ANNALS

THE CONGRESS OF THE UNITED STATES.

SIXTH CONGRESS

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

SIXTH CONGRESS.

COMPRISING THE PERIOD FROM DECEMBER 2, 1799, TO MARCH 3, 1801, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

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1851.

PROCEEDINGS

OF

THE SENATE OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SIXTH CONGRESS, BEGUN AT THE CITY OF PHILADELPHIA, DECEMBER 2, 1799.

MONDAY, December 2, 1799.

The first session of the sixth Congress, conformably to the Constitution, commenced this day, and the Senate assembled, in their Chamber, at the city of Philadelphia.

PRESENT:

JOHN LANGDON, from New Hampshire;
BENJAMIN GOODHUE, from Massachusetts;
THEODORE FOSTER, from Rhode Island;
JAMES HILLHOUSE and URIAH TRACY, from Connecticut;
JOHN LAURANCE and JAMES WATSON, from New York;
WILLIAM BINGHAM, from Pennsylvania;
HUMPHREY MARSHALL, from Kentucky;
JACOB READ, from South Carolina;
JAMES GUNN, from Georgia.

JOSEPH ANDERSON, appointed a Senator by the State of Tennessee, for the remainder of the term for which their late Senator, Andrew Jackson, was appointed; ABRAHAM BALDWIN, appointed a Senator by the State of Georgia; JOHN BROWN, appointed a Senator by the State of Kentucky; SAMUEL DEXTER, appointed a Senator by the State of Massachusetts; SAMUEL LIVERMORE, appointed a Senator by the State of New Hampshire; and WILLIAM HILL WELLS, appointed a Senator by the State of Delaware; severally produced their credentials, and took their seats in the Senate.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and SAMUEL LIVERMORE was chosen.

Ordered, That Mr. READ administer the oath required by law to the President of the Senate *pro tempore*.

The PRESIDENT administered the oath, as the law prescribes, to Messrs. ANDERSON, BALDWIN, BROWN, DEXTER, and WELLS.

Ordered, That the Secretary wait upon the PRESIDENT OF THE UNITED STATES, and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the VICE PRESIDENT, they have elected SAMUEL LIVERMORE President of the Senate *pro tempore*.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business, and that, in the absence of the VICE PRESIDENT, they have elected SAMUEL LIVERMORE President of the Senate *pro tempore*.

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose, provided, that the same be furnished at the rate usual for the annual charge of such papers.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and have elected THEODORE SEDGWICK their Speaker.

Ordered, That Messrs. READ and BINGHAM be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

The PRESIDENT communicated a letter signed John Trumbull, presenting to the Senate of the United States impressions of two prints of the American Revolution, which he had lately caused to be published; and the letter was read.

Ordered, That it lie on the table.

The Senate adjourned to 11 o'clock to-morrow morning.

TUESDAY, December 3.

WILLIAM COCKE, appointed a Senator by the State of Tennessee, and JAMES SCHUREMAN, appointed a Senator by the State of New Jersey, in the room of John Rutherfurd, resigned, severally produced their credentials, were qualified, and took their seats in the Senate.

HENRY LATIMER, from the State of Delaware, and JAMES ROSS, from the State of Pennsylvania, severally attended.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and have appointed a joint committee on their part, together with such committee as the Senate may appoint on theirs, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

Mr. READ reported from the joint committee

appointed for the purpose, that they had waited on the President of the United States, and had notified him that a quorum of the two Houses of Congress were assembled; and that the President of the United States acquainted the committee, that he would meet the two Houses, this day, at 12 o'clock, in the Chamber of the House of Representatives.

A message from the House of Representatives informed the Senate that the House are now ready to meet the Senate, in the Chamber of that House, to receive such communications as the President of the United States shall be pleased to make to them.

Whereupon the Senate repaired to the Chamber of the House of Representatives, for the purpose above expressed.

The Senate then returned to their own Chamber, and a copy of the Speech of the President of the United States, this day addressed to both Houses of Congress, was read. (For which, see House Proceedings, *post.*)

Ordered, That Messrs. ROSS, READ, and TRACY, be a committee to report the draught of an Address to the President of the United States, in answer to his Speech this day to both Houses.

Ordered, That the Speech of the President of the United States, this day communicated to both Houses of Congress, be printed for the use of the Senate.

Resolved, That two Chaplains of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

The Senate proceeded to the appointment of a Chaplain to Congress on their part, and the Right Reverend Bishop WHITE was unanimously elected.

WEDNESDAY, December 4.

The Senate assembled, but transacted no business.

THURSDAY, December 5.

JONATHAN DAYTON, appointed a Senator by the State of New Jersey, and RAY GREENE, appointed a Senator by the State of Rhode Island, severally produced their credentials, were qualified, and took their seats in the Senate.

A message from the House of Representatives informed the Senate that the House concur in the resolution for the appointment of Chaplains, and have elected the Rev. Doctor ASHBEL GREEN a Chaplain to Congress on their part.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress certain documents which have relation to the communications made on Tuesday, on the subjects of the insurrection in Pennsylvania, the renewal of commerce with St. Domingo, and the mission to the French Republic.

JOHN ADAMS.

UNITED STATES, *December* 5, 1799.

The Message and papers therein referred to were read.

Ordered, That they lie for consideration, and that the Message and papers be printed for the use of the Senate.

Mr. ANDERSON presented the petition of Samuel Glass and others, praying compensation for a number of horses, stated to have been stolen from them by certain Indians on the frontiers; which was read, and referred to Messrs. ANDERSON, HILLHOUSE, and GOODHUE, to consider and report thereon to the Senate.

FRIDAY, December 6.

Mr. DEXTER notified the Senate, that he should, on Monday next, ask leave to bring in a bill to revive the act, entitled, "An act for the relief of persons imprisoned for debt."

Mr. ROSS, from the committee appointed to draught an Address, in answer to the Speech of the President of the United States, to the two Houses of Congress at the opening of the session, made a report; which was read.

Ordered, That it lie for consideration.

MONDAY, December 9.

ELIJAH PAINE, from the State of Vermont, attended.

The PRESIDENT laid before the Senate a letter from Samuel Meredith, Treasurer, together with his Specie, War, and Navy accounts, ending the 31st of December, 1798, March 31st, and June 30th, 1799, and Navy and War accounts to September 30th, 1799; which were read.

Ordered, That they lie on file.

Agreeably to notice given, Mr. DEXTER had leave to bring in a bill to revive the act, entitled, "An act for the relief of persons imprisoned for debt," which was read; and, by unanimous consent, the bill was read the second time.

Ordered, That it be referred to Messrs. DEXTER, LAURANCE, and TRACY, to consider and report thereon to the Senate.

The Senate proceeded to consider the report of the committee of the draught of an Address in answer to the Speech of the President of the United States to both Houses of Congress, at the opening of the session; which, being read in paragraphs, was adopted, as follows:

To the President of the United States:

Accept, Sir, the respectful acknowledgments of the Senate of the United States for your Speech delivered to both Houses of Congress at the opening of the present session.

While we devoutly join you in offering our thanks to Almighty God, for the return of health to our cities, and for the general prosperity of the country, we cannot refrain from lamenting that the arts and calumnies of factious, designing men have excited open rebellion a second time in Pennsylvania; and thereby compelled the employment of military force to aid the civil authority in the execution of the laws. We rejoice that your vigilance, energy, and well-timed exertions, have crushed so daring an opposition, and prevented the spreading

of such treasonable combinations. The promptitude and zeal displayed by the troops called to suppress this insurrection deserve our highest commendation and praise, and afford a pleasing proof of the spirit and alacrity with which our fellow-citizens are ready to maintain the authority of our excellent Government.

Knowing, as we do, that the United States are sincerely anxious for a fair and liberal execution of the Treaty of Amity, Commerce, and Navigation, entered into with Great Britain, we learn, with regret, that the progress of adjustment has been interrupted, by a difference of opinion among the commissioners. We hope, however, that the justice, the moderation, and the obvious interests of both parties, will lead to satisfactory explanations, and that the business will then go forward to an amicable close of all differences and demands between the two countries. We are fully persuaded that the Legislature of the United States will cheerfully enable you to realize your assurances of performing, on our part, all engagements under our treaties, with punctuality, and the most scrupulous good faith.

When we reflect upon the uncertainty of the result of the late mission to France, and upon the uncommon nature, extent, and aspect, of the war now raging in Europe—which affects materially our relations with the Powers at war, and which has changed the condition of their colonies in our neighborhood—we are of opinion, with you, that it would be neither wise nor safe to relax our measures of defence, or to lessen any of our preparations to repel aggression.

Our inquiries and attention shall be carefully directed to the various other important subjects which you have recommended to our consideration; and from our experience of your past administration, we anticipate, with the highest confidence, your strenuous co-operation in all measures which have a tendency to promote and extend our national interests and happiness.

SAMUEL LIVERMORE,
President of the Senate, pro tempore.

Ordered, That the committee who prepared the Address wait on the President of the United States, and desire him to acquaint the Senate at what time and place it will be most convenient for him that it should be presented.

Mr. ROSS reported, from the committee, that they had waited on the President of the United States, and that he would receive the Address of the Senate to-morrow at 12 o'clock, at his own house.

Whereupon, *Resolved*, That the Senate will, to-morrow, at 12 o'clock, wait on the President of the United States accordingly.

Mr. ROSS notified the Senate that he should to-morrow ask leave to bring in a bill to revive certain suits and process in the Circuit Court for the district of Pennsylvania, which have been discontinued.

TUESDAY, December 10.

Agreeably to the resolution of yesterday, the Senate waited on the President of the United States, and the President of the Senate, in their name, presented the Address then agreed to.

To which the PRESIDENT OF THE UNITED STATES made the following reply:

Gentlemen of the Senate:

I thank you for this Address. I wish you all possible success and satisfaction in your deliberations on the means which have a tendency to promote and extend our national interests and happiness; and I assure you that, in all your measures directed to those great objects, you may, at all times, rely with the highest confidence on my cordial co-operation.

The praise of the Senate, so judiciously conferred on the promptitude and zeal of the troops, called to suppress the insurrection, as it falls from so high authority, must make a deep impression, both as a terror to the disobedient, and an encouragement of such as do well.

JOHN ADAMS.

UNITED STATES, *December* 10, 1799.

The Senate returned to their own Chamber, and proceeded to the consideration of Executive business.

WEDNESDAY, December 11.

NATHANIEL CHIPMAN, from the State of Vermont, attended.

The PRESIDENT laid before the Senate a report from the Commisioners of the Sinking Fund; which was read.

Ordered, That it be printed for the use of the Senate.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of State, in pursuance of the "Act to revive and continue in force certain parts of the 'Act for the relief and protection of American seamen,' and to amend the same," with abstracts of all the returns, made by the collectors of the different ports, of registered seamen, and of impressed seamen; together with a report, exhibiting abstracts of the communications received from the agents employed by virtue of that act; which were read.

Ordered That they be printed for the use of the Senate.

Agreeably to notice given, Mr. ROSS obtained leave to bring in a bill for reviving and continuing suits and proceedings in the Circuit Court for the District of Pennsylvania; and the bill was read; and, by unanimous consent, it was read the second time and referred to Messrs. ROSS, CHIPMAN, and DEXTER, to consider and report thereon to the Senate.

Ordered, That the report of the Secretary for the Department of State, respecting impressed seamen, together with the papers therein referred to, be committed to Messrs. READ, GOODHUE, and BINGHAM, to consider and report thereon to the Senate.

Mr. DEXTER from the committee to whom was referred the bill, to revive the act entitled "An act for the relief of persons imprisoned for debt," reported amendments, which were read and adopted; and the bill being further amended,

Ordered, That it pass to a third reading.

THURSDAY, December 12.

JAMES LLOYD, from the State of Maryland, attended.

The bill to revive the act, entitled "An act for the relief of persons imprisoned for debt," was read the third time and passed.

Mr. GREENE presented the petition of Joseph

Russell, jr., and others, stating that there is due to them from the United States interest on twenty-four thousand four hundred dollars, according to a resolution of Congress of the 18th March 1780, and praying payment; which petition was read and referred to Messrs. GREENE, TRACY, and HILLHOUSE, to consider and report thereon to the Senate.

Mr. DEXTER presented the petitions of Michael Jackson and others, on the subject last mentioned, which were referred to the same committee, to consider and report thereon to the Senate.

On motion, by Mr. HILLHOUSE, that a committee be appointed to revise the law, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country," and to make such amendments or alterations as shall be found necessary more effectually to prevent the carrying on such trade, it was agreed that this motion lie until to-morrow for consideration.

Ordered, That the letter signed John Trumbull, communicated on the 2d inst., be referred to Messrs. TRACY, LAURANCE, and WATSON, to consider and report thereon to the Senate.

Mr. ANDERSON presented the petition of Daniel Smith, praying compensation for a negro, and also for several horses, stated to have been stolen by the Indians; which was read, and referred to the committee appointed the 5th inst., on the petition of Samuel Glass and others, to consider and report thereon to the Senate.

Mr. MARSHALL presented the petition of Margaret Lapsley, praying the renewal of certain certificates therein mentioned, and stated to have been lost; and the petition was read, and referred to Messrs. MARSHALL, TRACY, and DAYTON, to consider and report thereon to the Senate.

Ordered, That Messrs. TRACY, LAURANCE, READ, DEXTER, and ROSS, be a committee to take into consideration that part of the Speech of the President of the United States which recommends a revision and amendment of the judiciary system, and that they have leave to report by bill, bills, or otherwise.

FRIDAY, December 13.

Mr. ROSS from the committee to whom was referred the bill for reviving and continuing suits and proceedings in the Circuit Court for the district of Pennsylvania, reported amendments; which were read and agreed to, and the bill was amended accordingly.

Ordered, That this bill pass to the third reading.

The Senate resumed the consideration of the motion made yesterday respecting the law prohibiting the slave trade; and,

Ordered, That Messrs. HILLHOUSE, DEXTER, and READ, be a committee to take the same into consideration and report thereon to the Senate.

MONDAY, December 16.

The bill for reviving and continuing suits and proceedings in the Circuit Court for the district of Pennsylvania was read the third time, and passed.

Mr. MARSHALL, from the committee to whom was referred the petition of Margaret Lapsley, made report; which was read.

Ordered, That it lie for consideration.

TUESDAY, December 17.

Ordered, That Mr. WELLS be of the Joint Committee for Enrolled bills on the part of the Senate.

The Senate took into consideration the report of the committee on the petition of Margaret Lapsley, and agreed thereto.

Mr. TRACY, from the committee to whom was referred the letter signed John Trumbull, of 20th September, 1798, reported a resolution, which was adopted, as follows:

Resolved, That the Senate of the United States accept the prints presented by John Trumbull, Esq., and that their President be requested to inform him, that while they respect the delicacy which dictated the *manner* of offering this elegant present, they consider their country honored by the genius of one of her sons, by whom these prints are happily designed, to perpetuate two memorable scenes in her progress to independence, and to preserve in lively recollection the names and virtues of heroes who fell in her defence.

Ordered, That Messrs. DAYTON, MARSHALL, and TRACY, be a committee to prepare and report a bill providing for the renewal of the certificates of the debt of the United States which have been destroyed or lost.

WEDNESDAY, December 18.

The Senate transacted no business to-day.

THURSDAY, December 19.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

The letter herewith transmitted will inform you that it has pleased Divine Providence to remove from this life our excellent fellow-citizen GEORGE WASHINGTON, by the purity of his character, and a long series of services to his country, rendered illustrious through the world. It remains for an affectionate and grateful people, in whose hearts he can never die, to pay suitable honors to his memory. JOHN ADAMS.

UNITED STATES, *December* 19, 1799.

The Message and letter were read and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House having received intelligence of the death of their highly-valued fellow-citizen, General GEORGE WASHINGTON, and sharing the universal grief this distressing event must produce, have resolved that a joint committee be appointed, to report measures suitable to the occasion, and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, first in war, first in peace, and first in the hearts of his countrymen; and, having appointed a committee on their part, desire the concurrence of the Senate.

The Senate proceeded to consider the foregoing resolution of the House of Representatives; whereupon,

Resolved, That they do concur therein, and that Messrs. DAYTON, BINGHAM, DEXTER, GUNN, LAURANCE, TRACY, and READ, be the committee on the part of the Senate.

Resolved, That the Senate will wait on the President of the United States, to condole with him on the distressing event of the death of General GEORGE WASHINGTON; and that a committee be appointed to prepare, for that occasion, an Address to the President of the United States, expressive of the deep regret of the Senate; and that this committee consist of Messrs. DEXTER, ROSS, and READ.

Resolved, That the chairs in the Senate Chamber be covered, and the room hung with black, and that each member, and the officers of the Senate, go into mourning, by the usual mode of wearing a crape round the left arm, during the session.

MONDAY, December 23.

TIMOTHY BLOODWORTH, from the State of North Carolina, and JOHN E. HOWARD, from the State of Maryland, severally attended.

Mr. DEXTER, from the committee appointed for the purpose on the 18th inst., reported the draught of an Address to the President of the United States, on the death of General GEORGE WASHINGTON; which being read in paragraphs, was adopted, as follows:

To the President of the United States:

The Senate of the United States respectfully take leave, sir, to express to you their deep regret for the loss their country sustains in the death of General GEORGE WASHINGTON.

This event, so distressing to all our fellow-citizens, must be peculiarly heavy to you, who have long been associated with him in deeds of patriotism. Permit us, sir, to mingle our tears with yours; on this occasion it is manly to weep. To lose such a man, at such a crisis, is no common calamity to the world. Our country mourns her Father. The Almighty Disposer of human events has taken from us our greatest benefactor and ornament. It becomes us to submit with reverence to him who "maketh darkness his pavilion."

With patriotic pride, we review the life of our WASHINGTON, and compare him with those of other countries, who have been pre-eminent in fame. Ancient and modern names are diminished before him. Greatness and guilt have too often been allied; but his fame is whiter than it is brilliant. The destroyers of nations stood abashed at the majesty of his virtue. It reproved the intemperance of their ambition, and darkened the splendor of victory. The scene is closed, and we are no longer anxious lest misfortune should sully his glory; he has travelled on to the end of his journey and carried with him an increasing weight of honor: he has deposited it safely, where misfortune cannot tarnish it, where malice cannot blast it. Favored of heaven, he departed without exhibiting the weakness of humanity. Magnanimous in death, the darkness of the grave could not obscure his brightness.

Such was the man whom we deplore. Thanks to God! his glory is consummated; WASHINGTON yet lives—on earth in his spotless example—his spirit is in heaven.

Let his countrymen consecrate the memory of the heroic General, the patriotic Statesman, and the virtuous Sage; let them teach their children never to forget that the fruit of his labors and his example are their inheritance. SAMUEL LIVERMORE,
President of the Senate, pro tempore.

Ordered, That the committee who prepared the Address wait on the President of the United States, and desire him to acquaint the Senate at what time and place it will be most convenient for him that it should be presented.

Mr. DEXTER reported, from the committee, that they had waited on the President of the United States and that he had acquainted them that he would receive the Address of the Senate immediately, at his own house.

Whereupon, the Senate waited on the President of the United States, and the President of the Senate, in their name, presented the Address this day agreed to.

To which the PRESIDENT OF THE UNITED STATES made the following reply:

Gentlemen of the Senate:

I receive with the most respectful and affectionate sentiments, in this impressive address, the obliging expressions of your regard for the loss our country has sustained in the death of her most esteemed, beloved, and admired citizen.

In the multitude of my thoughts and recollections on this melancholy event, you will permit me only to say, that I have seen him in the days of adversity, in some of the scenes of his deepest distress and most trying perplexities; I have also attended him in his highest elevation, and most prosperous felicity, with uniform admiration of his wisdom, moderation, and constancy.

Among all our original associates in that memorable League of the Continent in 1774, which first expressed the sovereign will of a free nation in America, he was the only one remaining in the General Government. Although, with a constitution more enfeebled than his, at an age when he thought it necessary to prepare for retirement, I feel myself alone, bereaved of my last brother, yet I derive a strong consolation from the unanimous disposition which appears, in all ages and classes, to mingle their sorrow with mine, on this common calamity to the world.

The life of our WASHINGTON cannot suffer by a comparison with those of other countries who have been most celebrated and exalted by fame. The attributes and decorations of royalty could have only served to eclipse the majesty of those virtues which made him, from being a modest citizen, a more resplendent luminary. Misfortune, had he lived, could hereafter have sullied his glory only with those superficial minds, who, believing that characters and actions are marked by success alone, rarely deserve to enjoy it. Malice could never blast his honor, and envy made him a singular exception to her universal rule. For himself he had lived enough to life, and to glory. For his fellow-citizens, if their prayers could have been answered, he would have been immortal. For me his departure is at a most unfortunate moment. Trusting, however, in the wise and righteous dominion of Providence over the passions of men, and the results of their councils and

actions, as well as over their lives, nothing remains for me but humble resignation.

His example is now complete, and it will teach wisdom and virtue to magistrates, citizens, and men, not only in the present age, but in future generations, as long as our history shall be read. If a Trajan found a Pliny, a Marcus Aurelius can never want biographers, eulogists, or historians.

JOHN ADAMS.

UNITED STATES, *December* 23, 1799.

The Senate returned to their own Chamber.

A message from the House of Representatives informed the Senate that the joint committee appointed on the part of the House of Representatives, on the 19th instant, on the receipt of the intelligence of the death of General GEORGE WASHINGTON, having made report to that House, they have agreed to sundry resolutions thereupon, in which they desire the concurrence of the Senate.

Mr. DAYTON, from the joint committee appointed the 19th instant, on the part of the Senate, on the receipt of the intelligence of the death of General GEORGE WASHINGTON, reported in part, and the report was agreed to. Whereupon,

The Senate took into consideration the resolutions of the House of Representatives, of this day, on the report of the joint committee on the subject above mentioned, and which resolutions are as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That a marble monument be erected by the United States in the Capitol, at the City of Washington; and that the family of General WASHINGTON be requested to permit his body to be deposited under it; and that the monument be so designed as to commemorate the great events of his military and political life.

And be it further resolved, That there be a funeral procession from Congress Hall to the German Lutheran Church, in honor of the memory of General GEORGE WASHINGTON, on Thursday, the 26th instant; and that an oration be prepared at the request of Congress, to be delivered before both Houses on that day; and that the President of the Senate, and Speaker of the House of Representatives, be desired to request one of the members of Congress to prepare and deliver the same.

And be it further resolved, That it be recommended to the people of the United States to wear crape on the left arm, as mourning, for thirty days.

And be it further resolved, That the President of the United States be requested to direct a copy of these resolutions to be transmitted to Mrs. WASHINGTON, assuring her of the profound respect Congress will ever bear to her person and character; of their condolence on the late afflicting dispensation of Providence, and entreating her assent to the interment of the remains of General GEORGE WASHINGTON, in the manner expressed in the first resolution

Resolved, That the President of the United States be requested to issue a proclamation, notifying to the people throughout the United States the recommendation contained in the third resolution.

Resolved, unanimously, That the Senate do concur in the aforesaid resolutions.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States;" and a bill, entitled "An act extending the privilege of franking to William Henry Harrison, the Delegate from the Territory of the United States Northwest of the Ohio, and making provision for his compensation;" in which bills they desire the concurrence of the Senate.

The bill, sent from the House of Representatives, entitled "An act supplementary to the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," was read the first time; and, by unanimous consent, it was read the second time, and referred to Messrs. ROSS, PAINE, and LAURANCE, to consider and report thereon to the Senate.

The bill last mentioned in the message from the House of Representatives was read, and ordered to the second reading.

TUESDAY, December 24.

Mr. Ross, from the committee to whom was referred the bill, sent from the House of Representatives for concurrence, entitled "An act supplementary to the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," reported the bill without amendment; and the report was adopted; and, by unanimous consent, the bill was read a third time, and passed.

Mr. TRACY presented a petition of Thomas Burling and others, inhabitants of certain lands on the borders of the Mississippi, praying confirmation of their grants made by the Spanish Government; and also that a disposition be made of the vacant lands in that territory. Also, a letter signed John Henderson, per order, directed to Winthrop Sargent, Governor, together with the extract of a letter from Governor Sargent to the Secretary of State on the subject.

Ordered, That the petition and papers above mentioned be referred to Messrs. TRACY, GUNN, and ROSS, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act extending the privileges of franking to William Henry Harrison, the Delegate from the Territory of the United States Northwest of the Ohio, and making provision for his compensation," was read a second time, and referred to Messrs. ROSS, TRACY, and WATSON, to consider and report thereon to the Senate.

Mr. LAURANCE presented the petition of Peter Aupoix, of the city of New York, praying allowance of drawback on certain goods stated to have been exported, though the forms of law were not, through want of information, complied with; and the petition was read, and referred to Messrs. LAURANCE, GOODHUE, and HILLHOUSE, to consider and report thereon to the Senate.

THURSDAY, December 26.

In conformity to the resolve of the 23d instant, the Senate went in procession to the German Lutheran church, where was delivered an oration in honor of the memory of General GEORGE WASHINGTON. After which, they returned to their own Chamber, and adjourned.

FRIDAY, December 27.

Resolved, That the thanks of the Senate be communicated, through their President, to General HENRY LEE, for the eloquent and impressive oration to the memory of General GEORGE WASHINGTON, which he prepared and delivered at the request of Congress.

Resolved, That the Secretary be directed to apply to General LEE for a copy of the same.

Mr. Ross, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act extending the privilege of franking to William Henry Harrison, the Delegate from the Territory of the United States Northwest of the Ohio, and making provision for his compensation," reported the bill without amendment, and the report was adopted; and, by unanimous consent, the bill was read the third time and passed.

MONDAY, December 30.

THOMAS JEFFERSON, Vice President of the United States and President of the Senate, attended.

JESSE FRANKLIN, appointed a Senator by the Legislature of the State of North Carolina, produced his credentials, was qualified, and took his seat in the Senate.

The VICE PRESIDENT laid before the Senate a letter signed John Cleves Symmes, stating the reasons why Congress should be induced to receive of him the purchase money for certain public lands at the contract price; and the letter was read.

Mr. LIVERMORE laid before the Senate a letter signed Henry Lee, in answer to their vote of thanks of the 27th instant, and request of a copy of his oration; which was read.

Mr. DAYTON, from the joint committee appointed the 19th instant, on the intelligence of the death of General GEORGE WASHINGTON, made a further report, in part, and it was agreed that the consideration thereof be postponed.

TUESDAY, December 31.

The VICE PRESIDENT laid before the Senate a letter from Samuel Meredith, Treasurer, of the 30th instant, with his specie account to 30th September, 1799; which were read and ordered to lie on the table.

Mr. PAINE presented the petition of Elijah Brainard praying to be put on the pension list, or for such other allowance as Congress shall approve, in consideration of a wound received in the public service in the year 1776; and the petition was read and referred to Messrs. PAINE, TRACY, and COCKE, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed "Resolutions directing further measures in honor of the memory of General GEORGE WASHINGTON," in which they desire the concurrence of the Senate.

The resolutions were read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That it be recommended to the people of the United States to assemble on the 22d day of February next, in such numbers and manner as may be convenient, publicly to testify their grief for the death of General GEORGE WASHINGTON, by suitable eulogies, orations, and discourses, or by public prayers.

And be it further resolved, That the President be requested to issue a proclamation for the purpose of carrying the foregoing resolution into effect.

Whereupon, *Resolved*, That the Senate do concur in the said resolutions.

WEDNESDAY, January 1, 1800.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act providing for salvage in cases of recapture," in which they desire the concurrence of the Senate. They have passed the bill, sent from the Senate, entitled "An act for the relief of persons imprisoned for debt," with amendments, in which they desire the concurrence of the Senate.

The Senate proceeded to consider the amendments of the House of Representatives to the bill last mentioned.

Ordered, That they be referred to Messrs. DEXTER, TRACY, and COCKE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives for concurrence, entitled "An act providing for salvage in cases of recapture," was read the first time, and ordered to the second reading.

THURSDAY, January 2.

Mr. DEXTER, from the committee to whom were referred the amendments, sent from the House of Representatives, to the bill entitled "An act for the relief of persons imprisoned for debt," made report.

Resolved, That the Senate do agree to the amendments.

The bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," was read the second time, and referred to, Messrs. GOODHUE, LAURANCE, and LANGDON, to consider and report thereon to the Senate.

FRIDAY, January 3.

WILSON CARY NICHOLAS, appointed a Senator by the Legislature of the State of Virginia, to supply the vacancy occasioned by the death of Henry Tazewell, Esq., produced his credentials, was qualified, and took his seat in the Senate.

MONDAY, January 6.

The Senate proceeded to the consideration of Executive business, in which they spent the day.

TUESDAY, January 7.

STEPHENS THOMPSON MASON, from the State of Virginia, attended.

The VICE PRESIDENT communicated a report of the Secretary of the Department of War, exhibiting the expenses of the national armory at Springfield, Massachusetts; which was read.

Mr. GOODHUE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," reported amendments; which were read, and in part agreed to.

Ordered, That this bill be recommitted to the same committee, for further amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the preservation of peace with the Indian tribes," in which they desire the concurrence of the Senate.

The bill last mentioned was read and ordered to the second reading.

Mr Ross presented the petition of Richard Butler, an officer in the military service of the United States, doing duty within the Mississippi Territory, praying to be allowed to introduce a number of slaves within the said Territory, which he has lately become possessed of in right of his wife, the ordinance to the contrary notwithstanding; and the petition was read.

Ordered, That the petition be referred to Messrs. ROSS, TRACY, and BROWN, to consider and report thereon to the Senate.

WEDNESDAY, January 8.

The bill, sent from the House of Representatives, entitled "An act for the preservation of peace with the Indian tribes," was read the second time, and referred to Messrs. HILLHOUSE, BROWN, and ROSS, to consider and report thereon to the Senate.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

A report made to me on the first day of this month by the Director of the Mint, through the office of the Secretary of State, with the documents attending it, I transmit to both Houses of Congress for their consideration.

JOHN ADAMS.

UNITED STATES, *January* 8, 1800.

The Message and papers were read and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of John Vaughan," in which they desire the concurrence of the Senate.

The bill was read, and ordered to a second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

In compliance with the request in one of the resolutions of Congress, of the 21st of December last, I transmitted a copy of those resolutions, by my Secretary, Mr. Shaw, to Mrs. WASHINGTON, assuring her of the profound respect Congress will ever bear to her person and character; of their condolence in the late afflicting dispensation of Providence; and entreating her assent to the interment of the remains of General GEORGE WASHINGTON in the manner expressed in the first resolution. As the sentiments of that virtuous lady, not less beloved by this nation than she is at present greatly afflicted, can never be so well expressed as in her own words, I transmit to Congress her original letter.

It would be an attempt of too much delicacy to make any comments upon it; but there can be no doubt that the nation at large, as well as all the branches of the Government, will be highly gratified by any arrangement which may diminish the sacrifice she makes of her individual feelings.

JOHN ADAMS.

UNITED STATES, *January* 8, 1800.

The letter is as follows:

SIR: While I feel with keenest anguish the late dispensation of Divine Providence, I cannot be insensible to the mournful tributes of respect and veneration which are paid to the memory of my dear deceased husband; and, as his best services, and most anxious wishes, were always devoted to the welfare and happiness of his country, to know that they were truly appreciated and gratefully remembered affords no inconsiderable consolation.

Taught by the great example which I have so long had before me, never to oppose my private wishes to the public will, I must consent to the request made by Congress which you have had the goodness to transmit to me; and, in doing this, I need not, I cannot, say what a sacrifice of individual feeling I make to a sense of public duty.

With grateful acknowledgments, and unfeigned thanks, for the personal respect and evidences of condolence, expressed by Congress and yourself, I remain, very respectfully, sir, your most obedient humble servant.

MARTHA WASHINGTON.

The PRESIDENT OF THE UNITED STATES.

Ordered, That the Message and letter be referred to the joint committee appointed on the 19th December last, to report suitable measures in honor of the memory of General GEORGE WASHINGTON, deceased.

THURSDAY, January 9.

Mr. GOODHUE, from the committee to whom was recommitted the bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," reported further amendments.

Ordered, That they be printed for the use of the Senate.

The bill, sent from the House of Representatives, entitled "An act for the relief of John Vaughan," was read the second time, and referred to Messrs. LIVERMORE, DEXTER, and PAINE, to consider and report thereon to the Senate.

Mr. DEXTER presented the petition of Keziah Underwood, of the State of Massachusetts, praying the payment of a prize ticket of the United States lottery, although barred by the statute of limitation; and the petition was read.

Ordered, That it be referred to Messrs. DEXTER, GUNN, and PAINE, to consider and report thereon to the Senate.

FRIDAY, January 10.

Mr. TRACY presented the memorial of the Connecticut Academy of Arts and Sciences, signed Timothy Dwight, President, praying that provision may be made for a more minute return of the inhabitants of the United States in a future census; and the memorial was read.

Ordered, That it be referred to the committee appointed the first instant, on the bill, sent from the House of Representatives, entitled "An act providing for the enumeration of the inhabitants of the United States," to consider and report thereon to the Senate.

Mr. Ross presented the memorial of the American Philosophical Society, signed Thomas Jefferson, President, suggesting the propriety of a similar provision; and the memorial was read, and referred to the committee last mentioned, to consider and report thereon to the Senate.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," and, after debate,

Ordered, That the bill be recommitted to the committee who reported the amendments, further to consider and report thereon, and that Messrs. DEXTER and LIVERMORE be added to the committee.

Mr. DAYTON, from the committee appointed the 17th December, to prepare and report a bill providing for the renewal of certificates of the debt of the United States, which have been destroyed or lost, made report; whereupon,

Ordered, That the committee be discharged from the further consideration of the subject.

Ordered, That Messrs. TRACY, MARSHALL, and DAYTON, be a committee to bring in a bill for the relief of the representatives of Samuel Lapsley.

MONDAY, January 13.

The Senate proceeded to the consideration of Executive business.

TUESDAY, January 14.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

A report, made to me on the 5th of this month, by the Secretary of War, contains various matters in which the honor and safety of the nation are deeply interested. I transmit it therefore to Congress, and recommend it to their serious consideration.

JOHN ADAMS.

UNITED STATES *January* 13, 1800.

The Message and report were read, and ordered to lie on the table.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. HILLHOUSE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act for the preservation of peace with the Indian tribes," reported the bill without amendment; and the report was adopted.

Ordered, That this bill pass to the third reading.

Mr. TRACY, from the committee appointed for the purpose, reported a bill for the relief of the legal representatives of Samuel Lapsley, deceased; which was read, and ordered to the second reading.

WEDNESDAY, January 15,

The bill, sent from the House of Representatives, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," was read the second time, and referred to Messrs. ROSS, GOODHUE, and LATIMER, to consider and report thereon to the Senate.

The bill for the relief of the legal representatives of Samuel Lapsley, deceased, was read the second time, and recommitted to the committee who reported the bill, further to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act for the preservation of peace with the Indian tribes," was read the third time, and passed.

Mr. Ross, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," made report; and, after debate,

Ordered, That the bill be recommitted to the committee last named, further to consider and report thereon to the Senate.

THURSDAY, January 16.

Ordered, That the Secretary supply each Senator with the fourth volume of the laws of the United States, bound and lettered.

Mr. Ross, from the committee to whom was recommitted the bill, sent from the House of Representatives, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," reported amendments, which were adopted.

Ordered, That this bill pass to the third reading as amended.

Mr. GOODHUE, from the committee to whom was recommitted the bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," reported amendments, which were read.

Ordered, That they be printed for the use of the Senate.

FRIDAY, January 17.

Mr. TRACY, from the committee to whom was referred the bill for the relief of the legal representatives of Samuel Lapsley, deceased, reported amendments.

Ordered, That they be printed for the use of the Senate.

The bill, sent from the House of Representatives, entitled "An act to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," was read the third time.

Resolved, That this bill pass with amendments.

MONDAY, January 20.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act providing for salvage in cases of capture," and

Ordered, That the bill and amendments be recommitted to the same committee, further to consider and report thereon.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

In obedience to law I transmit to Congress my annual account of the contingent fund.

JOHN ADAMS.

UNITED STATES, *January* 20, 1800.

The Message and account were read, and ordered to lie on the table.

The Senate took into consideration the amendments reported by the committee to the bill for the relief of the legal representatives of Samuel Lapsley, deceased; which were adopted.

Ordered, That this bill pass to the third reading as amended.

The VICE PRESIDENT communicated a letter from Governor St. Clair, of the Territory Northwest of the Ohio, with a resolution of the Legislature of the said Territory, instructing William H. Harrison, their Delegate in Congress, to apply for an act of Congress to authorize the President of the United States to grant to the said Legislature, in trust, certain lots reserved for public use in the grant to John C. Symmes, and also the lots reserved in the seven ranges of townships within the said Territory; and the letter, together with the resolution, were read.

Ordered, That they lie on the table.

TUESDAY, January 21.

Mr. ROSS, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act providing for the enumeration of the inhabitants of the United States," reported amendments, which were read.

Ordered, That they be printed for the use of the Senate.

The bill for the relief of the legal representatives of Samuel Lapsley, deceased, was read the third time, and passed.

WEDNESDAY, January 22.

Ordered, That Messrs. GOODHUE, TRACY, and LAURANCE, be a committee to consider whether any, or what, compensation should be made to the members of the Senate and House of Representatives, in addition to what is at present allowed by law, and report by bill or otherwise.

THURSDAY, January 23.

CHARLES PINCKNEY, appointed a Senator by the State of South Carolina, produced his credentials, was qualified, and took his seat in the Senate.

Ordered, That the Secretary deliver the letter from Governor St. Clair, addressed to the Vice President, together with the resolution of the Legislature of the Territory Northwest of the river Ohio, communicated on the 20th instant, to Mr. Harrison, the representative of the Territory in Congress.

Mr. ANDERSON, from the committee appointed to consider the petition of Samuel Glass, and others, also, the petition of Daniel Smith, reported thereon; and the reports were severally read.

Ordered, That they be printed for the use of the Senate.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," and, after debate.

Ordered, That the further consideration thereof be postponed.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress, for the information of the members, a report of the Secretary of State, of the 9th instant, a letter from Matthew Clarkson, Esq. to him, of the 2d, and a list of the claims adjusted by the commissioners under the 21st article of our treaty with Spain.

JOHN ADAMS.

UNITED STATES, *January* 23, 1800.

The Message and papers were read, and ordered to lie for consideration.

Mr. PINCKNEY notified the Senate that he would, in the course of the next week, or at some short day hereafter, move for leave to bring in a bill to establish an uniform mode of drawing juries by lot in all the Judicial Courts of the United States having juries.

On motion, of Mr. ROSS, that it be

Resolved, That a committee be appointed to consider whether any, and what, provisions ought to be made by law for deciding disputed elections of President and Vice President of the United States, and for determining the legality or illegality of the votes given for those officers in the different States:

A motion was made to amend the motion by adding, "and that the committee be authorized to report by bill or otherwise."

Mr. BROWN, of Kentucky, was of opinion that this was a subject on which Congress had no right to legislate. When the Constitution undertook to make provisions on a subject, if they were found incomplete, or defective, they must be remedied by recommending an amendment to the Constitution. He wished the gentleman who had made this motion would pay further attention to the subject, and believed he would find that if anything was to be done it must be done by proposing an amendment to the Constitution.

Mr. ROSS said, that the Constitution had certainly made no provision on this subject. It only directed that after the votes were received, &c., the President of the Senate should, in the presence of the Senate and of the House of Representatives, open the certificates, and the votes should be counted. Suppose, said he, persons should claim to be Electors, who had never been *properly* appointed, should their vote be received? Suppose they should vote for a person to be President who had not the age required by the Constitution, or who had not been long enough a citizen of the United States, or for two persons who were both citizens of the same State—such cases might happen and were very likely to happen, and is there no remedy? What a situation would the country be in if such a case was to happen! He thought it their duty to make provision for it, and he believed a law was sufficient.

Mr. C. PINCKNEY, of South Carolina, thought it a very dangerous practice to endeavour to amend the Constitution by making laws for the purpose. The Constitution was a sacred deposite, put into their hands; they ought to take great care not to violate or destroy the essential provisions made by that instrument. He remembered very well that in the Federal Convention great care was used to provide for the election of the President of the United States, independently of Congress; to take the business as far as possible out of their hands. The votes are to be given by Electors appointed for that express purpose, the Electors are to be *appointed* by each State, and the whole direction as to the manner of their appointment is given to the State Legislatures. Nothing was more clear to him than that Congress had no right to meddle with it at all; as the whole was entrusted to the State Legislatures, they must make provision for all questions arising on the occasion.

Mr. DEXTER, of Massachusetts, did not feel himself at all in doubt as to the right of the Legislature to make such provisions on this subject as appeared to be necessary. It was directed by the Constitution that a President should be appointed, that he should be of not less than thirty-five years of age, that he should have been at least fourteen years a citizen of the United States, &c. The proceedings in the election of a President may be defective in all these particulars, and can it be supposed that there is no way to correct them? The Constitution is not silent on this head; among the powers given to Congress in the 5th section is this, "to pass all laws necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." The law now proposed appears to be necessary to carry into effect the power of appointing the President; it is therefore clearly Constitutional.

Mr. LIVERMORE, of New Hampshire, never felt less doubt on any subject than the one now under consideration: the Constitution has given many directions as to the appointment of the President, some of which he read. Is it possible (said Mr. L.) that gentlemen can suppose all these may be violated and disregarded, and yet that it is nobody's business to interpose, and make provision to prevent it? He trusted the honorable Senate would agree to the resolution to appoint a committee for that purpose.

Mr. BALDWIN, of Georgia, expressed his regret that the mover of this resolution had not thought proper to bring forward a subject so new and important, in the form commonly used in parliamentary assemblies, by a single proposition, viz: "that it is expedient that further provision be made respecting disputed votes for President and Vice President of the United States." It was manifest from the debate that several different questions had been under consideration at the same time, and different gentleman were in fact directing their remarks to different questions.

The first question was, the one he had just mentioned, whether there was so great a defect in the present provisions, which exist on this subject, as to render further provisions necessary?

The second is, if further provisions are necessary, must they be made by amendment to the Constitution? or,

Thirdly, whether they can be made by law?

He must say, for himself, that he did not agree that the present provisions on this subject were so defective and absurd as had been represented. His general respect for those who had gone before him in this House, and especially for the venerable assembly of the most experienced statesmen of the country by whom the Constitution had been formed, forbade him to entertain the belief that this subject, which is the strong feature that characterizes this as an Elective Government, could have been till now so entirely out of sight and neglected. Gentlemen appeared to him, from their observations, to forget that the Constitution in directing *Electors* to be appointed throughout the United States equal to the whole number of the Senators and Representatives in Congress, for the express purpose of entrusting this Constitutional branch of power to them, had provided for the existence of as respectable a body as Congress, and in whom the Constitution on this business has more confidence than in Congress. Experience had proved

that a more venerable selection of characters could not be made in this country than usually composed that electoral body. And what are the questions which can arise on the subject entrusted to them to which they are incompetent, or to which Congress is so much more competent? The questions which present themselves seem to be:

1. Those which relate to the elections, returns, and qualifications, of their own members. Shall these be taken away from that body, and submitted to the superior decision and control of Congress, without a particle of authority for it from the Constitution?

2. The legality or constitutionality of the different steps of their own proceedings, as, whether they vote for two persons both of the same State; whether they receive votes for a person under thirty-five years of age, or one who has not been fourteen years a citizen of the United States &c. It is true they, as well as any other Constitutional branch of this Government acting under that instrument, may be guilty of taking unconstitutional or corrupt steps, but they do it at their peril. Suppose either of the other branches of the Government, the Executive, or the Judiciary, or even Congress, should be guilty of taking steps which are unconstitutional, to whom is it submitted, or who has control over it, except by impeachment? The Constitution seems to have equal confidence in all the branches on their own proper ground, and for either to arrogate superiority, or a claim to greater confidence, shows them in particular to be unworthy of it, as it is in itself directly unconstitutional

3. The authentication of their own acts. This would seem to be as complete in them, as in either of the other branches of the Government. Their own authentication of their act finishes the business entrusted to them. It is true this must be judged of by the persons who are concerned in carrying it into execution; as in all laws and official acts under this Government, they to whom they are directed, and who are to be bound by them, must judge, and judge at their peril, whether they are duly authenticated or whether they are only a forgery.

If this be the just view of the subject, (and he could see no other which did not involve inextricable difficulties,) it leaves no possible question for the Senators and Representatives, when met together to count the votes agreeably to the Constitution, but to judge of the authentication of the act of the Electors, and then to proceed and count the votes as directed. If this body of the Electors of all the States had been directed by the Constitution to assemble in one place, instead of being formed into different Electoral colleges, he took it for granted none of the questions on which this resolution has been brought forward, would have occurred; every one would have acknowledged that they were to be settled in that assembly. It having been deemed more safe by the Constitution to form them into different Electoral colleges, to be assembled in the several States, does not at all alter the nature or distinctness of their powers, or subject them any more to the control of the other departments of the Government.

He observed further, on the other points to which gentlemen had spoken, that if such radical and important changes were to be made on this subject, as seemed to be in contemplation under this resolution, he thought they must be made by proposing an amendment to the Constitution to that effect; and that they could not be made by law, without violating the Constitution. He did not agree with the gentleman from Massachusetts, (Mr. DEXTER,) that the clause at the close of the 8th section of the Constitution, which gives to Congress power to pass all laws necessary and proper to carry into effect the foregoing powers of that section, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof, could be extended to this case; that speaks of the use of the powers vested by the Constitution—this resolution relates to the formation of a competent and essential part of the Government itself: that speaks of the movements of the Government after it is organized; this relates to the organization of the Executive branch, and is therefore clearly a Constitutional work, and to be done, if at all, in the manner pointed out by the Constitution, by proposing an article of amendment to the Constitution on that subject. His own opinion, however, was, what he had before stated, that the provisions on this subject were already sufficient; that all the questions which had been suggested were as safely left to the decision of the assemblies of Electors, as of any body of men that could be devised; and that the members of the Senate and of the House of Representatives, when met together in one room, should receive the act of the Electors as they would the act of any other Constitutional branch of the Government, to judge only of its authentication, and then to proceed to count the votes, as directed in the second article of the Constitution.

The further consideration of the subject was postponed.

FRIDAY, January 24.

Mr. GOODHUE, from the committee to whom was recommitted the bill, sent from the House of Representatives, entitled "An act providing for salvage in cases of recapture," reported further amendments.

Ordered, That they be printed for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to suspend in part an act, entitled 'An act to augment the Army of the United States, and for other purposes," also, a "Resolution authorizing and directing the Secretary of State to procure and transmit to the Governor of North Carolina a number of copies of the laws of the United States;" in which bill and resolution they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The resolution last mentioned was read, and ordered to be printed for the use of the Senate.

The Senate resumed the consideration of the motion made yesterday, that a committee be appointed to consider whether any, and what, provisions ought to be made by law for deciding disputed elections of President and Vice President of the United States, and for determining the legality or illegality of the votes given for those officers in the different States, and that the committee be authorized to report by bill or otherwise; and the motion as amended was adopted; and,

Ordered, That Messrs. ROSS, LAURANCE, DEXTER, PINCKNEY, and LIVERMORE, be the committee.

MONDAY, January 27.

The bill, sent from the House of Representatives, entitled "An act to suspend in part an act, entitled 'An act to augment the Army of the United States, and for other purposes," was read the second time.

Ordered, That it be referred to Messrs. TRACY, GUNN, and SCHUREMAN, to consider and report thereon to the Senate.

The Senate resumed the consideration of the amendments reported by the committee to the bill, entitled "An act providing for salvage in cases of recapture; and, after debate,

Ordered, That the further consideration thereof be postponed.

The Senate took into consideration the resolution sent from the House of Representatives, authorizing and directing the Secretary of State to procure and transmit to the Governor of North Carolina copies of the laws of the United States; and

Resolved, That they do concur in the resolution.

TUESDAY, January 28.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, entitled "An act providing for the enumeration of the inhabitants of the United States;" and, the first amendment reported being amended, on motion to agree to the amendment, as follows:

SEC. 1. Strike out lines 8, 9, 10, 11, 12, and to the word "for" in the 13th line, and insert "to take, or cause to be taken the number and names of the free inhabitants, (including those bound to service for a term of years,) and the number of slaves within their respective districts and territories; omitting, in such enumeration, Indians not taxed, and designating the age, sex, and colour, of all free persons; also the profession, trade, or occupation, in which every free male, above the age of twenty-one, is chiefly or principally employed, and the professions, trades, and occupations to which free males, under twenty-one, are bound as apprentices; and, also, distinguishing those who were inhabitants of the United States on the third day of September, one thousand seven hundred and eighty-three, or born under the jurisdiction thereof afterwards, from those who have emigrated since that time, according to the schedule herein contained:"

It was determined in the negative—yeas 12, nays 19, as follows:

YEAS—Messrs. Baldwin, Brown, Chipman, Dexter, Foster, Hillhouse, Laurance, Paine, Read, Ross, Schureman, and Tracy.

NAYS—Messrs. Anderson, Bingham, Bloodworth, Cocke, Franklin, Goodhue, Greene, Gunn, Howard, Langdon, Latimer, Livermore, Lloyd, Marshall, Mason, Nicholas, Pinckney, Watson, and Wells.

And it was agreed that the further consideration of the bill be postponed till to-morrow.

WEDNESDAY, January 29.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, entitled "An act providing for the enumeration of the inhabitants of the United States;" and having agreed to some of the amendments reported by the committee, together with sundry additional amendments,

Ordered, That this bill be recommitted.

Mr. LIVERMORE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act for the relief of John Vaughan," reported the bill without amendment.

THURSDAY, January 30.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, entitled "An act providing for salvage in cases of recapture;" and, having agreed thereto,

Ordered, That this bill pass to the third reading as amended.

The Senate proceeded to consider the report of the committee on the bill, entitled "An act for the relief of John Vaughan;" and, after debate, adjourned.

FRIDAY, January 31.

The bill, sent from the House of Representatives, entitled "An act providing for salvage, in cases of recapture," was read the third time.

Resolved, That this bill pass with an amendment.

The Senate resumed the consideration of the report of the committee on the bill, entitled "An act for the relief of John Vaughan;" and, after debate,

On motion, to agree to the third reading of the bill, it passed in the affirmative—yeas 16, nays 15, as follows;

YEAS—Messrs. Baldwin, Bingham, Bloodworth, Foster, Franklin, Greene, Langdon, Latimer, Laurance, Lloyd, Nicholas, Pinckney, Read, Ross, Tracy, and Wells.

NAYS—Messrs. Anderson, Brown, Chipman, Cocke, Dexter, Goodhue, Gunn, Hillhouse, Howard, Livermore, Marshall, Mason, Paine, Schureman, and Watson,

So it was *Resolved*, That this bill pass to the third reading.

DRAWING JURIES BY LOT.

Mr. PINCKNEY, agreeably to notice given on the 23d instant, asked leave to bring in a bill to establish an uniform mode of drawing juries by lot, in all the Courts of the United States; and, leave being granted, the bill was read.

On motion to agree to the second reading of the bill, it passed in the affirmative—yeas 30, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Langdon, Laurance, Livermore, Lloyd, Marshall, Mason, Nicholas, Paine, Pinckney, Read, Ross, Schureman, Tracy, Watson, and Wells.

On introducing the above bill, Mr. PINCKNEY addressed the Chair as follows:

Mr. President: Agreeably to the notice I gave, I rise to introduce a measure which appears to me of the highest importance to this country; it is for the purpose of introducing a bill to establish an uniform mode of drawing juries by lot in the Courts of the United States. On this occasion it will be unnecessary for me to go into an examination of the nature and excellence of the trial by jury, further than to remark, that we must all consider a fair and impartial one as next in point of importance to an uncorrupt or unbiassed choice of the Legislature. On the integrity and impartial decisions of our juries, depend not only the lives and properties, but what is infinitely dearer to freemen, their privileges and characters. Your Legislature and your juries are the foundation upon which your freedom must rest. The Constitution has declared our citizens shall always enjoy the benefit of both; but the particular modifications under which the right of trial by jury shall be extended to them, depend upon the Legislature. It is to endeavor to rectify what I conceive to be a fatal error on this subject, that I now address you—I do so in the most perfect confidence that I shall be heard with that attention the importance of the subject is entitled to; that, on one so interesting to every part of the community, gentlemen will leave themselves open to conviction; that the principles and best mode of establishing impartial justice will be sought for, and that, when discovered, they will be suffered to prevail.

I will begin by expressing my astonishment that in framing the law for establishing the Judicial Courts of the United States, its forms did not only establish one uniform mode, but that in doing so, they did not without hesitation give the preference to the drawing jurors by lot—a mode long in use in several of the States, where the excellent effects it has produced has proved it to be incontestably the best that has ever been devised, for producing complete and impartial justice. This being the great object of our judiciary, I hope the House will upon the present occasion throw all party views and opinions out of the question; that they will recollect it is not for the present moment, or to answer any temporary purposes, this regulation is intended; that it is one springing from the habits and opinions of our citizens, and the nature of our Government; that it is intended to be ingrafted upon our judiciary, and remain as a bulwark, constructed to resist all the storms of power, of privilege, or of faction, that may hereafter assail it. It will be necessary, before we go into an examination of the bill I intend to produce, to state to you the defects of your jury system as it stands at present, and the danger and inconvenience it produces.

The introduction of juries was intended to serve as a barrier against tyranny, and to be the guardian of the private rights and privileges of the people. Well and impartially selected, they are certainly the most complete defence against oppression, and the most certain means of producing impartial justice, that ever the ingenuity of mankind could discover; this and the representative principle are unquestionably the greatest efforts of the human mind; and they are blessings unknown to the ancients, which I trust our country will carry further and more completely into operation, and make them more a public blessing to our own than they have yet been to any nation. It is true we borrowed our jurisprudence from England, but weak and lame indeed is the administration of justice in that country to what I hope it will be in this. While their judges are appointed by the Crown—some of them holding seats in Parliament, all of them constantly looking to the Monarch for further honors and emoluments, and removable by an address of both Houses, which a Minister can always command—while their juries are summoned at will by a sheriff, Heaven forbid we should not exceed them in the purity and impartiality of our judicials! As they first taught us the value and importance of an independent judiciary, we will in return transmit them our improvements and teach them by our example to perfect their own; we will, too, I hope, be the means of extending it to other nations—for no pride can certainly be a more honest one than that of wishing our country to take the lead, and be an example to the world in everything that may tend to their freedom and happiness.

One great defect in our present jury system is, that it introduces an inequality in the proceedings of our courts. In some districts the juries are drawn by lot in one mode, and in other districts drawn in a different one; in many they are not drawn by lot at all, but summoned at the will of the marshal; whereas in courts emanating from the same authority, held by the same judges, and administering the same laws, there should be an uniformity in all the proceedings. Another is, that the districts or portions of territory out of which the juries are to be drawn, are not precisely fixed; but, in many instances, perhaps in all, it is left to the clerk and marshal to draw or summon them as they please; whereas the boundaries of the counties or districts from which they are to be drawn, ought to be so fixed as to leave no discretion on this subject to the officers of the court, and while a sufficient number of jurors are secured to answer the end, to prevent them being drawn at such distances as would probably produce inconvenience or delay, or in many instances inevitable

absence. But, sir, the greatest of all its defects, is the placing it at all in the power of the marshal to exercise his discretion in so important a manner as to select a jury as he pleases. The danger and consequences of this power vested in a ministerial officer, appointed by the President, holding his office during his pleasure, and looking up to him for other and more honorable and lucrative appointments, appear to me not only to be one of the greatest evils under which a part of the American people at present labor, but one which does not seem, before this, to have claimed from them or their Government the attention due to its importance. It is for this reason I have thought it my duty to bring it to your view at this time; and I do not hesitate to confess that I shall even consider it as one of the most fortunate moments of my life, that I have had an opportunity of first moving in a question on which the true freedom and happiness of our country so much depends. Should I succeed even partially—should I be the means of producing only an alteration of the present unjust and oppressive system, and lay a foundation for a complete and perfect one hereafter, it will amply compensate me for all the remarks and odium which the mover in so important a reform must naturally expect.

Viewing, as I do, impartial juries as among the most indispensable ingredients of a free Government, it is my duty to declare, and I solemnly do deliver it as my opinion, that in those States in which the federal marshals have a right to summon jurors as they please, the people *are not free;* that in those States the impartiality of your judicial tribunals, and the purity of the administration of justice, must depend not on the laws but the integrity and honest independence of a marshal; to him is left the monstrous and dangerous power of summoning proper or improper, fit or unfit, dishonest or upright men—men who may be the friends or enemies to the parties who are on their trial, or who on political questions may be known to be opposed to them, and to hold opinions diametrically contrary to those which are perhaps in the course of the trial to be submitted to them for their decision.

Who can deny that on the wise or oppressive, the unbiassed or corrupt use of this power must depend the decisions of our judiciary, in every case where party spirit runs high, and where it may be an object of great moment to influence the proceedings of a marshal? On a public and political question, any man can tell the danger and impropriety of such a power vested in an individual. But not only on questions of a public or political nature, but even in private cases, where the object in dispute is considerable, and where the parties have extensive concerns, no man ought to possess the power of summoning, as his friendships or hatreds, his caprice or perhaps something worse, may direct him, the jury who are to decide questions on which not only the fortune and happiness of individuals, but the character of some laws, and sometimes the faith of treaties, may depend.

I will for a moment consider this dangerous power in a marshal, as it respects the public, on all questions in which the lives or characters of our citizens, may be concerned—on charges against them of a political nature, as well as in those entirely of a private nature, in which public questions are not at all involved.

With respect to those of a public nature, I must confess that when I first arrived here, and discovered the precarious and unsafe tenure on which the citizens of New York, Pennsylvania, Maryland, Virginia, and I believe New Jersey, held everything that freemen ought to consider as most dear—when I was informed that on every question respecting character, life, or fortune, the men who were to decide were to be picked or selected by a sheriff or a marshal, and not impartially drawn by lot, it was difficult for me to find words sufficiently expressive of my astonishment. I could scarcely believe that a people so enlightened, and so jealous of their liberties—a people who have had before their eyes, and in their very neighborhood, such excellent examples, in this respect, as the Eastern and Southern States, could have so long neglected a reform more precious to them than any other they could adopt. It has been since to me a source of much surprise that the State Legislatures, in the administration of justice within their own States, did not at once perceive and correct a system which, under a partial or oppressive use of it, places it so much in the power of an officer to stain the character of a nation and violate its most sacred obligations. This inattention is, however, I trust, now at an end, the subject is brought to their view, and the question is fairly before them; they are now to determine whether their exertions are in future to have all important questions respecting their dearest interests depend upon juries, impartially drawn by lot, under the regulations of laws *equally affecting* all, and whose provisions no sheriff or marshal can violate or interfere with; *or to entirely rest* with a sheriff or marshal, *on whose integrity, knowledge, or impartiality, or on whose want of these essential qualities,* is to depend the pure or corrupt administration of their laws. In a word, with the State Legislatures it now remains to be determined whether the citizens of the States I have mentioned are to be less free and less entitled to the inestimable privilege of trial by a fair and impartial jury, than their brethren in the Eastern and Southern States.

By the law of Congress now in force, juries are to be designated by lot or otherwise, in the manner *now in use* in the several States. From this it is to be presumed that whether Congress agree or not to the general reform I shall introduce, they will certainly always consent to a law conforming the practice of the several courts to the mode in use in the States where these federal courts are held. Hence it becomes highly important to these States, and their citizens, to insist that the State Legislatures shall alter their modes as soon as possible: they should make it an indispensable compact with the persons they elect to represent them; they should consider it as more dear to them than any other public act they could attend to. For how can that Government or that people be free, where the execution of their laws is to depend upon

the will of an individual? How can any man whose political opinions differ from a marshal, be safely tried for any political offence touching his life, his character, or his fortune, while the political character of the jury, who are to try him, depends upon the selection of a marshal? Suppose for instance, a man is charged with a libel against the President of the United States; that this libel charges the President with acts of so important a nature and so injurious to the welfare of the Union, that, unless they can be removed or the writer convicted of a libel and punished, the President would be likely to lose the confidence of the people, and consequently his re-election to office; that the marshal of the district knows this; that the President's feelings are alive to the decision; that he feels his public character, the affections of the people in his principles, and his re-election to office all at stake: that, in short, it is of the utmost consequence to him, this person should be convicted and humbled. Under these circumstances, is it not expecting more than we have generally a right to expect from him, or natural to suppose, that the marshal will feel himself entirely unmoved; that he will carefully select moderate men, who are not attached particularly to party, and who will really compose so impartial a jury as to give the defendant a fair chance of having justice done him? Or is it not more correct to suppose, that in such a case a marshal will recollect that it was from the President he received his office; that he holds it at his pleasure; that if in a case so important to the President and where his feelings are so much alive, the marshal should be lukewarm or make a selection of men not approved, he would probably lose his office; but that if he should exert himself, array a decided jury, whose opinions on politics were not to be shaken, and procure a conviction, that the President would not be unmindful of his zeal, and that amongst the numerous lucrative appointments in his gift the marshal would not be forgotten? I ask if this is not the proper mode to reason a question of this sort? I allude not to particular cases. On general subjects where I conceive it my duty to act, I condescend not to mention anything that may have happened. I am endeavoring to regulate for the future. I thank Heaven that in the State to which I belong, juries are on the best establishment. I wish, for the honor of the United States, and the character of their judiciary, that the same purity and impartiality in the administration of justice should pervade the whole; that equal laws, and not the opinions or wishes of individuals, should govern in their decisions, and that the principles which were among the leading objects of the American Revolution, should forever obtain and be insured to our citizens; until they do, it is in vain for the people of those States to think that while their juries are summoned at will by a marshal, they are free—or that the citizens of the other States, having impartial juries, will ever think of removing to reside among them, or trust themselves or their fortunes under laws whose administration is so unsafe and precarious. Nor can there be a doubt, that when the difference in this important part of their Government comes to be, as it will hereafter, perfectly understood, that, in emigrations to this country, the enlightened foreigner will prefer living in States having impartial juries, to those in which, in every act and almost word of his life, he is to be at the mercy of a marshal, holding his office at the will of a President. This difference between Pennsylvania, Virginia, and the other States I have mentioned, and Southern ones, places the former in so unequal not to say degrading a situation with respect to the administration of justice, that I will not for a moment suppose they will any longer submit to so improper a system. I can never believe that when the subject has been fairly brought to their view, that States so enlightened, and so distinguished by their love of republican liberty, will feel themselves easy until they have obliged the State Legislatures to adopt the mode of drawing juries by lot. It is in vain to think of repealing sedition laws, or asserting the liberty of the press, as secured by the Constitution, until this reform takes place. This power in a marshal, is a more complete and severe check on the press, and the right of the people to remark on public affairs, than ten thousand sedition laws, because here the power to select and by that means govern the opinion of juries, is continual, always increasing, and in a great degree subject on every trial to the wishes and directions of a President. In times of party, when opinions run high, and contending factions oppose each other with violence, it is then truly dreadful. Justice, which has been represented and ought forever to be blind to the political opinions of men, becomes on these occasions as keen-eyed as the eagle, it pounces into every recess and corner of a State, drags forth the avowed and political enemies of the accuser, and arrays them on his jury. I will hope, for the freedom of our country, this has not yet taken place; but that it may, and that it should be guarded against, no man will deny. Let us, by adopting the mode I recommend, or something like it, give to our citizens the comfort of reflecting that amidst the storms and conflicts which may attend a republican form, they will, on every question respecting their lives, characters, or fortunes, be always entitled to a fair and impartial trial by jury, secured by equal laws, the impartial election of which no man however elevated or no officer however willing can dare to control or interfere with. It is our duty to give to our citizens this valuable reform. They have a right, from the nature of our Government, to expect it; amidst all the fluctuations of parties and changes of men and measures, it will be to them a solid consolation to reflect that their private rights are secure, and that, with respect to these, their Government is indeed a Government of laws. Under this sacred guard the honest and the innocent may safely come to trial, nor will advocates be afraid to defend them, nor consider it as hopeless to attempt it. The people will revere your tribunals—they will then have no reason to fear that faction or corruption may curb your bench of justice, fill the seats of your jurors, or stain the annals of your judiciary with innocent blood sacrificed at the shrine

of party or ambition; the dreadful evils which have disgraced the tribunals of other countries, will be avoided, and you will exhibit to an admiring and imitating world the finest and most unexceptionable form they have yet witnessed. Give them this improvement, and say that your judges, while they continue as such, shall hold no other offices, and we may safely defy any nation that has preceded us to exhibit a judiciary by any means comparable to the one we shall then possess.

MONDAY, February 3.

Mr. WATSON presented the petition of Abraham Franklin, and John Franklin, jun., merchants, of the city of New York, and owners of the ship Amelia, captured in the year 1799, by a French national corvette, and recaptured by the United States ship of war Constitution, and by the said Franklins purchased at public auction, praying for a new register: and the petition was read.

Ordered, That it be referred to Messrs. WATSON, GOODHUE, and LANGDON, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to discharge Robert Sturgeon from his imprisonment;" in which they desire the concurrence of the Senate. They agree in part to the amendments of the Senate to the bill, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned.'"

The bill first mentioned was read and ordered to the second reading.

Ordered, That the amendments of the House of Representatives to the amendments of the Senate to the bill, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned,'" be referred to the committee to whom the bill was originally committed on the 15th of January last, to consider and report thereon.

Mr. LAURANCE presented the petition of Reuben Smith and Nathan Strong, praying payment for the bounty on certain articles exported by them; the formalities required by law being, through casualty, omitted.

Ordered, That the petition, and the papers accompanying the same, be referred to the committee appointed the 24th of December last, on the petition of Peter Aupoix, to consider and report thereon to the Senate.

The bill to establish an uniform mode of drawing juries by lot, in all Courts of the United States, was read the second time, and referred to Messrs. PINCKNEY, NICHOLAS, CHAPMAN, LAURANCE, and DEXTER, to consider and report thereon to the Senate.

On motion, by Mr. PINCKNEY, the subjoined resolution was read, and ordered to lie on the table:

Resolved, That the following amendment to the Constitution of the United States be recommended to the adoption of the Legislatures of the different States; and that, when adopted by three-fourths of the said Legislatures, the same shall become a part of the said Constitution:

That neither the Chief Justice nor any Judge of the United States shall hold any other appointment, or office, under the Government of the United States, or the individual States, during his continuance in office as a Judge of the United States; and that the acceptance of such other office shall vacate the appointment of any Judge accepting the same.

Mr. ROSS, from the committee to whom was recommitted the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," reported further amendments.

Ordered, That they lie for consideration.

Ordered, That the third reading of the bill, sent from the House of Representatives, entitled "An act for the relief of John Vaughan," be postponed to Wednesday next, and that, at 12 o'clock on that day, there be a call of this House.

TUESDAY February 4.

Mr. ROSS, from the committee to whom was referred the amendments of the House of Representatives to the amendments of the Senate to the bill, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned,'" made report. Whereupon,

Resolved, That the Senate do recede from their amendments disagreed to by the House of Representatives, and concur in their amendments to the amendments.

The bill, sent from the House of Representatives, entitled "An act to discharge Robert Sturgeon from his imprisonment," was read the second time and referred to Messrs. TRACY, BALDWIN, and DEXTER, to consider and report thereon to the Senate.

The Senate proceeded to consider the report of the committee to whom was recommitted the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," to which they agreed; and, having adopted sundry other amendments

Ordered, That this bill pass to a third reading.

WEDNESDAY, February 5.

Agreeably to the order of the 3d instant, a call of the House was made, and the following members were present:

Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Langdon, Latimer, Laurance, Livermore, Lloyd, Marshall, Mason, Nicholas, Paine, Pinckney, Read, Ross, Schureman, Tracy, Watson, and Wells.

The bill, sent from the House of Representatives, entitled "An act for the relief of John Vaughan," was read the third time.

On motion to amend the preamble to the bill,

a motion for the previous question was made; and upon a declaration from the VICE PRESIDENT, that the previous question is not in order upon an amendment to a bill, a motion was made that the question on the final passage of the bill be postponed until Monday next; and it passed in the negative.

And the proposed amendment being disagreed to,

Resolved, That this bill do pass.

THURSDAY, February 6.

The bill, sent from the House of Representatives, entitled, "An act providing for the enumeration of the inhabitants of the United States," was read the third time; and, being further amended,

Resolved, That this bill pass with amendments.

FRIDAY, February 7.

Mr. WATSON presented the petition of Lyon Lehman, praying remission of the duty on a number of fire-arms, imported from Hamburg, for reasons mentioned therein; which was read, and referred to Messrs. WATSON, LANGDON, and HOWARD, to consider and report thereon to the Senate.

Mr. GOODHUE, from the committee appointed to consider the subject, reported a bill for augmenting the compensation of the Senators and members of the House of Representatives of the United States; which was read, and ordered to the second reading.

Mr. TRACY, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to suspend in part an act, entitled 'An act to augment the Army of the United States, and for other purposes," reported amendments; which were read.

Ordered, That they be printed for the use of the Senate.

Mr. ROSS presented the memorial of George Isham and others, purchasers of certain tracts of land, between the Great and Little Miami rivers, of John C. Symmes, and praying confirmation of their contracts; and the petition was read.

Ordered, That it lie on the table.

MONDAY, February 10.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act giving further time to the holders of military warrants to register and locate the same;" a bill, entitled "An act for the relief of James Yard;" a bill, entitled "An act respecting the Mint;" a bill, entitled "An act declaring the assent of Congress to certain acts of the State of Maryland and Georgia;" and a bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" in which bills they desire the concurrence of the Senate.

The bills were severally read, and ordered to the second reading.

On motion, it was agreed, by unanimous consent, to dispense with the rule, and that the bill last mentioned in the message be again read at this time.

Ordered, That it be referred to Messrs. ROSS, BROWN, and DAYTON, to consider and report thereon to the Senate.

On motion, it was agreed, by unanimous consent, to dispense with the rule, and that the bill first mentioned in the message be now again read.

Ordered, That it be referred to the above mentioned committee, to consider and report thereon to the Senate.

The VICE PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, of the goods, wares, and merchandise, exported from the United States, during one year, prior to the 1st day of October, 1799; exhibiting the amount exported to each foreign nation; and the report was read.

Ordered, That it lie on the table.

On motion, "That a committee be appointed to consider whether any compensation ought to be allowed to John Heckwelder, for the losses he sustained, during the war between the United States and Great Britain, and that the said committee have power to report by bill or otherwise;" it was agreed that the motion should lie on the table.

The bill for augmenting the compensation of the Senators and members of the House of Representatives of the United States was read the second time; and it was agreed that the further consideration thereof be postponed until to morrow.

A message from the House of Representatives informed the Senate that the House have passed a resolution, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the first Monday in April next; in which they desire the concurrence of the Senate.

The resolution was read, and ordered to lie on the table.

A motion was made as follows:

Resolved, That the resolution of the Senate of the United States, passed on the 10th of February, 1796, requiring the Secretary of the Treasury to prepare annually, and lay before the Senate, in the month of January in each year, a statement of the imports of the United States, shall be, and the same is hereby, altered and amended so as not to require hereafter any statement of the amount exported to each foreign nation.

It was agreed that this motion lie on the table.

Mr. TRACY notified the Senate that he would to-morrow move for leave to bring in a bill for the relief of Ithamar Canfield.

The Senate took into consideration the amendment reported by the committee, to whom was referred the bill, sent from the House of Representatives, entitled "An act to suspend in part an act, entitled 'An act to augment the Army of the United States, and for other purposes;" and it being adopted,

Ordered, That this bill pass to the third reading as amended.

TUESDAY, February 11.

Agreeably to notice of yesterday, Mr. TRACY had leave to bring in a bill for the relief of Ithamar Canfield, which was read, and ordered to the second reading.

The bill, sent from the House of Representatives, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," was read the second time, and referred to Messrs. HOWARD, GUNN, and PAINE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act for the relief of James Yard," was read the second time, and referred to Messrs. BINGHAM, WATSON, and GOODHUE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act respecting the Mint," was read the second time, and referred to Messrs. LIVERMORE, GOODHUE, and MARSHALL, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act to suspend in part an act, entitled 'An act to augment the Army of the United States, and for other purposes," was read the third time.

On motion, it was agreed to amend the amendment adopted yesterday, as follows:

"SEC. 2. *And be it further enacted*, That the provisions of this act shall not be construed to prevent the President from employing any officer or officers in recruiting for the four first regiments of infantry, and the two regiments of artillerists and engineers: and the President is hereby authorized to employ any officer or officers in the recruiting service for the aforesaid regiments, on the terms prescribed by law, and until the full complement of men are procured, pursuant to the first section of the act for the better organizing the troops of the United States, and for other purposes; any provision in the said section or act to the contrary notwithstanding."

And, on motion to strike out the amendment thus amended, it passed in the affirmative—yeas 17, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Dexter, Foster, Franklin, Greene, Hillhouse, Langdon, Livermore, Marshall, Mason, Nicholas, Paine, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Goodhue, Gunn, Howard, Latimer, Laurance, Lloyd, Read, Ross, Schureman, Tracy, Watson, and Wells.

On motion to agree to the final passage of the bill, it passed in the affirmative—yeas 21, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Langdon, Livermore, Marshall, Mason, Nicholas, Paine, Pinckney.

NAYS—Messrs. Chipman, Latimer, Laurance, Lloyd, Reed, Ross, Schureman, Tracy, Watson, and Wells.

So it was *Resolved*, That this bill pass.

Mr ROSS, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act giving further time to the holders of military warrants to register and locate the same," reported amendments; which, being considered, were disagreed to; wherepon, by unanimous consent, the bill was read the third time, and passed.

WEDNESDAY, February 12.

Mr. BALDWIN, presented the petition of Jonas Fauche, captain, and others, officers of the troop of militia dragoons, formerly under his command, praying compensation for military services in the State of Georgia; which was read, and referred to the Secretary for the Department of War, to consider and report thereon to the Senate.

Ordered, That the Message of the President of the United States, of the 8th of January last, together with the report of the Treasurer of the Mint, of the first of the said month, be referred to Messrs. HILLHOUSE, LIVERMORE, and GOODHUE, to consider and report thereon to the Senate.

Mr. WATSON, from the committee to whom was referred the petition of Abraham Franklin, and John Franklin, junior, reported that the prayer of the said petitioners ought not to be granted, and that they have leave to withdraw their petition; and the report was adopted.

The bill to augment the compensation of the Senators and members of the House of Representatives of the United States was read the second time; and, being amended,

Ordered, That it pass to the third reading as amended.

Mr. TRACY, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to discharge Robert Sturgeon from his imprisonment," reported amendments:

Ordered, That they be printed for the use of the Senate.

The Senate took into consideration the motion made on the 10th instant, relative to the propriety of allowing a compensation to John Heckwelder: and the motion was agreed to, amended as follows:

Resolved, That a committee be appointed to consider whether any compensation ought to be allowed to John Heckwelder for his services during the war between the United States and Great Britain; and that the said committee have power to report by bill or otherwise.

Ordered, that Messrs. ROSS, TRACY, and BLOODWORTH, be the committee.

The bill for the relief of Ithamar Canfield was read the second time, and referred to Messrs. TRACY, DEXTER, and CHIPMAN, to consider and report thereon to the Senate.

The Senate resumed the consideration of the motion made the 10th instant, to alter and amend the resolution of the Senate, of the 10th of February, 1796, requiring, from the Secretary for the Department of Treasury, certain statements, of imports and exports; and, after debate,

Ordered, That the further consideration thereof be postponed.

The Senate took into consideration the resolution of the House of Representatives for the adjournment of the two Houses of Congress on the first Monday in April next; and, after debate,

Ordered, That the further consideration thereof be postponed until the second Tuesday in March next.

THURSDAY, February 13.

The Senate took into consideration the amendment reported by the committee, to the bill sent from the House of Representatives, entitled "An act to discharge Robert Sturgeon from his imprisonment;" which was adopted, and the bill was ordered to the third reading as amended.

The bill for augmenting the compensation of the Senators and members of the House of Representatives of the United States was read the third time.

Ordered That the further consideration thereof be postponed until the first Monday in December next.

FRIDAY, February 14.

Mr. ROSS, from the committee appointed the 28th of January last, reported a bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; which was read and ordered to the second reading.

The bill, sent from the House of Representatives, entitled "An act to discharge Robert Sturgeon from his imprisonment," was read the third time.

Ordered, That it be recommitted to the committee to whom it was originally referred: further to consider and report thereon to the Senate.

MONDAY, February 17.

The VICE PRESIDENT laid before the Senate a report relative to the claim of Seth Harding, in pursuance of the act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia," signed James M'Henry, Oliver Wolcott, and John Steele; and the report was read.

Ordered, That it be referred to Messrs. LANGDON, HILLHOUSE, and PAINE, to consider and report thereon to the Senate.

Mr. TRACY, from the committee to whom was referred the bill for the relief of Ithamar Canfield, reported amendments thereto, which were read.

Ordered, That they lie for consideration.

The bill prescribing the mode of deciding disputed elections of President and Vice President of the United States was read the second time; and the further consideration thereof postponed until Wednesday next.

On motion by Mr. GREENE,

"That it be referred to the Secretary of the Treasury to prepare and report to this House a plan for establishing an uniformity in the weights and measures of the United States:"

It was agreed that this motion lie for consideration.

On motion, by Mr. MARSHALL, that it be

"*Resolved*, That a committee be appointed to inquire if the Indian title has been extinguished to any land, and if to any, what land, lying in the State of Tennessee to which the United States hath a right by cession from North Carolina:

It was agreed that this motion lie on the table.

Mr. ROSS, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" reported amendments, which were read.

Ordered, That they lie for consideration.

TUESDAY, February 18.

Mr. HOWARD presented the petition of Jeremiah Yellott, praying liberty to export a number of firearms and cutlasses, not adapted to the use of the army or navy; and the petition was read.

Ordered, That it be referred to Messrs. HOWARD, WATSON, and TRACY, to consider and report thereon to the Senate.

Mr. ANDERSON presented the petition of Shadrack Inman, of the State of Tennessee, praying compensation for property taken from him for public service in the State of North Carolina, in the year 1780; and the petition was read.

Ordered, That it be referred to Messrs. ANDERSON, CHIPMAN, and BLOODWORTH, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to extend the time of payment of bonds given for duties of impost in certain cases," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The Senate took into consideration the amendments reported by the committee, to the bill, sent from the House of Representatives, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen:" which amendments were adopted; and the bill was ordered to the third reading as amended.

WEDNESDAY, February 19.

The bill, sent from the House of Representatives, entitled "An act to extend the time of payment of bonds given for duties of impost in certain cases," was read the second time and referred to Messrs. GOODHUE, WATSON, and TRACY, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee, to whom was referred the bill for the relief of Ithamar Canfield.

Ordered, That the bill be recommitted to the original committee, further to consider and report thereon to the Senate.

Agreeably to the order of the day, the Senate took into consideration the bill prescribing the

mode of deciding disputed elections of President and Vice President of the United States; and, after debate, adjourned.

THURSDAY, February 20.

Mr. GOODHUE presented the petition of the executors of Elias Haskett Derby, late of Salem, in the State of Massachusetts, praying the interposition of Congress in regard to the tax assessed on the mansion-house of the deceased, stated to have been over estimated in the valuation: and the petition was read.

Ordered, That it be referred to the Secretary for the Department of Treasury, to consider and report thereon to the Senate.

Mr. BINGHAM, from the committee to whom was referred the bill sent from the House of Representatives, entitled "An act for the relief of James Yard," reported the bill without amendment.

The Senate resumed the consideration of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion to strike out of the first section of the bill the following words:

Together with the Chief Justice of the United States, or, if he be absent from the Seat of Government or unable to attend, then with the next senior Judge of the Supreme Court of the United States, who may be present and able to attend.

It passed in the negative—yeas 11, nays 19, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

On motion to strike out these words from the 1st section: "to choose by ballot in each House six members," and in lieu thereof to insert "to draw by lot in each House —— members:"

It was determined in the negative—yeas 9, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Langdon, Marshall, Mason, and Nicholas.

NAYS—Messrs. Chipman, Dayton, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Latimer, Laurance, Livermore, Paine, Read, Ross, Schureman, Tracy, and Wells.

Ordered, That the further consideration of the bill be postponed.

The bill, sent from the House of Representatives, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" was read the third time; and, after debate,

Ordered, That the further consideration thereof be postponed.

FRIDAY, February 21.

Mr. GOODHUE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to extend the time of payment for bonds given for duties of impost, in certain cases," reported the bill without amendment.

Mr. WATSON, from the committee to whom was referred the petition of Lyon Lehman, reported that the committee have leave to bring in a bill for his relief; and the report was adopted; and ordered that the committee bring in a bill accordingly.

The bill, sent from the House of Representatives, entitled "An act for the relief of James Yard," was read the second time, and ordered to the third reading.

Resolved, That the Senate will, to-morrow, at half past 12 o'clock, meet at the Senate Chamber, and from thence walk in procession to the German Calvinist Church in Race street, to hear the eulogium pronounced on the character of General WASHINGTON.

The Senate resumed the consideration of the bill, sent from the House of Representatives, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of United Brethren for propagating the Gospel among the Heathen,'"

Resolved, That this bill pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof;" and a bill, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; and, after debate,

Ordered, That the further consideration thereof be postponed.

Mr. TRACY notified the Senate that he should, on a future day, ask leave to bring in a bill providing for the punishment of persons who may be convicted of frauds in squandering money, or other property of the United States, with which they have been entrusted.

SATURDAY, February 22.

The bill, sent from the House of Representatives, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," was read the second time, and referred to Messrs. GOODHUE, READ, and BINGHAM, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives,

entitled "An act to establish an uniform system of bankruptcy throughout the United States." was read the second time, and referred to Messrs. LAURANCE, CHIPMAN, HILLHOUSE, LIVERMORE, and READ, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act for the relief of James Yard," was read the third time, and passed.

MONDAY, February 24.

A message from the House of Representatives informed the Senate that the House concur in the amendments of the Senate to the bill, entitled "An act providing for salvage in cases of recapture," with amendments, in which they desire the concurrence of the Senate. They have passed a bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage," in which bill they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

Mr. GOODHUE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," reported the bill without amendment; and, after debate, it was agreed that the further consideration of the bill at this time be postponed.'

The Senate took into consideration the amendments of the House of Representatives to their amendments to the bill, entitled "An act providing for salvage in cases of recapture."

Ordered, That they be referred to Messrs. GOODHUE, LAURANCE, and LANGDON, to consider and report thereon to the Senate.

Mr. LANGDON, from the committee to whom was referred, on the 17th instant, the case of Seth Harding, reported a bill for his relief; which was read, and ordered to a second reading.

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion, to amend the bill, section 5th, line 7th, so as to provide that the proceedings of the committee be held in public, by striking out the words "with closed doors," and inserting, "in the Chamber of the House of Representatives, with open doors," in lieu thereof:

It passed in the negative—yeas 8, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, Franklin, Langdon, Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Foster, Goodhue, Greene, Hillhouse, Howard, Latimer, Laurance, Livermore, Marshall, Paine, Read, Ross, Tracy, and Wells.

And, after progress, the further consideration of the bill was postponed.

TUESDAY, February 25.

The bill authorizing Seth Harding to locate certain lands in the Territory of the United States Northwest of the river Ohio, was read the second time; and, after debate, the further consideration thereof was postponed.

A message from the House of Representatives informed the Senate that the House agree to all the amendments of the Senate to the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," except the 10th, to which they disagree. They have passed a bill, entitled "An act to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes, as therein mentioned," in which they desire the concurrence of the Senate. They agree to all the amendments of the Senate to the bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," except to those of the first section, to which they disagree.

The bill last brought from the House of Representatives, for concurrence, was read, and ordered to the second reading.

The Senate proceeded to consider their amendment disagreed to by the House of Representatives to the bill first mentioned in the message: Whereupon,

Resolved, That they do recede from their said amendment.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill last mentioned in the message. Whereupon,

Resolved, That a conference be requested on the amendments disagreed to, and that Messrs. ROSS and BROWN be the managers at the same on the part of the Senate.

Mr. PINCKNEY, from the committee to whom was referred the bill to establish an uniform mode of drawing jurors by lot, in all the Courts of the United States, reported amendments, which were read.

Ordered, That they be printed for the use of the Senate.

The VICE PRESIDENT laid before the Senate a report from the Secretary of the Department of Treasury, on the memorial of the executors of the late Elias Haskett Derby, of Salem, in the State of Massachusetts; which was read.

Ordered, That it lie on the table.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof."

On motion, to strike out, in section 2, line 3, the word "Europe," and insert these words: "foreign countries," it passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth,

Brown, Cocke, Franklin, Gunn, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Goodhue, Greene, Hillhouse, Howard, Langdon, Latimer, Laurance, Livermore, Lloyd, Paine, Ross, Tracy, and Wells.

On motion to strike out the 6th section, as follows:

"SEC 6. *And be it further enacted*, That, at any time after the passing of this act, it shall be lawful for the President of the United States, by his order, to remit and discontinue, for the time being, whenever he shall deem it expedient, and for the interest of the United States, all or any of the restraints and prohibitions imposed by this act, in respect to the territories of the French Republic, or to any island, port, or place, belonging to the said Republic, with which, in his opinion, a commercial intercourse may be safely renewed: and, also, it shall be lawful for the President of the United States, whenever he shall afterwards deem it expedient, to revoke such order, and hereby to re-establish such restraints and prohibitions; and the President of the United States shall be, and he is hereby, authorized to make proclamation thereof accordingly."

It passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney,

NAYS—Messrs. Bingham, Chipman, Dayton, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Paine, Ross, Tracy, and Wells.

And the bill being amended, it was ordered to the third reading, as amended.

The Senate took into consideration the motion made on the 17th instant, relative to the Indian titles of land extinguished within the State of Tennessee; and, after debate, it was agreed that the motion be withdrawn.

A motion was made, by Mr DAYTON, that it be

Resolved, That a standing Committee of Privileges, consisting of —— members, be appointed.

Ordered That it lie for consideration until to-morrow.

WEDNESDAY, February 26.

On motion, by Mr. MARSHALL,

Whereas the United States, by act of cession from the State of North Carolina, claim the vacant and unappropriated lands within the State of Tennessee: And whereas the said State also claims these lands, as appears by an act of the Legislature thereof, passed the 5th day of January, 1799: And whereas it is desirable that the interfering claims should be settled in the most amicable manner; Therefore,

Resolved, That a committee be appointed to investigate the respective claims, and to inquire what will be the most advisable mode of settling them; and that the committee be authorized to report by bill or otherwise.

Whereupon a motion was made to amend the motion, as follows:

Resolved, That a committee be appointed to inquire into the situation and extent of the vacant and unappropriated lands claimed by the United States under the cession of the State of North Carolina, and the expediency of making provision for the disposition thereof.

And it was agreed that the motion and amendment lie for consideration, and in the mean time be printed for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have agreed to the conference, desired by the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," and have appointed managers at the same on their part.

NON-INTERCOURSE WITH FRANCE.

The bill, sent from the House of Representatives, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," was read the third time.

Mr. PINCKNEY said, I feel much pleasure in being present at this discussion, because I have always wished that some parts of this bill, particularly those that relate to the delegation of the powers to the President, in the recess of Congress, should be maturely examined, in order that I might hear the reasons upon which, what appears to me, so unusual and unconstitutional a delegation of authority has taken place. Open as I always wish to be to conviction, it will give me much satisfaction to find that my doubts can be removed, and that the arguments I shall use against the bill can be answered and refuted. It is easily to be perceived that this bill is an important one to all the Union, but particularly to the Southern States. It will be my endeavor to show that very serious inconveniences have arisen from the former bill, which this is intended to revive, both to Virginia and Maryland, as well as to North and South Carolina and Georgia. I am not, it is true, so anxious about it as I was formerly, because I trust our Commissioners have used their powers so well, that an honorable and pacific arrangement with France will soon take place. I shall not, therefore, at this time, go into any observations on the nature and origin of our dispute with France, or give my opinions on that subject; they have already been frequently given and well known, nor do I see any reason to alter them. I have strong Constitutional objections to this bill, which it is my duty to state, and which compel me not to suffer it to pass with a silent vote.

The precedents, sir, which any measures that are unconstitutional furnish, and the abuses to which they may be converted, are always to be guarded against. I have said, on a former occasion, that improper doctrines or precedents, whether under the form of resolutions or of laws, if not early opposed, were strengthened by time, and became liable to be applied to pernicious purposes. Upon examining the laws which are contained in the fourth volume, and which have been passed since March, 1797, there is reason to apprehend the pre-

cedents established by some of them, may hereafter be more inconvenient in their consequences to our peace and safety than even that sort of maritime warfare, in which alone there is ever any danger of this country being engaged with an European Power. The present bill I consider of the like character, and I therefore very earnestly hope that a pacific arrangement will be concluded, which may prevent the effects I am afraid this additional precedent will afford. I consider it as springing from the same source with most of the measures which have been agitated for the last two years, particularly the provisional army, and as going to establish the precedent of granting to the Executive powers, in my judgment, unwarranted by the Constitution—of paving the way to that Executive and Ministerial influence in the affairs of our Government which may hereafter render the Representative part of it, and the direction and influence they ought to have, more a name than anything else. It is astonishing to me, that, having the examples on this point of another nation before us—examples which we must recollect were held forth by Congress, during the Revolutionary war, in the strongest language, as beacons to warn us of similar dangers—we should, at so early a day, be preparing to precipitate ourselves into the same system.

Look to Great Britain, from the first day of the present monarch's reign, and see what has been the progression of Executive and Ministerial influence there, within that time. Let any gentleman attentively examine the book entitled, "The history of the two acts passed, one for the preservation of the King's person against treasonable practices and attempts, and the other to prevent seditious practices and assemblies," and there will he find the best account I have met with, of the measures which have been pursued, step by step, to establish this Ministerial and Executive influence, until, by the confession of the most able and moderate of their own writers, the all-controlling power of the Minister is now such, that he can always direct their Parliament as he pleases, and plunge them in any war his personal resentment or self-interest may prompt him to, regardless of the expense or true interests of the nation. This enormous power in the hands of their Executive and Ministers, and the total loss of influence in the Representative part of their Government, must be attributed not to any one, but to a variety of measures, successively introduced, at first little suspected, but at length, under the sanction of precedent, increased to an alarming extent. Some gentlemen, who view such acts as the present improper, are averse to opposing them, because they think they see inutility in the attempt. I differ from them extremely, and consider it as the duty of every member to express his sentiments on such measures as appear improper, and to resist them, even though satisfied of the immediate inefficiency of that opposition, as it serves to keep the public mind awake to its safety and the conduct of their constituted authorities.

This bill is a branch of that system which has been pursued by the friends and supporters of the present Administration, for two or three years, with constant and too effectual perseverance, for increasing the power of the Executive. In a former session, we have seen a large army voted, which has since been partly raised, and is now resolved to be reduced. There was also an act authorizing the President to raise, if in his opinion the danger was so great as to require it, 10,000 men, as a provisional army, and, of his own and sole authority, to commission all the officers; there was also in this act, a clause authorizing the President to accept of the service of volunteer corps, and to appoint all the commissioned officers; although there is an express clause in the Constitution, which says, that the appointment of all the officers of the militia, who may be employed in the service of the United States, shall be reserved to the States respectively. I must confess, I view this delegation to the President, of the power to raise this provisional army or not, as in his opinion the danger of our situation may require, and the power intended to be given by this bill, to remit the prohibition of intercourse, and renew it again, with the whole, or any part of the French dominions, as he pleases, as so intimately connected, and as standing so precisely on the same principles, that although it may not be perfectly in order, yet, in considering the one, I cannot help glancing at the other, as they both serve to bring before you the important question, how far the Constitution authorizes Congress to delegate to the President the exercise of such extensive powers. I have no doubt, in my own mind, that the Constitution does not authorize the delegation of these authorities, and it is among the reasons that induce me to vote against this bill. It will be granted that no powers are more important to a nation than those to regulate commerce, and to declare war—these, therefore, are both exclusively given to Congress. It is observable, that although the power to make peace is given to the President, with the advice and consent of two-thirds of the Senate, yet, that so guarded is the Constitution upon the subject of war, that this is given to Congress—they alone can declare war, they alone can regulate commerce; nor can they constitutionally delegate this exercise of their authorities, by any limitations they can annex to the manner in which their agent is to execute them: they are powers so great, and so important to the peace and dearest interests of the people, that they are vested in Congress—they, and they alone, are to judge from the circumstances before them, whether war, or measures that may in their tendency involve a war, are expedient. With them also rests the power to say what shall be the nature of our commerce, or the regulations necessary to its rights and safety; with whom and under what conditions it shall be carried on; with what nations, and for what time it shall be interdicted. And are not these powers so great that they ought never to be exercised but by the representatives of the people? In giving to them exclusively the powers of war and commerce, does not the grant include all their incidental authorities? Where is the part of the Constitution which authorizes their delega-

tion of them? If it has wisely said, that delicate and important powers like these ought only to be exercised by the representatives of the people—that they are the only safe depositaries of them; that they ought to judge when measures are to be adopted, which may in their consequences lead to war—that they alone ought to judge how far commercial prohibitions, extending to a whole nation and its territories, ought to be carried, when removed, and when again renewed—can they delegate this authority without interfering with the intentions of the Constitution? The design of that instrument clearly was, that no individual should possess the dangerous power of involving this country in war, or of regulating its commerce; and yet will any man deny, that the powers here delegated are not such as may, by an unwise or precipitate use of them, lead inevitably to war? In the act I have alluded to, respecting the provisional army, how great is the power given to an individual, to raise or not, as he pleases, an army of 10,000 men, and in the present to open or shut the intercourse with the dominions of one of the greatest Powers in the world! Is not this, as far as those dominions extend, and during the continuance of the law, completely giving to the President the power to regulate commerce? Are not, in fact, these continued delegations adding to the precedents for establishing an Executive influence in this country, which may one day increase to what it is in England? We know what it is there, and we begin to see what it may be here; it must ever be too great here, by what I have always considered as improper in the Constitution, the giving to the President the nomination to all offices. But if we are perpetually to add to it in this manner, there will be no knowing where it will end. Only consider what would have been the patronage of a whole army, and the immense power of opening either wholly or partially a trade so important as this is, and shutting it at his pleasure. If he should determine to open it at some fixed period, he cannot lock up this in his own breast. He has executive officers he always consults, and must they not know, and may they not have commercial and other friends to whom they may entrust so important a secret? Is it not possible such things may happen? Has not rumor been already busy on this subject? Have we not heard complaints about the manner in which the trade to St. Domingo was carried on last year, or have they not yet reached this or the other branch? But whether they have or not, or any improper conduct has taken place, is not so great a power open to the abuse and evils I have mentioned? Is it not vesting a power unauthorized by the Constitution, and adding immensely to that Executive influence which has already become too great? The only truly vulnerable part in our Constitution is the patronage of the Executive, and the establishment of that undue influence in our councils, which may one day contribute to destroy the important agency which the nature of our Government, and the safety of the people, always require the representative part of it to possess. This I have already observed must always be too great, by the Constitution giving to the President the right to nominate to all offices, and his agency in the formation of treaties. To balance and in some degree to correct this too great influence in the Executive, it ought to be the care of Congress never to add to it, if it can be avoided with any kind of convenience, lest they should destroy their own necessary and Constitutional weight in the Government. That as they alone are authorized to put their hands into the pockets of their constituents, they only ought to judge and decide upon those great legislative questions, which may lead to requisitions for money or to cramp or touch the means by which alone our citizens can furnish it. That the power to adopt measures that may in their tendency lead to or touch the subject of war or commerce, is so intimately connected with the power to tax, that we may just as well suppose Congress can delegate the right to the President to lay and levy taxes as they can the authority to regulate commerce in the way this bill proposes. I will suppose a case, that Congress should be of opinion a sum of money might possibly be wanted during their recess; that they were to determine the amount, and vest the President with the power to call for it or not, as he should please; but if he did require it, he should have the authority to lay and levy taxes for that purpose. Suppose an attempt of this sort was made, and that the Executive should levy taxes on houses and lands, and except from the tax money at interest, stock, or that kind of property which he wishes to favor; could you justify the delegation of such authority, or wonder at the abuse of it? No gentleman will say such a delegation could constitutionally be made. Yet you can delegate with infinitely more safety the regulation of taxes than of commerce, because, by the means of commerce, you not only give an arbitrary power over the natural wealth of a particular State, or part of a nation, but you give a power which enables the person trusted with it at all times to involve the country in war, by granting particular favors to one nation, or a part of a nation, which are denied to another. Who will undertake to say, that by such a power over the commerce of a country, it may not at any time be involved in war? Yet you cannot, by the Constitution, delegate the right to make war. How then can we rush into so great an inconsistency, as to give, indirectly, a power which is directly precluded from delegation?

This bill not only goes to keep up the present state of things with France, but may, by a part of it, eventually involve you in a war with Spain, a Power with which you are not only upon friendly terms at present, but carry on one of the most lucrative branches of your foreign commerce—I mean the trade with Cuba. You have by this bill declared, that for its purposes, the whole of Saint Domingo should be considered as a dependency of France, notwithstanding it is well known that the Spanish part of it is in possession of their Government and its officers, and ought to be considered as a part of the Spanish territories, until it has been formally delivered to

the French, and their officers govern it. It may be said that we know, by the treaty between Spain and France, it was ceded to the latter; but how can we be sure that since that period some secret agreement has not taken place, and that it is returned to Spain? Is it not probable, by her keeping possession, that it is so; and ought not the delivery of the place, and the change of rulers and laws, to be the criterion with us for judging to what power a territory belongs? Can the annexing the Spanish part of that island to the French, for the purposes of this bill, be an object with us to risk the enmity of Spain, and the loss of the Havana trade to our merchants? I should suppose not; and that this new section is an unnecessary and impolitic one, and ought not to be adopted.

I come now to the policy of continuing this bill at all, or, if at all, whether it can be politic to extend it, as the last mentioned section proposes; or whether it would not be better to narrow its limits, and the territories it is to affect. I know it is a favorite theme with the Government, that until a peace is established with France, we must preserve our attitude, and keep up all the measures of defence that have been gone into, to protect us from her hostility. When, therefore, we see several of those measures either relaxed in or altered, or no measures taken to renew them; such, for instance, as stopping the enlistments for the army, and not reviving the alien law, or pushing the building of the seventy-fours, it is a strong proof that Government and its friends think there is a sincerity in the offers of the French, and that our negotiations will terminate successfully. Honorable peace, therefore, being our great object, may not suffering this act to expire without renewal, or if revived, by lessening its restrictions, and the places it is to operate upon, hold out such confidence, on the part of our Government, in the sincerity and justice of the French administration, as may be the best means of insuring future conciliation and friendship? No great danger can arise to our commerce, for few of our merchants will venture, until they know that peace is made; and if the reports which are in circulation are true, that they have ordered their cruisers to respect our neutral rights, the risks will be very small.

I have no doubt, myself that peace will be made; it is peculiarly the interest of France to have it, and this cannot be unknown to or undesired by the consummate politician who now directs her affairs. I am sure it is the wish of every gentleman to do all in his power to promote the desirable end of honorable peace, particularly of those from the Southern States. It is on them the weight of the loss of the commercial intercourse with France has principally fallen. The Northern and Eastern States have not been without feeling their share of the loss of an intercourse with its European dominions, and, until August, with the West Indies; but from Maryland inclusively to Georgia, has the loss been greatest. Our whole exports were 78,664,000 dollars, of which 33,142,000 are of domestic growth, and upwards of 45 millions of foreign. Of our domestic growth, nearly ten millions of pounds of cotton, and very little short of one hundred thousand hogsheads of tobacco are exported. Flour and rice are also considerable articles; upwards of 110,000 barrels of rice being exported, and principally from South Carolina. It will be easily seen, that if in the exports of these articles, the French market had been open, and added to the other European markets, that in the sales of our tobacco, cotton, flour, and rice, the prices must have been greatly increased. From some regulations I am informed of in the custom-houses, I have not been able particularly to ascertain the amount of exports from each State to France. I am told, that the exports from Philadelphia, for 1796, were, to France, 913,880 dollars; to the French Antilles, 3,250,584; to the islands of France and Bourbon, 20,967. This being the export from that city alone, we may easily judge how great must be the amount of exports from all the States, and how important this intercourse is. I have been credibly informed, that while the Virginia and North Carolina tobacco planters, and the Georgia and South Carolina tobacco and rice planters were obliged at one time to take for their tobacco, four and five dollars per hundred here, that that article was selling in France at fifty dollars; and while the rice planters were obliged to take six and seven shillings, that rice sold there at upwards of thirty-eight livres; and that cotton is now selling there at a price which is so great, that the moment the intercourse is opened, there is no knowing to what an amount the price of cotton in Georgia and South Carolina will be increased. Although the Northern States may suffer in some degree in having the intercourse with France stopped, they are by no means injured in proportion with the Southern States, because the Northern have an important commerce direct with the East Indies, which is scarcely known, and not at all pursued, in the Southern States: they therefore by no means feel the loss occasioned by this intercourse as much as we do. View the price of tobacco at this moment, and what was the low price of rice, until the accident of a scarcity in England has given it for the present a rise. Indeed, to any man the least acquainted with the subject, there can be no difficulty in asserting, that on the Southern States has the loss of this intercourse principally fallen, and that whenever the American Government shall deem it expedient to stop it, the tobacco planters of Virginia and Maryland, and the rice, cotton, and tobacco planters of Georgia and North and South Carolina will always have to bear the principal part of the loss. Nor do I believe, that this act has answered the end intended by it, which was to distress France, and deprive her of these articles, so necessary to her convenience. She has generally obtained them, notwithstanding our prohibition, by the way of Hamburg and Great Britain. It is true the French have had to pay higher for them by this circuitous route; but it is equally true, the Southern American planters have in consequence had to sell them at a lower price. It has entirely destroyed all competition in their market, and placed them entirely at the mercy of the Hamburg and British merchants. In short, it has contributed to make Great Britain principally, and Hamburg in a less degree, the depots of all American produce; for, while this intercourse is prohibited, we have scarcely any other market to send it to. We must entirely depend on the British market, and it operates, in point of commerce, almost as conveniently for them, as if we were still their colonies. In mentioning this, I desire by no means to be understood as intending to justify the conduct of France, in capturing our vessels, or refusing to treat with us. Their conduct was not only unjustifiable, but impolitic in the extreme; and their then rulers must have been blind to their own interests. But I have done it with a view to show the importance of the intercourse with France, whenever our national honor and safety permit, and that nothing but the most urgent necessity can justify our continuing the prohibitions a day longer than is necessary.

I consider it as my duty to make a remark here, which springs necessarily from the question—it is this: that as our original ground of dispute with France, was the illegal capture of our vessels, contrary to the law of nations, that we ought to convince France and the world that our conduct is intended to be equal to all nations; that it is not because they have any particular prejudice against France, that our Government adopt these measures, but because she has violated their neutral rights; and that whenever any other nation acts in a similar manner, our Government will use every exertion to remove the inconvenience, and endeavor, at least by examination and remonstrance, to have justice done to their citizens. I did, therefore, expect that long before this, some inquiry would have been made into the captures which have been alleged to be made of our vessels by other nations. It is loudly asserted in the papers, that a very great number of our vessels have been taken; and that, in a variety of instances, the most established principles of the laws of nations have been violated. If so, we have a right to expect the same measures of protection as were taken with respect to France, will now be afforded to our merchants against the depredations of any other Power, and that our Government will prove itself just and impartial in all its proceedings to every nation. I hope it will, and that all its operations may be so founded in wisdom and policy, as not only to restore to us the peace of our former friends, but to insure to us the blessings of an undisturbed commerce with all the world.

For the reasons I have mentioned, I shall vote against this bill. Indeed, if I was ever so much convinced of the propriety of continuing the prohibition until peace was made with France, I should vote against this bill, in its present form, on the ground that the delegation of power it contains, is unconstitutional; and that in our Government nothing can be more dangerous to its freedom and future fate, than the increase of the patronage and influence of the Executive—that it goes to destroy entirely the unbiassed Constitutional agency of the Representative branch, and undermine our liberties, precisely in the manner that the ruin of every free government has been formerly occasioned.

"Men (says Algernon Sidney) are naturally propense to corruption, and if he whose interest and will it is to corrupt them, be furnished with the means, he will never fail to do it. Power, honors, riches, and the pleasures that attend them, are the baits by which men are drawn to prefer their personal interest before the public good; and the number of those who covet them is so great, that he who abounds in them will be able to gain so many to his service, as shall be able to subdue the rest. It is hard to find a tyranny in the world that has not been introduced this way; for no man by his own strength, could subdue a multitude; no one could ever bring many to be subservient to his ill designs, but by the rewards they received or hoped. By this means Cæsar accomplished his work, and overthrew the liberty of his country, and with it all that was then good in the world. They who were corrupted in their minds, desired to put all the power and riches into his hands, that he might distribute them to such as served him."

With these reasonings of this illustrious patriot, to whose force it is impossible to add, I shall conclude my observations against the bill.

The question was then taken on the passage of the bill, and it was determined in the affirmative—yeas 19, nays 10, as follows:

YEAS—Messrs Anderson, Bingham, Chipman, Dayton, Foster, Goodhue, Greene, Gunn, Hillhouse, Howard, Lloyd, Paine, Ross, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

So it was, *Resolved*, That this bill pass with the amendments.

The Senate took into consideration the motion made yesterday, that a standing Committee of Privileges, consisting of —— members, be appointed.

On motion, it was agreed that the motion be amended to read, as follows:

Resolved, That a Committee of Privileges, consisting of five members, be appointed, to continue during the present session.

And, on motion to agree to the motion as amended, it passed in the affirmative—yeas 22, nays 7, as follows:

YEAS—Messrs. Anderson, Bingham, Brown, Chipman, Dayton, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Ross, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Cocke, Langdon, Mason, Nicholas, and Pinckney.

So it was, *Resolved*, That a Committee of Privileges, consisting of five members, be appointed, to continue during the present session; and that Messrs. DAYTON, TRACY, LATIMER, CHIPMAN, and BROWN, be the committee.

Mr. HOWARD, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," reported the bill without amendment.

A motion was made, by Mr. TRACY, that it be

Resolved, That the Committee of Privileges be, and they are hereby, directed to inquire who is the editor of the newspaper printed in the city of Philadelphia, called the General Advertiser, or Aurora, and by what means the editor became possessed of the copy of a bill prescribing the mode of deciding disputed elections of President and Vice President of the United States, which was printed in the aforesaid newspaper, published Wednesday morning, the 19th instant, February, and by what authority he published the same; and by what authority the editor published in the same paper that the honorable Mr. Pinckney, a Senator from South Carolina, and a member of the committee who brought before the Senate the bill aforesaid, had never been consulted on the subject. And generally to inquire the origin of sundry assertions in the same paper, respecting the Senate of the United States, and the members thereof, in their official capacity, and why the same were published; and make report to the Senate. And that the said committee have power to send for persons, papers, and records, relating to the subject committed to them.

Ordered, That this motion lie for consideration.

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of the President and Vice President of the United States; and after progress, adjourned.

THURSDAY, February 27.

Mr. BINGHAM presented a memorial, signed by the President of the Board of Health for the city of Philadelphia, praying a more general extension of the quarantine laws; and the memorial was read.

Ordered, That it be referred to Messrs. BINGHAM, WATSON, and GOODHUE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes, as therein mentioned," was read the second time, and referred to Messrs. LANGDON, and NICHOLAS to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" was read the second time, and referred to Messrs. BINGHAM, GOODHUE, WATSON, and BROWN, to consider and report thereon to the Senate.

The bill authorizing Seth Harding to locate certain lands in the Territory of the United States Northwest of the river Ohio, was read the second time, and recommitted to the original committee, further to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," was read the second time, and ordered to the third reading.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to extend the time of payment of bonds given for duties of impost, in certain cases;" and, after progress,

Ordered, That it be recommitted to the original committee, further to consider and report thereon to the Senate.

Mr. ROSS, from the managers at the conference on the amendments to the bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" reported that the Senate insist on their amendments.

Ordered, That the report lie for consideration.

The VICE PRESIDENT laid before the Senate a letter from Samuel Meredith, Treasurer of the United States, with his account for the War and Naval Departments, to the 31st December, 1799; which was read.

Ordered, That they lie on the table.

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; and, after progress, adjourned.

FRIDAY, February 28.

The Senate took into consideration the report of the managers at the conference on the amendments to the bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen.'"

Resolved, That they do insist on their said amendments.

Mr. SCHUREMAN, from the committee, reported that they had examined and found duly enrolled the bill, entitled "An act providing for the second census or enumeration of the inhabitants of the United States."

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; and, after debate, the further consideration thereof was postponed.

The Senate took into consideration the motion made on the 3d instant, for an amendment to the Constitution, respecting the appointment of the Chief Justice and Judges of the Supreme Court to other offices; and, after debate,

Resolved, That the consideration of the motion be postponed to Tuesday next.

A message from the House of Representatives informed the Senate that the House recede from their disagreement to to the amendments of the Senate to the bill, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" so far as to agree to it with certain amendments and modifications.

The Senate took into consideration their amendments disagreed to by the House of Representatives, to the bill mentioned in the foregoing message; and

Resolved, That they do recede from so much of their amendment as is disagreed to by the House of Representatives, and agree to their amendment to the amendment of this House.

The bill sent from the House of Representatives, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," was read the third time and referred to the original committee, further to consider and report thereon to the Senate.

Ordered, That Mr. DAYTON be added to the committee to whom was referred the bill, entitled "An act to establish an uniform system of Bankruptcy throughout the United States."

The Senate took into consideration the motion made on the 17th inst., respecting an uniformity of weights and measures; and

Resolved, That it be referred to the Secretary of the Treasury to prepare and report to this House a plan for establishing an uniformity in the weights and measures of the United States.

The Senate took into consideration the motion made on the 26th inst., relative to certain lands claimed by the United States within the State of Tennessee; and the motion being amended, was adopted, as follows:

Resolved, That a committee be appointed to inquire into the situation and extent of the vacant and unappropriated lands claimed by the United States, under the cession of the State of North Carolina, and the expediency of making provision for the disposition thereof; and that Messrs. ANDERSON, MARSHALL, and CHIPMAN, be the committee.

SATURDAY, March 1.

Mr. GOODHUE, from the committee to whom was referred the amendment to the bill, entitled "An act providing for salvage in cases of recapture," made report.

Whereupon, *Resolved*, That the Senate agree to the amendments of the House of Representatives to their amendment on the said bill.

MONDAY, March 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Thomas Arnold," and a bill entitled "An act to establish a general stamp office," in which bills they desire the concurrence of the Senate.

The Senate resumed the consideration of the amendment proposed to the first section of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion to amend the amendment, which stood "draw by lot in each House, and in the following manner, eighteen members thereof," by expunging the word "eighteen," and inserting the word "twenty-four," it passed in the affirmative—yeas 16, nays 13, as follows:

YEAS—Messrs. Anderson, Chipman, Dayton, Foster, Goodhue, Hillhouse, Howard, Latiner, Laurance, Livermore, Paine, Read, Ross, Schureman, Tracy, and Watson.

NAYS—Messrs. Baldwin, Bingham, Bloodworth, Brown, Cocke, Franklin, Greene, Langdon, Lloyd, Marshall, Mason, Nicholas, and Pinckney.

On motion to amend the second section proposed as an amendment to the bill, by expunging these words: "reduce by lot, in the manner before prescribed, the committee above selected, to the number of six," and to insert "choose by ballot six out of the committee above selected," it passed in the affirmative—yeas 15, nays 13, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Paine, Read, Ross, Tracy, and Watson.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Howard, Langdon, Lloyd, Mason, Nicholas, Pinckney, and Schureman.

On motion to agree to the amendment amended, as follows:

Section 1, lines 6, 7, and 8, strike out these words: "choose by ballot in each House six members thereof, and the twelve persons, thus chosen," and insert the following: "draw by lot in each House and in the following manner, twenty-four members thereof, viz: that the Secretary of the Senate shall write the names of all the Senators present, on distinct pieces of paper, of nearly equal size, and shall roll them up and place them in a box, which shall be then shaken and intermixed together; after which, the Secretary of the Senate shall draw out of the said box the said pieces of paper with the names written on them, until twenty-four names of the Senators then present shall be so drawn. He shall deliver the same to the President of the Senate, who shall open and read them aloud, and the Secretary of the Senate shall write down the names so called. The Clerk of the House of Representatives shall, on the same day, write the names of all the members of the said House present, on distinct pieces of paper, of nearly equal size, and shall roll them up and place them in a box, which shall be then shaken and intermixed together; after which, the Clerk of the House shall draw out of the said box the said pieces of paper with the names written on them, until twenty-four names of the members then present shall be drawn. He shall deliver the same to the Speaker of the House, who shall open and read them aloud, and the Clerk shall write down the names so called.

"*And be it further enacted*, That, previous to the day preceding the second Wednesday in February of any year, the Senate and House of Representatives shall then, respectively, proceed to choose, by ballot, six out of the committee above selected:"

It passed in the negative—yeas 4, nays 24, as follows:

YEAS—Messrs. Anderson, Bloodworth, Langdon, and Mason.

NAYS—Messrs. Baldwin, Bingham, Brown, Chipman, Cocke, Foster, Franklin, Goodhue, Greene, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Marshall, Nicholas, Paine, Pinckney, Read, Ross, Schureman, Tracy, and Watson.

On motion, to insert in the 10th section, line 9th,

after the word "committee," these words: "such rejection shall be founded on a concurrence of two-thirds of the committee." it passed in the negative—yeas 10, nays 19, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Foster, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, and Tracy.

And after debate the Senate adjourned.

TUESDAY, March 4.

The bill, sent from the House of Representatives, entitled "An act for the relief of Thomas Arnold," was read, and ordered to the second reading.

The bill, sent from the House of Representatives, entitled "An act to establish a general stamp office," was read, and, by unanimous consent, it was read the second time, and referred to Messrs. TRACY, NICHOLAS, and CHIPMAN, to consider and report thereon to the Senate.

On request, by Mr. PINCKNEY, he had leave to withdraw his motion, made on the 3d of February, last, for an amendment to the Constitution, respecting the appointment of the Chief Justice of the United States to any other office. He also notified the Senate, that he should to-morrow move for leave to bring in a bill further to amend the act, entitled, "An act to establish the Judicial Courts of the United States."

The Senate resumed the second reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion, to amend the 8th section, line 4th, by striking out these words: "upon the Constitutional qualifications of the Electors appointed by the different States, and whether their appointment was authorized by the State Legislature or not," and to insert, in lieu thereof, these words: "whether the appointment of Electors for any State was authorized by the State Legislature or not," it passed in the negative—yeas 14, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Franklin, Greene, Gunn, Langdon, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Chipman, Dayton, Foster, Goodhue, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, and Tracy.

And, after debate, the Senate adjourned.

WEDNESDAY, March 5.

The VICE PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, of a general statement of goods, wares, and merchandise, imported into the United States, from the 1st of October, 1797, to the 30th of September, 1798; which was read.

Ordered, That it lie on the table.

Mr. GUNN, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," reported an amendment; which was read.

Ordered, That it lie for consideration.

Mr. LAURANCE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States," reported the bill without amendment.

Mr. WATSON, from the committee to whom was referred, on the 7th of February, last, the petition of Lyon Lehman, reported a bill for his relief; which was read, and ordered to a second reading.

BREACH OF PRIVILEGE.

The Senate took into consideration the motion made on the 26th of February last, that an inquiry be had relative to a publication in a newspaper called the "Aurora," on the 19th of the said month; and agreed to insert after these words: "and by what authority he published the same," line 7th, the words "as having passed the Senate."

Mr. COCKE said, he would not suffer a measure of this kind to pass through the Senate, while he had the honor of a seat in that body, without manifesting the most determined opposition. What did the gentleman mean by avoiding the general principle? did he mean to get the consent of the Senate, acting in the character of an inquest, to an acknowledgment that the editor of the Aurora had been guilty of a crime, without any inquiry whether the publication in itself was criminal, or whether if it was criminal, the Senate, as an independent and a single branch of the Legislature, had of itself the power to define the crime and inflict the punishment? He could not consent to an admission of this kind; the Constitution gave them no such authority; the privileges of the House and of the members did not extend beyond the walls of the Chamber in which they were sitting, in cases of comment upon their official proceedings. He had held these opinions from the time the motion was first laid before the House, and thought that the consequences which would result from pursuing the subject, would be more dangerous to the honor and dignity of the Senate, which it was meant to defend, than all the attacks which all the public newspapers could make during their existence, inasmuch as an actual assumption of power was far more detrimental to their character than any unfounded charge of tyranny could be. He believed that the more the subject was agitated the more would be the clamor against the Senate, and in the end they would be forced to abandon the measure for want of ability to carry it through; he therefore concluded it would be best to give it up in the first instance, and save both their own time and the public money. He would move to postpone the consideration of the motion till the first Monday in December next.

Mr. TRACY did not wish to hurry on the decision, but as the resolution had been several days upon the table, he believed the House might now decide on the propriety of referring the business

to the Committee of Privileges, as this procedure would not be final; or, if the House was not ready to vote immediately, the discussion might proceed and time would be given for coming to the conclusion.

Mr. C. PINCKNEY.—This subject involves the important questions, What are the privileges of Congress, and how far are they defined by the Constitution; and what is the liberty of the press, as it respects those privileges? These are subjects of great consequence, and such as I suppose the House will touch with much caution. My name having been mentioned in the body of the original motion I feel myself particularly called upon to deliver my sentiments fully, as well with respect to the manner in which it is mentioned, as to the limitations of the Constitution, and what ought, in my judgment, to be the conduct of the Senate, on this very interesting occasion.

In considering, first, what are the privileges of Congress, and how far they are defined by the Constitution, I am naturally led into a repetition of arguments I have found myself too frequently obliged to use on this floor; that is, to entreat the House to recollect the nature of our federal system; that all powers not expressly and specifically delegated to Congress, are reserved to the States and people: and particularly to remember, that where any powers are so expressly defined as the privileges of Congress are, that it is our duty very carefully to consider the consequences, before we take a step that may, by subsequent or cool reflection, be found to exceed them; that the privileges of Congress, as limited by the Constitution, have been very deliberately considered by men whose opinions were not swayed by party, and whose impartial situation gave the best opportunity of judging; that having before them the example of the unlimited privileges of the British Parliament, and colonial assemblies, or councils, assuming to themselves the right of such privileges; that knowing the consequences of undefined powers, and being well aware what privileges were necessary to prevent an interruption of the undisturbed situation a member should enjoy, during the time he is engaged on public affairs, after much thought they had defined them in the manner fixed by the Constitution. No man, who is a friend to order, will justify what properly deserves to be termed the licentiousness of the press. When, instead of candidly reviewing the arguments or public conduct of a member of the Legislature, or officer of the Government, it meanly descends to private scandal, instead of being defended, it should be met with contempt and disdain. Abuse is the price that public men, and frequently those of the most ability, are obliged to pay; and it is seldom, in countries where the press is free, and strong political parties are known to exist, that it is much noticed. Men of elevated minds, who feel themselves strong in the powers of reasoning, will always yield to their feeble opponents the miserable resort of abuse: it is the surest test of imbecility, and the public, who generally think right, seldom hesitate to suppose it equally the proof of weakness and of malice.

I shall consider this subject from its importance, and the peculiar manner in which it has been introduced, as open to such animadversions as are within the rules of order and are consistent with decorum. I shall probably advance doctrines that will be termed as extraordinary here, but it shall be done with the good manners I have ever considered as the criterion of good breeding, and which self-respect will forbid my violating. It is the first question respecting the privileges of the Senate that I have ever been present at, and, as it involves the liberty of the press, it is only necessary for me to mention these subjects, to show the House the propriety of our well-examining every line of the resolution on your table, before we adopt it.

I feel myself particularly called upon to give my opinion fully on this subject, because my name is inserted in the body of the resolution, and, to those unacquainted with the circumstances, it might have the appearance of being done at my request; whereas it was not only done without my knowledge, but is contrary to my wish, and opinion of the power of the House, and of the mode in which such inquiries should be conducted; that even if the House had the power, the remarks and information contained in the paper are not sufficiently important to attract its notice, particularly as they had been completely silent on the abuse of the Senate in the Gazette of the United States, respecting the stopping of the enlistments for the army; that the inquiry might lead to steps not within the defined privileges of the Senate, and that, as these may involve the liberty of the Press, and the right of a citizen to publish the debates and public acts of this House, those who were opposed to what they might consider unconstitutional restrictions, ought to meet the question at the threshold, and contest it in every stage. I shall therefore feel it peculiarly my duty to do so, and, after having stated to you my objections to any interference at all on this subject, to move the postponement of the resolution, or to amend it in some way that shall place on the journals my opinions of the extent of your privileges, and reasons for objecting to the mode of inquiry proposed by the gentleman from Connecticut.

In examining the Constitution, we find, that to prevent any attempt being made on the part of either branch of Congress, to define their own privileges, and exercise the same, as occasion or circumstances may, in their opinions, require, and to remove all doubt as to the extent and exercise of the privileges they are to enjoy, the Constitution has positively and expressly limited and defined the same, by declaring—

"That each House shall be the judge of the elections, returns, and qualifications of its own members; that they may compel the attendance of absent members, in such manner, and under such penalties, as each House may provide; that they may determine the rules of their proceedings, punish the members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. That the members of both Houses shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at

their respective Houses, and in going to and returning from the same, and, for any debate or speech in either House, shall not be questioned in any other place."

This is all that is said on the subject of privilege: and surely no words can be more explicit, nor any subject more clearly defined. The powers they are to exercise, and the persons and cases they are to operate upon, are all distinctly marked and named; nor is there a word or a sentence in the whole that can by any possible construction be made to mean that for any libels or printed attack on the public conduct or opinions of either House of Congress, or of any of its members, that their privilege shall extend to ordering the persons charged with the offence before them, and imprisoning them at their will. The Constitution wisely determined, that they should possess all the powers necessary to their formation, and the undisturbed order of their proceedings, and the safety of their members from arrest, during their attendance, and going to, and returning from Congress; but it at the same time recollected, that it is the nature of our Government to invite examinations of public measures, that it is the duty of our citizens to make these inquiries, to watch over the proceedings of our public bodies, and if they find them departing from the Constitution, or exceeding their authority, instantly to announce it. That our Constitution supposes no man, or body of men, to be infallible, but considers them all as mere men, and subject to all the passions, and frailties, and crimes, that men generally are, and accordingly provides for the trial of such as ought to be tried, and leaves the members of the Legislature, for their proceedings, to be amenable to their constituents and to public opinion: it however particularly guards the right of the citizen to investigate their measures: and in case of a false or libellous attack, it intends, if the power of collecting juries is fairly exercised, to provide a just and impartial tribunal to decide between them, to act upon oath, and who ought not to be the particular friends or enemies of either. On this subject I shall hereafter more fully remark, and at present take some little notice of an observation that has been made, and which, with the subject of privileges, should be considered as preliminary to those that are necessary on the liberty of the press. It is, that if Congress possessed the power contemplated by this resolution, it was their duty to pass some legislative act respecting it, declaring the manner in which it should be executed, and designating the officer or officers who were to do so; that the people would then know the manner in which offenders were to be summoned or apprehended, or brought before them: but this should have been done when no particular case had occurred, and was before them, and that no proceeding of privileges in any case like the present, ought to be had until such act was passed, and the mode of proceedings clearly ascertained; that if the power was given by the Constitution, until Congress had legislated upon it, in the manner above mentioned, it was extremely improper for either branch to attempt to exercise it: that a judiciary department was erected by the Constitution, but that Congress were obliged to legislate upon it, and detail its duties, and provide for the appointment of officers to execute them, before the powers of that department could be properly exercised: and that if Congress possessed the power some gentlemen contend for on this point, they must previously legislate on it in the same manner. On this subject there can be no doubt of the propriety of this objection, if Congress possessed the power; and their never having passed such a law is a strong proof, that whatever opinions either branch may have entertained, that both did not suppose they possessed this power, or certainly they would have legislated upon it. If they did not doubt, or were not sure they did not possess this authority, why did they not legislate on it at the time they did on all such other parts of their privileges and powers as they conceived they had authority to act on. They (that is, Congress) passed an act on the subject of the election of members of the House of Representatives, of which that House are the sole judges: each House detailed, in a particular manner, their rules and modes of proceeding—this was all that was necessary to be detailed. The remainder of the clause respecting privilege is so express on the subjects of privilege from arrest, government of members, and expulsion, that every civil officer in the United States, and every man who has the least knowledge, cannot misunderstand them. I assert, that it was the design of the Constitution, and that not only its spirit, but letter, warrant me in the assertion, that it never was intended to give Congress, or either branch, any but specified, and those very limited, privileges indeed. They well knew how oppressively the power of undefined privileges had been exercised in Great Britain, and were determined no such authority should ever be exercised here. They knew that in free countries very few privileges were necessary to the undisturbed exercise of legislative duties, and those few only they determined that Congress should possess; they never meant that the body who ought to be the purest, and the least in want of shelter from the operation of laws equally affecting all their fellow citizens, should be able to avoid them; they therefore not only intended, but did confine their privileges within the narrow limits mentioned in the Constitution. And here, sir, let me ask, are not these privileges all that are necessary? They have complete authority to keep order and decorum within their own chamber, to clear the galleries if an audience are unruly, and to punish their own members, to take care that no arrests, except for treason, felony, or breach of the peace, shall keep their members from their duty, and for all libellous attacks or misrepresentations the laws are open to them; and if unjustly attacked, no doubt the juries of their countrymen, who are interested to preserve the dignity and independence of their Legislature, will give them the most ample satisfaction. But it is said, "each branch must possess this power to punish for breach of privileges, which they must judge of as circumstances may arise and require; that every legislative body, or branch of one, possesses an inherent right to protect itself, which must be exercised as their discretion directs, because it may

frequently be necessary to exercise it immediately, when the public safety would make it impossible to wait for reference to other bodies, or tribunals." and, "that if a man was approaching to knock you down, it would be absurd, instead of defending yourself, to deliberate whether you were authorized to do so; that you must act instantly, as the occasion demands; and that as each individual in society possesses this inherent right to protect himself, so does each branch of the Legislature." This, as far I have been able to collect, is the sum of the reasoning on this subject; and it is said to be strengthened by the practice and precedents of the British Parliament, and the Colonial Legislatures, before the Revolution, and most of the State Legislatures since, and is now universally received as the true doctrine on this subject.

That it is the doctrine and practice of the British Parliament, I will allow; but it was because the doctrines there held are utterly inadmissible in a free Government; and to prevent any influence from them, and their precedents, and the improper practice of the Colonial and State Legislatures, that this limitation of the privileges of Congress was here purposely introduced. Will any man undertake to say, that the privilege of the Parliament of Great Britain ought to be that of the Congress of this country? Do you suppose that all their members, and their property, and even their servants, should be protected from arrests during the whole time they are elected for, many of them for twenty years together, or during their lives? Would it be thought safe in this country that a small majority of a small body, or single branch of a Legislature, should claim and exercise the authority, whenever they please, to send and seize any man in your community, however important, and confine him in a loathsome dungeon, for six months together, merely because he has differed with them in politics, and criticised, as he had a right to do, on their legislative acts? Is it a pleasant sight to our citizens, to see sergeants-at-arms, with their rods, inquisitorially seizing freemen, and dragging them to your bar, and there exhibiting them as criminals, or spectacles to crowded audiences, merely because they thought they had a right to attack, by argument, proceedings which appeared to them unconstitutional? Can you have the most distant idea, that your Constitution could have intended thus forever to shut the door of inquiry, and make it so penal and dangerous to your citizens that none of them will dare to venture it? Is it possible for any man to read the Constitution with attention, and then suppose that such could have been its design? So far from being so, I do assert that great pains were taken specially to guard against the exercise of any such power, and I have no doubt that the Congress of 1798 must have been of this opinion, or else why did they pass the 2d section of the sedition law? Why did they (improperly in my opinion, because it ought to belong to the State judicials) why did they make the crime of writing, uttering, publishing, or printing any libel against the President, or either branch of Congress, triable, and punishable, in the federal courts, if either branch possessed this power themselves? If they have the right to punish libels, or false, or malicious attacks, why include them in this act? Their power extends over the whole of the Union, and can reach any inhabitant, in any State. Is it not therefore clear, that by giving this authority to the federal judges, to try and punish for written or printed attacks on either branch of Congress, that the Congress of 1798 did not suppose, for attacks of this kind, made in the papers, there was any other mode of punishment than by a trial, where the person charged would have the benefit of trial by jury? Surely this must have been their opinion, or they would not have had two different modes of trial and punishment for the same offence. They never would have erected a new jurisdiction to include a crime, when one sufficiently strong and energetic existed already; but to prove this still more clearly, let us inquire, why the Constitution should have been so attentive to each branch of Congress, so jealous of their privileges, and have shewn so little to the President of the United States in this respect. Why should the individual members of either branch, or either branch itself, have more privileges than him? He is himself, as far as his qualified negative goes, a branch of the Legislature; he is, besides, your Executive, he is the sword of the law, and does he possess any privileges like these? If a man meets him walking alone in the streets and insults him, or if one of ruffian manners should enter his house, and even abuse him there, has your President any privileges like these? Can he commit and imprison without a trial? No sir, he must resort to the laws for satisfaction, where the person charged with the outrage will be heard, and where each party will have justice done them, by men who ought to be so impartially summoned as that no undue bias will be found, when they come to decide. No privilege of this kind was intended for your Executive, nor any except that which I have mentioned for your Legislature. The Convention which formed the Constitution well knew that this was an important point, and no subject had been more abused than privilege. They therefore determined to set the example, in merely limiting privilege to what was necessary, and no more. Look into the constitutions of all the States, which have been formed since the Federal Constitution, and see if they have not done the same. The Constitution of South Carolina is remarkably explicit and limited on this subject: It says, "that each House may punish by imprisonment, during its sitting, any person not a member, who shall be guilty of disrespect to the House, by any disorderly or contemptuous behaviour in its presence, or who, during the time of its sitting, shall threaten harm to the body or estate of any member, for anything said in either House; or who shall assault any of them therefor; or who shall assault or arrest any witness or other person, ordered to attend the House, in his going to or returning therefrom; or who shall rescue any person arrested by order of the House." These are all privileges, except privilege from arrest or seiz-

ure of estate, mentioned in that constitution; and the slightest inspection at once shows, that except for disrespect or contemptuous conduct, in its presence, or threatening or assaulting a member for his conduct in the House, that no other authority is given to punish—not a word is said about libels, or attacks by writing or printing, on their conduct. It is well known that our Constitution intended the press to be free; to be the means of communicating the acts of the Government, and of commenting on them where necessary; that it supposes that majorities will sometimes exist, who may wish to overstep the boundaries they ought not to pass; and, therefore it provides for them, in the hands of the people, this wholesome correction of the press, which those who resort to must use at their peril. If they use it properly, animadvert with propriety, and really point out defects or usurpations in the Government, the people will applaud their zeal, and the laws will support them in their exertions; but if they falsely or maliciously misrepresent, the law will become the avenger of the Government, and unprejudiced juries be the means of punishing calumniators. This is the true footing upon which legislative privilege should be put in every Government, and it is the one on which it is now placed in the United States. By this you give sufficient power to punish, for any improper thing done in their presence, which may disturb the order of either House, or violate the decorum of their proceedings; and for any supposed slanderous attack, the tenderness with which you ought to touch the Constitutional right of the public to inquire into public affairs, and the delicate subject of trial by jury, will always necessarily oblige you to recur to the latter for redress and satisfaction.

If it was proper, on subjects like this, to refer to British precedents, I could mention a recent one, which is exactly in point; and shows, that even in the English House of Commons, the doctrine I contend for prevails; it is, that in all cases of libels against either House, the remedy must be by prosecution by the Attorney General, and trial by jury. In Stockdale's case, Doctor Logan published charges against the House of Commons, in which he stated, in a variety of ways, that they had been guilty of great cruelty to Mr. Hastings. Mr. Pitt and Mr. Fox, and all sides of the House, agreed that it was a libel: but, instead of ordering him before the House, they entered into resolutions directing the Attorney General to prosecute. It appears to me so clear, that for all libels or attacks on either branch of the Legislature, in writing or in print, the mode must be by prosecution, that I do not know it is necessary to trouble you at this time with any further reasoning on that head; I will therefore only mention one more, and then conclude this part of my subject: it is, that from the nature of our Government, where our President is elective, and obliged to attend to public opinion, even if he wishes to do so, he will never venture on those bold measures, which hereditary Executives sometimes attempt. If, then, there should be some men, whose political talents he is afraid of, or whose inquiries into his administration give him uneasiness, an Executive, instead of venturing on any such measure himself, if he can obtain a majority in either branch, will easily discover some mode of having this man's political inquiries construed into breaches of privilege; and, under cover of his friends' influence, immure and silence, during a whole session, and for half a year, a man, whose arguments were perhaps unanswerable, and whose system may be the one which your councils may the next year adopt. I am far from supposing that we are yet so much advanced in the arts and intrigues of older Governments as to make this probable at present; it is not however impossible, and must be guarded against.

The next question is, that of the liberty of the press, as applying to these defined privileges; and as it is the first time this sacred subject has been before either House on a question of privilege, I shall expect your indulgence in making some remarks on it. I shall be very short; for however fruitful the subject is, yet so much has been said of it elsewhere, and you must be so well acquainted with it, that it will be necessary for me barely to state some general principles, as they apply to the question before you. I feel a pride in saying that in no country has the press ever been as free as in United America; however clouded or interrupted this freedom has, in my opinion, lately been. I entertain a hope that in a few months all its shackles will be removed, and that the emotions they have occasioned in the public mind will for ever forbid its being thus fettered again. To no subject have I ever more carefully applied, than what ought in a well regulated Government to be the freedom of the press. I well know that where the press is not free, liberty is but a name, and Government a mockery. I have therefore endeavored to form, in my own mind, what ought to be the true standard of the freedom of the press with us; and I have no doubt that it consists in this: That the printing press shall be free to every person who undertakes to examine the proceedings of the Legislature, or any branch of the Government, and no law shall ever be made to restrain the right thereof; that the free communication of thoughts and opinions is one of the most invaluable rights of man; and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty; that in prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels the *Jury* shall have a right to determine the law, and the fact, under the direction of the court, as in other cases. This is the situation in which the Constitution of Pennsylvania has placed the press; and it is the true and safe one, upon which it ought to be placed in every free Government. Here the right to investigate the conduct of the Legislature, and of official men, is not only recognised and established, but the Constitution seems to require it as a duty, from the citizens. It says to them, these are men periodically delegated by you to manage your public concerns—to you, and you alone, they

are accountable for their conduct; nor can you know whether it is meritorious, or otherwise, but by having the right to examine into it, and by freely and frequently exercising that right. And would it not be the strangest thing in the world, when the Constitution not only establishes the right, but calls upon the citizens to exercise it with alertness, and by no means to neglect it, that if they should happen to displease a branch of the Legislature, whose conduct they have censured, that they should be delivered immediately into the power of this branch, to be dealt with as they please; that the men they had accused, and whom they had, by the Constitution, a right to accuse, should become their judges? Would not this be a most extraordinary doctrine? Would it not involve an inconsistency, that ought not certainly to be chargeable upon the framers of the Constitution? In private cases of slander, or defamation, would you suffer the person abused, or any near connexion of his, or person interested in the event of the suit, to be on the jury? Certainly not. How much more glaringly improper then would it be, in cases of a public nature, where the acts of a legislative branch are censured, and where the charge has been openly and honorably brought forward, to commit the person who produced it, at once, to the power of the body whose acts he has condemned! Let us suppose, that in the exercise of this invaluable right, some disinterested and independent man, urged by the most honorable and patriotic motives, should conceive a branch of the Legislature overstepping the bounds of the Constitution, and going into measures destructive of our rights, or injurious to our interests; that this man should be an important member of your community, of known integrity and independence of situation and character, that he should have no private ends of his own to answer, or anything in view but the public good; that he has embarked in the investigation at the entreaty of a numerous and respectable part of the community, who wished the public mind to be so fairly and fully possessed of facts, and reasonings on them, as to be able, at the next election, to determine with precision and fairness on the conduct of their Legislature: under these circumstances would it be proper to deliver this man into the power of a body whom he has charged with misbehaviour, or a departure from Constitutional principles? Or would it not be more fair, would it not wear more the appearance of impartiality in case an examination was necessary into the nature of his charges, or the manner in which he has made them, and the expressions he has used, to have a distinct and unprejudiced body, a jury acting under oath, to decide between them? As far as I know anything of the principles of natural justice, I should suppose there was no question on the subject, and no other opinion ought to be entertained, and that without it there can be no such liberty of the press, or freedom of inquiry, as the Constitution intends.

And here, sir, let it be asked, why should a Government that means well, or is confident in its uprightness and ability, ever fear the press? It should be to them a source of great pleasure, in reflecting that they had so excellent a mode of diffusing a knowledge of their acts, well knowing, if they were unjustly attacked, it gave them the most ample means of defence; and that if it became immoderate and licentious, the laws were always sufficiently energetic to punish it. How many individuals when attacked or slandered, have rejoiced that such a defence has been afforded them; and how indispensable is its free investigation to the removal of doubts which sometimes crowd about the characters of public bodies, or men, and which it is necessary to remove! Public bodies are public property; and so indeed are public men, who have in any degree rendered themselves conspicuous by their exertions: few of these, if ever there was one, can expect to be without personal enemies; these will be in proportion to the talents of the man they dislike, and his consequence with the people. Men who engage in public life, or are members of legislative bodies, must expect to be exposed to anonymous, and sometimes avowed, attacks, on their principles and opinions. Their best shield will be an upright and able conduct. The best informed will sometimes err; but when their intentions are pure, an enlightened nation will easily discover it, and pardon the mistake. With the shield of conscious rectitude, a Government can never dread the press. It is only in States where the happiness of the people is not the end of Government, or where an individual or a few possess the whole authority, that the press is not agreeable to them. Hence, in despotisms, it is generally odious to the sovereign, and strictly limited. We have, however, found even among them, a latitude which proves that in the most despotic countries, where the sovereign is conscious of using his power for the good of the people, he fears not the slanders of the malicious. It is remarked of Frederic of Prussia, that few princes were more libelled by his subjects; but that in no country were libels more disregarded: that few, if any, instances ever occurred of his endeavoring to discover the authors, or to crush by punishment, the spirit of inquiry which literary pursuits had diffused among his subjects. A more remarkable instance is, that of the Empress of Russia; in giving her directions respecting libels, she says, "great care ought to be taken how we 'extend this crime; representing to ourselves the 'danger of debasing the human mind by restraint 'and oppression, which can produce nothing but 'ignorance, and must cramp and depress the rising 'effects of genius." I did not expect to have been obliged ever to have introduced on this floor, Frederic or the Empress, as examples on the subject of the press. The love of liberty, or a wish to countenance the spirit of political inquiry, were not certainly among the reasons for allowing this latitude; but they at once discovered, that if they wished to govern an enlightened people, the spirit of inquiry must be unshackled, and an extensive range given to literary productions. Among the ancients we find Tiberius, and Trajan, and Titus, allowing absolute liberty of speech and writing, suppressing the laws against seditious words and writings, and punishing informers. But the most remarkable instances we have, that freedom of

speech and writing are essential to the liberty and greatness of a people, are those of Athens and Rome, when republics: in speaking of them, a celebrated writer says "that democracy is the nurse of genius, and the greatest encourager of sublimity." The fact is evident from these republics. In Greece, Athens was most democratical, and a state of the greatest liberty; and hence it was, according to Paterculus, "that eloquence flourished in greater force and plenty in that city alone than in all Greece besides; insomuch (says he) although the bodies of the people were dispersed into other cities, yet you would think their souls and their genius to have been pent up within the precincts of Athens." So the city of Rome was not only the seat of liberty and empire, but of true wit and exalted genius. The Roman power outlived, it is true, for a considerable time, its liberty, but the freedom of speech and writing was gone, and wit and genius could not long survive them.

How applicable, sir, are these instances, and how incumbent on us is it, if we mean to keep this country a Republic, to cherish the freedom of the press, to remember that without it seldom any thing great or noble can be produced, that to shackle it is to chain the mind, and stifle the seeds of everything that is generous and amiable! That, in the words of a celebrated divine, "reason and freedom are our own, and given to continue so; we are to use, but cannot resign them, without rebelling against Him who gave them; that to invade them is to encroach on the privileges we receive from God, and traverse the designs of Infinite Goodness." We should remember the danger of precedents, and be careful, as this is the first discussion we have had on this subject, not to establish improper ones, or lay a foundation for that debasement of the mind, which always follows the depression of the press.

It is important here to remind you, of the anxiety of the State Legislatures in insisting upon the doors of the Senate being thrown open, and their legislative proceedings exposed, like the other branch, to public view. It was done unquestionably with the intent, that minutes of your debates should be taken, and all your proceedings subject to the inspection of such of our citizens as choose to attend; but as from the distance, very few of the States could have citizens attending, the great object certainly must have been to have notes taken of the debates, and printed in the gazettes; that through that channel information may be transmitted to every part of the Union, and thus the States become, in the best manner they are able, judges of the talents, as well as conduct and opinions of their members. That this is of infinite importance, in a representative government, no man will deny; but if a printer is to be seized, and dragged to your bar, and perhaps imprisoned for a mistake, that a law has passed when it is only its second reading, or that a member of a committee was not summoned to attend the meeting of the committee, when he was, and did attend, or for any mistake of this kind, I ask you what printer or reporter will take your debates? Who will venture on it; because, where will you draw the line? Will you require that each reporter shall give every word and observation with exactness, and that the smallest deviation from what was said on the orders or proceedings of the House, shall subject him to the odium, and perhaps expense, of a trial at your bar, which must accrue if he has counsel? If this is the case, no reporter will certainly attempt to take your debates, and your doors may just as well be shut again. But, say gentlemen, it is not only for those assertions which you have mentioned, but for the preceding and accompanying observations respecting the views and proceedings of the Senate, and of the members of that body in their official capacity, for which we think this examination requisite. I have already said, in the commencement of my argument, that no man can justify the licentiousness of the press, and that it is perhaps to be lamented that so much invective is used in the papers on both sides of the question; but that as most of these observations are on things that did not happen in the Senate room: and many of them are stated to have occurred near two years ago, and that as much more violent abuse against the Senate was published in the Federal paper styled the Gazette of the United States, on the 13th day of February, and no notice has been taken of it, that it was best, upon this occasion, to suffer the present to pass unnoticed likewise: that it is astonishing the honorable mover from Connecticut, who seems to feel so much for the dignity and character of the Senate on this occasion, did not, on that of the abuse which was heaped on it for consenting to stop the enlistment for the army, have similar feelings; and that as he consented to suffer those animadversions to pass, it would certainly be doing no great violence to his feelings to deal with the present in the same way: that perhaps the best mode to lessen the importance of a paper was, not to treat its observations with either too much notice or severity; that in politics, as in religion, persecution seldom made converts; that if I ever had the inclination to raise the importance of a press, and bring it into celebrity and notice, I would wish it persecuted, for I never saw a press in a free Government persecuted but it rose immediately. Attack a press for its political publications, you instantly convince the people that it is dreaded, and must be of great importance, and attract their attention. We can never forget the memorable cases of *Sacheverel* and *Wilkes*, or how much the English nation was agitated by them, and we ought to be convinced, that in every country having the least semblance of freedom, the same consequences will always flow from the same measures.

I request of you again to consider the importance of the question, how far, in the case of libels, or attacks in the papers, for their political opinions, any single branch ought to possess the power, perhaps in a moment of passion and resentment, to decide on what is to affect the personal liberty of a citizen? Whether it is consistent with the nature of our Government, that a single branch, without check or control, should become judges in their own case? Whether any citizen charged

with a crime, for which he may be punished by the temporary loss of liberty, is not entitled, by the Constitution, to "a speedy trial by an impartial jury?" And, whether to deny it, in this instance, would not be to interfere with that provision of the Constitution? For my own part, I have no doubt of it; and, feeling as I always do, most jealous for the character of this branch, I am apprehensive, should we proceed in this measure, it may occasion unpleasant observations. Some of its enemies may perhaps say, that no power is so arbitrary as that of the unlimited authority of a single branch, acting in its own cause, revenging its own affronts, and deciding, perhaps more by its own passions and feelings, than by the justice of the case: that a power of this kind, is worse than a despotism; because there the despot is in some measure checked by his individual responsibility; for the act being the official act of the body, is that sort of protection under which an individual despot cannot shelter himself from the public odium—should the measure be oppressive, he must alone meet the general censure, which thus concentered, strikes with force; but when divided among a number, must in a great measure lose its effect. That, in every view of the subject, we must be convinced that for libels, or printed attacks, on either branch, the Constitution must have intended to give the person charged the right of trial by a jury, so collected that a cool and unprejudiced examination might take place, and justice be done to all parties; that this I had shewn to be the case, in the instance I had mentioned, in the House of Commons of Great Britain; and we surely would not wish the press should be more free, or the freedom of inquiry into legislative conduct more unshackled in England than with us. Look sir, into the abuse that is daily poured by the papers of that country, upon their Parliament and Administration, and upon Mr. Pitt and Mr. Fox, and all their leading members; and yet we see no proceedings of this kind. Indeed, if we were to believe Montesquieu, and the writers since him, it is to the freedom of the press alone, England owes the portion of liberty she enjoys—it is the ladder by which she rose, and that which she will struggle most to preserve. I devoutly hope she will always keep it, and that we shall likewise maintain it for ever in its utmost purity.

If we proceed in this business to the length it may go, that is, to issue the warrant to apprehend and confine, where, sir, is the power given to this branch to issue the warrant, and to appoint an officer to execute it; and in case he is unable to do so, to order the civil officers of the United States to aid him? I see no such power, nor do I believe any such is to be found in the Constitution. But may not another difficulty arise, and that is, if the editor is apprehended, and applies to a Judge, either of the United States, or the State in which you sit, for a habeas corpus, to examine into the nature of the commitment, and the Judge should be of opinion that you have no right to commit for such an offence, and that your remedy must be by prosecution, and discharge the editor, what then is to be done? Will you commit the Judge for doing his duty, and deciding according to the Constitution, and his oath to preserve it? And if a State Judge should discharge him, and the State should be of opinion their Judge had done his duty, and ought to be supported in it, will you suppose the present publication sufficiently important to give rise to a conflict of jarring opinions between the United States and the State, and to disturb the harmony which at present so happily prevails? If one or two of their Judges may have held an opinion in England, that a Judge cannot discharge on a habeas corpus a man, however improperly committed, on a charge of breach of privilege, the solemn opinion of the British House of Lords, delivered in the famous case of Ashby and White, goes unquestionably to fix the point, that a Judge can discharge on a habeas corpus, any man illegally or improperly committed, although by either branch of Parliament.

Upon the whole of this question, which I consider as extremely important to the liberties of our common country, I am to entreat that the House will well consider every step before they proceed. To adopt the motion before you, is to pledge the House to proceed in a business of great difficulty, and to give a wound to the freedom of the press which it may not easily recover. Remember, sir, it is a blessing guarantied to your whole nation by the Constitution; and that if a few men should at any time be so imprudent as to injure the cause they wish to abet, that ought never to be a reason for depriving a whole people of their dearest right—a right without which, in its full, unshackled, and Constitutional sense, I repeat, that liberty is but a name, and Government a mockery; that the press is to a free people, the tree of the knowledge of good and evil; that it is the only mode through which truth can be conveyed to magistrates and rulers, who will frequently find things written, that their friends did not dare to advise them. I trust that before we proceed to the extremities I apprehend, that all means of gentleness will be first tried. Terror can always be applied to, but never without danger; for if it fails once, it produces disrespect ever after.

I have endeavored to give these subjects the deliberate examination they appeared to me to require; nor can any much more important to your citizens, be agitated within these walls. They not only include the privileges of Congress, and the freedom of the press—questions of very great consequence in themselves—but the all-important one of the extent of the right of trial by jury, possessed by your citizens, in the case of written or printed observations on the conduct of the Legislature, or any branch of it, and the Constitutional right they have to make such observations. Their magnitude will, I hope, easily excuse me for the time I have taken. It was to guard the privileges of our citizens, and to secure the great palladium of our liberties, the freedom of the press, that I have made these remarks. The Constitution has declared, that its freedom shall not be abridged; and that it shall not, it is our duty to take care that no question respecting it shall ever be determined without the intervention of a jury. It is difficult

perhaps, in preserving its privileges, to guard against its licentiousness: but it is infinitely better that some instances of this sort should arise, than that a particle of its freedom should be lost. Considering, as I always have done, the freedom of the press as amongst the greatest of our public blessings, while I almost adore its good qualities, I am content to throw a veil over its defects. Few men have been for some time, attacked in the papers with more acrimony than myself; but as I know it is impossible to touch the freedom of the press without destroying it, and as I believe it to be the only true means of preserving rational liberty in the world, I trust that our country, which has received such important benefits from its operations, will never cease to cherish and protect it. I hope it will be our boast, as I know it will be our interest, while other nations are endeavoring to fetter and destroy, to guard it as a sacred trust received from our ancestors, and to deliver it, with its rights undiminished, to those who are to succeed us.

For these reasons I am decidedly opposed to the motion of the gentleman from Connecticut; and move such an amendment, as will record my opinion on this subject, on the Journals.

Mr. P. here read the following:

"Whereas the Constitution of the United States has expressly declared 'That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;' and whereas, to prevent any attempt being made on the part of either branch of Congress to define their own privileges, and exercise the same as occasion or circumstances may, in their opinion, require, and to remove all doubt as to the extent and exercise of the privileges they are to enjoy, the Constitution has positively and expressly limited and defined the same, by declaring that each House shall be the judge of the elections, returns and qualifications of its own members; that they may compel the attendance of absent members, in such manner, and under such penalties as each House may provide; that they may determine the rules of their proceedings, punish the members for disorderly behaviour, and, with the concurrence of two thirds, expel a member; that the members of both Houses shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during the attendance at their session of their respective houses, and in going to and returning from the same, and for any debate or speech in either House, shall not be questioned in any other place:

"*Therefore, resolved*, That as the Constitution of the United States does not vest in either branch of Congress any other powers on the subject of privilege than those mentioned and limited and defined therein, therefore to assume any other privilege would be to diminish the rights of the people, expressly reserved to them by the Constitution; to encroach on the powers given to the judiciary; to disparage the right of trial by jury, and to establish the dangerous doctrine that a single branch, without control or interference, can at their own will, and in their own case, punish for reasons on which the Constitution has given to them no power to decide."

Mr. P. concluded by adding, that if the Senate went into a consideration of his motion, instead of that of the gentleman from Connecticut, (Mr. TRACY,) they would probably avoid that part of the discussion which would be least agreeable, as the subject would be clear from that locality and personality which attached to the first, and a decision would take place without any reference to this or that particular printer; but if the gentleman would postpone the question, Mr. P. consented to let his motion lie on the table, with a view to its being printed for the use of the members, that so both propositions might be compared and considered with more attention than could be done in any other way.

Mr. COCKE declared that the object which he had in view was nothing more nor less than to rid the House of the business altogether. He was not inclined to appoint any special time for the discussion, as the worthy gentleman from South Carolina (Mr. PINCKNEY) had requested. He had no idea that it was supposed he had the saving or exoneration of any printer in view; he had no such thing; but he wished to save the reputation of this body, which he thought was placed in jeopardy by the Connecticut motion. Here it is proposed to inquire and examine of and into this, that, and the other—to bring one printer here, and generally all persons and papers, who and whatever, just as your committee may think fit. Suppose this power is doubted? Suppose the persons deny your power—how are your committee to enforce their mandates? Suppose your courts of law claim cognizance as a case of libel, are you to have two prosecutions and two trials for the same offence? Surely, surely, your committee will have to retire from the untenable ground, and the defeat will recoil with disgrace upon those of us who attempt to assume powers neither Constitutional in themselves, nor just, even if they were Constitutional. You can call upon somebody—but who?—to inquire who is the editor of the Aurora. You are to inquire how he became possessed of a certain bill which he published; what kind of an inquiry is this? How he procured the sight of a bill, while it was pending in Senate. Why, is there any crime in printing a minute of our transactions? Your bills are printed by your own order, for your use, and for the information of the other House; two hundred copies or more are circulated without any injunction of secrecy; they are sent off into every State of the Union; and are you going to make inquiry how the editor of the Aurora got to see one of them? Why, are not your gallery doors open, and cannot a bill which has been read in public be possibly remembered, at least, cannot it be taken down in short-hand? and will you punish every man who shall repeat, print, or publish what is made public on this floor? Suppose the editor of the Aurora declines to inform your committee of the mode through which he obtains his information; he says it is convenient and useful to him, but his prior engagements do not permit him to divulge it to you; will you punish him for contempt? But suppose you possessed of the physical power necessary to procure the information you require by an application of the torture; while you are straining his muscles

and dislocating his joints, what becomes of the grand palladium of American freedom? Where is the liberty of the press, which is secured to the citizens of the Union against Federal usurpation? The Constitution declares that you shall not infringe upon the liberty of the press; and a power expressly denied to the whole Government, a single branch may not assume.

Here Mr. C., was called to order by

Mr. BINGHAM, of Pennsylvania, who inquired what the liberty of the press had to do on a question of postponement? He believed, while the motion for postponement was under consideration, all debate on the merits of the main question to be out of order.

It was contended to be in order to object on a postponement generally to the original motion, for an argument tending to defeat the original motion is reason for a general postponement.

Mr. COCKE proceeded, and said he was glad to find that the freedom of debate in this House was not to be destroyed, though it might be interrupted: and he hoped that the freedom of the press would never be subverted while the Government of the country rested upon the Republican principle of representation. He admitted there were a great many ill-natured things said by many of our American presses, but that should never induce him to run the risk of destroying the most valuable and effectual bulwark for maintaining us free and independent, by using an instrument more fit to cut down the trunk of a tree, than to prune it of its tendril luxuriances. What was the engine now brought out against this freedom—an engine possessed of all the powers, necessary to insure its success? A printer is to be charged, is to be tried, judged of, and executed, by a body he has offended. Where, will you find men of nerve that will risk certain ruin? Such may arise when the press is in danger. It was under these impressions that he wished to get rid of the business altogether.

Mr. TRACY, of Connecticut, did not wish to press the business; indeed his conduct had manifested this intention, for the original motion had been suffered to lie on the table a longer term than usual before it was called up, but even now when it was called up he did not wish to hurry it through. He should not refuse a moderate delay, but he hoped the motion from Tennessee would not prevail, as it went to destroy the object without any further consideration. In answer to what fell from the gentleman from Tennessee, he would say, that the objections he had made did not all of them apply, and if there was any which did apply, amendments could be made so as to conform them to the sense of the Senate. He wished gentlemen would attend to the words of the resolution, and they would find that they did not carry them beyond what was prudent, mild, and proper. The committee are desired to inquire who is the editor of the Aurora; this will appear to be a proper inquiry, for the person is not publicly known: the imprint declares the paper to be published for the heirs of Benjamin Franklin Bache, but we do not know who are the heirs. The gentleman has told us it is no crime to publish the doings of this body; agreed, but is it nothing to publish untruths respecting the official conduct of the members of this body? is it no crime to publish a bill while before this House? But are printers at liberty to tell lies about our transactions? The Aurora says, that the bill which it published had passed the Senate; this every member knows to be contrary to the fact. The bill has not even to the present moment passed this body, it is still on your table liable to recommitment, amendment, or rejection. Asking the editor how he came to print this falsehood, does not go to examine into the private mode by which conveyance of intelligence is made to that office; there can be no real intelligence, it being a falsehood. But suppose we have no power over this editor, because the press is free, suppose we cannot punish him for his slander, calumny, and falsehood, perhaps the inquiry may lead us to discover some person whom we can punish; will it be said that the Constitution is an impediment in our way to punish one of our own members, if he should be found guilty of abusing the confidence of his situation? At least we can exercise the power of removing one of our officers, if we should convict him of a secret league to transmit intelligence which is confidentially entrusted to his care.

He did not mean to insinuate that any improper mode was used in conveying this intelligence; it might appear that the whole circumstance was a mere unintentional error, if so he should not go farther; but yet the printer could hardly have made the subsequent mistake in relation to the gentleman from South Carolina, in declaring that he had never been consulted by the committee on Mr. Ross's bill; there was something in this calculated to produce an effect upon the public mind. He insinuates that the business of the Senate is done in caucuses, into which the gentleman was not permitted to enter; for if he had, it is supposed he might have detected and defeated the mischiefs which are working against the public welfare. This is an abandoned slander, as is well known to every member of the House, for Mr. PINCKNEY did attend not one meeting only, as the editor of the Aurora squeezed out some days subsequent to his first licentious publication, but he did attend every meeting, as he has candidly and honorably avowed in his place.

The gentlemen had declared themselves the champions of the press; but surely gentlemen will not advocate such liberty as this—the liberty of publishing nothing but lies and falsehood. If by the liberty of the press is meant the publication of truth and just political information, it was proper to be supported; but he was desirous of maintaining, along with the liberty of the press, the liberty of the citizens, and the security of the Government; he was not for sacrificing these latter objects to the licentiousness of the press. He was not inclined to enter into a newspaper controversy to maintain the dignity and reputation of the Senate, nor did he think that gentlemen appreciated their own standing in society when they referred the individual members of this body to such a mode of defence against the shafts of calumny

which a daring editor might hurl against them individually.

He believed that it was as requisite to maintain the privileges of the Senate as it was to support the liberty of the press; the Constitution secured the first as well as the last; and it became important in considering the subject in this point to ascertain the extent of the privilege on the present occasion. The Constitution declares several privileges to belong to the members of Congress, and these privileges are given in order to secure the execution of the public duties which are enjoined upon us; it is for the interest of the people, and not for our own peculiar advantage, that we enjoy these privileges. it is then proper that we should on their account maintain them; but, in defining what may be privilege, we must govern ourselves according to the original intention, which is the promotion of the general interests of the citizens, and here we can be guided only by sound discretion and common sense. In this point of view the subject becomes truly important. Will any gentleman contend that our privileges are restrained to this Chamber? No. Are there no other methods by which our deliberations may be interrupted? Certainly there are. Of course, then, our authority must extend to remedy the evil wherever we may meet it, or otherwise our authority is inadequate to protect itself. On the principle of self-preservation, which results to every public body of necessity and from the nature of the case, the right of self-preservation is vested in the Senate of the United States, as it is in your courts of justice and other public institutions. Suppose a printer was to say that one of the judges had received a bribe in a certain case, would not the court be competent to call him before them and punish him for the slander, if it was one? And shall a printer insinuate that members of this body are guilty of a similar crime, and they have no mode of giving redress? Is it not of as much importance that the laws be dictated from pure motives, as that they be executed from pure motives? If it is admitted that we have the right of protecting ourselves within these walls, from attacks made on us in our presence, it follows of course that we are not to be slandered and questioned elsewhere. Will gentlemen deny this? then there is no complete remedy; for the defamation and calumny of yesterday, circulated in the newspapers, out-travel the slow and tardy steps of truth; they have spread over the face of the country and entered every cottage, where the contradiction may never penetrate. Or shall the foul aspersions of an editor circulate till you can send to the attorney general to issue a writ, to the marshal to serve it, to the court and jury to bring it, before the contradiction can be published? This also would defeat the object. The Senate, being so long suspected, must have received a deep wound, and some of its members may have to be amputated before a right understanding is acquired.

Mr. T. concluded with reiterating the idea that he did not mean to punish for publishing the transactions which took place in Senate, but to prevent misrepresentation and abuse; he did not wish the punishment to be cruel or severe, but as mild and lenient as the case would admit.

Mr. BLOODWORTH, of North Carolina, doubted the power of the Senate to take cognizance of the conduct of members in communicating with their constituents, much less to punish them for publishing circumstances respecting which no injunction of secrecy had been imposed. He, however, assured the Senate that he had not given the editor of the Aurora any information on the subject before them, or indeed on any other, for the editor was a stranger to him; nor did he know that he ever called at that printing office more than once or twice in his life. He hoped that the business would be postponed for the present, and he should have no objection to its being taken up at a future day, when gentlemen might be better prepared to meet it.

Mr. PAINE, of Vermont, declared himself against the postponement, nor did he think that the motion of Mr. PINCKNEY was so inconsistent with the motion before the House as to render a postponement necessary; he thought the committee might inquire, and although the gentleman would stop, by his proposition, from proceeding in case it turned out to be a fabrication of the editor of the Aurora, yet if it should be found not a fabrication of his, but that of a member or an officer of the House, it was admitted they might progress, without infringing the sacred liberty of the press. Suppose that some person in the gallery should have furnished this spurious matter—and that may possibly be the case—will the sacred liberty of the press be violated if we order the doorkeeper to turn him out, and refuse him access in future? He thought the resolutions might be amended so as to give greater satisfaction than they do at present; for his own part he was not willing to declare all at present which they contained. He thought the business would be simplified if the committee were directed to consider and report what measures would be proper to adopt in respect to a publication containing various untruths of the proceedings of the Senate, and if the question of postponement was lost he meant to move several amendments for that purpose.

Mr. MASON, of Virginia, had no objection to meet the question at the present moment, but he thought it of such importance, both to the Senate and the citizens of the United States, that it should be taken up and discussed in a solemn and serious manner; not hastily and lightly, as some gentlemen seemed to think who were opposed to the postponement for a few days: if, however, the opposition to the postponement was persisted in, he had no doubt but the subject would prove itself well worth a discussion of several days, and that the ultimate decision would not be made till a period more remote than that moved for by his friend from South Carolina. He therefore recommended to gentlemen to explore well the ground which the motion of the gentleman from Connecticut had taken, and consider seriously of the consequences to which they would be led in pursuing their object. What was to be the course of their proceeding? What were the embarrasments likely to arise therein?

He called the House to view the delicacy of the situation in which they would be involved while defining their newly discovered privileges and subverting the old acknowledged privileges of the liberty of the press; he said the delicacy of their situation, because he considered it a delicate one, for he was far from believing that the privileges of the Senate were as unlimited as the gentleman from Connecticut contended they were; if so, and they proceed to touch the liberty of the press, which they may discover in the end to be secured against the invasion, they will be compelled to retrace every step they are now taking, which will neither redound to their honor nor discernment. They should be careful how they expose themselves to popular scrutiny in cases respecting their own power, for the public mind had been already considerably agitated, at what many conceived to be an unconstitutional exercise of power. If, session after session, attempts were made to fetter the freedom of the press, the people of the United States would watch with anxious regard every movement of this body. A measure which originated in the Senate, and was subsequently acceded to by the other branch of the Legislature, had been just ground of alarm. It is no wonder that they watch our bills as well as our laws, for it must be recollected by many of the gentlemen who hear me, that the bill called the Sedition Bill was first introduced here, and that, instead of being what it afterwards became, it was a bill more particularly to define treason and sedition. The good sense of the House, during the time it was upon the table and undergoing a political dissection, cut off from it many of those monstrous excrescences which at first disfigured it, and at last trimmed it into a shapely form; but after all it was removed below stairs in a condition not fit to meet the eye of our constituents—even obliged to undergo a decapitation; the head or the title of it was struck off, and instead of being a bill defining treason—which is a thing totally out of our power, the Constitution having declared in what alone treason should consist—instead of being denominated a bill against sedition, it took the obnoxious head of being a bill to amend the law for punishing certain crimes against the United States.

Nor, said Mr. M., do I think gentlemen do themselves much honor in the declarations they make on this floor, respecting the publication of the bill for deciding the disputes in the election of a President and Vice President; they seem to consider the publication of such a bill with a declaration of its having passed the Senate as a scandal on the Senate. Well, it might perhaps be a subject of scandal as to the Senate, if they had passed it; but is not this charging the committee who reported it, with reporting a bill which it would be a scandal perhaps to advocate but certainly a scandal to pass? According to this construction of the argument, the gentlemen certainly cast as gross a censure upon the committee who reported a bill which is unfit to be acted upon, as the publication is supposed to cast on the House for having agreed to it. With respect to the measures which are pursued and pursuing, is it unknown to the members on this floor what effects they are producing; do they not know that the sedition bill as it is called, and which the present motion may be considered as supplementary to, has created a general alarm not only among our citizens, but in several of our State Legislatures? Will not this measure increase that alarm? Or is it supposed that you may call upon a printer and that he will answer, not knowing that by the Constitution no man can be called upon to give evidence against himself in criminal cases? He concluded with the remark that he did not mean to go into the subject fully, because the question before the House was confined to the postponement; but, if the postponement was refused, he should take the liberty of adding some further observations to enforce the ideas contained in the motion brought forward by his worthy friend from South Carolina.

Mr. COCKE wished that gentlemen who were of the same sentiments with himself would acquiesce in his motion for throwing out the subject at once, so that they might hear no more of it. He was well convinced that the House had no powers to legislate in relation to publications in newspapers, notwithstanding all that the gentleman from Connecticut had said. It had been asked where the Senate had got the power, and it is replied, they got it by a necessary and natural inference from the Constitution. This idea of drawing powers by inference and construction had been stretched, on former occasions, much beyond what he considered a proper attention to its spirit would justify; but the doctrine on this point could not be inferred from that instrument, because the argument by inference is rebutted by the express declaration made in the amendments to the Constitution, wherein it is declared that all the powers which are not given to the United States are reserved either to the States or to the people; and again, it declares that every man shall be secured in his person and papers from unlawful searches and seizures: and further, no person shall be called upon in a criminal case to give testimony against himself.

He supposed the resolutions considered the publications in the Aurora as criminal, otherwise they would not make this stir about them. Gentlemen have asked, are the newspapers to be permitted to go on and villify the members of the Legislature without punishment? He answered, the printers of papers published on their own responsibility, and if they had no authority for any scandalous assertions respecting the Senate, they could be punished in the way pointed out by law. But would the members wish to draw the printers before the House and assume the judiciary powers of the courts of justice? As they had not the advantage of grand juries from every vicinage, to present the libels as they arise in the various quarters of the Union, they would be forced to appoint another committee to remark the files of all the printers from Maine to Georgia, in order to procure a knowledge of the numerous calumnies and slanders on the Senate, which have been fabricated by them, or communicated by their friends. He thought this a business of considerable extent,

and one which few gentlemen on the floor would be willing to labor through; he thought, moreover, when they erected themselves into Censors of the Press they would find no leisure from their office to attend to the performance of their ordinary duties of legislation or that portion of Executive business which the Constitution assigned to their care. He was confident it would give more general satisfaction to their immediate constituents, the State Legislatures, if members would attend to the business they were sent here to perform, than would be given by combining all powers of Government in their own body. It would certainly redound more to the honor of the Senate, if they left the courts to perform their duties in cases of libel, than to undertake, in their own behalf, the ungrateful office of judge and the ungraceful one of executioner; and all this either without law or by a resolution tantamount to an *ex post facto* law, directly in the face of the Constitution, which restricts Congress from passing an *ex post facto* law in all cases whatsoever.

Mr. ANDERSON, of Tennessee, did not rise with an intention of entering into the merits of the general question, as to the extent of the privileges of the Senate, which he conceived to be of great moment, but merely to remark, as gentlemen alleged that the public mind was already agitated on the subject, the postponement would tend to increase the degree of agitation, which he conceived it was the wish of gentlemen on both sides to have allayed as soon as possible. He therefore concluded that it would be better to go on with the business and come as soon as possible to a decision. One gentleman had said it ought to go to the judicial courts, and that the Attorney General should be directed to prosecute: well, then, that gentleman should give his consent to send the business to a committee, in order to inquire whether the case would warrant this interference.

Mr. REED, of South Carolina, would not oppose the motion of his honorable colleague for a postponement, if he had required it on his own account, or if its being negatived would prevent him from bringing forward the preamble and resolution he had read in his place, and at a proper time of having them discussed; but neither of these circumstances were urged; therefore, as his colleague neither required time for preparation nor would be prevented from offering and supporting the intended amendment, he should vote against the postponement.

Mr. PINCKNEY, of South Carolina, supposed if the postponement was lost, that the House would proceed with the discussion on the Connecticut motion, which he conceived would be progressing in an unnatural mode towards a decision. As he firmly believed that the privileges of the Senate were limited and defined by the Constitution, he could not resist calling the House in the first place to consider of and decide this question. He had heard arguments which he imagined would satisfy them of the justness of the conclusions he had drawn, and which would demonstrate that the privileges of the members did not go out of the doors of their Chamber; and that this was not only the actual ground on which they stood, but it was the proper, the dignified, and manly attitude for them to take. Every gentleman should be the guardian of his own honor; and here he would just remark, that, from the style and manner used in the Connecticut motion, it was to be expected that in general the idea would be entertained that this procedure took its rise from an application made to the House either by himself or some of his friends, as he was the only member named; and the committee are directed to inquire by what authority the editor published in the Aurora that he (Mr. P.) had never been consulted. Far be it from him to ask the protection of the House for any publication respecting himself; though few persons in the United States had been more abused or calumniated than himself in the modern newspapers, he had never complained; he either despised the abuse, or answered the charges, which served to draw down contempt upon the slanderer's head; and this was the line of conduct which he recommended to others, who should find themselves in a similar situation. He trusted after what he had formerly declared, that he never gave or sent the editor of the Aurora either the bill which he published of any of the information accompanying it, that it would be unnecessary for him to declare anything further. He had said that he was prepared to go into the discussion, but his indisposition would scarcely permit him to do the subject the justice which its merits deserved, and he therefore still hoped the motion for postponement till Tuesday next would be agreed to.

Mr. DAYTON had the highest confidence in the honor of the gentleman from South Carolina, (Mr. PINCKNEY,) and he never suffered himself to doubt of the truth of the declaration which had been made. He thought the resolutions might be varied so as to get rid of the idea which the gentleman objected to, in respect to the motion having been brought forward at his instance; and might be amended as suggested by the gentleman from Vermont, (Mr. PAINE,) so as to reconcile it still more to the sentiments of the Senate. This being his view of the subject, he wished the business to proceed, and should therefore vote against the postponement.

The question on postponing till Tuesday next, was now put, and the yeas and nays being called, stood yeas 9, nays 19, as follows:

YEAS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Mason, Nicholas and Pinckney.

NAYS—Messrs. Anderson, Bingham, Chipman, Dayton, Foster, Goodhue, Greene, Gunn, Hillhouse, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, Watson and Wells.

So the motion was lost.

Mr. NICHOLAS, of Virginia, wished to ask for information. Was it intended by this resolution to charge the committee with inquiring into a breach of privilege as it respected the majority of this body? For the resolution itself furnished no correct idea on this point. He wished also to know whether it was intended that the Senate should

declare that the publication was a breach of privilege?

Mr. TRACY, of Connecticut, said that if the gentleman wished for information from him, he would endeavor to give it. He conceived it would be better to pursue the mode of inquiry in the first instance, through the intervention of a committee, and not make at once a decision whether the publication was or was not a breach of privilege; and further, that the committee should report to the Senate what other matters were the proper subjects for the Senate's inquiry. He would not undertake to say at this time whether there was a breach of privilege at all, or whether that breach was in respect to a majority of the House, or of the privilege of a single member.

Mr. MARSHALL, of Kentucky, was of opinion that if the subject itself was a proper one to be inquired into, then the mode was well devised, and one liable to few or no objections; but there was another circumstance to which he begged permission to call the attention of the Senate. He observed that the resolution pointed only to one object, and that was the publications in the Aurora; he did not think this went far enough, if it was intended to be anything more than a party manœuvre. If gentlemen meant to defend the honor of this body, they should avoid anything like partiality, and direct their inquiry to all breaches of privilege, by publications in newspapers, let their publishers be whom they might. Believing that the gentlemen were serious in the present undertaking, he wished them to give it the appearance of impartiality, without which, it would reflect disgrace on their proceedings. Gentlemen have complained of the slander and calumny thrown upon them by the publications in the Aurora, but, however detestable they might be, he held in his hand one still more vile and flagrant. He would read it, and then move to amend the resolution before the House by adding that the committee be directed to inquire who is the editor of the United States Gazette, and by what authority he published in that paper the following paragraphs:

"The Democrats have at length completely carried their point with respect to the permanent army. It was resolved on Monday, in the Senate, that the bill, sent up from the House of Representatives, suspending the enlistments, should pass into a law; and no other reliance is now left us for the preservation of this bulwark of the public hope, from the effects of so ruinous a step, but the courage of his Excellency the President of the United States.

The votes in the Senate on this momentous question, were as follows:

For putting a stop to the enlistments: Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Foster Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

Also Messrs. Bingham, Dexter, Goodhue, Greene, Gunn, Hillhouse, Howard, Livermore, and Paine.

Gentlemen who voted for preserving the army according to the law by which it was established—Messrs. Chipman, Latimer, Laurance, Lloyd, Read, Schureman, Tracy, Watson, and Wells.

Impressed as we are with the most serious alarms at the manifest tendencies of this dreadful step, we cannot for a moment allow ourselves to doubt, that the measure will be nipped in the bud by the decided negative of the Executive. Never can there be an occasion more imperiously demanding that negative than the present. The President has expressly declared to both Houses of Congress, that a steady perseverance in a system of national defence is indispensable to our peace and safety. An advance therefore, on the part of Congress, towards impairing the grounds on which his administration rests, and on which his particular measures are bottomed, can only be met on his part, by opposing a firm countenance to such attempts at the outset, or by recalling the steps themselves.

The measure just adopted is more awful, I think, in whatever aspect viewed, than that proposed by the honorable member from Virginia. In the first place, as it was carried by federal votes; by gentlemen, who, under the influence of I know not what wretched calculations, advance into what they deem a neutral region, to embrace the enemy. This neutral country is full of concealed snares, and gins, and pitfalls: every step of it is mined, and fraught with devices for their destruction. They have been blown from it into the air more than fifty times, and yet they advance upon it again, with the most sovereign unconcern. In the second place, from the excess of evil there often arises some important good—their extremes do often meet. From this benefit these gentlemen have most kindly cut us off; and by the half measures they have adopted, left us exposed to all the mischiefs which could have resulted from the prevalence of the motion of Mr. Nicholas. Thirdly, the measure of stopping the recruiting service is worse than that of disbanding the army; because nearly all the expense still continues, while all the beneficial effect of that expense is perverted to our injury. A monarch without subjects, a general without an army, and an officer without soldiers, are standing butts of the jest and ridicule of all mankind; and a surer mode could hardly have been devised for disgusting every military man in the country than this of depriving the officers of their troops, thereby making each of them a pompous effigy of dignity, a *nomen et prætereа nihil*. These officers will not mutiny against their Government, because they are amongst the most respectable and patriotic of men. It is my pride to boast an acquaintance with many of them, who have laid aside professions which supported them in the rank of gentlemen, and with others who relinquished every luxury and enjoyment of affluence, to join this army, this phalanx of federalism, these cohorts of justice and honor, against the infidel, rapacious, and sanguinary invaders of our rights, and their atrocious and unprincipled sectaries. I know they will not mutiny; but if it had been sought to devise a scheme to drive men to the extremest excess of disgust, I know not a more plausible one than this.

The resolution proposed by Mr. Randolph ought now in all reason to be adopted. It is necessary in order to render this measure consistent with reason or common sense. The whole force of the mighty Twelve Regiments is then cut down to about three thousand men! Precious defence against the invasion of a foreign enemy, or the machinations of domestic treason! Why, McKean will turn out more than this number of well-armed well-organized militia-men from the city and county of Philadelphia alone. I do not think that the movements of that powerful Triumvirate, Jefferson, McKean, and Monroe, are by any means to be despised or disregarded. It is no longer a doubt that our unhappy country nour-

ishes in her bosom vipers who live but in the hope of inflicting a mortal sting. There is not a doubt, that there are men in America, and men too of powerful and operative force, who would prostrate without remorse every pillar of the public happiness, to found an hierarchy under which they might more securely aggrandize themselves: I do not less doubt that these Capulets are abroad, that their hot blood is up and stirring towards this object. And is this a time for disbanding troops! Is there not extant a danger to be guarded against *quocunque modo*? But these seems to be a system for repressing in the Federal cause all spirit worthy of the part which it is called to act. Sure never till now, were the counsels of Adonis relied on in affairs of State. When the reins of the steeds and the chariot of the Sun were entrusted to the guidance of Phæton, we read that the car was overthrown, and the presumptous youth submersed in the waves.

True Americans will say, it is a vexatious suit that this man urges, when the truth is, that I have only to say *vestra res agitur*. They will exclaim, whence this abuse and illiberality against an economical and a conciliatory measure! It was by this cursed economy that the villain Neckar brought his monarch into all his troubles: and it was by conciliatory measures that the unhappy prince lost his head.

If the economy, and the squeamishness, and the present conciliatory disposition of Federalism endure much longer, its empire will pass away like a dream, or the shadows of illumination; no figure will encompass it around: and its economy, and its conscientiousness, and its conciliation, and all its bitter delusions, will be atoned in one truly republican succession of fire and blood.

The abuse of True Americans, half federalists, and conciliation men, I have long learnt to despise. I feel inexpressible and uncontrollable chagrin and indignation when I see measures pursued, under whatever calculations, so evidently tending to the ruin and subversion of the order and peace of this society, and so utterly militant against all usage and experience. Not having any gold to hug, like the poor, rich True Americans, and time-serving federalists and conciliators, I have no other object so near me as the success and prosperity of my much abused, sadly distressed country; and I will protest alike against the undivulged pretence of treasonous malice, and the more fatal cowardice and ignorance of the enemies to every establishment by which, in this day of distress and tribulation, the great ark of our safety might be preserved and maintained.

I will dwell but for a moment on the hope that the President will interpose his veto between this alarming measure and its consequences, and then quit a subject on which there will be nothing more to say.

The preservation of harmony between the different branches of the Government is undoubtedly desirable: at the same time when an important prerogative is entrusted to either department, and the exercise of that prerogative is demanded by motives of public safety, no considerations of this or any other nature ought to prevent the exertion of it. Nor do the reproaches of evil-minded men on such occasions, merit the slightest regard. It is true that the newly enlightened citizens of France murdered their royal master on this pretence; but the people of America, however debauched by the introduction of the profligate principles of that hideous race, are not yet degenerated to so high a pitch of perfectibility, civilization, and refinement. In this one respect, at least, they are not yet the freest and most enlightened nation on earth. I think that whoever attentively considers the late events in France, will view that Republic as a more formidable enemy to America than ever—formidable in enmity, in fallacious peace still more so: *Gallis fidem non habendam*. Talleyrand, who was turned out of office by the old Government, for demanding tributes and bribes of our Ministers, we behold reinstated in his former office by the new governors! And for what particular merit more probably, than for his care over the strong box of the Republic, to which Bonaparte appears to have a very single eye! With this polluted, ill-omened Apostolus Diaboli our mission must treat, if they be at all allowed to treat, which I deem very questionable.

Are these the auspices on which we are to rely for peace: this the crisis at which our wisdom disbands the only army the country has to boast of!"

[NOTE.—The above comprises all of the debate on this subject which the Compiler has been able to recover. The explanatory remarks* by the Reporter for the "Aurora," will probably account for the meagerness of the report.]

It was then moved to amend the motion, by inserting, between the words "Senate" and the word "and," in the fourth line from the end, these words:

"And that the said committee be also directed to inquire who is the editor of the newspaper, printed in said city, called the 'Gazette of the United States and Philadelphia Daily Advertiser,' and by what means the said editor became possessed of the votes in the Senate on the bill, sent from the House of Representatives, for suspending the enlistments of the twelve regiments, &c., as published in the said newspaper, bearing date the 13th of February (instant:) and by what authority he published those votes particularly, and under the classification contained in the said newspaper; and, also, whether the said editor is the author, or not, and if not, who is the author of sundry assertions, observations, and reflections, immediately preceding and following the statement of the said votes, and published in the said paper, of, and concerning the Senate of the United States, and the members thereof, in their official capacity:"

It passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, Franklin, Langdon, Lloyd, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Foster, Greene, Gunn, Hillhouse, Laurance, Livermore, Paine Read, Ross, Schureman, Tracy, Watson, and Wells

THE JUDICIARY.

Agreeably to notice given yesterday, Mr. PINCKNEY had leave to bring in a bill to amend the act, entitled "An act to establish the Judicial Courts of the United States;" which was read and ordered to the second reading.

On introducing the above bill Mr. PINCKNEY addressed the Chair as follows:

Mr. President: When I first had the honor of addressing you on this subject it appeared to me necessary to move an amendment to the Constitution; on reflection, however, I am since convinced that the more regular and expeditious mode would be to move an amendment to the law establishing the Judicial Courts of the United States—by this means the law may be passed during the present session, and we shall the more readily obtain the limitation we contend for.

As the Judiciary is among the most important departments in our Government, as it reaches every situation in society—neither the rich, the honored, or the humble, being without its influence or above its control—as it is the department to which not only the lives and fortunes, but the characters of our citizens are peculiarly entrusted, it becomes us to be extremely careful that the Judges should not only be able and honest men, but independent in their situation. Our Constitution has in some degree secured their independence by giving them permanent salaries, and rendering them ineligible to the Legislature; but in vain will we consider them independent, in vain may we suppose their opinion beyond the control or interference of the Executive, until we have determined it shall not be in his power to give them additional offices and emoluments, while Judges; until, in short, we confine them wholly to their duties as Judges, and teach them to believe that in the execution of the laws they should consider themselves as little obliged to please the President, or to fear his disapprobation, as that of any other man in the Government. This can only be done by preventing them accepting other offices, while they continue as Judges, and thus depriving him of the power of heaping upon them additional favors and emoluments.

It is an established maxim, and I hope will forever remain so, that the Legislature and Judiciary should be as distinct as the nature of our Government will admit; that is, that the same men shall not, in a deliberative capacity, agree to measures which they shall afterwards have a right to explain and decide upon in a judicial one. The reason is obvious; that the Judges should, in a calm and unprejudiced manner, explain what the law literally is, and not what it ought to be; that they should not be allowed to carry upon the bench those passions and prejudices which too frequently prevail in the adoption and formation of legislative acts and treaties, and which never fail to give an irresistible bias to the opinions of a Judge who has been concerned in making them. The truth of this reasoning is now so generally conceded, that there is not a man who knows anything of government that will attempt to controvert it; the constitutions of all the States have sanctioned it, and if the opinions of the Federal Convention ought to have weight, they so strongly insisted upon it as even to refuse, after repeated trials, associating the Judges with the President in the exercise of his revisionary power: indeed a gentleman high in office, and who held both situations at the same time as Judge and Envoy, is himself decidedly of this opinion, for in his charge to the Eastern juries he has these expressions:

"Wise and virtuous men have thought and reasoned very differently respecting Government; but in this they have at length very unanimously agreed, viz: "that its powers should be divided into three distinct independent departments, the Executive, Legislative, and Judicial. But how to constitute and balance them so as best to guard against abuse and fluctuation, and preserve the Constitution from encroachments, are points on which there continues to be a great diversity of opinions, and on which we all have as yet much to learn. The Constitution of the United States has therefore instituted these departments, and much pains have been taken so to form and define them, as that they may operate as checks one upon the other, and keep each within its proper limits: it being universally agreed to be of the last importance to a free people, that those who are vested with Legislative, Executive, and Judicial powers should rest satisfied with their respective portions of power; and neither encroach on the provinces of each other, nor suffer themselves or the others to intermeddle with the rights reserved by the Constitution to the people."

If, then, there can be no doubt of its propriety when applied to a Judge, in ordinary cases, how much more forcibly does it apply to an Envoy who concludes a treaty, which when ratified is to become the supreme law of the land; how strongly must the negotiation of so important and in many instances so difficult a business, be impressed on his mind! He will no doubt retain the journals of his proceedings and opinions, and perfectly recollect the progress and termination of every proposal which was compromised or rejected. It must be difficult for him to forget the attempts to which Ministers are sometimes liable in condescending where their object is honorable; he will remember what his opinions were upon particular points; and, whether they were successful or not, his general character may be that of not very easily yielding them. In short it is impossible for him to be that cool and unbiassed interpreter of the treaty which he otherwise might have been, had he not been concerned in concluding it.

The Constitution contemplates an independent Judiciary. The public, therefore, will expect and have a right to demand, upon all questions, a fair and impartial trial by Judges, whose minds are open to conviction, and unprejudiced by party opinions; by men who have not been concerned in forming a law or treaty, but who are totally unfettered by the recollection of what passed at the negotiation, or what might have been wished or expected by either party, as judges, candidly and impartially to determine upon every question that may come before them.

These reasons are certainly sufficient to convince any one that this provision is necessary to the independence of the Judges, and the pure and unbiassed exposition of the laws; that unless it is done, their independence is a visionary and unfounded thing. That if the President can hold out to the Judges the temptation of being Envoys, or of

* We are fortunately enabled to give a sketch of the proceedings in the Senate of the United States on Mr. Tracy's resolution, respecting a publication in the Aurora of the 19th ult., a subject involving in it not only the privilege of members of Congress, but determining the liberty of the press, in a more decisive manner than either the Sedition law of the last Congress, or the judicial decision of the Chief Justice, that the common law of England exists in all its force under our Federal Constitution. We are sorry that our report is confined to a mere sketch, because the subject requires the fullest display, but the extreme inconvenience of the scanty gallery, which was crowded, in an uncommon manner, prevented us from hearing in some cases with the accuracy we wished, and limited our notes; we however trust that enough will be detailed to give a general idea of the motives, intentions and objects by which the members were respectively guided and influenced.—*Reporter for the Aurora.*

giving them other offices, and that he still can continue them as Judges, that on any question in which the President or his friends, or the Government, may be concerned, it might have a tendency to influence them in opinion; that it was not frequently to be expected they would be unmindful from whom they received the present appointments, or so entirely indifferent to their own, or the advancement of their families as not sometimes to recollect that from the same source other and greater emoluments might in future be derived; that ingratitude was not often the vice of public officers while their patron continued in power; that on subjects where his character, his feelings, or the public opinion of his acts were in question, our Judges might reasonably be expected not to be chargeable with apathy or inattention; and that the true way to assert the dignity of the President and the honor and independence of the Judges, was to place it out of the power of the one to offer, and the other to accept additional favors.

That a Judge ought never to be absent from the United States, or be drawn from his official situation and leave an undue proportion of its duties to be performed by the remainder of the bench; that the number of Judges were exactly proportioned to the duties they were to perform; that to withdraw one and be incapable of supplying the vacancy, was not only to require the inexecution of the laws in some parts of the Union, but to invidiously harass the other, while a favorite or possibly too complying a Judge was sent to gratify his curiosity or indulge his taste on some agreeable or easy mission.

That no man ought to hold two offices under the same Government, particularly where they were important; that most of the States had regulations to prevent this, and that nothing more contributed to the extravagance of a Government or the corruption and immorality of its citizens, than the power to heap many lucrative and perhaps useless offices on the same person; that it had a tendency to make them servile, to render them the tools and sycophants of men in power, and to degrade the character of office.

That in case of the impeachment of the President of the United States, the Chief Justice was to preside, and there was no provision in the Constitution to supply the vacancy: therefore, if an impeachment was to take place in his absence, it must remain undecided until the Chief Justice could be sent for; that this, if recollected by the Executive, should of itself have been an insuperable objection—in point of propriety, it always is so, but in point of delicacy it ought most strongly to have been so, because here the President is the officer, and indeed the only one, who is implicated in the possibility of its inconvenience arising from absence of the Chief Justice. It is true it is to be presumed that the man who is elected by his countrymen to administer the important office of President, will be always so wise and virtuous as to make it very unlikely an impeachment of him should take place—the thing, however is possible. In times of difficulty where opinions run high, and where those opinions are strongly divided between numerous and powerful parties, it is impossible to foretell what may happen. No man is said to be wise at all times, and our own experience and intercourse with the world must convince us that there are moments of enthusiasm, or of heat, or surprise, when the most cautious men are not quite so prudent as others. I will therefore ask, and do it with great deference, as the President is the only officer on whose trial the Chief Justice is to preside, or on whose impeachment his absence would be a public inconvenience, is it not perhaps presuming too far on his own infallibility or incapacity to err, to send the only officer to a distant country, without whose presence, in case of an impeachment, a court could not be formed to try him? I ask it with deference, and am sure these observations must have escaped the Executive, or the Chief Justice never would have been sent.

To evince the absolute necessity of some provision being made, it is to be observed that, as the law stands now, a Judge might not only accept any other appointment from the Executive of the Union, but he may accept them from the individual States, or, what is still more dangerous, from a foreign Power, and thus become the minion of the one or the tool of the other, as circumstances or his own interest may prompt him. Few men will deny the necessity of some provision here, and that the present is an unwise and degrading situation for a national judiciary. Most of the States have carefully guarded their tribunals against a danger of this kind. The State of South Carolina, to which I belong, is remarkably express on this subject. Aware of the necessity of an independent judiciary, her constitution, in speaking of that department, has these words: "nor shall the Judges hold any other office of profit or trust under this State, the United States, or any other Power," a prohibition not more complete or full than ought to exist in the case of the Federal Judges.

The not preventing, by the Constitution, the Judges from holding other offices may possibly be considered as an omission; it is true, it might as well have been there; but when we examine the power given by the Constitution to Congress, to organize and establish the judicial courts—to fix their salaries, detail their duties, and arrange and alter the system as they think proper, there can be no doubt we have a perfect right to pass the bill I shall have had the honor to propose to you. It does not go to prevent the President's right to nominate a Judge, but only to declare that if a Judge accepts any other appointment he cannot continue a Judge; a limitation which the Legislature has most unquestionably a right to annex. To Congress is left the power to fix the number of Judges, ascertain their duties and the compensation they shall receive. They therefore clearly have the right to say that a Judge, on performing certain duties, shall receive a certain salary, but that if he does not perform them he shall not receive it; cases of sickness must of course be always excepted. Congress have a right to declare by law, as I shall hereafter endeavor to induce them, that no man shall hereafter hold two offices, of profit and

trust, under this Government, at the same time. There can be no question as to their right to pass such a law; and it would certainly reach the case of the Judges. It could never have been the intention of the Constitution, nor will the nature of our Government quietly admit so great an impropriety, as that a man should hold an office, the duties of which he cannot, from his absence, perform, nor can any other be appointed to perform them for him, and that this man should nevertheless be authorized, if he please, to draw the salary. We are not quite so old, and not, I trust, quite so hackneyed in the arts of European Governments, as to bear this without a murmur, or to suffer it to grow into precedent without an attempt to correct it.

If we recollect the manner in which our Judges are appointed, that circumstance alone should induce us to adopt every mode in our power to render them independent of the Executive. They are appointed by the President, and if the moment after they receive their commissions they were really so independent as to be completely out of his reach—that no hope of additional favor, no attempt to caress could be reasonably expected to influence their opinions, yet it is impossible for them ever to forget from whom they have received their present elevation. Hence I have always been of opinion, that it was wrong to give the nomination of Judges to the President; it is, however, determined by the Constitution, and while the right continues in him, it must in some degree have its effects on the good wishes and influence of a Judge in his favor. He cannot hear anything respecting him in quite so unbiassed and impartial a manner, as he would was the President unknown to him, or had he not received any favor from him. It is our duty to guard against any addition to this bias, which a Judge, from the nature of his appointment, must inevitably feel in favor of the President. It is more particularly incumbent on us when we recollect that our Judges claim the dangerous right to question the constitutionality of the laws; and either to execute them or not, as they think proper; a right in my judgment as unfounded and as dangerous as any that was ever attempted in a free government; they however do exercise it, and while they are suffered to do so, it is impossible to say to what extent it might be carried. What might be the consequences if the President could at any time get rid of obnoxious laws by persuading or influencing the Judges to decide that they were unconstitutional, and ought not to be executed? It will be said this is arguing as if all our officers were corrupt—that we should place no confidence in them—and was truly taking the dark side of the picture. To this I answer that it is our duty to guard against every possibility of influence or corruption—hence springs the necessity of laws; if all our officers were perfect, and all our citizens honest and virtuous, there would be no occasion for them, but as it is the nature of men to err, and sometimes to be vicious, our laws are incompetent unless they are calculated to meet every contingency.

A strange doctrine has lately been circulated, which it is my duty to remark on—it is, that this bill is to be considered as a reflection on the President for nominating a Chief Justice, and the Senate for having confirmed it, and that the Senate, by agreeing to it, will join in the censure. Being always ready to approve, and to praise what is meritorious, it is with great reluctance I can ever be brought to censure—I have no such intention at present. I can readily believe that many of the inconveniences I have mentioned may have escaped the President in the recent nomination. It is here I have always disliked it. I believe the general sentiment to be against it; but, be that as it may, no such reason ought ever to have weight in this House. If the thing is right, if it is now considered as proper for us to say, that the Judges must stay at home, and be confined to their judicial duties, and hold no other offices while Judges, we should do it, and not consider whether it is pleasing or otherwise to the President; he must understand public business too well to consider it in the nature of a reflection. We every day alter existing laws and regulations, without considering such changes as reflections on a preceding Legislature or President, and I should be sorry to suppose, that, while a bill was under discussion, the fear of displeasing the Executive should ever be used as a reason for its rejection. He has always a right to give his opinion in the exercise of his revisionary authority, and when he does, we will deliberately and respectfully attend to it. One remark more, and I shall no longer trespass on the patience of the House: it is, that a reason has been given for leaving the President at liberty to send a Judge on any delicate or difficult mission, which I do not conceive reputable either to the political or literary character of our country—it is said the Judges may be the most able and qualified men the President can find, and that being prevented from sending one of them, he may sometimes be obliged to send inferior and less important characters, and that the public interest might suffer. How far the present or any former supreme bench may justify the observation it is not for us to say, but never will I suppose that among a people so numerous and enlightened, so alive to their country's welfare, and hundreds, perhaps thousands, of whom are so devoted to public business, can only six men be found capable of discharging any political duties that Government might require; the idea is too degrading to our national character to be entertained for a moment. For these reasons I have thought it my duty to introduce this bill, and I trust it will pass and become a law.

THURSDAY, March 6.

The Senate took into consideration the amendment reported by the committee to whom was referred the bill, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," and having adopted the same,

Resolved, That this bill pass with an amendment.

The bill, sent from the House of Representatives, entitled "An act for the relief of Thomas

Arnold," was read the second time, and referred to Messrs. FOSTER, GOODHUE, and GREENE, to consider and report thereon to the Senate.

The bill for the relief of Lyon Lehman was read the second time and referred to Messrs. WATSON, GOODHUE, and LANGDON, to consider and report thereon to the Senate.

The bill further to amend the act, entitled "An act to establish the Judicial Courts of the United States," was read the second time.

Ordered, That it be referred to the committee appointed the 12th of December last, to take into consideration that part of the Speech of the President of the United States, which recommends a revision and amendment of the Judiciary system, to consider and report thereon to the Senate.

The Senate resumed the consideration of the motion made on the 26th of February last, that an inquiry be had relative to a publication in a newspaper called the Aurora, on the 19th of the said month.

On motion to amend the original motion, by prefacing it with these words:

"Whereas the Constitution of the United States has expressly declared 'That the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people:' And whereas, to prevent any attempt being made on the part of either branch of Congress to define their own privileges, and exercise the same, as occasion or circumstances may, in their opinion, require, and to remove all doubt as to the extent and exercise of the privileges they are to enjoy, the Constitution has positively and expressly limited and defined the same, by declaring that each House shall be the judge of the elections, returns, and qualifications, of its own members; that they may compel the attendance of absent members, in such manner, and under such penalties, as each House may provide. That they may determine the rules of their proceedings; punish the members for disorderly behaviour; and, with the concurrence of two-thirds, expel a member. That the members of both Houses shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from, the same; and for any debate or speech in either House shall not be questioned in any other place:"

A motion was made to strike out from the amendment the second clause, to wit: all that follows the word "people;" and it passed in the affirmative—yeas 21, nays 8, as follows:

YEAS—Messrs. Anderson, Bingham, Chipman, Dayton, Foster, Franklin, Goodhue, Gunn, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Langdon, Mason, Nicholas, and Pinckney.

And, on request, Mr. PINCKNEY had leave to withdraw the preceding part of the proposed amendment.

And, the original motion being amended, a motion was made to strike out all the words thereof after the words "Resolved, that," line 1st, and to insert, in lieu thereof, the following words:

"As the Constitution of the United States does not vest in either branch of Congress any other powers on the subject of privilege than those mentioned, and limited, and defined therein, therefore, to assume any other privilege would be to diminish the rights of the people expressly reserved to them by the Constitution; to encroach on the power given to the Judicial; to disparage the right of trial by jury; and to establish the dangerous doctrine, that a single branch, without control or interference, can, at their own will, and in their own case, punish for reasons on which the Constitution has given them no power to decide:"

And, after debate, the Senate adjourned.

FRIDAY, March 7.

Resolved, That this House will, on Monday next, take into consideration the report of the committee on the bill, entitled "An act to establish an uniform system of bankruptcy throughout the United States."

The Senate took into consideration the motion made yesterday, for amending the motion made on the 26th of February last, that an inquiry be had relative to a publication, of the 19th of said month, in a newspaper called the Aurora; and

A motion was made to strike out these words: "other powers on the subject of privilege than those mentioned, and limited, and defined therein; therefore, to assume any other privilege would be to diminish the rights of the people, expressly reserved to them by the Constitution;" and to insert the word "power" before the words "to encroach:"

And, after debate, the Senate adjourned.

SATURDAY, March 8.

Mr. LIVERMORE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act respecting the Mint," reported the bill without amendment.

The Senate resumed the consideration of the motion made yesterday to strike out certain words from the motion of the preceding day, on the original motion made on the 26th of February last, that an inquiry be had relative to a publication of the 19th of the said month, in a newspaper called the Aurora.

And, on the question *to strike out*, and to insert the word "*power*," as stated yesterday, it passed in the affirmative,—yeas 19, nays 8, as follows:

YEAS—Messrs. Anderson, Bingham, Foster, Franklin, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Langdon, Mason, Nicholas, and Pinckney.

And, on motion *to strike out* the original motion, for the purpose of inserting the amendment as amended, it passed in the negative—yeas 8, nays 19, as follows:

YEAS—Messrs. Baldwin, Bloodworth, Cocke, Franklin, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Anderson, Bingham, Chipman, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance,

Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

So the amendment was lost.

A motion was made to strike out, after the words "Resolved, that," line first of the original motion, and insert, in lieu thereof,

"It be an instruction to the Committee of Privileges to inquire and report whether, in their opinion, the publication of the 19th of February, contained in the newspaper called the General Advertiser, or Aurora, is a seditious libel against the Senate of the United States; and, if so, whether the Attorney General should be requested to prosecute the editor thereof for the printing and publishing the same."

And it was agreed to divide the motion, and that the question be taken on *striking out;* and which passed in the negative—yeas 8, nays 19, as follows:

YEAS—Messrs. Baldwin, Bloodworth, Cocke, Franklin, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Anderson, Chipman, Dayton, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross Schureman, Tracy, Watson, and Wells.

So the motion was lost.

And, on motion to agree to the original motion as amended, it passed in the affirmative—yeas 19, nays 8, as follows:

YEAS—Messrs. Anderson, Chipman, Dayton, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Cocke, Franklin, Langdon, Mason, Nicholas, and Pinckney.

So it was

Resolved, That the Committee of Privileges be, and they are hereby, directed to consider and report what measures it will be proper for the Senate to adopt, in relation to a publication in the newspaper, printed in the city of Philadelphia, on Wednesday morning the 19th of February, 1800, called the General Advertiser, or Aurora; in which it is asserted, that the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States had passed the Senate, when, in fact, it had not passed; in which it is also asserted, that the honorable Mr. Pinckney, a Senator from the State of South Carolina, and a member of the committee who brought before the Senate the bill aforesaid, had never been consulted on the subject; whereas, in fact, he was present at each meeting of the committee; and, generally, to report what measures ought to be adopted in relation to sundry expressions contained in said paper, respecting the Senate of the United States, and the members thereof, in their official capacity.

Mr. GOODHUE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to extend the time of payment of bonds given for duties of impost in certain cases," reported the bill without amendment.

The VICE PRESIDENT laid before the Senate a return from the Secretary for the Department of Treasury, of two abstracts of the emoluments of the officers of the customs for the year 1799.

Ordered, That they lie on the table.

MONDAY, March 10.

Mr. WATSON, from the committee to whom was referred the bill for the relief of Lyon Lehman, reported it without amendment.

Ordered, That the consideration of the report of the committee on the bill, entitled "An act to establish an uniform system of bankruptcy throughout the United States," which was the order of this day, be postponed until to-morrow.

Mr. MARSHALL presented the memorial of John Finnie, a collector of the revenue for the State of Kentucky, for additional compensation; which was read.

Ordered, That it lie on the table.

The Senate resumed the second reading of the bill, prescribing the mode of deciding disputed elections of President and Vice President of the United States; and, after debate,

Ordered, That it be recommitted to the original committee, further to consider and report thereon to the Senate; and that Mr. NICHOLAS be added to the committee.

The Senate took into consideration the amendments reported by the committee to the bill to establish an uniform mode of drawing jurors by lot, in all the Courts of the United States; and, after debate, adjourned.

TUESDAY, March 11.

Mr. LAURANCE presented the petition of Robinson and Hartshorne, and others, merchants of New York, requesting permission to export a quantity of gunpowder, for reasons therein stated; and the petition was read and referred to Messrs. LAURANCE, GOODHUE, and BINGHAM, to consider and report thereon to the Senate.

Agreeably to the order of the day, the Senate resumed the consideration of the resolution of the House of Representatives of the 10th of February last, for the adjournment of the two Houses of Congress on the first Monday in April next; and,

Resolved, That they do not concur therein.

A motion was made that a committee be appointed to inquire what laws will expire at the close of this session, or before the first Monday in December next, and make report thereof to the Senate.

Ordered, That Messrs. TRACY, BLOODWORTH, and CHIPMAN, be the committee.

Agreeably to the order of the day, the Senate took into consideration the report of the committee on the bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" and,

Ordered, That the further consideration thereof be postponed until Thursday next.

The Senate resumed the consideration of the amendments reported by the committee to the bill to establish an uniform mode of drawing jurors by

lot, in all the Courts of the United States; and, on motion to postpone the further consideration thereof until the next session of Congress, it passed in the affirmative—yeas 14, nays 8, as follows:

YEAS—Messrs. Anderson, Chipman, Dayton, Foster, Goodhue, Hillhouse, Langdon, Latimer, Livermore, Lloyd, Paine, Ross, Schureman, and Tracy.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Franklin, Greene, Nicholas, and Pinckney.

On motion that a committee be appointed to inquire whether any, and what, amendments are necessary in the act to establish the Judicial Courts of the United States, particularly the provision in said act for summoning jurors to serve in the Courts of the United States; and to report by bill or otherwise:

Ordered, That this motion lie for consideration.

WEDNESDAY, March 12.

The VICE PRESIDENT laid before the Senate a report from the Secretary for the Department of War, on the petition of Jonas Fauche, for services for a troop of dragoons late under his command in the State of Georgia; which was read.

Ordered, That it lie on the table.

The motion made yesterday for a committee to inquire what amendments are necessary in the act to establish the Judicial Courts of the United States, was resumed and adopted; and,

Ordered, That Messrs. CHIPMAN, LAURANCE, ANDERSON, NICHOLAS, and FRANKLIN, be the committee.

Mr. BINGHAM, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" reported the bill without amendment.

On motion it was agreed to amend the bill, and that it pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Campbell Smith;" also, a bill, entitled "An act to alter and establish sundry post roads;" in which bills they desire the concurrence of the Senate.

The bill last mentioned was read, and, by unanimous consent, it was read the second time, and referred to Messrs. NICHOLAS, READ, ANDERSON, LAURANCE, and ROSS, to consider and report thereon to the Senate.

The bill first mentioned in the message was read and ordered to the second reading.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to extend the time of payment of bonds given for duties of imposts in certain cases."

Ordered, That the further consideration thereof be postponed.

The Senate resumed the second reading of the bill for the relief of Lyon Lehman, and it was ordered to the third reading.

The Senate resumed the consideration of the motion made on the 10th of February last, respecting a return of imports and exports, which was amended and agreed to, and,

Resolved, That the resolution of the Senate of the 10th of February, 1796, so far as it requires from the Secretary of the Treasury a yearly statement of the exports and imports of the United States, to and from each foreign nation, shall be, and the same is hereby, rescinded.

Ordered, That the return from the Secretary for the Department of Treasury, of two abstracts of the emoluments of the officers of the customs for the year 1799, be referred to Messrs. GOODHUE, BINGHAM, and LAURANCE, to consider and report thereon, by bill or otherwise.

THURSDAY, March 13.

The bill, sent from the House of Representatives, entitled "An act for the relief of Campbell Smith," was read the second time, and referred to Messrs. GUNN, HILLHOUSE, and LAURANCE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" was read the third time.

Resolved, That this bill pass as amended.

The bill for the relief of Lyon Lehman was read the third time; and, on the question to agree to the final passage of this bill, it passed in the negative.

A message from the House of Representatives informed the Senate that the House have agreed to the amendment of the Senate to the bill, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendment of the House of Representatives to their amendment to the bill last mentioned; whereupon,

Resolved, That the Senate do agree to the amendment to the amendment.

Agreeably to the order of the day, the Senate resumed the second reading of the bill, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" and, after progress,

Ordered, That the further consideration thereof be postponed.

FRIDAY, March 14.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to prevent the interference of any military force in certain elections;" also, a bill, entitled "An act to alter the times of holding the district court in North Carolina;" in which bills they desire the concurrence of the Senate—they disagree to the amendments of the Senate

to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'"

The Senate resumed the second reading of the bill, entitled "An act to establish an uniform system of bankruptcy throughout the United States."

On motion to strike out from the clause, section 1st, lines 4th and 5th, "that from and after the 1st day of June next, if any merchant or other person," the words "or other person:"

It passed in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Dayton, Franklin, Goodhue, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Foster, Greene, Gunn, Laurance, Livermore, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

And, after progress, it was agreed that the further consideration of the bill be postponed until Monday next.

Mr. DAYTON, from the Committee of Privileges, to whom it was referred, on the 8th instant, to consider and report what measures will be proper to adopt in relation to a publication in the newspaper printed in the city of Philadelphia, on Wednesday morning, the 19th of February last, called the General Advertiser, or Aurora, made report; which was read.

Ordered, That it lie on the table.

Mr. HILLHOUSE, from the committee to whom was referred the Message of the President of the United States, of the 8th of January last, together with the report of the Director of the Mint, of the 1st of said month, made report, which was read.

Ordered, That it lie on the table.

The bill first mentioned in the message from the House of Representatives of this day was read and ordered to the second reading.

The other bill mentioned in the said message, and brought up for concurrence, was read; and, by unanimous consent, it was read the second time, and referred to Messrs. FRANKLIN, BLOODWORTH, and LIVERMORE, to consider and report thereon to the Senate.

The Senate took into consideration the memorial of John Finnie, presented the 10th instant.

Ordered, That it be referred to the Secretary of the Department of Treasury, to consider and report thereon to the Senate.

MONDAY, March 17.

The bill, sent from the House of Representatives, entitled "An act to prevent the interference of any military force in certain elections," was read the second time, and referred to Messrs. DEXTER, ROSS, and DAYTON, to consider and report thereon to the Senate.

Mr. ANDERSON presented the memorial of Paul M'Dermott, praying to be discharged from certain sums for which he is held accountable as paymaster; he having, by unavoidable casualty, lost his baggage, which includes vouchers, as he states, to the amount for which he stands charged.

The memorial was read and referred to Messrs. ANDERSON, TRACY, and DAYTON, to consider and report thereon to the Senate.

Mr. ROSS, from the committee to whom was recommitted the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States, reported amendments, which were read.

Ordered, That they lie on the table.

Mr. FRANKLIN, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to alter the times of holding the district court in North Carolina," reported the bill without amendment, and, by unanimous consent, it was read the third time and passed.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to extend the time of payment of bonds given for duties of imposts in certain cases," and on the question to agree to the third reading of the bill, it passed in the negative; so the bill was lost.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to fix the compensation of the Paymaster General, and assistants to the Adjutant General," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The Senate took into consideration the resolution of the House of Representatives disagreeing to the amendments of the Senate to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'"

Resolved, That the Senate *insist* on their amendments, ask a conference thereon, and that Messrs, BINGHAM and GOODHUE be managers at the same on the part of the Senate.

Mr. GREENE, from the committee to whom was referred the petition of Joseph Russell and others, made report, which was read, and ordered to lie on the table.

The Senate took into consideration the report of the committee on the petition of Jeremiah Yellott, which is, that the prayer of the petitioner is reasonable; and the report was adopted.

Ordered, That the committee who made the report be instructed to bring in a bill accordingly.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States."

On motion to insert, in section 1st, line 46, after the word "provided," the following words: "that this act shall not be construed to extend to farmers, graziers, drovers, tavernkeepers, or manufacturers," it passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Anderson. Baldwin. Bloodworth, Brown, Cocke. Franklin, Goodhue, Hillhouse, Langdon. Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dexter, Foster, Greene, Laurance, Livermore, Lloyd, Marshall, Read, Ross, Schureman, Tracy and Wells.

On motion to insert, in section 1st. line 9th, after the word "dollars." the following words. "contracted by such dealings." it passed in the negative. —yeas 12. nays 13. as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Goodhue, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Chipman, Dexter, Foster, Greene, Laurance, Livermore, Lloyd, Marshall, Read, Ross, Schureman, Tracy, and Wells.

On motion to strike out of the proviso, in the 6th section, line 29th. the following words: "two hundred." and to insert "fifty." it passed in the negative—yeas 10. nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Brown, Cocke. Franklin, Goodhue. Hillhouse, Langdon, Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dexter, Foster, Greene, Laurance, Livermore, Lloyd, Marshall, Read, Ross, Schureman, Tracy, and Wells.

Ordered. That the further consideration of the bill be postponed.

TUESDAY. March 18.

The bill. sent from the House of Representatives for concurrence. entitled "An act to fix the compensation of the Paymaster General. and assistants to the Adjutant General." was read the second time and referred to Messrs. GUNN. DAYTON. and ROSS. to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House agree to the conference proposed by the Senate. on the amendments to the bill. entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act. entitled 'An act to regulate the collection of duties on imports and tonnage." and have appointed managers at the same on their part.

The Senate took into consideration the report of the Committee of Privileges. on the measures that will be necessary to adopt in relation to a publication in the newspaper. printed in the city of Philadelphia. on Wednesday morning. the 19th of February last. called the General Advertiser. or Aurora; and.

On motion to adopt the first resolution reported. it was agreed to divide the motion. and that the question should be taken on the following words:

Resolved, That the said publication contains assertions, and pretended information, respecting the Senate, and the Committee of the Senate, and their proceedings, which are false, defamatory, scandalous, and malicious; tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States.

And, on the question, to adopt this part of the resolution. reported by the committee, it passed in the affirmative—yeas 20, nays 8. as follows:

YEAS—Messrs. Anderson, Bingham, Brown, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Cocke, Franklin, Langdon, Marshall, Mason, and Nicholas.

WEDNESDAY, March 19.

The VICE PRESIDENT communicated a letter from JAMES WATSON, a Senator from the State of New York. resigning his seat in the Senate; which was read.

Resolved. That the Vice President be requested to notify the Executive of the State of New York. that James Watson hath resigned his seat in the Senate.

Mr. GUNN. from the committee to whom was referred the bill. sent from the House of Representatives. entitled "An act for the relief of Campbell Smith." reported an amendment. which was read.

Ordered. That the report lie on the table.

Mr. BINGHAM presented the memorial of the select and common council of the city of Philadelphia. stating their exposed situation to pestilence. and the necessity of general laws on the subject of quarantine; and the memorial was read.

Ordered. That it be referred to the committee appointed the 27th of February last. on the subject. to consider and report thereon to the Senate; and that Mr. LLOYD be added to the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill. entitled "An act to extend the privileges of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees;" a bill. entitled "An act to enable the President of the United States to borrow money for the public service;" and a bill. entitled "An act supplemental to the act. entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory;" in which bills they desire the concurrence of the Senate.

The Senate resumed the consideration of the report of the Committee of Privileges, on the measures proper to adopt in relation to a publication in the newspaper called the Aurora. of the 19th of February last; and it was agreed to amend the second member of the first resolution reported. as follows: "and that the said publication is a high breach of the privileges of this House;" and. on the question to agree thereto. as amended, it was determined in the affirmative—yeas 17. nays 11. as follows:

YEAS—Messrs. Bingham, Chipman, Dexter, Foster, Goodhue, Greene. Gunn, Hillhouse. Laurance, Livermore, Lloyd, Paine, Read Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

THURSDAY, March 20.

The bills yesterday brought up from the House of Representatives. for concurrence, were read. and ordered to the second reading.

Mr. GOODHUE. from the committee to whom was referred the bill, sent from the House of Representatives. entitled "An act to continue in force 'An act concerning certain fisheries of the United States. and for the regulation and government of the fishermen employed therein. and for other purposes. as therein mentioned." reported the bill without amendment.

The Senate resumed the consideration of the report of the Committee of Privileges. on the measures proper to be adopted in relation to a publication of the 19th of February last. in the newspaper called the Aurora; and it was agreed to fill the blanks in the second resolution reported. with the words "Monday 24th. twelve o'clock." and. at the close of the resolution, with the words "twenty-second;" and,

On motion. to adopt this part of the report. as follows:

Resolved, That William Duane. now residing in the city of Philadelphia, the editor of the said newspaper called the General Advertiser, or Aurora, be. and he is hereby. ordered to attend at the bar of this House, on Monday. the 24th day of March inst., at 12 o'clock, at which time he will have opportunity to make any proper defence for his conduct, in publishing the aforesaid false. defamatory, scandalous, and malicious assertions, and pretended information: and the Senate will then proceed to take further order on the subject; and a copy of this and the foregoing resolution, under the authentication of the Secretary of the Senate of the United States, and attested as a true copy by James Mathers, Sergeant-at-Arms for the said Senate. and left by the said Sergeant-at-Arms with the said William Duane, or at the office of the Aurora, on or before the twenty-second day of March instant, shall be deemed sufficient notice for the said Duane to attend in obedience to this resolution:

It passed in the affirmative—yeas 18, nays 10. as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

So the report of the committee was adopted. as follows:

Whereas, on the 19th day of February, now last past, the Senate of the United States, being in session, in the city of Philadelphia, the following publication was made in the newspaper, printed in the said city of Philadelphia, called the General Advertiser, or Aurora, viz:

"In our paper of the 27th ult. we noticed. the introduction of a measure into the Senate of the United States, by Mr. Ross, calculated to influence and affect the approaching Presidential election, and to frustrate, in a particular manner, the wishes and interests of the people of the Commonwealth of Pennsylvania.

"We this day lay before the public a copy of that bill as it has passed the Senate.

"Some curious facts are connected with this measure, and the people of the Union at large are intermediately. and the people of this State immediately, interested to consider the movements, the mode of operation, and the effects.

"We noticed a few days ago the caucuses (or secret consultations) held in the Senate Chamber. An attempt was made in an evening paper to give a counteraction (for these people are admirable at the system of intrigue) to the development of the Aurora, and to call those meetings jacobinical; we must cordially assent to the jacobinism of those meetings—they were in the perfect spirit of a jacobinical conclave.

"The plain facts we stated are, however, unquestionable; but we have additional information to give on the subject of those meetings. We stated, that intrigues for the Presidential election were among the objects; we now state it as a fact that cannot be disputed upon fair ground, that the bill we this day present was discussed at the caucus on Wednesday evening last.

"It is worthy of remark how this bill grew into existence.

"The opponents of independence and republican Government, who supported Mr. Ross in the contest against Governor M'Kean, are well known by the indecency, the slander, and the falsehood of the measures they pursued—and it is well known that they are all devoted to the Federal party, which we dissected on Monday. Mr. Ross proposed this bill in the Federal Senate, (how consistently with the decency of his friends will be seen;) a committee of five was appointed to prepare a bill on the subject: on this committee, Mr. Pinckney, of South Carolina, was appointed. On Thursday morning last (the caucus held the preceding evening) Mr. Ross informed Mr. Pinckney that the committee had drawn up a bill on the subject, when in fact Mr. Pinckney had never been consulted on the subject, though a member of the committee! The bill was introduced and passed as below.

"On this occasion it may not be impertinent to introduce an anecdote which will illustrate the nature of caucuses, and show that our popular Government may, in the hands of a faction, be as completely abused as the French Constitution has been, by the self-created Consuls:

"In the Summer session of 1798, when Federal thunder and violence were belched from the pestiferous lungs of more than one despotic minion, a caucus was held at the house of Mr. Bingham, in this city. It was composed of members of the Senate, and there were present seventeen members. The Senate consisting of thirty-two members, this number was of course a majority, and the session was a full one.

"Prior to deliberation on the measures of war, navy, army, democratic proscription, &c., it was proposed, and agreed to, that all the members present should solemnly pledge themselves to act firmly upon the measures to be agreed upon by the majority of the persons present at the caucus.

"The measures were perfectly in the high tone of that extraordinary session. But upon a division of the caucus it was found that they were divided, nine against eight. This majority, however, held the minority to their engagement, and the whole seventeen voted in Senate upon all the measures discussed at the caucus.

"Thus it is seen that a secret self-appointed meeting of seventeen persons dictated laws to the United States, and not only that nine of that seventeen had the full command and power over the consciences and votes of

the other eight, but that nine possessed, by the turpitude of the eight, actually all the power which the Constitution declares shall be vested in the majority only. In other words, a minority of nine members of the Senate ruled the other twenty-three members.

"It is easily conceivable, as in the recent changes in France, that this spirit of caucusing may be conducted in progression down to two or three persons; thus three leading characters may agree to act upon measures approved by any two of them; these three may add two others, and they would be a majority of five; and those adding four others would be a majority of nine; and this nine possess all the power of a majority of twenty-three!

"Yet such is the way we are treated by those who call themselves Federalists.

"The following bill is an offspring of this spirit of faction secretly working; and it will be found to be in perfect accord with the outrageous proceedings of the same party in our State Legislature, who are bent on depriving this State of its share in an election that may involve the fate of the country and posterity."

Resolved, That the said publication contains assertions and pretended information, respecting the Senate, and the Committee of the Senate and their proceedings, which are false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States: and that the said publication is a high breach of the privileges of this House.

Resolved, That William Duane, now residing in the city of Philadelphia, the editor of the said newspaper called the General Advertiser, or Aurora, be, and he is hereby, ordered to attend at the bar of this House on Monday, the 24th day of March, inst., at 12 o'clock, at which time he will have opportunity to make any proper defence for his conduct, in publishing the aforesaid false, defamatory, scandalous, and malicious, assertions and pretended information; and the Senate will then proceed to take further order on the subject: and a copy of this and the foregoing resolution, under the authentication of the Secretary of the Senate of the United States, and attested as a true copy by James Mathers, Sergeant-at-Arms for the said Senate, and left by the said Sergeant-at-Arms with the said William Duane, or at the office of the Aurora, on or before the twenty-second day of March, instant, shall be deemed sufficient notice for the said Duane to attend in obedience to this resolution.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of John Collet," in which they desire the concurrence of the Senate.

The bill mentioned in the message was read, and ordered to the second reading.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States."

On motion, to strike out the proviso, at the end of the tenth section, as follows:

Provided, always, That in case of a bona fide purchase, made before the issuing of the commission from or under such bankrupt, for a valuable consideration, by any person having no knowledge, information, or notice, of any act of bankruptcy committed, such purchase shall not be invalidated, or impeached:"

It passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Goodhue, Hillhouse, Langdon, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Franklin, Greene, Gunn, Laurance, Livermore, Lloyd, Marshall, Mason, Paine, Read, Ross, Schureman, and Tracy.

On motion to strike out the word "rest," section 30th, line 27th, and to insert in lieu thereof the word "vest" it passed in the negative—yeas 12, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Goodhue, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton Dexter, Greene, Gunn, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, and Tracy.

FRIDAY, March 21.

The bill, sent from the House of Representatives, entitled "An act to extend the privileges of obtaining patents for useful discoveries and inventions, to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees," was read the second time, and referred to Messrs. LIVERMORE, PAINE, and MARSHALL, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act supplemental to the act, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," was read the second time, and referred to Messrs. GUNN, ROSS, and DEXTER, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act to enable the President of the United States to borrow money for the public service," was read the second time, and referred to Messrs. READ, BINGHAM, and HILLHOUSE, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act for the relief of John Collet," was read the second time, and referred to Messrs. GOODHUE, BINGHAM, and LAURANCE, to consider and report thereon to the Senate.

The Senate took into consideration the amendment, reported by the committee, to the bill, entitled "An act for the relief of Campbell Smith;" and, having agreed thereto, the bill was ordered to the third reading as amended.

Mr. FOSTER, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act for the relief of Thomas Arnold," reported the bill without amendment.

Ordered, That the Committee of Privileges prepare and lay before the Senate a form of proceedings in the case of William Duane.

The Senate took into consideration the amendments reported by the committee to the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; and having agreed thereto, the bill was ordered to the third reading as amended.

Mr. GREENE notified the Senate that he should, on Monday next, ask leave to bring in a bill to alter the time of holding the district courts in Rhode Island.

SATURDAY, March 22.

Mr. DAYTON, from the Committee of Privileges, to whom it was referred to prepare and lay before the Senate a form of proceedings in the case of William Duane, reported in part; which report was read, amended, and agreed to, as follows:

When William Duane shall present himself at the bar of the House, in obedience to the order of the 20th inst., the President of the Senate is to address him as follows:

1st. William Duane:

You stand charged by the Senate of the United States, as editor of the newspaper called the General Advertiser, or Aurora, of having published in the same, on the 19th of February, now last past, false, scandalous, defamatory, and malicious assertions, and pretended information, respecting the said Senate and Committee of the Senate, and their proceedings, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and therein to have been guilty of a high breach of the privileges of this House.

Then the Secretary shall read the resolutions of the Senate, passed the 20th instant, with the preamble; after which the President is to proceed as follows, viz:

1st. Have you anything to say in excuse or extenuation for said publication!

2dly. If he shall make no answer, the Sergeant-at-Arms shall take him into custody, and retire with him from the Senate Chamber until the Senate shall be ready for a decision, at which time the Sergeant-at-Arms shall again set him at the bar of the House, and the President of the Senate is to pronounce to him the decision.

3dly. If he shall answer, he is to continue at the bar of the House until the testimony (if any be adduced) shall be closed, and he shall retire while the Senate are deliberating on the case; and when a decision is agreed upon, the said Duane, being notified of the time by the Sergeant-at-Arms, verbally, or by a written notice left at his office, shall appear at the bar of the House, and the President of the Senate is to pronounce to him the decision.

The bill, sent from the House of Representatives, entitled "An act for the relief of Campbell Smith," was read the third time.

Resolved, That this bill pass as amended.

MONDAY, March 24.

The VICE PRESIDENT communicated a letter, signed William Duane, requesting to be heard by counsel, and have process awarded to compel the attendance of witnesses in his behalf, on the summons served on him the 22d inst., for a high breach of the privileges of the Senate; which letter was read.

A motion was made that William Duane be permitted to be heard by counsel, agreeably to his request; and, after debate, the said William Duane appeared at the bar of the House, agreeably to the summons of the 22d instant; a return thereon having been made in the words following:

CITY OF PHILADELPHIA, *March* 21, 1800.

Then I, the subscriber, Sergeant-at-Arms for the Senate of the United States, left a true and attested copy of the within at the office of the Aurora.

JAMES MATHERS.

And the charge against the said William Duane having been read, he repeated his request to be heard by counsel.

On which he was ordered to withdraw, and a motion was made as follows:

Resolved, That William Duane be permitted to be heard by counsel, he having appeared, agreeably to the order of the Senate, and requested that he might be heard by counsel.

On which a motion was made to strike out all the motion subsequent to the word "Duane," and insert:

Having appeared at the bar of the Senate and requested to be heard by counsel, on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate; who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offence.

And it was agreed to divide the motion, and that the question be taken on striking out; which passed in the affirmative—yeas 18, nays 11, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

A motion was made to amend the amendment by striking out these words "he be allowed the assistance of counsel while personally attending the bar of the Senate; who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offence;" and to insert "he be permitted to have assistance of counsel for his defence;" and it was agreed to divide the motion, and that the question should be taken on striking out, which passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

And, on the question to agree to the original amendment, it passed in the affirmative—yeas 21, nays 8, as follows:

YEAS—Messrs. Baldwin, Bingham, Bloodworth, Chipman, Dayton, Dexter, Foster, Franklin, Goodhue

Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Brown, Cocke, Langdon, Marshall, Mason, Nicholas, and Pinckney.

And the question being taken on the motion as amended, it was

Resolved, That William Duane having appeared at the bar of the Senate, and requested to be heard by counsel, on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who may be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offence.

A motion was made that it be an instruction to the Committee of Privileges to report in what manner witnesses shall be compelled to attend the Senate in support of the charge against William Duane, and in his defence against that charge.

And, after debate, the further consideration thereof was postponed.

Resolved, That a copy of the resolution last agreed to be sent to William Duane, and, at the same time, he be ordered to attend at the bar of this House at 12 o'clock, on Wednesday next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled, "An act for the relief of the Corporation of Rhode Island College;" also a bill, entitled "An act supplementary to the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" in which bills they desire the concurrence of the Senate.

TUESDAY, March 25.

Mr. DEXTER, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to prevent the interference of any military force in certain elections," reported the bill without amendment.

Mr. READ, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to enable the President of the United States to borrow money for the public service," reported the bill without amendment.

The two bills yesterday brought up from the House of Representatives for concurrence were read and ordered to the second reading.

The bill prescribing the mode of deciding disputed elections of President and Vice President of the United States was read the third time.

On motion to strike out the ten first sections, and insert—

Whereas, on an election of President and Vice President of the United States, questions may arise whether an Elector has been appointed in a mode authorized by the Legislature of his State or not: Whether the time at which he was chosen, and the day he gave his vote, were those determined by Congress: Whether he were not at the time a Senator or Representative of the United States, or held an office of trust or profit under the United States: Whether one at least of the persons he has voted for is an inhabitant of a State other than his own: Whether the Electors voted by ballot, and have signed, certified, and transmitted to the President of the Senate a list of all the persons voted for, and the number of votes for each: Whether the persons voted for are natural born citizens, or were citizens of the United States at the time of the adoption of the Constitution, were thirty-five years old, and had been fourteen years resident within the United States: And the Constitution of the United States having directed that "the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and that the votes shall then be counted," from which the reasonable inference and practice has been that they are to be counted by the members composing the said Houses, and brought there for that office, no other being assigned them; and inferred the more reasonably, as thereby the Constitutional weight of each State in the election of those high officers is exactly preserved in the tribunal which is to judge of its validity: the number of Senators and Representatives from each State, composing the said tribunal, being exactly that of the Electors of the same State:

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That whensoever the members of the Senate and House of Representatives shall be assembled for the purpose of having the certificates of the Electors of the several States opened and counted, the names of the several States shall be written on different and similar tickets of paper and put into a ballot box, out of which one shall be drawn at a time; and so soon as one is drawn, the packet containing the certificates of that State shall be opened by the President of the Senate, and shall then be read, and then shall be read also the petitions, depositions, and other papers and documents, concerning the same; and if no exception is taken thereto, the votes contained in such certificates shall be counted, but if the votes, or any of them, shall be objected to, the members present shall, on the question propounded by the President of the Senate, decide, without debate, by yea or nay, whether such vote or votes are Constitutional or not; and the votes of one State being thus counted, another ticket shall be drawn from the ballot box, and the certificate, and the votes of the Electors of the State drawn, shall be proceeded on as before directed; and so on, one after another, until the whole of the votes shall be counted; and if the counting cannot be completed in one day, the members of the said two Houses may adjourn from day to day until it be completed."

A division of the question was called for, and that it first be taken on striking out.

A motion was made to strike out of section 1st, lines 10 and 11, these words: "and finally to decide," and to insert "into and report upon;" and a division of the motion was called for, and that the question be first taken on striking out; which passed in the negative—yeas 11, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Loyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

A motion was made to strike out the 7th section, and after debate,

Ordered, That the further consideration of the bill at this time be postponed.

A message from the House of Representatives

informed the Senate that the House have passed a bill, entitled "An act to alter the form of certain oaths and and affirmations directed to be taken by the act entitled 'An act providing for the second census or enumeration of the inhabitants of the United States;" also, "Resolutions in honor of the conduct of Captain Thomas Truxtun, the officers, seamen, and marines, of the Constellation frigate, and of James Jarvis, a midshipman, who was lost in the late action with the French ship of war La Vengeance;" in which bill and resolutions they desire the concurrence of the Senate.

Mr. DAYTON, from the Committee of Privileges, to whom it was referred to prepare and lay before the Senate a form of proceedings in the case of William Duane, reported in part: and the report was read.

Ordered, That it lie for consideration.

WEDNESDAY, March 26.

The VICE PRESIDENT communicated a letter signed William Duane, stating that he had received "an authenticated copy of the resolution of Monday last in his case," and enclosing certain papers stated to be a correspondence between him and his intended counsel, marked A, B, and C, and that he finds himself "deprived of all professional assistance under the restrictions which the Senate have thought fit to adopt. He therefore thinks himself bound, by the most sacred duties, to decline any further voluntary attendance upon that body, and to leave them to pursue such measures in this case, as in their wisdom they may deem meet;" and the letter was read.

On motion that the papers referred to in the letter be read, it passed in the negative.

On motion, the Senate took into consideration the report of the Committee of Privileges, who were ordered to prepare and lay before the Senate a form of proceedings in the case of William Duane; and, after debate,

The order of the day was called for.

Ordered, That the Sergeant-at-Arms, at the bar of the House, do call William Duane. And the said William Duane did not appear. Whereupon,

Resolved, That as William Duane has not appeared at the bar of this House, in obedience to the order of the 24th instant, and has addressed a letter to the President of the Senate, which has been read this morning, in which he refuses any further attendance, his letter be referred to the Committee of Privileges, to consider and report thereon.

On motion, the Senate resumed the consideration of the report of the Committee of Privileges of the 25th instant. And on the question to agree to the first resolution, amended as follows:

Resolved, That all testimony shall be taken by the Committee of Privileges, who are hereby authorized to send for persons, papers, and records, and compel the attendance of witnesses which may become requisite for the execution of their commission:

It passed in the affirmative—yeas 18, nays 11, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

On motion, the 4th resolution was adopted, as follows:

Resolved, That all testimony taken by said committee shall be reported to the Senate, and kept on file by the Secretary.

And, having agreed to postpone the other resolutions reported, the Senate adjourned.

THURSDAY, March 27.

The bill and resolutions, sent up from the House of Representatives on the 25th instant, for concurrence, were read, and ordered that the bill pass to the second reading.

Resolved, That the Senate concur in the resolutions in honor of Captain Thomas Truxtun, his officers, seamen, and marines.

The bill, sent from the House of Representatives, entitled "An act supplementary to the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read the second time, and referred to Messrs. HILLHOUSE, PAINE, and BROWN, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act for the relief of the Corporation of Rhode Island College," was read the second time, and referred to Messrs. GREENE, LANGDON, and DEXTER, to consider and report thereon to the Senate.

Mr. DAYTON, from the Committee of Privileges, to whom was referred the letter of William Duane, on the 26th instant, made report, as follows:

Resolved, That William Duane, editor of the General Advertiser, or Aurora, having neglected and refused to appear at the bar of this House at 12 o'clock, on the 26th day of March instant, pursuant to the order of the 24th instant, of which order he had been duly notified; and having sent the following letter to the President of the Senate, which has been communicated to the Senate, viz:

"*To the President of the Senate:*

"SIR: I beg of you to lay before the Senate this acknowledgment of my having received an authenticated copy of their resolutions on Monday last, in my case. Copies of those resolutions I transmitted to Messrs. Dallas and Cooper, my intended counsel, soliciting their professional aid; a copy of my letter is enclosed, marked A. Their answers I have also the pleasure to enclose, marked B and C. I find myself, in consequence of these answers, deprived of all professional assistance, under the restrictions which the Senate have thought fit to adopt. I therefore think myself bound by the most sacred duties to decline any further voluntary attendance upon that body, and leave them to pursue such measures in this case as, in their *wisdom*, they may deem meet. I am, sir, with perfect respect,

"WM. DUANE."

is guilty of a contempt of said order, and of this House,

and that, for said contempt, he, the said Wm. Duane, be taken into the custody of the Sergeant-at-Arms attending this House, to be kept subject to the further orders of the Senate.

On motion, to agree to this first resolution reported, it passed in the affirmative—yeas 16, nays 12, as follows:

YEAS—Messrs. Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

On motion, to strike out these words from the second resolution reported: "And all marshals, deputy marshals, and civil officers of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof:" it passed in the negative—yeas 10, nays 19, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, and Wells.

The second resolution reported was read as follows:

Resolved, That a warrant issue signed by the President of the Senate, in the following form, viz:

UNITED STATES,
The 27th day of March, 1800, } ss.

Whereas the Senate of the United States, on the 18th day of March, 1800, then being in session in the city of Philadelphia, did resolve that a publication in the General Advertiser, or Aurora, a newspaper printed in the said city of Philadelphia, on Wednesday, the 19th day of February, then last past, contained assertions and pretended information respecting the Senate, and Committee of the Senate, and their proceedings, which were false, defamatory, scandalous, and malicious, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States; and that the said publication was a high breach of the privileges of the House.

And whereas the Senate did then further resolve and order, that the said William Duane, resident in the said city, and editor of said newspaper should appear at the bar of the House, on Monday, the 24th day of March, instant, that he might then have opportunity to make any proper defence for his conduct in publishing the aforesaid false, defamatory, scandalous, and malicious assertions and pretended information.

And whereas the said William Duane did appear on said day at the bar of the House, pursuant to said order, and requested counsel; and the Senate, by their resolution of the 24th day of March, instant,

Resolved, That William Duane, having appeared at the bar of the Senate, and requested to be heard by counsel on the charge against him for a breach of privileges of the Senate, he be allowed the assistance of counsel while personally attending at the bar of the Senate, who might be heard in denial of any facts charged against said Duane, or in excuse and extenuation of his offence, and that the said William Duane should attend at the bar of the Senate on Wednesday, then next, at 12 o'clock, of which the said Duane had due notice.

And whereas said William Duane, in contempt of the said last mentioned order, did neglect and refuse to appear at the bar of the said Senate, at the time specified therein; and the Senate of the United States, on the 27th day of March, instant, did thereupon resolve that the said William Duane was guilty of a contempt of said order and of the Senate, and that for said contempt he, the said William, should be taken into custody of the Sergeant-at-Arms attending the Senate, to be kept for their further orders. All which appears by the journals of the Senate of the United States, now in session in the said city of Philadelphia.

These are, therefore, to require you, James Mathers, Sergeant-at-Arms for the Senate of the United States, forthwith to take into your custody the body of the said William Duane, now resident in the said city of Philadelphia, and him safely to keep, subject to the further order of the Senate; and all marshals, deputy marshals, and civil officers, of the United States, and every other person, are hereby required to be aiding and assisting to you in the execution thereof; for which it shall be your sufficient warrant.

Given under my hand, this 27th day of March, 1800.

THOMAS JEFFERSON,
President of the Senate of the U. S.

On motion, to agree to this resolution, as reported, it passed in the affirmative—yeas 18, nays 11, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Pinckney.

So the report of the committee was adopted.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States."

On motion to agree to the third reading of the bill, it passed in the affirmative—yeas 17, nays 12, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Greene, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Goodhue, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

So it was *Resolved*, That this bill pass to a third reading.

The Senate resumed the third reading of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion to strike out the 7th section, as follows:

SEC. 7. *And be it further enacted*, That the Grand Committee shall have power to inquire, examine, decide, and report, upon the Constitutional qualifications of the persons voted for as President and Vice President of the United States; upon the Constitutional qualifications of the Electors appointed by the different States,

and whether their appointment was authorized by the State Legislature or not, or made according to the mode prescribed by the Legislature; upon all petitions and exceptions against corrupt, illegal conduct of the Electors, or force, menaces, or improper means used to influence their votes; or against the truth of their returns, or the time, place, or manner, of giving their votes: *Provided always*, That no petition, or exception, shall be granted or allowed by the Grand Committee, which shall have for its object to draw into question the number of votes on which any Elector in any of the States shall have been declared appointed:

It passed in the affirmative—yeas 15, nays 12, as follows:

YEAS—Messrs. Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Bingham, Bloodworth, Cocke, Franklin, Langdon, Laurance, Livermore, Marshall, Mason, Nicholas, and Pinckney.

On motion to strike out the ten first sections, as stated in the motion of the 25th instant, it passed in the negative—yeas 10, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, Franklin, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Latimer, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

And, after debate, the further consideration of this bill was postponed.

FRIDAY, March 28.

Mr. LIVERMORE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to extend the privilege of obtaining patents for useful discoveries and inventions, to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees, reported amendments.

Ordered, That they lie for consideration.

The bill, sent from the House of Representatives, entitled "An act to alter the form of certain oaths and affirmations, directed to be taken by the act, entitled 'An act providing for the second census or enumeration of the inhabitants of the United States,'" was read the second time, and referred to Messrs. ROSS, PAINE, and BALDWIN, to consider and report thereon to the Senate.

Mr LAURANCE, from the committee to whom was referred, on the 11th instant, the petition of Robinson and Hartshorne, and others, reported that the prayer of the petition is reasonable; and the report was adopted.

Ordered, That Messrs. LAURANCE, LLOYD, and TRACY, be a committee to bring in a bill accordingly.

Ordered, That the committee appointed on the 17th instant, to bring in a bill, on the petition of Jeremiah Yellott, be discharged; and that the committee last mentioned do bring in a bill on the subject of his petition.

The bill, sent from the House of Representatives, entitled "An act to establish an uniform system of bankruptcy throughout the United States," was read the third time.

On the question, to agree to the final passage of this bill, it passed in the affirmative—yeas 16, nays 12, as follows:

YEAS—Messrs. Bingham, Chipman, Dexter, Foster, Greene, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, and Wells,

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Goodhue, Hillhouse, Langdon, Mason, Nicholas, and Pinckney.

So it was *Ordered*, That this bill pass.

A message from the House of Representatives informed the Senate that the House have passed a resolution, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the first Monday of May next.

The Senate took into consideration the resolution last brought up, from the House of Representatives, for concurrence.

Ordered, That the further consideration thereof be postponed until Friday, 4th of April next.

DISPUTED PRESIDENTIAL ELECTIONS.

The Senate resumed the consideration of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

Before the question was taken on the passage of the bill, Mr. PINCKNEY addressed the Chair as follows:

Mr. President: The question now before the Senate is on the passage of the bill. It having been understood as agreed, that we would reserve ourselves on its constitutionality until this period, I have some claim to expect your indulgence, while I review, not only that subject, but the principal features of the bill—while I endeavor to show that it is a serious invasion of some of the most important rights solemnly and explicitly reserved by the Constitution to the State Legislatures: that it is a bill more alarming in its consequences than even the alien or sedition law; because, however unfriendly I conceive those to have been in their principles and operation to the liberties of the people, yet after March next we are to hope nothing but the mournful reflection will remain that such laws have ever existed; while the act before you is to continue as a perpetual one, unlimited in its consequences and duration, and is to exist as a check or diminution of those important rights which, by the Constitution, are solely and exclusively vested in the State Legislatures, or under their direction, with the people, and with which Congress have no power to interfere, except in the manner I shall hereafter detail. I am indeed more anxious on this subject, as on many important points the majorities in the Senate were small, and as I well know the subject will excite very great public attention. The States and the State Legislatures will feel themselves particularly concerned, and I have some reason to suppose that such of those as I represent, and who are of my opinion, will expect from me a defence of what they consider as their just rights.

I will begin my remarks on this subject, by asserting that all powers not specifically given to Congress by the Constitution, are reserved to the States or the people respectively; that this is the base and principle of the Government; that without any express declaration on the subject, or any amendment to the original instrument, this is the construction we are obliged to give it; but that when we couple with this construction the 12th amendment, which the jealousy of the States insisted upon, there can be now no question, that in the language of that amendment, the powers not delegated to the United States, nor prohibited by the Constitution to the States, are reserved to the States respectively, or to the people.

It is of essential importance in examining this bill to recur to those amendments and the reason of their being adopted. This appears in the caption of the resolution recommending the amendments to the adoption of the States. It is in these words:

"The conventions of a number of States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Government will best insure the beneficent end of its institution; therefore Congress, according to the Constitutional mode, recommended to the States to agree to, and their Legislatures did adopt, such of the amendments as are now officially directed to be annexed to the Constitution."

By this caption it appears that jealousies and suspicions existed in the States; that they were anxious to have some declaration of the principle of the system to be ascertained on the subjects of religion and the press, and the rights of the people, and the State Legislatures. They knew that parties would arise, and that as in all Governments unprincipled and designing men had existed, they saw no reason to expect that their own would be without them; they therefore determined that an explicit Constitutional declaration should be annexed, expressly stipulating that the powers not specifically delegated were reserved, and that the prohibitions and reservations mentioned in the amendments should be added, in the nature of a bill of rights.

When those amendments became a part of the Constitution, it is astonishing how much it reconciled the States to that measure; they considered themselves as secure in those points on which they were the most jealous; they supposed they had placed the hand of their own authority on the rights of religion and the press, and the as sacred right of the States in the election of the President; that they could with safety say to themselves, "On these subjects we are in future secure; we know what they mean and are at present; and such as they now are, such are they to remain, until altered by the authority of the people themselves—no inferior power can touch them. In our adorations to our Maker, our right to remark on public men and measures, and the exclusive right of the State Legislatures and people to elect the Supreme Executive, Congress have no authority to interfere. They are not within the ordinary sphere of its legislation." I appeal to any man, who dispassionately peruses the Constitution and its amendments, and who recollects the mode and reasons of their adoption, to answer if this was not the construction then understood, and which now ought always to be given to them? It is the one I shall ever contend for, and it is on this ground I shall endeavor to show that Congress have no right to pass the bill before you, or to legislate at all further on the subject, than they have done by the act of 1792.

I suppose it will hardly yet be denied, that the people are the common fountain of authority to both the Federal and State Governments; that the Constitution reposes exclusively in the State Legislatures for the formation of a part of the Federal Government, and in the people for another part; and that in the appointment or formation of their part, the rights of the State Legislatures and people are exclusive: that the State Governments are the pillars upon which the Federal Government must rest, and that without a cordial and active performance of their duty, the latter could not proceed or exist. That, in the formation of the Federal Government, the people found that their safety consisted in giving certain exclusive rights to the State Legislatures, in the election of Senators and of their President—the first to insure to the State Governments their existence as such, and their equality in the second branch, and the other to make their Executive completely independent of the National Legislature.

In examining these exclusive rights, we will at once perceive that in the mode of voting for Senators, no other part of our Governments can interfere than our State Legislatures; if they neglect or refuse to elect, there is no power to compel them. The only authority to interfere is the Senate of the United States, and their power extends only to the determination whether a Senator is constitutionally qualified, or properly commissioned, and in discussing this neither the President nor House of Representatives can interfere.

With respect to the House of Representatives, for important reasons, there is a substantial difference. A right is in the first instance given to the State Legislatures, to establish regulations for their election, and in the same clause a right is given to Congress—not to the House of Representatives, but to Congress—not only to make regulations on the same subject, but to alter such as the State Legislatures have made; giving to Congress, in fact, a paramount authority, whenever they please, to regulate the elections of the House of Representatives in any manner they think proper. Let us for a moment compare this with the directions of the Constitution respecting the Electors of a President, and then permit me to call your attention to the remarkable difference there is between them, and the reasons for this difference.

By the Constitution, Electors of a President are to be chosen in the manner directed by the State Legislatures—this is all that is said. In case the State Legislatures refuse to make these directions there is no power to compel them; there is not a single word in the Constitution which can, by the most tortured construction, be extended to give Congress, or any branch or part of our Federal Government, a right to make or alter the State Legislatures' directions on this subject. The right to make these directions is complete and conclusive, subject to no control or revision, and placed entirely with them, for the best and most unanswerable reasons. It was intended to give your President the command of your forces, the disposal of all the honors and offices of your Government, the management of your foreign concerns, and the revision of your laws. Invested with these important powers, it was easily to be seen that the honor and interest of your Government required he should execute them with firmness and impartiality; that, to do this, he must be independent of the Legislature; that they must have no control over his election; that the only mode to prevent this was to give the exclusive direction to the State Legislatures in the mode of choosing Electors, who should be obliged to vote secretly; and that the vote should be taken in such manner, and on the same day, as to make it impossible for the different States to know who the Electors are for, or for improper domestic, or, what is of much more consequence, foreign influence and gold to interfere; that by doing this the President would really hold his office independent of the Legislature; that instead of being the creature, he would be the man of the people; that he would have to look to them, and to the confidence which he felt his own meritorious actions would inspire, for applause or subsequent appointments.

Instead of this, what is the mode proposed by this bill? That the Senate and House of Representatives of the United States shall each of them elect six members, who with a chairman, to be appointed by the latter from a nomination of the former, would form a *grand committee*, who should, sitting with *closed doors*, have a right to examine all the votes given by the Electors in the several States for President and Vice President, and all the memorials and petitions respecting them; and have power finally to decide respecting them, and to declare what votes of different States shall be rejected, and what admitted; and, in short, that this committee, thus chosen, and sitting with closed doors, shall possess complete, uncontrollable, and irrevocable power to decree, without appeal from their decision, who has been returned, and who shall be proclaimed President of the United States.

As long and as much as I have been accustomed to examine this bill, and consider its contents, I cannot recapitulate its objects and extent without new emotions of surprise. I am astonished that a measure so completely calculated to deprive the State Legislatures of their most important and exclusive rights in the election of the Chief Magistrate, should be at once brought forward, without paving the way by some milder preparatory measure, of the same tendency. It is true, the sedition law, by giving to the Federal Courts a power to decide on libels, a right which we contend belongs exclusively to the State Courts, and of which we think they cannot constitutionally be divested; and the untenable doctrine, avowed by the Federal Judges, that there is a common law, such as is in force in Great Britain, common to the courts of the United States, may be considered as preparative. Had the people quietly acquiesced in these doctrines, and generally expressed no disapprobation of them, there might have been some reason to suppose they had determined silently to submit to everything, and even without a murmur put up with this diminution of the authority of the State Legislatures. But, when we recollect the unanswerable arguments that have been used throughout every part of the Union against them; when we see not only individuals but Legislatures of important States, using the mild and Constitutional mode of remonstrance and argument; when we have found not only the tables of the State Legislatures, but of Congress itself, covered with memorials against them, lamenting in the most affecting language their adoption and execution; I cannot, under these circumstances, suppose that we are authorized to believe the public mind so much under the influence of implicit confidence as to think that a measure which strikes so forcibly at the reserved rights of the States, can be received by them without particular emotions. It is my duty, however, to examine it with freedom, and this I shall do with candor and deference to other gentlemen's opinions, who differ from me on the subject.

Knowing that it was the intention of the Constitution to make the President completely independent of the Federal Legislature, I well remember it was the object, as it is at present not only the spirit but the letter of that instrument, to give to Congress no interference in, or control over the election of a President. It is made their duty to count over the votes in a convention of both Houses, and for the President of the Senate to declare who has the majority of the votes of the Electors so transmitted. It never was intended, nor could it have been safe, in the Constitution, to have given to Congress thus assembled in convention, the right to object to any vote, or even to question whether they were constitutionally or properly given. This right of determining on the manner in which the Electors shall vote; the inquiry into the qualifications, and the guards necessary to prevent disqualified or improper men voting, and to insure the votes being legally given, rests and is exclusively vested in the State Legislatures. If it is necessary to have guards against improper elections of Electors, and to institute tribunals to inquire into their qualifications, with the State Legislatures, and with them alone, rests the power to institute them, and they must exercise it. To give to Congress, even when assembled in convention, a right to reject or admit the votes of States, would have been so gross and dangerous an absurdity, as the framers of the Constitution never could have been guilty of. How could they expect, that in deciding on the election of a President, particularly where such election was strongly contested, that party spirit would not prevail, and govern every decision? Did they not know how easy it was to raise objections against the votes of particular elections, and that in determining

upon these, it was more than probable, the members would recollect their *sides*, their favorite candidate, and sometimes their own interests? Or must they not have supposed, that, in putting the ultimate and final decision of the Electors in Congress, who were to decide irrevocably and without appeal, they would render the President their creature, and prevent his assuming and exercising that independence in the performance of his duties upon which the safety and honor of the Government must forever rest?

But it is said, are Congress bound to receive every vote of an Elector, whether it is constitutionally given or not? Suppose votes are sent for a person not a citizen or fourteen years a resident of the United States; or under thirty-five years of age; or that the Legislature of a State has not authorized by their act the votes of the Electors, or that double returns are made: who are then to decide? Or has not Congress, under these circumstances, a power to determine which of the votes shall be received or rejected?

These being the avowed reasons for introducing this bill, I answer them by observing, that the Constitution having directed that Electors shall be appointed in the manner the Legislature of each State shall direct, it is to be taken as granted that the State Legislatures will perform their duties, and make such directions as that only qualified men shall be returned as Electors. The disqualifications against any citizen being an Elector, are very few indeed: they are two. The first, that no officer of the United States shall be an Elector; and the other, that no member of Congress shall. The first, an indispensable one, because every officer of the United States is nominated by the President, and (except Judges) removable at his pleasure. The latter, that no member of Congress shall, is a provision which goes unanswerably to prove the solidity of my objections to this bill, and to show how extremely guarded the Constitution is in preventing the members of Congress from having any agency in the election, except merely in counting the votes.

They well knew, that to give to the members of Congress a right to give votes in this election, or to decide upon them when given, was to destroy the independence of the Executive, and make him the creature of the Legislature. This therefore they have guarded against, and to insure experience and attachment to the country, they have determined that no man who is not a natural born citizen, or citizen at the adoption of the Constitution, of fourteen years residence, and thirty-five years of age, shall be eligible.

These are all the provisions in the Constitution, and being specifically defined and clearly marked out, where is the necessity of this bill? Is not the Constitution the supreme law of the land, and must not the State Legislatures conform their directions in the appointment of Electors to the directions of the Constitution? Have they not always determined, that persons qualified as the Constitution directs shall be chosen as Electors; and in the three elections which have taken place, has there been a single mistake or error in the vote? Was not the last election as much contested as the ensuing, or any one can be, and were not the votes regularly given? Why this anxiety, why these unnecessary efforts to take from the State Legislatures their exclusive and most valuable right? Why should we be afraid that our citizens should be so forgetful of their safety, as to vote for men holding offices under the United States, or members of Congress; men who are not only disqualified, but who must, from their connexions with the Government, be always unsafe depositaries of this trust.

Who, when he reflects on the immense power the President possesses, can suppose that any man, honorably selected by his fellow-citizens as an Elector, could for a moment be so lost to a sense of his own and his country's welfare, as to vote for a man as the Supreme Executive, whose citizenship or residence were doubtful, and who were not of sufficient age? Gentlemen who support the bill have confessed they thought it improbable, and that it may not happen once in a century; but still they say it is possible, and ought to be guarded against. I consider both as so extremely improbable, that I am astonished they are mentioned. So far from having any apprehension of this sort, we may be assured that while the office of President is accompanied by so much power and patronage, while it is so honorable to its holder and influential to his friends, there can be no doubt that only such men will ever be spoken of, or even thought of or nominated as candidates, as are the most conspicuous for talents, and whose experience of our public affairs is generally acknowledged. Nor need we ever be afraid that in this country too young men will be brought forward as candidates. There is a jealousy against young men, or men not much advanced in years, which will forever forbid their being nominated for this office with much hope of success. Men do not like to see their juniors, or even those of the same ages, taking the lead, or being more conspicuous for talents or knowledge than themselves. They erroneously consider it as a reflection on their own deficiencies; they will therefore invariably unite in preferring a man much advanced in years, whose honors would occasion them no invidious sensations, and whose age and long employment in public life have accustomed them to his elevation. Regardless of his errors, or capacity to govern, they will more cordially unite in promoting him, than one whose rise they will consider as too rapid, and whose political exertions have given them pain. Be assured, sir, there can never be any fear of too young men being promoted to this situation. The danger is entirely on the other side of the question; that none but men too old will be brought forward; men whose minds have lost their energy, and whose age and infirmities render them incapable of sustaining the great and increasing weight of an important, and arduous situation.

To prevent, therefore, candidates of doubtful residence or citizenship, or under the requisite age, being elected as President, can never be sufficient reasons with the House for adopting this bill in the face of the Constitution, even if they had the

power. I suppose there must be more weight in the other reasons, or they would not agree to it.

These are, that suppose a State Legislature should so far forget its duty, as not to pass some legislative act or resolution, directing the manner in which, within the proper time, Electors of a President should be elected, and the people should, notwithstanding, assemble and elect under a different authority; would the votes of the Electors, under these circumstances, be receivable? Or suppose that two different sets of Electors should insist that they were constitutionally elected, and that double returns should be transmitted, one certified by the Governor of the State, and the other not; which are to be received, and who is to have the power to decide to which the preference is to be given?

On this subject I am to remark, that the Constitution supposes a mutual confidence to exist between the Federal and State Governments; that not only in its formation, but in the strict and honorable performance of their relative duties, there will be the greatest punctuality and exactness; that neglect, and particularly refusal, on the part of either, must endanger the existence of both; and that until the case does actually arise, it is extremely impolitic in either to suspect it, and particularly to adopt measures in anticipation, on suspicions unsupported by proofs, to meet situations that have never yet occurred, or probably never will. That it ought to be a federal principle, and a rule with the Government, never to doubt the attachment of the States, in the performance of their Constitutional duties. That as they have hitherto regularly appointed Electors and Senators, and members of the other branch, that they will continue to do so, and cheerfully to contribute to the general expenses; that in return they will expect from the Government complete and adequate protection in their public and private rights, and a Constitutional attention to such as are explicitly reserved to the people and the State Legislatures. That they will govern themselves by the Constitution, and suffer no suspicions, jealousies, or unfounded reports, to hurry them into acts invading the State right. That, as it is so much the interest of the States to exercise their right in the election of a President, it is to be presumed that every State Legislature will seek with avidity each returning opportunity of doing so. That whatever they may surmise or threaten, that when the time arrives no few men will dare to oppose numerous and important States expressing their opinion, or giving their votes on so interesting an election; particularly where the opinion has been so recently and decidedly expressed on questions of the same political tendency. That there was no doubt of every State fairly and honorably voting, and of every Executive constitutionally discharging the duties of his station. That we had no more right to suppose, from what has hitherto happened, that an Executive or State Government would break the Constitution, than they had to think that Congress and the President would do so. That if the General Government went into measures to restrain or control the States in the exercise of their duties, might it not unnecessarily give rise to a spirit of discord, destructive to the harmony which ought ever to exist between them? That, in every view in which the subject presents itself, it is certainly most wise to suffer things to remain as they are, and to be content with the regulations of the act of 1792, which go as far, and perhaps in one or two particulars of no importance, even farther than the Constitution warrants.

To show the extreme impropriety of adopting this bill, I will, for argument sake, suppose that there might be some irregularities in the votes of Electors, or even in the conduct of the Executive of a State on this subject; and ask, whether, even under these circumstances, it would not be safer and less injurious to the interests of the people, that these few irregular votes, if transmitted and certified by an Executive, should be received and counted, than that a new and unknown power like this should be created, under whose control not a few, but every vote that is given, must be reviewed, and received or rejected as they decree?

If the bill is not passed, we are to depend, as we have hitherto done, on the attachment of the States, and the good sense and integrity of their Executives. We have, particularly on the Executive of a State, the strong hold of public opinion. He will recollect that his character is at stake, and that if he suffers party views or private interest or resentment to govern his conduct, that he stands alone, and is individually responsible. That so far as respects his agency in the authentication of the election of the Electors, he has no body of men under the cover of whose advice he can shield himself; but that in case of misbehaviour, he must alone meet the public censure. That to deserve the confidence of his country, he ought never to submit to temporary expedients, or court the fleeting breath of popular applause; he must recollect what are his Constitutional duties, and to those, and those only, he must conform. That this has always been the conduct of the Executives of the States, and under that conduct we have been safe. That the Constitution makes this dependence on the States necessary, and as we have never yet been disappointed, we are to hope we never shall. But, surely, its friends never could have considered the extent and danger of giving to this committee, or even to Congress, the right to decide on double returns, or they must immediately have seen the extreme impropriety of attempting it. It is, in short, nothing less than holding out to the minority in all the States, a temptation to dispute every election, and to always bring forward double returns. In every State where the election is strongly contested, there will of course be a minority. It will be easily known by the measures of Congress, to which candidate the majority of that body inclines, and whose friends will compose the committee that are to be thus packed and selected. If a minority in a particular State find that the candidate they have unsuccessfully supported is the favorite one with the majority of Congress, or their committee, they will easily discover the means of raising objections to the validity of the return of the Electors, insist that they themselves are elected,

proceed to the length of meeting and voting, and transmit to Congress a double return.

It will not be difficult for them to accompany their return with plausible reasons, and perhaps with such unfounded assertions, and specious although false documents, as to give to the committee some colorable reason for rejecting the return of the Electors, certified by the Governor, and admitting the other. Knowing the situation of the Union; how differently some States think from others on political questions; how divided Congress have been for some years, on certain great and trying subjects; who that is a friend to harmony and the Constitution, and to that easy, tranquil mode of deciding these elections which has hitherto prevailed, can wish to go into a measure so calculated to produce unceasing disputes, and to throw almost every State into scenes which can never arise but from this bill?

Can there be any one who would thus hazard the reserved rights of the State Legislatures and the people, and commit them to a body unknown to and unauthorized by the Constitution? Why should we suppose that the Congresses which have preceded us did not understand this subject as well as we do, or any that may succeed us?

In 1792, being the first time the exercise of this power was necessary, Congress passed a law, entitled "An act relative to the election of President and Vice President," &c., directing how the States should appoint Electors for the election; when they should meet and vote; that they should sign three certificates of all the votes given; directing how the votes should be disposed of; detailing the duty of the Executive of each State in certifying the lists of Electors chosen; of the Secretary of State on the non-receipt of votes; that Congress shall always be in session on the second Wednesday in February in every fourth year, for the purpose of opening and counting the votes, and declaring a President elected agreeably to the Constitution; ascertaining the duties, allowances to, and penalties on persons sent with the votes; and making provision in case of the death of both President and Vice President, or their refusal to serve, and fixing the time when their service commences.

It is very important in deciding on the bill before you, to peruse this act with great attention; to recollect by whom, and when, and under what circumstances, it was made. This law was passed in 1792, when a number of able and well informed men, who have been since appointed to some of your most respectable situations at home and abroad, and many who have voluntarily retired with deserved and well-earned honor to private life, filled the seats of both Houses of Congress: when the Executive authority was held by Gen. WASHINGTON, for whom your whole nation at present mourns; by him who had no rival in the public affection, whose honors no man envied, and whose re-election to office as long as he pleased, he well knew, would always have been without contest; in him was placed the revision of your laws. And here, sir, let me ask, whether from a Congress thus ably formed, and from an Executive thus discerning and independent, as much knowledge of the Constitution, its precise directions, and the agency it intended Congress to have in the counting the votes and declaring the President, were not to have been expected, as from the present? Were not the then Executive, and a number of the members of both Houses, members of the Convention which framed the Constitution; and if it intended to give to Congress, or to authorize them to delegate to a committee of their body, powers contemplated by this bill, could the Congress or the President of 1792, have been so extremely uninformed, and indeed ignorant of its meaning and of their duty, as not to have known it? I have heard many motions and measures which have been introduced here, termed as intended reflections on the present President; but surely no more severe reflections on the mistakes or ignorance of the Congress and President of that day can be passed than this bill. It will exhibit to the world our decided opinion, that they were both ignorant of the powers of their respective departments, and both neglected to declare and assert them. An impartial public will, however, feel themselves interested on this very important occasion to recollect the circumstances under which the act of 1792 was passed, and those under which the present attempt has been made, and upon comparing them, to examine and decide for themselves. They will find, that in that year they possessed as able and independent a Congress as they can ever reasonably expect to see again; that they were then in perfect peace; no treaty had been made with Britain, or alliance dissolved with France; no depredations vexed their commerce; no improper partialities for contending nations divided their councils; respecting and alike respected by the whole family of the civilized world, their country was the residence of peace and industry, and the asylum of the oppressed of every nation. Their Constitution was universally admired; it was drawing to them a great share of wealth, the arts and information of Europe: no rival candidates contended for the chair, it was filled by him who had no opponent, and who was in the succeeding year again unanimously summoned to occupy it. Under circumstances so favorable to the impartial exercise of those legislative duties, will not our citizens be inclined to suppose that the act of 1792 was a proper one, and that there was more probability of its provisions being in a temperate and unbiassed conformity to the Constitution, than any act which could be passed at this time? A time when no man can say we are at peace, or that our commerce is free from depredations; or that strong contending parties do not divide our councils and citizens, as well with respect to foreign politics, as to him who is hereafter to fill the Executive department; a time, when it is out of the question not to suppose that each party will use every means to secure their favorite object.

If, after comparing these circumstances, our citizens should carefully peruse the express directions of the Constitution, they will have but little doubt to which act to give the preference, as the proper and Constitutional one. By viewing the 1st section of the 2d article of the Constitution, it is to be seen, that on the day fixed by law, which is the second Wednesday in February, the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes shall be President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then, the House of Representatives *shall immediately* choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall *in like manner* choose the President. From this part of the Constitution it is evident that no power or authority is given to Congress, even when both Houses are assembled in convention, further than to open and count the votes, and declare who are the President and Vice President, if an election has been made; but that in case no election is made by the Electors, or no candidate has a majority, then the House of Representatives are (voting by States) *immediately* to choose, out of the five highest on the list, the President, &c.

In order that every man may understand what is here meant by the Constitution, and what is its express *directions* and *letter* as to this election, let us examine what is the literal meaning of the word *immediately*, and why it was introduced here. The best and most generally admired expounders of the English language, give this explanation of the word *immediately;* they say it means "instantly"—at the present time—without delay. This is the meaning the framers of the Constitution intended to give it, and it admits of no other. The plain, express, literal direction of that instrument therefore is, that in case of no election, the House of Representatives, voting by States, are *immediately*, that is instantly, and on the spot, without leaving the House in which they are then assembled, and without adjournment, to choose, out of the five highest candidates that have been voted for by the Electors, the one who is to be the Executive.

The reasons for this immediate election are, in my judgment, unanswerable; they show very clearly the foresight and caution of the Convention, and, if not strictly attended to, may be productive of the most serious calamities to our country. The reasons are these: that from our rapidly increasing strength and commerce, from the enterprise of our citizens, and our particular maritime situation as it respects the West Indies, South America, and the Powers having possessions in both, it was easily to be seen, that in any conflict between these Powers, our friendship or hospitality must be of the greatest importance; that they therefore would never cease to interfere in our politics and endeavor to direct them in the manner most suitable to their own interests; that from the difficulty of influencing so large a body as Congress, and from the immense power of the President, not only over the laws, but foreign connexions of the Union, that their principal effort would be always to have one of their own friends chosen; and to effect this, no influence would be left untried. To prevent this therefore, and to make the Executive independent of Congress, the election has been given exclusively to the States, under the direction of the State Legislatures. If an election is made by the Electors, and subject to no future control or revision on the part of Congress, then the end intended by the Constitution, of preventing the interference of foreign influence, is completely answered: for, elected as they are, and voting as the Electors must, the interference of foreign gold, or influence, is impossible. But it was to be supposed, that instances would occur, where two candidates, having a majority, may be equal in their number of votes; or where no candidate had a majority of the whole of the Electors appointed, and an election must take place by the National Legislature, or a branch of it; the question then arose, how was this election to be guarded to prevent, as far as human prudence could, improper domestic combinations, or, what is infinately worse, foreign interference? It was a difficult thing, and required much deliberation. The Constitution directs that the Electors shall vote *by ballot*, and seal up and transmit their votes to the President of the Senate. It is expected and required by the Constitution, that the votes shall be secret and unknown, until opened in the presence of both Houses. To suffer them to be known, as heretofore, has been the practice, is unconstitutional and dangerous, and goes to defeat in some measure, the wise provisions of that instrument, in declaring, that when the House of Representatives are to elect, that it shall be done immediately. The Electors, therefore, ought never to divulge their votes. The votes being thus unknown, it would be impossible in most instances to say who were elected or who had the five highest numbers on the list. The leaders of domestic intrigue and foreign emissaries would be at a loss how to direct their influence, and the election by the House of Representatives taking place immediately after the votes have been opened and counted, that body would go to the election free and uninfluenced, as they ought. And is not this, sir, safer; is it not better than that the smallest delay should take place in determining it? You are to choose, out of the five highest candidates on the list of the Electors' votes; it never can be supposed, that men thus deliberately chosen as Electors, would vote for any but the most distinguished amongst our citizens, or point the attention of the public, or of the House of Representatives, to obscure or improper characters. The five having the highest number of votes, will all be such men as that either of them, if chosen, will be well qualified to fill the office; and it will be less dangerous to the public interest, that even one who may not be the most qualified of the five, should be elected, than that Congress should adjourn to deliberate on it, and thus expose themselves, and the best interests of their constituents, to the secret and artful attacks that will be made on their integrity.

It is to be remembered, that around the seat of Congress will be placed all the open and accredited Ministers, as well as secret emissaries, of foreign

Powers. Here too will be assembled the concealed leaders of domestic faction; all the arts and intrigues that have been used in Elective Governments in the Old World, will soon find their way among us; and if the Electors do not conceal their votes until the day appointed by law for opening them, and in case of no election by them, an immediate one by the House of Representatives does not take place, we shall soon have the scenes of Polish Diets and elections re-acted here, and in not many years the fate of Poland may be that of United America.

Wisely foreseeing this, the Constitution expressly orders that the Electors shall vote by ballot; and we all know, that to vote by ballot is to vote secretly; that the votes shall be sealed up, and not opened until the day appointed by law, and that if no election has been made by the Electors, an immediate one shall take place by the House of Representatives; that so far from appointing committees to receive memorials or petitions respecting the election, or decide upon it, or so far from having any right to delegate an authority on this subject, that Congress shall not themselves, even when in convention, have the smallest power to decide on a single vote; that they shall not have authority to adjourn for one moment, but shall instantly and on the spot, in case of no election by the Electors, proceed to the choice of a President, and not separate until it is determined.

I have intentionally gone into repetitions on this subject, in order to impress on the House the full meaning and intent of the word *immediately;* and to show how utterly unconstitutional it would be for Congress, either acting in their separate chambers or in convention, to attempt to assume to themselves the power to reject a single vote; and how inadmissible must be the idea that they could delegate it to a small packed committee, chosen by the prevailing majorities in both Houses, and sitting with closed doors, authorized irrevocably to decree who shall be proclaimed President; a committee not even to be appointed by lot, as was proposed, in imitation of the election committee of Great Britain—a measure which might have had the appearance of giving to the friends of all the candidates some chance of being on it; not limited, as was afterwards moved, in imitation of that part of the Constitution which respects the making of treaties, to the number of two-thirds being necessary for every decision; but to a committee, chosen by the majorities of both Houses, just as their own political opinions and prejudices shall prompt.

Extraordinary and unconstitutional as this mode of choosing a committee must appear, and new and unknown as are the powers intended to be given to it, perhaps no part of the bill strikes us with more astonishment, than that the deliberations on all these great and important questions are to be in secret, and that the committee are to sit with *closed doors.* We have hitherto been taught to believe, that only on Executive business, or communications deemed by the Executive of either branch to be of a secret nature, that our citizens were to be denied the right of being present if they please; but that on all legislative subjects, most particularly on all questions respecting elections, the deliberations of the body who are to have power finally to decide, must, from the nature of our Government, be open and uncovered.

I have heard that at a time when upon all other questions the doors of the Senate were shut, yet that when the right of a Senator to keep his seat was discussed, they were ordered to be thrown open. If then, on a subject in which the rights of a single State Legislature were investigated, you deemed it proper the debates and decisions should be in public, how much more important is it that every eye should be entitled to inspect the conduct, and every ear to listen to the decisions of a body, on whose decree, without appeal, are to depend the rights of every Legislature in the Union? Can it be supposed that this extraordinary measure will meet the public approbation? Can we be ignorant of the jealous temper of our citizens, their general information, and their persevering and laudable endeavors to be acquainted with our measures? Do we not suppose that the State Legislatures will feel particularly alive on this subject, and that they who by their perseverance have formerly unbarred the doors of the Senate, and opened your legislative deliberations to the public view, will scarcely suppose that an investigation so much more important than any legislative act, should be veiled from a jealous inspection? Will they not remember, that in all contested elections of members of either House, the debates are in public; and by concealing these, will it not be a reason with them to believe you doubt your right to act at all? If upon elections in a State Legislature, or the National one, petitioners have a right to be heard openly and by counsel, ought not the same right to exist in an election where all the Legislatures and all the people are concerned? It is no answer, or no reason for sitting with closed doors, to say that the testimony is to be entered in writing on the journals of the committee, and the members are to enter their reasons and sign them for rejecting a vote. It is not to know the result of their deliberations, or what laws they pass, that creates the necessity for deliberative bodies in free countries sitting with open doors; it is, that the public eye may be constantly upon them; that all their movements may be seen, and all opinions they give on public questions or in debate carefully attended to. When a single member in the House of Representatives may represent the interests of above thirty thousand citizens, and in the Senate upwards of hundreds of thousands, or where a committee of thirteen are to decide on the election of the officer who is to preside over upwards of five millions of people, most surely every opinion and every motion of each member should be strictly scrutinized. If ever there could be good reasons for opening the deliberations of any assembly of men to the public view, they must apply with redoubled force to this; if ever the opinions, or steadiness, or integrity of a body should be vigilantly attended to, it must be of one who are to possess full and irrevocable power to reject or receive the votes of the Electors as they

please, and finally, to decide. It is a power too important to be exercised in the dark; it is contrary to what ought to be the practice of every Government, whose pride it should be to invite the investigation of their constituents, and, instead of retiring from the public eye, to wish "that there was a window in its bosom."

It is among the precepts of our religion, that we should continually pray not to be led into temptation: to avoid being tempted to do improper things, would be an excellent rule with public bodies, as well as with individuals; many private crimes would be prevented, and many indiscreet and unconstitutional public acts not even thought of. Self-interest or revenge are sometimes so powerful incentives, that temptations to pursue the one or gratify the other are frequently not to be resisted. To no public body has ever a stronger temptation been held out, than this bill offers to the House of Representatives. If the election by the Electors can be destroyed by any means, the Constitution gives to that House the election of the President; if, therefore, their favorite candidate has not the majority of votes, but come so near, that the rejecting a few of the rival's votes will prevent an election and bring it to their House, how easy is it for them to elect six members, whose opinions they have previously known, and that Senator out of the three nominated by the Senate whom they can most depend upon, as fitted for their purpose, and with these to destroy the election, and assume to themselves the power of deciding who is to be your Supreme Executive? Considering the influence and authority of this officer, how much he will have it in his power to reward such tried friends as these, friends who have proved themselves so valuable to him as to have set aside the election of his opponent, who ought to have been the successful candidate, and placed himself in the Chair, I ask, if it is not a temptation too great to offer to any single body, like the House of Representatives? And if the Constitution, by the most sacred construction, had ever permitted or intended such an event, whether it would have deserved the encomiums it has hitherto received? Whether, instead of having a really independent Executive, chosen under the direction of the State Legislatures, in a manner to prevent the influence of foreign gold, or domestic faction, whose election, in order that he may be firm in the exercise of his revisionary power, and honest in the disposition of the public honors, was not to be subject to the control or interference of Congress; one who could be really called the *man of the people,* and on whom they could depend: whether, instead of having an officer like this, you would not have a *fettered, dependent creature of the Legislature,* the production of their little packed committee, *a thing* with a chain on his pen, and a curb in his mouth, that could neither write, speak, or even sign his name, but at the will of his creator; and whether *this thing,* when presented, however he might be called and obeyed, would deserve to be considered such a President of the United States as the Constitution intended?

I now come to a part of the bill, on which, should it become a law, it appears to me that insuperable difficulties would arise, and this is the section which respects *testimony.* By the 13th section it is said, that persons petitioning against the votes given by any of the Electors of President or Vice President of the United States, and persons desirous of supporting such contested votes, may respectively obtain testimony in the same manner, and under the same rules and regulations, which are provided by the act, entitled "an act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses." And the rules, regulations, and penalties of the said act, are and shall be extended to cases arising under this act, as fully as if the same were herein fully recited and enacted.

By the act to which this alludes, any Judge of the Courts of the United States or of a State, or, if they cannot be conveniently obtained, two justices of the peace, are, on application of the parties contesting elections, to issue a warrant or summons to witnesses, to attend at some convenient time and place; if they are not at their usual place of residence, service of a copy is sufficient; and for non-attendance the fine is only twenty dollars. The party whose election is opposed, is to be served with notice of this intended opposition, and of the time and place when these witnesses are to be examined. If it is said he was not at home, proof of a copy of the notification being left is sufficient, and the judge or justices are to proceed, *ex parte,* to take the testimony. It does not appear by the most attentive perusal of the act, that the officers or persons who are to serve the notice are to depend on the judge or justices, or known public officers: but may be any persons the party opposing the election may choose; they may be some of his own particular friends or dependents, or persons he can direct as he pleases.

In examining this act, we must immediately perceive that it is extremely defective, even as it respects the election of members of the House of Representatives; but that should it ever be relied upon in the decision of the election of a President of the United States, and the choice of this important officer, this intended man of the people, was to depend upon the testimony, which, under the cover of this act, fraud, or force, or bribery, might produce, the evils to this country would be monstrous indeed.

By this act we are prevented from the *viva voce* examination of witnesses before Congress or the committee; that examination which, on the trial of the meanest culprit and for the smallest offence, your just and equitable laws render indispensable; that mode which allows you to look a witness steadily in the face, to view in it the calmness of conscious innocence, or the agitation of falsehood and the fear of detection; in the presence of an anxious and inquiring public to probe his statements to the bottom, and if they are false to confront him with the truth. How far superior, sir, is this, to the regulations of the act, where examinations are to be taken by commission, in a manner

that must for ever open a door for the grossest impositions. If a judge of some superior or inferior court is not to be conveniently found—and in the interior and frontier parts of a number of the States this will frequently be the case—the whole management of this business is to depend upon two justices of the peace, who are to issue the warrant or summons, and examine and reduce the testimony to writing and transmit it to the seat of Government. I trust I shall be believed when I say, that few men have, indeed that no man has, a higher respect or affection for the people of the United States than I have; that I believe them to be the most immaculate, and easily governed, and at the same time the best intentioned people in the world. I cannot therefore be suspected of the most distant reflection, in supposing that in some of the States, where objections may be made to the elections or qualifications of Electors, and it may by this bill be necessary to take testimony, that some judge, or chancellor, or justice of the peace, may be found, who may not be men of good character, or men of sufficient knowledge or technical skill to be entrusted with the taking of the testimony, or the cross-examination of witnesses, on whose assertions may depend so important an election. Recollecting that there are some thousands of judges, chancellors and justices of the peace, resident in so extensive and populous a country as the United States, it would be wonderful indeed, if some of them were not men of letters, or not sufficiently informed to manage so difficult and delicate an examination as this is, with sufficient acuteness and ability; but if we extend the idea, and suppose that amidst so numerous a body of men it is possible some of them may be tampered with, and made subservient to the purposes of party, to reduce testimony to writing in a mangled or partial manner, to omit or add, as they may be tempted, the alarming consequences that might flow from their misconduct scarcely need to be mentioned; they must strike the most superficial observer. How easy, too, is it under this act, for the contesting party to employ dependents of his own, who may so manage the transmission or delivery of the notices, as that the Elector, or person whose qualifications or election is contested, may not receive them at all, or receive them so late as to make his appearance in time before the justices impossible? In short, if we view the difficulties that must attend the attempt to obtain testimony on this subject that can be at all depended upon, the door that it will open to bribery, and perjury, and fraud of every description, it must at once appear that the Constitution could never have contemplated giving Congress any authority on the subject. They knew it was impossible, from the great distance of some of the States, that *viva voce* examinations could take place before that body; that on this occasion all others were inadmissible; they therefore determined, that the inquiry into the election and qualifications of the Electors, and the constitutionality of their votes, should be given to and rest exclusively with the State Legislatures; and that the certificate of the Executive of a State, of the Electors appointed, and the votes of such Electors regularly transmitted, must be received and counted. If this was not to be the case, and the bill before you was to become law as you have now determined that the 7th section should be struck out, and that the committee shall have power, finally, to decide without restrictions, I wish to be informed, where are the committee to stop their inquiries? In States where the Electors are chosen by a general vote, or by districts, and where thousands of voters may ballot for a candidate, are the committee to examine into the return of every Elector, and into the qualifications of every vote? Or in others, where the Electors are chosen by the Legislature, are the committee to inquire into the legality of the return of every member of a State Legislature? Or how is it possible for this committee, or for Congress itself, either to have the time or means to make these inquiries, so as to be able to determine with exactness, or with justice to the parties?

But let us suppose that this committee, or even Congress itself, are determined to exercise this power, and should receive memorials and petitions, and collect testimony, and should be of opinion that one or more Electors of a State have not been duly elected, or are not constitutionally qualified; how are Congress then to proceed to find how these unduly or disqualified Electors voted, particularly if they should belong to a State having a number of Electors? As the Constitution directs they are to vote by ballot, the votes of the election ought to be secret. You have no right to require from an Elector how he voted, nor will you be able to know for whom he did vote, particularly if in the return from that State different candidates have been voted for. In this dilemma, I ask, what is to be done? You cannot discover for whom this disqualified or improperly returned Elector voted; and you would not certainly, in a State having sixteen or twenty-one votes, reject the whole, because one or two illegal votes have been supposed to be given.

From the most attentive consideration of this part of the subject, I believe no satisfactory answer can ever be given to the question I ask; that the objection I have stated can never be removed; that if there was no other good reason for supposing the Constitution did not intend to give to Congress any control or examination into the election, this of itself is sufficient, and proves the wisdom of that instrument's vesting it exclusively in the State Legislatures.

Another serious objection to this bill, or to the exercise of this power, either by Congress or a committee, is, that the Executives of the States and the State Legislatures are equally bound with Congress, by oath, "to support the Constitution;" it is an oath they all take at the commencement of each new Legislature. If therefore a number of the Legislatures of the most important States in the Union should be of opinion, with me, that this is a right exclusively vested in them by the Constitution, which they have solemnly sworn to preserve, and that consistently with their oaths they cannot quietly acquiesce in a diminution of it, or

suffer any invasion by a body having no Constitutional authority to interfere, might not such sentiments, firmly expressed and adhered to, unnecessarily give rise to a conflict of opinions, at least, that had better always be avoided? We know the force of religious opinions in this country, and how tenaciously oaths are in general adhered to; and surely, nothing but some strong and pressing necessity could ever excuse, if anything can excuse, an interference on so delicate a subject. And where, sir, is this necessity at present? Have not the States, and their Legislatives and Executives, always punctually and faithfully executed every duty the Constitution required of them? Have you any documents before you to prove some of them mean to misbehave, or any proofs to justify your adopting a measure of this kind? Are the opinions of individuals, or perhaps unfounded anonymous publications, to precipitate you into differences with the States, at a time when harmony is so essential to our general welfare? Do you recollect the contests that are now prevailing in the Old World on the subject of Government and its principles, and how important it is to us to avoid a clashing of opinions between Congress and the States on the subject of their reserved rights, at a time when not only this but every Constitutional principle should be touched with the greatest delicacy? We should recollect that it is also highly necessary at this time to impress our citizens with the most favorable opinions of the integrity of the Government, particularly as it respects the election of their President; they now know that chosen by Electors, elected under the exclusive direction of the State Legislatures, within only a short time of the election, and voting on one day throughout the Union, it is impossible for foreign or domestic gold, or factions, to influence the election; as it stands now, corruption must ever keep at a distance; it can never assail your Electors, or sully the purity of their choice. Give, however, the power of deciding on their votes, and of rejecting or receiving them, as they please, to thirteen men, all of the same political description, all wishing the same men, sitting with closed doors, and whose deliberations are removed from the public eye, and you will find it difficult to avoid just suspicion; your jealous citizens will remember that secrecy always accompanies corruption, and that even if this committee were to act in the most honorable manner, yet still that the friends of the candidate whose votes have been refused, if such refusal cost him his election, will never cease to suspect that all has not been fair, and that some improper reason had influenced the decision. I could urge a variety of other objections against this bill; but I am afraid I have already too long trespassed on your patience. I will therefore here conclude my remarks, with entreating the House not to destroy the beautiful harmony and safety which the Constitution at present insures, both to the States and the General Government; a safety which must depend on a strict adherence to its principles, and to the judicious distribution of its authorities; that while the States are wisely prohibited from interfering with those really national powers which can alone be safely exercised by the General Government, for the purposes of national defence and protection, that Government is in its turn checked from overstepping the boundaries of the Constitution, by the reserved powers to the States and the people, and by their exclusive rights of election, as I have fully stated to you. Instead of injuring, let it be our care to preserve unimpaired this valuable system. I should be sorry that any part of the Government should be chargeable with a wish to violate it; but feeling, as we must always do, a particular affection for that branch of it to which we belong, I should be extremely sorry indeed that this bill should pass the Senate.

Let us remember that the election is intended by the Constitution, once in every four years, as an appeal to the people for their opinions respecting the preceding Administration. If the conduct of the Executive has been wise, disinterested, and impartial, there can be no doubt that the good sense and virtue of our citizens will continue him in office, or, if he wishes to decline, elect a successor of similar principles. On the contrary, if he has not proved himself able and judicious, and the measures of his Administration do not accord with the public sentiment, they will have an opportunity, mildly and gently, through the force of the elective principle, to remove him, and place in his stead some man of different political conduct and opinions. This appeal, however, can never be fairly and independently made to the people, if Congress are to have the smallest control or revision of the election, because, the majority of them must always be intimately connected with the measures of Administration. The President can never proceed without the support of Congress; their approbation must sanction all the laws and all the supplies which his views have occasioned; and the people, in expressing by the election their sentiments of the conduct of the Executive, must, at the same time, necessarily give an opinion on that of the Legislature. This is another reason for rejecting the bill; and as it appears, since the 7th section has been struck out, several gentlemen have altered their opinions, I am not without hopes, when the question is taken, we shall find ourselves in a majority, that it will not pass, and that the exclusive rights of the State Legislatures will be preserved inviolate.

When Mr. P. had concluded, the question was taken on the passage of the bill, and it was determined in the affirmative — yeas 16 nays 12, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Lloyd, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Livermore, Marshall, Mason, Nicholas, and Pinckney.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act prescribing the mode of deciding disputed elections of President and Vice President of the United States."

MONDAY, March 31.

Mr. LANGDON, from the committee to whom was referred the bill authorizing Seth Harding to locate certain lands in the Territory of the United States Northwest of the river Ohio, reported amendments; which were read.

Ordered, That they lie for consideration.

Mr. TRACY, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to discharge Robert Sturgeon from his imprisonment," again reported the amendment; which was read and adopted.

Resolved, That this bill pass as amended.

Mr. TRACY, from the committee to whom was referred the bill for the relief of Ithamar Canfield, reported the bill with an amendment.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to continue in force 'An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes, as therein mentioned."

Ordered, That this bill pass to the third reading.

Mr. TRACY, from the committee to whom was referred the bill further to amend the act, entitled "An act to establish the Judicial Courts of the United States," reported the bill without amendment.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act to prevent the interference of any military force in certain elections."

Ordered, That the further consideration thereof be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to extend the privilege of franking letters and packages to Martha Washington;" a bill, entitled "An act fixing the rank and pay of the commanding officer of the corps of marines;" and a bill, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments;" in which they desire the concurrence of the Senate.

The bills were read and ordered to the second reading.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act for the relief of Thomas Arnold;" and on the question to agree to the third reading of this bill, it passed in the negative.

So the bill was lost.

The Senate took into consideration the report of the committee to whom was referred the Message of the President of the United States of the 8th day of January last, together with the report of the Director of the Mint, of the first of the said month, and, after debate,

Ordered, That the further consideration of the said reports be postponed until Wednesday next.

TUESDAY, April 1.

The bill, sent from the House of Representatives entitled "An act to extend the privilege of franking letters and packages to Martha Washington," was read the second time; and, by unanimous consent, it was read the third time and passed.

The bill, sent from the House of Representatives, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments," was read the second time and referred to Messrs. BROWN, ROSS, and GUNN, to consider and report thereon to the Senate.

The bill, sent from the House of Representatives, entitled "An act fixing the rank and pay of the commanding officer of the corps of marines," was read the second time and referred to Messrs. GUNN, DAYTON, and BINGHAM, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee to the bill authorizing Seth Harding to locate certain lands in the Territory of the United States Northwest of the river Ohio.

Ordered, That the further consideration thereof be postponed until Wednesday, the 9th inst.

A message from the House of Representatives, informed the Senate that the House have passed a "Resolution respecting the copper mines on the south side of Lake Superior," in which they desire the concurrence of the Senate.

The bill for the relief of Ithamar Canfield was read the third time and passed.

The bill, sent from the House of Representatives, entitled "An act to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for the purposes therein mentioned," was read the third time; and, being amended,

Ordered, That the further consideration thereof be postponed.

Ordered, That the Secretary of the Treasury be directed to lay before the Senate the amount of duty collected upon salt imported into the States of the Union, severally and annually, from 1793 to 1798, both inclusively; and, also, the amount of allowances made to fishing vessels, and drawbacks allowed to the exportation of salted provisions and pickled fish, in those States, annually, during that period.

Mr. MASON, notified the Senate that he would, to-morrow, ask leave to bring in a bill to amend the act, entitled "An act for the better organizing of the troops of the United States, and for other purposes."

WEDNESDAY, April 2.

Mr. BINGHAM, from the managers at the conference on the amendments to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage," made report.

Mr. GOODHUE, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act for the relief of John Collet," reported the bill without amendment.

Agreeably to the order of the day, the Senate resumed the consideration of the report of the committee to whom was referred the Message of the President of the United States of the 8th of January last, together with the report of the Director of the Mint of the first of the said month; and, after debate, it was ordered that the further consideration thereof be postponed.

Ordered, That a committee be appointed to examine the Mint Establishment of the United States, and the operation thereof, and report to the Senate what reform may, in their opinion, be requisite in the same, and whether it will be proper to remove the Mint to the city of Washington; with liberty to report by bill or otherwise; and that Messrs. HILLHOUSE, GOODHUE, and LIVERMORE, be the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river," in which they desire the concurrence of the Senate. They recede from their disagreement to the amendments of the Senate to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage," and agree thereto, with an amendment to their second amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendment to the bill last mentioned.

Resolved, That they do concur therein.

The bill first mentioned in the message was read and ordered to the second reading.

Agreeably to notice given yesterday, Mr. MASON asked leave to bring in a bill to amend the act, entitled "An act for the better organizing the troops of the United States, and for other purposes;" and, on the question to give leave, it passed in the negative.

Mr. TRACY, from the committee to whom was referred the bill, sent from the House of Representatives, entitled "An act to establish a general stamp office," reported the bill with amendments; which were read.

Ordered, That they lie for consideration.

Mr. MASON notified the Senate that he should, to-morrow, ask leave to bring in a bill supplementary to the act to suspend part of an act, entitled "An act to augment the Army of the United States, and for other purposes."

THURSDAY, April 3.

The bill, sent from the House of Representatives, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river," was read the second time and referred to Messrs. ROSS, BROWN, and MARSHALL, to consider and report thereon to the Senate.

Mr. GREENE, from the committee to whom was referred the bill, sent from the House of Representatives entitled "An act for the relief of the Corporation of Rhode Island College," reported the bill without amendment.

The Senate resumed the second reading of the bill, sent from the House of Representatives, entitled "An act respecting the Mint."

Ordered, That it pass to the third reading.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act to establish a general stamp office;" and, having agreed thereto in part,

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill, further to amend the act, entitled "An act establishing the Judicial Courts of the United States."

On motion to postpone the further consideration thereof until the first Monday in December next, it passed in the negative—yeas 2, nays 23, as follows:

YEAS—Messrs. Livermore and Read.

NAYS—Messrs. Anderson, Bloodworth, Brown, Chipman, Cocke, Dayton, Dexter, Foster, Franklin, Goodhue, Gunn, Hillhouse, Langdon, Latimer, Lloyd, Marshall, Mason, Nicholas, Paine, Pinckney, Ross, Tracy, and Wells.

On the question to agree to the third reading of this bill, it passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Gunn, Langdon, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Latimer, Lloyd, Paine, Read, Ross, Tracy, and Wells.

So the bill was lost.

The VICE PRESIDENT communicated a report from the Secretary of the Treasury, agreeably to the order of first instant, stating the drawbacks allowed on salt; which was read.

Ordered, That it lie on the table.

Agreeably to notice given yesterday, Mr. MASON asked leave to bring in a bill supplementary to the act to suspend part of an act, entitled "An act to augment the Army of the United States, and for other purposes."

FRIDAY, April 4.

Agreeably to the order of the day, the resolution of the House of Representatives, for adjournment, on the first Monday in May next, was considered,

Ordered, That the further consideration thereof be postponed until Friday the 18th instant.

The Senate resumed the consideration of the motion made yesterday, that leave be given to bring in a bill supplementary to the act to suspend part of an act, entitled "An act to augment the Army of the United States, and for other purposes;" and on the question to agree to this motion, it passed in the affirmative—yeas 18, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Dexter, Foster, Franklin, Greene, Gunn, Langdon, Livermore, Marshall, Mason, Nicholas, Paine, and Pinckney.

NAYS—Messrs. Chipman, Dayton, Hillhouse, Latimer, Laurance. Lloyd, Read, Ross, and Tracy.

So the bill was read. and ordered to the second reading.

The bill. sent from the House of Representatives. entitled "An act to establish a general stamp office," was read the third time.

Resolved. That this bill pass as amended.

The Senate resumed the second reading of the bill "to prevent the interference of any military force in certain elections;" and, having agreed to an amendment, on the question to agree to the third reading of this bill. it passed in the negative—yeas 12, nays 17. as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Foster, Franklin, Langdon, Marshall. Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Chipman, Dayton, Dexter, Goodhue, Greene, Gunn, Hillhouse, Latimer, Laurance, Livermore, Lloyd, Paine, Read, Ross, Tracy, and Wells.

So the bill was lost.

A message from the House of Representatives informed the Senate that the House have passed a bill "for the better government of the Navy of the United States;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read. and ordered to the second reading.

Mr. NICHOLAS. from the committee to whom was referred the bill "to alter and to establish sundry post roads," reported amendments.

Ordered, That they lie for consideration.

MONDAY. April 7.

The bill "for the better government of the Navy of the United States" was read the second time and referred to Messrs. BINGHAM. GOODHUE. and LANGDON, to consider and report thereon to the Senate.

The bill supplementary to the act to suspend part of an act. entitled "An act to augment the Army of the United States," was read the second time and referred to Messrs. MASON. GUNN. and TRACY. to consider and report thereon.

Mr. ROSS. from the committee to whom was referred the bill "to alter the form of certain oaths and affirmations," reported the bill without amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill "to make further provision for the removal and accommodation of the Government of the United States;" a bill "to repeal the act laying duties on mills and implements employed in the manufacture of snuff;" and a bill "to authorize the defence of the merchant vessels of the United States;" in which they desire the concurrence of the Senate.

The bills were read and ordered to the second reading.

The Senate resumed the consideration of the bill, entitled "An act to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed thereiñ. and for other purposes, as therein mentioned."

Resolved, That this bill pass with an amendment.

Mr. TRACY, from the committee to whom was referred. on the 24th December last. the petition of Thomas Burling and others, inhabitants of certain lands on the borders of the Mississippi. made report; which was read.

Ordered. That it lie for consideration.

Mr. TRACY. from the committee to whom was also referred a letter signed John Henderson. per order. directed to Winthrop Sargent. Governor. together with an extract of a letter from said Governor Sargent to the Secretary of State. made report; which was read.

Ordered. That it lie for consideration.

Mr. LAURANCE. from the committee to whom was referred. on the 28th of March last. sundry petitions respecting those articles. reported a bill permitting the exportation of some gunpowder; also, a number of muskets and cutlasses; and the bill was read and ordered to the second reading.

The Senate resumed the second reading of the bill for the relief of John Collet.

On motion. to agree to the third reading of this bill. it passed in the negative; so the bill was lost.

The Senate considered the amendments reported by the committee to the bill "establishing sundry post roads;" and. having in part agreed thereto. then adjourned

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TUESDAY. April 8.

The bill for the defence of the merchant vessels of the United States was read the second time and referred to Messrs. GOODHUE. NICHOLAS. and TRACY, to consider and report thereon to the Senate.

The bill "for the removal and accommodation of the Government of the United States" was read the second time and referred to Messrs. ROSS. LLOYD. and HILLHOUSE. to consider and report thereon to the Senate.

The bill to repeal the "Act laying duties on mills and implements employed in the manufacture of snuff." was read the second time. and referred to Messrs. BINGHAM, LIVERMORE. and LAURANCE, to consider and report thereon to to the Senate.

The bill permitting the exportation of some gunpowder, also. a number of muskets and cutlasses, was read the second time and ordered to lie on the table.

Mr. CHIPMAN, from the committee to whom was referred on the 12th March last. to inquire what amendments are necessary in the act to establish the Judicial Courts of the United States. reported a bill on the subject; which was read and ordered to the second reading.

The Senate took into consideration the report of the committee on the petition of Thomas Burling and others. inhabitants of the Mississippi Territory; and the report was adopted. as follows:

"That the petitioners solicit an act of Congress for the confirmation of grants of land made by the Spanish Government. prior to the treaty of April, 1796; and likewise for confirming the claims for lands to those who were occupants before that time.

"They further request, in favor of those who have settled on vacant lands since the treaty with Spain, a priority of right to lands in that Territory; and a grant of head rights to all who are now, or may hereafter become, settlers.

"By the act of Congress for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory, a method is provided to settle all interfereing claims to said lands, which settlement has not yet been effected. It is also declared, by said act, that the rights of the State of Georgia and of any other persons claiming in that Territory, shall remain unimpaired by said act.

"The committee are of opinion it will be improper for the Legislature of the Union to do anything upon the subject of said petition, while the interfering claims to the lands in said Territory remain unsettled. They therefore report that the prayer of said petition is unreasonable."

The Senate took into consideration the report of the same committee, on the letter of John Henderson to Winthrop Sargent, and the extract of a letter from Governor Sargent; and the report was adopted. as follows:

That the inhabitants of the Mississippi Territory, request an appropriation of lands in the Territory, by Congress, for the support of "clergymen and seminaries of learning, and such like purposes," in the same manner that appropriations have been made in the Northwestern Territory.

The committee are of opinion that the unsettled condition of claims to lands in the Mississippi Territory renders it improper at this time to make appropriations of lands for any purposes.

They therefore report that the request of said inhabitants is unreasonable.

A message from the House of Representatives informed the Senate that the House agree to the first amendment of the Senate to the bill to establish a general stamp office, and disagree to the other amendments; desire a conference on the subject. and have appointed managers on their part.

The Senate took into consideration the resolution of the House of Representatives last mentioned; and agreed to the conference, and that Messrs. TRACY and CHIPMAN be the managers on their part.

The Senate resumed the second reading of the bill to extend the privilege of obtaining patents for useful discoveries and inventions; and. after progress,

Ordered. That the further consideration thereof be postponed.

Mr. GUNN, from the committee to whom was referred the bill to fix the compensation of the Paymaster General. and assistants to the Adjutant General. reported amendments.

Ordered, That they lie for consideration.

The Senate resumed the consideration of the amendments reported by the committee to the bill to alter and establish sundry post roads; and, having agreed thereto in part, and adopted other amendments. the bill was ordered to the third reading. as amended.

The Senate took into consideration the report of the committee to whom was referred. on the 11th of December. the petition of Joseph Russell, jr., and others.

Ordered. That the further consideration thereof, at this time, be postponed.

The Senate resumed the second reading of the bill. entitled "An act to alter the form of certain oaths and affirmations directed to be taken by the act, entitled 'An act providing for the second census or enumeration of the inhabitants of the United States."

On motion. it was agreed, by unanimous consent, to dispense with the rule, and that this bill be now read the third time.

Resolved. That this bill pass.

WEDNESDAY. April 9.

Mr. TRACY presented the petition of Benjamin G. Bulcke. stating that he hath sustained injury by the interception of his letters in the Post Office, and praying redress; and the petition was read.

Ordered, That it lie on the table.

The bill. entitled "An act to alter and establish sundry post roads," was read the third time.

Resolved, That this bill pass with amendments.

Mr. GUNN, from the committee to whom was referred the bill providing for an amicable settlement of limits with the State of Georgia, reported amendments; which were read.

Ordered, That they lie for consideration.

The Senate resumed the consideration of the amendments reported by the committee to the bill to extend the privileges. of obtaining patents for useful discoveries and inventions to certain persons therein mentioned; and. having adopted the amendments.

Ordered. That this bill pass to the third reading as amended.

The Senate resumed the consideration of the report of the committee on the petition of Joseph Russell and others.

On the question to agree to the report, it passed in the affirmative—yeas 22, nays 4, as follows:

YEAS — Messrs. Anderson, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, Foster, Franklin, Goodhue, Gunn, Hillhouse, Langdon, Latimer, Livermore, Lloyd, Marshall, Nicholas, Paine, Pinckney, Ross, and Tracy.

NAYS—Messrs, Dexter, Greene, Laurance, and Read.

So the report was adopted, as follows:

That the petitioners, as holders of certain bills of credit, (commonly called new emission bills,) emitted agreeably to a resolution of Congress of the 18th of March, 1780, pray of the United States payment of the interest on those bills; the parts of that resolution illustrating the principles upon which they were emitted, are as follows:

"*Resolved,* That the several States continue to bring into the Continental Treasury, by taxes or otherwise, their full quotas of fifteen million dollars monthly, as assigned them by the resolution of the 7th of October,

1779; a clause in the resolution of the 23d of February last, for relinquishing two-thirds of the quotas, to the contrary notwithstanding; and that the States be further called on to make provision for continuing to bring into the said treasury their like quotas monthly, to the month of April, one thousand seven hundred and eighty-one, inclusive.

"That silver and gold be receivable in payment of the said quotas, at the rate of one Spanish milled dollar, in lieu of forty dollars of the bills now in circulation.

"That the said bills as paid in, except for the months of January and February past, which may be necessary for the discharge of past contracts, be not re-issued but destroyed.

"That as fast as the said bills shall be brought in to be destroyed and funds shall be established, as hereafter mentioned, for other bills, other bills be issued, not to exceed, on account, one twentieth part of the nominal sum of the bills brought in to be destroyed.

"That the bills which shall be issued be redeemable in specie, within six years after the present, and bear an interest at the rate of five per centum per annum, to be paid also in specie, at the redemption of the bills, or at the election of the holder, annually, at the respective Contineptal loan offices, in sterling bills of exchange, drawn by the United States on their Commissioners in Europe, at four shillings and six pence sterling per dollar.

"That the said new bills issue on the funds of individual States for that purpose established, and be signed by persons appointed by them, and that the faith of the United States be also pledged for the payment of said bills, in case any State on whose funds they shall be emitted, should, by the events of war, be rendered incapable to redeem them; which undertaking of the United States, and that of drawing bills of exchange for payment of interest as aforesaid, shall be endorsed on the bills to be emitted, and signed by a commissioner to be appointed by Congress for that purpose.

"That the face of the bills to be emitted read as follows, viz:

"The possessor of this bill shall be paid —— Spanish milled dollars, by the thirty-first day of December, 1786, with interest in like money, at the rate of five per cent. per annum, by the State of ——, according to an act of the legislature of the said State, of the —— day of ——, 1780.

"And the endorsement shall be as follows, viz:

"The United States insure the payment of the within bill, and will draw bills of exchange for the interest annually, if demanded, according to a resolution of Congress of the 18th day of March, 1780.

"That the said new bills shall be struck under the direction of the Board of Treasury, in due proportion for each State, according to the said monthly quotas, and lodged in the Continental loan offices in the respective States, where the Commissioner to be appointed by Congress, in conjunction with such persons as the respective States appoint, shall attend the signing of said bills, which shall be completed no faster than in the aforesaid proportion of one to twenty of the other bills brought in to be destroyed, and which shall be lodged for that purpose in the said loan offices.

"That, as the said new bills are signed and completed, the States, respectively, on whose funds they issue, receive six-tenths of them, and that the remainder be subject to the orders of the United States, and credited to the States on whose funds they are issued, the accounts whereof shall be adjusted agreeably to the resolution of the 6th of October, 1779.

"That whenever interest on the bills to be emitted shall be paid prior to their redemption, such bills shall be thereupon exchanged for others of the like tenor, to bear date from the expiration of the year for which such interest is paid.

"That the several States be called on to provide funds for their quotas of the said new bills, to be so productive as to sink or redeem one-sixth part of them annually after the first day of January next."

Conformably to which all the States, excepting North Carolina, South Carolina, and Georgia, then invaded, were furnished with their several proportions of bills for emission, and, excepting Connecticut, and Delaware, did issue various sums of them, which passed into circulation at a considerable discount fiom the nominal value, and which in circulation continued to depreciate.

Provision for redemption of bills of the above description, has been made by the States which issued them at different periods and rates of value: but those provisions seem not to have given satisfaction to all the creditors, as, under the act of Congress, passed February 12th, 1793, entitled "An act relative to claims against the United States not barred by any act of limitation, and which have not been already adjusted," claims were lodged against the United States for payment of bills issued by the individual States as aforesaid, to

amount of dollars	-	-	-	90,642
Since withdrawn	-	-	-	58,222
Remaining.	-	-	-	32,420

Upon any of which interest has not been paid by the United States, nor is proof shewn that demand for it was made, agreeably to said resolution. Such of the petitioners whose names are entered as claimants under said act of February 12th, 1793, appear to be holders of bills issued chiefly by the States of New Hampshire, Massachusetts, and Rhode Island.

The committee are informed that New Hampshire has provided for the redemption of those issued by that State, at the rate of one silver dollar for five dollars of their nominal amount.

Massachusetts, by the act funding the debt of that Commonwealth, passed February 1st, 1794, provided for receiving on loan new emission bills of that State, "at the rate of one dollar silver for four dollars of those bills, calculating the interest due on their face up to July 1st, 1794, and issuing a certificate for the principal and interest at five per cent., payable semi-annually."

Rhode Island, by act of Assembly, passed July (second session) 1780, providing for emitting bills conformably to the above resolution, ordered an annual tax for six years, as a fund for their redemption: a considerable sum of them has been paid into that State's treasury by tax; for those outstanding, no further provision has been made.

Upon this general view of the subject which presents itself, in considering the description of debt upon which interest is demanded, the committee are of opinion that the United States cannot be holden to make payment of interest on said bills, when there has not been demand made for such payment, agreeably to the terms of said resolution of Congress, and the endorsement on them.

The committee do not decide what would be the consequence, had such demand for payment of interest been proved; that subject not having been committed to them; but no such demand being proved, they are of opinion that the prayer of the petitions committed to them is unreasonable.

THURSDAY, April. 10.

Mr. GUNN, from the committee to whom was referred the bill "fixing the rank and pay of the commanding officer of the corps of marines," reported it without amendment.

The Senate resumed the consideration of the amendments reported by the committee to the bill authorizing Seth Harding to locate certain lands; which were in part agreed to; and,

Ordered. That the original committee on this bill be revived; and that the bill be recommitted to them. further to consider and report thereon.

The bill. sent from the House of Representatives, entitled "An act to extend the privileges of obtaining patents for useful discoveries and inventions to certain persons therein mentioned; and to enlarge and define the penalties for violating the rights of patentees." was read the third time.

Resolved, That this bill pass with amendments.

Ordered. That the petition of Benjamin G. Bulcke be referred to Messrs. TRACY, BLOODWORTH, and FOSTER, to consider and report thereon.

The Senate considered the amendments reported by the committee to the bill for an amicable settlement of limits with the State of Georgia.

On motion to strike out from the 10th section. reported as an amendment, these words: "*Provided*, That the said Commissioners shall not contract for the payment of any money from the Treasury of the United States. other than the proceeds of the same lands:" it passed in the negative—yeas 3. nays 22. as follows:

YEAS— Messrs. Baldwin, Gunn, and Read.

NAYS—Messrs. Anderson, Bingham, Bloodworth, Browne, Chipman, Cocke, Dexter, Foster, Franklin, Greene, Hillhouse, Langdon, Latimer, Laurance, Livermore, Lloyd, Marshall, Nicholas, Paine, Pinckney, Ross, and Tracy.

And having agreed to the amendments reported,

Ordered, That this bill pass to the third reading as amended.

Mr. LANGDON, from the committee to whom was recommitted the bill. authorizing Seth Harding to locate certain lands. reported amendments; which were adopted.

Ordered. That this bill pass to the third reading as amended.

Mr. PAINE. form the committee to whom was referred the petition of Elijah Brainard. made report.

On motion it was agreed that this report be adopted as follows:

That the petitioner asks pecuniary relief for a wound he states to have received in the Revolutionary war.

Although there are some circumstances attending this claim which are peculiar to itself, and would plead in the petitioner's favor, yet your committee do not see sufficient in it to distinguish it from other claims which are barred by the statute of limitations; your committee are therefore of opinion that the petitioner ought to have leave to withdraw his petition.

SATURDAY, April 12.

Mr. GOODHUE, from the committee to whom was referred the bill authorizing the defence of the merchant vessels of the United States. reported amendments. which were read.

Ordered, That they lie for consideration.

The Senate resumed the consideration of the bill to enable the President of the United States to borrow money for the public service; and agreed that the consideration thereof be postponed.

The Senate resumed the second reading of the bill for the relief of the Corporation of Rhode Island College.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill. to authorize the President of the United States to accept for the United States a cession of the Western Reserve of Connecticut, in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The bill, supplemental to the act for an amicable settlement of limits with the State of Georgia was read the third time.

On motion further to amend the bill. it was agreed. that the consideration thereof be postponed until Wednesday next.

Mr. HILLHOUSE. from the committee to whom was referred the bill supplemental to the act to regulate trade and intercourse with the Indian tribes, reported amendments; which were read.

Ordered. That they lie for consideration.

The bill authorizing Seth Harding to locate certain lands was read the third time.

Resolved. That this bill pass. that it be engrossed. and that the title thereof be, "An act authorizing Seth Harding to locate certain lands in the Territory of the United States Northwest of the river Ohio."

Mr. ROSS. from the the committee to whom was referred the bill to make further provision for the removal and accommodation of the Government of the United States. reported amendments; which were read.

Ordered. That they lie for consideration.

The Senate considered the report of the committee on the bill fixing the rank and pay of the commanding officer of the corps of marines.

Ordered. That the original committee on this bill be received; and that the bill be recommitted to them. further to consider and report thereon.

MONDAY. April 14.

The bill authorizing the President of the United States to accept. for the United States, a cession of the Western Reserve of Connecticut, was read the second time. and referred to Messrs. ROSS, LAURANCE, TRACY, READ, and MARSHALL, to consider and report thereon.

The bill, sent from the House of Representatives, entitled "An act for the relief of the Corporation of Rhode Island College," was read the third time and passed.

The second reading of the bill to enable the

President of the United States to borrow money for the public service, was resumed, and the bill was ordered to the third reading.

The amendments reported by the committee to the bill supplementary to the act to regulate trade and intercourse with the Indian tribes, were considered and adopted.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill making appropriations for the support of Government for the year 1800; a bill to make appropriations for the Navy of the United States during the year 1800; a bill to authorize the sale and conveyance of lands in certain cases, by the marshals of the United States; a bill to continue in force "An act prescribing the mode of taking evidence, in cases of contested elections;" and a bill to provide for rebuilding, erecting, and supporting certain light-houses; in which bills they desire the concurrence of the Senate.

The bills were read and ordered to the second reading.

Mr. HILLHOUSE, from the committee to whom the subject was referred, reported a bill in addition to the act prohibiting the slave trade; which was read and ordered to the second reading.

The amendments reported by the committee to the bill for the defence of the merchant vessels of the United States were considered and adopted.

Ordered, That the bill pass to the third reading as amended.

The Senate considered the resolution respecting the copper mines on the south side of Lake Superior.

Resolved, That they do concur therein.

The bill permitting the exportation of some gunpowder, muskets, and cutlasses, was read the second time and ordered to the third reading.

The bill to amend the act establishing the Judicial Courts of the United States was read the second time: and, after debate, the Senate adjourned.

TUESDAY, April 15.

The bill providing for the rebuilding, erection, and support of certain light-houses, was read the second time and referred to Messrs. GOODHUE, HILLHOUSE, and LANGDON, to consider and report thereon.

The bill to continue in force an act prescribing the mode of taking evidence in cases of contested elections was read the second time.

Mr. BINGHAM, from the committee to whom was referred the bill for the better government of the Navy, reported amendments.

The bill to authorize the sale and conveyance of lands by the marshals was read the second time, and referred to Messrs. BROWN, DEXTER, and ROSS, to consider and report thereon.

The bill making appropriations for the support of Government for the year 1800; also, the bill making appropriations for the Navy of the United States, during the year 1800; were severally read the second time, and referred to Messrs. TRACY, BINGHAM, and READ, to consider and report thereon.

The bill in addition to the act prohibiting the slave trade was read the second time.

The bill entitled "An act to continue in force an act, entitled 'An act authorizing the defence of the merchant vessels of the United States against French depredations,'" was read the third time.

Resolved, That this bill pass with an amendment.

The bill entitled "An act supplementary to the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read the third time.

Resolved, That this bill pass with amendments.

The bill to enable the President of the United States to borrow money for the public service was read the third time.

Ordered, That it be recommitted to the committee, this day appointed, on the bills making appropriations for the year 1800, to report thereon.

A message from the House of Representatives informed the Senate that they have passed a bill in addition to the act for the punishment of certain crimes, in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The bill permitting the exportation of some gunpowder, muskets, and cutlasses, was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act permitting the exportation of certain parcels of gunpowder, muskets, and cutlasses."

Mr. TRACY, from the managers at the conference on the bill to establish a general stamp office, made report; whereupon,

Resolved, That the Senate insist on some, and recede from other amendments to the said bill, as reported.

The report of the committee on the bill to fix the compensation of the Paymaster General, and assistants to the Adjutant General, was considered and adopted.

Ordered, That this bill pass to the third reading as amended.

The bill making further provision for the removal and accommodation of the Government of the United States, was considered: and, after progress, the Senate adjourned.

WEDNESDAY, April 16.

The bill in addition to the act for the punishment of certain crimes was read the second time, and referred to Messrs. DEXTER, READ, and DAYTON, to consider and report thereon.

The second reading of the bill to prescribe the mode of taking evidence in cases of contested elections was resumed.

Ordered, That it pass to a third reading.

The amendments reported by the committee to the bill for the better government of the Navy of the United States were read and adopted.

Ordered, That the bill pass to the third reading as amended.

Mr. GUNN, from the committee on the bill fixing the rank and pay of the commanding officer of the corps of marines, reported an amendment.

The second reading of the bill to amend the act establishing the Judicial Courts of the United States was resumed.

Ordered, That it be recommitted to Messrs. NICHOLAS, DAYTON, and TRACY, further to consider and report thereon.

A message from the House of Representatives informed the Senate that the House so far recede from their disagreement to the amendments of the Senate to the bill to establish a general stamp office, as to agree thereto with amendments; in which they desire the concurrence of the Senate. They have passed a bill for the regulation of the public arsenals and magazines; in which they desire the concurrence of the Senate.

Mr. BROWN, from the committee to whom was referred the bill to divide the Territory of the United States Northwest of the Ohio into two separate governments, reported amendments; which were read.

The Senate took into consideration the resolution of the House of Representatives, on their amendments to the bill establishing a general stamp office.

Resolved, That they so far recede therefrom as to agree to the amendments of the House of Representatives to their amendments.

The bill to fix the compensation of the Paymaster General, and assistants to the Adjutant General, was read the third time.

Ordered, That it be recommitted to Messrs. GUNN, DAYTON, and ANDERSON, to consider and report thereon.

The bill last brought up from the House of Representatives for concurrence was read, and ordered to the second reading.

Mr. MASON notified the Senate that he should, to-morrow, move for leave to bring in a bill to repeal in part the act, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States."

The third reading of the bill providing for an amicable settlement of limits with the State of Georgia was resumed.

On motion, to agree to amend the 10th section reported as an amendment, by adding after the word "reasonable:"

"And also, that the said Commissioners on the part of the United States, or any two of them, after such settlement with the State of Georgia shall be made, be authorized to settle, by compromise, with the parties interested, any claims which are or shall be made by settlers, or any other persons whatsoever, to any parts of the aforesaid lands, which may be relinquished by the State of Georgia. *Provided*, That the settlement with Georgia and the claimants aforesaid shall be made and completed before the 4th day of March, 1803:"

It passed in the affirmative—yeas 19, nays 8, as follows:

YEAS—Messrs. Anderson, Bingham, Chipman, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Langdon, Latimer, Livermore, Lloyd, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Cocke, Franklin, Marshall, Mason, and Nicholas.

Resolved, That this bill pass as amended.

THURSDAY, April 17.

The bill for the regulation of arsenals and magazines was read the second time, and referred to Messrs. TRACY, DAYTON, and ANDERSON, to consider and report thereon.

The Senate considered the amendment reported to the bill fixing the rank and pay of the commanding officer of the corps of marines; which was adopted, and it was agreed that the bill be read the third time as amended.

Mr. GOODHUE from the committee on the bill for rebuilding and supporting certain light-houses, reported the bill without amendment.

The Senate resumed the consideration of the bill, entitled "An act to make further provision for the removal and accommodation of the Government of the United States.

On motion to strike out the first section, agreeably to the report of the committee, it passed in the negative—yeas 8, nays 21, as follows:

YEAS—Messrs Bingham, Brown, Goodhue, Latimer, Laurance, Livermore, Ross, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Chipman, Cocke, Dayton, Dexter, Foster, Franklin, Greene, Gunn, Hillhouse, Langdon, Lloyd, Marshall, Mason, Nicholas, Pinckney, Read, Schureman, and Tracy.

On the question to agree to the third reading of the bill as amended, it passed in the affirmative—yeas 20, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, Dexter, Foster, Franklin, Greene, Gunn, Langdon, Lloyd, Marshall, Mason, Nicholas, Pinckney, Read, and Tracy.

NAYS—Messrs. Bingham, Goodhue, Hillhouse, Latimer, Laurance, Livermore, Ross, Schureman, and Wells.

On the question to agree to the final passage of the bill, it passed in the affirmative—yeas 20, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Chipman, Cocke, Dexter, Foster, Franklin, Greene, Gunn, Langdon, Lloyd, Marshall, Mason, Nicholas, Pinckney, Read, and Tracy.

NAYS—Messrs. Bingham, Brown, Goodhue, Hillhouse, Latimer, Laurance, Livermore, Ross, Schureman, and Wells.

So it was *Resolved*, That the Senate concur in this bill as amended.

The bill entitled "An act to continue in force, for a limited time, the act entitled an act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," was read the third time.

Resolved, That the Senate concur in this bill.

The bill, entitled "An act for the better government of the Navy of the United States," was read the third time.

Resolved, That this bill pass as amended.

The Senate resumed the third reading of the bill, entitled "An act to fix the compensation of the Paymaster General, and assistants to the Adjutant General; and it being further amended,

Resolved, That this bill do pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill making appropriations for the Military Establishment of the United States for the year 1800: also, a bill supplementary to the laws now in force, fixing the compensation of the officers of the Senate and House of Representatives; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and by unanimous consent it was read the second time.

Ordered, That it be referred to the committee appointed the 15th instant, on the bills making appropriations for the support of Government, and for the Navy, for the year 1800, to consider and report thereon.

The bill last mentioned in the message was read and ordered to the second reading.

The VICE PRESIDENT communicated a letter from Samuel Meredith, Treasurer of the United States, with his specie account ending the 31st of December 1799.

The Senate resumed the consideration of the report of the committee to whom was referred the bill to divide the Territory of the United States Northwest of the river Ohio into two separate governments; and having agreed thereto.

Ordered, That this bill pass to the third reading as amended.

FRIDAY, April 18.

The bill supplementary to the laws fixing the compensation of the officers of the Senate and House of Representatives, was read the second time, and referred to Messrs LIVERMORE, LATIMER, and ANDERSON, to consider and report thereon.

Ordered, That the committee appointed the 12th of March last on the bill "to alter and establish sundry post roads," be revived, and that they be instructed to bring in a bill supplementary thereto.

Mr BINGHAM, from the committee on the bill to repeal the act laying duties on mills, and the implements employed in the manufacture of snuff, reported it without amendment.

The second reading of the bill to provide for the rebuilding, erecting, and supporting, certain light-houses, was resumed.

Ordered, That it pass to a third reading.

The bill entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments," was read the third time.

Resolved, That the further consideration of this bill be postponed until Monday next.

Agreeably to the order of the day, the resolution of the House of Representatives, for an adjournment of the two Houses on the first Monday in May next, was considered.

Resolved, That the Senate concur therein, with this amendment: strike out the 1st Monday, and insert the 2d Monday.

The bill, entitled "An act fixing the rank and pay of the commanding officer of the corps of marines," was read the third time.

Resolved, That this bill pass with amendments.

The second reading of the bill to prohibit the carrying on the slave trade from the United States, was resumed.

Ordered, That it pass to a third reading.

Mr. ROSS, from the committee on the bill authorizing the President of the United States to accept a cession of the jurisdiction of the Western Reserve of Connecticut, reported an amendment.

SATURDAY, April 19.

The bill, entitled "An act to repeal the act laying duties on mills, and implements employed in the manufacture of snuff;" also, the bill, entitled "An act to provide for rebuilding the light-house at New London; for the support of a light-house at Clerk's Point; and for the erection and support of a light-house at Wigwam Point, and for other purposes;" were severally read the third time and passed.

The bill to prohibit the carrying on the slave trade from the United States was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act, in addition to the act entitled 'An act to prohibit the carrying on the slave trade from the United States to any foreign place or country.'"

Mr. DEXTER, from the committee on the bill for the punishment of certain crimes against the United States, reported it without amendment.

Ordered, That the bill pass to a third reading.

Mr. ROSS, from the committee on the bill providing for the sale of the lands in the Territory Northwest of the Ohio, reported amendments.

Ordered, That Mr. Ross be added to the committee, appointed the 28th of February last, on the subject of unappropriated lands claimed by the United States in the State of North Carolina.

MONDAY, April 21.

The bill, entitled "An act to continue in force the act, in addition to the act for the punishment of certain crimes against the United States," was read the third time and passed.

The bill, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments," was read the third time, amended, and passed.

A message from the House of Representatives informed the Senate that they have passed a bill to continue the duty on salt, in which they desire the concurrence of the Senate.

The bill last mentioned was read and ordered to the second reading.

The Senate took into consideration the amendments to the bill for the sale of lands northwest of the Ohio; and having agreed thereto,

Ordered, That this bill pass to the third reading as amended.

The bill entitled "An act respecting the Mint," was read the third time and passed.

TUESDAY, April 22.

The bill laying additional duties on salt was read the second time, and referred to Messrs. BROWN, GOODHUE, and ANDERSON, to consider and report thereon.

Mr. TRACY, from the committee on the petition of Benjamin G. Bulcke, reported that the prayer thereof is unreasonable.

Agreeably to the order of the day, the Senate took into consideration the amendment to the bill to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut; and agreed thereto.

On motion, to agree to the third reading of this bill, as amended, it passed in the affirmative—yeas 15, nays 10, as follows:

YEAS—Messrs. Anderson, Cocke, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Livermore, Marshall, Read, Schureman, Tracy, and Wells.

NAYS — Messrs. Baldwin, Bingham, Bloodworth, Brown, Franklin, Latimer, Laurance, Mason, Nicholas, and Ross.

Mr. LIVERMORE, from the committee on the bill fixing the compensations of the officers of the Senate and House of Representatives, reported amendments; which were read.

The bill, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river,'" was read the third time, and passed with amendments.

WEDNESDAY, April 23.

The bill to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut, was read the third time.

On motion, to amend section 1st, line 2d, after the word "that," to strike out to the word "to," in third line, and insert:

"It shall be lawful for the Attorney General of the United States, with such agent or attorney as the State of Connecticut may appoint for that purpose, to institute a suit, or make up an issue, in the Supreme Court of the United States, to try and decide the title of the said State of Connecticut to that tract of land commonly called the Western Reserve of Connecticut. And should the decision of the said Court be in favor of the claim of the said State of Connecticut, that then the President of the United States shall be authorized:"

It passed in the negative—yeas 10, nays 15, as follows:

YEAS—Messrs. Baldwin, Bloodworth, Brown, Franklin, Langdon, Laurance, Mason, Nicholas, Ross, and Schureman.

NAYS—Messrs. Anderson, Cocke, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Latimer, Livermore, Marshall, Read, Tracy, and Wells.

And the question on the final passage of the bill as amended, was determined in the affirmative—yeas 15, nays 10, as follows:

YEAS—Messrs. Anderson, Cocke, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Livermore, Marshall, Read, Schureman, Tracy, and Wells.

NAYS—Messrs. Baldwin, Bloodworth, Brown, Franklin, Langdon, Latimer, Laurance, Mason, Nicholas, and Ross.

A message from the House of Representatives informed the Senate that the House have passed a bill to establish the district of Kennebunk, and other places therein mentioned; also, the bill for equalising the valuations of unseated lands; in which they desire the concurrence of the Senate.

Mr. MASON, from the committee to whom was referred the bill supplementary to the act to suspend part of the act providing for the augmentation of the Army, reported an amendment; which was read.

The bills last brought up for concurrence were read, and it was agreed that they be severally read the second time.

The Senate took into consideration the amendments reported by the committee to the bill fixing the compensations of the officers of the Senate and House of Representatives; and, having agreed thereto,

Ordered, That the bill pass to the third reading as amended.

THURSDAY, April 24.

The bill for equalising the valuations of unseated lands was read the second time and referred to Messrs. LAURANCE, LIVERMORE, and BROWN, to consider and report thereon.

The bill to establish the district of Kennebunk, and other places therein mentioned, was read the second time, and referred to Messrs. GOODHUE, NICHOLAS, and HILLHOUSE, to consider and report thereon.

The bill, entitled "An act supplementary to the laws now in force fixing the compensations of the officers of the Senate and House of Representatives, was read the third time, and passed with amendments.

The Senate considered the report of the committee on the bill supplementary to the act to suspend part of the act, entitled "An act to augment the Army of the United States, and for other purposes," which is as follows: Line 2, after the word "that," strike out to the end of the bill, and insert:

"It shall be lawful for the President of the United States to suspend any further military appointments under the act to augment the Army of the United States, and for other purposes, and under the ninth section of the act for the better organizing of the troops of the United States, and for other purposes, according to his discretion, having reference to economy and the good of the service."

On motion to adopt the report, a division was called for, and the question was taken on striking out: which passed in the affirmative—yeas 14, nays 11, as follows:

YEAS—Messrs. Bingham, Dexter, Foster, Goodhue,

Greene, Gunn, Hillhouse, Latimer, Laurance, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Langdon, Livermore, Marshall, Mason, and Nicholas.

And the amendment was adopted, and the bill ordered to be read a third time as amended.

Mr. NICHOLAS, from the committee appointed the 18th instant, reported a bill supplementary to the act to alter and establish sundry post roads; which was read.

On the question to agree to the second reading of the bill, it was determined in the negative. So the bill was lost.

FRIDAY, April 25.

The bill supplementary to the act to suspend part of the act, entitled "An act to augment the Army of the United States, and for other purposes," was read the third time, and postponed to Tuesday next.

MONDAY, April 28.

Mr. TRACY, from the committee, reported the bill regulating public arsenals and magazines, without amendment; and it was agreed that it pass to a third reading.

Mr. BROWN, from the committee on the bill to authorize the sale of lands, in certain cases, by the marshals, reported amendments; which were read.

A message from the House of Representatives informed the Senate that they disagree to some, and agree to other, amendments to the bill providing for the sale of the lands northwest of the Ohio: they agree to some, and disagree to other, amendments to the bill for a settlement of limits with the State of Georgia. They disagree to the amendments of the Senate to the bill to divide the Territory Northwest of the Ohio into two separate governments. They have appointed a committee, with such as the Senate may join, on the subject of a public library. They have passed a bill authorizing a credit to William Tazewell; a bill allowing payment to the militia commanded by Major Thomas Johnson, in the year 1794; a bill authorizing the sale of certain lands between the Great and Little Miami rivers; in which bills and resolutions they desire the concurrence of the Senate.

The Senate considered the resolution of the House of Representatives on the amendment to the bill providing for the sale of the lands northwest of the Ohio.

Resolved, That they ask a conference thereon, and that Messrs. ROSS and BROWN be managers on the part of the Senate.

The Senate considered the resolutions of the House of Representatives on the amendments to the bill for the settlement of limits with the State of Georgia; and ordered that they be committed to Messrs. ROSS, DEXTER, and LIVERMORE, to report thereon.

The Senate took into consideration the resolutions of the House of Representatives, on the amendment to the bill for dividing the Territory Northwest of the Ohio into two separate governments.

Resolved, That they insist on their amendments.

The resolution of the House of Representatives for the appointment of a joint committee on the subject of a public library, was considered and adopted.

Resolved, That Messrs. DEXTER, BINGHAM, and NICHOLAS, be the committee on the part of the Senate.

The bill authorizing a credit to William Tazewell was twice read, by unanimous consent, and referred to Messrs. BROWN, ANDERSON, and LIVERMORE, to consider and report thereon.

The bill directing the payment of militia under Major Thomas Johnson, in the year 1794, was twice read, by unanimous consent, and referred to Messrs. TRACY, ANDERSON, and DAYTON, to consider and report thereon.

The bill to authorize the issuing of patents was twice read, by unanimous consent, and referred to Messrs. DEXTER, MARSHALL, and GREENE, to consider and report thereon.

The bill last mentioned in the message was read, and ordered to the second reading.

Mr. GOODHUE, from the committee to whom was referred the bill to establish the district of Kennebunk, and certain other districts, reported amendments.

A motion was made that a committee be appointed to inquire into the propriety of passing an act to authorize the meeting of Congress at an earlier period than the time directed by the Constitution, and that they report by bill or otherwise; and it was agreed that the consideration thereof be postponed.

Mr. NICHOLAS, from the committee to whom was referred the bill to amend the act to establish the Judicial Courts of the United States, reported amendments.

Ordered, That Messrs. HILLHOUSE, BINGHAM, and DEXTER, be a committee to consider whether any, and what, alteration ought to be made in the act, entitled "An act to establish the Treasury Department;" and whether it would not be expedient to make it the duty of the Secretary of the Treasury to digest, prepare, and report to Congress, at the commencement of every session, plans for improving and increasing the revenue, and raising such sum or sums of money as shall be necessary for the public expenditures; and report by bill or otherwise.

TUESDAY, April 29.

A message from the House of Representatives informed the Senate that the House have passed a bill to promote the manufacture of sheet copper within the United States; in which they desire the concurrence of the Senate. They agree to the conference on the bill providing for the sale of the lands northwest of the Ohio, and have appointed managers on their part. They ask a conference on the amendment to the bill to divide the Territory Northwest of the Ohio into two separate governments, and have appointed managers on their part.

The Senate took into consideration the resolution of the House of Representatives on the bill last mentioned.

Resolved, That they agree to the proposed conference, and that Messrs. ROSS and BROWN be managers at the same on the part of the Senate.

The bill first mentioned in the message was read, and passed to the second reading.

The bill providing for the sale of lands between the Great and Little Miami rivers, was read the second time, and committed to Messrs. ROSS, BROWN, and LIVERMORE, to consider and report thereon.

Mr. TRACY, from the committee on the bill to authorize the President of the United States to borrow money, reported it without amendment.

The bill, entitled "An act for the regulation of public arsenals and magazines," was read the third time, and passed.

A motion was made.

"That a committee be appointed to inquire into and make a statement of the expenditure of public money for —— years past, and that they be authorized to inspect all public records, books, and papers, or to require copies thereof, when, in their opinion, the same may be necessary, and to make a report at the next session of Congress:"

And it was agreed that the motion lie for consideration.

Mr. BROWN, from the committee on the bill laying duties on imported salt, reported an amendment.

The Senate resumed the third reading of the bill supplementary to the act to suspend the act for augmenting the Army.

And the question on the final passage of the bill was determined in the affirmative—yeas 19, nays 6, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Langdon, Livermore, Mason, Nicholas, and Schureman.

NAYS—Messrs. Dayton, Latimer, Read, Ross, Tracy, and Wells.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act supplementary to the act to suspend part of an act entitled 'An act to augment the Army of the United States and for other purposes.'"

The Senate took into consideration the report of the committee on the bill to amend the act to establish the Judicial Courts of the United States; the first clause of which is as follows:

Strike out the whole of the bill after the word "serve," in the third line, and insert "in the Courts of the United States, shall be designated by lot, or otherwise, in each State or district respectively, according to the mode of forming juries, to serve in the highest courts of law therein, now practised; so far as the same shall render such designation practicable by the Courts and Marshals of the United States."

On motion to strike out all that follows the word "otherwise," in the fourth line of the report, for the purpose of inserting the following:

"Summoned or procured in each State respectively, according to the mode directed and prescribed by the laws of each State respectively, so far as such laws shall render the same practicable by the Courts or Marshals of the United States; and where the State mode cannot be used in the Courts of the United States, the Marshal attending such Courts shall, every day the Court sits, summon a sufficient number of persons to attend the Court that day, that out of them may be impannelled sufficient juries for the trial of all causes (except cases punishable with death) depending in such Courts; and if any person so summoned shall fail to attend the Court accordingly, he shall be fined eight dollars, to the use of the United States."

A division of the motion was called for, and the question was taken on striking out, which passed in the negative—yeas 9, nays 16, as follows:

YEAS—Messrs. Anderson, Bloodworth, Brown, Cocke, Franklin, Langdon, Marshall, Mason, and Nicholas.

NAYS—Messrs. Bingham, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Livermore, Read, Ross, Schureman, Tracy, and Wells.

And it was agreed that the bill pass to the third reading as amended.

WEDNESDAY, April 30.

The bill to promote the manufacture of sheet copper within the United States was read the second time, and committed to Messrs. DEXTER, GUNN, and LIVERMORE, to consider and report thereon.

The bill to establish the Judicial Courts of the United States was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act to amend an act, entitled 'An act to establish the Judicial Courts of the United States.'"

The Senate resumed the third reading of the bill, entitled "An act to enable the President of the United States to borrow money for the public service."

On motion, to strike out these words: "and upon such terms and conditions as he shall judge most advantageous for the United States;" and insert "at a rate of interest, not exceeding 6 per cent. per annum:"

A division of the motion was called for, and the question was taken on striking out; which passed in the negative—yeas 11, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Brown, Cocke, Foster, Franklin, Gunn, Langdon, Marshall, Mason, and Nicholas.

NAYS—Messrs. Bingham, Dayton, Dexter, Goodhue, Greene, Hillhouse, Howard, Latimer, Livermore, Read, Schureman, Tracy, and Wells.

On motion to strike out "fifteen years," the term limited for reimbursement of the loan, and insert "eight years:"

A division of the motion was called for, and the question was taken on striking out; which was passed in the negative—yeas 10, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Brown, Cocke, Franklin, Gunn, Langdon, Marshall, Mason, and Nicholas.

NAYS—Messrs. Bingham, Dayton, Dexter, Foster, Goodhue, Greene, Hillhouse, Howard, Latimer, Livermore, Read, Ross, Schureman, Tracy, and Wells.

And the question on the final passage of the bill was determined in the affirmative—yeas 15, nays 10, as follows:

YEAS—Messrs. Bingham, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Livermore, Read, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Brown, Cocke, Franklin, Langdon, Marshall, Mason, Nicholas, and Ross.

The Senate took into consideration the amendment reported by the committee to the bill to authorize the sale and conveyance of lands by the Marshals of the United States: and it was agreed that the bill pass to the third reading as reported.

The Senate resumed the second reading of the bill to continue "An act laying additional duty on salt imported;" and it was agreed that it pass to the third reading.

THURSDAY, May 1.

The bill, entitled "An act to authorize the sale and conveyance of lands in certain cases, by the Marshals of the United States, and to confirm former sales," was read the third time and passed.

Mr. BROWN, from the committee to whom was referred the bill allowing a credit to William Tazewell, reported it without amendment, and it was agreed that the bill be read the third time.

Mr. ROSS, from the committee appointed to consider the amendments disagreed to by the House of Representatives, to the bill providing for a settlement of limits with the State of Georgia, reported that a conference be desired thereon; and the report was agreed to; and Messrs. ROSS and DEXTER were appointed managers on the part of the Senate.

The bill, entitled "An act to continue in force 'An act laying an additional duty on salt imported into the United States, and for other purposes,'" was read the third time; and the question to agree to the final passage of the bill was determined in the affirmative—yeas 16, nays 8, as follows:

YEAS—Messrs. Bingham, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Howard, Langdon, Latimer, Livermore, Marshall, Read, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Bloodworth, Brown, Cocke, Franklin, Mason, Nicholas, and Ross.

The amendments reported to the bill respecting the district of Kennebunk, and other districts therein mentioned, were adopted, and the bill passed to the third reading as amended.

Mr. HILLHOUSE, from the committee appointed the 28th of April last, on the subject of the Treasury Department, reported a bill, which was twice read by unanimous consent.

Mr. TRACY notified the Senate that he should, to-morrow, ask leave to bring in a bill continuing in force after the 25th day of June next the act concerning aliens.

FRIDAY, May 2.

Mr. HILLHOUSE, from the committee to whom the subject was referred, reported a bill supplementary to the act establishing the Mint; which was read, and passed to the second reading.

The bill, entitled "An act to authorize the allowance of a credit to William Tazewell," was read the third time and passed.

The bill respecting the district of Kennebunk, and other districts therein mentioned, was read the third time.

Ordered, That the original committee be revived, and that the bill be recommitted to their further consideration.

Mr. TRACY, from the committee to whom was referred the bill making appropriations for the support of Government for the year 1800, reported the bill without amendment; and it was agreed that the bill be read a third time.

A message from the House of Representatives informed the Senate that the House agree to the proposed conference on the bill for an amicable settlement of limits with the State of Georgia, and have appointed managers on their part. They have passed the bill for deciding disputed elections of President and Vice President of the United States, with amendments; in which they desire the concurrence of the Senate. They concur in the amendment to the bill authorizing the sale and conveyance of lands by the Marshals.

The Senate resumed the second reading of the bill supplementary to the act to establish the Treasury Department; and agreed that it pass to the third reading.

The Senate took into consideration the amendments of the House of Representatives to the bill for deciding disputed elections of President and Vice President of the United States, and they were referred to Messrs. ROSS, DEXTER, and LIVERMORE, to report thereon.

SATURDAY, May 3.

GOUVERNEUR MORRIS, appointed a Senator by the State of New York, for the remainder of the term for which their late Senator, James Watson, was appointed, produced his credentials, and took his seat in the Senate; and the oath required by law was administered to him.

The bill supplementary to the act establishing the Mint was read the second time, and postponed until Monday next.

The motion made on the 28th of April, respecting the next meeting of Congress, was considered: and,

Resolved, That Messrs. BLOODWORTH, LIVERMORE, and TRACY, be a committee to inquire into the expediency of passing an act to authorize the next meeting of Congress at the city of Washington, in the District of Columbia, and whether it will not be advisable to meet at an earlier period than the time directed by the Constitution; and that the committee report by bill, or otherwise.

Mr. DEXTER, from the committee to whom was referred the bill authorizing the issuing certain patents, reported it without amendment.

Ordered, That the original committee be revived, and that the bill be recommitted, for their further consideration.

The bill, entitled "An act making appropriations for the support of Government, for the year 1800," was read the third time, and passed with an amendment.

The bill supplementary to the act to establish the Treasury Department was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act to establish the Treasury Department."

Mr. TRACY notified the Senate that on Monday he would ask leave to bring in a bill concerning aliens.

MONDAY, May 5.

Mr. LAURANCE, from the committee appointed to consider the bill for equalising the valuations of unseated lands, reported it without amendment; and it was agreed that it be read a third time.

The Senate resumed the second reading of the bill supplementary to the act establishing the Mint: and it was agreed that it be read a third time.

A message from the House of Representatives informed the Senate that they have passed the bill prohibiting the slave trade, with an amendment, to which they desire the concurrence of the Senate.

They recede from their disagreement to the amendment of the Senate to the bill to divide the Territory Northwest of the Ohio into two separate governments, so far as to agree thereto with an amendment.

Mr. ROSS, from the committee on the bill last mentioned, made report; and it was

Resolved, That the Senate so far recede from their amendment thereto, as to agree to the amendment to their amendment.

The Senate took into consideration the amendment of the House of Representatives to the bill prohibiting the slave trade.

Ordered, That the original committee be revived, and that the amendment be referred to them, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill supplementary to the act to establish the compensation of the officers of the customs, in which they desire the concurrence of the Senate.

The bill last mentioned was read and passed to the second reading.

Mr. ROSS, from the managers at the conference on the amendments to the bill to amend the act providing for the sale of lands northwest of the Ohio, made report. Whereupon,

Resolved, That the Senate recede from their amendments to the sixth section, so far as respects the forty days, in both instances, and insist on all their other amendments.

TUESDAY May 6.

The bill supplementary to the act to establish the compensation of the officers employed in the collection of the duties on impost and tonnage, was read the second time, and referred to the committee appointed the 12th of March last on that subject.

Mr. TRACY, from the committee on the bill making appropriations for the Military Establishment for the year 1800, reported it without amendment; and it was agreed that the bill be read the third time.

The bill supplementary to the act establishing the Mint was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act supplementary to the act establishing the Mint, and regulating the coins of the United States."

The bill, entitled "An act to provide for equalising the valuations of unseated lands," was read the third time, and passed.

Mr. GOODHUE, from the committee on the bill, entitled "An act to establish the district of Kennebunk, and to annex Lyme to New London, and to alter the district of Bermuda Hundred and City Point, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" reported an amendment, which was adopted; and the bill passed as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill to enlarge the powers of the surveyors of the revenue; a bill to ascertain the compensation of public Ministers; a bill making appropriations for Indian treaties; and a bill respecting the lands granted to the inhabitants and settlers at Vincennes, and the Illinois country; in which they desire the concurrence of the Senate. The House of Representatives so far recede from their disagreement to the amendment of the Senate to the bill providing for the sale of the lands in the Territory Northwest of the Ohio, as to agree thereto with amendments.

The resolution of the House of Representatives last mentioned was considered.

Resolved, That the Senate concur in the amendments to the amendments.

The bill first mentioned in the message was twice read by unanimous consent, and referred to Messrs. LIVERMORE, WELLS, and GOODHUE, to consider and report thereon.

The second bill mentioned in the message was twice read by unanimous consent, and referred to Messrs. MORRIS, BINGHAM, and MASON, to consider and report thereon.

The third bill mentioned in the message was twice read by unanimous consent, and referred to Messrs. GUNN, HILLHOUSE, and ANDERSON, to consider and report thereon.

The fourth bill mentioned in the message was twice read by unanimous consent, and referred to Messrs. ROSS, BROWN, and LATIMER, to consider and report thereon.

Mr. DEXTER, from the committee on the bill to promote the manufacture of sheet copper, reported amendments.

And, on motion, the Senate adjourned.

WEDNESDAY, May 7.

Mr. LIVERMORE, from the committee on the bill to enlarge the powers of the surveyors of the revenue, reported an amendment, which was agreed to; and the bill passed to the third reading as amended.

Mr. ROSS, from the managers at the conference on the amendments disagreed to by the House of Representatives to the bill providing for a settlement of limits with the State of Georgia, reported sundry modifications; which were agreed to.

Mr. HILLHOUSE, from the committee to whom was referred the amendment of the House of Representatives to the bill prohibiting the slave trade, reported amendments to the amendment; which were adopted.

Mr. GOODHUE, from the committee on the bill establishing the compensations of the officers employed in the collection of the duties on imports and tonnage, reported an amendment.

Mr. BLOODWORTH, from the committee to whom the subject was referred, reported a bill providing for the next meeting of Congress; which was read, and passed to the second reading.

Mr. MORRIS, from the committee on the bill to ascertain the compensation of public Ministers, reported an amendment; which was agreed to, and the bill passed to the third reading as amended.

The bill entitled "An act making appropriations for the Military Establishment of the United States, in the year 1800," was read the third time and passed.

The Senate took into consideration the report of the committee on the bill to establish the compensations of the officers employed in the collection of the duties on imports and tonnage.

On motion, to strike out the following from the 2d section:

"To the collector for the district of Boston and Charlestown, and to the collectors of Baltimore and Philadelphia, three-eighths of one per centum; to the collectors of Charleston, South Carolina, Salem, and Norfolk, three-quarters of one per centum; to the collector of the district of Portland, one per centum:"

It passed in the negative—yeas 7, nays 17, as follows:

YEAS—Messrs. Greene, Howard, Latimer, Read, Ross, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Foster, Franklin, Goodhue, Hillhouse, Laurance, Livermore, Marshall, Mason, Morris, Nicholas, and Schureman.

Ordered, That this bill pass to the third reading as amended.

THURSDAY, May 8.

Mr. ROSS, from the committee to whom was referred the amendment of the House of Representatives to the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States, reported amendments thereto.

A message from the House of Representatives informed the Senate that the House do not concur in the bill to permit the exportation of certain parcels of gunpowder, muskets, and cutlasses. They have passed a bill making provision for the children of Colonel John Harding, and Major Alexander Trueman; in which they desire the concurrence of the Senate. They agree to the modifications reported by the managers at the conference on the bill for an amicable settlement of limits with the State of Georgia, with an amendment to the amendment of the first section of the bill.

Mr. TRACY, from the committee on the bill directing the payment of the militia under the command of Major Thomas Johnson, reported amendments. He also reported, from the committee, amendments to the bill making appropriations for the Naval Department.

The VICE PRESIDENT communicated a letter from the Treasurer of the United States, with his War and Navy accounts, ending the 31st of March, 1800; which was read.

The bill, entitled "An act supplementary to an act, entitled 'An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes,'" was read the third time, further amended, and passed.

Mr. DAYTON, from the joint committee of both Houses, appointed the 19th December last, on the receipt of the intelligence of the death of General GEORGE WASHINGTON, reported that the committee have agreed to report to their respective Houses sundry resolutions; which were read.

The Senate took into consideration the message of the House of Representatives, on the amendment to the amendment of the Senate to the bill providing for a settlement of limits with the State of Georgia; and agreed to the amendment to the amendment of the 1st section, line 1st.

A message from the House of Representatives informed the Senate that the House have passed a bill to lay additional duties on certain articles imported; also, a bill to retain a further sum on drawbacks.

The bills last mentioned were read, and severally passed to the second reading.

The Senate considered the amendments reported by the committee to the amendment of the House of Representatives on the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

On motion, to agree to the following amendment reported by the committee:

Section 8, line 49, strike out the word "rejecting," and insert "admitting"—it passed in the affirmative—yeas 15, nays 11, as follows:

YEAS—Messrs. Bingham, Dayton, Dexter, Goodhue, Greene, Gunn, Hillhouse, Latimer, Livermore, Morris, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Foster, Franklin, Marshall, Mason, Nicholas, and Pinckney.

On motion, to strike out the following words from the 1st section of the amendment of the House of Representatives, viz: "other than such as may merely question the number of votes by which the electors may have been appointed:" it passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Dayton, Dexter, Goodhue, Greene, Hillhouse, Latimer, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Cocke, Foster, Gunn, Laurance, Livermore, Marshall, Mason, Morris, Nicholas, and Pinckney.

On motion, to agree to the amendment of the House of Representatives, with the amendments reported, it passed in the affirmative—yeas 16, nays 11, as follows:

YEAS—Messrs. Bingham, Dayton, Dexter, Foster, Goodhue, Greene, Gunn, Hillhouse, Latimer, Laurance, Livermore, Morris, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Franklin, Marshall, Mason, Nicholas, Pinckney, and Read.

FRIDAY, May 9.

Resolved, That the Secretary of the Senate pay to Hugh McKinley, for his labor and attendance on the Senate, the last session, fifty dollars, over and above what he has already received; and one dollar and a half per day for his labor and attendance on the Senate during the time he may be employed the present session; to be paid out of the money appropriated for the contingent expenses of the two Houses of Congress.

The bill making provision for the children of Colonel John Harding and Major Alexander Trueman was read the second time, and committed to Messrs MARSHALL, TRACY, and BROWN, to report thereon.

The bill to lay additional duties on certain articles imported was read the second time, and committed to Messrs. BINGHAM, GOODHUE, and LAURANCE, to report thereon.

The bill to retain a further sum on drawbacks, in lieu of stamp duties on debentures, was read the second time, and referred to the last mentioned committee, to report thereon.

A message from the House of Representatives informed the Senate that they have passed a bill to permit the bringing of slaves into the Mississipppi Territory, in certain cases; a bill allowing rations to certain Indians; and a bill to make further appropriations for the year 1800.

The bills last brought up for concurrence were read, and severally passed to the second reading.

The bill last mentioned in the message was, by unanimous consent, read a second time, and committed to Messrs. NICHOLAS, LIVERMORE, and TRACY, to consider and report thereon.

The bill to allow rations to certain Indians was read the second time, by unanimous consent, and referred to the committee last mentioned, to consider and report thereon.

Mr. DEXTER, from the committee on the bill to authorize the issuing certain patents, reported amendments; which were agreed to, and the bill passed to the third reading as amended.

Mr. ANDERSON, from the committee to whom was referred the resolution authorizing an inquiry into the situation and extent of the vacant and unappropriated lands claimed by the United States under the cession of the State of North Carolina, and the expediency of making provision for the disposition thereof, reported sundry resolutions.

Ordered, That they be printed for the use of the Senate; and that the consideration thereof be postponed to the next session of Congress.

The bill to permit the bringing of slaves into the Mississippi Territory, in certain cases, was read a second time, by unanimous consent, and referred to Messrs. DEXTER, READ, and BROWN, to consider and report thereon.

The bill, entitled "An act to enlarge the powers of surveyors of the revenue," was read the third time, and passed as amended.

The bill, entitled "An act to ascertain the compensation of the public Ministers," was read the third time and passed as amended.

The bill appointing the time and place of the next meeting of Congress was read the third time, and passed.

The Senate took into consideration the report of the committee on the bill making appropriations for the Navy for the year 1800, which was adopted; and, by unanimous consent, the bill was read the third time, and passed with an amendment.

A message from the House of Representatives informed the Senate that they agree to the amendments to the bill to enlarge the powers of surveyors of the revenue, with amendments. They have passed a bill to continue trading houses for the Indians; also, a resolution relative to the laws of the Mississippi Territory; in which bill and resolution they desire the concurrence of the Senate. They disagree to the amendments of the Senate to the amendment of the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

The bill and resolution were severally read and passed to the second reading.

On motion, the consideration of the amendments disagreed to on the bill last mentioned was postponed until to-morrow.

The Senate resumed the second reading of the bill directing the payment of the militia, under the command of Major Thomas Johnson; agreed to the amendments reported by the committee; and the bill passed to the third reading as amended.

Mr. ROSS, from the committee on the bill to provide for the sale of lands between the Great and Little Miami rivers, reported the bill without amendment.

SATURDAY, May 10.

The Senate took into consideration the amendment of the House of Representatives to their amendments to the bill to enlarge the powers of the surveyors of the revenue; and disagreed thereto.

A message from the House of Representatives informed the Senate that they have passed a bill for erecting a mausoleum for GEORGE WASHINGTON; also, a bill to regulate grants of land to the refugees of Canada and Nova Scotia; in which bills they desire the concurrence of the Senate.

The bills last mentioned were read, and severally passed to the second reading.

Mr. DEXTER, from the committee on the bill to admit, in certain cases, slaves into the Mississippi Territory, reported it without amendment.

Mr. BINGHAM, from the committee on the bill to lay additional duties on certain imported articles, reported the bill without amendment; and it was agreed that it pass to the third reading.

Mr. GUNN, from the committee on the bill to defray the expense of holding treaties with Indians, reported an amendment.

The bill for establishing trading houses with the Indians was read the second time, and committed to Messrs. ROSS, LIVERMORE, and ANDERSON, to report thereon.

Resolved, That the resolution of the Senate and House of Representatives, of the 21st day of April last, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses, on Monday the 12th of May instant, be repealed, and that the said President and Speaker do adjourn their respective Houses on Wednesday the 14th instant.

The Senate resumed the consideration of the resolution of the House of Representatives on the amendments of the Senate to their amendment to the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States; and, on motion to recede from the amendments to the amendment, it passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, Foster, Franklin, Marshall, Mason, Nicholas, and Pinckney.

NAYS—Messrs. Bingham, Dayton, Dexter, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Morris, Read, Ross, Schureman, Tracy, and Wells.

Resolved, That the Senate adhere to their said amendments.

A message from the House of Representatives informed the Senate that they insist on their amendment to the amendment to the bill to enlarge the powers of the surveyors of the revenue; ask a conference thereon, and have appointed managers on their part. They adhere to their disagreement to the amendments of the Senate to their amendment to the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States. They have passed the bill supplementary to the act establishing the Mint, with an amendment; in which they desire the concurrence of the Senate. They disagree to the resolution of the Senate extending the time of adjournment of the two Houses.

The Senate agreed to the proposed conference on the amendment to the amendments to the bill to enlarge the powers of the surveyors of the revenue; and appointed Messrs. LIVERMORE and LAURANCE managers on their part.

Mr. MARSHALL, from the committee on the bill making provision for the children of Colonel John Hardin and Major Alexander Trueman, reported an amendment.

The bill, entitled "An act to authorize the issuing certain patents," was read the third time, amended, and passed.

The Senate took into consideration the amendment of the House of Representatives to the bill supplementary to the act establishing the Mint, and disagreed thereto.

The bill, entitled "An act directing the payment of a detachment of the militia under the command of Major Thomas Johnson, in the year 1794," was read the third time and passed with an amendment.

Mr. NICHOLAS, from the committee to whom was referred the bill to authorize certain expenditures, and to make certain appropriations for the year 1800, reported an amendment. He also reported from the committee the bill to make provision relative to rations for Indians, without amendment.

Mr. BINGHAM presented the remonstrance and petition of a number of "citizens of the Republic of America, resident in the city and county of Philadelphia," praying the Senate "to reconsider the resolutions by them adopted on the subject of privilege, in the case of William Duane;" which were read.

The Senate resumed the second reading of the bill to provide for the sale of lands between the Great and Little Miami rivers.

Resolved, That the further consideration thereof be postponed until the next session of Congress.

Mr. BINGHAM, from the committee to whom was referred the bill to retain a further sum on drawbacks, and in lieu of stamp duties on debentures, reported amendments, which were disagreed to, and the bill passed to a third reading.

On motion, that all questions respecting the election of President and Vice President of the United States ought to be decided by the House of Representatives, the votes being taken by States, and each State having one vote; it was agreed that the motion lie for consideration.

The Senate considered the amendments reported on the bill to promote the manufacture of sheet copper within the United States; and on the question to agree to the third reading of the bill, it passed in the negative; so the bill was lost.

MONDAY, May 12.

A message from the House of Representatives informed the Senate that the House concur in the bill to suspend the act to augment the Army of the United States, with amendments. They have passed a bill for the relief of persons imprisoned for debts due to the United States; in which bill they desire the concurrence of the Senate.

The bill last mentioned was read and passed to a second reading.

The Senate considered the amendments of the House of Representatives to the bill to suspend the act for the augmentation of the Army; and referred them to Messrs. TRACY, DAYTON, and GUNN, to report thereon.

The resolution relative to the laws of the Mississippi Territory, was considered and referred to

Messrs. ANDERSON, ROSS, and MARSHALL, to report thereon.

A message from the House of Representatives informed the Senate that they insist on their amendment to the bill relative to the Mint, and ask a conference thereon, and have appointed managers on their part. They have passed a resolution prolonging the present session of Congress to the 14th, in which they desire the concurrence of the Senate.

The Senate took into consideration the resolution of the House of Representatives desiring a conference on the amendments to the bill respecting the Mint, and agreed thereto, and that Messrs. HILLHOUSE and BINGHAM be managers on the part of the Senate.

The bill entitled "An act laying additional duties on certain articles imported," was read the third time and passed.

The bill, entitled "An act to retain a further sum on drawbacks, for expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the third time and passed.

Mr. LIVERMORE, from the managers at the conference on the bill last mentioned, made report. Whereupon,

Resolved, That the Senate agree to the modifications of the amendments, agreeably to the report of the managers.

The bill regulating grants of land appropriated for the refugees from the provinces of Canada and Nova Scotia, was read the second time, and referred to Messrs. ROSS, BROWN, and MARSHALL, to report thereon.

The bill for erecting a mausoleum for GEORGE WASHINGTON was read the second time, and the further consideration thereof postponed until the next session of Congress.

The Senate considered the amendment reported by the committee on the bill to appropriate a certain sum of money to defray the expense of treaties with the Indians, agreed thereto, and the bill then passed to the third reading as amended,

The Senate considered the amendment reported by the committee on the bill making certain appropriations for the year 1800; which was agreed to, and the bill passed to the third reading as amended.

The Senate resumed the second reading of the bill to make provision relative to rations for Indians; and agreed that it pass to the third reading.

Mr. ANDERSON notified the Senate that he should to-morrow ask leave to bring in a bill to authorize the proper officer to settle the claim of John Pitchlyn.

The Senate considered the amendments reported to the bill making further provision for the children of Colonel John Harding and Major Alexander Trueman, deceased; and, having amended the report, it was adopted, and the bill passed to the third reading as amended.

And, on motion, the Senate adjourned.

TUESDAY, May 13.

The bill making provision for persons imprisoned for debts due the United States was read the second time, and postponed to the next session of Congress.

The bill entitled "An act appropriating a certain sum of money to defray the expense of holding a treaty or treaties with the Indians," was read the third time and passed with an amendment.

The bill entitled "An act to authorize certain expenditures, and to make certain appropriations for the year 1800," was read the third time and passed with an amendment.

The bill entitled "An act making provision relative to rations for Indians, and for their visits to the seat of Government," was read the third time and passed.

The bill entitled "An act making further provision for the children of Colonel John Harding and Major Alexander Trueman, deceased," was read the third time and passed.

Mr. HILLHOUSE reported from the managers at the conference on the amendment to the bill to establish the Mint: Whereupon,

Resolved, That the Senate do insist on their said amendment.

The second reading of the bill to permit the introduction of slaves, in certain cases, into the Mississippi Territory, was resumed; and it was agreed that it pass to the third reading.

A message from the House of Representatives informed the Senate that they adhere to their amendments to the bill to establish the Mint.

The Senate resumed the consideration of the motion made the 10th of May, instant, respecting the election of President and Vice President of the United States; and, after debate, the further consideration thereof was postponed until the next session of Congress.

Mr. ANDERSON, from the committee to whom was referred the resolution repealing certain laws passed by the Governor and Judges of the Mississippi Territory, reported an amendment, which was disagreed to, and the resolution postponed to the next session of Congress.

The Senate considered the resolution of the House of Representatives, adhering to their amendment to the bill supplementary to the act establishing the Mint. Whereupon,

Resolved, That they do recede from their disagreement, and agree to the amendment of the House of Representatives.

Mr. TRACY, from the committee to whom was referred the amendment of the House of Representatives to the bill supplementary to the act to suspend part of an act to augment the Army of the United States, reported amendments thereto; which were read.

Ordered, That the committee be revived, and that the bill be recommitted for further consideration.

Mr. TRACY, from the committee, reported further amendment to the bill supplementary to the act for augmenting the Army; and the reported amendment to the amendment was adopted.

WEDNESDAY, May 14.

The VICE PRESIDENT having, by letter, intimated his desire to be excused from further attendance, as it would probably be the last day of the session, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and URIAH TRACY was duly elected.

Mr. ROSS, from the committee on the bill, entitled "An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia, reported an amendment, which was adopted; and it was agreed, by unanimous consent, that the bill be now read the third time, and passed.

The bill entitled "An act to permit, in certain cases, the bringing of slaves into the Mississippi Territory," was read the third time. On the question to agree to the final passage thereof, it passed in the negative—yeas 5, nays 14, as follows:

YEAS—Messrs. Anderson, Cocke, Marshall, Pinckney, and Read.

NAYS—Messrs. Baldwin, Bingham, Bloodworth, Brown, Dayton, Foster, Franklin, Greene, Hillhouse, Laurance, Livermore, Mason, Morris, and Ross.

A message from the House of Representatives informed the Senate that the House disagree to the amendment of the Senate to the bill regulating the grants of land for the refugees from the British provinces of Canada and Nova Scotia.

The Senate considered the resolution of the House of Representatives on the amendment of the Senate to the bill last mentioned.

Resolved, That they adhere to their amendment.

Mr. ROSS, from the committee on the bill making grants of lands to the inhabitants of Vincennes, and Illinois country, reported the bill without amendment; and it was agreed to postpone the bill to the next session of Congress.

Ordered, That the committee to whom was referred the bill to establish trading-houses with the Indians, be discharged; and that the bill be postponed to the next session of Congress.

A message from the House of Representatives informed the Senate that they have appointed a committee on their part, with such as the Senate may join, to wait on the President of the United States and notify him that, unless he hath any further communications to make to the two Houses of Congress, they are ready to adjourn; and they desire the appointment of a committee on the part of the Senate.

Mr. BINGHAM presented an additional remonstrance and petition of a number of "citizens of the Republic of America, residing in the city and county of Philadelphia," praying the Senate to reconsider the resolutions by them adopted on the subject of privilege, in the case of William Duane."

And on motion that the remonstrance be read, it passed in the negative—yeas 7, nays 12, as follows:

YEAS—Messrs. Baldwin, Bingham, Bloodworth, Brown, Cocke, Franklin, and Mason.

NAYS—Messrs. Dayton, Foster, Greene, Gunn, Latimer, Laurance, Livermore, Morris, Read, Ross, Tracy, and Wells.

Resolved, That the Secretary of the Senate be, and he is hereby, authorized to pay to James Mathers, acting as Sergeant-at-Arms to the Senate, out of the contingent fund, the sum of one hundred dollars, for extra services during the session.

The Senate agreed to the resolution of the House of Representatives appointing a committee, jointly with such as the Senate may appoint, to wait on the President of the United States, and notify him of the proposed adjournment of the two Houses of Congress; and it was ordered that Messrs. BINGHAM and WELLS be the committee on the part of the Senate.

Mr. BINGHAM reported, from the joint committee last mentioned, that the President of the United States had no further communication to make to Congress at this time than his best wishes for their safe return to their respective places of abode.

On motion that it be

Resolved, That the President of the United States be requested to instruct the proper law officer to commence and carry on a prosecution against William Duane, editor of the newspaper called the Aurora, for certain false, defamatory, scandalous, and malicious publications, in the said newspaper, on the 19th of February last past, tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States:

It passed in the affirmative—yeas 13, nays 4, as follows:

YEAS—Messrs. Bingham, Dayton, Foster, Greene, Gunn, Latimer, Laurance, Livermore, Morris, Read, Ross, Tracy, and Wells.

NAYS—Messrs. Bloodworth, Brown, Cocke, Franklin.

Ordered, That the Secretary lay an attested copy of the foregoing resolution before the President of the United States.

Resolved, That the thanks of the Senate of the United States be presented to the Commissioners of the City and County of Philadelphia, for the convenient and elegant accommodations furnished by them for the use of the Senate, during the residence of the National Government in the city; and that the President of the Senate be requested to convey this resolution in a letter to the said Commissioners.

The PRESIDENT, agreeably to the joint resolution of the 12th instant, adjourned the Senate, to meet again on the third Monday of November next, as the law provides.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SIXTH CONGRESS, BEGUN AT THE CITY OF PHILADELPHIA, MONDAY, DECEMBER 2, 1799.

MONDAY, December 2, 1799.

This being the Constitutional day for the annual meeting of Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats, viz:

From New Hampshire—ABIEL FOSTER, JONATHAN FREEMAN, and WILLIAM GORDON.

From Massachusetts—BAILEY BARTLETT, PHANUEL BISHOP, DWIGHT FOSTER, HARRISON G. OTIS, SILAS LEE, SAMUEL LYMAN, JOHN REED, SAMUEL SEWALL, THEODORE SEDGWICK, WILLIAM SHEPARD, GEORGE THATCHER, JOSEPH B. VARNUM, PELEG WADSWORTH, and LEMUEL WILLIAMS.

From Connecticut—JONATHAN BRACE, SAMUEL W. DANA, JOHN DAVENPORT, WILLIAM EDMOND, CHAUNCEY GOODRICH, ELIZUR GOODRICH, and ROGER GRISWOLD.

From Rhode Island—JOHN BROWN, and CHRISTOPHER G. CHAMPLIN.

From Vermont—MATTHEW LYON, and LEWIS R. MORRIS.

From New York—THEODORUS BAILEY, JOHN BIRD, WILLIAM COOPER, LUCAS ELMENDORF, HENRY GLEN, EDWARD LIVINGSTON, JONAS PLATT, JOHN THOMPSON, and PHILIP VAN CORTLAND.

From New Jersey—JOHN CONDIT, FRANKLIN DAVENPORT, JAMES H. IMLAY, AARON KITCHELL, and JAMES LINN.

From Pennsylvania—ROBERT BROWN, ANDREW GREGG, ALBERT GALLATIN, JOHN A. HANNA, JOSEPH HEISTER, JOHN WILKES KITTERA, MICHAEL LEIB, PETER MUHLENBERG, JOHN SMILIE, RICHARD THOMAS, ROBERT WALN, and HENRY WOODS.

From Maryland—GEORGE BAER, WILLIAM CRAIK, GABRIEL CHRISTIE, GEORGE DENT, JOSEPH H. NICHOLSON, SAMUEL SMITH, and JOHN CHEW THOMAS.

From Virginia—JOHN DAWSON, THOMAS EVANS, DAVID HOLMES, GEORGE JACKSON, JOHN MARSHALL, JOHN NICHOLAS, ANTHONY NEW, LEVEN POWELL, JOHN RANDOLPH, ABRAM TRIGG, and JOHN TRIGG.

From North Carolina—WILLIS ALSTON, JOSEPH DICKSON, ARCHIBALD HENDERSON, WILLIAM H. HILL, NATHANIEL MACON, RICHARD STANFORD, and DAVID STONE.

From South Carolina—ROBERT GOODLOE HARPER, ABRAHAM NOTT, JOHN RUTLEDGE, Jr., and THOMAS SUMTER.

From Georgia—JAMES JONES, BENJAMIN TALIAFERRO.

From Tennessee—WILLIAM CHARLES COLE CLAIBORNE

A quorum of the whole number of members being present, the House proceeded to the election of a SPEAKER; when, on counting the ballots, the tellers reported that Mr. SEDGWICK had 42 votes; Mr. MACON, 27; Mr. DENT, 13; Mr. RUTLEDGE, 2; Mr. SUMTER, 1.

That the whole number of votes were 85, and the rules of the House requiring a majority of the members present to constitute a choice, neither of the above gentlemen were elected.

The House then proceeded to a second trial; when Mr. SEDGWICK had 44 votes; Mr. MACON, 38; Mr. DENT, 3; Mr. RUTLEDGE, 1.

Whereupon Mr. SEDGWICK was declared duly elected, and conducted to the Chair accordingly.

Mr. SEDGWICK, upon taking the Chair, addressed the House in the following words:

"GENTLEMEN: Although I am conscious of a deficiency of the talents which are desirable to discharge with usefulness and dignity the important duties of the high station to which I am raised, by the generous regard of the enlightened and virtuous representatives of my country, yet, reposing myself on the energy of their candid support, I will not shrink from the attempt.

"Accept, I pray you, gentlemen, my grateful acknowledgment of the honor you are pleased to confer; and, with it, an assurance, that no consideration shall seduce me to deviate, in the least degree, from a direct line of impartial integrity."

A message was received from the Senate, informing the House that a sufficient number of members appearing to form a quorum, they had proceeded to the choice of a President *pro tempore*, when Hon. SAMUEL LIVERMORE was elected.

The House proceeded to the choice of a Clerk; when it appeared Jonathan W. Condy had 47 votes, John Beckley, 39.

Whereupon Mr. CONDY was declared by the SPEAKER to be duly elected.

Ordered That a message be sent to the Senate, to inform that body of the election of the Hon. THEODORE SEDGWICK, as Speaker of the House of Representatives.

On motion of Mr. MACON, the House proceeded to the choice of a Sergeant-at-Arms, Doorkeeper, and Assistant Doorkeeper; when JOSEPH WHEATON, THOMAS CLAXTON, and THOMAS DUNN, were unanimously elected.

The oath to support the Constitution of the United States, as prescribed by the act, entitled "An act to regulate the time and manner of administering certain oaths," was administered by Mr. RUTLEDGE, one of the Representatives for the State of South Carolina, to the SPEAKER, and then the same oath or affirmation was administered by Mr. SPEAKER to each of the members present.

WILLIAM HENRY HARRISON having also appeared, as a Representative for the Territory of the United States Northwest of the River Ohio, the said oath was administered to him by Mr. SPEAKER.

The same affirmation, together with the affirmation of office prescribed by the said recited act, were also administered by Mr. SPEAKER to the Clerk.

A message was received from the Senate, informing the House, that they had passed a resolution, appointing a joint committee to wait on the PRESIDENT OF THE UNITED STATES, and inform him that Congress had met and were ready to receive any communications he might think proper to make; and, in case of concurrence, that Messrs. READ and BINGHAM were appointed a committee on behalf of the Senate.

The House concurred in the resolution, and Messrs. MARSHALL, RUTLEDGE, and SEWALL, were appointed to wait on the PRESIDENT, in conjunction with the committee from the Senate.

The following letter was read by the SPEAKER:

72 WELBECK-STREET, LONDON,
September 20, 1798.

SIR: I beg leave, through you, to offer to the House of Representatives of the United States, impressions of the two prints of the American Revolution, which I have lately caused to be published.*

The importance of the events, and the illustrious characters of the two great men to whose memory they are particularly devoted, give to these works their best claim to your notice; and the patriotism of my countrymen, I trust, will give them a kinder reception than their intrinsic merit might entitle me to hope.

With great respect, I have the honor to be, sir, your most obedient, humble servant,

JNO. TRUMBULL.

The SPEAKER *of the House of Reps. U. S.*

Resolved, That the rules and orders of proceeding established by the late House of Representatives, shall be deemed and taken to be the rules and orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

Resolved, That each member be furnished with three newspapers, printed in this city, during the session, at the expense of this House.

*The prints referred to by Mr. Trumbull, in his letter to the Speaker of the House of Representatives, are, first, a representation of the Battle of Quebec, and death of General Montgomery; second, the Baute of Bunker's Hill—both elegant engravings. They are placed on the right and left of the Speaker's chair, and are highly ornamental to the Representatives' Chamber.

Mr. MARSHALL, from the joint committee appointed to wait on the PRESIDENT OF THE UNITED STATES, reported, that they had performed that service; and that the PRESIDENT had appointed to-morrow forenoon, 12 o'clock, to meet both Houses in the Representatives' Chamber.

The House then adjourned, till to-morrow morning at eleven o'clock.

TUESDAY, December 3.

JAMES A. BAYARD, from Delaware, appeared produced his credentials, was qualified, and took his seat in the House.

PRESIDENT'S SPEECH.

Ordered, That a message be sent to the Senate to inform them that this House is now ready to attend them in receiving the communication from the President of the United States, agreeably to his notification to both Houses yesterday.

The Senate attended and took seats in the House; when, both Houses being assembled, the PRESIDENT OF THE UNITED STATES came into the Representatives' Chamber, and addressed them as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

It is with peculiar satisfaction that I meet the sixth Congress of the United States of America. Coming from all parts of the Union, at this critical and interesting period, the members must be fully possessed of the sentiments and wishes of our constituents.

The flattering prospects of abundance, from the labors of the people, by land and by sea; the prosperity of our extended commerce, notwithstanding interruptions occasioned by the belligerent state of a great part of the world; the return of health, industry, and trade, to those cities which have lately been afflicted with disease; and the various and inestimable advantages, civil and religious, which, secured under our happy frame of Government, are continued to us unimpaired, demand, of the whole American people, sincere thanks to a benevolent Deity, for the merciful dispensations of his providence.

But, while these numerous blessings are recollected, it is a painful duty to advert to the ungrateful return which has been made for them, by some of the people, in certain counties of Pennsylvania, where, seduced by the arts and misrepresentations of designing men, they have openly resisted the law directing the valuation of houses and lands. Such defiance was given to the civil authority as rendered hopeless all further attempts, by judicial process, to enforce the execution of the law; and it became necessary to direct a military force to be employed, consisting of some companies of regular troops, volunteers, and militia, by whose zeal and activity, in co-operation with the judicial power, order and submission were restored, and many of the offenders arrested. Of these, some have been convicted of misdemeanors, and others, charged with various crimes, remain to be tried.

To give due effect to the civil administration of Government, and to insure a just execution of the laws, a revision and amendment of the judiciary system is indispensably necessary. In this extensive country it cannot but happen that numerous questions respecting the interpretation of the laws, and the rights and duties

of officers and citizens, must arise. On the one hand, the laws should be executed; on the other, individuals should be guarded from oppression. Neither of these objects is sufficiently assured under the present organization of the Judicial Department. I therefore earnestly recommend the subject to your serious consideration.

Persevering in the pacific and humane policy which had been invariably professed and sincerely pursued by the Executive authority of the United States, when indications were made on the part of the French Republic, of a disposition to accommodate the existing differences between the two countries, I felt it to be my duty to prepare for meeting their advances, by a nomination of Ministers upon certain conditions, which the honor of our country dictated, and which its moderation had given a right to prescribe. The assurances which were required of the French Government, previous to the departure of our Envoys, have been given through their Minister of Foreign Relations, and I have directed them to proceed on their mission to Paris. They have full power to conclude a treaty, subject to the Constitutional advice and consent of the Senate. The characters of these gentlemen are sure pledges to their country that nothing incompatible with its honor or interest, nothing inconsistent with our obligations of good faith or friendship to any other nation, will be stipulated.

It appearing probable, from the information I received, that our commercial intercourse with some ports in the island of St. Domingo might safely be renewed, I took such steps as seemed to me expedient to ascertain that point. The result being satisfactory, I then, in conformity with the act of Congress on the subject, directed the restraints and prohibitions of that intercourse to be discontinued, on terms which were made known by proclamation. Since the renewal of this intercourse, our citizens, trading to those ports, with their property, have been duly respected, and privateering from those ports has ceased.

In examining the claims of British subjects, by the Commissioners at Philadelphia, acting under the sixth article of the Treaty of Amity, Commerce, and Navigation, with Great Britain, a difference of opinion, on points deemed essential, in the interpretation of that article, has arisen between the Commissioners appointed by the United States and the other members of that Board, from which the former have thought it their duty to withdraw. It is sincerely to be regretted that the execution of an article produced by a mutual spirit of amity and justice, should have been thus unavoidably interrupted. It is, however, confidently expected that the same spirit of amity, and the same sense of justice in which it originated, will lead to satisfactory explanations. In consequence of the obstacles to the progress of the commission in Philadelphia, His Britannic Majesty has directed the Commissioners appointed by him under the seventh article of the Treaty, relating to British captures of American vessels, to withdraw from the Board sitting in London: but with the express declaration of his determination to fulfil, with punctuality and good faith, the engagements which His Majesty has contracted by his Treaty with the United States; and that they will be instructed to resume their functions, whenever the obstacles which impede the progress of the commission at Philadelphia shall be removed. It being, in like manner, my sincere determination, so far as the same depends on me, that, with equal punctuality and good faith, the engagements contracted by the United States in their treaties with His Britannic Majesty shall be fulfilled, I shall immediately instruct our Minister at London to endeavor to obtain the explanations necessary to a just performance of those engagements, on the part of the United States. With such dispositions on both sides, I cannot entertain a doubt that all difficulties will soon be removed, and that the two boards will then proceed and bring the business committed to them, respectively, to a satisfactory conclusion.

The act of Congress relative to the seat of the Government of the United States, requiring that, on the first Monday of December next, it should be transferred from Philadelphia to the district chosen for its permanent seat, it is proper for me to inform you that the Commissioners appointed to provide suitable buildings for the accommodation of Congress and of the President, and for the public offices of the Government, have made a report of the state of the buildings designed for those purposes in the city of Washington; from which they conclude that the removal of the seat of Government to that place, at the time required, will be practicable, and the accommodations satisfactory. Their report will be laid before you.

Gentlemen of the House of Representatives:

I shall direct the estimates of the appropriations necessary for the service of the ensuing year, together with an account of the revenue and expenditure, to be laid before you. During a period in which a great portion of the civilized world has been involved in a war unusually calamitous and destructive, it was not to be expected that the United States could be exempted from extraordinary burdens. Although the period is not arrived when the measures adopted to secure our country against foreign attacks can be renounced, yet it is alike necessary to the honor of the Government and the satisfaction of the community, that an exact economy should be maintained. I invite you, gentlemen, to investigate the different branches of the public expenditure: the examination will lead to beneficial retrenchments, or produce a conviction of the wisdom of the measures to which the expenditure relates.

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

At a period like the present, when momentous changes are occurring, and every hour is preparing new and great events in the political world, when a spirit of war is prevalent in almost every nation with whose affairs the interests of the United States have any connexion, unsafe and precarious would be our situation were we to neglect the means of maintaining our just rights. The result of the mission to France is uncertain; but, however it may terminate, a steady perseverance in a system of national defence, commensurate with our resources and the situation of our country, is an obvious dictate of wisdom: for, remotely as we are placed from the belligerent nations, and desirous as we are, by doing justice to all, to avoid offence to any, nothing short of the power of repelling aggressions will secure to our country a rational prospect of escaping the calamities of war, or national degradation. As to myself, it is my anxious desire so to execute the trust reposed in me, as to render the people of the United States prosperous and happy. I rely, with entire confidence, on your co-operation in objects equally your care; and that our mutual labors will serve to increase and confirm union among our fellow-citizens, and an unshaken attachment to our Government.

JOHN ADAMS.

UNITED STATES, *December* 3, 1799.

The President of the United States then withdrew and the two Houses separated.

A copy of the speech being delivered by the PRESIDENT to the SPEAKER, and read by the Clerk, it was ordered, that it be committed to a Committee of the whole House to-morrow.

WEDNESDAY, December 4.

Mr. LIVINGSTON said he conceived some notice ought to be taken of the letter received from Mr. Trumbull, and therefore moved that it be referred to a select committee. Agreed to, and Messrs. LIVINGSTON, TALIAFERRO, and HILL, were appointed.

THE PRESIDENT'S SPEECH.

The House went into a Committee of the Whole on the President's Speech. Mr. RUTLEDGE in the Chair. The Speech having been read.

Mr. MARSHALL moved the following resolution, which was agreed to by the Committee, viz:

Resolved, That it is the opinion of this Committee, that a respectful Address ought to be presented by the House of Representatives to the President of the United States, in answer to his Speech to both Houses of Congress, on the opening of the present session, containing assurances that this House will duly attend to the important objects recommended by him to their consideration.

The Committee rose, and the resolution having been agreed to by the House, Messrs. MARSHALL, RUTLEDGE, SEWALL, LIVINGSTON, and NICHOLAS, were appointed a committee to draught the Address.

CHAPLAIN TO THE HOUSE.

A message from the Senate announced that they had passed a resolution for the appointment of two Chaplains to Congress, to which they requested the concurrence of the House.

The resolution having been concurred in, Dr. GREEN was chosen on the part of this House.

THURSDAY, December 5.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, enclosing a report from the Commissioners appointed to superintend the public buildings in the City of Washington.

On motion of Mr. BAYARD, the following resolution was agreed to by the House:

"*Resolved*, That a committee be appointed to prepare and bring in a bill for the establishment of an uniform system of bankruptcy throughout the United States."

Messrs. BAYARD, MARSHALL, C. GOODRICH, SEWALL, and HARPER, were appointed.

A message was received from the Senate, informing the House that the Right Rev. Bishop WHITE had been chosen on their part, as Chaplain to Congress.

Mr. OTIS moved the following resolution, which was agreed to by the House:

"*Resolved*, That a committee be appointed to consider whether it be expedient to make any and, if any, what provision for persons confined for debt, and that they report by bill or otherwise."

Messrs. OTIS, BIRD, and STONE, were appointed.

STANDING COMMITTEES.

On motion of Mr. LIVINGSTON, the House ordered the appointment of the following Standing Committees, viz:

Committee of Elections—Mr. DANA, Mr. SUMTER, Mr. KITTERA, Mr. NEW, Mr. HENDERSON, Mr. GORDON, and Mr BAILEY.

Committee of Claims—Mr. D. FOSTER, Mr. MACON, Mr. BRACE, Mr. MORRIS, Mr. IMLAY, Mr. HANNA, and Mr. JOHN CHEW THOMAS.

Committee of Commerce—Mr. SMITH, Mr. SEWALL, Mr. WALN, Mr. RUTLEDGE, Mr. JOHN BROWN, Mr. FRANKLIN DAVENPORT, and Mr. TALIAFERRO.

Committee of Revisal and Unfinished Business—Mr. GRISWOLD, Mr. EVANS, and Mr. DENT.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I herewith transmit to Congress certain documents which relate to the late insurrection in Pennsylvania, the opening of trade and intercourse with the island of St. Domingo, and the mission to the French Republic; promised in my address to both Houses of Congress, on Tuesday last. JOHN ADAMS.

UNITED STATES *Dec.* 5, 1799.

The Message and documents were read, and ordered to lie on the table.

[The following are the documents which accompanied the above Message: (See *Appendix.*)

I.—*Insurrection in Northampton, &c.*

A letter from the Hon. Richard Peters to the Secretary of State, enclosing a declaration of William Nichols, Esq., Marshal of the district of Pennsylvania; a deposition of Valentine ———; and the deposition of Jacob Eyerly, Esq.

A proclamation of the President relative to the Northampton insurrection.

A letter from the Secretary of War to the Governor of Pennsylvania, designating the different companies of troops required from that State to march upon the expedition.

Instructions from the Secretary at War, to Brigadier General Macpherson, commanding the expedition.

II.—*St. Domingo.*

A proclamation of the President of the United States, for opening trade and intercourse with the island of St. Domingo.

III.—*Mission to the French Republic.*

A letter from Patrick Henry, Esq. to the Secretary of State, declining the appointment of Envoy, owing to his indisposition, and the distance of the scene at which the negotiations are contemplated to take place.

Copy of a letter from Citizen Talleyrand, dated Paris, 11th Fructidor, to the Citizen Pichon, Secretary of the French Legation at the Hague, approving the conduct of that agent, in communicating to Mr. Murray the pacific disposition of the French Republic towards the United States.

Another letter from Talleyrand to Pichon, dated Paris, 28th September, 1798, authorizing him to communicate the pacific sentiments contained in the preceding to Mr. Murray; and of the sincere disposition of the Directory to accelerate an amicable adjustment of all existing differences; and the respect with which an American Envoy would be received.

A letter from the Secretary of State to Mr. Murray, enclosing his appointment as Envoy to the French Republic, in conjunction with Mr. Ellsworth, Chief Justice of the United States, and P. Henry, Esq. of Virginia; and the condition (to be expressed to the Directory) on which the Envoys would repair to Paris: or, if more agreeable to the Directory, a Minister from the French Republic would be received at Philadelphia.

A letter from Mr. Murray to the Secretary of State, accepting the appointment of Envoy to the French Republic.

A letter from Mr. Murray to the Minister of Foreign Relations, dated at the Hague, acquainting him with the nomination of the Envoys, and the stipulations expressed in the letter from the Secretary of State to Mr. Murray.

A letter from the Minister of Foreign Relations, in answer to the above, dated 12th May, 1799, containing assurances that they shall enjoy all the prerogatives attached to the mission by the laws of nations, and a Minister of equal quality be appointed to treat with them; and that passports would be granted for their safe conveyance to Paris.]

FRIDAY, December 6.

EDWIN GRAY, from Virginia, and WILLIAM BARRY GROVE, from North Carolina, appeared this day, were qualified, and took their seats.

Mr. HARRISON moved the following resolution, which was ordered to lie on the table, to wit:

"*Resolved*, That a committee be appointed to inquire and report, by bill or otherwise, whether any, and what, alterations are necessary to be made in the judicial establishment of the Territory of the United States Northwest of the river Ohio."

Mr. MARSHALL, from the committee appointed to draught an Address in answer to the Speech of the President of the United States, at the commencement of the present session, reported the same, which was committed to a Committee of the Whole on Monday next, and ordered to be printed.

Mr. LIVINGSTON, from the committee to whom was referred the letter of Mr. Trumbull, reported the following resolution, which was adopted by the House:

"*Resolved*, That the two elegant prints offered by Mr. Trumbull, be accepted; and that the Speaker be instructed to write an answer, expressive of the pleasure with which this House has observed his genius and talents exerted in the patriotic task of celebrating the events which led to his country's independence, and dedicated to the memory of those heroes who fell in its defence."

On motion of Mr. BAYARD, the President's Speech was referred to a Committee of the Whole on the state of the Union.

MONDAY, December 9.

JOSIAH PARKER and ROBERT PAGE, from Virginia, appeared, produced their credentials, were qualified, and took their seats.

ADDRESS TO THE PRESIDENT.

The House resolved itself into a Committee of the Whole, on the Address to be presented to the President of the United States, in answer to his Speech to both Houses, at the commencement of the present session.

Mr. GREGG moved, that the words distinguished by italics, in the third and fourth lines of the second paragraph of the Address, be struck out, and that the words "act in" be inserted in their stead; which produced a short debate, and was finally negatived.

The Committee then rose, and the Address was reported without amendment; and was agreed to by the House, in the words following, viz:

To the President of the United States:

SIR: While the House of Representatives contemplate the flattering prospects of abundance from the labors of the people, by land and by sea, the prosperity of our extended commerce, notwithstanding the interruptions occasioned by the belligerent state of a great part of the world, the return of health, industry and trade, to those cities which have lately been afflicted with disease, and the various and inestimable advantages, civil and religious, which, secured under our happy frame of Government, are continued to us unimpaired, we cannot fail to offer up to the benevolent Deity our sincere thanks for these the merciful dispensations of his protecting Providence.

That any portion of the people of America should permit themselves, amid such numerous blessings, to *be seduced by the arts and misrepresentations of designing men into an* open resistance of a law of the United States, cannot be heard without deep and serious regret. Under a Constitution where the public burdens can only be imposed by the people themselves, for their own benefit, and to promote their own objects, a hope might well have been indulged that the general interest would have been too well understood, and the general welfare too highly prized, to have produced in any of our citizens a disposition to hazard so much felicity, by the criminal effort of a part, to oppose with lawless violence the will of the whole. While we lament that depravity which could produce a defiance of the civil authority, and render indispensable the aid of the military force of the nation, real consolation is to be derived from the promptness and fidelity with which that aid was afforded. That zealous and active co-operation with the judicial power, of the volunteers and militia called into service, which has restored order and submission to the laws, is a pleasing evidence of the attachment of our fellow-citizens to their own free Government, and of the truly patriotic alacrity with which they will support it.

To give due effect to the civil administration of Government, and to insure a just execution of the laws, are objects of such real magnitude as to secure a proper attention to your recommendation of a revision and amendment of the judiciary system.

Highly approving, as we do, the pacific and humane policy which has been invariably professed and sincerely pursued by the Executive authority of the United States, a policy which our best interests enjoined and of which honor has permitted the observance, we consider as the most unequivocal proof of your inflexible perseverance in the same well chosen system, your preparation to meet the first indications on the part of the French Republic, of a disposition to accommodate the existing differences between the two countries, by a nomination of Ministers on certain conditions, which the honor of our country unquestionably dictated, and which its moderation had certainly given it a right to prescribe. When the assurances thus required of the French Government, previous to the departure of our Envoys, had been given

through their Minister of Foreign Relations, the direction that they should proceed on their mission, was, on your part, a completion of the measure, and manifests the sincerity with which it was commenced. We offer up our fervent prayers to the Supreme Ruler of the Universe for the success of their embassy, and that it may be productive of peace and happiness to our common country. The uniform tenure of your conduct, through a life useful to your fellow-citizens and honorable to yourself, gives a sure pledge of the sincerity with which the avowed objects of the negotiation will be pursued on your part, and we earnestly pray that similar dispositions may be displayed on the part of France. The differences which unfortunately subsist between the two nations, cannot fail, in that event, to be happily terminated. To produce this end, to all so desirable, firmness, moderation, and union at home, constitute, we are persuaded, the surest means. The character of the gentlemen you have deputed, and still more, the character of the Government which deputes them, are safe pledges to their country, that nothing incompatible with its honor or interest, nothing inconsistent with our obligations of good faith or friendship to any other nation, will be stipulated.

We learn, with pleasure, that our citizens, with their property, trading to those ports of St. Domingo with which commercial intercourse has been renewed, have been duly respected, and that privateering from those ports has ceased.

With you, we sincerely regret that the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, with Great Britain, an article produced by a mutual spirit of amity and justice, should have been unavoidably interrupted. We doubt not that the same spirit of amity, and the same sense of justice in which it originated, will lead to satisfactory explanations; and we hear with approbation that our Minister at London will be immediately instructed to obtain them. While the engagements which America has contracted by her Treaty with Great Britain, ought to be fulfilled with that scrupulous punctuality and good faith to which our Government has ever so tenaciously adhered, yet no motive exists to induce, and every principle forbids us to adopt a construction which might extend them beyond the instrument by which they are created. We cherish the hope that the Government of Great Britain will disclaim such extension, and by cordially uniting with that of the United States for the removal of all difficulties, will soon enable the boards appointed under the sixth and seventh articles of our treaty with that nation, to proceed, and bring the business committed to them respectively to a satisfactory conclusion.

The buildings for the accommodation of Congress, and of the President, and for the public offices of the Government at its permanent seat, being in such a state as to admit of a removal to that District by the time prescribed by the act of Congress, no obstacle, it is presumed, will exist to a compliance with the law.

With you, sir, we deem the present period critical and momentous. The important changes which are occurring, the new and great events which are every hour preparing in the political world, the spirit of war which is prevalent in almost every nation with whose affairs the interests of the United States have any connexion, demonstrate how unsafe and precarious would be our situation, should we neglect the means of maintaining our just rights. Respecting, as we have ever done, the rights of others, America estimates too correctly the value of her own, and has received evidence too complete that they are only to be preserved by her own vigilance, ever to permit herself to be seduced by a love of ease, or by other considerations, into that deadly disregard of the means of self-defence, which could only result from a carelessness as criminal as it would be fatal concerning the future destinies of our growing Republic. The result of the mission to France is, indeed, sir, uncertain. It depends not on America alone. The most pacific temper will not always insure peace. We should therefore exhibit a system of conduct as indiscreet as it would be new in the history of the world, if we considered the negotiation happily terminated because we have attempted to commence it, and peace restored because we wish its restoration. But, sir, however this mission may terminate, a steady perseverance in a system of national defence, commensurate with our resources and the situation of our country, is an obvious dictate of duty. Experience, the parent of wisdom, and the great instructer of nations, has established the truth of your position, that, remotely as we are placed from the belligerent nations, and desirous as we are, by doing justice to all, to avoid offence to any, yet nothing short of the power of repelling aggressions will secure to our country a rational prospect of escaping the calamities of war or national degradation.

In the progress of the session, we shall take into our serious consideration the various and important matters recommended to our attention.

A life devoted to the service of your country, talents and integrity which have so justly acquired and so long retained the confidence and affection of your fellow-citizens, attest the sincerity of your declaration, that it is your anxious desire so to execute the trust reposed in you as to render the people of the United States prosperous and happy.

Resolved, That the Speaker, attended by the House, do present the said Address.

Messrs. Marshall, Rutledge, and Sewall, were appointed a committee to wait on the President, to know when and where he would be ready to receive the Address; and having performed that service, reported, that the President had appointed to-morrow, two o'clock, for that purpose, at his own house.

PRESIDENT'S SPEECH.

The House went into Committee of the Whole on the state of the Union, to take into consideration the several objects recommended in the President's Speech.

Mr. D. Foster moved the following resolutions, which were agreed to by the Committee, viz:

1. *Resolved*, That so much of the Speech of the President of the United States, to both Houses of Congress, at the commencement of the present session, as relates to a revision and amendment of the judiciary system, be referred to a committee, with leave to report by bill, bills, or otherwise.

2. *Resolved*, That so much of the Speech of the President of the United States, to both Houses of Congress, at the commencement of the present session, as relates to the expenditure of public moneys, be referred to a committee of Ways and Means.

3. *Resolved*, That so much of the Speech of the President of the United States, to both Houses of Congress, at the commencement of the present session, as relates to a system of national defence, commensurate with our resources and the situation of our country, be referred to a committee.

The Committee then rose, and the House having taken up the consideration of the resolutions, as reported, the first and third were agreed to; and on motion of Mr. Dent, the question on agreeing to the second, was postponed till to-morrow.

Ordered, That Mr. Harper, Mr. Chauncey Goodrich, Mr. Bayard, Mr. Marshall, and Mr. Sewall, be appointed a committee, pursuant to the first resolution.

Ordered, That Mr. Otis, Mr. Nicholas, Mr. Edmond, Mr. Abiel Foster, Mr. Champlin, Mr. Waln, and Mr. Hill, be appointed a committee, pursuant to the third resolution.

COMMITTEE OF WAYS AND MEANS.

On motion of Mr. Gallatin, the House ordered the appointment of a standing committee of Ways and Means. A motion that it consist of one member from each State, was made; but on Mr. Harper's observing that nine were found a sufficient number last session, and were able to obtain every information, and would be more expeditious in doing business, the latter motion was agreed to.

Ordered, That Mr. Harper, Mr. Griswold, Mr. Otis, Mr. Gallatin, Mr. Powell, Mr. John Brown, Mr. Stone, Mr. Nott, and Mr. Platt, be appointed.

Ordered, That the credentials of William Henry Harrison, who has appeared as a Delegate from the Territory of the United States Northwest of the river Ohio, be referred to the Committee of Elections; and that they be directed to report whether the Territory is entitled to elect a Delegate who may have a seat in this House.

Tuesday, December 10.

Matthew Clay, from Virginia, appeared produced his credentials, was qualified, and took his seat in the House.

Mr. Griswold from the Committee of Revisal and Unfinished Business, made a report, which was ordered to be printed.

The House resumed the consideration of the resolution postponed yesterday, which, after being read, was agreed to in the words following, to wit:

Resolved, That so much of the Speech of the President of the United States to both Houses of Congress, at the commencement of the present session, as relates to the expenditure of public moneys, be referred to the Committee of Ways and Means.

Mr. Claiborne moved the following resolution, which was adopted:

Resolved, That a committee be appointed to inquire whether any, and what, provision ought to be made, by law, for the punishment of such persons as may be discovered in making attempts to alienate the affections of any Indian nation, tribe, or chief, from the United States; or in exciting them to hostilities against the United States; or to the violation of any existing treaty; and that the said committee be authorized to report by bill or otherwise.

Mr. Harrison called up the consideration of the resolution which he laid upon the table on Friday last, relative to the judiciary establishment of the Territory of the United States Northwest of the river Ohio; and the resolution having been read, on motion, it was agreed to by the House.

Messrs. Craik, Harrison, and Bird, were appointed the committee.

Mr. Harrison presented a petition of Lardner Clark, a citizen of the United States, residing at Kaskaskias, in the Northwestern Territory, praying for the confirmation of his title to a certain tract of land granted under the old French Government, the papers ascertaining his right to which had been lost or destroyed. Referred to a select committee.

On motion of Mr. Dawson,

Ordered, That leave be given to bring in a bill or bills, providing for an enumeration of the inhabitants of the United States; and that the Committee of Ways and Means do prepare and bring in the same.

On motion of Mr. Claiborne, the House came to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a Post Office and post roads within the United States.

Messrs. Thatcher, Wood, New, Claiborne, and Grove, were appointed the committee.

ADDRESS TO THE PRESIDENT.

The hour having arrived which the President had appointed, Mr. Speaker, attended by the members present, proceeded to the President's house, to present him their Address in answer to his Speech at the opening of the present session; and having returned, the President's reply thereto was read, as follows:

Gentlemen of the House of Representatives:

This very respectful address from the Representatives of the people of the United States at their first assembly, after a fresh election, under the strong impression of the public opinion and national sense, at this interesting and singular crisis of our public affairs, has excited my sensibility, and receives my sincere and grateful acknowledgments.

As long as we can maintain, with harmony and affection, the honor of our country, consistently with its peace, externally and internally, while that is attainable, or in war, when that becomes necessary, assert its real independence and sovereignty, and support the Constitutional energies and dignity of its Government, we may be perfectly sure, under the smiles of Divine Providence, that we shall effectually promote and extend our national interests and happiness.

The applause of the Senate and House of Representatives, so justly bestowed upon the volunteers and militia, for their zealous and active co-operation with the judicial power, which has restored order and submission to the laws, as it comes with peculiar weight and propriety from the Legislature, cannot fail to have an extensive and permanent effect, for the support of Government, upon all those ingenuous minds who receive delight from the approving and animating voice of their country.

JOHN ADAMS.

United States, *December* 10.

And then the House adjourned till to-morrow morning, 11 o'clock.

WEDNESDAY, December 11.

HENRY LEE, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. D. FOSTER laid the following resolution on the table:

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations ought to be made in the law, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign country;" and that the committee have power to report by bill or otherwise.

THE DIRECT TAX LAW.

Mr. HARPER said, that a difficulty had arisen in the State of Pennsylvania, relative to the execution of the law "for the valuation of lands and dwelling-houses, and for the enumeration of slaves, within the United States," which the Commissioners for that State did not conceive themselves competent to decide upon; that the Commissioners had referred the case to the Secretary of the Treasury, whose opinion it was, that they were possessed of sufficient power to obviate the difficulties complained of; but the Commissioners, on again taking the subject into consideration, were still of opinion they were unable to act without legislative aid, and therefore had made application to the Commmitte of Ways and Means, who, Mr. H. said, had directed him to move for leave to bring in a bill, further to amend the act entitled "An act to provide for the valuation of lands and dwelling-houses, and for the enumeration of slaves, within the United States," which was granted.

FRANKING PRIVILEGE TO W. H. HARRISON.

Mr. HARPER laid the following resolution on the table.

Resolved, That a committee be appointed to prepare and bring in a bill, extending the privilege of franking to W. H. Harrison, a delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation.

Mr. H. said, that according to law, that gentleman had the right only of speaking and giving his opinion upon any question before the House, but was not entitled to a vote, or any other privilege; but as the privileges of a member had been extended on a former occasion to a delegate from the Southwestern Territory, he had no doubt they would be granted on the present.

UNFINISHED BUSINESS.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, moved the following resolution, which was adopted by the House, viz:

Resolved, That all petitions which were depending and undecided at the last session of Congress, ought to be taken up and acted upon by the House, as the same may be called for by any member, or upon the application of the individual claimant or petitioner.

THURSDAY, December 12.

Mr. OTIS moved the following resolution, which was agreed to by the House:

Resolved, That a committee be appointed, whose duty it shall be to make inquiry into the state of the naval equipments ordered by former acts of Congress; to consider whether any, and what, other naval force may be necessary for the protection of the commerce of the United States, and for the support of its flag; and whether any, and what, alterations ought to be made in the law relative to the Navy of the United States.

Messrs. PARKER, OTIS, RUTLEDGE, CRAIK, and CHAMPLIN, were appointed the committee.

Mr. D. FOSTER called up the resolution which he laid on the table on Tuesday, relative to the slave trade; and the same having been read, was agreed to by the House.

Messrs. DWIGHT FOSTER, BIRD, and JONES, were appointed committee.

Mr. SEWALL moved that when the House adjourn it do adjourn till Monday. After a few observations from Mr. RUTLEDGE, who said time ought to be given to the committees to prepare their reports, and, until made, there was little else to occupy the attention of the House; the question was put and carried, 48 rising in favor of it.

MONDAY, December 16.

THOMAS HARTLEY, from Pennsylvania, and JOSEPH EGGLESTON, from Virginia, appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. GREGG presented a petition of Robert Sturgeon, late a revenue officer of the United States, in the county of Mifflin, State of Pennsylvania, and now in the jail of the said county, for arrearages of money due by him to the United States, praying that a law may be passed for his liberation; which was read, and referred to a Committee of the Whole.

Mr. CLAIBORNE, from the committee appointed to inquire whether any, and what, provision ought to be made for the punishment of such persons as may be discovered in making attempts to alienate the affections of the Indians on our frontiers from the United States, reported "a bill for the preservation of peace with the Indian tribes;" which was read a first and second time, and referred to a Committee of the Whole on Wednesday.

Mr. OTIS, pursuant to leave given for that purpose, reported "a bill extending the privilege of franking to William Henry Harrison, a delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation;" which was read a first and second time, and committed to a Committee of the Whole to-morrow.

Mr. DANA, from the Committee of Elections, made a report, certifying the due election of all the members who have produced their credentials; which was read and committed to a Committee of the whole House.

A message was received from the Senate informing the House that the Senate have passed an act entitled "An act for the relief of persons imprisoned for debt," and "An act for reviving and continuing suits and proceedings in the Circuit Court for the district of Pennsylvania," to which they request the concurrence of the House.

The former was read a first and second time and committed to a Committee of the Whole for to-morrow. The latter was read a third time and passsed.

Mr. DANA, from the Committee of Elections, to whom was referred the credentials of William Henry Harrison, Esq., a delegate from the Northwest Territory, made a report, which concluded with the following resolution:

Resolved, That William Henry Harrison a delegate from the Territory of the United States Northwest of the river Ohio, be admitted to have a seat in this House with the right of debating but not of voting:"

which was committed to a Committee of the whole House this day.

The report was subsequently taken up and agreed to by the House.

Mr. GRISWOLD, from the Committee of Ways and Means, reported "A bill providing for the enumeration of the inhabitants of the United States;" which was read a first and second time, and committed to a Committee of the Whole on Thursday next.

Mr. G., from the same committee, also reported "a bill supplementary to the act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," which was read a first and second time, and committed to a Committee of the Whole for to-morrow.

On motion, it was *Ordered*, That Mr. WADSWORTH, and Mr. GRAY, be appointed a Committee for Enrolled Bills, on the part of this House, jointly, with such committee as shall be appointed for that purpose on the part of the Senate.

THE MILITIA LAW.

Mr. LEE moved the following resolution, which was adopted by the House, viz:

Resolved, That a committee be appointed to report whether any, and, if any, what alterations are necessary to be made in the militia law of the United States."

In prefacing his motion, Mr. L. said he wished to call the attention of the House to a subject highly interesting to the citizens of the United States, and deserving the serious attention of its Legislature. He thought the system heretofore pursued was radically wrong, and viewed every measure which was not predicated on the wishes of the people, as answering but little effect. He wished to see that system of defence which, growing out of nature, shall enable all men to serve without injuring their families. The youth of our country should alone be called upon, who would be found sufficiently adequate for its defence, and seventeen and twenty-six were the ages of which the defenders of our country should consist. When father and son are arrayed in the same ranks, a wavering must take place, and present an opportunity for an impression from the enemy. He concluded a concise and elegant speech, by moving the above resolution.

Ordered, That Mr. HENRY LEE, Mr. SMITH, Mr. MORRIS, Mr. SHEPARD, Mr. DICKSON, Mr. TALIAFERRO, and Mr. SUMTER, be appointed a committee, pursuant to the said resolution.

TUESDAY, December 17.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, reported a bill providing for salvage in case of recapture, which was read a first and second time and committed to a Committee of the whole House on Thursday.

The House went into Committee of the Whole on the bill supplementary to the act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States;" and the bill having been read, was agreed to without amendment, and ordered to be engrossed for a third reading to-morrow.

IMPRISONMENT FOR DEBT.

Mr. OTIS moved, that the Committee of the Whole to whom were referred the bill from the Senate for the relief of persons imprisoned for debt, be discharged; and that the bill be committed to the select committee to whom were referred a similar subject. Agreed to.

Mr. O. said, he made this motion, in consequence of some recent information which he had received on the subject from the Judge of the District Court of Pennsylvania. The bill from the Senate was merely a copy of the old law, in which there were several imperfections. He had not yet had time to mature his reflections on the alterations necessary to be made in the bill, but expected if it were committed, (as he proposed,) to receive such additional information from the District Judge, on this subject, as would render the law, if passed, more beneficial, and competent to the purposes for which it was intended.

WEDNESDAY, December 18.

The bill entitled "An act supplementary to the act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," was read a third time and passed.

Mr. SPEAKER said, he had received a letter, addressed to him, in the French language, (of which he had procured a translation,) from six French officers, confined in jail, at Burlington, in the State of New Jersey, which was read and referred to the Secretary of the Navy.

The letter stated that they had been in imprisonment six months; that their usage was contrary to that of enemy officers in the power of the French Republic, who allowed them to depart either for their own or a neutral country; and that American officers were not detained in France as prisoners of war. Wherefore, they pray to be allowed to depart for their own or for a neutral country.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of the sums necessary to be appropriated for the service of the year one thousand eight hundred; also, a statement of the receipts and expenditures at the Treasury of the United States, for one year preceding the first day of October, one thousand seven hundred and nine-

ty-nine; which were read, and ordered to be referred to the Committee of Ways and Means.

DEATH OF GENERAL WASHINGTON.

Mr. MARSHALL, in a voice that bespoke the anguish of his mind, and a countenance expressive of the deepest regret, rose, and delivered himself as follows:

Mr. Speaker; Information has just been received, that our illustrious fellow-citizen, the Commander in-Chief of the American Army, and the late President of the United States, is no more!

Though this distressing intelligence is not certain, there is too much reason to believe its truth. After receiving information of this national calamity, so heavy and so afflicting, the House of Representatives can be but ill fitted for public business. I move you, therefore, they adjourn.

The motion was unanimously agreed to; and then the House adjourned till to-morrow morning, 11 o'clock.

THURSDAY, December 19.

SAMUEL GOODE, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

DEATH OF GENERAL WASHINGTON.

Mr. MARSHALL, addressed the Chair as follows:

Mr. Speaker: The melancholy event which was yesterday announced with doubt, has been rendered but too certain. Our WASHINGTON is no more! The Hero, the Sage, and the Patriot of America—the man on whom in times of danger every eye was turned and all hopes were placed—lives now only in his own great actions, and in the hearts of an affectionate and afflicted people.

If, sir, it had even not been usual openly to testify respect for the memory of those whom Heaven had selected as its instruments for dispensing good to men, yet such has been the uncommon worth, and such the extraordinary incidents which have marked the life of him whose loss we all deplore, that the whole American nation, impelled by the same feelings, would call with one voice for a public manifestation of that sorrow which is so deep and so universal.

More than any other individual, and as much as to one individual was possible, has he contributed to found this our wide-spreading empire, and to give to the Western world its independence and its freedom.

Having effected the great object for which he was placed at the head of our armies, we have seen him converting the sword into the ploughshare, and voluntarily sinking the soldier in the citizen.

When the debility of our federal system had become manifest, and the bonds which connected the parts of this vast continent were dissolving, we have seen him the Chief of those patriots who formed for us a Constitution, which, by preserving the Union, will, I trust, substantiate and perpetuate those blessings our Revolution had promised to bestow.

In obedience to the general voice of his country, calling on him to preside over a great people, we have seen him once more quit the retirement he loved, and in a season more stormy and tempestuous than war itself, with calm and wise determination, pursue the true interests of the nation, and contribute, more than any other could contribute, to the establishment of that system of policy which will, I trust, yet preserve our peace, our honor, and our independence.

Having been twice unanimously chosen the Chief Magistrate of a free people, we see him at a time when his re-election, with the universal suffrage, could not have been doubted, affording to the world a rare instance of moderation, by withdrawing from his high station to the peaceful walks of private life.

However the public confidence may change, and the public affections fluctuate with respect to others, yet with respect to him they have in war and in peace, in public and in private life, been as steady as his own firm mind, and as constant as his own exalted virtues.

Let us then, Mr. Speaker, pay the last tribute of respect and affection to our departed friend—let the Grand Council of the nation display those sentiments which the nation feels.

For this purpose I hold in my hand some resolutions, which I will take the liberty to offer to the House.

Mr. MARSHALL having handed them in at the table, they were read, and unanimously agreed to by the House, in the words following, to wit:

The House of Representatives of the United States, having received intelligence of the death of their highly valued fellow-citizen, GEORGE WASHINGTON, General of the Armies of the United States, and sharing the universal grief this distressing event must produce, *unanimously resolve:*

1. That this House will wait on the President of the United States, in condolence of this national calamity.

2. That the Speaker's chair be shrouded with black, and that the members and officers of the House wear mourning, during the session.

3. That a joint committee of both Houses be appointed to report measures suitable to the occasion, and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, first in war, first in peace, and first in the hearts of his countrymen.

4. That when this House adjourns, it will adjourn until Monday next.

Ordered, That Mr. MARSHALL and Mr. SMITH be appointed a committee to wait on the President of the United States, to know when and where he will receive this House for the purpose expressed in the first resolution.

Ordered, That Mr. MARSHALL, Mr. CRAIK, Mr. HENRY LEE, Mr. EGGLESTON, Mr. SMITH, Mr. STONE, Mr. RUTLEDGE, Mr. ABIEL FOSTER, Mr. MUHLENBERG, Mr. VAN CORTLANDT, Mr. DWIGHT FOSTER, Mr. FRANKLIN DAVENPORT, Mr. CLAIBORNE, Mr. MORRIS, Mr. JOHN BROWN, and Mr. TALIAFERRO, be a committee, jointly with such committee as may be appointed on the part of the Senate, for the purpose expressed in the third resolution.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

A Message was received from the PRESIDENT OF THE UNITED STATES, which, together with the letter accompanying the same, was read and referred to the committee last appointed, and is as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

The letter herewith transmitted, will inform you that it has pleased Divine Providence to remove from this life our excellent fellow-citizen GEORGE WASHINGTON, by the purity of his character, and a long series of services to his country, rendered illustrious through the world. It remains for an affectionate and grateful People, in whose hearts he can never die, to pay suitable honor to his memory. JOHN ADAMS.

UNITED STATES, *Dec.* 19, 1799.

"MOUNT VERNON, *Dec.* 15, 1799.

"SIR: It is with inexpressible grief that I have to announce to you the death of the great and good General WASHINGTON. He died last evening, between ten and eleven o'clock, after a short illness of about twenty hours. His disorder was an inflammatory sore throat, which proceeded from a cold, of which he made but little complaint on Friday. On Saturday morning, about three o'clock, he became ill. Doctor Craik attended him in the morning, and Doctor Dick, of Alexandria, and Doctor Brown, of Port Tobacco, were soon after called in. Every medical assistance was offered, but without the desired effect. His last scene corresponded with the whole tenor of his life; not a groan, nor a complaint, escaped him in extreme distress. With perfect resignation, and in full possession of his reason, he closed his well spent life.*

"I have the honor to be, sir, your most obedient and very humble servant.

"TOBIAS LEAR.

"The PRESIDENT OF THE UNITED STATES."

Mr. MARSHALL, from the committee appointed to wait on the President of the United States, to know when and where it will be convenient for him to receive this House in condolence of the national calamity, reported that the committee had according to order, performed that service, and that the President signified to them it would be convenient for him to receive this House at one o'clock this afternoon, at his own house.

A message from the Senate informed the House that the Senate have agreed to the resolution passed by the House of Representatives for the appointment of a joint committee of both Houses to report measures suitable to the occasion, and expressive of the profound sorrow with which Congress is penetrated on the loss of a citizen, first in war, first in peace, and first in the hearts of his countrymen; and have appointed Mr. DAYTON, Mr. BINGHAM, Mr. DEXTER, Mr. GUNN, Mr. LAURANCE, and Mr. TRACY, a committee on their part.

The SPEAKER, attended by the House, then withdrew to the house of the President of the United States, when Mr. SPEAKER addressed the President as follows:

SIR: The House of Representatives, penetrated with a sense of the irreparable loss sustained by the nation in the death of that great and good man, the illustrious and beloved WASHINGTON, wait on you, sir, to express their condolence on this melancholy and distressing event.

To which the PRESIDENT replied as follows:

Gentlemen of the House of Representatives:

I receive, with great respect and affection, the condolence of the House of Representatives, on the melancholy and affecting event, in the death of the most illustrious and beloved personage which this country ever produced. I sympathize with you, with the nation, and with good men through the world, in this irreparable loss sustained by us all. JOHN ADAMS.

UNITED STATES, *Dec.* 19, 1799.

MONDAY, December 23

THOMAS T. DAVIS, from Kentucky; ROBERT WILLIAMS, from North Carolina; and JOHN DEN-

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* FROM AN ALEXANDRIA PAPER OF DECEMBER 21, 1799.

Messrs. J. & J. D. Westcott:

Presuming that some account of the late illness and death of General WASHINGTON, will be generally interesting, and particularly so to the professors and practitioners of medicine throughout America, we request you to publish the following statement.

JAMES CRAIK,
ELISHA C. DICK.

Some time in the night of Friday, the 13th inst., having been exposed to a rain on the preceding day, General WASHINGTON was attacked with an inflammatory affection of the upper part of the windpipe, called, in technical language, *cynanche trachealis*. The disease commenced with a violent ague, accompanied with some pain in the upper and fore part of the throat, a sense of stricture in the same part, a cough and a difficult rather than a painful deglutition, which were soon succeeded by fever and a quick and laborious respiration. The necessity of blood-letting suggesting itself to the General, he procured a bleeder in the neighborhood, who took from his arm, in the night, twelve or fourteen ounces of blood. He would not by any means be prevailed upon by the family to send for the attending physician till the following morning, who arrived at Mount Vernon at about eleven o'clock on Saturday. Discovering the case to be highly alarming, and foreseeing the fatal tendency of the disease, two consulting physicians were immediately sent for, who arrived, one at half after three, the other at four o'clock in the afternoon. In the interim were employed two copious bleedings, a blister was applied to the part affected, two moderate doses of calomel were given, and an injection was administered, which operated on the lower intestines—but all without any perceptible advantage; the respiration becoming still more difficult and distressing.

Upon the arrival of the first of the consulting physicians, it was agreed, as there were yet no signs of accumulation in the bronchial vessels of the lungs, to try the result of another bleeding, when about thirty-two ounces of blood were drawn, without the smallest apparent alleviation of the disease. Vapors of vinegar and water were frequently inhaled, ten grains of calomel were given, succeeded by repeated doses of emetic tartar, amounting in all to five or six grains, with no other effect than a copious discharge from the bowels. The powers of life seemed now manifestly yielding to the force of the disorder. Blisters were applied to the extremities, together with a cataplasm of bran and vinegar to the throat. Speaking, which was painful from the beginning, now became almost impracticable; respiration grew more and more contracted and imperfect, till half after eleven o'clock on Saturday night; when, retaining the full possession of his intellect, he expired, without a struggle.

He was fully impressed at the beginning of his complaint, as well as through every succeeding stage of it, that its conclusion would be mortal; submitting to the several exertions made for his recovery rather as a duty, than from any expectation of their efficacy. He considered the operations of death upon his system as coeval with the disease; and several hours before his decease, after repeated efforts to be understood, succeeded in expressing a desire that he might be permitted to die without interruption.

During the short period of his illness, he economized his time in the arrangement of such few concerns as required his attention, with the utmost serenity, and anticipated his approaching dissolution with every demonstration of that equanimity, for which his whole life has been so uniformly and singularly conspicuous.

JAMES CRAIK
Attending Physician.
ELISHA C. DICK.
Consulting Physician.

The signature of Doctor Gustavus Brown, of Port Tobacco, who attended as consulting physician, on account of the remoteness of his residence from the place, has not been procured to the foregoing statement.

NIS, from Maryland; appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. OTIS from the select committee to whom was referred the bill from the Senate for the relief of persons imprisoned for debt, reported the bill with sundry amendments, which were committed to a Committee of the whole House for Friday.

Mr. SEWALL presented a letter of Winthrop Sargent, Esq., Governor of the Mississippi Territory, to the Secretary of State, enclosing two memorials of the inhabitants of the Natchez—the first praying for Legislative aid to assist them in the establishment of a seminary, and places of public worship; the second for a confirmation of their titles to lands occupied by them previous to the cession of the Territory to the United States by Spain, and that vacant lands may be granted, free of expense, to persons on their becoming actual settlers. Ordered to lie on the table.

Mr. RUTLEDGE presented a petition of Nicholas I. Roosevelt, on behalf of himself and associates, praying for an act of incorporation for the purpose of continuing and facilitating the works of Schuyler's Copper Mine, in New Jersey; which was read and referred to the Committee of Commerce and Manufactures.

A petition of Thomas Burling and others, inhabitants of the Mississippi Territory, in behalf of themselves and the people of the said Territory, was presented to the House and read, praying the confirmation of all grants of lands legally and justly obtained from the Spanish Government, prior to the ratification of the late treaty between the United States and His Catholic Majesty.

Also, a petition of John Henderson, and others, inhabitants of the Natchez, in the said Territory, praying the aid and patronage of Congress in the establishment of a regular ministry of the Gospel among them, and of schools for the education of their youth.

Ordered, That the said petitions do lie on the table.

Mr. DAVIS presented a memorial of a number of inhabitants of the United States, residing near the Ohio, who had purchased a quantity of land from John Cleves Symmes, the title to which had been abrogated by the act of Congress of the 30th September, 1794, praying for a repeal of that act; or permission to retain the lands which they have improved, at a fair valuation; or that a hearing may be given them in the courts of law.

Ordered, That it lie on the table.

Mr. GREGG moved, that the Committee of the Whole to whom was referred the petition of Robert Sturgeon, be discharged from the further consideration thereof; and that it be referred to the select committee to whom was committed the bill from the Senate for relief of persons imprisoned for debt. Agreed to.

RESPECT TO THE MEMORY OF GENERAL WASHINGTON.

Mr. MARSHALL, from the joint committee appointed to report what testimony of respect ought to be paid to the memory of the man first in war, first in peace, and first in the hearts of his countrymen, made a report in part, which he delivered in at the table, where it was twice read, and unanimously agreed to, in the words following, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That a marble monument be erected by the United States, in the Capitol, in the city of Washington, and that the family of General WASHINGTON be requested to permit his body to be deposited under it; and that the monument be so designed as to commemorate the great events of his military and political life.

And be it further resolved, That there be a funeral procession from Congress Hall to the German Lutheran Church, in honor of the memory of General GEORGE WASHINGTON, on Thursday the 26th instant, and that an oration be prepared at the request of Congress, to be delivered before both Houses on that day, and that the President of the Senate and Speaker of the House of Representatives be desired to request one of the members of Congress to prepare and deliver the same.

And be it further resolved, That it be recommended to the people of the United States to wear crape on the left arm, as mourning, for thirty days.

And be it further resolved, That the President of the United States be requested to direct a copy of these resolutions to be transmitted to Mrs. WASHINGTON, assuring her of the profound respect Congress will ever bear to her person and character; of their condolence on the late afflicting dispensation of Providence; and entreating her assent to the interment of the remains of General GEORGE WASHINGTON, in the manner expressed in the first resolution.

And be it further resolved, That the President of the United States be requested to issue a proclamation, notifying to the people throughout the United States, the recommendation contained in the third resolution.*

Ordered, That the Clerk of this House do carry the said resolutions to the Senate, and desire their concurrence.

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*The following orders were issued by the War and Navy Departments:

The PRESIDENT, with deep regret, announces to the Army the death of its beloved Chief, General GEORGE WASHINGTON. Sharing in the grief which every heart must feel for so heavy and afflicting a public loss, and desirous to express his high sense of the vast debt of gratitude which is due to the virtues, talents, and ever memorable services of the illustrious deceased, he directs that funeral honors be paid to him at all the military stations, and that the officers of the army and of the several corps of volunteers wear crape on the left arm, by way of mourning, for six months. Major General Hamilton will give the necessary orders for carrying into effect the foregoing directions.

Given at the War Office of the United States, in Philadelphia, this nineteenth day of December, A. D. 1799, and in the twenty-fourth year of the independence of the said States.

By command of the President: JAMES M'HENRY, *Secretary of War*

NAVY DEPARTMENT, *20th December*, 1799.

The PRESIDENT, with deep affliction, announces to the Navy, and to the marines, the death of our beloved fellow-citizen, GEORGE WASHINGTON, Commander of our Armies, and late President of the United States; but rendered more illustrious by his eminent virtues, and a long series of the most important services, than by the honors which his grateful country delighted to confer upon him.

Desirous that the Navy and marines should express, in common with every other description of American citizens, the high sense which all feel of the loss our country has sustained in the death of this good and great man, the PRESIDENT directs that the vessels of the Navy, in our own and foreign ports, be put in mourning for one week, by wearing their colors half-mast high; and that the officers of the Navy and of the marines wear crape on the left arm, below the elbow, for six months. BEN. STODDERT.

Previous to the question being put upon the first resolution, Mr. H. LEE, of Virginia, rose, and addressed the Chair as follows:

Mr. Speaker: In executing the task assigned to the committee, it will be observed much remains to be done; so far as they have gone, and as far as they may go, one hope is cherished that whatever is done, will be unanimously adopted.

This will be most pleasing to our constituents, and most honorable to the character we all honor. Out of a wish to execute in the best manner the direction of the House, a difference of opinion will naturally prevail. This difference of opinion, however commendable, upon ascertaining the mode of public mourning, ought to be suppressed when we come to act; for unanimity then is, as I before stated, most to be wished for, whether the feelings of our constituents, or our intentions, on the celebrity which all desire to give to the high occasion, govern.

A message was received from the Senate, announcing their concurrence in the report of the joint committee made this day; and then the House adjourned till to-morrow morning.

TUESDAY, December 24.

Ordered, That the petitions of John Henderson and others, and of Thomas Burling and others, inhabitants of the Mississippi Territory, presented yesterday, be referred to Messrs. SEWALL, CHAUNCEY GOODRICH, WALN, EVANS and HILL; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report what laws have expired, or are near expiring, and require to be revived or further continued, made a report, in part; which was read, and ordered to lie on the table.

Mr. GORDON moved the following resolution, which was adopted by the House:

Resolved, That a committee be appointed to inquire whether any, and, if any, what amendments are necessary to the act, entitled "An act to lay and collect a direct tax within the United States;" and that they be authorized to report by bill, or otherwise.

On motion of Mr. GRISWOLD, the above resolution was committed to the Committee of Ways and Means.

NORTHWESTERN LAND SALES.

Mr. HARRISON said, he conceived the system which had been adopted for the sale of the lands of the United States northwest of the river Ohio was capable of considerable improvement; and that alterations might be made in the existing laws on that subject, which would be of considerable benefit to persons becoming actual settlers of that country. He therefore moved the following resolution, viz:

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations are necessary in the laws authorizing the sale of the lands of the United States northwest of the Ohio, and report to the House their opinion thereon.

The resolution was agreed to, and Messrs HARRISON, BRACE, GORDON, DAVIS, GORE, LYMAN, and GALLATIN, were appointed the committee.

Mr. GALLATIN presented a petition of 176 actual settlers, of the county of Jefferson, in the Northwestern Territory, praying that a law may be passed authorizing the sale of the lands of the United States in such manner as they may become purchasers, and thereby prevent land speculators from becoming the proprietors of the ground which they had improved, and to which they ought to have the pre-emption, which they could not have under the existing laws. Referred to the committee to whom were committed Mr. HARRISON's resolution.

PETITION OF GEORGE FARRAGUT.

Mr. CLAIBORNE moved, that the petition of George Farragut, presented at the last session, with the report of the Secretary of War made thereon, be referred to a select committee.

This motion was objected to, on the ground that the petition contained a claim upon the United States; and that as a standing committee had been appointed by the rules of the House, for considering and reporting upon all claims of the nature contained in this petition, it would be improper to deviate in one instance from the rule; as it must tend to the appointment of select committees whenever members who present similar petitions might wish the report upon them to be expedited. Mr. MACON therefore moved that it be referred to the Committee of Claims; which was agreed to.

RESPECT TO THE MEMORY OF GENERAL WASHINGTON.

The SPEAKER informed the House that, conformably to the resolution of Congress, the President of the Senate and the Speaker of the House of Representatives had requested Major General HENRY LEE, one of the Representatives from the State of Virginia, to prepare and deliver a funeral oration before both Houses, on Thursday, the twenty-sixth instant, in honor of the memory of GEORGE WASHINGTON, late General of the Armies of the United States; and that Mr. LEE had been pleased to accept of the appointment.

And, on motion, the House adjourned.

THURSDAY, December 26.

This being the day appointed by the resolution of Congress for the funeral procession in honor of the memory of GEORGE WASHINGTON, late General of the Armies of the United States, the House proceeded to the German Lutheran Church, where they attended the funeral oration, prepared and delivered on the occasion by Major General LEE, one of the members of this House for the State of Virginia. [See *Appendix.*]

The House, having returned, adjourned until to-morrow morning.

FRIDAY, December 27.

JOHN FOWLER, from Kentucky, appeared, produced his credentials, was qualified, and took his seat in the House.

A petition of Samuel Selby, 3d, late Collector of the Revenue in the fourth division of the second survey of the District of Maryland, now confined in the prison of Allegany county, in the said State, was presented to the House and read, praying to be relieved from the confinement to which he is subjected, in consequence of his having converted to his own use moneys which he received as Collector as aforesaid, and is unable to refund.

Also a petition of Lawrence Erb, late Collector of the Revenue of the United States within the county of Northampton, in the State of Pennsylvania, to the same effect.

Ordered, That the said petitions be referred to the Committee of the Whole House to whom was committed the bill sent from the Senate, entitled "An act for relief of persons imprisoned for debt."

A petition of John Smith, and others, inhabitants of the Northwestern Territory, was presented to the House and read, praying a repeal or amendment of the laws authorizing the sale of the lands of the United States northwest of the Ohio; and that they may be allowed to purchase lands of the United States, on terms and in quantities suitable to their circumstances.

Also a petition of James Grubb, and others, inhabitants of the said Territory, to the same effect.

Also, a petition of Andrew Small, and others, inhabitants of the Territory aforesaid, and actual settlers upon lands purchased of John C. Symmes, praying for a revision and amendment of the acts authorizing the sale of the lands of the United States in the Territory Northwest of the river Ohio, and that they may be allowed to retain the possession of the said lands upon terms more favorable and better suited to their situation than those contemplated by the said acts.

The SPEAKER laid before the House a report of the Secretary of the Navy on the petition of sundry French officers confined in the prison of Burlington, in the State of New Jersey, referred to him on the eighteenth instant; which was read, and ordered to lie on the table.

The House, resolved itself into a Committee of the Whole upon the bill, sent from the Senate, entitled "An act for the relief of persons imprisoned for debt;" and after some time spent therein, the Committee rose and reported progress; and on the question that the Committee of the whole House have leave to sit again on the said bill, it passed in the negative.

Ordered, That the Committee of the whole House be discharged therefrom, and that the said bill be recommitted to the committee appointed, on the fifth instant, to inquire whether it be expedient to make any, and, if any, what provision for the relief of persons imprisoned for debt.

RESPECT TO THE MEMORY OF GENERAL WASHINGTON.

On a motion made and seconded that the House do come to the following resolution, to wit:

"The House of Representatives of the United States, highly gratified with the manner in which Mr. LEE has performed the service assigned to him under the resolution desiring the President of the Senate and Speaker of the House of Representatives to request one of the members of Congress to prepare and deliver a funeral oration on the death of GEORGE WASHINGTON; and desirous of communicating to their fellow-citizens, through the medium of the press, those sentiments of respect for the character, of gratitude for the services, and of grief for the death of that illustrious personage, which, felt by all, have, on this melancholy occasion, been so well expressed:

"*Resolved*, That the SPEAKER present the thanks of this House to Mr. LEE, for the oration delivered by him to both Houses of Congress on Thursday, the twenty-sixth instant; and request that he will permit a copy thereof to be taken for publication:"

The question was taken that the House do agree to the same, and unanimously resolved in the affirmative.

MONDAY, December 30.

Mr. OTIS, from the committee to whom was recommitted the bill from the Senate for the relief of persons imprisoned for debt, reported the same, with amendments; which was made the order of the day for to-morrow.

ENUMERATION OF INHABITANTS.

Mr. OTIS called for the order of the day on the bill to provide for the enumeration of the inhabitants of the United States. The House accordingly went into a Committee of the Whole on said bill; Mr. PARKER in the Chair. The first section of the bill begins thus:

"*Be it enacted &c.*, That the Marshals of the several districts of the United States, and the Secretaries of the Territory of the United States, Northwest of the river Ohio, and of the Mississippi Territory, respectively, shall be and are hereby authorized and required, *under the direction of the Secretary of State, and according to such instructions as he shall give pursuant to this act*, to cause the number of the inhabitants within their respective districts and territories to be taken," &c.

The first section having been read, Mr. NICHOLAS moved to strike out the words printed in italic. Mr. N. said this provision was not to be found in the former act on this subject; and he saw no reason why a man who was bound by a solemn oath to act in conformity to this act, should be subject to directions which the scrupulousness of his conscience might lead him to refuse to abide by.

Mr. OTIS thought it necessary the power of giving directions pursuant to this act, should be lodged somewhere—he was indifferent whether with the Secretary of State or any other proper officer; in order that if any difficulty or embarrassment arose in the execution of the law, the Marshals, who were to execute it, would know where to apply. It was also necessary the returns should be uniform, which could not be expected to be the case were the words struck out. The question was put, when there appeared in the affirmative 36, negative 41.

The bill having been gone through, and the blanks therein filled up, the Committee rose, and reported the same. When

Mr. CHRISTIE renewed the motion made in the Committee by Mr. NICHOLAS. He said he was so impressed with the necessity of erasing the words, as to impel him to wish a reconsideration of the subject; for it was not his wish or intention to vote for a law that should give a controlling power to any particular officer of the Government over the law, which he conceived the Secretary of State would completely enjoy, were the words to remain in the bill. He would be sorry to harbor the thought that that officer would throw any impediment in the way of the law, but he thought it improper to entrust him with a power to do it.

Mr. GRISWOLD, said, it certainly was a mere matter of form and custom, and necessarily the business of an officer of State, for questions would unavoidably arise in which instructions must come, as to the execution of the law, from the Secretary of State or the President. From the first section, it would appear that certain interrogatories were necessary to be made to the heads of families, as, Who are the persons residing in the house? What their ages, names? &c. These interrogatories must be provided by some department of the Government, or the Marshals and their assistants would not know how to proceed on the business allotted to them. In order to prevent confusion and to establish an uniformity throughout the districts, it was very necessary to put this power in the Secretary of State.

Mr. NICHOLAS said his principal objection to the words before was, because they established an operation which he could not understand; but, from the explanation of the gentleman last up, he feared the operation was worse than he had suspected. The gentleman said that a particular section of the law was not sufficient of itself, but wanted the explanation of the Secretary of State to ascertain its operation, and his direction, by prescribing the interrogatories to come at facts requisite; and he supposed, of course, that the Secretary of State may have it in his power to determine what facts shall make a residence necessary for insertion in the schedule. He would ask the House, whether they were not giving, out of their own hands, a power which none but the Legislature ought to possess? Was it the way to recommend the insertion of the words, by saying that it was necessary to lodge the discretion somewhere? Surely, this proved that the law was not right, and therefore was sufficient to excite a doubt as to the propriety of its operation. Mr. N. thought, if there were no other reasons to be urged against inserting the words, it would be enough that they had not been introduced into the former law, and no injuries had occurred for the want of them. It was sufficient time to amend, or insert new provisions in a law, when its former operation was found inadequate to its object. The former law never had such a provision: the present law was in every other respect made as precise as was possible; the schedule of return was accurately and distinctly marked as to the descriptions of persons; and surely none were so able to say what constituted actual residence as the Marshal, but, if he should be thought incompetent, the law might be made to go further, and mark precisely the mode of its own operations.

Mr. OTIS was surprised at the perseverance of the gentleman in his opposition to the words. It appears to be taken for granted that the Secretary of State has power to vary the law, whereas it was merely a declaratory power that was given him, and to say how it ought to be executed. It was not a new power given to the departments of the Government; the same was left with the Secretary of the Treasury, respecting another law, and those powers were necessarily left, because it was impossible for the Legislature to foresee all the occurrences which would arise, and which would be various in various parts. It is the business of the departments of Government to see that the laws are executed, which power only these words delegate.

Besides, whatever instructions the Secretary of State would have power to give must be "pursuant to this act." If the law itself is sufficiently precise, as the gentleman supposes, then no instructions will be necessary, but this will not be the case everywhere. This was the idea of the committee who reported the bill, and in order to meet all difficulties that might occur, they introduced these words and the eighth section, which reads thus:

"The Secretary of State shall be, and hereby is, authorized and required to adopt and communicate to the Marshals of the several States, and to the Secretaries aforesaid, proper regulations and instructions for carrying this act into effect, and also the forms of schedule to be returned and interrogatories to be administered by the several persons who shall be employed therein."

Mr. OTIS said it was thought these regulations would much facilitate the labor of the officers employed, and enable them to attain the facts with considerable less difficulty.

Mr. GALLATIN said the object in introducing this new provision appeared to him to be either to give the Secretary of State power and authority to define some part of the law which was not precise enough to be understood, or it was merely that he should direct some certain provision of it to be carried into effect.

If, as was insinuated by a gentleman, (Mr. GRISWOLD,) it was to give a discretionary power to that officer to define any law or part of a law which was not clear enough, he must say it was not the province of any officer in the Government whatever, but such definition ought to be included in the law itself, or it would be imperfect. He supposed, as was observed, that this definition might be seen requisite in the fifth section as to what was meant by "inhabitants," so that all might be included, and none twice enumerated whom accident might throw into different parts of the United States. It was necessary to have a better definition than was provided by the Constitution; he took it to be the duty of the House to do it; they must declare it, and not leave it to the Secretary of State or to the Marshals, who are only to carry the law into effect. If it is taken out of the hands

of the Marshals, and placed with the Secretary of State, then the remedy is not adequate to the evil, because he cannot be so competent to it as the Marshals.

If, on the other hand, the meaning of the word "inhabitant" is precise enough in itself, and no explanation is necessary, and the object is merely a regulation as to the questions it may be necessary to ask, then it is better to leave it with the Marshal, for he can best know whether all and no more are enumerated, he being an inhabitant of the district and more acquainted with it. The Marshal is sworn to "enumerate all the inhabitants in his district, to the best of his abilities," and surely there can be no necessity to shackle him with directions which must issue, not from the law he is executing, but from the office of the Secretary of State. The eighth section, Mr. Gallatin observed, went further, and in a manner gave power to the Secretary of State to alter the first section. The first section pointed out the necessary schedule, but the eighth section gave some power concerning that schedule to the Secretary, to "adopt and communicate the forms of schedule to be returned," &c., which, being inconsistent with any former mode, he conceived was highly improper.

The object of taking the enumeration was to conform the representation in Congress to the number of inhabitants; the people wished it done, and Congress ought to do it fairly; and in forming a bill to effect it, all suspicion ought to be removed from the minds of the public, that it would be done contrary: but if the power of regulating the enumeration was placed in the Secretary of State, who might be supposed to possess some local adherence and favor towards his own State—if it was recollected that there was no such provision before, and yet the law was well executed—was not the measure calculated to breed suspicion? The forms of return and directions being ample in a general view, he hoped no new provision would be introduced.

Mr. Gordon said the objections made to the controlling power of the Secretary of State were of a nature not to be answered, because those objections were merely of suspicion; but to those who wished to look at the reasonableness of the words, and who harbored no suspicion, a few arguments might be offered which he thought must carry conviction.

The propriety of having some person to superintend had been well argued, but more reasons might be offered for its necessity. It was a possible event (and against such, provisions ought to be made) that a Marshal might die, resign, or be removed from office, before the completion of the act, and yet the enumeration in that district might be begun; in such case, what provision was there to complete those returns, or to examine into deficiencies? By placing it in the hands of the Secretary of State there will be no danger of this difficulty. That this power should be vested in some officer who should have a general superintendence to remove all objections and impediments he thought self-evident, and with none, in his opinion, could it be so properly placed as the Secretary of State.

Mr. Lee said, he had some doubts as to the propriety of these words, and he would vote for their expulsion; and he must confess that the farther discussion of the subject, had not removed those doubts, but rather strengthened them. If the sole object contemplated by the gentlemen who argued for the necessity of the words was merely that there should be some head, for conducting, in point of form and uniformity, the execution of the law, then these words, or some other more definite, should be preserved; but as the bill now stood, while it held up that object, it carried with it material and substantial objections. What, he asked, would be the result under the law, if a Marshal, attending to the just warning of his conscience, should say to the Secretary of State "Your instructions, if executed by me, in my judgment, would violate my oath; and my conscientious adherence to the directions of the law must be a prominent rule for my conduct?" Thus during the dispute between the Secretary of State and the conscientious officer, on account of the elapsing of the Constitutional period for enumeration, a whole State would lose its representation to the National Legislature! He would not suppose that its occurrence would happen from political motives, but purity of conscience may prevent the execution of the office, and as that could possibly take place it must appear a very material inconvenience, and the benefits of a wise and necessary law would be not only lost, but the result be evil.

The law would therefore be incomplete as it respected the instructions of the Secretary of State, and if the sole object was uniformity of system, a discretion would be given which may be used very detrimentally to a part of the community, though perhaps not willingly. He wished that some gentleman would remove those doubts by showing, either that there was no foundation for them, or else by so qualifying the law, while the discretion was given, as to prove that the sole object was the professed one, to wit, that all the Marshals through this extensive Republic should be governed by a fixed rule with respect to form; until which he could not vote for the clause.

Mr. Eggleston suggested the propriety of striking out the words, and again committing the bill to the whole House for an amendment, suitable to the opinions of the member last up.

Mr. Griswold said the same words were passed through the House last session in the enumeration bill. The Secretary of State was as much restricted as the Marshal himself, for he could not give instructions otherwise than "pursuant to this act." Why there should be objections to the Secretary's using this power, and no objection be made to the exercise of it by the Marshals, he could not imagine. He did not conceive the act was indefinite, as had been said; the act was sufficiently certain and precise, but the mode of execution was so uncertain that a discretionary power must be placed somewhere. If it was left with the Marshals, there was danger of some persons being twice returned; suppose, for instance, an inhabitant of Delaware resided for a time in Pennsylvania, his return might have been made in Delaware, and again in Pennsylvania, because it was in the hands of two different Marshals, whereas if left with the Secretary of State, this evil would be avoided.

Mr. Lee could not but suspect there was more than "mere matter of form" intended by the introduction of this new principle in the broad words in which it was comprised, "under the direction of the Secretary of State"—broader words could not be found in the English language. The Secretary of State being placed paramount to the Marshal, the Marshal acting conscientiously would disobey the Secretary of State rather than his conscience; what would then be his mode of acting under this imperious mandate? Mr. L. said he looked with a jealous eye upon every law coming from the Legislature, lest it should be improperly used by Executive authority. This was a Constitutional duty. The wisdom and genius of our Government, as well as the feelings of our people, alike made it necessary to keep the Executive and the Legislative power separate, for on this our safety depended; but here was the Executive power brought in to aid the Legislative. We doubt, said he; are we not to realize these doubts by supposing they may take place in this extensive community? Thus situated, the people will charge us with what we all disclaim—that we mean to give a power to the Executive authority over our laws. If we desire to escape this suspicion, we should make our laws in themselves explicit, and not give any discretionary power as to their execution elsewhere.

Mr. Dana said, that the discussion which this subject had undergone had decided him in the opinion that the words ought not to be stricken out. The whole execution of the laws was entrusted to Executive officers, and they were to execute those laws uniformly throughout the United States. The construction was wrong to suppose that this influence was improper, because the President or Secretary of State should think this or that a proper way of executing it; and the argument was weak that a particular local attachment would be used. It was no more improper that the Secretary of State should have his particular bias, even if he should make use of it, than that a Marshal should have his particular bias. This, in his view, instead of operating against the measure, was a decisive argument in its favor, in order that the bias of a number should not be left to act so variously as they naturally would, but upon uniform principles. It would not have done to have left that power in the hands of that officer if he was not to be restricted to the meaning of the act, but with this restriction it was necessary.

Mr. Otis said his great desire to have this law carried into beneficial execution induced him to be averse to striking out the words, for unless they remained, in vain might the Legislature expect any accurate census to be made at any future period. If the particular form of a schedule was to be made by the different Marshals and there were no provisions to be made by law, by which to consolidate them into one regular return, how would they be understood, or who know the result? Different would be the forms of returns; some would be more, and some less intelligible; they must all be sent to the Secretary of State; that officer must, without a law or instructions, reduce them into a form at a great expense; whereas it ought to be provided in the law that they may be more readily reduced to form, and this was done by the discretion given to that officer. Farther, the assistants to the Marshal, many of them young men, and inexperienced, would have to ascertain facts about which they had no instructions, as, what is the name of the head of the family? how many reside in this house? &c.

Nor was this a new principle, as contended by some gentlemen. He instanced the act for the relief of American seamen, respecting whom the collectors at the different ports had to transmit a report once in three months, for which the Secretary gives instructions how to make out the abstract. It was similar in the Treasury Department, and in all cases where it was necessary to make a general provision, it was the practice of the Head of the Department to give directions.

It was suggested by the gentleman from Virginia, (Mr. Lee) that there was danger in taking the instructions of the Secretary and of the Marshals. If the conscientious Marshal should still go on and conform to the law, all the facts must appear in the Department of State, and would be submitted to the Legislature for inspection, and it would be in the power of the House to say whether the Marshal or the Secretary of State was wrong: whether or not he had conformed to the law. Therefore, in the event, it would be in his power to do his duty notwithstanding the contrary instructions he might receive, and the House would decide the matter with strict justice.

Mr. Jones thought, as had been expressed by the gentleman from Virginia, that these words conveyed too much power to the Department of State, besides it was not the province of any Executive officer to construe the laws. Laws, after they passed, were generally referred to the Judiciary department of the Government for construction; once out of the hands of the Legislature and they were no longer in their power; but this high and solemn power ought not to be entrusted to the Secretary of State, because it was not a part of his business, and might materially involve the interests of the community. Under this extensive clause the Secretary of State might establish a rule which may operate very severely upon some parts of the United States, and his regulations and instructions were made absolutely final. The gentleman last up thought that the House could determine upon the conduct of the Secretary of State, but had they not the same power over the Marshal's return? The Marshals, if the words were stricken out, would exercise their own judgments, and when the returns were made to the House, they could determine whether they would militate against the interest of any particular parts of the United States or not, and it would be with that House to say how far these returns should operate on the apportion-

ment of representation. He hoped it was not the disposition of the Legislature of this country to throw this increase of power into the hands of any department, however much that department might merit and obtain confidence.

That this law must be under the direction of some one department of the Government, in order to obtain a uniform operation, he admitted was necessary: this might be done by a clause in the law authorizing the Secretary of State, or some other officer of Government, to forward to the Marshals and Secretaries, exemplified copies of the act and schedule; this would make the operation uniform. To effect this the words might be struck out, and the whole of the 11th section, and the direction, incorporated into the act. It appeared to be the general sense of the House that the instructions should be uniform; this was the most that gentlemen on the other side contended for; he therefore supposed they would agree to some such mode as that.

Mr. Edmond thought the words ought not to be struck out, for, unless they were retained, there certainly would not be an uniform return. Where the execution of a law was entrusted to a great variety of hands, there must necessarily be a difference in their returns, unless by the intervention of some general instruction they were made uniform. Gentlemen appeared to be jealous of the power they were delegating, but surely it was a necessary power. They seemed to forget that there were other officers to be employed in this business besides the Marshals; assistants were to be appointed by sixteen different tribunals; in some States the number of assistants would be more, in some less. As the Marshals could not dictate to the "consciences" of their assistants, (for they must give them instructions,) would they not be subjected to as much difficulty as was supposed might exist between the Secretary of State and the Marshals? If the Marshals were left to instruct their assistants, each might give different directions, and the consequence would be that sixteen different modes would be brought to the House.

The Secretary of State, as it now stands, undertakes to prescribe to the Marshal a certain mode for the execution of the law; if the Marshal should conceive that prescription required more than the law pointed out, he would not execute it thereby, but by the law. On the other hand, if the prescription does not point out as much as the law, he will certainly still act as the law directs; neither result would lessen the information he might think it necessary to obtain. If the provision remained, perhaps twelve out of sixteen might think the mode established by the Secretary right, and so far there would be uniformity. This would be the most likely way, he thought, to produce it; and sure he was that nothing would control the conscience of the Marshal, for, after all the instructions, he must be governed by his oath.

Mr. Rutledge believed that, if in every stage of proceeding in this very difficult business, the mode of executing the law was not prescribed, the law could not be carried into effect during the ten years the Constitution had pointed out. There appeared to him to be an unfounded jealousy harbored by gentlemen, which must be removed by a due attention to the law, and the necessary circumstances of it. The direction was entrusted, where difficulty should occur, to the Secretary of State. Did not all the gentlemen know, that when difficulties occurred to the inferior officers, employed in the execution of all laws, they must be removed by the Heads of the Department to which they were attached? Thus in the direct tax, the Secretary of the Treasury prescribed the mode of its operation—but when that power was given, it was not even suggested, nor was it ever experienced, that he exercised any control over the law itself; he only directed the form and manner of filling the schedule, and this power was delegated that the return might be accurate and uniform, and this uniformity was indispensable.

Gentlemen coming into the House in this stage of the debate would conceive, from the opposition made to these words, that the House were about to invest the Secretary of State with full control over the law. Although the motion was so strongly enforced, yet no gentlemen had pretended to say that the Secretary possessed any controlling power over the law, but they were jealous of a power which could not be executed; yet those gentlemen allowed that the instructions must come from somewhere. It appeared to him, Mr. R. said, that the whole alarm was by *shadow*, and upon a complete investigation it would appear that the *substance* did not, nor ever would, exist. He said he had attended minutely to the argument, wishing to be convinced of the impropriety of the words moved to be stricken out, if there existed any, but he was not convinced of any, nor could he conceive how anything else could be substituted to answer the purpose contended for. These difficulties would never be dispelled nor the law put into execution if the Marshals were to come to the House and ask information. The only effectual way, in his opinion, to get the law executed was by entrusting the instructions with the proper department—the Secretary of State.

Mr. Macon could not conceive how the effect supposed by the gentleman from South Carolina (Mr. Rutledge) could be produced for a want of this provision, to wit, the non-execution of the law in the ten years. It could not have that effect, nor was the suspicion warranted by experience. The former law had none of these words, but was well executed, and the case which occurred in South Carolina was not from that cause. It appeared to him that the House were giving up the benefit of experience, merely for the sake of novelty. The return and apportionment were made under the former law without difficulty, or complaint of irregularity in the proceeding.

The case stated by the gentleman from Virginia was possible, and if an injury could possibly occur therefrom it must be felt by every part of the Union, which ought not to be hazarded by any new introductions, the beneficial effects of which could not be known. It may be useful, or it may not. To put it on its best footing, therefore, as there was a possibility of inconvenience from the different

constructions of the law, it would be wise to avoid that part of the law which would produce that uncertainty, especially as no great necessity for that part was contended for. If, as was thought by the gentleman from Connecticut, (Mr. Edmond,) there should arise a difference between the Marshals and their deputies, the remedy would be easy, for the Marshal could easily displace his deputy.

Mr. Craik said he had heard no gentleman argue in favor of giving the Secretary of State any control, *in substance*, over this act; the only difference of opinion appeared to be as to the mode of obtaining the principal objects of the bill, for all agree that some general superintendence was necessary, to act as a control over the officer who should execute the law. The words appeared to him to be nothing more than a designation of that control. If gentlemen were desirous of defining what the directions of the Secretary of State should be, he should have no objection to its introduction into the bill. He should therefore be in favor of the words remaining, and of any addition to the amount stated to be made to the 8th section.

Mr. Reed observed, that it having repeatedly been argued that there were no inconveniences in the execution of the former law, he thought it necessary to rise and inform the House that it was not the case, and there was not that uniformity gentlemen conceived. In some of the divisions, while executing the old law, deputies went into all the houses, while others went into scarcely any, but made their inquiries of other persons. He thought at that time it was a great grievance, and some provision was necessary to compel more uniformity and accuracy. From this and other reasons which had been adduced, he hoped the words would remain.

Mr. Randolph said the provisions of the bill were so express, and the directions to the Marshals so explicit, that he was at a loss to conceive where any want of uniformity could possibly originate. Some gentlemen had told the House that certain interrogatories should be devised by the Secretary of State, and issued by him to the Marshals, to be put to householders. It appeared to him that the law had already designated those interrogatories, in the first section, which were to be put by the assistants; they were there informed what was the information wanted; into what division of persons they were to make their lists, &c.; and it required no great foresight in them to know what questions to ask, whereby to come at those facts which were precisely stated as their duty. The business could not be executed better, if put under the superintendence of the Secretary of State. How could he remedy an evil which their oath would not prevent? For by their oath they were to make "a just and perfect enumeration and description of all the persons resident within their respective divisions." He could not conceive what reason operated now to make these words necessary which did not at the formation of the former act, since no evidence had been adduced of its incompetency. Every Marshal would take a copy of the schedule required, and it would operate on their duty uniformly, and if that uniformity was not attainable by the law, it could not be by the Secretary of State.

The question was taken by yeas and nays, and the motion negatived—39 to 45, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Robert Page, John Randolph, John Smilie, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abraham Trigg, John Trigg, Philip Van Cortland, and Robert Williams.

Nays—George Baer, Bailey Bartlett, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glenn, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, William H. Hill, James H. Imlay, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Josiah Parker, Jonas Platt, Leven Powell, John Reed, John Rutledge, junior, Samuel Sewall, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

RESPECT TO THE MEMORY OF GENERAL WASHINGTON.

The Speaker informed the House that, in pursuance of the resolution of Friday last, he had addressed to Major General Henry Lee, one of the members for the State of Virginia, the following letter:

"Philadelphia, *Dec.* 27, 1799.

"Dear Sir: The enclosed resolutions, which unanimously passed the House of Representatives this day, will make known to you how highly they have been gratified with the manner in which you have performed the service assigned to you, in preparing and delivering a funeral oration on the death of General Washington. That our constituents may participate in the gratification we have received, from your having so well expressed those sentiments of respect for the character, of gratitude for the services, and of grief for the death of that illustrious personage, I flatter myself you will not hesitate to comply with the request of the House, by furnishing a copy of your oration, to be taken for publication.

"Allow me, while performing this pleasing task of official duty in communicating an act of the Representatives of the People, so just to you and so honorable to themselves, to embrace the opportunity to declare that I am, personally, with great esteem and sincere regard, dear sir, your friend and obedient servant,

"THEODORE SEDGWICK.

"The Hon. Maj. Gen. Lee."

To which Mr. Lee had replied as follows:

"Franklin Court, *Dec.* 28, 1799.

"Dear Sir: I owe to the goodness of the House of

Representatives the honor which their resolutions confer on my humble efforts to execute their wish.

"I can never disobey their will, and therefore will furnish a copy of the oration delivered on the late afflicting occasion, much as I had flattered myself with a different disposition of it.

"Sincerely reciprocating the personal considerations with which you honor me, I am, very respectfully, sir, your friend and obedient servant,

"HENRY LEE.

"The SPEAKER *of the House of Reps.*"

Mr. MARSHALL, from the joint committe appointed to consider and report what measures ought to be adopted in honor of the memory of General WASHINGTON, made another report in part, which was unanimously agreed to by the House, in the words following, to wit:

Resolved, by the Senate and House of Representatives of the United States in Congress assembled, That it be recommended to the people of the United States to assemble on the twenty-second day of February next, in such numbers and manner as may be convenient, publicly to testify their grief for the death of General GEORGE WASHINGTON, by suitable eulogies, orations, and discourses, or by public prayers.

And be it further resolved, That the President of the United States be requested to recommend the same, by a proclamation for that purpose.

Ordered, That the Clerk of this House do carry the said resolutions to the Senate, and desire their concurrence.

TUESDAY, December 31.

ENUMERATION OF INHABITANTS.

The bill providing for an enumeration of the inhabitants of the United States, was read the third time; and, on the question of its passage,

Mr. PAGE rose and moved its reconsideration in a Committee of the Whole, for the purpose of making the following amendment at the end of the eighth section.

"*Provided* That the directions, regulations, and instructions, which the Secretary of State is hereby authorized to give to the Marshals of the several States, shall be confined to the forms necessary to be observed by them respectively, in taking the census herein provided for, and making the returns thereof."

It was stated yesterday, he observed, and he believed it to be a fact, that the bill now under consideration contained an important innovation upon the bill formerly passed upon the same subject. Whenever the House are called upon to amend the forms of law, or to make alterations in one which it might be found necessary to renew, it should always be made to appear that great inconveniences attended its former execution. This has not been made to appear, nor have any arguments for the necessity of the new principle, which yesterday passed the House, been introduced. The same officers were mostly now in office, he conceived, who were engaged in the execution of the former law, and there had been no complaints of any difficulty or fault in its execution, from which he concluded the innovation was unnecessary.

Experience was always the best guide in matters of legislation; as therefore no difficulty was formerly found, none could exist under the operation of the same law at present. He objected to the principle, farther, because it furnished a latitude of construction to the Secretary of State which might defeat the salutary effects of the law. It also went to establish a precedent for increasing authority, which the history of mankind forbade, in the numerous evils attendant thereon. New power was generally injurious, and, unless from peremptory necessity, ought never be delegated. In his opinion it was as important a question as could come before the Legislature, because the object of this law was to affect the very sinews of the Republic by affixing its representation, which if wounded would be felt in our dearest interests. From this important view, and to introduce what was declared to be the wish of many, and yet suffer the avowed object of others to remain, in the bill, he thought a short time would be well spent in its reconsideration.

Mr. GRISWOLD thought, from the explanation yesterday given to the bill, and the opportunity gentlemen then had to amend it, there could be no necessity for its reconsideration.

Mr. DANA declared himself perfectly satisfied with the safety of the bill from any undue interposition. Yet, in order to give gentlemen every opportunity of a full and fair discussion, he should vote for the motion.

Mr. NOTT said he voted yesterday against striking out the words, as moved, in expectation, from some observations which dropped from several gentlemen, that a motion would be afterwards made to amend the eighth section. It struck him at that time, and he was still of opinion, that the provisions of the bill ought to be superintended by the Secretary of State, but that some inconveniences wanted removing. Being disappointed in that expectation, he hoped the bill would be recommitted.

On the question for the bill generally to be recommitted to the whole House, the motion was negatived—yeas 37, nays 39.

Mr. CHRISTIE then asked whether it was in order to recommit a particular part. After a few observations as to the point of order, the SPEAKER giving his opinion that it was in order, Mr. C. moved a reconsideration of the eighth section.

Mr. RUTLEDGE declared himself in favor of the motion; not because he was dissatisfied with the bill as it stood, for he hoped no alteration would take place, but because a member had voted for retaining certain words in expectation that an amendment would afterwards take place in the eighth section. He wished a full discussion, and should be sorry to do anything that looked like entrapping any member. He said, he voted against the general reconsideration, because the ground of debate would be renewed, and the time of the House lost, but on this single section the ground would be exceedingly narrow.

Mr. THATCHER said the gentleman from South Carolina (Mr. RUTLEDGE) was certainly mistaken in his idea of "entrapping," because the bill had been open to any amendment, but none was introduced;

from which it was just to infer none would be; and as the bill then passed to engrossing without even a motion to the contrary, he hoped no reconsideration would be allowed.

Mr. JONES observed, that in the former debate, gentlemen seemed astonished at the alarm entertained by the members who were in the minority. As to himself, he said, he was not alarmed on account of this bill alone, for he did not suppose the Secretary would disgrace his character by taking any injurious steps, even if he had the power; but he was alarmed to see any power vested in any department that was unusual; not on account of this particular power vested in this particular Secretary of State. But, could he have been easy at the present moment as to this innovation, he asked whether gentlemen did not now justify an alarm, when they merely wished the introduction of the principle on account of form and not of substance? If only matter of form, what in the name of God could be their objections to say so in the law? Let the bill be recommitted and the alteration be made, and no alarm would exist for a moment. But, when this reluctance was so apparent, to say there was not just cause for alarm was an absurdity. If the words were not intended to have an injurious operation, on which the alarm was built, gentlemen would admit the amendment into the bill to express what they themselves avowed to be their only object. But if they persisted in opposing this explanatory provision, at least the minority were justified in being alarmed. If, therefore, the Secretary was to have no power over the law, then of course his authority would be designated and confined as to the form and tenor of the instructions.

Mr. DANA said, agreeably to his declaration before, he had determined to vote for the reconsideration of the section, until he heard the observations of the gentleman last up; that gentleman having taken up the subject upon such general principles—extending his observations to the great question of Executive power—as to make him desist from that determination. What had Executive power to execute under this act? May not the discretion be as well and properly entrusted to the Secretary of State as to other Executive officers—the Marshals? This question has no kind of relation to any Constitutional principle; but, the discussion having gone upon that ground, Mr. D. said, if he agreed to a reconsideration, it would comprehend him as voting with others in favor of the great alarm, and declaring himself not to know the difference between Executive and Legislative authority, and, therefore, upon the ground which the gentleman had meant to vote for, he was now decidedly against it.

Mr. SMILIE was surprised at the attempt of gentlemen to insert an entirely new principle into this law, and that surprise arose from the consideration that the law had operated as well as gentlemen could wish; but, notwithstanding no fault could be found which might reasonably be expected to be mentioned as the ground of its introduction, a principle that never before had existence was inserted! He had no hopes that the former minority would obtain their wish, because it appeared to be determined already, but he hoped the principle would be again opened for discussion.

Gentlemen appeared surprised that suspicion should be felt by any member; for himself, he declared without shame, that he had suspicion, and he believed it well grounded; but it originated in the conduct of gentlemen on the other side of the question, as much as from the words themselves. How far the instructions or regulations of the Secretary of State to the Marshals would extend, could not be ascertained without the introduction of some boundary. Although it had been said that it was only the introduction of a matter of form and not of substance, yet the Secretary could go a great way by the power which the bill committed to him. In his opinion it placed the Marshal, between his oath and the instructions of the Secretary, in the exact situation mentioned yesterday by the gentleman from Virginia (Mr. LEE.) As this might happen, and as considerable injuries might occur if the power was improperly used, he hoped the section would be recommitted for the necessary amendment.

Mr. MARSHALL was persuaded that there was no member in the House who wished to commit to the Executive officers any power which they did not possess by the Constitution. So far as his own convictions and opinion went, the fears of gentlemen on that head were perfectly void of foundation. But, though he thought so, he should vote for the recommitment, out of that respect which he thought was due to every gentleman. A member supposing the 8th section might be reconsidered, supposing that some amendment might be brought forward, and supposing that his own opinions might be heard, and have their weight with the House, had voted in a manner different from his wish: should not that member be indulged with a reconsideration?

From this consideration, Mr. M. said he felt himself extremely inclined to vote for a reconsideration; and, feeling so, he should not think himself justifiable in being prevented that duty from any observations which should have fallen from another gentleman. Supposing another gentleman did wrong in extending his ideas beyond the precise limits of the question, should that operate as a reason to vote against that motion? In this he differed from his friend from Connecticut (Mr. DANA.) He did not place it upon that ground, and, therefore, should not be deterred from his duty by that consideration.

Mr. NOTT, after expressing his design to rise only where his duty called him, on account of the number of gentlemen of superior talents which he beheld around him, observed that his desire of reconsideration was not on account of any alarm which he felt, because he did not conceive the section gave that extraordinary power to the Executive which was apprehended by some gentlemen; but as it was considered that the power given might extend further than was contemplated by the friends of the bill, in the differences which might exist between the Marshals and the Secretary of State, so as to prevent the execution of the

law, although he thought the Marshal ought to be under direction of the Secretary of State, yet he thought an amendment was necessary to define the business assigned. Seeing many gentlemen of the same opinion more able to introduce the amendment, than himself, he had forborne. He conceived that a grammatical error existed in the bill: the form of schedule was particularly marked in the first section, but in the 5th section, the Secretary of State was to direct the form of schedule. There appeared to be a duty where none was requisite, and might cause errors in the returns. However, he did not wish the section to be recommitted merely on account of his misunderstanding.

Mr. OTIS rose to explain the objection respecting the schedule. The one in the first section went merely to direct the secretaries and assistants, but the one to be under the direction of the Secretary of State was the form of an aggregate schedule to be returned by the Marshals into his office.

The argument that the law should not be touched because the provision did not exist in a former law, he thought very weak; it was the first time he had heard objections made to laws being amended upon that ground; if that kind of argument was good, laws would never be amended. Still, faults may exist, which, from various causes, were never pointed out. As he conceived the motion would extend beyond the mere verbal amendment, and the design was again to try the principle, he hoped it would not be reconsidered.

The motion was lost—yeas 41, nays 43.

The bill was then passed without an amendment.

IMPRISONMENT FOR DEBT.

The House resolved itself into a Committee on the bill for the relief of persons imprisoned for debt, also the bill for allowing salvage in cases of recapture.

These bills were passed by the Committee and by the House, and ordered to be engrossed for a third reading.

WEDNESDAY, January 1, 1800.

REDUCTION OF THE ARMY.

Mr. NICHOLAS rose and observed, that he was so well informed of the necessity the House would be under, in the course of the present session, to find additional supplies to meet the expenses, that it must appear an incumbent duty on every gentleman who wished to provide for that object, to state it in the early part of the session. It would soon become the duty of the Committee of Ways and Means to make a report of the supplies wanting, to provide for which, he thought it proper to know the sentiments of the House, on what changes may be necessary from the existing establishment. For his part, he was well convinced that a considerable saving might be made by lopping off all unnecessary expenses in the army establishment. It would be entirely unnecessary to go into the argument at this time, therefore he would merely lay on the table a resolution which he should call up some time next week, after the private report of the Secretary of the Treasury was before the House. The resolution is in the following words:

Resolved, That so much of the act passed the 16th July, 1798, entitled "An act to augment the Army of the United States, and for other purposes," as authorizes the President of the United States to raise twelve additional regiments of infantry, and six troops of light dragoons, and to appoint two Major Generals, an Inspector General, three Brigadier Generals, and an Adjutant General; and so much of the act passed the 3d of March, 1799, entitled "An act for the better organization of the troops of the United States, and for other purposes," as authorizes the appointment of a Commander of the Army, and a Quartermaster General, ought to be repealed.

Mr. OTIS said he rose upon this resolution in compliance with a duty he owed the Committee of Defence, of which himself and the gentleman who laid the resolution on the table were members, to state that application was made to the Secretary of the War Department for information on the state of the Military Establishment; until that report was obtained, he thought this resolution improper, for in conformity to that report the Committee would, no doubt, propose some resolutions to the House. He wished the resolution had not been read, because it might cause some alarm, and probably affect our interests at home as well as abroad. Notwithstanding it might be a general belief that some retrenchment of expenses would be necessary, and though it was probable that some modification of the existing Military Establishment might be adopted with a view to save expense, yet he did not believe that in the actual state of things this House would discover such a versatility of temper and system as to disband the Army by a single resolution.

Mr. NICHOLAS replied that he would not be in haste to call up the resolution; and was willing to let it lie, till every information could be obtained that might be wished upon the subject.

The resolution was laid on the table.

JURISDICTION OF MISSISSIPPI.

Mr. MACON presented a petition of sundry inhabitants of the Mississippi Territory, residing on the Tombigby and Mobile rivers, praying for a confirmation of their title to certain lands, and for the free navigation of said rivers; which Mr. M. moved to have referred to a select committee.

Mr. JONES objected to the House legislating on this subject, on the ground that it involved a right of the State of Georgia to the jurisdiction of that Territory; and that as commissioners had been appointed by act of Congress to settle all existing difficulties as to the jurisdiction of that State, it would be improper for the House to hold forth any encouragement to the petitioners—an encouragement which would only prove delusive, because this House had not the power to grant the relief prayed for. He therefore hoped the petition would be ordered to lie on the table till the claim of the State of Georgia to that Territory should be settled.

Mr. TALIAFERRO and Mr. NICHOLAS advocated the opinion of Mr. JONES.

Mr. GALLATIN thought this was bringing a great and important question before the House in a very indirect way. Before we decided upon this claim, a committee ought to be appointed to inquire what progress had been made by the commissioners appointed to settle the claims of Georgia; and if the question came before the House in any shape, it ought to be in the only proper one, "to whom does this Territory belong?" Mr. G. was decidedly against the reference of the petition to a select committee.

Mr. CLAIBORNE said the petition contained other subjects than the right objected to by Georgia. The navigation of the Tombigby and Mobile rivers, of which they were deprived, was essentially necessary to the commerce of that part of the world, and their claim to this was certainly worthy of attention. The committee, in their report, might be silent as to any subject which would involve the objection urged against the reference.

Messrs. MACON, SEWALL, and RUTLEDGE, were also in favor of the commitment. After a long debate, Mr. MACON waived his motion, so as to have the petition referred to the committee to whom was committed a similar petition on the 24th ult.—which was agreed to.

THURSDAY, January 2.

RICHARD DOBBS SPAIGHT, from North Carolina, appeared, produced his credentials, was qualified, and took his seat.

PETITION OF FREE BLACKS.

Mr. WALN presented a petition of Absalom Jones and others, free men of color, of the city and county of Philadelphia, praying for a revision of the laws of the United States relative to the slave trade; of the act relative to fugitives from justice; and for the adoption of such measures, as shall in due course emancipate the whole of their brethren from their present situation; which he moved to have referred to the committee appointed to inquire whether any and what alterations ought to be made in the existing law prohibiting the slave trade from the United States to any foreign place or country.

The petitioners, after mentioning their sense of the bounties of Providence in their freedom, and the happiness they felt under such a form of Government, represent that they cannot but be impressed with the hardships under which numbers of their color labored, who they conceived equal objects of representation and attention with themselves or others under the Constitution. That the solemn compact, the Constitution, was violated by the trade of kidnapping, carried on by the people of some of the Southern States on the shores of Maryland and Delaware, by which numbers were hurried into holes and cellars, torn from their families and transported to Georgia, and there inhumanly exposed to sale, which was degrading to the dignified nature of man. That by these and other measures injurious to the human species, there were 700,000 blacks now in slavery in these States. They stated their application to Congress to be, not for the immediate emancipation of the whole, knowing that their degraded state and want of education would render that measure improper, but they ask an amelioration of their hard situation. They prayed that the act called the fugitive bill, which was very severe on that race of people, might be considered; also that the African slave trade might be put a stop to.

Mr. WALN moved its reference to the committee appointed to prohibit carrying on the slave trade to any foreign place or country.

Mr. RUTLEDGE thought any reference at all very improper; he hoped it would be laid on the table, and with a view never to be called up hereafter. Petitions of this sort had repeatedly come before the House, only with the difference of transfer of hands. When the Congress sat at New York, they spent much time and attention on the subject, but no sooner had it been decided that nothing could be done, than the same scenes were acted over again by repeatedly petitioning. Those gentlemen who used to come forward, to be sure, had not avowedly come forward again, but had now put it into the hands of the black *gentlemen*. They now tell the House these people are in slavery—I thank God they are! if they were not, dreadful would be the consequences. They say they are not represented. To be sure a great number of them are not. Farther, they say they are sent to the Southern States. Who can prevent that? Persons possessing slaves have a right to send them there if they choose. They tell you that they are brought from Africa. This matter is in a train to be prevented, the subject being now in the hands of a committee. Already had too much of this new-fangled French philosophy of liberty and equality found its way and was too apparent among these *gentlemen* in the Southern States, by which nothing would do but their liberty. This appeared to be the intention of the petition, but he supposed the people of the Eastern States had felt as much in having them among them as those of the Southern States in losing them, and therefore he believed gentlemen from those parts would vote with them. However, he considered this subject very improper and unconstitutional to discuss, and, from the ill effects it might produce, should say no more.

Mr. WALN thought the gentleman mistaken as to the nature of the petition; it related but two grievances: one was, the operation of the fugitive act, by which free men were carried and sold into slavery, and the other was the slave trade. He did not wish to enter into general principles, because he conceived it as improper as any gentleman, but he could see no good reason why the petition might not be committed; every petition presented to the House ought to receive that attention, and a rejection of the present without examination could have no good effect.

Mr. SMILIE was much surprised at the opposition of the gentleman from South Carolina to the reference. To be sure a great part of what these people asked, as far as he was acquainted with it,

was out of their power to grant, but there was much of the petition which was within the power of the House. So far as they had power, he considered it the duty of the House to attend and grant relief. He could wish to drop some ideas on the situation of those people, but felt a contrary impulse from motives of prudence. However, he must consider them as a part of the human species, equally capable of suffering and enjoying with others, and equally objects of attention, and therefore they had a claim to be heard.

Mr. Otis hoped the petition would not be committed; he had never seen a petition presented under a more dangerous and unpleasant aspect. It appeared to be subscribed by a number of individuals who were incapable of writing their names, or of reading the petition, and, *a fortiori*, of digesting the principles of it. It therefore was a petition of certain men made out by other men, who ought to have come forward themselves, but had forborne. To encourage a measure of the kind would have an irritating tendency, and must be mischievous to America very soon. It would teach them the art of assembling together, debating, and the like, and would soon, if encouraged, extend from one end of the Union to the other. A great part of the petition was improper, and the other part entirely unnecessary. No particular object or evils were pointed out in the fugitive law, but the truth was, they wanted a repeal of the law. Although, he thanked God he had no slaves, nor ever wished to possess any, yet he thought the subject ought not to be meddled with by the General Government, and if any grievances existed they were properly and only objects of legislation in the several States. It was the duty, and he thought the interest of the States, while they were kept in servitude, to ameliorate their situation as much as consisted with security. He thought those who did not possess that species of property had better leave the regulation of it to those who were cursed with it. However, it was unjust to intermeddle with it to the injury of the possessors.

Mr. H. Lee observed that gentlemen were sent to that House to protect the rights of the people and the rights of property. That property which the people of the Southern States possess consisted of slaves, and therefore Congress had no authority but to protect it, and not take measures to deprive the citizens of it. He said he held himself not second to any gentleman in a genuine attachment to the rights of humanity, but he could not believe that great ends would be answered by the reference of the petition, but much evil might accrue. It contained sentiments which he thought it would be highly improper so far to encourage. One object prayed for in this petition was now in the hands of a committee; let that committee report respecting the Guinea trade, let it be entirely obliterated; to that he would agree with all his heart, but he hoped the House would never intermeddle with the property of any of the citizens. Instead of voting with the worthy member who wished it to lie on the table, he would have it returned to the gentleman who presented it, as the only effectual means of checking an injurious practice.

Mr. Rutledge, in addition to his former arguments, observed, that so improper was it to consider this subject that some of the States would never have adopted the federal form of Government if it had not been secured to them that Congress would never legislate on the subject of slavery. Inasmuch, therefore, as it might rouse the jealousy and fears of those States, the least attention paid to it might do mischief.

Mr. Thatcher said that gentlemen generally set out wrong, on this subject, and leave off about half right; they debated till they were almost tired, and then the petition was not to be committed. If Congress had not power to legislate on the African trade, then why did they say it was with a committee? If they had power, where was the impropriety of referring, at least that part which could be considered? Would any gentleman say that it was policy not to legislate about 700,000 enemies, in the very body of the United States? While they were slaves they were enemies. He declared a greater evil than the very principle could not exist; it was a cancer of immense magnitude, that would some time destroy the body politic, except a proper legislation should prevent the evil. It must come before the House sooner or later. Then why postpone it? It was true the Eastern States were now suffering from the streams which issued from this great and dangerous fountain, but the evil ought to be stopped, ere it become too strong.

Upon principles less general, he contended the petition, which was couched in as decent and respectful terms as was possible, should be referred. Whether the petitioners were black or white, whether they could write, or whether not, was entirely immaterial: they stated their sufferings under a law of the United States, and that was argument enough for a respectable reference. Because they could not write, were not their rights to be secured to them? Strange doctrine! A great reason why they could not write was their being brought up in early life in slavery.

If gentlemen saw so great evil rise out of the debate on this subject, why did they introduce the evil practice? They might have silently suffered it to have been committed; no evil could have arisen therefrom, because the committee would have reported only consistently with the power of the House to grant.

Mr. Brown, of Rhode Island, said he was in hopes that every member belonging to the Northern States would have seen by this time the impropriety of encouraging slaves to come from the Southern States to reside as vagabonds and thieves among them, and have been tired of the bad policy. No subject surely was so likely to cause a division of the States as that respecting slaves. He did not hold a slave in the world, he said, but he was as much for supporting the rights and property of those who did, as though he was a slave owner. He considered this as much personal property as a farm or a ship, which was incontestably so. He went into a view of the federal compact, to argue the impropriety of legislating on the subject. This petition, he said, did not come from the blacks, but

from a combination of people who had troubled Congress for many years past, and he feared never would cease. He did not fear the power of the 700,000 enemies that the gentleman had pointed out, since there were five millions to withstand them; they could at any time subdue them. He begged that the gentleman, who put the petition on the table, might be desired to take it back again. He was sorry to see the commitment supported by two such worthy members of the House, both good Federalists. [A laugh.]

We want money, said Mr. B., we want a navy; we ought therefore to use the means to obtain it. We ought to go farther than has yet been proposed, and repeal the bills in question altogether, for why should we see Great Britain getting all the slave trade to themselves; why may not our country be enriched by that lucrative traffic? There would not be a slave the more sold, but we should derive the benefits by importing from Africa as well as that nation.

Mr. Waln contended, that at least the House had the power of legislating on the state of free blacks as well as other people, and on the slave trade, much of which was still carrying on from Rhode Island, Boston and Pennsylvania. This ought to be looked into. He denied that any idea had ever entered his mind on presenting the petition either to debate on the subject, or to will an emancipation of the slaves. Gentlemen from the Southern States appeared to lament there were so many among them, but their conduct was very contrary to their declaration.

Mr. Hill thought if any evil existed under any law now in force, a committee ought to be appointed, to examine into and correct it; but he hoped the petition would not be committed. It was to be lamented that this kind of property did exist; but it did exist, and was sanctioned by the Constitution. That being the case, the House ought to set their faces against any innovations on it, either directly or indirectly.

Mr. Dennis rose, he said, principally because he conceived the petition implicated the justice of the States of Maryland and Delaware, respecting the abominable practice of kidnapping. In justice to the State he represented, he must say that none of this evil was attributable to that State, because they had enacted extremely penal laws to stop it. He wished the petition to lie on the table, because the objects of it appeared to be extremely multifarious, and, he believed but few members knew its contents, from the different opinions they had advanced. He wished them to have an opportunity of examining it.

Mr. Randolph hoped that the conduct of the House would be so decided as to deter the petitioners, or any persons acting for them, from ever presenting one of a similar nature hereafter. The effects must be extremely injurious. He did wish that the conduct of the House would have been so indignant as to have passed it over without discussion. He should not, therefore, say anything that would tend to encourage that discussion. The Constitution had put it out of the power of the House to do anything in it, and therefore he hoped the motion for a reference would be lost by a decided majority, and this be the last time the business of the House would be entered upon, and the interest and feelings of the Southern States be put in jeopardy, by similar applications.

Mr. Christie said the gentleman was mistaken, if he thought it would be the last time, for a certain society had thought it their duty to present petitions of this nature to Congress every year since he was acquainted with it; but he hoped this, which came from that source, but through other hands, would have the fate of all the rest, and go under the table instead of upon it. As to the fugitive law, he would wish it to be taken up, and if no other member moved it, he should; but not for the purpose of repeal or weakening, but to make it stronger. There was now a fine laid upon any person who should harbor a black, knowing him or her to be a slave; he wished the provision should be that the persons harboring should know that he or her was not a slave. He mentioned the great desire of his State to prevent kidnapping, for which their laws were very severe.

Mr. Harper had hoped that the House so well understood this subject, as to the people who instigated the petitioners to come forward, who well knew that nothing could be done by Congress, as to decide on it instantly. This was the act of a religious body of people whose fanaticism leads them to think it a bounden duty to come to the House every year, though they now come in a different name. By this measure they had discharged their duty; all that now remained was for the House to discharge theirs. He hoped, from the present time, they should merely let the petition be read and pass it over in silence—for he expected that society would continue presenting petitions. The obvious tendency of agitating this question would only be to create discontent in a class of people whom it was out of the power of the Legislature to change the situation of. He called upon gentlemen to say whether a temper of revolt was not more perceptible in that quarter? It was; and what was the cause of it but that they were not let alone by those people; but if others would disturb them, he hoped at least that House would cease to do it.

Mr. Dana said if the petition before the House contained nothing but a farrago of the French metaphysics of liberty and equality, he should think that it was likely to produce some of the dreadful scenes of St. Domingo. Or if he believed it was only the effects of a religious fanaticism in a set of men who thought they were doing their duty, though he thought the subject quite out of the power of Congress, he might be disposed to think it quite wrong. But when he perceived a petition, addressed in language which was very decent, and which expressly declared that the petitioners did not wish the House to do what was inconsistent with the Constitution, but only asked an amelioration of the severities under which people of their color labored, he thought it ought to be received and committed. He did not think the gentleman who presented it ought to withdraw it,

nor was he the least culpable, but executed a duty he conceived him bound to.

Mr. JONES said the petition threw so much aspersion upon the State he represented (Georgia) that he must think it his duty to rise Why was that State to be selected out from all others? However, he should follow the petition in its parts, in order to show that the petitioners actually had asked what it was not in the power of the House to legislate upon—emancipation. It was said to merely affect the slave trade.

First, the petitioners contemplated that those people (the slaves) ought to be represented, "with *us* and the rest of the citizens of the United States." Then they speak of the Federal compact, in which they consider those people as interested in common with others, under these words: "we, the people of the United States of America," &c. I would ask gentlemen whether, with all their philanthropy, they would wish to see those people sitting by their sides deliberating in the councils of the nation? He presumed not. They go on farther and say, "We do not ask for the immediate emancipation of all, but we ask you to prepare the way for the oppressed to go free, that every yoke might be broken, thus keeping up the principle to do unto others as you would they should do unto you." The words need only be read to convince every man what is the tendency of their request. The gentleman farther says, that 700,000 men are in bondage. I ask him how he would remedy this evil as he calls it? but I do not think it is any evil; would he have these people turned out in the United States to ravage, murder, and commit every species of crime? I believe it might have been happy for the United States if these people had never been introduced amongst us, but I do believe that they have been immensely benefited by coming amongst us. It was the British Government that transmitted them down to us when in a colonized state, but being here, and being the property of individuals, after obtaining our common liberty and forming our Federal compact, property and safety were guarantied to every individual and State in the Confederation. How then can this House meddle with that part of our property? The General Government has no power over it. With respect to that part of the petition which said that these people were crowded into cellars and transported to Georgia, Mr. J. informed the House that the importation to that State by sea had been prohibited; none had come there by sea for many years, and offenders against that law were fined £100 sterling for each individual thus introduced. He hoped the petition would be treated with the contempt it merited, and thrown under the table.

Mr. RUTLEDGE rose to move that the question might be decided by *yeas* and *nays*. It was a practice he generally was against, and scarcely ever moved, but he considered this of importance sufficient to demand it. It was a question in which the interests of a great number of people in this country were involved. He had no doubt it would be lost by a very great majority, and he thought it would have a good effect to be recorded by how vast a majority it would be lost. He thought it would be some consolation to his constituents, when he returned home, to say how few of the House of Representatives were the supporters of this dangerous petition.

Mr. WALN said if he had known that this petition would have caused so much alarm, he certainly should have desired the petitioners not to present it; but if they had still thought it necessary and been desirous of it, he should, as he then thought it within the power of Legislation, and still thought so, have presented it. He thought it his duty, whenever any individual conceived himself injured by a law, to receive his petition, and he thought himself in no wise implicated in the manner, form, or subject of the petition, or answerable for it as containing his opinions. If it should be supposed that the assertions in the petition were unfounded, or bore too hard on a certain State, the only way to ascertain that fact was by referring to a committee, that the necessary inquiries might be reported. He again declared his disapprobation at this subject undergoing any discussion, nor would it have taken place had not the gentleman from South Carolina commenced it.

Mr. PLATT conceived that everything which was brought before that House ought to be committed, unless there was manifest indecency in the language, or it should appear that the relief prayed for could not be granted consistently with the power of the House. In his opinion, except one of these two causes prevented, it unquestionably ought to be thus disposed of. As for indecency of expression, he could perceive none, either in the petition, or in the arguments of the gentlemen who advocated its reference. A third reason indeed might be mentioned, which was, that the persons whose names were signed did not give consent to the petition, and therefore it was not their act. Neither of these reasons was proved to have existed.

Although, agreeably to the Constitution, Congress could not make any laws to prevent the emigration or importation of any persons whom the several States should, at the adoption thereof, think proper to admit, yet Congress could, and had made laws relative to fugitives from justice and previous to the year 1800. It was this law they prayed the amelioration of, and that the power of persons over their slaves might be limited, and that the law might be so amended as to prevent its violation. It was for that, and not for the general abolition of slavery they prayed, and surely they ought to be heard; their prayer ought to be committed for that purpose.

He disclaimed the least desire, but an abhorrence, of any principle that would rob persons of their property, but at the same time he was not such a dupe to *words* as to be of the opinion held up by a gentleman that because the French had used the words "reason" and "philosophy" he should discard them, and with them humanity!

Mr. THATCHER thought that to make use of the incapacity of these people to read or write, as an argument against committing their petition, must arise out of prejudice in his colleague against the

general object, or he surely never would have resorted to such pitiful, and he might say, mean, virulent remarks. [Mr. T. was here called to order] This was certainly a "new-fangled doctrine." But the reason why they could not write was because of the degraded state of their minds for want of education; many of them, perhaps, in their youth were in slavery.

The gentleman from Georgia had objected to the reference because the petition contained a system of facts which *he said* was not true? He (Mr. T.) believed they were true, and thus the dispute was in issue. How was this to be ascertained but by inquiry? If the State of Georgia should prove themselves innocent of that black stain, it would be to their honor. But no, said the gentlemen, "We will not have it examined into, because it will make us out to be as *black* as the petitioners themselves!"

Mr. EDMOND observed that the gentleman from South Carolina had called for the yeas and nays for a particular purpose, to wit, that it should be seen how few voted for this intermeddling with the property of the people in the Southern States. Mr. E. said he should vote for the reference, and as that opinion would be attached to his conduct, his reasons ought to accompany his vote. He should be as far from wishing to affect the property of the citizens as any gentleman, much less should he wish to affect the Constitution. This appeared to him to be a very respectful petition; it mattered not whether the people were black or white; the petition only was to be regarded, and not the color of the persons, who, representing their grievances, asked for such relief as the Constitution could afford them. Surely then, every measure ought to be adopted to alleviate their sufferings. Was it consistent that the House, instead of a reasonable and patient attention, should come forward and treat this complaint with an inattention which passion only could dictate? Was contempt the way to recommend attachment to the Government? This ferment and scorn could not be necessary, but he was sure it was highly improper and inconsistent.

Mr. GALLATIN said that in his opinion there were many parts of the petition exceptionable, but not being so much acquainted with it as might be necessary to form a decision, he could not say whether or not it was in the power of the House to legislate on it. However, seeing this much in the situation with other petitions, he felt disposed, and should vote for its reference. If it should appear improper for Congress to legislate on it, then the committee would so report. He said he was not satisfied that there was no grievance to which the House could apply a remedy; he thought there was such a part. He remembered a petition from Delaware once on one of the complaints, that of kidnapping free negroes; therefore, he conceived it was truth, and could be no insult to the States of Delaware and Maryland to mention it. If so, surely an effectual remedy ought to be applied. In the former State he believed they had made the punishment death, and yet the evil was not prevented, if the complaints of the petitioners were true.

Mr. WALN then withdrew his former motion, and moved "that so much of the petition as related to the slave trade carried on from any part of the United States to any foreign place or country; and so much of the said petition as respected fugitives from justice, or escaped from their masters, be referred to the committee appointed on the 12th day of December last on the subject of the slave trade."

Mr. RUTLEDGE appealed to the Chair to know whether the motion was in order.

Mr. SPEAKER said, perhaps that was the only deliberative body in the world where a motion, having been made, seconded, and debated, could be withdrawn by either the mover or seconder. But it had been a practice in that House so to do, and there was no rule against it. The motion was therefore perfectly agreeable to order.

Mr. RUTLEDGE then moved, an adjournment, which was carried—yeas 47, nays 35.

FRIDAY, January 3.

BENJAMIN HUGER, from South Carolina, appeared, was qualified, and took his seat.

PETITION OF FREE BLACKS.

The House resumed the unfinished business of yesterday, on the resolution for referring certain parts of the petition of Absalom Jones and others, when.

Mr. RUTLEDGE rose to explain his reasons for moving the adjournment yesterday, as not having arisen from a desire of protracting the debate, but because he conceived the Chair misunderstood him on the point of order. When he submitted the question of order to the Chair, it appeared from the decision to be the Speaker's opinion that the question was, whether a member had a right to withdraw a motion in that situation or not. He knew that right to exist, but he doubted of the competency of the House to refer parts of a petition, and not the whole. In his opinion it ought not to be referred, or, if so, the whole ought to be referred generally. He mentioned a petition which was last session presented from Northampton county, praying the repeal of the alien and sedition laws, but in their general zeal in the pursuance of those objects severally, other laws were found fault with, particularly those relating to measures of defence. These were thought to be improper for a reference; on which a motion was made to refer a part, but it was then thought the petition could not be divided. He submitted to the gentleman from Pennsylvania a very easy mode of acquiring the object, which was by withdrawing the petition and advising the petitioners to present one conformable to the decision, and within the Constitutional power of the House. Gentlemen were mistaken in saying that petitions of this kind came annually. The session before last the subject was referred to a committee, who made a suitable report upon it, and in order to prevent the continual debate it was resolved to be a proper object of Ju-

dicial, and not of Legislative cognizance. This brought the matter to such an understanding that he hoped he would have heard no more of it. It appeared to have had the good effect of preventing any application during the sitting of last session.

The SPEAKER said the question of order, as now explained by the member from South Carolina, was not understood by the Chair. From all the examination and the fruits of inquiry which the Chair had since acquired, it appeared not to be unusual to refer parts of a subject, for parts of the President's Speech had been referred; also, parts of petitions had frequently been referred; on which account the opinion of the Chair at present, unless an appeal should be made to the House, was, that the motion of the gentleman from Pennsylvania was perfectly in order.

Mr. WALN said it would have been very agreeable to him that the question should have been taken on the motion first made to the House; but, on hearing the warmth with which it was contested, and willing to remove the jealousy of several gentlemen in the House, he thought it best to alter the motion to their wishes.

It had been suggested that to withdraw the petition for its modification, would be an easy way to acquire the object. He thought it entirely unnecessary to withdraw it in this stage of business. Although he could have wished the words objected to had never been inserted, yet he was not prepared to say that the petitioners had no right to use them. It appeared that these people's sentiments accorded with those of the gentlemen who opposed the reference. They wished to obtain a removal of this great evil when proper: those gentlemen called it an evil which they could wish to get rid of, but they think it cannot be done. Mr. W. said he should not have objected to a resolution importing that it would be improper to legislate on the subject of slavery, but so far as relates to the bad traffic, and the practice of kidnapping, they ought to be examined by a committee. On these accounts he was not authorized, nor was he inclined to withdraw the petition.

He was in hopes the gentleman from South Carolina would not have desisted from his motion for calling the yeas and nays; that gentleman wished the House to show the world that this petition was so irritating and alarming as to merit universal contempt and abhorrence. He believed this gentleman was mistaken as to the small number he supposed would vote for its commitment, and therefore wished he would renew the motion on the question as modified.

Mr. GOODE then observed that as a public discussion had taken place upon this subject—one from which he thought Congress precluded by the Constitution, and one which materially affected the interest and perhaps the safety of a great portion of the United States, and particularly of his constituents, he thought it his duty not only to give his negative in the usual manner, but to call for the pointed disapprobation of the House, and proposed to amend the resolution by adding the following words:

"And that the parts of the said petition which invite Congress to legislate upon subjects from which the General Government is precluded by the Constitution, have a tendency to create disquiet and jealousy, and ought therefore to receive the pointed disapprobation of this House."

Mr. THATCHER said it was the first time that he had ever known any petition or part of a petition receive the "pointed disapprobation of the House" by a resolution, even though the object of it was not within the power of the House. Several petitions had been received upon which the House had no power. He referred to the petition of John Churchman, in December 1791, praying the patronage of Government to facilitate his discovery of the longitude, by enabling him to undertake a voyage to Baffin's Bay. It was reported that great inconvenience operated to prevent the grant prayed for, and no money was allowed, yet no member moved a censure upon the petitioner. Was it a desirable object to do away a great evil? It was professed to be the wish of several gentlemen to eradicate it. No gentleman in the House but appeared desirous of embracing it with all his heart. These people only wished the evil destroyed, but did not point out the form. He was willing, for the sake of argument, to admit that slavery did exist and was sanctioned by the laws and Constitution of the United States; he did not believe the fact, but as some other gentlemen did, he would admit it for the present. Surely it would be desirable that this great evil should be destroyed, if it could be done without injury, nay, with advantage, to the possessors. Did the petition go any farther than this? It did not. The second person in the Government of the United States had devised a means to procure this object, as also had a certain learned professor. If it was therefore the desire, as avowed, of those gentlemen, and an equitable means had been devised to acquire it, would the reference of a petition which made that request be improper, or would it be impolitic in gentlemen to examine these plans, and if eligible bring about their execution? Certainly not. Even if a certain sum of money was wanting he did not believe the House would refuse to appropriate it. Who would not withhold a few dollars from his purse to facilitate it? Then, while such are the propositions, a petition in behalf of its accomplishment ought to be heard; if it is not, it must fix a national indignity and stigma which ages of good actions could never wipe away.

Gentlemen supposed the friends of the reference were got to such a high degree of enthusiasm as to destroy the very essence of philanthropy. He professed himself to be no friend to some of the doctrines of the French, but there were others he much admired. It was an admirable attempt in them, and well executed, to liberate their slaves. So far we ought not to be behindhand with their philanthropic conduct. If slavery is an evil the French have wiped away this evil. He submitted to gentlemen whether it could not be fully procured with very little injury to the owners; he begged them to review the several plans which had been proposed, and act upon them if attainable.

Mr. T. said he should be much grieved if any gentleman in the House should advocate the motion of *pointed disapprobation* towards men who respectfully complained and petitioned the House. He should think it a plain contradiction to tell them that they had professed it their wish to destroy slavery; it would be a plain demonstration that they hugged slavery as slavery, and loved it for its very odiousness.

He was sorry to hear such harsh reflections insinuated against a very respectable body of men who were declared to be, if not the ostensible, yet the actual authors of these "discontents." From all his acquaintance with that body he had never perceived any conduct in them to promote anarchy or disturbance; on the contrary, he had often observed that wherever there was a humane or benevolent institution, the Quakers were at the bottom of it. He thought, therefore, that they little deserved the odium which had been lavished on them.

Mr. DANA was not of the opinion of a number of gentlemen, that the House ought to express its indignation against these petitions. The indignation of that House ought to be limited to certain objects; it might be expressed against an offending nation, but he much doubted whether it became it to express that high sensation against any individuals. He thought no circumstance could occur which called for such condescension, and therefore he could not approve of words so strongly expressed upon an occasion comparatively so trivial. If the gentleman from Virginia would so convey his ideas as to express the impropriety of those subjects for the consideration of this House, he was willing to agree with him.

Mr. RUTLEDGE thought it a little extraordinary that when gentlemen from some parts of the Union were positively assured that very serious, nay, dreadful effects, must be the inevitable consequence of their discussions on this subject, they still would persist. He used strong words, he said, because no others would be appropriate. Gentlemen recommended the subject to be calmly argued.—Would gentlemen feel calm if measures were taken to destroy most of their property? Would calmness be consistent if entering wedges were prepared to ruin the property of whole estates? If ever it was justifiable to be warm on any subject in the House, it surely was on an occasion like the present, when imminent danger was in view. Yes, we deem this as an entering wedge to an inevitable loss of our property, if persisted in. It appeared by the gentleman's arguments that he had just been reading the opinions of his brother philosopher, Brissot.

Three emissaries from St. Domingo appeared in the hall of the Convention, demanding the emancipation of their species from slavery. The Convention were told it would operate as an entering wedge that would go to the destruction of property, and the loss of one of the finest islands in the world; that it would be murderous in the extreme; that it would open scenes which had never been practised since the destruction of Carthage; that a whole rich country would be buried in blood; that thousands would instantly be reduced to abject penury; that the first towns in that fine island would be reduced to a heap of ashes. But those gentlemen said no, it cannot be, all our desires originate in philanthropy—we wish to do good! But sir, we have lived to see these dreadful scenes. These horrid effects have succeeded what was conceived once to be trifling. Most important consequences may be the result, although gentlemen little apprehend it. But we know the situation of things there, although they do not, and knowing we deprecate it. There have been emissaries amongst us in the Southern States; they have begun their war upon us; an actual organization has commenced; we have had them meeting in their club rooms, and debating on that subject, and determinations have been made. It might be wrong in me to mention these things, because many of those people can read and write, and will be informed of what I am now saying, which they think I did not know, but knowing, I am determined to make use of.

Sir, I do believe that persons have been sent from France to feel the pulse of this country, to know whether these are the proper engines to make use of: these people have been talked to; they have been tampered with, and this is going on. They now will see that the argument has been agitated in the Legislature; that the subject of emancipation has been discussed. Is not this extremely wrong, when gentlemen are told how much it puts our property at hazard. Although these people are unable to do any harm, yet the work will be done by gentlemen in this House, *they* must be answerable for the mischief.

Before I had the honor of a seat in this House, one question which was agitated by the people was, how do the General Legislature regard this species of property? I said, our brethren in the Northern States are willing to leave this business entirely to us who possess it—they will not intermeddle. I did hope that they never would take the lead in any arguments of this dangerous tendency. But, as gentlemen have gone into this business, I find I am compelled to use arguments which otherwise ought not to be mentioned.

I recollect that gentlemen in France used arguments like the gentleman from Massachusetts: "We can indemnify these proprietors." But how did they do it, or how can it be done?—Not at all. Farther, we were told these things would take place, we need not be alarmed; it was inevitable; that it was reasonable, and unavoidable. Sir, it never will take place. There is one alternative which will save us from it, but that alternative I deprecate very much; that is, that we are able to take care of ourselves, and if driven to it, we will take care of ourselves.

The gentleman talked much about longitude; it appears to me when he brought up that petition as a precedent he was very much out of his latitude. [A laugh.] That circumstance related to a grant of money which it was thought prudent not to make. Did that go to a national right? He thought the gentleman was rather too witty on a subject so solemn as this must appear to the world.

Mr JONES had hoped that the decision of Congress when sitting at New York would have put a final stop to any future applications, and the councils of the United States would have been troubled no farther with them. It was justly and wisely proved that it was a difficulty unfit for Congress to attempt, on account of the extremely different local circumstances and species of property possessed by the Northern and Southern members, who were all met in one convention. However, he must do justice to the candor of some gentlemen from the North, who had vindicated their right to this property. Mr. J. did not think there was any more probability of discovering an eligible and just mode of acquiring the object of *emancipation*, than there was in the case referred by the gentleman to Mr. Churchman's discovery of *longitude*. All researches into these attempts were illusory, and both alike impracticable at this time, if ever they would be. However, he was certain that the honorable gentleman's manner of treating the subject would give rise to a just jealousy in those parts of the United States whose property consisted only in slaves. As to the State he represented, as he before said, a very heavy penalty was the fine on each slave imported, and killing, maiming, or ill treating them was punished severely by the whites. He could not think but the arguments of some gentleman must originate from improper motives.

He should vote for the motion of the gentleman from Virginia, (Mr. GOODE.) It was time to say what the House could or could not legislate upon; what it could not, ought to be marked with disapprobation. He should vote for the amendment, but when the question was taken on the general subject of reference he should vote against it. This he thought the most effectual way to show a just disapprobation.

Mr. GOODE then amended his motion, so as to read instead of "ought to receive the pointed disapprobation of this House," "ought to receive the disapprobation of this House."

Mr. EDMOND could not conceive any danger from committing this petition, whatever alarms some gentlemen had apprehended. But as gentlemen apprehended so much danger from committing certain parts of the petition, he would be willing to quiet these alarms, and do everything reasonable by expressing an idea that Congress would not legislate upon what belonged not to them. The amendment at first proposed, he professed himself much opposed to, upon the ground that the House were about to express a pointed disapprobation towards the petitioners, which he conceived wrong, because no censure could be due where a petition was respectfully addressed. But as now modified he had no objection to adopt the amendment; not that he conceived it important, but because it tended to quiet the minds of some gentlemen in the House.

Mr. WALN again said, that it was not his intention to advocate the emancipation of slaves, but only to ameliorate their state. He therefore would cheerfully consent to the amendment as amended.

Consent being given by the mover to incorporate the amendment with the original resolution, it was now all before the House in the form of one resolution.

Mr. THATCHER said, as an abstract proposition, he should have no objection; he thought the House ought to give no countenance to anything that it could not legislate on by the Constitution; but as he did not believe the petition contained any such proposition, he must adhere to his former sentiments, and could not consent to the incorporation of the words. As amended, he disliked it much less than before, but he did not like it as connected with the first motion.

Mr. J. BROWN asked whether it was in order for a gentleman to speak five or six times.

Mr. THATCHER said he had spoken but once on this question. The gentleman from Rhode Island need not be afraid, for he was not now going to say much about slavery, which was the nearest to his heart. Mr. T. was fully of the opinion that the House had a right to take up the subject, and give it a full, free, and deliberate discussion, but this did not appear to be the general opinion. As he was opposed to the motion, as amended, he was willing his name should appear against it, even though no other gentleman should think fit to vote with him.

Mr. GALLATIN conceived that there certainly were parts of the petition over which that House had no power, for though the petitioners did not pray for emancipation to be completed immediately, yet they anticipated that it would some time be done, and their prayer included a wish that the House would take a preparatory step. As to the amendment, although he did not like the wording of it altogether, he had no objection to the principle, and therefore should vote for it; for he thought it right to say that it was improper for the House to legislate on the subject. What was not specifically acknowledged by the Constitution, in his opinion, carried with it a doubt upon which the Legislature ought not to enter.

Mr. THATCHER called for a division of the question.

Mr. NICHOLAS, on this, expressed some embarrassment as to giving his vote, on which he moved to strike out the latter part. The same appeared to pervade the minds of several gentlemen.

Mr. WALN, therefore, to relieve the House from the situation, withdrew his acquiescence to the amendment, so as to leave the questions distinct. The yeas and nays had been several times moved during the embarrassed state of the House, but were only taken once, to wit, on the amendment to the former proposition:

"And that the parts of the said petition which invite Congress to legislate upon subjects from which the General Government is precluded by the Constitution, have a tendency to create disquiet and jealousy, and ought therefore to receive no encouragement or countenance from this House."

The question was taken, that the House do agree to the same, and resolved in the affirmative—yeas 85, nay 1, as follows:

YEAS—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, John Bird, Phanuel Bishop, Jonathan Brace, John Brown, Robert Brown, Christopher G. Champlin, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dawson, John Dennis, George Dent, William Edmond, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Abiel Foster, Dwight Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, James H. Imlay, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Nathaniel Macon, John Marshall, Lewis R. Morris, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Randolph, John Reed, John Rutledge, junior, Samuel Sewall, William Shepard, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Chew Thomas, Richard Thomas, John Thompson, Abram Trigg, Philip Van Cortlandt, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

NAY—George Thatcher.

And then the main question, to agree to the said motion, as amended, being taken, it was resolved in the affirmative.

Mr. HARRISON, from the select committee, reported a bill to reform the Superior Courts of the Territory of the United States Northwest of the river Ohio, which was twice read and committed:

MONDAY, January 6.

Mr. D. FOSTER reported a bill from the Committee of Claims, for the relief of John Vaughan, which was read a first and second time, and referred to a Committee of the whole House for to-morrow.

PEACE WITH THE INDIAN TRIBES.

The House took up the report of the Committee of the Whole on the bill for preserving peace with the Indian tribes, which was agreed to, and ordered to be engrossed for the third reading to-morrow.

The continuance of the bill is limited to the 2d of March 1802, which was stated by Mr. CLAIBORNE to be in consequence of the expiring of some other bill or bills at that period, relating to the same subject, so that one general bill might then be introduced.

COURTS IN OHIO.

The bill to reform the Superior Courts in the Territory of the United States Northwest of the Ohio, was called up, when Mr. DAVIS stated some reasons for wishing its postponement for a week, which he moved. This being agreed to, Mr. D. moved as follows:

"That a committee be appointed to prepare and bring in a bill to establish a Circuit Court in the States of Tennessee and Kentucky, and the Territory Northwest of the river Ohio."

Mr. GALLATIN then moved the reference of that resolution to the committee appointed some time since to report a mode of reform for the Judiciary Courts of the United States.

Mr. DAVIS opposed this motion, but it was agreed to.

REMISSION OF PENALTIES.

The resolution reported by the Committee of Revisal, &c., was taken up, and agreed to, as follows:

Resolved, That a committee be appointed to prepare and bring in a bill to repeal so much of the act passed March 3d, 1797, "to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," as limits its continuance to the end of the present session of Congress.

Ordered, That the same committee do prepare the same.

DUTY ON SPIRITS, STAMPS, &c.

Mr HARPER, from the Committee of Ways and Means, reported the following resolution.

"That the Committee of Ways and Means have leave to bring in a bill to consolidate into one act and amend the several acts, for laying duties on spirits distilled in the United States, and on stills, and for collecting the same."

Mr. H. said the subject was attended to, at the last session, and a bill was prepared, but owing to the shortness of the session was not passed. A consolidation of the several laws on this subject must certainly appear desirable. The amendments proposed at present were of two kinds; one for increasing the number of supervisors, which now was only one for each State; and in order to accommodate the business, superintendents were appointed; thus a circuitous and troublesome communication was held up from the collectors to the superintendents, from them to the supervisors, and from thence to the Treasury. It was proposed to abolish superintendentships, and increase supervisorships. Again, the irregular mode of compensation to the officers employed, was found a grievance. At present, they received a per centage on their receipts. This, in some, amounted to too high a salary, while in others, although the per centage was increased, it was too low. It was thought all officers with the same trust ought to receive about the same salary. Other amendments might probably be suggested when the business came before the House.

Mr. HARPER said he was also instructed to move the following:

Resolved, That it is expedient to amend an act for laying duties on stamped vellum, parchment, and paper, and to abolish the offices heretofore established for stamping vellum, parchment, and paper, in the several districts of the United States, and to establish at the seat of Government one general office for that purpose.

At the time the act was passed, Mr. H. observed, it was thought most convenient, for expedition, to distribute those offices into different parts of the United States. This most probably had been accomplished, and it was now thought necessary to bring all the business immediately under the superintendence of the Government.

The resolutions were referred to a Committee of the whole House, and made the order for Wednesday.

UNIFORM BANKRUPTCY.

Mr. BAYARD, from the committee appointed, reported a bill to establish an uniform system of bankruptcy thoughout the United States; which was twice read and referred to a Committee of the Whole on Monday next.

TUESDAY, January 7.

JAMES SHEAFE, of New Hampshire, appeared, produced his credentials, was qualified, and took his seat in the House.

The bill for the relief of John Vaughan was taken up and ordered to a third reading, which it received next day and passed.

The bill for the preservation of peace with the Indian tribes was read a third time and passed.

The SPEAKER laid before the House a letter and report from the Secretary of War, exhibiting the expenses of the National Armory at Springfield, Massachusetts; which were read, and ordered to lie on the table.

REDUCTION OF THE ARMY.

Mr. NICHOLAS called up the resolution which he laid on the table on Wednesday last, as follows:

Resolved, That so much of the act passed the 16th July, 1798, entitled "An act to augment the Army of the United States, and for other purposes," as authorizes the President of the United States to raise twelve additional regiments of infantry, and six troops of light dragoons, and to appoint two Major Generals, an Inspector General, three Brigadier Generals, and an Adjutant General; and so much of the act passed the 3d March, 1799, entitled "An act for the better organizing of the troops of the United States, and for other purposes," as authorizes the appointment of a Commander of the Army, and a Quartermaster General, ought to be repealed.

Mr. NICHOLAS said he was led to make this proposition from a strong sense of his duty; that while speaking on the subject, he hoped to treat it in such a manner as to give no occasion for a revival of those passions which had been too predominant in times past, and that if his arguments met their assent, they would find no resistance from resentment. Sir, he continued, I am led to this measure from a sense of its necessity, in our present situation. I think the affairs of this country require a strict economy in their administration, perhaps at this period more than at any former, and that with this principle, our foreign consequence and domestic happiness is most intimately connected.

Upon the information of the Secretary of the Treasury, we are told there is a new appropriation of 8,162,923 dollars wanted; this, gentlemen will observe, is independent of the permanent appropriations of Government. On examining the subject, as well as I have been able, I find the comparison of the expenditures with the revenue will stand as follows:

New appropriations to be made.

For the civil list	$562,275 95
For grants and annuities	953 33
For the Mint	13,300 00
For foreign intercourse, &c.	92,000 00
For expenses of treaties	244,000 00
For expenses of valuation of lands, dwelling houses &c.	215,000 00
For military department	4,067,000 0
For military pensions	93,000 00
For Navy Department (exclusive of 74's)	2,482,953 99
For fabrication of cannon, arms, &c.	260,000 00
For light-houses, &c.	98,240 03
For miscellaneous claims	34,000 00
For 74-gun ships, according to the Secretary of the Navy.	600,000 00
	8,762,923 30

Appropriations already made.

For foreign intercourse	40,000 00
Annuities to Algiers and Indians	60,000 00
For interest on public debt	3,020,000 00
For do. domestic loans	616,000 00
For do. Dutch debt	511,121 00
	4,247,121 00

For reimbursement of Public Debt.

Instalment of Dutch debt	400,000 00
Do. Bank do.	200,000 00
Unexpended appropriation of last year for 74-gun ships	650,000 00
Total	14,260,044 30

Revenue.

Imports, excise, &c., as in 1799	7,350,000	
Land tax	1,900,000	
		9,250,000 00
Deficiency		5,010,044, 30

Deficiencies in the land tax and unexpended appropriations of last year will equal any saving in military appropriations.

The sum of 5,000,000 dollars is the least which we shall be expected to provide; this we understand is to be done by loan, and there is no expectation of getting it at a lower interest than 8 per cent. As we are to be embarked in a system of this kind, and it may be necessary to pursue it for years, it will be proper to consider how far the present revenues of the United States afford a fund for future credit, or, in other words, what surplus there will be after paying the ordinary expenses of Government as they will be in time of profound peace. On such a surplus, or if none, on additional taxes for payment of interest, the power of borrowing can alone depend. To ascertain whether any such surplus will exist, I will state the expenditures of the next year as they will be if every war expense ceases with the present year:

Ordinary Expenses of 1801.

For interest on domestic debt, including two per cent.	$3,020,000
Ditto on deferred do.	1,116,000
	4,136,000
For interest on domestic loans, old loans as in 1799	216,000

On ship subscriptions	$ 36,000
On 5,000,000 borrowed in 1799	400,000
On do. to be borrowed in 1800	400,000
	1,052,000
For interest on Dutch debt	500,000
Civil list	560,000
Military pensions	93,000
Light-houses, annuities, and miscellaneous expenses	133,000
Foreign intercourse	120,000
Algiers, and Indian annuities	120,000
	1,026,000
Permanent Army	1,500,000
	8,214,000
Revenue	9,250,000
	$1,036,000

On this balance will be chargeable expenses of navy, fortifications, arms, foundries, treaties, &c., which will no doubt exhaust it. An instalment of the Dutch debt will become due next year, which is not taken into account, because as principal money it might not be properly considered as a necessary expense. On this view it would seem that you have no fund for borrowing in the present revenues of the United States, after the present year; and that if we confirm a system of expense which will require loans hereafter, we must accompany it with taxes, or submit to the disgraceful and ruinous system of borrowing money to pay the interest of our debts.

The army which is comprehended in that resolution, non-commissioned officers and privates, amounts to 9,000 men: the army retained will then be 5,000 men, non-commissioned officers and privates. In the course of the last two years it will be observed that great additions were made to the permanent Army of the United States by a regiment of artillery and a number of men being annexed to each company, by which the number is made to amount to 5,000.

Sir, the finances of this country would be in an alarming state, if all the present expenses were necessary, but my opinion is, that they are not necessary, for that this additional army is in no wise useful. I cannot conceive for what they are wanted. The idea of invasion, the only ground upon which their necessity could be founded, is quite out of the question—an event of that sort in the present state of Europe, is absolutely impossible; whatever possible changes may take place, on considering the difficulties and inducements, it seems to me morally impossible. If there is not so great a certainty as I believe there is, the improbability of the event is so great that we cannot be justified in keeping up so expensive a preparation for it. If that improbable contingency should ever be brought about, we have a competent defence in the patriotism of the people. The self-interest of all the people of the United States, if no other principle should call them out, would be an infallible defence against invasion from an enemy.

But I suppose very little will be said about the usefulness of the present army, but we shall hear more of the effects which a measure of this kind would have on the state of our negotiation in Europe. I suppose, therefore, that the question will turn on the propriety of dismissing this army while our Commissioners are treating, and therefore this view of the subject may merit a few remarks.

The importance of this army in the negotiation seems to me to be entirely dependent on its importance in the kind of warfare we may expect to carry on with France. If it is not important in that, I cannot conceive how it is to influence the negotiation which is to end it. It would be an extraordinary effect that our army should produce a termination of the war when it cannot affect it in its progress. I have before stated my opinion on the danger of invasion, and I would say more, but that the public understanding has, I believe, decided in the same way; and, if not in repelling invasion, I should be glad to learn how the army can resist the views of France, so as to induce her to abandon them.

It is desirable, I should imagine, that at entering on a negotiation our country should be so situated as to be able to make a firm and obstinate stand against unjust demands. If this is a desirable situation, I ask gentlemen to say whether this army does not lessen, instead of increasing our importance, with that country to which we go to negotiate, when it is apparent to the world that for its support we borrow money of more than one half the amount of the revenue, and pay interest on that loan at an enormous rate. This being known, will it not operate as a strong ground for suspicion that you are forced to the negotiation from pecuniary considerations; that your present state of exertion is greater than you can bear for any length of time, and thus lessen your respectability with that nation? While it may hurry you to submit to terms less advantageous than could be wished, it may make the terms proposed for your acceptance harder than they would otherwise have been.

How can this measure ever affect the negotiation? If such a consequence could be supposed, I ask how it can ever be in the power of Government to give up any measure, let it be ever so mischievous, without running the same risk? If this is to be held up as a *bugbear*, how is it possible for a Government to change its measures? Apprehensions of this sort, if they are not to be liable to the scrutiny of the mind, will put it out of your power to make any change, although it would add to your coercive power. In the present instance, you are to be deterred from reconsidering your arrangements for an army, by an apprehension of an unfavorable effect on your enemy; although it must be confessed, that of all our preparations and measures this has been the least operative and promises to be so in future. If you have the power of further exertion, ought you not to make it in the war which will give you

most power over France, and may she not count that in retrenching useless expenses you acquire additional strength?

I do not hesitate to say, if preference is due to one, it is to our naval preparations of defence. Sir, if you part with one which has never proved useful, will you not be better enabled to keep up the other, which is certainly more favorable to your interest and local situation?

Another objection which will most likely be made, but which is in effect the same, is, that those measures having been established, taken to resist any attack that might be made from *France*, and no material change having happened since, it will be considered as a proof that the spirit which dictated them is gone. What I have said before I consider as a full answer to this. In retaining those measures which alone have had effect, we give the best proof of our determination to persevere; in dismissing those measures which have only been burdensome to ourselves, we certainly increase our ability to do so. Thinking as I do, about the usefulness of this army in a contest with France, I conceive this the most proper time for disbanding it. I would enter the negotiation with an armor which would last more than a day; I would go to it so as to satisfy the country with whom we treat that we will not be obliged to abandon the ground which justice has pointed out. If its usefulness is not such as it ought to be maintained throughout the contest with France, in my opinion this is the best time which can offer for disbanding the army. In case the negotiation is to fail, the increase of passion and alarm would deprive us of the power of acting up to the sound dictates of understanding, and we should certainly continue under the pressure, though useless.

If there was a possibility of my proposition hindering the negotiation with France, or in the least retarding it, I am sure that I should be the last in the House to press it; there is nothing I wish more than a complete accommodation, and nothing for which I would bear more. I propose a correction of what I call a misdirected zeal; by correcting which, I conceive the country will acquire new energy, the power of Government be placed on a firmer and more substantial footing. Under the firm impression of these ideas, I have done what I considered my duty, and leave it to the consideration of the House whether the measure would or would not be prudent and practicable.

Mr. MARSHALL said if it was true that America, commencing her negotiation with her present military force, would appear in the armor which she could only wear for a day, the situation of our country was lamentable indeed. If our debility was really such, that the troops sought to be disbanded could not be kept up but for a day, or for a very short period, our situation was truly desperate. No cheaper mode of self-defence had been or could be devised, and it amounted to a declaration that we were unable to defend ourselves. He thought differently from the honorable gentleman who moved the resolution. He thought America could maintain, if it should be necessary, a much larger force, for a much longer time, than was contemplated with respect to the troops to which the resolution under consideration related.

It was also to be observed that the honorable gentleman had predicated all his arguments on the idea, that the troops must be immediately disbanded, or that the original law, unmodified, must have its full effect; that no middle ground might be taken. He was of a very different opinion; he thought middle ground might be taken, and that the law might be modified, so as to diminish the estimated expense, without dismissing the troops already in actual service.

The resolution proposed, he said, occupied such broad ground, as necessarily to unite against it a considerable variety of opinions respecting the future disposition of the army. Not only those who thought the original law ought to have its full course and effect, but those also who thought it ought to receive certain modifications, and even those who thought that in the event of the failure of the present negotiation, the army ought, under certain circumstances, to be disbanded, but that this was not the time for disbanding it, must unite against the motion now under consideration. It could only be supported by those who, like the mover of the resolution, thought that in the present moment, uninformed as we were concerning all those circumstances which should govern our decision, we ought to retrace the steps we had taken, and very materially to change the ground on which we found ourselves placed. This being the opinion on which alone it could be maintained, it became necessary to examine the arguments urged in support of this opinion.

It has been urged that the army ought to be disbanded because it was totally useless, because the United States were unable to bear the expense, and on some other suggestions, which should be considered in the course of the argument.

Its inutility has been maintained on the impossibility of invading our country in the present state of things, on the difficulty of invading it at any time, and on the total indisposition to invasion, arising from the inadequacy of the object to the difficulty of attaining it.

But what assurance have gentlemen that invasion is now impracticable? The present state of Europe is totally unknown to us. The effects of the late decisive victories of France have not reached us. It is by no means certain that these victories may not have produced a negotiation with some of the continental Powers, which may liberate a considerable portion of her force, which she may send across the Atlantic. By the opening of the next campaign we shall be informed on this subject, and shall be able to act with proper knowledge of it—at present we are uninformed and are urged to act without the requisite knowledge.

On this point it was necessary to inquire into the relative situation of the two nations. All commercial and friendly intercourse between us was suspended. Whenever we met, the stronger party attacked and captured the weaker. The property of the captured was confiscated and their persons imprisoned. This was war in fact though not in form. We are, in fact, at war with France, though

it is not declared in form. What security then is there that no disposition will exist to invade us? The unimportance of the object forms no such security.

Neither is there any security that there exists no disposition to invade us. On this subject he differed essentially from the honorable gentlemen who supported the resolution. He thought America of vast importance to France. Whatever might be the views of France, whether they were merely to humble her great rival or were still more extensive, it was impossible to consider the effect which a control over American affairs must have in promoting those views, without being satisfied on this subject. Independent of the effective force which might be used, the great advantage which the monopoly of our commerce would give in time of peace for the formation of a naval power, was of importance to France or England. The result of the two last wars between those two nations, in one of which the force of America was added to that of Britain, and in the other to that of France, evinces the importance of America, even at that time, in either scale. Unquestionably that importance cannot be diminished.

With respect to the difficulty of attaining the object, Mr. M. said that France could not be so much governed by the difficulty which might actually exist, as by the opinion she would previously entertain of that difficulty. Before the real difficulty could be ascertained, the invasion must take place. Of consequence, her opinion on this subject would regulate her conduct, and her opinion would depend on the measures which might be adopted, and the disposition which might be manifested by America. But it has been urged, not only that the army is useless, but that there is in the United States a positive inability to maintain it. To prove this our revenue and expenditure has been stated. Suppose this had been the language of '75? Suppose, at the commencement of our Revolution, a gentleman had risen on the floor of Congress, to compare our revenues with our expenses—what would have been the result of the calculation? Would not the same system of reasoning which the gentleman from Virginia has adopted, have proved that our resources were totally inadequate to the prosecution of the war? Yet it was prosecuted, and with success. If vast exertions were then made to acquire independence, will not the same exertions be now made to maintain it? The question now is, whether self-government and national liberty be worth the money which must be expended to preserve them.

The mover of the resolution, Mr. M. said, had urged, as his strongest reason for the measure, the saving of public money which it would produce. Any argument of which the object was economy, came home to the feelings of every member of the community, and came home to the feelings of every member of the House. Such arguments would, and ought to have great weight; but it should never be forgotten that true economy did not content itself with inquiring into the mere saving of the present moment; a true and wise economy would take an enlarged view of the subject, and determine, on correct calculation, whether the consequence of a present saving might not be a much more considerable future expenditure. The reduction of the army would certainly diminish the expense of the present year; but if it should have any operation on the existing negotiation with France, the present saving it would produce would bear no proportion to the immense waste of blood, as well as treasure, which it might occasion us. To determine in what manner this measure might, and probably would, bear on the existing negotiation, it became indispensable to take into our view what had preceded the actual state of things between the United States and France. In doing this it could not be necessary to enumerate the various injuries our country had sustained. They rested in the memory of every American, and need not be recited. It must, however, be particularly observed, that while prayers for peace were returned for indignities of every sort, while America was humbly supplicating for peace, and that her complaints might be heard, France spurned her contemptuously and refused to enter on a discussion of differences, unless that discussion was preceded by a substantial surrender of the essential attributes of independence. America was at length goaded into resistance, and resolved on the system of defence, of which the army now sought to be disbanded forms a part. Immediately the tone of France was changed, and she consented to treat us as an independent nation. Her depredations indeed did not cease; she continued still to bring war upon us; but, although peace was not granted, the door to peace was opened.

What could have produced this change? Every member of the House is called upon to put this question to himself and to weigh it according to his best judgment. To supplicating America, even discussion was denied. America armed, and immediately a different language was used, and the rights of an independent nation were allowed her. What, he repeated, could have produced this change? Can any other motive be assigned, than the defensive system which America had adopted? If in the mind of any gentleman, any other motive did exist, he is called upon to assign that motive. If no other did exist, is it wise immediately to change the system which has alone been effectual? Is it not to be apprehended that this change may revive those sentiments which existed before that system was adopted?

This subject, he said, was also to be considered in another point of view, which had been foreseen by the mover of the resolution and declared to be intimately connected with that which had been already stated. It was this: the policy of this measure depends entirely on the state of things when the negotiation shall be determined.

Will gentleman say, that, under any state of things, the army ought to be disbanded? Will they say that if peace should be made with the continental Powers of Europe, and a French army should be crossing the Atlantic to invade our territory, that yet our military force ought to be diminished? He believed no gentleman would say so. He was certain the mover of the resolution

would not. Is it then wise to precipitate a measure, the policy of which depends entirely on an event which is not yet, but will soon be, ascertained?

In a few months the fate of the present negotiation will be decided. Should it terminate favorably, the army expires by the law which gave it being, and the additional expense to be incurred will be very inconsiderable. Should it fail, we shall then know the disposition of France and the situation of Europe. We shall be able to form a just estimate of the danger of invasion, and consequently to decide, with much better information than we now possess, on the question under discussion. If such a state of things should then exist as would justify disbanding the army, the loss produced by the delay of that measure would be very inconsiderable. If the then state of things should require even an augmentation of the existing force, the injury occasioned by our precipitation might be very considerable. We should certainly throw away all the expense incurred in recruiting men, all the discipline the present army had acquired, and be in a state as unprepared as if the expense for those objects had never been sustained. He concluded with observing that this was not the time for diminishing the force of the nation, and therefore he was opposed to the resolution.

Mr. Nicholas.—As usual, I fear that this, as I consider it, wrong step, will never be got over. How can it, if there is strength in the gentleman's arguments? Where is the end of it? In vain do we seek for it! He supposes the necessity for that army will continue while depredations continue on our commerce; thus, France may continue her depredations, which are directed only towards a part where this army can have no effect, and consequently, though there will be no power to use it, the armament is never to have an end. He says on the moment of failure in the negotiation, an army may be crossing the ocean, and then we shall want these troops. Sir, this might occur at any period, and if we are never to disband our army, under apprehensions of that event, it will never be done, and our expense will be perpetual; but of all times the one fixed on by the gentleman is the most improbable, and if you are to be in perpetual alarm on this account, where will the argument lead? The expense is stated to be small, as the event will be soon known. We know not how short is the time or how long; we cannot limit it. France may continue, and might continue to plunder us on the ocean, and therefore to fix on her forbearance as the time, is but in other terms to be satisfied to bear the burden for years, without a prospect of its being useful.

The gentleman considers this armament to be the measure which extorted the overtures from France. But this is not so. It is a little extraordinary that he should have ascribed an effect to a measure that existed previous to the knowledge of that measure; for the propositions, and the avowed willingness on the part of the Directory to meet our complaints by an honorable adjustment, were made known to our Ministers in August, which was before the law of July, 1798, which created the army we wish should be disbanded, could have reached that nation.

I could not understand one of the gentleman's arguments, when he spoke of the motive for invading this country by the different weight it would have in the scale of either of the contending Powers. Instead of this being a reason why she should make war upon us, it is a good reason, in my opinion, why she should wish for peace with us, to keep us out of the scale of her enemy. He surely could not think it an easy acquisition to France, from any attachment formed for that nation among the people of this country, so as to make it an easy conquest. I am sure he would not form such a degrading opinion of his countrymen. The general suggestion that we *may be* invaded will not operate the least in favor of retaining the troops, for to that we are always exposed. No time can be pointed out in which it would not be as practicable as at present, but many periods and circumstances in which it would be more so. If a conquest can be made of this country, and the difficulties of achieving it are not sufficient to prevent the attempt, I ask whether a time of peace would not comport more with the interests of the nation expected to attempt it? Their supply of arms and men, and having no enemy to encounter, would certainly render that the most proper time. The consequence, then, of those arguments would be that we must keep this army up and go on arming in all times, because we may be invaded. This continual alarm will be found so fatal to public happiness, that we shall at last be willing to yield ourselves up to any master who can promise us security.

But the gentleman seems to suppose that there is a middle ground upon which we can go, and that we might do something short of disbanding the army, by which expense can be saved. How does this proposition comport with the influence he conceives any change in our system will have on France, or with his fears of invasion? Is your army so numerous that you can bid defiance to France with half of it—for, in the idea of the gentleman, in case of a want of agreement, your negotiators are to return with an army at their heels!

In my opinion, the same arguments that go to the least retrenchment at the present time, go to the whole principle of the resolution, for, if we were to be invaded, it would not all be enough; we must have recourse to other means. If from motives of economy we ought to save part of the expense, and the saving of that part would leave us in nearly the same danger which saving the whole would, who can hesitate to decide which is the most expedient? I confess I have heard none of the arguments used by the gentleman that have convinced me of the impropriety of the resolution, but rather they have confirmed me in a sense of the necessity of it.

Considerable argument then took place on a motion of Mr. Jones to refer the resolution to a Committee of the whole House, which at last was agreed to; and the House adjourned.

Wednesday, January 8.

An engrossed bill for the relief of John Vaughan was read the third time, and passed.

Sundry petitions and remonstrances from a number of the inhabitants of Morris county, in the State of New Jersey, were presented to the House and read, praying a repeal of the alien and sedition laws passed at former sessions of Congress; and, also, of the law which authorizes the President to augment the Army; for certain reasons therein expressed.

Ordered, That so much of the said petitions as relates to a repeal of the laws authorizing the augmentation of the Army be referred to the Committee of the whole House to whom is committed the motion for a repeal of certain parts of the acts relative to the Army, passed the sixteenth of July, one thousand seven hundred and ninety-eight, and the third of March, one thousand seven hundred and ninety-nine.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, reported a bill to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned;" which was read twice, and ordered to be committed to a Committee of the Whole House to-morrow.

A Message was received from the President of the United States, transmitting a report of the Director of the Mint. The Message and report were read, and ordered to lie on the table.

REDUCTION OF THE ARMY.

The House then resolved itself into a Committee of the whole House on the motion depending yesterday, for a repeal of certain parts of the acts relative to the Army, passed the sixteenth of July, one thousand seven hundred and ninety-eight, and the third of March, one thousand seven hundred and ninety-nine—Mr. Morris in the Chair.

Mr. Bayard rose and said, he felt much embarrassment in rising to speak in support of positions which had already been so ably and so eloquently maintained by the honorable gentleman from Virginia. He could not flatter himself with the expectation of throwing much light on a subject which had been illustrated by him. But the subject was of such magnitude and interest, that it was important to contemplate it in every point of view.

He was not surprised that such a resolution as the one under consideration, even at the present crisis, should have been brought forward by the honorable gentleman who moved it.' He could perceive in it a connexion with a system which had long been pursued by a party in the United States—a system which had for its object the debilitation and degradation of the General Government. A knowledge of the party and a knowledge of their views prevented any astonishment at the present measure they proposed. This measure he did not regard as a single operation. It was part of a general plan, which, if it were successful, would soon be unfolded.

The conduct of France in relation to this country, had compelled the United States to adopt a system of defence. The nation had found that no reliance could be placed on the moderation or justice of the French Government. Their own energies were the only ground on which their independence could be maintained. They did not hesitate as to the alternative of defence or submission. Having resolved to resist the aggressions and pretensions of the French Government they found themselves forced into a state of hostility. The commercial intercourse with France was suspended, the treaty of alliance was abolished, a navy was created for the protection of trade, and an army ordered to be raised. Our ships of war were instructed to seize and destroy the armed ships of the French Republic, and a war, though deprecated, was expected without dread. The national sentiment coincided with the temper of the Government, and its measures were approved and applauded. The system which was adopted was connected in its parts, and the objection which went to one part applied with equal force to the whole. The naval hostilities authorized against France rendered an army necessary against invasion from Europe or the islands, which might reasonably be expected.

If gentlemen now said an army was not necessary, it must be because they thought the French Government was not hostile but friendly. If they thought that Government friendly, surely there could be no occasion for the navy. The same reason would induce us to revive the treaty with France and open the commercial intercourse.

Sir, said Mr. B. before we undertake to change the entire plan which we have pursued, and which certainly has been productive of salutary effects, gentlemen should well consider what condition of the country induced that plan, and whether that condition is altered; they should reflect upon the operation which the change might have upon our affairs abroad and on its probable effects at home. He should not enter into a recapitulation of the various complaints and recriminations which had occurred between the two countries. It was sufficient to observe that the Government of the United States, actuated by a love of peace and a motive of amity, early sent a Minister to France, to conciliate the differences which had arisen. This Minister was not simply rejected, but repelled with circumstances of marked disdain and contumely, designed, not as a personal, but as a national affront. The moderation of the Government and the forbearance of the people passed over in silence this gross violation of the respect and justice done to them.

Still, willing for peace and anxiously desirous to avoid engaging in the contentions of Europe, a new embassy was sent to France, composed of citizens the most illustrious for their talents and probity. We all know the fate of this embassy. The olive branch which was presented was disdainfully trampled under foot. Our Ministers were not received. A miserable pecuniary intrigue was set on foot, which unveiled the corruption and hypocrisy of the French administration, and remained a lasting monument of the disgraceful

views and designs of that Government. When these rejected Ministers of Peace returned what was our situation? The American people perceived that their Government had sincerely and zealously endeavoured to preserve the relations of amity with France. They saw that peace could not be maintained without a surrender of their independence. The alternative was war or tribute. The people were then roused from their lethargy. The national pulse beat high, and from one end of the Union to the other the sentiment was uttered and reiterated, "millions for defence but not a cent for tribute." He trusted this was not the ephemeral spirit of a moment. He trusted that the American people, though slow to anger, would be found firm to their purpose. At this moment the temper of the country forced the Government to measures of defence. The Government, faithful to the interest and will of the people, assumed the attitude of resistance; they severed the connexion with France, and prepared to defend themselves on the ocean and on land. This state of things they had not chosen, but it had been imposed upon them.

They had been fully sensible of the burden and sufferings of war. But the election of peace no longer remained upon terms compatible with the independence of the country. This state of things gave birth to the measures of the last Congress; those measures had been adopted, not from choice but from necessity.

If the state of things justified the measures which were adopted in 1798, before gentlemen consented to abandon the system then taken up, they would certainly inquire whether anything had occurred which changed the situation of the country. To me, said Mr. B., the same views present themselves; nay, the causes of apprehension have increased. To the complaints which France had in 1798, we have added a course of hostilities since that time; we are now in actual war; we have everything to dread which the vengeance and power of the Great Nation can inflict. Have we anything to hope from their moderation and justice? To them we have already appealed in vain. A new effort to negotiate has been made, hostilities however continue, and the event of the mission is utterly uncertain. We have, then, the same reason to maintain the army which we had to raise it; consistency will oblige every gentleman to vote for its continuance who voted for its creation. He had no doubt that the people of the United States, perceiving the necessity of our situation, would cheerfully submit to the burden. A burden, great as it might be, not so heavy or calamitous as bondage to a foreign Power.

But, said Mr. B., some gentlemen affect to believe that in no event could the army be necessary. They conceive, in the first place, that an invasion of the country is impracticable by France; and, in the second, that if an invasion should happen, the patriotism of our citizens furnishes alone sufficient means of defence. He was not of opinion that invasion was impracticable. What rendered it impracticable? Did France want men? No nation was more populous; nor could any nation furnish more soldiers in proportion to her population. Did she want ships? We were informed that she still possessed a considerable navy of her own, and, in addition, could dispose of the marine force of her august ally the King of Spain; the combined fleets were certainly competent to the end. Was the project too hazardous or chimerical? Look at the expedition to Egypt; the distance to the United States was greater, but the voyage once begun, all difficulties were surmounted. Did we rely on her friendship or moderation? On this subject we had lessons of our own, and they were confirmed by the invasion of Egypt. Egypt was a dependence on the Porte. The Porte, at the time of invasion, was the ally of France, and was her natural and ancient ally. France had not a complaint against the Turkish Government; and notwithstanding, in breach of the law of nations and in violation of every principle of justice, invaded the Turkish dominions. This invasion furnishes memorable proof of the darkness of her intrigues and the perfidy of her assurances. It was not till Bonaparte was landed in Egypt that the Turkish Government suspected the hostile designs of France; and, when in Egypt, you find the French General as good a Musselman as here he would be a Christian. Nothing could be expected from the moderation of a Government which had uniformly shown itself the most ambitious, the most rapacious, and the most unprincipled, of any that ever ruled.

But we are told that in case of invasion an army is not necessary, because we might rely on the patriotism of the nation. Sir, said Mr. B., I am not insensible to the melody of the word, but I must doubt of the efficacy of one thing. There was a time when everybody understood what was meant by patriotism; it indicated an attachment to our country. But a modern patriot was a character not so well understood. Patriotism has become a furious spirit of revolution; the ties of blood, the inspirations of nature, the principles of truth and honor, are consumed by the devouring flame. The *natale solum* had lost its charm. To be a patriot you must forget your country, abjure your religion, suppress the impulses of nature, and maintain the equality of vice and virtue. He knew there were a sect of patriots who attributed to themselves exclusive merit. Was it on these patriots the country was to rely in case of invasion? It was necessary to develope their principles before they could be entitled to confidence. Their object might be beyond his view, but their operations inspired distrust. We see, said he, every means employed to separate the Government and the people. Art, intrigue, and falsehood, are indiscriminately made use of to create an opinion that the friends of the Government aim at the establishment of monarchy. He did not suppose that those who gave currency to the idea believed in the fact. The evil was extensive and increasing. The attempts to establish the opinion to which he alluded were not confined to a few miserable editors, whose bread depended on defamation and calumny, but ambition and party had laid hold of the same instrument to accomplish their purposes. The opinion

had been declared by men of high character; we had seen it in official addresses and official answers; and the ebullitions of conviviality were proof of the impression it had made. Sir, said Mr. B., I know the fact to be otherwise. The friends of the Government are devoted to the Constitution. They wish to maintain it on its just principles. They have resisted the insidious attempts to weaken and destroy it, made under the deceitful pretence of love of liberty and attachment to the rights of the people.

The design to establish monarchy, attributed to the friends of the Government, he considered as a most dangerous calumny. Unsupported as it was by any acts, or even the expression of opinion, yet there were many who were weak enough to believe it. He thought, in this country, a more fatal poison could not have been infused into the public mind. The body of the people were attached to a republican form of Government. He had no doubt that to maintain this form of Government they could sacrifice every other consideration. When they are brought to suppose that those who administer the Government aim at the establishment of monarchy, they will be ripe for insurrection, or ready to join an invading army.

He could not imagine that the delusion on this subject reached to an alarming extent. He believed a great majority of the people were attached to their Government, and had full confidence in its rectitude. But there were no doubt some who were weak and credulous enough to believe the slanders which the enemies of the Government had propagated. The patriotism of these few would not be shown in attachment to the country, but in a furious opposition to those whom they have been taught to think were enemies to liberty and equality.

Sir, said he, let the French come with their cap of liberty mounted on their standards, singing *ça ira*, planting liberty poles, and denouncing the Government as an aristocratical and British faction, and I fear you would see some patriots forgetting their country, and, under the ardent impression of their political fanaticism, ready to imbrue their hands in their brothers' blood. Revolution was not confined to politics—religion and morals were revolutionized. The sacred love of country, once ranked amongst the best principles of man's nature, was now shamefully sacrificed to the very sound of equality.

These sentiments were no declamation, they were drawn from what had actually happened. The example of Holland was before us. No nation had ever struggled with more fierceness and obstinacy to establish their independence; the people of no nation had been more celebrated for their patriotism. And yet, within the compass of a few years, we had seen that spirit yielding to a new passion, which had involved the country in slavery and wretchedness. For a few empty sounds they had bartered the independence of their country. The patriots united with the invaders, and, as soon as they were told that they were all free and equal, surrendered their Government and treasures to France. They are punished beyond the desert of folly. An army of 24,000 plunderers is established in their bosom, and the vultures will not be satisfied while there is anything to devour. They have now the equality of slaves, and the liberty of singing the songs and playing with the baubles which France has given in exchange for the right of governing them with the bayonet.

Mr. B. said he would turn his eyes to a picture still more melancholy than that of Holland. He alluded to Switzerland. The people of those cantons were illustrious for their love of liberty and their devotion to their country. Liberty they had, and with it all the blessings which good government could bestow. They did not escape, however, the poison of the French mania. The storm of the Revolution reached them, and Switzerland has been effaced from the list of independent nations. Still brave, still attached to their country, yet seduced by the flattery and false promises of their invaders, instead of uniting in a common defence, they divided among themselves, and thus fell an easy prey.

Cannot these dreadful instances of credulity and delusion open your eyes? Must this country swell the catalogue of national folly and human misery? He trusted there was a Providence who would protect us. He trusted that a great majority of the people would be preserved from falling into those fatal errors which had proved the ruin of other nations. He was not disposed to doubt the patriotism of the people. It was not distrusting their patriotism to provide an army of disciplined soldiers. No one could predict what would be the first impression of an invasion. France was not without emissaries and some friends in this country. At the moment of invasion the French partisans would be actively employed to distract the patriotism and paralyze the energy of the country. At this moment it was of vast importance that the Government should have some troops to rally the confidence as well as the forces of the nation; no regular army could be contemplated as an adequate defence. But their utility was still great. They were a point which would concentrate the militia, the great reliance of the country.

Sir, said Mr. B., because our militia are brave and willing to turn out, in case of invasion, shall we not add to them the aid and support of a corps of disciplined troops? Shall they be exposed at once to the bayonets of veteran soldiers, inured to fighting? Without meaning to disparage the militia, he would say that no men could be made soldiers the day they were led into the field. If we designed, therefore, effectual resistance, it was necessary to have some men at least instructed in discipline before an invasion happened.

But we have been told, Mr. Chairman, said Mr. B., that our pecuniary means are not equal to the support of the army which has been directed to be raised. The argument on this subject has not been fairly stated by the honorable gentleman who moved the resolution. We have two events to contemplate, either that a treaty will or will not be concluded with France. If a treaty should be concluded, then, by the law raising this army, the troops would of course be disbanded; because

they are entitled to serve during the existence of the differences between France and the United States, unless sooner disbanded.

If a treaty should be concluded, it must be in a short time. The event must be known in a few months, and of consequence, in case of peace, the expense to the country would be only the pay and subsistence of about 3,500, (the number already enlisted for the twelve regiments,) for two or three months, which could not exceed 200,000 dollars. If, however, France should still insist on terms destructive of the honor and independence of the nation; if, sir, nothing should remain but war, will gentlemen say the army ought to be disbanded? It is impossible such can be their infatuation. If France should again refuse us peace, it must be because she has some great hostile intention against us. The present state of things is prejudicial to her. She gains nothing and loses something. If she did not mean to do more, if she did not aim at some great advantage, she would readily accede to the moderate terms of accommodation which we ask. What can she design? A war upon our commerce is not a sufficient object. It would be of advantage to her corsairs, but the Government would acquire neither reputation nor advantage by it. If France will not make peace, she can design nothing less than conquest. And will we stop to calculate the expense of a war for our national independence? It had been well observed, by an honorable gentleman from Virginia, that at the commencement of our late Revolution America did not do so. Destitute of all means of defence but the energy of public spirit, calculation would have been useless. At this time we had means upon which we might calculate, and he trusted the spirit of the nation still remained. I believe, said Mr. B., that, in a war for their independence, the people of these States would submit to any taxes which their defence might require. If it were fifty per cent. on their capital, they would rather part with it, than with their rights and liberties, which they purchased with so much blood and treasure. In fact, in the event which he was contemplating, the only question for the people would be, whether they would not spend a part of their fortunes in their defence, rather than yield the whole in endless contributions to France? Upon such a question he presumed there could be no hesitation.

He should detain the Committee a short time longer in offering some observations upon the probable operation of the resolution abroad, in case it were adopted. Gentlemen in favor of the resolution affect to believe, that its adoption would not influence the negotiation which is pending with France. None of us have entertained the idea attributed to us by the honorable mover of the resolution, that these troops were to be sent to Europe or were to act against France. We readily agree that nothing would be more chimerical and absurd.

It is not from any view of a possible operation of the army against France that the disbanding could influence the negotiation, but from the impression such a measure would necessarily make on the French Government, as to the state of affairs in this country. If, after having raised an army against them, without any change of conduct on their part, they were to see us disband it, what would they infer? Either that extreme imbecility pervaded our councils, or that there was a want of means on the part of the Government to maintain a small military force. Or, perhaps they would make an inference still more, that those whom they called and supposed their party in this country had become more powerful than the Government. In either case they would perceive less difficulty in the accomplishment of any views which they had on the country, than our plans of defence may have caused them to apprehend; and, of consequence, the inducements to an accommodation of differences would be diminished. It was a wise axiom in politics, that a nation which would negotiate to advantage should be prepared to fight. The resolution was predicated on an opposite principle, and was repugnant to the plain evidences of experience and common sense.

Mr. B. said the disbanding the army would have the worst effect at home. If the resolution succeeded, the soldiers were disbanded in the midst of Winter, were left without employment, and were thrown on the community to subsist by plunder or charity. That if the measure were delayed to that season when common justice would suffer the troops to be disbanded, the event of our mission to France would be known, and the term of enlistments would expire by their own limitation, or the necessity of retaining the troops would be no longer questionable. He begged the gentlemen to consider what would be the situation of the country if the army were now disbanded, and at the end of three months France should declare war. Would an officer or soldier return to the service of a Government which might be obliged to dismiss them the next day, without any change occurring in their political affairs. Mr. B. concluded with observing that, viewing the resolution in every point of light in which it presented itself to him, he felt the necessity of giving it his decided negative.

Mr. Gallatin observed, that after the Committee had been so eloquently entertained, by the display of fancy exhibited by the gentleman last up, he did not know whether he should have it in his power to command their attention, as he could offer nothing but a dry discussion of the question itself. The motion did not contemplate that the whole army should be disbanded—a position on which the arguments of gentlemen opposed to it had been founded. It did not even go to reduce the army establishment to the same situation in which it was in 1798. In April of that year our whole number of troops on the establishment was 3,200 men. Our permanent establishment now, independent of the troops which are the object of the motion on the table, amounts to 5,400. There is therefore an increase of 2,200 men since April, 1798, which are not contemplated to be affected by this motion. This increase had been made by adding an additional regiment of artillery, and increasing the number of men in each company on

the former establishment. In addition to these there are 1,000 marines, who are likewise upon the permanent establishment, and who may occasionally serve in garrison, in the nearest place. In case of war, or danger of invasion from any foreign country, such increase of the companies on the permanent establishment was to take place, by virtue of the law to organize the army, as would make an addition of 2,500 men. This was independent of what was called the eventual army. The resolution affects only what is called the additional army, which was to amount to about 9,300 men. These are proposed to be disbanded, which, if done, would still leave a force of 5,400 besides 1,069 marines, and power in the President to raise 2,500 more in case of invasion or war. This is a correct statement of the existing force. What is called the permanent establishment, of 2,400 men, I conceive to be sufficient to garrison the forts and harbors, and for the protection of the frontiers against the Indians. Indeed, that appears also to be the opinion of Government; for such of the 9,300 as are enlisted are encamped in cantonments.

Permit me first to say that all the speech of the gentleman from Delaware, with the exception of a few observations which I may notice hereafter, is a strong argument in favor of the motion which he attempted to oppose. The argument which he used, and supported with all the ability he possesses, was that no dependence could be placed on the amicable disposition of the French, and that it was not probable a peace would be the event of the negotiation. On this supposition he argues the necessity of a continuation of this force. It is from this uncertainty of things I wish the army to be disbanded. Sir, if I was convinced that the event of the negotiation would be a treaty in a short period, I should not think the advantages that would result from an immediate disbandment of the army so very important as to have rendered this motion necessary; for, in case of an adjustment of differences with France, the army was already, according to law, to be disbanded. It is because I am not certain a treaty will be made in a short time, because it may not be made during the session of Congress, and therefore because the troops may continue in pay for a great length of time, that I conceive the motion to be important. I do believe that if there should be no treaty formed with France this army would be useless; nay, I will go further and say it would be pernicious. When I say it would be useless, I conceive the burden of proof does not rest on me, but that it is incumbent on those gentlemen who think the army necessary to prove its utility. The arguments of the gentleman from Virginia yesterday (Mr. Marshall) did not appear to place any great dependence upon this army, let what would be the event of the negotiation. Yet he has repeated the idea formerly so much insisted upon—the inducements which this country offered to the French for invasion. In favor of this doctrine he gives however, but one argument, drawn from the events of the former wars between France and Great Britain. He very justly observes, that in all those wars where America was united to Great Britain, she triumphed over France; but that event was changed during the last war, when the weight of America was thrown in the scale of France. And from thence he draws the conclusion that America offers great inducements to invasion. The fact brought to view by the gentleman, proves to me the very reverse of what he intended to suggest. If the weight of America, thrown in the scale of Great Britain, decided every contest in favor of that country, can it be the interest of France, by an invasion, to throw us altogether into the arms of Great Britain? Is it not, on the contrary, her interest to cultivate our friendship and to promote at least our neutrality? But the history of the last war places the argument in a far more forcible point of view. The force of America was not only withdrawn from an active operation against France, but it was actively employed against Great Britain. It was that contest which rendered the weight of America of immense importance. But where and in what manner was that contest carried on? Great Britain invaded America; and it was that invasion, it was their shedding their blood and exhausting their treasure in the hopeless attempt, which divided their force, weakened their efforts everywhere else, and procured almost everywhere the means of victory to their enemies. Yet it is said, that the recollection of the events of that war are an inducement to invade this country, and thence is drawn an argument in favor of the army. To my mind nothing can appear more contradictory than that conclusion. It amounts to this: England was not only unable to conquer America, but the attempt divided and enfeebled her so much as to change her relative situation with her ancient European enemy; therefore, it is the interest of France to invade America. It is evident that the recollection and experience of the last war added greatly to our confidence in our power of repelling an invasion, and our security against the renewal of the attempt from any nation. France has neither naval nor money resources to spend for it—not scarcely to accomplish what she wishes in Europe. Notwithstanding her boasted power, she is not in any degree equal in those two resources to what Britain is now, after a long and expensive war; much less is she equal to what that nation was in 1775, when she invaded this country. I need not add, in confirmation of these ideas, that our population is nearly double at this time of that of 1774, and that with our population our resources are doubled at least. This is a fact which cannot be disputed.

We have been told, by the gentleman from Delaware, that if France did not make a treaty with us, it was because she meant to invade us. I cannot conceive how he could draw this conclusion. He has recapitulated all the conduct of France towards us, and related the indignities with which our former missions were treated. She was not, at either of those times, disposed to treat with this country, but did invasion succeed the failure of the negotiation? Sir, from past experience, and from a knowledge of her situation, and the small

inducements to that conduct, the danger of invasion is not to be apprehended, even on a failure of our present negotiation. If France wishes to continue the dispute, I believe it will be because she has another object in view, and that object is solely to plunder our commerce. This may be an inducement, but the other cannot, on account of her want of power to execute it, or, if she had power, the want of inducement.

The argument, however, on which the gentleman from Virginia principally rests his opposition is grounded on a supposition that the present motion will have an unfavorable effect upon the negotiation, inasmuch as it is, in his opinion, a partial dereliction of the system of resistance adopted by this country, and to which he ascribes the present temper of France. I do not believe such an effect can be produced by it; if I did, or had the least apprehension, I should be among the last to advocate it; for I certainly wish for nothing that can impede the negotiation. I do not believe it, sir, because, for the reasons I have just now given, I consider this army as useless even in case of a continuation of hostilities with that nation, and because I do sincerely believe that France entertains a similar idea on the subject with ourselves; and that our having three or four thousand men effective, or from nine to ten thousand nominal men, more or less, will not produce the least change in the opinion of our ability to resist an invasion, or in her expectation of success should she continue to be hostile. In the next place, I do not conceive this motion to be a dereliction of the system of resistance against France, because the additional army never made a part of that system, which was adopted by the last Congress. That system, besides putting in a situation of defence by sea our ports and harbors, which are completely garrisoned by the permanent army, independent of these troops, consisted in repelling force by force at sea, in resisting the aggressions of France on the element where they had been committed, and in suspending our treaties and commercial intercourse. The only addition to those measures was merely one of caution, by giving the President power to call out a provisional army in case of "war, invasion, or danger of invasion." All these measures were proposed by the Committee of Defence, and were passed between April and June, or thereabout. After these acts were passed, a motion was brought into the House, and carried, to create these twelve regiments. This was entirely an independent and unconnected motion from the measures reported by the committee at an earlier period. Further: although this law did pass in July, it was not attempted to be carried into execution till the next Winter, which was about six months after the law passed. The first appointment of officers was made after the meeting of Congress in that Winter, and of course the enlistments did not take place for a considerable time. I therefore argue that this was not a part of the necessary system of defence, or, rather, resistance, before determined on and executed. I well remember what were the arguments adduced in favor of the measure at that time, and the circumstances which led to its adoption, which was carried by a very large majority of the House. We were told of the proximity of St. Domingo to the Southern parts of America; we were told of the weakness of that part of the country, arising from their black population, and the danger to which they were exposed from an invasion of blacks from Hispaniola; we were told that it was not doing justice to so important a part of the country if we neglected to add to it the same security which other parts enjoyed. Not that much danger of invasion was apprehended, but that that part of the country should be placed beyond the power of complaint. I know many members received impressions so far as to induce them to vote for it, of which number I was one. Yes, sir, I then voted for the law, under consideration, but I consider the situation of things is now materially changed. So far from this being the situation at present, a treaty has been formed with the Government of St. Domingo, and therefore invasion cannot be apprehended from that quarter. Another reason in favor of this law at the period of its proposition was, that several members of this House had doubts whether or not the law for raising a provisional army was strictly Constitutional, because power was given to the President to raise it "in case he should, in his discretion, think proper." They therefore voted for this rather than to see that carried into execution which they doubted the constitutionality of. At present, neither of these reasons can be operative; the law giving this discretionary power to the President expires at the end of the present session of Congress, and the danger from St. Domingo is set aside by a treaty. I therefore think that, inasmuch as this does not make any part of the system of defence, or resistance against French aggression, the repealing of it cannot affect our negotiation, or impress that nation with an opinion of our imbecility.

The gentleman from Delaware goes farther: he says, that if we are disposed to think so friendly of France as to disband our troops, we shall next propose to disband our navy, renew our intercourse, and abolish all those measures to which we were driven by her hostile conduct. I will, for my part, say, that I see no connexion between the one measure and the other. Although I was opposed to all the measures, nearly, to which he alludes, yet I would not, in our present situation, vote for the repeal of either of those laws. I was averse to the general system of hostility adopted by this country; but, once adopted, it is my duty to support it until negotiation shall have restored us to our former situation, or some cogent circumstances shall compel a change. At present, I think it proper that the system of hostility and resistance should continue, and I would vote against any motion to change that system.

At the same time, I am of opinion that a Naval Establishment is too expensive for this country; but, as we have assumed an attitude of resistance, it would be wrong to change it at present. There is but one of those laws about which I have any doubt, that is, respecting our commercial intercourse with France. I will not say that our suspension is not injurious to us upon the whole; perhaps it might be better policy to repeal that law; but I state this merely as the only point connected with our system of resistance on which I have not made up my mind.

The gentleman from Virginia, after opposing the motion, told us there was some middle way, some modification of the army, which might be adopted and would save a great part of the expense. We ask the dismission of 3,500, which is the number enlisted towards the 9,300 ordered by law. We then keep 5,400, besides 1,000 marines. The object of the gentleman would be to prevent a certain number being enlisted, perhaps all those who are still wanting. I ask, then, if to reduce our Military Establishment is a dereliction of our system of resistance, and may, as insisted on by that gentleman, have a fatal effect on the negotiation, I ask whether any modification will not produce precisely the same effect? Sir, let the modification be in whatever manner, whether to reduce the number of regiments, or of men in each regiment, it will still be receding from measures established eighteen months ago. In whatever manner introduced, it will be neither more nor less than saying that the situation of affairs is altered, and that it is not necessary to keep up all these forces. Eighteen months ago we thought 1,500 necessary, but now we think proper to modify agreeably to our situation. All the difference between the gentleman's proposition and ours is, he thinks the forces may be reduced to 8,000—we think they may be reduced to 5,000; and there is only a question between eight, and five; the principle is the same, and the effect on the negotiation the same. But, sir, I believe a modification in either way would not have the least effect. I think that the concession of that gentleman in favor of a modification is exclusively in support of my position, that this army could not affect the negotiation, and therefore that it was useless; but I will go farther, and say it is pernicious. I think so, because taking these men from their occupations and employments, and putting them into a service where their labors are perfectly unproductive and where they contract habits of idleness, is of itself an evil. But, further—the army exhausts our resources, by putting us to a greater expense than can be justified, except from urgent necessity.

I believe that if there is any danger to be apprehended from France, it is by sea, and therefore I think that gentlemen who go on that plan, ought, in conformity to their own system, to apply our resources to the object which will protect our commerce. I shall not enter into a detail of our actual financial situation, because the statement made yesterday by the gentleman from Virginia was sufficiently accurate, and because documents are not yet before the House on which to ground one perfectly correct. We cannot however value our receipts derived from revenue at more than nine millions. Our actual expenditure for the present year, according to the existing establishment, will be about fourteen millions of dollars, to be supplied by a loan. And the expense of the year 1801 will be increased by the interest on that loan, and by that on the deferred debt, viz: $1,100,000, which then begins to be due. Those two objects will make an addition of one million and a half for the next year. The ability and willingness of the people to pay their taxes, as an abstract principle, cannot be doubted; but, however willing they may be to pay taxes, this year's deficiency must be supplied by a loan. Our income is now insufficient; the Secretary of the Treasury has told us that we must have recourse to a loan; no tax which we can now lay will remove the deficiency, because its receipts would not come into the Treasury till 1801. Our situation then is, that, upon a revenue of nine millions, we borrow five millions at the rate of eight per centum. I think this simple statement to be a sufficient reason why we should retrench an expenditure of two millions and an half, the appropriation necessary for that additional army which it is the object of this motion to discharge.

I think this motion, accompanied with the statement which has been made, leaves but one opinion on the floor—we either must decrease our establishments or increase our revenue or our debt. I will not say that it is impossible to increase our revenue. I know it is possible to raise more even by direct taxes; but I know, at the same time, that it cannot be done without inconvenience to our citizens, and the more so as our produce has experienced a considerable depression. Gentlemen who are not disposed to diminish the establishments will find it extremely difficult to raise new taxes, or to increase those already laid, in the present circumstances of the people. This, I think, requires no proof.

We are told, by the gentleman from Delaware, that the people of this country would pay fifty per cent. for money rather than submit to a foreign invasion. I admit that if the danger was imminent and real they would agree to pay anything. We do not conceive there would be any reluctance to pay taxes were such our situation, but, when it is not, it will be difficult to convince them of the propriety of additional taxation. Yet the confidence expressed by that gentleman in the willingness of the people to pay, does not very well comport with another part of his argument, wherein he insinuated a want of confidence in a considerable part of the people, whom he supposes so far as even to wish that our Government should be overturned. In support of his opinion, he alluded to several Legislative declarations and official addresses and answers. He infers, therefrom, that it would be unnecessary to keep up this standing force, because the militia would be fully confided in for the defence of the country. I am astonished at the palpable inconsistency of the gentleman—that the people would willingly pay fifty per cent. of their property for defence against an enemy, and yet no reliance is to be placed on those very people when the enemy comes!

Much weight appears to be placed on the argument of the necessity of these troops in case of the failure of the negotiation; and that we must wait till that failure actually takes place, for we do not know what will be the situation of affairs at that time. The force of this argument does not strike

me, because I always consider it my duty to give my vote on the present situation of affairs, and not on what *may* occur some months hence. At that time we shall be told, notwithstanding there may be no apparent want of this force, that it would be very improper to disband the army then, because we could not tell what might happen three months after. These three months pass over, and then three months more, but when is the proper time? This argument would hold good while the war in Europe continues, under the uncertainty of what may happen. The present and existing state of things and probability of events are the only ground of legislation. But if we legislate on mere possibilities, however remote and improbable, there never can be a time when an army shall be thought unnecessary. The same reasoning might be urged by gentlemen even if the negotiation should succeed, for, from these apprehensions we should not then be out of danger, and while in danger we must prepare for it. I will go further, and say that, if the accommodation with France does succeed, there will be stronger ground in favor of the continuance of the troops, on account of the danger of a rupture with Great Britain. If we form a treaty with France, in my opinion this will not be the least probable event; and, from her, invasion is more likely than it can be from France at any period. It is well known that at this time our disputes with that nation are not trifling. The depredations of Britain are now at least equal to those of France, and are a sufficient ground of offence. In addition to this, two of the articles of our treaty with that nation are in a state of suspension. The one for adjudicating her spoliations upon our commerce was suspended by His Britannic Majesty; the other, on this side the Atlantic, relating to British debts, being a subject of dispute between the Commissioners, is also suspended. If, to the unsettled British spoliations, and debts, and British captures, you add another cause of dissatisfaction, by a change of our situation in relation to France, her enemy, from war to peace, and from suspension of commerce to free trade, I appeal to any gentleman's good sense to say whether a rupture with that country will not be more to be apprehended than invasion from France ever was, now is, or then will be? If we retrace our steps we shall see we have always been insulted by one nation in proportion as we attached ourselves to the other. This gave cause to the mission of Mr. JAY; we were supposed by Britain to have entertained an undue attachment towards France. When the treaty with Britain was passed, France was under the same impressions. I do not say that a treaty with France would be the cause of a war with Britain, but it might produce uneasiness. Our present system of arming at home; our suspension of intercourse with France; our dissolution of treaty; our naval and mercantile armaments, by which we take French vessels, are highly favorable to Britain. Take all this away, and we may pronounce it cannot be very pleasing to Great Britain.

What I have stated are not my arguments in favor of a continuation of the army; they have no impression on my mind in that view. I am not afraid of invasion from any Power. I know it is within the possibility of events, but I do not think it probable. I have only used them to show that this is as proper a time to disband these troops as can exist, and indeed more proper, whether the event of the negotiation be a treaty or not. I think the present time is proper; that if it is not thought so by Congress we cannot anticipate any one whatever.

I will only add a few ideas in answer to the gentleman last up, as to the impression the measure would make on the soldiers themselves. This as a general argument is not a good one, because soldiers and officers enlist or accept their commissions during the existing disturbance, "unless sooner discharged;" therefore we have reserved a right to discharge them at any time. The gentleman from Virginia (Mr. MARSHALL) thought a middle way would be preferable. The motion on the table does not exclude a modification, if any gentleman should propose it.

I will add that I understand our permanent establishment at this moment is not full, and therefore, if the soldiers are now discharged from this additional army, they may avoid all the hardships so humanely contemplated by the gentleman last up, by enlisting in that army. With respect to the officers, if they have a prospect of being discharged from the service in a short time, the sooner they return to their homes and occupations the better; for the habits acquired in encampments are, in my opinion, nowise calculated to promote their future usefulness to society or to themselves.

Mr. HARTLEY said he did not intend to have risen on this subject, but, on the recollection that he was entrusted with a petition to the House from his constituents, last session, on this subject and against a standing army, he was bound to it from a duty he owed them. These troops he believed did not fall under the denomination of the permanent Military Establishment, and therefore he was not of the opinion that it was an attempt to reduce the Military Establishment. This law was passed under the existing differences with the French Republic. We had been, and continued to be insulted, and he did not conceive there was any change in circumstances to warrant a change in measures. He said he voted for the raising of these men, and could see no reason to alter his vote. Mr. H. said he would wish to revive an idea thrown out by the gentleman from Virginia, (Mr. MARSHALL,) on the propriety of a modification. He wished gentlemen to consider whether a modification could not be made so as to reduce the expense, and yet not to abandon the measure. The people in the country, he said, were very much alarmed at seeing bodies of troops marching about, and from the assessments lately made they were apprehensive that the expense of them would be burdensome. The people were not acquainted with the meaning of these things, and therefore their apprehensions were alive to the expense and danger. If there was even a suspension of farther enlistments he thought it might have a good effect; but something was necessary to be done in order to

quiet the apprehensions of the people with respect to a standing army and an increase of taxes, which now threatened them. He hoped gentlemen who voted against the resolution would also concur in the necessity of a suspension in the enlistments, and perhaps some other modifications which may be thought necessary to save expense. He should vote against the present resolution, but he hoped to see one adopted to effect a saving some other way.

Mr. LEE said, if he was to consult his own feelings, or were he to regard momentary popularity, he should certainly remain silent, or support the resolution on the table. But there were seasons when, situated as he was, silence would be censurable, and a regard to personal considerations criminal; this was, in his judgment, one of those seasons. He must therefore claim the indulgence of the Committee, for a few moments, while he should explain the reasons which governed his decision. For his own part he wished the state of the resolution had been decided yesterday, as it was placed in a fair and plain point of view by the honorable member who moved it, and by his honorable friend who rose first in reply. Although much additional argument had been since proffered to the Committee, still the real ground on which the question rested was narrow, and ought never to be forgotten. It was simply this, shall we, for the sake of a small saving, break in on our system of defence, uninformed as we are of the pending negotiation for peace, or continue to adhere to our defensive system, until we know with certainty what we may expect on the subject of peace? The honorable member from Delaware had, with much ability and eloquence, pressed some of the observations made by his colleague yesterday, and added considerably to the range of argument against the resolution. It would certainly, therefore, have been useless consumption of the time of the Committee to have risen on the present occasion, had not the remarks which fell just now from the honorable member from Pennsylvania demanded attention. He would confine himself to those remarks chiefly, and hoped to be able to show their irrelevancy.

The gentleman began by stating that the effect of the resolution was not clearly understood, for that it would not affect the original army, which last year had been considerably augmented, but would only affect the additional regiments now raising; that, should the motion prevail, we should be left with an army of 5,400 men, besides the corps of marines, which, in his opinion, was adequate to any probable demand. I agree that the gentleman is correct in his conclusion of the effect of the resolution, but insist that however gentlemen have heretofore misconceived the same, he cannot be induced from this correction of the effect of the resolution to relinquish his opposition to it; for the more you reduce the saving to be produced, of course the more you diminish the influence of the chief argument used by most of the friends of the resolution.

The gentleman asserts confidently that the addition of the twenty-two regiments, which when completed make about 9,300 men, cannot be viewed as in any degree operative on the pending negotiation, for if invasion be really apprehended a much larger force would be requisite. It is true that looking at the army in this view it cannot be deemed very influential; compared to the enemy the force is small. But when you regard the army as part of a general system of defence, when you regard it as indicative of the public spirit, it must have its proportional influence on the councils of France; and when you view it as the rallying point of our militia, in case of invasion, 14,000 well disciplined, well appointed troops would not be found an inconsiderable obstruction, seconded as they would be by proper reinforcements of the militia, to any invading foe, however vast its resources.

It was justly observed, by my friend from Virginia, that the change in the councils of France towards America could only be ascribed to her manly preparations of defence, in consequence of her failure in attempts to adjust amicably existing differences. To what other cause can this change be placed; will gentlemen show us? This being the fact, I pray you, Mr. Chairman, to consider what will be the probable effect on our present effort to restore peace, should the resolution on the table be now adopted. It goes not only to manifest a shameful mutability in our councils, but tends to impress an opinion of fiscal debility in our nation, which, if true, would encourage aggression, and invite an attack even on our independence.

Suppose that paper, adopted by Congress, should reach Paris in the very moment when the Ministers of each nation were engaged in the formation of a treaty of peace, what would be the probable effect? Would it not imbolden the enemy, and depress your Envoys? Would it not lead to a submission, on secondary points at least, and thus produce sacrifices which may materially injure the commerce or other interests of the American people? Should we run this risk for the saving of $134,000, especially when, should peace not be concluded, we should be brought into considerable pecuniary loss by giving up the troops already raised? When our Envoys left their native shores they left a people fixed in their resolution to maintain their rights, disregarding loss of money or risk of life. They left a Government settled in its measures of preparation, and pursuing stedfastly the adopted system of defence. Let no change interrupting this proper conduct be introduced, for baneful must be its effects on the councils of our foe and on the spirit of ourselves.

The honorable member who introduced the resolution candidly declared that, was he sure of success in our pending negotiation for peace, he would not have troubled the House with a business little in that event, and the cause of some irritation. The same sentiment has been repeated by the gentleman from Pennsylvania. Here, indeed, Mr. Chairman, I cannot but express my surprise. If I understand the gentleman (peace not restored) still he would dismiss the additional army. We are in a state of actual war, our property seized and confiscated when taken, our seamen when

captured imprisoned; and yet, in this state of actual war, if our Envoys return, the object of their mission unfulfilled, our country is to be deprived of the greater part of its military force!

On what ground rests counsel like this? I will not impute opinions delivered here to improper motives, but I must be permitted to assert that advice so strange excites suspicions truly alarming. The honorable member has attempted to turn an argument used by my honorable friend in support of the resolution—that is a hazardous experiment, and on the present occasion certainly ineffectual. Suppose the case before mentioned to take effect when France and Great Britain shall, with the rest of Europe, be in a state of peace. America has no alliance with Great Britain. The invasion of this country on the part of France will not be an object claiming the interposition of its rival potentate. What may not force and intrigue united accomplish? If not a conquest of part, the invasion may terminate in an ascendency in the American councils, so far as to unite France and America in all future operations. Thus will France produce an object to her all important, and certainly such an object, for the reasons before mentioned, is worthy of the risk, expense, and trouble of invasion.

But it seems, at all events, regular troops are not necessary; militia, of themselves, are an adequate defence. This I deny; and much as I wish to see our militia placed on a respectable footing, much as I count on their aid whenever danger approaches, yet I never can be brought to trust the defence of the country solely to them. The experience of the last war justifies the opinion. Look at the battle of Long Island—braver men on the part of America were never brought into action, but vain was their courage. The best blood of America was prodigally and ineffectually expended during the war, for want of the aid to be derived from discipline and skill. See what the same sort of men did at the close of the war, when properly trained. The battle of the Eutaws is a distinguished example of the effect of discipline on the American soldiery. But really it is trifling with the Committee to press farther this truth; the history of man, from the beginning of the world to this day, throughout, maintains the folly of placing the defence of a nation on what we call militia only: economy too forbids it. But, because we firmly maintain this truth, insinuations go forth inculcating a belief that we are inimical to the militia, and friendly to a standing army. This is untrue and unwarranted by our declarations. We hold no such sentiments. We wish for the best and cheapest defence, and that we believe to consist of an adequate regular force, calculated for the occasion, and dismissed as soon as the object is answered; to be seconded by seasonable reinforcements from the militia.

But, says the honorable member, let us reduce the army, and use the saving in augmentation of the navy. I very much respect this last establishment; I prefer it, and will always be ready to cherish and invigorate it, but not now, in the way suggested, nor at the expense of the army. Until we are assured of peace we must hold both, and I doubt not we shall hold both.

But we come now to the point of pressure. The honorable member has given us a statement of our income and our outgoings—nine millions annual revenue; fifteen millions expenditure annually; a deficit of six millions. Agreed; make it eight if he pleases; it is a serious business, but still it is nothing compared to our national resources, or the stake at issue. We have the consolation to know that our money is raised upon an equal system of taxation, that it is honestly disbursed, and that the people's Government apply it to the people's service, and for their good only. Talk not to us, then, about the expense of any measure, with a view to destroy a measure in itself proper and necessary; especially in a contest on the successful termination of which hangs the most important rights.

We are a great, free, and powerful nation, and no gentleman can put his finger on any act of the American people fixing on them the imputation of niggardness. Whenever money is wanting for the public good, it will be readily given. In my native State (a State which I profoundly respect and truly love, much as I differ politically with its Legislature) the taxes were raised 25 per cent. at one dash—no difficulty attended their collection. I trust the American people value and respect their Government as much as the people of any State can their State Government; and I argue, therefore, that the whole, for the purposes of the whole, will furnish money with as much alacrity as do a part for the purposes of a part.

But, says the honorable member, this is the proper season to dismiss the army, for should it not be done until peace is made with France, it never will be done; amity with France will beget hostility with Great Britain. This is possible, but I hope not probable. Was it so, it certainly furnishes a strong argument against the resolution. We should want the army to repel British aggression. It is to us of no importance, as to the principle, what nation becomes our foe. All I wish is, to avoid cause of war with any; this done, it is enough for us to know that America has an enemy: its name or color will not change my fixed resolve, which is to defend my country against any and every enemy, by true and adequate preparations. The honorable member contends that the twelve regiments form no part of the original system of defence, and therefore may be dismissed without breaking at all on that system. He himself voted for the twelve regiments, and never considered them as a feature in the system we wish to hold inviolate. Yet the same gentleman tells us that the provisional army did form a part of the defensive system but being believed by himself and others to be unconstitutional, they substituted in its place the twelve regiments. Certainly the thing substituted must be viewed as was the thing whose place it assumed: of course the twelve regiments are properly considered as part of the system of defence, and the honorable member by his own showing is bound to unite with us in holding safe this substituted additional force. Again, the proximity of St. Domingo to our Southern States,

weak from their peculiar condition, had its effect in producing the law forming the twelve regiments. A treaty has since been made with St. Domingo; consequently this reason no longer operates.

I know nothing about the supposed treaty, but sure I am that no treaty we can make with St. Domingo can prevent France, in case of an invasion, from using that island as the place of rendezvous for the invading forces, as well as applying all the troops she may find there, white and black, in support of her views. The proximity then of St. Domingo is as operative now as it was at the time the gentleman alludes to.

Having noticed such points in the argument just delivered by the gentleman from Pennsylvania, I beg leave to occupy your time with some few observations on a part of the argument used by my honorable colleague who moved the resolution. He spoke in decided terms of our fiscal debility, and descanted largely upon this assumed data. He expressly said, if I understood him, that such was our impoverished condition, that want of money would soon compel the disbandment of the army. Was this the case, we are fitted only for colonization; our bosted independence is a mere illusion, and the blood and treasure expended in its attainment a wretched and useless sacrifice. Was the gentleman correct, not only ought his resolution obtain, but the pageantry of self government ought to be abandoned; this House ought to return to their homes and communicate the sad but true intelligence to our constituents, that they might look out for some protector, themselves being inadequate to that high end. Happily for us, happily for our fellow citizens, my worthy colleague is entirely mistaken. We are a great, powerful, and free people, capable and ready to maintain our rights and to transmit them with all the expenses attending their defence to a grateful posterity; a posterity who, participating in the good derived from our toils and exertions, will cheerfully share in the evils accompanying the good, will pay their portion of loans, though borrowed at eight per cent., and even at a higher rate, if necessary.

If, Mr. Chairman, the resolution on the table could but meet the same unanimous vote as was displayed on a late occasion, the rejection would do away all the ills its production threatens. I lament deeply the existence of such a proposition; I wish it had rested alone in the breast of the honorable mover, but as it has been introduced, let us destroy it without delay; it holds up a spirit of dissension at a period when the best interests of the nation and its true policy alike inculcate the sacred duty of cherishing and confirming a spirit of union.

Mr. Nicholas, said, from the manner in which the subject had been treated by the gentlemen who opposed the motion, the question again recurred, as he conceived it would, and placed itself in the position first intended, which was, whether the army should now be disbanded, or whether it never should; for it was apparent that, if it was not now done, the ingenuity of gentlemen opposed to it would always, on the same arguments, be able to keep it from dismission, unless there should be a perfect accommodation with France. Yesterday it was said, by the gentleman who opposed the motion, that the army might be so modified as to give a great saving of expense, and might even be disbanded if the failure of negotiation did not threaten new dangers; but to day such a riddance of it had been treated as fanatical, although suggested by the gentleman's *honorable* friend. What might be learned from this? Why, that whenever a motion should be made for disbanding this army, it must be considered whether there was a possibility of invasion or not. That might ever be apprehended, and yet never nearer or more probable than at the present moment.

The gentleman last up (Mr. Lee) had said much of what this country could do in case of necessity. To show the disposition and power to meet danger, he cited an act of the Legislature of Virginia, for the purchase of arms. At the time alluded to that State went farther than the gentleman thought necessary, although the measure was a proper one even for a time of profound peace. But what a country could do in times when it was apprehensive of invasion, or actually invaded, and what it should do when danger is only possible, were two questions, entirely different.

The gentleman last up, in order to aid the argument of the gentleman from Virginia, who preceded him, says, that in the event of a peace between France and England, the desire to direct the councils of this country might produce invasion. This admits the necessity of a peace between France and England before the measure would be practicable, and supposes that then France might pursue her system without restraint from Great Britain. The gentleman, by defining the danger, shows more forcibly than we could that there is none, for, besides postponing it to a most uncertain event, he makes it depend on what is impossible, that England should be a calm spectator of the contest. I do not believe our safety depends on either, and have only said so much to show that there is no necessity to guard against invasion according to the gentleman's own showing.

It was said, by the gentleman from Delaware, that France could have no other view than invasion if she broke up the negotiation. If this was the only ground on which the gentleman's probability of invasion could take place, it certainly was very unstable, and yet he adduced no other. This was well answered, that negotiation had failed, and yet no invasion had taken place, nor an effort made to that purpose. When nations quarrel it does not follow that views of conquest are entertained. Very few wars end in an acquisition of territory, much less in the subjugation of either party, and if advantages are at last gained, it is because the money resources of one or other are exhausted.

Do we not run the risk of bringing ourselves, by untimely and unnecessary exertions, to a situation where submission to dishonorable terms may be necessary? Are we not in danger of doing the work of our enemy, by making so imprudent and useless an effort? We shall find, by attending to

the contest now going on, that both parties have expected its termination from the poverty of the other. The British Minister said, that as France had no regular financial system she must soon fail. On the other hand, France supposes that the power of Great Britain to borrow money must be limited, and that she could support her credit no longer. These expectations were so well founded on both sides, that in all probability they have spun out the war to its present length. Let us not place ourselves in a situation where we may be expected to submit, from the difficulty of maintaining it.

The gentleman says it will have an unfavorable effect on our Commissioners in France. What possible effect can it have? This must depend on the first consideration, that is, the danger of invasion. If no danger is to be apprehended in time of war, if no employment is likely to be given to the army, they surely cannot influence the negotiation. If the measures of resistance here have influenced the conduct of France, as gentlemen assert, it must be those measures which deprive them of some benefits they derived from this country. So far from proving, by the measure now proposed, that our determination to resist is weakened, it must prove the reverse; as it will be a confirmation of that part of the system which can alone have touched them, and will give us ability, if we choose, to enlarge it. So far from not showing a determination to defend ourselves at home it gives a defiance to that country, with the natural strength of our country, the militia, and shows that we are not dependent on this pitiful army. It is this language I wish the resolution should speak, and nothing but a perversion of terms can extort any other from it. The gentleman says the navy is his favorite object. Again, sir, I say that we can preserve this object and dismiss the other, which we are not able to bear without unnecessary burdens; and the gentleman supports all the inference I make from parting with the army while other measures are supported, when he confesses that the army is the least important. Will it not have a worse effect on our Commissioners to know that we sent them away under appearances of great military strength, which they know we are unable to keep up? The consequence will be a supposition that we have now stretched every nerve, and must soon relax. But take the measure proposed, and you will say "we have shown our determination of defence as far as danger showed itself; what is no longer necessary we disband." This, I believe, is the true effect of it.

The gentleman, in the outset, disclaimed any regard to popular feelings on the subject. I know not what the general opinion is, and therefore cannot be suspected of conforming to it; I know that in my part of the country the people are determined to bear all the expense that is necessary, but I hope that they require us to give up all unnecessary expenses and to spend their money only on useful objects. I do believe that nothing but a determination in the people to prevent all expenses which do not appear to be absolutely necessary, will prevent the lavishing of public money upon useless objects, or even preserve a Republican Government among us. I am sure that nothing but a principle of economy will secure to us the happiness we enjoy.

All the gentlemen who had been up, Mr. N. said, had stated his opinion to be that it was impossible for the country to bear the expense. Perhaps, he said, he had stated it in too strong terms; if it were conceived to mean that it was impossible for this country in any event to bear the expense, he would declare he meant no such thing. He knew the country would bear very much in case of invasion. For himself, he would go the full length in patriotism with any gentleman in the House on such an event. My opinion was and is now, said Mr. N., that the expense is greater than can be borne with propriety; that its continuance now is unnecessary, and would deprive us of means which would be more properly retained until the danger was in prospect. It is the uselessness and misapplication of the expense I meant, and that ground I still maintain.

The gentleman from Delaware stated that the resolution could only be founded on a confidence in the disposition of the French towards this country in the negotiation. I disclaim any impressions of this kind; I know of no such thing. On the contrary I act on a supposition of the possible failure of that negotiation. I repeat, with the gentleman from Pennsylvania, that if I was certain of the good success of that measure I should not think it worth agitating the House for; I would now withdraw it if I could ascertain that fact. But I press it upon the Committee because, in case of the failure of the negotiation, the increase of passion on this floor would be so great that, though the expense might be equally useless, it would be impossible to retrench our expenses. It is impossible for me to adopt the opinion of the gentleman from Delaware, and say that we invite them to invasion by disbanding our troops. We do not leave the country defenceless; he cannot believe any such thing, because the contrary is apparent. We only want the expense taken from an object where it is useless, and where it has done no good, and if necessary, place it on another, which we will agree deserves a preference to the army. Let gentlemen say what they will on our state of security, they must still acknowledge that our principal defence against invasion from France, or any other Power, is in our own natural means, the people. This cannot be questioned. We have large claims on France for depredations committed on us; we know not the result of our demand. France may refuse us peace, from an unwillingness to make compensation. If her animosity should still continue against this country, it is not likely that it would ever show itself in any way but that hitherto practised—invasion is not to be apprehended.

The only specious argument which has been used is the trifling expense of these troops for two or three months. For this time I could bear the expense willingly; but, sir, it is the expense for two or three years that this Committee is called to vote upon, for the reasons already given. It is the system of borrowing money to pay these troops,

which we deprecate. This system of borrowing money to pay the interest of money borrowed before (which must soon be the case) will inevitably hurry us to ruin and bankruptcy. Unless, therefore, we can with propriety lay new taxes on our people, it is a duty we owe to our constituents to stop this among other unnecessary expenses.

The gentleman from Delaware (Mr. Bayard) supposes the French Government will think that we are either too poor to bear the expense, that we are foolishly versatile, or that there is a party in our country to support their views. I wish the gentleman would prove that the rejection of the resolution would not have the effect to prove our foolishness in continuing a great needless expense. Sir, is a nation never to alter its course? Is it never to determine whether it has done right or wrong, and change its system? Is it to persevere in doing the very work of its enemy, and never to retrench an expense, though ever so extravagant? This is the way I would wish to see the question explained, and on this we are called to vote.

The next impression contemplated was that we are too poor to continue our defensive system. How can this be, since it divulges nothing new? What better publication can be made than the advertisements of the Treasury Department to borrow five millions upon a revenue of nine? Is not this notorious? It would be folly to expect any operation from the use of a fact already well known. The third effect the gentleman conceived it would have, was, to give the belief that a party favorable to French views were in this country. I did suppose that this topic was exhausted, and that we should hear no more on that head, of which we have heard so much. This subject is so completely exhausted that I do not believe there are any ears to receive it. But I would beg the gentleman to inform us how, if there was danger under this circumstance, they would recommend the House to act? Why, I suppose give up all their opinions to them, and sacrifice all their views for the good of the country, to prevent France acting under such a deception. The consequence of this is evidently to keep down the freedom of opinion, and to destroy the usefulness of every member who is afraid of being called by the gentleman a French partisan. I am not afraid of this impression, and therefore, as I think the motion right, it is not the clamors of that side of the House, nor their imaginary dangers, that will prevent me acting up to my duty.

The gentleman from Delaware concludes by supposing that France would establish this very measure if she had superintendence over our councils. This would lead us back again to inquire into the danger of invasion, and the propriety of keeping up a standing army for an event which nobody says is more than possible. I am sure there is no apprehension of invasion in a great majority of the members of this House. If the question was now agitated whether this army should be raised, if it was not now in existence, there would be two-thirds of the members of the House against it, because they would conceive it unnecessary. I would appeal to the reason of gentlemen whether the same opinion must not now strike them, and with some force, in favor of disbanding this useless army. If there is no danger of invasion, in the opinion of the Committee, they must vote in favor of the motion.

Mr. Macon.—Finding that the Committee are determined to have the question, and that the only thing that a minority can do is to speak, he should give his sentiments on the subject. The question is intimately connected with our state of finance, and it would not be improper to consider it in that view. In the opinion of the gentleman from Virginia (Mr. Lee) and some others, the borrowing of five or six millions was a trifling thing, we might leave it for our children to pay. This is unjust; if we contract a debt, we ought to pay it, and not leave it to our children. The actions of Government are often compared to those of an individual; and what should we think of a father, who would run in debt, and leave it to his children to pay? But the want of money is not to be regarded. To be sure it is much easier to vote money, than to lay taxes, because the people do not directly feel the vote, but if taxed they must instantly know it; therefore loaning is the way mostly practised. But the time is now come when we begin to feel that our revenue from imports and tonnage is not so great as it was last year. One reason for this is the low price of produce. The value of the exports must in some measure regulate the imports; and the great decrease in value of our produce in Europe, must make the capital employed less. When gentlemen say that the American people will put everything at stake, and make great sacrifices to support their independence, I agree with them; but this is not at stake, and you must convince them, that the expense is necessary. However willing they may be to pay their taxes, their ability can only be in proportion to the price of their produce, and as produce is now at a low price, it will be difficult for many of them to pay.

Notwithstanding the great increase of capital which the gentleman told us of, from eighteen to fifty millions, yet we have been obliged with all this increase to borrow money, and now are told we want somewhere about five millions more this year. We were told that the people are fond of economy, this is true, and I have no doubt they will willingly pay all the taxes that we can convince them are necessary; but ought we not to save allt he expenses which are not absolutely necessary, especially when we have a very important money concern to settle with another powerful nation, with whom you may have a great demand; and, if you do, where is the money to satisfy it? I suppose the gentlemen will say another loan; but where is the interest to come from? We cannot make money here by any means but work; labor is our only resource; therefore our money concerns ought to be well husbanded.

Mr. M. said if he could have heard any proof of the argument of gentlemen, or that any good purpose could be obtained by keeping the army, he should have been silent on the subject; but this had not been proved. To calculate any effect that these troops might produce on a distant enemy,

was wrong; because nations would calculate the strength and resources of nations, and not on any small army. Could it be supposed that any nation would conceive that because we had but twelve or fifteen thousand men in arms, that we had no more than that number, or could raise no more? No, it could not.

If the British, during the war, had conceived that our regular army was all the strength of the country, they would not, perhaps, have so soon given up the contest. We were then obliged to bring our forces to every place of danger; and if any nation should invade our country, we should have again to repel the enemy in the same way. It is most prudent now to save all the money we possibly can, while the danger of an invasion cannot be apprehended, in order to enable us with more ease to meet the enemy; for, if we get ourselves poor while the enemy is at a distance, we shall be obliged to resort to enormous taxes if he should really come to our doors.

[Mr. CHRISTIE, observing the members in general engaged in private conversation, and not only inattentive themselves but preventing other gentlemen hearing, expressed his opinion of their ill behaviour. On the Chairman obtaining order, Mr. MACON proceeded.]

Mr. M. disregarded such conduct, for, said he, we have two privileges, one to speak, the other not to hear; it did not disturb him. The principal dependence, he said, must be in the militia, notwithstanding the little confidence some gentlemen appear to have in them. He did not wish nor intend to take the least honor from the valiant men who were engaged in the brilliant action of the Eutaws, but he could not forget the unrivalled valor of our citizens at the battle of King's Mountain, where there was not a single regular engaged, but men who left their homes on the spur of the moment, and conquered regular troops, which were commanded by an able and experienced officer, so that none escaped either death or capture.

The burden of the expense of regular troops, as well as all other expenses of the Government, Mr. M. said, fell heaviest on the laboring poor. The rich would not feel the weight of taxes, but the poor certainly would. When money came into the Treasury it would not be useful to employ it to support this army. Money is the very sinew of war; if, therefore, we use it unnecessarily in time of peace, it must be wanted if war should ever come. No gentleman could say, that the money spent in supporting this army would be for any serviceable purpose, except it might be so considered just about the cantonments of the troops, where the money will be scattered, and thereby enable the neighborhood to pay their taxes more easily; but, in a general view, it must be considered as wasted. If he had not heard gentlemen of such profound talents speak as to its usefulness, Mr. M. said, he should have thought that no man considered the army of any service whatever.

It had been said that it would be difficult to get another army if it should be wanted some time hence, and you now disband this. The very contrary appeared to Mr. M. to be the fact, for the very same men would enlist again for the bounty, pay, and clothes, and expect to be again discharged in a few months; and this might also induce others to enlist. But, whenever an army is really wanted, the patriotism of the people will always supply the emergency.

Gentlemen calculated on another loan, but were they certain that we could make another, even at eight per cent., or at any rate? Might not the present state of the commercial world, so replete with large failures, prevent the possibility of one; and suppose the army should be kept up, on the presumption that one will be made, and, when you make the attempt, that you fail, would not the event be disastrous, and what would become of our credit then? It is possible that the derangement of trade in Europe might prevent the possibility of a loan being made there, and whatever might be the patriotism of the people, in such times, they would be obliged to take care at home, and make good their own contracts, before they could venture to lend money to the Government; perhaps our moneyed men would think it imprudent to part with their cash, before they knew the result of these failures.

The gentleman from Virginia certainly furnished an argument against himself when he mentioned the importance of America, in the two wars to which he alluded. It could not be supposed for a moment, that France, if she wished the friendship of this country, would invade it, unless she expected conquest; which would be an illusive idea; indeed she could not suppose any chance for conquest. The fate of an invading enemy marching through the country last war, would undoubtedly be a sufficient warning to any nation not to make the attempt, for if it did, the consequence would be the same, it would be cut off and their vain attempts rendered fruitless.

The gentleman from Delaware asked whether you would send out men not disciplined, nor organized, and without even arms, against men learned in military tactics. Mr. M. said it appeared to him very different from that representation; the knowledge of the use of a gun was universal; he had never seen an American who could not shoot, and that was the principal use of a gun. So much had they a natural kind of practice over Europeans in general. There could not be a doubt but if the young men were got together they would be soldiers immediately, for, understanding the use of arms, they would easily be disciplined. As, therefore, he apprehended no danger, and if there was danger an easy remedy could be applied; and, as it was more proper to save money than to waste it on a useless object, he should vote in favor of the motion.

When Mr. MACON sat down, the Committee rose and had leave to sit again.

RESPECT TO THE MEMORY OF GENERAL WASHINGTON.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

In compliance with the request in one of the resolutions of Congress, of the twenty-first of December last, I transmitted a copy of those resolutions, by my Secretary, Mr. Shaw, to Mrs. Washington, assuring her of the profound respect Congress will ever bear to her person and character; of their condolence in the late afflicting dispensation of Providence; and entreating her assent to the interment of the remains of General GEORGE WASHINGTON, in the manner expressed in the first resolution. As the sentiments of that virtuous lady, not less beloved by this nation than she is at present greatly afflicted, can never be so well expressed as in her own words, I transmit to Congress her original letter.

It would be an attempt of too much delicacy to make any comments upon it; but, there can be no doubt that the nation at large, as well as all the branches of the Government, will be highly gratified by any arrangement which may diminish the sacrifice she makes of her individual feelings.

JOHN ADAMS.

UNITED STATES, *January* 8, 1800.

The letter referred to in the said Message is as follows:

"MOUNT VERNON, *December* 31, 1799.

SIR: While I feel, with keenest anguish, the late dispensation of Divine Providence, I cannot be insensible to the mournful tributes of respect and veneration which are paid to the memory of my dear deceased husband; and, as his best services and most anxious wishes were always devoted to the welfare and happiness of his country, to know that they were truly appreciated and gratefully remembered affords no inconsiderable consolation.

Taught, by that great example which I have so long had before me, never to oppose my private wishes to the public will, I must consent to the request made by Congress, which you have had the goodness to transmit to me; and, in doing this, I need not, I cannot, say what a sacrifice of individual feeling I make to a sense of public duty.

With grateful acknowledgments and unfeigned thanks for the personal respect and evidences of condolence expressed by Congress and yourself, I remain, very respectfully, sir, your most obedient, humble servant,

MARTHA WASHINGTON."

The said Message, and letter accompanying the same, were read, and ordered to be referred to the joint committee appointed the nineteenth ultimo, on receipt of the intelligence of the death of General GEORGE WASHINGTON, to prepare and report measures suitable to the occasion.

THURSDAY, January 9.

A petition of Nathaniel Whitaker, of the town of Bath, in the State of Massachusetts, was presented to the House and read, praying that he may be allowed to receive a reasonable part of the proceeds from the sale of a certain vessel engaged in the slave trade, in consideration of the exertions which he made and expenses he incurred in procuring her condemnation, in consequence of a breach of the act, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Ordered, That the said petition be referred to the Secretary of the Treasury, with instruction to examine the matter thereof, and report the same, with his opinion thereupon, to the House.

REDUCTION OF THE ARMY.

The House again resolved itself into a Committee of the Whole on the motion for a repeal of certain parts of the acts relative to the Army, passed the sixteenth of July, one thousand seven hundred and ninety-eight, and the third of March, one thousand seven hundred and ninety-nine.

Mr. NICHOLSON observed, that when the member from Delaware (Mr. BAYARD) rose yesterday, he informed the Committee that he was not surprised at the introduction of this resolution; he believed it to be a part of a system which for several years had existed, the object of which was to debilitate and degrade the Government of this country; and, believing it to be a part of that system, he was not surprised at the quarter from which it came. When gentlemen undertook to criminate the motives of others, Mr. N. said, it would be well if they would offer some evidence of the purity of their own; and he trusted that the gentleman from Delaware would find considerable difficulty in convincing not only this Committee, but the public at large, that his motives were more pure and patriotic than those of other members who differed with him in opinion,

It must be recollected, Mr. N. said, that when the mover of this resolution called it up for the consideration of the House, he expressed a wish that it might be discussed with temper and moderation, and that the acrimony which had existed too much in former sessions might not make its appearance on the present. The resolution was not proposed for the purpose of inflaming the House, but merely to correct an undue and useless expense. An expression of this wish, Mr. N. said, he did hope would have protected the friends of the resolution from those general imputations which the member from Delaware had thrown out against them; but, instead of a cool and temperate discussion, instead of a calm and dispassionate train of reasoning, the gentleman had indulged himself in a furious invective against his opponents, which might have been more rationally expected from a member of that rapacious and fanatical Government which the honorable member had described as existing beyond the Atlantic, and against which a principal part of his execrations were directed. As I disapprove of this conduct in the gentleman, said Mr. N., I shall endeavor to pursue a different line. While I deliver my opinions, I trust I shall not cease to respect the opinions of others. I am willing to believe that although other gentlemen may pursue a different road from me, yet that they are actuated by motives equally patriotic; that they are using their exertions for the attainment of the same end, although they might think other means the most likely to accomplish it; and that all have in view the same objects—the honor and welfare, the happiness and prosperity of the country.

Nor, Mr. N. said, did he think it necessary to pursue the gentleman through his historical windings relative to the different negotiations which had been attempted with the French Directory, because he did not think that any argument, either for or against the adoption of the resolution, could

be drawn from that source. He was willing to admit that the conduct of France towards this country had excited one general sentiment of indignation against them in the people of America, and had produced a unanimous zeal for the maintenance of American honor and independence. But what did that prove? Nothing more than that the people were willing to expend their money in support of their rights; but surely it did not go to prove that they were willing to throw away their money in support of an object of useless expense—an army which could not be brought to act against their enemies. If the gentleman had gone on a little farther in the history of this business, he might have shown that of late the French had acted a different part, and were now offering us that "olive branch" which in a moment of frenzy they had trodden under foot. The President of the United States had wisely embraced their offers of accommodation, and had sent Envoys for the purpose of treating with them, which step he believed met with general approbation, with an allowance for a few exceptions only.

The member from Virginia, (Mr. MARSHALL,) who first rose in opposition to this resolution, had taken a position which Mr. N. said he thought had been fully remarked on by a gentleman from Pennsylvania, (Mr. GALLATIN;) but he discovered in the subsequent part of the debate yesterday, that it had produced a powerful effect on the minds of some members, particularly on the gentleman from Pennsylvania, (Mr. HARTLEY.) The position which I refer to, said Mr. N., is, that a middle ground might be taken, and the system might be supported at a less expense. By this, sir, I presume that it was meant that the number of the twelve regiments might be reduced, or that the enlistments might be stopped; an idea which I have heard thrown out by some. This argument or position, whatever it might be called, Mr. N. said, would prove more perhaps than gentlemen were aware of.

He presumed that when the law passed for raising these troops, it was not in the idea of any gentleman to employ them out of the limits of these States; that they were only to be employed to repel an invading enemy, or to check their progress after a landing had been effected. If one or both of these were the objects, it would be well to inquire whether these 10,000 men, if already raised, would be equal to the task allotted to them. He imagined that no gentleman would contend that they were. If at this moment intelligence should be received that there was a French fleet on the coast, with French troops on board, could the Executive of our Government determine on that point of the coast at which our force should concentrate? Surely not. They must rely upon the native strength of the country, the militia of that part against which the attack would be directed, and these troops might afterwards come in to support them. If the French Government was to send an army here it would be an efficient one, calculated to act with vigor, and to do very extensive mischief; it would not be such a one as could be checked by a small force, only 10,000 strong. From this view of the subject it must be conceded, —and indeed the gentleman from Virginia (Mr. LEE) had conceded the point—that these forces would not be sufficient either to repel an invading enemy, or to check it after the invasion was complete. And yet gentleman argue for the necessity of keeping up some force to repel an invasion, when at the same time they will agree to reduce a force which they acknowledge is already incompetent for the purposes which they themselves wish to keep them for. With what face can gentlemen declare that they are apprehensive of an invasion, when in the same breath they also declare their willingness to reduce a force which they acknowledge is too small to repel an invasion? Can it be possible that they feel these apprehensions, and yet are willing to lessen their means of defence? Sir, said Mr. N., it would be more reasonable to suppose, if gentlemen really believe there is danger of an invasion from France, that they should be anxious to increase, and not diminish, our Military Establishment; but they affect to believe there is danger and yet say they will agree to reduce our strength. The circumstance of these gentlemen being willing to reduce the army must prove one of two things; either that they do not believe there is any danger of invasion, or, if they do believe it, they do not think the army is calculated to defend the country. In either case, therefore, by keeping it up, we incur unnecessary expense, by applying our resources to useless objects, and weaken our finances, without a prospect of deriving any benefit from the measure. If there is no danger of invasion we ought to disband the army, and if we are to continue at war with France, it will enable us to apply more money on such objects as can be brought to operate with more effect against her.

I cannot conceive, sir, said Mr. N., what possible inducements France could have to invade America; I can see no advantages which she could derive from an invasion. Let gentlemen look back to the situation of France at the commencement of her Revolution, and compare it with the present state of things. She then had colonies abroad; the East and West Indies acknowledged her empire; her finances were at least in as good a situation as at present: her enemies were neither so numerous nor so powerful: and yet the consequence has been that her colonies are sacrificed and there is not one of them that she can with any confidence look to, as forming a part of her dominions. Her territory at home has indeed been increased, but her foreign possessions are either conquered by her enemies or are in a state of independence. Can it be possible then that France would send a force across the Atlantic to attack a country which she could have no hope of retaining even if she could conquer it; or is it not more probable, if she had the force to spare, that she would employ it for the purpose of regaining her former possessions? The island of St. Domingo would be worth the trouble and expense of conquest, if it could be afterwards secured; but, sir, I am inclined to believe that the European Powers begin to doubt the policy of foreign dominions.

Two or three gentlemen who had opposed the motion, Mr. N. said, had drawn what they supposed to be strong arguments, in their favor, from the relative situation of America in the wars of '56 and '76. He took a concise view of the contending Powers in the war of '56, and stated that France, Austria, Russia and Sweden, were arranged in battle against Prussia and England, with her dependencies; America was of course in the scale of Britain. After a war of seven years, in which much blood was shed and much treasure expended, the Treaty of Paris was concluded, which though said by some malcontents in England not to be so favorable to Britain as she had a right to expect, yet, considering that the war commenced in America between the French and English colonies about their respective rights, may fairly be called an advantageous treaty to England, as she had considerable cessions made her on the continent of America. In the war of '76 America took a different position, and was arranged on the side of France. The events of the war, he said, were too well known to require any statement from him, and Britain was crippled not only in her finances, but very much injured in her foreign possessions. All this he was willing to admit arose from the importance of America being thrown into the scale of one or other of the contending Powers. What, Mr. N. asked, are the respective situations of France and Great Britain at the present day? France is contending almost against the whole world; her power and that of Britain are equally balanced; the one victorious by land, the other by sea. If, then, America is thus all important to these rival nations, and her acquisition to either would gain a preponderance to the scale, would it not be the height of madness in France to attempt an invasion of America, when such an act must be attended with the necessary consequence of uniting America to Britain in the contest, of throwing us into the arms of the enemies to France; or, in the language of gentlemen, would not America by this measure be thrown into the scale of Great Britain; and, reasoning from analogy, would not France be subject to disasters similar to those produced by the war of 1756? There could be no doubt that America, would take up arms against France in the event of an invasion, unless indeed, as had been insinuated, there should be a party here strong enough to lay our independence under foot.

The gentleman from Delaware had asked if France had not men enough and ships enough for the purposes of invasion? Mr. N. said he acknowledged France was very populous, that her inhabitants were vastly numerous in her own country, and the acquisition of Belgium made them much more so. It might at the first view be supposed that they had men to spare, but what had been their situation the last campaign? They were not in want of able generals; they were not in want of ammunition or anything else but men, and therefore the consequence was disastrous to her until the latter part of the campaign, when her conscripts went out, and then from her sufficiency of men she conquered. From this it must appear that she has no men to spare, nor had she, a short time past, enough for her own service. Has she not ships enough? was the next question. She has to be sure her own fleet, and that of Spain in Brest harbor, but does she not want these fleets for other purposes? She requires all she can procure to be a check upon the enormous fleets of Great Britain. There can be no doubt, but that the same wisdom and policy which have hitherto guided the affairs of France, will induce her to keep her fleets at home until opportunity should offer to execute a project which she has never professed to abandon—the invasion of Ireland.

If France ever should have views of invading America, this is the most unlikely of any period whatever. She has at home as much as she can do, and it is very unlikely that she will send a large army and fleet 3,000 miles on an expedition which at best is uncertain, and if its success was certain, her means to protect her acquisition must inevitably fail. If there ever will be such an idea, it will be at a moment of peace, when all Europe are in quiet, and America in no state of preparation against an invasion. But I trust this event will never take place, even in that state of Europe. But how far would this state of alarm carry us? Certainly farther than any gentleman would wish. We should not only now be in a state of preparation, but ever hereafter. If invasion was always to be apprehended, (which it must be, on the same arguments which gentlemen now use,) we must always be ready to meet it, and the continuation of this army is defensible upon the same principles. Our preparation must continue in proportion to our European connexions, because we shall always be proportionably engaged in European contests. We never can form a new connexion with any Power but we shall be more or less engaged in her quarrels. But since we are in this situation, we must abide by the consequences. If then it is necessary to keep up the army at this time, can we look forward to any future time in which we can safely part with it? I can see no moment, said Mr. N., when we shall not be in equal danger, and if in equal danger equal preparation will be contended for. We must, therefore, at all times, whether in peace or war, keep up the armament to repel invasion, not only from France, but every other Power in Europe, and then we shall be compelled to admit the dangerous doctrine of keeping up a standing army in time of peace.

It was said by some gentlemen, that the provision for raising these 10,000 men had already produced a good effect upon France, in changing her conduct towards us. It had been truly stated by a gentleman from Virginia (Mr. NICHOLAS) that the law for raising these troops passed in July, '98, and that the overtures for negotiation on the part of France were made in the ensuing August; so that this was no argument. But, independent of this fact, let me beg gentlemen to look back on the conduct of France. At what period has she been alarmed? When has she shrunk from a contest with her enemies? Have preparations of war

in other countries produced conciliatory propositions on the part of France; or has not her spirit always roused into action in proportion to the martial disposition of her neighbors? Take a view, said Mr. N., of the immense combinations lately formed against her—did they alarm her? Has she not supported herself against a world in arms; and has she not always been more terrible in proportion to the numbers she has had to contend with? Call to mind the preparations made against her by Great Britain in the year 1792; did France then shrink from the contest? No, sir, on the contrary, she anticipated the intentions of Great Britain, and, instead of waiting for acts of hostility against herself, declared war on her own part, in February, 1793, against the most powerful nation in the world. Can it be supposed then that France would be alarmed at our small force of 10,000 men only, at the distance, too, of 3,000 miles across the Atlantic—when we had not the means of transporting them to a situation where they could act against her—when she was not alarmed at preparations infinitely more extensive forming even on her own borders? Surely not, sir; and to this we cannot attribute the pacific disposition of France.

The argument of the gentleman from Delaware, that this measure would be dictated by the Directory, if they could govern our councils, he thought equally unapt with several others. If, Mr. N. said, the Directory wished to weaken the country, and could guide our councils, they would advise not only a continuance of the army, but the raising of more troops. They would advise us to expend our money upon useless objects, thereby to cripple our finances as much as possible, and then indeed we might be an easy prey, when the people were so loaded with taxes and debts that they were indifferent as to what Government they lived under. On the other hand, the wise step they thought would be to husband our resources, to let our people live easy and happy, to attach them to the Government; to make no new loans, to impose no new taxes, and then we should always be prepared for war when either the honor or interest of the country required it.

Upon the whole, Mr. N. said, in every view he could give this subject, it appeared to him that by keeping up this army we incurred a useless expense, which the country ought to get clear of as soon as possible; and more particularly so, when money is wanted for other purposes. If, said he, I could believe that we were in danger from any foreign Power whatever; if for a moment I could suppose that France meditated an attack upon our independence, I would go as far in the expenditure both of public and private property as any gentleman in this House; I would join heart and hand in raising forces and equipping fleets. With the gentleman from Delaware, I should be ready to exclaim, "millions for defence, but not a cent for tribute!" Not believing so, I shall give my hearty assent to the resolution.

Mr. Shepard said, he did not rise with a view of lengthening the debate, nor did he intend to follow the gentlemen who favored the resolution, but he could not avoid being struck with one position they had taken with respect to the expense: he therefore should make a few observations on what had fallen from them on that subject. The gentlemen had taken exceedingly broad ground in the defence of the resolution, and had advanced many strange positions, but that respecting our finances was the most extraordinary—that the United States were in such a situation as to be unable to support the small army contemplated! He thought this could not require an answer; he therefore should proceed to another argument which has been used, which was, that the army was not wanted, for the militia were a competent defence in case of invasion, or whatever could take place. This had been so ably spoken to, that he did not flatter himself to think he could add anything thereto, but he should make an observation or two.

It had been said that the expense was useless, and if an army should be necessary at any time it could be raised. But did gentlemen consider the expense of raising men? Each of these 3,500 men had received at least twelve dollars bounty; to disband them would be to lose that money entirely, besides discipline and clothing. Should it be necessary to raise another army a short time hence, the whole of that money must be again provided. Mr. S. said he would place as much dependence as any gentleman within those walls on the valor of the militia, and would pay them every respect due to their services, but, if he could possibly call gentlemen's attention to realize the situation of Massachusetts in 1775, when attacked by the English, he thought they would not conceive their services against a well disciplined army to be so great. Few gentlemen ever witnessed such a scene of consternation and general distress as pervaded the whole country. Murder, plunder, and general devastation, were spread through the country. Every man who possessed arms was called out, but though their number was great, yet, having no general officer to lead them, vast numbers of lives were thrown away, and only for the want of a few well disciplined troops for them to rally round, and lead the army.

Very material advantages, Mr. S. thought, would arise from a continuation of the army at this time. Our very independence is concerned. And shall we value five millions of dollars at as high a rate as our independence? He trusted not. In addition to that inestimable blessing, it is possible that the lives of many brave men and officers may be thrown away for want of expending a little money; for very little would be necessary to keep these men for a few months. Let us pursue the path we have taken and keep our defensive system in the same situation, if we wish for an honorable peace. Hold fast that which is good, and I believe we shall be saved. But if, on the other hand, we recede from these measures, when they are wanted we shall not have them, and, for want of well applied strength, numbers may perish who would otherwise have lived. If, therefore, we study humanity, or policy, or prosperity and peace, let us, with a noble unanimity, reject the motion, which

will make a good impression of our strength on our enemies.

Mr. R. Williams said, that if the gentleman who had just sat down (Mr. Shepard) thought there would be a unanimous vote, he must rely very much on the force of what he had advanced, for he certainly had the best proofs to the contrary. He said it had been observed that those gentlemen who were in favor of the general system of defence, ought to vote for a continuation of the army as a part of it; he did not think so, because gentlemen who then viewed the measure as necessary, might now see such a change in affairs as to make them alter their opinions. However, he would say, were he one of those in favor of that system, he saw nothing which would induce him to alter his opinion, for he saw no necessity at that time to warrant raising this army, nor at this time to keep it up.

By attending to the arguments of gentlemen opposed to the resolutions on your table, it would appear, that it went to the destruction of the whole system of defence. It could not be viewed in that light by an impartial mind. If it were so, Mr W. said, he should hesitate before he voted in favor of it: the resolution, he said, applied to that system, was only to make a deduction of the variation in it; trifling as it related to system, but important in itself. Would gentlemen pretend to say that no change in public measures ought to be made? If so, the House ought to be careful how they proceeded. In order to properly appreciate the arguments against the resolution, it might not be amiss to take notice of the arguments which were made use of to carry this law in the House when it was passed. Invasion was then the cry, but near two years had elapsed and no invasion had been attempted, nor, he believed, thought of.

Internal disturbances were likewise apprehended, but no such thing had appeared, worth notice; but it was necessary to keep up the alarm. After a former negotiation with France had failed to accommodate differences, invasion was supposed to be the intention of France. These steps were therefore taken to guard against it. No invading foe has been heard of. A negotiation is now again set on foot, the same alarm is spread, but we are not to believe those gentlemen's aprehensions are well founded; therefore we will not trust to them; they have failed once, they may fail again. We have the benefit of experience for our guide, which teaches the apprehensions of an invasion to be ill-founded. The only argument urged by those who opposed the resolution, which had any weight with me, said Mr. W.—and I declare I have given the subject all the consideration in my power—was the possibility of this measure having an influence on the negotiation now pending with France; and, inasmuch as I cannot, on mature reflection, think that it would have any effect of that kind, I cannot think it necessary to keep up the army, and therefore shall vote for the resolution.

How is it probable that it could affect or injure the pending negotiation with France? Sir, I think it would have a very contrary tendency. It appears to me it would rather promote the negotiation. It would rather put it in the power of our Envoys to say to the French Government, "You see what our Government is determined to do; when you will not give us an audience, and continue hostile, they are determined to defend; but when you show a contrary disposition they immediately relax, and are disposed to meet you." This appears to me to be the language of reason. Farther, it would prove that on an emergency, or when we chose, we could get an army, but when that necessity is over, we can say to them "return to your homes and employments, we can do without you." This, and not an unfavorable impression, it would have, if any.

But it is stated an influence would be wrought another way, that it would show to that Government that we are not able to keep up an army; that our resources are inadequate to our wants, on account of which we are obliged to disband the troops. How, Mr. Chairman, can such an inference, with propriety, be drawn? Because I do not choose to go in debt, though I am able, shall it be said I am not able? As with an individual so with a nation. We choose not to borrow money; will France therefore say we cannot? They will draw no such conclusions. No, they will rather admire our prudence in avoiding unnecessary expense, and say, here is a nation temperate in its operations, firm in its principles, and rich in its resources, and not to be driven into ruinous measures by the threats of any nation.

But it is said that this army must be kept up for what may happen. I ask whether the same argument may not always hold good, with respect to any nation, between whom and us there may be but little friendship. When is the moment in which we might not be exposed to this danger? This argument will always apply to keep up a standing force in this country, greater than we ought to bear. When gentlemen use these arguments, I take it for granted this is the force they mean to keep upon a permanent establishment, whatever name they may give it; for I can see no bounds to an argument of the kind, or line at which we are to stop; it goes, sir, too far to answer the purpose intended.

We are asked, sir, whether we have forgotten the insult offered to our national dignity by France? We are asked, too, by the honorable member (Mr. Marshall,) who from his situation must have felt the indignity more sensibly than any other member of this committee. But I hope no gentleman will be disposed to resent an insult offered farther than the interest and policy of the United States calls for. For, however much I might be disposed to individually resent an insult, the effects of which could only attach to myself, yet it is a very different thing when it is to affect the lives and happiness of thousands as well as a whole nation. And, sir, although I hope the insults offered our nation in our Commissioners, by the French Government, will never be forgotten, I cannot agree to carry my resentment so far as to keep up such extraordinary expenses and systems when there is no real danger.

But we are told, by the honorable member from

Delaware, (Mr. BAYARD.) that this resolution is the first step to a system which has been long and uniformly pursued by a certain party in this House, to debilitate the Government in all its systems of defence, and there will be an attempt to renew treaties and revive commerce. Sir, are these the things that are to make us shudder? Is it so disagreeable to renew friendship, commerce, and treaties, with any nation whatever, that we are called upon to dread it? I am ready to acknowledge that no argument I have heard, would sooner make me adopt the resolution, or any other which might produce all these much to be lamented facts, by that gentleman. I must confess if they have a terrific appearance to him, they have not to me. This same gentleman says, there is a party who wish to infuse into the minds of the people an opinion, that there is another party who wish to establish monarchy in this country. Sir, I believe, if an opinion of that kind has been entertained, it has been founded on the tendency of such measures as have been taken, and which have led other countries into that evil, for it is proper to calculate that similar causes will produce similar effects. If blame can rest upon such an opinion I am willing to take my part of it. But that men should not be permitted to differ in opinions, and that they cannot speak of certain measures, as tending to certain objects, without being charged as a party with implicating the conduct of those who differ from them, is strange.

The conduct of the militia in the last war with Great Britain and the spirit of '76 have been called up. Mr. Chairman, what has the spirit of '76 to do with the present question? How dissimilar our situation! Are we engaged in a Continental war? Is the enemy in our land, burning and destroying our towns, and scattering our villages? That is not our situation at present. Gentlemen say we could then have an army, but it is not the case now. I believe if our situation was one tenth as bad now, as then, we would soon have an army; and no member on this floor would think ten times the sum called for mispent, for a prize so valuable as our independence. I agree with gentlemen fully in the principle, but not in the application. If our independence was at stake, the money it would require for our security ought only to be a secondary consideration.

We ought to calculate upon expense in proportion to the object in view. If we are ever invaded we must defend our country, and the money it may cost must be out of the question; because, if we lose our country we lose our all, and nothing can come in competition. I do not therefore judge of this measure entirely on the score of expense, but that of its utility. It is said by the honorable member from Virginia (Mr. LEE) that America, with half the ability, supported a much larger force in her revolutionary war for her protection. She did so—she afforded all that was necessary for the object, and would do it again. But God forbid there ever should be another army in this country, equally useful, and paid off in the same manner, at the rate of two and three shillings in the pound? This, sir, is the way that army was paid. Sir, I hope we have men enough who would view their independence and liberties as sufficient compensation for them to repel any invasion; these are considerations that would call forth the patriotism of numbers whom money would not. But our present situation calls for no such sacrifices; we have no occasion for such noble exertions, or they would be made. It is not unworthy of notice that whatever measures are brought forward, their adoption and continuance are constantly urged by certain gentlemen, on some point of expediency or policy for the time present, notwithstanding any change in our affairs, and the true object and real state of things kept out of sight. But the time is fast approaching when it can no longer be done; our real situation must appear. Our Government has been regularly progressing in the accumulation of a public debt, at the same time that it is constantly imposing new taxes upon the people, and yet we are told not to mind the expense, we can borrow.

When the necessity of an expense is so far-fetched as gentlemen have been obliged to resort to in the present instance—no less nor more than bare apprehension and conjecture—it cannot be said that a motion to repeal such a useless expense is not properly made, and that the subject requires serious consideration. I wish to know for what these men are to be called forth. If it can appear necessary, the expense is unworthy of notice. I defy the proof of that necessity, and shall continue opposed unless convinced of their use. From every point of view, therefore, in which it can be made to appear, I continue in the opinion I first entertained; and seeing no necessity for the troops at this time, nor prospect of their future use, I consider them an useless expense, and shall vote for the resolution.

Mr. RANDOLPH said, notwithstanding this question had occupied so much time in the discussion, he felt disposed to give the little aid in his power to a measure of whose wisdom he was firmly convinced, and in the success of which he knew his constituents to be deeply interested. He did not flatter himself with the hope of throwing much new light upon the subject, but he felt it to be his duty to deliver their sentiments upon it, and from that duty he trusted he should not shrink. Unaccustomed to public debate, the Committee would not be surprised at his inability to pursue the arguments of gentlemen through the intricate labyrinth in which they had been involved; yet, in such statements as he might make of them, he should endeavor to give them a fair interpretation, and not to twist them to a meaning which it was not intended they should bear.

The gentleman from Virginia, (Mr. MARSHALL,) who first rose in opposition to the resolution, has left this subject in a state in which I did not expect to find it when coming out of his hands. Sir, I entertain a respect as high as that of any member upon this floor for the talents of that gentleman; I have witnessed their exertion on a variety of occasions with singular delight; his ingenious researches and logical deductions have often commanded my admiration. Yet he will permit me to say that he has on this occasion advanced nothing which disproves the propriety of adopting

the measure before you; and as he has been unable to produce any arguments of weight upon the subject, I shall take it for granted that none can be adduced. He has alleged nothing specific; his observations carry no conviction with them, they tend only to excite alarm and doubt. This is a situation in which that gentleman is not accustomed to leave the minds of his audience. He has affirmed that the adoption of the resolution of my colleague would have a deadly influence upon our pending negotiation with France. If, indeed, sir, I can be convinced that such will be its effect, I will give it a decided opposition. I would even go farther. If gentlemen would convince me that any addition to our military force would eventually secure an honorable issue to that negotiation, so highly do I value the restoration of that harmony which heretofore subsisted between the Republics, so completely in my opinion are the best interests of my country involved in a successful termination of the mission to that country, that I will even assent, reluctant as I am to such measures, to double our present establishment. But I must have some more substantial grounds of action than mere conjecture.

But I oppose the establishment of a standing army in this country, not only as a useless and enormous expense, but upon the ground of the Constitution. The spirit of that instrument and the genius of a free people are equally hostile to this dangerous institution, which ought to be resorted to (if at all) only in extreme cases of difficulty and danger. Yet let it be remembered that usage, that immemorial custom, is paramount in every written obligation, and let us beware of ingrafting this abuse upon our Constitution. A people who mean to continue free must be prepared to meet danger in person; not to rely upon the fallacious protection of mercenary armies. The gentleman from Virginia spoke of a middle way to be adopted, which should reconcile all parties, but he has not specified anything. May I be permitted to name a measure which will completely protect us from every fear of danger, however remote? Meet the wishes of the people, bestow a part of the annual millions which are levied upon them, to the purpose of arming and organizing the militia. If ever a hostile nation should be rash enough to attempt an invasion of these States, it is upon the militia that we must rely for the defence of their own rights and everything that is dear to man. The word may be grating to the ears of some gentlemen, but, in that event, we must rely upon requisition. No country, unpossessed of the pecuniary resources of Britain, can afford (nor can she do it consistently with her public happiness) to keep up a mercenary army adequate to her defence. France, superior in resources to every country of the world but England, and second to her only in those of a pecuniary nature, has been obliged to abandon that system, and resort to requisitions of militia. Such a stress is however laid upon these twelve regiments by some, that our safety, nay, even our independence, it seems, hangs upon their existence. When gentlemen spoke of them as of such primary importance to our security from foreign invasion, I did expect that they would have proved their competency to the proposed object; that they would have satisfied us of the practicability of defending our extensive coast with an handful of men, not exceeding 4,000, scattered over the interior country; at least, that they would have shown that an invasion of this country by France was among probable events. I shall not attempt to answer arguments drawn from a supposed analogy between our country and Holland, Switzerland, &c., when no such analogy exists; nor do I think that the Administration of our Government have any reason to be obliged to the member from Delaware for suggesting that these troops may be necessary to overawe a hostile faction, who (like the oppressed subjects of the Batavian and Swiss aristocracies, anxious for any change, as being well assured that none would be more intolerable than their ancient servitude,) might be disposed to join the standard of an invading foe. Insinuations that these troops are to be used, on whatever pretext, against our own people, will not reconcile me to the measure. Gentlemen have called to mind our situation in 1775, and compared it with that of the present day. Where, sir, is the similitude? We were then weak, divided, destitute of resources, and of the power of calling into action such as we possessed; the enemy was in our bosom, his troops in possession of our important holds; the minds of men in a great degree unprepared for a bold assertion of reason and right, against the pretensions of law and power; our manly resistance branded with the epithets of sedition and rebellion. Will gentlemen undertake to say that such is our present state of preparation, or that similar results are to be expected? I did hope, sir, that our remote distance from the great disturbers of human repose, would have permitted us to be exempted from those perpetual alarms, those armings and counter-armings, which have raised the national debt of Britain to its present astonishing amount, and which sends her laborers supperless to bed. This is the mischief which poisons the happiness of that country, of all others perhaps the most blessed in point of soil, climate, and position.

I am friendly to the resolution on your table, sir, on another ground. I believe that it will remove a considerable cause of irritation. The raising of these troops has had a deleterious effect upon the public temper. The military parade which meets the eye in almost every direction excites the gall of our citizens; they feel a just indignation at the sight of loungers, who live upon the public, who consume the fruits of their honest industry, under the pretext of protecting them from a foreign yoke. They put no confidence, sir, in the protection of a handful of ragamuffins; they know that when danger comes they must meet it, and they only ask arms at your hands. Gentlemen have talked of organizing the militia; I call upon them to make good what they have said. Instead of reducing this force, I could wish to see the *whole* of it, reprobated as it is by our citizens, abandoned, and the defence of the country placed in proper hands, those of the people.

I repeat, that if we value our Constitution, our

peace, and public welfare, in this way we must prepare for war. By arming our people, by equipping every able-bodied man for war, you present the most terrible front to an invading foe. Our citizens are confident in their strength; they know themselves to be capable of protecting their own property and liberties; they do not want their noses held to the grindstone to pay protectors, the surplusage of their labor they wish to employ in increasing their property, in providing for their offspring—that numerous and increasing population of which gentlemen have said so much; they do not wish to have money forced out of their pockets to pay hirelings, under the stale pretext of keeping off French invasion.

But, we are asked, how we are to maintain our independence? The desultory observations which I have made are in part an answer. But the question is not the preservation of our independence. It is simply, whether we will consent to a reduction of an expensive establishment, hostile to our liberties—which cannot be brought to act against the enemy, and which, even in case of invasion, would make but a paltry part of our defence—and appropriate any saving of the public expenditure to objects of real utility. But we are told that the consistency and wisdom of our councils will be called in question, by thus retracing the steps which former Legislatures have taken. Sir, I will make some sacrifice to preserve the reputation of our councils, but I must do it at the expense of duty. If our Administration have heretofore expended the public money upon improper objects, I cannot consent to continue such measures in order to bolster up their consistency. I am willing to give them all credit where they deserve it, but not to preserve their reputation at the public expense.

The finances of the country merit our most serious attention; in my mind their situation excites a just alarm. If, indeed, the command of money by indirect methods were attended with no inconvenience; if, for the payment of every shilling which was borrowed, every foot of ground in the Union did not stand pledged, then indeed a resort to the favorite resources might not be so unpleasant. But, sir, our people view this measure with a jealous eye; they abhor the principle, they know how deceitful is the aid which it affords; they dread its consequences. Whether they are warranted in these impressions, I leave gentlemen to determine. A twenty years peace, a ten years operation of this efficient Government—what is the consequence? Your debt diminished by hundreds of thousands and increased by millions. This debt, which was contracted during the Revolutionary war, we know to be the price of our independence; we pay it without a murmur. We could wish, sir, that the revenues raised for that purpose could have been poured into the lap of the defenders of their country, rather than the coffers of speculators; but we cheerfully pay our obligations to the holders of them; we ask no questions. We have however expected to see that debt diminished, or at least the public expenditure reduced within the limits of the revenue, yet are we disappointed.

The member from Virginia (Mr. MARSHALL) says that our economy is false; that the pay of these regiments for a few months (until we hear from our Commissioners in Paris) ought not to be put in competition with the success of that mission. Sir, in my opinion nothing save the honor and welfare of our country ought to be put in competition with that most desirable object. I repeat that if I thought this resolution tended to throw cold water upon that negotiation, I would abandon it without hesitation; our best interests are involved in its successful issue, and they are not to be weighed down by an expense much larger than what is incurred by this establishment.

But should that negotiation fail, we are asked if we shall then be prepared to abandon this defence. Sir, I will say for myself, it is impossible for this country (much as may be *squeezed* from the people) to support a mercenary force adequate to its protection against a powerful invading foe. The country must find protection in her sons; you must look for this invaluable good to its proper source, where you are secure against disappointment, the people. A gentleman [Mr. LEE] stated yesterday that our finances were in a prosperous condition, that the deficit was trifling, and, if much greater, ought not to demand our regard. Does it not create surprise to hear gentlemen put a smile of contempt on a deficit of five millions in a revenue of nine, and an additional increase of debt to that amount? Surely, sir, they must dissemble their feelings when they make so light of it. If our expenses were confined to such objects as necessity dictated, our people would pay them with cheerfulness. But, sir, they will justly murmur at this idle waste of their treasure.

This Committee has been told, Mr. Chairman, that the effect of this resolution goes to the prostrating our country, defenceless, at the feet of the Directory. It is, sir, by a cultivation of your militia alone that you can always be prepared for every species of attack. When citizen and soldier shall be synonymous terms, then will you be safe. When gentlemen attempt to alarm us with foreign danger, they will permit me to advert to those of a domestic and more serious nature; they will suffer me to warn them against standing armies—against destroying the military spirit of the citizen, by cultivating it only in the soldier by profession; against an institution which has wrought the downfall of every free State, and rivetted the fetters of despotism; which must produce in this country effects similar to those which it has brought about in others; unless, indeed, gentlemen suppose that the same moral and physical causes which govern the Eastern world are here suspended in their operations.

Believing this resolution to be a wise measure; in every respect to be a prudent retrenchment of unnecessary and enormous expense; entertaining a strong and well founded hostility to mercenary armies, upon every possible consideration; persuaded that it is time to reduce our expenditure within the bounds of our income, I have offered, among my desultory remarks, some of the principal causes of my support to the measure under your consideration.

Mr. OTIS said, the progress of the debate had convinced him that the opinion he entertained at first was accurate—that much new light would not be given to this question after the first day of the discussion. Though he despaired of adding to the information already possessed by the Committee, he might possibly suggest some ideas which had not been advanced, and at the same time would attempt to enforce the arguments used by his friends in opposition to the resolution.

In the course of the general view he should take of the subject, Mr. O. said, he should animadvert on some of the observations of the gentleman from Virginia, who had just sat down, (Mr. RANDOLPH.) That gentleman had with great modesty been pleased to say that his arguments had been desultory. On this remark, said Mr. O., I will not join issue with that gentleman, but when he further says his arguments have been extremely weak, I much fear that some of the defenders of their country, in whose hearing they were uttered, will think that a part of them at least have been extremely strong.

The principal objection urged, Mr. Chairman, against the army now proposed to be disbanded, is not the absolute want of money, and insufficiency of our resources. Gentlemen do not say that we cannot borrow money, or that we cannot invent taxes, but that loans and taxes will be burdensome to the people. Sir, I would ask those gentlemen what right the people of this country have to expect to escape the conflagration in which the other three quarters of the globe are involved, without some pains and expense to erect barriers against its destructive progress? Are we chosen by heaven to live in a sequestered corner of the world, exempt from the troubles and distresses of other nations, to grow rich by their spoils, and to fatten on their misfortunes, without any additional burdens? While the Old World is wasted by fire and sword, while cities are sacked and unpeopled, their fields made desolate, and their commerce destroyed, are we privileged to count in quiet the gains of the counting-house and the produce of our acres, without deduction or alloy? Do we presume that the Atlantic would open and swallow up an invading army, as the host of Pharoah was swallowed up in the Red Sea? Confident as I am in the justice of our cause, I do not expect the assistance of miracles for our protection. We must rely, under Heaven, upon the arm of flesh. If we do not, if we neglect to make necessary preparation against natural accidents, we may be overwhelmed in the common fate of those nations, which, lulled into a delusive security, have lost their liberties, and perished in the general wreck of the social union.

Sir, I fear that our long enjoyment of peace has led gentlemen to think that peace belongs to us by right of prescription, and that we have only to remind our souls that we have goods laid up for many years, and may eat, drink, and be merry. But, to gentlemen who reason thus, the voice of experience proclaims, in solemn accents, that this very year, for aught we know, our liberties may be required at our hands? Sir, we are told that the present establishment shows an annual deficit of five millions of dollars. But suppose, for the sake of the argument, the calculation to be just and the establishment certainly necessary; what are five millions of dollars? Or suppose that the price of our safety and independence should be twenty, forty, or, if you please, eighty millions of dollars, in addition to the present debt. This indeed, sir, is money—as M. TALLEYRAND observed—is a great deal of money; but money is cheaper than blood, it is less precious than honor. Who would hesitate, between the evils of doubling the national debt or relinquishing the rights of an independent nation? But, sir, there is no probability that we shall be called to make such a sacrifice. Mr. Chairman, I once more entreat gentlemen who deem the condition of the United States to be unprosperous, to look upon the picture of Europe, to which their attention has so often been called. Ask, sir, if you please, the calculating Dutchman, the hardy Swiss, the soft Italian, the haughty Spaniard—nay, if you please, the wretched Egyptian—ask them at what price they would redeem their ancient rights and privileges; rights and privileges indeed far inferior to those enjoyed by our fellow citizens. Or, sir, reverse the picture, and inquire of the British yeomanry, of the peasants, who, as the gentleman from Virginia says, go supperless to bed, whether they would exchange their burdens, great as they are—their conscious pride and satisfaction, the result at once of a sense of duty and of safety, for all the advantages reaped by those whom I have just enumerated? They, sir, all of them at least who are not abject or corrupt, will agree with me, that liberty cannot be estimated by money. Sir, when we contemplate the resources of this country, either in a general or more particular view, there does not appear a sufficient occasion for the deplorable statement exhibited by gentlemen. Let us for our comfort recur to a period when, without half our present population, or a tenth part of our riches, when, destitute of Government and commerce, we were involved in a struggle of seven years with a powerful nation, and under all these disadvantages escaped with a debt of eighty million of dollars—a sum less than the expenses of that nation for one year. We now enjoy a regular and efficient Government, the agricultural and commercial capital of the country is greatly augmented, we have sixty millions of exports, nine hundred thousand tons of shipping, moneyed institutions to facilitate the operations of Government, and experience and confidence on our side. Why then will gentlemen persist in representing our finances in a low and degraded state? Why exhibit statements which diminish our weight and consequence in the eyes of other nations? I perceive no propriety or good policy in these measures. Again, sir, complaints are made that the Government cannot borrow money at a less interest than 8 per cent. But the Government borrows as cheap as the individual. It borrows at the market rate of interest, and if that rate is high, it is because the demand for money for lucrative objects is also great—it is a proof that the country is advancing in prosperity.

It has been intimated, in order to alarm the

Committee, that the deficiency of our revenue compared with our expenditure is greater than that of Great Britain in a time of peace—that our revenues amount to eight millions, and our expenses to thirteen millions, so that we must borrow two-thirds of the amount of the revenue. But, sir, to say nothing of additional revenues which may be provided, let it be remembered that when the land tax is received the revenue will be nearer ten millions than eight; and that the Military Establishment may be so modified, by suspending the recruiting service, that a million, or perhaps a million and a half, may be saved in the current year. And further, if the negotiation with France succeeds, that an additional saving will be made, amounting in all to two millions and a half at least. So that in the next year, if we should beat peace, additional revenues or a loan for about two millions of dollars only would be required. And is this a state of things to create terror or alarm? Sir, as an allusion has been made to the debt of Great Britain, it may not be amiss to remark that that nation, which undoubtedly obtains money upon easier terms than any nation in the world, has not in this respect so great an advantage over the United States as may at first be imagined. She borrows nominally at a much less rate of interest; yet, when we take into view all the gratuities and expenses attending her loans, the disparity is not very great. I have a document of undoubted authority, which shows that between the years 1793 and 1799, the whole amount of money borrowed by Great Britain was - - - - £117,654,225
For which she was obliged to create a capital of - - - - 160,929,739
And the total annual charge on the money borrowed was - - - 7,931,215
Which is more than seven per cent. on the whole.

Mr. Chairman, too much has been said upon the subject of our finances, in the discussion of this question. The inquiry ought to be, simply, Is it prudent and essential to the true interests of the country to maintain the establishment? If so, we must sustain the expense of it. But if otherwise, it should be relinquished, however adequate our resources may be to the support of it. Is it then expedient under existing circumstances of invasion, which has occupied so much time and attention? I readily confess that I do not consider this danger so imminent as at the time when the augmentation of the army was authorized by law. At that period, the whole seacoast of France was lined with soldiers, called in the gasconading language of the country, "The Army of England." These troops meditated a descent somewhere. They were actually embarked aboard a powerful squadron, and instead of coming hither they proceeded on a crusade to Egypt and the Holy Land. But sir, who could have foretold the destination of that fleet and army? I do most solemnly declare if at that time my opinion had been requested as to the probability of their destination, either for Louisiana or Egypt, I should have considered the former the most probable; and I believe farther, that but for the length of the gauntlet which they must have run, it must have appeared the most tempting and promising expedition of the two. We also knew at that time that they had actually threatened our Envoys with danger on that quarter. We have reason to believe Louisiana has been ceded to France, and we know, since, that Carnot, the ex-Director, in a book written in his own vindication, inculpates his colleagues for not insisting upon the cession; alleging, as a reason, the control and influence which France would have thereby obtained in the United States. Under these circumstances, I thought the measures adopted by Congress necessary—I believe a great majority of the American people were of the same opinion.

Since that time, events have happened which render France less able to invade this country, if such is her disposition. Her fleets have been crippled or destroyed, and her armies find ample employment upon the continent of Europe. But who can say, that this danger, though diminished, is so entirely passed that we should remain in a situation utterly defenceless? That, because it is not a pressing and immediate danger this year, it is not possible and will not be practicable the next year? We know not, sir, the state of affairs which a general pacification of the Continent might develop. We know not how soon it may happen. Perhaps even France and Great Britain may be at peace this Winter. Probably some of the Spanish possessions in America may yet be ceded to the French Republic. These contingencies justify the maintenance of a small force. To disarm would be to provoke and encourage attempts, which an attitude of readiness and resistance would altogether prevent.

It has been said that this army was not wanted for garrison duty. The permanent establishment is 5,400 men, including non-commisioned officers. These cannot be considered sufficient in a time of danger to garrison all our ports, harbors, and fortifications, and to protect the coast and frontiers from Georgia to Maine, and from the Atlantic to the Lake of the Woods. As we know not the probable point of attack, we ought to have a few disciplined troops always ready to fly to the post of danger, to act with the militia; for it is impossible to protect our vast coast everywhere, and in every point, by a regular force.

But another and more forcible reason which operates upon me to desire this army to be preserved is, that of all arts and sciences now understood and cultivated in Europe at the present day, the military art has attained to the most considerable degree of perfection: on the contrary, I believe that of the arts and sciences known in America, the art of war is the least understood. Considering this vast disproportion, then, ought we not to have men who should learn the rudiments of discipline, who should serve for the germ of an army at least, so as to be ready when called out by requisition or by any other means? Certainly these twelve regiments, though not alone to be relied upon, in the event of war, may yet be of high importance in this view of the subject.

Among the observations made by the gentleman

from Virginia (Mr. RANDOLPH) he has urged an argument which, however ingenious, is certainly not new. He considers standing armies as opposed to the spirit of the Constitution and dangerous to liberty.

This alarm relative to standing armies has been at least rung a thousand times a year since the first British army was landed in this country; and, if the objection is well founded, it goes to the destruction of the old regiments as well as of the new, and we must have immediate recourse to militia for every ordinary object. That gentleman further contends that this country cannot be defended by a standing army, but requires a force raised by requisition. Wherein lies the difference between a standing army and a force raised for a limited time, by requisition? The gentleman may distinguish the first by the hard names of ragamuffins and mercenaries, if he thinks proper, I shall not dispute with him about terms. Yet, why troops raised according to his ideas of requisition, who are to be organized, disciplined, and compelled into service, to receive pay and march wherever they are ordered, are less ragamuffins and mercenaries than troops raised in any other mode, is for that gentleman to explain. Sir, far be it from me to question the importance of the great national resource, the militia. I well know they are the palladium of the country, the fund on which we must rely for soldiers and defence.

But I contend that militia in itself is calculated only for sudden emergencies. They will fight bravely while they continue in the field. They will resist an invading army, but they will not endure a series of campaigns. I call on gentlemen to produce an instance wherein militia have been alone equal to cope with an army that had once got a footing in a country. Remember, sir, the Swiss militia, the bravest in the world, animated by the best principles, fighting for all that was dear to them, urged on by their wives and children, armed with weapons that were furnished by despair, and dying at their sides. Yet these brave but undisciplined men were defeated and massacred, and the liberties of their country were buried in the same tomb. The gentleman further considers that wives and children are a great incentive to the bravery of the militia. This is unquestionable; but are the "mercenaries" of which the gentleman speaks precluded from the advantage of having wives and children, or will the incitement to defend them be less in one case than in the other? One thing I acknowledge, that militia when called out are sooner desirous of going home to their wives and children than regular troops—at least they cannot be prevented from it; and this is another circumstance which disqualifies them for long service. Again, the gentleman professes himself willing to apply the moneys that are requisite for the support of this army to the organization of the militia. But suppose, with the gentleman, that we have not the money—that we cannot obtain it without squeezing it from our needy constituents. He will be content to squeeze them for the sake of the militia, but not of the regular army. Sir, let us not consent to be taught by experience. Let our militia be well armed and disciplined—let us repose all due confidence in their fidelity and courage. But let us have at least a few men in the country to act with them in perilous conjunctures, to encourage and to instruct them.

I am sorry, Mr. Chairman, to hear that gentleman make use of the word *squeeze*, when applied to taxation. It was the only inelegant word which escaped him, and it was certainly misapplied. Sir, it may be very proper to apply this word to the impositions of despots and arbitrary Governments; but to talk of *squeezing* the people in our happy country, and under our mild Government, is certainly to speak without accuracy. When the gentleman considers that at the same time he and I squeeze our constituents, we also squeeze ourselves. I think the asperity with which he pronounced that expression will be mollified. I also regret that the gentleman has discovered the gall of the people of the country moved by the sight of the Federal uniform. I have not witnessed a similar effect. I candidly confess that I do not believe a large military establishment to be a favorite project either with the people or in this House. I am aware that the apprehensions and jealousies of the people have been roused, and are now habitual, upon the subject of standing armies in times of peace. But surely these alarms must yield to good sense, to the consideration that the existence of this army is limited with the duration of our dispute and controversies with France, and becomes disbanded by the law which creates it when these shall be terminated. Surely, then, there can be no reason for any part of the community to regard unfavorably the brave men who have engaged their services for its defence. It was observed by another gentleman from Virginia, (Mr. NICHOLAS,) that if any original proposition to raise this army were now before us, it would not be adopted, and thence he infers that many who will now vote for maintaining it, can have no conviction of its necessity. Sir, it is very possible that if the country had not already advanced to these troops a hundred thousand dollars, for bounty, if they had not received their clothing, we might be willing to defer the raising of them for a few months. It is very possible that if a corps of officers had not been collected from their occupations, they might have still remained at home, under present circumstances. But does it follow that we should throw away all the benefit and expense of this bounty and clothing, when the men may be wanted in three months; or can we expect that these officers, if discharged, will again fly to our standard with the same alacrity?

Mr. Chairman, my strongest objection to the resolution, is the time chosen by the gentleman for offering it to the House. It is my duty to wish that our Envoys to the French Republic may avail themselves in their negotiation of the ostensible union of sentiment prevailing among the people, and of all the advantages which they carried with them to maintain the rights and honor of this country. When your late Envoys left this country they left it united in one common sentiment, except that of reluctance to come to an open

rupture with France. The Directory presumed upon the appearance of division in our public councils, they calculated upon their party among the people, and they rejected your Ministers with insult and indignity. This conduct excited a general spirit of resentment, and induced the Government to prepare the means of resistance. The demonstration of the public abhorrence and indignation was loud and universal; and the consequence was an invitation to renew your negotiation. We have been told, indeed, that this invitation must not be imputed to the institution of this army, for that the act for raising it passed in July, and could not be known in August, when it is said the overtures were made by the Directory. But, sir, this law was the last of a series of measures, some of which have been adopted, and must have been known to the Directory before the month of August. In April, an act passed to increase the Military Establishment by a regiment of artillery, and to establish the Naval Department; in May, the acts for the defence of ports and harbors, and for the protection of commerce; in June, the act to suspend all commercial intercourse with France; all of which must have been well known to the Directory; and the act to augment the army is a link in the same chain. Not, sir, I presume, as gentlemen would say for us, that these measures have terrified France into a disposition to accommodate controversies; not that twelve regiments are a match for her armies, or are to be transported to her coasts, but that all the acts, taken in connexion, are an evidence of our spirit rather than of our strength; that they are a pledge of our union and further exertions, and a proof that political divisions of sentiment will vanish before a common sense of insulted dignity and national honor. Under these advantages your last Envoys have embarked; and shall their ears be wounded on their arrival by intelligence that you have begun to undo your late work, to destroy piecemeal your defensive establishments? Will it not damp their zeal, and humble their spirits? Yes, sir, disguise this measure as you please, it will prove a stumbling block to the negotiation; the Directory, with a prompt sagacity, will discern through it a weak and wavering policy, from which they will not fail to attempt to draw an advantage.

When, sir, gentlemen who are opposed to the resolution, express a readiness to modify the present Military Establishment, so as to diminish the expense, they are told that any modification whatever will produce the same effect upon the negotiation as the proposed resolution in its full extent. I beg leave to express a very different conception upon this point: in one instance we hold the purse and preserve the establishment; in the other we shall lose, first the establishment and then the purse. The one is a total departure from system, the other mere suspension of means. Mr. Chairman, in the beginning of this debate I was greatly embarassed to solve one problem. I believed and still believe the gentleman who offered the resolution to be desirous of a successful issue to the negotiation with France, but I could not reconcile this disposition with a measure calculated in my opinion to defeat it. From this however I am relieved by the gentlemen from Pennsylvania and Virginia who avowed their belief that the negotiation will not succeed.

[Mr. GALLATIN and Mr. NICHOLAS disclaimed this opinion.]

Mr. OTIS insisted, and appealed to the Committee, that they had declared that if they thought the negotiation would succeed they should be indifferent to the success of the resolution, and he did not believe it possible to assign any other rational motive for their conduct. Thus, sir, said he, gentlemen wish to anticipate our decision under a state of things very different from the present. They think that the discretion of this House cannot be trusted in such an event; that we shall be too much heated to act wisely. Really, sir, I may venture to assure those cool and dispassionate gentlemen, that this House may be safely trusted with the exercise of their Constitutional power, at any time and under any circumstances. Sir, with my friend from Delaware, I confess I have indulged mournful presentiments of the effects to be expected from a new treaty. I foresee that, like other nations, we may be compelled to realize that the dangers of peace and amity are the most serious dangers. I know that attempts will be made to demolish the whole defensive fabric which we have erected, and to replunge us into that abyss of debility and inaction from which we shall never escape a second time. With these difficulties I have always thought our Government would be doomed to struggle whenever a treaty should be concluded with France, but I did not expect to see at this time the axe laid to the root of our whole system. I flatter myself, that, like other nations who capitulate, we should at least be permitted to march out of the garrison with the honors of war, and not be called upon to surrender at discretion before we know our terms. To this measure I will never consent.

Mr. O. concluded by disapproving the intimation suggested by the gentleman from Pennsylvania, (Mr. GALLATIN,) that the effect of a treaty with France might probably involve the country in hostilities with another nation. He considered an allusion to such a state of things as highly premature and injudicious, and what ought not to be mentioned on that floor. He did not believe in any such consequence. Should it indeed happen, deplorable as it must be, he doubted not that every gentleman in the House would meet it with firmness; he thought nothing so likely to hasten it, as to express opinions of any such connexion between the state of peace with one country and hostility with another, and to familiarize ourselves to a belief that we cannot preserve peace with all nations. For these reasons he was ready to give the resolution a decided negative.

Mr. JONES said, he would not have risen to trouble the Committee, after such a length of debate, had he not conceived it necessary to give his reasons for the vote he should give on the present question. He had made the motion for the reference of this resolution to a Committee of the whole House, in order that it might undergo a

full, free, and fair discussion; he felt himself highly gratified in obtaining the indulgence, and he would now account to the Committee how he had improved it.

Sir, said he, I should feel myself unworthy of the blessings of a free citizen, if I had not taken the subject of a standing army into my mature reflection, before I had the honor of taking a seat in this House. Upon this subject I have long ago made up my mind. But the question of the propriety of a standing army is not now to be discussed. With respect to the resolution now under consideration, I am free to confess that I think it introduced at an improper time, and that, from the present situation of our affairs abroad, it would have been more properly delayed longer. At a late stage of the session, the influence this measure might have on the negotiation, which is a specious rather than a solid objection, would not apply. I did not therefore expect to be called upon to give my vote at the present period.

This subject presented itself to my reflection at the time when this law passed, although not then a member, being a citizen, it did not escape my attention. I did not think at the time, from the information I was possessed of, that there existed any circumstance which could give ground to a probability of invasion from France or any other Power. However, it was thought otherwise by the Legislature, and preparation was made for defence. Those measures being in existence, and our Ambassadors having gone to France on an accommodating mission, I would have been satisfied to have awaited information from them without wishing any change in our posture; but as several other gentlemen, over whose conduct I have no control, have thought otherwise, I must meet the vote, and shall not shrink from it on that account. The subject having been brought up, I have given it all the direction I was capable of in the short time I had to determine. I have looked over and examined the several measures of defence which have been established against France. The result is, that in my judgment this is among the least operative, if it ought at all to be classed with those measures of defence which were established by Congress on that occasion. For it seems in some sort to attach itself to the permanent military force.

The first measure I find adopted to repel invasion was the organization of 80,000 militia. That was thought an efficient means of protection at the time, but that law has since been suffered to expire. The next step taken was to pass a law authorizing the President to raise a provisional army of 10,000 men, in case of war or invasion, or imminent danger of invasion, and to empower the President to accept the services of as many volunteer corps as he should think proper. In consequence, a number of independent corps had been formed in different parts of the continent, armed, uniformed, and equipped, at their own expense; they had offered their services, and had actually been accepted by the President, and still held themselves ready to be called out on the first emergency. It cannot be forgotten what a splendid appearance the numerous volunteer corps of this city made on a late melancholy occasion; amongst these was a considerable band of McPherson's legion of blues, composed of cavalry, infantry, and grenadiers, which he understood had associated for the purpose of being enrolled and ready for service, on the call of the President. He did not doubt that similar traits of a patriotic spirit had appeared in other large cities, and that similar corps had been formed in most of them for the same purpose. Another step taken for our defence was an act to authorize the raising of 24 regiments of infantry, a regiment and battalion of riflemen, one battalion of artillery, and three regiments of cavalry. This was called the eventual army, being authorized in case war should break out, or danger of invasion.

We come now to the naval armaments; these were 34 ships of war of different sizes, commissioned, armed, manned, and sent out to cruise against, and these as well as private armed ships were authorized to make reprisals and captures upon the vessels of France. This was the most operative and the most consistent mode of defence entered into, or that could be, because it was by sea only that we were attacked. This he thought the only active and useful means of defence that was attached to the whole system.

But some gentlemen had supposed (he could not tell upon what grounds) that this was the commencement of a regular debilitating system, in order to prostrate the whole of our defensive arrangements. Mr. J. said he trusted it was not so; on the contrary, he hoped every part of the plan of defence now in existence would remain, except the alteration now proposed. Viewing it as he did, that the establishment of an army of 9,000 men was extremely immaterial to the support of the dignity of the nation in the view of France; viewing it as not in the least useful at the present, and perceiving not the least probability of invasion, and viewing this not as a necessary part of the defensive system, he could see no impropriety in disbanding them, and saving the expense.

Mr. J. said he would now call the attention of the Committee to the conduct of a nation from which it was become a favorite practice to draw precedents for the United States—I mean England. The last resort of that Government in all times of danger of invasion is always to the mass of the people. It will be recollected that in the war with France, in 1778, danger of invasion was apprehended; the militia were immediately imbodied, and formed encampments in the most exposed parts of the country, to wait the event. During the present contest in Europe, when an invasion was again threatened, the same measure was adopted, the militia corps were considerably enlarged, new corps formed, volunteers accepted, and the whole people, in a manner, imbodied to resist the invaders. The King, in his Speech to Parliament, subsequent to these events, felicitating the nation on this great display of zeal and firmness, declared that his chief reliance, in great difficulties and dangers, was on the support of his people; and, in a late review of the militia of London and

Westminister, he told the Prince of Orange it was the proudest day that he had ever known, to see the whole mass of the people was prepared and ready to protect their Government. The 2,500 men already raised, or the whole 9,000, if it should be thought proper to raise them, would make but a very small force towards repelling a powerful enemy.

Mr. J. said he was really astonished at the reference made by some gentlemen to the resolution, from which it was inferred that the militia were not to be depended upon in the hour of danger. If this reference were fully proved, to be sure, it would be the most powerful objection that could be made to the resolution. But he believed it would appear otherwise on the examination. Shortly after the commencement of the Revolution the whole of our force were militia, and they continued so till they were actually inured to battle, and had gained many important conquests. They went forward and eminently distinguished themselves, long before regular discipline was established among them. The battle of Bunker Hill, eminent in our early history, was achieved by men taken from their civil occupations. The brave man who led them to action had been recently called from his civil employment as a physician, but, warmed with enthusiasm in the cause he had undertaken, he fought bravely and closed his short career by a glorious death. Although this noble effort was not crowned with success, so far as to gain the victory, yet our raw troops so much weakened the enemy, and left such impressions of their own courage, that they were able to keep possession of the country around Boston and deprive the enemy of supplies until the arrival of General Washington, who had been appointed Commander-in-chief, and who finally compelled them to evacuate the place. Another instance of the enterprise and valor of militia, is the bold expedition against Canada, by a parcel of New York militia under Generals Montgomery and Schuyler; they encountered every hardship of a long and difficult march, in a most inclement season, through a wilderness, took fort St. John's and Montreal, and finally attempted Quebec itself, where, though they did not succeed, it was not for want of courage or conduct, but of the necessary means for an assault. A still more striking instance of the valor and activity of these kind of troops is the battle of King's Mountain, already mentioned. In this brilliant affair, the men engaged were not even an imbodied militia, they were the farmers and their sons, who, fired with a just indignation at the sight of a hostile army marching through their country, spread the alarm, appointed the place of meeting, unharnessed their horses from the plough, and went to seek the enemy. They attacked a force of 1,400 men, two thirds of whom were regular British troops, under Colonel Ferguson, as gallant and noble an officer as any in the British army; they not only defeated him but actually killed or took every man. I do contend that the militia are the principal dependence for the defence of our country against invasion; to be sure, in case of actual war, it would be necessary to organize them into a regular force; but, however organized, they would still come from the mass of the people. Such men as can be enlisted into the army in time of peace, in this extensive and happy country, where labor is so well rewarded in all the various employments, would be a forlorn hope to defend the rights and liberties of a free people. It is only the people themselves, who feel interested in the happiness of their country and the safety of their property, that are the defence of this country.

A gentleman had informed the Committee that if the enlistments were now stopped it would save $1,500,000, although the resolution was rejected. However, he believed all the officers were appointed; these are the most expensive part of the establishment, and they must remain on pay. From the report of the Secretary of the Treasury it appeared that the Military Establishment cost $4,067,000, and that the revenue to meet the expenditures will be deficient by five millions. This money must be borrowed. By the proposition which was now made to the House, of disbanding the army, there would be a saving of $5,000,000, so that the deficiency would be reduced to 2,000,000. Mr. J. said, for his part, he would rather raise the money by a direct tax than to borrow, such was his aversion to a new loan. He would do anything rather than to involve posterity, by leaving a future generation to pay the debts now contracted. But the suspension of enlistments would not prevent the loaning of the money, because the House would proceed to appropriate sums upon the report of the Secretary of the Treasury, which recommended the borrowing of five millions. When the proposition for the loan came before the House, it would be thought inconsistent for those who should vote to keep up the troops to vote against the loan proposed, and therefore he hoped gentlemen who were against the loan would not give their vote in favor of the resolution.

Mr. J. said he was much obliged to the gentleman last up (Mr. OTIS) for furnishing proof of the improbability of invasion from France. Indeed, he had himself said, that he was not under very lively apprehensions of it from the present state of Europe. But some other gentleman had asked what change there was to induce the gentleman to bring forward this resolution. Sir, there is such a change as to make the army an useless expense. When our Ministers were insulted, I felt as great indignation at their treatment as any gentleman on the floor of this House. I acknowledge some propriety in the argument that at any time they could take troops to Europe or where they pleased, because they were in the most flourishing situation. But the change in their affairs is great; at present we find them but just surmounting the difficulties of a most unsuccessful campaign, threatened by a combination the most powerful that ever united their efforts against any nation. This powerful phalanx is not dissolved. Is it to be supposed that at this time of all others they are to send their 30 or 40,000 men across the ocean, when opposed by the more powerful naval force of Great Britain?

The gentleman from Massachusetts, said Mr. J., thought there was no probable danger of immediate invasion. Yet it might be next year attempted. I confess I do not perceive the consistency of this argument with another he used—that 3,500 men were sufficient to meet the present danger. If there is no danger to be apprehended for a year to come, why should we provide for it, and not leave it to the next Congress, who would be better able to judge of the danger, and might provide an adequate defence to meet it?

Before he concluded, Mr. J. said, he would say a few words as to the system of borrowing money for national support. It was a fact, with which most gentlemen must be acquainted who had read British history, that if the Parliament in the reign of Queen Anne had opposed this system of borrowing, and had levied taxes and contributions on subjects equal to those imposed on them in the reign of George the Third, they would then have had a revenue equal to their expenditure, which was immense, to support the continual wars carried on in her reign, and all their burdens of national debt would have been avoided. But the contrary was their conduct, and an enormous national debt was transmitted down to posterity, which grew as it existed. They were unwilling to bear the expense incurred by themselves, but forced them upon their children. Are we willing to do this, sir? No. I trust there is too much patriotism, and too much justice in the people of the United States, and that they will rather support any expense, if necessary at this time, than encumber their successors with a growing debt.

Mr. J. concluded by saying, he believed there was not the least danger of invasion, even should the negotiation fail. But, in case so remote and unlikely an event should happen, he thought the militia or the people a much better reliance for defence, than the few regular troops contemplated by the law. He was opposed to a new loan, except in case of the greatest necessity, and knowing that these troops could not be kept up without the loans, he should vote for the resolution, and did not apprehend it could have any influence on the disposition of France towards an accommodation.

Mr. CLAIBORNE said, the resolution upon the table certainly presented to his mind an aspect favorable to the interest of our common country; instead of drawing upon the Government "debility and degradation," in his opinion, it would strengthen her resources, and increase the respect of her citizens for the Administration. Instead of endangering the security of the nation it would add to its safety, and promote the happiness of the people. Under these impressions, he should do violence to his own feelings, and be unworthy of representing a free people, did he not give the proposition under discussion his most cordial support. He had frequently heard the fate of those nations who had lately lost their Governments, and in some cases the little remnant of liberty they possessed, repeated over within the walls of this House; the subject was never introduced but his sensibility was greatly excited, and the feelings of his heart much wounded, at the recital of such calamities. But when he heard gentlemen assimilate the situation of Italy, Holland, and Switzerland, to the present state of American affairs, he felt indignant at the reflection upon the American character. In those countries, the Governments were corrupt, human rights were not respected, and the tyranny of the rulers alienated the affections of the people; the intestine divisions which consequently ensued invited attack, and they fell an easy prey to French ambition. But view America, and the prospect brightens: we have a Government of our choice; and every man knows that while the Constitution is preserved, his rights are secure; from revolution, therefore, we have naught to gain, but much to lose.

The wrongs France had done us, upon the ocean and elsewhere, were known to all America; everywhere the public sentiment had been expressed; and, so far as relates to resistance to foreign domination, and a determination to support our Government and independence from foreign attacks, but one opinion seemed to prevail from the Lakes in the North to the forests in the West, from St. Croix to St. Mary's. On these subjects the people think alike, and there can be no doubt of their rallying around the standard of their country when real danger threatens. It was from the prevalence of this national sentiment that he felt secure from invasion, and not from the "gauntlet" an invading foe would have to run, or from a hope that the troubled "ocean would swallow them up."

Besides the assurances of safety from foreign attack, which the bravery of his countrymen gave him, Mr. C. felt additional security from the debility of our enemy, at least so far as relates to the means of conveying war to our shores, which means unquestionably were money and ships. But from this weakness the gentleman from Delaware (Mr. BAYARD) seems to draw no security, and asks, "What may we not apprehend from a nation who had the boldness to attempt, and the power to effect, the invasion of Egypt? Mr. C. said, his country was degraded by the question! Are the Mamelukes of Egypt to be compared to the citizens of the United States? [Here Mr. BAYARD explained, and declared he had made no such comparison.] Mr. C. said, he believed he had quoted the expressions of the gentlemen from Delaware accurately, and he had a right to draw therefrom his own conclusions. He would repeat, that great was the difference between the Egyptians and the citizens of America. In Egypt, the people, in want of the means of defence, involved in political slavery, and savage ignorance and poverty, became an easy conquest to an invading foe. But America was powerful in the means of self defence, and presented innumerable and insurmountable barriers to a successful attack. The expedition to Egypt had proved highly injurious to France, it pressed hard upon her fiscal resources, and so palsied her warlike arm as to render it doubtful at one time whether she would be enabled to resist with success the coalesced Powers who threatened her political existence. Mr. C. thought a remembrance of this, if other instructive lessons were wanting, would at least teach France the folly and the danger of carrying war into remote countries. Believing thus, as he did, that there was no

danger of invasion, he could not see to what useful purpose this army could be applied—but, on the contrary, he saw much evil which its existence would create; among the greatest, was the increase of the national expenditure, and with it the increase of the national burdens.

Let not gentlemen flatter themselves that the present weight of Government was not felt by the people. In those parts of the Union where commerce floats by the doors of our citizens, the taxes are paid with ease, but in the interior of the States they were met with difficulty. But if this army system was persisted in, taxation must everywhere become great and burdensome. His desire was, to exact no more money from the people than was absolutely necessary. Nothing had a greater tendency to tame the spirits of a free people, and sooner to prepare their minds for political servitude, than an immense national debt and heavy taxation.

The feelings of a nation may well be assimilated to those of an individual. A man loaded with debt, and guarded by his creditors, too often loses his firmness of character, and sinks into inactivity and despair. A nation groaning under a national debt and the weight of taxes was too apt to fall into a political lethargy, and tamely to wear any yoke their rulers may prepare for them. What but this, has induced the people of England, without a murmur, to carry a corrupt Government through so many wars of ambition? What else has induced the people of England to suffer their treasure to be squandered away in the paying of foreign hirelings, to impose upon distant countries Governments not wished for by the inhabitants? And what besides has occasioned the people of England to see without complaining a war of plunder and desolation carried to the once peaceful and happy plains of India? But, to avoid immediate recourse to further taxes, gentlemen proposed the expedient of loans. This, however, was only delaying the evil; this policy is bad, as was clearly shown by his friend from North Carolina (Mr. Macon) at a late period last evening.

Mr. C. said, he had given an opinion, that the disbanding of an additional army would strengthen the resources of our country, and increase the love of the people for the Government. To his mind, nothing could be more clear. Next to freemen, money was the most powerful engine in the defence of a nation, a saving of which would insure the adoption of the resolution. Next to dispensing protection and equal justice to the people, economy tends to render an administration pleasing. But the gentleman from Delaware (Mr. Bayard) was fearful, if this army was reduced, another could not easily be raised, when the occasion required it. Mr. C. could not think so; he placed great reliance upon the patriotism of his fellow-citizens, and when the country was in danger, many brave defenders would range themselves under her standard.

We have been told, said Mr. C., that of the twelve regiments, not more than 3,500 men have been raised; this convinced him that the American people did not view this army as necessary for their defence; were it otherwise, the ranks would not be so thin.

Some gentlemen were apprehensive that the adoption of the resolution would injure the pending negotiation with France. Mr. C. said, if he thought so, it would not receive his support. No man desired more heartily the success of the mission than he did. Peace was essential to the welfare of his country, and he wanted much to see it restored. But the disbanding of this little army could have no influence on the councils of France. No other inference could be drawn than this: that the American Congress, assured of their immense resources for defence, and relying on the bravery and attachment of the American people to their country, had thought proper to lessen the expenses of Government, by reducing a useless part of their military forces.

Mr. Harrison said, the resolution had been so ably spoken to, that it could not be expected to receive any new light from what he should add. But when it was recollected that he had no other way of expressing his opinion on any subject that came before the House, than by taking part in the debate, not having a vote in the House, he trusted he need make no apology for rising on the present subject, which to him appeared an important one. He was fully of opinion that disbanding so large a proportion of the military force would be attended with disastrous consequences. In giving this opinion, he was sure he spoke that of nine-tenths of his constituents, and that they would with much more readiness bear their proportion of the expense which would be necessary to maintain these forces, than that they should be disbanded.

The employment of his past life, Mr. H. said, had led him to believe that too much reliance was placed on the militia. Were valor or alertness the only requisite in the formation of a good soldier, he should willingly give the militia that character. But these are only partial qualities compared with those which they may be called to meet. What would their valor do, attacked by the military tactics of a Bonaparte or a Massena? Nothing short of discipline will do for our forces. And are our militia well disciplined? No, sir, they are not.

Mr. H. said he had experienced the inconveniences of a militia army. In 1794, he went out with a number of the militia of his part of the country against the Indians. When brought into action they behaved very well; they did not want courage, but after a very short service they wanted to go home, they were anxious to see their families, and therefore numbers deserted, and left the army in a state which was almost the cause of its destruction. He had experienced seven years service with the militia, but he was sorry to say, such was their conduct, that he never could think of trusting the country entirely to their protection. They might do well with regular troops, and no doubt would. Under these impressions, and from this experience, he knew he spoke the will of a proportion of his constituents in sincerely hoping the resolution would not pass.

Mr. Hill.—Notwithstanding the invincible embarrassment which always oppresses me when I rise to address this House, notwithstanding my reluctance to protract the debate on this question, which I have all along considered ought to be promptly and immediately decided, I find myself impelled to offer a few observations on the subject, to make evident that my desire to press a speedy decision does not arise from the unworthy motive of forcing the minority into a measure without a full discussion of its merits; and that the sentiments which have actuated me, and will determine my vote on the present occasion, are such as forcibly impress me with the propriety and necessity of such disposition of the resolution.

I consider this question of vast importance in various points of view, whether it regards our respectability abroad or our interests and safety at home. The proposition appears to me to be fraught with mischief, calculated to involve the councils of our country in the contempt of other nations—to make them disreputable in the consideration of our citizens. While, sir, I thus freely declare my sentiments of the measure, I would not be understood to intend that an improper motive is ascribed to the gentleman who moved or the gentlemen who advocate the resolution. The human mind is so constructed that the same object of contemplation will appear differently to different persons, and even, under various views, will assume various appearances to the same mind; to this I am disposed to ascribe the want of unanimity now experienced.

To me, sir, after bestowing the most unremitting, steady attention to the arguments of gentlemen on both sides, it appears unequivocally, that the measure if adopted would produce the most fatal effects; that the proposition can but create the most pernicious influence on the pending negotiation with France. Hence, sir, it is my wish to have the resolution speedily disposed of. I believe a majority of this House unquestionably disapprove it; and the only way to prevent the pernicious influence dreaded is to let the disapprobation of the House accompany the account of the proposition. I would have the same breeze which wafts across the ocean the paralyzing intelligence of the proposition, convey to our Commissioners the restorative information of its decisive rejection. But, sir, it is said that this ill effect cannot be produced, because this army forms no part of that system of defence occasioned by French aggressions. The contrary of this is so evident, that it would be an insult on the understanding of this House to attempt to prove it. If, however, a doubt exists, a reference to the law authorizing the enlistments—to the terms of enlistment which form the contract between the Government and the soldier, will effectually conclude it. If, then, this army is part of a system of defence adopted in consequence of French aggressions, before we agree to disband it, it becomes necessary to know whether those aggressions have ceased; whether the injuries suffered have been repaired; and to examine the present state of affairs between the two countries. Will it be alleged that this is materially different from that existing when this army was organized? Will it be concluded that we are not in a state of actual war? Sir, it will not, because neither position is tenable—the facts are otherwise. Why, then, sir I ask, are we to abandon this system? It is said, because it has not, it cannot have, any useful operation—because it has not had, it cannot have, any possible effect on the French councils, while it induces a heavy expense on the American people. Sir, it has been clearly and conclusively proved, that the system adopted has had a powerful influence on the French measures. The belligerent attitude assumed by this Government, was a strong and indubitable evidence to the Government of France, that we should prefer war, with all its calamities, to submission, and loss of our independence; that we would expend our last dollar in defence of our rights, but not bestow a single cent for tribute. The change of measures evidences the change of sentiment in the French councils, and this was consequent to the adoption of this system—a negotiation is invited by those who, but a little while before, rejected with scorn and contempt a like overture. If now, in the very commencement of that negotiation, the first act of the Legislature is an abandonment, is the destruction of that system, what must be the fatal consequence? Sir, it cannot be anything less than a prostration of our national honor, dignity, and interests, at the feet of French justice, of French mercy; and all that we could have to expect would be, what the magnanimity of the Great Nation might, in its tender commiseration for us, think proper to bestow on a people whose councils are too fluctuating and too weak to assert their rights, and whose resources are unequal to their protection.

But, sir, it is said that the negotiation may fail; nay, it would seem that gentlemen calculate it will fail; and therefore it is, say they, we bring the proposition forward now, aware that we have to encounter less difficulties than if we wait the issue of the negotiation. Surely, sir, nothing can operate with more force on the mind of every member of this House favorable to the measures of Government, resisting such encroachments, than this declaration; it must decide every mind on the propriety of making a firm stand against this present attempt. It is further stated that the army cannot be useful because invasion is impracticable, or if practicable, still it cannot be useful, on account of the paucity of its numbers, and for other reasons. Both these positions have been so ably assailed, and the assertions so conclusively refuted, by two gentlemen from Virginia, that it would be but waste of time to enlarge on the subject. I will only observe, that possibilities more remote have been sustained in the French councils, and have proved practicable in their execution. Calculations founded on the events of former wars, are not admissible as correct indications of what may occur in the present war. Never in modern times has a war sustained as this has been existed. Perhaps the present are the only times which ever witnessed a single nation, unaided by allies, carrying war and havoc in every direction, through various nations

at the same time, with such a combination of Powers to resist, and sustain itself, victoriously, as the French nation has done.

Are we to satisfy ourselves with the belief that the French will not invade us, and become unprepared to defend ourselves, while in actual war with that Power? Sir, is not this inviting invasion? But, admit that invasion is not to be dreaded—is that the only means the French have of annoying us of disturbing the peace, and introducing war into our country?

While we are considering whether our Constitutional power to adopt measures to repel invasion is or is not expedient to be exerted, let it not be forgotten, our country has a vulnerable side, other than that exposed to invasion; a point, sir, that will not escape hostile notice; a point, sir, which the Southern States have most to dread, and where, if war in our country is to happen, it will probably commence.

As to the expense to be incurred by maintaining the army proposed to be discharged, it is admitted it cannot be much; too trifling, it is acknowledged, to be an object, if the mission to France succeeds. In that event it is merely questionable whether there would be any saving at all by disbanding the army now, as most probably the pay which may be considered as proper to bestow on its discharge, would be fully equal to its support during the whole period of its enlistment.

Much has been said on the subject of economy. Truly, sir, it is an important consideration, and ought always to be present in our councils. But, sir, economy consists in a due application of the wealth and resources of the country; to promote measures calculated to produce the peace, safety, and happiness of the citizens; to insure the prosperity and welfare of the Republic. This kind of economy is as distant from the paltry considerations of an impolitic parsimony as it is removed from the waste of an inconsiderate prodigality. I therefore consider what has been urged on that subject as of no moment in the present question; and much better calculated to tickle the ears of an unreflecting populace, than convince the minds of a deliberative assembly. It has been alleged that the existence of this army occasions unpleasant sensations in the minds of the citizens at large; that the sound of the drum and the glitter of arms among their peaceful habitations distresses them. Sir, doubtless it excites their attention, and produces from them inquiries on the subject, but when told that this army is raised to be ready to protect the rights and support the honor of their country, which has been and still is injured and insulted by a foreign Power, they are satisfied. But what would be the operation of the measure proposed on the minds of these very citizens? They find the army disbanded, they inquire what reparation has our Government received for the injuries, what satisfaction for the insults, heaped on our country? None. Why is the army then disbanded, and, after the expense of organization for the defence of our country, why are we now left without the proposed means of defence? Sir, can these questions be answered without involving our Government in the disrepute of its citizens? No, sir, it must forcibly attach to it in every mind.

It has been urged that the wisdom and prudence of this House are involved in the present question. I sincerely coincide in this sentiment. I will go further: the dignity, sir, of this House is involved in entertaining this question. I call loudly to be extricated as speedily as possible. Scarcely, sir, has a month elapsed since this House, without a division, announced to the American people, to the world at large, that it is the dictate of wisdom, of duty, to persevere in the system of defence adopted by the councils of our country. This sentiment is emphatically expressed in the Address of this House to the President. And we are now, without even the suggestion of a change of situation, called on to make an inroad on that system, to commence its destruction.

I hope, sir, the question will be taken this day. I feel every disposition to accommodate gentlemen in their feelings and wishes, but I hold the interests of the country, which I sincerely believe to be involved in the length of this debate, as too expensive a sacrifice. I apprehend every gentleman has made up his mind, without the probability of relinquishing the point on which it rests; if so, a further postponement can only be to afford an opportunity for a display of oratory. If gentlemen have made up their minds, and if it is important that a prompt decision should be had, it will be better to take the vote now and have the speeches afterwards—they doubtless will prove entertaining and instructive essays; and this course will be considered less exceptionable, as it has been exemplified with no small success by an ancient orator of celebrity. I allude to Cicero, and his oration in defence, but not heard until after the trial, of his friend Milo. It is true it was of no manner of service to his friend—but it was nevertheless a very fine speech, and contributed not a little to increase the fame of his eloquence. I hope, therefore, sir, that this course may be taken, rather than the decision should be any longer delayed.

At this point the Committee rose, and had leave to sit again.

FRIDAY, January 10.

REDUCTION OF THE ARMY.

The House, in Committee of the Whole, Mr. MORRIS in the Chair, resumed the consideration of Mr. NICHOLAS'S resolution for reducing the Army Establishment.

Mr. KITCHELL thought that the question before the Committee had been treated by the gentlemen on both sides upon much too extensive grounds, many of which had nothing at all to do with it. It appeared to him that the real merits of it would be better ascertained, and a vote taken with much more propriety, if it only rested on these two points, to which he wished to call attention:

First. What would its influence be with the French Directory in the present state of the negotiation?

Secondly. What would be its influence or use in case of invasion?

These were the principal grounds on which it was opposed, but, he conceived, without much foundation. As to its influence on our negotiation with France, he thought the arguments very weak. Could it be supposed that an army of three or four thousand men, at a distance of at least three thousand miles, could bid defiance to a Power that the combination of all Europe would not appal? That must be an absurd conclusion. This small army could not possibly affect a negotiation when the Atlantic separated the Powers. In what form could they be used to attack the French? Could they be transported across the ocean to compel the Directory to attend to the terms we should dictate? If the attempt was made, our great and good allies would meet, and very probably impress them into their service. Or was a bridge to be laid across for their transportation to Europe? But, if they could get there, what would they do? These notions, he believed, would be acknowledged absurd; but in what other way could the preservation of this army influence the Directory? Yet gentlemen had ascribed to it that wonderful power. He concluded it could have no such effect.

But the gentleman from Delaware said, if the French could have emissaries here to direct our councils, they would recommend such a motion as this. No, said Mr. K., they would rather advise or influence us to augment the forces, in order to drain our resources, so that we should be unable to meet them, if they had any design upon us. They would wish rather to disable us from making any opposition, which could be more effectually done by leaving us without money than without troops. Not that he conceived our financial state to be at so low an ebb as to disable us in any event from keeping up the army, but while our expenditure was already more than our revenue, it would certainly be imprudent not to attend to every opportunity of decreasing it, so as to bring it as nearly level as possible.

Farther. What effect could this army have in case of invasion? What would our whole army, of fifteen or sixteen thousand men, do against the great number any European Power, who was so inclined, could throw into our country? If such madness should seize them as to send an army here for the invasion of our country, could it be supposed that they would immediately send a flag of truce to inform us of the manner of its execution? Certainly not. Would they not be so well acquainted with our country and situation as to land where these troops could not be brought to operate against them? Then can we suppose that the keeping up of these men, at the rate of four millions of dollars a year, will compel France to do what we please? No, sir, this army would not be found, were a disembarkation to take place; and our militia would have to stand the whole attack.

Mr. K. believed that at any time a well armed, and well disciplined militia would be competent to all the purposes required to make head against an invasion from any nation. He therefore thought that while a standing army of this force would be useless to make any impression on the French mind, so it would on their armies, if they actually invaded the country. He did not believe that the people could not support this army; they could, or one ten times larger, if necessary, and they would do it in that event. But he was confident that a cheaper and more efficient protection was to be found in the people of the United States. Suppose this army were to be divided to guard different parts of the coast. Our coasts are so extensive that there could not be a sufficient quantity at any one point to do any good against an army that should invade, and therefore what use could they be in that service?

Mr. K. said he merely threw out these ideas to show his reasons for voting in favor of the resolution, which he must do unless his objections, and some others which had been mentioned by gentlemen who spoke before him, were satisfactorily removed. He thought the money could be better applied to arming and disciplining the militia, and he never could give a vote to impair that great foundation of our strength, which ought to be cultivated with assiduity. Nor was he anywise apprehensive of invasion if the war in Europe should cease, because of the affinity of France and Great Britain to each other, which would operate as a sufficient check. Besides, it could not be supposed that after a war of this great length, and unprecedented for fatigue and sanguinity, either of those Powers would enter on new adventures, when a few years rest and peace would be so requisite to recruit their men as well as their finances. It was said that in another year they may invade us, and therefore we ought to preserve the army. To be sure it was possible, but the argument would lead to making provisions for another century. If there is any way, said Mr. K., in which we can attack the French Republic, it must be by sea; we have no fear of them by land, because they will not attack us, and it is not probable we shall attack them. If, indeed, that is our wish, we must increase our force, instead of diminishing it. They do distress our commerce, we ought not therefore to be negligent of our navy, but to protect it; but as for an army, we can have no use for it.

Mr. S. SMITH believed, with two gentlemen who had lately spoken, that if a bill was now brought in to create the army in question, it would have very few advocates. The gentleman from North Carolina (Mr. WILLIAMS) had said, that if he had voted for raising this army, he certainly should now vote for its continuance, because he saw no change in circumstances sufficient to warrant any change in measures. Mr. S. said, he disagreed with that gentleman: he did not think the same occasion now existed.

Mr. S. said, he came to Congress this year with a strong impression upon his mind that the expense of this army was an unnecessary one; but he did not expect such a resolution to be brought forward at so early a period of the session. He had hoped that the gentleman would have delayed his motion until every document relating to the army was laid before the House by the Secretary of War, and every document of finance from the Treasury Department. Unprepared as he was, and unwilling as he was to vote, he was

called on now so to do, and therefore must vote upon such documents as were in possession of the House.

He conceived it necessary to call the recollection of gentlemen to the state of affairs when the law in question had passed. It had been thought proper, by the Senate of the United States, to publish the despatches of our envoys to France, which by him, and many others, was considered in no other light than as a manifesto to prepare the minds of the people for war; for all had declared that France could not do otherwise, after their publication, than declare war. The House thought so, and declined the publication on their part. However, having been made public, it became a duty to assume a posture of defence; the necessity of which so strongly impressed him, that he could not have returned to his constituents without seeing the proper measures taken.

It had been said, that this part of the army was not a part of the system of defence. What else could it be? To be sure it was not the only means of defence adopted, but it was considered that this army would operate valuably as a rallying point round which the militia would assemble. It was thought that wherever the United States should be invaded, the enemy would first be met by the militia, and that these troops, being prepared, would rapidly come to their aid.

Under these impressions, Mr. S. said, he had thought it his duty to bring forward a resolution for raising eight regiments, and six troops of dragoons; the House carried it further, and voted twelve regiments and the dragoons. The measure was then thought to be so essential a feature of our defence, that there were but eleven members who voted against it. It will be recollected that a gentleman expressed an opinion that the right wing of the Army of England (as it was then called) would probably come to this country; although he had no such idea, he had thought that the Southern States might be in danger of a descent from Hispaniola, and therefore thought that a small army might be necessary.

It would not be considered improper for gentlemen to vote for continuing the men who had been recruited into the twelve regiments a few months longer; for although they could not be draughted into the old regiments, yet many of them might and probably would be recruited for those regiments, and a saving of clothing, &c., would thereby be effected. He presumed something like this was the middle ground contemplated by the gentleman from Virginia. At present no regiment appeared to have more men than would make a battalion. The supernumerary officers might therefore retire home till called for, and thus make a considerable saving.

From the reports of the War Department, Mr. S. said there were no more than 3,399 men recruited for that service; many of these would be objected to when they came to the muster, so that they would probably be reduced to 3,000; 8,520 was the total number of men wanted for the twelve regiments. By stopping the enlistments, there would be a saving of bounty and clothing for 5,520. The raising of the six troops of dragoons (no men being yet engaged) might also be stopped, and the whole expense of their bounty and clothing, besides the purchase of horses, would be saved. Under this statement of facts, would gentlemen think of destroying this army at once? Would it not be more prudent to wait two or three months for advices from our Envoys? He felt well assured in his own mind that a peace would be the result of our negotiation. If gentlemen thought with him, they would wait the event. If successful, the army would of course be discharged under the law.

The resolution, Mr. S. said, was calculated to discharge all these men without a single shilling to carry them home. He trusted they would not be sent home without such provision as had been usual to make.

This army had been called a standing army, and it was said that excuses would be found to keep it up, even after a peace. But this cannot happen, for the law expires, "whenever the differences between France and America are made up."

Sir, said Mr. S., there is no man that places more reliance on the militia than I do, but before I place all my reliance on that truly essential part of our defence, much as I admire it, I must see a better militia law framed than exists at present. Until that time, I must say that a regular army in case of war will be always deemed necessary. I was pleased to hear the gentleman from Virginia (Mr. RANDOLPH) say that something like a requisition was necessary, and that the money appropriated to this army ought to be applied towards disciplining our citizens, that they may be ready on an emergency. But how can that gentleman make these men serviceable under the present militia law, when their time of service is so short, that in many instances it will be nearly expired before they can arrive at the scene of action? Sir, a requisition might be useful in this country. It is the youth of a nation that can most easily be made its effectual defence; France has proved it—oppressed by the great Powers of Europe, in a manner deprived of her soldiery, she called out by requisition the young men from eighteen to twenty-three. What was the consequence? The veterans of Europe were not able to withstand this shock, and France was everywhere victorious. Again oppressed by numbers, the armies of France, pressed by the troops of Russia and Austria, were defeated at all points, and again she had recourse to the young men. The conscripts (being those who had passed the age of eighteen since the first requisition) were called on; they joined the armies of their country, and the proud armies of the allies fled before them, from the morasses of Holland and from the mountains of the Alps, and victory again decided for the armies of France.

Mr. Chairman, grant a militia law such as has twice been reported to this House, where the youth from eighteen to twenty-five are selected, in which a plan is digested for arming, disciplining, and holding them in a constant state of preparation, and with power of keeping them in the

field a sufficient length of time, and I do not hesitate to say that an army on a regular establishment will be rendered wholly unnecessary. America would then feel herself perfectly secure; an army of 120,000 young citizens, well armed and well trained, would deter all nations from an attempt at invasion. The truth being, that there are not more men recruited for the new regiments than would fill the permanent army, of course no extraordinary expense will be incurred beyond the usual estimated expenses of the army, except that of the officers of the twelve regiments; the amount of which was not such as in his opinion ought to induce a conduct that would have but too much the appearance of versatility in our Government. He should therefore vote against the motion, under a firm reliance that the recruiting service would be stopped immediately.

Mr. HARPER said: What, Mr. Chairman, would be the effect of this motion, if adopted, on the negotiation now pending between this country and France? What would be its effects on the state of this country should the negotiation fail? Such are the questions which arise out of the resolution upon your table, and present themselves for the consideration of this Committee. So strongly am I impressed with their magnitude, that I should regard myself as a traitor to that country which gave me birth, and in defence of which I drew my sword before fifteen years had passed over my head, dead to every feeling of that patriotic affection for it which I drew in with my mother's milk, were I to pass over, with a silent vote, questions so deeply interesting to its honor and welfare. These questions, indeed, have been so ably discussed, that I am far from hoping to urge any new reasons, or to adduce any additional information; but if I can renew the impression formerly made, which the length of the discussion may have in some degree obliterated, I shall consider the time which I may occupy as not wholly misspent.

What then, Mr. Chairman, let me be permitted again to ask, will be the effect of this motion, if adopted, on the success of our negotiation with France? What would be its effects on our safety should that negotiation fail?

The motion from which these questions arise, becomes infinitely more important and alarming to my mind, when combined with the avowed object for which it is introduced. Gentlemen tell us, most explicitly, that it is not on the success, but on the failure of the negotiation, that their motion becomes altogether necessary; because, in that case, the army, by the very terms of its establishment and of the act under which it was raised, is to be disbanded. The troops were enlisted to serve "during the continuance of existing differences with France." Should these differences be terminated, which is the object of the pending negotiation, the troops are disbanded of course. This gentlemen well know; and, therefore, they feel that their motion would be wholly unnecessary in case the negotiation should succeed. They even tell us, in plain terms, that did they consider the success of the negotiation as certain, they should feel very little solicitude about the motion. An honorable gentleman from Pennsylvania (Mr. GALLATIN) declares that he should not, in that case, think it worth while to make this motion; and the honorable gentleman from Virginia, who brought it forward, (Mr. NICHOLAS,) fully concurs in this sentiment. But it is precisely because they think that the negotiation may fail, that they feel anxious to carry this measure. It is because they think that we may be left in a state of war with France that they wish to disband the army. It is because we may have to contend with a powerful and an insidious foe, which shall have refused to treat with us, and may meditate an immediate blow against our country, that gentlemen wish to deprive us of this arm of force for our defence. It is not in case of peace they wish to reduce, to disband, the national force, but in case of war; a war, too, against a Power whose constant policy it is to divide and conquer; to avail itself of every party contention, every internal discontent, every jealousy against Government, in order to disarm those on whom it intends an attack; to employ every act of intrigue, and hold out every insidious appearance of friendship, for the purpose of lulling into a false and fatal security the victim which it has destined for its future prey.

Sir, it is this view of the subject which strikes my mind with awful alarm. It is not foreign force that I dread, but internal division: it is not an attack from without that fills me with apprehension, but a weakness within, arising from timid counsels, which may prevent us from exerting our strength; from party animosity, which may render one half of the country the instrument for destroying the other; from jealousy of our own Government, which may prevent us from entrusting it with the means of defending us against the enterprises of another. I have heretofore been charged with endeavoring to spread alarm; and I have confessed the charge; for, when I feel alarm, I hold it my duty, as one of those persons to whom this nation has confided the task of watching over its safety, to spread that alarm. When danger is abroad, it is the duty of the sentinel to give the alarm; and it is by being alarmed that, alone, we can be saved. And I confess, sir, that when I see men, no doubt of the best intentions, so blinded by the spirit of opposition, so carried away by party animosity and jealousy of the Executive, as to struggle, with all their might for the disbandment of the army in the midst of a war; as to contend, with the most persevering zeal, that the failure of the negotiation is the precise case in which we ought to divest ourselves of our only regular disciplined force, I do feel extreme alarm, and am most awfully anxious for the fate of my country. This alarm it is my desire to spread, for I am fully convinced that unless we take the alarm, in occasions like this, we must be lost.

But to return, Mr. Chairman, from this digression, into which I was irresistibly impelled by the force of my feelings, let me be permitted to discuss the first of the two questions which present themselves for our consideration. Let me inquire, what must be the effect of this motion, should it succeed,

upon our negotiation with France? Out of this question, sir, will arise two others, which ought to be separately considered. In what manner must the French Government be affected, in the pending negotiation, from this measure? How must it affect the conduct of our own Government? Under these two points of view, permit me to examine the measures.

When gentlemen who support this motion, have endeavored to answer the question, "in what manner the conduct of the French Government, in the pending negotiation, must be affected by this measure?" they seem to me to have fallen into a great, I had almost said an unaccounable, mistake. They have spoken of the amount of the force which it is the object of this motion to reduce, and they have triumphantly asked, "Will France be deterred or overawed by an army of ten thousand men? Will her Government, after having broken and triumphed over one most formidable coalition, and successfully resisted the progress of another, be induced to treat with us by the fear of this handful of troops? Will she regard this as the whole force we have to resist her, in case she should attack us?" To all these questions, sir, I answer no. She will not be deterred by this handful of troops. The fear of ten thousand men will not induce her to treat with us. She will not consider this as the only force which we can oppose to her attacks. But these, sir, are not the true questions to be determined. France will not advert to the mere amount of force to be reduced, but to the spirit to be displayed by the reduction. This is the point of view and the only one in which she will regard this measure; and the impression which it is calculated to make on her, in that point of view, is the important subject which we are now called to consider. What inference with regard to our situation and our councils, will France draw from a disbandment of our army at this moment? How will that influence affect her conduct in the negotiation? These, sir, are questions which it is our duty to solve, before we adopt the resolution on your table.

Will France consider this disbandment as an indication of a want of strength, of want of means, of inability to support this force? No, for she well knows the extent of our means, and the greatness of our strength. She knows them from the exertions made under her eye, in the Revolutionary war, at a time when we were but infants compared with our present state. She knows them from the exact information which she possesses respecting our commerce, our maritime wealth, our population, our finances, and our rapid increase. On all these particulars we cannot doubt but that she is perfectly well informed. It has been at all times a leading maxim in the policy of her Government, to spare no pains or expense in acquiring the most accurate information on all these points, respecting the countries comprehended in her political system. For this purpose she has at all times maintained skilful agents in all the countries with which she had connexions. Can we suppose, even for a moment, that she has departed from this maxim in our case? We know that she has not. Besides the secret agents, whom there is every reason to believe that she has always kept amongst us, we know that there resided here, for three years, a person of the most comprehensive, active, and discerning mind, unwearied in his pursuit of information respecting our affairs, and perfectly well qualified for obtaining it. We know that this person was recalled to France and placed in a very high and influential station in her Government. We know that he carried with him the most exact information that has ever gone to Europe respecting everything in this country that can be known by a foreigner. And although he has since been removed from his official station in France, yet there cannot be a doubt that the communications which he made and the opinion he impressed have had, and will long continue to have, a powerful influence on the conduct of his Government towards this country. The facts which he related and the statements which he was in a condition to make, and no doubt did make, will at least remain and be remembered; and they are sufficient to inform the Government of France that our strength would be great were we disposed to exert it, that our means are extensive and abundant should we resolve to employ them. That such is, and from the beginning of her present struggle has always been her impression, is rendered perfectly manifest by the anxiety which she has shown and the pains which she has taken to draw us into the quarrels on her own side. She well knew the use of such an ally; she was fully assured of the aid which we could afford for the accomplishment of her great purpose, the destruction of the English commerce and marine, and therefore, with a policy equally profound and comprehensive, she early took every step in her power to secure this aid. We well know that early in the year 1793, as soon as her contest with England had commenced, she sent a Minister here for the express purpose of inducing us, by every artful pretext and insidious contrivance, to join her in the war. We know that when her intrigues were baffled, she resorted to menaces and violence for the same purpose. All this proves, in the most undeniable manner, that she has a very high and adequate opinion of our force. Her desire to gain the disposal of this force would not otherwise have been so ardent, nor her mortification and rage so excessive at finding herself disappointed. She will not therefore, she cannot, consider this measure as an indication of our want of means. She well knows that we possess them. She has hitherto found that we were not only too wise to be inveigled by her insidious policy, but too strong to be bent by her force. In what light, then, will she consider this measure? She will consider it, sir, as a most decisive proof that our divisions have arisen to such a height as to render us incapable of exerting our strength; that although we were, for a moment, roused into something like spirit, by the unheard of insults and indignities wherewith she loaded us in the wantonness of her pride, we are of a character too feeble and timid to support, with persevering courage and unshaken firmness, the hazard of a great conflict; that our people are too jealous of each other

and of their Government to unite, for any length of time, in vigorous measures; too inert to support the fatigues of a continued exertion, or too avaricious to pay its expenses. That our Government is feeble in itself; destitute of confidence in the magnanimity and patriotism of the nation; or so clogged in all its movements, by the opposition of a powerful party, as to be rendered incapable of adhering with steadiness to any great and manly system for the protection of its honor or national rights. That there exists among us a great and powerful party which is impelled by party spirit, by animosity against its rivals, by jealousy of the Administration, by its own political system, or by whatever other motive, to exert all its force with unabated zeal, and at length with complete success, for wresting from the Government every means of defence, for depriving it of all means of exerting national force, for robbing it of all hope of public support, by withdrawing from it, completely, the public confidence. That this party, in fine, about whose existence she is but too well informed, and whose principles and views it is not natural for her to mistake, has at length obtained an ascendency in our councils, and will not fail in the pursuit of its own plans, whatever they may be, to serve effectually her cause, by tying up the hands of the Administration, separating the nation from the Government, and neutralizing, by means of that division, the national force.

These, sir, are the circumstances of which this motion, if adopted, must be considered by France as a certain indication. Believing these circumstances to exist, she must consider our wealth, our population, our commerce, our capital, our shipping, in fine our national means, not as a force to be dreaded, but as a prey to be seized. The greater these means, the richer will be the spoil, and the more eager she will be to seize it, and to continue the quarrel which is to furnish the occasion. But resist the motion and all these indications are at once wrecked; she will then consider our national means, not as a prey to be seized, but as a force to be overcome; and, knowing as she does, the extent of those means, she would be induced to put an end to a quarrel from which she would see there was so little to be gained.

Mr. Chairman, we know the men who guide the councils of France. We have seen their conduct for six years past. Unfortunately for mankind, they have acted a most conspicuous part on the theatre of the world. We have been enabled to discover their characters, their views, and the means, as well as the object of their political system. We know that it is by fomenting internal discontent, by availing themselves of the weakness resulting from the jealousy of Government, and party divisions, that they have triumphed and still hope to triumph over other countries. In other countries they have found parties that aided their views; and when they see a party here pursuing measures exactly similar, why should they not expect some aid from that party? Sir, I speak not of the motives of gentlemen—God forbid that I should doubt, much less call in question the purity of their motives! Among those who support this motion, there are many with whom I have the advantage of being much acquainted, whose characters I highly respect, and whose intentions I believe to be most upright. But I am constrained—it is my duty—to speak of the effects of their conduct; and I must remark, that those effects will be precisely the same, from whatever motives their conduct may flow. If France find a party among us which strips us of our defence in the midst of a quarrel with her; which disbands our regular disciplined force at the moment when our negotiation shall have failed; it is the same thing, in her view, whether this be done through a mean and foolish parsimony, through versatility and weakness of character, through party spirit, animosity against the Administration, jealousy of the Government, or a direct intention to promote her views. In either case she will consider her views as promoted; because, in either case, the country will appear to her to be left at her mercy. Sir, she will have ground for this opinion—the ground of experience—for she has found her views most effectually promoted by a similar state of things in other countries. The example of other countries cannot be too often recurred to, for it is from the misfortunes and errors of others that, if we are wise, useful lessons for our conduct will be drawn.

Let it then be remembered, Mr. Chairman, that the independence of Switzerland was subverted by a party; not a party among the people, for they were united, and were attached to their Government, and eager to defend their country; but a party in the Government itself. The example of the deplorable effects of foreign force and intrigue aided by internal division, has already been noticed, but it cannot be too often held up to our view, for nowhere else shall we be able to find so many points of resemblance with ourselves, so many considerations applicable to our own situation. Let me therefore be permitted to dwell for some time on this most interesting and affecting picture.

When I speak of Switzerland, Mr. Chairman, I mean to be understood especially of the Canton of Bern—the most powerful by far of the whole confederacy, and the only one able to exert a great force of itself, to stand as a bulwark for the rest, and to give union and system to their common efforts. The people of Bern, sir, were not that oppressed and degraded peasantry, of whom an honorable gentleman from Virginia (Mr. Randolph) has spoken, and whom he represented as being so ground down by the miseries resulting from their own Government, that they fled with joy into the arms of the invaders, for protection against their domestic tyranny. Let me inform that honorable gentleman, that there was neither misery, oppression, nor discontent among the people of Bern. Nowhere was more happiness to be seen; nowhere more prosperity, more comfort, more security for person and property, a more perfect exemption from the burdens of taxation, more contentment to be found. In addition to the united voice of every historian and every traveller, who has viewed or attempted to represent this delightful

picture of human bliss, let me refer the honorable gentleman from Virginia to the testimony of a gentleman who now hears me, who has a personal knowledge of that once happy people, and from whom the honorable gentleman may derive much useful information on this and many other subjects. That gentleman will inform him, as he has informed me, that the Government of Bern, however defective in theory, was, in its practice and administration, the best that mankind has ever seen; that there was no tyranny and no misery in Bern; that the people loved the Government, and were at all times ready to fight in its defence; that the Government cherished the people, and maintained them by a tender and paternal exercise of authority, in the possession of every blessing which Government was originally instituted to secure. Among such a people, there could be, there was no party division. The Government, indeed, was in the hands of a certain number of families, they were numerous, and operated as a check upon each other; they were venerated, and that veneration produced a willing obedience to their authority; the manners of the country were pure, and those manners contributed largely towards preventing the usual abuses of power. The mass of the people was excluded, indeed, from all share in the Government, but they felt all its blessings, and were willing to be exempt from its labors and its cares; and any among them who became distinguished by their talents, their virtues, or their services, found an easy admission into the order which held the Government. In fine, sir, they were wedded to it by the habits of three hundred years, during which it had existed in prosperity and honor. But, although there were no divisions or discontents among the people, two parties existed in the Government itself. These parties, as in all other Governments partaking of a popular nature, long struggled for superiority and rule, but, until the French Revolution broke out, and the war which its leaders, to serve their own purposes, immediately excited against the great Powers of Germany approached the borders of Switzerland, those struggles were productive of little injury. The shock produced by those events was soon felt in Switzerland. The party which at the same time possessed the chief magistracy of Bern, foreseeing the danger whereto the country would be exposed, attempted to adopt a firm and vigorous policy, to put the country in a state of defence, and to take measures for causing its neutrality and its rights to be respected by France, when a disposition to disregard both was early displayed. The opposite party, which, let it be remembered, sir, was not a French party, and would have spurned the imputation of French prepossessions, much more of French connexions or views, with the utmost indignation, did not fail, however, to oppose all these attempts, sometimes on the ground that they would irritate France, sometimes because they would be too expensive, and sometimes because there was no danger. During the whole war this conflict continued. One party took hold of every favorable occasion to use its system of defence and preparation, while every new injury or insult from France was palliated by the other, which, aided by the cautious policy of the French Minister in Switzerland, by the fear of expense and exertion natural to the people everywhere, and by the indolence of character which wealth and a long continued peace had produced, perpetually succeeded in its opposition, and kept the nation in an alarmed state.

Many injuries were endured, many insults were submitted to, but no direct attack was made on the part of France while the war with the Emperor continued. Sufficient materials for a future quarrel were however provided; and no sooner did the House of Austria make a truce with France, by which the latter was left in possession of Italy and the Rhine, than this quarrel was openly begun, and an attack on Bern, which alone stood in the way of France, was secretly planned. For this purpose a part of Bonaparte's army commanded by General Brune, was ordered to advance into the neighborhood of the Pais de Vaud, a part of Bern, and to support a handful of wretches, who had been excited by the French Government to rise in insurrection. One party in the Government of Bern wished to send a general to suppress this insurrection, and drive off Brune's army, which was not considerable in force. The other party, which called itself the peace party, and which acted and talked as our pretended peace party has always done, opposed this measure with success, and procured a negotiator to be sent instead of a general. This negotiator was also entrusted with military powers, but he belonged to the peace party, abandoned the country to the insurgents and to General Brune, with whom he entered into a negotiation instead of fighting him. The consequence was, that Brune advanced into the Pais de Vaud, took possession of it, revolutionized it, and conquered it, although nineteen-twentieths of the people were firmly attached to their Government, and ready to risk their lives in defence of the country, had there been any one to unite and direct their exertions. Having achieved this conquest, and levied an enormous contribution for the supply of his army, General Brune advanced to the frontier of Bern itself.

This invasion, however, roused the nation and the Government. The peace party, which still talked of irritation, and of expense, and of negotiation, was overborne, and preparations were made for a vigorous defence of the country. In this state of things, Brune found himself too weak for the enterprise, and had recourse to negotiation, till another body of troops, amounting to twenty thousand, could be brought from the Rhine, by General Shauenburg, to his aid. He sent negotiators to Bern, to negotiate with the peace party, and by means of the peace party to suspend the measures of defence till Shauenburg could have time to arrive. The peace party entered into his views; they negotiated; the measures for driving Brune out of the country were suspended, and Shauenburg advanced by rapid marches. At length he approached the opposite frontier, got possession of the passes which lead into the country, and attacked one of the neighboring cantons.

Then the Canton of Bern again roused itself. The people called aloud on the Government to take measures for the defence of the country, and demanded to be led against the enemy. The pretended peace-makers were silenced, the real friends of their country gained a majority in the Council of Bern, and General D'Erlach received orders to take immediate measures for attacking the enemy and driving him from the country. The patriotic enthusiasm of the people soon supplied him with an army of 30,000 men; the confidence of the nation revived, and the country was on the point of being saved.

Now begins the mournful history of the delusion of party. General D'Erlach left the Council, of which he was a member, and went to take the command of the army. One hundred officers, also members, attended him to the field. Their absence threw the majority again into the hands of the peace party—the party that talked of negotiating with an advancing enemy, of expense, of irritation, of the horrors of war. This band of misguided and timid men, led on and instigated by a faction of modern patriots—not such as Cato, as Hampden, or as Washington, but of that bastard race of patriots of the present day, whose patriotism consists in devotion to the will of France—struck the blow under which their country sunk, perhaps to rise no more. Availing themselves of the majority thus acquired, they obtained a reversal of the orders to General D'Erlach, and procured an order that he should retreat. This fatal order, the pretext for which was to avoid irritation and leave the door still open for negotiation with an invading advancing enemy; this order once given, the energy of the nation was completely unstrung. The people and army of the country, astonished and indignant at this very unaccountable weakness and versatility, which they attributed to the treachery of their Government and their officers, gave up the public cause in despair. Some refused to obey, some fled to their homes, and some turned against their officers those arms which they were not permitted to employ against the invaders of their country. Everywhere distrust, confusion, and flight, were seen, while the enemy, feeling the favorable moment, advanced with rapidity against the city of Bern, in different directions. Then the last struggles of despair took place. A brave people, deprived of leaders, deprived of government, deprived of all means of resistance except such as despair could supply, threw themselves between the enemy and their homes, their families, and their altars. The wife fought by the side of her husband. The aged grandsire, the youth, and the tender virgin, fell in the same ranks. The scythe and the pitchfork supplied the want of the bayonet and the sword. Glorious, but unavailing efforts! Unavailing to you, brave and self-devoted Swiss! but useful to us, were we willing to profit by the lesson. Useful in teaching how fruitless is valor unaided by discipline, how little can be effected by the most exalted patriotism, the firmest union, in a nation, unless the public spirit be sustained, the public exertions systematized, combined, and directed, by a wise and vigorous Government! The catastrophe, sir, is known. Bern fell, and with her fell Switzerland; affording, in their fall, a mournful but impressive example of the mischiefs resulting from weak and versatile counsels, from party jealousy and animosities, from distrust of our own Government, and blind security as to the designs and projects of our neighbors.

This awful example, Mr. Chairman, passed under the eyes of France; and the reflections which this example furnishes, she will, she must apply to us, and to our conduct. In Switzerland she saw her views accomplished by the aid of a party, which did not intend to aid her; by the feebleness, the timidity, the divisions, and the fickleness, which the efforts of that party, guided most probably by upright though mistaken views, were able to introduce into the councils of Bern. That party, sir, was not a French party. It was not a revolutionary party. It was not even a democratic party. It called itself a peace party. It talked of the expense of defensive preparations; of the danger of irritation; of the horrors of war; of the improbability, not to say the impossibility, of an attack by France. When France sees the same measures pursued, finds the same language held, by a party here, and sees the efforts of that party so far successful as to effect a disbandment of the army at a moment like this, may she not, will she not, nay, sir, must she not expect the same final result? must not her conduct in the negotiation be guided by that expectation? She will say, "The conduct of this party, like that of the party in Bern, proceeds, perhaps, not from attachment to me, but from jealousy of their own Executive, from the spirit of opposition, from animosity against their rivals who are in power; but, from whatever cause it proceeds, its effect is to stop the Government of all means of defence, and to lay the country at my mercy." Sir, this must be her reasoning, and by it her conduct must be regulated. Elated by success in one country, she will expect it in another and that expectation will imbolden her to the attempt. Can any party be more honest than the party in Bern? Sir, I believe not. Can any people be more patriotic, more brave, more devoted in their country's cause, than the people of Switzerland? They cannot. Can our hardy mountaineers sacrifice themselves in defence of their mountains, with a courage more truly Spartan, than was displayed by the shepherds of Underwald? Sir they cannot. Can our farmers die with more heroism in defence of their firesides and their families, than died. I will not say the men, but the women, and children of Bern and Solure? No!' no! they cannot. Yet they perished. Their means were abundant, their courage was undismayed, their patriotism was ardent and pure; and yet they perished, because the efforts of a party in their Government prevented them from using those means. France found in that party a most useful ally; and, by its aid, her arts and her arms triumphed over the bravest, the most virtuous, and the truest people that Europe could boast. Sir, let the mournful, the instructive truth, be again repeated, and never forgotten;

it was in the Council of Bern that the conquest of Switzerland was achieved. And it is on this floor, sir, that, from the example of Switzerland, France will expect to achieve the conquest of the United States, should she see measures like that on your table adopted.

The resolution on your table, sir, would manifest, or be considered by France as manifesting, the same weakness, the same division, the same preponderance of a party steadily opposed to every measure for resisting her encroachments and her attacks; and the success of it must give her hopes, and apparently well grounded hopes, of the same success here, which she has seen to result from a similar state of things in Switzerland. These hopes must lead to a resolution, on her part, to bend us to her will, whenever she may find it convenient to make the attempt; and in the meantime, to pass over our demands of justice with contempt, or repel them as formerly, with haughty insult.

Such, Mr. Chairman, in my apprehension, must be the effect of this resolution, if adopted, on the Government of France. What must be its effect on the conduct of our own Government? This is the question next to be considered.

I cannot suppose, sir, that gentlemen wish to place the Government of this country in such a situation, that it must feel itself deprived of the public confidence, deprived of the national support, and compelled, through a sense of weakness, to subscribe to the terms which France may choose to dictate; but such, I conceive, must be the effect of adopting this resolution. The language of this resolution to our Executive is this: "We cannot trust you with the means of defending the country. Even in case of a conflict with France, we will deprive you of those means, lest you should abuse them. Besides, we cannot afford the expense of those means. We cannot pay for an army capable of defending the country, even should it be invaded; and, therefore, you must arrest the danger, as well you can, by submission." Whatever different explanation, sir, gentlemen may give; whatever they may say about the want of motive, or the want of means, to invade us, on the part of France; whatever they may say about the all-sufficiency of a sudden effort of militia, hastily collected together, without officers, without discipline, and without the possibility of acquiring it, to defend their country against the attacks of disciplined and veteran armies; this is the plain language of their resolution; this is the manner in which all men of sense must understand it; thus it must be understood by the Executive of the United States. It must go into the negotiation with a thorough sense of its own weakness, of its abandoned state. It must find itself discouraged from demanding fair and honorable terms, precisely in the same proportion and by the same means that the Government of France is encouraged to refuse them. The tendency and perhaps the effect of this view of things, must be to strip it of all that manly energy, of that lofty magnanimous spirit, of that unshaken firmness, which are essential for the preservation of the national rights and honor, in a negotiation with such a Power as the French Republic.

Such, Mr. Chairman, in my apprehension, is the effect which this resolution, if adopted, must have on the success of our negotiation with France. What must be its effect on our situation should that negotiation fail? This is the question which next demands our consideration.

In discussing this question, gentlemen have affirmed, and made it the groundwork of their reasoning, that there can be no danger of invasion from France, even should the negotiation fail. What object, they ask, could France have for invading this country? What means has she of effecting such an enterprise were it her desire?

As to the objects for invading us, sir, I will answer that question by another. What object had the French Government in sending Bonaparte to Egypt? The object must have been conquest or plunder on the one hand, or, on the other, the desire of getting rid of a general whose talents, ambition, and influence they dreaded, or of employing, rewarding, or banishing an army whose claims they were not in a condition to satisfy, on whose obedience they could not rely, and of whose enterprising valor and attachment to their chief they were justly afraid. Some, perhaps all, of these motives must have induced them to send Bonaparte with an army of forty thousand men to invade Egypt.

Now I shall ask gentlemen whether all these motives do not exist, in a stronger degree, in our case, than in the case of Egypt? Are there, or can there be, no more enterprising armies and powerful generals whom the Government may dread, and wish to get rid of? In case of their making peace with Austria, an event very probable, will there be no more troublesome, discontented armies, whom it may be impossible to pay, and necessary to employ in distant enterprises, in order to prevent them from doing mischief at home?

Would not the plunder of America, be an object as inviting to such an army, as the plunder of Egypt? Would not the rich shores of the Savannah, the Potomac, the Chesapeake, the Delaware, and the Hudson, yield as plentiful a crop of pillage as the barren sands of the Nile? Would not Boston, New York, Philadelphia, Baltimore, Norfolk, Charleston, and Savannah, present as rich a spoil as the miserable remains of Alexandria and Cairo? Would not the conquest of America be as fine a feather in the cap of the old, or some new, Bonaparte, as the conquest of Egypt or Syria? Gentlemen say there is nothing for France to get by invading us. Sir, is the worth of our towns nothing? Would it be nothing to have the disposal of six millions of population; of our revenue; of our banks; of our shipping, amounting to upwards of 800,000 tons, exclusive of ships of war; of our immense funded capital; of fifty thousand sailors; of our ports and harbors; in fine, of the resources of this great people? Would this be nothing to France? Would it be nothing to her to be enabled to employ these resources against the commerce and settlements of the English in the West Indies, where the maritime power of that nation is susceptible of so deep and deadly a wound?

Would it be nothing to her to gain the entire disposal of our means, as she has gained that of the means of Holland, Switzerland, Belgium, and, till very lately, of Italy.

But gentlemen say she cannot gain all this without conquering the country, and that such a conquest she cannot effect. I grant, sir, that she can never effect it; but she may hope to effect it, by the same means which she has found successful elsewhere; and that hope will be sufficient to induce the attempt where the prize is so alluring. The success of this motion would be considered by her, and with great appearance of reason, as a decisive proof of the existence, in this country, of the means which have enabled her to conquer others, and would, therefore, add new confidence to her hopes of success here. In all probability, she would not wish to effect what gentleman would call a conquest, she might not even hope it. But her purpose would be completely accomplished, by placing herself at the head of that party which she considers as favorable to her views, by aiding that party to possess itself of the Government, and then compelling it to rule according to her will. This she has done in other countries, and she will hope to do it here also. Nothing could tend more to strengthen this hope, than the success of a motion like the present. And let it be remembered, sir, that when we speak of the attempt which France may be led to make, we are to consider, not the actual probability of success, but the hope which she may entertain of success; for it is by that hope that her conduct will be regulated. Besides, sir, it is not necessary that she should hope for the conquest of that country, or even to revolutionize it in her usual way, in order to induce her to attempt an invasion. In the case of her wishing to get rid of a troublesome army, or a dangerous chief, or both, a case which probably has once happened and certainly may happen hereafter, the success of the invasion would be a very secondary consideration. The hope of plunder would allure the troops. The hope of glory would allure the leader. If conquest should result, it would be a gain to France. If the troops and the leader should be destroyed, which I have no doubt would happen, still she would gain. In one case she would extend her power; and in the other, she would rid herself of a dangerous and troublesome burden. France, therefore, Mr. Chairman, can never want an inducement to invade us. Can she want the power? I answer that she cannot.

On what do gentlemen rely, when they say that France cannot invade this country? Do they rely on her want of troops? If so, let them remember that she found forty thousand men to send to Egypt. Do they rely on her having full employment for all her troops against the Austrians and Russians? Let them remember she may suddenly make peace with the Austrians and Russians, as she did with the Austrians in 1797; that such an event grows every day more probable; and should it take place, she will have troops very fit for such an enterprise, and very ready to be employed in it. Do they rely on a want of ships? Let them remember that she found ships enough to transport forty thousand men to Egypt, and a fleet of thirteen sail-of-the-line to escort them, and that having gained possession of the Spanish fleet, she has now a much greater naval force at her disposal than heretofore. Do they rely on the superior power of the British at sea, and on the vigilance of their fleets? Let them remember that in 1797 General Hoche got out of Brest with a fleet and a considerable army, eluded two British fleets which were watching him, entered a port in Ireland, remained there several days, and after being prevented from landing by the bad weather, again eluded the British fleets, and got back to France with his fleet and his army. Let them remember that when Bonaparte sailed from the ports of France on his Egyptian expedition, he was watched by a superior British fleet, under the command of one of the ablest, most active and most enterprising naval commanders that ever England could boast; that he eluded this fleet, arrived safe at Malta, and had time to conquer that important place before the British admiral could find out where he was, and come up with him; that he sailed from Malta, and, notwithstanding this fleet was in full pursuit of him, arrived in Egypt and made good his landing, without the least molestation; that his fleet might, after landing him, have returned safe to France, had not some unaccountable fatality induced the Admiral who commanded it to remain for many days in a situation where it was exposed to the attack of the British; and that when Bonaparte had once escaped near the ports of France, from the British fleet which watched him, it was as easy for him to go down the Mediterranean, and through the Straits, to America, as up the Mediterranean to Egypt. Let them remember, in fine, that in the course of the last year, a French fleet escaped from Brest, and having eluded the British fleets that were in that quarter and near the Straits, passed into the Mediterranean; that having drawn after it the British fleets which blockaded Cadiz, and thereby enabled the Spanish fleet to follow it into the Mediterranean, it formed a junction with that fleet, escaped from the British who were in pursuit of them, repassed the Straits into the Atlantic, and returned safe to Brest, and that during the whole of this long and circuitous voyage, the French and Spanish fleets were watched and pursued by superior British fleets. Do they rely, sir, on the distance? Let them remember that when a fleet has once escaped into the open sea, the danger of meeting the enemy is almost past, and that the distance is a matter of small moment; that when the Brest fleet, having got into the Atlantic, turned to the East and went into the Mediterranean, it could as safely and as easily have turned to the West and gone into the Chesapeake; and when the two fleets had formed their junction in the Mediterranean and returned into the Atlantic, the course to New York or Charleston was as plain, and far more free from the danger of an enemy's fleet, as the course to Brest; and, in fine, that during our Revolutionary war, the French did find means, notwithstanding the distance, and the naval superiority of England, to send fleets and armies to this country.

Sir, what has been done, may be done again. It is even more easy, I affirm, and every man of reflection will concur in the opinion, to invade America than to invade Ireland; because Ireland is nearer to the British, and can more easily be watched by their fleets. There was more difficulty in going from Brest into the Mediterranean, than from Brest to America; because the British fleets could watch, and did watch, one route, but could not watch the other. When we wait for a fleet at a port from or to which it is bound, or at a cape, round which it must pass, the chance of finding it is a thousand times greater than when we search for it in the wide ocean, uncertain of its course or its final destination.

And yet gentlemen will tell us, that France has neither the means, nor the inducement to invade us; and that although our quarrel with her should continue, yet we ought to rest secure, and disband our troops. Sir, she has both the means and the inducement; and if we, by measures so weak, give her hopes of success, she will make the attempt. The use of this force is to deter her from the attempt, by showing her that we mean to resist, and to be prepared for doing so with effect. I will admit, sir, that this army might be sufficient to deter her from invading us with a great force, if she were disposed and able to do so. But we must bear in mind that a small force, an army of ten or fifteen thousand men for instance, is much more easily spared, and much more easily transported than a large one. I do believe that she will never find it convenient to send a large force here. Her want of pecuniary means, her want of ships, and the hazards of the enterprise, will very probably prevent her from making again so great an exertion, as that for the invasion of Egypt. But these circumstances would not so certainly prevent her from sending a smaller force against us, either for conquest, or plunder, or to get them out of her way. Here, then, is the first use of this army. Its first use is to prove to France that we cannot be invaded with effect, or with impunity, by a small force; that we mean to resist, and are so prepared for resistance; and by that conviction to deter her from making the attempt with a small force. Her finanical embarrassments, and the state of things in Europe, will probably be sufficient to prevent her from using a great one against us, and we shall be safe. On the contrary, if we disband this army, she will consider the country as an easy, as well as a rich prey. She will suppose that we are too timid in our counsels, too much divided, too jealous of each other, and of our Government, too avaricious to make any exertions for our defence. She will suppose that ten or twelve thousand veterans, under an able leader, and with a few ships-of-the-line, will be able to insult, pillage, and distress the country with impunity; and perhaps with the aid of a party here, of whose existence, force, and views, she will consider the success of this motion as a decisive proof, to overturn the Government, revolutionize the country, and place its affairs under the control of her partisans and creatures. A prospect so alluring will probably induce her to make the attempt, as soon as she can spare a handful of troops and a few ships for the occasion. To deter her from such an attempt under such circumstances, by taking away this alluring prospect, is, let me repeat it, the first use of this army.

To enable us to resist with more promptness and more effect, if she should resolve to invade us, as she did Egypt, with greater means and more direct views, is its second use. Suppose Bonaparte, or some of his brother adventurers, to appear with forty thousand men, and thirteen sail-of-the-line, at the mouth of the Chesapeake, as he did at the mouth of the Nile, and to make good his landing. The case, sir, let it be remembered, has once happened, and may happen again. Suppose it to have happened, would the army which gentlemen propose to disband be of no use? Sir, they would be of the utmost use. Not as superseding a militia of the country, but as aiding them; as being a centre to which they might collect; as furnishing the means of giving them discipline and military knowledge. Gentlemen have chosen to treat this question, as if all who support the necessity of a regular force, or of what they, for purposes best known to themselves, choose to designate by the odious epithet of a "standing army," were desirious of disuniting and discrediting the militia. This is one of the expedients whereby popular odium is perpetually attempted to be excited, but, sir, the reputation is unfounded. We think highly of the militia, we rely much on them; we know that they are the materials out of which any efficient force for the defence of this country, in a great struggle, must be made; we have no doubt of their patriotism and courage; but we know from our own experience and that of other nations, that patriotism and courage are not enough for soldiers; that without discipline, military science, command and subordination, they are unavailing in a contest with troops possessing those advantages. The exploits of militia during the American war are often talked of. I admire them, sir, as much as anybody; but let it be remembered that those exploits were performed near the close of the war, when the militia, by frequent and long service, had acquired much of the character of regular troops; that they were performed by short and sudden efforts, which militia will readily make, and which are infinitely different from those long continued, steady exertions, those painful evolutions, those patient and tedious manœuvres whereon the success of a campaign, and of a war, almost wholly depend, and to which regular troops alone are equal; that, in fine, they were performed by small detachments, for the most part, of two, three, or four hundred men, in a sort of partisan, skirmishing war, where the want of discipline, military subordination and tactical knowledge, is infinitely less felt, and less pernicious than in large armies.

Let a man collect together any army, of even ten thousand men, where officers and privates are destitute of military habits, military knowledge, and regular subordination, and who are bound to service for only a short period of three, four, or five months, for instance; and let him attempt to make a campaign with such an army against a regular

force. He will soon find its utter insufficiency. Let him double or treble the number, as in case of any great exertion, and the confusion will be increased in proportion. His troops would be brave, but they would neither be patient, nor obedient. They would be willing to fight, but unwilling to keep the field. They would not fear the enemy, but they would grow disgusted with the slowness of the operations, the toils and inconveniences of the camp, the hardships of the military life. And their general would be in perpetual danger of their abandoning him, to go home, at the very moment perhaps when the operations of the campaign were most critical and important. Nay, sir, their term of service must always expire before any great scheme of military operations would be completed.

The consequences of all this are easily foreseen, nor can they be prevented without having, at least, a considerable portion of regular troops, to give consistency to the operations, confidence to the militia, discipline to the new levies, and some degree of stability to an army, a great part of which must, from its very nature, be subject to perpetual changes.

An honorable member from Virginia, (Mr. Randolph,) in proof of the efficiency of militia, has adduced the example of the French conscripts or requisition men, and he tells us that in case of a war in this country, we also must have recourse to requisition. If that honorable gentleman, by the term requisition, means no more than a draught of militia for that period, and according to some rule of rotation, I agree with him that we must always have such requisition, when the militia is to be called out. But if he means the French requisition, which I cannot suppose, I then answer, that the example is worthy of execration and abhorrence, not of imitation. Nay more, sir, that it never can be imitated in this country. I say that the American nation can never be forced to submit to so horrible a despotism, as that which exists in France under the name of a Republic, and enforces the requisition of that unhappy and degraded people. No, sir, while the free spirit of this nation and its ardent attachment to liberty still exists, which I hope and believe will always be the case, a French requisition can never be enforced here, even should that revolutionary state of things which some gentlemen seem to desire ever be produced. Does that honorable gentleman, sir, when he talks of a French requisition and French conscripts, and recommends them to future adoption, know what they are? I am inclined to think that he does not. Let me be permitted to inform him.

A French requisition, sir, or conscription, is neither more nor less than a British impressment, about which gentlemen sometimes declaim with such warmth, with this single exception; that, in the conscription, men of a certain age are first taken before those of a more advanced age are touched; those from eighteen to twenty-five for instance, are taken before those from twenty-five, to forty; whereas, in a British impressment, all men of a certain class, that is all seamen, are taken, whatever may be their age. With this difference, which is altogether in favor of the impressment, the two things are precisely alike. The conscript is seized by force, and if he absconds, his father, mother, and family, are answerable for his appearance. He is is carried handcuffed to the army. He is put into a regular regiment, under regular officers, subject to military discipline of the strictest kind, and obliged to serve till the Government have no farther need of him. When the conscript, or the impressed seamen, once gets into the regiment, or on board of the man of war, discipline, habit, association, and the difficulty of escape, all combine with the sentiments naturally inspired by action and the sight of the enemy, to make a soldier of one, and a gallant tar of the other. This is more especially the case with the Frenchman, whose characteristic valor and military spirit are so universally known, and who is always taken at the age most susceptible of all the sentiments which ought to fire a soldier's breast.

That new levies thus selected, thus raised, and disposed of, should soon become excellent troops, is certainly nothing very wonderful. The wonder is that gentlemen should compare such troops as these to militia draughted in the mode which we practice—to a body of men called by rotation from their farms into the field, to serve for a limited and short period, and under officers chosen by themselves, as unacquainted with military matters as they are unaccustomed to service, and as impatient to return home. Sir, the conscripts of France are, to all intents and purposes, regular troops, or a standing army, if the gentlemen like the phrase better; for I contend not about names. They have all the qualities and distinguishing characteristics of regular troops. They are dispersed into old regiments, among old soldiers, under regular officers, subject to every part of military discipline, and forced to serve an unlimited time. The only difference between them and every other regular army is, that, instead of being raised by voluntary enlistment, they are raised by arbitrary impressment. Yet this is the mode of raising troops which it is said that we must imitate, and because such troops fight and conquer, we are told that we need no regular troops, even in case of war!

I must here, sir, advert to an argument advanced by my honorable friend from Delaware, (Mr. Bayard,) which an honorable member from Virginia (Mr. Randolph) seems to have misunderstood. He has represented my honorable friend as having contended, that the force in question ought to be kept up for the purpose of overawing and curbing the discontents of the people. He is not capable of misrepresentation, but certainly he has wholly mistaken my honorable friend's meaning. Let me be permitted, sir, to state the argument as it was stated and argued by the member from Delaware. We are perpetually told that there is no need of regular forces, even in case our quarrel with France should continue, because the militia is the natural defence of the country, and a sufficient defence, on which we ought confidently to rely; and when we answer, what every man of understanding and reflection knows to be the truth, that militia, unless aided and supported by regular troops, are not to

be depended on for long continued and systematic operations, we are charged, most untruly no doubt, with wanting confidence in the militia, and wishing to depreciate their merits and their services. In reply to these charges my honorable friend from Delaware adverted to the unceasing and systematic efforts which are made to inspire the people of the United States with distrust and hatred of the Administration, to imprint on their minds a belief, that the system of measures pursued by it is calculated and intended to convert the Government into a monarchy—that such is the wish, and the constant aim, of the Executive, and of all those individuals who approve and support its measures, including a majority of both Houses of Congress; finally, that the principles of the Administration, as well as its measures, are hostile to republicanism. He asked whether those efforts, being constantly repeated, and aided, as we know them to be, by every species and degree of calumny, misrepresentation, and falsehood, might not, in certain parts of the country at least, be at length successful? He asked whether the people, some portions of them at least, might not at length be induced to believe that those who administer the Government, and those who support its measures, are not engaged in a scheme for the subversion of republicanism, and the introduction of monarchy? He asked where, in such a case, would be the reliance of the Government on the efforts of the militia? Sir, the question is serious and important; and I will repeat it. Where will be the reliance of this Government on the militia for the defence of the country, if the militia, or considerable portions of them, should at length be induced, by the unceasing efforts which are employed, to regard the Government itself as their greatest enemy? Is there no danger that their efforts may be successful? Sir, I trust there is not. I have always relied on the good sense and prudence of the American people, and I have never yet been disappointed. But when we consider the greatness of the efforts, the increasing zeal with which they are renewed, the systematic form which they have assumed, and the hand whereby they are guided, can we say there is no danger of their success? Sir, I speak not of the army of libellers, pamphleteers, newswriters, and profligate scribblers, of every name and description, that is cantoned regularly through the United States, openly supported by a political party, and employed most assiduously in carrying on an attack upon the character, public and private, of all those concerned in the administration of the Government, or known to favor its principles. But shall I not speak of a letter written by a person of great name in this country, in which the people of America are informed that an "aristocratico-anglico-monarchico" faction has arisen amongst us, that this faction includes the Executive and all persons employed by it, the judges, all persons in office, of every description; in fine, that whole description of men, in Congress and out, who are known to be friendly to the administration of the Federal Government; and that the object of this party is to impose on this country the substance of the British Government? Shall I not speak of a most virulent manifesto lately issued by a Legislature of this country against the Government of the United States, under the name of instructions, where the highest sanction is given to the vilest calumny, and the Administration is plainly charged with laboring for the introduction of monarchy? Shall I not speak of answers to addresses, in which the most scurrilous abuse and foulest slanders are poured out upon that whole class of citizens who think that the Government of the United States has been well administered; in which they are stigmatized as old Tories, apostate Whigs, British agents, speculators, and sycophants of power? Shall we say that these attempts, thus made, are always to be without success? I believe, sir, for myself, that they will. I have a strong reliance on the good sense of the nation. I believe that these attempts will share the fate of that most malignant but contemptible effort which was made some time ago, from the same quarter, to fix the odious appellation of *Tory*—that is, in the common acceptation, a friend to monarchy and an adherent to Britain—on the supporters and approvers of Administration, including Washington; to call Washington a Tory!—an attempt which the nation laughed to scorn, and of which its very authors at last grew ashamed. These attempts, I believe, will share a similar fate in the end. They will finally, I have little doubt, draw on their authors the contempt of the nation. But this is not certain, and if they should succeed, sir, what will be the result? Yes, sir, if these persons should at length succeed by dint of repeated calumnies in persuading the people of America, or even certain portions of them, that the Executive of the United States, the whole Administration, and a majority of both Houses of Congress, are embarked in a scheme for the gradual introduction of monarchy, and are pushing it with might and main, at every favorable opportunity, and under every plausible pretext; I ask what reliance could be had on the aid of the people, in resisting invaders who should declare, as the French never fail to do, that they come to rescue the people from oppression, to subvert aristocracy, and establish true liberty? I say, sir, and I found the opinion on the experience of every country, that such people as should be impressed with this persuasion, must join the invaders instead of opposing them. For what, sir, did the people of America formerly take up arms, and call in the French aid? It was to subvert monarchy and resist the dominion of England. Once persuade them that their own Government is a British faction and aims to introduce monarchy, and the same principle will induce them again to take up arms, and hail the approach of foreign aid. Is there no danger of their being misled? Experience, sir, answers, and says that there is danger. What produced the Western insurrection? The calumnies, misrepresentations, and inflammatory resolutions industriously circulated on the subject of the still tax. What raised the insurrection in Northampton? The falsehoods propagated, for electioneering purposes, on the subject of the house tax. The people were told that the Government of the United States wished to trample on their rights and liberties, and to establish monarchy; that a standing army had been raised for that purpose, and that the house tax was laid to support this army. This they were made to believe, and they resolved to resist the tax by force. And, sir, if one portion of the people can be brought by artifices of this kind to take up arms against the Government, might not other portions be induced, by the same artifices, to aid, instead of resisting, an invading French army? When we see these artifices practised, with increasing industry, and more extensive combination, ought we not to retain, in case our quarrel with France should continue, some force that may be more perfectly relied on?

Such, sir, was the argument of my honorable friend from Delaware; which I have been thus particular in stating, not only because it was misunderstood by the honorable member from Virginia, but because I think it worthy of most serious consideration. I do indeed trust, and believe, that these contemptible and malignant acts will, in the end, recoil on the heads of their authors; and I am firmly persuaded that in the mean time they will produce, at most, but some partial disturbances, which the patriotism and good sense of the neighboring districts will, as heretofore, put down without bloodshed or painful exertion. But, while I entertain this persuasion, still it must be admitted that there is some danger of a contrary result. Should that danger be realized, should any considerable portion of the people at length be made to regard their Government as the greatest enemy of republicanism and the public good, and of course to look with favor on an invading French army, where would be the reliance on the militia, about which we hear so much? Sir, let me repeat it, this is a most serious question.

An honorable gentleman from Virginia (Mr. Randolph) has advanced one reason for disbanding the army, on which I must be allowed to make a remark. He has told us that in his part of the country, the very appearance of these troops excited the gall of the people. Sir, I trust that he is under a mistake. We have seen that the honorable gentleman himself has no gall. The sense of decorum and respect for himself, which we have seen him so strongly display, has indeed permitted him to bestow the harsh and unmerited epithet of ragamuffins on the army; but I am persuaded he did not mean to apply it to the whole army. Some handful of recruits, perhaps, whom the honorable gentleman has seen lately picked up in a town, and not yet clothed or drilled, may have suggested the term to his mind, and in the warmth of debate he has applied it in a manner more extensive than he intended. But even admitting that the army were ragamuffins, how could they excite the gall of the honorable gentleman's neighbors, or of himself? They ought to excite compassion, and not gall. Congress that voted them, or the Administration that had raised them, might excite gall, but as for them they did only their duty, and no part of the gall could fall on them. Instead of finding abuse and exciting gall, they would, I am persuaded, receive hospitality and kindness in the house of that honorable gentleman and his neighbors. If really in the situation of ragamuffins, they would most probably be clothed, as well as fed, should they fall in the way of the honorable gentleman and his friends. He is therefore mistaken in the fact from which he adduces a reason for the disbandment of the army. His friends from Pennsylvania and Virginia (Mr. Gallatin and Mr. Nicholas) have assigned a much better reason for making the attempt at this time. They have told us that they are anxious to get the army disbanded during the pendency of the negotiation, lest, after its failure, the public spirit should be so roused and the sense of danger become so general and strong, as to render the disbandment impossible. Sir, they are in the right. If the negotiation should succeed, the army will be disbanded of course. If it should fail, I do believe that the public mind would not bear such a motion as this unnoticed. The sense of this country never would tolerate an attempt to disarm the Government in the midst of a war against France. The gentlemen therefore act wisely to make the attempt now, when there is some chance of lulling the Legislature and the country into a false security. And this, and not the gall of the honorable gentleman and his neighbors, is the true reason why the measure is pressed at this moment. The honorable mover himself, (Mr. Nicholas,) with a candor which I always admire in his character, has avowed the motive; and, in this instance, his prudence is equal to his candor.

Give me leave now, Mr. Chairman, to make some few concluding remarks on the financial part of this question, which has been so much dwelt on by the supporters of the motion. Much, sir, has been said of the deficit in our revenue. Much has been said of the alarming state of our finances, which, according to some gentlemen, present an appearance more alarming than has ever been exhibited by the fiscal affairs of any other nation. Last year, having occasion to prepare for war, we were forced to expend five millions more than the product of our taxes, and this sum we borrowed. Being compelled to continue those preparations till we know the success of the negotiation with France, we shall have occasion for another loan this year, because our expenses will still exceed our revenue, while we remain in a warlike attitude. This excess gentlemen calculate very erroneously indeed, as will soon appear, at five millions for the present year; and they call it a deficit. What, they exclaim, a deficit of five millions, upon a revenue of nine! Was such a thing ever heard of before!

Sir, when gentlemen alarm themselves thus, they mistake the meaning of the word "deficit." If they will permit me, I will give them an explanation of it. The word "deficit," sir, does not mean the extraordinary expenses which a nation is forced to incur by a state of war or of preparation. These extraordinary expenses always are, and must be, far beyond the revenue of every nation. The war expenses of England, for instance, have sometimes amounted to thirty millions, when her revenue was only sixteen. The same thing, and in a much

greater degree, may be said of the war expenses of France. But the word *deficit*, which was invented or brought into use by Mr. Neckar, applies, exclusively, to times of peace, and signifies a deficiency in the revenue from taxes, to meet the ordinary and permanent expenses of the Government. This was the deficit in the French finances, which brought on the French Revolution; and such a deficit must destroy every Government where it exists, unless it be cured by new taxes. But we, sir, have no deficit. When we were forced by the injustice of France into war preparations, we were so far from a deficit, that we had a clear surplus of a million. The moment peace is made, and we can lay down our war preparations, we shall again have a surplus, to be applied to the extinguishment of the debt which those preparations may oblige us to contract. While those preparations continue, our present taxes, with perhaps some small additions, will defray our ordinary expenses, and supply a fund for the interest of the loans which we may be compelled to make. To talk of a deficit, sir, in such a state of things, is to be guilty of an abuse of words.

Having corrected this mistake, I will now present the Committee, sir, with a short view of our expenditure and revenue for the present year, and of the amount which our war calculations compel us to provide for by a loan. As the returns are not yet complete, this statement will not be perfect. Some items will be omitted on both sides of the account, but, in the main, it may be relied on for a general result.

The interest of the old debt of every description, with the sums annually applied for its extinguishment, amounts for this year to - - -	$4,215,981
The interest on the 8 per cent. new debt, is	400,000
The expenses of the Army, Navy, and Civil List, as estimated in the late report from the Secretary of the Treasury, amount for this year, to - - - - - -	8,162,923
The extraordinary expenses of foreign intercourse, Indians, and Algerines - -	80,000
An instalment due to the bank this year -	200,000
Total amount - - -	$13,078,904

To meet which we have the following revenue:

The import and tonnage duties, taken at the actual product of the last year, which was - - - - - - -	$6,400,000
The internal revenue, including the stamp duties - - - - - - - -	800,000
Certain small revenues, arising from postage, dividend of bank stock, coinage, &c.	100,000
The direct tax of two millions, the whole of which will not be collected in the course of this year, but may be brought into the Treasury by a temporary loan in anticipation, which the President is authorized to make by former laws, and which will be repaid out of the tax when collected. The whole tax may therefore be placed to the credit of this year's revenue -	2,000,000
Giving a total of - - -	$9,300,000

which, being deducted from the total amount of expense, ordinary and extraordinary, leaves a balance of $3.778,904, to be provided for by a loan.

Suppose we say four millions, sir; how inconsiderable is the expense compared with the object, and with the resources of this country? The object is to defend our rights, and our national honor, which is above price; to protect our flag, and secure the fruits of their industry and enterprise to our citizens, of all classes and descriptions. What, sir, are our resources? Let us look upon our revenue from imports and tonnage, which are bottomed on the consumption of the country, and must increase progressively with that consumption. The consumption of the country in its turn must increase with the increasing population and wealth of the country. The import and tonnage duties, therefore, may be taken as a just criterion of the augmentation of our resources. In the year 1795, those duties produced $5,500.000. In 1799, notwithstanding the immense losses which our commerce sustained from events growing out of the war, the same duties, with some small additions, by no means commensurate with the losses alluded to, produced $6.400,000. In some of the intermediate years, the product was much higher. In 1797, it rose to $7,500.000; and, as the causes which have produced a diminution since that year are of a temporary nature, it may be expected very soon to regain that height. But take the two extreme points of 1795 and 1799, and we find that in this short space, only five years inclusive, and five years of war, those duties have increased from $5.500,000, to $6.400,000, which is one fifth, or twenty per cent. on the whole amount. With a revenue increasing in this manner, and a population which, according to the best calculations, doubles itself in twenty-five years, are we, sir, to fear the incurring of a debt of a few millions for the defence of the country? When this increasing revenue, too, arises from taxes the lightest that are paid by any people on earth? Our revenue, including the direct tax, amounts to about nine and a half millions of dollars. Our population, most probably, amounts to six millions of souls, which is less than one dollar and two-thirds for each soul. The population of Great Britain may be about twelve millions of souls. Her permanent taxes, before the present tax of ten millions on income, amounted, as nearly as I can now recollect, to upwards of sixteen millions sterling; which is nearly, or quite six dollars for every soul. And yet these taxes England pays with ease, and her people are prosperous and happy. Their very ability to pay such immense taxes, with a late addition of ten millions sterling on income, and a permanent addition of two millions sterling in parish rates for the support of the poor, is an ample undeniable proof of their flourishing and happy condition. Such sums cannot be paid in a country where the people are miserable and oppressed. Despotism could not extort them, even if armed with all the apparatus of a French Revolutionary Government; for they can only be produced by a protected and prosperous industry. There are other proofs in abundance. They are to be found in the vast extent of agricultural improvement, in the increase of product from every great branch of national industry; in the immense sums expended annually on canals, and other public works of a beneficial nature.

And, with this example before us, sir, shall we say that we cannot afford money for our own defence? Sir, we never need be, and I am persuaded never shall be, taxed as the English are. A very great portion of their permanent burdens arises from the interest of a debt which the Government most unwisely suffered to accumulate almost a century, without one serious effort, or systematic plan, for its reduction. Her present Minister, at the commencement of his administration in 1783, established a permanent sinking fund, which now produces very great effects; he also introduced a maxim of infinite importance in finance, which he has steadily adhered to, that whenever a new loan is made, the means shall be provided, not only of paying the interest but of effecting a gradual extinguishment of the principal. Had these two ideas been adopted, and practised upon, at the beginning of the century which we have just seen close, England might have expended as much money as she has expended, and not owed, at this moment, a shilling of debt, except that contracted in the present war. These ideas, profiting by the example of England, we have adopted, and are now practising on. We have provided a fund, which is now in constant operation, for the extinguishment of our debt. This fund will extinguish the foreign debt in nine years from now, and the six per cent., a large part of our domestic debt, in eighteen years. I trust we shall adhere to this plan, and whenever we are compelled, by the exigency of our affairs, to make a loan, by providing also for its timely extinguishment, we may always avoid an inconvenient or burdensome accumulation of debt. We may gather all the roses of the funding system, without its thorns.

Let us suppose, sir, the worst that can happen. Let us suppose that we shall be compelled to continue our defensive preparations, and present warlike attitude, for four years longer, and to borrow in each of these years as much as we want for the present, that is four millions of dollars. This will be sixteen millions, and, added to the last year's loan, would produce a debt of twenty-one millions. Suppose, what I think hardly probable, that we should be forced to make all these loans at eight per cent. The whole amount of interest would be something less than seventeen hundred thousand dollars, and five hundred thousand dollars, as a sinking fund for the extinguishment of the debt, which that sum would effect in the course of sixteen or seventeen years; and it would produce an annual charge on the people of the United States, then increasing in population, wealth, and revenue, of two millions two hundred thousand dollars, for about sixteen years. And this would be the price at which they would buy the honor and safety of their country, the protection of their flag, and the security of their national rights! Would they grudge the price for such a purchase? Sir, I will not dishonor them by admitting the supposition.

I have gone thus far, Mr. Chairman, into the consideration of the subject in a financial view, in order to take off the false and dangerous alarm, which general declamations about the augmentation of public debt, the increase and weight of taxes, and the expense of defensive establishments, are calculated to produce. I will now close this long and I fear tedious discussion, by repeating a maxim advanced under circumstances nearly similar, in another country, by one of the greatest statesmen that has ever adorned the world—a maxim which can never be too often repeated, or too deeply impressed on the minds of those who are called to the direction of public affairs: "A nation 'which forbears to defend itself through fear of ex-'pense, bribes its neighbors, with its own money, 'to attack and destroy it." Under the impression of this wise maxim, I cannot but flatter myself that the Committee will vote on the resolution now on your table.

When Mr. Harper had taken his seat,

Mr. Gallatin rose.—He said that the gentleman from South Carolina had mistaken the opinion expressed by Mr. Nicholas and himself. It was not that the reduction of the army would be most desirable in a state of war, but only that, as it was already provided by law that the troops should be disbanded in case the negotiation with France should succeed, the resolution on the table was peculiarly applicable to the case of a failure of negotiation. And, therefore was it, that he had given his reasons at large why those troops would be useless even in that case. The principal of those reasons was that there was no rational apprehension of an invasion. Yet the gentleman from South Carolina, drawing his own deductions from a supposed opinion of his own creation, had gone so far as to suppose that we would also avow similar sentiments even in case of an actual invasion. The whole of the superstructure which he has erected on that false foundation must fall with the foundation itself.

The gentleman from South Carolina supposes that this motion will encourage the French to attempt an invasion; and, in order to support that opinion, he insisted much on the knowledge which France had acquired of our means and resources. She is said to have derived that knowledge from her experience during the last war, from the publicity of our financial and other statements, and from the correct observations made by her agents in this country, particularly by that one who till very lately was an influential member of her own Government, (Mr. Talleyrand.) Yet all the arguments and positions of the gentleman tend to show the extent of our resources. If those positions are true, and the information of France as correct as he supposes it to be, it is impossible to believe that that nation should draw an inference from the disbanding of this army, that we are unable to support it. They will, if, as the gentleman supposes, their information is perfectly correct, view this measure, as we consider it ourselves, as a question of internal policy and economy. They will conclude that we reduce the establishment because we do not fear an invasion, and wish not to be at an useless expense.

But it is said that France will ascribe the motion to motives different from those we avow, different from those which actuate us; that it will evince the existence of a party that wishes to trammel and debilitate our own Government; that it will actually weaken the means of our Government to obtain honorable terms of accommodation, and compel the Administration to submit to any conditions France may please to impose.

Are we then to take for our guide, on subjects of legislation, the opinion which foreign nations may form of our motives, instead of being governed by the intrinsic merits of the question itself on which we are called to decide? But this motion is calculated neither to debilitate our own Government, nor to impress on France an opinion of imbecility in our councils or of internal weakness.

Different opinions are entertained as to the motives which have induced France to show a disposition to treat with us on equal terms. That disposition has by some gentlemen been ascribed solely to the spirit of resistance evinced by America, and to the state of hostility adopted by the last Congress. Was I to hazard an opinion on that subject, I would say, that the refusal of our Envoys to accede to the terms first proposed by France, a public loan and a private bribe, and the subsequent determination not to treat through the medium of a Minister selected out of the three by the Government of that country, a determination adopted by that Minister himself, contributed to produce a change on their part. I would even add, that, from Mr. Gerry's correspondence, it appears probable to me that that refusal and that determination alone would have been sufficient to produce the present negotiation. But I consider that discussion as unconnected with the motion now under consideration; and I am willing to grant at present, for the sake of argument, that the present state of things has been solely produced by the system of resistance and hostility adopted by America. And on that ground I say that the reduction of the Military Establishment can neither change the amicable disposition of France, nor deprive our Government of the means of obtaining equally advantageous and honorable terms.

The present negotiation originated in the indirect communications that took place in August, 1798, between the French Government and our Minister in Holland, and in the consequent nomination of that gentleman in February last, to treat with that Government. This additional army was voted in July, 1798. That vote could not be known in France in August, when the communications of that country, which are the acknowledged basis of the negotiation, were made. That vote, therefore, did not influence the change of disposition in France, whatever effect might have been produced by our other acts; and the repeal of that law cannot alter that disposition to treat which was not produced by the law.

As it regards our own Government, when they agreed to open a negotiation by the nomination of a Minister in February last, the army, voted six months before, existed that moment only on paper: it had, in fact, no existence. The disbanding of that army tends not, therefore, to debilitate our Government, by depriving them of any means to render a negotiation successful, which they did actually possess when they consented to open that negotiation.

There is, on the contrary, but one circumstance that can produce abroad an unfavorable impression of our situation; it is the state of our finances; it is the knowledge that our revenue does not exceed nine millions of dollars, and our expenditure amounts to fourteen. Men and free men we have, and we never, therefore, can want soldiers to repel an invading foe. But our moneyed resources are limited, and the only source of danger to us is our consuming those resources for useless objects and exhausting ourselves for the fear of imaginary dangers. And I would ask, added Mr. G., which situation is best calculated to impress foreign nations with an idea of our strength and wisdom—an annual expenditure reduced to the level of our revenue, without this army, or a deficiency of five millions, and this army, without any means of paying it but ruinous loans?

That trite topic of the necessity of certain measures, because they are called measures of defence; that cry of alarm that we are, or will be considered as a divided people; these charges of party spirit, disorganization, and jacobinism, have, for a long time, been uniformly repeated on this floor upon almost every subject of any importance. They have not not been confined to debates upon taxes, navies, or armies. The sedition and alien laws were also proposed and have since been supported as an indispensable measure of defence; those who opposed them were branded with the appellation of enemies of their Government, and the fate of the conquered countries in Europe held up to our view as a warning of the approaching danger. It is true that the burden of the song is now somewhat altered. Formerly it was Venice that was the constant subject of the lamentations of some gentlemen. With the fate of Venice we were perpetually threatened. At present Venice seems to have altogether escaped the recollection of those gentlemen. We hear not a single voice raised to remind us of the fate of Venice. Indeed, sir, I hear no more of Venice in Europe than on this floor. We are yet to learn, that since the whole of the possessions of that Republic have been wrested from the rapacious hands of the Emperor of Germany, he has restored to her her ancient independence. Is it then because the conqueror is not the same, and because the charge of ambition and rapacity is transferred from one Power to another, that gentlemen have become silent on that subject? For myself, I sincerely believe that all the great Powers of Europe, France as well as Austria, Prussia, England, or Russia, and these as well as France, are actuated by similar motives, and have similar objects in view. I can see no sensible difference between the overthrow of Tippoo Saib, the division of Poland, or the annexation of Venice, and the conquest of Holland, Egypt, or Switzerland. Inordinate ambition and insatiable avarice equally govern them all, and they seem equally to disregard the dictates of justice and integrity. These are the exclusive attributes of the weaker European nations, and seem to have no better foundation than their weakness.

We were, however, very seriously admonished, on this occasion, with the destiny of Holland. As the opposition to the motion is, in a great degree, grounded on the supposed inefficacy of a militia and the necessity of a standing army in case of invasion, the instance of Holland, who had no militia, and who was conquered notwithstanding her standing army, is not certainly very judiciously selected by the opponents of the motion. Their object, however, is to insinuate that our political divisions may prove as fatal as those of Holland. Yet no evidence has ever been adduced to convince us that the patriots of that country assisted the French in their invasion. It appears that the mass of the people there, whatever might have been their former sentiments, have, during this war, been the passive prey of their successive defenders or conquerors. But there does not exist the least similarity between the parties of this country and those of Holland. Here men, perfectly equal in their rights and expectations, differ about the propriety of measures adopted or rejected by a majority, and that majority fluctuates with the opinions of the people expressed in their elections. Here men differ on the measures and not on the form of the Government. Here we have no influential family, possessed of an immense hereditary power, supported by one half and detested by the other half of the nation. In Holland, civil dissensions and wars on the subject of the Orange family, have been almost coeval with the existence of the Republic. The Stadtholdership has been abolished and reinstated six times before the present war. The present Prince of Orange was, some time before the French Revolution, expelled by a majority of the people of Holland, unaided by foreign aid; and he was within a short time reinstated, against their will, by the armies of the King of Prussia. Doubtless a people governed by a sovereign who had, but a few years before, been imposed upon them by a foreign Power, could not be supposed to exert much energy in his defence. But, if for that reason they afford inducements of invasion to France, can any inference be drawn applicable to America? Unless the gentlemen suppose that our Government was imposed on the people of America, against the will of a majority and by force, or unless they suppose the existence in this country of a party who wish to subvert our Government and to establish here an hereditary Stadtholder, they must acknowledge the fallacy of these inferences.

Any comparison between Egypt and the United States would be so evidently absurd that it would be wasting the time of the Committee to dwell on the subject. But Switzerland has been mentioned. An appeal to the opinion of a member of this House, personally acquainted with that country, has been made by the gentleman from South Carolina. I believe, said Mr. G., that I am the only member who may be supposed to possess some personal knowledge of Switzerland; I have indeed, principally on account of that appeal, been induced to reply to the gentleman; and although I do believe that it is not altogether fair to draw any arguments from opinions of a member of this body, which have never certainly been declared on this floor, and which must therefore have been expressed in a loose manner and in private conversation, I will beg the indulgence of the Committee whilst I state the facts alluded to, so far as I am acquainted with them.

The population of Switzerland is estimated at less than two millions of souls, and the Canton of Bern includes about one third of the whole. Less than 400,000 souls form the population of that part of the Canton called the "German country." Between two and three hundred thousand inhabit that part called "Pays de Vaud," which was conquered by Bern from the house of Savoy. The Government of that Canton was monstrous in theory, but gentle and it may be good in its administration. Out of two hundred families, and to the exclusion of all the other citizens, a council of two hundred and fifty was selected for life, filling their own vacancies out of those families only, and uniting the supreme legislative, executive, and even judiciary powers. It was a complete hereditary aristocracy. Yet the people were protected in their property, justice was administered with tolerable impartiality, individual acts of oppression were rare, taxes were light; the administration on the whole might perhaps deserve the appellation of paternal: even the conquered inhabitants of Pays de Vaud, although subjects in the true meaning of the word, could boast that they lived under the most gentle servitude. The people of the whole canton enjoyed a greater share of physical happiness than those of any other European nation; and the only rational cause of discontent was the hereditary, insuperable exclusion from any share in the government of that nominal republic of which they were nominal citizens. The causes of so much real happiness, under a form of government so little calculated to bestow it, are worthy of attention, and not altogether inapplicable to the present question.

In the first place, that canton, together with the other parts of Switzerland, had enjoyed two centuries of peace. Firmly attached to a system of neutrality, and having neither armies nor other expensive establishments, light taxes and a frugal economy enabled them to support the necessary expenses of Government, and even to enrich the individual members of that Government, and to accumulate a public treasure, without having recourse to any extended system of taxation, much less to a system of accumulating funded debt. This was the first cause of the happiness of the body of the people. Their Government kept clear of foreign wars, supported no army, and was not under the necessity of wresting the fruits of the labor of the governed, in order to support the expense and parade of a military, unproductive establishment. But, as they had no military standing force, the defence of the country rested with the people themselves. Hence, every man was armed and trained to arms. The people were the best, indeed the only militia of Europe. And this

was their best security against oppression. The existence of an arbitary Government, destitute of military standing force, depended on the will of its armed subjects; and this accounts for the great moderation and gentle administration of that Government.

Of the other parts of Switzerland, it will be sufficient to say that they consisted of a number of small independent republics, feebly united by any general government, some of them governed by aristocracies as vicious in practice as in theory, and others enjoying perfectly free governments.

I would not have presumed, said Mr. G., to state so much at large mere historical facts, as well known to almost every member of this Committee as to myself, had I not been drawn into that digression by the historical details given to us by the gentleman from South Carolina, and I must once more apologise for having consumed in that manner so much of their time. But what deductions can be drawn from those facts connected with the event of the invasion and conquest of that country? When that invasion took place, the subjects of most of those aristocracies, except that of Bern and a considerable part of the inhabitants of the Pays de Vaud, either joined or did not resist the French. The citizens of the free cantons, and even those of the Canton of Bern, made every resistance in their power, and were subdued merely by a superior force. No inference can thence be drawn except that the subjects of a Government, bad in practice and theory, may wish for a revolution or for a change of masters; and that the citizens of a free country, and even the subjects of a Government bad in theory, but gentle in its administration, may safely be trusted with the defence of their country against an invading foe. Want of success was not owing to the want of exertions, but to immense inferiority of power. As to the divisions of the councils of Bern so much insisted on by the gentleman from South Carolina, they had not the least effect on the event. When those divisions he alluded to took place, the event was decided; the enemy was at the gates. The smallness of the population has been mentioned. No hope of success remained, and the only division at that time was on the question whether it was proper to sacrifice or preserve the lives of a handful of enthusiastic and devoted people. Unfortunately, indeed, divisions had previously existed in those councils. In 1792, when the Duke of Brunswick invaded France, and perhaps at other subsequent times, when the alarm was proclaimed that the French Revolution endangered every Government, a party in the Council of Bern favored the views of the coalition, and although they could not obtain a majority in favor of war, a departure from the ancient strict rules of neutrality occasionally took place, which afforded afterwards, when the favorable moment of a suspension of war with Germany took place, a pretence to the unjustifiable invasion of France.

France, it is true, has been enabled to conquer, by superior numbers, a small country lying at her doors, and whose immense importance to her as a military position, in her approaching contest with the Continental Powers, has been evinced by the state of this campaign. It would be ridiculous to dwell on the immense difference resulting in favor of America, from her distance, extent of territory, population, union, and Government.

Before he would take leave of these extraneous historical digressions, Mr. G. said, that he could not help noticing one of the observations of the gentleman from South Carolina. That gentleman had remarked, that the French conscripts, carried as he said by force and chained to the army, fought with uncommon bravery against a foreign enemy. Thus it appeared that Frenchmen living under the worst tyranny, even that of Robespierre, and at a time when their country was torn by the most inveterate and bloody internal factions, did not hesitate, although dragged in chains to a camp, to fight, and had succeeded in repelling an invading foe and even in prosecuting war in foreign countries. Why did not the gentleman apply that instance also, and draw its proper deduction as applied to America? If the French people in that situation, and amidst those divisions, had been found equal to the task of combatting foreign nations, could it be supposed that the free citizens of America would, on account of some divisions merely of opinion, be less willing and less capable to defend themselves and their independence at the time of real danger against a foreign invader?

The arguments given in support of the possibility of an invasion were not certainly susceptible of being absolutely disproved by reasoning. They were grounded not on probabilities, but on possible events. And there was perhaps nothing which could be proved to be altogether impossible. But that kind of argument did not apply, particularly to the present motion or to the present time. For there could be no possible time, nor any possible situation of Europe, which would not justify some hypothetic statement as plausible as that given by the gentleman from South Carolina. At any time, and under any circumstances whatever, that gentleman, or any other, might assert that it was not altogether impossible for some European nation to attempt an invasion of this country, and, on as solid ground, justify a permanent military establishment of considerable magnitude. The suppositions of that gentleman, if they would prove anything, would only prove that it was necessary for America, at all times, and as a measure of caution, to keep on foot a large standing army. They only would prove that this army ought not to be disbanded even if the negotiation with France should succeed.

Amongst other inducements which we offered to invasion, that gentleman had, however, mentioned one of an extraordinary nature. In his enumeration of the objects of plunder, which might attract French rapacity, he counted our funded capital. As our funded capital is the same thing with our funded debt, I must confess for my share, said Mr. G., that I have no objection to give it to the French or to any other nation that will take it. It would be the most negative gift ever bestowed by one Government on another.

The gentleman from South Carolina had indulged himself in a number of observations on a supposed party, whose views he had represented at one time to be to carry elections by means of insurrections, at another to estrange the people from their Government. He seemed indeed to have altogether confounded evidences of dissatisfaction at certain measures of Administration with a decided hatred against a Government of their own choice. But he had concluded his observation by an unexpected conclusion. For, after having stated the strength of that party as extremely formidable—since he had drawn proof of its existence from the legislative proceedings of some large and respectable State, from the declarations of the Governor of another powerful State, and even from the supposed opinions of the second official character of the Union—after having represented their views as extremely dangerous, not less indeed than to persuade the militia, the people of this country, that they should consider French invaders as their deliverers—he told us that they were too weak in numbers, and too contemptible to be considered as in any degree dangerous. Did I believe the reality of all the positions of that gentleman, relative to party, I must confess that I would not consider that party as too contemptible to create any danger. And if he did believe they were so harmless, to what purpose did he expatiate so much at large on their existence and designs? But the gentleman from Delaware views this subject in a different light. His conclusion was, that, knowing the existence of such a party, it was necessary to have an army, in order to defend this country against an invasion, inasmuch as a considerable part of the militia could not be trusted with its defence.

If a party does exist so inimical to our Government as to join an invading enemy, in order to subvert it, they must be supposed to subvert it without an invasion. It is impossible to mistake the meaning of the gentlemen. When they ground the necessity of an army on the supposed existence of a party, let them express themselves as they please, either they mean nothing, or they mean that an army is necessary not only against an enemy, but against a party of the people. Let the gentlemen be silent about party, or let them candidly acknowledge that this army is intended to suppress party.

Mr. G. then proceeded to make some observations on the financial statements of the gentleman from South Carolina. He said he had avoided making any detailed statement of that kind, because he knew that the official documents, necessary to form a correct estimate, were not yet before the House. And he had stated, in the gross, that our revenue was about nine millions, our expenditure about fourteen, and the deficiency therefore about five. The result of the gentleman from South Carolina was to show a deficiency of only four millions. It was immaterial to the present question whether that deficiency was four or five millions. But the details on which the gentleman from South Carolina had grounded his result were in some degree incorrect. He had estimated the nett proceeds of the land tax at two millions of dollars. But he had forgotten to deduct from that sum the expenses of collection, which, being 5¾ per cent., would amount to $115,000. He had stated, what was true, that the whole of the nett proceeds of that tax could not be received in the Treasury during the present year. Yet he insisted that the whole amount should be considered as part of those receipts, because an anticipation for the deficiency might be obtained by way of loan, from the Bank. That anticipation certainly could not be considered as part of the receipts arising from revenue. Instead of being credited to the account of revenue, it ought to be charged as part of the debt that would be contracted during the present year. An anticipation was as much a debt as any other loan. The amount of that anticipation would fill a part of the deficiency and should be added to the amount of five millions, stated as deficiencies by the gentleman. He had also neglected to insert several items in his estimate of expenditures; the most important omission was the necessary disbursements for the building of the seventy-fours, which by the Secretary of the Treasury, were estimated at $1,300,000.

The deficiency is, however, acknowledged to be at least four millions; making only these few corrections to the statement of the gentleman from South Carolina, it appears to be five millions. Our revenue is stated by all of us to be only nine millions; and under those circumstances, Mr. G. said, he would ask, whether a saving of two millions and a half, which would result from the adoption of the motion, would be called contemptible? But we are flattered by expectations of an increasing revenue, even without additional taxes. The very reverse, a diminution, instead of an increase, appears probable. The gentleman from South Carolina has compared the proceeds of the impost of 1795 with those of 1799, in order to prove an increase. But he forgot to state how much was due to a real increase of importation, and how much to an increase of taxation. The fact was, that the rate of duty on many articles had been considerably increased in 1796 and 1797, and that an additional duty on salt had been laid in 1798, all of which were blended together in his statements. But the right way of computation would have been to compare the proceeds of the impost for 1799 with those of 1798 and 1797; and that comparison would show a defalcation in 1799 of near eight hundred thousand dollars from the average proceeds of 1797 and 1798; for those two years had given $14,400,000 for the impost and tonnage, equal to an average of $7,200,000, and the year 1799 had given less than $6,500,000. Was there any probability, from the importations of last Fall as compared with those of the preceding years, that the amount of impost for 1800 would exceed the amount of 1799? We import in proportion to our consumption, which must be limited by our means of payment. Those means of payment are always in proportion to our exports, and an examination of these will show that the quantities of articles of our own produce have not increased, but, on the whole, have rather suffered a decrease within these past few years. It is solely to the

increase of the price in most of the articles, that we are indebted for any increase in the value of that of our exports, which consist of articles of our own produce. The prodigious fall of seven dollars at least per hundred, in the price of tobacco, will make a difference of several millions of dollars in the value of our exports, will so far diminish our means of payment for articles imported, and will so far tend to diminish our importations and affect our revenue.

We are, however, told that any increase of debt that may be created in consequence of our present situation is trifling in itself, and holds no proportion to the supposed increase of resources resulting from our growing population. But the gentlemen from Massachusetts (Mr. OTIS) and from South Carolina (Mr. HARPER) estimate that possible increase at something more than twenty millions of dollars, which would require, according to the calculation of one of those gentlemen, additional taxes to the amount of two millions, in order to pay the interest on and redeem the principal itself in twenty years. Whether to add twenty five per cent. to our debt and taxes can be considered as trifling, Mr. G. said, he would leave the Committee to judge? But was it not a most extraordinary and novel mode of calculating, not on the present resources of the country, but on those which posterity might have? Are we then so sure that our posterity will have no dangers of their own to encounter, and no additional expenditures which will require every additional resource they may possess? Let us provide, out of our own resources, for our own wants, instead of mortgaging not only our actual revenue, but even that which may hereafter be raised by posterity.

Much has been said by the gentleman from South Carolina of certain new financial discoveries, relative to the application of a sinking fund, which had they been known to British Ministers fifty or one hundred years ago, as well as they were to the present Administration of that country, would have discharged, by this time, the whole debt of Great Britain. Were we to judge of the merit of that pretended new application of a sinking fund by its effects, we would not be disposed to admire it as much as the gentleman. Seventeen years ago, the debt of Great Britain did not exceed two hundred and forty millions sterling. During that period, that country had enjoyed ten years of peace, and had seven years of war; during that period, the years of war did not exceed the average proportion of time for which England had been involved in war for the last fifty years. At present her debt was almost five hundred millions sterling. The present Administration of Great Britain, notwithstanding all the boasted merit of certain modifications of the sinking fund, had more than doubled the public debt during that period.

I know, said Mr. G., but one way that a nation has of paying her debts; and that is precisely the same which individuals practise. "Spend *less* than you receive;" and you may then apply the surplus of your receipts to the discharge of your debts. But if you spend *more* than you receive, you may have recourse to sinking funds, you may modify them as you please, you may render your accounts extremely complex, you may give a scientific appearance to additions and subtractions; you must still necessarily increase your debt. If you spend more than you receive, the difference must be supplied by loans; and if out of these receipts you have set a sum apart to pay your debts—if you have so mortgaged or disposed of that sum that you cannot apply it to your useful expenditure, you must borrow so much more in order to meet your expenditure. If your revenue is nine millions of dollars, and your expenditure fourteen, you must borrow, you must create a new debt of five millions. But if two millions of that revenue are, under the name of sinking fund, applicable to the payment of the principal of an old debt, and pledged for it, then the portion of your revenue applicable to discharging your current expenditures of fourteen millions is reduced to seven millions; and instead of borrowing five millions, you must borrow seven: you create a new debt of seven millions, and you pay an old one of two. It is still the same increase of five millions of debt. The only difference that is produced arises from the relative price you give for the old debt and rate of interest you pay for the new. At present we pay yearly, a part of a domestic debt, bearing six per cent. interest, and of a foreign debt bearing four or five per cent. interest; and we may pay both of them at par. At the same time we are obliged to borrow at the rate of eight per cent. At present, therefore, that nominal sinking fund increases our debt, or at least the annual interest payable on our debt.

Mr. G. said, he would now conclude the desultory observations into which he had been drawn, from a wish to reply to some parts of the speech of the gentleman from South Carolina. It was true, indeed, those observations could have no weight with gentlemen who supposed the liberty and independence of the country concerned in the reduction of the Military Establishment. To him it was only a question of economy, which could have no possible effect on the external relations of America, which had no importance except as a question of economy. But, as such, he considered it as highly important, and hoped it might be viewed in the same light by the Committee.

Mr. H. LEE.—If, Mr. Speaker, search after truth was sincerely pursued in debate, we should be relieved from much useless discussion, much unnecessary consumption of our time, and the common good would be more thoroughly promoted. But it seems as if long habit in public speaking produced a desire rather to give some colorable pretexts for favorite opinions, however erroneous, than by open and manly arguments to enlighten and convince. Much as we have cause to lament the prevalence of this habit, it must be endured, and can be corrected only by sound decisions in those whose province it is to decide.

The gentleman last up (Mr. GALLATIN) has started with a fundamental error, which has diffused its influence through his whole argument. To have regarded the turn of his discourse you would suppose that the question before us was the creation of a permanent military force, when in

truth it is whether we shall disband a part of a force already created, or, in other words, whether we shall disband a considerable portion of the army raised for the express purpose of defending the United States from an unprovoked existing war waged against us by France, before we know what may be the termination of our third attempt to secure to us a solid peace. We contend that prudence, dignity, and economy, alike command us to make no diminution in our actual force, till the result of the existing negotiation is ascertained. I put it to the candor of the honorable gentleman last up, whether this is not the real question. But the course of debate has obscured if not changed the point in dispute, and the attention of the Committee has been drawn to objects opposite or irrelevant.

If the real question be that now stated, I ask on what ground can gentlemen hesitate in their decision? In three months we shall know whether the enemy conclude a peace, or continue war. In the first event the army falls of course, in the last event their services may be wanting. The intermediate expense will not be more than $130,000, and shall we, to avoid this small expense, properly styled "contemptible" by the gentleman himself, deprive our country of the means of self-defence acquired by a large expenditure of our money?

On the score of economy only, I repeat my assertion, the measure ought to be rejected. But says the honorable gentleman, we believe the negotiation for peace will fail and then we have no doubt the army will be held in service, and a useless expense of two millions and a half of dollars thus incurred. To prevent this, we now urge its reduction.

It is not possible to declare the situation of things should the negotiation fail—therefore it is not possible to say now what it may be proper to do in case of such failure—the conduct to be observed must be decided by the existing circumstances of the period. But I hesitate not in pronouncing it as my opinion, that if the public interest shall require a reduction, or even a disbandment of the army, negotiation failing, such reduction or disbandment will be made; the happiness of the people would command the measure, and their happiness is the sole object of the exertions of those gentlemen with whom he had the pleasure of acting on this floor, as well as of every other department of Government, so far as it was in his power to distinguish their views. Was it reduced to a certainty that the pending negotiation would terminate in a solid peace, I should with alacrity support the motion on the table, for upon all occasions it is our duty to save the public money, unless by such saving we sacrifice more important interests. But the event of the negotiation is unknown; I must, therefore, continue to resist every measure which in this state of incertitude tends to decrease our actual force, or to brand with the stamp of caprice our public councils. I persuade myself, that some days ago, it was clearly shown that the army to which the motion applies was part of the general system of defence adopted on the part of the United States, in consequence of French aggression, and indeed that this fact was established from evidence exhibited by the gentleman last up. To make any change in that system at this time I persist in believing not only unwarranted by sound policy, but as begetting impressions unfavorable to our national character, and tending to disappoint our hopes of peace.

The gentleman thought it extremely improper in our deliberations to respect at all the influence which our conduct might have on the councils and conduct of any other nation, but contended that every measure ought to be tried by its own intrinsic merit. I differ entirely in opinion from the honorable member. In my judgment, no consideration is more proper than the effect of our measures on the conduct of the nation to whom such measures apply. I know no other test by which the merit or demerit of our deliberations can be so fairly ascertained; thus we act in private life, and thus do and must all nations act. By what other light ought we, or can we direct our steps? But it seems, we not only ought to disregard the influence of our measures on our present foe, but must shut out, too, from our deliberations, all the instruction which history affords.

The learned and relevant researches which the honorable member from South Carolina edified us with, have drawn upon him, from the gentleman last up, unmerited asperity. Very differently indeed, sir, did my mind feel under the instructive illustration. I feel the propriety of holding up to the view of America, the fall of Venice, of Holland, of humble, but once happy Switzerland. The example of other nations ought, and I hope will teach us to avoid similar destruction, by adopting in time different conduct. In what manner can you so strongly appeal to the good sense of your own countrymen, as by showing to them from the faithful page of history how to avoid national disasters?

If, Mr. Chairman, we are neither to regard the effect of our measures on those on whom they are intended to operate, nor to look into history for light to guide our deliberations, we act the part of mere puppets, spending to no possible good purpose the people's money, and exhibiting to the world a splendid instance of human insignificance. Fortunately for the American nation and for the human race, such barbarous doctrines cannot be admitted. History will be referred to by those who direct public councils, and time, in its guidance, will uphold human happiness, by enlightening human councils. I thank the member from South Carolina, for his applicable and illustrating information, confirmed not only in the instance he has quoted, but by all ancient history, and especially in the conquest of Greece, by Philip of Macedon.

How then results this historical inquiry? Certainly, that the United States, warned by the fall of other nations, ought to hold fast all her acquired means of defence, till the establishment of a solid peace shall authorize her with safety to save her money by reducing her expenses.

But the same member has been pleased to ac-

knowledge that the system of defence had produced a change of conduct on the part of France. but attributes this change to our diplomatic efforts and naval exertions. I agree with him in part; the ability displayed by our late Envoys, and the vigilance of our infant navy, no doubt contributed to produce the change alluded to, so did also the raising of an additional military force, and the other defensive measures adopted by Congress.

It has again and again been represented that we place our whole confidence for the defence of our country, in case of invasion, in these ten or twelve thousand men, although we have often denied it. We have again and again declared that we consider a well disciplined militia to be the chief bulwark of our nation, but have insisted on the impropriety of trusting to militia only in actual war. A regular army, adequate to the object of co-operating with the militia, we prefer as the safest and cheapest defence. Let us then be quoted fairly, let the truth only be disseminated, and I cheerfully will meet all the consequences of the opinion given.

The honorable gentleman has attempted to do away all the operation of the illustration which fell from the gentleman from South Carolina, so far as it grew out of difference of opinion existing in this country, by asserting that although the Hollanders did experience much evil from their internal discord, yet the same evils were not to be apprehended from our differences of opinion. We had no Stadtholder, nor did we assimilate in any respect the condition of the people of Holland. It is true we have no Stadtholder, nor is our situation as a people much like that of Holland, but we are men, we are governed by the appetites and passions common to men, and we must expect the same effect from the same causes; unless, as was correctly expressed by an ingenious young member the other day, (Mr. Randolph,) the operation of physical and moral causes and effects was suspended in America. The truth is, Mr. Chairman, and I acknowledge it with much pain, that our differences in America are the same as to principle and operation as are the differences referred to, and the extent of the effect will depend on the good sense of the people. For my own part I sincerely wish they would rid the public councils of all factious men. Thus and thus only can the evil be arrested.

Difference of opinion, sir, backed by possession of power, no matter how named or how dressed, will lead always to disastrous consequences, if successfully fostered by an erring people or by the intrigues of a foreign nation. This truth the honorable member would find fully exhibited in that invaluable book written by the illustrious personage at the head of our Government, and which work in my humble opinion stands first in all the efforts of science to secure and perpetuate the blessings of liberty to man, notwithstanding the misconceived and unmerited censure which now surrounds it.

It is in vain for gentlemen to treat so indifferently the existing difference of opinion among us, their own experience meets them full in the face. When that great and good man whose picture hangs before us, conducted the Government, what was the trial to which he was subjected with a foreign agent! How difficult did he find it, with all the greatness of his character, to repress the intrigues of that foreign agent! Did not a difference of opinion, ranged in conformity with existing differences of opinion, pervade the continent? Were there not found many citizens who openly maintained the proceedings of the foreign Minister in opposition to their own Chief Magistrate? How then can gentlemen affect to disbelieve that the people of America are liable, like other nations, to all the disasters which spring from factions and factious men?

The gentleman is certainly correct when he says that powerful nations consult too often their own will and not the rules of right, nor can the truth of the position be more precisely maintained than by the example of that very nation now at war with us. Austria and Great Britain, powerful nations, I dare say have also often proved the correctness of the gentleman's opinion; but it does not follow that because these two nations do wrong, that therefore we ought to submit to injuries received from France. My own opinion is that America ought to guard herself against injury from all nations, disregarding their name or situation. I wish, said Mr. L., we could conduct our affairs without having anything to do with the Ministers of foreign nations, we should then be exempt from the influence of their intrigues; but this is impossible, and of course, the only course to be pursued is to counteract their operation as much as possible, by guarding against the effect. But it is not the way to guard ourselves by declaring, with the same gentleman, that they can do us no injury. I lament very much that the debate has taken this turn, but it was not possible to avoid it, without shrinking from that full inquiry demanded by the occasion.

It has been more than once insinuated that the army is preserved with a view to turn their arms on a part of the people who differ in sentiment from Administration. Is it possible that such an opinion can be entertained? What evidence can be resorted to in justification of such a sentiment? Ought it to have been ventured without full proof to support it? Can any insinuation be more cruel or absurd? An Administration uniformly distinguished by love of country, by zeal for the common happiness, by vigilance and wisdom in the execution of its duty, and by an enlarged and correct arrangement of all the affairs of the nation, surely deserves very different treatment. I must therefore say, what I utter with reluctance, that these derogating suspicions must have been experienced in the breast of the member who announced them.

Much has been said on the subject of money and the saving of money. But it has not been proved on the present occasion that the small retrenchment contended for would ultimately turn out a saving of money—the reverse was most probable. It was the duty of every man in that House to be careful of the public money, and, as far as his small experience justified any opinion, no Legislature

could be more attentive to this subject than the House of Representatives. Let us proceed in the same praiseworthy manner, but let us not prefer saving the people's money to securing their liberty and their lives. For my own part, I never considered the present subject as involving much pecuniary consequence, and therefore have been surprised to find gentlemen in opposition always recuring to this ground.

Another topic sensible in its effect on the eloquence of the friends to the motion, and a never failing topic, is the militia; and, to show their entire capacity to defend the country, various instances have been cited of their valor in the American revolutionary war. It is certainly grateful to the American ear to hear eulogiums pronounced on our countrymen, and no heart rejoices more than does mine in recollecting the gallantry of our militia The two examples quoted, Bunker's Hill and King's Mountain, are illustrious proofs of American valor, and grateful America has always manifested her deep regard of those highly honored defenders of their country. Was it necessary, we could add many other memorable testimonies of the occasional and gallant services of our militia during the late war, but it is unnecessary and will be avoided. For, although true, it does not change the position we contend for. The mere act of fighting is not the whole of soldiership. The militia equal any troops in personal courage and exceed all in fidelity. They want method, patience, obedience, and combination, without all which attributes, no man can be a good soldier. Sir, without these qualifications, essential to war, never expect a long course of success. The trained man does possess them, and therefore will forever be superior to the untrained man. You must, therefore, when you prepare for war, create a trained army. We want no mercenary nor foreign army—we want our own brothers, our own sons, taught to be patient, to obey, to retreat, to act in concert, and thus in the hour of battle to be equal to their enemy, however skilful. Show me, in any country, where militia have so done, until beaten into it by long and constant course of service. It cannot be done.

He was sorry his honorable colleague had used the word mercenary; it certainly was not justly applied to our army—an army of foreigners fighting for her only was so designated with propriety. But really he could never admit the justice of the appellation when applied to an army of natives, interested in common with us all as to country and objects, and distinguished from us only by the receipt of pay. If this last distinction authorized the expression, it might be applied to our militia; they receive pay when in service. The King's Mountain action is no proof of the counter opinion. An imprudent though gallant officer had placed himself far from all possible support and in the neighborhood of a country entirely inimical. He was caught on the top of a mountain, hid as it were like a squirrel. Surrounded by brave militia, expert in the use of rifles, his fate was inevitable. But suppose he could have entrenched himself and had been in possession of a fortnight's supply of provisions; do you believe he would have been taken? No, the event would not have happened; brave as were the assailants they were militia, they would have been found destitute of patience, and thus the enemy would have escaped. I say not this to subtract from the credit due to these gallant and patriotic citizens. No man more reveres their heroism, but I make the explanation that my country, knowing the truth, may repel the introduction of error.

But it seems we are to have militia like the conscripts of France. If you effect this, your militia will be regulars—for the name *conscript* and the name *regular* means one and the same thing. The mildness of our Government forbids the possibility of such a change. It can never be effected but under the misrule of despotism, and God forbid we should ever imitate France, either in Government or in the management of our citizens!

In every view then, Mr. Chairman, of the subject before us, pressed as has been the motion by its friends, I must give it my decided negative, convinced that in so doing I truly promote the public good.

Mr. Huger said he rose to expres his desire, that the Committee would take the question. He confessed he had made up his mind; indeed, after the talents and abilities displayed on the present question, he should suppose every member had received all the information possible on the subject, and he could not be wrong in thinking every gentleman had formed his opinion. Having been detained from the city much longer than he wished, he had voted, on a former occasion, that the subject should undergo such a discussion as to enable him to give a vote on the question; that had been allowed, and a mature discussion taken place.

In his opinion, Mr. H. said, the motion was at least premature—this was his opinion at first, but he wished to hear reasons against it, if any could be adduced. Supposing no new impressions could be made, why should the debate be prolonged? Some gentlemen might perhaps wish to give a reason for their vote; he wished such might be patiently heard.

If gentlemen wish to go farther, and extend their observations in the way the subject had been treated, they ought to publish in the newspapers what would have been their speeches on this occasion. This was not unfrequently done, and would much save the time of the House. Much had been said about our finances. Mr. H. conceived a trifling expense, such as this had been represented, was not worthy notice, especially as considerable advantages might be derived. When an expense was superfluous, it ought to be prevented; then it might be necessary to mention the financial state of the nation; but no such thing was now pretended. On the whole, he considered the present state of things called upon him to vote in the negative.

The question was called for, from different parts of the House, when

Mr. Randolph rose, and begged the attention of the Committee to a few observations, which if not granted as indulgence he should be obliged to

demand as a right. He denied having asserted that our finances were in a situation which would not permit the raising of more money, however urgent the necessity. But he persisted in declaring that their condition was alarming, and that gentlemen had, instead of offering proof to support their opposition to the resolution, perpetually eluded the question—which was, whether there was danger, in the first place; and whether, in the second, these troops were competent to repel it. Gentlemen could not even agree in the use to which these troops were to be applied. Some asserted that they were to act in the first instance; the militia not being in a state of preparation. Others, sensible that they could not annihilate space and be present everywhere, said that the militia could oppose the foe until these troops could march to their relief. If gentlemen were persuaded of the danger of invasion there was no mode to convince them of their mistake. Mere impression could not be effaced by argument. But was it true policy to expend the "sinews of war" upon the chance of bringing these men into action? Mr. R. insisted that his use of the term mercenary, as applied to the Army of the United States, was warranted. He denied Mr. LEE's interpretation of the word, which he had declared applicable only to foreign troops subsidized by another State. Mr. R. stated that the original word signified wages, and had no relation to foreign or domestic affairs. That a mercenary army was one in which the military art was carried on as a profession, in contradistinction from a militia or patriotic army, composed of citizens, without respect to station or fortune, indiscriminately bound to defend their country. He declared that he had no intention of receding from any opinions which he had expressed, but there was a term which he had used yesterday, and which (as no notice had been taken of it) he would exchange—it was *ragamuffin*. It had been extorted from him by the character and appearance of the recruits in his country; men the most abject and worthless of the community; and to their protection, said he, we are told to confide our liberties and independence. Sir, we revolt from the idea. We hold those blessings in contempt of their protection. We hold them in defiance of all force, foreign or domestic; we hold them, sir, by the tenure of that valor which obtained them.

Mr. R. denied that this tax would fall lightly upon the community. In the tobacco country it would be severely felt. The depreciation of that important article would alone cause great distress. If to this effect gentlemen were insensible, it would speak to them in a language which they would be obliged to hear, in the diminished amount of the revenue drawn from the imposts. The consumption of foreign articles must be limited by the ability to pay for them. The large importation of last year was scarcely half sold. There were goods enough on hand nearly sufficient to supply the ensuing year's demand. Under all these circumstances we were hooted at for talking of economy. Whatever gentlemen might say or insinuate about speeches calculated to insure popular favor, he would never vote one shilling until he saw the public resources better husbanded. A gentleman from Massachusetts, (Mr. OTIS,) who had taken exception to the term, had told us that we could not "squeeze" the public, without squeezing ourselves. Mr. R. said that he did not make professions of uncommon patriotism; that it was not the least of his objections to taxing his constituents that he must also burden himself, and his property being of that kind which exposed it to be "squeezed" on all occasions, rendered him particularly averse to the operation. The member from Massachusetts spoke lightly of our reluctance to part with money. That gentleman was eminent in a lucrative profession; and did he too derive a handsome revenue from talking, he might perhaps be less averse to voting away money.

A gentleman from South Carolina, in a long detail, to which I cannot, with my colleague, (Mr. LEE,) attach the epithet of a "learned history," has been so very candid as to allow that the friends of the resolution (at least some of them) are actuated by pure motives in the support which they have given it. I felt disposed to thank the gentleman for this great degree of charity; but, sir, the burden of obligation was lifted from my shoulders when he talked of modern patriotism, which consisted in declamation against public burdens and a devotion to France. When it is considered that those against whom these insinuations were thrown, had not only "drawn in love of country with their mother's milk," but were attached by every tie which could bind the heart of man to the soil which gave him birth, and in which their property consisted, the Committee would decide upon the motives by which their conduct had been actuated. When it was recollected that they were supposed to have been peculiarly friendly to the mission to France and to be highly anxious for its success, whilst the opponents to the resolution exhibited a great coolness with regard to a compromise of differences with that Republic, he trusted that the alarm with respect to the effect of the measure under discussion upon that negotiation would wear off. Mr. R. declared that although he had become the object of what the member from South Carolina no doubt intended as a chastisement, he had no reason to regret it. He was, on the contrary, glad that he had excited the gentleman's animadversion, since by that means the Committee had been favored with the very correct, luminous, and conclusive observations of the gentleman from Pennsylvania, (Mr. GALLATIN,) which must have carried conviction to every unprejudiced mind, and would doubtless produce a decided approbation of the measure now under consideration.

Mr. R. said that although this army had been ordered into existence so long, yet scarcely 4,000 men were raised; and, if the recruiting went on, it would take a year perhaps to fill the regiments. Would not this be a stronger proof to France of our debility, than the disbanding of them, which would indicate only a prudent application of resources to proper objects. But, in fact, sir, this circumstance is a proof the most decisive of the inutility of this force. In spite of the system of

alarm, and the cry of danger from French invasion, the good sense of the country still prevailed. Our people knew that there was no immediate danger, nor can they hear it in every breeze; they therefore refused to enter a service into which the indolent and worthless had been allured by the potent consideration of being clothed and fed at public expense. Would this tardiness to defend their country, sir, be exhibited were the danger imminent, as gentlemen had alleged? He cautioned the members of the House, particularly from the South, against lavishing, by the smallest estimate which had any pretension to correctness, at least two and a half millions, perhaps four, upon so worthless an object. As to the proposal to stop the enlistments and retain the officers upon pay, without any nominal duty to perform, he declared that it would justly excite the public indignation. With these remarks he concluded by expressing a hope that the resolution would be carried.

The Committee now rose, and reported their disagreement to the resolution.

The question was taken that the House do agree with the Committee of the Whole in their said disagreement, and resolved in the affirmative—yeas 60, nays 39, as follows:

YEAS—William Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Richard Stanford, David Stone, Thomas Sumter, John Thomson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

MONDAY, January 13.

SAMUEL J. CABELL, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

A memorial of Paul Bentalou, and others, merchants, of the city of Baltimore, late owners of the ship Flora, was presented to the House and read, stating that they have sustained considerable loss in consequence of an illegal detention, as they conceive, of the said ship at the port of Edgartown, in the State of Massachusetts, by the officers of the United States, acting under the law entitled "An act to suspend the commercial intercourse between the United States and France, and the dependencies thereof," and praying compensation for the same.

Ordered, That the said petition be referred to the Committee of Commerce and Manufactures.

Two petitions of Cato West and others, in behalf of themselves and the other inhabitants of the Mississippi Territory, were presented to the House and read; the first complaining of the political system by which the said Territory is governed, and the present mode of its administration, and praying that the operation of the ordinance of Congress, passed the thirteenth of July, one thousand seven hundred and eighty-seven, with such amendments as shall seem expedient, may be extended to the said Territory: the other, praying that an act may be passed confirming to the citizens of the said Territory all grants of lands legally and justly obtained prior to the ratification of the late treaty with Spain.

Ordered, That the first of the said petitions be referred to Mr. CLAIBORNE, Mr. GRISWOLD, Mr. HENDERSON, Mr. NOTT, and Mr. BARTLETT, to examine the matter thereof, and report their opinion thereupon to the House; and that the second be referred to the committee to whom was referred, on the twenty-fourth ultimo, the petitions of John Henderson and others, and of Thomas Burling and others.

Mr. OTIS, from the committee to whom was referred, on the ninth ultimo, so much of the President's Speech as relates to "a system of national defence, commensurate with our resources and the situation of our country," made a report, in part; which was read, and ordered to lie on the table.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

A report made to me, on the fifth of this month, by the Secretary of War, contains various matters, in which the honor and safety of the nation are deeply interested; I transmit it therefore to Congress, and recommend it to their serious consideration.

JOHN ADAMS.

UNITED STATES, *Jan.* 13, 1800.

The said Message, and report accompanying the same, were read, and ordered to be referred to the committee to whom was referred, on the ninth ultimo, so much of the President's Speech as relates to "a system of national defence, commensurate with our resources and the situation of our country."

Ordered, That the petition of Charles Pettit, presented the 31st ultimo, and which was laid on the table, be referred to the Committee of Claims.

Ordered, That the report of the Secretary of War, on the seventh instant, exhibiting the expenses

of the national armory at Springfield, in the State of Massachusetts, which lay on the table, be referred to the committee to whom was referred, on the ninth ultimo, so much of the President's Speech as relates to "a system of national defence, commensurate with our resources and the situation of our country;" with power to report thereon by bill, or bills, or otherwise.

Ordered, That the Message of the President of the United States, of the 8th instant, transmitting sundry statements relative to the Mint of the United States, prepared by the officers thereof, and which lay on the table, be referred to Mr. Dwight Foster, Mr. Chauncey Goodrich, and Mr. Page.

On a motion made and seconded that the House do come to the following resolution, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, authorized and directed to procure and transmit to the Governor of the State of North Carolina, a number of copies of the laws of the United States, equal to the number which the Secretary was heretofore authorized to transmit to the Governor of the said State, by an act, entitled "An act for the more general promulgation of the laws of the United States," to be deposited and distributed agreeably to the provisions of the said act, for the use and information of the citizens of the United States within the said State:

Ordered, That the said motion be referred to Mr. Hill, Mr. Kittera, and Mr. Nicholas.

Resolved, That the Committee of Claims be instructed to inquire whether any, and, if any, what, alterations ought to be made in the law passed on the twelfth day of June, one thousand seven hundred and ninety-eight, entitled "An act respecting loan office and final settlement certificates, indents of interest, and the unfunded or registered debt credited in the books of the Treasury.

Resolved, That the act, entitled "An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein," and all acts for amendment of the same, be referred to the Committee of Commerce and Manufactures, to consider and report as to the expediency of continuing the same, and whether any, and, if any, what, alterations may be necessary therein.

The House, resolved itself into a Committee of the Whole on the bill to repeal part of an act, entitled "An act to provide for mitigating the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned;" and, after some time spent therein, the Committee rose and reported their agreement to the same without amendment.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

Resolved, That a committee be appointed to prepare and report a bill to continue in force "An act declaring the consent of Congress to a certain act of the State of Maryland," and to continue "An act declaring the consent of Congress to certain acts of the States of Maryland, Georgia, and Rhode Island and Providence Plantations, so far as the same respects the States of Georgia and Rhode Island;" and that the Committee of Revisal, &c., do prepare and bring in the same.

Tuesday, January 14.

An engrossed bill to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," was read the third time and passed.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report what laws of the United States have expired, or are near expiring, made a farther report, in part; which was read, and ordered to be committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the motion to amend the "Act for laying duties on stamped vellum, parchment, and paper;" and, after some time spent therein, Mr. Speaker resumed the Chair, and Mr. Morris reported that the Committee had had the said motion under consideration, and come to a resolution thereupon; which he delivered in at the Clerk's table, where the same was twice read, and agreed to, as follows:

Resolved, That it is expedient so to amend the "Act for laying duties on stamped vellum, parchment, and paper," as to abolish the offices thereby established for the stamping of vellum, parchment, and paper, in the several districts of the United States, and to establish, at the seat of Government, one general office for that purpose.

Ordered, That a bill or bills be brought in, pursuant to the said resolution, and that the Committee of Ways and Means do prepare and bring in the same.

CASE OF MR. RANDOLPH.

A Message was received from the President of the United States, as follows:

Gentlemen of the House of Representatives:

As the enclosed letter, from a member of your House, received by me in the night of Saturday, the eleventh instant, relates to the privileges of the House, which, in my opinion, ought to be inquired into in the House itself, if anywhere, I have thought proper to submit the whole letter and its tendencies to your consideration, without any other comments on its matter or style: but, as no gross impropriety of conduct, on the part of persons holding commissions in the Army or Navy of the United States, ought to pass without due animadversion, I have directed the Secretary of War and the Secretary of the Navy to investigate the conduct complained of, and to report to me, without delay, such a statement of facts as will enable me to decide on the course which duty and justice shall appear to prescribe.

JOHN ADAMS.

United States, *Jan. 14th*, 1800.

Chamber of Representatives of the U. S.,
11th January, 24th of Independence.

Sir: Known to you only as holding, in common with yourself, the honorable station of servant to the same sovereign people, and disclaiming all pretensions to make to you any application which, in the general estimation of men, requires the preface of apology, I shall, without the circumlocution of compliment, proceed to state the cause which induces this address

For words of a general nature, uttered on the floor of this House, and addressed, in my official capacity, to the Chairman of the Committee of the Whole, and urged with a view to effect the reduction of a Military Establishment, I have been grossly and publicly insulted, by two officers of the army (or navy, I know not which) with evident intention to provoke me to a conduct which, in some sort, might justify the hostile designs which they manifestly entertained towards me, and from the execution of which, I believe, they were only deterred by the presence of several of my friends (members of this House) who felt themselves implicated in an insult, which, although more particularly offered to one, was certainly levelled at all.

I am acquainted with the name of one only of these unfortunate young men, who appear to have made so false an estimate of true dignity of character; who seem to have mistaken brutality for spirit, and an armed combination against the person of an individual for an indication of courage. He was called, I think, McKnight—rank unknown,—and, to my best recollection, of the navy. Mr. Christie, a member of this House, appeared to know him; and that gentleman, with Capt. Campbell Smith, who, as I understood, endeavored to deter those rash youths from their scheme, and whose conduct would evince, if indeed there were any need of proof, that the character of the man and the citizen is not incompatible with the profession of the soldier, can give an account of the various instances of misconduct which were exhibited by the parties. Mr. Van Rensselaer, the Lieutenant Governor of New York, Mr. Nicholson, Mr. Glenn, and Mr. Macon, of the House of Representatives, were likewise present at these transactions.

Having stated the fact, it would be derogatory to your character, sir, for me to point out the remedy, which it is your province to provide, nor shall I descend from the respect which I owe myself to declare what are not the considerations which govern my conduct on this occasion. So far as they relate to this application, addressed to you in a public capacity, they can only be supposed by you to be of a public nature; and it is enough for me to state that the independence of the Legislature has been attacked, the majesty of the people, of which you are the principal representative, insulted, and your authority contemned. In their name, I demand that a provision commensurate with the evil be made, and which will be calculated to deter others from any future attempt to introduce the reign of terror into our country. In addressing you, in the plain language of man, I give you, sir, the best proof that I can afford of the estimation in which I hold your office and your understanding; and I assure you with truth that I am, with respect, your fellow citizen, JOHN RANDOLPH, Jr.

The President of the United States.

Mr. Kittera moved that the Message and letter accompanying it be referred to a Select Committee.

Mr. Randolph hoped it would not. It was far from his expectation, he said, when he addressed the letter now before the House to the President, that it would have been made the subject of a communication. Had he thought the House could have remedied the abuse complained of, he would have entered his complaint here; but he did not conceive it within their jurisdiction; and he was opposed to it, as being a bad precedent which might at some future period be prostituted to purposes injurious to the country. The power of the Commander-in-chief of the Army, in his opinion, was sufficient to afford a remedy, and to restrain men under his command from giving personal abuse and insult. And he therefore disclaimed any wish that the House should take measures for his protection.

The voice of the House appeared to be unanimous for the commitment, and several members expressed an opinion that the President, in submitting the subject to the House, had acted judiciously, it being a question on which he could not, dare not, decide. It was a Constitutional prerogative vested in that House alone, and that House, after having a statement of facts, were to be the sole judges of them. The wish of the complainant to suspend inquiry ought not to have any weight; for if a member was to be insulted for language made use of in debate, there was an end to all legislation, and they might as well return to their homes at once.

The said Message, together with the letter accompanying the same, were read, and ordered to be referred to Mr. Chauncey Goodrich, Mr. Macon, Mr. Kittera, Mr. Jones, Mr. Sewall, Mr. Robert Williams, and Mr. Bayard.

The House then resolved itself into a Committee of the Whole on the bill to reform the Superior Court of the Territory of the United States Northwest of the river Ohio; and, after some time spent therein, rose and had leave to sit again.

Wednesday, January 15.

Ordered, That Mr. Macon be excused from serving as a member of the committee to whom was referred the Message received, yesterday, from the President of the United States, and that Mr. Hanna be appointed in his stead.

On motion, it was

Resolved, That the Clerk of this House be directed to furnish each of the Members of this House with a set of the laws passed by the Fifth Congress of the United States.

The House proceeded to consider the report made on Monday last, by the committee to whom was referred so much of the President's Speech as relates to "a system of national defence, commensurate with our resources and the situation of our country," which lay on the table; and the same being again read, in the words following, to wit:

"That, in the opinion of the committee, no such material change in the state of the foreign relations of the United States has happened, as would justify a relinquishment of any of the means of defence heretofore adopted by Congress, but that the national honor and interest in the present posture of affairs make it prudent and necessary to continue prepared for the worst event: but while danger still threatens our country, yet circumstances having diminished the probability of an immediate invasion, the attention of the committee has been particularly directed to the state of the Military Establishment, with a view to reconcile safety with economy, to preserve the establishment, and retrench the expense. The annexed abstract and letter from the Secretary of War exhibit the state of the twelve

new regiments of infantry, according to the latest returns. As these men have received their bounty and clothing, and are daily improving in discipline; as they would be useful in any sudden emergency, and the greater part of them may also be usefully employed, until wanted for actual service, on the fortification of ports and harbors, it is conceived proper to retain them, but to suspend the recruiting service until the approach of danger shall compel the Government to resume it. This project combines the advantage of an important reduction of the national expense, with that of having at command a body of officers ready for service upon short notice, and a number of disciplined troops sufficient for the present occasion.

"The committee, therefore, submit the following resolution:

"*Resolved*, That, from and after the —— day of —— next, all enlistments under an act, entitled "An act to augment the Army of the United States, and for other purposes," shall be suspended until the next session, unless war should break out between the United States and a foreign European Power, or in case imminent danger of invasion of their territory by any such Power shall, in the opinion of the President of the United States, be discovered to exist."

The question was taken that the House do agree to the resolution contained in the said report, and resolved in the affirmative.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that Mr. OTIS, Mr. NICHOLAS, Mr. EDMOND, Mr. ABIEL FOSTER, Mr. CHAMPLIN, Mr. WAIN, and Mr. HILL, do prepare and bring in the same.

Ordered, That the Committee of the Whole House to whom was referred the report of the Committee of Revisal and Unfinished Business, made yesterday, recommending the appointment of a committee to prepare and bring in a bill to continue in force, for a limited time, the act, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," be discharged from the consideration of the same; and that the said report be referred to the Committee of Commerce and Manufactures, with power to report thereon by bill or bills, or otherwise, and with instruction to inquire and report in what manner, and to what effect, the act suspending commercial intercourse with France has been executed.

THURSDAY, January 16.

Mr. OTIS, from the committee appointed, presented a bill to suspend, in part, an act, entitled "An act to augment the Army of the United States, and for other purposes;" which was read twice and committed to a Committee of the Whole House to-morrow.

FRIDAY, January 17.

A petition of sundry inhabitants of the Northwestern Territory, northwest of the Great Miami river, was presented to the House and read, praying a repeal or amendment of the law providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio, and above the mouth of Kentucky river.

Ordered, That the said petition be referred to the committee appointed, on the twenty-fourth ultimo, to inquire whether any, and, if any, what, alterations are necessary in the laws authorizing the sale of the lands of the United States northwest of the Ohio.

Mr. OTIS, from the committee to whom was referred, on the twenty-third ultimo, the petition of Robert Sturgeon, made a report; which he delivered in at the Clerk's table, where the same was twice read, and considered: Whereupon,

Resolved, That Robert Sturgeon be discharged from his confinement, upon a judgment in favor of the United States, upon his making an assignment of all estate, real and personal, to which he may be entitled, to the acceptance of the Secretary of the Treasury: Provided, however, that the said judgment shall remain in full force against any property which he may hereafter acquire.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. OTIS, Mr. BIRD, and Mr. STONE, do prepare and bring in the same.

The House then resolved itself into a Committee of the Whole on the bill to suspend, in part, an act, entitled "An act to augment the Army of the United States;" and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

MONDAY, January 20.

A memorial of the General Assembly of the Territory of the United States Northwest of the river Ohio, signed by Edward Tiffin, Speaker of the House of Representatives, and H. Vandeburg, President of the Council, stating the unhappy situation of a large number of the citizens of the county of Hamilton, in the said Territory, residing on lands purchased from John Cleves Symmes, under a conviction that the said Symmes had a right to dispose of the same in virtue of his contract with the United States; that, having paid their money into the hands of Judge Symmes, they are deprived of the means of making their payments, as at present required by the United States; and requesting that such indulgence may be extended to the said purchasers as to the wisdom of Congress may seem meet.

Ordered, That the said petition be referred to the committee appointed, on the twenty-fourth ultimo, to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the lands of the United States Northwest of the Ohio.

The House resolved itself into a Committee of the Whole on the bill to establish an uniform system of bankruptcy throughout the United States; and, after some time spent therein, the Committee rose and had leave to sit again.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

In obedience to the law, I transmit to Congress my annual account of the contingent fund.

JOHN ADAMS.

The said Message, and account accompanying the same, were read, and ordered to lie on the table.

CASE OF MR. RANDOLPH.

Mr. C. GOODRICH, from the committee to whom was referred the Message of the President of the United States of the 14th instant, together with a letter from JOHN RANDOLPH, Jun., a member of the House, accompanying the same, made a report, which was read and ordered to lie on the table.

On motion, it was ordered, that the Message of the President, and Mr. RANDOLPH's letter to him, the report of the committee, and testimony accompanying it, be printed for the use of the members.

The reading of the testimony being called for,

Mr. HARTLEY said, that as the whole was ordered to be printed, he thought it at present unnecessary, and therefore moved an adjournment.

Upon the question, Will the House adjourn? it was negatived—yeas 35, nays 56.

The testimony was then read, as follows:

Mr. Randolph's statement to the Committee.

JANUARY 18, 1800,
24th year of Independence.

SIR: A mature consideration of the subject induces me to suspect that a refusal on my part to communicate the information requested by you a few days ago could only have originated in a false delicacy, under the impulse of which I am determined never to act. I shall, therefore, proceed to state some instances of the misconduct of Captain McKnight and Lieutenant Reynolds, on the night of Friday, the 10th instant.

Exclusive of repeated allusions to what passed in the House of Representatives during the debate of the preceding day, and a *frequent* repetition of some words which fell from me during that discussion, in a manner so marked as to leave no doubt on *my* mind or that of Messrs. Van Rensselaer, Christie, or Macon, of their intention to insult me personally; finding me determined to take no notice of their *words*, they adopted a conduct which placed their designs beyond every possibility of doubt, and which they probably conceived to be calculated to *force* me into their measures. Mr. Christie had left his seat between me and the partition of the box; after which Mr. Van Rensselaer, who sat on the other side of me, lay down, so as to occupy a more than ordinary portion of room, and occasioned my removal to a part of Mr. Christie's former seat, leaving a very small vacancy between myself and the partition; into this Lieutenant Reynolds *suddenly*, and without requesting or giving time for room to be made for him, dropped with such violence as to bring our hips into contact; the shock was sufficient to occasion a slight degree of pain on my part, and for which it is probable he would in some degree have apologized had not the act been intentional.

Just before I left the box, one of them, I believe McKnight, gave me a sudden and violent pull by the cape of my coat; upon my demanding who it was, (this was the first instance in which I noticed their proceedings,) no answer was given; I then added, that I had long perceived an intention to insult me, and that the person offering it was a puppy. No reply that I heard was given.

It will be impossible for me, sir, to specify the various minute actions of these persons and their associates which tended to the same point. Suffice it to say that their whole deportment exhibited an insolence, and their every act betokened a bold defiance, which can neither be *defined* nor *mistaken*; and which, according to the general received opinions of the world, would not only have *justified* but *demanded* chastisement.

Referring the committee to the numerous and authentic accounts of this transaction, which the gentlemen present are so well calculated to give, I remain with respect, sir, your fellow-citizen,

JOHN RANDOLPH, JUN.

The CHAIRMAN of the Committee, &c.

Mr. Christie's Affidavit.

On the 17th January, 1800, came the subscriber before the Hon. C. Goodrich, chairman of a committee of Congress, and being sworn, deposeth and saith, that, on Friday evening, the 10th of January, I was sitting in a box of the theatre: I was shortly after joined by Mr. Randolph, Mr. Nicholson, Mr. Macon, Mr. Baer, Mr. Glen, General Van Cortlandt and Mr. Van Rensselear, of New York; they all took seats near me; shortly after Mr. Baer went out of the box; the others remained; after the play was over, and about the time that the farce was beginning, I discovered in an adjoining box Captain McKnight and a gentleman, whose name I have since found to be Reynolds, both officers of the navy; I saw also in company with them Captain George Taylor, of this city; I saw them repeatedly look towards our box, and whispering to each other. When the procession came forward on the stage, Captain McKnight called out that they were well-looking mercenaries; I then began to discover, what I had before suspected, that some of these gentlemen intended to offer Mr. Randolph or some of us an insult, on account of the part we took in the House of Representatives respecting the army. It was my intention to have left the theatre early, but I remained, fearing a disturbance would take place between Mr. Randolph and those gentlemen, who manifestly evinced an intention of insulting him; Mr. Randolph took no notice of anything that was said; and I overheard a person (who it was I know not) say to Captain McKnight and Mr. Reynolds, "He does not hear you, go nearer to him;" Captain McKnight and Mr. Reynolds then left the box they were in, and came round into that in which we were, and got as close to Mr. Randolph as they could; so near as to touch him; Captain Taylor did not leave the box at the time they did, but remained behind; Captain McKnight called out to Captain Taylor, what do you think of these ragamuffins—these ragamuffins are not Pennsylvanians, they are black Virginia ragamuffins; Captain Taylor laughed, but made no reply; Captain McKnight and Mr. Reynolds afterwards repeated the words mercenaries and ragamuffins, and said that they were not well drilled, but would be better at the next session of Congress. Finding that none of us took any notice of what was said, Mr. Reynolds stepped with his feet on the seat on which Mr. Randolph was sitting, and sat down, although there was little or no room for a seat; he crowded Mr. Randolph in sitting down, and I believe sat upon his thigh; Mr. Randolph moved, to give as much room as he could. Mr. Reynolds remained for about fifteen minutes, and stepped back, upon which Captain McKnight came forward and took his place, observing the same conduct as Mr. Reynolds had done in sitting down. Captain McKnight spoke to me, and I gave him my hand; Captain George Taylor then

came round to our box, and took his place at the back of Captain McKnight, and used once or twice the words mercenaries, and appeared to me to understand fully the intentions of Captain McKnight and Mr. Reynolds, and appeared to be desirious of forwarding their views; they all three remained in the box until the farce was over, and as Mr. Randolph got up to go out, I heard him call out "who was that that pulled me by the coat?" I looked, and saw Captain McKnight, Mr. Reynolds, and Captain Taylor, at his back; I got before them, and walked with Mr. Randolph; in going out of the lobby, a gentleman, whose name I do not know, told me not to leave that gentleman, (meaning Mr. Randolph,) for it was the intention of those persons to use him ill; I therefore walked with him to the head of the stairs, and in going down was pressed on so closely by Captain McKnight and others, that it was with difficulty I could keep on my feet; I looked back and called out to them not to crowd me, and they desisted; in going out of the house, Captain Taylor and Captain McKnight came arm in arm and pushed by us, and would hardly get out of our way, but walked slowly before us to the corner of Fifth street, when we turned off; Captain McKnight called to me and wished me good night, which compliment I returned. From the whole of their conduct, it appeared to me evidently the intention of the whole three to provoke Mr. Randolph to reply to their observations, so as to bring on a quarrel; that Captain McKnight and Mr. Reynolds did jostle Mr. Randolph on his seat, and used many expressions that fell from Mr. Randolph in the House of Representatives in the debate on the reduction of the army; and it appeared to me that they had taken offence at these expressions, and were determined to provoke him to a quarrel.

G. CHRISTIE.

Sworn to, on the 18th day of January, A. D. 1800, before me,

C. GOODRICH, *Chairman, &c.*

Mr. Nicholson's Affidavit.

On the evening of Friday, the 10th instant, I went to the theatre, in company with Mr. Nicholas, Mr. Stone, Mr. Macon, and Mr. Randolph. When we reached the theatre, our company accidentally separated; Mr. Macon, Mr. Randolph, and myself going into one box. After remaining there some time, we were joined by Mr. Van Rensselaer, the Lieutenant Governor of New York, and General Cortlandt, of the House of Representatives. General Cortlandt and myself were seated on one of the front benches, and, as I was attending to the play, I did not hear the remarks which are said to have been made with the view of insulting Mr. Randolph. During the performance of the afterpiece, I was called out by Captain Campbell Smith, who informed me that he had understood Mr. Randolph had been insulted by some officers, and inquired if I had heard anything of it; at the same time stating the cause to be Mr. Randolph's observations of that day or the day before in Congress. I told Captain Smith I had heard nothing of it, and asked him about the kind of insult which had been offered; he answered that he was not present himself, but from what he had heard he was apprehensive of some disagreeable consequences. I remained in the upper part of the box, where I could see every thing passing in front, and observed with attention the two officers who had been pointed out to me; they were in conversation, but I was not near enough to hear it distinctly. Their names, I am told, are McKnight and Reynolds; the one dressed in plain clothes, or perhaps his coat might have been trimmed with a light edging of buff cloth; the other in a blue and red uniform, with a sword. At the conclusion of the entertainment, I stepped forward, with the intention of protecting Mr. Randolph from any injury, and at the same time called to him to know if he would walk. He, with Mr. Macon and a number of others, had risen from their seats, and were going out of the box. As one, if not both, of the officers remained behind, I suffered Mr. Randolph to pass me, designing to follow closely after him. At that time I saw Mr. McKnight throw himself forward, with one arm extended, and at the same moment heard Mr. Randolph call out "*who was that that jerked my coat?*"—Mr. McKnight passing by him just then. Mr. Randolph made the same exclamation a second time, and added that the person was a damned puppy, let him be who he might. Upon reaching the large passage, Mr. Macon, Mr. Christie, with several others, surrounded Mr. Randolph, and, in going down stairs, I felt myself pushed with great violence, as I thought for the purpose of throwing me upon Mr. Randolph. I found it necessary to resist the pressure, which I believe would have been impossible if I had not been a very heavy man. Whether Mr. McKnight was the person who jerked Mr. Randolph's coat, or whether those two officers were concerned in attempting to push him down stairs, I will not pretend to say. I have stated the facts as nearly as I can recollect them, and from those facts the committee will draw their own inferences.

It is necessary to add, that when Mr. McKnight threw himself forward in the box, as above stated, there were two persons passing between him and me, which prevented me from seeing whether he took hold of Mr. Randolph or not. The staircase was darker than usual, owing, I believe, to the lamps having burnt out, the hour being later than common; and this prevented me from seeing those persons who were pressing forward with so much violence.

JOSEPH H. NICHOLSON.

Sworn to, on the 18th day of January, A. D. 1800, before me,

C. GOODRICH, *Chairman, &c.*

Mr. Macon's Affidavit.

I was at the play last Friday night, and in the same box with Mr. Randolph and others. Some time after the play had been begun, the door of the box in which we were was opened so often that I turned towards the door to see who opened it, and what it could be for, but did not then discover any one going out or coming in, though I saw several people who had come into the box and taken seats behind us. Still looking towards the door, I saw a young man, with a blue coat, go out. Soon afterwards the door was opened again; I looked back, and saw him behind us, in company with a man who had on a uniform coat; others were also behind us. These men were frequently going out of the box, and, after a little time, returning again. I do not recollect to have heard either of them say a single word until the farce was begun, when the man dressed in blue said, these ragamuffins march very well, (the players were then marching.) At this time, I think, a third person was with them, who had on a great coat; if he was not, he was with them very soon after. The same words were quickly repeated by the same person standing near Mr. Randolph, who was sitting. Mr. Van Rensselaer, who sat by Mr. Randolph, and nearly behind me, said these men intend to insult Mr. Randolph; I answered, it appeared much like it. The word ragamuffin was afterwards used, though I do not know by which of the three. After this, when some of the players appeared in a different dress, words were spoken by one of these three men, which I do not know, nor could I hear them plain enough to understand clearly what they said. At another time, when the players were marching, one of these men, I know not which, said, these ragamuffins march badly; they want drilling, and will do better by another session. The man with the great coat did not, I think, stay long in the box, nor am I certain that he was there when these last words were spoken. The one with the uniform coat staid more in the box after the farce was begun than either of the others. The one with the blue coat continued to go out and to return. Both these men were in the box, I think, at the time we got up to go out. During the farce, and when the scenery was changing, Mr. Randolph stood up before his seat; as soon as he rose, the man who had on the uniform coat (and at this time I saw that he had a sword) stepped on his seat, and stood on it, until Mr. Randolph sat down; he then stepped off the seat, and immediately crowded in between Mr. Randolph and the side of the box, where there did not appear to be room for him to sit either with pleasure or ease. Mr. Randolph instantly made what room he could for him; he did not continue long in his new seat, but got up again, and stood behind us, where he had room neither to stand or sit.

As we were going out of the box, about the time the farce was finishing, Mr. Randolph being near the door and before me, I heard him ask who had taken hold of him, and said that whoever it was that he must be a puppy. I got to him as quick as I could, and before he went out of the box; several people were near him when I got to him; he went out of the box; we followed him; as soon as we had got clear of the box, a man said to Mr. Christie, keep near to that man, meaning, as I understood, Mr. Randolph; we walked to the stairs; Mr. Randolph went down before me; as I stepped on the stairs, I took hold of the hand of the man next to me, (I think it was General Van Cortlandt,) and supported myself with the other as well as I could, and it was with great difficulty that I was able to prevent being pushed down; some person behind me (I think it was Mr. Christie) said to those behind him, do not push so hard. Messrs. Van Rensselaer, Glen, and Christie, were nearer these men than myself, and may have heard their expressions more distinctly than I did.

Sir, the above is a statement of the facts you asked for. I have endeavored to keep it clear of the impressions that were made on me at the time.

NATHANIEL MACON.

HON. CHAUNCEY GOODRICH.

Sworn to, on the 18th day of January, A. D. 1800 before me,

C. GOODRICH, *Chairman, &c.*

H. Glen's Affidavit.

PHILADELPHIA, *Jan.* 14, 1800.

HENRY GLEN, a member of the House of Representatives of the United States, saith:

That in the evening of Friday, the tenth of this month, he went, in company with the Hon. Stephen Van Rensselaer, Lieutenant Governor of the State of New York, to the theatre in this city. Finding vacant seats, we placed ourselves in a front box, where were Mr. Macon and Mr. Randolph, both members of the House of Representatives. I seated myself by the side of Mr. Macon, and the Lieutenant Governor took a seat by the side of Mr. Randolph. Looking round, I found Messrs. Baer, Christie, and Nicholson, all members of the House, were behind, not far from us.

After a very short time, two gentlemen in uniform, whom I took to be marine officers, came near, and were with us in the same box. In the course of the entertainments nothing happened, to my knowledge, to interrupt the cheerfulness and good-humor which prevailed among us.

When the afterpiece was performing, a number of men, with a drum, pikes, &c., appeared on the stage; upon a view of this scene, one of the gentlemen in uniform, addressing himself, as I supposed, to his companion, said, "I think our ragamuffins would make a better appearance than those men," or words to that effect. No particular notice appeared to be taken of the expression, and, as soon as the curtain was dropped, the officers back of us went out; so did the other gentlemen who were with us.

The Lieutenant Governor and I remained a little time in the box till the crowd had passed, and I saw none of the gentlemen before mentioned afterwards. This statement is made according to my best recollection.

HENRY GLEN.

Sworn to, on the 18th day of January, A. D. 1800, before me,

C. GOODRICH, *Chairman, &c.*

Captain Campbell Smith's Deposition.

PHILADELPHIA, *Jan.* 15, 1800.

In obedience to the request of the committee to whom was referred the Message of the President of the United States, with the letter of Mr. Randolph, a member of your House, complaining of his having been insulted by two officers of the army or navy, as signified in the note of the honorable Mr. Goodrich to me of this day, I have only to state that I was not present or within hearing when the abuse, as alleged, took place; that I went into the theatre at a late period of the exhibition, but a very little time before the first part was completed, and was sitting, in company with Colonel Butler, in one of the lower boxes, when a gentleman of our acquaintance came and informed me of what had happened above, relative to Mr. Randolph and the officers, but whose expressions I do not now recollect; that immediately, aware in my own mind of the imprudence of such conduct in such a place, and apprehensive that some of my military acquaintances might be there, I went up stairs to the door of the box in which Mr. Randolph and some other members of Congress were sitting; at the door of the box, I met a gentleman of this city whom I knew, and of whom I asked the question, "Who is that gentleman in uniform?" looking at an officer in the box, and received for answer that he did not know, but if I wished to be acquainted with him, he would introduce me to Captain McKnight who was there, and who would introduce him to me; this, however, did not take place at this time. I afterwards discovered a member from Maryland, of my acquaintance, in the adjoining box, of whom I inquired if he knew what had happened? He answered in the negative; I told him what I had heard, and that I was apprehensive a fracas might ensue; in moving through the house, I met an officer of the army, to whom I mentioned my information and apprehensions; he accorded with me in opinion, and we went to the door of the box in which Mr. Randolph was. Here a tender was again made to

me, by the same gentleman, of an introduction to Captain McKnight, which did not, however, occur; we went to another part of the house, and returned some little time afterwards, when, something being said which I do not now remember, the gentleman before alluded to called out Captain McKnight, and introduced me to him; the captain called out the gentleman in uniform, whose name I had inquired, and introduced him to me as Lieutenant Reynolds. Just after the usual salutes had occurred, our attention was called to the stage, and the captain and lieutenant returned (as I supposed) to their seats in the box, and I went to an opposite quarter of the house.

When the entertainments closed, I went out amongst the first, and stood on the pavement above the theatre, till I saw Mr. Randolph come out with several members of Congress; in their rear were the captain and lieutenant. They all moved down Chestnut street; I followed them to the corner of Sixth, and turned up and retired to my quarters.

The next evening I was in company with Mr. Randolph and several other members of Congress, when the occurrence at the theatre on the night before was talked of; from which company, as I retired, Mr. Randolph followed me into the entry of the house, and observed to me that he had taken the liberty to mention my name in a letter which he had that morning written to the President of the United States, requiring an investigation into what had happened the night before at the theatre; to which I replied that I had no objection to attest what I knew, and we parted.

CAMPBELL SMITH.

Question. Did you observe any acts or expressions of Captain McKnight, or of any other person, which you apprehended designed to insult Mr. Randolph?

Answer. I did not.

Q. Were you present at any time when Captain McKnight and Lieutenant Reynolds were in the box with Mr. Randolph?

A. I was several times at the door of the box in which those gentlemen were.

Q. Did you at any of those times observe any exceptionable conduct on the part of those gentlemen?

A. I did not; they were sitting perfectly quiet.

CAMPBELL SMITH.

Sworn to, on the 18th day of January, A. D. 1800, before me, C. GOODRICH, *Chairman, &c.*

Captain James McKnight's Statement.

On Thursday, the 9th instant, I returned to Philadelphia after having guarded fifty-four French prisoners to Fredericktown, Maryland.; on the evening of my arrival I obtained permission to be absent until the day following; the night I spent with my family at Captain Decatur's seat, fourteen miles from the city, and I did not return until twelve o'clock on Friday, at which hour I was ordered on a court-martial, which did not adjourn until three o'clock; I did not quit my quarters until six o'clock, at which hour I went to the theatre alone, in an undress, and without arms; after remaining in the theatre for some time, I was joined by several acquaintances. On my return to the theatre, I went by accident into the box, where the person sat that I now know as Mr. Randolph; on the appearance of a number of persons in the garb of Turks, I remarked that our ragamuffins would make a better appearance, and several times during the evening, I repeated the words ragamuffins and mercenaries. A very interesting piece of scenery being introduced, most of the persons in the box rose up; finding my view obstructed, I stepped on a vacant bench; a person soon after sat on my feet; I desired him to rise, which he did, without any appearance or expression of anger; I soon after stepped behind, where (except for eight or ten minutes) I remained during the peformance, but I am positive I never sat beside Mr. Randolph during the evening. At the time of quitting the box I had hold of Captain Taylor's right arm; the crowd was great; at the box door Captain Taylor was jostled, and I put out my arm (but without any violence) to make room; Captain Taylor and myself then went out before Mr. Randolph and his friends. We walked down Chestnut to Fifth street, at which place I wished Major Christie good night, and he returned the compliment, and I am certain that I never mentioned Mr. Randolph's name during the evening, nor did I know Mr. Randolph was to be at the theatre, nor do I ever recollect seeing him previous to Friday evening, and, from his youthful appearance and dress, I had no idea of his being a member of the House of Representatives; and I trust it will not be supposed I would do an act that would be an infringement of the privileges of Congress, for whom I have the highest respect.

JAMES McKNIGHT,
Captain of Marines.

Michael Reynolds's Statement.

PHILADELPHIA, *Jan.* 16, 1800.

On Friday evening, the 10th instant, Lieutenant Thomson and myself went to the theatre, and, after some time being seated, were joined by Captain McKnight; during the performance of Blue Beard, there appeared on the stage a number of strange figures, when some one of the gentlemen present made use of the expression that the ragamuffins would make a much better appearance; to which I replied, that could not be doubted; but as to my knowing of Mr. Randolph's being in the adjoining box, I did not, until I heard some one behind me mention it; and as to our having any previous conversation relative to our going to the play to insult him, or any other gentleman, it never entered my head; I went to the play-house in uniform and with my side-arms, and am confident that none of the other gentlemen in the box with us had either uniform or side-arms.

M. REYNOLDS, Jr.,
Lieut. Marines.

James Thompson's Statement.

On Friday, the 10th instant, Lieutenant Reynolds and myself attended the theatre, and, after being some time in the house, were joined by Captain McKnight; I neither knew nor expected to meet Mr. Randolph, although it so happened that we got into a box adjoining (without design) the one in which he, with other members of the House of Representatives, was seated; soon after Captain McKnight's coming over to us, which was not until long after our having been in the house, some remarks were made on the performance and performers, in which the words ragamuffins and mercenaries were used; although Captain McKnight was in the same box behind Mr. Randolph, yet I neither saw nor heard him address himself to that gentleman; and, while I was present, nothing like a personal insult appeared to me to be offered, unless his repeating the words above can be so construed.

JAMES THOMPSON,
Lieut. Marines.

Questions by Captain McKnight.

Question. Did you see me seat myself by Mr. Randolph in the course of the evening?

Answer. I did not; but it might have happened without my observing it.

Q. Were we constantly together during the performance of the farce?

A. We were either in the adjoining boxes, or, it may be, for a little time, in the same box; but in full view of each other, and within speaking distance the whole time.

Q. Was I not in an undress and without any weapon that evening?

A. You were in an undress, and without any weapon which I knew of.

Q. Did you leave the theatre with Lieutenant Reynolds, and when?

A. I staid in the box, and Lieutenant Reynolds was with me there, after Mr. Randolph left it; and we came away together, and did not see Mr. Randolph after he left the box. Captain McKnight left the box before Mr. Randolph, and I did not see him afterwards that evening.

Q. Did you hear me mention Mr. Randolph's name that evening at the playhouse?

A. I did not, that I recollect.

Questions by the Committee. Did Captain McKnight use the expressions mentioned by you, of ragamuffins and mercenaries, or by whom were those expressions used?

Answer. I think by Captain McKnight. He asked Lieutenant Reynolds if he did not think the ragamuffins would perform better than those on the stage; alluding, as I understood, to a procession in the farce; to which Lieutenant Reynolds answered he thought they would.

Q. Did you know of any particular application those expressions were intended to have?

A. I do not know Captain McKnight's intention; nothing was ever said by him, or any other person, in my presence, of any intention of insulting Mr. Randolph or any other person.

Q. Did you hear any person say to Captain McKnight or Lieutenant Reynolds, he does not hear you, go nearer to him?

A. I did not.

Q. When did Captain McKnight leave the box where he first came to you, and in what manner?

A. I do not recollect whether Captain McKnight left that box before the conclusion of the play, but, in the interval between that and the farce, Captain McKnight, with several other gentlemen and myself, went together to a public house in the neighborhood of the playhouse and supped together, and on our return to the playhouse Captain McKnight went into the box where Mr. Randolph was, and remained there during the farce, or was there the most of the time.

Q. Did you see any person take hold of Mr. Randolph, or pull his coat?

A. I did not; but I heard Mr. Randolph, as he left the box, say that some person had taken him by the shoulder, evidently to insult him, or words to that effect.

Q. Have you any knowledge where Capt. McKnight was at the time Mr. Randolph made that observation?

A. At the time Mr. Randolph made the observation I have mentioned, Captain McKnight had left the box and was forward of Mr. Randolph.

Q. Did Captain McKnight, in going out of the box, pass Mr, Randolph, and in what manner?

A. We passed Mr. Randolph immediately before he made the observation I have mentioned; but I did not see Captain McKnight touch Mr. Randolph.

JAMES THOMPSON,
Lieut. of Marines.

Sworn to, on the 17th of January, Anno Domini 1800, before me,

C. GOODRICH, *Chairman, &c.*

William W. Burrows's Affidavit.

PHILADELPHIA, *Jan.* 18, 1800.

I, WILLIAM W. BURROWS, do solemnly swear, on the Holy Evangelist of Almighty God, that I ordered Captain James McKnight to march on the 18th December last, with a detachment of marines, to guard some French prisoners to Fredericktown, in Maryland.

On Thursday, 9th January, at three o'clock in the afternoon, he arrived here, after a fatiguing march; and after reporting his arrival to me, he asked leave to go that evening to see his family, about eight miles from the city. He accordingly went, and returned about twelve o'clock, the next day, when he was immediately ordered to sit on a court-martial, which did not break up till near three o'clock. He then went to his dinner, and, as I have understood since, from thence to the theatre.

WILLIAM W. BURROWS,
Major Com'dt of the Marine Corps.

Sworn to on the 8th day of January, Anno Domini 1800, before me,

C. GOODRICH, *Chairman, &c.*

Jonathan H. Hurst's Deposition.

JONATHAN H. HURST, of the city of Philadelphia, maketh oath that, on the evening of the 10th instant, he was present at the theatre, and for some time in a box adjoining that in which was seated Mr. Randolph, member of the House of Representatives of the United States, from the State of Virginia; that he saw in the same box Captain McKnight, of the United States' Marine Corps, standing immediately behind Mr. Randolph; that he heard the chief part of the conversation which passed between Captain McKnight and several gentlemen who were near him during the performance of the opera or entertainment of Blue Beard; that he (J. H. Hurst) looked frequently to that part of the box where Captain McKnight stood; that he did not see any violence offered to Mr. Randolph by Captain McKnight, nor did he see Captain McKnight at any time crowd, jostle, or touch Mr. Randolph; nor did he (the said J. H. Hurst) hear Captain McKnight utter any word or words insulting or disrespectful to Mr. Randolph. And he further saith that Captain McKnight was not in uniform, nor was he armed, nor was there any visible or audible interference on the part of any person near Mr. Randolph to deter Captain McKnight or his acquaintance present from any apprehended ill treatment to Mr. Randolph.

JONATHAN H. HURST.

Question by the Committee. Did you hear Captain McKnight or Lieutenant Reynolds use the expressions "mercenaries, ragamuffins" and in what manner?

Answer. I heard Captain McKnight ask one of his acquaintance present, of whom I do not recollect, whether he thought that band, alluding to some of the performers in the farce then acting, as I understood it, could stand against our ragamuffins, alluding, as I understood, to the army of the United States. There was no pointed

answer given, as I recollect, and the question appeared to me to be a matter of common conversation; and though at first I was not sensible of its being intended for Mr. Randolph, yet, looking upon him soon after, I thought he smiled as if he had heard it.

Question by Captain McKnight. Did you, in the course of the evening, hear me or Lieutenant Reynolds speak of Mr. Randolph, or mention his name?

Answer. I heard some gentlemen in the box speak of Mr. Randolph, as pointing him out to others, but I cannot say that this was to or by Captain McKnight or Lieutenant Reynolds.

JONATHAN H. HURST.

The foregoing deposition was sworn to on the 18th day of January, Anno Domini 1800.

C. GOODRICH, *Chairman, &c.*

George Taylor's Deposition

Some time during the performance on Friday evening, the 10th instant, at the theatre, I was called by Captain McKnight, to inform me of the marriage of an officer who had been on a detachment under his command, and from which he had that day returned. After some time we were joined by other persons, when a general conversation took place respecting the ragamuffins on the stage. There was a number of comparisons made, but they were general, and no names were mentioned. Of the persons in the box with myself there was but one in uniform, or with side-arms. In a part of Blue Beard, interesting as to scenery, the persons in the same box with me generally rose. I was on the right of Captain McKnight, and saw that those before him were taller than himself. It appears to me that he stepped on the seat before him to have a fair view of the scenery or stage. My attention was, for an instant, taken from the performance by hearing Captain McKnight say to some one, "Sir, you are sitting on my feet;" that person rose, and made a slight inclination of his head. Captain McKnight resumed his former situation, as did the one before him. After what is above related, Lieutenant Campbell Smith, from the door of the box, called me, and asked the name of an officer, then sitting in the box, the only one in uniform, except himself, there present, to whom I had never been introduced, or, to my knowledge, seen before that night. From my knowledge of Mr. Smith I did not feel myself disposed to satisfy his mere curiosity, or mention a name I had heard accidentally and scarcely recollected; I therefore asked him if he had any reason or particular object for knowing it. His reply was, that he saw a great many strange faces in uniform, and, wearing one himself, he wished to know the names of others who did. I then told him I would make him known to Captain McKnight, who would introduce him. Mr. Smith then used an expression which I considered as in nowise averse to the introduction of himself to Captain McKnight, which was done in the lobby. After some slight commonplace observations I saw no more of Lieutenant Smith. I had accepted an invitation from Captain McKnight to go home with him after the performance of the theatre. We were anxious to get out before the crowd from the upper part of the house would fill the lobby. To accomplish this, we passed a number of persons, one of whom, not known to me, caught my left arm; I took it for granted that it was to assist himself either to rise from the floor to the seat, or to prevent him from falling.

Captain McKnight had hold of my right arm. The tug I received from the left must have affected him, I think: at any rate it separated us. I am inclined to believe Captain McKnight put his hand on the shoulder of some person and passed on. I did not overtake him until he was out of the box, when we, by his request, looked for some gentlemen to be of our party to his house, which we did, there and in the street, but could not find them.

GEORGE TAYLOR.

Question by Captain McKnight. During the performance of the farce, were we not so near each other, and to Lieutenant Reynolds, that if any violence had been offered by him or me to Mr. Randolph, you must have observed it?

Answer. I think I was near Captain McKnight and Lieutenant Reynolds the whole time, and must have observed any unusual conduct by them.

Questions by the Committee. Did you, in the evening in question, either before you went to the theatre, there, or at any time afterwards, know of any intention on the part of Captain McKnight or Lieutenant Reynolds to affront Mr. Randolph?

Answer. I did not.

Q. Did you observe Mr. Randolph at the time of your leaving the box, or hear any words from him respecting his being insulted?

A. I did not observe Mr. Randolph at that time, nor hear any words from him. Captain McKnight and I were going out of the box together, and I was separated from him by some person giving me a pull by the arm with some violence, but we joined again soon after in the lobby.

GEORGE TAYLOR.

Sworn to on the 18th day of January, Anno Domini 1800, before me.

C. GOODRICH, *Chairman, &c.*

The reading having been gone through with, the House adjourned.

TUESDAY, January 21.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned,'" with several amendments; to which they desire the concurrence of this House.

The said amendments were read, and ordered to be referred to the Committee of Revisal and Unfinished Business.

The House resolved itself into a Committee of the Whole on the bill to establish an uniform system of bankruptcy throughout the United States; and, after some time spent therein, the Committee rose and reported several amendments thereto, which were severally read.

The amendment to the ninth section, reported from the Committee of the Whole, being again read, was, on the question put thereupon, disagreed to by the House.

The other amendments reported by the Committee of the Whole were then again read, amended, and, on the question severally put thereupon, agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments,

ordered to be engrossed, and read the third time on Monday next.

Ordered. That the petition of the Corporation of Rhode Island College, presented the thirty-first of December, one thousand seven hundred and ninety-two, with the report of the Committee of Claims thereon, made the eleventh of February, one thousand seven hundred and ninety-seven, be referred to the Committee of Claims.

A bill was received from the Senate for the relief of the legal representatives of Samuel Lapsley, which was read and referred to the Committee of Claims.

Mr. OTIS reported a bill to discharge Robert Sturgeon from his confinement, which was twice read and committed.

On motion it was

Ordered. That there be a call of the House on Monday next at two o'clock

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WEDNESDAY, January 22.

SUSPENSION OF ADDITIONAL ARMY LAW.

The House resolved itself into a Committee of the Whole on the bill to suspend in part the act to augment the Army of the United States, and for other purposes; when, after several amendments having been made to the bill,

Mr. RANDOLPH proposed the following:

"*Be it further enacted*, That the men now enlisted under the said act, shall be formed into as many regiments as they are sufficient to complete; to be officered, at the discretion of the President of the United States, out of the officers of the said twelve regiments; and that the supernumerary officers, together with such officers of the general staff as in his opinion will not be necessary for the discipline of the said regiments, so to be formed as aforesaid, shall be discharged, and be entitled to receive, besides the allowance directed by law to be paid at their discharge, each one month's pay."

Mr. RANDOLPH said, his object in proposing this amendment to the bill was to consolidate the men already enlisted into as many regiments as they would make; and as there could be no use, but great expense, in maintaining the officers who remained, they might be discharged. He believed it would be generally conceded that the number of men now enlisted were not more than sufficient to fill six regiments, but the whole of the officers were appointed and on pay for the twelve regiments. As the recruiting would now be stopped, he was not disposed to see the public money squandered away unnecessarily.

If an invasion should happen there would be need of a much greater quantity than the whole, and then a number adequate to the exigency could be raised; without it, these officers would be useless. To keep up an army of officers without men to command, would be an expensive folly. He could have wished the whole force disbanded, but not being able to obtain that, it became his duty to endeavor to reduce it to the narrowest possible grounds.

Mr. RUTLEDGE said the bill upon the table was to him extremely disagreeable. Coming from that respectable quarter, the Committee of Defence, and being supported by a number of his friends, he should have been content with giving a bare vote in opposition to it, had not this proposition come forward. He conceived it would be fatal to this country to recede from any one measure of defence. He wished this army to be filled up agreeably to the law as it stood originally, because he sincerely believed it highly probable that it would be wanted. But, in addition to a bill which in itself was receding from our original defence, an amendment more fatal still was proposed. Mr. R. believed it much more easy to get men than to get officers. Many gentlemen had made considerable sacrifices to serve the country, they abandoned profitable employments to get into the army; it would therefore be extremely wrong to discharge them before the object was completed for which their patriotism induced them to enter. He said his feelings should never overcome what he conceived the interests of his country required; but it could never require this paltry, pitiful economy. Indeed, he did not believe it true economy, because, if the men were wanted again, the officers would be indispensably necessary; and the recruiting would necessarily be much impeded if they were now discharged, because they would not be induced to engage again in the service.

Mr. R. believed the resources of this country were far beyond what gentlemen had represented in a late debate; he believed them fully adequate to the maintenance of any army whatever. In talking of our means, it had been insinuated that this was a permanent establishment. It was no such thing. It was an extraordinary army, raised for an extraordinary occasion, which occasion was not yet accomplished. Our children, who had been referred to, would never complain of the debt which was left them to pay, when they considered the occasion there was to incur that debt; they would rather regard the attention paid to the permanent interests of the country with gratitude.

The military art, Mr. R. observed, was a science; gentlemen of the army, if they were continued in their stations, could be acquiring a more competent knowledge in that science in this interim, and fit themselves for usefulness, when they were to be called to action.

As for the prejudice of the people to the army—though it was true that they were against the standing army, and it was possible they might be, in a little corner of a State, generally against all these kinds of preparations, but it was not so universally. He rather believed, in respect to the insults from France, that the sentiments of the public were far in advance of the Government—he knew it to be so in South Carolina; they thought the Government tardy, and therefore proceeded to measures of defence themselves, tired of waiting for the Government.

Mr. R. lamented that gentlemen, who had always expressed their desire for strong measures, should be prevailed upon to take steps which were receding from their former ones. If this were encouraged, the evil would not stop here; every measure of defence would be successively attacked by others, who readily caught at every opportu-

nity. He believed this from the progress which was making towards it. These soldiers were to be disbanded: now the officers were to be discharged; besides this, there was a motion lying on the table to recede from another measure of defence (the Sedition bill;) next it would be moved to stop the building of the seventy-fours; and when or where would it end, until the total subversion of the whole? If this kind of proceeding was encouraged, it would be impossible to say to what a state of prostration our nation would be brought. He therefore thought his duty called upon him to vote against every innovation upon the system, until the occasion was removed.

Mr. Platt said he had voted against the late resolution to disband the army; the reasons which were urged against that motion made a strong impression on his mind, and, although nearly a week had elapsed, he still retained that impression. It was unnecessary to recapitulate those arguments, he would only observe that the whole course of reasoning against the former resolution appeared to him to apply with at least equal force against the present measure. A very considerable expense would have been saved by disbanding the army, and in that point of view alone, the inducement to that measure was strong: but it was contended on very good grounds, he believed, that it would indicate a want of union and stability in our councils, which at this particular crisis it was so important to maintain. It appeared to him that the suspension of enlistments by a law of Congress was in effect the same thing in that point of view, as a law to disband the army—it discovered the same relaxation of spirit, and indicated the same fluctuating policy. And what was the inducement to this measure? The small additional expense of the few soldiers who may be enlisted for the three months to come. This, he said, appeared to him to be a pitiful saving indeed; and such as would not justify the Government in abandoning that system of measures which had hitherto been so successful, and which had made so strong and so favorable an impression on one enemy. We shall probably know the result of the pending negotiation within three months. If peace and security shall be restored, the army in question would cease with the law which created it, and if a third attempt to negotiate shall fail of success, who is prepared to say that the whole twelve regiments will not be necessary? There was one point of view in which this subject was not before considered. The President of the United States had informed them that, in his judgment, sound policy dictated the renewal of negotiation with France, but that in order to give effect to that negotiation, our whole system of defensive measures ought to be firmly maintained. In our answer to his Speech we explicitly approve of the conduct and views of the President with regard to the mission, and we concur with him in opinion that no relaxation ought to be made in defensive measures; he therefore thought they owed it to the Executive, they stood pledged, to maintain the ground on which the negotiation was commenced. They were bound to afford every advantage in their power to enable the President to bring the negotiation to a favorable conclusion. But, by adopting the measure they certainly did relinquish a part of the ground on which the President had founded his measures. Instead of seconding the efforts of the President, the present measure would counteract the exertions of the Executive arm; and by pursuing this course, said he, we shall assume the responsibility of a measure which must certainly be attended with very important consequences to this country. I think, sir, we ought to allow a fair trial to the negotiation under all possible advantages, and to leave the high responsibility of that measure where it now rests.

Mr. Hartley said he did entertain a hope that this bill would have passed pretty unanimously, and he was therefore sorry to see any attempts made towards its destruction. The gentleman who had proposed the section had evinced his perfect aversion to any Military Establishment whatever—he did not wish to have a single officer or soldier—but Mr. H. hoped his attempts towards it would fail, for though he liked the bill, he disliked the amendment.

These officers were now at their posts; they have been selected with the best aid our Executive could have—such as could not be had again—the aid of the wise Washington; if they were dismissed, they would many of them refuse to return if called for, and a new, but less complete selection must be made. This would make the measure an essential injury to the country.

Mr. H. said he wished our citizens no more to be disturbed with the unnecessary noise of the drum, and therefore he hoped that recruiting would be suspended, but at present he thought it would be very improper to discharge the officers. On this account he should vote against the proposed section, but in favor of this bill without it.

Mr. Cooper professed himself against the amendment as well as against the whole bill. He was convinced that the prosperity of the United States was intimately connected with this army, and it must be a weakness in the Government to relax any part till the object was obtained. If the object was not obtained, how unwise, how undignified, would this measure then appear; and, thus uncertain, how ill-timed was this relaxing system proposed. It was not wisdom to do to-day what must be undone to-morrow. The gentlemen who had proposed this defensive system, and procured its establishment, in his opinion, were pulling down what they once with so much wisdom reared, by introducing the bill at all.

Mr. C. went into the former debate of the House on the motion for disbanding the army; he considered it an inconsistency in the conduct of gentlemen who opposed that motion to propose this bill.

Mr. Otis vindicated himself from the inconsistency charged. As for himself, he said, he was only the humble organ of the Committee of Defence, for whom he reported the bill. But, however, it was his opinion that the bill was proper. As to the amendment he opposed it. The question the other day was to disband the army. That was

negatived. Now the motion is to disband a part of it—the officers. If the officers were to be sent home and the staff pulled down and annihilated, he conceived it would be equivalent to disbanding two-thirds of the whole army, because the recruiting could not go on as soon as it probably might be wanted. There was no argument, in his opinion, which was used against disbanding the whole army, that could not with equal propriety be applicable to the present motion. He therefore hoped the dignity of the House would not be so impaired, as it must be by enlarging the discussion of the present motion, but that the question would be taken immediately.

Mr. Harper opposed the proposition because of the considerable delay such a motion must make if the necessity should return for raising this army. A new selection of officers must be made, for he presumed very few of those discharged would serve again. It was true there were plenty of applications for commissions, but a long time would be necessary to procure the information necessary to make a wise selection. He did not think it an economical measure, for the delay and expense which would accrue in making the arrangements would equal the pay of the officers for the short time they would probably be now in the service.

Mr. Macon could not agree with the gentleman (Mr. Rutledge) that officers were hard to be had; during the war there were plenty of able officers to be obtained. Indeed the report of the Secretary of War confirmed the truth of this opinion; there was not a single regiment complete in men, but the whole of the officers were appointed. It was an unnecessary use of money. It had been said to be a small expense. That argument could not warrant the ill use of it. "Take care of the pence, the pounds will take care of themselves," was an old but true adage. Therefore, no saving whatever was "pitiful," or "paltry."

The gentleman from South Carolina (Mr. Rutledge) had said it was not a standing army. Mr. Macon did not know what then to call it. It must be a militia army or a regular army; the word regular, applied to the army, had always been considered synonymous with a standing army. They certainly could not be called militia; then they must be regulars—a standing army.

The President, in his opening Address to the House, had given advice that the House ought to examine and see where any saving could be made: no doubt he meant to examine into every item of the expenditure. If only the pay of one officer could be saved it would be prudent to do it. He liked the amendment for the principle of it, because it went to lessen the public expenditure; and having failed in the attempt to get the men disbanded, he considered it his duty to come the nearest possible to it, and vote for discharging the supernumerary officers. As the enlistments were to be stopped, the officers could be of no use: then why not discharge them?

It had been supposed that these patriotic officers would not return to the service, if this dismission took place, but new ones must be sought. Mr. Macon had no doubt but the same patriotism which brought them out on a certain occasion, would induce them to return to their homes if the Government had no more need of their services, and that they would as cheerfully return to the service, if there ever should be occasion for them; or their patriotism would be very mutable indeed, and unworthy their profession.

Mr. Bayard conceived that a right view of this subject must convince the House that it would be a real saving to keep the officers. From the report of the Secretary of War it would appear that the army referred to were at present stationed at great distances, one part from the other. Agreeably to the report of the Secretary of War it appeared that these twelve regiments (or what were enlisted of them) were stationed in the following manner: Three regiments in the vicinity of Providence river, near Uxbridge, Massachusetts; three regiments in the vicinity of Brunswick, New Jersey; three regiments in the vicinity of Potomac, near Harper's Ferry, Virginia; three regiments in the vicinity of Augusta, above the Falls of Savannah.

Were this amendment to pass, said Mr. B., it would become the duty of the Executive to take immediate steps to order their removal from their present positions, in order to form them into complete regiments. The expense of removing from their present cantonments, marching, forage, &c., must be very considerable. Again: If the officers were to be reduced, could it be done in a minute? How is the Executive to determine who were the officers to discharge, and who to retain? If they were to draw lots, it must take considerable time—three or four months would not be sufficient. But, on the other hand, it was possible that the negotiation might be successful in one month, and if so, they would then be discharged by the law upon the bare wages due to them for the time they served. But the amendment was calculated to give them a month's pay. Surely, from these considerations, it would be an eventual saving to keep them until the success of the negotiation is known. But suppose peace was not made with France, would it be prudent in that event to discharge them? Mr. B., conceived not, for he had no doubt but they would then think of invading this country, and having that apprehension, he should be sorry to see the country unprotected; for surely retaining these officers would much facilitate enlistments, if they should be required to go on.

Mr. Claiborne said, that the enemies to the bill would no doubt be opposed to the amendment, but he could see no good reason why it should be exceptionable to other gentlemen. If there exists no necessity for calling into service a greater number of men than are already enlisted, surely there can be no propriety in retaining in pay a greater number of officers than are necessary to command.

Notwithstanding the remarks of the gentleman from Delaware, Mr. C. was of opinion that economy dictated the adoption of the amendment. He knew of no great additional expense which would attend the removing and concentrating of this army, other than the transportation of the baggage,

nor did he suppose that any elapse before the President law. If, in the mean time, a cluded, the army would be and the law could have no negotiation fails, and no danger the amendment would free the United States from a great and unnecessary expense.

It had been said, that the officers should be retained in service, since the military art was a science of great intricacy, and difficult to be acquired. Mr. C. was of opinion, that the knowledge of war was principally to be acquired in war; that, so far as relates to the theory necessary to aid the practical officer, we had a number of characters already in the study of it—he alluded to the officers of the militia—and, from among them, suitable persons may be chosen to take command in a regular army in time of danger.

It had also been urged, that if the officers should resign or be discharged, and the exigencies of the nation should shortly require their services, it might be attended with delay and trouble to obtain suitable successors. Mr. C. apprehended no such difficulties; heretofore they had not been experienced; our fellow-citizens had on all occasions manifested a disposition to accept of command in our armies. At this time the Secretary of War, no doubt, possessed a long list of respectable applicants, and their characters were always portrayed by their friends when they applied for appointment. It could not therefore be difficult or tedious to make a good selection, where the necessary "materials" were continually in possession of the proper department.

Mr. MARSHALL said, this was precisely the same question as had taken up so much time in the House, and had been maturely discussed, and on which a majority of the House had expressed an opinion by rejecting the motion to disband the army. He would call the attention of the House to the particular principle upon which that decision was grounded. It was this: The state of the country at the present moment was such as to leave it absolutely uncertain whether the twelve regiments would or would not be necessary for our defence, but that the period would soon arrive when that uncertainty would be removed. On these grounds, it was the determination of the House not to recede from any measure they had ordered, nor to progress, and agreeably to that principle a bill was reported to suspend the enlistments.

Mr. M. called to the recollection of the House some of the arguments which were used against the motion to disband the army, and applied them to the present amendment. A large majority, he said, then decided in favor of maintaining exactly the same ground as at present, and he presumed no circumstance had appeared to change the opinions of the House on that point. The adoption of the motion would certainly very materially derange the system. Gentlemen supposed the President could re-create the officers. He could not do it without the law should have been fully executed, and nothing should remain to do in it; the Executive could not therefore create an officer. Besides, there would be a great inconsistency; the bill pointed to an event when recruiting must recommence, but the amendment removed that power, by taking away the officers who were to execute that service, besides leaving the men recruited (if it were possible) without officers! Thus, though the time was appointed, the means were taken away, until at a future meeting of Congress an act should be passed to enable him to appoint officers.

If the number of men were never to be increased, then indeed the arguments in favor of discharging the officers would be unanswerable, but in the prospect of such an event as an increase, those arguments must fail. It was, and with propriety, thought prudent to retain the skeleton of an army to enable the President, in case of invasion, or actual war, to recommence the recruiting service.

It was observed that the same patriotism which called forth the spirit of our citizens to accept of commissions, would excite them again to enter the service. Mr. M. believed it to be a fact: he believed they would again enter the service if required. No doubt but they did estimate love of country sufficient to obey the orders of their country, at any time, or in any way; but would it be right and proper to call gentlemen from their occupations and families, and dismiss them before the service was performed in which their patriotism called them out, merely because their zeal could be depended on? He hoped the national spirit would never yield to that false policy. He hoped the now existing station would be maintained, and no measure at present be receded from on which the country had placed their confidence for defence.

Mr. NICHOLAS did not think, with gentlemen who had spoken against the present amendment, that the same reasons which were used in opposition to the other motion, were also applicable to the present one. If he understood the arguments of gentlemen at that time, they concurred in this: that they would not give up the effective defence in their hands, until the extinguishment of the danger, to provide against which they were established. But what would be the operation of the present motion if adopted?

The House had determined that no more men should be raised, even if the negotiation with France should fail, unless the failure was followed by actual war or threatened invasion; if, therefore, the present motion was rejected, there would be three times the number of officers in the pay of the country, and they must, in case the negotiation fail, remain until the next session of Congress—at least necessary for the men. How would this contribute to the strength of the country, or how to another object gentlemen had mentioned, military discipline? These men would always be at their homes, and acquire habits not useful either to themselves or the country.

It was said that if discharged before the accomplishment of the services for which their patriotism brought them away from their homes, they would be unwilling to return when wanted, and that, when the necessity was most urgent, there would be great delay in procuring others. The

gentleman who used this argument had answered it by telling you that the War Department has made provision for officering an eventual army of 50,000 men. If so, it could be no difficulty to procure officers at any time. If these officers might not all find it convenient to return, others could be appointed without any trouble or delay, whenever it might be necessary to augment the army.

It is well known that a much more numerous class of citizens were willing to go into the eventual army, (as it is called,) provided for time of real danger, than into the one now under consideration; therefore, the probability would be in favor of a better selection, for there would be a larger field to choose from. Again: most of the officers had most likely tried their efforts at enlistment. Was it not probable that new officers would be likely to draw into the service men who might be particularly attached to them, but who else would not have entered? If these were sound arguments, the article of expense was not the consideration, but the actual power of the country would still be increased in the event of danger.

The gentleman from Delaware, Mr. N. said, used an argument which appeared to him extremely weak. He had said the amendment now proposed would probably be more expensive than the law as it now stands, for in all likelihood the army will be disbanded by the terms of its enlistments before this law could be executed. How this was to be, he could not conceive. If the occasion for this army should cease before the dismissal of the officers, they would be dismissed under the original law; if it should not, this measure could not increase the expense.

Another objection, and one which was relied upon, was, that it would be out of the power of the President to re-appoint the officers, even if he should find occasion to order the enlistments to go on. To this objection it might be answered that the old law would still remain in force, and the same power which could direct the enlistments to be made could appoint the officers. Regiments of men were always accompanied with a suitable number of officers, and therefore if the President was empowered from the existence of certain circumstances to raise so many regiments, he was equally empowered to appoint a certain number of officers to command them. Suppose a vacancy happened in the army, the President always had the power to fill it; by the same rule could these appointments take place. But if any gentleman should think the construction of the law would be mistaken in that particular, he might amend it so as to make its operation certain.

Gentlemen appeared to suppose a kind of necessity existed to keep these officers, because their patriotism had called them out. The original contract by which they were brought into the service did not bind the country to keep them longer than the exigencies of the times required; they had therefore no claim upon the country, and it was not consistent with that professed patriotism to wish to stay in the service a moment longer than they could be serviceable. Mr. N. admitted that they would be under no obligation to return.

Upon the whole, as officers could be of no use to the country without men, and as it would always be easy to procure officers when it might be necessary to raise men, Mr. N. sincerely hoped the amendment would be adopted.

Mr. GALLATIN did not conceive it would be necessary to remove the regiments from where they now are, and consequently no new expense would be incurred by consolidating the men already raised into regiments. Suppose they would make four regiments complete; as he supposed they were now nearly equally divided in four different stations, each of them could have one regiment, and if any companies remained as a surplus, they could stay where they now are. Thus the supposed expense of removal would be saved. It was also thought that three or four months would be necessary to execute this measure. Mr. G. thought it might be done in two or three weeks, by the mode above proposed. If this could be done, of which he had no doubt, these objections must fail.

If this amendment did not obtain, a number of officers, three times more than was requisite, would be detained in pay, for a considerable length of time, without any service for them to perform. The officers perhaps were the most expensive part of the establishment, and if that could be saved, it would certainly be an object meriting attention; it would be a duty incumbent on the House to dispense with the expense.

Some gentlemen had said, if this measure was adopted it would be a dereliction of the defensive system, and that the arguments used the other day were sufficient to oppose this measure as well as that for disbanding the army already raised. Certainly it was not so—although it was conformable to the same principle, and on that account he approved of it. Mr. G. acknowledged himself to be against the whole establishment, and the more it was reduced, the more he should be gratified; but he trusted it would not be thought that this was the same question which was negatived the other day. This was rather a middle ground, and such a one as he hoped gentlemen who professed to desire a medium would approve of.

This was not a question which had already been decided. If it was proper that the establishment should be so far reduced as to prevent the completion of the twelve regiments ordered by the act, a bill founded on that position ought to include a principle like the one now proposed, or it would not be complete in itself. If gentlemen would review the arguments on which the former motion was opposed, it would be evident that they did not apply to the amendment now before the House. Among other arguments against disbanding the army, a principal one was, its effect on the negotiation. Surely the reduction of the officers could not be opposed on that ground, even when added to the other part of the bill for preventing farther enlistments, because another argument then used would not even affect it—that of receding from our defensive position. The present situation was maintained the same by this bill; it was not thought prudent to progress, but no part of this bill can be construed to be receding.

Mr. G. did not think the measure would have any injurious effects, by preventing officers being procured when wanted. As many of these gentlemen, he believed, entered the army from the love of their pay as from the love of their country, and, between both, there never could be a deficiency of officers. He thought it perfectly easy for the Secretary of War to learn the individual circumstances of every gentleman in the army, so that none might be injured by the discharge, if a proper selection was made.

He did not know whether the construction put in the power of the President to appoint officers, if there should be occasion for the men, by the gentleman from Virginia, (Mr. Marshall,) was correct or not; but Mr. G. said he knew one thing—that if it was necessary, and a doubt existed upon it, an amendment could be made to the bill to remove that doubt, and therefore that was no objection to the motion now under consideration. From the return, it would appear that at present there was about one officer to seven non-commissioned officers and privates, upon the average. From this estimate it must appear that great numbers of these supernumeraries were useless, and if useless they ought not to be kept, especially since their places could be filled at any period when it might become necessary, and as they could have no claim beyond the period when their services became useful.

Mr. Smith said, when the subject was before the House a few days past some gentleman talked about a middle ground; he then thought one might be taken, he thought that the supernumerary officers might be sent home on furloughs; but, on farther reflection, he perceived that measure would be attended with considerable inconvenience, and but little convenience or saving. He thought it was best to let them remain at present with the army. He had obtained information from the proper officers, and learnt that by the middle of February some answer would most probably be received from France respecting the prospect of our negotiation. It would therefore be advisable to wait that issue. Mr. S. said, he recollected that, in the Revolutionary war, it took two months before the supernumerary officers got to their corps after they were called for; and as this must be attended with difficulty in urgent circumstances, it ought to be avoided, even at a trifling expense, for trifling it would be, should they afterwards be called upon.

The gentleman last up had not talked like a military man when he proposed the regiments should be concentrated at their several posts. This could not be done, but the trouble and expense of marching (which was very considerable) must occur if the motion were to pass. He feared if this amendment was introduced it would be worse than economy; he feared that a majority of the House would reject the bill, and he should regret that event, and on that account he was sorry the section was ever proposed.

Mr. Randolph declared, that had it been his opinion the amendment would endanger the bill, he should not have offered it, or he would even now withdraw it. He professed himself a friend to the bill in its present shape, and if he could not get it amended in such a manner as to his ideas would be right, he would vote for it without; but he hoped gentlemen would see the amendment as proper, he was sure it would be found a saving measure. In the event of invasion (which gentlemen must mean when they talk about wanting these officers) will not the United States require these, and *more*? Nothing can be more clear. Then, certainly, while the selection would be making for others, it could also be for these.

It did not surprise him, Mr. R. said, that gentlemen who were inimical to the bill should also be opposed to the amendment; but it did surprise him that the friends of the bill were, because it appeared to him to be a part of the same measure. If the amendment was not to pass, there would be more officers than could be necessary for organizing the army. If the period should arrive and events occur by which they ought to be discharged, agreeably to the former bill, prior to this consolidation, they could as well be immediately discharged as though this provision had not been introduced, because there could be no more occasion for them, and therefore it was impossible this section could increase the expense.

Mr. Harper said, there had been a mistaken opinion suggested—that the Executive had a considerable number of applications, and therefore could easily appoint any additional number of officers. That there were numerous applications was true, but the Secretary of War only made it his business to inquire respecting those gentlemen who were actually appointed; therefore, if new appointments were to be made, new inquiries must be entered into, as to character and a variety of circumstances necessary to make a judicious appointment. This must necessarily be, when it was considered that these appointments might precede the enlistments, which the peremptory necessity of the circumstances ought to hasten as much as possible. Mr. H. could not see the ground of the gentleman's surprise who was last up. A man might be willing to do something—he might be willing to go a mile, but might not wish to go four or five. But this appeared to surprise the honorable gentleman.

Mr. Jones said, he thought the other day that the twelve regiments were unnecessary, and therefore voted that they might be disbanded; he thought for the same reasons that the supernumerary officers were unnecessary, and that to discharge them would be a saving to the United States, which was a circumstance every gentleman ought to look to and endeavor to effect. His suspicions, he said, were more founded by the conduct and declarations of gentlemen who were generally hostile to measures which they supposed would cramp the Government. He feared the other day that these men were rather attached to a standing force than raised for a particular occasion. They were admitted not to be the provisional army—what were they then?—let gentlemen answer. It was farther stated to be necessary to keep up a regular force in order that the officers should acquire the art of war. How, by this establishment, would gentlemen expect this point could be effected? In some regiments there were not more than twenty or thirty men. What knowledge of military tactics or discipline could be acquired by exercising this very small number? There were more officers than men. He feared these were not the true reasons why the officers were preserved. There could be no want of them; no good could accrue from keeping them in pay, but much harm might. He therefore hoped the amendment would prevail.

Mr. Smilie never apprehended invasion, but if such a thing was to occur, what effect would these officers have? He thought a good answer had been given to that question. As to the effect of this measure on the negotiation, it was folly to talk about it. Would the French be terrified from the attempt on account of these officers? Surely such an idea must be absurd, and yet the arguments of gentlemen went that length. He hoped the amendment and the bill would pass.

On the question the amendment was negatived.

The Committee then rose, reported the amendment to the House, and on motion the House adjourned.

Thursday, January 23.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act to repeal part of an act, entitled 'An act to mitigate or remit the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned,'" made a report; which was read, and ordered to lie on the table.

SUSPENSION OF ADDITIONAL ARMY LAW.

The House proceeded to consider the amendment reported, yesterday, from the Committee of the Whole, to whom was committed the bill to suspend part of the act, entitled "An act to augment the Army of the United States, and for other purposes;" and the same being read, Mr. Platt proposed a resolution that a further consideration of the bill should be postponed till the first Monday in December next.

Mr. Bird wished to give his reasons for his vote on the present occasion, as he should probably be in the minority. When the motion for disbanding the army was before the House some days since, he did not rise, because the same principles which he maintained were supported with such great ability by several other gentlemen. But the same reasons which dictated his vote on that question, Mr. B. thought, would operate in favor of the present motion. He recapitulated some of the principal ideas advanced on the former occasion, particularly on the necessity of maintaining our defensive position, for which he thought there was as much occasion as ever. Having voted against that resolution, he thought it also consistent to vote against this bill, in whatever shape it came forward. There were certain cases in which not to go forward would be to go backward; this was one—here, not to do, was to undo. If a man undertook to build a house, and having carried it up to the roof, he was not to finish it, but let it remain in that state, it would be an evident display of his inability to complete it or of his folly in commencing the building. One or the other impressions would naturally strike the observer. So in respect to the army. It certainly was a feature of the national spirit; it certainly was a means of defence which was determined on by the national councils. To arrest its completion before the ground of its commencement was removed, must prove to observant France either imbecility or folly. And was it to be supposed she would make no use of it? She certainly would never so far depart from her usual policy. As he should be opposed to the bill in every shape, he should vote for the postponement.

Mr. Huger said, though he agreed that the situation of the country did not authorize a reduction of the means of defence which were wisely ordered, yet he conceived there were good reasons why the present motion ought to be adopted. He did not believe that defensive measures had been or would be useless. He thought nothing more clear, than that the crisis of affairs was not so serious as it had been, and this he thought entirely owing to our defensive measures; their benefits had been received, but he wished not, on mere assurances of friendship, to recede from what he had done. What, he asked, had France done? She had done nothing which ought to produce a change in our measures, and therefore he voted against disbanding the army. She had to be sure wafted across the Atlantic a few fine soft words. Whatever their views, whether sincere or not, Mr. H. said, he would meet every proffer for accommodation, and therefore he approved highly of the measures taken by the Executive in sending Envoys. That amicable disposition ought to be seconded, by not increasing our means of defence. He could not be of the opinion with some gentleman, that it was the same thing to lay on our oars and remain in *statu quo*, as to recede. He did not believe it was like a man, with his shield half raised and his club grasped, who on the first offer of accommodation from his adversary lays down his weapon and his shield, and meets the proffered, though it might prove deceitful, proposition unarmed. No, it was rather like the man who would still keep himself prepared, his shield still ready to avert the blow, though no less willing to meet amicable propositions. This, he believed, was what was desired by the Committee of Defence.

By preventing farther enlistments, the country would not be in a worse situation than at present. But by disbanding the army, or by discharging the officers, which he considered of the same nature, it would put the country in a worse situation, because it would prevent the means of progressing if there should be occasion. You show France and the world that you are willing to do anything you can towards peace and unanimity, but you will not trust to words; that while you hope for the best, you will remain prepared for the worst. It struck him, Mr. H. said, that there was something very amicable and conciliatory in this bill, and he

therefore should vote for it, and against the proposition for its postponement.

Mr. Nicholas called the yeas and nays upon the question, which were agreed to be taken, and were—yeas 10, nays 82, as follows:

Yeas—George Baer, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Gordon, Jonas Platt, John Rutledge, jr., James Sheafe, and Peleg Wadsworth.

Nays—Willis Alston, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Phanuel Bishop, Jonathan Brace, Robert Brown, Samuel J. Cabell, Gabriel Christie, William Charles Cole Claiborne, John Condit, William Craik, Samuel W Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Abiel Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Andrew Gregg, Roger Griswold, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, Benjamin Huger, Jas. H. Imlay, George Jackson, James Jones, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Michael Leib, Samuel Lyman, James Linn, Nathaniel Macon, John Marshall, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Leven Powell, John Randolph, John Reed, Samuel Sewall, William Shepard, John Smilie, Samuel Smith, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, George Thatcher, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Robert Williams, Lemuel Williams, and Henry Woods.

The said amendments were then again read, and, on the question severally put thereupon, agreed to by the House.

A motion was then made and seconded further to amend the said bill, by adding the following as a new section:

"*Be it further enacted*, That the men now enlisted under the said act, shall be formed into as many regiments as they are sufficient to complete; to be officered, at the discretion of the President of the United States, out of the officers of the said twelve regiments; and that the supernumerary officers, together with such officers of the general staff, as, in his opinion, will not be necessary for the discipline of the said regiments, so to be formed as aforesaid, shall be discharged, and be entitled to receive, besides the allowance directed by law to be paid at their discharge, each one month's pay:"

And, the question being taken that the House do agree to the same, it passed in the negative—yeas 38, nays 57, as follows.

Yeas—Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Richard Stanford, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

Nays—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, Robert Goodloe Harper, Thomas Hartley, William H. Hill, Benjamin Huger, James H. Imlay, John W. Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

The said bill was then further amended at the Clerk's table, and ordered to be engrossed, and read the third time to-morrow.

The following Message was received from the President of the United States:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress, for the information of the members, a report of the Secretary of State, of the ninth instant; a letter from Matthew Clarkson, Esq. to him, of the second; and a list of claims adjusted by the Commissioners, under the twenty-first article of our treaty with Spain. JOHN ADAMS.

United States, *Jan.* 23, 1800.

The said Message, and papers accompanying the same, were read, and ordered to lie on the table.

THE SEDITION LAW.

Mr. Macon submitted the following resolution:

Resolved, That the second section of the act, passed the fourteenth of July, one thousand seven hundred and ninety-eight, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,'" ought to be repealed; and the offences therein specified shall remain punishable as at common law. Provided, that, upon any prosecution, it shall be lawful for the defendant to give in evidence, in his defence, the truth of the matter charged as a libel.

Mr. Macon said, though he was well convinced that the subject had been so fully discussed, both in this House in former sessions and elsewhere, that it would be impossible to add anything new, yet he thought it incumbent on him to offer his reasons for bringing the resolution before the House, which he would do in a few words.

He was so well convinced that no power was delegated by the Constitution of the United States to the Legislature to pass such a law, that the duty he owed his constituents, as well as his own opinion, impelled him, to make the motion to repeal the section at the present session. When the Constitution was before the State Conventions that adopted it, almost all the members who were in favor of it, in the States where the debates have been published, declared explicitly, that no power was granted to Congress whereby they could pass any law abridging the liberty of the press; those who were not in favor of the adoption at that time,

thought it possible, some future day, Congress might assume the power by implication, and therefore it is that the conventions of the States generally recommended that an amendment should be made to the Constitution, declaring that no power over the press was granted to Congress by the Constitution. And the first Congress under the Constitution, in conformity to the wishes of their constituents, proposed several amendments to the Constitution, among them is one in the following words: "Congress shall make no law respecting an establishment of religion, or prohibiting 'the free exercise thereof, or abridging the freedom 'of speech, or the right of the people peaceably to 'assemble, and to petition the Government for a 'redress of grievances." When this article was under consideration, it appears, by the debates which have been printed, that some of the then members of Congress thought it useless, because as no power was delegated on the subject, they could not then pass any law on any of the subjects mentioned in the article. This article, with others that will be read, has been ratified by the States and made a part of the Constitution, and removed all the doubts as to the power of Congress to pass any law on the subject of the press. If Congress can constitutionally pass the law now in question, can they not also pass a law to abridge the freedom of speech, to prevent the people from peaceably assembling to petition for a redress of grievances, and by the same arguments make an establishment of religion? But what means the freedom of the press? It must mean that, as there was no law existing to abridge it, that Congress should not thereafter pass one, and that it should remain exactly as the Government found it. But in order to make it more clear if possible, and to give more perfect satisfaction to the people, another amendment was introduced in the following words: "The powers not delegated to the 'United States by the Constitution, nor prohibited 'by it to the States, are reserved to the States re-'spectively or to the people." Mr. M. said he conceived this clause was introduced to prevent any power being assumed by implication, and consequently that Congress have no power to pass any law, unless that power be specially granted, or absolutely necessary to carry a delegated power into effect. Again, the 11th amendment has these words—"The enumeration in the Constitution of 'certain rights, shall not be construed to deny or 'disparage others retained by the people." From these clauses it appears quite clear that the law is a violation of the Constitution; if, however, it should be contended that the power to pass the law is delegated, or that it is necessary to carry any delegated power into execution, he hoped the gentlemen would put their finger on that part of the Constitution in which the power was granted; but he conceived that this could not be done now, no more than formerly, because no such clause was in the Constitution.

Mr. M. said it was not only fair, but perfectly consistent, with the Constitution, that every act of Government might be discussed either in the public prints or elsewhere, by any citizen; and what other means than the press could the people employ to disseminate their opinions, or of knowing the opinions of others? Besides all this, the law must have a very bad effect on our system of Government, if we mean to keep it pure by elections; if elections are to be free, the people ought to have the liberty of freely investigating the character, conduct, and ability of each candidate to fill any place of public trust whatever, and this cannot be done as long as the present law continues in force.

It has been said formerly on this floor, and perhaps it would now be made an objection to the motion, that there was a great difference between the liberty of the press and the abuse of the press. This may be true; but as no line of distinction has ever been drawn, so that we may know where the liberty of the press ends and the abuse begins, we may fairly conclude that it is impossible to draw the line. But if a line could be drawn, it would be of no consequence to us, because we are prohibited from legislating on the subject of the press by the Constitution. The press is amongst the best gifts bestowed on man, its benefits are incalculable, and if we had the power to touch it, prudence would dictate to us to do it with great caution; and here permit me to repeat, that we have no power over it, given by the Constitution of the United States.

A considerable argument in favor of the liberty of the press, if there was a necessity for one, might be derived from the old saying, that truth will always prevail. This Mr. M. said he firmly believed, and could not discover any reason for preventing a free investigation of all public acts; and if there are those in the country who hold different opinions, they ought to have the same means of supporting their opinions.

Another proof may be derived from the Constitution in favor of the opinion that the law is unconstitutional, it is that part which declares that the President and other officers may be impeached. This also shows the propriety of examining into the conduct of all officers, because it supposes that some one of them may commit a crime for which he ought to be impeached and punished. And if at any time, any officer liable to be impeached, should be guilty of malpractice in office, what so ready a way to make the discovery as a free and public investigation of his conduct? And yet the liberty to make this examination is considerably curtailed by the law, for in doing this it is more than probable that the hatred of the good people of the United States will be excited against such officer. Mr. M. said he hoped there never would be cause for anything of the kind, yet that was no reason why the means of making a discovery, in case it should happen, ought to be unlawful.

Mr. M. said he would not take up the time of the House any longer, and on these grounds would submit the subject to their decision, with the hope that the section would be repealed.

Mr. Bayard, said he could not question the purity of the motives which induced the gentleman from North Carolina to introduce the reso-

lution on the table, but it was difficult to discover a sufficient object for the renewal of a subject which had heretofore been so fully discussed and so often decided. The House would remember that the law which the resolution proposed to repeal, would expire by its own limitation on the 3d of March 1801; and judging from its past effects there was certainly nothing to dread from its continuance another year.

Mr. B. said he was not one of those who had ever had any scruples as to the constitutionality of the law or who ever felt alarm as to its operation. He knew that it had been made the instrument of much clamor, but there was no law so wholesome that party could not create a clamor against it. The law in question went no further than to punish acts which no one would be hardy enough to say ought not to be punished. It moderately chastised the author of a false and malicious libel, who employed falsehood maliciously to deceive the people as to the conduct of the officers of Government. It was no matter how wicked the motive of an author might be, provided his publication was true, nor was it material how groundless the publication was provided the motive was honest. It was the combination of wickedness and falsehood alone that was punished. And he would ask whether the nation had now anything to fear from the suppression of such a combination?

It was not his intention, Mr. B. said, to go into a dilated argument on the subject; he should however beg permission to notice some things which fell from the gentleman who moved the resolution before the House. The gentleman had urged what had often been said, that the law was unconstitutional. If this objection were clearly founded, the Legislature could not be in too much haste to repeal the law. But the enemies of the law must at least allow the point to be extremely doubtful: and considering in case the Legislature had erred, as to their power on the subject, the citizen who was injured might seek relief from the judiciary by contesting the validity of the law, there was the less occasion to adopt the resolution. If the act was unconstitutional it was no law; and, if no law, there was no occasion for the present interference of the Legislature.

It is insisted, by the gentleman from North Carolina, that the act is repugnant to the amendment to the Constitution which provides that Congress shall make no law abridging the freedom of the press. The gentleman himself had seen a wide difference between the liberty and licentiousness of the press, and he had endeavored to anticipate the distinction. It is said that no line can be drawn on the subject: that the shades are indiscriminable and that you cannot curb the licentiousness without wounding the liberty of the press. Nothing could be more fallacious than such reasoning. It applied with equal force to every human act which was punishable, because every act was equally susceptible of the shades of innocence and criminality. Crimes of the deepest dye, capitally punished, might be traced by a connexion scarcely perceptible to actions not only lawful but laudable. The act of homicide was graduated by the nicest lines, and according to the shades of the act it was commended, permitted, excused, or punished by the law. If the possibility of touching the liberty of the press were an objection to punishing the abuse of it, on the same principle the whole criminal code ought to be abolished. It was always possible that innocence might be the victim of a law designed against guilt. Many innocent persons had suffered, and even capitally, but this only proved the sad law of our nature, but too well known, *humanum est errare*.

Mr. B. said it was impossible for him to feel a difficulty on the point of distinguishing between the liberty and licentiousness of the press, when he thought the line was full and clearly defined by the law in question. Surely to say the press shall not be the vehicle of malicious falsehood, is not to restrain its just liberty. Will gentlemen say the Constitution meant to establish an empire of falsehood, or to prevent the erection of pillars of truth? Can the freedom of the press require the liberty to publish malicious lies? Can any one hesitate in saying that such a liberty would be licentiousness? The law had said no more. It has defined licentiousness to be the malicious publication of falsehood. And can it be said that the punishment of such an act restrains the just liberty of the press? Gentlemen could not suppose that the law was liable to be perverted to a different end. They would remember that its execution was placed in the same hands to which were trusted our properties and our lives. No man could suffer under the law, unless a jury of the country convicted him of the offence designed by the law. He might defend himself by the truth of his statements, or the purity of his motives, and the jury would not, and could not convict him but on the belief that with wicked intentions he had published what was false. With this protection what was to be feared? The honest citizen was secure, it was only the restless, ambitious, unprincipled disturber of the peace who had anything to dread.

The honorable gentleman had also relied upon that amendment to the Constitution which reserves to the States and the people the power not delegated to the United States. Mr. B. admitted that if the power was not delegated to the United States it could not be exercised by Congress.

But he insisted that the power was delegated. He found it in the last clause of the 18th section of the first article of the Constitution. By that clause Congress has power "to make all laws "which shall be necessary and proper for carrying "into execution the foregoing powers, and all other "powers vested by the Constitution in the Government of the United States, or in any department or officer thereof." This clause expressly delegates a general power of self preservation. The right given to the Government to make laws proper for carrying into execution the powers delegated, necessarily carries with it the right to make laws proper to preserve and maintain the powers delegated, because the powers cannot be executed unless they are preserved. To preserve its powers the Government must certainly defend the foundation on which they rest. The Government of the United States is immediately bottomed on public opinion. It originates with the people and depends on their will for its existence, and on their arms for its protection. Poison the fountain of its being and the whole frame is palsied, and must sink into lethargy or die in convulsions. The Government is bound not to deceive the people, and it is equally bound not to suffer them to be deceived. Delusion leads to insurrection and rebellion, which it is the duty of the Government to prevent. This they cannot prevent unless they have a power to punish those who with wicked designs attempt to mislead the people. Sir, said Mr. B. for Government willingly or weakly to suffer the people to be misled, is to commit treason against them. It is our duty to defend them against deception, and when they are rightly informed, there is no doubt but, in their turn, they will defend the Government.

The gentleman from North Carolina, however, had said the truth needed not the aid of a law; that in the end it would always prevail against falsehood. This was a fine moral sentiment, but our limited knowledge of events did not verify it. There was scarcely a period of the world, at which the empire of falsehood was not as extensive as that of truth. The labor of truth was eternal, as fast as it vanquished one enemy another arose. Would the gentleman say the truth always prevails, when he looked to the state of our holy religion? Near 1800 years had elapsed since its light was abroad, and yet how large a portion of the world remained in darkness and error! If the sentiment, however, were true, it would not dispense with the propriety of the law. Though truth had power to prevail in the end, it was no reason why we should not assist it in the beginning. Were we called upon to be impartial between the principles of truth and falsehood, and to allow them to contend on an equal footing? Before the victory was obtained by truth it often happened that much mischief was done by falsehood. This was especially observable in political affairs. The law in question was enlisted in the service of truth, and designed solely to oppose her enemies.

Mr. B. said he had not risen with an intention of entering largely into the subject. He had been drawn further than he had designed to go, in answering observations which had fallen from the gentleman from North Carolina. His design was to vote against the resolution. He thought the law a wholesome one, and that it ought not to be repealed.

There was no modification of the resolution which would induce him to agree to it. But he thought it susceptible of amendment which would render it less exceptionable. Not knowing the event, he considered it as a duty to render the resolution as harmless as possible in case it should succeed. He should perhaps not disappoint the wish of the honorable gentleman who moved the resolution. It was certainly not the design of that gentleman to raise the floodgates of slander and defamation. His motive probably was a tenderness for the Constitution, which he might consider infringed by that law. The amendment he designed to propose would still hold out the terror of punishment to those who wickedly aspersed the members of the Government. The gentleman must often have observed in the public prints slanders the most flagitious and unfounded, designed to impair the confidence of the nation in officers of great trust, and whom we all knew to be equally faithful and zealous in the performance of their duty. Surely in such case it should be known that there was a power to punish. He should therefore move to amend the resolution by the following addition:

"And the offences therein specified shall remain punishable as at common law; provided, that upon any prosecution it shall be lawful for the defendant to give in his defence the truth of the matters charged as a libel."

Mr. GALLATIN could not conceive what connexion the amendment, as it was called, had with the motion of the gentleman from North Carolina. It in fact amounted to a complete substitute for that proposition. The motion was calculated to repeal a part of a law, but the amendment was calculated to establish an entirely different principle, in direct opposition to the intention of the mover—not only that a certain class of persons should be punishable at common law, but that they should "REMAIN" punishable at common law. This was certainly an independent proposition, and therefore improper to be coupled with it.

In the next place it was improper, inasmuch as it would go to revive a law which the motion went to repeal, and therefore, being to all intents a substitute for the original motion, could not be in order. Nor could the motion be of any use according to its own words. It provides that certain offences shall remain punishable at common law: this implies that they are already punishable in the courts of the United States, and if they are now punishable, there being no attempt to change the jurisdiction of the common law over them, it can be of no use to declare they shall remain so. The resolution goes to repeal a statute. Is it necessary then to say that a measure which goes to repeal a statute shall not go to repeal the common law? The common law remains of course. But if the amendment, or supposed amendment, goes to establish a kind of substitute, by maintaining the principle of the statute which was identically the same that the resolution was intended to destroy, it certainly must be out of order. Mr. G. appealed to the Chair.

The SPEAKER declared the amendment in order.

Mr. NICHOLAS said if the amendment meant anything, it certainly implied that these offences were now punishable at common law, by the expression "*remain*." For what then could the amendment be introduced? It could not be pretended that the motion of the gentleman from North Carolina was calculated to repeal any part of the common law. If it was meant to declare what would be of course, it could have no operation at all. If the real design is not the apparent one, it is very evident that something farther is intended than the gentleman has acknowledged or

the House is aware of a trick to defeat any attempt to repeal the law, or to couple with it a provision much worse than all the provisions of the law. Something is meant to be adopted which is not now in existence, and which gentlemen do not wish to declare.

Were gentlemen prepared, Mr. N. asked, to bring into force in this country all the common law of England, and with it all the punishments and penalties there inflicted? He knew that this would be esteemed extremely useful and gratifying in one department of the Government, but it could not be done; he knew that there was too much wisdom in that House to admit of such a system, the danger of which was extremely evident.

If the motion was to introduce no new law of principle, it would be useless, but if it was to introduce a new law, or rather a new and essential principle, (of which he had no doubt,) an hundred more unknown but hidden ones would attend it, because the practice of another country would be introduced in all its rigor. This was done in a way which he conceived never could meet the assent of Congress—it covered under it so much more than it pretended—and which, whenever established, must have a serious effect. He therefore trusted it would be rejected.

Mr. Bayard said, it was as little his intention as it could be his expectation to cover under plain words a design which no veil could have concealed from the eyes of the House. He did not know what the gentleman meant by a trick. But if he meant anything unfair, it was not justified by what had occurred on the occasion, and could be attributed only to a disposition which is ever ready to suspect what it is apt to practice. He had no hesitation in avowing that the amendment was predicated in the existence of the common law, and was not designed to introduce it. He had always been of opinion, nor could he suffer himself to doubt, that the common law existed under the Constitution of the United States. He had no doubt that those who wished to weaken the Government would maintain a different doctrine. Without the common law the Courts of the United States would be reduced to a cypher, and the other branches of the Government be stripped of that great defence which its institutions and principles afforded. Without recurring to the common law the Constitution could neither be explained nor executed. The judicial bill supposed it to exist, and the judges had pronounced its existence. He was informed that the question had been several times decided, and that all the judges united in opinion with the exception of one. It was a point proper for the judiciary to decide, and their decision was full evidence of the existence of the law. It might be in the power of Congress to unmake the law, but, after the judicial determination of the point, it was necessary for them to enact it.

Mr. B. could not conceive how the gentleman from Virginia could misunderstand the language of the amendment. The words were, that the offences specified in the act should *remain* punishable as at common law. Was it necessary to explain to the gentleman the meaning of the word *remain?* If the gentleman was not capable of understanding the word, Mr. B. said he certainly was not to blame, as it was in no degree ambiguous. But he hoped at least, that his express avowal that he considered the common law as existing, and that he considered the offences specified in the act as punishable at common law, would render him intelligible even to the gentleman from Virginia.

The principal design of the amendment was to ameliorate the common law. It was known that upon a public prosecution for libel, the truth of the matter charged as a libel was no defence. This doctrine he thought unrighteous in itself and inconsistent with political freedom. He could not consent that truth should be punished. It was important that the truth in politics should be known. He wished to circulate it, and support its credit, by punishing the impostures of falsehood, which frequently assumed its appearance. When the Sedition bill was before Congress, he had been governed by the same principle, and proposed an amendment to the same effect with the present, which was incorporated in the bill.

Mr. B. would only further observe, that in his opinion without a power to punish defamation a popular Government could not exist. It rests immediately on the opinion of the people. The public affection is the vital principle of the Government. Let that affection be alienated and the Administration is palsied. Not a law could be executed, not a measure could be supported. Must not the Government have the power of preserving itself? They who doubt this principle must wish it exterminated. It could not preserve itself without the power of punishing those atrocious and poisonous falsehoods, which unprincipled ambition and the violent spirit of party were ever ready to employ as means to accomplish their purposes.

Mr. Gallatin said, the gentleman from Delaware (Mr. Bayard) certainly did give the House to understand that he meant, by his amendment, to introduce a new principle: for he had asked whether the gentleman from North Carolina would leave the country without a law to inflict punishment on these offences; would he open the flood-gates to defamation and scandal? This certainly implied that there was no law to correct the evil: he had not then told the House that libels were already punishable at common law, by the Federal Courts. But afterwards he came forward and denied any design to introduce a new principle: he said that the common law was the law of this land.

Mr. G. did not understand the precise meaning of the gentleman. This was a principle so extremely extensive, and susceptible of so many meanings, that he presumed it impossible to be understood. If, as the gentleman said, the amendment conveyed no new idea, because the offence was already punishable at common law, what then did it mean? It must mean that it was not an amendment to the resolution, but an amendment to the common law, in order to effect the same object which the resolution first proposed

went to repeal, and therefore it could not be in order, because one was in direct violation of the other. But the decision of the Chair had pronounced it in order.

Mr. G. suggested to the candor of the gentleman, whether it would not be better to make a distinct proposition of his motion. If the first motion is carried, it will be in his power at any time to propose any other he may think fit. An admissoin of the one will not prevent the subsequent admission of the other, but certainly the first ought to be the first in order. But to force the House into a debate, not on the principle of the first resolution but of a new one, viz: what would be the best substitute, or what would be the law, if this should be repealed, certainly was not consistent with his usual candor. This must necessarily puzzle the friends of the resolution as to what vote to give. The House were told that the judiciary, with one exception, had pronounced the common law of the land. Mr. G. wished to understand the assertion. Upon this broad and large construction of the judiciary, he would not hesitate to say that "we have no construction;" for if it was intended to say that certain species of offences, which had been recognised as offences by the common law (perhaps) of Great Britain, were within the jurisdiction of the judiciary of the United States, merely because they were offences at common law, it was clearly the same as setting aside at one stroke all the restrictions and limitations of power as expressed in the Constitution. It was giving to the judiciary a legislative power of adopting certain laws not enacted by Congress as the law of the land. Indeed it was giving a farther power: Congress had no power to legislate on any subject which was not specially granted to them, by the Constitution; but, if the other doctrine was true, the judiciary could decide on subjects upon which Congress could not legislate.

But, Mr. C. asked, where did the judges get that power of making the common law the law of our land? Their power is limited; no department of the Government has a power to make laws but the Legislative, and if that idea is just, how can the judges assume an uncontrolled jurisdiction over all common law offences? The motion certainly argues that the judges have a power which it cannot be proved ever was given to them by the Constitution. He said he was not ready to meet this altogether new principle, in every point of view a subject of such magnitude merited: these ideas were drawn from him as the most prominent on the occasion.

When the Sedition law was proposed and adopted, was it brought up with a view of ameliorating the common law, because its severities for this species of crime were too hard? No, it was undoubtedly brought forward as a measure of defence. It was thought that there was no power in the judges to carry into effect such punishments as were thought by a majority essentially necessary to support the Government. It was therefore brought up as a part of the general defensive system. When a motion was made to repeal it during the last session, the committee appointed to report on the subject, did report on it as a part of the measures of defence against France, and therefore, in that state of things, thought it improper to repeal it. Nay, were not the arguments of the gentleman this day grounded on the necessity of the law being continued? What need of all this argument, and of what force would these opinions be if the crime was already punishable at common law? All these arguments would be fallacious, if the offence was already punishable at common law. This being a question of so novel a nature, Mr. G. presumed the House was not prepared to discuss it. Indeed it was one of so delicate a nature that it ought not to be admitted in a way wherein it could not be maturely discussed. If the offences are cognizable at common law, then the motion of the gentleman from North Carolina would leave the subject in the same situation as the gentleman from Delaware wanted to place it, but if they are not cognizable, the motion of the gentleman from Delaware would make them so. It is impossible to conceive that the latter gentleman could think his motion necessary, except it was to destroy the other motion, and if meant to destroy that, it ought not to be admitted as coupled with it.

Mr. Harper said, whether the conduct of the gentleman from Delaware was candid or proper, the House could judge, but that there was neither a want of candor or of propriety evinced in the present proposition, he believed, must plainly appear; however, it did so to him. This method of introducing amendments was constantly the practice of the House; it would not be a novel practice to endeavor to make a thing better which was disapproved of. Mr. H. disapproved of the motion on the table; but, if it must pass, he certainly would wish it to pass in as unexceptionable a form as possible.

There appeared to him but two distinct propositions now before the House. One was, whether the common law, generally speaking, was the law of the land; and the other, whether these offences were punishable under the Constitution of the United States. These were entirely distinct. He did not consider it necessary to inquire, on the present subject, whether the common law was in force in the United States, or whether it was not; the only inquiry he thought was, whether the offence of libelling the Government was punishable in the United States without the aid of a statute. Of this he never had a doubt.

The Constitution provides that all offences under that Constitution, or the laws made in pursuance thereof, should be punished by the judiciary power. Now the law which our forefathers brought with them, and to secure which they shed their blood, is what is termed the common law; by this law it was punishable for any person to libel the Government, by fine and imprisonment. This law, therefore, is an affirmance of this common or universal law. If the subject matter exist, the law operates: if the Constitution of the United States gives birth to the subject matter, the offence is therefore punishable under that Constitution. When the Constitution created the Government,

it brought into existence the subject matter; the offence therefore arises under the Constitution, and in that view the judiciary power can punish libels against the Government of the United States.

With regard to the reasons why this law was introduced, the gentleman last up was mistaken, both as to facts and conclusions. He said that the reasons why the law was introduced were grounded on measures of defence, and that this was considered as a part of that system. Every other gentleman but him, Mr. H. said, knew that the reason was because there was a doubt entertained as to the applicability of the common law to this species of offence, and whether it could be punished under the Constitution or not. To remove these doubts the law was made—it was introduced as a declaratory act—an act to render a pre-existing fact notorious, and so express, that "he that runs may read it."

Another object was to mitigate the undue rigor of the common law, and to give opportunity for the person charged to clear himself by proving the truth of his assertion. On this ground also the present amendment was introduced, and on this ground it is an amelioration to what would exist without it. It was true, that this law was passed about the same time of the adoption of the defensive measures, but the conclusion that this was one did not follow of course. Nor was it to be inferred, from the period at which it was passed, that no such offence existed independently of the act. If these things were true, there was an absolute necessity, for the motion of the gentleman from Delaware, in order to declare what is the law of the land, as it stands, independent of the statute; and for another use, as observed before, to remove the severities of the penalty. It was not his desire, Mr. H. said, that the law should be repealed, but if it must, he wished it to be coupled with this provision.

Mr. SMITH concurred in the idea with the gentleman from Pennsylvania, that this bill was certainly brought forward in connexion with measures of defence. The bill was first brought into the Senate in a very objectionable shape indeed, it was changed there, and underwent other alterations in the House. It was thought a measure essentially necessary, to guard against the treachery that was at that time apprehended from the French. Another proof of that principle was, that the bill was made to continue in force about the probable time that this necessity might arise. There was then no doubt of the connexion of the bill with the other measures of defence entered into at that period. It was clear, therefore, that the gentleman from South Carolina himself, and not the gentleman from Pennsylvania, was deficient in his recollection of the grounds on which the law was built.

Mr. NOTT moved, as the question was so materially changed by the last motion, and as it appeared to him to involve an important subject, that it be referred to a Committee of the whole House. He believed he was not singular in his wish; he was not prepared to give his vote, and supposed it must be the case with other gentlemen, on which account he wished it to receive every possible consideration.

The question for commitment was taken and negatived—49 to 41.

Mr. NICHOLAS confessed, notwithstanding the skill of the gentleman from South Carolina in enlightening his hearers, that his understanding was yet so dull that it was impossible for him to escape the imputation of ignorance from that gentleman. He considered this motion in no other light than as an affirmance of the common law, covered under the pretended modification of it. This appeared to be confessed in effect, though not openly. The gentleman from Delaware at first pointed out the danger to which he supposed the Government would be exposed by the flood of slanders opened on it by the motion first made, and yet the gentleman now says he only intended to ameliorate the common law, and not to introduce new restraints. He said farther, that he himself never had a doubt about the common law being the law of this country, but acknowledged there was a doubt in the judiciary about it. This was a proof that if it was not the established law, he wished it to be in force, and therefore, as there was some doubt about it, he proposed an affirmance of the principle. Let the gentleman endeavor to clear himself of that imputation as much as he pleases, it still was evidently his desire that the House should sanction the common law, which Mr. N. trusted they never would do.

Mr. N. said he should not pretend to go into an examination of what is meant by the common law; he confessed he could not do it; he did not know what it was, nor did he ever yet see a man who could explain it to him, or that pretended to do it. It was the first time that he had heard it said that the Sedition law was intended as a modification of the common law; he appealed to the debates of the period when the Sedition law passed: there was not a solitary opinion then given that the United States had such law as is now called the common law. He recollected, indeed, some gentlemen saying that it was a law in all the States, and thence argued that it was necessary the General Government should have similar restraints.

The gentleman from South Carolina, indeed, had endeavored to remove the difficulties in the way of the amendment, by calling it part of the universal law. This was quite a new term, and a new doctrine. Where he was to go to look for this law, he was more at a loss than before. Was it the practice of all nations, and was no Government to deviate from this universal law? It was not to the common law of England alone, then, that they were to affirm, but something yet more uncertain! But the gentleman pretended to prove it an offence under the Constitution. The Constitution indeed speaks of the offences under it, but defines a variety of crimes, more than enough to satisfy such an expression—treason for example is a crime, under the Constitution, the mode of punishment being left alone to the law. On the whole, whether the amendment is to be understood according to the gentleman's first explanation, as a substitute for the Sedition law, or according to his last explanation

as an amelioration of the law of the land, it must deserve the name he had given it, a trick to effect more than the terms of it seemed to import.

Mr. OTIS said, that the amendment proposed by his friend from Delaware was new to him when offered to the Chair. He was however astonished at the unwelcome reception which it had encountered. It appeared to him to be a most happy expedient for reconciling the views of the friends and opposers of the original act, and yet it affected some gentlemen with stronger abhorrence and apprehension than the law itself. The true state of facts relative to this subject he apprehended to be, that gentlemen on one side of the House maintained an opinion that libels against the Government were punishable by common law, and that the truth was no justification. On the other side it is believed that the common law is unknown to the Constitution, and the Sedition act, being a violation of the Constitution, ought to be repealed. The judicial courts of the United States are alone competent to decide this question. It is not to be expected that either party will recede from a belief of its own tenets. The amendment of the gentleman from Delaware is calculated to leave each in possession of its respective doctrine, and to guard against the mischiefs arising from either. He agrees that the act shall be repealed, and only requests that if, in that event, our opinion of the competency of the common law should be established by the proper tribunal, a man charged with writing a libel may be permitted to give in evidence the truth of his assertions. Wherein consisted the unfair design, or appearance of duplicity, charged upon this measure, he confessed that he could not perceive. It did not contain the affirmation of any new principle, unknown to the Constitution, and, if it did, it would be of no binding authority. It proceeded merely upon the supposition that the principles of the common law were recognised by the Constitution. If the assumption of this principle was erroneous, a court of law would decide against it; but if, on the other hand, it should happen to be sustained, would not the utility of a provision appear manifest, which should screen from punishment the author of a publication founded in truth.

Mr. O. observed, that in reply to the gentleman from Pennsylvania, who denied that the common law was recognised by the Constitution or the laws, he would venture the assertion, that the Constitution itself was not intelligible without the aid of definitions taken from the common law. In one section was contained an express allusion to trials at law, which could be satisfied by no other law than the common law. This construction had been retained in the act for establishing the judicial courts, which provides for trials at common law, in so many words. All our forms of trials and judicial proceedings, as well criminal as civil, are modelled upon and conducted conformably to the uses of the common law. He was at a loss to account for the repugnance entertained by some gentlemen to a law under which nearly every member of the House had been born and educated, and from which they derived a security for their titles to their estates, and for the principal rights of property and persons.

But gentlemen are pleased to declare their ignorance of the meaning of the words "common law." Do you mean, say they, the common law of England? Is that the law of this country? If not, how do you define and explain it? I will answer, said Mr. O., No! We mean not the law of England in its full extent. We know that a great part of that law does not apply to the nature of our Government or the circumstances of our country. But we mean so much of that law as, being applicable to the circumstances of this people, has been adopted into practice by constant and immemorial usage. It may indeed be pretended, that this law has been so variously modified in the different States, as entirely to destroy its uniformity, and consequently its relation to the whole people of America; but to this objection it was a plain answer, that the right of punishing all misdemeanors, which, being wrong in their own nature, had a tendency to destroy the Government, was inherent in the people of every State, and had never been relinquished by any of the United States. It was a principle of common law essential to the preservation of social order and of every Government under Heaven. It was the basis of the present Constitution; a birthright to which we should cling as a blessing and a privilege, and not abjure as a curse. The reason which operated upon his mind in favor of the amendment, was what he had assigned; to secure the citizen from the rigor of the common law in this particular, if he should be found amenable to its jurisdiction.

The argument of the gentleman from Pennsylvania is, that if the common law be unknown to the Constitution, this amendment will give it a sanction, and if it be a part of the Constitution the amendment is unnecessary. This argument may be retorted upon the gentleman. If the common law be a part of the Constitution the amendment will be nugatory and do no harm—but should it be otherwise decided, as it has already been in several cases by the Circuit Court, then the amendment will ameliorate the common law and prove highly beneficial.

Mr. MACON thought it the most extraordinary amendment that ever was tacked to a resolution. It meant neither more nor less when coupled with the resolution, than that the law ought to be repealed, and yet continued in force! If the common law was in force, and could punish the crimes, what reason could there be for declaring so by a statute? If it was not, he was not yet convinced that this would not establish it; he feared it would. The law in question was said not to be a measure of defence. In addition to what had been said on that subject, he referred to an observation of Mr. RUTLEDGE, a few days ago, in reference to the resolution now before the House: in recapitulating the measures of defence which he supposed some gentlemen wished to repeal, he mentioned this as one, and no doubt he thought it one.

Mr. HARTLEY was in hopes there would have been an open and candid discussion of the first

motion; he conceived it would have a very good effect upon the minds of the people, who were dissatisfied with the law. He considered that more harm than good would attend this law, and therefore, as a question of policy, it would be best to repeal it. The few prosecutions which had taken place under it, he considered had tended to bring two or three individuals to public notice and consequence, who would otherwise have sunk into nothing, or never been known. He believed it was generally the opinion of the bench that the common law was in existence in this country, but that question had not fairly come before the House; he wished it had been made the subject of a distinct proposition, and not been so interwoven with what he considered entirely another subject. It would be remembered that last session, he had presented a petition from 1,700 of his constituents against this bill; paying some attention to their will, and doubting the propriety or policy of the law, he should vote for the repeal of the section proposed by the gentleman from North Carolina, and against the amendment.

Mr. J. Brown, in answer to the observation of Mr. Hartley, that he had presented a petition from 1,700 persons, against this bill, said that he presented one from 3,000, not one of whom, he would be bold to say, wished to have the act repealed.

The question was then taken upon the first part of the resolution in the words following:

Resolved, That the second section of the act passed the 14th July, 1798, entitled "An act for the punishment of certain crimes against the United States," ought to be repealed:

And carried in the affirmative—yeas 59, nays 48, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Thos. Hartley, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Barlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, Lewis R. Morris, Harrison G. Otis, Robert Page, Jonas Platt, Leven Powell, John Reed, John Rutledge, junior, Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Mr. Lee said the question was, at this moment, whether the House should say to the world that the councils of the United States possessed the means of legislative provision, or whether they did not—whether the American Government had not made a law upon a subject over which it possessed ample power to legislate? A manœuvre had been introduced to repeal a law, but by the rules of the House that manœuvre had completely turned against its friends, that part of the resolution having passed. Mr. L. was very happy an amendment had been introduced which enabled him to vote in a way to get rid of the deformity attending the original proposition, and at the same time to make the condition of the people better than it was under the law. He was one of those who believed that the common law was the law of this land, and therefore he was desirous of amending the proposition of the gentleman from Delaware to the one now passed. With that amendment he should be induced to vote for it, because it would ameliorate the common law; it would enable the accused to produce the truth (if truth existed) in his defence.

Mr. Nicholas conceived the common law was at its last push, and that if gentlemen, who were friends to it, could not get this, or some such provision, to support it, it was beginning to appear so monstrous that it never could be executed in this country. There might be found court after court who could give opinions in favor of its existence and force, but he should venture to say that public opinion must finally make them abandon the doctrine.

The principle proposed was recommended upon the ground that the accused might give the truth in evidence. He would venture to say that if this amendment was admitted, the accused would scarce ever be able to give the truth in evidence. Let the President or let the Congress act as corruptly as possible, let them do it as constantly as possible, it could not be proclaimed to the world; they were too secure under this provision, because what may be the truth, it might be impossible to produce in evidence. This was the amount of the doctrine. This view of it ought to deter the House from adopting so evil a principle.

As to gentlemen saying that this would leave the power precisely where it was, and would introduce nothing injurious, but on the contrary would operate to soften the rigor of the law, it was nothing but a specious provision, and unfounded reasoning, introduced to render a dangerous doctrine acceptable, and to make it go down the more unperceived. It certainly was calculated to give legislative sanction to the decision of the judges, so that if it was a wrong principle, in this instance, it would be more than a common wrong, and he hoped gentlemen would be so impressed with its evil tendencies as to vote against the motion.

Mr. Dana quoted the ordinance for the government of the Territory Northwest of the Ohio, in 1787, to prove that common law was established

in the American code, that people were entitled to *common law* jurisdiction, and it was considered as a valuable article. The government of the common law was repeatedly recognised, he said, in our courts of justice. But it was not confined to civil actions, as recognised by the 9th amendment to the Constitution, but in many instances extended to criminal actions. In the 10th amendment the article of bail was treated of, excessive bail was not to be required; the nature of bail was settled always by the usages of common law, and common law alone could say what was excessive bail. Again, I will say, that in a case where a new trial is required, no fact already examined shall be re-examined but by the *rules of common law*. Indeed the whole code was full of references to the existence of common law; every public record was drawn agreeably to common law usage. When he spoke of common law, Mr. D. said, he did not mean the common law of England, but he meant that part of the universal common law which was adopted by America, and which was become *our* common law. The common law jurisdiction being as well established as the Constitution, the laws, and the practice of our courts could make it, the amendment proposed could not be considered as introducing a new principle. On these grounds he should vote for it.

Mr. Gallatin considered the observations of the gentlemen from Massachusetts and Connecticut, as an answer to the objections made to the proposition as it respected the existence of common law. The principle that courts in their proceedings on subjects within their jurisdiction should be governed by the rules of common law, and adopt certain general definitions of common law, was very different from the principle that a certain class of offences which otherwise were not within their jurisdiction, should be cognizable by those courts merely because they were offences at common law. Let it be granted that the common law is recognised to a certain extent by the Constitution and laws of the United States, that it has been modified in the different States to suit their circumstances, and that it serves as a rule by which the judiciary is to be governed in their conduct upon questions on which by the Constitution and laws they have jurisdiction. But here we stop, and say that we do not wish, under color of common law jurisdiction, to give our sanction to a new species of power which the judiciary never have possessed, and which they cannot assume without it. This amendment declares that a species of offence, the jurisdiction of which does by the Constitution belong to the judiciary, does in effect belong to them by another power—that of common law. Thus the gentleman creates two Constitutions, that of the United States, and that of the common law? He admits two distinct sources whence our judges derive their authority.

It is certain that the doctrine now insisted on goes to erase from the Constitution all the limits by which the judiciary are bound. We say, that by the Constitution, the power of the judiciary is limited to certain prescribed bounds, and that they cannot go beyond those points, and therefore, as specific powers are given to them by the Constitution, they cannot have those powers increased or assume new powers; but does not this motion go to give a new series of powers to that department? Nay, does it not go to say that not only the offences now under consideration, but all those offences which, although not within their jurisdiction, are offences at common law, shall be cognizable by them? Mr. G. said he did not think it could be proper, upon a slight investigation, for the House at once to decide that this extensive and hitherto unknown jurisdiction should belong to the judges.

But why, Mr. G. asked, was the proposition now made? It could be for no other purpose than to defeat the resolution just adopted, and to re-enact a section which it had been just agreed to repeal. The second section says that certain offences shall be punished by the law itself in a certain manner—this it was agreed to repeal; but now came another motion forward, to say with the same breath that these same offences should be punished, but in a different manner. Why is this alteration in the mode of punishment? It must be because one is preferable to the other. But what is the punishment the common law inflicts? If he mistook not, the punishment enacted by common law was more discretionary or more penal than what was now proposed to be repealed. Fine and imprisonment, without limitation of even pillory, were the common law punishments. Therefore, the gentleman who made the original motion and the friends of that motion were now called upon to adopt a principle more hateful, in their opinion, than the one they had just voted to repeal. Mr. G. said he would much rather have the present law continue in existence than that the common law should be substituted, because the punishment inflicted by common law was greater and more arbitrary, and because the law would soon expire, whilst the amendment rendered the doctrine of common law perpetual.

Those gentlemen who wished to repeal the law as it now stands, did it with a view of substituting something better and not something worse, but if they were to agree to their own motion, accompanied by that of the gentleman from Delaware, a worse and perpetual law would be substituted for a temporary one, and therefore they would be compelled to vote against both, when connected. As it was clear, therefore, that the second motion would inevitably defeat the first, he hoped those who voted for the one would vote against the other.

Mr. Harper observed, that all the gentlemen who had spoken to these motions constantly recurred to the same misconception with which they set out. The question was not, as gentlemen had treated it, to know whether the judges were to have a power delegated to them by this law which was not given them by the Constitution; but the real question was whether the offences herein detailed were punishable under, and by the Constitution? In the discussion of it they said there was no common law in the United States; or, however, to clear themselves of what they could

not get out of otherwise, they called it all a mere matter of form!

Mr. H. would ask them whether the rules of evidence was a matter of form? Suppose for instance a criminal trial was brought on in one of the courts, in a case of life or death: the evidence in that case must be given and accepted upon rules of common law—would gentlemen call this only a matter of form! If they would, common sense must revolt at their judgment. Suppose a case of murder—the legal definition of murder must be known, and could only be known upon common law principles. Where would you go to find it? Not to the Constitution, nor to our statute books, but to *Hawkins;* there is its definition, and that is common law. Suppose the inquiry be, what is the law on the rule of deficit: where would you find what are the rules? You must go to *Blackstone's Commentaries.* These are important questions, and are only soluble on common law principles. So it is with all rules of law, and yet, however important, there is to be no common law, agreeably to these gentlemen's opinions. If, then, there is such a thing as common law, if it is recognised in any court of the United States and in all the State courts, and their whole practice is built on it; if it goes to life, to limb, and to reputation; if its use among us is without limits; where are gentlemen's arguments? How can they refuse to recognise a thing which necessarily is in continual existence whether they do it or not?

The question was then taken on Mr. Bayard's amendment and carried—yeas 51, nays 47—in the following words, after Mr. Macon's motion:

"And the offences therein specified shall remain punishable at common law; provided, that, upon any prosecution, it shall be lawful for the defendant to give in evidence, for his defence, the truth of the matter charged as a libel."

The following are the yeas and nays upon the amendment:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, Robert Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, Archibald Henderson, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Some discussion here took place on the point of order, as to taking the question on the whole resolution as amended; with some gentlemen, and with the Speaker, it appearing that if both parts of the resolution were carried, of course the whole was; on the other hand it was suggested as unfair to force an amendment on an original resolution which destroyed its whole effect, and substituted a worse principle, on which account they wished to vote against the whole.

Mr. Otis relieved the House from the embarrassment by moving the question on the whole resolution.

Mr. Randolph rose to express his reasons for the vote he was about to give. He was sorry this extraordinary measure had been used to prevent the question being taken in the way it ought to have been. If the friends of the original motion were now to vote for it, it would put the liberties of the people upon an infinitely worse footing than at present. The question ought to have been, simply, whether the House would repeal an obnoxious act? But it seemed to have been changed so as to be, whether the House would place offenders under that law in a worse situation than before? Those who were even enemies to the law as it now stood, could not hesitate to vote for the preservation of a law they disliked. Mr. R. disliked the law in question because it was unconstitutional, and because it was inexpedient. Were the first objection out of the question, the latter alone would be important. Those gentlemen who had witnessed the impression this law made on the public mind could not avoid being earnest for its repeal, but however earnest, he never could agree to substitute a worse for it.

Though some gentlemen seem to think that the parts were the same as the whole, and though it might be self-evident in mathematics, yet it certainly was not always so in morals, nor in politics. This question, taken in its aggregate form, was as foreign to that originally proposed as was possible. Mr. R. said, so far was he from wishing to subject the people of the United States to what was called common law usage in this country, so far was he from declaring a power to exist where the Constitution had not placed it, that, as much as he disliked the Sedition law and much as he approved a motion for its repeal, he should vote against it in this dangerous shape, and hoped gentlemen who had entertained the same dislike to it would act in a similar manner, and not be carried away with the fair pretence of amelioration, so much talked about—a mere evasion of the merits of the resolution. These were the reasons which would influence him to reject the resolution in turn.

Mr. Smilie also rose to give his reasons, to a similar effect. He never could agree to make an offence felony for which he considered the penalties of fine and imprisonment too severe. The common law would at once make libels felony. He hoped the resolution would be unanimously rejected.

Mr. Eggleston said, by voting against the resolution, the present law expires in March, 1801, but if the common law was adopted it was a sore which would never wear away, and a sore much worse in its nature than the law now in force, hateful as it was.

Mr. R. Williams was sorry to see gentlemen plume themselves and appear to take advantage of what no rules of propriety could approve, to wit, the snare they had brought gentlemen into. For himself, though the motion went very far, he would not vote against a resolution he so much admired; on that account, merely, he would give it his vote to prove his approbation of the principle. The reason he should vote for it was also because it would still leave a power in gentlemen, when the bill came into the House, to move to strike out the part which they disapproved of. Seeing it within the power of the House, it could do no mischief in the shape of a resolution.

The question was then taken by yeas and nays, on the motion as originally proposed, and decided in the negative—yeas 11 nays 87, as follows:

Yeas—Willis Alston, George Baer, John Dennis, Thomas Evans, Benjamin Huger, Henry Lee, Abraham Nott, Josiah Parker, Leven Powell, George Thatcher, and Robert Williams.

Nays—Theodorus Bailey, Bailey Bartlett, James A. Bayard, John Bird, Phanuel Bishop, Jonathan Brace, John Brown, Robert Brown, Samuel J. Cabell, Christopher G. Champlin, Gabriel Christie, William Charles Cole Claiborne, John Condit, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Lucas Elmendorf, Abiel Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Andrew Gregg, Roger Griswold, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, Archibald Henderson, William H. Hill, David Holmes, James H. Imlay, George Jackson, James Jones, Aaron Kitchell, John Wilkes Kittera, Silas Lee, Michael Leib, Samuel Lyman, Matthew Lyon, James Linn, Nathaniel Macon, John Marshall, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Harrison G. Otis, Robert Page, Jonas Platt, John Randolph, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Chew Thomas, Richard Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Robert, Waln, Lemuel Williams, and Henry Woods.

Friday, January 24.

An engrossed bill to suspend part of the act, entitled "An act to augment the Army of the United States, and for other purposes," was read the third time and passed.

A petition of sundry inhabitants of the Northwestern Territory between the Sciota and Little Miami rivers, was presented to the House and read, praying that a tract of land sufficient to erect and endow an academy, for the benefit of the settlers between the said rivers, may be granted by Congress.

Ordered, That the said petition be referred to the committee appointed, on the twenty-fourth ultimo, to inquire whether any, and, if any, what, alterations are necessary in the law providing for the sale of the lands of the United States Northwest of the Ohio.

Mr. Hill, from the committee to whom was referred, on the thirteenth instant, a motion for authorizing and directing the Secretary of State to procure and transmit to the Governor of the State of North Carolina, a number of the copies of the laws of the United States, made a report, in the words following, to wit:

"That the committee are informed by the Secretary of State that, in pursuance of the act mentioned in said resolution, he had transmitted to Wilmington, in the said State, the number of copies of the said laws directed by said act, for the use of citizens in North Carolina; that the same was there stored, and were all consumed in the fire which destroyed the town of Wilmington. The Secretary has further informed the committee, that he is possessed of a number of copies of the laws, equal to the supply proposed by said resolution: It is, therefore, the opinion of the committee that the following resolution ought to be adopted, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, authorized and directed to procure and transmit to the Governor of the State of North Carolina, a number of the copies of the laws of the United States, equal to the number which the Secretary was heretofore authorized to transmit to the Governor of the said State, by an act, entitled "An act for the more general promulgation of the laws of the United States," to be deposited and distributed agreeably to the provisions of the said act, for the use and information of the citizens of the United States within the said State.

The question was then taken that the House do agree to the said resolution, and resolved in the affirmative.

CASE OF MR. RANDOLPH.

The House proceeded to consider the report of the committee, made the twentieth instant, to whom was referred the Message of the President of the United States, together with a letter from John Randolph, Jr., a member of this House for the State of Virginia.

Mr. Smith moved a recommitment of the report. He observed that he could not otherwise get at the report, which he considered a very extraordinary and improper one. He was of opinion that the committee had gone far beyond the line of their duty, and the instructions given to them. They had suffered themselves to make reflections on a gentleman who complained of a breach of privilege, and insult offered to him. They had reflected on that gentleman both for his mode of application and for the style he had used. He considered that every gentleman had a right to

address himself in what style he pleased, and he could not discover the authority by which that committee should censure it. Every man might not think proper to address the President in the way Mr. Randolph had done, but that could be no ground for reflecting on his peculiar mode of address. Considering the second paragraph of the report a deviation from their powers by the committee, he hoped the House were not disposed to sanction that impropriety.

After a few words from Mr. Rutledge,

Mr. Nicholas said, as the committee had proceeded in the manner they had, if the House disapproved of their conduct, it would be necessary to recommit the report; for they had given many opinions unconnected with the resolutions submitted to the House, and, according to our rules, the resolutions alone are subject to alteration or amendment. For himself, he would say that he disapproved of almost every opinion the committee had given. He would beg leave to state his reasons at large for differing with them.

The House and committee appeared to have had but one opinion on the subject of the complaint being sufficient for our cognizance. The House, with the exception of Mr. Randolph himself, had determined on this principle when the President's Message was received, and the committee admit that the case would have been sufficient for the House to have acted upon, if the conduct of the officers in these instances, which were not of themselves equivocal, had not, as they say, been satisfactorily explained. The design of the actions charged on the officers is therefore the great object of inquiry.

Mr. N. said he could not conceive a clearer truth than that conduct towards a member of this House on account of the manner in which he has acted in it, calculated to provoke a quarrel and affray, ought to be considered in the same light as an immediate attack on his person; and yet he was very apprehensive that the decision of the committee on this admitted principle went to destroy it, and that, so far from giving security to the freedom of debate, it would go a great way towards its destruction.

In examining into the design of the conduct charged on the officers, Mr. N. said he would not trouble the House with a recital of all the testimony, as the course of the transaction must be fully in the recollection of members, although it contains throughout very strong evidence of the intention which is charged on them, but should confine himself to those circumstances which afforded positive evidence of the design to insult Mr. Randolph, and to put him under a necessity of resenting their conduct.

Mr. Christie, who was, as Mr. N. understood, in a situation to hear more than any other gentleman present, except Mr. Van Rensselaer, whose deposition had not been taken, tells us that he was prevented from leaving the theatre by the strong impression which the conduct of the officers made on him before the particular facts he has stated took place; it convincing him that some riot would probably happen. He tells you that before they came into the box where Mr. Randolph and the other members were sitting, he heard the words mercenaries and raggamuffins used, and heard somebody say to Captain McKnight and Lieutenant Reynolds, "he does not hear you; go nearer;" and that upon this they came into the box where Mr. Randolph sat and carried on constant conversation in the same style. If Mr. Christie deserves credit, what doubt can there be of the intention? Captain McKnight called out to Captain Taylor, in another box, "these are Virginia ragamuffins." Can there be any doubt that this was intended to irritate some person belonging to that State? Talking of the discipline of the men exhibited on the stage, one of the officers said, "these ragamuffins are not well drilled, but will be better by another session of Congress." Mr. N. said he should be glad to hear what gentlemen understand by this but a comment on the proceedings of this House, which was meant for the members present, and particularly the member who had used the term ragamuffin? To these positive proofs of intention he would add the impression made on gentlemen present. He perceived, indeed, that for some cause (he could not tell what, for he did not entertain a doubt that the opinion of the persons present was necessary and proper evidence in this case) the gentlemen had endeavored to avoid giving opinions; but the course of the transaction has disclosed their impressions as completely as they could have been expressed. We find them rallying round Mr. Randolph in expectation of outrage. It is the most indubitable evidence of opinion, that he acts in the way the opinion would require.

Mr. N. said it was here proper to remark on an omission in the committee, which had very probably lessened the amount of testimony, and which of itself, if there was no other reason for it, should induce the recommitment of this report; that was the want of a regular examination of Mr. Randolph under oath. We find in the papers presented a general statement from Mr. R. barely glancing at the transaction, not sworn to, and of course entitled only to the same degree of credit in the House, and the world, which will be given to the statements of Captain McKnight and Mr. Reynolds. He could hardly suppose the committee doubted of Mr. Randolph's competency as a witness, for a decision against his admission would establish that outrages on members when alone and unprotected should be exempt from punishment. He did not suppose there were any circumstances in this case which could be supposed to lessen the usual respectability of that gentleman's testimony, for he had, so far from soliciting the present investigation, shown himself decidedly opposed to the House commencing it, and he was a perfect stranger to the officers in question, except in the impressions they made on him in the instance to which his testimony would relate. It will appear, when Captain McKnight's information comes to be examined, that a more minute examination of Mr. Randolph was absolutely necessary.

The committee have said that the part of these officers' conduct which was not too equivocal to be acted on by the House has been satisfactorily explained. Mr. N. said he had looked in vain

throughout the testimony for the explanation; he found neither contradiction of facts nor denial of intention. He would run over the statements of these officers and the evidences of their witnesses to show that they contained nothing material.

It was to be remarked that the statements of the officers themselves were not evidence in their favor, though they might be against them; but, admitting them to have the utmost force, they will be found to furnish great evidence of the truth of the charges; for they do not deny the truth of the actions themselves, or the intention which is inferred from them; they deny that they went to the theatre with the intention of insulting Mr. R.: this is by no means necessary to make them guilty, a design taken up then is quite equal; it is not even suspected that they did, for Mr. R. was at the theatre for the first time, and entirely by accident. The only fact denied by Captain McKnight is his rudely sitting down by Mr. R., which is proved by some of the gentlemen. But this is of little consequence. Captain McKnight speaks of an effort at leaving the box to clear himself a passage, and perhaps means this as an explanation of what Mr. Randolph considered as a jerk by his coat; but it is to be observed that he does not deny the act charged by Mr. Randolph. Here, Mr. N. said, may be observed the necessity of a more minute and authenticated examination of Mr. Randolph. The act charged by him and the one stated by Mr. McKnight (if it is at all to be considered as an explanation) are of such different natures that a witness could be at no loss in determining with certainty which it was. One circumstance was remarkable in Captain McKnight's statement: he must have been absent at the time of the debate on the army, and has given an account of the manner of filling up his time after his return till the affair at the theatre, so as to show that he could not have had any concert in this business; but Captain McKnight shows, by the constant repeated use of the words which fell from Mr. R. in the debate, that he had been fully charged with the subject before he went to the theatre; and yet his history of himself gives no account of this important occurrence.

Lieutenant Reynolds admits that Mr. Randolph was the subject of conversation while they were in the adjoining box, and that he had been pointed out to them—a very strong confirmation of Mr. Christie's testimony and of the design of insulting Mr. R. when they went into the box with him.

Mr. Thompson only proves that there could be no concert before going to the play; his testimony is negative in everything else.

Mr. Hurst proves nothing but that Mr. Randolph was the subject of conversation, and was pointed out while the officers sat in the other box.

Mr. Taylor proves nothing. He shows the manner of leaving the box, and that there was possibly occasion for Captain McKnight throwing himself forward; but does not pretend to have seen him so as to know that he did not take hold of Mr. Randolph. He says he knows of no concert. It will be proper to remark, once for all, that evidence of concert was not to be expected from persons who formed part of the company of these officers. If the concert was made, and they, knowing it, gave their countenance to the execution even by their presence, they were to all events and purposes parties. The question, therefore, could not properly be asked of them, and voluntary testimony on the subject is entitled to no weight.

Mr. N. said again, that, after running over the statements and evidence, he could neither discover explanation by testimony nor denial by the parties. Under such circumstances he confessed he felt alarmed at the decision of the committee, which in his mind amounted to a declaration that as long as it was possible to doubt that actions like these were meant to produce a quarrel, they should meet no censure. It was the same as saying that insults, which must always partake of uncertainty, if there is any in the present case, should be the reward of our public labors.

But it is surprising, said Mr. N., that the same committee who have been found so incredulous with respect to the conduct of these officers, should have caught so eagerly at a supposed misconduct in Mr. Randolph. They have in general terms censured the style of Mr. Randolph's letter to the President. It were to be wished that they had shown in what its impropriety consists. He said he was utterly ignorant on such subjects; he knew of no standard for official communications. In all probability, persons writing to the President adopted styles suited to their object. Men who want places would use one; those who were in familiar friendship with him would use another; and so according to all the varieties of situation. He knew of nothing necessary but the decency which is to be observed throughout society, and he saw no violation of this. When gentlemen would be pleased to tell what they consider as censurable, it may be answered. It is but an ill omen to exhibit such anxiety about official address, and so much indifference to freedom of debate.

But Mr. R. is censured for betraying the privileges of the House, by calling on the President to defend them. It is to be observed that this is no denial of the power of the House to protect themselves. It might have proceeded from a principle, which I think correct, that the House should not take up questions of privilege but on great and important occasions. We take our prejudices on this subject from a country where there is a natural hostility between the departments of Government, and where, of course, an ever-waking jealousy is proper; but we have not the same necessity for being constantly on the watch. Nobody will deny that if an outrage is committed by the military the President ought to take notice of it, and it may well be presumed that if the present case was of a nature to demand punishment that the House would address the President on it. There is no doubt either that the President would think the case aggravated where an outrage was committed, by its being committed against a member for an act of duty here. If these things are admitted, Mr. Randolph's application only gives information of what the President's duty requires him to act on; and so the President himself thinks.

as appears by his Message to Congress. As well might it be said that if these officers had proceeded to a battery, it would have derogated from the rights of the House to have applied to the civil magistrate. The same act may be cognizable by different persons in different points of view, and it is no denial of the power of the other to apply only to one. It is remarkable that the committee should be such sticklers for a power which they are so unwilling to use; that they should censure Mr. Randolph for not applying to the House, when they treat the case so lightly after they get possession of it. It would seem that they mean rather to acquire dominion than give protection, and that, by prohibiting applications to other departments, they would bring on complete subjection to the power here.

Mr. N. had stated his opinion fairly and honestly, and should conclude with repeating what he had said at first, that the committee were in no way warranted in making such a report. As it was the first instance of the kind, and had been attended with no serious consequences, as the officers were young men, who were probably ardent in support of their profession, he wished for nothing like punishment, or that more notice should be taken of it than would discourage such conduct in future.

Mr. BAYARD said, that the committee who had made the report then under consideration, had endeavored to execute with equal candor and fidelity, the unpleasant task which had been assigned to them. The subject was of the most delicate nature, involving the personal feelings of a member of the House, the privileges of this body, and the respect due to the first Magistrate of the United States. The committee had been the more embarrassed in being obliged to decide facts arising from evidence of different tendency, before they could form the conclusions contained in the report. Their industry had been unremitting in endeavoring to collect all the light which the testimony of witnesses could furnish.

When the committee had the depositions under consideration, it was very manifest that different gentlemen had seen with different eyes. The circumstances which had occurred, to some were wholly unsuspicious, to others were pregnant with designed insult. This was not remarkable, it was in the nature of things; circumstances naturally equivocal always enabled persons of different sentiments to draw various inferences. The committee had thought that in resting principally upon the facts stated, and discarding the coloring which arose from the impressions of different gentlemen they took the surest ground upon which their decision could be founded. He was confident that a liberal and accurate investigation of the testimony upon the principle stated, would maintain the propriety of the report which had been made.

The motion now before the House was to recommit the report. He would beg the attention of the House in considering the grounds on which the motion was supported. It was said that the committee had unjustifiably censured the style of Mr. Randolph's letter to the President. It did not appear to him that the committee had done so. They had only expressed a regret that Mr. Randoph should have felt himself justifiable in departing from the usual forms of decorum observed in official communications. No one could doubt, but Mr. Randolph had departed from those forms. The committee did not undertake to say that Mr. Randolph on any other person had not *a right* to express themselves in the style they thought most eligible. But if the style adopted departed from that which was usual, the fact of departure and its tendencies became matter of observation. The fact in the present case was undeniable, and the committee had only expressed their regret. They did believe that the accustomed forms of civility, in official communications, were often useful in softening the harshness of discordant sentiments, and generally productive of conciliation and good will. Preserving, therefore, the approved usages of time, the precedents of our forefathers, they could not do less than regret an innovation which promised no good and destroyed what had been found beneficial.

It had been further said that the committee had transgressed their powers, in expressing any opinion on the style of Mr. Randoph's letter, because it was a matter not referred to them. The Message of the President, said Mr. B., was certainly referred; and in that Message the President has called the attention of the House, to the style of the letter as strongly as the respect which he owed to his own character would allow. Why should the President have noticed the style of the letter, if he had no intention of turning the attention of the House to it? As it was a subject of remark in the Message, and as the Message had been referred to the committee, they would have been wanting in the respect due to the Chief Magistrate if they had passed the matter over in silence. The committee certainly did not approve the style of the letter—they intended to be so understood, without having it supposed that they undertook to pass a censure. Upon the point in question Mr. Randolph had his opinion, which was to be collected from his letter. The committee had a different opinion, and they considered it a duty to express it. Mr. B. observed that he admitted the right which belonged to every one to employ the style which he preferred in the expression of his opinions, but still he might be allowed to remark, that where an individual undertook to discard the terms of respect which custom had long connected with office and station, it was difficult to avoid inferring something more than a negative intention. He had no wish to press this subject. The committee had passed it over as lightly as possible, and for his part he should leave it to the private reflections of the House.

It had been stated that the committee had neglected to obtain all the evidences in their power, and the name of Mr. Van Rensselaer had been mentioned as a material witness who had not been examined. It ought to be known that Mr. Van Rensselaer had left the city before the committee was appointed. And considering the impatience

of the House as well as of the public to have the business brought before them, they would not have been excused had they delayed their report till the testimony of Mr. Van Rensselaer could have been obtained from Albany.

But it had been made a mighty objection, and relied on as sufficient for the recommitment, that Mr. Randolph's statement had not been taken under oath. This objection, he said, arose from want of information on the part of the gentleman who made it. Early in the business Mr. R. had been applied to, in the same manner as other gentlemen. From motives of delicacy Mr. R. had declined appearing as a witness in the affair. This expressly appeared from the statement which he had furnished. Mr. R. afterwards delivered in his statement. This was not till Saturday. It was the design of the committee to convert it into a deposition. For that purpose, on Monday, the Chairman searched for Mr. R. It happened that he did not find him. And it had been declared and was expected that the report would be made on that day. It was therefore a mere accident, not avoidable by the committee, that the statement did not appear in the form of an affidavit. On this subject, said Mr. B., the committee were not ignorant of the rules which should direct them. They knew that Mr. Randolph was a competent witness in the case. But he would take the liberty of remarking that he was at a loss to discover how the gentleman from Virginia, who had raised the objection, had been able to determine that the testimony of Mr. Randolph was competent; there was certainly no statute of the United States containing any provision on the subject. And according to the doctrine of that gentleman the common law was not the law of the land. From what source the gentleman had derived his opinion he was much at a loss to know. For his own part, he had no doubt on the point, because, believing in the existence of the common law, by its rules he discerned the competency of the testimony. He confessed he was curious to know on what ground the opinion of the gentleman from Virginia was built.

But, said Mr. B., the objection on this subject is easily removed. None of us had any doubt that Mr. Randolph would have sworn to the statement of facts which he made. We are now willing to allow it the weight of a deposition. He did not mean to question the truth of the statement. He should treat it with the same respect as if sanctioned by an oath. But there were few facts which were proved by it or any part of the evidence. It had been insisted on as a reason for recommitting the report, that in the manner it was framed the House were confined to the resolutions which were offered, and precluded from passing their opinions and sentiments, expressly, in the preamble by the committee. Mr. B. did not perceive the force of this objection; the sentiments alluded to were simply the sentiments of the committee, according to the common forms of proceeding—the House had nothing to do with them. They went out to the world only as the opinions of the committee, and were not supposed to have been adopted by the House. The resolutions alone were the act of the House, and they were subject to modification. It certainly would be understood that the rest had no other ground than the judgment of the committee.

Mr. B. said he would now turn to another subject, and, following the example of the gentleman from Virginia, would enter into an examination of the evidence upon the table in order to ascertain how far it supported the report which had been made. He would first observe that he never had doubted, that it was a breach of privilege to offer any wrong or insult to a member for what he had said in his place, though it were done beyond the walls of the House. He believed that this doctrine was essential to the freedom of debate. But, in the present instance, his opinion had been determined by the case which resulted from the facts which had been proved. It had been urged that the opinions of the gentleman who were present at the occurrence at the theatre ought to have been considered as evidence by the committee. He differed from this opinion of the gentleman from Virginia. The impressions of those gentlemen were entitled to respect, but they could not prevent the natural inferences which the facts afforded. The committee were necessarily led to consider themselves in the nature of a judicial tribunal. Their inquiry was not explained. There was a justice due to the party accused as well as to the party complaining. The scales of justice are to be held with an impartial hand. Private sentiments and impressions existed on both sides and were very opposite. The committee therefore were driven to the facts of the case, as the only sure ground on which they could bottom their judgment.

Mr. B. said that certainly many circumstances occurred at the theatre which justified the suspicions of the gentlemen that an insult was intended to Mr. Randolph. Those circumstances however had been found capable of explanation, or so equivocal or trivial in their nature as not, in the opinion of the committee, to warrant the interference of the House.

Mr. B. said he would first take up the statement of Mr. Randolph, and he apprehended that upon a just examination it would be found to contain few material facts. He said the committee had certainly erred, unless they were justifiable in drawing a marked line of distinction between the knowledge which the witnesses had of facts and the inferences which they themselves had drawn from them. The minds of the gentlemen had manifestly been filled with suspicion, which had deeply tinctured their views of every occurrence which took place. He meant no censure upon the gentlemen; nothing was more common or more in the course of nature. But the committee had the more occasion to be guarded in order to avoid catching the same spirit.

The first fact stated by Mr. Randolph was "repeated allusions to what passed in the House of Representatives, during the debate of the preceding day, and a frequent repetition of some words which fell from him during the discussion." Mr.

B. observed that it did not clearly appear that those words were repeated with a design to insult Mr. Randolph. The conduct of the officers had been unexceptionable till that part of the exhibition which introduced a procession of persons in the habit of Turks. The words ragamuffin and mercenary, to which the gentleman from Virginia had given currency, were then first made use of. The allusion was natural, and had not the aspect of premeditation. If the officers had harbored an intention to insult Mr. Randolph, they would hardly have waited for an occasion they probably did not know would arrive, and which was less calculated than any other to accomplish their object.

The words in question had derived so much importance from the use the gentleman had made of them, that they had become the common cant of every tavern and street in the town. He had heard them frequently applied, certainly not with a view to Mr. Randolph, but from some little spirit of humor. But, said Mr. B., a question will remain—supposing the words made use of, with all the aggravation attributed to them—whether they amount to a breach of privilege. This question perhaps involved considerations different from any imagined by the gentlemen opposed to him.

Were they prepared to say that words alone amounted to a breach of privilege? If so, he thought it somewhat strange that the House had so tamely endured the breaches of their privileges which for years past had been committed, in newspaper publications. Nothing was more notorious than that the words used by gentlemen in the course of debate, had been introduced into papers, and commented upon and villified in terms of the most slanderous abuse. Need he refer gentlemen to pages of the Aurora, stained with the blackest scandal? Need he cite from it instances in which his friend from South Carolina, and other gentlemen, having been so happy or so unfortunate as to express some strong ideas, their opinions and words were made for months and years the theme of invective and opprobrium? Were not the motives of gentlemen also frequently arraigned and blackened with whatever calumny or falsehood could invent? He was aware that some gentlemen would say that these publications were different in their nature from words used in the presence of a person. Certainly there was no difference in the intention of using them, and, as to the effect, it was more pernicious in the former than in the latter case. Words uttered perished in the expression of them, or remained only in the memory of a few persons, but words printed were durable, and, in the vehicle of a newspaper, were circulated far and wide. But at any rate the distinction alluded to could only exist in the case where words were so applied that an instant notice of them was unavoidable, which was not so in the present case. Mr. Randolph had with a very laudable discretion avoided the least notice of them. It might have been designed that he should hear them, but there was no principle which called upon him to notice them. Mr. B. could not discern the difference between the cases of words generally uttered with an intention they should be heard, and words published with an intention they should be seen. The obligation to resent the affront, was not greater in one case than in the other. An extreme case might be put of words so applied as to leave no alternative but violence, and, if such had been the present case, he should have entertained an opinion different from that expressed in the report.

The next fact stated by Mr Randolph is the act of Lieutenant Reynolds, suddenly dropping on the bench on which he was seated, in such a manner as to cause a concussion of their hips, and to occasion on his part a slight degree of pain. It would not be supposed that he meant to justify this conduct. In any point of view it was rude and inexcusable. But it could not be an object of much consideration with the committee, without being clearly combined with an intention to insult. Such an intention did not manifestly appear. Mr. Randolph himself was not assured of it. He did infer it, but with doubt, because there was no apology. If Mr. Randolph could not be certain as to the design, how was the committee to judge? Could they be more certain than the persons present at the occurrence? But it should be remembered where the affair happened. In a place where there was often a scramble for seats, and where the obligations of civility were not the most powerfully felt.

Another fact appears in the statement, that as Mr. Randolph left the box the cape of his coat was violently pulled. Mr. Randolph doubts whether this was done by Captain McKnight or Lieutenant Reynolds. Mr. B. said he would observe, that Mr. Randolph did not see the person who did this act. He had not stated that he saw the person. And it appeared from other evidence that the person was behind him. This act was brought home to nobody. From none of the evidence did it clearly appear by whom it was done. It was the opinion of the committee that without evidence very pointed and certain, they ought not to recommend the interposition of the House.

Mr. B. said, the serious and great ground of inquiry with the committee was, whether there had existed a premeditated design to insult. The investigation dispelled every suspicion on this subject. It manifestly appeared that whatever happened was the fruit of the occasion and of no design. But it had been alleged and strongly urged that the conduct of the officers was intended to provoke Mr. Randolph to some expression or act which would justify violence on their part. This idea was shown to be groundless, by what was stated by Mr. Randolph himself as well as by other gentlemen. In passing from the box, where the coat of Mr. Randolph was pulled, he applied to the person who pulled it the appellation of puppy, or, as stated by one gentleman, of "damned puppy." Was any notice taken of the expression? Did any one apply it to himself? Surely, if it had been done intentionally, and especially with the intention to provoke a quarrel, the person who did it had accomplished his object. What greater insult could there be, what better excuse for violence, than the ignominious appellation of damned puppy!

Sir, said Mr. B., this is a powerful and governing circumstance in the present case. It shows how much suspicion existed, and how little fact. Circumstances trivial or unnoticed upon like occasions were upon this swelled into much importance by the designs supposed to be connected with them.

Mr. Randolph had used expressions in the course of debate which were known to have given great umbrage to the gentlemen of the same army. It might easily be suspected that young and indiscreet officers would think themselves not only allowed but bound to resent the affront. When two officers at the theatre were seen whispering to each other, and looking towards the box in which Mr. Randolph was seated, it was instantly concluded that there was an intention to insult him. He was confident that if the words which had given offence had never been made use of by Mr. Randolph that everything might have occurred which was proved to have passed, without the notice of any one. This induced the committee to a severer scrutiny of the evidence than they otherwise would have thought necessary. Whatever could be placed to the mere account of suspicion had no influence with them. They did not discredit the facts stated by any gentleman—they were implicitly admitted, but they certainly guarded against the coloring, which varied with the impressions of different persons.

Mr. B. said he would now pass to the deposition of Mr. Christie. In examining the details of it, he found much opinion, many impressions, and a great deal of belief, but on other facts than had already been noticed, and were contained in Mr. Randolph's statement. The looks and whispering of the officers had been sufficient to convince him of the intentions which they harbored. It was worth remarking that these officers had been several hours at the theatre before anything was observed. It was not till the procession of persons habited like Turks, that a word escaped them; the allusion then made to the words *mercenary* and *ragamuffin*, to which the gentleman from Virginia had given so much meaning and currency, seemed to have sprung from the occasion. If there had been any previous design to insult Mr. R. it was certainly strange that it should so long have remained dormant. It could not be supposed that the impetuous young men, stung with an insult which they felt degraded them, would have patiently waited for a moment which could have the least answered their purpose. Would it be imagined that with a direct design they would have proceeded in an equivocal manner! If it was their intention to insult, it must have been their wish to be understood. Instead, therefore, of waiting for an occasion when the fitness of their allusion would destroy its edge and give it the air of humor, they would have abruptly applied it, in such a manner and in such a way that but a single design could have been inferred.

Mr. Christie stated that he heard some one observe to the officers, "He does not hear you, go nearer to him." Who this person was, Mr. Christie did not know, nor had the committee been able to learn. They could not therefore attach much importance to words used by an unknown person. It did not appear that the person was in concert with the officers, and to have allowed them to be affected by the words of a third person, with whom they were not connected, would have been against every principle of justice.

Another circumstance of the same kind was also mentioned by the same gentleman. Upon entering the lobby a stranger told him to keep close to Mr. R., because there was a design to insult him. This stranger was also unknown, and his opinions, without his reasons, could have little weight with the committee. There was little occasion for this opinion of the stranger, it was the opinion of Mr. Christie before, and he should not have allowed the opinion of a stranger to have more weight with him than the opinion of that gentleman. The circumstance was calculated to give the idea of some dark plot, but as such a thing, upon inquiry, was proved not to have existed, the circumstance lost all its strength.

It was further stated by Mr. Christie, that, in going down stairs, they were so closely pressed by Captain McKnight and others, that it was with difficulty he could keep his feet. Mr. B. said this was a strong instance of the effect of suspicion. Mr. C. turned about and requested Captain Mc Knight not to crowd, and he immediately desisted. Was this consistent with an intention to insult? It evidenced much civility on the part of the Captain. He was probably pressed himself, and upon the request of Mr. C. he took the weight off his shoulders upon his own. If Captain McKnight had pressed with an intention to offend, he must have designed to make himself known, or otherwise the offence could not have been applied to him, and his end could not have been answered. But the moment any such offence could have been produced, by its being known that he was pressing, upon a civil request he so civilly desists that no offence could have been taken at his conduct.

Mr. B. said he saw nothing in Mr. Christie's deposition to carry his opinion further than it had gone on the ground of Mr. Randolph's statement.

Mr. Nicholson's deposition, Mr. B. said, was extremely correct and candid, but it contained no additional facts which went to criminate the officers. There was one circumstance in the deposition on which he should remark, which strongly supported the general reasoning of the committee. Mr. Nicholson stated that during the performance of the afterpiece, he was called out by Captain Campbell Smith, who informed him that he understood Mr. Randolph had been insulted, and inquired if he had heard anything about it; and observed that Mr. R.'s observations in Congress had been the cause. Mr. N. told him he had heard nothing of it, and asked what kind of insult had been offered. He answered he was not present, but apprehended disagreeable consequences. In fact, at this time, nothing had happened, but rumor had mounted her stalking-horse and carried the report through the theatre, of an actual insult having been offered. From this moment jealousy was awakened, and the intention to insult soon

discovered. It was then that every whisper, every look, and every action, gave the impression of hostile intentions. The eye became jaundiced and every object was colored accordingly. He was inclined to believe that if no report had ever been brought to the box, of an insult having been offered to Mr. R., that no insult would have been observed. A circumstance stated by Mr. N. was supposed to carry some proof with it, of Captain McKnight having pulled the coat of Mr. Randolph in passing out of the box. Mr. N. stated that he saw the Captain throw his body forward about the time he heard Mr. Randolph say some one had pulled his coat. As to the fact, it was only a matter of inference that Captain McKnight was the person who pulled the coat of Mr. Randolph, for no one saw it. But even supposing it to have been him, the circumstance was innocently accounted for by what was stated in Captain Taylor's deposition. In going out of the box Captain McKnight had hold of Captain Taylor's arm. Some one, in order to aid himself in rising, pulled Captain Taylor so violently as to break the hold of Captain McKnight. It might well have happened that Captain McKnight in order to save himself from falling, in throwing out his hand, might unluckily have caught hold of Mr. Randolph. Mr. B. said that in his opinion in a case of this kind every explanation ought to be allowed, where there was an equal probability of its being true. To infer a criminal design from an action which was equally capable of innocent construction, was against the common principles of justice.

Mr. B. said the deposition of Mr. Macon was very candid. It could not be necessary for him to go through it, as it was in the hands of gentlemen, and they would observe that it contained no circumstances on which he had not already commented. He would only observe that Mr. Macon had with much propriety avoided giving his *impressions* as evidence; and, simply stating facts, had left the conclusion to those whose business it was to judge.

He next called the attention of the committee to the deposition of Mr. Glen, a member of this House. Though Mr. G. was in the same box with the other gentlemen, yet as he had no reason to suspect anything, he neither heard nor saw anything which bore the appearance of an insult. He should be allowed to remark, what the knowledge of every gentleman would confirm, that the color of objects depends so much upon that medium of sensibility through which we see them, that the impressions of a witness whose feelings had been strongly excited by an event which was passing, ought to be received with great caution and weighed with much precision. Upon this principle the committee had been guarded, not considering themselves as a party in the business, but in nature of a tribunal which was to do justice, they governed themselves by the same rules as in like cases were observed by the criminal courts of the country.

It had been expected that very material information could have been obtained from Captain Smith. But on his examination before the committee it was found, and so appeared by his deposition, that though he frequently saw the gentleman accused, he observed nothing exceptionable in their conduct. He repeatedly saw them in the box, and though he had heard the report which had been circulated, he could discover nothing in the demeanor of the officers which confirmed it.

Mr. B. said that if any proof was wanting on the subject it was fully established by the depositions of Captain Taylor and Lieutenant Thompson, that no scheme had been concerted to offer an insult to Mr. Randolph. The attention of the committee had been strongly directed to this point. Had anything like premeditation appeared, a very different construction would have been put upon the occurences of the evening. In such a case the affair would have had much importance, and the committee would have been forward in calling for the vengeance of the House. But they could not be induced, by a few accidental and equivocal circumstances, to call into action the high powers of the great National Legislature.

Mr. B. said, that he was now done with the evidence, but he should beg the indulgence of the House while he replied to the remarks of the gentleman from Virginia, as to the censure which he said the report contained on the conduct of Mr. Randolph. It was said that the committee had censured Mr. R. for applying to the President for redress, and not appealing to the House on the ground of a breach of privilege. Mr. B. said that if the report was examined, it would be found that the committee had given an express opinion, that it was not the intention of Mr. R. to infringe the privileges of the House in his application to the President. In denying an improper intention, it could not be supposed to have been the view of the committee to cast much censure. No, sir, said Mr. B., our object was of much greater importance. We observed, universally, a dangerous precedent set, which vitally affected the powers and existence of this body.

He was astonished to hear the application to the Executive in such a case justified by the gentleman from Virginia. Nothing could be more fallacious than the ground he had taken. The gentleman said Mr. Randolph had a choice of remedies. The President had a power over the officers, and he might be called upon to exercise it without any infringement of the powers of this House. To illustrate his arguments, he supposed the case of an assault and battery having been committed, and asked if recourse might not have been had to the civil authority. Sir, said Mr. B., upon the case put, I have no doubt, the civil magistrate might certainly be applied to, but the great question is as to the ground on which that magistrate could punish. He could punish the breach of the peace, but could he punish the breach of privilege? An application to the civil magistrate to punish a breach of the privileges of this House would, equally with an application to the President, derogate from the rights of the House. The question therefore was, whether the application to the President in this case, was not on the ground of a breach of the privileges of the House. The consideration of this point obliged him to refer to Mr.

Randolph's letter to the President. It was dated in the Chamber of the Representatives, and is expressly addressed by Mr. Randolph, officially, to the President in his official character.

He states, that, "for words of a general nature 'uttered on the floor of this House, and addressed 'in my official capacity to the Chairman of the 'Committee of the Whole, and urged with a view 'to effect the reduction of a Military Establishment, 'I have been grossly and publicly insulted by two 'officers" &c. Again, "so far as they (speaking 'of the motives of his conduct) relate to this application, addressed to you in a public capacity, 'they can only be supposed by you to be of a public nature; and it is enough for me to state that 'the independence of the Legislature has been attacked, the majesty of the people, of which you 'are the principal representative, insulted, and your 'authority contemned. In their name, I demand 'that a provision commensurate with the evil be 'made, and which will be calculated to deter others 'from any future attempt to introduce the reign 'of terror into our country."

It was impossible, Mr. B. said, to state a more explicit application for the punishment of a breach of privilege. The complaint was of an insult offered for words spoken in his place on the floor of this House. He distinguishes the very ground of complaint to be the attack on the independence of the Legislature. He disavows any personal consideration. And he demands of the President to make a provision commensurate with the evil. What was the evil stated? A direct, flagrant breach of the privileges of the House. Were not gentlemen startled at seeing the Executive applied to, to protect the privileges chiefly designed as a barrier against Executive power, and would they be disposed to throw them at the feet of the Executive. Sir, said Mr. B., if a series of precedents were permitted to establish that the Executive Magistrate was the power to be applied to when the privileges of the House were violated, there would be an end of the safety and independence of the Legislature.

Let me show, said he, the impropriety of this application by referring to the parties which exist in the country. The one is supposed to support and the other to oppose the Executive. If we depended, sir, on Executive good will, could opposition expect equal and impartial protection? Could they apply with confidence to that Executive for protection, to whom they always deny their support? But no gentleman could hesitate on the subject—the point went to the very existence of the Legislature.

Mr Bayard concluded with observing, that he trusted the House would be persuaded, that the committee had made the proper inferences from the testimony before them, and that they had gone no further in the expression of their opinions relative to the conduct of the gentleman from Virginia, than they were bound to do in the discharge of an incumbent and indispensable duty.

Mr. Davis said, since he had the honor of a seat in that House, he had ever possessed a desire and a determination to support the dignity of the House, and while he possessed this, he could not be unmindful of the privileges of a member freely to deliver his sentiments on this floor, without being amenable to any one. This being the case, he could not agree with the report of the committee; he did not consider the committee authorized to make a report upon the subject of Mr. Randolph's conduct; but even allowing, for the sake of argument, that they were, he could not see any grounds for the report they had made, in any part but one, that was, in their expression of a sense of the propriety of the conduct of the President in referring the subject to the House.

With respect to the style of Mr. Randolph's letter to the President, the committee were not at all authorized to draw those inferences from it which they had done. As was observed before, gentlemen had different modes of writing. If he was to address a letter to the President, Mr. D. said, he most likely should not write in the style that gentleman had done—indeed he believed he could not write in that style, but he knew nothing in it which could give offence: no doubt the gentleman endeavored to convey his ideas in his own language; to be sure it was not in a courtly language, nor did he know of any in the United States. As, therefore, there was no particular mode of address, no gentleman could merit censure for writing in that which was most familiar with his own judgment of propriety. Mr. D. here referred to the language used by the President in his answer to an address from Bath County, Virginia, in the following words: "It rests with Virginia to say 'whether there does not exist in her a faction that 'must be humbled in dust and ashes before the 'indignant frown of an injured and insulted country." Mr. D. said he left gentlemen to draw the comparison between these sentiments and Mr. Randolph's letter; he only made this reference to show that men had their own manner of writing.

He conceived the application of Mr. Randolph to the President did not merit censure, but the report of the committee had given it. The gentleman certainly was justifiable in making appeal to the President if he thought proper, although the House had also a jurisdiction over it in a certain degree. That gentleman applied to the President as Commander-in-Chief of the Army, and in that view it was certainly proper. Suppose the conduct of these gentlemen of the army had been more serious, and they had actually assaulted Mr. Randolph; by an application to this House for justice as a breach of privilege, all the House could do was to order fine and imprisonment, and the officers would retain their situation in the army; but the President had power to order a court martial to try them, and divest them of their commissions, if found guilty of the assault complained of. From this view of the subject Mr. D. believed the most regular way would have been to have applied to the House as well as to the President.

He could not subscribe to the opinion uttered by the committee, that this (what Mr. Randolph and others thought) premeditated insult towards

him, was explained away. That the insult was designed, was the decided opinion of several gentlemen, as well as Mr. Randolph. But who could have satisfactorily explained it, except the gentlemen themselves had done so? What other evidence had the committee to warrant them to differ in their opinion from that of those respectable evidences which were produced? Was not the evidence of Messrs. Christie, Nicholson, and Macon, (under a solemn oath,) of more importance, and much better testimony than the mere declarations of those men who were implicated, and who could not be under oath? It was not to be expected that they would criminate themselves, and all they had to do was to deny the facts which were charged; candor was not to be expected from them. In his opinion, Mr. D. said, the weight of evidence against these men was very considerable, and merited the particular attention of the House. He also believed the report of the committee to be very improper, and also meriting attention. He supposed no gentleman would deny the right of free discussion in the House, and the inviolability of the members from personal insult on account of sentiments delivered there; and that members should not be overawed so as to intimidate them in discharging their public duty: this he believed was an indisputable principle.

In order to corroborate the opinion, that the report of the committee was very improper, it was necessary to consider the subject in two points of view. First, to inquire whether Mr. Randolph did believe he was insulted on account of what he had said in the House, and secondly, whether there was good ground for the House to believe the insult was premeditated. That Mr. Randolph believed so, appeared from his own declaration, and in this the committee coincided; they thought that he believed so. The report must appear improper, because, admitting Mr. Randolph thought it was aimed at him for his conduct in the House, it might deter him from using that liberty of free discussion in the House which the Constitution had clothed him with. Though he did not receive any material personal injury, he could not help revolving in his own mind the circumstances of the insult and the view the committee had of it, and that if he should suffer himself again to express the sensations of his heart, he would be alike insulted and alike disregarded in his complaint. These were certainly very discouraging considerations.

That there was an insult offered to Mr. Randolph, appeared to be conceded, and Mr. D. said he thought there was good ground for saying the insult was premeditated. The *design*, on which hung the criminality of the action, he thought the evidence fully established. It might not have entered their ideas until after they had got to the theatre, but that it was premeditated at some time previous to its execution, and that there was a combination, he conceived well proved from the impressions the conduct of these young men made on the different gentlemen who gave testimony. The gentleman from Delaware had said that suspicion outstript the facts. It might be so, but how did it happen that, besides Mr. Randolph himself, several gentlemen should fall into the same opinion that it was designed by them to insult Mr. Randolph? There certainly was a design, which gave existence to some actions from which to draw these inferences. There certainly must be reality in these suspicions, and the gentleman might as well have said that the revolution of seasons and the daily rising and setting sun was the effect of mere accident, as to say this circumstance originated in accident.

Was it by accident, Mr. D. asked, that they repeated the words "ragamuffin" and mercenary?" Was it by accident one said, "go nearer to him, he don't hear you?" Was it by accident one of them forcibly pressed himself into what he knew was not a vacant seat, by the side of Mr. Randolph, and which very much incommoded him? The gentleman said it was by accident that Mr. McKnight caught hold of Mr. Randolph's coat, and that it was merely to support himself. Did this appear probable? If it had been merely an effort to recover himself, when jostled, would he not have taken hold of some person more able to support him? He certainly could not promise himself much support from Mr. Randolph.

But, said the gentleman, they had opportunity, if their design was to aggravate to a rupture, to have done it when Mr. Randolph called the person, who pulled his coat "a puppy." No; Mr. D. thought it the very reverse. He had no doubt but McKnight laid hold of that gentleman with a view of pulling him down and trampling him down by the crowd, and that Mr. Randolph's calling out as he did, deterred him from renewing his efforts to carry it into execution.

Without entering into the evidence (which he conceived must bring conviction to the mind) Mr. D. said he had adduced these few reasons for his vote in favor of a recommitment, because he was certain some unjust censures were put upon Mr. Randolph and because he did not conceive the officers clothed with that innocence which the report stated. There was one part, as he observed before, and one only, of the report which he approved, and that was the respectful sense entertained by the House of the conduct of the President in submitting it to the consideration of the House, as a breach of privilege. To this resolution he should heartily agree.

Mr. Jones said he rose, as one of the committee who made the report, to show his reasons for differing from a majority of that committee, and why he should vote for recommitting the report. It had been stated, and he believed consistently with the rules of the House, that the reasoning upon which was founded any resolutions reported by a committee was not a subject of deliberation in the House, and therefore was not capable of amendment or alteration there. It was because he thought the deductions were not warranted by the facts, in the present instance, that the report did not meet his approbation; he wished the report to be recommitted, in order that the exceptionable parts of the preamble might undergo some modification, and not to go abroad as an act of the House in its present shape and tenor.

Mr. J. said he should now state the particular paragraphs of the report to which he objected. The first related to the style of Mr. Randolph's letter to the President. He did not consider this subject as referred to the committee at all. Indeed it was admitted in the committee that it was not directly referred to them, but it was contended that it was referred indirectly. He differed from that opinion, and thought he was warranted by the letter of the President. The notice the President took of the style of Mr. Randolph's letter, he supposed intended only to intimate his sense of it, without desiring any proceedings thereon. The President writes thus, "I have thought proper to submit the whole letter and its tendencies to your consideration;" that is, the import and drift of the letter; and takes occasion to subjoin, "without any other comments on its matter or style." From which it appeared plain that the letter and its tendencies were the only objects submitted and which he wished to be acted upon. The mention of its style was only intended as a retort. Mr. J. did not believe the President wished the House to interpose in support of that respectful demeanor to him which his station demanded, and which he knew how to preserve.

The letter alluded to was objected to and censured as disrespectful, and although, Mr. J. said, he had called upon the members of the committee who were in favor of the report to point out the objectionable expressions, or to show the proper mode of redress, yet they had not done it, nor had the gentleman from Delaware on Friday, in his long and able defence of the committee, thought proper to do it. He thought it but reasonable and proper that if any gentleman had, and expressed objections, he should point out the grounds of them, otherwise it would naturally be thought that they are not tenable. If it was in the style only, Mr. J. said, he knew of no other particular style in which the President ought to be addressed, and therefore no particular style, if decent, could be justly complained of. Considering it as not a part of the duty of the committee, he considered it an unnecessary and improper extension of their powers to take it up.

The next paragraph Mr. J. objected to was the fourth, where the committee had censured Mr. R. for his application to the President, and had declared the subject exclusively cognizable in this House, and that Mr. Randolph's conduct was derogatory from the rights of the House.

He did not consider a gentleman as forfeiting his citizenship when he took a seat in that House, nor less entitled to the protection of the law. He therefore thought, that though Mr. Randolph might have appealed to the House, he could appeal to the President without acting derogatory to the rules or privileges of the Legislature. He certainly was justifiable, knowing the disagreeable consequences the agitation of such a question in the House must produce. Suppose an assault had been committed, it would have then been cognizable in a court of law; if the gentleman had taken that mode of redress, instead of agitating the House, would he not have been commendable, and would that alternative have been derogatory to the rights of the House?

It was allowed that the application to the President might have been proper if he had not come forward upon the score of privilege, to obtain redress for an insult as a member of Congress. Suppose he had applied, in case of assault, to a court of law. It would have been incumbent on him to state the causes for the assault; that the resentment arose from the use of words in debate, which disobliged the persons charged. Surely that would not exclude him from proper redress! To bring the point nearer to view, let us imagine another case—I mean no disparagement in the comparison. Suppose a common soldier had insulted a member of Congress for any part of his public conduct, would he not conceive that his commanding officer if a man of sense and discretion would give that redress which would be satisfactory? He would therefore, apply to the captain, who was vested with authority sufficient for that purpose by the rules and articles of war. No gentleman would say but it would be a preferable mode to taking it up upon the serious ground of a question of privilege, although he possessed the power and in his discretion might make that appeal. So in the present circumstance, the President, as Commander-in-Chief had power over the military, he gave the officers their commissions, and might take them away if he was convinced of the propriety of it. The gentleman was certainly right, therefore, in taking that course in preference to the other disagreeable alternative. Nay, the President himself knew that he possessed a cognizance of the affair, and therefore he had informed the House that he had directed inquiry to be made into it by the proper officers, and there was no doubt but he would give the proper redress.

The next part of the report, Mr. J. took notice of, was the opinion expressed by the committee on the facts and testimony which had come before them, which they had said were either satisfactorily explained or too equivocal to merit attention. If the members of Congress were entitled to any kind of protection in their public conduct and expressions on the floor of the House, he should be glad to know how it was that words or actions, which tended to produce quarrels and provoke retort on account of that public conduct, could be so explained as not to be a breach of privilege. Where is the efficacy or the value of privilege if a member should be compelled to be the butt and ridicule of the company, if he appears at any place of public entertainment? Agreeably to the opinion of the committee, gentlemen must bear the taunts and raillery of every one who may find occasion to be displeased at any part of their conduct in the House, so that it did not amount to actual assault! But that was not the common mode of interpreting actions. Among gentlemen, the intention was the criterion by which to judge of an insult. No matter how vague or indirect, no matter how equivocal the circumstances were, if the intention was to insult, the conduct would be noticed and resented. So in the present case, as it was in his opinion clear, Mr. J. said, that

the intention was to insult Mr. Randolph for his public conduct, the House were as much bound to notice it as though the offence was the most palpable.

Surely no man could mistake the intention of these officers; it was clearly to wound the feelings of Mr. Randolph. Nay, this was admitted by gentlemen, but to exculpate them it was said that no premeditated intention was discovered. If it was proved, that no intention was formed previous to their going into the theatre, he was willing so to believe; but if it was proved to have been their design but one moment previous to using the words, it possessed the properties of premeditation, and the gentleman was entitled to redress upon the score of privilege. The gentleman from Delaware admitted that if the circumstances were as stated, and the design could be proved, it would be entitled to redress on the score of privilege. Mr. J. conceived the facts were clearly made out. Where could there be facts more clearly demonstrated and charges more fully substantiated than those contained in the letter of Mr. Randolph to the chairman of the committee? That gentleman's opinion was, that they made use of certain words repeatedly, with the design of producing a quarrel; the gentleman charged acknowledged that they did frequently make use of the words. Who that was acquainted with the previous proceeding in the House could doubt but it was meant to apply to Mr. Randolph? Where would have been the merit or what the end of making use of them if Mr. Randolph had not been there? Indeed their use of the words "Virginia ragamuffins," must clearly ascertain their application to a gentleman from that State, and the repetition of the words so frequently, so near him, could leave no room to doubt but they were meant to apply to Mr. Randolph.

The act of taking Mr. Randolph by the coat after he went out of the box, Mr. J. said, appeared to him to have been done by Captain McKnight. Indeed that gentleman only denied sitting down by Mr. Randolph; and his not denying the other act charged in Mr. R's statement, was a confession of it. Captain Taylor had given testimony that he believed Captain McKnight laid hold of somebody's shoulder, as he went out of the box. Notwithstanding the gentleman from Delaware said that Captain McKnight was in advance of Mr. Randolph, yet it appeared from the evidence of Mr. Taylor and Mr. Thompson that he passed that gentleman just at the moment Mr. Randolph exclaimed "Who was it that jerked my coat?" and from their evidence it was very probable that he was the person. However, to put this matter beyond a doubt, it was confessed by Captain McKnight himself—he said before the committee that he was the man who laid his hand on Mr. R's shoulder, but he did it gently, and with moderation.

Mr. HARPER asked if this was admitted as testimony, and if not whether it was properly mentioned to the House?

Mr. JONES said he was only identifying the fact that this was the man who took hold of Mr. Randolph. It was not admitted as testimony to the committee, because it was said by some of the members of the committee that it would be wrong to ask a man to give testimony against himself. Mr. J. said he thought so, but it was voluntarily given, and as such in his opinion ought to have been produced to the House.

Mr. HARPER again appealed to the point of order.

Mr. JONES said he had explained what the gentleman said with truth and candor, and not to injure the gentleman; he was going on to relate that Captain McKnight said he did not do it to insult Mr. R., he wished to give him full justice in this case, but he should always make known everything that would display truth, however displeasing to any gentleman.

Mr. NICHOLAS appealed to the Chair, whether it was proper for the House to suppress facts merely because a majority of a committee should not choose to produce them. He thought it was proper to obtain every information necessary, although the committee had not produced it.

The SPEAKER said that the report of the committee contained the evidence which came before them; if that was fairly taken, it was laid before the House as evidence to guide the House. It was fairly taken unless there could be a charge substantiated before the House that the committee had omitted material evidence. Unless, therefore, the charge should be made good, it was the opinion of the Chair that it was not proper for admission.

Mr. JONES confessed that he did not urge the necessity of taking this evidence, because he considered the same fact fully substantiated without it, and should not now have noticed this fact if the gentleman from Delaware had not said it was doubtful who was the man that took hold of Mr. Randolph. The gentleman from Delaware admitted that the persons charged used the words referred to, and that repeatedly, and with intention to wound the feelings of Mr. R.; yet he would not admit that the House ought to act on it.

Mr. J. begged gentlemen to reflect on the consequences if this doctrine should prevail. If words were allowed to be used to produce irritation on account of the public conduct of any gentleman, and with intent to wound his feelings, if no protection was to be had in the House against such treatment, the right of privilege, under which it was pretended members were protected, would be insignificant. If members must bear the mockery of disappointed or disaffected men for what they said in that House, the boasted freedom of debate must be considered as a nullity. Personal abuse was much less to be dreaded, in his opinion, than to be exposed in every company to aggravations of that sort.

In order to soften down this conduct, the gentleman had pointed out the manner in which the public prints treated gentlemen for their expressions used in the House. Surely this was a very inapt comparison. These anonymous publications were not entitled to notice, and gentlemen were justified in disregarding them. But many

things said in a newspaper were totally disregarded, which, if said to a gentleman's face, would not be passed over. These publications were not calculated to produce irritation and violence, or to provoke men to quarrels, but were sent abroad to create amusement, and no harm was produced by them; and when they had evil tendencies, were punishable by law. But the manner of using these words, when connected with the subsequent conduct, must produce a very different effect.

Mr. J. then proceeded to take a view of that part of the report of the committee which stated some facts to be too equivocal to justify the interference of that House on the ground of a breach of privilege, and others as satisfactorily explained.

He did agree with the committee that this was not so flagrant a case as to require the House going into the solemn question of privilege. He wished the whole question to be avoided. But when he said that, he did not mean to say that the whole amount of these facts did not constitute what was so termed; because this would appear too much like pointing out the line to which a person might go towards insulting a member of the House, and where to stop, with safety. He did not suppose there was any attack premeditated, in the present case, nor any design to step on the privileges of the House; but finding a member of Congress at the theatre, who had used words not very pleasing to their profession, they had indulged themselves in imprudent conduct. From these considerations he had been and still was willing to pass it over as lightly as possible. But, while he would thus lightly look over this improper conduct in the officers, he would never agree to reprehend and pass a censure on the gentleman who had been ill treated; for this, instead of saying to gentlemen, "You shall be protected in all your conduct on this floor," would be to say, "If you charge any man with insulting you, you will meet our severe censure." This language being held out, would deter gentlemen from appealing to the House, and tend to make the members of Congress amenable to every listener, and subject to their scoffs in every company, or compel them to have recourse to another mode of redress.

The gentleman from Delaware had supposed that if the intention of these officers had been to produce a quarrel, they had a fair opening when Mr. Randolph used the word *puppy* to the person who pulled his coat. This argument must fall. Mr. J. said, when it was considered that it appeared from the affidavits of Captain Taylor and others that Captain McKnight did not hear these words used, and therefore they could not have produced that effect.

There could be no doubt but these gentlemen's feelings were wounded in the expressions applied to the Army by Mr. Randolph, in the House, and there can be as little doubt but they intended to wound his feelings in return, by their repetition of them; and, from the aggregate of their conduct, probably they wished to create a quarrel. They must have known their conduct was irritating. That impression was made on a number of gentlemen present. It had spread further; a rumor had gone abroad in the theatre that an insult was given to that gentleman, and apprehensions were formed that evil consequences would ensue. It was therefore not to be wondered that some of Mr. Randolph's friends should have taken that impression.

Mr. J. hoped it was the intention of the House to protect every member in the exercise of his rights, in the freedom of debate, and to afford ample redress in cases of insult. But, as he observed before, he wished not, in the present case, to carry into execution the full powers which the House possessed; he wished rather an expression of disapprobation of the conduct of the officers, as of a matter not of that magnitude to demand punishment. But why the member who made the appeal should meet a censure worse than the offenders he could not conceive; and therefore hoped the report would be recommitted, and undergo an alteration, before it filled a place in the proceedings of the House.

When Mr. J. had concluded, an adjournment being called for.

The House adjourned till Monday.

MONDAY, January 27.

THOMAS PINCKNEY, from South Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

On motion, it was

Resolved, That the order for a call of the House this day be dispensed with, and that there be a call of the House to-morrow, at two o'clock.

On motion, it was

Ordered, That the third reading of the bill to establish an uniform system of bankruptcy throughout the United States, be suspended until to-morrow.

CASE OF MR. RANDOLPH.

The House resumed the consideration of the report of the committee to whom was referred the Message from the President of the United States, together with a letter from John Randolph, Jr., a member of this House from the State of Virginia.

Mr. CHRISTIE said, that having obeyed the command of the House in the testimony he had given, he hoped to have been permitted to give a silent vote on every question which might come before the House on the present subject; but the conduct of the gentleman from Delaware, on Friday, had obliged him to deviate from that determination in rising upon what must be very disagreeable, a justification of his own deposition. He could not have apprehended the gentleman would have made so wanton an attack on the deposition of any man whom he had no reason to believe would deviate from fact. The gentleman was pleased to say that he (Mr. C.) was so fortunate as to see more and hear more than any one else who was in the same situation. Mr. C. said he considered himself rather unfortunate in knowing and seeing so much. But although his deposition contained so much of the transactions of that evening, yet the gentleman from Delaware appeared

to be much the best pleased with the depositions of gentlemen who saw the least of it!

In the gentleman's examination of the evidence, he appeared more like the county-court lawyer, whose business was to make the worst appear in the best light, and to reduce the most important testimony to nothing, than as an honorable member of the National Legislature, where the strictest impartiality should mark his conduct, and where no impressions should be formed but from a just view of evidence.

Farther, he has charged me, indirectly, said Mr. C., with a want of candor in my deposition. He has said of the other gentlemen, that there was much candor in their testimony. What is there in my testimony to deprive me of the same approbation? I did not wish him to commend my testimony, because his approbation would not make it the more truth; but I think he might have placed mine in the same situation he placed others. The encouragement he has taken to draw these insinuations is, my having introduced my suspicions with my evidence. This appeared to me a case of absolute necessity. There were many little circumstances that could not well be introduced into an affidavit. I endeavored to give my opinion from my real impressions; I am sure I have done it with candor, whatever that gentleman may insinuate. I have not misstated a single circumstance that came under my observation. I had my suspicions awakened, and therefore I did not go away as I had intended. Why were these impressions made? I will relate one particular ground. In the course of the morning, in a company of some officers and other gentlemen, the conversation turned up about the gentleman from Virginia (Mr. Randolph;) some of the officers said he ought to have his neck broke; that the officers ought to be picked out, one by one, till they had killed him. Having heard this, and perceiving and hearing what I did at the theatre in the evening, my suspicions were naturally awakened; I thought it my duty to prevent mischief if possible. I did not attend at all to the play, but paid particular attention to every word and every action which transpired between these officers. This was one reason why I was so fortunate as to know more than others.

Farther, the gentleman says that I have stated no facts. What he thinks are facts I cannot say, but I will submit to the consideration of the House what I call facts. I saw the officers there. That is one fact. I saw them look toward our box. That is another fact. Another is, I heard one of them say, after using the words ragamuffin and mercenary, "he does not hear you, go nearer to him." I heard this perfectly plain, and this the more awakened my observation, because I could not mistake Mr. Randolph to be the object of their ridicule. But the gentleman supposes I was mistaken in another fact; that of Capt. McKnight's sitting beside Mr. Randolph. What evidence has he that I am mistaken? None but the bare assertion of that gentleman himself. I am sure of the circumstance. I saw him sit down; he touched my elbow in sitting down, and made a slight apology with his head for so doing. I rather think the gentleman wants candor himself, or he would never scrutinize my testimony with so suspicious an eye, when he has no ground for so doing.

I was not the only person who was so fortunate as to receive impressions that an insult was intended; other gentlemen who had less occasion, thought the same. I marked every transaction—I well remember their words; it is impossible that I should be mistaken in either. That gentleman might have his reasons for so speaking of my testimony, for aught I know, but certainly he treated it as neither candid nor honest. I could not be insensible of his harsh treatment of my testimony, particularly when he spoke of the candor of every other gentleman.

I do not think the committee obtained all the information they could have procured. I did expect that they would have asked Captain Smith who the gentleman was that gave him the information of his apprehensions about the conduct of these officers. I must confess, had I been on the committee, I should have put the question. The gentleman was in town, he had been in the box; there can be no doubt but he could have given some important evidence, but this they neglected to obtain.

As I believe the report of the committee conveys an unjust censure on Mr. Randolph, and as I think it can be reported in a manner much more acceptable to a majority of this House if recommitted, I shall therefore vote in favor of the motion.

Mr. Sewall, having been a member of the committee, and having fully concurred in the report, considered it his duty to show the inquiries and reasons which led him to a concurrence with the committee, and would induce him to vote against the motion now before the House. It appeared to him necessary to express some cautions to gentlemen on this occasion.

The House were now sitting as judges upon the conduct of their fellow-citizens who were not members of the House; they were now judging in a case in which the feelings of gentlemen must necessarily make them a party; they were called upon to defend the privileges of the House, in which they were judges from the necessity of the case, with a power to determine the nature of the offence, the punishment of it, and the degree of punishment to be inflicted. In this situation it became proper for gentlemen to divest themselves of resentment, which the supposed injury to themselves would excite, as much as possible; of their sympathy with the accuser, who has been more immediately affected; and rather to take the place of the persons accused; to consider what were the natural and allowable feelings to which officers of the army must be excited on hearing of the expressions which had been made use of by the gentleman from Virginia on the floor of the House, unnecessarily, and without any occasion from the debate in which they were uttered. The words, if not peculiarly applied to them, respected their profession and the reputation of the service in which they had engaged; and if they thought proper to pass about, in the way of jest, the words by which

they had been hurt, surely it could not be necessary for the House to pursue this as a breach of privilege. Whether the words were repeated in the street or at the playhouse, if, scattered in the air, they should reach the ears of the persons who gave them birth, ought he to feel himself injured! It was merely a repetition of the words used by the gentleman, and these could not be offensive to him, unless from his consciousness that they had been by himself improperly used and applied.

A further caution, Mr. S. said, he found it necessary to express, from what he heard that morning. The House sat as judge on this case. It was an established principle, in the administration of justice, that the judge shall be influenced only by the evidence before him, and that he ought not to admit his own conjectures, or to believe beyond the evidence. He had this morning observed a member of the House, in whose candor he had usually confided, imprudently carried away by his feelings. Had not a gentleman said that he firmly believed it was not merely the design of the persons accused in this case to pull the coat off the gentleman from Virginia, but to trample him down? Was this the dictate of those impartial, those cautious sensations which ought to possess the breast of a judge? When members of the House were carried away by those improper conjectures and predispositions, a caution to them he conceived might be allowed as very necessary.

Farther. It was the duty of a judge when undertaking to be a witness to distinguish his situation. Yet there were several gentlemen who acted in the double capacity of witness and judge. One of those gentlemen had undertaken to argue upon his own testimony, and adduce his opinion thereupon, mixing additional evidence. Surely these circumstances must prove the necessity of extreme caution in those who would be impartial in their inquiries and just in their decisions in this case.

Mr. S. then proceeded to show the reasons which led him to concur in the report of the committee.

First. A previous inquiry ought to be, what are the privileges of the House which they undertook to vindicate? To what extent are they to be carried? In the present instance the privileges in question might be inferred from one, and that a very important right of this House, that every member should be free in debate; that he ought not to be called in question by any person, or in any other place, for what he had done or declared in the capacity of a Representative and in the proceedings of the House. But when the question is whether any member has been injured in this important right, gentlemen must also consider to what extent their privileges in this respect have been claimed. What had been the established practice of the House, Mr. S. asked, till the present time? Have not the expressions of members uttered in debate, with the addition of the most insulting calumnies and injurious commentaries, issued forth from the press and been disseminated throughout the United States? Has there been any precedent, any instance of a printer or publisher, who has been called to the bar of any House of Congress for this offence as for a breach of privilege? It has never been thought worthy of notice, much less of punishment. He was now speaking before an assembly a majority of whom had, a few days ago, declared they would not preserve in their code of laws the statute by which those are to be punished who shall falsely and maliciously traduce the President or either House of Congress, by misrepresenting, not in words but in writing, their official proceedings; will this House then punish any man for merely a repetition of words, however reproachful, that had been previously uttered by a member of the House? If it was the settled law, determined by the practice of every House of Representatives since the Constitution, that the observations which members have used in debate may be repeated, published, and uttered, without exposing to punishment, there could be thus far no crime in this case.

Mr. S. said, he would consider the case in two points of view. First, as it respected the words as separated from any action; and secondly as it respected the words connected with what had been called the personal insult offered. In either view he thought he should justify the report. With respect to the first, he had already observed it would be a departure from the constant practice of the House to punish for merely the publication or repetition of words; such publications had been accompanied oftentimes with the most insulting strictures. He was certain the House would not begin at this time to punish where the publication had not been accompanied with any commentaries or insult. The use or repetition of the words alluded to in the charge might not have been intended as an offence, and was natural in officers upon whose minds the degrading epithets which had been bestowed on their employments must rest. It may be observed also that those epithets had been very improperly applied to the army, in the House. Indeed the repetition of them was a much more proper application as made at the playhouse, more according to the facts; but the application of such epithets to the Army of the United States, was not according to the truth, but must be attributed to the warmth of the member who had used them in debate.

But gentlemen have said that the repetition of the words of Mr. Randolph was with the purpose of producing a quarrel, and, considered with that design, the offence must amount to a breach of privilege. Whether this was or was not the case, Mr. S. said, the House as well as the committee may be at some loss to discover. It was probable if the intention had been to produce a quarrel the offensive words would have been more pointedly used, so as not to admit of a doubt as to that intention. If the gentleman himself thought so, his most proper way would have been to have asked an explanation. Judging from all the circumstances of the evidence as it now appears, and especially from the positive declarations of the officers charged, it may be reasonably concluded that an inquiry would have produced an apology perfectly satisfactory at the time, and the affair would have proceeded no further; and if that had happened

there would have been more evidence before the House as to the intention. But that was not done. It was not pretended that these words were addressed to Mr. Randolph, if there was an intention that they should apply to him. It appeared that the occasion arose from a scene that was then exhibited on the stage; this might have reminded them of the words which had been used respecting the army, and which they must have considered as degrading their profession in the Hall of Congress.

But, Mr. S. said, he would beg leave to refer the House to the part of the evidence which was considered as proving a personal insult. One circumstance was, that Mr. Reynolds sat down in a place which was scarce sufficient to contain him, and, in sitting down, pressed Mr. Randolph. Whether this was meant to offend, or not, did not appear; but it would have been very easy for Mr. Randolph to have learnt the intention by asking it, and it was rather a wonder that that gentleman, supposing it to be meant so, had not then discovered it. But it appeared that there was an excuse for this action, arising from the evidence. In Mr. Randolph's statement, to which, as to facts, Mr. S. said he would give implicit credit, it appeared that Mr. Reynolds sat down in a place which Mr. Christie had just left; he perhaps thought he had a right to sit in it, and he did not think proper or find it in his power to take an exact measure whether it was large enough, since it had been occupied by another person; it having been left, made an apology not necessary, since Mr. Randolph could occupy the same room as before. This he did not offer as a lawyer's apology, but as a reasonable inference, and in this habit it was considered in the committee. This excuse would also appear reasonable from another part of the testimony. Just before Mr. Reynolds took this place, all the persons in the box had been attracted by a scene that was exhibting, and got upon their feet. The time of returning to take their seats was the moment when Mr. Reynolds sat down.

Mr. S. thought Mr. Christie must have been mistaken as to Mr. McKnight's taking that seat. Mr. Randolph himself did not say he was beside him, nor was it said by any other witness, but Captain McKnight denied it. However, that was immaterial.

Another circumstance stated was, Mr. Randolph's coat being pulled. That he had his coat pulled, and that he thought it was intended as an insult, there was no doubt; but Mr. S. thought it was entirely impossible to collect from the testimony who it was done by; or, if that were known, it would be difficult to discover that it was intended to insult that gentleman. Whether it was done with such a degree of violence as to make it worthy of notice did not appear. The House could not attend to insinuations in this particular: they must let facts dictate their decision. He wished gentlemen to consider the situation the theatre was in; every one hurrying to get out before others. No doubt the press was very great, and it would be no wonder if a gentleman should suffer a degree of violence in such a situation—it was almost inevitable. As to the acknowledgment made by Captain McKnight before the committee, it was not taken as evidence; but if the pulling of Mr. Randolph's coat is to be considered as proved upon Captain McKnight by his confession—and there seems to be no other proof of it—the whole of that confession must be taken together, and from that it must result that his taking hold of Mr. Randolph at the moment of leaving the box was at least intended to be gentle, was accidental, and without any purpose of insult to the gentleman.

Mr. S. declared that if there could have appeared from any part of the whole testimony a design to ill use Mr. Randolph, the committee certainly would have recommended a censure upon the parties who should have been found guilty, and he should have willingly joined in such a report; but, to the apprehension of a majority of the committee, there was no proof of ill usage, nor was there any ill intention deducible from the words or conduct which had been proved.

But were these persons declared innocent in the report? By no means. The committee had only declared their opinion to be that sufficient cause did not appear to induce a notice of this transaction on the ground of a breach of privilege. They by no means cleared the parties charged of every misconduct. There may remain suspicions of guilt when there is not sufficient evidence for conviction; the committee had framed their opinion from the testimony, that testimony was before the House, it was therefore for the House to decide. If censure and if punishment was at all necessary, it could be ordered.

The motion now before the House was for a recommitment of the report, upon the idea that the committee had gone beyond their authority, or that they had improperly used their authority, by expressing an opinion upon the style and mode of application to the President of the United States, which eventually brought this business before the House. If the arguments had been confined to this point, Mr. S. said, he should have been glad; but as it appeared by the conduct of gentlemen who first took up the question that the whole of the report was in discussion, he had been obliged to pursue them upon the merits of the resolutions.

He should now say a few words as to the supposed impropriety of the committee expressing their opinion. In what had they been guilty of impropriety? Had they exceeded the authority given to them? They were not specially a committee appointed to take the letter of the President and that of Mr. Randolph into consideration. The committee thought themselves under a necessity of considering it in a point of view in which they had reported. The regret expressed by the committee, Mr. S. said, was a regret which he felt the moment he had heard the letter read. He believed if gentlemen would examine the style of that letter they would regret that it was ever sent to the President. It certainly did not show a disposition to support that dignity which ought to be preserved inviolate between the different departments of the Government. There was a kind of comparison of equality in the mode of address always indecorous in itself, and which ought not to be used from an inferior to a superior officer of the Government. He thought he did not speak improperly in saying that they, as members of the House, were inferior in their official capacity to the President of the United States. To preserve these distinctions, and the dignity of an official character, was particularly necessary for the preservation of the Government. Those who were exalted by their fellow-citizens should be treated with that respect, and being raised higher in power by the people, the more peculiar the respect to be paid to the office and authority, which is created for the common good. There was a very improper style of comparison, an evident indecorum through the whole tenor of the letter addressed by Mr. Randolph, and that, he thought, a mere perusal of the letter would as well prove as any comment could. But they had not expressed a censure on the member, and therefore the argument in that view must fail. They only expressed a regret that such a thing should be. A censure upon the author was not necessarily implied.

Another paragraph having been pointed out as exceptionable, wherein the committee considered the application to the President, however otherwise intended, as derogating from the rights of the House, Mr. S. wished to say a few words to. How was this application to be considered? Certainly as an appeal to the President, as Commander-in-Chief of the Army, complaining of the conduct of some of the officers of the army. Some of the gentlemen have said, there could be no doubt but the President possessed authority to regulate the subordinate officers; but how had the gentleman in this instance made his appeal? That his independence and rights as a member of the House had been infringed. Now that this was an appeal to the President for redress was clearly established by the perusal of the letter, and that such an appeal by a member of Congress was improper was equally well established. The committee could not be ignorant of these truths, and, knowing them, they were justifiable in saying that the appeal was made to an improper authority, because the appeal bore on its face a charge which respected a breach of the privileges of the House, a charge which is there exclusively cognizable, and to this jurisdiction the President had paid a suitable regard in his reference of the inquiry to them.

If this application had been made by a gentleman of a party who are supposed to favor the increase of Executive authority, Mr. S. supposed the attempt would have been treated as an aggravated offence, and they should not have heard the last of it for some time.

Mr. S. said he had thus briefly given some of the reasons which weighed with the committee in determining their report, and these reasons would still induce him to vote for the resolutions. He hoped the report would not be recommitted; he could see no ground for so doing; the report, so far as it has been objected to by the gentleman who moved the recommitment, only contained the reasoning of the committee, and was not an act of the House. With respect to the resolutions, they could be amended or rejected when they came before the House.

Mr. Nicholson said, he did not intend to have offered any observations upon this subject, but he felt himself called upon by the remarks of the member from Massachusetts, (Mr. Sewall,) who had just sat down. That gentleman had expressed an opinion, a part of which was a novelty to him, and which he certainly did not expect to have heard from a lawyer. He had said "that 'our present situation was a very important one, 'and the authority derived from it ought to be 'exercised with great caution; and that when a 'man became a witness in a case, he ought not to 'consent to sit in judgment upon it." Mr. N. said he trusted that he felt the high importance of his station as fully as any member upon that floor; but although he had been summoned by the committee to give testimony in this affair, yet this was not to deprive him of the Constitutional authority which he possessed of deciding upon every question which came before the House, either in its legislative or judicial capacity. It was a right which his constituents expected him to exercise, and he was resolved not to surrender it while they continued to repose their confidence in him. When he had made his affidavit, in obedience to the commands of the committee, he did not think himself at liberty to state his impressions, but as he was now on the floor, he would offer his opinions upon the testimony and the report which was under consideration.

He was somewhat surprised to hear the honorable member from Massachusetts (Mr. Sewall) attempt a vindication of the officers on the score of an allowance for their feelings, which, Mr. N. said, he was willing to admit might have been somewhat wounded by the expressions of his friend from Virginia; but if they were to be justified in offering insult to the representative body because their feelings were to plead their excuse, he did not know how or where such conduct was to be checked. If members of this House are to be exposed to outrage and insult, and are then to be told that the feelings of military men had been excited, and therefore they were to be excused, what, he asked, was the necessity for the Constitutional guard of freedom of debate? But, said he, this mode of defence grants precisely what we insist on. While gentlemen attempt to extenuate, they tacitly admit the commission of the offence charged, and convict those whom they endeavor to acquit. Mr. Randolph's language, say they, was aggravated and improper, and therefore it must be supposed would naturally provoke the subsequent conduct. Granted—and this is the point contended for, for it admits the very fact in dispute: that this conduct did actually ensue.

Mr. N. said, he had thought the report of the committee extremely incorrect in a variety of points, and the very ingenious explanation of the gentleman from Delaware (Mr. Bayard) had not

induced him to change his opinion. It appeared to him that the committee had conducted the business entirely as if it had been a petty case between two individuals, and only interesting to the House because they were to decide on it; for, instead of examining Mr. Randolph upon oath, as they did every other witness, they barely procured a statement from him, in the same manner as from Captain McKnight and Lieutenant Reynolds, thus holding out an appearance to the world that Mr. Randolph was equally concerned with the officers. To be sure, one of the committee had explained this, but still it did not remove the objection, for however excusable the committee might be, yet this did not change the face of the report; it still went to the public as a naked question between individuals, and thus they would be induced to overlook it, as of no consequence to them, and will not give it that investigation which their invaded rights demand. But, sir, said Mr. N., I view it in a different light. I consider it as a question between this House and the officers of the Army and Navy. I consider it as a question between the civil and military authorities of the country. I consider it as a question between the sovereignty and independence of the people, and the influence of Executive authority. But, sir, the committee will appear to have thought otherwise, by inducing a belief that Mr. Randolph was a party interested, and therefore not to be used as a witness, when in fact he was only concerned as every other member in this House is—all being equally interested to preserve the freedom of debate.

But what in his mind was a powerful objection to the report, he said, was that the committee had exceeded the authority delegated to them by the House, in undertaking to censure the style of Mr. Randolph's letter to the President. The member from Delaware had indeed attempted to explain this part of the report also, by declaring that the committee did not mean to convey censure; but it appeared to him that the language was extremely strong, though they had affected to be somewhat modest about it. They express their disapprobation in pointed terms, and I have always thought that an expression of disapprobation amounted to censure, and an expression of approbation amounted to applause. But I deny the power or authority of the committee to make any strictures on the style of this letter. From whence do they derive so much authority? No such power was delegated by the House, for the Constitution gives them none. I know of no law providing for the case; the general rules and practice of the House afford no precedent that I have heard stated; by what right then, I again ask, did the committee undertake the task of criticism? Who erected them into a committee of censorship for the preservation of form and decorum? If we are to agree with the member from Delaware, (Mr. BAYARD,) this authority was derived from the President, for that gentleman tells us that the language was offensive to the President, and that out of respect to him they were bound to notice it. Is this, sir, a ground which the National Legislature ought to take? Are we to enter into all the President's feelings? Are we to participate in his resentments? Shall this House descend from the dignity of guarding the rights of a great people, to the paltry office of settling rules and forms of etiquette? No, sir, it is as inconsistent with the character of a Republican Government as it is exceeding the authority under which we act. In courts, sir, I have been told that these forms are deemed essential, and that therefore much care is taken to preserve them. They publish the necessary style of address, and you can easily find out whether you are to call your fellow-man his Majesty, his Grace, his Lordship, or his Honor. But plainness and simplicity are the characteristics of a Republican Government, and ought not to be laid aside; for, in proportion to the establishment of titles and distinctions, in the same proportion do we lose sight of that equality which the member from Massachusetts (Mr. SEWALL) appears to think the offensive part of Mr. Randolph's letter.

I was surprised to hear that gentleman talk of grades in dignity on this side of the Atlantic, and object to this letter because Mr. R. discovered an opinion that he was on a level with the President. What, sir, is the President more than man? Because it is the custom in other countries to clothe a human being with the robes of state, and then fall down and worship him, shall we declare that our Chief Magistrate is exalted above the level of his race, and that those are his inferiors who are servants to the same sovereign people! True, he has more power, and is elected by more people than a member of this House, but then he has more masters, and is still a servant; we are all made by the voice of the people, and that voice can destroy us. It is the pride and boast of our Government that every man in it is subject to the same laws, and enjoys the same rights; that although we, with the President, are elected for a time to make laws for the good of the whole, yet after having performed our routine of service, we lay down our employments and return again to private life, become responsible to our fellow-citizens, and depend on our good conduct here for their approbation. Surely this gives a member of this House a right to consider himself on a level with the President, because in these respects an equality exists between them, inasmuch as they are both servants to the people, and this is the light in which my friend from Virginia considered it. The member from Massachusetts (Mr. SEWALL) might as well be displeased because his letters were addressed to plain Mr. Such-a-one, instead of the honorable Mr. Such-a-one; an unmeaning title which we have assumed without authority. I do not know, Mr. Speaker, that I should have addressed the President in the same style, because, as the gentleman from Kentucky (Mr. DAVIS) said, I do not know that I could; but if I had been consulted about this letter (which I believe none of Mr. Randolph's friends were) I do not think there is a single word which I could have advised him to blot. It is written in a style of manly independence, consistent with the character of a freeman who disdains to address himself to power in the language of adulation.

Let me again repeat, sir, that the committee have exceeded their authority. There was but one fact which they had to inquire into, and that was whether the officers had or had not been guilty of a breach of privilege, and this is the only fact on which they should have reported.

But, sir, in the third paragraph, the committee have again fallen into the error of giving this business the appearance of an affair between individuals. They have told you that Mr. Randolph demands "redress." I deny it. He asked no redress, but he requires a remedy to prevent future evils of a similar nature. What is redress? It is a compensation for an injury sustained. Does he ask compensation? No, sir. When a man has been injured in his person, he appeals to the laws of his country, by instituting a civil suit, and recovers damages to compensate him for the injury, and this is redress; but the offender is also punished for a breach of the peace, and this is the remedy (not the redress) applied by the State to deter others from the perpetration of similar offences against society. This, sir, is what Mr. Randolph demanded; the rights and independence of the Legislature had been attacked, the majesty of the people had been insulted, he therefore required the application of a remedy which might show to other military men the necessity of conducting themselves with decency and respect towards the civil authorities.

The fourth paragraph of the report appears to me highly exceptionable. It not only declares Mr. Randolph's application to the President to be improper, but that he himself had violated the privileges of the House. For, whatever is in derogation of the rights of this House must be considered as a violation of its privileges. This is a charge of a serious nature levelled at one of the Representatives of the people, and if true, ought to be punished. But, in my opinion, this application to the President was not only proper, but highly commendable. It discovered a spirit of mildness and forbearance which will rather command the esteem and approbation than the censure of the public. He had the choice of two remedies, either an application to this House, or to the President, and he preferred that which at the same time would be equally effectual, and yet be less harsh and severe.

But let me illustrate this conduct on the part of Mr. Randolph, by comparing it with a case of more familiarity. If a member of this House had been arrested for debt by a sheriff's officer while attending in the discharge of his official duty, the officer no doubt would be guilty of a breach of privilege, because it is expressly so declared by the Constitution; if the member thus arrested had written to the high sheriff himself, informing him of the circumstance, and stating to him that the privileges of the House had been violated, requiring him to instruct his officer as to the impropriety of his conduct, with the view of preventing similar offences in future, would any one here have said that this was a breach of privilege, or would they not rather have commended the member for treating the officer with so much mildness and liberality? Would it have been thought preferable to arraign the officer at the bar of this House, to fine and imprison him for the commission of an act which in all probability arose from ignorance and misconception? Sir, I believe such conduct on the part of a member would have been thought cruel and oppressive, and would have been exclaimed against by all who became acquainted with the fact. Or, I would ask, if every man is chargeable with a violation of that duty which he owes to society, if he neglects to bring to punishment every one who in the heat of the moment may be guilty of a petty assault and battery? I confess I think otherwise, for I have always been of opinion that a mutual forbearance among men was necessary to preserve the harmony of society. It was the prevalence of this temper which prevented other members who were witnesses of the fact from bringing the business before this House, and if Mr. Randolph is guilty of a breach of privilege in making application to the President, every other member acquainted with the circumstance became equally guilty, by not applying to the House for the means of punishment; for it was as much the duty of those who were present as it was the duty of Mr. Randolph; all, as members of the Legislative body, being equally interested.

However, sir, let us recur again to this clause, and see whether the position of the committee may not be turned upon themselves. The committee have declared in their preamble that Mr. Randolph was guilty of a breach of privilege, in not making application to this House to punish the officers; and yet the committee themselves, notwithstanding they had these impressions, have introduced no affirmative proposition for the purpose of censuring or punishing Mr. Randolph. If it is the duty of members who believe that a breach of privilege has been committed, to apply to the House to remedy the evil, it was certainly the duty of this committee to introduce an affirmative proposition on this head, in order that the House might express their opinions on the subject, and punish or acquit, as their judgments might dictate. By neglecting to do this, if Mr. Randolph is guilty of a breach of privilege, the committee are equally guilty also.

As to myself, Mr. Speaker, I have no hesitation in declaring that I never did wish these young men to be punished with severity. I am willing to believe that their conduct was the result of youthful indiscretion, and as such might well have been overlooked by this House, leaving it to the President to have them informed that they had behaved improperly, and that a recurrence of similar misconduct would be attended with more serious consequences to them. Sir, I do not now wish them to be punished with severity; but as this business is brought before the House, I hold it to be our duty to decide upon it in such a manner as to produce a good effect upon the military of the country. I conceive this to be our duty, because I think our rights and the rights of the

people are deeply involved, and because I think it rests with us at this moment either to surrender or to support the freedom of debate, which is one of our most essential privileges. If we pass over this instance, without declaring our sense of its impropriety, I know not how far the evil may extend itself.

Although it has been denied by some, yet it has been admitted by other gentlemen in this House, that if the words were spoken with an intention to insult, and it was proved that the insult had taken place, this would be a breach of privilege. This, sir, I take to be the correct ground, for, independent of the admission of gentlemen, a variety of instances migh be adduced from the Parliamentary history of England where persons not members have been punished for words spoken to and of members.

The question then is, how these words were used by the officers, and how they were intended to apply; and whether, by the use of them and the subsequent conduct afterwards, it is not apparent that they intended to insult, for the purpose of provoking hostilities?

In my opinion, Mr. Speaker, no stronger argument can be adduced than the impressions which were made upon the bystanders. And here, sir, I cannot avoid noticing a remark which fell from the gentleman from Delaware, and which I regret exceedingly the use of. That gentleman thought it probable that the members present at the transaction were governed in their feelings by the peculiarity of their relative situation to Mr. Randolph, insinuating very strongly that their impressions arose from the similarity of their own and Mr. Randolph's political cast. [Mr. Bayard said he did not mean to insinuate that any member was governed by motives of that kind, but spoke of it as a natural and involuntary bias of the human mind.] Mr. Nicholson said he trusted that the member had no such meaning. He flattered himself that the characters of those who were present were superior to such imputations, for although he himself had not thought proper to state his impresions in his affidavit, yet he could not avoid feeling for those who had; and he thought it very fair to suppose that those four members of the committee who had agreed to the report, in opposition to three of their brethren, were influenced by similar feelings. Those four gentlemen, said Mr. N., have testified, by their conduct here, their strong attachment to the Army; they have expressed a fellow-feeling for the officers, and one of them at least had on this floor warmly declared his disapprobation of the language used by my friend from Virginia. May we not believe, then, that these gentlemen were influenced in their examination of this subject, by their attachment to the army, and their disapprobation of Mr. Randolph's words? May we not suppose that their judgments were blinded by their feelings, and that this report is the production of party spirit? I do not charge the gentlemen with this, but it is certainly equally probable that they should be governed by their feelings, as well as those who were acting upon oath. But, sir, how will the gentleman from Delaware account for the impressions made by the conduct of the officers on the mind of Mr. Van Rensselaer? He was no member of this House. He does not agree with us in political opinions. His judgment was not warped by party feelings or considerations. He does not "view Executive conduct with an eye of jealousy." And yet we are told by Mr. Macon, who I presume the gentleman will not say misstated a fact, that Mr. Van Rensselaer was the first who mentioned the subject, by telling him that these officers intended to insult Mr. Randolph. He saw the tendency of their improper behaviour and expressed his opinion on it instantly. His impressions were the result of what he saw, and could not be produced by a sympathy of political feelings.

How will the member from Delaware account for the impressions of the person who went to a distant box and told Captain Smith that it was the intention of the officers to insult Mr. Randolph! If the committee had taken the trouble to inquire (and I find the question was not asked of any person) they would have found that this was a man of respectability, bearing the exclusive title of a Federalist, and one of the warm supporters of the Federal candidate at the late election for a Governor of this State. He could have no feelings to influence him. He could have no attachment to Mr. Randolph, to whom he was a perfect stranger. His motives could only have been of the purest and most disinterested nature. He had no party malevolence to gratify, no personal attachments to interest him; he was unknown to all parties, and the fair presumption is, therefore, that he was perfectly impartial. And yet we find that he was under strong apprehensions that disagreeable consequences might ensue, and went to Captain Smith for the purpose of inducing him to interfere, presuming, I suppose, that he might have influence with his brother officers. How will the member from Delaware account for the impressions made on the mind of that man who told Mr. Christie not to leave Mr. Randolph, for some injury was intended towards him? He had no acquaintance with Mr. Randolph, had no feelings to gratify that we know of, and yet he could see the same impropriety of behaviour in the officers, and was impressed with the same opinions which other gentlemen entertained.

But it was insinuated that a report had been rung about the House by the friends of Mr. Randolph, and that the impressions were created in this manner. [Mr. Bayard explained. He said he did not mean to charge the friends of Mr. Randolph with having done so, for he believed they had not; but that it was done by other persons.] Mr. Nicholson said this strengthened his argument, for it would not be contended by the member from Delaware that this report could have been circulated before the conversation had taken place in the box, for this would prove a premeditated design; it was not contended that the report was circulated by any of those members who were in the box with Mr. Randolph; and this clearly proves that the same impressions were made on all persons who were in hearing.

Although I will not say, sir, that the House are bound to decide agreeably to these impressions, yet I will say that impressions so general, opinions so correspondent, could not have been formed by such a variety of men, who were witnesses of the scene, and could see the manner and countenances of the persons concerned, unless the intention was so strongly marked by their conduct as not to leave the possibility of a doubt. In my mind, an argument arising from the generality of the impression is irresistible in its nature, and must carry conviction with it.

As the testimony is in the possession of every member here, I shall offer very few observations upon it; but it appears to me that there are some strong outlines which deserve to be remarked on. Let it be remembered, sir, that Mr. Christie was in a situation to hear and see more than any other person whose testimony has been offered, and he has to-day stated that he was induced to observe these officers with more attention, because he heard several, either of the Army or Navy, declare, in the morning, that "Mr. Randolph ought 'to have his neck broke; that the officers ought 'to single themselves out and challenge him by 'turns until some of them killed him;" with other language to the same amount. This accounts for his suspicions of their intention, when he heard some person tell them they were not near enough to Mr. R., and they had better go nearer, as he could not hear them. The member from Delaware has said, that the committee were anxious to find out who this person was, and this is the only remark he made upon it. But it does not appear that they were anxious, for by examining the depositions it will be found that Lieutenant Thompson was the only person of whom the inquiry was made. He did not hear it, but it does not follow from thence that the words were not spoken. The committee neglected to put this question to the only two men from whom, in all probability, they could have received the requisite information; and these were Mr. Hurst and Captain Taylor. I have very little doubt, sir, but that Captain Taylor was the man who used these expressions; for Mr. Christie informs you that he was with the officers, and appeared extremely anxious to forward their views. If, then, the words were spoken, will gentlemen undertake to explain their tendency? They must have meant something, and we have every reason to believe that they were intended to induce a removal nearer to Mr. Randolph's situation, for we find Captain McKnight and Lieutenant Reynolds immediately changing their position and removing to the same box where Mr. Randolph was, getting so near to him as to touch him. The subsequent language was sufficiently provocative, and must have been directed to Mr. Randolph, as there was no other person there whose feelings could be wounded by the expressions, "black Virginia ragamuffins." But the member from Massachusetts (Mr. Sewall) thinks that Mr. Randolph ought to have asked an explanation of the officers, with the view of obtaining certain information as to their intentions, and this information might have been used as unequivocal evidence of their designs. Such conduct, sir, may be consistent with the cool, calculating cunning of a Northern climate, but is entirely inconsistent with the open manly character of Virginia. [Here there was a call to order from several parts of the House. Mr. N. asked why he was called to order? Mr. Rutledge said it was certainly very much out of order to draw comparisons between different States.] Mr. N. said he meant to make no comparison between States, but merely to notice a distinction which he had always understood did actually exist between the inhabitants of Northern and Southern climates. If Mr. Randolph had required an explanation at all, it would have been with other views than those of procuring testimony, which might have produced very serious consequences. But he discovered a temper and moderation which did him great honor, until their conduct was such as to violate all decorum, and he found it impossible to submit any longer without retorting.

Gentlemen seem to think the circumstance of laying hold of and violently jerking Mr. Randolph's coat as very slight and trivial. They have attempted to explain it away by saying that Mr. McKnight gently laid his hand on his shoulder for the purpose of passing him with more ease, and that this was construed by Mr. Randolph into a violent jerk. But, sir, is it possible that Mr. Randolph should have so far forgotten himself, that he should so far have abandoned that principle of moderation which he had suffered himself to be governed by, and which alone had prevented him from resenting their conduct, as to call a man a puppy for a slight and accidental touch of his coat, or for gently putting his hand upon his shoulder? He had already submitted to too much insult during the evening, which he treated with the proper contempt, and it cannot be supposed that his indignation, which had not been roused by insolent language, should afterwards take fire on the slight and trivial ground of being by mere chance accidentally touched by a person passing him in the theatre. If the act was not more flagrant than that contended for, is it possible that he could have construed it into violence? Or can it be imagined that he, who had the moment before looked with an eye of cool contemptuous dignity on his adversaries, would at once become warm and impetuous, unless he was driven to it by conduct of strong and marked hostility towards his person? This, sir, would have bespoke a light petulance of disposition which I can inform those gentlemen who now advocate this report, constitutes no part of his character; and I think the circumstance of his calling the person a puppy furnishes powerful evidence to convince us that the act itself was of uncommon violence.

But, sir, Captain McKnight does not tell us where or how he heard of Mr. Randolph having used the words "mercenaries" and "ragamuffins" in debate. He will not deny that he had heard it, for he will not pretend to say that his using them was merely accidental, and without reference to Mr. Randolph. The officers of the army are not in the habit of expressing themselves

in opprobrious terms towards each other; they do not call their brethren "mercenaries" and "ragamuffins," for it is a language that would not be tolerated among them, and would produce endless quarrelling and disagreement. The words, then, must have been intended for Mr. Randolph. Captain McKnight has accounted very minutely for the whole of his time from his arrival in town until he went to the theatre. He came to the city about twelve o'clock, was immediately ordered on a court martial, which was not discharged till three; from thence he went to his lodgings, and did not leave them till he came to the theatre, at six o'clock. Here the whole of his time is accounted for, and no mention made of his having heard of Mr. Randolph's expressions about the army. But, sir, we are told by Lieutenant Thompson that McKnight, with himself and several others, went in the interval between the play and the entertainment to sup at an adjoining tavern, and here, sir, I presume the thing was talked over; I will not say premeditated, because I do not believe there was any regular plan of insult laid, or we should have heard it from Lieutenant Thompson, whose testimony is, I think, very correct; but in all probability Mr. Randolph's expressions in debate were then mentioned; a general coincidence of sentiment prevailed among them, as officers, that they were insulted and were bound to resent the affront; and no doubt a conversation similar to that spoken of today by Mr. Christie took place, "that Randolph's 'neck ought to be broken, and that some of the 'officers ought to shoot him." Under the impressions produced immediately by this conversation, and perhaps somewhat heated with wine, they returned to the theatre, and the exhibition before them furnished an opportunity of provoking Mr. Randolph in such a manner as they thought would produce a correspondent conduct on his part, which might justify the most indignant outrage that they wished to offer.

With this view of the testimony, therefore, and taking into consideration that none of the facts are denied either in Captain McKnight's or Lieutenant Reynolds's statements, I shall vote for a recommitment of this report, for the purpose of changing the nature of the preamble, and so modifying the resolutions as to express our disapprobation of their conduct, and slightly to reprimand them for what I consider only as an indiscretion, but an indiscretion of a very improper nature, and of the most dangerous tendency. If I could suppose that this affair was the result of a premeditated design, I should be inclined to punish it with great severity.

Mr. Otis said, the whole tenor of the arguments of gentlemen in opposition to the report of the committee appears to be directed not against the resolutions but against the preamble to the resolutions. If the preamble had not been reported, he believed that no great objections would have been urged against the resolutions, yet was there no necessary connexion between them, nor any reason for recommitting the whole report, because that part of it on which the House was not called to act might be liable to objections. It was also unnecessary on the ground of procuring the attestation of the gentleman from Virginia to his own statement, for it might easily be converted into an affidavit without that formality. But, said he, though it does not follow that the agreement to the resolutions is an approbation of the reasons assigned by the committee, yet to recommit the report would imply a direct censure of those reasons. Gentlemen may be convinced of the propriety of the resolutions without assenting to the reasoning contained in the preamble. That reasoning has been exhibited by the committee as the inducement which led them to propound the resolutions; but other minds may perhaps arrive at the same conclusions from a very different view of the subject. The same resolutions might have resulted from other premises, and the same premises might have warranted, in the opinions of some gentlemen, other resolutions. By deciding upon the foundation of its own merits, by recommitting the report, we decide upon the preamble, and decide against it.

For his own part, he was persuaded that much of the sensibility discovered on this occasion arose from a misconstruction of the report, and a prevalent opinion that it contained a direct and heavy censure upon the gentleman from Virginia. He denied the truth of this inference. The objections to the preamble may be referred to two points: the one comprising the allusions made to the style of Mr. Randolph's letter; the other, the exclusive cognizance claimed for the House in all matters of privilege respecting its members.

As to the first of these objections, he denied that the report contained a direct affirmation of censure upon the style or conduct of the gentleman, but it merely left the subject where it was, open to the opinion of every individual. As members of the committee, they express their regret that the gentleman has deviated from the forms of decorum customary in official communications to the Chief Magistrate. They do not deny his right to do so. They do not say he has been guilty of indecorum, or that he has not substituted other forms of decorum in the place of those which are usual. Upon this subject all are at liberty to form an opinion, and, from what has already transpired, we know that a variety of sentiment exists. Still, the committee may regret this departure from the customary style of writing to the Chief Magistrate; they may apprehend that it may lead to inconveniences. But other gentlemen, who think it not a matter of regret, and who have no fears lest the harmony of the different branches of the Government should be endangered by it, may still, consistently with their sentiments, vote for the resolutions. He would not, however, conceal his opinion, which actually accorded with that of the committee, that it was to be regretted that the gentleman had thus departed from the usual mode of addressing the President. It was true, indeed, that no precise forms were required by the Constitution or by the laws, and from the nature of language some variety of expression must always be found in the style and

direction of different persons, but yet it would appear, upon examination, that the style of this letter was quite new and peculiar. [Mr. O. here read Mr. Randolph's letter in part.] The gentleman, said he, considers himself as holding, in common with the President, the station of servant to the same sovereign people. What is the meaning of the word servant? Grant that, in political treatises, this word is sometimes affectedly applied to magistrates and public officers, as importing that they are appointed for the benefit of the people, yet this is not the ordinary acceptation of the word. Its usual meaning is, a menial person employed for hire. At best, it is an equivocal expression, quite unusual and unnecessary; and why should we adopt, in our communications with the Executive, words that are liable to a possible misconstruction? Again, this word is inaccurately used, in whatever sense it is considered. For the gentleman from Virginia is not a servant in common with the President. Their offices are perfectly distinct. If both are servants the President is certainly a servant of a higher grade than any member of this House. He holds an office of greater trust, of higher responsibility. It is not, therefore, customary or correct to put both upon the same level. The letter proceeds: "disclaiming all pretensions to make any appli-'cation which, in the general estimation of men, 'requires the preface of apology," &c. This, again, is unusual. To what species of application does the gentleman allude? Probably to applications for office or preferment. It is happy for the gentleman that his circumstances do not make it necessary or convenient for him to solicit any favor of this kind; but why thus formally disclaim his pretensions? Standing upon the same ground, and enjoying the same right, with other citizens, might it not seem to imply a belief that his political opinions would be considered as an obstacle to his pretensions, and that offices are distributed through favor and affection? Is it usual to say to the President, "I come to ask no favors?" "I seek no office in your gift?" Certainly it is not. But does the committee declare this language to be indecorous? Do they reproach the gentleman for using it, or deny his right to use it? No! They say it is not customary, and surely no man will say it is.

Mr. O. then referred to the last part of the letter, "In their name (the Legislature*) I demand 'that a provision commensurate with the evil be 'made," &c. What is the meaning of the word demand, in our language? One definition of it may be to ask, to require; perhaps the gentleman might simply intend the idea conveyed by the French words *je demande;* but is this the ordinary acceptation of this word? I appeal to the experience of gentlemen to decide, whether it does not import not merely a request, but a right to expect, and even an authority to compel, satisfaction. The term is peremptory in its most ordinary use. This, then, is at least an equivocal mode of address, and a deviation from the customary tenor of official communications.

The last clause of the letter is equally singular: "In addressing you in the plain language of man, 'I give you, sir, the best proof I can afford of the 'estimation in which I hold your office and your 'understanding." It was, he conceived, uncommon and improper, in addressing the President, to comment upon his understanding. If by one his understanding be appreciated, it may be undervalued by another; one gentleman may profess to hold it in high estimation, another may assign it a less elevated grade. It could not be necessary to dwell upon the unpleasant consequences of discussions of this nature. Suffice it to say, with the committee, that the style is unusual and a subject of regret.

The second opinion of the committee, by which they had also given umbrage, was that in which they claim for the House an exclusive cognizance of all complaints for a breach of privilege. They assert that this application to the President, however intended, is derogatory from the rights and privileges of the House. There can be no doubt of the right and propriety of referring to the Commander-in-Chief, complaints of flagrant misconduct in any officer under his command, that due inquiry may be ordered, and a just censure or punishment awarded by a military court. But when the essence of the injury is made to consist in a violation of privilege, and the complaint is instituted on that ground, this House is the only tribunal to which the application should be made. If the gentleman had complained merely as an individual, without any reference to his station, or without considering the affront as offered to him in his official capacity, his letter probably would not have been submitted to the inspection of the House. He has not, however, taken this course; he considers the rights of the Legislature violated in his person; it is as a representative of the people that he demands redress; and, consequently, the committee, without charging him with a want of respect for the privileges of the House, content themselves with a declaration of their sentiments upon the mere question of the jurisdiction of the House.

In concluding his observations upon this head, he said that he could not forbear to advert to that part of the letter in which the gentleman professes to address the President in the "plain language of man." This expression seems naturally to imply that the President, being merely a man, is entitled to no distinction or peculiar marks of respect which are not due to his fellow-men. It is true that we live in a country in which the distinctions of rank and title are the voluntary tribute of civility to office and merit; yet, in the intercourse of life, both precedence and appellations of courtesy were dictated by our feelings and our habits. He had no doubt but the gentleman from Maryland, in his private conversation and manners, was an attentive observer of these forms; in addressing a gentleman he used the word sir, which was in itself a

* In a subsequent part of this debate, recurrence was had to the original letter, which reads *legislator* instead of "Legislature," so that the meaning here must be in the name of the people.

title, and that, when he intended no offence, he refrained from the use of words which conveyed at least a doubtful meaning. And wherein consists the mischief of this civility? Is it not more than innocent, is it not salutary and productive of harmony and pleasure? In a Republic, where the Chief Magistrate is elective, and the dignity of his character is upheld, not like that of a monarch by the splendor of his station, or the compulsive homage of his subjects, but by the esteem of his constituents and the strength of public opinion, it is an incumbent duty to demonstrate, by all ordinary means, our respect for the character and the office. If in addressing the President we should waive all ceremony, and dispense with all forms of decorum, we cannot claim from him a more respectful attention in his addresses to the Legislative body, and by diminishing his weight and importance in the eyes of the community, we should also impair our own.

In regard to the evidence upon which the resolutions, were predicated, Mr. O. wished that it had been reserved for a distinct inquiry, and not involved with the question of commitment; but, as the gentleman from Virginia had proceeded at large into the examination of the evidence, and had been followed by others, he requested indulgence for a few remarks upon this point. The evidence naturally resolved itself into two parts—as it regards overt acts, and as it regards words. Without attempting to settle abstract questions of privilege or alluding to imaginary cases, he thought that the attention of gentlemen might safely be confined to two positions, arising from the circumstances of this particular transaction. First, that if the overt acts alleged against the officers were done with an intention to insult Mr. Randolph, they must, in connexion with the words spoken, be deemed a high and flagrant breach of privilege. Secondly, that the words proved to be spoken, if not accompanied with any overt act, with any insulting or menacing gestures, much less if not addressed to the member himself, could not be deemed a violation of privilege.

Let us then inquire, said he, into the nature of those acts which are imputed to the officers. There are two of them only upon which a reliance is placed. It is said that Mr. Reynolds crowded himself into a seat at the theatre in such a manner as to jostle and even to hurt Mr. Randolph, with an avowed intent to insult him, and that Captain McKnight pulled him violently by the coat, in coming out of the theatre. With respect to the first of these accusations, the question was not whether it might possibly be true, but whether the evidence of its being so, was satisfactory. It is indeed barely possible that Mr. Reynolds intended to affront Mr. Randolph by this mode of taking a seat at his side, but many circumstances render it doubtful and improbable. Had the impression since made upon that gentleman's mind been conveyed by the action itself, he would probably have demanded an explanation, as he afterwards did, when he felt himself pulled by the coat: his omission to do this, convinced him that he must have considered the conduct of Captain Reynolds as ambiguous at most. There was nothing unusual in his occupation of a vacant seat; although the space was small it had been sufficient for Mr. Christie, a moment before, and if Mr. Rensselaer, who was leaning on the same seat, had resumed an upright position, it would have been still enlarged. In the public boxes at the theatre this change of places is incessant. The spectators, intent upon amusement, are often regardless of the punctillios of good breeding; every man is elbowed and jostled in turn; and can the House, sitting as judges in their own case, venture to decide that an ordinary occurrence of this kind affords proof of a design to affront the gentleman from Virginia; that it amounts to a breach of privilege?

The next overt act, said he, is the pull by the coat which Mr. Randolph felt and noticed in coming from the theatre. The first question is by whom this was done? The only evidence that fixes this act upon any individual is derived from Mr. McKnight himself; but this evidence, which confesses the probability of the act, also explains it. He declares that being violently pulled or pushed by others he merely put out his hand to save himself or to make room. The various parts of this relation must be taken together, and is it not a probable account of the affair? It is proved that at this time one of his arms was locked under the arm of Mr. Taylor. Would he have chosen this situation, if his intention was to commit an act of violence? Or would he not naturally expect an attack and have kept his arms at liberty to defend himself? It has already been urged that Mr. McKnight had a fair occasion of commencing a fracas when Mr. Randolph called the person who touched him a puppy, had this been his intention. To this it has been answered that he immediately passed by, and probably did not hear him. But why did he pass by, why not stop to hear him? If he was desirous of a quarrel why should he avoid Mr. Randolph? It has not been pretended that the officers intended to commit a secret outrage, to insult the member by stealth, and skulk out of his reach. On the contrary, the attempt has been to prove a design to bring on an open quarrel and riot, and affront him in the view of all the spectators. This evidence therefore labors under the same defect with the former, and is too equivocal for censure or punishment. Leaving, then, the overt acts, the injury complained of is reduced merely to the words spoken by the officers. Mr. O. said, that for the sake of argument he would admit that these words were spoken in the hearing of the gentleman from Virginia, in token of their disapprobation of the language used by him in the House, and that they were willing he should understand the displeasure they had conceived on this account. Still the words were not addressed to that gentleman, they were not accompanied with looks or gestures of insult or defiance, they were not uttered in a manner that could justify his taking notice of them. The question then arises, whether a mere repetition of words used by a member in debate, in his hearing, significant only of the disapprobation of the speaker, furnishes a ground for the interference of this House. Certainly the doctrine cannot be admitted in this latitude; even this conduct in those officers might be improper and indiscreet; its remote tendency might have been injurious and leading to a breach of privilege, but did not actually amount to it. Suppose these words had been repeated from the galleries by a number of soldiers or other persons, would this House have thought proper to arraign them for a breach of privilege? On the whole, therefore, Mr. O. concluded, that a very concise statement of the results of the evidence must be sufficient to convince gentlemen that the resolutions as reported were warranted and supported, and that the report ought not to be recommitted.

Mr. H. LEE, sensible that the discussion had extended far enough, said he should not have occupied a moment of the time of the House, had not the subject been placed in a position which, it struck him, was exceedingly unfavorable to a right understanding of it. Instead of openly confessing, at once, the great objections they had to the report, and treating only on the reasons which operated with the committee on which to found the resolutions, gentlemen had extended their observations to the whole subject, unconnected as was one part with another, in the light the motion had placed it, although the whole report and the resolutions had been discussed. The only question now was, whether the committee had exceeded the boundaries of the duty prescribed to them. Those gentlemen who thought they had, would vote for the amendment; but by that act they would tell the committee that they had done what they ought not to have done. On the other hand, if a majority should be found to vote against the recommitment, they would tell the committee that no part of their conduct merited the censure of the House. In this view the subject was now placed, and simply so.

However he might differ, Mr. L. said, with the committee in one of their resolutions, yet he was bound to declare that he coincided entirely with them in their report; so far as he understood the rules of the House, they had not exceeded their power and duty by stating the reasons whereupon they acted. Had they shrunk from this task, feeling the conviction they have uttered, they would have merited the reprobation of the House, because they would not have done their duty. Had not a member from Virginia told the House that the committee uttered opinions unsubstantiated by evidence, and unsupported by facts? If the report was to be recommitted, it would be at once applying to the committee that censure which the observations of the gentleman were calculated to convey, and this censure would bear with redoubled force, because sanctioned by the House.

Mr. L. said he could not help observing that in the whole course of this discussion gentlemen were very delicate with respect to the conduct of an individual, lest a censure might be cast on him, but it was remarkable that in the same breath they were not cautious as to censuring a very respectable committee of the House? He was not desirous of censuring either a committee or any individual member of the House, except justice and duty combined to require it, but to the impulse of duty he trusted he ever should be susceptible.

What, Mr. L. asked, have the committee done to merit your censure? They have told you in language the most delicate, that they think the letter written by the member to the President is a deviation from that decorum which ought to be observed, and which is essential to harmony in the Government. Is there a man here who doubts the sincerity of the committee in this particular opinion? If they believed so, it was their bounden duty to make the declaration; and if they ought to say it, in what language could they convey it with more delicacy than they have done? Shall a censure be cast upon them, and for what?

Mr. L. then read the report and the first part of the letter, in order to examine whether the opinion suggested by the committee was not well founded. What he asked could the word "*servant*," in the letter, mean? A servant was well known to be a person in low condition, and one over whom a command was existing. He did not view this very indecorous language as applying to the President in his individual capacity, but to the representative of the people, and in that view he considered not the man but the majesty of the people concerned. How would the people look on this indecorous and degrading treatment of their Chief Magistrate! If the Chief Magistrate was addressed in an undue manner, it could not be improper for the representatives of the people to express an opinion thereupon. Indeed there would be a deficiency in the execution of their duty, were they to neglect it. He considered the end of all Governments ought to be the happiness of the people, he considered it peculiarly so in a representative Government like ours, where all the power of the Government was immediately and necessarily drawn from the people. When he looked at the President, as Chief Magistrate of the Union, and acting by their choice he saw in him *the people*, when he looked at the Senate, or at the House of Representatives, he also saw in them *the people*, because the whole of the power possessed by either, and all the branches, were derived from the people, for whom they acted. He would always give his dissent to any and every measure which went to disparage the organs of the people. It was upon this ground that he considered the language of the letter indecorous and improper, to be used by any man to either branch of the Government.

"In their name, *I demand*," &c. Suppose the President of the United States was to send a Message to this House couched in language like this, how, Mr. L. asked, would gentlemen feel it? How would my colleague himself, or his colleague in opinion (Mr. NICHOLSON) feel it? I should consider the President as committing a deep insult on the majesty of the people. Is he not situated as we are? Does he not derive his situation from the same source as we do? Then surely if we should be justifiable in feeling the offence, he has a right to be so, and we may presume he does feel it; but he has too much good sense to feel it in his indi-

vidual capacity, he must however feel it in his representative character.

"*I demand.*"—When I say this, what meaning do I convey? It implies that I have very great reason to suspect you will not do the thing in question, but which you have a right to do. On what ground I would ask, did the gentleman suppose that the Chief Magistrate would not do what he ought? Surely no gentleman can say this is decent language; no gentleman but the gentleman from Maryland has pretended to approve of it. I did not think that there was a man in the House who would have used it, but there is one who admires this extraordinary style; happily that does not prove the consistency or propriety of it.

As to the word "fellow-citizen," Mr. L. thought it was decent; he could see no objection to it, because it was truth, and conveyed no improper idea, but when he heard expressions used which conveyed impressions that the President would not do his duty, rather than think of censuring, he should, for one, think himself bound to thank the committee for noticing it, and at the same time he could not avoid admiring the moderation exemplified in their delicacy of the expression of those feelings.

Mr. L. asked, whether decorum of behaviour between man and man did not go to uphold human happiness, and peace and good order in society? On the same ground the committee thought decorum was necessary to be preserved between the branches of the Government, in order to preserve the happiness of the people. Would the gentlemen from Virginia or Maryland, if they met a lady in the street, address her by the plain epithet of woman? No, they would know it was an offence, and would avoid such language; they certainly would address her in the customary style. If you beat down these barriers, who can trace the consequences? He considered that all these means to cultivation, small as they may appear, ought to be considered important, for the surest road to overturn a Government was to encourage innovations upon good order and decorum. Upon this ground, Mr. L. said, he was inimical to introducing any new mode of speaking or acting, since the customary one had been found to answer good purposes, and no fault had ever been found with it.

Mr. L. then made some observations in support of the consistency of Mr. BAYARD in his remarks, and in his examination of the testimony, which by another gentleman (Mr. NICHOLSON) had been supposed to bear an inconsistent aspect.

He further observed that, though it was his desire the observations should be confined to the report, yet as the testimony had been introduced, he would go on and make a few remarks on the resolutions.

With respect to the first, he supposed there would be but little, if any, difference of opinion. He could not think it possible for the most ingenious members in the House to argue for a moment against the propriety of the conduct of the President, and his merit of the approbatory declaration of the House for submitting the letter, in the most respectful manner, where alone he considered the right of privilege to exist. Supposing that a large majority would concur in this opinion, it was unnecessary to occupy a moment in speaking on it.

But this was not his opinion with respect to the second resolution: he wished he could as readily and with as much propriety concur with the committee in their opinion respecting that.

Mr. L. said he viewed the rights and privileges of the House as forming a most important feature in that system of Government under which we live; he conceived every attempt, be it little or great, which went to debase those rights and privileges, as commanding the just displeasure of the House, and unless in this instance the amount of the evidence could be better done away than it had been, he was of opinion that this was one of those cases in which the House ought to show it. He thought it was plainly proved that the two officers now charged had been guilty of conduct which rendered an application for redress very necessary, and to refuse redress would be very improper. He would give his reasons:

In the evidence of Mr. Christie, (which was entitled to the highest credit,) it appeared that one said "go nearer, he does not hear you." This was said respecting Mr. Randolph; it showed very plainly that these two officers had designed to insult the member: to execute a design thus evinced, they did go into the box where he was, and continued using the words mercenary and ragamuffin. Unless it could be proved that they had no intention to give insult, Mr. L. said, he could not believe but they had; for merely because they did not go through with their design was no proof that nothing was done towards it. That argument of gentlemen was something like an argument used on the other side, during a debate for the reduction of the Army, that you are not to prepare against an invading army till they land on your coasts! The inconsistency of the doctrine must be readily perceived.

The intention, in my opinion, said Mr. L., is well proved, unless contradictory testimony can be produced; if proved, the dignity of this House, the feelings of this House, and the duty we owe to the people, all command us to say that it was an attack upon our privileges as their Representatives, and ought to be noticed.

Had these two gentlemen been common citizens, Mr. L. protested, he should have been willing to disregard the business; he should have been more willing to grant indulgence for overstepping the bounds of decorum in this matter, which, simply considered, was trifling; but with respect to gentlemen who held commissions under the President of the United States, it was their duty, as it ought to be their pride, to protect and respect every part of the Government; it was their duty to have interposed if they had perceived any insult offered to any member of this House, and in no case to take the lead in disorder. Valuing the honor of the Army, he thought it his duty to let gentlemen in that character know that more was expected from them than from

other citizens, because, independent of their character and duty as citizens, they were called upon to protect the good order of society. But although he should vote against the last resolution, because it was proper to express a disapprobation of the conduct of these officers, he wished to express that disapprobation in as light a manner as possible, and in this opinion he hoped the House would concur.

When Mr. L. had concluded, the House adjourned.

TUESDAY, January 28.

Ordered, That the third reading of the bill to establish an uniform system of bankruptcy throughout the United States, be postponed until Thursday next.

A petition of Amy Dardin, of the county of Mecklenburg, in the State of Virginia, widow and relict of David Darden, deceased, was presented to the House and read, praying compensation for the loss of a horse, the property of the said deceased, which was taken for the use of the Continental cavalry, during the late war.

Ordered, That the said petition do lie on the table.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary in the law passed the first of June, one thousand seven hundred and ninety-six, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Ordered, That Mr. HARRISON, Mr. BRACE, and Mr. GALLATIN, be appointed a committee, pursuant to the said resolution, and that the said committee have power to report thereon by bill or otherwise.

CASE OF MR. RANDOLPH.

The House resumed the consideration of the report of the committee to whom was referred the Message from the President of the United States, together with a letter from JOHN RANDOLPH, Jr., a member of this House for the State of Virginia, the motion under consideration being to recommit the report.

Mr. HARPER said he did not rise to follow some of the gentlemen who had risen yesterday, in their lengthy examination of the evidence, because he thought in that conduct they had strayed very far from the motion before the House, which he supposed was merely designed to recommit the preamble, because it was not worded to the liking of some gentlemen, as they could not debate on what was not an act of the House, but of a committee, the only way to show their dislike of it was to move its recommitment. This appeared to be the general opinion. But Mr. H. thought it was not in order to recommit the report at large, since any disapprobation which the House may desire to express could be conveyed by resolution, or the present resolutions may be altogether negatived.

However, since the motion had been to recommit, and since, in the discussion of that motion, the subject at large had been discussed, Mr. H. said he would just inform the House what he thought the most proper mode of proceeding.

He did not believe there was a breach of privilege in the present case; of this he was well satisfied in his own mind, and which he should feel no objection to explain, if the proper motion was before the House. He conceived it could not be objected that the resolution approving the conduct of the President was highly proper, on a presumption of which he should not enter into a defence of that resolution. He believed that the preamble to the report was very proper; that it went no farther than it ought to have gone, and that much credit was due to the committee for their moderation in the report they had produced. But though he was of opinion that a breach of privilege was not committed, he was also of opinion that the conduct of the officers was very indiscreet and highly improper.

He believed, since nothing appeared to contradict that opinion, that they came to the theatre without any design of insulting any person, and that they returned after they had gone out to supper without any such design; he believed, also, that when they made use of the expressions, it was done without any view of producing a quarrel. He believed it a mere indiscretion of youth, excited by the occasion that offered. It certainly ought to be noticed in some way or other, but Mr. H. did not think the repetition of mere words could amount to a breach of privilege, if not offensive in themselves, nor coupled with actions that were offensive. This he held to be a just principle. The words which are repeated must be in their own nature offensive, or, not being so, must be coupled with some action that is so, in order to amount to a breach of privilege. These words could not be offensive in their own nature, because the member used them in his seat, and used them without occasion. The mere repetition of these words, then, could not be criminal. This position, he thought, could be easily maintained by discussing the testimony, but he conceived it unnecessary. But Mr. H. considered the conduct of the officers improper and indiscreet, as before observed; though they might not have intended to produce a quarrel, yet it might have had that effect; as it might have produced much ferment they ought to have guarded against it. This idea he wished to express by a resolution somewhat to this effect, if the second resolution reported by the committee should be negatived. To insert the words "although the conduct of Captain McKnight and Lieutenant James Reynolds was indiscreet and improper, yet sufficient cause doth not appear for the interposition of the House on the ground of a breach of privilege."

Mr. H. did believe that this indiscretion had been fallen into, but it was not of a nature to require reprehension, much less punishment. He thought it one of those charges which would admit of extenuation, but he would not enter into it, because it appeared to the gentlemen who had spoken, generally, that the crime did not amount

to much, and particularly so, since it must be acknowledged that provocation was given by the member in this House to that class of men. On these accounts he should vote against the recommitment; and if the second resolution should be negatived, he meant to move as a substitute the above in its place.

Mr. HARTLEY did not conceive that it would be passing a censure on the committee to recommit the report, though, for his part, he saw no necessity for that measure, since the House could express their whole desire in the resolutions. He thought the conduct of the officers at least indiscreet, and ought not to pass without some reprehension. The testimony of Mr. Christie, in his opinion, proved a complete insult. Certainly their behaviour was very rude and insolent to the gentleman; but he did not conceive it was a premeditated scheme. How far the irritation they might have felt could operate to excuse them from insulting a member on account of what he had said in the House, he could not say, but certainly some impropriety was attached to it, and therefore he could not, with the committee, vote for an entire excuse of their conduct.

Mr. R. WILLIAMS said, he was of opinion the debate had taken a course it ought not; for most gentlemen had directed their arguments principally in support of the preamble or reasoning of the committee, and at the same time acknowledged that the House could not act on it. It was for this reason, he supposed, the member from Maryland (Mr. SMITH) had made the motion to recommit the report of the committee.

He said the report presented two distinct subjects: one in relation to the application and style of the letter of Mr. Randolph to the President; the other in relation to the conduct of the officers, and charged to amount to a breach of privilege—yet the committee had thought proper to make a report in such manner as to deprive the House from having any kind of control over one-half its conduct in any other way than by the one proposed, and which is now contended to be equally an important part of the reference.

Mr. W. said he did not believe any intention was entertained by the House, in making the reference, that the committee should consider the style of the letter or manner of application, and that it was never thought of till hatched in the committee or elsewhere less public; for, as one of the committee, he knew it was a matter of doubt, even with the most anxious for the power, when first mentioned, and it was some time before a conclusion was had to that effect by the majority. He said he wished gentlemen to consider the conduct of the House, and the arguments made use of, in order to obtain a reference, and if they were to be relied on. The powers the committee had assumed were not contemplated or mentioned by any one. When the motion was made to raise the committee, the member from Virginia himself, who had been insulted, opposed it, and said he did not mean application with a view to a breach of privilege, and, if he had, he knew it ought to be made to the House. But gentlemen then urged it was a question in which the House and all its members were interested, and that there were a thousand considerations which might operate on the member injured, but which ought not on other members of the House; that having a knowledge of a breach of the privileges of the House, they ought to act.

If the committee considered this an important part of their duty, why did they not report accordingly, and in the usual form, something by way of resolutions, on which the House could act? Why did they not also report a resolution on the conduct of Mr. Randolph, (which it is now contended was referred to the committee,) instead of a train of irrelevant reasoning against him, and on one part of their duty, whereon to found resolutions on the other part to exculpate the officers offending? Thus he thought he was warranted in saying the committee had exceeded the objects of the reference, and that they were sensible of so doing, otherwise they would have reported substantially on both objects, which it is contended were referred.

Mr. W. said this was a question which of all others ought to have stood clear of an evil which found its way into almost every question that came before the House, he meant party; but, so far from this, certain gentlemen had taken occasion to invite it, in express terms and with a degree of triumph. He cautioned them to consider, that a question of privilege might operate as a two-edged weapon, and cut both ways.

He said, although he was one of the committee, he could not acknowledge himself under any obligations to the gentleman from Virginia (Mr. LEE.) for his defence of it; that gentlemen had stated, that the committee have a right to report what they thought, and to recommit the report would be a censure on them. He said it was the first time he ever heard the report of a committee defended on such grounds. Mr. W. said it was every day's practice for the House to disagree to reports of committees, and to recommit them too; and he never before knew any one to consider it a censure; indeed this same gentleman has expressed a desire and intention to amend the resolutions reported, so as to alter the substance, notwithstanding his extreme caution on the score of censuring the committee. Certainly this would be as much a censure as to recommit; the effect would be the same. In both cases it showed a disagreement of the House with the opinion of the committee; and that the committee had a right to report what they thought, he supposed every member of it and the House knew, and that the House also had a right to disagree to any report.

As to the objections made to the style and manner of the letter of Mr. Randolph, Mr. W. asked who, or what body had a right to point out any particular style, in which the President or any officer of the Government should be addressed? If a particular mode is necessary, it had better be stated by some legislative act, that all might know; yet even that might put it out of the power of some to address without offence, unless by the aid of those skilled in courtly etiquette.

But, said Mr. W., is it not a little surprising to see gentlemen differ so widely among themselves on this subject? In attacking the style of this letter, one gentleman, from Delaware, (Mr. BAYARD,) had found fault with the word "fellow-citizen;" another, from Massachusetts, (Mr. OTIS,) thought "servant" a very improper epithet for the President; and a third (Mr. LEE) considered the words "I demand" as improper and rude. All those gentlemen had undertaken to point out the offensive parts of the letter of Mr. Randolph, and yet no two agreed. This, sir, shows the absurdity of any attempt of the kind, and that those gentlemen could not agree on this subject were they to set about it. But, said Mr. W., is this a proper subject for the House to act on? Have we a right to dictate the language or style of any man, and how he should address the President? Admitting, for the sake of argument, (and that only,) that this letter had been written in a style not altogether decent, what have this House to do concerning it? Suppose any other person had written a letter to the President, not decorous, ought this House, or could they consistently take cognizance of it, in case the President should think proper to communicate it by way of message? Certainly not. If an offence is offered to the President by any person, the laws are sufficient to protect him, and punish the offenders, and not this House. We have no power to protect or punish any person, except by laws which shall operate equally on all.

Mr. W. said he agreed with the member from Massachusetts, (Mr. SEWALL,) in his position, that this House ought to be cautious in exercising its powers on questions of privilege, and he believed there were few members in the House as relax on those points as himself. That gentleman had also warned the House against casting a censure on the conduct of these officers in a doubtful case, and when their intention to insult is not clearly ascertained. Why does he not extend this principle also to the other side of the question, as relating to Mr. Randolph? Is there any evidence that he intended to insult the President, even if his language in the letter was capable of it? And can that gentleman, by any possible construction, make the case more than doubtful? Yet we see him wishing to cast the strongest censure on Mr. Randolph, (the person insulted,) and at the same time willing to exonerate the persons insulting altogether. He said this was a disposition which he could not very well account for on proper principles.

Mr. W. said, with respect to the words used by the officers, his opinion was expressed in the report of the committee: that they might have been produced more from the occasion at the theatre, than from any direct intention to insult; therefore not worthy to be considered of by the House, on the ground of privilege. He should not go into an investigation and comparison of the evidence in the case, as some gentlemen had done, because he thought it did not comport with the dignity of the House to attend hours together on gentlemen in seeking up and explaining evidence, which was short, and which every member had on his desk, and because he supposed them all capable to judge of it

Mr. W. concluded by saying he had endeavored to confine his observations to the question of recommitment, which he hoped the House would agree to; because the report was, in his opinion, uncandid, inasmuch as it tended to cast a censure on Mr. Randolph, and was so calculated, that the House could not express its opinion on that part in any other way, unless to approbate, for the rules of the House did not admit of the amendment to that part.

Mr. EDMOND did not conceive the committee could give any new opinion upon the papers, if they were to be recommitted to them. At the desire of the House, they had considered the letter, as well as the Message of the President. From all the facts which had appeared before them, they undoubtedly thought themselves bound to make a report. What more could be expected from them, if they were to take it back? If it were to be referred to another committee, another opinion would probably be given; was it probable that would also meet with opposition on account of the difference of opinions entertained in the House? —if so, no advantage could be derived. The committee had given an opinion, but, Mr. E. said, that opinion would have no influence upon his mind. It was their duty to report, but the House were to be guided by that report no farther than their judgment should direct them; at least, that was the way in which he should act.

The report was considered a censure on the member who wrote the letter to the President, because its style was not proper. That the style of the letter was displeasing to the President, Mr. E. thought was clear enough: whether the President had a right or not to be displeased, he would not pretend to say, but it was not pleasing. The committee regretted that this should have existed, and they certainly were right, but that was no censure on the gentleman.

Farther, Mr. E. contended that the idea of the committee, that it was derogatory to the rights of the House to apply to the President, was accurate; it was a complete surrender of all the privileges of the House, out of its own hands, where the Constitution had placed them, because the gentleman did not appeal as an individual citizen, but as a member of the House. The facts stated in his letter were, that he had been insulted and abused for words of a general nature uttered in the House: he then went on, "it would be derogatory to your character, sir, for me to point out the remedy, which it is your province to provide." Here the complete surrender of the cognizance of the House is made to the President. But what made it more so, it was not in his own name he made the appeal; if he had, the House would have had nothing to do with it; no, it was in the name of the House he made the appeal and demanded a remedy. "The independence of the Legislature 'has been attacked, the majesty of the people, of 'which you are the principal representative, in-'sulted, and your authority contemned; in their 'name I demand that a provision," &c.

[Mr. Randolph said it was a misprint where the word "Legislature" was inserted; by a reference to the manuscript letter it would be found to be "Legislator." By a reference to the letter, it was found to read "the independence of the Legislator has been," &c.]

Whether this demand was made in the name of the people, or whether it was in the name of the Legislator and people, Mr. E. did not know; however, he conceived it made but little difference, since in his opinion the rights of the Legislature were surrendered to the Executive by the appeal, which certainly was to obtain a remedy he had no power to give, and, therefore, the committee were correct in saying it was derogatory to the rights of the House.

With respect to the resolutions, Mr. E. could see no reasons for recommitting, since the whole of the evidence on which they were formed was before the House; there could be no reason to explain this evidence anew. If any new evidence could be produced, or any new light derived, then it might possibly be an argument for recommitment, but, even then, it might as well be done in the House. Mr. E. did not see the necessity of going into the testimony; he did not consider the House like a jury, that he should arrogate to himself the right of summing up the evidence or laying down principles of law, of which they were as well able to judge as himself.

An idea was advanced that though this did not amount to a breach of privilege, yet some degree of blame was attached to the conduct of the officers, and some mode of censure ought to be taken. In answer to that, Mr. E. said, it was a breach of privilege, or it was not; if it was, it ought to be treated as such, and punished accordingly; there was no half way in the business, and the House could not take a step out of their province. It must be a crime, or it must not; if not, according to the rules of the House they had nothing to do with it.

An idea was advanced, (he thought by the gentleman from Maryland, Mr. Nicholson,) that these gentlemen had been out to sup, and might have got a little warm with wine, and, therefore, might have proceeded a little farther than they intended. This was mentioned in exculpation of their crimes. This was a kind of apology which was very inconsistent with the rules of law. If a breach of privilege was committed, could this apology mitigate the crime? As he observed before, Mr. E. said, if the officers were guilty, the House ought to do itself justice in their punishment; if they were not, it ought to do them justice in acquitting them of every charge.

Mr. Gallatin.—The report of the committee appears to embrace three things. First, an expression of respect and commendation of the President's conduct in submitting the subject of the letter to the House; secondly, an exculpation of the officers, and thirdly, a censure of Mr. Randolph for his conduct, not only as to the manner and style of the letter, but in regard to the appeal itself.

If the committee had, agreeably to the usual custom, laid before the House a number of resolutions deduced from the opinions expressed in their preamble, there would have been no occasion for the present motion to recommit the report: but they have now reported in a manner that precludes the possibility of an alteration in the House, and, therefore, the only way to come at the report is by recommitting it. The House are by this report prevented from giving an opinion, although the committee have thought themselves authorized to do it.

So far as relates to the two resolutions proposed, Mr. G. said he did not mean to give an opinion, because if the present motion was negatived, the House would then have them fairly before them; but, as there had been during the debate a general deviation from this strict adherence to order, and as he thought some of the facts merited an answer, he should indulge himself in the same with following them. We are told, said Mr. G., that by admitting the resolutions, we do not admit the reasoning upon which the resolutions are founded, or that the reasoning of the committee is only their own, and we cannot make it ours; but it will be found, upon perusing the second and fourth paragraphs of the report, (I will not call them reasonings, I will call them assertions or declarations,) if you precede them with the word resolved, they would be complete resolutions. The committee might have deducted these two resolutions. I will now ask why they did not introduce it in that form? I will suppose at this time that the committee had the full power to extend their ideas to every subject laid before them; if the committee thought they were justifiable in taking up the style and manner of appeal, they ought to have taken it up and acted upon it, but in such a manner as to enable the House to do the same. The letter was within the province of the House, or it was not; if it was, then it ought to have been reported on, so that the House could act on it, nay, it was the duty of the committee to do so: if it is not proper for the House, neither was it for the committee, and, therefore, it was uncommon and improper. That it was uncommon I think every man must acknowledge, when it is considered that a committee never reports upon more facts than are referred to them. It was improper, because it contains an indirect but easily distinguishable censure on Mr. Randolph, while it exculpates the two officers whose conduct was complained of.

To me, said Mr. G., this would be a sufficient reason to vote for its recommitment, because I cannot otherwise express my disapprobation at the censure exhibited against Mr. Randolph.

But I will go further—I will say that the report is objectionable, not only on account of the committee expressing declarations and assertions which they did not think proper to submit to the discussion of the House, but because their declarations are incorrect and unfounded in themselves.

In order to prove this position, Mr. G. proceeded to review the evidence. From which it appeared that these officers were at the theatre, first in an adjoining box to Mr. Randolph; that there they made use of words ostensibly pointed at him, and which could not but be taken by him as an

insult; that their allusions not only went to him as a Virginian, but as a member of Congress—"they would be better drilled by the next session of Congress." These allusions were repeated several times by both the officers, and with a view of being heard by Mr. Randolph; that, after this, one of them took a seat close by Mr. Randolph, in a manner at least rude; that, at the end of the performances, one of them, being behind Mr. Randolph, was seen with his arm extended at the instant his coat was pulled, so that no doubt could remain but it was he that did the act.

The question is, whether these facts amount to insult, or not; and this must be answered by discovering the intention of the party acting them. To me, said Mr. G., it does amount to insult; I draw my deductions from the facts themselves, and the impressions these facts made on the bystanders.

The facts speak for themselves. These words were repeated a variety of times, and, to leave it unquestionable, one said, "go nearer to him, he does not hear you." These words were followed by acts of violence. The whole of this together must prove some hostile intention. There cannot be a doubt that words alone amount to an insult, but it is left indubitable, if followed by actions. In order to evade the force of these concurrent circumstances, gentlemen have split the testimony into a number of pieces, and thus concluded they made nothing at all! But I conceive these pieces ought to be collected, if we wish to discover the truth; it is the whole mass of the facts united that must guide the decision of the House. And to this ought to be added the impressions those facts made on the bystanders, the minutiæ of which they could not explain, but generally they could not but be impressed with their force. These impressions were not confined to members of this House; Mr. Van Rensselaer, of New York, and other gentlemen, did actually express their impressions to be such as left no room to doubt that insults were given.

It has been said that this committee exerted themselves to discover all the facts and all the evidence that could be had. I dare say they acted to the best of their knowledge, but they certainly forgot to examine a most important witness to the early part of the transactions of these officers. Captain Smith says, in his testimony, "a gentle-'man of our acquaintance came and informed 'me of what had happened above," &c. Did the committee ask Captain Smith who this gentleman was, in order to bring forward his testimony, because he must have known something? They did not. But was it not their duty to have known and sent for that gentleman? Certainly. This exhibits a considerable, nay, an important neglect on the part of the committee, because the impressions made on this gentleman's mind were such as excited him to wish the interference of Captain Smith. The committee did not pursue the testimony as far as they could, and as they ought to have done; but had they produced this gentleman they would have found him impressed with ideas similar to those of Mr. Christie, and others, though in political opinions very opposite. In my opinion, Mr. Speaker, every doubt as to the intention of these officers must be dispersed upon a review of the testimony, and most particularly that of Mr. Christie. Unless I can be brought to disbelieve that gentleman's relation, I must believe there was insult committed, and that their intention was to insult. Can any person review the words and conduct of these men, and say there was no insult?

To be sure I cannot command the same impressions on the minds of other gentlemen which I receive myself, but I cannot see what ground there is for the conclusions of the committee, that all the facts were either satisfactorily explained, or of too equivocal a nature to merit notice. I do not know a single fact that has been satisfactorily explained; there are some of an equivocal nature, to be sure, that do not receive that degree of positive proof which may be necessary, but I do not see them explained away. If these gentlemen were innocent of any intention, one in forcing himself into the seat of Mr. Randolph, the other in pulling his coat, was it probable these acts would have so immediately followed the abusive words which they used, and which evidently were meant to insult that gentleman? This certainly must tend to increase the suspicions of any man who will observe the circumstances.

Although I state these impressions, said Mr. G., I would not say there was any premeditation, if by that word is meant a combination entered into beforehand, since it appears from evidence, that one of the officers had but very recently arrived in town. They certainly could not have known that Mr. Randolph could be there; but though willing to make every allowance in favor of the officers, I cannot say that Mr. Randolph received no insult.

I will now, sir, proceed to an examination of the charges exhibited by the committee against Mr. Randolph, in respect to his letter and application. The style of that letter has received a stronger appearance by the animadversions and explanations of some gentlemen than it will admit of; it has certainly received a strained meaning. But, before I come to the letter, permit me to say that in respect to the two paragraphs of their report, I do not agree with the members of the committee that no censure is included; on the contrary I think the censure very severe. The gentleman is not only charged with deviating from the customary forms of decorum in the style of his address to the Chief Magistrate, but he is charged with breaking the harmony that ought to subsist between the different branches of the Government, so far as he had it in his power. In what stronger language can this censure be couched than this? Let us see how far these charges are just. I wish the committee, in regard to the style of the letter, instead of being self-created avengers of the wounded feelings of the President, had imitated his example and forborne to make any comment on the style, and then they would have acted with that prudence their station called for.

"Servant to the same sovereign people." This is the first exceptionable part mentioned, and this was objected to by the gentleman from Massachusetts, because it conveyed a kind of equality which he considered improper. Another gentleman said the word "servant" was objectionable, because it was susceptible of more than one meaning. It certainly has different meanings, but it is impossible to mistake the meaning intended in that letter; as it is there used, it is perfectly correct, and strictly Constitutional. The President, in the Constitution, is assigned an office, the duty attendant on which he is enjoined to fulfil. On not executing that office he is liable to be impeached. He is to receive compensation for his services. He is elected by the people to execute, not his own business, but that of the public. Can it be denied then that he is a public servant? "Filling the honorable station of servant to the same sovereign people." It is impossible to be more correct in respect to the official situation of the President. With respect to the objection on account of the equality which Mr. Randolph had assumed with the President, how is that improper in the light it is there represented? There is, to be sure, much more confidence vested in the President than in any one member of this House; his share of power is much greater, but he certainly is a public servant as well as Mr. Randolph. There may be different degrees among public officers, and this Mr. Randolph conceived when he made the appeal, but that the Legislator and the President are both servants of the people is a correct idea.

The next part of the letter objected to is the introductory part, which the member considers does not require the preface of apology. The meaning of this part has been tortured by the gentleman from Massachusetts to be that Mr. Randolph disclaimed all expectation of public offices, since his opinions were not of a favorite kind, and therefore it was said not to be decorous.

Mr. OTIS.—I said that the meaning was equivocal, and that it might be susceptible of that construction.

Mr. GALLATIN.—Suppose it is susceptible of that meaning, ought we to blame the gentleman for using the word merely because two or more meanings are attached to it, and on that account a forced construction is put upon it? The meaning is perfectly obvious; that if the application was of such a nature as to require apology, he would make it, but he did not think it necessary as it was not: it appears to be only an excuse for not making an apology; for the same reason he says he shall not use the circumlocution of compliment.

Again. The word "demand" was twisted by the gentleman from Virginia (Mr. LEE) to include the idea that Mr. Randolph suspected the President would not do his duty. Surely this is a tortured meaning. The sense in which it was used is no more than this: "I ask it as a matter of right, and not of favor." I will not, however, say of the word "demand," as I have said of the other part, that it was highly proper. I consider it so harsh that it would have been more prudent to have used some other word.

The committee have thought proper to say that the gentleman has deviated from the decorum customary in official communications. I would then ask, said Mr. G., to what part of the letter these remarks of the committee apply? If it is to the style generally, I would next ask how are we to address ourselves to the President? If a letter to the President is to be called official communication, and by the same rule, if a letter to any other department of the Government is to be called official communication, and in this a certain style is to be observed, then I think we ought to pass a law or resolution to fix a standard of address.

The next objection is to the word "fellow-citizen;" this is substituted in the place of what is frequently used. "most humble and obedient servant." I always subscribe my letters in the latter mode, but that does not appear to be an usual mode with the gentleman; he most likely thinks the other best, because he commonly uses it. Indeed if that gentleman were to address the President in these words, it might not be a correct mode, because he might not be his most humble nor most obedient servant. Indeed we well know that these words are merely complimentary, and no kind of consequence is attached to them. As I do not feel myself possessed of sufficient courage to support the character of a reformer of received customs, I shall not, when they are only absurd, but harmless, pretend to deviate from them, and I do not mean to change my manner in order to assume that used by the gentleman; but he certainly has a right to do it if he thinks proper.

The committee report that the appeal to the Executive is a derogation from the rights of the House. This, said Mr. G., I consider as one of the most heavy charges they could possibly have brought on a member of the House, and on the most slight, not to say absurd, foundation that could have entered their imaginations. We are told, on the one hand, that the officers, whose conduct was complained of, have been guilty of no breach of privilege, and at the same moment that Mr. Randolph has been guilty of a breach of privilege, because he did not call on the House to punish those officers for a breach of privilege.

On what ground does this declaration rest? It is on the principle that the privileges of the House are only cognizable here, and here he ought to have appealed. The position is not correct. It does not follow that because this House had a right to punish a breach of its privileges, the Executive had no right to punish officers under him who were guilty of misconduct. If that did follow, the doctrine would be established that it would be criminal for a member of this House to appeal to any other tribunal for redress than to the House. It would be censurable to appeal to a court of law upon the same principle, and at the same time no redress is to be had here. How inconsistent! We are told by the committee that the complaint does not amount to a breach of

privilege, and yet, a breach of privilege being only cognizable here, the member is censured for not bringing it here. The gentleman himself said that the very reason why he did not bring it before this House was, because he did not consider it of importance enough to agitate the House on a question of a breach of privilege; he considered the President could afford an ample remedy in the command he possessed; but he is to be censured for not magnifying it beyond the real ideas he possessed of the facts.

Suppose the offence had been of an amount that required greater punishment than this House had power to give: it is well known that the power of this House does not extend to imprisonment beyond the period of its sitting—from this view would it not be an evil precedent to say that no other appeal should be made than to the House? Would it not be saying to these military gentlemen "you may insult our members for expressions used during debate, but take care you do it just before the adjournment of the House, and then you may be sure of escaping punishment altogether."

I think, said Mr. G., every member has a right to take that mode of redress which he may think right, if two modes present themselves. If the gentlemen thought it did not amount to a breach of privilege, he had a right to appeal as for a personal insult. But because the power of the House, being defined, does not extend to give him redress, and because the President as Commander-in-Chief has it in his power to give it, he is to have none, because he is a member of this House. This is the amount of the argument!

I think Mr. Randolph perfectly justified, in every point of view I can discover, in making the appeal where he did. It is such an appeal as I should have made had I been in his situation, because I should not have thought it proper to trouble the House with a subject for which the President could provide a more efficient and easier remedy. It is for these reasons I think the whole report ought to be recommitted, if it is designed to do justice to the gentleman.

But we are told that a recommitment would amount to a censure on the committee. How is that? Surely the House have a right to express an opinion as well as the committee; the House must be the best judges of their opinion; and if a committee report contrarily, the House have a right to recommit, and a committee have no right to be offended. It is no censure. If it be a censure to recommit a report, it must be a much greater censure to reject a resolution reported by a committee, yet there is not so much said about the resolutions, and gentlemen do not appear so tenacious of them, as about the reported opinion. But resolutions and reports were frequently recommitted, without any degree of censure being apprehended therefrom.

The House were told in an early part of the debate that persons of different political opinions would form different conclusions, and in fact, Mr. G. said, the conduct of gentlemen since had evinced the truth of the suggestion. This was considered as a rallying point, and he was sorry to see it. He wished party to have nothing to do with this subject; he wished the proceedings on it to stand on the ground of its own merits. Whether the report was recommitted or not, it would stand on its own ground, and if there was censure to be attached to the committee, it would not be affected by the resolution that might be entered into.

Mr. G. concluded by expressing his regret that the whole of the report, which was now considered by some gentlemen only in the light of an opinion entertained and expressed by the committee, had not openly and fairly been submitted to the House in the form of resolutions, by which a vote might be given on them.

Mr. DANA wished, with much sincerity, to declare his full approbation of the conduct of the gentleman in making the subject one of a public nature; it certainly displayed no small victory over his own momentary feelings, to repress those passions which too frequently preponderate in the mind, when he considered himself insulted, and he considered himself a public character. This, said Mr. D., I consider is due to him, but when I say that he has conducted himself with perfect propriety in taking it up in a public and not in a private capacity, I cannot overlook an error which in my opinion he has committed in the choice of tribunal to which he made the appeal. In appealing to the President of the United States, there can be no doubt but the gentleman did it as the "Legislature," and that he believed the privileges of the body to which he belonged were attacked in him. The President, considering it cognizable in this House, submitted the subject to its consideration; and it will be recollected that a motion was made to refer it to a Committee of Privileges, but that was withdrawn, on the idea that the powers of a Committee of Privileges would not be extensive enough. It certainly then was very proper for that committee to whom it was referred to notice the style of the letter sent to the President, as well as its subject.

But permit me to say, said Mr. D., that whether the language was elegant, or even grammatical, is not worthy of notice; we are not come here to explain the mere schoolboy sense of words; no man who feels the importance of the seat he holds will contend that the President of the United States or this House ought to descend to the boyish business of discussing mere words. The use of the words "fellow-citizen" and "public servant," I consider as perfectly immaterial; we all have public services to perform, and all act under the Constitution; we are not the masters. If any gentleman then chooses to say we are servants to the sovereign people, he is at liberty to do it. But this kind of language has nothing to do with the republican, more than any other form of Government, and therefore there is no exclusive merit attached to this plainness of address. The station which Mr. Randolph has assigned to himself, in common with the President, is most undoubtedly an honorable station, and the office which he is called to perform he received from the sovereign, and for the sovereign he is to perform it. In this

way the gentleman has thought proper to indulge his fancy, and wherein is his fault?

This kind of style has the exterior affectation of humility, which may be very grateful to the feelings of the gentleman's constituents, but I am not willing to make use of such a style, nor am I ashamde to differ from the gentleman. If there be any degradation attached to a different manner of expression of my ideas and feelings, I must submit myself to the censure of my constituents, for I do not choose to follow him in that pretended humility. Away with this idle stuff, this affectation! I am willing my constituents should hear me declare that my masters they are not, nor are they my servants. No, sir, they are my worthy friends, and my neighbors. I am their agent, appointed to transact their public business for them: we have one common interest, which it is my duty and my advantage to study; in that I will study to please. I respect their opinion, or I would not serve them; and they respect me, and approve of my mode of managing our common interests, or I should be unworthy of their confidence, and I will venture to say I should not enjoy it. But I will mention an instance or two wherein modest and humiliating language has been used, and yet the most imperious arrogance has been displayed in the conduct.

If the records of history are to be credited, it must, I presume, be sufficiently evident to the enlightened members of this House that, in a different portion of the globe, and at a different period from the present, there has been a public officer, elevated by his success in obtaining votes, who was attended by princes and emperors as his pages, and who broke sceptres and trampled upon crowns; an elective officer whose feet were kissed by prostrate kings, and whose ghostly power humbled the Governments of the civilized world, and arrogated the prerogative of dividing the terraqueous globe; an officer who, by his act of interdiction, exiled the customary offices of civility and humanity, who rescinded political engagements, armed people against their magistrates, dissolved the civil order, and who, notwithstanding all this, professed to be totally unambitious, and to act solely in obedience to the voice of official duty. The rescript which announced the imperious pretensions of office, was attested under the plain seal of the fisherman's ring. Anathemas, which were intended to convulse empires, were fulminated from the Vatican by a person who assumed the humble appellation of servant of servants.

Although this gentleman's extreme humility led him to consider himself a servant of the sovereign people, yet, it is observable, he makes application to the President in the name of his fellow-servants, or of his masters, the people. It is in their name "he orders the execution of his desire;" he certainly assumes a consequence little worthy of that professed humility. Indeed there is a general strain of imperiousness running through the whole of the appeal, which no analysis can destroy, although the most ingenious attempts have been made.

But, said Mr. D., the gentleman has not addressed the President in a style of request, nor in language which the necessity of the case impelled him to, but in a manner which merits attention, and the conclusion of the letter particularly so: "In addressing you in the plain language of 'man, I give you, sir, the best proof that I can 'afford, of the estimation in which I hold your 'office and your understanding." To make every possible apology for the different idioms of the English language, every gentleman must know that this is not an usual nor a respectful manner of address. It is well known that the President is too well acquainted with the powers of the English language to mistake the meaning of plain words. It is not usual to tell the President, in our communications with him, that we respect his office and his understanding. The construction is sufficiently obvious. But if there was a doubt of the President's failure in his duty, the gentleman ought to have spoken plainly, and not have thrown out insinuations, implying doubts. If I thought he could not or would not act with integrity, I would go further, and make the charge to this House.

The gentleman from Pennsylvania introduced a reason for the application to the President in preference to this House, because this House are not able to inflict all the punishment which may be necessary for a breach of privilege.

Wherein is the power of this House defined or limited in this particular? If it be defined at all, it is by parliamentary usage, and by principles of common law. I admit, with that gentleman, that our power is limited to imprisonment during the session. But is this a reason why we are not to judge of the extent of a violation of our privileges, and the punishment that violation merits? Can any other body of men judge what affects our privileges, and to what extent? If it is the privilege of the members of this House to debate freely, who can judge but them how far that privilege is attacked? If the gentleman will consult Parliamentary history he will find that a Legislative body might inflict a punishment to any extent a crime of this sort might deserve; if the imprisonment during the session is too short, by application to the proper officer, the punishment can be extended to any length the crime merits. If the privileges are infringed by officers of the army, it is the business of the House alone to judge how far the punishment shall be inflicted; and if the House should not otherwise carry it so far as the crime merited, it could be completely carried into effect by applying to the commanding officer.

I, therefore, consider this House perfectly competent to afford an ample remedy, and the only proper tribunal to which an appeal is to be made for justice; and I consider, also, that any member of this House making application, on the score of privilege, to any other authority, is at once yielding the first principles of the privileges of the Legislature, and himself making inroads upon the rights of the House.

As it respects the decorum necessary to be observed towards the members of this House, whenever we undertake to judge on this subject, our conduct ought to be measured by the circumstances. If the freedom of debate is among the most precious privileges of the Legislative body, and ought to be preserved inviolate, I am sure gentlemen will also acknowledge, with me, that the dearest privilege of a military man is his honor. Admitting, then, that these officers did repeat the words referred to in the testimony, admit that they repeated them—yet, I contend, that the mere repetition of words is not, nor cannot be, construed to violate our privileges. However harsh the words, if unconnected with menace or assault, it is not breach of privilege.

The fact is, the words which were repeated, were very improper to use in this House; but they were used, and could not avoid mortifying gentlemen in the military line. Sir, if they had not felt the force of the words "mercenary," and "ragamuffin," as used in application to the army, they could not have had American spirit in them; they must have been devoid of every sense of honor, if they had not felt the words when spoken in this House, which ought to be the temple of honor as much as the temple of liberty; but they felt them, and on that occasion they showed their sense of it.

What would our soldiers think if they knew these words were used to reproach them? But the term ragamuffin is incorrect; our soldiers are not clothed in rags, but if they were, it would not detract from their bravery or their usefulness. Let it be remembered, that men clothed in rags have ere now marked the frozen earth with the blood of their footsteps—they have fought heroically—they have conquered. These ragamuffins, though not clothed like members of this House, are yet brave—they are mindful of their country's interest and safety, and therefore they are valuable, instead of meriting reproach and disdain.

The term mercenary was also repeated. If by mercenary is meant menial bravoes—men who put themselves up to public auction, and are sold to the highest bidder, who regard not the cause they engage in, but make interest their aim, they truly are mercenaries. But if they are so base, where is the honor of the Government who suffer it? Sir, it is not so with our soldiers. 'Tis true they serve their country for pay; but if to receive wages for service means mercenary, the Legislative body is mercenary, the Government itself is mercenary, and the people altogether are a mercenary people. But happily this language could not be properly applied to the army—they are not that contemptable part of society which they are represented to be, and therefore those degrading terms were improper, as they were unnecessary and aggravating.

The use of the words by the member must have affected the feelings of these officers, and no doubt they repeated them that he might hear, and that he might know that they were noticed. But it appears to me, said Mr. D., that they were used more to produce sport than anything else; for, although they might have felt something unpleasant in their first impressions, they well knew that their military honor and that of their comrades could not be shaken by aspersions which they knew were unfounded.

Mr. HARPER said, however he might agree with the gentleman from Pennsylvania on some points, he could not accede to every one which he had stated; but in order to bring, with more force, the disagreement to view, he would mention them.

I concur, said Mr. H., that this is not, nor ought to be called a party question. I did hope that a style of language would have been observed that would have entirely excluded the word party from this floor. I think decorum of debate ought to be so far observed as to prevent the word being pronounced. I think every allusion to a party in the country merits a call to order. As to the merits of the question, I declare that I view it as a question between the country and A, and whether A stands on one side of an imaginary line or the other, my declarations will be precisely the same. I disclaim all such paltry motives as any party attachments must evince, and therefore I declare that the rights and honor of the Legislature will be my only aim in discussing the merits of this question.

I concur, also, that the style of the letter was not noticed by the President, and that he felt no insult from it. No, sir, his mind moves in a sphere too exalted; his character is grounded on a basis too broad, for him to feel what in itself was extremely insignificant. The dignity of his mind, his long and respectable standing in this country, raise him far above the danger which any deficiency in the respect of an individual could threaten.

I agree also that the report of the committee does absolutely convey a censure upon the member from Virginia. It is because it does convey a censure that I approve of it; it is because I consider it a strong censure that I shall vote against the recommitment. On what account is this censure reported? Is it because of any boyish style of phraseology, as fellow-citizen, &c.? No, sir, I conceive it is because the committee thought, what I think, that the letter conveys to the President an imperious order. It is upon account of the general tenor of the appeal, implying a command to do—what? To redress an injury? No, sir, but to avenge himself of a supposed affront. In what manner is this affront stated? Is the President told how this was done? No, sir.

Forms of respect, Mr. H. said, were not matters of reasoning, but of sentiment and feeling; he appealed to the impressions this letter, when it was first read, made on every member of the House, whether it was not as he stated it. No member but the gentleman from Maryland (Mr. NICHOLSON) had approved of the style of the letter; to be sure, he had said he would not have expunged a word from it, had he been consulted, but in this declaration he certainly must have misrepresented his own judgment.

The gentleman from Pennsylvania had produced an example of some Friends who addressed King James II. in plainness of speech, in order to prove that respect did not consist in expressions. As this example was an extremely happy one to

prove the point he wished to maintain. Mr. H. would read it again, and appeal to the good sense of the House to decide whether an address could possibly be couched in terms more perfectly respectful. [He here read the quotation from Hume's England, and in a few comments, hoped the example would have a good effect.]

Another ground of reprehension which has been spoken of, and in which I agree with the committee, is, because the member applied to the Executive—this is essentially derogatory to the honor of the Legislature. Gentlemen here bring into view assault and battery, and ask whether, if it had proceeded so far, he would not have a right to an action in a judicial court? Yes, he would. And in this case he had a right to appeal to the President. But the moment he speaks of privilege, this House, and this alone, has cognizance. Here is the true distinction which the gentleman from Pennsylvania, with all his ingenuity, has overlooked. If the gentleman had been assaulted, he might have taken his case before a grand jury, but the question of privilege never could come before a grand jury. In this case, it is not for a breach of law in his person that the gentleman appeals, but for a breach of privilege. His words are, "the independence of the legislator has been infringed." In this application, what could be meant but that the President ought to punish for a breach of privilege? This certainly was the ground of appeal, and, being so plain a fact, it requires no animadversions to prove it derogatory to the rights of this House; and if they cannot prevent a breach of privilege from its own members, it will not be respected by others. I do not believe the gentleman intended to act derogatory to the honor and privilege of this House, but such having been the case, I think it ought to be noticed.

But it is further said in support of the motion to recommit, that the committee had no power to report in the manner they have done, and that they had no power to make remarks on the style of the letter. But I contend that if a letter written by a member of this House is submitted to them, they have a right to report their opinion upon the contents of it. To be silent on it would be the same as to approve of it, and that neither the committee nor the House ought to do, and I trust will not do.

With respect to the words used and conduct of these officers, Mr. H. agreed, that if offensive words were repeated to Mr. Randolph on account of words used in this House, or if offensive words were coupled with offensive actions, in either case it is a breach of privilege. But he denied that any words, offensive in themselves, had been used, or that any act of an offensive nature was perpetrated or conceived.

Mr. H. then explained the nature of a breach of privilege, and called up an example to illustrate his ideas. He then proceeded to a comparison of the testimony of Mr. Christie, with the facts as they appeared from the testimony of other witnesses, and concluded that in the fact respecting the whispering of these officers, and the use of the words "he does not hear you, go nearer to him," he must have misconceived. He recurred to the place in which Mr. Christie's testimony related to the use of the words; to wit, for some time in the adjoining box, till they afterwards came round into the same box. Mr. Macon's and Mr. Glen's testimony on the contrary proved that they came into the same box immediately after they returned from supper, or before the farce began. Thus, however honest, Mr. H. could not but conclude the gentleman was certainly mistaken. This he said was not singular, for such things frequently happened in courts, and yet did not impair the personal respectability of the witness, although it must that part of his evidence.

With respect to the act of sitting down, or if you please, pressing himself by the side of Mr. Randolph, Mr. McKnight could only at most be thought rude. This kind of conduct is well known to be common at the theatre, and frequently done without apology. This might have been done innocently, or it might have been done on purpose to offend, but since the custom is frequent it cannot be noticed as a breach of privilege.

The next act was pulling the coat—an act which, if done in order to offend Mr. Randolph, would have been an act of violence which ought to place the offender at the bar of this House, and if the fact had been proved he ought to have been punished. But when it is considered that the violence of the crowd in going out of the theatre was such as to separate Mr. Taylor from Mr. McKnight, it will cease to appear an offence; but Mr. Taylor was not offended at being caught hold of by the other arm by some strange person, because he knew it might be an effort to prevent falling. Might not the same excuse stand good as to pulling the coat? It appeared to be no other than an effort which the crowd caused, and therefore a mere accident, and as such ought to be excused. Indeed the gentleman had declared that he did the act, but he did it by accident, and very moderately. Shall a man be punished for this act merely, especially since there is no evidence whatever that he did it at all, (for his own confession cannot be admitted.) The fact is, the pulling of the coat, and the other act, is quite out of the question; nothing remains but the simple repetition of certain words made use of by the member in his place.

I do not believe, said Mr. H., that the very same thing would have happened if the gentleman had not been there; but he being there, I also believe that the words were used with a design that he should hear them, but not with a wish to breed a quarrel. This conclusion is established by the facts—there was no quarrel, and had they designed to promote one, it would have occurred. When the coat was pulled, words were used by Mr. Randolph, which, if that event had been designed, would have been taken up for that purpose by Mr. McKnight.

Is this then a breach of privilege? No, sir, it is not. It might have led to a breach of privilege, it is true; opprobrious language and a quarrel might have grown out of it, and then it would

have been a breach of privilege, because it was on account of the gentleman's public conduct in the House; but that there was no intention to commit a breach of privilege, and that no such thing was committed, I think too clear to be controverted.

Mr. SMITH said, that he had intended to take no further part in the present debate. But the manner in which the testimony of his colleague (Mr. Christie) had been treated by the gentleman who has just sat down (Mr. HARPER) induced him to delay the decision for a few minutes. That gentleman calls himself a county-court lawyer; that being such he was in the habit of sifting testimony and examining it with great care—that the custom he had practised in the county courts he should pursue on the present occasion. He then proceeded, in a manner not the most candid, to criticise the positive evidence given by Mr. Christie, which I presume he has learnt in the county courts, but which all will agree ought not to be practised in the Legislature of the United States. Permit me here to observe, that few gentlemen of this House will suffer themselves to be compelled to give testimony in any case pending before the House, if they are to have their positive depositions doubted thus publicly, criticised and rebutted by testimony vague and not decisive, as if they were evidences of bad or doubtful characters, before a county court. The gentleman (Mr. HARPER) ought at least, before he had been thus severe, to have examined the testimony more carefully. I have heard that some gentlemen in the courts are in the habit of bringing forward only such parts of the evidence as best will suit their client—a practice which in this case the gentleman has introduced into the present debate; a practice, however, that I trust will never be countenanced in the case. The gentleman (Mr. H.) says, that Mr. Christie must be mistaken, when, in his deposition, he states, that the transaction "commenced during the play," and equally so when he says, that "he discovered the officers in an adjoining box;" for that the testimony of all the other witnesses agree that it commenced after the play was over, and that he would prove by the testimony of Mr. Macon and Lieutenant Thompson, that the officers were not at that time in an adjoining box, but in that which Mr. Randolph sat. Mr. Christie does not say that the transaction commenced during the play; of course he has been misstated by the gentleman from South Carolina; misstating may (for aught Mr. S. knew) be a proper practice for county courts, but certainly not very decent in this case for a member of this honorable body.

What has Mr. Christie said? The words in his deposition are, "after the play was over, and 'about the time the farce was beginning, I discovered, in an adjoining box, Captain McKnight 'and a gentleman whose name I have since found 'to be Reynolds, both officers of the navy; I saw 'also in company with them Mr. George Taylor, 'of this city; I saw them repeatedly look at our 'box and whisper to each other." To prove they were in the adjoining box, the gentleman (Mr. H.) has rebutted this positive testimony of Mr. Christie with the testimony of Mr. Macon and Lieutenant Thompson. The words read by the gentleman out of Mr. Macon's testimony, do not say whether the officers were or were not in the adjoining box, yet he says Mr. Christie must be mistaken. This, sir, is a strange mode of reasoning, and certainly would be laughed at if used at the bar. Had the gentleman sifted further the testimony of Mr. Macon, he would have seen words rather confirming the testimony of Mr. Christie, but not one contradiction. Lieutenant Thompson, on whose testimony the gentleman (Mr. H.) has placed his chief reliance, says, "Captain McKnight, with several other gentle- 'men and myself, went to a public house and sup- 'ped together; on our return to the playhouse, 'Captain McKnight went into the box where Mr. 'Randolph was, and remained there during the 'farce, or was there most of the time." In this, Lieutenant Thompson does not say that they went into Mr. Randolph's box previous to their having gone into the adjoining box. His testimony, although vague as to that point, has been thought sufficient to refute the positive testimony of Mr. Christie. In another place, Mr. Thompson, answering a query, says: "We were either in 'the adjoining boxes, or it may be in the same box 'for a little time." But, sir, if I prove, by the acknowledgment of the party accused, that Mr. Christie was not mistaken when he said that the officers were "in the adjoining box," I trust that this House will agree with me that the attack made on my colleague has been without any evidence to support it, and I trust the gentleman (Mr. HARPER) will have the candor to acknowledge to the House the error he has committed, and the politeness to apologise to Mr. Christie for the unmerited censure he has endeavored to fix upon him. Lieutenant Reynolds, one of the officers accused, states that, "during the performance of 'Blue Beard, there appeared on the stage a num- 'ber of strange figures, when one of the gentlemen 'present made use of the expression, that the rag- 'amuffins would make a much better appearance, 'to which I replied, that could not be doubted; 'but as to my knowing of Mr. Randolph being in 'the adjoining box, I did not, until I heard some one 'behind me mention it." I trust the House will be of opinion that nothing more will be necessary to confirm the correctness of the testimony of Mr. Christie.

What is the peculiarity or impropriety of style alluded to? Two gentlemen from Massachusetts have declared certain parts of the letter improper; another gentleman (Mr. LEE) has declared those very parts they complained of to be proper. On which of these gentlemen's judgment are we to place most reliance? The fact is, according to our different habits and customs, so will our judgment on a subject like this be guided, and by habits are we led to say what is not an offensive style. As, therefore, there is no acknowleged courtly style known in America, we are not warranted to cast a censure on the gentleman who had used a species of language which to him perhaps is most

familiar. The gentlemen from Massachusetts (Messrs. Sewall and Otis.) and from Connecticut, (Mr. Edmond.) say there is no censure included in the words of the report; others say there is. I thought there was, and, therefore, I made the motion of recommitment. What more severe language can be used, sir, than that of the report? It is, in my opinion, the most severe censure that possibly could come from the pen of a committee. Our judgment, even on this point, may differ, according to habit. It is well known that there is a coolness of temper, which is not easily irritated; harsh and severe words will not raise the habitual temper of some men in the world, while in others, nothing can exceed the offence which habit and natural warmth of temper would construe the same words into. I consider these words are offensive, and I confess it appears to me extraordinary that those gentlemen who do not consider them so, and who represent them as quite innocent and unimportant, should appear so very averse to their being stricken out. In my opinion, it would have evinced the candor of gentlemen if they had suffered the report to have been recommitted; it certainly was unfair to introduce a censure by report; had it been done by resolution, we could then have given our opinion, and our vote upon the subject; but the committee having issued their censure by report, we have no means, but by recommitment, to get rid of the offensive matter.

Gentlemen have said that it would be casting a censure on the committee to reconsider the report. If so, how often do we censure different committees of the House? How often are reports recommitted? The practice is common. If the principle is to be adopted, that we must not recommit a report for fear of offending a committee, we may as well make their decision final; upon the same ground we must not alter their resolutions.

I do not mean, said Mr. S., to go into the resolutions; I think they might be modified; upon this subject I would not wish severity. I well recollect that when I was an officer in the army, at the age of the young gentlemen, I should have felt as they did; perhaps I should have done more—my youthful zeal for the honor of the army might have excited me to actions which would have actually brought on a quarrel with the gentleman. I think there can be no doubt, from a review of the whole of this testimony, but the gentlemen accused meant to produce a quarrel; that they did not do it was owing to the moderation of the gentleman.

Gentlemen say mere words are not cause of quarrel! Nothing but violence, in the opinion of those gentlemen, is cause. Sir, I consider words may be worse than blows; words may destroy a man's fame and his honor; blows can be cured, by making the party answer with his life for the offence. We should be careful of countenancing the impetuosity of young officers' tempers, lest we place ourselves in a situation which can little promote the good of the country.

It appears to be the opinion of the committee, that no notice ought to be taken of the conduct of the officers; on the contrary, they actually have attacked the conduct of the gentleman himself, for disrespect to the President. But this is said only to be the opinion of the committee. Sir, the report goes out to the world under the sanction of this House, and in this view it becomes one of its acts. In this view it is casting a Legislative censure on a member! From these views, and because we could not otherwise come at the report, I moved to recommit it; in which I do hope a majority of this House will concur, in order that we may avoid injustice to the gentleman; but without any view of inflicting punishment on the officers.

Mr. Shepard.—I wish to ask the House what we are about? I think we are debating on a matter of very little consequence indeed. The question is, whether the report of the select committee shall be recommitted or not. How did this committee come to have the matter before them? It was on account of a few impertinent words which fell from the member from Virginia—a young member, and therefore he certainly was the more excusable. These words struck hard at the young gentlemen of the army. They resented it. I like them all the better for it, Mr. Speaker; they were commendable in showing their resentment at any degrading terms used about the army. Where are we going to end? Gentlemen get up, one after another, repeating the same things over and over, and making no new remarks, no new ideas. Sir, we are only degrading ourselves and lessening the dignity of the House by continuing a debate of so little consequence. It is high time to take the question. Not all that can be said more will alter the mind of a single member; they are already determined how to vote. I hope, Mr. Speaker, that gentlemen will shorten this debate, and spend their great talents on subjects more honorable to them and to the House. I will then listen to them with the greatest pleasure and patience to the last moment.

Mr. Christie thought the gentleman from South Carolina, and some other gentlemen, had gone too far in their criticisms on testimony. Mr. C. said he declared only what he knew to be true, but yet it was said he must be mistaken? How mistaken? He only repeated upon oath words which were positively uttered, and in a place about which he could not be mistaken. Every incidental word of that testimony, Mr. C. said, came under his particular observation. But one lawyer had got up and thought him mistaken in one instance, another in another; another might presently get up and question whether he was at the theatre at all or not. Upon my word, said Mr. C., I do not know what these county-court lawyers cannot do, or how far their habits of culling testimony may lead them. Had I known the manner in which my testimony would have been treated, I should have been very unwilling to have obeyed the commands of the House to give it at all; and I believe in future it will be likely to have that effect upon me.

Mr. Randolph said he would call the attention of the House to a single observation.

The situation, Mr. Speaker, in which I find myself is indeed new to me—standing upon your floor not as a person aggrieved, but in the character of a criminal. And with what, sir, am I charged? With "transferring the authority of 'this House to the President of the United States, 'by appealing to that Magistrate, in the name of 'the Legislature, on an occasion wherein its privi-'leges had been infringed."

I have "appealed in the name of the Legislature!" Although this opinion has not been advanced by the committee in direct terms, it seems to have gained the assent of many members on this floor. Will those gentlemen who are so ready to suppose me capable of this monstrous absurdity, advert to the error of the press in the printed report, which has substituted that word for *legislator?* Will they take the trouble of turning to the original letter? They will then discover that I have not assumed to myself the right of acting in the name, not of this House only, but of both branches of Congress, unsupported by the authority of either. They will see that the relative *their* can have reference only to the antecedent "*people*," and that as the representative of *their* majesty which had been insulted; as clothed with their authority which had been contemned; as the Commander-in-Chief of their forces, did the President become the object of my application.

I have "prostrated the privileges of this House before the shrine of Executive power." And can any one suppose, Mr. Speaker, that it is my desire to enlarge the Executive authority at the expense of the Legislative; to confide your rights to the unsafe guardianship of the President; and to hold at his will the inestimable privilege of free debate? I am under no apprehension, sir, that a serious belief of such an intention on my part can be entertained by any one who is at all acquainted with my political opinions—opinions hostile to the extension of Executive influence, and which inculcate a well-grounded jealousy of its formidable pretensions. But, sir, in relation to the fact: how does that stand? Will gentleman carry their recollection back to the period when my letter was submitted by the President to their consideration? Did I not contest your right to extend your privileges beyond those limits which the Constitution had prescribed; did I not express a fear least a dangerous precedent might be established which would lead to terrible abuses—which would be prostituted to the most nefarious purposes; and did I not oppose a reference of the Message, upon the ground that there had been no breach of privilege? The committee agrees with me in this opinion, and it has received the concurrence of the House. Yet that very committee has determined (and you are about to affirm the decree) that I have submitted to the decision of the President a case involving the privileges of the representative body, although they have declared (and although this House has sanctioned the declaration) that no such case has occurred; although it is in evidence to you such was my own impression of the subject. If, Mr. Speaker, my opinion of the case had been that it was a breach of privilege, or if such had been the sentiment of the House, then, indeed, there might have been some ground for crimination. If I had viewed it in this light, where would have been the difficulty of addressing my application to yourself? But it will be remembered, that at the time when the Message was delivered, at the time when I disclaimed the idea of a breach of privilege or of your protection, I made this declaration. But it was in his military capacity that I addressed myself to the President; because I supposed the discretion of the Commander-in-Chief would suggest the necessity of a provision, to which his authority was completely adequate, which would remedy the present instance of misconduct, and repress those of a similar nature in future. Can a representation to the Commander-in-Chief of the misbehaviour of his subalterns, in a case not amounting to a breach of privilege, (for the committee and the House unite with me in this opinion)—can a statement of this outrage, because aggravated by the consideration of the official conduct which excited it, and of the legislative character which was its object—can an application to a military tribunal for remedy, to whose provision this House is not competent, for an offence in which its privileges are not implicated, can such a procedure attract your censure, "as derogating from 'those rights with which your honor, your inde-'pendence, and the inviolability of your members, 'are intimately connected?"

It was my intention, Mr. Speaker, to explain the error into which we should be led by adopting the expression of the printed report, and to recall to the minds of gentlemen a chain of facts which display in a proper light the motives by which I have been actuated. It formed no part of my design to enter into any explanation of the various clauses and expressions of my letter, which have become the object of the very ingenious criticism of many members upon this floor; if, indeed, such had been my intention, I should have been anticipated by the candid illustration of the gentleman from Pennsylvania, (Mr. Gallatin.) His exposition is warranted both by the literal sense of the composition which has become the object of so much virulent invective, and by that which the author has even affixed to the expressions which he has thought proper to use.

I join with the gentleman from Massachusetts in the wish that the question might be immediately taken. Whatever the success of the motion, so far as relates to myself, it is a matter of indifference to me. It was under no expectation of averting the censure of the House that I have now addressed it. I entertain not a doubt upon the issue. But in the unshaken conviction of the propriety of my procedure, and in the approbation of my constituents, whose honor and whose interests it will ever be my object to maintain, I can have no cause of personal regret.

The question was then taken upon recommitting the report, and was decided in the negative—yeas 43, nays 50, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, David Holmes, George Jackson, James Jones, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, John Nicholas, Joseph H. Nicholson, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, junior, Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Resolved, That the order for a call of the House this day be dispensed with, and that there be a call of the House on Thursday next, at two o'clock.

WEDNESDAY, January 29.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report what laws of the United States have expired, or are near expiring, made a further report, in part; which was read and considered. Whereupon,

Resolved, That a committee be appointed to prepare and report a bill to continue in force an act entitled "An act providing the means of intercourse between the United States and foreign nations."

Ordered, That a bill or bills be brought in, pursuant to the said resolution, and that the Committee of Revisal and Unfinished Business do prepare and bring in the same.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, to whom it was referred, on the thirteenth instant, to prepare and report a bill to continue in force, "An act declaring the consent of Congress to a certain act of the State of Maryland, and to continue an act declaring the consent of Congress to certain acts of the States of Maryland, Georgia, and Rhode Island and Providence Plantations, so far as the same respects the States of Georgia and Rhode Island," reported a bill declaring the assent of Congress to certain acts of the States of Rhode Island, Maryland, and Georgia; which was read twice, and committed to a Committee of the Whole House on Monday next.

CASE OF MR. RANDOLPH.

The House resumed the consideration of the report of the committee, to whom was referred, on the fourteenth instant, the Message of the President of the United States, together with a letter of JOHN RANDOLPH, Jr., a member of this House from the State of Virginia: and the same being again read, in the words following, to wit:

"In executing the task assigned to them, it is with peculiar satisfaction your committee notice the respect shown in his Message by the President of the United States, to the rights and privileges of the House.

"On the style of the letter to the President, referred to the consideration of the committee, they forbear any other remark than to express their regret that a member of the House has conceived himself justified in deviating from the forms of decorum customary in official communications to the Chief Magistrate of the United States, justly due to his office and character, and essential to that harmony between the different branches of the Government, which should be circumspectly cherished by their respective members.

"In Mr. Randolph's letter, he states, that for words of a general nature, uttered in debate in the House of Representatives, on the proposition for reducing the Army, he had been publicly and grossly insulted by several persons, officers of the Army or Navy; and demands, of the Executive authority, redress for an attack on his independence and rights as a legislator.

"Your committee, being of opinion that the matter of complaint respects the privileges of the House, inherent in its own body, and there exclusively cognizable, cannot but consider the appeal, in this instance, to the Executive authority, however otherwise intended, as derogating from those rights of the House with which are intimately connected both its honor and independence, and the inviolability of its members.

"Your committee further report that, on inquiry, they found James McKnight, Captain, and Michael Reynolds, Lieutenant, of Marines, to be the persons implicated in Mr. Randolph's charge. They, on notice, appeared before the committee, and denied the truth of the allegations. The committee have collected all the evidence they could find to be material in the case, and heard the parties accused, with their witnesses; and, although they believe a series of circumstances to have taken place at the theatre, on the evening of Friday, the 10th instant, which appeared to Mr. Randolph, and others present, to evince premeditated insult towards him, yet, as some of those circumstances have been satisfactorily explained, and others are of a nature too equivocal to justify reprehension and punishment, your committee are of opinion that sufficient cause does not appear for the interference of the House, on the ground of a breach of their privileges.

"Your committee have taken the evidence in writing, which they submit to the consideration of the House, with the following resolutions:

"*Resolved*, That this House entertain a respectful sense of the regard which the President of the United States has shown to its rights and privileges, in his Message of the 14th instant, accompanied by a letter addressed to him by John Randolph, jun., a member of this House.

"*Resolved*, That in respect to the charge alleged by John Randolph, jun., a member of this House, in his letter addressed to the President of the United States, on the 11th instant, and by him submitted to the consideration of the House, that sufficient cause does not

appear for the interposition of this House, on the ground of a breach of its privileges."

The question was taken, that the House do agree to the first resolution contained in the said report, and resolved in the affirmative.

The second resolution being under consideration, a motion was made and seconded to amend the same by inserting, before the word "sufficient," in the fifth line, the words "although the conduct of Captain McKnight and Lieutenant Reynolds was indiscreet and improper, yet," and to insert, before the word "interposition," in the sixth line, the word "further:" Whereupon,

It was further moved and seconded to amend the said amendment, by inserting, after the word "improper," the words "and deserves reprehension."

And the question being taken, that the House do agree to the same, it passed in the negative—yeas 42, nays 56, as follows:

YEAS—Willis Alston, Theodorus Bailey, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, and Philip Van Cortlandt.

NAYS—George Baer, Bailey Bartlett, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Samuel Lyman, Nathaniel Macon, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, Richard Dobbs Spaight, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

The question was then taken, that the House do agree to the amendment as originally proposed to the said second resolution, and resolved in the affirmative—yeas 61, nays 39, as follows:

YEAS—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, John Fowler, Albert Gallatin, Samuel Goode, William Gordon, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, James Sheafe, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, Richard Thomas, John Thomson, John Trigg, and Philip Van Cortlandt.

NAYS—James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, William Edmond, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Archibald Henderson, James H. Imlay, John Wilkes Kittera, Silas Lee, Samuel Lyman, Nathaniel Macon, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Jonas Platt, Samuel Sewall, William Shepard, John Smilie, George Thatcher, John Chew Thomas, Abram Trigg, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

And then the main question being taken to agree to the said second resolution as amended, it passed in the negative—yeas 49, nays 51, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, Robert Brown, Christopher G. Champlin, William Cooper, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, William Gordon, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, John Marshall, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, George Thatcher, Richard Thomas, Philip Van Cortlandt, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, John Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, William Craik, Samuel W Dana, John Davenport, Thomas T. Davis, John Dawson, William Edmond, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Elizur Goodrich, Edwin Gray, Andrew Gregg, Roger Griswold, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, John Wilkes Kittera, Michael Leib, Samuel Lyman, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, John Smilie, David Stone, Thomas Sumter, Benjamin Taliaferro, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Robert Waln, Robert Williams, and Henry Woods.

A motion was then made and seconded that the House do come to the following resolution, to wit:

Resolved, That this House do highly disapprove of the conduct of Captain McKnight and Lieutenant Reynolds, towards John Randolph, a member of this House, on the evening of Friday, the tenth instant; but, considering it as an indiscretion of youth, are unwilling to exercise their constitutional authority of punishment,

under a hope that similar instances of misconduct will not occur in future.

The Speaker deciding the said motion not to be in order, an appeal was made to the House from the decision of the Chair; and the question being taken that the House do concur with the Speaker in his said decision, it was resolved in the affirmative—yeas 56, nays 42, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William C. C. Claiborne, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, Joseph Heister, David Holmes, George Jackson, James Jones, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, and Robert Williams.

And so the said motion was rejected.

Thursday, January 30.

Ordered, That the Committee of the Whole House to whom is committed the bill for the reform of the Superior Court in the Territory of the United States Northwest of the Ohio river, be discharged from the further consideration thereof, and that the said bill be recommitted to Mr. Craik, Mr. Harrison, and Mr. Bird, with instruction to report their opinion on the expediency of dividing the said Territory into two distinct governments: *Provided*, That the line of division shall commence at the mouth of the Great Miami river, and run due north until it strikes the dividing line between the United States and Canada.

Resolved, That the order for a call of the House this day, at two o'clock, be rescinded.

The House proceeded in the third reading of the bill to establish a uniform system of bankruptcy throughout the United States: Whereupon.

Ordered, That the said bill be recommitted to a Committee of the whole House immediately.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported several amendments thereto.

And then the House adjourned.

Friday, January 31.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, made a further report, in part; which was read and considered: Whereupon,

Resolved, That the Committee of Revisal and Unfinished Business do prepare and report a bill to revive and continue in force an act entitled "An act respecting the Mint."

A message was received from the Senate, informing the House that they had passed the bill, entitled "An act providing for salvage in cases of recapture," with several amendments; to which they desire the concurrence of this House.

The said amendments were read, and ordered to be referred to the Committee of Commerce and Manufactures.

The House proceeded to consider the report of the Committee of Revisal and Unfinished Business, made the twenty-third instant, to whom were referred the amendments of the Senate to the bill to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned;" and the said report and amendments of the Senate, being again read.

Resolved, That this House doth agree to the first amendment proposed by the Senate to the said bill.

Resolved, That this House doth agree to the other amendments of the Senate, with amendments.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

The House resolved itself into a Committee of the whole House on the bill to discharge Robert Sturgeon from his imprisonment; and, after spending some time therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time on Monday next.

UNIFORM BANKRUPTCY.

The House proceeded to consider the amendments reported, yesterday, from the Committee of the whole House to whom was recommitted the bill to establish an uniform system of bankruptcy throughout the United States: Whereupon,

The first amendment being twice read, was further amended at the Clerk's table, and, on the question put thereupon, agreed to by the House.

A motion being then made and seconded to postpone the further consideration of the said report of the Committee of the whole House, until the first Monday in December next,

The previous question thereon was called for by five members, to wit: "Shall the main question, to agree to the said motion, be now put?"

And, on the previous question, to wit: "Shall the said main question be now put?" it passed in the negative—yeas 41, nays 56, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

Nays—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, Edward Livingston, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, junior, Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Richard Dobbs Spaight, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

The other amendments reported from the Committee of the Whole, being twice read, were, on the question severally put thereupon, agreed to by the House.

The said bill being then further amended at the Clerk's table,

A motion was made and seconded that the further consideration of the said bill be postponed until next Tuesday week: and the question being taken thereupon, it was resolved in the affirmative.

Monday, February 3.

An engrossed bill to discharge Robert Sturgeon from his imprisonment was read the third time, and passed.

Mr. Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of James Yard; which was read twice, and committed to a Committee of the Whole.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, presented a bill providing the means of intercourse between the United States and foreign nations; which was read twice and ordered to be committed to a Committee of the Whole House on Thursday next.

Tuesday, February 4.

A memorial of Isaac Zane was presented to the House and read, praying that he may be permitted to retain the possession of a certain tract of land which was granted to him by the Wyandot nation of Indians, and which, by the cession of lands since made by the said nation, falls within the boundary of the United States.

Ordered, That the said petition be referred to the committee appointed, on the twenty-fourth of December last, to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the lands of the United States Northwest of the Ohio.

Mr. Smith, from the Committee of Commerce and Manufactures, presented a bill to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes, as therein mentioned; which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. Harrison, from the committee appointed, presented a bill in addition to an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of United Brethren for propagating the Gospel among the Heathen;" which was read twice and committed to a Committee of the Whole House to-morrow.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, presented a bill respecting the Mint; which was read twice and committed to a Committee of the Whole House to-morrow.

Mr. Harper, from the Committee of Ways and Means, presented a bill to establish a General Stamp Office; which was read twice and committed to a Committee of the Whole House on Friday next.

AMENDMENT TO THE CONSTITUTION.

On a motion made and seconded that the House do come to the following resolutions, to wit:

Resolved, That the first section of the second article of the Constitution of the United States ought to be amended in such a manner that the Electors of President and Vice President of the United States, in giving their votes, shall designate and distinguish the person voted for as President, and the person voted for as Vice President, and the person having the greatest number of votes for Vice President, if such number be a majority of the whole number of Electors, shall be Vice President; and if there be no choice, and two or more persons shall have the highest number of votes, and those equal, the Senate shall immediately choose, by ballot, one of them for Vice President; and if no person shall have a majority, then the Senate shall, in like manner, choose a Vice President from the five highest on the list: but in choosing the Vice President, the votes shall be taken by States, the Senators from each State having one vote. A quorum, for this purpose, shall consist of a member or members from two-thirds of the States; and a majority of all the States shall be necessary to a choice.

Resolved, That the foregoing amendment be proposed to the Legislatures of the several States, to be ratified as a part of the Constitution of the United States.

Ordered, That the said motion be committed to a Committee of the Whole House on the state of the Union.

On motion, it was

Resolved, That a committee be appointed to report on the expediency of amending so much of the act, en-

titled "An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose," as restricts the right of obtaining patents for useful discoveries and inventions, to the citizens of the United States, and for extending the said right to all persons who shall have resided within the said States for a limited time; and to the executors and administrators of the inventors of useful arts and inventions, who may have died before a patent has issued for such invention.

Ordered, That Mr. Harper, Mr. Kittera, Mr. Bird, Mr. Griswold, and Mr. Pinckney, be appointed a committee, pursuant to the said resolution.

On motion, it was

Resolved, That a committee be appointed to inquire whether any amendments are necessary to such parts of the laws as relate to arresting the non-commissioned officers and private soldiers of the United States, for debts or contracts.

Ordered, That Mr. Gordon, Mr. Bird, and Mr. Page, be appointed a committee pursuant to the said resolution, with power to report thereon by bill or bills, or otherwise.

The House resolved itself into a Committee of the Whole House on the bill for the relief of James Yard; and, after some time spent therein, the Committee rose and reported two amendments thereto; which were twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed and read the third time to-morrow.

CASE OF JONATHAN ROBBINS.

Mr. Livingston laid the following resolutions on the table:

Resolved, That provision ought to be made, by law, for carrying into effect the twenty-seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and the King of Great Britain.

Resolved, That the President of the United States be requested to lay before this House copies of the requisition for, and other papers relative to, the apprehension and delivering of Jonathan Robbins, under the twenty-seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and the King of Great Britain, together with copies of the communications (if any) between either of the Executive Departments and the Judge of the District Court of South Carolina, on the subject.

Mr. Livingston said, at the time the law was passed respecting the British Treaty, provision was supposed to have been made for carrying it fully into execution. The twenty-seventh article, however, of that Treaty, had been found unjust, impolitic, and cruel. He then read the article, by a recent construction of which, Mr. L. said, a citizen of the United States might be dragged from his country, his connexions, and his friends, and subjected to the judgment of an unrelenting military tribunal.

The second resolution, Mr. L. said, was connected with the first, although addressed to the Chief Magistrate of the Union. It had been said, and repeated in every paper throughout the United States, that a letter had been written by an Executive officer advising a Judge, in his judicial capacity, of the line of conduct which it was wished by the Executive should be pursued. He did not know this to be the fact, and would be happy to find it was not; nor did he mean now to enter into any discussion on the subject; and concluded with laying the resolutions on the table.

Ordered, That Mr. Dana, Mr. Livingston, and Mr. Bayard, be appointed a committee, pursuant to the resolutions, and that the said committee have power to report thereon by bill or bills, or otherwise.

Ordered, That Mr. Livingston and Mr. Claiborne be appointed a committee to wait on the President of the United States with the last resolution.

Wednesday, February 5.

An engrossed bill for the relief of James Yard was read the third time and passed.

A petition of John Wilkins, Jr., and others, was presented to the House and read, praying that a resurvey of certain lands purchased by the petitioners from the United States, may be granted, in consequence of a deficiency which appears upon actual admeasurement to exist; and that the amount of such deficiency may be deducted from the payment of the last moiety of the purchase-money.

Ordered, That the said petition be referred to the committee appointed on the twenty-fourth of December last, to inquire whether any, and, if any, what, alterations are necessary in the laws authorizing the sale of the lands of the United States Northwest of the Ohio.

Mr. Livingston, from the committee appointed yesterday, to wait on the President of the United States with a resolution requesting him "to lay before this House copies of the requisition for, and other papers relative to, the apprehension and delivery of Jonathan Robbins, under the twenty-seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and the King of Great Britain, together with copies of the communications, if any, between either of the Executive Departments and the Judge of the District Court of South Carolina, on the subject," reported that the committee had performed that service, and that the President had signified to them, that he would take the request of the said resolution into consideration, and return an answer in due season.

A message from the Senate, informed the House that the Senate recede from their amendment disagreed to by this House to the bill, entitled "An act to repeal part of an act, entitled 'An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned;" and doth agree to the amendments proposed by this House to the other amendments of the Senate to the said bill.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, accompanying two statements in relation to the internal revenues of the United States, made in pursuance of a resolution of the House of the 6th

of January, one thousand seven hundred and ninety-seven, and an act of Congress passed on the 11th of July, one thousand seven hundred and ninety-eight; which were read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole, on the bill declaring the assent of Congress to certain acts of the States of Rhode Island, Maryland, and Georgia; and, after spending some time therein, the committee rose, and had leave to sit again.

The House resolved itself into a Committee of the Whole, on the bill in addition to an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" and, after spending some time therein, the committee rose, and had leave to sit again.

Thursday, February 6.

Resolved, That a committee be appointed to prepare and bring in a bill giving further time to the holders of military warrants to register and locate the same.

Ordered, That Mr. Harrison, Mr. D. Foster, and Mr. Gallatin, be appointed a committee to prepare and bring in a bill pursuant to the said resolution; and that said committee have leave to sit during the sitting of the House.

Mr. Harrison, from the last-mentioned committee, presented a bill giving further time to the holders of military warrants to register and locate the same; which was twice read, and referred to a Committee of the Whole immediately.

The House accordingly resolved itself into said committee; and, after spending some time therein, Mr. Speaker resumed the Chair, and Mr. Parker reported that the committee had had the said bill under consideration, and made two amendments thereto; which were twice read, amended, and agreed to by the House.

The said bill was then further amended, and, together with the amendments, ordered to be engrossed, and read the time to-morrow.

The House again resolved itself into a Committee of the Whole, on the bill declaring the assent of Congress to certain acts of the States of Maryland, Rhode Island, and Georgia; and, after spending some time therein, the Speaker resumed the Chair, and Mr. Parker reported that the Committee had again had the said bill under consideration, and made several amendments thereto; which were severally twice read and agreed to by the House.

The said bill was then further amended, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill respecting the Mint; and, after spending some time therein, the Speaker resumed the Chair, and Mr. Parker reported that the Committee had had the said bill under consideration, and made no amendments thereto.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

The House again resolved itself into a Committee of the Whole, on the bill in addition to an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" and, after spending some time therein, the Speaker resumed the Chair, and Mr. Parker reported that the Committee had again had the said bill under consideration, and made several amendments thereto; which were severally twice read, and agreed to by the House.

The said bill was then further amended, and, together with the amendments, ordered to be engrossed, and read a third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," with several amendments; to which they desire the concurrence of this House.

Friday, February 7.

An engrossed bill in addition to an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the third time, and passed.

An engrossed bill respecting the Mint was read the third time, and passed.

An engrossed bill declaring the assent of Congress to certain acts of the States of Rhode Island, Maryland, and Georgia, was read the third time, and passed.

An engrossed bill giving further time to the holders of military warrants to register and locate the same was read the third time, and passed.

The amendments proposed by the Senate to the bill, entitled "An act providing for the enumeration of the inhabitants of the United States," were read, and ordered to be referred to the Committee of Ways and Means.

A motion was made and seconded that the House do come to the following resolution, to wit:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of authorizing the collectors of the direct tax in North Carolina, to receive, in payment thereof, the paper money of that State; and report by bill or otherwise:

And, the question being taken thereupon, it passed in the negative.

FOREIGN INTERCOURSE.

The House resolved itself into a Committee of the Whole on the bill providing the means of intercourse between the United States and foreign nations; and, after some time spent therein, Mr. Speaker resumed the Chair, and Mr. Parker reported that the Committee had had the said bill under consideration, and made some progress therein.

On motion, it was

Ordered, That the Committee of the Whole be discharged from the further consideration of the said bill, and that the same be recommitted to the Committee of Revisal and Unfinished Business.

NORTHWESTERN LANDS.

A petition of sundry inhabitants of the Northwestern Territory, residing on lands purchased from John Cleves Symmes, was presented to the House and read, praying that the said Symmes may be allowed to complete his contract with the United States, or that such other relief may be granted to the petitioners as to the wisdom of Congress shall seem meet.

Ordered, That the said petition be referred to the committee appointed, on the twenty-fourth of December last, to inquire whether any, and, if any, what, alterations are necessary to be made in the laws authorizing the sale of the lands of the United States, Northwest of the Ohio.

CASE OF JONATHAN ROBBINS.

The following Message and documents were received from the President of the United States; which were read, and ordered to lie on the table:

Gentlemen of the House of Representatives:

In consequence of your request to me, conveyed in your resolution of the fourth of this month, I directed the Secretary of State to lay before me copies of the papers intended. These copies, together with his report, I now transmit to the House of Representatives, for the consideration of the members.

JOHN ADAMS.

United States, *Feb.* 7, 1800.

Department of State,
February 6, 1800.

The Secretary of State has prepared, as directed, and now respectfully submits to the President of the United States, copies of the papers which probably were contemplated by the House of Representatives, in their resolve of the 4th instant; although no requisition, as the resolve supposes, has ever been received, nor any communication made to the Judge of the District Court of South Carolina, concerning any man by the name of Jonathan Robbins. But by the proceedings before that Judge, as they have been published, it appears that a seaman named Thomas Nash, the subject of the British Minister's requisition, did assume the name of Jonathan Robbins, and make oath "that he was a native of the State of Connecticut, and born in Danbury, in that State." The Secretary therefore, besides the copy of the requisition, and the copies of his letter to the Judge of the District Court of South Carolina, and of the Judge's answer, has prepared, and herewith encloses, copies of the certificates of the selectmen and town clerk of Danbury, and extracts of letters from Admiral Sir Hyde Parker, satisfactorily proving that the Thomas Nash, calling himself Jonathan Robbins, who, on the requisition of the British Minister, was delivered by the Judge aforesaid, with the assent of the President of the United States, was not an American citizen, but a native Irishman, who to his other crimes added *perjury*, in the hope, thereby, to escape the punishment due to *piracy* and *murder*. The original certificates of the selectmen and town clerk of Danbury are in the Secretary's possession; and he has compared the extract of Admiral Parker's letter to Mr. Liston with the original, and the extract of the Admiral's letter to the British Consul at Charleston, with the passage as recited in the Consul's original letter to Mr. Liston.

All which is respectfully submitted.

TIMOTHY PICKERING.

Copy of a note from Robert Liston, Esq., Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty, to Timothy Pickering, Secretary of State of the United States.

Philadelphia, *May* 23, 1799.

R. Liston presents his respects to Col. Pickering, Secretary of State. A seaman of the name of Thomas Nash having been committed to jail in Charleston, South Carolina, at the instance of His Majesty's Consul there, on suspicion of his having been an accomplice in the piracy and murder committed on board His Majesty's ship Hermione, and information of the circumstance having been transmitted to Vice Admiral Sir Hyde Parker, a cutter was despatched to Charleston, with an officer on board to whom the man was well known, in order that his person might be indentified, and that he should be carried to the West Indies for trial. But on the application of the Consul for the restoration of Nash, in conformity to the treaty of 1794, Judge Bee and the Federal Attorney were of opinion that he could not with propriety be delivered up, without a previous requisition on my part made to the Executive Government of the United States. May I therefore request, sir, that you will be pleased to lay this matter before the President, and procure his orders that the said Thomas Nash be delivered up to justice.

Letter from the Secretary of State, to Judge Bee.

Department of State,
Philadelphia, June 3, 1799.

Sir: Mr. Liston, the Minister of His Britannic Majesty has requested, that Thomas Nash, who was a seaman on board the British frigate Hermione, and who he is informed is now a prisoner in the jail of Charleston, should be delivered up. I have stated the matter to the President of the United States. He considers an offence committed on board a public ship of war, on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs. Nash is charged, it is understood, with *piracy* and *murder*, committed by him on board the above mentioned British frigate, on the high seas, and consequently within the jurisdiction of His Britannic Majesty; and therefore, by the 27th article of the Treaty of Amity with Great Britain, Nash ought to be delivered up, as requested by the British Minister, provided such evidence of his criminality be produced as, by the laws of the United States or of South Carolina, would justify his apprehension and commitment for trial, if the offence had been committed within the jurisdiction of the United States. The President has in consequence thereof authorized me to communicate to you "his advice and request" that Thomas Nash, may be delivered up to the Consul or other agent of Great Britain, who shall appear to receive him. I have the honor be, &c.

TIMOTHY PICKERING.

Hon. Thomas Bee,
Judge of the District of South Carolina.

Letter from Thomas Bee, Esq., to the Secretary of State, dated Charleston, South Carolina, July 1st, 1799.

In compliance with the request of the President of the United States as stated in your favor of the 3d ult., I gave notice to the British Consul that at the sitting of the district court on this day I should order Thomas Nash, the prisoner charged with having committed murder and piracy on board the British frigate Hermione on such strong evidence of his criminality as justified his apprehension and commitment for trial, to be brought before me on habeas corpus, in order to his being delivered over agreeably to the 27th article of the Treaty of Amity with Great Britain. The Consul attended in court and requested that the prisoner should remain in jail until he had a convenient opportunity of sending him away. I have therefore directed that he remain in prison, until the Consul shall find it convenient to remove him. I have the honor to be with great respect your most obedient servant,

THOMAS BEE.
District Judge of South Carolina.

Hon. T. Pickering, *Secretary of State.*

Danbury, *Sept.* 16, 1799.

We, the subscribers, selectmen of the town of Danbury, in the State of Connecticut, certify that we have always been the inhabitants of said town, and are from forty-five to fifty-seven years of age, and have never known an inhabitant of this town by the name of Jonathan or Nathan Robbins, and that there has not been nor now is any family known by the name of Robbins within the limits of said town.

Certified, per ELI MYGOT.
EBEN BENEDICT.
JUSTUS BARNUM.
BEN. HICHCOK.

Danbury, *Sept.* 10, 1799.

The subscriber, late town clerk for the town of Danbury, in the State of Connecticut, certifies that he kept the town records twenty-five years, viz: from the year 1771 until the year 1796; that he is now fifty-six years of age, and that he never knew any person by the name of Robbins, born or residing in the said town of Danbury, during that term of twenty-five years, before or since.

MAJOR TAYLOR.

Extract of a letter from Admiral Sir Hyde Parker, to Robert Liston, Esq., Envoy Extraordinary and Minister Plenipotentiary of His Britannic Majesty to the United States, dated

Port Royal Harbor,
Jamaica, Sept. 9, 1799.

"I have had the honor of receiving duplicates of your Excellency's letters, numbered 10, 11, and 12, and, in answer thereto, acquaint you that in consequence of Nash, one of the ringleaders in the mutiny, murders, &c., on board the Hermione, being delivered up by the United States to me, he has been tried at a court martial, and sentenced to suffer death, and afterwards hung in chains, which sentence has been put into execution. He acknowledged himself to be an Irishman."

Extract of a letter from Benjamin Moodie, Esq., Consul of His Britannic Majesty at Charleston, South Carolina, to Robert Liston, Esq., Envoy of his said Majesty to the United States, dated

November, 19, 1799.

In consequence of many obstacles I had to encounter in obtaining the delivery of Thomas Nash, late of His Majesty's ship Hermione, and of the numerous publications to the northward and in this place, I wrote to Admiral Sir Hyde Parker, requesting he would be good enough to send me minutes of the court martial, to which he answered under date 13th September: "I am 'to acquaint you that Nash has been executed agreeably to a court martial, and that he confessed himself 'to be an Irishman; and it further appears, by the 'Hermione's books, that he was born at Waterford; 'on the 21st December, 1792, entered a volunteer on 'board the Dover, received £3 bounty money, and was 'removed to the Hermione, 28th of Januay, 1793. And 'with respect to transmitting the minutes of his trial, 'that is not in my power, but rests with the Lords of 'the Admiralty only."

Monday, February 10.

Mr. Abiel Foster laid the following resolution on the table:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alteration is necessary to be made in the compensation of the officers of this House and of the Senate.

The Speaker laid before the House two reports from the Secretary of the Treasury, one containing a statement of the goods, wares, and merchandise, imported into the United States, and the other a statement of the duties and drawbacks on merchandise.

Mr. Claiborne called up a resolution he laid on the table on Friday, and substituted the following in its place:

Resolved, That a committee be appointed to inquire into the operation of the acts making provision for the establishment of trading houses with the Indian tribes; and also into the expediency of reviving and continuing in force the said acts.

Messrs. Claiborne, Nicholas, Henderson Thatcher, and Elizur Goodrich, were appointed.

The petition of Amy Dardin was called up, and after some opposition, on account of a former reference and decision, was referred to the Committee of Claims.

The motion for an adjournment of both Houses on the first Monday in April next was taken up. Mr. Kittera moved to insert the first day instead of the first Monday in April. Mr. Macon moved to change it to the third Monday in March. Both these motions were negatived, and the original one carried—ayes 55.

CREDIT ON DUTY BONDS.

Mr. Smith, Chairman of the Committee of Commerce and Manufactures reported a resolution, which he said the present deranged state of commerce rendered necessary and very important to the commercial interests; he therefore hoped it would be passed without delay.

On motion the House resolved itself into a Committee thereupon, and it was agreed to, as follows:

Resolved, That the term of payment allowed by law on bonds which have been given, and which shall become due prior to the first day of August next, for duties on impost, may be extended for sixty days, in all cases, respectively, where it shall be required by the parties, and where the recovery of such imposts shall not be endangered thereby. *Provided*, That in every case of such additional credit, there shall be required and paid on such bonds, respectively, interest at the

rate of one half per cent per month from the time such duties shall be respectively due and payable according to law.

It was referred to the Committee of Commerce and Manufactures, to report a bill accordingly.

CAVEATS AGAINST LAND PATENTS.

Mr. DAVIS laid on the table the following resolution:

Resolved, That a committee be appointed to inquire into the expediency or inexpediency of passing a law to regulate the manner of entering caveats to prevent the issuing of patents for land granted for military services; and that the same committee be directed to inquire into the expediency or inexpediency of passing a law to prevent the entering a caveat in any case to hinder the issuing a patent for land granted for military services.

TUESDAY, February 11.

Mr. SMITH, from the Committee of Commerce and Manufactures, pursuant to the order of the House of yesterday, reported a bill extending the time for the payment of bonds given for duties of impost, in certain cases; which was read a first and second time, and committed for to-morrow.

Mr. GORDON, from the select committee to whom were referred the consideration of that part of the law relative to the Military Establishment which provides that non-commissioned officers or privates shall not be arrested for debt, reported a bill "in addition to the laws relative to the Military Establishment of the United States;" which was read a first and second time, and committed for to-morrow.

Mr. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the consideration of the amendments of the Senate to the bill providing for salvage in case of recapture, made a report; which was read, and committed to a Committee of the whole House on Thursday.

A petition of Samuel Lewis, senior, late a Clerk in the War Office, stated that, upon a settlement of his account with the United States, a balance has been found due from him to the United States, for which he is now imprisoned; that he is unable to discharge the same; and praying that he may be liberated from his confinement.

Mr. SMITH, from the Committee of Commerce and Manufactures, presented, a bill further to suspend the commercial intercourse between the United States and France, and the dependencies thereof; which was read twice and committed to a Committee of the Whole House to-morrow.

Ordered, That the committee appointed to inquire whether any, and, if any, what, alterations are necessary in the laws establishing a post office and post roads within the United States, have leave to report by bill or bills, or otherwise.

UNIFORM BANKRUPTCY.

The order of the day to take into consideration the report of the Committee of the whole House on the Bankrupt bill, having been called for by Mr. BAYARD—after proposing and agreeing to several amendments,

Mr. JONES, agreeably to the notice which he had given, moved the following additional section:

"*And be it further enacted*, That nothing in this act contained, shall extend to, or in any wise affect or operate upon debts contracted, or transactions which may have taken place, prior to the passing thereof."

This motion was opposed by Messrs. BAYARD and MARSHALL, and finally negatived, only 24 members voting in the affirmative.

Mr. MACON moved to strike out the 24th section, which gives the commissioners power to examine the wife of a bankrupt upon oath—which created considerable debate. Upon the question there were yeas 38, nays 49.

The bill was then ordered to be engrossed for a third reading on Monday next—55 members voting in favor of it.

DRAWBACK OF DUTY.

Mr. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the memorial of a number of merchants of the city of Philadelphia, relative to the 75th section of the act to regulate the collection of duties on imports and tonnage, reported a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act entitled "An act to regulate the collection of duties on imports and tonnage;" which was read a first and second time, and committed to a Committee of the whole House.

WEDNESDAY, February 12.

On motion of Mr. SMITH, the House went into a Committee of the Whole on the bill extending the time of payment of bonds given for duties of imposts, in certain cases, when

Mr. SHEAFE having suggested, that the giving this indulgence might inconvenience the Treasury, by being called upon by the collectors for money to discharge debentures on goods given for drawback, without a positive provision be made that such debentures should not be paid until the duties were discharged, after some observations from Messrs. SMITH, NICHOLAS, OTIS, and SEWALL, the Committee rose and the bill was recommitted to the Committee of Commerce and Manufactures.

The House went into Committee of the Whole on the bill further to suspend the commercial intercourse between the United States and France and the dependencies thereof; and after some time spent therein, the Committee rose, reported progress, and obtained leave to sit again.

Mr. DAVIS called up for consideration the resolution which he laid on the table on Monday last, instituting an inquiry into the expediency of preventing caveats being filed against the issuing of patents for land granted by the State of Virginia, for military services; and the resolution having been again read, was agreed to, and a committee of three members appointed for the purpose.

Mr. OTIS, from the committee to whom was referred, on the ninth of December last, so much of the President's Speech as relates to "a system of national defence, commensurate with our resources and the situation of our country," laid before the House a letter from the Secretary of War to the chairman of the said committee, relative to the establishment of military schools; which was read, and ordered to lie on the table.

ARRESTING SOLDIERS FOR DEBT.

The House went into a Committee of the Whole on the bill in addition to the laws relative to the Military Establishment of the United States, Mr. RUTLEDGE in the Chair; when the bill was read, as follows.

Be it enacted &c., That if any person who *shall have enlisted, or* hereafter may enlist, as a non-commisioned officer or private soldier, in the service of the United States, shall, prior to his enlistment, have been taken in execution, or arrested for debt, or contract, and committed to prison, and at the time of his enlistment as aforesaid, be holden in prison by virtue of said execution or arrest, such person shall not be discharged from his imprisonment in consequence of his enlisting as aforesaid; and in case any such person, arrested as aforesaid, and prior to his enlistment, shall have given bail, and at the time of his enlistment his bail shall not be discharged in due course of law, it shall and may be lawful for the bail to take such measures for his or their discharge, as he or they might have taken if the principal had not been enlisted in the service of the United States; and in case the principal shall be surrendered up by the bail, he shall be holden in like manner, as if he had not been enlisted as aforesaid; any law or laws to the contrary notwithstanding."

Mr. OTIS moved to amend the bill so as to confine its operation to persons who may hereafter enlist, by striking out the words in *italic* in the second line of it.

Mr. O. said he conceived the Government had no right to break their contract with the soldiers, a great part of whom had probably enlisted for the benefit of the provision now about to be rescinded.

After some debate, and Mr. NICHOLAS having said he wished to make a motion which would more fully try this principle, Mr. OTIS withdrew his motion, and the Committee rose and reported the bill without amendment—when

Mr. NICHOLAS moved that the bill be recommitted to a select committee, with instruction to amend the laws relative to the Military Establishment, so as to take away the exemption thereby given to non-commissioned officers, musicians, and privates, from arrest for any debt or contract, existing or entered into before their enlistment, above the sum of twenty dollars.

Messrs. MARSHALL, OTIS, RUTLEDGE, SMITH, SHEPARD, and CHAMPLIN, opposed the motion; and Messrs. VARNUM, MACON, NICHOLAS, JONES, and GALLATIN, spoke in favor of it. The question was then taken, and decided in the negative—yeas 43, nays 51 as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A. Hanna, Joseph Heister, Archibald Henderson, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Smilie, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Wiliam H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Harrison G. Otis, Robert Page, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, junior, Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

And then the question being taken that the said bill be engrossed, and read the third time, it passed in the negative—yeas 33, nays 53; and so the bill was rejected.

THURSDAY, February 13.

MILITARY INTERFERENCE IN ELECTIONS.

Mr. LEIB called up for consideration the following resolution, which he laid on the table on the 4th instant, viz:

Resolved, That a committee be appointed to *bring in a bill making* provision for the removal of the regular troops of the United States which may be stationed where an election is held, and that such removal shall take place at least two days previous to such election, and to a distance not less than two miles.

Mr. OTIS moved to amend the resolution by striking out the words in *italic*, in the second line, and inserting "inquire into the expediency of."

A long debate ensued on this motion, in which it was conceded, on all sides, that the resolution was too definite, and left nothing in the power of the committee to act on, except merely bringing in a bill comformable to it. If excesses had been committed by the military at elections, and they were guilty of improper interference, it seemed to be the wish of every member that some provision should be made to guard against them in future; but they were unwilling to say what that provision should be until an inquiry were made into the facts stated. The removal of the troops to the distance mentioned, was also particularly objected to, as it might leave fortifications, arsenals, and military stores, for two or three days, entirely unprotected.

Mr. LEIB at length withdrew his original proposition, and submitted the following, which was adopted without objection, viz:

"*Resolved*, That a committee be appointed to prepare and report a bill, containing such legislative provisions as may be judged expedient, either for removing any military force of the United States, from any place of holding elections, or for preventing their interference in such elections."

Mr. Marshall, Mr. Leib and Mr. Otis, were appointed the committee.

UNIFORM MILITIA.

Mr. H. Lee, from the select committee appointed for that purpose, reported a bill more effectually to provide for the national defence, by establishing an uniform militia throughout the United States; which was read a first and second time, and committed to a Committee of the whole House on Monday.

CREDIT ON DUTY BONDS.

Mr. Smith, from the Committee of Commerce and Manufactures, to whom was recommitted "a bill to extend the time of payment of bonds given for duties of impost, in certain cases," reported the same, with amendments.

The bill was read a first and second time, and committed for to-morrow.

AMENDMENT TO THE CONSTITUTION.

Mr. Livingston laid the following joint resolution on the table:

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three fourths of said Legislatures, shall be valid as a part of the said Constitution, viz:

No Judge of any Court of the United States shall, during his continuance in office, or within six months after he may have resigned the same, be appointed to any other than a judiciary office, under the United States.

STRANGERS ON THE FLOOR.

Mr. Dana said, he wished some other regulation to be made, relative to the exclusion of strangers from the floor of the House, within the bar, and to this effect proposed an order that the Doorkeeper be authorized to admit strangers, on their presenting a card signed by one of the members, which card should mention the name of the bearer, and bear date on the day of admission; no member to have liberty to give more than one card in one day.

Mr. Macon did not approve of this regulation, nor was he a friend to the one lately adopted. He thought very little inconvenience was experienced before the recent regulation took place, and wished it to be rescinded.

The motion was ordered to lie on the table.

Friday, February 14.

Mr. Hanna presented a petition of a number of the inhabitants of the Northwest Territory, praying a confirmation of their titles to certain lands purchased from John Cleves Symmes. Referred to the committee appointed on the subject of public lands.

Mr. A. Foster called up for consideration the resolution which he laid on the table, for appointing a committee to inquire whether any alterations ought to be made in the compensation allowed to the officers of the two Houses of Congress; which was agreed to, and three members appointed.

Mr. Smith, from the Committee of Commerce and Manufactures, who were directed to inquire into the operation of the existing law suspending the intercourse with France, made a report, which was committed to the Committee of the Whole House on the bill further to suspend the commercial intercourse with France.

[The committee state it to be their opinion, that the law had been faithfully executed by the officers of Government, but that the principles of it had been evaded by individuals acting from interested motives, and contains a variety of information in a letter from the Secretary of the Treasury to the chairman of the committee, propounding several questions relative to the existing law, and suggesting strong measures to prevent frauds in future.]

A Message was received from the President of the United States, transmitting a copy of the laws enacted for the government of the Territory of the United States Northwest of the river Ohio.

The Message and the papers accompanying it were referred to the select committee to whom were referred the petition and remonstrances of sundry inhabitants of the Mississippi Territory.

INTERCOURSE WITH FRANCE.

The House went into Committee of the Whole on the bill further to suspend the commercial intercourse between the United States and France, and the dependencies thereof.

Mr. Nicholas moved to amend the following part of the first section, to wit: "and if any ship or vessel owned, hired, or employed by any *person or persons resident within* the United States, shall directly or indirectly proceed to a French port," &c., by striking out the words in italic, and inserting "*citizen or citizens of*" thereby giving neutrals resident within the United States, or elsewhere, the liberty of trading from the ports of the United States to those of France in neutral bottoms.

Mr. Sewall conceived the amendment would render the bill intolerable to the citizens of the United States, who would view with a jealous eye foreigners among them enjoying the benefits of a trade they were precluded from, and employing our own vessels and sailors for that purpose.

Mr. Smith said, the original law, now in existence, was intended to embrace two objects; first, the cutting off all provisions and supplies from the West India islands; second, and the main object, preventing our property from entering the ports of France and being seized and confiscated, an open rupture being at that time considered as unavoidable. And both these measures were also intended to coerce the French Government to an accommodation. But these objects had failed, and their policy, instead of benefiting, had injured, this country. He was, therefore, in favor of the amendment.

What, said Mr. S., will be the operation of this amendment? Gentlemen were mistaken when they supposed our own vessels or our own sailors would be employed to carry on this trade. Neutral vessels could be employed. If a single American sailor were found on the list of the *role d'equipage*, the whole property would be liable to condemnation, if taken by a French cruiser. And they were also mistaken if they supposed any protection would be required from the American Government. What would be its operation on our commerce? Are we not now restricted from carrying our property, and shall we not be restricted by the bill upon the table? And how, then, shall we suffer by adopting the amendment? It had been said we might carry on an intermediate trade. It was true this had and might still be done, but the inconveniences and the risks were incalculable.

And what, exclaimed Mr. S., would be its operation on our agricultural interests? An immediate advantageous sale for our produce would be offered, which now lies rotting in our warehouses. Double risks and double insurances would be saved by purchasers coming into our market and giving a fair price for our commodities.

If we were in actual war, said Mr. S., would it not be good policy to permit neutrals to purchase our produce, and thereby enable us to carry on that war; to support that navy which was raised for our protection; to enable the citizens to pay the additional burdens which our exigencies require; and, finally, prevent the sinking of our revenue, as was the case the last year? It was this policy which enabled Great Britain to meet her extraordinary demands; it was this policy which we ought to pursue, and which he hoped the citizens of the United States would not be deprived the benefit of.

A long debate ensued on Mr. Nicholas's amendment, and the Committee rose, and obtained leave to sit again, without taking the question upon it.

Mr. Kittera said, he perceived a disposition to travel over the whole of the arguments which had been formerly used relative to the expediency of suspending the intercourse with France; and as some delay must ensue thereby, and as it was important for the citizens of the United States to know whether the prohibition would be continued, he would move the following resolution, to wit:

Resolved, That a committee be appointed to report a bill to continue in force for one month the act, entitled "An act to suspend the commercial intercourse between the United States and France, and the dependencies thereof."

Ordered to lie on the table.

Monday, February 17.

The Speaker read a letter from the Commissioners appointed to settle and adjust the claims of Canada and Nova Scotia Refugees, enclosing a statement of their proceedings under the act authorizing their appointment.

The House went into a Committee of the Whole on the bill to extend the time of payment of bonds given for duties of impost, in certain cases, and reported their agreement to the same. It was ordered to be read a third time to-morrow.

Mr. Dana called up for consideration the order which he proposed to be made relative to the admission of strangers by a card given by a member, and, after some debate, it was negatived—yeas 30, nays 41.

Mr. D. Foster, from the Committee of Claims, made a report on the petition of the Corporation of Rhode Island College, recommending an agreement, on the part of the House, to a resolution heretofore reported on that subject, the purport of which is, that the accounting officers of the Treasury should liquidate and settle the claims for compensation for the use and occupation of the College edifice, and for injuries done to the same, by the troops of the United States.

The report was read a first and second time, committed to a Committee of the whole House, and made the order of the day for Wednesday next.

CASE OF JONATHAN ROBBINS.

Mr. Rutledge said, he had expected that some order would have been taken on the Message of the President, before this time, by the gentleman who called for it; but as he had been disappointed, he would now give notice to the honorable member from New York that he would call for some order upon the Message to-morrow.

Mr. Livingston said, the gentleman had momentarily anticipated him; he meant to have moved for a reference to a Committee of the whole House this morning, with an intention to introduce certain resolutions, and he would now make that motion.

The question on commitment was put and carried—yeas 50, nays 43; and was made the order of the day for Friday.

Mr. Bayard then laid the following resolution on the table, which was read and referred to the above Committee, viz:

Resolved, That the conduct of the Executive Government of the United States, in relation to the requisition made by His Britannic Majesty's Minister, of the delivery up to justice of Thomas Nash, otherwise called Jonathan Robbins, upon the charge of murder, committed on board of the Hermione British frigate, which said Nash had sought an asylum within the United States, was conformable to the duty of the Government, and to the obligations of good faith stipulated in the 27th article of the Treaty of Amity, Commerce, and Navigation, made with Great Britain.

INTERCOURSE WITH FRANCE.

The House again went into Committee of the Whole on the bill further to suspend the commercial intercourse between the United States and France; and,

Mr. Nicholas's amendment being under consideration, Messrs. Otis, Rutledge, and H. Lee, spoke against it; and Messrs. Nicholas, Macon, and Randolph, in favor of it.

Mr. Kittera then moved that the Committee rise, for the purpose of taking into consideration the resolution which he laid on the table on Friday, proposing to continue in force the existing

law, which will expire on the second day of March next, till the second day of April next.

This motion was negatived—yeas 37, nays 44—on the ground that the bill under consideration would be likely to pass as soon as the one which the gentleman contemplated.

Messrs. MARSHALL and WALN then spoke against it, and Messrs. SMITH, RANDOLPH, NICHOLAS, JONES, and CLAY, in favor of it; when the question on the amendment was taken and negatived—yeas 42, nays 51.

The Committee then rose, and obtained leave to sit again.

TUESDAY, February 18.

An engrossed bill, entitled "An act to extend the time of payment of bonds given for duties of impost, in certain cases," was read the third time and passed.

Mr. SMITH reported a bill from the Committee of Commerce for the relief of Thomas Arnold; which was twice read and committed to the whole House.

Mr. MARSHALL, chairman of the committee appointed for that purpose, reported a "bill for removing any military force of the United States from the places of holding elections;" which was twice read and committed to the whole House.

Mr. HARRISON, chairman of the committee appointed on the 24th December last to inquire whether any, and, if any, what, alterations may be necessary in the laws relating to the sale of lands in the Territory Northwest of the Ohio, made a report, in part, of several resolutions; which were referred to the Committee of the whole House.

CONNECTICUT WESTERN RESERVE.

Mr. BRACE, on account of a bill which passed the Senate last session, and which was sent down to the House just before the rising of Congress, and therefore was not taken up, laid upon the table the following resolution:

Resolved, That a committee be appointed to take into consideration the expediency of accepting from the State of Connecticut a cession of jurisdiction, in the State of Pennsylvania, commonly called the Western Reserve of Connecticut, with instructions to report by bill or otherwise.

Mr. C. CLAIBORNE made a report in part, from the committee appointed on the 18th ultimo to take into consideration the petitions of Cato West and others, inhabitants of the Mississippi Territory. The committee reported some resolutions, one of which was that the same regulations and privileges be extended to the inhabitants of that Territory as were to the Territory Northwest of the Ohio, under an ordinance for their government, &c., proportionate to their numbers, which at present are not accurately ascertained.

This report was referred to a Committee of the whole House.

INTERCOURSE WITH FRANCE.

The House then went into Committee of the Whole on the French Intercourse Bill.

Mr. WALN moved an amendment to the bill, so that persons resident in Europe only, who owned, hired, or employed foreign vessels, should obtain a clearance to any port of the French Republic or its dependencies. His wish was to prevent its being done by persons resident in the West Indies or elsewhere, except in Europe.

This motion caused some debate. Mr. HARPER at length superseded that motion by one to strike out part of the section, so as to prevent the intercourse being carried on by neutrals, in any manner whatever. This, he said, was truly consistent with the spirit of the act, which was to suspend the intercourse altogether.

Some debate ensued on this motion, which was at length negatived—48 to 41.

Mr. RANDOLPH moved to strike out of the third section the words "in bills of exchange, or in money, or bullion," so that vessels which should be driven into a French port by distress of weather, or other casualty, might receive compensation for their cargo, produce, or merchandise.

Mr. CHAMPLIN opposed this motion. He said difficulties had occurred for want of this provision in the old law; it was now introduced to prevent any encouragement offering itself to the merchant who would wish to evade the law under the pretence of distress of weather; for if he could not take a cargo in return, it would not turn to his advantage to enter a French port under this pretence.

The motion was negatived.

Mr. RANDOLPH moved to strike out the whole of the sixth section, but afterwards so modified the section as that the President should not have power to take off the restriction of the act partially, or, in regard to ports with which he might deem it expedient to open the communication. He had no objection for the power to exist in the President to renew the intercourse when events should warrant it, but he wished it to be wholly done, or not at all.

This was also negatived.

Mr. GALLATIN wished to know the meaning of the beginning of the seventh section which is in these words:

"That the whole island of Hispaniola shall, for the purpose of this act, be considered as a dependency of the French Republic."

He understood a part of it, which, by the treaty with Spain, was ceded to France, had not been evacuated by Spain. The Government and laws, as well as the people of that nation, were still there, and he supposed it was not the design of the House to cut off the communication with Spain.

After some explanation by Mr. SMITH, Mr. NICHOLAS moved to strike out the section.

This motion caused some debate, and at length was carried—yeas 43 nays 40.

Mr. KITTERA moved to strike out the limitation section, but was not seconded.

The Committee then rose and reported the amendments.

It being a late hour, the House adjourned without taking up the amendments.

WEDNESDAY, February 19.

Mr. D. FOSTER from the Committee of Claims, made a report on the petition of Moses Gill, Esq., praying for the payment of 8,400 dollars of Loan-office certificates, and interest thereon, issued by the State of Georgia, which had been rejected at the Treasury, as not constituting a claim against the United States.

A report from the Secretary of the Treasury was submitted to the Committee of the House, with which it was their opinion that it would be proper for the House to concur, and that it would not be expedient for the United States to assume the payment of the said certificates.

The report was committed to a Committee of the whole House.

Mr. HARRISON, chairman of the committee appointed to consider whether any, and, if any, what, alterations may be necessary in the laws relative to the Northwestern Territory, made a report, proposing the following resolution to the House.

"*Resolved*, That all the salt springs and marshes in the Territory of the United States Northwest of the river Ohio ought to be leased out for the term of not less than —— years, nor more than —— years."

The report was referred to a Committee of the whole House, and made the order for Thursday.

INTERCOURSE WITH FRANCE.

The House then took up the report of the Committee of the Whole on the bill "further to suspend the commercial intercourse between the United States and France, and the dependencies thereof."

That part of the report going to strike out the seventh section, which considered the whole of the Colony of Hispaniola a dependency of the French Republic, was disagreed to, 48 to 42, so that the section remains.

The tenth section provides that if the President should deem it proper to open the intercourse with any part of France, or its dependencies, so that the residence of a Consul at such place may be necessary, then such Consul or Agent shall be allowed an annual salary not exceeding —— dollars, and shall be prohibited from engaging in any kind of traffic.

In Committee the blank was filled with $3,000.

Mr. GALLATIN wished to know why a salary should be granted in the present instance, when none was allowed to other residents in a like situation.?

Mr. SMITH answered, that the present was very different from other consulships; there it required only a common merchant to manage the business relating to shipping, sailors, &c., but in this, ministerial powers, for negotiation, was contemplated. A person qualified for that purpose must be employed; it could not be expected that any man would go to reside in a climate which endangered his life, without a compensation somewhat adequate to the profits he could make by engaging in commerce, which other consuls were permitted to do. In the present case, as had been experienced, this privilege would much injure the general commercial interest of the United States, because such resident would have the earliest opportunity to take advantage of the intercourse being opened.

Mr. RUTLEDGE also made some explanatory observations, and the motion adopted in Committee for filling the blank with $3,000 was agreed to.

Mr. HARPER renewed a motion which he made yesterday, but which was negatived, to prevent any neutrals carrying on trade from the United States to France, &c., at all. He contended this was the spirit of the former bill, and the idea of the friends of it at its passage, although it might have proved inefficient to its object. He called for the yeas and nays on it; which, after a long debate, were taken and decided in the negative—yeas 39, nays 56, as follows:

YEAS—Bailey Bartlett, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, James H. Imlay, John Wilkes Kittera, Silas Lee, Samuel Lyman, Harrison G. Otis, Robert Page, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, William Shepard, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, George Baer, Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, William B. Grove, John A. Hanna, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, James Jones, Aaron Kitchell, Henry Lee, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, John Marshall, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Smilie, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Mr. WALN then introduced an amendment he yesterday proposed to the second section, which reads thus: "That, excepting for foreign ships or vessels owned, hired, or employed by persons permanently residing in *foreign countries, and without the limits of the United States*, and commanded and wholly navigated by foreigners, no clearance for a foreign voyage shall be granted to any ship or vessel, &c., without a bond being given that it shall not enter a French port."

A motion was made to strike out the words above printed in italic, and to insert, in lieu thereof, the word "Europe."

The question on this motion was taken by yeas and nays, and carried—yeas 50, nays 46, as follows:

YEAS—George Baer, Bailey Bartlett, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich,

Elizur Goodrich, William Gordon, Edwin Grey, Roger Griswold, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, William Shepard, Richard Dobbs Spaight, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thomson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Several other amendments, but of less importance, were likewise adopted. The bill was restricted in its continuance to the 3d of March, 1801. It was then ordered to be engrossed for a third reading to-morrow.

THURSDAY, February 20.

INTERCOURSE WITH FRANCE.

The engrossed bill, entitled, "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," was read, and, on the question, "Shall this bill pass?" Mr. RANDOLPH called for the yeas and nays.

A long debate ensued on the passage of the bill. Messrs. MACON, EGGLESTON, and NICHOLAS, spoke against its passage, and Messrs. MARSHALL and GALLATIN in its favor.

The bill was passed—yeas 68, nays 28, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William C. Cole Claiborne, John Condit, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, Archibald Henderson, William H. Hill, James H. Imlay, James Jones, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, William Shepard, John Smilie, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, John Thompson, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Theodorus Baily, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Andrew Gregg, John A. Hanna, David Holmes, George Jackson, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, David Stone, Thomas Sumter, Abraham Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

TENNESSEE LANDS.

Mr. HARRISON, on account of an act lately passed by the Legislature of Tennessee, respecting certain land situated in that State, the title of which is disputed—whether belonging to the United States, or to that State—laid on the table a resolution for a committee to be appointed to make inquiry and report such facts as may come to their knowledge respecting the same, together with their agreement respecting the title thereof; and if found to be the property of the United States, to report as to the expediency of selling the same.

CREDIT FOR DUTIES.

Mr. SPAIGHT proposed the following resolution:

Resolved, That the Committee of Commerce and Manufactures be directed to inquire whether any, and what, further credit, may be given for duties on the articles of produce imported from the West Indies into the ports of the United States, and that they report by bill or otherwise."

The resolution was agreed to.

CASE OF JONATHAN ROBBINS.

Mr. LIVINGSTON proposed the following resolutions:

"*Resolved*, That it appears to this House that a person, calling himself Jonathan Robbins, and claiming to be a citizen of the United States, impressed on board a British ship-of-war, was committed for trial in one of the courts of the United States for the alleged crime of piracy and murder, committed on the high seas, on board the British frigate Hermione: That a requisition being, subsequent to such commitment, made by the British Minister to the Executive of the United States, for the delivery of the said person (under the name of Thomas Nash) as a fugitive, under the 27th article of the Treaty with Great Britain, the President of the United States did, by a letter written from the Department of State to the Judge who committed the said person for trial, officially declare his opinion to the said Judge that he 'considered an offence committed on board a public ship of war on the high seas to have been committed within the jurisdiction of the nation to whom the ship belongs;' and, in consequence of such opinion and instruction did advise and request the said Judge to deliver up the person so claimed to the agent of Great Britain, who should appear to receive him, provided only that the stipulated evidence of his criminality should be produced. That in compliance with such advice and request of the President of the United States, the said person so committed for trial was, by the Judge of the district of South Carolina, without any presentment or trial by jury, or any investigation of his claim to be a citizen of the United States, delivered up to an officer of his Britannic Majesty, and afterwards tried by a court martial, and executed on a charge of mutiny and murder.

"*Resolved*, That, inasmuch as the Constitution of the United States declares that the Judiciary power shall extend to all questions arising under the Constitution, laws, and treaties, of the United States, and to all cases of admiralty and maritime jurisdiction: and, also, that the trial of all crimes (except in cases of impeachment) shall be by jury; and that such trial shall be held in the State where such crime shall have been committed; but when not committed within any State, then at such place or places as Congress may by law have directed; and inasmuch as it is directed by law that the offence of murder committed on the high seas shall be deemed to be piracy and murder, and that 'all crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be tried in the district where the offender is apprehended, or into which he may be first brought:' therefore the several questions, whether the alleged crime of piracy and murder was committed within the exclusive jurisdiction of Great Britain; whether it comes within the purview of the said twenty-seventh article; and whether a person stating that he was an American citizen, and had committed the act of which he was accused in attempting to regain his liberty from illegal imprisonment, ought to be delivered up, without any investigation of his claims to citizenship, or inquiry into the facts alleged in his defence, are all matters exclusively of judicial inquiry, as arising from treaties, laws, Constitutional provisions, and cases of admiralty and maritime jurisdiction.

"*Resolved*, That the decision of those questions by the President of the United States, against the jurisdiction of the courts of the United States, in a case where those courts had already assumed and exercised jurisdiction: and his advice and request to the Judge of the District Court that the person thus charged should be delivered up, provided only such evidence of his criminality should be produced as would justify his apprehension and commitment for trial, are a dangerous interference of the Executive with Judicial decisions; and that the compliance with such advice and request on the part of the Judge of the District Court of South Carolina, is a sacrifice of the Constitutional independence of the Judicial power, and exposes the administration thereof to suspicion and reproach."

The question of reference to the Committee of the Whole was taken and carried—yeas 55.

The House then adjourned.

FRIDAY, February 21.

Mr. VAN CORTLANDT presented a petition of a number of natives of Great Britain, residing at Mount Pleasant, State of New York, praying some modification of the last naturalization act. It was moved, first, that it be referred to a select committee; which was carried, and three members appointed. It was further moved that the committee have leave to report by bill or otherwise; which was negatived.

UNIFORM BANKRUPTCY.

The bill for establishing an uniform system of bankruptcy throughout the United States was read a third time.

Mr. BISHOP, after mentioning some amendments which were still necessary to the bill, moved its recommitment to the Committee of the whole House for that purpose; which was negatived, as was also a motion by Mr. DAVIS, for the postponement of taking the question until Monday.

The question was then taken and decided in the affirmative, the House being equally divided—yeas 48, nays 48—the SPEAKER declaring himself with the yeas.

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, Franklin Davenport, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Edward Livingston, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, Dwight Foster, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Samuel Lyman, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Robert Page, John Randolph, John Smilie, Richard D. Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

BOUNTY LANDS.

Mr. DAVIS, from the select committee to whom was referred the petition of John Mountjoy, made a report that it appeared the petitioner was entitled to bounty lands for services in the Army, and owing to some accident he had never obtained it. The committee therefore reported the following resolution:

"*Resolved*, That the Secretary of War be directed to issue to John Mountjoy, late Captain in the service of the United States, the land warrant No. 2495 for three hundred acres of bounty land."

A motion was made that the House agree to the resolution, but on Mr. D. FOSTER wishing a general system to be adopted, in order to take up a number of cases of the same nature, and, as he observed, the subject was now before the Senate, the report was referred to a Committee of the whole House.

ISAAC ZANE.

Mr. HARPER, from the committee to whom was referred the petition of Isaac Zane, praying a fee simple for certain lands on which he had settled,

and which was granted to him by the Wyandot nation of Indians, prior to a treaty by which those lands became the property of the United States, reported a resolution for a committee to be appointed to bring in a bill to convey the same accordingly.

The report was referred to the Committee of the Whole.

DUTIES ON STILLS.

Mr. Harper also made a report from the Committee of Ways and Means on the petition of David Wiley, and others, praying exemption from their part of the duty on stills, on account of an accidental want of water, so as to prevent them making use of their stills. The Committee were of opinion that these accidents may frequently occur, and that it was not proper for the revenue to sustain loss thereby, and therefore reported that the prayer of the aforesaid petitioners ought not to be granted, and that they have leave to withdraw the same.

The House took up the report for a second reading, and agreed thereto.

ESTIMATES FOR THE YEAR 1800.

Mr. Harper also made a report from the Committee of Ways and Means of the estimate of moneys necessary for the service of the present year. The following is a summary of the statement:

The amount of necessary supply for the present year, agreeably to the estimate of the Secretary of the Treasury - - - - -	$15,393,034 11
From this is to be deducted one million, on account of the suspension of further enlistments in the Army	1,000,000 00
Add to this a suspension of building of the six seventy-four gun ships for the present year, which the committee conceived it expedient to do—the present year's estimate for that item was - - - - -	600,000 00
	1,600,000 00
Loans, a sum to be provided for in the present year of - - - -	13,793,034 11
To meet this expenditure, the receipts of the present year were estimated at	9,301,258 51
Deduct this revenue from the aforesaid expenditure, would leave a sum to be provided for, above the revenue of the present year, of - - -	4,491,775 60
There remained in the Treasury, of the last year's appropriation - -	2,159,377 10
But, as part of this would be wanted for contracts yet remaining due, not more than one million would be left on hand towards this year's expenditure, which, deducted, - -	1,000,000 00
Would leave a balance to be procured, over and above the revenue, of -	3,491,775 60

The committee reported that they have turned their attention to the object of revenue, but had not yet decided as to their report, and therefore they thought proper to submit a resolution to the House to authorize the President to procure, by loan, for the services of the present year, the sum of $3,500,000, at such rates as he may find most for the interest of the United States.

The report was ordered to be printed and referred to a Committee of the Whole House.

EULOGIUM ON THE CHARACTER OF WASHINGTON.

A message was received from the Senate, informing the House that the Senate had this day come to the following resolution, viz:

"*Resolved*, That the Senate will to-morrow, at half past 12 o'clock, meet in the Senate Chamber, and from thence walk in procession to the church in Race street, to hear the eulogium to be pronounced on the character of General Washington."

Ordered to lie on the table.

The Speaker said he was requested, by a member of the Catholic church, to inform the House that seats were provided for the accommodation of such members as would please to attend to hear the delivery of the oration to-morrow.

Mr. Rutledge said, before the receipt of the message from the Senate, he had intended to move that when the House adjourn they do adjourn till Monday; but the Senate having informed the House that they intended to walk in procession, he conceived this House ought to come to a similar resolution, and moved the following:

"*Resolved*, That the House of Representatives will meet to-morrow, at half past 12 o'clock at their Chamber, and from thence walk in procession to the church in Race street, to hear the eulogium there to be pronounced on the character of General Washington."

It was objected to this resolution, that it had not been contemplated this House would walk in procession, no arrangement having been made for that purpose; and that as it might be the wish of several members to attend the oration at the Catholic church in preference to the one in Race street, it ought to be left to their own option.

The question on the resolution was put and negatived—yeas 40, nays 43.

SUNDRY BILLS.

The House took up the report of the Committee of Commerce and Manufactures, on the amendments of the Senate to the bill providing for salvage in case of recapture, and concurred therein.

A message was received from the Senate, informing the House that the Senate had passed the bill, entitled "An act, in addition to the act, entitled 'An act for regulating the grants of lands for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" with sundry amendments.

The bill and amendments were read and referred to the select committee who reported it.

Mr. Harper, from the committee appointed for that purpose, having obtained leave, reported a bill to extend the privilege of obtaining patents

for useful discoveries and inventions, to certain persons therein mentioned, and to enlarge and define the privileges of patentees; which was read and referred to a Committee of the Whole House.

The House went into a Committee of the Whole on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," when the bill was agreed to without amendment, and ordered to be read a third time on Monday next.

Monday, February 24.

An engrossed bill, entitled "An act to allow drawbacks of duty on goods exported to New Orleans, and therein to amend the act for the collection of duties on imposts and tonnage," was read the third time and passed.

Mr. Thatcher, from the Post Road Committee, reported a bill "to alter and establish sundry post roads;" which was twice read, and committed to the whole House, and made the order for Thursday.

Mr. Dana reported a bill to provide for the execution of the 27th article of the Treaty of Amity, Commerce, and Navigation, made with Great Britain; which was twice read, and referred to a Committee of the whole House for to-morrow.

Mr. Harper, Chairman of the Committee of Ways and Means, to whom were referred the amendments proposed by the Senate to the bill "providing for the enumeration of the inhabitants of the United States," reported their concurrence with the amendments proposed.

The House took up the amendments, and agreed to all, but one. The title was altered to that of "An act providing for the second census, or the enumeration of the inhabitants of the United States."

WESTERN LANDS.

The House resolved itself into a Committee of the Whole on the report made the 18th instant, by the committee appointed to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the lands of the United States Northwest of the Ohio; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follows:

Resolved, That all the townships directed to be sold, either in quarter townships or in tracts of one mile square, by the act "providing for the sale of the lands of the United States, in the Territory Northwest of the river Ohio, and above the mouth of Kentucky river," shall be subdivided into half sections, containing, as nearly as may be, three hundred and twenty acres each: the additional expense of surveying to be paid by the purchaser, at the rate of three dollars per tract.

Resolved, That all the said lands shall be offered for sale at public sale, in tracts of three hundred and twenty acres as above directed: *Provided*, That the same shall not be sold under the price of two dollars per acre, and that the sale shall be at the following places, to wit:

All the lands contained in the seven first ranges of townships, and north of the same, shall be offered for sale at Pittsburg.

All the lands contained in the eight next ranges of townships, shall be offered for sale at Marietta.

All the lands lying west of the fifteen first ranges of townships, and east of the Sciota river, shall be offered for sale at Chilicothe.

All the lands lying below the Great Miami shall be offered for sale at Cincinnati.

Resolved, That one or more land offices shall be opened in the Northwestern Territory, and that every person be permitted to locate and purchase at the rate of two dollars per acre, one or more of the half sections that shall not have been sold at public sale.

Resolved, That the payments for lands purchased either at public or private sale, may be made as heretofore in public securities, and shall be made in the following manner, and under the following conditions, viz:

1st. At the time of purchase, every purchaser shall deposite one-twentieth part of the amount of purchase money; to be forfeited, if, within three months, one-fourth of the purchase-money, including the said twentieth part, is not paid.

2d. One-fourth of the purchase-money to be paid as aforesaid, within three months, and the other three-fourths in three equal payments, within two, three, and four years, respectively, after the date of the purchase.

3d. No interest to be charged in case of punctual payment; but interest at the rate of six per cent. a year, to be charged from the date of purchase, on any part of the purchase-money which shall not have been paid at the times, respectively, when the same shall have become due.

4th. A discount at the rate of eight per cent. a year, to be allowed on any of the three last payments, which shall be paid before the same shall have become due.

5th. If any tract shall not be completely paid for within one year after the date of the last payment, the tract to be sold in such manner as shall be provided by law; and after paying the balance due to the United States, including interest, the surplus, if any, to be returned to the original purchaser.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. Harrison, Mr. Brace, Mr. Gordon, Mr. Davis, Mr. Lyman, and Mr. Gallatin, do prepare and bring in the same.

SALT SPRINGS AND LICKS.

The House resolved itself into a Committee of the Whole, on the report made the 19th instant, by the committee appointed to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the lands of the United States Northwest of the Ohio; and, after spending some time therein, the committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That all the salt springs and licks, the property of the United States, in the Territory Northwest of the Ohio, ought to be leased for a term not less than —— nor more than —— years.

Ordered, That a bill or bills be brought in, pursuant to the said resolution, and that Mr. HARRISON, Mr. BRACE, Mr. GORDON, Mr. DAVIS, Mr. LYMAN, and Mr. GALLATIN, do prepare and bring in the same.

CASE OF MOSES WHITE.

The report of the Committee of Claims on the petition of Moses White, praying liquidation of his claim as aid-de-camp, in the Revolutionary Army, to General Hazen, was read. The committee reported a resolution to direct the accounting officers of the Treasury to pay the claim.

Objection was made to the claim, because the commanding officer was only a Brigadier General *pro tem.*, and not in full commission, and that, even if the claim had been just, the statute of limitation had barred it; that there were a number of cases not only equal but superior in claim to the present, which had been opposed on the ground of the statute, and, therefore, this could be no claim under the present law and usage, since no law allowed any supernumerary aid; and if supernumerary aids were appointed, they never had extra pay.

On the other hand, it was contended that the claim was just; that application was made long since for a settlement of this claim; that others had been allowed their pay under similar circumstances; that the only objection made at the Treasury was that the commander held the office by brevet, and not by commission; but it was essentially the same. If the claim was ever just, and the services actually performed, it ought to be granted; that there was no danger of establishing a precedent in this case, because there was no claim precisely of a similar nature.

The Committee of the Whole disagreed to the resolution, 37 to 48; which disagreement was reported to the House, was taken up therein, and agreed to—48 to 33.

THE FISHERIES.

The House resolved itself into a Committee of the Whole, on the bill to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes therein mentioned.

In the Committee of the Whole, it was agreed to fill the blank of years with *ten*. The Committee rose, and reported the amendment.

Mr. GALLATIN thought it would be proper for Congress to examine into this subject before they proceeded too far, to know whether it was an object worthy of notice or not; and, further, to bring it into some proportion to the tax on salt, the additional duty on which was prescribed to about two years from this time.

Mr. SEWALL thought that there was a necessity of giving this time to the law, in order to remove the discouragements under which fishermen had labored, and which alone could encourage the trade to be carried on to any extent, because this law was meant to operate as a bounty; but he did not think the amount now paid as a bounty was equal to the single duty on salt.

Several gentlemen spoke on this subject. At length the amendment was carried, 40 to 26, and the bill was ordered to be engrossed for a third reading.

TUESDAY, February 25.

Mr. GALLATIN proposed the two following resolutions, which were agreed to by the House:

Resolved, That the committee appointed to prepare and report a bill to amend an "Act providing for the sale of the lands of the United States Northwest of the river Ohio, and above the mouth of Kentucky river," be instructed to prepare and report a bill appropriating a tract of land sufficient to satisfy the claims of the Nova Scotia and Canada refugees, and designating the mode in which their respective bounties in land shall be located.

"*Resolved*, That the Clerk of this House, with the approbation of the Speaker be authorized to employ such farther assistance as may be necessary in his office during the present session, to be paid out of the contingent funds of this House."

THE FISHERIES.

An engrossed bill, entitled "An act to continue in force an act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein, and for other purposes therein mentioned," was read the third time, and on the question, "Shall this bill pass?"

Mr. MACON observed that he could see no reason why this article of provision should be entitled to a bounty in preference to beef, pork, and fish, which required salt in their curing, as well as codfish. It was, in fact, taxing all other species of labor in order to give a bounty to this particular one.

Mr. SMITH said that, at the first passage of this bill, it was considered as a drawback on the salt used, and, in that view, the same benefit was extended to all other salted articles of export. In the salting of beef, pork, mackerel, or herrings, a certain quantity of salt was estimated to be used in each barrel, but it was not so with codfish, and, therefore, a certain sum was supposed to be equal to the drawback. This sum very possibly operated as a bounty; but even if it did so, and was brought forward with that ostensible design, Mr. S. considered it very proper; for how, he asked, could a navy be supported if there was not some nursery wherein to increase the number of our seamen?

The bill was then passed—yeas 51.

LANDS FOR MILITARY SERVICES.

Mr. HARRISON from the committee to whom were referred several amendments proposed by the Senate to the bill for regulating the grants of lands for military services, &c., reported their agreement with some of the said amendments and their disagreement with others.

The House took up the report and agreed to it. The Senate afterwards asked a conference thereupon, which was agreed to, and three members appointed on the part of the House.

GILBERT DENCH.

Mr. OTIS presented the petition of Gilbert Dench, praying pay for certain contracts which he had fulfilled during the war. A motion was made to refer it to the Committee of Claims.

Mr. D. FOSTER wished to know why it was to be referred to that committee. This petition had several times been referred to that committee and reported against. Why the committee should so repeatedly be harassed he could not tell.

Mr. OTIS said he had no hidden motive in making his motion; it was impossible for him to know the particulars of the claim; however, he had been informed that some new facts would come before the committee if it was submitted to them.

The petition was not referred, 26 only voting for it.

CASE OF JONATHAN ROBBINS.

The House having resolved itself into a Committee of the Whole on the Message of the President respecting Jonathan Robbins, a short debate took place whether the Committee should take up the business of the resolution first proposed by Mr. BAYARD, or those subsequently offered by Mr. LIVINGSTON. Mr. BAYARD seemed inclined to withdraw his motion, but the Committee seeming of opinion that both resolutions were within their jurisdiction, and that they might proceed on either, the question was taken whether the Committee would proceed on the resolutions of Mr. LIVINGSTON, and carried in the affirmative. Messrs. BAYARD, RUTLEDGE, OTIS, &c., voting in favor of the question, and Messrs. LIVINGSTON, NICHOLAS, &c., against it.

Mr. LIVINGSTON then entered upon an argument in support of the resolutions which he had some days before submitted to the House, and which now were taken up. Soon after he began the discussion, he was proceeding to read a deposition of Jonathan Robbins, and certificates accompanying the same, to prove himself a citizen of the United States, in which the deponent swore, before the court of South Carolina, that he was born at Danbury in the State of Connecticut, and that he was impressed from on board the American brig Betsey, by the crew of the British frigate, about two years before, where he was detained contrary to his will until the mutiny occurred.

Mr. BAYARD opposed the reference to a fact so incompetently authenticated as the report of a case upon newspaper testimony, especially when, if it had been the desire of the gentleman to have introduced it as evidence, it was extremely easy to have procured the record of the court before he proceeded on his allegations. If such evidence as this was to be admitted, other and perhaps more important evidence might next be introduced to impose on the Committee. Besides, it certainly must be looked upon as *ex parte* evidence, which it was impossible to repel. Mr. B. submitted to the Chair whether it would be in order to admit any fresh evidence to support the resolutions, when all the documents which had been asked for, and which had come to the knowledge of the Executive, had been submitted to the House.

Mr. GALLATIN, on the question of order, contended for the admission: this document, he said, was referred to as authentic, in his letter. He says, "That, by the proceedings before that Judge, (Bee,) as they have been published, it appears that a seaman named Thomas Nash did assume the name of Jonathan Robbins, and make oath that he was a native of the State of Connecticut," &c. Certainly it cannot be deemed improper to refer to the identical document there mentioned. If it was proper for the Secretary of State to make the allusion, the House could take it up under the same idea. He did not think it was introduced as evidence before the Committee.

Mr. DANA said he was very sorry the gentleman had been interrupted; he could not think of admitting it as evidence, but the gentleman might read it as part of his speech, which perhaps might otherwise have a chasm in it.

Mr. BAYARD was fully of opinion, with the mover of these resolutions, that it was a very serious business; he believed there was a very serious object in view. He believed the affidavit was introduced as evidence, else why should the gentleman have taken this in connexion after he had been stating the facts contained in the Message?

It was further said that this deposition was referred to by the Secretary. Surely then it was introduced as evidence upon that authority; but how had the gentleman been assured that this was the same deposition, an extract of which was taken by the Secretary? Did it follow, that because the Secretary referred to a printed paper, that this was the authentic one? He presumed no gentleman would vouch for the veracity of this paper. The Secretary had only extracted from the document such parts as he deemed necessary for the information of the House, supposing this was the case meant.

Mr. NICHOLAS was surprised that the gentleman should oppose the reading of what he supposed the Secretary had authenticated copies of in his office. The Secretary had certainly referred to an authenticated affidavit which was published, and it was presumable this was the one. The result of this declaration must be, if the gentleman thinks the House is imposed upon by a reference to a false paper, that the Committee must rise, and the House ask for the authentic copies which may aid their decision.

But Mr. N. thought the information was sufficiently authentic; the House had asked the papers of the President; some papers were sent, and, instead of sending this original paper, he had referred to the printed report. This had never been contradicted, and had every appearance of authenticity. He really hoped that the objection would not be insisted on, and the discussion be arrested in this stage.

Mr. RUTLEDGE hoped the paper might be read, but not for the purpose for which it was introduced;

he wished it to be read as part of the gentleman's speech, but he did not think this was the proper time. He did not think the gentleman had come to that *chasm* in his speech which was supposed by the gentleman from Connecticut. The gentleman had produced facts and stated evidence, among which he was proceeding to introduce this paper. Mr. R. said he was willing to procure all the information, and that other gentlemen should also be possessed of it; on which account, when the subject was first mentioned, he moved its reference to a select committee. In that case, all the facts and every necessary light would have been procured; but it was referred to a Committee of the Whole.

Mr. Sedgwick thought, as this was merely a question of order, and as the acts and deliberations of the Committee of the Whole were prescribed, it could only have been proper to have made it an act of the House. The Committee of the Whole, he said, were limited to the documents referred to it by the House; and if they found them insufficient, it was their duty to rise and go to the House for more.

If it was the intention of the gentleman to read this as evidence, (which we must suppose was intended,) and it was not evidence, it might shed darkness, but it could not illuminate. He was surprised that gentlemen who were sitting there in their inquisitorial capacity should bring forward charges of a serious nature against two officers of high confidence, and deservedly so, in the public opinion, upon evidence which cannot be deemed authority, when, for merely asking, they could receive that which was authentic. Mr. S. said he was not afraid of the reading of any papers whatever, on any subject, because he must profess a desire to come at the whole truth; if there be a man, who possesses the public confidence unworthily, strip him of that confidence, and his power too; but do it not, sir, on a bare newspaper publication.

Mr. S. said that his reasons for opposing the reading was not because the paper was deficient of that formality which courts of justice required; he should therefore waive formalities, except the evidence should appear evidently false. But the deposition itself he believed to be perfectly irrelevant to the object of inquiry. It was not, in his opinion, material whether this man claimed to be an American citizen or not, nor was it material whether the paper in question was in the office or not. He thought the only inquiry to be whether the President had interfered with the Judicial authority, or not; and whether the Judge had been guilty of a breach of his duty in obeying the orders given him by the Executive of the United States. There was, to be sure, allusions made to a printed trial, but it was by the Secretary of State, and not by the President. He had said no such thing, and therefore he was not culpable. The only thing, he believed, which the President considered, was, what must appear a very clear and well-ascertained fact, to wit: that a ship or vessel of any Power was to be considered as within the jurisdiction of that Power to whom it belongs, and not whether the man was an American citizen or not.

Mr. Livingston said he did wish to read this paper as part of his speech; and he believed it a very material part, because it was a justification of a point which he wished to establish; he wished to show the Committee that Jonathan Robbins claimed to be an American citizen, and that he said he was impressed. This he swore to in court; and that he did so, he hoped would be admitted. He said he only introduced it with this view. Surely he could not be so far mistaken in his law knowledge as to be thought to have said that the culprit could be evidence in his own behalf. If *he did say* he was a citizen, then the matter, upon examination, must appear more serious than gentlemen would be willing to think.

Did the Speaker think it was his desire, Mr. L. asked, to criminate the man who stood so deservedly high in the public estimation? Surely the mere reading of this paper could not contribute to that crimination, since it was, with the other papers, furnished to the House as documents which were asked for by the House. The House received these papers (these among others, for to this the Secretary referred the House) to assist them in forming their judgment. If "newspaper evidence" was given to the House, (if authenticated affidavits,) who then was to blame? The House asked for all papers relative to the subject; the President furnished these, and therefore if any blame attached, it must be to him.

It was said that this paper was in the office of the Secretary of State; that this was not an act of the President; that this was a report of the Secretary of State, and that he only was answerable for it. Sir, said Mr. L., when the President says that he, in conformity to the request of the House, had ordered the Secretary to bring him the papers, and that he submits them to the House for their consideration, does he not take the act off the Secretary and appropriate it to himself? Certainly he does.

The conduct of gentlemen must appear a little strange when it is considered that a part of these papers—such as certain affidavits from Connecticut that Robbins was not born there, and a letter from the British Admiral in the West Indies, stating that he was an Irishman, and entered into the service—I say it is unaccountable that gentlemen are willing to admit this part of the report, which was never required by the House, and refuse another part which was, and of which it was the duty of the House to be informed, if information could be had. Information is sent, but it must not be admitted! Sir, this is to be considered as an act of the President; it is to be considered that this affidavit is quoted, and ought to be wholly read, since it is the part upon which we are to proceed to the investigation.

Mr. Bayard had no doubt but it was the gentleman's intention to impress the force of the facts contained in that paper upon the minds of that Committee; and to suppose it would have no impression would be absurd. It would afterwards be said that this man was admitted to be an impressed American citizen, and that he was praiseworthy in committing what would then be called

the homicide. The decision of the Committee would be much affected, he said, by the kind of evidence which was adduced. If this was admitted, it would be impossible to ascertain the extent of the principle. Other depositions may be produced—indeed, he had no doubt but the gentleman could get proof to any point which he might think it material to ascertain. In saying this, he did not mean to insinuate that any improper steps would be taken by that gentleman, but there were volunteers enough to be found who would step forward in order to answer a party purpose, and make oath of anything.

But the gentleman had now acknowledged that his reference to that paper was a work of supererogation; he now said that he only wanted to prove that the man *claimed* to be an impressed American citizen. This is admitted in the letter of the Secretary of State. Sir, said Mr. B., you are about to inculpate the conduct of the President, and of the District Judge of South Carolina; and, to do this, will you do it on the affidavit of a man at the hazard of his life, a man who could commit murder and piracy, for which he was then going to be executed? It was the last resource of the wretch himself.

Mr. B. had no doubt but the gentleman would have brought that paper as evidence; and the evidence, though derived from the vilest possible source, he would certainly have turned to serve his point. With this idea, and for the sake of consistency, (for the rules of the House would admit, in any other part of the examination, what was now admitted,) and viewing the principle as injurious, he had thought it his duty to put a stop to it in time.

Mr. Livingston supposed he should increase the astonishment of gentlemen still more when he declared that he did not believe a word of the affidavit; but he believed Nash was an Irishman, and that he entered on board and committed all the crimes charged to him. It was clear that this affidavit could not be evidence. In admitting this, he believed he did not surrender one point of the resolutions; he should prove that all which he wished to ascertain was that such claim was made to the court.

Mr. Gallatin did not consider the question to be whether this should be considered as evidence, but whether the gentleman might be permitted to read the paper—whether as part of his speech or whatsoever else. It was certainly no legal evidence; and, therefore, if a trial was holding, or if the ground was an impeachment, refusal would be proper; but upon what ground the gentleman was interrupted at this time was inconceivable, except it was to throw all possible impediments in the way of the investigation. The letter from the British Admiral to the British Consul was not legal evidence; but yet that was inserted in the report of the Executive; that was sent, no doubt, to disprove some fact which was related. What was that fact? Why, that this man laid claim to citizenship. Surely, while the gentleman was stating the facts contained in his resolutions, he had a right to elucidate those facts by reading a paper so intimately connected therewith.

Mr. G. said he did not know what use the gentleman made of this paper, but it is certainly proper to hear what he intended by the reference, before he ought to have been stopped. There certainly could be no doubt, Mr. G. thought, that the Secretary of State knew this affidavit to be authoritative, by the reference made to it. If this paper could not be read, for himself he should wish to procure further information before he should think proper to proceed.

Mr. Bayard asked where could be the necessity of proving a fact which every member of the House was willing to admit. All acknowledged that Nash claimed to be an American citizen; but perhaps the wish of the gentleman was to have additional light on this subject, on which account he introduced the deposition. But, Mr. B. said, he was willing only to proceed upon what the House knew from the documents before them, and not take a step on precarious ground. It must be well known what the gentleman wanted to get this admission for; he no doubt wished to prove that, upon his own mere suggestion, he was an American citizen, and that he was impressed—he was entitled to a trial by jury in this country, and on that account the act of sending him away was unconstitutional. This would lead to an extensive field of argument. If there was any necessity for more evidence, or to call witnesses to the bar of the House, let proper measures be taken to procure them, but let them not come forward in any other way.

Mr. Dana read the resolution first offered to the House for a call for papers relative to Jonathan Robbins; this was answered, he said, by the Secretary of State, that no requisition or proceedings had been had in that name; but he presumed allusion was made to the case of Thomas Nash, concerning whom proceedings were had in the district court of South Carolina; in that way, and that only, the Secretary made reference to the printed report. In this blundering way, Mr. D. said, the business was begun. [He was called to order.] In addition to this, he said, the proceedings of gentlemen were erroneous; but, notwithstanding that, Mr. D. said, he would gratify the feelings of the gentleman, as far as his vote would go, for him to read it, but only as part of his speech. No doubt he wished to support some point of his argument by it, and in that view he had a right to read it; but that it was evidence, he denied.

Mr. Lee said he did not profess to understand the rules of the House perfectly, but he must indulge a presumption that they could have but one grand object in view—to encourage and maintain full and fair discussion on every subject, whatever it might be, that should come before the House. That being necessary, surely a rule must be bad, indeed, that would bar a gentleman from reading anything that might tend to elucidate this subject. He therefore thought it the duty of the Committee to allow the member from New York to read this and every other paper which might enable him to proceed on so serious a charge as the one exhibited in the resolutions. Were not gentlemen fully adequate to judge what may be wrong when he

should come to the application? If he asked the papers of the President of the United States, was he to be content with those only which should come through his Ministers? That could not be the true ground of proceeding.

Suppose the gentleman should be stopped from reading what he thinks material, and the resolutions which he has introduced should afterwards be negatived, I pray you to say, sir, said Mr. L., what would be the consequence? Would not the people say that no other possible decision could be had by the House, because the Committee of the Whole laid their hand upon every effort the gentleman used to substantiate his charges? They certainly will; and no act can more increase the means of opposition to the measures of the Government.

Upon this ground he hoped the gentleman would be permitted to proceed, and the whole truth be made to appear. If gentlemen should determine it out of order, he would move that the Committee rise, in order to get hold of all the authentic papers.

The CHAIRMAN having stated his reasons, concluded with an opinion that the member could not proceed to read the affidavit.

Mr. GALLATIN appealed to the Committee from the decision of the Chair; when there appeared 39 in favor of the decision, and 48 against it.

At this point the Committee rose, and had leave to sit again.

WEDNESDAY, February 26.

Mr. OTIS again called the consideration of the House to the petition of Gilbert Dench, which was yesterday refused a reference to the Committee of Claims; he stated the claim in strong colors, and added that new evidences were to be exhibited, on which account he moved its reference to a select committee.

A reconsideration was moved by Mr. KITCHELL, and the petition was referred to the Committee of Claims.

WRECKED VESSELS.

Mr. SPAIGHT proposed a resolution to the following effect:

"*Resolved*, That the Committee of Commerce and Navigation be directed to inquire whether any, and what, regulations ought to be made in respect to vessels, goods, wares, and merchandise, wrecked on the coasts; also, of such goods, wares, and merchandise, as may be saved from wrecks and brought into the ports of the United States, and that they report by bill or otherwise."

This resolution was agreed to.

CESSION OF CONNECTICUT.

Mr. BRACE called up the following resolution for consideration, which he presented on the 18th instant:

"*Resolved*, That a committee be appointed to take into consideration the expediency of accepting from the State of Connecticut a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut, and that they report by bill or otherwise."

The resolution was agreed to, and seven members appointed accordingly.

CASE OF JONATHAN ROBBINS.

Mr. DAVIS moved that the Committee of the whole House be discharged from the further consideration of the resolutions proposed by Mr. LIVINGSTON and Mr. BAYARD, on the affair of Jonathan Robbins. The small progress, Mr. D. said, which was made yesterday in the discussion, fully convinced his mind that nothing at all would be done in it; besides, were he convinced that the subject would be impartially conducted, he did not know of any possible good that could arise from the adoption of the resolutions. If there had been any error in the proceedings of the Executive, he conceived that error would correct itself. If there was an improper interference, he was certain it could not have arisen from improper motives, and therefore he sincerely hoped he should not be called upon to give an opinion on the subject. Nor, on the other hand, was he at all prepared to compliment the Executive, or any officer of the Government, for having done what he thought to be right. If he had done right, it was his duty. He did not think it of any great importance; but, most assuredly, if the argument was extended, it would be made a case of much importance. It was better, however, to let the case of Jonathan Robbins sleep in the Committee of the Whole, where it then was. He was not prepared to criminate, nor was he prepared to applaud.

Mr. D. did not think the evidence before the House was sufficient to form a decision upon, and he professed himself unable to make up a determinate opinion; but, if he could form any, the deficiency of evidence furnished must raise his suspicion. Reference was yesterday made to a paper—it might be authentic or it might not—but it was impossible to say to what papers gentlemen might be disposed to refer; and for gentlemen to sit there as judges, having papers read, the authenticity of which it was impossible to know, was to judge in the dark. He hoped that if the House were not prepared to discharge the Committee of the Whole, they at least were prepared for a call for such authentic papers as could be procured; for, from the present documents, it was impossible to form a correct judgment upon this very disagreeable and irksome business. He had no doubt but many gentlemen had formed their judgments one way or the other, but he had not.

Mr. RANDOLPH said, that no gentleman had a higher respect for the motives of the gentleman from Kentucky than himself; but, however disagreeable it might be, he must differ from him in his present opinion. He really hoped the gentleman would reconsider the motion he had made, and not stop the gentleman from New York in this early stage of the business. If there were any defects in the papers, and their authenticity was questionable, it must not arise from the gentleman from New York, but from those whose

duty it was to furnish all the facts relative to the subject. He was obliged to read a printed paper, because those with whom the authoritative copies are have not thought proper to furnish the House with them. He hoped, if a stop was put to the proceedings, it would not be to discharge the Committee, but to call for authentic copies of all the papers within the reach of the Government. It must be acknowledged that the man whose case the House are considering did put in his claims to citizenship, and to the protection of his country on that account. If that acknowledgment is refused on account of the paper which has been produced being a newspaper, reference must be made to what is within the reach of the House—more authentic papers.

The gentleman had supposed that most of the members had made up their minds on the subject without other papers. Where he procured that information Mr. R. could not tell, but certain it was that his mind was not made up; he professed to be still in a state of incertitude. He therefore was sorry the gentleman had not delayed to make his motion until it should be known by the House whether the gentleman from New York had any further evidence to adduce. Could he undertake to say that his mind would not be made up, and the subject appear to him in a very different point of view, after a full and fair discussion?

Mr. R. thought the very reason which the gentleman had given for his motion would operate as a strong argument against it; with him it certainly had that impression. He thought a discussion was more proper to remove incertitude from the mind, than that, because such a state existed, the Committee should be discharged. The public mind, he believed, was very uneasy upon the subject, and this state of disquiet was not to be eluded; he therefore ought to have withheld his motion, that a discussion might be had, from which the people could draw their deductions. If, after all the evidence that was to be produced, he could draw a conclusion similar to that expressed by the gentleman, Mr. R. said he would cordially join with him that no expression ought to be made by the House without being well supported by facts.

Mr. H. LEE considered the motion would have the complete effect any gentleman could wish whose desire it was to reprobate the conduct of the Administration of our Government. How could the motion be necessary—how be useful? If they were to ask more evidence, said Mr. L., I would vote for it to be produced; they have brought the subject before the House—let us see it in the purest colors which it can be placed in. We are ready to meet them here; we are willing they should have every evidence that can be obtained to elucidate their charge; but let not the Executive be hung up to reproach without a trial; let not suspicion be encouraged, which must have all the effects of a substantiated charge. I wish them to go on with the discussion, that all the truth may be disclosed, and every fair light be given which the case will bear; for now the people of the United States have their eyes fixed upon our proceedings on this important question.

Mr. MACON was in favor of the motion. If the Committee of the Whole was not to be discharged, he hoped at least the subject would not be postponed till the public business of the session was over; there were many public bills, he said, that must be passed. The House was called upon to judge with almost no testimony, and yet upon this uncertain ground, perhaps a whole week might be spent of the most precious time of the House; for if the House was to rise at the time proposed, the loss of this time would certainly be felt.

As to the impression it would leave on the minds of the people, they had as many facts to judge from as the House, and they certainly would form an opinion, whether the House did so, or not. Gentlemen were very much mistaken, he said, if they undertook to lead the people; they would think, and they would show what their judgment was when a proper time came for that purpose. The time the people would take to show their approbation or disapprobation of the measures of the Administration was at elections, and then they would do it.

Mr. SMITH said, if the object of the motion was to get better testimony, he thought it a very proper one; the House certainly ought to be possessed of the documents of the District Court of South Carolina, on this case, in an authentic form, and not from newspaper information. He professed himself to be in the precise situation of the mover, and, if called upon to vote without more evidence, should be at loss to know how to vote.

Mr. DANA was against the postponement of the subject, or the rising of the Committee. It was to be recollected that the business had assumed its present shape only in consequence of the zeal of the gentleman from New York, and his coadjutors, to censure the Executive. On the 7th of February, it was committed to the whole House; contrary to the opinion of a number of gentlemen, who wished the facts investigated by a select committee; thirteen days then elapsed before he had prepared his resolutions—resolutions not calculated to make an inquiry into the conduct of the Executive, but expressive of the most pungent censure upon his conduct. These resolutions were produced upon the papers which, at the desire of those gentlemen, were submitted to the House. The only question then, is, Do the papers upon which those resolutions are predicated warrant the censure contained in them, or not?—It certainly would be a high reproach to the very idea of a public inquisition to admit more evidence upon those grounds. Still, however, let gentlemen go on in their heterogeneous proceedings, the House would have the wisdom justly to appreciate the various attempts made to clear themselves of a predicament in which their over-arduous attempts to censure had thrown them.

Mr. SHEPARD thought the best way would be to let the resolutions take their course; they must be debated sooner or later, and the sooner they were disposed of the better. He was sorry they ever had been introduced in the House, but, as they were, he hoped no postponement would take place.

Mr. Livingston conceived it his duty to answer the observations of the gentleman from Connecticut, (Mr. Dana,) as to the resolutions being founded upon the facts then before the House. He did not think the facts were precisely sufficient to warrant every idea contained in the resolutions. When the original call for papers was agreed to by the House, he had hoped that something more authentic than newspaper testimony would have been referred to by the Executive; and upon that he was now compelled to act, if at all. The gentleman has said that my zeal and that of my coadjutors, to censure the Executive, has brought us into this situation. Who, sir, I would ask the gentleman, are my coadjutors? That gentleman himself was my coadjutor, and every gentleman in the House, because the resolution was adopted. The House directed the inquiry, and every gentleman must therefore take the burden, in part, with me. It was upon the suggestion of the notoriety of the facts that the inquiry was made, and now we are about to enter into the inquiry upon the facts with which we are furnished. We never can act but upon the evidence we have to guide that action. If the facts contained in the resolutions cannot be substantiated, if they shall fail to justify the conclusions we mean to draw from them, we certainly cannot be worthy of blame for not possessing more. I consider the affidavit yesterday produced as only supporting one branch of the conclusion that may be drawn from the whole. Whatever gentlemen may say as to the folly or hasty zeal of the resolutions, I can assure them that they are the result of many days of most serious reflection. They were not drawn in haste, and I am not afraid to say that they can be well substantiated—every fact contained in them. I am sufficiently prepared to proceed, and, therefore, hope this motion will be negatived, and a calm and deliberate investigation be had. If the deductions I shall make will not be satisfactory, then let it drop. I am, however, well satisfied of their force.

Mr. Craik said, that very early in this business he thought the House were entering into it very improperly, either having nothing at all to do with it, or else taking wrong measures, if they had; he thought then, and was yet of opinion, that if the object was to impeach the President, measures ought to have been taken accordingly. He never did look upon the House of Representatives as having either the power to censure or to approbate the conduct of the Executive, and, therefore, he equally disapproved of the resolutions of the gentlemen from New York and Delaware; and, upon that ground, he felt strongly inclined to vote with the gentleman from Kentucky for giving the whole subject the go by, and getting clear of it by any possible means.

The motion being to discharge the Committee of the Whole from both questions, was giving an opinion upon neither the one nor the other; and, therefore, it could not be received as a censure, agreeably to the apprehensions of the gentleman from Virginia, (Mr Lee.) Mr. C. believed the people of the United States were too wise and too intelligent to form unjust conclusions upon the conduct of the House on this subject. They had the whole subject before them, they could judge, and they had a right to do it; but the House had not, except the avowed object was impeachment, which was not the case. The House had nothing to do with it, and therefore they ought not, in this unnecessary way, to spend time upon it.

Mr. Harper agreed with the gentleman, that it would be folly for the House to spend time in useless discussion, which could lead to no decision; but, viewing this resolution as he did, he must conclude it of more importance; he thought it the direct road to an impeachment of the President of the United States, and, if so, surely it must appear important. The resolution declared, in express terms, that the Executive had exercised unconstitutional powers—one of the most dangerous crimes that he could commit. If he had so exercised his power, the inevitable consequence must be, that the President of the United States must be impeached by this House. Then, how could any gentleman say this was a trifling question, and one with which the House had nothing at all to do? Certainly no question can be more important.

If, as it respected the motion of the gentleman from Delaware, no motion had been made to criminate the Executive, he should not think it right to approbate his conduct; he should, in short, have been of an opinion that the House had nothing to do with it; but, it having been made, he should consider it very disrespectful not to express a sense of the propriety of the Executive conduct. He was willing, nay, desirous, of meeting the charge with all its terrors, and never would shrink from a decision on it. He presumed gentlemen had a meaning in what they did, and if they had any meaning, it must be that the House ought to proceed against the Executive. He did not think, however, from the total evidence which appeared, that there was one idea in the resolution but ought to be scouted with disdain from the House. He wished to have an opportunity of showing to the world that the House disdained to look with unconcern at a serious and unfounded charge upon the supreme Executive of the United States. He wished to give an opinion upon these charges, and treat them as they merited.

Mr. Rutledge regretted that he could not join with his friend from Maryland, (Mr. Craik,) in thinking this consideration useless; he believed the attention of the people had been called to view this subject, and they were anxiously looking for a decision in some way. Neither did he think, with his honorable friend, that the House had nothing to do with it, because no impeachment could grow out of it. It was impossible to say what the gentleman meditated in his resolutions, but one thing was certain, if the gentleman had wished to promote an impeachment he could not have taken a more direct means for it, if the resolutions should be carried. He thought the friends of the Administration would act a very unfriendly part thereto, if they should agree to smother the business in this stage. The minds of the people had been

raised to the highest pitch of expectation; they had been told, in certain public prints, that it loudly called for the interference of Congress; they had also been told, by an honorable member of the other House, that Congress ought to interfere. Attempts having been made to lead the public mind astray, and the House having proceeded so far on resolutions calculated to procure the object, it would be extremely wrong not to remove that disquiet by a suitable proceeding. It would not be useless to rescue the Executive from the very serious charges which had been thrown on him, and prove to the world that his actions had been consistent.

Mr. Kitchell thought no good could arise from the investigation of this subject, because he did not know what was to be done in it, let the decision be what it might. The gentleman from South Carolina (Mr. Harper) wished to have an opportunity of showing that every part of the resolution was built on false ground. Every gentleman in the House was not so fond of speaking nor of hearing as was that gentleman, and he hoped, merely on that account, that the House would not spend time on what (in his opinion) could not possibly lead to impeachment. What effect could a discussion have, but to show the world that there were *parties* in the House, and to raise a rancorous disposition? He did not know what there was in the resolution that could lead to an impeachment, nor did he know what the House, in their censorial capacity, had to do but to impeach. He believed it out of the power of the House to applaud. In short, he did not think they had anything to do with it.

Mr. Nicholas hoped the discussion would proceed. Although there might not be sufficient ground on which to impeach the Executive, he could not agree that, therefore, no inquiry ought to be made into his conduct; there might be an error in his conduct, and yet no impeachment be necessary to be raised out of it; and, if so, it would be extremely wrong to suffer it to go out to the world without a decision, after the subject had once been taken up by the House. Where there might be no bad intention or wicked design, the action might be of a dangerous tendency, and proper to be inquired into, in order to express an opinion thereupon. Mr. N. said he was well pleased that his opinion, that the motion ought to be negatived, accorded with that of the gentleman from South Carolina, because it would afford him an opportunity of showing what he said he could show.

Mr. Bayard had no doubt of the competency of the House either to impeach, to censure, or to approbate the conduct of the Executive, and of course both the resolutions were in their power.

Several gentlemen had intimated that the authentic evidence and the whole of the documents were not before the House, and that the Executive Department was to blame for the deficiency. It appeared that the gentleman himself had forgotten the import of his resolution; it called for such documents as might be in possession of the Department of State. Now, what could possibly be in possession of that Department? The President of the United States had his duties to perform, and the Judge of the district his duties; each had their separate documents; and, as neither interfered with the other, therefore, it could not be expected to be in the power of the President to furnish the papers belonging to the courts of South Carolina, any further than they came within the joint duties of both. Agreeably to treaty, the British Consul made a requisition for the person; a copy of this, and the several letters and instructions, were sent to the House, but it was not in the power of the Executive to order the Judge to furnish him with a record of the proceedings; he was not bound to furnish it if the President had called for it, and no doubt he had furnished the House with every paper in his possession.

The idea in the resolutions being to criminate the Judge as well as the Executive, Mr. B. thought he ought to have had an opportunity to furnish the papers of his department, and they ought to have been called for before his conduct was so deeply implicated.

Mr. Otis said, when first the motion was made by the gentleman from Kentucky, he felt for a moment inclined to lean to it; the motives of that gentleman appeared to be so candid and liberal, that, for the moment, Mr. O. confessed, his feelings got the better of his reason. But a short reflection induced him to change an opinion thus hastily formed, and he felt satisfied that to vote with him, would be to display, in the conduct of gentlemen who wished to support the Administration of this country, worse than censure. He joined that gentleman in regret that it had gone so far, but certainly it was a subject of the most irritating nature possible: a charge the most serious; a breach of law by the Executive Magistrate, who is bound to support it and see it carried into effect. It is certainly a charge of much importance, and however disagreeable it might feel to him, Mr. O. said, he must vote that every argument should be used that could possibly tend to substantiate the charge, that nothing of truth might be hidden.

An insinuation was thrown out that the President had suppressed part of the information which ought to be had on this business. Lest this should take hold of the minds of gentlemen he would observe that the President, in his Message, says "I 'have directed the Secretary of State to lay be-'fore me copies of the papers intended, which I 'now transmit to Congress." If, therefore, there is any blame, it is not attached to the President, but to the Department of State: but it does not appear that the Secretary of State has any other papers in his possession than those the House are furnished with. This may be inferred from the readiness with which he furnished the papers he has given; he says he has no papers respecting any person of the name of Jonathan Robbins. "but 'by the proceedings before that Judge (Bee) it 'appears that a seaman named Thomas Nash, the 'subject of the British Minister's requisition," &c. He having therefore been asked for papers relative

to Jonathan Robbins expressed his willingness by furnishing what he supposed was intended.

Mr. O. said he did not know to what points the evidence required by the gentleman from New York could apply, except it was to that of his being an American citizen, and of his being impressed. An affidavit was produced to prove these facts, but it would be found from an examination of the documents that nothing relating to those points was in the office of the Department of State; for the date of the affidavit of Robbins is the 25th of July, but the order of the Secretary of State, bears date the 5th of June, so that no papers as to his claim can be in the possession of that Department. Mr. O. thought the documents before the House contained everything that was important to the point.

Admitting the position gentlemen had taken to be true, which he positively denied, but admitting that the President had given an opinion upon a judicial question, it was only as respected the delivering up of the man, which was only in fact an Executive duty; but if the evidence should prove insufficient to support the charge exhibited against the Executive or Judge, he was certain that the gentleman ftom New York would rejoice as much as himself to find the charges unfounded, and the character of those gentlemen beyond blame.

Mr. CRAIK was sorry that gentlemen who advocated this motion should be charged with an opposition to the Administration of Government, he believed his conduct had herefore evinced a different line of conduct. He still denied that the mode taken by the resolution could lead to impeachment. It certainly did contain a very great censure, and one which the House had no authority to inflict.

Gentlemen had supported their resolution upon the ground of the necessity of the various departments of the Government being kept distinct, but the very object of the resolution was a dereliction of that principle, since it exemplified an interference on the part of the House with a Judge of the United States, and with the Executive of the United States. When the House undertook to decide upon Executive or Judicial acts, and call their conduct into review, before them, not with a view to impeach but to give a severe censure, they certainly interfered with the separate powers of those departments, which in his opinion was setting a very dangerous precedent. He thought it ought not to be in the power of any member to lay such a resolution on the table, or, if it was laid there, that it ought not to be discussed, unless it was found to contain principles over which the House had power. It should not be in the power of any member to call the attention of the House to what could not have any good effect, but might have a very dangerous one. The power of impeachment by the Constitution was not a power to inflict punishment, it was only a power to investigate facts to be tried by another tribunal; the House were not to judge, they were only to charge, but by this proceeding they had taken upon them to consider of the propriety of punishing as well as charging; for most assuredly to censure, to injure a man's character, must operate as a punishment.

Mr. GALLATIN considered the motion to be grounded on two ideas; that there was not sufficient foundation for the House to act upon, and therefore that it was necessary to discharge the committee, or postpone the subject for want of further evidence.

It is clear, said Mr. G., that the evidence is not sufficient to impeach the District Judge of South Carolina. If an impeachment of him was the object, it would be impossible to carry it forward without an authoritative copy of the record of the court; but if there was no intention to impeach, he did not think there was any material evidence wanted in order to decide upon the resolution, since it only meant an implication of censure upon the Executive and the District Judge, and not impeachment.

The only business being to consider of the propriety or impropriety of censuring or approving the conduct of the President and the Judge, all the material facts were before the House. If any censure was due to the President, it was on account of the opinion and advice he expressed by his letter to Judge Bee. This letter was before the House, and nothing more could be wanted to form the resolution upon; the fact was sufficient to form a decision upon. There could be but one thing wanting, and that was the original letter of the President to the Secretary of State, instructing him what to write to Judge Bee, and this could not be requisite if gentlemen would not say the letter of the Secretary perhaps did not contain the precise opinion of the President. If there should be such an objection, he should certainly wish the House to possess the document. However, he concluded that no such objection could be, since the Message of the President contained a full acknowledgment of every sentiment contained in that letter.

Mr. G. agreed there was at first sight some weight in the sentiment expressed by the gentleman from Maryland, (Mr. CRAIK,) that the House had only a power to impeach but not to censure; but certainly, when it was considered that an act might be committed without any ill motive, and yet the act be injurious, it could not be the subject of impeachment, but it might be of censure. The same act committed with a criminal motive would be impeachable, which without it would be of a nature not to admit of it.

Again: Mr. G. thought that though the House might have ground whereupon to censure, they ought not, at any time; but they had exercised that power. They had in a number of cases approved of the conduct of the President, and if the act of approbation had been done, they surely had as much power to disapprove and censure.

As to the irritation that was apprehended from a continuation of the discussion, that consideration would not induce him, Mr. G. said, to vote with the gentleman from Kentucky. If there was any irritation to be apprehended, it must come from those gentlemen who denominated themselves exclusive friends of the Administration;

from those who presumed to arraign all the measures of their opponents, and who declared that they were disposed to support, not only that measure, but every measure of the Administration.

A number of very improper epithets had been thrown out as it respected the resolution, and certainly the distinction must be considered very narrow between those resolutions and the supporters of them; but it was too frequent for those great supporters of the Administration to use high tones, and if they choose to do so, let them. Mr. G. said he was not afraid of any injury accruing from the high ground they had assumed to themselves.

The question was then taken on the motion to discharge the Committee of the Whole from the further consideration, and negatived—yeas 14, nays 76, as follows:

YEAS.—Theodorus Bailey, John Condit, William Craik, Thomas T. Davis, George Dent, Joseph Dickson, Jonathan Freeman, Samuel Goode, William Barry Grove, Aaron Kitchell, James Linn, Nathaniel Macon, Thomas Pinckney, and Samuel Smith.

NAYS.—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, Phanuel Bishop, Jonathan Brace, John Brown, Robert Brown, Samuel J. Cabell, Christopher G. Champlin, Gabriel Christie, Matthew Clay, William Cooper, Samuel W. Dana, Franklin Davenport, John Dawson, William Edmond, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Abiel Foster, Dwight Foster, John Fowler, Albert Gallatin, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Andrew Gregg, Roger Griswold, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, William H. Hill, David Holmes, James Jones, Henry Lee, Silas Lee, Michael Leib, Samuel Lyman, Matthew Lyon, Edward Livingston, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, John H. Nicholson, Abraham Nott, Harrison G. Otis, Robert Page, Leven Powell, John Randolph, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, John Smilie, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, Abram Trigg, John Trigg, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

INTERCOURSE WITH FRANCE.

A message was received from the Senate informing the House that they had agreed to the bill further to suspend the commercial intercourse with France, with sundry amendments.

The bill was taken up, when Mr. MACON moved that the consideration of the amendments be postponed until the first Monday in December next. He observed that this bill, in the shape it passed the Senate, was so fatal to the interests of the Southern States that, every opportunity he could meet with, his duty impelled him to take measures for its destruction.

The motion was negatived.

The first amendment proposed by the Senate was to strike out a permission granted in the bill to citizens of the United States now residing in the French Republic, to enter with vessels and property, bona fide theirs, into any port of the United States, previous to the first of October next.

After the question was stated and put to concur with this amendment, Mr. LIVINGSTON was perceived to be on the floor. The SPEAKER decided that he had risen too late to offer his sentiments; however, by universal concurrence, he proceeded to state some objections to the amendment, and was answered by Mr. OTIS, when the question for concurrence was put and carried—yeas 50, nays 36.

The second amendment was to strike out the tenth section, in the words following:

"In case the President of the United States shall deem it necessary to employ a Consul, or other agent, to repair to and reside at any place within the territories of the French Republic, or any of the dependencies thereof, with which he may deem it expedient, or may contemplate to renew a commercial intercourse, pursuant to the fifth section of this act, then such Consul or other agent shall and may be allowed an annual salary not exceeding $3,000, and shall be prohibited and wholly restrained from engaging directly or indirectly in any commerce or traffic whatever, during his continuance in office."

This question caused some debate, but it was at length carried that the section should be struck out.

The House then adjourned.

THURSDAY, February 27.

Another member, to wit: JOHN SMITH, from New York, appeared, produced his credentials, was qualified, and took his seat.

CASE OF JONATHAN ROBBINS.

Mr. DAVIS said, as the House had yesterday thought proper to negative a proposition to discharge the Committee of the Whole from the farther consideration of the business, and as one great motive for that motion was the incompetency of evidence before the House, and as he knew it was in the power of the House to procure that evidence by a proper application, he hoped gentlemen would now indulge him in the adoption of the following, which he moved, viz:

Resolved, That the President of the United States be requested to direct the proper officer to lay before this House a copy of the proceedings of the court held in the district of South Carolina, in the case of Thomas Nash, calling himself Jonathan Robbins.

Mr. BAYARD said, if he was persuaded, or if the gentleman could convince him that there was any particular evidence in the hands of any officer that would tend to throw such light as to give the least explanation to the case, he certainly would be willing to accord with the resolution; but he believed every necessary fact was before the House, and this had been acknowledged by several gentlemen. If the object was to prove that Nash was an American citizen, and that he was impressed, that could not be necessary as it respected the resolutions of the gentleman from New York, for that gentleman himself had acknowledged that he believed no such thing, but that the whole claim was falsehood. Would the gentleman, then, inform the House what point he

wished to ascertain, or in what he expected additional proof? He wished information, farther, who was the "proper officer" to whom reference was expected to be made. There are but two officers at all in view, one is the Secretary of State, the other the District Judge of South Carolina; the gentleman could not suppose that the Judge would be able to transmit the records of that court previous to the adjournment of the House; and if it could be obtained, no evidence to the point could be expected from him. If, on the other hand, it was meant to call on the Secretary of State, it was not to be expected, from the nature of the case, that any more documents were in his hands than those already furnished; he had given copies of the correspondence and requisition, which it might be fairly inferred, from the nature of his office, was all of which he could be possessed. But if any gentleman doubted this fact, he could apply to the office of the Secretary of State, from whom he could procure whatever was in his possession.

If it was the intention of the House to close this very disagreeable business in the present session, they must negative the resolution and let the discussion go forward. The gentleman who brought forward the resolution ought to have been provided with every document that was necessary to support the charges, before he suffered them to appear. However, he did not think but the gentleman who proposed the resolutions thought his grounds were quite sufficient to support them.

Mr. S. Smith was in favor of the resolution. He considered himself as filling the character of judge of the case, and as such he was inclined to think, from the documents which were laid before the House, that there was other papers, which were not yet brought forward, relative to the judicial proceedings of South Carolina, that would have a considerable effect on his vote. He said there was a paper which he had seen published which ought, in his opinion, to be in the possession of the House; he meant that wherein Jonathan Robbins swore he was an American citizen, and as a proof of it produced before the court a notarial certificate of New York, the date of which went to corroborate the fact. He also swore he was impressed. If this certificate was before the House, gentlemen would be able to compare the date of it with the declaration made by Admiral Parker, and perhaps that comparison might produce conviction some way or other. These he thought very important, if it was desirous to prove the man an American citizen. This was certainly the duty of the Judge to ascertain, but it did not appear whether he paid attention to it, or not; however it was very presumable that he did not. Mr. S. declared he should be at a loss to go forward in the business without these papers, if he was to decide upon the whole truth.

Mr. Nicholas said he always believed that the testimony was incomplete, but when he heard a gentleman get up and mention particular testimony which he considered so important that without it he should not know how to vote, whatever Mr. N. said might have been his former satisfaction as to the establishment of the points, he certainly must now be inclined to grant gentlemen every point of evidence that they should think necessary, if within the reach of the House.

One particular piece of testimony had been mentioned, viz: that the man had filed an affidavit that he was an American citizen and was impressed on board a British man-of-war. Could any gentleman pretend to say that no inference might be drawn from this source and the concomitant facts? The gentleman from New York, to be sure, had declared his satisfaction with the facts that had been produced to the House, but did the gentleman from Delaware know that this was the case with any other gentleman in the House? That gentleman's conclusions and impressions were not to be taken as the opinions of others, nor were others obliged to be satisfied because he was; and therefore to couple others in a measure to which they were not privy, and to ascribe opinions to them which they had not expressed, was at least unfair.

Some gentlemen might feel satisfied with what had came out since this unfortunate man's death, but that could be no rule for others. As to this part of the papers, Mr. N. could by no mens understand or conceive for what they were collected and sent to the House—except, indeed, it was to quiet the minds of some gentlemen who thought that the measures of the Government were too precipitate, in their having judged the case without proof. That certificates should be collected respecting this man after his death, and when he could not possibly appear to contradict them, or to adduce contrary evidence, was an insult to the common understanding. Suppose this man had claimed to be an American citizen, and the Government had known it, he would ask gentlemen how they would justify an act done when no such evidence was known to exist as was now presented from Connecticut? What does it amount to, but that there is a chasm in this business which wants to be supplied? It might be supplied to the satisfaction of some gentlemen, Mr. N. said, but it was by no means so to his. Suppose, as was observed before, the certificates had proved the man to be an American, what could gentlemen have then said? From the present state of information, every gentleman must acknowledge it a matter of doubt, and being so, it ought to have been searched into; this doubt might probably be removed by a reference to the Judge; but the record of the court would prove another thing, and one which the gentleman who moved the resolutions expressed his intention to dwell much upon, that is, whether the Judge had caused him to be arrested, and intended him for trial in the Circuit Court of the United States; and whether the Judge had taken upon him to supersede, not his own jurisdiction, but that of the court over which he presided, in the delivery of this man to the British agent. For his part, Mr. N. said, he had no doubt of the jurisdiction of the United States upon this man's trial, and that it was a departure from justice to deliver him up to a foreign tribunal.

Upon a review of these reasons, he must conclude that more evidence ought to be had, if more

evidence could enable the House to make a better investigation, and more was attainable; for, although the gentleman from New York thought the business ripe for discussion, he could not say it was, and therefore thought it his duty to vote for the motion.

Mr. Otis said, he should not, for himself, have the smallest hesitation, if that resolution pointed to a particular object, or to a particular officer, who might be under the direction of the President, to agree to it. If the gentleman would modify his motion, so that the President of the United States might be requested to instruct the Secretary of State, to lay before the House those papers, he should not vote against it. But he thought it his duty to declare that the Secretary of State had received no further authentic or other transcript than he had furnished to the House, of the judicial proceedings on this subject. Mr. O. said he had received this information from the Secretary of State in answer to an inquiry of that officer, whether he had any such documents. But in the present form of the resolution he could not agree to it. If the motion was adopted, the question would be, who was the "proper officer?" Even if it was to be some officer under the direction of the President, the President had already furnished the House with every paper within his power. If the "proper officer" meant, was the Judge of South Carolina, Mr. O. would say, that the Executive could not with propriety furnish it, because it would be to all intents an interference with the Judiciary department. He did not think that the President had any right to *demand* the documents of that court. He thought the House were fully competent to send to that District Judge, ordering him to lay before them all the papers they should think necessary; but then the question would be, were the House ready to consent that the proceeding should be postponed until such an application should be made, or, in short, till the conclusion of the session? Besides, to ask for documents which would be made use of injuriously both to the Executive and to the Judge, was a measure which gentlemen who supported the resolutions of the gentleman from New York, could have no right to expect from gentlemen who could perceive nothing improper in their conduct.

If then it be true, of which Mr. O. thought there could be but little doubt, that the judicial proceedings of that court were never before the Executive, whether the Judge had done wrong or not, he, and he only, would have to answer, and not the President. The conduct of the President grew out of the proceedings of the court; where then could be the propriety or justice of hanging up the President in effigy, and there suspend him until the next session of Congress, subject to the thousand alarms, surmises, and reproaches of the people, which must carry with it the whole object of the censure? Every man might have had access to those papers; the Judge never would have refused any man a copy of all the proceedings that might tend to elucidate a subject which they may think was deficient without it An honorable gentleman had lately written a pamphlet on the subject; he might have procured the proceedings of that court, if he had thought them of any service, and so might the gentleman from New York. Should, then, the proceedings on this business be suspended merely for the want of evidence, which it was in the power of every gentleman to have brought forward? Gentlemen had, with very great deliberation, brought forward this accusation before the House. If it was in the power of every gentleman to refer to new evidence at every stage of the business, after the accusation was grounded only on the documents before the House, the evident effect must be to procrastinate beyond all bounds a business which the honor of our Government requires should be immediately decided. In justice therefore to the President, he conceived himself bound to vote against the resolution.

Mr. Dana thought this a most extraordinary resolution indeed. Was the President of the United States the clerk of the court, to keep the records of it? What had the President to do with the proceedings of that court? It was certainly a total departure from all the forms of judicial proceedings to suppose a thing of the kind. The gentlemen must certainly have mistaken the situation held by the President, or they would never have made such a vast departure from order and propriety of proceeding. The President is not the public accuser; he is not to be called upon for papers with which he has nothing to do. When he found gentlemen outraging everything that belonged to judicial propriety; when he found them stumbling into error after error, and departing totally from all jurisprudential propriety, Mr. D. said, he could not avoid rising to oppose it.

So much for the form; he believed it totally wrong, and therefore could not be adopted. But, in addition to this, the House would render themselves more ridiculous than they now appeared, by the adoption of measures which must make a matter appear important, that in itself was unimportant. Several gentlemen proceeded with the same zeal as though an American citizen was concerned. This was not the case; it was notorious to every man that this Nash was a foreigner; of this the House was fully apprized by respectable testimony. This man contended that he was born in Danbury, but the certificate of the clerk who kept the registers for a number of years back, to whom the annual list of all the births was transmitted, and by him registered, and also the certificates of a number of old residents in that town, had incontestably proved that this man was never an inhabitant of that town. He was an Irishman. Let any man from Ireland whatever declare that he is an American of Connecticut, in vain would he try to impose that opinion upon the mind of any person who observes his speech; it is entirely impossible to suppose that an intelligent court could be so imposed upon. The fact of country being incontestably proved, how can gentlemen be so earnest, in the face of that fact, to charge the Executive with any im-

proper influence? Could the gentleman be ignorant how many men who were aliens had taken advantage of the certificates granted to Americans, and as Americans had procured certificates from a magistrate in attestation of their false oaths? Any gentleman who believed that possible might account for his having procured an American certificate.

Mr. LIVINGSTON said he did hope that this motion would not have been brought forward; but as he meant to vote in favor of it, after having declared his satisfaction with the documents, as sufficient to support his resolutions, he should be accused of advocating a question of which he had before spoken apparently differently, unless he should now give his reasons; and lest he should be accused of a desire to keep alive a calumny against the President of the United States, an effect which had been stated, he took opportunity to answer the insinuation by saying that he as much abhorred so mean a principle as any gentleman in the House.

Mr. L. said he would again declare that the evidence was sufficient to satisfy his mind upon the points he meant to establish, but that should not preclude other gentlemen from thinking other papers necessary—papers which he must acknowledge would throw an additional light on the subject. Though he thought the Message contained all the facts absolutely necessary to establish the points he proposed to dwell on, yet it certainly did not contain all that was asked for, and which it was in the power of the President to give; and yet, on the other hand, more was sent than was asked for, and what they had no right to send was given.

The resolution, Mr. L. said, asked for all the papers relative to the apprehension and delivery. A copy of the requisition and of the correspondence was furnished, but where are the other papers relative to the delivery of Jonathan Robbins? We are told that they are not in the office of the Secretary of State; the President must know where they can be procured, and he has it in his power to procure them; they may be in the hands of the District Judge of South Carolina. But the House are told the President cannot procure this record: gentlemen say he has no power over that department; and yet this very President has the power to instruct this very District Judge to deliver up the person to the British Government! How then can gentlemen presume to say the President has not power to call for the records of the court in a case in which himself has acted a principal part?

Again: it was said that neither the President nor the Judge had a right to deliver up papers that might lead to their crimination. This was the reason why the House should require papers that would explain any doubtful parts of their conduct; for this very reason the House ought to demand, not only the documents, but the reasons for their conduct. The President or the Judge can only be able to supply the House with those documents, and if they have done wrong they ought to be required to furnish them.

But gentlemen, supposing the main reason for inquiring is to ascertain whether Nash was an American or not, said that the inquiry to this point was extremely unimportant whether he was or was not. Upon that, Mr. L. said, he did not lay so much stress as some other gentlemen; he believed it was perfectly immaterial, because he believed that the course of the proceeding would be precisely the same whether he was or was not, and because it appeared that the conduct of the Executive and of the Judge would have been the same in either event. The same might be said as to the impressment. And therefore, though some trouble had been taken to prove that, in addition to the murder, he had been guilty of perjury—he being proved to the satisfaction of some gentlemen to be an Irishman—it was precisely the same in the case. However it had been, he should have been delivered up.

Gentlemen had farther said that he, Mr. L. ought to have known all these facts before he had formed the resolutions. Mr. L. said he did not think so; as he had before declared, he was possessed of satisfactory facts, but he could not prevent himself giving loose to the desires which other gentlemen had expressed, and therefore should now accord with them in the vote.

Mr. MARSHALL said, it was with no inconsiderable regret that he perceived so much of the time of the House, which ought to be devoted to more beneficial purposes, employed in preliminary discussion. He thought that it was impossible the House could agree to a postponement, which the motion under consideration must cause when it was reflected how much time must be employed in procuring those papers—it could not take less than a month; for they could only be found, he would presume to say, in the Court of the District of South Carolina: it was therefore scarcely to be expected that they could be obtained until just before the rising of the House, a period, if they arrived before the House rose, too late for their consideration.

He therefore considered the question precisely the same in principle, though different in form, to that which yesterday occupied the House. The question he believed essentially to be, would the House postpone the business till the next session? in this light he should treat it; and he could not see how gentlemen who voted against the motion yesterday could advocate the present. Shall the House, merely because two or three members think such documents are necessary, agree to postpone the business? for if two or three members be indulged on this account, two or three may lay claim to the same right on another account, and thus day after day may be spent and no determination ever be come to! It is a necessary case in every House, and upon every question; there always will be some few found who will express dissatisfaction at proceedings, and claim some privilege, but this can never operate as a general rule for a session. Gentlemen ought not to request this when the general expression of the case is, that there is enough evidence before the House to decide on the resolutions. And most particularly

it ought not to be indulged in a case where so much manifest mischief would attend its inevitable consequence, delay. Let gentlemen recollect the nature of the case: the President of the United States is charged by this House with having violated the Constitution and laws of his country, by having committed an act of dangerous interference with a judicial decision—he is so charged by a member of this House. Gentlemen were well aware how much the public safety and happiness depended on a well or a misplaced confidence in the Executive. Was it reasonable or right, Mr. M. asked, to receive this charge—to receive in part the evidence in support of it—to receive so much evidence as almost every gentleman declared himself satisfied with, and to leave the charge unexamined, hanging over the head of the President of the United States, until a distance of time, how long it was impossible to say, but certainly long enough to work a very bad effect? To him it seemed of all things the most unreasonable and unjust; and the mischief resulting therefrom must be very great indeed.

When the evidence, now in possession of the House, came to be examined, gentlemen would be much better able to decide whether more would be necessary, than they possibly could be at present; if more should then be wanted, the business might with propriety be postponed. If it was possible to obtain the documents shortly, he should have no hesitation to admit of the motion, but, being impossible, he felt no hesitation in declaring he should put his negative on it.

The gentleman from New York, (Mr. LIVINGSTON,) Mr. M. said, in his opinion, had criminated the conduct of the Secretary of State, in supposing that he had withheld some of the documents. The court record was mentioned—but was it to be supposed by the Executive that he was to be called upon to furnish papers the property of another department of the Government, supposing them material? To procure these papers, he knew was as much in the power of the House as in his power. The House could as well despatch a messenger as the Executive could. How was the President, then, to consider those papers asked for of him? Was he to be a *menial* to the House in a business wherein himself was seriously charged? Certainly not. There could be no doubt but the Executive thought he had fully complied with the request of the House, when he supplied them with those immediately in his power.

Mr. BAYARD said he could not distinguish between the present motion and one yesterday negatived, because it must operate as a discharge upon the Committee of the whole House. There could be no doubt but the Secretary of State had furnished all the papers relative to the business in his possession—indeed, he could assuredly say so. He said he held in his hand a letter from the Secretary of State, in answer to one from an honorable member of the House inquiring whether there were any more documents in his office; he answered that he had no certified copy whatever but those which he had furnished the President with, from whom they came to the House. Gentlemen must then perceive that the mere operation of this resolution was an absolute and inevitable postponement of the business till another session. Many gentlemen, who were yesterday ashamed to vote for a postponement, would now have a plausible cover for their vote by calling for additional proof, to accomplish the object of the resolution of yesterday; and thus he feared it would have many advocates, but, however specious the pretext, he hoped it would not be carried.

Mr. B. then went into an examination of the facts contained in the resolutions of Mr. LIVINGSTON, from which he deduced the impossibility of procuring anything that could be material in the prosecution of their discussion, or that could assist the House in drawing their conclusions, except any new facts could be produced, and, therefore, he concluded that nothing but a postponement could be the issue. He farther contended, in answer to Mr. NICHOLAS, that it was not competent for the Executive to furnish papers the property of the District Judge; as well might the House ask for the Executive to bring the proceedings on again at their bar. In the impeachment of Blount, Mr. B. said, the House did not apply to the President, but appointed a committee to bring the case and all the papers relative to it to view; so it might have been in the present case.

And by what authority, taking the subject in another view, could the House call upon that Judge to furnish it with papers? The Executive had no right to demand them of him, nor had the House. The power of the Judiciary is co-ordinate with the power of this House; it is a distinct branch of the Government. He would have precisely the same right to call authoritatively for a copy of the Journals of this House, as the House would to call upon him for copies of his record; his proceedings are public, his records are open to view, so are our Journals; we cannot call upon him for them, though we may obtain them by paying the clerk for a copy of them, as any individual might do.

The gentleman from Maryland (Mr. SMITH) had considered the notarial certificate of New York, in attestation of Nash's or Robbins's citizenship, to be important. If that gentleman thought this a material document, Mr. B. said he did not; but he thought the observation very material, as it might make an improper impression on the minds of some gentlemen. What could be more easy than for this Thomas Nash, this perjured pirate and murderer, to have got a certificate, when he murdered some man, or he might have procured it by purchase or favor. But there were facts before the House that this man was an Irishman, that his name was Nash and not Robbins; that it was never issued to him, and that he was never entitled to it. What farther then can be wanted? Will not this satisfy gentlemen? The next thing, if this objection be admitted, we shall be called upon to send to the West Indies to prove the fact that his name was Nash!

Mr. B. said he was well satisfied that when this subject came to be analyzed, it would be made to appear perfectly clear that the whole of the evi-

dence necessary was before the House, and it would only be misspending time and producing extremely injurious consequences to grant the motion.

Mr. Rutledge conceived this motion to be the same as to postpone the business. Further information was wanted, and that information could alone come from South Carolina. He wished the gentleman from Kentucky would read the resolution before he pressed his motion: he would find that the District Judge was not charged; no, it was only a charge against the Executive; there was not a word of irregularity of proceeding in the Court, but the Executive was seriously charged.

Mr. Davis explained. He said his objects were to have the record in order to see whether Robbins did produce a certificate that he was an American citizen; to see a copy of the warrant by which he was committed; and thirdly, to know what stratagem or what proceedings were used to take him out of the cognizance of the Court, where he must have remained, if the President had not interfered. These things he wished to ascertain, but that would be impossible without the court record.

Mr. Rutledge said, he conceived this to be the object, but he by no means thought that the gentleman would be satisfied on these points, were he to be possessed of the record. The gentleman might inquire the reasons for the Executive and Judicial conduct being as it was, but perhaps he would not receive the information. Every gentleman in the House would unite their vote to procure all the testimony within their reach, so as to enable the House to prosecute the business. We know, said Mr. R., what monstrous clamor has been raised about this business; we know that great pains have been taken to make the people believe that their fellow-citizen has been torn from his country; that he has been impressed into a foreign service; that the treaty has been violated; that their fellow-citizen has been taken to a foreign country, and there been tried in a summary manner and executed. We have been told for months past that this business would be inquired into; we wish not to avoid it; we will by all means in our power assist it; we have done it. Some time since papers were asked for, we agreed with gentlemen that they should be furnished; it was done, and they are now on your table. They have been there many days; so that gentlemen had sufficient time, long before this, to have known whether they were satisfied or not. The gentleman himself who brought forward the resolutions affected to be satisfied, but, in compliance with the wish of his friends, he now wishes to postpone it. We want to bring the matter to a decision, and so far as we can accommodate gentlemen and avoid delay we will do it.

But, said Mr. R., what will be the effect of this motion? Sir, it will hold up to the view of the world the President of the United States, as having been grossly delinquent in his duty. We say, if he has offended, punish him; if he has not, discharge him from censure; but by no means expose him to popular suspicion, without an examination.

What more can be wanted than the House are in possession of? The Secretary of State says he has no further documents; and he cannot be suspected of any design to smother the business, by the readiness with which the call of the House was complied with. He might have said he would send to the district of South Carolina, but instead of that, so earnest was he to give every possible information, that he trusted to newspaper publications, and this he tells you is all he has. What more can be asked? After a discussion, if the evidence should be found insufficient, and more light was necessary on which to form a decision, Mr. R. then would agree to send anywhere for evidence; but until he was convinced of a want of such testimony, except the will of gentlemen could be complied with without delay, he should be compelled to vote against the motion.

Mr. Nicholson rose to correct what he considered a mistake in the gentleman last up, (Mr. Rutledge,) when he said that the Executive only was implicated in the resolutions; he conceived that the District Judge of South Carolina was implicated, and that the papers of that court were necessary to examine the conduct of that Judge. He read the resolution, and contended that his deduction was accurate. Mr. N. said he wanted to know whether the District Judge of South Carolina had committed this man for trial; this would appear or be disproved by the warrant.

Mr. N. said, he could not believe the position laid down by a gentleman, (Mr. Dana,) that it was utterly impossible that Jonathan Robbins should have been a citizen of the United States. It was worthy of notice that the notarial certificate, which the unfortunate man produced in court, was dated 1795; the opposite authority, to wit, a copy of the books of the Hermione, appeared to state that Thomas Nash was transferred to that ship in 1792. He wanted to know, authoritatively, whether this certificate was produced to the court, for, if it was produced, it certainly went to prove that the copy of the books of the Hermione was erroneous, because, if this man was in New York in 1795, he could not have been on board British frigate in 1792, and have continued there until the time of the mutiny.

That the President of the United States was not to be considered as the servant of that House, he was willing to admit, but he did think that the President might, with propriety, apply to the Judge of the district for the documents of the court; and he did not believe that the President would object to make the application. However, the object he presumed was to procure the papers, no matter from whom; that being the object, he hoped the mover of the resolution would withdraw it, in order to accommodate it more to the feelings of some members in the House, by adopting something like the following:

Resolved, That the Speaker of the House of Representatives be requested to procure, from the Clerk of the District Court of South Carolina, copies, under seal, of the proceedings of that court, together with the evidence produced in the case relative to the requisition for Thomas Nash, alias Jonathan Robbins, who was delivered to His Britannic Majesty's Consul.

Mr. Davis withdrew his resolution, and Mr. Nicholas moved the substitute, which was now before the House.

Mr. Harper moved a postponement of this resolution to this day week. The object of the resolution which was before the Committee of the Whole was two-fold—a charge on the President, and a charge on the District Judge. So much as related to the President of the United States, it was manifest that the testimony called for by this resolution could have no effect whatever upon him, because he left the whole to the Judge. The President went no further than to declare that if it should appear that the acts committed by this man came within the purview of the British Treaty, the man ought to be delivered up conformably to that stipulation.

It must be manifest that the testimony to be expected from South Carolina could have no possible effect on the part relating to the President, and, therefore, the House could proceed with that part of the resolution; but whether the Judge, in executing the duty belonging to him, acted with propriety or not, might be more clear from the documents of that court. When the Judge entered into the consideration of this subject, what questions were open to him? The principle was, whether the man was guilty of the piracy and murder charged to him or not; if this was proved, no further question could arise as to the propriety of delivering him up conformably to the requisition.

The consequence of these papers being called for, had been stated to be much delay; it would operate so. Was it not an established principle, Mr. H. asked, that a delay of justice amounted to a denial of justice. If you suffer this charge to hang over the head of your President for eight months, to no purpose, you inflict a severe punishment. A charge is here exhibited against the First Magistrate of the Union, which must be considered as the commencement of an impeachment; for, if gentlemen have any propriety of conduct, this must operate as a foundation to impeachment. This is to keep alive the idea of guilt—to hang up suspicion, as a party weapon, over the head of the Executive, until an opportunity shall offer to make use of it on a great approaching occasion; this, he thought was the main intention of the motion, and this consequence was inevitable. He believed the motion now before the House to be the same in principle as one yesterday negatived; it was an effort to shrink from a charge, the object of which could better be answered by delay than examination.

Mr. Nicholas thought, with the gentleman last up, that if the only inquiry was as to the conduct of the President, or if the inquiry was only to respect the Judge, the papers might be dispensed with; but it was otherwise—the conduct of both was called forth to view by the resolutions, but how far the conduct of either may be reprehensible, depended on the testimony which might appear before the House. It was impossible to say what the President had done until the documents should be seen. If gentlemen refused the inquiry being made of the court in South Carolina, they, by that act, made the President answerable for every part of the facts, which he believed they would not pretend to do. He really believed it extremely important to know what steps had been taken in this very serious business, to know whether the man was in course for trial, and whether the President had acted in the hasty and premature manner which was stated, in delivering him up.

Mr. N. then proceeded to prove that the warrant was important to be seen, because the intent for which the apprehension was made, was explicitly incumbent on the Judge to record, together with the court where he was to be tried, agreeably to the provisions of the Judiciary act, and, therefore, this information could be attained by recurring to that record. A gentleman had thought the information could not be obtained from persons whom probably that information may criminate. But were the House to decide upon information short of truth, because the result may lead to crimination? That is, they are to be acquitted without materials whereupon to acquit. As to the objection of gentlemen on account of the time it would take to procure the testimony, which they suppose would be so late that the case could not be acted upon during the present session, he believed it was not accurate. Mr. N. declared that it was far from his desire to postpone the subject; he wished it to go forward without delay, but not without all the facts before the House which were necessary.

The House were told by a gentleman (Mr. Marshall) that it would be extremely improper to indulge a few gentlemen in their objections. Was the gentleman confident that there would be a majority of his opinion? A few, it must be remembered, could make a decision, and, if so, the result of the opinion of those few might guide the question. Much had been said about the introduction of the motion, and the motives ascribed to the supporters of it, as though it was a planned object. Mr. N. denied having the least knowledge of it till the motion was made, and, with respect to him, it could not be thought an attempt to carry into effect the motion yesterday made for postponement, because he yesterday voted against that motion, and by no means could agree to postpone, but for an object which he now thought material—when the object was to obtain important information; and believing, as he did, that it would not put off the decision beyond the power of the present session, he should consider himself justified in voting for the motion.

Mr. Gallatin could not help observing the disposition which gentlemen evinced of placing the opinions and sensations expressed by one gentleman to the account of others. To take a fair view of the resolutions, what did they amount to? Nothing more than the deductions which one man had drawn from the Message sent to this House by the Executive: these deductions, in the form of a resolution, he had submitted to the consideration of the Committee of the Whole. Now, except it could be proved that that gentleman had made all

the deductions of and acted for every gentleman, there could be no ground for saying that every gentleman would be satisfied, without the evidence which might be collected from the records of the District Court of South Carolina. Was any gentleman in the House bound to be satisfied, with the gentleman from New York, that all the facts necessary to be known were furnished? Was every gentleman in the House bound to confine himself solely to the resolutions before the House? Certainly not. It could not be denied that the evidence now required was essential to a full investigation of the conduct of the Judge, who was the principal agent of the Executive in this case.

He did not consider the question to be whether the resolution of the gentleman from New York required that evidence or not to support them, but whether, to come to a knowledge of the truth and the whole truth relative to the circumstance, it was not necessary. Although, Mr. G. observed, he could not at present perceive how far it was likely those documents might assist the decision of the House, yet he thought them proper to come before the House; it was very probable they would tend either to criminate more, or to extenuate, and perhaps to justify.

With respect to the objection, on the ground of postponement, Mr. G. would observe that the motion of the gentleman from South Carolina proved that this was not the proper time to proceed in the discussion; the motion implied that gentleman's acknowledgment of it, or he would rather have at once rejected the motion than moved its postponement for a week; he therefore presumed that gentleman saw the additional testimony necessary.

[Mr. HARPER explained his statement to be that the testimony to be expected, nor the postponement, could have any possible bearing on the part relating to the President, and therefore that ought to be decided; but, as far as related to the Judge, evidence might be necessary.]

Taking this to be the mind of the gentleman, Mr. G. said, he did not know in what manner he could apply his argument to the motion. For himself, he was ready to vote on the resolutions without more documents, but as other gentlemen were not, he should vote without them. He confessed he was the more earnest to do this, because, on the very threshold of the business, the gentleman was stopped while reading a paper he thought useful to bring forward. Gentlemen had now gotten up and declared themselves compelled to call for evidence which might substantiate a fact contained in that paper, which, though known to be true, was not stamped with that legal credit that was necessary. Let gentlemen then come forward at once and give this fact its legal importance, or prove its non-existence.

Another fact stated, was, that the President had undertaken to discharge the man when the court had already assumed jurisdiction of the case. This it was possible to prove or disprove by the record of the court. That this record, agreeably to law, was to contain the name of the court before which the case was triable, and process upon which the man was arrested, he quoted the Judiciary act, Laws U. S., vol. 1, pages 72, 73. He was, however, well satisfied, from the letter of the Judge and the nature of the case, that this man was committed for trial before a court of the United States, and what corroborated the opinion was that no power was given by our laws to hold a man in prison on any other ground. On the whole, Mr. G. said, as one fact had been and others might be contended, if produced, it would perhaps be the most expeditious, as it certainly would be the most satisfactory, method, to procure every fact authentically attested, before the proceeding was had.

Mr. H. LEE hoped that the gentleman from South Carolina would withdraw his motion. He would mention some reasons which would induce him to vote differently from gentlemen with whom he usually had the honor to vote. Considering this a question of very great importance, not only to the American people, and to the reputation of the House, but also to the highly respectable character presiding over our Government, he trusted the House would, in its whole process, be led by principles so fair and candid, as not to leave the least room for a charge of derogation from its own dignity or of the great subject it was discussing.

He would vote for the motion calling for the papers, but he would do it with an expectation that it would not postpone the discussion of the business so far as related to the conduct of the President of the United States. It appeared that the conduct of the President, as charged, was fully before the House; there could be no difficulty therefore to proceed on it; but, as far as respected the Judge, Mr. L. trusted the record of the court would be sent, for he thought it but fair to gratify gentlemen who considered there was any material evidence wanting.

If the view of the gentleman was to postpone the whole of this business, until a return from South Carolina, he would ask the gentleman from New York and his friends, whether they could wish any means to be adopted more completely to effect the object of the resolutions than postponement? Was I the high character, said Mr. L., to whom this resolution refers, I would infinitely rather have the disapprobation of this House to the full extent which the censure goes, than to have the subject postponed, and be exposed to the conclusions and surmises of the world. I will not attribute the motives to gentlemen which the gentleman from South Carolina has expressed; I cannot think the member from New York wishes to suspend the decision of this House until that high character shall be before that tribunal which is to estimate his merits or demerits—for knowing that no baser motives can be cherished, I will not even suspect it of him; but, whatever may be the motives which may induce a postponement, it cannot fail of having that effect. He therefore wished to proceed as it respected the President.

Mr. DANA acknowledged his very high estimate of the opinion of the gentleman last up, but he could not agree with him at present. He did not think it would consist with general justice to delay the case for the time contemplated by the resolution. He well knew that if the inquiry was not

made, gentlemen would talk about liberality and about motives; but that he should little regard, being assured that his conduct would be guided by the strictest rules of legal propriety and justice. Mr. D. admitted that much propriety marked the conduct of the gentleman from Maryland, (Mr. NICHOLSON.) That gentleman well knew that the Executive ought not to be called upon, and that the Speaker of the House was the true medium by which evidence could be obtained for that House. But, as the argument was in favor of a complete investigation of the subject, Mr. D. could not help calling to the recollection of gentlemen a motion (which was negatived) to put this previous examination into the hands of a select committee; but, for want of that very necessary measure, gentlemen now found themselves in a disagreeable situation for having accused these officers. They could not prosecute their accusation as they wished, and therefore they would feign make further inquiry. He objected further to it, because it was unnecessary; he did not believe the least good could spring from it. But it was extremely unreasonable, and highly unbecoming the dignified character of *grand inquisitors general*, because there was no proof to make the charge appear, that they should suspend the business while gentlemen sought for proof which they ought to have known when the resolutions were proposed. They ought by no means to have been brought upon slight grounds. Did the gentleman not know that public officers possessed reputation, and that the preservation of that reputation was essential to preserve public confidence in them? He would not stretch a man on the bed of torture, for time unknown, while he searched for proof of a supposed crime. Sir, said Mr. D., by this treatment you chain your public officers to a rock for this spirit of *patriotism*, like a vulture, to prey on their hearts. This is conduct I abhor, and therefore cannot, for my part, indulge in it.

Sir, they have brought this charge; we are willing to meet it; we are willing to give full weight to it. We are not disposed to vindicate the Executive, nor any other public officer, if doing wrong; but it is because we respect honest men, in public stations, that we are prepared to hear what the tongue of accusation can produce. We are unwilling to leave them exposed to calumny, (as they must be, if unheard and unjustified,) except it be by clamor which a suspicion must inevitably raise.

Mr. VARNUM would vote for the resolution proposed; he thought it was doubtful whether the President had acted with propriety or not; but he believed if there had been any incidental impropriety of conduct, it was never done with an evil design, nor with a view to interfere with any other department of the Government; but certainly to deny this evidence, which several gentlemen had stated to be necessary to assist them in making up their minds, would stamp a censure on the conduct of those officers as great as that contained in the resolution. He thought the gentleman from New York had a right to bring the subject to the view of the House. If he saw any proceeding which to him appeared dangerous, it was his duty to commence an investigation. No man ought to flinch from what he thought right. The only way to give public satisfaction, in a matter that had so much engaged public attention, was to give all the evidence which could be procured, and let the matter be investigated to the bottom; and, most assuredly, the only way effectually to clear the characters implicated, if they were innocent, was to leave no doubt as to the desire of the House to scrutinize their conduct. But, certainly, the very great reluctance which gentlemen showed to procure all the evidence, and, after all, their denial of it, must leave a suspicion bordering much on guilt.

Mr. BAYARD rose, in answer to Mr. GALLATIN and others, and observed, that, with respect to Nash calling himself an American citizen before that court, (an object which it was desired to prove by this call for evidence,) they were asked to admit the fact. Mr. B. asked, would those gentlemen admit that Nash was guilty of the dreadful murders committed on board the British frigate? Would they admit that he falsely made the claim? However, he had no disposition to rest on that point. Another fact, however, which it was required to admit was as to the jurisdiction of the court of the United States upon the case. Mr. B. denied this, and repeated the former arguments in proof of his opinion. He insisted that the whole arrest and proceeding was had at the instance of the British Consul and Minister, in proof of which he quoted their letters. The record, he said, could not possibly dispense any light to this fact; the record would only give the warrant and some of the depositions first taken before the Judge; but as to the court being designated where the case was to be tried, he contended that it was not usual to insert it in the warrant—he never saw one so drawn. It was possible that Nash was committed with a view to be delivered up to the British, before the letter was received by the Judge from the President; and it was very reasonable that the whole previous business was at the instigation of the British agent, but it was impossible to prove that jurisdiction had attached before the letter directing the delivery to be made was received.

Mr. JONES said, that finding himself, from the vote he was about to give, implicated in the charge made by the gentleman from Delaware, (Mr. BAYARD,) that gentlemen who were yesterday ashamed to vote for the proposition to discharge the Committee from further consideration of the subject, in general and express terms, because it would imply a distrust of the sufficiency of the ground on which to support the principles of the resolutions, were now disposed to effect the same object by a decision which would, in fact, go to evade the question during the present session, he felt himself impelled, by a respect for his own conduct, to explain the motives which would govern his vote on the present question. He considered the case which had been called into view by the proposition of the gentleman from New York, (Mr. LIVINGSTON,) as one that involved in it the dearest interests and deepest concerns of the people of the United States. The gentleman from Delaware (Mr. BAYARD) and the gentleman from Connecticut (Mr. DANA) had

indulged themselves in the most violent invectives and unnecessary abuse against the unfortunate, the obscure, and insignificant character, now dead, who was the subject of this proposition. On this topic they had exercised all their powers of passionate declamation. If this was a grateful theme for the employment of their talents, he did not envy them the enjoyment of it. How that kind of argument would apply to the question, he left to the House to determine.

For his part Mr. J. said, he deemed it totally immaterial whether the man was, as they had declared, an Irishman or not; whether he was a Turk, a Hottentot, or a native-born American, if he claimed to be an American citizen, and produced a certificate in due form, under the signature of a proper officer, of his citizenship, and that claim was slighted by the Judge, or declared immaterial, and the fact not inquired into of his being a citizen, then he conceived the safety of the citizens of America, to be equally put in jeopardy, as if the man had been born and raised in Charleston, in the circle of the Judge's own acquaintance. If, he asked, a dagger aimed at my breast by an assassin in the dark, should by mistake or impetuosity pierce the bosom of another, would not the discovery of such an attempt awaken alarm, and demand a precaution for my future safety? Certainly it would. So in this case, if this man claimed to be a citizen and wore about him the legal voucher of that claim, and if he was told in the presence of American citizens, "it is of no importance whether you are, or are not a citizen, that is a point of no concern in the case," notwithstanding it may afterwards be found he was no citizen, yet would it equally involve the safety of every true citizen who might fall into similar circumstances. We may congratulate ourselves that it has not fallen on a fellow-citizen, but we ought still to improve the lesson this case has presented. Mr. J. hoped that it would be improved, and that, at least, legislative provisions would be made to prevent this decision from operating on a citizen, if such a case should occur in future. This man was a citizen to all intents and purposes, so far as respects the precedent, if he claimed that right and produced a voucher to testify it, and was entitled to all the privileges of a citizen until his claim and certificate had been formally proven to be false. Mr. J. said, to ascertain with certainty whether this claim was put in, and how it was treated, it certainly was necessary to procure authentic copies of the record and proceedings in the case, from the court, and every ray of evidence that could be obtained; nothing could be more essential in deciding on the conduct of the Judge than to have an authentic account of the proceedings. Gentlemen seemed extremely anxious to have the question decided early, on account of the censure hanging over the Executive by continuing the business on the table. It is true, said Mr. J., the papers now called for were not necessary to determine on that part of the resolution which charges the Executive with interfering with the Judiciary; on this point no further evidence was wanted, that was an abstract question and might be so decided; but there was a probability that the evidence to be obtained from the courts in Charleston might be material as to another charge or implication against the President. If it should by any means be proved, that the President was informed of, or knew the man had claimed to be a citizen, then he was surely as much to blame in not making the distinction as the Judge; it was possible this might appear from some of the proceedings or papers before the court.

Gentlemen were sensibly affected for the President's feelings in this case, and if he is blameless this tenderness was proper, but for his part he considered the case of the Judge as equally and more delicate than that of the President. The situation of a Judge, determining on the life of his fellow creature, was, he thought, the most important and responsible duty mankind could impose on any one; of course to censure a Judge for any decision that could affect life, was a severe infliction, and in doing it every possible proof and sight ought to be had. It was said that by the delay which this vote would cause, if carried, the President would be hung up in odious effigy to the people at large. Mr. J. said he could not conceive how a disposition of the House to receive every light, and go into as ample an investigation as possible, would have that effect; he believed a contrary conduct would be more likely to render the conduct of the President suspicious and censurable. What effect would a mere vote of approbation have in this case, after refusing to permit testimony to be brought forward which was thought material? It would seem as if the friends of the Executive were afraid to let the matter be clearly sifted, and wished to avoid everything that could throw light on the subject. What value ought to be put on applause obtained in such a way? He believed the President would disdain the approbation of the House on such terms; to make his exculpation grateful to himself and satisfactory to the nation, nothing ought to be suppressed, everything should be produced that related to the subject.

The gentleman from Connecticut, (Mr. DANA,) who is always so tenderly concerned for the character and dignity of this House, and so frequently complains of other gentlemen committing that dignity and respect by their conduct and opinions, has, on all occasions, when he has addressed the House, in his style and manner, manifested the most unlimited confidence in the talents and penetration of *one* member of the House; but what kind of respect he had discovered for every other gentleman in it, he appealed to the observation of gentlemen generally to determine.

Some gentlemen had indulged themselves in attributing to the mover and friends of this proposition, unworthy motives; he had on many occasions observed that those gentlemen were partial to that kind of debate; he could not see the use or advantage of such conduct; he thought it very unbecoming any gentleman in this body. There was, however, one motive which these gentlemen had not attributed to him or those with whom he usually acted in the House, they could not insinuate nor pretend that their conduct was designed to throw themselves within the benign beams of Executive patronage. Mr. J. said he would not so far conform to a practice which he condemned as to designate what gentlemen would bear an insinuation of that kind, it was not necessary to point them out. He could perceive no other object which could induce gentlemen to declaim so frequently and earnestly on those unpleasant topics.

The question was then taken on the motion of Mr. HARPER, to postpone the consideration of the motion of Mr. NICHOLSON, for a call of the record of the District Court of South Carolina, for one week, and negatived—yeas, 32 nays 63, as follows:

YEAS—Bailey Bartlett, James A. Bayard, John Bird, John Brown, Samuel J. Cabell, Christopher G. Champlin, William Cooper, Franklin Davenport, John Dennis, Thomas Evans, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Samuel Lyman, John Marshall, Harrison G. Otis, Robert Page, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, George Baer, Theodorus Bailey, Phanuel Bishop, Jonathan Brace, Robert Brown, Matthew Clay, John Condit, William Craik, Samuel W. Dana, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Lucas Elmendorf, Abiel Foster, Dwight Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Silas Lee, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, Richard Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Robert Waln, Robert Williams, and Henry Woods.

The question then recurred upon adopting the resolutions.

Mr. MARSHALL spoke at length against it. He contended there was no prospect of coming to a decision of the original question this session, if this were adopted; and asked if the character of the President of the United States ought to be held up in the suspicious view in which the resolution placed it, until the next session of Congress? He hoped not. It seemed to him that a postponement amounted to a declaration to the people of America that there was much cause for suspicion, and that additional evidences were wanted to substantiate it.

Mr. NICHOLAS replied to Mr. M., and contended that the whole truth of the case was to come out of the additional testimony now asked for.

An adjournment was then called for, and negatived—yeas 30.

Mr. RANDOLPH spoke in favor of the resolution, and in answer to Mr. MARSHALL.

The question was then taken that the House do agree to the motion first proposed, and passed in the negative—yeas 44, nays 57, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A. Hanna, David Holmes, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Michael Leib, Matthew Lyon, Edward Livingston, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, Silas Lee, Samuel Lyman, James Linn, John Marshall, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John C. Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

And then the House adjourned.

FRIDAY, February 28.

Mr. HARPER moved a postponement of the order of the day on the business of Jonathan Robbins, until Monday. He did not conceive much progress would be made this day, and as there was much private business on hand it could not be gone through with. If the business be taken up on Monday it can be regularly gone through with without intermission.

The motion was agreed to.

The House resolved itself into a Committee on the report of the Committee of Claims on the petition of Campbell Smith, which was, that he should receive allowance as Advocate General and Judge Marshal while filling those capacities in the Western Army. The resolution to that effect was agreed to, and the Committee of Claims directed to report a bill accordingly.

Mr. WALN presented a memorial from the Health Office in Philadelphia, stating that, in consequence of the plague having raged in Morocco, Great Britain had enacted very strict quarantine laws, but although the port of Philadelphia might be watched by all the vigilance in the power of the Health Office, there was no general law to keep that most dreadful scourge of the human race from being introduced into some ports of the United States. They prayed the attention of Congress thereto.

Referred to the Committee of Commerce.

ADMISSION OF STRANGERS.

The subject of the admission of strangers without the bar, on the floor of the House, was introduced by the Speaker. He said it would be very pleasing to him that some specific order should be taken thereupon by the House, since a variety of inconveniences attended the present mode as well as the former.

Mr. Davis then moved, that during the present question, (Message of the President, &c.,) the present order relative to the admission of strangers be suspended, and that any persons introduced by members should be admitted without the bar.

Mr. Harper moved, that the words, "during the present session," be struck out, which was agreed to—38 to 26.

The question on the resolution was taken and negatived—48 to 33.

On Mr. Randolph's wishing to know what was the present order, Mr. Speaker explained it to be, that no person be admitted without the bar, on the floor of the House, except public characters, and such as are admitted by the special order of the Speaker.

Mr. Randolph then moved for the exclusion of strangers from that part of the House altogether, for which he mentioned several reasons.

This motion was negatived, without a division.

LANDS FOR MILITARY SERVICES.

A message was received from the Senate informing the House that they insisted on their amendments, which were disagreed to by the House, and on which conferees were appointed, to the bill respecting the grant of lands for military services.

Mr. Harrison, one of the conferees on the part of the House, afterwards reported that the conferees had agreed to recommend to the respective Houses a resolution, the import of which was, that the House should recede from their disagreement with the amendments proposed by the Senate, and agree to certain amendments proposed by the conferees.

The report was concurred in by the House.

A message was afterwards received from the Senate notifying that they had receded from their amendments, and adopted those reported by the conferees.

SUNDRY BILLS.

The House resolved itself into a Committee on the bill for the relief of Thomas Arnold, which was agreed to, and ordered to be engrossed for a third reading on Monday.

The House also resolved itself into Committee on the report of the select committee on the petition of John Mountjoy. Some difficulty appearing, the Committee rose, and obtained leave to sit again.

The House also resolved itself into Committee on the report of the select committee on the petition of Isaac Zane. The committee had reported a resolution for allowing the land prayed for, and an amendment was added to introduce a proviso, that it did not come within the military lands. The report was agreed to, and the Committee instructed to report a bill accordingly.

The House resolved itself into a Committee of the Whole on the bill to establish a General Stamp Office; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

Ordered, That the Committee to whom was referred the Message of the President of the United States, relative to the Mint, have leave to report thereon by bill or bills, or otherwise.

REPORT ON THE LOAN.

The House then went into Committee on the report of the Committee of Ways and Means on the subject of a loan. The report was read, as follows:

The Committee of Ways and Means, to whom was referred the estimates for the public service during the present year, having taken them into consideration, and obtained from the different Departments such further information as they deemed necessary, beg leave to submit to the consideration of the House the following report on that subject:

The committee thought it proper, before they entered into the subject referred to them, to obtain from the Treasury Department a detailed estimate of the revenue and expenditure of the present year, according to existing laws. For this purpose was written to the Secretary of the Treasury the letter, of which a copy, (No. 1,) together with his answer, (No. 2,) and the estimate requested, (No. 3,) is subjoined to this report.

From this estimate it appears that the whole sum required for the public service, during the present year, including the interest and reimbursement of the public debt of every description, the civil list, army and navy, and every incidental charge, amounts to fifteen millions three hundred and ninety-three thousand and thirty-four dollars and eleven cents. But this sum includes the whole army estimate, which was founded on the supposition that the twelve regiments of infantry and six troops of horse, composing the additional army, would be immediately completed. The act, however, for suspending further enlistments, having passed one branch of the Legislature, the committee thought it proper to ascertain, as nearly as possible, what reduction in the expense of the army would result from this bill, should it pass into a law. For this purpose they wrote a letter to the Secretary of War, a copy of which, (No. 4,) with his answer, (No. 5,) and an estimate of the reduction in question, (No. 6,) they have annexed to this report. From this paper it appears that the reduction may be calculated at about one million of dollars; which, as the bill has now passed into a law, must be deducted from the former estimate of fifteen millions three hundred and ninety-three thousand and thirty-four dollars and eleven cents, and will leave a balance of fourteen millions three hundred and ninety-three thousand and thirty-four dollars and eleven cents, for the expenses of the year.

From this balance, however, the committee are of opinion that a further deduction of six hundred thousand dollars ought to be made. This sum is added to the navy estimate as a further appropriation during the present year, for the building of the six 74's. But the committee, entertaining doubts whether it would be for the benefit of the public to press the building of those ships so fast as to require this further appropriation, since they must in that case be built of timber far from sufficiently seasoned, wrote to the Secretary of the Navy requesting his opinion on this point. A copy of their letter, (No. 7,) together with his answer, (No. 8,) is hereunto subjoined. This answer, to which the committee beg leave to direct the attention of the House, furnishes, in their opinion, very sufficient reasons for avoiding that degree of expedition in building the 74's, which would require the further appropriation of six hundred thousand dollars. And they therefore think it proper to deduct that sum also from the general estimates of expenditure for the year, which will reduce that expenditure to the sum of thirteen millions seven hundred and ninety-three thousand and thirty-four dollars and eleven cents.

The whole estimated amount of revenue to meet this expenditure is nine millions three hundred and one thousand two hundred and fifty-eight dollars and fifty-one cents, as detailed in the statement (No. 3) furnished by the Secretary of the Treasury, and above alluded to, which sum being deducted from the sum of thirteen millions seven hundred and ninety-three thousand and thirty-four dollars and eleven cents, which has been stated as the amount of expenditure, it leaves a balance of four millions four hundred and ninety-one thousand seven hundred and seventy-five dollars and sixty-one cents.

The Government, however, possesses funds to cover this balance in part. From the above-mentioned statement (No. 3) it appears that on the thirty-first of December, one thousand seven hundred and ninety-nine, there remained in the Treasury an unexpended balance of the last year's supplies, amounting to two millions one hundred and fifty thousand three hundred and seventy-seven dollars and ten cents. A considerable part of this sum has since been paid, or will be required for the discharge of contracts remaining due for the service of last year. It is not easy to ascertain with precision what portion of this balance will remain, after satisfying all demands of this description, to be applied to the service of the present year; but the Secretary of the Treasury, in his above-mentioned statement, (No. 3) estimates it at one million of dollars—an estimate which the committee have no reason for considering as too high. They therefore place this sum to the credit of the Government, which reduces the balance to be provided for by the loan to three millions four hundred and ninety-one thousand seven hundred and seventy-five dollars and sixty-one cents—say three millions five hundred thousand dollars.

In proposing a loan to the House, the committee wish to call its attention to the propriety of providing, at the same time, permanent revenues, equal to the interest of the debt to be incurred; and of making provision, also, for the gradual and timely extinguishment of the principal—a policy which, in their opinion, ought to be invariably adhered to, as the only means of avoiding that constant accumulation of debt which is the great evil of the funding system. The committee have turned their attention to this interesting part of the subject, and have little doubt of being able to propose such measures to the House as, without materially increasing the public burdens, will add to the present revenues a sum adequate to the accomplishment of so desirable an object. But as they are not yet possessed of all the information necessary for maturing their plan, they reserve it for the subject of a further report.

In the mean time, they beg leave to present, for the consideration of the House, the following resolution, viz:

Resolved, That it is expedient to authorize the President of the United States to borrow, for the service of the present year, a sum not exceeding three millions five hundred thousand dollars, upon such terms and conditions as he shall judge most advantageous for the United States: *Provided*, That no contract or engagement shall be entered into which shall preclude the United States from reimbursing any sum or sums borrowed at any time after the expiration of fifteen years from the date of such loan.

The resolution was agreed to, and when taken up in the House, a bill was ordered to be prepared and reported conformably thereto by the Committee of Ways and Means.

A motion was made to adjourn till Monday, but on Mr. Harrison's mentioning to the House the absolute necessity there was of receiving the report of the Committee of Enrollment on the bill respecting military lands, which must pass to-morrow, or the warrants would be located, by the old law, on Monday, the motion was withdrawn, and the House adjourned till to-morrow.

Saturday, March 1.

Mr. Parker, from the select committee appointed for the purpose, having obtained leave, reported a bill for the government of the Marine Corps, while on shore; which was read a first and second time, committed to a Committee of the whole House, and made the order of the day for Thursday next.

Monday, March 3.

An engrossed bill, entitled "An act for the relief of Thomas Arnold," was read and passed.

An engrossed bill, entitled "An act to establish a general Stamp Office," was also read and passed.

Mr. Harper, from the Committee of Ways and Means reported a bill to enable the President of the United States to borrow money for the public service; which was twice read and committed to the whole House.

Mr. Parker from the Naval Committee, reported a bill for the better government of the Navy of the United States, and for repealing the law on the same subject, passed the second of March, 1799, which was twice read and committed to the whole House.

Mr. D. Foster reported a bill, from the Committee of Claims, for the relief of Campbell Smith; which was twice read, and referred to a Committee of the whole House.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting two statements; one exhibiting the value or quantities of the goods, wares, and merchandise, imported into the United States, in ships or vessels of the United States, for one year, prior to the first of October, one thousand seven hundred and ninety-eight and the other, exhibiting, in like manner, the importations in ships or vessels of foreign nations

during the same period; which were read, and ordered to lie on the table.

LAKE SUPERIOR LANDS.

Mr. COOPER observed that a navy was considered an object of great importance, as was also our extended commerce, and neither of these could be carried on to any profit without a very liberal use of copper. That article could not be purchased at present at less than half a dollar a pound, but by attention to an object which was within our own power it might be had at a very low price. From these considerations he laid on the table the following resolution:

Resolved, That a committee be appointed to bring in a bill authorizing the President of the United States to appoint an agent to purchase of the Indians that tract of land on the south side of Lake Superior, which shall include the great copper bed.

Mr. C. said, as this invaluable copper mine was well known by individuals, it no doubt would soon become an object of speculation, but wishing to make it of public utility, as it must become if purchased, he hoped the proposition would be adopted.

DIVISION OF NORTHWEST TERRITORY.

Mr. CRAIK, from the committee to whom were referred to consider whether any alteration is necessary in the judicial establishment of the Territory Northwest of the Ohio, and also as to the expediency of dividing the said Territory into two distinct governments, reported the following resolution:

Resolved, That the Territory of the United States Northwest of the Ohio ought to be divided into two distinct and separate governments, divided by a line beginning at the great Miami river, and thence running north until it intersects the boundary line between the United States and Canada.

Referred to the Committee of the whole House.

JONATHAN ROBBINS.

The House then resolved itself into a Committee of the Whole on the Message of the President respecting Jonathan Robbins, when Mr. LIVINGSTON spoke about three hours in support of the resolutions he some time since submitted to the House on that subject.

Mr. BAYARD was proceeding to follow Mr. L. when a member moved the Committee to rise and ask leave to sit again. Mr. B. objected: he said he was prepared to proceed if the House would have patience at that late hour to hear him. Several members expressed a desire that he might proceed, which he was doing, when the SPEAKER hoped the gentleman would give way to a motion for the Committee to rise; he had no doubt of his friend being prepared for the discussion, but from the length the answer must necessarily take, the House certainly would be fatigued much before he would conclude. The motion was made and carried.

During Mr. LIVINGSTON's observations he introduced a copy of the record of the Circuit Court in New Jersey, where three men were tried and acquitted on a charge of piracy, and one of them for murder, on board of the same frigate and at the same time. This record, on motion of Mr. RUTLEDGE, was ordered to be printed.

Mr. NICHOLAS, not being able to account to his satisfaction for the obvious change of conduct in our Executive in this recited instance and the one now under the consideration of the House (though precisely the same in facts) any other way than by supposing that a correspondence on the subject had occurred between the Executive of the United States and the British Government; though he expressed himself to be extremely unwilling, yet he thought it his duty to move that the President be requested to furnish it to the House.

An adjournment was immediately called and carried.

TUESDAY, March 4.

Mr. OTIS in behalf of the Committee of Defence, having first obtained leave, reported a bill from the committee to fix the compensation of the Paymaster General, and the Assistant to the Adjutant General, which was referred to a Committee of the whole House.

CASE OF JONATHAN ROBBINS.

Mr. GALLATIN presented to the House the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House, copies of any requisition or application that may have been made by any foreign Minister, Consul, or Agent, for or concerning the delivery of William Brigstock, alias John Johnson, of John Evans, alias Michael Campbell, or of Joannes Williams, alias Joannes Williamson, who were tried in the Circuit Court of the United States, New Jersey district, on the charge of piracy committed on board the British frigate Hermione; and, also, copies of any communications to and from any of the Executive Departments, and of any papers in the possession of either of the said departments, on the subject of the commitment, trial, discharge, or delivery, of either of them.

[Mr. NICHOLAS, yesterday, just before the rising of the House, mentioned the necessity of this inquiry, but the House adjourned before a motion was made to that effect.]

Some debate took place as to the disposal of this motion.

Mr. BAYARD hoped the resolution would follow the usual course, and lie on the table for a day. If the idea was to connect the case with that of Nash, or to bring more evidence to the present case, he thought it must fail of its object. It was impossible, he said, that the decision on that case could be the least guide to the House in the present, as it was a very distinct trial, and therefore he hoped it would lie.

Mr. LIVINGSTON hoped the resolution would lie on the table till another day, and for this plain reason. What were the House to do in the meantime? He believed it perfectly connected with the business which now occupied the House, and, therefore, if it was the desire of the House to proceed, that they had better dispose of this resolution immediately. But the gentleman from Delaware had intimated that it could bring no new evidence

respecting the case now before the House, because it was a case quite distinct from it. To be sure, Mr. L. said, it would operate for the benefit of the gentleman's argument if he could make the House believe so; but Mr. L. thought they were clearly the same, except it was in men, in place of trial, and in Judges who tried them. Both were for precisely the same act, and committed at the same time. It would be remarked in the warrant that it appeared these men were committed under the Treaty with Great Britain, and therefore it was more than probable that it was in consequence of application from some British agent to the Executive they were apprehended. How could the gentleman say it could give no new light? Was it possible that the conduct of the Executive in the case of Brigstock and others, in New Jersey, could afford no new light to the conduct of the same Executive, in the very same case, on the trial of Thomas Nash? Mr. L. said he knew nothing of what passed between the Executive and others; but suppose it should appear, if the House obtain possession of the communication, that application had been made before the trial, by some British agent, for the delivery up of all or either of these men, and the answer of the President had been that it was a judicial point, and therefore he did not choose to meddle with it? Certainly the gentleman would not say that this case had nothing to do with the present, in which such an extraordinary change of conduct had been evinced. If this result could arise (which it was impossible to deny) gentlemen ought to yield to the wishes of others. The plea could not now be that they would have to send to South Carolina for what was asked, because this information might be procured in a few hours; and, certainly, to obtain what was deemed so important, a small delay might well be borne.

A gentleman had said it ought to have been brought forward at an earlier period. How was this possible? Mr. L. said that he did not receive the record of the New Jersey case till just before the House met yesterday; he then made use of it in the discussion, and it was not till just at the rising of the House that any gentleman could make use of it, and then a gentleman did propose something of the kind. It was a plain inference to be drawn that some communication did occur with a foreign agent, and some answer must have been given; the Executive no doubt did act on the subject—he also acted in this case. It was therefore very proper for the House to be informed how he acted.

Mr. RUTLEDGE trusted that the difficulties gentlemen had to encounter in their present precipitate way of acting would prevent them bringing forward any crimination of so great a character in future without being better prepared to substantiate it. Mr. R. said that he had no objection to call for all the information that could conveniently be had previous to the debate commencing, but to do it afterwards was most extraordinary indeed! If these proceedings were to prevail, it would be impossible to say when a vote would be taken. Gentlemen, now they have entered into the business, find that facts will not bear them out; they find they cannot substantiate what they would prove. One calls for this, another for that, and there would be no end to their calling. He wished for all possible elucidation of the subject as long as it could be proper, but after going into the argument, it was extremely improper.

But, Mr. R. asked, what had this case to do with the business of Nash? The gentleman supposed that it was considered by the Executive as a case within the judicial cognizance, and therefore he refused to act in it. Suppose it was so; and suppose the Executive afterwards changed his opinion—what he might consider an erroneous opinion? The object of this motion he believed to be to delay and finally to postpone the decision, but he hoped the House would not now agree to delay the business.

If the gentleman should hereafter think proper to promote an impeachment upon the proceedings in the case of Brigstock and others, and on that ground should ask for the papers relative thereto, he should have no objection to an acquiescence; but as this was an entirely independent case, he could see no necessity of yielding to the solicitations of gentlemen at present.

Mr. GALLATIN said, as to the late period of introducing the resolution, it must be clear that it was out of his power to propose it till the time he offered it to the House, because the facts which gave rise to it were not produced until yesterday; and as to the objects for it, the gentleman last up was quite mistaken. A gentleman had said that it was a last effort, in order to support charges against the President of the United States. As to what would be the effect of these papers if they should be sent, Mr. G. could not tell. He did not know that such papers existed at all, but the inference the gentleman had drawn was upon a presumption that they would criminate the President: this Mr. G. did not know was the fact; he knew nothing about them, they might criminate, or they might have a very contrary effect. The gentleman was extremely mistaken if it was his idea that other gentlemen were determined at all events to discover a charge; he only wished an investigation of the truth, and let that truth as well as the law dictate the proper measures to be used.

The affair having been brought before the House, he would say it was their duty to obtain all possible information, whether in favor of, or against the President; with this view he made the motion. Contrary to the opinion expressed by the gentleman last up, he must consider this case extremely similar, and he believed the most minute scrutiny could not distinguish between them. There was this difference, however, so far as the House had knowledge of at present; in one there was a requisition made; in the other there possibly was not; but whether so or not he wished to be satisfied, as well as to the ground for which a requisition was made and refused. There had been no law passed since the New Jersey case occurred to carry this 27th article of the treaty into effect, and therefore the proceedings in every case ought

to have been precisely the same; but not having been so, Mr. G. said he wished to know on what rule or law the President had acted.

Much had been said as to the claim of Thomas Nash to citizenship. How far the President acted in that case with regard to citizenship would be seen; but there was one remarkable fact as to the New Jersey case. One of the men, named Brigstock, it appeared was indicted on three different charges; two of them were for piracy, and were much alike; the other was for murder; for the two first he was tried and acquitted, but for the last, a *nolle prosequi* was left: one remarkable difference was in the last indictment from the two others; in that he was represented as being a citizen of the United States. He thought it was very probable the *nolle prosequi* was ordered by the President because the man was a citizen of the United States; the opinion of the President on that case Mr. G. thought would tend much to elucidate his conduct with respect to Nash's case.

The question was then taken on the consideration of the resolution, and decided in the negative—yeas 46, nays 54, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, Archibald Henderson, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

And then the House adjourned.

Wednesday, March 5.

Mr. Harrison, from the committee appointed for that purpose, reported a bill for the relief of Isaac Zane: which was twice read, and referred to a Committee of the Whole.

Mr. Spaight proposed the following resolution:

Resolved, That a committee be appointed to inquire whether any, and what, alterations are necessary in the time for holding the District Court of North Carolina, and that they report by bill or otherwise.

Mr. Cooper called up his resolution respecting the purchase of a copper vein of the Indians, on the south side of Lake Superior; which was amended, so that the Committee inquire into the expediency of the measure.

Three members were appointed conformably thereto.

JONATHAN ROBBINS.

The resolution of Mr. Gallatin, calling upon the President for papers in the case of Brigstock and others, tried in New Jersey, was again taken up; when,

Mr. Edmond said he almost ceased to wonder at anything done on that floor. If the intentions of gentlemen were to lay the foundation of another inquiry, which should bring the past conduct of the President to view, perhaps this motion might then be proper; but calling for papers relative to another transaction, and not included in the original resolutions, was unaccountable, except it was to lay the foundation of an impeachment of the President; and if even that was the view, the House ought first to get rid of these troublesome resolutions. He knew it was very easy for gentlemen to get up and call for this and that testimony, and if they did not receive it, to make a handle of the refusal, by saying the evidence was precluded; but, Mr. E. said, such excuses would not in the least affect his vote.

Suppose the papers in question were obtained, he could perceive no possible application they would have to the present case; for, if the President was totally wrong in what he did respecting Johnson, (or Brigstock,) that would not prove him wrong or right in his conduct respecting Nash. The facts respecting Robbins (or Nash) were only now before the House, in the resolutions, and no other case ought to be brought to confound it. Suppose this was admitted; if the gentleman should still find himself deficient in his testimony to support the resolutions, he might want the House to send for more testimony from some other parts. This kind of conduct must take up unnecessary time, when a decision was very necessary to come to. He hoped the motion would be negatived.

Mr. Macon confessed he was astonished at the conduct he had seen exemplified in the House; it appeared to him that gentlemen were making every possible excuse to prevent that information coming before the House which the friends of the resolution said they wanted.

If, Mr. M. said, he was desirous of injuring the reputation of the President, (and that he declared he was not,) he should think himself facilitating that desire by throwing every embarrassment in the way, and refusing every sort of information on the subject; this conduct would effectually tell the public that the truth dare not be seen—that the facts are too bad to be seen. He could not think it was any great mark of friendship to the President to give rise to such conjectures as the people must and would form, by the door to investigation into his conduct being stopped. In his opinion, Mr. M. said, this seclusion of the facts went to prove that

the opinion of the President, or his conduct in the New Jersey case, was right, and to reveal it would amount to an evidence that the latter was wrong with respect to Nash. If it was otherwise, the papers asked for would speak for themselves. It certainly would have a very suspicious appearance to refuse the papers, which were declared by several gentleman to be important to their forming a decision.

Mr. M. wished to have got rid of this subject altogether; but, as it must be examined, he wished it to be done with all the evidence possible. If there were gentlemen who were enemies to the President, he declared he was not one; he desired to do him justice, which he thought could not be done by hiding any part of his conduct which was open to suspicion. If the President had changed his opinion, give him an opportunity to show that he had acted right. If the papers should prove to be of no use in the present investigation, he could see no harm that could accrue from them.

Mr Shepard hoped the resolution never would be permitted to go on the Journals of the House, because it must tend to injury. The object he believed only to be delay. He thought, when the resolution was first submitted, in having anything to do with the subject the House committed a very great error; but because the House had committed one blunder, was that any reason why they should go on blundering still? He hoped the House would get rid of this subject with all possible expedition.

Mr. Livingston said, if he were really a personal enemy to the President, he should rejoice at such a motion as this being opposed; he thought it a very inconsistent part of the conduct of those gentlemen who called themselves exclusive friends of the President; those gentlemen who boasted of giving up their personal ease to the service of their country, in contradistinction to those gentlemen of opposite political opinions. His bitterest enemies would not wish to place him in a more undignified situation. What inference can be drawn by the people of the United States, but that there is something rotten in the business, that will bear too hard on the conduct of the President to be made public? that he had done, in the case of Nash, without consideration, very differently from what he did in the case of Brigstock, after mature consideration?

It had appeared, in the course of this business, Mr. L. said, that some gentlemen in the House had been in the habit of corresponding with the Department of State on the case of Robbins; might it not be inferred, from their subsequent conduct, that they had discovered something which they did not choose to have exposed? Whether this was a fair inference or not it would certainly be made.

The wretched arguments with which this opposition was supported, Mr. L. said, was most extraordinary, and would be quite so, could it be supported on better grounds. The distinction of the cases, when no perceptible distinction exists; the time that it would waste, when a few hours could procure all that was asked; and, above all, the miserable excuse of trouble to the clerks in the Secretary's office; were too futile for gentlemen to suppose they could palm them upon the public. But, miserable as they are, it is a convincing proof that no better are to be found, and these are their last resort.

To suppose that no correspondence took place would be an absurdity, and equally so would it be to harbor the opinion, which gentlemen had desired to establish, that it could throw no light upon the present subject if it did appear. Gentlemen had actually presumed to say that these cases were not the same; but what gentleman had pretended to draw a shade of distinction? It was impossible, and nothing was wanted to prove this fact but a slight examination of the two cases. If they are the same, said Mr. L., it is impossible to suppose the conduct of the Executive in respect to one, and the proceedings of the court thereupon, will not be laid down as a rule for future proceeding. This opinion of the President, in the New Jersey case, was no doubt given upon due deliberation; and in a future case, so precisely the same, his conduct ought to have been the same, or, not being so, the House ought to be informed why it differed. The result could be obtained; if it should prove favorable to the character of the President, Mr. L. declared he should be as willing to admit it as those who called themselves his exclusive friends.

Mr. Harper said, when the gentleman from New York undertook to direct others in their vote, he should be careful to give reasons which must convince their minds. For his part, Mr. H. said, he never chose to accept of advice from an enemy; but if he could get instruction from his errors, and, viewing his mistaken measures, could improve himself, he was always willing to do it. If he took advice from any man he must know that his motives were good in giving it; if, in the present instance, he could believe the design of the gentleman was to preserve the President of the United States from obloquy; if he had not discovered the "pen dipped in gall," he should be more inclined to attend to his advice. He was not afraid that the people of the United States were so stupid as to mistake the true light in which they ought to view the subject.

Was it a common practice, Mr. H. asked, to exhibit vast charges, and then go to look for the testimony? Why, did not the gentleman and his counsel, whoever they might be, know that the testimony from South Carolina, and the testimony from New Jersey, or any other, would be necessary to support their charge? They had plenty of time since the subject was first agitated. Had not this subject been talked of for eight months past, and pasteboard figures of Jonathan Robbins been exhibited at every election ground in the United States? The most ordinary rules of courts of justice in the United States forbade testimony to be admitted at such a period of the proceeding. If any public accuser in the United States was to conduct himself in that way he would get severely rapped over the knuckles, if not thrown over the bar. The matter has proceeded too far for its admission.

But, said Mr. H., what can be the use of this tes-

timony? Gentlemen say that the Executive has decided on one case in different ways, and that, on the present occasion, he must have been wrong. One gentleman said, the claim of citizenship was important. But this is a wrong idea; the claim of citizenship, which was built on falsehood, was not made till a month after the President had acted on the case, and, consequently, it must be out of the question. It is scarcely possible that any requisition was ever made by any British agent in the case in New Jersey. Can it be supposed that the President would be guilty of such a boyish trick—of such versatility of conduct in his dealings with a foreign nation—as, in a few months, to put a different construction upon one and the same action? No; it is absolutely impossible, and gentlemen well know it.

The difference of the cases, Mr. H. said, was that, in New Jersey, the men were indicted by the Circuit Court; they were not claimed to be given up to the British. They were indicted for an offence cognizable in that court; bills were found against them; two of them were tried and acquitted, the other the President ordered a *nolle prosequi* entered upon. Why were the men acquitted? Was it through a defect of testimony? No, sir, said Mr. H., but through a defect in the jurisdiction. The jury well knew, being judges of law as well as of fact, that the court had no jurisdiction, and, therefore, they made a return of not guilty. Inasmuch as there was no demand made from Great Britain, the men were discharged.

Mr. H. said he was opposed to this motion on account of the principle contained in it. It was very wrong first to exhibit a charge and then go to hunt for testimony. It was like hanging a man upon a gibbet, and then seeking for his guilt. This principle had been presented to the House in various shapes, but every one was, he thought very properly, rejected, as he had no doubt this would also be. If this were to be acceded to, the next thing would be to search for a piece of evidence in Georgia or in Maine, or anything that would procure the object—delay, and its influence on a certain occasion—the "election."

Here was a criminal charge, dressed up and blazoned out with all the false colors which a morbid imagination could invent, but which was manifestly and totally unfounded, and contrary to fact; it therefore appeared to him necessary, Mr. H. said, to come to a decision speedily, and strip the charge of its gloss, in order that its true deformity might appear, and all the world see that the intention to accuse was baffled by an exposure of truth, and the character accused justified from guilt.

Mr. S. SMITH said, the gentleman last up had given the most powerful reason why these papers were necessary that could possibly be imagined; he said, in strong language, that no requisition had ever been made, in the New Jersey case, to deliver up the men to the British. If this was a fact, most assuredly the case would not apply; but the only way to estimate that fact was to obtain a view of the papers, or know from authority that there were none. Mr. S. said he could not draw that conclusion. He believed that a requisition had been made; that it was precisely the same as the South Carolina case; and that the papers relating to it would be completely in point; to which the House ought to have access, and not go to British statutes and law books when the country produced a precedent.

The gentleman last up had said that the jury, being judges of law and fact, determined that there was no jurisdiction. How that was he could not say; the verdict was, not guilty; which, most likely, was a verdict upon facts. Suppose it should turn out, by the documents, that requisition was made for these men, and they should prove that two of them were liberated for want of sufficient proof; suppose it should turn out that this very Lieutenant Foreshaw was sworn to have been killed by Brigstock, and yet, now, Nash is charged with having killed Foreshaw; suppose it should turn out that Brigstock was an American citizen, and being such, was liberated from further prosecution, because the President might have thought that an American citizen, impressed on board a British ship-of-war, was justified in getting his liberty. These things might appear; the same claim of citizenship was now made; and, in his opinion, a jury trial ought to have been had in order to ascertain facts so material to a man's personal interest.

Mr. HARPER explained: that the said documents did not discover any requisition having been made in the New Jersey case. And, further, instead of positively saying the jury had acquitted for want of jurisdiction, he said it was presumed so.

Mr. SMILIE said, there was another fact stated by the gentleman which was incorrect; he said that the figure of J. Robbins was hung up at every election ground. This was not true, for Mr. S. said he was at one election where it was not hung up. [Several other gentlemen also declared that they saw no such thing in their respective districts, but they heard of it in some few places.] One extraordinary feature, Mr. SMILIE observed, was easily perceived throughout the whole of this attempt to investigate facts—it appeared that gentlemen were determined to exculpate the President, at all events; he was not ready to do so, nor was he ready to accuse him; he only wished to do what was right and lawful, for which purpose he wished every document that could assist him. It was strange, that while there were papers which, it was said, would make the whole of the Executive conduct appear free of blame, the friends of the Executive should refuse them. How could gentlemen say they had not withheld important testimony, when all the world must perceive that facts were yet hidden that would throw light on the case.

Mr. H. LEE said, he had hitherto voted with gentlemen who asked for papers; he did it because they themselves said they wanted such papers to guide their decision; he was unwilling they should have any excuse. Supposing that other information might possibly be procured, and anxious to obtain it, he wrote to the Secretary of State, but received for answer that there was none.

Mr. L. said he did it, in case there had been any papers, that they should be produced. He should have voted on the present question in the same way, but, from what he had perceived, he found that any attempts to gratify those gentlemen were in vain, and that to encourage it would be wasting day after day, without any hope of settling the main inquiry before the next session of Congress. Besides, Mr. L. said, the session was far spent, and not one public bill was yet passed. And should so many days be spent on a matter of so little consequence as considering the case of an individual who had transgressed the law, and very properly suffered for his crimes? He hoped not. From this moment he was determined, by his vote, to stop every attempt to delay a final decision.

Mr. L. contended that the President had a right to change his proceedings, according to his opinion, if he should be convinced of the propriety of it. It was a privilege every public character enjoyed. He would not vote for a postponement, which he must do, were he to vote for the motion.

Mr. NICHOLAS thought there was a very great probability that a requisition was made in the New Jersey case. The gentleman from South Carolina (Mr. HARPER) said there were none; but how did he know it? Did the gentleman believe that the British Ministry were not as desirous to have these men delivered as they were of the other? To suppose they acted understandingly; to suppose they were desirous of pursuing one steady object, unremittingly, as they always had done, would warrant a strong presumption that they did demand those men. It was impossible but the papers in question must either add to or diminish the construction put upon this case, and solve some important queries.

Mr. DANA thought the conduct of the President was consistent, Constitutional, and proper, and that it was out of the power of any gentleman to prove the contrary. One great reason for thinking this was, the manner this charge had been conducted from its first appearance, which was contrary to all legal knowledge and Constitutional principles. He defied any gentleman to produce a precedent, in any public body, except it was in the proceedings of the Revolutionary Government of France. The manner of conducting the business being totally wrong, Mr. D. said he did not expect to receive the least conviction from anything that would be brought forward, or any arguments which would be used.

Gentlemen had said it would awaken dreadful suspicions if the motion was negatived. And were the House to be deterred from their duty at the apparition of a demagogue? No, he trusted not; because he well knew that men of understanding would approve their conduct; and if weak and silly men disapproved, he was willing to bear it from them.

If gentlemen would look to the record they would find that the cases were different; these men were charged under the statute of the United States, the other was not. The proceeding being different, the case could not enlighten us. As well might gentlemen ask for the whole of the State trials in order to discover the law on impeachments.

Mr. GALLATIN contended, that if investigation was the object of the House, they ought to grant the resolution. Whether it was admitted or not, it would be impossible to deny one fact—that the court did admit jurisdiction in that case, which was exactly similar to this, and that the court of South Carolina did assume jurisdiction. Whether the demand was made in the Jersey case or not, it was clear that it was made in the case of Nash, and that it was complied with; and this man, by the advice of the President, was taken out of the hands of the Judiciary.

But to know how exactly the circumstances attending the Jersey case correspond with the latter, the papers were certainly desirable. This was a case in point, much better than all which the English authorities could produce; and there being a different decision, it certainly ought to be known why that difference did occur. The gentleman from South Carolina had stated that no jurisdiction was admitted by the jury, and therefore the men were acquitted, and that no requisitions were made; to be sure, he afterwards said it was all founded on supposition. Now, whether these were or were not facts, the papers would tell. By knowing all the circumstances of that case, a decision could be formed with more accuracy as to the other case.

Mr. DAVIS said he was desirous of avoiding this disagreeable subject, but as a majority of the House thought differently, and they determining, he should give a vote, however contrary to his will. He certainly wished to meet it with all the information in the power of the House. The gentleman from New York had brought forward certain resolutions which he had defended. The gentleman from South Carolina said they were blazoned with falsehood. Now, which of these two gentlemen, Mr. D. asked, was he to believe? How could he form an opinion without the facts being produced? He wished not to be forced to form it upon bare conjecture—he wished to have truths before him. Certainly, if he was refused facts, he must suppose there was some great reason against the disclosure. He asked gentlemen to recollect in what a situation they placed the Executive, exposed to such censure. Let everything appear that will do honor to the character of that gentleman, but to afford such crippled testimony never would acquit the President in the eyes of the American people, if that House should be satisfied that his conduct was honorable.

The question was then taken on agreeing to the resolution, and decided in the negative—yeas 46, nays 46, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, Archibald Henderson, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Liv-

ingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, William H. Hill, Henry Lee, Silas Lee, James Linn, John Marshall, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

The SPEAKER voted in the negative.

The House then resolved itself into a Committee on the Message, when Mr. BAYARD proceeded, in answer to Mr. LIVINGSTON, in which he spoke about three hours. The Committee then rose, and obtained leave to sit again.

THURSDAY, March 6.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act declaring the assent of Congress to certain acts of the States of Maryland and Georgia," with an amendment; to which they desire the concurrence of this House.

JONATHAN ROBBINS.

The House went into Committee of the Whole on the Message of the President, in the case of Jonathan Robbins, when Mr. NICHOLAS spoke about three hours in favor of the resolutions introduced by Mr. LIVINGSTON, which were negatived—yeas 34, nays 58.

Some discussion then took place on taking up the resolution presented by Mr. BAYARD, which was also with the Committee of the Whole House. The Committee at length rose without entering upon it, and reported their disagreement to the resolutions proposed by Mr. LIVINGSTON; and the question whether the Committee should have leave to sit again was taken by yeas and nays, and carried—yeas 59, nays 38, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, Phanuel Bishop, John Brown, Robert Brown, C. G. Champlin, Matthew Clay, John Condit, William Cooper, S. W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dawson, Joseph Dickson, William Edmond, Abiel Foster, Dwight Foster, Jonathan Freeman, Albert Gallatin, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, Joseph Heister, David Holmes, James H. Imlay, George Jackson, John Wilkes Kittera, Henry Lee, Silas Lee, Michael Leib, Samuel Lyman, Edward Livingston, Nathaniel Macon, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Jonas Platt, John Randolph, Samuel Sewall, John Smilie, John Smith, David Stone, Thomas Sumter, Benjamin Taliaferro, George Thatcher, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Robert Williams.

NAYS—Theodorus Bailey, Jonathan Brace, Samuel J. Cabell, Gabriel Christie, William Craik, John Dennis, George Dent, Joseph Eggleston, Thomas Evans, Samuel Goode, William Gordon, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Archibald Henderson, William H. Hill, James Jones, Aaron Kitchell, Matthew Lyon, James Linn, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jun., William Shepard, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Richard Thomas, John Thompson, Robert Waln, Lemuel Williams, and Henry Woods.

The question was then before the House to agree to the report of the Committee in their disagreement with the resolutions.

Mr. GALLATIN rose, and entered generally into the argument, in a speech of about two hours, after which the House adjourned.

FRIDAY, March 7.

The amendments of the Senate to the bill declaring the assent of Congress to certain acts of the States of Maryland and Georgia were referred to the Committee of Revisal and Unfinished Business.

Mr. SPAIGHT, from the committee appointed for that purpose, reported a bill to alter the times of holding the District Court of North Carolina; which was read a first and second time, and committed for Monday next.

Mr. HARPER presented a petition of about fifty families, residing on a tract of territory ceded by the State of South Carolina to the United States, stating that they had been left unprotected and unacknowledged by any civil authority, and praying to be placed under such government as Congress in their wisdom may see fit. Referred to a select committee, to consider and report thereon.

JONATHAN ROBBINS.

The House took up the unfinished business of yesterday, and the question, Will the House agree with the Committee of the Whole in their disagreement to Mr. LIVINGSTON's resolutions? being under consideration.

Mr. MARSHALL said, that believing, as he did most seriously, that in a Government constituted like that of the United States, much of the public happiness depended, not only on its being rightly administered, but on the measures of Administration being rightly understood—on rescuing public opinion from those numerous prejudices with which so many causes might combine to surround it, he could not but have been highly gratified with the very eloquent, and what was still more valuable, the very able and very correct argument which had been delivered by the gentleman from Delaware (Mr. BAYARD) against the resolutions now under consideration. He had not expected that the effect of this argument would be universal;

but he had cherished the hope, and in this he had not been disappointed, that it would be very extensive. He did not flatter himself with being able to shed much new light on the subject; but, as the argument in opposition to the resolutions had been assailed with considerable ability by gentlemen of great talents, he trusted the House would not think the time misapplied which would be devoted to the reëstablishment of the principles contained in that argument, and to the refutation of those advanced in opposition to it. In endeavoring to do this, he should notice the observations in support of the resolutions, not in the precise order in which they were made; but as they applied to the different points he deemed it necessary to maintain, in order to demonstrate, that the conduct of the Executive of the United States could not justly be charged with the errors imputed to it by the resolutions.

His first proposition, he said, was that the case of Thomas Nash, as stated to the President, was completely within the 27th article of the Treaty of Amity, Commerce, and Navigation, entered into between the United States of America and Great Britain.

He read the article, and then observed: The *casus fœderis* of this article occurs, when a person, having committed murder or forgery within the jurisdiction of one of the contracting parties, and having sought an asylum in the country of the other, is charged with the crime, and his delivery demanded, on such proof of his guilt as, according to the laws of the place where he shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed.

The case stated is, that Thomas Nash, having committed murder on board of a British frigate, navigating the high seas under a commission from His Britannic Majesty, had sought an asylum within the United States; on this case his delivery was demanded by the Minister of the King of Great Britain.

It is manifest that the case stated, if supported by proof, is within the letter of the article, provided a murder committed in a British frigate, on the high seas, be committed within the jurisdiction of that nation. That such a murder is within their jurisdiction, has been fully shown by the gentleman from Delaware. The principle is, that the jurisdiction of a nation extends to the whole of its territory, and to its own citizens in every part of the world. The laws of a nation are rightfully obligatory on its own citizens in every situation where those laws are really extended to them. This principle is founded on the nature of civil union. It is supported everywhere by public opinion, and is recognised by writers on the laws of nations. *Rutherforth*, in his second volume, page 180, says: "The jurisdiction which a civil society has over the persons of its members, affects them immediately, whether they are within its territories or not."

This general principle is especially true, and is particularly recognised, with respect to the fleets of a nation on the high seas. To punish offences committed in its fleet, is the practice of every nation in the universe; and consequently the opinion of the world is, that a fleet at sea is within the jurisdiction of the nation to which it belongs. *Rutherforth*, vol. ii. p. 491, says: "there can be no 'doubt about the jurisdiction of a nation over the 'persons which compose its fleets, when they are 'out at sea, whether they are sailing upon it or are 'stationed in any particular part of it."

The gentleman from Pennsylvania, (Mr. GALLATIN,) though he has not directly controverted this doctrine, has sought to weaken it by observing that the jurisdiction of a nation at sea could not be complete even in its own vessels; and in support of this position he urged the admitted practice of submitting to search for contraband—a practice not tolerated on land, within the territory of a neutral Power. The rule is as stated; but is founded on a principle which does not affect the jurisdiction of a nation over its citizens or subjects in its ships. The principle is, that in the sea itself no nation has any jurisdiction. All may equally exercise their rights, and consequently the right of a belligerent Power to prevent aid being given to his enemy, is not restrained by any superior right of a neutral in the place. But, if this argument possessed any force, it would not apply to national ships-of-war, since the usage of nations does not permit them to be searched.

According to the practice of the world, then, and the opinions of writers on the law of nations, the murder committed on board of a British frigate navigating the high seas, was a murder committed within the jurisdiction of the British nation.

Although such a murder is plainly within the letter of the article, it has been contended not to be within its just construction; because at sea all nations have a common jurisdiction, and the article correctly construed, will not embrace a case of concurrent jurisdiction.

It is deemed unnecessary to controvert this construction, because the proposition, that the United States had no jurisdiction over the murder committed by Thomas Nash, is believed to be completely demonstrable.

It is not true that all nations have jurisdiction over all offences committed at sea. On the contrary, no nation has any jurisdiction at sea, but over its own citizens or vessels, or offences against itself. This principle is laid down in 2 *Ruth.* 488, 491.

The American Government has, on a very solemn occasion, avowed the same principle. The first Minister of the French Republic asserted and exercised powers of so extraordinary a nature, as unavoidably to produce a controversy with the United States. The situation in which the Government then found itself was such as necessarily to occasion a very serious and mature consideration of the opinions it should adopt. Of consequence, the opinions then declared deserve great respect. In the case alluded to, Mr. Genet had asserted the right of fitting out privateers in the American ports, and of manning them with American citizens, in order to cruise against nations with whom America was at peace. In rea-

soning against this extravagant claim, the then Secretary of State, in his letter of the 17th of June, 1793, says:

"For our citizens then to commit murders and depredations on the members of nations at peace with us, or to combine to do it, appeared to the Executive, and to those whom they consulted, as much against the laws of the land as to murder or rob, or combine to murder or rob its own citizens; and as much to require punishment, if done within their limits, where they have a territorial jurisdiction, or on the high seas, where they have a personal jurisdiction, that is to say, one which reaches their own citizens only; this being an appropriate part of each nation, on an element where all have a common jurisdiction."

The well considered opinion, then, of the American Government on this subject is, that the jurisdiction of a nation at sea is "personal," reaching its "own citizens only;" and that this is the "appropriate part of each nation" on that element.

This is precisely the opinion maintained by the opposers of the resolutions. If the jurisdiction of America at sea be personal, reaching its own citizens only; if this be its appropriate part, then the jurisdiction of the nation cannot extend to a murder committed by a British sailor, on board a British frigate navigating the high seas under a commission from His Britannic Majesty.

As a further illustration of the principle contended for, suppose a contract made at sea, and a suit instituted for the recovery of money which might be due thereon. By the laws of what nation would the contract be governed? The principle is general that a personal contract follows the person, but is governed by the law of the place where it is formed. By what law then would such a contract be governed? If all nations had jurisdiction over the place, then the laws of all nations would equally influence the contract; but certainly no man will hesitate to admit that such a contract ought to be decided according to the laws of that nation to which the vessel or contracting parties might belong.

Suppose a duel, attended with death, in the fleet of a foreign nation, or in any vessel which returned safe to port, could it be pretended that any Government on earth, other than that to which the fleet or vessel belonged, had jurisdiction in the case; or that the offender could be tried by the laws or tribunals of any other nation whatever?

Suppose a private theft by one mariner from another, and the vessel to perform its voyage and return in safety, would it be contended that all nations have equal cognizance of the crime, and are equally authorized to punish it?

If there be this common jurisdiction at sea, why not punish desertion from one belligerent Power to another, or correspondence with the enemy, or any other crime which may be perpetrated? A common jurisdiction over all offences at sea, in whatever vessel committed, would involve the power of punishing the offences which have been stated. Yet, all gentlemen will disclaim this power. It follows, then, that no such common jurisdiction exists.

In truth the right of every nation to punish is limited, in its nature, to offences against the nation inflicting the punishment. This principle is believed to be universally true. It comprehends every possible violation of its laws on its own territory, and it extends to violations committed elsewhere by persons it has a right to bind. It extends also to general piracy.

A pirate, under the law of nations, is an enemy of the human race. Being the enemy of all, he is liable to be punished by all. Any act which denotes this universal hostility, is an act of piracy.

Not only an actual robbery, therefore, but cruising on the high seas without commission, and with intent to rob, is piracy. This is an offence against all and every nation, and is therefore alike punishable by all. But an offence which in its nature affects only a particular nation, is only punishable by that nation.

It is by confounding general piracy with piracy by statute, that indistinct ideas have been produced, respecting the power to punish offences committed on the high seas.

A statute may make any offence piracy, committed within the jurisdiction of the nation passing the statute, and such offence will be punishable by that nation. But piracy under the law of nations, which alone is punishable by all nations, can only consist in an act which is an offence against all. No particular nation can increase or diminish the list of offences thus punishable.

It had been observed by his colleague, (Mr. Nicholas,) for the purpose of showing that the distinction taken on this subject by the gentleman from Delaware (Mr. Bayard) was inaccurate, that any vessel robbed on the high seas could be the property only of a single nation, and being only an offence against that nation, could be, on the principle taken by the opposers of the resolutions, no offence against the law of nations; but in this his colleague had not accurately considered the principle. As a man who turns out to rob on the highway, and forces from a stranger his purse with a pistol at his bosom, is not the particular enemy of that stranger, but alike the enemy of every man who carries a purse, so those who without a commission rob on the high seas, manifest a temper hostile to all nations, and therefore become the enemies of all. The same inducements which occasion the robbery of one vessel, exist to occasion the robbery of others, and therefore the single offence is an offence against the whole community of nations, manifests a temper hostile to all, is the commencement of an attack on all, and is consequently, of right, punishable by all.

His colleague had also contended that all the offences at sea, punishable by the British statutes from which the act of Congress was in a great degree copied, were piracies at common law, or by the law of nations, and as murder is among these, consequently murder was an act of piracy by the law of nations, and therefore punishable by every nation. In support of this position he had cited 1 *Hawk. P. C.* 267. 271-3. *Inst.* 112, and 1 *Woodeson* 140.

The amount of these cases is, that no new offence is made piracy by the statutes; but that a different tribunal is created for their trial, which is guided by a different rule from that which governed previous to those statutes. Therefore, on an indictment for piracy, it is still necessary to prove an offence which was piracy before the statutes. He drew from these authorities a very different conclusion from that which had been drawn by his colleague. To show the correctness of his conclusion, it was necessary to observe, that the statute did not indeed change the nature of piracy, since it only transferred the trial of the crime to a different tribunal, where different rules of decision prevailed; but having done this, other crimes committed on the high seas, which were not piracy, were made punishable by the same tribunal; but certainly this municipal regulation could not be considered as proving that those offences were, before, piracy by the law of nations. [Mr. Nicholas insisted that the law was not correctly stated, whereupon Mr. Marshall called for 3 *Inst.* and read the statute:]

"All treasons, felonies, robberies, murders, and confederacies, committed in or upon the seas, &c., shall be inquired, tried, heard, determined and judged in such shires, &c., in like form and condition as if any such offence had been committed on the land," &c. "And such as shall be convicted, &c., shall have and suffer such pains of death, &c., as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land."

This statute, it is certain, does not change the nature of piracy; but all treasons, felonies, robberies, murders, and confederacies, committed in or upon the sea, are not declared to have been, nor are they piracies. If a man be indicted as a pirate, the offence must be shown to have been piracy before the statute; but if he be indicted for treason, felony, robbery, murder, or confederacy, committed at sea, whether such offence was or was not a piracy, he shall be punished in like manner as if he had committed the same offence on land. The passage cited from 1 *Woodeson*, 140, is a full authority to this point. Having stated that offences committed at sea were formerly triable before the Lord High Admiral, according to the course of the Roman civil law, *Woodeson* says:

"But, by the statutes 27 H. 8. c. 4, and 28 H. 8. c. 15, all treasons, felonies, piracies and other crimes committed on the sea, or where the admiral has jurisdiction, shall be tried in the realm as if done on land. But the statutes referred to affect only the manner of the trial so far as respects piracy. The nature of the offence is not changed. Whether a charge amount to piracy or not, must still depend on the law of nations, except where, in the case of British subjects, express acts of Parliament have declared that the crimes therein specified shall be adjudged piracy, or shall be liable to the same mode of trial and degree of punishment."

This passage proves not only that all offences at sea are not piracies by the law of nations, but also that all indictments for piracy must depend on the law of nations, "except where, in the case of British subjects, express acts of Parliament" have changed the law. Why do not these "express acts of Parliament" change the law as to others than "British subjects?" The words are general, "all treasons, felonies, &c." Why are they confined in construction to British subjects? The answer is a plain one: The jurisdiction of the nation is confined to its territory and to its own subjects.

The gentleman from Pennsylvania (Mr. Gallatin) abandons, and very properly abandons, this untenable ground. He admits that no nation has a right to punish offences against another nation, and that the United States can only punish offences against their own laws and the law of nations. He admits, too, that if there had only been a mutiny (and consequently if there had only been a murder) on board the Hermione, that the American courts could have taken no cognizance of the crime. Yet mutiny is punishable as piracy by the law of both nations. That gentleman contends that the act committed by Nash was piracy, according to the law of nations. He supports his position by insisting that the offence may be constituted by the commission of a single act; that unauthorized robbery on the high seas is this act, and that the crew having seized the vessel, and being out of the protection of any nation, were pirates.

It is true that the offence may be completed by a single act; but it depends on the nature of that act. If it be such as manifests generally hostility against the world—an intention to rob generally, then it is piracy; but if it be merely a mutiny and murder in a vessel, for the purpose of delivering it up to the enemy, it seems to be an offence against a single nation and not to be piracy. The sole object of the crew might be to go over to the enemy, or to free themselves from the tyranny experienced on board a ship-of-war, and not to rob generally.

But, should it even be true that running away with a vessel to deliver her up to an enemy was an act of general piracy, punishable by all nations, yet the mutiny and murder was a distinct offence. Had the attempt to seize the vessel failed, after the commission of the murder, then, according to the argument of the gentleman from Pennsylvania, the American courts could have taken no cognizance of the crime. Whatever then might have been the law respecting the piracy, of the murder there was no jurisdiction. For the murder, not the piracy, Nash was delivered up. Murder, and not piracy, is comprehended in the 27th article of the treaty between the two nations. Had he been tried then and acquitted on an indictment for the piracy, he must still have been delivered up for the murder, of which the court could have no jurisdiction. It is certain that an acquittal of the piracy would not have discharged the murder; and, therefore, in the so much relied on trials at Trenton, a separate indictment for murder was filed after an indictment for piracy. Since, then, if acquitted for piracy, he must have been delivered to the British Government on the charge of murder, the President of the United States might, very properly, without prosecuting for the piracy, direct him to be delivered up on the murder.

All the gentlemen who have spoken in support of the resolutions, have contended that the case of Thomas Nash is within the purview of the act of Congress, which relates to this subject, and is by that act made punishable in the American courts. That is, that the act of Congress designed to punish crimes committed on board a British frigate. Nothing can be more completely demonstrable than the untruth of this proposition.

It has already been shown that the legislative jurisdiction of a nation extends only to its own territory, and to its own citizens, wherever they may be. Any general expression in a legislative act must, necessarily, be restrained to objects within the jurisdiction of the Legislature passing the act. Of consequence an act of Congress can only be construed to apply to the territory of the United States, comprehending every person within it, and to the citizens of the United States.

But, independent of this undeniable truth, the act itself affords complete testimony of its intention and extent. (See *Laws of the United States*, vol. i. p. 10.) The title is: "An act for the punishment of certain crimes against the United States." Not against Britain, France, or the world, but singly "against the United States."

The first section relates to treason, and its objects are, "any person or persons owing allegiance to the United States." This description comprehends only the citizens of the United States, and such others as may be on its territory or in its service.

The second section relates to misprision of treason; and declares, without limitation, that any person or persons, having knowledge of any treason, and not communicating the same, shall be guilty of that crime. Here then is an instance of that limited description of persons in one section, and of that general description in another, which has been relied on to support the construction contended for by the friends of the resolutions. But will it be pretended that a person can commit misprision of treason who cannot commit treason itself? That he would be punishable for concealing a treason who could not be punished for plotting it? Or, can it be supposed that the act designed to punish an Englishman or a Frenchman, who, residing in his own country, should have knowledge of treasons against the United States, and should not cross the Atlantic to reveal them?

The same observations apply to the sixth section, which makes any "person or persons" guilty of misprision of felony, who, having knowledge of murder or other offences enumerated in that section, should conceal them. It is impossible to apply this to a foreigner, in a foreign land, or to any person not owing allegiance to the United States.

The eighth section, which is supposed to comprehend the case, after declaring that if any "person or persons" shall commit murder on the high seas, he shall be punishable with death, proceeds to say, that if any captain or mariner shall piratically run away with a ship or vessel, or yield her up voluntarily to a pirate, or if any seaman shall lay violent hands on his commander, to prevent his fighting, or shall make a revolt in the ship, every such offender shall be adjudged a pirate and a felon.

The persons who are the objects of this section of the act are all described in general terms, which might embrace the subjects of all nations. But is it to be supposed that, if in an engagement between an English and a French ship-of-war, the crew of the one or the other should lay violent hands on the captain and force him to strike, that this would be an offence agninst the act of Congress, punishable in the courts of the United States? On this extended construction of the general terms of the section, not only the crew of one of the foreign vessels forcing their captain to surrender to another, would incur the penalties of the act, but, if in the late action between the gallant Truxtun and the French frigate, the crew of that frigate had compelled the captain to surrender, while he was unwilling to do so, they would have been indictable as felons in the courts of the United States. But surely the act of Congress admits of no such extravagant construction.

His colleague, Mr. M. said, had cited and particularly relied on the ninth section of the act; that section declares, that if a citizen shall commit any of the enumerated piracies, or any acts of hostility, on the high seas, against the United States, under color of a commission from any foreign Prince or State, he shall be adjudged a pirate, felon, and robber, and shall suffer death.

This section is only a positive extension of the act to a case which might otherwise have escaped punishment. It takes away the protection of a foreign commission from an American citizen, who, on the high seas, robs his countrymen. This is no exception from any preceding part of the law, because there is no part which relates to the conduct of vessels commissioned by a foreign Power; it only proves that, in the opinion of the Legislature, the penalties of the act could not, without this express provision, have been incurred by a citizen holding a foreign commission.

It is most certain, then, that the act of Congress does not comprehend the case of a murder committed on board a foreign ship-of-war.

The gentleman from New York has cited 2 *Woodeson*, 428, to show that the courts of England extend their jurisdiction to piracies committed by the subjects of foreign nations.

This has not been doubted. The case from Woodeson is a case of robberies committed on the high seas by a vessel without authority. There are ordinary acts of piracy which, as has been already stated, being offences against all nations, are punishable by all. The case from 2 *Woodeson*, and the note cited from the same book by the gentleman from Delaware, are strong authorities against the doctrines contended for by the friends of the resolutions.

It has also been contended that the question of jurisdiction was decided at Trenton, by receiving indictments against persons there arraigned for the same offence, and by retaining them for trial after the return of the habeas corpus.

Every person in the slightest degree acquainted with judicial proceedings, knows that an indictment is no evidence of jurisdiction; and that, in criminal cases, the question of jurisdiction will seldom be made but by arrest of judgment after conviction.

The proceedings, after the return of the habeas corpus, only prove that the case was not such a case as to induce the Judge immediately to decide against his jurisdiction. The question was not free from doubt, and, therefore, might very properly be postponed until its decision should become necessary.

It has been argued by the gentleman from New York, that the form of the indictment is, itself, evidence of a power in the court to try the case. Every word of that indictment, said the gentleman, gives the lie to a denial of the jurisdiction of the court.

It would he assuming a very extraordinary principle, indeed, to say that words inserted in an indictment for the express purpose of assuming the jurisdiction of a court, should be admitted to prove that jurisdiction. The question certainly depended on the nature of the fact, and not on the description of the fact. But as an indictment must necessarily contain formal words in order to be supported, and as forms often denote what a case must substantially be to authorize a court to take cognizance of it, some words in the indictments at Trenton ought to be noticed. The indictments charge the persons to have been within the peace, and murder to have been committed against the peace, of the United States. These are necessary averments, and, to give the court jurisdiction, the fact ought to have accorded with them. But who will say that the crew of a British frigate on the high seas, are within the peace of the United States? or a murder committed on board such a frigate, against the peace of any other than the British Government?

It is, then, demonstrated that the murder with which Thomas Nash was charged, was not committed within the jurisdiction of the United States, and, consequently, that the case stated was completely within the letter and the spirit of the twenty-seventh article of the treaty between the two nations. If the necessary evidence was produced, he ought to have been delivered up to justice. It was an act to which the American nation was bound by a most solemn compact. To have tried him for the murder would have been mere mockery. To have condemned and executed him, the court having no jurisdiction, would have been murder. To have acquitted and discharged him would have been a breach of faith, and a violation of national duty.

But it has been contended that, although Thomas Nash ought to have been delivered up to the British Minister, on the requisition made by him in the name of his Government, yet, the interference of the President was improper.

This, Mr. M. said, led to his second proposition, which was:

That the case was a case for Executive and not Judicial decision. He admitted implicitly the division of powers, stated by the gentleman from New York, and that it was the duty of each department to resist the encroachments of the others.

This being established, the inquiry was, to what department was the power in question allotted?

The gentleman from New York had relied on the second section of the third article of the Constitution, which enumerates the cases to which the Judicial power of the United States extends, as expressly including that now under consideration. Before he examined that section, it would not be improper to notice a very material misstatement of it made in the resolutions, offered by the gentleman from New York. By the Constitution, the Judicial power of the United States is extended to all cases in law and equity, arising under the Constitution, laws, and treaties of the United States; but the resolutions declare that Judicial power to extend to all questions arising under the Constitution, treaties, and laws of the United States. The difference between the Constitution and the resolutions was material and apparent. A case in law or equity was a term well understood, and of limited signification. It was a controversy between parties which had taken a shape for judicial decision. If the Judicial power extended to every question under the Constitution, it would involve almost every subject proper for Legislative discussion and decision; if, to every question under the laws and treaties of the United States, it would involve almost every subject on which the Executive could act. The division of power which the gentleman had stated, could exist no longer, and the other departments would be swallowed up by the Judiciary. But it was apparent that the resolutions had essentially misrepresented the Constitution. He did not charge the gentleman from New York with intentional misrepresentation; he would not attribute to him such an artifice in any case, much less in a case where detection was so easy and so certain. Yet this substantial departure from the Constitution, in resolutions affecting substantially to unite it, was not less worthy of remark for being unintentional. It manifested the course of reasoning by which the gentleman had himself been misled, and his judgment betrayed into the opinions those resolutions expressed. By extending the Judicial power to all cases in law and equity, the Constitution had never been understood to confer on that department any political power whatever. To come within this description, a question must assume a legal form for forensic litigation and judicial decision. There must be parties to come into court, who can be reached by its process, and bound by its power; whose rights admit of ultimate decision by a tribunal to which they are bound to submit.

A case in law or equity proper for judicial decision may arise under a treaty, where the rights of individuals acquired or secured by a treaty are to be asserted or defended in court. As under the fourth or sixth article of the Treaty of Peace with Great Britain, or under those articles of our late treaties with France, Prussia, and other nations, which secure to the subjects of those nations

their property within the United States; or, as would be an article, which, instead of stipulating to deliver up an offender, should stipulate his punishment, provided the case was punishable by the laws and in the courts of the United States. But the Judicial power cannot extend to political compacts; as the establishment of the boundary line between the American and British dominions; the case of the late guarantee in our Treaty with France, or the case of the delivery of a murderer under the twenty-seventh article of our present Treaty with Britain.

The gentleman from New York has asked, triumphantly asked, what power exists in our courts to deliver up an individual to a foreign Government? Permit me, said Mr. M., but not triumphantly, to retort the question. By what authority can any court render such a judgment? What power does a court possess to seize any individual and determine that he shall be adjudged by a foreign tribunal? Surely our courts possess no such power, yet they must possess it, if this article of the treaty is to be executed by the courts.

Gentlemen have cited and relied on that clause in the Constitution, which enables Congress to define and punish piracies and felonies committed on the high seas, and offences against the law of nations; together with an act of Congress, declaring the punishment of those offences; as transferring the whole subject to the courts. But that clause can never be construed to make to the Government a grant of power, which the people making it do not themselves possess. It has already been shown that the people of the United States have no jurisdiction over offences committed on board a foreign ship against a foreign nation. Of consequence, in framing a Government for themselves, they cannot have passed this jurisdiction to that Government. The law, therefore, cannot act upon the case. But this clause of the Constitution cannot be considered, and need not be considered, as affecting acts which are piracy under the law of nations. As the judicial power of the United States extends to all cases of admiralty and maritime jurisdiction, and piracy under the law of nations is of admiralty and maritime jurisdiction, punishable by every nation, the judicial power of the United States of course extends to it. On this principle the Courts of Admiralty under the Confederation took cognizance of piracy, although there was no express power in Congress to define and punish the offence.

But the extension of judicial power of the United States to all cases of admiralty and maritime jurisdiction must necessarily be understood with some limitation. All cases of admiralty and maritime jurisdiction which, from their nature, are triable in the United States, are submitted to the jurisdiction of the courts of the United States.

There are cases of piracy by the law of nations, and cases within the legislative jurisdiction of the nation; the people of America possessed no other power over the subject, and could consequently transfer no other to their courts; and it has already been proved that a murder committed on board a foreign ship-of-war is not comprehended within this description.

The Consular Convention with France, has also been relied on, as proving the act of delivering up an individual to a foreign Power to be in its nature Judicial and not Executive.

The ninth article of that Convention authorizes the Consuls and Vice Consuls of either nation to cause to be arrested all deserters from their vessels, "for which purpose the said Consuls and Vice 'Consuls shall address themselves to the courts, 'judges, and officers competent."

This article of the Convention does not, like the 27th article of the Treaty with Britain, stipulate a national act, to be performed on the demand of a nation; it only authorizes a foreign Minister to cause an act to be done, and prescribes the course he is to pursue. The contract itself is, that the act shall be performed by the agency of the foreign Consul, through the medium of the courts; but this affords no evidence that a contract of a very different nature is to be performed in the same manner.

It is said that the then President of the United States declared the incompetency of the courts, judges, and officers, to execute this contract without an act of the Legislature. But the then President made no such declaration.

He has said that some legislative provision is requisite to carry the stipulations of the Convention into full effect. This, however, is by no means declaring the incompetency of a department to perform an act stipulated by treaty, until the legislative authority shall direct its performance.

It has been contended that the conduct of the Executive on former occasions, similar to this in principle, has been such as to evince an opinion, even in that department, that the case in question is proper for the decision of the courts.

The fact adduced to support this argument is the determination of the late President on the case of prizes made within the jurisdiction of the United States, or by privateers fitted out in their ports.

The nation was bound to deliver up those prizes in like manner, as the nation is now bound to deliver up an individual demanded under the 27th article of the Treaty with Britain. The duty was the same, and devolved on the same department.

In quoting the decision of the Executive on that case, the gentleman from New York has taken occasion to bestow a high encomium on the late President; and to consider his conduct as furnishing an example worthy the imitation of his successor. It must be the cause of much delight to the real friends of that great man; to those who supported his Administration while in office from a conviction of its wisdom and its virtue, to hear the unqualified praise which is now bestowed on it by those who had been supposed to possess different opinions. If the measure now under consideration shall be found, on examination, to be the same in principle with that which has been cited, by its opponents, as a fit precedent for it, then may the friends of the gentleman now in office indulge the hope, that when he, like his predecessor, shall be no more, his conduct too may be quoted as an example for the government of his successors.

The evidence relied on to prove the opinion of the then Executive on the case, consists of two letters from the Secretary of State, the one of the 29th of June, 1793, to Mr. Genet, and the other of the 16th of August, 1793, to Mr. Morris.

In the letter to Mr. Genet, the Secretary says, that the claimant having filed his libel against the ship William, in the Court of Admiralty, there was no power which could take the vessel out of court until it had decided against its own jurisdiction; that having so decided, the complaint is lodged with the Executive, and he asks for evidence, to enable that department to consider and decide finally on the subject.

It will be difficult to find in this letter an Executive opinion, that the case was not a case for Executive decision. The contrary is clearly avowed. It is true, that when an individual, claiming the property as his, had asserted that claim in court, the Executive acknowledges in itself a want of power to dismiss or decide upon the claim thus pending in court. But this argues no opinion of a want of power in itself to decide upon the case, if, instead of being carried before a court as an individual claim, it is brought before the Executive as a national demand. A private suit instituted by an individual, asserting his claim to property, can only be controlled by that individual. The Executive can give no direction concerning it. But a public prosecution carried on in the name of the United States can, without impropriety, be dismissed at the will of the Government. The opinion, therefore, given in this letter, is unquestionably correct; but it is certainly misunderstood, when it is considered as being an opinion that the question was not in its nature a question for Executive decision.

In the letter to Mr. Morris, the Secretary asserts the principle, that vessels taken within our jurisdiction ought to be restored, but says, it is yet unsettled whether the act of restoration is to be performed by the Executive or Judicial department. The principles, then, according to this letter, is not submitted to the courts—whether a vessel captured within a given distance of the American coast, was or was not captured within the jurisdiction of the United States, was a question not to be determined by the courts, but by the Executive. The doubt expressed is not what tribunal shall settle the principle, but what tribunal shall settle the fact. In this respect, a doubt might exist in the case of prizes, which could not exist in the case of a man. Individuals on each side claimed the property, and therefore their rights could be brought into court, and there contested as a case in law or equity. The demand of a man made by a nation stands on different principles.

Having noticed the particular letters cited by the gentleman from New York, permit me now, said Mr. M., to ask the attention of the House to the whole course of Executive conduct on this interesting subject.

It is first mentioned in a letter from the Secretary of State to Mr. Genet, of the 25th of June, 1793. In that letter, the Secretary states a consultation between himself and the Secretaries of the Treasury and War, (the President being absent,) in which (so well were they assured of the President's way of thinking in those cases,) it was determined that the vessels should be detained in the custody of the Consuls, in the ports, until the Government of the United States shall be able to inquire into and decide on the fact.

In his letter of the 12th of July, 1793, the Secretary writes, the President has determined to refer the questions concerning prizes "to persons learned in the laws," and he requests that certain vessels enumerated in the letter should not depart "until his ultimate determination shall be made known."

In his letter of the 7th of August, 1793, the Secretary informs Mr. Genet that the President considers the United States as bound "to effectuate 'the restoration of, or to make compensation for, 'prizes which shall have been made of any of the 'parties at war with France, subsequent to the 5th 'day of June last, by privateers fitted out of our 'ports." That it is consequently expected that Mr. Genet will cause restitution of such prizes to be made, and that the United States "will cause restitution" to be made "of all such prizes as shall be 'hereafter brought within their ports by any of the 'said privateers."

In his letter of the 10th of November, 1793, the Secretary informs Mr. Genet, that for the purpose of obtaining testimony to ascertain the fact of capture within the jurisdiction of the United States, the Governors of the several States were requested, on receiving any such claim, immediately to notify thereof the Attorneys of their several districts, whose duty it would be to give notice "to the 'principal agent of both parties, and also to the 'Consuls of the nations interested; and to recommend to them to appoint by mutual consent arbi-'ters to decide whether the capture was made with-'in the jurisdiction of the United States, as stated in 'my letter of the 8th inst., according to whose award 'the Governor may proceed to deliver the vessel 'to the one or the other party." "If either party 'refuse to name arbiters, then the Attorney is to 'take depositions on notice, which he is to trans-'mit for the information and decision of the Pre-'sident." "This prompt procedure is the more to 'be insisted on, as it will enable the President, by 'an immediate delivery of the vessel and cargo 'to the party having title, to prevent the injuries 'consequent on long delay."

In his letter of the 22d of November, 1793, the Secretary repeats, in substance, his letter of the 12th of July and 7th of August, and says that the determination to deliver up certain vessels, involved the brig Jane, of Dublin, the brig Lovely Lass, and the brig Prince William Henry. He concludes with saying: "I have it in charge to 'inquire of you, sir, whether these three brigs have 'been given up according to the determination of 'the President, and if they have not, to repeat the 'requisition that they may be given up to their 'former owners."

Ultimately it was settled that the fact should be investigated in the courts, but the decision was re-

gulated by the principles established by the Executive Department.

The decision, then, on the case of vessels captured within the American jurisdiction, by privateers fitted out of the American ports, which the gentleman from New York has cited with such merited approbation; which he has declared to stand on the same principles with those which ought to have governed the case of Thomas Nash; and which deserves the more respect, because the Government of the United States was then so circumstanced as to assure us that no opinion was lightly taken up, and no resolution formed but on mature consideration; this decision, quoted as a precedent and pronounced to be right, is found, on fair and full examination, to be precisely and unequivocally the same with that which was made in the case under consideration. It is a full authority to show that, in the opinion always held by the American Government, a case like that of Thomas Nash is a case for Executive, and not Judicial decision.

The clause in the Constitution which declares that "the trial of all crimes, except in cases of impeachment, shall be by jury," has also been relied on as operating on the case, and transferring the decision on a demand for the delivery of an individual from the Executive to the Judicial department.

But certainly this clause in the Constitution of the United States cannot be thought obligatory on, and for the benefit of, the whole world. It is not designed to secure the rights of the people of Europe and Asia, or to direct and control proceedings against criminals throughout the universe. It can then be designed only to guide the proceedings of our own courts, and to prescribe the mode of punishing offences committed against the Government of the United States, and to which the jurisdiction of the nation may rightfully extend.

It has already been shown that the courts of the United States were incapable of trying the crime for which Thomas Nash was delivered up to justice. The question to be determined was, not how his crime should be tried and punished, but whether he should be delivered up to a foreign tribunal, which was alone capable of trying and punishing him. A provision for the trial of crimes in the courts of the United States is clearly not a provision for the performance of a national compact for the surrender to a foreign Government of an offender against that Government.

The clause of the Constitution declaring that the trial of all crimes shall be by jury, has never even been construed to extend to the trial of crimes committed in the land and naval forces of the United States. Had such a construction prevailed, it would most probably have prostrated the Constitution itself, with the liberties and the independence of the nation, before the first disciplined invader who should approach our shores. Necessity would have imperiously demanded the review and amendment of so unwise a provision. If, then, this clause does not extend to offences committed in the fleets and armies of the United States, how can it be construed to extend to offences committed in the fleets and armies of Britain or of France, or of the Ottoman or Russian Empires?

The same argument applies to the observations on the seventh article of the amendments to the Constitution. That article relates only to trials in the courts of the United States, and not to the performance of a contract for the delivery of a murderer not triable in those courts.

In this part of the argument, the gentleman from New York has presented a dilemma, of a very wonderful structure indeed. He says that the offence of Thomas Nash was either a crime or not a crime. If it was a crime, the Constitutional mode of punishment ought to have been observed; if it was not a crime, he ought not to have been delivered up to a foreign Government, where his punishment was inevitable.

It had escaped the observation of that gentleman, that if the murder committed by Thomas Nash was a crime, yet it was not a crime provided for by the Constitution, or triable in the courts of the United States; and that if it was not a crime, yet it is the precise case in which his surrender was stipulated by treaty. Of this extraordinary dilemma, then, the gentleman from New York is, himself, perfectly at liberty to retain either horn. He has chosen to consider it as a crime, and says it has been made a crime by treaty, and is punished by sending the offender out of the country.

The gentleman is incorrect in every part of his statement. Murder on board a British frigate is not a crime created by treaty. It would have been a crime of precisely the same magnitude had the treaty never been formed. It is not punished by sending the offender out of the United States. The experience of this unfortunate criminal, who was hung and gibbeted, evinced to him that the punishment of his crime was of a much more serious nature than mere banishment from the United States.

The gentleman from Pennsylvania and the gentleman from Virginia have both contended that this was a case proper for the decision of the courts, because points of law occurred, and points of law must have been decided in its determination.

The points of law which must have been decided, are stated by the gentleman from Pennsylvania to be, first, a question whether the offence was committed within the British jurisdiction; and, secondly, whether the crime charged was comprehended within the treaty.

It is true, sir, these points of law must have occurred, and must have been decided; but it by no means follows that they could only have been decided in court. A variety of legal questions must present themselves in the performance of every part of Executive duty, but these questions are not therefore to be decided in court. Whether a patent for land shall issue or not is always a question of law, but not a question which must necessarily be carried into court. The gentleman from Pennsylvania seems to have permitted himself to have been misled by the misrepresentation of the

Constitution made in the resolutions of the gentleman from New York; and, in consequence of being so misled, his observations have the appearance of endeavoring to fit the Constitution to his arguments, instead of adapting his arguments to the Constitution.

When the gentleman has proved that these are questions of law, and that they must have been decided by the President, he has not advanced a single step towards proving that they were improper for Executive decision. The question whether vessels captured within three miles of the American coast, or by privateers fitted out in the American ports, were legally captured or not, and whether the American Government was bound to restore them, if in its power, were questions of law; but they were questions of political law, proper to be decided, and they were decided by the Executive, and not by the courts.

The *casus fœderis* of the guaranty was a question of law, but no man could have hazarded the opinion that such a question must be carried into court, and can only be there decided. So the *casus fœderis*, under the twenty-seventh article of the treaty with Great Britain, is a question of law, but of political law. The question to be decided is, whether the particular case proposed be one in which the nation has bound itself to act, and this is a question depending on principles never submitted to courts.

If a murder should be committed within the United States, and the murderer should seek an asylum in Britain, the question whether the *casus fœderis* of the twenty-seventh article had occurred, so that his delivery ought to be demanded, would be a question of law, but no man would say it was a question which ought to be decided in the courts.

When, therefore, the gentleman from Pennsylvania has established, that in delivering up Thomas Nash, points of law were decided by the President, he has established a position which in no degree whatever aids his argument.

The case was in its nature a national demand made upon the nation. The parties were the two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognizance.

The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him.

He possesses the whole Executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.

He is charged to execute the laws. A treaty is declared to be a law. He must then execute a treaty, where he, and he alone, possesses the means of executing it.

The treaty, which is a law, enjoins the performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse, and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but, till this be done, it seems the duty of the Executive department to execute the contract by any means it possesses.

The gentleman from Pennsylvania contends that, although this should be properly an Executive duty, yet it cannot be performed until Congress shall direct the mode of performance. He says that, although the jurisdiction of the courts is extended by the Constitution to all cases of admiralty and maritime jurisdiction, yet if the courts had been created without any express assignment of jurisdiction, they could not have taken cognizance of cases expressly allotted to them by the Constitution. The Executive, he says, can, no more than courts, supply a legislative omission.

It is not admitted that, in the case stated, courts could not have taken jurisdiction. The contrary is believed to have been the correct opinion. And although the Executive cannot supply a total Legislative omission, yet it is not admitted or believed that there is such a total omission in this case.

The treaty, stipulating that a murderer shall be delivered up to justice, is as obligatory as an act of Congress making the same declaration. If, then, there was an act of Congress in the words of the treaty, declaring that a person who had committed murder within the jurisdiction of Britain, and sought an asylum within the territory of the United States, should be delivered up by the United States, on the demand of His Britannic Majesty, and such evidence of his criminality, as would have justified his commitment for trial, had the offence been here committed; could the President, who is bound to execute the laws, have justified the refusal to deliver up the criminal, by saying, that the Legislature had totally omitted to provide for the case?

The Executive is not only the Constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided.

The department which is entrusted with the whole foreign intercourse of the nation, with the negotiation of all its treaties, with the power of demanding a reciprocal performance of the article, which is accountable to the nation for the violation of its engagements with foreign nations, and for the consequences resulting from such violation, seems the proper department to be entrusted with the execution of a national contract like that under consideration.

If, at any time, policy may temper the strict execution of the contract, where may that political discretion be placed so safely as in the department whose duty it is to understand precisely the

state of the political intercourse and connexion between the United States and foreign nations, to understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union?

This department, too, independent of judicial aid, which may, perhaps, in some instances, be called in, is furnished with a great law officer, whose duty it is to understand and to advise when the *casus fœderis* occurs. And if the President should cause to be arrested under the treaty an individual who was so circumstanced as not to be properly the object of such an arrest, he may perhaps bring the question of the legality of his arrest before a judge, by a writ of habeas corpus.

It is then demonstrated, that, according to the principles of the American Government, the question whether the nation has or has not bound itself to deliver up any individual, charged with having committed murder or forgery within the jurisdiction of Britain, is a question the power to decide which rests alone with the Executive department.

It remains to inquire whether, in exercising this power, and in performing the duty it enjoins, the President has committed an unauthorized and dangerous interference with judicial decisions.

That Thomas Nash was committed originally at the instance of the British Consul at Charleston, not for trial in the American courts, but for the purpose of being delivered up to justice in conformity with the treaty between the two nations, has been already so ably argued by the gentleman from Delaware, that nothing further can be added to that point. He would, therefore, Mr. MARSHALL said, consider the case as if Nash, instead of having been committed for trial. Admitting even this to have been the fact, the conclusions which have been drawn from it were by no means warranted.

Gentlemen had considered it as an offence against judicial authority, and a violation of judicial rights to withdraw from their sentence a criminal against whom a prosecution had been commenced. They had treated the subject as if it was the privilege of courts to condemn to death the guilty wretch arraigned at their bar, and that to intercept the judgment was to violate the privilege. Nothing can be more incorrect than this view of the case. It is not the privilege, it is the sad duty of courts to administer criminal judgment. It is a duty to be performed at the demand of the nation, and with which the nation has a right to dispense. If judgment of death is to be pronounced, it must be at the prosecution of the nation, and the nation may at will stop that prosecution. In this respect the President expresses constitutionally the will of the nation: and may rightfully, as was done in the case at Trenton, enter a *nolle prosequi*, or direct that the criminal be prosecuted no farther. This is no interference with judicial decisions, nor any invasion of the province of a court. It is the exercise of an indubitable and a Constitutional power. Had the President directed the Judge at Charleston to decide for or against his own jurisdiction, to condemn or acquit the prisoner, this would have been a dangerous interference with judicial decisions, and ought to have been resisted. But no such direction has been given, nor any such decision been required. If the President determined that Thomas Nash ought to have been delivered up to the British Government for a murder committed on board a British frigate, provided evidence of the fact was adduced, it was a question which duty obliged him to determine, and which he determined rightly. If, in consequence of this determination, he arrested the proceedings of a court on a national prosecution, he had a right to arrest and to stop them, and the exercise of this right was a necessary consequence of the determination of the principal question. In conforming to this decision, the court has left open the question of its jurisdiction. Should another prosecution of the same sort be commenced, which should not be suspended but continued by the Executive, the case of Thomas Nash would not bind as a precedent against the jurisdiction of the court. If it should even prove that, in the opinion of the Executive, a murder committed on board a foreign fleet was not within the jurisdiction of the court, it would prove nothing more; and though this opinion might rightfully induce the Executive to exercise its power over the prosecution, yet if the prosecution was continued, it would have no influence with the court in deciding on its jurisdiction.

Taking the fact, then, even to be as the gentlemen in support of the resolutions would state it, the fact cannot avail them.

It is to be remembered, too, that in the case stated to the President, the Judge himself appears to have considered it as proper for Executive decision, and to have wished that decision. The President and Judge seem to have entertained, on this subject, the same opinion, and in consequence of the opinion of the Judge, the application was made to the President.

It has then been demonstrated—

1st. That the case of Thomas Nash, as stated to the President, was completely within the twenty-seventh article of the treaty between the United States and Great Britain.

2d. That this question was proper for Executive, and not for Judicial decision; and,

3d. That in deciding it, the President is not chargeable with an interference with Judicial decisions.

After trespassing so long, Mr. MARSHALL said, on the patience of the House, in arguing what had appeared to him to be the material points growing out of the resolutions, he regretted the necessity of detaining them still longer for the purpose of noticing an observation which appeared not to be considered by the gentleman who made it as belonging to the argument.

The subject introduced by this observation, however, was so calculated to interest the public feelings, that he must be excused for stating his opinion on it.

The gentleman from Pennsylvania had said that an impressed American seaman, who should

commit homicide for the purpose of liberating himself from the vessel in which he was confined, ought not to be given up as a murderer. In this, Mr. M. said, he concurred entirely with that gentleman. He believed the opinion to be unquestionably correct, as were the reasons that gentleman had given in support of it. He had never heard any American avow a contrary sentiment, nor did he believe a contrary sentiment could find a place in the bosom of any American. He could not pretend, and did not pretend to know the opinion of the Executive on this subject, because he had never heard the opinions of that department; but he felt the most perfect conviction, founded on the general conduct of the Government, that it could never surrender an impressed American to the nation which, in making the impressment, had committed a national injury.

This belief was in no degree shaken by the conduct of the Executive in this particular case.

In his own mind, it was a sufficient defence of the President from an imputation of this kind, that the fact of Thomas Nash being an impressed American was obviously not contemplated by him in the decision he made on the principles of the case. Consequently, if a new circumstance occurred, which would essentially change the case decided by the President, the Judge ought not to have acted under that decision, but the new circumstance ought to have been stated. Satisfactory as this defence might appear, he should not resort to it, because to some it might seem a subterfuge. He defended the conduct of the President on other and still stronger ground.

The President had decided that a murder committed on board a British frigate on the high seas, was within the jurisdiction of that nation, and consequently within the twenty-seventh article of its treaty with the United States. He therefore directed Thomas Nash to be delivered to the British Minister, if satisfactory evidence of the murder should be adduced. The sufficiency of the evidence was submitted entirely to the Judge.

If Thomas Nash had committed a murder, the decision was that he should be surrendered to the British Minister; but if he had not committed a murder, he was not to be surrendered.

Had Thomas Nash been an impressed American, the homicide on board the Hermione would, most certainly, not have been a murder.

The act of impressing an American is an act of lawless violence. The confinement on board a vessel is a continuation of the violence, and an additional outrage. Death committed within the United States, in resisting such violence, would not have been murder, and the person giving the wound could not have been treated as a murderer. Thomas Nash was only to have been delivered up to justice on such evidence as, had the fact been committed within the United States, would have been sufficient to have induced his commitment and trial for murder. Of consequence, the decision of the President was so expressed as to exclude the case of an impressed American liberating himself by homicide. He concluded with observing, that he had already too long availed himself of the indulgence of the House to venture farther on that indulgence by recapitulating or reinforcing the arguments which had already been urged.

When Mr. MARSHALL had concluded, Mr. DANA rose and spoke against the resolutions.

An adjournment was then called for and carried—yeas 50, nays 48.

SATURDAY, March 8.

CASE OF JONATHAN ROBBINS.

The House resumed the consideration of the report made on Thursday, last, by the Committee of the whole House to whom was referred the Message of the President of the United States of the seventh ultimo, containing their disagreement to the motion referred to them on the twentieth ultimo; and the said motion being read, in the words following, to wit:

"*Resolved*, That it appears to this House that a person calling himself Jonathan Robbins, and claiming to be a citizen of the United States, impressed on board a British ship-of-war, was committed for trial in one of the Courts of the United States, for the alleged crime of piracy and murder committed on the high seas, on board the British frigate Hermione. That a requisition being, subsequent to such commitment, made by the British Minister to the Executive of the United States, for the delivery of the said person (under the name of Thomas Nash) as a fugitive under the twenty-seventh article of the treaty with Great Britain, the President of the United States did, by a letter written from the Department of State, to the Judge who committed the said person for trial, officially declare his opinion to the said Judge that he 'considered an offence committed on board a public ship of-war on the high seas, to have been committed within the jurisdiction of the nation to whom the ship belongs;' and, in consequence of such opinion and construction, did advise and request the said Judge to deliver up the person so claimed, to the agent of Great Britain who should appear to receive him—provided, only, that the stipulated evidence of his criminality should be produced. That, in compliance with such advice and request of the President of the United States, the said person, so committed for trial, was, by the Judge of the District Court of South Carolina, without any presentment or trial by jury, or any investigation of his claim to be a citizen of the United States, delivered up to an officer of his Britannic Majesty, and afterwards tried by a court martial and executed, on a charge of mutiny and murder.

"*Resolved*, That, inasmuch as the Constitution of the United States declares that the Judicial power shall extend to all questions arising under the Constitution, laws, and treaties of the United States, and to all cases of admiralty and maritime jurisdiction; and, also, that the trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where such crimes shall have been committed, but when not committed within any State, then at such place or places as Congress may by law have directed: And, inasmuch as it is directed by law 'that the offence of murder, committed on the high seas, shall be deemed piracy and murder, and that the trial of all crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he

may be first brought:' Therefore, the several questions, whether the alleged crime of piracy and murder was committed within the exclusive jurisdiction of Great Britain; whether it comes within the purview of the said twenty-seventh article; and whether a person, stating that he was an American citizen, and had committed the act of which he was accused in attempting to regain his liberty from illegal imprisonment, ought to be delivered up without any investigation of his claim to citizenship, or inquiry into the facts alleged in his defence, are all matters exclusively of judicial inquiry, as arising from treaties, laws, constitutional provisions, and cases of admiralty and maritime jurisdiction:

"That the decision of those questions by the President of the United States, against the jurisdiction of the Courts of the United States, in a case where those courts had already assumed and exercised jurisdiction, and his advice and request to the Judge of the District Court that the person thus charged should be delivered up, provided only such evidence of his criminality should be produced as would justify his apprehension and commitment for trial, are a dangerous interference of the Executive with Judicial decisions; and that the compliance with such advice and request, on the part of the Judge of the District Court of South Carolina, is a sacrifice of the Constitutional independence of the Judicial power and exposes the administration thereof to suspicion and reproach."

Mr. NICHOLAS spoke in answer to Mr. MARSHALL.

The question was then taken that the House do agree with the Committee of the Whole in their disagreement to the same, and resolved in the affirmative—yeas 61, nays 35, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, William Cooper, William Craik, John Davenport, Franklin Davenport, Thomas T. Davis, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, James H. Imlay, James Jones, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, Richard Dobbs Spaight, David Stone, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Thomas Sumter, John Thomson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

A motion was made to adjourn. Mr. MACON hoped the House would sit and decide the resolution proposed by the gentleman from Delaware, so as to have done with the business, and not to enter on another week with it; however, 54 rising for the adjournment, it was carried.

MONDAY, March 10.

The House went into Committee of the Whole on the bill for the relief of Campbell Smith, reported their agreement to the bill without amendment, and the bill was ordered to be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the report of the committee to whom was referred, on the thirteenth of January last, a petition of Cato West and others, inhabitants of the Mississippi Territory, complaining of the political system by which the said Territory is governed; and, after some time spent therein, the Committee rose and reported progress.

Ordered, That the Committee of the Whole House be discharged from the further consideration of the said report, and that the same be recommitted to Mr. CLAIBORNE, Mr. GRISWOLD, Mr. HENDERSON, Mr. NOTT, and Mr. BARTLETT.

On a motion made and seconded that the House do come to the following resolutions, to wit:

Resolved, That, from and after the organization of the Mississippi Territory, the Governor shall nominate, and, by and with the advice and consent of the Legislative Council, shall appoint, all officers, both civil and military, of the Territory, whose appointments are not particularly vested in Congress by the ordinance; provided, that the Governor shall have power to fill up all vacancies which may happen during the recess of the Legislative Council, by granting commissions, which shall expire at the end of their next session.

Resolved, That every bill which shall have passed the House of Representatives and the Legislative Council, shall, before it become a law, be presented to the Governor of the Territory: if he approve, he shall sign it; but, if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections, at large, on their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House, it shall become a law. If any bill shall not be returned by the Governor within six days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case, it shall not be a law.

Resolved, That every order, resolution, or vote, to which the concurrence of the Legislative Council and House of Representatives may be necessary, except on a question of adjournment, shall be presented to the Governor of the Territory, and, before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be re-passed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Resolved, That the General Assembly shall meet at least once in every year, and such meeting shall be on the —— day of ——, unless they shall, by law, appoint a different day: *Provided*, that the Governor shall have power, on extraordinary occasions, to convene both Houses of the General Assembly, or either of them.

Resolved, That neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Ordered, That the said motion be referred to the committee last mentioned.

CASE OF JONATHAN ROBBINS.

Mr. BAYARD moved that the Committee of the whole House, to whom was referred the Message of the President relative to Thomas Nash, alias Jonathan Robbins, and a resolution submitted by himself to the House, approbating the conduct of the President, and referred to that Committee, be discharged from the further consideration thereof.

A long debate arose upon this motion, in which Messrs. RANDOLPH, DAVIS, JONES, NICHOLAS, LIVINGSTON, and EGGLESTON, spoke against it—and Messrs. BAYARD, BIRD, OTIS, KITTERA, VARNUM, RUTLEDGE, EDMOND, SHEPARD, and H. LEE, in favor of it; when the question was taken by yeas and nays, and carried in the affirmative—yeas 62, nays 35, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William C. C. Claiborne, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Richard Dobbs Spaight, George Thatcher, John Chew Thomas, John Thompson, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Joseph Heister, George Jackson, James Jones, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin, Taliaferro, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

POST ROADS.

Mr. H. LEE moved the following resolution, which was ordered to lie on the table:

Resolved, That a committee be appointed to inquire, and report by bill or otherwise, the expediency of making further provisions, by law, to facilitate the communication between different parts of the United States, by means of post roads.

Mr. HARPER also laid the following resolutions on the table.

Resolved, That for the more convenient, certain, and expeditious conveyance of the mails of the United States, on the main post road, leading from Portland in Maine, to Augustia in Georgia, it is expedient to make provision for promoting and aiding the establishment of turnpike, on the said road, and for rendering the course thereof more direct, between the places though which it is, or shall be, directed by law to pass; and that the surplus revenue of the Post Office ought to be set apart as a fund for those purposes.

Resolved, That the said fund ought to be vested in a board, under the direction of the President of the United States, and to be composed of the Secretaries of the Executive departments of the United States, and the Attorney General; and that when any company shall undertake to make a good turnpike road on any part of the said post road, and shall apply to the said board, stating their object, plan, and means, and shall offer good and sufficient security for the accomplishment of the undertaking, within a reasonable time, to be fixed by the said board, and for refunding any money to be advanced to them by the said board in case the said undertaking should not be so accomplished, the said board ought to be authorized and empowered, with the approbation of the President of the United States, to grant an act of incorporation to the said company, for the purposes aforesaid, and under certain conditions, terms, and restrictions, to be established by law; and to subscribe from the said fund and on behalf of the United States, for any number of shares of the said company, not exceeding one-third of the whole number: *Provided*, That the payments to be made on account of the said subscription, shall be made in such portions, and at such times, as the said board shall stipulate, and may be withheld by the said board, at its discretion, whenever the said company shall fail to make its stipulated payments.

Resolved, That whenever two or more companies shall apply as aforesaid, the preference ought to be given to that which shall apply for the part of the said post road nearest to the city of Washington in either direction: *Provided*, that the plan of such company shall appear to the President of the United States, to be, in other respects, equally worthy of adoption with those of its competitors.

Resolved, That if there should not be in any one year, sufficient applications as aforesaid to employ the whole of said funds, the surplus thereof ought to be applied, in manner aforesaid, to any other post road of the United States, respecting which application in manner aforesaid, shall be made; or, at the discretion of the President of the United States, to be carried to the fund for the next year.

Resolved, that the tolls and dividends to be derived from the shares which shall be subscribed for as aforesaid, ought to be received at the Treasury of the United States, and there accounted for, and added annually to the aforesaid fund, to be applied in manner aforesaid, to the purposes thereof.

Resolved, That when the said main post road shall be completed, the fund aforesaid ought to be applied in manner aforesaid, to the construction of turnpike roads on any other post road in the United States, and of toll bridges on such main or other post road.

The House went into Committee of the Whole, on the bill to alter and establish sundry post roads. After some time spent therein, the Committee rose, reported progress and asked leave to sit again.

TUESDAY, March 11.

The House then went into Committee on the bill to alter and establish certain post roads; several amendments were made thereto, with which the House concurred; and the bill was ordered to be engrossed for a third reading.

An engrossed bill for the relief of Campbell Smith was read the third time, and passed.

Mr. HARPER, from the committee to whom were referred so much of the Speech of the President at the commencement of the present session as relates to the revision and amendment of the Judiciary system, reported a bill to provide for the better establishment and regulation of the Courts of the United States.

Mr. D. FOSTER, from the Committee of Claims, to whom were referred the several petitions of Thomas Frothingham, of Massachusetts; of sundry citizens and inhabitants of the counties of Washington and Allegany; of Andrew Finley and others, citizens of Westmoreland county; and the memorial of sundry inhabitants of the four Western counties of Pennsylvania; made a report, which was read, and ordered to be committed to a Committee of the Whole House on Monday next.

WEDNESDAY, March 12.

An engrossed bill to alter and establish certain post roads, was read and passed.

MARINE CORPS.

The House then went into Committee of the Whole on a bill for the government of the Marine Corps, while on shore.

[The reported bill contained a section providing that, if any marine officer or private should commit any offence against the person or property of any citizen, while on shore, that is punishable by the known laws of the land, the commanding officer or officers of every company or party, is required to use his utmost endeavors to deliver up such accused person to the civil magistrate, upon demand made by such magistrate, and shall also aid and assist the officers of justice in apprehending such offender, in order to bring him to trial—any officer refusing as aforesaid, on application being made to him by a civil officer to deliver or aid in the delivery of such person to the civil magistrate, every such officer so offending, *and being thereof convicted in any court of law in the county where the fact was committed, by the oath of two credible witnesses*, shall be cashiered and forever afterwards incapacitated to hold any military commission in the service of the United States.]

This, so far as related to a trial before a court of law, was moved and carried in Committee of the Whole to be struck out. When the question came up in the House to agree with the report of the Committee of the Whole to strike out the words in *italic*, a warm and long debate ensued; the question to agree was taken by yeas and nays, and carried in the affirmative—yeas 47, nays 44, as follows:

YEAS—Bailey Bartlett, Jonathan Brace, John Brown, Christopher G. Champlin, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Archibald Henderson, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Samuel Lyman, John Marshall, Harrison G. Otis, Thomas Pinckney Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, Richard Dobbs Spaight, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

NAYS—Willis Alston, Theodorus Bailey, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Andrew Gregg, John A Hanna, Joseph Heister, William H. Hill, George Jackson, James Jones, Aaron Kitchell, Henry Lee, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abraham Trigg, John Trigg, and Robert Williams.

The further consideration of the bill was then postponed till to-morrow.

THURSDAY, March 13.

Mr. CLAIBORNE, from the select committee to whom was recommitted the petition of Cato West and others, of the Mississippi Territory, together with sundry resolutions, abridging the power of the Governor of that Territory—made report that it would be inexpedient to adopt the said resolutions.

The report was read a first and second time and committed for to-morrow.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, to whom was referred, on the seventh instant, the amendment of the Senate to the bill declaring the assent of Congress to certain acts of the States of Maryland and Georgia, made a report; which was read and considered: Whereupon,

Ordered, That this House doth agree to the amendment of the Senate to the said bill, with an amendment.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" with amendments; to which they desire the concurrence of this House.

The House resumed the consideration of the bill depending yesterday, for the government of the Marine Corps, while on shore; Whereupon,

Ordered, That the said bill be re-committed to Mr. PARKER, Mr. OTIS, Mr. RUTLEDGE, Mr. CRAIK, and Mr. CHAMPLIN.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, reported a bill providing the means of intercourse between the United States and foreign nations; which was read a first and second time, and committed for to-morrow.

Mr. MARSHALL presented a petition of William Tazewell, Secretary to Mr. Gerry, while Envoy at Paris, praying that the Secretary of State may be authorized to liquidate and settle his accounts for travelling expenses from Paris to Holland and London, in an official capacity, and for sundry articles plundered from him on his passage to this country, having been captured and carried into Spain. Referred to a select committee.

The bill for the government of the Marine Corps, while on shore, was, on motion of Mr. OTIS, recommitted to a select committee.

The House went into Committee of the Whole on the bill for removing any military force of the United States from the places of holding elections. After amending the bill, it was agreed to, and ordered to be engrossed and read a third time to-morrow.

The House went into Committee of the Whole on the bill to alter the times of holding the District Courts in North Carolina; which was agreed to without amendment, and ordered to be engrossed and read a third time to-morrow.

FRIDAY, March 14.

Mr. HARRISON, from the select committee appointed on the subject of public lands, reported a bill to amend the act, entitled an act to provide for selling the lands of the United States in the Territory Northwest of the river Ohio, and above the mouth of the Kentucky river; which was read a first and second time, and recommitted for Monday next.

The bill to fix the compensation of the Paymaster General, and of the Asssistant to the Adjutant General, was taken up in Committee of the Whole, agreed to, and ordered to be engrossed and read a third time on Monday next.

On motion of Mr. S. SMITH, the House came to the following resolution.

Resolved, That a committee be appointed to inquire into the expediency of authorizing the Secretary of the Treasury to remit any forfeitures which shall occur, or may have occurred, under the laws of the United States prohibiting the exportation of arms and ammunition, under the same provision which the Secretary is authorized to remit forfeitures incurred, under the revenue laws; and that they be authorized to report by bill or otherwise.

MISSISSIPPI TERRITORY.

The House, resolved itself into a Committee of the Whole on the report of the committee to whom was yesterday recommitted their report on the petition of Cato West and others, inhabitants of the Mississippi Territory; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follows:

Resolved, That so much of the ordinance for the government of the Territory of the United States Northwest of the river Ohio, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall forthwith operate, and be in force in the Mississippi Territory: *Provided*, That, until the number of free male inhabitants, of full age, in the said Territory, shall amount to five thousand, there shall not be returned to the General Assembly more than nine Representatives.

Resolved, That, until the number of free male inhabitants, of full age, in the Mississippi Territory, shall amount to five thousand, the county of Adams shall be entitled to choose four Representatives to the General Assembly; the county of Pickering, four; and the inhabitants of the Tensaw and Tombigby settlements, one.

Resolved, That the first election for Representatives to the General Assembly, shall be on the —— day of ——, and that all subsequent elections shall be regulated by the Legislature.

Resolved, That it shall be the duty of the Governor of the Mississippi Territory, to cause the said election to be holden on the day aforesaid, at the most convenient place in the counties and settlements aforesaid, and to nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected.

Resolved, That the Repreresentatives shall be convened by the Governor, at the town of Natchez, on the —— day of ——.

Resolved, That, so soon as the number of free male inhabitants, of full age, shall amount to, or exceed five thousand, the number of Representatives to the General Assembly shall be determined, and the apportionment made in the way prescribed in the ordinance.

Resolved, That nothing in these resolutions contained shall extend, or be construed to extend to, or affect the right of Georgia to the territory in question, or any part thereof.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. CLAIBORNE, Mr. GRISWOLD, Mr. HENDERSON, Mr. NOTT, and Mr. BARTLETT, do prepare and bring in the same.

SUNDRY BILLS.

The bill for removing troops from places of holding elections, was read a third time and passed; and the title declared to be "An act to prevent the interference of any military force in certain elections."

The bill entitled "An act to alter the times of holding the District Court in North Carolina," was read a third time and passed.

The House took up the amendment of the Senate to the bill allowing a drawback of duties on goods exported to New Orleans, and therein to amend the act regulating the collection of duties on imports and tonnage," and disagreed to the same, only five members voting in favor of it.

[The Senate proposed to insert "from and after the tenth day of April next," thereby fixing the operation of the act from that period.]

COLLECTION OF THE REVENUE.

Mr. HARPER said it had been represented to him, that there was considerable defect in the law requiring the payment of money from the collectors

of the revenue into the Treasury; that the Secretary felt himself very much inconvenienced, and that there existed no sufficient compulsory means to enforce payment; he therefore moved the following resolution.

Resolved, That a committee be appointed to inquire and report by bill or otherwise, whether any and what further provisions are necessary to be made by law, for compelling the receivers of public money to account for and pay over the same.

This resolution was agreed to.

INDIAN INTERCOURSE.

MR. JONES said the law for regulating intercourse with the Indian tribes, had been found to operate very oppressively on individuals in the State of Georgia, and expensively to the United States, as the trial of offenders under the act must be had before one of the Judges of the Supreme Court of Georgia, who resided at the distance of one hundred and fifty miles from the frontiers, where offences under this act are committed; and must be conveyed for such trial under an escort of United States troops, however trivial and harmless the offence may be, and slight the punishment prescribed for it. Supposing, as he did, that the inferior courts were competent to execute the provisions of the act, Mr. J. moved the following resolution, with a view to that effect, viz:

Resolved, That a committee be appointed to inquire and report whether any, and, if any, what, alterations are necessary in the law for regulating trade and intercourse with the Indian tribes, and for preserving peace on the frontiers; and that they have leave to report by bill or otherwise.

The resolution was ordered to lie on the table.

The House went into Committee of the Whole on the report of the select committee, appointed to consider and report on the expediency of amending the Judiciary system of the Northwestern Territory; and also on the expediency of dividing said Territory into two distinct and separate governments—when the resolution reported by the committee recommending a division of the Territory, was agreed to. The Committee then rose, and upon the question, will the House agree with the Committee in their agreement to the said resolution; a long debate ensued, and the House adjourned without taking the question upon it.

AMENDMENT TO THE CONSTITUTION.

Mr. NICHOLAS submitted the following resolution, viz:

"*Resolved, by the Senate and House of Representatives of the United States, two-thirds of both Houses concurring*, That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States:

"That, after the third day of March, in the year one thousand eight hundred and one, the choice of Electors of President and Vice President shall be made by dividing each State into a number of districts equal to the number of Electors, to be chosen in such States, and by the persons in each of those districts who shall have the qualifications requisite for electors of the most numerous branch of the Legislature of such State choosing one Elector in the manner which the Legislature thereof shall prescribe.

"That the election of Representatives to Congress, who are to serve after the third day of March, in the year one thousand eight hundred and three, shall be by dividing each State into a number of districts equal to the number of Representatives to which such State shall be entitled, and by the people within each of those districts who shall have the qualifications requisite for electors of the most numerous branch of the Legislature of such States choosing one Representative in the manner which the Legislature thereof shall prescribe."

The resolution was ordered to lie on the table.

PATENTS FOR USEFUL INVENTIONS.

The House went into a Committee of the Whole on the bill to extend the privilege of obtaining patents for useful discoveries and inventions, to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees; when

Mr. GRISWOLD moved to strike out the first section of the bill, which provides that an alien, after due residence, shall be entitled to patents for useful discoveries and inventions, &c.

Messrs. HARPER, SMITH, RUTLEDGE, and OTIS, opposed this motion, and Messrs. KITTERA and GRISWOLD spoke in favor of it; and contended that foreigners might, under this section of the bill, obtain a complete monopoly of the whole American market. After some observations of Mr. OTIS, who wished an amendment might be introduced, which should provide that the patent to be granted to any alien should continue to his benefit during his residence in this country only, the Committee rose, reported progress, and obtained leave to sit again.

LAND WARRANT.

The House went into a Committee of the Whole on the report of the select committee on the petition of John Mountjoy, and the resolution reported by the committee, authorizing the proper officers to issue a land warrant to said Mountjoy, in lieu of one said to be lost. Messrs. D. FOSTER and MACON opposed it, and wished to make a general question whether all warrants lost or destroyed ought to be renewed.

Mr. GRISWOLD was of the same opinion, and moved that the Committee rise, for the purpose of having this petition, and all others of a similar nature referred to a select committee, with instructions to report on the expediency of passing a general law on the subject.

The Committee having rose, and leave being refused to sit again, the proposition of Mr. G. was adopted, and the Committee instructed by a resolution of the House, to inquire into the expediency of authorizing the Secretary of War to issue to the officers and soldiers of the Continental Army, warrants for bounty lands, which may have been obtained from the War Office by fraud, or may have been lost or destroyed.

MONDAY, March 17.

A petition of Mary Wooster, relict of the late Major General Wooster, was presented to the House and read, stating that her said husband, on entering into the service of his country, during

the late war with Great Britain, (in which he fell, in the year one thousand seven hundred and seventy-seven,) relinquished his half-pay as a British officer; and praying that an indemnification may be granted her for the loss of the same, or that she may receive the same justice which has been done to others in similar circumstances.

Ordered, That it be referred to the Committee of Claims.

An engrossed bill to fix the compensation to the Paymaster General and the Assistant to the Adjutant General was read and passed.

Mr. CLAIBORNE, from the committee appointed for that purpose, reported a bill supplementary to an act entitled an act to provide for the final settlement of the limits of the State of Georgia, and for authorizing the establishment of a Government in the Mississippi Territory; which was twice read and referred to a Committee of the whole House.

Mr. A FOSTER proposed the following resolution:

"That a committee be appointed to inquire whether any, and, if any, what, alterations ought to be made in the bill passed the present session of Congress, entitled an act providing for the second census or enumeration of the inhabitants of the United States."

It was agreed to, and the committee appointed.

Mr. COOPER from the committee appointed on that subject, reported the following resolution:

"*Resolved*, That the President be authorized to employ an agent who shall be instructed to collect all the material information relative to a copper bed on the south side of Lake Superior; and to ascertain the Indian title to such land, in case it should be the wish of the United States Government to work a mine there; and also to inquire as to the terms upon which it may be obtained, and that a report be made thereof to Congress."

Referred to a Committee of the whole House.

A resolution proposed by Mr. JONES on Friday, relative to trade and intercourse with the Indians was taken up and agreed to, and five members appointed for that purpose.

A message from the Senate, informed the House that the Senate insist on their amendments disagreed to by this House to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage;'" and ask a conference thereon.

MEDAL TO CAPTAIN TRUXTUN.

Mr. PARKER observed that information had been received of a very gallant action having occurred between a frigate of the United States of 38 guns, commanded by Commodore Truxtun, and a French vessel of 52 guns, which was extremely bloody, but valiant on the part of the United States commander. It was not usual to grant emoluments on account of any particular gallant action to our officers, but to give approbation was common and consistent. In other countries, he said, monuments had been erected to commemorate such splendid victories.

As a testimonial of the regard of Congress for the officers who so bravely supported the flag of the United States, and to encourage similar acts of bravery, he would propose the following resolution:

Resolved, by the Senate and House of Representatives of the United States in Congress assembled, That a golden medal, emblematical of the late action between the United States frigate Constellation of 38 guns, and the French ship-of-war La Vengeance of 52 guns, be purchased under the Secretary of the Navy, and be presented to Captain Thomas Truxtun, in testimony of the high sense entertained by Congress of his gallantry and good conduct in the above engagement, wherein an example was exhibited by the captain, officers, sailors, and marines, honorable to the American name and instructive to its rising Navy.

The resolution was ordered to lie on the table.

LOAN OF MONEY.

The House then resolved itself into Committee on the bill to enable the President to borrow money for the public service.

This bill caused much debate, but at length passed through the Committee without amendment, and the question for engrossing was superseded by a motion to adjourn, which was carried.

TUESDAY, March 18.

The House proceeded to consider the message from the Senate, of yesterday, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act for allowing a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage:'" Whereupon,

Resolved, That this House doth agree to the proposed conference; and that Mr. SEWALL, Mr. WALN, and Mr. SAMUEL SMITH, be appointed managers at the same on the part of this House.

Mr. S. SMITH, from the committee to whom was referred a resolution to inquire whether any, and what, further credit ought to be given on articles of produce imported into the United States from the West Indies, reported, that it would be inexpedient, at the present time, to extend the terms of credit given by law on said articles.

The report was concurred in.

Mr. OTIS, from the Committee of Defence, reported a bill for the regulation of public arsenals and magazines; which was read a first and second time, and committed for Thursday.

The bill to enable the President to borrow money for the public service was ordered to be read a third time to-morrow.

The House, in Committee of the Whole, resumed the consideration of the amendatory patent law, when Mr. GRISWOLD withdrew his motion to strike out the first section, upon Mr. HARPER'S offering an amendment which obviated his objections, and the bill was agreed to as amended, and ordered to be read a third time to-morrow.

OFFICERS AND CREW OF THE CONSTELLATION.

Mr. PARKER moved that the unfinished business be postponed for the purpose of taking up the resolution which he yesterday laid on the

table, relative to the captain, officers, and crew of the Constellation; when

Mr. NICHOLSON said he wished it might not be taken into consideration until some official information was received upon the subject from the Secretary of the Navy, upon which resolutions can be grounded. In his opinion the resolution of the gentleman did not go far enough. It had been said, that a young officer had voluntarily lost his life, rather than shrink from his duty, which he thought ought to be noticed. He was in favor of giving his approbation of the conduct of the officers and crew in more general terms than the resolution on the table contemplated.

After some observations from Messrs. CHAMPLIN and HARPER, who were of the same opinion,

Mr. PARKER said, he did not suppose a doubt could exist upon this subject sufficient to require any further information than had been received through the medium of the newspapers. He had seen a letter in the possession of the Secretary of the Navy, from Captain Baker, of the Delaware, who had every opportunity of knowing the situation of the enemy's frigate, was in the same harbor, and, being a nautical man, was of course able to give a correct opinion on her then situation, and the evident marks of the bravery of her antagonist with whom she contended—this was sufficient to satisfy his mind.

If, said Mr. P., gentlemen think the resolution does not go far enough, there is no one who will more cheerfully concur in offering other testimonies of approbation than myself. With respect to the young officer,* whose gallantry and good conduct had been so highly spoken of, it was his intention to have brought forward a resolution for setting up his bust in a niche of the Capitol of the city of Washington.

Mr. P. concluded with observing that he had no objection to call for information from the Secretary of the Navy, and would therefore withdraw his motion.

Mr. PARKER then moved that the House come to the following resolution, viz:

Resolved, That the Secretary of the Navy be requested to lay before this House any information he may possess respecting the engagement which lately took place in the West Indies between the United States frigate Constellation and a French ship-of-war; *and, also, respecting the conduct of James Jarvis, a midshipman on board the said frigate.*

Mr. SMITH moved to strike out the words in italic, which created considerable debate; when

Mr. BIRD proposed to insert in lieu thereof the following words: "And also upon the conduct of any officer or other person on board said frigate who may have particularly signalized himself in the said action;" which Mr. B. supposed would meet the intention of the mover, and be less liable to objection than the words proposed to be stricken out.

Mr. PARKER having consented to the modification, the resolution was agreed to.

* Son of Mr. James Jarvis, of New York, and midshipman on board the Constellation in the engagement of the 1st of February, who was killed by the falling of the mast.

LIMITS OF GEORGIA, &c.

The House went into a Committee of the Whole on the bill supplementary to the act entitled an act for an amicable settlement of the limits of the State of Georgia, and for authorizing the establishment of a Government in the Mississippi Territory.

Mr. CLAIBORNE moved two additional sections to the bill—one of which abrogates the power of the Governor of that Territory to prorogue the Legislature at his pleasure—upon which a very long debate ensued.

Both resolutions were finally agreed to, 52 members voting in favor of each of them. The Committee rose, and upon the question, Will the House concur in the report of the Committee in their agreement to said additional sections? it passed in the affirmative—yeas 54, nays 37, as follows:

YEAS—Willis Alston, Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, Jonathan Brace, John Brown, Christopher G. Champlin, William Craik, Samuel W. Dana, John Davenport, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Harrison G. Otis, Thomas Pinckney, Jonas Platt, John Reed, Samuel Sewall, Wm. Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

And the bill was ordered to be engrossed and read a third time to-morrow.

DIVISION OF NORTHWEST TERRITORY.

The House proceeded to consider the report of the Committee of the whole House, made the thirteenth instant, to whom was referred the report of the committee appointed to inquire whether any, and what, alterations are necessary to be made in the judicial establishment of the Territory Northwest of the Ohio, and into the expediency of dividing the said Territory into two distinct and separate governments; and the resolution reported from the Committee of the whole House being again read in the words following, to wit:

Resolved, That the Territory Northwest of the river Ohio be divided into two distinct and separate Governments, by a line beginning at the mouth of the Great Miami river, and running thence a north course until it intersects the boundary line between the United States and Canada.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. CRAIK, Mr. HARRISON, and Mr. BIRD, do prepare and bring in the same.

WEDNESDAY, March 19.

Mr. S. SMITH, from the Committee of Commerce, reported a bill for the relief of John Collet; which was read, and ordered to be engrossed for a third reading to-morrow.

Mr. GRISWOLD observing that so much had lately been mentioned about our national debt and its increase, in the public papers, he would lay on the table the following resolution:

"*Resolved*, That a committee be appointed to examine the accounts of the United States relating to the public debt, and to report how far the same has been increased or diminished since the establishment of the Government of the United States under the present Constitution."

A petition of Oliver Pollock, renewing his former application for compensation on account of moneys advanced for, and services rendered, the United States, during the late war, was presented to the House and read, stating that he is possessed of new proofs in support of his said demand, and praying that the House will go into an investigation of the same.

Ordered, That the said petition be referred to the Committee of Claims.

A memorial of the Select and Common Councils of the city of Philadelphia, was presented to the House and read, praying that Congress may take such precautionary measures to prevent the introduction of the plague, which has for some time prevailed in the countries bordering on the Mediterranean, as to their wisdom shall seem meet.

Ordered, That the said memorial be referred to the Committee of Commerce and Manufactures.

SUNDRY BILLS.

The following engrossed bills were read the third time, and passed:

An act providing for an amicable settlement of limits with the State of Georgia, and establishing a regular Government in the Mississippi Territory;

An act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned; and to increase and define the penalties for violating the rights of patentees; and

An act to enable the President of the United States to borrow money for the public service.

The yeas and nays being called on the passage of the last named bill, were taken, and stood—yeas 52, nays 39, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, Henry Lee, Silas Lee, Samuel Lyman, James Linn, Harrison G. Otis, Josiah Parker, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, James Sheafe, Samuel Smith, Richard Dobbs Spaight, George Thatcher, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robt. Waln, Lemuel Williams, and Henry Woods.

NAYS—Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, David Holmes, George Jackson, James Jones, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Robert Williams.

MILITARY ACADEMY, &c.

Mr. OTIS, from the Committee of Defence, reported a bill for establishing a Military Academy, and for better organizing the corps of Engineers and Artillerists.

The bill was proceeding to be read, when Mr. OTIS suggested that as this bill contained much the same in detail as a report on the subject made by the Secretary of War, with which every gentleman was acquainted, he supposed the reading would not be necessary.

Mr. MACON said he should have no objection to its being read a first time, though he did not think it necessary; but he would give notice that it was his intention to move that the bill be rejected. He mentioned his reasons to be the expense of the measure generally, which it was an improper time to incur.

The bill having been read, he made the motion.

Mr. OTIS and Mr. CHAMPLIN answered. Mr. VARNUM supported the motion, which was at length negatived, 49 to 42; and the bill was referred to a Committee of the whole House.

RHODE ISLAND COLLEGE.

The House went into Committee on the report of the Committee of Claims, on the petition from the College of Rhode Island, praying payment for the occupation and certain injuries sustained by the said College on being used as an hospital for the troops of the United States, and of the French troops, during the war.

The report was, that compensation ought to be granted for the use and occupation, together with injuries sustained in the said College in its use by the Army of the United States, during the war, for an hospital.

Mr. CHAMPLIN proposed to amend the report by adding thereto, that compensation should also be made for its use by the French Army for the

same purpose. Mr. C. as well as Mr. BROWN contended that it was proper that compensation should be allowed for its use and injury by the French, they being in the United States service, as part of the American Army. On the other hand, it was contended that the French Army were to procure their own supplies, and pay for their own damages, which, in many instances that were recited, they had done, and therefore that application should have been made to them.

After considerable conversation, the motion was rejected.

The question, then, was for agreeing to the report. This caused considerable debate. On one side it was contended that this was a claim of a similar nature to many which had been rejected from individuals, and there could be no preference to this above the claim of an individual who had lost his property. Doubts were also expressed whether this claim was not barred by the statute. In support of the claim, instances were produced of Wilmington, Jersey, and Hartford Colleges, having received compensation in like cases; that the damages had been sustained, and the use made of the house, and that if any claim at all called for redress, it was incorporated literary societies, by which the Government was upheld. Mr. C. pressed the justice of the case with much zeal.

At length the resolution was agreed to in Committee, and the House concurred—yeas 51.

The Committee of Claims were instructed to report a bill accordingly.

THURSDAY, March 20.

An engrossed bill for the relief of John Collet was read the third time and passed.

Mr. D. FOSTER, from the Committee of Claims, reported a bill for the relief of the Corporation of Rhode Island College.

Mr. CRAIK from the committee appointed for that purpose, reported a bill to divide the Territory of the United States Northwest of the river Ohio into two separate governments.

Mr. JONES, from the committee appointed for that purpose, reported a bill supplementary to the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

These bills were severally twice read and referred to the Committee of the whole House.

The House went into Committee on the report of the committee to whom was referred the petition from several aliens of Mount Pleasant, who prayed, that having neglected to make the declaration of their desire to become citizens before the period expired which was settled by law, they may not be subjected to wait fourteen years before they could become citizens.

The Committee, after stating a variety of reasons, reported that the prayer of the petitioners ought not to be granted. The House concurred.

REMOVAL OF SEAT OF GOVERNMENT.

Mr. OTIS observed that it appeared to be the general opinion that the seat of Government would be removed to the Federal City, and that Congress would commence their next session at that place; and as some preliminary measures were necessary to be made previous thereto; and as it would be reposing too much power in the Commissioners who now act there to rely entirely on their reports; and as some measures must be reported and adopted before the end of the present session, he laid on the table the following resolution:

"*Resolved*, That a committee be appointed to consider what measures are expedient for Congress to adopt, preparatory to the removal of the seat of Government, with leave to report by bill or otherwise."

THE PUBLIC DEBT.

Mr. GRISWOLD called up a resolution he yesterday laid on the table, which, after being modified by Mr. GALLATIN, was adopted, as follows:

"*Resolved*, That a committee be appointed to examine the accounts of the United States, so far as relates to the public debt; the amount of the expenses incurred; the amount of debt extinguished; and, generally, such facts as relate to the public receipts and expenditures under the present Constitution."

Seven members were appointed.

Mr. HARPER moved that the said committee might be instructed to inquire into and ascertain, as near as may be, and report to the House, the amount of moneys paid since the establishment of the present Government for grants for incidental claims arising under the old Government; the amount of unfunded debt paid since that period; the amount paid for military pensions; the amount paid for the construction and repair of light-houses, beacons, &c.; the sum paid to quell the Western insurrection; the sum paid in fortifying the ports and harbors; the expenses of the fabrication of arms and military stores; the expenses of the ships-of-war, together with the amount of materials now on hand; the sums paid for the preservation of peace with the Indian tribes; the expenses for the relief and protection of American seamen; the amount for ascertaining and fixing the boundary lines of the United States; the sums paid for the preservation of peace with the Barbary Powers; and also a statement of the whole public property of every kind acquired, and now possessed, by the Government of the United States.

Mr. GALLATIN had no objection to the principle of the resolution, but, as the gentleman had gone into detail, if he by mistake had omitted any article, it would only lead the House into mistaken conclusions. He thought the amount of the whole of the expenditures as well as receipts ought to be stated in a general resolution, leaving the committee to give it in such detail as they might think proper.

Mr. HARPER said his object was not to obtain every expense of the whole Government; he did not want a statement of the civil list, but of what was called incidental and extraordinary expenses, into which the Government had been drawn by particular circumstances.

The motion was laid on the table.

STOUFFER AND WALLACE.

The House resolved itself into a Committee on the report of the Committee of Commerce on the

petition of Stouffer and Wallace. The report recommended that the prayer of the petitioners should not be granted.

Mr. S. SMITH hoped the report would not be agreed to; he stated the committee to have been nearly equally divided in this case. It appeared that one of the petitioners (Mr. Wallace) being at Tortola, a British island, purchased the ship, for which a register was prayed, at $20,000; which ship had been captured and condemned, and sold in that island. Mr. S. contended that the ship was purchased under the orders and instructions of the Secretary of State, in a report made on this subject, (which was read,) and wherein it was considered proper to take vessels captured into the ports of Great Britain, or any other at war with France, provided the distance was great from the United States. Conceiving this ship entitled to all the privileges under this instruction, as it would have if it had been condemned and sold in the United States, he thought himself perfectly safe in purchasing the vessel, not doubting but she was entitled to a register.

Mr. SEWALL stated the reasons of the committee in reporting against the petition. It appeared that this gentleman had mistaken the law, and this mistake the committee thought ought to be borne by the petitioners, rather than admit a very injurious principle. The consequence would very probably be that vessels would be taken into a British port, in preference to an American port, and thus the United States would be parties in the war. Further, it appeared that this vessel was taken while the captors were in company with a British privateer. With respect to the instructions of the Secretary of State, it was not stated that all the advantages were to be allowed to a vessel sold in a British port, to which she would have been entitled if sold in the United States; and that the purchaser certainly ought to have inquired into the operation of the laws of the United States in the case, or abide by the consequences.

Mr. NICHOLAS said he had no doubt but the instructions of the Secretary of State were wrong, and contrary to the law, and that the determination of the committee was right, and he hoped it would be decided in that way.

Mr. SMITH again supported the right of the petitioner. It was but fair, he said, if a man had been led into an error, by the instructions of a public officer, that the Government should assist him. Mr. Wallace had nothing to do with the privateers; the captors brought the vessel and sold it to him, at the same time producing the order of the Secretary for his security.

The Committee agreed to the report of the select committee, and the House concurred—yeas 45, nays 31.

The House went into a Committee on the report of the Committee of Claims on the petition of Amy Dardin, which was that the prayer of the petitioner ought not to be granted. Being taken up in the House, the propriety and impropriety of granting it was again contended, when there appeared in favor of the report 42, against it 42. The SPEAKER decided in the affirmative, so that the claim was not admitted.

The House resolved itself into a Committee of the Whole House on the bill to provide for the execution of the twenty-seventh article of the Treaty of Amity, Commerce, and Navigation, made with Great Britain; and, after some time spent therein, the Committee rose, reported progress, and asked leave to sit again.

FRIDAY, March 21.

Mr. MARSHALL, from the committee appointed on the subject of the Western Reserve of Connecticut, made a report that the cession of the said lands ought to be accepted by the United States upon terms mentioned by a bill which he also reported, and which was referred to a Committee of the Whole House.

Mr. PARKER, from the Naval Committee, reported a bill fixing the rank and pay of the commanding officer of the Corps of Marines. Committed to the Whole House.

The House then went into a Committee on the bill supplementary to an act for regulating the trade and intercourse with the Indian tribes, &c.; which was ordered to be engrossed for a third reading on Monday next.

Mr. OTIS called up his resolution, yesterday proposed, for a committee to inquire respecting the removal of the Government to the Federal City, which he now altered, so that the reference was made to the Committee of Ways and Means. The motion was agreed to.

ACTION OF THE FRIGATE CONSTELLATION.

The SPEAKER laid before the House a report from the Secretary of the Navy, in compliance with the instructions of the House, respecting the engagement which occurred between the frigate Constellation and a French ship-of-war. The report enclosed a letter from Captain Truxtun, detailing the action, and also extracts of letters from the American Consul at Curaçoa, and one from the American agent at St. Kitts, respecting the disabled state of the French ship La Vengeur. As to any particular specimen of valor, the Secretary received no information; but that all the officers and men had acted with the most unexampled bravery and decorum was attested by the Captain, whose good management was evinced by the singular success of the action. The Secretary mentions the singular bravery of James Jarvis, a Midshipman, who preferred death to quitting his post.

On motion of Mr. H. LEE, this report, together with a resolution proposed some days since by Mr. PARKER, was referred to the Naval Committee.

RHODE ISLAND COLLEGE.

An engrossed bill for the relief of the Corporation of Rhode Island College was read, and, on the question for its passage, Mr. RANDOLPH wished to know what difference there was in the prin-

ciple of this claim and that which was yesterday negatived of Amy Dardin.

Mr. D. FOSTER stated it to be, that the claim of Amy Dardin was barred by the statute of limitation, whereas this was not; and, being just, a bill was reported on it. The principle of the bill was strongly contested by Messrs. GOODE, GALLATIN, and NICHOLAS, on the ground of its being barred by the statute. Messrs. D. FOSTER, OTIS, and CHAMPLIN, spoke in answer. At length Mr. S. SMITH moved the postponement of the question on the bill until Monday, in order to ascertain whether it was barred or not.

It was postponed.

CHILDREN OF MAJOR TRUEMAN.

The House resolved itself into a Committee on the report of the Committee of Claims, on the petition of J. Somerville and H. T. Compton, guardians of the orphan children of the late Major Alexander Trueman, who was killed in bearing a mission to the Indians. The report was, that the decision of the accounting officers of the Treasury was right, and that the prayer of the petition ought not to be granted. Mr. E. FOSTER moved to agree with the report.

[It appeared that this claim was made for the difference of half-pay between a special law that was passed in this case, and a general law that was afterwards passed in behalf of the widows and orphan children of persons slain in battle, generally.]

Messrs. J. C. THOMAS, S. SMITH, and H. LEE, spoke in favor of the claim, and Messrs. D. FOSTER, MACON, and NICHOLAS, against it. After which the report was agreed to—ayes 48. The House concurred.

Mr. DAVIS afterwards laid on the table a resolution that a committee be appointed to report whether or not it was expedient to extend the general law of 1793 to the children aforesaid.

MONDAY, March 26.

Mr. HARPER, from the Committee of Ways and Means, reported a bill making further provision for the removal and accommodation of the Government of the United States; which was twice read and committed to the whole House.

An engrossed bill, supplementary to the act for regulating trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, was read and passed.

Mr. HARPER, directed by the Committee of Ways and Means, proposed the following resolution, which was agreed to:

"*Resolved*, That the Committee of Ways and Means have leave to prepare and report a bill or bills for making appropriations for the various branches of the public service during the present year."

Mr. HARPER reported a bill from the Committee of Ways and Means, to amend an act providing for a second census or enumeration of the inhabitants of the United States. Mr. H. stated this act to be only an alteration to conform the bill to an amendment made to the title of the bill which passed the present session. It was ordered to be engrossed for a third reading.

MEDAL TO CAPTAIN TRUXTUN.

Mr. PARKER, from the Naval Committee, reported the following resolutions:

"*Resolved, by the Senate and House of Representatives of the United States, in Congress assembled*, That the President of the United States be requested to present to Captain Thomas Truxtun, a golden medal, emblematical of the late action between the United States frigate Constellation, of 38 guns, and the French ship-of-war La Vengeur, of 54 guns, in testimony of the high sense entertained by Congress of his gallantry and good conduct in the above engagement, wherein an example was exhibited by the Captain, officers, sailors, and marines, honorable to the American name, and instructive to its rising navy.

"*Resolved*, That the conduct of James Jarvis, a Midshipman in said frigate, who gloriously preferred certain death to an abandonment of his post, is deserving of the highest praise; and that the loss of so promising an officer is a subject of national regret."

The House then proceeded to the consideration of these resolutions; the first of which being under consideration.

Mr. RANDOLPH said, that inasmuch as he could not give his assent to these resolutions, he felt impressed with the propriety of stating the reasons which would govern his vote.

It was not with any intention to detract from the deserved reputation which had been so nobly earned by the Captain, officers, and crew, of the Constellation; still less to withhold the well-earned applause due to that gallant youth who had sacrificed his life in the prosecution of his duty. It was to the first of these resolutions, only that he should deny his concurrence. He should do this, unless the gentlemen of the Naval Committee should show to him that it was the duty of the commander of the Constellation to persist in the chase, and compel to action a ship of such superior force. This conduct was, in his opinion, rash; and, when the situation of the United States and France was taken into consideration, it was peculiarly unadvisable. Our Commissioners were at this time in the capital of that country negotiating peace. How did the pursuit of this ship—the forcing her into an action, which ended in the crippling of both vessels—comport with that protection which was to be afforded to our commerce by the Constellation?

Mr. R. said that his duty obliged him to act upon his own opinion; and, however singular it may appear, he should vote against the first resolution, unless the gentleman who brought it forward would make it appear that it was the duty of Captain Truxtun to compel the Vengeance to come to action, when he knew her to be of such superior force. The second resolution met his most hearty approbation.

Mr. PARKER said, what the present state of things between the two countries might be, in the opinion of his colleague, he could not say; but Mr. P. conceived it was no other than it was at the time Congress passed a bill which prescribed

the conduct of our naval commanders. In that bill they were authorized to take or destroy all French armed vessels; under these orders Captain Truxtun left this country, and, in obedience to instructions to that effect, he pursued and engaged this vessel, which, though of superior force, he had beaten. Had he not attacked her, it is most probable she would have proceeded against our commerce. The law having been passed by Congress, if the President of the United States had not given orders conformably thereto, he would have been subject to impeachment. He, therefore, presumed it to be his duty; and, most certainly, such orders being given to the commanders, they were bound to conform to them. Mr. P. thought that this and greater approbation ought to be expressed by Congress for conduct so brave and unprecedented. In some countries monuments had been raised, but this was unnecessary, though merited. Our naval exertions were very recent and confined, but an instance of extraordinary valor having occurred it ought to be honorably and suitably noticed.

Mr. NICHOLAS said, however he might agree with his colleague (Mr. RANDOLPH) in a desire that no conduct should be encouraged that would tend to aggravate France in the present situation of things, he could not agree with him in his present sentiments. While we were in a state of actual, though not of declared war, Mr. N. thought it was naturally to be expected that our commanders would act in their complete military character, when our ships were arrayed for battle, and power given to act up to the full rigor which the laws of honor and of war would warrant. In the conduct of the Captain, as well as the crew, Mr. N. said, he saw nothing but what was extremely laudable, and highly meriting approbation.

Mr. LYON said he rose to request the division of the question on the resolutions. He was disposed to vote for the latter resolution, and not for the former.

The SPEAKER declared they would be divided, and that the question before the House was on the agreeing to the first resolution.

Mr. LYON observed that he had voted for the equipment of the three frigates under an impression that they would be employed solely for the protection of the commerce of this country; but now he found himself called upon to give thanks or praise to the commander of one of those frigates, and for what? for going out of the station assigned to him, as the most proper for the protection of the trading vessels of this country, in chase of a ship-of-war of much superior force; and for reducing the ship under his command, as well as that of his opponent, to a mere wreck. Mr. L. said he had seen nothing in the orders which had been published directing him to do this, nor did he think policy or prudence dictated the measure. Let all our naval commanders be excited to follow this example; let them play or fight each of them their vessel against a French vessel-of-war of superior force in the same way, and our naval force is crippled, while the French will scarcely feel their loss; then our commerce would be wholly at their mercy. Besides these considerations, what is there to defend that commerce, on the station left destitute by the Constellation, while she is refitting. For his part he was as glad and proud as any gentleman that our officers, and our sailors, and our marines, had behaved gallantly and done themselves and their country honor, in the late action, but he did not feel himself bound, under existing circumstances, to give distinguished praise to the conduct which produced it; he should therefore vote aganint the resolution.

Mr. J. BROWN would vote for this resolution for the very reason which some gentlemen urged for voting against it. He thought the very fact of chasing a ship of superior force, and forcing her to an action which had been attended with success, was a commendable act. This to him would be the only inducement for paying so high a mark of national respect. If it had been an attack upon a vessel of inferior force, he should not think it worth notice. The objection was partly on account of the French ship being of superior force; surely this would rather be a reason why we should have vessels of greater force than we have now; therefore he hoped the worthy member would suffer that brave officer to go to sea next time with a 74-gun ship under his command, when he would doubtless bring the enemy to a good account.

The yeas and nays were called on this resolution and carried—yeas 87, nays 4, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, John Bird, Phanuel Bishop, Jonathan Brace, John Brown, Robert Brown, Samuel J. Cabell, Christopher G. Champlin, William C. C. Claiborne, John Condit, William Cooper, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Abiel Foster, Dwight Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, James H. Imlay, James Jones, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Michael Leib, Samuel Lyman, James Linn, Nathaniel Macon, John Marshall, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Benjamin Taliaferro, George Thatcher, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

NAYS—George Jackson, Matthew Lyon, John Randolph, and Thomas Sumter.

The other resolution was adopted *unanimously*.

RHODE ISLAND COLLEGE.

An engrossed bill was read for the relief of the trustees of Rhode Island College, and after being warmly objected to by Mr. GALLATIN, and warmly

supported by Mr. Champlin, the yeas and nays were taken on its passage and resulted—yeas 41, nays 41, as follows:

Yeas—George Baer, Bailey Bartlett, Phanuel Bishop, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, John Davenport, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, John A. Hanna, James H. Imlay, George Jackson, Henry Lee, Silas Lee, Samuel Lyman, Joseph H. Nicholson, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Benjamin Taliaferro, George Thatcher, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

Nays—Willis Alston, John Bird, Robert Brown, Samuel J. Cabell, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, and Robert Williams.

The Speaker declaring himself in the affirmative the bill was passed.

The House went into Committee on the bill for the better regulation of the Courts of the United States, which was read through, when, the hour of adjournment being arrived, a motion was made for the Committee to rise, which was carried.

Progress was reported, and on the question "Shall the committee have leave to sit again?" leave was refused—yeas 38, nays 40, so the bill was lost.

Tuesday, March 25.

Mr. S. Smith, from the Committee of Commerce, to whom was referred a resolution to that effect, reported, that it would be inexpedient to authorize the Secretary of the Treasury to remit any forfeitures which have been or may be incurred under the laws of the United States prohibiting the exportation of arms and ammunition, upon the same principles on which the Secretary of the Treasury is authorized to remit forfeitures, penalties, and disabilities, incurred under the revenue laws. The House concurred in the report.

An engrossed bill to amend an act entitled, an act providing for the second census, or enumeration of the inhabitants of the United States, was read; and, after the title was amended so as to read "An act to alter the form of certain oaths and affirmations directed to be taken by the act entitled an act," &c. it was passed.

COURTS OF THE UNITED STATES.

The Speaker observed that, yesterday, the bill to provide for the better establishment of the Courts of the United States was taken up in Committee, which rose at the usual hour of adjournment, reported progress, and was refused leave to sit again; it was however the opinion of the Speaker, that the bill was still to be considered in possession of the House; this inference he drew from the constant practice of the House; and therefore, though leave was refused to sit again, the House could now agree to recommit the bill either to the select committee, or to the Committee of the Whole. There never were but two questions on a bill, to commit or to engross; one of these modes he considered must indispensably be taken.

Mr. Harper then, after some observations, moved to recommit the bill to a select committee.

Mr. Gallatin contended that the bill was not at all in possession of the House, but in the Committee of the Whole; there the Speaker found it, and until they were discharged from the consideration of it, the Speaker had no power over it.

After some other observations, Mr. Nicholas moved its postponement till the first Monday in December next.

Mr. Harper spoke against the motion, on the ground that gentlemen ought not to object to a system without either showing its impropriety or permitting its friends to show its usefulness. He wished the subject to undergo a discussion, when he was assured it would appear that many valuable improvements were introduced by this bill.

The yeas and nays were then taken on the question of postponement, and stood—yeas 44, nays 50, as follows:

Yeas—Willis Alston, Phanuel Bishop, Rob't Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Bartlett, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, Richard Dobbs Spaight, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Mr. Nicholas then moved that the bill be taken up in Committee of the Whole.

The House resolved itself into a Committee thereupon.

Mr. Nicholas moved to strike out the first section.

Mr. Harper objected, and mentioned the nature and properties of the section.

Mr. Nicholas afterwards withdrew his motion, observing that he should reserve it for the seventh section, in which more of the principle of the bill was contained.

A lengthy debate then ensued on a motion of Mr. Gallatin to strike out the sixth section, which related to suits being entered against the United States in the Supreme Court of the United States.

The Committee rose, and the House adjourned without taking the question.

Wednesday, March 26.

Mr. Harper, from the Committee of Ways and Means, reported a bill for the support of Government for the year 1800; which was twice read, and committed.

Mr. Harrison presented a petition of a number of the inhabitants of the Illinois country, in the Northwestern Territory, stating that they inhabit a country of eight hundred miles in length and four hundred in breadth; that many of them have to go six hundred miles to a Judicial court; that immigrations are very numerous; on which, and numerous other accounts, they prayed a division of the Territory. This petition was referred to a Committee of the Whole, to whom was referred a bill on that subject.

COURTS OF THE UNITED STATES.

The House then again resolved itself into a Committee on the Judiciary bill.

The fifth section being under consideration, which made a provision for bringing claims against the United States to be tried before the Courts of the United States,

Mr. Gallatin said he had yesterday moved to strike out this section, the impropriety of which he again contended; but, even if it were proper, the section by no means contained provisions to prevent frauds being practised in the claims that might be made. On which account, if the principle must pass, it ought to be the subject of a separate bill, wherein necessary precautions might be taken.

Mr. Harper agreed as to the principle, but had no objection to striking out the section if another bill could be brought in to effect the object. He appealed to the Chair to know whether it would be in order, the section being struck out, (the rules of the House not admitting one bill to be twice brought into the House in one session,) to bring in a bill afterwards containing the same principle, but with additional provisions.

Mr. Rutledge (the Chairman) gave his opinion that striking out the section would not preclude a bill being brought in to modify the same principle, when that was the main object.

The Speaker gave his opinion that it would be quite in order, since it was entirely distinct from the general provisions of the bill before the Committee, and would be complete without this; which, if necessary, could be made the subject of another bill; certain, however, he was, that it ought to be much more guarded than the section made it. There were, he was well persuaded, many enemies to the fifth and sixth sections, who would wish the bill itself to pass; to such it would be a relief to strike out the sections, and could not possibly do injury.

The fifth and sixth sections were ordered to be stricken out.

The seventh section contained provisions for dividing the United States into twenty-nine districts, in each of which a circuit court should be established (which are enumerated.) Mr. Nicholas moved to strike out this section, and entered at large into his reasons, and in favor of the present Judiciary system in this respect. Mr. Harper answered, giving the reasons why it was proper to change the present Judiciary system. Mr. S. Smith spoke in favor of the motion; after which Mr. Gallatin and Mr. Harper again spoke. The Committee rose without a decision, and the House adjourned.

Thursday, March 27.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on the memorial of Charles Pettit, referred to him by order of the House, on the eighth of January, one thousand seven hundred and ninety-six; which were read, and ordered to be referred to the Committee of Claims.

Mr. Nicholson laid on the table a resolution that the President of the Senate and Speaker of the House of Representatives should be authorized to adjourn their respective Houses on the last day of April next.

COURTS OF THE UNITED STATES.

The House went into Committee on the Judiciary bill; the motion to strike out the 7th section, containing the principle of the bill, being under consideration,

Mr. Marshall entered into a lengthy defence of the new system, and spoke against the motion.

Mr. Nicholson replied in answer.

Mr. Harper, in opposition to the motion, detailed the difference of expense between the present and the new system; it having been stated by the enemies of this bill that the expense of it would be $100,000 more than the present; Mr. H.'s statement made it only $46,500 more, which he contended was trifling compared with the essential advantages of a more perfect administration of justice.

Mr. Dennis also spoke in favor of the bill, with certain modifications in the detail, and Mr. Macon and Mr. Nicholas against it.

The question was then taken upon striking out the first section, and carried—ayes 50.

The Committee then rose, obtained leave to sit again, and the House adjourned.

Friday March 28.

Mr. D. Foster made a report, from the Committee of Claims, to whom were referred a resolution on the 13th of January last, that it was the

opinion of the committee that no alteration ought to be made in the law passed the 12th of June, 1798, respecting the loan office and final settlement certificates, indents of interest, and unfunded or registered debt on the books of the Treasury.

The report was referred to a Committee of the Whole.

Mr. LIVINGSTON observed, that great quantities of white cotton goods were imported into the United States, here printed, and again exported, which were not now entitled to a drawback of the duties; he, therefore, proposed the following resolution, which was carried:

"*Resolved*, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of allowing a drawback on exported cotton goods of foreign manufacture, from the United States, and to report by bill or otherwise."

The House went into Committee on the bill fixing the rank and pay of the commanding officer of the Corps of Marines; which was agreed to, and, when in the House, ordered to be engrossed for a third reading.

Mr. H. LEE proposed to the House the following resolution, which was agreed to:

"*Resolved*, That all the papers and packets sent to Mrs. Martha Washington, relict of the late General George Washington, shall be received and conveyed by post free from postage for and during her life."

A committee of three members was appointed to bring in a bill conformably thereto. A bill was accordingly reported by Mr. H. LEE, which was read, and ordered to be engrossed.

On motion, it was

Resolved, That the Secretary of State be directed to lay before this House a report of the proceedings had under an act passed at the last session, entitled "An act in addition to an act, entitled 'An act for the more general promulgation of the laws of the United States;" together with an account of the expense incurred within each State by publishing the laws therein.

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the first Monday of May next.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

COURTS OF THE UNITED STATES.

The House then went into a Committee of the Whole, on the Judiciary bill.

Mr. HARPER observed, that the section yesterday stricken out in Committee of the Whole, contained the essential principle of the bill, by which almost all the subsequent sections were guided. It was, therefore, impossible for the Committee to proceed with the other sections, so immediately flowing from the seventh section, which had been stricken out. Believing a modification to be essentially necessary, and desirous of putting it into such a train as to be brought before the House, agreeably to the more general opinion as expressed in the debate, he moved that the Committee of the Whole be discharged, for the purpose of afterwards moving the reference of the bill to a select committee.

Mr. OTIS also spoke in favor of the motion.

Messrs. GALLATIN, S. SMITH, and NICHOLAS, spoke against the Committee being discharged; wishing that some grounds might be established before it should be referred, in order that the select committee might know upon what principles to report a bill. It was necessary first to know whether it was the will of the House to increase the number of districts; whether the Judges of the Supreme Court should go the circuits, or be confined to the mere business of appeal; and whether, if they are to go the circuits, the number of Judges ought to be increased. Knowing the will of the House on these important articles, the Committee would know what to do.

The motion was carried—ayes 57.

Mr. HARPER then moved that the bill be recommitted to a select committee.

Mr. MACON moved to postpone the further consideration of the bill till the first Monday in December next. He considered the vote of yesterday was a transcript of the will of the House. The session was far advanced, and every gentleman knew how improper it was to discuss any important subject at the end of the session.

Some debate took place on the motion. It was contended in favor of the bill that the revision of the system was very important; that the business being of a public nature, it was the duty of the House to stay to do it, whatever might be their desire to go to their homes. The House had time, and were bound to take it up; but, if it was left till next session, it might not be done. Besides, it was argued that the close of the present Executive's authority was at hand, and, from his experience, he was more capable to choose suitable persons to fill the offices than another.

The question was taken and stood—yeas 46, nays 52, as follows:

YEAS—Willis Alston, Phanuel Bishop, Rob't Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Wain, Lemuel Williams, and Henry Woods.

Ordered, That the Committee of the whole House be discharged from the further consideration of the said bill, and that the same be recommitted to Mr. HARPER, Mr. CHAUNCEY GOODRICH, Mr. BAYARD, Mr. MARSHALL, and Mr. SEWALL.

NORTHWESTERN TERRITORY.

The House then went into Committee on the bill to divide the Territory of the United States Northwest of the Ohio.

Mr. MACON moved to strike out the first section; he had heard no considerable reason why the present mode of government was improper, as related to the Governor.

Mr. HARRISON answered, that the Government was too unwieldy; that numbers of families had removed to the Spanish territory; that the number of inhabitants in the Western division was at least 15,000, and that it was the general wish of the people a division should take place.

Mr. HARPER also spoke in favor of the bill. He considered that a territory of 1,000 miles in length and about 700 in breadth, divided by an extensive wilderness, inhabited by Indians, was very much too large, and the local situation too dissimilar to admit of being one Government, either to enact equal laws or to provide for the execution of them.

The motion to strike out was negatived.

Mr. CLAIBORNE moved to amend so as that the Government of the two Territories should be the same as that of the Mississippi Territory lately passed into a law.

Mr. HARRISON wishing this motion had been suspended, and promising to introduce that principle in another bill if this should pass, Mr. C. withdrew it.

The bill was then ordered to a third reading on Monday next.

MONDAY, March 31.

A message was received from the Senate, notifying the House that they had passed "An act prescribing the mode of deciding disputed elections of President and Vice President," to which they desired the concurrence of the House.

The bill was read twice and committed to a Committee of the whole House to-morrow.

The following engrossed bills were read, and passed:

An act fixing the rank and pay of the commanding officers of the corps of Marines;

An act to extend the privilege of franking letters and packages to Martha Washington; and

An act to divide the Territory of the United States Northwest of the Ohio into two separate Governments.

Mr. A. FOSTER, from the committee for that purpose, reported a bill supplementary to the law now in force, fixing the compensation of the officers of the Senate and House of Representatives; which was twice read, and referred to a Committee of the whole House.

Mr. HARPER, from the committee to whom was recommitted, on the 28th instant, the bill for the better establishment and regulation of the Courts of the United States, reported an amendatory bill to provide for the more convenient organization of the Courts of the United States.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, made the twenty-first instant, to whom was referred the petition of Gilbert Dench; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of the said Gilbert Dench cannot be granted, and that the petitioner have leave to withdraw the same.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act to discharge Robert Sturgeon from his imprisonment," with an amendment; to which they desire the concurrence of this House.

LAKE SUPERIOR COPPER MINES.

The House, according to the order of the day, again resolved itself into a Committee of the whole House on the report of the committee appointed, on the 5th instant, to inquire into the expediency of authorizing the President of the United States to appoint an agent to purchase of the Indians a tract of land on the south side of Lake Superior, which shall include the great copper bed; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be authorized to employ an agent, who shall be instructed to collect all material information relative to the copper mines on the south side of Lake Superior, and to ascertain whether the Indian title to such lands as might be required for the use of the United States, in case they should deem it expedient to work the said mines, be yet subsisting; and, if so, the terms on which the same can be extinguished: And that the said agent be instructed to make report to the President, in such time as the information he may collect may be laid before Congress at their next session.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

SALE OF NORTHWESTERN LANDS.

The House then resolved itself into Committee on the bill to amend the act entitled "An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river."

Mr. COOPER moved that the Committee rise, in order that the bill may be recommitted for the

purpose of regulating the quantities to be exposed for sale.

This motion was negatived.

Mr. Griswold then moved to strike out the first section, in which he was supported by Mr. Edmond, Mr. Cooper, and Mr. H. Lee, upon the ground of expense of surveying the lands, which must be very considerable, while the sale would be uncertain; that it would encourage encroachments upon the United States' land, from which it would be impossible to dispossess persons who would make this encroachment.

Messrs. Gallatin, Harrison, Nicholas, Harper, and Gordon, spoke in favor of this bill, because it prevented speculators receiving the advantages resulting from offering the lands in large quantities for sale; that the former bill provided the sales to be either in quarter townships, or in lots of 640 acres; but the present bill offered the whole in lots of 320 acres, which must encourage actual settlers to purchase, and of course increase the price of the purchase; that the expense would therefore be soon refunded to the Treasury, with a considerable advantage to the United States, whereas by the operation of the former bill, the sales had been small.

The Committee of the Whole rose without a decision, and obtained leave to sit again.

And the House adjourned.

Tuesday, April 1.

Mr. S. Smith brought in a bill to incorporate a company by the name and style of the Mine and Metal Company; which was read a first and second time, and committed for Friday next.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, reported sundry resolutions, recommending the further continuance of the following acts, which will expire with the present session, viz:

An act in addition to the act for the punishment of certain crimes against the United States;

An act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives, and to compel the attendance of witnesses;

An act to authorize the defence of merchant vessels of the United States, against French depredations.

In this report the House concurred.

Mr. Gallatin also reported, that it would be advisable further to suspend the operations of the following acts, viz:

An act laying an additional duty upon salt imported into the United States, and for other purposes; and

An act further to suspend the duties on the manufacture of snuff within the United States, and of drawbacks on the exportation thereof.

The consideration of the question on the act laying a duty on salt, was postponed till to-morrow, and committed to a Committee of the whole House. The second resolution was agreed to.

The Speaker laid before the House a letter from the Secretary of State, accompanying his report made in pursuance of a resolution of this House, on the twenty-eighth ultimo, directing him to lay before this House a report of the proceedings had under an act passed at the last session, entitled "An act in addition to an act, entitled 'An act for the more general promulgation of the laws of the United States,'" together with an account of the expense incurred within each State, by publishing the laws therein; which was read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act to discharge Robert Sturgeon from his imprisonment:" Whereupon.

Resolved, That this House doth agree to the said amendment.

The bill reported yesterday, to provide for the more convenient organization of the Courts of the United States, was read twice and committed to a Committee of the Whole House on Monday next.

SALE OF NORTHWESTERN LANDS.

The House again resolved itself into a Committee of the Whole on the bill to amend the act providing for the sale of the lands of the United States, in the Territory Northwest of the Ohio, and above the mouth of Kentucky river; when Mr. Griswold's motion to strike out the first section being under consideration, Messrs. Harrison, and J. Brown spoke against it and Mr. Cooper in favor of it. The motion was at length negatived.

Mr. Harper then moved an amendment, providing that no money should be paid for surveying the lands, until sufficient had been received into the Treasury from the sales authorized by the act; which was opposed by Messrs. Griswold and Jackson, as derogatory to the dignity of the Government, and was negatived.

Mr. J. Brown then moved to amend the bill by striking out the words "half sections" and inserting "quarter sections," so as to have the land surveyed into lots of 160 instead of 320 acres; which was negatived.

Mr. Claiborne, after having stated to the Committee the policy and necessity of granting some indulgence to the intruders on the public lands, moved the following amendment, viz:

"*Provided, however*, That every head of a family who shall have made an actual settlement or improvement on any part of the lands aforesaid, and shall reside on the same, shall have the right of pre-emption to the half section on which he resides, at the rate of —— dollars per acre."

After some observations from Messrs. Gallatin, Jackson, and Kittera, against the motion, it was negatived, there being only 17 yeas.

After making some amendments, the Committee rose, and the bill was ordered to be engrossed for a third reading to-morrow.

Wednesday, April 2.

An engrossed bill entitled "An act to amend the act entitled, 'An act providing for the sale of lands, &c.'" was read the third time and passed.

Mr. S. Smith, from the Committee of Commerce reported a bill to provide for repairs and additions to the light-house at New London; for the support of the light-house at Clark's Point, and for the erection and support of a light-house at Wigwam Point; which was referred to a Committee of the Whole.

A bill from the Senate for the relief of Thomas Canfield was twice read, and referred to the committee respecting entering caveats on land.

The Speaker laid before the House a letter and report from the Secretary of the Treasury on the petition of Benjamin Wells, referred to him the first ultimo; and, also, a counter petition, signed by sundry inhabitants of Fayette county, in the State of Pennsylvania, referred to him on the twenty-fourth ultimo; which were read, and ordered to be referred to the Committee of Claims.

Mr. Sewall, from the managers appointed, on the part of this House, to attend a conference with the managers appointed on the part of the Senate, on the subject-matter of the amendments proposed by the Senate, and disagreed to by this House, to the bill, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" made a report; which was read and considered: Whereupon,

Resolved, That this House doth recede from their disagreement to the amendments proposed by the Senate to the said bill; and doth agree to the same, with an amendment.

Mr. Sewall, from the committee to whom were referred, on the twenty-fourth of December, and on the first and thirteenth of January last, the several petitions of Thomas Burling and others, of John Collier and others, and of Cato West and others, made a report; which was read, and ordered to be committed to a Committee of the Whole House on Monday next.

The bill sent from the Senate, entitled "An act for the relief of Ithamar Canfield," was read twice and committed to the committee appointed, on the twelfth of February last, to inquire into the expediency or inexpediency of passing a law to prevent entering a caveat, in any case, to hinder the issuing a patent for land granted for military services.

Ordered, That the report of the Secretary of War, made the twenty-sixth of February last, on the petition of Samuel Lewis, senior, be referred to Mr. Claiborne, Mr. Dennis, and Mr. Silas Lee.

HEIRS OF HARDING AND TRUEMAN.

Mr. Davis called up a resolution which he laid on the table some days since, that a committee be appointed to consider whether the provision of the law of 29th April, 1798, may be extended to the widows and orphans of the late Colonel Harding and Major Trueman.

Messrs. D. Foster and Macon spoke against the reference; Messrs. Parker, R. Thomas, Harrison, and Davis, in favor of it.

Mr. Griswold moved its reference to the Committee of Claims, (instead of a select committee;) which was supported by Messrs. Nicholas, and Kitchell, and opposed by Messrs. Rutledge, Claiborne, S. Smith, and Bird. Thirty rising only in favor of this reference, it was negatived.

The resolution was then referred to a select committee—yeas 57.

REMOVAL OF THE SEAT OF GOVERNMENT.

The House then resolved itself into a Committee on the bill to make further progress for the removal and accommodation of the Government of the United States.

A motion was then made to fill a blank for the accommodation of the household of the President, about which considerable conversation occurred; when Mr. Rutledge moved that the Committee rise, in order that time may be given for learning the amount of money wanting for this object, and because he supposed the chairman of the committee, who was absent, might be able to give that information. The motion was afterwards withdrawn, but renewed by the Speaker, and at length carried.

TREATY WITH GREAT BRITAIN.

The House then went into Committee on the bill for carrying into effect the twenty-seventh article of the Treaty with Great Britain.

Mr. Nicholas was surprised a business so delicate as this should be entrusted solely to the Secretary of State; he conceived none less than the Executive ought to take steps for delivering over an offender under the treaty.

Mr. Marshall informed him that he was preparing an amendment to the 2d section of the act; which he afterwards produced, providing that on any requisition being made under this article, the testimony should be taken in writing and transmitted to the Secretary of State, and by him laid before the President of the United States, whose opinion should decide whether the matter was cognizable in any court of the United States, or whether the offender should be delivered up; if the former, that he should give directions to the Judge in whose district the offender was apprehended to proceed to trial according to law: if not, and the crime came under the treaty, that he should direct the Secretary of State to direct the Judge to make the delivery.

This was agreed to.

Mr. Nicholas said this did not altogether remove his objection: he wished the Secretary of State to be out of the question, since it was not here as in Great Britain where the Secretary of State was the first Executive. However, he varied a motion he made to strike out these words, so as to read "the Secretary of State, under the direction of the President." This was carried.

Mr. Nicholas then proposed two provisos at the end of the section, the first of which went to prevent the delivery up of any person for offences, for the trial of which any Courts of the United States are competent, so as to preserve inviolable the Constitutional right of trial by jury. The other proviso went to permit any person so charged, if he was an American and impressed into the British service, to make claim thereof to the judge by whom he was committed, in which custody he

should only remain for safe-keeping during the time in which he might be able to send for testimony to prove the facts of his claim, which depositions might be received by the judge in writing; against which the claimants should be allowed to bring proof that the person entered voluntarily into the British service, and that if it should appear he was impressed and kept on board a British ship, contrary to his desire, he should be discharged.

The Committee rose, in order to have these motions printed, and the House adjourned.

THURSDAY, April 3.

Mr. HARPER, from the Committee of Ways and Means, reported a bill making appropriation for the Military Establishment of the United States for the year 1800; which was twice read and committed to the whole House.

Mr. HARPER observed that in some of the States lands were received in satisfaction of judgments, which also was the case in such places where the United States were plaintiffs. To remedy what he conceived an evil, he laid on the table the following resolution:

"*Resolved*, That a committee be appointed to inquire and report, by bill or otherwise, whether any, and what, further provisions are necessary to be made relative to the sales of real estate delivered to the United States in satisfaction of judgments against persons indebted thereto."

Three members were appointed.

GOVERNMENT OF THE NAVY.

The House then went into Committee on the bill for the better government of the Navy, and to repeal the act heretofore made for that purpose.

The discussion of the bill occupied the House till near four o'clock, and a variety of amendments were made to it. After the Committee had risen, and the amendments were agreed to,

Mr. RANDOLPH moved the recommitment of the bill. He said he did this from impressions that some of the provisions of it were unconstitutional, men being to be tried, and suffer by the decision of a court martial, when the Constitution says, article 3, section 2: "The trial of all crimes, except in cases of impeachment, shall be by jury." And the amendments to the Constitution, article 7, says: "No person shall be held to 'answer for a capital, or otherwise infamous 'crime, unless on a presentment or indictment of 'a grand jury, except in cases arising in the land 'or naval forces, or in the militia when in actual 'service in time of war or public danger;" this, he conceived, prevented Congress ordering any court martial.

Mr. R. said he had no kind of objection to the bill, but he wished his scruples on these articles to be cleared up to him, or he must vote against it on the ground of unconstitutionality.

Mr. PARKER said, he considered it indispensable that persons in the Navy, as had been always the case in the Army, should be tried for offences by court martial. He believed the objections were fully answered by that part of the Constitution, article 1, section 8: "Congress shall have power to make rules for the government and regulation of the land and naval forces." The "rules and regulations," he supposed to be everything that related to subordination, which he thought was borne out by the exception in the amendment mentioned by the gentleman.

The motion to recommit was lost by a large majority.

The bill was ordered to be engrossed for a third reading to-morrow.

FRIDAY, April 4.

An engrossed bill for the better government of the Navy was read the third time and passed.

Mr. HARPER, from the Committee of Ways and Means, reported a bill to make appropriation for the Navy of the United States during the year 1800; which was referred to the Committee of the Whole.

Mr. HARRISON reported a bill authorizing the Secretary of the Treasury to lease certain salt springs, the property of the United States, in the Territory Northwest of the Ohio; which was referred to the Committee of the whole House.

A message from the Senate informed the House that the Senate have disagreed to the bill, entitled "An act to prevent the interference of any military force in certain elections."

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to establish a General Stamp Office," with several amendments, to which they desire the concurrence of this House.

Ordered, That the said bill and amendments be referred to the Committee of Ways and Means.

SUNDRY BILLS.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, reported the following bills:

A bill to continue in force an act, entitled an act laying duties on mills and implements used in the manufacture of snuff;

A bill to continue in force an act, entitled an act to authorize the defence of merchant vessels of the United States against French depredations;

A bill to continue in force an act for the punishment of certain crimes against the United States.

The two first were ordered to be engrossed for a third reading on Monday. The last was referred to a Committee of the Whole House.

REMOVAL OF THE SEAT OF GOVERNMENT.

The House then went into Committee of the Whole on the bill for the removal and accommodation of the Government of the United States.

Mr. HARPER proposed to amend the act so as that the sum to accommodate the household of the President of the United States with furniture, in addition to what was now in possession of the President, should not operate until after the third of March next. This he did, he said, in consequence of some Constitutional doubts which he had expressed. The Constitution declaring that

the salary of the President should receive no addition nor diminution during his being in office. This was concurred in.

The question then was, what sum should be allowed for that purpose; $20,000, $15,000, and $10,000, were severally named.

Mr. RANDOLPH, considering the principle itself unconstitutional, moved, in order to defeat the section altogether (it having been amended and being out of order to move its being stricken out) to insert the sum of $500. These different sums called forth a lengthy debate. The sum of $20,000 was negatived—45 to 39. That of $15,000 was carried—yeas 44, nays 42.

Mr. HARPER proposed a provision that this money should be expended under the direction of the Secretaries of the four Executive departments, which was agreed to; one thousand dollars was allowed for removing the public property appertaining to the household of the President to the Federal city.

Mr. D. FOSTER moved to strike out the 5th section, which provides that $10,000 shall be appropriated to pave such parts of the city as, in the opinion of the commissioners, and the Secretaries of Executive departments, may be convenient for the Government. This was negatived, only 21 rising for it.

On motion of Mr. BAYARD the Secretaries of the Executive departments were inserted in lieu of the Secretary of Senate and Clerk of the House of Representatives, who were to provide for the accommodation of Congress.

Mr. SMITH moved a new section, which was carried—that the clerks of the several offices of the Departments of State, Treasury, War, Navy and General Post Office, should be allowed each one quarter additional salary to provide for their removal.

Nine thousand dollars were appropriated to furnish the two Chambers of Congress, offices, committee rooms, &c.

The Committee rose; when Mr. GALLATIN moved to strike out the 2d section, which provided $15,000, to accommodate the President's House with furniture. He did it, not because it would not be necessary to appropriate something, but he said what that something might be, would be better ascertained by waiting for the proper estimates, and until Congress moved there, when as much as should appear necessary might be appropriated, since it was not to come into use until after 3d of March.

Twenty-six members only rose in favor of this motion, so it was negatived.

The bill being gone through, was ordered to be engrossed for a third reading on Monday.

MONDAY, April 7.

Mr. HARPER, from the Committee of Ways and Means, to whom were referred, on the fourth instant, the amendments proposed by the Senate to the bill, entitled "An act to establish a General Stamp Office," made a report, which was received, and ordered to lie on the table.

Mr. H., from the committee to whom was referred, on the seventh ultimo, the memorial of Matthew Patterson and others, made a report; which was received, and ordered to lie on the table.

The following bills were read a third time and passed, viz:

An act to repeal the act laying duties on mills and implements employed in the manufacture of snuff;

An act to continue in force the act entitled, an act to authorize the defence of the merchant vessels of the United States against French depredation; and

An act to make further provision for the removal and accommodation of the Government of the United States—yeas 47, nays 32.

CONNECTICUT WESTERN RESERVE.

Mr. MARSHALL called for the order of the day, on the bill to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of territory lying west of Pennsylvania, commonly called the Western Reserve of Connecticut.

Mr. COOPER moved that the further consideration of the bill be postponed till the first Monday in December next.

Messrs. MARSHALL, HARRISON, HARPER, GRISWOLD, GALLATIN, KITTERA, C. GOODRICH, and DANA, opposed this motion, and Messrs. COOPER, BIRD, RANDOLPH, PLATT, and MACON, spoke in favor of it.

The question was at length taken by yeas and nays, and stood yeas 30, nays 57, as follows:

YEAS—Theodorus Bailey, John Bird, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Cooper, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Henry Glen, Samuel Goode, Edwin Gray, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Nathaniel Macon, Anthony New, Joseph H. Nicholson, Jonas Platt, John Randolph, John Smith, Samuel Smith, Richard Stanford, David Stone, John Thompson, Abram Trigg, John Trigg, and Robert Williams.

NAYS—Willis Alston, George Baer, Bailey Bartlett, Jonathan Brace, John Brown, Christopher G. Champlin, William Charles Cole Claiborne, John Condit, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Albert Gallatin, Chauncey Goodrich, Elizur Goodrich, William Gordon, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, William H. Hill, James Jones, John Wilkes Kittera, Henry Lee, Silas Lee, Michael Leib, Samuel Lyman, James Linn, John Marshall, Lewis R. Morris, Peter Muhlenberg, John Nicholas, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, John Smilie, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

On motion of Mr. GALLATIN, the bill was then postponed till to-morrow—ayes 45.

THE FISHERIES.

A message was received from the Senate, informing the House that the Senate have passed the bill to continue in force an act concerning certain fisheries of the United States, for the government of the fishermen employed therein, and for other purposes as therein mentioned, with an amendment.

The amendment, was taken into consideration, when,

Mr. CLAY moved a postponement of the question till the first Monday in December next, and called the yeas and nays upon it, which were after some debate taken, and stood yeas 36, nays 54, as follows:

YEAS—Willis Alston, Theodorus Bailey, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, James Jones, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, Joseph H. Nicholson, John Randolph, John Smilie, Richard Stanford, David Stone, Thomas Sumter, Abram Trigg, John Trigg, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, Phanuel Bishop, Jonathan Brace, John Brown, Christopher G. Champlin, John Condit, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, Thomas Hartley, Benjamin Huger, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Lewis R. Morris, John Nicholas, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, John Smith, Benjamin Taliaferro, George Thatcher, John Chew Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

The amendment of the Senate was then concurred in.

TUESDAY, April 8.

Mr. HARPER, from the Committee of Ways and Means, presented a bill to authorize the sale and conveyance of lands in certain cases, by the Marshals of the United States, and to confirm former sales; which was twice read and committed to a Committee of the whole House.

The report made, yesterday, from the Committee of Ways and Means, to whom were referred, on the fourth instant, the amendments proposed by the Senate to the bill, entitled "An act to establish a General Stamp Office," was read and considered: Whereupon,

Resolved, That this House doth agree to the first, and doth disagree to all the other amendments proposed by the Senate to the said bill.

Resolved, That a conference be requested with Senate on the subject-matter of the amendments disagreed to; and that Mr. HARPER, Mr. GRISWOLD, and Mr. GALLATIN, be appointed managers at the same on the part of this House, jointly, with such committee as may be appointed for the purpose on the part of the Senate.

The report made, yesterday, from the committee to whom was referred, on the seventh ultimo, the memorial of Matthew Patterson and others, was read, and ordered to be committed to a Committee of the Whole House on Thursday next.

ILLINOIS COUNTRY.

Mr. HARRISON, from the committee to whom was referred the petition of a number of the ancient inhabitants of the Illinois country, made a report, recommending the agreement of the House to a bill therewith submitted, in addition to the act entitled an act for granting lands to the inhabitants and settlers of Vincennes, in the Illinois country, in the Northwestern Territory, and for confirming them in their possessions; which was read a first and second time, committed to a Committee of the whole House, and made the order of the day for to-morrow.

VALUATION OF LANDS, &c.

Mr. HARPER said, he was instructed by the Committee of Ways and Means, to move that the House do come to the following resolution, viz:

Resolved, That the Committee of Ways and Means have leave to prepare and report a bill or bills, for authorizing the Commissioners under the act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States, in those States whereof the valuations have not yet been completed and returned, to revise, vary, and adjust the valuation of unseated lands, in the several assessment districts and sub-divisions, within their respective States; so as that the relative valuations of different tracts of such lands, in the same sub-division, be not varied or affected. And also for enabling the Surveyors of the Revenue, under the said act, to add to the lists of valuations within their districts, respectively, all such lands or dwelling-houses therein, as shall from time to time appear to have been omitted, by the assessors or otherwise, in receiving, making, or returning such lists. And also for authorizing the said Surveyors to erase from the said lists, all lands and dwelling-houses wherefrom the persons interested in the said lists respectively shall have been ejected in the due course of law, or upon the title whereto there shall have been a decision in due course of law against such person.

The resolution was agreed to, and Mr. HARPER accordingly brought in a bill to provide for equalizing the valuation of unseated lands; which was read a first and second time, and committed for to-morrow.

CONNECTICUT WESTERN RESERVE.

The House resolved itself into a Committee of the Whole on the bill to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of territory lying west of Pennsylvania, commonly called the Western Reserve of Connecticut.

Mr. COOPER moved to amend the bill by striking out that part which goes to conciliate and adjust the right of Pennsylvania to some of the land in question; and thereby to defeat the bill.

Messrs. MARSHALL and GALLATIN opposed this motion, which was negatived—yeas 25.

Mr. ELMENDORF then moved to strike out that part of the first section which provides for the acceptance of the cession of a jurisdiction of soil by the United States from the State of Connecticut, and to amend the bill so as to accept the cession of jurisdiction only.

After some debate, Mr. GALLATIN called for a division of the question.

Mr. MARSHALL then entered into a lengthy discussion in favor of the bill, and against striking out.

The Committee then rose, and the House adjourned.

WEDNESDAY, April 9.

Mr. NICHOLAS, from the committee to whom was referred the resolution respecting the orphan children of Colonel Hardy and Major Trueman, after stating the circumstances of their death, reported "a bill making further provisions for the children of the late Colonel John Hardy, and Major Alexander Trueman, deceased."

Mr. DWIGHT FOSTER, from the Committee of Claims, to whom was referred, on the eighth of January last, the petition of William Nicholas, made a report; which was read, and ordered to be committed to a Committee of the whole House tomorrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to alter and to establish sundry post roads," with several amendments; to which they desire the concurrence of this House.

WILLIAM TAZEWELL.

Mr. MARSHALL, from the committee to whom was referred the petition of William Tazewell, Esq., secretary to Elbridge Gerry, Esq., late Envoy to France, who prayed compensation for sundry extra services and expenses, together with losses on account of his capture in returning home, reported the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That in settling the accounts of William Tazewell, secretary to Elbridge Gerry, one of the late Envoys to the French Republic, the Secretary of State be authorized to allow the expenses incurred by him in consequence of his being captured on his return to his country.

The report was twice read and referred to a Committee of the whole House.

CONNECTICUT WESTERN RESERVE,

The House again resolved itself into a Committee on the bill to enable the Government to accept a cession of jurisdiction from Connecticut.

Mr. RANDOLPH and Mr. NICHOLAS spoke at length against the principle of the bill. Mr. GRISWOLD and Mr. S. SMITH spoke in favor of it.

Mr. GALLATIN moved a proviso which specially went to prevent the bill being construed to draw into question the conclusive settlement of the dispute between the States of Pennsylvania and Connecticut, by the decree of the Federal Court at Trenton, or to impair the right of Pennsylvania.

This was agreed to. Several other amendments were made, and, when the Committee rose, were concurred in by the House; and the bill was ordered to be engrossed for a third reading to-morrow.

THURSDAY, April 10.

A message from the Senate informed the House that the Senate have passed the bill to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees, with several amendments, to which they desire the concurrence of this House. And then he withdrew.

The House proceeded to consider the said amendments; and the same being read,

Ordered, That the said amendments be referred to Mr. HARPER, Mr. KITTERA, and Mr. BIRD.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to alter and to establish sundry post roads," and the same being read,

Ordered, That the said bill and amendments be referred to Mr. THATCHER, Mr. WOODS, and Mr. CLAIBORNE.

Mr. HARPER, from the Committee of Ways and Means, presented a letter from the Secretary of the Treasury, enclosing a copy of a letter to him from the commissioners of valuation of houses and lands in the State of New York; which were read, and ordered to be committed to the Committee of the Whole House to whom is committed the bill to provide for equalizing the valuations of unseated lands

CONNECTICUT WESTERN RESERVE.

The bill to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut, was read the third time; and upon the question being put, Shall the bill pass?

Mr. ELMENDORF proceeded to show, in a very lengthy discussion of the subject, the invalidity of the claim of Connecticut to the land in question; and against the passing of the bill.

He was followed by Messrs. BIRD, and RANDOLPH, on the same side, and Messrs. EDMOND. E. GOODRICH, and HARPER, in favor of it.

The question was then taken by yeas and nays, and the bill passed—yeas 54, nays 36, as follows:

YEAS—George Baer, Bailey Bartlett, Jonathan Brace, John Brown, Robert Brown, Christopher G. Champlin, William C. C. Claiborne, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Albert Gallatin, Chauncey Goodrich, William Gordon, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Peter Muhlenberg, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Leven Powell, John Reed, Samuel Sewall, James Sheafe, William Shepard, John Smilie, George Thatcher, John Chew

Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, John Bird, Phanuel Bishop, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, William Cooper, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Henry Glen, Edwin Gray, William H. Hill, David Holmes, George Jackson, Aaron Kitchell, James Linn, Nathaniel Macon, Anthony New, John Nicholas, Joseph H. Nicholson, Jonas Platt, John Randolph, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, and Robert Williams.

Friday, April 11.

SUNDRY BILLS.

Mr. Harper, from the Committee of Ways and Means, presented a bill to enlarge the powers of Surveyors of the Revenue; which was twice read and committed to a Committee of the whole House on Monday next.

Mr. Griswold, from the Committee of Revisal and Unfinished Business, presented a bill for continuing in force, for a limited time, an act entitled "An act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses;" which was twice read, and ordered to be engrossed and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill making appropriations for the support of Government, for the year one thousand eight hundred; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill and amendments be engrossed, and read the third time on Monday next.

The House resolved itself into Committee of the Whole on the bill to make appropriations for the Navy of the United States, during the year one thousand eight hundred; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill and amendments be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill to authorize the sale and conveyance of lands, in certain cases, by the Marshals of the United States, and to confirm former sales; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill and amendments be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill to continue in force the act in addition to the act for the punishment of certain crimes against the United States; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill to incorporate a company by the name and style of "The Mine and Metal Company;" and, after some time spent therein, the Committee rose and reported progress, and had leave to sit again.

Saturday, April 12.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting a statement exhibiting the tonnage of the shipping of the United States at the close of the year one thousand seven hundred and ninety-eight; which were read, and ordered to lie on the table.

The House then resolved itself into a Committee on the bill to support and repair certain light-houses at New London, &c.; which was agreed to, and ordered to be engrossed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act authorizing Seth Harding to locate certain lands in the Territory of the United States North-west of the Ohio;" to which they desire the concurrence of this House.

Ordered, That the said bill be referred to the Committee who were instructed, on the twenty-fifth of February last, to prepare and report a bill appropriating a tract of land sufficient to satisfy the claims of the Nova Scotia and Canada refugees, and designating the mode in which their respective bounties in land shall be located.

MINE AND METAL COMPANY.

The House again went into Committee on the bill to incorporate a company by the name and style of the Mine and Metal Company, when the debate was continued. Messrs. Sewall, Champlin, Waln, S. Smith, Parker, and J. Brown, spoke in favor of the bill and against the motion to strike out. Messrs. Nicholas and Macon spoke in favor of striking out the section.

Mr. Kitchell moved for the Committee to rise; he thought more information might be obtained of the prospect of success attending this experiment. He said there was a gentleman of much respectability who had superintended the works before the war, to whose opinion he should be willing to pay much deference, and which the Committee might procure in two days.

After some few observations, the Committee rose, and on the question for leave to sit again, it was carried—44 to 33.

LOAN OFFICE CERTIFICATES.

The House resolved itself into Committee on the report of the Committee of Claims, which was instructed to inquire whether any, and what, alterations would be necessary to be made in the act passed the 12th June, 1798, respecting loan office and final settlement certificates, indents of interest, &c.

The Committee of Claims entered in their report into a course of reasoning on the subject, and concluded with an opinion that no alteration ought to be made in the law of June, 1798.

Mr. D. Foster hoped the report would not be agreed to. He argued the propriety of granting this species of claim, which was very different from claims in general, and in which no imposition could be perpetrated. He thought it but just to continue the extension of the law for a longer period.

Messrs. Harper, Gordon, Dana, Shepard, Hill, and Read, also supported the rights of this description of claim, and the justice of extending the bill to them.

Messrs. Griswold, Macon, S. Smith, Edmund, and Varnum, spoke in favor of the report.

The report was agreed to—yeas 40, nays 30.

The committee also reported that the same decision (whatever it might be) ought to apply to the petitions of Henry and Sarah Waters, and of Lucas Ames; which was referred to the same Committee. This was likewise agreed to.

On the question for the House to concur in the report of the Committee of the Whole, it was carried.

Monday, April 14.

Mr. Harper, from the committee to whom was referred the bill respecting patents, &c., and the amendments of the Senate thereto, reported their opinion that the House ought to agree with the said amendments.

The House concurred.

Mr. Davis laid on the table a resolution that the next annual meeting of Congress should be on the first Monday in December next.

The following engrossed bills were read the third time, and passed, viz:

An act making appropriations for the support of Government for the year 1800;

An act to make appropriations for the Navy of the United States for the year 1800;

An act to continue in force for a limited time an act entitled an act prescribing the mode of taking evidence in cases of contested elections of members of the House of Representatives of the United States, and to compel the attendance of witnesses;

An act to authorize the sale and conveyance of lands, in certain cases, by the Marshals of the United States, and to confirm former sales;

An act to continue in force an act in addition to an act for the punishment of certain crimes against the United States;

An act to provide for rebuilding the light-house at New London, for the support of a light-house at Clark's Point, and for the erection and support of the light-house at Wigwam Point, and for other purposes.

COURTS OF THE UNITED STATES.

On motion of Mr. Harper, the Judiciary bill was called up; when Mr. Kitchell, after observing that this bill, though in a different shape, had been before the House, by whom it was referred to a select committee, after, in his opinion, an expression of disapprobation of the principle, and a new bill having been reported, moved that the further consideration thereof be postponed to the first Monday in December next.

A warm and lengthy debate was had on the motion for postponement, on which the question was taken, and decided in the affirmative—yeas 48, nays 46, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Davenport, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Dwight Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Edwin Gray, Andrew Gregg, Thomas Hartley, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William B. Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

JAMES T. BISHOP.

Mr. Waln presented a petition of James T. Bishop, who stated, that he came to this country in 1794; that he took the oath of allegiance agreeably to the laws of Pennsylvania; that he went to Europe in 1796, with the intent of settling his affairs, so as to make his permanent residence in the United States, where he arrived in 1798; he then, supposing his former oath sufficient, neglected to make the application before the law precluded him. He prays that a law may be passed in his favor to admit him to become a citizen.

Referred to a select committee.

ADDITIONAL DUTY ON SALT.

The House resolved itself into a Committee on the resolution reported by the Committee of Revisal and Unfinished Business, that the said committee have leave to bring in a bill to continue in force an act laying an additional duty on salt.

The Committee of the Whole agreed to the resolution, and rose and reported it.

On the question for the House to concur, Mr. Clay observed it was a subject of very great importance to people who resided in the back coun-

tries, who used a considerable quantity of salt for their cattle; he moved for the yeas and nays.

Mr. Randolph spoke against agreeing with the reported resolution.

The question was then taken and decided in the affirmative—yeas 54, nays 38, as follows:

Yeas—George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, Silas Lee, Samuel Lyman, James Linn, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, John Smith, Richard Dobbs Spaight, George Thatcher, John Chew Thomas, Richard Thomas, Philip Van Cortlandt, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

Nays—Willis Alston, Phanuel Bishop, Rob't Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, Thomas T. Davis, John Dawson, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Andrew Gregg, Thomas Hartley, Archibald Henderson, David Holmes, George Jackson, James Jones, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Robert Williams, and Henry Woods.

STEPHEN SAYRE.

The House resolved itself into Committee on the report of the Committee of Claims upon the petition of Stephen Sayre, who prayed compensation as Secretary of Legation to Mr. Arthur Lee, and other services performed for the United States at Berlin, during the war.

The report was very lengthy, and concludes with an opinion that after full consideration, the former determination of the House was proper; and that the petitioner ought again to have leave to withdraw his papers.

Mr. Harper made a lengthy answer to the report; when the question was taken on agreeing therewith and carried—yeas 46, nays 27. The House concurred.

Tuesday, April 15.

The House took up the report of the Post Road Committee on the amendments proposed by the Senate to the bill to alter and establish certain post roads; several of which were agreed and some disagreed with.

The House resolved itself into Committee on the bill for the regulation of public arsenals and magazines; which was amended and ordered to be engrossed for its third reading.

Mr. D. Foster, from the committee appointed to inquire whether any and what alterations ought to be made in the law, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country," reported an additional bill on that subject, which was twice read and committed to the whole House.

Mr. Griswold from the Committee of Revisal and Unfinished Business, reported a bill to continue in force an act entitled "an act laying additional duty on salt imported into the United States and for other purposes," which was read and referred to a Committee of the whole House.

A message from the Senate, informed the House that the Senate insist on their amendments, disagreed to by this House, to the bill, entitled "An act to establish a General Stamp Office," in the fifth line of the sixth section thereof. The Senate also insist on their amendments disagreed to by this House, in the second and fourth lines of the seventh section; and do recede from their amendment in the ninth line of the sixth section of the said bill.

Mr. Harper, from the managers appointed on the part of this House, to confer with the managers appointed on the part of the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act to establish a General Stamp Office," made a report; which was read and considered: Whereupon,

Resolved, That this House doth recede from their disagreement to the amendments insisted on by the Senate to the said bill; and doth agree to the same, with amendments.

A message was received from the Senate, informing the House that they had passed the act to authorize the defence of our merchant vessels against French depredations; and an act for the preservation of peace with the Indians on the frontiers, with sundry amendments. Also that they had passed a bill entitled an act permitting the exportation of certain parcels of gunpowder, muskets, and cutlasses, to which they desire the concurrence of the House.

VIRGINIA LAND WARRANTS.

The House went into Committee on the report of the Committee of Claims on the petition of Temple Elliot, William Boyce, and Simon Somers, who prayed for patents of lands for sevices as officers in the Virginia line.

It appeared that these officers had a legal claim upon the State of Virginia, which gave them warrants, but, immediately subsequent, it appeared that the lands, now a part of Kentucky and a part of the Northwestern Territory, were ceded to the United States, but which on that account the petitioners were prevented from locating. They therefore preferred their petitions to the General Government to confirm the former grants, by a law in their favor.

Messrs. New, H. Lee, Marshall, Randolph, Eggleston, Nicholas, and Champlin, warmly supported the justice of the case, in favor of men who were active in the service of the United States, and the injustice of refusal. It was stated that a very liberal cession of land, sufficient for a nation, was ceded to the United States by Virginia, who reserved out of it only enough to satisfy the claim of her officers in the Continental troops. It therefore to the United States became a claim from Virginia that the Government might enable her to fulfil her engagements to the officers of the Continental line. The amount of claims of this nature was supposed to amount to from 50 to 100,000 acres, which, compared to the immense cession, was nothing to the Government, but much to the meritorious individuals.

Messrs. D. Foster, Macon, and Gallatin, vindicated the report, on the ground that there was no legal claim against the Government, but that it stood in the same situation with many others which had been refused; and except a law was passed to compensate all meritorious services which had been refused on various accounts, it would be improper to favor those individuals. It was adopting a principle, it was urged, to which no limits could be ascertained; it might even extend to the opening of commutation again.

The report was at length disagreed to—yeas 21, nays 45.

Wednesday, April 16.

An engrossed bill for the regulation of public arsenals was read the third time and passed.

Mr. Brace, from the committee appointed on the petitions of several persons in the Northwestern Territory, respecting the lands purchased by Judge Symmes, having obtained leave, presented their report, and "A bill to provide for the disposition of the lands between the Great and Little Miami rivers," which was twice read and referred to the Committee of the Whole.

Mr. S. Smith, from the Committee of Commerce, reported a bill to establish the district of Kennebunk, and to annex Lyme to New London; to alter the districts of Bermuda Hundred and City Point, and therein to amend the act entitled an act to regulate the collection of duties on imports and tonnage.

The bill was read twice and committed.

The House took up the amendments of the Senate to the following bills, which they agreed to: An act authorizing the defence of the merchant vessels of the United States &c., and an act to regulate trade, and to preserve peace with the Indians.

The House also took up the act permitting the exportation of certain arms and ammunition; which was read, and referred to the Committee of Commerce and Manufactures.

The House then resolved itself into a Committee on the bill supplementary to the laws now in force, fixing the pay of the officers of the Senate, and House of Representatives.

The blanks being filled the bills were ordered to be engrossed for a third reading to-morrow.

Mr. Lee called up his resolution for the appointment of a committee to draw up rules and regulations respecting the District of Columbia. Five members were appointed.

DISPUTED ELECTIONS FOR PRESIDENT, &c.

The House went into a Committee on the bill from the Senate prescribing the mode of deciding disputed elections for President and Vice President.

The bill having been read, and the first section being under consideration,

Mr. Marshall, after speaking of the importance of the subject before the Committee, and the necessity of some salutary mode being adopted for this object, expressed his doubts of the propriety of two points in this first section of the bill, to wit: first, that the Senate were to name the Chairman of the Grand Committee and secondly that the opinion of this Grand Committee was to be final. He therefore moved to strike out of the section so much as related to those principles, and read what he wished to introduce for a substitute.

Some debate was had on this motion, when Mr. Nicholas expressing a desire to acquire all the information that was necessary to digest the new principles, moved the Committee to rise; which was done accordingly, and it obtained leave to sit again.

MILITARY APPROPRIATIONS.

The House then went into Committee on the bill making appropriations for the Military Establishment for the year 1800. The several items were filled as follows:

Pay of the Army	$1,018.620
Subsistence	787,786
Forage	36.672
Clothing	257,955
Horses, to replace deficiencies	5,000
Bounties and premiums	14,000
Hospital department	51,000
Promoting civilization among the Indians	15,000
Running lines of demarcation	4,000
Defence of the frontiers, &c.	60,000
Loss of horses and other contingencies	57,956
Invalid pensions for one year	93,000
Quartermaster's department	528,065
Making a total appropriation of	3,042,576

The bill was then ordered to be engrossed and read the third time to-morrow.

VIRGINIA LAND WARRANTS.

Ordered, That the Committee of Claims be discharged from the further consideration of the petition of Alexander Spotswood, referred to them on the twenty-eighth of February last, and that the same be referred to the Committee of the whole House to whom was committed, on the twenty-fifth of February last, the report of the Committee of Claims on the several petitions of Temple Elliot, of William Boyce, and of Simon Sommers.

The House again resolved itself into a Committee of the Whole on the report of the Committee of Claims, made the twenty-fifth of February last, on the several petitions of Temple Elliot, of William Boyce, and of Simon Sommers; to which Committee of the Whole was also referred the

report of the Committee of Claims on the memorial of David Jones and William Rogers; and, after spending some time therein, the SPEAKER resumed the Chair, and Mr. RUTLEDGE reported that the Committee had, according to order, again had the said reports under consideration, and directed him to report to the House their disagreement to the report of the Committee of Claims on the several petitions of Temple Elliot, of William Boyce, and of Simon Sommers; and their agreement to the report on the memorial of David Jones and William Rogers.

The said report on the several petitions of Temple Elliot, of William Boyce, and of Simon Sommers, being read in the words following, to wit:

"That the several petitioners seek for grants of land from the United States, in consideration of services performed in the Army of the United States, in the Virginia line, during the Revolutionary war. A report on the said petition of Temple Elliot, was made upon the second of April, one thousand seven hundred and ninety-eight, and is herewith submitted. The committee are of opinion it would be proper for the House to agree to the said report,

"The petitions of Mr. Boyce and of Mr. Sommers are grounded on the same principles with those of Mr. Elliot, and the committee report that the same decision which shall be made on the petition of Mr. Elliot, should be applied to the others.

"The Committee of Claims, to whom was referred the petition of Temple Elliot, heir of Thomas Elliot, late Colonel in the Army of the United States, report: That the petitioner states that the said Thomas Elliot was a Colonel in the Virginia line of Continental troops, during the late war, and was induced to retire from service on account of ill health, at a period when he was not entitled to the bounty in lands engaged by law to certain officers and soldiers of the Continental Army; that, in consequence of his meritorious services, however, the State of Virginia, by a special resolve, on the sixteenth day of June, one thousand seven hundred and eighty-four, granted him a Colonel's bounty in lands, which lands the petitioner has, at considerable expense, had surveyed, platted, and located, in the tract reserved from the cession made by the State of Virginia to the United States, for the purpose of satisfying the grants of land made by said State to officers and soldiers of the Virginia line on Continental establishment, but that he cannot obtain patents for the same from the President of the United States, without the special interposition of Congress.

"The committee find that, in the act of cession which passed in the State of Virginia, on the twentieth of October, one thousand seven hundred and eighty-three, and which was accepted by Congress on the first day of March, one thousand seven hundred and eighty-four, there is the following clause:

"'That, in case the quantity of good land on the southeast side of the Ohio, upon the waters of Cumberland river, and between the Green river and Tennessee river, which have been reserved by law for the Virginia troops upon Continental establishment, should, from the North Carolina line bearing in further upon the Cumberland lands than was expected, prove insufficient for the legal bounties, the deficiency should be made up to the said troops in good lands, to be laid off between the rivers Scioto and Little Miami, on the northwest side of the river Ohio, in such proportion as has been engaged to them by the laws of Virginia.'

"As it then appears, by Mr. Elliot's statement, that the deceased Colonel Elliot was not within the provision contemplated by the act of cession, and the cession was in fact made to, and accepted by, Congress before any grant of lands was made to Colonel Elliot, the committee are of opinion that the petitioner has no legal or equitable claim to have the said grant of lands, made by the State of Virginia, satisfied out of lands of the United States; and, therefore, they recommend that he have leave to withdraw his petition."

The question was taken, that the House do agree with the Committee of the whole House in their disagreement to said report, and resolved in the affirmative—36 to 23.

The report of the Committee of Claims on the memorial of David Jones and William Rogers, being then read, in the words following, to wit:

"That they represent that they had the honor of serving the United States in the capacity of Brigade Chaplains, in the Pennsylvania line, during the Revolutionary war with Great Britain; and that, as public servants, they think themselves entitled to all the favors and emoluments conferred on the other parts of the Army; that, finding they were not entitled by the former resolution of Congress to military bounty lands, and apprehending the omission was not intentional, they now, in their own behalf, and that of their absent brethren, solicit Congress to grant to the late Chaplains such quantities of land as they may be thought to merit.

"It is understood that the Chaplains regularly appointed to the several brigades of the late Continental Army, and who served until the close of the war, were entitled to, and did receive, the same pay and emoluments as were granted and paid to Lieutenant Colonels in the line of the Army, the right to military bounty lands only excepted.

"When the grants of land were promised by Congress to such officers and soldiers as should engage, and actually serve, in the Army till the close of the war, it does not appear that it was thought proper or expedient to extend the promise of such grants to the Chaplains, nor does it appear whether the question was or was not agitated. It is presumable that Congress then supposed the encouragement offered to gentlemen to serve in that capacity was sufficient. The committee are of opinion, at this late day, it would not be expedient or advisable to go into a consideration of the subject; and, therefore, recommend that the petitioners should have leave to withdraw their petition."

The question was taken, that the House do agree with the Committee of the whole House in their agreement to the said report, and resolved in the affirmative.

Resolved, That a committee be appointed to prepare and report a bill authorizing the President of the United States to grant patents for the lands due to certain officers for their military services in the Continental Army, during the Revolutionary war; which, by resolutions of the Legislature of Virginia, were granted to them, and which have hitherto been withheld from them in consequence of the act of cession made by the said State to the United States.

Ordered, That Mr. MARSHALL, Mr. NEW, and Mr. HENRY LEE, be appointed a committee, pursuant to the said resolution.

WILLIAM TAZEWELL.

The House resolved itself into a Committee on the report of the select committee on the petition of William Tazewell, secretary to Mr. Gerry; he remained in Paris, and performed other services at the Hague and at London, but in returning he was captured. The Committee reported a resolution that the allowance in consequence of his capture should be granted.

The subject caused some debate, after which the resolution was agreed to—39 to 30. The House took up the report, and agreed to it, and a committee was appointed to report a bill conformably.

THURSDAY, April 17.

The bill entitled an act making appropriations for the Military Establishment of the United States for the year 1800, and the bill supplementary to the laws now in force, fixing the compensation to the officers of the Senate and House of Representatives, were respectively read a third time and passed.

A message was received from the Senate, informing the House that the Senate had passed the bill supplemental to the act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory, with amendments.

The bill and amendments were referred to a select committee, and ordered to be printed.

DISPUTED ELECTIONS OF PRESIDENT, &c.

The House again resolved itself into a Committee of the Whole on the bill prescribing the mode of deciding disputed elections of President and Vice President, and Mr. MARSHALL's amendment being under consideration:

Mr. RANDOLPH moved to amend the amendment by striking out that part which directs the Grand Committee to be chosen by ballot, and inserting that they shall be chosen by lot.

Mr. NICHOLAS then rose, and after noticing the amendments which had been offered, and animadverting at considerable length upon the unconstitutionality of the bill, moved to strike out the first section.

He was followed by Mr. MARSHALL, in opposition, and Mr. RANDOLPH in support of the motion. The Committee then rose, and obtained leave to sit again.

A message from the Senate, informed the House that they have passed the following bills with amendments, viz: an act for the government of the Navy of the United States; an act to provide for the removal of the Government of the United States, and an act to fix the compensation of the Paymaster General, and the Assistant to the Adjutant General.

FRIDAY, April 18.

The amendments of the Senate to the bill to provide for the removal and accommodation of the Government of the United States, were referred to a select committee. The amendments to the bill for the better government of the Navy of the United States, and to the bill fixing the compensation of the Paymaster General and Assistant to the Adjutant General were concurred in by the House.

DISPUTED ELECTIONS OF PRESIDENT, &c.

Mr. NICHOLSON called for the order of the day on the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

Mr. HARPER moved that it be postponed till Monday.

Mr. NICHOLSON, after expressing his abhorrence of the principles contained in the bill, then moved that it be postponed till the first Monday in December next.

Messrs. HARPER, DANA, RUTLEDGE, and MARSHALL, opposed this motion; and Messrs. S. SMITH, GALLATIN, RANDOLPH, NICHOLSON, and NICHOLAS, supported it.

The question was taken by yeas and nays, and decided in the negative—yeas 48, nays 52, as follows.

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, Archibald Henderson, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, Franklin Davenport, John Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, William Barry Grove, Robert Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, James Linn, John Marshall, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr. Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Mr. HARPER's motion for postponement till Monday, was then agreed to—ayes 54.

ADDITIONAL DUTY ON SALT.

The bill to continue in force an act laying an additional duty on salt, imported into the United States, was taken up in Committee of the Whole; when

Mr. S. SMITH, with a view to make the tax perpetual, and the easier to be increased if neces-

sary hereafter, moved to strike out that part of the bill which limits its duration to ten years.

This motion caused a long debate, and was finally negatived—yeas 40, nays 48.

Mr. Macon then moved to limit the operation of the law to *two* years, instead of *ten*, as the bill contemplates; which was also negatived—yeas 44, nays 47. The Committee then rose, and

Mr. Randolph renewed the motion for inserting two years; which was negatived—yeas 44 nays 50, as follows:

Yeas—Willis Alston, Phanuel Bishop, Rob't Brown, Samuel J. Cabell, Matthew Clay, William Charles Cole Claiborne, John Condit, John Dawson, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, Archibald Henderson, David Holmes, Geo. Jackson, James Jones, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, John Randolph, John Smith, John Smilie, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Robert Williams, and Henry Woods.

Nays—George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, John Bird, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, William Gordon, Roger Griswold, Robert Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge junior, Samuel Sewall, William Shepard, Samuel Smith, George Thatcher, John Chew Thomas, Richard Thomas, Philip Van Cortlandt, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

The bill was then ordered to be read a third time on Monday.

A message was received from the Senate, notifying that the Senate have passed a bill to fix the rank and pay of the commanding officer of the Marine Corps; and also the resolution sent from this House, authorizing the President of the Senate and Speaker of the House of Representatives to close the present session, by adjourning their respective Houses on the first Monday in May next, with an amendment.

The amendment to the first named bill was concurred in by the House.

To the resolution for adjournment, the Senate propose to strike out *first*, and insert *second*, which was concurred in by the House.

Mr. Marshall brought in a bill to authorize the allowance of a credit to William Tazewell, and also a bill to authorize the issuing of certain patents; which were respectively read and committed for Monday.

Monday, April 21.

Mr. Parker, from the committee appointed, presented a bill authorizing the purchase of timber for naval purposes; which was read twice, and committed to a Committee of the whole House to-morrow.

An engrossed bill to continue in force an act for laying an additional duty on salt imported into the United States, and for other purposes, was read and passed—yeas 37, nays 28.

The House went into Committee on the bill to establish the districts of Kennebunk, Bermuda, and City Point, which was ordered to be engrossed for a third reading to-morrow.

The House also went into a Committee on the report of the Committee of Claims in favor of the petition of Thomas Johnson, for pay, &c., to a company who went against the Indians in 1794. The report was agreed to, and a bill ordered to be brought in conformably thereto.

A message was received from the Senate informing the House that they had agreed to the bill for the division of the Northwestern Territory into two separate governments, with amendments.

A bill was received from the Senate entitled "A bill in addition to the act entitled 'An act to prohibit the carrying on the slave trade from the United States to any foreign place or country;" to which they desired concurrence.

The bill was referred to the Committee of the Whole; to which was referred a bill of the same purport reported by a select committee.

Mr. Rutledge from the committee to whom was referred the amendment of the Senate to the bill for settling the limits of the State of Georgia, and for establishing the Mississippi Government, made a report, which was referred to a Committee of the whole House.

ADMIRALS IN THE NAVY.

Mr. Parker, from the Naval Committee, reported a bill for the appointment of Admirals for the Navy.

[This bill provides for the appointment of one Vice Admiral and four Rear Admirals, and arranges the fleet into squadrons.]

It was read a first time, and on the question for the second reading, it was carried—37 to 31. Having been read a second time, Mr. Gallatin moved its postponement till the first Monday in December next.

The Speaker said the question was, whether it should be committed or not? The question for commitment was carried, 37 to 32. The question was then to make it the order of the day for the first Monday in December next.

Mr. Eggleston hoped it would be postponed. He said it would be agreed upon to suspend the building of the 74's for the present year; in addition to this our difference with France would most probably be soon adjusted. Another reason was, it would incur an addition of expense, which it would be improper to go into, having recently agreed to borrow $3,500,000. He was really surprised to hear such a bill proposed; he scarcely could think his colleague sincere.

Mr. Parker said that the building of the 74's was not suspended, but it was thought advisable not to hurry their building. He stated a number of conveniences that would attend the new arrangement; that the whole expense would not be more than $10,000, but owing to the advantages, he believed it would be a real saving. He did not think there could be any certainty of a peace, from the revolutionary disposition of France; but even if it was certain that peace would be made with that nation, it was not certain that the combined Powers would not renew their hostilities. He wished this measure to be adopted, even if it was at the expense of the Army. The return of peace would render the Army nugatory, except just enough for the garrisons; the whole of the Army expenses, he said, was upwards of four millions, but the whole sum expended on the Navy (really a more efficient defence and advantage) was little more than two millions. He wished our naval defence to be nurtured and rendered respectable, for which the squadron arrangements and appointments of suitable commanders was necessary.

Mr. Champlin also spoke in favor of the bill, and in favor of its commitment for an earlier day.

Mr. Claiborne could not think the gentleman (Mr. Parker) sincere in his professions that the Army was not necessary, when he perceived that every motion to reduce the Army, which by other gentlemen was thought absolutely necessary, had as uniformly been opposed by that gentleman. Mr. C. said he did not look forward to a period when the Navy as well as the Army would be unnecessary. This appointment might take place at any time when there should be necessity of it; and, therefore, as it was not pretended the 74's could be built before the next session, it would then be time enough to think of voting these officers.

The Speaker said that it was unknown in the Parliamentary proceedings of any country that the merits of a bill were discussed on a motion for postponement; he must therefore say that any discussion on the bill was out of order, and that gentlemen must confine themselves merely on the question of the day this bill should be made the order for.

Mr. Harper stated some of the inconveniences that must attend gentlemen who brought in, or would wish to support a bill being presented, recommending its provision by a motion to postpone; he conceived the bill a valuable one, and wished for an opportunity of endeavoring to convince the House of that fact, but he was precluded by the decision of the Chair, he must therefore beg leave to appeal from the decision.

The question was put, "Is the decision of the Chair right?" and carried—yeas 65.

Mr. Smith said he should vote for this bill being the order for December next, but if the 74's were then ordered to proceed, he should vote for this bill, if then proposed.

The yeas and nays were taken on the question, "Shall this bill be postponed until the first Monday in December next?" and decided in the negative—yeas 44, nays 45, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, Lewis R. Morris, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Robert Waln, Lemuel Williams, and Henry Woods.

The bill was then made the order for to-morrow.

Mr. Harper, after again mentioning the inconveniences that must attend the decision of the Speaker against the merits of a subject being entered into, moved that the following might be added to the standing rules and orders of the House:

"On a motion to postpone any bill, motion, or resolution, the merits of the said bill, motion, or resolution, may be discussed."

It was laid on the table.

ELECTION OF PRESIDENT, &c.

Mr. Harper moved that the Committee of the Whole should be discharged from the further consideration of the bill from the Senate, respecting the election of President and Vice President, for the purpose of committing it to a select committee. He thought some essential alterations were wanting, which could not be incorporated in the present bill in the House; he particularly referred to the powers of the Committee.

Mr. Marshall supported the motion.

Messrs. Gallatin and Nicholas opposed the motion, and hoped, first, the principle would be decided whether there should be a committee at all or not, before its commitment.

The motion was carried—yeas 54. Seven members were appointed.

MINE AND METAL COMPANY.

The House then went into a Committee on the bill to incorporate a company by the name and title of the Mine and Metal Company. A motion to strike out the 3d section, which provides that when $150,000 in shares are subscribed, the Secretary of the Treasury shall be empowered to subscribe $50,000 for the United States, was before the Committee.

A lengthy debate ensued upon the motion to strike out—at length the question was taken thereupon and was 46 to 31.

Mr. WALN then proposed a new section in the place of the one stricken out, which provided that the President of the United States might, whenever the stock of the said company should amount to $150,000, cause the Secretary of the Treasury to lend to them a sum not exceeding $50,000, for the purpose of erecting a machine for rolling the copper into sheets, upon certain security being given for the payment thereof in ten years, at an interest of six per cent.

This was carried, and the bill was ordered for a third reading to-morrow.

TUESDAY, April 22.

An engrossed bill to incorporate a company by the name and style of the Mine and Metal Company was read, and on the question for its passing, it was negatived—36 to 34.

The bill to establish a district at Kennebunk, and annex Lyme to New London, was recommitted to the whole House; when, some amendment having been made, the bill was ordered to be engrossed.

Mr. D. FOSTER, from the Committee of Claims, to whom was referred the bill from the Senate for the relief of the legal representatives of Samuel Lapsley, deceased, and also on a number of petitions respecting lost and destroyed certificates, made a report, which was referred to a Committee of the whole House.

The amendments of the Senate to the bill for the division of the Northwestern Territory were taken up, and referred to a committee of five members.

Mr. DENNIS, from the committee to whom were referred the amendments of the Senate to the bill for the removal and accommodation of the Government of the United States, reported their opinion that it was expedient for the House to accede thereto. The House took up the report and agreed to it.

The House went into Committee on the bill to provide for equalizing the valuation of unseated lands. The bill was agreed to, and ordered to be engrossed.

The House also resolved itself into a Committee on the bill to enlarge the powers of the Surveyors of the Revenue.

Mr. DAVIS called up his resolution fixing the next annual meeting of Congress on the first Monday in November next; which, after a long debate, was negatived—yeas 27.

Mr. COOPER proposed an amendment, which it appearing difficult to incorporate, and some objections having been made, the Committee rose and obtained leave to sit again.

Mr. CLAIBORNE, from the committee appointed to inquire into the expediency of continuing in force the law respecting trading houses with the Indians, reported a resolution for reviving that law for one year. It was referred to a Committee of the Whole.

LIMITS OF GEORGIA.

The House went into Committee on the report of the select committee on the amendments of the Senate to the bill for an amicable settlement of limits with the State of Georgia, and for the establishment of a government in the Mississippi Territory.

The report was, to agree to all the amendments except one.

The Senate had stricken out that part of the bill which prevented the Governor of the Territory from proroguing and dissolving the Legislature at his pleasure.

Mr. RANDOLPH hoped the measure would not be agreed to.

Mr. RUTLEDGE spoke in favor of the measure, he believed it would be the saving of the bill, which held out many great advantages to these people, and, in fact, amounted to all they asked. He observed that the agent, from that country, who was in town, would rather give up this principle than in the least jeopardize the bill.

Mr. NICHOLAS spoke on the other side.

The motion to agree with the Senate was carried—45 to 38.

The Senate also introduced a new section respecting the separate claim of the State of Georgia and of individual claimants; also respecting the extinguishment of an Indian claim to certain lands within the State.

A motion by Mr. JONES, to strike out, caused a lengthy debate; the Committee rose without a decision, and obtained leave to sit again.

HOUR OF MEETING.

Mr. RUTLEDGE observed that great inconvenience attended the meeting of the House at ten o'clock, on account of the necessity of committees meeting in the morning, whereby many gentlemen were prevented attending, while perhaps an engrossed bill (as was the case this morning) might be negatived, which had really a large majority of the House in its favor. He therefore moved that when the House adjourned, it should be till 11 o'clock.

This was carried—42 to 33.

WEDNESDAY, April 23.

An engrossed bill to provide for equalizing the valuations of unseated lands, was read the third time and passed.

An engrossed bill to establish the district of Kennbunk, and to annex Lyme to New London, and to alter the district of Bermuda Hundred and City Point, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time and passed.

Mr. D. FOSTER, from the Committee of Claims, presented a bill directing the payment of a detachment of Militia under the command of Major Thomas Johnson, in the year one thousand seven hundred and ninety-four; which was read twice and committed to a Committee of the Whole House to-morrow.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river,'" with several amendments; to which they desire the concurrence of this House.

The said amendments were read, and ordered to be referred to Mr. HARRISON, Mr. BRACE, Mr. GORDON, Mr. DAVIS, Mr. GROVE, Mr. LYMAN, and Mr. GALLATIN.

A message was received from the Senate, informing the House that they had passed the bill, entitled "An act to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment: Whereupon,

Resolved, That this House doth agree to the said amendment.

MINE AND METAL COMPANY.

Mr. S. SMITH, after expressing an opinion of the importance of the bill which had been unfortunately lost yesterday, moved the following resolution, to which he hoped there would be no objection, as the object was only to incorporate a company, without involving the Government of the United States:

"*Resolved*, That a committee be appointed to bring in a bill to incorporate a company for the purpose of procuring sheet copper, to be manufactured within the United States."

Mr. NICHOLAS wished to know if the motion was in order; and upon the SPEAKER'S wishing time to decide, it was ordered to lie on the table.

LIMITS OF GEORGIA.

The House, in Committee of the Whole, resumed the consideration of the report of the select committee, to whom was referred the amendments of the Senate to the bill supplemental to the act for an amicable settlement of limits with the State of Georgia, and for the establishment of a government in the Mississippi Territory.

Mr. JONES'S motion to strike out the latter part of the section being under consideration.

Mr. HARPER called for a division of the question. That part which authorizes the commissioners to settle those claims to the Georgia lands, which had been granted by one and revoked by a subsequent Legislature, being first in order:

Mr. GALLATIN opposed it, on the ground that it had not come regularly before the House; that the claimants had never applied for relief; and deprecated the manner in which it was introduced, as there could be but two votes on the most important measure that ever came before the House.

He was followed by Messrs. MARSHALL, and JONES, against the motion, and Messrs. RANDOLPH, NICHOLAS, and RUTLEDGE, in favor of it.

The question was then taken, and the motion for striking out agreed to—yeas 54, nays 39.

The Committee then rose, and had leave to sit again.

THURSDAY, April 24.

Mr. SMITH called up his resolution for appointing a committee to bring in a bill to incorporate a company for the manufacture of sheet copper; and upon the SPEAKER'S declaring that, upon due investigation, he had no doubt the motion was in order, the resolution was adopted.

Mr. SMITH, Mr. MARSHALL, and Mr. WALN, were appointed the committee.

A message was received from the Senate, informing the House that they have passed the bill in addition to the act fixing the compensation of the officers of both Houses of Congress, with amendments, to which they request a concurrence.

LIMITS OF GEORGIA.

The House resolved itself into a Committee of the Whole on the amendment of the Senate to the bill supplemental to the act for an amicable settlement of limits with the State of Georgia; and, after further amending the amendment, the Committee rose.

Upon the question, whether the House should concur in the report of the Committee in their agreement to the amendment of the Senate, to strike out that part which abrogates the power of the Governor, given in the ordinance, to prorogue the General Assembly at his pleasure, it passed in the negative—yeas 42, nays 49, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, Franklin Davenport, John Davenport, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

So the amendment of the Senate was rejected.

Upon the question to agree with the Committee in their disagreement to that part of the new section proposed by the Senate, which gave the Commissioners power to settle the rights of claimants to parts of the lands about to be ceded by Georgia to the United States.

Messrs. H. LEE, RUTLEDGE, and BAYARD, spoke in favor of the amendment, and against concurring in the report of the Committee, and Messrs. GALLATIN and JONES in opposition.

Mr. SMILIE, after insinuating that he understood some members to be interested in this question, read the rule of the House, which declares, that no member who is particularly interested in any question shall have a right to vote.

Mr. SEWALL said, he wished the true interpretation of this order to be given by the Chair. In his opinion it was not applicable to the question under consideration, as it appeared to be a general one.

After some observations from Mr. NICHOLAS,

Mr. NICHOLSON said, he hoped there would be no more debate until it was known that some member was actually interested.

Mr. SEWALL, in answer to this challenge, said that he was interested, having been a purchaser of these lands; and added that a number of his constituents were equally interested, and would feel much hurt at the rejection of his vote. He again called upon the Chair to decide as to the propriety of applying the rule to him upon this question.

After some other observations as to the point of order, the business before the House was suspended for fifteen minutes, and a resolution was submitted by Mr. SEWALL, by which the House were to declare their sense upon the subject. Whereupon an adjournment was called for and carried —yeas 39, nays 38.

FRIDAY April 25.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying an estimate for an appropriation of moneys for carrying into effect the act respecting quarantines and health laws; which were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a letter from the Comptroller, transmitting sundry statements, prepared in pursuance of the "Act establishing a Mint, and regulating the coins of the United States;" which was read, and ordered to lie on the table.

Mr. MARSHALL, from the committee to whom was referred the bill sent from the Senate, entitled "An act prescribing the mode of deciding disputed elections of President and Vice President of the United States," made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The report of the select committee to whom was referred the amendments of the Senate to the bill to provide for the sale of the lands in the Territory Northwest of the Ohio, and above the mouth of Kentucky river, was concurred in.

Mr. S. SMITH brought in a bill to promote the manufacture of sheet copper within the United States, by the incorporation of a company under the name of the Passaick Copper Company; which was committed for Monday.

The amendments of the Senate to the bill, supplementary to the laws now in force, fixing the compensation of the officers of the Senate and House of Representatives, were read and concurred in.

The bill to authorize the issuing of certain patents was agreed to, and ordered to be engrossed for a third reading to-morrow.

The House went into Committee of the Whole on the bill to provide for the disposition of the lands between the Great and Little Miami rivers; and after some time spent therein the Committee rose, and obtained leave to sit again.

Mr. C. GOODRICH, from the committee to whom was referred the amendment of the Senate to the bill to divide the Territory of the United States Northwest of the Ohio into two separate governments, made a report, that the House ought to disagree to the amendment, which proposes striking out the whole bill, and inserting a new one.

The report was concurred in.

The bill directing the payment of a detachment of militia under the command of Major Johnson, in 1794, was also agreed to, and ordered to be engrossed for a third reading to-morrow—as was the bill making further provision for the orphan children of Colonel John Harding and Major Alexander Trueman, deceased.

CONGRESS LIBRARY.

Mr. DENNIS said that by the act passed the present session, further to provide for the removal and accommodation of the Government of the United States, a sum not exceeding $5.000 was appropriated for the purpose of procuring a Library. In order to carry that provision into execution, he would move the following resolution:

"*Resolved*, That —— be a committee, jointly with such committee as may be appointed on the part of the Senate, for the purpose of making out a catalogue of books, and adopting the best mode of procuring a Library, at the City of Washington; and for adopting a system of rules and regulations relative thereto."

This motion was agreed to, and Messrs. WALN, EVANS, and POWELL, appointed.

LIMITS OF GEORGIA.

The House resumed the consideration of the report of the Committee of the Whole on the amendment of the Senate to the bill supplemental to an act for an amicable settlement of limits with the State of Georgia, and for the establishment of a government in the Mississippi Territory; when

Mr. SPEAKER, having been called on to decide whether the gentleman from Massachusetts (Mr. SEWALL) had a right to vote upon the question before the House, after explaining the rule, and the cases to which it evidently applied, declared that it could not even be a question of order, that the gentleman had an undoubted right to vote.

Mr. SEWALL then said, from motives of delicacy, and to avoid that censure, which, influenced by party spirit, he might incur in exercising his legal right (for he never entertained a doubt on the subject) he would decline giving his vote upon the question.

Immediately after Mr. S. had withdrawn from the House, the question was taken on agreeing with the committee in their resolution of non-concurrence to that part of the new section proposed by the Senate, which authorizes the Commissioners to settle individual claims, and carried in the affirmative, yeas 46, nays 34, as follows:

YEAS—Willis Alston, Phanuel Bishop, Robert Brown, Samuel J. Cabell, John Condit, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, Benjamin Huger, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, Robert Page, Josiah Parker, John Randolph, John Smith, John Smilie, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Chew Thomas, Richard Thomas, John Thompson, Abram Trigg, John Trigg and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Brown, Samuel W. Dana, John Davenport, Franklin Davenport, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Thomas Pinckney, Leven Powell, John Reed, John Rutledge, jr., James Sheafe, William Shepard, George Thatcher, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Mr. VARNUM observed, that he thought something ought to be done to bring about a compromise with these claimants, and therefore moved an amendment, in place of the words struck out, viz: that the said Commissioners, on the part of the United States, or any of them, be authorized to inquire into the claims which are or shall be made by the settlers, or any other person or persons, whatever, to any part of the aforesaid lands, which may be relinduished by the State of Georgia, and make report thereon to Congress, as soon as may be.

This motion was agreed to, ayes 49; and the amendment of the Senate, as amended, concurred in.

SATURDAY, April 26.

The following engrossed bills were read and passed:

An act to authorize the issuing certain patents;

An act directing the payment of a detachment of militia nnder the command of Major Thomas Johnson in the year 1794.

An engrossed bill to make further provision for the orphan children of Col. J. Harding and Major Alexander Trueman, deceased, was read. Mr. D. FOSTER moved that the bill be recommitted to the same Committee of the Whole to whom were referred the report on the petition of the widow of Colonel Preston, and another on the same subject —his view was to include all in the same bill. Mr. NICHOLAS and Mr. J. C. THOMAS thought the cases dissimilar. The motion was carried, 43 to 37.

Mr. S. SMITH, from the Committee of Commerce, reported a bill supplementary to the act, entitled "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes;" which was read and committed for Monday.

The House went into a Committee on the bill authorizing the allowance of a credit to William Tazewell; which was agreed to, and ordered to be engrossed.

The House also went into a Committee on the bill providing for the disposition of the lands between the Great and Little Miami rivers: which was ordered to be engrossed for its third reading.

SLAVE TRADE.

The House resolved itself into a Committee on the bill from the Senate, in addition to the act, entitled "An act prohibiting the carrying on the slave trade from the United States to any foreign place or country."

Mr. J. BROWN said, when the motion was first laid on the table, he thought it improper to prevent the citizens of the United States enjoying the benefits of a trade enjoyed by all the European nations. He really was in hopes that the good sense of the select committee would have permitted them to have seen the policy of realizing the act in question. Many members of the House, he observed, knew how the former act was passed; they knew that Congress was drilled into it by certain persons who would not take *no* for an answer. It was well known that the Abolition Society, otherwise the Society of Friends, as they were called, were very troublesome until they got that act passed. It was also well known that those people did not do much to support the Government, but that they did as much as they could to stop the measures of the Government, and particularly our defensive system, on which our national security depended.

Mr. NICHOLAS asked whether it was in order to abuse any class of citizens in this manner, and particularly since no motion was before the Committee?

The CHAIRMAN said he conceived the gentleman to be in order, since he supposed he was about to make a motion affecting the principle of the bill.

Mr. BROWN resumed. He was only speaking, agreeably to his information, how this bill came originally into existence. He was certain that this nation, having an act against the slave trade, did not prevent the exportation of a slave from Africa. He believed we might as well, therefore, enjoy that trade as to leave it wholly to others. It was the law of that country to export those whom they held in slavery—who were as much slaves there as those who were slaves in this country—and with as much right. The very idea of mak-

ing a law against this trade, which all other nations enjoyed, and which was allowed to be very profitable, was ill policy. He would further say that it was wrong, when considered in a moral point of view, since, by the operation of the trade, the very people themselves much bettered their condition. It ought to be a matter of national policy, since it would bring in a good revenue to our Treasury. It was not pleasing to him, Mr. B. said, to pay an interest of 8 per cent. for our loan: rather than borrow money, he would wish to be paying off some of our old standing debt, which could be done by increasing our commerce, or rendering it free. He wished it to be free as the wind that blew—from one end of the world to the other. As he observed before, he believed not one more slave would be exported from Africa, while our merchants and our revenue would enjoy the benefit.

Mr. B. said, our distilleries and manufactories were all lying idle for want of an extended commerce. He had been well informed that on those coasts New England rum was much preferred to the best Jamaica spirits, and would fetch a better price. Why then should it not be sent there, and a profitable return be made? Why should a heavy fine and imprisonment be made the penalty for carrying on a trade so advantageous?

But, he observed, if it was thought advisable that the old act should continue, he would wish it could be made to meet the purpose altogether, and prevent the system of slavery entirely, so that equal advantages might be given to all the inhabitants of the Union; without this, it would, as it ever had been, remain a great disadvantage. He therefore moved that the Committee rise, in order to postpone the bill. He believed the House would be better prepared to meet it in a few days.

Mr. Nicholas seconded the motion, not but that he was prepared to decide on it, but that there might be opportunity given to express an opinion. He really could not understand the gentleman, when he said that our people being employed in that trade would not add nor diminish the number exported. This was certainly a wrong calculation. These people were enslaved for their masters, or to supply some foreign market. Certainly if the number of purchasers were increased, the number of slaves would be increased. Surely the gentleman would not wish them brought into the United States when he talked of their condition being improved; this was a fact, to be sure, but would it be policy so to do?

But another and an important point was touched upon—that he would wish the law to be made to meet another object, if it was determined to prohibit the trade in this country. As a Southern man, Mr. N. said, he would observe that he was placed in a most unfortunate situation, indeed, in being obliged, in common with other people of those States, to keep men in a state of slavery: but he had the consolation to inform the House, that he believed the people of the Southern States were wiping off the stain entailed upon them by their predecessors, in endeavoring to ameliorate the situation of that race of people as much as possible. This appeared to be an increasing disposition. He hoped the gentleman would have an opportunity to produce all his arguments on this subject, in his endeavors either to get the law repealed or to strengthen it, agreeably to his wish, in order that he might be satisfied that he would not find an advocate in the House.

Mr. D. Foster spoke against the Committee rising.

Several sections of the bill were then gone through with, when the Committee rose, and obtained leave to sit again.

Monday, April 28.

An engrossed bill to provide for the sale of certain lands between the Great and Little Miami rivers, was read and passed; also a bill authorizing the allowance of a credit to William Tazewell.

The House went into a Committee on the bill to promote the manufacture of sheet copper in the United States; which was agreed to, and ordered to be engrossed accordingly.

Mr. H. Lee called up the Militia bill, when Mr. Bayard moved its postponement till the first Monday in December next, which was carried—yeas 50.

Mr. Rutledge proposed a resolution that a committee be appointed to inquire whether any and what alterations are necessary to be made in the act respecting fugitives from justice and persons escaping from their masters. This was negatived—38 to 34.

THE SLAVE TRADE.

Mr. Rutledge moved that the Committee of the Whole, to whom were referred the bill for preventing the carrying on the slave trade, &c., be discharged from the further consideration thereof. He conceived it to be one of the most defective bills that ever was before Congress, because the object intended was in no wise provided for, or utterly impracticable.

Mr. Bayard was of the same opinion. He had taken some pains to examine the bill, but was obliged to conclude it extremely imperfect. The objects of the former bill, and which was intended to be improved, were, to prevent the citizens of the United States having any right in vessels so employed; and also to prevent the citizens of the United States being employed on board any such vessels. He trusted that a great majority of the members of the House would be in favor of those principles, and effectually promote them. It would indeed be extremely dishonorable, in a country like this, to affirm such a trade, so contrary to all those principles held dear in the United States, and which ought to be promoted. His desire was, that a bill should be constructed upon the true principles of the intent of Congress: so far he thought they might go, but no farther. To be sure, as the gentleman from Rhode Island (Mr. J. Brown) observed, the Government could derive revenue from the encouragement of this trade, but he thought a more dishonorable item of revenue could not be established.

The Committee was discharged.

Mr. Bayard then moved that the bill should be referred to a select committee.

Mr. Rutledge hoped this would not be agreed to; he was not disposed at this late day of the session to take up any new business that was not of urgency. He thought it was perfectly unnecessary to make a new act upon the subject; he believed the former act did everything that was necessary or practicable to be done. What more could be wanted than that persons engaged in this traffic should forfeit their ships and pay a fine, besides, in many instances, imprisonment of the person offending? Surely that was all the occasion required. The different States which had heretofore imported those people into the United States had established the policy not to import any more; but in addition to this willing restriction, the Federal Government thought proper to prevent the trade being carried on, by our ships, to those countries which did suffer their importation. This was going very far indeed, but so far it was thought proper to go, to furnish a peace offering to those philanthropists whose urgency was great to accomplish the general destruction of the trade. However, the activity of the people of the four New England States first engaged them in this profitable traffic; their produce would bring a good price on the African coast, and why they might not enjoy the profit of it as well as the English he could not conceive. He believed it to be impossible effectually to prevent it. Some gentlemen, indeed, had talked of authorizing our cruisers to seize vessels of this kind, but, suppose they were confiscated, what was to be done with their cargoes? They could not be brought into the United States. Where could they be carried? It was not consistent with the policy of the West India islands to suffer them to land there, since it was their practice to keep these people in bondage, and they did not want, nor could they suffer free men to inundate those colonies. He knew of no place where they could be landed but St. Domingo, and as these people would not have been of those who had procured the freedom of slaves there—were not of those who had spread devastation and murder throughout that island, it was probable they would spurn them from their shores. What then was to be done with them? Surely no gentleman would wish them to be drowned, and it would be as absurd to think of sending them back to Sierra Leone! These difficulties he thought insuperable.

Mr. Waln hoped the bill would be committed, and that the provisions of it would be made effectual to its object. As for the people of Pennsylvania, he believed he could say they were unanimously in favor of the trade being put an end to most completely; which was in nowise done by the law now in force, nor by the bill now proposed. He said it was well known, that great grievances did exist for want of the due execution of the law, and much greater than were generally known, and hence it was that no more was heard of it from the people on this subject. He had been well informed that great evasions had taken place, and that this unlawful trade was becoming more and more in use. In the last year he believed that near forty vessels entered the West Indies with this illicit species of commerce. In some parts of the United States, he had been well informed, it was become so popular, that if a vessel was seized and sold, it was impossible to get any person to bid for her, and therefore the owner was enabled to repurchase her at a very low price indeed. It would be much better to repeal the old law, and open the trade, than to suffer the law to continue when nearly a nullity. But this he believed was not the disposition of the House; he believed the House could carry the principle into effect, and he was sure that a very great majority of the American people would wish them to do it.

The motion for recommitment was carried by a very large majority, and three members appointed.

IMPRISONMENT FOR DEBT.

Mr. Stone made a report from the committee to whom was referred the petition of Lawrence Erb and others, imprisoned at the suit of the United States for disabilities in the payment of moneys received by them. The committee saw no necessity of a special interference in these cases, and, in order to try the principle, submitted the following resolution:

"*Resolved*, That provision ought to be made by law for the personal discharge from prison of the insolvent debtors of the United States."

It was agreed to, and the committee appointed to carry it into effect.

MILITARY ACADEMY, &c.

Mr. Eggleston said, since he found the House so much disposed to prepare for the close of the session by postponing unnecessary business, he would move that the bill for establishing a Military Academy, and for the better organization of the corps of Artillerists and Engineers, be postponed till the first Monday in December next.

After some observations against the motion, by Messrs. Parker, Champlin, and H. Lee, and in favor of it by Messrs. Eggleston and Shepard, it was carried—yeas 64, nays 23, as follows:

Yeas—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Phanuel Bishop, Jonathan Brace, John Brown, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, John Condit, William Cooper, John Davenport, Thomas T. Davis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Dwight Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, David Holmes, James Jones, Aaron Kitchell, Samuel Lyman, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Reed, James Sheafe, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, Richard Thomas, John Thompson, John Trigg, Joseph B. Varnum, Robert Williams, Lemuel Williams, and Henry Woods.

Nays—C. G. Champlin, S. W. Dana, Franklin Davenport, John Dennis, William Edmond, Thomas

Evans, Abiel Foster, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, John Marshall, Lewis R. Morris, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Rutledge, jun., George Thatcher, John Chew Thomas, Peleg Wadsworth, and Robert Waln.

DIVISION OF NORTHWESTERN TERRITORY.

A message was received from the Senate informing the House that they insisted on the amendments to the bill for the division of the Northwestern Territory, and for establishing limits to the State of Georgia; and that they asked a conference on the bill providing for the sale of the lands above the mouth of Kentucky river, having appointed managers on their part. Managers were appointed on the part of the House.

It was resolved that a conference be requested on the bill for dividing the Northwestern Territory.

TREATY WITH GREAT BRITAIN.

The House went into a Committee on the bill for the execution of the 27th article of the Treaty with Great Britain.

A motion of Mr. NICHOLAS was under consideration, that no person whose case was cognizable in any of our courts should be delivered up. This caused a lengthy debate; it was advocated by Messrs. S. SMITH, NICHOLSON, and GALLATIN, and opposed by Messrs. BAYARD, DANA, and DENNIS. It was negatived 45 to 42. After which the Committee rose, obtained leave to sit again, and the House adjourned.

TUESDAY, April 29.

An engrossed bill to promote the manufacture of sheet copper within the United States, by incorporating a company for carrying on the same, was read the third time, and passed.

The House resolved itself into Committee on the bill to provide for carrying into effect the 27th article of the British Treaty. An amendment of Mr. NICHOLAS was under consideration, to which Mr. MARSHALL proposed some amendments; which being somewhat opposed, the Committee rose in order to have the amendments printed, and obtained leave to sit again.

A message was received from the Senate requesting concurrence to a bill which they had passed, entitled An act supplementary to the act to suspend part of an act entitled an act to augment the Army of the United States, and for other purposes.

DISPUTED ELECTIONS.

The House resolved itself into a Committee on the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

The bill, as amended by the select committee, provided for the appointment of a joint committee, with certain defined, but no decisive, powers.

Mr. NICHOLAS, saw no use for this committee, whose only business was to examine testimony, which, being next to nothing for them to do, would enable them the better to design mischief, if they were so inclined; and the great inconvenience that would attend their being empowered to send for testimony, even from the most distant part of the United States, made him think that all the provisions with which this committee are connected ought to be stricken out; he therefore moved to strike out the first section of the bill.

This was negatived—43 to 39.

Mr. GALLATIN afterwards moved to amend a section which provided the means of ascertaining the votes. Mr. MARSHALL answered. The Committee rose without a decision.

WEDNESDAY, April 30.

The bill sent from the Senate, entitled "An act supplementary to the act to suspend part of an act entitled "An act to augment the Army of the United States, and for other purposes," was read twice, and committed to a Committee of the Whole to-morrow.

Mr. HARPER, from the Committee of Ways and Means, made a report on the subject of further revenue; which was read, and ordered to be committed to a Committee of the Whole on Monday next.

A message was received from the Senate informing the House that they had passed an act to amend an act entitled an act to establish the Judicial Courts of the United States.

DISPUTED ELECTIONS OF PRESIDENT, &c.

The House again resolved itself into a Committee on the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States.

A motion of Mr. GALLATIN was under consideration, to insert, instead of the principle that in cases of doubt the Houses should divide to their respective chambers to consider the qualification or disqualification of a vote or votes, from their joint meeting, if such question should arise at counting the votes, the following words: "and the question of the exception shall immediately, and without debate, be taken by yeas and nays, and decided by a majority of the members of both Houses then present."

This motion called forth a long debate, and on the division was negatived, 46 to 44.

The Committee having gone through the bill, rose and reported.

THURSDAY, May 1.

The bill from the Senate to amend the act entitled "An act to establish the Judicial Courts of the United States," was twice read and committed.

Mr. HARPER, from the Committee of Ways and Means, made a report on the subject of further revenue; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

Mr. SEWALL, from the committee to whom was referred, on the thirteenth of January last, the petition of Cato West and others, made a further

report; which was read and considered: Whereupon,

Resolved, That the Governor of the Mississippi Territory be authorized by law, for the term of one year, to permit by his special license, to be granted after examination of each case in which it shall be requested, any slave or slaves, bona fide the property of a citizen of the United States, or owned by any person resident within the Mississippi Territory, at the period when the Government of the United States was established over the same, to be brought by such proprietor into the said Territory.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. SEWALL, Mr. CHAUNCEY GOODRICH, Mr. WALN, Mr. EVANS, and Mr. HILL, do prepare and bring in the same.

The House resolved itself into a Committee of the whole House on the report of the committee to whom was referred, on the seventh of March last, the petition of William Hill and others, and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were severally twice read, and agreed to by the House, as follows:

Resolved, That the sum of —— dollars ought to be appropriated by law to defray the expenses of such treaty or treaties as the President of the United States may deem it expedient to hold with any nation or nations of Indians southwest of the river Ohio.

Resolved, That provision ought to be made by law, authorizing and enabling all persons who, under the laws of North Carolina, and in conformity to the regulations and provisions thereof, have entered, surveyed, located, or obtained, grants of any of the lands ceded by the said State to the United States, in such manner as would have vested a good title under the said State of North Carolina, if such cession had not been made, to enter upon, occupy, and possess, the same, or to remove thereto their location from such lands, the titles whereto shall not be extinguished, whenever, and as soon as the Indian title or claim to a sufficient portion of the said land shall be extinguished, under the authority of the United States; and to possess and enjoy the same in as full and ample manner as if the same had been derived from, or under, the United States.

Ordered, That a bill or bills be brought in, pursuant to the first resolution; and that Mr. PINCKNEY, Mr. CHAUNCEY GOODRICH, Mr. HENDERSON, Mr. NICHOLAS, and Mr. THATCHER, do prepare and bring in the same.

On the motion of Mr. CLAIBORNE, the report of the select committee respecting the continuation of the acts for establishing trading houses with the Indians, was taken up and agreed to, and the committee directed to bring in a bill.

A message was received from the Senate, informing the House that they had agreed to a bill to authorize the sale and conveyance of lands by the Marshals of the United States, with an amendment. The House concurred.

Also, requesting a conference on the bill respecting the Mississippi Territory. Three managers were appointed on the part of the House.

Mr. HARPER, instructed by the committee to whom were referred so much of the President's Speech as related to the revision and amendment of the judicary system, reported a bill to provide for the more convenient and effectual administration of justice in the Circuit Courts of the United States. It was ordered to be printed.

The House resolved itself into Committee on the bill to establish the compensation of the officers employed in the collection of the duties on imports and tonnage; and after some time spent therein, the Committee rose and obtained leave to sit again.

DISPUTED ELECTIONS OF PRESIDENT, &c.

The House proceeded to consider the amendment reported, yesterday, from the Committee of the Whole House to whom was committed the report of the committee to whom was referred the bill sent from the Senate, entitled "An act prescribing the mode of deciding disputed elections of President and Vice President of the United States;" and the same being read,

A motion was made and seconded to amend the said amendment, by striking out, in the first section thereof, the words following:

"That, on the —— next following the day when a President and Vice President shall have been voted for by Electors, it shall be the duty of the Senate and House of Representatives of the United States to choose, by ballot, in each House, four members thereof: and the persons thus chosen shall form a Joint Committee, and shall have power to examine into all disputes relative to the election of President and Vice President of the United States, other than such as may relate to the number of votes by which Electors may have been appointed:"

And the question being taken, thereupon it was decided in the negative—yeas 41, nays 47, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, William H. Hill, Benjamin Huger, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven

Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John C. Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

A motion was then made and seconded to amend the said amendment, by striking out of the eighth section thereof, the following:

"And sign his name thereto, and if it be founded on any circumstance appearing in the report of the Joint Committee, and the exception be seconded by one member from the Senate, and one from the House of Representatives, each of whom shall sign the said exception, as having seconded the same, then each House shall immediately retire, without question or debate, to its own apartment, and shall take the question on the exception, without debate, by ayes and noes. So soon as the question shall be taken in either House, a message shall be sent to the other, informing them that the House sending the message is prepared to resume the count; and when such message shall have been received by both Houses, they shall again assemble in the same apartment as before, and the count shall be resumed. And if the two Houses have concurred in rejecting the vote or votes objected to, such vote or votes shall not be counted; but, unless both Houses concur, such vote or votes shall be counted. If the objection taken as aforementioned, shall arise on the face of the papers opened by the President of the Senate, in the presence of both Houses, and shall not have been noticed in the report of the Joint Committee, such objection may be referred to the Joint Committee, to be examined and reported on by them, in the same manner, and on the same principles, as their first report was made; but, if both Houses do not concur in referring the same to the committee, then such objection shall be decided on in the like manner as if it had been founded on any circumstance appearing in the report of the committee:"

And insert, in lieu thereof, the following:

"And the question on the exception shall immediately, and without debate, be taken by ayes and noes, and decided by a majority of the members of both Houses then present."

And, the question being taken thereupon, it was decided in the negative—yeas 43, nays 46, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, John Trigg Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, William H. Hill, Benjamin Huger, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Another motion was then made and seconded to amend the said amendment; and the question being taken thereupon it was resolved in the affirmative.

Ordered, That the said amendment, as amended, be recommitted to a Committee of the whole House immediately.

The House accordingly, resolved itself into the said committee; and, after some time spent therein, Mr SPEAKER resumed the Chair, and Mr. RUTLEDGE reported that the committee had had the said amendment under consideration, and made one amendment thereto; which was twice read, and agreed to by the House.

And then the main question being taken, that the House do agree to the said amendment as amended, it was resolved in the affirmative.

Ordered, That the said bill, with the amendment be read the third time to-morrow.

A message from the Senate informed the House that the Senate request a conference on the subject-matter of their amendments, disagreed to by this House, to the bill, entitled "An act supplementary to the act entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory;" and have appointed members at the same on their part. The Senate have passed the bill, entitled "An act to continue in force an act laying additional duty on salt imported into the United States, and for other purposes." The Senate have passed the bill, entitled 'An act to authorize the sale and conveyance of lands, in certain cases, by the Marshals of the United States, and to confirm former sales," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said message: Whereupon.

Resolved, That this House doth agree to the conference proposed by the Senate on the subject-matter of the first mentioned bill; and that Mr. PAGE, Mr. NOTT, and Mr. VARNUM, be appointed managers at the same on the part of this House.

Resolved, That this House doth agree to the amendment proposed by the Senate to the last mentioned bill.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

On a motion made and seconded that the House do come to the following resolution:

"*Resolved*, That the Clerk of this House be directed to deliver to the members, such volumes of the Journals of the old Congress as may now be in his possession, for distribution"

Ordered, That the said motion be referred to Mr. NEW, Mr. NICHOLAS, and Mr. VARNUM.

FRIDAY, May 2.

Mr. D. FOSTER, from the committee to whom was referred the bill from the Senate in addition to the act, entitled an act to prohibit the carrying on the slave trade from the United States to any foreign place or country, made a report, recommending the adoption of sundry amendments to said bill. The report was read a second time, and committed for to-morrow.

Mr. RUTLEDGE moved that the Committee of the Whole, to whom was referred the bill supplementary to the act to fix the compensation of the officers employed in the collection of duties on imports and tonnage, be discharged from the further consideration thereof.

This motion, after considerable debate, was negatived—yeas 41, nays 44.

Mr. GRISWOLD, from the Committee of Revisal and Unfinished Business, made a further report, recommending the adoption of a resolution making additional allowance to the clerks of the Department of State, Navy, &c., which was read a first and second time; and, upon the question will the House adopt the same, it passed in the negative—yeas 32, nays 36.

DISPUTED ELECTIONS OF PRESIDENT, &c.

The bill sent from the Senate, entitled "An act prescribing the mode of deciding disputed elections of President and Vice President of the United States," together with the amendment agreed to yesterday, was read a third time; and on the question that the same do pass, it was resolved in the affirmative—yeas 52, nays 37, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dennis, George Dent, Joseph Dickson, William Edmond, Thos. Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robt. Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Samuel Lyman, John Marshall, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, Samuel Smith, Geo. Thatcher, John Chew Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, John Dawson, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Thomas Hartley, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, John Thompson, Abram Trigg, John Trigg, and Robert Williams.

COMPENSATION OF COLLECTORS.

The House went into Committee of the Whole on the bill supplementary to the act to fix the compensation of the officers employed in the collection of duties on imports and tonnage; and after making some other amendments, reducing the salaries of sundry collectors, the Committee rose, and the House proceeded to the consideration of the report; when

Mr. WALN moved to strike out from the amendment for reducing the Collectors of Boston, Baltimore, Philadelphia, and Charleston, the word "Philadelphia," which was negatived—yeas 30.

Mr. PARKER moved to amend the bill by striking out the reduction proposed with respect to the Collector of Norfolk. Negatived—yeas 25.

Mr. CHAMPLIN moved a reduction of the percentage allowed the Collector of the port of New-London, to one and a half per quarter per cent. Negatived—yeas 12.

Mr. SEWALL wished to make the allowance of the Collector of Boston 7-16ths of 1 per cent., instead of 3-8ths—and made a motion to that effect. Negatived.

The further consideration of the report was postponed till to-morrow.

SATURDAY, May 3.

Mr. PINCKNEY, from a select committee, reported a bill to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians.

Mr. CLAIBORNE reported a bill to revive and continue in force an act entitled an act for establishing trading-houses with the Indians.

A message was received from the Senate requesting concurrence to a bill passed in that House, supplementary to the act entitled an act to establish the Treasury Department.

These three acts were severally twice read, and committed to Committees of the whole House.

An amendment was also proposed to the bill for the support of Government for the year 1800; to which the House concurred.

Mr. NICHOLAS, from the committee to whom was referred, on the first instant, a motion relative to the distribution of the Journals of the old Congress, made a report; which was read, and ordered to lie on the table.

The House proceeded to the consideration of the bill for fixing the compensation to the Collectors of the Revenue, upon which some further debate occurred, which was principally confined to the efforts of several gentlemen to prevent any reduction of the per centage heretofore allowed to those officers.

The bill at last was passed through, and ordered to be engrossed for a third reading—yeas 44.

DIVISION OF NORTHWESTERN TERRITORY.

Mr. C. GOODRICH made a report from the managers on the part of this House appointed to confer with the Senate on the bill to divide the Northwestern Territory; the report was, that it would be expedient for the House to recede from their amendments and to agree to a farther amendment that was proposed.

Mr. JACKSON moved that the further consideration of this bill might be postponed till the first

Monday in December next. He stated this motion to be grounded on a belief that many of the people of that Territory had no knowledge or desire that this division should take place; he had been informed by a respectable gentleman who resided there, that the people were not generally informed that such a measure was in contemplation. Mr. J. said he had doubts whether it would be for their interest or not, and doubting, he wished to act with caution and information, since it was an important thing to them.

Mr. Harrison hoped the motion would not take place; the information the gentleman had stated came from a person who was interested, residing near Cincinnati, which, although now the seat of Government, would not continue so in case of a division. He knew the information to be inaccurate; he believed nine-tenths of the people were in favor of it, among whom were a great number of the Legislature. He confessed that the Senate had amended this bill in a manner very injurious to the general interests of the people there, but knowing as he did the great importance of the bill, and the general wish of the people, expressed to the House by petitions, he would rather submit to almost anything than postpone the subject till another session. He was sorry the gentleman from Virginia, or any other gentleman, should suppose him to be so void of a wish or endeavor to promote the interests of his constituents as to propose a measure that was not generally approved of; he knew it to be so, or, Mr. H. said, he should not have encouraged it. Indeed every gentleman must know that his interests were interwoven with those of his constituents.

Mr. Goodrich mentioned the present great inconvenience in the due administration of justice in that extensive Government, and the great inconvenience generally in all the matters where business with the seat of Government was necessary.

Mr. Rutledge also spoke against its postponement; and, on the question, it was negatived without a division.

The House then receded from its amendment and agreed to the one proposed.

SLAVE TRADE.

The House went into Committee on the bill to prohibit carrying on the slave trade to any foreign country. The Committee rose and reported the bill. On the question when it should be read a third time, it was carried for to-day. On the question for its passing, a long and warm debate ensued.

Several attempts were made to postpone its passing, but to no effect. At length the question was taken—yeas 67, nays 5, as follows:

Yeas—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Phanuel Bishop, Jonathan Brace, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, John Condit, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, William Edmond, Joseph Eggleston, Thomas Evans, Abiel Foster, D. Foster, Albert Gallatin, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, James H. Imlay, Aaron Kitchell, Silas Lee, Michael Leib, Samuel Lyman, Nathaniel Macon, Lewis R. Morris, Peter Muhlenberg, John Nicholas, Abraham Nott, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Samuel Sewall, William Shepard, John Smilie, John Smith, David Stone, Thomas Sumter, George Thatcher, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, and Robert Williams.

Nays—John Brown, George Dent, Joseph Dickson, Benjamin Huger, and John Rutledge, jr.

And the House adjourned.

Monday, May 5.

Mr. Sewall brought in a bill to permit, in certain cases, the bringing slaves into the Mississippi Territory; and Mr. Stone, a bill making further provision for the relief of persons imprisoned for debts due the United States; which were respectively read and committed for to-morrow.

Mr. Harper, from the Committee of Ways and Means, reported the two following bills, which were read a first and second time, and committed to a Committee of the Whole, viz: a bill to authorize certain expenditures, and to make certain additional appropriations for the year 1800; and a bill to make provisions relative to rations for Indians, and for their visits to the seat of Government.

The bill entitled "An act supplementary to an act entitled 'An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes,'" was read a third time; and the question being put, Shall the bill pass?

Mr. Champlin moved that the bill be recommitted for the purpose of reducing the per centage allowed the Collectors of New London and Wilmington, (Delaware,) which was negatived.

The bill was then passed.

The bill in addition to the act granting lands to the inhabitants and settlers of Vincennes, in the Illinois country, in the Territory of the United States Northwest of the Ohio, and for confirming them in their possessions, was agreed to in Committee of the Whole, and ordered to be engrossed for a third reading to-morrow.

A message was received from the Senate informing the House that they receded from their amendment, disagreed to by this House, to the bill to divide the Territory of the United States Northwest of the river Ohio.

The bill to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians, was taken up in Committee of the Whole, agreed to without debate, and the bill ordered to be read a third time to-morrow.

The bill to provide for the means of intercourse between the United States and foreign nations was taken up in Committee of the Whole, when Mr. Nicholas moved to strike out the first section, which made the appropriation for the purposes contemplated in the remainder of the bill permanent; which, after some debate, was carried—yeas 37, nays 34. The bill was then further amended, the Committee rose, and it was ordered to be read a third time to-morrow.

Mr. Gallatin, on behalf of the managers appointed to confer with managers on the part of the Senate of their amendments, disagreed to by this House, to the bill to amend the act entitled an act to provide for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river, made a report, which was read and concurred in. A message from the Senate informed the House that they also concurred in said report.

Mr. Nicholas, from the committee to whom was referred so much of the President's Speech, at the opening of the present session, as relates to the defence of the United States, made report, recommending the adoption of a resolution for appropriating the sum of $100,000 for the support and erection of fortifications; which was ordered to lie on the table.

SURVEYORS OF THE REVENUE.

The bill to enlarge the powers of Surveyors of the Revenue, was taken up, in Committee of the Whole, when Mr. Elmendorf moved to add a new section to the bill, giving the surveyors power to alter the assessment rates, where patented lands have been returned by two or three officers.

Mr. Harper opposed the motion, on the ground that it gave too unlimited power to an individual, and which ought alone to be vested in the commissioners.

Mr. Platt also opposed it; and Mr. Elmendorf spoke in reply—when the question was taken and negatived.

The Committee then rose, and the bill was ordered to be read a third time to-morrow.

INTERCOURSE WITH FRANCE.

Mr. Parker, after noticing the change of conduct in the French Government, and their disposition to liberate American property, said he wished provision to be made for such of our citizens in France whose vessels have not been condemned, and whose commanders, acting without information or instruction, have conceived themselves authorized to return with cargoes to this country, not having knowledge of the act recently passed, by which both vessel and cargo are forfeited; and therefore moved the following resolution:

"*Resolved*, That the Committee of Commerce and Manufactures be instructed to inquire whether any, and what, further amendments are necessary to the act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof, and report their opinion thereon by bill or otherwise."

Mr. P. wished this resolution to be immediately acted upon. One vessel had arrived at Norfolk under the circumstances mentioned, and it was probable there would be many more in a few days.

Mr. Nicholas wished the resolution to lie on the table. He was unwilling to act in this partial manner, as it would open a door to fraud. If a proposition was made to repeal the whole law, it would meet with his hearty approbation.

The resolution was ordered to lie on the table.

Tuesday, May 6.

The House proceeded to consider the report, made the third instant, from the committee to whom was referred a motion relative to the distribution of the Journals of the old Congress: Whereupon,

Resolved, That the Clerk of this House be directed to distribute among the members such volumes of the Journals of the former Congress as have been received by him under a resolution of the last session, or were before in his possession, and the volumes necessary to complete the sets as they may come to his hands.

The following bills were read a third time and passed:

An act, in addition to an act granting lands to the inhabitants and settlers of Vincennes, in the Illinois country, in the Territory of Ohio, and for confirming them in their possessions;

An act to enlarge the powers of Surveyors of the Revenue;

An act to appropriate a certain sum of money to defray the expenses of holding a treaty or treaties with the Indians;

An act providing the means of intercourse between the United States and foreign nations—the title of which was altered to read, "An act to ascertain the compensation of public Ministers."

INTERCOURSE WITH FRANCE.

Mr. Parker called up the resolution which he laid on the table yesterday, instructing the Committee of Commerce and Manufactures to inquire whether any, and what, further amendments are necessary to the non-intercourse law; which having been taken into consideration, Mr. P. again contended for the propriety of its adoption.

Mr. Macon moved to amend the resolution by instructing the committee to inquire into the expediency of bringing in a bill to repeal the law altogether; which was agreed to by Mr. Parker, and incorporated in his resolutions, as follows:

"*Resolved*, That the Committee of Commerce and Manufactures be instructed to inquire whether it be expedient to repeal or *amend* the act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof, and report their opinion thereon by bill or otherwise."

Mr. Nicholas moved to amend the resolution by striking out the word in italic, in the third line.

A long debate took place on this motion, in which it was frequently observed that the change of conduct on the part of the French Government, which was manifest, ought to produce an equal change on our part; but that we should not touch our system of defence, without connecting with it another; that the power for ceasing hostilities, which was lodged with the Executive, would no doubt be justly exercised, and whenever circumstances would warrant the measure—which no doubt

would happen upon the receipt of the first despatches from our Ministers at Paris.

The motion to strike out was negatived—yeas 23.

Mr. GALLATIN then opposed the resolution, on the ground that it would be highly improper to take any measure, at the present time, which would change our defensive system. He had no wish even to see the bill amended. Persons who may have suffered could obtain relief by petitioning Congress, who no doubt would grant it, wherever there was no fraud or collusion.

The question on the original resolution was put and negatived—yeas 40, nays 43.

SENATE BILLS.

A message was received from the Senate informing the House that the Senate have passed the two following bills, viz:

"An act supplementary to the act establishing the Mint, and regulating the coins of the United States;" to which they request the concurrence of this House.

Also, the following bill, with amendments: "An act to establish the district of Kennebunk, and to annex Lyme to New London; to alter the district of Bermuda Hundred and City Point, and therein to amend the act entitled 'An act to regulate the collection of duties on imports and tonnage."

The amendments to this bill were read and concurred in.

The bill relative to the Mint was read a first and second time, and committed to a Committee of the whole House.

ADDITIONAL REVENUE.

The House resolved itself into a Committee of the Whole on the further report of the Committee of Ways and Means, on the subject of the revenue; when the first resolution, laying an additional duty of twenty per centum on wines, after being amended, on motion of Mr. GRISWOLD, to read as follows, was adopted:

"*Resolved*, That it is expedient to lay an additional duty of twenty per centum on the amount of the present duty upon wines imported into the United States, and to vary the scale of duties in such manner as to comport with the plan of the Secretary of the Treasury."

The second resolution was agreed to without debate as follows:

"*Resolved*, That it is expedient to lay an additional duty of two and-a-half per centum ad valorem on such goods, wares, and merchandise, imported into the United States, as are now subject to a duty of ten per centum ad valorem."

The third resolution was opposed by Messrs. HARPER and S. SMITH, and supported by Mr. GRISWOLD; after which the Committee rose, and obtained leave to sit again.

WEDNESDAY, May 7.

Mr. DAVIS, from the select committee to whom was committed the bill from the Senate for the relief of Ithamer Canfield, made a report, that said bill ought to pass. The bill was then ordered to be read a third time to-morrow.

A message from the Senate informed the House, that they have concurred in the amendments of this House to the bill relative to the slave trade with several amendments to which they desire the concurrence of the House; also that the Senate insist on some of their amendments disagreed to by this House, to the bill supplementary to an act for an amicable settlement of limits within the State of Georgia, and for establishing a government in the Mississippi Territory.

ADDITIONAL ARMY.

Mr. HARPER said, that by the terms of enlistment of the additional army, they were engaged to serve for three years, or until an amicable adjustment of the differences existing between the United States and France; from which circumstance, the President was precluded, even if he knew the preliminaries of peace to be adjusted, from disbanding it until a treaty should be actually concluded and ratified by the two Governments—whereby the troops would be kept for perhaps six months in service unnecessarily. The Navy and other parts of our defensive system, were upon a different footing. He wished the Army to be placed on a similar one, and therefore moved the following resolution:

"*Resolved*, That it is expedient to authorize the President of the United States to discharge the additional army thereof, as soon as the state of things between the United States and the French Republic will warrant the measure."

The resolution was agreed to, and referred to the Committee of the whole House to whom was committed the bill from the Senate to suspend part of the act entitled "An act to augment the Army of the United States."

ADDITIONAL REVENUE.

The House again resolved itself into a Committee of the Whole on the further report of the Committee of Ways and Means on the subject of revenue; and the tax on drawbacks being under consideration, Mr. GRISWOLD and Mr. HARPER again spoke for and against the motion. Mr. NICHOLAS, Mr. HUGER, and Mr. RANDOLPH, also spoke against the motion; after which the question was taken and negatived, only 23 votes being in favor of it.

The third resolution, to lay an additional duty of one half per cent. per pound on brown sugar and coffee imported into the United States, was opposed by Mr. GRISWOLD, who doubted much the propriety of laying an additional duty on coffee, and therefore moved to strike out that article. The motion was opposed by Mr. HARPER, and advocated by Mr. SEWALL, who was of opinion that this article was frequently smuggled, and was apprehensive it would be more so, if an additional duty were laid, and therefore would injure the revenue.

The motion was carried—yeas 38, nays 21.

The question on the resolution as amended was, after some debate, put and carried—yeas 45, nays 28.

The fourth resolution reported, to retain two-and-a-half per centum on all drawbacks allowed for goods re-exported from the United States, in addition to the sums heretofore directed to be retained by law, and also on the whole of the additional duty on goods imported in foreign ships or vessels, was agreed to without debate. The Committee then rose, and, upon the question, Will the House concur with the Committee in their agreement to the resolution laying an additional duty on sugar? the yeas and nays were called for, and taken, as follows:

YEAS—Willis Alston, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Christopher G. Champlin, William C. C. Claiborne, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dennis, George Dent, Thomas Evans, Abiel Foster, Dwight Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Samuel Lyman, Matthew Lyon, Lewis R. Morris, Abraham Nott, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, John Smith, Samuel Smith, David Stone, George Thatcher, John Chew Thomas, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.—54.

NAYS—Phanuel Bishop, Samuel J. Cabell, Gabriel Christie, Matthew Clay, John Condit, John Dawson, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Andrew Gregg, John A Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Michael Leib, James Linn, Nathaniel Macon, Anthony New, John Nicholas, John Randolph, John Smilie, Richard Stanford, Thomas Sumter, Abram Trigg, John Trigg, and Joseph B. Varnum.—28.

The other resolutions, as amended, were also agreed to, and the Committee of Ways and Means directed to bring in a bill or bills conformable thereto.

HEIRS OF HARDING AND TRUEMAN.

The House then went into Committee of the Whole on the bill making provision for the orphan children of Colonel Harding and Major Trueman; when the unfavorable report of the Committee of Claims on the petition of Mrs. Elliot, which was referred to this Committee, was taken into consideration, and, after some debate, agreed to—yeas 36, nays 28.

The unfavorable reports on the petition of Mrs. Wooster, and on the petition of Mrs. Lynch, were also agreed to.

The bill for the relief of the orphan children was next taken up, and agreed to. The Committee then rose, and the House proceeded to the consideration of the report; when

Mr. HARRISON moved that the decision on the petition of Mrs. Elliot be postponed till the first Monday in December next; which was carried—yeas 40.

On motion of Mr. D. FOSTER, the decision of Mrs. Wooster's case was also postponed until that day.

Mr. MACON then moved that the further consideration of the bill be also postponed to that day; which was negatived, only 24 members voting in favor of it; and the bill was ordered to be read a third time to-morrow.

The report on the petition of Mrs. Lynch was concurred in.

THURSDAY, May 8.

The bill entitled an act to make further provision for the orphan children of Colonel John Harding, and the orphan daughter of Major Alexander Trueman, deceased, was read a third time, and passed.

The bill for the relief of Ithamer Canfield was read a third time, and passed.

Mr. HARPER brought in a bill to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of the stamp duties on debentures; and a bill to lay additional duties on certain articles imported; which were, respectively, read a first and second time, and ordered to the third reading. The bills were then engrossed, read a third time, and passed.

Mr. GRISWOLD, from the committee appointed, on the twentieth of March last, to examine the accounts of the United States relating to the public debt, and to report the amount respectively incurred and extinguished, and generally such facts as relate to the increase and diminution of the same, since the establishment of the Government of the United States under the present Constitution, made a report; which was read, and ordered to lie on the table.

Mr. SMITH, from the Committee of Commerce and Manufactures, to whom was referred the bill from the Senate, to permit the exportation of certain parcels of gunpowder, muskets, and cutlassess, made a report, that the said bill ought not to pass. The question was then put, "Shall the bill pass?" and resolved in the negative.

The SPEAKER laid before the House a letter enclosing a report from James McHenry, Oliver Wolcott, and James Steele, Esqs., on the subject of the Canadian and Nova Scotia refugees.

The report was referred to the select committee heretofore appointed on this subject, on the part of whom, Mr. GALLATIN immediately brought in a bill regulating the grants of land appropriated for the refugees from the Provinces of Canada and Nova Scotia; which was read a first and second time, and committed for Friday.

The House proceeded to consider the report, made yesterday, from the managers appointed to attend a conference with the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act supplemental to the act, entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory;" when the report was concurred in as follows:

Resolved, That this House do recede from their disagreement to the amendment of the Senate to

the first section of the bill above mentioned, and do agree to the said amendment, with an amendment.

Resolved, That this House do recede from their disagreement to the amendment of the Senate to the ninth section of the said bill; and do agree to the amendment of the Senate to the first amendment of this House to the tenth section, proposed to be inserted by the Senate.

Mr. Rutledge laid on the table the following resolution:

"*Resolved*, That a committee be appointed to inquire and report, whether any and what additional allowances ought to be made to the salaries of the district Judges of the several district Courts of the United States."

The bill to permit, in certain cases, the bringing of slaves into the Mississippi Territory, was taken up in Committee, agreed to without amendment, and ordered to be read a third time to-morrow.

Mr. Claiborne, from the committee to whom was referred the laws passed by the Governor and Judges of the Mississippi Territory, made a report, recommending the adoption of a joint resolution for repealing two of said laws—the one relating to granting licenses to tavern keepers, the other fixing the fees to be exacted in certain cases by the Judges of that Territory.

The resolution was read a first and second time, and ordered to a third reading to-morrow.

The House went into Committee of the Whole on the bill relative to making provision for allowing rations to Indians on visiting the seat of Government; when the bill was agreed to without amendment, and ordered to be read a third time to-morrow.

ADDITIONAL APPROPRIATIONS.

The House went into Committee of the Whole on the bill making certain additional appropriations for the year 1800; when the resolution referred to this Committee, making certain additional appropriations for fortifications, was agreed to, and a section for that purpose added to the bill. By this bill $32,000 are appropriated for defraying the expenses incurred by both Houses in doing honor to the memory of General Washington; to the Choctaw nation of Indians, $2,000; for the reimbursement of moneys advanced by Consuls of the United States in defending captured property of citizens of the United States in foreign countries, $5,000; for defraying costs of prosecution before the Court of Appeals in England, $14,000; for expenses of Indians visiting the seat of Government, $7,500; additional compensation to officers of both Houses of Congress, $1,500; for expenses incidentt o the establishment of the general stamp office, and salary of superintendent, &c., $400; for expenses incident to the establishment of the Indiana Territory, including salary of Governor, Judges, &c., thereof, $4,000; for exploring copper mines on Lake Superior, $1,500; and for fortifications, $100,000.

Mr. Claiborne moved a new section to the bill, authorizing the grant of $1,925 to John Pitchyn, as compensation as interpreter on the part of the United States to the Choctaw nation of Indians, at the treaty of Hopewell, authorized by the old Confederation.

The section, after some debate, was agreed to. The Committee then rose, the House concurred, and the bill was ordered to be engrossed for a third reading to-morrow.

MEMORY OF WASHINGTON.

Mr. H. Lee from the select committee appointed to consider what measures it would be proper for Congress to adopt for paying suitable respect to the memory of the man first in peace, first in war, and first in the hearts of his countrymen—the deceased General Washington—made a report, recommending the adoption of the following resolutions:

"*Resolved*, That the resolution of Congress passed in the year 1783, respecting an equestrian statue of General Washington, be carried into immediate execution, and that the statue be placed in the centre of an area to be formed in front of the Capitol.

"*Resolved*, That a marble monument be erected by the United States in the Capitol at the city of Washington, in honor of General Washington to commemorate his services, and to express the regrets of the American people for their irreparable loss.

"*Resolved*, That the President of the United States be requested to give such directions as may appear to him proper to carry the preceding resolutions into effect; and that for the present the sum of $100,000 be appropriated for these purposes."

The resolutions were referred to a Committee of the whole House, and immediately taken into consideration; when

Mr. Harper moved to amend the first resolution, by inserting that a mausoleum be erected for General Washington, in the city of Washington, instead of the statue proposed, which was carried; the other resolutions were negatived, of course.

The Committee then rose, and the resolution, as amended by Mr. Harper, was agreed to by the House, and a bill ordered to be brought in pursuant thereto.

COMPENSATION OF COLLECTORS.

A message was received from the Senate, informing the House that they have passed the bill supplementary to the act entitled an act to establish the compensation of the officers employed in the collection of duties on imports and tonnage, with amendments.

The Senate proposed to add a new section making it the duty of the collectors of the respective ports of Philadelphia, Baltimore, New York, Boston, and Charleston, to deposit in the Bank of the United States, or one of the banks of deposit, all bonds by them received, for payment of duties; which bonds are to be collected by and at the risk of said banks, with the usual per centage.

This was agreed to.

Friday, May 9.

The following engrossed bills were read and passed, viz:

An act to make provision relative to rations for Indians and their visits to the seat of Government;

An act to permit, in certain cases, the bringing of slaves into the Mississippi Territory;

An act to authorize certain expenditures, and to make certain appropriations for the year 1800.

A resolution yesterday reported, by Mr. Claiborne, from a select committee, respecting so much of the laws passed by the Governor and the two Judges of the Mississippi Territory as granted eight dollars for every tavern license to the Governor; and so much of the laws of the said Territory as gave to the Judges certain fees in the Courts thereof, was taken up. The resolution was to repeal and nullify the aforesaid laws. The House unanimously concurred.

The amendments to the act respecting surveyors, were agreed to, except one, which was negatived. The amendments to the other bills were concurred in.

The House went into Committee on the bill to revive and continue in force an act entitled "An act for establishing trading houses with the Indian tribes."

This bill was ordered for a third reading which it subsequently had, and was passed.

THE TREASURY DEPARTMENT.

The House went into a Committee on the act supplementary to the act entitled "An act to establish the Treasury Department."

The Committee rose and reported the bill—which provided that the Secretary of the Treasury should lay before Congress, at the commencement of every session, a report on the subject of finance, together with such plans for improving the revenue as may occur to him.

Mr. Gallatin and Mr. Nicholas opposed the passing of the bill, on Constitutional principles. They observed, that as all money bills were to originate in the House of Representatives, the Senate had no right to propose any bill by which that provision was changed; nor could the Secretary of the Treasury, upon the same ground, propose anything that should originate any money bill. Heretofore, it had been usual, when information was wanting by the House, to call for it from that Department, and the same could be done again.

It was contended by Mr. Griswold and Mr. Harper, that it was not a power to report a bill, but merely the state of our finances, which, for want of due notice, had heretofore been delayed, so as to throw all the most important business upon the close of the session, whereas, by a leisurely and mature examination, the Secretary of Treasury would be enabled to make a timely and complete report.

The bill passed to its third reading—43 to 39.

AMENDMENTS TO BILLS.

Amendments were proposed by the Senate to the following bills:

An act to ascertain the compensation to public Ministers;

An act to enlarge the powers of Surveyors of the Revenue;

An act making appropriations for the Navy of the United States during the year 1800;

An act prescribing the mode of counting the votes in the election of President and Vice President of the United States.

One of the amendments to the bill respecting the election of President, was, instead of the word "rejecting" (in the bill) any vote or votes by a concurrent vote of the two Houses, the word "admitting" was proposed by the Senate.

Mr. Harper and Mr. Bayard hoped the House would not concur, as this amendment very materially changed the principle of the bill, inasmuch as it would put it in the power of one or two members of either House to require the majority of both Houses to admit a vote or votes; in default of which, the whole votes of a State might be totally rejected. This was contrary to the former will of the House, after a mature deliberation.

The yeas and nays were called by Mr. Nicholas, on the question "Shall the amendments of the Senate be concurred in?" and decided in the negative—yeas 15, nays 73, as follows:

Yeas—John Brown, Samuel W. Dana, Franklin Davenport, Dwight Foster, Chauncey Goodrich, Roger Griswold, James H. Imlay, Samuel Lyman, Jonas Platt, James Sheafe, William Shepard, George Thatcher, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Phanuel Bishop, Jonathan Brace, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Cooper, William Craik, John Davenport, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Abiel Foster, John Fowler, Jonathan Freeman, Albert Gallatin, Henry Glen, Elizur Goodrich, Edwin Gray, Andrew Gregg, John A. Hanna, Robert Goodloe Harper, Thomas Hartley, Joseph Heister, William H. Hill, David Holmes, George Jackson, James Jones, Aaron Kitchell, John Wilkes Kittera, Michael Leib, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, Robert Page, Thomas Pinckney, Leven Powell, John Randolph, John Reed, John Rutledge, jun., Samuel Sewall, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Chew Thomas, Richard Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Robert Williams.

SALT SPRINGS.

The House went into Committee on the bill to authorize the Secretary of the Treasury to lease certain salt springs, the property of the United States, in the Territory Northwest of the Ohio.

Mr. Harrison moved to strike out the whole bill, for the purpose of inserting another.

The Speaker moved that, for the true understanding of a bill, new in its principles, the Committee rise, which was accordingly done. Leave was refused to sit again, when Mr. Claiborne moved that the bill be postponed till the first Monday in December next. This was carried.

CANADIAN REFUGEES.

Mr. Gallatin, from the committee to whom was referred the report of the Secretary of War and the Secretary and Comptroller of the Treasu-

ry, on the subject of Canadian and Nova Scotia refugees, made a report, which was referred to the Committee of the Whole, to whom was referred the bill regulating grants of land appropriated for the refugees of the British provinces of Canada and Nova Scotia. The House then went into a Committee on the said bill, and it was ordered to be engrossed for a third reading, which was subsequently done, and the bill passed.

MEMORY OF WASHINGTON.

Mr. Evans, from the committee appointed for that purpose, reported a bill for erecting a mausoleum for George Washington, in the city of Washington.

The bill provided that it should be one hundred feet square at the base, and of a proportionate height.

Mr. Eggleston wished to hear the estimated price.

Mr. Harper said he had an estimate from Mr. Latrobe, of Philadelphia, who was the architect employed on the Pennsylvania Bank, the estimate of which had rather been over the actual expense; the estimate was, that a pyramid of one hundred feet at the bottom, with nineteen steps, having a chamber thirty feet square, made of granite, to be taken from the Potomac, with a marble sarcophagus in the centre, and four marble pillars on the outside, besides other proportionate ornaments, would amount to $82,500. He hoped no objection would be made to the price, since it could not occur on any future occasion, as *another* Washington *would never die.*

Mr. Nicholas thought every sense of respect would be as well signified by a building of less dimensions, and it would be considerable less expense; he moved to strike out one hundred and insert sixty. After some debate, this was negatived.

The bill was then ordered to be engrossed for its third reading.

MEETING OF CONGRESS.

A bill was received from the Senate appointing the time and directing the place of the next meeting of Congress, which provided that the two Houses should meet at the city of Washington on the third Monday in November next.

The House went into Committee thereupon, which was reported. On the question for its third reading, it was carried—yeas 32 nays 32. The Speaker voted in the affirmative, and it was ordered to a third reading to-morrow.

Saturday, May 10.

MEMORY OF WASHINGTON.

The bill for erecting a mausoleum for George Washington, in the city of Washington, was read a third time; and upon the question, Shall the bill pass?

Mr. Kitchell called the yeas and nays upon it, and proceeded to give his reasons why he would vote against the bill. He was followed by Mr. Harper in favor of it, and Mr. Randolph against it; when the question was taken, and the bill passed—yeas 54, nays 19, as follows:

Yeas—Willis Alston, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, Gabriel Christie, William C. C. Claiborne, William Craik, Samuel W. Dana, Franklin Davenport, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Thomas Evans, Abiel Foster, Albert Gallatin, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Roger Griswold, John A. Hanna, Robert Goodloe Harper, David Holmes, Benjamin Huger, James H. Imlay, James Jones, John Wilkes Kittera, Henry Lee, Silas Lee, Edward Livingston, Lewis R. Morris, Peter Muhlenberg, Abraham Nott, Robert Page, Jonas Platt, Leven Powell, John Reed, John Rutledge, jun., Samuel Sewall, James Sheafe, John Smith, Samuel Smith, Richard Dobbs Spaight, George Thatcher, John C. Thomas, Richard Thomas, Abram Trigg, Philip Van Cortlandt, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Theodorus Bailey, Robert Brown, Matthew Clay, John Condit, John Davenport, George Jackson, Aaron Kitchell, Michael Leib, James Linn, Nathaniel Macon, Anthony New, John Nicholas, John Randolph, William Shepard, John Smilie, Thomas Sumter, John Thompson, John Trigg, and Joseph B. Varnum.

NEXT MEETING OF CONGRESS.

The bill from the Senate appointing the time and directing the place of the next meeting of Congress, was read a third time; when

Mr. Bayard moved that it be recommitted to a Committee of the whole House, for the purpose of altering the time of commencing the session. After some debate, the motion was negatived.

The question was then put, Shall the bill pass? and resolved in the affirmative—yeas 41, nays 35. The next meeting of Congress will of course take place on the third Monday in November next.

THE MINT.

The House went into a Committee of the Whole on the bill from the Senate supplementary to the act establishing the Mint, and regulating the coins of the United States.

The object of this bill, which is to authorize the Secretary of the Treasury to contract with the Bank of the United States for the disposal of the right of coinage for ten years, was objected to by Mr. Gallatin, who wished the bill to be postponed till next session; or that the coinage should be discontinued, and the implements sold; and not that it should be placed in the power of the bank.

Mr. C. Goodrich said, that some arrangement should be made on the subject. By the existing law the Mint was to be removed to the seat of Government, at the city of Washington—and it was highly questionable whether the removal would not conduce to the destruction of the institution; the project of the Senate, therefore, appeared to him the best we could adopt; it would relieve us from the coinage, and expense attending the business, at the same time that it would afford a reasonable profit to the bank, who, at first, would incur very great expense, as the dies were extremely defective, and new ones would have to be procured.

Mr. Gallatin moved to strike out the twelfth section of the bill, and insert that the Mint shall be continued at Philadelphia until 5th March, 1801. This would leave it in the power of Congress to take the subject into mature consideration next session.

The motion was carried, yeas 40, noes 31; the Committee rose, and the House concurred.

The bill was then ordered to be read a third time; and having received its third reading, was passed as amended.

A message from the Senate informed the House that they disagreed to this amendment; also, also, that they have passed the bill authorizing the issuing of certain patents, and a bill directing the payment of a detachment of militia under the command of Major Thomas Johnson, in 1794, each with amendment.

Also, that they disagree to the amendment proposed by this House to their amendment to the bill, entitled "An act to enlarge the powers of Surveyors of the Revenue."

The House proceeded to consider the latter bill, and

Resolved, That a conference be requested with the Senate on the subject-matter of the said amendment disagreed to by the Senate; and that Mr. Griswold, Mr. Harper, and Mr. Nott, be appointed managers at the same, on the part of this House.

[Subsequently the Senate agreed to the conference proposed.]

IMPRISONMENT FOR DEBT.

The bill making further provision for the relief of persons imprisoned for debts due the United States, was taken up in Committee, agreed to, and upon the question shall the bill be engrossed for a third reading, it passed in the affirmative—yeas 36, nays 25. The bill was subsequently read the third time and passed—yeas 39, nays 27.

[By this bill no person indebted to the United States can be discharged from prison, unless he shall have suffered two years imprisonment.]

ELECTIONS OF PRESIDENT.

A message was received from the Senate informing the House that the Senate adhere to their disagreement to the amendments to the bill prescribing the mode of deciding disputed elections of President and Vice President of the United States, made by this House, and subsequently insisted on Whereupon,

Mr. Harper moved that this House do also adhere to their disagreement to recede; which was carried, and the bill, consequently, is lost.

SUPPLEMENTARY ARMY BILL.

The House went into the Committee of the Whole on the bill from the Senate supplementary to the act to augment the Army of the United States; when

Mr. Harper, in pursuance of his motion referred to this Committee, moved an additional section, authorizing the President, whenever in his opinion the negotiations with France will warrant the measure, to discharge the additional army, except the engineers, raised in pursuance of the act to which this is a supplement.

Mr. S. Smith thought the measure warrantable at present, and moved to strike out the responsibility imposed on the President of waiting till the preliminaries of peace were signed.

Mr. Rutledge opposed this motion, as did Mr. H. Lee, and Mr. Sedgwick.

Mr. S. Smith spoke in reply, and said he had been the original mover of this army, had voted for retaining it; but was now of opinion it was totally unnecessary, and was sorry it was ever adopted; he thought it of no use, whether this country accommodated her differences or not with the French Republic, so little was the danger of invasion.

The motion was negatived—yeas 38, nays 41.

The section was then agreed to.

Mr. Sewall moved a new section, for allowing one month's pay, in addition to the allowance now made by law, as a compensation for their services, and expenses in returning home; which was adopted—yeas 42, nays 27. The Committee then rose, and

Mr. S. Smith renewed his motion for striking out part of the new section added on motion of Mr. Harper, and called the yeas and nays upon it, which were taken and stood—yeas 38, nays 42, as follows:

Yeas—Willis Alston, Theodorus Bailey, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

Nays—George Baer, Bailey Bartlett, James A. Bayard, Jonathan Brace, John Brown, William Cooper, William Craik, John Davenport, Franklin Davenport, George Dent, Thomas Evans, Abiel Foster, Dwight Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Lewis R. Morris, Robert Page, Thomas Pinckney, Jonas Platt, Levin Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

On the question for concurring with the Committee in adding the new section proposed by Mr. Sewall, Mr. Randolph spoke at considerable length against it, and called the yeas and nays upon it; which were taken and the section adopted, yeas 47, nays 27, as follows.

Yeas—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, Jonathan Brace, John Brown, Gabriel Christie, William Charles Cole Claiborne, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, George Dent, Thomas Evans, Abiel Foster, Dwight Foster, John Fowler,

Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William B. Grove, Robert Goodloe Harper, Wm. H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Lewis R. Morris, Peter Muhlenberg, Abraham Nott, Robert Page, Jonas Platt, Leven Powell, John Reed, John Rutledge, jr., Samuel Sewall, James Sheafe, William Shepard, George Thatcher, John Chew Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, and Lemuel Williams.

Nays—Robert Brown, Matthew Clay, John Condit, Thomas T. Davis, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Jones, Aaron Kitchell, Matthew Lyon, Jas. Linn, Edward Livingston, Nathaniel Macon, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, John Thompson, Abram Trigg, and John Trigg.

The bill was then read the third time and passed.

MONDAY, May 12.

On motion of Mr. NICHOLAS, the House rescinded a resolution to adjourn the two Houses this day, and a resolution was adopted that the President of the Senate and the Speaker of the House should adjrurn both Houses to-morrow. The Senate amended it by proposing Wednesday. On the question of concurrence, it was carried, 40 to 24.

The House resolved itself into Committee on the bill from the Senate, to amend an act entitled an act to establish the Judicial Courts of the United States.

This bill provides that jurors in the Courts of the United States shall be designated by lot, or otherwise, according to the mode now practised in the highest courts of the several States.

The bill was agreed to, read a third time and passed.

Mr. GRISWOLD, from the managers of the conference on the disagreeing votes to the bill to enlarge the powers of surveyors of the revenue, made a report, to which the House agreed. The Senate also concurred.

The Senate's amendments to the bill authorizing the payment of a detachment of militia, under the command of Thomas Johnson, and to the bill to authorize the issuing of certain patents, were taken up and concurred in.

A joint committee of conference was appointed on the bill respecting the Mint establishment.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act authorizing the issuing certain patents." Whereupon,

Resolved, That this House doth agree to the said amendment.

A message from the Senate, informed the House that the Senate agree to the resolution for postponing the time of adjournment of the two Houses, with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the resolution for postponing the time of adjournment: Whereupon,

Resolved, That this House doth agree to the said amendment

TUESDAY, May 13.

Mr. C. GOODRICH, from the managers on the part of this House to confer with the conferees of the Senate, on the subject of the disagreement of the two Houses to the bill respecting the Mint Establishment reported their opinion, that it would be proper for this House to recede from their amendment to the said bill, which he moved; but, on the question being taken, it was determined to adhere, 35 to 22. A message was afterwards received from the Senate, notifying the House that they recede from their opposition to the same; so that the bill passed with the amendment of the House, which was that the Mint should remain at Philadelphia, upon the present plan, till 4th of March, 1801.

A message was received from the Senate informing the House that they had agreed to the following bills with sundry amendments, to which they desired the concurrence of the House: An act to authorize certain expenditures, and to make certain additional appropriations for the year 1800; An act authorizing the payment of a certain sum of money for holding a treaty or treaties with the Indians; An act to make further provision for the orphan children of Colonel John Harding and Major Alexander Trueman, deceased.

The House concurred in the amendments to the same.

On motion of Mr. DENT, it was

Resolved, That the third engrossing clerk in the office of the Clerk of the House, be kept in the service of the House during the recess, on account of the removal of the office to the future seat of Government.

WEDNESDAY, May 14.

A message was received from the Senate informing the House that the Senate have resolved that the resolution for repealing two of the laws passed by the Governor and Judges of the Mississippi Territory, be postponed till next session of Congress; that the Senate concur in the amendments of this House to the bill supplementary to the act to augment the Army of the United States, with amendments.

The amendments having been taken into consideration, the first, which was to fix the day of disbanding the army on or before the 15th June next, was concurred in.

The second amendment, which was to insert a proviso, that nothing in the act contained should be construed to authorize a deduction of the first four regiments of infantry, two regiments of engineers, and two companies of light dragoons, or of the general and other officers of the staff, appertaining thereto, was also agreed to.

The third amendment was to allow three months additional pay, instead of two, as proposed by this House; which was carried—yeas 35.

MISSISSIPPI LAWS.

Mr. DAVIS, after observing that the Senate had postponed, till the next session of Congress, the resolution unanimously adopted by this, for the repeal of two laws obnoxious to the people of the

Mississippi Territory, moved the following resolution, with a recital, viz:

"Whereas, the extensive Territories of the United States, exclusive of the particular States, have rendered subordinate governments indispensable for local and temporary objects, and a system of this nature, calculated for the Northwest Territory, has been applied to that of the Mississippi, and now pervades the whole by separate jurisdictions, the number of which it is proposed to increase; and in each a Governor, appointed by the General Government, and removed from office at the pleasure of the President of the United States, is made the first and most important official character; whence it is of high concern to the internal quiet and prosperity of the people in those Territories, as well as of much moment to the political interests of the United States, and to the confidence reposed in the President, to continue in office such Governors only as shall have conducted themselves with propriety, and especially within the limits of legal authority; since the experience of all times, and the evidence of all history, prove that Governors, responsible only to those at a distance, are prone to disregard the good of the governed; to usurp authority, and to abuse the trust confided to them, and that connivance and impurity forever become the prolific parents of crime and oppression.

And whereas it is in particular represented to Congress, by the people of the Mississippi Territory, that Winthrop Sargent, the present Governor thereof, has acted under the influence of a faction, and pursued the principles of despotism, by excluding from his confidence a majority of the well-disposed citizens; by indulging an unwarrantable distrust of the great body of the people; and by appointing to offices, civil and military, over them, many persons who were obnoxious for their intrigues and foreign connexions.

That he has practised an avarice hateful to a liberal people, and an extortion odious and oppressive to free citizens, by exacting and receiving fees for passports, and for marriage licenses; and that he has, with others, exercised the most dangerous assumption of power, by enacting new laws for the Territory, instead of adopting laws from the original States, and by annexing to a breach of them the most rigorous penalties of forfeiture and confiscation.

And whereas it appears to this House, that the said Winthrop Sargent did acknowledge that he had deviated from the ordinance for the government of the Territories, whereby it is enacted, "that the Governor and Judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district," inasmuch as, in his letter of the 5th of October, 1799, directed by him and two of the Judges to a committee of the inhabitants of the Territory, he declares, "that there are few laws of this Territory, either of a civil or a criminal nature, but what are derived from some one of the State codes, and where we have ventured to depart from them, it has been in favor of our citizens, by lessening of fines and penalties; but when it has so happened that evils actually existed among us, for the remedy of which no provision could be found in the laws to which we had access, we have not so far distrusted our authority, as not to take immediate steps to prevent their growth and continuance."

That, by the authenticated transcript of the laws thus enacted, which have been officially transmitted to Congress, it does not appear whether the said laws have been taken from the code of laws of any of the States.

That, by one of the aforesaid laws, entitled "a law authorizing the Governor to establish public ferries," after declaring in the preamble of the same, that no law concerning ferries can be found for adoption, it is enacted, that the Governor be authorized to declare, by proclamation or otherwise, from time to time, what ferries shall be established, and by whom to be kept; and that if any person, without authority as aforesaid, shall keep a ferry, he shall forfeit, to the use of the country, the sum of fifty dollars.

That by another of the aforesaid laws entitled "A law respecting crimes and punishments," it is enacted "that any person or persons guilty of treason, shall, upon conviction thereof, suffer the pains of death, and shall moreover forfeit all his, her, or their estate real and personal to the Territory," although the Constitution of the United States declares "that no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

That by another law passed by the said Governor and Judges, entitled "A law to regulate taverns," it is enacted that the Governor should have and receive for every license by him granted pursuant to this law, to sell wine and other liquors, the sum of eight dollars; although the Governor receives, as such, the sum of $2,000 per annum from the United States.

And that by another law thus passed by the Governor and Judges, entitled "A law establishing and regulating fees," &c., it is enacted "that the Judges of the Supreme Court shall be entitled to receive fees for allowing writs of errors and supersedeas, &c., for taking bail, filing bail, &c., for the first motion in every civil cause, taxing bills of costs, signing judgment," and for a variety of other services, particularly enumerated in the aforesaid law, although each of the said Judges receive as such a salary of $800 per annum from the United States.

From whence it is evident, that the said Winthrop Sargent, being, in conjunction with the Judges, entrusted with the important power of adopting for the Territory such laws of the individual States as might be suited to the circumstances of the said Territory, has, in conjunction with the Judges, abused the power thus delegated, by usurping an authority of making new laws, not to be found amongst the laws of the individual States, by prescribing penalties inconsistent with the Constitution of the United States, and by combining with the said Judges in enacting laws for the purpose of exacting sums of money from the inhabitants of said Territory, for his and the said Judges' private use and emolument: Therefore

Resolved, That the laws passed by the Governor and Judges of the Mississippi Territory, and the petition of Cato West and others, together with all the documents relative thereto, be transmitted to the President of the United States."

Upon the question, Will the House now take the preceding resolution into consideration? a very warm debate ensued; it was finally determined in the negative—only 21 members voting in favor of it; and it was ordered to lie on the table.

CANADIAN REFUGEES.

A message from the Senate informed the House that the Senate have passed the bill regulating the grants of land to the Canada and Nova Scotia refugees, with amendments.

The amendments were taken into consideration, and opposed by Mr. GALLATIN, who said the ob-

ject of the Senate was to give the refugees land worth ten cents an acre, instead of good land worth one dollar per acre, as proposed by this House; rather than do this, he would give them nothing.

Mr. LIVINGSTON was of the same opinion, and hoped the House would not concur. These people had waited eighteen years, and he thought it extremely hard they should now be put off in this manner.

The amendments were unanimously rejected.

A message from the Senate informed the House that they adhered to the amendment; whereupon,

Mr. GALLATIN moved that the further consideration of the bill be postponed till the third Monday in November next; which was carried.

After receiving several messages from the President, notifying the signing of various bills, there appearing no further business before the House, on motion of Mr. C. GOODRICH, a resolution for the appointment of a joint committee to wait on the President, and inform him of the proposed recess was adopted, and was concurred in by the Senate.

Mr. C. GOODRICH, from the Joint Committee, reported that they had performed that service, and that the President informed them he had no other communication to make, except his good wishes for their health and happiness, and that he wished them a pleasant journey to their respective homes.

A message having been sent to the Senate to inform them this House was ready to adjourn, after a few minutes a motion was made for that purpose, and carried; when

The SPEAKER, after taking an affectionate farewell of the members, and expressing his wish for their safe return and happiness, during the recess, adjourned the House till the third Monday in November next, to meet in the city of Washington, in the District of Columbia.

PROCEEDINGS

OF

THE SENATE OF THE UNITED STATES,

AT THE SECOND SESSION OF THE SIXTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, NOVEMBER 17, 1800.

MONDAY, November 17, 1800.

In pursuance of the law of last session, the second session of the sixth Congress commenced this day, at the city of Washington, and the Senate assembled, in their Chamber, at the Capitol.

PRESENT:

JOHN LANGDON and SAMUEL LIVERMORE, from New Hampshire;
DWIGHT FOSTER, from Massachusetts;
JAMES HILLHOUSE and URIAH TRACY, from Connecticut;
THEODORE FOSTER, from Rhode Island;
NATHANIEL CHIPMAN, from Vermont;
JAMES SCHUREMAN, from New Jersey;
WILLIAM HILL WELLS, from Delaware;
JOHN E. HOWARD, from Maryland;
STEPHENS THOMPSON MASON, from Virginia;
JOHN BROWN, from Kentucky;
JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee;
ABRAHAM BALDWIN, from Georgia.

The number of members present not being sufficient to constitute a quorum, the Senate adjourned to 11 o'clock to-morrow morning.

TUESDAY, November 18.

The number of members present not being sufficient to constitute a quorum, the Senate adjourned.

WEDNESDAY, November 19.

There being no quorum, the Senate adjourned.

THURSDAY, November 20.

There being no quorum present, the Senate adjourned.

FRIDAY, November 21.

TIMOTHY BLOODWORTH, from the State of North Carolina; HUMPHREY MARSHALL, from the State of Kentucky; and GOUVERNEUR MORRIS, from the State of New York, severally attended.

The credentials of DWIGHT FOSTER, appointed a Senator by the State of Massachusetts, in place of Samuel Dexter, resigned, were read, and he took his seat in the Senate.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and JOHN E. HOWARD was chosen.

The PRESIDENT administered the oath prescribed by law to Mr. FOSTER.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the Vice President, they have elected JOHN E. HOWARD President of the Senate *pro tempore*.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business; and that, in the absence of the Vice President, they have elected JOHN E. HOWARD President of the Senate *pro tempore*.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and they have appointed a committee, on their part, together with such committee as the Senate may appoint, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

Resolved, That the Senate concur in the resolution last recited, and that Messrs. WELLS and TRACY be the committee on the part of the Senate.

Mr. WELLS reported, from the joint committee last mentioned, that they had waited on the President of the United States; and that he acquainted the committee that he would meet the two Houses of Congress, at 12 o'clock to-morrow, in the Senate Chamber.

SATURDAY, November 22.

Ordered, That the Secretary notify the House of Representatives, that the Senate are ready to meet them in their Chamber, for the purpose of receiving the communications from the President of the United States.

The House of Representatives having accordingly taken the seats assigned them, the PRESIDENT OF THE UNITED STATES came into the Senate Chamber, and addressed both Houses of Congress as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

Immediately after the adjournment of Congress at their last session in Philadelphia, I gave directions, in compliance with the laws, for the removal of the public offices, records, and property. These directions have been executed, and the public officers have since resided and conducted the ordinary business of the Government in this place.

I congratulate the people of the United States on the assembling of Congress at the permanent seat of their Government; and I congratulate you, gentlemen, on the prospect of a residence not to be changed. Although there is cause to apprehend that accommodations are not now so complete as might be wished, yet there is great reason to believe that this inconvenience will cease with the present session.

It would be unbecoming the Representatives of this nation to assemble, for the first time, in this solemn temple, without looking up to the Supreme Ruler of the Universe, and imploring his blessing.

May this Territory be the residence of virtue and happiness! In this city may that piety and virtue, that wisdom and magnanimity, that constancy and self-government which adorned the great character whose name it bears, be forever held in veneration! Here, and throughout our country, may simple manners, pure morals, and true religion, flourish forever!

It is with you, gentlemen, to consider whether the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States, shall be immediately exercised. If, in your opinion, this important trust ought now to be executed, you cannot fail, while performing it, to take into view the future probable situation of the Territory for the happiness of which you are about to provide. You will consider it as the Capital of a great nation, advancing, with unexampled rapidity, in arts, in commerce, in wealth, and in population; and possessing, within itself, those energies and resources which, if not thrown away, or lamentably misdirected, will secure to it a long course of prosperity and self-government.

In compliance with a law of the last session of Congress, the officers and soldiers of the temporary army have been discharged. It affords real pleasure to recollect the honorable testimony they gave of the patriotic motives which brought them into the service of their country, by the readiness and regularity with which they returned to the station of private citizens.

It is, in every point of view, of such primary importance to carry the laws into prompt and faithful execution, and to render that part of the administration of justice which the Constitution and laws devolve on the federal courts, as convenient to the people as may consist with their present circumstances, that I cannot omit once more to recommend to your serious consideration the judiciary system of the United States. No subject is more interesting than this to the public happiness, and to none can those improvements which may have been suggested by experience be more beneficially applied.

A Treaty of Amity and Commerce with the King of Prussia has been concluded and ratified. The ratifications have been exchanged, and I have directed the treaty to be promulgated by proclamation.

The difficulties which suspended the execution of the sixth article of our Treaty of Amity, Commerce, and Navigation, with Great Britain, have not yet been removed. The negotiation on this subject is still pending. As it must be for the interest and honor of both nations to adjust this difference with good faith, I indulge confidently the expectation that the sincere endeavors of the Government of the United States to bring it to an amicable termination will not be disappointed.

The Envoys Extraordinary and Ministers Plenipotentiary from the United States to France were received by the First Consul with the respect due to their character; and three persons, with equal powers, were appointed to treat with them. Although, at the date of the last official intelligence, the negotiation had not terminated, yet it is to be hoped that our efforts to effect an accommodation will at length meet with a success proportioned to the sincerity with which they have been so often repeated.

While our best endeavors for the preservation of harmony with all nations will continue to be used, the experience of the world, our own experience, admonish us of the insecurity of trusting too confidently to their success. We cannot, without committing a dangerous imprudence, abandon those measures of self protection which are adapted to our situation, and to which, notwithstanding our pacific policy, the violence and injustice of others may again compel us to resort. While our vast extent of seacoast, the commercial and agricultural habits of our people, the great capital they will continue to trust on the ocean, suggest the system of defence which will be most beneficial to ourselves, our distance from Europe, and our resources for maritime strength, will enable us to employ it with effect. Seasonable and systematic arrangements, so far as our resources will justify, for a navy, adapted to defensive war, and which may, in case of necessity, be quickly brought into use, seem to be as much recommended by a wise and true economy as by a just regard for our future tranquillity, for the safety of our shores, and for the protection of our property committed to the ocean.

The present Navy of the United States, called suddenly into existence by a great national exigency, has raised us in our own esteem; and, by the protection afforded to our commerce, has effected, to the extent of our expectations, the objects for which it was created.

In connexion with a navy ought to be contemplated the fortification of some of our principal seaports and harbors. A variety of considerations, which will readily suggest themselves, urge an attention to this measure of precaution. To give security to our principal ports, considerable sums have already been expended, but the works remain incomplete. It is for Congress to determine whether additional appropriations shall be made, in order to render competent to the intended purposes the fortifications which have been commenced.

The manufacture of arms within the United States still invites the attention of the national Legislature. At a considerable expense to the public this manufacture has been brought to such a state of maturity as, with continued encouragement, will supersede the necessity of future importations from foreign countries.

Gentlemen of the House of Representatives:

I shall direct the estimates of the appropriations necessary for the ensuing year, together with an account of the public revenue and expenditure, to a late period, to be laid before you. I observe, with much satisfaction, the product of the revenue during the present year has been more considerable than during any former equal period. This result affords conclusive evidence of the great resources of this country, and of the wisdom and efficiency of the measures which have been adopted by Congress for the protection of commerce and preservation of public credit.

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

As one of the grand community of nations, our attention is irresistibly drawn to the important scenes which surround us. If they have exhibited an uncommon portion of calamity, it is the province of humanity to deplore, and of wisdom to avoid, the causes which may have produced it. If, turning our eyes homeward, we find reason to rejoice at the prospect which presents itself; if we perceive the interior of our country prosperous, free, and happy; if all enjoy in safety, under the protection of laws emanating only from the general will, the fruits of their own labor, we ought to fortify and cling to those institutions which have been the source of such real felicity; and resist, with unabating perseverance, the progress of those dangerous innovations which may diminish their influence.

To your patrotism, gentlemen, has been confided the honorable duty of guarding the public interests; and, while the past is to your country a sure pledge that it will be faithfully discharged, permit me to assure you that your labors to promote the general happiness will receive from me the most zealous co-operation.

JOHN ADAMS.

UNITED STATES, *Nov.* 22, 1800.

The PRESIDENT OF THE UNITED STATES having retired, the two Houses separated.

Ordered, That Messrs. TRACY, MORRIS, and BALDWIN, be a committee to report the draught of an Address to the President of the United States, in answer to his Speech this day to both Houses.

It was further ordered that the Speech be printed for the use of the Senate.

Resolved, That two Chaplains of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the rate usual for the annual charge of such papers.

MONDAY, November 24.

JONATHAN DAYTON, from the State of New Jersey, attended.

Mr. TRACY, from the committee appointed to draught an Address in answer to the Speech of the President of the United States to both Houses of Congress, at the opening of the session, made a report, which was read, and ordered to lie for consideration.

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant and two horses, for the purpose of performing such services as are usually required of the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for that purpose, during the session, and for twenty days afterwards.

TUESDAY, November 25.

WILSON CARY NICHOLAS, from the State of Virginia, attended.

The Senate took into consideration the report of the committee of the draught of an Address in answer to the Speech of the President of the United States to both Houses of Congress, at the opening of the session; which, being read in paragraphs, and amended, was adopted, as follows:

To the President of the United States:

SIR: Impressed with the important truth that the hearts of rulers and people are in the hand of the Almighty, the Senate of the United States most cordially join in your invocations for appropriate blessings upon the Government and people of this Union.

We meet you, sir, and the other branch of the national Legislature in the city which is honored by the name of our late hero and sage, the illustrious WASHINGTON, with sensations and emotions which exceed our power of description.

While we congratulate ourselves on the convention of the Legislature at the permanent seat of Government, and ardently hope that permanence and stability may be communicated as well to the Government itself as to its seat, our minds are irresistibly led to deplore the death of him who bore so honorable and efficient a part in the establishment of both. Great indeed would have been our gratification if his sum of earthly happiness had been completed by seeing the Government thus peaceably convened at this place; but we derive consolation from a belief that the moment in which we were destined to experience the loss we deplore, was fixed by that Being whose counsels cannot err; and from a hope that, since in this seat of Government, which bears his name, his earthly remains will be deposited, the members of Congress, and all who inhabit the city, with these memorials before them, will retain his virtues in lively recollection, and make his patriotism, morals, and piety, models for imitation. And permit us to add, sir, that it is not among the least of our consolations that you, who have been his companion and friend from the dawning of our national existence, and trained in the same school of exertion to effect our independence, are still preserved by a gracious Providence in health and activity to exercise the functions of Chief Magistrate.

The question whether the legal powers over the District of Columbia, vested by the Constitution in the Congress of the United States, shall be immediately exercised, is of great importance, and in deliberating upon it, we shall naturally be led to weigh the attending circumstances and every probable consequence of the measures which may be proposed.

The several subjects for Legislative consideration, contained in your Speech to both Houses of Congress, shall receive from the Senate all the attention which they can give, when contemplating those objects, both in respect to their national importance, and the additional weight that is given them by your recommendation.

We deprecate, with you, sir, all spirit of innovation, from whatever quarter it may arise, which may impair the sacred bond that connects the different parts of this empire; and we trust, that, under the protection of Divine Providence, the wisdom and virtue of the citizens of the United States will deliver our national compact unimpaired to a grateful posterity.

From past experience, it is impossible for the Senate of the United States to doubt of our zealous co-operation with the Legislature in every effort to promote the general happiness and tranquillity of the Union.

Accept, sir, our warmest wishes for your health and happiness.

JOHN E. HOWARD,
President of the Senate, pro tempore.

Resolved, That a committee be appointed to wait on the President of the United States, and desire him to acquaint the Senate at what time and place it will be convenient for him that the Address of the Senate, in answer to his Speech to both Houses of Congress at the opening of the session, shall be presented; and that Messrs. TRACY, MORRIS, and BALDWIN, be this committee.

A message from the House of Representatives informed the Senate that the House have resolved, that two Chaplains be appointed to Congress, for the present session, one by each House, to interchange weekly; in which they desire the concurrence of the Senate.

The Senate took into consideration the resolution last mentioned; and,

Resolved, That they do concur therein with the following amendment: after the word "Chaplains," insert "of different denominations."

WEDNESDAY, November 26.

Mr. TRACY reported, from the committee yesterday appointed for the purpose, that they had waited on the President of the United States, and that he would receive the Address of the Senate this day, at 12 o'clock, at his own house.

Whereupon, the Senate waited on the President of the United States accordingly: and the President of the Senate, in their name, presented the Address yesterday agreed to.

To which the PRESIDENT made the following reply:

Mr. President and Gentlemen of the Senate:

For this excellent Address, so respectful to the memory of my illustrious predecessor, which I receive from the Senate of the United States, at this time, and in this place, with peculiar satisfaction, I pray you to accept of my unfeigned acknowledgments. With you, I ardently hope, that permanence and stability will be communicated as well to the Government itself, as to its beautiful and commodious seat. With you I deplore the death of that hero and sage who bore so honorable and efficient a part in the establishment of both. Great indeed would have been my gratification, if his sum of earthly happiness had been completed by seeing the Government thus peaceably convened at this place, himself at its head. But, while we submit to the decision of Heaven, whose councils are inscrutable to us, we cannot but hope, that the members of Congress, the officers of Government, and all who inhabit the city or the country, will retain his virtues in lively recollection, and make his patriotism, morals, and piety, models for imitation.

I thank you, gentlemen, for your assurance that the several subjects for legislative consideration, recommended in my communication to both Houses, shall receive from the Senate a deliberate and candid attention.

With you, gentlemen, I sincerely deprecate all spirit of innovation which may weaken the sacred bond that connects the different parts of this nation and Government; and with you I trust, that, under the protection of Divine Providence, the wisdom and virtue of our citizens will deliver our national compact unimpaired to a free, prosperous, happy and grateful posterity. To this end it is my fervent prayer, that, in this city, the fountains of wisdom may be always open, and the streams of eloquence forever flow. Here may the youth of this extensive country forever look up without disappointment, not only to the monuments and memorials of the dead, but to the examples of the living, in the members of Congress and officers of Government, for finished models of all those virtues, graces, talents, and accomplishments, which constitute the dignity of human nature, and lay the only foundation for the prosperity or duration of empires.

JOHN ADAMS.

CITY OF WASHINGTON *Nov.* 26, 1800.

The Senate returned to their own Chamber; and, the reply of the President of the United States having been read, adjourned.

THURSDAY, November 27.

A message from the House of Representatives informed the Senate that the House agree to the amendment of the Senate to the resolution for the appointment of Chaplains to Congress for the present session. Whereupon.

The Senate proceeded to the appointment of a Chaplain to Congress on their part, and the Right Reverend Bishop CLAGGETT was elected.

FRIDAY, November 28.

THOMAS JEFFERSON, Vice President of the United States, and President of the Senate, attended.

The VICE PRESIDENT laid before the Senate a report from the Commissioners of the Sinking Fund; which was read, and ordered to be printed for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have elected the Rev. THOMAS LYELL, a Chaplain to Congress, on their part, for the present session.

MONDAY, December 1.

JESSE FRANKLIN, from the State of North Carolina, attended.

The VICE PRESIDENT communicated a letter from JAMES LLOYD, a Senator from the State of Maryland, resigning his seat in the Senate; which was read, and

Resolved, That the VICE PRESIDENT be requested to notify the Executive of the State of Maryland of this resignation.

TUESDAY, December 2.

JACOB READ, from the State of South Carolina, and JAMES GUNN, from the State of Georgia, severally attended.

A message from the House of Representatives informed the Senate that the House have passed a bill to authorize the Delegate from the Territory Northwest of the Ohio to frank letters, and making provision for his compensation, in which they desire the concurrence of the Senate.

The bill was read and passed to the second reading.

WEDNESDAY, December 3.

The bill extending to the Delegate from the Territory Northwest of the Ohio the privilege of franking letters, was read the second time, and committed to Messrs TRACY, ANDERSON, and READ, to consider and report thereon.

THURSDAY, December 4.

RAY GREENE, from the State of Rhode Island, and ELIJAH PAINE, from the State of Vermont, severally attended.

The VICE PRESIDENT communicated a note from the Commissioners of the Federal Buildings, with a plan of the City of Washington, for the inspection of the Senate.

On motion, that so much of the Speech of the President of the United States, as relates to the exercise of the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States, be referred to a select committee, and that they be authorized to report by bill or otherwise, it was agreed, that the motion should lie on the table.

FRIDAY, December 5.

Mr. TRACY, from the committee to whom was referred the bill, entitled "An act extending the privilege of franking letters to the Delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation," reported an amendment; which being agreed to and the rule dispensed with,

Resolved, That this bill pass with an amendment.

The Senate took into consideration the motion made yesterday, for the appointment of a committee on that part of the Speech of the President of the United States, which relates to the exercise of the local powers over the District of Columbia; and the motion was adopted, and Messrs CHIPMAN, DAYTON, and MORRIS, were appointed the committee.

MONDAY, December 8.

The VICE PRESIDENT communicated a letter from the Treasurer of the United States, with his accounts, as follow: His general account ending 31st March and 30th June; War ditto, 30th June and 30th September; Navy ditto, 30th June and 30th September; which were read, and ordered to lie on the table.

Mr. ANDERSON presented the petition of Paul McDermott, praying Congress to authorize the settlement of his accounts, as paymaster to a part of the troops who served in the year 1794, against the insurgents, the loss of his vouchers notwithstanding; and the petition was read.

Ordered, That it be referred to Messrs ANDERSON, TRACY, and D. FOSTER, to consider and report thereon.

Mr. ANDERSON, also, presented the petition of Shadrach Inman, praying compensation for property stated to have been taken from him for public service, in the State of North Carolina, in the year 1780; and the petition was read, and referred to Messrs. ANDERSON, D. FOSTER, and TRACY, to consider and report thereon.

TUESDAY, December 9.

The VICE PRESIDENT communicated a note from the Commissioners of the city of Washington, with a plan thereof, for the members of the Senate, respectively.

WEDNESDAY, December 10.

A message from the House of Representatives informed the Senate that they have appointed a committee, on their part, for enrolled bills, and desire the appointment of a committee on the part of the Senate.

Ordered, That Mr. D. FOSTER be the committee for enrolled bills, on the part of the Senate.

THURSDAY, December 11.

Mr. LANGDON presented the memorial of Peter Charles L'Enfant, Major of Engineers, in the Revolutionary war, stating his services in planning the city of Washington, and supervising the public buildings, and praying compensation; and the petition was read and ordered to lie on the table.

FRIDAY, December 12.

The VICE PRESIDENT laid before the Senate a report from the Secretary for the Department of State, in pursuance of the "Act to revive and continue in force certain parts of the act for the relief and protection of American seamen, and to amend the same;" and the report was read, and ordered to lie for consideration, and that in the mean time it be printed for the use of the Senate.

MONDAY, December 15.

WILLIAM HINDMAN, appointed a Senator by the Legislature of the State of Maryland, for the remainder of the term for which James Lloyd was elected, produced his credentials, was qualified, and took his seat in the Senate.

TUESDAY, December 16.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of Robert Hooper, in which they desire the concurrence of the Senate.

The bill was read and passed to a second reading.

WEDNESDAY, December 17.

The bill for the relief of Robert Hooper was read the second time and referred to Messrs. D. FOSTER, LANGDON, and TRACY, to consider and report thereon.

Ordered, That the Doorkeeper of the Senate be directed to procure and put up two stoves, with suitable apparatus, in the Senate Chamber, and that the expense be defrayed out of the contingent fund.

Mr. CHIPMAN, from the committee to whom the subject was referred, on the 5th instant, reported a bill concerning the District of Columbia; which was read, and ordered to the second reading.

THURSDAY, December 18.

The bill concerning the District of Columbia was read the second time, and the consideration thereof postponed.

Mr. ANDERSON presented the petition of John Pitchlyn, by his attorney, Anthony Foster, praying compensation as an interpreter to the Choctaw nation of Indians; and the petition was read and referred to Messrs. ANDERSON, D. FOSTER, and BROWN, to consider and report thereon.

FRIDAY, December 19.

JONATHAN MASON, appointed a Senator by the Legislature of the State of Massachusetts, in place of BENJAMIN GOODHUE, resigned, produced his credentials, was qualified and took his seat in the Senate.

MONDAY, December 22.

The Senate proceeded to the consideration of Executive business.

TUESDAY, December 23.

A message from the House of Representatives informed the Senate that the House have passed a resolution for the adjournment of the two Houses of Congress, until Tuesday, the 30th instant, in which they desire the concurrence of the Senate.

The resolution was read, and it was *Resolved* That the Senate concur therein.

The Senate adjourned to Tuesday, 30th inst.

TUESDAY, December 30.

The VICE PRESIDENT communicated a report from the Secretary for the Department of War, on the claims of certain Canadian refugees, which was read and ordered to lie on the table.

Ordered, That the acts of cession by the States of Maryland and Virginia, to the United States, of the District of Columbia, together with the act of Congress accepting the same, be printed for the use of the Senate.

WEDNESDAY, December 31.

Mr. BALDWIN presented an address and remonstrance of the Legislature of the State of Georgia, stating certain grievances resulting from the operations of the law passed the 9th day of April, 1798; and the remonstrance was read.

THURSDAY, January 1, 1801.

The Senate assembled, but transacted no business to-day and adjourned to Monday morning.

MONDAY, January 5.

A message from the House of Representatives formed the Senate that the House have passed a bill, entitled "An act to erect a mausoleum for GEORGE WASHINGTON," in which they desire the concurrence of the Senate.

The bill was read and ordered to a second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to both Houses of Congress, for their information and consideration, copies of laws enacted by the Governor and Judges of the Mississippi Territory, from the 30th of June until the 31st of December, A. D. 1799.

JOHN ADAMS.

UNITED STATES, *Jan.* 1, 1801.

The Message was read and ordered to lie for consideration.

The Senate resumed the second reading of the bill concerning the District of Columbia, and, after debate, the further consideration thereof was postponed until to-morrow.

TUESDAY, January 6.

The bill to erect a mausoleum for GEORGE WASHINGTON was read the second time, and referred to Messrs. NICHOLAS, D. FOSTER, and TRACY, to consider and report thereon.

WEDNESDAY, January 7.

The Senate took into consideration the report of the committee to whom was referred so much of the President's Speech as relates to the exercise of the local powers over the District of Columbia, vested by the Constitution in the Congress of the United States; which is,

"That, by the cession of the several States of Virginia and Maryland, and the acceptance thereof by Congress, the said District has become the permanent Seat of the Government of the United States.

"That the powers of the said States to legislate within said District have wholly ceased;

"And that the sole power of legislation over the same is thereupon exclusively vested in Congress."

And, on motion to agree thereto, a motion was made for the previous question, to wit: "Shall the main question be now put?" and which passed in the negative.

The Senate resumed the second reading of the bill concerning the District of Columbia; and, after debate,

Ordered, That it be recommitted to the original committee, further to consider and report thereon.

THURSDAY, January 8.

JOHN ARMSTRONG, appointed a Senator by the Legislature of the State of New York, in place of John Laurance resigned, produced his credentials, was qualified, and took his seat in the Senate.

FRIDAY, January 9.

The Senate proceeded to the consideration of Executive business.

MONDAY, January 12.

WILLIAM BINGHAM and JAMES ROSS, from the State of Pennsylvania, severally attended.

The Senate then proceeded to the consideration of Executive business.

TUESDAY, January 13.

The Senate proceded to the consideration of Executive business.

WEDNESDAY, January 14.

A message from the House of Representatives informed the Senate that the House have passed a resolution that the Senate be notified that the funeral of JAMES JONES, a member of their House, who died yesterday, will be attended this day at 12 o'clock.

The resolution was read: and, on motion,

Resolved, That the Senate will attend the funeral of JAMES JONES, late a member of the House of Representatives of the United States, this day at 12 o'clock.

THURSDAY, January 15.

Mr. NICHOLAS, from the committee on the bill to erect a mausoleum for GEORGE WASHINGTON, reported amendments; which were read, and ordered to lie for consideration.

FRIDAY, January 16.

Mr. D. FOSTER, from the committee to whom was referred the bill for the relief of Robert Hooper, reported it without amendment.

Ordered, That the consideration thereof be postponed.

MONDAY, January 19.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I now transmit to both Houses of Congress, in conformity to law, my annual account of the application of grants for the contingent charges of Government for the year one thousand eight hundred.

JOHN ADAMS.

UNITED STATES, *Jan.* 16, 1801.

The Message was read, and ordered to lie on the table.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Robert Hooper;" and, on the question to agree to the third reading thereof, it passed in the negative. So the bill was lost.

TUESDAY, January 20.

The Senate proceeded to the consideration of Executive business.

WEDNESDAY, January 21.

The VICE PRESIDENT communicated a letter from the Commissioners of the City of Washington, addressed to both Houses of Congress, requesting the assignment of a room in the Capitol for the temporary accommodation of the Supreme Judicial Court of the United States; which was read.

Resolved, That the Secretary be directed to inform the Commissioners of the City of Washington that the Senate consent to the accommodation of the Supreme Court in one of the committee rooms, as proposed in their letter.

A message from the House of Representatives informed the Senate that the House have passed a bill for the more convenient organization of the Courts of the United States; a bill for the erection and support of a light-house on Cape Poge; a bill for the relief of Solomon Boston; and a bill to continue the acts laying duties on wines, spirits, and refined sugar, and property sold at auction, and on carriages; in which bills they desire the concurrence of the Senate.

The bills were read, and severally passed to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I have received from Elias Boudinot, Esq., Director of the Mint of the United States, a report of the second of January instant, respecting the state of it, together with an abstract of the coins struck at the Mint from the first of January to the thirty-first of December, 1800; an abstract of the expenditures of the Mint from the first of January to the thirty-first of December, inclusive; a statement of gain on copper coined at the Mint from the first of January, to the 31st of December, 1800, inclusive; and a certificate from Joseph Richardson, Assayer of the Mint, ascertaining the value of Spanish milled dollars in proportion to the gold coins of the United States to be no more than 84 cents and 424-500 parts of a cent, for one pennyweight, or 28 grains and 24-84: 256-848 parts of a grain, to one dollar. These papers I transmit to Congress for their consideration.

JOHN ADAMS.

UNITED STATES, *Jan.* 17, 1801.

The Message and papers were read and ordered to lie on the table.

THURSDAY, January 22.

The bill for the erection and support of a light-house on Cape Poge was read the second time, and referred to Messrs. D. FOSTER, LANGDON, and BALDWIN, to consider and report thereon.

The bill to continue the acts laying duties on

wines, spirits, and refined sugar; on property sold at auction, and carriages, was read the second time, and referred to Messrs. DAYTON, BALDWIN, and TRACY, to consider and report thereon.

The bill for the relief of Solomon Boston was read the second time, and referred to Messrs. WELLS, HOWARD, and LATIMER, to consider and report thereon.

The bill for the more convenient organization of the Courts of the United States, was read the second time, and referred to Messrs. HILLHOUSE, READ, ROSS, CHIPMAN, and J. MASON, to consider and report thereon.

The Senate resumed the consideration of the report of the committee on the bill to erect a mausoleum for GEORGE WASHINGTON; and on motion to agree to the report, and to strike out, after the word "That," immediately following the enacting clause, the whole of the bill, for the purpose of inserting as follows:

"In testimony of the respect and gratitude of the citizens of the United States to GEORGE WASHINGTON, and for carrying into effect the resolution of Congress of the 24th day of December, 1799, to commemorate the great events of his military and political life, there shall be and hereby is appropriated a sum not exceeding —— thousand dollars, to be paid out of any moneys in the Treasury of the United States, not otherwise appropriated.

"*And be it further enacted*, That —— —— shall be, and hereby are, empowered, to fix on a plan and make all contracts and engagements for payment of moneys, not exceeding in the whole the aforesaid sum of —— dollars; and to adopt all other measures necessary and proper for the due execution of this act, as to them shall seem expedient."

And it was agreed to divide the motion, and that the question be taken on striking out, which passed in the affirmative—yeas 16, nays 12, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, Dayton, T. Foster, D. Foster, Franklin, Hillhouse, Langdon, Marshall, S. T. Mason, Nicholas, and Schureman.

NAYS—Messrs. Chipman, Greene, Hindman, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Tracy, and Wells.

FRIDAY, January 23.

Mr. DAYTON presented the petition of the counties of Randolph and St. Clair, in the Indiana Territory, praying Congress to pass some regulations in regard to the gradual abolition of slavery; the extinction of certain Indian titles; the establishing of garrisons; and opening roads and houses of entertainment for the accommodation of travellers to the seat of Government; and the petition was read and ordered to lie on the table.

A message from the House of Representatives informed the Senate that the House have passed a resolution for the appointment of a committee, on their part, with such as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected of their election; and to regulate the time, place, and manner, of administering the oath of office to the President; in which they desire the concurrence of the Senate.

The message was read, and ordered to lie on the table.

MONDAY, January 26.

The Senate resumed the second reading of the bill for erecting a mausoleum for GEORGE WASHINGTON; and having agreed to the amendment reported by the committee, and filled up one of the blanks,

Ordered, That this bill pass to third reading as amended.

THURSDAY, January 27.

Mr. WELLS, from the committee on the bill for the relief of Solomon Boston, reported it without amendment; and it was agreed that the bill be read the third time.

The Senate took into consideration the resolution of the House of Representatives of the 23d instant, for the appointment of a joint committee, to ascertain and report the mode of examining the votes for President and Vice President of the United States; and

Resolved, That they do concur therein, and that Messrs. MORRIS, TRACY, and BINGHAM, be the committee on the part of the Senate.

The bill for erecting a mausoleum for GEORGE WASHINGTON was read the third time; and, on motion to amend the bill, it was agreed that the bill and amendment be referred to Messrs. BINGHAM, DAYTON, and HILLHOUSE, to consider and report thereon.

WEDNESDAY, January 28.

The bill, sent from the House of Representatives, entitled "An act for the relief of Solomon Boston," was read the third time and passed.

Mr. D. FOSTER, from the committee on the bill sent from the House of Representatives, entitled "An act to provide for the erection and support of a light-house on Cape Poge, at the northeasterly part of Martha's Vineyard," reported it without amendment: and the report was adopted, and the bill was read the third time by unanimous consent, and passed.

THURSDAY, January 29.

A message from the House of Representatives informed the Senate that the House have passed a bill to discharge Samuel Lewis, senior, from his imprisonment; a bill regulating the grants of land for the refugees from the British provinces of Canada and Nova Scotia; and a bill to allow the transportation of goods to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras; in which bills they desire the concurrence of the Senate.

The bills last sent up for concurrence were read, and severally passed to the second reading.

Mr. CHIPMAN, from the committee to whom was recommitted the bill concerning the District of Columbia, reported amendments.

Mr. HILLHOUSE, from the committee on the bill for the more convenient organization of the Courts of the United States, reported it without amendment.

Ordered, That the further consideration of this bill be postponed until Tuesday next.

FRIDAY, January 30.

The bill regulating the grants of land for the refugees from the British provinces of Canada and Nova Scotia, was read the second time, and referred to Messrs. BROWN, MARSHALL, and PAINE, to consider and report thereon.

The bill to allow the transportation of goods to and from Philadelphia, and Baltimore, by the way of Appoquinimink and Sassafras, was read the second time, and referred to Messrs. BINGHAM, WELLS, and HOWARD, to consider and report thereon.

The bill to discharge Samuel Lewis, senior, from his imprisonment, was read the second time, and referred to Messrs. GREENE, TRACY, and BALDWIN, to consider and report thereon.

Mr. BINGHAM, from the committee on the bill and amendment thereto, for erecting a mausoleum for GEORGE WASHINGTON, reported a further amendment; which was read.

Mr. ANDERSON presented the petition of Daniel Brent, and the other clerks in the Departments of State, Treasury, War, and Navy; also, of the clerks in the office of the Postmaster General; stating the inadequacy of their compensations, respectively, to their necessary expenses, and praying an additional allowance; and the petition was read, and referred to Messrs. ANDERSON, HILLHOUSE, and GREENE, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee, to whom was recommitted the bill concerning the District of Columbia, and, after debate, the further consideration thereof was postponed.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress, for their consideration, a letter from William Thornton, Alexander White, and William Cranch, Esquires, Commissioners of the city of Washington, with a representation of the affairs of the city, made by them to the President of the United States, dated the 28th of January, 1801, accompanied with a series of documents marked from A to H, inclusively. JOHN ADAMS.

UNITED STATES, *Jan.* 30, 1801.

The Message and papers therein referred to were read, and ordered to lie on the table.

MONDAY, February 2.

The Senate resumed the consideration of the amendments reported by the committee to whom was recommitted the bill concerning the Distict of Columbia; and, after debate,

Ordered, That they be recommitted to the original committee, further to consider and report thereon.

Mr. GREENE presented the petition of Nathaniel Waldron, and others, ship owners and merchants of Bristol, in the district of Rhode Island, praying that the ports of Bristol, Warren, and Barrington, and the waters around them, may be erected into an independent district; and the petition was read, and ordered to lie on the table.

Mr. TRACY presented the petition of Joseph Nourse, Register of the Treasury of the United States, praying allowance of a commission as agent for defraying the incidental and contingent expenses of the Treasury Department; which was read.

TUESDAY, February 3.

The Senate took into consideration the petition of Joseph Nourse, Register of the Treasury, presented yesterday; and,

Ordered, That it be referred to Messrs. TRACY, ROSS, and PAINE, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill to incorporate a mine and metal company; and a bill making the ports of Biddeford and Pepperelborough, and New Bedford, in Massachusetts, ports of entry for ships arriving from the Cape of Good Hope, and places beyond the same; in which they desire the concurrence of the Senate.

WEDNESDAY, February 4.

The two bills yesterday sent up from the House of Representatives, for concurrence, were read, and severally passed to the second reading.

Mr. CHIPMAN, from the committee to whom was recommitted the bill concerning the District of Columbia, reported further amendments, which were read, agreed to, and the bill passed to the third reading as amended.

The Senate took into consideration the amendment reported by the committee, on the bill for erecting a mausoleum for GEORGE WASHINGTON; which was agreed to.

And on the final passage of the bill as amended, the question was determined in the affirmative—yeas 20, nays 9, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Dayton, T. Foster, Dwight Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Livermore, Marshall, S. T. Mason, Nicholas, Paine, and Schureman.

NAYS—Messrs. Bingham, Cocke, Gunn, Hindman, Latimer, J. Mason, Morris, Read, and Ross.

So it was, *Resolved*, That this bill pass with amendments.

The Senate resumed the second reading of the bill for the more convenient organization of the Courts of the United States; and, after progress, the further consideration thereof was postponed, and the Senate adjourned.

THURSDAY, February 5.

The bill making the ports of Biddeford and Pepperelborough, and New Bedford, in Massachusetts, ports of entry for ships arriving from the Cape of Good Hope, and places beyond the same, was read the second time and referred to Messrs. DWIGHT FOSTER, LANGDON, and J. MASON, to consider and report thereon.

Ordered, That the petition of Nathaniel Waldron and others, ship owners and merchants of Bristol, in the district of Rhode Island, be also referred to the same committee, who are empowered to report by bill or otherwise.

The bill to incorporate a mine and metal company was read the second time, and referred to Messrs. TRACY, ROSS, and MORRIS, to consider and report thereo.

The bill concerning the District of Columbia was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act concerning the District of Columbia."

The Senate resumed the second reading of the bill providing for the more convenient organization of the Courts of the United States.

On motion to strike out of section 41, line 5th, the following words:

"Except the Judges of the sixth circuit, who shall be allowed the sum of fifteen hundred dollars each, to be paid in like manner; and that the salaries of the district Judges of Kentucky and Tennessee shall be, and hereby are, severally augmented to the like sum of fifteen hundred dollars annually, to be paid in like manner."

It passed in the negative—yeas 12, nays 17, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, Dwight Foster, Franklin, Hillhouse, Langdon, Marshall, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Greene, Gunn, Hindman, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

FRIDAY, February 6.

A message from the House of Representatives informed the Senate that the House have passed a bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes; and a bill to add to the district of Massac, on the Ohio, and amend the act to regulate the collection of duties on imports and tonnage; in which they desire the concurrence of the Senate.

The bills were read, and severally passed to the second reading.

The Senate resumed the second reading of the bill providing for the more convenient organization of the Courts of the United States.

On motion to strike out of the 7th section, line 48th, the following words: "twenty-fifth day of March and twenty-fifth day of September," for the purpose of inserting "twenty-fifth day of April and twenty-fifth day of October:" it passed in the negative—yeas 14, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Dwight Foster, Franklin, Greene, Hillhouse, Langdon, Livermore, S. T. Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Gunn, Hindman, Howard, Latimer, Marshall, J. Mason, Morris, Paine, Read, Ross, Schureman, and Wells.

On motion to amend the 41st section, and to strike out the provision for the compensation to the circuit Judges "$2,000," and to insert "$1,500:" it was agreed to divide the question, and that it be taken on striking out; and which passed in the negative—yeas 13, nays 16, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, D. Foster, Franklin, Hillhouse, Langdon, Livermore, S. T. Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Greene, Gunn, Hindman, Howard, Latimer, Marshall, J. Mason, Morris, Paine, Read, Ross, Tracy and Wells.

On motion to strike out the whole of the bill after the words "from and after the," section first, line second, for the purpose of inserting as follows:

"Passing of this act, there shall be four circuits in the United States; the first to consist of the district of Maine, the district of New Hampshire, the district of Massachusetts, and the district of Rhode Island; the second to consist of the district of Connecticut, the district of Vermont, the district of New York, and the district of New Jersey; the third to consist of the district of Pennsylvania, the district of Delaware, the district of Maryland, and the district of Virginia; the fourth of the district of North Carolina, the district of South Carolina, and the district of Georgia.

"The Supreme Court of the United States shall consist of the Chief Justice and seven Associate Justices, any six of whom shall constitute a quorum.

"That the Chief Justice and Associate Justices shall allot themselves among the said circuits as they shall think fit, so that there be not more than two allotted to any one circuit, and shall enter such allotment on record, to be hereafter binding; and, in case no such allotment shall be made by themselves, it shall and may be lawful for the President of the United States to make an allotment, as to him shall seem proper, so that no more than two be allotted to any one circuit, and that in all appointments hereafter to be made of a Chief Justice, or Associate Justice, it shall be said to which circuit they shall belong, and such appointments shall be made so as to allot to each circuit two Justices.

"That it shall not be necessary for more than one of the Justices allotted to any circuit to attend the sitting of the courts within such circuit unless the Supreme Court for special cause shall direct the same; or unless in the preceding term the court shall have been divided on the final hearing of a cause, or on a plea to the jurisdiction, in either of which cases it shall be the duty of both the Justices allotted to a circuit to attend, on notice of such division being given to the Justice who was not present.

"That, from and after the present session of the Supreme Court of the United States, the said court shall be holden by the Justices thereof, or any six of them, at the city of Washington, on the first Monday of December in each and every year thereafter; and that if six of the said Justices shall not attend within ten days after the time hereby appointed for the commencement of the said session, the business of the said court shall be continued over till the next stated session thereof.

"That it shall be the duty of the Chief Justice, or one of the Associate Justices, (to be allotted for that purpose at the preceding session of the Supreme Court,) to attend at the city of Washington, on the —— day of ——, who shall have power to make all necessary orders, touching any suit, action, appeal, writ of error, process, pleadings, or proceedings, returned to the said court, or depending therein, preparatory to the hearing, trial, or decision, of such action, suit, appeal, writ of error, process, pleadings, or proceedings."

And, on the question to agree to this motion, it passed in the negative—yeas 13, nays 17, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, D. Foster, Franklin, Hillhouse, Langdon, Livermore, S. T. Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Greene, Gunn, Hindman, Howard, Latimer, Marshall, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

On the question to agree to the third reading of the bill as amended, it passed in the affirmative—yeas 18, nays 12, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Greene, Gunn, Hindman, Howard, Latimer, Livermore, Marshall, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, D. Foster, Franklin, Hillhouse, Langdon, S. T. Mason, and Nicholas.

The bill first brought up this day for concurrence was again read by unanimous consent, and referred to Messrs. BROWN, ROSS, and PAINE, to consider and report thereon.

The other bill brought up this day for concurrence was again read by unanimous consent, and referred to Messrs. BROWN, ANDERSON, and MARSHALL, to consider and report thereon.

The VICE PRESIDENT laid before the Senate a letter from the Treasurer of the United States, with his general account ending the 30th of September, 1800; and the letter was read.

The VICE PRESIDENT also laid before the Senate a letter from Samuel Dexter, Secretary for the Department of the Treasury, with a statement of goods, wares, and merchandise, exported from the United States during one year from the 1st of October, 1800.

The letter was read; and, after the consideration of Executive business,

The Senate adjourned.

SATURDAY, February 7.

The bill entitled "An act to provide for the more convenient organization of the Courts of the United States," was read the third time.

On motion, to amend the seventh section of the bill, line 50, by striking out "Bairdstown," and inserting "Frankfort," in lieu thereof, it passed in the negative—yeas 9, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Brown, Cocke, D. Foster, Franklin, Langdon, Marshall, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, Greene, Hindman, Howard, Latimer, J. Mason, Morris, Read, Ross, Schureman, Tracy, and Wells.

On motion, the amendment agreed to in the second reading of the bill was struck out; and, on the final passage of the bill, the question was determined in the affirmative—yeas 16, nays 11, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, Greene, Gunn, Hindman, Howard, Latimer, Marshall, J. Mason, Morris, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Hillhouse, Langdon, S. T. Mason, and Nicholas.

So it was resolved that this bill pass.

Mr. BROWN, from the committee on the bill making appropriations of land for the refugees from the British provinces of Canada and Nova Scotia, reported an amendment; which was read, and ordered to lie for consideration.

The Senate adjourned.

MONDAY, February 9.

Mr. DWIGHT FOSTER, from the committee on the bill making the ports of Biddeford and Pepperelborough, and New Bedford, in Massachusetts, ports of entry for ships arriving from the Cape of Good Hope, and places beyond the same, reported the bill without amendment.

Mr. MORRIS, from the joint committee, appointed the 27th of January last, to ascertain and report the mode of examining the votes for President and Vice President of the United States, reported that the committee could come to no agreement.

A motion was made that it be

"*Resolved*, That, from and after the last day of March next, the towns of Kittery and Berwick, in the State of Massachusetts, shall be annexed to the district of Portsmouth, in New Hampshire, as ports of delivery only; provided that nothing herein contained shall be construed to prevent the master or commander of any ship or vessel having merchandise on board, destined for either of the said places, from making entry at his option with the collector of the district of New York, and obtaining permits for the delivery thereof as heretofore."

And it was agreed that this motion be referred to the committee, appointed on the 5th instant, on the bill respecting the ports of Biddeford and Pepperelborough, to report by bill or otherwise.

On motion, it was

Resolved, That the Senate will be ready to receive the House of Representatives in the Senate Chamber on Wednesday next, at twelve o'clock, for the purpose of being present at the opening and counting the votes for President of the United States. That one person be appointed a teller on the part of the Senate, to make a list of the votes for President of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and if it shall appear that a choice has been made, agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Ordered, That the Secretary notify the House of Representatives of this resolution.

TUESDAY, February 10.

On motion that when the two Houses shall proceed to opening and counting the votes for President of the United States, no person shall be admitted into the gallery, it passed in the affirmative—yeas 16, nays 10, as follows:

YEAS—Messrs. Brown, Chipman, Dayton, T. Foster, Dwight Foster, Hillhouse, Hindman, Latimer, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, Franklin, Langdon, Livermore, Marshall, S. T. Mason, and Nicholas.

A message was received from the House of Representatives informing the Senate that they have passed a resolution, which the Clerk was directed to bring to the Senate.

The resolution was read, as follows:

"*Resolved*, That this House will attend in the Chamber of the Senate on Wednesday next, at 12 o'clock, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States; that Messrs. RUTLEDGE and NICHOLAS be appointed tellers, to act jointly with the teller appointed on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and if it shall appear that a choice has been made, agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof."

Ordered, That Mr. WELLS be a teller on the part of the Senate for the purpose expressed in the above resolution.

The Senate resumed the consideration of the report of the committee on the bill making the ports of Biddeford, and Pepperelborough, and New Bedford, in the State of Massachusetts, ports of entry, for ships arriving from the Cape of Good Hope, and places beyond the same; and, having agreed to the report, the bill was ordered to the third reading.

The Senate took into consideration the amendment reported by the committee on the bill making appropriation of lands for the refugees from the British provinces of Canada and Nova Scotia; and the report was disagreed to.

Ordered, That the bill pass to the third reading.

WEDNESDAY, February 11.

Ordered, That the Secretary notify the House of Representatives that the Senate is ready to meet them in the Senate Chamber, for the purpose of being present at the opening and counting the votes for President of the United States.

The two Houses of Congress accordingly assembled in the Senate Chamber, and the certificates of the Electors of sixteen States were, by the VICE PRESIDENT, opened and delivered to the tellers appointed for the purpose, who, having examined and ascertained the number of votes, presented a list thereof to the VICE PRESIDENT, which was read, as follows:

STATES.	Thomas Jefferson.	Aaron Burr.	John Adams.	Charles C. Pinckney.	John Jay.
New Hampshire	–	–	6	6	
Massachusetts	–	–	16	16	
Rhode Island	–	–	4	3	1
Connecticut	–	–	9	9	
Vermont	–	–	4	4	
New York	12	12			
New Jersey	–	–	7	7	
Pennsylvania	8	8	7	7	
Delaware	–	–	3	3	
Maryland	5	5	5	5	
Virginia	21	21			
Kentucky	4	4			
North Carolina	8	8	4	4	
Tennessee	3	3			
South Carolina	8	8			
Georgia	4	4			
	73	73	65	64	1

Whereupon, the VICE PRESIDENT declared that the result of the votes, as delivered by the tellers, was that

THOMAS JEFFERSON, of Va., had	73
AARON BURR, of N. Y., had	73
JOHN ADAMS, of Mass., had	65
CHAS. C. PINCKNEY, of S. C., had	64
JOHN JAY, of N. Y., had	1

The whole number of Electors who had voted were one hundred and thirty-eight, of which number THOMAS JEFFERSON and AARON BURR had a majority; but the number of those voting for them being equal, no choice was made by the people; and that, consequently, the remaining duties devolve on the House of Representatives.

On which, the House of Representatives repaired to their own Chamber; and the Senate adjourned.

THURSDAY, February 12.

The bill, entitled "An act making the ports of Biddeford and Pepperelborough, and the port of New Bedford, in Massachusetts, ports of entry for ships or vessels arriving from the Cape of Good Hope, and from places beyond the same," was read the third time and passed.

The bill, entitled "An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia," was read the third time and passed.

FRIDAY, February 13.

The Senate met to-day, but no business was transacted.

MONDAY, February 16.

The VICE PRESIDENT communicated a letter from Governor Sargent, of the Mississippi Territory, enclosing sundry petitions of the inhabitants thereof, stating certain grievances, particularly from an act passed the last session of Congress, and praying redress; and the letter and papers were read.

Mr. D. FOSTER, from the committee appointed the 5th instant on the petition of Nathaniel Waldron and others, and to whom was also referred, on the 9th instant, a motion respecting the ports of Kittery and Berwick, in the State of Massachusetts, reported a bill, which was read and passed to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I wish to know the pleasure of Congress, and request their direction, concerning the disposition of the property of the United States now in my possession; whether I shall deliver it into the hands of the Heads of Departments, or of the Commissioners of the city of Washington, or of a committee of Congress, or to any other persons Congress may appoint, to be delivered into the hands of my successor, or whether I shall present it myself to the President of the United States on the 4th of March next. Any of these modes will be agreeable to me.

JOHN ADAMS.

UNITED STATES, *Feb.* 16, 1801.

The Message was read and ordered to lie on the table.

The VICE PRESIDENT communicated a letter from JAMES SCHUREMAN, a Senator from the State of New Jersey, resigning his seat; which was read.

Resolved, That the VICE PRESIDENT be requested to notify the Executive of the State of New Jersey that JAMES SCHUREMAN hath resigned his seat in the Senate.

TUESDAY, February 17.

The bill to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth, was read the second time, amended, and passed to the third reading as amended.

Mr. GREENE, from the committee on the bill to discharge Samuel Lewis, senior, from his imprisonment, reported it without amendment; and, after debate, the further consideration thereof was postponed.

WEDNESDAY, February 18.

The Senate resumed the consideration of the report of the committee on the bill to discharge Samuel Lewis, senior, from his imprisonment, and ordered the bill to the third reading.

The bill to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth, was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth."

Ordered, That the Message of the President of the United States, of the 16th instant, relative to the public property in his possession, be referred to Messrs. NICHOLAS, TRACY, and BALDWIN, to consider and report thereon, by bill or otherwise.

A message from the House of Representatives informed the Senate that the House have chosen THOMAS JEFFERSON, of Virginia, President of the United States, for the term commencing on the 4th of March next.

On motion it was

Resolved, That a committee be appointed, to join such committee as may be appointed on the part of the House of Representatives, to consider whether any, and, if any, what, measures ought to be adopted for the further accommodation of the President of the United States, for the term commencing the 4th day of March next, to report by bill, bills, or otherwise; and that Messrs. NICHOLAS, TRACY, and BALDWIN, be the committee on the part of the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill extending the privilege of franking to JOHN ADAMS, now President of the United States, in which they desire the concurrence of the Senate.

The bill was, by unanimous consent, read the first and second time, and passed to a third reading.

On motion, it was

Resolved, That the President of the United States be requested to cause to be transmitted to AARON BURR, Esq. of New York, Vice President elect of the United States, notification of his election to that office, and that the President of the Senate do make out and sign a certificate, in the words following, viz:

"BE IT KNOWN, That the Senate and House of Representatives of the United States of America, being convened at the city of Washington, on the second Wednesday in February, A. D. 1801, the underwritten, Vice President of the United States and President of the Senate, did, in presence of said Senate and House of Representatives, open all the certificates and count all the votes of the Electors for a President; whereupon it appeared that THOMAS JEFFERSON, of Virginia and AARON BURR, of New York, had a majority of the votes of the Electors, and an equal number of votes; in consequence of which the House of Representatives proceeded to the choice of a President, and have this day notified to the Senate that THOMAS JEFFERSON has by them been duly chosen President: by all of which it appears that AARON BURR, Esq. of New York, is duly elected, agreeably to the Constitution, Vice President of the United States of America.

"In witness thereof I have hereunto set my hand and seal, this 18th day of February, 1801.

"THOMAS JEFFERSON."

And that the President of the Senate do cause the certificate aforesaid to be laid before the President of the United States, with this resolution.

THURSDAY, February 19.

The bill, entitled "An act to discharge Samuel Lewis, senior, from his imprisonment," was read the third time and passed.

The bill, entitled "An act extending the privilege of franking to JOHN ADAMS, now President of the United States," was read the third time, amended and passed.

FRIDAY, February 20.

A message from the House of Representatives informed the Senate that they have passed a bill making appropriations for the support of Government for the year 1801; a bill making appropriations for the Military Establishment of the United States for the year 1801; a bill to amend the act for the valuation of lands and dwelling-houses; and a bill for the relief of Nathaniel Holmes: in which bills they desire the concurrence of the Senate.

The bill making appropriations for the support of Government for the year 1801 was twice read by unanimous consent, and referred to Messrs. TRACY, DAYTON, and LANGDON, to consider and report thereon.

The bill making appropriations for the Military Establishment for the year 1801, was, by unanimous consent, twice read, and referred to the last mentioned committee, to consider and report thereon.

The bill to amend the act for the valuation of lands and dwelling-houses was twice read, by unanimous consent, and referred to Messrs. ROSS, HILLHOUSE, and NICHOLAS, to consider and report thereon; and

The bill last mentioned in the message was twice read, by unanimous consent, and referred to Messrs. DWIGHT FOSTER, LANGDON, and J. MASON, to consider and report thereon.

Mr. DAYTON, from the committee on the bill to continue the acts laying duties on wines, spirits, and refined sugars, on property sold at auction, and carriages, reported it without amendment, and the bill was ordered to the third reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress a report received this morning from Elias Boudinot, Esq., Director of the Mint, dated February 13th, 1801, which will require the attention and decision of Congress before the close of the session.

JOHN ADAMS.

UNITED STATES, *Feb.* 20, 1801.

The Message was read, and ordered to lie on the table.

Mr. GREENE notified the Senate that he would, at a future day, ask leave to bring in a bill for the relief of William Arnold.

Mr. TRACY notified the Senate that he would, at a future day, ask leave to bring in a bill providing that the Secretary of the Navy of the United States shall not, during his continuance in said office, be concerned, directly or indirectly, in commerce, trade, or navigation.

MONDAY, February 23.

Mr. PINCKNEY, a Senator for the State of South Carolina, attended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

The enclosed report to me, made by the acting Secretary of War, on the 14th of this month, appears to be so well founded, in all respects, that I recommend it to the consideration of Congress.

JOHN ADAMS.

UNITED STATES, *Feb.* 20, 1801.

The Message was read, and ordered to lie on the table.

Mr. BROWN, from the committee on the bill, giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, reported amendments; which were read, and ordered to lie for consideration.

Mr. D. FOSTER, from the committee on the bill for the relief of Nathaniel Holmes, reported it without amendment; and the bill was ordered to the third reading.

The bill, entitled "An act to continue in force the acts laying duties on licenses for selling wines and foreign distilled spirits by retail; and so much of the act laying certain duties on snuff and refined sugar, as respects a duty on refined sugar, on property sold at auction, and on carriages for the conveyance of persons," was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill directing the mode of estimating certain foreign coins and currencies; and a bill declaring the consent of Congress to an act of the State of Maryland for the appointment of a health officer; in which bills they desire the concurrence of the Senate.

The bills this day brought up for concurrence were read, and severally passed to the second reading.

Agreeably to notice given on the 20th instant, Mr. GREENE had leave to bring in a bill for the relief of William Arnold; which was read, and passed to the second reading.

TUESDAY, February 24.

The bill declaring the consent of Congress to an act of the State of Maryland for the appointment of a health officer was read the second time, and referred to Messrs. LANGDON, BINGHAM, and TRACY, to consider and report thereon.

The bill declaring the mode of estimating foreign coins and currencies was read the second time, and referred to Messrs. BINGHAM, DAYTON, and GREENE, to consider and report thereon.

The bill for the relief of William Arnold was read the second time, and referred to Messrs. GREENE, TRACY, and ROSS, to consider and report thereon.

The bill, entitled "An act for the relief of Nathaniel Holmes," was read the third time, and passed.

The Senate took into consideration the amendments reported by the committee, on the bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes; and, having agreed thereto,

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House concur in the bill, sent from the Senate, entitled "An act concerning the District of Columbia," with amendments." They have passed a bill making appropriations for the Navy for the year 1801; and a bill for the relief of Arnold Henry Dohrman, or his representatives; in which bills and amendments they desire the concurrence of the Senate.

The bill making appropriation for the Navy for the year 1801, was twice read, by unanimous consent, and referred to the committee appointed the 20th instant, on the bills for the appropriations for the support of Government and Military Establishment for the year 1801, to consider and report thereon.

The bill for the relief of Arnold Henry Dohrman was twice read by unanimous consent, and referred to Messrs. ROSS, DWIGHT FOSTER, and J. MASON, to consider and report thereon.

The amendments of the House of Representatives to the bill concerning the District of Columbia were read, and referred to Messrs. CHIPMAN, DAYTON, and MORRIS, the committee who originated the bill, to consider and report thereon.

Resolved, That a committee be appointed to inquire whether any, and what, further measures it is expedient to adopt with respect to the balances reported by the Commissioners appointed to settle the accounts between the United States and the several States; and that the said committee be authorized to report by bill or otherwise; and that Messrs. BLOODWORTH, WELLS, and ROSS, be the committee.

Mr. ROSS, from the committee on the bill to amend the act for the valuation of lands and dwelling-houses, reported an amendment; which was agreed to, and the bill passed to the third reading as amended.

WEDNESDAY, February 25.

Resolved, That the Secretary of the Senate be directed to purchase an eight-day clock, and cause it to be set up in the Senate Chamber; and that the expense be defrayed out of the contingent fund.

Mr. CHIPMAN, from the committee to whom was referred the amendments of the House of Representatives to the bill concerning the District of Columbia, made report; which was ordered to lie for consideration.

Mr. LANGDON, from the committee on the bill declaring the consent of Congress to an act of the State of Maryland for the appointment of a health officer, reported the bill without amendment; and the bill was ordered to the third reading.

Mr. ROSS, from the committee on the bill for the relief of Arnold Henry Dohrman, or his representatives, reported it without amendment, and the bill was ordered to the third reading.

Mr. BINGHAM, from the committee on the bill to allow the transportation of goods to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras, reported it without amendment, and the bill was ordered to the third reading.

Mr. BROWN, from the committee on the bill to add to the district of Massac, on the Ohio, and to amend the act to regulate the collection of duties on imports and tonnage, reported amendments.

Ordered, That they lie for consideration.

The bill, entitled "An act to amend the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States; and to repeal the act, entitled 'An act to enlarge the powers of the Surveyors of the Revenue,'" was read the third time, and passed as amended.

The bill, entitled "An act giving the right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio, was read the third time, and passed with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill supplementary to an act to divide the Territory of the United States Northwest of the Ohio into two governments; and a bill to alter and establish certain post roads; in which they desire the concurrence of the Senate. The bills were read, and passed to the second reading.

Agreeably to notice given on the 20th instant, Mr. TRACY had leave to bring in a bill to prohibit the Secretary of the Navy from carrying on any business of trade, commerce, or navigation; and the bill was read, and passed to the second reading.

The bill supplementary to the act to divide the Territory of the United States Northwest of the Ohio into two governments, was, by unanimous consent, read a second time, and referred to Messrs. ROSS, ANDERSON, and BROWN, to consider and report thereon.

The bill to alter and establish certain post roads was, by unanimous consent, read the second time, and referred to Messrs. PAINE, TRACY, and ANDERSON, to consider and report thereon.

THURSDAY, February 26.

The bill to prohibit the Secretary of the Navy from carrying on any business of trade, commerce, or navigation, was read the second time, and referred to Messrs. LANGDON, NICHOLAS, and DAYTON, to consider and report thereon.

The Senate took into consideration the report of the committee on the amendments of the House of Representatives to the bill concerning the District of Columbia:

On motion to insert, between the 13th and 14th sections, as follows:

"And that it shall be lawful for the sheriffs and collectors of the public dues for the counties of Montgomery and Prince George's, in the State of Maryland, and for the sheriff of Fairfax county, in the Commonwealth

of Virginia, and they shall respectively have full powers and authority, to enter into those parts of the now District of Columbia, which were heretofore within the limits of their respective bailiwicks, for the purpose of collecting, by distress or otherwise, as they were heretofore authorized to do, all officers' fees, State taxes, county taxes, levies and muster fines, at this time due, from persons residing, or having property, subject to the payment of such officers' fees, State taxes, and county taxes, and levies, within the said District; and all disputes or controversies that do or may arise between such sheriff or collector and the person or persons from whom he or they may claim such public dues, shall be cognizable before and tried by the respective State courts to whom the trial of such controversies heretofore belonged, and not before the District of Columbia.

"And that it shall and may be lawful for the sheriffs of the said counties of Montgomery and Prince George's, in the State of Maryland, and for the sheriff of Fairfax, in the Commonwealth of Virginia, and they shall, respectively, have full power and authority, to enter into those parts of the now District of Columbia, which were heretofore within the limits of their respective bailiwicks, for the purpose of arresting and conducting to the respective jails, under their keeping and care, as they heretofore might have done had this law never passed, each and every person within the limits of the District of Columbia, upon whom such sheriff hath heretofore served a writ of capias ad satisfaciendum, capias ad respondendum, attachment, or other process, issuing from any State court, which commands and requires such sheriff to have the body of the persons before the court from which such writ or process hath issued.

And that wheresoever, by the act of Assembly of the State of Maryland, entitled "An act to establish a bank in the District of Columbia," the President of the said bank is authorized to write to the clerk of the General Court, or any county court in the State of Maryland, and to order such clerk to issue any process against a debtor of the said bank, it shall be lawful for the said President, where the debtor or debtors against whom he means to proceed resides within the limits of the county of Washington aforesaid, or has property within the limits of the same, to write to the clerk of the said county to issue such process, as, by the law of Maryland aforesaid, he might have ordered the clerk of the General Court, or any county court in the said State, to issue; which process shall issue and be returnable to the next county court to be held in the said county of Washington; and shall, by the said court, be proceeded upon in the same manner, and subject to the same rules and provisions in other respects, as is prescribed by the said act of Assembly of the State of Maryland, entitled "An act to establish a bank in the District of Columbia."

"And that the inspectors of tobacco and flour within the towns of Georgetown and Alexandria, who are now duly authorized to act as such under the laws of the respective States by which they, or any of them, are so authorized, shall continue to hold the office or offices which they now respectively fill, and to execute and discharge the duties by law imposed upon them, as inspectors of tobacco, until Congress shall otherwise provide. And that the said inspectors shall, during the time of their continuance as such, be entitled to the compensation, governed by the rules, and subject to the same penalties, provided, prescribed, and imposed by the laws of the State under which they have been respectively appointed and now act."

And it passed in the negative—yeas 12, nays 16, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Langdon, S. T. Mason, Nicholas, and Pinckney.

NAYS—Messrs. Dayton, Dwight Foster, Greene, Gunn, Hillhouse, Hindman, Howard, Livermore, Marshall, J. Mason, Morris, Paine, Read, Ross, Tracy and Wells.

So the amendments were agreed to.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend the act altering the district of Bermuda Hundred and City Point; and a resolution respecting Theodosius Fowler; in which bill and resolution they desire the concurrence of the Senate.

The bill last brought up for concurrence was, by unanimous consent, twice read, and referred to Messrs. NICHOLAS, LANGDON, and ARMSTRONG, to consider and report thereon.

The resolution last brought up for concurrence was read, and referred to Messrs. TRACY, ARMSTRONG, and DWIGHT FOSTER, to consider and report thereon.

The bill, entitled "An act to allow the transportation of goods, wares, and merchandise, to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras," was read the third time and passed.

The bill, entitled "An act declaring the consent of Congress to an act of the State of Maryland, passed the 28th day of December, 1793, for the appointment of a health officer," was read the third time and passed.

The bill, entitled "An act for the relief of Arnold Henry Dohrman, or his legal representatives," was read the third time and passed.

The Senate took into consideration the amendments reported by the committee on the bill to add to the district of Massac, on the Ohio; and to amend the act to regulate the collection of duties on imports and tonnage; and, having agreed thereto, it was ordered to the third reading as amended.

Ordered, That the committee on the petition of Joseph Nourse, Register of the Treasury of the United States, be discharged, and that the petitioner have leave to withdraw his petition.

FRIDAY, February 27.

Mr. TRACY, from the committee on the bill making appropriations for the Military Establishment for the year 1801, reported it without amendment, and the bill was ordered to the third reading.

The bill, entitled "An act to add to the district of Massac, on the Ohio, and to discontinue the districts of Louisville, in the State of Kentucky, and Palmyra, in the State of Tennessee, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" was read the third time, amended, and passed.

Mr. BINGHAM, from the committee on the bill directing the mode of estimating foreign coins and currencies, reported that the bill pass without amendment; and the bill being amended, on motion, passed to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend the act to retain a further sum on drawbacks, and a bill providing for a Naval Peace Establishment; in which they desire the concurrence of the Senate.

The bill first mentioned, for concurrence, was twice read, by unanimous consent, and referred to Messrs. ROSS, J. MASON, and BINGHAM, to consider and report thereon.

The bill last mentioned in the message was twice read, by unanimous consent, and referred to Messrs. NICHOLAS, TRACY, and LANGDON, to consider and report thereon.

Mr. BINGHAM presented the petition of Philip Sloan, late a captive in Algiers, for adjustment of his account for ransom; and the petition was read and referred to the Secretary for the Department of Treasury, to report thereon

Mr. PAINE, from the committee on the bill further to alter and establish certain post roads, reported amendments, which were read and ordered to lie for consideration.

Mr. ROSS, from the committee on the bill supplementary to the act to divide the Territory of the United States Northwest of the Ohio into two governments, reported an amendment, which was agreed to, and the bill passed to the third reading as amended.

Mr. NICHOLAS, from the joint committee appointed on the 18th inst. on the Message of the President of the United States, of the 16th, relative to the public property in his possession, made report; which was read and ordered to lie for consideration.

Mr. DWIGHT FOSTER presented the petition of James Mathers, Thomas Claxton, and Thomas Dunn, praying leave to continue in the houses on Capitol Square, of which they obtained possession from the city commissioners; and the petition was read.

SATURDAY, February 28.

The VICE PRESIDENT addressed the Senate as follows:

Gentlemen of the Senate:

To give the usual opportunity of appointing a President, *pro tempore*, I now propose to retire from the Chair of the Senate; and, as the time is near at hand when the relations will cease which have for some time subsisted between this honorable House and myself, I beg leave, before I withdraw, to return them my grateful thanks for all the instances of attention and respect with which they have been pleased to honor me. In the discharge of my functions here, it has been my conscientious endeavor to observe impartial justice, without regard to persons or subjects; and if I have failed of impressing this on the mind of the Senate, it will be to me a circumstance of the deepest regret. I may have erred at times—no doubt I have erred—this is the law of human nature. For honest errors, however, indulgence may be hoped.

I owe to truth and justice, at the same time, to declare, that the habits of order and decorum, which so strongly characterize the proceedings of the Senate, have rendered the umpirage of their President an office of little difficulty; that, in times and on questions which have severely tried the sensibilities of the House, calm and temperate discussion has rarely been disturbed by departures from order.

Should the support which I have received from the Senate, in the performance of my duties here, attend me into the new station to which the public will has transferred me, I shall consider it as commencing under the happiest auspices.

With these expressions of my dutiful regard to the Senate as a body, I ask leave to mingle my particular wishes for the health and happiness of the individuals who compose it, and to tender them my cordial and respectful adieu.

After which the VICE PRESIDENT retired.

Whereupon the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and JAMES HILLHOUSE was duly elected.

Ordered, That the Address of the VICE PRESIDENT, made this day, taking leave of the Senate, be referred to a committee, with instruction to prepare and report the draught of an Address in answer thereto; and that Messrs. MORRIS, J. MASON, and DAYTON, be the committee.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of the Treasury, of the emoluments of the officers employed in the collection of the customs for the year 1800; which was read, and ordered to lie on the table.

Mr. TRACY, from the committee on the bill making appropriations for the support of Government for the year 1801, reported amendments, which were agreed to, and the bill, by unanimous consent, was read a third time, amended, and passed.

Mr. TRACY, from the committee above mentioned, reported the bill making appropriations for the Navy of the United States, for the year 1801, without amendment; and the bill passed to the third reading.

The bill, entitled "An act supplementary to the act, entitled 'An act to divide the Territory of the United States Northwest of the Ohio, into two separate governments,'" was read the third time, further amended, and passed, with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend the act to establish an uniform system of bankruptcy; and a bill to augment the salaries of the District Judges of Massachusetts, New York, Delaware, and Maryland; also, a resolution respecting certain property of the United States, in the possession of Thomas Claxton, James Mathers, and Thomas Dunn, Doorkeepers to Congress; in which bills and resolution they desire the concurrence of the Senate.

The bill last mentioned in the message was twice read, by unanimous consent, and referred to Messrs. BALDWIN, BROWN, and LANGDON, to consider and report thereon.

The bill to amend the act to establish an uniform system of bankruptcy was read, and passed to the second reading.

The resolution respecting certain property of the United States, in the possession of Thomas Claxton, James Mathers, and Thomas Dunn, was read, and agreed to.

Mr. TRACY, from the committee on the bill to incorporate a mine and metal company, reported amendments; which were read, and ordered to lie for consideration.

The bill, entitled "An act directing the mode of estimating certain foreign coins and currencies, and of making out invoices in certain cases," was read the third time, further amended, and passed.

The bill, entitled, "An act making appropriations for the Military Establishment of the United States for the year 1801," was read the third time, and passed.

The Senate took into consideration the amendments reported by the committee to the bill further to alter and establish certain post roads; and, having agreed thereto, the bill passed to the third reading, as amended.

Mr. NICHOLAS, from the committee on the bill to amend the act altering the district of Bermuda Hundred and City Point, reported an amendment; which was agreed to, and the bill passed to the third reading, as amended.

MONDAY, March 2.

A mesage from the House of Representatives informed the Senate that they have passed a bill altering the times and places of holding certain courts; a bill authorizing the remission of duties on certain teas destroyed by fire; a bill to discharge Laurence Elb from his confinement; a bill to amend the act to establish a general stamp office; a bill concerning the Mint; a bill to authorize the Secretary of the Treasury to employ clerks for completing the abstracts for the valuation of lands and dwelling-houses; a bill fixing the compensation of receivers of public moneys for lands of the United States; and a bill supplementary to the act concerning the District of Columbia; in which bills they desire the concurrence of the Senate.

Mr. MORRIS, from the committee appointed the 28th ultimo, on the Address of the VICE PRESIDENT, made on his taking leave of the Senate, reported an answer thereto, which was read, as follows:

SIR: While we congratulate you on those expressions of the public will, which called you to the first office in the United States, we cannot but lament the loss of that intelligence, attention, and impartiality, with which you have presided over our deliberations. The Senate feel themselves much gratified by the sense you have been pleased to express of their support in the performance of your late duties. Be persuaded that it will never be withheld from a Chief Magistrate who, in the exercise of his office, shall be influenced by a due regard to the honor and interests of our country.

In the confidence that your official conduct will be directed to these great objects, a confidence derived from past events, we repeat to you, sir, the assurance of our Constitutional support in your future administration.

On the motion to strike out these words: "a confidence derived from past events," it passed in the negative—yeas 9, nays 19, as follows:

YEAS—Messrs. Chipman, Hindman, Howard, Livermore, Paine, Read, Ross, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Gunn, Hillhouse, Marshall, S. T. Mason, J. Mason, Morris, Nicholas, and Pinckney.

And the report was agreed to.

Ordered, That the committee who draughted the answer to the Address wait on the President elect of the United States, and present it to him.

The PRESIDENT laid before the Senate a letter from the PRESIDENT elect of the United States; which was read, as follows:

WASHINGTON, *March* 2, 1801.

SIR: I beg leave, through you, to inform the honorable the Senate of the United States that I propose to take the oath which the Constitution prescribes to the President of the United States, before he enters on the execution of his office, on Wednesday, the 4th instant, at 12 o'clock, in the Senate Chamber.

I have the honor to be, with the greatest respect, sir, your most obedient and most humble servant,

TH. JEFFERSON.

The PRESIDENT *pro tempore of the Senate.*

Ordered, That the foregoing letter be referred to Messrs. MORRIS, DAYTON, and ROSS, to report thereon.

The bill supplementary to the act concerning the District of Columbia was twice read, by unanimous consent, and referred to Messrs. HINDMAN, ROSS, and NICHOLAS, to consider and report thereon.

The bill, entitled "An act making appropriations for the Navy of the United States for the year one thousand eight hundred and one," was read the third time, and passed.

The bill, entitled "An act further to alter and establish certain post roads," was read the third time, amended, and passed.

The bill, entitled "An act to amend the act altering the district of Bermuda Hundred and City Point," was read the third time, amended, and passed.

The bill altering the times and places of holding certain courts was twice read, by unanimous consent, and referred to Messrs. BROWN, GREENE, and J. MASON, to consider and report thereon.

The bill to amend the act to establish an uniform system of bankruptcy was read the second time, and referred to Messrs. NICHOLAS, MORRIS, and TRACY, to consider and report thereon.

The bill to amend the act to establish a general stamp-office was read, and passed to the second reading.

The bill to authorize the remission of duties on certain teas destroyed by fire was twice read, by unanimous consent, and referred to Messrs. T. FOSTER, TRACY, and GREENE, to consider and report thereon.

The bill to authorize the Secretary of the Treasury, to employ clerks to copy certain abstracts for the valuation of lands and dwelling-houses was twice read, by unanimous consent, and referred to Messrs. PAINE, BLOODWORTH, and HOWARD, to consider and report thereon.

Mr. BALDWIN, from the committee on the bill

to augment the salaries of the district Judges therein mentioned, reported it without amendment.

The bill concerning the Mint was twice read, by unanimous consent, and passed to the third reading.

The bill fixing the compensation of the receivers of public moneys for lands of the United States was twice read, by unanimous consent, and referred to Messrs. MARSHALL, BROWN, and ROSS, to consider and report thereon.

The bill to discharge Laurence Elb from his confinement was read, and passed to the second reading.

Ordered, That the committee who were appointed to take into consideration the letter from the President elect of the United States, of this day, be discharged.

A motion was made as follows:

The President elect of the United States having informed the Senate that he proposes to take the oath which the Constitution prescribes to the President of the United States before he enters on the execution of his office, on Wednesday, the 4th instant, at 12 o'clock, in the Senate Chamber:

Ordered, That the Secretary communicate that information to the House of Representatives; that seats be provided for such members of the House of Representatives and such of the public Ministers as may think proper to attend; and that the gallery be opened to the citizens of the United States.

And the motion was agreed to.

A message from the House of Representatives informed the Senate that the House have passed a bill in addition to the act making provision for the further accommodation of the household of the President of the United States, in which they desire the concurrence of the Senate. They agree to the amendments of the Senate to the bill making appropriations for the support of Government for the year 1801, with amendments, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to their amendments to the bill making appropriations for the support of Government for the year 1801.

Ordered, That the committee appointed the 20th ultimo, and who reported the amendments, be revived, and that the amendments be referred to that committee.

Mr. LANGDON, from the committee on the bill to prohibit the Secretary of the Navy from carrying on any business of trade or commerce, reported it without amendment.

And it was agreed that this bill be read the third time.

The Senate resumed the second reading of the bill to augment the salaries of the district Judges, in the districts therein mentioned, and it was agreed that the bill pass to the third reading.

Mr. TRACY, from the committee on the amendments of the House of Representatives to those of the Senate to the bill making appropriations for the support of Government for the year 1801, reported that the Senate concur in said amendments to the amendments; and the Senate agreed thereto.

The bill in addition to the act making provision for the further accommodation of the household of the President of the United States was twice read, by unanimous consent, and passed to the third reading.

The Senate took into consideration the amendments reported by the committee to the bill to incorporate the persons therein named, as a Mine and Metal Company, which were agreed to; and, on the question to agree to third reading of the bill, it passed in the negative.

The PRESIDENT laid before the Senate a letter from Governor Ogle, with two volumes of the laws of Maryland, and the letter was read.

TUESDAY, March 3.

Mr. T. FOSTER, from the committee on the bill authorizing the remission of duties on certain teas destroyed by fire, reported it without amendment.

The bill to amend the act to establish a general stamp office was read the second time, and referred to Messrs. ROSS, LIVERMORE, and MARSHALL, to consider and report thereon.

Mr. MARSHALL, from the committee on the bill fixing the compensation of receivers of public moneys for lands of the United States, reported amendments.

The bill to authorize the discharge of Lawrence Elb from his confinement was read the second time, and referred to Messrs. ROSS, GREENE, and WELLS, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House agree to the amendments of the Senate to the bill to erect a mausoleum for GEORGE WASHINGTON, with amendments, in which they desire the concurrence of the Senate. They have passed a bill for erecting light-houses and placing buoys on New Point Comfort, Long Island Sound, and other places; and a bill further to amend the act establishing the temporary and permanent seat of Government of the United States; in which they desire the concurrence of the Senate.

Mr. BLOODWORTH, from the committee appointed the 24th ultimo, respecting the balances reported by the commissioners for settling the accounts between the United States and the several States, made report, which was read.

The Senate took into consideration the amendments to the amendments on the bill to erect a mausoleum for GEORGE WASHINGTON; and on motion to postpone the further consideration of this bill until the first Monday in December next, it passed in the affirmative—yeas 14, nays, 13, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Brown, Cocke, Gunn, Hindman, J. Mason, Morris, Pinckney, Read, Ross, Tracy and Wells.

NAYS—Messrs. Bloodworth, Chipman, Dayton, T. Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Livermore, Marshall, Nicholas, and Paine.

The bill concerning the Mint was read the third time and passed.

The bill, entitled "An act in addition to an act, entitled 'An act making provision for the further

accommodation of the household of the President of the United States," was read the third time, amended, and passed.

The bill, entitled "An act to augment the salaries of the district Judges, in the districts of Massachusetts, New York, Delaware, and Maryland, respectively," was read the third time and amended.

On the question to agree to the final passage of this bill as amended, it passed in the affirmative—yeas 13, nays 12, as follows:

YEAS—Messrs. Armstrong, Dayton, T. Foster, Gunn, Hillhouse, Hindman, Howard, Livermore, J. Mason, Morris, Nicholas, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Chipman, Cocke, Franklin, Langdon, Marshall, S. T. Mason, Pinckney and Ross.

So it was *Resolved*, That this bill pass with amendments.

The bill to prohibit the Secretary of the Navy from being concerned in trade or commerce was read the third time and passed.

Mr. NICHOLAS, from the committee on the bill providing for a Naval Peace Establishment, reported amendments, which being agreed to, the bill was read the third time by unanimous consent and passed.

Mr. MORRIS, from the committee appointed to wait on the President elect of the United States and present him with the answer of the Senate to his Address on taking leave, communicated his reply, which was read as follows:

GENTLEMEN: I receive with due sensibility the congratulations of the Senate on being called to the first Executive office of our Government; and I accept, with great satisfaction, their assurances of support in whatever regards the honor and interest of our country. Knowing no other object in the discharge of my public duties, their confidence in my future conduct, derived from past events, shall not be disappointed, so far as my judgment may enable me to discern those objects. The approbation they are so good as to express of my conduct in the Chair of the Senate, is highly gratifying to me; and I pray them to accept my humble thanks for these declarations of it.

TH. JEFFERSON.

MARCH 3, 1801.

Mr. TRACY, from the committee on the resolution respecting Theodosius Fowler, reported that the further consideration thereof be postponed until the first Monday in December next; and the report was agreed to.

The bill this day brought up for concurrence, entitled "An act for erecting light-houses on New Point Comfort and on Smith's Point, in the State of Virginia, and on Faulkner's Island, in Long Island Sound, in the State of Connecticut, and for placing buoys in Narraganset Sound," was three times read by unanimous consent and passed.

Mr. HINDMAN, from the committee on the bill supplementary to the act respecting the District of Columbia, reported amendments.

Mr. PAINE, from the committee on the bill to authorize the Secretary of the Treasury to employ certain clerks, reported the bill without amendment; and it was read the third time by unanimous consent and passed.

Mr. BROWN, from the committee on the bill, entitled "An act for altering the times and places of holding certain courts therein mentioned, and for other purposes," reported an amendment; which was agreed to, and the bill was read the third time by unanimous consent, and passed as amended.

The bill further to amend the act establishing the temporary and permanent seat of Government of the United States was twice read by unanimous consent, and referred to Messrs. TRACY, ROSS, and PAINE, to consider and report thereon.

Mr. NICHOLAS, from the committee on the bill to amend the act establishing an uniform system of bankruptcy, reported amendments.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act supplementary to the act, entitled 'An act concerning the District of Columbia;" and having agreed thereto, the bill was, by unanimous consent, read the third time, and passed as amended.

The bill entitled "An act authorizing the remision of duties on certain teas destroyed by fire, while under the care of the officers of the customs, in Providence, Rhode Island," was, by unanimous consent, read the third time and passed.

The Senate adjourned to 6 o'clock this evening.

TUESDAY EVENING, 6 *o'clock*.

AARON OGDEN, appointed a Senator by the Legislature of the State of New Jersey, in place of James Schureman, resigned, produced his credentials, was qualified, and took his seat in the Senate.

The President laid before the Senate the report of the Secretary for the Department of Treasury, to whom was referred the petition of Philip Sloan, praying to be reimbursed a sum of money stated to have been paid for his ransom from the Algerines; which was read.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act fixing the compensation of receivers of public moneys for lands of the United States;" and having agreed thereto, the bill was read the third time by unanimous consent, and passed with amendments.

Mr. ROSS, from the committee on the bill to amend the act to establish a general stamp office, reported it without amendment; and the bill was read the third time by unanimous consent, and passed.

The Senate took into consideration the amendments reported by the committee to the bill to amend the act establishing an uniform system of bankruptcy; which being agreed to.

On motion that this bill be now read by unanimous consent the third time, it was objected to. So the bill was lost.

A message from the House of Representatives informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill fixing the compensations of receivers of public moneys for lands of the United States.

The Senate took into consideration their amendment, disagreed to by the House of Representatives, to the bill fixing the compensation of

receivers of public moneys for lands of the United States; and,

Resolved, That they do insist on their said amendment.

Mr. GREENE, from the committee on the bill for the relief of William Arnold, reported that the further consideration of this bill be postponed until the first Monday in December next; and the report being agreed to, the bill was postponed accordingly.

Mr. TRACY, from the committee on the bill further to amend the act for establishing the tempoary and permanent seat of Government, made report.

On motion that this bill be now read the third time by unanimous consent, it was objected to. So the bill was lost.

Mr. ROSS, from the committee on the bill to amend the act to retain a further sum on drawbacks in lieu of stamp duties on debentures, made report.

On motion that this bill be now read the third time by unanimous consent, it was objected to. So the bill was lost.

Mr. ROSS, from the committee on the bill to authorize the discharge of Laurence Elb from his confinement, reported it without amendment.

On motion that this bill be now read the third time by unanimous consent, it was objected to. So the bill was lost.

Ordered, That the Secretary of the Senate be, and he is hereby, authorized to retain to his own use, out of the contingent fund, the sum of three hundred dollars, as a compensation for his additional expenses at the seat of Government, during the present session of Congress.

Ordered, That the Secretary of the Senate be authorized and directed to pay, out of the moneys appropriated to defray the contingent expenses of the Senate, the sum of two hundred dollars each, to the principal and engrossing clerks in his office, and to the Doorkeeper and Assistant Doorkeeper of the Senate.

Ordered, That the Secretary of the Senate be, and he is hereby, authorized to pay to Hugh McKinley, out of the contingent fund, the sum of two dollars and a half per diem, as a compensation for his labor and attendance on the Senate during the present session of Congress.

Ordered, That Messrs. READ and WELLS be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary of the Senate pay to Bishop CLAGGETT, the Chaplain of the Senate, for the present session, one hundred dollars out of the contingent fund, in addition to the allowance to which he is by law entitled.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate appointing a joint committee to wait on the President of the United States, and notify him of the proposed adjournment of the two Houses of Congress, and have appointed a committee on their part. And that the House of Representatives, having completed the business before them, are about to adjourn without day.

Mr. READ reported, from the joint committee, that they had waited on the President of the United States and that he replied, that he had nothing further to communicate to Congress, except his best wishes for the health and happiness of its members respectively.

The Senate then adjourned without day.

PROCEEDINGS OF A SESSION SPECIALLY CALLED,

On WEDNESDAY, March 4, 1801.

To the Senators of the United States, respectively:

SIR: It appearing to me proper and necessary for the public service, that the Senate of the United States should be convened on Wednesday the 4th of March next, you are desired to attend in the Chamber of the Senate on that day, at 10 o'clock in the forenoon, to receive and act upon any communications which the President of the United States may then lay before you touching their interests, and to do and consider all other things which may be proper and necessary for the public service, for the Senate to do and consider.

JOHN ADAMS,
President of the United States.

JANUARY 30, 1801.

In conformity to the summons from the President of the United States above recited, the Senate assembled in their Chamber.

PRESENT:

AARON BURR, Vice President of the United States, and President of the Senate.

SAMUEL LIVERMORE, and JAMES SHEAFE, from New Hampshire;

DWIGHT FOSTER and JONATHAN MASON, from Massachusetts;

THEODORE FOSTER and RAY GREENE, from Rhode Island;

URIAH TRACY and JAMES HILLHOUSE, from Connecticut;

NATHANIEL CHIPMAN, from Vermont;

GOUVERNEUR MORRIS and JOHN ARMSTRONG, from New York;

JONATHAN DAYTON and AARON OGDEN, from New Jersey;

JAMES ROSS and PETER MUHLENBERG, from Pennsylvania;

WILLIAM HILL WELLS and SAMUEL WHITE, from Delaware;

JOHN E. HOWARD from Maryland;

STEVENS T. MASON and WILSON CARY NICHOLAS, from Virginia;

JOHN BROWN, from Kentucky;

JESSE FRANKLIN and DAVID STONE, from North Carolina;

JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee;

CHARLES PINCKNEY, from South Carolina;

ABRAHAM BALDWIN, from Georgia.

Mr. HILLHOUSE administered the oath of office to the VICE PRESIDENT, who took the Chair, and the credentials of the following members were read:

Of Mr. ARMSTRONG, Mr. MUHLENBERG, Mr. SHEAFE, Mr. STONE, Mr. TRACY, and Mr. WHITE.

And the oath of office was administered to Mr. ARMSTRONG, Mr. MUHLENBERG, Mr. SHEAFE, Mr. STONE, and Mr. WHITE, by the VICE PRESIDENT.

Exception being taken to the credentials of the Hon. Mr. TRACY, a Senator from the State of Connecticut, a debate ensued; and, on motion that he be admitted to take the oath required by the Constitution, it passed in the affirmative—yeas 13, nays 10, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, Livermore, J. Mason, Morris, Ogden, Ross, Sheafe, Wells, and White.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Brown, Cocke, S. T. Mason, Muhlenberg, Nicholas, Pinckney, and Stone.

And the oath was accordingly administered to Mr. TRACY by the VICE PRESIDENT.

The PRESIDENT OF THE UNITED STATES, attended by the Heads of Departments, the Marshal of the District, his officers and other gentlemen, came into the Senate Chamber and took his seat in the chair usually occupied by the VICE PRESIDENT. The VICE PRESIDENT took a separate seat on the right of the PRESIDENT OF THE UNITED STATES, and the Chief Justice of the United States on the left. After a short pause, the PRESIDENT OF THE UNITED STATES rose, and addressed the audience as follows:

Friends and fellow-citizens:

Called upon to undertake the duties of the first Executive office of our country, I avail myself of the presence of that portion of my fellow-citizens which is here assembled, to express my grateful thanks for the favor with which they have been pleased to look towards me, to declare a sincere consciousness that the task is above my talents, and that I approach it with those anxious and awful presentiments which the greatness of the charge, and the weakness of my powers, so justly inspire. A rising nation spread over a wide and fruitful land, traversing all the seas with the rich productions of their industry, engaged in commerce with nations who feel power and forget right, advancing rapidly to destinies beyond the reach of mortal eye; when I contemplate these transcendent objects, and see the honor, the happiness, and the hopes, of this beloved country committed to the issue and the auspices of this day, I shrink from the contemplation, and humble myself before the magnitude of the undertaking. Utterly indeed should I despair, did not the presence of many whom I here see remind me, that, in the other high authorities provided by our Constitution, I shall find resources of wisdom, of virtue, and of zeal, on which to rely under all difficulties. To you, then, gentlemen, who are charged with the sovereign functions of legislation, and to those associated with you, I look with encouragement for that guidance and support which may enable us to steer with safety the vessel in which we are all embarked, amidst the conflicting elements of a troubled world.

During the contest of opinion through which we have passed, the animation of discussions and of exertions has sometimes worn an aspect which might impose on strangers unused to think freely, and to speak and to write what they think; but this being now decided by the voice of the nation, announced according to the rules of the Constitution, all will of course arrange themselves under the will of the law, and unite in common efforts for the common good. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression. Let us then, fellow-citizens, unite with one heart and one mind, let us restore to social intercourse that harmony and affection without which, liberty, and even life itself, are but dreary things. And let us reflect, that, having banished from our land that religious intolerance under which mankind so long bled and suffered, we have yet gained little, if we countenance a political intolerance, as despotic, as wicked, and capable of as bitter and bloody persecutions. During the throes and convulsions of the ancient world, during the agonizing spasms of infuriated man, seeking through blood and slaughter his long lost liberty, it was not wonderful that the agitation of the billows should reach even this distant and peaceful shore; that this should be more felt and feared by some and less by others; and should divide opinions as to measures of safety; but every difference of opinion is not a difference of principle. We have called by different names brethren of the same principle. We are all Republicans: we are all Federalists. If there be any among us who would wish to dissolve this Union, or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it. I know indeed that some honest men fear that a Republican Government cannot be strong; that this Government is not strong enough. But would the honest patriot, in the full tide of successful experiment, abandon a Government which has so far kept us free and firm, on the theoretic and visionary fear that this Government, the world's best hope, may, by possibility, want energy to preserve itself? I trust not. I believe this, on the contrary, the strongest Government on earth. I believe it the only one where every man, at the call of the law, would fly to the standard of the law, and would meet invasions of the public order as his own personal concern. Sometimes it is said that man cannot be trusted with the government of himself. Can he then be trusted with the government of others? Or have we found angels in the form of kings to govern him? Let history answer this question.

Let us then, with courage and confidence, pursue our own federal and republican principles; our attachment to union and representative government. Kindly separated by nature and a wide ocean from the exterminating havoc of one quarter of the globe; too high-minded to endure the degradations of the others; possessing a chosen country, with room enough for our descendants to the thousandth and thousandth generation; entertaining a due sense of our equal right to the use of our own faculties, to the acquisitions of our own industry, to honor and confidence from our fellow-citizens, resulting not from birth, but from our actions and their sense of them; enlightened by a benign religion, professed indeed and practised in various forms, yet all of them inculcating honesty, truth, temperance, gratitude, and the love of man, acknowledging and adoring an overruling Providence, which, by all its dispensations, proves that it delights in the happiness of man here, and his greater happiness hereafter; with

all these blessings, what more is necessary to make us a happy and a prosperous people? Still one thing more, fellow-citizens—a wise and frugal Government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government; and this is necessary to close the circle of our felicities.

About to enter, fellow-citizens, on the exercise of duties which comprehend everything dear and valuable to you, it is proper you should understand what I deem the essential principles of our Government, and consequently those which ought to shape its Administration. I will compress them within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political: peace, commerce, and honest friendship with all nations, entangling alliances with none: the support of the State Governments in all their rights, as the most competent administrations for our domestic concerns, and the surest bulwarks against anti-republican tendencies: the preservation of the General Government in its whole Constitutional vigor, as the sheet-anchor of our peace at home, and safety abroad: a jealous care of the right of election by the people; a mild and safe corrective of abuses which are lopped by the sword of revolution, where peaceable remedies are unprovided: absolute acquiescence in the decisions of the majority, the vital principle of Republics, from which is no appeal but to force, the vital principle and immediate parent of despotism: a well disciplined militia, our best reliance in peace, and for the first moments of war, till regulars may relieve them: the supremacy of the civil over the military authority—economy in the public expense, that labor may be lightly burdened: the honest payment of our debts, and sacred preservation of the public faith: encouragement of agriculture, and of commerce as its handmaid: the diffusion of information, and arraignment of all abuses at the bar of the public reason: freedom of religion, freedom of the press, and freedom of person, under the protection of the habeas corpus; and trial by juries impartially selected. These principles form the bright constellation which has gone before us, and guided our steps through an age of revolution and reformation. The wisdom of our sages, and blood of our heroes, have been devoted to their attainment: they should be the creed of our political faith; the text of civic instruction; the touchstone by which to try the services of those we trust; and should we wander from them in moments of error or of alarm, let us hasten to retrace our steps, and to regain the road which alone leads to peace, liberty, and safety.

I repair then, fellow-citizens, to the post you have assigned me. With experience enough in subordinate offices to have seen the difficulties of this, the greatest of all, I have learnt to expect that it will rarely fall to the lot of imperfect man to retire from this station with the reputation and the favor which bring him into it. Without pretensions to that high confidence you reposed in our first and greatest revolutionary character, whose pre-eminent services had entitled him to the first place in his country's love, and destined for him the fairest page in the volume of faithful history, I ask so much confidence only as may give firmness and effect to the legal administration of your affairs. I shall often go wrong through defect of judgment. When right, I shall often be thought wrong by those whose positions will not command a view of the whole ground. I ask your indulgence for my own errors, which will never be intentional; and your support against the errors of others, who may condemn what they would not, if seen in all its parts. The approbation implied by your suffrage is a great consolation to me for the past; and my future solicitude will be, to retain the good opinion of those who have bestowed it in advance, to conciliate that of others by doing them all the good in my power, and to be instrumental to the happiness and freedom of all.

Relying then on the patronage of your good will, I advance with obedience to the work, ready to retire from it whenever you become sensible how much better choices it is in your power to make. And may that Infinite Power which rules the destinies of the universe lead our councils to what is best, and give them a favorable issue for your peace and prosperity.

The oath of office was then administered to him by the Chief Justice of the United States. After which the President of the United States retired.

The Senate then adjourned till to-morrow.

THURSDAY, March 5.

WILLIAM HINDMAN, appointed a Senator by the State of Maryland, produced his credentials, and the oath of office was administered to him by the VICE PRESIDENT.

Ordered, That Messrs. NICHOLAS and BALDWIN be a committee to wait on the President of the United States, and notify him that the Senate is assembled and ready to receive any communications which he may be pleased to make to them.

The VICE PRESIDENT communicated a letter from RAY GREENE, a Senator from the State of Rhode Island, resigning his seat; which was read.

Resolved, That the VICE PRESIDENT be requested to notify to the Executive of the State of Rhode Island, that RAY GREENE hath resigned his seat in the Senate.

Mr. NICHOLAS reported, from the committee, that they had waited on the President of the United States and that he had informed the committee that he would immediately lay a Message before the Senate. The Message was received, containing nominations to fill Executive offices; which, after being considered,

Ordered, That Messrs. NICHOLAS and BALDWIN be a committee to wait on the President of the United States, and notify him, that, unless he has any further communication to make, the Senate are ready to adjourn.

Mr. NICHOLAS reported, from the committee, that they had waited on the President of the United States, and that he had informed them that he had no further communications to make to the Senate.

Whereupon, the VICE PRESIDENT adjourned the Senate without day.

PROCEEDINGS IN THE SENATE,

IN SECRET SESSION,

Which took place on the Ratification of the Convention with the French Republic.

TUESDAY, December 16, 1800.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I transmit to the Senate, for their consideration and decision, a convention, both in English and French, between the United States of America and the French Republic, signed at Paris, on the thirtieth day of September last, by the respective Plenipotentiaries of the two Powers. I also transmit to the Senate, three manuscript volumes, containing the journal of our Envoys.

JOHN ADAMS.

UNITED STATES, *Dec.* 15, 1800.

The Message and convention were read; and, after progress in reading the other papers accompanying the Message,

Ordered, That the further reading thereof be postponed.

WEDNESDAY, December 17.

The reading of the papers communicated with the Message of the President of the United States, of the 15th, was resumed; and, after progress,

Ordered, That the further consideration thereof be postponed.

THURSDAY, December 18.

The reading of the papers communicated with the Message of the President of the United States, of the 15th instant, was resumed, and the papers being read through,

A motion was made, that it be

Resolved, That the President of the United States be requested to lay before the Senate the instructions given to our late Commissioners to the French Republic.

Ordered, That it lie on the table.

FRIDAY, December 19.

The Senate proceeded to consider the motion, made yesterday, that the President of the United States be requested to lay before the Senate the instructions given to our late Commissioners to the French Republic; which, being amended, was adopted, as follows:

Resolved, That the President of the United States be requested to lay before the Senate the instructions given to our late Envoys Extraordinary and Ministers Plenipotentiary to the French Republic.

Ordered, That the Secretary lay this resolution before the President of the United States.

Resolved, That Mr. MORRIS, Mr. TRACY, and Mr. THEODORE FOSTER, be a committee to procure a translation of so much of the journal of the late Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, as is communicated in the French language.

MONDAY, December 22.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

In conformity with your request, in your resolution of the 19th of this month, I transmit you the instructions given to our late Envoys Extraordinary and Ministers Plenipotentiary to the French Republic.

It is my request to the Senate that these instructions may be considered in strict confidence, and returned to me as soon as the Senate shall have made all the use of them they may judge necessary.

JOHN ADAMS.

UNITED STATES, *Dec.* 22, 1800.

On motion,

Resolved, That all confidential communications made by the President of the United States to the Senate, shall be, by the members thereof, kept inviolably secret; and that all treaties which may hereafter be laid before the Senate, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

WEDNESDAY, December 31.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France; and, after progress,

Ordered, That the further consideration thereof be postponed.

MONDAY, January 5, 1801.

A motion was made that the following rule be adopted, to wit:

Resolved, (as a standing rule,) That whenever a treaty shall be laid before the Senate for ratification, it shall be read a first time, for information only; when no motion to reject, ratify, or modify, the whole, or any part, shall be received.

That its second reading shall be for consideration, and on a subsequent day, when it shall be taken up, as in a Committee of the Whole, and every one shall be free to move a question on any particular article, in this form—"Will the Senate advise and consent to the ratification of this article?" or to propose amendments thereto, either by inserting or by leaving out words; in which last case, the question shall be, "Shall the words stand part of the article?" And in every of the said cases, the concurrence of two-thirds of the Senators present shall be requisite to decide affirmatively. And when through the whole, the proceedings shall be stated to the House, and questions be again severally put thereon for confirmation, or new ones proposed, requiring, in like manner, a concurrence of two-thirds for whatever is retained or inserted.

That the votes so confirmed shall, by the House, or a committee thereof, be reduced into the form of a ratification, with or without modifications, as may have been decided, and shall be proposed on a subsequent day, when every one shall again be free to move amendments, either by inserting or leaving out words; in which last case, the question shall be, "Shall the words stand part of the resolution?" And in both cases the concurrence of two-thirds shall be requisite to carry the affirmative, as well as on the final question to advise and consent to the ratification, in the form agreed to.

It was agreed that the motion should lie for consideration.

TUESDAY, January 6.

The Senate resumed the motion, made yesterday, for an additional rule in the consideration of treaties; and the motion was agreed to, and the rule adopted accordingly.

The Senate proceeded to consider the convention made on behalf of the United States with the Republic of France;

And, the second article being under consideration, a question was moved and put, to wit: "Will the Senate advise and consent to the ratification of this article?" And, after debate,

Ordered, That the further consideration thereof be postponed.

THURSDAY, January 8.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France;

And the second article having been debated, a question was moved thereon, to wit: "Will the Senate advise and consent to the ratification of this article?"

And the yeas and nays being taken, are as follows—yeas 11, nays 16:

YEAS—Messrs. Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Greene, Langdon, S. T. Mason, Nicholas, and Paine.

NAYS—Messrs. Armstrong, Chipman, Dayton, D. Foster, Gunn, Hillhouse, Hindman, Howard, Latimer, Livermore, J. Mason, Morris, Read, Schureman, Tracy, and Wells.

So it passed in the negative.

And the third article being under consideration, a question was moved and put, "Will the Senate advise and consent to the ratification of this article?"

And the yeas and nays being taken, are as follows—yeas 12, nays 15:

YEAS—Messrs. Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Greene, Gunn, Langdon, S. T. Mason, and Nicholas.

NAYS—Messrs. Chipman, Dayton, D. Foster, Hillhouse, Hindman, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Schureman, Tracy, and Wells.

So it passed in the negative.

The Senate proceeded in the consideration of the convention, so far as to the fourteenth article; and, after debate,

Ordered, That the further consideration thereof be postponed.

FRIDAY, January 9.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France.

On motion, to advise and consent to the adoption of an additional article, to wit:

"It is further agreed, between the said contracting parties, that nothing in this treaty contained, shall be construed or operate contrary to former and existing treaties with other States or Sovereigns."

And, on the question, "Will the Senate advise and consent to the adoption of this article?" it passed unanimously in the affirmative—yeas 27, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, D. Foster, Franklin, Greene, Gunn, Hillhouse, Hindman, Howard, Langdon, Latimer, Livermore, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Read, Schureman, Tracy, and Wells.

On motion, to advise and consent to the adoption of the following additional article, to wit:

"The present convention shall be in full force during the term of —— years, to be computed from the time of the exchange of the ratifications."

And, after debate,

Ordered, That the further consideration thereof be postponed.

MONDAY, January 12.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France; and

The motion made on the 9th instant, being amended as follows:

The present convention shall be in full force until two years, to be computed from the day of the signature of the preliminary or other articles of peace, which shall conclude the war in which the French nation is now engaged, or for a term not exceeding —— years, to be computed from the time of the exchange of the ratifications, whichever event shall first happen.

On the question, "Will the Senate advise and consent to the adoption of this article?" it was determined in the affirmative—yeas 25, nay 1, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Hillhouse, Hindman, Howard, Latimer, Livermore, Morris, Nicholas, Paine, Read, Schureman, Tracy, and Wells.

NAY—Mr. Langdon.

TUESDAY, January 13.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France: and.

On motion,

Ordered. That the further consideration thereof be postponed until Thursday next.

THURSDAY, January 15.

The Senate resumed the consideration of the convention made on behalf of the United States with the Republic of France: Whereupon,

The VICE PRESIDENT reported to the House, that the Senate, as in a Committee of the Whole, had had under their consideration the convention, and had gone through the same, and had agreed to sundry modifications, which he proceeded to state to the House, and again to put questions thereon, severally, for confirmation, as follows:

On the question, whether the Senate would advise and consent to the ratification of the second article of the convention? it passed in the negative—yeas 10, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Bloodworth, Cocke, T. Foster, Franklin, Langdon, Marshall, Nicholas, and Paine.

NAYS—Messrs. Bingham, Chipman, Dayton, D. Foster, Hillhouse, Howard, Latimer, Livermore, J. Mason, Morris, Read, Ross, Schureman, Tracy, and Wells.

On the question, whether the Senate would advise and consent to the ratification of the third article of the convention? A motion was made to amend the article, by adding to the end thereof, these words, "or paid for." Whereupon,

A motion was made to amend the amendment by adding thereto the following words: "And so likewise, the merchant ships and vessels which have been taken, and definitively condemned on the one part and the other, shall be restored or paid for."

On the question to agree to the amendment to the amendment, it passed in the negative—yeas 8, nays 20, as follows:

YEAS—Messrs. D. Foster, Hillhouse, Howard, Latimer, Livermore, Read, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, Franklin, Langdon, Marshall, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Ross, and Schureman.

So the amendment to the amendment was lost.

On the question to agree to the original amendment, to wit: to add the words "or paid for;" it passed in the negative—yeas 7, nays 21, as follows:

YEAS—Messrs. Anderson, Armstrong, Brown, Baldwin, Cocke, S. T. Mason, and Nicholas.

NAYS—Messrs. Bingham, Bloodworth, Chipman, Dayton, T. Foster, D. Foster, Franklin, Hillhouse, Howard, Langdon, Latimer, Livermore, Marshall, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

So the amendment was lost.

On the question, whether the Senate would advise and consent to the ratification of the third article? it passed in the negative—yeas 13, nays 16, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Greene, Langdon, Marshall, S. T. Mason, and Nicholas.

NAYS—Messrs. Bingham, Chipman, Dayton, D. Foster, Hillhouse, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

On the question, whether the Senate would advise and consent to the adoption of the first additional article, agreed to as in Committee of the Whole, on the 9th instant? it passed unanimously in the affirmative—yeas 28, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Latimer, Livermore, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Read, Ross, Schureman, Tracy, and Wells.

On motion to fill the blank in the second additional article, agreed to as in Committee of the Whole, with the words, "ten years;" it passed in the negative—yeas 9, nays 19, as follows:

YEAS—Messrs. Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Langdon, S. T. Mason, and Nicholas.

NAYS—Messrs. Anderson, Armstrong, Bingham, Chipman, Dayton, D. Foster, Greene, Hillhouse, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

On motion to fill the blank with the words "eight years:" it passed unanimously in the affirmative—yeas 28, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Latimer, Livermore, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Read, Ross, Schureman, Tracy, and Wells.

On motion to amend the second additional article, agreed to as in Committee of the Whole, by striking out these words, "until two years, to be computed from the day of the signature of the preliminary or other articles of peace, which shall conclude the war in which the French nation is now engaged;"

And, on the question, "Shall these words stand?" it passed in the negative—yeas 4, nays 23, as follows:

YEAS—Messrs. Livermore, Paine, Read, and Tracy.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Latimer, Marshall, S. T. Mason, J. Mason, Morris, Nicholas, Schureman, and Wells.

And the article having been further amended, by unanimous consent, to read as follows:

"The present convention shall be in full force for the term of eight years, to be computed from the time of the exchange of the ratifications."

On the question, whether the Senate would advise and consent to the said additional article, as amended? it passed in the affirmative—yeas 26, nay 1, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Hillhouse, Howard, Langdon, Latimer, Marshall, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Read, Schureman, Tracy, and Wells.

NAY—Mr. Livermore.

Ordered, That Mr. MORRIS, Mr. NICHOLAS, and Mr. DAYTON, be a committee to reduce the several votes on this treaty into the form of a ratification.

MONDAY, January 19.

Mr. MORRIS, from the committee appointed to reduce the several votes on the convention made on behalf of the United States with the Republic of France, into the form of a ratification, made a report, which was read; and

Ordered, That it lie for consideration.

TUESDAY, January 20.

The Senate proceeded to consider the report of the committee appointed to reduce the several votes on the convention made on behalf of the United States with the Republic of France, into the form of a ratification.

On motion to amend the proviso, by inserting after the word "third," the words "and nineteenth:"

It was agreed that the further consideration of the convention, and report thereon, be postponed until to-morrow.

On motion,

Resolved, That the President of the United States be requested to communicate to the Senate such information, (if any such there be,) as may have been received respecting the convention with France, and may, in his opinion, be proper to be so communicated.

Ordered, That the Secretary lay this resolution before the President of the United States.

WEDNESDAY, January 21.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

In compliance with your request, signified in your resolution of the twentieth day of this month, I transmit you a report, made to me by the Secretary of State, on the same day; a letter of our late Envoys to him of the 4th of October last; an extract of a letter from our Minister Plenipotentiary in London, to him, of the 22d of November last; and an extract of another letter from the Minister to the Secretary, of the 31st of October last.

The reasoning in the letter of our late Envoys to France is so fully supported by the writers on the law of nations, particularly by Vattel, as well as by his great masters, Grotius and Puffendorf, that nothing is left to be desired to settle the point, that if there be a collision between two treaties, made with two different Powers, the more ancient has the advantage; for no engagement contrary to it can be entered into in the treaty afterwards made; and if this last be found, in any case, incompatible with the more ancient one, its execution is considered as impossible, because the person promising had not the power of acting contrary to his antecedent engagement. Although our right is very clear to negotiate treaties according to our own ideas of right and justice, honor and good faith, yet it must always be a satisfaction to know that the judgment of other nations, with whom we have connexion, coincide with ours, and that we have no reason to apprehend that any disagreeable questions and discussions are likely to arise. The letters from Mr. King will, therefore, be read by the Senate, with particular satisfaction.

The inconveniences to public officers, and the mischiefs to the public, arising from the publication of the despatches of Ministers abroad, are so numerous, and so obvious, that I request of the Senate that these papers, especially the letters from Mr. King, be considered in close confidence.

JOHN ADAMS.

UNITED STATES, *Jan.* 21, 1801.

The Message and papers were read, and ordered to lie for consideration.

The Senate resumed the consideration of the report of the committee appointed to reduce the several votes on the convention made on behalf of the United States with the Republic of France, into the form of a ratification, together with the motion made yesterday thereon, to wit: to amend the proviso, by inserting after the word "third," the words "and nineteenth." And, on the question to agree to the insertion of the words, it was determined in the negative—yeas 6, nays 22, as follows:

YEAS—Messrs. Bingham, Hillhouse, Read, Ross, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Howard, Langdon, Latimer, Livermore, S. T. Mason, J. Mason, Morris, Nicholas, Paine, and Schureman.

Ordered, That the further consideration of the convention, and the report of the committee thereon, be postponed until Friday next.

FRIDAY, January 23.

The Senate resumed the consideration of the report of the committee appointed to reduce the several votes on the convention made on behalf of the United States with the Republic of France, into the form of a ratification, which report is as follows:

Resolved by the Senate of the United States, (two-thirds of the Senators present concurring therein,) That they do consent to and advise the ratification of the convention between the French Republic and the United States of America, made at Paris the eighth day of Vendemaire, of the ninth year of the French Republic, the thirtieth day of September, anno Domini eighteen hundred: *Provided*, The second and third articles be expunged, and that the following articles be added or inserted:

1st. It is understood that nothing in this convention shall be so construed as to operate contrary to any former and existing treaties between either of the parties and any other State or Sovereign.

2d. It is agreed that the present convention shall be in force for the term of eight years from the time of the exchange of the ratifications.

Whereupon, a motion was made to strike out the whole of the proviso; on which it was agreed to divide the question into four parts, viz:

1st. Whether so much as provides that the second article shall be expunged, shall stand?

2d. Whether so much as provides that the third article be expunged, shall stand?

3d. Whether that part shall stand which restrains it from operating against former treaties?

4th. Whether that part shall stand which provides a limitation of time to its duration?

And, on the question on the first division, to wit: Whether so much as provides that the second article shall be expunged, shall stand? it passed in the negative, two-thirds of the Senators present not agreeing thereto—yeas 17, nays 13, as follows:

YEAS—Messrs. Armstrong, Bingham, Chipman, Dayton, D. Foster, Hillhouse, Hindman, Howard, Latimer, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Greene, Langdon, Livermore, Marshall, S. T. Mason, and Nicholas.

And, on the question on the second division, to wit: Whether so much as provides that the third article shall be expunged, shall stand? it passed in the negative, two-thirds of the Senators present not agreeing thereto—yeas 16, nays 17, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, D. Foster, Hillhouse, Hindman, Howard, Latimer, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Greene, Langdon, Livermore, Marshall, S. T. Mason, and Nicholas.

And, on the question on the third division, to wit: Whether that part shall stand which restrains it from operating against former treaties? it passed in the negative, two-thirds of the Senators present not agreeing thereto—yeas 17, nays 13, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, D. Foster, Greene, Hillhouse, Hindman, Howard, Latimer, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Langdon, Livermore, Marshall, S. T. Mason, and Nicholas.

And, on the question on the fourth division, to wit: Whether that part shall stand which provides a limitation of time to its duration? it was determined in the affirmative—yeas 24, nays 6, as follows:

YEAS—Messrs. Anderson, Armstrong, Bingham, Bloodworth, Chipman, Cocke, Dayton, D. Foster, Franklin, Greene, Hillhouse, Hindman, Howard, Langdon, Latimer, Livermore, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Baldwin, Brown, T. Foster, Marshall, S. T. Mason, and Nicholas.

And, on the question to agree to the report of the committee, as amended, it was determined in the negative, two-thirds of the Senators present not agreeing thereto—yeas 16, nays 14, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, T. Foster, Franklin, Greene, Langdon, Livermore, Marshall, S. T. Mason, Nicholas, and Paine.

NAYS—Messrs. Bingham, Dayton, D. Foster, Hillhouse, Hindman, Howard, Latimer, J. Mason, Morris, Read, Ross, Schureman, Tracy, and Wells.

MONDAY, January 26.

On motion, that it be

Resolved, That, whensoever a question on the ratification of a treaty, with modifications, shall have been negatived, a question may be proposed for a simple and unmodified ratification.

It was agreed that this motion should lie until to-morrow.

On motion, to correct the Executive Journal of the 23d instant, (to wit, the last question on which the yeas and nays were called,) to read as follows:

"And, on the question, to agree to the resolution as amended;" and to add, after the yeas and nays, these words: "So this resolution was not agreed to; and, therefore, it was

"*Resolved*, That the Senate do not consent to, and advise the President of the United States to ratify said convention between the French Republic and the United States.

"*Ordered*, That the Secretary lay this resolution before the President of the United States."

And it was agreed that this motion should lie until to-morrow.

TUESDAY, January 27.

The Senate took into consideration the motion made yesterday, for an additional rule in the conduct of the Executive business; and

It was agreed that this motion, the motion made yesterday for correcting the Executive Journal, of the 23d instant, together with the convention made with the French Republic, should be postponed to Monday next.

On motion, that it be

Resolved, That, when any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who voted on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes.

And it was agreed that the consideration of this motion should be postponed until Monday next.

MONDAY, February 2.

On motion, it was agreed that the consideration of the motion made the 27th ultimo, relative to the proceedings in case of treaties, be postponed until to-morrow.

TUESDAY, February 3.

The Senate resumed the consideration of the

motion made the 26th of January last, respecting the proceedings in case of treaties, to wit:

Resolved, That, whenever a question on the ratification of a treaty, with modifications, shall have been negatived, a question may be proposed for a simple and unmodified ratification.

And it was agreed to postpone the consideration thereof, and to adopt the following rule:

Resolved, That when any question may have been decided by the Senate, in which two-thirds of the members present are necessary to carry the affirmative, any member who voted on that side which prevailed in the question, may be at liberty to move for a reconsideration; and a motion for reconsideration shall be decided by a majority of votes.

On motion, it was agreed to reconsider the vote passed the 23d of January, on the report of the committee appointed to reduce the several votes on the convention made on behalf of the United States with the French Republic, into the form of a ratification.

On motion, it was agreed to reconsider the first division of the report, to wit:

"Whether so much as provides that the second article shall be expunged, shall stand?"

And, on the question to agree to this part of the report, it passed in the affirmative—yeas 30, nay 1, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, D. Foster, Franklin, Greene, Gunn, Hillhouse, Hindman, Howard, Langdon, Latimer, Livermore, S. T. Mason, J. Mason, Morris, Nicholas, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAY—Mr. Marshall.

On motion, it was agreed to reconsider the vote of the 23d of January, on the second division of the report, to wit:

"Whether so much as provides that the third article shall be expunged, shall stand?"

And, on the question to agree thereto, it passed in the negative, two-thirds of the Senators present not agreeing thereto—yeas 18, nays 13, as follows:

YEAS—Messrs. Bingham, Chipman, Dayton, D. Foster, Greene, Hillhouse, Hindman, Howard, Latimer, Livermore, J. Mason, Morris, Paine, Read, Ross, Schureman, Tracy, and Wells.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Cocke, T. Foster, Franklin, Gunn, Langdon, Marshall, S. T. Mason, and Nicholas.

On the question to agree to the ratification, as follows:

Resolved by the Senate of the United States, (two-thirds of the Senators present concurring therein,) That they do consent to, and advise the ratification of the convention between the French Republic and the United States of America, made at Paris, the eighth day of Vendemaire, of the ninth year of the French Republic, the thirtieth day of September, anno Domini, eighteen hundred: *Provided*, The second article be expunged, and that the following article be added or inserted:

It is agreed, that the present convention shall be in force for the term of eight years, from the time of the exchange of the ratifications.

It passed in the affirmative—yeas 22, nays 9, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bloodworth, Brown, Chipman, Cocke, Dayton, T. Foster, Franklin, Greene, Gunn, Hindman, Howard, Langdon, Latimer, Livermore, Marshall, S. T. Mason, Nicholas, Paine, and Schureman.

NAYS—Messrs. Bingham, D. Foster, Hillhouse, J. Mason, Morris, Read, Ross, Tracy, and Wells.

Ordered, That the Secretary lay this resolution before the President of the United States.

FRIDAY, February 20.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I request of the Senate, that the letter and journal of our late Envoys to France, and the copy of their instructions, and other documents relative to that negotiation, may be returned to me, or to the office of State.

JOHN ADAMS.

UNITED STATES, *Feb.* 20, 1801.

The Message was read: Whereupon,

Ordered, That the papers specified in the Message of the President of the United States, of this day, be returned to him. [See Appendix.]

PROCEEDINGS IN THE SENATE,

On the ratification of the Treaty with Prussia.

FRIDAY, December 6, 1799.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I lay before you, for your consideration, a Treaty of Amity and Commerce between the United States and the King of Prussia, signed by their Ministers, on the eleventh of July last.

JOHN ADAMS.

UNITED STATES, *Dec.* 6, 1799.

Ordered, That they lie for consideration, and that the treaty be printed for the use of the Senate.

MONDAY, December 9.

The Senate proceeded to the consideration of the treaty, made on behalf of the United States, with his Majesty, the King of Prussia.

On motion,

Ordered, That it be referred to Mr. BINGHAM, Mr. DEXTER, Mr. WATSON, Mr. READ, and Mr. GOODHUE, to consider and report thereon to the Senate.

TUESDAY, January 28, 1800.

Mr. BINGHAM, from the committee to whom was referred the consideration of the treaty made on behalf of the United States with the King of Prussia, reported that the Senate do advise and consent to the ratification thereof.

TUESDAY, February 4.

The Senate proceeded to consider the report of the committee on the treaty made on behalf of the United States with the King of Prussia; and, after progress.

Ordered, That the further consideration thereof be postponed until Monday next.

MONDAY, February 10.

The Senate resumed the consideration of the report of the committee to whom was referred the treaty made on behalf of the United States with the King of Prussia; and, after debate.

Ordered, That the further consideration thereof be postponed until to-morrow.

A motion was made, that it be

Resolved, That the President of the United States be requested to lay before the Senate the instructions given to our Minister at the Court of Berlin, respecting the negotiation of the late treaty with Prussia.

And, after debate, the Senate adjourned.

WEDNESDAY, February 12.

The Senate resumed the consideration of the report of the committee on the treaty made on behalf of the United States with the King of Prussia, together with the motion made thereon, on the 10th instant; and, having amended the motion, it was adopted; and, on motion to agree to the motion, it passed in the affirmative—yeas 25, nays 7, as follows:

YEAS—Messrs. Anderson, Baldwin, Bingham, Bloodworth, Brown, Chipman, Cocke, Dexter, Franklin, Greene, Gunn, Langdon, Latimer, Livermore, Marshall, Mason, Nicholas, Paine, Pinckney, Read, Ross, Schureman, Tracy, Watson, and Wells.

NAYS—Messrs. Dayton, Foster, Goodhue, Hillhouse, Howard, Laurance, and Lloyd.

So it was *Resolved*, That the President of the United States be requested to lay before the Senate, the instructions given to our Minister at the Court of Berlin, with the correspondence respecting the negotiation of the late treaty with Prussia.

Ordered, That the Secretary lay this resolution before the President of the United States.

MONDAY, February 17.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I now lay before you the instructions given to our Minister at the Court of Berlin, with the correspondence respecting the negotiation of the treaty with Prussia, according to your request of the 12th of this month.

JOHN ADAMS.

UNITED STATES, *Feb.* 17, 1800.

The Message and papers accompanying it were read. [See Appendix.]

TUESDAY, February 18.

The Senate resumed the consideration of the report of the committee on the treaty made on behalf of the United States with the King of Prussia;

And, on the question to adopt the same, it was determined in the affirmative—yeas 26, nays 6, as follows:

YEAS—Messrs. Anderson, Bingham, Bloodworth, Chipman, Cocke, Dayton, Dexter, Foster, Franklin, Goodhue, Greene, Gunn, Hillhouse, Howard, Latimer, Laurance, Livermore, Lloyd, Marshall, Paine, Read, Ross, Schureman, Tracy, Watson, and Wells.

NAYS—Messrs. Baldwin, Brown, Langdon, Mason, Nicholas, and Pinckney.

So it was *Resolved*, (two-thirds of the Senators concurring therein,) That the Senate do consent to, and advise the President of the United States to ratify the Treaty of Amity and Commerce between His Majesty, the King of Prussia, and the United States of America, concluded at Berlin, the eleventh day of July, one thousand seven hundred and ninety-nine.

Ordered, That the Secretary lay this resolution before the President of the United States.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE SECOND SESSION OF THE SIXTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, NOVEMBER 17, 1800.

MONDAY, November 17, 1800.

This being the day appointed by law for the commencement of the second session of the sixth Congress, the following members of the House of Representatives appeared, and took their seats in the House, to wit:

From New Hampshire—ABIEL FOSTER, and JONATHAN FREEMAN.

From Massachusetts—WILLIAM SHEPARD, JNO. REED, JOSEPH B. VARNUM, THEODORE SEDGWICK, (*Speaker*,) PELEG WADSWORTH, SILAS LEE, and LEMUEL WILLIAMS.

From Connecticut—JOHN DAVENPORT.

From New York—JOHN SMITH, PHILIP VAN CORTLANDT, JONAS PLATT, HENRY GLEN, JOHN THOMPSON, and THEODORUS BAILEY.

From Pennsylvania—MICHAEL LEIB, RICHARD THOMAS, JOSEPH HEISTER, ROBERT BROWN, PETER MUHLENBERG, HENRY WOODS, and JOHN SMILIE.

From Maryland—GEORGE DENT, GEO. BAER, WILLIAM CRAIK, GABRIEL CHRISTIE, JOHN C. THOMAS, and JOSEPH H. NICHOLSON.

From Virginia—LEVEN POWELL, JOHN NICHOLAS, ROBERT PAGE, JOHN DAWSON, ANTHONY NEW, GEORGE JACKSON, and DAVID HOLMES.

From North Carolina—NATHANIEL MACON, RICHARD STANFORD, and WILLIS ALSTON.

From South Carolina—THOMAS SUMTER, and BENJAMIN HUGER.

From Tennessee—WILLIAM C. C. CLAIBORNE.

A new member, to wit: JOHN C. SMITH, returned to serve as a member of this House, from the State of Connecticut, in the room of Jonathan Brace, who has resigned his seat, appeared and produced his credentials.

The SPEAKER observed that it had heretofore been the invariable practice of the House to admit new members to take their seats previously to being sworn, though the Constitution directed directly the reverse. As there was a new member present, he suggested the propriety of administering the oath to him before he took his seat.

Mr. MACON thought such a step premature. He was of opinion that no inconvenience would arise from delaying to administer the oath until a House was formed, and he thought great caution should attend an innovation opposed to all precedent.

Mr. NICHOLAS asked, whether it had heretofore been usual, in the case of a new House, to swear the members before the choice of a Speaker?

The SPEAKER replied that it had not.

Mr. NICHOLAS said, that though, on first thought, he was favorable to administering the oath at the present time, yet this precedent inclined him to think such a step improper.

The SPEAKER waived the question.

The members present not being sufficient to form a quorum, the SPEAKER adjourned the body till to-morrow.

TUESDAY, November 18.

Several other members, to wit: from Connecticut, ELIZUR GOODRICH, WILLIAM EDMOND, and ROGER GRISWOLD; from New York, WILLIAM COOPER and LUCAS ELMENDORF; from New Jersey, JAMES H. IMLAY and FRANKLIN DAVENPORT; from Pensylvania, ROBERT WALN; from Maryland, SAMUEL SMITH; from Virginia, HENRY LEE, THOMAS EVANS, and JOHN TRIGG; from North Carolina, RICHARD DOBBS SPAIGHT, and JOSEPH DICKSON; and from Georgia, BENJAMIN TALIAFERRO: appeared and took their seats in the House.

And a quorum, consisting of a majority of the whole number, being present,

The oath to support the Constitution of the United States, as prescribed by the act, entitled "An act to regulate the time and manner of administering certain oaths," was administered by the SPEAKER to JOHN C. SMITH, a new member, who appeared and took his seat in the House yesterday.

Ordered, That a message be sent to the Senate to inform them that a quorum of this House is assembled, and ready to proceed to business; and that the Clerk of this House do go with said message.

Ordered, That a Committee of Commerce and Manufactures be appointed, pursuant to the standing rules and orders of the House.

And a committee was appointed, consisting of Mr. SAMUEL SMITH, Mr. WALN, Mr. FRANKLIN DAVENPORT, Mr. HUGER, Mr. PARKER, Mr. ELIZUR GOODRICH, and Mr. SILAS LEE.

Ordered, That a Committee of Elections be appointed, pursuant to the standing rules and orders of the House.

And a committee was appointed, consisting of Mr. Dent, Mr. Lemuel Williams, Mr. Edmond, Mr. Muhlenberg, Mr. Evans, Mr. Dickson, and Mr. Claiborne.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers, such as the members, respectively, shall choose, to be delivered at their lodgings.

Wednesday, November 19.

Several other members, to wit: from Vermont, Lewis R. Morris, and from Virginia, Josiah Parker and John Randolph, appeared and took their seats in the House.

There being no quorum in the Senate, the House adjourned until to-morrow morning, eleven o'clock.

Thursday, November 20.

Two other members, to wit: from Virginia Abram Trigg, and from Pennsylvania, Andrew Gregg, appeared and took their seats in the House.

Ordered, That the Clerk of this House have leave to be absent from the service of the House for three weeks.

Resolved, That a Standing Committee of Ways and Means be appointed whose duty it shall be to take into consideration all such reports of the Treasury Department, and all such propositions relative to the revenue, as may be referred to them by the House; to inquire into the state of public debt; of the revenue, and of the expenditures; and to report, from time, to time their opinion thereon.

Ordered, That Mr. Griswold, Mr. Powell, Mr. Bartlett, Mr. Nicholas, Mr. Imlay, Mr. Nicholson, Mr. Taliaferro, Mr. Wood, and Mr. Smilie, be appointed a committee, pursuant to the said resolution.

Ordered, That a Committee of Revisal and Unfinished Business be appointed, pursuant to the standing rules and orders of the House;

And a committee was appointed, of Mr. Platt, Mr. Evans, and Mr. Alston.

Ordered, That a Committee of Claims be appointed, pursuant to the standing rules and orders of the House;

And a committee was appointed, of Mr. Macon, Mr. John C. Smith, Mr. Morris, Mr. John Chew Thomas, Mr. Gregg, Mr. Holmes, and Mr. Bartlett.

And then the House adjourned until to-morrow morning, eleven o'clock.

Friday, November 21.

Several other members, to wit: from Massachusetts, George Thatcher; from New Jersey, John Condit, Aaron Kitchell, and James Lynn; from Pennsylvania, John A. Hanna; and from South Carolina, Robert Goodloe Harper; appeared and took their seats in the House.

The Speaker laid before the House a letter from Thomas Claxton, the Doorkeeper, stating that certain expenditures will be requisite, and further assistance necessary to be allowed, the better to enable him to fulfil the duties of his station; which was read, and ordered to be referred to Mr. Nicholson, Mr. Powell, and Mr. Cooper.

A message from the Senate, informed the House that a quorum of the Senate is assembled, and ready to proceed to business, and that, in the absence of the Vice President, they have elected the Hon. John Howard President of the Senate, *pro tempore*.

Resolved, That Mr. Griswold, Mr. Samuel Smith, and Mr. Craik, be a committee, on the part of this House, jointly, with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications he may think proper to make to them.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

A message from the Senate informed the House that the Senate have appointed a committee jointly, with the committee appointed by this House, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications he may think proper to make to them.

Mr. A. Foster made a motion for the appointment of two Chaplains of different religious denominations, one to be appointed by each House, to interchange weekly; which was agreed to.

It was afterwards moved by Mr. Thatcher, and agreed to by the House, to strike out those parts of the motion which prescribed that the Chaplains should be of different denominations, and should interchange weekly.

Mr. Griswold, from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications he may think proper to make to them, reported that the committee had performed that service, and that the President signified to them he would make a communication to both Houses to-morrow at twelve o'clock, in the Senate Chamber.

Mr. Nicholson, from the committee to whom was this day referred the letter of Thomas Claxton, Doorkeeper of the House, made a report; which was read and considered: Whereupon,

Resolved, That Thomas Claxton be, and he is hereby, authorized to employ one additional assistant, and two horses, for the purpose of performing such services as are usually required of the Doorkeeper to the House of Representatives; and that the sum of twenty-eight dollars be allowed him weekly, for that purpose, during the session, and for twenty days afterwards.

Resolved, That the said Thomas Claxton be, and he is hereby, authorized to cause to be erected a shelter for the purpose of protecting from the weather, the fire-wood that may be required by the two Houses of Congress; and that he be paid therefor out of the fund appropriated for the contingent expenses of the House.

AMENDMENTS TO THE CONSTITUTION.

Mr. Nicholas observed that he had submitted, during the last session, certain propositions to amend the Constitution, as far as it related to the choice of Electors of President and Vice President, and to the election of members of the House of Representatives: but having found that they clashed with the opinions of many members, and not having then maturely considered them himself, he thought it best at that time to waive a conclusive consideration of them. Deeming the object of great importance, and considering the present a fit time to discuss it, he offered two amendments, which he wished to lie on the table for consideration—as follows:

Resolved, by the Senate and House of Representatives of the United States, two-thirds of both Houses concurring, That the following articles be proposed to the Legislatures of the United States, as amendments to the Constitution of the United States:

1. That, after the third day of March, in the year one thousand eight hundred and one, the choice of Electors of President and Vice President shall be made by dividing each State into a number of districts, equal to the number of Electors to be chosen in such State, and by the persons in each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State, choosing one Elector, in the manner which the Legislature thereof shall prescribe.

2. That the election of Representatives to Congress, who are to serve after the third day of March, in the year one thousand eight hundred and three, shall be by dividing each State into a number of districts equal to the number of Representatives to which such State shall be entitled, and by the people within each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Representative, in the manner which the Legislature thereof shall prescribe.

Mr. Harper was of opinion that the necessary propositions on this subject would require more detail than those just moved; he therefore moved their reference to a select committee.

Ordered, That the said motion be referred to Mr. Nicholas, Mr. Harper, Mr. Macon, Mr. Griswold, and Mr. Evans.

Saturday, November 22.

Two other members, to wit: from North Carolina, Archibald Henderson; and from Virginia, Edwin Gray; appeared and took their seats in the House.

PRESIDENT'S SPEECH.

A message from the Senate, informed the House that the Senate are now ready, in the Senate Chamber, to attend this House in receiving the communication from the President of the United States, agreeably to his notification to both Houses yesterday.

Mr. Speaker, attended by the members of this House, then withdrew to the Senate Chamber, for the purpose stated in the Senate's message; and, being returned, Mr. Speaker laid before the House a copy of the Speech delivered by the President of the United States to both Houses of Congress, in the Senate Chamber. [See Senate proceedings of this date, *ante*, page 723.]

Ordered, That the said Speech be committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said Committee; and, after some time spent therein, Mr. Speaker resumed the Chair, and Mr. Harper reported that the Committee had had the said Speech under consideration, and come to a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That it is the opinion of this Committee that a respectful Address ought to be presented by the House of Representatives to the President of the United States, in answer to his Speech to both Houses of Congress, at the commencement of the present session, containing assurances that this House will duly attend to the important objects recommended by him to their consideration.

Ordered, That Mr. Griswold, Mr. Macon, Mr. Craik, Mr. Henderson, and Mr. Nicholas, be appointed a committee to prepare an Address, pursuant to the said resolution.

Ordered, That the Speech of the President of the United States be committed to the Committee of the whole House on the state of the Union.

And then the House adjourned.

Monday, November 24.

Several other members, to wit: from Massachusetts, Harrison G. Otis, and Phanuel Bishop; from Virginia, Matthew Clay; and from North Carolina, David Stone; appeared and took their seats in the House.

William M'Millan, returned to serve as a Representative for the Territory of the United States Northwest of the Ohio, in the room of William Henry Harrison, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

The Speaker laid before the House a letter from the Secretary of the Treasury; which was read, and is as follows:

Treasury Department,
Washington, Nov. 22, 1800.

Sir: I deem it proper, through you, to inform the House of Representatives, that I have obtained the permision of the President of the United States to resign the office of Secretary of the Treasury, at the close of the present year.

I indulge a hope that I may, without presumption, declare, that the different offices with which I have been entrusted since the establishment of this Department, have been executed according to my best skill and judgment, with a conscientious regard to the rights of the public and of individuals, and under an impressive sense of responsibility to the Government. In conformity with these professions, I now freely submit the whole of my conduct to any investigation which the House of Representatives may be pleased to institute.

I cannot omit this only opportunity which may ever be afforded, of expressing the sincere sentiments of gratitude which I now feel and shall ever cultivate, for the many proofs of confidence and indulgence which I have experienced in the course of my official communications

with the Legislature; at the same time I request, that, if the liberty I have now taken to invite their attention to a matter of personal concern, should be deemed in any degree unsuitable, the error may be attributed to a just and a reasonable desire, that my conduct may, on proper evidence, appear to have deserved their approbation.

I have the honor to be, with perfect esteem and deference, sir, your most obedient servant,

OLIVER WOLCOTT.

Hon. Theodore Sedgwick,
Speaker of the House of Representatives.

Ordered, That the said letter do lie on the table.

Tuesday, November 25.

Another member, to wit: John Wilkes Kittera, from Pennsylvania, appeared, was qualified, and took his seat in the House.

A new member, to wit: Nathan Read, returned to serve as a member of this House from the State of Massachusetts, in the room of Samuel Sewall, who has resigned his seat, appeared, produced his credentials, and took his seat in the House.

Mr. Griswold, from the committee appointed to prepare an Address in answer to the Speech of the President of the United States to both Houses of Congress, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

On motion of Mr. Nicholson,

Resolved, That provision ought to be made by law for extending the privilege of franking to the Delegate, for the time being, from the Territory of the United States Northwest of the Ohio, and for making the same compensation to him, for his attendance, that is allowed to the members of the House of Representatives of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Nicholson, Mr. Parker, and Mr. Thatcher, do prepare and bring in the same.

The Speaker laid before the House a congratulatory letter from sundry inhabitants of the District of Columbia, on the first assemblage of Congress at the permanent seat of Government; which was read, and ordered to be referred to Mr. John Chew Thomas, Mr. Evans, and Mr. Craik.

THE SECRETARY OF THE TREASURY.

Mr. Otis observed that a letter had been received from the Secretary of the Treasury announcing his intention to resign at the termination of the present year, on which the House had taken no order. Holding a high and responsible office, it appeared the wish of the Secretary, before he retired into private life, to court an examination into the manner in which he had discharged the duties by law assigned him. In his opinion, the highest reward, which a faithful discharge of duty could receive was the approbation of those whose province it was to superintend the management of the public treasure; and believing, as he did, that the Secretary of the Treasury had discharged his official duties with ability and integrity, he was persuaded, that on inquiry, the House would not hesitate to say so. He wished the letter to be referred at present to a select committee, and promised in the course of a few days to offer to the House such instructions as might guide them in the inquiry which they might deem advisable to make. He forbore to state what those instructions would be, as he had not yet made up his mind on the subject. He concluded with moving a reference to a select committee.

Mr. Nicholas had no objection whatever to bestowing on a meritorious officer the approbation of the House, and he was disposed to consider the Secretary of the Treasury as of that character. But he was opposed to the precipitancy of the measure proposed. Even the gentleman, with whom it originated, had not digested in his own mind, the subject, nor had he proposed any specific mode of inquiry. He thought this ought to be done previously to a reference.

Mr. Otis said, that before he stated the manner in which it would be advisable to make the inquiry, he wished to consult precedents, which he had not had time to do. In the mean time, he thought it best to refer the letter generally. The Secretary had a claim on the earliest attention of the House, in case any inquiry was deemed proper.

Mr. Griswold hoped that an immediate reference would obtain. The committee, on examining the nature of the subject, may report the proper mode of procedure. If it be understood that, on the retirement of every Secretary of the Treasury from office, an inquiry is to be made into his official conduct, it will operate as a general stimulus to the faithful discharge of duty. As to the nature of the instructions to be given to the committee, it will be time enough to discuss them when offered.

Mr. Nicholas would not ask the mover of the reference what mode he meant to pursue, because he had informed the House that he did not know; but he would ask the gentleman, who had just spoken, what his views were, as on the line pursued depended altogether the propriety of the measure. Until the objects of inquiry were declared, and the mode of procedure designated, he was averse to taking any steps; for on these essentially depended the eligibility of the measure. It was notorious that the duties of the Secretary of the Treasury were so extensive and complicated, that a general inquiry into them all would not be in the power of a large deliberative body. And unless the greatest care were taken, the proposed examination might result in a disregard of those points which required attention, and a notice of those which required no investigation at all. Thus, under the name of an inquiry, nothing but the form of an investigation would be effected.

Mr. H. Lee thought it would be an act of injustice to the character of the Secretary, and an act of injustice to the country at large, to withhold an agreement to the proposition made by the gentleman from Massachusetts. It was known to the whole world that the most fictitious charges had resounded from one end of the Union to the other. Believing them to be groundless, in his opinion the honor of the country called for an investigation.

If the charges should be sustained, the Secretary ought to receive the censure of the House; but if they should be demonstrated to be false, we owed him our approbation. While he considered him as combining ability, integrity, and honor, he would give him his support; and he would do all in his power to wipe off the suspicions which, in some minds, had attached to his character.

The question was then taken on the reference, and carried in the affirmative, and a committee of seven appointed viz: Mr. Otis, Mr. Nicholas, Mr. Griswold, Mr. Nicholson, Mr. Waln, Mr. Stone, and Mr. Craik.

The House then went into a Committee of the Whole on the state of the Union, Mr. Morris in the Chair. The President's Speech being read by paragraphs, a motion was made to refer a particular part thereof to a committee, and was carried; but on the suggestion of Mr. Otis that it was unusual to act on the several parts of the Speech, before agreeing to an answer, the Committee rose.

The House being resumed, Mr. H. Lee, after some prefatory remarks, moved the appointment of a committee to report such measures as it may be proper to adopt to carry into effect the resolutions passed last session commemorative of the political services of George Washington, to report by bill or otherwise. Ordered to lie on the table.

Wednesday, November 26.

A new member, to wit: Littleton W. Tazewell, returned to serve as a member of the House for the State of Virginia, in the room of John Marshall, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

A message was received from the Senate, informing the House that they had agreed to the resolution for appointing Chaplains, with an amendment, directing that the Chaplains should be of different denominations; in which amendment the House concurred—yeas 36, nays 34.

Mr. Platt, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journals of the last session of Congress, and report therefrom all such matters of business as were then depending and undetermined, made a report, in part; which was read, and ordered to lie on the table.

ADDRESS TO THE PRESIDENT.

The House went into a Committee of the Whole on the reply to the President's Speech, which was read by paragraphs, and reported to the House without any amendments, as follows:

To John Adams, *President of the United States:*

Sir: The House of Representatives have received with great respect the communication which you have been pleased to make to the two Houses of Congress, at the commencement of the present session.

The final establishment of the Seat of National Government which has now taken place within the District of Columbia, is an event of no small importance in the political transactions of our country: and we cordially unite our wishes with yours, that this Territory may be the residence of happiness and virtue.

Nor can we, on this occasion, omit to express a hope, that the spirit which animated the great founder of this city, may descend to future generations, and that the wisdom, magnanimity, and steadiness, which marked the events of his public life, may be imitated in all succeeding ages.

A consideration of those powers which have been vested in Congress over the District of Columbia will not escape our attention; nor shall we forget that, in exercising these powers, a regard must be had to those events which will necessarily attend the Capital of America.

The cheerfulness and regularity with which the officers and soldiers of the Temporary Army have returned to the condition of private citizens, is a testimony clear and conclusive of the purity of those motives which induced them to engage in the public service; and will remain a proof, on all future occasions, that an army of soldiers drawn from the citizens of our country, deserve our confidence and respect.

No subject can be more important than that of the Judiciary, which you have again recommended to our consideration, and it shall receive our early and deliberate attention.

The Constitution of the United States having confided the management of our foreign negotiations to the control of the Executive power, we cheerfully submit to its decisions on this important subject. And in respect to the negotiations now pending with France, we sincerely hope that the final result may prove as fortunate to our country as the most ardent mind can wish.

So long as a predatory war is carried on against our commerce, we should sacrifice the interests and disappoint the expectations of our constituents, should we, for a moment, relax that system of maritime defence, which has resulted in such beneficial effects. At this period, it is confidently believed that few persons can be found within the United States, who do not admit that a Navy, well organized, must constitute the natural and efficient defence of this country against all foreign hostility.

The progress which has been made in the manufacture of arms, leaves no doubt that the public patronage has already placed this country beyond all necessary dependence on foreign markets for an article so indispensable for defence; and gives us assurances that, under the encouragement which Government will continue to extend to this important object, we shall soon rival foreign countries, not only in the number, but in the quality of arms completed from our own manufactories.

Few events could have been more pleasing to our constituents, than that great and rapid increase of revenue which has arisen from permanent taxes. Whilst this event explains the great and increasing resources of our country, it carries along with it a proof which cannot be resisted, that those measures of maritime defence which were calculated to meet our enemy upon the ocean, and which have produced such extensive protection to our commerce, were founded in wisdom and policy. The mind must, in our opinion, be insensible to the plainest truths, which cannot discern the elevated ground on which this policy has placed our country. That national spirit, which alone could vindicate our common rights, has been roused, and those latent energies, which had not been fully known, were unfolded and brought into view, and our fellow-citizens were prepared to meet every event which national honor or national security could render necessary. Nor have its effects been much less important in other respects.

Whilst many of the nations of the earth have been impoverished and depopulated by internal commotions and national contests, our internal peace has not been materially impaired; our commerce has extended, under the protection of our infant Navy, to every part of the globe; wealth has flowed without intermission into our seaports, and the labors of the husbandman have been rewarded by a ready market for the productions of the soil.

Be assured, sir, that the various and important subjects recommended to our consideration, shall receive our early and deliberate attention; and, confident of your co-operation in every measure which may be calculated to promote the general interests, we shall endeavor, on our part, to testify, by our industry and despatch, the zeal and sincerity with which we regard the public good.

The report of the Committee was immediately taken up, and, on the question to agree to the Address,

Mr. NICHOLAS rose and observed that he regretted the introduction of political matter, calculated to produce discord and division. He was averse to the House spending time in propounding political theories, as no good, but much mischief, might flow from such a procedure. Had no other topics or sentiments been alluded to than those contained in the President's Speech, there would have been much less division in the House than was to be expected from the insertion of extraneous ideas. He had no intention, however, to enter into a detail of the objections he entertained to the Address. For the reasons he had assigned, and others which he felt, he thought the style of the Address not only unnecessary, but worse than useless. He concluded by desiring the yeas and nays to be taken.

The question being taken, was carried in the affirmative—yeas 36, nays 32, as follows:

YEAS—Bailey Bartlett, William Cooper, Wm. Craik, John Davenport, Franklin Davenport, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Elizur Goodrich, Roger Griswold, Archibald Henderson, Benjamin Huger, Jas. H. Imlay, Henry Lee, Silas Lee, James Linn, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, Nathan Read, Wm. Shepard, John C. Smith, Richard Dobbs Spaight, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, John Dawson, Lucas Elmendorf, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Jos. B. Varnum.

Resolved, That Mr. SPEAKER, attended by the House, do present the said Address; and that Mr. GRISWOLD, Mr. MACON, and Mr. CRAIK, be a committee to wait on the President to know when and where it will be convenient for him to receive the same.

CREDENTIALS OF MEMBERS.

Mr. DENT, from the Committee of Elections, to whom were referred the certificates and other credentials of the members returned to serve in this House, made a report, in part, which was read, as follows:

"That they have examined the credentials of several members, claiming seats in this House, in consequence of resignations which have taken place, and find that, by the certificate of the Governor of Massachusetts, dated the eleventh day of November, eighteen hundred, under the seal of the State, Nathan Read, (of Danvers,) is duly elected, in the place of Samuel Sewall; that by the certificate of the Governor of Connecticut, bearing date twentieth day of October, eighteen hundred, with the seal of the State annexed, John Cotton Smith is duly elected, in the place of Jonathan Brace; and that, by the certificate of the Deputy Sheriff of Henrico, the Sheriff of Hanover, the Sheriff of New Kent, the Deputy Sheriff of Charles City, and the Sheriff of James City counties, composing one entire district in the Commonwealth of Virginia, under their respective seals, Lyttleton Waller Tazewell is duly elected, in the place of John Marshall.

"The committee also find, by an authenticated certificate, signed by the Speaker of the House of Representatives, and the President of the Legislative Council of the Territory Northwest of the river Ohio, dated the seventh day of November, eighteen hundred, that William McMillan is duly elected to represent the said Territory, in the place of William Henry Harrison.

"Whereupon, the committee are of opinion that Nathan Read, (of Danvers,) John Cotton Smith, and Lyttleton Waller Tazewell, are entitled to take their seats in the House, in the place of Samuel Sewall, Jonathan Brace, and John Marshall, who have resigned; and that William McMillan is entitled to take his seat therein, with the right of debating, but not of voting in the place of William Henry Harrison, who has resigned."

Ordered, That the said report do lie on the table.

On motion it was *Resolved*, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have power to report by bill or otherwise.

Ordered, That Mr. THATCHER, Mr. WOODS, Mr. CLAIBORNE, Mr. DICKSON, and Mr. NEW, be appointed a committee, pursuant to the said resolution.

On motion, of Mr. LEE, it was

Resolved, That a committee be appointed to report, by bill or otherwise, such further measures as may be deemed expedient to carry into execution the resolutions of Congress, passed the last session, in commemoration of the great events of the military and political life of GEORGE WASHINGTON.

Ordered, That Mr. HENRY LEE, Mr. ELIZUR GOODRICH, Mr. HUGER, Mr. POWELL, Mr. FOSTER, Mr. SPAIGHT, and Mr. BARTLETT, be appointed a committee, pursuant to the said resolution.

Resolved, That this House, will, to-morrow proceed, by ballot, to the appointment of a Chaplain to Congress, on the part of this House.

THURSDAY, November 27.

Another member, to wit: JOHN BIRD, from New York, appeared and took his seat in the House.

Mr. NICHOLSON, from the committee appointed, presented a bill extending the privilege of franking letters to the Delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation; which was twice read, and committed to a Committee of the whole House to-morrow.

ANSWER TO THE ADDRESS.

The SPEAKER, attended by the House, then withdrew to the house of the PRESIDENT OF THE UNITED STATES, and there presented to him the Address of this House in answer to his Speech to both Houses of Congress; to which the PRESIDENT made the following reply:

Mr. Speaker, and Gentlemen of the House of Representatives:

Compelled by the habits of a long life, as well as by all the principles of society and government which I could ever understand and believe, to consider the great body of the people as the source of all legitimate authority, no less than all efficient power, it is impossible for me to receive this Address from the immediate Representatives of the American people, at this time, and in this place, without emotions which it would be improper to express, if any language could convey them.

May the spirit which animated the great founder of this city descend to future generations; and may the wisdom, magnanimity, and steadiness, which marked the events of his public life, be imitated in all succeeding ages.

I thank you, gentlemen, for your assurance that the Judiciary System shall receive your deliberate attention.

With you, gentlemen, I sincerely hope that the final result of the negotiations now pending with France, may prove as fortunate to our country, as they have been commenced with sincerity, and prosecuted with deliberation and caution. With you, I cordially agree, that, so long as a predatory war is carried on against our commerce, we should sacrifice the interests and disappoint the expectations of our constituents, should we for a moment relax that system of maritime defence, which has resulted in such beneficial effects. With you, I confidently believe that few persons can be found within the United States, who do not admit that a Navy, well organized, must constitute the natural and efficient defence of this country, against all foreign hostility.

Those who recollect the distress and danger to this country, in former periods, from the want of arms, must exult in the assurance, from their Representatives, that we shall soon rival foreign countries, not only in the number, but in the quality of arms, completed from our own manufactories.

With you, gentlemen, I fully agree, that the great increase of revenue is a proof that the measures of maritime defence were founded in wisdom. This policy has raised us in the esteem of foreign nations. That national spirit and those latent energies which had not been and are not yet fully known to any, were not entirely forgotten by those who had lived long enough to see, in former times, their operation, and some of their effects. Our fellow-citizens were undoubtedly prepared to meet every event which national honor or national security could render necessary. These, it is to be hoped, are secured at the cheapest and easiest rate; if not, they will be secured at more expense.

I thank you, gentlemen, for your assurance that the various subjects recommended to your consideration, shall relieve your deliberate attention. No further evidence is wanting to convince me of the zeal and sincerity with which the House of Representatives regard the public good.

I pray you, gentlemen, to accept of my best wishes for your health and happiness.

JOHN ADAMS.

WASHINGTON, *Nov.* 27, 1800.

The members then returned to their Chamber.

A message from the Senate informed the House that the Senate have proceeded to the appointment of a Chaplain to Congress, on their part, and the Right Reverend Bishop CLAGETT has been duly elected.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend THOMAS LYELL.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

FRIDAY, November 28.

Another member, to wit: ABRAHAM NOTT, from South Carolina, appeared, and took his seat in the House.

The SPEAKER laid before the House a report of the Commissioners of the Sinking Fund, enclosing a statement of the proceedings which have been authorized by the Board, since their report of the eleventh of December, one thousand seven hundred and ninety-nine; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from Oliver Pollock, praying the attention of the House to his petitions, presented at former sessions, for compensation due him for services rendered to the United States during the late war; which was read, and ordered to lie on the table.

The House then resolved itself into a Committee of the Whole on the bill extending the privilege of franking letters to the Delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation; and, after some time spent therein, Mr. MORRIS reported that the Committee had had the said bill under consideration, and made no amendment thereto.

The bill was then ordered to be engrossed, and read the third time to day.

THE PRESIDENT'S SPEECH.

The House resolved itself into a Committee of the Whole on the state of the Union; and, after some time spent therein, the SPEAKER resumed the Chair, and Mr. MORRIS reported that the Committee had had the state of the Union under consideration, and come to several resolutions thereupon; which he delivered in at the Clerk's table, where the same were severally twice read, and agreed to by the House, as follows:

1. *Resolved*, That so much of the President's Speech as respects the District of Columbia, ought to be referred to a select committee; and that the said committee be authorized to report by bill or otherwise.

2. *Resolved*, That so much of the President's Speech as respects the national administration of justice, ought to be referred to a select committee; and that the said committee be authorized to report by bill or otherwise.

3. *Resolved*, That so much of the President's Speech as respects seasonable and systematic arrangements, proportioned to our national resources, for a Navy adapted to defensive purposes, ought to be referred to a select committee; and that the said committee be authorized to report by bill or otherwise.

4. *Resolved*, That so much of the President's Speech as respects the fortifications of some of the principal ports and harbors of the United States, ought to be referred to a select committee; and that the said committee be authorized to report by bill or otherwise.

5. *Resolved*, That so much of the President's Speech as respects the manufacture of arms within the United States, ought to be referred to a select committee; and that the said committee be authorized to report by bill or otherwise.

Ordered, That Mr. HENRY LEE, Mr. EVANS, Mr. CRAIK, Mr. BIRD, and Mr. SILAS LEE, be appointed a committee, pursuant to the first resolution.

Ordered, That Mr. GRISWOLD, Mr. NICHOLAS, Mr. KITTERA, Mr. NICHOLSON, and Mr. HENDERSON, be appointed a committee, pursuant to the second resolution.

Ordered, That Mr. PARKER, Mr. OTIS, Mr. SPAIGHT, Mr. JOHN DAVENPORT, Mr. NOTT, Mr. TALIAFERRO, and Mr. HOLMES, be appointed a committee, pursuant to the third resolution.

Ordered, That Mr. OTIS, Mr. NICHOLAS, Mr. EDMOND, Mr. FOSTER, and Mr. ALSTON, be appointed a committee, pursuant to the fourth resolution.

Ordered, That Mr. WADE, Mr. SHEPARD, Mr. COOPER, Mr. PAGE, and Mr. WOODS, be appointed a committee, pursuant to the fifth resolution.

CANADIAN REFUGEES.

Resolved, That a committee be appointed to prepare and bring in a bill for regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia.

Ordered, That Mr. NEW, Mr. EDMOND, Mr. STONE, Mr. SILAS LEE, and Mr. RICHARD THOMAS, be appointed a committee, pursuant to the said resolution.

MONDAY, December 1.

Several other members, to wit: from Maryland, JOHN DENNIS; from Virginia, JOSEPH EGGLESTON; from North Carolina, WILLIAM H. HILL; and from Georgia, JAMES JONES; appeared and took their seats in the House.

An engrossed bill extending the privilege of franking letters to the Delegate from the Territory of the United States Northwest of the river Ohio, and making provision for his compensation, was read the third time and passed.

TUESDAY, December 2.

The SPEAKER laid before the House a letter from the Secretary of the Navy, accompanying a report of the Commissioners of the fund for navy pensions and half-pay, pursuant to the act for the better government of the Navy of the United States; which was read, and ordered to lie on the table.

Mr. LEE, from the committee appointed for that purpose, reported a bill for erecting a Mausoleum to GEORGE WASHINGTON, which was read twice and referred to a Committee of the Whole tomorrow.

The bill directs that the mausoleum shall be of marble, to be erected in the City of Washington, under the superintendence of the four Secretaries.

TRADE WITH THE INDIANS.

Mr. CLAIBORNE stated that during the last session a committee was appointed to inquire into the state of the trade, authorized by law, with the Indian nations. That committee had reported unfavorably to the trade. But desirous of maturing with deliberation a new plan before the old one was supplanted, they had reported a bill for continuing the existing system for one year. The bill had passed the House of Representatives unanimously, but had been postponed by the Senate to this session.

For his own part he was altogether unfavorable to the trade; for he believed that it answered no good purpose in relation to the Indians, while it was a loss to the United States. It was, however, proper that some legislative provision should be made immediately. The old law, regulating the officers who had the superintendence of the trade, had expired, and they were of consequence under no legal control.

He, therefore, moved the appointment of a committee, to inquire into the expediency of carrying on any further trade on a capital furnished by the United States, to report by bill or otherwise; which motion being read a second time, was agreed to, and a committee of three appointed.

EXAMINATION OF THE TREASURY.

Mr. OTIS observed, that at the time he moved for the reference of the letter from the Secretary of the Treasury, he was of opinion that it might be necessary to give particular instructions to the committee to regulate their measures in the contemplated investigation. But, on further reflection, he thought it would be best to leave the committee at large to make the investigation in such way as they, in the progress of their inquiries, should consider most satisfactory. Objects, not foreseen, might occur, requiring different modes of procedure from any now agreed upon. Such was the opinion of the committee, who had directed him to move an instruction to the committee to examine into the state of the Treasury, the mode of conducting business therein, the expenditures, of the public money, and to report such facts and statements as will conduce to a full and satisfactory understanding of the state of the Treasury, since the appointment of the Secretary.

The motion was agreed to.

WEDNESDAY, December 3.

Ordered, That the report of the Committee of Claims on the petition of Oliver Pollock, made the eighteenth of April last, together with his letter presented the twenty-eighth ultimo, be referred to the Committee of Claims.

THURSDAY, December 4.

Another member, to wit: SAMUEL GOODE, from Virginia, appeared, and took his seat in the House.

The SPEAKER informed the House that the Chaplains had proposed, if agreeable to the House, to hold Divine service every Sunday in their Chamber.

REPORTING THE DEBATES.

Mr. HILL presented a memorial from Samuel Harrison Smith and Thomas Carpenter, representing that they had undertaken to report the debates of the House; that, contrary to their expectation—on the suggestion of inconvenience to the members—they had not received permission to occupy a situation within the bar, without which they were unable to state with fidelity the proceedings and debates; and praying the permission of the House to be admitted within the bar.

As soon as the memorial was read, the SPEAKER rose and observed, that feeling himself responsible to the House for the faithful discharge of the duties attached to his situation, he thought it proper to state the line of conduct he had pursued in this business. He stated that he was applied to by letter on the first day of the session, by Mr. Stewart, requesting permission to occupy a place within the bar; that he immediately took the request into consideration; that, in the mean time, similar requests were made by other individuals; that, on observing the structure of the room and the arrangement of the furniture, it at once appeared to him inconsistent with the dignity of the House or the convenience of the members to grant the permission asked; that the area was too small to afford the necessary accommodation; that the position considered as the least inconvenient to the House was within the window-frames; that, in his opinion, this position would not be agreeable to the stenographers, as the view of the members on the opposite side of the House from either window would be obstructed; that, if a position was assigned in any other part of the House, the stenographers would be between the Chair and some of the members, which would render the preservation of order impossible; that he had stated these reasons, and informed the applicants that, if agreeable to them, he would assign a place in the gallery, which should be set apart for their exclusive use; and that he considered that to be the most eligible position. He concluded by repeating, that it was, in his opinion, absolutely impossible to preserve the dignity of the House, and to maintain the convenience of the members, if the requested permission were given. Such was his first, his invariable opinion—it was unaltered—it was still the same.

Mr. NICHOLAS said, that the members of the House must feel a common interest in having the debates taken with fidelity. If the debates were taken, they ought to be taken with precision. Those who took them should not be debarred from the best means of hearing with accuracy. For his part he could not discern the inconvenience alleged to exist. The desk, which it was necessary to admit within the bar, would not project beyond the window-frame; and as to the remark of the Speaker respecting the inconvenience of such a position to the stenographers, it was easily obviated by the consideration, that any inaccuracy which might occur in the report of the individual who took them on one side of the Chair, would be checked by the reporter situated on the other side.

He thought the desire of the memorialists ought not to be passed over lightly. They had a right to the best place the House could assign. He moved the reference of the memorial to a select committee.

Mr. HILL observed that as the memorial contained no facts that required the investigation of a committee, and as the House possessed all the information that could guide their decision, he did not discern the propriety of the proposed reference. He had prepared a resolution, which, if the motion for a reference were withdrawn, he would offer.

Mr. NICHOLAS immediately withdrew his motion. Mr. HILL then proposed a resolution substantially to this effect: that Mr. Speaker be requested to assign places within the bar for the stenographers.

Mr. OTIS was sorry the gentleman from Virginia had withdrawn his motion to refer the memorial to a select committee, as he thought the subject required examination before a decision was made. There appeared to him much weight in the ideas of the Speaker. Grant, for the sake of argument, that four persons may be accommodated at the windows. Might there not be other applications? Was any gentleman prepared to say how many would be made? If the permission were once granted to one, would it not be necessary to extend it to all? Would the House suffer any individual to have an exclusive benefit whereby a stamp of authenticity would be fixed on his statements.

This business, in one shape or other, had often been before the House, and all conversation respecting it had always issued in leaving it to the regulation of the Speaker. This appeared to him the best termination it could receive.

From the attention he had paid to the debates reported this session, he believed them to be better and more accurately taken, than they had been on former occasions. This to him was a proof that the present situation of the stenographers was a good one. He acknowledged, at the same time, that the ability with which the debates were taken entitled those who took them to the best accommodation the House could afford. He concluded

with renewing the motion for a reference to a select committee.

Mr. NICHOLAS replied, that no debate had taken place which could test the accuracy of the stenographers. From his own experience he pronounced the situation at present occupied utterly inconvenient. What he had some days since remarked had been misstated. He well knew that this did not arise from the inability of the reporter to state correctly what occurred. He knew him to be intelligent, and fully capable of conceiving and conveying the meaning of any remarks which could be made in that House. But it arose from his situation, from which it was impossible to hear distinctly.

He declared the objections of Mr. OTIS, in relation to the number of applicants, perfectly chimerical. Did the gentleman suppose that the number would be so great as to make a demand on their seats? As well might he imagine this, as that they would swell to the ideal compass he had given them. It was known to the House, that at Philadelphia the number was small; seldom more than two, and often not more than one persevered during the session, though a greater number appeared on its earliest days. Fact and experience, therefore, demonstrated the fallacy of the danger apprehended from this source.

The question was then taken on the reference to a select committee, and carried, ayes 42, noes 34.

And a committee of five, viz: Messrs. OTIS, NICHOLAS, PLATT, MORRIS, and HILL, was appointed.

FRIDAY, December 5.

Several members, to wit: from North Carolina, WILLIAM BARRY GROVE; from Kentucky, THOMAS T. DAVIS; and from Rhode Island, CHRISTOPHER G. CHAMPLIN, appeared and took their seats in the House.

A petition of Thomas Jenkins and Sons was presented to the House, praying an American register for a vessel, the property of the petitioners; referred to the Committee of Commerce and Manufactures.

Mr. MACON, from the Committee on Claims, to whom was referred, on the third instant, a letter from Oliver Pollock, together with his former petitions, made a report; which was read, and ordered to lie on the table.

MAUSOLEUM TO WASHINGTON.

Mr. H. LEE moved that the House do go into a Committee of the Whole on the bill "directing the erection of a mausoleum to GEORGE WASHINGTON."

On which motion the House divided—yeas 36, nays 34. Mr. MORRIS took the Chair.

The CHAIRMAN, after reading the bill through, proceeded to read it by paragraphs. The first section is as follows:

"SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a mausoleum of American granite and marble, in a pyramidal form, one hundred feet square at the base, and of a proportionate height, shall be erected, in testimony of the love and gratitude of the citizens of the United States, to GEORGE WASHINGTON."

Mr. ALSTON moved an amendment to the first section, which was, in substance, "that a monument of marble be erected in the Capitol, at the City of Washington, commemorative of the great events of the military and political life of GEORGE WASHINGTON."

Mr. H. LEE said, that during the last session the House, after long debate, had declared itself in favor of a mausoleum, and that as no reasons had been assigned for a change of opinion, he hoped they would persevere in the deliberate result of their judgment.

Mr. OTIS was ready to acknowledge himself unacquainted with many of the circumstances embraced by the subject. He therefore wished additional information to that which he had received. His present opinion was, that a mausoleum was preferable to a monument. He acknowledged that, in forming this opinion, he had felt great deference for the judgment of the committee which had recommended it. It was undoubtedly a subject but little understood. The formation of a proper decision depended upon a concurrence of several circumstances—upon a comparison of the expense with the value of the object to be accomplished. Besides this, it had many peculiar features not comprehended by every gentleman. He thought these considerations sufficient to induce the House to decline voting for the amendment, whereby the plan of the committee, who had maturely considered the subject in all its relations, would be frustrated, unless stronger reasons were assigned than he had yet heard.

Mr. NICHOLAS observed, that the bill directed the erection of a mausoleum of certain dimensions, to ascertain the expense of which an estimate had been made. But that estimate was not satisfactory. It was made without information. The sum to be expended was not fixed. It might vastly exceed any sum now contemplated. The mausoleum was to consist of a huge, ugly mass of stones heaped upon one another, to raise which a heavy and useless expense would be incurred. And what was the object? It was to perpetuate the memory of GEORGE WASHINGTON. Was the memory of that great man to be perpetuated by a heap of large inanimate objects? The best way in which his fame could be preserved would be by bringing his ashes from the place where they now lie, by depositing them in the Capitol at the will of the nation, in interring them in such a manner as had never before been done, in placing over them a plain tablet, on which every man could write what his heart dictated. This, and this only, was the basis of his fame. It was not to be blazoned by figures or representations of any other sort. It consisted in the undecaying recollection of his virtues. It must live in the national feeling, and this called not for useless expense. Twenty thousand dollars was as competent to its expression as two hundred thousand. He hoped, therefore, the amendment would be adopted, and that the terms which related to military and political achievements would be omitted. He hoped a plain monument would be erected.

His preference of a monument to a mausoleum arose not from any indisposition to celebrate the memory of our American hero. He could say as much in his praise as any man. Neither a committee of Congress nor the four Secretaries, on whom the bill devolved the superintendence, felt more zeal for the character of this great man than he did.

Mr. NOTT did not rise to consume the time of the Committee by going at large into an examination of the subject, but to explain the reasons for the vote he meant to give. He had, last session, co-operated most cheerfully in all those measures which had been pursued to express the national sensibility at the loss of that great and immortal character. In the feelings of gratitude which his services excited, no man could outdo him. Among other measures, he had been friendly to the erection of a mausoleum. But, on more reflection, he had changed his opinion. He did not believe that a huge mass of stones would add to the reputation of WASHINGTON, or be more expressive of national affection, than a marble monument. This being the case, he preferred the latter, because it was the least expensive.

Mr. GRISWOLD hoped the amendment would not prevail. It was the object of the bill to raise a monument which should last for ages, and which should be a perpetual memorial of the gratitude of America. Such would not be the case if the proposition made by the gentleman from North Carolina should be adopted. The monument proposed by him might be broken and destroyed by a lawless mob or by a set of schoolboys. For his part, he would not consent to raise such a monument to the memory of a man who had deserved so well of his country.

The bill proposed the erection of a monument that would stand unimpaired for ages. It is true that it will not perpetuate the fame of WASHINGTON; his fame required nothing which we could do to give it perpetuity; but it will perpetuate the gratitude of the country. It would be a structure that will command respect; it will be pointed to our children; they will enter it with reverence, as the spot in which the ashes of this great man are deposited.

It was undoubtedly a subject of sentiment; and subjects of such a kind must be guided by feeling. Various opinions, therefore, may naturally be expected. His opinion was, that the national sentiment called for the erection of a structure correspondent in size to the character of the man to whom it was raised.

The general outlines of the bill might now be adopted; and if there existed a variance of opinion, the subordinate members of it might be modified.

Mr. H. LEE said, if it were the wish of gentlemen to avoid the adoption of measures commemorative of the talents of the great man we have lost, it would be candid to tell us so at once. For his part, he saw little difference between the adoption of the amendment and the rejection of every plan proposed that was adequate to the occasion. Sir, said Mr. L., there is not a rich man in Europe who loses his mistress that does not raise a trophy to her memory; and shall it be said that we, who have sustained the most irreparable loss in the death of our Chief—shall it be said that we refuse to pay him those honors which are lavished so liberally upon such inferior objects? If you do not mean to come forward on the occasion, say so. Then we shall understand the reasons of opposition to the ground taken by this House last session. As yet no reasons had been assigned for abandoning it. We then declared that we would act. We exhibited a spirit worthy of the immortal WASHINGTON—worthy of the distinguished character of this House.

But should this honorable spirit, kindled by an enthusiasm in the virtues and talents of our departed benefactor, subside and be chilled by the adoption of the proposed amendment, he would condole with the House, and would rather they would be silent forever than disgrace themselves and their country by so subordinate an act.

It is true, sir, that the celebrity and the glory of WASHINGTON hang not on our plaudits. History will transmit to posterity the lustre of his fame, glittering with untarnished purity. It is not in our power either to increase or diminish it. But, sir, we may imitate his virtues and his great example. We are deeply interested in holding them forth as illustrious models to our sons. Is there, then, I ask you, any other mode for perpetuating the memory of such transcendent virtues so strong, so impressive, as that which we propose? The grandeur of the pile we wish to raise will impress a sublime awe in all who behold it. It will survive the present generation. It will receive the homage of our children's children; and they will learn that the truest way to gain honor amidst a free people is to be useful, to be virtuous.

This will not be the act of an individual. It will be the act of a Government expressing the will of a great nation. Seize then, I pray you, seize with rapture, the occasion that is now presented, thankful to the Supreme Disposer of Events for giving you an opportunity of rearing some future WASHINGTON. This is a great object; frown, then, upon all the little efforts made to defeat it.

It is certainly true, that if you erect a mausoleum, you must expend some public money. But are you not the guardians of the public treasure? Does not the selection of the best objects to which to appropriate it devolve on you? And can there be a greater, a more patriotic purpose than this? Is it not your great duty to promote the public good; and can that be more completely promoted in any other way? The sum asked is seventy thousand dollars. Who can show me in what other manner the same good can be effected by so small a sum?

But it is said that the bill vests a discretion in the Secretaries, and they may exceed the estimate. But, sir, are the Secretaries unworthy of confidence? Do not we know that we may safely rely upon them? Besides, if thought expedient, the

expenditure may be limited. Thus, surely, without prodigality on the one hand or parsimony on the other, you may do honor to yourselves and your country.

Mr. Macon did not pretend to know much about that kind of things proposed by the bill; but he believed, from the little he did know, that such a thing had not been attempted for a thousand years. The expense attending the proposed measure had been treated lightly. For himself, he was not disposed to consider seventy thousand dollars a trifling sum. He thought it a great sum, and believed every man in the country thought as he did. In forming his idea of any particular sum, he was not carried away by the visionary notions of speculation; he looked at the labor it required to produce it; and he well knew how hardly earned was the money from which this enormous sum must proceed.

He further believed that no man could tell how much the mausoleum would cost. The seventy thousand dollars was only a beginning; and when the object was once begun, experience tells us that we must finish it at all events, let it cost what it might. The base was fixed at a hundred feet. Why not decide its other proportions? Did not the silence of the bill on this point show the ignorance of gentlemen? All was doubt. What strengthened his opinion of the total want of information, was the exhibition last session of two estimates: one of which was predicated on a base of sixty feet, and required sixty-seven thousand dollars; the other was predicated on a base of one hundred feet, making the structure nearly three times as large, and required only seventy thousand dollars. Could this be correct? Both estimates certainly could not be true. The probability was that neither could be depended upon.

For what purpose was this great mass to be raised? He saw no good purpose likely to be answered by it under the sun. Can stones show gratitude? If the nation wished to show its gratitude, let them do it by making a history of the life of Washington a school-book. Our children then will learn and imitate his virtues. This will be rendering the highest tribute to his fame, by making it the instrument of enlightening the mind and improving the heart.

While there are such rational modes of distinguishing the memory of Washington, can Congress so far forget the interest of the nation: can they so far forget their own duty, as to expend millions in acts of useless and pernicious ostentation? Since the invention of types, monuments are good for nothing. The records of history will remain long after their decay or destruction.

We are told that the best mode of perpetuating the memory of Washington is to erect a mausoleum. I have heard, said Mr. M., of Aristides. I have heard of Hampden, but I have never heard of monuments raised to their memories. Yet their virtues shine as bright now as they did while they lived. I have heard of a place called Westminster Abbey, full of the monuments of Kings; yet, notwithstanding these grand memorials, I have heard very little of them after they left this world, and I question very much whether any man, let him have heard what he may, if he were to go there could tell one of them from the other.

But, it is said, that the monument, proposed by the amendment, may be thrown down and destroyed by mobs or school-boys. God forbid that this should ever be the case! I do not believe, said Mr. M., this to be possible. If it were made of glass, frail as it is, it would be safe; all would revere, all would respect it.

The House is told by one gentleman, who advocates the mausoleum, that a rich man in Europe cannot lose his mistress without raising a monument to her memory. Was the gentleman serious when he made this remark? Would he place the memory of Washington on a footing with that of a rich man's mistress? Better, sir, said Mr. M., far better would it be, more honorable to the Government, and more conformable to the wish of our deceased friend, to devote the seventy thousand dollars, designed for a mausoleum, to the education of the poor. Then, indeed, we might flatter ourselves with having extended the empire of his virtues, by making those understand and imitate them, who, uninstructed, could not comprehend them.

If he thought that by raising a magnificent monument to Washington, he could give duration to his fame, or carry his name into a single country which it had not yet reached, he would give the measure his support. But no such effect would be produced. It might indeed adorn this city; and that was the only plausible argument in favor of it.

Before gentlemen act in this business, let them look to Egypt; there they will behold precedents in profusion; men made gods, and statues and monuments and mausolea covering the whole face of the country; but where will they find the virtues or the talents of the men they were meant to commemorate? Now is the time to make a stand against this monument mania. Washington is admired and beloved by all. No one can be charged with a desire to diminish his fame by opposing a useless expenditure of money. The precedent we now establish will be auspicious to our future measures. If we decline raising a mausoleum to Washington, no man who succeeds him, can expect one reared to his memory. On the other hand, if we now raise one to Washington, every pretender to greatness will aim at the same distinction.

Mr. Macon concluded by declaring himself hostile to the bill, and friendly to the amendment, because it proposed a plan that was more rational, more economical, and more conformable to the resolve of the old Congress, than that contained in the bill.

The Committee then rose without coming to any decision, reported progress, and obtained leave to sit again.

FRANKING PRIVILEGE.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act extending the privilege of franking letters to the Delegate from the Territory of the United States Northwest of the river Ohio, and makin

provision for his compensation," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment of the Senate: Whereupon,

Resolved, That this House doth agree to the same.

Resolved, That Mr. Huger and Mr. Imlay be appointed a committee for enrolled bills, on the part of this House, jointly, with such committee as shall be appointed for that purpose on the part of the Senate.

Monday, December 8.

Several other members, to wit: from Connecticut, Chauncey Goodrich, and Samuel W. Dana; and from Rhode Island, John Brown; appeared, and took their seats in the House.

A new member, to wit: Samuel Tenney, returned to serve in this House as a member for New Hampshire, in the room of William Gordon, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. Otis, from the committee to whom was referred, on the fourth instant, the petition of Samuel H. Smith and Thomas Carpenter, made a report; which was read, and ordered to lie on the table.

The House proceeded to consider the report of the Committee of Claims on the petition of Oliver Pollock, made on Friday last: Whereupon,

Resolved, That the prayer of the petition of the said Oliver Pollock cannot be granted.

Tuesday, December 9.

Another member, to wit: John Rutledge, Jr., from South Carolina, appeared, and took his seat in the House.

The Speaker laid before the House a letter from Jonathan W. Condy, notifying his resignation of the office of Clerk to this House; which was read, and is as follows:

"Philadelphia, *December* 4, 1800.

"Sir: The state of my health having rendered it impossible for me further to perform the duties of Clerk of the House of Representatives of the United States, I am reduced to the necessity of resigning that appointment; you will therefore oblige me by notifying my resignation to the House, and at the same time expressing the regret with which I yield to the necessity of withdrawing myself from their service,

"With the most sincere gratitude for the frequent and continued marks of friendship and attention, which I have received personally from yourself, and the indulgence with which I have been favored by the House, in the course of my feeble endeavors to obtain their approbation in the performance of the duties of my office, I am, with sentiments of the highest respect and esteem, sir, your most obliged, most humble servant,

"JONATHAN W. CONDY.

"The Hon. Theodore Sedgwick,
Speaker of the House of Representatives."

The House then proceeded, by ballot, to the appointment of a Clerk, to fill the vacancy occasioned by the said resignation; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of John Holt Oswald.

The oath to support the Constitution of the United States, together with the oath of office as prescribed by the act, entitled "An act to regulate the time and manner of administering certain oaths," were then administered by Mr. Speaker to the Clerk.

REPORTING THE DEBATES.

The House proceeded to consider the report of the committee to whom was referred the memorial of Samuel Harrison Smith and Thomas Carpenter, made yesterday, and which lay on the table; and, the same being again read, in the words following, to wit:

"The committee to whom was referred the memorial of Samuel Harrison Smith and Thomas Carpenter, report the following resolution, which they recommend to the House:

"*Resolved*, That it is not expedient for this House to make any order upon the subject of the memorial of Samuel Harrison Smith and Thomas Carpenter, presented on the fourth day of December instant."

Mr. Christie moved the reference of the report to a Committee of the Whole.

Mr. Griswold opposed the reference.

The House divided—for the reference 43, against it 46.

Mr. Jackson made several remarks, and concluded by calling for the yeas and nays, which were ordered.

Mr. Nicholas said, in a Government like ours, the theory of which is republican, and the practice of which he hoped would always continue to be republican, he considered the representatives of the people responsible to the people, by whom they were created. It was necessary, to give efficacy to this responsibility, that the people, who were to judge, should possess the purest information, as to not only the acts, but the motives of the public agents. It was of little consequence to them to know what laws are enacted, compared with a knowledge of projects that were attempted or prevented, and the grounds on which they were supported or opposed. Nor could the merits of the acts themselves be understood, unless the reasons for them were stated. It was, therefore, of the highest consequence that the reasons for our conduct should be clearly understood, that our measures may be comprehended, and our motives also known, that our constituents may judge whether we have faithfully discharged our duty.

Under this view of the subject, he thought it extremely indelicate to resist the admission within the bar of those persons who thought themselves qualified to take the debates and proceedings of the House. But what rendered the attempt still more improper, was, its being an innovation on the practice of the House. For, since he had been a member of the Legislature, individuals of this description had been placed by the House at their ease, in a situation convenient for hearing what passed. Why is this practice, hitherto unopposed, now to be broken in upon? For

such an innovation and departure from the established practice of the House, there ought to be the strongest reasons; particularly when the attempted innovation respected, and was made by, those whose conduct was to be scrutinized.

It was not without deliberation that the practice of the House had been instituted and adhered to. Some gentlemen had, some time since, contemplated the employment of a particular individual, whose services were to be paid for by the House. But the idea was abandoned, from the supposed sanction given by such an act to his statements; whereby the House might be made responsible for his accuracy and talents.

The difficulty attending the business he acknowledged to be great. But, for the reasons he had assigned, he thought the House had acted right in forbearing to interfere, further than by merely assigning a convenient place to the stenographers. It was deemed safest to confide the business to persons not known officially to the House, whose own individual interest would constitute the best pledge for their fidelity. Though no precise resolve had been passed to this effect, it was well understood that this was the course the House meant to pursue, after having given the subject a deliberate and solemn consideration.

Shall we now, said Mr. N., after this mature consideration, on the mere suggestion of personal inconvenience, on a subject of such importance as to invite a gentleman from a considerable distance, [referring to some said plan,] shall we, after the sanction of an uniform practice, fortified by the long period for which it has been observed, on the suggestion of a trifling inconvenience, which, he believed, on examination, would not be found to exist at all, adopt the innovation proposed by the report of the committee? For his part, he thought they were all deeply interested in having the debates well taken, as it was not in their power altogether to prohibit their being taken.

He had heard but two objections made to the old plan. The first was, that by passing a resolve admitting stenographers within the bar, the House gave a sanction to the reports published by them. The second was, that, as the Speaker had heretofore had the management of the business, it would be wrong to take it out of his hands.

As to the first objection, he thought it altogether incorrect. The resolution, submitted by the gentleman from North Carolina, (Mr. Hill,) which he wished the House to adopt, does not propose the selection of any particular person. It admits, generally, those individuals who wish to take the debates. Can this admission make us responsible for the conduct of men we do not know, and over whom we have no control? Have we heretofore been considered as responsible? And wherein consists the difference between our past situation and the situation we shall be in, if the motion of the gentleman from North Carolina be adopted? We shall then only have done that which before had been done by the Speaker. Governed by a sense of duty, the Speaker had refused admission within the bar. It became, therefore, necessary, in order to admit, for the House to pass a resolution. But it did not follow that the least responsibility would arise from such an act.

Indeed, by admitting the stenographers within the bar, the responsibility of the House would be diminished: for, if the House admitted them, no one could then say that it had done anything that interfered with a faithful report of the debates; whereas, by excluding the stenographers, the unavoidable inaccuracies committed, might be charged to the House.

The second objection made to the resolution of the gentleman from North Carolina, was that, as the Speaker had heretofore had the management of the business, it would be wrong to take it out of his hands.

Mr. N. in reply to this objection, observed, that the power, heretofore exercised by the Speaker on this subject, had not been expressly delegated to him by the House. It had often been thought of, but no decision had heretofore been made. As the object asked related to the convenience of the members, he thought they were the best judges of the propriety of granting it. The inconvenience alleged to exist was entirely a matter of opinion. He thought it either had no existence or a very limited one. As he had remarked before, the subject was extremely delicate. He would not consent to furnish room for being charged with a wish to suppress the means of making an inquiry into his conduct. He believed that the innovation contended for, would be so viewed; so far, therefore, from considering it as innocent, he viewed it as wrong in itself, and likely to be mischievous in its effects.

Mr. Otis was one of those who was not disposed to make a strong stand against the resolution offered by the gentleman from North Carolina. He did not view the point in so interesting a light as did the gentleman who had preceded him. It appeared to him in the shape of a question of convenience; and as to his own situation, it could not be affected by any permission given to stenographers to come within the bar. Many of the arguments he had heard, implied that the situation at present occupied by the stenographers was exclusive of all others; whereas if that were inconvenient they might take any other, so that they did not come within the bar.

It is true that the stenographers have hitherto been admitted within the bar. They were admitted because there was room. But, in our present chamber, the room was less; nor could they occupy a part of that little, without materially interfering with the convenience of the members.

In his opinion, the proper question for the House to consider was, whether an admission should take place independent of the Speaker, or whether he should decide its propriety. It did not follow, if the Speaker retained the management, that the exclusion would apply to all occasions. It was true, that the places desired by the stenographers were generally assigned to the high Executive officers of the Government, and the foreign Ministers. But if, in consistence with their accommodation, the indulgence could be granted, during any important debate, he had no doubt of

the Speaker's readiness to admit them, and they might thus obtain a temporary place within the bar.

Mr. O. thought the remarks of the gentleman from Virginia covered too much ground. They ascribed to the friends of the report an attempt to preclude the people from obtaining all information of what passed in the House. No such design existed. For his part, he wished the people to know everything that occurred within these walls. There was no doubt of the debates, as heretofore given, being an inadequate organ of the ideas of the members; they had been taken for nearly twelve years, and sometimes they had been accurate, and at other times very inaccurate; and so complete had the distortion of sentiments often been, that had it not been for the name that was attached to a particular speech, the member, to whom it was ascribed, would not have known it to be his. Mr. O. would, notwithstanding, not deny the ability of a person who read the debates, to form a tolerable idea of the arguments used on a particular subject.

The charge of innovation, Mr. O. thought unjust. He proposed to leave the business as it had heretofore been left, free from any resolve of the House, to the control of the Speaker. By this conduct, no sanction would be given to the performances of any reporter; but, on the other hand, if the House passed a resolve, divesting the Speaker of his previous power, they would render themselves responsible, and would virtually give a sanction.

If it were resolved that the House should interfere, he would much rather select and pay an individual competent to the business, and appeal, for the faithful discharge of his trust, to his candor and impartiality.

If the House passed the resolution admitting the stenographers within the bar, Mr. O. asked whether they would not in fact be officers of the House. The only difference between them and the other officers would be that one would be paid and the others would not.

Mr. O. said that, in his opinion, the most inconvenient position in the House had been taken by the stenographers. It was near the Clerk's office, between which and the bar there was a perpetual passage of the members. If an experiment were made of a position on the other side, or in the upper gallery, he was persuaded it would be found very convenient. Are not, said Mr. O., the galleries constructed for the express purpose of hearing? Are they not intended for the good people of the United States? And if they can hear in them cannot the stenographers also?

Mr. O. concluded by stating the extreme inconvenience that would arise from admitting the stenographers; the interference it would produce with the assignation of seats to the Secretaries of our Government and the foreign Ministers; and with declaring his opinion that it was most expedient to adopt the report of the committee.

Mr. Nicholson said, that if he understood the objections made by the gentleman from Massachusetts to granting an admission of the stenographers within the bar, they might be classed under three heads: 1. It will be against precedent; 2. It would prevent the members from having elbow-room; 3. There is a possibility that the Speaker may indulge the stenographers.

As to the first objection, he would ask whether the House had not a right to exercise any power themselves that was exercised by the Speaker. Hitherto the Speaker has exercised the power, and admitted the stenographers within the bar; he now refuses to do it, and we are called upon to perform what he refuses. If we think it proper to admit them, we have a right to do it. The power heretofore exercised by the Speaker was derived from us, according to the well known maxim, *Qui facit per alium, facit per se.*

But we are told that the admission would interfere with the accommodation of the four Secretaries and the foreign Ministers. Suppose it should, said Mr. N.; I ask whether the convenience and the interest of the people of the United States are to be prostrated by our complaisance to the Secretaries and foreign agents? It is our duty to enable the people to obtain the best information of what is doing here that we can supply. Shall we abandon our duty? Shall we sacrifice the interest of our constituents to a sense of politeness to these gentlemen? It would be much better to submit to the inconvenience experienced by the Secretaries and the foreign Ministers, if there is not room for them within the bar, than to conceal from the people the knowledge they have a right to possess. Let, then, the foreign Ministers, if there be such a competition, retire into the galleries.

He considered the subject as of high importance both to the country and the members themselves. They all ought to desire their conduct to be rigidly inspected.

Gentlemen say that the debates have been heretofore imperfectly taken. Will they remedy the evil by excluding the stenographers from places within the bar? If, heretofore, notwithstanding the favorableness of their position, when stillness and silence reigned, they have been unable to take the debates with precision, can it be expected that, driven to a distance from most of the members, surrounded by a crowd in perpetual motion, they will be able more successfully to accomplish their object? Sir, said Mr. N., the expectation is absurd. It cannot be done. I have placed myself without the bar, and I declare it impossible to hear correctly. If, then, you are determined to exclude them from their usual places, you had infinitely better turn them out of the House altogether.

As to the convenience of the galleries for hearing, Mr. N. was not able, from a trial made by himself, to decide upon it. But he had heard but one uniform opinion, which was, that owing to the constant passage of persons, and the frequent crowd it would contain, it was impossible to hear there with any distinctness. With respect to the remarks made by the gentleman from Massachusetts on this point, he thought them altogether inapposite. The gallery was not constructed by

us, and if it were a bad place for hearing it arose not from any fault to be ascribed to us. All that we did was to open our doors to all citizens who conducted themselves with decorum.

The personal inconvenience to members alleged, did not, in the opinion of Mr. N., exist. He thought there was ample room. The chamber they occupied was similar to that in Philadelphia, and the positions desired by the stenographers were relatively the same as those in Philadelphia. By advancing the Clerk's table three feet, every difficulty would be removed.

Mr. Rutledge said, that the members who had preceded him had talked much about the necessity of giving the people correct information of the transactions of that House. He believed there was not a single member who did not wish to impart to the people all the knowledge they could receive, and who did not highly prize the means of information furnished by the proceedings of that House. On this point there was no division. No one was desirous of excluding the stenographers, or prohibiting the publication of debates. The only question really before the House was, whether they should persevere in the old plan; whether they should confide in the integrity and the talents of the Speaker, who had hitherto merited their confidence, or whether, divesting him of his power, they should exercise a right themselves hitherto attached to his office.

Such a mode of procedure as had been pursued on this occasion was not conformable to that heretofore practised. An application somewhat similar had been, some time since, made to the Speaker. The Speaker decided, and the House, without debate, acquiesced in his decision. A stenographer had grossly misrepresented a member, and when required to correct his false statement, had insolently refused to do it, and added to the previous injury of misstatement insult of the most contumelious kind. The Speaker dismissed him from his place for this barefaced misconduct. Some of his friends made an appeal to the House. The House acted wisely, and, with becoming dignity, refused to interpose.

Now, said Mr. R., if any other stenographer, like the one I have alluded to, shall make it his systematic practice to misrepresent, and he continue as heretofore to hold his place at the tenure of the Speaker's permission, he may be dismissed by the Speaker without troubling the House. But should the motion made by the gentleman from North Carolina prevail, we shall be perpetually appealed to, and occupied in debate. For these reasons he trusted the report would be agreed to.

Mr. Hill said he considered the subject as simply involving an address to the sentiments of the members on the ground of personal convenience, and that on that ground he was ready to sacrifice any little inconvenience to the accommodation of the stenographers; stating at the same time his entire reliance upon the integrity and talents of the Speaker.

Mr. Griswold said, this is nothing less than an appeal from the Chair. To the Speaker has heretofore been committed the regulation of the admission of all persons whatever within the bar. This is the only correct mode in which such an object can be accomplished. The Speaker must exercise the discretion hitherto vested in him, otherwise the order of the House cannot be preserved. The object now is to take this power from the Speaker, and to open the area of the House to the stenographers, without the Speaker's approbation. It is said that only two persons at present apply. But if the door be once opened to admission in this way, there may be no end to intrusion. The Speaker being divested of power to act, and the necessity of acting being evident, the House will be perpetually troubled with appeals.

In his opinion, the power confided to the Speaker had been exercised in this case with great propriety. It must be apparent to everybody that the area was too small to justify the admission of the stenographers. He believed it to be an idle pretence that the stenographers could not hear. He believed it to be a mere matter of pride, which would be gratified by an appeal from the Chair, and a reversal of the decision of the Speaker by the House.

Mr. Thatcher, persuaded that all the information derived from the debates of this House was of little comparative importance when viewed in relation to the general mass of information possessed by the people, cared but little for the event of the resolution before the House. Upon this ground he felt no anxiety whatever. As a matter of order, it might perhaps be of some importance. As to the convenience of position, he doubted whether a more correct account of the debates could not be given from a situation from without the bar than within it. His reasons were these: It was well known that for four or five sessions after the organization of the Federal Government stenographers never came within the bar, and their positions during that period were as remote from the members as at present. Yet if any man would appeal to the debates then taken, he would find them as correctly taken as they have been at any time since. It is true, there were complaints of inaccuracy, but the debate takers never assigned, as a justification of their errors, the inconvenience of their situations; on the contrary, they declared that they did as well as they could, and contended that their reports were as correct as the nature of the case permitted.

When the seat of Government was transferred to Philadelphia, and the stenographers occupied places within the bar, complaints increased, the debates were taken more incorrectly, and two or three of the stenographers were actually turned out of the area within the bar; one of whom, he believed, was sent into the upper gallery.

The incorrectness of the published debates did not arise so much from an inability to hear as from an inability to take down a rapid speech.

Mr. T. said he believed the debates as taken down by Mr. Lloyd, were as accurately taken as any taken before or since. The conclusion he drew from these facts was, that if the stenographers were admitted by the House within the bar,

the public would gain nothing by it. He had, however, no objection to their admission, if the Speaker approved it. They might, as far as he cared, take any place in the House; even seats along side of the Speaker.

Mr. Davis had expected to hear substantial reasons in support of the report of the committee. None such had been offered. It was said that the stenographers could hear very well from their present positions. He denied it. The reporter could not possibly hear. Though himself nearer the gentleman, he had not heard a word that fell from the gentleman from North Carolina.

He trusted the House would admit the stenographers within the bar. If not admitted, the conversation and passage of the members around them will at once prevent the debates from being well taken, and be a perpetual excuse for their errors. But if admitted, they will have no such apology, and they will be within the power of the House.

The great mass of our citizens are too remote to attend your debates. They rely on those who report them. Not more than forty or fifty persons transiently appear in the galleries, who are not equal to diffusing a knowledge of your proceedings. Exclude the stenographers, and you may as well shut your doors. It may be said that you print your Journals; but who reads them? They are scarcely read by the members themselves. On great national questions the people ought to know, not only what you do, but also the principles that guide you.

The gentleman from South Carolina was willing to place the stenographers under the coercion of the Speaker, but was unwilling to place them under the coercion of the House. For his part, he thought differently. He did not wish to see them at the mercy of the Speaker.

Several allusions had been made to the treatment of a reporter at Philadelphia, who had been driven from the House by the Speaker. He recollected the affair, and, in his opinion, the Speaker had in this case been actuated more by personal enmity than by any other motive.

Mr. H. Lee next rose. He said he put it upon the candor of his colleague from Virginia to declare whether, in his opinion, any gentleman in that House wished to suppress his sentiments, or was disposed to shrink from an avowal of them. If an individual were to judge from the debate of to-day, he would infer that it was the desire of some members on that floor to conceal their sentiments from the people. No such thing was the case. We are as anxious as those who differ with us that the people should know what we think, say, and do.

The only question was, whether the Speaker shall exercise a certain power which he can conveniently, and which he has hitherto honorably exercised, or whether we shall assume it with all its inconveniences. He hoped we should not. He feared no inaccuracy so long as the debates published received no sanction from the House.

Have you, said Mr. L., no greater objects to engage your attention than whether this man or that man shall go out of your bar or remain within it? He thought the House might be better employed.

Mr. Macon understood the subject before the House very much as his colleague did. The question was simply whether we will take upon ourselves inconveniences alleged to exist, or keep the stenographers without the bar. He was convinced that the situations occupied by the stenographers were badly calculated for hearing, as even within the bar the members could scarcely hear each other.

One reason had great weight with him. It was, that if the House made a rule in relation to the admission of the stenographers, it would be placing law in the room of discretion. He preferred a certain rule to a vague discretion.

The danger apprehended from a crowd of stenographers was farcical. Since he had been in Congress he had never seen more than three or four. And if the number admitted should prove inconvenient, it would be time enough, when the inconvenience was experienced, to remedy it.

Mr. S. Smith said the question was entirely one of convenience. He would not ascribe to any member a desire to suppress his sentiments. The speeches never went forth as delivered. Yet it was desirable to assign to the stenographers the most convenient places. He had heard gentlemen on both sides of the Chair declare they would experience no inconvenience from the admission of the stenographers. For himself, from his situation, he could experience none. He believed, indeed, that the members could be heard from any part of the House, and nearly as well in one place as in another. But as other gentlemen hold a different opinion, and the stenographers had hitherto been admitted within the bar, he had not the least objection, and would vote for their admission.

In this stage of the debate, the Speaker arose, not, he said, to inquire into the consequences of the House acting in the business, but again to repeat the line of conduct he had pursued, and the motives which had influenced his conduct; he did this for the information of members not in the House at the time he had before addressed the House. The Speaker then repeated what he had before stated, viz: that on being appealed to by Mr. Stewart, he had declared to him his decision before any other application had been made; that he had spoken to many members, all of whom, without a single exception, had approved his ideas, and concluded with again declaring, as he had before declared, that the stenographers could not be admitted within the bar without violating the order of the House and the convenience of the members. It was, he said, for the House to decide—to them only was he responsible.

Mr. Nicholas understood it to be the object of those who supported the admission of the stenographers within the bar to place them upon the same footing they had heretofore held. This was his object. All the remarks, therefore, made respecting their independence of the Chair, were inapplicable. They would still be subject to his

control, except as to the single point of situation. In short, the business would be restored to its old form.

His colleague had made an appeal to his candor. He wished to know whether he (Mr. N.) thought that he or any other gentleman in that House wished to suppress his sentiments, or was disposed to shrink from an avowal of them? He would answer the appeal made by his colleague, and would tell him that he did not feel himself at liberty to form conjectures respecting the opinions of others, but decided from facts. If he heard gentlemen make use of arguments so weak as those he had heard that day in defence of their sentiments, he would say that their feelings differed essentially from his. He would say that, judging them by their arguments, they do not wish publicity to be given to the debates of this House.

What do the gentlemen tell us? Does it not amount to this: that their complaisance for the Speaker suffers him to judge for them in a case where they are the best judges; and would not this complaisance go to this length, that if the Speaker should judge wrong, they will not interfere to correct his error?

We are told by a gentleman just up that the application made proceeds from pride, and that it can proceed from nothing else. But the gentleman has not assigned his reasons for this extraordinary charge.

It is contended that any place without the bar will be convenient for the stenographers. Let the place be pointed out. Let the gentlemen who urge this show us a place without the bar inaccessible to the whispers of the members and the pressure of a crowd. Do they imagine that any particular place can be assigned to which they can insure a profound silence, and from which every person can be withheld? Do they not know, have they not experienced, that when business presses, when subjects of importance are discussed, a crowd is produced, noise ensues, and interposing obstacles render it impossible either to hear or see the members? In such cases, by far the most interesting that can occur, a recess within the bar can be their only protection.

The gentleman from Massachusetts had put the business upon a very extraordinary footing—a footing that he did not expect from him. He represented that it would be safe to trust the reporters to the Speaker's indulgence. For his part, he did not think it would be safe in such hands. Shall the Speaker have the discretion of saying what debates shall be taken and what shall not? Shall he, and he only, have the public ear? Could the Speaker desire this? Surely he could not. He ought rather to desire the House to decide generally than thus impose upon him such an invidious task.

Mr. N. said, he considered those who report the debates as appearing in this House on behalf of the people of the United States, to whom they communicated what passed here. The people were entitled to this information; and if, as observed by the gentleman from Massachusetts, either foreign Ministers or Secretaries, or any other gentleman in long robes, interfered with such an object, they ought to give way. He knew not wherein consisted the propriety of assigning them particular seats. What right had they to exclusive seats? He knew no connexion that subsisted between them and this House. Be the right as it may, he was not for sacrificing a solid benefit to mere complaisance.

But a gentleman has told us that one stenographer, for his misrepresentation and insolence, had been discharged by the Speaker. In the course of debate, Mr. N. said, he had studiously avoided any allusion to this circumstance. Nor would he now say anything about it, as he thought it altogether foreign from the present question.

The respect which gentlemen expressed for the Speaker appeared to him to lead them from the object they professed to have in view. For, at present, the stenographers are not under the control of the Speaker. But admit them within the bar, and if they are guilty of misconduct, if they infringe any of the rules of the House, the Speaker has them within his power.

Some gentlemen apprehend the admission of a crowd of stenographers. The thing is morally impossible. When Congress met in a large populous city, where several daily papers were printed, we saw but two reporters. Here, removed from the busy world, where the demand for that description of labor which arose from publishing the debates was not nearly so great, and, of consequence, the profit less, it could not be expected that there could be more.

Mr. N. concluded by declaring that, in his opinion, it was the duty of the House to decide in this case. The Speaker had changed the established practice of the House. It became, therefore, the House to inquire whether he had done what he ought to have done; which, if he had omitted to do, it devolved on them to see effected.

Mr. WALN spoke in favor of the adoption of the report.

The question was then taken by yeas and nays, on agreeing to the report of the select committee, and carried by the casting vote of the Speaker. There being yeas 45, nays 45, as follows:

YEAS—Theodore Sedgwick, (Speaker,) George Baer Bailey Bartlett, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Archibald Henderson, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, James Lynn, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Levin Powell, John Reed, Nathan Reed, John Rutledge, jr., John C. Smith, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, James Jones, Aaron Kitchell, Michael Leib, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Joseph B. Varnum.

WEDNESDAY, December 10.

Another member, to wit: MATTHEW LYON, from Vermont, appeared and took his seat in the House.

MAUSOLEUM TO WASHINGTON.

The House went into a Committee of the Whole on the bill for erecting a Mausoleum to the memory of GEORGE WASHINGTON.

Mr. ALSTON was in hopes, when he first made the motion now under consideration, that a question would have been taken upon the amendment without debate; but, as his wish upon that subject had not been complied with, he held it to be his duty to give to the House the reasons which actuated him.

He said that he by no means wished to detract anything from the merit of that illustrious character whose memory we were now about to perpetuate; that it was his wish that his character might be handed to the latest posterity unimpaired, and that he really thought the amendment equally calculated to effect that desirable purpose with the bill; that the difference of expense was a matter of importance to the people of this country; that the expense of a mausoleum, from the best information he had been able to collect, would amount to at least 150 or $200,000; that a monument, such as was contemplated by the amendment, would not cost more than one tenth as much as a mausoleum, as contemplated by the bill as it now stood. Indeed, he believed that the bare expense of interring the remains of General WASHINGTON in a mausoleum would cost as much as the proposed monument.

Mr. A. said he considered Congress pledged, as far as the resolutions of the last session went; that the gentleman from Massachusetts, (Mr. OTIS,) who was up a few days ago upon this subject, had requested information; in answer to which he had only to observe that if that gentleman would have given himself the trouble to have examined the proceedings of the last session of Congress he would have been better informed than he appeared to be; that a committee equally respectable with that which had reported the bill at the present time, had then fully investigated the subject, and had made a report, which was to be found upon the journals of the last session of Congress, recommending a monument such as was contemplated by the proposed amendment, and that the request made by the President of the United States to Mrs Washington, in conformity to the report of that committee, was for a monument; to which request she had consented; he, therefore, considered Congress as pledged thus far and no farther; that a motion was made in this House to change the monument to a mausoleum; that the recent death of General WASHINGTON at that time, prevented any person from opposing any measure which was offered, let the expense be what it would; but that the time which had elapsed since, had enabled the public mind the better to judge.

The gentleman from Virginia (Mr. LEE) and the gentleman from Connecticut (Mr. GRISWOLD) had dwelt a great deal upon the subject of public gratitude. It was by no means his wish or intention to lessen that sentiment, but he said that he could not give his consent to an expensive measure like that contemplated in the bill, when a measure far less expensive, in his opinion, would answer every purpose as well.

Mr. ALSTON was followed by Mr. HUGER, who advocated the erection of a mausoleum.

Mr. SMILIE replied. He considered the erection of a mausoleum as productive of unnecessary expense, as a monument would answer every rational purpose contemplated in the bill.

Mr. H. LEE next spoke at some length in favor of a mausoleum, and read a letter received from Mr. King, our Ambassador at London, enclosing a plan, presented to him by an eminent foreign artist, for a mausoleum of one hundred and fifty feet base, and the same height, the expense of which was estimated at $170,000.

Mr. CHAMPLIN, after some remarks, moved that the Committee rise, report progress, and ask leave to sit again.

Which motion being carried without a division, the Committee rose; and on the question to grant them leave to sit again, only three members rose in the affirmative.

Mr. CHAMPLIN then moved the recommitment of the bill to the same committee that reported it, with the addition of two members, which was carried, and Messrs. CLAIBORNE and CHAMPLIN appointed.

After Mr. CHAMPLIN's motion for a recommitment of the bill to a select committee was carried,

Mr. CLAIBORNE said he had risen to move that the committee just appointed be instructed to inquire into the expediency of carrying into effect a resolution passed by the old Congress, on the 7th of August, 1783, directing an equestrian statue of General WASHINGTON to be erected at the place where the residence of Congress shall be established.

Mr. C. said, that on a question which could not fail to excite the sensibility of every American heart, it was a subject of great regret that a division of sentiment should arise. The memory of our departed patriot lives in the affections of a grateful country, and will triumph over time. During a long life, so usefully and honorably employed, WASHINGTON had reared to himself a fabric of fame, the lustre of which can neither be diminished nor heightened by any measure that we can take. But, sir, from a respect for our own, as well as for the feelings of the nation, we should

endeavor to unite in the last act of attention which we propose to show this venerable character.

Mr. C. said that the proposition for a mausoleum was calculated to create division. The expense of such a monument would be immense, and would be viewed by many as a profuse and useless expenditure of the public money. He believed that the statue recommended by the old Congress could be better justified upon principles of economy, and would meet with more general support. Here Mr. C. read from the Journals of the old Congress the following resolutions:

"*Resolved*, (unanimously, ten States being present) That an equestrian statue of General Washington be erected at the place where the residence of Congress shall be established.

"*Resolved*, That the statue be of bronze—the General to be represented in a Roman dress, holding a truncheon in his right hand, and his head encircled with a laurel wreath. The statue to be supported by a marble pedestal, on which are to be represented, in basso relievo, the following principal events of the war, in which General Washington commanded in person, viz: The evacuation of Boston—the capture of the Hessians at Trenton—the battle of Princeton—the action of Monmouth—and the surrender of York. On the upper part of the front of the pedestal, to be engraved as follows: 'The United States in Congress assembled ordered this 'statue to be erected, in the year of our Lord, 1783, in 'honor of George Washington, the illustrious Commander-in-Chief of the Armies of the United States of 'America, during the war which vindicated and secured 'their liberty, sovereignty, and independence."

A monument thus designed, (continued Mr. C.) would portray in lively colors the military achievments of our late illustrious Chief, and is calculated to impress upon our posterity a grateful recollection of his eminent services. Mr. C. was the more interested in support of a monument of this kind, because it had been sanctioned by an unanimous vote of those venerable philosophers and statesmen who presided in our councils, at a time of the greatest danger, directed the storm of war, and tamed the rage of tyranny.

It was true, that this equestrian statue would not express any of the great events of Washington's civil life, but, of these, we have already many honorable testimonials; the first in order, and which he hoped would be the last in durability, was the Constitution of the United States; to this instrument his name was annexed, and would be noticed with gratitude by the lovers of freedom in every age and every clime; this city is another memento of his civil life, and, if it should be the residence of all that piety, wisdom, and magnanimity, which was so devoutly prayed for by each branch of the Legislature, at the commencement of the present session, this city would remain an honorable testimonial of the civil virtues of its great founder.

There was no doubt, said Mr. C., but that many gentlemen were also solicitous that the body of General Washington should be deposited within the walls of the Capitol; of this number Mr. C. was one, and was desirous that a plain but neat apartment should be speedily prepared for its reception. But over his remains, instead of an expensive monument, Mr. C. thought it most advisable to place a plain but neat tomb-stone, of American marble, and prepared by an American artist. And in order to convey to posterity, in impressive language, the feelings of the American nation, when the loss of our patriot, sage, and hero, was first announced, Mr. C. wished to see engraved upon this tomb the addresses of each House of Congress upon this occasion to the President of the United States, together with the President's replies thereto.

Mr. C. concluded by moving the instructions stated in the commencement of his speech.

Mr. Claiborne was followed by Messrs. Craik and Nott.

The instruction to the committee, moved by Mr. Claiborne, with a slight modification, was agreed to.

Thursday, December 11.

A letter was presented from Mr. L'Enfant, stating the services he had rendered in the formation and execution of the plan of the City of Washington, complaining of the ill treatment he had experienced, and requesting the attention of Congress to the propriety of rendering him compensation for his services.

A letter was received from the Secretary of the Treasury, accompanied by a statement of appropriations necessary for the year 1801, and a statement of the receipts and expenditures preceding the 1st day of October, 1800. Referred to the Committee of Ways and Means, and ordered to be printed.

The committee to whom was referred the congratulatory address of sundry citizens of the Territory of Columbia to Congress, reported that the address contained sentiments expressive of a laudable attachment to the Government of this country, and of a sincere solicitude to accommodate the members of the Government, and concluded with a resolution that the Speaker be requested to enclose to the committee appointed on behalf of the citizens a copy of the report. Report agreed to.

CLAIM OF MAJOR JACKSON.

Mr. Rutledge presented a petition from Major Jackson, an officer in the Army of the United States, stating that the Secretary of War had refused to allow him double rations, to which he considered himself entitled as the commandant of a post, and desiring Congress to take his claim into consideration.

Mr. R. moved to refer the petition to a select committee.

Mr. Griswold hoped it would go to the Committee of Claims. They were more competent, from their acquaintance with the nature and extent of the various claims made, to investigate the present claim. It is further desirable that a general system should be adopted and applied uniformly to all cases. This could only be accomplished by all the objects of this kind being laid before one committee. In this way only could an uniformity of decision be attained.

Mr. Claiborne was in favor of a reference to the Committee of Claims. He had himself, during the last session, presented a petition of a similar kind, which he wished to go to a select committee; but he had been opposed by the gentleman from South Carolina, at whose instance it was referred to the Committee of Claims.

Mr. Otis thought the claim made by the petitioner much better for the consideration of a special committee than for that of the Committee of Claims. The claim, he understood, was founded by the petitioner on the spirit of a law that allowed double rations to every officer who was a commandant of a particular post. He was informed that the petitioner had had the command of several posts in succession, and that, not exclusively confined to one, he had had the direction of several. The construction put on the law by the Secretary of War might be legal, but not equitable. If so, it became the House to change the provisions of the law, and to render them conformable to cases which had not been contemplated at its passage. If this were the case, it presented objects distinct from those usually submitted to the Committee of Claims.

The question was then taken on a reference to the Committee of Claims, and carried—48 members rising in favor of it.

MILITARY ESTABLISHMENT.

Mr. Varnum laid a resolution on the table to this effect: "That it is expedient so to alter the 'Military Establishment of the United States 'that the second regiment of artillery and engi-'neers shall consist but of three battalions."

Previous to offering this resolution, Mr. Varnum took a concise view of the progress made since the year 1796 in the Military Establishment, and stated that in 1799 a new organization was made, whereby each regiment ordered to be raised was made to consist of four battalions. One battalion was not yet raised, but according to that system it would soon be raised unless countermanded. He was of opinion that in the present state of the country it was quite unnecessary, and therefore hoped that the House would concur with him in altering the present law in such a way as to prevent the raising another battalion.

DISTILLED SPIRITS.

Mr. New called up the resolution laid by him yesterday on the table, which was read, as follows:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary to be made to the several acts "laying duties on spirits distilled within the United States, and on stills," and that they be authorized to report by bill or otherwise.

Mr. New observed that his object in making the motion was to have the law so amended as to allow the proprietors of stills to use them when they pleased, and have the option of paying by the gallon, or on the capacity of the still. Agreed to, and referred to the Committee of Ways and Means.

Friday, December 12.

A letter was received from the Secretary of the Treasury, enclosing a statement of the loans made in relation to the city of Washington, and a report from the Commissioners, containing an account of the expenditures from November 18, 1799, to November 18, 1800—referred to the committee of Ways and Means.

A letter was received from the Secretary of State, enclosing a list of impressed American seamen, with an account of the measures pursued for their release. Ordered to be printed.

The report of the Committee of Commerce and Manufactures, allowing Robert Hooper a drawback on fourteen pipes and three quarter casks of Madeira wine, was agreed to, and the same committee instructed to report a bill for that purpose.

JENKINS AND SONS.

The House went into a Committee of the Whole on the report of the Committee of Commerce and Manufactures on the petition of Thomas Jenkins and Sons. The report is as follows:

"That the object of the petitioners is to obtain a register for a ship built on the remains, or hulk, of a British ship, burnt at the port of New York; three-fourths of which ship, they set forth to be built with timber, plank, and other materials of the United States.

"The committee are of opinion, that the prayer of the petition ought not to be granted, and that the petitioners have leave to withdraw their petition."

A debate of some length, in which Messrs. S. Smith and Otis supported the report, and Messrs. Bird, Huger, and Elmendorf, opposed it, ensued. On the question to agree to the report, it was carried.

NORTHWEST TERRITORY.

Mr. McMillan observed that appropriations of particular tracts of land in the Northwest Territory had been made for the establishment of schools and the support of religion, and that in particular a tract of land six miles square had been set apart for these purposes out of a tract granted to John C. Symmes & Co. One of the terms of the appropriation had been the location thereof, with the consent of the Government of the Northwest Territory, within a certain time, which had not been done. He also stated, that in each township, one lot had been appropriated for the support of schools, and one for the support of religion; but that Congress had not vested them in any particular persons. It followed that the property not only remained unimproved, but was much injured by the encroachment of individuals. He had been directed to apply to Congress to take the subject into consideration, that such provisions might be made as would redress the existing evils. For which purpose he moved the appointment of a committee to inquire into the situation of certain tracts of land, appropriated to the support of schools and religion, out of a tract of land granted

to John C. Symmes, to report by bill or otherwise what measures are necessary to be adopted to render the said tracts productive.

The report was ordered to lie on the table.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill for the relief of Robert Hooper; which was read and committed.

MONDAY, December 15.

Another member, to wit: THOMAS PINCKNEY, from South Carolina, appeared, and took his seat in the House.

Mr. COOPER, after some prefatory remarks, moved the appointment of a committee to inquire into the expediency of repealing an act for the valuation of lands and dwelling-houses, and for the enumeration of slaves, within the United States.

Ordered to lie on the table.

ROBERT HOOPER.

The House went into a Committee of the Whole on the bill for the relief of Robert Hooper. After being read by the Chairman, the bill was reported to the House without amendment; and on the question of engrossing it for a third reading.

Mr. GRISWOLD said he wished to be informed wherein the facts, on which the committee at the present session had founded a favorable report, differed from those on which the committee in 1797 founded a different report, which then stated that the loss of the petitioner had arisen from a want of care on his part.

Mr. S. SMITH said he had been a member of both committees. In 1797 the petitioner supported his claim only by his own assertions; he was therefore against allowing it; the report was unfavorable, though he believed it had never been acted upon by the House. During the present session full proof had been exhibited that the loss of the petitioner did not arise from any misconduct of his, but from the inattention of the custom-house officer.

Mr. OTIS thought the case one of the plainest that could occur. The petitioner had imported certain specified goods; had declared his intention to export them; and had applied to the proper officer for coastwise certificates and clearances, and all other papers necessary for effecting his purpose. It was well known that the deputy collector was generally supplied with blanks, which he filled up as the case required. The petitioner, after expressing his wishes, and receiving from the deputy collector certain papers, asked "Have I got all my papers?" the answer was "yes." Afterwards, when too late to retrieve the error, he found that he had not one.

Mr. WALN, on a former occasion, had been opposed to the claim, because proof had not been produced of landing the goods in a foreign country. Proof of this fact was now furnished. As he had no doubt of the exportation of the articles, and of their having been landed in a foreign country, which is all the law requires to entitle the exporter to drawback, he thought that the claim ought to be allowed.

On the question for engrossing the bill for a third reading to-morrow, it was agreed to without a division.

WILLIAM NICHOLS.

On motion of Mr. LEIB, the House went into a Committee of the Whole on the report of the Committee of Claims on the petition of William Nichols, late Marshal of Pennsylvania.

The report was read, which allows the claim made by William Nichols for the expenses of the attendance of jurors and witnesses on the trial of insurgents in '95, before the Circuit Court of Pennsylvania.

Mr. MACON observed that the money stated by the petitioner to have been paid by him, was not warranted by any law existing at the time. The reason assigned by the petitioner for paying the sums he wished to be reimbursed was that at the time he was young in office. The sum allowed by the report, was the highest allowed in any State to jurors and witnesses, and was even higher than that paid in Pennsylvania. Under these circumstances he moved that the Committee should rise, and report progress.

Mr. WALN said that the judges had sanctioned the sums allowed in the report; and, though there was no law that authorized it, the measure was justified by the necessity of the case. The allowance made was to individuals in the double capacity of jurors and witnesses. It was thought equitable that they should be compensated in both characters. The sums allowed were the same as those that were allowed in the Supreme Court of Pennsylvania. These considerations made him friendly to the report.

The question for the Committee's rising was lost.

The Committee then concurred in the report of the Committee of Claims, which concurrence being reported to the House, was confirmed by them, and the Committee of Claims instructed to report a bill.

TUESDAY, December 16.

An engrossed bill for the relief of Robert Hooper was read the third time, and passed.

WEDNESDAY, December 17.

Mr. MACON, from the Committee of Claims, to whom was referred, on the eleventh instant, the memorial of Peter Charles L'Enfant made a report; which was read and considered: Whereupon,

Resolved, That the prayer of the memorial of the said Peter Charles L'Enfant cannot be granted.

Mr. H. LEE, from the committee to whom was referred, on the twenty-eighth ultimo, so much of the President's Speech as respects the District of Columbia, made a report, in part; which was read and ordered to lie on the table.

DISTRICT OF COLUMBIA.

Mr. H. LEE, from the same committee, presented

the following bill concerning the District of Columbia; which was twice read and committed:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the State of Virginia, as they existed on the first Monday of December in the year 1800, shall be and continue in force in that part of the District of Columbia which was ceded by the said State to the United States, and by them accepted for the permanent Seat of Government: and that the laws of the State of Maryland, as they existed on the said first Monday in December, shall be and continue in force in that part of the said district which was ceded by that State to the United States, and by them accepted as aforesaid.

SEC. 2. *And be it further enacted*, That all executive and judicial officers, appointed by the respective States of Virginia and Maryland, and who had jurisdiction in or over the said district, or any part thereof, on the said first Monday of December, according to the tenor of the Constitution and laws of the said States, shall continue to hold and exercise such jurisdiction until removed by the President of the United States; and that the appointment of all such officers hereafter, shall be made in the manner designated by the second section of the second article of the Constitution of the United States.

SEC. 3. *And be it further enacted*, That nothing in this act contained shall in any wise alter, impeach or impair the rights granted by or derived from the acts of incorporation of Alexandria and Georgetown, or any other body corporate or politic within the said District.

REDUCTION OF ARTILLERY.

Mr. VARNUM, called up his resolution, laid on the table on the 11th instant, for reducing the second regiment of artillery to three battalions: it at present consists of four battalions.

Mr. OTIS declared himself surprised at the resolution offered by his colleague, as he had not known any act passed in that House with more unanimity, or which appeared at the time or since to be attended with more general satisfaction, than the act on which the present establishment of artillery and engineers was founded. At the time the act was passed, the body of artillery and engineers thereby raised was considered and declared to be part of the permanent army; and in this view it had since received the sanction of the House in every form in which it had been presented.

To show that this was the case, it would be only necessary to exhibit a history of the establishment of this body of our military force.

Prior to the year 1794, the corps of artillerists and engineers consisted of one battalion.

In May 1794, in a time of profound peace, an act passed increasing the establishment to a regiment, consisting of four battalions.

In May 1796, an act was passed recognising and confirming the existence of the regiment, previously directed to be raised.

In April 1798, before Congress contemplated the existence of that emergency which afterwards occurred, before the Provisional Army was authorized, or a naval equipment with a view to actual hostility with a foreign Power was begun, an act passed directing the raising an additional regiment, to consist of three battalions, and this not merely for three years, as had been hitherto usual, but for five years.

On the 3d of March 1799, an act passed for the better organization of the troops of the United States, augmenting the numbers of the companies and regiments of infantry and cavalry, and directing that the second regiment of artillery should consist of four battalions instead of three. The provisions of this act were such as manifested the determination of Congress that the artillery thus directed, and that only, should be raised in any event. Thus the augmentation was not authorized for the purpose of meeting the crisis or of constituting a part of the temporary arrangements for defence, but as a resource for instruction and defence at all times and upon all occasions.

In the last session of Congress two acts were passed which materially affected the Military Establishment. One of which suspended all further recruiting in reference to the twelve regiments, but was silent in respect to the artillery; the other for authorizing the President to disband the infantry and cavalry, but expressly restraining him from diminishing the numbers of the artillery. Was he not therefore warranted in the assertion that the present establishment of the two regiments of artillery and engineers had been authorized with the greatest deliberation, and sanctioned as a favorite measure? That it was intended to be cherished as a nursery for those branches of military science which are most difficult of acquisition, which cannot be learnt or practised upon a sudden emergency? While every other part of the Military Establishment had experienced a radical reform, the organization of the artillery had hitherto remained exempt from objection and dispute.

This being the case, was it not incumbent on the gentleman, who had submitted the resolution before the House, to point out some of those discriminating circumstances, for the adoption of a measure at this time which has been hitherto inexpedient? Was it not incumbent on him to show that he did not intend the accomplishment of this measure as a prelude to the entire annihilation of the little germ of an army that now remains to this country?

For his part, Mr. OTIS declared he was not ambitious of assuming either credit or responsibility that would arise from a reformation that would leave the country destitute of defence. He was willing that those who succeeded in the administration of the Government should reap the honor and advantage of this reform.

Whether the force at present authorized by law was more than adequate to the protection of our extended sea-board, and our no less extensive frontier, would clearly appear by a statement of the distribution of it that is intended when the regiments are complete.

He had taken some pains to inform himself of this fact, and had prepared a document to show, exclusive of officers commissioned and non-commissioned, the numbers that would be stationed at the respective posts. Mr. OTIS then went minutely into a statement of the numbers allowed

to every post and garrison where the artillery are to be employed; the results of which were as follows:

In Georgia and South Carolina - - -	192
Virginia and Maryland - - - -	192
Pennsylvania - - - - - -	144
New York - - - - - -	288
Connecticut - - - - - -	48
Rhode Island - - - - -	144
Massachusetts - - - - -	192
On Northwestern frontier, from Niagara to Mobile Bay. - - - - -	336
Total - - - - -	1536

And this number was to be divided among nearly thirty different garrisons.

Now let any man, acquainted with the extent of our country, and who knew how vulnerable it was in many points, forming a line in one direction of fifteen hundred miles, and in the other direction of more than two thousand: let any man decide whether such an extended country could be adequately defended by a force less than two thousand in number? When the numerous harbors to be defended, on the seaboard, and the number of forts on the western frontier, requiring garrisons to protect them from the attacks of the Indians, were considered, could any reasonable man affirm that two thousand artillerists and engineers were too many?

Cannot we support this establishment? Are we too poor? True economy itself would dictate a continuance of the force. For the militia, however useful in other circumstances, could afford but little defence to our forts and harbors without a corps of regular artillery to support and encourage their efforts. He put entirely out of view all considerations derived from the four existing regiments of infantry. They were entirely occupied in defending our western frontiers from Indian invasion. Their services were there required, as the militia could not be kept in readiness to repel sudden aggressions, but at an enormous expense.

We are extremely young in the science of engineering. However competent the militia may be to the great purpose of ultimately defending the country, they are not in such a situation as to be enabled to protect our forts and harbors on a sudden invasion. If the militia are incompetent to this end, we must rely upon a standing force. Infantry and cavalry might soon be created, but artillery and engineers were not the growth of a day. By diminishing these, you deprive yourselves of all the solid advantages to be derived from the militia, who in co-operation with a small regular force of this description would be formidable, but who, unaided by them, would be inefficient.

The resolution in question he also considered as quite premature. What change, he inquired, since the last session, when the maintenance of this battalion was recognised as expedient, had occurred in our foreign or domestic relations? A convention, it is said, is made with France. But we are ignorant of its terms, its nature, or extent. It has not yet been ratified, and when ratified, who will answer for its due execution, or the consequences which may ensue? If it restores our friendly relations with France, may it not produce a misunderstanding with other Powers? Do not circumstances exist that render it highly prudent to secure and strengthen our western posts? He was persuaded that if a powerful nation like the United States, should declare its inability or reluctance to support this moderate military force, it would incur the contempt of other nations. They would hardly condescend to treat with us for a compensation of injuries, or if they made treaties, they would violate them in the full confidence of impunity.

But it was said by the gentleman, that as this battalion had not yet been raised, the inference was obvious that it was not necessary.

But for what reason had the raising of it been delayed? It would be recollected that during the last session of Congress, the late Secretary of War presented to this House a project for reducing the two regiments of artillery to three battalions each, and in lieu of the fourth battalion to substitute a corps of artillerists and engineers, and a military academy, in which they might be initiated into the principles of these useful and necessary sciences. While that report was pending before the Legislature, it would have been improper and inexpedient to recruit for this fourth battalion. Had the substitute been adopted, the measure would have been superseded. But the report of the Secretary, though many parts of it were, in his opinion, highly deserving of attention, was not accepted by Congress. Since that period, the seat of Government had been removed. The former Secretary of the War Department had resigned, and some time of course had been lost; he knew, however, that some of the officers had been appointed, and had reason to believe that the corps would soon be perfectly organized. Another reason, Mr. Otis alleged, was, that the intention of Government had been principally directed to organize the temporary army; it being conceived that the permanent establishment might proceed more leisurely. On the whole, Mr. O. said, that he was not one of those who were dismayed at the crisis in the political affairs of the country, and he trusted there was still a majority in the House, who, unawed by a change of times, and unshaken by the prospect of seeing their measures hereafter reversed, would persevere while they had the power in maintaining the principles and measures to which the nation was indebted for its dignity and prosperity. If the administration of the Government is destined to change, let those who succeed take upon themselves the burden of reform; and if it was intended by this resolution, that he should have an opportunity to partake in the glory and advantages of it, with all due acknowledgment, he begged to decline the offer.

Let those into whose hands the future Government might fall, realize the expectations that have been raised, let them perform all the engagements they have made, let them preserve and augment the public prosperity, and while they enjoyed the exclusive credit of their measures, they should on

those conditions receive all the support and approbation which in his humble sphere he could afford. But he had no idea of adopting measures that would betray symptoms of regret and contrition for the past, and he hoped his friends would do nothing that should be construed into a death-bed repentance of a conduct which constituted their glory and their pride. Retiring himself from a short political career, he had the consolation to reflect that his efforts had been directed to the support of no measure, which would not be a source of satisfaction, if he were retiring from the sphere of existence. And he doubted not that the other gentlemen had been actuated by the same motives, and would unite in the evidence of their sober conviction, by voting against the resolution.

Mr. Varnum observed that his colleague had not confined himself to a true statement of facts. It was well known that the military force raised in 1794 was for a standing army, of which character was the first regiment of artillery. But when the second regiment was raised, the country was in a state of alarm. We were told that war menaced us, and were terrified with the idea of invasion. Still, it was determined by Congress that the regiment should consist of no more than three battalions. If, then, at that period, when the danger was exaggerated by our fears, three battalions were thought sufficient, can more be thought necessary now, when there is no alarm, no danger of war or invasion?

Mr. V. was of opinion that the three battalions were sufficient for every rational purpose to be accomplished by artillery. He did not mean to say that they were equal to the defence of the country in case of invasion. The idea would be childish. In such a case our reliance must be upon the militia, upon the great body of the people themselves.

The gentleman who had preceded him had dwelt on the unfavorable condition of the militia, and the little knowledge we had yet acquired in relation to artillerists and engineers. Yet that gentleman must know, that in Massachusetts alone, there were forty companies of artillerists and engineers, well equipped and well disciplined, ready, at a moment's notice, to turn out in defence of the laws of the United States, or of that State. Other States were probably as well provided.

The only occasion, said Mr. V., we had for this description of troops, was to defend our harbors and posts from any sudden attack. For this purpose twenty-eight companies were fully adequate. On the occurrence of a great danger, we must not look up to these men, but to the people. Our true defence, our great and only defence, consisted in the militia. He believed them to be in such a state as to protect us from any danger.

Mr. Rutledge was surprised at the remarks of the gentleman from Massachusetts. He had stated no facts, he had referred to no documents, but had confined himself to a declaration of his belief that the four battalions of artillery are unnecessary, and had concluded by pronouncing, as he had frequently before done, a panegyric upon the militia. He thought as highly of the militia as the gentleman did, and he felt more for them. He did not desire to drag them from the plough, and the enjoyments of domestic felicity, to carry them to the seacoast, there to confine them for long periods in forts, under the pretence of a miserable economy. A comparative view of the relative expenses of a standing force and the militia, would convince the gentleman that the latter was by far the more expensive. Let him call to recollection the state of our fortifications at the close of the Revolutionary war. Fortifications then covered the face of the country. But no sooner was peace restored to us than the people believed it would last forever. Government received the same impulse, and suffered the defence of the country to fall into decay. And what were the consequences? We were now called upon to repair them. This very result would be produced by that pitiful spirit of economy that the gentleman wishes to revive.

Mr. R. spoke not from documents, but what he said was derived from actual observation. In travelling from the southward he had seen on the seacoast harbors and forts miserably garrisoned. His friend from Massachusetts (Mr. V.) had not been correct in his statement. The numbers he had assigned to different places were not those actually there, but those contemplated to be stationed when the establishment was complete. In the whole extent of South Carolina and Georgia, there were stationed only one hundred and ninety-two men, and in North Carolina, only one hundred and forty-two.

Discarding, as Mr. R. was compelled to do, all view to false economy, there was another view that naturally presented itself. Was the state of the nation materially changed; and, if it were, should that change have any influence on the measure under discussion? If the establishment of the two regiments of artillery was part of a permanent system, and not derived from any existing or apprehended state of things, and this had been his opinion, and was, he believed, the opinion of Congress, any change whatever in the state of the country would not affect the question before the House.

Artillery, said Mr. R., from their very nature, ought to be permanent. Infantry and cavalry can be soon raised and made effective; but not so with artillery. They require time to render them serviceable. We all know the force of artillery in war. The brilliant successes of the French were owing to the superiority of their artillery to that of their enemies. The First Consul had himself been an artillerist; he had been bred in the school of Paris. In the great war waged against Prussia, Frederick had converted almost the whole of his force into artillery; he had himself invented the horse artillery. By these means he had triumphed.

The Secretary of War had last session made a report recommending the formation of a military school. But his plan had not been embraced. This having failed, he hoped a strong Military Establishment would be substituted in its room.

Mr. R. was indisposed to diminish the corps of

artillerists and engineers; not that he wished to keep up an army for purposes of parade; the present establishment was not more than competent to our defence. If a reduction were to be made, he would much rather diminish the infantry or cavalry than the artillery, for the reasons he had already assigned.

Whether the state of the country was changed, or was not, it was not for him to say. If called upon to give his opinion, he would say that he thought the state of the country was changed. Two years ago the prospect of war was threatening. He now believed we should have peace; and if we did obtain it, it would be owing to the exertions of his honorable friend and of those who acted with him. To the energetic measures pursued by them, by which the people had been roused from apathy to a lively exertion of their powers and an exhibition of their spirit, we should owe its blessings. Their patriotic labors had warded off the dangers that threatened us, and prevented the adoption of measures in which we might have found our ruin. Mr. R. concluded with declaring that it was not for him to say what changes had taken place in the internal situation of the country.

Mr. SHEPARD said that a great expense had already been incurred in raising the artillery, which would be useless if they were now dismissed. He believed, too, the artillery to be the most important part of our Military Establishment. For this and other reasons, in the expression of which other members had anticipated him, he was against the motion for the reduction.

Mr. S. SMITH was perfectly agreed, on general principles, with the gentleman who had just sat down. A preference ought certainly to be given to that description of troops which required much previous instruction before they could be useful. In 1794 he had heartily concurred in adopting measures calculated to call into existence gentlemen of capacity to be instructed in enginery. An additional regiment had been urged at that time. It had been urged in 1796. A report was afterwards made of the number of men required. Upon that report the new regiment had been bottomed. It was then declared it would be no defence against an invading enemy; and it was replied that it was proposed to organize it for the particular purpose of defending our ports and harbors, and as a school of information. At that time we had the prospect of a war before us. Still, it was understood as a part of our permanent arrangement. If the establishment then formed was sufficient, why was it not now sufficient, when we have no new forts except those in the South-western Territory?

A proof of the uselessness of the additional battalion, said Mr. S., was derived from the conduct of the Executive. Neither the Secretary of War nor the President had called it into service.

The great object of the regular troops was to take care of the arms, forts, &c., and not ultimately to defend them. That object could only be accomplished by the militia, on whom, in periods of danger, we must rely for our substantial defence; for no man can suppose ninety-six men equal to the defence of Fort Mifflin, if attacked by an invading enemy.

Mr. S. said he thought the present number of artillerists sufficient. Indeed, one company might be spared from Fort Jay, and one from Newport. Fort Jay was in the vicinity of a populous city, from which any aid could be obtained. The harbor at Newport he considered of the utmost importance, as he thought in a time of war we must look to that port for the protection of our Navy.

Mr. S. was not an enemy to measures of defence. He had been among the foremost in proposing and supporting them. But he thought the grand defence of this country rested in the Navy and Militia. Let us then encourage and advance these. They will be our true friends in times of danger. Congress had applied a sum of money to be laid out in arms to be put into the hands of the militia; and yet not one stand of arms had been given to that useful body. Why had this not been done? The want of money he presumed was the cause. He was not among those who wished to complete the destruction of defensive measures. Nor was he for rushing into childish expense, barely to make a boast of our strength.

Mr. S. affirmed that the fourth battalion had been raised in a back-handed way, and not in the fair, regular manner, that had been pretended. Without taking up the subject by itself, a bill had been passed in 1799 barely directing that a regiment should consist of four battalions; and so back-handed did the President deem it, that he had never raised the additional battalion, not considering it the wish of the House that it should be raised; and, as to the Secretary of War, he had given it up last session for a military school.

One gentleman was greatly alarmed about nations not treating with us, as if our having one or two battalions of artillery would have any influence upon foreign nations. No injury could be done to the country by the proposed reduction. It only affected the future establishment. It did not diminish in the least the existing force. As to the measures of the new Administration, no one can tell what they will be. He trusted that they would be what they ought to be.

It appeared to Mr. S. strange to urge the raising of a new body of the military while the old body remained so incomplete. There were nominal corps in existence without a man. Why appoint officers for such corps? But if officers are wanted, there were one hundred and fifty vacancies in the old corps; fill them. The gentleman from Massachusetts had shown that this corps was useless. Mr. S. had shown that it had been authorized by the Legislature without having been called into existence by the President when war threatened us, and now when gentlemen tell us they expect (and he believed they expected truly) peace with all the world, we are called upon—strange inconsistency!—to organize this force.

The sum of forty-five thousand dollars, to be saved by the proposed retrenchment, had been called pitiful. He was far from thinking forty-five thousand dollars a pitiful sum.

Mr. S. disclaimed harboring the most distant idea of diminishing the present effective force of the United States, and more particularly that of the artillery. That at present in existence he thought useful and sufficient.

Mr. H. LEE thought a view could be taken of the subject before the House that would demonstrate the inexpediency of adopting the resolution proposed by the gentleman from Massachusetts. Let a view be taken of our forts, their distance from each other, the amount of our ordnance, and our infant Navy, and the number of men required for all these objects; and he would ask the mover of the resolution whether he could persist in his purpose? A statement had been made of the number of our forts, and of the men that garrisoned them. He would call upon gentlemen to say, whether the number of men was more than adequate to meet ordinary objects that arose during a state of peace. This was not sufficient. We must contemplate our predicament in a state of war. The militia had been represented, in such a state of things, as our great defence. But it was a fact, that before they could be operative a very inferior force might sweep out of our hands many of our most valuable forts.

The gentleman from Maryland had given it as his opinion, that the force stationed at Norfolk might be reduced. Mr. L. held an opposite opinion. He knew Elizabeth river to be very important, and he also knew that it was badly protected. If you do not defend your forts well, you had much better not do it at all. Newport and New York were also very important stations. Hampton road commands your attention. How, under your present establishment, would you defend your Navy riding in that road? In case of a war with England, your little Navy must fly to your shores for safety; and, when there, how are they to be protected?

This battalion not having been raised by the President has been tortured into an argument against the measure, under the belief that the President thought it useless. Mr. L. said he was disposed to pay the highest respect to the President of the United States, and he was happy to hear other gentlemen unaccustomed to express such respect, unite with him on this occasion. But he was, notwithstanding, not disposed to sacrifice his own opinion, though he thought the conduct of the President had been otherwise satisfactorily explained by a gentleman who had gone before him in the debate.

Mr. L. wished gentlemen to feel the full force of those remarks which had enforced the great weight of artillery in military operations. In the various campaigns conducted by the Chief that was now no more, we were without artillery, in consequence of which much American blood had been spilled. From the want of artillery we had lost Ninety-Six. In the loss of that place a fatal blow had been inflicted upon our arms. One engineer of talents would have saved it.

Mr. L. was not disposed, by adopting the motion, to cut up by the roots the only military school we have left. It was within our power, and it was undoubtedly our duty, to retrench all useless expenditure of public moneys. But he held it to be a still higher duty not to hazard the welfare of the country. If you are determined to reduce the Army, strike at the infantry and cavalry. The evil which you will then do may soon be repaired. A few weeks will make soldiers of this description. But, if by a wanton blow, you destroy science, study, and experience, you cannot soon repair the loss.

The SPEAKER said he rose to observe that it was not in order to make use of arguments derived from the execution of a law by the President, as no Constitutional control could be exercised by this House.

Mr. MACON said that the true question was whether the House thought it necessary at this time to raise the additional battalion. Does such a state of things exist as requires its being raised? If it does not, it ought not to be raised, the nominal existence of the battalion on paper to the contrary notwithstanding. As it never yet in reality existed, and we had done very well without it, he saw no occasion why we should call it into being now. As to the alleged use of it at a future period, he thought the idea futile. For then twenty battalions, for aught we can say, may be thought necessary.

Gentlemen had said that the old argument of saving the public money had been used. Mr. M. said he thought the argument a very good one on all occasions. On all occasions, unless a good reason could be assigned for spending the public money, it ought not to be spent. Suppose you raise the battalion. Experience will soon demonstrate its uselessness; and then you will discharge the men, and give them three months pay to go home with.

We have been told that in a certain event, not very improbable, the Western posts will be struck at, and we shall be obliged to go to war. Mr. M. hoped that the days of alarm were past, and the reign of terror over. From whom was this blow to come? He did not know any nation likely to strike at our posts. We had got, it was said, a treaty with France. If so, we had nothing to fear from that quarter. If no greater sum than forty-five thousand dollars was saved by the proposed reduction, he should still be for it, as he thought the additional battalion altogether useless.

Mr. KITCHELL made a few remarks, not heard, and concluded with moving the taking the yeas and nays, for which a sufficient number of members rose.

Mr. CHAMPLIN said, that he had been among those who thought the aggressions of France not only justified, but called for a declaration of war from us. He had been for taking the direct road. But as other gentlemen had differed from him in opinion, he had voted for the new regiment of artillery as a measure calculated, in connexion with other measures, to produce that, step by step, which he could not directly obtain. He had therefore voted for the additional regiment then as a temporary arrangement. But though, when first formed, he voted for the regiment as a part of the

system of defensive measures, he now thought it would be permanently useful.

In reply to the remarks of gentlemen, Mr. M. could assure them that several officers had already been appointed. When, at the close of the last session, Congress had manifested a disposition to destroy every military arrangement, they had, notwithstanding, been impressed with the expediency of maintaining the two regiments of artillery. Nothing had since occurred to change his opinion.

Mr. Randolph said that all the attention he had bestowed on the subject convinced him of the justness of the ideas expressed by the gentleman from North Carolina. The true question had been misrepresented. That did not consist in estimating, abstractly considered, in relation to a future period, the benefits or inconveniences attached to an increase in the establishment of artillery. The simple question was whether this additional body was necessary now. That it was not necessary he was fully convinced, as it had been dispensed with in periods of apprehension and danger. This conviction confirmed him in his adherence to those ideas which had been forcibly expressed by the member from North Carolina.

The House had been told by a gentleman from South Carolina, that from tenderness to the militia he would dispense with their services. In my opinion, said Mr. R., this is a mistaken tenderness, that neither he wished to manifest, nor did the militia themselves desire to receive. In a similar strain of affected tenderness a Roman Emperor had excused a Roman Senate from the exercise of their legislative duties, and had informed them that from a regard to their ease he would pass laws for them; and that Senate had abjectly returned their thanks to the Emperor for his kindness to them. He hoped that no similar proposition would be made to that House, or similar answer returned by them.

In his belief that this corps was unnecessary, Mr. R. was confirmed by the remarks that had fallen from the gentleman from Rhode Island. That gentleman had informed the House that the measure had received his approbation as tending to involve the country in a war with France: and was the House, at this day, to be called upon to adopt, piecemeal, those measures that had been framed for the production of this effect?

The gentleman from Massachusetts had sounded the tocsin of party, and had called upon a majority of that House to meet with firmness what he conceived an honorable political death. He had proclaimed his indisposition to recede from those dignified measures that had hitherto been pursued. Mr. R. confided in the integrity of the gentleman, and did not entertain a doubt of his receiving his most cheerful co-operation in that change of measures which he had portrayed as impending over the House; and he was happy to say, that if such a disposition were manifested by that gentleman, and by those who acted with him, it would be met by correspondent sentiments of harmony on his side of the House.

The question was taken that the House do agree to the same, and it passed in the negative—yeas 39, nays 46, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Samuel Goode, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Joseph B. Varnum.

Nays—George Baer, Bailey Bartlett, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, jr., William Shepard, John C. Smith, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. Macon, from the Committee of Claims, made report on the petition of Mr. L'Enfant, that the petitioner had no just claim against the Government of the United States—which report was read a second time by unanimous consent, and agreed to without a division.

Mr. Cooper called up his resolution for appointing a committee, to inquire into the expediency of repealing the act directing the valuation of dwelling-houses, and enumeration of slaves.

On motion of Mr. Otis, the motion was so altered as to make the reference to the Committee of Ways and Means, and then agreed to by the House.

On motion of Mr. Cooper.

Resolved, That a committee be appointed to inquire into the expediency of repealing the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States."

Ordered, That the said motion be referred to the Committee of Ways and Means.

Thursday, December 18.

Another member, to wit: James Sheafe, from New Hampshire, appeared, and took his seat in the House.

On motion of Mr. McMillan.

Resolved, That a committee be appointed to inquire into the situation of certain tracts of land which have been appropriated for the support of public schools and seminaries of learning, and for the support of religion, situated within the limits of a tract of land granted to John Cleves Symmes and his associates, in the Territory of the United States Northwest of the Ohio; and that the said committee take into their consideration what measures are necessary to be taken in order to render the lands so appropriated productive of the benefits contemplated to result therefrom; and that the said committee have power to report thereon by bill, or otherwise.

Ordered, That Mr. Pinckney, Mr. Imlay, Mr. Varnum, Mr. Morris, and Mr. M'Millan, be appointed a committee, pursuant to the said resolution.

Friday, December 19.

Mr. Griswold, from the committee to whom was referred so much of the President's Speech as relates to the Judiciary of the United States, presented a bill to provide for the convenient organization of the Courts of the United States; which, having been read twice, was referred to a Committee of the whole House on Monday.

The Committee on Unfinished Business reported in part a list of certain laws relative to revenue which expired with the present session, and recommended to refer the expediency of continuing them to the Committee of Ways and Means. Which report, being read twice, was agreed to.

MISSISSIPPI TERRITORY.

Mr. Claiborne laid before the House, a memorial of the House of Representatives of the Mississippi Territory, stating some inconveniences which had arisen from the want of authority in the Governor to issue writs of election, in case of improper returns; suggesting also the want of disposition on the part of Governor Sargent to have the General Assembly organized, and stating the advantage which would accrue to the Territory if an earlier day for the meeting of the Legislature was fixed by a law of Congress. The memorial was referred to Mr. Claiborne, Mr. Goodrich, and Mr. Nott, with authority to report by bill or otherwise.

Mr. Davis moved the reference to the same committee of certain resolutions submitted by him to the House during the last session, but then not acted upon, stating the alleged existence of several unconstitutional laws in the Mississippi Territory, whereby unjustifiable extortions were practised on the citizens.

The resolutions were read. After the reading, Mr. Griswold desired a postponement of the motion for a reference till Monday, which was agreed to.

MAUSOLEUM TO WASHINGTON.

Mr. H. Lee, from the committee to whom was referred the several propositions made commemorative of the services of George Washington, reported a bill for the erection of a mausoleum, differing in no other respects from the former bill reported, except as to the materials of which the mausoleum is to be constructed; the present bill directing it to be made of stone, the former one directing it to be made of marble. He said that the committee, after maturely considering the relative merits of all the plans proposed, had preferred the mausoleum, as well from its superior durability as cheapness, to any other.

The bill was read twice, and referred to a Committee of the whole House on Tuesday.

Monday, December 22.

AFFAIRS OF MISSISSIPPI.

The motion made on Friday by Mr. Davis, to refer to the committee to whom had been referred a memorial of the House of Representatives of the Mississippi Territory, on the official conduct of Governor Sargent, the following resolution, (concluding a specification of unconstitutional laws enacted by the Governor in conjunction with the Judges, and of sundry oppressive acts committed by him) viz: "*Resolved*, That the laws passed by 'the Governor and Judges of the Mississippi Territory, and the petition of Cato West and others, 'heretofore presented to the House, together with 'all the documents relative thereto, be transmitted 'to the President of the United States," was taken up; and, on the question of reference,

Mr. Griswold said the whole subject, of which the resolutions now offered formed a part, was already referred to a committee. The charges laid in the resolutions were serious. To refer them would be to give an indirect sanction to their truth, and he thought any such sanction highly improper until they are proved. The committee already appointed had full power to investigate all the facts that existed. The result of their investigation would be reported, and it would then be time enough to express an opinion on the propositions now offered. These same resolutions had been offered to the House the last session, and had then been rejected. Mr. G. hoped the same course would now be pursued.

Mr. Davis said he had always thought that a committee, to ascertain facts, and to shape business for that House, proceeded from a knowledge, that a committee consisting of a few members could with more facility gain a knowledge of those facts than the House in its collective capacity could do. He could, therefore, see no good cause for withholding the resolutions from the select committee, who were appointed to consider the remonstrance from the Legislature of the Mississippi Territory. His resolutions contained facts, and he was ready to support them, from the documents before him. It would be criminal in the House to withhold from the committee any facts it was in their power to furnish. If this resolution contains misstatements, let the gentleman from Connecticut show them, and he would readily join in expunging them, so as only to let pure facts go to the committee. He wished no imposition; he wanted only a fair examination into the conduct of Winthrop Sargent, Governor of the Mississippi Territory, whose administration had been marked with so much restlessness and discontent, and he believed justly. At the last session of Congress some alleviation was intended to be offered to the distresses of this oppressed people; but their Governor had defeated the object by omitting to give notice of the election, as he ought to have done. He was enjoined, by the laws of the last session, to give notice of the election, and to appoint a judge

or judges to attend it; he had omitted to do so, and had refused to issue a writ of election (doubting for the first time his power.) This conduct had drawn from their Legislature a remonstrance which required the further interposition of Congress, to enable them to organize their body. This remonstrance makes a general allusion to the unconstitutional laws made by the Governor and Judges; the resolution particularizes those laws, and will bring them in a precise manner before the committee. If gentlemen doubted the accuracy of the resolution, he would convince those, who were not opposed to conviction, that it was correct. [Here Mr. D. read several of the laws made by the Governor and Judges of the Mississippi Territory, and some clauses of the Federal Constitution to prove that the laws were unconstitutional.] Here then are abundant proofs of unconstitutional and oppressive laws, under which the people of that Territory labor, and of which they complain; and will this House afford no relief, from a tyrant, who has trampled on their rights with a tiger's stride; and plucked from them, by voracious and disgraceful laws, their hard earnings?

The Governor of that Territory receives annually a salary of two thousand dollars for his services, and each of the Judges a salary of eight hundred dollars per annum. This was supposed by the law a competent compensation; their acceptance of those offices for that sum acknowledges it to be enough; still you find laws here that give the Governor, a fee of eight dollars on tavern licenses, &c. As well might the President of the United States claim fees for giving patents or any other writing to which he affixes his name. The Judges of this Territory, who, conjointly with the Governor, made the laws have taken care of themselves. Hear their table of fees, giving to themselves fees for certain services, rendered by them in their Judicial capacity. And is not this a shameful abuse of the Legislative power they are vested with? [Here Mr. D. read the table of fees.] Congress cannot raise their own wages; the Constitution has wisely forbidden it, yet Winthrop Sargent and the Judges give themselves what fees they please, without regarding the spirit of the Constitution. If this resolution accompanies the remonstrance of the Legislature of the Mississippi Territory, the committee will be able to judge whether the Governor withheld the writ of election from a fear of exceeding his power, or whether he did it to prevent the organization of the Legislature; for had the Legislature been formed, those very laws by which he and the Judges satiate their avarice, would have been repealed.

The gentleman from Connecticut says, that the resolution contains direct charges against a man high in office, and this House ought not to sanction them until they are proved. I trust I have proved them by a reference to the laws now before me, and if they are not proved, let the gentleman take the laws and show wherein I am incorrect; and so much as is found defective, let him expunge. The gentleman says, that despotism is charged against the Governor. Why, said Mr. D., what stronger proof of tyranny or despotism can you ask, than to see a man set no bounds to his conduct, and break through the limits set for him by the supreme laws of the land?

It is true this resolution was offered by me at the last session, but it was not rejected as the gentleman supposes—it was not acted upon; but if the gentlemen from Connecticut, and other gentlemen on this floor, after seeing that Winthrop Sargent has openly violated the Constitution of the United States, consider him a fit object to rally round; if, after they see he has violated the ordinance designed for the government of that Territory, they consider him a fit object for them to cling to; if after seeing the shameful abuse of the Legislative power vested in his hands, and his disgraceful avarice; if, after seeing and hearing all this, they consider that he acted consistently with Federal principles, and is entitled to Federal support, they will unite, and stifle this resolution here, and never let the committee see it. It may be that this resolution will be lost to-day, perhaps it would be to-morrow, but the time is approaching when the conduct of a public officer will not be veiled in this manner. The sun of Federalism is nearly set—not three months, and it sets forever.

If this resolution contained anything new or strange there would be some excuse for the objections made to a reference; but its having been presented during the last session must have imprinted the facts charged in it on the minds of every member present. Besides this, those complaints have been made from the first hour Winthrop Sargent came into office, and have been heard from one extremity of the continent to the other. It is a fact well known, that at the time this man was appointed Governor of the Mississippi Territory, he was hated and despised by the people of the Western country. His pride, his insolence, and tyrannical disposition, had rendered his name odious to the Western country. In this, the gentleman who represents the Northwestern Territory, and who was nearer the theatre of his actions than I was, can bear me witness. Still he was appointed. We felt indignant at the promotion of such a character by our Government; but we have guardedly repressed our resentment.

The object, however, for which this man was set over us, has not been accomplished. His mission has failed. Though we felt the just indignation of freemen, we had more wit in our resentment than to commit any extravagant acts that would authorize "the chief who now commands," to lead "a heaven-born band" among us. We were apprized of the disposition; we were apprized that an excuse was all that was wanted. But the reign of terror is almost at an end. If you want to conciliate the affections of the Western people, and to bring them over to your Administration, refer this resolution. If you do this, they will suppose that the complaints of their fellow-citizens are heard and attended to, and that there is a hope of speedy redress; but if you reject it, the reverse will be the effect.

You have no idea, said Mr. D., of the mischief this man has done in the Western country; particularly in the Mississippi Territory. His conduct has reared a powerful opposition to your Administration, which will grow with our growth and increase with our strength, unless you remedy the evils that oppress our suffering fellow-citizens. His conduct has alienated the affections of the Western people from your Government; and this effect it will have while our fellow-citizens are suffered to complain unheard, and the conduct of their oppressor is justified. Ask a well informed man from that Territory, or from almost any part of the Western country. Why are you opposed to the administration of the Government? He will tell you in a moment, "I know, that Winthrop Sargent, Governor of the Mississippi Territory, has openly violated the Constitution of the United States in sundry instances. I know he has outrageously violated the ordinance of that Territory. I think he has shamefully exercised the legislative power put in his hands, by making it a cloak under which he has exacted the most exorbitant fees from the people to gratify his avarice. I know he has never received even a rebuke from the Chief Magistrate for all this. I consider Winthop Sargent but a small vein of a great body; I am acquainted with the pulsations of that vein; I know it beats towards aristocracy; I know it swells with tyranny and despotism. I consider the great body that feeds this small vein as also contaminated." This will be the answer you will receive; and this will eternally be the language you will hear from those people, until you release them from the tyrannical bondage under which they are laid by the oppressions of their Federal Government.

Mr. Otis was averse the last session, when this subject was before the House, to commit himself by a vote without possessing an accurate knowledge of the circumstances attending it. The same want of information under which he then labored he still felt. Casting his eyes over the resolutions just read he discovered that they contained two serious declarations; the first, that laws hostile to the happiness and prosperity of the citizens of the Mississippi Territory, and at variance with the Constitution, had been enacted; the second, that these laws had been passed under malignant intentions.

On the truth of these declarations Mr. Otis was not prepared to decide. He required that information which the committee already appointed would be most likely to furnish. If the gentleman from Kentucky had moved the appointment of a committee, either to inquire into the expediency of repealing those laws that were complained of, or to report facts whereupon an impeachment could be grounded, he would have pursued the usual course; but when he commits a speech to writing (for by no other name could he designate the string of resolutions which he had moved) criminating in terms of harshness the conduct of a public officer, he considered him as proposing an unprecedented step. As well might he move to refer what had fallen from him in debate this day.

In his opinion, Mr. O. said, the subject desired by the gentleman from Kentucky could be accomplished with much greater propriety in the usual way, than in that now proposed.

But the gentleman asks, if the charges are true that are contained in the resolutions, why not pass them; if false why not expunge them? How, said Mr. O., are these charges proved? He confided in the veracity of the gentleman, and was persuaded that he would not say what he did not himself believe; but his belief could not impart to other gentlemen the same strength of conviction with himself.

If the people of this Territory are really oppressed, if they groan under the pressure of tyrannical and unconstitutional laws, let those laws be examined, and repealed. But when he found a gentleman coming from the neighborhood of the Territory, actuated by personal and local considerations, and animated by a zeal that dictated sentiments which in cooler moments the gentleman himself would not approve, he could not avoid hesitating in taking his opinion as the guide of his vote.

This sir, said Mr. O., is not a question of Federalism or anti-Federalism. If the sun of Federalism, as the gentleman from Kentucky asserts, be set; if the Administration be changed; may not such a measure as this strike back upon its authors, and produce a change in the tide of events. If the sun of Federalism be set, would it not be unkind in us, the very day after it, to suffer the gentlemen to injure themselves by such an act?

I hope, continued Mr. O., that the sun of Federalism is not set. If it really be set, I hope that the satellite which that gentleman inhabits will not soon experience the want of its animating and protecting influence. I believe it is not set, and ardently hope that that quarter of the Union, as well as all the rest, will long continue to feel its vivifying effects.

It might be proper to repeal the obnoxious laws, without branding with corrupt motives those who enacted them. Mr. O. concluded with declaring that in the accomplishment of this purpose, if examination and inquiry warranted it, as well as in every proper step to gratify the citizens of the Mississippi Territory, he would heartily concur.

Mr. Randolph made some remarks on the reference of the *memorial* of the House of Representatives of the Mississippi Territory.

The Speaker said the question was on the reference of the *resolutions*, and not the memorial.

Mr. Randolph replied that his observations had respect to a resolution founded on the memorial, and requested that it should be read.

The Speaker put the question whether it should be read, which was carried. And after the reading of those parts of the resolutions before the House which were requested to be read,

Mr. Randolph again rose.—I do not find any assertion made in these propositions the truth of which may not be substantiated, by every member, from the documents before the House. The first proposition is predicated on the resolutions of the citizens of the Mississippi Territory; and with respect to the other propositions, which gentlemen say "may possibly be true," if they would give

themselves the trouble of turning to the code of laws for the Mississippi Territory, which had been laid before them, in an official shape, by the President of the United States, they will find no charge founded on them that is not completely substantiated.

I do not consider the resolutions as covering dubious ground, but as resting upon firm facts; and the gentleman from Kentucky, who introduced these resolutions, ought to be contemplated as discharging his duty as a member of this House, as an upright citizen, and as a neighbor to the oppressed Territory. There is no misapplied feeling expressed in the resolutions; on the contrary, they contain little more than abstract propositions. I trust, therefore, that this House will throw no impediment in the way of examination. I trust they will be referred to a committee, and that such committee will present the whole affair before the people and the Government.

The Government was called upon, if it regarded its honor, to inquire into these charges. They were high and serious ones, and, if true, required immediate and decisive redress. The gentleman from Massachusetts ought to co-operate in the accomplishment of this end, without involving in the discussion considerations of Federalsim, of which he may consider himself as the primary orb, and other gentlemen as the satellites.

Mr. Otis explained. He made no such allusion, either to himself or the gentleman from Kentucky, of whom he had only spoken as of one who inhabited a satellite—meaning by that phrase Kentucky.

Mr. Randolph.—I did not assert what the gentleman denies. I did not say the gentleman *actually did*, but *may*, consider himself as the primary orb.

I hope the House, after what I have said, will no longer be insulted by the declaration, on this floor, that laws *officially* communicated *may* have been passed. I hope that, in any event, effectual measures will be adopted, which shall not even wound the squeamishness of gentlemen.

When this officer was appointed, these charges were made and supported; the unconstitutional laws existed; still he was armed and fortified with destructive power.

Sir, said Mr. R., I never wish to blunt the sword of justice by directing it against innocence or virtue; I wish it only turned against the criminal. The object of the resolutions is to acquit Governor Sargent, if innocent—to convict him, if guilty. Is not this fair; is it not honorable; and ought not this House to promote it?

Mr. Harper.—I apprehend that the honorable member has totally mistaken the course of the business. He was corrected when he rose, but he still persists in error. The people who complain ought to be heard; they will be heard; they will obtain justice. What is the object of the motion? Does it not embrace a string of resolutions traducing a high public officer? This was the object of it. There was no other object. If there be another, what is it? The motion is not in the form of an address to the President desiring from him the removal of an officer who had violated his duty, but it offers you a string of preambulatory stigmatizing remarks, and concludes with directing certain laws, alleged to be unconstitutional, to be transmitted to the President. Does the President want these laws? Is he ignorant of them? Had he not them before we received them from him?

Are we then, by this side wind, to hint to the President that we wish the Governor of the Mississippi Territory removed? It would be more consistent with the ideas of honor expressed by the gentleman from Virginia, to come forward fairly and avowedly with such an address. Such a measure would certainly be novel, but still it might be right.

These were not the plain, fair means pursued for the attainment of an avowed end. The means were very different. They tended solely to the traduction by this House of a public officer.

The gentleman from Kentucky had called the Governor of the Mississippi Territory, after heaping reproaches upon his character, a vein of the great trunk. The allusion did not answer his purpose; but if it did, I will ask the gentleman, whether, even if the vein were removed, the great trunk would not still remain? The simile was, therefore, nugatory.

The same question had been before the House at the close of the last session. It had been then offered on the very last day. It had been laid aside. The same circumstances, then existing, attend it still. It is inherently the same.

The contents of the resolution had gone forth to the world. They had carried with them that weight that was derived from their having been offered by a member of this House. They struck at the honor and integrity of a man, who to the age of fifty-six years sustained a character, not only unimpeached, but embellished with many virtues. Though this character may be impaired by more recent incidents, since his appointment to the government of the Mississippi Territory, of which Mr. H. was entirely ignorant, all the charges now made were opposed by the preceding acts of his life.

Upon the whole, if a proper plan be pursued, instead of sanctioning these resolutions by a reference of them, a committee may be appointed, who may inquire extensively into the subject; after reporting to us all the information they can collect, the gentleman from Kentucky can add his, and a just decision be then made. This conduct will be more appropriate than any implied address to the President. For if the charges are true, we should be lost to political integrity, and should betray our trusts, if we did not immediately take higher ground; if we did not proceed *ad hominem*, and impeach the flagrant violator of his duty; and I pledge myself, that in such event, if no other member shall, to move his impeachment.

Mr. Claiborne.—I cannot subscribe to the character given to Winthrop Sargent by the gentleman from South Carolina; and when that gentleman calls him amiable, I can only tell him that such an opinion is opposed by the united voice of

the Western world. But on this subject I must forbear, for with the whole part of Western America I have feelings that would hurry me into an expression of sentiments which a member of this House should not indulge.

The gentleman from South Carolina was not truly informed on this subject. The memorial, on which some of the charges were made in the resolutions offered by the gentleman from Kentucky, was addressed to Congress, and not to the President of the United States. It was fair to suppose that the President was unacquainted with its contents; for had he known them, it were to be hoped, that, for the sake of vindicating the rights of an oppressed people, he would have removed their tyrants.

The gentlemen from South Carolina and Massachusetts declare themselves averse to the reference of the resolutions, lest by it they should give a sanction to the charges preferred. But does the House sanction the facts set forth in a petition by referring it? Do they not, on the contrary, refer for the very purpose of ascertaining them? Was not this the case every day? Was such a resolution or petition, on this ground, ever before opposed? If it had been, it was not since he was a member of this House.

If the resolutions be referred, what will be the effect? If the charges exhibited are found to be untrue, the investigation will terminate in the triumph of innocence; if, on the other hand they are proved to be true, he would proceed further—as far as the gentleman from South Carolina—and apply a Constitutional corrective. By a Constitutional corrective, he meant an impeachment; and he would not only have this man punished as a tyrant, but he would hold forth his punishment as a terror to others.

Mr. Griswold.—The remarks made by the gentleman go to show an indisposition in members of this House to investigate the subject. This is not the fact. We say that the investigation is in a train of being made. The petition of Cato West, and the memorial of the House of Representatives of the Mississippi Territory, have been referred; under these circumstances, the subject generally is before the committee. To go further at present, would, we say, be wrong. For if we do refer also the facts stated in the resolutions, we take it for granted that they are true, and refer to the committee the expediency of adopting an inference from them. The facts charged might be true, for anything Mr. G. knew. He knew not whether they were true or not. He knew nothing of Winthrop Sargent; he was no acquaintance of his. But, Mr. G. said, he was swayed by higher motives than those which were personal. He knew that the House had no right to pass censure upon any man, until his conduct had been fairly investigated, and his criminality proved. Then, and then only, had they a right to pronounce upon the character of any man.

Never before had he seen a resolution prefaced by such a number of *whereases*, only tending to place the character of this man upon the rack. This was introducing an old principle—a principle which it was our boast that we had discarded. A rack was brought into this House—not, as of old, to rack the body, but what was still worse, to rack the mind.

Gentlemen say the charges are either true or false; if false, refer them to a committee, and that committee will, on inquiry, tell you so, and thus you will get rid of them; and if true, they ought to be acted upon by this House. But who could depend upon their truth? Few members had investigated them in such a way as to form an honest conviction. If they shall appear to be true, after a faithful inquiry, the course proposed by his friend from South Carolina ought to be taken. The culprit should be summoned before the bar of this House, and should be impeached.

Mr. G. concluded by repeating that he was against the resolutions; not because he was averse to an investigation, but because he felt averse to censure any man for offences uninvestigated and unproved.

Mr. Harper here explained what had fallen from him in a previous part of the debate. He had not said, or, if he had said, it had not been his design to say, that these resolutions were intended to traduce the character of an individual, but that such were their effect. He knew nothing about the intention of the mover.

Mr. Dennis thought the question then before the House an improper one. For, whether adopted or rejected, it would inadequately express the opinion of members. On the one hand, it was contended, that if agreed to, it would contain a sanction of the truth of serious charges against the character of a public officer; and if rejected, it would express an opinion that those charges were false. Mr. D., who was not prepared either to approve or condemn the conduct of Winthrop Sargent, hoped the House would pursue another course; and if, in conformity to his wishes, the resolutions then offered should be dismissed, he would himself propose a more general resolution, for the appointment of a committee to inquire into the official conduct of Winthrop Sargent, and report to the House the result of their inquiries. Such a resolution would convey neither approbation nor censure; and it would be free from that long string of preambles which prefaced the present resolutions. These were certainly improper; for, however gentlemen might concur in certain general deductions, few men agreed in all points in the reasons assigned for any particular act.

Mr. Craik thought the object of the resolution itself improper. He desired to know in what part of the Constitution was to be found the right to move for the dismission of a public officer, or to impose a censure upon him? What was the view of the mover of the resolutions? He had not said that his object was to impeach. On the contrary, his real object appeared to be to obtain from this House an expression of their censure against a high public agent; and by the expression of such censure to effect his removal. Such a step would be improper. It involved in it the exercise of powers which we did not possess. If the object of the gentleman, as professed, was to com-

municate information to the President, this object could be attained by the gentleman by his withdrawing the papers then before the House, and delivering them, in the capacity of a private citizen, to the President, who alone was authorized by the Constitution to remove a public officer, except by impeachment.

Mr. Davis.—The opposition to these resolutions has assumed various shapes. One gentleman is startled at the long preface, another is alarmed at the number of *whereases*, and others say that by referring them, you will sanction the truth of the charges. This was not the case. They stand upon the same footing with any petition presented, which always contains some facts, to test the truth of which a reference is invariably made. The reference amounts to nothing more than an acknowledgment by this House that it is their duty to hear the complaints of the people, and when heard to inquire into their truth. Will not the committee, when appointed, compare the charges made with the facts that are proved, and from such a comparison make a report; and will not that report be open to examination, revision, and amendment, by any member of this House?

The gentleman from South Carolina, as was usual with him, had made remarks on this subject, without knowing where to begin; and had asked if the laws complained of had not been presented by the President to the House? It was certainly true that they had been so presented. But this was saying very little for the President, when it admitted that the President had seen the laws that violated the Constitution, and oppressed the people, without checking the officer who had usurped unconstitutional power, and exercised flagrant oppression.

The gentleman from South Carolina had called the charges contained in the resolutions mere assertions. Mr. D. denied the truth of the remark. There was not a charge made that was not proved. If he had told the House that he had laid hold of the threads of a conspiracy, he might have been charged with making mere assertions.

Mr. D. was not acquainted with the early character of Winthrop Sargent. But he was acquainted, which was more material, with his late and present character. He did know that in his recent actions he had exhibited the character of a tyrant. It was very probable that before he was corrupted by power he was a virtuous man. But with him, as with many other men, no sooner had he got power, than he assumed the character of the tyrant, and oppressed those whom he had been appointed to protect.

Mr. D. cared but little for the present fate of his motion; for, let the House decide as it would on this day, a proper decision would soon be had. The reign of terror in this country would soon reach its end.

Mr. Macon.—The subject already referred does not embrace the contents of this resolution. The memorial from the House of Representatives of the Mississippi Territory only relates to the election for Washington county, and the conduct of the Governor in relation to it; whereas the charges on which this resolution is founded are numerous and dissimilar.

The subject had been, last session, introduced at a late day, and had from that circumstance been laid aside. He was then convinced, and still was convinced, that the charges are true. They are specially stated and supported by a reference to their proofs. Can more be required? Why not then refer them? Will not a committee inquire into their truth? and should they be found untrue will not the committee say so? A reference presented the only course whereby justice could be done to those who complain; to the country at large; and to the individual criminated.

It appeared to Mr. M. that it became that House to be more attentive to these charges, as they came from a territory unrepresented in our Federal Councils.

Gentlemen say, impeach this officer, if guilty. Could there be a more appropriate mode of leading to this effect, than by the appointment of a committee, on whose reported statement of facts the House would be justified in acting? This had been the uniform mode. It had been practised in the case of the failure of the Western expedition under St. Clair. A committee had been appointed to inquire into the subject; though he granted that he did not recollect that the word *whereas* (so much objected to on this occasion) had been then used.

Nothing had been more common than to appoint a committee, and then give them certain instructions; this resolution was nothing more. But we are told from all quarters that we cannot pass the resolution without sanctioning the charges, and staining the character of Governor Sargent. It was not so. Gentlemen were mistaken. A reference involves no opinion, other than that a subject may be better investigated by a select committee than by this House.

Mr. Harper asked whether it was in order to amend the resolution.

The Speaker answered that it was.

Mr. Harper.—I then move to strike out the whole of the preamble, and so much of the resolution that follows, as to make it read, "that a committee be appointed to inquire into the official conduct of Winthrop Sargent, which shall be authorized to send for persons, papers, and records."

Mr. H. declared his object was to bring about an impeachment of Governor Sargent, if he appeared on investigation to be guilty.

Mr. Claiborne said he admired the object avowed by the gentleman from Massachusetts; but he then rose to ask the Speaker whether the amendment was in order.

The Speaker said it was.

Mr. Eggleston.—I hold in my hands the rules of the House, where I find it declared that a motion for commitment shall preclude all amendment.

The Speaker, after some hesitation, said it certainly was so.

Mr. Rutledge said gentlemen all seemed to agree as to the essence of the case, but to differ on the mode. He thought the instance referred

to by the gentleman from North Carolina fully in point, and altogether against him. In that case a committee had been appointed barely to inquire into the causes of the Western expedition. The resolution had not been prefaced by a long preamble; it had not ascribed motives of cowardice, or other reprehensible motives to General St. Clair. The subject seemed to be entangled by the rules of the House. He approved the mode recommended by his colleague, and for the purpose of attaining that he would move the previous question.

The previous question was then put, viz: "Shall the main question be now put?" Which passed in the negative—ayes 36, noes 48.

Mr. Harper then moved to strike out the preamble.

Mr. Macon moved a postponement of the question till to-morrow; motion lost.

Mr. Kitchell moved an adjournment.

Mr. Thatcher.—If we adjourn till to-morrow, when we meet then, what will be the question before the House? We have decided that the main question shall not be put; can that then be the question? Where will it be? Where shall we find it?

Mr. Harper called to order; on a motion to adjourn there could be no debate.

Motion for adjournment lost.

Mr. Davis moved a commitment of the amendment to a select committee.

The Speaker declared the motion not in order.

Mr. Dent asked if it was not in order to commit the motions of both the gentlemen from Kentucky and South Carolina to a committee.

The Speaker said a vote on the main question had just been put.

Mr. Eggleston said the vote had been on the previous question, and not the main one.

The Speaker acknowledged that it was so, but declared the proposition of Mr. Dent out of order.

The question was then taken on striking out the preamble, and carried—48 members rising in the affirmative.

Mr. Harper then moved to amend the concluding resolution moved by Mr. Davis, by striking it out, and introducing in its room the motion already stated as made by Mr. Harper.

Mr. Randolph desired to know, whether it was in order to move an amendment to the amendment of the gentleman from South Carolina.

The Speaker said it was in order.

Mr. Randolph then moved the reference to the committee of the laws, documents, and other papers accompanying them.

The Speaker said that appeared to him to be the amount of the original resolution.

Mr. Randolph replied that the original resolution was for the transmission of them to the President.

The Speaker acknowledged that it was so; and stated the motion of Mr. Randolph.

Mr. Champlin thought the motion out of order.

Mr. Harper rose to call the gentleman to order. The Speaker had already decided the motion to be in order.

The Speaker again pronounced the motion to be in order.

A desultory debate ensued between Mr. Randolph, Mr. Griswold, Mr. Harper, and Mr. Nott—Mr. Harper's motion under consideration.

Mr. Randolph would say, however hazardous the remark, that the House had never been more idly employed than on this occasion. All the gentlemen who have spoken against the original resolution of the gentleman from Kentucky, say they are agreed to the thing, but they dispute with tenacity every mode that we point out for accomplishing it. Whichever way we proceed, their ingenuity meets us at every step; and thus they strive to baffle every motion whose object is a fair and full investigation.

Mr. R. thought the direct point should be directly aimed at. The committee proposed to be appointed by the gentleman from South Carolina, uninstructed as to what charges they are to investigate, may be as blind as the gentlemen themselves who had spoken. He hoped, therefore, the House would compel them to take them into view.

Mr. Rutledge was in this stage of the business opposed to the amendment of the gentleman from Virginia, though he had no objection to agree to it, after the motion of the gentleman from South Carolina was agreed to.

Mr. Davis appealed to gentlemen, whether they were serious in wishing to send for persons and papers? Could they expect to get them during the session from a country 1,700 miles off?

The Speaker called to order. The main question was not before the House. Whatever was said must be on the amendment.

Then, said Mr. Davis, I will say nothing about it, and sit down.

The question on Mr. Randolph's motion was then put and lost—ayes 29.

Mr. Claiborne moved to strike out of the motion made by Mr. Harper, the words, "to send for persons, documents, and papers." His motion was dictated by a desire to obtain speedy justice for this oppressed people. The necessary proofs were before the House. If the committee were tied up from making a report until a message had been sent to, and returned from, the Mississippi Territory, he should despair of justice overtaking this man. The committee may certainly immediately inquire into the subject; and, from the documents that would be laid before them, they would be able to act with effect without much delay or great expense. To test the sincerity of gentlemen he moved to strike out those words.

Mr. Harper said that the motion carried an implication that his friend from Tennessee would not be willing to allow—either that a criminal might escape unpunished, or an innocent man be punished. Suppose the committee think the charges insufficient for the object of removal or impeachment, and yet they are of opinion that they are sufficient to justify strong suspicion and presumption of guilt, would it not be desirable to invest them with the right of making further in-

quiry? Suppose, on the other hand, that the charges appear to them true, had not the experience of ages justified the propriety of the maxim *audi alteram partem?* How can this dilemma be surmounted but by imparting to the committee all the powers required for making a full and fair inquiry? Unless this be done you may convict the Governor without testimony, or dismiss him, though you think him criminal.

Mr. Smilie.—If extortion has been practised by Winthrop Sargent; if unconstitutional laws have been passed, it is the duty of Congress to interpose its authority, and redress these great evils. In such cases delays are dangerous. He was, therefore, for those measures that provided the most immediate and effectual remedy.

Mr. Claiborne.—The gentleman from South Carolina has done justice to my feelings in supposing that I would recoil at the idea of punishing an innocent man. I would recoil at such an idea. But the testimony upon which I stand forbids the indulgence of such a fear. Before the exhibition of the documents I had suspicions; but now I have convictions. The unconstitutional laws, officially communicated, are proofs whose authority I dare not resist. They are before the House; any member may read them. I deny, pursuing the course we wish to pursue, that Winthrop Sargent can be punished unheard. The committee, after solemn inquiry, will report to us a statement of facts, on which an impeachment may be grounded; and when impeached, Winthrop Sargent will be heard in his defence, and your managers may be empowered to send for persons and papers. Let gentlemen who hesitate on this subject, recollect that a delay of justice is often equal to a denial of it.

Mr. C.'s last words were scarcely uttered, when a person in the gallery clapped.

"Sergeant," said the Speaker, "see to that man!"

[The Sergeant went into the gallery and took the person out, without resistance. He was kept in confinement by the Sergeant for about two hours, in consequence of which, and the loss of his horse, which he had fastened to a shed near the Capitol, and which was not to be found when he was released, he that very day obtained a warrant from a magistrate against the Sergeant-at-arms for illegal confinement.]

Mr. Craik wished a full inquiry to be made, and of course thought the committee ought to be empowered to send for persons and papers. This measure, in his opinion, so far from evidencing an indisposition to meet the subject, was the strongest evidence of the sincerity and adherence to justice of those who supported it.

Mr. Nott considered the point in dispute as of little, if any, importance.

Mr. Griswold hoped the words would not be struck out; for if they were struck out the effect would then be that the committee should not send for persons or papers. He was astonished at the ideas of some gentlemen. Could they expect this House to be governed by the opinion of any one member, who tells them that, in his opinion, certain facts exist that criminate a high public officer? If the documents are thus decisive, the committee need go no further; if not decisive, shall they substitute the opinion of the gentleman from Tennessee in the place of their own convictions? He hoped not. If gentlemen are serious in the expression of their wishes for a fair inquiry, let them give the committee full powers.

Mr. Macon asked gentlemen in favor of retaining these words, to consider the distance to which they would have to send, which was 1,700 miles, and to calculate the time occupied in going and returning from the Mississippi Territory, and then to say whether a return would not be impracticable during this session. He thought it would, and for this and other reasons, was for an immediate inquiry.

Mr. Bird.—Is it the intention of gentlemen that the committee they wish appointed shall be exclusively guided by those documents, which they, as accusers, hold in their own hands? Is this their idea of justice? If it were, he differed widely from them.

Not a proposition had been made by gentlemen who desired such an inquiry as justice prescribed, but had been clogged by the suggestion of imaginary difficulties, and tortured into the most perverse meaning. It was strange that gentlemen of such talents should, after wandering so long round a meander, not half an inch in diameter, come at last to the simple resolution, which appointed a common committee with common powers. He called them common, for every committee appointed on such a subject have similar powers. It was presumption to suppose, as the arguments of gentlemen did suppose, that the committee about to be appointed will desire to exculpate Winthrop Sargent. Was it candid to imply that they would be corrupt? The supposition of a denial of justice went on the idea that they would violate their duty in screening from punishment a criminal. If the laws are unconstitutional the committee will say so. But having done this, there remains a duty still more important—they must go into the intentions of Winthrop Sargent. How could they be ascertained but by that comprehensive investigation that would be derived from examining persons and papers? Why, then, deny this authority in the first instance, when it will ultimately be necessary? The ideas on which it was opposed, such as the distance and the time it would require, were frivolous, such as he could neither admit as reasons, or argue from as premises.

Mr. Randolph.—The gentleman who has just sat down, has impeached with unwarrantable acrimony the purity of our motives and our candor, because we differ from him on the course proper to be taken on this subject. Mr. R. was truly sorry that the gentleman had suffered such an accumulation of rancor to collect in his mind, as he had just poured out upon his side of the House. Every imputation hurtful to a feeling mind had been lavished. Since then, said Mr. R., the gentleman has become the *censor morum* and inquisitor of our hearts, permit me to draw the outlines of theirs.

The gentleman, after an unbroken silence during the whole debate, rises and tells this House, that they have spent their time most fruitlessly and idly, and that after wandering for hours round a meander not half an inch in diameter, they had got back to the very point from which they had started. Did that gentleman recollect that the half-inch meander of which he spoke, designated the understanding of those with whom he acted, who, perpetually moving in a circle, after all their labors, arrived at the point from which they first set out?

Instead of uniting with us in an inquiry into those serious charges you have heard; instead of aiding us with their talents; instead of performing their duty, gentlemen satisfy themselves with holding up before us a mere *ignis fatuus*. Under the idea of desiring a substantial investigation, they are converting us into a jury on life and death; and they will not suffer us to take a single step to bring a criminal to justice, without previously possessing the most incontrovertible proofs of his guilt. It is in vain that we answer that we are an initiating body, and that our present measures lead to that stage of the business in which legal testimony will be required; still, deaf to our reasons, they call up expedients that can only tend to defeat the measure, and have the boldness to tell us that we are moving in that very meander which they themselves occupy.

Gentlemen on this subject are unusually hard of hearing. They will not hear, or, if they do hear, they will not regard the passage of laws putting money into the hands of the Governor and Judges; laws warranting various descriptions of extortion: laws violating the Constitution of the Territory. These grievances are sounded in their ears; they are informed of the necessity of immediate redress; of the danger of unredressed oppression, and they still continue to talk of justice, and yet recommend nothing but what will delay, and, perhaps, defeat it. They may talk then of justice, and of their regard to the Constitution, as they please; the people will consider a delay of justice as a denial of it; they will say that the present Congress intend to do nothing.

A motion was made to adjourn, and lost.

Mr. Claiborne's motion to strike out the words "to send for persons, documents, and papers," was then put and lost.

Mr. Randolph moved to postpone the question till the 3d day of March; the motion was lost.

The question was then taken on Mr. Harper's amendment by yeas and nays, and carried—yeas 70, nays 11, as follows:

Yeas—Willis Alston, George Baer, Bailey Bartlett, John Bird, Phanuel Bishop, John Brown, Robert Brown, Christopher G. Champlin, Gabriel Christie, Matthew Clay, John Condit, William Cooper, William Craik, John Davenport, Franklin Davenport, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Silas Lee, Michael Leib, James Lynn, Peter Muhlenberg, Abraham Nott, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Randolph, John Reed, Nathan Reed, John Rutledge, jun., William Shepard, John Smilie, John Smith, John C. Smith, Richard Stanford, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Henry Woods.

Nays—Theodorus Bailey, William Charles Cole Claiborne, Joseph Eggleston, Lucas Elmendorf, Andrew Gregg, George Jackson, Matthew Lyon, Nathaniel Macon, Thomas Sumter, Benjamin Taliaferro, and Abram Trigg.

The resolution, as amended, was then agreed to, and referred to Messrs. Harper, Claiborne, C. Goodrich, Nott, Davis, Bird, and Otis.

Mr. Randolph moved that the laws passed in the Mississippi Territory, and the petition of Cato West, and others, with the documents, be referred to the same committee; which motion was agreed to.

Mr. Harper moved that the committee, to whom had been referred the memorial of the House of Representatives of the Mississippi Territory be discharged, and that the memorial be referred to the committee appointed to inquire into the official conduct of Winthrop Sargent; which was agreed to.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a report of the Commissioner of the Revenue, and sundry statements respecting the internal revenues of the United States, in pursuance of an act of Congress passed on the eleventh day of July, one thousand seven hundred and ninety-eight; and of a resolution of this House, passed on the sixth day of January, one thousand seven hundred and ninety-seven; which were read, and ordered to lie on the table.

Tuesday, December 23.

Mr. Harper observed that experience had proved the existence of some deficiencies, as well as inconveniences, in the provisions of the bankrupt law. He therefore moved the appointment of a committee to inquire whether any, and if any, what amendments are necessary to be made in an act for establishing an uniform system of bankruptcy throughout the United States.

Carried, and a committee of three appointed.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives be, and they are hereby, authorized to adjourn the respective Houses on this day, to Tuesday, the thirtieth instant:"

The question was taken that the House do agree to the same, and resolved in the affirmative.

Ordered, That the Clerk of this House do carry the said resolution to the Senate and desire their concurrence.

A message from the Senate, informed the House that the Senate have agreed to the resolution of this House for an adjournment of Congress, to Tuesday, the thirtieth instant.

A memorial of sundry inhabitants of the Northwestern Territory, residing on lands purchased from John Cleves Symmes, was presented to the House and read, praying that the said Symmes may be allowed to complete his contract with the United States, or that such other relief may be granted to the memorialists, as to the wisdom of Congress shall seem meet. Referred to the committee appointed, on the eighteenth instant, to inquire into the situation of certain tracts of land which have been appropriated for the support of public schools and seminaries of learning, and for the support of religion, situated within the limits of a tract of land granted to John Cleves Symmes, and his associates, in the Territory of the United States Northwest of the Ohio.

A petition of the messengers and office-keepers of the several Departments of State, of the Treasury, of War, and of the Navy, was presented to the House and read, stating the insufficiency of the compensation allowed them by law; and praying that the same may be increased, and rendered more adequate to their services. Referred to Mr. OTIS, Mr. TALIAFERRO, and Mr. WOODS.

A petition of Charles Tomkins, in behalf of the parties concerned, was presented to the House, and read, stating that, by a resolve of Congress, passed the first of October, one thousand seven hundred and eighty-seven, one complete and entire township of land, subject to the reservations as in other townships, agreeably to an ordinance of the twentieth of May, one thousand seven hundred and eighty-five, was granted to Arnold Henry Dohrman, and by said resolve he was permitted to make choice of the said township, out of any of the three last ranges surveyed; that the said Dohrman after having made his election of the thirteenth township, in the seventh range, has been under the necessity of assigning his right to the said land, for the benefit of his creditors; but that, on application at the office of the Secretary of State, by the trustees of the creditors of the said Dohrman, for a patent, it appears that there is no authority under the present Government for granting the same; and praying relief in the premises. Referred to the Committee of Claims.

MAUSOLEUM TO WASHINGTON.

Mr. H. LEE moved the going into a Commitee of the Whole on the bill for erecting a mausoleum to GEORGE WASHINGTON.

On this question the House divided—yeas 42, nays 34.

Mr. MORRIS took the Chair, and read the bill by paragraphs.

Mr. H. LEE said the merits of the bill had been so often discussed, and the subject was so delicate, that he would not again offer his sentiments generally on it. As it was the opinion of several members, that the dimensions of the mausoleum should not be fixed in the law, but that they should be governed by the sum appropriated, he moved to strike out "100 feet at the base and of proportionate dimensions."

The motion was agreed to.

Mr. H. LEE then moved an amendment confining the ground on which the mausoleum should be erected to public property.

Mr. HARPER opposed the amendment, which was lost, only 31 members rising in favor of it.

Mr. H. LEE then moved to fill the blank, fixing the sum to be appropriated for erecting the mausoleum, with $200,000.

Mr. SMILIE said he hoped the House would not with its eyes open go into a measure that might involve incalculable expense. It was proposed to appropriate $200,000. This was probably but a small part of what would be ultimately required; and when the thing was once begun, it must be completed, cost what it would. If the architect would give security for accomplishing the work for $200,000 he would not be so much opposed to it. But, as it stood, he was opposed to it, as a useless expenditure of public money.

Mr. HARPER said the old story was again rung in their ears. An object, in itself highly important, was proposed, and, forsooth, because it cost some money, on the ground of economy it must be rejected.

He would ask the gentleman just up whether he knew anything about the expense of a mausoleum? And yet not professing to be informed, professing indeed to know little, he had put his vague conjectures in the room of estimates formed with deliberation by artists of the first eminence. These clamorous objections were well understood. Their sole object was *ad captandum vulgus;* to create alarm about what was termed useless expense. They were intended for nothing else.

To satisfy the solicitude of gentlemen an artist of talents universally acknowledged had been desired to furnish an estimate; which estimate stated that a pyramid of 100 feet base would cost $67,000. This was the estimate of an artist of such accuracy that in the greatest work ever undertaken in America, and the greatest, perhaps of its kind, ever undertaken in the world, (he alluded to the water works of Philadelphia,) the expense actually incurred had fallen short of the estimate. The same accuracy had characterized his plan and execution of the Bank of Pennsylvania, which was probably the greatest work of the kind executed in this country. And yet the gentleman from Pennsylvania will place his vague doubts, and (Mr. HARPER begged pardon for the expression) his total want of knowledge against the calculations of a man of practical science.

The gentleman had asked whether any one could be found, who would be responsible for the execution of the work for the proposed sum. Mr. HARPER said, if it were proper for a member of that House to say so, he would undertake himself to erect a mausoleum of 150 feet base, and 150 feet high, for $200,000; and for the performance of his engagement he could give the most unquestionable security, such as every member of that House would approve. He further believed that the artist before alluded to, if required, would give the

necessary security. The accuracy of the estimate had been tested by every circumstance that the nature of the case admitted. The same course had been pursued, in this case, that every reasonable man was accustomed to take in his own private concerns. Every such individual, who designed building a house obtained first an estimate from a skilful workman, which satisfied him. If men acted not in this way, there could be no progress in human improvements.

After this information, furnished by such an artist, gentlemen ought to be satisfied without opposing to it their own crude conceptions; and Mr. HARPER said he hoped they would cease to talk on a subject on which they were so ignorant, until they became better informed.

Mr. MACON did not see the subject in the same light with the gentleman from South Carolina. He was disposed to pay the greatest respect to his talents, but he could not give up his own opinion. The estimate made by the artist amounted to $140,000; yet the gentleman from Virginia required $200,000. Does not this show that the gentlemen themselves have not confided in the estimate of the artist?

Mr. H. LEE explained, and said that he thought the most proper plan for adoption was that of Mr. West; pursuing that plan $200,000 might be required, as there would be interior arrangements to make, additional to those contemplated by the estimate.

Mr. MACON said he thought $140,000 would be sufficient. He knew not how to reconcile the difference between the estimate made in Philadelphia and that made in Washington; the first was only $67,000; which was a sum much below any calculated here. He did not pretend to any information on this subject, and the various modifications the bill had undergone convinced him that no member was well acquainted with it. The estimates differed materially from each other. They could not therefore all be correct. He could not, from these considerations, feel confidence in the estimates of the gentleman from South Carolina, or the other gentleman; for if they really possessed correct information, how came they so radically to differ; and the committee itself to propose so many alterations in the original bill?

Mr. SMILIE replied to Mr. HARPER. The object of his remarks was to show that Mr. H. possessed as little information on the subject as himself.

Mr. RUTLEDGE.—The substance of what the gentleman says, is that he wants to do nothing. He had long thought so, and he was now confirmed in his opinion. When the man, whose loss the world deplored, departed from us, we were all shrouded with sorrow; the mournful event awakened our deepest regrets; and resolutions expressive of the national affliction at his death, and commemorative of his services, were unanimously passed by both Houses of Congress. Those resolutions were not carried into immediate effect owing to the disagreement of the two branches of the Legislature. Now, when we propose to carry them into effect, objections are started to every measure offered; objections that rise eternally in our horizon; which, whenever we pursue, fly from our reach, and which, always moving in a circle, we can never overtake.

Gentlemen tell us they are unaccustomed to spend public money without estimates. To satisfy the vigilance of their economy we obtain them. They then tell us they are inaccurate; their objection arises from a want of detail; they wish a minute statement of each separate charge. Again we consent to gratify their wishes, anxious for their sanction to our measures, that they may express the unanimous sentiment of Congress. We produce an estimate as minute as was ever furnished by an artist on any occasion. The total amount of estimated expense is $140,000, and to avoid the necessity of calling on Congress again, the gentleman from Virgina asks for $200,000.

Still after all our trouble and solicitude to satisfy the scruples of gentlemen, they continue to urge objections. One gentleman says the estimate made at Philadelphia differs from that made here; another gentleman will not confide in any estimate, and another wants security.

Does it become the dignity of the House thus to be occupied with trifling objections on such a subject; and, in the spirit of bargaining, to waste its time in saving a few dollars?

Many gentlemen, anxious for this measure, had agreed to postpone the consideration of it, hoping thereby to accommodate other gentlemen in their views, and expecting ultimately an unanimous vote. But he now abandoned it. He saw no period to objections. Much time had already been idly wasted. They had delayed too long to do what ought to have been done at once. Let us then take the question at once, and get rid of it, though a veto should be passed upon the bill.

The question was then taken on filling up the blank with $200,000, and carried—yeas 41, nays 38.

Mr. DENT moved to amend the section appropriating the sum, by substituting the word "for" in the room of the word "towards," which would fix the whole sum to be appropriated instead of leaving it uncertain.—Agreed to.

The Committee then rose and reported the bill as amended. On the question to agree to the $200,000 appropriated, the House divided—yeas 41, nays 38.

The SPEAKER then put the question on engrossing the bill for a third reading.

Mr. CLAIBORNE was opposed to the engrossing of the bill. He hoped no gentleman would ascribe his opposition to a want of respect to the memory of our great patriot. His respect for this illustrious character had been almost coeval with his life, and would follow him to his grave

He was opposed to a mausoleum, because it would not be so respectful to the memory of WASHINGTON as the equestrian statue directed by the old Congress, who had directed the battle during our Revolutionary struggle, and for whose character he felt the highest veneration. The present Government could not refuse to carry into effect this act of the old Congress without a violation of moral principle. He preferred a statue to a mausoleum, because the former, from representing the

form and the features, would inspire the beholder with more lively emotions than a mass of stones formed into a pyramid.

Were the expense of a statue greater than that of a mausoleum, he would, notwithstanding, prefer it; but he believed the reverse would be the fact. He not only wished a statue raised, but also was in favor of an immediate appropriation for depositing the remains of our departed friend within these very walls, in such a manner as would not disgrace them.

Mr. Champlin had heretofore voted from a spirit of conciliation. He was now not a little surprised to find the gentlemen from Tennessee and South Carolina (Mr. Claiborne and Mr. Alston) opposed to a mausoleum, though their names appeared, from an inspection of the journals of last session, among those who were then in favor of it.

He considered a mausoleum as preferable to a statue, because the first was calculated to celebrate all the virtues of the statesman as well as the hero, while the latter would be limited to his military exploits.

Great opposition had been made to the erection of a mausoleum, with the professed view of avoiding expense, and I admit generally that economy ought to be observed, in the expenditure of public money. But on an occasion highly interesting to the feelings, and deeply involving the character of the nation, even the appearance of parsimony should be carefully avoided. It is necessary to consider the nature and magnitude of the object for which money is required. It is not asked for, in the present instance, to commemorate a man distinguished only on the field of battle. It is not wanted to gratify family pride, or to raise a monument of despotic power and slavish submission. It is to be be furnished by a great and free people, to record, in a manner worthy of themselves, their gratitude for the important services rendered to them by one of their fellow-citizens; the fruits of which I cannot but hope will be enjoyed and recognised by future generations. We are called upon by the public voice to erect a monument suited to the character of Washington, who has been emphatically styled, *the man of the age*, and whose virtues may, by the record we shall make of them, become the property of distant ages.

These virtues will doubtless be the theme of some able biographer, and it is wished that posterity may not search in vain for some striking evidence of our acknowledgment of them. It is indeed of infinite importance to civil society, that the memory of that great man should be perpetuated, by every means in our power. We may thus sow the the seeds of virtue, honor, and patriotism, in our country. He will be held up a model, to which the finger of wisdom will constantly point, to which the attention of youth will be irresistibly drawn, and the mind of every man aspiring to pre-eminence among a free people will be rivetted. The proposed mausoleum would be a structure well calculated to resist the ravages of time. As to the hand of man, at least of civilized man, we need not guard against it. The depository of the ashes of Washington will never be assailed by it. It may indeed be attacked by the ruthless hand of some invading barbarian. But its only security against such an attack must be derived from the courage and fortitude of the people of the United States. And I trust they will never tamely yield up the land of their forefathers.

Mr. Bird was against the bill, because it proposed the erection of a mausoleum, which would not be equal to the object for which it was raised without the expenditure of a vast sum of money; whereas a statue could be made, somewhat correspondent to the occasion, for a moderate sum. It was in vain for gentlemen to talk about a structure commensurate to the object. Such a thing was impossible. He moved the recommitment of the bill to a Committee of the whole House.

The question being put, the House divided—ayes 39, noes 39; and it passed in the negative by the casting vote of the Speaker.

Mr. Shepard said, I will do as much as any man to honor the memory of Washington. I have fought and bled with him several times. I have always supported and will continue to support him. But on the score of expense I think we are going too far. I will go so far as to have his remains placed decently within these walls. Further I will not go; for I do not think we have a right to throw away the public money.

Mr. Macon delivered his reasons against a mausoleum, and in favor of an equestrian statue: and among other remarks, said, the idea that a mausoleum would be equal to the character of Washington was preposterous. Few individuals in the world were capable of drawing his character. In a few words, he would say that no character that had ever lived was equal to him, and it was his firm belief, that the world would never see his equal.

Mr. Brown thought General Washington the best man that had ever lived; and he was surprised at the ideas of gentlemen on the ground of expense. If the mausoleum were agreed to, it would not cost each person in the United States four cents; and if the equestrian statue were also made, (which he hoped would also be done, for the sake of general accommodation) it would not cost more than two cents. It seemed to him that some gentlemen were averse to doing anything, though they did not wish the people to think so.

Mr. Alston would not have risen, had he not been marked by the gentleman from Rhode Island as an object of inconsistency.

Mr. Champlin explained by saying he did not mean to censure the gentleman for his change of opinion, for which he doubtless had good reasons.

Mr. Alston.—Let the measures of Congress be reviewed, and it would appear, that the House itself and the gentleman from Rhode Island had been as inconsistent as himself. He would appeal to the gentleman whether it was more honorable to desert his duty and fly a vote, than to act as he had done?

Mr Huger said it was unnecessary at this time to take into view the old arguments that had been urged. The proposition of the gentleman from Tennessee, for an equestrian statue, was the only

one he should notice. So impressed was he with the inadequacy of a common statue to express the gratitude of America, that he would rather have nothing done, than to have what was done in this backhanded way.

He was disposed to treat with respect the acts of the old Congress. But the act, to which the gentleman from Tennessee had alluded, and which he wished this House exclusively to carry into effect, was passed in reference to the military exploits of Gen. Washington, because, at the time it was passed, his life had been most characterized by them. Since that period circumstances had changed. If we are bound by the acts of the old Congress, are we not equally bound by those of the last session? If you adopt the ideas of the gentleman, do you not hold out the Commander-in-Chief of the American Army as deserving a splendid monument, and the father of the Constitution and other great civil acts as deserving nothing?

Without any concert whatever, a remarkable concurrence had taken place between West, Trumbull, and other respectable artists, who all gave an unequivocal preference to a mausoleum; which, in his opinion, would be far less expensive than a statue. The expense of the latter, as would appear from an estimate in the office of the Secretary of State, could not be less than forty thousand guineas, deliverable at Paris; and when the additional charges of transportation, insurance, and other incidental expenses, were considered, he was persuaded it could not be completed for less than two or three hundred thousand dollars.

Mr. J. C. Smith considered the Government as pledged to do that which they had promised, and which the national feeling required.

Mr. Randolph must consider the present as a tedious and useless debate. The gentleman had declared the Goverument to be pledged. To whom were they pledged, and for what? It was to the relics of the deceased; to have them placed within these walls. For this, there were the strongest reasons, as such a measure would be agreeable to the venerable lady to whom he had been united. If then they were so pledged, why violate this pledge, by referring the business to the Secretary of State, of the Treasury, of War, and of the Navy; though what connexion there was between the office of the Secretary of the Navy and the performance of this trust, he could not tell?

One consideration with him was insuperable. The departure from the original plan tended, unjustly, and most cruelly, (however pure the intention,) to violate the feelings of a lady, so much troubled already.

Mr. J. C. Smith said it had been declared by some gentlemen that the reputation of Washington might be safely confided to the record of history. Was it the opinion of those gentlemen that the record was to be found in the charge of murder against that illustrious character? Was it to be found in the patriotic effusions of men who had pronounced all expressions of national gratitude a mockery of woe, and had declared that it was high time for those who were the sincere apostles of liberty to be done with such foolery; or was it to be found in the denunciations of a printer, supported by a State that perpetually boasted its regard to Republicanism?

Mr. Harper could not but regret that a gentleman, who possessed so lively a regret for the venerable lady alluded to, should have exhibited in this discussion so glaring a contrast between his professions and his actions, by introducing that lady into the debate, and indelicately expressing her wishes, in reference to the place where the relics of her deceased partner should be deposited. Was it conceivable that to her the place could be of any importance? Or was it possible that this House could be enslaved by the trifling circumstance of the *locus in quo*, or that the paltry consideration attending an action of trespass could be gravely introduced into such a debate. All that this venerable lady says amounts to this, that accustomed from the example of her deceased friend to obey the national wishes, she submitted to that disposition of his remains that Congress may make. Shall we, then, in violation of the plain meaning of her words, enter into whispers of hearsay respecting wishes, which, from his knowledge of her good sense, he was persuaded had never been uttered?

Mr. Randolph rose to explain. He had neither said, nor intended to say, that he possessed any knowledge beside that which appeared on the journals; and from that knowledge he was justified in saying that Mrs. Washington's compliance, as expressed by her, was not with any public will that might be expressed, but with that will which had been already expressed. Whatever insinuations the gentleman from South Carolina may mean to convey, his feelings of respect for every woman were sacred; nor were they limited to that sex alone. He was not disposed on this occasion to take the advice of the gentleman, who judging me by his own heart, said Mr. R., may imagine me capable of disrespect to the sex.

Mr. Harper wished the gentleman would avoid any further interruption, and reserve his remarks until he was done. He did not know, nor was he concerned to inquire into the motives of the gentleman from Virginia. Such inquiry would, of all others, be the least profitable or interesting, either to the House or to himself. Neither had he any idea of giving advice which that gentleman would follow. He well knew that it was the most hopeless of all things to give advice to one whose own sense of propriety did not tell him what was right. Those, who were incapable of receiving lessons from their own minds or feelings, were not likely to receive them from any other quarter.

The feelings ascribed to Mrs. Washington were unfounded. The lady was incapable of entering into trifling disputes about place or time, such as the House had this day witnessed.

The arguments, by which the superiority of a statue to a mausoleum was attempted to be established, were fallacious. The form and features of our illustrious friend would be preserved without the erection of any statue by us. Pictures by celebrated artists were everywhere multiplied and

caught at with avidity; and the sculptor and the painter will be employed unceasingly to keep pace with the increasing demand. Likenesses may be found everywhere, and as perfect on the other side of the Atlantic as on this.

A mausoleum would last for ages, and would present the same imperishable appearance two thousand years hence, that it would now. Whereas a statue would only remain till some civil convulsion, or foreign invasion, or flagitious conqueror, or lawless mob, should dash it into atoms; or till some invading barbarian should transport it as a trophy of his guilt to a foreign shore.

I have beheld, said Mr. H., a monument erected to a man, once considered as the patron of America, defaced, mutilated, its head broken off, prostrated with the ground. A statue, erected by the Legislature of Virginia to perpetuate the virtues of a man to future ages, had been destroyed.

Besides, a statue was minute, trivial, and perishable. It was a monument erected to all that crowd of estimable but subordinate personages, that soar in a region, elevated indeed above common characters, but which was infinitely below that occupied by Washington.

The greatest honor which this country ever has received, the greatest honor which it ever could receive, was derived from numbering with its sons the immortal Washington.

Shall then a mistaken spirit of economy, and a still more mistaken jealousy arrest us? Honor him, it is true, we cannot. The world has charged itself with that task. Posterity, as long as the world shall endure, will celebrate his virtues and his talents; those virtues and talents of which every ingredient of their happiness will be a perpetual evidence. But though we cannot honor him we may dishonor ourselves; though we cannot increase the lustre of his fame, we may show our own meanness, cowardice, spite, and malice; and show an astonished world that we are deplorably unworthy of the high honor conferred by Nature in giving us a Washington.

I am, said Mr. H., awfully impressed by the subject. I sink under the sublimity that surrounds it. No words can reach it; mine are totally inadequate; to the feelings of the House then it must be submitted: they, after anticipating all that genius or eloquence can say, will still far surpass their boldest effusions.

Mr. Randolph was very unfortunately situated, as he was compelled to rise, not in his own defence, but in defence of the calumniated reputation of that State which he revered, since from it he derived his birth.

I will not, said Mr. R., enter into an elucidation of the motives of the gentleman from South Carolina, which have produced so much asperity, and such a virulence of rancour against the State of Virginia, but will confine myself to the question on engrossing the bill.

The gentleman has talked to us about his disregard for the *locus in quo*. Mr. R. said he cared as little for the *quo modo* as the gentleman did for the *locus in quo*.

He had further told us that a statue might be overthrown by a licentious mob; and that this had actually been the case in the State of Virginia. But, why had it been so? Because that statue had been erected in the life-time of the person it celebrated; because it had been erected under the Colonial Government; and because, like every other fetter of tyranny, it was broken by the Revolutionary spirit that established our liberties.

But, says the gentleman, statues are raised for subordinate men, for this admiral or that general, who may deserve well of their country, but who do not merit the highest distinctions of national gratitude. If this measure of raising a mausoleum is to be only a cover for obtaining statues for temporary and secondary and trifling characters, it may have a very alarming influence upon us.

It is not easy, for a man of even less sensibility than myself, to hear in silence the State in which I was born, and one of whose Representatives I am, calumniated in the manner in which it had been that day, by the gentlemen from Connecticut and South Carolina. In defence of that State, actuated by a love to it, and not from any respect to its detractors; not to repel any imputation of meanness, of cowardice, of malice, which the gentleman from South Carolina has called ours, (meaning, I suppose, his own,) I will inform him, and the gentleman from Connecticut, that that State was the first to celebrate the fame of the Hero of America, by erecting a statue to him in the Capitol at Richmond.

The gentleman from Connecticut objects to a confidence in the record of the historian. Does the gentleman wish to suppress the history of the political events of 1776? Or does he believe that these events will be handed down in association with the bloody buoy, and Porcupine's works? Perhaps he has formed from his own mind a proper selection for our children, and is against the press handing down anything else?

Mr. H. said, that the gentleman from Virginia had misstated what he had said. He had cast no reflection on the State of Virginia; but had barely stated two instances of statues overthrown and destroyed, to illustrate their frailty.

During the preceding debate, Mr. Claiborne stated that the committee to whom this subject had been committed, had obtained several estimates; among which was one in writing, by Dr. Thornton, which states with confidence that the expense of an equestrian statue would not exceed from eight thousand to fifteen thousand pounds currency.

After some remarks from Mr. Shepard and Mr. Lyon, the yeas and nays were taken on engrossing the bill, and were—yeas 44, nays 40, as follows:

Yeas—George Baer, Bailey Bartlett, John Brown, Christopher G. Champlin, William Cooper, William Craik, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis,

Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, jr., John C. Smith, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, John Davenport, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Linn, Nathaniel Macon, Peter Muhlenberg, John Randolph, William Shepard, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Joseph B. Varnum.

The third reading of the bill was fixed for Thursday week; when the House adjourned to Tuesday the thirtieth.

Tuesday, December 30.

Another member, to wit: Robert Williams, from North Carolina, appeared, and took his seat in the House.

A memorial and remonstrance of the Legislature of the State of Georgia was presented to the House and read, protesting against the establishment by the United States of the Government of the Mississippi Territory within the limits of the said State; and praying a repeal of the acts authorizing the establishment thereof; as being unconstitutional, injurious to, and subversive of, the rights of the State of Georgia.

Ordered, That the said memorial do lie on the table.

A memorial of Pleasant Henderson and others, inhabitants of the State of North Carolina, was presented to the House and read, stating their claims to certain lands ceded by the State of North Carolina to the United States, with a reservation of the claims of the petitioners; the possession of which lands the United States have since guarantied by treaty to the Chickasaw and Cherokee Indians; and praying relief in the premises.

Ordered, That the said memorial do lie on the table.

Ordered, That a committee be appointed, to be denominated "The Committee of Privileges;" and that Mr. John C. Smith, Mr. Cooper, Mr. Thatcher, Mr. Henderson, and Mr. Nott, be the said committee.

The Speaker laid before the House a letter from Joseph Wheaton, Sergeant-at-Arms to this House, stating that, in consequence of his having executed the order of the Speaker, in arresting a certain James Lane, for disorderly behaviour in the gallery of the House, on Monday, the twenty-second instant, he was apprehended and conducted before a magistrate of the city of Washington, detained for a certain length of time, and finally discharged, in consequence of the non-appearance of the said James Lane, to prosecute his complaint.—Referred to the Committee of Privileges this day appointed.

Mr. Platt, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report what laws have expired, or are near expiring, and require to be revived or further continued, made a farther report, in part; which was read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of War, enclosing a report on the claims of certain Canadian refugees, made in pursuance of the act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia;" which were read, and ordered to be referred to the committee appointed, on the twenty-eighth ultimo, to prepare and bring in a bill for regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia.

Mr. Griswold, from the Committee of Ways and Means, instructed, on the seventeenth instant, to inquire into the expediency of repealing the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," made a report; which was read, and ordered to lie on the table.

Mr. Griswold, from the same committee, presented a bill to continue in force the acts laying duties on licenses for selling wines and foreign distilled spirits by retail; on property sold at auction, and on carriages for the conveyance of persons; which was read twice and committed.

Wednesday, December 31.

Ordered, That the memorial of Pleasant Henderson and others, inhabitants of the State of North Carolina, presented yesterday, be referred to Mr. Pinckney, Mr. Chauncey Goodrich, Mr. Henderson, Mr. Nicholas, and Mr. Thatcher.

Mr. Dent, from the Committee of Elections, made a further report, in part; which he delivered in at the Clerk's table, where the same was read, and is as follows:

"The Committee of Elections further report, that, by the certificate of the Governor of the State of New Hampshire, under seal, and dated the twenty-second day of November, one thousand eight hundred, it appears that Samuel Tenney is duly appointed a member of the House of Representatives of the United States, until the fourth day of March, one thousand eight hundred and one. It is further made to appear by information from several members of this House, from the said State, that such appointment was made to supply the vacancy occasioned by the resignation of William Gordon. Whereupon, the committee are of opinion that Samuel Tenney is entitled to take a seat in this House in the place of William Gordon."

DUTIES ON LICENSES.

The House went into a Committee of the Whole on the bill for continuing in force "an act laying duties on licenses for selling wine, and foreign distilled spirituous liquors by retail, on property sold at auction, and on carriages."

Mr. Varnum moved to limit the duration of

the bill to two years from the 1st day of March, 1801.

The motion was supported by Messrs. VARNUM, RANDOLPH, and NICHOLAS, and opposed by Mr. GRISWOLD.

On the question being taken, there appeared 39 ayes and 39 noes. The Chairman declaring himself in the negative, it was lost.

Mr. BIRD disliked that part of the bill which gave to the judicatories of the several States the right of taking cognizance of suits for duties payable under it. He declared himself averse to this investment of Judicial power, on the ground of expediency; but said he should not, on this occasion, oppose the bill for that reason. But he deemed the Judicial power, as delegated by the bill, to be unconstitutional. The bill must be amended before it could obtain his vote. He, therefore, moved so to amend the first section, as to confine all Judicial power exercised under the bill to the Federal courts.

The Constitution expressly declares that "the Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States," &c. If the Judicial power extended to all cases, surely it must extend to the present case. The Constitution further declared "that the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." It was self-evident, that the State courts could not be embraced by the expression "one supreme court." And as to the expression "inferior courts," he would ask whether the State tribunals could come within its meaning? It was evident to him that they could not, as they were not appointed by Congress; as no cause of error lies from the State to the Federal courts, or writ of *mandamus*. It followed that they were not included in the true meaning of the term "inferior" courts; they were neither ordained nor appointed by Congress.

Further, the Constitution prescribed that the judges should receive fixed salaries, payable by the United States, and hold their offices during good behaviour. This direction of the Constitution precluded all other but Federal courts.

Besides these Constitutional injunctions, which, on his mind, were irresistible, on a view of the expediency of the delegated powers, it would appear that extensive and great inconvenience attended the exercise of it. Under the jurisprudence of the several States, such a variety of laws and mode of procedure existed as produced the greatest embarrassments. Besides, it was not unfair to suppose, in the succession of events, the occasional existence in particular States of a spirit of hostility to some measure of the Federal Government.

On the whole, Mr. B. said, that he considered Congress as equally incompetent to transfuse into the State Courts, the right of judging on cases that occurred under the Constitution and laws of the Federal Government, as they were to transfuse Executive or Legislative power, derived from that Constitution, into the hands of the Executive and Legislative organs of the State Governments.

Mr. DENNIS was so impressed with the importance of a full and fair discussion of the point submitted to the House by the gentleman from New York, that he recommended a suspension of any consideration of it, until the Judiciary bill came before them. Then the question might be met directly. He, therefore, moved that the Committee rise, report progress, and sit again; which was accordingly done, and leave to sit again granted.

THE TERRITORY OF COLUMBIA.

On motion of Mr. H. LEE, the House went into a Committee of the Whole on the bill in relation to the Territory of Columbia.

Mr. RANDOLPH moved to strike out the first section, which is in these words:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the laws of the State of Virginia, as they existed on the first Monday of December, in the year 1800, shall be and continue in force in that part of the District of Columbia which was ceded by the said State to the United States, and by them accepted for the permanent seat of Government; and that the laws of the State of Maryland, as they existed on the said first Monday in December, shall be and continue in force in that part of the said District which was ceded by that State to the United States, and by them accepted, as aforesaid.

Mr. H. LEE said, that he was far from considering this bill as an act of supererogation. The Constitution had prohibited the States of Virginia and Maryland from legislating for the Territory; and it now became a question, whether the existing laws of those States were in force, which question might come before the Judiciary. To obviate all doubts, this bill, in the shape of a declaratory one, was reported.

Mr. NICHOLAS said, this bill is not, in my opinion, merely an act of supererogation, but an act of immense mischief. I do not agree with my colleague in the construction he gives the Constitution. He is of opinion, that the powers given to Congress on this subject must be exercised by them. I think differently. These powers are like many others conferred, which may or may not be exercised. It had never been contended that we are obliged to carry into execution all the powers with which we are invested. It is true, that we have nearly exhausted the letter of our charter, in the extent to which we have gone; but this fact furnished no reason for going still further.

A construction contrary to that contended for had been given by Congress in the exercise of their power. The act of acceptance passed by Congress, confirming the cessions made by Virginia and Maryland, expressly declares, "that the operation of the laws of the State within such District shall not be affected by this acceptance until the term fixed for the removal of the Government thereto, and until Congress shall otherwise by law provide."

Great force was attached to that part of the Constitution which gave Congress exclusive legislation over the Territory. But the same clause of the Constitution gave the same power over forts, magazines, arsenals, &c. Yet this power had never been assumed by Congress. The possession of the right had heretofore been considered as sufficient; the exercise of it was reserved until peculiar circumstances should occur, which rendered it necessary.

I believe the Committee are not prepared to sanction this bill. To sanction it would be to place the inhabitants of the Territory in a situation for which they would not be thankful. It would impose upon them all the laws of Virginia and Maryland, as they existed on the first Monday of December, without those improvements which experience may suggest.

If this bill passed, it would leave a considerable portion of the inhabitants of the Territory without any judicial authorities to which they could appeal. There were parts of Fairfax, Montgomery, and Prince George's counties, which would have no courts to which they could apply.

Another consequence that would result from the construction attempted to be given to the Constitution, was the deprivation of the inhabitants of all participation either in Federal or State legislation. As, by the construction, they would cease to be the subjects of State taxation, it could not be expected that the States would permit them, without being taxed, to be represented.

Could any man desire to place the citizens of the District in such a state? To deprive them of the common right of participating in the passage of laws which all the citizens enjoyed?

If the construction be sound, that we are bound to legislate, then all the judicial proceedings which had taken place since the first Monday in December, whatever affected either property or persons, were mere nullities. I do not, however, believe the construction to be sound. I believe it opposed both to the spirit of the Constitution, and to the construction hitherto given by Congress. But were the construction just, to adopt the proposed bill would be to act in a way inadequate to the importance of the subject, which, involving in it a system of government for a large portion of citizens, ought not to be acted upon with precipitation, but ought to be conducted by the collected wisdom of Congress, derived from mature and deliberate reflection.

Mr. H. LEE said, my colleague is wrong in supposing this bill a part of a permanent system. It is only intended to cure an evil which some persons have supposed to exist, from the doubtful jurisdiction of the States of Virginia and Maryland.

Mr. OTIS said, though I respect the talents of the committee who brought in the bill, yet I cannot discover that it contains a single new view or provision. Though I am myself at a loss to account for the necessity of the bill, the committee were certainly right, if they entertained doubts, to attract the attention of the House to them.

By the first act of Congress accepting the cession, the United States have legislated in the very way the gentleman from Virginia now proposes. As it appeared at that time impossible to form a code of laws, those of Maryland and Virginia were confirmed till Congress should legislate.

If it were true that Congress were bound to legislate themselves, an equal obligation existed at that time with that which existed at present. Their not having done so was a strong argument against the construction now contended for.

To pass such a law as that now offered, instead of removing, would be the very means of exciting doubt. The time may arrive when Congress must go into the subject in detail, and make those provisions that were necessary for a great city. But at present such a step was not called for: the Territory had gone on very well for ten years without the interposition of Congress, and I have no doubt it will continue for some time to come to do well without it.

Mr. BIRD said, this question, in my opinion, is susceptible of a very clear and precise solution. Did the acts of cession by the States, and of acceptance by Congress, take away the jurisdiction of those States, and vest it in Congress? The acts of Maryland and Virginia make a complete cession of soil and jurisdiction to Congress. This cession has been accepted by Congress. What is the consequence of one sovereign transferring all jurisdiction to another sovereign? Does not the power that cedes give up all right whatever to that which accepts? The words of the Constitution are that Congress shall exercise exclusive legislation. If Congress exercise exclusive legislation, does it not follow that no other body can exercise any legislation whatever?

The gentleman from Virginia (Mr. NICHOLAS) does not deny the power altogether, but limits it, as a power that may or may not be exercised by Congress; and in illustration of his opinion, instances the power to naturalize and to pass bankrupt laws. But the cases are not analogous. These last are powers that Congress may or may not exercise. The Constitution does not apply to them the term exclusive; nor are they shut out by the actual words of that instrument, or by necessary inference.

Over some objects Congress have partial authority; but in this case their authority is absolute and exclusive of all other; from which irresistibly follows the absolute cessation of all power in the ceding body.

It was undoubtedly the intention of the framers of the Constitution, that, after this Territory became the actual seat of Government, no authority but that of Congress should be in force.

The act of cession by the States, after stating the terms of cession, contains a proviso, that the power of legislation thereby vested in Congress, shall not impair the force of the laws of Maryland and Virginia, till Congress shall otherwise by law provide. A proviso is to prevent something from being done that without it would be done. Congress declared the same thing when they accepted the cession with the same proviso. This proviso tends to supersede the cession. Having this effect it

must fall, as conflicting with the act to which it is a proviso. It must be considered as absolutely void. A proviso is intended to prevent the operation of a particular thing, not to give an operation to it. It may prevent the enaction of a particular law, but it cannot re-enact that law.

A difference of opinion seemed to exist as to the period when the powers of the States were superseded. It was the opinion of some gentlemen that they ceased on the completion of the act of cession. The committee consider them as ceasing on the first Monday in December of the present year. It became the House solemnly to settle this point before they entered into the consideration of a complicated system of government. If the legislative powers of the States had ceased, it follows, as a necessary consequence, that the Judicial powers had also ceased.

For these reasons I think it will be best to declare that things shall remain in *statu quo*. If the ordinary jurisdiction established be not competent, it may easily be made so.

Mr. Randolph was not prepared to enter into a discussion of the important point before the Committee. He would only state the dilemma in which the inhabitants of the District of Columbia would be placed by the construction given to the Constitution by his colleague, who was of opinion that all Legislative and Judicial powers derived from Virginia and Maryland, ceased on the first Monday of December. If this construction were true, was it not equally true that the bill now proposed would be of the same validity, and of no more validity, than the act of acceptance passed by Congress.

From his being unprepared, what he offered was submitted more in the form of hints than of correct arguments. But it seemed to him that if the construction contended for should prevail, it would disfranchise the corporations of Georgetown and Alexandria, and all other corporations within the District. Would it not place the Territory in the situation of a conquered country? According to this construction, the Territory was in a state of anarchy, and murder, if committed, would be no crime.

Further, if the Constitutional provision is obligatory upon us to assume exclusive legislation, are we not bound to establish uniform laws throughout the entire District? and of course are we not prohibited from establishing one system in one place, and a different system in another?

One other objection merited the gentleman's notice. The laws of Virginia precluded every officer under its Government from holding any Federal office.

From the impression made on his mind by these considerations, Mr. R. said, he would be wanting to himself and to his country, if he agreed to the bill. He hoped, therefore, that the Committee would rise, and not precipitate a decision.

Mr. Harper was in favor of the motion that the Committee should rise, for the purpose of recommitting the bill to a select committee. He would state his reasons: The object of the first section was to assume the jurisdiction. That was his object. He wished the establishment of a Judiciary competent to the carrying into effect the laws now existing. He wished this object to be accomplished in a fair, open, direct way. At some future period Congress might find it necessary to enter on a system of legislation in detail, and to have established numerous police regulations. At this time, the present exigency would be provided for by confirming the laws of Virginia and Maryland, and by giving effect to them by the institution of a competent Judicial authority.

Mr. Nicholas said, that he should vote for the Committee rising, from a different motive from that which actuated the gentleman from South Carolina. He hoped the business would be suffered for the present to sleep.

The construction given to the Constitution by the gentleman from New York, did not render it merely expedient in Congress to assume jurisdiction, but rendered it an absolute duty. In reply to his remarks, the gentleman had alleged that the authority given by the Constitution in relation to this Territory, differed from the other powers vested in Congress, inasmuch as the former investment of power had connected it with the word *exclusive*; whereas the latter had not. The meaning which Mr. N. affixed to that word, was altogether different from the one now contended for. The Constitution does not say Congress shall possess exclusive power of legislation; but that they shall have power of exercising exclusive legislation.

The acts of cession and acceptance contained a construction directly opposed to that now made. They declare that the laws of Maryland and Virginia shall continue till Congress shall alter them. Their cessation is made to depend on an uncertain event, viz: whether Congress shall legislate or not. Not a tittle in the Constitution or in our practice, under the Constitution, infringed our liberty to act or not to act.

What would be the effect of this law on the inhabitants of the Territory? It would impose on them the laws of Maryland and Virginia, as they existed on a particular day, without any capability of improvement from the improved code of those States.

Mr. N. had heard of no inconveniences which had arisen from the non-assumption of power by Congress. The people in the Territory of Columbia had been a happy people for more than a hundred years under their State Governments; and, he had no doubt, would remain so without the interposition of Congress, who, at present, were unqualified to act.

After some further remarks by Messrs. Harper and H. Lee, the question was taken on the Committee rising, and carried without a division.

The Committee rose; the Chairman requested leave to sit again, which was not granted.

Mr. Harper then moved to recommit the bill to the same committee that introduced it. He said, the objection made by the gentleman from Virginia to the assumption of power by Congress goes to say that the Constitutional provision, the acts of cession of Maryland and Virginia, and the act of acceptance by Congress, shall be all a dead letter; and that the Territory shall continue, as heretofore, under its old jurisdiction. This was, to all intents and purposes, the amount of the gentleman's remarks. He asked, what necessity for the exercise of power by Congress? Had not the citizens lived happily for a hundred years under the State Governments? This Mr. H. did not dispute. It was probably true that they had lived as happily as other portion of citizens under the State Governments. But the provision of the Constitution on this subject had not been made with this view. It was made to bestow dignity and independence on the Government of the Union. It was to protect it from such outrages as had occurred when it was differently situated, when it was without competent Legislative, Executive, and Judicial power, to insure to itself respect. While the Government was under the guardianship of State laws, those laws might be inadequate to its protection, or there might exist a spirit hostile to the General Government, or at any rate indisposed to give it proper protection. This was one reason, among others, for the provisions of the Constitution, confirmed and carried into effect by the acts of Maryland and Virginia, and by the act of Congress.

The object of the gentleman was to defeat all these acts, and all these arrangements, in subversion of that provision which the Constitution had made, and of that necessity which it had foreseen.

The gentleman from Virginia requires more time. He thinks we are not prepared to legislate. But if his (Mr. H.'s) ideas were adopted, there would be no occasion for this. The Territory has laws; and Mr. H. believed these laws would answer very well for fifty years, without giving Congress much trouble to modify them.

The establishment of a Judiciary would be very easy, and would require little time. As to a police, it may be necessary hereafter. At present it was not necessary. With regard to a corporation, he was against it at present, and he did not think it would ever be necessary.

Mr. Nicholas did not consider the power imparted by the Constitution as imperative. He, therefore, could not fairly be charged with a desire to deviate from the designs of its framers. The power was like a coat of armor, intended to protect the Government in periods of danger, and not to be worn at all times for parade and show.

Remarks had been made to show that the dignity and independence of the Government required the assumption. All such arguments, when set against the happiness of the people, were inconclusive. Mr. N. had always been taught to consider the true dignity of the Government as indissolubly connected with the happiness of the people; and was unable to unlearn all that he had heretofore acquired to this effect.

Mr. Craik agreed with the member from South Carolina, as far as his remarks went, but he did not think they went far enough. He was himself friendly to the institution of a local government for local purposes, leaving all Federal powers to Congress. If the bill should be recommitted, he would be prepared to offer a plan conformably to these ideas. He felt no alarm at the doubts suggested of the validity of the laws of Maryland and Virginia. He believed that they were still in force; and did not think there was any absolute necessity for Congress to act at all at present. Still, he thought that delay would only multiply the inconveniences already experienced in the formation of a plan of government. A plan might be framed, to protect the General Government as well as, in some degree, the inhabitants of the Territory, from any tyranny that some gentlemen supposed might be exercised by Congress.

He concluded, by expressing a hope that a completely organized system might be formed and adopted.

Mr. Dennis coincided with his colleague in desiring an assumption of jurisdiction by Congress. But, before he committed himself by an opinion, he wished to see an entire plan submitted. As to the bill before the Committee, it was little more than an abstract proposition.

Mr. D. believed that the assumption by Congress would be agreeable to the inhabitants, if a good system were adopted.

Mr. C. Goodrich advocated the recommitment of the bill, that a more complete system might be devised, and submitted to the House in a more direct way.

The question of recommitment was carried, and two members were added to the original committee.

The Committee of Revisal and Unfinished Business reported it as their opinion, that it would be proper to continue the Sedition law, which expires with the close of this session, for two years longer.

Ordered. To lie on the table.

Thursday, January 1, 1801.

The House of Representatives having received information of the death of Major General Thomas Hartley, one of its members, who has represented the State of Pennsylvania, in that branch of the National Legislature, from the commencement of the Government until his death, do, therefore, unanimously, *Resolve*, That the members testify their respect for the memory of the said Thomas Hartley, by wearing a crape on the left arm, for one month.

Resolved, That the Speaker address a letter to the Executive of Pennsylvania, to inform him of the death of Thomas Hartley, late a member of this House, in order that measures may be taken to supply the vacancy occasioned thereby.

MAUSOLEUM TO WASHINGTON.

An engrossed bill concerning George Washington was read the third time; and, on the question that the same do pass,

Mr. Dawson moved to recommit it. Lost—ayes 39, noes 44.

Mr. Randolph moved to refer the bill to a select committee. Lost—ayes 32.

Mr. SPAIGHT and Mr. DAVIS then assigned their reasons for voting against the bill.

The question was then taken on the passing of the bill, and it was resolved in the affirmative—yeas 45, nays 37, as follows:

YEAS—Bailey Bartlett, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, jr., John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thos. T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, Edwin Gray, Andrew Gregg, John A. Hanna, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Resolved, That the title of the said bill be, "An act to erect a Mausoleum for GEORGE WASHINGTON;" and that the Clerk of this House do carry the same to the Senate, and desire their concurrence.

FRIDAY, January 2.

Another member to wit: JAMES A. BAYARD, from Delaware, appeared and took his seat in the House.

On motion of Mr. GRISWOLD the House went into a Committee of the Whole on the Judiciary bill; the House dividing—yeas 44, nays 33.

The bill was read through, when the Committee reported progress, and asked and obtained leave to sit again.

A petition of sundry citizens and inhabitants of the county of Wayne, in the Territory of the United States Northwest of the Ohio, was presented to the House and read, stating the uncertain tenure by which they hold the lands now occupied by them, and praying relief therein; and, also, that the aid and patronage of Congress may be extended to them in the establishment of schools for the education of their youth, and that a township of land belonging to the United States may be appropriated in the said county for the support of the Gospel, and for erecting the buildings necessary for the celebration of divine service.

Ordered, That the said petition be referred to Mr. PINCKNEY, Mr. MCMILLAN, Mr. IMLAY, Mr. ELIZUR GOODRICH, and Mr. KITTERA.

Mr. HARPER presented two papers; one of which was a defence by Governor Sargent of himself, against charges preferred against him by a member of the House of Representatives; being a letter to the Secretary of State, put by him into the hands of Mr. HARPER; and the other, the presentment of a grand jury in the Northwest Territory on charges made against Governor Sargent, &c.

The papers were read and referred to the committee of inquiry into the offical conduct of Winthrop Sargent; as was a Message of the President, enclosing a copy of laws passed in that Territory between June 30, and December 31, 1799.

DISTRICT OF COLUMBIA.

Mr. HARPER moved the following resolutions, which were read, and referred to the Committee on the Territory of Columbia:

Resolved, That it is expedient for Congress to assume, forthwith, the jurisdiction of Columbia.

Resolved, That the laws of Virginia and Maryland now in force in the parts of the said district contained within the limits of those States respectively, ought to be continued in force therein, until Congress shall otherwise provide by law.

Resolved, That for the administration of justice within the said District, there ought to be established two Inferior, and one Superior Court: the Inferior Courts to sit at Alexandria, and the City of Washington, for such parts of the said District as lie on the different sides of the river Potomac respectively; to have a limited civil and criminal jurisdiction with competent powers; and to be composed of three Judges each; and the Supreme Court to be held at the City of Washington, to have full powers as a Court of Equity, original jurisdiction in all cases civil and criminal not within the jurisdiction of the Inferior Courts, and appellate jurisdiction from the said courts in all civil cases above the value of —— dollars; and to be composed of a Chief Justice, who shall also be superintendent of police for the said District, with competent powers, and two associates.

Resolved That the salaries of the said Judges ought to be established by law, and to be paid by the United States.

Resolved That provision ought to be made for the appointment of a Marshal for the said District, and of clerks and other officers for the said courts, for the preservation of records, and for the due confinement and security of persons committed or imprisoned.

Resolved That for the better ordering of affairs in the said District, it ought to be divided into three townships, so that one township shall include Alexandria, one Georgetown, and one the City of Washington; and that a Corporation ought to be established within each of the said townships, to be composed of a suitable number of persons annually elected by the freeholders within the same; and to be vested with power to make provision within their respective townships, by by-laws respecting streets, highways, markets, and other matters of a similar nature, to be particularly described; the said by-laws to be subject to the revision of the Superior Court of the District, and to be annulled thereby, upon complaint by any person or persons aggrieved, notice to the proper officers of Corporation, and cause shown.

SEDITION LAW.

The House proceeded to consider the report of the Committee of Revisal and Unfinished Business, made the thirty-first ultimo, which lay on

the table, and the same being again read, in the words following, to wit:

"The Committee of Revisal and Unfinished Business further report, in part:

"That, on examining the statutes of the United States, they find that the act, entitled 'An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,'" passed the fourteenth day of July, one thousand seven hundred and ninety-eight, will expire on the third day of March, one thousand eight hundred and one.

"And the said committee report their opinion, that the above-mentioned act ought to be continued; and, therefore, recommend the following resolution:

"*Resolved*, That the Committee of Revisal and Unfinished Business be authorized to report a bill for continuing the act, entitled 'An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,' passed the fourteenth day of July, one thousand seven hundred and ninety-eight"

It was moved and seconded that the said report be committed to a Committee of the Whole House. And the question being taken thereupon, it was resolved in the affirmative—yeas 47, nays 33, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Archibald Henderson, William H. Hill, James H. Imlay John Wilkes Kittera, Silas Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, jun., John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Williams, Lemuel Williams, and Henry Woods.

NAYS—Theodorus Bailey, Robert Brown, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, Joseph Eggleston, Lucas Elmendorf, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, George Jackson, Aaron Kitchell Michael Leib, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Joseph B. Varnum.

Ordered, That the said report be committed to a Committee of the whole House on Tuesday next.

Ordered, That Mr. HARPER and Mr. OTIS be excused from serving on the committee appointed, on the twenty-second ultimo, to inquire into the official conduct of Winthrop Sargent, Governor of the Mississippi Teritory; and that Mr. CHAUNCEY GOODRICH and Mr. BAYARD be appointed in their stead.

MONDAY, January 5.

Mr. GRISWOLD, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government, for the year one thousand eight hundred and one; which was read twice and committed to a Committee of the Whole House on Monday next.

Ordered, That Mr DAVIS, Mr. NOTT, and Mr. CLAIBORNE, be excused from serving on the committee appointed, on the twenty-second ultimo, to inquire into the official conduct of Winthrop Sargent, Governor of the Mississippi Territory; and that Mr. ROBERT WILLIAMS, Mr. TALIAFERRO, and Mr. PINCKNEY, be appointed in their stead.

Mr. DAVIS moved that the Committee of Ways and Means be directed to inquire into the expediency of appointing agents in Kentucky and the Northwest Territory to pay pensions becoming due.

JUDICIARY BILL.

The House resolved into a Committee of the Whole on the Judiciary bill.

The CHAIRMAN proceeded in reading the paragraphs until he came to the fifth section, which,

Mr. EGGLESTON moved so to amend, as to preserve the plan at present existing, which establishes one court for Virginia, instead of dividing the State into two districts, and having two courts, one to sit at Richmond, and the other at Fredericksburg, as proposed by the bill.

On this motion a lengthy debate ensued.

Messrs. EGGLESTON, NICHOLAS, RANDOLPH, JACKSON, and MACON supported, and Messrs GRISWOLD, HARPER, BAYARD, H. LEE, and OTIS, opposed it.

Those who supported the motion contended that the proposed alteration was unwarranted by any change which had taken place in Virginia; that heretofore much business had been done in the Federal court from an accumulation of unsatisfied demands incurred previously to the formation of the Federal Constitution; that these demands, for the most part, were now settled; that the existing demands are few, and which one court was fully equal to attending to; that the fact was that justice had been administered under the present system with the greatest dispatch; and that at the last term the docket was so completely cleared, in a sitting of ten days, that the court, not satisfied with deciding on suits which had gone through the usual forms, had actually decided on several returnable to the ensuing term; that the additional court was not desired by the citizens of Virginia, whose convenience, so far from being furthered, would be injured by it; for that the plan of having one court held at Richmond, and another at Fredericksburg, which were not more than seventy miles apart, would place a large portion of the citizens at a greater distance from the seats of the courts, than they were at present from Richmond; which was, besides, the capital of the State, and the place to which the citizens very generally repaired for the transaction of their ordinary affairs; —that it behooved those gentlemen who recommended this extension of the Judiciary system, to show the peculiar necessity and advantages of it.

Those who opposed the motion observed, that it became the Government of the United States to

organize the Judiciary in such a way as to insure an obedience to its laws, and to insure the faithful collection of revenue; that this last object could only be attained by the institution of Federal courts, not so remote from each other, as to prevent the convenient attendance of prosecutors, parties, witnesses, and jurors at the seats of the courts; that the recovery of duties derived from this source could only be made before the Federal courts, and if the places at which infractions of the revenue laws took place were very remote, however ardent the patriotism of the citizens, they could not be expected to encounter the great expense and loss of time that would be required in attending a court three or four hundred miles distant; that the most solid objection to an extension of the courts was their expense; that in fact the extension would probably be an economical arrangement, as the facility of recovering dues to the public would be increased, and with it the productiveness of the revenue; and a considerable sum would be saved in the expenses, defrayed by the public, of a grand jury, which from its very nature must be drawn from all the parts of each State, by the contracted size of the district from which they were taken; and that the same remark would apply, in a smaller degree, to common jurors, witnesses, prosecutors, &c.; that, so far from the statement made by the gentleman being correct, it was understoood that several suits in which the public was interested, had been protracted for several terms; that the little business alleged to have been brought before the Federal court of Virginia, was the most conclusive evidence of the inconveniences attending the present plan, whereby, owing to the remote situation of the greater part of the citizens, they were induced to prefer an appeal to the State, in preference to the Federal courts.

It was further declared to be very doubtful, on Constitutional ground, whether Congress could delegate judicial powers to the State courts; and if they could, it was a delicate question how far State Judges were amenable to the United States, for a faithful discharge of their duty, inasmuch, as, if they violated the laws of the United States, they were not Constitutional subjects of impeachment by Congress; that, at any rate, the effect might be the inexecution of the laws; from which an imbecility in the Government would arise, the more fatal as it affected the vital principle of the administration of justice; that it was not doubted but that Virginia would be well satisfied with one court in preference to two, or with no court whatever in preference to one; that it would be wise in Congress to conform as nearly as they could, in consistence with economy, to the ideas adopted by the several States, as well as the established principles of common law, which brought justice home to the door of every man: that it would therefore be advisable, if the expense were not too great, to divide Virginia, not merely into two, but into four or eight districts, with a court in each; that it was a lame argument, that because we could not do all that was required, we should do nothing; that as to the idea thrown out, that the convenience of the citizens of Virginia did not require an additional court it was entitled to no weight; as the additional court would not be instituted merely for the convenience of Virginia, but for rendering justice to foreigners and the citizens of other States, and to insure the dignity and independence of the Government.

It was further observed that if the division of Virginia, contemplated by the bill, was inconvenient, it might be altered; though it was believed that the objection arose from a want of geographical knowledge in the gentlemen who made it.

In reply to these remarks, it was said by a member, who represented the Western district of Virginia, that there had been but one suit carried before the Federal court from his part of the State for ten years, and that at present there was not a single one depending.

Other gentlemen observed that it behooved those who avowed that this additional court was not intended to answer the convenience of the citizens of Virginia to answer, that, notwithstanding the contrary declarations of some gentlemen, who on this occasion, had betrayed the same ignorance of the physical state of the country that on previous occasions they had manifested of its moral and political state, the new arrangement would increase, instead of diminishing the existing inconveniences, inasmuch as the citizens of the counties of Essex, Caroline, Louisa, and Orange, would be removed to a greater distance from Fredericksburg, the contemplated seat of their court, than they now were from Richmond.

It was further contended that the State courts were fully competent to discharge all the duties assigned them; and that in Virginia the Federal laws had been either invariably obeyed or enforced; that no spirit of hostility to the Federal Government had appeared, and that it would be time enough to guard against it when it should appear; that, from the remarks of some gentlemen, it really appeared, as if they wanted an additional Judge, and knew not where to locate him.

The question was then taken on Mr. EGGLESTON'S motion to strike out, and lost—yeas 39, nays 44.

A motion was then made that the Committee rise; which was lost—yeas 36, nays 39.

Mr H. LEE moved so to amend the section, as to produce a division of Virginia laterally, instead of longitudinally, and to make Staunton instead of Fredericksburg, the seat of justice.—Carried, yeas 45.

TUESDAY, January 6.

QUESTION OF PRIVILEGE.

The House took up the report of the Committee of Privileges on the letter of Joseph Wheaton, Sergeant-at-Arms, which is as follows:

The Committee of Privileges to whom was referred the letter from Joseph Wheaton, Sergeant-at-Arms, report:

That the representation made by the Sergeant-at-Arms contains a correct statement of facts; and that he, in the opinion of the committee, is to be commended for the promptitude and fidelity with which he executed the order of the Speaker to apprehend the person guilty of indecent and disorderly conduct in the gallery.

The committee have reason to believe, from the best information they can obtain, that the person who committed the disorder, (and who has since absconded,) was at the time intoxicated with liquor.

The magistrate, by whose warrant the Sergeant-at-Arms was arrested, and held in custody, for discharging his duty in the premises, has explained his conduct in a letter accompanying this report. The suggestion made to him, that any one member of this House was consulted with regard to the prosecution of the Sergeant-at-Arms, is presumed by the committee to be false; as it would imply in such member not only a disregard of all sense of personal propriety, but also an inexcusable contempt for the honor and dignity of the House.

That although the arrest and confinement of an officer of the House of Representatives for any act by him performed in its service, and in obedience to its orders, must be deemed a high breach of its privileges; yet as the magistrate, in the present case, seems rather to have been deceived by false representations, than influenced by improper views, the committee cannot consider his conduct as a subject of animadversion.

They are, therefore, of opinion that it is not expedient for the House to take any further order on the letter from Joseph Wheaton.

The following is the letter of the magistrate alluded to:

CITY OF WASHINGTON, *Jan.* 3, 1801.

SIR: In compliance with your request, I will endeavor to state what took place between James Lane and myself respecting the warrant I granted at the instance of the said Lane against Joseph Wheaton, which is in substance as follows:

On Monday the 22d ultimo, I was called on by a young man of genteel appearance, whose name he said was Lane, and informed (for the first time) that he had been arrested in the gallery of Congress by the Sergeant-at-Arms, and by him confined in one of the committee-rooms upwards of an hour, on suspicion of clapping a member of the House of Representatives while addressing the Speaker, which charge he at that time denied being guilty of. He also stated that Mr. Wheaton, after keeping him confined during the time abovementioned discharged him, and that he was arrested a second time by the said Wheaton on the public square, some distance from the Capitol, who wrested from him, his horse without producing a written authority from the Speaker of Congress, or any other evidence to justify his conduct. I thought, under such circumstances, it behooved me as a justice of the peace for Prince George's county, to take cognizance of the last charge, although I embarked in the business with great diffidence and reluctance. I issued a warrant to have Mr. Wheaton apprehended, which was served by Mr. Spalding (the constable) on the Wednesday following, by whom Mr. Wheaton was brought before me. On hearing his defence, which was corroborated by others who were present, I made no hesitation in discharging him, as I was well satisfied that his conduct had been that of a vigilant officer, and I made no hesitation in declaring that, so far as his conduct has fallen under my own observation, it has been marked with the strictest probity. Mr. Lane informed me that he had consulted with one or two members of Congress respecting his case, who thought he had been treated with improper severity, but he did not name any particular member. I have endeavored to state every circumstance that took place on this disagreeable subject, and hope my conduct may not be unfavorably construed, so as to lead to the smallest suspicion that I meant to offer an indignity to the representatives of this my native country, or any of its officers.

I remain with sentiments of due respect, your obedient servant,

RICHARD FORREST.

The following is the letter from the Sergeant-at-Arms:

To the Hon. Theodore Sedgwick, Esq., Speaker of the House of Representatives of the United States:

SIR: I conceive it to be my duty to report to you, for the information of the House of Representatives, the circumstances which have attended and the proceedings which have followed my obedience to your orders for arresting the person who had been guilty of contemptuous and disorderly behaviour in the gallery on Monday the 22d inst. Upon proceeding to the gallery I found that the disorderly person was one James Lane, whom I accordingly arrested, conducted to the Clerk's office, and treated with all possible civility, until the adjournment of the House, when he was released, and suffered to go where he pleased.

On the Wednesday morning I was apprehended upon a warrrant issued by Richard Forrest, Esq., in the name of the State of Maryland, commanding Thomas Barton Morris or Richard Spalding to arrest the body of Joseph Wheaton, and I was accordingly conducted before the said Justice Forrest, and was detained a prisoner from 10 o'clock in the morning until 1 o'clock in the afternoon, and was at length discharged because the aforesaid Lane did not appear to prosecute his complaint.

I have the honor to be, faithfully, your obedient, humble servant.

JOSEPH WHEATON.

December 30, 1800.

Mr. NICHOLAS thought the report contained opinions that it would be improper in the House to sanction. It improperly censured the conduct of a magistrate, who did not appear to have violated his official duties, as he had waived the prosecution as soon as he was informed by the Sergeant of the real nature of the circumstances. More could not be required. To expect the magistracy to forbear calling to account the officers of a Legislative body, in all cases whatever, would involve a violation of every legal principle.

As Mr. N. understood the affair before the House, the Sergeant had been directed by the Speaker to see to the man who made the disturbance in the gallery. He knew not that this order gave any authority to confine the man. He had not himself been present at the time; but, from the circumstances he had heard stated, he did not believe that the idea of arrest and confinement had entered into the head of any man. But the conduct of the Sergeant did not stop here. He had been told, and he believed truly, that the Sergeant, after removing the man from the gallery, had dismissed him, and had returned to the House; when, on the suggestion of some members, he

again pursued the man, who was in the street, and arrested him a second time, when there was no disturbance, and held him in confinement, without any authority whatever.

The opinions expressed by the committee would be of little importance, if they did not go to establish the incompetency of the magistracy of this country to inquire into the conduct of men who might be guilty of misconduct; of that magistracy on whom we must rely, in a great measure, for our protection.

Mr. Davis moved to refer the report to a Committee of the whole House.

Mr. Smilie hoped the House, before it committed itself by any judgment, would inquire by what authority the Sergeant had acted in this most extraordinary transaction, that the citizens might in future be protected from outrages similar to that under discussion.

Mr. Bayard said that the gentleman from Virginia (Mr. Nicholas) had entertained the House with an enumeration of doubts, which he hoped they would take no notice of. The facts before them came from a select committee, who were the only organ of a correct investigation of facts. If the facts were doubted the reference of them to a Committee of the Whole, with the view of ascertaining their truth, would be perfectly futile.

As to the sentiments of the gentleman on the report, he could not say he was surprised at them. They amounted simply to this, that there was something so sacred in the rights of a free citizen of a free country, that it was altogether immaterial how he acted, or in what manner he treated the constituted authorities of his country. Mr. B. felt as much as the gentleman for the rights of the citizen; but he also felt some degree of respect for the Government; as he believed that much, not merely of its dignity, but of the happiness of the people, depended upon an adherence to the settled principles of order. The gentleman had told the House he doubted its power in several respects. Did he doubt its power to take the most instantaneous steps to preserve its tranquillity and order? To advance such a doctrine would be to degrade the House below the grade of the most pitiful county court. There was no such court that did not possess the power of committing for a contempt.

Mr. Nicholas said that his remarks had been misstated. They were, that the magistrate was right in issuing his warrant; and that all that could be expected from him was an admission of the plea of the Sergeant, which had actually been done. But to say that a magistrate shall not call your officers to an account in any case, is saying more than had ever been said elsewhere. Cannot your officer commit abuses? Have not gentlemen heard of abuses committed elsewhere? Have they not heard, too, of their punishment? In such circumstances what other course can be pursued, than that whereby a complaint is first made, and the defence then heard?

Mr. N. did not think the committee had reported a true statement of facts. The Sergeant had himself declared that he had released the man, and afterwards arrested him a second time. He was, therefore, authorized in supposing, not that the committee had suppressed facts, but that they had not made a full inquiry into them. It was, then, an acceptable service to give this information to the gentlemen, in the hope that they would be influenced by it.

He was surprised at the imputation thrown on a member, who was alluded to, as having advised the prosecution of the Sergeant. This conduct, so far from being disgraceful, he considered as highly honorable, coming as it did from a member enjoying an inviolability of character.

Mr. N. concluded with the expression of a hope that the business would be buried in oblivion, without controversy.

Mr. Dana said there were two features of the report that seemed to excite the sensibility of the gentleman from Virginia; one was the improper opinions expressed in it; the other, the imputation thrown on a member. He would have been truly surprised at the remarks he had heard on this occasion, had not very similar remarks often been expressed. Could any gentleman, pretending to judicial knowledge, doubt the power of the House? Could any man doubt that to arrest an officer of this House for discharging his duty was a violation of privilege?

As to the imputation thrown on a member, if any member had advised the prosecution, was not the imputation merited? For could any member of this House, impressed with a just sense of his station, so far degrade himself or the House as to request the interference of a magistrate? This, indeed, would be a miserable degradation of the House.

Mr. Harper was prepared, if this were a fit time, to show that the Speaker clearly possessed the power he had exercised. It could be established by the best authorities. He was against a reference to the Committee of the Whole, which was the only question before the House. If gentlemen wished to try the abstract principle of privilege, they should move a recommitment to the select committee, and assign for reason the objectionable parts of the preamble.

The Speaker said that whatever words he may have used in giving his orders to the Sergeant, it was his intention to have arrested, and held in confinement, subject to the order of the House, the man who had committed disorderly behaviour in the gallery. He thought then, and he still thought, that his power extended to this length. If the Speaker did not possess this power a member might be assaulted without the bar, a debate might ensue, and before the House could come to any decision, the object to be answered might be defeated. It was, therefore, only justice to the Sergeant to declare that whatever he had done had been in obedience to his orders.

In the case of disorderly behaviour in the galleries, there were but two courses which could be pursued. One was to clear the galleries of all the persons in them. This would be to punish the innocent for the guilty. [The other was not heard distinctly.]

Mr. Davis spoke against the report, and in favor of referring it to a Committee of the Whole.

Mr. Kittera advocated the report.

Mr. Smilie declared his decided disapprobation of the conduct of the Speaker, the Sergeant, and the Committee.

Mr. Otis spoke at considerable length. He defended the conduct of the Speaker, the Sergeant, and the Committee. He observed that the authority of the Speaker to direct a momentary arrest was conceded. To arrest for an instant was as great a trespass as to arrest for a day. It could not admit of question that the Sergeant was bound to execute the orders of the Speaker; and these given in the presence of the whole House, without the House making any interference, were equal to the actual orders of the House.

It should be noticed by gentlemen that the species of outrage recently committed was more to be dreaded than any other kind of outrage. In other countries it had been fatal. In the French Republic it had produced much bloodshed, and other mournful transactions. Designing men attended for the express purpose of inspiring terror, thereby hoping to carry their favorite measures; and, in case they were called to account, they too generally found adherents, or lost themselves in a crowd. This description of outrages was, therefore, more to be feared than open assault upon the members.

Mr. Macon conceived that, in an affair of this kind, which presented the first instance in which a complaint had been made against an officer of the House for the arrest of a citizen, it became the House to act with deliberate caution. He was for a reference to the Committee of the Whole. He was not disposed to go at length into the arguments, urged by gentlemen in favor of the report. But he did not believe that the dignity of the House had anything to do with the business.

Mr. Nicholas had little doubt but that the sentiments contained in the preamble would hereafter be quoted as authorities. In this point of light he considered them as dangerous. They tended to extend, under the name of privilege, the powers of an Assembly, placed in circumstances peculiar to itself; and this extension could only be made at the expense of the magistracy of the country. The truth was that the civil authorities had powers, in many cases concurrent with those of the House; and it became not the House in such cases to countenance an exclusive exercise of them.

Mr. N. had no doubt of the Speaker's making a true statement, according to his own impressions. But he did doubt the actual correctness of his statement. His own opinion was that no authority had been given to the Sergeant to take the man into confinement.

[Mr. N. here stated, in corroboration of his opinion of the correctness of the facts reported by the Committee, the declaration made to him by several gentlemen as to the conduct of the Sergeant. His statement was substantially the same with that of Mr. Alston, which will be found below.]

The Speaker rose to explain what he had previously stated. He had said that he considered himself as possessed of the power to arrest and confine a person for disorderly behaviour during the present sitting, subject to the instructions of the House. He had not said that he had any power to confine an individual beyond that time.

The words in which he had conveyed his orders to the Sergeant, were he believed: "Take care of him." He would take this occasion to say that there was in the public prints of that day *a gross misrepresentation* of what occurred in the House.

[The editor of the *National Intelligencer* would deem it an act of pusillanimity to shrink from noticing this declaration of the Speaker. It is possible that it may not refer to his statement of the proceedings of the House; but the probability is that it does refer to that statement, inasmuch as it is the most particular which has been published, and the only one which states in detail the order of business of that day.

The day referred to is December 23d, 1800; and the debate that which took place on certain resolutions relative to the official conduct of Winthrop Sargent.

By a reference to that debate it will appear that, during the day there were sixty-nine successive risings of members, (including the Speaker;) that numerous points of order were started and decided upon by the Speaker; that embarrassment followed embarrassment; and that in several instances the Speaker, on the information of members, reversed his own decisions.

As a faithful reporter, a statement of these circumstances was published; as well as the words which fell from the Speaker on the disturbance in the gallery, which were: "See to that man."

Deeming it peculiarly important to be correct as to the words uttered by the Speaker, before they were published, the editor asked a gentleman, whose correctness cannot be questioned, and whose nearness to the Chair enabled him distinctly to hear, whether these were the words? he replied that they were.

This statement is extorted by the charge of *gross misrepresentation*. These are words which convey anything or everything. Without much latitude of construction they may be applied not only to the act, but the intention.

They tend, therefore, to impair that character for a sacred and undeviating adherence to truth, which the editor claims as of right. While he stands on the ground of truth, (and he never can stand on any other ground,) he knows that his statements will continue to be received as fair and correct representations of facts.

He will not deny his inability always to understand the meaning of the Speaker, even when he hears all his words. His consolation, however, is, that the misfortune is not peculiar to himself. The close of this day's debate will show that at least three members of the House labor under the same inconvenience.]

Mr. Rutledge had been informed by the Sergeant that there had not been a second arrest.

The account given to him at the time of the outrage, and that given him to-day, precisely corresponded. The account was this: that when the Sergeant went into the gallery, the man who had committed the disorderly behaviour braved the vengeance of the House; in consequence of which he was taken down stairs by the Sergeant; he then broke from the custody of the Sergeant, and was finally conducted into the committee room, where he remained till the House rose, when the Speaker released him.

Nothing so gross as this had occurred under the Government, except once in Philadelphia, when the Speaker had actually confined all the citizens in the gallery by locking them in for a time. So that this power of confinement, which gentlemen declared to be novel, had been exercised, and that too in a much more extensive degree.

Mr. ALSTON observed that, had it not been for the observations which fell from the gentleman from South Carolina, who had just sat down, he should not have troubled the House with any remarks upon the present occasion; but that the statement of facts given by that gentleman to the House, so far as they related to the information which he had received from the Sergeant-at-Arms, was so entirely different from that which he himself had received from that officer, that he conceived himself bound to state to the House what he had himself heard that officer say. That upon the evening after the transaction took place, sitting by the fire-side in the presence of ten or fifteen gentlemen, who, Mr. A. said, he was very confident would bear him out in what he was about to relate, the Sergeant-at-Arms said that, in executing the orders of the Speaker, respecting the noise in the gallery, he had turned the disorderly person out of the gallery, and intended to have let him go about his business; but upon returning into the House, he had been advised by some of the members not to let him go; that it was extremely improper. Upon this he returned, and found the man some distance from the Capitol, upon his horse; that he again arrested him, and conducted him into the Clerk's office, or one of the committee rooms, and there detained him until the House adjourned.

Mr. A. then observed, that if the Sergeant-at-Arms had been capable of relating in language so diametrically opposite, the transaction which had taken place, as had been just given by the gentleman from South Carolina and himself, that, instead of his conduct being praiseworthy, as was stated by the report of the committee, in his opinion it merited reprehension, and that he should, therefore, give his vote against concurring with the report of the committee.

Mr. STANFORD observed, that what he knew of the subject did not come from the Sergeant; but he had good authority for saying, that the person who had committed disorder in the gallery, had been set at large after he was taken, and arrested under the advice and influence of certain members of the House, one, at least, if not more; that he himself could establish these facts; of course, that the report of the select committee was incorrect, and he hoped the business would be committed to a Committee of the Whole.

Mr. NOTT spoke in approbation of the report, and stated in detail the facts which had attended the business; but not having heard with distinctness more than half the words he uttered, and these in a broken way, we cannot state even the substance of his statement.

Mr. STANFORD begged leave more particularly to state that, on the day of the disorder, after the House had adjourned, he stepped into the Clerk's office. He there found the young man, the subject of the present inquiry, held in custody. He then expressed his surprise to the young gentlemen of the office, that the Sergeant had confined him, and exposed him to this humiliating mortification so long; that, as it was a thoughtless act on the part of the young man, to have turned him out of the gallery was sufficient punishment for the offence, and, indeed, the usual course. The answer was, that the Sergeant had done no more at first, but that, at the instance, it seemed, of one or more of the members, and not by the authority of the Speaker, he had afterwards gone, rearrested, and thus confined him.

Mr. S. hoped that the matter might go to the Committee of the Whole; the facts, he alleged, could then be substantiated, and the report of the select committee, so evidently erroneous, might be corrected.

Mr. EDMONDS thought that the conduct of the Speaker and Sergeant had been just what it ought to be. Nor did the different statements of facts, in the least, affect the propriety of the steps taken. In consequence of the order of the Speaker the Sergeant had arrested the individual, who was immediately in confinement. After this arrest the Sergeant had no power to liberate him without the permission of the Speaker or the House. Whether, therefore, he had remained personally in the custody of the Sergeant, or whether he had been disengaged from him, still he was substantially and legally under arrest and in confinement; and if he had withdrawn from the custody of the Sergeant, the latter had only done his duty in retaking him.

The question was then taken on referring the report to the Committee of the whole House, and lost—ayes 34, noes 48.

Mr. DAVIS, after making a statement of facts in correspondence with those of Mr. ALSTON, moved a reference of the report to a select committee. Lost—ayes 38, noes 47.

The question on agreeing to the resolution, with which the report concludes, recurring, the yeas and nays were agreed to be taken.

Mr. VARNUM. Is it in order to move to strike out the preamble?

Mr. SPEAKER. It is not in order. The preamble to a resolution may be struck out. But he believed no preamble, that barely assigned the reasons of a committee, had ever been struck out.

Mr. VARNUM was of opinion there had been such instances; and referred to a report of the Committee of Elections in 1795.

The SPEAKER declared that the preamble was not before the House; the only question was on agreeing to the concluding words.

On which the yeas and nays were taken.

When the Clerk called the name of Mr. SPAIGHT, he rose, and asked the Speaker whether the preamble would be inserted on the journals? declaring that if it were not, he would vote for the resolution.

The SPEAKER replied, in words that we considered as equivalent to a declaration that it would not be inserted. So impressed, Mr. SPAIGHT said, "aye."

On enumerating the yeas they were 58, and the nays 30, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William C. C. Claiborne, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, James Lynn, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, jr., William Shepard, John C. Smith, Richard Dobbs Spaight, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, John Thompson, Peleg Wadsworth, Robert Williams, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Edwin Gray, David Holmes, George Jackson, Michael Leib, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, Abram Trigg, John Trigg, Philip Van Cortlandt, and Joseph B. Varnum.

The SPEAKER then made some remarks on placing the preamble on the journals.

Mr. KITCHELL said he had voted for the resolution from the declaration of the Speaker that the preamble was not to be inserted on the journals. If it were to be inserted he would change his vote.

The SPEAKER declared he had not said so.

Mr. SPAIGHT had been similarly impressed with Mr. KITCHELL. He, too, must request permission to change his vote.

Mr. GREGG declared he had voted under the same impression.

The members were not permitted to change their votes.

Mr. KITCHELL said that, in order to have an opportunity of fairly expressing his opinion, he moved a reconsideration of the question just taken.

On which question the yeas and nays were taken—yeas 45, nays 42, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Christopher G. Champlin, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Craik, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, John Randolph, John Reed, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Nathan Reed, John Rutledge, junior, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Lemuel Williams, and Henry Woods.

On agreeing to the resolution the yeas and nays were again taken, under the declaration of the Speaker that he would direct the preamble to be placed on the journals—yeas 50, nays 38, as follows:

YEAS—George Baer, Bailey Bartlet, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glenn, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, James Lynn, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, jun., William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Mr. GRISWOLD, from the Committee of Ways and Means, presented a bill making appropriations for the Military Establishment of the United States, for the year one thousand eight hundred and one; which was read twice, and committed to a Committee of the Whole House on Monday next.

Ordered, That the committee to whom was referred, on the twenty-third ultimo, the petition of the messengers and office-keepers of the several Departments, be discharged from the consideration of the same; and that the said petition be referred to the Committee of Ways and Means.

Wednesday, January 7.

Ordered, That the memorial and remonstrance of the Legislature of the State of Georgia, presented the 30th ultimo, and which lay on the table, be referred to Mr. Dana, Mr. Taliaferro, Mr. Tenney, Mr. Nott, and Mr. Eggleston.

JUDICIARY BILL.

The House again resolved itself into a Committee of the Whole on the Judiciary bill.

A considerable number of amendments were offered by Mr. Harper, and approved.

Mr. Dennis moved an addition to one of the sections, in the form of a proviso, declaring that nothing contained in the act should be so construed as to repeal so much of an act for securing duties on stills, &c., as vests in the courts of the several States a jurisdiction in certain cases therein mentioned.

He made this motion, not with reference to his own decision, but to try the sense of the Committee on the constitutionality of the power thus delegated; which, on a former day had been contested by a gentleman from New York. (Mr. Bird.)

He had himself no doubt of the constitutionality of the power. Under our present system of Government, as well as under the Confederation, it had been exercised in analogous cases. The old Congress had expressly vested in the State courts the jurisdiction over Admiralty cases.

The Constitution has empowered Congress to establish judicatories, which might be made the sole organs of decision in certain specified cases; but it had not prescribed that they should absolutely be the exclusive organs. He recollected that in the Convention of Virginia that ratified the Federal Constitution, the advocates of it urged, as an argument for its adoption, that though Congress had the right of establishing independent judicatories, it was not probable that they would extensively exercise the right; but that they would devolve Judicial powers on the State tribunals.

As to the expediency of delegating Judicial powers to the State courts, it presented a more difficult inquiry. It was certainly a kind of clumsy affair. Under all other Governments the Judicial authority was at least coextensive with the Legislative; and in many Governments it went beyond it in a decision of cases under the law of nations.

Besides, Mr. D. discerned no way of compelling State Judges to perform their duty; and there appeared to be peculiar hardships in obliging courts and juries, supported by particular counties, to perform Federal duties.

Mr. Harper had as little doubt of the Constitutionality as he had of the expediency of this delegation of power. At present we are not under the necessity of establishing a Judicial system as extensive as the powers of Congress. If we were constitutionally obliged to do this, we should be compelled to cover the whole ground, and to institute a great number of new courts. It is true that we cannot enforce on the State courts, as a matter of duty, a performance of the acts we confide to them; but we give them the power, and until they refuse to exercise it, we have no cause to complain. He did not believe this proviso necessary. But as some gentlemen thought it was necessary, he would vote for it.

Mr. Bird declared himself still of opinion, that the delegation of Judicial power to the State courts was unconstitutional. This is denied by the gentleman from Maryland. The argument he makes use of stands thus: He denies the unconstitutionality of the transfer, because we have practised it; therefore we have the power. Is this correct reasoning? Does the practice of a particular thing demonstrate it to be right?

The extreme difficulty of stretching out Judicial power in federal tribunals, which was alleged, was not a question of right, but of expediency. If it were a question of right, then must the question of right, as superior, supersede the minor question of expediency.

Some gentlemen seemed to think that, as soon as Congress pass a particular law, there exists a right and a duty in the State courts to execute it. But our own practice destroys this idea; for all our laws on the subject actually give power to the State courts; the expression is, "they may have jurisdiction in certain cases."

It had been asked, whether the laws of the United States did not bind the State Judges? He answered that they bound them as citizens but not as Judges. Even the gentleman from South Carolina admits that there is no obligation imposed upon them to act. This furnished a strong argument of the inconsistency of gentlemen, as the Judges were neither bound to execute our laws nor punishable for omitting to execute them. Further, the institution of a Judiciary coextensive with the other branches of the Government, was essential to the due administration of all just plans of civil policy. On the Judiciary depended the fair administration of justice. It was an organ of essential use and necessity. It should be attached to the system of which it formed a part, independently of all other systems. As well might the organ of one human body expect to derive support from the organ of another disconnected body, as the Federal Judiciary expect to gain support from State tribunals. So thought the framers of the Constitution; and a cotemporaneous commentator on it has declared that a Judiciary coextensive with the Legislature is so natural as not to require argument to support it.

Mr. B. then went over the same ground with that taken by him in a former debate.

He concluded by declaring that, until the point was better cleared of Constitutional objections, all arguments of inexpediency were perfectly futile.

Mr. Nott said, the simple question was, whether the Congress of the United States had or had not the Constitutional right of transferring to the State judicatories the power of trying causes arising under the Constitution or laws of the United States. In discussing this question he should not consider the consequences resulting from the decision, for although the consequences might be as his colleague (Mr. Harper) had represented, that the Judiciary of the United States must be made coextensive with the State Judiciaries, if this power was not admitted, yet if so the Constitution was written, so it must be understood. The Constitution could not be bent as convenience might require. The decision, therefore, must be made by the instrument itself.

The Constitution provided that the Judicial power of the United States should be vested in one Supreme Court and such inferior courts as the Congress might from time to time ordain and establish; and also that they should hold their offices during good behaviour, &c.

Mr. N. said, the clause in the Constitution requiring inferior courts, was equally imperative with that requiring a Supreme Court, with this difference only, that the Supreme Court was limited to one, but the details of the inferior courts were left to Congress. The expression "inferior courts" was a technical expression, as well understood by every lawyer as any in our law books. It meant a court possessed of subordinate powers within the same Judiciary system, and necessarily implied a superior court, capable of controlling an undue exercise of those powers; that the State Legislatures might with as much propriety be called inferior to the Federal Legislature, or the Executive of any State be called a subordinate officer of the President of the United States, as the State courts could be considered inferior courts of the United States.

The words in the Constitution were, "such inferior courts as Congress may ordain and establish;" and it was not sufficient to say that by giving the power to try causes arising under the Constitution, &c., you, *quo ad hoc*, made them courts of the United States; for there was an essential difference between ordaining and establishing courts and transferring power to courts already ordained and established. The obvious meaning of the Constitution, was that the Judicial power of the United States should be confided to courts established and organized by their own Government. Besides, Mr. N. observed, it was required that the Judges should hold their offices during good behaviour; but this was not the case in the several States; in some, he said, they held their commissions for a limited time; in others during the pleasure of the Legislature, and in others they could not hold them after a certain period of life.

There was another objection, he said, to this mode of appointing officers of the United States. The Constitution has provided that the President should appoint all the officers of the United States not otherwise appointed by the Constitution, except Congress should by law provide otherwise, as mentioned in the same clause of the Constitution. The Judges were not, however, of that description of officers contemplated by the Constitution, the appointment of whom Congress might vest in some other department, and if they were, that power had never yet been exercised by Congress. This, in effect, would be to divest the President of the power given him by the Constitution of appointing all officers, and to exercise it ourselves.

The doctrine he contended for would be further obvious by a reference to the second section of the third article of the Constitution, expressing the cases to which the Judicial power of the United States should extend:

"The Judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizen of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State and a citizen thereof, and foreign States, citizens, or subjects. In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

He said there was a marked difference between the words of the Constitution relating to the catalogue of cases enumerated in the first part of that section, and those in the latter part of the same. The word "all" was prefixed to each of the cases first mentioned, down to the words "admiralty and maritime jurisdiction" inclusive, but was omitted in all the subsequent cases. He could see no reason why that word was added in the former part of the section, and omitted in the latter, except it meant that there was no case of the former description to which the Judicial power of the United States should not extend; in fact that the courts of the United States should have exclusive jurisdiction of all those cases, and in the latter their jurisdiction should be concurrent with the State courts.

It was further to be observed, he said, that the first description of cases here enumerated, were such as had received their birth from the Constitution and laws of the United States, and could not have existed previous to the establishment of the Government, or be such as immediately involved the rights and interests of the General Government; but that the latter were such as the individual States might have jurisdiction of, previous to that period. He presumed the State courts were not vested with more power under the present Constitution than they were before, unless given them by the Constitution; nor are they divested of any, unless by the same instrument, or by Congress, in pursuance of the power

therein given to them. And he had seen no part of the Constitution that delegated this power to the State courts, or that authorized Congress to do it. It appeared to him that the meaning of the Constitution was to give to the courts of the United States exclusive jurisdiction over cases arising under the Constitution or laws of the United States, and also over all cases immediately affecting the general interests, and to reserve to the individual States the exclusive jurisdiction over their own local concerns; and that in cases involving their own interest and the rights of others, they might have concurrent jurisdiction. It was acknowledged by the gentleman from Delaware (Mr. Bayard) that Congress had no power to compel the State courts to perform that duty, but that the Judges of the several States were bound to obey all the acts of Congress. Other gentlemen had observed, that this doctrine would go to deny that the stamp act, or any similar act, was binding on the State Judiciaries. On this Mr. N. observed, that the State courts were bound to observe all the Constitutional laws of Congress. When, therefore, Congress passed a law that no instrument of writing for the payment of money should be received in any State court as evidence of such debt, unless the same was upon stamped paper, the Judges were bound to obey it; but if they should pass a law giving power to any county court within the United States, to try persons guilty of treason against the United States, that law would not be obligatory upon them; nevertheless, it would be an act of Congress. Mr. N. said, the distinction was between cases arising under the Constitution and laws of the United States, and those that did not. His idea might be further illustrated by the act above mentioned (the stamp act.) If a person should give a note of hand for a hundred dollars on unstamped paper, with a view of evading that act, he was liable to a penalty; that would of course be a case arising under a law of the United States, and would be exclusively cognizable in the courts of the United States. But an action brought on a note of hand written on stamped paper, is not a case arising under the law of the United States, but arises from the contract itself; and, although no note had been given, the contract would, nevertheless, have existed. The stamp act does not require a contract to be in writing; but if people will have their contracts tested by written evidence, it requires that paper should be stamped.

Mr. N. said, wherever a duty was enjoined by law, the person who was guilty of the non-performance of that duty incurred the penalty annexed, and that penalty could be recovered no other way but by indictment, unless otherwise expressly provided by the law itself. And how would gentlemen frame an indictment in a State court, to embrace a case that had occurred under a law of the United States? It was essential in every indictment, to lay the offence to have been committed against the law of the State, and to conclude against the peace and dignity of the same. But, surely, gentlemen would not contend that an offence against a law of the United States was an offence against the law of an individual State, or against its peace and dignity. The gentleman from Delaware (Mr. Bayard) had observed that penalties incurred under the revenue laws were not considered as crimes, but were recoverable in actions of debt. But, said Mr. N., merely changing the action or the mode of recovering the penalty cannot alter the nature of the offence, nor the tribunal before whom it is to be tried. It was still a case arising under a law of the United States, and although a debt, it was one in which the defendant not even in contemplation of law had any agency. And to contend that because a penalty is by an act of Congress recoverable by an action of debt, therefore they have a right to transfer these cases to the State courts for adjudication, is to say that Congress may first give themselves the power to delegate it, and then exercise the power that is acquired.

But, said Mr. N., if it is true that Congress have a right to impose this duty on the Judges of the State courts, they must have the right to compel a performance of it. It was incompatible with the idea of sovereignty, to pass laws and not to have the power and the means of carrying them into execution.

Upon the whole, he had seen no part of the Constitution that authorized Congress to delegate such power to the State courts, or that authorized the State courts to execute it, and he should therefore vote against the proposed amendment.

Mr. Bayard considered the question of the delegation of power altogether misapplied. The proviso moved by the gentleman from Maryland related to the jurisdiction of the State courts, not over offences, but over civil suits, which were brought by the United States for debts arising out of contracts with the individuals indebted to the Government. Now, it would puzzle him to say why the State courts should not decide cases in which the United States were a party, as well as in any other description of cases, when it was known that their jurisdiction extended over all actions for debt.

Mr. Nicholas desired to know whether there did not exist other laws than the one embraced by the proviso, to which it would be proper to extend its provisions? for which purpose he moved that the Committee rise. Motion lost—ayes 34, noes 37.

Mr. Bird, wishing an amendment to the bill that would fairly and fully meet the question of constitutionality, recommended to the gentleman from Maryland to withdraw his proviso; in which case he would, at a proper period, present an amendment to that effect.

Mr. Dennis withdrew his motion.

The Chairman then read the 13th section, one clause of which is as follows:

"The circuit courts shall have cognizance of all actions, or suits, matters or things, cognizable by the Judicial authority of the United States, under and by virtue of the Constitution thereof, where the matter in dispute shall amount to ——— hundred dollars, and where original jurisdiction is not given by the Constitution of the United States to the Supreme Court

thereof, or exclusive jurisdiction by this act to the courts of Admiralty hereby established."

Mr. Nicholas moved to fill the blank with 500, so as to confine the jurisdiction to debts above $500. Among other reasons assigned by him, he stated that the estate of Lord Fairfax, with the quit rents due thereon, had been confiscated during the Revolution by the State of Virginia; notwithstanding the confiscation, the heirs of Lord Fairfax had sold all their rights, (which the assignees contended remained unimpaired.) It might be their wish to prosecute in a Federal court, expecting to gain advantages in it which could not be had from the courts of Virginia. His object was to defeat the purpose by limiting the jurisdiction of the circuit courts to sums beyond the amount of quit rents, alleged to be due by any individual.

[It is understood that the present assignees of the claims of Lord Fairfax, are General Marshall, General Lee, and a third individual, and that they maintain their claims under the British Treaty.]

The motion was opposed by Messrs. Harper and Bayard.

On the question being taken, it was lost by the casting vote of the Chairman—ayes 37, noes 37. The blank was then filled with $400—ayes 41.

The Committee then rose, reported progress, and had leave to sit again.

Thursday, January 8.

JUDICIARY BILL.

In Committee of the Whole on the Judiciary bill—

Mr. Nicholas moved to add to the 17th section the following clause of the act, passed September 24, 1789, which is omitted in the bill now before the Committee, viz:

"Nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents if no assignment had been made, except in case of foreign bills of exchange.

Mr. N. stated his object to be to leave the jurisdiction of the Federal courts, as far as respected debts created by assignment, in the situation in which it now stood.

On this motion a debate of considerable length took place. The supporters of the motion were Messrs. Nicholas, Randolph, and Alston; the opponents, Messrs. Griswold, Harper, and Bayard.

Those who supported the motion contended that by giving jurisdiction to the Federal courts over assigned debts, a great mass of suits would be transferred from the State to the Federal tribunals; that this would be done by a collusive assignment; that it would thereby be in the power of a creditor, by nominally assigning his claim to a citizen of another State or to a foreigner, to bring his debtor into any Federal court he pleased, and occasion an increase of trouble and expense; that if any benefit did attach to the creditor by the right of instituting process in a Federal court, which was, however, not granted, that very benefit would violate the established principle of law that the assignee of a debt ought not to be placed in a better situation than the assignor; that when a citizen made a contract with a foreigner, he knew the consequences, but when he made a contract with a citizen, he entertained no idea of amenability to the Federal courts, and had no idea of being dragged to a distance in case of a controversy with his creditor; that in the Southern States, and particularly in Virginia, this power would be highly injurious; for that in Virginia all bonds were assignable, and a great mass of the debts contracted were in bonds and promissory notes; that if the power were bestowed, it would place the debtor at the mercy of the creditor; inasmuch as the latter would choose his court, and the former would in many cases be drawn two hundred miles from his home, where the debt had probably been contracted, where only were to be found his witnesses, and where a jury could be formed acquainted with his general character; that the power would operate severely to the prejudice of the citizens of North Carolina, as in that State there circulated a paper currency which was 25 per cent. below par, and which was a lawful tender in the State courts; whereas judgments were given in the Federal courts for specie only; the effect, therefore, would be that the creditor would commence his suit in the Federal courts, and by that mean obtain 25 per cent. more than was really due to him, as the contracts made in that State were predicated on the depreciated state of the paper currency.

Those who opposed the motion demanded to know whether a real *bona fide* debt could not be created by endorsement; whether it was not one of the most common operations among merchants; and whether the person who thus received an endorsement was not as completely and substantially the creditor as the original holder of the obligation? The effect of the amendment would be to shut out from the Federal Courts all persons of this description, whose claims would be as much affected by local passions and prejudices, as though they had not assigned. It was contended that this was one of the precise cases for which the Constitution had provided; and that the attempt to defeat this essential provision was another evidence of that invariable and unabating disposition to defeat the most important provisions of the Constitution, to destroy its energy, and to withdraw from it the respect of the citizens, which on every occasion was manifested by some gentlemen in that House.

The reasons offered in defence of the amendment were declared to be fallacious. There would exist no irrational, unfounded predilection of the creditor to the Federal tribunals; in most cases the creditor would prefer the State courts; in all cases, except those in which he had a strong dread that the undue influence of sinister feelings would bias them. If gentlemen simply desired to repress suits for demands not *bona fide*

assigned, an express provision could be made to this effect, to which the House would generally agree; for that provision, while it gratified the desires of several gentlemen, would not impair one of the vital principles of the Constitution, established on the conviction that an alien did not in the State courts stand on an equal footing with a citizen. It was contended that the observations derived from the situation of the State of North Carolina was not correct; as it was not believed that the Federal courts could alter a contract from its original form; and that, of course, in those cases where contracts had been made in paper money, judgment would be given, not for money, but in the nature of provisions, or some similar way, as no power could exist to deteriorate the contract.

It was not true that the great mass of debts incurred were in bonds or promissory notes; the great mass of debts were in the shape of book debts, which were not transferable.

It was further observed that if a disposition to evade the spirit of the law existed, it would be extremely easy in the creditor, when making his bargain, to obtain a note payable to a person in another State, or to an alien; and in this way his object of getting access to the Federal courts would be completely effected.

It was further contended that this amendment violated the Constitution. By it a citizen of one State had a declared right of suing the citizen of another in the Federal courts. As to the idea of additional expense in the Federal courts, if it had any weight, it would as forcibly apply to the creditor as the debtor.

In reply it was contended, that facts were stubborn things, and that they established, notwithstanding the ingenious theories of gentlemen, that judgments in North Carolina were actually given in the Federal courts in specie, while in the State courts they were given in paper money; and that as to the idea of discriminating between *bona fide* and *mala fide* assignments, it would produce one of the most intricate and embarrassing questions that could come before the courts; that in most cases all the knowledge to be obtained must proceed from the party interested in suppressing it; and that in consequence an extensive scene of perjury would be opened by appealing to his oath.

To this remark the opponents of the motion rejoined, that the operation would be a very simple one, consisting only in a resort to the equity side of the court to obtain, an oath of the assignee, a true statement of facts; and this resort had actually been had in Pennsylvania.

The question was then put on agreeing to Mr. Nicholas's motion, and carried—ayes 42, noes 27.

Mr. Harper moved to strike out sections 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33, which established a number of distinct courts with Admiralty jurisdiction.

On reflection, Mr. H. said it had been thought advisable at present not to constitute these new courts, but to establish two or three additional district courts, in the most maritime positions, with Admiralty powers; for which purpose Mr. H. would prepare an amendment.—Motion carried without a division.

The Committee here rose, and had leave to sit again.

Friday, January 9.

THE JUDICIARY BILL.

The House went into Committee of the Whole on the Judiciary bill.

The forty-eighth section was read as follows:

"Sec. 48. *And be it further enacted*, That each of the Circuit Judges of the United States to be appointed by virtue of this act, shall be allowed as a compensation for his services an annual salary of two thousand dollars, to be paid quarter-yearly at the Treasury of the United States; and that the salaries of the District Judges of Maine, New Hampshire, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Georgia, Kentucky, and Tennessee, shall be, and they hereby are, augmented to the like sum of two thousand dollars annually, to be paid in like manner."

Mr. Gregg moved to strike out $2,000 and to insert $1,800.

Mr. Claiborne declared himself in favor of the motion. He considered $2,000 as too high a compensation. In the State which he represented (Tennessee) it would be immoderate. The bill established three Circuit Courts for Kentucky and Tennessee, the Judges of which would receive $6,000, which was a larger sum than the total amount of the expenses of the Government of Tennessee. The Judges of the Supreme Court of Tennessee receive but $500 each, and the present Federal Judge received only $800. The duties which the Federal Judges would have to discharge would not equal those of the State Judges. Such an exorbitant salary would be distressing to the State of Tennessee. It would either lessen the respect of the citizens for their own Judges, or rouse their pride to afford them salaries equal to those of the Federal Judges, even to their own oppression. As, therefore, such an expenditure would exhibit an instance of shameful profusion of public money, and would deeply wound the interests of his State, he would give his decided vote against it.

Mr. Otis, persuaded that if the Judiciary were not filled with men of the first talents and integrity, the system we are now devising would be injurious instead of being beneficial, was opposed to the motion. Talents of this order were not to be obtained for a small compensation. The sum proposed in the bill, as far as his knowledge extended, was not greater than that now allowed in the Superior State Courts. In his part of the country a lesser compensation to men qualified to decide those great and intricate questions, which often come before them, would be deemed a shameful parsimony. As to the idea of discriminating the compensation of different Judges, he thought the benefits to be derived from it were trivial compared with the evils it would create.

Grant that the effect of this bill will be the affording a higher compensation to the Federal

Judges than is at present made to those of the States. The effect, he thought, would be a good one. It would operate as a powerful stimulus to the State Judges ably and faithfully to discharge their duty, that they might be qualified for, and likely to receive, Federal appointments.

So convinced was Mr. O. of the importance of this part of the bill, that he would rather not see it pass at all than pass without it. It might, in that event, be rationally expected that the community, realizing the inconveniences to which they would be inevitably exposed, would be awakened to the obligations of a more liberal policy.

Mr. Davis said, if he seriously believed that additional salaries would inspire men with brighter talents, he would not object to the increase contemplated by it. But as he knew full well that, in making appointments to office, the only inquiry made would be, what were the candidate's politics, he should object to the increase.

Hitherto, the entire compensation given to the Judges in the Western country has not exceeded $2,000; and now we add three Judges, whose duties, individually, will of course be greatly diminished, and at the same time increase their compensation!

Mr. Harper.—The gentleman from Kentucky, in making his remarks on the exclusive inquiry that will be made in respect to the qualifications of a candidate for office, has forgotten to state one circumstance. He has forgotten to state that in appointments to office the choice of talents is altogether confined to men of one description of politics. Though this be the notorious fact—though men of one description of politics possess the great mass of talents—yet it is certain that men of this class possess among themselves different and various degrees of talent. The tendency of this motion is to fill Federal Judicial offices with trifling characters—with men whose want of talents and reputation would degrade the Government, and render it an object of contempt instead of an object of admiration and affection.

If the pride of Tennessee and other States took alarm at the high salaries of the Federal Judges, and, to place themselves on an equality, increased the salary of their own Judges to their standard, he should consider this effect as the strongest argument in favor of the provisions of the bill; and it would be an evidence that their pride enlisted itself on the side of their understanding.

It is in the administration of justice, in the application of our laws to the interests of the people, that the benefits of the Government are felt and brought home to them. Protecting by its salutary energies the lives and the property of the citizens, they feel a respect for the Government from which they derive their support. Shall we, then, seduced by a deceitful spirit of parsimony, after erecting the scaffolding of our Judicial system, hesitate, by the expenditure of a trifling additional sum, to render the system itself respectable? Weighed with such an object, a few thousand dollars was a paltry consideration.

It was not denied that the expenses of living in some States were greater than in others. But on this ground to graduate a scale of compensations, would be to do what no State had done, and what would inevitably produce unpleasant jealousies.

Mr. S. Smith was for a liberal but not profuse compensation. He was also for accommodating the compensation made to the duties to be performed, and the expenses of living in the several States.

Heretofore, when the salaries were lower than those proposed by the bill, there had been no want of talents. He said, that in the State of Maryland, the office of District Judge had been twice successively filled by men of first rate talents.

Mr. Dennis opposed the amendment as it applied to all the Judges. If it were rejected, he would propose an amendment for reducing the salaries of the Judges of Kentucky and Tennessee.

Mr. Smilie was in favor of the amendment. In Pennsylvania the Judges of the Supreme Court received only $2,000. They were men equal in legal talents to any in the Union, and had to go into every county of the State every year. It was well understood that $2,000 presented no temptation to a lawyer at the bar of Philadelphia who was in full practice. But did gentlemen suppose patriotism to be so low that all our officers were actuated by mere mercenary views?

Mr. Claiborne again rose, and went over the ground of argument, declaring that his wish was to be frugal, but not parsimonious—liberal, but not profuse. He was persuaded that in Tennessee five suits would not appear on the Federal dockets in a term. For myself, said Mr. C., I pay little regard to that wisdom that rises up in a day—to that wisdom which has sprung up since the third day of December. Our old principles I consider as good ones, and I am still for them. He then moved to strike out the whole section, with a view of introducing an amendment for apportioning the salaries of the Judges to their duties and expenses.

Mr. Harper said gentlemen had committed one egregious mistake; they had confounded District with Circuit Courts; in the last of which the expenses of the Judge were to be determined by the distance he had travelled, and not by the number of suits he had tried.

Gentlemen were mistaken in their notions about the degree of business in the Federal courts. The very gentleman from Kentucky (Mr. Davis) had on a former occasion stated the existence, he knew not of how many hundred suits in the District Court of that State. There was not a doubt of there being in the Western country great litigation about titles to lands, and a lively jealousy of the State courts among claimants who lived at a distance.

The present District Judge of Maryland, notwithstanding the possession of a handsome private fortune, had been obliged to retire from Baltimore and live on his farm. And yet his travelling expenses were trifling compared with those of the Circuit Judges, who have to perform five times as much travelling as the State Judges.

When you deduct all travelling expenses, you will reduce the salaries below $1,500.

Mr. S. Smith.—The gentleman from South Carolina is incorrect in his statement of facts. With respect to the District Judge of Maryland, he believed (as he had the information from the Judge himself) that he had retired of choice to an elegant country seat, which he purchased two years ago, before he was appointed Judge, with a view of residing on it.

Mr. H. Lee was in favor of adequate and liberal compensation to the members of the Judiciary; such compensation attracted to those offices talents, integrity, and reputation, which cemented and strengthened the Union. He did not understand those sentiments of jealousy that were so often expressed. We are too apt to view our Federal Government as a foreign one. These prejudices were unworthy of Americans. As a citizen of Virginia, who was a member of the Union, he beheld the Federal Government with sentiments of filial affection, as the protectress of all the States. He did not suppose that a part of the whole could be expected or ought to render compensations as liberal as the whole itself.

Mr. Davis, in reply to the gentleman from South Carolina, (Mr. Harper.) acknowledged that he had on a former occasion stated the existence of a good deal of business in the District Court of Kentucky. Then there was but one Judge, with a salary of $1,000; and now, when the business has diminished, we are to have two Judges, whose salaries are to be doubled. He placed no confidence in the hope which some gentlemen cherished of cementing the Union by giving high salaries to our officers. Sir, said Mr. D., it is not the passage of this bill that will produce this great effect. Relieve the people from oppressive taxes, and that will produce the effect.

Mr. Champlin said the ideas of the gentleman from Tennessee, if carried into effect, would be fatal to the system contemplated by the bill. Each circuit was to be formed of three Judges who would embrace three States. The trouble and expense of Judges in the same circuit would be the same, though one of them might be appointed in a large, and another in a small State. So far as his personal knowledge extended, he was authorized in saying that the district Judge of Rhode Island, from the inadequacy of his salary, had been obliged to fly from the town to the country.

Mr. Otis was not much surprised at the motion made, so far as it respected Kentucky, but he was greatly surprised at it, so far as it applied to other States. For his part he wished the Government to hold out inducements to men of talents, not broken down by the excessive fatigues of their profession, or by the debility of advanced age. He did not wish the Judicial corps to be a hospital for invalids. Nor did he feel a perfect reliance on the patriotism to which some gentleman had alluded. For he thought a court of justice the worst place that could be imagined for the indulgence of patriotic feelings. It ought to be filled with men, honest, sober, and independent, and so cool as to be little influenced by the impulses of patriotism. He had been at a loss to account for the high reliance of the gentleman from Pennsylvania on the efficacy of the influences of patriotism, until he recollected that in that State a proposition had lately been made to destroy in effect all the legal decisions, books, and principles, now in existence. Then indeed we might resort to patriotism, as our only remaining refuge.

Mr. Nicholas.—The very idea of gentlemen, on which rests their opposition to the present motion, furnishes in reality the strongest argument in its favor. They say that unless you give your Judges salaries that will enable them to run before all the State Judges, you will not make them so respectable as they ought to be; you will not place them on the ground they ought to occupy. In this event will the gentlemen say what becomes of the State Judges? If the reputation of the Federal Judges be increased, will not that of the State Judges be impaired?

As to the idea, avowed by some gentlemen, that this measure will cement and strengthen the Union, Mr. N. considered it as directly the reverse of the truth. Tending, as it did, to aggrandize the Federal at the expense of the State courts, so far from cementing, its immediate influence would go to impair, the Union. In his opinion that man respected as little the Federal Union who, in his zeal for the General Government, overlooks the State Governments, as he who alone regards, to the exclusion of the General Government, the Governments of the several States.

My colleague says that this Government is too often considered in the light of a foreign one. Mr. N. said he did not believe that the charge would be so often made unless there were some truth in it. He would ask his colleague, if immediately after having left his constituents he declares himself a new man, not their particular representative, governed by new views—he would ask him whether such sentiments did not furnish the strongest argument to convince the people that this Government was foreign to their interests, foreign to their settled habits?

It appeared that the greatest compensations made to the State Judges but little exceeded one thousand six hundred dollars; and that in other instances they did not exceed one thousand eight hundred dollars.

Mr. N. thought it would be right to go over the ground, to inquire into the compensations made in the respective States, and to accommodate the salaries of the Federal Judges to what appeared in this view to be adequate. This will enable us to go on prosperously and harmoniously with the State Governments.

Mr. H. Lee spoke with great indignation of the sentiments ascribed to him by his colleague, and declared that he never did say, he defied his colleague to prove it, either in public or private, that he mistrusted the States. He always had considered the States as an essential part of the whole, necessarily benefitted by whatever promoted the general good.

Mr. Bayard observed that the whole expense

contemplated to be saved by the amendments was four thousand eight hundred dollars. The measure should not, therefore, on this ground receive opposition. There was in truth nothing to alarm in it. But few subjects could be introduced, in which the tocsin of alarm is not rung against the expenses of the Federal Government. Is it possible that the addition or subtraction of four hundred dollars, as it respects the salaries of our Judges, can affect the sovereignty or independence of the State Governments?

Without amusing ourselves with fine-spun theories we ought to resort to the solid motives that influence men. Patriotism, though a fine sounding word, will not sustain a family. It was a common proverb that few lawyers were born with silver spoons in their mouths. On the contrary, they were generally born in the humble spheres of life; and were incapaciated, however enthusiastic their feelings, from serving their country through pure motives of patriotism. Beside, the direct effect of this amendment, if adopted, will be to throw these offices into the hands of the aristocracy of the country. None but the rich will be able to hold them.

In fixing a compensation we ought to consider what sum will induce lawyers of the first talents to leave their practice. If this end were not accomplished, and men of small talents were placed on the bench, the bar would inevitably rule the bench instead of being ruled by it.

Mr. B., coming from one of the smallest States in the Union, thought himself competent to forming a just opinion of the lowest allowance to the Judges that would be adequate. In the State of Delaware, a lawyer in full practice received at least four thousand dollars; which was double the salary allowed by the bill. From this view of the subject, as well as from the other views that had been taken, he considered two thousand dollars as only a moderate compensation.

As to the idea that the Federal Judges have but little business to do, he thought the fact, even if true, had no weight; as a Judge was not paid so much for the actual duties he performed, as for abandoning his practice, and holding himself prepared for, and applying his talents exclusively to, the public business whenever it occurred.

The question was then put on striking out the section, and lost—yeas 40, nays 43.

A question was then taken on Mr. Gregg's motion, to substitute sixteen hundred dollars in the room of two thousand dollars; and lost—yeas 39, nays 49.

Mr. Dennis moved to reduce the proposed salaries of the Judges of Kentucky, and of East and West Tennessee to $1,500.

Mr. Claiborne moved the reduction to $1,200.

Mr. Dennis withdrew his motion.

The question was taken on Mr. Claiborne's motion, and carried, yeas 46.

Mr. Christie hoped that the Committee would rise, and the House adjourn. As the gentleman from South Carolina (Mr. Harper) appeared to rule the roast on the other side, he trusted he would make no objection.

The Commitee accordingly rose, reported progress, and obtained leave to sit again.

Mr. Macon then moved that when the House adjourn, it adjourn till Monday.

Mr. Harper opposed the motion, which in his opinion arose from a disposition in gentlemen to throw every obstacle in the way of the bill. This was an attempt to procrastinate its progress. He concluded by moving an adjournment in the usual form, whereby the House would be adjourned till to-morrow. The motion was lost.

Mr. Macon's motion then recurred, on which the House divided. The Speaker, having counted the members, declared the motion lost—yeas 38, nays 39.

Mr. Randolph said there must be a mistake, and desired another count.

The members took their seats, and the House was again divided; when the motion was carried, there being 43 yeas, 39 nays.

The House then adjourned—yeas 44, nays 39.

Monday, January 12.

Another member to wit: Albert Gallatin, from Pennsylvania, appeared and took his seat in the House.

JUDICIARY BILL.

The House again resolved itself into a Committee of the Whole on the bill to provide for the more convenient organization of the Courts of the United States; and, after some time spent therein, the bill was reported with several amendments thereto, which were read.

The amendment, reported from the Committee of the whole House, to the fifth section of the said bill, being under consideration, to wit: To insert, in lieu of certain words stricken out from the fifth section by the Committee of the whole House, the following words:

"Eastward of a line, to be drawn from the river Potomac, at Harper's Ferry, along the Blue Ridge, with the line which divides the counties on the East side thereof from those of the West side thereof, to the North Carolina line, to be called the Eastern District of Virginia; one to consist of the remaining part of the said State of Virginia, to be called the Western District of Virginia:"

The question was taken that the House do agree to the same, and resolved in the affirmative—yeas 49, nays 42, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew

Thomas, Richard Thomas, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Several other amendments reported by the Committee of the whole House to the said bill, were, on the question severally put thereupon, agreed, and others disagreed to by the House; but an adjournment being called for, the several orders of the day were further postponed, and then the House adjourned.

TUESDAY, January 13.

Ordered, That Mr. GALLATIN be added to the committee appointed, twenty-eighth of November last, to prepare and bring in a bill for regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia.

The House being informed that JAMES JONES, one of the members for the State of Georgia, died this morning;

Ordered, That Mr. TALIAFERRO, Mr. NICHOLAS, Mr. CHAUNCEY GOODRICH, Mr. MACON, and Mr. HUGER, be appointed a committee to take order for superintending the funeral of the said JAMES JONES, and that this House will attend the same.

Resolved, unanimously, That the members testify their respect for the memory of the said JAMES JONES, by wearing crape on the left arm for one month.

Resolved, That the SPEAKER address a letter to the Executive of Georgia, to inform him of the death of JAMES JONES, late a member of this House, in order that measures may be taken to supply the vacancy occasioned thereby.

JUDICIARY BILL.

The House resumed the consideration of the amendments reported from the Committee of the whole House to the bill to provide for the more convenient organization of the Courts of the United States; whereupon the amendments reported from the Committee of the Whole House, to the thirteenth section, being under consideration, to fill the blank in the thirteenth line thereof, with the word "four," the question was taken that the House do agree to the same, and resolved in the affirmative—yeas 71, nays 18, as follows:

YEAS—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Robert Brown, Christopher G. Champlin, Gabriel Christie, John Condit, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, Thomas T. Davis, John Dennis, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Thomas Evans, Abiel Foster, Jonathan Freeman, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, David Holmes, Benjamin Huger, James H. Imlay, George Jackson, Henry Lee, Michael Leib, Lewis R. Morris, Peter Muhlenberg, John Nicholas, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, William Shepard, John Smith, John C. Smith, Thomas Sumter, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, John Thompson, John Trigg, Philip Van Cortlandt, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Phanuel Bishop, Mathew Clay, William C. C. Claiborne, John Dawson, Lucas Elmendorf, Aaron Kitchell, James Linn, Nathaniel Macon, Anthony New, Joseph H. Nicholson, Abraham Nott, John Randolph, John Smilie, Richard Dobbs Spaight, Richard Stanford, Abram Trigg, Joseph B. Varnum, and Robert Williams.

The amendment, reported from the Committee of the whole House, to the seventeenth section, being under consideration, to wit: to add to the end thereof, the following words:

"Nor shall any District or Circuit Court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange."

A motion was then made and seconded further to amend the said amendment, by adding to the end thereof, the following words, to wit: "and of promissory notes and bonds, payable to order or assigns:"

And, the question being taken that the House do agree to the said amendment to the amendment, it passed in the negative—yeas 36, nays 53, as follows:

YEAS—Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, William Edmond, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, James H. Imlay, Lewis R. Morris, Harrison G. Otis, Thomas Pinckney, Jonas Platt, John Reed, Nathan Reed, John Rutledge, jun., William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, George Baer, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Craik, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, James Linn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Robert Page, Leven Powell, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

The question was then taken that the House do agree to the amendment, as originally reported from the Committee of the Whole House, to the said seventeenth section and resolved in the affirmative—yeas 55, nays 35, as follows:

YEAS—Willis Alston, Geo. Baer, Theodorus Bailey, Bailey Bartlett, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Craik, Thomas T. Davis, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, Albert Gallatin, Samuel Goode, Elizur Goodrich, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Robert Page, Leven Powell, John Randolph, Nathan Read, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, Samuel, W. Dana, John Davenport, Franklin Davenport, John Dawson, William Edmond, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Roger Griswold, Robert Goodloe Harper, James H. Imlay, Henry Lee, Silas Lee, Lewis R. Morris, Harrison G. Otis, Thomas Pinckney, Jonas Platt, John Reed, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Ordered, That the further consideration of the said bill and amendments be postponed until Thursday next.

WEDNESDAY, January 14.

Ordered, That a message be sent to the Senate to inform them that the funeral of JAMES JONES, Esq., a member of this House, who died yesterday, will be attended this day at twelve o'clock; and that the Clerk of this House do go with the said message.

THURSDAY, January 15.

The following resolution was referred to a Committee of the Whole:

Resolved, That a committee be appointed to bring in a bill to repeal the act entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," with a proviso that nothing therein contained shall be construed so as to prevent the assessing and collecting of the direct tax, passed the 14th July, 1798.

Mr. OTIS, as chairman of the committee appointed to inquire into the state of the Treasury, in conformity with the request of the late Secretary, informed the House that the committee expected to be prepared to report in two or three days. In making the investigation, the committee had not considered it as incumbent on them to enter into an examination of all those long details which had already been under the eye of the House. They had, however, carefully examined those statements which had not been minutely exhibited to the House; and, indeed, had made every inquiry that, in their opinion, was necessary to a correct understanding of the state of the Treasury. As, however, the committee, in the inquiry made, had been left almost entirely to their own discretion, and might perhaps have failed to take all those views that members might desire, he was instructed by the committee, at the instance of the Secretary and Comptroller of the Treasury, to invite any members, who were desirous of having any particular information, to state their request, which might be attained by proposing specific instructions to the committee, who would most cheerfully co-operate in the furtherance of their object.

Mr. OTIS presented a long letter from the Secretary of the Navy, exhibiting a comprehensive view of the Naval Department, which was ordered to be printed without being read.

Mr. OTIS presented a petition, praying the interposition of Congress in affording relief to the holders of certain descriptions of paper money, whose reference he moved to the Committee of Claims.

The reference was opposed by Messrs. MACON and GRISWOLD, on the ground of the prayer of the petition having been already decided upon. On the question, the reference was lost by almost an unanimous vote. It was then resolved that the prayer of the petition cannot be granted.

The House then went into a Committee of the Whole on the report of the Committee of Ways and Means, on a motion made by Mr. COOPER to repeal the act for the valuation of lands and dwelling houses, &c.

On this subject some debate ensued, which terminated in the Committee of Ways and Means being instructed to inquire into the expediency of repealing the act.

A motion was made to go into a Committee of the Whole on the report of the Committee of Revisal and Unfinished Business, recommending a continuation of the Sedition law, which was rejected.

DUTIES ON LICENSES, &c.

The House went into Committee of the Whole on the bill to continue in force the acts laying duties on licenses for selling wines and foreign distilled spirits by retail, on property sold at auction, and on carriages for the conveyance of persons.

The CHAIRMAN reported an amendment, limiting the duration of the bill (which was originally without limitation) to the 3d of March, 1803. On the question of agreeing thereto, the yeas and nays were taken, and were—yeas 41, nays 47, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Nays—Bailey Bartlett, James A. Bayard, John Brown, Christopher G. Champlin, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thom-Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

Friday, January 16.

DUTIES ON LICENSES, &c.

An engrossed bill to continue in force the acts laying duties on licenses for selling wines and foreign distilled spirits by retail; on property sold at auction, and on carriages for the conveyance of persons, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 46, nays 31, as follows:

Yeas—Willis Alston, George Baer, Bailey Bartlett, John Brown, John Condit, William Cooper, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Jonas Platt, John Rutledge, John C. Smith, James Sheafe, Benjamin Taliaferro, Samuel Tenney, John Chew Thomas, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

Nays—Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Matthew Clay, William Charles Cole Claiborne, John Dawson, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Edwin Gray, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Smilie, John Smith, Samuel Smith, Richard Stanford, Thomas Sumter, John Thompson, Abram Trigg, John Trigg, and Joseph B. Varnum.

THE JUDICIARY BILL.

The House resumed the consideration of the amendments reported from the Committee of the whole House to the bill to provide for the more convenient organization of the Courts of the United States; and the said amendments being again read, were, on the question severally put thereupon, agreed to by the House.

The said bill was then further amended at the Clerk's table; and, together with the amendments, ordered to be engrossed, and read the third time on Tuesday next.

Monday, January 19.

Mr. Waln, from the committee to whom was referred, on the tenth ultimo, the petition of Samuel Lewis, senior, made a report; which was read and considered: whereupon,

Resolved, That a committee be appointed to bring in a bill to discharge Samuel Lewis, senior, from his imprisonment upon a judgment obtained against him in favor of the United States; with a proviso, that he shall first assign and convey all the estate, real and personal, which he may now own, and be entitled to, for the use of the United States; and that the said judgment shall remain in full force against any estate which the said Samuel Lewis may hereafter acquire.

Ordered, That Mr. Waln, Mr. Grove, and Mr. Imlay, be appointed a committee, pursuant to the said resolution.

Mr. Waln, from the last mentioned committee, presented a bill to discharge Samuel Lewis, senior, from his imprisonment; which was twice read and committed to a Committee of the Whole House to-morrow.

Mr. Samuel Smith from the Committee of Commerce and Manufactures, presented a bill to incorporate the persons therein named and their associates, as a mine and metal company; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. Samuel Smith, from the same committee, presented a bill to provide for the erection and support of a light-house on Cape Poge, at the north-easterly part of Martha's Vineyard; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. New, from the committee appointed, on the twenty-eighth of November last, to prepare and bring in a bill for regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia, made a report; which was read, and committed to a Committee of the whole House on Wednesday next.

Mr. New, from the same committee, presented, a bill regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia; which was twice read and committed to a Committee of the whole House last mentioned.

The House went into a Committee of the Whole on the report of the committee to whom was referred, on the second instant, the petition of Solomon Boston; and, after some time spent therein, the Chairman reported that the Committee had had the said report under consideration, and directed him to report their agreement to the same.

The said report being then read at the Clerk's table, in the words following, to wit:

"That the petitioner is, and for upwards of six months last past, has been confined in the public jail at Dover, in the State of Delaware, upon process at the suit of the United States, founded upon a judgment for one thousand dollars, being a penalty forfeited by the petitioner under the act of Congress, regulating the collection of duties on imports and tonnage. It appeared to the committee, that under the same act the petitioner had forfeited and lost a vessel and the cargo on board of her; and that he is destitute of any means of satisfying the judgment against him. The committee having taken into consideration the offence committed by the petitioner, and the punishment he has suffered, are of opinion, that the petitioner has been sufficiently punished for the wrong done by him, and that he ought to be relieved by an exoneration from any further claim against him on the part of the United States:"

Resolved, That this House do agree to the same, and that Mr. Bayard, Mr. Thatcher, and Mr. Spaight, be a committee to prepare and bring in a bill or bills pursuant thereto.

FRANCIS B. CHANDLER.

The House then went into a Committee of the Whole on the report of the committee to whom was referred, on the eighth instant the petition of Francis B. Chandler and others; and, after some time spent therein, the Chairman reported that the Committee had had the said report under consideration, and directed him to report to the House their agreement to the same.

The said report being then read at the Clerk's table, in the words following, to wit:

"That the object of the petitioners is to obtain an extension of the seventy-ninth section of the act of Congress, entitled "An act to regulate the collection of duties on imports and tonnage," so as to include Frederick town, on the river Sassafras, in the routes allowed for the transportation of goods to and from Philadelphia and Baltimore. The committee, perceiving no inconvenience relative to the revenue, which could arise from complying with the request of the petitioners, are of opinion that the prayer of their petition ought to be granted:"

Resolved, That this House do agree to the said report, and that Mr. Bayard, Mr. Foster, and Mr. Linn, be a committee to prepare and bring in a bill or bills pursuant thereto.

On motion, it was

Resolved, That a committee be appointed to inquire and report by bill, or otherwise, the expediency of making further provision by law to facilitate the communication between different parts of the United States, by means of post roads.

Ordered, That Mr. Henry Lee, Mr. Chauncey Goodrich, Mr. Sheafe, Mr. Samuel Smith, and Mr. Harper, be appointed a committee, pursuant to the said resolution.

The House then resolved itself into a Committee of the Whole on the bill for the relief of William Nichols, late Marshal of Pennsylvania; and, after some time spent therein, the Chairman reported that the Committee had had the said bill under consideration, and made no amendment thereto.

Ordered, That the said bill be engrossed and read the third time to-morrow.

Tuesday, January 20.

An engrossed bill, entitled "An act for the relief of W. Nichols, late Marshal of Pennsylvania," was taken up for a third reading.

Mr. Gregg said, that when this bill was before the House yesterday, there appeared a very considerable difference of opinion as to facts. He believed papers might now be obtained which were not before the Committee of Claims, when they reported the bill, that would enable them to make such a statement of facts as would reconcile these different opinions, and lead to a different decision from that contemplated by the bill. He would therefore move that it be committed to the Committee of Claims. This motion was carried in the affirmative.

A memorial of Sylvanus Bourne, Consul General of the United States for the Batavian Republic, in behalf of himself and many of his colleagues residing in Europe, was presented to the House and read, praying that a law may be passed for allowing a general compensation to Consuls of the United States, for services by them rendered. Referred to the Committee of Commerce and Manufactures.

The Speaker laid before the House a letter from the Commissioners of the City of Washington, requesting that an arrangement may be made for the accommodation of the Supreme Court of the United States in the Capitol.

Ordered, That the said letter be referred to Mr. Rutledge, Mr. Kittera, and Mr. Silas Lee.

Mr. Bayard, from the committee appointed, presented a bill for the relief of Solomon Boston; which was twice read, and ordered to be engrossed and read the third time to-morrow.

A message from the Senate informed the House that the Senate have disagreed to the bill, entitled "An act for the relief of Robert Hooper."

Mr. Pinckney, from the committee appointed, presented a bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Bayard, from the committee appointed, presented a bill to allow the transportation of goods, wares, and merchandise, to and from Philadelphia and Baltimore, by the way of Appoquinimink, and Sassafras; which was read twice and committed to a Committee of the whole House.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill making the port of Biddeford and Pepperelborough, and the port of New Bedford, in Massachusetts, ports of entry for ships or vessels arriving from the Cape of Good Hope, and from places be-

yond the same; which was read twice and committed to a Committee of the whole House tomorrow.

The House resumed the consideration of the resolution reported on Thursday last, from the Committee of the whole House to whom was committed the report of the committee on the memorial of Matthew Patterson and others.

And the said resolution being again read, in the words following, to wit:

Resolved, That for extending the benefits of civil government to the settlers on and near the head of French Broad river, it is expedient to cede to the State of South Carolina the right of soil and jurisdiction, in, of, and to, such part or parts of any lands which may be found to belong to the United States, and which lie to the South of the thirty-fifth degree of latitude, and contiguous to the western boundary of that State, as will include the lands at present occupied by the said settlers.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Nott, Mr. Bird, and Mr. Harper, do prepare and bring in the same.

The House, then went into a Committee of the Whole on the bill to provide for the erection and support of a light-house on Cape Poge, at the northeasterly part of Martha's Vineyard; and reported one amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time tomorrow.

JUDICIARY BILL.

An engrossed bill to provide for the more convenient organization of the Courts of the United States was read the third time, and, on the question that the same do pass, it was resolved in the affirmative—yeas 51, nays 43, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Wednesday, January 21.

An engrossed bill to provide for the erection and support of a light-house on Cape Poge, at the northeasterly part of Martha's Vineyard, was read the third time, and passed.

An engrossed bill for the relief of Solomon Boston was read the third time, and passed.

A Message, was received from the President of the United States, transmitting a report of the Director of the Mint, which was read, and ordered to lie on the table.

A resolution in the following words, presented to the House by Mr. Rutledge, was read and ordered to lie on the table:

Resolved, That a committee be appointed on the part of this House, jointly with a committee on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons elected of their election, and to regulate the time, place, and manner, of administering the oath of office to the President.

Mr. Nicholson proposed a resolution in the following words, which was read and ordered to lie on the table, viz:

Resolved, That a committee be appointed to inquire into the expediency of making further provision to prevent the concealing and harboring of slaves escaping from one State into another, and that they report by bill or otherwise.

SEDITION ACT.

The House went into Committee of the Whole on a resolution reported by the Committee of Revisal and Unfinished Business for continuing in force the act commonly called the Sedition law.

The resolution reported by the committee was, that it would be expedient to renew the law in addition to the act for the punishment of certain crimes against the United States.

Mr. Platt, chairman of the committee, explained the reasons of the committee for proposing a resolution for its continuation. The only arguments that could be adduced against it were, as to the constitutionality and as to the expediency of the measure. That it was Constitutional, he contended could be well and plainly proved without entering into the question upon the grounds and proofs exhibited at the period of the original passage of the bill, from the decision in its favor, after a lengthy examination in both Houses of Congress, and its adoption into a law. Added to this was the solemn decision and concurrence of the Judiciary.

After these deliberate decisions in favor of it, to doubt the constitutionality of this law would be absurd. To those who took every occasion to show their opposition to the Government, and were accustomed to villify the conduct of its warmest adherents, this law must be obnoxious; but those who considered the Government a blessing, and worthy the protection of a free people, must approve of the provisions of this law, as one of the most valuable institutions in its support.

As to the expediency of the measure, the committee thought it was a wholesome and ameliorating interpreter of the common law, established to assist the Government upon the most fair and equitable principles. On the one hand, the right of the Government in support of itself is established; on the other, that right of protection is so established as not to injure in the least the honest and well-intended individual, but to afford him the means of exculpating himself, although engaged in scrutinizing measures of the administration of the Government; for, unless it can be made evident to a court and jury that the thing written was done with a false and malicious intention, the precaution is useless. He saw nothing in this law, notwithstanding all that had been said about it, which an honest man ought to fear. No Government in the world demanded the public confidence more than ours, when well administered; and should a Government be brought into popular disrepute with impunity, through the false and malicious writings of those who peaceably enjoy its blessings? He trusted not.

The House had been told on a former occasion that the sun of Federalism was about to set: he confessed that he viewed with horror the awful night that would follow. But, notwithstanding that, whilst he possessed a seat in that House, he thought himself bound to legislate in favor of measures to support the Government which the people had honored by their choice. This reverse of things should never drive him from measures which it became his duty upon the most solemn conviction to adopt, since no injury could result but to those whose wilful and habitual slander opposed it by falsehood. For his part, he was not afraid of the new order of things; he had nothing to fear from the existence of this law.

To those who believed the rules of common law of force and effect in the United States, this law must be truly gratifying. By the common law two practices were established, which this law most effectually removed by its ameliorating provisions. First, the common law rejected the evidence of truth in cases of libel. Secondly, the court had unlimited authority to ascertain the penalty. By this law the truth must be given in evidence, and the penalty is ascertained. He trusted that whilst the liberty of speech and of the press (privileges to be prized above all others) were made secure, the House would see the propriety of preventing the unlimited abuse of this blessing, so injurious to the preservation of social order—an abuse which was to be judged as to its extent by an impartial jury—a privilege by which are secured to every individual, and to the Government, equal rights.

Mr. Davis said, the gentleman from New York and himself had as different feelings as to the manner of deciding the constitutionality of the law, as they had of its utility. Had the decisions of the courts been made with all the moderation and solemnity that usually attend judicial decisions, he might answer that there had been proceedings in the courts of the United States calculated to establish the constitutionality of that law, so far as the opinions of the Judges went. For he must acknowledge that the Judges had the power of deciding the constitutionality of a law under which they were to act; but he denied that those deliberate decisions had been made under it, that ought to establish it as a Constitutional law with the Judges generally. Even in Great Britain, where we are too apt to look for examples, he believed such hasty adjudications could not be found. He was acquainted with English books, and could not then recollect any case where the accused had been summoned, indicted before the grand jury, and tried by the venire or petit jury, in the space of a few hours, or one day at most; more especially where the accused had made affidavit that he had material witnesses absent, as had been the case in two trials under this Sedition law, one at Philadelphia, the other in Richmond, Virginia. If those were decisions that had rivetted the constitutionality of the law in the mind of the gentleman from New York, he had taken slippery ground, from which he could be easily driven. But a Judge of the United States having determined the law to be Constitutional, did not bring conviction to his mind. He still entertained the same opinion he had formerly entertained, and he believed it would be difficult to persuade the American people that the law was either Constitutional or expedient. The gentleman from New York says there is nothing in the law an honest man should object to. Why then do honest men take shelter behind it? We are all fond of having our good deeds made public, and of concealing our bad ones. Now let the public judge who are the honest men; that gentleman and his political associates, or myself and those who usually vote with me. We are willing to submit our actions to public scrutiny, and to rise or fall by public opinion.

If that gentleman and his friends intend to act honestly, why do they wish this law to hide their actions? Why lay the hands of power on the lips of the people, who ought to have the right of examining their political conduct and approving or condemning it? While they boast of honesty, why skulk in darkness and shelter behind a sedition law? In my opinion, this neither argues honesty, nor is ominous of good; at all events this is the true difference between the parties in this House. That gentleman and his friends form a party who wish to conceal their public conduct from the prying eyes of the public, and who say, if you see you shall not speak. Myself and my political asssociates are willing to spread our actions before the tribunal of the people, and to be judged by them. Now let the world judge who are the honest men, we, who expose our actions to public view, and say to them, judge, and approve or condemn us for our deeds; or those who say, be silent; we are above you; if you open your lips the penalty of the law shall be inflicted on you.

We are told by the gentleman from New York,

there is to be a new order of things. I believe there will be. It looks as if we should burn all the old and begin a new. What! are gentlemen not contented with the Sedition law to protect them, do they want a wall of fire around them?

This law has been in force two years, and what have been its effects? A few printers, and a few miserable newspaper scribblers, have fallen victims to it, and it has disgusted a large portion of the American people who have loaded your table with petitions praying for the repeal of the obnoxious law; and why will you again agitate the public mind by reviving a law so foreign to their feelings and hateful to their sights? Will gentlemen never yield their party views to the public voice, and drop a law that has produced so much discontent?

If this law had been good and Constitutional, and but a few people had been dissatisfied with it, there would be some excuse for continuing it; but the very reverse is the fact. I am not afraid of the law, I am not afraid that I shall ever be subject to its operation, for, in my opinion, the Administration, when it is presented in the fairest forms of truth, will afford sufficient ground for all my animadversions. I can turn to pages, and lay my finger on paragraphs which would authorize me to say more than I wish to.

The gentleman from New York says, they have been told that the sun of Federalism would shortly set. I, on a former occasion, did say so, and I again repeat it; this very law, if it has ever done any good, has done it in this way. I believe it has hastened the declension of the Federal sun. Instead of controlling public opinion, as it was intended, the opposite effect has been produced; men have acted up to their opinions, though they were forbidden to speak. Your own weapons have been turned against you; you find the public mind acting strongly against you, though it dare not speak.

The gentleman from New York says, that those who consider Government an evil will vote against this law. I consider good Government a blessing, and am, therefore, willing to let the people examine freely and fairly the fruits of Government. Those who wish to make it a curse, wish also to conduct it out of the sight of those immediately interested in its operations. This hidden way of conducting the concerns of the nation will never be pleasing to the free people of America. Already very many of them are opposed to the Administration, and, while you conduct their important concerns out of their sight, they will be jealous, and withdraw their affections from an Administration that shuns the light.

Mr. Randolph said, when he first considered this report, he viewed it merely as the fulfilment of an obligation which the committee thought imposed upon them by the House, and he had supposed that it would have been suffered to remain on the table without any intention of being called up.

He would not enter into a view of the unconstitutionality of the law. How strongly soever the gentleman supposed that question to have been decided by the Congress who passed the law, he would tell that gentleman and all his adherents, that he had a still higher tribunal to appeal to—one higher than they could produce: he meant the American people. Their voice was more powerful than that of those courts and this President, to whom the gentleman referred. The will of the people had been fairly and fully expressed upon this subject, and, notwithstanding all inferior decision, this ought and this ultimately must be attended to; the people would be heard. He would ask gentlemen whether it was expedient, at this time, for the House to show their contempt of the opinions of the people; whether it was prudent to insult their understanding in a matter so well appreciated by them as this law, and at a period when they have so evidently declared that their rights shall be no longer infringed? The moment in which this measure was renewed, reminded him of the spirit which actuated the fallen angel, as related by the great poet of the English language: when he could no longer be victorious, he would evince his revenge.

The Legislature of the State which he had the honor to represent, Mr. R. said, had given instructions to her Representatives and Senators in Congaess, to oppose, by every effort in their power, any attempt that might be made to renew this monstrous and destructive act. From which, were he not even convinced of its unconstitutionality, of which he could not entertain a doubt, he felt himself particularly bound to express the opinion of that State, and to give his utmost opposition to the law in its several stages. Were he to act otherwise, he really ought to humble himself in dust and ashes before an insulted and indignant people, for the perpetration of an act so inimical to their instructions, as well as to all the feelings and good sense of the American people.

Mr. Griswold said, it would be well for the Committee to attend to the whole of the law. The gentleman said that all the old writings were destroyed, and we must begin anew.

[Mr. Davis explained, that he said it seemed as though the old papers were to be burned up and that we should begin anew.]

Mr. Griswold then hoped, from a due examination of this law, this would be one part he would wish to preserve from destruction. Surely the insinuations made against the whole law could not be of force; some of its parts were certainly unobjectionable. The first part provides a punishment against unlawful combinations to oppose the National Government. It is possible, said Mr. G., the gentleman may think such persons ought not to be punished, but I do; and, in my opinion, the preservation of this provision is essential to our very existence.

Another part is against persons who rise in insurrection, or those who encourage it by counselling and abetting it. That such acts should be punished appears to me a self-evident proposition, whatever the gentleman might think of it; yet he thinks the law ought not to be renewed! Surely a moment's consideration must prove that such persons ought to be punished, and that their punisnment

ought not to be left to the unlimited discretion of the court as by common law, but should be defined by a statute.

But the most essential opposition appears to be against that part where libelling the Government is made an offence and punishable. That this part should be opposed by a gentleman whose orderly conduct removes him beyond the fear of the penalty, he was much surprised. What is the effect of this provision? It is, that if any person should publish untruths against the Government, with an intent to bring it into disgrace, such offender should be punished. Is there any gentleman in this Committee who wishes to publish falsehoods, and malicious falsehoods? He trusted not; and, if not, why should gentlemen be unwilling to make this wilful offence punishable by statute? There could be no ground for alarm, since the penalty was only intended to affect the publication of falsehoods. Falsehoods tended to much evil; nay, they were evil in themselves, and it was necessary to punish them, in order to preserve to the Government its merited popularity. The provision was exceedingly important, and he thought the ideas of his friend from New York must have considerable weight with the Committee.

It was a well known fact, that at common law the truth could not be given in evidence; it was equally well known, that the punishment for crimes was left undefined, and at the will, he had almost said the arbitrary will, of the court. He did not think it right to leave this power in the hands of the court, nor did he think it right to stifle the evidence of truth in behalf of the accused. He did not believe it to be the wish of the House or of the Administration to suppress truth; if the Government acted in such a manner as not to bear the test of truth, it certainly merited animadversion, and with severity. To continue the right of giving truth in evidence, and to keep the power of prescribing a punishment with the Legislature, he hoped the law would be re-enacted.

As a Constitutional question, he thought no doubt could now exist, whatever might have been entertained before the question was settled on its present principles. The Judiciary had decided it to be a law effectually within the Constitution. There might be some other quorum to which gentlemen would wish to appeal; perhaps they might be better satisfied by appealing to the people, but he could not be. He believed the decision to be made in a Constitutional mode, and was desirous of giving it his decided support.

Mr. Nicholson said, had he been a member of the House at the time when this bill passed, he should have most assuredly given his opinion that it was unconstitutional and inexpedient; and all that he had heard or seen since that period, in the various examinations it had undergone, had not contributed to create a doubt in his mind upon the accuracy of that decision. It had ever been his opinion that a virtuous Administration, whose actions flowed from good motives, required not the aid of a statute to defend it from the attacks of slander. The abuse of the power confided by the people, and not its Constitutional use, could alone fear the shafts of reproach, and power thus used merited no better fate.

These, Mr. N. said, were his ideas, at the period when the bill passed. If its inexpediency was so evident to him at that period, how much more so must it appear at the present time! In order to call this to the view of the Committee, he would bring to their remembrance the prosecutions which had taken place under it during the two years of its existence, from which he could make it plainly appear that the administration of this law was extremely objectionable.

The first fact he noticed was, the arraignment, trial, and conviction of a member of the House, who was committed under the care of a severe keeper, to an unwholesome and loathsome dungeon, and the treatment of that member whilst in confinement; in all of which were evinced a spirit of party highly unworthy the character this country ought to bear. The next was the case of a printer, who was made to stand on his trial, but notwithstanding he pleaded the necessity of producing evidence, which he stated was material to his defence, time was refused him to procure their attendance. He need not expatiate, he presumed, on the rights of every man to demand, when brought before a tribunal of justice, time to produce witnesses material for his defence, or of the right of the court to grant every opportunity to afford the means of defence: these were too evident to be opposed. Another instance was that of a trial proceeding, wherein important testimony was asked, but refused, because the person required to give the evidence was a high officer of the Government. The accused was told by the judge that he had no right to that testimony. Another instance had occurred of testimony, stated to be material to the defence, but, because it was at a distance, time was refused to produce it, and the trial and judgment proceeded without it. Another, and more fatal instance, was that of a printer, who died in prison, where he lay convicted under that law. From a view of all these cases, Mr. N. said, he must conclude that the administration of this law was extremely objectionable. Although many of these persons were foreigners, yet they had not the less claim upon the justice of the country. It mattered not whether they came from the tropics, from the poles, or whether they first drew their breath in this country, all men possessed an equal right of demanding a free and impartial trial, and to all men alike it ought to be granted.

It was and might be further urged, that the act was only aimed at false and malicious libels, tending to defame the Government. He granted it; but who were to be the judges? The bench themselves; they perhaps might be the subjects of animadversion, but if not, were the creation of the person grieved. By them the materiality of the testimony, which ought to go to the jury, was to be judged, and, therefore, the principle that the truth might be given in evidence, was of but little importance, if that truth was not suffered to appear.

The gentleman from Connecticut (Mr. Gris-

WOLD) had adduced parts of this law, which he supposed could not be objected to. Mr. N. admitted that the cases of insurrection and unlawful combination against the Government, ought to be provided against, and if the gentleman had proposed a resolution for the continuance of those parts, he would not have objected. No, the objectionable part was that which the people of the country, in a voice of thunder, had said ought not to have been enacted, and which, therefore, now ought to be suffered to sleep—that part which stifles every investigation into the affairs of the Government. It was certainly true, that the existence of this law forbade inquiry into the affairs of the Government, for who (most particularly having those instances in view) would dare scrutinize into the conduct of men in power, when they could apprehend that they should afterwards be handled by a court and jury so unlikely to do impartial justice to them? It must prevent men saying what they think, much less what they know; for, though it might be truth, how could they assure themselves of their own testimony?

What, he asked, had the Government to fear from untruth? The publication of falsehood must carry the evidence of its infamy, and would undoubtedly meet its due appreciation. The characters of public men, in whom the people of this country had been wont to repose confidence, need not shrink at the apprehension of the publication of falsehood. The people would discriminate, and to their own observation it might with safety be confided; for the truth must ultimately be made to appear.

He concluded by expressing his regret that this subject should again be called up to irritate the House. He wished not to have said or heard anything upon so unpopular a subject, but as it had he must inform the Committee that the resolution should have his most decided negative. But, as he had before said, if one was produced containing the principle of re-enacting the other parts of the law, he would give it his support.

Mr. DANA said, a principal part of the arguments of gentlemen in the opposition, were calculated to prove that the Administration of our country was wilfully corrupt. They had told the House that necessary testimony had been refused, and that various abuses of this kind had actually occurred in our courts, which were actuated by a spirit of party, to the great injury of persons not born in this country.

[Mr. NICHOLSON.—I spoke facts: I did not say the Administration was wilfully corrupt—these are the gentleman's own words.]

Mr. DANA.—There could be no other implication from the gentleman's words, nor was it in the power of human invention to distinguish between a violation of the principles of justice in the manner represented, and a most wilful and gross corruption. As it would be extremely improper to leave so great a charge in this unqualified manner, Mr. D. would proceed to examine the conduct of the Judges of the United States. Who are those judges? Nominated by the President of the United States, and chosen by the Senate agreeably to the Constitution. How long, or at whose pleasure are these judges to continue in their high offices? At the pleasure of no man, nor set of men, but during good behaviour. Surely if there be any part of the Government, or any set of men in the United States, who were placed above the spirit of party, and beyond the reach of corruption, it is the Judges of the United States; and yet, above all others, these are the men charged with a party spirit, and with corrupt principles—these men, who are singled out as men of the most profound wisdom and integrity among us, and who are superior to the dread of removal from office, excepting only by impeachment for misbehaviour. Yet this is the substance of the reasons gentleman assume why this law should not be continued.

Would not prudence dictate; would not justice, that justice which is due to the character of every man, demand that before these charges would be even suggested, the proof ought to be decisive; that it ought to be "damning?" This has not been produced.

He would not go into the details of the law, but examine it upon general principles. He would admit that there had been much opposition to this law, and that most particularly it had been opposed and condemned by the Legislature of one of the largest States in the Union. But he was not inclined to judge of a measure upon the opinions of others; that House ought not to be overawed by the multitude of petitioners, nor by the remonstrances of the Legislature of any State whatever; it should act with a spirit of independence.

One of the extravagances of that State, and many of the people, had been to arraign, to their extremely weak and partial judgment, the common law; the existence of it was altogether denied. That common law which most undoubtedly secured to every individual its most endeared rights, and afforded security against every species of legal oppression, whilst it preserves to the Government that protection against the licentious and false slanders which polluted some of the presses of the United States, and maintained upon established principles the rights of our jurisprudence and our morality. This was the true character of what was termed the common law.

It would seem to him, Mr. D. said, that no honest man could wish for a liberty to utter defamation and falsehood. It was directly incomprehensible to him how a man who held dear the principles of liberty and of good government, could attempt to utter falsehoods against the Government. The rights of the people and of the press were held up. How, he would ask gentlemen, could the rights of the people require a liberty to utter a falsehood? How could it be right to do wrong? If this was liberty, he had been hitherto totally ignorant of its principles, and wished to remain so. And yet the only crime made by that part of the law so much the subject of complaint, is the uttering of a scandalous and malicious falsehood, with intent to defame. Most certainly truth is not always the motive of investigating

the measures of our Government, and so far as truth is deviated from, so far is the Government libelled, and virtue proportionately becomes beclouded by misrepresentations. Could not public opinion become corrupted? Could no falsehood be disseminated that would gain credit from the people? Then how could gentlemen pretend to suppose that truth could overcome falsehood? how could they suppose that misrepresentation and calumny could do no manner of harm? How often are calumnies and falsehoods published against the Government; but when is a contradiction of those falsehoods seen in the same paper? No: falsehoods will have their effect, and even if afterwards contradicted, it is not so until the falsehood has had its effect, and at that time the truth avails but little. Thus, though upon general principles, truth may be said to be an antidote to falsehood, truth does not always make its appearance in time to prevent the evil intended by the evil-disposed. Suppose the reputation of the Government to have been attacked, and the affections of the people weaned from it, of what avail will be the remedy? The poison is swallowed beyond the power of expulsion, even by the most powerful antidote. If this, then, be true, and that it is, is indubitable, a check ought to be provided in due time, whilst yet its qualities may completely prevent any possible harm.

And what danger, Mr. D. asked, could result from this law? As he observed before, it was not the will of the judges—those arbitrary party-spirited characters—that could convict. No: every cause is submitted to a jury of twelve honest men, who are sworn to decide upon the fact; and the security is so great that if but one man out of the twelve should be of opinion that the person arraigned is not wilfully an offender, and that he has not traduced the Government falsely and maliciously, he must be acquitted of the indictment. What better barrier to the liberty of an individual can be presented than this? The only answer that gentlemen can give is that the juries are packed. But, he would ask, whether the juries were not returned as fairly in this as in other cases under the laws of the land? If, then, there was an evil, it was not solely applicable to this law, but to all laws, and to the general principles upon which juries were selected. He could scarcely conceive that men of character, under the solemnity of their oath, could act so unprincipled.

Upon the whole he could see nothing but unfounded arguments in opposition to this law, and that gentlemen had no other way to get rid of their dilemma but by charging the courts and juries with corruption. And when men began to charge with evil design the sanctuary of justice, it was time to bid adieu to all public happiness, and every hope to enjoy the blessings of freedom.

Mr. HUGER acknowledged that he had been somewhat surprised, when the report of the Committee of Revisal and Unfinished Business was first made, and found it to be their wish to renew and continue in force this act, so well known by the appellation of the Sedition law. It had been generally understood, he thought, on all hands, that this act would be allowed to expire in peace, and without further notice, on the 3d of March next. As the subject, however, was again brought forward, he was happy to perceive that gentleman were inclined to treat it with calmness and moderation. There appeared indeed no great anxiety in the Committee to enter largely into the discussion of this question; neither did he feel himself any strong inclination to do so; but as he should in the present instance probably vote in opposition to the sentiments of most of those with whom he was usually in the habit of acting, he would beg leave to state some of the reasons which led him to differ from them on the present occasion. He felt some little pain, however, he acknowledged, at the idea of dissenting from and acting in opposition to his friends on this important and interesting question, because no man had a stronger conviction than himself of the general correctness of their political views and principles, or was more persuaded of their honest intentions and patriotic views.

Mr. H. said he would not enter into an investigation of the constitutionality or unconstitutionality of this law. The gentlemen who preceded him had not done it, and it would become him less to do so; for, although it was true, he had never given it the sanction of his vote, yet if he felt any doubt as to the constitutionality of this law, it would certainly come with a very ill grace from him to urge them at this late day, and in the present state of things.

Waiving, then, the question of constitutionality, Mr. H. called upon gentlemen to show the expediency or necessity of renewing this act, and continuing it longer in force. For his part, he had heard nothing, nor could he see any reason, which led him to think such a measure either expedient or necessary at the present moment. Granting that Congress possessed the Constitutional power of laying some restrictions on the licentiousness of the press, and of punishing libels, yet it certainly does not follow of course, that they must necessarily, at all times and on all occasions, carry that power into operation. In time of imminent danger; in the midst of a great crisis, it might be proper to avail ourselves of such a power. And such indeed was the state of things when this law was originally enacted. Our country was at that time threatened with foreign, and perhaps domestic war. We had to guard against the machinations of an artful and well-disciplined foe, who was endeavoring to rouse up our citizens against the Government, and would, no doubt, have availed themselves of every possible means to mislead the public mind, and to spread abroad falsehoods, which might have had the most direful and fatal effects, before it was possible to detect and expose them. At that time, and in the then state of things, he was one of those who was for exerting every nerve, and bringing into operation every means in our power to defeat the schemes of our enemies, and repel the impending danger. Taking it, there-

fore, as one of the measures adopted at that awful period, and regarding it as a part of the general system of defence then deemed necessary, he had always been inclined to view it with a favorable and partial eye, but the state of things was now actually changed. The smiles of peace had again visited our shores, and a convention had lately been concluded, which he trusted would finally put an end to all our dissensions with the French nation. Why then renew or continue longer the provisions of this act, when the storm which gave rise to them is blown over?

There was another point of view in which the subject presented itself to Mr. H., and which would greatly influence his vote upon the present occasion. Without going so far as to assert with some gentlemen, that nine-tenths or even two-thirds of our citizens had declared themselves decidedly opposed and hostile to this act, he would venture to say, without any fear of being contradicted, that there certainly was a very great difference of opinion, and contrariety of sentiment, both as to the constitutionality and policy of the measure. As little noise has been made with respect to this law in the State he had the honor of representing, as in perhaps any part of the Union; yet it certainly had occasioned some uneasiness in the public mind even there; and he was convinced the great majority of his constituents would not willingly see it again renewed at the present time. He would venture even to go so far as to say, that the freedom of speech and of the press, though carried even to a certain degree of licentiousness, was in general deemed preferable by them to anything like an appearance of restraint on either. Their good sense might lead them to acquiesce in, and perhaps even approve of temporary restrictions in the moment of impending danger, but such restrictions even then would be unpleasent and distressing to their feelings, and excite all their jealousies; nor would they easily reconcile themselves to anything of the kind in peaceful and common times.

It had been argued that no Government depended so much upon public opinion as our own, and it was consequently necessary to continue these restrictions at all times, as a safeguard against misrepresentation and falsehood. He could not, however, acquiesce in this conclusion; during the eight years of the Administration of that great man, who bore so conspicuous a part in forming and carrying into operation the present Constitution, as well as during the first two years of the present Administration, the Government had progressed and prospered, without the aid of any such law. And if the crisis of the moment had two years since called forth an expedient of this kind, it was now at an end, and he saw no reason why we should not allow things to revert to their ancient channel. He was willing, indeed, to admit that some inconveniences, some mischiefs even did occasionally arise from the unprincipled and unbridled licentiousness of the press. He had had but too much reason to lament the truth of this fact. In the present political state of society, however, these evils, he was inclined to believe, were far more than counterbalanced by the advantages which we reaped from the entire freedom of speech and of the press. He was content, therefore, to take the good with its concomitant evil. For so nice and delicate were the shades of distinction between the licentiousuess of the press, and a necessary freedom of discussion, that it was upon the whole better perhaps, in times like the present, when the thing would probably work its own cure, to leave the measures of Government and its Administration entirely open to investigation and animadversion, without attempting to repress the eccentricities and exuberances of public discussion by even an ideal restraint.

Mr. H. begged leave to make one other observation before he sat down. It was evident to all that a change of men was about to take place. It was equally well known, that those who were about to enter into the administration of the Government, had on all occasions declared themselves openly and unequivocally hostile to the principles of this act. It was no doubt honorable in those gentlemen who had heretofore supported this measure, to show their willingness to continue and submit to it, in a change of circumstances, which might enable their political opponents to turn it against themselves. But with what appearance of consistency, with what propriety, upon what principle, could these gentlemen avail themselves of the provisions of this law. To him it appeared impossible, that they could act under it. If renewed, then, it must remain a dead letter. And why load your statute book with laws, which could not be carried into execution, and would of course answer no end.

Upon the whole, the motion appeared to him ill-timed. The measure, it was admitted on all sides, had occasioned much difference of opinion, and considerable uneasiness in the public mind. The state of things which originally gave rise to it, was at an end, and there appeared to be no circumstance which rendered it peculiarly necessary or expedient to continue the law longer in force. All restrictions of this kind were discordant and uncongenial to the American feelings and wishes; and even if the law should be continued in our statute book, it would, according to all human probability, not be acted upon. Under these impressions, and in this view of the subject, he could have wished the present motion had not been made, but, at all events, he felt himself bound to give it his negative.

Mr. Claiborne made a short reply to some observations which had fallen from Mr. Harper. Mr. C. said, that spirit which the gentleman from South Carolina dreaded, he highly venerated; that fanaticism against which the gentleman so much declaimed, was the will of the people, and their voice could alone be terrible to the satellites of despotism. It was that voice which had heretofore broken the fetters of our transatlantic subjection, and will never suffer political chains to be forged for our country, either by foreign or domestic tyrants. Mr. C. believed that the sentiments of the American citizens were much averse

to the law under consideration; they viewed it as an arbitrary and oppressive act, dangerous to their freedom and happiness, and during its existence the public mind would never be tranquil.

Mr. C. declined an examination into the constitutionality of the law in question. He waived this inquiry, because this point had been so frequently and ably discussed that it was not in his power to introduce any new argument. He would say, however, that the measure had always been viewed by him as a violent outrage upon the great charter of American rights—the Constitution—and from this and other causes had arisen his former opinion. Mr. C. was of opinion that the revival of the Sedition act was highly inexpedient. It would be remembered, that for eight years after the organization of this Government, the powers vested in the different Departments were exercised without the aid of a sedition act. That great character who was then at the head of the Government asked no such shield, and required no such protection. To calumny he opposed virtue and integrity, and, thus fortified, the shafts of calumniators can inflict no wound.

Mr. C. remarked that the conduct of our public men should always be investigated; that free investigation was inseparable from a representative Government, and essential to its preservation; that in such investigation base men might resort to calumny, but this was an evil which could not be remedied without rendering insecure a valuable privilege. Mr. C. anticipated no good that could flow from this act, but, on the contrary, he apprehended much mischief.

If an Administration is honest and wise, it needs not the support of this law, but its existence may do such Administration immense injury. Awed by the fear of punishment, the labor of calumniators will be veiled in secrecy, and the operations of detraction will be so private that a detection will be difficult, and truth and virtue may thus be assailed with success. But repeal this act, lay no restraint upon inquiry, and then political investigation of every description will come boldly out, error may be met by truth and calumny by virtue.

Mr. Nicholas, in a speech of some length, opposed the resolution.

Mr. Rutledge had not intended to have raised his voice on the present occasion, nor should he now trouble the Committee, if it was not for the purpose of giving correction to some misstatements which had been made by the honorable gentleman from Maryland, (Mr. Nicholson.) In recapitulating the evils and mischiefs which had resulted from the Sedition law, he had mentioned as facts some of the tales of detraction and falsehood which had been very generally circulated, and which, owing to popular delusion and credulity, had been very generally believed.

The first in order was a pathetic history of a printer, who, as we are told, was a martyr to this law, and pursued under it to death. Mr. R. had often heard and read of the case of Adams, the printer, who, it was stated in most of our public prints, as it was this day stated by the member from Maryland, had been prosecuted under the Sedition act, thrown into a sickly dungeon, where, loaded with chains, he had died. In the course of the last Summer, I happened to be in Boston, and, after inquiring about the business, learned the following facts: that a printer, of the name of Adams, had been prosecuted at common law, in the State courts of Massachusetts, for a libel against the Senate of that Commonwealth, and died some time after he was released from jail. So that the Sedition law had nothing to do with this case. The proceedings were under a State law and in a State court, and the story which the gentleman from Maryland believed to be a fact, and which had been mentioned as one in many of our papers, turns out, upon investigation, to be a fiction—a mere opposition trick, practised for the purpose of injuring the Government. He had given to the Committee the history he received at Boston of this transaction, but his friend near him, who is the representative of that city, had just now interrupted him to say the latter part of the narrative was incorrect, for the printer is still living; so that the victim we just now saw in a foul dungeon, loaded with chains and dead, it now appears is alive. Thus much for the history of the printer. After having been told of his prosecution under the Sedition law and dying in jail, we were reminded of the hard sufferings of a member of this House—the respect due to all its members forbids making comments upon this case. The trial of Cooper, at Philadelphia, was adverted to by the gentleman, (Mr. Nicholson,) who had made an implicit charge of cruelty on the Judge for having refused leave for taking the testimony of the President of the United States. What motives governed the decision of the Bench he could not say; but many very strong reasons present themselves why the request ought to have been resisted, and why the Chief Magistrate should not be drawn from place to place as a witness in courts of law. In the case of Cooper, it was believed at the time, and afterwards known, that his object in soliciting the attendance of the President was merely to perplex the court and induce a postponement of his trial. This was proved by his conduct to many of this House—so many of them had been summoned by him as witnesses, that Congress was obliged to adjourn to enable them to attend the court, where, after remaining from ten to three o'clock, they were told, upon the Judge's promising to have them sworn, that they would not be wanted. This was the conduct of Mr. Cooper, whose trial he attended, and which he could say with great confidence, as many members who now heard him also attended, was one of the fairest and most deliberate that ever was had. As the gentleman from Maryland had been mistaken in his facts, Mr. R. deemed it important to correct his misstatements, inasmuch as it is highly desirable to keep the public proceedings correct, and to undeceive the people of errors into which they have been led by the tales of rumor. In Governments like ours, where all political power is derived from the people, and whose foundations are laid in public opinion, it is essential that the people be truly informed of the pro-

ceedings, the motives, and views of their constituted authorities. It is the duty of the latter to keep in a state of purity the channels of public information, and to make liable to exemplary punishments malicious persons, who, by wantonly disseminating unfounded suspicions, impose upon the understandings, inflame the passions, and mislead the judgments of their fellow-citizens. In a Republican Government, where public opinion rules everything, it is all-important that truth should be the basis of public information. Government, which is the preservative of the general happiness and safety, cannot be secure if falsehood and malice are suffered to rob it of the confidence and affection of the people.

Although my sole motive for rising, said Mr. R., was to correct the misstatements of the gentleman who had preceded me, yet, as I am up, I will trouble the Committee with a few remarks upon the observations which have been heard from the other side of the House.

The member from Kentucky, (Mr. DAVIS,) in a speech in which more acrimony was exhibited than he usually displayed, had painted in very vivid colors the evils to be entailed upon us by the re-enacting of this law; but, after recapitulating them, had concluded with saying "he had nothing to fear from it, because he was an honest man." If, sir, honest men have nothing to apprehend from this measure, whence all this clamor against it, and wherefore all this fear and horror? Why sound the tocsin, and why agitate the country, when honest men have nothing to fear? If this law, which subjects men to a punishment who publish false, scandalous, and malicious writings against the Government, with intent to defame and to bring it into disrepute; and men who stir up sedition and excite unlawful combinations in the United States; and men who encourage the hostile designs of a foreign nation; I say, if a law which constitutes these things crimes, and which gives to the accused a trial by jury, and gives him the privilege of giving in evidence the proofs of the matter contained in the libel; if such a law cannot, in the opinion of those who oppose it, produce inconvenience to honest men, I cannot believe that gentlemen are very much in earnest who so warmly deprecate its renewal—the renewal of a law under which no man can suffer who is not convicted, by a jury, of the intention to disturb the public repose. The member from Kentucky had again introduced his favorite figure, and told us the sun of Federalism would shortly go down; he had added that quite a new order of things would be introduced, and said, triumphantly, everything will be burnt up, and we will begin again anew. Sir, the sun of Federalism will not decline; in spite of the whimsies of reforms, our Federal fabric shall endure; although its structure may seem rude and Gothic to theoretical and experimental gentlemen, the great body of our citizens will cherish and support it. In stormy and tempestuous times it has sheltered their property and protected their independence, and they will suffer no rude hands to violate it. Our Federal fabric will not be dissolved, sir; and I trust we shall tenant it with a practical gentleman who will have judgment, taste, and genius enough to appreciate its integrity. Of the threatened conflagration and new order of things, I am not afraid. During the rage in this country of the Gallic mania, the friends of the Government had much cause for apprehension; but, thank God, sir, the season has passed away, and the people of America will profit by the awful and mournful lessons they read in the modern history of Europe; they will firmly resist the adoption here of theories, the practice of which in other countries, under the imposing names of reform and improvement, have produced subversion and ruin.

Respecting the constitutionality of this law, I will only observe that our Judiciary (and they are the only appropriate judges of its constitutionality) have decided, and repeatedly decided, that it was Constitutional. An honorable gentleman from Virginia has told us that a more high and respectable tribunal—the people—had declared it unconstitutional. Sir, I am not so good a Democrat, nor so diffident of myself, as to have recourse to the people on the passage of every law to inquire of them if it be Constitutional. As a legislator, it is sufficient for me that, with the best understanding I can obtain of the Constitution, I take care not to violate it, and to know that, if, through error of judgment, I travel beyond the sphere of the Constitution, my errors will immediately be checked by a mound and barrier which cannot be overleaped. If any proceeding of the Legislature be unconstitutional, I have the consolation of knowing the Judiciary will declare it so; and to the decisions of our venerable and profoundly learned Judges I look up for information whenever the constitutionality of a law is questioned, and not to the resolutions of popular and tumultuous meetings. If, upon every Constitutional doubt, we are to have recourse to the people, there is an end to representative Government.

We have been told that this law was odious to the people, and that they had declared their execration of it. Sir, the truth of this position seems to me more than problematical. I will never estimate the sentiments of the American people by the opinions expressed in some sections of the people; as a representative of the whole, I am not to be governed by the will of a part; and the discontent displayed in Virginia, Pennsylvania, and Kentucky, cannot convince me that the people throughout the United States were discontented with this law. The truth is, sir, that in those sections of our country where clamors have been raised against this law, everything is disliked and everything is abused which emanates from the Federal Government.

But, respecting this law, we have evidence of its not being disliked by the people generally. I refer to the calls made by the Legislatures of Virginia and Kentucky on those of all the States respectively, for reprobation of this law, and to all of them having refused or neglected to do so. I regret that this law is odious to the people of Virginia. I would wish that every act of the Government was approved by every citizen of the country, if such a thing were possible; but I know this to be impossible in a free Government. I am too well acquainted, sir, with the character of man, to expect unity of sentiment among the people of this country respecting the conduct of a Government under which every man has the privilege of expressing unreservedly whatever he thinks on political subjects. As reasonably may we expect the same capacity of intellect from every man in the community, as that all men in it should think alike on any one political subject. A diversity of sentiments among men is incidental to our nature, and expressing this difference of opinion is an illustration of our political freedom. If any honorable member of this House supposes the people are contented in those countries where no popular murmurings are heard, he deceives himself; theirs is the silence of the grave, and they are silent because they have not the power of complaining.

We have been told by the gentleman before me, from Maryland, that a virtuous Administration had nothing to fear from slander and falsehood; that if things said are not true, the saying of them cannot injure. Can this, sir, be his deliberate opinion? Is he justifiable, with his knowledge of the world, in making this assertion? Does he not know that virtue does not form an impenetrable shield against the arrows of slander? He must know that calumny is too subtle to be warded off by the mantle of innocence. He must know that continued defamation will at length sully the fairest reputation, and throw suspicion on the purest conduct. I say, the gentleman must know these things; he knows it from the experience of the world; he knows it also from his own experience, as a member of the learned profession; he knows that actions for slander are brought and sustained in our State courts at every term. Would he say to a client who had been robbed of the fairest heritage of man—his good name; whose head had been pillowed with thorns, and whom foul calumny had stretched on the bed of torture—would he say to him, if you are innocent of these charges they will not be believed—the innocence of a mind conscious of its own rectitude will blunt and render harmless the arrows of slander; will make them recoil on the calumniator? No, sir, this would not be his language nor his conduct, but he would make high demands of indemnification for the injury done to his constituent, in attempting to deprive him of his good name, the loss of which makes man poor indeed. I know that such would be his course of conduct; for the high value he places on the high reputation he very deservedly sustains, would make him pursue this course. His veneration for the liberty of the press would not make him tolerate its licentiousness. He knows this demands a correction wherever they have presses, but more than anywhere else under a Government so peculiarly constructed as ours is, and where, if calumnies are unrestrained, they will produce convulsions which will not only be injurious to its prosperity, but destructive of its existence.

In answer to what has been repeatedly said about the discontents of the people, I again say, that for myself I am not displeased by the ebullitions of discontent which are occasionally displayed in some sections of our country; for I regard them as high evidence of the freedom of my country, where any man who is dissatisfied with any of the acts of the Government may unreservedly express his disapprobation, knowing there is none to make him afraid, if he employs the language of truth, or publishes what he believes to be truth.

Mr. NICHOLSON explained—He trusted no gentleman would suppose the history of Adams, the printer, to be intentionally misstated by him. That his relation of it might not be erroneous, he did not say. The gentleman himself it appeared was under the very some mistake—he acknowledged to have seen the circumstance in the newspapers as related, and to have believed it, until by a more intimate inquiry, when the opportunity offered to him, he was undeceived. He therefore could not blame those who had not had the opportunity of seeing it contradicted. Besides this misinformation, the gentleman thought the man was dead, until informed otherwise by a gentleman by his side.

As to the case of Mr. Cooper, the gentleman from South Carolina corroborated the observation, Mr. NICHOLSON said, made by him. He agreed that the testimony of the President was refused, but did not draw the same inferences. He thought it right but I conceive it otherwise. Mr. Cooper was charged with having declared that the President in his answers to addresses had said such and such things. He was told that he must not rely on this as testimony. [Mr. HARPER denied the truth of this.] Mr. NICHOLSON said it certainly was refused in the first instance, though afterwards it might have been permitted to be read to the jury, but not as due testimony. Upon this he thought it proper to call for the testimony of the President himself, which was refused, upon the ground of impropriety.

Mr. HARPER said: As a great part, Mr. Chairman, of what I have to offer to the Committee on this question is connected with the statement of abuses, which gentlemen who oppose the continuation of this law tell us have been committed in the course of its execution, I have chosen to offer it at this stage of the debate, in order that the correction of the errors with which those statements abound, may go forth with the errors themselves.

The objections of gentlemen, sir, to the continuation of this law, have been directed, as usual, against its constitutionality and its expediency. Those against its expediency are reducible, so far as I have been able to understand them, to some instances of oppression, which gentlemen say have taken place under the law. In what did this oppression consist? If I understand gentlemen aright, they stated it to consist in the denial to persons who had been indicted under the law, of the proper time, means and opportunity of making their defence. The objections have been variously

and very indistinctly expressed. but, as far as I was able to understand them, this was their full amount.

Let us, then, Mr. Chairman, examine the cases which have been adduced as instances of this oppression. Let us inquire whether they afford any foundation for the imputations which have been made on the conduct of the courts?

The first case is that which occurred in Philadelphia last year.* In this case, we are told, the party was denied the means of making his defence; was prevented from adducing the testimony by which the truth of the publication for which he was indicted might have been proved. Fortunately, sir, there are many now present, many honorable members of this House, who were present at the trial, and can bear testimony to the manner in which it was conducted. They can testify that the party was allowed all the indulgence that he asked for, was permitted to carry before the jury all the evidence he chose to adduce.

In the first place he summoned several members of Congress to attend as witnesses in his behalf. I myself was summoned. An honorable member from Pennsylvania who sits near me, (Mr. GALLATIN,) was also summoned; and I see several other honorable members in their places who were included in the summons. It happened that we were prevented from going into court as soon as we had intended, but we did so; and when we entered the court, we found the party preparing an affidavit, or prepared with one, and holding it in his hand, in which our testimony was stated to be material in his defence; and, as our absence was alleged as a ground for postponing the trial went on. Why were we summoned, sir? Nobody present was ignorant of the purpose. It was a mere trick to postpone the trial, and so universally understood. We were summoned in the expectation and belief that we would not attend. In that case our absence would have been alleged as a cause of postponement, and there was no difficulty about swearing that our testimony was material. If the trial had been postponed on this ground, the point would have been gained, and justice eluded; and if the court had refused to postpone it, the opportunity which had been sought, of abusing the court, and raising an outcry about the denial of justice, would have been afforded. Will anybody deny this statement? No, sir, nobody will presume to deny it. The truth flashed on all who were within the verge of the court. None were so blind as not to see the artifice; none were so shameless as not to blush at it. Even the spirit of party was reduced to silence and the most hardened votaries of faction hung down their heads, and were confounded at the detection. How, sir, did the detection take place? How was the design rendered thus apparent? The witnesses thus summoned with parade, thus called from their seats in the National Legislature to give evidence of the trial; the witnesses whose absence, when it was hoped and believed that they had declined attending, was about to be made the ground of an application on oath for a postponement of the case, whose testimony was about to be stated on oath to be material to the defence; these witnesses, when they did come, were not examined. They remained in court during the whole of the trial. The party was informed of their being present, and when he had gone through all his other testimony, was expressly asked by the court if he wished to examine them, and he said, no. They were not examined. Lest it should be said that through fatigue arising from the length of the trial, he had become unable to examine them, the court informed him that if he wished for time to refresh himself, there should be an adjournment of an hour or two for that purpose, but this indulgence he rejected, and still declined to examine these witnesses. Thus the purpose for which they had been summoned was disclosed, and it became manifest to all, even those most unwilling to see, that their being called on was a mere trick, which their unexpected appearance had defeated.

But we are told, sir, that this person was refused the opportunity of producing other testimony. What testimony? That of the President of the United States. And do gentlemen seriously contend that the President of the United States is liable to be called from the seat of Government, where his high and important functions always require him to be, in order to travel up and down the United States as a witness on trials? If he may be summoned to attend one, he may be summoned to attend another; if he must go as witness into the courts of Pennsylvania, he must, on the same principle, go as a witness into those of New Hampshire or Georgia. Can gentlemen be serious in contending for such a principle? No, sir, they are not serious; they cannot be serious; and I am firmly persuaded that the honorable gentleman from Maryland (Mr. NICHOLSON,) who has expressly contended for it, would, *mutatis mutandis*, be one of the first to discern and expose its absurdity.

The President, moreover, was called on in this case to criminate himself—which the best-established rules of law protect every person from being compelled to do. The party was indicted for a false, scandalous, and malicious libel on the President, whom he had accused of many atrocious acts. He plead the truth of the matter in justification, and wished to bring the President as a witness to criminate himself by proving their result. This is forbidden by the positive rule of law, revived and admitted in every day's practice. What would be the consequence of admitting it with respect to the President? A profligate fellow would have nothing to do but to accuse him in print of a crime, and when indicted for it, harass his person and degrade his office and character, by examining him in a court of justice, as to the commission of that crime, and thus compelling him to give an account of his whole private conduct and public administration. This is the principle for which gentlemen contend.

But there was other testimony, we are told by

*The case of Cooper.

gentlemen, which this person was denied permission to adduce? What other testimony? Certain publications extracted from newspapers, and purporting to be answers of the President to various addresses. Was he prevented from adducing them? No. He was, on the contrary, permitted to adduce them, and did in fact adduce them. He was, indeed, told by the court, and most truly told, that these extracts from newspapers were not legal evidence; but that, under the particular accusations of the case, he should be allowed to give them in evidence. He was told that he might read in evidence whatever he thought proper. He availed himself of this permission in its full extent. He read those extracts in evidence. Indeed, the greater part of his defence, which lasted for nearly three hours, consisted in reading and commenting on the President's answers to addresses.

Will any one deny this fact, sir? No; it will not be denied. It cannot be denied. It took place in the presence of many witnesses—of many who now hear me—and proves incontestably, that greater latitude of indulgence could not possibly be given in making a defence, than was given to this person. And yet, sir, this is one of the instances adduced of oppression, of denial of justice, under the Sedition act.

The next instance is brought from Boston. We are told a melancholy story, decorated with all the graces of the pathetic, about a poor innocent printer in Boston, who was indicted under this law for a libel on the Federal Government, convicted, imprisoned, and at length sunk under the cold and dreary dampness of a dungeon, and yielded up his life a victim to the tyranny of the Sedition act. This dismal tale, sir, thus piteously told, is found to be completely destitute of truth in all its parts. This poor wretch, whose life fell a sacrifice to the rigors of imprisonment under the Sedition act, turns out to be still alive and in health. He is found to have been indicted in a State court, under a State law, and for a libel on the State government. By a most singular infelicity of exactness, the fact appears, in every point, to be precisely the reverse of the story.

The last instance is brought from Richmond. There, too, according to gentlemen, a person indicted under this act, was denied the opportunity of producing evidence in support of his justification. Let it be recollected, Mr. Chairman, that this person was indicted for a libel† so atrocious, that no person, except its author, has yet been found profligate enough to defend or even to quote it. A libel, not on the administration merely of this Government, or on the Government itself, but on the nation, the Constitution, our independence, the war of our Revolution, the patriots who conducted it, the character of our people and country, and on the American name. A libel on every person and thing that is American, except one individual, whom alone it dishonors by its praise; whom it disgraces as far as disgrace can be inflicted by the commendation of the wicked; whom it places alone on that bad eminence, where not even a generous enemy could wish to see him stand. A libel, sir, which has made its supporters blush; which they have sedulously endeavored to suppress, lest it should dishonor the cause which it was intended to defend; which they have made to shun the light, and passed secretly from hand to hand, lest it should produce repulsion in the minds of those whom it was their wish to seduce. This, sir, was the libel for which the person in question was indicted, and which he had the effrontery to say that he wished to prove, by the testimony of honorable men. He wished to call men of character into court, and insult them by asking them on their oaths, whether "The Prospect before us" was true. Is there one man on earth, sir, profligate and hardened enough to say that he believes it? Would the gentlemen whom he pretended that it was his wish to summon, have appeared in court, and said they believed what the book contained? No, sir. One of them was in Richmond, and was summoned. He, sir, is a man of honorable feelings, of a manly character, whose political prejudices and party animosities, strong as they are, never betrayed him into a mean, a little paltry action. He was summoned, and what did he answer? "Let the scoundrel run away, and I will pay his recognisance; but as to appearing for him in court, that would be too much." This is said to have been his answer; and, whether he gave it or not, certain it is he did not attend. The other persons proposed to be summoned were within reach, and might have been had. What did the court say? "You shall have a continuance till next term, if you entitle yourself to it according to the rules of law, by disclosing to the court, on affidavit, the matter which you expect to prove by these witnesses, and showing that it is material. Even without complying with these terms, you will have a postponement from day to day, in order to procure your witnesses, as long as the time allowed for the sitting of the court will admit." But of this indulgence no use was made. No effort was made to procure the witnesses during the sitting of the court. That was not the object. The object was to postpone the trial till the next court, under the pretence of the absence of witnesses; and the court recollecting the Philadelphia case, where an attempt was made to practice a similar trick, were on their guard, and very properly resolved to defeat it. They resolved to bring on the trial, unless proper and legal grounds for a continuance should be shown. As this could not be done, the trial was brought on, and the party convicted by an honest, responsible, and independent jury.

So much, Mr. Chairman, for the oppressions exercised under this law, and for the objections to its expediency.

As to the question of constitutionality, it has been waived by gentlemen, very properly in my opinion; and I certainly shall not enter into it.

The constitutionality of the law has been, on many former occasions, triumphantly established by arguments to which not even the semblance of an answer has been given. Indeed, sir, I have

†The Prospect Before Us.

never so lowly appreciated the understandings of those who have clamored about the unconstitutionality of this act, as to suppose that they themselves believed in their objections. I have ever considered those objections merely as instruments for working on the public mind, as party expedients for exciting discontent against those in power and paving the way for their dismissal. I have ever considered the constitutionality of the Sedition act as a mere stalking-horse, behind which to fight the Administration. I believe that it has always been so considered by those who have used it; by those who have most gladly grasped, and most industriously wielded, a weapon whereby they hoped to demolish the power of their political adversaries, and open the way for their own. Hence, sir, and hence alone, the odious epithets which have been heaped upon it, and the tales fabricated about oppressions exercised in the course of its execution. Hence the charge that Congress had no power to make a provision, which rests on the same principle whereon are founded nearly one third of the laws in our code; and which cannot be distinguished, and has never been attempted to be distinguished, from the first section of the same act—the section against seditious meetings—about the constitutionality of which a doubt has never been raised.

We are told, sir, that the people have condemned this act; that the people, as one gentleman has eloquently expressed it, "have declared their disapprobation in a voice of thunder." Sir, gentlemen deceived themselves. They have indeed thought this reason a good one, and have proved that they thought so by the industry wherewith they have used it. But they greatly overrate its effects, which they measure by the erring standard of their own zeal. Let it be remembered, that this act was passed in the Spring of 1798; and in the Summer and Autumn of that year, and the Spring of the next, when the clamor against this law was fresh and high, the American nation was called upon to express, by a general election, its sense of the conduct of its Representatives. Let it be remembered, that the persons who were instrumental in passing this law, never received higher or more general proofs of the approbation and confidence of their country, than in this election. A change, gentlemen say, has since happened. If this change be anything more than apparent, or at most a temporary fluctuation in popular sentiment, it is owing to far other causes than the Sedition act; causes which need not now be discussed. Suffice it to say, that this act has received the highest and most repeated proofs of approbation on the part of the American nation; and that industriously as the clamor against it has been excited and kept up, that clamor has not been extended beyond certain parts of the country.

We are called on, sir, for the reasons why this act should now be continued. I will give my reasons most freely. Whether they be the same with those which actuate the conduct of other gentlemen, I know not; but in my mind they deserve all consideration. I wish to revive this law, sir, as a shield for the liberty of the press and the freedom of opinion; as a protection to myself and those with whom I have the happiness and the honor to think on public affairs, should we at any future time be forced, by the imbecility or the mistakes of any future Administration in this country, to commence an opposition against it; not a factious, profligate, and unprincipled opposition, founded on falsehood and misrepresentation, and catching at the passions and the prejudices of the moment; but a manly, dignified, candid and patriotic opposition, addressed to the good sense and virtue of the nation, and resting on the basis of argument and truth. Should that time ever arrive, as it may arrive, though I earnestly pray that it may not, I wish to have this law which allows the truth to be given in evidence on indictments for libels, I wish to have this law as a shield. When indicted myself, for calmly and candidly exposing the errors of Government and the incapacity of those who govern, I wish to be enabled, by this law, to go before a jury of my country, and say that what I have written is true. I wish to interpose this law between the freedom of discussion and the overbearing sway of that tyrannical spirit, by which a certain political party in this country is actuated; that spirit which, arrogating to itself to speak in the name of the people, like fanaticism arrogating to itself to speak in the name of God, knows neither moderation, mercy, nor justice; regards neither feeling, principle nor right; and sweeps down, with relentless fury, all that dares to detect its follies, oppose its progress, or resist its domination. It is my knowledge of this spirit, sir, of its frantic excesses, its unfeeling tyranny, and its intolerable revenge, that makes me anxious to raise this one mound between its fury and public liberty; to put into the hands of free discussion, one shield against its darts. This shield, I have little doubt, will at length, and perhaps very soon, be torn away; for the spirit of which I speak, goaded by conscious inferiority, stimulated to madness by the envy of superior talents, reputation, and virtue, knows to brook, no check upon its rise, no censure upon its excess. But I will not sanction my own death by my own voice. I will not yield one barrier to freedom and the right to opinion, while I can defend it. I regard this law as such a barrier, feeble perhaps, indeed, and ineffectual to check the progress of that tyrannical spirit which even now can scarce restrain its rage; but though feeble, yet dear to freedom, and never to be abandoned by freedom's friends. And in order to keep up this barrier to the last, I shall now, while I may, vote for the continuance of that law, which mitigates the rigor of the common law in this respect, and protects the liberty of the press and of opinion, by enacting that the truth may be given in evidence on indictment for libels against the Government.

Thursday, January 22.

On motion, it was *Resolved*, That a committee be appointed to inquire into the expediency of making further provision to prevent the concealing or harboring of slaves escaping from one State to another, and to and from the Territories of the United States; and that the said committee be authorized to report by bill, or otherwise.

Ordered, That Mr. Nicholson, Mr. Rutledge, Mr. Macon, Mr. Craik, and Mr. Parker, be appointed a committee pursuant to the said resolution.

Mr. Henry Lee, from the committee appointed, presented a bill to provide for the better establishment of the post roads of the United States.

On motion, it was *Resolved*, That Mr. Rutledge, Mr. Nicholas, Mr. Griswold, Mr. Macon, and Mr. Bayard, be appointed a committee on the part of this House, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected of their election; and to regulate the time, place, and manner of administering the oath of office to the President.

AMENDMENTS TO THE CONSTITUTION.

Mr. Nicholas, from the committee to whom was referred, on the twenty-first of November last, a motion for amending the Constitution of the United States, made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next. The report is as follows:

Resolved by the Senate and House of Representatives of the United States, (two-thirds of both Houses concurring,) That the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States:

"1. That, after the third day of March, in the year one thousand eight hundred and one, the choice of electors of President and Vice President shall be made by dividing each State into a number of districts, equal to the number of electors to be chosen in such State, and by the persons in each of those districts, who shall have the qualifications requisite for electors of the most numerous branch of the Legislature of such State, choosing one elector in the manner which the Legislature thereof shall prescribe.

"2. That the election of Representative to Congress, who are to serve after the third day of March, in the year one thousand eight hundred and three, shall be by dividing each State into a number of districts, equal to the number of Representatives to which such State shall be entitled, and by the people within each of those districts who shall have the qualifications requisite for electors of the most numerous branch of the Legislature of such State choosing one Representative in the manner which the Legislature thereof shall prescribe."

The committee, to whom were referred the foregoing resolutions, have had the same under their consideration, and, as the result of that consideration, beg leave to make the following report:

It is conceived that it may be assumed as one of the most indisputable maxims of American policy, that no change in the Constitution of the United States be admitted without a well-grounded assurance of the attainment of some greater good under the proposed change than under the existing provisions of the Constitution.

In relation to the object of the first of the aforesaid resolutions, the existing provisions of the Constitution of the United States are expressed in the following terms:

"Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

"The electors shall meet in their respective States, and vote, by ballot, for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such a majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice President.

"The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States."

Under the latitude of expression used in the foregoing provisions, considerable variety of practice has been found to prevail, not only in the different States, but at different periods in the same States. The modes adopted may be considered as capable of designation under two general descriptions: the one an appointment of electors by popular vote; the other, an appointment of electors by legislative choice.

In each mode considerable varieties have prevailed. Under the first general mode, the States have been sometimes divided into districts, in proportion to the number of electors to be appointed in each State respectively; and the inhabitants of each district, having the right of suffrage, have appointed, by vote, the elector for such district, respectively, nearly in the manner proposed by the first resolution referred to your committee. In other instances, the whole people of a State, having the right of suffrage, have appointed, by general vote, such number of electors as the State was respectively entitled to. The electors appointed under the latter modification have been sometimes taken from the body of the people at large, in other instances, they have been selected from certain districts or divisions of the State, in conformity with certain previous legislative

requisitions. In cases of death, absence, or other disability of electors appointed by popular vote, provisions have been made by law, in the same States, to supply the vacancies which might be occasioned by such accidents, by means of a legislative choice.

Under the other general mode of appointment, the electors in some States have been appointed by a joint ballot of both Houses of the Legislature. In some instances, the electors appointed by legislative choice have been taken from the body of the people at large without previous limitation; in other instances, from a restricted list, nominated in certain proportions by each House of the Legislature, respectively.

In the same States one general mode of appointment has prevailed at one time, and another general mode at another time; the changes having been made as well from one general mode as from the other.

Such are the existing provisions of the Constitution of the United States, and such has been the practice under these provisions. The modes thus used are presumed to have been within the legitimate construction of the Constitution, since the votes of electors appointed under almost every variety of these modes have been admitted in former elections of President and Vice President of the United States. The latitude of expression used in those provisions, and the variety of modes practically adopted under them, seem to have been considered in the first of the resolutions referred to your committee as inconveniences which ought to be remedied.

Your committee are persuaded that the provisions of the Constitution of the United States can, in no instance, be reasonably considered as mere pleonasms or inadvertencies; and, therefore, that the particular phraseology used on the above subject, was not adopted without due consideration. Your committee are equally persuaded that the varieties which have practically taken place under the terms used, are not beyond the contemplation of those who framed the Constitution. These varieties, it is reasonable to suppose, were foreseen, and, being foreseen, were viewed not without favor, as the best means of enabling the people of the United States to combine the advantages of experience with the speculations of theory in relation to this acknowledgedly the most difficult part of their Government in the adjustment, so that they may ultimately settle down into one uniform mode within Constitutional limits, not from Constitutional restriction, but from the convictions of reason founded on experience.

The mode proposed to be exclusively established being clearly within the expressions of the Constitution, if upon experience and comparison with other modes, equally within those expressions, it shall be found to possess superior advantages, or, possessing equal advantages, to be liable to fewer or less considerable inconveniences, your committee will not distrust the good sense of the people of the United States, in ultimately selecting this mode without Constitutional restraint, as their uniform mode of electing the President and Vice President of the United States.

Your committee hold it foreign to their duty to enter into a comparative view of the merits and demerits of the various modes which have been or may be adopted under the existing provisions of the Constitution of the United States; they hold it sufficient to authorize the rejection of any proposition for the exclusive establishment of any particular mode, if such mode shall, upon candid examination, be found liable to serious abuses of most dangerous consequence to the public peace; against which abuses, under such mode, no practicable means have been, or probably can be found, for prevention or remedy.

The liability of the mode proposed to such abuses cannot be made more manifest than by a brief review of the essential details of that mode.

To carry into effect the mode proposed to be exclusively established, every State must necessarily be divided into a number of districts in proportion to the number of electors to be appointed in each State, respectively. These districts must, of necessity, be again sub-divided, for the convenient reception of the votes of the people. Authority must be delegated to one or more officers in every sub-division of every electoral district throughout the United States for the purpose of receiving those votes.

Amidst so great a variety of officers thus to be intrusted, it would be against the calculations of all experience to suppose there would not be found some who might be reasonably suspected of a liability to the deviations of error, if not to those of a worse nature. No government upon earth has, or can have, competent knowledge of so great a variety of individuals, as to insure, through the cautiousness of appointment, against such deviations in all instances. Absolute prevention, then, is not to be expected.

The votes of some, possessing the right of suffrage, may be rejected; the votes of others, not possessing the right of suffrage, may be admitted; whether such rejection or admission proceed from error of judgment, or from design, it will equally lay the foundation of a contested or disputed election between the candidates for the electorship.

When the votes of the several sub-divisions of an electoral district have been taken, the polls, or lists of those votes, must be brought together for an addition and comparison; and a return must be made of the person appointed an elector. Whether that return be made by the officers (authorized originally to receive the votes) in a collective body, or whether it be made by some other authority, to which those officers may be directed to transmit the polls or lists of the votes taken by them, there may (amidst the conflict of passions, too likely to prevail on such occasions) too probably be found means of suppressing the polls, or lists of votes of some of the sub-divisions of a district, or of preventing or delaying the transmission thereof; so that one man might be returned in apparent conformity with law, the elector of a district, when, in reality, another may have been appointed by the people of that district.

The common experience of elective governments evinces that cases, such as those above suggested, are by no means out of the course of probable occurrence. Instances of disputed elections, contested upon similar grounds, frequently occur in ordinary legislative bodies, notwithstanding the knowledge that a remedy exists within the scope of the power of those bodies. The protracted periods of their sessions give time for investigating and deciding upon the merits of such contested elections. The knowledge of the practicability of such remedy probably tends to discourage the greater frequency of such occurrences.

But the bodies of electors in each State, respectively, from the necessarily restricted periods of their sessions, are incapacitated to collect the necessary evidence, and to pursue such other steps as are essential to the investigation of and decision upon the merits of a contested election of one of their members, were they otherwise competent thereto. Those, therefore, who may be returned electors, whether duly and really appointed or not, will, in practice, exercise the important functions

of electors of the President and Vice President of the United States. No practicable remedy against such abuses appears to exist in the present stage of the proposed system; a knowledge of the defect of such remedy, moreover, it is to be feared, might act as an additional temptation to the frequency of abuse.

The votes of the electors in the several States are next to be rendered by ballot, and, when so rendered, they are to be transmitted in the form of certificates, giving the result of the ballot to certain officers of the Government of the United States. When the period arrives for opening those certificates, and counting the votes in the presence of the Senate and House of Representatives of the United States, if error or abuse shall have taken place, no means exist (in case the ballot be in favor of more than two persons as President and Vice President) for discriminating between the votes of those who shall have been duly appointed and returned, and those who shall have been defectively appointed and unduly returned as electors. To set aside votes given by persons not duly appointed, and consequently wanting the competent authority of electors, no course presents itself in such case, save that of vacating the whole ballot, of which the defective vote or votes may be a component part. Thus, to deprive a State of all participation in the election of the President and Vice President of the United States, on account of the defective appointment of one or a few of its electors, would be a serious and painful duty. To vacate such ballot, and thereby to deprive those candidates for whom the sound votes of such ballot may have been given, of the aid of that ballot, in order at the same time to destroy the effect of the unsound votes, might result in giving to others a priority, to which, if effect could be given to the really sound votes, those others might not be entitled. This also presents an embarrassing consideration.

The vacation of a ballot, composed of sound and defective votes, ought to be the result of uniform principle; it ought to take place on all occasions where a discrimination cannot be made, or on none. Not to vacate such ballot, but to permit the election of a Chief Magistrate to be carried, on any occasion, by the aid of one or more defective votes, would be to hazard, in a most eminent degree, the peace of the Union. It is of the last importance to the happiness of the people of the United States, that a complete conviction should prevail at all times that the person who may be elected Chief Magistrate of the Union has been really elected by electors duly and really appointed by those having competent authority for that purpose. It were painful to anticipate the consequences which would too probably attend a disputed election to the Presidency; those consequences might be more calamitous than can be foreseen.

A mode of electing the President and Vice President of the United States, which might at once combine the expression of the public sentiments of the people of the respective States, with a perfect assurance of the due appointment of the electors for that important purpose, is a discovery greatly to be desired; that such mode may be found, under the present provisions of the Constitution of the United States, and will be discovered by the good sense of the American people, when aided by further experience, is confidently hoped. Under such circumstances, to adopt exclusively the mode proposed by the first resolution referred to your committee, might not only preclude the advantages of further experience, and the adoption of a more eligible mode, but might tend to perpetuate, as well as to render more frequent the occurrence of those exceptionable incidents which have been before suggested, and for which it is difficult, if not impracticable, to find adequate and convenient means of prevention or remedy.

These considerations induce your committee to prefer the existing provisions of the Constitution of the United States to the change proposed by the first of the resolutions referred to them.

In relation to the second resolution referred to your committee, they report, that the objects directly contemplated therein are already within the limits of the Legislative authority of the Government of the United States. To convert a Constitutional provision for the exercise of Legislative authority, to which recurrence may be had at all times, and under which such modifications may be introduced, from time to time, as the public good or convenience may require, in the ordinary forms of legislation, into a specific Constitutional prescription, seems to be both superfluous and inconvenient.

The adoption of the change proposed in the second resolution would also, in the opinion of your committee, indirectly tend to withdraw from the Government of the United States its existing control over the appointment of one of its most essential branches, and to vest that authority exclusively in the State Governments. Such arrangement might produce consequences not contemplated, and too unpleasant to be anticipated. Your committee, therefore, conceive it to be inexpedient to adopt the proposed change on this subject, and submit the following resolutions to the consideration of the House:

Resolved, That it is inexpedient to change the Constitution of the United States, in the manner proposed by the first of the aforesaid resolutions, in relation to the election of the President and Vice President of the United States.

Resolved, That it is inexpedient to change the Constitution of the United States, in the manner proposed by the second of the aforesaid resolutions, in relation to the election of members of the House of Representatives of the United States.

SEDITION ACT.

The House went into a Committee of the Whole on the unfinished business of yesterday, which was a resolution reported by the Committee of Revisal and Unfinished Business, for continuing in force an act commonly called the Sedition law.

Mr. BAYARD said that after what had fallen from gentlemen who opposed the revival of the Sedition law, it became necessary for its former friends to support it in their own justification.

He thought, from a consideration of the nature of the law and the crimes it was intended to punish, viz: false, scandalous, and malicious libels, it was surprising it should meet with any opposition. Is it, he said, no crime falsely and maliciously to asperse the Government of the country? From the enormity of the offence, and the extent of the injury, it was necessary to make examples of such offenders in order to deter others. Were he in a despotic country, he would feel but little anxiety about this subject; but in this country we stand on different ground. Our Government depends much upon the opinion of the people. To mislead or corrupt public opinion, is to sap the pillars which support the Government, and produce its ruin.

Gentlemen say, and pretend to think, there is no necessity for a law of this kind; that the good sense of the people will prevent the evils apprehended from false publications. It is, however, found that the most intelligent are deceived in this way. When falsehoods are stated in newspapers as facts, and remain uncontradicted, what chance is there for their not being believed? The gentleman from Maryland, (Mr. Nicholson.) was himself so far deceived and deluded that he ventured to state to the Committee one of these assertions as a fact. This is adduced to show in a strong point of light the necessity for such a law. Mr. B. had as much confidence as other gentlemen in the good sense, integrity, and patriotism of the people, when not misinformed. To prevent this is the object of the law; that newspapers may thus be made the channels of truth, punishment is only to be inflicted when known falsehood is maliciously published. Can this be called no crime? Can any one say a man may falsely, wickedly, and maliciously publish things with a view to destroy the Government, and yet not be amenable to justice?

It is allowed that Government has power to punish insurrections, and even combinations to prevent the execution of the laws. If this may be done, should not the instruments of insurrection and illegal combinations also be punished? May we not strike at the root of the evil? May not false publications produce insurrections? In his opinion, there would have been no insurrection in this country, had it not been for the publication of false, scandalous, and malicious libels. Unless provided against, the time may come when the country will be deluged with evils occasioned by such falsehoods.

The gentleman from Virginia, (Mr. Nicholas.) opposed the law as essentially wrong both in theory and practice. Mr. B then entered on a review of the cases in which it had been carried into practice. Respecting Callendar's trial he knew but little. The doctrine advanced by the court was a very alarming one in the opinion of the gentleman from Virginia. The jury had a right to decide upon the law and fact, but not upon the constitutionality of the law; the judge was therefore authorized in prohibiting any argument on that point.

He then took a view of the case, in which, it was said, an honorable gentleman of that House had been fined in a large sum, and confined in a loathsome dungeon. What, he inquired, was the object in mentioning that case? A libel was published against the Government; a jury of the country declared it to be false, scandalous, and malicious, and yet the punishment is complained of as a hardship! As well might we be told of hardship when a felon suffers for his crime; or that it was hardship when a vote was taken for expelling the honorable gentleman from this House.

Will you say that the judge and jury were corrupt? The House by a vote sanctioned their decision. He was convicted by a fair trial, and if the court did wrong, so did this House. If the court, acting under oath, entered so far into party prejudice as to neglect their duty, why not impeach the judges? It is improper to cite these authorities when the judges cannot justify themselves. This is a case of real hardship. Why do not gentlemen come forward and impeach the judges if they have done wrong? They are not above the justice of the country. It would be administered even against them. They are said to be under party prejudices. Mr. B. believed they could be trusted. He never suspected them of doing wrong; full evidence should be adduced of it prior to its being believed. Will gentlemen say there is no chance for impeachment, because a majority in both Houses are biased by the same party prejudices? What is the amount of this argument? Those who think with me are impartial; those who differ from me are under party prejudice. Mr. B. believed the gentlemen opposed to him sincere in their intentions. He also believed the judges were sincere; that they had been correct in their principles. He was warranted in what he said by the charges made against them being groundless.

The charges delivered by the judges have been complained of. The object of the charges has been to inculcate a love of order and good government. This might be party prejudice in the opinion of some gentlemen; if so, he must still applaud the judges.

It is said, the law is unconstitutional. He thought a sound mind might be intuitively convinced of the contrary. If such a law is necessary to preserve and continue the Constitution, it is Constitutional. It is necessary to defend the Government from the attempts of assassins. If you allow the Government to be brought into contempt, the Constitution will become a baseless fabric, and in time will vanish away. The right to make such a law he thought was clearly and expressly given in the 8th section of the 1st article of the Constitution, which says, "Congress 'shall have power to make all laws which shall 'be necessary and proper for carrying into execution the foregoing powers, and all other powers 'vested by this Constitution in the Government 'of the United States, or in any department or 'officer thereof." In his opinion, the law is so essentially necessary, that without it the Government would be paralyzed and stripped of all defence. He thought it unnecessary to trouble the House with further argument, as those offered were sufficient in his opinion; he knew of no stronger ones.

Mr. B. was of opinion, that if this law is permitted to expire, the common law will be in force, by which fine and imprisonment are unlimited, and truth is not allowed to be given in justification. By some it is denied to be the law of the land. It ought to be remembered that the common law is the parent not only of the liberty of this country, but of England and all Europe. How differently, he said, we feel from what our ancestors did who were ready to spill the last drop of their blood in its defence! To the common law we owe the trial by jury, and many other

rights; yet it is reprobated. Is it not the boast even of Virginia? Was it not objected to the Constitution in the Virginia Convention, that it did not recognise the common law? The Constitutions of all the States are predicated on the common law, which is made up of the rules of right reason, founded on the experience of ages. If courts are not bound by the common law, they must be governed by their own arbitrary will. If the common law is not binding, there is no law, and gentlemen surely cannot dream of liberty without law. If we are governed without law, it is despotism, whether government is by the will of one or many. Were we left to the will of courts we should be in a state of uncertainty; we should be liable to suffer from caprice, vice, folly, and every weakness. The existence of the common law is of immense importance; without it, the Constitution would be a mere skeleton, devoid of sinews and nerves, and incapable of motion.

Gentlemen seem to suppose they have started an insuperable difficulty by asking what period you will fix on for taking the common law, and with or without the modifications of different statutes.

He would take it as taken by the States, with no more difficulties than our ancestors took it. It was no difficult matter to draw the line. He would take it at the adoption of the Constitution, as modified by the statutes of the States. What objection could be made to this? Was there more cause of alarm at its being adopted by the United States courts than in the courts of the different States, where they love the common law? They cannot surely object to it as it is dispensed in all the courts.

To paralyze the General Government, and confide all power to the State courts, is a system invariably pursued by some gentlemen on this floor. He was not, therefore, surprised that they should wish it not to be the law of the courts of the United States. We must, however, have one of the two alternatives; take the common law or have no law. The courts must be either despotic, or bound by the common law.

If a government were given to this Territory, and a Judiciary established, it would be under the common law. Whenever a constitution is formed, it is bottomed on the idea of the common law being in existence. The ancient opinion was that the common law was the law of the United States. Now, judges are called despots for deciding by it. This is the novel opinion which should be scouted from the floor of the House.

Mr. B. referred gentlemen to the 11th article of the amendments to the Constitution, which says, "No fact, tried by a jury, shall be otherwise re-'examined in any court of the United States, than 'according to the rules of the common law." Here the existence of the common law is recognised, unless the article is without meaning.

Suppose a man convicted of treason, and a motion made for a new trial, must not the determination be by the rules of common law?

In the third section of the tenth article of the Constitution, after defining the extent of judgment, it is said, "But the party convicted shall 'nevertheless be liable and subject to indictment, 'trial, judgment, and punishment, according to 'law." It could be only the common law here referred to.

In cases of impeachment, how would Senators form their opinion? The Constitution has given no direction as to the manner of conducting them. The common law only could direct.

Persons can be impeached only for offences against the United States. After conviction, they may be punished by law; certainly the common law, and that part of it which relates to criminal cases.

Again, in the same article, felony and breach of the peace are spoken of; how are these to be defined? Only by the common law. In defining a breach of the peace there are many nice distinctions.

Mr. B. said he could cite many other cases, but they were not necessary. He would, however, refer gentlemen to the opinions given in the course of legislation, which was a fair mode of construction.

Those who first had the Government of the United States in their hands proceeded upon the opinion that the common law was the law of the land. In one place they recognise the right of common-law remedy. In the act establishing the Judiciary they say, "The circuit courts shall have 'concurrent jurisdiction in all suits at common 'law."

Mr. B. concluded by saying: If I am correct in my position that the common law is the law of the land, the Sedition law ought to be continued, because it limits and softens the penalties in cases of libels, which are very harsh according to the common law. The gentleman from Virginia has rightly appreciated my motives in wishing to renew this law, when a different administration is to take charge of the public welfare.

Mr. Gallatin said it had been his intention not to rise again on this subject, but as the gentleman from Delaware had said, that if this law is not continued in force, the common law will be the law of the land, he would make a few observations. As to the constitutionality of the law, it is alleged to be necessary for carrying into operation certain defined powers of the Constitution. Surely this law cannot be necessary to carry into effect these defined powers, if the common law will remain in existence according to the gentleman's opinion. He rests much upon the necessity of it to protect the Government from slander. Mr. G. supposed the evils arising from this source were not so much to be dreaded as those which would result from the attempt to punish slander. He wished to know what a false, scandalous, and malicious libel is. If punishment could be confined to those only who published as facts what was unsupported by truth, he would not think the law improper. It could not, however, be denied that recourse must be had merely to the opinion of the judges respecting things of very difficult definition.

The gentleman from Delaware had entered

largely into the discussion of what had never been denied, that the common law is in some measure the law of the land. But after he had paid every encomium to the common law he allowed it to be harsh in respect to libels.

The Sedition act says truth shall be given in evidence, the gentleman supposed that without that provision the judges would be bound to decide by the common law. He thinks, too, that it has gone further, by allowing the jury to determine the law and the fact, as in other cases. This supposes they had not this right before. Then as to libels the common law is contradictory to its usual allowance.

In a cause of this kind in England, a judge gave it in charge to the jury that they were only to inquire whether a certain paper was printed and published by the accused. As well might he in a case of murder tell them they were only to inquire whether the accused had killed the man, without any attention to the criminality of his intention.

Mr. G. did not think the courts of the United States would at once assume jurisdiction over libels, according to the common law, in case this act was not revived.

The gentleman from Delaware had mentioned the case of a member of this House who had been punished under the Sedition law, and considered the vote given for his expulsion as a sanction of the decision of the judge and jury. In such instances the Constitution declared that two-thirds were necessary for a decision. This was provided on the principle that such might be the prevalence of party spirit, that a majority would agree to expel without well-grounded reasons. The vote was, therefore, a nullity, as two-thirds did not agree to it. Mr. G. considered laws of this kind as the means of introducing party views into courts of justice; and that it was only in such cases that any danger of partiality was to be apprehended; here it is to be apprehended, unless you can suppose judges become different men merely by being placed on the bench. It is also certain that the jury must be composed of one or the other party, and is, therefore, incompetent to decide upon opinions. He did not suppose them intentionally doing wrong. He asked if any gentleman in the House would be willing to be tried for a libel by a jury chosen from the members of it who are of different political opinions? He confessed he would not.

The gentleman from South Carolina had said, that in a certain trial the judge had permitted a book or newspaper to be read, although it was not legal evidence. This shows that the accused was at the mercy of the judge, since he could not claim it as a right.

The same gentleman had spoken of the impropriety of the President being summoned as a witness. Suppose a person is accused of having written and published a false and malicious libel, in which he states that the President has expressed certain opinions; on the trial he says, I will prove the truth of my assertions; how is it to be done? By printed declarations? No; that is not legal evidence. He cannot summon the President. Thus, though truth be on his side, he cannot give it in evidence. This shows how difficult it is to carry such laws into effect without oppression. Thus the provision that truth may be given in evidence is rendered useless.

Finally it is said that as it is upon public opinion our Government depends, the public opinion should be guarded from corruption. What, he asked, is meant by saying the Government depends upon public opinion? Surely it is not intended to mean whether there shall be a Government or not. It can only relate to the persons who administer the Government. It depends wholly on the public opinion, who shall administer the Government, but not whether there shall or shall not be a Government.

Mr. G. contended that the common law is modified by different Governments. To suppose that truth should not be given in evidence was inconsistent with the nature of our Government, and if this law did not exist, the common law would be thus modified in this country.

If the existence of this law had been found to correct public opinion it would be well to continue it. In this country, he said, opinions were divided between two sets of men, and the people will vote for those who they conceive will best answer their views. Mr. G. could not see how this law would correct or render pure the channels of information, if only certain kinds of libels were punished. How, he asked, has it been executed? Only by punishing persons of politics different from those of the administration. It has not prevented the corruption of public opinion, according to the explanation which the gentlemen in favor of the law have themselves given of those words. If the Sedition law was adopted only as a part of defensive measures, it is no longer necessary.

Mr. Otis said, that when the gentleman from Pennsylvania, (Mr. Gallatin,) who had last risen, contended that the law which the resolution intended to revive, provided for the punishment of opinions, as well as of actions, he spoke a language quite unintelligible to him. This sentiment had been often repeated, and he would test its soundness by an appeal to the gentleman himself. Would that gentleman, however unfavorable his opinions may be of the Administration of this country, consent to adopt any of the methods described in the act to express his censure? Would not he, or any other gentleman of his party, blush and be ashamed to publish a writing, false, scandalous, and malicious? He presumed the answer must be affirmative. Yet that gentleman would not and did not hesitate to declare opinions injurious to the Government; he was not afraid to express any sentiments which he entertained upon this subject, without an idea of incurring the penalties of this act. This, then, Mr. O. contended, was a fair standard to try the meaning and extent of the provisions in this act, and to show that they did not apply to matters of opinion. Cases indeed might possibly arise in which the mere forms of expressing opinions might be adopted as

the disguise of an intended libel. A man might choose to think everything that is infamous and atrocious, and to publish his thoughts without a fact to justify them. In other words, positive assertions might be conveyed under the assumed form of opinions to evade the law. In these cases his cunning ought not to serve for his protection, but still the law did not restrain free investigation, nor even the most acrimonious censures of the measures of Government, unless they are falsehoods direct, scandalous, and malicious.

Mr. O. professed his admiration at the dexterity with which the opponents of the resolution had contrived to shift the burden of proof from their own shoulders to those of its friends, by leading them insensibly into a discussion of the original merits of the measure. He understood it to be an agreed point in the first stage of the debate, to waive all argument in relation to the constitutionality of the act, and simply to consider its expediency. But this ground is changed by degrees, and principles and arguments which have been frequently canvassed to the bottom, are once more brought into view. He did not, however, feel it incumbent on him to follow gentlemen upon this ground. He would not, at this time of day, permit himself to be seduced into a new argument upon the constitutionality of the measure. It was sufficient for him, that, on former occasions, he had not shrunk from this discussion. It was sufficient for him, that a glance at the Constitution demonstrated its powers to extend to all cases in law and equity, arising under the Constitution, and that this word, *law*, intends the common law, without which whole phrases, as well as many technical terms contained in that instrument, must remain destitute of interpretation. But above all it was a sufficient answer on this occasion, that the wisdom of a former Legislature, composed of a majority of the present members, after great deliberation, had adopted this law, as a safeguard against the rapid progress of an unparalleled licentiousness, which threatened the subversion of the Constitution. When it is considered, further, that this House has, in two instances, affirmed the constitutionality of this most salutary law; once by rejecting a resolution to repeal it, and once by sanctioning the judgment of a court in the case of the member from Vermont; was it reasonable to expect that a majority would be formed ready to abandon a doctrine to which they had, with such solemnity, subscribed their assent? For these reasons, said Mr. O., we are acquitted from all obligation to justify the act upon the principles which gave it birth, and in my turn I call on gentlemen to prove the mischiefs and grievances which have sprung from it. Let them show that it has been used as an instrument of oppression, and the scourge of innocence. Let them demonstrate its inexpediency from the practice that has arisen under it, and if they succeed in this attempt, then, indeed, with a good countenance, they may call on us to rescind it.

What then, said Mr. O., are the mischievous consequences that have resulted from this act? What are the abuses which are incident to its operation? Two arguments are principally relied on by the gentlemen from Virginia and Pennsylvania. They contend that there exists a moral incompetency in our Federal courts to decide causes of this description with impartiality; and again they say, with the gentleman from Maryland, that the law has been executed with rigor. But why are the Judges of the Federal Courts disqualified to decide upon cases of this nature? It is answered that they owe their appointments to the President, and are naturally inclined to support the side that may be supposed most congenial with his feelings and interests. In vain we reply to this suggestion, that although the President appoints the Judge, yet the tenure of his office is perfectly independent, and his salary permanent. This is true, say gentlemen, but he may be a candidate for the office of Chief Justice, or for a foreign mission. Now, it happens unfortunately for this argument, that not one of the judges who has yet presided at a trial for a libel has been either promoted to the office of a Chief Justice, or sent upon a foreign mission. This species of reward must therefore be allowed to be a very precarious compensation for a violation of oaths and an abandonment of duty. Sir, arguments like these are a satire upon the nature of man, and his capacity to frame a Constitution; when you have selected men of talents and tried integrity for judicial stations, and rendered them independent by ample salaries, you have done all that human prudence can devise, and you have done enough.

With equal justice, said Mr. O., might it be pretended in the present case that our courts are not competent to try an action of debt where the President is interested, or an assault and battery upon his person, or a riot, or combination, to obstruct him in the discharge of his official duties. In these cases your judges would be equally liable to the influence of an unjust partiality, if such partiality could be presumed. But the objection of incompetency extends not merely to the judges. The jurors are also disqualified for an impartial discharge of their duty. They are returned by the marshals, who are appointed by the President. I repeat, sir, that this argument is unfortunate in the quarter whence it proceeds. It is in those parts of the Union only where this law is obnoxious that the marshals have this power of returning jurors; a power derived from their State laws, which they may change at pleasure, and which the laws of the Union do not affect.

Let us then advert, Mr. Chairman, to the cases which have been noticed as instances of the rigorous operation of this law. In the case alluded to by the gentleman from Virginia, it is said that the people of that State were astonished at the extraordinary proceedings of the presiding Judge. But where the cause of the astonishment consisted, the gentleman does not explain. The question, however, is not whether that Judge was singular, or even mistaken, in some of his opinions or rules of proceeding, but whether substantial justice was done on the trial. Will the gentleman tell us the people of that State consider

the sentence unjust or the punishment severe? Do they accredit the charges contained in the book of that most infamous culprit? Will they countenance the atrocious falsehoods for which he was punished? I think too well of the people of Virginia to believe this to be possible. The case from Pennsylvania has been thoroughly sifted and explained by my friend from South Carolina, who was present at the trial. In regard to the other case of a member from Vermont, I forbear to make any remarks, the circumstances of it being recent and familiar to the recollection of the House. It was not my wish to allude to it. If that member enjoys the serenity of an approving conscience, it shall not be disturbed by me; but if, on the other hand, past scenes are with him a source of pain and regret, I will not plant with my finger an additional thorn in his bosom.

We come now, Mr. Chairman, to the case of the Boston printer—to the poor, unhappy man, who died a martyr, and is now alive. Two persons of the same name were concerned in publishing the Boston *Chronicle*, one of them the ostensible owner and editor of the paper; the other, the superintendent of the business. A very gross libel appeared in that paper, for which the editor was perhaps recognised to answer, but was never brought to trial. He was in the last stage of a consumption, and was finally arrested, not by the Marshal of the district, but by that grim messenger whose mandate strikes terror to the heart of the false and malicious libeller. He died in his own house, and peace to his ashes. The other party, who conducted the business of the office, was at length arraigned for the offence. But, sir, not upon the Sedition law, not in a court of the United States, but upon that good old wholesome common law, to which the people of our country cling as the charter of their most precious right; a law, sir, by which we yet hope to preserve our religion, our morals, and our ancient habits. He was convicted, not by a jury returned by a marshal, but by the verdict of twelve honest men, chosen by lot from the whole town in which he dwells, and he was sentenced to imprisonment for a short period, I believe not more than two months, certainly not exceeding four. This, Mr. Chairman, is the case selected as an instance of the most cruel oppression of this law. This is the man who, until within a few hours, was thought, not only by the gentleman from Maryland, (Mr. NICHOLSON,) but by a great majority of this House, to have perished in a prison under circumstances of aggravated wretchedness; and while many a patriotic heart beat high with indignation at this treatment, and many a pious, sympathizing friend, sang requiems to his departed spirit, this dead man had escaped from prison, was at his old trade again, and the groans of his press, under the new weight of new libels, echoed responses to the lamentations of his friends.

Sir, said Mr. O., I dwell upon this case, not with a view to triumph in the misstatement of the gentleman from Maryland, but to draw from it a strong and conclusive inference in favor of the act. What plainer evidence can you have to prove that these outrageous falsehoods do not merely waste their force upon the desert air? They sink deep into the minds of men in high stations, and bear directly upon the measures of this House and Government. Can that gentleman, can any other honorable member of this House, distinguish what portion of the ingredients that form the combination of prejudices, which he may have conceived against the Government, consists of such materials? And, sir, when men in important public stations—men qualified for them by their talents—when minds to which all the avenues of intelligence are open, are exposed to all these delusions, what can you expect from the gaping and promiscuous crowd who delight to swallow calumny? What from the sons of riot, and intemperance, and idleness, who cluster in the alleys and dram-shops of your cities? What from the more innocent but equally deluded yeomanry, among whose sequestered retreats these poisons are scattered by officious missionaries who prowl through the country, disturbing the silence of the woods and tranquillity of the cottage? Can it be a subject of wonder that ordinary minds are agitated with a mighty ferment when these tales are woven with such art, circulated with such industry, and repeated with such effrontery as to produce belief in men generally well informed? Under these circumstances do you wonder, sir, that the fear of future danger should absorb the consciousness of actual security, and that men should be roused into active opposition to the best and mildest system of government? Sir, these consequences are natural in course, and accordingly you this day are a witness to them. The men who framed and who, for twelve years have nurtured the Constitution; the men under whose administration our affairs have prospered, and our agriculture and commerce flourished beyond all former experience, are now driven from the helm and are succeeded by whom? By those who, I hope, will do equal justice to the confidence of the people.

Mr. Chairman, I pity the blindness of that man who does not perceive that the press is the engine which is probably destined to overturn the Government of this country. It has been instrumental, indeed, of the greatest benefits to mankind, by the destruction of systems founded in civil and religious tyranny, but it may be rendered not less formidable to governments which have the freedom and happiness of man for their basis. In no country was a more systematical and inveterate design to destroy a government by means of the press manifested than it is in ours. There is nothing sacred in virtue, nor fair in character, nor endeared by services, which does not fall a prey to the insatiate fury of certain printers and their abettors. The immortal WASHINGTON has been charged with murder, and with speculating in the funds with the public money; the President of the United States has been accused of designs to change the Constitution, to establish monarchy, and to maintain himself in place by an army; the late Secretary of State has been represented as a peculator; the late Secretary of the Treasury, a man who is an ornament to his country, has

been stigmatized as the felonious burner of public offices and records. No mercy has been observed in the violation of truth and decency; no character has escaped, unless protected by its own congenial infamy and baseness. Yet, sir, these are offences which we have no power to punish! These are merely the feverish symptoms of liberty, which truth alone is sufficient to allay!

But we are told, Mr. Chairman, that under the new order of things, no use will be ever made of this law, and it is therefore superfluous to re-enact it; that the new Administration will disdain to avail itself of its protection; and that such measures will be pursued for the preservation of harmony, as will secure us from the penal consequences of the common law, by depriving us of all cause of complaint. Sir, to this argument I reply, that if the law is to fall into disuse, no harm can result from its revival, and the anxiety of gentlemen is the more extraordinary. But when gentlemen promise us that this law will remain a dead letter, they can speak only for themselves as individuals. Hitherto, much greater rigor and keenness in prosecutions for libels have been displayed by the party opposed to this law than by its advocates. Look at the prosecutions, and menaces of prosecution, in Pennsylvania. Reflect on the amount of Republican damages. The enormous sum of two thousand dollars was lately awarded for a libel, against a young printer, at the suit of a Democratic Republican. A judgment which I will venture to say will prove more oppressive than any adjudication under the sedition act. I learn from good authority that other prosecutions are pending, and others still threatened from the same quarter, so that no great reliance can be had upon the forbearance of gentlemen in this respect. I confess, sir, however, it is with great pleasure I hear it announced by the gentleman from Virginia, that great union of sentiment, and general harmony, will prevail under the new administration. I wish, however, he had condescended to be more explicit. Is the system adopted for the support of our public credit to be maintained? Without this there can be no harmony. Will an adherence be observed to the principles of a fair and impartial neutrality in the European contest? For, without these things, there will be no safety, and, of consequence, no harmony; but if the gentleman will give us satisfactory assurances upon these topics, and a few others that might be mentioned; if, in a word, the credit and the honor of the country shall be preserved by the energy of Government, we may yet hope for this desirable harmony.

The gentleman from Pennsylvania, said Mr. O., has reported the intimation that no advantage has resulted either to the Administration or its friends from this law. But, sir, if this were true, it would furnish no argument against the law itself. If it has not been enforced, the makers of it are not culpable for the omission. I believe, sir, that very material benefits would have flown from it had ten prosecutions been instituted where one has been; had three or four venal presses, set up with foreign money, and conducted by incendiary emigrants, been crushed and silenced. But although these have been tolerated by an abused and insulted people, and are still suffered to disgorge their impurities, yet has the law been productive of important advantages. It has enabled us to rescue the Constitution from misconstruction; it has established a high and binding precedent; it has developed principles essential to the security of all government; which opposition itself, in a season of returning moderation and reflection, will be compelled to acknowledge and adopt.

Sir, the gentleman from Pennsylvania contends that the prosecutions under this act, have been confined to men of one political sect, and mentions a pamphlet printed in New York, as a libel which has been permitted to pass unnoticed by the magistrate. But there is a singular infelicity in the choice of this example; without giving any opinion upon the pamphlet alluded to, I will remind that gentleman, that whatever might have been the designs of Government, they were anticipated by the eagerness of democratic zeal. A certain Northumbrian apostle of liberty rode post to New York to snatch the Sedition law from the hands of his friends, and to apply it with his own hands. To have interrupted him, in this promising pursuit, would have furnished real cause for complaint: no other instance is quoted by the gentleman, but his proposition may be nearly correct. It is for libels upon Government and its officers, alone, that Congress is authorized to provide a punishment. The State laws are competent to redress the injuries of individuals, and in Pennsylvania at least, no charge can be made of an indisposition to afford this redress.

Mr. Chairman, I will not enlarge at this late hour upon the cases furnished by that gentleman's imagination, in which a failure of justice might happen through want of evidence or other means. In these, as in all other cases where the best evidence is of necessity precluded, that which is next in the nature of things and in the power of the party, is permitted. I see nothing in the Constitution or the law, or in the practice under the law, that should induce those who once supported it, to desert it at this moment. The prospect of a war with France is more remote, but the temper of the times is not changed, nor the licentiousness of the press controlled. We may want this law as a coat of armor to defend us from persecution, and we should be willing to give to the new Administration the means of protection that have been provided for their predecessors. For these reasons my vote will be given in favor of the resolution.

FRIDAY, January 23.

Mr. GRISWOLD, from the Committee of Ways and Means, presented a bill making appropriations for the Navy of the United States for the year one thousand eight hundred and one; which was read twice and ordered to be committed to a Committee of the whole House on Monday next.

On motion it was

Resolved, That the Committee of Ways and

Means be instructed to inquire into the expediency of obliging the respective officers intrusted with the collection of the revenue, to enter into such bonds as will more effectually secure the payment of moneys received by them for the use of the United States; and that they report by bill, or otherwise.

Mr. Rutledge, from the committee to whom was referred, on the twentieth instant, the letter from the Commissioners of the City of Washington, relative to the accommodation of the Supreme Court of the United States in the Capitol, made a report; which was read and considered: Whereupon,

Resolved, That leave be given to the Commissioners of the City of Washington to use one of the rooms on the first floor of the Capitol for holding the present session of the Supreme Court of the United States.

The bill presented yesterday to provide for the better establishment of the post roads of the United States was read twice, and committed to a Committee of the whole House on Wednesday next.

Mr. Henry Lee, from the committee appointed, presented a bill for the government of the District of Columbia; which was read twice and committed to a Committee of the whole House on Wednesday next.

DISTRICT OF COLUMBIA.

The following resolutions were laid on the table by Mr Harper, and directed to be printed.

Resolved, That, for completing the public buildings, already commenced at the City of Washington, the sum of —— dollars, to be paid in annual instalments of one hundred thousand dollars each, ought to be advanced by the United States by way of loan; and that the public property in the said city, after discharging the incumbrances incurred for former advances for the said city and buildings, ought to be pledged and applied, under the direction of Congress, as a fund for the reimbursement of the said loan.

Resolved, That the said sum, and all other sums applicable to the same objects, and hereafter to be received, or now on hand, ought to be applied, under the direction of the Secretaries of the State, Treasury, Navy, and War Departments, with the approbation of the President of the United States; and that the said Secretaries, or any three of them, ought to be empowered to employ a proper clerk or clerks for keeping the accounts for the said expenditures, and all suitable architects, agents and workmen, for carrying on and completing said buildings.

Resolved, That a suitable apartment or apartments, in that part of the Capitol already finished, ought to be fitted up for the temporary accommodation of the Courts of the United States, appointed, or hereafter to be appointed, to be held in the said city, and of such courts as may hereafter be appointed to be held therein for the Territory of Columbia; and that, in completing the Capitol, permanent accommodations for the said courts ought to be provided therein.

Resolved, That the sum of —— dollars, annually, ought to be appropriated towards the establishment of a National Library, to be applied under the direction of the Secretary of State, and that a suitable apartment, in that part of the Capitol which is now finished, ought to be fitted up for the reception of the said Library; and that, when the Capitol shall be completed, suitable apartments for the reception and use of the said Library ought to be provided therein.

Resolved, That the sum of —— dollars ought to be appropriated for the suitable furnishing of the President's House, to be applied under the direction of the Secretaries of State, Treasury, War, and Navy Departments, with the approbation of the President of the United States; and that the said Secretaries, or any three of them, ought to be empowered to employ a suitable agent for that purpose.

Resolved, That the Board of Commissioners for the City of Washington ought to be discontinued, and the public property in the said city to be placed under the direction of the Secretary of the Treasury, with authority to appoint such clerk or clerks, for the particular management thereof, as he may judge necessary; and that all powers, rights, duties, and trusts, now vested in, or belonging to said board, ought to be transferred to the said Secretary.

SEDITION LAW.

The House resolved itself into a Committee of the Whole on the unfinished business of yesterday, which was a resolution reported by the Committee of Revisal and Unfinished Business, for continuing in force the act commonly called the Sedition law.

Mr. H. Lee rose to express his great pleasure at the very fair and candid manner in which his colleague (Mr. Nicholas) and the gentleman from Pennsylvania (Mr. Gallatin) had conducted themselves towards the State he represented; but he could not wholly approve of the sentiments expressed by them.

With respect to the constitutionality of this law, after what had been so ably advanced by his friends in its behalf, he would only observe that even with the suspension of those sentiments, or without any other support, the decision of the sub-court ought to be with every gentleman, and effectually was with him, sufficient to remove every possible doubt. From the moment of that decision every doubt ought to have ceased, and the question never again to have agitated the Congress of the United States. Those who had been taught to obey the Constitution, must approve of its decisions, and nothing could be more evident than that the reference to the Judiciary of our Government was the precisely accurate mode of ascertaining the veracity of a Legislative measure.

The gentleman from Pennsylvania had told the House that this law was the offspring, and had become a part of a defensive system, adopted when the aggression of a foreign foe raised into action every measure of repulsion within the power of the country, and that it was so considered at a succeeding session of the House. Not having the honor of a seat in the House at the time, Mr. L. said he did not know; but, whether that was the reason of its adoption, or whether not, he could not agree with that gentleman that the occasion for this law was at an end. He would not hesitate for a moment to say that this law ought to be perpetual. It was from this impression that

he should vote for the report, and with pleasure would go farther and make it a perpetual law.

In order to examine the propriety of this opinion, it would be necessary to examine the law. What were its provisions, and what its object? Its object is to support your Government—not by suppressing the truth—not by suppressing information proper to be known to your people—not by violating the rights of even the humblest of your citizens—but by giving the truth, and the truth only, its dominion. The gentlemen must pardon him in contradicting them when they said that it operated to the injury of our citizens. He must deny the assertion that the honest well-intentioned citizen could possibly receive the least inconvenience from this law. He owed it to himself and to his friends with whom he usually voted, to declare that it was their most sincere desire to give every truth and every act to the community. He would contend that this law went to adopt, as far as a law could do, measures for the express protection of truth. After a provision against unlawful and forcible combination, the law provided a protection to the Government, by guarding it from the consequences of false and malicious defamation.

He would ask gentlemen to consider candidly whether, if the establishment of an oligarchy, of a monarchy, or of an aristocracy, was desired in this country, how the object could be more easily attained than by beginning with undermining the Government; and how could the Government be undermined but by removing, by every possible manœuvre, the public confidence from that Government? Would not prudence dictate to such characters to bring the Government into contempt? This was too plain to be answered negatively; it must be answered affirmatively. If these efforts then might produce such a result, or if such measures could lead to it, would it not be highly unbecoming those whose duty it was to watch and repel every avenue and attempt that could possibly tend to such an event, not to support the authorities of the country by using every effort to the destruction of such measures? Most undoubtedly so. He contended that it was a most important duty, without the performance of which the House of Representatives would be traitors to that people whose good ought to rest upon the heart of every man, and whose interest could never be more faithfully effectuated than in the perpetuating of a law which would effectually go to protect the Government of their choice.

He was surprised at his colleague's objection, and that of the gentleman from Pennsylvania, when it was made so evidently to appear by the gentleman from Maryland (Mr. Dennis) that such a protection was afforded by their own State constitution and law! This truth was too strong to be resisted. He believed it to be the case in almost every State. And if so in the individual States, why should not so valuable a remedy be afforded to the Government of the Union? This was the charter of our venerable sires, and what principle should withhold this disposition from their enlightened and experienced sons? Why should that be denied to the supreme Government which every member of the House, and which every individual in the Union, enjoyed? Why should gentlemen deny that to the Federal Government which was granted to the separate Governments?

There was, however, Mr. L. said, a point of view which this subject assumed to him of a very important nature, and which he had not heard from any gentleman. Unless this deluge of falsehood and defamation was impeded in its course, or prevented by wholesome and timely provisions, the confidence of the people is removed, and even beyond possibility of relief; that fatal blow once given to the confidence of the people, all efforts to re-establish that confidence is in vain.

But gentlemen say that unless this law is suffered to fall, you resist the voice of the people. How do they estimate this fact? In whatever way the voice of the people has been heard on that subject, it is in favor of the law; for expression of the public approbation has been experienced in the re-election of men whose principles are in perfect accordance with those who first enacted it. Added to this, has not Virginia, after expressing her pointed disapprobation of this measure, submitted her arguments and her definitive vote to all her sister States; and out of them how many were there found to approve of her measures? Very few, indeed. He believed out of the sixteen, not more than two or three!

Mr. L. could not but admire the soothing manner in which his colleague consoled the House on the change of politics that was about to take place. For the first time since he had the honor of a seat in the House, had he heard such harmonious and highly grateful accents drop from the lips of that gentleman. As this measure would, most undoubtedly, tend to increase and establish the happiness and security of the Government, and all its well disposed citizens, he hoped that gentleman's harmonious disposition would let us be so for life, and retain to the Government their wonted protection, notwithstanding the change of men and politics. Whosoever of the two great characters should direct the helm of our State vessel—whether he be taken from the South, or whether from the fertile fields of the Hudson—he would be willing to give him all the opportunity of tranquillity, so sweetly promised by his honorable colleague.

But how short lived were these pleasing accents! How soon did we hear from the associates of that gentleman the most poignant anathemas against the Judiciary of our country? Such as could scarcely be thought possible to escape their lips against men who have no opportunity of vindicating themselves! Where are vanished those pleasing forebodings of political happiness? Is it the way to make the people happy to depict the supreme Judiciary of our country—men who hold their offices, not for a day, not during Executive pleasure, but for life—to depict those men in colors so unworthy their high characters! But certain he was that the gentlemen were incorrect in their opinions. Was he not well assured that they

were in an error, and believed with them that the Judiciary were partial and corrupt, his duty would excite him to join them; not perhaps in attacking men who were not able to answer in the House, but in taking measures whereby a full and fair examination should be had. This he knew to be the mode which true candor would point out.

True it was that a great change had been made in the direction of our affairs; he did hope (though he did not believe) this change would be productive of much good to the people. Believing that this law would be a protection to the Administration in the ways of truth and virtue—wishing to do unto others as he desired they should do unto him—how could gentlemen on the other side suppose that they would violate their principles of honor and integrity so much as to depart from a system they had raised for themselves? What better attachment could be displayed than to afford the future Administration the same aid which was afforded to one more peculiarly approved of by a majority of the present House?

Mr. L. concluded by expressing a most sincere hope that the success under the operation of this law, and a full satisfaction of its being strictly Constitutional, in the opinion of the judges, which our Government stamped with its authority, might operate to continue to the Government every necessary protection, and evince to the world that the political setting of the Federal side of the House was as bright as its rising, and their last acts devoted to the public good.

Mr. Macon said, no member of the House was more willing than himself that the question should have been taken without debate; but, since gentlemen who differed with him in opinion had chosen to discuss it, he should not shrink from it; especially as, he firmly believed, he had both the Constitution and truth on his side.

It was a little curious to observe the manner in which those who approved the law, changed the ground on which they defended it at different times. It originated in the days of alarm, and was then supported as a part of a system of defence against France; at that time this common law of the United States, of which we now hear so much, was not talked of. The second time it was before the House, it was brought up by many petitions from the people in different States, praying for its repeal; then, too, it was considered as a part of the system of defence, and, as the dispute with France was not settled, it was said to be improper to repeal it. At the last session, when a motion was made to repeal the second section of the act, the law was then supported on this reason, to prevent the operation of the common law, and to afford the gentlemen themselves the liberty of expressing their sentiments, if founded in truth, and expressed with decency; and so it is that the friends of order and good government now want the Sedition law to protect themselves.

If the common law is actually in force, it is rather extraordinary that gentlemen will not make the law uniform, so as to comprehend all the cases of libels which it is pretended would be cognizable in the Federal courts under that law, if this was not in force. A libel upon the President of the United States, the Senate, or this House, is not to be actionable at common law; but suppose a person to libel the Supreme Court of the United States, he is not to be punished under this act, but at common law. A court can as easily be libelled as any department of the Government; where, then, is the necessity or reason for inflicting the punishments for the same crime, under two laws, so different, if the common law is really in force in the United States?

It has been said, by publishing calumny and falsehood, Government may be destroyed. This Mr. Macon did not believe, nor did he believe that ever a Government was destroyed or a revolution brought about by such means. Falsehood cannot make a good administration bad, or a bad administration good. No administration need ever fear false publications, it can always destroy their effects whenever it pleases by publishing the truth, and truth alone can destroy Governments; nor need any administration fear anything but the truth. Was our Revolution brought about by the publication of a falsehood? No, sir, it was not; it was by publishing and proclaiming the truth. As to the execution of the law, it would be needless to state the facts which have been stated by others; he would only say that, in his opinion, it was worse than the law itself, which he had always believed to be unconstitutional; and there was no doubt but the execution was as unpopular as the law.

It has been said, owing to the prevalence of crimes, which this law is intended to punish, that men grown grey in the service of their country, had been turned out of office. Mr. M. knew of no man that had been turned out of office, except it was done according to the Constitution, or a law made in conformity to it. What, sir, was this law made and is it now wished to be continued in force, to prevent the freedom of elections! If this is not the plain result of the idea, I am at a loss to know what it does mean. Are not our elections to be free? Have we not a right to investigate the characters of those who are candidates for our suffrages? Are not these our Constitutional rights as freemen? Why then do gentlemen wish to continue this law in force to deprive the people of their dearest rights? Surely if men are not approved, after they have been tried, they ought to be turned out of office; the end of elections is choice. But we have been told, to induce us to continue this law, that the illustrious Washington had been called a peculator and a murderer. Mr. M. never heard of the first charge before this day, nor of the second till within a few days past, and that, too, was in this House. He had no doubt but the gentlemen had heard what they asserted, nor had he any doubt but the person who first pronounced the report knew it was not true; and its circulation must have been very confined indeed, and so it will be with all such reports.

Mr. M. said he saw no necessity for this law; a good character does not want its support, and a bad character does not deserve help. He believed the Senate would not agree to renew this law for

themselves; no future President, he expected, would wish it for himself; what, then, do we want it for ourselves? No gentleman will say that he wished a sedition law to stop the people's mouth about him, or anything he should do in this House. The gentlemen who support this act, have always told us that their actions were founded on such principles, that they should never be ashamed of them anywhere. Let us be free to act for the good of the people, and let the people be equally free to examine our conduct in any manner they may think proper. Gentlemen do not mean to do any act which should make this law necessary; why then continue it in force? We have been told by a gentleman that he heretofore voted for this law, and that therefore he should vote for it again. Surely there cannot be a worse reason for a vote than this; it goes on the principle of never changing, and if a law be once passed, it must remain a law forever. The same gentleman once voted for an army, yet we found him ready, on a fit occasion, to vote for the discharge of that army, and that army too was considered a part of the system of defence; if the army could be spared from the general system formerly adopted, there certainly could be no necessity for this law, at this time, unless indeed it is now wanted for some other purpose than formerly. The same reason ought to have continued the army; but as the army was disbanded, when the necessity ceased for which it was raised, and the system of defence broken, why then should the law be continued as a part of that system, when there was no occasion for it?

It has been said, that a part of this House are always crying out against the unconstitutionality of every act they do not approve. The answer to this is very easy. There is another part of the House that never questions the constitutionality of anything; and if one part questions the constitutionality of everything, the other does not of anything; one side believes it has limits, the other believes it has no limits.

Mr. M. observed, as to what had been said on the subject of juries, he would only say, that no Federal jury had ever been got in the State in which he lived, in the same manner that jurors were obtained for the State courts; perhaps it was impossible, under present circumstances, because all the jurors for both superior and inferior courts were appointed by the county courts and then summoned by the sheriff of the county. The Federal court, he believed, in that State, generally determined from which counties the jurors should be summoned, and left it to the discretion of the marshal to summon whom he pleased. The marshal is appointed by the President; in States where he summons whom he pleases for jurors, it is most probable they will all be of one party.

Another reason had been urged for continuing this law in force, which is this, that it was believed there were newspapers in this country under the influence of a foreign Power. Whether this was a fact or not, he did not know; but he well recollected that not long since there was a press in the United States, which was pretty much caressed, the editor of which was a foreigner, who gloried in being the subject of a foreign Prince; the contents of his paper are not yet forgotten, and, strange to tell, he never heard that this law had been put in operation against that person.

It is not pretended that the next President, let him be who he may, will want this law. No action for a libel has ever been brought at common law in the Federal courts; the reason was obvious, the States as united have no such law, whatever they may have in their individual character. Without this act, or the operation of the common law, we had flourished for many years. The law would hereafter be useless, it was unpopular and believed to be unconstitutional. It would increase rather than lessen party spirit, and it ought to be the object of all to harmonize as much as possible. He therefore trusted that the law would be suffered to expire, never again to be renewed.

Mr. Dennis.—Like the gentleman from North Carolina, who has this moment resumed his seat, I was one of those who were satisfied to have taken a silent vote on the question before us; and on yesterday voted against the rising of the Committee, in order that a definitive decision might have taken place; but since the gentlemen opposed to the continuance of the law have determined to protract the debate, and since it is probable this day will be consumed in the discussion, I shall claim the indulgence of the Committee, whilst I submit some sentiments on the occasion. During this discussion, I have remarked that observations on the constitutionality of the law have generally been avoided, yet that some objections have been interspersed of that nature among the arguments against its expediency; while, therefore, I do not intend an analytical review of all the opinions which have hitherto been advanced, either in favor of or against its constitutionality, the remarks which I shall make will occasionally apply as well to the one as to the other. Those gentlemen who have distinguished themselves by their opposition to this law, have laid down the following standard by which to test the extent of Congressional power relative to this subject: First. That Congress can exercise no powers but such as are specifically delegated by the Constitution, or such as are incidental and necessary to the execution of those specific powers. Secondly. Admitting Congress to have originally possessed the power of passing laws similar to the present, they have been restricted therefrom by the prohibitory amendment of the Constitution, which, among other things, declares that Congress shall pass no law abridging the liberty of the press. In relation to the first branch of the subject, even the gentleman from Pennsylvania, (Mr. Gallatin,) does not insist that there exists in us no such thing as incidental power, nor does he contend that we can exercise no power but such as we can find expressly mentioned in the Constitution; but while he admits the existence of incidental authority, he requires that we shall demonstrate the impossibility of preserving the Government, or giving efficacy to those duties which it is enjoined upon us to perform, without exercising the power in the present instance. And how will this

gentlemen expect this to be proved? Are we to prove it by actual experiment? Are we to sit still and suffer the Government to be subverted, in order that we may experimentally prove the powers we may exercise, in order to preserve it? Doctrines similar to these were inculcated with considerable gravity during the first insurrection in Pennsylvania. It was then contended that the President could not call out the militia to suppress the insurrection, until it should be fully proved by actual experiment that the ordinary powers of the Judiciary were incompetent to suppress it. That is, that although it was evident, from the number and the preparations for resistance by the insurgents, they could not be subjected to the ordinary powers of the Judiciary, yet the militia could not be drawn out until the marshal and his *posse comitatus* had been first murdered or imprisoned. This sophistry, however, did not then pass for argument, and I hope will not in the case before us. To candid minds it would seem sufficient to show, that the publication of false, scandalous, and malicious matter against the Government, in its immediate consequences, tends to produce insurrection and a total disrespect for its authority; and that, without the power of preventing these, no Government can exist. And will it, sir, be contended that such publications have not this effect? Let me suppose Congress to have passed some important law, which should peculiarly interest the people and meet the disapprobation of certain sections of the Union; and let me suppose a printer, in order to increase their discontents, to publish a very circumstantial, but false and malicious account of his having evidence that such law was passed by the bribery and corruption of a certain foreign Minister, mentioning the sum which each member had received; would not the law, in case these reports were credited, be resisted in its execution? Yes, a high-minded Republican people would and ought to resist it, while under such impressions. Sir, there is no crime which will not be sanctioned by this new doctrine of the liberty of the press: Treason itself may be committed with impunity, if such principles be established. According to the construction which by some is affixed to the amendment to the Constitution, Congress can make no law in any manner affecting the press, because they say every such law must amount to an abridgment thereof. Let me suppose our country at war, and a hostile fleet upon our coast, and that a number of hand-bills be printed and circulated in this fleet, giving particular information of the most vulnerable part of our territory, and of the deposites of our military stores; this, if done by letter, or verbally, would amount to treason, yet if the press be inviolable to the extent contended for, no punishment could reach the crime. It has been frequently remarked, that there exist in a statutory code a number of crimes, the power of creating which rests upon precisely the same basis as the law which is the subject of discussion; and yet no objections have ever been made to their constitutionality. Such are the crimes of perjury, bribery, falsifying the public records, and misprision of treason; for creating these crimes no express provision is made in the Constitution; and if we were, agreeably to the position of the gentleman from Pennsylvania, obliged to show, in the manner he contends for, that without such laws our Government could not be preserved, we should be obliged to yield the point of their unconstitutionality.

I shall now proceed to examine this law, as it is supposed to be prohibited by the 3d amendment to the Constitution, which stipulates against abridging the freedom of the press; and believing it to have grown into a maxim with many gentlemen of this Committee, that the State of Virginia can do no wrong, and that the seal of infallibility is stamped upon her Legislative acts, I shall bring into view a clause in her Declaration of Rights on the subject of the press, and certain Legislative acts, and then compare both with the 3d amendment to the Constitution of the United States, and the law now under consideration; and if it shall be found that the Declaration of Rights of Virginia has provided as strongly for the liberty of the press as the amendment to the Federal Constitution, and that certain Legislative acts of that State have gone as far to punish its licentiousness, as the law now proposed to be continued, it will then be proper to inquire, what are the exclusive prerogatives which have absolved their Legislature from the obligation to which they have so strenuously contended, the Legislature of the Union are bound to yield obedience? And in answer to their representations, we may say, take the beam out of your own eyes, before you undertake to pluck the mote out of ours. By the 12th article of the Declaration of Rights of Virginia, it is provided: "That the liberty of the 'press is one of the great bulwarks of liberty, and 'can never be restrained but by despotic Govern-'ments." It is believed that this expression does not substantially vary from the amendment of the Constitution, which says, among other things, "that Congress shall make no law abridging the 'freedom of speech or of the press." By an act of Assembly of the Commonwealth of Virginia, passed in 1775, it is provided as follows:

"Sec. 1. Whereas, at the present time of danger, the safety of the people more especially requires that all persons who are so wicked as to devise the destruction of good government, or to obstruct the operations of the laws, should suffer punishments suitable to their crimes;

"*Be it therefore enacted, &c.*, That if any person residing or being within the Commonwealth, shall, from and after the publication hereof, *by any word, open deed*, or act, advisedly and willingly maintain and defend the authority, jurisdiction, or power of the King and Parliament of Great Britain, heretofore claimed or exercised within this Colony, or shall attribute any such authority, jurisdiction, or power, to the King or Parliament of Great Britain, the person so offending being legally convicted thereof, shall be punished by fine and imprisonment, to be ascertained by a jury, so that the fine exceed not the sum of twenty thousand pounds, nor the imprisonment the term of five years.

"Sec. 2. *And be it enacted, &c.*, That any person who shall maliciously, or advisedly, endeavor to excite the people to resist the government of this Commonwealth, as by law is established, or to persuade them to return to a dependence upon the Crown of Great Britain, or who shall maliciously or advisedly terrify and discourage the people from enlisting in the service of the Commonwealth, or dispose them to favor the enemy, every person so offending, and being legally convicted thereof, shall be punished with fine and imprisonment as aforesaid."

It is not my intention to comment at large on this law, but have stated it as a fact upon which each member of the Committee will indulge his own sentiments and opinions. I will, however, state that this act goes further than the act of Congress; since it not only punishes libellous publications, but also inflicts a punishment far exceeding that contained in the Sedition act, for verbal communications, and touches not only the liberty of the press, but the liberty of speech likewise. If the high sentiments of liberty, which animated the people of Virginia, during our Revolution, did not induce them to believe that when their Legislature had provided for the punishment of slanderous, libellous, and malicious publications against their Government, their liberties were thereby destroyed, I flatter myself that these same people, with their fellow-citizens of the United States, will not now be duped into the opinion that an act of Congress, which punishes such false, scandalous, and malicious publications against their Government, with an intent to vilify, degrade, and subvert its authority, is tyrannical and oppressive.

By another act of the Assembly of Virginia, originally passed 1661, and re-enacted in 1792, entitled "An act against divulgers of false news," it is provided as follows:

"Whereas many idle and busy-headed people do forge and divulge false rumors and reports:

"*Be it therefore enacted, &c.*, That what person or persons soever, shall forge or divulge false rumors or reports tending to the trouble of the country, he shall be, by the next justice of the peace, sent for and bound over to the next county court, where, if he produce not his author, he shall be fined two thousand pounds of tobacco, (or less, if the court think proper to lessen it,) and besides give bond for his behaviour, if it appear to the court that he did maliciously publish or invent it."

By another act of the same State, passed in 1785, entitled "An act punishing certain offences and vesting the Governor with certain powers," in the third section, it is enacted, "that every per-'son who shall attempt to establish such Govern-'ment, (meaning a division of Virginia, and the 'establishment of another State therein,) by any 'other means than with the assent of the Legisla-'ture of this Commonwealth, and in pursuance of 'such attempts, shall join with another person or 'persons in any overt act for promoting such at-'tempts, or who shall, by writing or advisedly 'speaking, endeavor to instigate the people of this 'Commonwealth to erect or establish such Govern-'ment, without such assent as aforesaid, shall be 'adjudged guilty of a high crime or misdemeanor, 'and, on conviction, shall be subject to such pains 'and penalties, not extending to life or member, as 'the court before whom the conviction shall be, 'shall adjudge."

Such, sir, are the Legislative acts, and such the Bill of Rights of the State of Virginia. Perhaps the gentlemen in the opposition may yield to these high authorities, when reason and argument have ceased to operate. There is no man who will contend, that if the Sedition act be a violation of the amendment of the Constitution, these several acts of the Virginia Assembly are not equally infractions of their Bill of Rights. But it is my opinion that, in the formation of these laws, neither the one nor the other have transcended the limits of their respective charters. But these acts of Virginia prove, as far as any Legislative interpretation can prove, that, by the term liberty of the press, is not to be understood an entire exemption from all responsibility for slanderous and libellous publications, and perfectly confirm the idea annexed to it by the friends to the act in question. If, however, it may be found that these authorities have no influence on our opponents, let me resort to the opinions of certain great and prominent characters, who concentrate, perhaps, more than any others, the confidence and attachment of the citizens of Virginia, and to whose political opinions, on all other occasions, these gentlemen have yielded a ready obedience. Soon after the Declaration of Independence, the State of Virginia, finding it necessary to change her laws so as to adapt them to the new political situation which she had assumed, appointed a committee with plenary powers to that effect; among these gentlemen were the present Chancellor of the State, (Mr. Whyte,) the President of the Court of Appeals, (Mr. Pendleton,) and the now Vice President of the United States, who entered upon the duties assigned them; and among a great variety of bills which they presented, was one entitled an act regulating proceedings in the courts of common law, in which is contained the following clause:

"In an indictment or information for a libel, the defendant may plead a justification, and if the jury find the fact contained in the libel to be true, he shall be acquitted."

In the draught of a Constitution, which was prepared by Mr. Jefferson, to be submitted to a Convention intended to be called by the State of Virginia, in 1783, are the following expressions:

"Printing presses shall be subject to no other restraints than to liableness for false facts printed and published."

It will be recollected that, at the time of the ratification of the Federal Constitution, Mr. Jefferson was our Minister in France; on being informed of its ratification, in a letter to his correspondent here, dated Paris, July 31, 1788, after expressing his satisfaction at the event, he proceeds to give his opinion in favor of adding to the Constitution a Bill of Rights, and, among others, of stipulating for the freedom of the press. In this letter are contained these expressions:

"A declaration that the Federal Government will never restrain the presses from printing what they

please, will not take away the liability of printers for false facts printed. The declaration that religious faith shall be unpunished does not give impunity to criminal acts, dictated by religious error."

After the third amendment before mentioned, in relation to the press, was proposed to be added to the Constitution, and sent by his correspondent to Mr. Jefferson, in a letter dated Paris, August 28, 1789, Mr. Jefferson says:

"I like it as far as it goes, but I should be for going further; for instance, the following alterations and additions would have pleased me: Article 4. 'The people shall not be deprived of the right to speak, to write, or otherwise publish anything but false facts, affecting injuriously the life, liberty, property, or reputation of others, or affecting the peace of the Confederacy with foreign nations.'"

[Here Mr. Nicholas interrupted Mr. Dennis, by asking him the title of the book from which he read the above extracts.]

Mr. Dennis replied that the book which he held in his hand was a collection of the publications on the Alien and Sedition law, and that the above extracts were taken from one of the pamphlets composing the collection, published at Richmond, in 1798. That, with respect to the authenticity of the extracts, he (Mr. D.) had compared them with the publication of Mr. Jefferson's letters, which appeared in *Freneau's Gazette*, in 1791, and which were then published by Mr. Jefferson's friend, in order to vindicate him against charges of hostility to the Federal Government, and he knew them to be correct.

Mr. D. then proceeded: Such, Mr. Chairman, are the opinions of these learned jurists, of these enlightened expositors of political law. Very different, indeed, from this new doctrine, that it is impossible to restrain the licentiousness, without destroying the liberty of the press. These gentlemen have everywhere discriminated between them, and Mr. Jefferson's letters admit all that is contended for by us. They clearly admit that, before the amendment was superadded to the Constitution, Congress had the power of legislating relative to the press, and that after the amendment was adopted, although they were very properly deprived of the power of imposing previous restrictions thereon, they have a right to punish the authors of false and malicious publications. These documents prove to me, too, that the opposition to this law has not been so much the result of a sense of its unconstitutionality or inexpediency, as of the conviction, that it would be a powerful weapon in the hands of a party whereby to combat their political opponents.

Having said thus much relative to Virginia, forasmuch as the most general opposition to this act has proceeded from thence and the State of Pennsylvania, I shall now claim the attention of the Committee to the 7th section of the 9th article of the constitution of the latter State, which is in these words:

"That the printing presses shall be free to every person, who undertakes to examine the proceedings of the Legislature, or any branch of Government; and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man; and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. In prosecutions for the publication of papers, investigating the official conduct of officers, or men in public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have a right to determine the law and the facts under the direction of the courts in other cases."

Does this article comport with the arguments so much insisted on, in the course of this discussion, that it is in vain that we attempt to distinguish between the liberty and licentiousness of the press? It was not from a representative of Pennsylvania, (Mr. Gallatin) that I expected such declarations; because, in making them, he sets his own wisdom above the wisdom of the constitution of his State. That constitution emphatically declares the liberty of the press to be among the palladia of the most important rights of its citizens, but at the same time explains itself by declaring, that it does not mean to tolerate every species of licentious abuse and defamation, either of a private citizen, or of a man in his official station. There is one more topic in relation to the State of Pennsylvania, upon which I wish to revive the recollection of the Committee; and this is upon the charge delivered by the then Chief Justice of that State, to the Grand Jury, relative to a supposed libel, by William Cobbett, on the memory of Doctor Franklin and His Spanish Majesty's Minister. In this charge there was a very able and elaborate dissertation on the liberty of the press, which, he informed the jury, by no means implied an exemption from punishment for the propagating of falsehood; and he concurred with Justice Blackstone and other elementary writers, that to punish the licentiousness was essential to the liberty of the press. He therein most pathetically deplored the unbounded licentiousness of the American press, which far exceeded that of any other nation; that neither the innocence of youth nor the well-earned reputation of a life devoted to virtue and public service, nor the peace of families, were unassailed by the unprincipled and slanderous publications issuing daily from the press. Now, this same gentleman has since been promoted to the chief executive magistracy of the State, by those very characters who have been so clamorous against this law. Hence I infer, either they have not duly attended to its contents, or that since the exhibition of their petitions against it there has been a revolution in their opinions, and therefore shall deny the fact which has been assumed, that there is a majority of them, or of the people of the United States, opposed to the act. After all, Mr. Chairman, I must believe that this right, claimed so loudly on behalf of the people, is intended only for the security of a few renegadoes, who have gotten our presses into their hands, and who only expect to make the impressions which they wish for through the medium of falsehood and malignity. I never can believe that the people of the United States can connive at such publications, against a Government which has been

erected by their own hands and with which they are themselves perfectly assimilated in interests, and which cannot be aspersed without participating of such aspersion themselves. Nor can I believe that the people of Pennsylvania will think it a high crime to libel the memory of Dr. Franklin or the Minister of a foreign Potentate, and no crime to vilify and degrade the Government of the United States. Whilst every other man, however exalted his rank or station may be, is amenable to the law, shall the printers and authors of false and malicious publications alone be irresponsible? These characters are the authors of insurrections; the President may call out the militia to suppress them, and the deluded victims are to be brought to punishment, whilst the authors of slanderous publications, who have caused the mischief, rest in perfect security, surrounded by the inviolability of the press. I will, Mr. Chairman, no longer trespass on the patience of the Committee; my principal object was to bring into view the different documents to which I have referred, with the hope that they might have some influence upon some gentlemen of the Committee, or at least render them less positive in their opposition than they heretofore have been.

Mr. Lyon.—In the course of the debate on the present motion my condemnation and imprisonment have been introduced by a gentleman whom I highly respect, but without many of the agitations which belonged to that very extraordinary case. A number of gentlemen have told the Committee that they would avoid the discussion of my case in compliment to my feelings—every one of whom, except the gentleman from South Carolina, have done their utmost to wound those feelings. But I can tell those gentlemen it is now too late; I do not thank them for their pretended tenderness; they have heretofore lacerated those feelings by their irritating and abusive language, until I have become perfectly callous to anything that can come from that quarter. I do not think by any means that they should go round my case out of delicacy to me—rather let them defend the indicting me under the Sedition law, for writing and publishing a letter, dated the 20th June, and sent about that time by me to the post office of Philadelphia, which carried the post marks of Philadelphia, July 7th, seven days before the law passed! Let them defend the Judge who refused me a challenge of the jurors, and falsely told me that in a similar case I should not be entitled to a challenge on the jury in the courts of the State where I then lived. This, I say, was false, because there is in Vermont, among the criminal code, a law against defaming courts, &c., which allows the defendant to challenge six of the jury-list without showing any cause! Let them defend the Judge in charging the jury to find me guilty of malicious intentions, on the ground of my known political principles; my opposition in Congress to the Executive, where there was no proof whatever against me of such principles. Here permit me to observe that those who are opposed to the new Administration, have more faith than I have in the Judges, with respect to their attachment to the party they belong to: for my part, after the change in the Administration, in case the law is continued, I have no doubt but Judges may be found who would charge the jury, as in my case, to look to the political principles and conduct of the defendant, and so turn the tables upon them. Had I, therefore, a wish for revenge, I would vote for the bill. I fear no danger from it; I have faith in the new Administration; I shall have no desire to write concerning them, and I now reside in a country where there is no danger of political persecution.*

I must now beg leave to refer to the charge for which I suffered. It consisted of three counts; the first, for having maliciously &c., with intent, &c., written at Philadelphia a letter dated the 20th of June, and published the same at Windsor, in the newspaper called the *Vermont Journal*, containing the words following: "As to the Executive, when I shall see the efforts of that power bent on the promotion of the comfort, the happiness, and the accommodation of the people, that Executive shall have my zealous and uniform support; but whenever I shall, on the part of the Executive, see every consideration of the public welfare swallowed up in a continual grasp for power, in an unbounded thirst for ridiculous pomp, foolish adulation and selfish avarice; when I shall behold men of real merit daily turned out of office, for no other cause but independency of sentiment; when I shall see men of firmness, years, merit, abilities, and experience, discarded in their applications for office, for fear they possess that independence, and men of meanness preferred, for the ease with which they take up and advocate opinions, the consequence of which they know but little of; when I see the sacred name of religion employed as a State engine, to make mankind hate and persecute each other, I shall not be their humble advocate."

The second count consisted of my having maliciously, &c., with intent, &c., published a letter, said to be a letter from a diplomatic character in France, containing two paragraphs in the words following: "The misunderstanding between the two Governments (France and America) has become extremely alarming; confidence is completely destroyed; mistrust, jealousy, and a disposition to wrong attribution of motives, are so apparent as to require the utmost caution in every word and action that are to come from your Executive; I mean if your object is to avoid hostilities. Had this truth been understood with you before the recall of Monroe; before the coming and second coming of Pinckney; had it guided the pens that wrought the bullying speech of your President, and stupid answer of your Senate, at the opening of Congress in November last, I should probably have had no occasion to address you this letter."

"But when we found him borrowing the language of Edmund Burke, and telling the world, that although he should succeed in treating with the French, there was no dependence to be placed

* Kentucky.

in any of their engagements; that their religion and morality were at an end; that they had turned pirates and plunderers, and it would be necessary to be perpetually armed against them, though you were at peace, we wondered that the answer of both Houses had not been an order to send him to a mad-house. Instead of this the Senate have echoed the speech with more servility than ever George the Third experienced from either House of Parliament."

The third count was for aiding and abetting, &c., in publishing the same.

Again. Let those gentlemen justify the Judge in sending a man from the jury, because a creature of a party swore that, at a previous time, he had heard that juror say something like this: that it was his belief that Mr. L. would not be found guilty. This was a man who was summoned through mistake, and without a thorough knowledge of his political principles, and it was necessary to get rid of him some way or other. Let them defend the conduct of the Judge who, in his charge, in order to exasperate the jury against me, descended to degrade his office so much as to tell them I was guilty of forging the writing called "Barlow's letter." "Let," said the Judge, "men of letters read that letter and compare it with Barlow's writings, and they will pronounce it to be none of his!" Let those gentlemen defend the marshal in carrying me, in the most contumelious and degrading manner, upwards of forty miles from the door of the jail of the county where I lived, which is a jail of the United States. Let them defend that marshal for throwing me into a stinking cell of about ten feet by sixteen, the common receptacle of thieves, murderers, and runaway negroes, without anything to keep the cold out where the light came in, and keeping me there four months, nearly one month of which without fire, not having the liberty to procure myself a stove, although in a cold inclement season, whilst the house contained comfortable rooms in plenty, which I could have hired had I been allowed to do it; but he refused notwithstanding my application to him, and the entreaties of several of my friends, offering a security of $100,000 bail for my continuance in the appointed room during the time of my confinement.

Unless gentlemen can defend these things let them speak no more of the superiority of this law over the common law, nor vindicate it upon the limits of its punishment being assigned, the contrary of which I think my experience abundantly proved.

When Mr. Lyon had concluded, the question was taken on agreeing to the resolution, and it was determined in the affirmative by the casting vote of the Chairman, the Committee being equally divided. The Committee rose, and reported the resolution as agreed to. The House then took up the resolution as reported, and on the question will the House agree to the same, it was determined in the affirmative by the vote of the Speaker, there being 48 for it and 48 against it, as follows:

Yeas—Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Lynn, Nathaniel Macon, Peter Muhlenburg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Monday, January 26.

Several other members, to wit: from Kentucky, John Fowler; from Virginia, Samuel J. Cabell; and from New York, Edward Livingston; appeared and took their seats in the House.

A memorial of sundry freeholders and inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, praying that Congress may establish a system of legislation and government for the said District.

Ordered, That the said memorial be referred to the Committee of the whole House to whom is committed the bill for the government of the District of Columbia.

A memorial of sundry mechanics and manufacturers of the city of New York was presented to the House and read, praying that the attention of Congress may be directed to the encouragement and support of the manufacturing and mechanic arts within the United States.

Ordered, That the said memorial be referred to the Committee of Commerce and Manufactures.

Mr. Nott, from the committee appointed, presented a bill to cede to the State of South Carolina certain lands therein mentioned; which was read twice and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire whether any, and, if any, what, amendments are necessary to be made in the acts for the relief of sick and disabled seamen, and that the said committee have leave to report thereon by bill, or otherwise.

The House then went into a Committee of the Whole on the bill regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia; and made several amendments thereto: which were agreed to by the House, and the bill was ordered to be engrossed, and read the third time to-morrow.

On motion it was

Resolved, That a committee be appointed to inquire whether it be necessary to ascertain the northwardly boundary line of the tract of land in the Territory of the United States Northwest of the Ohio, reserved by the State of Virginia for satisfying the bounty rights of the officers and soldiers of the Virginia line on the Continental establishment, and that the said committee be empowered to report thereon by bill or otherwise.

Ordered, That Mr. Bird, Mr. M'Millan, and Mr. Varnum, be appointed a committee, pursuant to the said resolution.

The House went into a Committee of the whole House on the bill to discharge Samuel Lewis, senior, from his imprisonment; and no amendment being made thereto, the bill was ordered to be read the third time to-morrow.

Mr. Platt, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report what laws have expired, or are near expiring, and require to be revived or further continued, made a report, in part; which was read and considered: Whereupon,

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of continuing the act, entitled "An act further to suspend the commerical intercourse between the United States and France, and the dependencies thereof," passed the twenty-seventh day of February, one thousand eight hundred; and that the said committee be authorized to report thereon by bill or otherwise.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, to whom was recommitted, on the fifteenth instant, the report of the said committee on the petition of James Clark; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of the said James Clark cannot be granted.

The House went into a Committee of the Whole on the bill to allow the transportation of goods, wares, and merchandise, to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras; and, no amendment being made thereto, it was ordered that the bill be engrossed, and read the third time to-morrow.

Tuesday, January 27.

An engrossed bill to allow the transportation of goods, wares, and merchandise, to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras, was read the third time, and passed.

An engrossed bill regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia was read the third time and passed.

Resolved, That a committee be appointed to inquire into the expenditure of money made by the Commissioners of the City of Washington; the disposition of public property made by them; and, generally, into all the transactions of the Commissioners which relate to the execution of the trust confided to them by the President of the United States; and that the committee report thereon to the House.

Ordered, That Mr. Griswold, Mr. Waln, Mr. Sheafe, Mr. Nott, and Mr. Henderson, be appointed a committee, pursuent to the said resolution.

On motion of Mr. Gregg, that it be

"*Resolved*, That a committee be appointed to inquire into the expediency of amending the act, entitled "An act, supplementary to, and to amend the act, entitled an act to establish an uniform rule of naturalization, and to repeal the law heretofore passed on that subject, so as to admit aliens who were resident within the limits, and under the jurisdiction of the United States, prior to the 29th day of January, 1795, and who have continued to reside as aforesaid, to become citizens of the United States;"

The resolution was ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the resolution reported by the Committee of Ways and Means, that it would be inexpedient to repeal the act, entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves. This resolution produced a lengthy debate, rather of a desultory nature, in which Messrs. Griswold, Bayard, Dana, Champlin, Cooper, Nicholson, Harper, Varnum, and Gallatin, took part.

The Committee rose without coming to a decision on this resolution, and were then refused liberty to sit again. A resolution having the repeal of that law for its object was referred to the Committee of Ways and Means with instructions to report a bill for that purpose.

SAMUEL LEWIS.

An engrossed bill to discharge Samuel Lewis, senior, from his imprisonment, was read the third time; and on the question that the same do pass it was resolved in the affirmative—yeas 67, nays 13, as follows:

Yeas—Willis Alston, George Baer, Phanuel Bishop, John Brown, Robert Brown, Christopher G. Champlin, Gabriel Christie, William C. C. Claiborne, William Cooper, William Craik, Samuel W. Dana, John Davenport, John Dawson, John Dennis, George Dent, Joseph Dickson, William Edmond, Joseph Eggleston, Abiel Foster, John Fowler, Albert Gallatin, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich Andrew Gregg, Roger Griswold, John A. Hanna, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, David Holmes, John Wilkes Kittera, Michael Lieb, James Lynn, Edward Livingston, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Abraham Nott, Harrison G. Otis,

Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, John Reed, Nathan Read, John Rutledge, William Shepard, John Smilie, John C. Smith, Richard Dobbs Spaight, Richard Stanford, James Sheafe, Benjamin Taliaferro, Samuel Tenney, George Thatcher, Richard Thomas, John Thompson, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, and Robert Williams.

Nays—John Bird, Samuel J. Cabell, Mathew Clay, Lucas Elmendorf, Edwin Gray, George Jackson, Aaron Kitchell, Henry Lee, Nathaniel Macon, John Randolph, John Smith, Thomas Sumter, and Abram Trigg.

Wednesday, January 28.

Mr. Harper, from the committee appointed, presented, a bill to amend and to continue in force the act, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" which was read twice and committed to a Committee of the whole House on Friday next.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to consider whether any, and what, alterations are expedient in the rates of estimating foreign coins and currencies; with leave to report by bill, or otherwise.

The House then went into a Committee of the Whole on the bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio; and after considering the same the Committee rose, without coming to a decision, and had leave to sit again.

EXAMINATION OF THE TREASURY.

Mr. Otis, from the committee to whom was referred, on the 25th of November last, the letter of the Secretary of the Treasury, announcing his resignation; which committee was instructed, on the second ultimo, to examine into the state of the Department of the Treasury; into the mode of conducting the business thereof; and into the expenditure of public money; and to report to this House such facts and statements as may conduce to a full understanding of the transactions of the Treasury, since the same has been under the superintendence of the officers now at the head of that Department, made a report; which was read, as follows:

The committee to whom was referred the letter from the late Secretary of the Treasury, of the 22d of November last, report:

First: In relation to the general state of the Department, and the mode of directing the business thereof:

On the 22d day of May in the year 1794, a report was made to the House of Representatives, by a committee appointed to examine the state of the Treasury; in which the manner of conducting the business of the Department was detailed with great accuracy, the duties of the various officers and their mutual checks upon each other, explained; and the rules and proceedings observed in the collection, keeping, and disbursement of the public moneys, and in accounting for the same, described with minute precision. It does not appear that any objection has ever been made to the forms of doing business specified in that report, or that the committee, after a most ample and elaborate investigation of the regulations adopted in the Department, entertained doubts of the judicious and competent nature of the arrangement and distribution of the powers and duties of the officers. The attention of the present committee was, in the first instance, occupied in comparing the present forms of proceeding at the Treasury, with those heretofore exhibited; and, upon a careful examination, they are satisfied that, while the principles of that system have been maintained and matured, a close adherence to established usage has been observed; and that the Department itself is so organized by law, and the mode of doing the business is so devised, as to afford the most perfect security to the nation, from the misapplication of the public moneys.

These moneys do not, in any instance, pass through the hands of the Secretary of the Treasury; he merely authorizes the receipts and disbursements, by warrants in favor of and upon the Treasurer. These warrants are all signed by the Secretary, countersigned by the Comptroller, and registered by the Register. The Treasurer is the medium of the receipts and disbursements of the public moneys. Those who collect these moneys can only discharge themselves by warrants in favor of the Treasurer. The Treasurer can only obtain credit for payments from the Treasury by warrants on himself. All moneys received by the Treasurer are deposited by him in the Bank of the United States, and other banks; and the actual amount of moneys in the custody of the Treasurer, may be at any time ascertained, independently of his own returns, by the statements which are constantly made and transmitted to the Secretary, by those who collect and receive public moneys into their custody, in the different parts of the Union. His accounts must be rendered quarterly, and oftener if required, to the Comptroller, and annually to Congress.

Secondly: In relation to receipts and expenditures:

It is the uniform course of business at the Treasury, immediately after the close of each session of Congress, to enter in a book kept for that purpose in the office of the Secretary, the various objects for which appropriations of money have been made by law, and to credit each head with the whole amount of the sums appropriated to it. The same proceeding is observed in the offices of the Comptroller and Register. No disbursements are made by the Treasury, but in pursuance of laws authorizing the expense; and all warrants for the disbursement of moneys are forthwith entered to the debit of their respective heads of appropriation. These books are open to the daily inspection and revision of the officers of the Department; and, by means thereof, the expenditures may be promptly compared with the appropriations. In no instance does it appear to the committee that the expenditures have exceeded the legal appropriations. They have not, however, presumed it to be within the meaning of their instructions, that they should exhibit a detailed statement of the receipts and expenditures at the Treasury. For these they refer to the annual and other periodical statements, which are enjoined by law, and which have been regularly submitted to Congress; and, especially, to a report of the committee of the House of Representatives, of the 8th of May last; in which the sum total of the receipts and expenditures of the present Government, from its commencement to the end of the year 1799, is exhibited at one view.

By the constitution of the Treasury Department, the

Secretary superintends the collection of the revenue, and grants all warrants for moneys issued from the Treasury, in pursuance of appropriations made by law; but he is not responsible for the application of moneys issued from the Treasury for the use of the other Departments. When, for example, appropriations are made for the Departments of State, of War, or of the Navy, the Secretary of the Treasury, as also the Comptroller, are bound to prevent the advances from exceeding the appropriations. The disbursements and application of the moneys so advanced, to the various objects of public service, are necessarily made under the immediate superintendence of the other Departments, subject to a revision and final settlement by the Comptroller of the Treasury. But, from the nature of the public business, it becomes indispensably necessary, in most cases, that advances should precede the services for which the moneys are destined—as these services are of great magnitude, branched out into a variety of details, and performed by numerous agents. It results that while voluminous accounts are in a train of settlement, sums to a great amount must at all times appear debited to individuals, to be accounted for in course, although they are known to have applied the same according to law, and although in many instances they may have exhibited sufficient vouchers for their discharge.

The foregoing inquiries embrace the principal duties of the Secretary of the Treasury; in the discharge of which the Department is regulated by positive laws and established forms. In certain cases, a limited discretion is either given or implied in the nature of transactions performed under his agency. This happened chiefly in three instances: First, in contracts for the loan of money for the public service. Secondly, in providing and remitting to Europe funds for the discharge of the foreign debt. Thirdly, in measures adopted to enforce punctuality on the part of public agents and officers, in the payments of moneys into the Treasury.

First, in regard to loans of money:

On the first of February, 1795, being the day when the late Secretary of the Treasury was commissioned, the temporary loans to the United States by the Bank of the United States and the Bank of New York, exclusive of five hundred thousand dollars in stock, purchased on credit as hereinafter mentioned, amounted to four million nine hundred thousand dollars; at the same time the United States, however, were possessed of five thousand shares of the capital stock of the Bank of the United States, purchased with part of the proceeds of the said loans.

The following loans have been negotiated by the late Secretary:

1. Under the act, entitled "An act for the reimbursement of a loan authorized by the last session of Congress," passed on the 21st day of February, 1795, the sum of eight hundred thousand dollars.

The above loan was obtained of the Bank of the United States, at 6 per cent. interest, and was declared to be repayable by instalments of two hundred thousand dollars each, on the last days of December, in the years 1796, 1797, 1798, and 1799.

2. Under the act, entitled "An act making further appropriations for the Military and Naval Establishments, and for the support of Government," passed on the third of March, 1795, the sum of five hundred thousand dollars.

3. And under the same act, the further sum of five hundred thousand dollars.

The two last-mentioned loans were obtained of the Bank of the Unted States, at 6 per cent. interest; on the first, from April 1, 1795, and on the second, from October 1st, 1795, repayable in one year from the dates of the respective advances.

4. Under the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," the sum of five hundred thousand dollars.

The above loan was obtained of the Bank of the United States, at 6 per cent. interest, from January 1, 1796, repayable on or before the 1st of January, 1797.

5. Under the act, entitled "An act making provision far the payment of certain debts of the United States," passed on the 31st of May, 1796, there was obtained on the Bank of New York, at 6 per cent. interest, the sum of three hundred and twenty thousand dollars.

6. Under the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," there was obtained from the Bank of the United States, on the last day of December, 1798, at 6 per cent. interest, repayable on or before the first day of January, 1803, the sum of two hundred thousand dollars.

The six loans above mentioned amount to two millions eight hundred and twenty thousand dollars.

The first loan of eight hundred thousand dollars was negotiated for the pupose of effecting a treaty of peace with Algiers. On the 4th of February, 1795, the subject was submitted to the consideration of Congress, in a Message from the President. This Message was referred to a committee of the House of Representatives, consisting of Mr. Sedgwick, Mr. Madison, Mr. Baldwin, Mr. William Smith, and Mr. Giles. The Secretary of the Treasury was desired by the committee to ascertain in what manner the proposed loan could be obtained; and it is stated by him that the specific terms on which the contract was afterwards concluded, were presented to the committee; who, after being informed of causes which rendered any other mode of remitting so considerable a sum to Europe, at that time, either impracticable or highly inexpedient, approved of the proposal of receiving the amount of the desired loan in 6 per cent. stock, and of remitting the same to London to be sold on account of the United States. Being fully apprized of the manner in which the law would be executed, the committee reported certain resolutions on the 9th, which were adopted in a bill by the House of Representatives on the 11th and 12th of February, without opposition.

The House of Messrs. Baring & Co., of London, were, on the suggestion of the Secretary of the Treasury, designated by the then Secretary of State, to negotiate sales of the stock, and hold the proceeds subject to the disposal of the Minister of the United States at Lisbon. The Secretary of the Treasury is considered in no manner responsible for the subsequent disposition of the fund; though, by this remark, the committee do not intend to suggest that the management had been improper; which they have no reason to suspect.

The necessity of negotiating the second and fourth loans, of five hundred thousand dollars each, was evinced by an examination of the state of the Treasury, on the first of April, 1795, and first of January, 1796. The third loan of five hundred thousand dollars, negotiated on the first of October, 1795, appears to have been in like manner justifiable, with this additional circumstance in favor of the transaction, that an equal sum was applied on the same day to the payment of the

six per cent. stock purchased by the Secretary of the Treasury, and remitted to Amsterdam, under circumstances hereinafter detailed.

Of the loan of three hundred and twenty thousand dollars, obtained of the Bank of New York, the sum of one hundred and twenty thousand dollars was immediately applied to satisfy part of a loan obtained of the Bank of the United States, in the year 1792; the remaining two hundred thousand dollars operated merely as a prolongation of the loan made by the Bank of New York, in the year 1794. The same observation is applicable to the sixth loan of two hundred thousand dollars obtained of the Bank of the United States.

The different capitals of the temporary loans made of the Bank of the United States, were, at the close of the year 1800, reduced to three millions four hundred and forty thousand dollars; at which time the United States remained possessed of two thousand two hundred and twenty shares of the capital stock of the said Bank. The total amount of Dutch debt extinguished since the first day of January, is four millions nine hundred and twenty thousand dollars; and no new foreign debt has been contracted by the Secretary of the Treasury.

In consequence of the failure of the attempt to negotiate sales of six per cent. stock, on terms advantageous to the public, the Secretary of the Treasury was authorized by the Commissioners of the Sinking Fund, with the consent of the President, which was duly obtained, to negotiate sales of a part of the shares of the Bank of the United States, belonging to the United States. In pursuance of which authorities, two thousand seven hundred and eighty shares were sold for one million three hundred and eighty-four thousand two hundred and sixty dollars; which sum was applied towards satisfying the demands of the Banks, and the proceedings duly reported to Congress, according to law.

The foregoing representation contains a detail of all the loans which were negotiated by the late Secretary of the Treasury, prior to the year 1799: the causes of which, so far as they produced an increase of debt, existed in the unexpected and pressing expenses of the year 1794, of which the insurrection in Pennsylvania may be considered as the principal; and in the necessity which existed early in the year 1795, of providing a fund for defraying the expenses of effecting a treaty of peace with Algiers; for neither of which objects adequate revenues had been or could be provided.

The only loans negotiated by the present Secretary of the Treasury, which have not been before enumerated, are, a sum of five millions of dollars obtained in 1799, in pursuance of an act passed on the 16th day of July, 1798, entitled "An act to enable the President of the United States to borrow money for the public service," for an equal amount of stock bearing interest at eight per centum per annum, until the last day of December, 1808, and thereafter at like interest, during the pleasure of Congress, until the said stock shall be redeemed: also, a further sum of one million five hundred and sixty-five thousand two hundred and twenty-nine dollars and twenty-four cents, obtained in pursuance of an act of Congress passed on the 7th of May, in the year 1800, by the sale of one million four hundred and eighty-one thousand seven hundred dollars of stock, bearing a like interest, and subject to the same terms of reimbursement. The necessity of these loans is well known to have been occasioned by the military and naval preparations lately directed.

The principles upon which these loans were negotiated have been considered by the committees, and must be familiar to the House. The situation of the country was new and embarrassing; the prospect of a war was threatening; a reliance on public credit was necessary; the aids which could be afforded by the banks were limited, and could only be considered as resources which might be rendered auxiliary to more extensive and permanent negotiations. No loan had been previously negotiated by the Government, of individuals in the United States. A reliance upon loans in foreign countries appeared to be improvident and dangerous, from its tendency to diminish the confidence of the country in its internal resources. The market rate of interest in the United States was known to be at least eight per centum per annum, and it was certain, moreover, that the demand for money, which would be occasioned by a considerable loan, would tend to increase the then common rate of interest.

The first loan of five millions was obtained by subscription, and without attempting to dispose of the stock above par. Under the second contract, the loan may be extended to three millions and an half of dollars, if the Government should have occasion to raise that sum. No more than one million five hundred and sixty-five thousand two hundred and twenty-nine dollars and twenty-four cents, have yet been borrowed; for which the sum of one million four hundred and eighty-one thousand seven hundred dollars in stock, has been issued. No sales have been made for less than five per cent. advance in money, upon the nominal amount of the stock, being the mean value in the market at the time the contract was published. In every instance the most favorable terms for the public were preferred. The highest price offered was eight per cent. advance in money, at which rate only a small amount in stock was issued; and the committee see no reason to doubt that these loans were negotiated upon the best terms that could be procured, and with a laudable view to the public interest.

Secondly: In regard to remittances:

Remittances to the bankers of the United States in Amsterdam, for the purpose of providing for the payment of the principal and interest of the foreign debt, have been effected in the three following modes:

1. By purchasing six per cent. funded stock, and authorizing the banker to sell the same in Europe, on account of the United States.

2. By bills of exchange on Amsterdam, Rotterdam, Hamburg, and London.

3. By contracts with merchants in the United States, for cargoes consisting principally of West India produce, the proceeds of which were directed to be placed to the credit of the United States in Amsterdam.

In relation to the first object, it is observed that the first Secretary of the Treasury, in January, 1795, purchased of the Bank of the United States five hundred thousand dollars of six per cent. stock at par, payable by instalments. The late Secretary of the Treasury purchased in April, 1795, an additional sum of one hundred and sixty thousand dollars of like stock, for which immediate payment was made in money to the Bank of the United States.

In respect to the terms at which the stock was purchased, they were conformable to the current prices of stock at the periods when the purchases were made.

A necessity of purchasing the first-mentioned sum of five hundred thousand dollars on credit, was created by the heavy and unexpected expenses already alluded to. These had greatly exhausted the Treasury and incapacited the Bank from increasing its loans to the Government.

It appears from the correspondence of the Treasury with the bankers in Holland, which the committee have carefully examined, that an expectation was entertained that the stock would be sold at par, including interest; or that the instalment of principal due in Holland, for the payment of which the stock was intended to provide, would be continued on loan by a new contract. Although both of these expectations were disappointed, in consequence of the unfortunate situation of Holland at that time, yet it clearly appears to the committee that every measure within the power of the Secretary was adopted to render the remittance as productive as possible.

The second mode of remittance, in bills of exchange, is that which has most usually been resorted to. The rates of exchange at which bills were purchased, have, it is believed, been the most favorable which circumstances would permit; at no time exceeding forty-two cents per guilder, and frequently for very considerable sums as low as thirty-six cents per guilder. No loss has been sustained by the public except in one instance, of a bill for one hundred and twenty thousand guilders, drawn by Pragers & Co., of Philadelphia, endorsed by Peter Blight, which was purchased by the cashier of the Bank of the United States, at the request of the Secretary, at thirty-six cents per guilder, and remitted in October, 1799. The drawers and endorser of the bill, at the time of the purchase, were in high credit; it is, moreover, stated by the Secretary, as his opinion, that a part of the debt arising from the protest will be eventually secured to the public.

The third mode of remittance, by purchasing the proceeds of cargoes, has been found effectual, and has, in no instance, occasioned any loss to the public. By the terms of the contracts, the public have been secured for all advances, by assignments of the policies of insurance, and by the bonds of the shippers. No commercial risks have ever been assumed by the Government, who have had no concern with the market, paying only for the nett amount passed to their credit. In other words, these shipments have been merely a collateral security for the replacing in foreign countries the advances made by the Treasury.

Thirdly: In regard to provisions made for enforcing punctuality on the part of public agents and receivers:

It is the immediate duty of the Comptroller to superintend the adjustment of the public accounts, and to direct prosecutions for all delinquencies of officers of the revenue, and for debts due to the United States. Though the Secretary, in virtue of his authority as superintendent of the collection of the revenue, would be also responsible for the permission of any negligence or abuse of trust in the officers of the revenue, or receivers of public money, after the same should come to his knowledge. In the collection of an immense revenue, through an extensive country, losses by the fraud, negligence, and insolvency of individuals, are unavoidable.

When the Secretary has obtained and presented to the President the best information in respect to characters recommended by him for appointment to office; when he has established those official forms and checks which are best calculated to convey a true state of the accounts of the public agents, and the money in their hands; when, on just grounds for suspicion of improper management, the Secretary has preferred to the President of the United States his complaints against those who are disqualified for office, and the Comptroller has directed prosecutions for delinquencies, it is conceived that these officers have respectively discharged their duty in this particular. Instances, therefore, might naturally be expected of public defaulters to a very considerable amount, while no blame could attach to these officers of the Treasury. But, on the contrary, if the number of persons of this description, and the amount due from them are found to be comparatively inconsiderable, the inference is fair and plain that due caution has been observed in the appointments and diligence in the superintendence of the subordinate officers.

Upon this subject the committee have been solicitous to acquire such information as might be satisfactory to the House, and having examined the particular cases of delinquency which appear on the books of the Treasury, and the proceedings adopted by the Secretary and Comptroller, respectively, are convinced that the utmost loss arising from the delinquency of those concerned in the collection of the revenue, from duties on imports and tonnage, for six years, will not exceed one hundred thousand dollars; being somewhat less than one-seventh of one per cent. on the whole amount collected and secured.

The loss sustained in the management of the internal revenue, will exceed this ratio; for reasons of which, some are incident to the nature of the duties and mode of collection; and others, which happened at an early period, attributable to the novelty of the system. This loss, by officers commissioned by the President, is estimated at fifteen thousand dollars.

The committee have also examined, with attention, the statements of moneys advanced to individuals on account of current services. This amount is always apparently considerable, and the details are too voluminous to be annexed to this report. No inference can be drawn from them of the balances actually due from the public agents, as the sums advanced always appear to their debit, while the accounts of their expenditures, and their vouchers, which may absorb the whole amount, are either not rendered, or are in a train of settlement in the public offices. It does not appear to the committee that there is any foundation to conjecture that those persons who have been principally entrusted with considerable sums of money, will be found in arrear. The accounts of the late Secretary of State, Secretary of War, and Purveyor of Public Supplies, have been duly exhibited, and are in their course of settlement in the office. These accounts have been so far examined as to satisfy the accounting officers of the Treasury that no balance will be found due from them. On the whole, after such an examination as they have been enabled to make, the committee beg leave to express their opinion that the business of the Treasury Department has been conducted with regularity, fidelity, and a regard to economy. That the disbursements of money have been always made pursuant to law; that every attention consistent with the magnitude and nature of the business has been bestowed in removing delinquents from office; in compelling them to account; in securing moneys due from them, and in preventing an improper and unreasonable accumulation of moneys in the hands of public agents; that the loans effected on account of Government, have been procured on the most advantageous terms for the public; that the most eligible modes of remittance to Europe have been devised; and, generally, that the financial concerns of the country have been left by the late Secretary in a state of good order and prosperity.

The report was ordered to be laid on the table.

THURSDAY, January 29.

A resolution in the following words, proposed by Mr. HARPER, was read, and ordered to lie on the table:

"*Resolved*, That the act entitled an act to augment the salaries of certain officers therein mentioned, ought to be continued in force."

A petition from sundry merchants of Rhode Island was presented to the House, and, on motion, referred to the Committee of Commerce and Manufactures.

The following resolution, proposed by Mr. RUTLEDGE, was presented to the House, which, being read, was ordered to lie on the table:

"*Resolved*, That a committee be appointed to prepare and report such rules as, in their opinion, are proper to be adopted by this House, to be observed in the election of a President of the United States, whose term is to commence on the fourth day of March next, provided the Electors appointed under the authority of the States have not elected a President for that term."

MINE AND METAL COMPANY.

The House resolved itself into a Committee of the Whole on the bill to incorporate the persons therein named, and their associates, as a Mine and Metal Company.

A motion was made to strike out the first section of the bill, on the principle that Congress was not authorized by the Constitution of the United States, to grant charters of incorporation. This motion was supported by Messrs. LIVINGSTON and BIRD, and opposed by Messrs. S. SMITH, RUTLEDGE, J. BROWN, and BAYARD. On the question being taken it was determined in the negative.

Sundry amendments were made, which were reported by the Committee, taken up and adopted by the House. The bill was then ordered to be engrossed and read a third time to-morrow.

[During the session of this day, while the House was in Committee of the Whole, a noise was made, by a person in the gallery expressing, in a very loud voice, his approbation of what had been just said by one of the members. By the direction of the Chairman of the Committee of the Whole, the gallery was cleared, and the person who had committed the offence was taken into custody by the Sergeant-at-Arms. Before the House adjourned, a motion was made and carried that the person should be discharged from confinement.]

FRIDAY, January 30.

A memorial of sundry clerks employed in the different Departments was presented to the House and read, stating the insufficiency of the salaries at present allowed them by law, and praying that the same may be increased, and rendered more adequate to their services.

Mr. BAYARD submitted the following resolution, to wit:

Resolved, That, in the event of its appearing upon the counting and ascertaining of the votes given for President and Vice President, according to the mode prescribed by the Constitution, that an equal number of votes have been given for two persons, that as soon as the same shall have been duly declared and entered on the journals of this House, that the Speaker, accompanied by the members of the House, shall return to this Chamber, and shall immediately proceed to choose one of the two candidates for President; and in case, upon the first ballot, there shall not appear to be a majority of the States in favor of one of the candidates, in such case the House shall continue to ballot for President, without interruption by other business, until it shall appear that a President is duly chosen; and, if no such choice should be made upon the first day, the House shall continue to ballot from day to day, till a choice shall be duly made.

Ordered, That the consideration of the said motion be postponed until Monday next.

A petition of Lawrence Erb, late Collector of the Revenue of the United States, within the county of Northampton, in the State of Pennsylvania, was presented to the House and read, praying to be relieved from the confinement to which he is subjected, in consequence of his having converted to his own use moneys which he received as collector as aforesaid, and is unable to refund.

Ordered, That the said petition be referred to Mr. ROBERT BROWN, Mr. THATCHER, and Mr. KITCHELL, with instruction to report thereon by bill, or otherwise.

The House went into a Committee of the Whole on the bill making the port of Biddeford and Pepperelborough, and the port of New Bedford, in Massachusetts, ports of entry for ships or vessels arriving from the Cape of Good Hope, and from places beyond the same.

The bill was reported to the House with amendments, and ordered to be engrossed and read the third time on Monday next.

The House went into a Committee of the Whole on the bill to cede to the State of South Carolina certain lands therein mentioned.

The Committee reported several amendments; which were severally twice read, and agreed to by the House, and the further consideration of the said bill was postponed until Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire and report, by bill or otherwise, whether it is expedient so to amend the several acts concerning the naturalization of foreigners in the United States, as to admit to the benefits of the act on that subject, passed January the twenty-ninth, one thousand seven hundred and ninety-five, all persons whose situation would have enabled them, before the passing of the act of June the eighteenth, one thousand seven hundred and ninety-eight, on the same subject, to make declaration, pursuant to the said act of January the twenty-ninth, one thousand seven hundred and ninety-five, of their intention to become citizens of the United States, but who omitted to do so, and have constantly been residents of the United States; or to consider and report on the expediency of repealing the said act of June the eighteenth, one thousand seven hundred and ninety-eight.

Ordered, That Mr. HARPER, Mr. GREGG, Mr. LIVINGSTON, Mr. DANA, and Mr. EVANS, be appointed a committee, pursuant to the said resolution.

On a motion made and seconded that the House do come to the following resolution, to wit:

Resolved, That a committee be appointed to inquire into the expediency of amending the act, passed the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend the act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject,'" so as to admit aliens who were residents within the State, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, and who have continued to reside as aforesaid, to become citizens of the United States:

Ordered, That the said motion be referred to the committee last appointed.

MINE AND METAL COMPANY.

An engrossed bill to incorporate the persons therein named, and their associates, as a Mine and Metal Company, was read the third time.

Ordered, That the fifth section of the said bill be recommitted to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said Committee; and, after some time spent therein, the Chairman reported that the Committee had had the said fifth section under consideration, and made one amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said amendment to the fifth section be presently engrossed, and read the third time.

The said fifth section, as amended, being then brought in, engrossed, and read the third time, the question was then taken that the House do agree to the said bill as amended, and resolved in the affirmative—yeas 50, nays 44, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Brown, John Condit, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, James Lynn, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, Samuel Smith, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, Thomas Sumter, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

CITY OF WASHINGTON.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress, for their consideration, a letter from William Thornton, Alexander White, and William Cranch, Esquires, Commissioners of the City of Washington, with a representation of the affairs of the city, made by them to the President of the United States, dated twenty-eighth of January, one thousand eight hundred and one, accompanied with a series of documents marked from A to H, inclusively.

JOHN ADAMS.

UNITED STATES, *Jan.* 30, 1801.

The said Message and papers accompanying the same were read, and ordered to be referred to the committee appointed, on the twenty-seventh instant, to inquire into the expenditure of money made by the Commissioners of the City of Washington; the disposition of public property made by them; and, generally, into all the transactions of the Commissioners which relate to the execution of the trust confided to them by the President of the United States. [See *Appendix.*]

MONDAY, February 2.

A new member to wit: EBENEZER MATTOON returned to serve as a member of this House for the State of Massachusetts, in the room of Samuel Lyman, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill making the port of Biddeford and Pepperelborough, and the port of New Bedford, in Massachusetts, ports of entry for ships or vessels arriving from the Cape of Good Hope, and from places beyond the same, was read the third time and passed.

A motion being made and seconded that the House do come to the following resolution, to wit:

Resolved, That a committee be appointed to prepare and report such rules, as, in their opinion, are proper to be adopted by this House, to be observed in the choice of a President of the United States, whose term is to commence on the fourth day of March next, if, when the votes which have been given by the Electors appointed under the authority of the States shall have been counted, as prescribed by the Constitution, it shall appear that no person for whom the Electors shall have voted, has a majority, or that more than one person, having such majority, have an equal number of votes:

Ordered, That Mr. RUTLEDGE, Mr. NICHOLAS, Mr. GRISWOLD, Mr. MACON, Mr. BAYARD, Mr. TALIAFERRO, Mr. FOSTER, Mr. CLAIBORNE, Mr. OTIS, Mr. DAVIS, Mr. MORRIS, Mr. CHAMPLIN, Mr. BAER, Mr. COOPER, Mr. LINN, and Mr. WOODS, be appointed a committee, pursuant to the said resolution.

Ordered, That the motion made on Friday last

relative to the mode of commencing and continuing the ballot for the choice of a President of the United States, be referred to the committee last appointed.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" which was read, and committed to a Committee of the Whole.

Mr. SAMUEL SMITH, from the last mentioned committee, presented, a bill to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice and committed to a Committee of the Whole.

Mr. GREGG observed that a report had gone abroad, which he believed to be true, that a number of very valuable and important books and papers belonging to the Departments of War and of the Treasury had lately been destroyed by a fire, which unfortunately had quite ruined one of the houses, and greatly injured the other, in which these offices were kept. It appeared to him highly necessary and proper, that Congress should know, as far as it could be ascertained, the extent of that destruction; and how the settlement of public accounts would be affected thereby. He believed the best method of obtaining this information, would be to call on the Heads of these Departments for an official statement of the knowledge they have, or may be able to acquire on the subject. For this purpose he would move a resolution in the following words:

Resolved, That the Secretaries of War and of the Treasury be directed to communicate to this House such information as may be in their power, in relation to the destruction of official books and papers, in their respective departments, by fire; designating particularly what description of books and papers were lost, and what the probable effect of such loss will be, in the adjustment of the unsettled accounts of the United States.

The motion was carried.

DISTRICT OF COLUMBIA.

The House then went into Committee of the Whole on the bill for the government of the District of Columbia. While the question was being taken for the House to resolve itself into a Committee, Mr. SMILIE rose and moved the postponement of this order till the third day of March next. He made this motion, he said, in order to try the sense of the House, whether they were determined to assume the jurisdiction or not. He hoped it would not, and was proceeding to show his reasons, when

The SPEAKER reminded him of the order of the House. He could not be permitted to discuss the merits of the bill under this motion.

Mr. SMILIE conceived the question to affect the bill generally, and simply to be, whether the House would agree to disfranchise some thousands of persons of their political rights, which they now enjoyed. If this was not considered an object of importance enough to command attention, he must confess other gentlemen saw it in a very different light from that in which he viewed it. By the passage of this bill, the people of the District would be reduced to the state of subjects, and deprived of their political rights, and he very much doubted whether not of their civil rights also. If, indeed, there was such an imperious necessity of assuming the jurisdiction, of which he was by no means convinced, then it must be done; but, if that great and immediate necessity did not exist, why should this privation of rights take place? If it was necessary to reduce the City of Washington to a state of local government by an incorporation, he contended that act could be done by the State Legislature; as he did not conceive the local demands of the people called for it, as they could want no such assumption as the bill contemplated, and as he could perceive no advantage to be derived to the General Government thereby, and as the assumption would eventually injure the people, he trusted it would be postponed, at least.

Mr. RUTLEDGE said, he had always uniformly opposed any motion for postponing a bill the consideration of which the House had not gone into. Although it might be in order, it could not be perfectly fair, from various considerations; if, however, it were only from its tendency to preclude the investigation of the bill, it were sufficient. The gentleman had stated it not to be necessary. Who are to judge? Most assuredly the people belonging to the Territory. And what have they said? Why, sir, they have prayed the House to assume the jurisdiction. From this petition the subject was referred to a committee, and this committee have reported a bill, and a bill well discussed and well matured in its detail. To refuse this bill, from a diversity of sentiment, would be to insult the committee and to insult the people of the Territory. If the gentleman wishes to please the people, why does he not suffer the consideration of the bill to proceed, and afford his aid in making it what he supposes their desires would concur in? Perhaps the gentleman had not read the bill. Mr. R. said, if he had not, how was he to know whether it was good or bad? Something must be done. He wished to get at that something, but was precluded by the motion. It certainly became the gentleman to show how this bill would operate injuriously upon the people, as a reason for his motion. Disfranchisement, to be sure, had been mentioned as the result of this bill; but how was the House to know that would be its tendency, except by going into its investigation?

Mr. CRAIK, also, considered this order of the House as the most unfair one among the rules of the House. However, it must be permitted while the order continued. The gentleman had said the people were in a state of vassalage; how was this declaration to be refuted, if the order of the House forbade the investigation into the application of this bill to the liberties of the people? The gentleman further said, that the people did not desire this assumption of jurisdiction. Were he, Mr. C. said, to give an opinion upon the subject, it would be drawn from the same source with that

expressed by the gentleman, but of a very different import. He should say, as far as his knowledge of their sentiments extended, and he professed to be pretty well acquainted with their ideas upon this subject, that their feelings, their interests, and their desires, conspired to encourage the assumption, and to prevent the postponement of the subject. As the immediate representative of a large proportion of them, he could say that much uncertainty and disquiet convulsed the minds of many good and wise men among them; that their present uncertainty was truly deplorable; that serious doubts existed with judicious men how far the grants and acceptance of lands, or of their papers, afforded them security for value received; doubts existed, in all their acts of negotiation, whether their respective State laws held any government over them? And this state of insecurity as to their property, could not fail to have an injurious effect. They doubted whether all other jurisdiction did not immediately cease, upon the removal of Congress to the District; and should Congress break up without assuming the jurisdiction, and taking other suitable measures to fix the government, it would not fail to paralyze every exertion and effort toward a successful establishment. No man at present can assure himself of the right by which he holds his property, or remove his apprehensions. They now called loudly upon the National Government to remove from them this state of doubt and uncertainty; this is the object of the bill before the House; by this bill, a variety of inconveniences are removed, and the Government use their effort to make their situation at least more certain; and, he had no doubt, more safe and desirable. This it was incumbent on the Government to do; and this, he trusted, a majority of the House would be disposed to do soon. If the objects or provisions of the bill did not meet that gentleman's desires, he wished an opportunity to hear the objections, to enable him, as far as in his power, to remove them.

Mr. SMILIE was proceeding to show that, at any rate, such a bill as the present ought not to pass, when

The SPEAKER interrupted him, saying that any arguments that went to show that the third day of March was a more proper time than the present for this bill to pass would only be in order.

Mr. SMILIE continued to show the impropriety of the bill, and the inevitable injuries that must be sustained by it, when he was again reminded of the question of order.

Mr. S. proceeded: that it might be the wish of some of the people, he would not say; but he denied that such a wish had been expressed, and therefore it ought not to be considered as correct. As to the question of doubt on the minds of the people, whether or not they held their property secure, not being certain of the existence of their former State laws, he referred to the acts of cession, passed by the States of Maryland and Virginia respectively, the words of which were, that the laws remained in force "until Congress shall by law otherwise provide." Under this express provision, the cession was made by the two States; and by this provision the Government of the United States accepted the grant of the ten miles square. And, therefore, until Congress by law should accept of the jurisdiction and nullify the laws of those States over the District, there could be no doubt but they remained in full force, and property was held as secure under those laws as ever. As he had before observed, he contended that an act of incorporation could be obtained for the City of Washington without this bill. From all these grounds, he believed the bill to be at present unnecessary.

Mr. H. LEE did not wonder at this opposition, considering the quarter from whence it came; perhaps, he said, if he had come from Pennsylvania, the idea of losing the General Government, might instigate him to wish to give the stabbing blow to every act which should go to the establishing of that Government in another place. But, he trusted, as these local reasons could not influence gentlemen from other States, they would not concur in his arguments. He trusted other gentlemen would lay to their hands and join to make this District a settled Government, and go into the examination of the principles proposed to accomplish that measure. He hoped not merely words of kindness escaping from the lips of gentlemen, would be deemed by them sufficient, but that their efforts would be used to produce a well-digested and valuable Government for the security of their civil and political rights.

With respect to the act of cession, he contended that the solemn injunctions of the Constitution were detailed in words upon which the most critical could not find wherewith to hang a doubt. There the Congress of the United States were enjoined to "exercise exclusive jurisdiction." When was this jurisdiction to commence but at the period when the General Government should occupy it? Was not, then, this spot become the permanent seat of the Government of the Union? Were not the different departments, Executive, Legislative, and Judicial, assembled, according to the Constitution, in this District? How, then, could the respective States of Virginia and Maryland a moment longer possess the jurisdiction? It was completely done away, and nothing was now wanting to remove the miserable state of suspense the people now felt, but the declaration of the Government that this was the case; that moment would all their fears be appeased. As a friend to those people, then, as much as that gentleman could be, he hoped an opportunity would be given to examine the bill, not doubting but it would be made to meet the wishes, as he was assured it would be the interest of the people to be governed by it.

Mr. MACON said the motion was perfectly in order, and explained some of the cases for which it was established, as a rule of the House. As to the jurisdiction being assumed by the removal of Congress here, as the gentleman last up had said, were that the case, not only by this bill would it be assumed, but the acts of the two States must have ceased from the day Congress first sat here; a deduction by no means supported. The only

evidence the House had of to come specially under ment, was a petition from the gentleman from the District had learned so among his friends. But did that express the will or wishes of the inhabitants of the surrounding country?

As he believed the laws of the States to be in full force; as he believed they would remain so until otherwise enacted by Congress, and as postponing the bill till the third of March would afford the people a large time to reflect on the subject, and express their will more generally, he hoped the postponement would take place. He would remind the House that this measure, once taken, could not be undone; and, therefore, prudence would dictate that time should be taken to do it well. The act could not be repealed without amending the Constitution. If the gentleman only calculated upon an opposition from Pennsylvania, he was mistaken. Mr. M. presumed that he could not be supposed to have local attachments, residing very far from the former, or the present seat of Government; he was, notwithstanding, opposed to taking up this subject at present, and even during the present session. The delay of acceptance could not displease the inhabitants, if they were satisfied as to the present jurisdiction, which did not, in his opinion, admit of a doubt. It was impossible that the postponement could be attended with any inconvenience; they had been in the same situation for ten years, and wherein could be the inconvenience of their remaining so? Nay, there must be advantages in their usages and customs being continued to them. He wished this matter to be postponed till another session.

Mr. Bird never could suppose that the members of the Legislature would be satisfied with their removal from a place of accommodation to a wilderness, and with subjecting themselves to the inconveniences of this place, without exercising all the powers entrusted to them, and taking the jurisdiction to the Government, the members and subordinates of which were to subject themselves to the code of laws under which they should place themselves. A motion, therefore, to continue the jurisdiction out of the hands of the Government, much surprised him. All the arguments used by the gentleman in favor of a postponement, would operate fully to the entire abandonment of the subject; and did he suppose that all the expense attending the removal of the whole Government, all the inconvenience experienced would be, or ought to be, borne without the enjoyment of that Constitutional right, nay, injunction, of "exclusive legislation?" What could have been the reason why Congress was to assume this exclusive legislation? Did not the members of the Convention know that a great quantity of public treasure would be drawn together into this place? Did they not suppose it of importance to secure the privileges and rights of foreign Ministers, who would necessarily be brought to reside in this District? Did they not consider the number of persons attached to the the desire of the people the National Government, Alexandria, except that

Government worthy of the special regard of the National Legislature? Could any gentleman conceive that these were not too great powers to be entrusted to any State whatever? Else why was the provision for exclusive jurisdiction made? To avoid putting those powers into execution, he firmly believed, would be omitting a great and important duty. But, were it not for the words of the Constitution, the words of the acts of cession made by the States were as ample upon the subject as one sovereign Power in the act of granting, and another sovereign Power in the act of receiving a cession, could make. This was precisely the case; the two States made a full and complete cession of the jurisdiction to the General Government, upon the terms of the Constitution, which were to "exercise exclusive legislation, in all cases whatever, over such District," which had, by the cession of those particular States, and the acceptance of Congress, become the seat of the Government of the United States. How, he would ask gentlemen, could this be granted, and yet retained? It was absurd to suppose a man could grant a piece of land, and by the same instrument retain it.

But suppose this was a doubtful subject, whether or not the laws of the two States were in force in the District; would the gentleman still wish to leave it in doubt? Surely no new laws could be made by those States to affect this District, actually made the seat of Government, and he contended that none of the laws whatever did exist here, and that the power of the civil officers actually had ceased; it therefore required no painting to show that the state of the place was truly deplorable. Would the gentleman yet wish to leave the District without laws, and merely lest it should take away their suffrage? That the people could not be represented in the General Government, Mr. B. admitted. But where was the blame, if any could attach? Certainly not to the men who made the act of cession; not to those who accepted it. It was to the men who framed the Constitutional provision, who peculiarly set apart this as a District under the national safeguard and Government. But, he contended, there was no injury sustained. What less compensation than the particular legislation of this District could be required for the removal of the Government, whereby in these almost uninhabited woods the beginnings of a rich and prosperous city was commenced, and made the capital of the United States?

The motion for postponement was withdrawn without a question being taken, and the House resolved itself into a Committee of the Whole on the bill. Mr. Smilie moved to strike out the first section of the bill.

Mr. Smilie said he would willingly give the reasons which prompted him to make the motion, and he hoped the gentleman would as freely make his reply. If it could be proved to him that the rights of these people could be reserved by the passage of the bill, it would give him pleasure, but, believing it to be impossible, he wished to destroy the bill. It could not be denied but that

the people of this District were precisely in the same situation at present which they always had been, and subject to the same laws, but would it be so when the Government once accepted the cession? It would not. Not a man in the District would be represented in the Government, whereas every man who contributed to the support of a Government ought to be represented in it, otherwise his natural rights were subverted, and he left, not a citizen, but a subject. This was one right the bill deprived these people of, and he had always been taught to believe it was a very serious and important one. It was a right which this country, when under subjection to Great Britain, thought worth making a resolute struggle for, and evinced a determination to perish rather than not enjoy.

Another, and an important right, of which those people were about to be deprived, was, that their Judges and their Governor were not to be the choice of themselves, but of the President. The privilege of a local Legislature might be given to the people, but of what avail could they be if the Governor appointed by the President could deprive them of every act they might make by his negative? Where was their security if the acts of these Representatives of the people could be to-morrow revoked by a power deriving authority from elsewhere? Much as gentlemen might talk about dignity of government, nothing, he thought, would more comport with true dignity than liberty, and without it dignity of government was not worth a name. It surely must be disagreeable for the Government to be in the midst of a people who are deprived of their rights, and what insecurity there ever had been, or ever would be, to the Government, from its residence under the laws of the States, he could not conceive. He had never known of any. If he could be convinced that the people would not be deprived of these rights, among others, he would agree to some such bill as this.

Mr. Dennis acknowledged that had he the same impressions as the member who had just sat down, he would not hesitate for a moment to believe that liberty had been forced to yield to a reign of absolute slavery. But from a consideration of the interests of the people, of the dignity of the Government, and of the seat of the Congress, together with the reflections of the gentleman who had just resumed his seat, he felt himself called upon to make some observations by way of an answer.

As to the interests of the people, could it for a moment be doubted that a local government, a judiciary, and a legislature, would be highly advantageous? Could any man doubt but it would be more convenient and advantageous for the inhabitants to attend the courts in this place than to be taken away to Richmond or to Annapolis? It had been always an approved privilege that justice should be brought home to every man's door, and where could it be more so than by the establishment of a judiciary, especially for this District? Nor were the advantages less, he contended, in the legislative department. If a ready communication with their representatives was desirable to the people, by the residence and sitting of the representatives of this District being within itself, the communication was easy, and the rights of the people in their local concerns more attainable, surely, than though they had to go to Richmond or to Annapolis. But, taking a more comprehensive view of the subject, Mr. D. asked if the general interests of the District would not be more secured by persons immediately acquainted and concerned, than by persons of different States, and at a distance from the place? One or two representatives to each legislature would be the utmost that the District could send, and these placed among men of different interests, what could be expected compared to a body such as is prescribed by this bill, drawn from among the people themselves? In these legislatures, the numerous local circumstances which must call for attention in a newly planted and rapidly growing capital, never can receive due attention. Every person must know that a great proportion of business must arise from a commercial city. From observation he could say that about one-third of the business of the Legislature of Maryland usually arose from Baltimore alone. As this city, therefore, grew in population and in trade, the demand for legislative attention would increase, and either its interests must be neglected, or the sitting of the State legislatures must be protracted too far. Besides this, experience must have taught gentlemen that numerous bodies could not so well attend to the minute advantages of a place like this as small bodies, and particularly such as well knew its situation and circumstances.

It had been said that these people were happy. Mr. D. admitted it, but a change of circumstances made an inevitable difference, and required a different mode of legislating. This District of the General Government, being a part of two States, must require an alteration from its former government. Surely the organization of a local body must be more advantageous than any modifications which could be made by those two Legislatures. So far from a rule of despotism then being over these people, he thought the passing of this bill would much increase their prosperity. It was said that, by the assumption of the jurisdiction, these people would ask how much they were heretofore represented in the two Legislatures to which they sent delegates. They were so in name, but very little in essence, from the comparatively small number they could send to the Legislatures. But the arguments went as much against the assumption at any future time as at present. That it would be some time taken up there could be no doubt. It ought therefore to be recollected, that if it would ever be proper, a period more unfavorable to the interests of the people might be selected than the present, and therefore the present moment ought to be accepted, and especially so, as he believed the people were desirous of it, and were satisfied with the features of the bill. From their contiguity to, and residence among the members of the General Government, they knew, that though they might not be represented in the national body, their voice would be heard. But if it

should be necessary, the Constitution might be so altered as to give them a delegate to the General Legislature when their numbers should become sufficient. Upon the whole, he could see no measures which would more immediately promote the interests of the people of this District, and give stability to their minds, and to their concerns with each other, than the present bill; and, therefore, he hoped the section would remain.

Mr. Macon said, he could see no such immediate necessity for this law. A gentleman had told the Committee it was necessary because the States did not pay regard to it. Mr. M. supposed the same attention was paid to this District as usual, and the same as was paid to any other particular part. He believed their political and local rights were as perfectly secure without this bill as any other part of those States, and if the object of gentlemen was to make it better or worse, he should be opposed to it. Before the least change from their former situation, some inconveniences ought to be mentioned under which they labored, and this had not been done, more than mere conjecture and surmises had engendered. Most assuredly there ought to be some good ground for this assumption, because it was not merely a common act of the Legislature, which could be repealed or amended as soon as passed. It was an act of a nature that could not be essentially altered without an alteration in the Constitution, because if the assumption was once accepted, it could not be parted with.

It would be so far from advantageous to the city of Washington, Mr. M. said, that it must essentially injure it. On one side of the water was Alexandria, a populous town; on the other side was Georgetown. Would not these two give to the legislature a majority? And if so, a more palpable evil could not be put upon the city than by putting it in with more numerous towns whose interests would ever be opposed to the growth of the city. There would inevitably be an Alexandria interest, a Georgetown interest, and a city interest, and those struggling with each other.

It was said to be inconvenient to be represented at a distance, from the want of an easy communication. How could this be? What was more easy than for letters and instructions to be sent by post? The communication was easy from all parts of the United States to Congress, and could be equally so to any place where the post goes. There could be no doubt but the States would pay as much attention to the interests of this District, if it continued under their jurisdiction, as ever had been done, and more: by not suffering it to endure any injury which it could prevent. Congress should immediately take the jurisdiction. The language and meaning of gentlemen could be well understood. Gentlemen were called to support the measure with energy, while they had strength. No doubt this was the principal ground of their endeavors to push the measure, although the Legislature had but just met here, and there had been scarce time to know what would be the proper regulations to adopt. But he wished to remind them, that, although the law might be passed, the time would not be far off when his friends would be in the minority, and some considerable alterations might be made in it.

Mr. M. then proceeded to the details of the bill. He disliked the establishment of a government, the executive and judiciary of which were in the appointment of the President of the United States, the former for three years and the latter during good behaviour: and these, both governor and judges of the superior and inferior courts, to be paid out of the Treasury of the United States. Could it be the wish of the gentleman, he asked, to establish in the very heart of the United States, and immediately under the eye of the Government, such a principle as that these rulers should be independent and entirely above the control of the people? He declared that if he should be in Congress again, and as long as he ever should be in the House, he should constantly make it his duty to exert himself for the repeal of so bad a principle, and leave the governor, the judges, and the legislature, immediately amenable to the people. Another thing he should also be ever opposed to, was the manner of this House of Representatives and Senate being chosen, and the time of their continuance. Why should they be elected here for two years, when in all the State Legislatures, he believed they were chosen annually, except two, in one of which they were elected every six months, and in the other, every two years. A greater absurdity still was evinced in the time for which, and the manner how the Senators were chosen—six years, and by electors. Although in these things there was a similarity to the choice of the General Government, he would ask what similarity there could be in the two Governments? In the one there is a vast extent of country and a numerous population; in the other, a small population, a small tract of country, and an almost general knowledge by every one of every individual in it. He doubted whether the Legislature of the Union could at all delegate powers to this local government; but whether or not, he could see no kind of necessity during the present session to assume them. The Government would go on as well as before, and he had no doubt the city would continue in that rapid state of prosperity gentlemen had witnessed since they arrived here.

The Committee rose without taking a question, and had leave to sit again.

Tuesday, February 3.

A new member, to wit: John Stewart, returned to serve as a member of this House for the State of Pennsylvania, in the room of Thomas Hartley, deceased, appeared, produced his credentials, was qualified and took his seat in the House.

A petition of Theodosius Fowler was presented to the House and read, stating that a contract had been formed by the petitioner, with the Secretary of the Treasury, some time in the year one thousand seven hundred and ninety, or one thousand seven hundred and ninety-one, for supplying rations to certain troops in the service of the United States; which contract he entered into at the request of William Duer, deceased, but in which he, the petitioner, had no concern or interest whatever; that a large balance due upon the said contract, to the United States, is now claimed from the petitioner, and that a suit has been instituted against him for the recovery thereof; and praying that the said suit may be discontinued, or such other relief afforded to the petitioner, as to the wisdom and justice of Congress may seem meet.

Ordered, That the said petition be referred to Mr. Bird, Mr. Morris, and Mr. Henry Lee; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On motion it was

Resolved, That a committee be appointed to prepare and bring in a bill supplementary to the act, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments."

Ordered, That Mr. Otis, Mr. Gallatin, and Mr. McMillan, be appointed a committee pursuant to the said resolution.

Mr. Pinckney, from the committee to whom was recommitted, on the twenty-ninth ultimo, the bill giving a right of pre-emption to certain persons who have contracted with John Cleaves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio, reported an amendatory bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio; which was read twice and engrossed, and ordered to be read the third time on Thursday next.

Mr. Griswold, from the Committee of Ways and Means, made a report; which was read and considered; Whereupon.

Resolved, That the Committee of Ways and Means do prepare and report a bill to authorize the Secretary of the Treasury to employ Clerks for completing the abstracts of the valuation of lands and dwelling-houses, and the enumeration of slaves, agreeably to the provisions of the act, entitled "An act supplementary to the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States.'" in those States where clerks cannot be procured by the Commissioners for the compensation allowed by law to clerks employed in that business.

Mr. Griswold, from the last mentioned committee, presented a bill to amend the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States, and to repeal the act, entitled 'An act to enlarge the powers of the Surveyors of the Revenue; which was read twice and committed to a Committee of the Whole.

DISTRICT OF COLUMBIA.

The House resolved itself into a Committee of the Whole on the bill for the government of the District of Columbia, when the question was taken on the motion made yesterday, for striking out the first section, and negatived, ten members only rising for it.

Mr. Gregg then proposed an amendment to the first section, the object of which was to make the election of representatives annual, instead of biennial as contemplated by the bill. This motion brought on a lengthy discussion, being supported by Messrs. J. Smith, Claiborne, Nicholas, Gallatin, and Macon; and opposed by Messrs. Craik, Harper, Bayard, H. Lee, Thomas, and Dennis. On the question for agreeing to the motion, it was determined in the negative—48 voting for it and 50 against it.

A motion was then made by Mr. Claiborne, so to amend the first section as to extend the privilege of voting to persons who are not freeholders; that privilege being confined by the bill to freeholders exclusively. This motion brought on a short debate, in which Messrs. Kitchell, Nicholson, Smith, Macon, Tazewell, and Nicholas supported the motion, and Messrs. Harper, Craik, Dennis, and Gallatin, opposed it. On the question that the House do agree to the motion, it was determined in the negative, there being 48 votes for and 50 against it.

Wednesday, February 4.

A petition of sundry freeholders and inhabitants of the City of Washington, whose names are thereunto subscribed, was presented to the House, and read, praying that Congress may assume the jurisdiction of the Territory of Columbia, and frame such a code of laws for the government thereof as in their wisdom may seem meet.

Ordered, That the said petition be committed to the Committee of the whole House, to whom is committed the bill for the government of the District of Columbia.

Mr. R. Brown, from the committee appointed, presented a bill authorizing the discharge of Lawrence Erb from his present confinement; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. S. Smith, from the Committee of Commerce and Manufactures, presented a bill to add to the district of Massac, on the Ohio, and to discontinue the districts of Louisville, in the State of Kentucky, and Palmyra, in the State of Tennessee, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was twice read, and ordered to be engrossed, and read a third time tomorrow.

DISTRICT OF COLUMBIA.

The House resolved itself into a Committee of the Whole on the bill for the government of the District of Columbia.

A motion was made by Mr. Gallatin to amend the first section of the bill, so as to extend the privilege of voting for representatives to persons other than freeholders, who are possessed of property in the District to the value of eighty dollars.

Mr. Harper proposed an amendment to the foregoing amendment, that a citizen, not being a

freeholder, in order to qualify him as an elector, must be a housekeeper, and possessed of property of the value of one hundred dollars, to be ascertained by the record of the last assessment next preceding the period of offering his vote.

Mr. Gallatin's amendment was withdrawn, and Mr. Harper's, which, though offered as an amendment, was a complete substitute for it, was adopted.

Mr. Claiborne proposed as an amendment to this same section, to reduce the term of a Senator continuing in office from six to three years.

The motion was negatived.

Mr. Tazewell moved to strike out the Senate altogether, on the ground that Congress, having the revision of all laws that may be passed for the Territory, and the power of rejecting such as they did not approve, would be a sufficient check on the Representatives without a Senate.

This motion was negatived.

Mr. Macon moved as an amendment, that the Senators should be elected immediately by the people, and not by electors, as proposed by the bill.

This motion was also lost.

A motion was made by Mr. Nicholson, that the electors should not be permitted to choose themselves as Senators.

This motion was adopted.

The Committee rose, reported progress, and asked leave to sit again.

A message was received from the Senate informing the House that the Senate had passed the bill for erecting a mausoleum for George Washington, with amendments. The amendments were committed to a Committee of the whole House, and ordered to be printed.

Thursday, February 5.

An engrossed bill giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio, was read the third time, and passed.

An engrossed bill to add to the district of Massac, on the Ohio, and to discontinue the districts of Louisville in the State of Kentucky, and Palmyra, in the State of Tennessee, and therein to amend the act, entitled, "An act to regulate the collection of duties on imports and tonnage," was read the third time, and passed.

A memorial of sundry inhabitants of Alexandria, signed by Amos Alexander, their chairman, was presented to the House, and read, expressing their disapprobation of several of the provisions contained in the bill now depending in the House, for the government of the District of Columbia.

Ordered, That the said memorial be committed to the Committee of the whole House, to whom is committed the bill for the government of the District of Columbia.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances, which, by the commissioners appointed to settle the accounts between the United States and the several States, were reported to be due from several of the States to the United States; and that the said committee be authorized to report by bill or otherwise.

Ordered, That Messrs. Hill, Waln, Harper, Otis, and C. Goodrich, be appointed a committee, pursuant to the said resolution.

The House again resolved itself into a Committee of the Whole on the bill for the government of the District of Columbia. Several amendments were made to the bill, and it was reported to the House.

On motion, it was

Resolved, That the act, entitled, "An act to augment the salaries of the officers therein mentioned," ought to be continued in force and made perpetual.

Ordered, That Messrs. Harper, Dent, and Edmond, be appointed a committee, pursuant to the said resolution.

A message from the Senate informed the House that the Senate have passed a bill, entitled, "An act concerning the District of Columbia," to which they desire the concurrence of this House.

The said bill was twice read, and committed to a Committee of the whole House to-morrow.

TRADE WITH THE INDIANS.

Mr. Claiborne, from the committee appointed, on the second of December last, to inquire into the expediency of carrying on any further trade with the Indians, on a capital furnished by the United States, made a report; which was read, and committed to a Committee of the whole House on Monday next.

The report is as follows:

The committee appointed to inquire into the expediency of carrying on any further trade with the Indians, on a capital furnished by the United States, report:

That in pursuance of the laws heretofore passed by Congress on that subject, two trading-houses, or factories, have been established; one in the State of Tennessee and another in the State of Georgia; and, of the sums appropriated by Congress, the sum of ninety thousand one hundred and fifteen dollars and ninety cents has been drawn from the Treasury, for the purpose of forming those establishments and purchasing and conveying goods suitable for trade with the Indians of the Cherokee and Creek nations. That the laws aforesaid expired on the —— ——, and no law was passed at the last session of Congress to continue the establishment and trade aforesaid; although the committee to whom the subject was then referred, reported, that it was expedient to continue the trade.

The committee further report,

That from the accounts in the Treasury Department, rendered by the persons who superintend those establishments or factories, the present state of this trade cannot be ascertained; and although this trade may have produced some advantages in attaching the Indians to the Government of the United States, by affording them necessaries, and avoiding the animosities which might be produced by the abuses of private traders, yet those have not been of such magnitude as to justify, in the opinion of the committee, any extension or increase of the capital stock, however proper it may be to continue the trade, on the stock now vested, for some time longer.

The committee, unwilling to abandon institutions of public utility, and convinced that the establishment of Indian houses, with proper management, would contribute to the attainment of important advantages; and not having ascertained, with any precision, how far the present establishment may be maintained without loss to the United States, therefore recommend the following resolution:

Resolved, That it is expedient to provide by law for the continuance of the trade and trading-houses heretofore by law established, on the capital already drawn from the Treasury, for one year, and from thence to the end of the next session of Congress; and that provision should be made in such law, for the better regulation of said trading-houses, and prescribing the duties of the agents employed therein.

Ordered, That this report be committed to a Committee of the Whole on Monday.

Friday, February 6.

A new member, to wit: Levi Lincoln, returned to serve in this House as a member from Massachusetts, in the room of Dwight Foster, elected a Senator of the United States, appeared, produced his credentials, and took his seat in the House.

Mr. Bird, from the committee appointed, presented a bill for the purpose of ascertaining the northwardly boundary line of a tract of land between the Little Miami and the Scioto rivers, reserved by the State of Virginia to satisfy the troops of the line of the said State, who in the Revolutionary war served on the Continental establishment; which was read twice, and committed a Committee of the whole House on Tuesday next.

The House proceeded to consider the amendments reported yesterday from the Committee of the whole House to whom was committed the bill for the government of the District of Columbia: Whereupon,

Ordered, That the said bill and amendments be recommitted to the Committee of the whole House to whom is committed the bill sent from the Senate, entitled "An act concerning the District of Columbia."

Mr. Platt, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine what laws have expired, or are near expiring, and require to be revived or further continued, made a further report, in part; which was read, and ordered to lie on the table.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of making provision to secure the property of prints to inventors and engravers.

RULES FOR ELECTION OF PRESIDENT.

Mr. Rutledge, from the committee appointed, on the second instant, to prepare and report such rules as, in their opinion, are proper to be adopted by this House to be observed in the choice of a President of the United States, made a report; which was read, as follows:

The committee appointed the second instant, report, in part, the following resolution:

Resolved, That the following rules be observed in the choice by the House of Representatives of the President of the United States, whose term is to commence on the fourth day of March next.

1st. In the event of its appearing, upon the counting and ascertaining of the votes given for President and Vice President, according to the mode prescribed by the Constitution, that no person has a Constitutional majority, and the same shall have been duly declared and entered on the journals of this House, the Speaker, accompanied by the members of this House, shall return to their Chamber.

2d. Seats shall be provided in this House for the President and members of the Senate; and notification of the same shall be made to the Senate.

3d. The House, on their return from the Senate Chamber, it being ascertained that the Constitutional number of States are present, shall immediately proceed to choose one of the persons from whom the choice is to be made for President; and in case upon the first ballot there shall not appear to be a majority of the States in favor of one of them, in such case the House shall continue to ballot for a President, without interruption by other business, until it shall appear that a President is duly chosen.

4th. After commencing the balloting for President, the House shall not adjourn until a choice be made.

5th. The doors of the House shall be closed during the balloting, except against the officers of the House.

6th. In balloting, the following mode shall be observed, to wit: The representatives of the respective States shall be so seated that the delegation of each State shall be together. The representatives of each State shall, in the first instance, ballot among themselves, in order to ascertain the vote of that State; and it shall be allowed, where deemed necessary by the delegation, to name one or more persons of the representation, to be tellers of the ballots. After the vote of each State is ascertained, duplicates thereof shall be made; and in case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in case the ballots of the State be equally divided, then the word "divided" shall be written on each duplicate, and the said duplicates shall be deposited in manner hereafter prescribed, in boxes to be provided. That, for the conveniently taking the ballots of the several representative of the respective States, there be sixteen ballot boxes provided for the purpose of receiving the votes of the State; that after the delegation of each State shall have ascertained the vote of the States the Sergeant-at-Arms shall carry to the respective delegations the two ballot boxes, and the delegation of each State, in the presence and subject to the examination of the members of the delegation, shall deposit a duplicate of the vote of the State in each ballot box; and where there is more than one representative of a State the duplicates shall not both be deposited by the same person. When the votes of the States are all thus taken in, the Sergeant-at-Arms shall carry one of the general ballot boxes to one table, and the other to a second and separate table. Sixteen members shall then be appointed as tellers of the ballots; one of whom shall be taken from each State and be nominated by the delegation of the State from which he was taken. The said tellers shall be divided into two equal sets, according to such agreement as shall be made among themselves; and one of the said sets of tellers shall proceed to count the votes in one of the

said boxes, and the other set the votes in the other box; and in the event of no appointment of teller by any delegation, the Speaker shall in such case appoint. When the votes of the States are counted by the respective sets of tellers, the result shall be reported to the House; and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall immediately proceed to a new ballot, in manner aforesaid.

7th. If either of the persons voted for shall have a majority of the votes of all the States, the Speaker shall declare the same; and official notice thereof shall be immediately given to the President of the United States and to the Senate.

8th. All questions which shall arise after the balloting commences, and which shall require the decision of the House, shall be decided without debate.

Resolved, That this House will consider the said report on Monday next.

Mr. HARPER, from the committee appointed, presented a bill to continue in force the act entitled "An act to augment the salaries of the officers therein mentioned;" which was read twice and committed to a Committee of the whole House on Monday next.

Mr. OTIS from the committee appointed, presented a bill supplementary to an act, entitled, "An act to divide the Territory of the United States Northwest of the Ohio, into two separate governments;" which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. HARPER, from the committee appointed, presented, a bill to extend to aliens who arrived and became residents in the United States, before a certain period, the benefits of the act of one thousand seven hundred and ninety-five, on the subject of naturalization; which was read twice and committed to a Committee of the Whole on Monday next.

The House, went into a Committee of the Whole on the bill to amend the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States, and to repeal the act, entitled "An act to enlarge the powers of the Surveyors of the Revenue;" and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

MONDAY, February 9.

Ordered, That the Committee of Claims, to whom was referred, on the thirtieth ultimo, the memorial of sundry clerks employed in the different departments, be discharged from the further consideration thereof, and that the same be referred to the Committee of Revisal and Unfinished Business.

Mr. RUTLEDGE, from the Committee appointed on the part of this House, jointly, with the Committee on the part of the Senate, to ascertain and report a mode of examining the votes given for President and Vice President of the United States; of notifying the persons elected of their election, and the time, place, and manner of administering the oath of office to the President, reported that the Committee had taken the subject referred to them under consideration, but had come to no agreement thereupon.

A message from the Senate, informed the House that the Senate would be ready to receive the House in the Senate Chamber, on Wednesday next, at twelve o'clock, for the purpose of being present at the opening and counting of the votes for President of the United States; and that the Senate have appointed a teller on their part, to make a list of the votes for President of the United States as they shall be declared.

RULES FOR ELECTION OF PRESIDENT.

The House proceeded to consider the report made on Friday last, from the committee appointed to prepare and report rules proper to be observed in the choice of a President of the United States: Whereupon,

Ordered, That the said report be committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into a Committee of the Whole on the said report; and, after some time spent therein, the Chairman reported that the committee had had the said report under consideration, and directed him to report to the House their agreement to the same, with an amendment; which he delivered in at the Clerk's table, where the same was read. The House then proceeded to consider the report: Whereupon, the amendment reported from the Committee of the whole House to the said report, was, on the question put thereupon, agreed to by the House.

A motion was then made and seconded that the House do disagree with the Committee of the whole House in their agreement to the fourth rule contained in the said report, in the words following, to wit:

"4th. After commencing the balloting for President, the House shall not adjourn until a choice is made:"

And, the question being taken thereupon, it passed in the negative—yeas 47, nays 53, as follows:

YEAS—Willis Alston, George Baer, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Robert Page, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Joseph B. Varnum.

NAYS—Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, Thomas T. Davis, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Andrew Gregg, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Ebenezer Mattoon, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

A motion was then made and seconded that the House do disagree with the Committee of the whole House in their agreement to the fifth rule contained in the said report, in the words following, to wit:

"5th. The doors of the House shall be closed during the balloting, except against the officers of the House:"

And, the question being taken thereupon, it passed in the negative—yeas 45, nays 54, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Henry Lee, Silas Lee, Levi Lincoln, James Lynn, Ebenezer Mattoon, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Levin Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Resolved, That this House doth agree with the Committee of the whole House in their agreement to the said report, as amended, in the words following, to wit:

"That the following rules be observed in the choice by the House of Representatives of a President of the United States, whose term is to commence on the fourth day of March next.

"1st. In the event of its appearing, upon the counting and ascertaining of the votes given for President and Vice President, according to the mode prescribed by the Constitution, that no person has a Constitutional majority, and the same shall have been duly declared and entered on the Journals of this House, the Speaker, accompanied by the members of the House, shall return to their Chamber.

"2d. Seats shall be provided in this House for the President and members of the Senate; and notification of the same shall be made to the Senate.

"3d. The House, on their return from the Senate Chamber, it being ascertained that the Constitutional number of States were present, shall immediately proceed to choose one of the persons from whom the choice is to be made for President; and in case upon the first ballot there shall not appear to be a majority of the States in favor of one of them, in such case the House shall continue to ballot for a President, without interruption by other business, until it shall appear that a President is duly chosen.

"4th. After commencing the balloting for President, the House shall not adjourn until a choice be made.

"5th. The doors of the House shall be closed during the balloting, except against the officers of the House.

"6th. In balloting, the following mode shall be observed, to wit: The representatives of the respective States shall be so seated that the delegation of each State shall be together. The representatives of each State, shall, in the first instance, ballot among themselves, in order to ascertain the votes of the State; and it shall be allowed, where deemed necessary by the delegation, to name one or more persons of the representation, to be tellers of the ballots. After the vote of each State is ascertained, duplicates thereof shall be made; and in case the vote of the State be for one person, then the name of that person shall be written on each of the duplicates; and in case the ballots of the State be equally divided, then the word "*divided*" shall be written on each duplicate, and the said duplicates shall be deposited in manner hereafter prescribed, in boxes to be provided. That, for the conveniently taking the ballots of the several representatives of the respective States, there be sixteen ballot boxes provided; and that there be, additionally, two boxes provided for the purpose of receiving the votes of the States; that after the delegation of each State shall have ascertained the vote of the State, the Sergeant-at-Arms shall carry to the respective delegations the two ballot boxes, and the delegation of each State, in the presence and subject to the examination of all the members of the delegation, shall deposit a duplicate of the vote of the State in each ballot box; and where there is more than one representative of a State, the duplicates shall not both be deposited by the same person. When the votes of the States are all thus taken in, the Sergeant-at-Arms shall carry one of the general ballot boxes to one table, and the other to a second and separate table. Sixteen members shall then be appointed as tellers of the ballots; one of whom shall be taken from each State, and be nominated by the delegation of the State from which he was taken. The said tellers shall be divided into two equal sets, according to such agreement as shall be made among themselves; and one of the said sets of tellers shall proceed to count the votes in one of the said boxes, and the other set the votes in the other box; and in the event of no appointment of teller by any delegation, the Speaker shall in such case appoint. When the votes of the States are counted by the respective sets of tellers, the result shall be reported to the House; and if the reports agree, the same shall be accepted as the true votes of the States; but if the reports disagree, the States shall immediately proceed to a new ballot, in manner aforesaid.

"7th. If either of the persons voted for, shall have a majority of the votes of all the States, the Speaker shall

declare the same; and official notice thereof shall be immediately given to the President of the United States, and to the Senate.

"8th. All questions which shall arise after the balloting commences, and which shall be decided by the House voting *per capita* to be incidental to the power of choosing the President, and which shall require the decision of the House, shall be decided by States, and without debate; and in case of an equal division of the votes of States, the question shall be lost."

TUESDAY, February, 10.

INTERCOURSE WITH FRANCE.

Mr. S. SMITH, Chairman of the Committee of Commerce and Manufactures, reported, according to order, "A bill to continue in force an act further to suspend the commercial intercourse between the United States and France and the dependencies thereof.

The existing act is limited to continue in force till the 3d of March next, the bill now reported, re-enacts it to continue till the 3d day of March, 1802. It was once read, and on the question whether it should be read a second time,

Mr. DAVIS hoped it would not have a second reading. Every step which was taken with a law so obnoxious, must not only wound our recent accommodation with France, but also our merchants and planters engaged in trade with that nation, and afford means of speculation. He moved that the bill be rejected.

Mr. S. SMITH hoped it would be rejected. Conformable to his duty as chairman of the committee he had reported the bill, but had by no means assented to that measure. He saw no use whatever in it; he saw much evil in it, and in every step which was advanced towards re-establishing it. He observed with pleasure a proclamation issued by the Government of Guadaloupe to deliver up captured property conformable to the fourth and seventeenth articles of the mutual convention; that proclamation also completely arrested all future captures by their privateers. In the present posture of affairs, what possible reason could be adduced in favor of this bill? In the committee he said he was alone in his aversion to this law; he wished to postpone it for some time at least. He hoped gentlemen would consider their strength, and, if they were not able to carry the bill through, would suffer its immediate destruction, otherwise the inevitable effect of loss must rest on the tobacco planter.

Mr. LIVINGSTON presumed, as this bill had been reported, there were some gentlemen in favor of it, and he supposed if any were in favor of it, they could give the reasons of their conduct. He most sincerely wished to hear them, for really he could conceive none. He declared himself to be astonished at finding the House engaged in the re-enaction of this law when he entered it this morning: he was astonished because the very face of the law carried its own destiny. It declared that whenever the President should be convinced that commerce could be safely renewed with France, he should have power to renew it. There had been several instances wherein our vessels had been treated upon neutral grounds, and there appeared to be a general disposition that it should be so. Can any gentleman in this House doubt that that state of things *actually* exists which this bill predicates? If there are any such, let them answer, and give their reasons. If they do not, they are bound to join in the rejection of the bill.

It was not a very common course, he said, to stop a law on its first reading, but if ever there was a state of things which demanded it, this was it. All the American commercial men engaged in its support when it first passed; it passed from the extreme necessity of the case, and in assenting to it all our commercial men sustained a vast sacrifice—a sacrifice which only the occasion could justify. But now the state of things is altogether changed; the necessity and the danger have entirely ceased: a convention of amity has been formed with that nation. What answers, then, this ill-advised spirit of acrimony? Where is the necessity now of the measure? What answer can they give to the planters in Virginia, whose produce must remain on their hands, when they ought to have a market, and a good price for it? What, he would ask those gentlemen, had been acquired by this two years' suspension of the intercourse with France? At that time, said Mr. L., we submitted, when they so pressingly supported the bill, but it is out of their power longer to make us, or to make the country believe, that there is necessity for the measure, so wounding to our own country. Nothing can prevent us receiving with pleasure the accommodation now proposed, or make us again open the wounds of our separation. Nothing remains respecting that convention but an acquiescence in the part of France to an article which was inserted at the instance of our negotiators, and consequently its expulsion will be received with pleasure by the nation. Will, then, not one solitary advocate for this bill arise, and give his reasons why the prohibition should be renewed? It really appears to me a measure of the most extraordinary nature: it is bordering on *insanity*. No man dares vindicate it! No man advocates what he assisted in promoting! If it is to be carried into effect, I hope it will not be carried into effect with a sullen silence, tending to insult the understanding of the nation.

Mr. RUTLEDGE did not know that the reasons would be very agreeable to the gentleman who had ascribed them to "insanity," but he might be assured there were reasons for the measure, and such as its advocates would not be ashamed to acknowledge. Not being a member of the Committee of Commerce he could not give their reasons, but though the gentleman thought there was not one solitary reason to be advanced he would give his reasons. He wished to let France know that the productions of our country were useful to her, and that we would rather let them rot in our own country, than expose such weakness to her as to make her believe we must at all events bring them to market. Sir, said Mr. R., we are

about to open a new negotiation with France, and yet before sending our Envoys we will be so extremely weak as to send our produce to her, and thus expose our extreme cupidity and desire at all events to get money. The object of France in negotiating with our country is to trade with us, but by this measure we shall give them our trade without the conclusion of negotiation! What injury can it be? Has not the President power to renew the trade whenever in his opinion circumstances will warrant it? What then can gentleman have to fear, when the gentleman to fill that office is of their own choosing? Do they not suppose that the gentleman whom they have made President will suspend the law as soon as it is unnecessary? They tell us that France has called in her cruisers. How is this known? by newspaper testimony! Our property is liberated, they say. How are we to know this? It is not the fact; no merchant will rise and tell us so. I acknowledge, sir, that many of our vessels have been released; but why was it? By large and valuable douceurs! This the Chairman of the Committee of Commerce well knows, and every merchant is acquainted with it. Sir, we have lately seen a ship belonging to a member of this House released; but why was it done? It was because the American Consul actually paid a large sum as a douceur. It is known that the New Jersey was not obtained till near $200,000 was paid down, and yet we are told that our ships are liberated! Sir, we have taken our ground; we have determined upon defence and sacrifice, to preserve our national honor; and, except the most unequivocal proofs are given of the removal of the causes, we will not depart from those measures which have proved so salutary.

The gentleman supposed that the treaty is concluded, because the project of the article he says came from our Envoys. How does he know this? How does he know that the French Government do not regard this article? If France should not be disposed to adopt this treaty so modified; if she should wish to carry on her old practices, we wish to tell her that we are not afraid of her, nor have we been willing to hearken to the uncertain accents which merely sounded peace in our ears. These, Mr. R. said, were his reasons for wishing not to be too hasty in renewing the intercourse, and in these he believed his friend would coincide.

Mr. EGGLESTON said he had often heard this kind of argument from the gentleman who had just sat down. He appeared to be very fond of indulging his visionary ideas at other people's expense, and with very great levity to talk upon a subject which was of the most important nature to the country he (Mr. EGGLESTON) represented, [Virginia.] He wished to remind the House that a very important part of the community had suffered exceedingly under this law for two years past, not only the growers of tobacco, but the merchants. He trusted no greater impositions would be put upon that particular part of the community. The gentleman knew very well that rice, the staple commodity of his country, (South Carolina,) was in great demand everywhere, and would bring a good price; but it was not so with tobacco, an article principally consumed in that country with which we had been prohibited to trade. He hoped no other gentleman would be of the same principles, and that his constituents would have the same chance for their produce, (tobacco,) as was enjoyed by other parts of the Union for their produce.

Mr. RUTLEDGE said the gentleman was mistaken; he represents a tobacco country as a country which produces rice; but I will tell him that rice brings twice as much in France as in England, and, therefore, on the score of benefit, I am individually interested. But, to views of pecuniary advantage, I prefer the great question of national policy. I am disposed to yield all for my country's benefits; I believe the gentleman's principles are the same, but I think he is mistaken in his efforts to procure the good of the whole.

Mr. DENNIS moved a postponement till Monday.

Mr. S. SMITH moved to postpone till the third of March. He wished to show the American people that the law was not to be re-enacted, and not to keep them in suspense for even a day. Some indistinct idea having dropped from Mr. RUTLEDGE that Mr. S. knew of no douceurs having been taken for the delivery up of vessels which had been captured, which he was unwilling to own—Mr. S. said he knew of no vessel whatever which had been bought out since the convention was sent from France. Whatever had occurred before that period was not to the purpose. He was proceeding to state some cases, when Mr. HARPER asked whether it would be in order to answer. The SPEAKER observed that it would not, because the gentleman was not in order—the question being on postponement.

Mr. NICHOLAS hoped it would not be postponed, because, although the time mentioned should be the third of March, the price of tobacco would be exceedingly depressed by it.

Mr. SMITH withdrew his motion, and Mr. FOWLER renewed it.

Mr. RANDOLPH spoke against both motions; he wished to settle the public mind; for, he observed, ever since the negotiation had been in agitation, the price of tobacco had fluctuated like the stocks. The uncertainty of the fate of this law would produce a species of gaming (speculation) which must be very injurious to the honest dealers. He hoped both merchants and planters would immediately know what was the certain fate of the bill, and that this nefarious gambling system would be cut short, and an instant decision be had upon a question so interesting to a respectable portion of the people.

The motion to postpone to the third of March was again withdrawn.

A motion was made to postpone the further discussion of the bill till Monday.

Mr. H. LEE said, if the circumstances were as they were last year, he should contend for the continuance of this act, but our relations with that country were changed. He asked, what

would the world say if, while the President and Senate of the United States had actually agreed to a convention of amity and commerce with France, the Legislature should pass this act to continue our non-intercourse? It certainly would look like an act of the most degrading duplicity. He hoped the bill would be rejected.

Mr. Macon.—If the House postpone this bill till Monday, it cannot fail of having an evil effect upon the trade in the article of tobacco, for the persons concerned are now making arrangements to sell and to ship it: the only object of this bill is to make the thing as uncertain as before. So fluctuating is the price of the article upon the event of the day, that when our Ministers came from France with the treaty, tobacco rose 50 per cent. upon the prospect of a peace with that country. If the majority of the House should think fit to continue the law, the sooner the merchants know it the better, as it would bring the trade to a more settled state, and enable them to make their arrangments conformably thereto.

Mr. J. C. Thomas said he seconded the motion to postpone, because it was a subject of very considerable importance, upon which he had not sufficiently turned his attention. As to the fear of speculation, a rejection of the bill, in his opinion, afforded the most ample means to carry on that scheme. If the postponement should take place, how could any man say what would be the event of the bill? The moment it was known that the bill was lost, speculations would fly in every quarter. But why should the House legislate under any impressions of the kind? They were called to decide upon a great and important political question, and should they withhold going in the right path, whatever it might be, through fear of speculation? He hoped not. For this cause he advocated the motion.

Mr. Livingston said when he first rose he expressed his desire that some reason for the introduction of the bill should be given. Two reasons were assigned to show that we must continue our attitude towards France: one was, that we must preserve the dignity of our character; the other, that we must keep the old means until the conclusion of the negotiation. This dignity of character he would be as unwilling to sacrifice as any gentleman in the House, but he did not conceive it to consist in the high-sounding words used by some gentlemen. What, he asked, was dignity of character? Does it consist in impoverishing ourselves? This, to be sure, must be a very dignified effect. Some gentlemen might sit with their hands to their sides, and brave all the world, not thinking of the situation of those who lose three-fourths of the result of their labor. All that these gentlemen boastingly sacrifice is felt in another quarter; what is dignity of attitude to them, is distress to other parts of the Union. From the most accurate accounts, then, this dignity of character is nothing. What effect will it have on our negotiation, now again renewed? To examine this it will be necessary to inquire what does France want, or what did she want at the time this bill first passed. Gentlemen at that time thought that without food from us, their West India colonies could not subsist, or have means to carry on their aggressions upon our commerce. The experiment was made, but was it found to answer the effect? Did she not attack our commerce with equal violence? Tobacco is allowed to be the principal article exported from us to France, except our flour to the West Indies, without which she has subsisted, and carried on her warfare. What is the article of tobacco? It is an article we shall ever be willing to get rid of, rather than prohibit our merchants from selling. How, then, can we coerce France by it? Are we to remain in this situation till their treaty returns to this country? They tell us, to be sure, that the President has it in his power to put an end to the force of this bill, but from the common course of things, it is certain that the President never will put an end to the bill, till the treaty is completed. And who are injured by it? Not France, for gentlemen confess that they can procure this article without our aid. It must be ourselves.

But, say gentlemen, France will open her ports; she will receive our produce, and then she will add these additional millions to what she has before seized from us, and disregard our treaty. If there was any foundation on which to hang such a suspicion, Mr. L. said he would not merely vote for the suspension for one year, but forever. But where was the foundation for such distrust? He could see none, and believed there was none. The gentleman from Massachusetts presented this dilemma: either the House must believe the treaty would not go into operation, or it was a very uncertain event. Now, between these two, Mr. L. thought there might be a mean supposed, that is, that it was a probable event that it would be carried into execution; this was the middle way he chose to take as a foundation. He thought the possibility bordering upon certainty: he thought the probability so great as to justify any measures being founded thereupon. But, gentlemen say, we must take nothing upon probability, because, as soon as it is certain, the President can act conformable to circumstances, which he must be most acquainted with. Upon this point, Mr. L. was perfectly satisfied; he did believe France to be sincere, and he further believed that condition with which we had ratified the treaty, would be no hindrance to its final passage. He was well satisfied that the second article, which was erased, was inserted at the instance and even the desire of our Commissioners. Believing this, he could not conceive they would make excuses to evade its ratification. This brought him to another reason for objection which was urged. Could any gentleman believe France would act so perfidiously as to desire and promote this treaty, on purpose to induce us to send our produce to that country, which she would seize? Did he suppose that nation so base, he would never agree to open the communication at all, without other assurances. If gentlemen thought this, they ought not to rest here; their duty requires them to put a perpetual end to commercial intercourse with a nation whose faith was so bad. But it was no such thing—he believed there was good faith in that nation, and that we had received as good assurances of it as could be expected. He hoped a majority of the House believed so, and that no delay would take place in promoting an accommodation in which ourselves would be gainers. He believed the interests of the country called upon the House for immediate action, and therefore hoped that an end would be put to any doubt on the subject.

Mr. Waln thought gentlemen were mistaken in supposing that the non-intercourse with that nation was only felt by the Southern States; he believed it was as severely felt by every commercial town in the Union, whether southward of the Delaware or eastward. Every gentleman knew that the spirit of adventure in the Eastern States, would excite them to carry their commerce as extensively as possible, and that, though not the growers of that species of produce, they were the carriers of it, and were interested in its increasing exportation. But for his part he wished not to be so confined in his ideas to the interest of this or of that State, but to the United States. He did believe that the result of the measures now taking to produce accommodation, was yet uncertain. As a ground of argument, the article of tobacco had been mentioned, and its rise and fall called forth to prove the fluctuating state of political appearances. But for his part he believed that changeableness arose from the amounts of the crops. He would appeal to gentlemen who were, from their local knowledge, acquainted with the price of that article, whether in times of plentiful crops, it was not as low as at the present moment. And, upon this, whether the last crop of tobacco was not very great? He believed it was so, and if so, why should that be considered as proper data for a national concern of such moment? He believed that this, as well as many other prohibited articles, found its way to France, and that this small increase in the price but very little lessened its consumption. He would appeal to the understandings of gentlemen, whether there could be a more inauspicious moment to open the communication than at present? It was the desire of the Committee to wait a few days to know the result of the treaty before the Senate: if that had been signed unconstitutionally, the law would not have been reported, but as it was not, the possibility of evil alone was a sufficient warrant for the continuance of the law for such time as circumstances might continue the same. He could not believe the policy of the country would warrant the immediate opening of intercourse, and, therefore, should vote for the bill.

Mr. Gallatin said, as he last session voted for this bill, it was proper for him to state the reasons why he now voted against it. The measure was originally adopted as a defensive measure: circumstances being little different last session, and a treaty being on the tapis, he thought it would be wrong policy then to change it; but now the state of things was altogether changed. As he conceived, a safe intercourse with every foreign nation could not fail to produce general advantages, he should now, upon the idea of safety, vote that the suspension be taken off. The House were told that the same negotiation was pending, and therefore the measures ought to be the same. He thought very differently: last session there was only the appearance of a treaty; it was a question of uncertainty whether it would be concluded. But at present we know the precise state of things, and no gentleman in the House can doubt as to the acquiescence of France in the modification we have made. It is true that France may make this an excuse to refuse the treaty, and that they may possibly seize our produce sent there under the impressions of their good faith. But if such was her disposition, was it not to be supposed that she would have treated with us before now, on purpose to draw our commerce into her clutches for seizure? He thought the prospect was as favorable, and the moment as safe as ever it would be, and to leave it to the President was at least to suspend it till the final ratification. It was properly a legislative question, and as it originated in Congress, in the same branch it should expire, and not be confided to Executive pleasure. Anything confided to the Executive, is so upon the supposition of a change of circumstances during the recess of the Legislature. Why should the House leave to the President to do what it was not only alone competent to, but what every consideration of amity declared ought to be done without fail? It is impossible to say what circumstances may take place after the third of March, or how our relations with any nation may stand, but we must go upon present circumstances; we must only view the present state of things.

Mr. S. Smith replied to Mr. Waln, in his declaration that every commercial part of the Union felt as much as Virginia the want of this trade. It was not so; the tonnage of the United States was now fully employed; if they could not go to France direct, they could and they would go to England, and she received the benefit which the planters lost. He appealed to the gentleman's commercial knowledge, whether there ever was such an immensity of tonnage employed as at present, and whether ever freight was so high. There never was a time in which our shipping was more used. He further answered the gentleman in his assertion that the great crops made the difference of price. How could that be? The last crop was very great. From a comparison of the former period to the present, when the quantity of that crop must be felt, there was a difference of two dollars a hundred. It was now advanced from $3 50 to $5 50, or $6; which advance he believed beyond a doubt arose from the appearances of accommodation with France. An argument advanced by an officer of the Government the other day, he believed to be very just: That now she had called in her privateers and altered her system towards us, if we refused her our trade, she would not think we were honest in our professions of friendship. What course would they take? Why, most probably send them out

again, and force from us what our diffidence in their friendship prevented us selling them.

Mr. C. GOODRICH was not willing to trust our trade in the present uncertain situation. He believed from the best information, that every step taken towards negotiation by our Envoys was taken with difficulty, and that every possible care was taken by France not to lose an article. He wished as much as any gentleman to see the trade opened with safety, but till it could be done with safety, he was not willing to take a step towards it. He would leave it with the President, whose information must at any time be adequate to take the proper steps.

Mr. CHAMPLIN renewed the motion to postpone till Monday.

The yeas and nays were taken on this motion, which was carried in the negative—yeas 40, nays 59, as follows:

YEAS—Bailey Bartlett, John Bird, Christopher G. Champlin, William Cooper, John Davenport, Franklin Davenport, John Dennis, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Ebenezer Mattoon, Lewis R. Morris, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, George Baer, Theodorus Bailey, James A. Bayard, Phanuel Bishop, John Brown, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Craik, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Henry Lee, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Abraham Nott, Robert Page, Leven Powell, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, Richard Thomas, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

The question recurring, to reject the bill, the yeas and nays were taken and it was decided in the affirmative—yeas 59, nays 37, as follows:

YEAS—Willis Alston, George Baer, John Bird, Phanuel Bishop, John Brown, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, William Craik, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin Samuel Goode, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, Aaron Kitchell, Henry Lee, Michael Leib, Levi Lincoln, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Robert Page, Leven Powell, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—Bailey Bartlett, James A. Bayard Christopher G. Champlin, William Cooper, John Davenport, Franklin Davenport, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, Ebenezer Mattoon, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

TREASURY AND WAR OFFICES.

Mr. HARPER said that he wished to call the attention of the House to a subject which had become interesting to its own honor and the honor of the nation. It was the subject of the calumnies so industriously propagated respecting the fires in the Treasury and War Departments, especially the former. Had those calumnies, sir, said Mr. H. continued to be confined to certain gazettes in this country, whose daily occupation everybody knows it is to invent and promulgate slanders at once the most absurd and the most atrocious against the Government, and all who are attached to it or concerned in its administration, I for one should certainly have continued to regard them with the profoundest contempt; for I well know that filth thus thrown, cannot tarnish the reputation of men of honor and character, much less of the Government itself. But, Mr. Speaker, these calumnies have assumed a far more imposing and dangerous form. They are uttered, sir, by men in this place, (it will not certainly be supposed that I allude to any honorable member of this House.) They are uttered, sir, by men in this place, whose stations give weight to their testimony, and must be considered, in distant parts of the country especially, as entitling their assertions to belief. Yes, sir, there are found men in this place, men, too, let me repeat it, whose stations gave weight to their testimony, and who are profligate enough, far enough lost to all sense of honor, truth, and decency, to state in private letters, as a fact fully established and admitted, that the War and Treasury offices, especially the latter, were set on fire by the chief officers themselves, in order to destroy the evidences of their own peculation. This abominable calumny, sir, one of the foulest and most malicious that party spirit has yet fabricated, is asserted as a well known fact by letters from this place, written by men of station and name. I know the fact, sir; I state it on the authority of competent and sufficient testimony. Those letters are handed about, and their contents are industriously circulated in other letters, which disseminate them though all parts of the country.

Since this calumny has assumed such a shape;

since it is thus propagated and supported, it is necessary to crush it by an authentic inquiry. It becomes necessary to investigate the subject, that the truth may be displayed to the eyes of the nation thus attempted to be abused and misguided. For this purpose I move the following resolution:

"*Resolved*, That a committee be appointed to inquire into the causes of the late fires in the War and Treasury Departments, and to report their opinion thereon to the House, with such facts and documents as may, in their opinion, be necessary for explaining the subject fully. And that the said committee have power to send for persons, papers and records."

The resolution was adopted, and a committee of seven appointed. The following members were named on the committee.

Messrs. NICHOLAS, MACON, LIVINGSTON, GALLATIN, VARNUM, HARPER, and WALN.

CREDENTIALS OF MEMBERS.

Mr. DENT, from the Standing Committee of Elections, made a report; which he delivered in at the Clerk's table, where the same was read, and is as follows:

"The Committee of Elections, having examined the credentials of several members claiming seats in this House, report:

"That, by two certificates of the Governor of Massachusetts under seal of the State, and dated the ninth day of January, one thousand eight hundred and one, it appears by one of the said certificates that Ebenezer Mattoon is duly elected to serve as a member of the House of Representatives of the United States, in the place of Samuel Lyman, stated therein to have resigned; and, by the other certificate, that Levi Lincoln is duly elected as aforesaid, in the place of Dwight Foster, appointed a Senator of the United States.

"It appears, also, by a letter under the signature of the Governor of Pennsylvania, dated the twenty-first day of January, one thousand eight hundred and one, and addressed to the Speaker, accompanied by authenticated documents, that John Stewart is duly chosen, in the place of Thomas Hartley, deceased.

"The committee are of opinion that Ebenezer Mattoon is entitled to a seat, in the place of Samuel Lyman, resigned; Levi Lincoln, in the place of Dwight Foster, appointed a Senator of the United States; and John Stewart, in the place of Thomas Hartley, deceased."

ELECTION OF PRESIDENT.

Mr. BAYARD moved an additional rule in relation to the Presidential election, viz: that five hundred tickets should be printed, on which should be the name of Thomas Jefferson, and five hundred on which should be the name of Aaron Burr, and that the members in balloting should be confined exclusively to these.

The SPEAKER requested Mr. BAYARD to modify his motion, so that six hundred tickets should be printed, and that after Thomas Jefferson, should be printed "of Virginia," and after Aaron Burr, "of New York," as he (the Speaker) had given directions to this effect; to which Mr. BAYARD agreed.

The question was taken that the House do agree to the same, and it passed in the negative—yeas 36, nays 59, as follows:

YEAS—Bailey Bartlett, James A. Bayard, John Bird, John Brown, William Cooper, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Wm. B. Grove, Robert G. Harper, Archibald Henderson, Benjamin Huger, Henry Lee, Lewis R. Morris, Abraham Nott, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, Nathan Reed, John Rutledge, jr., William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, and Lemuel Williams.

NAYS—Willis Alston, George Baer, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Christopher G. Champlin, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, William Craik, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Ebenezer Mattoon, Peter Muhlenberg, Anthony New, John Nicholas, Robert Page, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Robert Williams, and Henry Woods.

Resolved, That this House will attend in the Chamber of the Senate, on Wednesday next; at twelve o'clock, for the purpose of being present at the opening and counting of the votes for PRESIDENT and VICE PRESIDENT of the United States; that Mr. RUTLEDGE and Mr. NICHOLAS be appointed tellers, to act jointly with the teller appointed on the part of the Senate, to make a list of the votes for PRESIDENT and VICE PRESIDENT of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals; and if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

WEDNESDAY, February 11.

On motion, it was

Resolved, That all letters and packets to JOHN ADAMS, now President of the United States, after the expiration of his term of office, and during his life, may be transmitted by post, free of postage.

Ordered, That a bill, or bills, be brought in pursuant to the said resolution; and that Mr. OTIS, Mr. THATCHER, and Mr. SHEPARD, be appointed a committee to prepare and bring in the same.

ELECTION OF PRESIDENT.

On this day, being the day by law appointed for counting the votes of the Electors of PRESI-

DENT and VICE PRESIDENT, there were present the following Representatives, respectively, that is to say:

From New Hampshire—Abiel Foster, Jonathan Freeman, James Sheafe, and Samuel Tenney.

From Massachusetts—Theodore Sedgwick, Speaker, John Reed, Joseph B. Varnum, William Shepard, Peleg Wadsworth, Silas Lee, Lemuel Williams, George Thatcher, Bailey Bartlett, Phanuel Bishop, Harrison G. Otis, Nathan Reed, Levi Lincoln, and Ebenezer Mattoon.

From Connecticut—John Davenport, Roger Griswold, Samuel W. Dana, Chauncey Goodrich, Elizur Goodrich, William Edmond, and John C. Smith.

From Vermont—Matthew Lyon, and Lewis R. Morris.

From Rhode Island—Christopher G. Champlin, and John Brown.

From New York—John Smith, Philip Van Cortlandt, Jonas Platt, Henry Glen, John Thompson, Theodorus Bailey, John Bird, William Cooper, Lucas Elmendorf, and Edward Livingston.

From New Jersey—James Linn, Aaron Kitchell, John Condit, James H. Imlay, and Franklin Davenport.

From Pennsylvania—Robert Brown, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, John Wilkes Kittera, Michael Leib, Peter Muhlenberg, John Smilie, John Stewart, Richard Thomas, Robert Waln, and Henry Woods.

From Delaware—James A. Bayard.

From Maryland—John Chew Thomas, Samuel Smith, Gabriel Christie, William Craik, Joseph H. Nicholson, George Dent, George Baer, and John Dennis.

From Virginia—Samuel J. Cabell, Matthew Clay, John Dawson, Joseph Eggleston, Thomas Evans, Samuel Goode, Edwin Gray, David Holmes, George Jackson, Henry Lee, Anthony New, John Nicholas, Robert Page, Josiah Parker, Leven Powell, John Randolph, Abram Trigg, John Trigg, and Littleton W. Tazewell.

From North Carolina—Willis Alston, Joseph Dickson, William Barry Grove, Archibald Henderson, William H. Hill, Nathaniel Macon, Richard Dobbs Spaight, Richard Stanford, David Stone, and Robert Williams.

From South Carolina—Robert Goodloe Harper, Benjamin Huger, Abraham Nott, Thomas Pinckney, and John Rutledge.

From Georgia—Benjamin Taliaferro.

From Kentucky—John Fowler, and Thomas T. Davis.

From Tennessee—William Charles Cole Claiborne.

Mr. SPEAKER, attended by the House, then went into the Senate Chamber, and took seats therein, when both Houses being assembled, Mr. RUTLEDGE and Mr. NICHOLAS, the tellers on the part of this House, together with Mr. WELLS, the teller on the part of the Senate, took seats at a table provided for them, in the front of the President of the Senate.

The PRESIDENT of the Senate, in the presence of both Houses, proceeded to open the certificates of the Electors of the several States, beginning with the State of New Hampshire; and as the votes were read, the tellers on the part of each House, counted and took lists of the same, which, being compared, were delivered to the President of the Senate, and are as follows:

STATES.	Thomas Jefferson.	Aaron Burr.	John Adams.	Charles C. Pinckney.	John Jay.
New Hampshire	–	–	6	6	
Massachusetts	–	–	16	16	
Rhode Island	–	–	4	3	1
Connecticut	–	–	9	9	
Vermont	–	–	4	4	
New York	12	12			
New Jersey	–	–	7	7	
Pennsylvania	8	8	7	7	
Delaware	–	–	3	3	
Maryland	5	5	5	5	
Virginia	21	21			
Kentucky	4	4			
North Carolina	8	8	4	4	
Tennessee	3	3			
South Carolina	8	8			
Georgia	4	4			
	73	73	65	64	1

Recapitulation of the votes of the Electors.

Thomas Jefferson	73
Aaron Burr	73
John Adams	65
Charles Cotesworth Pinckney	64
John Jay	1

The PRESIDENT of the Senate, in pursuance of the duty enjoined upon him, announced the state of the votes to both Houses, and declared that THOMAS JEFFERSON, of Virginia, and AARON BURR, of New York, having the greatest number, and a majority of the votes of all the Electors appointed, and, being equal, it remained for the House of Representatives to determine the choice.

The two Houses then separated; and the House of Representatives, being returned to their Chamber, proceeded, in the manner prescribed by the Constitution, to the choice of a President of the United States, and the following members were appointed tellers of the respective States, to examine ballots of each State, pursuant to the sixth rule adopted by the House on the ninth instant, to wit:

For the State of New Hampshire, Abiel Foster; Massachusetts, Harrison G. Otis; Rhode Island, Christopher G. Champlin; Connecticut, Roger Griswold; Vermont, Lewis R. Morris; New York, Theodorus Bailey; New Jersey, James Linn; Pennsylvania, Albert Gallatin; Delaware, James A. Bayard; Maryland, George Dent; Virginia, Littleton W. Tazewell; North Carolina, Nathaniel Macon; South Carolina, Thomas Pinckney; Georgia, Benjamin Taliaferro,; Kentucky, John Fowler; Tennessee, William Charles Cole Claiborne.

The members of the respective States then proceeded to ballot, in the manner prescribed by the rule aforesaid, and the tellers appointed by the

States, respectively, having put duplicates of their votes into the general ballot boxes prepared for the purpose, the votes contained therein were taken out and counted, and the result being reported to the SPEAKER, he declared to the House that the votes of eight States had been given for THOMAS JEFFERSON, of Virginia; the votes of six States for AARON BURR, of New York; and that the votes of two States were divided.*

The Constitution of the United States requiring that the votes of nine States should be necessary to constitute a choice of President of the United States, a motion was made and seconded, that the ballot for the President be repeated in one hour; and, the question being taken by States, it passed in the negative.

The States then proceeded in the manner aforesaid, to a second ballot; and, upon examination of the ballot boxes, it appeared that the votes of eight States had been given for THOMAS JEFFERSON, of Virginia; and the votes of six States for AARON BURR, of New York; and that the votes of two States were divided.

The States then proceeded in like manner to a third ballot; and, upon examination thereof, the result was declared to be the same.

The States then proceeded in like manner to a fourth ballot; and, upon examination thereof, the result was declared to be the same.

The States then proceeded in like manner to a fifth ballot; and, upon examination thereof, the result was declared to be the same.

The States then proceeded in like manner to a sixth ballot; and, upon examination thereof, the result was declared to be the same.

The States then proceeded in like manner to a seventh ballot; and, upon examination thereof, the result was declared to be the same.

A motion was then made and seconded, that the States proceed again to ballot in one hour; and, the question being taken thereupon, it was resolved in the affirmative—the votes of the States being ayes 12, noes 4.

The time agreed upon by the last-mentioned vote being expired, the States proceeded, in manner aforesaid, to the eighth ballot; and, upon examination thereof, the result was declared to be the same, to wit:

The votes of eight States for THOMAS JEFFERSON, of Virginia; the votes of six States for AARON BURR, of New York; and the votes of two States were divided.

The States then proceeded to a ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth ballots; and, upon examination of the ballots, respectively, the result was declared to be the same.

A motion was then made and seconded, that the States proceed again to ballot at ten o'clock; and the question being taken thereupon, it passed in the negative—the votes of the States being ayes 7, noes 9.

Ordered, That the next ballot be repeated at nine o'clock, and not before.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the sixteenth ballot; and upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated in one hour.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the seventeenth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at eleven o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the eighteenth ballot; and, upon examination thereof, the result was declared to be the same.

A motion was then made and seconded, that the ballot be repeated to-morrow at eleven o'clock, and not before.

The question being taken thereupon, it passed in the negative.

Ordered, That the ballot be repeated at twelve o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the nineteenth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated in one hour.

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FEBRUARY 12—1 *o'clock, A. M.*

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twentieth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at two o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-first ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at half after two o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-second ballot; and, upon examination thereof, the result was declared to be the same.

* During the time the States were employed in balloting, sundry messages from the President of the United States, from the Senate, and communications from Departments, were received, and reports from committees made; but, it being contrary to the rules established on the 9th instant for the House to take them into consideration at that time, they were taken up and acted upon after the balloting had been completed, and the final result declared. Among which documents was a Message from the President of the United States, concerning the disposition of the property of the United States now in his possession.

Ordered, That the ballot be repeated at four o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner as aforesaid to the twenty-third ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at five o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-fourth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at six o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-fifth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at seven o'clock.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-sixth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at eight o'clock.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-seventh ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at twelve o'clock, and not before.

The time agreed upon by the last-mentioned vote being expired, the States proceeded in manner aforesaid to the twenty-eighth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated to-morrow at eleven o'clock, and not before.

February 13.

The time agreed upon by the last mentioned vote being expired the States proceeded in manner aforesaid to the twenty-ninth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated to-morrow at twelve o'clock, and not before.

February 14.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirtieth ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at one o'clock.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-first ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at two o'clock.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-second ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at three o'clock.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-third ballot; and, upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated on Monday next at twelve o'clock, and not before.

February 16.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-fourth ballot; and upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated to-morrow at twelve o'clock, and not before.

February 17.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-fifth ballot; and upon examination thereof, the result was declared to be the same.

Ordered, That the ballot be repeated at one o'clock.

The time agreed upon by the last mentioned vote being expired, the States proceeded in manner aforesaid to the thirty-sixth ballot; and, upon examination thereof, and the result being reported by the tellers to the Speaker, the Speaker declared to the House that the votes of ten States had been given for Thomas Jefferson, of Virginia; the votes of four States for Aaron Burr, of New York; and that the votes of two States had been given in blank; and that, consequently, Thomas Jefferson, of Virginia, had been, agreeably to the Constitution, elected President of the United States, for the term of four years, commencing on the fourth day of March next.*

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*The following account of the ballotings and incidents connected therewith in the House, is taken from the National Intelligencer, of February 13, 16, and 18, 1801.

[From the National Intelligencer, Feb. 13.]

"The votes having been entered on the Journals of the House of Representatives, the House returned to its own Chamber, and with closed doors proceeded to the ballot, as follows:

Whereupon the votes of the first ballot being counted, the following was the result:

Jefferson, 8 States; Burr, 6; divided, 2, viz: Maryland and Vermont. No election.

Ordered, That Mr. Pinckney, Mr. Tazewell, and Mr. Bayard, be appointed a committee to wait on the President of the United States, and notify him that Thomas Jefferson is elected President of the United States, for the term commencing on the fourth day of March next.

On this ballot the individual votes were for

	Jefferson.	Burr.
New Hampshire	—	4
Massachusetts	3	11
Vermont	1	1
Rhode Island	—	2
Connecticut	—	7
New York	6	4
New Jersey	3	2
Pennsylvania	9	4
Delaware	—	1
Maryland	4	4
Virginia	16	3
Kentucky	2	—
North Carolina	9	1
South Carolina*	—	5
Georgia†	1	—
Tennessee	1	—
	—	—
	55	49

The individual votes on the succeeding ballots occasionally fluctuated without changing the general result.

The House proceeded immediately to the second ballot, the result of which was the same, as well as that of the succeeding ballots, including the 8th, which being declared about 4 P. M., the House determined to suspend taking the next ballot for one hour; on which the members separated.

The reader will observe that this postponement of the ballot was a virtual adjournment of the House, and that it was pursued in preference to adjournment, to avoid violating the rule previously adopted not to adjourn until a President should be elected.

About 5 P. M. the 9th ballot was entered upon, and the same result with the former produced.

After going through a number of other ballots, terminating in the same issue, it was agreed to take each ballot at the interval of an hour. In this manner the ballots were repeated until about 9 o'clock A. M., on Thursday—no separation of the members having taken place during the whole night.

The same invariable result followed each ballot, including the 27th, when, at 9 o'clock A. M., it was agreed to postpone the next ballot till 12 o'clock at noon; when the members separated.

At 12 o'clock the 28th ballot was taken—the result of which corresponded with the preceding ballots. After which further balloting was postponed till Friday at 11 o'clock.

On Thursday morning the Speaker stated that persons were in waiting to deliver messages from the President and the Senate, and he wished a decision of the House whether they could be received. On the suggestion of a member it was agreed, without formally putting the question, to receive the messages.

On Wednesday, Mr. Nicholson, who had been for several days very ill, appeared on the floor, and had a place assigned him in an anti-chamber adjacent to the room in which the House assembled, to which room, to enable him to vote, the ballot box was carried by the tellers of Maryland. He rapidly progresses in recovery. His vote for Mr. Jefferson was important as it divided Maryland, and would, with the accession to Mr. Jefferson of one Federal vote from that State, have made him President.

At 12 o'clock on Friday (this day) the 29th ballot was taken, which produced the same result.

At 1 o'clock the 30th ballot was taken, the result the same.

It was then determined that the next ballot should be taken to-morrow at 12 o'clock.

[From the National Intelligencer, of Feb. 16.]

On Saturday, the 14th instant, at 12 o'clock at noon, the House of Representatives went into the thirty-first balloting, the result of which was the same with the preceding ballots.

It was then determined that the next ballot should be at one o'clock.

On going into the thirty-second ballot, General Dickson, from North Carolina, declared, that it was high time to come to a final vote, and that he would henceforward vote for Mr. Jefferson.

The result of this ballot presented the same issue.

At two o'clock, the thirty-third ballot was taken; the result still the same.

It was then determined that the next ballot should be taken on Monday at 12 o'clock.

On Friday, during one of the intervals of balloting, the Speaker informed the House that he had received a letter from the Secretary of the Treasury, which he would, with the permission of the House, read.

A member expressed his opinion that to read the letter would be an infraction of the rule established by the House.

The Speaker declared that, in his opinion, the rule would not be violated, as the reading of the letter would be gone through before the hour assigned for the next ballot arrived.

It was replied that, though it had been agreed to postpone taking the next ballot for an hour, yet it was clearly understood that, in the interval, the Representatives of the several States were consulting on the votes to be given.

The reading of the letter was overruled.

After the thirtieth ballot, on Friday, a motion was made and seconded by individual members, to postpone the next ballot to the 3d of March; the motion was rejected by the unanimous votes of all the States.

The Speaker then informed the House that, unless otherwise instructed, he should in future not consider a question before the House, unless moved by one State, and seconded by another.

The decision of the Chair was, on all hands, acquiesced in.

On Monday, the 16th instant, the thirty-fourth ballot was taken, the result the same as before.

The next ballot was postponed till to-morrow at 12 o'clock.

All the accounts received from individuals at a distance, as well as the feelings of citizens on the spot,

* Mr. Sumter sick.
† Mr. Jones dead.

The House resolved itself into a Committee of the Whole House on the bill making appropriations for the support of Government, for the year one thousand eight hundred and one; and after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

concur in establishing the conviction that the present is among the most solemn æras which have existed in the annals of our country.

That confidence, which has hitherto reposed in tranquil security, on the wisdom and patriotism of Congress, stands appalled at dangers which threaten the peace of society, and the existence of the Constitution.

Placed in the midst of such circumstances, with the solicitudes of millions centering on the deliberations of their Representatives, it becomes the sacred duty of the press to make that people, whose rights are involved, the depositary of the earliest and most correct information.

For four days, the Republican and Federal parties have remained immoveable in their original vote for President.

The Republicans possess eight States, with half the delegation of two other States.

The Federalists possess six States with half the delegation of two States.

The Federal party apparently, for some time, entertained hopes of gaining over some Republican votes. But they are now convinced that the hope is abortive. What will be the result?

The answer to this interesting question will be made with the utmost coolness and integrity. Though it will in a degree involve opinions as to future measures, yet it is confidently believed that these opinions are entitled to the most unlimited confidence.

1. The Representatives of the eight States that vote for Mr. Jefferson will remain immutable in their adherence to the public will.

2. It is said that the six States that vote for Mr. Burr will not yield.

But it is believed that they will yield. The unanimous and firm decision of the people throughout the United States in favor of Mr. Jefferson will be irresistible. In Maryland, there is scarcely a dissenting voice, and among the first who have avowed a preference for Mr. Jefferson, are Federalists of the largest wealth and most respectable talents.

3. Some of the Representatives of those States that vote for Mr. Burr have declared a determination, in case neither he nor Mr. Jefferson shall be elected, to make by law a President *pro tempore*.

The determination was avowed; but it is believed that it is not now seriously entertained. So hostile would the voice of America appear to be to this measure, that it is doubtful whether any man would propose it, and more doubtful whether any man would accept the station, if offered to him.

During that period of deep suspense which may be yet to come, it behooves the people of the United States to manifest that spirit of dignified and commanding fortitude, that, while it stands prepared for any crisis, is resolved not to commit the cause in which it is embarked, by any act of indiscretion. It is right that public opinion should express itself. Let it then be expressed with respectful firmness from one end of the Union to the other. Let the Representatives of the people know the will of the people, and they will obey it.

Resolved, That the Clerk of this House cause to be printed one thousand copies of the act passed this session, entitled "An act to provide for the more convenient organization of the Courts of the United States," for the use of the members of both Houses of Congress.

That the people may know how the votes of their Representatives have been given, we present a statement:

New Hampshire—4 for Burr, viz: Mr. Foster, Mr. Sheafe, Mr. Tenney, and Mr. Freeman.

Massachusetts—11 for Burr, viz: Mr. S. Lee, Mr. Otis, Mr. N. Read, Mr. Shepard, Mr. Thatcher, Mr. Wadsworth, Mr. L. Williams, Mr. Bartlett, Mr. Mattoon, Mr. J. Reed, Mr. Sedgwick.

Three for Jefferson, viz: Mr. Bishop, Mr. Varnum, Mr. Lincoln.

Rhode Island—2 for Burr, viz: Mr. Champlin, and Mr. J. Brown.

Connecticut—7 for Burr, viz: Mr. C. Goodrich, Mr. E. Goodrich, Mr. Griswold, Mr. Dana, Mr. J. Davenport, Mr. Edmond, Mr. J. C. Smith.

Vermont—1 for Jefferson, viz: Mr. Lyon.

One for Burr, viz: Mr. Morris.

New York—6 for Mr. Jefferson, viz: Mr. Bailey, Mr. Thompson, Mr. Livingston, Mr. Elmendorf, Mr. Van Cortlandt, Mr. J. Smith.

Four for Mr. Burr, viz: Mr. Bird, Mr. Glen, Mr. Cooper, Mr. Platt.

New Jersey—3 for Jefferson, viz: Mr. Kitchell, Mr. Condit, Mr. Lynn.

Two for Burr, viz: Mr. F. Davenport, Mr. Imlay.

Pennsylvania—9 for Mr. Jefferson, viz: Mr. Gallatin, Mr. Gregg, Mr. Hanna, Mr. Leib, Mr. Smilie, Mr. Muhlenberg, Mr. Heister, Mr. Stewart, Mr. R. Brown.

Four for Burr, viz: Mr. Waln, Mr. Kittera, Mr. Thomas, Mr. Woods.

Delaware—1 for Mr. Burr, viz: Mr. Bayard.

Maryland—4 for Mr. Jefferson, viz: Mr. S. Smith, Mr. Dent, Mr. Nicholson, Mr. Christie.

Four for Mr. Burr, viz: Mr. J. C. Thomas, Mr. Craik, Mr. Dennis, and Mr. Baer.

Virginia—14 invariably for Mr. Jefferson, viz: Mr. Nicholas, Mr. Clay, Mr. Cabell, Mr. Dawson, Mr. Eggleston, Mr. Goode, Mr. Gray, Mr. Holmes, Mr. Jackson, Mr. New, Mr. Randolph, Mr. A. Trigg, Mr. J. Trigg, Mr. Tazewell.

Five for Mr. Burr on same ballots, (two of whom on the first ballot voted for Mr. Jefferson,) viz: Mr. Evans, Mr. H. Lee, Mr. Page, Mr. Parker, Mr. Powell.

North Carolina—6 invariably for Mr. Jefferson, viz: Mr. Alston, Mr. Macon, Mr. Stanford, Mr. Stone, Mr. R. Williams, Mr. Spaight.

Four for Burr on some ballots, (3 of whom on the first ballot voted for Mr. Jefferson,) viz: Mr. Henderson, Mr. Hill, Mr. Dickson, Mr. Grove.

South Carolina—Mr. Sumter being sick has not attended, but will attend, at every hazard, the moment his vote can be of any avail. The individual votes of the Representatives of this State are not accurately known, but it is generally believed that Mr. Huger votes for Mr. Jefferson; and Mr. Rutledge, Mr. Pinckney, and Mr Harper, vote for Mr. Burr. Mr. Nott's vote is doubtful. He has gone home.

Georgia—1 for Jefferson, viz: Mr. Taliaferro—Mr. Jones, who is dead, would have voted the same way.

Kentucky—2 for Mr. Jefferson, viz: Mr. Davis and Mr. Fowler

The SPEAKER laid before the House a letter from Winthrop Sargent, Governor of the Mississippi Territory, enclosing a petition from sundry inhabitants of the said Territory, praying that Congress will suspend the operation of so much of the act, entitled "An act supplemental to the act, entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory,'" which establishes a second grade of territorial government in the said Territory; and that a law may be passed extending the same privileges to the said inhabitants as have been granted to the inhabitants of the Indiana Territory.

Ordered, That the said petition do lie on the table.

On motion it was

Resolved, That the President of the United States be requested to cause the proper officer to lay before this House a particular detail of the expenditure of the moneys appropriated by the acts of the fourth of May and sixth of July, one thousand seven hundred and ninety-eight, and of the tenth of May, one thousand eight hundred, for the purpose of purchasing cannon and arms, or fabricating the same, and the purchasing, leasing, and establishing, of foundries and armories; showing the quantity of cannon and arms purchased or manufactured; the foundries and armories established, and what lands have been purchased for the purpose of erecting foundries, together with their respective quantities and situations; also, a list of the warrants drawn on those appropriations, specifying in whose favor each warrant was drawn, and for what purpose.

Tennessee—1 for Mr. Jefferson, viz: Mr. Claiborne.

On Saturday last a memorial was presented to John Chew Thomas, representative in Congress for this District, from a respectable number of his constituents, recommending him to vote for Thomas Jefferson, and declaring that at least two-thirds of his constituents were in favor of the election of Mr. Jefferson.

The memorial was signed by the most respectable Federal gentlemen of the City of Washington.

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[From the National Intelligencer, of Feb. 18.]

On Tuesday at 12 o'clock the 35th ballot was taken; the result the same with that of the preceding ballots.

At 1 o'clock the 36th ballot was taken which issued in the election of Thomas Jefferson.

On this ballot there were,

Ten States for Mr. Jefferson, viz: Vermont, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, Georgia, Kentucky, and Tennessee.

Four States for Mr. Burr, viz: Rhode Island, New Hampshire, Connecticut, and Massachusetts.

Two States voted by blank ballots, viz: Delaware and South Carolina.

In the instance of Vermont, Mr. Morris withdrew.

In that of South Carolina, Mr. Huger, who is understood previously uniformly to have voted for Mr. Jefferson, also withdrew, from a spirit of accommodation, which enabled South Carolina, to give a blank vote.

And in the instance of Maryland, four votes were for Jefferson and four blank.

Mr. OTIS, from the committee appointed, presented a bill extending the privilege of franking to JOHN ADAMS, now President of the United States; which was twice read, and ordered to be engrossed, and read the third time to-morrow.

The SPEAKER laid before the House a letter from SAMUEL DEXTER, acting as Secretary of War, enclosing a report made in pursuance of a resolution of the House of the second instant; which was read, and ordered to lie on the table.

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WEDNESDAY, February 18.

An engrossed bill for extending the privilege of franking to John Adams, now President of the United States, was read the third time and passed.

A petition of sundry inhabitants of the States of Delaware and Maryland was presented to the House and read, praying that more efficient measures may be adopted by Congress, for the recovery of slaves escaping from their masters, and taking refuge in any of the neighboring States.

Ordered, That the said petition be referred to the committee appointed, on the twenty-second ultimo, to inquire into the expediency of making further provision to prevent the concealing or harboring of slaves escaping from one State to another, and to and from the Territories of the United States.

Mr. SAMUEL SMITH, from the committee, presented a bill for erecting light-houses on New Point Comfort, and on Smith's Point, in the State of Virginia, and on Faulkner's Island, on Long Island Sound, in the State of Connecticut; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. PARKER, from the committee appointed on so much of the President's Speech as respects seasonable and systematic arrangements, proportioned to our national resources, for a Navy adapted to defensive purposes, presented a bill providing for a Naval Peace Establishment, and other purposes; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. PARKER, from the same committee, presented a bill respecting navy yards, and timber for naval purposes; which was read twice and committed to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth;" to which they desire the concurrence of this House. The said bill was read twice and referred to the Committee of Commerce and Manufactures.

Mr. THATCHER, from the committee appointed, on the twenty-sixth of November last, to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States, presented a bill further to alter and establish certain post roads; which was read twice and committed to a Committee of the whole House on Friday next.

Ordered, That Mr. Samuel Smith be appointed on the committee to whom was referred so much of the President's Speech as respects seasonable and systematic arrangements proportioned to our national resources, for a Navy adapted to defensive purposes, in the room of Mr. Nott, who has obtained leave of absence.

The House went into a Committee of the Whole on the bill for the relief of Nathaniel Holmes; which was reported to the House without amendment, and ordered to be engrossed and read the third time to-morrow.

The House, then went into a Committee of the Whole on the bill to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the Committee rose, reported progress and had leave to sit again.

A message from the Senate informed the House that the Senate have resolved that a committee be appointed, to join such committee as may be appointed on the part of the House of Representatives, to consider whether any, and, if any, what, measures ought to be adopted for the further accommodation of the President of the United States, for the term commencing the fourth day of March next, to report by bill, bills, or otherwise; and that Mr. Nicholas, Mr. Tracy, and Mr. Baldwin, be this committee.

The House proceeded to consider the said message of the Senate: Whereupon,

Resolved, That this House do concur in the same.

Ordered, That Mr. Nicholas, Mr. Gallatin, Mr. Varnum, Mr. Kitchell, and Mr. Macon, be the committee on the part of this House, for the purpose expressed in the message of the Senate.

The House again resolved itself into a Committee of the Whole on the bill making appropriations for the support of Government, for the year one thousand eight hundred and one; and, after some time spent therein, the committee reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House went into a Committee of the Whole on the bill making appropriations for the Military Establishment of the United States, for the year one thousand eight hundred and one; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House then went into a Committee of the Whole on the bill to amend the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," and to repeal the act, entitled 'An act to enlarge the powers of the Surveyors, of the Revenue;" and, after some time spent therein, the Committee rose and reported the bill without amendment.

SAMUEL HARRISON SMITH.

Mr. Davis—Mr. Speaker, I have risen with an intention of bringing before the House a subject on which I think it is our duty to act; and as the subject, to a certain extent, relates to the Speaker, I shall endeavor to conduct myself towards him in such a manner as to injure his feelings as little as the nature of the case will admit, in doing justice to the rights of a citizen. But, while I profess a respect for you as the Speaker of this House, a fear of wounding your feelings shall not prevent me from doing what I conceive to be my duty as a public servant. I think it important and necessary, that the power of a Speaker of this House over a citizen of America should be precisely known and understood. That the Speaker should know how far he ought to go, and the citizen know where he ought to stop.

Believing, therefore, as I do, that the Speaker of this House, in a very recent instance, has exceeded his power, and in so doing has deprived a citizen of the United States of his Constitutional right, by denying him the liberty of hearing the debates of this House, upon questions of great national concern, I have determined to bring the subject before the House with a view of obtaining the opinions of others on it. But, as almost all questions that come before this House assume the shape of party, I do not expect this question to be exempt from party feelings and party prejudices: but this shall not deter me from trying it. If gentlemen are not ready or willing to abandon their party feelings by a fair examination of a citizen's right, it is their own fault. The subject I allude to is contained in the following resolution, to wit.

Resolved, That the Speaker of this House, in directing the Sergeant-at-Arms to order and expel from the gallery of this House Samuel Harrison Smith, a citizen of the United States, usurped a power not given him by the rules of this House, and deprived the said Samuel Harrison Smith of his Constitutional right, as a citizen of the United States.

Thursday, February 19.

An engrossed bill making appropriations for the support of Government, for the year one thousand eight hundred and one, was read the third time and passed.

An engrossed bill making appropriations for the Military Establishment of the United States, for the year one thousand eight hundred and one, was read the third time and passed.

An engrossed bill to amend the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," and to repeal the act, entitled, "An act to enlarge the powers of the surveyors of the revenue," was read the third time and passed.

An engrossed bill for the relief of Nathaniel Holmes was read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for extending the privilege of franking to John Adams, now President of the United States," with

an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment to the last mentioned bill; Whereupon,

Resolved, That this House doth agree to the said amendment.

Ordered, That the committee appointed, on the seventeenth instant, to wait on the President of the United States and notify him that Thomas Jefferson is elected President of the United States, for the term commencing on the fourth day of March next, be instructed to notify the President elect thereof.

On motion it was

Resolved, That a committee be appointed to inquire into the expediency of altering the times of holding the Courts of the United States, and to report by bill, or otherwise.

Ordered, That Mr. Silas Lee, Mr. Hill, and Mr. Elizur Goodrich, be appointed a committee, pursuant to the said resolution.

The House went into a Committee of the Whole on the bill to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the Committee rose and reported two amendments thereto.

Ordered, That the further consideration of the bill and amendments be postponed until to-morrow.

MISSISSIPPI TERRITORY.

Mr. Chauncey Goodrich, from the committee appointed, on the twenty-second of December last, to inquire into the official conduct of Winthrop Sargent, Governor of the Mississippi Territory, made a report; which was read as follows:

The Committee to whom was referred the representation of the House of Representatives of the Mississippi Territory, report:

That the first object mentioned in this representation respects the failure of an election for a member of the House of Representatives for the county of Washington, in that Territory.

On account of the Governor's order not being received in season, the election was there held on the 15th and 16th days of August, whereas by law it was directed to have been held on the 15th day of July. In all other respects the election is represented to have been fair, and the member chosen, correct. The power of the Governor to issue a writ of election is doubted, and the interference of Congress solicited.

As the members of the House of Representatives of the Territory serve for two years, and unless special provision be made, the inhabitants of Washington county will have no member in the House of Representatives the first session of the General Assembly, it appears to your committee expedient to authorize the Governor to order an election to be held in that county, for the choice of a representative.

The second object of this representation respects the time of holding the first session of the General Assembly of the district.

By law the General Assembly is to meet annually on the first Monday of December, unless by law they appoint a different day. The Governor has power, on extraordinary occasions, to convene the General Assembly.

It was found impracticable to make the appointments of the Legislative Council seasonably for holding the first session of the General Assembly on the first Monday of December last; and it is represented that if an earlier time be not fixed than the first day of December next, as now established by law, the appointment of a delegate in Congress from the Territory cannot be made seasonably for the next Congress, and it is stated that the Governor will be indisposed to convene the General Assembly at an earlier day.

The powers of the Governor being competent to the object in view, in the opinion of the committee, it would be inexpedient for Congress to interfere on the grounds suggested, of a presumption that those powers will not be fairly and discreetly exercised in this instance.

The Committee therefore respectfully submit to the consideration of the House the following resolution:

Resolved, That the Governor of the Mississippi Territory, be authorized to cause an election to be held in the county of Washington in that Territory, for the choice of a representative in the first General Assembly of the Territory.

Ordered to be committed to a Committee of the whole House on Monday next.

Mr. Chauncey Goodrich, from the same committee, to whom was referred, on the twenty-second of December last, the representation of the Legislature of the Mississippi Territory, made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

SEDITION ACT.

Mr. Platt, from the Committee of Revisal and Unfinished Business, presented, according to order, a bill to repeal part of the act, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,'" and to continue in force the residue of the same;" which was read the first time.

A motion was then made and seconded, and the question thereupon being taken, to wit:

"Shall this bill be rejected?" it passed in the negative—yeas 50, nays 49.—The Speaker declaring himself with the nays.

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum and Robert Williams.

Nays—Theodore Sedgwick, (Speaker,) George Baer, Bailey Bartlett, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archi-

bald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Ebenezer Mattoon, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

The said bill was read the second time, and committed to a Committee of the whole House on Saturday next.

STATE BALANCES.

Mr. HILL, from the committee appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances which, by the Commissioners appointed to settle the accounts between the United States and the several States, were reported to be due from several of the States to the United States, made a report, accompanied by a bill, to extinguish the claims of the United States, for certain balances reported to be due from several of the States to the United States; which was read, and the consideration of the said report and bill postponed until the third day of March next.

The report is as follows:

The committee appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances which, by the Commissioners appointed to settle the accounts between the United States and the several States, were reported to be due from several of the States to the United States, report—

That the Commissioners aforesaid, on the liquidation of the accounts, reported that there were due from several of the States certain balances, that is to say:

New York - - - -	$2,074,846
Pennsylvania - - - -	76,709
Delaware - - - - -	612,428
Maryland - - - -	151,430
Virginia - - - -	100,879
North Carolina - - -	501,082

That Congress, by an act passed the 15th February, 1799, engaged that any State so reported against might discharge itself from the claim, by an engagement in the form of a Legislative act, to be passed before the first of April, 1800, to pay at the Treasury of the United States, within five years, the amount of the sum assumed by the United States in the debt of such State; or by expending moneys to the like amount within the time aforesaid in the erection of fortifications. And the said act of Congress provides further, that any payment or expenditure aforesaid shall be credited at the Treasury to the amount of stock which said payment or expenditure is equal to the purchase of at the market prices of stock. That the State of New York passed, within the time limited, the Legislative act required by the act of Congress aforesaid, and has already received credit at the Treasury for the sum of $222,810 06, for having previously expended in fortifications the sum of $136,533 82. That no other State has acceded to the terms offered by the said act of Congress.

The committee further report, that, by the immediate operation of the said act of Congress, and of the Legislature of the State of New York, that State was exonerated and released from a very considerable part of the balance reported, to wit, the sum of $891,129 31; the balance reported against the State being to that amount more than the sum subscribed on the assumption of the United States in the debt of that State, the sum so subscribed amounts to $1,183,716 69; that the sum of $891,129 31, exceeds the whole amount of the balance reported to be due from any one of the States, and the aggregate amount of the whole of the balances, with the exception of the balance reported to be due from the State of Delaware.

The committee, without entering into a discussion of the principles whereon the settlement of the accounts by the Commissioners was founded, remark, that as none of the States but the State of New York has manifested any disposition to pay the balances reported against them, whether the terms offered by the said act of Congress operate favorably or not, and none of them have assented to the justice or equity of the claim of the United States, and no means exist of exacting payment, it seems unwise to keep alive a claim which cannot be enforced, and may have the effect of producing irritation and exciting discontent; and as the act of Congress has already released the State of New York from so large an amount, and enabled that State, with ease and advantage, to discharge the residue of the balance reported to be due from that State, the committee are of opinion that a release of the balances due from the other States is expedient, and for this purpose report a bill, which is submitted.

FRIDAY, February 20.

A petition of sundry persons residing on lands belonging to the United States, and lying between the waters of the Muskingum and Scioto rivers, in the Northwestern Territory, was presented to the House and read, praying to be allowed a preemption right to the lands on which the petitioners are settled, on terms more favorable than those heretofore granted to them by law.

Ordered, That the said petition be referred to Mr. DENNIS, Mr. MCMILLAN, and Mr. CHRISTIE, with instructions to examine the matter thereof, and report the same, with their opinion thereon, to the House.

Mr. MACON, from the Committee of Claims, to whom was referred, on the twenty-third of December last, the petition of Charles Tomkins, in behalf of Arnold Henry Dohrman and others, made a report; which was read and considered: Whereupon,

Resolved, That the President of the United States be authorized to issue a patent for the thirteenth township in the seventh range, to Arnold Henry Dohrman, or his legal representatives, agreeably to a resolution of Congress of the first day of October, in the year one thousand seven hundred and eighty-seven.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Resolved, That a committee be appointed to bring in a bill to revive and continue "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth of December, one thousand seven hundred and ninety-three, for the appointment of a health officer."

Ordered, That the said motion be referred to the Committee of Revisal and Unfinished Business, and that they do prepare and bring in a bill or bills pursuant thereto.

Mr. PINCKNEY, from the committee appointed, on the seventeenth instant, to wait on the President of the United States, and inform him that Thomas Jefferson is elected President of the United States, for the term commencing on the fourth of March next, reported that the committee had performed that service.

The House resumed the consideration of the amendments reported yesterday, from the Committee of the whole House, to whom was committed the bill to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," and the same being read, were, on the question severally put thereupon, agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the report of the Committee of Claims, made the twenty-sixth ultimo, on the several petitions of Alexander Roxburgh, Emory Sudler, and Elizabeth his wife, Benjamin Bird, Griffith Jones, David Jones, Philip Bush; and a bill which passed the Senate at the last session of Congress, for the relief of the representatives of Samuel Lapsley, deceased; and, after some time spent therein, the Committee rose and reported their disagreement to the same.

SAMUEL HARRISON SMITH.

A motion being made and seconded that the House do come to the following resolution, to wit:

Resolved, That the Speaker of this House, in directing the Sergeant-at-Arms to order and expel from the gallery of this House, Samuel Harrison Smith, a citizen of the United States, has assumed a power not given him by the rules of this House, and deprived the said Samuel Harrison of a right which can only be forfeited by disorderly behaviour.

Resolved, unanimously, That the Speaker be excused from deciding whether the said motion is in order or not.

Mr. DAVIS.—Mr. Speaker, my intention is to call for the resolution laid on the table by me the other day, which relates to the conduct of the Speaker towards Mr. Smith. But before I call up the resolution I will remark that I have not introduced it with a view to afford myself an opportunity of venting invectives or personalities against the Speaker. The due respect to this House forbids a conduct of that sort. The number of days the Speaker has seen, compared with my own, forbids it. I contend for principle; and those who differ from me on this point, in opinion, may meet me on this ground, and, by a fair and dispassionate argument, discuss the subject. If they choose to do so I shall be satisfied; it will be the most agreeable method to me. But if gentlemen are disposed to introduce asperity into the debate, I am ready to repel it.

The question was then taken, to wit: "Is this motion in order?"

And it passed in the negative—yeas 49, nays 54, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Levi Lincoln, Ebenezer Mattoon, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, jr., William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

And so the said motion was decided not to be in order.

Mr GALLATIN moved the following resolution, to wit:

Resolved, That the power of the Speaker, or Chairman of the Committee of the Whole, shall not be construed to extend (unless by consent of the House, previously obtained, or in case of disorderly behaviour) to the expulsion of any person, either from the lobby, when introduced by any member of the House, or from the gallery, when the same is generally opened.

The previous question was called for by five members, to wit: "Shall the main question to agree to the said motion be now put?"

Whereupon, the said question being under consideration, Mr. LIVINGSTON having addressed the Speaker, did, in the opinion of the Speaker, proceed to debate the main question, and being thereupon called to order by the Speaker, the said member did not immediately sit down, pursuant to the rule of the House, and was thereupon again called to order by the Speaker: Whereupon,

An appeal was made to the House from the decision of the Speaker,

And, on the question of concurring with the Speaker in his said station, it was resolved in the affirmative—yeas 60, nays 42, as follows:

YEAS—George Baer, Bailey Bartlet, James A. Bayard, John Bird, John Brown, Christopher G. Champ-

lin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, Aaron Kitchell, John Wilkes Kittera, Henry Lee, Silas Lee, Levi Lincoln, Ebenezer Mattoon, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, William Shepard, John Smith, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Joseph B. Varnum, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William Charles Cole Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Edwin Gray, Joseph Heister, David Holmes, George Jackson, Michael Leib, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Robert Williams.

The previous question upon the said motion being then taken, in the words following, to wit:

"Shall the main question to agree to the same, be now put?"

It passed in the negative—yeas 50, nays 53, as follows:

YEAS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Samuel Goode, Chauncey Goodrich, Elizur Goodrich, R. Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Ebenezer Mattoon, Lewis R. Morris, Harrison G. Otis, Robert Page, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

And so the said motion was lost.

THE MINT.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress a report received this morning from Elias Boudinot, Esq., Director of the Mint, dated February the thirteenth, one thousand eight hundred and one, which will require the attention and decision of Congress, before the close of the session.

JOHN ADAMS.

UNITED STATES, *Feb.* 20, 1801.

MINT OF THE UNITED STATES,
February 13, 1801.

The Director considers it his duty to inform the President, that Monday last was the day, directed by law, on which the assays of the reserved pieces of coin should be made, in the presence of the Secretary of State, the Secretary of the Treasury, the Comptroller of the Treasury, the Chief Justice, and Attorney General; but none of those officers have attended, nor could indeed have been expected; and the Director has not been informed of any other provision, yet made by law, to accomplish the same purpose. By this means not only the check established by law on the coin of the United States is frustrated, but the reserved pieces are still locked up, and the depositors complain of being thus deprived of the use of their property. The design of bringing this subject before the President, is, that the Director may be instructed what steps to take on this occasion.

It is also necessary to inform the President, that, by the act of Congress of the 16th July, 1790, all offices attached to the seat of Government shall be removed to the district accepted for the seat of Government of the United States by the said act, by their respective holders, on the first Monday of December, 1800, and shall, after the said day, cease to be executed elsewhere; but, by an act of the last session of Congress, the Mint is to remain at Philadelphia till the fourth day of March next, anything in the said act to the contrary notwithstanding. This act expires on the fourth of March next, and unless some other provision is made by law before that day, it will be difficult to ascertain the duty of the Director, except to prevent any further operation of the Mint at Philadelphia. He wishes, therefore, for instructions from the President, as to his conduct with regard to the Mint, in case further provision, by law, should not be made; at all events, the public property here should be attended to.

All which is respectfully submitted to the President.

ELIAS BOUDINOT, *Director.*

The Message and report accompanying the same were read, and ordered to lie on the table.

SATURDAY, February 21.

An engrossed bill to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time, and passed.

A petition of sundry inhabitants of the States

of Delaware and Maryland was presented to the House and read, praying that more efficient measures may be adopted by Congress for the recovery of slaves escaping from their masters and taking refuge in any of the neighboring States.

Ordered, That the said petition be referred to the committee appointed, on the twenty-second ultimo, to inquire into the expediency of making further provision to prevent the concealing or harboring of slaves escaping from one State to another, and to and from the Territories of the United States.

Ordered, That the Message from the President of the United States respecting the Mint, presented yesterday, be referred to the Committee of Revisal and Unfinished Business.

Mr. PLATT, from the Committee of Revisal and Unfinished Business, to whom was this day referred the Message of the President of the United States made a report; which was read and considered: Whereupon,

Resolved, That it is expedient that the Mint remain in the city of Philadelphia until the fourth day of March, one thousand eight hundred and three, and that, during the continuance of the Mint at Philadelphia, it is expedient that the duties now enjoined on the Chief Justice of the United States, the Secretary and Comptroller of the Treasury, the Secretary for the Department of State, and the Attorney General of the United States, by the eighteenth section of the act, entitled "An act establishing a Mint, and regulating the coins of the United States," passed the second day of April, one thousand seven hundred and ninety-two, be performed by ———.

Ordered, That a bill or bills be brought in, pursuant to the said resolution: and that the Committee of Revisal and Unfinished Business do prepare and bring in the same.

Mr. PLATT, from the same committee, presented a bill concerning the Mint; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. P., from the same committee, presented a bill declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth of December, one thousand seven hundred and ninety-three, for the appointment of a health officer; which was read twice, and ordered to be engrossed, and read the third time on Monday next.

Ordered, That the committee to whom was referred the Message from the President of the United States, relative to the disposition of the public property in his possession, be discharged from the consideration thereof, and that the same be referred to the Joint Committee appointed, on the eighteenth instant, to inquire what further measures ought to be taken for the accommodation of the President of the United States.

The House resumed the consideration of the report of the Committee of the whole House, to whom was yesterday referred the report of the Committee of Claims on the several petitions of Alexander Roxburgh and others: Whereupon,

Resolved, That this House doth disagree with the Committee of the whole House in their disagreement to the said report, and doth agree to the report of the Committee of Claims. And thereupon,

Resolved, That the several petitions of Alexander Roxburgh, Emory Sudler, junior, and wife, Benjamin Bird, Griffith Jones, David Jones, Philip Bush, Tobias Rudolph, Samuel Gibbs, and Benjamin Kendrick, ought not to be granted.

The House proceeded to consider the report of the Committee of Revisal and Unfinished Business, made the sixth instant, and which lay on the table, relative to an augmentation of the salaries of certain District Judges; Whereupon,

Ordered, That the said report be committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said committee; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

The House again resolved itself into a Committee of the Whole, on the bill sent from the Senate, entitled "An act concerning the District of Columbia; to which Committee of the Whole was also committed the bill for the government of the District of Columbia; and, after some time spent therein, the Committee rose and reported progress, and had leave to sit again.

Mr. BAYARD moved the following resolution, which was ordered to lie on the table:

Resolved, That a committee be appointed to prepare and bring in a bill to amend the Common Law, so as to define and limit the punishment upon prosecutions for libels; and to enable a defendant, upon such prosecution, to give the truth of the matter charged as a libel, in evidence, in his defence.

ADJUTANT AND INSPECTOR GENERAL.

A Message was received from the President of the United States, as follows:

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

The enclosed report to me, made by the acting Secretary of War, on the fourteenth of this month, appears to be so well founded in all respects, that I recommend it to the consideration of Congress.

JOHN ADAMS.

UNITED STATES, *Feb.* 20, 1801.

DEPARTMENT OF WAR, *Feb.* 14, 1801.

SIR: Great inconveniences being experienced in the Army, from the want of a competent general staff, I conceive it to be my duty to submit the matter to your consideration. Though the Army is at present a small one, the duties of Adjutant and Inspector General must be performed; and, from the nature of our service, in small detachments, these duties become more laborious than in an Army acting in one compact body. At present an officer in the line of the Army resides at the seat of Government for these purposes, but there is no law allowing him any compensation for these extra services. As he is obliged to keep an office and be constantly employed himself, and also constantly to employ a clerk, it cannot be expected that he can continue to do the duties without compensation beyond his pay in the line. Perhaps a sufficient power rests in the Secretary of War to allow him an adequate sum for his extra labor and expenses. But, if this be

true, it is a loose discretion, which, I conceive, ought to be directed by law. It is my opinion, that a law authorizing the appointing of a field officer in the line, to perform the duties, and giving him additional compensation for his services, and also giving him an assistant from among the subaltern officers, would promote regularity in the Department, discipline in the Army, and public economy.

I have the honor to be, with profound respect, sir, your obedient and faithful servant,

SAMUEL DEXTER.

The PRESIDENT *of the United States.*

The said Message, and report accompanying the same, were read, and ordered to be referred to Mr. RUTLEDGE, Mr. OTIS, and Mr. TENNEY.

PRESIDENT ELECT.

Mr. PINCKNEY, from the committee instructed on the eighteenth instant to wait on the PRESIDENT elect, to notify him of his election, reported that the committee had performed that service, and addressed the PRESIDENT elect in the following words, to wit:

"The committee beg leave to express their wishes for the prosperity of your Administration; and their sincere desire that it may promote your own happiness and the welfare of our country."

To which the PRESIDENT elect was pleased to make the following reply:

"I receive, gentlemen, with profound thankfulness, this testimony of confidence from the great Representative Council of our nation. It fills up the measure of that grateful satisfaction which had already been derived from the suffrages of my fellow-citizens themselves, designating me as one of those to whom they were willing to commit this charge, the most important of all others to them. In deciding between the candidates, whom their equal vote presented to your choice, I am sensible that age has been respected rather than more active and useful qualifications.

"I know the difficulties of the station to which I am called, and feel, and acknowledge, my incompetence to them: But, whatsoever of understanding, whatsoever of diligence, whatsoever of justice, or of affectionate concern for the happiness of man, it has pleased Providence to place within the compass of my faculties, shall be called forth for the discharge of the duties confided to me, and for procuring to my fellow-citizens all the benefits which our Constitution has placed under the guardianship of the General Government.

"Guided by the wisdom and patriotism of those to whom it belongs to express the Legislative will of the nation, I will give to that will a faithful execution.

"I pray you, gentlemen, to convey to the honorable body from which you are deputed, the homage of my humble acknowledgments, and the sentiments of zeal and fidelity by which I shall endeavor to merit these proofs of confidence from the nation, and its representatives; and accept, yourselves, my particular thanks for the obliging terms in which you have been pleased to communicate their will.

"THOMAS JEFFERSON.

"FEBRUARY 20, 1801."

SEDITION ACT.

The House then went into a Committee of the Whole, on the bill to repeal part of an act, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,' and to continue in force the residue of the same."

On the question that the said bill be engrossed for a third reading—

Mr. DAWSON said, when the law which this bill is intended to continue was first passed, I gave to it my dissent; I did it from a conviction on my mind that it does violate that Constitution which I have sworn to support, and from a persuasion that the then state of things did not require it; that while it begat an unjust suspicion of the American character, it was a stain on our code of legislation.

If these were my impressions at that time, some reflection since, aided by the productions of men whose names and talents will be long remembered, and a knowledge of the sentiments of the State from which I come, and of the people whom I represent, have confirmed those impressions, and have resolved me to vote against that bill in every shape and in every stage, and I hope that it will not be suffered to be engrossed. Sir, it is well remembered by me, nor can it be forgotten by any gentleman, on what grounds this law was advocated and first passed; it was then supported and pressed upon us as a necessary link in a chain of measures which a majority of the two Houses of Congress thought proper to adopt to meet a particular crisis—to guard against the supposed intrigues of a foreign nation—to give respectability and energy to our Executive—to prevent its falling into disrepute with the people, and to punish factious individuals. The history of the last two years has, I am persuaded, convinced gentlemen how mistaken were their opinions of the American character. With me they must now believe that whatever difference there may be in our political principles, when the safety, freedom, or honor of our country are threatened by a foreign nation, like a band of brothers we will rally round our Government, and support it by means which the Constitution of our country authorizes, and which the energy of the case may require. How far this law has given respectability or energy to our Administration I will not pretend to say; the events of the present day is an ample comment on that point; but, after the experience which we have had, since some of the objects for which it was formed do not exist, and others have not been answered, I did hope that no attempt would have been made to continue it, and that it would have been suffered to expire like its twin-brother, the Alien law. In this hope, however, I have been disappointed; gentlemen have come forward and supported it with a zeal, not uncommon to them on other occasions, and unexpected in the present, when we were taught to believe that they were at least indifferent about it, and new reasons have been assigned for its continuance—formerly it was thought necessary to protect the Administration against the people; and now, sir, it is wanted to guard individuals against an Administration which may be weak or wicked. Experience has, I am persuaded, convinced gentlemen that it has not answered the first purpose, and I hope they

will find it unnecessary for the latter. Into whatever hands the Administration of our country may fall, its acts ought to be examined with that freedom which becomes freemen, and with that decency which becomes gentlemen; so long as they are guided by justice and wisdom, they will be supported with decision and firmness by the friends to the Administration; whenever they shall descend from these great principles, the voice of the people will again sweep the actors from the political theatre.

This law, sir, has been advocated, because it is said to ameliorate the common law of England, and on this argument much dependence has been placed; however, admitting it to be true, on a moment's reflection it will not be found to merit any consideration; for, sir, let it be remembered that the opponents to this law are also the opponents to the adoption of that law as the law of the United States, and do not think it authorized by the Constitution; this is the doctrine which they have uniformly contended for, and which, pardon me if I say, has been established as fully as one point possibly can be; it is not therefore probable, nay, I think it impossible, that they ever should appeal to it to shield them. No, sir, supported by the justice and policy of their measures, I trust they will need the aid of neither the Alien, Sedition, nor Common law.

Sir, it will be unnecessary for me to touch on the unconstitutionality of this law; it has been proven over and over again in this House, and in every part of the continent, and if what has been said and written has not convinced gentlemen, no effect would be produced by anything which I could say. But, sir, as some of the objects for which the law was first enacted have passed by, and others have not been answered—as the friends to the approaching Administration do not wish it for their protection, and the opponents will not need it for theirs, I do hope that those gentlemen who doubt about the constitutionality will vote with us, and that the bill will not be permitted to be engrossed.

The question was then taken, and the engrossment refused, 49 to 53, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Ebenezer Mattoon, Lewis R. Morris, Harrison G. Otis, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, Geo. Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Samuel Goode, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Benjamin Huger, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Josiah Parker, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

MONDAY, February 23.

An engrossed bill declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer, was read the third time and passed.

A petition of Notley Young and others, of the City of Washington, was presented to the House and read, praying that the consent of Congress may be given to an act of the General Assembly of the State of Maryland, for erecting a bridge over the Eastern branch of the Potomac river.

Ordered, That the said petition be referred to Mr. JOHN CHEW THOMAS, Mr. CRAIK, and Mr. DENNIS.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the eighteenth instant, the bill sent from the Senate, entitled "An act to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth," reported that, in the opinion of the committee, it would be proper for the House to agree to the said bill without amendment.

Ordered, That the said bill be now read the third time.

The said bill was accordingly read the third time and passed.

Mr. MACON, from the Committee of Claims, presented a bill for the relief of Arnold Henry Dohrman, or his legal representatives; which was read twice, and ordered to be engrossed, and read the third time to-morrow.

Mr. S. SMITH, from the Committee on Commerce and Manufactures, to whom was referred the petition of sundry merchants of the town of Providence, in the State of Rhode Island, made the following report:

That the petitioners deposited, under the care of the officers of the customs, in the manner prescribed by law, a quantity of teas imported by them from China. That, on the twenty-first of January last, the said goods were destroyed by fire, and the petitioners pray that they may not be compelled to pay the duties accruing on the same.

Your committee are of opinion, that, as the goods were under the care of the officers of the customs, at the time they were consumed by fire, and not subject to the control of the owners, and that, as granting relief

in this case, cannot establish a precedent dangerous to the revenue, the prayer of the petition ought to be granted.

They, therefore, submit the following resolution, viz:

Resolved, That the Committee of Commerce and Manufactures be instructed to report a bill to exonerate the petitioners from the payment of duties on such goods as were deposited, under the care of the officers of the customs, at the time they were consumed by fire.

The House then went into a Committee of the Whole on the report of the Committee of Revisal and Unfinished Business, relative to an augmentation of salaries of certain District Judges; and, after some time spent therein the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That it is expedient to augment the salaries of the District Judges for the districts of Massachusetts, New York, Pennsylvania, and Maryland, respectively.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Revisal and Unfinished Business do prepare and bring in the same.

Mr. PLATT, from the last mentioned committee, presented a bill to augment the salaries of the District Judges of Massachusetts, New York, Pennsylvania, and Maryland, respectively; which was read twice and committed to a Committee of the whole House to-morrow.

On motion it was

Resolved, That the committee appointed to inquire what alterations ought to be made in the times of holding the Courts of the United States, be directed to inquire into the expediency of changing the place of holding a court from Baird's town to Frankfort; and report their opinion thereupon by bill or otherwise.

The House went into a Committee of the Whole on the bill making appropriations for the Navy of the United States, for the year one thousand eight hundred and one; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Ordered, That the Committee of Ways and Means be authorized to report a bill to amend the act, entitled "An act to establish a General Stamp Office."

Mr. GRISWOLD, from the last mentioned committee, presented a bill to amend the act, entitled, "An act to establish a General Stamp Office;" which was read twice and committed to a Committee of the whole House to-morrow.

The House then went into a Committee of the Whole on the bill sent from the Senate, entitled, "An act concerning the District of Columbia," to which Committee of the whole House was also committed the bill for the government of the District of Columbia; and, after some time spent therein, the Committee rose and reported their agreement to the bill from the Senate, with several amendments; which were severally twice read, and agreed to by the House.

Ordered, That the amendments be engrossed, and, together with the said bill, be read the third time to-morrow.

TUESDAY, February 24.

An engrossed bill making appropriations for the Navy of the United States, for the year one thousand eight hundred and one, was read the third time and passed.

An engrossed bill for the relief of Arnold Henry Dohrman, or his legal representative, was read the third time and passed.

The bill sent from the Senate, entitled "An act concerning the District of Columbia," together with the amendments agreed to yesterday, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 57, nays 36, as follows:

YEAS—Willis Alston, George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, David Holmes, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Levi Lincoln, Nathaniel Macon, Ebenezer Mattoon, Lewis R. Morris, Anthony New, John Nicholas, Harrison G. Otis, Robert Page, Josiah Parker, Jonas Platt, Leven Powell, John Reed, Nathan Reed, John Rutledge, William Shepard, Samuel Smith, John C. Smith, Richard Dobbs Spaight, David Stone, James Sheafe, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Robert Williams, Lemuel Williams, and Henry Woods.

NAYS—Theodorous Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, George Jackson, Aaron Kitchell, Michael Leib, Matthew Lyon, James Lynn, Edward Livingston, Peter Muhlenberg, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Richard Stanford, John Stewart, Benjamin Taliaferro, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, and Joseph B. Varnum.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report, made in pursuance of a resolution of this House on the second instant, relative to the destruction of official books and papers by the late fire in the building occupied by the Treasury Department; which was read and ordered to lie on the table.

The House went into a Committee of the Whole on the bill to amend an act, entitled "An act to retain a further sum on drawback for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" and, after some time spent therein, the Committee reported progress, and had leave to sit again.

On motion, it was *Resolved*, That the President

of the United States be requested to direct to be laid before this House an account of the depredations committed on the commerce of the United States by vessels of Great Britain, of which complaint has been made to the Government.

Ordered, That Mr. BAYARD and Mr. RUTLEDGE be appointed a committee to wait on the President of the United States with the foregoing resolution.

Mr. GRISWOLD, from the Committee of Ways and Means, presented a bill authorizing the Secretary of the Treasury to employ Clerks for completing the abstracts of the valuation of lands and dwelling-houses, and the enumeration of slaves; which was read twice and committed to a Committee of the whole House to-morrow.

On motion, it was *Resolved*, That a committee be appointed to inquire into the propriety of amending the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio and above the mouth of Kentucky river,' so far as relates to the compensation of the Receivers of Public Moneys; and that they report by bill or otherwise.

Ordered, That Mr. GALLATIN, Mr. MCMILLAN, and Mr. JOHN BROWN, be appointed a committee pursuant to the said resolution.

On motion, it was *Resolved*, That a committee be appointed to direct such an arrangement of the chamber of this House as will be best adapted to the preservation of order.

Ordered, That Mr. NICHOLAS, Mr. MATTOON, Mr. TALIAFERRO, Mr. FOSTER, Mr. MORRIS, Mr. JOHN C. SMITH, Mr. CLAIBORNE, Mr. FOWLER, Mr. HENDERSON, Mr. HARPER, Mr. BAER, Mr. WOODS, Mr. IMLAY, Mr. CHAMPLIN, Mr. COOPER, and Mr. BAYARD, be appointed a committee pursuant to the said resolution.

The House went into a Committee of the Whole on the bill further to alter and to establish certain post roads; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill and amendments be engrossed, and read the third time to-morrow.

Mr. PINCKNEY, from the committee to whom was referred, on the thirty-first of December last, the memorial of Pleasant Henderson and others, inhabitants of the State of North Carolina, made a report; which was read and considered: Whereupon,

Resolved, That it is unnecessary for this House to adopt any further measures at this time on the subject of the memorial of Pleasant Henderson and others.

The House then resolved itself into a Committee of the whole House on the bill supplementary to an act, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments;" and after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

The House went into a Committee of the Whole on the report of the Committee of Commerce and Manufactures on the petition of sundry merchants of the town of Providence, in the State of Rhode Island, made the twenty-third instant; and, after some time spent therein, the Committee rose and reported a resolution, which was twice read and agreed to by the House, as follows:

Resolved, That the Committee of Commerce and Manufactures be instructed to report a bill to exonerate the petitioners from the payment of duties on such goods as were deposited under the care of the officers of the customs at the time they were consumed by fire.

WEDNESDAY, February 25.

An engrossed bill further to alter and to establish certain post roads was read the third time, and passed.

An engrossed bill supplementary to an act, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments," was read the third time, and passed.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented, according to order, a bill to amend the act altering the district of Bermuda Hundred and City Point; which was read twice and ordered to be engrossed, and read the third time to-morrow.

Mr. DENNIS, from the committee to whom was referred, on the twentieth instant, the petition of sundry inhabitants of the Northwestern Territory, made a report; which was read and considered: Whereupon,

Resolved, That the prayer of the said petition cannot be granted.

Ordered, That the committee appointed, yesterday, to inquire into the propriety of amending the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river,' so far as relates to the compensation of the Receivers of Public Moneys, be also instructed to inquire into the propriety of amending the same law, so far as relates to the rule according to which discounts shall be calculated in case of prompt payment, and that they report by bill, or otherwise.

Mr. NICHOLSON, from the committee appointed, presented a bill to amend the act, entitled, "An act respecting fugitives from justice, and persons escaping from the service of their masters;" which was twice read, and committed to a Committee of the whole House to-morrow.

Mr. PLATT, from the Committee of Revisal and Unfinished Business, made a further report, in part; which was read, and ordered to lie on the table.

Mr. BIRD, from the committee to whom was referred, on the third instant, the petition of Theodosius Fowler, made a report; which was read and considered: Whereupon,

Resolved, That the Secretary of the Treasury cause a revision of the accounts of Theodosius

Fowler, under the contract of the twenty-eighth of October, one thousand seven hundred and ninety, to be made and stated, and that, in said account, where there is no certain and absolute proof, such presumptive proof as the case affords be introduced: and that a report of the same, together with the Secretary's opinion thereon, be exhibited to Congress at the next session; and that, in the mean time, the suit in the Circuit Court of the State of New York against said Fowler be stayed.

Ordered, That a bill or bills, or resolution, be brought in, pursuant to the said resolution; and that Messrs. BIRD, MORRIS, and H. LEE, do prepare and bring in the same.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States,' and to repeal the act, entitled 'An act to enlarge the powers of the Surveyors of the Revenue," with an amendment; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio," with several amendments; to which they desire the concurrence of this House.

The amendments proposed by the Senate to the last mentioned bill were read and ordered to lie on the table.

Mr. RUTLEDGE, from the committee to whom was referred, on the twenty-first instant, the Message from the President of the United States, enclosing a report from the acting Secretary of War, made a report; which was read, and is as follows:

"The committee to whom were referred the Message of the President of the United States, of the twentieth instant, with a report from the Secretary of War to the President, of the fourteenth instant, report the following resolutions:

"*Resolved*, That provision be made by law for the appointment of an Inspector and Adjutant General of the Army of the United States, and for an assistant to the Adjutant General.

"*Resolved*, That provision be made by law for the compensation of the persons who have done the duties of Inspector and Adjutant General, from the first of November, one thousand seven hundred and ninety-nine."

And, on the question that the House do agree to the said resolutions contained in the said report, it passed in the negative.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act to amend the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States,' and to repeal the act, entitled 'An act to enlarge the powers of the Surveyors of the Revenue:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House then resolved itself into a Committee of the Whole on the bill providing for a Naval Peace Establishment, and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were read, but, an adjournment being called for, the House adjourned.

THURSDAY, February 26.

An engrossed bill to amend the act altering the district of Bermuda Hundred and City Point, was read the third time, and passed.

Mr. GALLATIN, from the committee appointed, presented a bill fixing the compensation of Receivers of Public Moneys for lands of the United States, and regulating the mode of calculating discounts in case of prompt payment for the said lands; which was twice read, and committed to a Committee of the whole House to-morrow.

Mr. BIRD, from the committee appointed, presented a resolution on the case of Theodosius Fowler; which was read, in the words following, to wit:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury cause a revision of the accounts of Theodosius Fowler, under the contract of the twenty-eighth of October, one thousand seven hundred and ninety, to be made and stated; and that, in said accounts, where there is no certain and absolute proof, such presumptive proof as the case affords be introduced; and that a report of the same, together with the Secretary's opinion thereon, be exhibited to Congress at the next session; and that, in the mean time, the suit in the Circuit Court of the State of New York against said Fowler, be stayed.

The question was taken thereupon, and resolved in the affirmative.

The House again resolved itself into a Committee of the Whole on the bill to amend the act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill authorizing the remission of duties on certain teas destroyed by fire, while under the care of officers of the customs in Providence, Rhode Island; which was read twice and committed to a Committee of the whole House to-morrow.

NAVAL PEACE ESTABLISHMENT.

The House proceeded to consider the amendments reported, yesterday, from the Committee of the whole House to whom was committed the bill providing for a Naval Peace Establishment, and for other purposes: Whereupon,

The amendments reported from the Committee of the whole House were, on the question severally put thereupon, agreed, and others disagreed to by the House.

A motion was then made and seconded to strike out the fourth section of the said bill, in the words following, to wit:

"SEC. 4. *And be it enacted*, That every captain, master commandant, and lieutenant, who shall be in service at the time when the reduction of the Navy shall take place as aforesaid, while remaining unemployed, shall have and receive, during his natural life and continuance in office, one-half his monthly pay, agreeably to the rank of his commision or warrant; on condition, however, that he shall at all times hold himself in readiness to enter into actual service, and full pay on being so ordered; and that he shall keep the Secretary of the Navy advised of his place of residence, and of the nearest post town thereto; and shall not at any time absent himself from his place of residence for more than forty days, without first having obtained written permission from the Navy Department."

And, the question being taken thereupon, it passed in the negative—yeas 48, nays 49, as follows:

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thos. T. Davis, John Dawson, Joseph Eggleston, Lucas Elmendorf, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Ebenezer Mattoon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Robert Page, John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Lewis R. Morris, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

A motion was then made and seconded further to amend the said bill, by adding thereto the following section, to wit:

"*Be it further enacted*, That the President of the United States shall be, and he is hereby, authorized to discharge any part of the Marine Corps which may be unnecesary for the naval service;"

And the question being taken thereupon, it was resolved in the affirmative—yeas 53, nays 40, as follows:

YEAS—Willis Alston, Theodorus Bailey, Bailey Bartlett Phanuel Bishop, Robert Brown, Samel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Dickson, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, David Holmes, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

NAYS—George Baer, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, John Davenport, Franklin Davenport, John Dennis, William Edmond, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, William Barry Glove, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Harrison G. Otis, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, John Rutledge, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Richard Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Ordered, That the said bill and amendments be recommitted to a Committee of the whole House immediately.

The House accordingly resolved itself into the said committee; and, after some time spent therein, the Speaker resumed the Chair, and Mr. MORRIS reported that the committee had, according to order, had the said bill and amendments under consideration, and directed him to report to the House their disagreement to the fourth section.

The question was taken that the House do agree with the Committee of the whole House in their said agreement, and resolved in the affirmative.

The said bill was then further amended at the Clerk's table; and, on the question that the same be engrossed for a third reading, it was resolved in the affirmative—yeas 70, nays 27, as follows:

YEAS—Willis Alston, George Baer, Theodorus Bailey, Bailey Bartlett, James A. Bayard, Phanuel Bishop, John Brown, Robert Brown, Gabriel Christie, Matthew Clay, John Condit, William Craik, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, Lucas Elmendorf, Thomas Evans, John Fowler, Albert Gallatin, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Robert Goodloe Harper, Joseph Heister, Archibald Henderson, William H. Hill, David Holmes, Aaron Kitchell, John Wilkes Kittera, Silas Lee, Michael Leib, Levi Lincoln, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Ebenezer Mattoon, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Leven Powell, John Randolph, John Reed, Nathan Read, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, John Stewart, Benjamin Taliaferro, Samuel Tenney, George Thatcher, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Philip Van Cortlandt, Joseph B. Varnum, Robert Waln, Robert Williams, and Lemuel Williams.

NAYS—John Bird, Samuel J. Cabell, Christopher G. Champlin, William Charles Cole Claiborne, William Cooper, Samuel W. Dana, John Davenport, Franklin Davenport, Joseph Dickson, William Edmond, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Benjamin Huger, James H. Imlay, Henry Lee, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, John Rutledge, James Sheafe, Richard Thomas, Peleg Wadsworth, and Henry Woods.

Ordered, That the said bill and amendments be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to amend and continue in force the act, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" and, after some time spent therein, the Committee rose and reported two amendments thereto; which were read.

Ordered, That the said bill and amendments be postponed until to-morrow.

FRIDAY, February 27.

An engrossed bill to amend the act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the third time, and passed.

A memorial of Thomas Claxton, James Mathers, and Thomas Dunn, Doorkeepers to Congress, was presented to the House and read, praying that they may be permitted to retain the possession of three small tenements, the property of the public, on such terms as may be thought reasonable.

Ordered, That the said memorial be referred to Mr. GREGG, Mr. FREEMAN, and Mr. GLEN; that they do report thereon by bill or otherwise.

A Message was received from the President of the United States transmitting a report of the Secretary of State, with sundry documents, relative to the subject of the resolution of the House of Representatives of the twenty-fourth instant. Laid on the table.

Mr. GRISWOLD, from the committee appointed to inquire into the expenditure of money made by the Commissioners of the City of Washington; the disposition of public property made by them; and, generally, into all the transactions of the Commissioners which relate to the execution of the trust confided to them by the President of the United States, made a report; which was read and considered: Whereupon,

Resolved, That a committee be appointed to prepare and report a bill to abolish the Board of Commissioners of the City of Washington, and to direct that the business of that Board be transferred to the Department of the Treasury.

Resolved, That a committee be appointed to prepare and report a bill directing the Secretary of the Treasury, under the direction of the President of the United States, to prepare a plan of the city of Washington, delineating the streets, squares, and public grounds therein; and to report the same to Congress in December next.

Resolved, That a committee be appointed to prepare and report a bill to authorize the sale of lands in the District of Columbia, under proper regulations, to raise the moneys which may at any time be due and unpaid on contracts for the sale of such lands.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Mr. GRISWOLD, Mr. SHEAFE, Mr. HENDERSON, Mr. CRAIK, and Mr. TENNEY, do prepare and bring in the same.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

I transmit to you, in conformity with your request of the seventeenth instant, two reports; one from the acting Secretary of War, the other from the Secretary of the Treasury, of the twenty-sixth, with details of the expenditure of the moneys appropriated by the acts of the twentieth May, and sixth of July, one thousand seven hundred and ninety-eight, and of the tenth of May, one thousand eight hundred,

JOHN ADAMS.

UNITED STATES, *Feb.* 27, 1801.

The Message and papers accompanying the same were read, and ordered to lie on the table.

Mr. DENNIS, from the committee appointed on so much of the President's Speech as respects the District of Columbia, presented a bill supplementary to the act, entitled "An act concerning the District of Columbia;" which was read twice, and committed to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to add to the district of Massac, on the Ohio, and to discontinue the districts of Louisville, in the State of Kentucky, and Palmyra, in the State of Tennessee, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments; whereupon,

Resolved, That this House doth agree to the said amendments.

Mr. SILAS LEE, from the committee appointed, presented a bill for altering the times of holding the Circuit Courts of the United States in the first circuit; for altering the times of holding the District Courts of said States in the State of North Carolina; and for altering the place of holding the Circuit Court of the said States in the district of Kentucky; which was read twice, and committed to a Committee of the whole House this day.

Mr. PINCKNEY, from the committee appointed, presented a bill to ascertain the titles of certain persons claiming lands within the territory of the United States; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. NICHOLAS, from the joint committee appointed to consider what further measures ought to be taken for the accommodation of the President of the United States, and to whom was referred the Message from the President of the United States, concerning the disposition of the property of the United States in his possession, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. NICHOLAS, from the same committee, presented a bill in addition to the act, entitled "An act making provision for the further accommodation of the household of the President of the United States;" which was read twice, and committed to the last-mentioned committee.

UNIFORM SYSTEM OF BANKRUPTCY.

The House proceeded to consider the amendments reported yesterday, from the Committee of the whole House, to the bill to amend and continue in force the act, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" whereupon the amendments reported from the Committee of the whole House were, on the question severally put thereon, agreed to by the House.

The said bill was then further amended at the Clerk's table; and, on the question that the same be engrossed and read the third time, it was resolved in the affirmative—yeas 49, nays 42, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, George Dent, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Edward Livingston, Lewis R. Morris, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, William Shepard, Samuel Smith, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Rob't Brown, Samuel J. Cabell, Matthew Clay, William Charles Cole Claiborne, John Condit, John Dawson, Joseph Eggleston, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson John Randolph, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, and Joseph B. Varnum.

Ordered, That the said bill, with the amendments, be engrossed and read the third time to-morrow.

NAVAL PEACE ESTABLISHMENT.

An engrossed bill providing for a Naval Peace Establishment, and for other purposes, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 69, nays 18, as follows:

YEAS—Willis Alston, Theodorus Bailey, Bailey Bartlett, Jas. A. Bayard, Phanuel Bishop, John Brown, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, John Dennis, George Dent, Joseph Eggleston, Thomas Evans, Jonathan Freeman, Albert Gallatin, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, Aaron Kitchell, John Wilkes Kittera, Silas Lee, Michael Leib, Levi Lincoln, Matthew Lyon, James Linn, Edward Livingston, Nathaniel Macon, Ebenezer Mattoon, Lewis R. Morris, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Robert Page, Leven Powell, John Randolph, John Reed, Nathan Read, Wm. Shepard, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, Samuel Tenney, George Thatcher, John C. Thomas, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Joseph B. Varnum, Robert Waln, Robert Williams, and Lemuel Williams.

NAYS—Christopher G. Champlin, William Cooper, Franklin Davenport, Joseph Dickson, William Edmond, Abiel Foster, Henry Glen, Chauncey Goodrich, Elizur Goodrich, Benjamin Huger, James H. Imlay, Harrison G. Otis, Josiah Parker, Jonas Platt, John C. Smith, James Sheafe, Peleg Wadsworth, and Henry Woods.

SATURDAY, February 28.

An engrossed bill to augment the salaries of the district Judges in the districts of Massachusetts, New York, Delaware, and Maryland, respectively, was read the third time, and passed.

Mr. GREGG, from the committee to whom was this day referred the memorial of Thomas Claxton and others, made a report; which he delivered in at the Clerk's table, where the same was twice read and considered; whereupon,

Resolved, That Thomas Claxton, James Mathers, and Thomas Dunn, be permitted to occupy, free of rent, until otherwise directed by Congress, the houses now in their respective possession, the property of the United States, in the public square in the city of Washington, on which the Capitol stands; together with a small piece of ground contiguous to each, for a garden, to be enclosed in such manner as not to interfere with any of the public streets or avenues running through the said square.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

Mr. GRISWOLD, from the committee appointed, presented a bill further to amend the act, entitled "An act for establishing the temporary and permanent seat of the Government of the United States; which was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the bill concerning the Mint; and, after some time spent therein, the Committee rose and reported one amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amend-

ment, be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill fixing the compensation of receivers of public moneys for lands of the United States, and regulating the mode of calculating discounts in case of prompt payment for the said lands; and, after some time spent therein, the Committee rose, and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill for altering the times of holding the Circuit Courts of the United States in the first circuit; for altering the times of holding the District Courts of the said States in the State of North Carolina, and for altering the place of holding the Circuit Court of the said States in the district of Kentucky; and, after some time spent therein, the Committee rose and reported the bill without amendment.

The said bill was then amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-day.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on the petition of James Scott, referred to him on the twenty-seventh of January last; which was read, and ordered to lie on the table.

Ordered, That the Committee of the whole House, to whom was committed, on the twenty-sixth instant, the bill authorizing the remission of duties on certain teas destroyed by fire, while under the care of the officers of the customs in Providence, Rhode Island, be discharged from the further consideration thereof, and that the said bill be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill authorizing the discharge of Lawrence Erb from his confinement; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act concerning the District of Columbia;" and, after some time spent therein, the Committee rose and reported.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to an act, entitled 'An act to divide the Territory of the United States Northwest of the Ohio into two separate governments,'" with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments: Whereupon,

Resolved, That this House doth agree to the same.

Ordered, That the Committee of the whole House, to whom was committed, on the twenty-third instant, the bill to amend the act, entitled "An act to establish a General Stamp Office," be discharged from the further consideration thereof, and that the said bill be engrossed, and read the third time to-day.

Ordered, That the Committee of the whole House, to whom was committed, on the twenty-fourth instant, the bill authorizing the Secretary of the Treasury to employ clerks for completing the abstracts of the valuation of lands and dwelling-houses, and the enumeration of slaves, be discharged from the further consideration thereof, and that the said bill be engrossed, and read the third time to-day.

Mr. Nicholas, from the committee appointed, on the tenth instant, to inquire into the causes of the late fires in the War and Treasury Departments, made a report; which was read, and ordered to lie on the table.

An engrossed bill authorizing the discharge of Lawrence Erb from his confinement, was read the third time.

The House resolved itself into a Committee of the Whole on the bill to amend the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and the Committee rose, reported progress, and had leave to sit again.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act directing the mode of estimating certain foreign coins and currencies, and of making out invoices in certain cases," with amendments; to which they desire the concurrence of this House. The Senate have passed the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and one," with amendments; to which they desire the concurrence of this House.

Ordered, That the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and one," be committed to a Committee of the whole House on Monday next.

An engrossed bill to amend the act, entitled "An act to establish a General Stamp Office," was read the third time, and passed.

An engrossed bill concerning the Mint was read the third time, and passed.

An engrossed bill authorizing the Secretary of the Treasury to employ clerks for completing the abstracts of the valuation of lands and dwelling-houses, and the enumeration of slaves, was read the third time and passed.

An engrossed bill authorizing the remission of duties on certain teas destroyed by fire, while under the care of the officers of the customs in Providence, Rhode Island, was read the third time, and passed.

An engrossed bill for altering the times of holding the Circuit Courts of the United States in the first circuit; for altering the times for holding the District Courts of the said States in the State of North Carolina; and for altering the place of

holding the Circuit Court of the said States in the district of Kentucky, was read the third time, and passed.

An engrossed bill fixing the compensation of receivers of public moneys for lands of the United States, and regulating the mode of calculating discounts in case of prompt payment for the said land, was read the third time, and passed.

UNIFORM SYSTEM OF BANKRUPTCY.

An engrossed bill to amend and continue in force the act, entitled "An act to establish an uniform system of bankruptcy throughout the United States," was read the third time.

A motion was then made and seconded that the fourth section of the said bill be recommitted to a Committee of the whole House; and, the question being taken thereupon, it was resolved in the affirmative—yeas 50, nays 42, as follows:

Yeas—Willis Alston, George Baer, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, John Condit, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, John Fowler, Albert Gallatin, Edwin Gray, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, William H. Hill, David Holmes, George Jackson, Aaron Kitchell, Michael Leib, Levi Lincoln, Matthew Lyon, Edward Livingston, James Lynn, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, Robert Page, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Benjamin Taliaferro, John Thompson, Abram Trigg, John Trigg, Littleton W. Tazewell, Joseph B. Varnum, and Robert Williams.

Nays—Bailey Bartlett, James A. Bayard, John Bird, John Brown, Christopher G. Champlin, William Cooper, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Jonathan Freeman, Henry Glen, Chauncey Goodrich, Roger Griswold, Robert Goodloe Harper, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Silas Lee, Lewis R. Morris, Harrison G. Otis, Josiah Parker, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Peleg Wadsworth, Robert Waln, Lemuel Williams, and Henry Woods.

Ordered, That the fourth section of the said bill be recommitted to a Committee of the whole House immediately.

The House accordingly resolved itself into said Committee; and, after some time spent therein, the Speaker resumed the Chair, and Mr. Morris reported that the Committee had had the fourth section of the said bill under consideration, and directed him to report to the House their disagreement to the same.

And, on the question that the House do agree with the Committee of the whole House in their said disagreement, it was resolved in the affirmative.

Resolved, That the said bill do pass, and that the title be "An act to amend the act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States."

REMONSTRANCE OF GEORGIA.

Mr. Dana, from the committee to whom was referred, on the seventh ultimo, the memorial and remonstrance of the Legislature of the State of Georgia, made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The report is as follows:

The Committee to whom was referred the Address and Remonstrance of the Legislature of the State of Georgia, submit the following Report:

The remonstrance complains of two acts of Congress respecting the Mississippi Territory; one passed in April, one thousand seven hundred and ninety eight, the other in May, one thousand eight hundred; and prays for their repeal.

The tract of country called the Mississippi Territory, is bounded on the West by the river Mississippi, on the East by the river Appalachicola, or Chatahoochee, on the South by the southern boundary of the United States, and on the North by a line drawn from the confluence of the river Yazoo with the Mississippi, due East to the before mentioned river Chatahoochee.

For a view of the claim of the United States to the territory in question, the committee, in the present instance, deem it sufficient to refer to a report of the Attorney General, made to the Senate, at the first session of the fourth Congress, and to the report of a committee of the House of Representatives, made at the first session of the sixth Congress. The last mentioned report also contains a summary statement of a variety of individual claims to land within the territory.

The claim of Georgia is particularly stated in the remonstrance referred to your committee.

The two acts of Congress, of which the remonstrance complains, have provided for an adjustment of those claims, through the agency of Commissioners; and also for the establishment of a government over the Mississippi Territory, similar to that established by the ordinance of Congress, of July one thousand seven hundred and eighty seven, for the Territory Northwest of the river Ohio; saving and reserving to the State of Georgia all her right or claim to the said territory.

Commissioners have accordingly been appointed on the part of the United States, and also on the part of Georgia, for negotiating an adjustment of their respective claims. No report has yet been laid before Congress from the Commissioners of the United States; but the business of their commission is understood to be yet pending.

Considering this state of things, the committee deem it proper for them to abstain from any particular discussion of the several claims to the Mississippi Territory, while a hope is cherished that an amicable adjustment may be ultimately effected. Nor do they think it expedient to adopt any measure which may be prejudicial to an object so desirable.

The committee therefore submit the following resolution:

"*Resolved*, That it would not be proper at this time for the House to take any further order on the Address and Remonstrance of the Legislature of the State of Georgia.

Monday, March 2.

An engrossed bill supplementary to the act, entitled "An act concerning the District of Columbia," was read the third time, and passed.

The SPEAKER laid before the House a letter from the PRESIDENT OF THE UNITED STATES elect, which was read, and is as follows:

WASHINGTON, *March* 2, 1801.

SIR: I beg leave through you to inform the Honorable the House of Representatives of the United States, that I shall take the oath which the Constitution prescribes to the President of the United States before he enters on the execution of his office, on Wednesday, the fourth instant, at twelve o'clock, in the Senate Chamber.

I have the honor to be, with the greatest respect, sir, your most obedient, and most humble servant,

THOMAS JEFFERSON.

Hon. THEODORE SEDGWICK,
Speaker of the House of Representatives.

Ordered, That said letter do lie on the table.

The SPEAKER laid before the House a letter from the Governor of Maryland, which was read, and is as follows:

IN COUNCIL, ANNAPOLIS,
February 26, 1801.

SIR: We have the honor to forward to you, for the use of the honorable body over which you preside, a set of the laws of this State, pursuant to a resolution of the Legislature.

We have the honor to be, with great respect, your obedient servants,

BEN. OGLE.

The Hon. THEODORE SEDGWICK,
Speaker of the House of Representatives.

Ordered, That the said letter do lie on the table.

The House resolved itself into a Committee of the whole House on the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and one;" and, after some time spent therein, the Committee rose, and reported their agreement to the same, with several amendments.

And, on the question that the House do agree with the Committee of the Whole in their agreement to the said amendments, with amendments, it was resolved in the affirmative.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House resolved itself into a Committee of the Whole, on the bill further to amend the act, entitled "An act for establishing the temporary and permanent seat of the Government of the United States;" and, after some time spent therein, the Committee rose and reported two amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill for erecting light-houses on New Point Comfort, and on Smith's Point, in the State of Virginia, and on Faulkner's Island, in Long Island Sound, in the State of Connecticut; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the Navy of the United States for the year one thousand eight hundred and one." The Senate have passed the bill, entitled "An act further to alter and to establish certain post roads," with amendments; to which they desire the concurrence of this House. The Senate have passed the bill, entitled "An act to amend the act altering the district of Bermuda Hundred and City Point," with amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act directing the mode of estimating certain foreign coins and currencies, and of making out invoices in certain cases:" Whereupon.

Resolved, That this House doth agree to the said amendments.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to amend the act altering the district of Bermuda Hundred and City Point:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act further to alter and to establish certain post roads:" Whereupon.

Resolved, That this House doth agree to the said amendments.

Mr. MACON, from the Committee of Claims, to whom was referred the several petitions of Jacob Barnitz, Philip Sloan, Thomas Parker, Peter Charles L'Enfant, Mile Riley, Charles Hyde, Margaret Culbertson, Mary Hay, James Denniston, Mathias Shroyer, Philip Lightfoot, William Ray, John Followell, John Hall, Leonard Jarvis, William Milton and others, and the bill for the relief of William Nichols, made a report; which was read and considered: Whereupon,

Resolved, That the Committee of Claims be discharged therefrom, and that the further consideration of the said petitions and bill be postponed until the next session of Congress.

PRESIDENT'S HOUSE.

The House resolved itself into a Committee of the Whole on the bill for the further accommodation of the President of the United States.

The object of this bill was to apply six thousand dollars, remaining of the appropriation of $15,000, during the last session, for furnishing the President's house—together with the proceeds of such

furniture as, being unfit for use, might be sold, to procure such additional furniture as might be necessary.

Mr. HARPER contended that the sum was too small for so large and elegant a house as was provided for that officer. Though the house was neither too large nor too elegant, yet the furniture was by no means sufficient to furnish it in that style it demanded. Perhaps, he said, the furniture might produce five thousand dollars, which added to the six thousand dollars, and to that added ten thousand dollars, he would now move as an amendment to the bill. This amounted to twenty thousand dollars, for furniture, which he believed was as small a quantity as would be any way adequate to that place.

Mr. NICHOLAS said the committee (of which he was one) had endeavored to procure the best possible information of the state of the furniture now in the house; they were well satisfied that the sum in hand which the bill proposed to expend, with the proceeds of sale from such as might be unfit, would be perfectly competent to that decency of style which the manner of living of that officer could require. But, he said, he should despair of forming an agreement of opinions as to the sum requisite, without the style could be ascertained in which it was desirable to support the President of the United States.

Mr. S. SMITH hoped the motion would not prevail. He could see no necessity whatever for more to be appropriated than the unexpended six thousand dollars proposed. In twelve years, he said, there had been thirty thousand dollars used for this object. The present furniture, with what this money and the proceeds of the sale would procure, would make a very handsome quantity, and be fully adequate to the wants of the House. From his observation in such parts of the house as were occupied, he could perceive no want of furniture nor elegance.

Mr. CRAIK differed in opinion with his colleague (Mr. SMITH) that the style of the rooms now furnished was such as was desirable. What then could be said, when it was considered that the largest and most elegant rooms were not yet furnished? But furniture must be procured for these apartments before the next session of Congress, and it would certainly require much more money than was proposed to be used upon it. If it was considerered that the whole sum was appropriated every four years, he hoped gentlemen would cease their objections to the ten thousand dollars proposed.

Mr. MACON believed the sum already appropriated to be adequate to all the style and elegance that officer would require. For his part he could see no more occasion for furnishing a house for the President than for the Heads of Departments. If he chose to live in style, twenty-five thousand dollars a year was quite sufficient to enable him to do it, and if he could not live upon that sum, he could not live upon any. Forty-five thousand dollars had been appropriated for President's furniture, thirty-six thousand or more of which had been expended; but now, in addition to the six thousand on hand, a gentleman wanted to give ten thousand more! For what, he would ask? If that sum was not enough, no sum whatever would be enough. He believed this sum would be sufficient for fifty years service, and he hoped the House would not appropriate a farther sum. If the style of the furniture was raised so very high, he should not be surprised soon if there was to be a proposition to make the salary a little more adequate to the style of the furniture, and raise that too, to bring him up to the style of his furniture.

Mr. BAYARD wished not to extend it so far as the gentleman from South Carolina. As heretofore fourteen thousand dollars had been appropriated, he would propose to this six thousand dollars, supposing the proceeds of sales to amount to three thousand dollars, to add fourteeen thousand, a medium which he considered sufficient.

Mr. HARPER observed that the proceeds of the sales had been usually granted in addition to the money appropriated. He wished the sum of ten thousand dollars, as proposed, to be appropriated; however, as objections were made, he was willing to modify it, and make it eight thousand dollars, which, with the six thousand remaining, would make the usual sum of fourteen thousand dollars; to which sum he hoped no gentleman would object.

Mr. VARNUM reminded the Committee, that the fourteen thousand dollars first given, were to furnish an empty house; the furniture then purchased remained during the eight years of General WASHINGTON'S administration, and he believed no complaints of inadequacy were heard. At the close of his period of office, and before Mr. ADAMS came into office, fourteen thousand dollars more were appropriated, together with the proceeds of the sale of such as was unfashionable or decayed. He did not know that the amount of the sales was ascertained, but it was added in the additional purchase. To this had been added the appropriation of last year to furnish the present house, all of which had not been expended. He always had supposed that the whole of these sums were intended solely for the providing of household furniture. It appeared, however, that this law had received a different construction by the President, than he had heard given to it by any gentleman on the floor; for in the inventory of furniture remaining on hand, which had been supplied to the house, he saw an item of seven horses and a carriage, and even a market wagon, together with harness, &c. This plainly evinced that the House had appropriated fifteen thousand dollars for household furniture—the President had thought himself authorized to purchase carriages, horses, and perhaps other things which convenience might suggest.

Mr. MACON said, the arguments of the gentleman from Delaware, who had proposed a sum much more to his liking, because it was less, went to prove that fourteen thousand dollars must be appropriated every four years; but upon this principle there would be a great amount of furniture in a few years, by the sums being heaped on each other. Now, for his part, he was not willing to take away anything of the thirty thousand dollars which had been laid out, but he would even add

to it the remaining sum in hand, and surely this must be sufficient, though in his opinion there would be no necessity for it.

Mr. S. Smith thought gentlemen were completely acquainted with the quantity or the kind of furniture which had been provided for that house. The articles which had been mentioned were certainly improper items in household furniture. He much disapproved of the manner in which the money had been laid out, and believed no gentleman could approve of it, as a compliance with the law. However, he had no idea of going into the subject at this time, lest it should lead him further than he would wish to go.

Mr. Harper said, the very argument used by the gentleman last up carried the evidence of its own impotence; for, if of this sum much had been expended upon other objects, not household furniture, it proved that there was the more occasion for money to be appropriated for the purpose to which that ought to be applied. He knew of no object to which the gentleman's observations were applied, otherwise than to evince his disposition to trample, very unworthily indeed, upon those who are already fallen. He hoped, however, that this disposition would not excite the gentleman to withhold such measures as were necessary to carry into execution what was already begun.

Mr. Smith could not conceive how he had endeavored unworthily to trample upon the fallen. He reflected upon no individual, nor did he know the gentleman's meaning. To such persons as had been engaged in making this very improper selection of furniture, he did, however, refer. He meant to say, that if this money had been laid out upon furniture the house would have had a better appearance than at present, though at present he could see no deficiency.

The question on Mr. Harper's motion, for eight thousand dollars, was taken and negatived.

Mr. Bayard's, for five thousand, shared the same fate. Mr. Harper moved four thousand, which was carried in the same way; on which Mr. H. withdrew the amendment altogether. The bill was engrossed, and passed its third reading during the day.

MAUSOLEUM TO WASHINGTON.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to erect a mausoleum for George Washington:" Whereupon,

A motion was made and seconded to amend the amendment of the Senate to the first section of the said bill, by striking out, from the tenth line thereof, the word "fifty," for the purpose of inserting, in lieu thereof, the word "one hundred:"

And the question being taken thereupon, it passed in the negative—yeas 34, nays 49, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Brown, William Craik, Samuel W. Dana, Franklin Davenport, John Dennis, Joseph Dickson, Thomas Evans, Abiel Foster, Henry Glen, Chauncey Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, William H. Hill, Benjamin Huger, John Wilkes Kittera, Henry Lee, Lewis R. Morris, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, Nathan Reed, John C. Smith, James Sheafe, George Thatcher, John Chew Thomas, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Christopher G. Champlin, Gabriel Christie, Mathew Clay, William Charles C. Claiborne, John Davenport, Thomas T. Davis, John Dawson, William Edmond, Joseph Eggleston, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph Nicholson, John Randolph, John Reed, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, Samuel Tenney, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Peleg Wadsworth.

The said amendments of the Senate were then further amended at the Clerk's table, and, on the question that the House do agree to the said amendments as amended, it was resolved in the affirmative—yeas 46, nays 33, as follows:

Yeas—Theodorus Bailey, Bailey Bartlett, John Bird, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, Samuel W. Dana, John Davenport, John Dawson, Joseph Eggleston, John Fowler, Albert Gallatin, Chauncey Goodrich, Andrew Gregg, William Barry Grove, John A. Hanna, Joseph Heister, David Holmes, John Wilkes Kittera, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Reed, Nathan Read, William Shepard, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, David Stone, Benjamin Taliaferro, Samuel Tenney, John Chew Thomas, John Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Peleg Wadsworth.

Nays—James A. Bayard, John Brown, Christopher G. Champlin, Gabriel Christie, William Craik, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thomas Evans, Abiel Foster, Henry Glen, Roger Griswold, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, James H. Imlay, George Jackson, Henry Lee, Silas Lee, Ebenezer Mattoon, Robert Page, Thomas Pinckney, Jonas Platt, John Randolph, John C. Smith, Richard Stanford, Thomas Sumter, James Sheafe, John Stewart, George Thatcher, Lemuel Williams, and Henry Woods.

Tuesday, March 3.

An engrossed bill further to amend the act, entitled "An act for establishing the temporary and permanent seat of the Government of the United States," was read the third time, and passed.

An engrossed bill for erecting light-houses on New Point Comfort, and on Smith's Point, in the State of Virginia, and on Faulkner's Island, in Long Island Sound, in the State of Connecticut, and for placing buoys in Narraganset Bay," was read the third time, and passed.

Resolved, That the said bill do pass, and that the title be, "An act for erecting light-houses on New Point Comfort, and on Smith's Point, in the State of Virginia, and on Faulkner's Island, in Long Island Sound, in the State of Connecticut, and for placing buoys in Narraganset Bay."

Mr. Nicholas, from the committee appointed, on the twenty-third ultimo, to direct such an arrangement of the Chamber of this House as will be best adapted to the preservation of order, made a report; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to augment the salaries of the District Judges in the districts of Massachusetts, New York, New Jersey, Delaware, and Maryland, respectively," with an amendment; to which they desire the concurrence of this House. The Senate have passed the bill, entitled "An act in addition to an act, entitled 'An act making provision for the further accommodation of the household of the President of the United States," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act, entitled 'An act making provision for the further accommodation of the household of the President of the United States: Whereupon,

Resolved, That this House doth agree to the said amendment.

On motion, *Resolved*, That the Clerk of this House be authorized and directed to pay, out of the moneys appropriated to defray the contingent expenses of the House to the principal and engrossing clerks in the office of the Clerk of the House, respectively, two hundred dollars each, for their extra services during the present session.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to prohibit the Secretary of the Navy from being concerned in trade, or commerce, or navigation;" to which they desire the concurrence of this House.

The bill from the Senate, entitled "An act to prohibit the Secretary of the Navy from being concerned in trade, or commerce, or navigation," was read the first and second time.

SERGEANT-AT-ARMS, &c.

On a motion made and seconded that the House do come to the following resolution, to wit:

Resolved, That the Clerk of this House be authorized and directed to pay to the Sergeant-at-Arms, out of the money appropriated to defray the contingent expenses of the House of Representatives, the sum of ——— dollars for extra services:

Ordered, That the said motion be committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said committee; and, after some time spent therein, the Committee rose and reported one amendment thereto; which was twice read, and agreed to by the House.

The said resolution was then further amended at the Clerk's table, and being again read, in the words following, to wit:

Resolved, That the Clerk of this House be authorized and directed to pay to the Sergeant-at-Arms, the Doorkeeper and Assistant Doorkeeper, out of the money appropriated to defray the contingent expenses of the House of Representatives, the sum of two hundred dollars, each, for extra services:

The question was taken that the House do agree to the same, and resolved in the affirmative, yeas 39, nays 20, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, John Brown, Christopher G. Champlin, William Craik, Samuel W. Dana, Franklin Davenport, Thomas T. Davis, John Dennis, Joseph Dickson, Thomas Evans, Abiel Foster, Henry Glen, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, Henry Lee, Silas Lee, Michael Leib, Levi Lincoln, Lewis R. Morris, Peter Muhlenberg, Joseph H. Nicholson, Robert Page, Thomas Pinckney, Jonas Platt, John Randolph, John Reed, Samuel Smith, John C. Smith, John Stewart, Benjamin Taliaferro, Samuel Tenney, George Thatcher, John Chew Thomas, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, William C. C. Claiborne, John Dawson, George Dent, Joseph Eggleston, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, James Lynn, Edward Livingston, Nathaniel Macon, John Nicholas, John Smilie, John Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thos. Sumter, Abram Trigg, John Trigg, and Joseph B. Varnum.

WINTHROP SARGENT.

Ordered, That the Committee of the whole House, to whom was committed, on the nineteenth ultimo, the report of the committee appointed to inquire into the official conduct of Winthrop Sargent, Governor of the Mississippi Territory, be discharged from the further consideration thereof.

The House then proceeded to consider the said report at the Clerk's table, and, the resolution contained therein being then read in the words following, to wit:

Resolved, That there does not appear cause for further proceedings on the matters of complaint for mal-administration against Winthrop Sargent, as Governor of the Mississippi Territory."

The question was taken that the House do agree to the same, and it passed in the negative—yeas 38, nays 40, as follows:

Yeas—George Baer, Bailey Bartlett, James A. Bayard, Jno. Brown, Christopher G. Champlin, Wm. Craik, Saml. W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, Wm. Edmond, Thomas Evans, Abiel Foster, Henry Glen, Chauncey Goodrich, Roger Griswold, Wm. B. Grove, Robert Goodloe Harper, Archibald Henderson, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Gabriel Christie, Matthew Clay, William C. C. Claiborne, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Michael Leib, Levi Lincoln, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, Joseph H. Nicholson, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, John Stewart, Benjamin Taliaferro, Abram Trigg, and John Trigg.

And, an adjournment being called for, the House adjourned until six o'clock, P. M.

6 O'CLOCK, P. M.

A message from the Senate, informed the House that the Senate have passed the bill entitled "An act for altering the times and places of holding certain courts therein mentioned, and for other purposes," with an amendment; to which they desire the concurrence of this House; also, the bill, entitled "An an act providing for a Naval Peace Establishment, and for other purposes," with an amendment; to which they desire the concurrence of this House; and, also, the bill, entitled "An act supplementary to the act, entitled 'An act concerning the District of Columbia," with amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for altering the times and places of holding certain courts therein mentioned, and for other purposes:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act concerning the District of Columbia:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act concerning the District of Columbia:" Whereupon,

Resolved, That this House doth agree to the said amendments.

A message from the Senate informed the House that the Senate insist on their amendment, disagreed to by this House, to the bill, entitled "An act fixing the compensation of Receivers of Public Moneys for lands of the United States, and regulating the mode of calculating discounts in case of prompt payment for the said lands."

A motion was then made and seconded that the further consideration of the said bill and amendment be postponed until the next session of Congress.

And, the question being taken thereupon, it was resolved in the affirmative.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act fixing the compensation of Receivers of Public Moneys for lands of the United States, and regulating the mode of calculating discounts in case of prompt payment for the said lands," with amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the last mentioned bill: Whereupon,

Resolved, That this House doth agree to the said amendments, except the amendment for striking out the second section, to which this House doth disagree.

On motion, it was *Resolved*, That there be allowed to the Clerk of this House, to compensate for his extraordinary expenses during the present session of Congress, the sum of three hundred dollars, to be paid to him out of the moneys appropriated for defraying the contingent expenses of the House.

On motion, it was *Resolved*, That the Clerk of this House do pay to the Chaplain of this House the sum of one hundred dollars, out of the moneys appropriated for the contingent expenses of the House, in addition to the compension allowed him by law.

SECRETARY OF THE NAVY.

The bill sent from the Senate, entitled "An act to prohibit the Secretary of the Navy from being concerned in trade, or commerce, or navigation," was read the third time.

Mr. S. SMITH said the evident tendency of the bill was to prevent the Executive selecting mercantile men to fill these offices. [Mr. LIVINGSTON had moved to add the Secretaries of State and of War.] He wished to know what occurrence had transpired to make such a prohibition necessary? None had been mentioned, none he believed had existed. In the particular instance of prohibiting the Secretary of the Treasury from engaging in trade, &c., there was more reason, from his having in his possession much public money, and because it would be exceedingly improper to open the means for him to trade or speculate with it; but there could not be the same occasion for prohibiting the other officers. If the prohibition were now to take place, it would be supposed by the world, that the gentlemen who had filled these offices had actually traded with the money which passed through their hands belonging to the public. One of the gentlemen, who was Secretary at War, was at the time he was chosen to office, a commercial man; but was it ever said, or even thought, that he acted dishonestly, or used public money to promote his private interest? He believed not. He thought there was no doubt of his integrity. Why, then, should the House prevent the President of the United States from choosing men for office out of what class of citizens his judgment might suggest? What, he would ask, had commercial men done to merit this pecular mark of the distrust of the gentleman from New York? He wished gentlemen to look at the revenue laws and the duties. Were they not paid by commercial

men? The amount of their actual payments at the custom-house and their general conduct, he thought, fully evinced the honor and the honesty of that class of men, and proved them worthy to be entrusted, as well as other citizens, with offices of trust. But did the gentleman suppose his proposition would effect this end? If so, he was mistaken; for if a man entrusted with public property, choose to use it speculation or in commerce, what was to prevent him, whether merchant or not? Other means could be found than those which every one could discover. He hoped the amendment and the law itself would be negatived.

Mr. CHRISTIE moved to postpone it till fifty minutes past 11 o'clock; which was not carried.

Mr. LIVINGSTON said he had attended in vain to hear any distinction drawn between the Secretary of the Navy and those of the State and War Departments. To that difference only the arguments ought to have gone, for no further did his motion go; but gentlemen had argued against the whole principle of the bill. The argument of the motion implying distrust might have had some weight as the bill stood before, but to include the heads of all the departments was a sufficient answer. It was not upon grounds of distrust that he made his motion; it was upon the wide, incontrovertible principle, that when a man is taken to fill either of those great departments, the country has a right to his whole time and his whole attention, that the motion was made. What, he would ask the gentleman last up, could have induced him to suppose that the merchant alone was pointed out as an object of distrust? Mr. L. declared he distrusted no particular set of men, but what figure would a merchant or a tradesman make at the head of either of these departments? The principle was incontrovertible, that nothing ought to interfere to divert attention from the public concerns of a high office. This was not a paltry question between the merchant and the lawyer. No more should a Judge of the United States be drawn from his studies or his bench by any other avocation he might wish to possess for lucre than should a Secretary from his office.

Mr. L. would further observe, that it was not from any misconduct of this kind which he had observed in those who had filled public offices. He rather wondered that it had not long ere now been introduced as a just principle in the management of public concerns. It was from this view he wished to introduce it; and how the reasons for the bill, without the amendment, could be supported, he could not conceive.

Mr. H. LEE contended that the President of the United States was to take his Cabinet from among the people of the United States, and ought not to be prohibited from selecting such men as he thought fit to fill the offices with credit to themselves and to the nation. Sir, when I see the President made the agent of these two Houses, and restricted by them, I see that high officer prostrate at your feet, and the liberties of the people gone! If gentlemen tell me that the President has yet his selection because the gentlemen may quit their business, I deny it. I say that a man, once become a merchant and continuing in that occupation for ten years, is a merchant for life; for let him leave off pursuits at any period, there must of necessity remain very much unfinished business, which, if he studies his own interest, must be attended to. Sir, trammel not your President in his choice; let him have the liberty of choosing men of honor and integrity, and you need not fear a derogation from those principles more than from men of independence. This new principle in legislation I am not for adopting. I never can deviate from those principles under which our happy Government has so long flourished. I am advocating principles, and giving to the President of the United States the same power, the same freedom of selection, I would have given four years ago, although the gentleman who fills that high office is not the same. Commercial men, sir, are the most competent for the office of Secretary of the Navy, because most acquainted with the foreign relations and concerns of our country. Preclude commercial men from being selected, and you preclude those the most qualified.

Mr. LIVINGSTON explained the motives of his conduct. He wished to preserve that system of conduct which he always had advocated; he wished to give to the Executive that direction and limitation he had always desired to do. It was always his opinion, and continued to be so, that if all men were honest there would be no occasion for laws; if all men were honest there would be no occasion for that House to sit to make them, and therefore they might go home and never return. But this was not the case; while there were men, there must be laws, and strict laws, to keep men to their duty.

Mr. H. LEE having obtained leave to speak again, further contended against the principle of the bill and amendments, and hoped the House would not place the President in such a subaltern situation as this measure would place him in, and snatch from him a prerogative his situation demanded.

Mr. CHAMPLIN was surprised that the gentleman from New York, a representative of a commercial city, should advocate such principles. He conceived it to be a question of confidence in the President of the United States, and perhaps would be of some weight, if that officer had not the power of removing the Secretaries of the different departments whenever he should think them unworthy of public confidence; or whenever they should use the public money to private purposes; or whenever they should neglect their business. This was certainly a very different case from that of a Judge, who could not be removed except upon misconduct, which could only be known by impeachment. He opposed the bill and the amendment, because it was an intrusion upon Executive privilege; because it must go to wound the officers who had been and are now employed; because it must go to prevent that selection of men whose talents and integrity may be most calculated for the general interest of the Union; and most of all, because it went to wound the Navy of the United States, whose well government and

regulation depended very much upon the talents of the character who was placed at the head of that department; it was not because it affected this or that merchant or tradesman. He wished to see a man of property; a man of commercial knowledge; a man of experience; and a man who was attached to the Navy, at the head of that department. By this bill a man in that situation must be prohibited from placing his money in the public funds; from dealing in public lands; from putting it in commerce, or from using it in trade of any kind. Now, what was a man of large property to do with his money? It could not be supposed that men of large capital, or men of business, or men of experience, would accept an appointment under the limitations to which they must subject themselves.

Mr. MACON hoped the amendment would be agreed to, and the bill pass. He supposed the bill must have originated in the Senate, either from past experience, or from the intrinsic necessity of such a preventive to what might produce a public fraud, by public money being used to speculate for private advantage. Man is man wherever he is placed, and to guard against his frailties is wise legislation. He wished to confide the money of the people to no man further than was necessary.

Mr. S. SMITH answered, that it would be impossible, by any measure of this kind, to make a dishonest man act with integrity. It must be to the honor and honesty of the man the public property must be confided. He produced an instance of speculation in a public officer, who was entrusted with the good of the community; but it was not the act of a merchant, he said; and not from merchants, nor from any particular description of men, but men devoid of principle, evils were to be expected. On the contrary, integrity and honesty alone could insure the right use of a public confidence.

On the question, the amendment was lost.

The bill was also refused a third reading and lost.

THANKS TO THE SPEAKER.

Mr. PAGE moved the following resolution:

Resolved, That the thanks of the House be presented to Theodore Sedgwick for his conduct while in the Chair of this House.

The question was taken whether this motion was in order. It was decided to be in order.

The yeas and nays were ordered.

Mr. CHRISTIE said he should not point out the improprieties in the conduct of the Speaker while in the Chair, otherwise than by his vote, though he possessed the right to call up to the recollection of the House the many inconsistencies his presidency had been marked with. In doing that, Mr. Speaker, I shall behave better to you than you have ever done to me.

The cry of "order!" "order!" prevented any more being said, and Mr. C. sat down.

The yeas and nays were then taken, and resulted—yeas 40, nays 35, as follows:

YEAS—George Baer, Bailey Bartlett, James A. Bayard, John Brown, Christopher G. Champlin, William Craik, Samuel W. Dana, John Davenport, Franklin Davenport, John Dennis, Joseph Dickson, William Edmond, Thos. Evans, Abiel Foster, Henry Glen, Chauncey Goodrich, Roger Griswold, William Barry Grove, Robert Goodloe Harper, Archibald Henderson, Benjamin Huger, James H. Imlay, John Wilkes Kittera, Henry Lee, Silas Lee, Lewis R. Morris, Robert Page, Thomas Pinckney, Jonas Platt, Leven Powell, John Reed, Nathan Read, William Shepard, John C. Smith, James Sheafe, Samuel Tenney, George Thatcher, John Chew Thomas, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Robert Brown, Samuel J. Cabell, Gabriel Christie, William Charles Cole Claiborne, Thomas T. Davis, John Dawson, George Dent, Joseph Eggleston, John Fowler, Albert Gallatin, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, Michael Leib, Matthew Lyon, James Lynn, Edward Livingston, Nathaniel Macon, Peter Muhlenberg, Anthony New, John Nicholas, John Randolph, John Smilie, John Smith, Samuel Smith, Richard Dobbs Spaight, Richard Stanford, David Stone, Thomas Sumter, Abram Trigg, John Trigg, and Joseph B. Varnum.

Whereupon, Mr. SPEAKER made his acknowledgments to the House in the manner following:

Accept, gentlemen, my thanks, I pray you, for the respectful terms in which you have been pleased to express the opinion you entertain of the manner in which I have discharged the arduous duties of the station to which I was raised by your kind regard.

Although I am conscious of having intended faithfully to execute the trust confided to this Chair, yet I am sensible that, whatever success may have attended my endeavors, is justly attributable to the candid, honorable, and firm support which you have constantly afforded. I cannot lay the least claim to merit for any thing that I have done; because the generous confidence which you had reposed in me, demanded that I should devote all my feeble talents to your service.

Being now about to retire from this House, and, as I hope, from the public councils forever, permit me, gentlemen, to bid you, collectively and individually, an affectionate farewell. It is true that I have long wished to indulge repose in the shade of private life; but the moment of separation inflicts an anguish inexpressible by language. It is a separation from men of dignity of character, of honorable sentiments, and of disinterested patriotim; an association with whom has been my pride and solace amidst all the fatigue and vexation of public life. Of the friendship of such men, long uninterrupted and cordial as it has been, I shall always cherish a grateful remembrance. May you receive the reward most grateful to generous spirits, the reward of witnessing, as the effects of your labors, the increasing prosperity, and happiness, and glory, of your country.

As the last words which I shall utter, as a public man, allow me to declare, that those with whom I have had the honor, here, to act and think, whose confidence I have enjoyed, whose bosoms have been opened to my inspection, in my cool and reflected opinion, deserve all of esteem, affection, and gratitude, which their countrymen can bestow. On this occasion I deem myself authorized, from the present circumstances, to make this declaration; and I do it in the most solemn manner, in the presence of the assembled Representatives of America; and not only so, but in the awful presence of that heart-searching Being to whom I feel myself responsible for all my conduct. May the Almighty keep you in his holy protection. Farewell.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the President of the United States, and to inform him that Congress is ready to adjourn without day, unless he may have any further communications to make to them.

The House proceeded to consider the foregoing resolution of the Senate, agreed to the same, and appointed Mr. PINCKNEY and Mr. GROVE the committee on the part of this House.

Mr. PINCKNEY, from the joint committee of the two Houses, appointed to notify the President of the United States of the proposed recess of Congress, reported that the committee had, according to order, performed that service, and that the President signified to them that he had no further communication to make, but the expression of his wishes for the health and happiness of the members, and a pleasant journey on their return to their homes and families.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now ready to adjourn without day; and that the Clerk of this House do go with the said message.

The Clerk accordingly went with the said message; and being returned, Mr. SPEAKER adjourned the House, *sine die*.

APPENDIX

TO THE HISTORY OF THE SIXTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

FRANCE.

[Communicated to Congress, December 5, 1799.]

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress certain documents which have relation to the communications made on Tuesday, on the subject of the renewal of commerce with St. Domingo, and the mission to the French Republic.

JOHN ADAMS.

UNITED STATES, *Dec.* 5, 1799.

Renewal of Commerce with St. Domingo.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

Whereas, by an act of the Congress of the United States, passed the 9th day of February last, entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," it is provided, That, at any time after the passing of this act, it shall be lawful for the President of the United States, if he shall deem it expedient and consistent with the interests of the United States, by his order, to remit and discontinue for the time being, the restraints and prohibitions by the said act imposed, either with respect to the French Republic, or to any island, port, or place, belonging to the said Republic, with which a commercial intercourse may safely be renewed; and also to revoke such order whenever, in his opinion, the interests of the United States shall require; and he is authorized to make proclamation thereof accordingly:

And, whereas, the arrangements which have been made at St. Domingo, for the safety of the commerce of the United States, and for the admission of American vessels into certain ports of that island, do, in my opinion, render it expedient, and for the interest of the United States, to renew a commercial intercourse with such ports:

Therefore, I, JOHN ADAMS, President of the United States, by virtue of the powers vested in me by the above-recited act, do hereby remit and discontinue the restraints and prohibitions therein contained, within the limits and under the regulations here following, to wit:

1. It shall be lawful for vessels which have departed or may depart from the United States, to enter the ports of Cape François and Port Republicain, formerly called Port-au-Prince, in the said island of St. Domingo, on and after the 1st day of August next.

2. No vessel shall be cleared for any other port in St. Domingo than Cape François and Port Republicain.

3. It shall be lawful for vessels, which shall enter the said ports of Cape François and Port Republicain, after the thirty-first day of July next, to depart from thence to any port in said island between Monte Christi, on the north, and Petit Goave, on the west, provided it be done with the consent of the Government of St. Domingo, and pursuant to certificates or passports expressing such consent, signed by the Consul General of the United States, or Consul residing at the port of departure.

4. All vessels sailing in contravention of these regulations will be out of the protection of the United States, and be, moreover, liable to capture, seizure, and confiscation.

Given under my hand and the seal of the United States, at Philadelphia, the twenty-sixth day of June, in the year of our Lord 1799, and of the independence of said States the twenty-third.

[L. S.]

JOHN ADAMS.

By the President:
TIMOTHY PICKERING,
Secretary of State.

Mission to France.

Letter from Patrick Henry, Esq., to the Secretary of State.

CHARLOTTE COUNTY, (*Va.*,)
April 16, 1799.

SIR: Your favor of the 25th ultimo did not reach me till two days ago. I have been confined for several weeks by a severe indisposition, and am still so sick as to be scarcely able to write this.

My advaaced age and increasing debility compel me to abandon every idea of serving my country, where the scene of operation is far distant, and her interests call for incessant and long-continued exertion. Conscious as I am of my inability to discharge the duties of Envoy, &c.

to France, to which, by the commission you send me, I am called, I herewith return it.

I cannot, however, forbear expressing on this occasion, the high sense I entertain of the honor done me by the President and Senate in the appointment; and I beg of you, sir, to present me to them in terms of the most dutiful regard, assuring them that this mark of their confidence in me, at a crisis so eventful, is a very agreeable and flattering proof of their consideration towards me, and that nothing short of absolute necessity could induce me to withhold my little aid from an Administration whose abilities, patriotism, and virtue, deserve the gratitude and reverence of all their fellow-citizens.

With sentiments of very high regard, and unfeigned esteem, I am, sir, &c.

P. HENRY.

Copy of a letter from Mr. Talleyrand, as Minister of Exterior Relations, to Mr. Pichon, Secretary of Legation, Hague, dated

PARIS, *11th Fructidor.*
(*August* 28, 1798.) *6th year.*

I see with pleasure, citizen, that the intercourse of society has procured you some political conversations with Mr. Murray. I entertain an esteem for that Minister. Like all the men at the head of the affairs of the United States, he has received the impressions which the British Cabinet has known how to give against us. He thinks the measures of his Government just, and supports them; but he possesses reason, understanding, and a true attachment to his country: he is neither French nor English: he is ingenuously an American. I am not at all surprised that he has appeared to you to wish sincerely for the reconciliation of the two Republics. I will, therefore, cheerfully answer the questions you put to me on different points, which appeared to you not to be well established in his mind.

I do not see between France and the United States any clashing of interests, any cause of jealousy. The Americans wish to be fishermen, sailors, manufacturers, and especially husbandmen. In all these points of view, their success is more at the expense of England than us. Why should we be uneasy about them? They aspire to the consolidation of their national existence, and it is to our purpose that they should succeed. In fact, we should have decided upon very superficial views to sustain their independence, if the matter was to separate them from England merely to leave them finally insulated among themselves, on an extensive seacoast, weak, rivalling, and impoverished by each other, and torn by foreign intrigues. We know that Great Britain would soon have to put together, piece by piece, those scattered shreds, and we should have done nothing useful for ourselves, if so miserable a chance of it were not daily rendered more remote.

What, therefore, is the cause of the misunderstanding, which, if France did not manifest herself more wise, would henceforth induce a violent rupture between the two Republics? Neither incompatible interests, nor projects of aggrandizement, divide them. After all, distrust alone has done the whole. The Government of the United States has thought that France wanted to revolutionize it. France has thought that the Government of the United States wanted to throw itself into the arms of England. It does not require much skill to divine which is the Cabinet interested in the two events producing each other, and which invisibly puts in motion all the expedients calculated to make them take effect. Let us open our eyes on both sides. I am disposed to admit that the conduct of the Government of the United States may be explained by other causes than those heretofore presumed. But let it on its part understand that the French Government, wounded as it may be, is too wise to entertain the views of disturbance which the other supposes. It concerns a Republic, founded on the system of representation, to support and not to weaken similar establishments. The stability of this system abroad is a necessary example at home. France, in fine, has a double motive, as a nation and as a Republic, not to expose to any hazard the present existence of the United States. Therefore, it never thought of making war against them, nor exciting civil commotions among them; and every contrary supposition is an insult to common sense.

These fundamental principles being established, it is natural to ask by what fatality a good understanding was not long since restored. It was because irritation being mingled with distrust, neither party yielded to real conciliatory inclinations. In the United States it was supposed that the French Government was temporizing, in order to strike the blow with greater certainty; whence resulted a crowd of measures more and more aggravating. In France it was supposed that the Government of the United States wished only the appearances of a negotiation, whence resulted a certain demand for pledges of good faith.

Let us substitute calmness for passion, confidence for suspicions, and we shall soon agree. I used my endeavors to enter upon a negotiation in this spirit with Mr. Gerry. My correspondence with him, until the day of his departure, is a curious monument of advances on my part, and of evasions on his. It is wrong to think that I confined myself to vague protestations. Among that series of official letters, which will doubtless be published at Philadelphia, I select one, of the 30th Prairial, wherein you will see that I make very positive propositions, without any mixture of preliminary conditions. This letter was followed by three notes upon the articles to be discussed, and I intended to complete the others in this manner if Mr. Gerry had not refused to answer thereto.

When it became necessary to abandon the idea of treating with that Envoy, who thought it important only to know how a negotiation might thereafter be resumed, I gave him the most solemn assurances concerning the reception that a new Plenipotentiary would receive. It was far from my thoughts to insinuate that the President should send one from the United States, instead of

investing with his powers some one who was in Europe; far less that the Envoy should land directly in France, instead of announcing it in a neighboring country. I wished merely to say, that the Executive Directory was so decided for a reconciliation, that all tampering would be superfluous, that an act of confidence in it would excite its own. I should be very badly understood, if there should be found in my expressions a restriction on the nature of the choice which the President might make. I wished to encourage Mr. Gerry, by testimonies of regard, that his good intentions merited; although I could not dissemble that he wanted decision, at a moment when he might have easily adjusted every thing. It does not thence follow that I designated him. I will even avow that I think him too irresolute to be fit to hasten the conclusion of an affair of this kind. The advantages which I prized in him are common to all Americans who have not manifested a predilection for England. Can it be believed that a man who should profess a hatred or contempt of the French Republic, or should manifest himself the advocate of royalty, can inspire the Directory with a favorable opinion of the dispositions of the Government of the United States? I should have disguised the truth, if I had left this matter ambiguous. It is not to wound the independence of that Government, to point out a sincere friend of peace the shoals he ought to avoid.

As to the mediation of the Batavian Republic, and of Spain, I do not know that there is any serious question about it, and it appears to me absolutely useless. The United States might hesitate in the present state of things, to refer themselves to their impartiality, and besides, I perceive no subject which may not be arranged directly.

I know that the distance which separates France and the United States opens a vast field for incidents, and there have been but too many of them. But the Executive Directory is unshaken in the conduct which may best obviate them. The excess even of provocations has deadened their effect. The Government of the United States surrounds itself with precautions against an imaginary attack. To stretch the hand to deluded friends, is what one Republic owes to another, and I cannot doubt that the dignity of that attitude will convince the President of our pacific intentions.

The two Governments ought, above all, to be attentive to indirect attempts to alienate them still more. Their prudence will secure this object, and I shall cite but one example of it. You have told Mr. Murray the truth respecting Dr. Logan. But I perceive, that on all hands it is attempted to produce a belief in America, that we are negotiating with him. On the 7th of this month, a very insidious paragraph was inserted in the *Bien Informe*. It is therein intimated that, guided by the citizen Thomas Paine, Dr. Logan has made application to the Executive Directory, in the character of a secret agent. The doctor has complained bitterly of it to me. He has no need of justifying himself concerning the matter, the falsity of which I know better than anybody; but he assured me, that having once only met Thomas Paine, at the house of a third person, he found him so prejudiced against the United States, and so opinionative, with respect to an influence he neither possesses among them nor us, that he abstained from conversing any more with him. Moreover, to cut short all misunderstanding, I engaged Dr. Logan to postpone, till another time, the experiment he proposes to make on agriculture, and to return home. As to Mr. Hitchborn, of Massachusetts, I was even ignorant till now that he was in Europe. A single word will suffice for the rest.

We want nothing but justice on the part of the United States; we ask it; we offer it to their Government: it may depend upon the candor of the Executive Directory.

You will not doubt, citizen, that I approve of the communications which your zeal has caused you to seek with Mr. M., since I enabled you to resume them with official elucidations. &c.

CH. MAU. TALLEYRAND.

[This letter was received from Mr. Murray, without the French original.]

The Minister of Exterior Relations to Citizen Pichon, Secretary of Legation of the French Republic, near the Batavian Republic.

PARIS, *the 7th Vendemiaire,*
(*Sept.* 28, 1798.) *7th year of the French Republic, one and indivisible.*

I have received successively, citizen, your letters of the 22d and 27th Fructidor, (8th and 13th of September.) They give me more and more cause to be pleased with the measures you have adopted to detail to me your conversations with Mr. Murray; those conversations, at first merely friendly, have acquired a consistency, by my sanction, transmitted to you on the 11th Fructidor, (28th of August.) I do not regret that you have trusted to Mr. Murray's honor a copy of my letter. It was intended only for you; and it contains nothing but what is conformable to the Government's intention. I am fully convinced that should explanations once take place with confidence between the two Cabinets, irritation would cease, a number of misunderstandings would disappear, and the ties of friendship would be more strongly united, as both parties would be made sensible what hand had attempted to disunite them. But I do not conceal from you that your letter of the 2d and 3d Vendemiaire, (23d and 24th of September,) this moment arrived, surprises me much. What Mr. Murray is still doubtful of has been very explicitly declared, before even the President's Message to Congress, of the 3d Messidor, (21st of June,) was known in France. I had written it to Mr. Gerry, namely, on the 26th Messidor, (12th of July,) and 4th Thermidor, (July 22d.) I repeated it to him before he set off. A whole paragraph of my letter to you, of the 11th Fructidor, (28th of August,) of which Mr. Murray has a copy, is devoted to develop still more the fixed determination of the French Government. According to these bases, you were right

to assert that whatever Plenipotentiary the Government of the United States might send to France, in order to terminate the existing differences between the two countries, he would be undoubtedly received with the respect due to the representative of a free, independent, and powerful nation.

I cannot persuade myself, citizen, that the American Government need any further declaration from us to take the resolution, in order to renew the negotiations; to adopt such measures, as would suggest their wish to bring the differences to a peaceable end. If misunderstandings on both sides have prevented former explanations reaching that end, it is presumable that these misunderstandings being done away, nothing henceforth will raise any obstacle to the reciprocal dispositions. The President's instructions to his Envoys at Paris, which I have only been acquainted with, by the copy given to you by Mr. Murray, and by me received the 21st Messidor, (9th of July,) announce, if they contain the whole of the American Government's intentions, dispositions which can only add to those the Directory has always entertained; and notwithstanding the posterior acts of that Government, notwithstanding the irritating and almost hostile measures which they have adopted, the Directory has shown that it persisted in the dispositions consigned as well in my correspondence with Mr. Gerry, as in my letter to you of the 11th Fructidor, and which I have hereinbefore repeated in the most explicit manner. Carry, therefore, citizen, to Mr. Murray these positive expressions, to convince him of our sincerity, and request him to transmit them to his Government.

I presume, citizen, this letter will find you at the Hague; if not, I ask it may be sent back to you at Paris.

Salute and fraternity.

CH. MAU. TALLEYRAND.

No. 22.

DEPARTMENT OF STATE.
Philadelphia, March 6, 1799.

SIR: I enclose a commission constituting you, in conjunction with the Chief Justice Ellsworth and Patrick Henry, Esq., of Virginia, Envoys Extraordinary and Ministers Plenipotentiary to the French Republic. By the President's direction I enclose, for your information, copies of his Messages to the Senate of the 18th and 25th of March, by the latter of which you will see the motives inducing the nomination of a commission for the purpose of negotiating with France, instead of resting the business wholly with you. This will doubtless be agreeable, by relieving you from the weight of a sole responsibility in an affair of such magnitude.

It is the President's desire that you, by letter to the French Minister of Foreign Relations, inform him "that Oliver Ellsworth, Chief Justice of the United States, Patrick Henry, late Governor of Virginia, and yourself, are appointed Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, with full powers to discuss and settle by treaty all controversies between the United States and France:" But, "that the two former will not embark for Europe until they have received, from the Executive Directory, direct and unequivocal assurances, signified by their Secretary of Foreign Relations, that the Envoys shall be received in character to an audience of the Directory, and that they shall enjoy all the prerogatives attached to that character by the law of nations, and that a Minister or Ministers of equal powers shall be appointed and commissioned to treat with them."

The answer you shall receive to your letter you will be pleased to transmit to this office.

You will also be pleased to understand it to be the President's opinion, that no more indirect and inofficial communications, written or verbal, should be held with any persons whatever, agents on behalf of France, on the subjects of difference between the United States and the French Republic. If the French Government really desire a settlement of the existing differences, it must take the course above pointed out, unless the Executive Directory should prefer sending a Minister Plenipotentiary to the United States.

I have the honor to be, &c.,

TIMOTHY PICKERING.

WILLIAM VANS MURRAY, Esq.,
Minister United States, at the Hague.

THE HAGUE, *May* 5, 1799.

CITIZEN MINISTER: It is with the greatest pleasure that I hasten to fulfil the instructions, which I have just had the honor to receive from the Government of the United States of America, by informing you that the President has appointed Oliver Ellsworth, Chief Justice of the United States, Patrick Henry, late Governor of Virginia, and William Vans Murray, Minister Resident of the United States at the Hague, to be Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, with full powers to discuss and settle, by a treaty, all controversies between the United States and France; but that the two former (Mr. Ellsworth and Mr. Henry) will not embark for Europe until they shall have received from the Executive Directory direct and unequivocal assurances, signified by their Minister of Foreign Relations, that the Envoys shall be received in character to an audience of the Directory, and that they shall enjoy all the prerogatives attached to that character by the law of nations, and that a Minister or Ministers of equal powers shall be appointed and commissioned to treat with them.

I request you, Citizen Minister, to lay this subject before your Government, and, as the distance is so great and the obstacles so numerous in an Atlantic voyage, that you will favor me, as speedily as possible, with the answer which is to lead to such happy and important consequences.

Accept, Citizen Minister, the assurances of my perfect and high esteem.

WM. V. MURRAY.

Citizen TALLEYRAND, *Minister, &c., Paris.*

THE HAGUE, *May* 7, 1799.

DEAR SIR: On the 4th instant, late in the evening, I had the honor to receive your No. 22, containing the commission of Envoys.

On the fifth, I addressed, precisely agreeably to your instructions, as I conceived, the enclosed letter to Mr. Talleyrand, the Minister of Exterior Relations. You will perceive, sir, that I did not think myself at liberty to go, not only not out of the commas, but beyond them; in one word alone I deviated, in the word "Minister" instead of "Secretary" of Foreign Relations. No direct nor indirect and inofficial communications written or verbal will be held by me with the French agents on American affairs.

I accept the appointment which it has pleased the President to clothe me with, under a grateful sense of the high honor conferred upon me, so unexpectedly, by this mark of his confidence. I may be allowed to say, that though I was deeply sensible of the honor conferred by the first nomination, and shall always, I hope, retain a most grateful recollection of it; yet, sir, the new modification of that nomination gave me great pleasure. Always conceiving, as I thought I did, that any negotiation with France would be full of anxieties and political perils to the Envoys that should be employed by our Government, I had no wishes to be engaged in it, and no expectation that I should be: to have a share in it was by me unsought. You will excuse this declaration, because I was instrumental in certain preliminary steps relative to the advances of France, which produced the basis of the appointment.

I sent the original of the enclosed to Mr. Talleyrand by post, another (a copy) to Major Mountflorence, to be handed to him, a third to a Mr. Griffith for Major M. in case the other failed, to be opened by Mr. G. if Major M. should have been out of Paris, and directed Mr. G. to follow the instructions which he would find in the letter to Major M. which were to deliver the enclosed to Mr. Talleyrand and take his letter, answer for me, and to send it to me

As soon as I have the answer of the Directory, I shall have the honor of transmitting copies to you, sir, by different ways.

I am, with the greatest respect, &c.,

WM. V. MURRAY.

Hon. TIMOTHY PICKERING, Esq.,
Secretary of State, United States.

The Minister of Exterior Relations to Mr. William Vans Murray, Minister Resident of the United States at the Hague.

PARIS, 23*d Floreal*, (*May* 12, 1799.)
7th year of the French Republic, one and indivisible.

I augur too well, sir, from the eagerness you display in fulfilling the instructions of your Government, not to hasten to answer the letter I received from you dated the 15th of this month.

The Executive Directory being informed of the nomination of Mr. Oliver Ellsworth, of Mr. Patrick Henry, and of yourself, as Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, to discuss and terminate all differences which subsist between the two countries, sees, with pleasure, that its perseverance in pacific sentiments has kept open the way to an approaching reconciliation. It has a long time ago manifested its intentions with respect to this subject. Be pleased to transmit to your colleagues, and accept for yourself, the frank and explicit assurance that it will receive the Envoys in the official character with which they are invested; that they shall enjoy all the prerogatives which are attached to it by the law of nations, and that one or more Ministers shall be duly authorized to treat with them.

It was certainly unnecessary to suffer so many months to elapse for the mere confirmation of what I have already declared to Mr. Gerry, and which after his departure I declared to you at the Hague. I sincerely regret that your two colleagues await this answer at such a great distance. As to you, sir, whom it will reach in a few days, and who understand so well the value of time, when the restoration of harmony between the two Republics, which everything invites to friendship, is in question, be assured, that as soon as you can take in hand the object of your mission, I shall have the honor immediately to send you passports. Accept, sir, the assurances of my very sincere consideration.

CH. MAU. TALLEYRAND.

[Reported to the House of Reps., Feb. 14, 1800.]

The Committee of Commerce and Manufactures beg leave to report, on the subject of the suspension of the commercial intercourse between the United States and France, that the laws which have been enacted for that purpose have been, as far as appears to the committee, faithfully executed in all respects depending on the care of the officers of the United States. It is but too probable, however, that individuals, engaged in pursuit of private commercial advantages, and regardless of the public welfare, have evaded, in many instances, the provisions of those laws. Some observations from the Secretary of the Treasury relative to these practices, and a detail of the cases, which, under the sixth section of the last act of Congress, prohibiting commercial intercourse with France, have been transmitted to that department, are herewith submitted. The committee, being of opinion that it is expedient further to suspend all commercial intercourse between the United States and France, have prepared a bill for that purpose, which is also submitted, and, in the opinion of the committee, ought to be enacted without delay.

TREASURY DEPARTMENT, *Jan.* 23, 1800.

SIR: I have the honor to enclose a statement of all the cases which have been transmitted to this department for decision, pursuant to the act of Congress passed on the 9th of February, 1799, entitled "An act further to suspend the commer-

cial intercourse between the United States, and France and the dependencies thereof."

Although this statement contains the substance of the information desired by the committee, and particularly in what manner the power granted by the sixth section of the act has been exercised, yet it may be useful to observe, that the law of Congress passed on the 13th of June, 1798, which imposed the first restrictions on commercial intercourse with France, was, by this department, understood to declare the following principles, by which the conduct of the collectors of the customs has accordingly been governed.

1st. That all exports to France or her dependencies were prohibited after the 1st day of July, 1798, except the goods and effects of Frenchmen residing in the United States, and about to depart in vessels with permits from the President of the United States.

2d. That the entry of vessels *bona fide* the property of citizens of the United States, or employed by them, and having on board property of such citizens only, was lawful until the 1st day of December, 1798, and no longer.

Although the true interpretation of the law cannot be considered as finally settled by judicial decisions, yet, as diversities of opinion are known to exist, it is desirable that the sense of the Legislature may be ascertained upon the following points, in case the restrictions upon commerce with France shall be continued after the 3d day of March ensuing.

1st. Whether the restrictions shall extend to any except French and American vessels?

2d. Whether trade through a neutral country, by means of a mutual agent of persons residing in the dominions of France and the United States, shall be lawful?

3d. Whether cartel vessels, with passports of the President of the United States, authorizing the departure of French citizens and their effects, shall be exempted from the restrictions imposed on other vessels?

4th. Whether vessels which may be captured or driven by distress into French ports, the cargoes of which may be seized or detained by the French Government, shall be allowed to receive merchandise or produce in exchange, or compensation for the cargoes so seized or detained.

The following practices have been discovered, and may be expected to increase, in case the law shall not provide a competent remedy.

1st. American citizens have proceeded to the island of St. Thomas, and have there obtained certificates of naturalization for themselves and their vessels; with such vessels a direct trade between the United States and French ports has been attempted to be prosecuted in the same manner as before the law was passed.

2d. Agents for commercial houses have been established in the island of St. Thomas, and other neutral places, to whom the productions of the United States have been consigned; these productions have been shipped from thence in other American vessels for French ports. The vessels employed between the neutral French ports have been generally covered as Danish property.

3d. Although vessels which have been employed in transporting French citizens and their property from the United States have been carefully restricted by instructions, and by the custom-house inspection, from transporting merchandise on account of persons resident in the United States, yet there is reason to suspect that the intentions of the Government have in some instances been evaded. In case it shall be deemed reasonable to continue the provision for removing French citizens and their property, precise regulations for preventing the vessels from being employed in commerce will be highly necessary.

4th. Vessels have been carried to the vicinity of French ports, where, as is believed, they have been captured by French privateers, in consequence of preconcerted arrangements: other vessels have entered French ports, on pretence of distress. Although the vessels have in many instances been liberated, yet the cargoes have been detained by order of Government. In some cases the masters or owners have been permitted to purchase return cargoes; latterly, to strengthen the plea for being admitted to entry in the United States, it has been represented that the masters have been compelled to receive cargoes on board their vessels.

The cases of vessels which have been reported as having been captured by privateers, or driven into French ports in distress, have been attended with particular difficulty. In some instances the representations have, doubtless, been fair and correct; but in others they have unquestionably been collusive and fraudulent. The protests and other papers usually produced by masters of vessels could not, however, furnish the means of a just discrimination.

No effectual remedy is perceived against an abuse which must continue to increase, but by declaring importations from French ports to be unlawful in all cases whatever, without excepting those of vessels really captured or driven into French ports in distress. The capture or arrival in distress may be involuntary, and, therefore, not illegal; but the purchase of a new cargo, or any purchase whatever, except of necessaries to enable the captured persons to return to their own country, ought, as is believed, to be declared unlawful.

It may be said that such a regulation would be odious and severe; that it would be cruel to oblige men to suffer unnecessary losses, or to abandon their property to great risks when an equivalent was offered. Admitting these objections to have some force, yet it may be observed, with equal truth, that the act prohibiting commercial intercourse ought to be considered, in connexion with other measures, as constituting a part of the system of resistance adopted by the United States; that, prior to the adoption of this system, our vessels were captured and condemned indiscriminately; that the suspension of commerce is a measure which, if well executed, must powerfully influence the conduct of the French colonies; that no system of resistance can be executed without exposing our citizens to some losses; that it is impossible to distinguish cases of real capture or distress from those which are fictitious; that many of our citizens will not make reasonable efforts to avoid being captured or entering French ports, if they find themselves exempted from every loss and inconvenience; that the plea of forcible exchange cannot be admitted without permitting the French Government virtually to repeal our laws by means of their own internal regulations; and that, if the United States refuse to submit to an insidious policy, and some of our citizens suffer losses, it is against the French and not the American Government that their complaints ought to be directed.

I have the honor to be, with great respect, sir, your most obedient servant,

OLIVER WOLCOTT.

Hon. SAMUEL SMITH, Esq.
Chairman of the Committee of Commerce, &c.

[Communicated to the Senate, December 15, 1800.]

UNITED STATES, *Dec.* 15, 1800.

Gentlemen of the Senate:

I transmit to the Senate, for their consideration and decision, a convention both in English and French, between the United States of America and the French Republic, signed at Paris on the 13th day of September last, by the respective Plenipotentiaries of the two Powers. I also transmit to the Senate three manuscript volumes containing the journal of our Envoys.

JOHN ADAMS.

[The following Messages, with the accompanying documents, relating to the same subject, were also transmitted to the Senate.]

UNITED STATES, *Dec.* 22, 1800.

Gentlemen of the Senate:

In conformity with your request, in your resolution of the 19th of this month, I transmit you the instructions given to our late Envoys Extraordinary and Ministers Plenipotentiary to the French Republic.

It is my request to the Senate, that these instructions may be considered in strict confidence, and returned to me as soon as the Senate shall have made all the use of them they may judge necessary.

JOHN ADAMS.

UNITED STATES, *Jan.* 21, 1801.

Gentlemen of the Senate:

In compliance with your request, signified in your resolution of the 20th day of this month, I transmit you a report, made to me by the Secretary of State on the same day; a letter of our late Envoys to him of the 4th of October last; an extract of a letter from our Minister Plenipotentiary in London to him of the 22d of November last; and an extract of another letter from the Minister to the Secretary of the 31st of October last.

The reasoning in the letter of our late Envoys to France is so fully supported by the writers on the law of nations, particularly by *Vattel*, as well as by his great masters, *Grotius* and *Puffendorf*, that nothing is left to be desired to settle the point that, if there be a collision between two treaties, made with two different Powers, the more ancient has the advantage; for no engagement contrary to it can be entered into in the treaty afterwards made, and, if this last be found, in any case, incompatible with the more ancient one, its execution is considered as impossible, because the person promising had not the power of acting contrary to his antecedent engagement. Although our right is very clear to negotiate treaties according to our own ideas of right and justice, honor and good faith, yet it must always be a satisfaction to know, that the judgments of other nations, with whom we have connexion, coincide with ours, and that we have no reason to apprehend that any disagreeable questions and discussions are likely to arise. The letters from Mr. King will, therefore, be read by the Senate with particular satisfaction.

The inconveniences to public officers, and the mischiefs to the public, arising from the publication of the despatches of Ministers abroad are so numerous, and so obvious, that I request of the Senate that these papers, especially the letters from Mr. King, be considered in close confidence.

JOHN ADAMS.

Convention between the French Republic and the United States.

The Premier Consul of the French Republic, in the name of the people of France, and the President of the United States of America, equally desirous to terminate the differences which have arisen between the two States, have respectively appointed their Plenipotentiaries, and given them full powers to treat upon those differences and to terminate the same, that is to say: the Premier Consul of the French Republic, in the name of the people of France, has appointed for the Plenipotentiary of the said Republic, the citizens Joseph Bonaparte, ex-ambassador at Rome and Counsellor of State; Charles Pierre Claret Fleurieu, member of the National Institute, and of the Board of Longitude of France, and Counsellor of State, President of the Section of the Marine; and Pierrie Louis Rœderer, member of the National Institute of France, and Counsellor of State, President of the Section of the Interior. And the President of the United States of America, by and with the advice and consent of the Senate of the said States, has appointed for their Plenipotentiaries, Oliver Ellsworth, Chief Justice of the United States, William Richardson Davie, late Governor of the State of North Carolina, and William Vans Murray, Minister Resident of the United States at the Hague; who, after having exchanged their full powers, and after full and mature discussion of the respective interests, have agreed on the following articles:

ARTICLE 1. There shall be a firm, inviolable,

and universal peace, and a true and sincere friendship between the French Republic and the United States of America, and between their respective countries, territories, cities, towns, and people, without exception of persons or places.

ART. 2. The Ministers Plenipotentiary of the two parties not being able to agree, at present, respecting the Treaty of Alliance of 6th February, 1778, the Treaty of Amity and Commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects at a convenient time; and, until they may have agreed on these points, the said treaties and conventions shall have no operation, and the relations of the two countries shall be regulated as follows:

ART. 3. The public ships which have been taken on one part and the other, or which may be taken before the exchange of ratifications, shall be restored.

ART. 4. Property captured, and not yet definitively condemned, or which may be captured before the exchange of ratifications, (contraband goods destined to an enemy's port excepted,) shall be mutually restored, on the following proofs of ownership, viz: The proof on both sides with respect to merchant ships, whether armed or unarmed, shall be a passport in the form following: "*To all who shall see these presents, greeting:*

"It is hereby made known that leave and permission has been given to ——, master and commander of the ship called ——, of the town of ——, burden —— tons, or thereabouts, lying at present in the port and haven of ——, and bound for ——, and laden with ——, after that his ship has been visited, and before the sailing, he shall make oath before the officers who have the jurisdiction of maritime affairs, that the said ship belongs to one or more of the subjects of ——, the act whereof shall be put to the end of these presents, as likewise that he will keep, and cause to be kept by his crew on board, the marine ordinances and regulations, and enter in the proper office a list, signed and witnessed, containing the names and surnames, the places of birth, and abode of the crew of his ship, and of all who shall embark on board her, whom he shall not take on board without the knowledge and permission of the officers of the marine; and in every port or haven where he shall enter with his ship, he shall show this present leave to the officers and judges of the marine, and shall give a faithful account to them of what passed and was done during his voyage; and he shall carry the colors, arms, and ensigns of the French Republic, or the United States, during his voyage. In witness whereof, we have signed these presents, and put the seal of our arms thereunto, and caused the same to be countersigned —— at ——, the —— day of ——, anno Domini ——."

And this passport will be sufficient without any other paper, any ordinance to the contrary notwithstanding; which passport shall not be deemed requisite to have been renewed or recalled, whatever number of voyages the said ship may have made, unless she shall have returned home within the space of a year. Proof with respect to the cargo shall be certificates, containing the several particulars of the cargo, the place whence the ship sailed, and whither she is bound; so that the forbidden and contraband goods may be distinguished by the certificates, which certificates shall have been made out by the officers of the place whence the ship set sail, in the accustomed form of the country. And if such passport or certificates, or both, shall have been destroyed by accident, or taken away by force, their deficiency may be supplied by such other proofs of ownership as are admissible by the general usage of nations. Proof, with respect to other than merchant ships, shall be the commission they bear.

This article shall take effect from the date of the signature of the present convention. And if, from the date of the said signature, any property shall be condemned, contrary to the intent of the said convention, before the knowledge of this stipulation shall be obtained, the property so condemned shall, without delay, be restored or paid for.

ART. 5. The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations.

ART. 6. Commerce between the parties shall be free. The vessels of the two nations, and their privateers, as well as their prizes, shall be treated in the respective ports as those of the nation the most favored; and, in general, the two parties shall enjoy in the ports of each other, in regard to commerce and navigation, the privileges of the most favored nation.

ART. 7. The citizens and inhabitants of the United States shall be at liberty to dispose, by testament, donation, or otherwise, of their goods, moveable and immoveable, holden in the territory of the French Republic in Europe, and the citizens of the French Republic shall have the same liberty with regard to goods, moveable and immoveable, holden in the territory of the United States, in favor of such persons as they shall think proper. The citizens and inhabitants of either of the two countries, who shall be heirs of goods, moveable or immoveable, in the other, shall be able to succeed *ab intestato*, without being obliged to obtain letters of naturalization, and without having the effect of this provision contested or impeded, under any pretext whatever; and the said heirs, whether such by particular title, or *ab intestato*, shall be exempt from every duty whatever, in both countries. It is agreed that this article shall in no manner derogate from the laws which either State may now have in force, or hereafter may enact, to prevent emigration; and, also, that, in case the laws of either of the two States should restrain strangers from the exercise of the rights of property with respect to real estate, such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be, and the other nation shall be at liberty to enact similar laws.

ART. 8. To favor commerce on both sides, it is agreed that, in case war should break out between the two nations, (which God forbid,) the term of six months after the declaration of war shall be allowed to the merchants, and other citizens and inhabitants, respectively, on one side and the other, during which time they shall be at liberty to withdraw themselves, with their effects and moveables, which they shall be at liberty to carry, send away, or sell, as they please, without the least obstruction; nor shall their effects, much less their persons, be seized during such term of six months; on the contrary, passports, which shall be valid for a time necessary for their return, shall be given to them for their vessels and the effects which they shall be willing to send away or carry with them; and such passports shall be a safe conduct against all insults and prizes which privateers may attempt against their persons and effects. And if anything be taken from them, or any injury done to them, or their effects, by one of the parties, their citizens, or inhabitants, within the term above prescribed, full satisfaction shall be made to them on that account.

ART. 9. Neither the debts due from the individuals of the one nation to the individuals of the other, nor shares, nor moneys which they may have in public funds, or the public or private banks, shall ever, in any event of war or national difference, be sequestered or confiscated.

ART. 10. It shall be free for the two contracting parties to appoint commercial agents for the protection of trade, to reside in France and the United States. Either party may except such place as may be thought proper from the residence of these agents. Before any agent shall exercise his functions, he shall be accepted in the usual forms by the party to whom he is sent; and when he shall have been accepted and furnished with his *exequatur*, he shall enjoy the rights and prerogatives of the similar agents of the most favored nations.

ART. 11. The citizens of the French Republic shall pay in the ports, havens, roads, countries, islands, cities, and towns of the United States, no other, or greater duties or imposts, of what nature soever they may be, or by what name soever called, than those which the nations most favored are, or shall be obliged to pay, and they shall enjoy all the rights, liberties, privileges, immunities, and exemptions in trade, navigation, and commerce, whether in passing from one port in the said States to another, or in going to and from the same from and to any part of the world, which the said nations do, or shall enjoy. And the citizens of the United States shall reciprocally enjoy in the territories of the French Republic in Europe, the same privileges and immunities, as well for their property and persons, and for what concerns trade, navigation, and commerce.

ART. 12. It shall be lawful for the citizens of either country to sail with their ships and merchandise (contraband goods always excepted) from any port whatever to any port of the enemy of the other, and to sail and trade with their ships and merchandise, with perfect security and liberty, from the countries, ports, and places of those who are enemies of both, or of either party, without any opposition or disturbance whatsoever, and to pass not only directly from the places and ports of the enemy aforementioned, to neutral ports and places, but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of the same Power, or under several; unless such ports or places shall be actually blockaded, besieged, or invested.

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced, may be turned away from such port or place, but she shall not be detained, nor any part of her cargo, if not contraband, be confiscated, unless, after notice of such blockade or investment, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper. Nor shall any vessel of either, that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor if found therein after the reduction and surrender of such place, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ART. 13. In order to regulate what shall be deemed contraband of war, there shall be comprised, under that denomination, gunpowder, saltpetre, petards, match, ball, bombs, grenades, carcasses, pikes, halberds, swords, belts, pistols, holsters, cavalry saddles and furniture, cannon, mortars, their carriages and beds, and generally all kinds of arms, ammunition of war, and instruments fit for the use of troops; all the above articles, whenever they are destined to the port of an enemy, are hereby declared to be contraband, and are just objects of confiscation; but the vessel in which they are laden, and the residue of the cargo, shall be considered free, and not in any manner infected by the prohibited goods, whether belonging to the same, or a different owner.

ART. 14. It is hereby stipulated that free ships shall give a freedom to goods, and that everything shall be deemed to be free and exempt which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either, contraband goods being always excepted. It is also agreed, in like manner, that the same liberty be extended to persons who are on board a free ship, with this effect: that, although they be enemies to either party, they are not to be taken out of that free ship, unless they are soldiers and in actual service of the enemy.

ART. 15. On the contrary, it is agreed that whatever shall be found to be laden by the citizens of either party on any ship belonging to the enemies of the other, or their citizens, shall be con-

fiscated without distinction of goods, contraband or not contraband, in the same manner as if it belonged to the enemy, except such goods and merchandises as were put on board such ship before the declaration of war, or even after such declaration, if so be it were done without knowledge of such declaration; so that the goods of the citizens of either party, whether they be of the nature of such as are prohibited or otherwise, which, as is aforesaid, were put on board any ship belonging to an enemy before the war, or after the declaration of the same, without the knowledge of it, shall no ways be liable to confiscation, but shall well and truly be restored without delay to the proprietors demanding the same: but so as that if the said merchandises be contraband, it shall not be in any way lawful to carry them afterwards to any ports belonging to the enemy.

The two contracting parties agree, that the term of two months being passed after the declaration of war, their respective citizens, from whatever part of the world they come, shall not plead the ignorance mentioned in this article.

Art. 16. The merchant ships belonging to the citizens of either of the contracting parties, which shall be bound to a port of the enemy of one of the parties, and concerning whose voyage, and articles of their cargo, there shall be just grounds of suspicion, shall be obliged to exhibit, as well upon the high seas as in the ports or roads, not only their passports, but likewise their certificates, showing that their goods are not of the quality of those which are specified to be contraband in the thirteenth article of the present convention.

Art. 17. And that captures on light suspicions may be avoided, and injuries thence arising prevented, it is agreed, that if one party shall be engaged in war, and the other party be neuter, the ships of the neutral party shall be furnished with passports similar to that described in the fourth article, that it may appear thereby that the ships really belong to the citizens of the neutral party; that they shall be valid for any number of voyages, but shall be renewed every year, that is, if the ship happens to return home in the space of a year. If the ships are laden, they shall be provided, not only with the passports above mentioned, but also with certificates similar to those described in the same article; so that it may be known whether they carry any contraband goods. No other paper shall be required, any usage or ordinance to the contrary notwithstanding. And if it shall not appear from the said certificates that there are contraband goods on board, the ships shall be permitted to proceed on their voyage. If it shall appear from the certificates that there are contraband goods on board any such ship, and the commander of the same shall offer to deliver them up, the offer shall be accepted, and the ship shall be at liberty to pursue its voyage, unless the quantity of contraband goods be greater than can conveniently be received on board the ship of war or privateer; in which case the ship may be carried into port for the delivery of the same.

If any ship shall not be furnished with such passport or certificates as above required for the same, such case may be examined by a proper judge or tribunal; and if it shall appear, from other documents or proofs admissible by the usage of nations, that the ship belongs to the citizens of the neutral party, it shall not be confiscated, but shall be released with her cargo, (contraband goods excepted,) and be permitted to proceed on her voyage.

If the master of a ship named in the passport should happen to die, or be removed by any other cause, and another put in his place, the ship and cargo shall, nevertheless, be equally secure, and the passport remain in full force.

Art. 18. If the ships of the citizens of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war or privateer of the other; for the avoiding of any disorder, the said ships of war or privateers shall remain out of cannon shot, and may send their boats on board the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship shall exhibit his passport concerning the property of the ship, made out according to the form prescribed in the fourth article. And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other examination whatever.

Art. 19. It is expressly agreed by the contracting parties, that the stipulations above mentioned, relative to the conduct to be observed on the sea by the cruisers of the belligerent party towards the ships of the neutral party, shall be applied only to ships sailing without convoy; and, when the said ships shall be convoyed, it being the intention of the parties to observe all the regard due to the protection of the flag displayed by public ships, it shall not be lawful to visit them: but the verbal declaration of the commander of the convoy, that the ships he convoys belong to the nation whose flag he carries, and that they have no contraband goods on board, shall be considered by the respective cruisers as fully sufficient: the two parties reciprocally engaging not to admit, under the protection of their convoys, ships which shall carry contraband goods destined to an enemy.

Art. 20. In all cases where vessels shall be captured or detained under pretence of carrying to the enemy contraband goods, the captor shall give a receipt for such of the papers of the vessel as he shall retain, which receipt shall be annexed to a descriptive list of the said papers: and it shall be unlawful to break up or open the hatches, chests, trunks, casks, bales, or vessels found on board, or remove the smallest part of the goods, unless the lading be brought on shore in presence of the competent officers, and an inventory be made by them of the said goods. Nor shall it be lawful to sell, exchange, or alienate the same in any manner, unless there shall have been lawful process, and the competent judge or judges shall have pronounced against such goods sentence of confiscation, saving always the ship and the other goods which it contains.

Art. 21. And, that proper care may be taken of the vessel and cargo, and embezzlement prevented, it is agreed, that it shall not be lawful to remove the master, commander, or supercargo of any captured ship, from on board thereof, either during the time the ship may be at sea after her capture, or pending the proceedings against her, or her cargo, or anything relative thereto. And, in all cases where a vessel of the citizens of either party shall be captured or seized, and held for adjudication, her officers, passengers, and crew, shall be hospitably treated. They shall not be imprisoned or deprived of any part of their wearing apparel, nor of the possession and use of their money, not exceeding for the captain, supercargo, and mate, five hundred dollars each, and for the sailors and passengers, one hundred dollars each.

Art. 22. It is further agreed, that in all cases the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal of either of the parties shall pronounce judgment against any vessel or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of the said vessel, without any delay, he paying the legal fees for the same.

Art. 23. And that more abundant care may be taken for the security of the respective citizens of the contracting parties, and to prevent their suffering injuries by the men of war, or privateers of either party, all commanders of ships of war and privateers, and all others the said citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them; and if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

For this cause, all commanders of privateers, before they receive their commissions, shall hereafter be obliged to give, before a competent judge, sufficient security by at least two responsible sureties, who have no interest in the said privateer, each of whom, together with the said commander, shall be jointly and severally bound in the sum of seven thousand dollars, or thirty-six thousand eight hundred and twenty francs; or, if such ships be provided with above one hundred and fifty seamen or soldiers, in the sum of fourteen thousand dollars, or seventy-three thousand six hundred and forty francs; to satisfy all damages and injuries which the said privateer, or her officers or men, or any of them, may do or commit during their cruise, contrary to the tenor of this convention, or to the laws and instructions for regulating their conduct; and further, that in all cases of aggressions, the said commissions shall be revoked and annulled.

Art. 24. When the ships of war of the two contracting parties, or those belonging to their citizens which are armed in war, shall be admitted to enter with their prizes, the ports of either of the two parties, the said public or private ships, as well as their prizes, shall not be obliged to pay any duty either to the officers of the place, the judges, or any others; nor shall such prizes, when they come to and enter the ports of either party, be arrested or seized: nor shall the officers of the place make examination concerning the lawfulness of such prizes; but they may hoist sail at any time, and depart, and carry their prizes to the places expressed in their commissions, which the commanders of such ships of war shall be obliged to show. It is always understood that the stipulations of this article shall not extend beyond the privileges of the most favored nation.

Art. 25. It shall not be lawful for any foreign privateers who have commissions from any Prince or State in enmity with either nation, to fit their ships in the ports of either nation, to sell their prizes, or in any manner to exchange them; neither shall they be allowed to purchase provisions, except such as shall be necessary for their going to the next port of that Prince or State, from which they have received their commissions.

Art. 26. It is further agreed, that both the said contracting parties shall not only refuse to receive any pirates into any of their ports, havens, or towns, or permit any of their inhabitants to receive, protect, harbor, conceal, or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offences. And all their ships, with the goods or merchandises taken by them and brought into the port of either of the said parties, shall be seized, as far as they can be discovered, and shall be restored to the owners, or their factors, or agents, duly authorized by them, (proper evidence being first given before competent judges for proving the property;) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew, or had good reason to believe or suspect that they had been piratically taken.

Art. 27. Neither party will intermeddle in the fisheries of the other on its coasts, nor disturb the other in the exercise of the rights which it now holds, or may acquire on the coast of Newfoundland, in the Gulf of St. Lawrence, or elsewhere on the American coast, northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world.

This Convention shall be ratified on both sides in due form, and the ratifications exchanged in the space of six months, or sooner, if possible.

In faith whereof, the respective Plenipotentiaries have signed the above articles both in the French and English languages, and they have thereto affixed their seals; declaring, nevertheless, that the signing in the two languages shall not be brought into precedent nor in any way operate to the prejudice of either party.

Done at Paris, the eighth day of Vendemiaire, of the ninth year of the French Republic, the thir-

tieth day of September, Anno Domini eighteen hundred.

JOSEPH BONAPARTE.
OLIVER ELLSWORTH.
CHARLES P. C. FLEURIEU.
WILLIAM R. DAVIE.
PIERRE LOUIS RŒDERER,
WILLIAM V. MURRAY.

Journal of the Envoys.

Journal of Oliver Ellsworth, William R. Davie, and William Vans Murray, Envoys Extraordinary and Ministers Plenipotentiary to the Court of France, containing their correspondence and negotiations from the 17th of January, 1800, to the 3d of October in the same year; and terminating in the Convention with France, of the 30th September, 1800.

OCTOBER 16.

The following letter from the Secretary of State, with its enclosure, was delivered to Mr. Ellsworth and Mr. Davie, at Trenton.

DEPARTMENT OF STATE.
Trenton, Oct. 16, 1799.

SIR: To fulfil the President's orders, and to convey correctly to you and —— his sentiments towards you, and his determination respecting your mission as Envoys Extraordinary to the French Republic, I enclose a copy of his letter to me of this date; and have the honor to be, with great respect, your obedient servant,

TIMOTHY PICKERING.

TRENTON, *Oct.* 16, 1799.

SIR: I request you to order fair copies of the instructions, as corrected last evening, to be prepared and delivered to Judge Ellsworth and Governor Davie, with another for Mr. Murray, without loss of time; and to write a letter to those gentlemen as Envoys Extraordinary to the French Republic, expressing, with the affectionate respects of the President, his desire that they would take their passage for France, on board the frigate United States, Captain Barry, now lying at Rhode Island, by the 1st of November, or sooner, if consistent with their conveniences. Captain Barry will have orders to land them in any port of France which they may prefer, and to touch at any other ports which they may desire. The President's best wishes for their health and happiness, as well as for an honorable termination of their mission, will attend them. As their visit to France is one of the most critical, important, and interesting moments that ever has occurred, it cannot fail to be highly entertaining and instructive to them, and useful to their country, whether it terminate in peace and reconciliation or not. The President sincerely prays God to have them in his holy keeping.

I am, sir, with great respect and esteem, your faithful humble servant,

JOHN ADAMS.

T. PICKERING, Esq., *Secretary of State.*

The following are the instructions above referred to.

Instructions to Oliver Ellsworth, William Richardson Davie, and William Vans Murray, Esquires, Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the French Republic.

GENTLEMEN: You have been witnesses of the enduring patience of the United States, under the unexampled aggressions, depredations, and hostilities, authorized and sanctioned by the French Republic against the commerce and citizens of the United States; and you are well informed of the measures adopted by our Government to put a stop to these evils, to obtain redress for the injured, and real peace and security to our country. And you know that, instead of relief, instead of justice for past wrongs, our very moderate demands have been immediately followed by new aggressions and more extended depredations; while our Ministers, seeking redress and reconciliation, have been refused a reception, treated with indignities, and finally driven from its territories.

This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce.

The treatment experienced by the former Envoys of the United States to the French Republic, having determined the President not to send thither other Ministers, without direct and unequivocal assurances previously signified by its Minister of Foreign Relations, that they would be received in character to an audience of the Directory, and that they should enjoy all the prerogatives attached to that character by the law of nations, and that a Minister or Ministers of equal powers should be appointed and commissioned to treat with them: the French Government, by Mr. Talleyrand, its Minister of Foreign Relations, has declared, "that it will receive the Envoys of the United States in the official character with which they are invested; and that they shall enjoy all the prerogatives attached to it by the law of nations; and that one or more Ministers shall be duly authorized to treat with them." This the President deems to be substantially the assurance which he required as the previous condition of the Envoys entering on their mission. It now belongs to you, gentlemen, to see that this assurance be verified. Your country will not submit to any new indignity or neglect. It is expected, when you shall have assembled at Paris, and have given official notice of it to the Minister of Foreign Relations, that you will be received to an audience of the Executive Directory; that a Minister or Ministers, with powers equal to your own, will be appointed to treat with you; and that within twenty days at furthest, after your arrival at Paris, your negotiation will be commenced. If, however, your passports to Paris should be unreasonably withheld; if an audience of the Directory should be denied or procrastinated; if the appointment of a Minister or Ministers, with equal powers, to treat with you, should be delayed; or, if, when appointed, they postpone the intended negotiation; you are to relinquish your mission, demand your passports, and leave France; and, having once resolved to terminate the mission, you are not to resume it, whatever fresh overtures or assurances may be tendered to you by the French Government.

One more limitation: The subjects of difference between the United States and France have often been discussed and are well understood; and, therefore, admit of a speedy decision. The negotiation is expected to be concluded in such time that you may certainly embark for the United States by the 1st of next April. This is highly important, in order that on your return Congress may be found in session, to take those measures which the result of your mission shall require. If it can be earlier concluded it will be still better.

If any of the periods above mentioned should be prolonged with your assent, it is expected that the circumstances will be stated for your justification.

I. At the opening of the negotiation you will inform the French Ministers, that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained, by reason of irregular or illegal captures or condemnations of their vessels and other property, under color of authority or commissions from the French Republic or its agents. And all captures and condemnations are deemed irregular or illegal, when contrary to the law of nations generally received and acknowledged in Europe, and to the stipulations in the Treaty of Amity and Commerce, of the 6th of February, 1778, fairly and ingenuously interpreted, while that treaty remained in force; especially when made and pronounced.

1. Because the vessels' lading, or any part thereof, consisted of provisions or merchandise coming from England or her possessions.

2. Because the vessels were not provided with the *rôles d'équipage* prescribed by the laws of France; and which, it has been pretended, were also required by treaty.

3. Because sea letters or other papers were wanting, or said to be wanting when the property shall have been, or shall be, admitted or proved to be American. Such defect of papers, though it might justify the captors and exempt them from damages, for bringing in such vessels for examination, could not, with reason, be a ground of condemnation.

4. When the owners, masters, or supercargoes shall have been refused a hearing, or placed in situations rendering their presence at the trial impracticable.

5. When the vessels or other property captured shall have been sold, or otherwise disposed of, without a regular trial and condemnation.

Captures and condemnations for such causes, and under such circumstances, are manifestly irregular or illegal.

The French Government, if it has any serious wish to accommodate existing differences, can make no difficulty in admitting the general proposition, that, for injuries arising from violated laws and engagements, reparation shall be made. In every claim under this general stipulation, the question will occur, Has the treaty, or the law of nations, been violated?

But such a general stipulation will not be sufficient. The five specific propositions just stated are obviously proper rules of adjudication; but the previous admission of the first and second is vastly important, to remove from hazard the most interesting claims of our citizens.

To capture neutral property, because it was produced or manufactured in the country of an enemy to France, is so palpably unjust, that it seems improbable that even the men who originated the law, were they still in power, would persist in it as of right; and it is scarcely possible for their successors to hesitate on this point. To hesitate would be to doubt whether a man has a right to occupy his own house, or to wear his own clothes, unless he had built the first, or manufactured the last, with his own hands.

The second proposition respecting the *rôle d'équipage*, as well as the first, should be insisted on. Until the decree of the Directory of March 2, 1797, was passed, and we had felt its fatal effects, we had no idea of the meaning which the French applied to the phrase *rôle d'équipage*. In the Consular Convention between the United States and France, article ninth, which relates to deserters from vessels, the document is described in the French by the words "des registres du bâtiment ou *rôle d'équipage*," and in the English part of the Convention by the words "the registers of the vessel or ship's rolls." And this paper was to be produced to the proper judge, to prove a deserter to belong to the vessel in question. The law or usage of each nation was incontestably to direct what was proper for its own vessels in this respect. If an American master claimed from a judge in France his warrant to arrest a deserter, he must have produced his "ship's roll," or what in the United States is called his shipping paper, which is a contract signed by all the persons composing a vessel's crew. The propriety and necessity of a ship's roll was, in the year 1790, sanctioned and enforced by an act of Congress; and, without such a written contract, the master, besides being subjected to other disadvantages, could not claim his men when they deserted. This ship's roll every American master, bound on a foreign voyage, takes on board his vessel; and, unquestionably every American vessel, captured and condemned by the French for the want of a *rôle d'équipage*, has, nevertheless, been possessed of the ship's roll, just described; and it is the only list of the ship's crew, which could ever have been contemplated by the United States, as necessary for American vessels. There never was, indeed, any intimation on the part of France, from 1778, when the Treaty of Amity and Commerce was made, until the passing of the decree of the Directory, in March, 1797, that a *rôle d'équipage*, other than the ship's

roll, or shipping paper, would be required. It was then suddenly demanded; and the decree (like the law of January, 1798, respecting articles of the produce or manufacture of Great Britain,) was instantly enforced, and became a snare to the multitudes of American vessels, which, for want of previous notice, would not have on board the document in question, if their Government should permit them to receive a document which they were under no obligation to produce. For it cannot, with any semblance of justice, be pretended that the vessels of one nation are bound to furnish themselves with papers in forms prescribed by the laws of another. And if we resort to the treaty of 1778, or to the sea-letter or passport annexed to it, on which letter the Directory pretended to found their decree concerning the *rôle d'équipage*, we shall see that these words are not to be found in either; and, although the passport mentions "a list signed and witnessed, containing the names, surnames, the places of birth, and abode of the crew of his [the neutral master's] ship, and of all who shall embark on board her, whom he shall not take on board without the knowledge and permission of the officers of the marine;" yet, instead of being obliged "to have the list on board," the passport declares, that "he shall enter it in the proper office;" and all that the treaty requires him to exhibit at sea is the sea-letter, or passport. In a word, whatever is said about the *rôle d'équipage*, in the French application of the phrase, has relation to the laws and usages of France. It was to be exhibited to the officers of the marine; but the United States have not, nor ever had, like France, any such description of officers, employed in the examination and clearing of vessels and their crews, prior to their going to sea; and the Directory, if they had wanted pretences for despoiling our commerce, might as well have made the omission of appointing marine officers in our ports, to whom, according to the letter of the passport, the *rôle d'équipage* was to be exhibited, a cause of capture and condemnation, as the omitting to furnish them with *rôles d'équipage* in the French form. In preparing, in 1793, the sea-letter for American vessels, the Secretary of State, Mr. Jefferson, changed, in divers places, the letter of the passport, substituting other words applicable to us; and for "officers of the marine," "officers and judges of the marine," which words were descriptive of French institutions, using only the phrase "proper officers," in conformity with our own. In the same manner, the "ship's roll," or shipping paper of the United States, if at all required, should have been respected by France, as her *rôle d'équipage* would have been respected by the United States. And, after all, what was the real object of the sea-letter, (in which alone there is any reference to a list of the crew,) and what was it substantially to express? The twenty-fifth article of the treaty of 1778 informs us, "in case either of the parties should be engaged in war, the ships and vessels belonging to the subjects or people of the other ally, must be furnished with sea-letters or passports, expressing the name, property, and bulk of the ship, as also the name and habitation of the master or commander of the said ship, "that it may appear thereby that the ship really and truly belongs to the subjects of one of the parties;" and with this further view, "that all manner of dissensions and quarrels might be avoided and prevented:" for, as was declared in the twenty-seventh article, when a ship of the party remaining neutral, met with by a ship of the other party, had shown her sea-letter or passport, she was to "be free and at liberty to pursue her voyage, so as it should not be lawful to molest or search her in any manner, or to give her chase, or force her to quit her intended course."

It also merits observation, that, according to the tenor of the sea-letter or passport, in every port or haven where he (the neutral master) should enter with his ship, he is required to show, not a *rôle d'équipage*, but his passport. Yet this passport, made and intended by the Governments of France and the United States, in 1778, to facilitate and protect their commerce, to exempt it from vexations, and to prevent dissensions and quarrels, has, by the Government of France, been converted into a fatal snare, an engine of mischief, producing quarrels, dissensions, vexations, and, to the commerce of many American citizens, absolute destruction.

II. If these preliminaries should be satisfactorily arranged, then, for the purpose of examining and adjusting all the claims of our citizens, it will be necessary to provide for the appointment of a Board of Commissioners similar to that described in the sixth and seventh articles of the Treaty of Amity and Commerce between the United States and Great Britain.

The Commissioners of the two nations may first meet at Paris. In choosing the fifth Commissioner, they will have a right to propose a Frenchman or an American. But it might conduce to more satisfactory results if the fifth Commissioner were a foreign civilian, eminent for his learning, talents, and integrity.

Three of the Commissioners may constitute a board, provided one named on each side and the fifth Commissioner be present. The four Commissioners, in the absence of the fifth, may also constitute a board; and, in each case, the decisions of a majority are to be valid. But, when on any questions, the four Commissioners, in the absence of the fifth, shall be equally divided, such questions are to be re-examined and decided in the presence of the fifth Commissioner. Further, in absence of the fifth Commissioner, any three of the other Commissioners may constitute a Board, and their decisions valid in cases where they are unanimous.

The salaries of the Commissioners, the expense attending the commission, and the supplying of vacancies in it, may be regulated in the manner proposed in the eighth article of our Treaty of Amity and Commerce with Great Britain.

The Commissioners should be appointed and meet at Paris, within six months after the ratifications of the treaty by the respective Governments, and as much sooner as may be.

Claims may be presented to the Board during two years, commencing with the day on which the Commissioners shall first assemble to proceed to business; and, in particular cases, in which it shall appear to them reasonable and just, they may extend the time of receiving claims to any reasonable term after the expiration of the two years.

All sums which the Board may award to American claimants, France should stipulate to pay in gold and silver, without any deduction, at such place or places, and at such time or times, as the Commissioners shall appoint. The awards should comprehend a reasonable allowance of interest on the amount of the original losses and damages, or, instead of prompt payment, the whole may constitute a transferable capital, bearing interest until the debt be discharged.

The Board should also take cognizance of the claims which may be presented to them by American citizens for merchandise, or other property, seized by the French in their own ports or elsewhere, and not comprehended under the head of captures; and for their vessels arbitrarily and unreasonably detained in French ports, and for the losses and damages thereby sustained, the Board should award equitable compensations, to be paid in the manner prescribed in the case of captures.

The claims of the United States, as distinguished from those of their citizens, for injuries received from the French Republic, or its citizens, should be submitted to the same Board; and whatever sums they award, France should stipulate to pay, in the manner before mentioned, in the case of captures.

As the French Government have heretofore complained of infringements of the Treaty of Amity and Commerce by the United States, or their citizens, all claims for injuries thereby occasioned to France, or its citizens, are to be submitted to the same board; and whatever damages they award, will be allowed by the United States, and deducted from the sums awarded to be paid by France.

If, however, the French Government should desire to waive its national claims, you may do the like on the part of the United States. Doubtless the claims of the latter would exceed those of the former; but, to avoid multiplying subjects of dispute, and because *national* claims may probably be less definite than those of *individuals*, and consequently more difficult to adjust, national claims may, on both sides, be relinquished.

All claims for sums due to American citizens, by contracts with the French Government or its agents, which may be presented to the Board, France should stipulate to pay within the shortest periods possible to obtain, with interest, at the rate or rates agreed on; or, if no agreement about interest appears, then at the rate to be fixed by the Board, and from the times when the sums were respectively payable by contract. This also may be transferable stock.

The questions about interest, and any other questions which may arise out of the claims founded on contracts, not explicitly determined by the treaty, may be left to the decision of the Board of Commissioners.

III. If the preceding claims shall be duly attended to, and adequate arrangements made for adjusting and satisfying them, you will then turn your thoughts to the regulation of navigation and commerce, and to some other points interesting to the two nations.

IV. It may be stipulated that there shall be a reciprocal and entirely perfect liberty of commerce and navigation between France and the United States, and their territories and dominions, in every part of the world; but without admitting the vessels of either country into the rivers of the other beyond the highest ports of entry from the sea.

With the usual policy of European nations, France may object to the free admission of American vessels into the ports of her colonies. But the singular injuries our commerce has sustained from France, during the present war, which no payments to be made by her, under the preceding stipulations, can ever fully compensate, plead for an entire liberty of trade with her colonies, at least during the term of the proposed treaty, and until the stipulated compensations shall actually have been made. Another reason will naturally operate in favor of this claim; the inability of France immediately to furnish the requisite navigation and supplies for the commerce of her distant possessions.

But if France will not allow us a trade with her colonies on the terms which may be agreed in respect to the parent State, we should be silent on the subject. The commerce of all our territories will be open to France; that of all her dominions should be alike open to us. At any rate, it appears inexpedient for the United States to countenance injurious distinctions respecting colonial commerce, to obtain a share in it by agreeing to allow a price for it in the payment of extra duties. Neither ought we to stipulate anything like what is contained in the last clause of the third article of our treaty with the United Netherlands. Such an engagement would be a species of guaranty of the colony system. It is sufficient for the United States to treat foreign nations with justice and friendship.

V. It may be stipulated that no other or higher duties shall be paid by the ships or merchandise of one party in the ports of the other, than such as are or shall be payable by the like vessels or merchandise of all other nations: that no other or higher duties shall be imposed in one country on the importation of any articles which are the growth, produce, or manufacture of the other than are or shall be payable on the importation of the like articles being of the growth, produce, or manufacture of any other foreign country; and that no prohibition shall be imposed on the exportation or importation of any articles from or to the territories of the two parties, respectively, which shall not equally extend to all other nations.

And for the information of their respective fellow-citizens, and to prevent abuses, it may be stipulated that the Consuls of each nation shall be officially furnished in the other with tariffs of all imposts, customs, duties, and charges; by which

tariffs the demands of the officers of each nation may be respectively limited.

VI. The freedom of navigation and commerce here proposed will require the admission of the citizens of the two countries respectively into the dominions of the other, with liberty to reside there, to hire and possess houses and warehouses for the purposes of their commerce, and complete protection and security for the merchants and traders on each side, with their property, whether in going to, residing in, or returning from, the country of the other. Nor should they be liable to any tax on their persons or property, to which the natives are not equally subject. They should be at liberty to manage their own affairs, without being obliged to employ any factor, broker, or interpreter, or any persons to load or unload their vessels; with a right, however, to employ any or all of them, as well as advocates and attorneys, at their pleasure.

VII. The merchants and others of one nation residing in the other, should have liberty to dispose of their property by testament, or otherwise, including real estates already acquired; and, if dying intestate, their heirs should enjoy the right of succession. Provided that, if the laws of either country should at the time be incompatible with such transfer or inheritance of real estates by aliens, they may be sold or otherwise disposed of to citizens of the two countries respectively. The citizens of the United States should not, in respect to their property, be considered as *aubains* in France; and, consequently, should be exempted from the *droit d'aubain*, or other similar duty.

VIII. The mutual residence of citizens of the two nations in the countries of each other necessarily requires the free exercise of religion, at least in their own houses, and in their own way; and permission to bury the dead in convenient places.

IX. If debtors flee from one country to the other, the creditors should be allowed to pursue them, and have the benefit of the laws of the country to which they flee, in the same manner as if the debts had been there contracted.

X. Neither the debts due from individuals of the one nation to the individuals of the other, nor shares nor moneys which they may have in the public funds, or in the public or private banks, should ever, in any event of war or national differences, be sequestered or confiscated.

XI. The ships of the citizens of the respective countries coming upon any coasts belonging to either, but not willing to enter into port; or, being entered into port, and not willing to unload their cargoes or break bulk; they should be treated according to the general rules prescribed, or to be prescribed, relative to the object in question.*

XII. Neither party should permit the ships or goods belonging to the citizens of the other to be taken within cannon shot of the coast, nor elsewhere within their jurisdiction, by ships of war or others having commission from any Prince, Republic, or State whatever. But if such capture or other injury should happen, the party whose territorial rights are thus violated should use his utmost endeavors to obtain from the offending party full and ample satisfaction for the capture or other injury so committed. The just freedom of commerce, and the interest and dignity of the neutral nation, demand the protection of all vessels entering its ports, not only from being taken, but from being pursued within its jurisdiction, or immediately after their departure from its ports: therefore, their enemy, finding an asylum in those ports, should not be permitted to leave the same until the lapse of twenty-four hours after such departure.

XIII. No asylum should be given to pirates; vessels and property rescued from their hands should be restored to the proper owners; the pirates, and any who conceal or assist them, should be brought to condign punishment; all with the precautions customary in such cases.

XIV. The ships of war and other public vessels of each party should at all times be hospitably received in the ports of the other; their officers and crews paying due respect to the laws and government of the country.

XV. In case the citizens of either party with their private shipping, armed or unarmed, be forced through stress of weather, pursuit of pirates or enemies, or any other urgent necessity, to seek for shelter in the ports of the other, they should be received and treated with humanity, and enjoy all friendly protection and assistance.

XVI. In the case of vessels wrecked, foundered, or otherwise damaged, they should receive in each country the same protection and assistance as if they belonged to the inhabitants of the country on whose coasts the misfortune should happen.

XVII. Each party may appoint Consuls for the protection of trade, to reside in the dominions and territories of the other, including colonies as well as the mother country: for wherever trade is permitted, there the assistance and protection of Consuls is necessary. If a Consul be sent to a colony, his provisional admission by the colonial government might suffice until the pleasure of the national government should be known. The Consuls may enjoy the rights and liberties which belong to them by the law of nations.

XVIII. Deserters from public and private vessels should be delivered up, and the laws of each country make suitable provision for that purpose. The merchants and commanders of vessels, public and private, of one nation, in the country of the other, may engage and receive on board seamen or others, natives or inhabitants of the country to which the vessels belong: Provided that, either on one side or the other, they may not take into their service such of their countrymen (not deserters) who have already engaged in the service of the other party, whether in war or trade, and whether they meet them by land or sea; at least if the captains or masters under whose command such persons may be found, will not voluntarily discharge them from their service. Not only the original enlistment, shipping paper, or *rôle d'équipage*, but a copy, duly certified by a

*See section 60, new collection law.

judge of the country, may be admitted in proof of desertion.

XIX. It may be agreed, that, on mutual requisitions by the respective Ministers or Consuls of the two nations, persons charged with murder or forgery committed within the territorial jurisdiction of one, and fleeing to the other, shall be delivered up.

XX. It may be agreed that neither party shall intermeddle in the common fisheries on the coasts of the other party, nor disturb the other party in the exercise of the rights which either now holds, or may acquire, of fishing on the banks of Newfoundland, in the Gulf of St. Lawrence, or elsewhere on the American coast northward of the United States of America: but that the whale and seal fisheries may be freely exercised in every quarter of the world.

XXI. The seventh and twenty-second articles of the Commercial Treaty between the United States and France, of February 6, 1778, have been the source of much altercation between the two nations during the present war. The dissolution of that and our other treaties with France leaves us at liberty with respect to future arrangements; with the exception of the now preferable right secured to Great Britain by the twenty-fifth article of the Treaty of Amity and Commerce. In that article we promise mutually that, while we continue in amity, neither party will in future make any treaty that shall be inconsistent with that article or the one preceding it. We cannot, therefore, renew with France the seventeenth and twenty-second articles of the Treaty of 1778. Her aggressions, which occasioned the dissolution of that treaty, have deprived her of the priority of rights and advantages therein stipulated. Indeed, if the public faith pledged in the British Treaty did not forbid a renewal of those engagements with France, sound policy should prevent it. We should preserve to ourselves the right of allowing every commercial nation in amity with us the like shelter, supplies, and assistance, under like circumstances; and, by excluding all equally when engaged in war, (saving to each the rights of humanity and hospitality,) we may keep the calamities of war at a distance. The engagements with Great Britain may cease in two years after the close of the present war: but, under the stipulations contained in the twenty-eighth and last articles of the British Treaty, the engagements in question may be continued to a longer period. If, therefore, you should find any cogent reasons for renewing in substance the seventeenth and twenty-second articles of the Commercial Treaty with France of 1778, it must be with the explicit declaration that neither at the present or any future time, shall the said articles be construed to derogate from the whole or any part of the twenty-fourth and twenty-fifth articles of the Treaty of Amity, Commerce, and Navigation between the United States and His Britannic Majesty, concluded at London on the 19th of November, 1794.

XXII. The present war has exhibited such inconveniences and mischiefs in our own country, and such monstrous abuses elsewhere, by trials, or pretended trials, and sales of prizes, by French Consuls and agents: in order to prevent any claim to the exercise of such powers, it will be expedient expressly to declare they shall not be exercised in the United States; whether the prizes are made by public ships or privateers. There will, of course, be a reciprocal denial of the exercise of the like powers by American Consuls and agents in the dominions of France. Prizes ought to be conducted to the country to which the captors belong, unless the two parties are engaged in hostilities against a common enemy. But, in this case, the established courts for prize causes in the country to which the prizes are conducted should alone take cognizance of them.

XXIII. The duties of an impartial neutrality, when either party shall remain neutral, will forbid any permission to the enemies of the other to arm originally, or to increase a former armament, in the ports of the neutral party.

XXIV. When one of the parties shall be engaged in war, the vessels of the other may be captured on just suspicion of having on board property belonging to the enemy of the former, or of carrying to the enemy any of the articles which are contraband of war. With these exceptions, the trade of each party to the ports of the enemies of the other should be perfectly free, unless to the ports actually blockaded; and if such enemies forbear to capture enemies' property in neutral vessels, it may be agreed that in such case, the contracting parties will forbear to capture the vessels of each other for that cause. The law of France of the 18th of January, 1798, respecting produce or manufactures coming from England or her possessions, is incompatible with the stipulation here proposed, and, if not repealed, negotiations with you must be deemed illusory.

But that captures on light suspicions may be avoided, and the vexations and injuries thence arising prevented, the usual stipulations for sea-letters or passports, and certificates or manifests of the cargoes of vessels, may be introduced. But neither party should be allowed to prescribe the form, or to require the exhibition of any document (the sea-letter and certificates before mentioned excepted) not required by the laws or usages of the party to whose citizens the vessels and their cargoes belong. The form of the sea-letter should be simple, like that now used by the United States, in that part of the passport which is printed in the English language.

When the quality of the ship, goods, and master, shall sufficiently appear from the sea-letter and certificates, the commanders of armed vessels should exact no further proof. And if any merchant ship be not provided with a sea-letter or certificates, the case should be examined by a proper judge; and if it be found, from other proofs and documents, that the vessel truly belongs to the citizens of one of the parties, it should not be liable to confiscation, but be released with its cargo, with the exception of enemies' property and contraband goods which may be found on board. The change of the master not to invalidate the passport.

XXV. The following articles, beyond the quantities proper for the ship's use, may be deemed contraband of war: cannon, mortars, their carriages and beds, muskets, petards, match, ball, bombs, grenades, carcasses, cartridge-boxes, gunpowder, saltpetre, pikes, halberds, swords, belts, pistols, holsters, cavalry saddles and furniture, and, generally, all kinds of arms and warlike instruments fit for the use of troops; and all these articles may be declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy; but the vessel in which they are laden and the residue of the cargo to be free. France will probably not desire to extend further the use of contraband, and especially not to comprehend timber for ship building, naval stores, and other articles for the equipment of ships. If, however, she urges an extension, then timber for ship building, tar, pitch, turpentine, rosin, copper in sheets, sails, and sail cloth, hemp and cordage, may be added; and, generally, whatever may serve directly and principally for the equipment of vessels. But iron in pigs and bars, timber for house frames, pine or fir planks and boards, staves, nails suitable for house building, coarse linens, and, generally, all other articles which, though occasionally or from necessity applicable to the equipment of ships, are not directly and principally prepared for that purpose.

It is also probable that France will not desire to consider provisions as contraband, unless going to a place actually blockaded, and we ought strenuously to resist any other construction; but if what is said on this subject in the eighteenth article of our commercial treaty with Great Britain should induce France seriously and with earnestness to demand the like stipulation, it may be conceded; yet a modification may first be attempted, by proposing not only that if provisions be captured, they shall be promptly paid for, with a reasonable mercantile profit, freight, and demurrage, but that they shall not be captured at all unless going to a place actually blockaded, or to supply an invading army or hostile fleet, though in situations not actually forming an investment or blockade.

XXVI. If, on the exhibition of the certificates or manifests of a ship's cargo, the property of an enemy, or contraband goods, be discovered, and the ship be consequently captured and carried into port, provision must be made to prevent embezzlement, waste, and destruction.

But there is a very common regulation to prevent disorder and injury in stopping and examining neutral ships, which certainly is disregarded in practice, viz: That the examining ship shall not approach the neutral within cannon shot, while her boat is sent to make the examination. It is a rule which would produce both inconvenience and delay, and in bad weather be impracticable, or very dangerous. The provision that only two or three men shall enter the neutral vessel is very proper, though, like many other salutary regulations, is not enforced by penalties on offenders. But instead of visiting the neutral, the other often requires the neutral to send an officer with his papers. This is an abuse; and many instances have occurred in the present war, in which it has been practised with great inhumanity, and most when it was most inhuman—in tempestuous weather, when a boat could not be put out, but with imminent danger of the lives of the men. It will therefore be very well to stipulate that the neutral party shall in no case be required to go on board the examining vessel. And if this should in any cases prevent an examination, it can afford no just ground of complaint; for *prima facie*, better is the right of the neutral than of the belligerent vessel. Besides, the stipulation would be reciprocal.

XXVII. The usual stipulations in treaties, designed to prevent abuses by armed vessels, have ever been found inadequate; perhaps they do not admit of a complete remedy. If, however, any nation does not provide penalties and securities, whereby to restrain offenders and indemnify the injured, the nation itself ought to be responsible. Doubtless, the nation should be immediately responsible for all abuses committed by national ships.

One abuse is the destruction or concealment of papers of captured vessels. A remedy for this seems practicable: the captors may be obliged to give a receipt for them upon a list of the papers; and they may also be sealed up with the seals of the captors and captured.

The master and supercargo, being entrusted by the owners with the vessel and cargo, ought never to be separated from them. They may prevent waste and embezzlement, and, on the arrival of the vessel, will be ready for examination; and, also, to claim the property in behalf of the owners, and contest, as of right they may do, the legality of the capture.

Bribery, or an attempt to bribe any one of the ship's company or passengers to depose to any fact tending to the condemnation of vessel or cargo, or putting any of them to torture for that or any other purpose, should absolutely procure her acquittal.

But a still greater evil remains, and more difficult to remedy—the improper institution of prize courts. Probably no provision can be explicitly made, other than that each party will take effectual care that the judgments and decrees in prize causes shall be given conformable to the rules of justice and equity, and the stipulations of the treaty, and without any unnecessary delay, by judges above all suspicion, and who have no manner of interest in the cause in dispute. It would be some check on the judges in prize causes if their reasons for condemning were required to be stated, with the other proceedings, in writing; and copies of the whole should, if demanded, be delivered to the commander or agent of the captured vessel without the smallest delay, or, at furthest, within fifteen days after sentence pronounced, and sooner if practicable, and at the expense of the captors, (in case of condemnation,) not of the captured, who are otherwise sufficiently distressed.

Prizes, as already observed, should be conducted into the ports of the party at war, or of an associate in the war, and there adjudicated by the regular tribunals. The French have conducted their prizes into neutral as well as belligerent ports; and, when there was no Consul to try and condemn, leaving there the prizes, they have carried the papers to a distant place to find a French tribunal; and there, in the absence of the captured party, procured sentences of condemnation, and sold the prizes. The same mode of obtaining condemnation has been uniformly practised when they carried their prizes into the ports of an associate in the present war. But, without waiting for the result of this farcical trial, it has been common to unlade and sell the cargoes as soon as they reached a port.

An unreasonable burden is imposed on the captured, in requiring them, if they think proper to appeal to a higher tribunal, to find sureties in large penalties, which, as strangers, it is impossible to procure. This evil demands redress.

The crews are often stripped of their property, and even of their clothes, and turned ashore without money or provisions. Such inhuman pillage is disgraceful to the nation which permits, or does not, by adequate punishments, restrain it. The masters, supercargoes, other officers and seamen, should be allowed certain sums; the former to employ counsel to support their claims to the property captured, and also for their subsistence; and the seamen might have an adequate allowance of good provisions until they could find vessels returning to their own country. To admit masters and supercargoes into the courts to defend the property captured, when they have been previously stripped of their money, and all means of providing the legal assistance essential to a right defence, is to tantalize with the semblance of justice, while the substance is denied.

XXVIII. If vessels of either party sail for a place actually blockaded by the other, without a previous knowledge of the blockade, every such vessel may be turned away, but not detained, nor her cargo, if not enemy's property, nor contraband, be confiscated, unless, after notice, she shall again attempt to enter. Nor should any vessel that may have entered prior to the blockade, be restrained from quitting such place with her return cargo; nor, if found there after the reduction of the place, should they be liable to any injury.

XXIX. If a war should break out between the two nations, six months after the proclamation thereof may be allowed to the merchants and others of each nation, residing in the dominions of the other, for selling and transporting their goods and merchandise. And if, during that term, any thing be taken from them, or injury done them, by either party, or the citizens or subjects of either party, full satisfaction should be made.

XXX. The articles of the treaty which you may conclude, as far as they respect compensation and payment for past injuries and contracts, should be permanent, until the objects thereof be fulfilled. So likewise the article to prevent the sequestration or confiscation of debts, and shares or moneys in the public funds, or in public or private banks, should endure, while on either side there is a subject on which to operate. The other articles of the treaty should terminate in ten or twelve years; a period as long as they will be likely to be mutually satisfactory.

The following points are to be considered as ultimated:

1. That an article be inserted for establishing a board, with suitable powers, to hear and determine the claims of our citizens, for the causes hereinbefore expressed, and binding France to pay or secure payment of the sums which shall be awarded.

2. That the treaties and consular convention, declared to be no longer obligatory by act of Congress, be not in whole or in part revived by the new treaty; but that all the engagements, to which the United States are to become parties, be specified in the new treaty.

3. That no guaranty of the whole or any part of the dominions of France be stipulated, nor any engagement made, in the nature of an alliance.

4. That no aid or loan be promised in any form whatever.

5. That no engagement be made inconsistent with the obligations of any prior treaty; and, as it may respect our Treaty with Great Britain, the instruction herein marked XXI, is to be particularly observed.

6. That no stipulation be made granting powers to Consuls or others, under color of which tribunals can be established within our jurisdiction, or personal privileges be claimed by Frenchmen, incompatible with the complete sovereignty of the United States in matters of policy, commerce, and Government.

7. That the duration of the proposed treaty be limited to twelve years, at furthest, from the day of the exchange of the ratifications, with the exceptions respecting its permanence in certain cases, specified under the instruction marked XXX.

TIMOTHY PICKERING.

DEPARTMENT OF STATE, *Oct.* 22, 1799.

List of books and papers, delivered to Governor Davie for the use of the Envoys to the French Republic.

1. Chalmers's collection of Treaties between Great Britain and other Powers, 2 vols.

2. Complete copy of the Laws of the United States, 4 vols.

3. Correspondence between Mr. Jefferson, Secretary of State, and the French Minister, Mr. Genet, 1 vol.

4. Letter from T. Pickering, Secretary of State, dated January 16, 1797, to General Pinckney, Minister from the United States to the French Republic, with an appendix, containing correspondences with the French Ministers, Fauchet and Adet, 1 vol.

5. Documents (including General Pinckney's information of his mission) laid before Congress, the 16th of May, 1797, 1 pamphlet.

6. Instructions to, and proceedings of, the late Envoys, Pinckney, Marshall, and Gerry, 3 copies.

7. Mr. Gerry's letter of October 1, 1798, and correspondence with M. Talleyrand, 3 copies.

8. French originals of Mr. Talleyrand's communications, 3 copies.

9. Report of T. Pickering, Secretary of State, on Mr. Gerry's letter and communication, 3 copies.

10. Report of T. Pickering, Secretary of State, on French spoliations, laid before Congress, February 27, 1797, 1 copy.

11. Report of further spoliations, received September 6, 1798, from General Pinckney, manuscript.

12. Letter dated 12th May, 1799, from M. Talleyrand to Mr. Murray, containing *the assurances*.

13. Letter of credence to the French Directory, sealed with the seal of the United States.

14. One copy of the letter of credence.

15. Three sets of instructions for negotiating with the French Republic.

16. Form of the passport, or sea-letter, annexed to the treaty of February 6, 1798.

17. Printed sea-letter in four languages, as now used in the United States.

18. Papers on the affairs of St. Domingo: 1. Letter from General Toussaint, to the President of the United States, dated November 6, 1798; 2. Answer to ditto, from the Secretary of State, March 4, 1799; 3. Letter of instructions to Edward Stevens, Esq., Consul General, and marked No. 1, March 7, 1799; 4. Letter to Edward Stevens, Esq., No. 2, April 20, 1799; 5. Heads of regulations and points understood between the Governments of Great Britain and the United States; 6. Letter to Edward Stevens, Esq., No. 3, May 9, 1799; 7. Letter to Edward Stevens, Esq., No. 4, June 1; 8. Letter to Edward Stevens, Esq., No. 5, July 5; 9. President's proclamation for opening trade with St. Domingo.

19. Letter to General Desfourneaux, agent of the French Directory at Guadaloupe, declaring the terms on which trade might be opened with that island.

20. Letter of instructions to Samuel Cooper, Esq., sent to the Isle of France to propose terms for opening trade with that island.

21. Letter from Fulwar Skipwith, late Consul General of the United States at Paris, dated January 23, 1799, enclosing a letter from Mr. Talleyrand, dated 12th December, 1798, on the *rôle d'equipage*.

22. A cipher, for secret correspondence with the Department of State.

23. Personal passports for Judge Ellsworth and Governor Davie.

24. Passport for the frigate United States.

25. Letter to Judge Ellsworth and Governor Davie, mentioning the names of Consuls and agents of the United States in Spain, Portugal, and France.

Mr. Ellsworth and Mr. Davie sailed from Newport, Rhode Island, on the 3d of November, having agreed to touch at Lisbon, before they made any port of France; arrived there on the 27th of November. Information of the revolution at Paris of the 18th Brumaire had just been received, and it was therefore thought expedient to remain long enough at that place to form some judgment of the consequences of that change in the French Government. Upon a conference on the 6th of December, the Envoys resolved on the measures detailed in the following letter to the Secretary of State:

LISBON, *December* 7, 1799.

SIR: We arrived at this place on the 27th ultimo. The late change in France, the circumstances of which we are informed will be fully detailed in Mr. Smith's despatches, and our desire to obtain a more accurate knowledge of the features and effects of this revolution before we entered that country, would have induced us to land in Holland, where we might join Mr. Murray, and be in a better situation to govern ourselves by circumstances; but Captain Barry apprehends it would hazard the frigate to attempt any port in Holland at this season of the year; we have, therefore, determined to sail immediately for L'Orient.

From L'Orient we shall probably proceed to Paris, if we can be satisfied that our present letters of credence will avail us. You will doubtless consider, sir, of the expediency of sending us, with your first despatches, other letters of credence addressed to the Supreme Executive of France, or in a manner more particular, which may introduce us, if necessary, or sanction the progress we have made. We have the honor, &c.,

OLIVER ELLSWORTH.
W. R. DAVIE.

Hon. TIMOTHY PICKERING,
Secretary of State.

Mr. Ellsworth and Mr. Davie, being detained nine days by contrary winds, sailed on the 21st of December for L'Orient; a succession of heavy gales and continued bad weather then rendering it apparently impracticable to reach that place, they authorized Captain Barry to make any port in France or Spain, and arrived at Corunna on the 16th of January, and the next day sent the following letter to Ch. M. Talleyrand, Minister of the Exterior Relations of the French Republic, by a special courier:

CORUNNA, *January* 17, 1800.

The undersigned, Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the French Republic, have the honor to inform you of their arrival at this port, after a lapse of ten weeks since their leaving America, and the loss of four in a fruitless attempt to get from Lisbon (where they touched) to L'Orient. From hence they will proceed immediately to the confines of France by land.

As they left the United States early in November, their letters of credence are, of course, addressed to "the Executive Directory of the French Republic." This circumstance being a matter of mere formality, they are induced to suppose that no objection will arise out of it, and that their letters of credence will have the same effect as they would have under an address adapted to the present distribution of the powers of the French Republic. Should the Government view this circumstance in the same light with the undersigned, they then request that passports may be granted for them and their suite to Paris, and that they may be forwarded by the courier charged with these despatches; and also that there may be granted, and that you would have the goodness to transmit, together with their letter to him, a like passport to William Vans Murray, Esq., at the Hague, who is joint Envoy Extraordinary and Minister Plenipotentiary, as before mentioned, with them. They pray you, sir, to accept the assurances of their high respect.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.

MINISTER OF FOREIGN RELATIONS, &c.

The following is the letter forwarded to William Vans Murray, Esq., mentioned in the above

CORUNNA, *January* 17, 1800.

DEAR SIR: We enclose to you a copy of our note to the Minister of Foreign Relations of the French Republic, from which you will learn our situation, and the steps we have taken to facilitate your progress and ours to Paris, where we hope soon to meet you for the accomplishment of a business which we all have so much at heart. Your letter of credence and your instructions are with us. With much respect and esteem, we are, dear sir, your obedient servants.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.

WILLIAM VANS MURRAY, Esq.

The above Envoys, in pursuance of the plan which they had adopted of going to Paris by land, left Corunna on the 24th of January, and arrived at Burgos on the 9th of February, where they met the courier returning from Paris, with the following answer from the Minister of Exterior Relations:

PARIS, 11*th Pluviose*, (30*th January*,)
8*th year of the French Republic.*

GENTLEMEN: I have received the letter dated at Corunna, which you have done me the honor to write. I regret exceedingly that an unpleasant and protracted voyage has so long delayed your arrival in France. You are expected with impatience and will be received with warmth. The form which has been given to your letters of credence will occasion no obstacle to the opening of a negotiation, from which I dare anticipate the happiest results. No time will be lost in transmitting to Mr. Murray the letter intrusted to my care, to which will be added the necessary passports. The requisite passports will also be forwarded to you. Agreeably to your desire, I confide this packet to the courier whom you have despatched.

Receive, gentlemen, the assurance of my high consideration.

CH. MAU. TALLEYRAND.

Messrs. ELLSWORTH and DAVIE,
Envoys, &c., of the United States.

Captain Barry having received directions from the Envoys to wait the return of the courier to Corunna, in order to take their despatches for the Government, the following letter was written to the Secretary of State:

BURGOS, *February* 10, 1800.

SIR: We have the pleasure to enclose to you a copy of our letter No. 1, dated at Lisbon, and forwarded from St. Ubes. We were detained in the Tagus by contrary winds till the 21st of December, when we sailed for L'Orient, under the expectation of making that port in seven or eight days; but, on the 24th, we encountered a severe gale, which blew with little intermission until the 2d of January, at which time it was ascertained that we had drifted as far as latitude 50, and to the west of Cape Clear. Observing that Captain Barry was extremely apprehensive of approaching any part of the French coast, on the Bay of Biscay, in bad weather, and as so much time had been already lost, we directed him to land us in any port of France or Spain that he could make with safety and convenience; he thought proper to choose the port of Corunna, and anchored in the Bay of Ares, a few leagues from that place, on the 11th of January. Being anxious to make the necessary preparations for our journey to Paris, and the wind continuing unfavorable for the sailing of the frigate to Corunna, we landed at the village of Puente d'Eume, and immediately after our arrival at Corunna, despatched a courier to Paris, with a letter addressed to the Minister of Foreign Relations, desiring the necessary passports, (a copy of which is enclosed, marked A.) covering also a letter to Mr. Murray, a copy of which (marked B.) you will receive under this enclosure.

The necessary arrangements were made to meet the courier at Burgos, or Victoria, and he fortunately reached this place yesterday, a few hours before our arrival, charged with the despatches (marked C.) from Ch. M. Talleyrand, Minister of Exterior Relations, enclosing the passports requested in our letter written at Corunna.

We regret exceedingly the time that must be consumed in a long and tedious journey by land, in the most rigorous and unfavorable season of the year; but after the ineffectual attempt to go to L'Orient by water, this measure appeared indispensable, notwithstanding any difficulties with which it might be connected. We expect to leave this place to-morrow, and flatter ourselves with the hope of arriving in Paris about the first of March. We have the honor to be, &c.,

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.

Hon. TIMOTHY PICKERING,
Secretary of State.

The Envoys set out from Burgos on the 11th of February, and, taking the route by Bayonne, arrived in Paris on the 2d of March, where Mr. Murray had also arrived the preceding day.

The following was delivered by Mr. Murray, as an extract from his journal:

Mr. Semonville, the French Minister at the Hague, called on me on the 4th of February, and delivered to me a packet from Mr. Talleyrand, containing a passport, a letter from my colleagues Mr. Ellsworth and Mr. Davie, dated at Corunna, and the following letter:

PARIS, 11*th Pluviose*, (30*th January*.)
8*th year of the French Republic*.

SIR: I have received information that the Plenipotentiaries of the United States, after a long and difficult voyage, have arrived at Corunna. They have forwarded to me the enclosed letter, which I hasten to transmit to you. I avail myself of this occasion to enclose a passport, which may be necessary on your repairing to Paris. While indulging the hope that you will speedily join your colleagues, I felicitate myself upon the prospect that the time will soon arrive, when, by a frank and full discussion, a termination will be put to the difficulties existing between the Republic of France and the United States, and when the two nations will be restored to that friendly and harmonious intercourse which ought never to have been suspended. Receive, sir, the assurance of my high consideration,

CH. MAU. TALLEYRAND.

To Mr. MURRAY,
Envoy, &c., of the U. S. at the Hague.

To which I returned the following answer:

THE HAGUE, *February* 4, 1800.

CITIZEN MINISTER: Mr. Semonville, the Minister Plenipotentiary of the French Republic, had the goodness to-day to deliver to me himself the letter of the 31st ultimo, which you did me the honor to write, enclosing passports for myself, family, and baggage, and a letter from my colleagues, Mr. Ellsworth and Mr. Davie; accept my thanks for this communication.

I shall immediately prepare for my new destination, one from which I now permit myself to hope a restoration of that harmony which certainly ought not to have been so cruelly interrupted.

May I ask a repetition of an act of politeness in requesting that the enclosed may be delivered to my colleagues, who I hope will be in Paris immediately. Accept, Citizen Minister, the assurance of my high consideration.

W. V. MURRAY.

To CITIZEN TALLEYRAND,
Minister, &c., of the French Republic.

On the 10th, I requested personally of Mr. Vemder Goes, the Minister of Exterior Relations, an audience of leave. This was fixed for the 13th, when I took a temporary leave of the Batavian Directory, and on the 17th set out for Paris.

The severity of the season, and a two days' illness of Mrs. Murray on the road, prevented me from making a journey, generally made in five days, in less than thirteen. On Saturday evening, the 1st March, I arrived at Paris, and the next day had the pleasure of seeing Mr. Ellsworth and Mr. Davie arrive.

MARCH 3d.

The following note was addressed to the Minister of Exterior Relations:

PARIS, 3*d March*, 1800, *and of the Independence of the U. S. the* 24*th*.

CITIZEN MINISTER: The undersigned, Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the French Republic, have just met at this city, and request the favor of you to inform them at what time it may be convenient to you to receive a visit from them.

Accept, Citizen Minister, the assurance of their high consideration.

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

To Citizen TALLEYRAND,
Minister of Exterior Relations, &c.

The following notes were received from the Minister, in answer to the above, and the demand verbally made by the Envoys of being formally received by the Premier Consul:

The Minister of Exterior Relations to Messrs. Oliver Ellsworth, W. R. Davie, and W. V. Murray, Envoys Extraordinary and Ministers Plenipotentiary of the United States of America.

PARIS, 13*th Ventose*, (3*d March*,)
year 8 *of the French Republic*.

GENTLEMEN: The information which you have just communicated, of your arrival at Paris, has given me real satisfaction. If you will take the trouble to call upon me at half-past twelve to-morrow, I will be exceedingly gratified at having the honor to receive you. Accept, gentlemen, the assurance of my high consideration.

CH. MAU. TALLEYRAND.

The Minister of Exterior Relations to Messrs. Ellsworth, Davie, and Murray, Ministers Plenipotentiary and Envoys Extraordinary of the United States of America.

PARIS, 14*th Ventose*, (4*th March*.)
8*th year of the French Republic*,
one and indivisible.

GENTLEMEN: I have the honor to inform you that the First Consul of the Republic will give you an audience on the 17th instant; I pray you, therefore, to be so obliging as to attend on that day at the Tuilleries, in the Hall of the Ambassadors, a little before one o'clock. I beg you to accept the assurance of my high consideration.

CH. MAU. TALLEYRAND.

MARCH 5th. (17*th Ventose*.)

The Envoys were received by the Premier Consul, in the manner required by their instructions.

Citizens Joseph Bonaparte, Fleurieu, and Rœderer, being appointed by the Premier Consul, on the 13th Ventose, Ministers Plenipotentiary for the purpose of negotiating with the Ministers Plenipotentiary and Envoys Extraordinary of the United States, upon the differences existing between the two States, this event was announced

to the Envoys of the United States, by the Minister of Exterior Relations, in the following letter, under date of the 18th Ventose, (8th of March:)

The Minister of Exterior Relations to Messrs. Ellsworth, Davie, and Murray, Envoys Extraordinary and Ministers Plenipotentiary of the United States of America.

PARIS 18*th Ventose*, (8*th of March*.)
8*th year of the French Republic*,
one and indivisible.

GENTLEMEN: I have the honor to inform you that the First Consul of the Republic has just appointed Citizens Joseph Bonaparte, ex-Ambassador at Rome, Fleurieu, late Minister of Marine, and Rœderer, Counsellor of State, Ministers Plenipotentiary, to treat with you concerning the differences existing between the two nations, to effect the accommodation which they mutually desire, and to fulfil the wish, expressed by the two Governments, to remove a misunderstanding which comports as little with their interests as with their sentiments. Receive, gentlemen, the assurance of my high consideration.

CH. MAU. TALLEYRAND.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Minister of Exterior Relations of the French Republic.

PARIS, *March* 9, 1800.

CITIZEN MINISTER: The undersigned, Envoys Extraordinary of the United States, have the honor to acknowledge your letter of yesterday, announcing to them that the Premier Consul of the Republic had named the Citizens Joseph Bonaparte, ex-Ambassador at Rome, Fleurieu, late Minister of Marine, and Rœderer, Counsellor of State, as Ministers Plenipotentiary to treat with them on the differences existing between the French Republic and the United States of America.

The Government of the United States, being always assured that the interests of both nations would be essentially promoted by the re-establishment of confidence and harmony between the two countries, is sincerely desirous to adjust all existing differences, and to restore between them that understanding and friendly intercourse so congenial to her wishes, and so essential to their mutual prosperity.

The agreeable and interesting task of effecting these great objects has been committed, on the part of the United States, to the undersigned, and they will be ready to enter upon that business as soon as the Ministers Plenipotentiary of the French Republic shall signify that they are ready to commence the negotiation. Accept, Citizen Minister, the assurances of their high consideration.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

The Envoys of the United States having thus informed the Minister of Exterior Relations of their readiness to enter on the business of the negotiation, as soon as it would be convenient for the Ministers of the French Republic, they waited until the 14th for some intimation from them on that subject: none, however, being then received, they agreed to address the following note to Messrs. Joseph Bonaparte, Fleurieu, and Rœderer, the Ministers announced in the above communication:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *March* 15, 1800.

MINISTERS: The undersigned had the pleasure to be informed of your appointment as Ministers Plenipotentiary to treat with them on the differences existing between the French Republic and the United States, by a letter from the Minister of Exterior Relations, under date of the 18th Ventose.

The necessary previous measures appearing now to be taken by both Governments, it remains with their Ministers to have their wishes fulfilled: and the undersigned permit themselves to hope that the strange phenomenon of a misunderstanding between the French Republic and the United States of America will soon disappear. They will have the honor to meet the Ministers Plenipotentiary of the French Republic at such time and place as they may prefer, for the exchange of powers, and to learn how soon it will be convenient for them to commence the negotiation. Accept, Ministers, the assurances of their high consideration.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

MARCH 27th.

The Envoys had received no answer to their note of the 15th, but had been informed, verbally, that the delay was much regretted by the French Government and the Ministers, and that it was occasioned by the indisposition of Mr. Joseph Bonaparte, President of the French Commission, who, in a note to the Envoys, of this date, announced his recovery. The French Ministers, however, continuing silent, the Envoys addressed the following note to them, on the morning of the 29th; and, in the afternoon of the same day, received the note under date of the 8th Germinal, (same date:)

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to Citizens J. Bonaparte, Fleurieu, and Rœderer, Ministers Plenipotentiary of the French Republic.

PARIS, *March* 29, 1800.

CITIZEN MINISTERS: The undersigned are happy to learn that the indisposition of Mr. Bonaparte, which has so unfortunately retarded the commencement of the negotiation, is at length removed: and, impressed as they are with the importance of their mission, and the urgency of existing circumstances, they take again the liberty

to express their solicitude that an early day may be named, at which it will be convenient for you to honor the undersigned with an interview, for the purpose of effecting the object of their last note. Accept, Citizen Ministers, &c.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

The Ministers Plenipotentiary of the French Republic to the Envoys Extraordinary and Ministers Plenipotentiary of the United States of America.

PARIS, 8*th Germinal, year* 8.
(27*th March*, 1800.)

GENTLEMEN: We participate, very sincerely, in the wish which you have expressed for the speedy re-establishment of friendly relations between the United States of America and the French Republic; and it is for the purpose of hastening its accomplishment that we propose a conference the 11th or 12th instant, at whatever hour may be most convenient to you, at the house of Citizen J. Bonaparte, one of us. Receive, gentlemen, the assurance of our high consideration.

BONAPARTE.
FLEURIEU.
RŒDERER.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *March*, 30, 1800.

CITIZEN MINISTERS: The underwritten Envoys Extraordinary and Ministers Plenipotentiary of the United States have the pleasure to acknowledge the receipt of your note of the 8th Germinal, proposing a meeting on the 11th or 12th following, at such hour as might be convenient.

The underwritten will have the honor to meet the Ministers Plenipotentiary of the French Republic at the house of the Citizen Joseph Bonaparte, on the 12th Germinal, (2d April,) at one o'clock in the afternoon; a time which they hope will be agreeable. Receive, Citizen Ministers, the assurance of their high consideration.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.
WILLIAM V. MURRAY.

On the 2d of April, (12th Germinal,) the Envoys of the United States met the French Ministers at the house of Joseph Bonaparte, where the following powers were exchanged, and the mode of conducting the negotiation adjusted:

Extract from the Registers of the Decrees of the First Consul of the Republic.

PARIS, 12*th Ventose*, (3*d March*.)
year 8 *of the French Republic, one and indivisible.*

In the name of the French people: Bonaparte, First Consul of the Republic, upon the report of the Minister of Foreign Relations, decrees:

ARTICLE 1. Citizen Joseph Bonaparte, ex-Ambassador of the French Republic, Fleurieu, and Rœderer, Counsellors of State, are appointed Ministers Plenipotentiary, for the purpose of negotiating with the Ministers Plenipotentiary and Envoys Extraordinary of the United States, upon the differences existing between the two nations.

ART. 2. Citizen Joseph Bonaparte shall preside over the French Ministers.

BONAPARTE.

By the First Consul: the Secretary of State,
HUGUES B. MARET.

A true copy: the Minister of Exterior Relations,
CH. MAU. TALLEYRAND.

A true copy: the Ministers Plenipotentiary,
BONAPARTE,
FLEURIEU,
RŒDERER.

JOHN ADAMS, President of the United States of America. To all to whom these presents shall come, greeting:

Whereas, by letters patent under the seal of the United States, and dated on the 26th day of February last, I did, by and with the advice and consent of the Senate of the United States, appoint Oliver Ellsworth, Chief Justice of the United States, Patrick Henry, late Governor of Virginia, and William Vans Murray, Minister Resident of the United States at the Hague, to be Envoys Extraordinary and Ministers Plenipotentiary of the United States to the French Republic, thereby giving and granting to them full powers, for and in the name of the United States, to meet and confer with the Minister or Ministers of the French Republic, who should be appointed and commissioned with equal powers, and with such Minister or Ministers to discuss and settle by a treaty all controversies between the United States and France, transmitting such treaty to the President of the United States of America, for his final ratification, by and with the advice and consent of the Senate of the United States, if such advice and consent shall be given; and whereas the said Patrick Henry did signify to me that, from his bodily infirmities, being unable to execute his said appointment, he declined accepting the same; now, know ye, that reposing especial trust and confidence in the integrity, prudence, and abilities of William Richardson Davie, late Governor of the State of North Carolina, I have nominated, and, by and with the advice and consent of the Senate, do appoint him an Envoy Extraordinary and Minister Plenipotentiary of the United States to the French Republic, in the room of the said Patrick Henry, hereby giving and granting to him, and to the said Oliver Ellsworth, and William Vans Murray, full powers for and in the name of the United States, to meet and confer with the Minister or Ministers of the French Republic, who shall be appointed and commissioned with equal powers, and with such Minister or Ministers to discuss and settle by a treaty all controversies between the United States and France, transmitting such treaty to the President of the United States of America, for his final ratification, by and with the advice and consent of the Senate of the United States, if such advice and consent shall be given.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States of America to be hereunto affixed. Given under my hand, at the city of Philadelphia, the tenth day of December, in the year of our Lord one thousand seven hundred and ninety-nine, and of the independence of the United States the twenty-fourth.

JOHN ADAMS.

By the President:
TIMOTHY PICKERING,
Secretary of State.

The Envoys, after withdrawing, proceeded immediately to consider the copy of the powers delivered by the French Ministers; and, as they appeared to them not sufficiently full and explicit to authorize them to commence the negotiation under the limitation of their own powers, they addressed the following note to the French Ministers on the next day:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *April* 3, 1800.

CITIZEN MINISTERS: The undersigned Envoys, having conferred on the copy delivered to them yesterday, of the powers granted to you to negotiate with them concerning the existing differences between the French Republic and the United States, feel themselves compelled to present to you the doubts they entertain whether the terms in which those powers are expressed are sufficiently full and explicit. You will please to observe that the powers with which the undersigned are invested, authorize them to discuss and settle by a treaty all controversies between the United States and France, and they suppose it may be questionable, at least, whether the same latitude of power may be given by the expression, "à l'effet de négocier avec les Ministres, &c. sur les différends survenus entre les deux états;" and if it could be inferred from any construction of the terms used in the commission, that to "negotiate respecting the existing differences," implied a power to settle them also by treaty, yet the undersigned conceive that it would not be advisable to act upon powers deduced by implication from terms in their nature indefinite, in the same manner as if they had been fully and explicitly expressed. Upon examining the copy of the commission, which the undersigned had the honor to deliver to you yesterday, you will observe the nature and extent of their powers, and that they can only negotiate with Ministers of the French Republic, who may be commissioned with equal powers. This circumstance, it is hoped, will satisfy the Ministers of the French Republic, that the undersigned have not attached to this objection an unnecessary importance, and evince to them the propriety of procuring from their Government powers commensurate with those granted by the Government of the United States.

While the undersigned regret any trouble or delay that this circumstance may occasion, they are happy that the situation of the Ministers of the French Republic will enable them to remove the difficulty without any considerable inconvenience to the negotiation.

The Envoys of the United States have the highest confidence in the upright views and frank disposition of the French Government, and hope it will do them the justice to believe that they are actuated only by a respect to that duty which their commission and instructions prescribe. Accept, &c.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

APRIL 8.

Received the following letter from the French Ministers under date of the 17th Germinal, (7th April,) enclosing a copy of the new powers, and a copy of a letter from the Minister of Exterior Relations:

The Minister of Exterior Relations to the Ministers Plenipotentiary appointed to negotiate with the Envoys of the United States.

PARIS, 19 *Germinal*, (*April* 6,) *year* 8.

I have received, citizens, your letter of the 13th and 14th of this month, (Nos. 1 and 2,) with the copies therein referred to.

By the first, you inform me of the exchange which you have made of your powers with the American Ministers; and, in the second, you communicate an extract of the note which these Ministers have addressed to you, respecting the insufficiency which they suppose to exist in the powers you have exchanged with them.

The First Consul, to whom I have submitted your despatches, in order to present to the Ministers of the United States an unequivocal proof of the spirit in which he desires to conduct the negotiation, has thought proper to furnish you with powers still more special and explicit than those contained in his first decree. In transmitting them, however, to the American Ministers, you will be pleased to apprize them that, in our diplomatic usages, since the Revolution, our negotiators have almost always been accredited and empowered by simple decrees, similar to the one which you have placed in their hands; and that in these decrees the expression "to negotiate" has always imported an authority "to conclude." I might have confined myself, indeed, to giving you, officially, this explanation; and the American Ministers, as they have themselves declared, would have been content with receiving it. But the First Consul has preferred the other mode, for the purpose, as I have already stated, of removing all the obstacles of mere form which could delay or embarrass the progress of the negotiation.

Safety and fraternity.

CH. MAU. TALLEYRAND.

An exact copy: the Ministers Plenipotentiary of the French Republic:

J. BONAPARTE,
FLEURIEU,
RŒDERER.

PARIS, *the 17th Germinal, (7th April,) year* 8.

The undersigned, Ministers Plenipotentiary of the French Republic, have the honor to inform the Envoys Extraordinary and Ministers Plenipotentiary of the United States, that their letter, dated the 13th of this month, has been received.

In order to reply to this letter, the French Ministers have awaited the result of its reference to their Government, which they hastened to make. The answer which they received is enclosed. In the new powers, of which they have the honor to transmit the subjoined copy, the American Ministers will perceive the manner in which the First Consul of the Republic has removed the doubt which they expressed; and in the explanations contained in the letter of the Ministers of Exterior Relations, they will not fail to discover new motives of confidence. The Ministers of the Republic, presuming that no obstacle will now oppose the opening of the negotiation, expect to receive, on the part of the Ministers of the United States, the memorial which was announced at the conference of the 12th instant.

They pray them to receive the assurance of their high consideration.

J. BONAPARTE,
FLEURIEU,
RŒDERER.

Extract from the register of the Decrees of the First Consul of the Republic.

PARIS, 15*th Germinal*, (5*th March*.) *year* 8*th of the Republic, one and indivisible.*

In the name of the French people: Bonaparte, Rœderer, and Fleurieu, appointed, by the decree of the 13th Ventose, (3d March) last, Ministers Plenipotentiary, to negotiate with the Envoys Extraordinary and Ministers Plenipotentiary of the United States of America upon the differences existing between the two nations, are authorized to negotiate with the said Ministers upon all that concerns these differences; as well as to sign and conclude, in the name of the Republic, whatever shall to them appear necessary to effect a perfect re-establishment of good harmony. To this end, therefore, Citizens Bonaparte, Rœderer, and Fleurieu receive, by this decree, full and complets powers.

BONAPARTE.

By the first Consul: the Secretary of State.

HUGHES B. MARET.

An exact copy: the Minister of Exterior Relations. C. M. TALLEYRAND.

An exact copy: the Ministers Plenipotentiary of the French Republic.

J. BONAPARTE.
FLEURIEU.
RŒDERER.

The following answer was returned to the above communication, accompanied by a note under the same date, sketching the plan on which the Envoys proposed to open the negotiation. This proposition produced a discussion, detailed in the following correspondence up to the 17th April, inclusive; when the Envoys considered the way sufficiently prepared to authorize them to offer some details in the form of articles of a treaty, respecting the claims of individuals.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Citizens Joseph Bonaparte, Fleurieu, and Rœderer, Ministers Plenipotentiary of the French Republic.

PARIS, *April* 7, 1800.

CITIZEN MINISTERS: The undersigned have great pleasure in acknowledging the receipt of the note which you did them the honor of addressing to them to day, covering the arrêté of new powers, and the copy of the letter to you from the Minister of Exterior Relations. That Minister, they are happy to see, has done them justice upon the interpretation which they had presumed to be the correct one of the terms in question; and as they unite with you in the wish to press forward the negotiation, they believe that, in transmitting the note which accompanies this, and which was promised on the 12th of Germinal, they at once meet the frankness of your views, and give to you a certain demonstration of the confidence with which the justice and principles of the Government of the French Republic have inspired them.

Accept, Citizen Ministers, the assurance of their high consideration.

OLIVER ELLSWORTH,
WM. R. DAVIE.
WM. V. MURRAY.

PARIS, *April* 7, 1800.

CITIZEN MINISTERS: The undersigned, appreciating the value of time, and wishing by frankness to evince their sincerity, enter directly on the great object of their mission, an object which they believe may be best obtained by avoiding to retrace too minutely the too well known and too painful incidents which have rendered a negotiation necessary. To satisfy the demands of justice, and render a reconciliation cordial and permanent, they propose an arrangement, such as shall be compatible with national honor and existing circumstances, to ascertain and discharge the equitable claims of the citizens of either nation upon the other, whether founded on contract, treaty, or the law of nations. The way being thus prepared, the undersigned will be at liberty to stipulate for that reciprocity and freedom of commercial intercourse between the two countries, which must essentially contribute to their mutual advancement. Should this general view of the subject be approved by the Ministers Plenipotentiary, to whom it is addressed, the details, it is presumed, may be easily adjusted, and that confidence restored which ought never to have been shaken. Accept, &c.

OLIVER ELLSWORTH,
WM. R. DAVIE.
WM. V. MURRAY.

PARIS, 19*th Germinal*, (9*th April*,) *year* 8.

The Ministers of the French Republic have perused with attention the plan proposed by the Envoys Extraordinary and Ministers Plenipotentiary of the United States for conducting the negotiation.

They are of opinion that the first object should be, to determine the rules, and the mode of procedure, for the valuation and indemnification of those injuries for which the two nations respectively, may have demands against each other, whether these demands are founded on national injuries or individual claims.

And that the second object is, to insure the execution of the treaties of friendship and commerce, now existing between the two nations, and the accomplishment of those views of reciprocal advantage which first dictated them.

The undersigned have only, in addition, to observe, that as no measures are authorized by the Government of France affording the least ground of inquietude to the American commerce, they would consider it a preliminary favorable to the negotiation, if the Envoys Extraordinary and Ministers Plenipotentiary of the United States will be pleased to communicate the orders, no doubt issued by the President of the United States, to discontinue the operation of the acts of Congress, the enforcement of which must be viewed as repugnant to that good understanding for which both nations have expressed an equal desire.

The undersigned pray the Ministers Plenipotentiary to receive the assurance of their high consideration.

BONAPARTE.
FLEURIEU.
RŒDERER.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *April* 11, 1800.

CITIZEN MINISTERS: The undersigned have seen with pleasure in your note which they had the honor to receive yesterday, an acquiescence in the principle of compensating equitable claims of citizens on both sides; though you have proposed to include also claims which either nation might have for herself.

This description of claims was omitted in the proposition of the undersigned, not from the apprehension of an unfavorable balance, but because in their nature they were difficult to define and limit, because their discussion might be unpleasant and dilatory, and because, also, to insist on pecuniary compensation for themselves, would be incompatible with that magnanimity which it was presumed both nations would prefer in an act of accommodation, so auspicious to their future prosperity. If, however, after considering these objections, and others which will suggest themselves, the Ministers of the French Republic shall deem it necessary to provide pecuniary compensation for such claims, the undersigned will be ready further to consider the question at a convenient stage of the negotiation, which they apprehend will be after it shall be seen what arrangement would be acceptable for the claims of citizens.

The expectation of the undersigned, with regard to commerce, is not to renew or amend the former treaty, but to propose a new one, which shall have fewer difficulties of construction and execution; shall more extend the provisions for intercourse, and better adapt them to the existing state of things; and they trust that, when the negotiation shall have sufficiently progressed to take up this branch of it more particularly, their expectation will be shown to be reasonable.

Any recent acts of the French Republic, having for their object to remove from the American commerce causes of disquietude, will be duly estimated in America, and be perceived to have strengthened the ground for returning confidence, when there shall have been time for it.

With respect to the acts of the Congress of the United States, which the hard alternative of abandoning their commerce to ruin imposed, and which, far from contemplating a co-operation with the enemies of the Republic, did not even authorize reprisals upon her merchantmen, but were restricted simply to giving safety to their own, till a moment shall arrive when their sufferings could be heard and redressed: of these acts the undersigned do not know that the President of the United States has suspended their effect, except in the instance of saving St. Domingo from famine. But, without doubt, their effects will wholly cease as soon as it can be assured that the necessity which imposed them no longer exists: of which the undersigned hope their mission will be regarded as a sufficient pledge.

Should it appear to the Ministers of the French Republic, from these explanations, made with a frankness equal to the candor with which they are sure to be examined, that the way is prepared to bring forward an arrangement for the claims of citizens, the undersigned will soon have the honor to offer for their consideration some details on that subject. Accept, &c.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

The Ministers of France to the American Envoys.

PARIS, 23d *Germinal*, (14*th April*,) *year* 8.

The Ministers Plenipotentiary of the French Republic do not perceive, from the considerations suggested rather than developed by the Envoys Extraordinary and Ministers Plenipotentiary of the United States, any obstacle to arrangements which it may be proper to make, on the subject of the individual claims of one nation upon the other. It being impossible, on the part of either, to estimate these claims except by the discussion of the principles of the law of nations and the obligations of treaties, the national claims will, for the most part, be impliedly estimated by the value affixed to those of individuals. National stipulations will be only the ulterior consequences of admitted principles.

The question, therefore, whether it is expedient to form a new treaty, cannot be answered until after a discussion, in which the meaning of ancient treaties shall be determined, the principles of

the laws of nations unfolded, and the application of these principles to the claims brought forward, whether national or individual, clearly shown. It is only when the doubts thus raised shall be removed, that the Ministers Plenipotentiary of the two nations will be able to determine whether the ancient treaties will suffice to their interests or not.

Finally, the Ministers of the French Republic cannot see without concern that the Ministers Plenipotentiary of the United States are uninformed of any revocation of the hostile measures which their Government has adopted with regard to France. The French Government, after rescinding several regulations which had given inquietude to the Federal Government; after publishing many others for the purpose of re-establishing perfect harmony; after professing, also, a readiness to do all that justice shall demand, in order to efface every irritating remembrance; had a right to expect, with other evidences of reciprocity, that the armed vessels of the United States should cease to attack the vessels of the Republic, and that the effusion of human blood should no longer be feared.

To prevent the interruption of the negotiation by vexatious incidents like these, it is necessary that the Ministers Plenipotentiary of the United States shall give an assurance to the Ministers Plenipotentiary of the Republic, that their Government will terminate, without delay, the hostile condition which it now maintains in relation to France. This assurance, strongly demanded by the acts of the French Government, to which a just reciprocity has been promised, can only be considered a legitimate exchange for that herein contained.

The undersigned pray the Envoys Extraordinary and Ministers Plenipotentiary of the United States to accept the assurances of their high consideration.

BONAPARTE.
FLEURIEU.
RŒDERER.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *April* 17, 1800.

CITIZEN MINISTERS: The undersigned have been favored with your note of the 23d of Germinal.

With respect to the assurances desired of them that measures of the United States, which had been resorted to for the protection of their commerce, should immediately cease, they must explicitly declare that they are not authorized to give assurances, otherwise than by incorporating them in a treaty, it having been expected by their Government that, in that way, every necessary assurance on both sides would so soon be given as to render preliminary provisions of little use: and which expectation the undersigned yet confidently trust will not be disappointed.

Should they, however, be favored with copies of recent repeals of regulations, which had given disquietude to the United States, and of other regulations lately adopted with a view of re-establishing harmony, it would be as well their pleasure as their duty to transmit the same in the most favorable manner to their Government, which would be sure, in the conciliatory temper it has evinced, to receive from them very fully the correspondent impressions they are adapted to make. Penetrated as the undersigned are with the interests which both nations have in returning to a good understanding, they receive with sensibility a pledge of that event in the declaration, that the French Republic is ready to do all that justice can require to obliterate every irritating remembrance.

The undersigned, conceiving that the way is now prepared, have the honor to offer for consideration some details respecting the claims of individuals. They have preferred to offer them at once in the form of articles of the treaty, as containing a full and frank expression of their views; and as a mean by which the principles can be discussed connected directly with their application; as the most probable way of fixing the attention of the Ministers on both sides upon the points of difference of opinion, if any such exist; and as affording the most certain prospect of progressing in the business. And they have no doubt that in those articles or propositions will be seen a spirit of accommodation as well as of justice.

Accept, &c.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.
WILLIAM V. MURRAY.

ARTICLE 1. There shall be a firm, inviolable and universal peace, and a true and sincere friendship, between the French Republic and the United States of America, and between their respective countries, territories, cities, towns, and people, without exception of persons or places.

ART. 2. Whereas complaints have been made by divers merchants and others, citizens of the United States, that, during the course of the war in which the French Republic is now engaged, they have sustained considerable losses and damage, by reason of irregular or illegal captures or condemnations of their vessels and other property, in ports and places within the jurisdiction or dominions of the said Republic, all under color of authority or commissions from the same; for which losses and damage they have failed, without manifest neglect or wilful omission on their part to obtain adequate compensation: it is agreed that, in all such cases, full and complete compensation shall be made by the Government of the French Republic.

And whereas complaints have also been made by divers merchants and others, citizens of the French Republic, that ——, under color of authority or commissions from the United States; for which losses and damage they have failed, without manifest negligence or wilful omission on their part, to obtain adequate compensation: it is agreed that, in all such cases, full and complete

compensation shall be made by the Government of the United States.

That, for the purpose of ascertaining the amount of any such losses and damage sustained either by citizens of the United States or of the French Republic, five Commissioners shall be appointed and authorized to meet and act in the following manner, viz:

When the five Commissioners thus appointed shall first meet, they shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other; which oath or affirmation, being so taken and duly attested, shall be entered on the records of their proceedings, viz:

I, A B, one of the Commissioners appointed in pursuance of the second article of the treaty of ——, between the French Republic and the United States of America, do solemnly swear or affirm that I will honestly, diligently, impartially, and carefully examine all such complaints as, under the said article, shall be preferred to the said Commissioners, and the same will decide to the best of my judgment, according to the rules and principles of decision expressed and contained in the said treaty of ——. I will, also, in like manner, examine all such complaints as, under the fifth article of said treaty, shall be preferred to the said Commissioners, and will decide them to the best of my judgment, according to justice and equity; and that I will forbear to act as Commissioner in any case in which I am personally interested.

Two years, from the day on which the Commissioners shall form a Board, and be ready to proceed to business, are assigned for receiving complaints and applications; but the Commissioners are nevertheless authorized, in any particular case in which it shall appear to them reasonable and just, to extend the said term of two years for any term not exceeding six months after the expiration thereof. The Commissioners shall be appointed, and meet at ——, within six months from the ratifications of this treaty by the respective Governments, and as much sooner as may be.

The Commissioners, in examining the complaints and applications so preferred to them, shall have power to examine all such persons as shall come before them, on oath or affirmation, touching the premises; and also to receive in evidence, according as they may think most consistent with justice and equity, all written depositions, or books, or copies, or extracts thereof; every such deposition, or book, or paper, or copy, or extract, being duly authenticated, either according to the legal forms now existing in the two countries, or in such other manner as the said Commissioners shall see cause to require or allow. They shall not, in examining claims under this article, be concluded either as to law or facts by any judicial decision, sentence, or decree, which has been had or rendered therein: and they shall decide the claims in question according to the original merits of the several cases, and to justice, equity, and the law of nations; and in all cases of complaint existing prior to the 7th of July, 1798, according to the treaties and consular convention then existing between France and the United States.

The award of said Commissioners, or any Board of them, as hereinbefore provided for, shall be final and conclusive as to the justice of the claim, and the amount of the sum to be paid to the creditor or claimant. And they shall comprehend, when in favor of a claimant, a reasonable allowance of interest on the original losses or damage, computed up to the time when the award is to be performed.

And it is also further agreed, that not only the now existing cases, of all the descriptions before named, but all such as shall exist at the time of exchanging the ratifications of this treaty, shall be considered as being within the provisions, intent, and meaning of this article.

ART. 3. The French Republic, desirous, in an adjustment of differences with the United States, to give them a proof of her liberality, by waiving formal exceptions, and narrowing the ground of discussion, does agree that such claims of the citizens of the United States for compensation as shall be in other respects fair and equitable, shall not be prejudiced by reason of not having on board their vessels, when captured, any other passport or sea-letter than such as had been usually furnished by their Government prior to the 2d day of March, 1797, or any other ship's *rôle d'équipage*, or other shipping paper, than had been generally used by the citizens of the United States prior to that date; nor shall their claims be prejudiced by reason of having on board their vessels, when captured, merchandise, the manufacture or production of any particular country or place.

ART. 4. Any sum which shall be awarded by the said Commissioners, pursuant to the second article of this treaty, in favor of a claimant, a citizen of the United States, the Government of the French Republic will, on the condition of such releases or assignments, to be given by him, as the said Commissioners may direct, cause to be paid to such claimant, in silver or gold coin, without deduction, at Paris, within three months after the date of the award; or will then cause the sum so awarded to be converted into transferable stock or capital, bearing interest at the rate of six per cent. per annum; which interest and principal the said Government will cause to be paid in silver or gold coin, without deduction, to such claimant, or his transferee at Paris, viz: the interest annually, and the principal by three equal instalments, viz: one-third in three years, one-third in five years, and the remaining third in seven years from the date of the award. The form of the security or securities, and the mode of transfer, to be such as the said Commissioners shall prescribe: and any sum which shall be so awarded in favor of a claimant, a citizen of the French Republic, the Government of the United States will, within six months after the date of the award, upon like condition, and in like manner and time, cause to be paid, or secure to be paid, to such claimant, or his transferee, at the city of Washington.

ART. 5. And whereas complaints have been

made by divers merchants and others, citizens of the United States, that the French Government is indebted to them, by contract, in considerable sums, for provisions and other property received from them in France and other places within the jurisdiction or dominions of the said Republic, and for freight and use of their vessels to transport provisions and other property, and prisoners, all since the commencement of the war in which the French Republic is now engaged, for a part of which debts they hold certificates and bills, issued and drawn by officers and agents of the Republic, payable in France and in other places; and that, although they have used due diligence, it has never been in their power to obtain payment of said debts, certificates, or bills: it is agreed that, in such cases, the claimants may, if they see fit, prefer their claims to the Commissioners provided in the second article, who are authorized to proceed respecting the same as to the time of their reception, mode of examination, and admission of evidence, and generally, in other respects, as is prescribed for the claims there specified; and they shall decide them according to justice and equity.

The award of the Commissioners, in such cases, or any Board of them, as is provided in the second article, shall be final and conclusive, both as to the justice of the demand and the amount of the sum to be paid to the creditors or claimants: and, when in favor of claimants, they shall comprehend interest from the times, respectively, at which the debts ought, according to the tenor or nature of the contract, to have been paid, at the rates respectively stipulated therein; or, where none was specially stipulated, at such rate, in each case, as the Commissioners shall judge to be just. But it is understood that no person, by omitting to prefer such, his claim, to the said Commissioners, shall thereby impair his right to seek and obtain payment by any other means.

Whatever sum shall be awarded in favor of any claimant under this article, the Government of the French Republic will, in three months after the date of the award, on condition of such releases or assignments to be given by him as the said Commissioners may direct, cause to be paid to him, without deduction, in gold or silver coin, at Paris, or will then convert the same into transferable stock or capital, bearing an interest at the rate of six per cent. per annum; which interest and principal the said Government will cause to be paid, without deduction, in gold or silver coin, to such claimant, or his transferee at Paris, viz: the interest annually, and the principal by three equal instalments, viz: one-third in two years, one-third in four years, and the remaining third in six years from the date of the award. The form of the security or securities, and the mode of transfer to be such as the said Commissioners shall prescribe.

ART. 6. It is further agreed that the Commismissioners mentioned in this and the preceding articles shall be respectively paid in such manner as shall be agreed between the two nations; such agreement being to be settled at the time of the exchange of the ratifications of this treaty; and all other expenses attending the said Commissioners shall be defrayed jointly by the two parties; the same being previously ascertained and allowed by a majority of the Commissioners: and in case of death, sickness, or necessary absence, the place of every such Commissioner, respectively, shall be supplied in the same manner as such Commissioner was first appointed; and the new Commissioner shall take the same oath or affirmation, and do the same duties.

[Explanatory Note.]

The Ministers Plenipotentiary of the French Republic will please to observe that a blank is left for the insertion of such claims of the citizens of the Republic on the United States as the Ministers may think proper to bring forward. A blank is also left for the mode of selecting the five proposed Commissioners, and another for the manner in which they shall be organized; for the filling of which two last the Envoys of the United States are preparing propositions, which will be sent in a day or two. A blank is also left for the title of the treaty, of which the proposed articles, if agreed to, may form a part.

APRIL 18.

The views of the French Government being in some measure developed in the preceding correspondence, and the negotiation having now assumed some form, it was thought proper to advise the Government of the United States of the progress and state of the business. The following letter was therefore written to the Secretary of State; duplicates and triplicates were also afterwards forwarded:

PARIS, *April* 18, 1800.

SIR: Your despatches of the 6th and 20th of January reached us some time since, as did also their duplicates and triplicates.

We all met here the 2d of March, Mr. Murray having arrived the evening before. The papers marked from A to V, which we have the honor to enclose, trace the circumstances connected with our mission, which have since taken place.

On the 5th of March, we waited on the Minister of Exterior Relations, delivered copies of our letters of credence, and requested to be informed at what time we should have an audience of the Premier Consul. He observed that, in cases like ours, it was usual to postpone the audience till the negotiation was finished. We replied that, should we be honored with one before the negotiation commenced, we thought its effects would be favorable. Mr. Talleyrand then said that he supposed there would be no difficulty on that point, and that he would speak to the Premier Consul about it.

On the 8th of March, agreeably to the notification which we had in the meantime received, we attended, and had an audience of the Premier Consul at the palace of the Tuilleries, and delivered him our letters of credence. We were received with the respect due to the character which we had the honor to bear. The audience was a public one, and was attended by the two other Consuls, the Ministers of the Government, members of the Council of State, general officers, and the Ministers of foreign Powers. After the compliments usual on such occasions had passed, Mr. Talleyrand informed us that a commission of three Ministers Plenipotentiary had been appointed to negotiate with us, and that we should receive a note from him officially notifying us of that appointment; which we accordingly received in the evening of the same day.

The illness of Mr. Joseph Bonaparte, President of the French Commission, prevented our meeting with them for the exchange of powers till the 2d instant; and the time till the 7th was also lost in obtaining such further powers as were satisfactory to us. Since that day you will perceive that the negotiation has made some progress; and will doubtless also perceive, that there has been, on our part, due solicitude to give it facility.

Our note of yesterday, sent to-day, was accompanied with six articles covering the whole ground of individual claims, and formed for a treaty; but there has not been time to prepare a copy for this despatch. It is understood that the campaign has opened between Austria and France, on the side of Italy.

We have the honor to be, sir, with high respect, your obedient humble servants,

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

P. S. We shall be hard pressed to revive the old treaty, so far, at least, as to save its anteriority.

APRIL 21.

The Envoys being extremely desirous of forming the Board of Commissioners for adjusting the claims in some manner that might avoid the inconveniences which have resulted from the mode prescribed in the sixth and seventh articles of the Treaty of Amity and Commerce between the United States and Great Britain, had retained that part of the subject under consideration till the 21st of April; when, after the discussion of several projects, they finally agreed that, under all circumstances, the mode adopted in the above treaty was the least exceptionable, and transmitted the following note to the French Ministers:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *April* 21, 1800.

CITIZEN MINISTERS: The undersigned requests that the blanks in the articles which they had the honor to send you under the date of the 17th May, be filled as follows, viz: that left for the mode of selecting the five Commissioners with these words: "Two of them shall be appointed by the Premier Consul of the French Republic, two of them by the President of the United States, by and with the advice and consent of the Senate thereof, and the fifth by the unanimous voice of the other four; and, in case they should not agree in such choice, the Commissioners named by the two parties shall respectively propose one person; and of the names so proposed, one shall be drawn by lot in the presence of the four original Commissioners." That left for the organization of a board, with these words: "Three of said Commissioners shall constitute a board, and shall have power to do any act pertaining to said commission, provided that one of the Commissioners on each side, and the fifth Commissioner, shall be present."

And that the sentence which contains a blank for the place of their meeting, may be so completed as to read thus: "The Commissioners shall be appointed, and meet at Paris, within six months from the ratification of this treaty by the respective Governments, and as much sooner as may be; but they shall have power to adjourn from place to place, as they shall see cause." Accept, &c.

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

PARIS, 3*d Floreal*, (*April* 22) *year* 8.

The Ministers Plenipotentiary of the French Republic have received the note which the Envoys Extraordinary and Ministers Plenipotentiary of the United States have done them the honor to address to them the 17th of April, as well as the supplementary note of the 21st.

They have been engaged, since that time, in preparing a reply; and, as soon as their observations shall be reduced to writing, they will hasten to transmit them to the American Ministers.

They pray the Ministers Plenipotentiary of the United States to accept the assurance of their high consideration.

J. BONAPARTE,
FLEURIEU,
RŒDERER.

MAY 6, 1800.

The following note was received to-day from the French Ministers:

PARIS, 16*th Floreal*,
(6*th May*) *year* 8.

The Ministers Plenipotentiary of the French Republic coincide with the Envoys Extraordinary and Ministers Plenipotentiary of the United States, in viewing the communication of their project of a treaty as a frank mode of leading to the discussion of principles which should guide the negotiation and promote its object.

The object of the negotiation is to restore the harmony and cement the friendship formerly subsisting between the two nations.

The principles, with which the undersigned conceive it necessary to commence, are those which can determine the true sense of the mutual obligations, the real or supposed infraction of which has caused a misunderstanding between the respective Governments.

The liquidation and discharge of the damages which may have resulted, either to the two nations or to their citizens, from this momentary

misunderstanding, can only be considered as a consequence of the interpretation which, by common consent, shall be given to ancient treaties, as a proof of a sincere return to the primitive relations of the two nations, and as a pledge for the oblivion of those events by which the former relations have been disturbed.

The communication of this project, by the Ministers of the United States, has, therefore, a tendency to remove the obstacles which lie in the way between the object to which it is proposed to arrive and the principles with which it is proper to set out.

No doubt exists respecting the object to which the desires and interests of both nations are directed.

The Ministers, respectively, are also agreed on the expediency of providing a suitable indemnity.

The discussion, then, is now restricted to two points, viz: 1st. What are the principles which ought to have governed, and which ought still to govern, the political and commercial relations of the two nations? 2d. What is the mode, the best adapted to their respective interests, by which the ascertained indemnities shall be liquidated and discharged?

The examination of the principles ought to precede the consideration of the mode of indemnification: since, on the one hand, an indemnity cannot result except from an admitted contravention of an acknowledged obligation; and, on the other, it is only an agreement founded upon principles that can insure peace and maintain friendship.

The Ministers of the French Republic would, for this reason, have seized the present moment to develop their views respecting the various interpretations which, for years past, have been given to the treaties, if, upon reading the 2d article of the project which has been submitted, they had not been struck with an interpretation of which they can conceive neither the cause nor the object, and which, therefore, seems to require explanation. The words which contain it relate to the arbitrators to be appointed for the liquidation of damages. "They shall decide (says the project) the claims in question, according to the original merits of the several cases, and according to justice, equity, and the law of nations; and, in all cases of complaint, existing prior to the 7th July, 1798, according to the treaties and consular convention then existing between France and the United States."

The Ministers Plenipotentiary of the French Republic are not aware of any reason which can authorize a distinction between the time prior to the 7th of July, 1798, and the time subsequent to that date, in order to apply the stipulations of treaties to the damages which have arisen during the first period, and only the principles of the laws of nations to those which have occurred during the second.

The commission of the Ministers Plenipotentiary of the French Republic has designated the Treaty of Alliance, and of Friendship and Commerce, and the Consular Convention, as the sole basis of their negotiations. Upon these acts the misunderstanding has arisen; and upon these acts it seems proper that union and friendship should be re-established.

In hastening to recognise the principle of compensation, it was the intention of the undersigned to exhibit an unequivocal proof of the fidelity of France to her ancient engagements; all pecuniary stipulations appearing to her proper as results from ancient treaties, not as preliminaries to a new one. The undersigned pray, &c.

BONAPARTE,
FLEURIEU,
RŒDERER.

P. S. We have the honor to transmit herewith the acts which show the earnestness with which the Government desires to remove the causes of irritation which have heretofore existed.

MAY 7.

A conference was held to-day for the purpose of agreeing upon the draught of answer; and, as the French Ministers had acceded to the general proposition of mutual compensation and indemnity, in their note of the 19th Germinal, (9th of April,) and had again recognised the principle in their note of the 16th Floreal, (6th of May,) connected with certain discussions, and the ulterior adjustment of the existing differences in a treaty, the Envoys were of opinion that they would facilitate the arrangements as to the preliminary object, and avoid the waste of time, in the discussion of general abstract principles, by sending the entire project of a treaty which they had then prepared. By these means, they hoped to fix the attention of the French Ministers to the real objects of difference, and press the business forward with a degree of certainty that would mark the progress of the negotiation; and, therefore, the next day, the 8th of May, forwarded the answer which follows, of that date, accompanied by the remaining part of their project of a treaty, from article 7 to article 36, inclusive:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *May* 8, 1800.

CITIZENS MINISTERS: The undersigned have been honored with your note of the 16th of Floreal. They readily assign the reason why it was proposed by them that the treaties and consular convention, made between France and the United States, should be the rule of decision on the claims of their respective citizens, only with respect to causes of complaint which arose prior to the 7th July, 1798, leaving their subsequent causes of complaint to rest upon the law of nations; and also the reason why they cannot regard those treaties as the basis of the present negotiation for any other purpose than that of giving a rule by which causes of complaint, prior to the period above mentioned, are to be tested.

It was not till after the Treaty of Amity and Commerce, of February, 1778, had been violated to a great extent on the part of the French Republic, nor till after explanations and an amicable adjustment, sought by the United States, had been refused, that they did, on the 7th day of July, 1798, by a solemn public act, declare that they were freed and exonerated from the treaties and consular convention which had been entered into between them and France. Nor would such declaration, though justified by the law of nature and of nations, have even then been made, if it had been possible for the United States, while continuing the treaties and consular convention as the rule of their conduct, to guard against injuries which daily increased, and threatened their commerce with total destruction. That declaration cannot be recalled; and the United States must abide by its effects, with respect to the priority of treaties, whatever inconveniences may result to themselves. Their Government, it was understood, could not, with good faith, give to the undersigned powers to change or effect such priorities, and they do not possess them.

The undersigned deem it unnecessary at present to enumerate the acts of the French Government which produced the above measure. The principles of those decrees are as well understood, and now as fully acknowledged, as the mischiefs they have generated: and, as the object of this negotiation is to produce the reconciliation, and to cement the ancient friendship of the two nations, such a painful recapitulation would, at this time, answer no valuable purpose. They are, therefore, still of opinion that the views of the respective Ministers should be directed to the object of terminating their differences in such a manner as, without a specific and detailed discussion on the merits of the respective complaints, might, by the adoption of plain and acknowledged principles of justice, produce mutual satisfaction and a permanent good understanding.

The undersigned recognise the principle that a right to indemnification can result only from the violation of a known obligation; and they conceive it to be equally incontrovertible that the law of nations constitutes such an obligation where treaties do not exist. They have not understood that the principle of compensation, proposed by them, was admitted without a supposition that the other points would be satisfactorily arranged; yet they trust that satisfying the demands of justice will always be considered as the wisest of political expedients.

The questions what are to be the political, and what the commercial relations of the two countries, have had the consideration, so far as the undersigned have been able to bestow it, which questions of such high and extensive import deserve.

For an answer to the first, they refer to their project of a treaty; and it is scarcely necessary to add that the interest of the United States, while it prompts them strongly to cultivate a good understanding with France, forbids them to wish such relations to any Power as might involve them in the contests with which Europe is so often scourged. They wish not even to afford in their ports, beyond the rights of hospitality, an asylum for privateers, which obstructs their commerce, and too easily entangles them in the conflicting passions and interests of the belligerent Powers.

It is true, however, that the engagements of the United States do not, as yet, permit them to pursue their policy, with respect to privateers, to its full extent. Those of one nation have a right of asylum in their ports, but it is a right which may cease in two years after the present war with Great Britain. Nor is it conceived to be very interesting to the French Republic during the present war, which is presumed to draw near to an honorable termination, to whose prizes and privateers the ports of the United States may, in the meantime, be most open, as few or none of her merchantmen now pass that coast to be exposed, and as few or none of her enemies pass it without convoys too strong for privateers.

For an answer to the other question, what is to be the commercial relation of the two nations, the undersigned refer particularly to the thirteenth article of their project, which they have endeavored to accommodate, not only to the existing circumstances, but to the future hopes of both nations.

It is seen that this article goes further than the colonial and monopolizing systems of Europe have admitted an experiment of; but it is hoped that the period approaches when nations will cease to interpose those barriers and restraints upon commerce, which, besides checking industry and enterprise, diminish the value of everything they have to sell, and enhance the price of everything they purchase.

As to an unembarrassed intercourse between the United States and French West India islands, in particular, nothing could more happily, or perhaps more justly, efface from the recollection of the former their sufferings in that quarter; and certainly nothing would sooner restore the latter to productiveness and utility. They need only, in addition to order, facility of supplies and sales for a few years for their complete re-establishment, and even to carry them to a height of prosperity which the neighboring islands could not rival.

Reserving to the Republic, exclusively, her coasting trade, and the direct trade between France and her colonies, and to the United States their coasting trade, and leaving each nation to encourage also, by a reduction of duties to a limited extent, the use of their own ships, is presumed sufficient so to raise the marines of both, (which, fortunately, can rise without being objects of mutual jealousy,) as to insure a reasonable share of the privileges of the ocean.

And, lastly, it will not be an objection to this article, that, while it proposes to invigorate the commerce of France, it promises also extension and activity to that of the United States; because, it is well understood, that every depression which the commerce of the latter feels, and every risk to which it is subjected, profit only the enemies of the former, by augmenting their carrying trade, and increasing their naval power.

With this note, the undersigned have the honor

to transmit the remaining part of a project, which, together with what has been transmitted, discloses fully their views, and will, as they hope, facilitate the progress of the negotiation. Accept, &c.

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

P. S. The Envoys of the United States have not had the pleasure to receive the copies referred to in the postscript of the note to which the above is an answer.

ART. 7. All citizens and inhabitants of either nation, detained within the jurisdiction of the other, for any cause, except for debt or crimes committed within the same, shall be immediately set at liberty. All ships of war, or other public ships, which either nation has taken from the other, and detains, shall be given up; or where that cannot without difficulty be done, the full value shall be restored; and the value, if not agreed between the parties, shall be ascertained by the Commissioners mentioned in the second article.

And it is further agreed that, if the armed ships of the United States have retaken and set free from the ships of war or other public ships of the French Republic, any prizes which they had captured from her enemies, the United States will make compensation to the French Republic for the prizes so liberated. Claims for the same may be preferred to the said Commissioners, who shall decide them according to justice and equity; and any sum or sums which they may award in satisfaction of such claims, the Government of the United States will cause to be paid, or secured in the same manner as is provided in the second article in the case of claims of the citizens of the French Republic. And, as well all cases of either of the descriptions aforesaid which shall exist at the time of exchanging the ratifications of this treaty, as those which now exist, shall be considered within the intent and meaning of this article.

ART. 8. The citizens and inhabitants of the United States shall be exempted in the French Republic from the *droit d'aubaine*, or other similar duty, under whatever name; and the citizens and inhabitants of both nations, may, by testament, donation, or otherwise, dispose of their real estates already acquired, and of their goods and effects; and their heirs or representatives, being citizens of one of the parties, and residing in either nation, or elsewhere, may succeed to them, even *ab intestato*, without being obliged to obtain letters of naturalization, and without having the effect of this provision contested or impeded under any pretext whatever; and their heirs or representatives shall receive such estate, or goods and effects, either in person, or by attorney or substitute; and if the heirs or representatives to whom such succession or devise, and goods or effects may have fallen, shall be minors, the guardian, tutor, curator, or executor established by the testament, or by the domiciliary laws of the country, whereof such minor shall be a citizen or inhabitant, may direct, administer, and alienate the estate or goods so fallen to such minors; and, in general, in relation to such estate and goods, use all the rights and fulfil all the functions which belong by the disposition of the laws to such guardian, tutor, curator, or executor. The inheritances, as well as the goods and effects which the said citizens or inhabitants, in changing their abode, shall be desirous of removing from the place of their abode, shall be exempted, with respect to each, from all duty whatever. But it is at the same time agreed, that this article shall in no manner derogate from the laws which either State may have now in force, or may hereafter enact, to prevent emigration. Provided, also, that if the laws of either country should at any time be incompatible with the inheritance or devise of real estate by and to aliens, it is agreed that such real estate may be sold, or otherwise disposed of, to citizens or inhabitants of the country where it may be.

ART. 9. Neither the debts due from individuals of the one nation to individuals of the other, nor shares, nor moneys which they may have in public funds, or in the public or private banks, shall ever, in any event of war, or national difference, be sequestered or confiscated.

ART. 10. And whereas, debtors may flee from the territories of one of the contracting parties to those of the other, it is agreed that the creditors, being citizens or inhabitants of either nation, may pursue such debtors, whether they be citizens or inhabitants, or not, of either country, and shall have the benefit of the laws of the country to which such debtors may flee, on the one side and on the other, in the same manner as if the debt or cause of action had arisen or been therein contracted.

ART. 11. And it is further agreed that the Governments of both nations, on requisitions by them respectively made, or by their respective Ministers, Consuls, or other officers authorized to make the same, will deliver up to justice all persons, who, being charged with murder or forgery, committed within the territories of the party making the requisition, shall seek an asylum within any of the territories or dependencies of the other; provided, that this shall only be done on such evidence of criminality, as, according to the laws of the nation where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had been there committed; the expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the arrested fugitive.

ART. 12. To favor commerce on both sides, it is agreed that, in case a war should break out between the two nations, (which God forbid!) the term of six months after the declaration of war, shall be allowed to the merchants, and other citizens and inhabitants, respectively, on one side and the other, in order that they may withdraw with their effects and moveables, which they shall be at liberty to send, carry away, or sell, where they please, without the least obstruction; nor shall their effects, much less their persons, be seized

during such term of six months; on the contrary, passports, which shall be valid for a time necessary for their return, shall be given to them for their vessels and the effects which they shall be willing to send away or carry with them; and such passports shall be a safe conduct against all insults and prizes, which privateers may attempt against their persons or effects. And if anything be taken from them, or any injury done to them or their effects by one of the parties, their citizens, or inhabitants, within the time above prescribed, full satisfaction shall be made to them on that account.

ART. 13. And for the purpose of more effectually maintaining a good correspondence, and facilitating commerce between the citizens of the two nations, it is agreed, on the part of the United States, that the merchant ships and vessels of the French Republic may freely enter, lade and unlade, at such convenient port or ports in each of the United States situate on the ocean, as shall for that purpose be designated by the laws of the United States, and until such designation shall be made, at any of the ports of the same where foreign ships and vessels are now permitted to enter; and may, at all times, enter, lade, and unlade at any port in the said States, at which ships and vessels of the most favored nation shall be permitted to do the same.

The citizens of the French Republic may import in such ships and vessels, and freely dispose of all merchandises, without exception, of the manufacture, growth, or produce of any part of the territories or dominions of the French Republic, or of the produce of her fisheries, and also all merchandises of the manufacture, growth, or produce of any foreign country or place, the importation of which shall not be prohibited in ships and vessels of the United States; and they may export in such ships and vessels to any country or place out of the United States, all merchandises, the exportation of which shall not be prohibited in ships and vessels of the United States. There shall be paid on such ships and vessels in the ports of the United States, no other or higher duty than shall be paid on the ships and vessels of the most favored nation, nor any other or higher duty than a tonnage duty, not exceeding fifty cents per ton of the ship or vessel; and such duties or fees, on papers obtained from any office of the port, as the citizens of the United States shall pay in like cases.

No duties shall be paid on the exportation in such ships and vessels of any merchandise whatever; nor shall any other or higher duty be paid on the importation in such ships and vessels, of any merchandise, than the most favored nation shall pay in like cases; nor any other or higher duty than shall be paid on the importation of like merchandise in the ships and vessels of the United States; except that there may be exacted a duty less, by any proportion not exceeding one-eleventh part, on importations in their own ships and vessels than on importations in any other ships or vessels whatever; and except, also, that there may be exacted such duties on teas imported in the ships and vessels of the French Republic, as shall be paid on teas imported in the ships and vessels of the most favored nation.

The ships and vessels of the French Republic shall be permitted, when it shall be convenient for them, both to lade and unlade by parcels, at different ports in the United States, conforming to such regulations as the laws of the country shall prescribe to prevent frauds in the revenue. But they shall not unlade in any port of the United States what they have laded in any other port of the same, except in cases of distress, and shall then only be permitted to sell so much of what they have laded, as may be necessary for the repairs of the ship or vessel, and the prosecution of the voyage.

And it is also agreed, on the part of the French Republic, that the merchant ships and vessels of the United States may freely enter, lade, and unlade at such convenient port or ports in every part of the territories or dominions of the French Republic in any quarter of the world, as shall, for that purpose, be designated by the laws of the Republic; and until such designation shall be made, at all the ports in the said territories or dominions where the ships or vessels of the French Republic are now permitted to enter from the sea; and they may at all times enter, lade, and unlade at any ports within the said territories or dominions, at which ships or vessels of the most favored nation shall be permitted to do the same.

The citizens of the United States may import, in such ships or vessels, to every part of the said territories or dominions, and freely dispose of all merchandises, without exception, of the manufacture, growth, or produce of the United States, and of the produce of their fisheries; and also all merchandises of the manufacture, growth, or produce of any foreign country or place, the importation of which shall not be prohibited in ships and vessels of the French Republic. And they may export in such ships and vessels, from every part of the said territories or dominions, to any country or place out of the same, all merchandises whatever, the exportation of which shall not be prohibited in ships and vessels of the said Republic.

There shall not be paid on such ships and vessels, in any port in the territories or dominions of the French Republic, any other or higher duty than shall be paid at such port on the ships and vessels of the most favored nation; nor any other or higher duty than a tonnage duty of fifty-three sols per ton of the ship or vessel, and such duty or fees on papers obtained from any office of the port as the citizens of the French Republic shall pay in like cases.

No duties shall be paid on the exportation in such ships and vessels from any port in the said territories or dominions of any merchandise whatever; nor shall any other or higher duty be paid on the importation in such ships and vessels, to any part of the said territories or dominions, of any merchandise whatever, than the most favored nation shall pay in like cases; nor any other or higher duty than shall be paid on the importation

of like merchandises in ships and vessels of the French Republic, except that there may be exacted a duty less, by any proportion not exceeding one-eleventh part, on importations in ships and vessels of the said Republic, than on importations in any other ships and vessels whatever; and except, also, that there may be exacted such duties on teas imported in ships and vessels of the United States as shall be paid on teas imported in the ships and vessels of the most favored nation.

The ships and vessels of the United States shall be permitted, when it shall be convenient for them, both to lade and unlade, by parcels, in different ports throughout the territories or dominions of the French Republic, conforming to such regulations as the laws of the country shall prescribe to prevent frauds in the revenue; but they shall not unlade in any port within the said territories or dominions what they have laded at any other port within the same, except in cases of distress; and shall then only be permitted to sell so much of what they had so laded as may be necessary for the repairs of the ship or vessel, and for the prosecution of the voyage.

ART. 14. The citizens of each party, respectively, shall have free admission into the dominions of the other, with liberty to reside there, to hire houses and warehouses, for the purposes of trade and commerce; and complete protection and security for the merchants and traders, citizens of either party, with their goods and effects, whether in going to, residing in, or retiring from the dominions, or from one part thereof to another of the other, shall be given. It shall be lawful for them, on either side, to employ such advocates, attorneys, notaries, solicitors factors, brokers, and interpreters, without being obliged to employ either, as they shall think proper; and it shall be wholly free for all merchants, commanders of ships and vessels, citizens of either party, in every place subject to the jurisdiction of the other, to direct and manage their own affairs and business; and, in relation to the loading or unloading of their vessels, and everything which has relation thereto, they shall not be obliged, though they may, if they please, to employ any persons but those of the crew of the vessel.

ART. 15. The ships of the citizens of the respective countries coming upon any of the coasts belonging to either of the parties, but not willing to enter into port, or, being entered into port, and not willing to unlade their cargoes or break bulk, shall not be obliged to give an account of their lading, unless they are suspected, upon sure evidence, of carrying prohibited goods, called contraband, to the enemies of either of the two contracting parties; but shall be subject, nevertheless, to such regulations in the port as may be prescribed by the government of the place.

ART. 16. In case the citizens of either party, with their shipping, whether they be public, and equipped for war, or private, and employed in commerce, be forced, through stress of weather, pursuit of pirates or enemies, or any other urgent necessity for seeking of shelter and harbor, to retract and enter into any of the rivers, creeks, bays, ports, roads, or shores belonging to the other party, they shall be received with all humanity and kindness, and enjoy all friendly protection and help; and they shall be permitted to refresh and provide themselves, at reasonable rates, with victuals, and all things needful for the sustenance of their persons, or reparation of their ships; and they shall be allowed to break bulk, and unlade and sell, conformably to the orders and regulations of the government of the place, so much of the cargo as may be necessary to defray their expenses, without being obliged to pay any duties whatever, except only on such articles as they may be permitted to sell for the purposes aforesaid; and they shall no ways be detained or hindered from returning out of the said ports or roads, but may remove and depart when and whither they please, without any let or hindrance.

ART. 17. If any ship belonging to either of the parties, or their citizens, shall be wrecked, foundered, or otherwise damaged, the same protection and assistance shall be given to the persons shipwrecked, or such as shall be in danger thereof, or be otherwise distressed, as would be afforded in like cases to the inhabitants of the country on whose coast such misfortune may happen; and letters of safe conduct shall likewise be given to them, when required, for their free and quiet passage from thence, and their return to their own country.

ART. 18. It is likewise agreed that deserters from the public and private vessels of either nation shall be arrested and delivered up, on application made, according to the orders and regulation of the government of the place where such deserters shall be, by the Consul, Vice Consul, or agent of the nation of which such deserter may be a citizen; and suitable provisions shall be made by law, in each country, for that purpose; and not only the original enlistment, shipping-paper, or *rôle d'équipage*, but a copy or extract, certified to be conformable to the original, by a judge of the country in which the vessel may be, or from which she may have departed, shall also be admitted in proof of desertion; and such extract or copy shall have in all the ports of the respective Powers the same force with the original, for six months: And it is further agreed that the masters and commanders of vessels, public or private, of one nation, in the country of the other, may engage and receive on board seamen and others, natives or inhabitants of the country to which the vessels belong: *Provided*, That, either on one side or the other, they shall not be at liberty to take into their service such of their countrymen (deserters excepted) as may have already engaged in the service of the other party, whether they meet them by land or by sea, unless the captains or masters under whose command such persons may be found will voluntarily discharge them from their service.

ART. 19. Neither of the said parties shall permit the ships or goods belonging to the citizens of the other to be taken within cannon-shot of the coast, nor in any of the bays, ports, or rivers of their territories, by ships of war, or others having

commissions from any foreign State or Prince; but, in case it should so happen, the party whose territorial rights shall thus have been violated, shall use his utmost endeavors to obtain from the offending party full and ample satisfaction for the goods and vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

ART. 20. It shall be lawful for the citizens of either country to sail with their ships and merchandise (contraband goods always excepted) from any port whatever, to any port of the enemy of the other, and to sail and trade with their ships and merchandise with perfect security and liberty, from the countries, ports, and places of those who are enemies of both, or of either party, without any opposition or disturbance whatsoever; and to pass, not only directly from the places and ports of the enemy aforementioned, to neutral ports and places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of the same Power, or under several; unless such ports or places shall be actually blockaded, besieged, or invested.

And whereas, it frequently happens that vessels sail for a port or place belonging to an enemy, without knowing that the same is either besieged, blockaded, or invested, it is agreed that every vessel so circumstanced may be turned away from such port or place, but she shall not be detained, nor any part of her cargo, if not contraband, be confiscated, unless after notice she shall again attempt to enter; but she shall be permitted to go to any other port or place she may think proper; nor shall any vessel of either, that may have entered into such port or place, before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her return cargo; nor, if found therein after the reduction or surrender of such place, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners or proprietors thereof.

ART. 21. In order to regulate what is in future to be esteemed contraband of war, it is agreed that, under the said denomination, shall be comprised gunpowder, saltpetre, petards, match, ball, bombs, grenades, carcasses, cartridge-boxes, pikes, halberds, swords, belts, pistols, holsters, cavalry saddles and furniture, cannon, mortars, their carriages and beds, and, generally, all kinds of arms and instruments fit for the use of troops. All the above articles, whenever they are destined to the port of an enemy, are hereby declared to be contraband, and just objects of confiscation; but the vessel in which they are laden, and the residue of the cargo, shall be considered free, and not in any manner infected by the prohibited goods, whether belonging to the same or a different owner.

ART. 22. It is agreed that in all cases where vessels shall be captured or detained on just suspicion of having on board enemy's property, or of carrying to the enemy any of the articles which are contraband of war, the said vessel shall be brought to the nearest or most convenient port of the country to which the captor belongs; and if any property of an enemy should be found on board such vessel, that part only which belongs to the enemy, of which consists of articles contraband of war, destined as aforesaid, shall be made prize, and the vessel shall be at liberty to proceed with the remainder, without any impediment; and a reasonable freight shall be paid by the captor on such property of the enemy as shall be made prize. And it is agreed that all proper measures shall be taken to prevent delay in deciding the cases of ships or cargoes so brought in for adjudication, and in the payment or recovery of any indemnification adjudged or agreed to be paid to the masters or owners of such ship: Nevertheless, it is agreed that such effects and merchandises, even though the property of an enemy, as were put on board before the declaration of war, or —— months after it, shall not be in any manner subject to confiscation, but shall be faithfully and specifically restored to be carried to their place of destination: *Provided, notwithstanding*, That if such merchandise be contraband, destined as aforesaid, it shall not be in anywise lawful to carry them afterwards to a port belonging to an enemy; and, also, that if there shall be found on board the vessel of an enemy, captured by either party or its citizens, any property of the other party, or of its citizens, the same shall not be confiscated, but freely restored to the owners or proprietors thereof.

ART. 23. And that captures on light suspicions may be avoided, and injuries thence arising prevented, it is agreed that, in case either of the parties should be engaged in a war, the ships and vessels belonging to the citizens of the other shall be furnished with sea-letters or passports, expressing the name, property, and bulk of the ship, as also the name and place of habitation of the master or commander of the said ship, that it may appear thereby that the ship really and truly belongs to the citizens of one of the parties; which sea-letter or passport shall be made out and granted according to the form annexed to this treaty; they shall likewise be renewed every year, that is, if the vessel should return home within the space of a year. It is likewise agreed that such ships, being laden, are to be provided not only with passports, as above mentioned, but also with certificates containing the several particulars of the cargo, the place from whence the vessel sailed, and whither she is bound, that so it may be known whether she carries any of the contraband goods specified in the twenty-first article of this treaty; which certificates shall be made out in the accustomed form of the country from whence the vessel sailed; and neither party shall require the exhibition of any papers or documents (the sea-letter and certificates aforementioned excepted) not required by the laws or usages of the party to whose citizens the vessels and their cargoes belong, nor in any other form than the laws and usages of such last mentioned party shall prescribe. And it is expressly stipulated and agreed, that, when the quality of the ship, goods, and master sufficiently appear from the passport and certificates aforesaid, it shall not be lawful for the commanders of armed vessels to exact any further proof, under any pretext whatever; and that when any

merchant ship shall not be provided with such passport and certificates, such case may be examined by a proper judge or tribunal; and if it shall be found from other documents or proofs that the vessel truly belongs to the citizens of one of the parties, it shall not be confiscated, but shall be released with its cargo, (enemy's property and contraband goods, as aforesaid, excepted,) and be permitted to proceed on its voyage.

If the master of the ship named in the passport should happen to die, or be removed by any other cause, and another put in his place, the ship and goods laden thereon shall, nevertheless, be equally secure, and the passport remain in full force.

ART. 24. If the ships of the citizens of either of the parties shall be met with, either sailing along the coasts or on the high seas, by any ship of war, or by any privateers of the other, for the avoiding of any disorder, the said ships of war or privateers shall remain out of cannon shot, and may send their boats on board the merchant ship which they shall so meet with, and may enter her to the number of two or three men only, to whom the master or commander of such ship or vessel shall exhibit his passport concerning the property of the ship, made out according to the form annexed to this present treaty, and also the certificates aforesaid relative to the cargo; and, when the master or commander shall have exhibited such passport and certificates, and there shall not appear among the articles of the said cargo enemy's property, or any articles contraband of war, then such master or commander shall be at liberty to pursue his voyage, so as it shall not be lawful to molest or search his vessel in any manner, or to give her chase, or force her to quit her intended course: And it is expressly agreed that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other examination whatever.

ART. 25. It is agreed that, in all cases where vessels shall be captured, or detained by reason of their having on board enemy's property, or carrying to the enemy any of the articles which are contraband of war, the captor shall give a receipt for such of the papers of the vessel as he shall retain; which receipt shall be annexed to a descriptive list of the said papers, and the said vessel shall be brought to the nearest and most convenient port of the country to which the captor belongs; and it shall be unlawful to break up or open the hatches, chests, trunks, casks, bales, or vessels found on board such ship, or to remove even the smallest parcel of the goods, unless the lading be brought on shore in the presence of the officers of the Admiralty, and an inventory made by them of the said goods; nor shall it be lawful to sell, exchange, or alienate the same in any manner, unless, after due and lawful process shall have been had against such goods, and the Judge or Judges of the Admiralty, respectively, shall, by sentence pronounced, have confiscated the same, saving, always, as well the ship itself as the other goods found therein; and if, when only part of the cargo shall consist of contraband goods, the master of the ship shall agree, consent, and offer to deliver them to the captor who has discovered them, in such case the captor, having received those goods as lawful prize, shall forthwith release the ship, and not hinder her by any means from prosecuting her voyage to the place of her destination.

ART. 26. And that proper care may be taken of the vessel and cargo, and embezzlement prevented, it is agreed that it shall not be lawful to remove the master or commander of any captured vessel, or the supercargo thereof, from on board the same, neither during the time that the vessel may be at sea after her capture, nor pending the proceedings against her or her cargo, or any part thereof. And in all cases where a vessel of the citizens of either party shall be captured or seized, and held for adjudication, her officers, passengers, and crew, shall be hospitably treated. They shall not be imprisoned, nor deprived of any part of their wearing apparel, nor of the possession and use of their money, not exceeding, for the captain, supercargo, and mate, five hundred dollars each; and, for the sailors and passengers, one hundred dollars each.

ART. 27. If it shall appear that the captor bribed, or attempted to bribe, any of the ship's crew or passengers to give any evidence, or make any declaration or disclosure whatever, respecting the vessel, her lading, or destination, or make use of any kind of torture upon the master of the ship, the crew, or others who shall be on board of the same, in such case, whatever grounds there might otherwise be for condemnation, the ship and her lading shall, without delay, be acquitted and restored, with costs and damages; and, also, such as shall be guilty of any of the said crimes, as well as their accomplices, shall suffer the most severe punishment suitable to their offences. And, to insure the observance of this article, provision shall be made by law in each country to carry the same into full effect.

ART. 28. It is further agreed that all prizes shall be conducted to a port of the party at war; and, in all cases, the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal or court of either of the parties shall pronounce sentence against any vessel, or goods, or property claimed by the citizens of the other party, the reasons or motives of such judgment shall be entered in the sentence or decree, and a duly authenticated copy of all the proceedings in the cause, and of the said sentence, shall, if required, be delivered to the commander or agent of the said vessel without the smallest delay, he paying all legal fees and demands for the same.

ART. 29. When process shall be moved, in the first or second instance, between those that have taken the prizes at sea and the persons interested therein, and the said interested persons shall come to obtain a favorable judgment or decree, the said judgment or decree shall have its execution, upon security given, notwithstanding the appeal of him that took the prize: but the same shall not hold, on the contrary, where the sentence goes against the claimers.

ART. 30. The merchant ships belonging to the

citizens of either of the two contracting parties which intend to go to a port at enmity with the other, concerning whose voyage and the sort of goods on board there may be just cause of suspicion, shall be obliged to exhibit, as well on the high seas as in the ports and havens, not only their passports, but also their certificates expressing that the goods are not of the kind which are contraband, as specified in the twenty-first article of this treaty.

ART. 31. And that more abundant care may be taken for the security of the respective citizens of the contracting parties, and to prevent their suffering injuries by the men of war or privateers of either party, all commanders of ships of war and privateers, and all others the said citizens, shall forbear doing any damage to those of the other party, or committing any outrage against them; and, if they act to the contrary, they shall be punished, and shall also be bound in their persons and estates to make satisfaction and reparation for all damages, and the interest thereof, of whatever nature the said damages may be.

For this cause all commanders of privateers, before they receive their commissions, shall hereafter be obliged to give, before a competent judge, sufficient security, by at least two responsible sureties who have no interest in the said privateer; each of whom, together with the said commander, shall be jointly and severally bound in the sum of —— dollars or —— francs; or, if such ship be provided with above one hundred and fifty seamen or soldiers, in the sum of —— dollars or —— francs, to satisfy all damages and injuries which the said privateer, or her officers or men, or any of them, may do or commit, during their cruise, contrary to the tenor of this treaty, or to the laws and instructions for regulating their conduct: and further, that in all cases of aggressions, the said commissions shall be revoked and annulled.

ART. 32. It shall not be lawful for any foreign privateers, who have commissions from any other Prince or State in enmity with either nation, to arm their ships in the ports of either of the said parties, nor to sell what they have taken, nor in any other manner to exchange the same, nor shall they be allowed to purchase more provisions than shall be necessary for their going to the nearest port of that Prince or State from whom they obtained their commissions.

ART. 33. It is further agreed that both the said contracting parties shall not only refuse to receive any pirates into any of their ports, havens, or towns, or permit any of their inhabitants to receive, protect, harbor, conceal, or assist them in any manner, but will bring to condign punishment all such inhabitants as shall be guilty of such acts or offences. And all their ships, with the goods or merchandise taken by them, and brought into the port of either of the said parties, shall be seized, as far as they can be discovered, and shall be restored to the owners, or their factors or agents duly deputed and authorized in writing by them, (proper evidence being first given in the Court of Admiralty for proving the property,) even in case such effects should have passed into other hands by sale, if it be proved that the buyers knew, or had good reason to believe or suspect, that they had been piratically taken.

ART. 34. Neither party will intermeddle in the fisheries on the coasts of the other, nor disturb the other in the exercise of the rights which it now holds or may acquire of fishing on the banks of Newfoundland, in the Gulf of St. Lawrence, or elsewhere on the American coast northward of the United States of America; but the whale and seal fisheries shall be free to both in every quarter of the world.

ART. 35. It shall be free for the two contracting parties, respectively, to appoint Consuls for the protection of trade, to reside in the dominions and territories of each party. Either of the parties may except from the residence of Consuls such particular places as such party shall judge proper to be excepted. Before any Consul shall act as such, he shall be, in the usual forms, approved and admitted by the party to whose territory he is sent; and the said Consuls shall enjoy those liberties and rights which belong to them by reason of their function. And it is agreed that the admission of a Consul by the government of a colony, shall be deemed such a provisional admission as to entitle him to act as such until the will of the Government to which such colony belongs shall be formally made known. And it is hereby declared to be lawful and proper, that, in case of illegal or improper conduct towards the laws or Government, a Consul may be either punished according to law, or dismissed, and even sent back; the offended Government assigning to the other their reasons for the same.

ART. 36. It is agreed that the first twelve articles of this treaty shall be permanent, and that the subsequent articles shall be limited to twelve years, to be computed from the day on which the ratifications of this treaty shall be exchanged.

Nothing in this treaty shall be construed to operate contrary to former and existing public treaties with other Sovereigns or States.

MAY 16.

The following letter was received from the Secretary of State, and, on the next day, the letter under date of the 27th, was prepared, and forwarded with the several enclosures mentioned; duplicates and triplicates of this last despatch were also soon afterwards sent by different routes:

DEPARTMENT OF STATE,
Philadelphia, February 14, 1800.

GENTLEMEN: In your commissions, containing your full powers, you are named "Envoys Extraordinary and Ministers Plenipotentiary of the United States to *the French Republic;*" and you are authorized "to meet and confer with the Minister or Ministers of the French Republic, who shall be appointed and commissioned with equal powers, and with such Minister or Ministers to discuss and settle by a treaty all controversies between the United States and France." Consequently, the circumstance of your letters of credence being addressed to the late "Executive Directory," need

not prevent or impede the proposed negotiation, provided the existing Government in France are inclined to enter upon it, and to conclude a treaty.

This is the President's opinion, and, by his direction, I now communicate it to you. Indeed, the idea must have occurred to you, it being obvious that a satisfactory treaty, however negotiated, which shall be approved and ratified by the President, by and with the advice and consent of the Senate, will be alike valid as if conducted with the most minute attention to customary formalities.

I am, with great respect, gentlemen, your most obedient servant,

TIMOTHY PICKERING.

OLIVER ELLSWORTH, &c.,
Envoys to the French Republic.

PARIS, *May* 17, 1800.

SIR: We had the honor to write to you on the 18th ultimo, covering all the communications between us and the Ministers Plenipotentiary of the French Republic up to that date, and a duplicate and a triplicate of that despatch have also been forwarded. The quadruplicate of your letter, (No. —,) arrived some time ago, and your letters of the 14th of February and 7th of March were received last evening.

The enclosed copies, marked W. X., will give you the necessary information respecting the progress and present state of the negotiation. As the French Ministers entered on the business of their commission soon after their appointment, and at the seat of their Government, it seems to have been so arranged that they were to receive their instructions on important points as they might become necessary in the course of the negotiations. This duty was naturally attached to the office of Exterior Relations; and our progress has suffered some delay by the sickness of M. Talleyrand, who has been confined by a severe illness from about the 15th of April to the 14th or 15th of this month. You will observe, however, that, even during this period, the business has been pressed forward on our part the whole length of the proposed treaty, with a view of avoiding all useless discussion, of fixing the attention of the Ministers to the real points of difference, and of marking with certainty the progress of the negotiation.

The situation of the army of Italy, commanded by General Massena, has been extremely critical, and has attracted the particular attention of the Premier Consul; and the army of reserve, amounting to about sixty thousand men, has marched to its relief. The French are, however, very successful on the Rhine, and the Government is as yet unshaken; it professes justice and moderation, and appears to be desirous of peace, which, there is some reason to believe, may be the result of the present campaign.

Our success is yet doubtful. The French think it hard to indemnify for violating engagements, unless they can thereby be restored to the benefits of them. Very few American vessels have been brought into European ports since our arrival at Paris, and, for some time past, we have heard of none. We know not, however, of any orders of this Government for the restraining of captures, except such as may have been the consequence of the enclosed law, repealing that of the 29th Nivose. Prisoners have been generally released, on a receipt being given by the American agents, promising the discharge of as many French seamen from confinement in the United States.

The court lately established for deciding questions of prize administratively, as it is called, and before which there are many American appeals, has not yet made any decisions.

We enclose, also, the copy of the law repealing the 1st article of the law of the 29th Nivose, and the arrêté of the Consuls respecting their new court, called "le conseil des prises."

We have the honor to be, sir, with great respect, your most obedient servants,

OLIVER ELLSWORTH,
WILLIAM R. DAVIE.
WILLIAM V. MURRAY.

TIMOTHY PICKERING, Esq.,
Secretary of State.

The following note was received, covering two acts of the French Government:

26th FLOREAL, (16*th April.*)

The Ministers Plenipotentiary of the Republic have the honor to transmit to the Ministers Plenipotentiary of the United States the documents announced in the postscript to their last note, which had been accidentally omitted.

They pray the Ministers of the United States to accept the assurance of their high consideration.

RŒDERER,
FLEURIEU.
BONAPARTE.

PARIS, *May* 19, 1800.

The Envoys Extraordinary of the United States have the pleasure to acknowledge the receipt of two acts of the French Government, mentioned in the postscript of the note of the Ministers of the Republic. These papers have been forwarded to the Government of the United States, who, as late as the 7th of March, had received no advices respecting the acts or measures of the present Government of France.

They request the Ministers of the Republic to accept the assurance of their high consideration.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

MAY 23.

The French Ministers had frequently mentioned in conversation the insuperable repugnance of their Government to yield its claim to the anteriority assumed to it in the Treaty of Amity and Commerce of 1778; urging the equivalent alleged to be accorded by France for this stipulation; the meritorious ground on which they generally re-

presented the treaty stood; denying strenuously the power of the American Government to annul the treaties by a simple Legislative act, and always concluding that it was perfectly incompatible with the honor and dignity of France to assent to the extinction of a right in favor of an enemy, and much more so to appear to acquiesce in the establishment of that right in favor of Great Britain. The priority with respect to the right of asylum for privateers and prizes, was the only point in the old treaty on which they had anxiously insisted, and which they agreed could not be as well provided for by a new stipulation. They had, however, transmitted no answer to the note of the Envoys, covering the remaining part of the project of a treaty; and only indirect intimations had been received, that difficulties had arisen, from the limited nature of the instructions of the French Ministers. But, at an interview today, the Envoys were officially informed that the negotiation was at a stand on the part of France; that no further progress could be made until other powers* were procured from the Premier Consul, as the tenor of their instructions made the acknowledgment of former treaties the basis of negotiation and the condition of compensation; that the French commission was working upon a report which would be delivered in a day or two to the Minister of Exterior Relations, and forwarded immediately by a courier to the Premier Consul, who had left Paris the 6th of May, and was supposed to be at this time in Switzerland or Italy.

MAY 24.

The Envoys held a conference to-day for the purpose of taking into consideration the information received yesterday, and the critical state of the negotiation; and, considering that the judgment of the Premier Consul would probably be formed upon the impressions made by the report; that the instructions which would be the result might possibly be conclusive; and that, in any event, there might be some difficulty, and certainly delay, in procuring any alteration, it was deemed expedient to transmit the note following, under date of the 25th, with a view to obviate any apprehension that our Government contemplated further grants to their prejudice, and as containing an intermediate ground, conciliatory to the pride of the French Government, without sacrificing the honor or interests of the United States.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *May* 25, 1800.

CITIZEN MINISTERS: The undersigned having bestowed the most mature consideration upon the subject so often mentioned with so much interest by the Ministers of the French Republic, and being desirous of guarding against any misapprehension on that head, have thought it expedient to propose the clause enclosed, as an addition to the thirty-second article of their project of a treaty.

Accept, Citizen Ministers, the assurance of their high consideration.

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

To be added to the thirty-second article:

Nor will either of the said parties, while they continue in amity, make a treaty with any foreign Sovereign or State, stipulating for the privateers and prizes of such Sovereign or State an asylum in the ports of either, unless they shall have assured to each other such right of asylum for the privateers and prizes of each in the ports of the other.

MAY 26.

The following letter was received from the Secretary of State:

DEPARTMENT OF STATE.
Philadelphia, April 9, 1800.

GENTLEMEN: On the 3d instant Capt. Barry arrived here with your letter, dated at Burgos, on the 10th of February, covering copies of your letters of December 7th from Lisbon, and January 18th from Corunna, and your correspondence with Mr. Talleyrand. These are the first and only despatches received from you since you left the United States. We are happy you escaped the perils of the sea in your attempting a voyage from Lisbon to L'Orient.

The answer of Mr. Talleyrand confirms the opinion expressed in your letter to him, that the circumstance of your letters of credence being addressed to the Directory of the French Republic could be viewed merely as a formality of no moment to the object of your mission. Your powers are full to negotiate and settle by treaty all differences between the United States and the French Republic, and to make commercial arrangements. The person or persons vested with the Executive power of the nation, if really desirous of such an adjustment, could not possibly make any serious objection to the address of your letters of credence, which was perfectly correct at their date. For these reasons, and because no official notice has been received of any change in the form of the Government of France, or in the person administering it, the President does not think it necessary to send any new letters of credence. Mr. Talleyrand having said that "the form of your letters of credence would be no obstacle to the opening of negotiations, of which he ventured to foresee the happy success," must indeed be considered as removing all doubt on the subject.

The ship Portsmouth, Captain McNeil, goes with this letter to Havre de Grace, whence he will send one of his officers to Paris, and receive your orders. The President supposes that by the time of her arrival, your negotiations will be con-

* Speaking on this subject, the French Ministers always used the words "powers" and "instructions" synonymously.

cluded, and that Judge Ellsworth aad Governor Davie will take their passage in her to America. Should your negotiations be still pending, and any reason satisfactory to yourselves, (according to the latitude given in your instructions,) determine you to wait longer in France, you will, at your discretion, either detain or send back the Portsmouth, as you shall think expedient for the public good.

I have the honor to be, with great respect, gentlemen, your obedient servant.

TIMOTHY PICKERING.

OLIVER ELLSWORTH, &c.,
Envoys to the French Republic.

JUNE 1.

As the French Ministers had yet made no answer to the notes of the 8th and 25th of May, covering the remaining details of the project of a treaty, the American Ministers thought it would be proper to press them for an answer, or at least an explanation of the cause of their silence; and sent them the following note, which was answered by the note under date of the 16th Prairial:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *June* 1, 1800.

Solicitous as are the undersigned, Citizen Ministers, to terminate happily and with promptitude a negotiation which is calculated to promote the interests of the two nations, they invite your attention to their notes of the 8th and 25th of May, and hope to be honored with as early an answer as the state of the business will admit of.

They trust that, while they avow a strong disposition to hasten the great object in view, they will not be chargeable with impatience; the frank development of their views will have been properly estimated.

Accept, Citizen Ministers, the assurances of their high consideration.

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

PARIS, 16 *Prairial, (5th June,) year* 8.

The undersigned, Ministers of the French Republic, participate with the Envoys Extraordinary and Ministers Plenipotentiary of the United States, in the desire which they express, in their note of the 12th of this month, that the negotiation with which they are respectively charged should be brought to a speedy and favorable issue. The Ministers of France, in acknowledging the receipt of the note which the Ministers of the United States were pleased to address to them, the 18th Floreal, have had the honor to state that the examination of its contents would occasion some delay. That note has been since that time the subject of their most serious attention. After mature deliberation, they considered the propositions it contained of a nature to require submission, for ultimate decision, to the Government of the Republic. The Ministers Plenipotentiary have, therefore, transmitted it to the Minister of Exterior Relations, by whom they are informed that he has himself deemed it necessary to take the direction of the First Consul. As soon as the undersigned shall have received the expected instructions, they will hasten to transmit their answer to the Envoys Extraordinary and Ministers Plenipotentiary of the United States.

Meanwhile, the undersigned pray the American Ministers to accept the assurance of their perfect consideration.

BONAPARTE,
FLEURIEU,
RŒDERER.

JULY 5th.

The following letter was received from C. Lee, Esq., acting as Secretary of State:

DEPARTMENT OF STATE,
Philadelphia, 22d May. 1800.

GENTLEMEN: Since the letter at Burgos, 10th February, which was received early in April, the President has not had the pleasure of receiving a letter from any of the Envoys to the French Republic. But by various European gazettes, intelligence has reached him of your safe arrival in Paris, in the beginning of March, and, before many days shall elapse, he hopes to receive information from you upon the subject of your mission.

The unexpected and unavoidable delays after you left Lisbon may possibly have the consequence of your retarding your return home so long that this letter will find you at Paris; and, in contemplation of such a possibility, it is written.

Congress adjourned on the 14th instant. The most material acts of the session were the following:

An act on the subject of bankruptcies.

An act to authorize the President to borrow three millions and a half of dollars.

Sundry acts continuing the system of maritime defence, and the prohibitions of commerce in regard to the French Republic, and her dominions, as they stood at the commencement of the session.

And an act for disbanding the additional twelve regiments, excepting the artillerists, and engineers, part thereof, on or before the 15th of June next.

Whatever may be the result of your negotiation, in the present state of France and the United States, this part of the military establishment was not deemed indispensably necessary. A considerable saving of money would be the immediate consequence; and if your negotiation should fail to restore peace and harmony between the two countries, a greater portion of the resources of the United States would remain to be expended more advantageously than in the support of an army. This alteration in the defensive system was very generally approved in the Senate and House of Representatives, just before the session was closed.

The judicial system remains as it stood. Our country is at present blessed with the prospect of a most plentiful harvest of wheat and rye, and the

losses of our merchants arising from depredations are considerably diminished. I am instructed to express the President's hope that your reception at Paris has been agreeable, and that your mission has been accomplished in a manner entirely satisfactory, or, if not accomplished, that the negotiation is near a happy conclusion; and, at the same time, to add his wishes that you may soon return in health and happiness to the bosom of our beloved country. I have the honor to be, &c.

CHARLES LEE,
Acting Secretary of State.

The American Ministers having been officially advised that their notes of the 8th and 25th of May, with the details accompanying them, had been submitted to the Minister of Exterior Relations, were also soon afterwards confidentially informed that the whole business was referred to the decision of the Premier Consul, who was then in Italy; and about the —— of June, Joseph Bonaparte, President of the Commission, set out for the headquarters of the Army. The object of his journey to the Premier Consul was not publicly known, nor was his departure announced to the American Ministers. The battle of Marengo took place on the 14th day of June, and the Premier Consul returned to Paris the 3d of July; Joseph Bonaparte also arrived a few days afterwards. While the American Ministers sincerely regretted the delay occasioned by the above unexpected circumstances, they supposed it probable that the Premier Consul might not have had sufficient leisure, amidst the active operations of the armies, to determine upon the several matters respecting the treaty, and that his decisions and instructions might have been postponed until his return to Paris. At a meeting, however, on the 6th of July, they were of opinion that they had then made a proper allowance for all circumstances that might have countenanced delay on the part of the French Ministers, and addressed to them the following note:

PARIS, *July* 6, 1800.

CITIZEN MINISTERS: Presuming, as the undersigned Envoys Extraordinary and Ministers Plenipotentiary of the United States do, that you are now acquainted with the ulterior views of your Government, respecting the negotiation between the United States and the French Republic, they request the honor of a conference on that subject, at such time and place as may be most convenient for you. They trust that the unfortunate delays, which have hitherto attended the business, will justify their hopes of bringing it to a speedy close.

Accept, Citizen Ministers, the assurance of their high consideration,

OLIVER ELLSWORTH,
W. R. DAVIE.
W. V. MURRAY.

To Messrs. JOSEPH BONAPARTE, FLEURIEU, and RŒDERER.

The next day the American Ministers were invited to dine on the 11th with the President of the French Commission; and, as no answer had been received to the note of the 6th, it was agreed that the 11th should be considered by them as the time appointed for the conference; the object of which, on their part, was to ascertain the difficulties which seemed to have arrested all progress on the part of the French Ministers; to designate, with more precision, the real grounds of difference; and, if possible, to adopt some arrangement that would accelerate the negotiation. On the 11th, before dinner, M. Bonaparte informed them that the whole business of the treaty was now under the consideration of the Premier Consul, and that his decisions and instructions were expected in the course of a few days, when the notes and propositions received would be immediately answered. The American Ministers repeated their regret at the long delay which had taken place; and, upon their expressing the desire that a conference should be held that evening, the French Ministers readily consented. After the objects of requesting an interview were stated, the President of the French Commission said they would frankly state the difficulties which had arisen with their Government: although they had not received officially its determination of instructions, they believed they were possessed of its present sentiments and opinions, and could not avoid adding that they accorded with those of the Commission. He then declared that it was the decided opinion of the Premier Consul that the ancient treaties ought to be the basis of negotiation; that compensation could only be a consequence of the existence of the treaties, and the re-establishment under them of the former privileges and relations; and that he would never consent to make a treaty which would surrender the exclusive rights of France, in effect, in favor of an enemy; or, in any event, make a treaty with the United States, which would not place France on a footing of equality at least with Great Britain. He thought it would be derogatory to the present Government to make a treaty, less advantageous and less honorable than that made by the royal Government. Discussions of some length took place on the most important points: but, as the whole business, on the part of the French Ministers, was under reference to their Government, no point could of course be settled; and the conference closed with the request of the French Ministers that all they had said should be considered merely as confidential.

After several deliberations on the difficulties which had now completely arrested the progress of the negotiation, and the selection of some expedient which might remove them, the American Ministers at length determined to request an early interview, and make a proposal to the effect that the payment of the indemnities should be suspended until the Government of the United States should have offered to France an article, re-establishing her in the exclusive privileges she claimed, under the treaty of 1778. It was considered that the American Government might or might not perform the condition, after a further view of the political state of Europe, and the possession of more ample means to estimate a promise of in-

demnity. It was also clearly perceived that, unless the indemnities were secured by some means under the present negotiation, they would be forever lost.

JULY 15.

At an interview to-day with the French Ministers, the following proposition was delivered to them in writing:

"Indemnities to be ascertained and secured in the manner proposed in our project of a treaty, but not to be paid until the United States shall have offered to France an article, stipulating free admission into the ports of each for the privateers and prizes of the other, and the exclusion of those of their enemies; nor unless the article be offered within seven years: such article to have the same effect, in point of priority, as a similar provision had in the treaty of 1778.

"JULY 15, 1800."

The circumstances which motived the proposition and its principle were briefly explained on the part of the American Ministers, who concluded by adding, that an answer was not expected at that interview. There was, however, no difficulty in perceiving, that the first impression was not perfectly satisfactory to the French Ministers; their observations took the same course they had done the preceding conference, and were answered on the same principles. Upon the American Ministers expressing their wish to receive an answer to this and their former propositions as speedily as possible, the French Ministers repeated their professions on that head; adding, that the observations they had made in these interviews were to be considered as merely hypothetical and unofficial.

JULY 20.

Meeting the French Ministers to-day at M. Rœderer's, it was agreed to press them again officially for an answer. An interview took place after dinner, and M. Bonaparte said that he had seen the Minister of Exterior Relations that morning, on the business of the negotiation; and that he was assured that in a few days they should receive the decision and instructions of their Government.

JULY 23.

The American Ministers, having taken into consideration the importance of the discussions which took place at the late interviews, thought it expedient to address the following note to the French Ministers:

PARIS, *July* 23, 1800.

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

CITIZEN MINISTERS: The Envoys of the United States being apprehensive lest possibly their remarks to the Ministers of the French Republic, in the two last conferences which led to and accompanied their written proposition, may not have been fully comprehended, from being expressed in a language but imperfectly understood, they have thought proper to reduce the substance of them to writing.

As to the proposition of placing France, with respect to an asylum for privateers and prizes, upon the footing of equality with Great Britain, it was remarked, that the right which had accrued to Great Britain in that respect, was that of an asylum for her own privateers and prizes, to the exclusion of those of her enemies; wherefore, it was physically impossible that her enemies should at the same time have a similar right.

With regard to the observation, that by the terms of the British Treaty the rights of France were reserved, and, therefore, the rights of Great Britain existed with such limitation as would admit of both nations being placed on a footing which shauld be equal, it was observed by the Envoys of the United States, that the saving in the British Treaty was only of the rights of France resulting from her then existing treaty; and that that treaty having ceased to exist, the saving necessarily ceased also, and the rights, which before that event were only contingent, immediately attached and became operative.

With respect to the supposition that the treaties with France yet continued to exist, it was remarked, that a treaty being a mutual compact, a palpable violation of it by one party did, by the law of nature and of nations, leave it optional with the other to renounce and declare the same to be no longer obligatory, and that, of necessity, there being no common tribunal to which they could appeal, the remaining party must decide whether there had been such violation on the other part as to justify its renunciation. For a wrong decision it would doubtless be responsible to the injured party, and might give cause for war; but, even in such case, its act of public renunciation, being an act within its competence, would not be a void but a valid act; and other nations, whose rights might thereby be beneficially affected, would so regard it: that it had become impossible for the United States to save their commerce from the depredations of French cruisers, but by resorting to defensive measures; and that as, by their Constitution, existing treaties were the supreme law of the land, and the Judicial department, who must be governed by them, is not under the control of the Executive, or Legislative, it was also impossible for them to legalize defensive measures, incompatible with the French Treaties, while they continued to exist. Then it was that they were formally renounced, and from that renunciation there resulted necessarily a priority in favor of the British Treaty as to an exclusive asylum for privateers and prizes. A right, indeed, which she has made little use of, and with respect to which it would be unconsequential, during the remainder of the present war, whether she or France possessed it; but as it was a vested right, neither the Government of the United States nor their Ministers could, with good faith, stipulate to France a right inconsistent with it.

To the still further suggestion that the law of nations admitted a dissolution of treaties only by mutual consent or war, it was remarked by the undersigned, that their conviction was clearly otherwise; and that *Vattel*, in particular, the best approved of modern writers, not only held that a treaty violated by one party might for that reason be renounced by the other, but that, when there were two treaties between the same parties, one might be rendered void in that way, and the other remain in force: whereas, when war dissolves, it dissolves all treaties existing between the parties at the time.

It appearing, however, to be the ultimate opinion of the French Ministers that it did not comport with the honor of France to be deprived of that right, and at the same time to be called upon for compensation, the undersigned, solicitous for the honor of France as well as of America, devised and offered, as their last effort, the written proposition alluded to, which, it was conceived, did essentially remove the difficulty. Its object was to suspend the payment of compensations, a consideration of much weight in the estimate of the United States, until France could be put into complete possession of the privileges she contended for; and, at the same time, to give that security, which a great pecuniary pledge would amount to, for her having the privilege, as soon as it could be given with good faith, which might, perhaps, be in a little more than two years, and at any rate within seven.

Accept, Citizen Ministers, the assurance of their high consideration.

OLIVER ELLSWORTH.
WILLIAM R. DAVIE.
WILLIAM V. MURRAY.

The following answer was received:

PARIS, 8*th Thermidor*,
(26*th August*,) *year* 8.

The Ministers Plenipotentiary of the French Republic have received the note dated 23d July, 1800, (4th Thermidor, year 8,) which the Envoys Extraordinary and Ministers Plenipotentiary of the United States of America have been pleased to address to them.

That note has two objects:

The first, to recapitulate the answers which had been given by the Ministers Plenipotentiary of the United States, at two former conferences, to the remarks then made by the Ministers Plenipotentiary of France, on the subject of the right of asylum, in the ports of the United States and France, which has been assured to the privateers and prizes of both nations, reciprocally, and exclusively, by the Treaty of 1778; a right which the Ministers Plenipotentiary of the United States maintained had been annulled between France and the United States, and established, to the injury of France, between the United States and England.

The second object of the note is, to explain the propositions, made by the American Ministers, at the last conference, by which they offered to stipulate that the indemnities which may be due to the United States, "shall not be paid, until the United States shall have offered to the French Republic an article stipulating free admission, in the ports of each, for the privateers and prizes of the other, and the exclusion of those of their enemies; and, moreover, that these indemnities shall not be paid unless the article shall be offered within seven years: such articles to have the same effect, in point of priority, as a similar provision in the Treaty of 1778."

As to the first object, the Ministers of the French Republic are compelled to repeat, that their instructions, predicated on the complete recognition of the ancient treaties, leave them no power to consent to the extinguishment of a right, confirmed by the Treaty of 1778, by which the privateers of the two nations, respectively, are allowed to enter the ports of each other; and, least of all, to consent to the incorporation of that right with the existing relations between the United States and Great Britain.

But being convinced that the true interest of France is closely connected with that of the United States, and that the prosperity of the United States mainly depends on their complete independence; being convinced, also, that an exclusive right, conferred by one nation upon another, to bring prizes into her ports, has a tendency to compromit tranquillity, and by that means endanger independence: inasmuch, as, in a number of cases, causes either of complaint or of distrust must be given to the Power from whom prizes have been taken; the undersigned hasten to repeat to the American Ministers the proposition already made, that, in the event of a reconciliation being effected, they will consider it their duty to urge upon their Government to abolish the exclusive right to enter the ports of each other, with privateers and their prizes; and to limit their privilege to that enjoyed by the most favored nation. They believe that France would do herself honor by the voluntary sacrifice of a privilege prejudicial to her allies; but that, to consent to be despoiled of that privilege, for the benefit of an enemy, without thereby contributing to American independence, would exhibit to the world a striking instance of self-degradation.

The Ministers of France cannot discover, in the note of the 23d July 1800, any reason to incline them to the supposition that the treaties between France and the United States* are abrogated.

When on the one hand, Congress declare that France has contravened these treaties, and that the United States are released from their stipulations; and when, on the other, the Government of France declares that she has conformed to these treaties, that she desires their execution, and that the United States alone have infringed them; where is the tribunal or the law to enforce the exoneration, in preference to the execution?

So long as a difference exists between two contracting parties, respecting the existence or abrogation of a treaty, no right or benefit can result to a third party from the abrogation contended for by one.

If France had declared the treaties annulled, and

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* The act of Congress of July 9, 1798, is the declaration of one of two parties; but the treaties were the work of two. A compact formed by two can be destroyed by one in no other way except by war and victory.

the United States had maintained their validity, England would have no ground for saying to America, "We succeed to the rights of France." There is no foundation, even for a doubt, whether a treaty is cancelled by the declaration of its abrogation made by one only of the parties.

These reflections are in conformity with the doctrines advanced by all writers upon the laws of nations. The opinion of *Vattel* can only be understood of a nullity in point of right, not of a nullity in fact: and it is only a nullity in fact that can give an opening, respecting the claim of anteriority, to rights resulting to a third party.

These reflections, moreover, arise from the very nature of things. If one of two contracting parties is at liberty, whenever he may please, to cancel his obligations, in virtue of his own judgment concerning facts, or men, or things, no binding force can be attached to treaties, and the term itself should be erased from every language.

If the right of anteriority can be destroyed, to the prejudice of the nation that possesses it, by the sole act of one of the parties by whom that right has been recognised, it must be acknowledged as a principle, that the nation making the second treaty converts the one with whom she first contracted into an enemy; and that she may be certain of being despoiled by that enemy whenever the time may be propitious for an open explanation.

The Ministers Plenipotentiary of the French Republic refrain from pursuing these observations. What has been said will already suffice to establish the rights of France and to insure to herself the honor of a sacrifice which she would make by renouncing the exclusive right under which the privateers of France, together with their prizes, are entitled to enter the American ports.

Passing to the second object of the note, the Ministers of France observe, that the proposition of the American Ministers offers to the Republic, at a remote period, the hope of enjoying exclusive advantages, of which, in the mean time, they think that France should not be jealous; and at the present moment, perhaps for seven years to come, it tenders the humiliating forfeiture of privileges acquired by effective services to America in time of war, and a degrading inferiority to a rival Power, at whose expense these privileges were first obtained. When the Ministers of France shall subscribe to a condition so unworthy of the French nation, the price of her humiliation will assuredly not be the simple postponement of a state of subjugation, which she regards as inconsistent with the interests of the United States. The dependence of her allies will never be considered a suitable indemnity for the wrongs she may endure. The Ministers of France, believing it their duty to recommend to their Government the surrender of a privilege honorably acquired, might be charged with inconsistency if they should prudently provide for its restoration at a distant period.

The Ministers Plenipotentiary of the French Republic can, therefore, only await the final determination of their Government; and, whenever received, they will hasten to transmit it to the Ministers Plenipotentiary of the United States.

They have the honor to assure the Ministers Plenipotentiary of the United States of their high consideration.

J. BONAPARTE,
FLEURIEU,
RŒDERER.

AUGUST 11.

The following note was received from the French Ministers:

PARIS, 23 *Thermidor*,
(11*th August*,) *year* 8.

The Ministers Plenipotentiary of the French Republic have received from their Government the new instructions which they thought themselves obliged to ask, when they were informed, by the unexpected note of the Ministers Plenipotentiary of America, that the United States consider their treaties with France as annulled, and that the validity of these treaties could not be recognised, with all the advantages attached to their date. The French Ministers hasten to present to the Ministers of the United States the reflections and overtures which the actual state of the negotiation appears to demand.

In the first place, they insist upon the principle already established in their former note, viz: that the treaties by which France and the United States have been united are not annulled; that war itself could not have annulled them; and that the misunderstanding which, through the agency of individuals more than the intention of the respective Governments, has for some time existed between France and the United States, has not constituted a state of war, at least on the part of France.

If the reflections presented by the French Ministers on this subject, in their note of the 8th instant, have been sufficient to induce the American Ministers to admit the validity of these treaties, it would follow, as a necessary consequence, that the Ministers of France would hasten to renew the declaration that the parties should be reciprocally indemnified for injuries mutually sustained during the existence of that misunderstanding. If the treaties are preserved unimpaired, as originally concluded, it would be just and proper to extinguish even the remembrance of the recriminations which have occurred during the period of their existence.

The first proposition, then, of the Ministers of France, is to stipulate a full and entire recognition of the treaties, and a reciprocal promise of indemnities for the damages resulting, on the part of either, from their infraction.

If the American Ministers shall continue to believe that they possess no authority to recognise the validity of the ancient treaties, with the advantage arising from their date; if it shall appear that France has been only deceiving herself with delusive hopes, while relying upon an uninterrupted friendship with the United States; and that, in consenting to indemnify the injuries committed by a few privateers and some unauthorized agents, she has made only a useless display of her sacred adherence to her own engagements; the Government of France will, nevertheless, consent to the abrogation of the treaties; and with the less reluctance, because the American Ministers have appeared to consider some of their stipulations as incompatible with the perfect independence of the United States. Such is the provision referred to in the note of the American Ministers of the 18th Floreal, (8th May,) in which the desire is expressed to restrict the privateers of foreign nations, within the ports of the United States, to the rights of hospitality, in order to liberate the commerce of the United States from every restraint, and free their political relations from all connexion with the interests and passions of the belligerent Powers. The Government of France is convinced that it is only a complete independence than can advance the United States to the highest point of prosperity; and it agrees to make a willing sacrifice of advantages which may endanger that independence, however ample the equivalent by which they were acquired, and with whatsoever reciprocity or services it may have been repaid.

They, therefore, declare that the demands concerning the treaties, and the offer to repair the damages arising from their infraction, if an infraction has taken place, (a demand dictated by a scrupulous fidelity to engagements, and, at the same time, advantageous to the United States,) will now easily give place to the views, dictated by considerations of interest, independence, and security, with which they are now occupied: they especially declare, that they will not refuse to relinquish the exclusive privilege enjoyed by the privateers of France, to carry their prizes into the ports of the United States. Whilst, however, the Ministers of France acquiesce in the nullity of the treaties, they cannot conceal from themselves that the act of the United States, by which their abrogation has been declared, has been an unequivocal provocation to war; that the hostile acts, by which this provocation has been followed, increasing in number and publicity, even after France had removed every just cause of complaint, were nothing less than war; that France had desired to be insensible to the real state of her extraordinary relations with the United States; in a word, that a new treaty between France and the United States ought to be preceded by a treaty of peace. If the correctness of these observations is admitted, it would seem that the two Governments ought to be occupied no longer with their respective losses: the rights of war acknowledge no obligation to repair its ravages: their consideration even is prohibited by national honor, since the State inflicting the greatest injury would, by making compensation, acknowledge a victor and purchase peace.

As to the rest, it must be perfectly understood that, in acquiescing in the annulment of these treaties, the French Government intends only to renounce the privileges which these treaties assured to France; and that France will never submit to be placed, in her relations with the United States, on a footing inferior to that of any other Power. She would renounce, without regret, the exclusive advantages she has enjoyed, but she cannot consent that other Powers shall enjoy the same advantages to her prejudice. She would relinquish freely the right she has acquired, but she will never acknowledge the right of another, founded on the destruction of her own. This she owes to her own character, and even to the prosperity of the United States. If it is the wish of the United States to be liberated from engagements which weigh, perhaps, too heavily on their national independence, they ought to desire the loosening of their fetters, in order to assume a more erect and imposing attitude, and not for the purpose of being bent with equal force in the opposite direction.

The second proposition of the Ministers of France, in case the former shall not be accepted, will then be the abrogation of ancient treaties; the formation of a new treaty, in which the French nation, abandoning a privilege inconvenient to the United States, shall be placed, in her political and commercial relations, on an equal footing with the most favored nation; and an entire silence on the subject of indemnities.

Thus, the proposition which the Ministers of France have the honor to communicate to the Ministers Plenipotentiary of the United States is reduced to this simple alternative:

Either the ancient treaties, carrying with them the privileges resulting from anteriority, together with stipulations for reciprocal indemnity;

Or a new treaty, promising equality, unattended with indemnities.

In this double overture, and the explanation accompanying it, the Ministers of the United States will, without doubt, perceive the desire of the French Government to terminate the negotiation in a manner satisfactory to the United States.

The French Ministers have the honor to assure the Ministers Plenipotentiary of the United States of their high consideration.

J. BONAPARTE.
C. P. CLARET FLEURIEU,
RŒDERER.

AUGUST 15.

The following letter was written to the Secretary of State, and forwarded by the Franklin, sailing from Bourdeaux:

PARIS, *August* 15, 1800.

SIR: Having ascertained, by an interview with the French Ministers, soon after our note to them of the 8th of May, a copy of which you have doubtless received, that, as we refused to assume the former treaties, they could proceed no further with our new instructions, and that a report on the state of the negotiation ws preparing for the Minister of Exterior Relations, and ultimately for the Premier Consul; we judged it expedient, in order to obviate an apprehension that our Government contemplated further grants to the prejudice of France, and to diminish the hazard of sending off the business to the Premier Consul, then with the army in Switzerland, who, in a moment of agitation, might decide definitely upon it, to propose the following clause as an addition to the 32d article of our project, viz: "Nor will either of the said parties, while they continue in amity, make a treaty

with any foreign Sovereign or State, stipulating for the privateers and prizes of such Sovereign or State, an asylum in the ports of each other, unless they shall have assured to each other such right of asylum for privateers and prizes of each in the ports of the other:" and it was accordingly sent with the note marked A.

Embarrassing as the delay for new instructions was seen to be, it was nevertheless deemed inexpedient, in the then critical state of European affairs, to treat it as a studied delay.

On the 1st of June, we addressed the note marked B, and on the 5th, received an answer marked C.

Soon after the Premier's return from Italy, the note marked D was sent.

The requested interview took place on Friday, the 11th July; and although the French Ministers declared that they had not received further instructions, yet, as they expressed a willingness to converse upon the subject, a conversation was entered upon, which had for its object to ascertain with more precision the grounds of difference between us. Their observations led to, and finally terminated in, this position: that, to be deprived of her former privileges in the ports of the United States, and that, too, in favor of an enemy, and at the same time to be called upon for compensation, was derogatory to the honor of France.

At a further interview, on the 15th July, we brought forward, in order to remove what seemed to be the difficulty at the interview, on the 11th July, a written proposal to suspend the actual payment of indemnities, on the condition of replacing France in the privileges she contended for. A condition which our Government might or might not perform, after it should have further seen the political state of Europe: and also been better able to estimate a promise of indemnity. The proposition was as follows, viz: "Indemnities to be ascertained and secured, in the manner proposed in our project of a treaty, but not to be paid until the United States shall have offered to France an article, stipulating free admission in the ports of each for the privateers and prizes of the other, to the exclusion of her enemies; nor unless the article shall be offered within seven years, such article to have the same effect, in point of priority, as a similar provision had in the treaty of 1778."

An immediate reply to the proposition was not pressed or wished; there was no difficulty, however, in perceiving that the impression was not perfectly satisfactory.

On the 23d of July, the note was sent, marked E, which throws some further light on the two preceding conferences.

The note marked G, purporting to be predicated on the new instructions, was received the 11th of August. This note is now under consideration, and will not be formally answered, till there has been an interview to ascertain some points.

It has however become manifest, that the negotiation must be abandoned, or our instructions deviated from. Should the latter be ventured upon, which, from present appearances, is not improbable, the deviation will be no greater than a change of circumstances may be presumed to justify.

The success of the French in Italy has produced an armistice, and has since opened with the Emperor a negotiation for peace, which is still pending. The result is daily and anxiously expected.

Captain McNeil, with the Portsmouth, arrived safe at Havre on the 23d of May, where he yet remains. The despatches sent by him were duly received. We are, &c., &c.,

OLIVER ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

An interview took place with the French Ministers on the subject of their note of the 23d Thermidor, for the purpose of ascertaining with more precision their views on some points which were supposed to be covered under the general terms of their note. The conference was opened on the part of the American Ministers in a manner which they supposed would entitle them to the utmost candor and frankness. The French Ministers were, however, extremely reserved, answering with great caution to every inquiry in the general terms of their note. The result of the conference was, of course, little satisfactory to the American Ministers, who were consequently obliged to consider the French note in the general terms of its text. It now became necessary to decide whether the negotiation should be broken off, or the instructions departed from; whether the treaties should be revived, or the indemnities sacrificed; and, if the treaties were revived, whether, after considering the text of the French note, and the obstinacy with which the Ministers adhered to it, an attempt should be made to effect a modification that might enable Government to extinguish the exclusive privileges of France under the Treaty of Amity and Commerce, as well as her claims under the Treaty of Alliance. The following note became the result of the several deliberations and discussions on these points, and was sent to the French Ministers on the 20th of August:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *August* 20, 1800.

CITIZEN MINISTERS: The undersigned Ministers have been honored with your note of the 23d Thermidor.

It adds to the regret, occasioned by three months' delay for further instructions, that they confirm the obstacles which had brought the negotiation to a stand.

To abandon indemnities would be illy to select the means of restoring France to the confidence of a nation, too long accustomed to revere and practise justice ever to forget its demands. Nor could America ever conceive that, protecting from depredations her property which remains, had impaired a claim for that of which she has been despoiled. More difficult still of comprehension would it be, that she had aggressed by declaring the truth: for, doubtless, declaring that treaties ceased to bind her which the other party had long and greatly infracted, was no more. If, however,

that declaration, as necessary for judicial purposes as it was conformable to truth, had amounted to a cause of war, yet, as the wisdom of France reconciled it to peace, its application on the principle of war to the extinguishment of claims would be inexplicable; and even as to war itself, though it does by its rights, or rather by its usages enforced against weaker Powers, merge the injuries it operates, it does not cancel obligations prior to its existence. If war had actually commenced when it is suggested there was cause given, still, how could its rights be seen to extinguish the claims of America, as the mass of her sufferings was at a time when her conduct towards France was remarkable for nothing but the patience with which she endured, and the moderation with which she sought to remove them?

If, in applying the principle, or exercising the natural right of self-defence, in a state of things now mutually and equally lamented, certain events have taken place, which might be regretted when considered in connexion with their cause; if these events have been attended with a sensation which the French Ministers are pleased to term "eclat," they will have candor enough to admit that this sensibility was natural among men sore by repeated losses, and citizens who had thought their country degraded by her patience and long suffering. A mutual stipulation, however, of restoration or indemnity will save the honor of both nations, and efface with the hand of justice every irritating remembrance. It is but proper here to remark, that if the action, or the notice of it, to which the French Ministers Plenipotentiary have particularly alluded, be taken in connexion with dates and distances, the American Government cannot be charged with neglecting to avail itself of conciliatory measures.

In a word, while nothing would be more grateful to America than to acquit herself of any just claims of France, nothing could be more vain than an attempt to discover to her reasons for the rejection of her own.

It is time for the two nations to return from a state of things difficult to name, and more difficult to account for, to the correcter views of '78; to the confidence inspired by co-operating for an object equally interesting to both; to that spirit which disavowed the idea of founding pretensions on exertions; and, finally, to that friendship which knew not the alloy of purchase.

Too much concerned with that epoch not to recollect its professions, and too confident in the wisdom of those professions to despair of their fruits, the American Ministers have persevered in efforts for a reconciliation. To remove obstacles interposed, they have developed their views and their doubts with more frankness than effect. To go further, they must take on themselves a high responsibility.

If, then, the dignity of one party cannot be satisfied with a recognition of former treaties, still less can the interests of the other dispense with a remodification of them.

The seventeenth article of the Commercial Treaty, which stipulated an exclusive admission for the privateers and prizes of each in the ports of the other, was but nominally reciprocal; not only because America would seldom be at war, but also by reason of the prior engagements of France under the Treaty of Utrecht, then in force, and since renewed. The real reciprocity of that article was to be sought for in another, which made free goods in free ships—a stipulation greatly beneficial for the United States could they have enjoyed it. This stipulation, however, proved inconvenient to France, as appeared from her defeating the use of it so early in the present war; and for that reason, the undersigned Ministers, in their project of a treaty, proposed to give it up, trusting that it would be deemed a full equivalent for abandoning, on the part of France, the first mentioned privilege stipulated to her.

The American Ministers have shown, in their note of the 8th May, that the free admission of privateers is inconvenient to the United States, and the Ministers Plenipotentiary of France have reasoned, in a note of the 8th Thermidor, and assumed in others, that an exclusive admission of those of one nation compromits their independence. France, then, will not insist on that privilege for herself, exclusively and forever. She will not embarrass that progress to greatness, which, with so much reason and so much solicitude, she seeks to cherish; nor, least of all, compromit the independence she guaranties. Doubtless, upon a review of this claim, her Ministers will be satisfied with the footing of the most favored nation; and, as to rights beyond that, will relinquish them gratuitously, or, at most, on terms not difficult to be complied with.

With respect to the eleventh article of the Treaty of Alliance, it has produced mischievous apprehensions, and never can produce an effect which will not contravene its professed design. If France should not discern the utility of relinquishing this article, she will acquiesce in a specification which may render it less incompatible with her policy.

If the American Ministers, in attending to the note before them, have avoided retracing the measures of the late French Government, which forced the United States to take the defensive position in which the present negotiation found them; if they have declined to renew former discussions, or have not availed themselves of the opportunity of commencing others; it is because time has become precious with them, and because also they yet think it may be more useful to search for means of healing the breach than for the causes which produced it.

As a further effort on their part to ascertain those means, they make the following propositions, predicated on the adoption of the first alternative in the overture of the French Ministers Plenipotentiary.

1. Let it be declared that the former treaties are renewed and confirmed, and shall have the same effect as if no misunderstanding between the two Powers had intervened, except so far as they are derogated from by the present treaty.

2. It shall be optional with either party to pay to the other, within seven years, three millions of

francs, in money or securities, which may be issued for indemnities, and thereby to reduce the rights of the other as to privateers and prizes, to those of the most favored nation; and, during the said term allowed for option, the right of both parties shall be limited by the line of the most favored nation.

3. The mutual guaranty in the Treaty of Alliance shall be so specified and limited, that its future obligation shall be, on the part of France, when the United States shall be attacked, to furnish and deliver, at her own ports, military stores to the amount of one million of francs; and on the part of the United States, when the French possessions in America in any future war shall be attacked, to furnish and deliver, at their own ports, a like amount in provisions.

It shall, moreover, be optional for either party to exonerate itself wholly of its obligations, by paying to the other, within seven years, a gross sum of five millions of francs, in money, or such securities as may be issued for indemnities.

4. The articles of commerce and navigation, except the seventeenth article of the treaty, shall admit of modifications, reserving for their principle the rights of the most favored nation, where it shall not be otherwise agreed, and be limited in their duration to twelve years.

5. There shall be a reciprocal stipulation for indemnities, and these indemnities shall be limited to the claims of individuals, and adjusted agreeably to the principles and manner proposed by the American Ministers in their project of a treaty heretofore delivered, except where it shall be otherwise agreed. Public ships taken on either side shall be restored or paid for.

6. All property seized by either party, and not yet definitively condemned, or which may be seized before the exchange of the ratifications of the present treaty, shall be restored on reasonable, though it should be informal, proof of its belonging to the other, except contraband goods of the United States destined to an enemy's port. This provision to take effect from the signature of the treaty; and if any condemnations should take place contrary to the intent of this stipulation, before knowledge of the same shall be obtained, the property so condemned shall be paid for without delay.

The Ministers of the United States pray the Ministers of the French Republic to accept the assurance of their high consideration.

OLIVER ELLSWORTH.
WILLIAM R. DAVIE.
WILLIAM V. MURRAY.

AUGUST 25.

The following note and propositions were received from the French Ministers:

PARIS, *7th Fructidor*, (*Aug.* 25,) *year* 8.

The Ministers Plenipotentiary of the French Republic have received the note which the Ministers Plenipotentiary of the United States have done them the honor to address to them the second of the present month.

They cannot regard the overtures therein contained as complying with the first part of the proposed alternative. In reality the first of the propositions offered to the option of the American Ministers was, that the United States should explicitly recognise the treaties they had concluded with France, with all the advantages attached to their date. In the last conference, which took place the 25th Thermidor, (13th August,) it was well understood, and even reduced to writing, that this part of the alternative should particularly exclude every idea of a modification extending to the contested points of the negotiation, and especially to the privilege assured to the French nation, in relation to other Powers. Nevertheless, the note of the American Ministers proposes an important modification of the seventeenth article: whence, it is evident that this note applies to the second branch of the alternative, which consisted in offering a new treaty without indemnity.

The French Ministers might here insist upon the condition, that every stipulation on the subject of indemnities should be laid aside. Nevertheless, France will give the United States a new proof of her friendly disposition, in consenting to the modification of the treaties, and also to the principle of indemnities, in the manner expressed in the subjoined note; in which the U. States will discover undoubted proofs of the desire of France to effect a speedy and complete reconciliation.

The Ministers of the French Republic have the honor to assure the Ministers Plenipotentiary of the United States of their high consideration.

J. BONAPARTE.
C. P. CLARET FLEURIEU.
RŒDERER.

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1. The ancient treaties shall be continued and confirmed; and they shall be carried into execution, in the same manner as if no misunderstanding had taken place between the two nations.

2. Commissioners shall be appointed to liquidate the respective damages.

3. The seventeenth article of the Treaty of Commerce of 1778 shall be preserved inviolate, with the single addition, at the end of the following words: "on the contrary, no shelter or refuge shall be given in their ports or harbors to such as shall have made prize of the subjects, people, or property of either of the parties;" "except in virtue of treaties known at the time of the signature of the present treaty, and subsequent to the treaty of 1778; and this for the space of seven years."

The twenty-second article to contain the same exception as the seventeenth.

4. If, in the space of seven years, the seventeenth and twenty-second articles shall not be offered and accepted in their original force, the indemnities awarded by the Commissioners shall not be paid.

5. The guaranty, stipulated by the Treaty of Alliance, shall be converted into a promise of succor, to the amount of two millions; but this promise shall not be redeemable except by a capital of ten millions.

BONAPARTE,
FLEURIEU,
RŒDERER.

AUGUST 24.

As the French Ministers dined to-day with Mr. Ellsworth and Mr. Davie, they were requested to attend a conference after dinner, for the purpose of giving some explanations of the propositions subjoined to their note. Mr. Bonaparte and Mr. Fleurieu, mentioning that they had some urgent business at the council, went away, leaving Mr. Rœderer authorized to give any explanation required. After a conversation of some length, during which Mr. Rœderer discovered how unsatisfactory those propositions were to the American Ministers, he suggested the following idea for consideration, viz: "that the option contained in the note of the American Ministers, to extinguish by an equivalent of eight millions of francs certain claims of France under the former treaties, ought to be reciprocal; so that, if the offer should be made by either party, the other should be bound to accept it:" saying that this suggestion ought not to be considered official, as his colleagues were not consulted.

The next day it was reduced into the form of an article, and shown to Mr. Rœderer, to know whether the principle of his proposition was correctly taken; and upon its being stated to him in the form it was supposed to be made the preceding evening, and upon the article being translated, he admitted that he was correctly understood; and then delivered another proposition, which he said had been approved by the Minister of Exterior Relations, to the following effect:

"If, in the space of seven years, the renewal of the 17th and 22d articles, in their full meaning, shall not be offered, the indemnities which the Commissioners may award shall not be paid; and if the renewal of the 17th and 22d articles, in their full meaning, shall be offered within the space of seven years, France shall have the option, between this renewal and an indemnity of eight millions, which shall be paid to her in money, or in obligations given for the payment of indemnities which shall have been awarded by the Commissioners."

NOTE, (said to have been added by the Minister of Exterior Relations.) "It is understood, and shall be stipulated, in conformity with a note of the American Ministers, that, whenever the privilege respecting prizes shall be abolished, as to France and England, by the expiration of the treaty, neither the United States nor France shall again concede it to any Power whatever."

AUGUST 29.

The American Ministers intended to avail themselves of another conference to-day with the French Ministers; but the President of the French Commission and Mr. Rœderer had gone into the country on the 27th, and were not returned this morning; therefore, with the expectation of attracting the earliest attention of the Ministers to the business of the negotiation, the following note was addressed to them and sent to Mr. C. P. C. Fleurieu:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *August* 29, 1800,
7 *o'clock*, *P. M.*

CITIZEN MINISTERS: The Envoys of the United States have given the most serious attention to the note and the propositions enclosed, which the Ministers Plenipotentiary of the French Republic did them the honor to address to them under date of 7th Fructidor; and they regret that they have not been able to consider those propositions in the light they are presented by the French Ministers, as connecting the justice of indemnity with a beneficial modification of the treaties.

The third and fourth propositions leave it optional with France to reject indemnities, while they secure to her, unconditionally, the Treaty of Commerce, with a minute exception, which is so limited by time and other circumstances as to render it of little consideration with either party. With respect to the other treaty, the option to reject indemnities produces no effect whatever; its inconveniences are only to be avoided by a purchase of ten millions; so that, by those propositions, indemnities may be sacrificed, and the treaties remain recognised and confirmed—a measure which, in its operation, would be a complete departure from the principle proposed as the basis of negotiation by the French Ministers, and the abandonment of an object to which the American Ministers are bound to adhere, and upon which their sentiments have never varied.

As to the fifth proposition, it is rendered inadmissible only by an augmentation of the sums proposed by the undersigned Ministers, to extinguish the right of France under the mutual guaranty—a right, indeed, which, if France ever placed a value upon, she must have long since discerned that the abolition of it had become as essential to her interests as to those of the nation which she wishes not to embarrass. Confidently was it presumed by the American Ministers, that, in the equivalent for that right offered by them, there would be seen a liberal regard to the honor of the French Republic, and a still further proof of that desire which has so much sought to facilitate to her an adjustment of existing differences.

The Ministers Plenipotentiary of the United States, having exhausted their efforts to discover, by a spirit of justice and accommodation, the means of accomplishing the desires and realizing the views of both nations, can only now hope to avail themselves of the better directed efforts of the Ministers Plenipotentiary, with whom they have the honor to treat.

The American Ministers, willing to profit even of suggestions, remark that, in a late conference, which respected as well their notes of the 20th of the present month as that of the French Ministers Plenipotentiary of the 7th Fructidor, it was suggested by one of the latter (though not officially, or as a matter upon which the sense of his colleagues had been taken) that the option contained in the first mentioned note, to extinguish, by an equivalent of eight millions of francs, cer-

tain claims of France under the former treaties, ought to be reciprocal; so that, if the offer should be made by either party, the other should accept it. That principle, if reduced to a form proper to give it effect, it is conceived, would be expressed as follows, viz:

"If the United States shall, at any time, within seven years from the exchange of the ratifications of the present treaty, offer to the French Republic an article of the tenor following, viz:

"It is agreed that the United States shall pay to the French Republic, within seven years from the day of exchanging the ratifications of the treaty of ——, eight millions of francs, in money, or such securities as have been or may be issued to citizens of the United States for indemnities under the said treaty, together with interest hereafter, at the rate of —— per centum per annum, until the principal shall be discharged; and that, as a consideration of such engagement, the United States shall forever be exonerated of the obligation on their part to furnish succors or aid under the mutual guaranty of the 11th article of the Treaty of Alliance of the 6th of February, 1778; and the rights of the French Republic, under the 17th and 22d articles of the Treaty of Amity and Commerce, of the same date, shall be forever limited to such as the most favored nation shall in these respects enjoy."

The French Republic will accept the same; or, if the French Republic shall, at any time within that term, offer such an article, the United States will accept the same; and, in either case, the article so offered shall become part of the present treaty.

To such a stipulation, in connexion with the first, fourth, fifth and sixth propositions offered by the American Envoys in their note of the 20th of the present month, they would agree, so great is their desire to terminate, without further loss of time, the present negotiation. They pray the Ministers Plenipotentiary of the French Republic to accept the assurances of their high consideration.

O. ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

SEPTEMBER 5.

The following propositions were delivered by Mr. Rœderer:

To the Ministers Plenipotentiary of the United States of America at Paris.

PARIS, *17th Fructidor, (4th Sept.,) year* 8.

We shall have the right to carry our prizes into the American ports.

A commission shall regulate the indemnities due by each of the two nations to the citizens of the other.

The indemnities which shall be found due by France to the citizens of the United States shall be discharged by the United States; and, as an equivalent, France makes an abandonment of the exclusive privilege resulting from articles XVII and XXII of the Treaty of Commerce, and of the rights of guaranty resulting from the eleventh article of the Treaty of Alliance.

BONAPARTE.
C. P. C. FLEURIEU.
RŒDERER.

Mr. Rœderer delivered, at the same time, a paper unsigned, containing the following observations:

The Ministers of the United States appear to have mistaken the sense of the last note of the French Ministers. They imagine that the indemnities may be sacrificed by the propositions of the 7th Fructidor, and the treaties notwithstanding remain completely acknowledged and confirmed. It has always been the intention of the Ministers of France to reserve to her the right of choice between the restoration of her privileges and the payment of indemnities which may be brought against her; so that they have never supposed that she would enjoy privileges without the payment of indemnities, or could pay indemnities without the enjoyment of privileges.

The American Ministers have also misunderstood the private observations of one of the French Ministers. Their sole object was to show that, during the term of seven years, France should possess (agreeably even to the plan of the Ministers of the United States) the right to choose between the re-establishment of the privileges resulting from the seventeenth and twenty-second articles of the Treaty of Commerce, and a sum of at least eight millions, since France regards those privileges as an advantage peculiar to her, and for the abandonment of which she may stipulate as she deems proper.

To avoid the uncertainty which might arise from such a stipulation, hastily reduced to a diplomatic style, the Ministers of France have offered anew a naked draught of their final determination; and they observe that, if the American Ministers agree to the substance of the note, they may settle the form of it in concert with the French Ministers, and even modify the means of arriving at the same end.

SEPTEMBER 6.

The American Ministers being unanimous in the opinion that they could not accede to the propositions under date of the 17th Fructidor, agreed to offer the following articles as the basis of negotiation, and as predicated upon the original overtures of the French Ministers, referring only the determination of the question respecting the treaties and indemnities to the American Government, and postponing that determination no longer than to the time of ratification:

For the Ministers Plenipotentiary of the French Republic.

PARIS, *Sept.* 6, 1800.

The American Ministers consider the propositions received from the Ministers Plenipotentiary of France yesterday, under date of the 17th Fructidor, as altogether inadmissible. The nearest approach to them, which the American Ministers can make, is—

1. The former treaties shall be renewed and confirmed.

2. The obligations of the guaranty shall be specified and limited, as in the first paragraph of their third proposition of the 20th of August.

3. There shall be mutual indemnities, and a mutual restoration of captured property not yet definitively condemned, according to their fifth and sixth propositions of that date.

4. If, at the exchange of ratifications, the United States shall propose a mutual relinquishment of indemnities, the French Republic will agree to the same; and, in such case, the former treaties shall not be deemed obligatory except that under the 17th and 22d articles of that of Commerce, the parties shall continue forever to have for their public ships of war, privateers, and prizes, such privileges in the ports of each other as the most favored nation shall enjoy.

O. ELLSWORTH,
W. R. DAVIE.
W. V. MURRAY.

SEPTEMBER 8.

The above note was sent on the same day to the French Ministers; no answer, however, being yet received, the following note, requesting an interview, was sent to-day:

To the Ministers Plenipotentiary of the French Republic.

PARIS, *Sept.* 8, 1800.

The Envoys of the United States request the honor of an interview with the Ministers Plenipotentiary of the French Republic to-morrow, at 12 o'clock, at such place as may be convenient to them, in order to learn whether the note of the undersigned of the 6th of the present month can serve as the basis of a treaty, or, if not, whether any further overtures are to be expected on the part of France. They pray the Ministers Plenipotentiary of the French Republic to accept the assurances of their high consideration.

O. ELLSWORTH,
W. R. DAVIE.
W. V. MURRAY.

SEPTEMBER 9.

Mr. Rœderer informed the American Ministers that the conference requested could not take place, owing to the absence of Joseph Bonaparte, the President of the Commission.

SEPTEMBER 11.

The following note was received:

PARIS, *24th Fructidor,*
(*September* 11,) *year* 8.

The Ministers Plenipotentiary of the French Republic will do themselves the honor to meet the Envoys Extraordinary and Ministers Plenipotentiary of the United States, at their residence, *Hotel des Oiseaux*, to-morrow, at two o'clock, P. M.

I pray them to accept the assurance of my high consideration.

J. BONAPARTE.

SEPTEMBER 12.

The American Ministers met this morning to settle the mode of conducting the expected conference, and resolved to press their last propositions to the utmost; and, if the French Ministers should finally disagree to them, without offering any admissible substitute, then, in that case, to offer the written proposition delivered by Mr. Rœderer on the 26th of August, in two forms, one connecting the 11th article of the Treaty of Alliance with the 22d and 17th of that of Amity and Commerce, in the option of an equivalent; the other pursuing strictly the original proposition, but connecting it with a modification of the guaranty. Some remarks were also prepared with respect to the operation and effect of a guaranty in the form of the 11th article; it being the object of the American Ministers to discuss the business fully, and, if possible, to press it to a termination.

The French Ministers attended at the hour appointed, and the propositions of the 6th of September were taken up and considered, article by article. The 1st and 3d were agreed to, with some modification of the 3d, as to rules of evidence, which did not vary its principle. The 2d and 4th were considered together, as in some measure connected; and, after considerable discussion, the French Ministers said they were determined not to accede to these, unless an option, perfectly similar and reciprocal, was assured to the French Republic, the operation of which enabled her to get rid of the indemnities, by an offer of abandoning the exclusive privileges. They now openly avowed that their real object was to avoid, by every means, any engagement to pay indemnities, giving as one reason the utter inability of France to pay, in the situation in which she would be left by the present war. The subject of the modification of the guaranty was now particularly pressed in the manner agreed. The conversation on this subject closed by a declaration of the President of the French Commission, that such a modification could not be acceded to without new instructions; that they had no powers to assent to such a stipulation; but that, if the Government should think proper to instruct them to make a treaty on the basis of indemnities and a modified renewal of the old treaties, he would resign sooner than sign such a treaty; adding that, if the question could be determined by an indifferent nation, he was satisfied such a tribunal would say that the present state of things was *war* on the side of America, and that no indemnities could be claimed. The other two Commissioners made similar declarations.

The American Ministers retired a few minutes and agreed that it was now clearly in vain to make any further attempts on this ground, and, of course, useless to bring forward the proposition of Mr. Rœderer in any form.

The conference was, therefore, closed by the American Ministers requesting a written answer to the note of the 6th of September.

Reflections of the American Ministers on their overture respecting the guaranty delivered to the French Ministers, at their conference, on the 12th day of September.

Adopting the universality of modern practice as a rule of exposition, a guaranty which omits to stipulate specific succors does not contemplate any to be furnished, and is, only, on the part of the guarantor, a renunciation of interfering claims, an engagement not to countenance or admit such claims in favor of a third Power, and, generally, an assurance of good offices for the security of the object guarantied, which shall not be onerous to himself.

If, however, the guaranty between France and the United States did in fact contemplate succors, they must have been principally for the latter, who might need them, rather than for the former, who was evidently competent to protect herself; and the mutuality of the obligation to succor could have been intended for little more than to save appearances.

Again, if the ability to furnish succors was to be the measure of them, (and if they were contemplated at all, there could have been no other measure,) much less must have been expected from the scattered agriculturists of a new country than from a nation habitually prepared for war, and one of the most powerful in Europe.

The American Ministers, however, have proposed, not only to render the guaranty specific, but to render the succors equal, and that without taking into account that France will frequently receive, and but seldom have occasion to furnish them. Their offer, it is presumed, in the view of the subject here given, will be sufficiently appreciated. The French Ministers will see in this proposition only those motives of liberal policy, and that sincere spirit of accommodation which have continually actuated the United States towards France; there being no circumstance in the present juncture that would dictate a sacrifice to that object of their convenience or their interests, and nothing in the perspective of the future from which they might augur such a necessity. And the American Ministers presume that France will not raise new obstacles to the progress of the negotiation, by placing a high and unexpected value upon what she really placed none heretofore: it would accord neither with her accustomed magnanimity, nor that conciliatory policy towards the United States which she professes to pursue.

SEPTEMBER 12.

The following note was received from the French Ministers:

PARIS, 26 *Fructidor*,
(13*th September*.) *year* 8.

The Ministers of France are unable to depart from the modifications which they had yesterday the honor to propose verbally to the American Ministers, on the subject of their note of the 6th of September, (19th Fructidor.) They adhere to these principles:

1. That a stipulation of indemnities carries with it a full and entire recognition of the treaties; and

2. That the abandonment of the advantages and privileges stipulated by the treaties, in consideration of the reciprocal abandonment of indemnities, will be the most useful and honorable arrangement for both nations.

Acting on these principles, the French Ministers persist in the verbal declarations made at the conference yesterday. They will, therefore, proceed to give some explanations on each of the articles of the note of the 6th of September.

I. The ancient treaties shall be recognised and confirmed.

II. The obligations of the guaranty shall be specified and limited, as in the first paragraph of their third proposition of the 20th of August.

III. There shall be mutual indemnities, and a mutual restoration of captured property, not yet definitively condemned, according to the fifth and sixth propositions of that date.

IV. If, at the exchange of ratifications, the United States shall propose a reciprocal abandonment of indemnities, the French Republic will agree to this proposition; and, in this case, the ancient treaties shall not be deemed obligatory; except that, under the 17th and 22d articles of the Treaty of Commerce, the parties shall continue to have, for their vessels of war, privateers, and prizes, in their respective ports, the privileges enjoyed by the most favored nation.

They accede to the proposition contained in the first article.

The second cannot be admitted unless the fourth article shall give to the French Republic the assurance that, if she should propose to the United States the reciprocal abandonment of indemnities, this proposition will be accepted, in consideration of the abandonment of the right of guaranty, resulting from the Treaty of Alliance, and the privileges resulting from the 17th and 22d articles of the Treaty of Commerce. If article four does not carry with it this stipulation, neither article four nor article two can be admitted.

The third has appeared to require some explanations. The Ministers of France understand:

1. Indemnities shall be provided for captures made from individuals, and which shall have been condemned at the time of signing the treaty.

2. That the vessels and national ships, respectively taken, shall be restored or paid for.

3. That the captures made from individuals, and not adjudicated at the time of signing the treaty, shall be adjudicated according to the treaty of 1778, correctly interpreted, as may be agreed on.

Article IV cannot be admitted, as has already been observed, if it does not offer the same rights to France as to the United States; and if it does not preserve the ancient treaties, with the exception of the privileges, and the stipulation of guaranty.

In order to attain this object, and render the second article admissible, the 4th article should be expressed in the following, or some other equivalent terms: "If, at the exchange of ratifications, the United States shall offer to the French Republic, or if the French Republic shall offer to the United States, the reciprocal abandonment of indemnities, this proposition will be accepted; and, in this case, the engagement of guaranty resulting from the eleventh article of the Treaty of Alliance, and the privileges resulting from articles eleven and twenty-two of the Treaty of Commerce shall be restricted to the advantages which can be enjoyed by the most favored nation.

J. BONAPARTE,
C. P. C. FLEURIEU,
RŒDERER.

SEPTEMBER 13.

The American Ministers being now convinced that the door was perfectly closed against all hope of obtaining indemnities, with any modification of the treaties, it only remained to be determined whether, under all the circumstances, it would not be expedient to attempt a temporary arrangement which would extricate the United States from the war, or that peculiar state of hostility in which they are at present involved, save the immense property of our citizens now depending before the Council of Prizes, and secure, as far as possible, our commerce against the abuses of captures during the present war.

After mature deliberation, the American Ministers resolved to make the overture contained in the following note, which was sent to the Commissioners of the French Republic the same day:

The Envoys Extraordinary and Ministers Plenipotentiary of the United States of America to the Ministers Plenipotentiary of the French Republic.

PARIS, *September* 13. 1800.

The undersigned had the honor of receiving the note of the French Ministers of the 26th Fructidor yesterday.

The discussion of former treaties and indemnities, being for the present closed, it must, of course, be postponed till it can be resumed with fewer embarrassments.

It remains only to consider the expediency of a temporary arrangement. Should such an arrangement comport with the views of France, the following principles are offered as the basis of it:

1. The Ministers Plenipotentiary of the respective parties, not being able at present to agree respecting the former treaties and indemnities, the parties will in due and convenient time further treat on those subjects; and, until they shall have agreed respecting the same, the said treaties shall have no operation. In the meantime,

2. The parties shall abstain from all unfriendly acts; their commercial intercourse shall be free, and debts shall be recoverable in the same manner as if no misunderstanding had intervened.

3. Property captured and not yet definitively condemned, or which may be captured before the exchange of ratifications, shall be mutually restored. Proofs of ownership to be specified in the Convention.

4. Some provisional regulations shall be made to prevent abuses and disputes that may arise out of future cases of capture.

The Ministers of the United States request the honor of an early interview at such time and place as may be convenient to the Ministers Plenipotentiary of the French Republic, and offer them the assurances of their high consideration.

O. ELLSWORTH,
W. R. DAVIE,
W. V. MURRAY.

SEPTEMBER 19.

A conference was held to-day with the French Ministers, at the opening of which they delivered the following articles as a kind of counterproject:

PARIS, 2 *Complémentaire*,
(19*th September*.) *year* 8.

The Ministers of France and those of the United States, finding, at the close of numerous discussions, that they cannot agree, at this time, either respecting the interpretation of the 11th article of the Treaty of Alliance of 1778, and the 17th and 22d articles of the Treaty of Commerce of the same year, or on the subject of the reciprocal indemnities due in consequence of the captures made from the citizens of the two nations, have agreed as follows:

ARTICLE 1. The two parties defer to another time, the discussion of the indemnities, and of the abovementioned articles of the treaties of 1778: in every other particular, these treaties are, by these presents, recognised and confirmed, as well as the Consular Convention of 1778.

ART. 2. The vessels and the privateers, with their prizes, of the two nations, shall be treated, in their respective ports, as those of the most favored nation.

ART. 3. The public ships shall either be restored or paid for.

ART. 4. The property of individuals not yet condemned, shall be adjudicated according to the Treaty of Friendship and Commerce of 1778; in consequence of which, no *rôle d'équipage* shall be required, nor any other proof which is not required by that treaty.

C. P. C. FLEURIEU,
RŒDERER.

These articles were discussed, with the corresponding articles in the propositions of the American Ministers of the 13th of September; and it was agreed to meet from day to day until the business was finished.

SEPTEMBER 24.

The following note was received from the Secretary of the French Legation:

4th Complémentaire, (*Sept.* 21,) *year* 8.

M. Pichon's compliments to Messrs. Davie and Ellsworth, and sends to them, herewith enclosed, copies of the articles settled. Mr. P. has it in charge from the French Ministers to desire the American Envoys, if they see no impropriety, to communicate what they intend to propose further

on the fourth principle of the note, in order that the French Ministers may look to it until the next conference, and that the debates after dinner may be the shorter.

If the American Ministers have no objection to this, and they are pleased to forward the articles to Mr. Pichon, he will translate and communicate them to the French Ministers, so that time may be spared, and business, as much as possible, forwarded.

SEPTEMBER 22.

The American Ministers present their compliments to Mr. Pichon, and readily comply with the proposal in his obliging note of yesterday.

They will bring forward, as details under their fourth proposition, the 21st, 22d, 23d, 24th, 25th, 26th, and 28th articles of their former project, with some variation of the 22d and 23d to adapt them to principles already agreed on. These articles, it is presumed, cannot occupy much time, as they have been so long in the hands of the French Ministers, as they are principally drawn from the treaty of '78, and are only varied or enlarged to prevent a repetition of abuses and misunderstandings. It will also be proposed to add to the 24th, the following clause: "Nevertheless, it shall not be required to examine the papers of vessels convoyed by vessels of war, but credence shall be given to the word of the officer who shall conduct the convoy;" principally with a view to check West India privateers, till your Government shall be able to reduce them to obedience.

The American Ministers present their compliments to Mr. Pichon, and now send, agreeably to his request, the 23d article of their former project, varied agreeably to the intimation given in their note to him of yesterday. He will have the goodness to present the article to the French Ministers for their examination. It accommodates their views to subject enemy goods in free bottoms as soon after the ratifications as papers can be furnished, requisite to prevent great embarrassments. It concedes the principle they desire, while it so regulates the exercise of that principle as to render it less distressing to neutral commerce, and, of course, less injurious to France.

SEPTEMBER 23.

ART. 23. And that captures on light suspicions may be avoided, and injuries thence arising prevented, it is agreed that, when one party shall be engaged in war, and the other party be neuter, the ships of the neutral party, that is, such of them as have already left, or which, prior to the 1st day of May next, may leave, the ports of the nation to which they belong, shall be furnished with passports similar to those described in the article, that it may appear thereby that the ships really belong to the citizens of the neutral party. They shall be valid for any number of voyages, but they shall be recalled every year, that is, if the ship should return home within the space of a year. Such ships, being laden, are to be provided not only with passports as abovementioned, but also with certificates similar to those described in the same article, that so it may be known whether they carry any contraband goods. No other paper shall be required, any ordinance or usage to the contrary notwithstanding. And if it shall not appear, from said certificates, that there are contraband goods on board, the ships shall be permitted to proceed on their voyage: if it shall appear from the certificates that there are contraband goods on board any such ship, and the commander of the same shall offer to deliver them up, he shall, notwithstanding, be at liberty to proceed on his voyage, unless the quantity of the contraband goods shall be greater than can be conveniently received on board the ship of war, or privateer; in which case, the ship may be carried into port for the delivery of the same.

With respect to ships which shall leave the ports of the nation to which they belong after the last day of April next, they shall be furnished with passports as abovementioned, and, if laden, shall be furnished with like certificates as beforementioned, excepting that the certificates shall also express to whom the cargo belongs, and of what nation, State, or Prince, the owner is a citizen or subject, that so it may be known if there are contraband or enemy goods on board. No other paper shall be required, any usage or ordinance to the contrary notwithstanding. And if it shall not appear from the last mentioned certificates that there are either contraband or enemy goods on board, the ships shall be permitted to proceed on their voyage: if it shall appear from the certificates that there are contraband or enemy goods on board any such ship, and the commander of the same shall offer to deliver them up, he shall, notwithstanding, be at liberty to proceed on his voyage, unless the quantity of contraband or enemy goods, or of both, be greater than can be conveniently received on board of the ship of war or privateer; in which case, he may be carried into port for the delivery of the same.

If any ship in the predicament first above mentioned shall not be furnished with such passport and certificates as is above required for the same, such case shall be examined by a proper judge or tribunal; and, if it shall be found, from other documents or proofs admissible by the usage of nations, that the ship belongs to the citizens of the neutral party, it shall not be confiscated, but shall be released, with her cargo, (contraband goods excepted,) and be permitted to proceed on her voyage. And, if any ship in the second predicament above mentioned shall not be furnished with such passport and certificates as is above required for the same, such case may be examined by a proper judge or tribunal; and, if it shall be found, from other documents or proofs admissible by the usage of nations, that the ship belongs to the citizens of the neutral party, the same shall not be confiscated, but shall be released, with her cargo, (contraband goods and such as shall be found to be enemy goods excepted,) and be permitted to proceed on her voyage.

The business was now conducted by conference, from day to day until the 30th of September.

when the Convention was finished, under the title of a "Provisional Treaty." The French Ministers had insisted that the treaty should be signed, under a recognition that the original was in the French language, after the manner of the treaty of '78. As the American Ministers refused to acknowledge this as a precedent, or recognise any prerogative with respect to language, the French Ministers delivered the following note on that subject:

PARIS, *8th Vendemiaire.*
(*29th September,*) *year* 8.

The Ministers of France insist, in relation to the treaty, upon one of three things:

Either that the treaty shall be signed in the French language only, without any reservation, the mode pursued by the Consular Convention of 1788, between France and the United States, and by the Treaty of 1786, between France and England;

Or, that it shall be signed in the French language only; and that a separate article (similar to the one at the close of the Treaty of 1783, between France and England,) shall stipulate, "That the French language, used in this treaty, shall not constitute a precedent, nor operate to the prejudice of either of the contracting parties;"

Or, finally, that it shall be signed in the French and English languages, accompanied by the following declaration, conforming to the one at the end of the Treaty of Alliance and the Treaty of Commerce of 1778: "In faith whereof, the respective Plenipotentiaries have signed the above articles, both in the French and English languages; declaring, nevertheless, that the present treaty was originally written and concluded in the French language."

The Ministers of France cannot depart from either the one or the other of these forms, or from one by which it will appear, with equal clearness, that the negotiation has been conducted in French, and that the original treaty is in that language. Their reasons are conclusive.

The *first* is, that this has been the usage between France and America, between France and England, between France and many other States, and even between America and other States besides France.

The *second* is, that this usage involves no principle opposed to the equality of the two nations; and that the use of one language, whatever that may be, in a treaty common to several parties, is a mutual advantage, and ought not to be considered as a privilege conferred on the nation to whom the adopted language is most familiar.

These *two* propositions may require a few words in explanation. On the *first*, we will only observe that, in addition to the cited examples of the two treaties of 1778, between France and America, and the Consular Convention of 1788, the United States have used the French language, without hesitation or objection, in treaties with which France had no concern. The Treaty of Friendship and Commerce between the United States and Sweden, concluded at Paris, the 3d of April, 1783, may be referred to as an instance. May it not be asked, why should the French language be now rejected, after having been adopted as the original in treaties formed by the United States with both France and Sweden?

The *second* proposition is founded upon very obvious considerations.

1st. When two nations or individuals are desirous of terminating differences existing between them, it is natural that they should make their several explanations in a common language, as well for the purpose of avoiding the tediousness and incorrectness of interpretations, as of preventing an increased misunderstanding which might arise from verbal misconstruction.

When public negotiations are carried on between three, four, or five different nations, speaking different languages, the necessity of a common language becomes the more apparent.

Formerly, when Europe had no common language except the Latin, treaties were formed in that language. But since the French, a derivation from the Latin, has become a classical language, it has generally been considered more convenient than the Latin for general use, and has therefore been substituted for the Latin. Hence, the French language has acquired a privilege, if you please, over other languages, but not the French nation. It has acquired this privilege at the expense of the Latin, not of any living language, and still less in prejudice of the rights of any Power whatever. Nations, in acknowledging it as the legitimate successor of the Latin, and in adopting it as their own, have only had recourse to a practice the most convenient to themselves in the exposition, discussion, and expression of their rights; and have thus advanced those rights by yielding up their prejudices.

2d. When two or more parties have been carrying on a negotiation in one language, it is possible to agree that the treaty shall be translated in the language of each of the parties, and signed by all. But, in this case, good sense and common interest require two things: First, that one of the copies, thus signed by all the contracting parties, should be acknowledged as the original: Secondly, that the copy written in the language in which the negotiation was conducted should be regarded as that original.

We say, in the first place, that there must be one original copy. Because, if time and usage should disclose differences of expression, at first unperceived, in the phraseology employed in two copies, written in different languages, (a circumstance which seems inevitable, and has, indeed, occurred in relation to the Treaty of Friendship and Commerce of 1778,) it will be necessary to have recourse to a common version.

We say, in the second place, that the copy, written in the language in which the negotiation was conducted, is the one to which the title of original should be given. The reasons are evident: First in point of fact, it is the original, as it respects the rest, having been first composed, article by article, in the language of the negotiation, as the negotiation itself progressed: Secondly, in

the event of a discrepancy in expression between two copies of the same treaty, written in different languages, it is the dictate of reason and justice that the contracting parties should have recourse to that expression which was agreed upon and avowed by all, in the language of the negotiation. What is more reasonable than that each should refer to the first expression of his own will, and the faithful signs of his own intentions?

In the adoption, therefore, of the French, as the original language of the treaty, every idea of national prerogative should be discarded, as foreign to the subject. No innovation is urged upon the American Ministers, and no consideration can authorize the Ministers of France to depart from established usage.

C. P. C. FLEURIEU,
RŒDERER.

The American Ministers finally, but with great reluctance, agreed to the signing in the form of the Treaty of 1778, and it was executed accordingly.

OCTOBER 2.

The French Ministers called this morning with the treaties, proposing some alterations, with regard to the style of the French Republic, and that the word "provisional" should be stricken out in the name or description of the treaty. The American Ministers availed themselves of this opportunity to resume their opposition to the admission in favor of the French language, and consented to the proposed alterations, respecting the style of the French Government, and offered to change the term "provisional treaty" for that of "convention," on the condition that that part of the treaty which respected the French language was stricken out, agreeing, at the same time, that a clause might be inserted, saving the right of both nations; to which the French Ministers acceded without any further discussion.

OCTOBER 3.

Six copies being now prepared, as agreed to be amended, they were signed and sealed under the former date of the 30th of September, (9 Vendemiaire;) two copies were retained by the French Commissioners, two were left with Mr. Murray, and the other two were taken in charge by Mr. Ellsworth and Mr. Davie.

OLIVER ELLSWORTH.
W. R. DAVIE.
W. V. MURRAY.

PARIS, *October* 4, 1800.

SIR: The undersigned have the honor to present to you a journal of their proceedings, and a convention in which these proceedings have terminated.

The claim of indemnities brought forward by them was, early in the negotiation, connected by the French Ministers with that of a restoration of treaties, for the infractions of which the indemnities were principally claimed. To obviate this embarrasment, which it had not been difficult to foresee, the American Ministers urged, in the spirit of their instructions, that those treaties having been violated by one party, and renounced by the other, a priority had attached in favor of the treaty with Great Britain, who had thereby acquired an exclusive right for the introduction of prizes; wherefore, that right could not be restored to France. The argument was pressed, both by notes and in conferences, as long as there remained a hope of its utility, and until there appeared no alternative but to abandon indemnities, or, as a means of saving them, to renew, at least partially, the Treaty of Commerce. Whether, in fact, it could or could not be renewed consistently with good faith, then became a question for thorough investigation; in the course of which, the following considerations occurred?

1st. It is not a breach of faith to form a treaty with one nation inconsistent with an existing treaty with another; it being well understood that the prior treaty prevails, and has the same operation as if the subsequent one were not formed; nor is it necessary or usual for a subsequent to make an express saving of the rights of a prior treaty, the law of nations having made that saving as complete and effectual as it can be rendered. This rule of construction holds universally, except where the subsequent treaty can have no operation but by violating the first; in which case, it will be taken for an agreement to come to a rupture with the Power with whom the first was formed.

2d. Indeed, by a clause in the twenty-fifth article of the British Treaty, it is provided, "that while the parties continue in amity, neither of them will in future make any treaty that shall be inconsistent with that or the preceding article," which articles contain, among other things, the exclusive right of introducing prizes into the ports of each other. If, however, the British be considered in the light of a prior treaty, as it must be to raise a doubt, all its rights, as well those of a restrictive nature as others, would be saved, of course, and none of them would at any time or in any degree, be affected by the subsequent stipulation. The subsequent stipulation, in the case supposed, although it should give in general terms the right of introducing prizes, would be understood with a limitation, that it was never to extend to a case in which Great Britain should be the enemy.

3d. The instructions to the American Ministers authorized a renewal of the seventeenth article of the Treaty of Commerce, if it should be necessary, though with a special saving for two articles of the British Treaty. That special saving, however, cannot be material, as the settled rule of construction would, without it, make a saving still more comprehensive.

4th. The renewal of the 17th article of the Commercial Treaty is not conceived to be within the expression or design of the restraining clause of the British Treaty, "not in future to make any treaty that shall be inconsistent with," &c. To recognise a pre-existing treaty which contains a stipulation inconsistent with, &c., is not to make a new or future

treaty containing such stipulation. To recognise the former treaties would be only to preserve or restore the state of things existing when the British Treaty was formed, and not to introduce a new state of things, which was, doubtless, the event intended to be guarded against. It would be only to do what is usually done in the termination of misunderstandings. We are not to presume, and much less is it expressed, that the United States and Great Britain meant to deprive themselves of the usual means of terminating national contests in which they might be involved. And the facility of terminating misunderstandings, by restoring things to their former condition, is not so great, but so conformable to justice, and so favorable to general tranquillity, that the law of nations will not favor a construction which goes to deprive a contracting party of the benefit of it.

5th. The language in which pre-existing treaties are usually recognised at the close of a war does not import that the treaties have in fact ceased to exist, but rather that the causes which suspended their operation have ceased. And in various instances such treaties are counted upon as becoming again operative, without any express provision to render them so.

6th. Nor is it conceived, that the treaties between the United States and France have undergone a more nullying operation than the condition of war necessarily imposes. Doubtless, the Congressional act, authorizing the reduction of French cruisers by force, was an authorization of war, limited, indeed, in its extent, but not in its nature. Clearly, also, their subsequent act, declaring that the treaties had ceased to be obligatory, however proper it might be for the removal of doubts, was but declaratory of the actual state of things; and certainly it was only from an exercise of the constitutional prerogative of declaring war that either of them derived validity. So that the treaties in question, having had only the usual inoperation, might, without a breach of faith, have the usual negotiation.

7th. As far as the opinion of Great Britain goes, there would be no difficulty in recognising a treaty, which gives to France an exclusive right to introduce prizes into the ports of the United States; because she, by a project of a treaty of peace, drawn up at her own Court in 1792, and offered by Lord Malmesbury to the French Plenipotentiaries, proposed to give to France such exclusive right in the British ports; that is, the project renewed the treaties of Paris of 1763, and of 1783, both of which renewed the Commercial Treaty of Utrecht of 1713, which contained such a stipulation.

The foregoing considerations induced the undersigned to be unanimously of the opinion that any part of the former treaties might be renewed consistently with good faith.

They then offered a renewal, with limitations of the seventeenth article of the Commercial Treaty, which, without compromitting the interests of the United States, would have given to France what her Ministers had partiularly insisted on, as essential to her honor, and what they had given reason to expect would be deemed satisfactory. The overture, however, finally produced no other effect than to enlarge the demand of the French Ministers, from a partial to a total renewal of the treaties; which brought the negotiation a second time to a stand.

The American Ministers, however, after a deliberation of some days, the progress of events in Europe continuing in the meantime to grow more unfavorable to their success, made an ulterior advance, going the whole length of what had been last insisted on. They offered an unlimited recognition of the former treaties, though accompanied with a provision to extinguish such privileges claimed under them as were detrimental to the United States, by a pecuniary equivalent, to be made out of the indemnities which should be awarded to American citizens. A compensation which, though it might have cancelled but a small portion of the indemnities, was, nevertheless, a liberal one for privileges, which the French Ministers often admitted to be of little use to France, under the construction which the American Government had given to the treaties.

This offer, though it covered the avowed objects of the French Government, secured an engagement to pay indemnities, as well as the power to extinguish the obnoxious parts of the treaties. To avoid any engagement of this kind, the French Ministers now made an entire departure from the principles upon which the negotiation had proceeded for some time, and resumed the simple, unqualified ground of their overture of the 23d Thermidor, declaring that it was indispensable to the granting of indemnities, not only that the treaties should have an unqualified recognition, but that their future operation should not be varied in any particular, for any consideration or compensation whatever. In short, they thought proper to add, what was quite unnecessary, that their real object was to avoid indemnities, and that it was not in the power of France to pay them.

No time was requisite for the American Ministers to intimate that it had become useless to pursue the negotiation any further.

It accorded as little with their views as with their instructions, to subject their country perpetually to the mischievous effects of those treaties, in order to obtain a promise of indemnity at a remote period—a promise which might as easily prove delusive as it would reluctantly be made; especially, as under the guaranty of the Treaty of Alliance, the United States might be immediately called upon for succors, which, if not furnished, would of itself be a sufficient pretext to render abortive the hope of indemnity.

It only remained for the undersigned to quit France, leaving the United States involved in a contest, and, according to appearances, soon alone in a contest, which it might be as difficult for them to relinquish with honor as to pursue with a prospect of advantage; or else to propose a temporary arrangement, reserving for a definite adjustment points which could not then be satisfactorily settled, and providing, in the meantime, against a state of things of which neither party

could profit. They elected the latter, and the result has been the signature of a convention.

Of property not yet definitively condemned, which the fourth article respects, there are more than forty ships and cargoes, and a number of them of great value, at present pending for decision before the council of prizes; and many others are doubtless in a condition to be brought there, if the claimants shall think fit.

Guards against future abuses are, perhaps, as well provided as they can be by stipulations.

The article respecting convoys may be of use in the West Indies, till it shall be more in the power of the French Government than it is at present to reduce the corsairs in that quarter to obedience.

As to the article which places French privateers and prizes on the footing of those of the most favored nations, it was inserted as drawn by the French Ministers, without any discussion of the extent of its operation; the American Ministers having, in former stages of the negotiation, repeatedly and uniformly declared, agreeably to the rule of construction settled by the law of nations, that no stipulation of that kind could have effect as against the British Treaty, unless the stipulation were derived from former treaties, which it is here expressly agreed shall have no operation whatever. This article, however, is less consequential, as it will soon be in the power of the United States, and doubtless, also, within their wisdom, to refuse to the privateers and prizes of any nation an asylum beyond what the rights of humanity require.

If, with the simple plea of right, unaccompanied with the menaces of power, and unaided by events either in Europe or America, less is at present obtained than justice requires, or than the policy of France should have granted, the undersigned trust that the sincerity and patience of their efforts to obtain all that their country had a right to demand will not be drawn in question.

We have the honor to be, sir, with high respect, your most obedient,

OLIVER ELLSWORTH,
WILLIAM R. DAVIE,
WILLIAM V. MURRAY.

Hon. JOHN MARSHALL,
Secretary of State.

Mr. King to the Secretary of State.

LONDON, *October* 31, 1800.

SIR: The Convention with France, having been published at Paris, immediately found its way into the English newspapers, in which it appeared the day after Mr. Ellsworth's arrival in London; its authenticity being confirmed by him, it became my duty to endeavor, with as much diligence and as extensively as was in my power, to communicate such sentiments and opinions respecting it as would be likely to procure to it a favorable consideration.

After conversing with the Lord Chancellor and some others of the Ministers, I found an occasion to mention the subject to the King: and, though this was not altogether regular, I had no reason to be dissatisfied with having done so.

After waiting several days, during which I might see and converse with the persons about the Court, I yesterday asked a conference with Lord Grenville, which took place this morning. The conversation began by my observing that I wished to speak with him respecting our reconciliation with France, in order that I might communicate to my Government, which would be desirous to understand the light in which it was considered by the British Government. This beginning led to a free and apparently candid conversation respecting it, which was followed by Lord Grenville saying to me that he saw nothing in the convention inconsistent with the treaty between them and us, or which afforded them any ground of complaint; nor did he perceive in it anything that might not have been expected, unless it was the article respecting convoys, which we were certainly free to make, but which, nevertheless, just at the present juncture, had somewhat of a less friendly appearance than might have been wished. I expressed my satisfaction that I had not been mistaken in believing that the British Government would find nothing to object to in the convention; and remarked, that the article of free bottoms having made a part of the old treaty, it was natural enough that it should be inserted in the new one, and that the provision respecting convoys seemed to be no more than a convenient consequence of that article, by which the visit of the belligerent is not only restrained in its object, but placed under special regulations as to the manner in which it shall be made; and, moreover, that convoys would be indispensable to protect our trade against French corsairs in the West Indies, which could not at present be controlled by France. Lord Grenville had not manifested any marks of disappointment or discontent concerning the convention; showed no inclination to controvert what I had just said; contenting himself by repeating (but without seeming to place much importance upon the observation) what he had before said, with regard to their misunderstanding with the Northern Powers. The subject of convoys being before us, I thought the occasion not an unfavorable one concisely to suggest certain reflections which had passed in my mind concerning it, and which are the foundation of the observations contained in my No. 80. After some general remarks respecting the rights of neutrals and belligerents, I observed that it seemed to me practicable to devise regulations, by which the trade of neutrals might be secured by convoys, without affecting injuriously the right of search. It might, for example, be stipulated that no ship should be entitled to sail under convoy which should not possess a certificate, in an agreed form, attesting her neutrality, and the neutrality and innocence of her cargo; the Consuls or other agents of the belligerent, residing in the neutral countries, might assist in taking the proofs upon which certificate should be granted; and it might, moreover, be settled that the visit of the belligerent should be confined to the convoying ship, the commander of which, on exhibiting the certificates of the ships under his convoy, should, with them, be entitled to proceed unmolested. Other regulations might be devised, for places where the agents of the belligerents could not, on account of the war, assist in receiving the proofs of neutrality.

Lord Grenville, without hesitation, admitted the fairness of the project, adding that it would be indifferent to them, as belligerents, whether the examination was made by their agents before the sailing of the neutral ship, or, upon the ocean, by their naval officers.

With perfect respect and esteem, I have the honor to be, sir, your obedient faithful servant.

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

"LONDON, *November* 22, 1800.

"SIR: Upon the probability of the conclusion of peace, well informed persons continue to differ extremely in their opinions. Austria will make peace if she can make a good bargain, which, as in former wars, she may probably be able to do. England (I mean the Government) desires to make peace with Bonaparte; and, from the language made use of by the English Ministers, one would almost be led to think that she is now willing to countenance and support the First Consul upon the very principles which have induced her to oppose those who have hitherto been at the head of the affairs of France.

"Whatever may have been the temper or inclination of this Government, in a different posture of its affairs, and before the convention with France was published, its sentiments in respect to that instrument, and the distinguished manner in which Mr. Ellsworth has been received by the Court, have a tendency to show that at present it has no animosity nor unusual prejudice against us; on the contrary, those who disseminate its opinions encourage the people to bear their distresses, arising from the dearness of bread, by holding forth to them the abundant harvest of America, and the prospect of a great supply from thence."

The Senate, having considered the aforegoing convention with France, adopted the following resolution:

IN SENATE. *February* 3, 1801.

Resolved, By the Senate of the United States, (two-thirds of the Senators present concurring therein,) that they do consent to and advise the ratification of the convention between the French Republic and the United States of America, made at Paris, the 8th day of Vendemiaire, of the 9th year of the French Republic, (the 30th day of September, Anno Domini 1800:) *Provided*, The second article be expunged and the following article added or inserted:

It is agreed that the present convention shall be in force for the term of eight years from the exchange of ratifications.

The following Message was thereupon transmitted to the Senate:

UNITED STATES, *March* 2, 1801.

Gentlemen of the Senate:

I have considered the advice and conduct of the Senate to the ratification of the convention with France under certain conditions. Although it would have been more conformable to my own judgment and inclination to have agreed to that instrument unconditionally, yet, in this point, I found I had the misfortune to differ in opinion from so high a Constitutional authority as the Senate. I judged it more consistent with the honor and interest of the United States to ratify it under the conditions prescribed than not at all. I accordingly nominated Mr. Bayard, Minister Plenipotentiary to the French Republic, that he might proceed without delay to Paris, to negotiate the exchange of ratifications. But, as that gentleman has declined his appointment, for reasons equally applicable to every person suitable for the service, I shall take no further measures relative to this business, and leave the convention, with all the documents, in the office of State, that my successor may proceed with them according to his wisdom.

JOHN ADAMS.

The ratification of the convention which was made by the French Government, is contained in the following translation:

Bonaparte, First Consul, in the name of the French people: The Consul of the French Republic having seen and examined the convention concluded, agreed to, and signed at Paris, the 8th Vendemiaire, ninth year of the French Republic, (30th September, 1800,) by the Citizens Joseph Bonaparte, Fleurieu, and Rœderer, Counsellors of State, in virtue of the full powers which have been given to them to this effect, with Messieurs Ellsworth, Davie, and Murray, Ministers Plenipotentiary of the United States, equally furnished with full powers, the tenor of which convention follows:

Approves the above convention in all and each of the articles which are therein contained; declares that it is accepted, ratified, and confirmed; and promises that it shall be inviolably observed.

The Government of the United States having added to its ratification, that the convention should be in force for the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition importing that the convention shall be in force for the space of eight years, and with the retrenchment of the second article: *Provided*, That by this retrenchment the two States renounce the respective pretensions which are the objects of the said article.

In faith whereof, these presents are given. Signed, countersigned, and sealed with the great seal

of the Republic, at Paris, the twelfth Thermidor, ninth year of the Republic, (31st July, 1801.)

BONAPARTE.

The Minister of Exterior Relations:

CH. MAU. TALLEYRAND.

By the First Consul: The Secretary of State,

HUGUES B. MARET.

The following Message of the President and resolution of the Senate terminate the proceedings upon the convention:

DECEMBER 11, 1801.

Gentlemen of the Senate:

Early in the last month I received the ratification, by the First Consul of France, of the convention betwen the United States and that nation. His ratification not being pure and simple, in the ordinary form, I have thought it my duty, in order to avoid all misconception, to ask a second advice and consent of the Senate before I give it the last sanction, by proclaiming it to be a law of the land.

TH: JEFFERSON.

IN SENATE OF THE UNITED STATES,

December 19, 1801.

Resolved, That the Senate (two-thirds of the members present concurring therein) consider the convention between the United States and the French Republic as fully ratified.

PRUSSIA.

[Communicated to the Senate, December 6, 1799.]

Gentlemen of the Senate:

I lay before you, for your consideration, a treaty of Amity and Commerce between the United States and the King of Prussia, signed by their Ministers on the 11th of July last.

JOHN ADAMS.

UNITED STATES, *Dec.* 6, 1799.

A Treaty of Amity and Commerce between His Majesty the King of Prussia and the United States of America.

His Majesty the King of Prussia and the United States of America, desiring to maintain, upon a stable and permanent footing, the connexions of good understanding, which have hitherto so happily subsisted between their respective States, and for this purpose to renew the Treaty of Amity and Commerce, concluded between the two Powers, at the Hague, the 10th of September, 1785, for the term of ten years, His Prussian Majesty has nominated and constituted as his Plenipotentiaries, the Count Charles William de Finckenstein, his Minister of State, of War, and of the Cabinet, Knight of the orders of the Black Eagle and of the Red Eagle, and Commander of St. John of Jerusalem; the Baron Philip Charles d'Alvensleben, his Minister of State, of War, and of the Cabinet, Knight of the orders of the Black Eagle and of the Red Eagle, and of that of St. John of Jerusalem; and the Count Christian Henry Curt de Haugwitz, his Minister of State, of War, and of the Cabinet, Knight of the orders of the Black Eagle and of the Red Eagle: and the President of the United States has furnished, with their full powers, John Quincy Adams, a citizen of the United States, and his Minister Plenipotentiary at the Court of His Prussian Majesty; which Plenipotentiaries, after having exchanged their full powers, found in good and due form, have concluded, settled, and signed the following articles:

ART. 1. There shall be in future, as there has been hitherto, a firm, inviolable, and universal peace, and sincere friendship between His Majesty the King of Prussia, his heirs, successors, and subjects, on the one part, and the United States of America, and their citizens, on the other, without exception of persons or places.

ART. 2. The subjects of His Majesty the King of Prussia may frequent all the coasts and countries of the United States of America, and reside and trade there in all sorts of produce, manufactures, and merchandise; and shall pay there no other or greater duties, charges, or fees whatsoever, than the most favored nations are or shall be obliged to pay. They shall also enjoy, in navigation and commerce, all the rights, privileges, and exemptions which the most favored nation does or shall enjoy, submitting themselves, nevertheless, to the established laws and usages, to which are submitted the citizens of the United States and the most favored nations.

ART. 3. In like manner, the citizens of the United States of America may frequent all the coasts and countries of His Majesty the King of Prussia, and reside and trade there in all sorts of produce, manufactures, and merchandise, and shall pay, in the dominions of His said Majesty, no other or greater duties, charges or fees, whatsoever, than the most favored nation is, or shall be, obliged to pay; and they shall enjoy all the rights, privileges, and exemptions in navigation and commerce, which the most favored nation does, or shall, enjoy; submitting themselves, nevertheless, to the established laws and usages to which are submitted the subjects of His Majesty the King of Prussia, and the subjects and citizens of the most favored nations.

ART. 4. More especially, each party shall have a right to carry their own produce, manufactures, and merchandise, in their own or any other vessels, to any parts of the dominions of the other, where it shall be lawful for all the subjects and citizens of that other freely to purchase them; and thence to take the produce, manufactures, and merchandise of the other, which all the said citizens or subjects shall in like manner be free to sell them, paying in both cases such duties, charges, and fees only, as are or shall be paid by the most favored nation. Nevertheless, His Majesty the King of Prussia and the United States respectively reserve to themselves the right, where any nation restrains the transportation of merchandise to the vessels of the country of which it is the growth, or manufacture, to establish against such nations retaliating regulations; and also the right to prohibit, in their respective countries, the importation and exportation of all merchandise whatsoever, when reasons of State shall require it. In this case the subjects or citizens of either of the contracting parties shall not import nor export the merchandise prohibited by the other. But if one of the contracting parties permits any other nation to import or export the same merchandise, the citizens or subjects of the other shall immediately enjoy the same liberty.

ART. 5. The merchants, commanders of vessels, or other subjects or citizens of either party, shall not, within the ports or jurisdiction of the other, be forced to unload any sort of merchandise into any other vessels, nor to receive them into their own, nor to wait for their being loaded longer than they please.

ART. 6. That the vessels of either party, loading within the ports or jurisdiction of the other, may not be uselessly harassed or detained, it is agreed, that all examinations of goods, required by the laws, shall be made before they are laden on board the vessel, and that there shall be no examination after; nor shall the vessel be searched at any time, unless articles shall have been laden therein clandestinely and illegally; in which case, the person by whose order they were carried on board, or who carried them without order, shall be liable to the laws of the land in which he is; but no other person shall be molested, nor shall any other goods, nor the vessel, be seized or detained for that cause.

ART. 7. Each party shall endeavor, by all the means in their power, to protect and defend all vessels and other effects belonging to the citizens or subjects of the other, which shall be within the extent of their jurisdiction, by sea or by land; and shall use all their efforts to recover, and cause to be restored to the right owners, their vessels and effects, which shall be taken from them within the extent of their said jurisdiction.

ART. 8. The vessels of the subjects or citizens of either party coming on any coast belonging to the other, but not willing to enter into port, or who, entering into port, are not willing to unload their cargoes or break bulk, shall have liberty to depart and to pursue their voyage, without molestation, and without being obliged to render account of their cargo, or to pay any duties, charges, or fees whatsoever, except those established for vessels entered into port, and appropriated to the maintenance of the port itself, or of other establishments, for the safety and convenience of navigators; which duties, charges, and fees, shall be the same, and shall be paid on the same footing as in the case of subjects or citizens of the country where they are established.

ART. 9. When any vessel of either party shall be wrecked, foundered, or otherwise damaged, on the coasts, or within the dominions of the other, their respective subjects, or citizens, shall receive, as well for themselves, as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the damage happens, and shall pay the same charges and dues only as the said inhabitants would be subject to pay in a like case; and if the operations of repair shall require that the whole or any part of their cargo be unladed, they shall pay no duties, charges, or fees, on the part which they shall relade and carry away. The ancient and barbarous right to wrecks of the sea shall be entirely abolished with respect to the subjects or citizens of the two contracting parties.

ART. 10. The citizens or subjects of each party shall have power to dispose of their personal goods within the jurisdiction of the other, by testament, donation, or otherwise; and their representatives, being subjects or citizens of the other party, shall succeed to their said personal goods, whether by testament, or *ab intestato*, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their will, paying such dues only as the inhabitants of the country wherein the said goods are shall be subject to pay in like cases. And in case of the absence of the representative, such care shall be taken of the said goods, as would be taken of the goods of a native in like case, until the lawful owner may take measures for receiving them. And if question should arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are. And where, on the death of any person holding real estate within the territories of the one party, such real estate would, by the laws of the land, descend on a citizen or subject of the other, were he not disqualified by alienage, such subject shall be allowed a reasonable time to sell the same, and to withdraw the proceeds without molestation, and exempt from all rights of *detraction* on the part of the Government of the respective States. But this article shall not derogate in any manner from the force of the laws already published, or hereafter to be published, by His Majesty the King of Prussia, to prevent the emigration of his subjects.

ART. 11. The most perfect freedom of conscience and of worship is granted to the citizens or subjects of either party, within the jurisdiction of the other, and no person shall be molested in that respect, for any cause other than an insult on the religion of others. Moreover, when the subjects or citizens of the one party shall die within the jurisdiction of the other, their bodies shall be buried in the usual burying grounds, or other decent and suitable places, and shall be protected from violation or disturbance.

ART. 12. Experience having proved, that the principle adopted in the 12th article of the treaty of 1785, according to which *free ships make free goods*, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree, either separately between themselves, or jointly with other Powers alike interested, to concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if, in the interval, either of the contracting parties should be engaged in war, to which the

other should remain neutral, the ships of war and privateers of the belligerent Power shall conduct themselves towards the merchant vessels of the neutral Power as favorably as the course of the war then existing may permit, observing the principles and rules of the law of nations, generally acknowledged.

ART. 13. And in the same case of one of the contracting parties being engaged in war with any other Power, to prevent all the difficulties and misunderstandings that usually arise respecting the merchandise of contraband, such as arms, ammunition, and military stores of every kind, no such articles carried in the vessels, or by the subjects or citizens of either party, to the enemies of the other, shall be deemed contraband, so as to induce confiscation or condemnation, and a loss of property to individuals. Nevertheless, it shall be lawful to stop such vessels and articles, and to detain them for such length of time as the captors may think necessary to prevent the inconvenience or damage that might ensue from their proceeding; paying, however, a reasonable compensation for the loss such arrest shall occasion to the proprietors: and it shall further be allowed to use, in the service of the captors, the whole or any part of the military stores so detained, paying the owners the full value of the same, to be ascertained by the current price at the place of its destination. But in the case supposed, of a vessel stopped for articles of contraband, if the master of the vessel stopped will deliver out the goods supposed to be of contraband nature, he shall be permitted to do it, and the vessel shall not in that case be carried into any port, nor further detained, but shall be allowed to proceed on her voyage.

All cannons, mortars, fire arms, pistols, bombs grenades, bullets, balls, muskets, flints, matches, powder, saltpetre, sulphur, cuirasses, pikes, swords, belts, cartouch-boxes, saddles, and bridles, beyond the quantity necessary for the use of the ship, or beyond that which every man serving on board the vessel, or passenger, ought to have; and, in general, whatever is comprised under the denomination of arms and military stores, of what description soever, shall be deemed objects of contraband.

ART. 14. To insure to the vessels of the two contracting parties the advantage of being readily and certainly known in time of war, it is agreed that they shall be provided with the sea-letters and documents hereafter specified.

1. A passport, expressing the name, the property, and the burden of the vessel, as also the name and dwelling of the master, which passport shall be made out in good and due form, shall be renewed as often as the vessel shall return into port, and shall be exhibited whensoever required, as well in the open sea as in port. But if the vessel be under convoy of one or more vessels of war belonging to the neutral party, the simple declaration of the officer commanding the convoy that the said vessel belongs to the party of which he is, shall be considered as establishing the fact, and shall relieve both parties from the trouble of further examination.

2. A charter-party; that is to say, the contract passed for the freight of the whole vessel, or the bills of lading given for the cargo in detail.

3. The list of ship's company; containing an indication by name, and in detail, of the persons composing the crew of the vessel. These documents shall always be authenticated, according to the forms established at the place from which the vessel shall have sailed.

As their production ought to be exacted only when one of the contracting parties shall be at war, and as their exhibition ought to have no other object than to prove the neutrality of the vessel, its cargo, and company, they shall not be deemed absolutely necessary on board such vessels belonging to the neutral party as shall have sailed from its port before or within three months after the Government shall have been informed of the state of war in which the belligerent party shall be engaged. In the interval, in default of these specific documents, the neutrality of the vessel may be established by such other evidence as tribunals authorized to judge of the case may deem sufficient.

ART. 15. And to prevent entirely all disorder and violence in such cases, it is stipulated, that, when the vessels of the neutral party, sailing without convoy, shall be met by any vessel of war, public or private, of the other party, such vessels of war shall not send more than two or three men in their boat on board the said neutral vessels, to examine her passports and documents. And all persons belonging to any vessel of war, public or private, who shall molest or insult in any manner whatever the people, vessels, or effects of the other party, shall be responsible in their persons and property for damages and interest; sufficient security for which shall be given by all commanders of private armed vessels before they are commissioned.

ART. 16. In times of war, or in cases of urgent necessity, when either of the contracting parties shall be obliged to lay a general embargo, either in all its ports, or in certain particular places, the vessels of the other party shall be subject to this measure, upon the same footing as those of the most favored nations, but without having the right to claim the exemption in their favor stipulated in the 16th article of the former treaty of 1785. But, on the other hand, the proprietors of the vessels which shall have been detained, whether for some military expedition, or for what other use soever, shall obtain from the Government that shall have employed them an equitable indemnity, as well for the freight as for the loss occasioned by the delay. And furthermore, in all cases of seizure, detention, or arrest, for debts contracted, or offences committed by any citizen or subject of the one party, within the jurisdiction of the other, the same shall be made and prosecuted by order and authority of law only, and according to the regular course of proceedings usual in such cases.

ART. 17. If any vessel or effects of the neutral Power be taken by an enemy of the other, or by a pirate, and retaken by the Power at war, they shall be restored to the first proprietor, upon the conditions hereafter stipulated, in the twenty-first article, for cases of recapture.

ART. 18. If the citizens or subjects of either party, in danger from tempests, pirates, enemies, or other accident, shall take refuge, with their vessels or effects, within the harbors or jurisdiction of the other, they shall be received, protected, and treated with humanity and kindness, and shall be permitted to furnish themselves, at reasonable prices, with all refreshments, provisions, and other things necessary for their sustenance, health, and accommodation, and for the repair of their vessels.

ART. 19. The vessels of war, public and private, of both parties, shall carry freely, wheresoever they please, the vessels and effects taken from their enemies, without being obliged to pay any duties, charges, or fees, to officers of admiralty, of the customs, or any others; nor shall such prizes be arrested, searched, or put under legal process, when they come to and enter the ports of the other party, but may freely be carried out again at any time by their captors, to the places expressed in their commissions, which the commanding officer of such vessel shall be obliged to show. But, conformably to treaties existing between the United States and Great Britain, no vessel that shall have made a prize upon British subjects shall have a right to shelter in the ports of the United States; but, if forced therein by tempests, or any other danger, or accident of the sea, they shall be obliged to depart as soon as possible.

ART. 20. No citizen or subject of either of the contracting parties shall take from any Power with which the other may be at war, any commission or letter of marque for arming any vessel to act as a privateer against the other, on pain of being punished as a pirate: nor shall either party hire, lend, or give any part of its naval or military force, to the enemy of the other, to aid them offensively or defensively against the other.

ART. 21. If the two contracting parties should be engaged in a war against a common enemy, the following points shall be observed between them:

1. If a vessel of one of the parties, taken by the enemy, shall, before being carried into a neutral or enemy's port, be retaken by a ship of war, or privateer of the other, it shall, with the cargo, be restored to the first owners, for a compensation of one-eighth part of the value of the said vessel and cargo, if the recapture be made by a public ship of war; and one-sixth part, if made by a privateer.

2. The restitution in such cases shall be after due proof of property, and surety given for the part to which the recaptors are entitled.

3. The vessels of war, public and private, of the two parties, shall reciprocally be admitted with their prizes into the respective ports of each: but the said prizes shall not be discharged or sold there, until their legality shall have been decided, according to the laws and regulations of the State to which the captor belongs, but by the judicatories of the place into which the prize shall have been conducted.

4. It shall be free to each party to make such regulations as they shall judge necessary for the conduct of their respective vessels of war, public and private, relative to the vessels which they shall take and carry into the ports of the two parties.

ART. 22. Where the contracting parties shall have a common enemy, or shall both be neutral, the vessels of war of each shall, upon all occasions, take under their protection the vessels of the other going the same course, and shall defend such vessels, as long as they hold the same course, against all force and violence, in the same manner as they ought to protect and defend vessels belonging to the party of which they are.

ART. 23. If war should arise between the two contracting parties, the merchants of either country, then residing in the other, shall be allowed to remain nine months to collect their debts and settle their affairs, and may depart freely, carrying off all their effects, without molestation or hindrance; and all women and children, scholars of every faculty, cultivators of the earth, artizans, manufacturers, and fishermen, unarmed, and inhabiting unfortified towns, villages, or places, and, in general, all others whose occupations are for the common subsistence and benefit of mankind, shall be allowed to continue their respective employments, and shall not be molested in their persons, nor shall their houses or goods be burnt, or otherwise destroyed, nor their fields wasted by the armed force of the enemy, into whose power, by the events of war, they may happen to fall; but if anything is necessary to be taken from them for the use of such armed force, the same shall be paid for at a reasonable price.

ART. 24. And to prevent the destruction of prisoners of war, by sending them into distant and inclement countries, or by crowding them into close and noxious places, the two contracting parties solemnly pledge themselves to the world, and to each other, that they will not adopt any such practice; that neither will send the prisoners whom they may take from the other into the East Indies, or any other parts of Asia or Africa; but they shall be placed in some part of their dominions in Europe or America, in wholesome situations; that they shall not be confined in dungeons, prison ships, nor prisons, nor be put into irons, nor bound, nor otherwise restrained in the use of their limbs; that the officers shall be enlarged on their paroles within convenient districts, and have comfortable quarters, and the common men be disposed in cantonments open and extensive enough for air and exercise, and lodged in barracks as roomy and good as are provided by the party in whose power they are for their own troops; that the officers shall also be daily furnished by the party in whose power they are with as many rations, and of the same articles and quality, as are allowed by them, either in kind or by commutation, to officers of equal rank in their own army; and all others shall be daily furnished by them with such rations as they allow to a common soldier in their own service; the value whereof shall be paid by the other party on a mutual adjustment of accounts for the subsistence of prisoners at the close of the war; and the said accounts shall not be mingled with, or set off against any others, nor the balances due on them be withheld as a satisfaction or reprisal for any other article, or for any other cause, real or pretended whatever; that each party shall be allowed

to keep a commissary of prisoners, of their own appointment, with every separate cantonment of prisoners in possession of the other, which commissary shall see the prisoners as often as he pleases, shall be allowed to receive and distribute whatever comforts may be sent to them by their friends, and shall be free to make his reports in open letters to those who employ him; but if any officer shall break his parole, or any other prisoner shall escape from the limits of his cantonment, after they shall have been designated to him, such individual officer, or other prisoner, shall forfeit so much of the benefit of this article as provides for his enlargement on parole or cantonment. And it is declared, that neither the pretence that war dissolves all treaties, nor any other whatever, shall be considered as annulling or suspending this and the next preceding article; but, on the contrary, that the state of war is precisely that for which they are provided, and during which they are to be as sacredly observed as the most acknowledged articles in the law of nature or nations.

ART. 25. The two contracting parties have granted to each other the liberty of having each, in the ports of the other, Consuls, Vice Consuls, Agents, and Commissaries, of their own appointment, who shall enjoy the same privileges and powers as those of the most favored nations. But if any such Consul shall exercise commerce, he shall be submitted to the same laws and usages to which the private individuals of their nation are submitted in the same place.

ART. 26. If either party shall hereafter grant to any other nation any particular favor in navigation or commerce, it shall immediately become common to the other party, freely, where it is freely granted to such other nation, or on yielding the same compensation, when the grant is conditional.

ART. 27. His Majesty the King of Prussia, and the United States of America, agree that this treaty shall be in force during the term of ten years from the exchange of the ratifications; and if the expiration of that term should happen during the course of a war between them, then the articles before provided for the regulation of their conduct during such a war shall continue in force until the conclusion of the treaty which shall restore peace.

This treaty shall be ratified on both sides, and the ratifications exchanged within one year from the day of its signature, or sooner, if possible.

In testimony whereof, the Plenipotentiaries before mentioned have hereunto subscribed their names and affixed their seals.

Done at Berlin, the eleventh of July, in the year one thousand seven hundred and ninety-nine.

JOHN QUINCY ADAMS.
CHARLES GUILLAUME.
Comte de Finckenstein.
P. CHAS. D'ALVENSLEBEN.
Minister of State, &c.
CHRETIEN HENRI-CURCE.
Comte de Haugwitz.

The following instructions and correspondence were communicated to the Senate by the Message of 17th February, 1799:

Instructions from the Secretary of State to John Quincy Adams, Minister Plenipotentiary to Prussia.

DEPARTMENT OF STATE, *July* 15, 1797.

SIR: By inspecting the Treaty of Amity and Commerce, concluded in the year 1785, between the United States and the late Frederick the Second, King of Prussia, you will observe that it was to be in force during the term of ten years from the exchange of ratifications. This exchange took place about the month of September, in the year 1786, and, of course, the treaty has expired.

You will receive herewith a commission containing full powers to renew this treaty in its present form, for another term of ten years, but with the following exceptions, if the same shall be assented to on the part of the King.

1. It will be expedient to omit that part of the sixteenth article which exempts the vessels of each party from embargo, and to render them liable to a general embargo. There is a like clause of exemption in our treaty with Sweden, which occasioned disagreeable comparisons and real inconveniences, when, by a general embargo in 1794, the vessels of all other nations, and of our own citizens, were detained in port.

2. The twenty-third article of our treaty with Prussia forbids the commissioning of privateers to take or destroy the trading vessels, or to interrupt the commerce of the contracting parties, in case a war should arise between them. And, considering the abuses too often committed by privateers, and the spirit in which privateering is commenced and prosecuted, it has sometimes appeared desirable to abolish the practice altogether. But the policy of this principle, as it respects the United States, may well be doubted; we are weak, at present, in public vessels of war, and our actual revenues are not adequate to the equipping of powerful fleets; but we are strong in the number of our seamen, in private wealth, and in the uncommon enterprise of our citizens. Our chief means, therefore, of annoying and distressing a maritime enemy would be our privateers. For these reasons, you will propose, and endeavor to effect, an alteration of the 23d article, and to leave commerce, in case of a war between us and Prussia, to the attacks of privateers.

The principle that free ships make free goods, is also found in the treaty with Prussia, (article 12.) It is a principle that the United States have adopted in all their treaties, (except that with Great Britain,) and which they sincerely desire might become universal; but treaties formed for this object they find to be of little or no avail, because the principle is not universally admitted among the maritime nations. It has not been regarded in respect to the United States when it would operate to their benefit, and may be insisted on only when it will prove injurious to their interest. You will, therefore, propose to abandon it in the new treaty which you are empowered to renew and negotiate with Prussia.

On the like ground, you are to propose to admit of articles contraband of war; and, among them, to enumerate timber for ship building, tar, pitch, turpentine, and rosin, copper in sheets, sails, hemp, and cordage, and, generally, whatever may serve directly to the equipment of vessels, unwrought iron and fir-planks only excepted.

But, although these alterations appear desirable, yet if the state of things shall, in your judgment, render it expedient not to propose them, or, if proposed, not to insist on them, you will act accordingly. In another period of ten years, it will probably not occasion any material embarrassment between the United States and Prussia, to renew the treaty precisely in its present form. And, at this time, it is peculiarly interesting to us to conciliate the good will of that and other European nations.

Another, and the principal design of the President in this appointment was, to place at Berlin a Minister of your abilities and knowledge in diplomatic affairs, from whom, in the existing situation of Europe, correct intelligence and information highly interesting to the United States might be derived; and who, by his vigilance and sagacity, might find and embrace opportunities to promote their security and welfare.

A third object will be to renew the Treaty of Amity and Commerce between the United States and Sweden; for which, also, full powers are herewith transmitted. By the Swedish Minister at Berlin, or otherwise, you will make known to the Court of Sweden that you are invested with such powers.

The ratifications of the Swedish treaty, it is supposed, were exchanged in the beginning of the year 1784; as, on the 9th of March of that year, Dr. Franklin wrote from Paris to the Secretary of Foreign Affairs that he had made the exchange. In like manner, Mr. Adams wrote from London, on the 27th of October, 1786, that he had been in Holland, and exchanged the ratifications of the Prussian treaty. No documents are found to show the day when the exchange took place.

For the reasons above assigned, in respect to the Prussian treaty, that with Sweden should be altered, in the 17th article, so as to subject the vessels of Sweden, as well as those of other nations, to the effects of a general embargo: enemies' property found on board them to capture and confiscation, as good prize; and ship timber and naval stores (as before enumerated) to be deemed contraband of war. The right of privateering is to remain as already fixed in the treaty with Sweden. I have the honor to be, &c.,

TIMOTHY PICKERING.
Secretary of State.

From the Secretary of State to John Quincy Adams.

DEPARTMENT OF STATE, *July* 17, 1797.

SIR: In the instructions, dated the 15th instant, relative to your renewing our treaties with Sweden, you see expressed the earnest wishes of the United States that the principle that free ships should make free goods should become universal. This principle is peculiarly interesting to us, because our naval concerns are mercantile, and not warlike; and you will readily perceive that the abandonment of that principle was suggested by the measures of the belligerent Powers during the present war, in which we have found that neither its obligations by the pretended modern law of nations, nor the solemn stipulations of treaties, secured its observation; on the contrary, it has been made the sport of events. Under such circumstances, it appeared to the President desirable to avoid renewing an obligation which would probably be enforced when our interest should require its dissolution; and be contemned when we could derive some advantage from its observance.

But it is possible that, in the pending negotiations for peace, this principle of free ships making free goods may be adopted by all the great maritime Powers; in which case, the United States will be among the first of the other Powers to accede to it, and to observe it as a universal rule.

In like manner, if the rigid rule of the law of nations respecting contraband, should be relaxed, and ship timber and naval stores be declared free, we shall eagerly embrace this liberal rule.

The issue of the negotiations for peace, which we suppose to be now pending, will probably be known to you before it will be necessary to finish the renewal of the treaties between us and Prussia and Sweden; and you will conform our stipulations with those two Powers on the points above mentioned, to the result of those negotiations.

But if the negotiations for peace should be broken up, and the war continue, and more especially if, as you have conjectured, the United States should be forced to become a party in it, then it would be extremely impolitic to confine the enterprises and exertions of our armed vessels within narrower limits than the law of nations prescribes. If, for instance, France should proceed from her predatory attacks on our commerce to open war, the mischievous consequences of any other limitations will be apparent. All her commerce will be sheltered under neutral flags, while ours would remain exposed, as at present, to the havoc of her numerous cruisers.

These remarks, added to your instructions, will possess you fully of the principles by which the President desires you may be influenced in renewing the treaties with Prussia and Sweden.

I am, sir, with perfect esteem, &c.,

TIMOTHY PICKERING.

From the Secretary of State to John Quincy Adams.

DEPARTMENT OF STATE,
Philadelphia, March 17, 1798.

SIR: As the war continues, and as it now seems scarcely possible for the United States to avoid becoming a party in it, you will doubtless be determined, by your instructions of the 15th and 17th July last, in renewing our treaties with Prussia and Sweden, and to reject the article in each which stipulates that free ships shall make free

goods. With this prospect before us, no considerations occur which should induce its admission. But the reasons suggested in those instructions are now strongly enforced by the law of the French Republic before cited,* if, as Mr. Fenwick supposes, though general in its expressions, it is really and exclusively intended to operate against the Americans. In this case, a renewal of that stipulation is positively to be refused. The Swedish and Prussian commerce will then be only on the footing of the commerce of Denmark, with whom we have no treaty; and if we must be involved in the war, it will be desirable that the commerce of those three Powers, in relation to the United States, should rest on one and the same principle. But if this iniquitous French law exists (and we have no room to doubt it) will all the Northern Powers submit to it? We hope not. We hope that the inordinate ambition of France, and avowed design to subjugate all Europe (of which she already calls herself "the great nation" and "the conqueror.") will excite the resistance of all the Powers whom her arms have not reached, and rouse anew those whom the course of events have induced to submit. At present Britain appears to be the only bulwark against the universal domination of France, by sea as well as by land. It is plain that those Powers who have avoided becoming parties in the present war, and have congratulated themselves on their superior policy and good fortune, will finally have no reason to rejoice: they were only reserved for future plunder and oppression. This is now strikingly verified in respect to the United States. Her exactions are as unexpected as her victories have been unexampled. Instead of stipulating for even future compensation for the many millions of which she has authorized her cruisers to rob us, she demands immediate contributions to the enormous amount of her depredations; making them the measure, not of rendering justice, but of increasing her oppression! A full knowledge of her treatment of our Envoys, and of the propositions made to them, would confound her partisans among us, convince our citizens in general of the impossibility of preserving their property and independence but by resistance, and produce general unanimity in the measures requisite for that end: or, if I am mistaken in this opinion, we are already under the yoke of foreign domination.

I have the honor to be, &c.

TIMOTHY PICKERING.

JOHN Q. ADAMS,
Minister, &c., Berlin.

*The following is the law referred to:

1. The character of a vessel, as neuter or enemy, is determined by her cargo. Therefore, all vessels laden with merchandise which has come from England, or her colonies, shall be declared good prize, whoever may be the owner.

2. Every vessel which, in the course of her voyage, shall have entered an English port, shall not enter the ports of the French Republic, except in case of distress, and when that cause shall have ceased, she shall immediately depart.

Correspondence.

List of Letters and Extracts from Letters of John Q. Adams to the Secretary of State, relative to his negotiation of the Treaty with Prussia.

No. 108. Extract, October 31, 1797.
No. 121. Extracts, May 17, 1798.
No. 122. Extracts, May 25, 1798.
No. 128. Extract, July 16, 1798, in which is enclosed a note from John Q. Adams to the Prussian Ministers, dated Berlin, July 11, 1798.
No. 136. Extracts, October 1, 1798, in which is enclosed a note to the Prussian Ministers, dated September 25, 1798.
No. 138. Original letter, October 30, 1798, in which is enclosed a note from Mr. Adams to the Ministers of the King of Prussia.
No. 141. Original letter, December 31, 1798, in which are enclosed two notes, one from the Prussian Minister to Mr. Adams, dated November 29, 1798; the other from Mr. Adams to the Prussian Minister, dated December 24, 1798.
No. 144. Original letter, April 4, 1798, enclosing a note from the Prussian Ministers, dated February 19, 1799, to Mr. Adams, with a copy of their full powers, and Mr. Adams's answer to them, dated March 16, 1799.
No. 147. Extract, May 10, 1799, enclosing a note from the Prussian Ministers, dated April 30, 1799, and the answer of Mr. Adams to them, dated May 4, 1799.
No. 150. Original letter, July 13, 1799, with the treaty perfected.

No. 108.

Extract of a letter from John Quincy Adams, Minister, &c., to Berlin, to the Secretary of State, dated

OCTOBER 31, 1797.

"A few days after I had the honor of writing to you last from London, I received a duplicate of your instructions, dated July 15th, together with a copy of those bearing date the 17th. I shall pay all the attention to them which their importance requires, and the circumstances will admit. It is, however, to my mind very questionable whether it will be expedient to propose the alterations suggested in your letters, except that relative to the embargo. The principle of making free ships protect enemy's property has always been cherished by the maritime Powers who have not had large navies, though stipulations to that effect have been more or less violated. In the present war, indeed, they have been less respected than usual, because Great Britain has held more uncontrolled the command of the sea, and has been less disposed than ever to concede the principle; and because France has disclaimed most of the received and established ideas upon the laws of nations, and considered herself as liberated from all the obligations towards other States which interfered with her present objects, or the interests of the moment. Yet, even during this war, several decrees of the French Convention, passed at times when the force of solemn national engagements was felt, have recognised the promise in the Treaty of 1778; and at times it has been in a great degree observed. France is still attached to the principles of the Armed Neutrality, and yet more attached to the idea of compelling Great Britain to assent to them. Indeed, every naval State is interested in the maintenance of liberal maxims in maritime affairs against the domineering policy of Britain. Every instance, therefore, in which these principles are abandoned by neutral Powers, which favor the rights of neutrality, is to be regretted as furnishing argument, or at least example, to support the British doctrines. These observations apply with more weight with regard to the Swedish Treaty than to the other, as I believe Sweden is peculiarly attached to the liberal system, and entertains hopes that it may finally prevail by the concurrence of all the maritime Powers, excepting only Britain."

No. 121.

Extract of a letter from John Quincy Adams to the Secretary of State, dated

BERLIN, *May* 17, 1798.

"I deem it highly inexpedient to propose any alteration in the principle agreed upon in our present treaty neutralizing enemy's property on board of neutral vessels. It is indeed true, that this stipulation has not, in the course of the present war, been observed by France. But she has uniformly professed her attachment to the principle, and attributed her violation of it to the example and previous practice of her enemy. There is certainly a great inconvenience, when two maritime States are at war, for a neutral nation to be bound by one principle to one of the parties, and by its opposite to the other; and in such cases it is never to be expected that an engagement favorable to the rights of neutrality will be scrupulously observed by either of the warring States. It appears to me, therefore, that the stipulation ought properly to be made contingent, and the contracting parties to a Commercial Treaty should agree that, in all cases when one of the parties should be at war and the other neutral, the bottom should cover the property, provided the enemy of the warring Power admitted the same principle, and practised upon it in their Courts of Admiralty; but, if not, that the rigorous rule of the ordinary law of nations should be observed.

"In truth, I am fully convinced that there is only one Power in Europe averse to the general establishment of the principle favorable to neutrality; a Power which does not even disguise the pretension of domineering upon the ocean, and whose naval force is almost equal to that of all the world besides. It must be admitted, that, so long as she rejects the liberal principle, every agreement of other nations between themselves admitting it, excepting contingently, as above stated, must, if it have any operation, operate altogether in her favor, and to her advantage; for while it gives her the benefit of a safe and protected neutral conveyance of her goods, it refuses the same to her enemy."

No. 122.

Extracts from a letter of John Quincy Adams to the Secretary of State, dated

BERLIN, *May* 25, 1798.

"I shall be guided by your instructions relative to the stipulations upon the subject of neutral commerce, though I have very recently written that, in my own opinion, the proposal of an alteration would be inexpedient. The reasons for my opinion are given in my last letter. Sweden and Prussia are both strongly attached to the principle of making the ship protect the cargo. They have more than once contended that such is the rule even by the ordinary laws of nations. A Danish author of some reputation, in a treatise upon the commerce of neutrals in time of war, lays it down as a rule, and argues formally, that, by the law of nature, free ships make free goods. *Lampredi*, a recent Florentine author, upon the same topic, has discussed the question at length, and contends that, by the natural law in this case, there is a collision of two rights equally valid; that the belligerent has a right to detain, but the neutral an equal right to refuse to be detained. This reduces the thing to a mere question of force, in which the belligerent, being ready armed, naturally enjoys the best advantage. I confess the reasoning of *Lampredi* has, in my mind, great weight, and he appears to have stated the question in its true light."

"I intend to propose a conditional article, putting the principle upon a footing of reciprocity, and agreeing that the principle, with regard to bottom and cargo, shall depend upon the principle guiding the Admiralty courts of the enemy. This will at once discover our own inclination and attachment to the liberal rule, and yet not make us the victims of our adherence to it, while violated by our adversaries. Whether the other party will, in either instance, accede to this, I cannot undertake to say; but you may be assured that, after your last instructions, I shall not accede to the renewal of the articles under their form in the previous treaties."

No. 122.

To their Excellencies the Ministers of State and of the Cabinet of the King.

The subscriber, Minister Plenipotentiary of the United States of America, upon his arrival at Berlin, had the honor to deliver to their Excellencies a copy of the full power with which he is charged, on the part of the United States, to renew the Treaty of Amity and Commerce between His Majesty and the United States, with such alterations as may be agreeable to both parties mutually.

He has now that of communicating to their Excellencies the alterations which he is ordered to propose, on the part of his Government, and to add some observations upon the motives which gave occasion to those propositions.

The twelfth article of the former treaty declares, that in case either of the high contracting

parties should be at war with another Power, enemy's property, on board of the neutral vessel, shall not be subject to be made prize. It is proposed to substitute, instead of this rule, that of the ordinary law of nations, which subjects to seizure enemy's property on board of neutral vessels.

The Government of the United States is not unaware, that the principle which communicates to the cargo the character of the vessel, would be conformable to the interests of the United States, as they are persuaded it would be to those of Prussia, and all the Powers preserving neutrality in maritime wars, if it could be universally acknowledged and respected by the belligerent Powers. But it is known that the Powers most frequently engaged in naval wars do not recognise, or do not respect, the principle. The United States have had, during the present war, the experience that, even the most formal treaty did not suffice to secure to them the advantage of this principle; but, on the contrary, only contributed to accumulate the losses of their citizens, by encouraging them to load their vessels with merchandise declared free; which they have, notwithstanding, seen taken and confiscated, as if no engagement had promised them all security.

At the present moment neither of the Powers at war admits the freedom of enemy's property on board of neutral vessels. If, in the course of events, either of the contracting parties should be involved in war with one or the other of those Powers, she would be obliged to behold her enemy possess the advantage of a free conveyance for her goods, without possessing the advantage herself, or to violate her own engagements, by treating the neutral party as the enemy should treat her.

It is for the same reason proposed, instead of the thirteenth article of the former treaty, to admit a list of contraband of war, and to comprise in it ship-timber, tar, pitch, turpentine, and rosin, copper, (in sheets,) sails, hemp, cordage, and generally everything serving for the equipment of vessels, unwrought iron and fir planks excepted. These two changes indicate several additional articles, naturally proceeding from them: as, for instance, a designation of the papers which shall be necessary to ascertain the neutrality of vessels and their cargo; and, likewise, the restrictions proper to prevent the armed vessels of the belligerent Power from abusing the privilege of arresting neutral vessels, and seizing the enemy's property found on board.

By the sixteenth article of the former treaty, the vessels of the subjects or citizens of each of the high contracting parties, in the ports of the other, are declared exempt from all embargo. It is proposed, in the treaty, to subject them to every general embargo, which the respective Governments may judge necessary. This proposal is founded upon the necessity under which both Governments are supposed alike liable to find themselves, of imposing, from time to time, a general embargo upon all the vessels either in all its ports, or in certain particular ports; exceptions, then, might defeat the advantages which might be expected from this measure, and may, besides, give occasion to comparisons, which one would wish to avoid, on the part of other nations, whose vessels would be detained with those belonging to the nation itself where the embargo should be laid.

The nineteenth article will require some alteration. By the present engagements of the United States, no vessel that shall have made either English or French prizes can obtain an asylum in the ports or harbors of the United States.

A modification of the twentieth article may declare that it shall not be understood to invalidate the guaranty of the French possessions in America, stipulated by the United States in their Treaty of Alliance with France, bearing date 6th February, 1778.

It is proposed to omit the last clauses of the twenty-third article, which declare, that, in case of war between the high contracting parties, the merchant and trading vessels shall not be subject to capture. This stipulation, being of little importance as to the high contracting parties, between whom no probability of war, no opposing interests which might lead to it, appear to exist; it is, therefore, in regard of other nations, who may require similar conditions when they might import very different consequences, that this engagement is desired to be omitted.

The twenty-fifth article of the former treaty grants mutually the faculty of keeping Consuls and Vice Consuls, agents and commissaries, in the respective ports: it adds, that their functions shall be determined by a particular agreement, when either of the parties shall appoint to such office. It would, perhaps, be well to stipulate that they shall enjoy the same privileges and powers as those of the most favored nations.

The duration of the new treaty may, like that of the old one, be limited to ten years, reckoning from the day of exchanging the ratifications, with the same faculty of renewing it again at the expiration of that period.

In submitting these observations and propositions to their Excellencies, the subscriber requests them to accept the assurance of his respect and high consideration.

JOHN Q. ADAMS.

BERLIN, *July* 11, 1798.

No. 128.

Extracts of a letter from John Q. Adams, Esq., dated Berlin, 16th July, 1798, to the Secretary of State.

"On the 11th I delivered to Count Finckenstein, first Minister in the Department of Foreign Affairs, a memorial of which I herewith enclose a translation. I would send, at the same time, a copy of the original French, but I do not think it would be prudent to send it unciphered, and I have no French cipher with you: I presume you will not judge it material. I hope you will find it exactly conformable to your instructions and intentions. The proposal for abandoning the principle of making free ships cover enemy's property, I have repeatedly informed you will not be acceptable: still less will that of a large list of contraband, especially comprehending many of the most material articles of Prussian exports. I have said, however, all that occurred to me as calculated to show that these would be but equitable alterations. If these proposals should be accepted, I have mentioned the necessity of some additional articles designating the papers that shall be deemed necessary to prove the neutrality of vessels and their cargoes, and to abuses by the armed vessels of the warring Power. The former treaty mentions the necessity of passports, but leaves their forms unsettled."

"I proposed an alteration of the nineteenth article, which appeared to me necessary to render it conformable to the twenty-fifth article of our treaty with Great Britain; and a modification of the twentieth, which might otherwise be liable to a collision with the guaranty in our treaty with France; although this treaty has, in numberless instances, been violated by the French Government, as it has not been declared by our Government formally dissolved, but as they have, on the contrary, invariably respected it, I thought the stipulation deserved attention."

"The twenty-fifth article referred to a future arrangement at the time when Consuls should be named. As this nomination had taken place, and no arrangement was made, an alteration of the article became necessary. I found, in our treaty with Spain, a precedent for what I proposed; and I believe it is what on our part is conceded alike to all foreign Consuls by law."

No. 136.

Extracts of a letter from John Q. Adams, Esq. to the Secretary of State, dated Berlin, Oct. 1, 1798.

"I have the honor to enclose herewith a copy of a note from the Department of Foreign Affairs here, in answer to mine of 11th July, with the proposals for the renewal of the treaty, which has heretofore been forwarded to you."

"The objections to the changes which, conformably to your instructions, I proposed, are those which I have constantly expected, and repeatedly announced."

"I shall reply to this note as soon as possible; but if you do not think it advisable to renew the stipulation for making the bottom cover the property, and for excepting at least ship timber from the list of contraband, I have no sort of expectation that either treaty will be renewed. At present, I consider myself as expressly forbidden from acceding to their proposal for renewing the twelfth article as it is, and have no idea that they will consent to leave it out."

[Referred to in Mr. Adams's despatch of Oct. 1, 1798.]

Messrs. Finckenstein, Alvensleben, and Haugwitz, to Mr. Adams.

BERLIN, 25*th September*, 1798.

We have considered with great attention the official note which Mr. Adams, Minister Plenipotentiary of the United States of America, has transmited to us the 11th of July of the present year; and, after having discussed the objects of that note with the departments to which they relate, we now reply to it in detail.

The King could not but receive with due sensibility the desire manifested by the United States to cultivate with him the relations of friendship and good will, which have, until this time, subsisted between Prussia and the American Republic, and his Majesty is therefore well disposed to renew the Treaty of Commerce concluded at the Hague, the 10th of September, 1785; and to adopt in it the changes and modifications which the actual circumstances and the respective interests of the two contracting Powers may render necessary.

With this view, we have examined the propositions just made by the Minister Plenipotentiary of tha United States, and we have the honor to communicate the observations to which they have given rise.

The first alteration proposed in his note relates to the 12th article of the ancient treaty, where it is said, "that, in case one or the other of the contracting parties shall be at war with any other Power, the vessels of the neutral Power may navigate in perfect safety in the ports and upon the coasts of the belligerent Powers; free ships making the merchandise free."

For this rule, the United States desire to substitute the following: "That all the property of enemies on board neutral vessels ought to be subject to seizure; and that neutral property on board enemies' vessels should remain free."

It cannot be denied that the ancient principle of the freedom of neutral navigation has been little regarded in the two last wars, and especially in that now carried on; but it is not the less true, that it served until the present time as a foundation and guide to the commerce of all neutral nations; and that, in consequence, it has been, and still is, followed and maintained. If, in the midst of the war now waging, its sudden abandonment and destruction should be advised, the following results might be expected:

1. Inevitable confusion would arise in all the commercial speculations of neutral nations, and the finishing blow would be given to the remonstrances and proceedings which are still urged, in numerous instances, both in England and France, for illegal captures.

2. We should directly oppose the Northern Powers, who maintain, to this very time, the ancient principle of armed convoys.

3. Nothing would be gained by establishing at the present period, the principle that neutral property on board enemies' vessels should be free. Neutral Powers would admit this principle with as much reluctance as the belligerent; and this would constitute an additional reason to authorize the judicial condemnation of the prizes made in contravention of the ancient rule.

4. Finally, supposing for an instant, that the great maritime Powers of Europe should wish to acknowledge hereafter the principle substituted by the United States, it would only multiply the embarrassments in the proceedings against the

privateers: for while, formerly, the character of the vessel decided at the same time that of the cargo, it would be necessary in future, to distinguish the one from the other, and provide separately the proofs of each.

All these difficulties combined prevent us from acceding to the alteration proposed by Mr. Adams; and we submit to his consideration, whether it would not suit the reciprocal interests of the two high contracting parties, as well as the interests of their commercial citizens and subjects, to suffer the twelfth article to remain provisionally as it is, in conformity with the system which they have maintained to the present time; and to add the eventual stipulation, "that, experience having unfortunately shown, in the course of the existing war, that the ancient principle of free neutral navigation has not been sufficiently respected by the belligerent Powers, the two high contracting parties, upon the return of a general peace, reserve the right of deciding definitely on this subject, either separately between themselves, or conjointly with other interested Powers, in order to concert, with the great maritime Powers of Europe, such arrangements as might serve to establish, in subsequent wars, upon fixed and permanent rules, the liberty and safety of neutral navigation." Mr. Adams proposes, also, to insert, in the thirteenth article, a specific list of the objects which shall be considered contraband in time of war, and to comprehend in it "ship timber, tar, pitch, turpentine, and rosin, copper in sheets, sails, hemp, cordage, and generally all that serves to the equipment of vessels, unwrought iron and fir planks excepted."

If an attempt should be made to specify, in the new treaty, the articles of contraband, we are obliged to adhere to those which have been considered and adopted as such in the maritime convention concluded with Prussia and Russia, the 8th of May 1781, after the example of the Treaty of Commerce and Navigation formed between Russia and Great Britain, the 20th of June, 1766. The eleventh article of this last mentioned treaty declares contraband, "cannon, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, fusils, flints, matches, saltpetre, sulphur, hauberks, pikes, swords, sword belts, cartridge boxes, saddles and bridles, or whatever each man, serving on board a vessel, should be furnished," &c.

This list has been the foundation of those rules of maritime commerce which we have always followed, as well in former wars as in the war now carried on; and it appears to us to embrace all the articles which appertain in reality to contraband property, so called. If this list is susceptible of additional extension at all, we can never consent to its comprehending ship timber, one of the principal productions of the Kingdom of Prussia, and always regarded, in all maritime wars, as an object of unrestricted commerce.

On the other hand, we willingly agree with Mr. Adams, that it will be useful and necessary to designate with precision, in the fourteenth article, the papers and documents with which the master of every vessel should be furnished, in order to establish the neutrality of the vessel and cargo. This should be done according to the usages admitted in our maritime tribunals.

1. The document showing the construction of the vessel, (building letter) or, in its absence, the contract of purchase. The original, or a certificate copy of either the one or the other.

2. The sea-letter, which, within the dominions of the King, is generally issued, for the term of one year, by the provincial officers appointed to inspect the affairs of the maritime commerce. It may be ordered, also, that the sea-letter ought to be renewed every time the vessel shall return to the port from whence she sailed.

3. The register of the crew.

4. The charter-party, or the contract, passed in bulk, for the freight of every vessel; or, where this is deficient, the proof in detail of what the cargo contains.

The change proposed in the fourteenth article is predicated on the suppression of the clause which, in case of a general embargo, would establish an exemption in favor of vessels belonging to the subjects or citizens of each of the two contracting parties. If the interests of the United States, and particular considerations, require in reality, a similar modification, the King will, on his part, accede to it. It will be just, however, to add a stipulation that, in these cases, the ships of the two nations, respectively, shall be treated equally with those of the most favored nation; and that an equitable indemnity should be granted to them as well for the freight as for the losses occasioned by detention.

Nor do we perceive any objection to the alterations proposed by articles XIX and XX, in order to adapt them to the relations subsisting between France and the United States. It may be declared, also, in article XIX, for the greater clearness and safety, that, among the prizes that may be carried into the ports and harbors of the United States, no neutral vessel or cargo shall be found among them, and still less when the property of Prussian subjects. The twenty-third article, which protected the merchant vessels from every species of capture, has, no doubt, been dictated solely by considerations of humanity and benevolence, and it will not be expunged without regret; but, inasmuch as this pleasing theory can with difficulty be enforced, it only remains to renounce it, whenever it can be done consistently with the political interests of the United States.

We acquiesce in the proposed addition to the twenty-fifth article, by which the Consuls of the two Powers, respectively, shall enjoy the same rights and privileges with those of the most favored nation; and we adopt again, for the duration of the treaty, the term of ten years, reckoning from the exchange of ratifications, and providing for its renewal at the expiration of that time.

We believe that, in the present note, we have replied fully to all the propositions which Mr. Adams has been charged to make; and we leave to him the care of transmitting to the United States the counter propositions and observations

herein contained. We shall be ready, at any time thereafter, to resume the negotiation, and also to conclude the treaty whenever he may desire it.

FINCKENSTEIN,
ALVENSLEBEN,
HAUGWITZ.

To Mr. Adams, *Minister, &c. of the U. S.*

No. 138.

Berlin. *Oct.* 30, 1798.

Sir: I have the honor to enclose a copy of the note, which I this day delivered to Count Finckenstein, in reply to the answer of the Cabinet Ministry to my former note of 11th July. Before I delivered it, I had two conferences with Count Haugwitz, concerning the subject matter of it. He professed himself highly satisfied with the within note, and assured me that there would not be the least objection made to expediting the business without waiting for further instructions to me from America. The proposal, to say nothing in the treaty relative to the property of enemies on board of neutral vessels appeared to have his assent altogether. I hope the answer to this note will not be delayed quite so long as that of the last; but as to what its tenor will be, I beg leave to refer you to my former letters, (No. 136, and those preceding it,) relative to this business. I have had no reason to alter my opinions therein expressed.

I have the honor to be, very respectfully, sir, your very humble and obedient servant.

JOHN Q. ADAMS.

The Secretary of State.

[Enclosed in No. 138.]

From Mr. Adams to Messrs. Finckenstein, Alvensleben, and Haugwitz.

Berlin, *October* 29, 1798.

The undersigned, Minister Plenipotentiary of the United States of America, considers it his duty to submit to the consideration of their Excellencies, the following observations on the subject of the objections presented, in the reply of their Excellencies to the note which he had the honor to transmit to them, dated the 11th of July of the present year, proposing certain alterations in the treaty about to be renewed between His Majesty the King of Prussia and the United States.

The principle on which is founded the proposed change respecting the security of enemy's property on board of neutral vessels, is, that, by the law of nations, in times of maritime war, the property of enemies on board of neutral vessels is subject to capture, and that the property of neutrals on board of enemies' vessels is free; that this rule cannot be changed, except by the general consent of all the maritime Powers, or by separate treaties, the stipulations of which cannot extend beyond the contracting parties; that the opposite principle, the establishment of which ought to be one of the principal objects of the Armed Neutrality, was not universally acknowledged even during the period of the American war; and, during the existing war, has not been maintained by any of those Powers which, at that time, acceded to this system; that Prussia, herself, while one of the belligerents in the last war, did not admit it; and that, to the present moment, the ancient principle of the law of nations subsists in all its force among all the Powers, except in the case where the opposite rule is stipulated by the engagements of positive treaty.

In proposing, then, to acknowledge the freedom of neutral property on board the vessels of enemies, and to acknowledge as subject to capture the property of enemies on board neutral vessels, it is only desired to confirm, by treaty, the principles which exist, even at the present moment, independently of all treaties: it is intended, not to make a change in the existing state of things, but to avoid one.

Far from wishing to prescribe on this point to the belligerent Powers, it is not supposed that an agreement between Prussia and the United States could, in any manner, serve as a rule for other Powers, not being parties to the treaty, in order to legalize prizes; and, as the effect of this convention, even between the high contracting parties, could only extend to the future, without being retroactive, it is still less imagined that the reclamations and proceedings of the subjects of neutral Powers, whether in England or in France, would be at all regarded.

Nor has the idea ever occurred that this measure could come in conflict with the Powers of the North, who could not be bound by a treaty to which they would not be the contracting parties; besides, this opposition could not extend to Russia, since, far from sustaining the principle that the flag ought to protect the property, she has engaged, by her convention with Great Britain, dated the 25th of March, 1793, to employ all her efforts to prevent its being carried into effect during the existing war.

Sweden and Denmark reciprocally engaged, in the view of all Europe, by their convention dated the 27th of March, 1794, to lay no claim, in cases not provided for in treaties, to any advantage which shall not be supported by the universal law of nations, "*recognised* and respected to the present time, by all the Powers and all the Sovereigns of Europe." It is not conceived possible to comprehend, under this description, the principle that the property should follow the destiny of the flag under which it sails; and, it may be added, that constant experience has demonstrated the insufficiency of the protection afforded by armed convoys to this principle, since we have seen them follow their convoys regularly, without resistance, into the ports of the belligerent Powers, there to be adjudged according to principles established in their tribunals entirely opposed to the one which makes the vessel neutralize the cargo.

According to the settled usage of the tribunals of all the maritime Powers, the proofs of the character of the cargo ought to be distinct from those which concern the vessel. Even in the treatie

which adopt the principle that the flag protects the property, it is common to stipulate for papers which designate the cargo, for the purpose of proving that it is not contraband. The charter-party, or the bill of lading, is among the papers required by the Prussian maritime tribunals, and which it is proposed to designate as necessary in the new treaty. It seems, then, that the adoption of the principle in question would not exact a single additional paper, and, consequently, would add nothing to the embarrassment of the proceedings against the armed vessels; or, at least, so little as to be considered a slight inconvenience in comparison with the losses and sufferings occasioned by the recognition of a principle which has been abandoned by all the maritime Powers, and which not one of them has effectually maintained; of a principle by which the high contracting party who might be at war would be disadvantageously bound, whilst her enemy would disregard it altogether, and the neutral would present to her citizens or subjects the allurement of a free commerce, only to see it interrupted, intercepted, and destroyed.

But, as the opinions entertained by this Government appear to differ from those of the Government of the United States on the subject of the principles prescribed by the law of nations, and, as it appears to their Excellencies that many inconveniences may result from the substitution of a principle opposed to the one contained in the ancient treaty, the undersigned has the honor to propose to omit entirely this part of the article, and on this point to enter into no engagement whatever; this will leave it in the state in which it formerly stood, without requiring of either of the high contracting parties any stipulation on the subject. And as the establishment of a stable and permanent principle, with the hope of seeing it respected and maintained in future wars, is an object important to commerce in general, and especially to that of the high contracting parties, the undersigned will readily consent to an eventual stipulation similar to that which their Excellencies propose, which, without implying, on the one part or the other, the admission of a contested principle, will defer a decision upon the subject to the period which will follow a general peace, either by an agreement between the high contracting parties, or in concert with the Powers who are interested in its adjustment. At the same time, the United States will be always disposed to adopt the most extended principles which can be desired in favor of the freedom of neutral commerce in time of war, from the moment that they can flatter themselves with seeing it adopted and recognised in a manner to insure its execution.

As to the list of contraband, the undersigned is persuaded that his Government has only been desirous to specify the articles enumerated in his last note, because they have been considered in the class of contraband articles by the laws of nations, independently of treaties. But, inasmuch as ship-timber constitutes an object so important to the commerce of Prussia, he is persuaded that in consenting to exclude it from the proposed list, and thus furnishing the evidence of a desire to conform to the wishes of His Majesty's Government, he will not fail to receive the entire approval of his own.

By the laws and usage of the United States, their vessels ought to be provided with the papers and documents designated by their Excellencies as required by the maritime tribunals of Prussia, such as the sea-letter, the charter-party, or the bill of lading; and, instead of the *beil-brief*, a certificate of the registration, signed by a public officer, and which proves the ownership of the vessel, as well as the time of her construction. Not one of the commercial treaties which have been formed by the United States, to the present time, requires the muster-roll. A great proportion of the remonstrances now made in France, by citizens of the United States, against the depredations of French privateers, are founded on the seizure of their vessels, with their cargoes, for not having been furnished with the muster-roll, a document not required by the treaty with France. If it were possible that foreign tribunals could avail themselves of a convention between Prussia and the United States only, as the pretext of their decisions upon prizes previously made, and concerning which another treaty prescribed the rule, some reason would exist for hesitation in admitting the muster-roll among the papers which it is proposed to specify in the treaty. No difficulty, however, will arise on this point. But, in order to avoid the multiplication of papers, he submits to the consideration of their Excellencies, whether it will not suffice to designate, in addition to the charter-party, or the bill of lading, and the muster-roll, the sea-letter, adding to it the name, the ownership, and the port of the vessel, with the name and residence of the captain, without at the same time requiring the "document of construction," which could only serve to repeat the same proofs.

The condition, that, in the event of an embargo, the ships of the high contracting parties shall receive the same treatment with those of the most favored nation, (with the exception of those exempted by a reciprocal engagement from all embargoes,) and shall receive an equitable indemnity on account of the freight, and for the losses occasioned by detention, is in itself too just to occasion any difficulty.

A reciprocal stipulation not to admit in the ports of one of the high contracting parties the prizes taken from the other, will be equally acquiesced in, as far as is compatible with the prior engagements of the United States, who, by several treaties, have agreed with other Powers for the reciprocal admission of prizes in the ports of each other.

In submitting these observations to the judgment of their Excellencies, the undersigned cannot refrain from tendering his own acknowledgments, as well as the satisfaction which he has no doubt will be felt by his Government, for the readiness with which they have acceded to the other alterations it became his duty to propose. The United States will see in this an unequivocal proof of the good will and friendship of His Majesty

which they cannot estimate too highly. If the present observations and propositions shall have the good fortune to receive the assent of their Excellencies, he hopes that they will be willing to pursue this object, and to put their last hand to the work, without waiting the return of a correspondence so remote as that with the United States. Without wishing to hasten their decision, or to manifest impatience upon a subject which appears to his Government important, he has to regret the delays which have been already caused by events in the course of the negotiation with which he has the honor to be charged. He considers it, therefore, a duty which he owes to his Government and country, to solicit the consent of their Excellencies to permit no further delay to the termination of this business, which may not be required by urgent and indispensable considerations.

JOHN Q. ADAMS.

To the MINISTERS OF STATE, &c.

No. 141.

BERLIN, *December* 31, 1799.

SIR: I have now the honor to enclose copies of the answer of the Cabinet Ministry to my note of the 29th of October, concerning the renewal of the commercial treaty between the United States and Prussia, and of my reply, which I presented to Count Finckenstein on the 25th instant. During the interval from the time when I received the answer, I had repeated conversations with Count Haugwitz upon the subject, and the substance of my reply was founded upon the result of those conversations.

You will observe, by these papers, how tenaciously this Government adheres to the principle of making neutral bottoms cover enemy's property in time of war, and to the very limited list of contraband contained in the treaty of 1766 between Russia and Great Britain. At the time when Frederic II. acceded to the Armed Neutrality, having no commercial treaty with any of the then belligerent Powers, he adopted this list as that which was most favorable to neutral interests, and it has ever since been considered here as the criterion of contraband. After having given up, in my last note, the article of timber for ship-building, I should most probably have abandoned the other naval stores in the present, had not your letter of September 24, expressed so much indifference whether the treaty should be renewed at all. I shall yet abandon them if this Government should persist in rejecting them.

Upon the other point, the stipulation proposed instead of the twelfth article of the old treaty, expressly holds out the question concerning neutral bottoms and goods as a contested point, and it is preceded by a labored argument to prove that, by the present law of nations, the principle of the old treaty is prescribed. But, in conformity to your instructions, I did not think myself authorized even to admit, by any implication, that the principle prescribed by the law of nations can be a subject of controversy, and hence, in objecting to the words which present it as such, it was necessary to answer the arguments in maintenance of the position.

I have, in my reply, offered two alternatives for avoiding, in the new treaty, any mention of the point; and, if a positive inference could be drawn from what Count Haugwitz assured me was his opinion, I might conclude that one or the other of them might be accepted. I shall not be surprised, however, if the difficulty in this case should still recur; for I judge, from what has hitherto passed, that they are apprehensive an alteration of the express agreement in the treaty of 1785 might be construed into an abandonment of the principle, unless the substituted article should contain some expression which should evidently reserve it; and it is perfectly clear that they are extremely averse to abandon the principle. Their own convention with Great Britain, in 1793, is, to be sure, an argument against them, so strong in itself, that I have not thought it necessary to dwell much upon it, and therefore barely alluded to it in my second note. You will see how they explain it in the enclosed answer, and consider it as compatible with the system which, at other times, Prussia has maintained, and now again wishes to support.

In the discussion concerning the papers to be specified for the purpose of ascertaining the neutrality of merchant vessels and their cargoes in time of war, as I had not the benefit of your instructions, I was obliged to proceed upon such principles as occurred to my mind as best calculated to answer the object proposed by those papers. The sea-letter, the muster-roll, and the invoices, appeared indispensable in a treaty which does not adopt the principle of allowing the bottom to protect both persons and goods; but the other paper, for which they so strenuously contend, seemed to me unnecessary, as tending to prove nothing but what the sea-letter alone suffices to show, and as binding the parties to certain forms of documents which their internal commercial regulations might require to be altered. In my last conversation with Count Haugwitz, he concurred with me fully in the opinion; and I hope, therefore, that the additional paper will not be insisted upon. I have felt more embarrassment upon this subject, because I have not with me the latest laws of the United States prescribing the papers with which vessels of the United States must be provided.

The case of the Wilmington packet, upon which so many fruitless applications were made to the Government in Holland for indemnity, suggested to me the idea of allowing time, after the breaking out of war, for the neutral nation to furnish its vessels with the proper papers.

Since receiving your letter of the 25th of September, I have felt much less anxious about the speedy conclusion of the treaty than I was before. In one of my last conversations with Count Haugwitz, I told him that, if the Prussian Government had the smallest scruple or hesitation about the renewal of the treaty, on account of the situation of our affairs with France, I knew enough of the sentiments of my Government to assure him that they

were by no means desirous that Prussia should take any step at which she should feel the smallest reluctance, and, if she thought it most expedient, would postpone the conclusion of the treaty until a time which should be perfectly suitable to both parties. He said he was very glad I had given him an opportunity to assure me, in the most positive and unequivocal manner, that the situation of our affairs with France had never entered into the consideration of His Majesty's Government, in regard to the renewal of the treaty, and that it certainly never would. That the friendly sentiments of the King towards the United States rested upon grounds which could not be affected by the changes in the political views of other European Powers, and that the transactions between the American and French Governments were of a nature which could not induce any impartial and honest third party to favor the latter. He then expressed [himself] with great bitterness and severity concerning the conduct of the French Government in general, and especially upon its present treatment of the King of Sardinia.

Since beginning this letter, I have received your favor of the 7th of November, No. 11, with duplicates of the Nos. 6, 7, 8, 9, and 10; a copy of your letter to Mr. Gerry, of the 25th of June; of your despatch to Mr. King, of the 17th of September, 1796; and extracts of his letters of the 13th of April, and the 3d of June, 1797. I have the honor to be, very respectfully, sir, your very humble and obedient servant,

JOHN Q. ADAMS.

The SECRETARY OF STATE.

The Prussian Minister to Mr. Adams.

BERLIN, 29th *November*, 1798.

We have received the last note which Mr. Adams, Minister Plenipotentiary of the United States of America, has done us the honor to transmit, dated the 29th of October; and we hasten to reply to it, in order to show how greatly it is desired, on our part, to expedite the negotiation with which we are now entrusted, by every means in our power.

Whatever may be the reciprocal dispositions of Mr. Adams, in this respect, it appears, nevertheless, that he finds some difficulty in acknowledging the force of the reasons which have prevented us from agreeing to the proposed alterations relating to the twelfth article of the Treaty of 1785. He objects that, by the ordinary law of nations, the property of neutrals, on board the vessels of enemies in times of war, is free. This rule, it is true, has heretofore been followed by most of the Powers of Europe, and it is to be found in many treaties which have been concluded during the fifteenth and fourteenth centuries; but it is also known that it has been since abandoned: the inconveniences to which it was liable having determined the maritime and commercial nations to depart from it. In the year 1646, the two treaties concluded by the States General of the United Provinces with France and England, have stipulated "that the vessels of friends and neutrals shall render their cargoes free:" and this principle, thus laid down, has been re-affirmed and preserved in almost all the treaties concluded since that epoch among the commercial nations of Europe. The convention formed between Russia and England, in the years 1798, which Mr. Adams cites in his note, is directed against France exclusively, and is, therefore, only an exception to the rule; and if it be true that, in the beginning of the present war, the combined Powers have thought proper to depart from the received principle, this momentary deviation can only be attributed to particular circumstances; and it is not, on that account, the less true, that Prussia had but one permanent system in relation to commerce and neutral navigation. It is founded on the maxim declared in the twelfth article of her ancient treaty with the United States of America; and this rule is better adapted than any other to the convenience of commercial nations: it has restricted the formalities of the required proofs concerning the ownership of the different cargoes of the same vessel; it protects navigation against vexatious searches; and, in a word, arrests the abuses and shackles of every kind to which it is exposed.

We are, moreover, convinced that, in the existing war, in which the commerce and navigation of neutrals are subjected to so many interruptions, purely arbitary, the principle proposed by Mr. Adams would not be more respected than the former; many examples having occurred which show that even neutral vessels laden only with neutral merchandise are liable to be seized and confiscated under all sorts of pretexts, however frivolous.

But it would be useless to extend this discussion; Mr. Adams being convinced, with us, that, instead of hazarding a new stipulation, both eventual and uncertain, it would be better to leave it in suspense until the epoch of a general peace; and then to consider with earnestness the means of insuring the freedom of neutral commerce, and placing it, in future wars, upon a solid basis. Nothing, therefore, remains to be done at present except to suppress, provisionally, the twelfth article of the ancient treaty, and to substitute the following stipulation, to which we suppose that no objection can be made:

"Experience having shown that the principle adopted in the twelfth article of the Treaty of 1785, according to which free ships make the merchandise free, has not been sufficiently respected during the two last wars, and especially in that which is now carried on; and that contradictory dispositions of the principal belligerent Powers not permitting, at the present time, a satisfactory adjustment of the litigated question; the two high contracting parties reserve to themselves the right, after the restoration of a general peace, to resume this subject, either separately between themselves, or conjointly with other Powers whom it also concerns, in order to concert with the great maritime Powers of Europe such arrangements and such permanent principles as may serve to confirm, in future wars, the freedom and safety of neutral navigation and commerce."

Mr. Adams having, in his last note, replied to the reasons which prevent the Prussian Government from including ship timber in the class of contraband articles, we propose to him the alternative either to retain the thirteenth article of the ancient treaty as it is, or to insert in it, specifically, the list of contraband articles extracted from the eleventh article of the Treaty of Commerce and Navigation concluded between Russia and Great Britain, the 20th of June, 1766. If the precaution shall appear necessary, it will suffice to add to the end of the thirteenth article of the new treaty the following passage:

"Shall be considered objects of contraband, cannon, mortars, fire-arms, pistols, bombs, grenades, bullets, balls, fusils, flints, matches, powder, saltpetre, sulphur, cuirasses, pikes, swords, sword-belts, cartouch-boxes, saddles and bridles, beyond the quantity which may be necessary for the use of the vessel, and beyond that which each man serving on board the vessel, or each passenger, ought to possess; and, in general, all that can be comprised under the denomination of arms, provisions, and munitions of war, of whatever kind they may be."

We only desire to simplify the formalities and the proofs which are required of the owners of vessels, in order to verify the neutrality of the vessel and of the cargo; in this respect, however, we are obliged to consult the rules established by our laws, and the usages received in our maritime tribunals. The document of construction (called *beil-brief*,) being precisely the one which proves the neutral quality of the ship, it appears impossible to erase it from the list of papers with which the Prussian navigators should be provided. But as this document is not used in the same form in the American Republic, nothing, in our opinion, would prevent the substitution, by American navigators, of the certificate of registry, which is the equivalent for it, and set forth this difference in the new treaty.

In return, we willingly consent to dispense with the muster-roll, which, it appears, the Constitution of the United States does not allow; but it will be preserved, notwithstanding, among the number of documents prescribed by our laws to the Prussian navigators, and this difference will be also declared in the new treaty.

We entirely concur with Mr. Adams in the other modifications proposed by him, respecting the articles 16, 19, 20 23, and 25; and as we presume that he will readily accede to the equitable observations submitted to his consideration in the present note, we shall expect his assent, in order to reduce the new treaty into proper form, and close, as soon as possible, a negotiation, the prompt and happy termination of which is alike desired by us and him.

FINCKENSTEIN,
ALVENSLEBEN,
HAUGWITZ.

Mr. Adams to the Prussian Ministers.

BERLIN, 24th *December*, 1798.

The undersigned, Minister Plenipotentiary o the United States of America, has seen, with pleasure, in the reply of their Excellencies, in their last note, that almost all the points relating to the renewal of the Treaty of Commerce between His Majesty and the United States, which required discussion, are adjusted; and that, with regard to those upon which some further explanation is still necessary, no difficulty will arise sufficiently serious to retard the conclusion of the negotiation to the entire satisfaction of the two Governments.

He would not hesitate to subscribe to the stipulation proposed by their Excellencies, as a substitute for the 12th article of the ancient treaty, if he could omit the following words: "And the opposing dispositions of the belligerent Powers not permitting the satisfactory adjustment, at the present moment, of the contested question." It is possible that the belligerent Powers may find in these expressions a kind of sanction to their dispositions, which would not accord with the intentions of the high contracting parties; and besides, the undersigned would desire to omit entirely an allusion to a point, of which it is the desire of the two Governments to defer the consideration, rather than to announce it formally as a contested question.

In order to justify the opinion of his Government, on the subject of the principle in question, he believes it his duty to observe that it is not founded on the treaties of the fourteenth and fifteenth centuries. He considers the principle of the law of nations as absolutely distinct from the engagements stipulated by particular treaties. These cannot establish a fixed principle on this point; because such stipulations bind only the parties by whom they are made, and the persons on whom they operate; and because, too, in the seventeenth and eighteenth centuries, as well as in the fourteenth and fifteenth, different treaties have adopted differeut rules for each particular case, according to convenience and agreement of the contracting parties.

Rejecting, therefore, all positive engagements stipulated in treaties, it may be well doubted whether, antecedently to the American war, a single example can be found of a maritime belligerent Power who has adopted the principle that enemy's property is protected by a neutral flag. For, without speaking of England, whose system in this respect is known, France by the ordinance of 1744, renewing the provisions of that of 1781, declares enemies' property on board neutral vessels subject to seizure and confiscation. It excepts from this rule the ships of Denmark and the United Provinces, conformably to the treaties then existing between these Powers and France. This ordinance has continued to have its effect, in the tribunals of France, to the epoch of the ordinance of the 26th July, 1778. By the first article of this last, the freedom of enemies' property on board of neutral ships is yielded to neutrals as a favor, but not as a principle of the laws of nations, since the power is reserved to withdraw it at the expiration of six months, if a reciprocal stipulation should not be conceded by the enemy. Spain by the ordinances of the 1st of July, 1779, and 13th of March, 1780, ordered, in like manner, the seizure

and confiscation of enemies' property found in neutral vessels.

It will only be added, that a celebrated publicist, a Prussian subject, who, in the latter part of the present century, wrote a highly esteemed work upon the laws of nations, *Vattel*, says expressly, (book 3, section 115,) that "when effects belonging to an enemy are found on board a neutral vessel, they may be seized by the laws of war." He cited no example where the opposite principle has been practised or insisted on.

When the system of armed neutrality, however, was announced, the United States, although a belligerent Power, hastened to adopt its principles; and during the period succeeding this epoch in which they were engaged in war, they scrupulously conformed to them. But, on the first occasion, when, as a neutral Power, they might have enjoyed the advantages attached to this system, they saw themselves deprived of these advantages, not only by the Powers who had never acceded to these principles, but also by even the founders of the system. The intentions of the combined Powers, it is true, were exclusively directed against France, but the operation of their measures did not extend the less to all neutrals, and especially to the United States. However peculiar may have been the circumstances of the war, the rights of neutrality could not be thereby affected. The United States have regretted the abandonment of principles favorable to the interests of neutrality, but they have perceived their inability to prevent it; and they are persuaded that equity cannot require of them to be the victims, at the same time, both of the rule and of the exception; to be bound, as a belligerent party, by laws, of the advantages of which, as a neutral Power, they are wholly deprived.

It is the wish, however, of the Government of the United States, to prove that it has no desire to depart from the principles adopted by the Treaty of 1785, except upon occasions when an adherence to those principles would be an act of injustice to the nation whose interests are confided to it. In consequence of the instruction he has received, the undersigned has the honor to propose, in adopting, (with the omision of the words already cited,) the stipulation contained in the note of their Excellencies, as a substitute for the twelfth article, the insertion of a clause to the following effect:

"And if, during this interval, one of the high contracting parties shall be engaged in a war to which the other is neutral, the belligerent Power will respect all the property of enemies laden on board the vessels of the neutral party, provided that the belligerent Power shall acknowledge the same principle with regard to every neutral vessel, and the decision of his maritime tribunals shall conform to it."

If this proposition has not the good fortune to be accepted by their Excellencies, the undersigned takes the liberty to make another; it is to adopt nearly the formula of the Treaty of 1766, between Russia and Great Britain, and to say that, "as to the search of merchant vessels, *in time of war*, the vessels of war and the private armed vessels of the belligerent Power will conduct themselves as favorably as the object of the then existing war will permit; observing, as much as possible, the principles and rules of the laws of nations, as generally recognised."

He cites this Treaty between Russia and Great Britain, because their Excellencies propose to take it as authority in defining the articles of contraband, and because this article is renewed by the Treaty of Commerce concluded between the same two Powers the 10th (21st) February, 1797.

The undersigned had flattered himself, after their Excellencies' reply to his first note, that ship timber would be the only article of those which he had specified which they would have any difficulty in admitting in the list of contraband. In adopting the proposition to preserve the principles, with regard to contraband, contained in the 13th article of the ancient treaty, he still hopes that they will consent to add the articles cited in his first note, with the exception of ship timber, to the list contained in the Treaty of 1766, between Russia and Great Britain. He had supposed that the stipulation that even contraband articles should not be subject to confiscation would have the tendency to faciliate this arrangement.

It would also, perhaps, be proper to omit the term *provisions*, which appears synonymous with that of munitions of war, and which is susceptible of being interpreted in a broader sense than that intended by the high contracting parties.

As to what regards the papers to be produced, in order to prove the neutrality of the vessels and their cargoes, the undersigned has the honor to observe, that, in designating certain documents, which the armed vessels of one of the high contracting parties should have the right to demand in time of war of the merchant vessels of the other, the respective Governments do not intend to resist the reciprocal power of ordering, for the municipal regulation of their commerce, whatever document or paper they may think proper to prescribe to their citizens or subjects; that, consequently, the Government of his Majesty may, at all times, require his commercial subjects to have the *beil-brief* on board their vessels; and, in like manner, the Government of the United States may order their seamen to be provided with a certificate of registry, although neither of these papers may be prescribed by the treaty. But, on the part of both, the nature of this document appears to be rather to prove the ownership of the vessel, on a question concerning the individual and his Government than the neutrality of the vessels, before the officers or tribunals of a foreign Power. It is the very document, on the credit of which the Government relies in granting its protection to the vessels which may be provided with it; but, as it regards foreigners it becomes a superfluous document, when the sea-letter, supported by the signature of public officers, gives still greater authenticity to all that it can attest.

When the armed vessel of a belligerent Power and the merchant vessel of a neutral Power meet together at sea, three objects are presented, to which the first will naturally look in order to ascertain the neutrality of the second—the vessel, the cargo, and the crew. Each of these objects has its own document. The sea-letter is that which particularly concerns the vessel; and, when it is found perfectly regular, it seems unnecessary to confer the right to exact others, the only effect of which would be to confirm what that alone ought sufficiently to prove.

The undersigned has taken the liberty to make these observations, because he has thought that the interests of the two high contracting parties would be equally consulted by not stipulating in a treaty for documents which seem more properly to appertain to the interior administration, and which each Government would probably desire to continue or to change, as its own policy might dictate, without embarrasment or control. A clause to that effect may even be added to this article, where a question may arise respecting the papers. However, if their Excellencies shall continue to think it necessary, the undersigned will not hesitate to specify the *beil-brief* for the Prussian vessels, and the certificate of registry for those of the United States, among the papers designated in the treaty.

He will also admit the muster-roll for the vessels of the two nations. This paper is not excluded by the Constitution of the United States. It is true, that it is not required by any of their former treaties; but the usage of having it is recently established, in consequence of the inconveniences which have been felt from not possessing it; and the Government will find no difficulty in expressly naming it in the new treaty, so as to prevent the possibility of any misunderstanding on this subject.

As all these papers ought to be stipulated only for the case when one of the high contracting parties shall be at war, and as their sole object is to prove the neutrality of the vessels and their cargoes, it would seem proper to give a delay (of three months, for example,) after the declaration of war, or notification of hostilities, before the expiration of which, these documents shall not be considered absolutely necessary. The justice of a similar arrangement will be evident, when it is considered that some time must be requisite to furnish the vessels of the neutral party with papers, the use of which will naturally cease in time of peace.

The undersigned has also the honor to apprize their Excellencies that, subsequently to the last note he has had the honor to transmit to them, he has received official information of a law of the United States, approved by the President of the United States, the 7th of last July, by which all the Treaties between the United States and France are declared to be no longer obligatory upon the Government and citizens of the United States. The reasons upon which this law is founded are declared in the preamble: "Because the engagements contained in these treaties have been manifestly violated on the part of the Government of France; because the just demands of the United States, for the reparation of these injuries, have been rejected, and their efforts to negotiate an amicable arrangement, upon all the differences existing between the two nations, rejected with indignity; and because, under the authority of the Government of France, a system of predatory violence has been continued, opposed alike to the aforesaid treaties, and to the rights of a free and independent nation." In consequence of this law, it will not be necessary to stipulate, on the part of the United States, in the new treaty, the exceptions in favor of France, proposed in the first note of the undersigned; nor to renew that which is contained in the 19th article of the Treaty of 1785.

The undersigned concludes, by observing, that he only awaits the time which will be convenient to their Excellencies, either to receive the formal project of a treaty which they shall have prepared, or to present one himself, as shall be most acceptable to them.

JOHN Q. ADAMS.

The MINISTERS OF STATE, &c.

No. 144.

BERLIN, 4*th April*, 1799.

SIR: Since I had the honor of writing to you last, I have received from the department of Foreign Affairs here a note, with a copy of the full powers given by the King to the three Ministers at the head of that department, to renew the Treaty of Commerce between the two Powers, and they sent me, at the same time, the project of a treaty, in the French language. I have replied, by a note containing my observations upon such parts of the projected plan as appeared to me to require them, and have returned the plan, with such alterations noted in the margin as I thought would be necessary or proper, and with a copy of the same plan, as verified by the marginal alterations, in our own language, for the consideration of the Cabinet. I enclose herewith copies of these papers, excepting of the projects for a treaty, which I shall reserve until we shall have agreed upon the tenor of the instrument; and, in the notes themselves, you will see in what respect they differ from the former treaty.

It is more than a fortnight since I delivered to Count Finkenstein my reply, with the two projects; and Count Haugwitz had before had them a fortnight in his possession. He told me that there would be few objections, perhaps none at all, to the alterations I proposed; and I do not apprehend that any further essential difficulty will occur to impede an agreement and the conclusion of the treaty.

I did not think it expedient to insist any further upon comprising naval stores among the articles of contraband, because they had given up the point of making free ships free goods; and, as it was evidently with reluctance on their part, I considered myself fully authorized by your instructions to show a disposition to comply with their wishes in the other particular. These articles have, indeed never been allowed by this country to be contraband, and even Great Britain has generally considered them as free, so far as Prussia is concerned. In the general Prussian code of laws, they are expressly named as *not* contraband, and they could not have been admitted under the opposite denom-

ination, without repealing a law which has reference to all other nations as well as to the United States.

The alteration in the twenty-first article I agreed, without hesitation, to adopt, as it appeared much more equitable than the former arrangement, and as the salvage allowed to ships of war is the same which the British Courts of Admiralty have allowed in cases of recapture of American vessels from French cruisers, though without any stipulation upon the subject by treaty. And I have not understood that any complaint has been made against this disposition.

I have the honor to be, with great respect, sir, your very humble and obedient servant.

JOHN Q. ADAMS.

The SECRETARY OF STATE.

The Prussian Ministers to Mr. Adams.

BERLIN, 19th *February*, 1799.

The note, dated the 24th December last, which Mr. Adams, Minister Plenipotentiary of the United States, has done us the honor to transmit, brings us to the close of the interesting negotiation with which we have been occupied with him during his residence at Berlin; and we now find ourselves prepared to communicate the subjoined *projet* of a new treaty, upon which it will be necessary to make a few observations.

We had proposed to him, in our note of the 29th November, to omit entirely the discussion which has arisen on the subject of the twelfth article, relating to neutral navigation; and we are now governed by the same desire in adopting, without variation, the stipulation which ought to be substituted for the one contained in the ancient treaty. Agreeably to the desire expressed by Mr. Adams, we have expunged the passage which refers to "the contradictory dispositions of the present belligerent Powers;" and following the analogy of the treaty concluded in 1766 between Russia and Great Britain, we have added an additional clause, which relates to the search of merchant vessels in time of war; by means of which this article will be found perfectly regular.

It is different with the thirteenth article, which concerns objects of contraband. We have declared to Mr. Adams, in our first note of the 25th of September, 1798, "that if it should be necessary to specify them in detail in the new treaty, we shall be obliged to restrict them to those which have been stipulated and adopted as such in the maritime convention concluded between Prussia and Russia, the 8th of May, 1781, after the example of the Treaty of Commerce and Navigation concluded between Russia and Great Britain, the 20th of June 1766."

According to this principle, we have declined to place ship timber on the list of articles of contraband; and we have also tacitly omitted the other exceptions which Mr. Adams has proposed to us. These are, also, the productions of the soil, or of the industry of Prussia, which have been considered in every war as lawful merchandise, and which we have no power to prohibit. Mr. Adams will, therefore, be willing, after our example, to adhere to the ancient list, which has, to the present time, served as a rule for all the maritime Powers. We have in this article omitted the word *provisions*, which seemed to him liable to objections.

To manifest to this Minister how much we are disposed to enter into his views, as well as to abridge superfluous formalities, we consent to suppress the document showing the building of the vessel, and we have, therefore, passed it over in silence to the 14th article; so that, in time of war, neutral vessels will have occasion for no other papers, except the sea-letter, muster roll, and charter party. Agreeably to the proposition of Mr. Adams, a delay of three months, after a declaration of war, is granted to the respective navigators to provide themselves with the required documents.

Finally, we have expunged from the nineteenth and twentieth articles the exceptions in favor of France, which have been revoked by the law of the United States of the 7th of last July.

After having thus yielded to the propositions of Mr. Adams, and to the views of his Government all that depended upon us, it remains for us to invite his attention to an article of the ancient treaty, which has not yet been noticed in the course of the negotiation, and which seems, nevertheless, to require revision. We refer to the twenty-first article, which has established, in 1785, exorbitant insurances, at the expense of the merchant vessels, which, in time of war, may be retaken from the enemy by vessels of war, or private armed vessels of either nation. The promised remuneration to private armed vessels has been fixed at one-third of the value of the vessel and cargo, when the vessel shall not have been in the power of the enemy more than twenty-four hours, and the owner would be condemned to lose the whole should the vessel be retaken after twenty-four hours.

As to the vessels of war, a thirtieth of the value is adjudged them, in the first case, and a tenth in the second. At the time the ancient treaty was concluded, these were the customary rates; but a new code of laws, subsequently introduced into the Prussian monarchy, has adopted on this subject the following regulation—*Title* 9, § 208–10:

"That if a Prussian privateer, or vessel of war, should retake a ship or merchandise belonging to the subjects of the King, or to those of a friendly neutral Power, the captor ought not to retain his booty, except where the vessel shall have been carried, before the recapture, into a neutral or enemy's port. But if the recapture has taken place before the vessel, or cargo, shall have been carried into an enemy's or neutral port, they shall be restored to the first owner upon a recompence being made; this recompense, in the case of private armed vessels, is fixed at one-third of the value; and, where vessels of war are concerned, it shall be determined, in each particular case, by the maritime tribunals."

This regulation, which has been sanctioned by a royal ordinance, published and dated the 24th

of September, 1798, has, in many respects, moderated the stipulations of the Treaty of 1785, and especially has abolished the short and unjust delay of twenty-four hours, which formerly, to the injury of the legitimate owner, sufficed to determine the fate of a vessel captured by the enemy.

A short time, however, after this law had been introduced into the dominions of the King, the Court of Madrid invited His Majesty, last November, "to observe, reciprocally, in future, between the two Powers, the usages established by the maritime ordinances of Spain, declaring that every national vessel, friend or neutral, captured from the enemy, shall be restored to the owner, for a remuneration of one-eighth of the value, in the case of a vessel of war, and one-sixth to privateers only."

The King hastened to adopt the principle of humanity, thus proposed for his imitation by His Catholic Majesty; and the two Courts have accordingly agreed to conform to it.

It is to be presumed that the United States of America, who, in their first treaty with Prussia, have so clearly manifested their generous intention to withdraw, as much as possible, navigation and commerce from the effects of war, will not, on this occasion, evince a disposition less liberal than others; and we therefore believe that we can appeal with confidence to their Minister. He will himself perceive that we could not be at liberty to agree to the stipulations which would impair the sanctions of an existing law, and that, therefore, in any event, we shall be obliged to conform the twenty-first article to the first modifications herein announced. We would submit it to his option, whether in the treaty to be concluded he will adopt these modifications, or prefer, as a substitute, the still more moderate regulations derived from the maritime ordinances of Spain. In this respect, we will do whatever he may think proper to suggest; and we only expect his reply, to supply the article which remains in blank.

As soon as this shall be done, supposing that we are now agreed on all the other stipulations of our *projet*, we will cause two draughts of the treaty to be prepared, and will not fail to inform him of the day when we may assemble, for the purpose of proceeding to the signature and to the exchange of the full powers. In anticipation of which, we have the honor to communicate herewith a copy of that with which we are provided.

FINCKENSTEIN.
ALVENSLEBEN.
HAUGWITZ.

To Mr. ADAMS, *Minister, &c. of the U. S.*

Full powers to the Ministers of State and of the Cabinet, Count of Finckenstein, Baron of Alvensleben, and Count of Haugwitz, having for its object the renewal of the Treaty of Commerce and Friendship with the United States of America.

We, FREDERICK WILLIAM the Third, by the grace of God, King of Prussia, make known to whomsoever it may concern:

The United States of America having proposed to us the renewal of the Treaty of Commerce and Friendship which our august predecessor, King Frederick the Second of glorious memory, concluded with them the 10th September, 1785; and it being equally our intention to establish on a solid basis the ties of commerce and good intelligence which, to the present time, have so happily subsisted between Prussia and the American Republic: we have nominated, constituted, and deputed, and do nominate, constitute, and depute our Ministers Plenipotentiary—

Charles William, Count of Finckenstein, our Minister of State, of War, and of the Cabinet; Knight of the Orders of the Black and Red Eagle, and Commander of that of St. John of Jerusalem;

Philip Charles, Baron of Alvensleben, our Minister of State, of War, and of the Cabinet; Knight of the Orders of the Black and Red Eagle, and of that of St. John of Jerusalem;

And Christian Henri-Curce, Count of Haugwitz, our Minister of State, of War, and of the Cabinet, Knight of the Orders of the Black and Red Eagle:

To negotiate with John Quincy Adams, Minister Plenipotentiary of the United States of America near our Court, the Treaty of Commerce and Friendship which ought to be substituted for the former; giving them, by these presents, jointly and separately, full and absolute power to confer and deliberate on the objects relating thereto, to conclude the stipulations which a change of circumstances has rendered necessary, and thereafter to sign a new treaty, and such other conventions, declarations, or acts, as they may judge suitable, in order to consummate their negotiation: promising, upon the faith and word of a King, to consider as right, to hold firm and stable, forever, and to accomplish and execute punctually all that our said Ministers shall have stipulated, concluded, and signed, in virtue of the present full powers, without either contravening it, or permitting its contravention by others, from any cause, or on any pretext whatsoever; as also to cause our letters of ratification, in proper form, to be issued and delivered, in order to be exchanged within the time which may be agreed upon.

In faith of which, we have signed these presents, and have caused our royal seal to be affixed thereto.

Given at Berlin the 10th of December, in the year of our Lord 1798, and of our reign the second.

FREDERICK WILLIAM. [L. S.]

Mr. Adams to the Ministers of Prussia.

BERLIN, *March* 16, 1799.

The Minister Plenipotentiary of the United States of America has received the note of their Excellencies, dated the 19th February, accompanied by a copy of their full power, and the project which they have been pleased to transmit. He hastens to make some observations in reply, for which he solicits the indulgence they have been kind enough to extend to his previous representations on the same subject.

The ancient treaty of 1785 was concluded and signed, as an original, in two languages, the French and English; and the undersigned hopes that the new treaty will be executed in the same manner. Relying on this expectation, he has now the honor to transmit the project in the English language; in which he has repeated the terms of the ancient treaty, in every article where the project of their Excellencies has preserved the French terms, with the exception of two inconsiderable changes, rendered necessary by the alterations in the Constitution of the United States: the one in the preamble, the other in the fourth article.

As to the new articles, a translation has generally been made by the undersigned, in the project which their Excellencies have communicated. He would, in his opinion, very ill return the courtesy which he has received in the course of this negotiation, and not less imperfectly exhibit the deference which his Government has desired him to manifest towards His Prussian Majesty, if he insisted further on the article of contraband. He has, therefore, in this respect, adopted entirely the provisions contained in the project of their Excellencies.

Upon the same principle, he has not hesitated to adopt, in relation to maritime recaptures, the alternative of those proposed by their Excellencies, which he finds has been sanctioned by the approbation and preference of His Majesty the King of Prussia; being persuaded that his Government will do itself the honor of participating in those sentiments of humanity which have dictated that preference.

The term "high," applied to the contracting parties, is not found in the articles copied from the ancient treaty. It is proposed to erase it from the new articles, not only for the sake of uniformity, but because the United States, having declined the adoption of any title of distinction, have never applied this epithet in any of their treaties.

In the thirteenth article, the terms "heretofore called" do not appear to apply appropriately to the articles of contraband; since the article itself contains a list of what is contraband. On that account it is proposed to expunge them.

In the fourteenth article, it is wished to add, that the charter-party, or bill of lading, as well as the muster-roll, shall be accompanied by the certificates of the public officers who are accustomed to issue them, in order to give to these papers a degree of authenticity, without which no documents would be entitled to credit, even in the private transactions of individuals. The undersigned believes that these documents are in use within the Prussian dominions, and that their Excellencies have intended to comprise them within the words "bills of lading," and "muster-roll." But as these certificates are not an essential part of these papers, and as these papers themselves are only necessary in a time of maritime war, it would perhaps be better to name them expressly. Another consideration appears to render these certificates necessary; the bills of lading, on board of American vessels, very frequently designate only the bales and boxes, with their marks and numbers, without specifying their contents, as is required of Prussian navigators by the laws of this country.

The project of the undersigned has slightly varied the clause which gives to the navigators a delay of three months, in order to procure the documents necessary in time of war. It only exacts these documents from vessels which shall have sailed from the ports of the neutral Power more than three months after the neutral Government has knowledge of the war; because, on the one hand, the vessel may be at sea more than three months after a declaration of war, without possessing these documents, if it shall have sailed from a neutral port before, or a little after this declaration; and, on the other, the intention of the contracting parties is not to exempt neutral vessels from the production of every document that can prove their neutrality; (an exemption which the enemies of the belligerent party may abuse, by demanding it without right,) but to allow the vessels necessarily unprovided with these specified documents every other reasonable and equivalent proof.

In the fifteenth article it may be proper to omit the stipulation that ships of war shall not approach neutral vessels within cannon shot. Although this engagement is frequently to be found among modern treaties, it has been seldom or never observed. It would be always difficult, and sometimes impossible, to observe. In tempestuous weather a boat could be rarely sent the distance which would be necessary, if the vessel should remain out of cannon's reach. In moderate weather, the two vessels must stop while a boat is passing between them, and this would occasion a useless waste of time, both to the neutral and belligerent vessels; besides, in binding one's self by this stipulation towards a neutral, an obligation is also created in favor of an enemy, since nothing is more usual with belligerent vessels than attempts to escape an enemy under the mask of a neutral flag. But, if this clause were observed, an armed ship would be arrested in the pursuit of every vessel that could raise a neutral flag; and, if a pretended neutral were at liberty to remain out of the reach of cannon while a boat could be sent for the examination of papers, facilities would be given to fraud.

In the same article, the words "passports and documents" seem more proper than "sea-letters and passports," which have been borrowed from the ancient treaty, which does not require the documents designated in the new one.

In the sixteenth article, to avoid the possible construction that the ships of one of the parties in the ports of the other might be subjected to an embargo, for the purpose of being employed on some special occasion, it is proposed to substitute for the words "public or private" the word "whatsoever."

To the nineteenth article a clause has been added, to make it conform to the subsisting treaties between the United States and Great Britain, to which the undersigned referred in his note to their Excellencies, dated the 11th July of the last year.

In submitting these remarks to the consideration of their Excellencies, he has only to add, that, whenever they shall have decided whether it will be their pleasure to sign the treaty in the two languages, he will cause two copies of the original to be prepared in English, that he may be ready, at the time it may suit their convenience, to proceed to the exchange of the full powers and to the signature.

JOHN Q. ADAMS.

To the MINISTERS OF STATE, &c.

No. 147.

Extract of a letter from John Quincy Adams, Minister, &c. at Berlin, to the Secretary of State, dated

"MAY 10, 1799.

"I received a few days since a note from the Cabinet Ministers, with a new project for a treaty, in which they have complied with all the alterations I had proposed in my last note, excepting in one particular, and for that they offer an expedient, which, I think, will answer perfectly well the purpose. I have therefore replied, and sent them a draught in our language entirely conformable to their plan; so that, at present, we are fully agreed upon the tenor of the treaty, the several copies of which only remain to be drawn up and signed, which I hope will be done in the course of a month."

The Prussian Ministers to Mr. Adams.

BERLIN, *April* 30, 1799.

In the reply we have now to make to the note of Mr. Adams, Minister Plenipotentiary of the United States, dated the 16th of March, but few observations will be necessary.

The greater part of the alterations which he has recently suggested present no essential difficulty. We have, therefore, unhesitatingly adopted them, in conformity with his desire. The only exception is in the fourteenth article, in which he proposes to stipulate "that, in times of war, the char ter-parties, bills of lading, and lists of the ship's company, shall be issued by the magistrates or public officers of the place from whence the ship shall have sailed." We are informed, from the statements with which we have been furnished on this subject, that, in some of our provinces, the practice has prevailed for a long time, to issue the above named sea-papers judicially; but that, in others, our merchants and owners of vessels are content with making their contracts before a notary or a commissary of justice, and sometimes even under a private seal; and they are, in this respect, the more enabled to follow the established usages and consult their own convenience, inasmuch as there is no law enacted by the Sovereign, or recognised by the maritime tribunals, which has required of them more rigorous formalities. It is not, therefore, within our competency to impose on the subjects of the King a new restraint, which would conflict with their rights and privileges; and the nearest approximation which we can make to the views of Mr. Adams is, to add to the fourteenth article "that the documents shall always be issued in the form established at the place from whence the ship shall have sailed." He will be the first to acknowledge that it is not in our power to go beyond this; and, in justification of our decision, we rely upon that equity of which he has given, in the course of the negotiation, so many satisfactory proofs.

All the residue of the treaty is in conformity with his desires; and we can anticipate no objection to the second project we herewith communicate. We pray him, however, to collate once more the English translation, herewith also transmitted, and to change the latter, in the passage redrawn in the 14th article, according to the alteration in the French text.

Perhaps, also, it will be necessary to retrench the last period of the same article, as well as the 7th, 19th, and 21st articles, to assimilate them still more to the expressions and phraseology which we have adopted in the original.

After Mr. Adams shall have had the goodness to return these two copies, we will not delay the conclusion of the treaty in duplicates, each in the two languages; and nothing will afterwards prevent our proceeding with him to the signature.

FINCKENSTEIN,
ALVENSLEBEN,
HAUGWITZ.

Mr. ADAMS, *Minister, &c. of the U. S.*

Mr. Adams to the Ministers of Prussia.

BERLIN, *May* 4, 1799.

The Minister Plenipotentiary of the United States of America has the honor to return to their Excellencies the new project of the treaty which they have been pleased to transmit to him, with the copy in English, which has been made to conform to it throughout.

In adopting, without hesitation, all the changes which their Excellencies have thought necessary, as well in relation to the papers stipulated by the 14th article, as to the phraseology of the 17th, 19th, and 21st articles, he will confine himself to the single remark that, in his project, in order to designate the modification at the close of the 19th article, he has used the precise expressions of the treaty between the United States and Great Britain; and as it is the extent of the engagement formed by a previous treaty, which ought to serve as the measure of its actual modification, he understands that the change of phraseology, in this article, will occasion no difference in its meaning.

He will be ready to sign the treaty as soon as the copies shall be prepared, and at whatever moment their Excellencies may signify their wishes.

JOHN Q. ADAMS.

No. 150.

BERLIN, *July* 13, 1799.

SIR: I have the honor to send with this the two originals, in the French language and our own, of the Treaty of Amity and Commerce between His Majesty the King of Prussia, and the

United States, signed on the 11th instant. I am, with great respect, sir, your very humble and obedient servant,

JOHN Q. ADAMS.

The SECRETARY OF STATE.

TUNIS.

[Communicated to the Senate, December 13, 1799.]

Gentlemen of the Senate:

In conformity with your recommendation, expressed in your resolution of March 6, 1798, I have entered into a friendly negotiation with the Bey and Government of Tunis on the subject of the fourteenth article of the Treaty of Peace and Friendship between the United States and that Power. The result of that negotiation I now lay before the Senate, for their consideration.

JOHN ADAMS.

UNITED STATES, *Dec.* 13, 1799.

Extract from the instructions of Richard O'Brien, William Eaton, and James Leander Cathcart, appointed to negotiate alterations of the Treaty with Tunis.

By the powers herewith delivered to you, from the President of the United States of America, you are authorized to confer, negotiate, and conclude, with the Bey and Regency of Tunis, on the alterations to be made in the treaty between the United States and that Power, as arranged in the month of August, 1797, by the agency of Joseph Etienne Famin, who was employed by Joel Barlow, Esq., Agent and Consul General of the United States at Algiers.

The important object of discussion arises out of the fourteenth article of that treaty, of which the following is a translation:

"ARTICLE 14. The citizens of the United States of America who shall transport into the Kingdom of Tunis the merchandise of their country, in the vessels of their nation, shall pay three per cent. duty. Such as may be laden by such citizens, under a foreign flag, coming from the United States or elsewhere, shall pay ten per cent. duty. Such as may be laden by foreigners on board of American vessels, coming from any place whatever, shall also pay ten per cent. duty. If any Tunisian merchant wishes to carry merchandise of his country, under any flag whatever, into the United States of America, and on his own account, he shall pay three per cent. duty."

This article is subversive of our great revenue system: it is, besides, without reciprocity. It cannot be important to the Bey and Regency, though ruinous to us.

The revenues of the United States arise chiefly from duties on goods imported. These duties generally exceed ten per cent. They are imposed on our own merchants, and increased on the merchants of foreign nations. Our treaties with those nations stipulate that no higher duties shall be paid by their subjects than by those of the most favored nation. Consequently, if this article in the treaty with Tunis should be ratified by the American Government, the duties on all the goods imported into the United States by the subjects of those foreign nations must be reduced to three per cent. This would necessarily involve the reduction of the duties on goods imported in our own vessels, or our whole navigation would sink under the unequal burden. This sacrifice, then, it is impossible to make. We should thereby deprive ourselves of the means of supporting our own Government, of paying our public debts, and even of fulfilling our engagement with the Bey and other Barbary Powers. While no advantage would arise to the Bey and his *proper subjects*, probably a few European and Jewish merchants, settled at Tunis, would alone be benefited.

For these reasons, the President cannot apprehend any difficulty in your obtaining the Bey's consent to abolish the fourteenth article before mentioned. In its place may be substituted a stipulation that the commerce of the United States with Tunis, and of Tunis with the United States, should be on the footing of the commerce of the most favored nations, for the time being, respectively. At all events, the fourteenth article must be rejected, if war should be the consequence.

This evil, however, by every soothing and persuasive measure, you will endeavor to prevent. Should, it nevertheless, be insisted on, it will evidently be for the purpose of extorting further stipulations for the delivery of money or stores; but the demand must be resisted. As the article is destitute of any reasonable foundation, without a precedent in any treaty with any other Barbary Power, and strikingly wanting reciprocity, a submission to it would be dishonorable to the United States. If, to prevent a war, anything should be added to the very burdensome contract already made, that addition should not have any reference to the fourteenth article, but be stipulated at large, on the conclusion of the new article or articles which you may negotiate.

The Senate have revised the ratification of the treaty, with the exception of the fourteenth article alone; but the eleventh and twelfth articles are objectionable. In firing salutes in the ports of the two Powers reciprocally, to return gun for gun will be proper; but, as the Tunisian vessels of war would probably never enter the ports of the United States, while the vessels of war of the latter were likely often to enter the ports of Tunis, to stipulate for the donation of a barrel of powder for every gun which shall be required for the salute, was to authorize the levying of a contribution in a way not very honorable on either side. It will, therefore, be desirable to expunge this stipulation, and to confine this article to mutual salutes, gun for gun; and it will be very well to limit the number to *fifteen*, the federal salute. The twentieth article of the treaty with Algiers requires a mutual salute of twenty-one guns; and, if there be any motive to induce the Bey of Tunis to require a salute of more than fifteen guns, the number may be increased to *twenty-one*. If, nevertheless, the Bey should persist in claiming a barrel of powder for every gun fired in his ports, for a salute to a vessel of war of the United States, then it

will be of more consequence to limit the number of guns to at least fifteen, and at most to twenty-one.

In the twelfth article it is stipulated that "the subjects or citizens of the two nations shall be protected by the government or commandants of the places where they may be, and not by the other authorities of the country." This is not very intelligible: possibly it may mean that the officers on the spot shall furnish such protection, without obliging the citizens of the United States in the Tunisian dominions, or the subjects of Tunis in the United States, to seek it at a distance, if the seat of Government be distant; but, if such protection be withheld by subordinate officers, the persons needing protection ought not to be forbidden to resort for justice to the chief authority in each nation. But the clause most objectionable in this article is that which permits the *Government* of Tunis to compel an American captain to put his vessel into its service at such freight as the Government itself shall prescribe. This will put it into the power of any merchant resident at Tunis, who has the ear of the Bey or of one of his chief officers, to command the service of American vessels for compensations wholly inadequate and unreasonable. The fourteenth article of the treaty with Algiers is proper and honorable: "Should the Dey want to freight any American vessel in the Regency or Turkey, *said vessel not being engaged*, in consequence of the friendship subsisting between the two nations, he expects to have the preference given him, *on his paying the same freight offered by any other nation.*"

The three articles in question may be changed into the following forms:

"ARTICLE 11. When a vessel of war of one of the parties shall enter a port of the other in which there is a fortification, he shall be saluted with fifteen guns, which salute the vessel of war shall return, gun for gun."

ARTICLE 12. The first part may stand as it is as far as the words (in the Engish translation.) "which may extend to merchant vessels, but not to those of war;" after which the article may be thus continued: "The subjects and citizens of the two nations, respectively, shall be protected, in the places where they may be, by the officers of the Government there existing; but, on failure of such protection, and for redress of every injury, the party may resort to the chief authority in each country, by whom adequate protection and complete justice shall be rendered."

"In case the Government of Tunis shall have need of an American vessel for its service, such vessel being within the Regency, [and not previously engaged,] the Government shall have the preference, on its paying the same freight as the Tunisian merchants usually pay for the same service, or at the like rate, if the service be without a customary precedent." The words, in brackets, [and not previously engaged] if objected to, may be omitted.

"ARTICLE 14. All vessels belonging to the citizens and inhabitants of the United States shall be permitted to enter the different ports of the kingdom of Tunis, and freely trade with the subjects and inhabitants thereof, on paying the usual duties that are paid by all other nations at peace with the Regency. In like manner, all vessels belonging to the subjects and inhabitants of the kingdom of Tunis shall be permitted to enter the different ports of the United States, and freely trade with the citizens and inhabitants thereof, on paying the usual duties that are paid by all other nations at peace with the United States."

Or, if preferred, the fourteenth article may be in the following form:

"The commerce of the citizens and inhabitants of the United States with the kingdom of Tunis, and of the subjects and inhabitants of the kingdom of Tunis with the United States, shall be on the footing of the most favored nations, for the time being, respectively."

Some such form is indispensable: it is impossible to place the commerce of the Tunisian subjects on a better footing than that of the most favored nation; and there must be an exact reciprocity in the stipulation.

A copy of the act of the Senate on this subject is annexed. By that you will see that an alteration in the fourteenth article only is essential; but you will aim at the proposed alterations in the eleventh and twelfth articles.

SINKING FUND.

[Communicated to the Senate, December 11, 1799.]

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the Board, subsequent to their report of the 15th of December, 1798, so far as the same has been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the 10th of December, 1799, and in the proceedings of the officers of the Treasury therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

SAMUEL LIVERMORE,
President of the Senate, pro tem.

DECEMBER 11, 1799.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund: That no purchases of the public debt of the United States have been made, since the date of the last report to Congress, on the 15th day of December, 1798; and that the sums of capital stock heretofore purchased and transferred, prior to the present year, in trust for the United States, the interest whereon is appropriated by law towards the reduction of the public debt, amount to two millions seven hundred and thirty-four thousand four hundred and seventy-nine dollars and forty-four cents, as will more particularly appear from the document hereto annexed, marked A.

That the following sums have been applied towards the discharge of the principal debt of the

United States, since the date of the last report to Congress, of the 15th of December, 1798:

1. To the fourth instalment of the six per cent. stock, bearing a present interest, which, pursuant to the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," passed on the 3d day of March, 1795, and the act in addition thereto, passed on the 28th day of April, 1796, became payable on the first day of January, 1799, the sum of - - $674,938 02
2. To the payment of the seventh instalment of the subscription loan for bank stock, due on the first day of December, 1798. - - 200,000 00
3. To the payment of the second instalment of a loan of one million of guilders, obtained in Holland, and which fell due the present year, pursuant to a contract, dated the 1st of June, 1787, estimated at 40 cents per guilder, - 80,000 00
4. To the payment of the first instalment of a loan of one million of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated the 13th of March, 1788, estimated at 40 cents per guilder - - 80,000 00

Amounting in the whole to - $1,034,938 02

The payments before enumerated have been made out of the following funds:

1. The interest on the sums which accrued upon the stock purchased, and vested in the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, marked B, $89,375 72
2. The fund arising from the payment of debts, which originated prior to the present Constitution of the United States, as particularly stated in the document marked C. - - - - - 6,710 68
3. The fund arising from the sales of lands in the Northwestern Territory, as particularly stated in the document hereto annexed, marked D. - - - - - 11,963 11
4. The fund arising from dividends on the capital stock belonging to the United States, in the Bank of the United States, from the 3d of March, 1795, to the 30th of June, 1798, after deducting the interest paid on the subscription loan for the same period, as particularly stated in the document hereto annexed, marked E, - - - - 144,889 08
5. The fund arising from a loan obtained of the Bank of the United States, pursuant to the 6th section of the act passed on the 3d of March, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," and agreeably to a resolution of the Board of Commissioners of the Sinking Fund, of the 15th December, 1798, approved by the President of the United States, 200,000 00
6. The proceeds of the duties on goods, wares, and merchandise, imported; on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, appropriated by the 8th section of the act of March 3, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," being for the period, and in reference to the objects, mentioned in this report, 581,999 43

$1,034,938 02

Making in the whole an equal amount to the reimbursement before mentioned.

There remained in the hands of the Treasurer of the United States, as agent of the Board of Commissioners, on the first day of December instant, the sum of five hundred thousand seven hundred and eighteen dollars and fifty-five cents, which, with the growing produce of other appropriated funds, will be sufficient for the reimbursement, at the close of the present year, of the fifth instalment of the six per cent. stock, bearing a present interest, and the eighth instalment of the subscription loan for stock of the Bank of the United States, which reimbursements are required to be made by the 11th section of the act of Congress, passed on the 3d of March, 1795, hereinbefore mentioned.

All which is most respectfully submitted, by

OLIVER WOLCOTT,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Dec.* 10, 1799.

[The tables of details are omitted.]

THE MINT.

[Communicated to Congress, January 8, 1800.]

To the President of the United States:

The Director of the Mint respectfully reports, that there has been coined and issued from the Mint, from the first day of January, to the thirty-first day of December, 1799, inclusive, the quantity of 213,285 dollars, in gold coin; 423,515 dollars, in silver coin; and 9,106 dollars and 68 cents, in copper cents; amounting to 645,906 dollars and 68 cents, or 1,365,681 pieces of coin; which, added to the former returns, makes the whole of the coinage, since the establishment of the Mint, 696,530 dollars in gold, 1,210,158 dollars and 75 cents in silver, and 50,111 dollars and 42 cents in copper cents; making the amount of the whole coinage of the Mint, 1,962,800 dollars and 17 cents; all which will more fully appear by the enclosed returns from the Treasurer of the Mint; as also, that the coinage of the last year has exceeded that of any former year, by 100,208 dollars 68 cents.

It is almost needless to observe, that the 50,000 dollars in copper coin, required by the second section of the act of Congress, passed on the 8th of May, 1792, being now completed, it becomes necessary for the Treasurer of the United States to comply with the provision of the said section, by giving the public notice therein mentioned.

The Mint has been regularly supplied with bullion, both gold and silver, so as to keep it in constant operation, on the present establishment, during the year past, excepting two months, in which the works were totally stopped, on account of the then prevailing fever; and there is a rational prospect that the supply will be continued for the present year.

From the late arrangements with regard to supplies of copper planchettes, for the coinage of cents, there is no doubt but that one press, equal to the coining of 1,400 per day, may be kept in constant operation.

It becomes necessary for the Director to draw the attention of the President to the act of Congress for the establishment of the temporary and permanent seat of the Government of the United States. By the original institution of the Mint, it was established at the seat of Government. By the sixth section of the act of Congress, above referred to, it is enacted "that all *offices* attached to the seat of Government, shall be removed to the permanent seat of the Government of the United States, by their respective holders, on the 1st day of December next." A question has arisen under this act, whether the Department of the Mint is included therein or not. If it is, without further provision by law, the Mint must be removed, with the other Departments, agreeably to the directions of that act; and if it is not, many necessary provisions must be made by law, applicable to the Mint being carried on at a distance from the seat of Government. The doubtful consequences of a removal must strike every person acquainted with the business of the Mint, as it is in a great measure supported by the bullion passing through the different banks of this city, and for want of which, it would frequently be without the means of coinage, while the expense would be nearly the same to the Government. The Director, therefore, thinks it is his duty respectfully to submit to the President the propriety of bringing this subject before Congress, in the early part of the session; this step is rendered more obviously necessary, from the present state of the machinery of the Mint. The works ought to be kept in perfect repair, unless they are so soon to be removed; in which case some parts, not worth the transportation to so great a distance, might be suffered to remain as they are, or barely kept in such repair as to answer for immediate use.

The Director is sorry to observe, that the practice of melting down the coin of the United States, by workmen in gold and silver, is, he fears, becoming too common, to the manifest loss of the United States. As there are not any laws prohibiting it, every one is left to his own discretion, which, from the certainty of the standard, becomes so great a convenience, if not a pecuniary advantage, as to render the prevalence of the practice almost beyond a doubt, if not prohibited by law.

All which is respectfully submitted to the President. ELIAS BOUDINOT, *Director.*

January 1st, 1800.

MINT OF THE UNITED STATES.
Treasurer's Office, Jan. 1st, 1800.

A statement of the denomination and value of gold coins issued from the Mint of the United States, from the 1st of January to the 31st of December, 1799, inclusive, viz:

17,483 eagles - - -	$174,830 00
7,451 half-eagles - -	37,255 00
480 quarter-eagles - -	1,200 00
	$213,285 00

BENJAMIN RUSH.
The DIRECTOR OF THE MINT.

MINT OF THE UNITED STATES,
Treasurer's Office, Jan. 1st, 1800.

A statement of the denomination and value of silver coins issued from the Mint of the United States, from the 1st of January to the 31st of December, 1799, inclusive, viz:

423,515 dollars - - -	$423,515 00

BENJAMIN RUSH.
The DIRECTOR OF THE MINT.

MINT OF THE UNITED STATES,
Treasurer's Office, Jan. 1st, 1800.

A statement of the denomination and value of copper, coined at the Mint of the United States, from the 1st of January, to the 31st of December, 1799, inclusive, viz:

904,585 cents - - -	$9,045 85
12,167 half-cents - - -	60 83
	$9,106 68

BENJAMIN RUSH.
The DIRECTOR OF THE MINT.

MINT OF THE UNITED STATES,
Treasurer's Office, Jan. 1st, 1800.

I certify there has been coined at the Mint of the United States, from the commencement of the establishment, to the date hereof, as follows, viz:

Gold - - - - -	$696,530 00
Silver - - - - -	1,216,158 75
Copper - - - - -	50,111 42
	$1,962,800 17

BENJAMIN RUSH.
The DIRECTOR OF THE MINT.

Mint of the United States.

[Communicated to the Senate, March 14, 1800.]

Mr. HILLHOUSE, from the Committee to whom was referred the Message of the President of the United States, of the 8th day of January, 1800, together with the Report of the Director of the Mint, of the first of January last, made the following report:

That the existing law requires the removal of the Mint to the permanent seat of Government; that such removal would, in many respects, be inconvenient; but the policy of keeping up that establishment, in a situation where its operations will not be under the immediate superintendency and direction of the principal officers of Government, is questionable.

It appears by official reports, that, on the 31st of December, 1799, there had been coined and issued from the Mint, since its first establishment, in gold, $696.530; in silver, $1.216.158 75; and in copper, $50.111 42; amounting, in the whole, to $1.962,800 17. That the expense, during the same period, has been $213.336 02, of which sum there has been reimbursed by the payment of cents and half cents into the Treasury, $48.041 42; leaving a balance of $175.254 60; an expense, in the opinion of the committee, disproportionate to the advantage which has been derived from a circulation of the coins of the United States, which have been very limited, and mostly confined to places in the vicinity of the Mint.

To furnish coin sufficient for a circulating medium throughout the United States would be impracticable, unless the powers of the Mint should be greatly increased, and the practice of melting down the coin, and the exportation to foreign countries, prevented; which may be done by debasing the coin—a measure which the committee cannot recommend.

The providing a fixed and permanent standard, by which the value of property, contracts for money, and foreign coins, shall be regulated, is an object of great importance. This may be effectually done without the aid of a permanent Mint establishment: for it is not an indispensable requisite, that the whole circulating medium should be of the coins of the United States. Wholly to exclude foreign coins from circulation, if not impracticable, would be attended with great inconvenience, especially in the extreme parts of the Union.

The banks afford the most effectual guard against the circulation of base coin; a regard to their own interest will induce caution, and such coin will not be there received for more than its intrinsic value; which will fix the rate at which it will have a currency. An authority might be, by law, vested in the bank, for ascertaining the intrinsic value of coins of a new impression, by assaying them at the expense of the United States: for these purposes the present Mint establishment cannot be necessary.

Causes, in their nature temporary, have hitherto furnished a great proportion of the bullion which has been coined at the Mint, and the committee do not discover any mode which can in future be relied on, for furnishing a regular and certain supply, but that of prohibiting the circulation of foreign coins, and converting them into bullion, which seems to have been the mode contemplated. In addition to the inconvenience attending this measure, the committee are strongly impressed with an apprehension, that it will be ineffectual, unless the transporting bullion to the Mint, and the replacing the value in coin, is to be at the risk and expense of the United States: for the difference in value between bullion and coin will be so small, that no individual would be induced to take upon himself the risk and expense: and the vast extent of the territory of the United States, the foreign commerce which is carried on from the various ports, almost wholly disconnected from, and independent of each other, and there being no place where the trade of this country is, or can be concentrated, will always make that risk and expense an object of no small importance.

The furnishing a supply of cents and half cents sufficient for circulation, would, in the opinion of the committee, be a desirable object, but they are well satisfied that the Mint, upon its present establishment, will not furnish such supply. The efforts of almost seven years have done very little towards it. Perhaps a more economical, and the most effectual, mode would be by contract.

Though the coining of gold and silver may, at times, be deemed expedient, there will still remain a doubt as to the propriety of keeping up the present Mint establishment: and the committee have no hesitation in declaring it as their opinion that a plan may be devised, which will be more eligible, and better comport with economy, and the interest of the United States, for securing every object of importance in relation to a national coin.

As the removal of the Mint must be attended with expense, and probably a derangement of many of the officers, if a change of the system is to take place, the present is beyond a doubt the most convenient time for effecting it.

The committee, therefore, recommend the following resolutions:

Resolved, That a committee be appointed to bring in a bill for repealing the first section of the act, entitled "An act establishing a Mint, and regulating the coins of the United States," and such other sections, and parts of sections, of said act, and other acts, as relate to the establishment of a Mint, and to provide for taking care of the materials and property appertaining to the Mint, and which belong to the United States.

Resolved, That the Secretary of the Treasury be directed to report a plan for furnishing the United States with cents and half cents, and such other coins as shall be deemed necessary or expedient.

A general statement of the expense of the Mint establishment, from its institution to the 31st of December, 1799.

Incidental and contingent expenses and repairs of the Mint, including purchase of ground and buildings thereon, in Seventh street, Philadelphia:

Additional Revenues.

From the institution of the Mint to the 31st December, 1797 - - -	$73,773 96	
From 1st January to 31st December, 1798 - - -	10,836 57	
		$84,610 53
Copper purchased for coinage.		
From the institution of the Mint to the 31st December, 1797, 135,498½ lbs. -	34,427 48	
From 1st January to 1st December, 1798, 22,829 lbs. -	7,110 22	
		41,537 70
Salaries of the officers.		
From the institution of the Mint the 31st December, 1797	46.494 15	
From 1st Jan. to 31st Dec., 1798	10,600 00	
Do. Do., 1799	10,600 00	
		67,694 15
Wastage in the coinage of silver.		
For this sum, applied to make good the wastage, as settled at the Treasury -		2,820 71
Amount of warrants drawn on the Treasurer of the United States, for the Mint establishment, including purchase of copper for coinage, in the year 1799, and exclusive of the salaries of the officers, the account of the expenditure thereof not fully settled - - - - -		16,672 93
		213.336 02
The payments of cents and half cents into the Treasury, from the institution of the Mint to the 31st December, 1799, have been - - - - -		$48,041 42

JOSEPH NOURSE, *Register.*

TREASURY DEPARTMENT,
Register's Office, February 20, 1800.

ADDITIONAL REVENUES.

[Communicated to the House of Reps., April 30, 1800.]

Mr. HARPER made the following report: The Committee of Ways and Means having, in a former report, wherein they recommended a loan of three millions and a half for the service of the present year, adverted to the propriety of providing permanent revenues, equal to the interest of the debt to be incurred, and to the gradual and timely extinguishment of the principal, now beg leave to call the attention of the House again to that important subject; on which they submit the following report:

The first point which presented itself for the consideration of the committee, in examining this subject, was "the amount for which it would be proper to establish additional revenue at this time." This must depend on the present and future increase of permanent expenditure, compared with the probable amount of permanent revenue from existing taxes.

When Congress, in the year 1798, was compelled, by the continued aggressions of a foreign Power, to commence active and extensive preparations for defence, by sea and land, the ordinary expenditure of the Government, including the interest of the public debt, the payment on account of the principal, and an adequate allowance for occasional grants and incidental expenses, was something less than seven millions of dollars. No increase, of any consequence, has been made in this expenditure, since that time, except what was occasioned by the interest of the debt, which the measures necessary for the defence of the country forced Congress to contract. As this debt amounts to five millions, at eight per cent., the increase, on that account is $400,000.

The continuation of those measures, for some time longer, having rendered it necessary, in the opinion of the House, to contract a further debt of three millions and a half, for the present year, that measure, if ultimately adopted, and carried into effect on the same terms with the former, which may perhaps be found unavoidable, will induce a further increase of $280,000 in the ordinary expenditure of the Government, making, in the whole, an increase of $680.000 for the interest of new loans.

It is known that, at the beginning of next year, a further addition of about $1,200,000 must be made to the ordinary expenditure, for the interest and extinguishing annuity of the deferred debt: and that, in 1802, the payments on the foreign debt will be larger, by one million, than in the present year. In 1803 and 1804 those payments will be increased to two millions beyond their present amount; but, after that period, they will gradually diminish, and, in 1809, they will finally cease, by the extinguishment of the debt.

The committee, however, though they have thought it useful to extend their view to this more remote increase of expenditure, are of opinion that it is not necessary for Congress to make provision, now, on that subject. No part of this increase will take place till two years hence; and before that period arrives, Congress will have a better view of the political and financial situation of the country than at present, and will be better able to judge respecting the means of meeting the exigency. But yet, the certainty of this future increase proves the necessity of providing, as far as can be conveniently done, for that which has already taken place, or must soon happen; so that the burden may be divided between different periods, and as little as possible may be left to be done hereafter.

Neither do the committee think it necessary to make provision, during the present session, for the deferred debt. The political situation of the country is now far more uncertain, than, in all probability, it will be at the next meeting of Congress. Should it change for the better, as there is reason to hope, the augmentations now to be made, together with the increase of revenue which we may reasonably expect, from our present system, may be sufficient, with some small aids, for defraying this additional expense. If, on the contrary, our situation should remain the same, still we shall have more experience than we now possess of the operation of our present system, and of the effect

of the war on our commerce and our revenue. The preparatory arrangements, moreover, for an amelioration and enlargement of our system, will then be completed, or in a much more advanced state than at present. We shall, consequently, be then in a better situation than we now are for judging whether a further augmentation will be necessary, to what extent it must be carried, and how it may best be made.

It is only for the interest of the loans of the present and last years, therefore, and for a sum equal to the reimbursement of the principal, within a convenient time, that the committee would propose to make provision, during the present session of Congress.

That interest, at the highest calculation, will amount to $680,000. It is known that an extinguishing annuity, or a sinking fund, equal to two per cent. on the principal of a debt, will, if steadily applied, extinguish it in about twenty-four years. This is the plan heretofore adopted by Congress for the extinguishment of the six per cent. stock; and the committee conceive that it may be safely adhered to, in all arrangements for a similar purpose: it appearing certain that, while adequate provision is made for the punctual discharge, within so short a period, of every new engagement, there can be but little reason to apprehend a dangerous or inconvenient accumulation of debt.

This annuity of two per cent. on the loans of the last and present years, admitting the latter to be fixed at $3,599,000, will amount to $170,000; and, added to the amount of interest, will produce an aggregate expenditure of $850,000, annually, for twenty-four years. As this annuity, however, by the terms of the former loan, which are likely to be found necessary in the present, also, cannot, until the end of ten years, be applied to the discharge of this particular debt, it must be employed, should Congress think fit to raise it, in the purchase of the public debt in general, by way of sinking fund. The committee are of opinion that every consideration of sound policy, and the best established principles of financial economy, are in favor of raising it.

At the period above referred to, the Summer of 1798, the Government possessed a revenue of something more than eight millions of dollars, derived from the duties on imports and tonnage; the tax on domestic distilled spirits and stills, on retailers licenses, on refined sugar, on carriages, and on sales at auction; the postage of letters; dividends of bank stock belonging to the United States; and some other less considerable branches of revenue. As the ordinary expenditure, at that time, was less than seven millions, there was a balance of a million and upwards in favor of the Treasury.

Had the revenue continued equally productive in the subsequent year, 1799, there would have been no need of further provision at this time; since the above mentioned balance would have been more than sufficient to cover the increase of permanent expenditure. But this was not the case. The duties on imports and tonnage, which, in 1798, produced $7,405,420, fell, in 1799, to $6,437,886—a diminution of very nearly one million; and although the stamp duties, and perhaps the other branches of the internal revenue, were more productive in that year than in the former, yet that increase, amounting to only $200,000, was far from sufficient to counterbalance the diminution in the imports and tonnage.

It is not, however, to be apprehended, in the opinion of the committee, that the diminution in question will be permanent. On the contrary, they suppose it to have resulted from two causes, of a temporary nature: first, the extensive depredations on our commerce, which took place in 1796, 1797, and 1798, especially the two former, the full effect whereof was not felt in the revenue, till 1799, because it was in that year that the duties on the imports of 1798 became payable; and secondly, the great re-exportation of foreign commodities in 1799, which amounted to $45,523,335, exceeding, by $12,000,000, those of any former year, and which drew from the Treasury very great sums in drawbacks. As this branch of the revenue is bottomed on the consumption of the country, which, notwithstanding occasional fluctuations, has a constant progressive increase with the increase of population and wealth, the committee conceive that it may be expected soon to regain its former level, and gradually to augment. In proof of which they remark, that the first quarter of the present revenue year, the returns of which are before the House, exceeds in product the first quarter of the last year, or of 1797, and very nearly equals that of 1798.

This event, however, though highly probable, as it seems to them, being still uncertain, and the revenue, in its present state, being unequal to the increased scale of expenditure, resulting from the interest of this and the last year's loans, and to a reasonable provision for deficiencies, and for the extinguishment of the principal; the committee conceive it proper, and even indispensable, to provide, at present, for the additional sum of $850,000, at the least. More, they think, will not now be necessary.

Having come to this conclusion, as to the amount of the sum which it would be expedient to provide for at this time, they next turned their attention to the ways and means of making the provision.

As the official situation of the Secretary of the Treasury gives him more exact and extensive information, on the subject of revenue, than any other person can be supposed to possess, and enables him to form the most correct opinions respecting the probable operation, and comparative merits, of different schemes of taxation, the committee thought it proper to address their inquiries, in the first instance, to him, and wait for the result of his deliberations, before they should decide. For this purpose was written the letter, of which a copy, No. 1, is subjoined to this report.

In his answer, which, together with the statements therein referred to, No. 2, is also hereto annexed, the Secretary proposes to augment the duties on several kinds of wine; to raise those articles which now pay a duty of ten per centum ad valorem, to 12½ per centum; and to make a new arrangement respecting drawbacks on goods re-exported, the effect of which would be, to impose a tax from about 15 to 18 per centum of their whole amount, on the drawbacks now allowed. This effect would be produced, by refusing, altogether, the drawback on certain articles, which are enumerated in the paper C, accompanying the Secretary's letter, and by withholding a greater or less part of it on a variety of other articles, in the manner stated in the paper B, referred to in the same letter.

The Secretary has informed the committee that he expects, from these three measures, should they be adopted, an addition to the revenue of about $900,000 annually. But he has not stated what part of this addition he expects from each measure separately. The two first he proposes to make perpetual. The third, the tax on drawbacks, he would continue no longer than during the present war in Europe.

When they proceeded to the examination of this plan, they found no difficulty as to that part of it which relates to the augmentation of duties.

Wines, indeed, are now highly taxed; but, being a mere luxury, which is consumed solely by people in affluent or easy circumstances, they appear to be a very proper object of revenue; and it is not apprehended that a moderate increase of the duty would diminish the consumption, or endanger smuggling. This reasoning, as the committee conceive, will be confirmed by a statement of the amount of duties on wines, which is annexed to this report, (No. 3,) and from which it appears that, from 1794 to 1797, inclusive, the net product of those duties has increased from $457,308 to $524,135, although no additional duty has been laid during that period. The returns for 1798 are too incomplete to be taken into the calculation. During the latter part of that period, indeed, there has been a fall in this product, as that of many other branches of the revenue; but it appears from the average, that this fall is more than counterbalanced by the rise in the former part, and the committee conceive that such fluctuations, arising from accidental and transient causes, are always to be expected, and that the average of a number of years can alone afford a safe criterion whereby to judge on subjects of this kind.

It is, moreover, to be observed, that the duties on wines have, hitherto, been injudiciously laid, so as to produce a strong temptation to enter high priced wines, which pay a very high duty, under the names of those of a low price, whereon the duty is comparatively low. There is reason to believe, as the committee are informed by the Secretary of the Treasury, that much loss to the revenue has already been experienced from this cause. The plan contained in his new tariff, the paper B, proposes to remove this cause, by a different adjustment of the duties in question.

As the average product of the duties on wines appears, by the statement No. 3, to be upwards of $600,000, an addition of twenty per cent. on the amount of the present duty would produce $120,000. This addition, it is conceived, might be safely made, in the manner proposed by the Secretary of the Treasury.

As to the articles paying a duty of ten per cent. ad valorem, which are very numerous, and of great value, including all woollen goods, white cottons, and nankeens, with other articles of less importance, the committee are of opinion, with the Secretary of the Treasury, that an additional duty of two and a half per centum on the value of the article may be safely laid on them. The present duties on all articles paying a rate per centum, ad valorem, of which the ten per cent. constitute a great proportion, probably two-thirds, were fixed in 1792, except a few, which were raised from 10 to 12½ per cent. in 1797; and they produced their full effect in 1793: from the end of which latter year, until the end of 1798, the net product of those duties rose from $2,319,817 to $2,717,657, as appears by a statement, No. 4, which is subjoined to this report. The increase, indeed, must probably have been greater, as the returns for the last mentioned year, 1798, are very incomplete—two quarters being wanting from Philadelphia, as many from Charleston, and four from Savannah; which deficiencies will, probably, be found to have produced a greater deduction from the product in 1798, than can have been made up for by the additional duties laid in 1797. This progressive increase, notwithstanding the intermediate fluctuation, appears to the committee to prove, satisfactorily, that the importation of the articles in question is not injuriously affected by the present duty; which may, therefore, be safely augmented to the amount proposed.

There is another consideration on this head, which is conceived to be of great weight. These articles are all imported from distant places, on general freight, and in ships of great value; which circumstances so much increase the difficulty and hazard of smuggling, as to leave little danger of its being attempted, under the operation of any duties that the consumption will bear. They are, moreover, in the same situation with many other articles, such as muslins, muslinets, and colored cottons, which now pay the proposed duty of 12½ per cent.

The average net product of the ad valorem duties, from 1794 to 1798, inclusive, a period of five years, being $3,181,173, as appears from the statement above mentioned, No. 4, it follows that, if the ten per cents be supposed to constitute two-thirds of the whole mass, which is probably the case, the additional 2½ per cent. proposed to be laid on them would produce $600,000.

As to the third proposition of the Secretary, the tax on drawbacks, it appeared liable to more doubt.

In support of the plan, it was urged, that the great mass of our re-exportation consists in commodities, chiefly sugar and coffee, which we bring from the East and West Indies, and afterwards carry to Europe, for the consumption of France, Holland, and Germany; and in East India and China goods, wherewith we supply the people of the West Indies and of South America. That

the commerce of France, Holland, and Spain, being annihilated by the events of the war, and that of Sweden and Denmark very inconsiderable, the carrying trade may be considered as almost exclusively possessed by the English and ourselves. That the English, being at war with France, Spain, and Holland, and thereby excluded from the ports of those nations in Europe, Asia, and America, cannot enter into competition with us, in the business of supplying their possessions, especially those in South America and the West Indies, with East India and China goods; and that we consequently having the exclusive possession of this traffic, may lay what price we please on the goods re-exported; and, of course, may compel the consumers to repay to us the tax laid on those goods here, by the refusal of part of the drawback. That the same reasoning will apply, in a great degree, to the supply of Europe with sugar, coffee, and other East and West India commodities, because France, Holland, and Spain, being shut against the English, by the war, they cannot become our competitors for the direct supply of those countries. That, as to the indirect supply, through the ports of Germany and Portugal, especially the former, which are by far the most considerable, we can furnish it on better terms than they; because they are excluded from many of the countries where the commodities are produced, and because their trade with the north of Germany is exposed to great danger and interruption from the French and Dutch privateers. And, finally, that the English are less liable to enter into a competition which we ought to dread, inasmuch as the monopoly of their East India trade, by a particular company, prevents individual enterprise and ingenuity from being excited in carrying it on, upon the best terms; and as the English Government itself has laid a duty on exports, during the war, equal to that proposed by the plan under consideration: so that her merchants and ours being on an equal footing, in that respect, they could not underbid us in the foreign markets to which both resort.

From hence, it was concluded that, while the war in Europe, and the present state of things resulting from it, shall continue, a tax on drawbacks, such as that proposed, would be a tax, not on our own commerce or our own merchants, but on foreign nations, who, being the consumers of the re-exported commodities, whereon the tax would fall in the first instance, and being compelled, during the war, at least, to purchase those commodities from us alone, would be under the necessity of repaying to us the tax, in addition to the price which we should otherwise demand.

To this it was answered, that the whole argument rests on the supposition of our being able to effect two things, both of which are of a very uncertain nature, namely to monopolize the business of supplying the countries in question with East and West India and China commodities, and to compel those commodities to touch first at our own ports, before they are carried to the places where they are consumed: it being clear that if, by raising the price of the commodities, we should raise up competitors, who would underbid us in foreign markets; or should, by taxing them on their arrival in our ports, render it the interest of our merchants to carry them directly from the places of their production, to the places where they are to be consumed, without landing them in this country; we should, in either case, lose the duty: in the first, by ruining altogether the trade, whereon it must depend; and, in the second, by turning the trade away from our own ports, where alone the duty can be collected.

Whether we should be able to monopolize the business in question, to such an extent as to have it in our power to lay our own price on the commodities which compose it, was said to be very uncertain, for various reasons: First, because the English possess very far the greater part of those places, in the East and West Indies, where the valuable commodities consumed in Europe are produced, and their merchants can carry them directly from thence to the ports of Germany, or of Denmark and Sweden, from whence they would easily find their way into Holland and France. Secondly, because the duty on exports laid in England, may easily be avoided by her merchants, by means of going directly to the foreign markets, instead of first touching at home; and the danger of privateers is greatly lessened, by the convoy which she gives to her trade, and the great number of her squadrons and cruising frigates in those seas—circumstances whereby her trade is, probably, rendered more secure than ours. And, thirdly, because, although her merchants cannot carry the East India and China goods, directly, to the French, Spanish, and Dutch possessions, in the West Indies and South America, they can and do carry those goods, in immense quantities, to their own islands; from whence they are known to find their way, by means of an illicit trade, perhaps connived at by those employed to prevent it, into the places of which we suppose ourselves to possess the exclusive supply.

As to the example of England, which is said to have laid our export duty analogous to the tax or drawbacks now proposed, it was observed, in the first place, that the experiment in England has not been long enough made to enable us to judge of its success; secondly, that so far as time has furnished information on that head, the experience of England is against the plan, her exports having diminished since the period when that tax was laid; and thirdly, that what is called a tax on exports in England, is, in fact, a premium paid for convoy, which the Government, in consideration of this premium, engages to furnish, and does furnish, to every ship sailing from her ports; an arrangement which enables shippers to obtain their insurance at a lower rate; so that the duty on exports, instead of being a tax on the trade of England, is merely a part of the premium of insurance, which the merchants pay to the Government, instead of paying to the underwriters: whereas, in our case, as we give no convoy, it would be a mere tax on our trade, which our merchants must pay in the first instance, and might or might not be able to get back from the consumers.

If they should prove unable to get it back from the consumers, by reason of the competition, which the augmentation of price, consequent to the duty, might create or increase, the trade must, in the end, be ruined; and with it must perish, not only a great portion of our revenue, and of our navigation, the basis of our future maritime strength, but also of the industry of our seaport towns, which is nourished and sustained by our navigation.

If, on the other hand, they should prove able to levy this tax ultimately on the consumers, still it was urged, would the question remain, whether the tax would be sufficient to induce the merchants to avoid our own ports, and either to go directly to the consumers, from the places where the commodities are produced, or where that cannot be done, to touch at some ports where no such duty is laid; in either of which cases, we should not only lose the revenue expected from this duty, but also affect, to a degree not easily foreseen, all those branches of industry, in our country, which are connected with the landing, storage, and reshipment of goods, and the arrival, repair, and supply of ships.

The duty of two and a half per cent. on the amount of a valuable cargo, it was observed, is a premium sufficient to afford a very strong temptation to avoid our own ports. Men of small capital, who could only import parcels of goods on freight, might not be able to do this, and therefore must pay the duty; while large capitalists, who import entire cargoes, in their own or in chartered ships, might be able to do it, and thus avoid the duty; whereby a monopoly would be created, to the very great detriment of our commercial interest, the prosperity of which depends far more on the mass of small capitalists than on the small number of great ones.

It was further urged, that this measure, so hazardous in itself, and the mischiefs whereof, should it prove unsuccessful, must always take place, and may have become irremediable before they can be perceived, is by no means necessary, since the two first parts of the Secretary's plan, the additional duties on wines and the ten per cent. articles, will afford an additional revenue of from six to seven hundred thousand dollars; to which might be added $200,000 by a half cent per pound additional on brown sugar; and $50,000 by a like addition, per pound, on coffee—making, in the whole, an additional revenue of at least $900,000; which is more by $50,000 than the sum proposed to be raised.

It was shown, by a statement of the duties on brown sugar, for six successive years, which is annexed to this report, No. 5, that the net product of that article, at a duty of one and a half cents per pound, from the beginning of 1793 to the end of 1797, a period of five years, increased from $646,715 to $735,671; and that the average net product, for a period of six years, from 1793 to 1798, inclusive, was $586,292. It was contended that, although an addition of half a cent was made to that duty in 1797, and the product in 1798, nevertheless, appeared to be less than in former years, being only $630,791, as stated from the returns, yet no conclusion unfavorable to the duty could be drawn from thence; because the returns for that year were very deficient; two quarters being wanting from Philadelphia and Charleston, and four from Savannah; which, probably, had reduced the apparent amount much more than the actual receipt had been augmented by the additional duty.

Hence, it was inferred, that the consumption and importation of brown sugar had not yet been injuriously affected by the former duty; and that the average net product being at the rate of $200,000 for every half cent of duty, that sum might be expected from the proposed augmentation.

On the subject of coffee, it was shown, by a statement of the duties on that article, for six successive years, from 1793 to 1798, inclusive, which is also annexed hereunto, No. 6, that the average net product of those duties, during the period in question, was $498,762, although the returns for the last year in the period were incomplete, as has been already stated, and no addition has been made to the duty since 1792. Hence, it was inferred that an additional half cent might safely be laid on that article also; which, as the present duty is five cents per pound, would produce the sum of $50,000.

Such were the arguments for and against the proposed tax on drawbacks; and such the objects of revenue, which it was thought might, with more safety and propriety, be adopted in its stead. The committee did not deem it their province to pronounce any decision on these points, but solely to bring them into the view of the House, and submit them to its consideration. There was, however, one proposal made, which does not appear to them to be of a doubtful nature, and which they have, therefore, thought it proper to recommend.

In the act allowing drawbacks, there is a provision, that one per cent. on the whole amount of them shall be retained, in order to defray the expense of management. Afterwards, one quarter per cent. was added to this first deduction, in lieu of stamp duties on debentures. It has been suggested by the Secretary of the Treasury, that the sum thus retained is found insufficient to defray the expenses incident to the allowance of drawbacks; and the committee are of opinion that it will be proper to double it. In that case, the reduction made by the Government for the expense of management, and in lieu of stamp duties on debentures, will amount to about $100,000 annually, which, as the present amount does not exceed $50,000, will be a further addition to the revenue of $50,000.

Having thus brought the whole subject into view, as fully as seemed to them to be proper, the committee beg leave, in order to take the sense of the House on the various matters stated in their report, to submit to its consideration the following resolutions.

1st. *Resolved*, That it is expedient to lay an additional duty of —— per centum on the amount

of the present duty upon wines imported into the United States.

2d. *Resolved*, That it is expedient to lay an additional duty of —— per centum ad valorem on such goods, wares, and merchandises, imported into the United States, as are now subject to a duty of ten per cent. ad valorem.

3d. *Resolved*, That it is expedient to lay a tax on drawbacks allowed by law, for goods re-exported from the United States, according to the plan proposed in the letter of April the 10th, 1800, from the Secretary of the Treasury to the Committee of Ways and Means.

4th. *Resolved*, That it is expedient to lay an additional duty of —— per pound on brown sugar and coffee imported into the United States.

5th. *Resolved*, That it is expedient to retain —— per centum on all drawbacks allowed for goods re-exported from the United States, for the expenses incident to the allowance thereof, and in lieu of the stamp duties on debentures, in addition to the sums heretofore directed, by law, to be so retained for the aforesaid purposes.

No. 1.

COMMITTEE ROOM, *Feb.* 14, 1800.

SIR: The Committee of Ways and Means, conceiving it proper for Congress to establish, during the present session, permanent revenues equal to the interest of the loan which may be necessary to make this year, and perhaps, to that of last year also, the amount of which two charges will, probably, not fall short of six hundred and eighty thousand dollars, annually, have directed their attention to the inquiry, "from what sources this additional revenue may be drawn, with the least difficulty to the Government, and the greatest ease to the public." Before, however, they come to any final resolution on so important and difficult a subject, they wish to obtain your opinion on the following points:

1st. Admitting the necessity of providing for both loans, can the requisite sum, or any considerable part of it, be raised by an addition to the duties on certain articles imported? What are those articles, and to what amount may new duties be laid on them? The committee have thought of wines, spirits, brown sugars, and woollen cloths. Salt, also, has been suggested as an article on which a further duty might perhaps be laid.

2d. Admitting a further duty to be laid on wines and spirits imported, will it not be necessary to make a corresponding augmentation on the tax on stills, and domestic distilled spirits? And can such augmentation be made with due regard to the situation of remote parts of the country?

3d. What would be the policy of abandoning altogether the idea of augmenting the imposts, and resorting to an internal tax, by way of excise, on wines, spirits, coffee, teas, and sugars? Or, would it be better to adopt both modes, in part?

4th. As a change will, probably, be made this year, in the mode of stamping, which will render it proper to call in and change the stamps, might not those duties be safely augmented, so as to raise a further sum of one hundred thousand dollars?

5th. Might not a national lottery be established, so as to raise from one hundred thousand to one hundred and fifty thousand dollars annually? And how far would such a mode of taxation be advisable?

In addition to your opinion on these several points, sir, the committee would be much obliged by the communication of any ideas which may have occurred to you on the subject in general. And as the interest and extinguishing annuity of the deferred debt will commence next year, they beg you to take into view the means of providing for those objects likewise.

With the highest respect, I have the honor to be, sir, &c.

ROBERT G. HARPER.

HON. SECRETARY OF THE TREASURY.

TREASURY DEPARTMENT, *April* 10, 1800.

SIR: I have, with the aid of the best information which I could obtain, deliberately considered the important questions, upon which, on behalf of the Committee of Ways and Means, you have been pleased to request my opinion.

Although, according to my view of the subject, the public debts have not hitherto considerably increased, since the establishment of the existing Government; yet, as the expenditure, at the present time, considerably exceeds the stated income from duties and taxes, an augmentation of the revenue appears to be advisable.

The sources from which this revenue may be expected, with the greatest ease to the community, are believed to be the following:

1st. From an increase of duties on the importation, and a new arrangement of drawbacks, payable on the exportation of certain articles of foreign growth or manufacture.

2d. From a new modification of the duties on stills employed in the distillation of spirits from domestic materials.

3d. From a duty on the transfer of real property, to be collected by stamps.

The first mentioned subject being the most complex, and of great importance, considered both in relation to the interests of commerce and the revenue, is separately presented to the consideration of the committee.

The paper herewith transmitted, marked A, exhibits a view of the rates of duties at present levied on imports; that marked B is respectfully offered as a substitute.

It is proposed to increase the duties on several kinds of wines, and generally to impose a duty of twelve and a half per centum, ad valorem, on the merchandise at present subject to duties at ten per centum; a few articles only, of no great importance, are placed in the list of goods subject to the rate of fifteen per centum.

It is known to the committee, that the quantities of articles of foreign growth or manufacture, which are imported into the United States for the purpose of being exported, have greatly increased, and are still increasing; the sum of one and one quarter per centum upon the duties at present retained, is found, on calculation, to be hardly sufficient to defray the custom-house expenses, occasioned by this branch of business. After a very close examination of the subject, it is my opinion that the revenue may be increased, and the manufactures of the country encouraged, by reducing the drawback in the mode proposed, without injury to commerce.

This opinion will, it is believed, receive a confirmation, from an examination of the commercial and financial systems, and actual situation of the countries with which our commerce of importation and exportation is, at present, prosecuted; to guard, however, against the consequences of any mistake, it is respectfully proposed that the present rates of drawback shall be allowed after the termination of the present war in Europe.

I have the honor to be, with the greatest respect, sir, &c.

OLIVER WOLCOTT.

HON. ROBERT G. HARPER, *Chairman, &c.*

TREASURY DEPARTMENT, *April* 12, 1800.

SIR: In compliance with your request, I have the honor to inform you that, if the tariff of duties and drawbacks, which accompanied my communication of yesterday, shall be established, the revenue will probably receive an addition of about nine hundred thousand dollars per annum.

I have added, at your request, a particular list of the articles upon which the duties are proposed to be increased or varied.

I have the honor to be, with respect, sir, &c.,

OLIVER WOLCOTT.

HON. ROBERT G. HARPER, Esq.

[The tabular statements, being voluminous, are necessarily omitted in this work.]

PUBLIC DEBT.

[Communicated to the House of Reps., May 18, 1800.]

Mr. GRISWOLD, from the committee who were appointed, on the twentieth of March, to examine the accounts of the United States, relating to the public debt, and to report the amount respectively incurred and extinguished, and, generally, such facts as relate to the increase or diminution of the same, since the establishment of the Government of the United States, under the present Constitution, made the following report:

That, for the purpose of obtaining every statement from the Treasury which could elucidate the subject of inquiry, they addressed a letter to the Secretary of that Department, on the twenty-fourth of March, a copy of which is subjoined to this report, and, on the twenty-ninth of April they received his answer, transmitting sundry statements, numbered from 1 to 9, inclusive, and exhibiting, in the most clear and satisfactory manner, the most important of the Treasury operations in relation to the debt, from the commencement of the present Government. These statements, together with three letters from the Secretary, on this subject, are now submitted to the House; and, although it is certainly possible that some trivial errors may have taken place in the details which these documents contain, yet the committee are perfectly confident that the general results which they produce must be correct.

The statements numbers 1 and 2, contain an account of the receipt and expenditure of all public money, from the commencement of the Government, and, whilst they show the application of the revenue to the debt, they will present, at the same time, in one view, every expense with which the Treasury has been charged, and enable the Legislature, with more accuracy, to decide how far those objects, or the amount of expense, in particular cases, may be diminished.

The order of the House having particularly directed the attention of the committee to the increase or diminution of debt, they have thought it their duty to bring into view the amount of debt with which the present Government commenced its operations, and to contrast the same with the balance of debt on the first of January, in the present year. In discharging this duty, it will become necessary to explain the principles on which these statements rest, which the committee will do, in as concise a manner as possible. But, before they enter upon this detail, they cannot forbear to express the satisfaction which they feel, in declaring that the documents which have been obtained from the Treasury will, in their opinion, fully demonstrate the precision and ability with which the business of the Departnent has been conducted, and that, by the fiscal operations of the Government, the public debt has been diminished.

In ascertaining the amount of the old debt, two different principles have been taken by those who have made their calculations on this subject. The first has been to include only the interest upon the debt to the close of the year 1789, as the nearest convenient period to the day when the Government commenced its operations, and, after deducting from the aggregate of debt the amount of funds then in the power of the Government, to consider the balance as the amount of old debt. The second principle has been, to take the amount of debt as the same has been liquidated and funded, under various acts of Congress, and after deducting therefrom the funds acquired or possessed by the Government at the close of the year 1790, to consider the balance as constituting the true amount of old debt. The difference between these principles consists in this: by the last mode of computation, the interest which accumulated upon the debt, subsequent to the close of the year 1789, and until the debt was funded and provided for, by law, is considered as a part of the old debt, whereas, by the first mode of computation, that interest is totally excluded.

In consequence of a difference in opinion, which, it is understood, still exists on this point, the committee have thought proper to state the debt in

both modes, that the results, in both cases, may be perfectly understood.

The nominal amount of debt, on the 1st of January, 1790, as appears by statement No. 9, amounted to		$72,237,301 97
The funds then in possession of the Government, and to be deducted, were—		
Cash in the Treasury, January 1, 1790	$28,239 61	
Cash in the hands of collectors	83,127 84	
Bonds at the custom-houses	590,468 60	
Debts due to the United States, under contracts of the late Government, collected at sundry times	62,586 74	
Debts paid in specie during the year 1789	15,927 13	
Proceeds of the sale of land to the State of Pennsyl'nia, made by the late Government	151,392 41	
		931,742 33
Amount of debt, January 1, 1790		71,305,559 64
By the same document, it appears that the debt contracted by the late Government, as the same has been liquidated and funded by acts of Congress, amounts to		$76,781,953 14
That the funds possessed by this Government, on the 1st of January, 1791, and to be deducted from the debt, were as follow:		
Cash in the Treasury, January 1st, 1791	$570,023 88	
Cash in the hands of collectors	225,786 95	
Custom-house bonds uncollected	1,052,215 13	
Money collected from the credits of the late Government, as in the preceding statement	62,586 74	
Debts paid in specie during the year 1789	15,927 13	
Sale of land to Pennsylvania	151,392 41	
Debts purchased and discharged during the year 1790	518,424 08	
		2,596,356 32
True amount of debt, January 1st, 1791		74,185,596 82
By the same document, No. 9, it appears that the debt, exclusive of temporary loans, on the first of January, 1800, amounted to		$76,651,820 30
Temporary loans, without deducting bank shares		3,640,000 00
Nominal amount of debt, January 1st, 1800		80,291,820 30
Funds acquired by the Government, and which may be applied to face the foregoing debt:		
Cash in the Treasury, January 1st, 1800, deducting therefrom the amount of unclaimed registered debt, and debt due to foreign officers, which are to be considered, at times, as a charge on all the specie balance in Treasury	$2,061,683 49	
Remittances to Holland, beyond the sum necessary to meet all demands on the foreign debt, to the close of the year 1799	548,955 84	
Cash in the hands of collectors and supervisors	532,247 81	
Bonds uncollected at the custom-houses, estimated at six millions, payable, on an average, at six months, deducting the interest for that term, leaves	5,826,214 00	
2,220 shares of bank stock, cost $888,000		
Advance, 25 per cent.	222,000	
Value	1,110,000	1,110,000 00
		10,079,101 14
True amount of debt, January 1st, 1800		70,212,718 16

For the purpose of showing the rapidity with which the public debt was diminishing, at the time when the hostility of France compelled the Government to incur those great and extraordinary expenses which appear in the Treasury statements, and to enter upon that extensive system of defence, which has resulted in the security of our commerce, the committee have thought it necessary, in addition to the preceding statements, to present a view of the debt on the first of January, 1798, remarking, at the same time, that the reduction which at that time had been made, proves, in the most satisfactory manner, the ease with which the debt may be extinguished, whenever the Government shall be left unembarrassed by internal disorder or foreign hostility.

The nominal amount of debt, on the 1st of January, 1798, was			$76,366,618 82
Funds to be deducted, were—			
Cash in the Treasury, January 1st, 1798	$1,021,889 04		
Cash in the hands of collectors	265,369 03		
Cash in the hands of supervisors	32,964 39		
Value of bonds uncollected at the custom-houses, January 1st, 1798, estimated at	6,309,058 00		
Bank stock, at its value	1,110,000 00		
			8,739,280 46
True amount of debt, January 1st, 1798,			67,627,338 36

From whence it results that, if the amount of debt on the 1st of January, 1800, is contrasted with the debt on the first of January, 1790, it will appear that the debt has diminished by the sum of $1,092,841 48, or, if it is compared with the debt of January 1st, 1791, the debt has diminished by the sum of $3,972,878 66; so that, in either mode of stating the account, it clearly appears that the debt has in fact been diminished.

It is, perhaps, of little importance whether the one or the other of the preceding views is taken of the public debt, as the result, in either case, will be highly favorable to the financial operations of the Government; the committee, however, have inclined to the opinion that the debt, as it has been liquidated and funded by the Government, after deducting the amount of funds which arose prior to the 1st of January, 1791, ought to be considered as constituting the true amount of debt with which the present Government has been charged by the Constitution.

It is perfectly clear that no part of the national debt can, with propriety, be considered as new debt, which arose prior to the complete establishment of the present Government; and it is equally certain that the funded debt originated from the contracts of the late Government, and although it is certain that the interest, for a certain period after the present Government commenced its operations, was suffered to accumulate, and now composes a part of the capital of the debt, yet it will be recollected that the Government commenced its operations without revenue, without any system of finance, or funds of any description, to meet even the ordinary civil list expenditure; that every plan which was ultimately adopted, for the purpose of revenue, was to be devised, matured, and finally carried into execution, before any money could be brought into the Treasury; that, from the nature of things, a considerable time must necessarily have elapsed before the Government could be considered as completely established, before any arrangements could be made, either for liquidating the debt or providing the means of discharging the interest arising thereon, and that, during that period, the interest (as had been the case before the adoption of the Constitution) did necessarily accumulate; but the committee believe that this accumulation of interest is entirely chargeable to the imbecility of the late Government, and, of course, ought to be considered as composing a part of the old debt. It may likewise be remarked, that the sum which was lost by this accumulation of interest was more than replaced by the terms on which the debt was funded.

The debt which had been contracted by the late Government generally bore an interest at six per cent., and the large arrearage of interest which had accumulated thereon had been long due, and might have been demanded by the creditors in cash; but, by the terms of the new contracts with them, that interest was converted into a capital, bearing an interest of three per cent., and the difference between the value of that stock and specie, has been gained by the Government; so that, in whatever point of view this subject is considered, it appears clearly to the committee that the old debt cannot be considered as composing a sum less than that at which it has been funded.

The committee would not have thought it necessary to explain the principles on which they have deducted, from the nominal amount of debt, at the various periods when they have stated the same, the amount of funds acquired or possessed by the Government at those periods, respectively, had not the propriety of those deductions been formerly questioned. It is, however, understood to be now admitted that all the items composing those funds form a proper deduction from the amount of debt, except the bonds remaining uncollected at the custom-houses; this item alone, it has been said, ought to be excluded from the account.

The propriety of deducting these bonds, together with the other items, from the debt, has appeared to the committee so apparent, that they have found some difficulty in rendering a principle more intelligible, which to them appears self-evident.

The object of every statement of this nature must be to ascertain the balance of debt; and to do this, it is apparent that the debts and credits of the Government must be drawn into the account. The principle which applies to the accounts of an individual, applies in the same manner to the accounts of a nation; the amount of debt can, in neither case, depend on the amount of accounts, but upon the balance which results from a comparison of debt and credit; that these bonds are the property of the Government has not been controverted, and if there is any meaning in terms, they contain personal engagements for money, and must be credits; the obligation to pay these bonds could be no stronger, if they had been executed by individuals for money loaned, nor would the mode of collection be in the least varied; and whilst the effect is precisely the same with that of all credits, it remains for those who place them on different principles to explain the grounds of distinction.

That they have been executed for duties is true, but the credit which is thereby given to the merchant is entirely for his accommodation; and such are the express provisions of the law, which requires that the duties on goods shall be paid or secured before they are landed, at the option of the importer. The duties are to be paid or secured, not upon the consumption, but upon the importation, and the bonds which have at any period been taken for duties, and which remain uncollected, are to be considered as securities for the revenue of the preceding year; the Government has nothing to do with the goods on which duties have been secured after the bonds are taken; whether they are consumed or destroyed, neither increases or diminishes the obligation of the merchant to pay the contents of his bond. A further circumstance may be adverted to, which, if anything can render this point more clear and certain, may, perhaps, produce that effect—it is the consideration that a considerable amount of these bonds have already been pledged for the payment

of a part of the debt. The temporary loans which appear in the preceding statements have all been obtained in anticipation of the money arising from the bonds; and it would be a singular case, indeed, if the pledge, which is confessedly of greater value than the debt, and from the proceeds of which the debt must in fact be discharged, is to be totally excluded from a general account of debts and credits.

In reviewing the progress and present situation of the debt, the committee have been led to consider the causes which have hitherto retarded its extinguishment. The deranged state, or rather total want of funds and revenue, at the commencement of the Government, has been already noticed, and it cannot be necessary to add, that the delays which necessarily attend all financial operations, at their outset, must have prevented the Government, for a considerable time, from extending the revenue so far as convenience and policy might afterwards require; but the committee deem it important to add that the extraordinary expense which has arisen within a few years, has swallowed up large sums of the public wealth, and diverted the application of those moneys which might otherwise have gone to the extinguishment of debt, to objects connected with the honor, and, in some cases, with the immediate existence of the Government.

In this class of expense will be included a large sum occasioned by the Indian war, one million two hundred and fifty thousand dollars expended in quelling two insurrections in the State of Pennsylvania, more than one million and a half expended in our transactions with Algiers, and other Mediterranean Powers, together with a much larger expense occasioned by the unprovoked aggressions of France upon this country. Had it been possible steadily to have applied those various sums to the purchase of debt, it is easy to conceive how rapidly the same might have been extinguished. The committee have likewise noticed the large sums which have been necessarily expended in the erection of light-houses, repairing fortifications, in purchases for replenishing our military and naval arsenals, and in the building, purchase, and equipment of more than forty sail of ships and armed vessels, together with a considerable loan to the Commissioners of the City of Washington. The money expended on these objects, it is well known, arise to a very large amount, and the property thus acquired by the Government, and which is now on hand, cannot be estimated, on the most moderate calculations, at a sum less than four millions of dollars. The value of this property might be considered as composing another item in the credit of the general account of debt, but the committee have not thought it necessary to include it, and have noticed it particularly at this time, for the purpose of exhibiting a more general view of the extraordinary expense incurred by the Government, and for the purpose of presenting all that information in relation to the debt which will enable the House accurately to appreciate the great and increasing resources of the country; and on this point the committee cannot forbear to remark, that the progress of the Government, in its financial operations, must afford the most flattering presages of its future success, if the same system is pursued which has hitherto proved so successful. It cannot certainly be unworthy of remark, that ten years have not at this time elapsed since the Government fairly commenced its operations; that, during that period, it has been necessary to liquidate, to fund, and to provide for a large capital of floating debt, which had grown out of the disorders of the Confederation; that, during the same short period, the Government has been compelled to contend with one expensive war on the frontier, with two insurrections in the centre of our own country, and with depredation and hostility from the nations of Europe; that these embarrassments have nevertheless been faced by the Government; most of the difficulties have been surmounted; the debt has been liquidated and diminished; and the nation has still continued to increase in wealth and population, beyond all former example; and although the contest in which we are now engaged may, for a short period, retard the further extinguishment of debt, or perhaps produce a small addition to that which already exists, yet it cannot be doubted that, whilst we maintain order at home, no exterior circumstances can exhaust or greatly diminish the increasing resources of the nation.

PHILADELPHIA, *March* 24, 1800.

SIR: I have the honor to enclose the copy of a resolution which passed the House of Representatives on the 20th instant.

The committee who have been appointed, in pursuance of this resolution, have directed me to request from you such a statement of the public accounts, relating to the debt, as will enable them, with the greatest facility and accuracy, to make a report on this subject.

The principal object contemplated, is to ascertain, with precision, how far the public debt has been increased or diminished since the establishment of the present Government.

With a view to this object, it will naturally occur that two general accounts are necessary.

1st. An account exhibiting the amount of debt incurred, under the Confederation, and with which the present Government has been charged by the Constitution.

2d. An account of the existing debt, at the latest possible period, which it is presumed must be on the first day of January, 1800.

In respect to the first of these accounts, it is requested that the whole amount of the old debt, of every description, may be given, arranged under distinct and proper heads, as the same has been funded, assumed, liquidated, or otherwise ascertained, by acts of the Government, or settlement at the Treasury. It is, however, desired, that the account may be so stated that the interest which accumulated after the commencement of the present Government, and which has, in any shape, been converted into capital, may distinctly appear.

The interest herein particularly alluded to, has accrued upon the foreign debt, upon loan-office certificates, together with other evidences of debt, prior to the 1st of January, 1791, on the assumed debt, prior to the 1st of January, 1792, distinguishing, however, the interest which accumulated in the last year, and on the debt due to certain creditor States, to the close of the year 1794.

In respect to the account for exhibiting a view of the debt on the 1st of January, 1800, it will, of course, contain a complete statement of the old and new debt, together with the purchase and reimbursement of so much of the same as has been already discharged; but it is the wish of the committee that the payments in specie, which have been made, under authority of direct grants from the Legislature, may be particularly stated, and the aggregate brought into one view.

The committee likewise request an account of payments for military pensions, cash in the Treasury, cash in the hands of collectors, and an estimate of the current bonds at the custom-houses, deducting debentures and estimated drawbacks.

An estimate of the value of public property, acquired by the present Government, is likewise desired; including the capital employed in trading houses, light-houses, and other public buildings, public ships, arsenals, with their contents, and fortifications.

The amount of extraordinary expense incurred by the Government, in consequence of events which it is hoped will not be repeated, is also requested. Under this head will be included the expense of treaties with the Mediterranean Powers; the two insurrections in Pennsylvania, and the war with the Indian tribes; together with the extraordinary expense incurred in the Military and Naval Departments, in consequence of the present disputes with France, exclusive of ships, and stores in the arsenals.

It will likewise be satisfactory to the committee to be informed whether the assumed debt, including the interest which accumulated on the same, to the close of the year 1701, was not charged to the particular States in the settlement with them, and whether the temporary loans which have been obtained from the bank, have not been obtained on the principle of anticipating the revenue.

A statement of the account with the bankers in Holland, on its latest adjustment, and a general account of debts contracted and debts discharged, annually, will gratify the wishes of the committee.

The committee do not wish that the statements from the Treasury should be exclusively confined to the objects which have been particularly detailed: they submit to your judgment the propriety of furnishing any other statements which, in your opinion, will elucidate the object of inquiry. They take the liberty, however, to suggest, that, if the time can be spared at the Treasury, it might be useful to obtain a general account of receipts and expenditures, from the commencement of the Government. I have the honor to be, very respectfully, your obedient servant.

ROGER GRISWOLD.

Hon. Mr. WOLCOTT, *Sec. of the Treasury.*

TREASURY DEPARTMENT, *April* 29, 1800.

SIR: I have the honor to transmit, herewith, sundry statements, numbered from 1 to 9, inclusive, which have been prepared in pursuance of your letter of March 24, and which, I trust, will satisfy the inquiries of the committee appointed to report to the House of Representatives such "facts as relate to the increase or diminution of 'the public debt, since the establishment of the 'Government of the United States, under the pres-'ent Constitution."

I have every reason to believe that the general results of these statements are entirely correct, and am unconscious of any defect in the details required by the committee, except in respect to the sums expended on fortifications, ships, arsenals, and other buildings, and in the purchase of military and naval stores. The sums stated under these heads have been necessarily founded on estimates, as a precise account could only be obtained from an examination of the transactions of the agents employed by each of the Executive Departments, and a valuation of the property now remaining in the possession of the Government. I trust, however, that I am not mistaken in assuring the committee that the value of the public property has not been overrated.

If the documents now transmitted should, in the opinion of the committee, require elucidation, their commands shall be executed with alacrity; it being certain, that, whatever opinions may be entertained respecting the increase or diminution of the public debt, in consequence of expenditures which have been authorized by the present Government, there can be no difficulty in determining the true state of all the facts by which those opinions must be supported. I have the honor to be, with perfect respect, sir, your most obedient servant.

OLIVER WOLCOTT.

Hon. ROGER GRISWOLD, *Chairman, &c.*

[The tables, being voluminous, are necessarily omitted.]

ESTIMATE OF APPROPRIATIONS.

The Secretary of the Treasury respectfully reports to the House of Representatives of the United States, That, for the service of the year 1801, the following appropriations, as detailed in the estimates herewith transmitted, appear to be necessary:

TREASURY DEPARTMENT,
December 10, 1800.

For the Civil List, for the support of Government, including the contingent expenses of the several departments and offices -	$594,701 37
For the payment of annuities and grants - - - - -	1,753 33
For the support of the Mint Establishment - - - -	13,300 00
For the ordinary expenses of intercourse with foreign nations -	85,000 00
For expenses incident to the treaties with Great Britain, Spain, and the Mediterranean Powers - -	361,364 00

Estimate of Appropriations.

For the expenses of supporting the claims of citizens of the United States, to property captured and detained in foreign countries -	$64,000 00
For aid to distressed American seamen in foreign countries, and occasional assistance after their arrival in the United States -	30,000 00
For defraying the expenses incident to the valuation of dwelling-houses and lands, and the enumeration of slaves, in pursuance of the act of Congress, passed on the 9th of July, 1798, and, in addition to the funds heretofore appropriated -	40,000 00
For the military department, including the pay of the Army, rations, clothing, hospital, ordnance, quartermaster and Indian expenses; the defensive protection of the frontiers, and contingencies, agreeably to the estimate of the Secretary of War - - -	1,400,001 00
For the payment of military pensions	93,000 00
For the Navy Department, including the pay and subsistence of officers and men, hospital and contingent expenses; the support of the corps of marines; for completing navy-yards, docks, and wharves; and on account of building six seventy-four gun ships, agreeably to the estimate of the Secretary of the Navy - - - -	2,342,352 95
For the fabrication of cannon and small arms, and the purchase of ammunition for the Army and Navy, and for the militia of the United States - - - -	400,000 00
For the support of light-houses, beacons, buoys, and public piers, and other establishments for the security of navigation - -	38,622, 70
For the second enumeration of the inhabitants of the United States -	60,000 00
For satisfying miscellaneous claims, including the expenses of returning the votes for President and Vice President of the United States -	5,600 00
Amounting in the whole to -	5,529,695 35

The funds out of which appropriations may be made for the purposes before mentioned, are:

1st. The sum of six hundred thousand dollars of the proceeds of duties on imports and tonnage, which will accrue in the year 1801, which sum is by law annually reserved for the support of Government.

2d. The surplus of the revenue and income of the United States, which may accrue, to the end of the year 1801, after satisfying the objects for which appropriations have been heretofore made.

The Secretary also transmits a statement of the receipts and expenditures of the United States, for the year prior to the 1st of October last, being the latest period to which an account can be prepared.

All which is most respectfully submitted, by

OLIVER WOLCOTT,
Secretary of the Treasury.

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After this general statement the Secretary descends to a distinct specification of the several items; the most interesting of which, frequently in a condensed form, follow:

President and Vice President - -	$30,000
Senate and House of Representatives -	209,470
Judiciary - - - -	78,900
Treasury Department - - -	92,713
Loan officers and clerks - -	28,250
Department of State - - -	24,800
Mint - - - - -	23,600
War Department - - -	36,766
Navy Department - - -	24,489
General Post Office - - -	12,112
Surveyor General's Department -	28,200
Territory Northwest of Ohio - -	5,500
" " Mississippi - -	5,500
" " Indiana - - -	5,500
Demands unprovided for - -	20,000
Annuities and grants - - -	1,753

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Diplomatic Department.

The Secretary of State estimates the following sums for the expenses of foreign intercourse and treaties for the year 1801.

For one Minister Plenipotentiary to Great Britain - - - - -	$9,000
One ditto to Prussia - - -	9,000
One ditto to Spain - - -	9,000
One ditto to Portugal - - -	9,000
One Minister Resident to the Batavian Republic - - - - -	4,500
Their secretaries (five) at 1350 dolls. each	6,750
Contingencies other than personal -	2,750
Making good the deficiency for 1800, in the estimate for the mission to France	20,000
One Consul General at Algiers - -	4,000
One Consul at Tunis - - -	2,000
One ditto at Tripoli - - -	2,000
One ditto to the kingdom of Morocco -	2,000
Contingencies other than personal -	5,000
	85,000

Treaties.

For carrying into effect the Treaty of Amity, Commerce, and Navigation, between the United States and the King of Great Britain, viz:	
For the salaries of the Commissioners under the 6th article - - -	$13,320
For salary of the secretary, clerk-hire, stationery, &c., for ditto, - -	4,000
The salary of agent relative to said article	2,000
Clerk-hire and other contingencies of said agent's office - - - - -	3,100
Payment to special agents appointed by ditto - - - - - -	20,000
The salaries of the Commissioners under the 7th article - - - -	14,444

Estimate of Appropriations.

Clerk-hire, office rent, and other contingencies of ditto. - - -	$2,000	
For deficiency of former appropriations for carrying into effect the Treaty between the United States and the King of Spain, particularly in running the boundary line, pursuant to the second article of the said treaty, and sundry contingent expenses of the military escort which attended the Commissioners of the United States - - -	46,500	
For the difference between the cost of stipulated articles in the annuity to the Dey and Regency of Algiers, and the permanent appropriation therefor -	56,000	
For fulfilling the engagements of the United States with the Mediterranean Powers, viz: Algiers, Tunis, and Tripoli -	200,000	
	361.394	

Prize Causes.

For prosecuting the claims of American citizens for property captured by the belligerent Powers, viz:		
For the salaries of two agents residing in London - - - - -	$5,000	
Their contingencies other than personal	4,000	
For prosecuting claims before the high Courts of Admiralty and Courts of Appeals in England - - -	45,000	
Reimbursing Consuls of the United States for instituting and supporting claims to captured property, before tribunals in foreign countries - - -	10,000	
	64,000	

Relief of Seamen.

For the salary of an agent residing in England, reimbursing Consuls and others for aid rendered to distressed seamen in foreign countries, bringing them home from thence, and assistance in the United States - - - - -	30,000
For defraying the expenses incident to the valuation of lands and houses, and the enumeration of slaves within the United States, as directed by the late act of Congress of the 9th July, 1798, in addition to the funds heretofore appropriated for that purpose - - -	40,000
	70,000

Military Establishment.

Pay of the Army, consisting of 1,400 officers, artificers, musicians, &c., and of 4,040 privates - - -	480,390
Forage of ditto - - - -	7,680
Subsistence of ditto - - -	306,395
Horses for ditto - - -	5,000
Clothing, bounties, premiums, medical and hospital departments - -	203,530
Quartermaster's department - -	165,000
	1,167,991

Ordnance Department.

Expenses at Philadelphia -	$9,060	
Armory at Springfield - -	53,592	
Ditto at Harper's Ferry -	24,540	
Laboratory on Schuylkill -	6,460	
Five store-keepers - -	1,960	
Rent - - - -	4,388	
		100,000
Defensive protection of frontiers, &c. -		30,000
Military pensions - - -		90,300
		1,390,991

Indian Department.

Annuities to the Six Nations of Indians		4,500
Cherokees - - - - -		6,000
Chickasaws - - - -		3,000
Creeks - - - - -		1,500
Choctaws* - - - -		2,000
		17,000
Expenses attending the transportation of the above annuities, and also the annuities per act of the 6th of May, 1796, - -	11,500	
Deduct so much appropriated -	1,500	
		10,000
Promoting civilization, pay of temporary agents, &c. - - -		15,000
Contingent expenses for presents to Indians on their visits to the seat of Government, also for expenses attending their journeys, and during their stay, and on their return home, &c. &c. -		7,500
Rations to Indians at the different military posts, and within their respective nations - - - - -		22,500
		72,000

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Naval Establishment.

1. United States, Constitution, President, Chesapeake, and Philadelphia—44 guns each.
2. Constellation, Congress, New York, and Insurgent—36 guns each.
3. Boston and Essex—32 guns each.
4. George Washington, General Greene, Adams, and John Adams—each 24 guns on main deck, and 8 on quarter deck.
5. Ganges, Connecticut, Maryland, Portsmouth, Merrimack, Patapsco, Delaware, and Baltimore—each 20 and under 32 guns.
6. Herald, Trumbull, and Warren—18 guns each.
7. Richmond and Augusta—16 guns each.
8. Eagle, Pickering, Scammel, Experiment, Enterprise—from 12 to 14 guns each.
9. Seven galleys.

*Although the Choctaws are not entitled to claim the above sum, by treaty, or authorized agreement, yet as beneficial effects are presumed to have resulted from the same grant made to them in the present year, the propriety and policy of renewing the appropriation is respectfully submitted.

The Secretary of the Navy makes the following estimate of the pay, subsistence, and other expenses of the following description of ships of war, viz:

Of 44 guns and 400 men - -	$115,945
36 guns and 340 men - -	98,347
32 guns and 260 men - -	74,999
24 on gun deck, 8 on quarter deck, and 220 men - - -	66,785
20 to 26 guns and 180 men -	57,269
18 guns and 140 men - -	45,780
16 to 18 guns and 100 men -	35,737
12 to 14 guns and 70 men -	24,213
Galley 28 men - - -	9,200
Marine corps, consisting of 1143 men, including officers - -	$166,903
5 frigates of 44 guns - -	579,728
4 do. of 36 do. - -	393,391
2 do. of 32 do. - -	149,999
4 (smaller) of 32 guns - -	267,035
8 ships of 20 to 26 guns - -	458,158
3 sloops of war of 18 guns -	137,341
2 brigs of 16 to 18 guns - -	71,474
5 brigs and schooners of 12 to 14 guns - - - -	121,069
7 galleys - - - -	64,400
Contingent expenses - -	37,850
Total, adding fractions, - -	2,447,352

The Secretary further estimates:

For progressing with six seventy-four gun ships, and for completing navy yards, docks, wharves, &c. -	$500,000
For erecting marine barracks -	20,000
For maintenance of French prisoners	30,000
And to make up the deficiencies of former appropiations for the maintenance of French prisoners -	45,000
	3,042,352 95
But the appropriations heretofore made for the different objects relating to the Navy will not be exhausted at the end of the present year, by a sum equal to $700,000, so it may not be necessary to appropriate for the year 1801, for all the navy purposes, exclusive of providing timber to be laid up in store for future use, more than -	700,000
	2,342,352 95

Estimate of the number of persons composing the crews of the Navy of the United States.

5 Frigates of	44 guns and	400 men,	2,000
4 Ditto	36	340	1,360
2 Ditto	32	260	520
4 Ditto, smaller,	32	220	880
8 Ships of	20 to 26	180	1,440
3 Sloops of	18	140	420
2 Brigs	16 to 18	100	200
5 Do. and schooners,	12 to 14	70	350
7 Galleys		28	196
Total, including marines.		-	7,366

SINKING FUND.

[Communicated to the Senate, Nov. 28, 1800.]

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the Board, subsequent to their report of the 11th of December, 1799, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the 27th of November, 1800, and in the proceedings of the officers of the Treasury, therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

JOHN E. HOWARD,
President of the Senate pro tem.

November 28th, 1800.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That no purchases of the debt of the United States have been made, since the date of the last report to Congress, of the 11th day of December, 1799; and that the sums of capital stock heretofore purchased and transferred, prior to the present year, in trust for the United States, the interest whereon is appropriated, by law, towards the reduction of the public debt, amounts to four millions seven hundred and four thousand two hundred and nineteen dollars and sixty cents, as will more particularly appear from the document hereto annexed, marked A.

That the following sums have been applied towards the discharge of the principal debt of the United States, since the date of the last report to Congress of the 11th of December, 1799:

1st. To the fifth instalment of the six per cent. stock, bearing a present interest, which, pursuant to the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," passed on the 3d day of March, 1795, and the act in addition thereto, passed on the 28th day of April, 1796, became payable on the first day of January, 1800, the sum of - - $716,894 36

2d. To the payment of the eighth instalment of the subscription loan for bank stock, due on the last day of December, 1799 - - - 200,000 00

3d. To the payment of the third instalment of a loan of one million of guilders, obtained in Holland, and which fell due the present year, pursuant to a contract, dated the 1st of June, 1787, estimated at 40 cents per guilder - - - 80,000 00

4th. To the payment of the second instalment of a loan of one million of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated the 13th of March, 1788, estimated at 40 cents per guilder - - - - - 80,000 00

5th. To the payment of the first instalment of a loan of three millions of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated the 1st day of January, 1790, estimated at forty cents per guilder - - - - - - 240,000 00

Amounting in the whole to $1,316,894 36

The payments before enumerated have been made out of the following funds:

1st. The interest fund on the sums which accrued upon the stock purchased, and transferred to the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, marked B - - - - $522,323 11

2d. The fund arising from the payment of debts, which originated prior to the present Constitution of the United States, as particularly stated in the document marked C - - - - - - - 2,943 39

3d. The fund arising from dividends on the capital stock, belonging to the United States, in the Bank of the United States, from the 1st of July, 1798, to the 30th of June, 1799, after deducting the interest on the subscription loan for the same period, as particularly stated in the document hereto annexed, marked D - - - - - - 29,040 00

4th. The proceeds of duties on goods, wares, and merchandise, imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, appropriated by the 8th section of the act of March 3d, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," being for the period and in reference to the objects mentioned in this report - - - 762,587 86

$1,316,894 36

Making, in the whole, an equal amount to the reimbursements before mentioned.

There remained in the hands of the Treasurer of the United States, as agent of the Board of Commissioners, on the twenty-fifth of the present month, one hundred and sixty-nine thousand and eighty-seven dollars and four cents, which, with the growing produce of other appropriated funds, will be sufficient for the reimbursement, at the end of the present year, of the sixth instalment of the six per cent. stock, bearing a present interest, and the ninth instalment of the subscription loan for stock of the Bank of the United States, which reimbursements are required to be made by the 11th section of the act of Congress, passed on the 3d of March, 1795, herein before mentioned.

All which is respectfully submitted, by

OLIVER WOLCOTT,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Nov.* 27, 1800.

[Tables omitted.]

THE MINT.

[Communicated to Congress, January 21, 1801.]

MINT OF THE UNITED STATES,
January 2, 1801.

The Director of the Mint respectfully informs the President that the enclosed abstract of coin issued from the Mint of the United States, and struck since the 31st of December last, shows the amount to be three hundred and seventeen thousand seven hundred and sixty dollars, in gold coins; two hundred and twenty-four thousand two hundred and ninety-six dollars, in silver coins; and twenty-nine thousand two hundred and seventy-nine dollars and forty cents, in copper cents and half cents; making up, in the whole, the quantity of five hundred and seventy-one thousand three hundred and thirty-five dollars, and forty cents.

For the information of Government, the Director thinks it expedient to enclose a statement of the expenses and profits of the Mint for the year past, which, from a number of concurring circumstances, has been full as expensive as may hereafter be expected, extraordinary supplies or repairs excepted.

The Director has a peculiar satisfaction in informing the President that there has been received from the test bottoms and ashes, accumulated before his administration of the Mint, four hundred and twenty-eight dollars and forty-seven cents; which repays so much of the nine hundred and seventy-four dollars, heretofore allowed by Congress, as a deficiency in the former account of bullion, and that there is still a quantity of ashes remaining to be cleansed and refined.

The cents issued from the Mint, amounting, now, to the sum of seventy-nine thousand three hundred and ninety dollars and eighty-two cents, the proclamation required by law ought to be issued, by which all other copper coin will be put out of circulation.

The late act of Congress, directing the Mint to remain at Philadelphia, will expire in March next; some further legal provision will be necessary for its continuance here, or removal to the seat of Government. At all events, it will be necessary to provide some other mode of assaying the reserved pieces, set apart by direction of the act of Congress of the 2d of April, 1792, and required by that act to be done once in every year, under the inspection of the Chief Justice, the Secretary and Comptroller of the Treasury, Secretary for the Department of State, and the Attorney General, who are required to attend at the Mint, for that purpose. As it will be impracticable for those

officers to leave the seat of Government, to comply with this part of the law, and the year will expire on the second Monday in February next, the Director respectfully submits to the President the propriety of recommending to Congress the necessity of a previous provision by law, to prevent a non-compliance with a positive injunction of an act of Congress.

The great rise in the price of copper, in Great Britain, has prevented so large an importation, and of course so large an issue of cents from the Mint, as would, otherwise, have been done, the public being now tolerably well supplied with that species of small change.

The Director thinks it his duty to inform the President that, having had occasion, during the past year, to have accurate assays made of Spanish milled doubloons, it was found that their real value, compared with the standard of the United States, was rather less than eighty-five cents the pennyweight; whereas, by the act of Congress, of the 9th of February, 1793, they are made a legal tender, at about eighty-seven cents the pennyweight, or, in the language of the act, "at the rate of one hundred cents for every twenty-seven grains and two-fifths of a grain, of the actual weight thereof," which creates a loss, on the part of the citizens of the United States, of twenty-seven dollars and forty-two cents on one thousand pennyweight. The official certificate of the assayer is enclosed with this report.

All which is respectfully submitted to the President.

ELIAS BOUDINOT, *Director.*

The PRESIDENT *of the United States.*

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House of Reps., Feb. 2. 1801.]

Mr. SAMUEL SMITH, from the Committee on Commerce and Manufactures, to whom were referred the several memorials and petitions of sundry mechanics and manufacturers, of New York; of the Providence Association of Mechanics and Manufacturers; of the Asylum Company of Journeymen Printers of Philadelphia; and of John Davies, of Alexandria, praying for further encouragement to be given to the manufactures of the United States, by extending the duties on importation, reported:

That, in their opinion, it would be inexpedient, at the present time, further to increase the duties on imported articles.

To the Senate and House of Representatives of the United States, in Congress assembled, the memorial of the subscribers, mechanics and manufacturers, in the city of New York, respectfully sheweth:

Your memorialists, with deference to the superior discernment of Congress, entreat permission to call their attention to the subject of manufactures within the United States.

While the prosperity of agriculture and commerce are deservedly objects of national solicitude, the interest of the manufacturer is entitled to a share of attention.

It appears to your memorialists to be a principle of the most obvious policy, that the capital and labor of a State should be directed towards objects most conducive to the public prosperity.

A country so extensive as the United States, and comprehending such varieties of soil and climate, must, necessarily, afford a proportionable variety and quantity of materials for the purposes of manufacture. Wool, cotton, flax, iron, indigo, and numberless other articles, can, with care, be furnished in the greatest abundance; the addition of labor, only, is wanted, to convert them into valuable fabrics. Labor can be considerably facilitated by machinery, and the American genius is particularly adapted to mechanics.

Your memorialists do further respectfully represent, that the prosperity of a State is not only evidenced by its population, but that it likewise consists in the industry of its inhabitants; their usefulness to each other, and their independence of foreign Powers.

While destitute of manufactures, and dependent upon Europeans for a supply of those articles which nature or habit have classed among the necessaries of life, we hold some of our principal blessings upon a precarious tenure, of which war or shipwreck may deprive us.

So long as we remain a nation of farmers and merchants merely, we shall be tributary to the Europeans; we shall lavish upon them the wealth that may be retained at home, and pay to them a tax, which is multiplied in every hand through which it passes.

The value of the raw material frequently bears an inconsiderable proportion to that of the manufactured article. The iron, which costs a single cent, is worth an eagle when moulded by the ingenuity of the artisan of Birmingham or Sheffield. To reward the labor of foreign artificers would be generous; but it would be just to remunerate the industry and ingenuity of our own countrymen and citizens.

With submission, your memorialists represent, that the introduction of manufactures would not militate against the interest of the American merchant. The manufactures of Britain constitute the foundation of her commerce. Should any branch of manufacture, when fostered by the protecting hand of Government, rise superior to our internal necessities, we should trust to its excellence to furnish it with a market. Should any branch of commerce be affected by the origin of domestic manufactures, the activity and enterprise of the merchant will not fail to discover a new employment for his capital. The increasing population and wants of our country will prevent a diminution of foreign commerce, for a long time; while the introduction of manufactures will support a domestic commerce, equally advantageous to the merchant, because it will employ his capital at much less hazard; more beneficial to the community, because its profits will be distributed among our own citizens; more conducive to the

prosperity of the Government, because the internal intercourse it will occasion, will tend to assimilate and strengthen the empire.

It is not on a sudden that manufactures can be established; they must be pursued with persevering diligence, and nursed by guardian care. They will have many obstacles to encounter, and will be opposed by those Europeans, whose interest it is to render us their perpetual tributaries. But this is a stage through which manufactures must inevitably pass. The weakness of infancy must precede the maturity and vigor of manhood; and unless a commencement is made, we shall have nearly the same obstacles to combat in the next century, that are opposed to us in the present. It appears, therefore, to your memorialists, to be the true interest of the United States to lay the foundation of infant manufactures, and to commence with such articles as can best be supported. When countenanced by the protection of the Government, they will gradually increase, and a new source of opulence and prosperity be opened to our country.

Nations the most polite and enlightened have ever bestowed the utmost attention upon manufactures; *they* have even cherished valuable fabrics by premiums and bounties, though your memorialists require not these inducements to call forth their enterprise and industry.

Your memorialists beg leave further to represent that, by some fatal inattention, the breed and numbers of our sheep are now on the decline, and with deference submit to the consideration of Congress, whether suitable measures should not be taken to encourage the raising and importation of these valuable animals.

And your memorialists do pray that Congress, by imposing protecting duties, and by such other measures as they, in their wisdom, may suggest, will afford encouragement to such manufactures and fabrics as may be most useful and most likely to succeed in the United States. Your memorialists take the liberty of suggesting, in a schedule, hereto annexed, such particular manufactures as they consider may be most successfully established, and your memorialists pray that such encouragement may be extended toward them, as, in the opinion of Congress, may be deemed proper and necessary.

And your petitioners, as in duty bound, will ever pray.

Mr. GRISWOLD, from the Committee of Ways and Means, to whom was referred the petition of Asa Benjamin, reported:

That the petitioner is a manufacturer of cordage, and states that, in consequence of the high price of labor, the manufacturers of that article are not able to afford cordage at so moderate a price as foreign cordage is sold at, in our own markets; and he prays that an additional duty may be laid on imported cordage.

The committee highly appreciate the importance of the cordage manufacture, and fully believe that, if any serious danger existed of the loss of this important branch of business, it would be expedient that Government should immediately extend its patronage to it; but, from the best information the committee can collect, they are persuaded that no such danger exists.

And when it is recollected that imported cordage is already subjected to a high duty; that duties upon foreign goods must, in their nature, operate to give a bounty to the home manufacture of the same articles, and must be paid by the consumer, it is believed that the home manufacturers have not, at this time, any reasonable ground of complaint; and that an increase of duty, at this time, merely to increase the price of the article, would be unreasonable, as it respects the consumer.

The committee, therefore, report, that it is not expedient to grant the prayer of this petition.

STATE BALANCES.

[Communicated to the Senate, March 3, 1801.]

Mr. BLOODWORTH, from the committee appointed to inquire whether any, and what, further measures it is expedient to adopt with respect to the balances reported by the Commissioners appointed to settle the accounts between the United States and several States, made the following report:

That, as no disposition has been evidenced by any of the States, against whom balances were reported by the aforementioned Commissioners, except by the State of New York, to subscribe to the terms offered by Congress, a further continuance of the demand against those States, the justice and equity of which they do not admit, and for effecting the payment of which no measure of coercion can ever be resorted to, is not likely to answer any useful purpose; but, on the contrary, is calculated to occasion perpetual disquiet, as well to the creditor as to the debtor States. Under this, and every other view of the subject that they have been able to take, the committee are impressed with an opinion that it is advisable to extinguish the claim of the United States for the balances of those States who have declined accepting the terms of payment proposed by the act of Congress, passed on the 15th day of February, 1799.

INSURRECTION IN PENNSYLVANIA.

[Communicated to Congress, Dec. 5, 1799, by Message from the President of the United States.]

Letter from the District Judge of Pennsylvania,

PHILADELPHIA, *March* 11, 1799.

SIR: I cannot longer omit transmitting to you some documents which are enclosed, showing that a daring combination, and treasonable opposition to the laws of the United States, has recently been brought to a crisis, in Northampton county, in this district. I had some time ago issued my warrants against sundry offenders in that county who had been charged, on oath, with misdemeanors in entering into unlawful combinations to re-

sist the law commonly called the house-tax law, and rendering it unsafe for the officers appointed under that act to perform their duties. The Marshal endeavored to execute my warrants, and had proceeded in the business as far as is related in the papers enclosed. The result may be gathered from these papers. But I have directed the Marshal to make a more accurate statement, which, with other proofs I daily expect, I will transmit. I shall proceed, when furnished with the necessary testimony, to issue warrants against those who took up arms and rescued the prisoners. But I fear the process cannot be executed without a military force: this, at least, seems to be probable from the opinions given in the enclosed papers, and from the facts therein stated. The same spirit exists in some parts of Montgomery and Bucks counties, though it has not yet arrived to the violent extreme exhibited in Northampton. I shall issue a number of warrants against offenders in those latter counties forthwith; and if any resistance should there happen, I will duly inform you, that you may lay the information before the President, to whom, I pray you, to transmit that herein given.

I have the honor to be, very respectfully, your obedient servant,

RICHARD PETERS,
Judge of the Pa. District, U. S.

Colonel TIMOTHY PICKERING,
Secretary of State.

Report of the Marshal of the District of Pa.

PHILADELPHIA, *March* 11, 1799.

SIR: On the 20th of February last the honorable Richard Peters, Esq. issued warrants against sundry persons residing in the county of Northampton, who had given opposition to the execution of the law of the United States laying a tax on lands and houses, and a number of subpœnas for witnesses there and in the county of Montgomery. The writs were put into my hands on the 23d; on the 26th I set out, and got to Norristown that night; on the next morning (the 27th) I set out from thence, and on that day served all my subpœnas in Montgomery, and on the 28th got to Emaus, in Northampton county. I was informed there that an express had arrived from Philadelphia with despatches informing them of my business, which created some alarm amongst the people in opposition in Millerstown and its vicinity. A meeting of a troop of horse was called there, of which a Mr. Jarrett, a Justice of the Peace, was the Captain. Messengers were sent to various places for purposes of which I was unacquainted. Next day I proceeded to Nazareth, saw Judge Henry and Mr. Eyerly, and on Saturday morning, the 2d instant, Mr. Eyerly and I rode into Lehigh township, where I arrested eleven persons, and on the next day took security from them that they would appear at Bethlehem, at the public inn, on Thursday morning, the 7th instant, to march with me to the city of Philadelphia, there to enter into recognizance to appear at the next circuit court to answer, &c. Five others came in and signed the obligation. This being accomplished, we came to Bethlehem; set out for Macungy township in company with Colonel Stephen Balliot. We lodged that night at Emaus; next morning, the 5th instant, we set out for Millerstown; on our way I stopped at the house of George Seider to serve a subpœna on him as a witness on the part of the United States. His wife came to the door; on being asked for her husband, she abused me and the gentlemen with me. He came to the door, (with a club in his hand, of green oak, which seemed to have been procured for the occasion,) and called us every abusive name the German language can afford, refusing at the same time the subpœna. I gave it into the hands of a person present, who afterwards gave it to him, and rode on. When we got near Millerstown, we observed people assembling from all quarters; in some instances two men riding on one horse. This, from the conduct of Seider, led to a belief that an opposition was intended to be made to the arresting of any of the offenders against the laws of the United States in that place. We left our horses at Mr. Buskirk's, (a German clergyman near the town,) and walked in. We went first to the house of George Schaffer, one of the worst offenders. We were there informed that he had gone the day before to Philadelphia. We then went to the house of Henry Shankweiller, where we found upwards of fifty men (chiefly armed with clubs,) prepared to prevent the execution of the law. Shankweiller was shown to me; as I advanced towards him, he retreated into the midst of the crowd. I, however, arrested him; he refused to submit to the arrest; the mob swore that, before he should be taken, they would, *to a man*, fight till they died; that he should not submit; he swore he never would; he would die first. I explained to them the consequence of resisting; he swore he did not care if it cost him his life and all his property, even to the destruction of his family, he would not. Upon which, Jacob and Daniel Schaffer, brothers of the aforenamed Henry Schaffer, a young man of the name of Schwartz, who tore the cockade from Col. Balliot's hat, and many others whom I did not know, nor could find any person who would furnish me with their names, rushed on in the most violent torrent of abuse, threatening vengeance, particularly against Eyerly and Balliot, calling to each other, "strike, strike!" all desirous that some one might begin the affray. I desired Shankweiller to quiet those people, to keep them off. He desired them not to hurt the Marshal; but Eyerly and Balliot, he said, were damned rascals. I informed him and his people that those gentlemen were under my protection; that I would protect them; and showed some little resolution, which seemed to strike terror into them; upon which they gave way, and the gentlemen got out of the house. It is my opinion that if one single blow had been struck the whole of the rascals would have fallen on, and we three should have been killed. Shankweiller, however, before I left him, promised to meet me on Thursday morning at Bethlehem,

but without a promise of submission. We went from thence to Jeremiah Trexler's; lodged there that night. Next morning I hired a constable to go with and show me the persons of Daniel Harvey, Adam Stephen, and Herman Hortman, whom I arrested, and obtained their promise to meet me on the morning after at Bethlehem. Hortman was insolent, disputed my authority, but submitted. I returned to Trexler's; was there informed that a rescue of the prisoners, as soon as I had them assembled, was intended. Mr. Eyerly, Mr. Balliot and I, returned to Bethlehem, where Judge Henry gave us the same information. I then called a *posse comitatus* of about fourteen men to my aid in support of the authority of the United States, who attended unarmed. About 11 o'clock in the forenoon of Thursday, two men came into the yard of the public inn. One had a large duck gun, and the other a rifle. After some conversation with them I disarmed and confined them, concluding that if all the rescuers came in that scattered and unmilitary manner, a good account might be given of them.

After some time, up came Shankweiller of Millerstown, with William Desh, Jacob Cline, and David Scheffer, three of Captain Jarrett's troop of horse; I asked him if he had come to surrender himself to me, and submit to the laws of the United States? He impertinently answered no, and kept rather behind the horsemen. I asked him for what purpose he came? He answered, to see his partner, (meaning his accuser.) I commanded him to submit; he refused in the most positive manner. After some time a person came up, informing us that, a large body of men, horse and foot, were assembled, armed with guns, swords, and pistols, at the Lehigh bridge, in a hostile manner; on which information, I sent down John Mulhallon, Esq., Major William Burnett, Isaac Hartzell, and Christian Rhodt, two of whom were supposed to be in the confidence of the people in arms, to ask of them their object, whether it was a rescue, and to warn them of the danger of such an attempt. They went down, spoke with them, and returned with reports unfavorable, which were that a rescue was intended, that I must submit to their will, and release the prisoners, or the consequences would be such as they would not be answerable for. I absolutely refused, and showed them the writs. They then offered to give bail to me to attend the court. I informed them that I was an executive officer only, that I must strictly obey the commands of the writs, that I could not take bail, desired them to go back and state this to their people in arms, that if they attempted a rescue, it would be punished severely. This they treated with contempt, and boasted of their strength. I asked them if they knew the power and strength of the United States, and the danger of resisting the authority thereof; that punishment would most assuredly follow any indignity offered to them. They went off, and returned with three of the insurgents, who came to demand a surrender of the prisoners, but who were too ignorant to inform me of the object they had in view. I informed them of my determination; then the whole body of them marched up immediately, the horsemen and officers of the infantry with swords drawn; the infantry marched with trailed arms and surrounded the house, and seemed to be without an officer of their own corps to command them. The whole troops seemed to be under the command of a Captain Fries, of Bucks county. Fries made himself conspicuous on the occasion; he said he was the commanding officer, the oldest captain; he insisted on all the prisoners being set at large. This I refused, and continued to refuse, notwithstanding their threats, till I was informed that their resentment against Judge Henry, Colonel Balliot, and Mr. Eyerly, was great, that their lives were in danger unless an immediate surrender was made; I then informed the prisoners that I could not resist longer the force against me, but that I dared not give up the prisoners. I desired the prisoners to march with me for Philadelphia; and added, that if those people chose to rescue them, they might, and take the consequence. The prisoners of Lehigh township refused to march, declaring that, if I would suffer them to go home for the present, they would meet me at Philadelphia, on the Monday and Tuesday next following, and submit to the laws. Previous to this, I had entreated Captain Jarrett, who was present and armed with pistols, to use his influence, to prevent their doing a thing so improper and dangerous to themselves. He answered, that he could do nothing with them, till he saw all the prisoners were given up to them. He then said, Now I will take away my people, which he did in perfect order. Fries prepared his, returned and asked for Eyerman, the priest; he said he must be given up, that his people would not march without him. I assured him that he had been surrendered with the other prisoners; on which assurance he went out, found the priest, and then marched. By this time night was fast appoaching. I feared these ungovernable men might do things in the dark which they would avoid in the light; therefore agreed, for the safety of the gentlemen, to give the prisoners up. Upon the whole of my observations, I am well satisfied, in my own mind, that the laws of the United States cannot be executed by the officers of the Government throughout the county of Northampton, without military aid; the people are determined to resist; they calculate largely on their strength in this State, and the aid they will have from the neighboring States, and particularly that of Virginia.

I have the honor, sir, to be your most obedient, humble servant,

WILLIAM NICHOLS.

TIMOTHY PICKERING, Esq., *Sec. of State.*

Deposition of Valentine Fuhrer.

STATE OF PENNSYLVANIA. *Northampton county, ss:*

Before me, Joseph Horsfield, Esq., one of the justices of the peace, personally appeared, Valentine Fuhrer, of Bethlehem, in the said county, toll receiver of the bridge across Lehigh, who, on his solemn affirmation, duly administered according to

law, doth declare and say, that on the 7th day of March, about noon, a number of men, unknown to affirmant, came to the bridge gate and told affirmant, that a party of armed men would come soon; that they were much enraged; that they advised him to leave the bridge gate open, otherwise they would break through. Affirmant, on seeing the armed horse and footmen, opened the gate, and left the passage free till evening. Affirmant thinks about eighty horsemen, some armed and some unarmed, passed over the bridge; and about eighty footmen, all armed either with guns or clubs, also passed across; that after all the horse and foot had passed the bridge, Mr. Henry Jarrett also crossed. In about four or five hours all the horse and foot returned, without paying any toll, except Mr. Henry Jarrett, who offered to pay for himself and the red coats, which were about ten or twelve horsemen, and paid three quarters of a dollar to affirmant; and further he saith not.

VALENTINE FUHRER.

Affirmed before me, on the 9th March, 1799.

JOSEPH HORSFIELD.

Deposition of Jacob Eyerly and Stephen Balliot.

PENNSYLVANIA, *Northampton county, ss.*

Before the subscriber, one of the Judges of the Court of Common Pleas, in and for said county, on the 8th day of March, A. D., 1799, personally came Jacob Eyerly, Esq., one of the commissioners of the direct tax, and Stephen Balliot, Esq., collector of the revenue, &c.; the said Jacob Eyerly having made solemn affirmation according to law, and the said Stephen Balliot having made solemn oath according to law, do depose, declare, and say, that they set out from Bethlehem on the 5th instant, in company with Colonel William Nichols, Marshal of the United States for the district of Pennsylvania, who intended to serve several subpœnas and warrants issued by the Judge of the District Court; that the Marshal, upon the road to Millerstown, served a subpœna upon a certain George Seider, who, when he was called upon, came to the door with a club, and called the Marshal and these deponents highway robbers, thieves, rascals, and scoundrels, and spoke other very abusive language, and would not receive the copy of the subpœna; that the Marshal handed the copy to a certain Daniel Schwartz, who was present with the said Seider; that we rode on from there to Millerstown, where the Marshal and these deponents entered the house of Henry Shankweiller to serve a warrant upon him; here we found at least fifty men collected in his bar-room, among others the abovenamed George Seider, with a club; that, upon the arrestation of said Shankweiller, Jacob Shaeffer and David Shaeffer, with others whom the deponents do not know, came in the most violent and threatening manner close up to the deponents and the Marshal, and in a most violent manner threatened to beat and otherwise did abuse the deponents, and declared, that if the Marshal dared to take off said Shankweiller, they would fight to the last. And further, that said Shankweiller did declare he would not submit; but, upon the Marshal's representing to him the consequences, he said whatever Jarrett (meaning Henry Jarrett) did he would do; that the Marshal endeavored to get a man from the neighborhood who should know the persons so collected, but could procure nobody else to accompany him; that the people of the neighborhood consider themselves in imminent danger of their lives by appearing in favor of the Government; that previous to the return of the deponents with the Marshal to Bethlehem, they had received information which induced them to believe there would be some attempts be made to rescue the prisoners either at Bethlehem or on the road.

That yesterday, the 7th of March, the Marshal having collected about eighteen of the prisoners in a quiet and peaceable manner, at the house of Abraham Levering, tavern keeper, in the town of Bethlehem, during the morning of said day, a number of men, partly horsemen and foot, collected at the said house; the first few that came within reach were disarmed, but the prisoners who had been arrested in and about Millerstown, in Macungy township came up to the said house in company with a number of horsemen, armed with pistols and swords; that, in a short time after, a number of other horsemen, well armed, partly in uniform, came up; about half an hour after came up also to the said house two parties of men on foot, well armed; upon the whole, we suppose to the amount of about or between eighty and one hundred; that there were various and numerous threats made that if the prisoners were not released they would proceed to violence. And further, that your deponents are fully assured that the laws of the United States cannot be executed under the present circumstances, as it is every day becoming more and more dangerous throughout all that part of the county of Northampton called Macungy, and Upper Milford, and several other places. And further saith not.

JACOB EYERLY.
STEPHEN BALLIOT.

Affirmed by the said Jacob Eyerly, and sworn by the said Stephen Balliot, and subscribed before me.

WILLIAM HENRY.

By the President of the United States of America.

A PROCLAMATION.

Whereas, combinations to defeat the execution of the laws for the valuation of lands and dwelling-houses, within the United States, have existed in the counties of Northampton, Montgomery and Bucks, in the State of Pennsylvania, and have proceeded in a manner subversive of the just authority of the Government, by misrepresentations, to render the laws odious, by deterring the public officers of the United States to forbear the execution of their functions, and by openly threatening their lives: And whereas, the endeavors of the well-affected citizens, as well as of the Executive officers, to conciliate a compliance with those laws, have failed of success; and certain persons in the county of Northampton aforesaid have been hardy enough

to perpetrate certain acts, which I am advised amount to treason, being overt acts of levying war against the United States, the said persons exceeding one hundred in number, and armed and arrayed in a warlike manner, having, on the 7th day of this present month of March, proceeded to the house of Abraham Levering, in the town of Bethlehem, and there compelled William Nichols, Marshal of the United States in and for the district of Pennsylvania, to desist from the execution of certain legal process in his hands to be executed, and having compelled him to discharge and set at liberty certain persons whom he had arrested by virtue of criminal process, duly issued for offences against the United States, and having impeded and prevented the commissioner and the assessors, appointed in conformity with the laws aforesaid, in the county of Northampton aforesaid, by threats and personal injury, from executing the said laws; avowing, as the motives of these illegal and treasonable proceedings, an intention to prevent, by force of arms, the execution of the said laws, and to withstand, by open violence, the lawful authority of the Government of the United States: And whereas, by the Constitution and laws of the United States, I am authorized, whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the powers vested in the marshals, to call forth military force to suppress such combinations, and to cause the laws to be duly executed: And whereas, it is, in my judgment, necessary to call forth military force, in order to suppress the combinations aforesaid, and to cause the laws aforesaid to be duly executed; and I have accordingly determined so to do, under the solemn conviction that the essential interests of the United States demand it: Wherefore, I, John Adams, President of the United States, do hereby command all persons, being insurgents as aforesaid, and all others whom it may concern, on or before Monday next, being the 18th day of this present month, to disperse and retire peaceably to their respective abodes; and I do moreover warn all persons whomsoever against aiding, abetting, or comforting the perpetrators of the aforesaid treasonable acts; and I do require all officers and others, good and faithful citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous and unlawful proceedings.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand.

[L. S.]

Done at the city of Philadelphia, the 12th day of March, in the year of our Lord 1799, and of the independence of the United States of America the twenty-third.

JOHN ADAMS.

By the President:

TIMOTHY PICKERING,
Secretary of State.

Letter from the Secretary of War to the Governor of Pennsylvania.

WAR DEPARTMENT, *March* 20, 1799.

SIR: To suppress the insurrection now existing in the counties of Northampton, Bucks, and Montgomery, in the State of Pennsylvania, in opposition to the laws of the United States, the President has thought it necessary to employ a military force, to be composed, in part, of such of the militia of Pennsylvania, whose situation and state of preparation will enable them to march with promptitude. The corps of militia first desired on this occasion are the troops of cavalry belonging to this city, and one troop from each of the counties of Philadelphia, Bucks, Chester, Montgomery, and Lancaster. These troops I have the honor to request your Excellency will order to hold themselves in readiness to march on or before the 28th instant, under the command of Brigadier General McPherson.

I have the honor to be, with great respect, sir, your obedient servant,

JAMES McHENRY.

His Excellency Governor MIFFLIN.

Instructions to General McPherson.

WAR DEPARTMENT, *March* 21, 1799.

SIR: In pursuance of the President's proclamation, bearing date 12th day of this month, it has become indispensable to determine upon and put in motion the military force proper to be employed for suppressing the insurrection in the counties of Northampton, Montgomery, and Bucks, in this State.

You will therefore be pleased to form a detachment from the volunteers, who have associated in the State of Pennsylvania, and been accepted by the President, as a part of the provisional army, to consist of the two volunteer companies of cavalry of the city of Philadelphia, to which you will add two more of the troops of militia cavalry of the same city, now under orders to hold themselves in readiness to march, so as to compose a body of two hundred and forty horse, including non-commissioned officers, and proceed with the detachment, without delay, to the theatre of insurrection.

You will forthwith make returns of such articles as may yet be wanted for this detachment, that the necessary orders may be given for their delivery.

A paymaster for the volunteers and militia that may be employed ought to be appointed. You will please to name one, who will be advanced a sum, on account, equal to one month's pay, for the companies now called into service.

You will cause correct muster and pay-rolls for the volunteers and militia called into actual service, in the usual forms, to be made out, with the view of rendering the settlement of the accounts for their services prompt and easy.

The quartermaster of the detachment, who will be appointed by the Quartermaster General, will receive in advance from the Quartermaster General a sum on account, which may be conceived adequate to the expenditure that may be incurred in this particular department.

Rations will be furnished by the contractors for supplying the same to the military within the State of Pennsylvania. It is presumed he will employ a proper agent or agents, and execute your orders with precision respecting provisions.

Doctor Joseph Strong will attend the expedition, in quality of surgeon, furnished with a competent supply of medicines and instruments.

As one object of the expedition is to assist the Marshal of the District to make prisoners of, and hold amenable to justice, persons who have either resisted the service of legal process, or been concerned in rescuing from him those who were in his lawful custody, or for whom he may have process on other charges, and to conduct the prisoners to Philadelphia, you will perceive the propriety of applying your cavalry, in the manner best calculated, consistently with the safety of the detachment, to secure as many of the offenders at the same moment as possible.

You will inform the Quartermaster General and the contractor of the precise time you design to put the detachment in motion, and make them acquainted with whatever it may be necessary for them to know, previously, in order to insure, as much as possible, no failure in your operations, from the want of means in either of their departments.

The Marshal of the District of Pennsylvania will move with you, and give you the names of the offenders, their descriptions, and respective places of abode, who are to be made prisoners under criminal process. You will be particularly careful that the most criminal, or the ringleaders, be attended to, and in preference secured, and to prevent, by the most pointed orders, any insult to the inhabitants, or unnecessary rigor towards the prisoners taken.

It is left entirely to your discretion to determine upon your place or places of rendezvous, which should be such as are best calculated to enable the troops that may be stationary to defend themselves in case of attack, and also to aid as effectually as possible your parties of horse in their transit to and from their points of departure.

You will have observed that is designed to give to the volunteer and militia cavalry selected by you a principal agency in suppressing the existing combinations against the laws, and of quelling an insurrection and rebellion against the Government and rightful authority of their country, at a time when its sovereignty and liberties are threatened by a powerful, implacable, and insidious nation, who have been accustomed to divide and conquer other nations. It is not doubted, therefore, but that they will exhibit a useful example upon this service of military promptitude, spirit, vigilance, discipline, and obedience of orders.

To be prepared for adverse contingencies, it will be proper that you continue the orders for holding themselves in readiness to march, at the shortest notice, to the volunteer companies and militia not immediately called into actual service.

To cover the active operations of the volunteer and militia cavalry, a company of infantry, under Captain Shoemaker, and a company of artillerists under Captain Irwin, from Carlisle, Pennsylvania, have been ordered to march and rendezvous at Reading; and a company of artillerists at Fort Mifflin, intended to redezvous at the same place, is under orders to march at the shortest notice. Two companies of artillerists, from New York, and a party of infantry, recruits under Lieutenant Boote, supposed about thirty, from New Brunswick, New Jersey, have been ordered to march to Newtown, Pennsylvania: these latter troops are on the establishment of the United States; expected to arrive at their first places of rendezvous on or about the 23d instant, and subject to your orders, to be stationed where their presence can produce the best effects, and employed in case circumstances should require their actual co-operation with the volunteers and militia.

If rebellion should acquire a strength demanding further force, you are, using a sound discretion, and keeping economy in view, fully authorized by the President to call into actual service the whole or any part of the volunteer and militia companies that have been ordered to be held in readiness in the States of Pennsylvania and New Jersey.

It is expected that the detachment of volunteers and militia will be pushed forward, as rapidly as the season and roads will permit to the point or points you may think proper to occupy with the regular troops, and to which your capturing parties may be instructed to conduct their prisoners.

You are earnestly requested to employ every moment of your time in accomplishing the objects of your command, conformably to these orders, and to keep constantly in mind that, if the offenders against the laws can be suddenly and unexpectedly secured, before they have time to prepare general resistance, it may extinguish the insurrection, without further expense to the United States, or call upon the patriotism or fortitude of our fellow citizens. That you may have sufficient assistance in your own family to meet the eventual business the service may impose upon you, it is permitted to you to appoint a volunteer aid-de-camp, (should you conceive one to be necessary,) in addition to the aid allowed you by law, and to draw for him and his servant rations and forage.

You will be able to judge accurately upon the spot when opposition to the laws, and the spirit of revolt and insurrection, are so far suppressed in the disaffected counties as to admit the whole or part of the volunteers and militia to return to their homes and civil occupations. This will be ascertained when the inhabitants shall quietly permit the commissioners and assessors of the tax on land and houses to perform their respective duties according to law. Until this shall be the state of those counties, it will be proper to continue the military force there in convenient positions to produce a perfect submission to the authority of the United States.

I have the honor to be, with great respect, sir, your most obedient, humble servant,

JAMES McHENRY.

Wm. Macpherson, Esq.,
Brigadier General.

ORATION ON THE DEATH OF GENERAL WASHINGTON.

[Communicated to the House of Reps., Dec. 30, 1799.]

PHILADELPHIA, *Dec.* 27, 1799.

DEAR SIR: The enclosed resolutions, which unanimously passed the House of Representatives to-day, will make known to you how highly they have been gratified with the manner in which you have performed the service assigned to you, in preparing and delivering a funeral oration on the death of General WASHINGTON. That our constituents may participate in the gratification we have received, from your having so well expressed those sentiments of respect for the character, of gratitude for the services, and of grief for the death, of that illustrious personage, I flatter myself you will not hesitate to comply with the request of the House, by furnishing a copy of your oration, to be taken for publication.

Allow me, while performing this pleasing task of official duty, in communicating an act of the Representatives of the people, so just to you and so honorable to themselves, to embrace the opportunity to declare that I am, personally, with great esteem and sincere regard, dear sir, your friend and obedient servant.

THEODORE SEDGWICK.

Hon. Major Gen. LEE.

FRANKLIN COURT, *Dec.* 28, 1799.

DEAR SIR: I owe to the goodness of the House of Representatives the honor which their resolutions confer on my humble efforts to execute their wish.

I can never disobey their will, and therefore will furnish a copy of the oration delivered on the late afflicting occasion, much as I had flattered myself with a different disposition of it.

Sincerely reciprocating the personal considerations with which you honor me, I am, very respectfully, sir, your friend and obedient servant.

HENRY LEE.

The SPEAKER *of the House of Reps.*

In obedience to your* will, I rise, your humble organ, with the hope of executing a part of the system of public mourning which you have been pleased to adopt, commemorative of the death of the most illustrious and most beloved personage this country has ever produced; and which, while it transmits to posterity your sense of the awful event, faintly represents your knowledge of the consummate excellence you so cordially honor.

Desperate, indeed, is any attempt on earth to meet correspondently this dispensation of Heaven; for, while, with pious resignation, we submit to the will of an all-gracious Providence, we can never cease lamenting in our finite view of Omnipotent Wisdom, the heart-rending privation for which our nation weeps. When the civilized world shakes to its centre; when every moment gives birth to strange and momentous changes; when our peaceful quarter of the globe, exempt as it happily has been from any share in the slaughter of the human race, may yet be compelled to abandon her pacific policy, and to risk the doleful casualties of war, what limit is there to the extent of our loss? None within the reach of my words to express; none which your feelings will not disavow.

The founder of our federate Republic, our bulwark in war, our guide in peace, is no more. Oh that this was but questionable! Hope, the comforter of the wretched, would pour into our agonized hearts its balmy dew. But, alas! there is no hope for us; our WASHINGTON is removed forever. Possessing the stoutest frame, and purest mind, he had passed nearly to his sixty-eighth year, in the enjoyment of high health; when, habituated by his care of us to neglect himself, a slight cold, disregarded, became inconvenient on Friday, oppressive on Saturday, and defying every medical interposition, before the morning of Sunday put an end to the best of men. An end did I say? his fame survives! bounded only by the limits of earth, and by the extent of the human mind. He survives in our hearts, in the growing knowledge of our children, in the affection of the good throughout the world; and when our monuments shall be done away, when nations now existing shall be no more, when even our young and far-spreading empire shall have perished, still will our WASHINGTON'S glory unfaded shine, and die not, until love of virtue cease on earth, or earth itself sink into chaos.

How, my fellow-citizens, shall I single to your grateful hearts his pre-eminent worth? Where shall I begin in opening to your view a character throughout sublime? Shall I speak of his warlike achievements, all springing in obedience to his country's will—all directed to his country's good?

Will you go with me to the banks of the Mononga-hela, to see your youthful WASHINGTON, supporting, in the dismal hour of Indian victory, the ill-fated Braddock, and saving, by his judgment and by his valor, the remains of a defeated army, pressed by the conquering savage foe? Or, when oppressed America, nobly resolving to risk her all in defence of her violated rights, he was elevated, by the unanimous voice of Congress, to the command of her armies? Will you follow him to the high grounds of Boston, where, to an undisciplined, courageous, and virtuous yeomanry, his presence gave the stability of system, and infused the invincibility of love of country? Or shall I carry you to the painful scenes of Long Island, York Island, and New Jersey; when, combatting superior and gallant armies, aided by powerful fleets, and led by chiefs high in the roll of fame, he stood the bulwark of our safety; undismayed by disaster; unchanged by change of fortune? Or will you view him in the precarious fields of Trenton, where deep gloom, unnerving every arm, reigned triumphant through our thinned, worn down, unaided ranks, himself unmoved? Dreadful was the night—it was about this time of

* The two Houses of Congress.

Winter; the storm raged; the Delaware rolling furiously with floating ice, forbade the approach of man. WASHINGTON, self-collected, viewed the tremendous scene; his country called; unappalled by surrounding dangers, he passed to the hostile shore; he fought; he conquered. The morning sun cheered the American world. Our country rose on the event; and her dauntless Chief, pursuing his blow, completed in the lawns of Princeton what his vast soul had conceived on the shores of Delaware.

Thence to the strong ground of Morristown he led his small but gallant band; and through an eventful Winter, by the high efforts of his genius, whose matchless force was measurable only by the growth of difficulties, he held in check formidable hostile legions, conducted by a chief experienced in the art of war, and famed for his valor on the ever-memorable Heights of Abraham, where fell Wolfe, Montcalm, and since our much-lamented Montgomery, all covered with glory. In this fortunate interval, produced by his masterly conduct, our fathers, ourselves, animated by his resistless example, rallied around our country's standard, and continued to follow her beloved Chief through the various and trying scenes to which the destinies of our Union led.

Who is there that has forgotten the vales of Brandywine, the fields of Germantown, or the plains of Monmouth? Everywhere present, wants of every kind obstructing, numerous and valiant armies encountering, himself a host, he assuaged our sufferings, limited our privations, and upheld our tottering Republic. Shall I display to you the spread of the fire of his soul, by rehearsing the praises of the hero of Saratoga, and his much-loved compeer of the Carolinas? No; our WASHINGTON wears not borrowed glory. To Gates—to Green—he gave without reserve the applause due to their eminent merit; and long may the Chiefs of Saratoga and of Eutaw receive the grateful respect of a grateful people.

Moving in his own orbit, he imparted heat and light to his most distant satellites; and combining the physical and moral force of all within his sphere, with irresistible weight he took his course, commiserating folly, disdaining vice, dismaying treason, and invigorating despondency, until the auspicious hour arrived; when, united with the intrepid forces of a potent and magnanimous ally, he brought to submission the since conqueror of India; thus finishing his long career of military glory with a lustre corresponding to his great name, and in his last act of war affixing the seal of fate to our nation's birth.

To the horrid din of battle sweet peace succeeded; and our virtuous Chief, mindful only of the common good, in a moment tempting personal aggrandizement, hushed the discontents of growing sedition, and surrendering his power into the hands from which he had received it, converted his sword into a ploughshare, teaching an admiring world that to be truly great you must be truly good.

Were I to stop here, the picture would be incomplete, and the task imposed unfinished. Great as was our WASHINGTON in war, and much as did that greatness contribute to produce the American Republic, it is not in war alone his pre-eminence stands conspicuous; his various talents, combining all the capacities of the statesman with those of the soldier, fitted him alike to guide the councils and the armies of the nation. Scarcely had he rested from his martial toils, while his invaluable parental advice was still sounding in our ears, when he, who had been our shield and our sword, was called forth to act a less splendid but a more important part.

Possessing a clear and penetrating mind, a strong and a sound judgment, calmness and temper for deliberation, with invincible firmness and perseverance in resolutions maturely formed, drawing information from all, acting from himself, with incorruptible integrity and unvarying patriotism; his own superiority and the public confidence alike marked him as the man designed by Heaven to lead in the great political as well as military events which have distinguished the era of his life.

The finger of an overruling Providence, pointing at WASHINGTON, was neither mistaken nor unobserved; when, to realize the vast hopes to which our Revolution had given birth, a change of political system became indispensable.

How novel—how grand the spectacle! independent States stretched over an immense territory, and known only by common difficulty, clinging to their Union as the rock of their safety, deciding, by frank comparison of their relative condition, to rear on that rock, under the guidance of reason, a common Government, through whose commanding protection, liberty and order, with their long train of blessings, should be safe to themselves, and the sure inheritance of their posterity.

This arduous task devolved on citizens selected by the people, from knowledge of their wisdom and confidence in their virtue. In this august assembly of sages and of patriots, WASHINGTON, of course, was found; and, as if acknowledged to be the most wise, where all were wise, with one voice he was declared their Chief. How well he merited this rare distinction, how faithful were the labors of himself and his compatriots, the work of their hands and our Union, strength and prosperity, the fruits of that work, best attest.

But to have essentially aided in presenting to his country this consummation of her hopes, neither satisfied the claims of his fellow-citizens on his talents, nor those duties which the possession of those talents imposed. Heaven had not infused into his mind such an uncommon share of its ethereal spirit to remain unemployed, nor bestowed on him his genius unaccompanied with the corresponding duty of devoting it to the common good. To have framed a Constitution, was showing only, without realizing the general happiness. This great work remained to be done, and America, steadfast in her preference, with one voice summoned her beloved WASHINGTON, unpractised as he was in the duties of civil administration, to execute this last act in the completion of the national felicity. Obedient to her call, he assumed the high office with that self-distrust peculiar to his innate modesty, the constant attendant of pre-eminent virtue. What was the burst of joy through our anxious land on this exhilarating event, is known to us all. The aged, the young, the brave, the fair, rivalled each other in demonstrations of their gratitude; and this high-wrought delightful scene was heightened in its effect by the singular contest between the zeal of the bestowers, and the avoidance of the receiver of the honors bestowed. Commencing his administration, what heart is not charmed with the recollection of the pure and wise principles announced by himself, as the basis of his political life. He best understood the indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and individual felicity; watching with an equal and comprehensive eye over this great assemblage of communities and interests, he laid the foundation of our national policy in the unerring, immutable principles of morality, based on religion, exemplifying the pre-eminence of free Government, by all the attributes which win the affections of its citizens, or command the respect of the world.

"O fortunatos nimium, sua si bona norint!"

Leading through the complicated difficulties produced by previous obligations and conflicting interests, seconded by succeeding Houses of Congress, enlightened and patriotic, he surmounted all original obstructions, and brightened the path of our national felicity.

The Presidential term expiring, his solicitude to exchange exaltation for humility returned with a force increased with increase of age, and he had prepared his Farewell Address to his countrymen, proclaiming his intention, when the united interposition of all around him, enforced by the eventful prospects of the epoch, produced a further sacrifice of inclination to duty. The election of President followed; and WASHINGTON, by the unanimous vote of the nation, was called to resume the Chief Magistracy. What a wonderful fixture of confidence! Which attracts most our admiration—a people so correct, or a citizen combining an assemblage of talents forbidding rivalry, and stifling even envy itself? Such a nation ought to be happy; such a Chief must be forever revered.

War, long menaced by the Indian tribes, now broke out; and the terrible conflict, deluging Europe with blood, began to shed its baneful influence over our happy land. To the first, outstretching his invincible arm, under the orders of the gallant Wayne, the American eagle soared triumphant through distant forests. Peace followed victory, and the melioration of the condition of the enemy followed peace. Godlike virtue! which uplifts even the subdued savage.

To the second he opposed himself. New and delicate was the conjuncture, and great was the stake. Soon did his penetrating mind discern and seize the only course; continuing to us all the felicity enjoyed. He issued his proclamation of neutrality. This index to his whole subsequent conduct, was sanctioned by the approbation of both Houses of Congress, and by the approving voice of the people.

To this sublime policy he inviolably adhered, unmoved by foreign intrusion, unshaken by domestic turbulence.

"Justum et tenacem propositi virum,
"Non civium ardor prava jubentium,
"Non vultus instantis tyranni
"Mente quatit solidâ."

Maintaining his pacific system at the expense of no duty, America, faithful to herself, and unstained in her honor, continued to enjoy the delights of peace, while afflicted Europe mourns in every quarter, under the accumulated miseries of an unexampled war; miseries in which our happy country must have shared, had not our pre-eminent WASHINGTON been as firm in the council as he was brave in the field.

Pursuing steadfastly his course, he held safe the public happiness, preventing foreign war, and quelling internal discord, till the revolving period of a third election approached, when he executed his interrupted but inextinguishable desire of returning to the humble walks of private life.

The promulgation of his fixed resolution stopped the anxious wishes of an affectionate people from adding a third unanimous testimonial of their unabated confidence in the man so long enthroned in their hearts. When, before, was affection like this exhibited on earth? Turn over the records of ancient Greece; review the annals of mighty Rome; examine the volumes of modern Europe—you search in vain. America and her WASHINGTON only afford the dignified exemplification.

The illustrious personage called by the national voice in succession to the arduous office of guiding a free people, had new difficulties to encounter; the amicable effort of settling our difficulties with France, begun by WASHINGTON, and pursued by his successor, in virtue as in station, proving abortive, America took measures of self-defence. No sooner was the public mind roused by prospect of danger, than every eye was turned to the friend of all, though secluded from public view, and grey in public service; the virtuous veteran, following his plough,* received the unexpected summons with migled emotions of indignation at the unmerited ill-treatment of his country, and of a determination once more to risk his all in her defence.

The annunciation of these feelings, in his affecting letter to the President accepting the command of the army, concludes his official conduct.

First in war—first in peace—and first in the hearts of his countrymen, he was second to none in the humble and endearing scenes of private life; pious, just, humane, temperate, and sincere;

* General WASHINGTON, though opulent, gave much of his time and attention to practical agriculture.

uniform, dignified, and commanding; his example was as edifying to all around him, as were the effects of that example lasting.

To his equals he was condescending, to his inferiors kind, and to the dear object of his affections exemplarily tender; correct throughout, vice shuddered in his presence, and virtue always felt his fostering hand; the purity of his private character gave effulgence to his private virtues.

His last scene comported with the whole tenor of his life. Although in extreme pain, not a sigh, not a groan escaped him; and with undisturbed serenity he closed his well-spent life. Such was the man America has lost; such was the man for whom our nation mourns.

Methinks I see his august image, and hear falling from his venerable lips these deep sinking words:

"Cease, sons of America, lamenting our separation; go on, and confirm by your wisdom the fruits of our joint councils, joint efforts, and common dangers; reverence religion; diffuse knowledge throughout your land; patronize the arts and sciences; let liberty and order be inseparable companions; control party spirit, the bane of free Governments; observe good faith to, and cultivate peace with, all nations; shut up every avenue to foreign influence; contract rather than extend national connexion; rely on yourselves only; be American in thought, word, and deed: thus will you give immortality to that Union, which was the constant object of my terrestrial labors; thus will you preserve, undisturbed, to the latest posterity, the felicity of a people to me most dear; and thus will you supply (if my happiness is now aught to you) the only vacancy in the round of pure bliss high Heaven bestows."

MISSISSIPPI TERRITORY.

[Communicated to the House of Reps., Feb. 18, 1800.]

Mr. CLAIBORNE, from the committee to whom was referred the petition of Cato West and others, styling themselves "a committee, regularly chosen by the inhabitants of the Mississippi Territory, for the purpose of petitioning for a redress of grievances," made, in part, the following report:

The petitioners state, that, from the vast interval which separates the Territory from the seat of the General Government, a knowledge of their interest and wishes being difficult to be ascertained, partial and inaccurate statements were too apt to acquire credit, and that of this stamp were the representations which have been made, in the name of the people, soliciting a Government similar to one which had been established in the Territory Northwest of the river Ohio.

That the Government which Congress had enacted for the Mississippi Territory was bad in theory and still worse in practice; the Executive, Legislative and Judicial authorities, so carefully separated and limited by the constitutions of the elder States, are here mingled together in the hands of three or four individuals, who have but a partial interest in common with the people; and further, that the immense power thus conceded had neither been exercised with liberality nor beneficence, and that in some instances the provisions of the ordinance had been unattended to, and the Constitution of the United States violated.

To remedy these inconveniences, and to extend the fundamental principles of civil liberty, the petitioners solicit an amelioration of their present political system, and that Congress will enact that the ordinance of one thousand seven hundred and eighty-seven may immediately operate in its second grade in the *Mississippi Territory*, meaning that the people thereof may be allowed a Legislative Assembly.

Upon mature consideration of the premises, the committee are of an opinion that an amelioration of the present existing Government is dictated by justice and policy.

That the political maxim, so generally practised upon in the United States, "that the citizen should have a voice, by himself or his representative, in the framing of laws, and imposing of taxes," ought to be extended to the Mississippi Territory.

The committee find that, by the act of Congress, passed on the seventh of April, one thousand seven hundred and ninety-eight, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," the boundaries of the said Territory were defined, and the President of the United States authorized to establish therein a Government in all respects similar to that now exercised in the Territory Northwest of the river Ohio, excepting and excluding the last article of the ordinance made for the government thereof, by the late Congress, on the thirteenth of July, one thousand seven hundred and eighty-seven.

That the President, soon after the passage of the act aforesaid, by and with the advice and consent of the Senate of the United States, appointed a Governor, Secretary, and three Judges, for the Mississippi district, who have entered upon the duties of their respective offices, and proceeded to the organization of the Government.

That in the ordinance referred to, in the beforementioned act of Congress, the committee find the following provisions:

"*Be it ordained by the authority aforesaid*, That there shall be appointed, from time to time, by Congress, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office."

"There shall be appointed, from time to time by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the Legislature and the public records

of the district, and the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress. There shall also be appointed a court, to consist of three Judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behaviour. The Governor and Judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress, from time to time; which laws shall be in force in the district, until the organization of the General Assembly therein, unless disapproved of by Congress, but afterwards the Legislature shall have authority to alter them, as they shall think fit. The Governor for the time being shall be commander-in-chief of the militia, appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress, previous to the organization of the General Assembly; the Governor shall appoint such magistrates and other civil officers, in each county or township, as he shall find necessary for the preservation of the peace and good order in the same; after the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly, but all magistrates and other civil officers not herein otherwise directed shall, during the continuance of this temporary government, be appointed by the Governor. For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district; and for the execution of process, criminal and civil, the Governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which Indian titles shall have been extinguished, into counties and townships; subject, however, to such alterations as may hereafter be made by the Legislature.

"So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the General Assembly, provided that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five; after which the number and proportion of representatives shall be regulated by the Legislature: *Provided*, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same: *Provided, also*, That a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold, and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

"The representative thus elected shall serve for the term of two years; and in case of the death of a representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

"The General Assembly, or Legislature, shall consist of the Governor, Legislative Council, and a House of Representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum; and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together, and, when met, they shall nominate ten persons, resident in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress, five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the House of Representatives shall nominate two persons qualified as aforesaid for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of Council, the said House shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the Council five years, unless sooner removed. And the Governor, Legislative Council, and House of Representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the House, and by a majority in the Council, shall be referred to the Governor for his assent; but no bill or Legislative act whatever shall be of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly, when in his opinion it shall be expedient."

The committee further report, that they have not been enabled to ascertain with certainty the number of citizens residing within the limits of the Mississippi district, but there are supposed to be about six thousand free people of all descriptions; that the free male inhabitants of full age, not being sufficient in number (under the ordinance) to authorize a General Assembly, the Legislative authority (subject to certain prescribed restrictions) is at this time vested in and exercised by the Governor and Judges.

A Legislative Assembly organized upon the plan contemplated by the ordinance, when the number of free male inhabitants of full age amounted to five thousand, would, it is presumed, remove the principal cause of uneasiness, and be promotive of the general good.

For information as to the extent of population in the Mississippi Territory, the quality, quantity, and value of the exports, the wishes of the people for a change of government, and their supposed ability to meet the expense incident to a General Assembly, the committee beg leave to refer the House to two letters from Mr. N. Hunter hereto subjoined, (Nos. 1 and 2;) the petitioners prayed that Mr. Hunter might be accredited as their agent, and viewed as a character in whom entire confidence may be placed.

From a desire to attach the citizens of the Mississippi Territory permanently to the United States, to promote their political welfare and happiness, and to extend to them more ample security against political oppression, the committee submit the following resolutions:

1. *Resolved*, That so much of the ordinance for the government of the Territory of the United States Northwest of the river Ohio, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall forthwith operate and be in force in the Mississippi Territory: *Provided*, That, until the number of free male inhabitants of full age, in the said Territory, shall amount to five thousand, there shall not be returned to the General Assembly more than nine representatives.

2. *Resolved*, That, until the number of free male inhabitants of full age in the Mississippi Territory shall amount to five thousand, the county of Adams shall be entitled to choose five representatives to the General Assembly, and the county of Pickering four.

3. *Resolved*, That the first election for Representatives to the General Assembly shall be on the —— day of ——, and that all subsequent elections shall be regulated by the Legislature.

4. *Resolved*, That it shall be the duty of the Governor of the Mississippi Territory to cause the said election to be holden on the day aforesaid, at the most convenient place in the counties aforesaid, and to nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected.

5. *Resolved*, That the Representatives shall be convened by the Governor on the —— day of ——.

6. *Resolved*, That so soon as the number of free male inhabitants, of full age, shall amount to or exceed five thousand, the number of Representatives to the General Assembly shall be determined, and the apportionment made, in the way prescribed in the ordinance.

No. 1.

PHILADELPHIA, *Feb.* 4, 1800.

DEAR SIR: In your communication of the 26th of January, you inquire—

1st. "By what authority were Cato West and others chosen a committee? if by the people, at what period, in what manner, and for what purpose?"

A meeting was held by a number of the principal inhabitants, on the 6th day of July last, in order to confer upon the unhappy situation of the country, and, if possible, to devise a remedy. The result of this meeting was a circular letter drawn up by the conference, recommending to the several districts the scheme of a committee, which was to meet, with written instructions from their constituents, in order to inform the Governor of the true situation of the country, and petition for a redress of grievances. I have a copy of the circular letter, and the letters of instructions from the several districts.

2d. You inquire "what is the aggregate number of the free inhabitants of the Mississippi Territory, what proportion are natives of the United States, and what the number of our militia?"

Our Governor has never taken a census of the people, nor has he been able to organize the militia, so that we are much at a loss with respect to our numbers; I think, however, that we cannot have less than six thousand free inhabitants, and about two thousand capable of bearing arms: our people are mostly natives of the United States; there is not, perhaps, one-tenth of any other description.

3d. You inquire "whether the emigration to the Territory is great, and whether any of the citizens have lately removed to the Spanish dominions, and, if any, what seem to have been the inducements?"

The emigration to our country is at this time extremely limited; the impossibility of procuring lands by any other way than by purchase from individuals, and the facility with which lands are acquired in the Spanish dominions, forms an insuperable bar to the increase of our population; though men of property who have lately descended the river seem rather inclined to sacrifice a part of their property in the purchase of lands whereon to settle, than to avail themselves of the easy terms offered by the Spanish Government; but the poorer classes are impelled to go below.

An alarming depopulation took place last Winter under the patronage of Doctor White; we could never learn the exact number of families, but they were sufficiently numerous to form a considerable settlement below the line of which Doctor White is commandant. A number of the inhabitants have been selling out this Summer, and preparing to remove below at the end of the year. Various circumstances may have combined in producing this dereliction, but we do not hesitate to say that the morose, arbitrary contumacy of Governor Sargent are among the primary causes.

4th. You would know "the particular culture which occupies the attention of the planter of the Mississippi Territory, what are our articles of exportation, and what the supposed quantity and value?"

Cotton is at present the staple of the Territory, and is cultivated with singular advantage to the planter. We get one quarter of a dollar per pound for clean cotton, and an active planter will make from five to eight hundred pounds weight to a hand; and, as I conceive we have as many black as white inhabitants, we cannot make much less than three millions of pounds of merchantable cotton, equal to seven hundred and fifty thousand dollars.

We are able to raise, at a small expense, great quantities of pork; but the price, for three or four years' past, has not been more than three and a half dollars; consequently, little has been raised. Our soil and climate seems peculiarly adapted to the growth of indigo, as well as cotton; and the sugar-cane thrives well in the lower part of the Territory. I am, dear sir, with great esteem, yours,

N. HUNTER.

Agent Mississippi Territory.

No. 2.

FEBRUARY 6, 1800.

DEAR SIR: I received your obliging note of the 3d instant; and while you have my sincere and hearty thanks for your vigilance and attention to the business of the Natchez, I shall make every exertion in my power to elucidate such parts of our petition and documents as may appear vague or ambiguous.

The estimate annexed to the petition of Cato West and others (mentioned in your note) is not "the amount of the tax laid on the county of Adams by a law of the Territory;" but it appears to be the sum which the Governor thought necessary to be raised in that county for the service of the last year; and it was sent by him to the first court of general quarter sessions in order to receive the sanction of that court. This would give it immediate currency, and necessarily operate in aid of his future projects of taxation.

But such a manifest prodigality of the public resources appeared upon the face of it, together with so marked an opposition to the public opinion, with regard to the place whereon the public buildings were to be erected, that it received the immediate disapprobation of the court; and I believe a similar instrument was never presented to the county of Pickering.

I would here beg leave to call your attention to the first address of the committee, to Governor Sargent, of the 26th of August. It is there stated that he had adopted and pursued improper measures; that he had given an exclusive confidence to a party; that his measures were calculated to give confidence to the insolence of faction, and to suffocate the germ of public virtue in the upright citizen. He was also told that most of the perplexities which had embarrassed him in his administration had undoubtedly flowed from this source; but anxious for a general accommodation, and animated with a hope of inspiring a system of measures capable of embracing that object, the committee was ready to admit that the Governor had been surprised into those measures by partial or designing statements. To this address, however, the Governor avoided to return an answer; for the fact is, the charges were too true to be denied, and his conduct too improper to be justified.

I must also solicit the attention of the committee of the House of Representatives to the address of Cato West and others, to the Governor and Judges, upon the subject of the laws, and the answer to that address. The committee charges the Legislature with making laws in express contradiction to the letter of the ordinance of 1787, which authorizes them only to adopt laws already made in the original States. The Governor and Judges, in their answer, confess that they have made laws which have not been derived from any one of the State codes; but they say they have been in favor of the citizen, by lessening fines and penalties. But the committee, in their reply to that answer, which concludes their correspondence, assert that the lessening of fines and penalties was not the object of their Legislative efforts; and the code of laws which, it is presumed, has by this time been transmitted to Colonel Pickering's office, will, I am fully persuaded, justify the assertion.

At the time of my departure from the Territory the discontents of the people were great indeed; the whole country was influenced by an idea that the ordinance for our government had been wantonly abused, and the Constitution of the United States as wantonly violated, at a time, and under circumstances, which required no such sacrifice.

But the Governor's appointments, civil and military, as they stand at present, have been a more abundant source of discontent than any that has arisen under his administration. All the principal officers that possessed the confidence of the people have uniformly resigned their appointments, and it will be impossible that the Governor can ever be able to organize the militia, notwithstanding his extraordinary fines, in order to force his appointments upon the people.

Can it be possible that an administration, which, from its earliest operations, has proved so repugnant to the public will, and so fatal to the happiness of society, can ever be able to restore harmony, attach public confidence, and promote the general good? The thing is impossible.

There is yet another source of uneasiness, excited by the conduct of our Governor, which I feel it a duty incumbent on me to suggest to the committee of the House of Representatives. He has heretofore been in the habit of exacting and receiving fees for passports granted to citizens travelling from the Territory to the United States, and also for tavern and marriage licenses. It is believed that his perquisites in these instances have not been inconsiderable; and if the practice were forbidden by a law of Congress, it is presumed that the burdens of the people would be somewhat lessened, and a great incentive to abuse entirely removed.

My state of health will now admit of my personal attendance on the committee of the House of Representatives, and I shall take much pleasure in making such further explanation as may be desired.

The people of the Mississippi Territory are extremely anxious for a Legislative Assembly; and there is no doubt existing, in my mind, as to the entire competency of their resources.

The power of making laws, through their immediate Representatives, in whom they have a confidence, and who have a common interest with themselves, is a privilege which cannot but be grateful to every American, and produce the best effects in that country.

I am, dear sir, with all possible esteem, your very humble servant, N. HUNTER.

Agent Mississippi Territory.

Hon. W. C. C. CLAIBORNE,
Chairman Mississippi Committee.

[Communicated to the House of Reps., March 13, 1800.]

Mr. CLAIBORNE made the following report: The committee to whom was recommitted the report upon the petition of Cato West and others, together with certain resolutions submitted to the House on the 10th instant, proposing an abridgment of the powers granted to the Governor of the Mississippi Territory, are of opinion that it would be expedient to adopt the said resolutions, for the following reasons:

1. That from the infancy of the Mississippi settlements, and their remote situation from the seat of the Federal Government, it is advisable that the Government of the United States should possess a control over the proceedings of the Territorial Legislature, which can alone be effected through the medium of the Territorial Governor, whose responsibility, it is presumed, will prevent an improper use of any powers granted.

2. That the Territorial Government will only be temporary; and if, in the progress of the administration thereof, the system should prove defective, the necessary alterations will, no doubt, be made by Congress.

3. That the petitioners solicited *only* the benefits of the ordinance in its *second* grade, which, in the report heretofore made on the petition of Cato West and others, the House was advised immediately to extend to the Mississippi Territory; this measure the committee still think is dictated by policy and justice, and again recommend the adoption of the resolutions contained in the said report.

Resolved, That, from and after the organization of the Territorial Assembly of the Mississippi Territory, the Governor shall nominate, and, by and with the advice and consent of the Legislative Council, shall appoint all officers, both civil and military, of the Territory, whose appointments are not particularly vested in Congress by the ordinance: *Provided*, That the Governor shall have power to fill up all vacancies which may happen during the recess of the Legislative Council, by granting commissions, which shall expire at the end of their next session.

Resolved, That every bill which shall have passed the House of Representatives and the Legislative Council, shall, before it becomes a law, be presented to the Governor of the Territory; if he approves it, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered; and if approved by two-thirds of that House, it shall become a law. If any bill shall not be returned by the Governor within six days (Sunday excepted,) after it shall have been presented to him, the same shall be a law, in like manner, as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case, it shall not be a law.

Resolved, That every order, resolution, or vote, to which the concurrence of the Legislative Council and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the Governor of the Territory, and, before the same shall take effect, shall be approved by him; or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Resolved, That the General Assembly meet at least once in every year, and such meeting shall be on the —— day of —— unless they shall by law appoint a different day; *Provided*, That the Governor shall have power, on extraordinary occasions, to convene both Houses of the General Assembly, or either of them.

Resolved, That neither House, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

DIVISION OF NORTHWEST TERRITORY.

[Communicated to the House of Reps., March 3, 1800.]

The committee to whom it was referred to consider and report whether any, and, if any, what, alteration is necessary in the judiciary establishment of the Territory Northwest of the Ohio, and who were directed to report their opinion of the expediency of dividing said Territory into two distinct and separate governments, do, in obedience to such direction, make the following report:

That parts of said Territory are subject to several serious inconveniences, which require redress from the General Government; most of the evils which they at present experience are, in the opinion of this committee, to be imputed to the very great extent of country at present comprised under their imperfect government. The Territory Northwest of the Ohio, from southeast to northwest, fifteen hundred miles, and the actual distance of travelling from the places of holding courts the most remote from each other, is thirteen hundred miles, and in a country so sparsely peopled, and so little reclaimed from its native wildness, this distance alone seems to present barriers almost insuperable against the exercise of the functions of government, which always presupposes a knowledge of the condition of the several parts and the practicability of seasonable communication among the several organs.

In the three western counties there has been but one court having cognizance of crimes in five years; and the immunity which offenders experience attracts, as to an asylum, the most vile and abandoned criminals, and at the same time deters useful and virtuous persons from making settlements in such society. The extreme necessity of judiciary attention and assistance is experienced in civil as well as in criminal cases. The supplying to vacant places such necessary officers as may be wanted, such as clerks, recorders, and others of like kind, is, from the impossibility of correct notice and information, utterly neglected. This Territory is exposed, as a frontier, to foreign nations, whose agents can find sufficient interest in exciting or fomenting insurrection or discontent, as thereby they can more easily divert a valuable trade in furs from the United States, and also have a part thereof on which they border, which feels so little the cherishing hand of their proper Government, or so little dread of its energy, as to render their attachment perfectly uncertain and ambiguous. The committee would further suggest that the law of the 3d of March, 1791, granting land to certain persons in the western part of said Territory, and directing the laying out of the same, remains inexecuted; that great discontent, in consequence of such neglect, is excited in those who were interested in the provision of said law, and which require the immediate attention of this Legislature. To administer a remedy to these evils, it occurs to this committee that it is expedient that a division of said Territory into two distinct and separate governments should be made; and that such division be made, by a line beginning at the mouth of the Great Miami river, running directly north, until it intersects the boundary between the United States and Canada.

In which case it is conceived that the western part may be permitted to go into the same stage of government as is now in use in said Territory, as the same is supposed to contain at the present time fifteen thousand inhabitants.

Your committee, therefore, recommend to the House the adoption of the following resolution, viz:

Resolved, That the Territory Northwest of the river Ohio be divided into two distinct and separate governments, by a line beginning at the mouth of the Great Miami river, and running through a north course, until it intersects the boundary line between the United States and Canada.

NATURALIZATION.

[Communicated to the House of Reps., March 14, 1800.]

Mr. GRISWOLD, from the committee to whom was referred the petition of sundry aliens residing at Mount Pleasant, in the State of New York, made the following report:

That these petitioners state, that they came into the United States before the passing of the law of June, 1798, respecting the naturalization of aliens, and might have made the declarations required by the law of January, 1795, and brought themselves within the proviso of the law first mentioned, and secured the right of naturalization after a residence of five years within the United States; but having omitted to make the declaration required, they are obliged to reside fourteen years within the United States before they can become citizens thereof. They request that the Legislature will pass an act which shall secure to them the same rights which they would have received had they made the declaration required by the law of January, 1795.

The committee can see nothing in this case which can warrant a deviation from the general rule.

They believe the law of June, 1798, to be founded on fair and just principles, and that a probation of fourteen years is not generally more than sufficient to conciliate the feelings of aliens to the manners, laws, and Government of a country into which they remove as strangers; and that the attachment which every honest mind feels to the country which gave him birth, and in which he has formed his early attachments, will not, probably, in the short space of five years, be so far obliterated as to make it safe or prudent for this Government to repose that confidence in him which it must place in its own citizens. The committee are therefore of opinion that the prayer of this petition ought not to be granted.

ARMS AND AMMUNITION.

[Communicated to the House of Reps., March 25, 1800.]

Mr. S. SMITH, from the committee appointed to inquire into the expediency of authorizing the Secretary of the Treasury to remit any forfeitures which shall occur, or may have occured, under the law of the United States prohibiting the exportation of arms and ammunition, on the same principles on which the Secretary is authorized to remit forfeitures incurred under the revenue laws, made the following report:

That the power heretofore vested in the Secretary of the Treasury to mitigate or remit fines, forfeitures, and penalties, incurred under the revenue laws of the United States, was, by the express tenor thereof, limited to objects of a *fiscal* nature only, the management and superintendence of which were committed to that Department of which he is the head.

That the act of the United States prohibiting, for a limited time, the exportation of arms and ammunition, though in that act it is declared to be the duty of the custom-house officers, and of all persons employed in the collection of the revenue, to attend to the execution thereof; and though all forfeitures and penalties incurred under the said act, and not otherwise directed to be prosecuted and recovered, were to be sued for, prosecuted, adjudged, and distributed, in like manner as is provided in the act entitled "An act to provide more effectually

for the collection of the duties imposed by law on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels," was yet essentially a political, and not a fiscal measure and regulation.

That the object contemplated by said act was of great importance, both as it related to the supplies of arms and ammunition to the United States, and as it related to the deprivation of similar supplies to those who practised hostilities against the United States.

That the power of remitting fines, forfeitures, and penalties, incurred under the said act, seems to be involved in the general "power of granting pardons for offences against the United States," vested by the Constitution in the President of the United States, to whom alone, according to the nature of our Government, it must pertain to judge of the extent of the mischiefs flowing from the violations of such political measures and regulations, and how far considerations for the remission of fines, forfeitures, and penalties incurred by such violations may be listened to consistently with the public safety in relation to that power. If cases of unintentional violation have occurred, the inconvenience of making special application to the Executive (where, upon due representation, it is not to be doubted but that every attention would at all times be paid which reason and propriety could require) cannot justify a departure from the ordinary course to be observed on similar occasions.

Your committee are therefore of opinion that it is inexpedient "to authorize the Secretary of the Treasury to remit any forfeitures which shall occur, or may have occurred, under the law of the United States prohibiting the exportation of arms and ammunition, on the same principles on which the Secretary is authorized to remit forfeitures incurred under the revenue laws."

BREACH OF PRIVILEGES.

[Communicated to the Senate, May 10th, 1800.]

To the Senate of the United States: The remonstrance and petition of the undersigned, citizens of the Republic of America, resident in the city and county of Philadelphia, respectfully showeth:

That we, the undersigned citizens of the American Republic, deeply impressed by the proceedings now pending before the Senate, on the subject of privileges, in the case of William Duane, are anxious to call the attention of this honorable House to what they deem the real and inevitable tendency of those proceedings.

We are fully persuaded that the surest safeguard of the rights and liberties of the people is the freedom of the press; and friends as we are to a republican Government, we cannot view, without strong emotions of surprise and regret, the doctrines and practices of the privileged bodies of Europe about to be adopted in this free country against that sacred bulwark of republican liberty.

Relying on the Constitution, we *had* thought that no law could be made by Congress abridging the freedom of the press. But we find, by the proceedings of the Senate, that the privileges of one House may effect what the Constitution has forbidden to the three branches of our Legislature united.

We *had* thought that the Constitution had secured to the citizens of the United States the right of a trial by jury; but the proceedings of the Senate have convinced us that we are liable to be tried and punished for new and unknown offences, without recourse to that Constitutional tribunal.

We have long viewed with silent horror the baneful progress of the Sedition law; but patiently submitted to evils we could not but feel, in hopes that the *juries* of our country might palliate, if not cure them; but with unfeigned sorrow and surprise we observe, in the proceedings of the Senate, another sedition law rising up to appal us; a sedition law that defies the counteraction of the laws of our land or the juries of our country.

We *had* thought that the Constitution provided against the dangerous intermixture of judicial, legislative, and executive authorities; but the proceedings of the Senate have shown us that the Constitution has not yet sufficiently guarded this most important principle, which the doctrine of privilege is so well calculated to destroy.

We *had* thought that the three branches of our Legislature were unitedly, but not severally, competent to the enaction of those laws which bind the persons and properties of the citizens; but we now find that penal ordinances may be enacted and enforced by the Senate alone! and we contemplate a speedy and alarming extension of our criminal code, if the present example should unhappily be pursued by similar claims of Representative privilege.

We *had* thought that the rights and authorities of the respective branches of our Federal Government had been expressly defined by the Federal Constitution, and that the Constitution itself was drawn up and sanctioned by the public voice for this *express* purpose; but we now see that rights may be claimed, and privileges assumed, which we seek for in vain among the declarations and provisions of that supreme law of our land.

We *had* thought that the Constitution had provided that, in every criminal case, an accused person should be confronted with his accusers, have process for his witnesses, and be *fully* heard by himself or counsel in his defence; but the proceedings in question have convinced us that these rights are very imperfectly secured, while an accusing Senate can dictate to a defendant the defence on which he must rely, and arbitrarily confine him to the weakest part of it.

We *had* thought that the plain and acknowledged principle of natural justice would have prevented the accusers from being also the judges, the jury, and the punishers; but the proceedings of the Senate have satisfied us that these inconsistent characters *may* be mingled, and this plain and acknowledged principle of natural justice be completely forgotten or boldly renounced.

We dread the introduction of rights unlimited, and power unbounded, whether under the name of privilege, or prerogative, or implied authorities, or constructive powers; and we speak with solemn and profound regret that the late proceedings of the Senate have strongly excited in us this dread.

Our hearts are full upon this subject; we could accumulate our reasons of apprehension from these proceedings far beyond the common bounds of a petition and remonstrance; but we forbear. If the objections we have already assigned are unfelt and unnoticed, we must patiently contemplate the gloomy prospect before us, and calmly wait the approaching period when we shall no longer boast of being citizens of the American Republic.

We reverence the constituted authorities of our country too much to dictate to them the line of their duty, or to reflect improperly on their conduct, or to occupy unnecessarily their time. But on great public occasions, when our liberties are essentially involved, we *will* practice and maintain our acknowledged right to petition and remonstrate for redress of grievances; and therefore we do, with sincere deference for the honorable body we now address, but at the same time anxiously impressed with the danger of the present proceedings, respectfully call upon the Senate to reconsider the resolutions by them adopted on the subject of privilege, in the case of William Duane.

CITY OF WASHINGTON.

[Communicated to Congress, January 30, 1801.]

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

I transmit to Congress, for their consideration, a letter from William Thornton, Alexander White, and William Cranch, Esquires, Commissioners of the City of Washington; with a representation of the affairs of the city, made by them to the President of the United States, dated January 28, 1801, accompanied with a series of documents marked from A to H, inclusively.

JOHN ADAMS.

United States, *January* 30, 1801.

Commissioners' Office, *Jan.* 28, 1801.

Sir: We do ourselves the honor to present to you a state of the business under our care, and of the public property belonging to the Federal seat, with an estimate of its value, founded, not on mere supposition, but on the average of former sales.

This report would have been made at an earlier day, had it not been delayed by the unfortunate death of Mr. Scott.

We have the honor to be, with sentiments of the highest respect, sir, your most obedient servants,

WILLIAM THORNTON,
ALEXANDER WHITE,
W. CRANCH.

The President *of the United States.*

To the President of the United States:

The Commissioners appointed by virtue of the act of Congress entitled "An act for establishing the temporary and permanent seat of the Government of the United States," respectfully represent:

That the business committed to their charge having so far proceeded as to enable the Government to remove to its permanent seat, they have judged it expedient to lay before the President such a statement as will enable him to determine on the measures proper to be pursued in future.

By the act of Congress abovementioned, the Commissioners appointed in the manner thereby prescribed, or any two of them, were authorized to purchase or accept such quantity of land on the eastern side of the river Potomac, within the District, in the said act mentioned, as the President should deem proper for the use of the United States; and, according to such plans as the President should approve, prior to the first Monday in December, 1800, provide suitable buildings for the accommodation of Congress, and of the President, and of the public officers of the Government of the United States. That the President, in compliance with the act abovementioned, and of an act to amend the same, passed at Philadelphia, on the 3d of March, 1791, did, by his proclamation, dated 30th of the same month, locate a district within the limits prescribed by the abovementioned acts, and which has now become the permanent seat of the Government of the United States. That the President, agreeably to the above-recited acts, appointed, and by supplying vacancies which have happened by resignation and death, has kept in appointment, three Commissioners, for the purposes in the said acts declared. That the proprietors of the lands on which the City of Washington is laid out, by their several deeds, dated in or about the month of June, 1791, conveyed the said lands to Thomas Beall, of George, and John M. Gantt, and the survivor of them, and the heirs of such survivor, in trust, to be laid out in a Federal city, with such streets, squares, parcels, and lots, as the President of the United States for the time being should approve; and that the said Thomas Beall, of George, and John M. Gantt, or the survivor of them, or the heirs of such survivor, should convey to the Commissioners, for the time being, and their successors, for the use of the United States, forever, all the streets, and such of the said squares, parcels, and lots, as the President should deem proper for the use of the United States, forever; and that as to the residue of the lots, into which the said lands should be laid off, that a fair and equal division should be made of them in the manner in the said deeds of trust specified, and that the part assigned to the public should be sold at such times and in such manner, and on such terms and conditions, as the President of the United States for the time being should direct; and that the said trustees, or the survivors of them, or the heirs of such survivors, should, on the order of the President, convey all the said lots, so sold and ordered to be conveyed, to the respective purchasers, in fee simple,

according to the terms and conditions of such purchases; and the produce of the sales of the said lots, when sold as aforesaid, should in the first place be applied to the payment in money to the original proprietors for all the parts of their lands which should be laid off in lots, squares, or parcels, and appropriated to the use of the United States, at the rate of £25 per acre, not accounting streets any part thereof; and the surplus, whether in money or securities of any kind, should be paid, assigned, transferred, and delivered over to the President for the time being, as a grant of money to be applied to the purposes mentioned in the aforesaid act. In which deeds of trust, it is further provided, that the said Trustees should at any time, at the request of the President of the United States, convey all or any of the said lands, which shall not then have been conveyed in execution of the trusts aforesaid, to such person or persons as he shall appoint, in fee simple, subject to the trusts then remaining to be executed, and to the end that the same may be perfected. (A.) A very valuable property being thus placed at the disposal of the President, he pursued those measures which appeared most conducive to the great objects committed to his charge. He directed public sales of the property, and authorized, by a writing under his hand, dated 29th September, 1792, the Commissioners, or any two of them, to sell, or agree for the sale of any lot or lots in the said city at private sale, for such price and on such terms as they should think proper. (B.) But no sales took place deserving attention, until the 23d of December, 1793, when a contract was made with Robert Morris and James Greenleaf, for the sale of six thousand lots, averaging five thousand two hundred and sixty-five square feet each at the rate of eighty dollars per lot, payable in several equal annual instalments, without interest, commencing the 1st of May, 1794, and with condition of building twenty brick houses annually, two stories high, and covering twelve hundred square feet each; and with further condition that they should not sell any lots previous to the 1st of January, 1796, but on condition of erecting on every third lot one such house within four years from the time of sale. (C.) This contract was afterwards modified by an agreement of the 24th of April, 1794, by which the payment of 80,000 dollars, and the erecting the first-mentioned houses, should rest on the joint bond of the said Morris and Greenleaf, and of John Nicholson; and that one thousand lots should be conveyed to the said Morris and Greenleaf, (D.) which was accordingly done. It is proper to observe, that on the day on which the first-mentioned contract was executed, the Assembly of Maryland passed a law enacting, "that on all sales of lots in the said city, 'by the said Commissioners, or any two of them, 'under terms or conditions of payment being made 'therefor, at any day or days after such contract 'entered into, if any sum of the purchase money 'or interest shall not be paid for the space of thirty 'days after the same ought to be paid, the said 'Commissioners, or any two of them, may sell 'the same lots at public vendue, in the City of 'Washington, at any time after sixty days' notice 'of such sale, in some of the public newspapers of 'Georgetown and Baltimore town, and retain in 'their hands sufficient of the money produced by 'such new sale, to satisfy all principal and interest due on the first contract, together with the 'expenses of advertisement and sale; and the original purchaser, or his assigns, shall be entitled to 'receive from the said Commissioners, at their 'treasury, on demand, the balance of the money 'which may have been actually received by them, 'or under their order, on the said second sale; and 'all lots so sold shall be freed and acquitted of all 'claim, legal, and equitable, of the first purchaser, 'his heirs and assigns."

Notwithstanding the favorable prospect which this transaction for a time afforded, the scene soon changed. The purchasers not only failed to pay the instalment which became due in May, 1795, but early in that year discontinued the buildings which they had commenced under their contract, and in which very little progress has since been made. The President, however, did not think it prudent to offer for sale so large a portion of the public property as would be necessary to raise the sums requisite for carrying on the public buildings; believing, on grounds sufficiently solid to authorize the declaration of his opinion in a message to Congress, accompanying the memorial of the Commissioners hereafter mentioned, that this property would be amply sufficient for the purpose, could it be reserved till after the removal of Government, or till it could be sold in small parcels to such as would purchase for their own use. It was therefore determined to solicit the patronage of Congress, which was done in the year 1796, by a memorial from the Commissioners, stating the affairs of the Federal seat in as clear a light as circumstances would then admit, and suggesting the propriety of authorizing a loan bottomed on the city property, and guarantied by Congress, if that property should prove deficient. Congress approved of the measure, and authorized a loan, under their guaranty, to the amount of $300,000. It is needless to detail the fruitless attempts which were made to fill this loan with actual specie. The only loan which could be obtained was $200,000 in United States six per cent. stock, at par, from the State of Maryland, and for which the Commissioners were obliged, in addition to the guaranty of Congress, to give bonds, in their individual capacities, agreeably to the resolutions of the Assembly of that State, passed in the years 1796 and 1797. (E.)

The moneys arising from the sales of this stock, with the interest accrued thereon previous to the respective sales, amount to $169,873 41; and the interest paid thereon, up to the 30th of September last, inclusive, amounts to $39,000; so that the net sum of $130,873 41 remained applicable to the use of the public.

The extent of these loans being thus ascertained, and the purchasers of lots still failing to pay the amount of their purchases, it became obvious that the views of Government could not be accomplished without further aid.

The Commissioners, therefore, prepared a second memorial to Congress, stating the situation of the Federal seat, and the resources which remained in their hands, which memorial was transmitted by the President to Congress on the 23d of February, 1798, and, in consequence, an act was passed authorizing the Treasurer of the United States to advance the sum of $100,000, at the times in the said act mentioned, which was declared to be in full of the sums previously guarantied. From the difficulty of collecting outstanding debts, as well from purchasers at public sales held by the Commissioners for default of payment by the first purchasers, as from the first purchasers themselves, it became evident that the several objects considered as necessary previous to the removal of Government could not be accomplished with the means at the disposal of the Commissioners; application was therefore made to the Assembly of Maryland for a loan, and a resolution of that Legislature was obtained on the 23d of December, 1799, directing the trustee of the State to transfer to the Commissioners of the Federal buildings in the City of Washington the sum of $50,000 of the stock of the United States, bearing a present interest of six per cent. per annum, on their giving such real and personal security as the Governor and Council should approve, for the payment of the principal sum, on or before the 1st day of November, 1802, and the punctual payment of the interest quarter-yearly. Whereupon, Gustavus Scott and William Thornton, two of the Commissioners, together with Uriah Forrest and James M. Lingan, entered into bond to the State of Maryland for payment of the principal sum of $50,000, and interest thereon; and the said Uriah Forrest executed a mortgage on 420 acres of land, for the same purpose, agreeably to the said resolution; the abovementioned Commissioners having agreed, by a letter dated 28th of February, 1800, and directed to the said Uriah Forrest and James M. Lingan, in answer to their letter of the same date, that all the property in the City of Washington, before that time sold or contracted for, and where the payments had not been made, (except the property pledged by the act of Congress to secure the loan of $300,000,) should be held as security for the payment of the said sum of $50,000. (F.)

The Trustee of the State transferred the stock accordingly, which has been sold at different times, including the interest received thereon, for the sum of $42,738 36, and interest has been paid thereon up to the 30th of September last, inclusive, to the amount of $2,250, leaving the net sum of $40,488 96 to be applied to public use. The land which has been accepted, or purchased by the Commissioners for the use of the United States, and which yet remains unsold, (exclusive of lots forfeited for non-payment of the purchase money, and which for that cause are liable to be resold,) consists of 24,655,735 square feet of ground in the City of Washington, equal to 4,682 lots of 5,265 square feet each, exclusive of lots which bind on navigable water; these form fronts to the extent of 2,043 feet, and are generally sold by the foot front. It is impossible to ascertain with precision the value of this property; some idea may be formed of it by taking the average price at which similar property has heretofore been sold; in this case, a reference must be had to the different situations; 3,178½ of the city lots lie northeast of Massachusetts avenue, in which situation only five standard lots (except 1,500, part of Morris & Greenleaf's selection of 6,000 lots) have been sold by the Commissioners; but many lots (of private property) on the same side of that avenue have been sold. We have been able to ascertain the price of 355 of these, which, united with the price of the five lots sold by the Commissioners, make an average of upwards of $105 per standard lot, which rate would produce, by the sale of the whole number on that side of the avenue, the sum of $333,747. The remaining 1,504 lots are situated to the southwest of Massachusetts avenue; the average price of lots sold in that division of the city, since passing the guaranty law in May, 1796, is $343, at which rates the abovementioned 1,504 lots would produce $515,872. The average price of lots binding on navigable water, sold during the same period, is $12 71 per foot front. The property of this descriptoin, remaining to be sold at the same rate, would produce $25,979 24. It is to be observed that most of these lots were sold at periods remote from the time when profit could be expected to arise from them, and many of them at reduced prices, in consequence of covenants to build thereon. Although it may be admitted that the lots heretofore sold, are, on an average, better than those which remain for sale, yet the change of circumstances under which future sales may be made we hope will more than counterbalance the difference. In addition to this property, four wharves have been built, at the expense of thirty-two hundred and twenty-one dollars eighty-eight cents, which yet remain in a useful state.

An island in Aquia creek, in the State of Virginia, was purchased, in the year 1791, for the sum of $6,000, on account of the freestone quarries therein, which has been conveyed to the beforementioned Thomas Beall and John M. Gantt for the use of the United States. Thus a real estate of the value of $884,819 88, according to the best estimate we are able to form, remains at the disposal of Government. (G.)

The measures to be pursued, with regard to this property, it is not for us to determine; but we think it necessary to state some other matters which require attention. The debts due, and shortly to become due, to the city fund, and which are considered as good, amount to $144,125 80; and the debts contracted on the credit of that fund, as nearly as can be ascertained, amount to $360,881 05. (G.)

Although it is believed that all the debts stated to be good may be ultimately recovered, (they being due for property sold and not conveyed, or secured by notes with sufficient endorsers,) yet the difficulty of enforcing payment is such that they cannot be relied on for the punctual payment of the interest on the several loans from the State of

Maryland, of the sums due to individuals, and the expenses of the Commissioners' office.

We further observe, that only three squares remain undivided, owing to the original proprietors not having agreed on their respective proportions therein; and that the division of thirty-three squares has been agreed upon, but the papers respecting them are not yet signed by the parties; and that the accounts with some of the original proprietors for land appropriated for public use have not yet been settled, owing to a difference of opinion between the Commissioners and them with respect to small portions of land for which they claim payment.

Thomas Beall and John M. Gantt, the trustees before named, have, at the request of the President of the United States, conveyed the building lots in the city of Washington to Gustavus Scott, William Thornton, and Alexander White, subject to the trusts remaining to be executed. Gustavus Scott has since deceased. The said trustees have been required by the President to convey the streets and grounds appropriated to public use to the Commissioners, but have not complied.

Several acts of the Legislature of Maryland have vested certain powers in the Commissioners, which it may be proper to notice, particularly an act passed the 19th December, 1791, entitled "An act concerning the Territory of Columbia and City of Washington," a copy whereof is enclosed, (marked H;) and an act passed in December, 1793, being a further supplement to the act above mentioned; by the first paragraph of which it is enacted, "That the certificates granted, or which may be granted by the said Commissioners, or any two of them, to purchasers of lots in the said city, with acknowledgment of the payment of the whole purchase money and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the Territory of Columbia and City of Washington, shall be sufficient and effectual to vest the legal estate in the purchasers, their heirs, and assigns, according to the import of such certificate, without any deed or formal conveyance."

The second paragraph of the last mentioned act, empowering the Commissioners to resell lots for default in payment of the first purchase money, has been before recited.

The Commissioners having stated all the facts and observations which appear to them necessary for the information of Government respecting the business committed to their charge, with the greatest deference and respect submit the same to the consideration of the President of the United States.

WILLIAM THORNTON,
ALEXANDER WHITE,
W. CRANCH.

COMMISSIONERS' OFFICE, *Jan.* 28, 1801.

A.

Copy of a Deed of Trust for Land in the City of Washington.

This indenture, made this —— day of June, in the year 1791, between Abraham Young, of the State of Maryland, of the one part, and Thomas Beall, of George, and John Mackall Gantt, of the State of Maryland, of the other part, witnesseth: That the said Abraham Young, for and in consideration of the sum of five shillings, to him in hand paid by the said Thomas Beall, of George, and John M. Gantt, before the ensealing and delivery of these presents, the receipt whereof he doth hereby acknowledge; and thereof doth, against the said Thomas Beall, of George, and John M. Gantt, their executors and administrators, and also for and in consideration of the uses and trusts hereinafter mentioned, to be performed by the said Thomas Beall, of George, and John M. Gantt, and the survivor of them, and the heirs of each survivor, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents doth grant, bargain, sell, alien, release, and confirm, unto the said Thomas Beall and John M. Gantt, and the survivor of them, and the heirs of such survivor, all the lands of him, the said Abrabraham Young, lying and being within the following limits, boundaries, and lines, to wit: Beginning on the east side of Rock creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburg; thence, along the middle of the said road, to a stone standing on the east side of the Reedy branch of Goose creek; thence, southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburg to the Eastern Branch ferry; then, south, to a stone eighty poles north of the east and west line already drawn from the mouth of Goose creek, to the Eastern Branch; thence, east, parallel to the said east and west line, to the Eastern Branch; thence, by and with the waters of the Eastern Branch, Potomac river, and Rock creek, to the beginning, with their appurtenances, except all and every lot or lots of which the said Abraham Young is seized, or to which he is entitled, lying in Carrollsburg or Hamburg; to have and to hold the hereby bargained and sold lands, with their appurtenances, to the said Thomas Beall, of George, and John M. Gantt, and the survivor of them, and the heirs of such survivor, forever, to and for the special trusts following, and no other, that is to say: that all the said lands hereby bargained and sold, or such part thereof as may be thought necessary and proper, to be laid out, together with other lands within the said limits, for a Federal city, with such streets, squares, parcels, and lots as the President of the United States, for the time being, shall approve; and that the said Thomas Beall, of George, and John M. Gantt, or the survivor of them, or the heirs of such survivor, shall convey to the Commissioners for the time being, appointed by virtue of the act of Congress, entitled "An act for establishing the temporary and permanent seat of the Government of the United States," and their successors, for the use of the United States, forever, all the said streets, and such of the said squares, parcels, and lots, as the President shall deem proper for the use of the United States; and that as to the residue of the

lots, into which the lands hereby bargained and sold shall have been laid off and divided, that a fair and equal division of them shall be made; and if no other mode of division shall be agreed on by consent of the said A. Young, and the Commissioners for the time being, then such residue of the said lots shall be divided, every other lot alternate to the said A. Young; and it shall, in that event, be determined by lot whether the said A. Young shall begin by the lot of the lowest number laid out on the said land, or the following number; and all the said lots which may in any manner be divided or assigned to the said Abraham Young shall thereupon, together with any part of the said bargained and sold land, if any, which shall not have been laid out into the said city, be conveyed by the said Thomas Beall, of George, and John M. Gantt, or the survivor of them, or the heirs of such survivor, to him, the said Abraham Young, his heirs or assigns; and that the said other lots shall and may be sold at such time or times, in such manner, and on such terms and conditions, as the President of the United States for the time being shall direct. And that the said Thomas Beall, of George, and John M. Gantt, or the survivor of them, or the heirs of such survivor, will, on the order or direction of the President, convey all the said lots so sold and ordered to be conveyed to the respective purchasers, in fee simple, according to the terms and conditions of such purchases; and the produce of the sales of the said lots, when sold as aforesaid, shall, in the first place, be applied to the payment in money to the said A. Young, his executors, administrators, or assigns, for all the part of the land, hereby bargained and sold, which shall have been laid off in lots, squares, or parcels, and appropriated as aforesaid to the use of the United States, at the rate of twenty-five pounds per acre, not accounting the said streets as part thereof; and the said twenty-five pounds per acre being so paid, or in any other manner satisfied, that then the produce of the same sales, or what part thereof may remain as aforesaid in money, or securities of any kind, shall be paid, assigned, transferred, and delivered over to the President for the time being, as a grant of money, and to be applied for the purposes and according to the act of Congress aforesaid. But the said conveyance to the said A. Young, his heirs or assigns, as well as the conveyance to the purchasers, shall be on and subject to such terms and conditions as shall be thought reasonable by the President for the time being, for regulating the materials and manner of the buildings and improvements on the lots generally in the said city, or in particular streets or parts thereof, for common convenience, safety, and order; provided such terms and conditions be declared before the sales of any of the said lots under the direction of the President. And in trust further, and on the agreement that the said A. Young, his heirs or assigns, shall and may continue his possession and occupation of the said land hereby bargained and sold, at his and their will and pleasure, until the same shall be occupied under the said appropriations for the use of the United States as aforesaid, or by purchasers. And when any lots or parcels shall be occupied under purchase or appropriations as aforesaid, then, and not till then, shall the said A. Young relinquish his occupation thereon. And in trust, also, as to the trees, timber, and wood on the premises, that he, the said A. Young, his heirs or assigns, may freely cut down, take, and use the same as his and their property, except such of the trees and wood growing as the President or Commissioners aforesaid may judge proper, and give notice, shall be left for ornament; for which the just and reasonable value shall be paid to the said A. Young, his executors, administrators, or assigns, exclusive of the twenty-five pounds per acre for the land. And in case the arrangements of the streets, lots, and the like, will conveniently admit of it, he, the said A. Young, his heirs and assigns, shall, if he so desire it, possess and retain the buildings and grave-yards, if any, on the hereby bargained and sold lands, paying to the President at the rate of twelve pounds ten shillings per acre for the lands so retained, because of such buildings and grave-yards to be applied as aforesaid; and the same shall be thereupon conveyed to the said A. Young, his heirs and assigns, with his lots; but if the arrangements of the streets, lots, and the like, will not conveniently admit of such retention, and it shall become necessary to remove such buildings, then the said A. Young, his executors, administrators, or assigns, shall be paid the reasonable value thereof, in the same manner as squares or other ground appropriated for the use of the United States are to be paid for. And because it may so happen that, by the deaths or removals of the said Thomas Beall, of George, and John M. Gantt, and from other causes, difficulties may arise in fully perfecting the said trusts by executing all the said conveyances, if no eventual provision is made; it is therefore agreed and covenanted between all the said parties, that the said Thomas Beall, of George, and John M. Gantt, or either of them, or the heirs of either of them, lawfully may, and that they at any time at the request of the President of the United States for the time being, will convey all or any of the said lands hereby bargained and sold, which shall not then have been conveyed in execution of the trusts aforesaid, to such person or persons as he shall appoint, in fee simple, subject to the trusts then remaining to be executed, and to the end that the same may be perfected. And it is further granted and agreed between all the said parties, and each of the said parties doth for himself respectively, and for his heirs, covenant and grant to and with the others of them, that he and they shall and will, if required by the President of the United States for the time being, join in and execute any further deed or deeds carrying into effect the trusts, purposes, and true intent of this present deed.

In witness whereof, the parties to these presents have interchangeably set their hands and affixed their seals, the day and year first above written.

Signed, sealed, &c., A. YOUNG.
R. T. HOOE,
DANIEL JENIFER, Jun.

B.

Copy of the President's order to the Commissioners to sell at private sale.

SEPTEMBER 29, 1792.

The President of the United States doth hereby order and direct that any lot or lots in the City of Washington may, after the public sale, to commence on the 8th day of October, be sold and agreed for by the Commissioners, or any two of them, at private sale, for such price and on such terms as they may think proper.

GEO. WASHINGTON.

C.

Copy of Morris and Greenleaf's contract with the Commissioners, dated 24th December, 1793.

Articles of agreement made and indented this twenty-fourth day of December, in the year of our Lord one thousand seven hundred and ninety-three, between the Commissioners for the Federal Buildings in the City of Washington on the one part, and Robert Morris, of the city of Philadelphia, and James Greenleaf, of the city of New York, Esquires, of the other part.

Whereas the said Commissioners, on the twenty-third day of September last, did enter into an agreement, in writing, with the said James Greenleaf, for the sale of three thousand lots of ground in the City of Washington, at the price of twenty-five pounds, current money of Maryland, for each lot, to be ascertained in the mode specified in the said agreement; and the sale to be made upon the terms and conditions therein also specified, as by the said agreement, reference being thereto had, will more fully appear; and whereas the said James Greenleaf is empowered by the said Robert Morris to enter into a contract in his name and on his behalf, as his agent, for the purchase of a like number of lots in the said City of Washington, for such price and on such terms and conditions as may be agreed upon between him and the said Commissioners; and, in pursuance of such power, the said James Greenleaf hath agreed with the said Commissioners for the purchase of three thousand lots of ground in the said City of Washington, fifteen hundred of them to be designated on the southwest, and fifteen hundred of them to be designated on the northeast side of Massachusetts avenue, at the price of thirty-five pounds, current money aforesaid, for each of the said lots, payable yearly, in seven equal payments, without interest; the first of which payments to be made on the first day of May next ensuing the date of these presents, and so on the first day of May in each year succeeding thereto, until the whole of the seven payments shall have been made; and hath further agreed, in pursuance of the said power, that the said Robert Morris should build annually, for seven years next ensuing, ten brick houses, of two stories each, and each of them covering twelve hundred square feet, making, in the whole, seventy houses; and that the said Robert Morris, or his heirs, should not, before the first day of January, in the year one thousand seven hundred and ninety-six, sell or contract for the sale of any of the said lots, but under and upon the express condition that one such house, at the least, should be built and erected on every third lot, within four years next after such sale or contract for sale. But it is understood and hereby declared to be the meaning of the parties to these presents, that the said Robert Morris and James Greenleaf may, at their pleasure, associate to them one or more persons in the whole purchase, without creating on any of them an obligation to erect on or for every third lot; and whereas it is agreed by and between the said Commissioners and the said James Greenleaf, that everything relating to a loan specified in the contract above mentioned, made between the said Commissioners and the said James Greenleaf on the twenty-third day of September last, to be hereafter made by the said James Greenleaf, shall be referred to a new contract, made and entered into this day by and between the said Commissioners and the said James Greenleaf, and shall have no other effect whatever than what such new contract specifies and ascertains; and whereas it is thought best, by the parties to these presents, to consolidate and join in one contract both the said agreements, and, further to prevent all disagreement concerning the size of the said lots, to fix and ascertain five thousand two hundred and sixty-five square feet as the average of the areas of the lots contracted for as aforesaid, as well as to ascertain and fix the general location of them, and to modify that part of the agreement with regard to the improvements to be made: *Now, therefore, these articles witness*, That the said Commissioners had sold and contracted for the sale and conveyance, and do hereby, for themselves and their successors, in consideration of the covenants of the said Robert Morris and James Greenleaf, hereinafter expressed, being fully executed and performed on their part, sell and contract for the sale and conveyance to them, the said Robert Morris and James Greenleaf, as tenants in common, and their heirs, in fee, six thousand lots of ground in the said City of Washington, upon the average of five thousand two hundred and sixty-five square feet to each lot, so that the aggregate in lots, reckoning in the ways to the squares, as the proportion thereof to the lots to be conveyed, shall amount to thirty-one million five hundred and ninety-thousand square feet, four thousand five hundred of which lots shall lie to the southwest of Massachusetts avenue, and the remaining fifteen hundred shall lie to the northeast of the said avenue. And that, of the said four thousand five hundred lots on the southwest of the said avenue, the said Robert Morris and James Greenleaf shall have the part of the city on Notley Young's land, and in that part of Daniel Carroll's land which lies in the branches of the canal, clear of Carrollsburg. And that the said Robert Morris and James Greenleaf shall have a right to choose, to satisfy the residue of the said four thousand five hundred lots lying to the southwest of the Massachusetts avenue aforesaid, on any part of the said southwest side of the avenue that they shall think proper, excepting such lots as shall lie in squares numbered as follow, to wit, &c. &c., and the lots lying in Carrollsburg; and also further excepting the water lots, including the water lots lying on the Eastern Branch, and also one-half of the lots lying in Hamburg; the lots in that part of the city, and belonging to it, other than water lots, being to be divided, by alternate choice, between the said Commissioners and the said Robert Morris and James Greenleaf: Provided, however, and it is hereby agreed, by and between the parties to these presents, that the said Robert Morris and James Greenleaf are entitled to the lots in Notley Young's land, and, of course, to the privileges of wharfing annexed thereto; and that lots adjoining the canal are not reckoned water lots; and that the said Robert Morris and James Greenleaf shall have a right to choose the remaining fifteen hundred lots lying to the northeast of the said Massachusetts avenue, or any part thereof they shall think proper, excepting one-half of the squares which shall adjoin the spot that may be appropriated for a national university, which is expected to be fixed on the northeast side of the said avenue. And the said Robert Morris and James Greenleaf, do hereby, in consideration of the agreement on the part of the said Commissioners hereinbefore set forth, for themselves, their heirs, executors, and administrators, jointly and severally agree to and with the said Commissioners to pay to them or their successors thirty pounds, current money of Maryland, for each of the said six thousand lots contracted to be sold as aforesaid, amounting to one hundred and thirty thousand pounds, current money aforesaid, in seven equal annual payments, without interest, and the first payment to be made on the first day of May next ensuing the date of these presents; and that they will build and erect yearly, on some parts of the said lots, twenty brick houses, of two stories each, and each house covering twelve hundred square feet, until the number of one hundred and forty houses shall be built and erected; and that all buildings and improvements to be made on any of the said lots shall conform to the general regulations published by the President of the United States; and that neither the said Robert Morris and James Greenleaf, nor their heirs, will sell or contract for the sale of any of the said lots before the first day of January, one thousand seven hundred and ninety-six, but upon the express condition that one such house, at least, as above described, shall be built and erected on every third lot, at the least, within four years after such sale or contract for sale. But, as it will promote the interest of the city that at least some of the said houses should be larger, and that all front houses of the size of those described should be of three stories in height, it is agreed by and between the parties aforesaid, and declared by them to be the meaning of these presents, that the area of all houses exceeding twelve hundred square feet shall be reckoned accordingly, and discount in proportion as they cover more than the twelve hundred square feet; and that all houses of three proper proportioned stories shall be reckoned and discounted at the rate of one-fourth part more than their area, so that the aggregate of houses of not less than twelve hundred square feet shall cover, with the allowance of one-fourth for three story houses, one hundred and sixty-eight thousand square feet. And it is hereby declared, that the covenants and agreements, on the part of the said Robert Morris and James Greenleaf, and the true and faithful performance of them, are the terms and conditions of the sale of the said six thousand lots. And it is further agreed, by and between the parties aforesaid, that, in the division that is hereafter to be made between the said Commissioners and the present proprietors of the property of the said City of Washington, due regard shall be had by the said Commisioners that such divisions shall take place, as far as consistently may be, for the interest of the said Robert Morris and James Greenleaf. And, further, it is understood and declared, that the lots already sold or contracted for by the Commissioners are not to be chosen by the said Robert Morris and James Greenleaf.

In witness whereof, we have hereunto set our hands the day and year first above written.

R. MORRIS.
by J. Greenleaf, his agent.
J. GREENLEAF.
T. JOHNSON, D. STEUART, D. CARROL, *Commissioners.*

Witness: WILLIAM DEAKINS, Jun.

D.

Copy of Minute of 24th April, 1794.

The Commisioners of the Federal District and Mr. Greenleaf entered on the subject of Messrs. Morris and Greenleaf's propositions, of the 7th of January last, communicated by the Commissioners to the Secretary of State, and being mutually disposed to accommodate in order to effect their common view of improvement of the city, have fallen on the following mode of carrying on and settling the contract of Messrs. Morris and Greenleaf:

1st. That an account shall be raised between the Commissioners and Messrs. Morris and Greenleaf, charging the lots which may from time to time be conveyed to them or their assigns, and giving credit for the payments, as made.

2d. That the Commissioners will grant a certificate or deed in fee for the public lots contracted for by Morris and Greenleaf, on Mr. Notley Young's land, and supposed to be about one thousand, as soon as those lots can be ascertained, or even before, if a general description will answer the purposes of Messrs. Morris and Greenleaf, on their giving bond, with Mr. John Nicholson, for the amount of the same, and for performing the contract made relative to improvements.

3d. And in order that Messrs. Morris and Greenleaf may have the advantage of disposing of any of their lots, amounting to six thousand, at their will, the Commissioners, on their assignment or order, will grant certificates or deeds in fee to such persons as they may from time to time require, acknowledging the payment of the consideration money, and subjoining thereto the condi-

tion of improvement, (if any is to be made,) according to the contract of Messrs. Morris and Greenleaf; the Commissioners being willing to rely on the condition to be inserted in the certificate, or in the responsibility of Morris, Greenleaf, and Nicholson, as the case may require, for the improvement of every third lot sold by them before the 1st day of January, 1796, agreeable to the tenor of their contract; and the Commissioners are willing to allow the amount of one thousand lots, and the improvements on the whole number of lots, to rest on the joint and several bonds of Morris, Greenleaf, and Nicholson; it being intended that a credit on their personal security may at any and at all times amount to the cost of one thousand lots, as before mentioned.

[NOTE.—The above is a copy of an entry made in the minutes of the Commissioners, between the 15th and 24th April, 1794.]

E—1

Resolutions passed in 1796 *and* 1797, *for loans to the Commissioners, by the Legislature of Maryland.*

BY THE HOUSE OF DELEGATES,
December 14, 1796.

Resolved, That this State will loan, for the use of the City of Washington, the sum of $100,000, agreeably to the request made by the Commissioners of the said city, under the authority given by the President of the United States to them, conformably to the act of the Congress of the United States.

Resolved, That the said loan be paid in six per cent. stock of the United States, bearing an immediate interest of six per cent. at par; which sum the Trustee of this State is authorized to transfer to the said Commissioners: *Provided*, To secure the repayment of the same with interest, at the times and in the manner prescribed by the act of Congress entitled "An act authorizing a loan for the use of the City of Washington, in the District of Columbia, and for other purposes therein mentioned," Gustavus Scott, William Thornton, and Alexander White, or a majority of them, give bond to the State of Maryland conditioned for the payment of $100,000, and punctual payment of six per cent. interest on the said sum of $100,000, quarterly, and on the several days on which interest on the said stock is now received from the United States: *And provided also*, That, before the transfer of the said stock, Gustavus Scott, William Thornton, and Alexander White, in their individual capacities, give bond to the State of Maryland in the penalty of $200,000, conditioned for the payment of the said sum of $100,000, with interest, at the times and in the mode prescribed by the act of Congress aforesaid, as additional and collateral securities for the same.

By order:

WILLIAM HARWOOD,
Clerk of the House of Delegates.

Assented to by the Senate, Dec. 17, 1796.

E—2.

Resolution of the Maryland Legislature, passed December, 1797, for a loan of $100,000 to the City of Washington.

BY THE HOUSE OF DELEGATES,
December 22, 1797.

Resolved, That this State will loan, for the use of the City of Washington, the sum of $100,000, agreeably to the request made by the Commissioners of the said city, under the authority given by the President of the United States to them, conformably to the act of Congress of the United States.

Resolved, That the said loan be paid in six per cent. stock of the United States, bearing an immediate interest of six per cent., at par; which sum the Trustee of this State is authorized to transfer to the said Commissioners: *Provided*, To secure the repayment of the same, with interest, at the times and in the manner prescribed by the act, entitled "An act authorizing a loan for the use of the City of Washington, in the District of Columbia, and for other purposes therein mentioned," Gustavus Scott, William Thornton, and Alexander White, or a majority of them, give bond to the State of Maryland, conditioned for the payment of $100,000, and punctual payment of six per cent. interest on the said sum of $100,000, quarterly, and on the several days on which interest on the said stock is now receivable from the United States: *And provided, also*, That, before the transfer of the said stock, Gustavus Scott, William Thornton, and Alexander White, in their individual capacities, give bond to the State of Maryland, in the penalty of $200,000, conditioned for the repayment of the said sum of $100,000, with interest, at the times and in the modes prescribed by the act of Congress aforesaid, as additional and collateral security for the same.

WM. HARWOOD,
Clerk of the House of Delegates.

BY THE SENATE, *Dec.* 22, 1797.

Read the first and second time, by especial order, and assented to.

By order: ARCH. VAN HORN.
Clerk of the Senate.

F.

Resolution of the Assembly of Maryland, passed December, 1799, for a loan of $50,000, to the City of Washington.

BY THE HOUSE OF DELEGATES,
December 23, 1799.

Resolved, That the Trustee of this State transfer to the order of the Commissioners of the Federal Buildings, in the City of Washington, the sum of $50,000 of the stock of the United States, bearing a present interest of six per cent. per annum, upon their giving such real and personal security as the Governor and Council shall approve for the payment of the principal sum, on or before the 1st day of November, in the year 1802, and the punctual payment of the interest thereon quarter-yearly; and if the interest is at any time thirty days

in arrear, the whole principal to be sued for and recovered.

By order: WM. HARWOOD, *Clerk.*

BY THE SENATE. *Dec.* 23, 1799.

Read the first and second time, by especial order, and assented to.

By order: A. VAN HORN, *Clerk.*

Uriah Forrest and James M. Lingan's letter to the Commissioners.

FEBRUARY 28, 1800.

GENTLEMEN: We expect that if we comply with your wish, and become sureties to the State of Maryland, you will consider that all the property in the city heretofore sold or contracted for, and where payments have not been made, (excepting the property pledged by the act of Congress, to secure the loan of $300,000) will be held as a security for the repayment of this money (say $50,000) to the State; and if you should think it advisable, you will, on reasonable notice, proceed to sell the property, or such parts as may be necessary, and pay over the notes, or the money arising therefrom, to the State, in discharge of this specific debt.

We are respectfully, gentlemen, your most obedient servants, URIAH FORREST,
JAS. M. LINGAN.

The COMMISSIONERS, &c, *Washington.*

Answer of Commissioners to Messrs. Forrest and Lingan's letter of this date.

FEBRUARY 28, 1800.

GENTLEMEN: We are favored with your letter of this day, and think the terms asked by you perfectly just and reasonable, and have no hesitation in saying we will readily agree to them.

We are, gentlemen, your obedient servants,
GUSTAVUS SCOTT.
WILLIAM THORNTON.

Messrs. LINGAN & FORREST.

G—1.

COMMISSIONERS' OFFICE, *Jan.* 28, 1801.

Schedule of public property on hand belonging to the Federal seat.

1,504 building lots, southwest of Massachusetts avenue, estimated at $343 each -	$515.872 00	
3,178½ building lots, northeast of said avenue, estimated at $105 each - - - -	333.747 00	
2,043 feet front of lots, binding on navigable water, estimated at $12 71 per foot front - -	25.979 00	
Four wharves, cost - - -	3,221 88	
Island, containing freestone quarries in Aquia creek, cost - -	6,000, 00	
	$884,819 88	
Debts due to the Commissioners, which are deemed good -	144.125 80	
	$1,028, 945 68	
Debts contracted on the credit of the above fund - - -	360,881 05	
Fund remaining, clear amount -	$668.064 63	

THOMAS MUNROE,
Clerk to the Commissioners.

[Table G—2, is a list of balances which appear to be due to the Commissioners of the City of Washington on the 1st January, 1801, exclusive of interest, amounting to $140,032 33.]

[Table G—3, is a list of notes passed for the purchase money of lots sold at public sale for default in payment by Morris and Nicholson, the original purchasers thereof; the amount of the principal of which said notes is included in the balance of $195.241 43, stated to be due from said Morris and Nicholson, in the document herewith exhibited, marked G—2. The amount of said notes, when paid, to be credited in account to said Morris and Nicholson.]

[Table G—4, is a list of debts due from the Commissioners of the City of Washington on the 1st of January, 1801, as correctly as can be ascertained, amounting to $360.881 05.]

[Table G—5, is a list of balances becoming due to the Commissioners of the City of Washington, in the year 1801, for lots purchased, amounting to $4.093 47.]

H.

Acts passed by the General Assembly of Maryland concerning the Territory of Columbia and the City of Washington.

An Act for the cession of ten miles square, or any less quantity of territory within this State, to the United States, in Congress assembled, for the permanent seat of the General Government.—(Passed Dec. 3, 1789.)

Whereas the equal and common benefits resulting from the administration of the General Government will be best diffused, and its operations become more prompt and certain, by establishing such a situation for the seat of the said Government as will be most central and convenient to the citizens of the United States at large, having regard as well to population, extent of territory, and a free navigation to the Atlantic Ocean, through the Chesapeake Bay, as to the most direct and ready communication with our fellow-citizens in the western frontier: And whereas it appears to this Assembly, that a situation combining all the considerations and advantages before recited may be had on the banks of the river Potomac, above tidewater, in a country rich and fertile in soil, healthy and salubrious in climate, and abounding in all the necessaries and conveniences of life, where, in a location of ten miles square, if the wisdom of Congress shall so direct, the States of Pennsylvania, Maryland, and Virginia, may participate in such location:

Be it therefore enacted by the General Assembly,

That a tract of country, not exceeding ten miles square, or any less quantity, to be located within the limits of this State, and in any part thereof as Congress may by law direct, shall be, and the same is hereby forever, ceded and relinquished to the Congress and the Government of the United States, in full and absolute right, and exclusive jurisdiction as well of soil as of persons residing or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the Constitution of government of the United States.

Provided, That nothing herein contained shall be construed to vest in the United States any right of property in the soil, or to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States.

And provided, also, That the jurisdiction of the laws of this commonwealth over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine, until Congress, having accepted the said cession, shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

An act concerning the Territory of Columbia, and the City of Washington.—(Passed Dec. 19, 1791.)

Whereas the President of the United States, by virtue of several acts of Congress, and acts of the Assemblies of Virginia and Maryland, by his proclamation dated at Georgetown, on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known, that the whole of the territory of ten miles square, for the permanent seat of Government of the United States, shall be located and included within the four lines following; that is to say, beginning at Jones's Point, being the upper point of Hunting creek, in Virginia, and at an angle in the outset of forty-five degrees west of the north, and running a direct line ten miles for the first line; then beginning again at the same Jones's Point, and running another direct line at a right angle with the first, across the Potomac, ten miles for the second line; then from the terminations of the said first and second lines, running two other direct lines, ten miles each, the one crossing the Eastern Branch and the other the Potomac, and meeting each other in a point; which has since been called the Territory of Columbia; and whereas Notley Young, Daniel Carroll, of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other part to be sold to raise money as a donation to be employed according to the act of Congress for esablishing the temporary and permanent seat of the Government of the United States, under and upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburg and Hamburg have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one half the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the Commissioners aforesaid and them; and, in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors of lots in Carrollsburg and Hamburg, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great proportion of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out, comprehending all the lands beginning on the east side of Rock creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburg; thence along the middle of the said road, to a stone standing on the east side of the Reedy branch of Goose creek; then southeasterly, making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburg to the Eastern Branch ferry; thence south to a stone eighty poles north of the east and west line already drawn from the mouth of Goose creek to the Eastern Branch; then east, parallel to the said east and west lines, to the Eastern Branch; then with the waters of the Eastern Branch, Potomac river, and Rock creek, to the beginning, which has since been called the City of Washington: and whereas it appears to this General Assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already very greatly enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary, till Congress exercise the jurisdiction and government over the said Territory: And whereas in the cession of this State, heretofore made, of Territory for the Government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognised in the acts of this State:

2. *Be it enacted by the General Assembly of Maryland*, That all the part of the said Territory, called Columbia, which lies within the limits of this State, shall be, and the same is hereby acknowledged to be, forever ceded and relinquished to the Congress and Government of the United States, in full and absolute right, and exclusive jurisdiction, as well of soil as of persons residing or to reside thereon, pursuant to the tenor and

effect of the eighth section of the first article of the constitution of Government of the United States: *Provided*, That nothing herein contained shall be so construed to vest in the United States any right of property in the soil, as to affect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States: *And provided, also*, That the jurisdiction of the laws of this State, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress shall by law provide for the government thereof, under their jurisdiction, in manner provided by the article of the Constitution before recited.

3. *And be it enacted*, That all the lands belonging to minors, persons absent out of the State, married women, or persons *non compos mentis*, or lands the property of this State, within the limits of Carrollsburg and Hamburg, shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands belonging as aforesaid, within the limits of the said City of Washington, shall be and are hereby subjected to the same terms and conditions as the said Notley Young, Daniel Carroll of Duddington, and others, have by their said agreements and deeds, subjected their lands to; and where no conveyances have been made, the legal estate and trust are hereby invested in the said Thomas Beall, son of George, and John Mackall Gantt, in the same manner as if each proprietor had been competent to make, and had made, a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgements of the execution thereof, and, where necessary, of release of dower; and in every case where the proprietor is an infant, a married woman, insane, absent out of this State, or shall not attend on three months' advertisement of notice in the Maryland Journal, and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment cannot take place by agreement, the Commissioners aforesaid, or any two of them, may allot and assign the portion or share of such proprietor, as near the old situation as may be, in Carrollsburg and Hamburg, and to the full value of what the party might claim under the terms before recited; and as to the other lands within the said city, the Commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the lands belonging to the same person, in alternate lots, determining by lot or ballot whether the party shall begin with the lowest number: *Prorided*, That in the cases of coverture and infancy, if the husband, guardian, or next friend, will agree with the Commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the Commissioners may proceed as if the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the Commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances, as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions, and incumbrances, as their former estate and interest were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted*, That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the City of Washington, or within the limits of Carrollsburg and Hamburg, who have not already, or who shall not within three months after the passage of this act, execute deeds in trust to the aforesaid Thomas Beall, and John M. Gantt, of all their lands within the limits of the said City of Washington, and on the terms and conditions contained in the deeds already executed by Notley Young and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt, of all their lots in the towns of Carrollsburg and Hamburg, on the same terms and conditions mentioned in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said Commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process directed to the Sheriff of Prince George's county, commanding him, in the name of the State, to summon five good substantial freeholders, who are not of kin to any proprietor or proprietors of the land aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place, within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors; on which day and place the said sheriff shall attend, with the freeholders by him summoned; which freeholders shall take the following oath or affirmation, on the land to be by them valued, to wit: "I A. B., do solemnly swear (or affirm,) that I will, to the best of my judgment, value the lands of C. D. now to be valued, so as to do equal right and justice to the said C. D. and to the public, taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands and seals, and under the hand and seal of the said sheriff, shall be annexed to the said process, and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same; and the said lands shall, on the payment of such valuation, be, and are hereby, vested in the said Commissioners, in trust, to be disposed of by them, or otherwise employed to the use of the said City of Washington; and the sheriff aforesaid and freeholders aforesaid shall be allowed the same fees for their trouble as are allowed to a sheriff and jurymen in executing a writ of inquiry; and in all cases where the proprietor or possessor is a tenant in right of dower, or by the courtesy, the freeholders aforesaid shall ascertain the annual value of the lands and the gross value of such estate therein; and,

upon paying such gross value, or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the Commissioners shall be, and are hereby, vested with the whole estate of such tenant, in manner and for the uses and purposes aforesaid.

5. *And be it enacted*, That all the squares, lots, pieces, and parcels of land, within the said city, which have been or shall be appropriated for the use of the United States, and also the streets, shall remain and be for the use of the United States; and all the lots and parcels which have been or shall be sold to raise money as a donation as aforesaid, shall remain and be to the purchasers, according to the terms and conditions of their respective purchases; and purchases and leases from private persons claiming to be proprietors, and having, or those under whom they claim having, been in possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the terms and conditions of such purchases and leases, respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the limits of the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing may, either by way of ejectment against the tenant, or in action for money had and received for his use against the bargainer or lessor, his heirs, executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels, appropriated for the use of the United States, as well as for lots or parcels sold, and rents received, by the person not having title as aforesaid, with interest from the time of the receipt; and, on such recovery in ejectment, where the land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession *bona fide* acquired in none of the said cases shall be changed.

6. *And be it enacted*, That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this State, in the same manner as if he was a citizen of this State, and the same lands may be conveyed by him, and transmitted to, and be inherited by, his heirs or relations, as if he and they were citizens of this State: *Provided*, That no foreigner shall, in virtue hereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted*, That the said Commissioners, or any two of them, may appoint a clerk for recording deeds of lands within the said Territory, who shall provide a proper book for the purpose, and therein record, in a strong legible hand, all deeds duly acknowledged, of lands in the said Territory, delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the Commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid; and the same book shall carefully preserve, and deliver over to the Commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint; which clerk shall continue such during good behaviour, and shall be removable only on conviction of misbehaviour in a court of law; but before he acts as such, he shall take an oath, or affirmation, well and truly to execute his office, and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted*, That acknowledgments of deeds made before a person in the manner and certified as the laws of this State direct, or made before and certified by either of the Commissioners, shall be effectual; and that no deed hereafter to be made of or for lands within that part of the said territory which lies within this State, shall operate as a legal conveyance; nor shall any lease for more than seven years be effectual, unless the deed shall have been acknowledged as aforesaid, and delivered to the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted*, That the Commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors, in pursuance of this act.

10. *And*, for the encouragement of master builders to undertake the building and finishing houses within the said city, by securing to them a just and effectual remedy for their advances and earnings, *Be it enacted*, That for all sums due and owing, on written contracts, for building any house in said city, or the brick work, or carpenters' or joiners' work thereon, the undertaker, or workman, employed by the person for whose use the house shall be built, shall have a lien on the house and the ground on which the same is erected, as well as for the materials found by him; provided the said written contract shall have been acknowledged before one of the Commissioners, a justice of the peace, or an alderman of the corporation of Georgetown, and recorded in the office of the clerk for recording deeds herein created, within six calendar months from the time of acknowledgment as aforesaid; and if, within two years after the last of the work is done, he proceeds in equity, he shall have remedy as upon a mortgage; or, if he proceeds at law within the same time, he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only, nor shall, as to the land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted*, That the Treasurer of the Western Shore be empowered and required to pay the seventy-two thousand dollars agreed to be advanced to the President by resolutions of the last session of Assembly, in sums as the same may come to his hands, on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted*, That the Commissioners aforesaid for the time being, or any two of them, shall, from time to time, until Congress shall exercise the jurisdiction and government within the said territory, have power to license the building of wharves in the waters of the Potomac and the Eastern Branch, adjoining the said city, of the materials, in the manner, and of the extent, they may judge durable, convenient, and agreeing with general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be built in the said waters without license as aforesaid; and if any wharf shall be built without such license, or different therefrom, the same is hereby declared a common nuisance; they may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in the Potomac river, above the lower line in said territory and Georgetown, and from ships and vessels lying in the Eastern Branch; they may also, from to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations, and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations, by appointing penalties for a breach of any one of them, not exceeding ten pounds current money, which may be recovered in the name of the said Commissioners, by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purposes of the said act of Congress; and the said Commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void; and if any person shall retail or sell any distilled spirits, mixed or unmixed, in less quantity than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted*, That an act of Assembly of this State, to condemn lands, if necessary, for the public buildings of the United States, be and is hereby repealed.

[Communicated to the House of Reps., Feb. 27, 1801.]

Mr. GRISWOLD, from the committee who were appointed to inquire into the expenditure of money made by the Commissioners of the City of Washington, the disposition of public property made by them, and generally into all the transactions of the Commissioners which relate to the trust confided to them by the President of the United States, made the following report:

That the short period which has elapsed since they have been possessed of the documents relating to the transactions of the Commissioners, the imperfect situation of those documents in several particulars, and the complicated nature of the inquiry, will prevent the committee from presenting to the House that full view of the subject which was desired. They deem, it, however, their duty to submit the result of their inquiry, so far as the same has been made.

By the general account of receipts and expenditures, hereunto annexed, it appears that the Commissioners have expended more than one million of dollars on various subjects, which are partially detailed in that statement. Whether those expenditures have been made with economy, or not, it is not necessary for the committee to decide, as the House will possess the same information which the committee possess on this point. It may, however, be proper to remark that the principal objects of expense have been the Capitol, the President's house, and the two buildings erected for the accommodation of the Executive Departments; and that the situation of those buildings, being under the eye of every member of the Legislature, cannot want a particular description.

As large as these expenditures have been, it is understood that the accounts of the Commissioners have not been regularly audited by any public officer, but have rested on their own statements.

By the report made by the Commissioners to the President of the United States, and by him transmitted to Congress during the present session, it appears that the site of the City of Washington was conveyed by the original proprietors to certain confidential persons, in trust, for certain uses which were defined in the deeds delivered to the trustees, a copy of which is annexed to the Commissioners' report; that the trustees have conveyed to the Commissioners, for the use of the United States, agreeably to the provisions of those deeds, the building lots which belonged to the public, and were laid down on the plan of the city, but that the trustees have declined to convey the streets of the city and the public squares and other grounds designated and appropriated for public uses.

The committee have thought it their duty to ascertain the causes which induced the trustees to refuse their deeds of this part of the public property; and, without pronouncing whether the trustees have conducted correctly or not, they understand that the trustees claim that they held these lands as well for the benefit of the proprietors as for the public; that the price allowed to the proprietors for those squares and public grounds being comparatively small, it was expected that these grounds should forever remain unoccupied, except by necessary public buildings; that the areas which they furnished should remain open for general convenience, and thereby increase the value of the building lots, and particularly those lots which adjoined those public grounds; that, under these impressions, and after receiving a remonstrance from some of the proprietors, they deemed it proper, in faithfulness to the parties concerned, to require that, before they made a conveyance of this property, the principle should be settled that the public grounds should not, after the same were conveyed, be converted by the Commissioners into building lots; that the Commissioners, however, declined establishing that principle, and claimed the right of converting such parts of the public ground into building lots as should be afterwards judged proper.

The trustees further state that the plan of the city has been varied more than once, and that some of the public grounds which are delineated upon a plan which was engraven and circulated by the Commissioners as a true plan of the city, and is now in the hands of the members of the Legislature, have since been surveyed by the Commissioners into building lots; that, under these circumstances, the trustees did not believe that, in justice to the proprietors, they could convey these public grounds.

The committee have likewise understood that, in consequence of the contracts entered into with Morris, Greenleaf, and Nicholson, for the sale of a large number of the building lots belonging to the public, and the failure of payment on their part, and the subsequent transactions which have grown out of that contract, some doubts have been entertained respecting the titles to a considerable part of those lots. *These doubts*, whether well or ill founded, must necessarily embarrass the sale of those lots, and ought, in the opinion of the committee, to be removed by a law of the National Legislature to establish titles both in law and chancery, where lands shall be resold, under proper regulations, to raise the purchase money which shall fall due from the first purchaser.

The Commissioners undoubtedly possess much better means of judging of the value of the building lots belonging to the public than the committee; but it could not escape the observation of the committee that the actual sales which have been made for cash since the Board of Commissioners was established cannot, in their opinion, support the estimate which the Commissioners have made of this property; and, whatever may be the product of sales hereafter, the committee believe that the Government cannot rely upon that fund for completing the objects which the Legislature may deem necessary for the accommodation of Government.

The view which the committee have taken of this subject has been necessarily imperfect, but it has satisfied them that, as the Executive Departments of the Government are now established at the City of Washington, the expense of the Board of Commissioners may very well be saved; that the business of that board may with propriety be transferred to the Treasury Department; and that it will be proper to require that the Commissioners account with the accounting officers of the Treasury for the moneys received and expended by them.

The committee likewise believe that a plan of the City of Washington ought to be prepared, and, at the next session of Congress, to receive the sanction of the Legislature, and means taken to obtain from the trustees a deed of the streets and public grounds, conformably to such plan, for the use of the United States; and that a law ought to pass for quieting titles in the District of Columbia, by authorizing the sale of lands contracted to be sold where the purchase money shall not be paid within the time limited for payment.

Conformably to the opinion herein expressed, the committee respectfully submit to the House the following resolutions:

Resolved, That a committee be appointed to prepare and report a bill to abolish the Board of Commissioners of the City of Washington, and to direct that the business of that board be transferred to the Department of the Treasury.

Resolved, That a committee be appointed to prepare and report a bill directing the Secretary of the Treasury, under direction of the President of the United States, to prepare a plan of the City of Washington, delineating the streets, squares, and public grounds therein, and to report the same to Congress, in December next.

Resolved, That a committee be appointed to prepare and report a bill to authorize the sale of lands in the District of Columbia, under proper regulations, to raise the moneys which may at any time be due and unpaid on contracts for the sale of such lands.

Account of receipts and expenditures by the Commissioners of the City of Washington, District of Columbia, from the time of their appointment to the 18th of May, 1796; since which day accounts have been rendered half-yearly.

Dr.

RECEIPTS.	Amount received.
Donation by the State of Virginia	$120,000 00
Donation by Maryland	72,000 00
Sales of lots	179,109 91
Loan from the Bank of Columbia	30,000 00
Leonard Harbaugh, refunded by him for part of the cost of the stone bridge over Rock creek, in consequence of defective work	60 00
John Dobson refunded, for part of sums advanced to him as a contractor for doing freestone work at the Capitol	1,310 51
Materials sold, which were unfit for use, or not wanted for the public buildings	917 62
Dividends on shares in Bank of Columbia originally subscribed for by the Commissioners	1,833 50
	$406,361 84

Cr.

EXPENDITURES.	Amount, 1791.	Amount, 1792.	Amount, 1793.	Amount, 1794.	Amount, 1795.	Amount between Jan. 1 and May 18, 1796.	Total amount.
Capitol		4,936 30	8,960 71	25,857 66	61,101 16	9,456 20	105,365 93
President's house		7,427 50	19,716 33	37,209 16	42,230 12	8,431 66	114,513 77
City of Washington, (see note, next page)			5,624 88	4,930 97	5106 81	3,007 97	29,506 33
Commissioners' Office			83 78	278 36	7,645 04	3,336 97	11,343 15
Surveying Department, (see note, next page)		161 67	12,344 32	5,624 85	5,002 03	909 66	24,016 53
Hospital for sick laborers				673 41	844 69	313 34	1,831 47
Ranting account, (see note, next page				251 27	1,313 25	429 66	1,995 18
Bridge over James's creek				342 04			342 04
Bridge over Tiber creek				798 04	742 01		1,540 05
Wharf at the Eastern Branch				389 42	626 09	23 67	1,039 18
Freestone quarries at Aquia, (see note, next page)			9,112 98	11,935 11	294 46		21,342 55
Ground appropriated to public use			1,766 67		2,000 00	3,072 16	6,838 83
Foundation stone quarry in the city of Washington				291 55			291 55
Temporary buildings for workmen			934 36	318 30	205 20		3,238 06
Wharf account			623 79				1,438 30
Wharf logs				945 27	786 13		6,149 12
White-oak swamp, (see note, next page)			217 38				1,949 79
Brick buildings			573 33				573 33
Brick making account, (see note next page)							3,309 09
Causeway account			6,397 14				6,397 14
Provision account			3,090 60	5,009 92			11,909 27
Stone wharf at Stone bridge			315 73				315 73
Stone bridge, at the mouth of Rock creek, (see note, next page)			4,063 11				12,744 26
Canal from Tiber creek to James's creek			2,133 33	1,600 00	1,941 42		4,974 75
Utensils of various kinds			307 60	96 40			1,376 91
Post road through the city of Washington			1,325 91				1,515 27
Engraved plans of the city and territory			314 15	63 02			1,477 17
Drawbridge over Rock creek				1,000 00	8,710 85	1,850 00	1,850 00
Advances on account of contractors for freestone, timber, and bricks						9,498 91	19,209 76
Shares in the Bank of Columbia, being part of 2,000 originally subscribed for, all of which have since been sold; but a part of the purchase money of these last sold was not due on the 18th of May, 1796				2,613 40			2,613 40
Advanced on a contract for Indian meal, of which partial deliveries have been made, but the quantity is unknown, no account having been rendered by the contractor: suit depending				300 00	544 00		844 00
Supposed errors and omissions prior to the year 1795							336 42
Cash in the Commissioners' hands on the 18th of May, 1796							313 89
	$83 00	$49,275 24	$77,596 13	$97,554 99	$137,613 97	$10,535 50	$406,261 84

Recapitulation of the foregoing Account.

RECEIPTS.	Amount received.	EXPENDITURES.	Amount from 18th May, 1796, to 18th Nov. 1796.	Amount from 18th Nov. 1796, to 18th Nov. 1797.	Amount from 18th Nov. 1797, to 18th Nov. 1798.	Amount from 18th Nov. 1798, to 18th Nov. 1799.	Amount from 18th Nov. 1799, to 18th Nov. 1800.	Total amount.
Receipts for semi-annual accounts rendered -	$640,905 52	Expenditures per semi-annnal accounts rendered - -	$115,836 73	$160,847 68	$122,798 61	$116,157 24	$115,304 91	$630,945 17
Receipts per foregoing account - -	406,261 84	Expenditures per foregoing account - - -	-	-	-	-	-	405,947 95
		Cash in the Commissioners' hands, 18th Nov. 1800.	-	-	-	-	-	10,273 24
	$1,047,167 36							$1,047,167 36

Notes to the table on the preceding page.

City of Washington—Includes commissions, discounts, recording squares in the district office, salary of a principal overseer, and all expenses of persons employed for general surveys.

Surveying Department—Includes survey of the District and city, opening and ascertaining level of streets, purchasing and planting bound-stones, and registering and calculating squares, as divided into lots.

Rafting Account—Expense of rafting the timber for the different buildings, and other public purposes indiscriminately.

Freestone Quarries at Aquia—Six thousand dollars paid for the island containing these quarries, and balance for quarrying the stone and incidental expenses.

White-oak Swamp—The Commissioners purchased the timber standing, had it cut down, and prepared for public use.

Brick-making Account—The bricks were made and used for public purposes generally, and no particular account kept of the number used on the respective buildings.

Stone Bridge at the Mouth of Rock Creek—Deducting the sums paid and secured to the public for ground ceded for the erection of this bridge twelve hundred dollars, refunded by the contractor for defective work, the real cost to the public will be only two thousand two hundred and eleven dollars and fifty-five cents.

(Errors and omissions excepted.)

COMMISSIONERS' OFFICE, WASHINGTON, *February* 6, 1801.

THOMAS MUNROE, *Clerk Com.*

BOOKS AND PAPERS DESTROYED BY FIRE IN THE WAR OFFICE, IN 1800.

[Communicated to the House of Representatives, February 17, 1801.]

WAR DEPARTMENT, *Feb.* 12, 1801.

The acting Secretary for the Department of War, in obedience to the direction of the House of Representatives, expressed in their resolution of the 2d instant, that he "communicate to the House such information as may be in his power in relation to the destruction of the books and papers in that Department by fire; designating particularly what description of books and papers has been lost thereby, and what the probable effect of such loss will be in the adjustment of the unsettled accounts of the United States," respectfully reports:

That he has very little doubt that the fire which, on the evening of the 8th of November last, entirely destroyed the house then occupied by the Department of War, was communicated from the adjoining house, as it was first discovered in the library, which was arranged against the partition wall directly behind the fire-place of that house, and at the distance of the whole width of the house (twenty-five or twenty-six feet) from the only fire-place in the apartment; in which last fire-place a fire had not been made on that day or for upwards of three weeks immediately preceding.

That the rapidity with which a large library extended the flames, on the admission of fresh air into the room, entirely precluded the possibility of saving any books or papers that were deposited on the the second or third floor; the whole of the former, and one apartment on the latter, then being occupied as the Secretary's office.

That not a book or paper of the office was saved, except one volume, in which the contracts and deeds for lands sold to the United States were recorded. This had been taken into the Accountant's apartments, on the ground floor, in the morning, for the adjustment of some accounts, and was saved, with his books and papers which were in those apartments.

That, immediately after the fire, measures were taken to secure a renewal of the most necessary and important documents in all possible cases. That the lists of invalid pensioners have already been renewed, and sundry communications of importance from the Department returned and copied. That additions to these are still making; and that the examination of the claims to land for services in the Virginia line on Continental establishment, as directed by law, though now suspended, is expected soon to be in the usual state of progression.

That the library, which was entirely destroyed, was extensive, and contained many military works of celebrity, which it is scarcely expected can be replaced. In order, however, to effect so desirable an object as far as may be, the Secretary has added a proportionate sum to the estimated appropriation for the present year for the purpose.

That of the claims for Continental military bounty lands, the entries of which were, by the act of 2d of March, 1799, limited to the 1st day of January, 1802, many still remain unsatisfied. That, from the manner in which the grants were made, the checks and books being all lost, a great difficulty will oppose the renewing issues of warrants for those lands. The Secretary has recommended to applicants that all claims be filed in the office before the day on which the above-mentioned limitation will take place, in order that the examination of them may thereafter be made under such regulations as may be judged most proper to secure to the claimants their lawful rights, and protect the United States as much as possible from fraud and imposition.

That it is not presumed that any consequences to effect the adjustment of unsettled accounts will follow from the loss of the papers of the Secretary's office, the original directions for expenditures being, it is supposed, to be obtained on the exhibition of the accounts growing from them; and it is not probable that any material injury will result from the losses sustained in the Accountant's office; the specification of which, with the remarks of the Accountant thereon, follows, viz:

Relating to the accounts of the old Army.

Several cases containing muster and pay-rolls; others containing accounts and vouchers of sundry paymasters and agents for paying troops; and one case containing individual settlements made by the late Paymaster General and Commissioner of Army Accounts.

These papers could only be of use in the examination of claims for services prior to the establishment of the present Government, which, if not already settled, are are all barred and foreclosed by acts of limitation. The loss will, therefore, not materially affect the unsettled accounts of the United States.

Relating to services and supplies under the present Government.

William Colfax's accounts, as contractor for the State of New York, from the 1st of January to the 31st of December, 1799.

Robert Ball's accounts, as contractor for North Carolina, for supplies furnished in 1799 and 1800.

These accounts had been examined, and the balances ascertained, but had not been entered on the principal books, owing to differences in the statements of the claimants and those made at this office, of which they had been informed, but had not finally removed the objections. No material inconvenience, it is thought, will arise from the loss of those accounts.

William Colfax & Co.'s accounts, as contractors for the States of New York, Massachusetts, Rhode Island, and Vermont, from the 1st of January to 31st of December, 1800.

This account had not been examined; the amounts are, therefore, only known from the claimants' own statements when they were rendered. It is therefore thought that no settlement can be made until a principle shall be fixed for the settlement of accounts in this situation.

Nathan Starr's accounts, as contractor for fur-

nishing swords, belts, and scabbards, per contract in 1779.

This account had not been examined, owing to a want of vouchers. It is probable that duplicates of the accounts can be furnished, and that no inconvenience will arise in the settlement.

Part of the vouchers belonging to the Paymaster General's accounts.

Some of the muster and pay-rolls of this account were lost, but they can all be replaced. No inconvenience but that of having copies made from duplicates in the possession of the Paymaster General will arise.

All which is respectfully submitted.

SAMUEL DEXTER,
Acting as Secretary of War.

BOOKS, &c., DESTROYED BY FIRE IN THE TREASURY DEPARTMENT, IN 1801.

[Communicated to the House of Reps., Feb. 23, 1801.]

TREASURY DEPARTMENT.
February 23, 1801.

SIR: In obedience to the resolve of the House of Representatives of the 2d instant, I have the honor of transmitting herewith the best information it is in my power to obtain, in relation to the destruction of official books and papers by the fire in the building occupied by the Treasury Department. To the enclosed statements from the other officers of the Department, I have the pleasure to add, that the books and papers belonging immediately to my office, with the exception of a few official letters and documents which can be replaced, have been preserved. It is not probable that any great public inconvenience will be the consequence of the unfortunate accident which gave occasion to the inquiry.

I have the honor to be, very respectfully, sir, your obedient servant,

SAMUEL DEXTER.

Hon. SPEAKER *of the House of Reps.*

TREASURY DEPARTMENT.
Comptroller's Office, Feb. 19, 1801.

SIR: In reply to your letter of the 4th instant, I have the honor to inform you, that after a careful and diligent examination, it does not appear that any records or documents appertaining to this office are missing in consequence of the late fire, from which any loss can result to the public, or to individuals. One book, in which sundry forms prescribed by this Department are recorded, has not yet appeared, though, as its destruction is highly improbable, expectations are entertained that it will eventually be found: if it should not, it can be replaced with some labor.

I have the honor to be, sir, with great respect, your obedient servant,

JOHN STEELE.

The Hon. SAMUEL DEXTER,
Secretary of the Treasury.

A list of books and papers destroyed or lost in the Auditor's office, in consequence of the fire which took place in the Treasury on Tuesday, the 20th of January 1801.

TREASURY DEPARTMENT,
Auditor's Office, Feb. 19, 1801.

1. The books containing copies of reports on all the accounts which have been adjusted since the establishment of the present Government, excepting those on the public debt funded at the Treasury, which being entered in a distinct set of books and kept in another room, were preserved. With the aid and expense of an extra clerk, the lost copies may be replaced, as the originals, with the statements and vouchers belonging to them, are deposited in the Register's office.

2. The books containing copies of various statements made by the Auditor and Accountants under the late Government. The originals of these are also in the Register's office, and new copies may be made from them, if necessary.

3. The ledgers and journals in which were entered the accounts settled by the late commissioner with the officers of the old quartermaster and commissary departments. The loss of these books adds to the difficulty of adjusting such of the accounts in these departments as remained open; but from examination which had been made, the greater part were found so defective as to leave little hope of a satisfactory statement. Some of them, however, though not passed, have been stated as far as the materials would admit. It is believed that few, if any, of the papers are lost.

4. The books in which were entered the accounts of the late secret and commercial committee. The papers being safe, no great inconvenience will result from the loss of the books, as few, if any of the transactions of this committee remain unsettled.

5. A number of claims exhibited by individuals, for services or supplies during the late war. Most of these had been presented in the first instance to the State Commissioners, and turned over by them to the Treasury. They had been all examined many years ago, and judged inadmissible; but as the register or list is gone with them, it is impossible to state the particular nature of each, or the names of the respective claimants.

6. An account rendered by the Bank of the United States, for the sale of 8 per cent. stock, under the last act authorizing a loan. A duplicate of this may be obtained.

7. An account of Hazen Kimball for the contingent expenses of the Office of State, which had been examined and was ready for stating. The vouchers cannot be replaced, but the particulars may be had from a book in which they were regularly entered by Mr. Kimball.

8. An account of Thomas Claxton, as agent for furnishing the Capitol. The vouchers had been all examined and found right, but the statement suspended until he should also render his account for furnishing the President's house, with which it had some connexion.

9. The accounts and vouchers of Tench Francis, late Purveyor of Public Supplies, for purchases from July 1, 1797, to the month of September, 1798, accompanied by a general account current, stated by his executors; in which they claimed a balance. The examination of these accounts was nearly completed, but the final settlement of them suspended from a wish to bring into view the balances for or against him with the Departments of War and Navy, with which his accounts were also in a course of settlement. Duplicates of the abstracts and (it is understood) of the vouchers also, can be furnished.

10. Three partial or subordinate accounts of Israel Wheelen, the present purveyor. Duplicates of all these have been already furnished.

11. The accounts of the following gentlemen, acting as agents for the commissioners of the direct tax, in their respective States:

Joseph Israel, Delaware; Nathaniel Gilman, New Hampshire; James White, Tennessee; Stephen Bayard, New York; Paul Zantzinger, Pennsylvania; Thomas Davis, Massachusetts.

All these accounts, except the last, had been examined, and some of them, particularly the two first, would have been stated and passed the next day. The others were suspended, either for want of warrants, or some futher explanation on particular points. As the vouchers, though much injured, are not entirely destroyed, it is probable that when they can be more thoroughly examined and properly arranged, they may be yet found sufficiently perfect to admit of settlement with at least some of the agents.

A few other accounts were also somewhat injured; but being still, however, in a state to be settled, a detail of them is deemed superfluous.

In addition to the foregoing, it is possible, and even probable, that in the course of business some other papers may be found missing, which are not recollected at this time; but none, it is believed, of much consequence.

R. HARRISON.

TREASURY DEPARTMENT,
Register's Office, Feb. 19, 1801.

The Register of the Treasury, upon the communication of the Secretary of the Treasury, of the 4th instant, transmitting a copy of the resolution of the House of Representatives of the United States, of Monday, the 2d of February, 1801, begs leave to report:

That upon the alarm of the late fire in the house occupied by the Treasury Department, all the books and records of the United States appertaining to his office, and which were deemed of primary importance, were removed from the fire-proof rooms occupied by the Register; and that, upon their being replaced, it does not appear, after a minute examination, that any of the books and records of the United States in his possession at the time of the late fire sustained either injury or loss, excepting statements Nos. 8,961, 10,919, and 11,349, with their respective vouchers, which were in a part of the building exposed to the fire. The official reports upon those three statements having been preserved, and the accounts thereof closed in the Treasury books, it is presumed no injury can possibly arise from the want of those destroyed documents. Respectfully submitted.

JOSEPH NOURSE,
Register of the Treasury.

TREASURY OF THE UNITED STATES,
February 19, 1801.

SIR: In answer to your letter of the 4th instant, I can assure you that my office has not suffered any injury of the least consequence by the late fire.

I am, with respect, your most humble servant,

SAMUEL MEREDITH,
Treasurer of the United States.

SAMUEL DEXTER, Esq.,
Secretary of the Treasury.

TREASURY DEPARTMENT.
Revenue Office, Feb. 13, 1801.

SIR: I have paid due attention to a notice from, the House of Representatives, which you communicated to me on the 4th instant.

I have the satisfaction of assuring you that the books are all safe, and that I know of no paper missing from this office which can impede or in any manner affect the adjustment of the public accounts.

I am, with perfect respect, sir, your obedient servant,

WILLIAM MILLER,
Commissioner of the Revenue.

The Hon. SECRETARY OF THE TREASURY.

GENERAL STAMP OFFICE,
February 23, 1801.

SIR: In obedience to your request and the resolution of Congress on the 2d current, I have the honor to report, that I have been fortunate enough to reclaim all the papers belonging to the General Stamp Office, of any consideration, and that the public will sustain no material injury in this office by the unfortunate fire.

I am, with the most perfect respect and esteem, sir, your most obedient and most humble servant,

JOSHUA JOHNSON,
Superintendent of Stamps.

SAMUEL DEXTER, Esq.,
Secretary of the Treasury.

FIRES IN THE WAR AND TREASURY DEPARTMENTS.

[Communicated to the House of Reps., Feb. 28, 1801.]

Mr. NICHOLAS, from the committee appointed to inquire into the causes of the late fires in the War and Treasury Departments, made the following report:

That they have taken the depositions of all the persons from whom they had reason to expect any information, and herewith report them: those

marked A relate to the fire in the War Office, and those marked B to the fire in the Treasury Department.

The committee having seen an assertion in a paper called the *Cabinet*, that, during the fire in the Treasury Department, persons were discovered in one of the rooms of that Department, in circumstances which excited suspicion, the committee called on the editor of that paper, and requested to be informed whether he could mention the names of any persons who were witnesses of that fact, or any other relating to the fires. By him they were referred to Lawson Pearson and Salem Roe; from whose depositions, and the deposition of John Woodsides, (among the papers marked B.) it appears that the persons thus discovered were clerks of the Department employed in taking care of the books and papers.

It having been mentioned in the depositions of some of the witnesses, from whom the committee were taught to expect material information, that Mr. Oliver Wolcott, late Secretary of the Treasury, was seen at one end of the Treasury Department, during the fire therein, loading a cart with boxes and papers, the committee considering it as a circumstance which might be made to excite suspicion, and believing it was due to Mr. Wolcott to investigate thoroughly a fact of this nature, which had been partially disclosed by their means, have taken several depositions on that subject, which are herewith reported, marked C. From these depositions no suspicion can remain that the boxes and cases were not Mr. Wolcott's private property.

The committee do not think it necessary to make a minute report of their opinion on the facts of these several cases, as the depositions themselves will afford more satisfactory information: they report, as the general result of their inquiries, that it is probable the fire in the War Department was communicated from the fire-place in the adjoining house, and that there is no evidence whatever on which to found a suspicion of its originating in negligence or design; that, as to the origin of the fire in the Treasury Department, they have obtained no evidence which enables them to form a conjecture satisfactory to themselves: it would only be in their power to make an abstract of the testimony; and, in doing this, they might add to or diminish its force: and therefore choose to report it only in the words of the witnesses themselves.

A.

Mr. Loring, a clerk in the War Department, states, that, on the day of the 8th of November, 1800, (the evening of which the office was burnt,) he was engaged in filing and arranging the papers of the office, (which were very much deranged in consequence of removing first from Philadelphia, and afterwards from the store, commonly known by the name of Lear's store, in the City of Washington,) a business in which he had employed all his hours which were not immediately necessary for the routine of business common in the office; that, having on that day nearly finished, he had determined to continue until he had completed the work, as he was anxious to have them arranged; that, in consequence, he remained an hour or an hour and a half after the other gentlemen of the Department had left it; that when he had finished the business he was engaged in, which was after three o'clock, he locked the door of the room, and carried the key thereof into the room of the messenger, which was in the kitchen; that the day having been uncommonly warm for the season, the fire had been reduced at about 11 o'clock in the morning, and that the door which led into the room usually occupied by the Secretary was ordered by the chief clerk to be opened in order to admit fresh air, (there having been no fire in that room on that day, or for three weeks and upwards prior to it;) that no more fire was made in the room in which he was employed that day; and that, when he left the room, he doubts whether there was fire enough on the hearth to have lighted a candle; that he went home to dine, and believed everything was perfectly secure in the office, as he looked into the Secretary's room to see if the windows were shut, and finding them to be so, he doubted not everything was safe; that, in the evening, about (he believes) six o'clock, or perhaps a little after, Mr. Brown, a clerk to the Accountant, came over to his lodgings and informed the gentlemen that the War Office was on fire; that Mr. Wolcott, and every other man in the house immediately ran over; that, when we approached the house, we observed the light very strong from the window over the door of the entrance of the house immediately adjoining the library, which was arranged along the partition wall of that building, and the adjoining house occupied by Mr. Jackson, and against which the chimney of Mr. Jackson's house stood; that he, with Mr. Wolcott, went immediately up stairs, and he, Mr. L., being first, opened the door of the room generally occupied by the chief clerk, viz: (the room immediately in the rear of the Secretary's, the one which was on fire;) that, when he opened the door, the force of the smoke was so great as to stagger him; he, however, recovered himself, and made a second attempt, but to no purpose; finding it impossible to save anything on that floor, he immediately left the house and went to the Treasury office for the engine, which, with assistance, he brought to the fire; but the house being in such a state, it proved ineffectual. That, on the morning after the fire, (Sunday,) he went over before breakfast to examine the partition wall; that he ventured as near as the walls, which were then tottering, would admit, and examined particularly as to the structure of the chimney; that, in viewing the partition wall, he did not doubt the fire was communicated from the chimney of the next house, as the partition wall was very thin, and the evident appearance of wooden blocks or bricks interspersed in it; and that it appeared to him that the wall was only the thickness of the length of a brick from the first floor to the second, and the thickness of the width of a brick from the second floor up to the roof; and knowing that a large library was extended along that wall; and upon the lower shelf of the library, about eight inches from the floor, stood a number of large volumes, behind which (for convenience) many pamphlets and loose papers were thrown; and he has no hesitation in saying, that he firmly believes it was from these causes that the fire was communicated.

With respect to the Treasury Department, Mr. L. has very little to say, which can give information or throw light on it; he has only to observe, that at about five o'clock in the evening of the —— January, he, agreeably to an appointment he had made with Mr. Steele, left the hotel in which he lodged, directly opposite to the Treasury, to call for Mr. Steele, who was writing in his office; that, as he crossed the street, he saw large columns of smoke issuing from the two southeast chimneys of the office; he immediately entered the east door, which led to the centre of the building, through a narrow passage; that, in passing through this passage, he observed the smoke issuing from under the two first doors on the left side of the passage; that he did not stop to open either of them, his object being to get the engine out which stood in the hall; that not more than two or three persons were with him at the time, and that, with the assistance of one of them he broke open the front door and put the engine into the street. Immediately on doing this he returned into the passage, where he discovered several persons forcing the middle door, (or that which led to Mr. Ferrall's room,) which they immediately succeeded in. As soon as the door was opened, the flames and smoke rushed out in a diagonal line from the back of Mr. Ferrall's room, where his cases stood, which was the part of the room opposite to his fire-place. This is all he can say respecting it, as his whole attention and exertions were to check and conquer the flames; which, with great exertions, on all sides, was finally accomplished.

Sworn before me, the subscriber, one of the justices of the peace for Prince George's county, this 23d day of February, 1801.

RICHARD FORREST.

On the evening of 8th November last, about seven o'clock, P. M., I was alarmed with the cry of fire, and on inquiry it was the War Office; I immediately alarmed Mr. Hodgson and Mr. Wood, and desired them to bring with them buckets, and I unhung my garden gate, that free access might be had to my pump; I gave orders to fill all the buckets and tubs that were about the house, and took with me two buckets of water; when I got to the War Office the smoke was issuing out of the front windows like a cloud; soon afterwards the flames broke out of the front window over the front door; I was then asked by Mr. Watson, a clerk, to assist him in getting a ladder, but before we could procure the ladder the fire broke out of the back side of the house. I assisted about half an hour to save the papers, but on seeing that my own house was in danger, I left the fire and went home. The next day (Sunday) I went to see Mr. Markward, to make inquiry how the fire originated, (Col. Burrows went with me;) he, Markward, could give us no satisfaction; we then went to the burnt house, and, on examining the walls, were of opinion that it had been communicated from the back of Mr. Jonathan Jackson's chimneys to the library; and, on further examination, we saw a number of places where wood had been let into the wall; and nearly at the back of the chimney of Mr. Jackson's house I saw a light through the wall, (and mentioned it to Col. Burrows,) which I suppose was the place that the fire got through to the library; and was further convinced, for the back part of the place is but four and a half inches thick. And further this deponent saith not. WM. O'NEALE.

CITY OF WASHINGTON, *Feb.* 25, 1800.

The above deposition was taken by the committee, this 25th February, 1801; Wm. O'Neale being first sworn.

JOHN NICHOLAS, *Chairman.*

Thomas Y. Sprogel, being first sworn, deposeth and saith that at about three o'clock, P. M., of the day on which the War Office was consumed, he assisted in laying out the corpse of a Mr. Jackson, who died in the room adjoining to the room occupied by the Secretary of War, in which the fire appeared to originate; that at that time there was so little fire in the hearth, that he, this deponent, could with difficulty burn vinegar enough to correct the effect of the body on the air of the room. That while the house was on fire, he returned into the room where the corpse was laid, and found the fire totally extinguished to all appearance; that he was informed a fire had been kindled in the interval of his two visits to the room, and that it had been extinguished because it had a bad effect on the corpse. THOS. Y. SPROGEL.

Sworn to before me, this 27th day af February, 1801.

JOHN NICHOLAS, *Chairman.*

B.

The testimony of Patrick Ferrall, principal clerk in the office of the Auditor of the Treasury, relative to the fire that took place on the 20th January last.

Having received a letter by the mail of the 19th, from a mercantile house in Philadelphia, that required an answer by the return of post, not being enabled from the official duties of the office to write the answer during office hours of the 20th; on leaving the office between two and three o'clock, and not seeing Fogel, the messenger, in the hall, I mentioned to one of the other messengers to inform him when he came in to leave the key, as I should be back after dinner to write a letter. I returned between three and four o'clock, and found the key of the Auditor's room, which I opened and went into the room usually occupied by me, and wrote my letter; after which I locked the door, and went to the house occupied by the messenger, delivered him the key and the letter,

desiring him to leave it at the post office before five o'clock. At my going in, and during my stay in the office, I observed not the least appearance of fire, but what was in the fire-place of the room where I was writing, which at the time was very low, being the remainder of that made in the early part of the day. After delivering the key to the messenger, I went over to a house in the neighborhood where a billiard-table is kept, where I remained, until the cry of fire was heard; when the whole of the persons that were there ran over to the office. On my entrance, finding the doors locked, I called on the messenger by name, who immediately appeared and delivered me the key of the Auditor's room, which I unlocked, and made to the door that opened into the room in which I had been writing; on opening which the smoke and flames gushed out with such violence, that I had nearly been suffocated. On which I returned into the entry and requested some persons that were there to break open the door; on this being done, I clearly perceived that the great body of the fire proceeded from three large cases, which were placed back of the fire-place in the room occupied by the Auditor. How or by what means this unfortunate accident took place, I do not deem myself competent to decide; but this I will say, I had neither hand nor deed in it.

P. FERRALL.

Sworn to before me, this 23d day of February, 1801.

JOHN NICHOLAS.

Chairman of the Committee.

The representation of Albright Fogle, Messenger to the Auditor's Office, respecting the fire which took place in the Treasury Department on the 20th of January, 1801.

The Auditor left his room on that day a little before two o'clock, when the fire in his fire-place was reduced so low that the ashes covered it close up, over which I placed the fender.

Mr. P. Ferrall left his room at about half past two o'clock on the same day, when his fire was also low. I covered it immediately with the fender, and locked the doors. The key leading to Mr. Ferrall's room was then, by his request, put into a certain place where he could have access to it after dinner.

I returned to the room about half after four o'clock, and found Mr. Ferrall writing at his desk; I inquired of him if I should put a stick on the fire, which he refused. About twenty minutes before five o'clock he called on me at my house, delivered me the key of the room and a letter, requesting me to put it in the post office; I then hastened to the office, examined the fire in the Auditor's room, raked up the remains of that in Mr. Ferrall's, covered it with the fender, and secured the windows and doors; at which time everything appeared, as usual, very safe from fire. About dusk, and some time after my return from the post office, I heard the first cry of fire; and, on opening the door of the Auditor's room, I did not perceive any fire, but a vast quantity of smoke came out, which prevented an entry at that time; the door of Mr. Ferrall's room was then forced open, when the large cases and furniture in it, which stood close to the wall adjoining the Auditor's room, were all on fire; at that time I did not perceive anything on fire at the other end of the room, near the fire-place.

ALBRIGHT FOGLE.

Sworn to before me, this 23d of February, 1801.

JOHN NICHOLAS, *Chairman.*

JOHN WOODSIDE, clerk in the office of the Comptroller of the Treasury of the United States, upon his oath, deposeth: That on the 20th day of January, 1801, having left the office about half past four, P. M., and gone to his place of lodging, about one hundred paces west of the building occupied by the Treasury Department, it being between sundown and dusk, approaching nearer the latter, when the deponent heard the cry of fire; upon which he immediately ran to the Treasury, from whence he saw smoke proceeding; and, upon his nearer approach, saw the smoke and flame issuing from the windows or window of the room occupied by the principal clerk in the office of the Auditor, which room is adjoining to the Auditor's, the latter being in the southeast part of the building.

The weather for the season had been moderate, as to cold, for a day or two preceding; but in the afternoon of the said 20th day of January, the wind had changed, and blew, especially at the time of the fire, cold and violently from the northwest.

The deponent, finding that the apartment in which the fire had commenced was all in flames, seeing sundry persons engaged in getting the engine ready, and not doubting the immediate assistance of other citizens, considered it most for the interests of the people to endeavor to save the books and papers in the two apartments up stairs of the office to which he was more immediately attached, viz: the Comptroller's, and that of his principal clerk, the latter being immediately over the one in flames; and therefore proceeded to these apartments as soon as they could be opened.

Early in the morning of the 21st, the day after the fire, as soon as there was light, the deponent, living in the vicinity, attended at the Department with a view to collect what papers might be found in a scattered state; and, before sunrise, went to the apartment where the fire had begun, and found the fender in the fire-place, in such a state as to lead, from appearances, to the conclusion that the fire had been carefully covered; the fender being somewhat in the form of part of a circle, the one edge resting upon the hearth, the other edge touching the back of the fire-place.

Since the fire, it having been proposed to the deponent to take the superintendence of the building, so far as respects the prevention of accidents by fire, he undertook the business confided to him; and, having been of opinion that the fire might have been communicated by the mantel-pieces, the deponent had an examination of one of the fire-places, upon which, apprehension of the probability of

fire being communicated to the building thereby was not lessened; but, from the blocks placed in the jambs, for nailing the surbase and wash-board, being exposed to the fire of the flues of the chimneys from below, by sparks passing though open joints one quarter of an inch in width between the bricks, and these open joints being only about three inches from the block to the inner part of the chimney, additional ground was given to apprehend danger; as likewise from the blocks placed in the walls, immediately back of the fire-places, in the rooms in the east and west ends of the building.

These apprehensions were communicated to the Register of the Treasury, upon which orders were given to have removed every block or piece of wood, with the mantel-pieces, which might possibly endanger the building. In the execution of these orders, it was found that the blocks back of the fire-places, in the apartment occupied by the Commissioner of the Revenue, have the appearance of being in a degree scorched. In the same room, that is, the one adjoining the Commissioner's, a wedge of pine wood was taken out of the chimney jamb, which had been driven into an open joint between the bricks, which led directly into the flue of the fire-place in the room below. To this wedge the wash-board was nailed. The wedge was found burnt to coal at the end next to the chimney, and was scorched on the under part, the board nailed thereto having been also touched with fire.

In the room occupied by the superintendent of stamps an open joint was found, which led to the block to which the wash-board was fastened into the chimney of the fire-place below; this block did not appear to be scorched, but a quantity of soot had made its way through this open joint to the board to which the wash-board was nailed. The whole of the circumstances, taken together, afford just ground for very serious apprehensions of the liability of the place being set on fire by sparks, especially if the chimney should have taken fire.

Similar facts occurred in breaking out the blocks n the jamb of the fire-place in the room occupied by the Secretary of the Treasury, and in another apartment belonging to the said officer, adjoining to that of his principal clerk. Here the danger appeared to be much greater, as it did not arise from open joints leading eight or nine inches into the flues of the chimneys below, but from openings immediately from the blocks to the flues. In one instance, a hole an inch and a half in diameter was discovered, the block, &c. very much dried and smoked, if not scorched. In the other instance, several openings leading directly to the flue from the block to which the surbase was nailed, two pieces of bats lying between the block and the flue, which, not being close to each other, and having no mortar, caused the last mentioned openings, opposite to which the block and other wood appeared to be scorched, and the turpentine to have been extracted by the heat from the chimney.

In relation to the state of the room where the fire originated, the deponent saith that he made a particular examination, and finds that the mantel-piece, except upon the south side, appears to have been burned or removed; that the blocks to which it was nailed appear to have been in part burnt on the outer surface next to the room, except one in a small degree scorched; that part of the mantel-piece on the south side of the fire-place, which remains standing, being burnt to coal upon the outside, which, if pulled down, the blocks to which it is nailed, it is supposed, will appear like those upon the other side of the fire-place, in some degree scorched or burnt.

In the said apartment, directly opposite the fire-place in the Auditor's room, there had been placed two blocks of wood, the uppermost fourteen inches in length, with two others upon a line, the right hand block four feet, the one on the left hand three feet and a quarter distant; these blocks were placed in the wall for the purpose of nailing the surbase thereto. The place where a block had been placed for nailing the wash-board is also back of the said fire-place, and nearly under the one already mentioned, and, like that, flanked upon the right and left with blocks, at the distances above mentioned; the block, from the opening in the wall, could not have been more than nine inches in length and five inches in width; the blocks upon the right and left of those back of the fire-place do not appear to have beeen burnt, except one upon the outside, next to the surbase, which appears to have been touched with fire.

The block behind the fire-place, to which the surbase was nailed, was burnt on the surface next to the room in which the fire originated, but that part of the said block which was within the wall had not any appearance of being scorched; the block immediately below, to which the wash-board had been nailed, the deponent did not see, as it was missing the first or second day after the fire, he having looked for it in the cellar, where he found the upper block.

The thickness of the wall back of the said fire-place is thirteen inches, by measurement, and deducting five inches, the width of the block, or rather depth of the place where it would appear a block had been, leaves eight inches brick between where the block had been and the fire in the Auditor's room; the joints between the bricks in the back of said fire-place appear to have been filled with mortar, except one joint about three-sixteenths of an inch wide, into which a piece of wood of that thickness can be inserted four inches, leaving, from the inner part of the joint, and the space which had been occupied by the block upon the opposite side, a thickness of four inches brick.

This deponent, on being asked, further saith, that he can discover no way in which the fire could have communicated from the fire-place in the Auditor's room to Mr. Ferrall's room, unless it was by the lower block to which the wash-board in Mr. Ferrall's room was nailed, which block was not to be found at the time this deponent examined the place.

JOHN WOODSIDE.

Sworn to before me, this 24th February, 1801.

JOHN NICHOLAS,

Chairman of the Committee.

On a further examination, the said John Woodside says that he was employed in the first room on the left-hand side of the passage, on the second floor of the Treasury Department, which leads to the east end, at the time the door was forced open; and that he was endeavoring to remove the books and papers into the fire-proof room adjoining; that he believes several other persons were also employed in the same way with him at the time.

CITY OF WASHINGTON, *Feb.* 24, 1801.

On the evening of the 20th January, 1801, as I was going to Dr. Cunningham's, on business, I saw a great smoke arising near the President's House. I directly called fire! Mr. Cunningham was in his yard, and asked where; I answered on the President's square. He replied that it was shavings; I said no; then we both ran. I got to the Treasury Office first, and found it on fire; (it was between sunset and dark.) and the alarm of fire was general, and the bells were ringing. I called for buckets, and to man the pump at the north end of the building, which was soon done, and water passed as long as there was any to be had. When the pump sucked, I went to the south side, and began to form a line to Mr. Blodget's pump; this being done, I returned to the north side, and proposed to convey water into the rooms where the fire was; after some time the fire began to abate, and I went to Mr. Ferrall's room door and began to throw water where the greatest appearance of fire was; and after some time the room got dark, I got a candle to see if I could discover where the fire originated. I felt on the floor near the fire-place, and it was not burnt; I then felt several other places, and, on feeling near the jamb of the door leading from Mr. Ferrall's room to the Auditor's, in the recess of the said door, I put my hand on a hickory chunk about twelve or fifteen inches long, and about three inches in diameter; it appeared to be burnt at one end to a coal; there was bark on one end. I think it was hickory; it might not have been hickory, but I think it was. I then said that the building was set on fire by some evil-disposed person. About this time it was said that the building was on fire up stairs; I ran to give my assistance, met Mr. Wolcott, and requested him to give some directions concerning the papers; Mr. Wolcott said he had nothing to do with them, that he was not the Secretary, and it was as much as he could do to take care of his own private property. I went up stairs, and Mr. Woodside gave me a quantity of books and papers to carry down stairs, which I delivered to Mr. Dawson, and told him that I was of opinion that the building was set on fire, and that I had found a chunk in the recess of the door of Mr. Ferrall's room. On my return up stairs I met Mr. Wolcott, and said for God's sake, Mr. Wolcott, give some directions; he told me he would introduce me to Mr. Dexter, who would give me the proper directions, which he did. Shortly afterwards, an alarm of fire took place in the cellar, and I got water carried down and put it out in a short time. On examination, it was found that the fire had found its way between the floor and the counter-ceiling, and it was proposed to tear up the floor, which was done, by Mr. Dexter's orders; and further this deponent saith not.

WILLIAM O'NEALE.

On being asked, the deponent saith that the floor was burnt through about the place where he found the piece of wood which he has before mentioned.

The above deposition was given by William O'Neale, before the committee; he being first sworn, this 25th February, 1801.

JOHN NICHOLAS, *Chairman.*

Thomas Y. Sprogel, being first sworn, deposeth and saith, that, after the fire in the Treasury Department, he was employed by Mr. Nourse, the Register, to watch in the office: and that about twelve o'clock at night, he discovered a wooden block behind Mr. Harrison's fire-place, in Mr. Ferrall's room, to which the wash-board had been nailed, to be on fire; that he extinguished the fire with water, and that it appeared to him to be burning from Mr. Ferrall's room, and towards Mr. Harrison's fire-place; that the block appeared to be about half consumed; that soon after he understood, from the conversation of persons present, that they had taken out the block and found the end next Mr. Harrison's fire-place untouched by fire, but did not see the block himself; that the fire in Mr. Ferrall's room appeared to have been perfectly secured, and that he is very well satisfied that the fire did not proceed from that fire-place.

THOMAS Y. SPROGEL.

Sworn to before me, this 27th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

I, Jonathan Freeman, testify, that I was at the Treasury Department about sunrise on the day after the fire happened at that place. In the room which was the most damaged I observed the strongest marks of fire, on the side of the room opposite to the fire-place, in the wall on this side, directly (as it appeared to me) opposite to the fire-place in the Auditor's room, near the floor, were two holes in the wall, in which had been placed wood for fastening; in the largest and lowest of those holes were some coals, and ashes, and such marks of fire as induced me to suppose that the wood had been consumed there; and the strongest marks of the fire were at the end of the hole next to the opposite room; from which I was led to believe that the fire was communicated from the fire-place in the Auditor's room, by means of a block or wooden brick, which appeared to have been in the lowest of the above-mentioned holes, and to which the wash-board or surbase of the room where the fire broke out had been fastened.

JONATHAN FREEMAN.

Sworn to before me, this 28th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

Lawson Pearson, being first sworn, deposeth and saith, that he came to the Treasury Department when the fire was at its height; that after assisting an acquaintance in emptying a room, which was in danger, of the things in it, he went up stairs, and turned into the passage running to the east, and he discovered a light through the key-hole of the door of the first room on the left hand; that, supposing the room was on fire, he forced the door open, and discovered three men with a number of papers before them; that the candle was extinguished either by the sudden opening of the door or some other cause; that, on his proposing to remove the furniture, he was advised by one of the persons to throw it out of the window, which he refused, as being likely to destroy it; that the persons in the room discovered no embarrassment on its being opened. He further saith that he laid the bricks in the east end of the Treasury Department, and that after the fire he examined the wall between the Auditor's room and the room which was on fire, and could find no reason to suppose that the fire had been communicated from the Auditor's fire-place; that there was the length of the brick between the fire-place and the wooden bricks in the opposite room, and that there was no appearance whatever on the brick or mortar of the wooden brick to which the wash-board was nailed having been burnt; that the wooden brick last mentioned had been removed when he examined, which was the day after the fire. He further saith that he assisted in the examination which has taken place of the fire-places in the Treasury Department, and that a number of blocks have been taken out which were touched by fire, but that none of them were as far from the fire-places as those behind the fire-place in the Auditor's room, and that none which were touched by fire, which he has seen taken out, were more than four inches from the fire.

LAWSON PEARSON.

Sworn to before me, this 25th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

Salem Roe, being first sworn, deposeth and saith, that he was in company with Lawson Pearson when he forced open the door mentioned in his deposition, and that he saw two or three persons sitting in the room; that they proposed to remove a case of papers, and were told they should not, unless they would throw it out of the window; that they, notwithstanding, took it up and carried it down stairs.

SALEM ROE.

Sworn to before me, this 25th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

C.

Having been in Georgetown at the time the fire was discovered in the Treasury Department, I did not arrive there until it had made some progress; my immediate concern was to see after the papers, as from the appearance of the flame I thought it impossible the building could be saved. On my going to the west end of the department, where the greatest number of boxes and cases of papers were placed, a carman came up and inquired for Captain Coyle, who, he said, had desired him to convey away a parcel of papers; not knowing what authority Coyle had to issue any directions concerning the removal of papers, my curiosity was excited to such a degree as to keep me on the spot where the records were; in a short time after Oliver Wolcott made his appearance, in company with Coyle, and began to load the cart which was there with chests of papers; being surprised at this conduct, and in order to aid any evidence which should in future be called for, I looked for and imparted my information to Mr. Kramer, who immediately repaired with me to the place, and expressed his astonishment at seeing Oliver Wolcott so extremely attentive to the carrying away of papers, when the department appeared in imminent danger of being destroyed.

THOMAS WATERMAN.

Sworn to before me, this 23d day of February, 1801.

JOHN NICHOLAS, *Chairman.*

The night on which the fire was discovered at the Treasury Department I was in Georgetown, in company with several friends, when a person came to the door of the house in which we were, and gave the alarm; on which we proceeded to the Treasury Department, and I joined the ranks to hand water. The night being somewhat cold I left said station, and went into the house to assist in getting out and securing the papers; when Mr. Waterman informed me that some persons were busy in taking from the department a number of cases, &c., with papers. I went with him to the place and saw two carts, one of which had a number of cases loaded up, and Mr. Wolcott, and Captain Coyle, a clerk to the Secretary of the Treasury, appeared to be busy in assisting to load one of the carts.

HENRY KRAMER.

Sworn to before me, this 23d day of February, 1801.

JOHN NICHOLAS, *Chairman.*

John Coyle, of the City of Washington, being duly sworn on the Holy Evangelists of Almighty God, doth depose and say, that on or about the 20th day of January, 1801, at about half past five o'clock, P. M., when the alarm was given that the Treasury Office was on fire; in going towards said office he overtook Oliver Wolcott, Esq., late Secretary of the Treasury, who observed to this deponent, that he was very much interested in saving his private papers, as the justification of all his official transactions depended on that circumstance, and requested his assistance to effect that purpose, if possible; that he went with Mr. Wolcott into the northwest room of the building,

where Mr. W. pointed out a chest of about four feet by one foot six inches; a trunk of about three feet four inches by one foot six inches; two boxes of about two feet by thirteen inches, and a small writing desk, already packed and locked, as those containing his private papers: these this deponent assisted in removing out of the house. Mr. Wolcott also requested the removal of an iron chest, as he said it contained valuable public property and documents. He also requested me particularly to assist in removing Mr. Miller's books and papers generally, as they were very important; which I did, and observed Mr. Wolcott active in assisting, and appeared very anxious for their preservation.

He then observed that it was his intention to have his papers removed to his lodgings in the course of two or three days if the fire had not happened, and as they were then exposed, he wished to have them taken there.

This deponent then went to the sign of the Black Horse, where he knew carts were to be hired, and engaged one. As it did not arrive soon, he went to the front of the house and observed an empty cart, employed the owner, and brought him to where the trunks, &c., were. Mr. Wolcott then went into the house and cellar to observe the state of the fire, returned, and reported that the danger was apparently over.

Mr. O'Neale then came up and requested Mr. Wolcott's orders respecting the removal of papers. Mr. W. replied he would give no orders, but would introduce him to the Secretary of the Treasury, who was the proper person; this was done, and the orders given. Mr. O'Neale then demanded his assistance as Secretary of the Treasury. Mr. W. replied, I am not Secretary of the Treasury. Mr. O'Neale then said, you are a citizen, and I demand your assistance to save the public property. Mr. W. replied, I cannot; I must take care of my private property.

This deponent and Mr. Wolcott had previously examined the state of the fire, and concurred in opinion that the danger was all over; the fire appeared completely subdued, and any further removal we conceived to be superfluous. We then had loaded into a cart the before-mentioned chest, &c., with the addition of an iron box, which Mr. Wolcott said contained valuable public documents, and did it as a measure of safety.

The cart then drove to the house of said deponent and unloaded. The iron box was returned in safety to the Treasury Department in the course of a day or two following.

JOHN COYLE.

Sworn to before me, this 25th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

Bazil Wood, of the City of Washington, doth, upon the Holy Evangelists of Almighty God, depose and say, that on the 20th of January last, and in the evening of the same day, during the fire which commenced in the evening aforesaid in the Auditor's office of the Treasury Department, he, this deponent, saw several chests and boxes containing books and papers belonging to Oliver Wolcott, Esq., late Secretary of the Treasury; that this deponent did not then, nor has he since seen the papers then contained in the said boxes; but for some time previous to Mr. Wolcott's resignation, he did prepare, and cause to be prepared, copies of various public documents and records in his office; that this deponent did several times assist the said Mr. Wolcott in removing these papers into Mr. Miller's room, which Mr. W. occupied for a few weeks, and from which the before-mentioned chests, &c., were, as before said, removed on the evening of the fire; that he verily believes there was not a single original document removed, or a paper which was not recorded taken away from the office by Mr. W. This deponent asserts that the space which the papers intended to be taken away by Mr. W. could not be less than four feet square at least, and the person (to wit, Robert Jones Heath, one of the clerks, who examined the rough draughts of letters and other documents, being sick,) this deponent can only further say, that he believes the said Heath could give particular information as to the papers, &c., which he examined and delivered to Mr. Wolcott. Mr. Wolcott received from this deponent no papers, or copies of books or papers, other than the weekly state of balances, of which the records are now in this deponent's possession. The kinds of papers which Mr. Wolcott intended, or said he intended to take were, the rough draughts of his own public letters and the copies of several reports to the various departments, printed journals of Congress, printed reports of the different departments to the President and Congress, copies of weekly statement of balances, the annual statements of receipts and expenditures of the United States: and further this deponent saith not.

Sworn to before me, this 27th day of February, 1801.

JOHN NICHOLAS, *Chairman.*

OFFICIAL CONDUCT OF GOV. SARGENT.

[Communicated to the House of Reps., Feb. 19, 1801.]

Mr. CHAUNCEY GOODRICH, from the committee appointed to inquire into the official conduct of Winthrop Sargent, Governor of the Mississippi Territory; and to whom also was referred the petition of Cato West and others, made the following report:

In the above-mentioned petition, the administration of Governor Sargent is criminated on the ground of improper and arbitrary misbehaviour; of an unconstitutional exercise of the legislative authority by the Governor and Judges, and of unlawful exactions of office fees.

First. Of improper and arbitrary misbehaviour.

As the particular instances and acts of improper and arbitrary misconduct imputed to Governor Sargent are not specified, nor evidence adduced whereby to verify the general charges alleged against him, your committee have not been able to investigate them. Such papers relative thereto as have come to their possession accompany this report.

Second. Of an unconstitutional exercise of legislative authority by the Governor and Judges.

On this point it is alleged that the Governor and Judges have made and published laws not derived from the codes of the original States.

By Governor Sargent this fact is admitted.

The President of the United States, by the act entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," was empowered to establish there a Government, in all respects similar to that exercised in the Territory Northwest of the river Ohio, excepting and excluding the last article of the ordinance made for the government thereof by the late Congress, on the 13th of July, 1787.

In the ordinance referred to in the aforesaid act, are the following clauses:

"The Governor and Judges, or a majority of them, shall *adopt* and *publish* in the district, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly, unless disapproved by Congress; but afterwards, the Legislature shall have authority to alter them as they shall think fit. The Governor for the time being shall be commander-in-chief of the militia; appoint and commission all officers in the same, below the rank of general officers; all general officers shall be appointed and commissioned by Congress. Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers not herein otherwise directed, shall, during the continuance of the temporary Government, be appointed by the Governor. For the prevention of crimes and injuries, the laws to be *adopted* or *made* shall have force in all parts of the district; and for the execution of process, criminal and civil, the Governor shall make proper divisions thereof; and he shall proceed, from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships; subject, however, to such alterations as may thereafter be made by the Legislature."

Your committee are of opinion that the legislative power of the Governor and Judges, by virtue of the above mentioned ordinance, is restricted to the *adopting of laws from the codes of the original States*, and cannot be extended to *the making or enacting of laws not derived from those codes.*

It appears to your committee, that the Governor and Judges of the Mississippi Territory misconceived the nature and extent of their authority in this particular. Justly to appreciate their motives, it is essential to state the principles on which they have acted. By them, the ordinance appears to have been understood as vesting in the Governor and Judges a plenary legislative authority. Governor Sargent justifies its exercise on the ground of construction, and of the principle being avowed and acted on by the Governor and Judges, in *making laws* in the Northwestern Territory; and its being impliedly if not directly sanctioned by Congress. In his letter of the 15th of June, 1800, to the Secretary of State, he observes, "upon the subject of *making* or *adopting laws*, I have written you largely heretofore. It is not necessary to repeat my own opinions; many letters in your office evince my anxiety to have possessed the codes of the original States. We began by legislating, however, with the laws of the Northwestern Territory; they had been long subject to the disapprobation of the honorable Congress; and daring not to doubt their intention, we believe them good. We have uniformly continued, however, to declare our willingness to receive and respect authenticated information for the quiet and interests of this people." In another letter, of the 25th of August, 1800, to the Secretary of State, (already communicated to the House) he observes, "the honorable Mr. Davis seems to have been at much trouble to establish what the Governor and Judges are very willing to admit, 'that they have made laws.' As Secretary of the Northwestern Territory, and vested with the powers of the Governor, I fully concurred with the Judges that we were a complete legislative body. We never hesitated to manifest this to Congress; and the laws by Governor St. Clair, the Judges Parsons, Symmes and Varnum, enacted as early as 1788, demonstrated that such also was their opinion. I solemnly deny to have acknowledged (as Mr. Davis asserts I have) a deviation from the ordinance of Congress in the thus enacting of laws; for the ordinance, in my acceptation thereof, tolerates so doing; in strong presumptive proof of which, I shall offer, as the honorable Mr. Davis and myself seem to have so differently read the same, that the laws which were regularly transmitted to the General Government, in one solitary instance only were disapproved; thus evidencing their perfect coincidence in sentiment with us upon this very important subject. As a further proof of their will and pleasure that we should 'make laws,' they have enacted, nearly in the words following, 'that the laws of the Territory that have been, or hereafter may be enacted by the Governor and Judges,' &c.; and again, that the Governor and Judges shall be authorized to repeal their laws by them made, whenever the same may be found to be improper."

With respect to the practice which Governor Sargent alleges obtained with the Governor and Judges of the Northwestern Territory on this point, your committee are informed, that at their first meeting in 1788, a difference of sentiment arose between the Governor and Judges on this subject;

they asserting and he denying, the power of the Legislature to make laws not derived from the codes of the States. After protesting against the assumption of that power, the Governor yielded to the opinion of the Judges. The subject was again resumed in 1795, when the Governor published his correspondence with the Judges, showing his disapprobation of the principle of making laws; on their part, the then Judges also published the reasons and grounds of their opinion and conduct in making laws. The Governor again yielded to that opinion, and from time to time, till the second grade of Government was established, the Legislature enacted laws not derived from the codes of the States.

The laws of that Territory being voluminous, a complete set whereof is to be had for examination only, in the office of the Secretary of State, your committee have not been able, from their own inspection, to ascertain how far the practice of making laws obtained, or how constantly it was adhered to in successive periods, as the judges have succeeded to each other. They find that several of the laws passed before the year 1795 were not taken from the statutes of either of the States. Mr. Wagner, clerk in the office of the Secretary of State, who, at the request of the committee, has examined the laws of the Territory in reference to this point, certifies, "that he has examined the laws of the Northwestern Territory from the commencement of its legislation, to the 1st of August, 1792, but it does not appear, from the face of them, which, or what parts of them have been adopted from the codes of the original States, or have been originally made by the Legislature of that Territory." How far, therefore, they have been mere adoptions from those codes, can only be established by comparison. That is not the case with respect to the printed laws of the Territory, published since May, 1795, in which they are invariably stated in their titles to be adopted laws, except in the instance of repealing laws; to pass which, the Governor and Judges were expressly authorized by the act of Congress of the 8th of May, 1792, and except a law in addition to a law, entitled a law ascertaining the fees of the several officers and persons therein named, published at Cincinnati on the first of May, 1798, by Winthrop Sargent, acting as Governor, and John Cleves Symmes, Joseph Gilman, and Return J. Meigs, Judges, which is not stated to have been adopted. Your committee further find, that on the 21st day of January, 1794, the President of the United States laid before the two Houses of Congress a copy of such laws of the Territory of the United States Northwest of the river Ohio, as had been passed from July to December, 1792, inclusive; that on the 21st day of April, 1794, they were, by order of the House of Representatives, referred to a special committee, who, on the 24th day of May, 1794, among other things, reported, that, on examination of the said laws, they found many of the provisions contained in them objectionable, but that they conceived it would be immaterial for them to detail the particular objections, as one applying to the whole of said laws afforded, in their opinion, sufficient reason for disapproving them. That those laws appeared to have been passed by the Secretary and Judges, on the idea, that they were possessed generally of legislative power, and have not, in whole or in part, been adopted from laws of the original States; that on the 12th of February, 1795, an engrossed resolution, in the form of a concurrent resolution of the two Houses, disapproving all those laws except one, was agreed to by the House of Representatives and sent to the Senate. In the Senate, on report of a special committee, the resolution was disagreed to. The consideration of those particular laws does not appear to have been resumed.

In a letter of Governor Sargent's to the Secretary of State, dated Mississippi Territory, January 15, 1799, he writes: "the Judge's arrival enables us to legislate: it was most essential, and we will set about it without delay, though with much regret on my part at the want of the laws of the several States, as we must be compelled to form our code from the volumes of the Northwestern Territory, which I by no means can be induced to believe a very good basis."

And in another letter of the 13th of March, 1799, he writes to the Secretary of State: "I have already advised you of the arrival of Judge Tilton, and, in consequence, we are at length legislating; but destitute of the laws of the several States, we necessarily *make* instead of adopting them; the right to do which has heretofore been a question. Very diffident of my own law knowledge, I feel extremely anxious for the presence of Judge McGuire, who, I am taught to believe, is a great professional character."

Third. Of unlawful exactions of fees for official acts.

The fees alluded to are for passports to persons travelling from the Mississippi Territory to other parts of the United States, through the Indian country, and on marriage and tavern licenses.

Governor Sargent acknowledges his having received fees of the above description. He justifies the practice on the principle of those acts being extra from the duties of the Governor's office, and also of precedent in the Northwestern Territory, known, as he presumes, for a long time, to the General Government.

A law of the Mississippi Territory, entitled a law to regulate taverns and retailers of liquors, and concerning Indians, allows to the Governor a fee of eight dollars on a tavern license, which, with a like fee on marriage licenses, Governor Sargent has received. The amount of the fee on passports is unknown to the committee.

By a law of that Territory, fees are allowed to the Judges, on certain processes and official acts.

It is understood, that, for a course of years, the Governor of the Northwestern Territory has been in the practice of receiving four dollars on marriage licenses, and one guinea on tavern licenses. Laws have also been there passed, allowing to the judges fees on processes and official acts and compensation for travelling expenses; one of which was among the laws disapproved by the before mentioned resolution of the House of Representatives, which was disagreed to by the Senate; the other

purports, on the face thereof, to have been adopted from the New York and Pennsylvania codes. Both of those laws were passed by Governor Sargent, when Secretary, and acting as Governor of the Territory.

The act of Congress, authorizing the establishment of a Government in the Mississippi Territory, provides that the officers therein shall receive the same compensation for their services, to be paid in the same manner, as is by law established for similar officers in the Territory Northwest of the river Ohio, and the powers, duties, and emoluments of a Superintendent of Indian Affairs for the southern department to be united with those of Governor.

To the Governor of the Northwestern Territory, for discharging the duties of that office and those of Superintendent of Indian Affairs, is allowed an annual salary of two thousand dollars, and to each of the Judges eight hundred dollars.

As the Governor and Judges of the Territorial Governments are officers of the United States, with annual salaries fixed by the laws of Congress, their exacting and receiving fees, as before stated, cannot be otherwise considered than as an abuse which ought to be corrected.

Although the committee find cause to notice as irregularities, in Governor Sargent's administration, the making laws not derived from the codes of the original States, and also his receiving fees for certain official acts, yet it appears satisfactory to them, from the circumstances under which they took place, that those irregularities originated from incorrect and misconceived opinions respecting the extent of his powers, and not from impure or criminal intentions.

They therefore respectfully submit to the consideration of the House the following resolution:

Resolved, That there does not appear cause for further proceedings on the matters of complaint for mal-administration against Winthrop Sargent, as Governor of the Mississippi Territory.

MISSISSIPPI TERRITORY,
August 25, 1800.

SIR: In consequence of proceedings in the National House of Representatives, tending to implicate the Governor and Judges of this Territory, unofficially communicated from the Department of State, I took leave to address the then Secretary, in a long letter, bearing date the 15th June, to exculpate, defend, and justify our aspersed conduct. Since that period there has come to my view, through the medium of the public prints, a resolution of the House of Representatives, for disapproving so much of two of our laws as authorizes certain fees to myself and their honors; with notice that the consideration thereof had been postponed by the wisdom and justice of the honable Senate.

In a public paper styled the True American, and printed at Philadelphia upon the 15th of May, we observe an extraordinary motion, and a more extraordinary preamble, to have been made on the preceding day by the honorable Mr. T. T. Davis, and such as the most rigid justice should not have dictated, but upon fullest proof of foulest deeds. To the distinguished sympathies and candor of Messrs. Harper, Craik, Nott, and Griswold, we stand indebted for reminding gentlemen that "the accused had no opportunity of answering to the very serious charges contained in the honorable Mr. Davis's preamble; that, if the censure was just, impeachment ought to be obtained by other means," more equitable, more ingenuous, and less dishonorable, they might well have added; and for impeachment, conscious we have discharged our duties according to honor and to conscience, we stand prepared; persuaded always that the tenure of public commissions, under the American Government, rests not upon their forfeiture.

Whether we may be indulged with the privilege of being heard is yet a question. Upon most of the allegations so odiously blazoned in the preamble of the honorable Mr. Davis, I have, I fondly trust, so fully expressed myself as at least to suspend sentence of public condemnation; and, ere another session of Congress, gentlemen who may seek truth, shall find fullest conviction that we have been most barbarously abused and vilified; for my own part, I have already thrown the gauntlet, and defy the most insidious as well as active malice to establish—

That I have "acted under the influence of a faction, or pursued the principles of despotism, in excluding from my confidence a majority of the well disposed citizens."

Or that I have "indulged an unwarrantable distrust of the great body of this people, and appointed over them, to offices civil and military, persons obnoxious for their intrigues and foreign influence." I deny that I have "practised avarice, extortion, or any oppresssive measure," as has been ascribed to me by the honorable Mr. Davis.

Fees warranted by a law predicated upon long-continued practice of the Northwestern Territory, and which had received the approbation of Congress, we have sometimes demanded, with this very essential difference, however, and as is in some measure stated in my last letter: that there the Governor and Judges have actually exacted fees for services expressly required by the ordinance under which they were appointed; whilst in this Territory (as it respects myself, this is most confidently asserted) they have been received for such only as seemed extra.

Judges in the Northwestern Territory are allowed by law a reimbursement of all expenses of themselves and servants in going the circuits to hold the courts. They have also fees for allowing writs of error, supersedeas, for taking bail, filing bail pieces, and all the et ceteras for which the honorable Mr. Davis has so zealously assayed to attach odium to the judicial character within this Government. The honorable Congress could not have been uninformed thereof, for the laws and records in point had been officially transmitted by myself, as secretary, consequently, long ere the practice of exacting fees could have been adopted into the United States' Mississippi Territory,

granting then, sir, for a moment, the exacting of fees to be wrong, should not manly candor have dictated that the example of an older colony, so long and so strongly sanctioned by the very highest authority we under God can know, might in justice have been accepted as an apology, and we humanely spared the cruel mortification of suffering the hard, the intemperate language with which we have been assailed in the face of Congress, our friends, and the world?

The privilege of gentlemen tolerating full freedom of speech does not warrant indecorum, nor can any power, I humbly conceive, command my tacit acknowledgment of the "avarice and extortion" ascribed to me by the honorable Kentucky member. Though constrained always to rigid economy by the hard service of my country, I acknowledge not to have practised "avarice and extortion."

A soldier of the Revolutionary war, I retired not from the field till the close thereof; and it may be remembered by some of the veteran comrades in those days of peril, and who have witnessed the whelming calumny so unjustifiably attached to my humble name, that bread and fame were our sole reward.

In civil life, of the ten years that the Government of the Northwestern Territory had been established, ere I was commanded to this country, the arduous and complicated duties of Governor and Secretary, with the accumulated expenses of both offices, were mine to discharge, and without further public provision than the small stipend allowed the Secretary.

By statements made to the honorable Congress in 1796, for a compensation which is yet withheld, it will appear that my expenses were necessarily very considerable, the salary small, and that there were none of the operating motives for an avaricious man to have continued in office; that reputation, a good name, must have been the grand desideratum. Offices in your Western country were long acknowledgedly the posts of danger; hence, perhaps, their tenure undisturbed: but gentlemen read in the history of the sufferings and peril of those days, a just and a grateful country cannot hastily prostrate servants grown gray in hardihood and toil.

The honorable Mr. Davis seems to have been at much trouble to establish what the Governor and Judges are very willing to admit, "that they have made laws." As Secretary to the Northwestern Territory, and vested with the powers of the Governor, I fully concurred with the Judges that we were a complete legislative body. We never hesitated to manifest this to Congress, and the laws by Governor St. Clair, the Judges Parsons, Symmes, and Varnum, enacted as early as 1788, demonstrated that such was their opinion also; but I solemnly deny to have acknowledged (as Mr. Davis asserts I have) a deviation from the ordinance of Congress, in the thus enacting of laws; for the ordinance, in my acceptation thereof, tolerates so doing: in strong presumptive proof of which I shall offer, (as the honorable Mr. Davis and myself seem to have so differently read the same,) that the laws which were regularly transmitted to the General Government, in one solitary instance only, were never disapproved; thus evidencing their perfect coincidence in sentiment with us upon this very important subject. As a further proof of their will and pleasure that we should "make laws," they have enacted nearly in the words following:

"That the laws of the Territory that have been or hereafter may be enacted by the Governor and Judges," &c., and again, "that the Governor and Judges shall be authorized to repeal their laws by them made, whenever the same may be found to be improper."

Whence we certainly may take leave to infer our most incontestable right to the so very essential and salutary measure of enacting as well as adopting laws for common good; and further, that we shall stand exonerated, in the minds of the virtuous and the wise, from even the intention of exercising that "most dangerous assumption of power," so unadvisedly ascribed to us by the honorable Kentucky member.

Amongst the rolls in the office of the Territorial Secretary, we are ingenuously to acknowledge a law for the punishment of arson, that seems to have escaped the watchful eye of the honorable Mr. Davis, and which, together with the statute against treason, are, in our view, alike exceptionable. No legal decision or proceedings, however, have been had thereupon; nor will the Judges, I persuade myself, ever designedly transgress the sacred rules of our more respected Constitution. But so much has already been said upon this unpleasant theme, without anticipating opprobrious misconceptions of our intentions, and which appears in my address to the Legislature of the 5th of May, in your office, that no more explanation or comment can be now necessary. In any formal investigation, I hope to demonstrate that the original of the laws (our great anxiety to disseminate hastily sent to the printer) was unexceptionable in matter; but that we have been inadvertent in our signatures to the rolls cannot be denied; an act acknowledgedly hostile to the Constitution, though we have the consolation to believe it has operated no evil. For my own part, however, I claim no indulgence in official transactions, and will await, in respectful submission, such censure as may be deemed proportionate to the magnitude of my transgression; but, when it shall be mercifully considered that the law for the punishment of arson in the Northwestern Territory, subject to the same Constitutional objections with any of the statutes of this Government, had been ten years before Congress at the time we adopted it, (and never disapproved,) it must be received as an extenuation of our crime.

There has been transmitted to the Department of State the copy of an appeal to the justices of Adams county, made immediately upon my receiving the reports of the committee of Congress, to whom had been referred the petition of Cato West, and certain letters of Narsworthy Hunter. The only matter therein which I then deemed of consequence enough to engage my special attention, and publicly demonstrate to be false, was Mr. Hunter's so positive declaration of my usurping

the powers of the court, (their duty to hold sacred,) and with most nefarious and dishonorable intention.

My appeal is annexed to the letter of the 15th of June, before mentioned, but it was not until the 4th instant that the justices were in session, which necessarily delayed their response herewith transmitted, and which I respectfully solicit may accompany the petitions of Cato West and others, "as the natural and legitimate relatives of those documents," which the honorable Mr. Davis has proposed to lay before the President.

Under any other circumstances than a base impeachment of almost all the territorial officers, I could not myself announce to Congress that the "accredited agent" of those persons, "styling themselves a committee regularly chosen by the inhabitants of the Mississippi Territory," &c., stands convicted, to every man of mind, of malice, mischief, and falsehood; and, if words have meaning, that he is recorded in the honorable court of general quarter sessions of the peace of Adams county, in their August term, to the present people and posterity, as a most infamous liar.

The character of the members of this court generally is, I believe, less exceptionable than that of any other equal number of men within the Government; but they are sufficiently known to reject or confirm my estimation by the most abundant testimony.

The presiding justice is respectable for integrity, science, and wealth; with very conciliating manners, and an independence of sentiment most happily adapted to his public station. I shall take leave to enclose unto you his charge to the grand jury, in this same August term, adding my request that it may be brought to the view of Government to illustrate the reputation of accusers and accused, and for other purposes important to this Territory, whenever proceedings shall be continued under the petition of Mr. West and committee. The name of Mr. Hugh Davis in the list of magistrates will also be found in the Mississippi committee; this, and the character which I have drawn of the former, may seem incompatible. The motives for my own appointments I can explain, but not always the conduct of officers.

This Mr. Davis is the same gentleman I have quoted in my address of the 15th of June, as the "well-meaning member of the committee, obtaining a copy of a letter of the 20th of December, 1798, to the Secretary of State," and which he believed to have been by them most basely perverted. He has since communicated to me that the representations made in that letter of the sufferings of the inhabitants from the Indians under Spanish and American government, then complained of by almost every man of my knowledge, and late presented as a grievance by the grand inquest, would have been stated to the General Government at that time as a wicked and abominable falsehood of the Governor; and that neither injury nor inconvenience from the Indians had ever been experienced by this people, but for his special opposition to the measure, made under the fullest impression of the justice and propriety of my statements, and which the committee had been constrained reluctantly to acknowledge. Facts, produced to them by Mr. Davis, had been too strong, and of too much publicity, to have escaped the notice of many of the members, and must induce a powerful presumption of more than want of candor upon the occasion.

The clerk, sheriff, and one of the justices, have transmitted to me some documents relative to the alarming depopulation said by Mr. Hunter to have taken place under Doctor White; the site of public buildings, "so marked by opposition to general opinion," and other matter, all which I take leave to submit as proper to be brought forward in future attention to the motion and preamble of the honorable Kentucky member.

My respected friend Colonel Clarke, deceased, whose eulogium and worth have been so long established, and whose situation as commanding the militia, and presiding in the courts of justice, rendered him more and better conversant in the administration of the Government than almost any other man within the Territory, sensibly impressed by the insults and injury offered to the Governor, and the country, devoted the last moments of a life, passed in honor, to the bearing strong testimony against that obloquy and odium which had been produced by the unprincipled clamors of malevolence.

Mr. D. Clark, a citizen of the Territory, nephew to the colonel, and inheriting his valuable possessions in this country, a gentleman long known and respected for his spirited and successful exertions in favor of our oppressed countrymen at Orleans, has obligingly committed to me his uncle's sentiments, addressed, and intended to have been directly communicated, it seems, to the honorable Mr. C. C. Claiborne, of Congress.

Testimony from characters so endowed as to command universal credibility, and so honorable to the administration of this Government, I shall certainly avail myself of. The letter, therefore, from Colonel Clark to Mr. Claiborne, and one from his nephew, (in connexion,) I respectfully solicit may be considered by the honorable Mr. Davis as true "relative documents" to the petition of Cato West, and transmitted to the President, or otherwise, as shall be deemed best for his so censorious motion and preamble.

The same reasons, sir, which induced my last long letter, have made me at this time thus immeasurably prolix, and I have again to pray your enduring patience. Once I would have deemed it an undue condescension to have brought forward voucher or collateral aid against more respectable men, than any enrolled in the list of those who are warring upon my fame; my own declaration I should have believed enough under any circumstances but formal impeachment. Wary, however, and apprehensive from late sufferings and persecution, I would guard against wiles, wickedness, and surprise.

The precedent of censure, and other uncommon proceedings upon "*ex parte*" evidence and statement, demand, on our part, more than ordinary circumspection. The attentions which have been

bestowed upon the representations of the smallest and the least respectable part of this community, I will venture to say, has excited astonishment in the mind of almost every man within the Mississippi Territory. That Mr. West and signers of the petition to Congress were not even a moiety of the committee pretended to have been duly elected, is well known to themselves, and no secret within the Government.

The circular letter which Mr. Hunter states to Congress as originating this body, was an indecorous publication, dated upon the 6th of July, 1799, requesting meetings of the inhabitants in the several districts to elect members for a general convention. This letter, to use the language of respectable characters amongst us, was evidently intended to have been communicated to those only who had been loud in disaffection to the Government; "not general, but to be whispered to a few individuals only."

If the whole people of the Mississippi Territory could have been assembled, or a due proportion of character only, the late proceeding of Cato West, and others, would probably have been discountenanced in all its parts. This is not mere matter of opinion; for, in the January of 1799, the same was demonstrated by analogy. In a committee, who then petitioned Congress upon the subject of these lands, were some of the leading characters of Mr. West's party assembled, with the same views which they they have of late accomplished; but the members who generally had been elected upon fair and honest principles, that is, after due and diffused notice, whose names are with Congress, and who probably were a representation of the majority, curbed, with strong hand, the spirit of faction and intrigue.

Fourteen days only elapsed, from the notice contained in the letter before mentioned, to the time appointed for holding the election; a short period, indeed, considering the extent of our country, and the dispersed state of its inhabitants. Many respectable persons, indeed whole settlements, Tensaw and Tombigbee (now Washington county) not included, were without notice upon this important occasion; nor can I learn that in any one of the districts there was an assembly sufficient for much less interesting purposes than constituting delegates to a general convention.

In the town of Natchez, which comprehends an important part of a respectable population, forty persons only assembled; a moiety of them are represented destitute of all visible property; people of any country, but never acknowledged to have been enrolled within this Territory. They chose two delegates; in the certificate of the election, however, the qualifications of the electors are candidly stated to have been problematical. One of the delegates, it is said, never attended the committee, and that the other, after in vain combating the violence of its proceedings, withdrew himself altogether. This is certain, that neither of their names are found affixed to the representations which have been published from this committee. By unquestionable authority, I am informed that the principal inhabitants of the settlement of Big Black and Bayou Pierre, in the upper county, were without notice of the district meetings; and that out of one hundred and forty free male inhabitants, who should have voted for delegates to this committee, twenty-one attended; that their most weak and most abandoned characters were elected, amongst whom was one Robert Ashley, said to have fled from the justice of some of the Southern States, and who has been indicted within the Mississippi Territory for horse stealing.

All this, and much more anecdote, as well as public history of, and in relation to, Mr. West's committee, was known to the respectable citizens of the Mississippi Territory; and the natural inference, "so just, so wise and so wary a body as Congress, will not act upon such irregular, such partial proceeding," was the general sentiment, the general expression of the most worthy characters amongst us. Experience, however, has shown us, that conclusions, founded upon the intelligence of man, are too often fallacious. Abstract of all consideration merely personal, I must, sir, continue to view it as a very great misfortune that one party only should have been heard upon decisions so momentous to us all.

Information might have been had from sources disinterested, impartial, and of confidence; less intrusion and importunity upon the important time of Congress, (for the past, present, and to come,) with more tranquillity to this restive country, would probably have been the happy consequence.

General Wilkinson, it is believed, was in Philadelphia in time to have met inquiry; as an officer of rank and confidence, he was worthy to have been consulted; he had spoken and written honorably of the administration of this Government within my knowledge; he is conversant with men whom the people should have respected, and few of whose names are enrolled amongst our accusers. His testimony must have been favorable to the Mississippi Territorial officers.

He could have informed Congress that we are unprepared for any accumulation of expense; that the statement of Mr. Hunter, of the wealth and numbers in this Government, is exaggerated; that we were so involved in debt as to have rendered interposition of the Spanish Government, between us and bankruptcy, absolutely indispensable; and that in Pickering county, where discontent with the present administration had originated, there were not enough of informed men to fill the present necessary offices of Government. It is my duty, however, to endeavor to conciliate all this people to the change which has been commanded, and I shall most religiously perform it.

With the sensibilities of a man wounded in his better, his immortal part—reputation, I have, sir, written much, but I feel much more.

Assailed violently by a party in this country, from motives probably most impure, and in manner and language which, I persuade myself, no gentleman shall ever cease to abhor, some unbecoming wrath of expression, some undue consideration of self may have escaped me; but that no

indecorum to characters in that honorable House, so much my duty to respect, may be found on those, or any of my future pages, is the object of my most devout prayers.

The honorable Mr. T. T. Davis, of Kentucky, seems to the Governor and Judges of the Mississippi Territory to have been unnecessarily severe. Towards the former he has practised most wanton and unwarrantable cruelty. He has given publicity to one of his letters seemingly intended only for his constituents, but which has circulated in the Northwestern Territory, where my very interesting concerns, where almost all my pecuniary affairs are afloat, calculated evidently to impress the people with such sentiments as may do me irreparable injury. He has added insult to injury, by addressing to me directly a copy of this letter, from which the following is a verbatim exscript:

"A bill to authorize the Mississippi Territory to elect a Legislature of their own, and to take from their Governor the power of dissolving and proroguing them at pleasure, has passed the House of Representatives. The numbers in this Territory did not, according to the ordinance, entitle them to a Legislature, but to curb the usurpation of their Governor, to wit, Winthrop Sargent, Secretary to the Governor of the Northwestern Territory, Congress are inclined to grant them this extraordinary privilege; and much I fear this will not be sufficient to protect the people from the insolence of this Federal Governor, as he still retains the power of putting his veto on all their legislative acts."

I will conclude this long epistle, sir, in the words of a very celebrated poet—

"Durum! Sed levius fit patientiâ,
Quicquid corrigere est nefas."

and subscribe myself, with every sentiment of most respectful consideration,

Your obedient, and Government's faithful and zealous servant,

WINTHROP SARGENT.

The Hon. Sec. of State *of the U. S.*

The Charge delivered to the Grand Jury at the opening of the Court of Quarter Sessions for the county of Adams, on the 4th instant, by the Hon. William Dunbar, presiding Justice:

Gentlemen of the Grand Jury: The court expresses great satisfaction at meeting a Grand Jury composed of such respectable persons now assembled for the discharge of its important duties towards our country.

It is with peculiar concern that this court has to lament, in the decease of its late able and worthy presiding magistrate, a loss which at this moment will be deeply felt. Gentlemen, you will undoubtedly mingle your griefs with ours in deploring a misfortune which this country was unprepared to sustain. Of all those gentlemen who have been honored with seats upon this bench, the late Colonel Clark was perhaps the only person who possessed, from the experience of his earlier years, treasured up in a mind replete with native energy, a sufficient fund of knowledge to enable him to preside over this court with conscious dignity. Long will the community have cause to lament the departure of this able magistrate, whose every moment, while he resided in this place, was dedicated not merely to the discharge of his official duty, but the ardor of his mind was perpetually occupied in seeking occasions to correct vice and repress immorality, whether of a public or private nature, and with a truly paternal care sedulously watching over the peace and happiness of this vicinity. The human mind is so constituted that, in order to discover the true value of an object, it would seem that it must first be lost; the public, therefore, will now begin to appreciate more justly the worth of this estimable character.

It has been said, with truth, that his brother associates relied on his perseverance, and would sensibly feel his loss; but, above all, this loss is most sensibly and severely felt by myself, who am now called upon, with inferior talents and very limited experience, to fulfil the important duties of his station in this court. If, in the infancy of our courts, this able magistrate thought it necessary to solicit the candor of his fellow-citizens, certainly I, whose whose education and pursuits of life have been altogether foreign to the modes of this court, have more abundant reason to entreat the indulgence of a generous public. The court is persuaded that if any deviation from technical rule should appear in the procedure of this court, it will be ascribed by our country to its true cause, and not to any deficiency in the virtuous wishes of its members to discharge with fidelity its duties in the public service.

Gentlemen, an important change has taken place in the form of our Government since the last meeting of this court. Congress, with great wisdom, considers all new colonies as in a state of infancy; and, as they are insufficient for their own protection, so also they are supposed to be unqualified for their own government. Protection and obedience must always go hand in hand. Congress, therefore, sends forth her chosen and approved servants with ample powers to guide the inexperience of her younger sons, who are not permitted to have a voice in their own Government, for the same reason that the infant is not permitted to oppose the will of the parent. The peculiarity of our situation, and our great distance from the seat of the General Government, have, no doubt, induced the honorable Congress to relax from the general rule established for the government of Territories; for it is to be recollected that the settlers of a British province, older than the Revolution, form the basis of the population of this Territory. It is true that accessions have been made to it by native Americans who have removed themselves during the war of the Revolution, and in a time of peace since the conquest by Spain; but the mass of our population not resembling any American colony, it is probable that this Territory has been considered as an ancient settlement, entitled to earlier privileges than young colonies just emigra-

ting from the bosom of the United States. It would seem that, with a view to facilitate the obtaining the consent of Congress, it has been stated that our population cannot be less than 6,000 free inhabitants, and that our annual revenue in cotton, at one quarter dollar per pound, amounts to $750,000. I do not know that evil consequences can result from this exaggerated statement, excepting that, in the course of possible events, we may be called upon by Congress for a contribution towards the general defence of the Union; which probably would be demanded in the ratio of the above statement of $750,000. There are no data which have come to my knowledge, that would justify a calculation of half the above sum; and it ought, therefore, to be remembered that, at this early period, we refuse our assent to the above statement.

It may not be improper to say a few words upon the subject of another statement, in which it appears to me the honor of this court is implicated. This court has been called by the Governor of the Territory to declare whether it has been truly stated, that he, the Governor, did send to the first general court of quarter sessions of Adams county, for their sanction, an estimate of upwards of ten thousand dollars, which it is said the Governor thought necessary to be raised in that county. I answer, that no such statement was ever sent to this court by Governor Sargent. I have ever been astonished how such an absurd idea could get abroad. Those who affected to believe it, must previously have admitted the turpitude of this court; for certainly, as the law exists, it is not easy to conceive how the Governor could have hazarded issuing so extraordinary a mandate, unless he were well assured that this court was predisposed to be his obsequious and servile minions. I presume that I speak the general opinion, when I say that this court is composed of men possessing sound republican principles, and of independent fortunes, who court not the smiles, nor fear the frowns of any man, however exalted may be his rank in life. The more ample reply, with the statements requested by the Governor, will be referred to the consideration of my brother associates.

Let us hope, gentlemen, that, by the virtue of our citizens and the wisdom of our legislators, our new privileges will become a source of additional happiness and prosperity to this Territory. It is a pleasing presage of our improving manners and peaceful disposition, that the late elections for this county were conducted with so much order, harmony, and decency, greatly to the honor of both candidates and people; and I do most sincerely congratulate my country on this recent proof that party spirit is retreating from our land. It is a certain truth, that the interests of the citizens of this Territory, when properly understood, are one and the same, and ought to bind us to each other in a firm bond of union. It is grievous to all good men, when the demon of party spirit stalks over the land. It will be always found to originate with men of despicable talents, who despair, by other means, of raising themselves into popular estimation. Gentlemen, you cannot do a more acceptable office to your country than by carrying to your respective homes a spirit of conciliation, endeavoring to extinguish this pernicious principle which harasses the peace of society, and keeps asunder families whose mutual happiness and interest it is to live in harmony and the exchange of good offices. Those who take a pleasure in broils, dissensions, and tumults, will counteract your virtuous endeavors, because their importance would be destroyed by your success; but if the worthy characters of the community could at length resolve to use their exertions, the fomentors of this malignant spirit would be compelled to hide their heads in the darkness of their evil designs.

Gentlemen, you are specially returned the grand inquest of the county, to inquire of all crimes and misdemeanors committed therein, and which are within the jurisdiction of this court to determine and sentence.

A crime or misdemeanor is defined to be "an act committed or omitted in violation of a public law, either forbidding or commanding it;" and this public law that is violated may be either the written statute or the common law of the land, which prohibits all offences of a public and evil example, and contrary to good morals. The jurisdiction of this court is limited by a statute of this Territory, and extends to all crimes and misdemeanors, of whatever nature and kind, committed within this county, the punishment whereof doth not extend to life, limb, imprisonment for more than one year, or forfeiture of goods and chattels, of lands and tenements, to the Government of the Territory. All offences punishable in less degree or in any other manner than by the punishments above enumerated, are within the jurisdiction of this court, and, therefore, proper objects of your inquiry. Offences against the penal statutes of the Territory come before this court through your presentments, such as perjury, larceny, forgery, making of fraudulent deeds, maiming or disfiguring, usurpation of office, assault and batteries, riots, routs, and unlawful assemblies, marrying persons contrary to law, offences against the statute regulating taverns and retailers of liquors and concerning Indians, also offences against the law regulating slaves, with others that might be enumerated from our penal code. Many offences against the common law might be noted as proper for your inquiry, such as challenging to fight or bearing a challenge, libels, nuisances, cheating, forcible entries and detainers, kidnapping, &c. In fine, every offence of a public and evil example, contrary to good morals, the punishment whereof this court can inflict, is within your duty to present.

Your presentments are made either by bill of indictments presented to you by the attorney for the Territory, or by a presentment, properly so called, which is the notice taken by you of any offence, from your own knowledge and observation, without any bill of indictment being laid before you, upon which, if the object admits of it, and is properly supported by evidence, an indictment is afterwards framed.

On the subject of offences, I find myself impelled to animadvert upon a crime of a heinous nature, which is too often resorted to upon very slight and trivial occasions; I mean the practice of duelling, where both parties meet avowedly with an intent to murder, presumptuously arrogating to themselves the right to wanton with their own lives and those of their fellow-creatures, in direct contradiction to the laws both of God and man.

Challenges to fight, either by word or letter, or to be the bearer of such challenge, are punishable, by fine and imprisonment, according to the circumstances of the offence.

Where two persons coolly and deliberately engage in a duel, this being attended with an apparent intention and danger of murder, and being a high contempt of the justice of the nation, is punishable as an affray of an aggravated nature, though no mischief has actually ensued.

Where killing has been the consequence of deliberate duelling, the law has justly fixed the crime and punishment of murder on both principals and seconds.

Hence, gentlemen, you perceive that the law has made ample provision for restraining this barbarous practice; and if it comes to your knowledge that any person has committed any one of the above-mentioned crimes or misdemeanors, you are bound by your oaths to present them.

Before you retire to your chamber, I have to request that, if you find your business likely to detain you a considerable time, you will be pleased to present to the court a few of the bills which may be first found, to enable us to proceed to try the traverses while the Grand Jury is occupied with the remainder of their business; the court having it greatly at heart to save as much as possible the precious time of the industrious inhabitants who are obliged to attend here at the present season.

The justices of the court of quarter sessions for the county of Adams, in court assembled, having taken into consideration an appeal made to them by his excellency the Governor of this Territory, on the subject of certain statements made to the committee of Congress by Mr. Narsworthy Hunter, as contained in Green's Impartial Observer of the 14th of June last, do declare in the most explicit manner, that the Governor did not send to this court, for their sanction, an estimate of $10,760, said to be for the current expenses of Adams county for the year 1799; nor did he ever send any other estimate to this court for that purpose; neither did he ever interfere, either directly or indirectly, with the proceedings of this court, in any manner contrary to the existing laws of this Territory.

Given under our hands, in court, the 6th day of August, 1800.

WILLIAM DUNBAR,
THOMAS WILKINS,
ABRAM ELLIS,
JOHN COLLINS,
HUGH DAVIS,
WILLIAM KENNER.

Estimate of the probable expenses of a public nature for the county of Adams, for the year 1799, made by the justices of the court of quarter sessions, and approved by the Governor and Judges.

For building a jail, including all materials	$3,300
Timber for a kitchen for the same	80
Pickets for enclosing the jail	80
Sheriff's expenses, including fire-wood, water, and provisions for the prisoners for the present year	500
Carpenter's expenses in preparing the present court-house	50
For inquests held on the bodies of Ann Daugherty and Duncan, by L. Evans, before the appointment of Melling Woolley as coroner	10
For 3,000 days labor of one man, supposed to be necessary for repairing the highways	1,500
For contingencies	500
	$6.040

The above is the amount of the tax ordered to be collected from the county of Adams, for the last year, which is only received in part. From the returns made by the supervisors of the highways, which are not yet perfected, it is presumed there will be a surplus on that object of $500, and the tax on tavern licenses has amounted for the last year to $965, making the whole surplus $1.465; out of which an unforeseen expense of $360, for paupers' expenses, will be paid; which objects will be introduced into the following estimate for the present year, 1800, viz:

Court-house rent for the year 1800	$250
Sheriff's expenses, including fire-wood, water, &c. for the jail	250
Paupers' expenses for two years	600
Contingencies, including the treasurer's, commissioner's, assessor's, sheriff's, coroner's, (clerks and prothonotary extra charges,) attorney general's, and other accounts, and compensations for services rendered to the county, and not specially provided for	500
Deficiency of the contingent accounts for 1799	500
Making and repairing public highways	1.000
	$3.100

Ways and Means.

Surplus of the tax for highways for the year 1799	$500
Tax on tavern licenses for 1799	965
Tax on tavern licenses for 1800, estimated at	965
	$2,430
To be raised from the county of Adams, for 1800	$670

Certified in court, the 4th day of August, 1800.

WILLIAM DUNBAR,
THOMAS WILKINS,
ABRAM ELLIS,
JOHN COLLINS,
HUGH DAVIS,
WILLIAM KENNER.

I, Peter Walker, Clerk of the Court of General Quarter Sessions for the county of Adams, do hereby certify, that the persons whose names are above written are justices of the peace, duly commissioned and qualified, in and for the county aforesaid; and that they signed their names unto the original, of which the foregoing is a copy, in open court, the day and year above mentioned.

In testimony whereof, I have undersigned my name, this fifteenth day of September, one thousand eight hundred.

PETER WALKER.

Presentment of a Grand Jury, at October term of the Supreme Court, Mississippi Territory, A. D. 1800.

At a court of oyer and terminer, held at Natchez, for the county of Adams, on the 13th of October, 1800. The grand jury for the said county present:

1st. That it will be highly expedient to make an application to the Territorial Legislature, praying them to frame or adopt laws for the more summary trial of slaves than can at present be effected by the existing statutes of this Territory; from which may result a considerable saving in expense and time to the owners, as well as the exercise of humanity towards the slaves, by the speedy termination of the trials.

2dly. We present Hugh Davis, Esquire, a magistrate of this county, for having committed a breach of the statutes of this Territory, in defacing a record of the court of quarter sessions of this county, to wit, the certification of the court in consequence of an appeal, made by his excellency the Governor of the Territory, on the subject of certain statements made to the committee of Congress, by Narsworthy Hunter, on the 8th February, 1800, and the estimate of the probable expenses of the county of Adams, for the years 1799 and 1800, by drawing a line through four words of said record, to wit, Hugh Davis, twice written, and ordering the printer not to insert said words, contrary to the instructions of the said court.

3dly. We present that Narsworthy Hunter has been guilty of composing and uttering a malicious, scandalous, and false libel against Winthrop Sargent, Esq., Governor of this Territory, as contained in a letter purporting to be addressed to the honorable W. C. C. Claiborne, chairman of Mississippi committee, dated 8th February, 1800, in the words following: "The estimate annexed to the petition of Cato West and others, mentioned in your note, is not the amount of the tax laid on the county of Adams by a law of the Territory; but it appears to be the sum which the Governor thought necessary to be raised in that county, for the service of the last year, and it was sent by him to the first court of general quarter sessions, in order to receive the sanction of the court. This would give it immediate currency, and necessarily operate in aid of his future projects of taxation; but such a manifest prodigality of the public resources appeared upon the face of it, together with so marked an opposition to the public opinion, with regard to the place whereupon the public buildings were to be erected, that it received the immediate disapprobation of the court; and, I believe, a similar instrument was never presented to the county of Pickering;" and, also, a malicious and scandalous libel against the Governor and Judges of this Territory, in their legislative capacity, contained in the aforesaid letter, in the words following, to wit: "The whole country were influenced by an idea that the ordinance for our government had been wantonly abused, and the Constitution of the United States as wantonly violated, at a time and under the circumstances which required no such sacrifice." Which said libels have direct tendency to expose them to public hatred, contempt, and ridicule, as also to disturb, in a violent degree, the peace and good order of society, by destroying that confidence so essential to the happiness of the people, which ought to subsist between them and their rulers; and by breaking down that respect which all ranks owe to those who are the guardians of our laws, may be productive of the worst of all human evils, the natural result of anarchy and unbridled licentiousness. The grand jury view, with horror, the late prevailing disorders, of a most alarming nature, which pervade the Territory, and which will all be the consequence of such crimes as have a manifest tendency to loosen the sacred bands that cement together the laws, the people, and their magistrates; for certainly, of all the most dreadful evils, that is the greatest which points out the means by which wicked men may resist and defeat the laws of their country, the consequences of which are too shocking to be here detailed. The grand jury expect, with confidence, that by the legal powers and influence of this honorable court, vigorous measures will be adopted to check the growing evils of our country, and, by the inflexible execution of the laws, we may be once more restored to peace, harmony, good order, and mutual confidence.

4thly. The grand jury are impressed with the fullest conviction that the second grade of Territorial Government is fraught with inconveniences which the good people of this Territory are not in a situation fully to encounter; they are persuaded, in particular, that the very considerable expense which will be occasioned by the new Legislature superadded to the county levies, already a subject of complaint, will be beyond the ability of our limited population to support, without very sensibly feeling its detrimental effects in the diminution of their small revenues; thereby procrastinating the time of extinguishing the remains of long standing debts, and of enabling their families of enjoying, at an earlier period, a few of the comforts of life. They earnestly recommend to their fellow-citizens to reflect, whether it will not meet the general wish of the Territory, that application be made to Congress to suspend the operation of the supplemental act for establishing the second grade of Territorial Government until it shall be fairly established to be the wish and desire of a majority of our citizens; this privilege will not be denied to our citizens, which has been conceded to the new Territory of Indiana, whose inhabitants, deriving wisdom from two years experience of the second grade of government, have found it their interest to repose entire confidence in the Legislature appointed by and under the control of the General Government, the people still retaining in their hands the power, which cannot fail to have a happy influence over their government, to wit, that of assuming the second grade whenever it shall be the will of the majority of their citizens. The grand jury have strong reasons to believe that the majority of our citizens will approve of postponing the operations of the second grade, under the above stated privilege of assuming it whenever they shall find it expedient. The grand jury think it, therefore, a duty to present, as a grievance, that the sudden and unexpected alteration in the government of the Territory, has been brought about by the industry of fifteen persons, part of a committee of thirty-five, irregularly chosen, at whose election not one-half of the inhabitants are supposed to have attended; and which election was held for the express purpose, as the people were informed by a hand-bill, not to demand a change of the former Government, but to obtain a redress of grievances; and consequently this important measure has been effected with the implied consent of less than one-quarter part of the citizens; or, more properly speaking, by the unauthorized agency of fifteen persons, composing the minority of the committee. The grand jury feel themselves forcibly compelled by their duty to add, that so great an alarm exists in the minds of the people, on the subject of taxation, that they are of opinion that, if the second grade of government is not arrested in its present stage, and postponed until the population and finances of the Territory become adequate to the increased expense of that grade, a very great depopulation will be the inevitable consequence.

The grand jury return their thanks to the court for their excellent charge; they presume to hope, that the just sentiments therein expressed will make a happy impression on the minds of the people, contributing, with other means, to attain the desirable end so much to be wished by all good men.

WILLIAM G FORNAN,
Foreman.

Ordered by the Court, That process issue on the second and third presentments, on application of Lyman Harding, Esq., Attorney General.

A true copy, test:

ROBERT STARK, *C. S. C.*

MILITARY ACADEMY—REORGANIZATION OF THE ARMY.

[Communicated to Congress, January 14, 1800.]

Gentlemen of the Senate, and
Gentlemen of the House of Representatives:

A report made to me on the fifth of this month, by the Secretary of War, contains various matters, in which the honor and safety of the nation are deeply interested; I transmit it, therefore, to Congress, and recommend it to their serious consideration.

JOHN ADAMS.

UNITED STATES, *Jan.* 13, 1800.

WAR DEPARTMENT, *Jan.* 5, 1800.

The Secretary of War respectfully requests the attention of the President of the United States, to certain measures and arrangements, which appear to him to be indispensable to the improvement of our military system, and solicits, if it shall be thought proper, that the same may be submitted to Congress.

No sentiment is more just than this, that, in proportion as the circumstances and policy of a people are opposed to the maintenance of a large military force, it is important that as much perfection as possible be given to that which may at any time exist.

It is not, however, enough, that the troops it may be deemed proper to maintain be rendered as perfect as possible, in form, organization, and discipline; the dignity, the character to be supported, and the safety of the country, further require that it should have military institutions, should be capable of perpetuating the art of war, and of furnishing the means for forming a new and enlarged Army, fit for service, in the shortest time possible, and at the least practicable expense of the State.

Let it not be presumed, that a country, however distantly situated from other nations, or favored by the courage and genius of its inhabitants, can neglect, with impunity, military institutions, or that it may, safely, consider all regular force to be useless, except when there is an enemy present to employ it. A country which acts upon such a maxim will invariably attract injuries and enemies, and, sooner or later, sink by internal discords, or see its noble spirit broken down by repeated humiliations, and the whole people thus prepared for the last stage of national degradation.

If the farmer would secure his flocks, he must go to the expense of shepherds; if preserve his crops, he must enclose his fields. In like manner, to insure safety to the nation, it is necessary that the leading avenues into it be guarded by troops and fortifications. Before the invention of gunpowder, the smallest villages were invested with walls, so that a long siege was often requisite to reduce them. Since that epoch, the history of almost, if not every war, contains undeniable proofs of the utility of fortifications, and the necessity of disciplined troops, to the defence of a country. Would it be wise or expedient in us to pursue a different course, and shut our eyes against the innumerable facts on record, in favor of their essentiality? Are we without regular troops, we may soon lose the military art; are we without engineers, not a little of the money employed on fortifications will be always hazarded, if not actually thrown away, and generals of the most consummate genius forced to capitulate in the field, whose retreat might have been covered by a fortification, or the battle decided in his favor by a happily contrived intrenchment.

Since, however, it seems to be agreed, that we are not to keep on foot numerous forces, and it would be impossible, on a sudden to extend, to every essential point, our fortifications, military science, in its various branches, ought to be cultivated with

peculiar care, in proper nurseries; so that a sufficient stock may always exist, ready to be imparted and diffused to any extent, and a competent number of persons be prepared and qualified to act as engineers, and others as instructers, to additional troops, which events may successively require to be raised. This will be to substitute the elements of an Army to the thing itself, and will greatly tend to enable the Government to dispense with a large body of standing forces, from the facility which it will give of procuring officers, and forming soldiers promptly in all emergencies.

No sound mind, after a fair view of the subject, can doubt the essentiality of military science in time of war, any more than the moral certainty that the most pacific policy on the part of Government, and the most solemn and well observed treaties, will not preserve a country from being engaged in war more or less frequently. To avoid great evils, we must either have a respectable force always ready for service, or the means of preparing such a force with certainty and expedition. The latter, as most agreeable to the genius of our Government and nation, is the object of the following propositions:

First—A Military Academy.

The object has repeatedly engaged the favorable attention of the Legislature, and some laws towards its consummation have been passed. These, however, being yet inadequate to afford the requisite instruction to officers, and others, in "the principles of war, the exercises it requires, and the sciences upon which they are founded," the adoption of a more perfect plan is conceived to be indispensable for these purposes. With this view, the following plan is respectfully suggested, formed upon those of institutions of a similar nature, from which the nations who have founded them derive the most decided advantages.

It is proposed that this Academy shall consist of four schools: one to be called "The Fundamental School;" another, "The School of Engineers and Artillerists;" another, "The School of Cavalry and Infantry;" and a fourth, "The School of the Navy;" and be provided with the following officers, professors, and teachers:

A Director General to superintend the three first schools.
A Director of the Fundamental School.
A Director of the School of Engineers and Artillerists.
A Director of the School of Cavalry and Infantry.
A Director of the School of the Navy.
Six Professors of Mathematics.
Four Professors of Geography and Natural Philosophy.
Two Professors of Chemistry, including Mineralogy.
Three Architects.
Four Designing and Drawing Masters.
One Riding Master.
One Fencing Master.

To be thus distributed among the several Schools:

To the Fundamental School.

One Director.
Four Professors of Mathematics.
Two Professors of Geography and Natural Philosophy.
One Designing and Drawing Master.
One Professor of Chemistry.

To the School of Engineers and Artillerists.

One Director.
Two Professors of Mathematics.
Two Professors of Geography and Natural Philosophy.
One Professor of Chemistry.
Two Architects.
Three Designing and Drawing Masters.

To the School of Cavalry and Infantry.

A Director.
A Riding Master.
A Fencing Master.

To the School of the Navy.

A Director.
A Professor of Mathematics.
A Professor of Geography and Natural Philosophy.
An Architect.
One Designing and Drawing Master.

The Fundamental School is designed to form Engineers, including Geographical Engineers, Miners, and officers for the Artillery, Cavalry, Infantry, and Navy; consequently, in this school is to be taught all the sciences necessary to a perfect knowledge of the different branches of the military art.

The School of Engineers and Artillerists, to teach those admitted therein, and appointed or designed for Engineers, the application of the theoretic knowledge which they had acquired in the Fundamental School, to the construction of all sorts of fortifications and military buildings appertaining thereto, to mines, and counter mines, sieges, attack, and defence, to mineralogy, to the art of projecting and constructing bridges, roads, canals, and maritime posts, and all works relative thereto, to all geographic and topographic operations, the calculations relative to the same, to designing and drawing charts, &c.

To those appointed or designed for the Artillery service, the application of the theoretic knowledge, acquired in the Fundamental School, to the construction of gun-carriages, pontoons, the fabrication of cannon and fire-arms, and all the manœuvres of war which depend upon artillery.

The School of Cavalry and Infantry, to teach those admitted therein, and appointed to, or destined for, the cavalry, the tactics, exercise, and police of cavalry; those for the infantry, the tactics of infantry, and all that concerns the police of an army, in the field and in quarters.

The School of the Navy, to teach those appointed to, or destined for, this service, the application of the knowledge acquired in the Fundamental School in arithmetic, algebra, geometry, statics, and navigation. To this end, after having passed examination, they shall make voyages or

cruises, under skilful officers, for certain periods, during which time they ought to be exercised in the manœuvres and observations most useful in service, and be instructed in whatever respects rigging of vessels of war, pilotage, and the management of cannon.

Functions of the principal officers.

The Director General to have the general superintendence of the schools, particularly of the Fundamental School; to occupy himself incessantly with the means of attaining the end of the institution, which is the greatest possible instruction to the pupils.

He will inform himself of their progress in the studies relative to the service to which they are destined, and collect all the facts proper to be laid before the President, to enable him to form an opinion of the fitness of any individual, who has not had one, for an appointment; or, in case he has, to judge how, and when, his talents can, upon occasion, be most beneficially employed.

He will attend, particularly, to the execution of whatever respects the admission of pupils; their transfer from the school of theory into that of practice; their passage from one class or division, in the same school, to another; and the examinations which they ought respectively to undergo.

He will propose a list of the officers of the Army, proper to be received into the schools, and will furnish the Secretary of War with information, from time to time, relative to their progress, conduct, and capacity to fill stations to which their genius and knowledge may particularly point.

He will give such certificates to the officers, cadets, or pupils, as they shall have merited.

The directors of each of the military schools will receive, from the Director General, instructions detailing their functions and powers; to him they will make their reports.

With respect to the School of the Navy, the director thereof will receive his instructions from the Secretary of the Navy.

The Director General, and the other directors, to be officers of the Army or Navy, according as the studies and exercises of the particular school shall be most intimately connected with either service.

These schools to be provided with proper apparatus and instruments, for philosophical and chemical experiments, for astronomical and nautical observations, for surveying, and such other processes as are requisite to the several topics and branches of instruction.

The site of schools of Engineers and Artillerists, and of the Navy, ought to be on navigable water. For this purpose, a piece of ground ought to be purchased, sufficient for experiments in tactics, gunnery, and fortification. The situation upon a navigable water is also requisite, to admit of specimens of naval construction and naval exercises.

It would also tend greatly to the perfection of the plan, if the academy of Artillerists and Engineers was situated in the neighborhood of foundries of cannon and manufactories of small arms.

Barracks and other proper buildings must be erected, for the accommodation of the directors, professors, and students, and for the laboratories and other works to be carried on at the respective schools.

The cadets of the Army, and a certain number of young persons, destined for military and naval service, ought to study at least two years in the Fundamental School; and if destined for the corps of Engineers or Artillerists, or for the Navy, two years more in the appropriate school; if for the Cavalry or Infantry, one year more in the appropriate school. But persons who, by previous instruction elsewhere, may have become acquainted with some or all of the branches taught in the Fundamental School, may, after due examination by the directors and professors of that school, be either received then for a shorter time, or pass immediately to one or other of the schools of practice, according to the nature and extent of their acquirements and intended destination.

In addition to these, detachments of officers and non-commissioned officers of the Army ought to attend one or other of the schools, in rotation, for the purposes of instruction and exercise, according to the nature of the corps to which they respectively belong.

It may be noticed also in this place, that it would be a wise addition if Government would authorize such a number of sergeants, supernumerary to those belonging to the regiments on the establishment, as would suffice with them for an army of fifty thousand men. All the supernumeraries to receive, according to their capacities, instruction at the academy, and occasionally sent to do duty with the Army.

This outline of a Military Academy, which is conformable to that of similar institutions in other countries, particularly in France, is not meant to imply anything conclusive; the plan may be modified, perhaps, to advantage. At all events, it ought to be left with the President to proportion the number of cadets, and others, to be admitted into the schools, and to prescribe, definitively, relative to the requisites to entitle to admission, the periods of novitiate, transfers from the schools to particular corps, and whatever respects organization, regulations, and police.

And here it may be proper to observe, that though provision should be made by law for the proposed establishment, in its full latitude, yet it may be left in the discretion of the President to appoint so many of the professors and masters only, as experience shall show to be necessary.

Will it be thought superfluous to remark, relative to the utility of this institution, that it is from the military schools of France have issued those general and other officers, whose skill and recent achievements in war have rendered them subjects for military history, and enabled the present governors of that nation, successively, and almost instantaneously, to form immense disciplined armies.

Is it not greatly desirable to be so provided and prepared for all emergencies?

An enemy who meditates invasion will naturally examine what he will have to encounter before he undertakes it. Acting with common pru-

dence, he must proportion his military array to the obstacles in fortifications and disposable force it will have to overcome, and which may be so stationed and improved, as to require from him an army and apparatus, expensive beyond his resources to support. Our country, by a skilful application of very moderate means, may thus avert from its bosom the most expensive and calamitous wars.

In treating upon such an institution, it was encouraging to reflect, that, happily, it coincided with your uniform wish to see our country placed in a situation which would entitle the just maxims of its policy to be respected, and enable it to meet any adverse accidents it may be reserved to encounter.

The measure proposed has also the high sanction of our late venerated President, whose talents and services were devoted, not to produce personal results, but to render a whole people great, flourishing, and happy.

"The institution of a Military Academy," this great man observes, in his last impressive speech, "is also recommended by cogent reasons; how-'ever pacific the general policy of a nation may 'be, it ought never to be without an adequate stock 'of military knowledge for emergencies. The 'first would impair the energy of its character; 'and both would hazard its safety, or expose it to 'greater evils, when war could not be avoided. 'Besides, that war might not often depend upon 'its own choice. In proportion as the observance 'of pacific maxims might exempt a nation from 'the necessity of practising the rules of the mili-'tary art, ought to be its care in preserving and 'transmitting, by proper establishments, the knowl-'edge of that art. Whatever argument may be 'drawn from particular examples, superficially 'viewed, a thorough examination of the subject 'will evince that the art of war is at once com-'prehensive and complicated; that it demands 'much previous study; and that the possession of 'it, in its most improved and perfect state, is al-'ways of great moment to the security of a nation. 'This, therefore, ought to be a serious care of 'every government; and, for this purpose, an 'academy, where a regular course of instruction 'is given, is an obvious expedient, which differ-'ent nations have successfully employed."

Will not the patriotism and good sense of our country readily consent to found an institution, at a moderate expense, recommended by such authorities, and which must produce the happiest effects? And yet, it ought not to excite surprise, if, in a season of profound peace, the minds of a generality of a people, partaking of the public calm, should become inattentive to the storm that may be collecting at a distance. Are we in the midst of that profound calm, and can the eye perceive no cloud in the horizon? But, were the heavens without one threatening spot, and peace universal on earth, ought the watchmen of a nation to trust to such evanescent and deceptive appearances? And will not an intelligent people, instructed by the wisdom of ages, and having every reason to confide in those to whom they have assigned the direction of their affairs, gladly see establishments arise, and arrangements made, which shall render the thunder harmless when it shall burst over their heads. In such conjunctures, (and such must happen to the United States,) corps of well-instructed officers and troops are to a country, what *anchors* are to a ship driven by a tempest towards a rocky shore.

Second—A modification of the two Regiments of Artillerists and Engineers, so as to create, instead thereof, one Regiment of Foot Artillerists, another of Horse Artillerists, and a third of Engineers.

It is conceived, that the entire union of the officers of artillerists and engineers in one corps, as in our present establishment, is not advisable. The art of fortification, and the service of artillery, though touching each other in many points, are, in the main, distinct branches, and each so comprehensive, that their separation is essential to perfection in either. This has been ascertained by long experience. Among the Powers of Europe, there is not one recollected, which, at the present day, is not conscious of this truth. When any of them have attempted to unite these corps, the disadvantages which resulted were soon felt to be so momentous, as to produce conviction that each required a separate organization. Such an union was once attempted in France.

According to an ordinance of the 8th of December, 1755, the artillery and engineer corps of that nation, which had been separate, were combined into one. The experiment, however, was of short duration. In 1758, the engineer corps was disjoined from the corps of artillery, and called, as before, the corps of engineers, since which time these corps have remained separate.

The two regiments of artillerists and engineers consist of the following officers, non-commissioned officers, and privates; each of, viz:

1 Lieutenant Colonel-commandant.
4 Majors.
1 Adjutant.
1 Quartermaster, } each being a Lieutenant.
1 Paymaster.
1 Surgeon.
2 Surgeon's Mates.
16 Captains.
32 Lieutenants, besides the three above-mentioned.
32 Cadets.
4 Sergeant-Majors.
4 Quartermaster-Sergeants,
64 Sergeants.
64 Corporals.
1 Chief Musician.
10 Musicians.
128 Artificers.
768 Privates.

Let the regiments of foot artillerists and horse artillerists consist each, as follows, viz:

1 Lieutenant Colonel-commandant,
3 Majors,
1 Adjutant.
1 Quartermaster. } each being a Lieutenant,
1 Paymaster.

1 Surgeon.
2 Surgeon's Mates,
12 Captains,
24 Lieutenants, besides the three above-mentioned.
24 Cadets.
3 Sergeant-Majors,
3 Quartermaster-Sergeants.
48 Sergeants,
48 Corporals.
1 Chief Musician.
12 Musicians,
780 Privates, including Artificers.

The artificers forming a part of each company in the regiments as they now exist, to form two companies of miners, and two companies of artificers, to be arranged as will be hereafter noticed.

It is also proposed: First, In the event of a war, that these two regiments shall be augmented to the complement of officers and men, composing the existing regiments of artillerists and engineers. Second, That the regiment of horse-artillerists shall perform their service on horseback during war only. Third, That provision be made to enable the President of the United States, in case war shall break out between the United States and a foreign European Power, or in case imminent danger of invasion of their territory, by any such Power shall, in his opinion, be discovered to exist, to organize, and cause to be organized, two additional regiments of horse-artillery. Fourth, That the officers which shall become supernumerary, by this aforesaid organization, shall, at the discretion of the President, be transferred to fill vacancies in other regiments, on the establishment, corresponding with their grades, or be retained to fill appropriate vacancies which shall happen in their respective regiments, by deaths, resignations, &c.

In addition to the economical effect of the latter arrangement, it may be mentioned, that the officers to one whole battalion of the second regiment of Artillerists and Engineers have not yet been appointed.

The regiment of engineers consisting entirely of officers, if we exclude the companies of miners, it remains to speak of its organization.

Let it consist of, viz:

Two Lieutenant Colonels, one first and one second, as already provided by law,
Three Majors,
Twelve Captains,
Twenty-four First Lieutenants,
Twenty-four Second Lieutenants,
Twenty-four Cadets.

The companies of miners and their laborers to be under the direction and immediate command of officers of this corps, and to make a part thereof.

It will be perceived, and it is observed with regret, that, the engineer regiment cannot be immediately formed, by the mere act of transferring into it officers from any of the existing regiments. In order to answer its high destination, it must be filled slowly, and under the exercise of great caution and responsibility.

For this purpose, selections may be made from among the officers of the army, and others who shall have passed through the military schools, and prescribed examinations, and obtain certificates of their possessing the requisite knowledge and qualifications.

It may also be permitted, in cases of uncommon urgency, requiring the completion of the corps, to choose officers among our citizens, whose professions or functions are most analogous to those of engineers, after an examination made by a special commission named by the President.

But let it be remembered, that this corps is too essential to the success of military operations, to be hurried in its formation, or composed of other than persons qualified to discharge its high and important functions. Is authority necessary to support this truth? A general, of the first reputation as a commander, observes on this subject, in speaking to his Government of an officer, who had been killed in action, "He was the best offi-'cer of engineers, a body on which so much of 'the success of campaigns and the fate of a coun-'try depend, and where the least fault may be at-'tended with the most fatal consequences."

The horse-artillery being a subject that cannot fail to attract attention, it will not, it is conceived, be deemed superfluous to submit a few observations and facts, relative to its structure, advantages, and importance.

The Prussians were the first who employed horse-artillery, invented by the great Frederick, at a time when the league which was formed against him, called upon his genius to multiply his resources. It was then, that the same army, transported with a celerity and precision, till then unknown in war, was seen to triumph against superior forces during the same campaign, upon opposite frontiers, to the east and to the west of his States. It was then were seen horse-artillery accompanying strong advanced bodies of cavalry without embarrassing, or retarding, their rapid marches and evolutions.

Horse-artillery was introduced into the *Austrian* army during the reign of *Joseph II.*, but it was not made a principal object, and remained in a state of imperfection. The cannoniers were transported upon the ridges of covered caissons, stuffed in the attitude of men on horseback. These carriages were called *Wurst-wagen*.

Some attempts were made in *France* to introduce the horse-artillery before the Revolution there; the subject, however, was not well understood; the general officers, who were present at the attempt, proposed to place the cannoniers, like the *Austrians*, on *wursts*.

In 1791, Mr. Duportail, Minister of War, authorized the commandant of the division of Mity to form two companies of horse-artillery. The success of this experiment was decisive, and answerable to the minister's expectations. The officers and men were in a few weeks in a condition to manœuvre with light troops.

In 1792, Mr. Narbonne, who succeeded to Mr. Duportail, composed a committee of the most enlightened officers of the army, to examine and

decide upon the means of improving and extending, in the French army, the use of horse-artillery.

As no better idea can be given of this new military arm, than what is reported of the result of this conference, the Secretary takes the liberty to introduce it.

These officers resolved, as fundamental points—

1. That a numerous horse-artillery well served, and kept complete in cannoniers and horses, was the most certain means to protect the evolutions of troops *indifferently instructed*, to support their attack with bayonets, and to render null, by positions seasonably taken and with celerity, the advantage which troops *better disciplined*, might confidently promise themselves from superiority in manœuvres.

2. That with respect to the employment of this arm, the rules of service, instruction, &c., the horse-artillery ought to differ from the field-artillery only, in having its pieces so managed, as to be drawn with the utmost celerity wherever they can produce the greatest effect, and in the cannoneers being able to follow their guns, and commence action as soon as they are placed.

3. That to fulfil this object, it is more convenient to have the cannoniers all mounted on horses, than a part of them on *wursts*, because on horses they are less subject to accidents, their movement more rapid, their retreat more secure, and the replacing of horses easy.

4. That without excluding any caliber, it appears pieces carrying balls of eight and twelve pounds, and howitzers, may be most advantageously employed.

5. That it is unnecessary to discipline a horse-artillerist in the manœuvres of cavalry; that this would be a departure, without utility, from the principal object; that it is enough for him to know to sit firm on his horse, to mount and descend quickly, and conduct him boldly; that it is not requisite to oblige him to preserve any order in following his piece, leaving it to his intelligence to learn, if he chooses, to execute the manœuvres of cavalry.

6. That the manœuvre, *à la prolonge*, ought to be employed in every case in which it is practicable to use it. That the horses remain attached while the pieces are firing; one gains thereby all the time which would be lost in removing or replacing the *avant train*, and thus one may pass fosses and rivers with the utmost celerity, and profit of positions.

7. That in order to form at once a requisite number of companies of horse-artillery, without weakening the artillery regiments, it is sufficient to employ for every piece two skilful cannoniers, and to draw upon the infantry for the rest.

On these principles the French have organized an establishment in their armies, from which they have derived the most important advantages in most, if not all their campaigns.

The decisive agency of horse-artillery in *offensive war* was manifested in the invasion of Belgium by General Dumouriez, at the end of his campaign in 1792. The affair of Waterloo is equally in point, as to its superiority in *defensive operations*.

Whilst General Pichegru commanded the army of Flanders, four thousand cavalry, manœuvring with his horse-artillery, sustained the immense effort of an army of thirty thousand men, supporting an artillery chiefly of a different kind, of at least triple the force of that opposed to it.

Bonaparte, at the battle of Castiglione, after raising the siege of Mantua, having re-assembled several divisions of his horse-artillery in a well-chosen position, under General Domartin, broke, by their means, the Austrian line, and thus decided a victory upon which depended the most important consequences in his favor.

It is also certain, that the horse-artillery contributed not a little to gain the battle of Ettingen, where General Moreau, very inferior in cavalry, maintained, by its means, his left wing against the whole cavalry of the Archduke. The application of the horse-artillery procured to General Hoche, upon the Rhine, in the late affair of Neuvied, like success.

The Archduke Charles, instructed by such events, has greatly augmented and improved this arm of the Austrian army. The English, also, have lately introduced horse-artillery into their service, but, it is supposed, too sparingly to derive therefrom its full effect.

Can an agent, so superior in all offensive and defensive operations, and so vastly important from its nature, as well as the use made of it by other nations, be dispensed with in the composition of our army, or neglected with impunity?

The author of a recent work, entitled "Précis des évènements militaires," published in numbers at Hamburg, from which most of the aforesaid facts respecting this powerful military agent have been taken, observes, "that it is become indispensable in all armies; it can accompany almost everywhere cavalry; it crosses rivers and morasses impassable to foot artillery; it thunders in mass and with great rapidity upon an unexpected point of attack; turns a body of the enemy; takes him in flank or rear; can perform the service of advance posts; of artillery position; of the rear guard, and, in fine, that of a corps of reserve, from which detachments may be made as wanted. It is free from the inconvenience ascribed to foot artillery, of retarding and restraining the manœuvres and marches of troops; the French have, therefore, already confined the use of foot artillery to the service of sieges, with the exception of four pounders, which they have yet left attached to battalions."

Horse artillery would seem to be peculiarly recommended to the United States, by the reflection that all attacks on the seaboard must be made by an enemy, water borne from a distant country, who will consequently be ill provided with horses, whereas the United States, having a knowledge of this agent, and resorting to their resources in horses, might be able to oppose a horse artillery so superior and so promptly, as to give decided advantages in attack or defence, and relieve their territory from being ravaged, or long possessed in

any part of it. If the United States shall prevent an enemy from procuring the horses of the country, and shall maintain a superiority in this forcible arm, they will have little to fear from invaders, however powerful in infantry.

The two regiments of artillerists and engineers, as they now stand on the establishment, cost the United States four hundred and twenty-seven thousand five hundred and fifty-three dollars and eighty cents annually. There will result from the proposed arrangement of these regiments, as will appear by schedule A, a difference in time of peace of twenty thousand nine hundred and fifty-five dollars and thirty cents annually, which sum may be applied to the expenses of the Military Academy.

When the preceding propositions are respectfully submitted, as essential to the improvement of our Military Establishment, it would be improper to overlook such other measures as may occur, and, it is believed, would conduce to perfect our preparations for securing our rights.

The importance of the volunteer associations or companies, which may be accepted under "An act authorizing the President to raise a Provisional Army," passed the 28th May, 1798, has heretofore been presented by the Secretary. They may be considered as a reserve body, from which prompt and efficient reinforcements can be drawn to our regular army, and as rallying and supporting points, when completely organized into regiments, brigades, and divisions, for the militia, in all cases of great and comprehensive urgency or danger.

A revision of the law respecting these valuable associations is earnestly recommended. No other force being so economical, will it not be proper, in order to derive full and permanent utility from the volunteer companies in all hazardous conjunctures, that the power of the President to accept their patriotic offers of service should no longer be confined to a limited period, and that the duration only of their engagements, after acceptance, should be defined by law. Can a time be fairly presumed to arrive when we can have nothing to apprehend from either foreign or domestic enemies?

An omission in the law to provide the same compensation to the volunteer cavalry, for the use of their horses, that is allowed to militia cavalry, when in actual service, has been felt with some sensibility by the former, who were employed during the last insurrection in the same service with militia cavalry. It is, therefore, recommended that an appropriation be made for compensating the volunteer cavalry so employed, for the use of their horses during their service, at the same rates of allowance which have been paid to the militia cavalry on the same service; and that equal rates of compensation for the future shall be provided for both by law, for the use of their horses in actual service.

The militia of the United States ought to be considered as an essential arm of our defence, and a sure resource from which reinforcements may be drawn to supply deficiencies in the regular army, in the event of a sudden invasion, or the wasting progress of a long war.

To obtain their aid, however, with celerity and order in such cases, other provisions are necessary than are to be found at present in the laws.

The act of the 28th February, 1795, authorizes the President, whenever the United States shall be invaded, or in imminent danger of invasion from any foreign nation or Indian tribe, to call forth such numbers of militia of the State or States adjoining, most convenient to the place of danger or scene of action, as he may judge necessary to repel such invasion, and to issue his orders for the purpose to such officer or officers of the militia as he shall think proper.

To give effect to this power, and enable the President to carry upon an enemy with promptitude the force nearest to, or best calculated to, annoy him, it is indispensable that he should know the number and species of militia in each county of a State, and the names and places of residence of their officers respectively.

If these particulars are not precisely known to the President at the time the force is wanted, the delay which must necessarily intervene in the circuitous course of orders and instructions, will often, if not always, be productive of disastrous consequences. To avoid these, the proper officer of the militia in each State should be obliged, by heavy penalties and high responsibility, to make quarterly returns to the Department of War, comprehending the aforesaid particulars.

The troops raised under, and conformably to the provisions of "An act to augment the Army of the United States, and for other purposes," passed the 16th July, 1798, demand at this time particular attention.

This additional force was to consist of twelve regiments of infantry and six troops of cavalry, the latter intended, with the troops of cavalry heretofore and now in service, to form one regiment of cavalry. For the infantry, the officers have been appointed, and the recruiting service some time in operation. For the cavalry, the officers have also been appointed; but, to avoid the expense of this kind of troops, which is always much greater than any species of foot, the recruiting service has not been ordered as yet into operation, nor have horses been purchased, although preparatory measures have been taken.

For the twelve regiments of infantry, the enlistments amount as follows, according to the last returns which have been received by the Department:

From the fifth regiment, which is the first of the twelve, there has been no returns.

Returned for the sixth regiment, enlisted in North Carolina, from August to December, 1799, viz: 134.

For the seventh, enlisted in Virginia, from May to the first Monday in November, 1799, viz: 258.

For the eighth, enlisted in Virginia, from May to October the 1st, 1799, viz: 424.

For the ninth, enlisted in Maryland, from May to September the 17th, 1799, viz: 314.

For the tenth, enlisted in Pennsylvania, from May to August the 1st, 1799, viz: 448.

For the eleventh, enlisted in New Jersey, Penn-

sylvania, and Delaware, from April to the first Monday in October, 1799, viz: 458.

For the twelfth, enlisted in New York, from May to the first Monday in September, 1799, viz: 287.

For the thirteenth, enlisted in Connecticut, from May to the first Monday in November, 1799, viz: 371.

For the fourteenth, enlisted in Massachusetts, from May to the first Monday in November, 1799, viz: 327.

For the fifteenth, enlisted in Massachusetts and Maine, from June to the first Monday in November, 1799, viz: 145.

For the sixteenth, enlisted in New Hampshire, from July to the first Monday in November, 1799, viz: 233.

Total enlisted, 3,399.

Agreeably to the provisions of the act of the 16th July, 1798, all these troops have, by the terms of their respective enlistments, engaged "for and during the continuance of the existing differences between the United States and the French Republic."

The Secretary thinks it necessary to mention that, immediately upon the accommodation of the existing differences aforesaid, the engagements of these troops will expire, and every man be entitled to demand his discharge. That, in consequence, if it shall be deemed expedient to keep up a Peace Establishment more extended than heretofore, or any events should intervene to render a larger army indispensable, it will not be practicable to apply one of these men to the same, who have already received a bounty, without a re-enlistment, and the expense of a new bounty.

It is, therefore, thought advisable that the terms of enlistment prescribed by the law be superseded by a provision in future to enlist for the term of five years, if not sooner discharged. This modification leaves with the President the power of reducing the numbers of the army at any time to a prescribed establishment; and if the negotiations of our Envoys to the French Republic shall be successful, it will procure a number of men who, without additional expense, can be retained, if necessary, in service for the period mentioned—a measure which appears equally recommended by its policy and economy.

The Secretary has before observed, that if the United States shall prevent an enemy from procuring the horses of the country, and maintain a superiority in horse artillery, they will have little to fear from an invading enemy, however powerful in infantry. It certainly would be an important addition to our system of defence, was an arrangement devised to deprive an enemy, as much as possible, after he had effected a landing upon our coast, of the means of subsistence, and especially to prevent him from possessing himself of horses, indispensable to the transportation of his baggage, stores, and provisions, and for his artillery and cavalry.

An operation promising to be so efficient, and sanctioned by experience in other countries, will perhaps require on the part of the Government a promise of indemnification to the individual for the value of all stock and horses which may be removed in consequence of invasion, if not restored to their respective owners.

Provisions and restrictions, it is conceived, may be made, calculated to secure the public against frauds, and to encourage, at the same time, the aid of proprietors themselves in the execution of such a law. It should explicitly provide that no compensation will ever be allowed for property of the kind described, destroyed either by the enemy or by our own army, to prevent its falling into the hands of an enemy; in all cases where it shall appear no previous preparation or exertion had been made use of to remove it, and authorize the destruction of all stock, and horses in particular, left in an exposed situation, when necessary, to prevent their being useful to an enemy, or employed against the armies of the United States.

The Government of a country blessed with every convenience for an extensive foreign trade, and peopled with inhabitants distinguished for their commercial spirit, will, from the natural operation of circumstances, and the impulse given by its citizens, consider it a duty to prepare either gradually or promptly, as policy, interest, or necessity, may dictate, the means of affording protection to its property on the ocean.

We find, accordingly, the foundation of a navy already laid, and its advantages so far felt as to induce a belief its progress will be permitted to keep pace with the purposes for which it was instituted. This navy, however, which is specially intended to protect trade, will in its turn require to be protected, when in harbor, by suitable fortifications. Without a place of safety to which it may retire from a superior fleet, the labors and resources of years may be destroyed in a single hour.

The fortifications erected for the defence of our cities and harbors cannot yet be considered competent to afford this security. Many new and extensive works, even at those places where the fortifications are advanced, will yet be required to render any of them a secure asylum for our navy.

Whenever, therefore, the harbors in which our dock yards and great naval deposites are to be established, and to which our navy may retire in time of war or danger, shall be determined upon, it will be indispensable to make them impregnable, if possible, to an enemy.

Schedule B will show the sums which have been appropriated and annually expended in fortifying our harbors since the "Act to provide for the defence of certain ports and harbors in the United States," passed the 20th March, 1794, and the balance remaining on the 1st October, 1799.

The Paymaster General of the Armies of the United States has been, agreeably to the provisions of the 15th section of "An act for the better organization of the troops of the United States, and for other purposes," quartered by direction of the late Commander-in-Chief, at the seat of Government, it being the station deemed most proper, to enable him to perform his functions with convenience, facility, and the least probable risk of the public moneys.

The functions of this office are, by law, highly important—his trust is eminently responsible. All moneys for the pay of the armies pass through his hands, including military bounties and the subsistence and forage of officers, and he is the auditor, in the first instance, of all accounts for such objects.

The compensation provided for him is eighty dollars per month, with the rations and forage of a major. This compensation the Secretary conceives, not merely inadequate to remunerate the duties and responsibilities attached to the office, but insufficient for the decent support of a respectable character, and certainly none other should fill it.

It is, therefore, respectfuly suggested to increase the compensation to the Paymaster General of the Armies of the United States, and submitted whether it might not be attended with some beneficial effect to vest him with a suitable brevet rank in the army.

The regularity, discipline, and, of course, the efficiency of all armies have always depended very essentially upon the system provided for their government. Impressed with this conviction, the Secretary takes the liberty to bring into your view, "the rules and articles for the better government of the troops raised, or to be raised, and kept in pay, by and at the expense of the United States of America." This system contains many excellent provisions, but experience has produced a pretty general wish among military men, that it could be submitted to a complete revision, as in many particulars it is presumed to require amendments.

This revision would be a very serious work, and there is reason to fear could not be undertaken, with a prospect of being speedily finished. Some things, however, can be done, which would be important improvements.

A great obscurity envelopes the provisions of the existing articles, respecting the power to appoint or order general courts martial. One construction, by confining the power to the General or Commander-in-Chief only, is inconveniently narrow, and has occasioned too great delay, as well in instituting courts, as in giving effect to their sentences. Another construction, which has been practised upon, (commandants of posts, as such, of whatever grade, having assumed the power of constituting general courts martial,) is too much diffused, and would place in too many hands a trust no less delicate than important.

To attempt to attain the proper medium by a more exact legislative definition, of the characters who may exercise the power, would perhaps be attended with difficulty, and might often not meet the new situations which are constantly occurring in the infinite combinations of military service. The expedient which has appeared most proper, is to give a discretionary authority to the President, to empower other officers, (than those the soundest interpretation has decided to be designated by the articles of war, viz: Generals, or those on whom a General's command has devolved,) to appoint general courts martial, under such circumstances, and with such limitations, as he may deem advisable.

The provisions which refer the determination on sentences extending to the loss of life, or the dismission of a commissioned officer in the time of peace, to the President, must no doubt have frequently been attended with perplexity to him, and are inconvenient, if not injurious to the service.

It is scarcely possible, for any but the military commander, to appreciate duly the motives which, in such cases, demand severity, or recommend clemency. To this, an accurate view of all the circumstances of the army, in detail, is often necessary. The efficacy of punishment, when requisite in an army, depends much on its celerity, and must be greatly weakened by the unavoidable delay of a resort to the Executive: during which delay, the mischief it was intended to remedy, may, and sometimes most probably will, have happened. The reasons mentioned induce an opinion, that it is expedient to empower the commanding general of an army, to decide upon, and command to be executed when proper, all sentences of general courts martial, except only such as respect a general officer. The responsibility of the commanding general to the President, and to his country, must insure a discreet exercise of the required authority, and its utility is manifest.

The best mode of treating the crime of desertion has been an embarrassing investigation in most countries. To fix upon a punishment, that gives the surest promise of checking or preventing the evil, or which, when it does happen, in its application will be most analogous to the generally received opinions of a country, and the habits of military life, is indeed difficult. The same punishment ought not, perhaps, to be applied to this crime, the most injurious to armies, and complicated in its nature, at all times and under all circumstances.

To punish it with death in time of peace in all cases, would, in this country, do violence to the popular habits of thinking. Whipping is found to be ineffectual. Confinement to hard labor, it is supposed, will produce more beneficial results, and courts martial have, in their discretion, been lately much influenced by this belief. As, however, our soldiers are enlisted for given periods, when an engagement is nearly expired, confinement would be an inadequate punishment, for it could not continue beyond the term of service, and although a soldier may be supposed to have fewer inducements to withdraw from an engagement which is near terminating, yet, it has sometimes happened, and may be expected in future, that men, under such circumstances, have been the authors of combinations, to revolt, desert, and commit other crimes, consequently have been the most atrocious offenders; and it is known that they frequently have themselves deserted. To make this punishment, then, in time of peace, in all cases, commensurate with, and proportioned to, the crime, an auxiliary provision to extend the confinement and labor beyond the period of service the criminal had engaged for, would appear necessary. Such a provision would have a ten-

dency to render the sentences of the courts less sanguinary.

The Secretary by no means designs to suggest, that it would be proper to abolish the punishment of death for desertion, even in time of peace. He considers that in aggravated and complicated cases, it would always be proper, and that in time of war or civil commotion, it should always be applied to this crime. He also inclines to the opinion, that the power of pardoning ought never to be extended in any instance of desertion, or an attempt to desert to enemies or traitors.

Connected with the perfection of our military establishment, is a code of well digested rules for the formations, field exercise, movements, and police, of the different species of troops composing our army.

Major General Hamilton has, some time since, been specially charged with this work. As it was not, however, expected that so extensive an undertaking could be completed without a subdivision of labor, and the co-operation of various talents and experience, he informs, that he has assigned to Major General Pinckney an important portion of the task. The execution, it is also understood, will require the aid of other and subordinate officers, for whose extra service a special compensation is suggested, as being agreeable to usage, and essential to a cheerful and zealous performance of their duty. This, should it meet your approbation, demands no particular act of the Legislature.

There is another point relative to the army, which he has made the subject of a recent communication to the Department of War, to which it may be proper to request attention.

The General observes, that "the detaching from their corps soldiers as servants to the various officers of the general staff is productive of material inconvenience, by withdrawing altogether, from military service, a considerable number of persons; and occasioning dissatisfaction to the commandants of corps, who never see their men removed without uneasiness, and are sometimes much disgusted by the selection of those whom they are anxious to retain. There is no doubt, he adds, that it would operate beneficially, if, after fixing the number of servants to which the several characters of the general staff should be entitled, they were to be allowed an equivalent in money, regulated by the cost of a soldier to the public, and were to be required to provide their own servants."

Should this measure be adopted, which is agreeable to an obsolete regulation of the old Congress, penalties may be devised to secure a faithful execution, which, from the force of circumstances, would be very little liable to abuse.

When treating upon military subjects, it may not be improper to give a general view of the positions of the existing regular force, composing the armies of the United States, conformably to a disposition of the same by your approbation, and that of the late commander-in-chief.

The four regiments of infantry, and the two companies of cavalry, on the permanent establishment, are disposed of as follows:

One regiment is assigned to the frontiers of Tennessee and Georgia. There are also in that quarter the two companies of cavalry.

The three other regiments are distributed along the lakes from Niagara to Michillimackinac, upon the Miami, Ohio, Mississippi, and Tombigbee.

There is also one battalion of the artillerists and engineers distributed with the aforesaid troops.

This entire force is manifestly inadequate to the purposes it is intended to answer on our Northern, Western, and Southern frontiers.

The twelve regiments of infantry now raising, have taken, or are to take, the following provisional positions, viz:

Three of the twelve regiments of infantry in the vicinity of Providence river, near Uxbridge, Massachusetts.

Three regiments in the vicinity of Brunswick, New Jersey.

Three regiments in the vicinity of Potomac near Harper's Ferry, Virginia.

Three regiments in the vicinity of Augusta, above the Falls of Savannah.

This disposition, it is conceived, combines considerations relative to the discipline and health of the troops with the economical supply of their wants. It has, also, some military aspects, in the first instance, towards the security of Boston and Newport; in the second, towards that of New York and Philadelphia; in the third and fourth, towards that of Baltimore, Charleston, Savannah, and the Southern States generally, and in the third, particularly towards the reinforcement of the Western army.

The residue of the two regiments of artillerists and engineers, except one battalion stated to be on our Northern, Western, and Southern frontiers, are stationed in our sea-board fortifications, from Portland, Massachusetts, to the St. Mary's, Georgia. From these are to be drawn two battalions in succession for the army, when in the field, with a view to a course of regular instruction.

Schedule C exhibits the actual force (according to the latest returns) of the four regiments of infantry, and two companies of cavalry on the old establishment, and the two regiments of artillerists and engineers.

All which is respectfully submitted.

[The tabular statements are omitted.]

MILITARY ACADEMY.

[Communicated to the House, Feb. 13, 1800.]

WAR DEPARTMENT, *Jan.* 31, 1800.

SIR: I have the honor to submit, in compliance with your requisition, a few supplementary observations, and a view of the probable expense of the military schools respectfully recommended to consideration in my report, communicated to Congress by a Message dated the 13th instant from the President of the United States.

The report contemplates certain military schools as an essential means, in conjunction with a small

Military Establishment, to prepare for, and perpetuate to, the United States, at a very moderate expense, a body of scientific officers and engineers, adequate to any future exigency, qualified to discipline for the field, in the shortest time, the most extended armies, and to give the most decisive and useful effects to their operations.

It is not conceived that the United States will ever think it expedient to employ militia upon their frontiers, or to garrison their fortified places in time of peace, nor that they will be disposed to place their reliance, for defence, against a foreign invading enemy, upon militia alone, but that they will, at all times, maintain a body of regular troops commensurate with their ability to maintain them, and the necessity or policy that may demand such an establishment.

To qualify and keep our citizens, in general, of suitable bodily ability, prepared to take the field against regular forces, would demand the most radical changes in our militia system, and such an uninterrupted series of training, discipline, and instruction, to be applied as well to the officers as to the men, as comports with regular troops only, while in its results the measure would be found, on account of the loss to the community, occasioned by the abstraction from labor or occupation, and direct cost, greatly to exceed in expense what would be required to support a moderate Military Establishment. This position, which is thought to be a sound one, does not bring into view the effects of the measure upon the morals, industry, and habits of the citizens.

Practically considered, may we not as well calculate to be commodiously lodged, and have the science of building improved, by employing every man in the community in the construction of houses, and by exploding from society, as useless, architects, masons, and carpenters, as expect to be defended efficiently from an invading enemy, by causing every citizen to endeavor to make himself master of the several branches of the art of war, and excluding engineers, scientific officers, and regular troops?

There is certainly, however, a system, as it respects our militia, which, if resorted to, and persevered in, may secure the utility of their services in times of danger, without much injury to the morals, or materially affecting the general industry of the nation.

When the perfect order and exact discipline which are essential to regular troops are contemplated, and with what ease and precision they execute the different manœuvres indispensable to the success of offensive or defensive operations, the conviction cannot be resisted, that such troops will always have a decided advantage over more numerous forces composed of uninstructed militia or undisciplined recruits.

It cannot yet be forgotten, that, in our Revolutionary war, it was not until after several years' practice in arms, and the extension of the periods for which our soldiers were at first enlisted, that we found them at all qualified to meet in the field of battle those to whom they were opposed. The occasional brilliant and justly celebrated acts of some of our militia, during that eventful period, detract nothing from this dear bought truth. With all the enthusiasm which marked those days, it was perceived, and universally felt, that regular and disciplined troops were indispensable, and that it was utterly unsafe for us to trust to militia alone the issue of the war. The position, therefore, is illustrated, that, even in times of the greatest danger, we cannot give to our militia that degree of discipline, or to their officers that degree of military science upon which a nation may safely hazard its fate.

The great man who conducted the war of our Revolution was continually compelled to conform his conduct to the circumstances growing out of the experimental lessons just mentioned. What was the secret of his conduct? Must it be told? It may be, and without exciting a blush or uneasy sensation in any of his surviving companions in arms. He had an army of men, but he had few officers or soldiers in that army. Both were to be formed, which could not be effected in a single campaign, or while his regiments were continually returning home, and, like the waves of the sea, each in their turn lost in the abyss, and succeeded by new ones. It was not till after he was furnished with a less fluctuating and more stable kind of force that he could commence with a prospect of advantage, military instructions, or enforce the ordinances of discipline; and, even then, he felt that time and instructers were required to render his labors useful, and enable his army to meet the enemy upon anything like equal terms. Are we to profit by, or is this experience to be lost to our country?

The art of war, which gives to a small force the faculty to combat with advantage superior numbers indifferently instructed, is subjected to mechanical, geometrical, moral, and physical rules; it calls for profound study; its theory is immense; the details infinite; and its principles rendered useful only by a happy adaptation of them to all the circumstances of place and ground, variously combined, to which they may be applicable. Is it possible for an officer of militia to obtain a competent knowledge of these things in the short space his usual avocations will permit him to devote to their acquisition? Is it possible for any officer, having acquired a knowledge of these details, this theory, and these principles, to carry them into useful practice with a handful of militia, in the few days in each year allotted by law to trainings and exercises? Is that perfect subordination and obedience of men to their officers, and of each inferior to his superior officer, through all the grades of rank, from the corporal up to the commander-in-chief, which forms a vital principle essential to the energy and force of armies, to be acquired by, or communicated to, a body of militia organized and trained according to our laws? And does it consist with a humane and enlightened policy to march men so imperfectly instructed and disciplined, unless in cases of the last extremity, against veteran troops, (where this principle reigns in full activity,) commanded by skilful and scientific officers? Admitting, how-

ever, that militia officers, during the few months the law permits their corps to be retained in actual service, could render their men, by incessant instruction, capable of fulfilling the object of their destination; yet, as that advantage is but momentary, as these borrowed instruments must be quickly returned to the depot which furnished them, as new ones must be resorted to, and successively instructed, what can be expected from such a system, but perpetual incoherence between the means and the end, and certain shipwreck to the best connected and combined military projects? This, to be sure, is the old story; it cannot, however, be too often repeated, because it can never be refuted.

The secret of discipline, and the importance of military science, were well known to those ancient Governments whose Generals and troops have filled the world with the splendor of their victories. According to *Scipio*, nothing contributed to the success of enterprises so much as skill in the individual officers. The severity of the Roman discipline is well understood, and the estimation in which it was held by *Cæsar*. *Livy* has observed, that science does more in war than force. *Vegetius*, that it is neither numbers nor blind valor which insures victory, but that it generally follows capacity and science in war. *Machiavel*, who has written upon military affairs, placed so much dependence on an exact discipline and military science, as to efface from his list of great Generals all those who with small armies did not execute great things: but to the committee it is unnecessary to repeat the authorities of Generals and writers of the first reputation, to show the high importance attached to military science and discipline in all ages of the world, or resort to history for evidence of its effects. They must be well acquainted with the facts, and, no doubt, will give them their due weight in considering the subjects now before them.

There is, however, an authority, so much in point relative to the essentiality of the institution in question, that I cannot forbear to mention it.

The Marshal de *Puisegur*, who has left an excellent treatise on the art of war, the result of his experience, observes:

"I have been, perhaps, at as many sieges as any of those in service, and in all sorts of grades; as subaltern, I have commanded troops and working parties in a siege; as major I have conducted to the trenches and posts to which they were destined troops and laborers; I have been major of brigade, marshal de camp, and lieutenant general: however, as I have not learned fortification, my practice has not enabled me to acquit myself in conducting attacks, so that I should be obliged to suffer myself to be instructed in many things by the lights of engineers, their practice being founded upon principles which are known to them, an advantage I have not in this branch of war."

This is the candid acknowledgment of a man who had served sixty years in the army; who had learned the military art under a father; that, in forty years service, had been present at two hundred sieges; and who had himself passed through all the military grades, and arrived from an inferior to a superior rank, but after having deserved each successive promotion by some distinguished action.

A slight attention to circumstances, and the actual position of our country, must lead to the conviction, that a well-connected series of fortifications is an object of the highest importance to the United States, not only as these will be conducive to the general security, but as a means of lessening the necessity, and consequently the expense of a large Military Establishment.

By strongly fortifying our harbors and frontiers, we may reasonably expect, either to keep at a distance the calamities of war, or render it less injurious when it shall happen. It is behind these ponderous masses only that a small number of men can maintain themselves, for a length of time, against superior forces. Imposing, therefore, upon an enemy who may have everything to transport across the Atlantic, the necessity of undertaking long and hazardous sieges, increases the chances against his undertaking them at all, or, if he does, in despite of such circumstances, insures to us the time he must consume in his operations, to rally our means to a point, and unite our efforts to resist him.

We must not conclude, from these brief observations, that the services of the engineer is limited to constructing, connecting, consolidating, and keeping in repair fortifications. This is but a single branch of their profession, though indeed a most important one. Their utility extends to almost every department of war, and every description of general officers, besides embracing whatever respects public buildings, roads, bridges, canals, and all such works of a civil nature. I consider it, therefore, of vast consequence to the United States, that it should form in its own bosom, and out of its own native materials, men qualified to place the country in a proper posture of defence, to infuse science into our army, and give to our fortifications that degree of force, connexion, and perfection, which can alone counterbalance the superiority of attack over defence.

With these advantages in prospect, is it not incumbent upon us to hasten, with all reasonable diligence, the commencement and completion of an institution essential to realize them: and are expenditures, which give such valuable results, to be otherwise viewed than as real economy? It is a well known fact, that England had neither native artillerists nor engineers before the time of the Duke of Cumberland, and till after she established military schools.

I shall now, having respectfully submitted these observations, present an estimate of the expense of the military schools, which it appears to me ought to be immediately instituted.

Agreeably to the plan of the Military Academy, the directors thereof are to be officers taken from the Army, consequently no expense will be incurred by such appointments.

The plan also contemplates that officers of the army, cadets, and non-commissioned officers, shall receive instruction in the academy. As the rations and fuel which these are entitled to in the Army, will suffice for them in the academy, no additional expense will be required for these objects of maintenance while there.

The expenses of servants, and certain incidental charges relative to the police and administration, may be defrayed by those who shall be admitted out of their pay and emoluments.

According to the plan contemplated, fifty officers, cadets, or non-commissioned officers, may be annually instructed in the Fundamental School, and an equal number in the School of Artillerists and Engineers, the only schools which it is deemed expedient to bring into operation.

To instruct these may require, when both schools are in full activity, the following professors, viz:

In the Fundamental School.

Two professors of mathematics, at $800 per annum, and two rations per day - - -	1,848 20	
Two professors of geography and natural philosophy -	1,848 20	
One professor of chemistry -	824 10	
One designing and drawing master - - -	724 17	
		5,344 60

In the School of Artillerists and Engineers.

One professor of mathematics, at $800 per annum, and two rations per day - -	924 10	
One professor of geography and natural philosophy -	924 10	
One professor of chemistry -	924 10	
One professor of architecture	924 10	
Two designing and drawing masters, at $600 per annum, and two rations per day -	1,448 20	
		5,144 60
Total - - -		$10,489 20

The cost of the buildings for these two schools, as the one or the other of the annexed plans shall be adopted will be, viz:

Plan by John Foncin, Engineer.

For the Fundamental School -	$19,423 00
The School of Artillerists and Engineers, supposed to cost an equal sum	19,423 00
	$38,846 00

Plan by B. H. Latrobe, Civil Architect and Engineer.

For the Fundamental School -	$40,000 00
The School of Artillerists and Engineers, supposed to cost an equal sum	40,000 00
	$80,000 00

It may be proper to remind the committee, that no appropriation for the School of Engineers and Artillerists will be required perhaps these two years, or till after the completion of the Fundamental School.

The Secretary takes occasion also to mention, that the laws have already made provision for four teachers or professors to the artillerists and engineers, at a salary of eighty dollars per month, and two rations per day, which may be considered equivalent to four thousand three hundred and thirty-six dollars and forty-six cents per annum; and that the act providing for raising and organizing a corps of artillerists and engineers, passed the 9th May, 1794, makes it "the duty of the Secretary of War to provide, at the public expense, under such regulations as shall be directed by the President of the United States, the necessary books, instruments, and apparatus, for the use and benefit of the said corps."

According to the plan and estimate of the buildings by Mr. Foncin, the two schools will cost thirty-eight thousand eight hundred and forty-six dollars.

According to the plan and estimate by Mr. Latrobe, the two schools will cost eighty thousand dollars.

The modification of the two regiments of artillerists and engineers will liberate twenty thousand nine hundred and fifty-five dollars annually.

The establishment of the two schools will liberate the salaries of the four teachers before mentioned, or four thousand three hundred and thirty-six dollars annually.

The books, apparatus, and instruments, directed to be provided for the use of the artillerists and engineers, are considered as an adequate offset for the books, apparatus, and instruments, required for the use of the schools; consequently, no charge has been stated in the estimate for these objects.

If, therefore, we oppose the sums thus annually liberated to the annual salary of the professors and original cost of the buildings, whichever of the plans is adopted, we shall find the measure proposed, viewed merely in the light of an operation of finance, to result in a considerable saving to the United States.

An individual would think it a good bargain to receive twenty-five thousand two hundred and ninety-one dollars, annually, the sum liberated, and to give, in lieu thereof, ten thousand four hundred and sixty-six dollars, annually, the salary of the professors, and a principal sum, equal to the cost of the buildings. In other words, he would receive fourteen thousand seven hundred and twenty-five dollars, annually, which is equivalent, at six per cent., to a capital, or principal, of two hundred and forty-five thousand four hundred and sixteen dollars; a sum greatly exceeding the estimated cost of the buildings upon either estimate.

The committee, while they perceive that the seed, which it is now proposed to sow, is to yield a future harvest, will, at the same time, justly appreciate the various beneficial consequences which must result from the immediate adoption, and the striking inconveniences, and danger to be apprehended from a postponement of the measure.

Whether our country is to be plunged into a war, or enjoy, for a length of time, the blessings

of peace and interior tranquillity; whether the portentous events which have afflicted Europe, and, in their progress, threatened the United States, are to subside into a settled state of things; whether the blessings of peace, and the customary relations, among the transatlantic Powers, are to take place, or hostilities shall be continued, protracted, and extended, beyond their present limits; in either view, it is equally a suggestion of policy and wisdom to improve our means of defence, and give as much perfection as possible to such establishments as may be conceived essential to the maintenance of our rights, and security from insults.

The unavoidable collisions growing out of trade, and the reciprocal restrictions of great commercial States; the apprehensions and jealousies natural to Powers possessing contiguous territory; the inefficacy of religion and morality to control the passions of men, or the interest and ambition of nations; the impossibility, at times, for governments to adjust their differences or preserve their rights, without making sacrifices more to be dreaded than the hazards and calamities of war: all these considerations, illustrated by volumes of examples, teach the soundness of the axiom, *si vis pacem para bellum*. And what time more proper to prepare the materials for war than a time of peace, or more urgent, than that in which a nation is threatened with war?

I have the honor to be, with the greatest respect, sir, your most obedient servant,

JAMES McHENRY.
Secretary of War.

HARRISON G. OTIS, Esq.,
Chairman of the Committee of Defence.

ACTION BETWEEN THE CONSTELLATION AND LA VENGEANCE.

[Communicated to the House of Reps., March 21, 1800.]

NAVY DEPARTMENT, *March* 20, 1800.

In obedience to the order of the House of Representatives of the United States, of the 18th instant, the Secretary of the Navy has the honor to lay before the House a copy of Captain Truxtun's letter of the 3d of February, together with a copy of the extract from his journal, referred to in the said letter, detailing the particulars of the engagement between the Constellation, under his command, and a heavy French ship, mounting, as he supposed, fifty-four guns.

The Secretary has received a number of letters too voluminous to trouble the House with, of dates both prior and subsequent to the action, which leave no doubt on his mind that the French ship, so gallantly defended against the bravery and superior skill of Captain Truxtun, is the same that arrived at Guadaloupe from France, in the month of December last, called La Vengeance, mounting fifty guns or upwards.

In confirmation of this opinion, the Secretary takes the liberty of stating the substance of letters received from Captain Baker, of the Delaware sloop of war, from B. H. Phillips, Esq., American Consul at Curaçoa, and from D. M. Clarkson, Esq., Navy Agent at St. Kitts.

Captain Baker, in a letter dated Curaçoa, 8th of February, mentions that a French ship, called La Vengeance, of fifty-four guns, had left Guadaloupe on her return to France, about the 1st of February, had a very severe action with the Constellation the following night, and arrived at Curaçoa on the 6th, in a most shattered condition; that he had understood she had lost one hundred and forty men in the action, and when she escaped from the Constellation had eight feet water in her hold.

Mr. Phillips, in a letter dated Curaçoa, 9th of February, to the Secretary of State, announces the arrival there of the French ship La Vengeance, of fifty-six guns, bound from Guadaloupe to France, with a valuable cargo, and a large sum of specie, in a very distressed situation, having lost one hundred and sixty men, killed and wounded, and her masts and rigging nearly all shot away, in an engagement of five hours, within pistol shot, with the Constellation.

Mr. Clarkson, at St. Kitts, in a letter dated 16th of February states "we are certain Captain Truxtun's gallant action was fought with La Vengeance, a French man of war of fifty-four guns, and five hundred picked men, from Guadaloupe to France."

As to the conduct of any particular officer, or other persons on board the Constellation, the Secretary has no information, except what is to be found in the communications from Captain Truxtun, by which, but still more by the result of this heroic action, it appears that all the officers and men on board the Constellation must have nobly performed their duty.

The praise of having pursued, for many hours, a ship known to be of force so greatly superior to his own, to bring her to action, and of conducting that action with so much skill as to compensate for his great inferiority of force, belongs exclusively to their gallant commander.

It cannot be necessary for the Secretary to add to the eulogium bestowed by Captain Truxtun, on the brave young midshipman, James Jarvis, who gloriously preferred certain death to an abandonment of his post.

All which is respectfully submitted.

BENJAMIN STODDERT.
Secretary of the Navy.

Hon. SPEAKER *of the House of Reps.*

Copy of a letter from Captain Thomas Truxtun to the Secretary of the Navy.

UNITED STATES' SHIP CONSTELLATION,
AT SEA, *February* 3, 1800.

SIR: I had the honor to address you the day after my arrival at St. Christopher's, the 21st ult., as per copy annexed; after which I made every exertion in my power to get the squadron, as well as my own ship, to sea, in the shortest time possible; and gave all the commanders of the different vessels orders to cruise separately, in certain situations, agreeably to the copies enclosed.

On the 30th I left St. Christopher's with the Constellation, in an excellent trim for sailing, and stood to windward in order to occupy the station I had allotted for myself, before the road of the enemy at Guadaloupe, where I was informed a very large and heavy frigate, of upwards of fifty guns, was then lying, and early on the next day I fell in with L'Insurgent, Captain Murray, and the prize brig Conquest, of Italy, that had been fitted out to cruise with him in those seas. After a short interview with Captain Murray I requested him to proceed to St. Christopher's without loss of time, and call on our agent there, Mr. Clarkson, for letters that I had lodged for him, which pointed out his further destination. On our parting he immediately made sail to leeward, and I continued plying to windward. At half past seven, A. M., of the following day, I discovered a sail to the southeast, to which I gave chase; and, for the further particulars of that chase, and the action after it, I must beg leave to refer you to the extracts of my journal, which is also enclosed, as being the best mode of exhibiting a just, fair, and candid account of all our transactions in the late business, which has ended in the complete dismantlement of the Constellation, though, I trust, to the high reputation of the American flag.

I have just fell in with the Enterprise, Lieutenant Shaw, returning from Curaçoa, who I send off to you with my despatches, and I shall be obliged by your sending him again to meet me at Port Royal, Jamaica, as early as possible, as I shall be impatient to hear from you, especially as we are now in want of everything, being a mere wreck.

If I had met Captain Morris, of the Adams, I should have taken the command of that ship and kept the station to windward, leaving him in charge of the Constellation to be refitted at Jamaica; but I have not been so fortunate.

I have the honor to be, with great respect and esteem, your very obedient humble servant,

THOMAS TRUXTUN.

BENJAMIN STODDERT, Esq.,
Secretary of the Navy, Philadelphia.

A circumstantial account of the engagement between the United States frigate Constellation, of thirty-eight guns, and a French national frigate, of fifty-four guns, on the 1st of February, 1800; taken from Commodore Truxtun's Journal, viz:

SATURDAY, *February* 1, 1800.

At half-past seven, A. M., the road of Bassaterre, Guadaloupe, bearing east, five leagues distance, saw a sail in the southeast standing to the westward, which, from her situation, I at first took for a large ship from Martinico, and hoisted English colors, on giving chase, by way of inducement for her to come down and speak me, which would have saved a long chase to leeward of my intended cruising ground; but finding she did not attempt to alter her course, I examined her more attentively as we approached her, and discovered her to be a heavy French frigate, mounting at least fifty-four guns. I immediately gave orders for the yards to be slung with chains, topsail sheets, &c., stoppered, and the ship cleared, ready for action, and hauled down the English colors. At noon the wind became light, and I observed the chase, that we had before been gaining on fast, held way with us, but I was determined to continue the pursuit, though the running to leeward, I was convinced, would be attended with many serious disadvantages, especially if the object of my wishes was not gratified.

SUNDAY, *February* 2.

At one o'clock, P. M., the wind being somewhat fresher than the noon preceding, and an appearance of its continuance, our prospect of bringing the enemy to action began to brighten, as I perceived we were coming up with the chase fast, and every inch of canvass being set that could be of service, except the bag reefs, which I kept in the topsails, in case of the enemy, finding escape from our thunder impracticable, should haul on a wind, and give us fair battle; but this did not prove to be her commander's intention; I, however, got within hail of him at eight P. M.; hoisted our ensign, and had the candles in the battle lanterns all lighted, and was in the lee gangway, ready to speak him, and to demand a surrender of his ship to the United States of America, when, at that instant, he commenced a fire from his stern and quarter guns, directed at our rigging and spars. No parley being then necessary, I sent my principal aid-de-camp, Mr. Vandyke, to the different officers commanding divisions on the main battery, to repeat strictly my orders before given, not to throw away a single charge of powder and shot, but to take good aim, and to fire directly into the hull of the enemy, and load principally with two round shot, and, now and then, with a round shot and a stand of grape, &c.; to encourage the men at their quarters, and to cause or suffer no noise or confusion whatever, but to load and fire as fast as possible, when it could be done with certain effect.

These orders being given, in a few moments I gained a position on his weather quarter, that enabled us to return, effectually, his salute, and thus as close and as sharp an action as ever was fought between two frigates, commenced, and continued until within a few minutes of one, A. M., when the enemy's fire was completely silenced, and he was again sheering off. It was at this moment that I considered him as my prize, and was trimming, in the best manner I could, my much shattered sails, when I found the mainmost was totally unsupported with rigging, every shroud being shot away, and some of them, in many places, so as to render stoppers useless, which in fact could not be applied with effect. I then gave orders for all the men to be sent up from the gun deck, to endeavor to secure the mast, in order that we might get alongside of the enemy again as soon as possible; but every effort was in vain, for it went over the side in a few moments after, and carried with the topmen, among whom was an amiable young gentleman, who commanded the main top, Mr. James Jarvis, son of James Jarvis, Esq., of

New York. This young gentleman, it seems, was apprized of his danger by an old seaman, but he had already so much the principle of an officer engrafted on his mind, not to leave his quarters, that he replied, if the mast went, they must go with it; which was the case, and only one of them was saved. I regret much his loss, as a promising young officer, and amiable young man, as well as on account of a long intimacy that had subsisted between his father and myself, but have great satisfaction in finding that I have lost no other, and only two or three were slightly wounded; out of thirty-nine of the crew killed and wounded, fourteen of the former, and twenty-five of the latter. As soon as the mainmast went, every effort was made to clear the wreck from the ship as soon as possible, which was effected in about an hour; and, as her security was then the great object, it being impossible to pursue the enemy, I immediately bore away for Jamaica, for repairs, &c., finding it impracticable to reach a friendly port in any of the islands to windward.

I should be wanting in common justice was I to omit here to journalize the steady attention to order, and the great exertion and bravery shown by all my officers, seamen, and marines, in the action, many of whom I had sufficiently tried before on a similar occasion, (the capture of the Insurgent,) and all their names are recorded in the muster-roll I sent to the Secretary of the Navy, dated the 19th of December last, signed by myself.

THOMAS TRUXTUN.

THE NAVAL ESTABLISHMENT, AND ITS EXPENSES.

[Communicated to the House of Reps., Jan. 15, 1801.]

NAVY DEPARTMENT, *Jan.* 12, 1801.

SIR: The report of the Secretary of the Treasury containing a statement of the appropriations necessary for the year 1801, includes the estimates of the expense of maintaining the Navy for the same year. It is unnecessary, therefore, for me to repeat them here.

But it will be observed that these estimates were formed on the idea of employing our whole force in cruising, as heretofore, for the protection of our commerce. Should the United States be so fortunate as to terminate, by an honorable treaty, the differences with France, it would be good economy to sell all the public vessels, except the following frigates:

The United States,	The New York,
President,	Constellation,
Constitution,	Congress,
Chesapeake,	Essex,
Philadelphia,	Boston,
John Adams,	Adams, and
General Greene.	

The rest were either built of materials which do not promise long duration, or are too small to form a part of the national defence. In future wars, the United States will probably be influenced by the example of all other nations, to suffer the capture of vessels merely commercial from their enemy; and, in this event, the enterprising spirit of our citizens will quickly furnish, for private emolument, nearly all the small vessels necessary to be employed; and will thus add to the national means of annoyance, without adding to the national expense. In this view, it may be sufficient for the United States to attend principally to a provision for ships of the line and frigates.

The expense of maintaining the thirteen frigates herein enumerated, in constant service, and on the present establishment of numbers, pay, and rations, would amount, annually, to the sum of one million two hundred and twenty-five thousand and forty-eight dollars and seventy-three cents, as will be seen in paper No. 1. But, on a peace establishment, the ration, which is too large, ought to be reduced; seamen's wages will undoubtedly fall, on a general peace; and, in such a state of things, it would be unnecessary to employ, in each ship, more than two-thirds of the present number of able and ordinary seamen. The paper No. 2 contains an estimate of the annual expense of these ships on a peace establishment, and on the principle of keeping the whole of them in constant service, amounting to seven hundred and twelve thousand seven hundred and twenty-four dollars and thirty-five cents. The paper, No. 3, shows the expense of keeping only six of the frigates in constant service; the others remaining in port, but allowing half-pay to a sufficient number of commissioned officers and midshipmen for the ships so laid up, amounting to three hundred and eighty-seven thousand two hundred and fifty-seven dollars. In the paper, No. 4, there is added to the estimate, No. 3, the expense of allowing half-pay to all the commissioned officers and midshipmen at present in the service, making the whole amount to the annual sum of four hundred and forty-four thousand six hundred and seventy-seven dollars.

The act establishing and organizing the Marine Corps considers that corps as part of the Military Establishment, but subject to perform duty on ship-board, as well as in posts and garrisons on the seacoast, and elsewhere on shore. It is questionable, therefore, whether the expense of this corps ought to be provided for in the estimates of the War or the Navy Department. It is certainly, one of the most useful corps belonging to the United States; and is particularly advantageous in facilitating the means, and lessening the expense, of manning our ships; and affords to every vessel a body of experienced and disciplined men, always prepared for action. The war expense of this corps is two hundred and seventy thousand nine hundred and fifty-seven dollars and ninety-eight cents, per annum; in peace, the expense might be reduced to two hundred and seven thousand three hundred and ten dollars, per estimate No. 5, which, being added to the estimate No. 4, would make the whole amount to six hundred and fifty-one thousand nine hundred and eighty-seven dollars.

The acts of Congress have appropriated one million of dollars towards building six seventy-four gun ships, and for procuring, arming, &c., six sloops of war, leaving about seven hundred thousand dollars to be applied towards the six seventy-four gun ships; also, two hundred thousand dollars for the purchase of growing or other timber, or of timbered lands, for the Navy, and for preparing proper places for securing the timber procured; and fifty thousand dollars for the erection of two docks, for repairing the public ships.

Under these acts, contracts have been made for eight frames for seventy-four gun ships; two of them under the appropriation of two hundred thousand dollars, and the execution of them, as far as six frames, will, it is believed, be completed this Winter. A considerable part of the other timber, necessary for six ships, has been procured. Ground has been purchased at Portsmouth, New Hampshire, Charlestown, (near Boston,) Philadelphia, the City of Washington, and Norfolk; and measures have been taken to procure ground at New York, for capacious buildings and dock-yards; and progress is making in preparing docks for receiving the timber, and wharves for building the ships. Contracts have also been made for cannon, and for the copper bolts and spikes, and for sheathing copper, for the seventy-four gun ships; but it is impossible to say how far those which respect copper will be executed, the works for manufacturing sheathing copper being very expensive, and, it is to be feared, beyond the reach of individual capital and enterprise.

The sums already advanced and expended on these different objects cannot be precisely ascertained; but they are not materially different from the following estimate:

For ground and improvements -	$186,800 00
Timber - - - - - - -	210,070 00
Copper purchased, and advances on contracts for sheathing copper -	76,913 00
Cannon - - - - - -	33,000 00
Purchase of Grover's Island and Black Beard - - - -	22,516 75
	$929,299 75

The agents for disbursing this money are also agents for all other purposes of the Navy; and it can only be seen what has been expended, under each head of appropriation, on settlement of their accounts. To remit money to them under each head of appropriation, allowing them to expend on that particular object only the sum remitted, would be to create the necessity of keeping, in each agent's hands, four or five times as much public money as necessary; hence, the practice has arisen in the Navy Department of drawing on one appropriation, for all Navy purposes, until that appropriation is exhausted; leaving until the settlement of the agent's accounts the charges against each appropriation for which the money has been expended.

The expense of building six seventy-four gun ships, and fitting them for sea, with guns and military stores, and every other article except men and provisions, has heretofore been estimated at two millions four hundred and three thousand eight hundred dollars and ninety-four cents; to complete the wharves and docks, for seasoning timber at the six places, where ground has been purchased, and to erect suitable houses, for the reception of public stores, will cost, including what has already been expended, six hundred thousand dollars; and to make, at two of these places, proper docks for repairing of ships, may cost one hundred thousand dollars, amounting, in the whole, to - - - - - - - - $3,103,800 00

From which is to be deducted the sums already expended - -	529,299 75
Leaving a balance still to be appropriated, of - - - - -	$2,574,500 25

If this balance should be divided into four equal parts, and one part should be appropriated in the present, and one in each of the three succeeding years, the money will be furnished as fast as it will be proper to build the ships, to give them every chance of long duration.

The timber alone of a seventy-four gun ship will cost, delivered at the ship yard:

For the frame, consisting of twenty-seven thousand three hundred and eighty-seven cubic feet,		
If of live oak, cut to the moulds -		$54,774 00
If partly of live oak, or other timber as valuable, and partly of white oak - - - - - - - -		41,080 00
If of white oak alone -	$27,387 00	
All the other timber -	40,000 00	
		67,387 00

All the timber for a frigate, to mount forty-four guns, has been estimated to cost fifty thousand dollars.

It will be impracticable to get more live oak from Georgia, after the frames already contracted for are completed, except from the islands belonging to the United States, and these are too small to furnish more than a few of the most material pieces for many ships. It will, also, soon be impracticable to obtain, in the United States, any other kind of timber superior to white oak; but there is reason to believe that, when our timber is as well seasoned, our white oak ships will last as long as those of most other countries. The experiment has never yet been fairly made.

When the United States own twelve ships of seventy-four guns, and double the number of strong frigates, and it is known that they possess the means of increasing, with facility, their naval strength, confidence may be indulged that we may then avoid those wars in which we have no interest, and without submitting to be plundered. An annual sum of one hundred and seventeen thousand three hundred and eighty-seven dollars, (over and above the appropriation for the six seventy-four gun ships already authorized,) for the purchase of timber, to be laid up in docks for seventy-four gun ships and frigates, and the adoption of efficient arrangements to secure the manufacture of copper, the culture of hemp, and the manufac-

ture of canvass, would, in a few years, raise us to this desirable state of security.

Thus, then, it appears that, for the small sum of six hundred and fifty-one thousand nine hundred and eighty-seven dollars thirty-four cents, the United States may keep in constant service six frigates; seven others in port, but always ready for service; the corps of marines, consisting of more than eleven hundred officers and men; and may remunerate the past, and secure the future, services of a meritorious class of men, who, in general, either sacrificed more profitable and less hazardous private employment, to devote themselves to their country, in a season of peril; or who, being qualified by education for any pursuits, have entered into the Navy, as a profession, at that time of life when professions are usually chosen.

All great maritime nations retain in peace the commissioned Navy officers necessary to be employed in war, by allowing them a portion of their monthly pay, on the condition of their holding themselves in readiness, at all times, to be called into active service. The same provision is not so generally extended to the midshipmen; but the discrimination is no where just, and, in the United States, in the present instance, it would be extremely impolitic: for the midshipmen are among the most promising young men of our country, possess all the materials to make officers equal to any in the world, and well merit the fostering care of their Government. But it would be injurious to themselves and to their country to pay them for remaining in idleness at home. No midshipman ought to receive half-pay, without exhibiting satisfactory proof that at least four months of the year for which he demanded it had been employed by him in acquiring a better knowledge of his profession; if not in foreign service, at least in the merchant ships of his own country.

It also appears that, for the further sum of six hundred and forty-three thousand six hundred and twenty-five dollars and six cents, appropriated for the present, and for each of the three succeeding years, six seventy-four gun ships may be added to the Navy; two frames for two other seventy-four gun ships may be placed in dock for seasoning; six capacious building yards, with docks for receiving large quantities of timber, may be prepared; and suitable houses, which are indispensable for the security of the naval stores, may be erected at each of the building yards.

And that, for the further appropriation of one hundred and seventeen thousand three hundred and eighty-seven dollars, for the timber of a seventy-four and a forty-four gun ship, to be repeated annually, until an adequate quantity of timber shall be obtained, the United States may acquire the means of suddenly raising their Navy to any size which the exigency of their affairs may demand.

It will require years to cut the timber from the woods and to build a ship of seventy-four guns, and, after she is built, of green timber, she will not last longer than the time consumed in building her. A ship of the same size, besides the immense advantage in point of duration, may be built and sent to sea in less than a year, if all the materials are on the spot. Timber may be preserved for ages in docks, and at little expense; and the knowledge that we possess it in that state will inspire nearly as much respect for our flag, as if the ships were built and on the ocean.

In a pecuniary point of view, there can be no comparison between the expense of creating a sufficient Navy, and the loss a commerce, so great as ours, will too certainly sustain for the want of such protection. But the loss of property is but a paltry consideration, compared with all the humiliating and destructive consequences which must flow from that debasement of mind which a system of eternal submission to injury and injustice cannot fail to produce.

Before I conclude, I will take the liberty of observing, that the business of the Navy Department embraces too many objects for the superintendence of one person, however gifted. The public interest, I am very sensible, has already suffered from this cause; and I have no doubt that the establishment of a Board, to consist of three or five experienced Navy officers, to superintend, in subordination to the Head of the Department, such parts of the duties as nautical men are best qualified to understand and to direct, would produce a saving to the public far beyond the expense of such an establishment. Their full pay as officers, indeed, and full rations, might be deemed sufficient compensation for such duty, as it would be proper that the members of the Board should retain their rank in the Navy.

I have the honor to be, with great respect, sir, your most obedient servant,

BEN. STODDERT.

HARRISON GRAY OTIS, Esq.,
Chairman of the Committee of Naval Affairs.

[The tabular statements are omitted.]

PUBLIC ACTS OF CONGRESS;

PASSED AT THE FIRST SESSION OF THE SIXTH CONGRESS, BEGUN AND HELD AT PHILADELPHIA, DECEMBER 2, 1799.

AN ACT for reviving and continuing suits and proceedings in the Circuit Court for the district of Pennsylvania.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all suits, process, and proceedings, of what nature or kind soever, which were pending in the circuit court of the United States, for the district of Pennsylvania, at the time appointed by law for holding a session thereof, in October, one thousand seven hundred and ninety-nine, and which were discontinued by failure to hold the said court, shall be, and they are hereby, revived and continued, and the same proceedings may and shall be had in the same court, in all suits and process aforesaid, and in all things relating to the same, as by law might have been had in the same court, had it been regularly holden, at the time aforesaid.

SEC. 2. *And be it further enacted,* That all writs, and other process, which may have been, and which shall be issued, by the clerk of the said court, bearing teste of April session or October session, one thousand seven hundred and ninety-nine, shall be held and deemed of the same validity and effect, as if the same court had been regularly held on the eleventh day of October, one thousand seven hundred and ninety-nine.

SEC. 3. *And be it further enacted,* That it shall be lawful for the judge of the district court of the district of Pennsylvania, to direct the clerk of the said circuit court to issue such process, for the purpose of causing jurors to be summoned to attend at the session of the said circuit court, on the eleventh day of April next, as hath heretofore been issued for the like purposes, returnable to any preceding session thereof; and the persons so summoned shall, in case of non-attendance, be liable to the same penalties as if such process had been issued in the ordinary course of proceeding.

THEODORE SEDGWICK,
Speaker of the House of Representatives.
SAMUEL LIVERMORE,
President of the Senate, pro tempore.

Approved, December 24, 1799.

JOHN ADAMS,
President of the United States.

An Act extending the privilege of franking to William Henry Harrison, the delegate from the Territory of the United States Northwest of the Ohio; and making provision for his compensation.

Be it enacted, &c., That William Henry Harrison, the delegate to Congress from the Territory of the United States Northwest of the river Ohio, be entitled to the privilege of sending and receiving letters free of postage, on the same terms, and under the same restrictions, as are provided for the members of the Senate and of the House of Representatives of the United States, by the act, entitled "An act to establish the post office and post roads within the United States."

SEC. 2. *And be it further enacted,* That the said William Henry Harrison shall receive for his travelling expenses, and attendance in Congress, the same compensation as is or may be allowed by law, to the members of the House of Representatives of the United States, to be certified and paid in like manner.

Approved, January 2, 1800.

An Act supplementary to the act, entitled "An Act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States."

Be it enacted, &c., That the commissioners appointed under the act to which this is a supplement, shall have power, on consideration and examination of the lists, returns, valuation, and abstracts, rendered by the assessors, to revise, adjust and vary the valuations of lands and dwelling houses in each and every sub-division of the several assessment districts, by adding thereto, or deducting therefrom, such a rate per centum as shall appear to be just and reasonable; *Provided,* That the relative valuations of the different lots or tracts of land, or dwelling houses in the same sub-division, shall not be changed or affected.

SEC. 2. *And be it further enacted,* That the said commissioners may direct the additions or deductions, as aforesaid, to be made out and completed by the several principal assessors, or, if they shall deem it more advisable, by their clerk, and such assistants as they shall find necessary and appoint for that purpose: *Provided,* That the compensation to be made to the said assistants shall not exceed the pay allowed to the assistant assessors, by the act to which this is a supplement.

Approved, January 2, 1800.

An Act for the relief of persons imprisoned for debt.

Be it enacted, &c., That persons imprisoned on process issuing from any court of the United States, as well at the suit of the United States, as at the suit of any person or persons in civil actions, shall be entitled to like privileges of the yards or limits of the respective jails, as persons confined in like cases on process from the courts of the respective States, are entitled to, and under the like regulations and restrictions.

SEC. 2. *And be it further enacted*, That any person imprisoned on process of execution issuing from any court of the United States in civil actions, except at the suit of the United States, may have the oath or affirmation, hereinafter expressed, administered to him by the judge of the district court of the United States, within whose jurisdiction the debtor may be confined; and in case there shall be no district judge residing within twenty miles of the jail wherein such debtor may be confined, such oath or affirmation may be administered by any two persons who may be commissioned for that purpose by the district judge: The creditor, his agent or attorney, if either live within one hundred miles of the place of imprisonment, or within the district in which the judgment was rendered, having had at least thirty days previous notice by a citation served on him, issued by the district judge, to appear at the time and place therein mentioned, if he see fit, to show cause why the said oath or affirmation should not be so administered: At which time and place, if no sufficient cause, in the opinion of the judge (or the commissioners appointed as aforesaid) be shown, or doth from examination appear to the contrary, he or they may, at the request of the debtor, proceed to administer to him the following oath or affirmation, as the case may be, viz. "You —— —— solemnly swear (or affirm) that you have no estate, real or personal, in possession, reversion, or remainder, to the amount or value of thirty dollars, other than necessary wearing apparel; and that you have not directly or indirectly, given, sold, leased, or otherwise conveyed to, or intrusted any person or persons with all or any part of the estate, real or personal, whereof you have been the lawful owner or possessor, with any intent to secure the same, or to receive or expect any profit or advantage therefrom, or to defraud your creditors, or have caused or suffered to be done anything else whatsoever, whereby any of your creditors may be defrauded." Which oath or affirmation being administered, the judge or commissioners shall certify the same under his or their hands to the prison-keeper, and the debtor shall be discharged from his imprisonment on such judgment, and shall not be liable to be imprisoned again for the said debt, but the judgment shall remain good and sufficient in law, and may be satisfied out of any estate which may then, or at any time afterwards, belong to the debtor. And the judge or commissioners, in addition to the certificate by them made and delivered to the prison-keeper, shall make return of their doings to the district court, with the commission, in cases where a commission has been issued, to be kept upon the files and record of the same court. And the said judge, or commissioners, may send for books and papers, and have the same authority as a court of record, to compel the appearance of witnesses, and administer to them, as well as to the debtor, the oaths or affirmations necessary for the inquiry into, and discovery of the true state of the debtor's property, transactions and affairs.

SEC. 3. *And be it further enacted*, That when the examination and proceedings aforesaid, in the opinion of the said judge or commissioners, cannot be had with safety or convenience in the prison wherein the debtor is confined, it shall be lawful for him or them, by warrant under his or their hand and seals, to order the marshal or prison-keeper, to remove the debtor to such other place, convenient and near to the prison, as he or they may see fit; and to remand the debtor to the same prison, if, upon examination or cause shown by the creditor, it shall appear that the debtor ought not to be admitted to take the above recited oath or affirmation, or that he is holden for any other cause.

SEC. 4. *And be it further enacted*, That if any person shall falsely take any oath or affirmation, authorized by this act, such person shall be deemed guilty of perjury, and, upon conviction thereof, shall suffer the pains and penalties in that case provided: and, in case any false oath or affirmation be so taken by the debtor, the court, upon the motion of the creditor, shall recommit the debtor to the prison from whence he was liberated, there to be detained for the said debt, in the same manner as if such oath or affirmation had not been taken.

SEC. 5. *And be it further enacted*, That any person imprisoned upon process issuing from any court of the United States, except at the suit of the United States, in any civil action, against whom judgment has been or shall be recovered, shall be entitled to the privileges and relief provided by this act, after the expiration of thirty days from the time such judgment has been or shall be recovered, though the creditor should not, within that time, sue out his execution, and charge the debtor therewith.

Approved, January 6, 1800.

An Act for the preservation of peace with the Indian tribes.

Be it enacted, &c., That if any citizen or other person residing within the United States, or the territory thereof, shall send any talk, speech, message, or letter, to any Indian nation, tribe, or chief, with an intent to produce a contravention or infraction of any treaty or other law of the United States, or to disturb the peace and tranquillity of the United States, he shall forfeit a sum not exceeding two thousand dollars, and be imprisoned not exceeding two years.

SEC. 2. *And be it further enacted*, That if any citizen or other person shall carry or deliver any such talk, speech, message, or letter, to or from any Indian nation, tribe, or chief, from or to any person or persons whatsoever, residing within the United States, or from or to any subject, citizen, or agent of any foreign Power or State, knowing the contents thereof, he shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

SEC. 3. *And be it further enacted*, That if any citizen or other person, residing or being among the Indians, or elsewhere within the territory of the United States, shall carry on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power, to excite any Indian nation, tribe, or chief, to war against the United States, or to the violation of any existing treaty; or in case any citizen or other person shall alienate, or attempt to alienate, the confidence of the Indians from the Government of the United States, or from any such person or persons as are or may be employed and intrusted by the President of the United States as a commissioner or commissioners, agent or agents, or in any capacity whatever, for facilitating or preserving a friendly intercourse with the Indians, or for managing the concerns of the United States with them, he shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

SEC. 4. *And be it further enacted*, That the provisions of the act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," passed the third day of March, one thousand seven hundred and ninety-nine, be, and the same are hereby extended to carry into effect this act, and for the trial and punishment of offences against it, in the same manner as if they were herein specially recited.

SEC. 5. *And be it further enacted*, That this act shall continue and be in force until the third day of March, in the year one thousand eight hundred and two, and no longer.

Approved, January 17, 1800.

An Act to repeal part of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned, and to continue in force the residue of the same."

Be it enacted, &c., That the fourth section of an act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned," passed on the third day of March, one thousand seven hundred and ninety-seven, shall be, and the same is hereby repealed, and the residue of the said act shall be, and the same is hereby, continued in full force without limitation of time.

Approved, February 11, 1800.

An Act giving further time to the holders of military warrants, to register and locate the same.

Be it enacted, &c., That the Secretary of the Treasury shall, for the space of fourteen days after the expiration of the nine months heretofore allowed for that purpose, by the act, entitled "An act regulating the grants of land, appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," register warrants for military services in the form and manner as is prescribed by the said recited act; and the priority of location of said warrants, and the warrants registered under the said recited act, shall be determined by lot, immediately after the expiration of the said fourteen days, and a day for the location shall be fixed by the Secretary of the Treasury, in a public notice given in one of the gazettes of the city of Philadelphia.

Approved, February 11, 1800.

An Act to suspend in part, an act, entitled "An act to augment the army of the United States; and for other purposes."

Be it enacted, &c., That all further enlistments under the second section of an act, entitled "An act to augment the army of the United States, and for other purposes," shall be suspended until the further order of Congress, unless in the recess of Congress, and during the continuance of the existing differences between the United States and the French Republic, war shall break out between the United States and the French Republic, or imminent danger of invasion of their territory by the said Republic, shall, in the opinion of the President of the United States, be discovered to exist.

Approved, February 20, 1800.

An Act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof.

Be it enacted, &c., That all commercial intercourse between any persons resident within the United States or under their protection, and any person or persons resident within the territories of the French Republic, or any of the dependencies thereof, shall be, and, from and after the second day of March next, is hereby prohibited and further suspended, excepting only in the cases hereinafter provided. And any ship or vessel, owned, hired, or employed, wholly or in part, by any person or persons resident within the United States, or any citizen or citizens thereof resident elsewhere, and sailing therefrom after that day, which, contrary to the intent hereof, shall be voluntarily carried, or shall be destined or permitted to proceed, or shall be sold, bartered, intrusted, or transferred, for the purpose that she may proceed, whether directly or from any intermediate port or place within the territories of that Republic, or any of the dependencies thereof; or shall be engaged in any traffic or commerce, by or for any person resident within the territories of that Republic, or within any of the dependencies thereof; and also any cargo which shall be found on board such ship or vessel, when detected and interrupted in such unlawful purpose, or at her return from such voyage to the United States, shall be wholly forfeited, and may be seized and condemned in any court of the United States having competent jurisdiction.

SEC. 2. *And be it further enacted*, That excepting for foreign ships or vessels owned, hired, and employed by persons permanently residing in Europe, and commanded and wholly navigated by foreigners, no clearance for a foreign voyage shall be granted to any ship or vessel whatever, until the owner or employer for the voyage, or if not resident within the district where the clearance shall be required, his factor or agent, with the master and one or more sufficient surety or sureties to the satisfaction of the collector of the district, shall give bond to the United States, such owner, employer, or factor, with the master, in a sum equal to the value of the vessel, and of one-third of her cargo; and such surety or sureties in a like

sum, when it shall not exceed ten thousand dollars; and if it shall exceed, then in that sum, with condition that the ship or vessel for which a clearance shall be required, is actually destined, and shall proceed to some port or place without the limits or jurisdiction of the French Republic, or any of the dependencies thereof, and during the intended voyage shall not be voluntarily carried, or permitted to proceed or sold, intrusted or transferred, with the purpose that she may proceed, whether directly or from any intermediate port or place, to any port or place within the territories of that Republic, or any of the dependencies thereof; and shall not, at any such port or place, voluntarily deliver or unlade any part of such cargo; and, if compelled by distress of weather, or taken by force into any such port or place, will not there receive on board of such ship or vessel, any goods, produce, or merchandise, other than necessary sea-stores; and generally, that such ship or vessel shall not be employed in any traffic or commerce, with or for any person resident within the territory of the French Republic, or any of the dependencies thereof.

SEC. 3. *Provided, and be it further enacted*, That when any ship or vessel which shall obtain a clearance for a foreign voyage, after a bond shall be given as aforesaid, shall be compelled by distress of weather, or other casualty endangering the safety of such ship or vessel, or of the mariners on board the same, or shall be taken by any armed vessel, or other superior force, into any port or place within the territories of the French Republic, or any of the dependencies thereof, and shall there necessarily unlade and deliver, or shall be deprived of any cargo then on board, then, and in such case, the master or other person having charge of such ship or vessel, may receive compensation or payment in bills of exchange, or in money or bullion, for such cargo, but not otherwise, and shall not be understood thereby to contravene this law, or to incur a forfeiture of the said bond.

SEC. 4. *And be it further enacted*, That no ship or vessel coming from any port or place within the territories of the French Republic, or any of the dependencies thereof, whether with or without a cargo, or from any other port or place, with a cargo on board obtained for, or laden on board of such vessel at any port or place within the said territories or dependencies, which shall arrive within the limits of the United States, after the second day of March next, shall be admitted to entry with the collector of any district; and each and every such ship or vessel which shall arrive as aforesaid, having on board any goods, wares, or merchandise, destined to be delivered within the United States, contrary to the intent of this act, or which shall have otherwise contravened the same, together with the cargo which shall be found on board, shall be forfeited, and may be seized and condemned in any court of the United States having competent jurisdiction: *Provided*, That nothing herein contained shall be construed to prohibit the entry of any vessel having a passport granted under the authority of the French Republic, and solely employed for purposes of political or national intercourse with the Government of the United States, and not in any commercial intercourse, and which shall be received, and permitted by the President of the United States to remain within the same: *And provided, also*, that until the first day of August next, and no longer, any ship or vessel, wholly owned or employed by a foreigner, other than any person resident in France, or in any of the dependencies of the French Republic, and which coming therefrom shall be destined to the United States, and shall arrive within the same, not having otherwise contravened this act, shall be required and permitted to depart therefrom; and in case she shall accordingly depart without any unreasonable delay, and without delivery, or attempting to deliver, any cargo or lading within the United States, such ship or vessel, or any cargo which may be on board the same, shall not be liable to the forfeiture aforesaid.

SEC. 5. *And be it further enacted*, That if any ship or vessel, coming from any port or place within the territories of the French Republic, or any of the dependencies thereof, or with any cargo there obtained on board, but not destined to any port or place within the United States, shall be compelled by distress of weather, or other necessity, to put into any port or place within the limits of the United States, such ship or vessel shall be there hospitably received in the manner prescribed by the act, entitled, "An act to regulate the collection of duties on imports and tonnage;" and shall be permitted to make such repairs, and to obtain such supplies, as shall be necessary to enable her to proceed according to her destination; and such repairs and supplies being obtained, shall be thereafter required and permitted to depart. But if such ship or vessel shall not conform to the regulations prescribed by the act last mentioned, or shall unlade any part of her cargo, or shall take on board any cargo or supplies whatever, without the permit of the collector of the district previously obtained therefor, or shall refuse, or unreasonably delay to depart from and out of the United States, after having received a written notice to depart, which such collector may, and shall give as soon as such ship or vessel shall be fit for sea; or having departed shall return to the United States, not being compelled thereto by further distress or necessity, in each and every such case, such ship or vessel and her cargo shall be forfeited, and may be seized and condemned in any court of the United States having competent jurisdiction.

SEC. 6. *And be it further enacted*, That at any time after the passing of this act, it shall be lawful for the President of the United States, by his order, to remit and discontinue for the time being, whenever he shall deem it expedient, and for the interest of the United States, all, or any of the restraints and prohibitions imposed by this act, in respect to the territories of the French Republic, or to any island, port or place belonging to the said republic, with which in his opinion a commercial intercourse may be safely renewed; and also it shall be lawful for the President of the United States, whenever he shall afterwards deem

it expedient, to revoke such order, and hereby to re-establish such restraints and prohibitions: And the President of the United States shall be, and he is hereby, authorized to make proclamation thereof accordingly.

SEC. 7. *And be it further enacted*, That the whole of the island of Hispaniola shall, for the purposes of this act, be considered as a dependency of the French Republic: *Provided*, That nothing herein contained shall be deemed to repeal or annul, in any part, the order or proclamation of the President of the United States, heretofore issued for permitting commercial intercourse with certain ports of that island.

SEC. 8. *And be it further enacted*, That it shall be lawful for the President of the United States, to give instructions to the public armed vessels of the United States, to stop and examine any ship or vessel of the United States on the high sea, which there may be reason to suspect to be engaged in any traffic or commerce contrary to this act, and if, upon examination, it shall appear that such ship or vessel is bound or sailing to or from any port or place, contrary to the true intent and meaning of this act, it shall be the duty of the commander of such public armed vessel, to seize every ship or vessel engaged in such illicit commerce, and send the same to the nearest convenient port of the United States, to be there prosecuted in due course of law, and held liable to the penalties and forfeitures provided by this act.

SEC. 9. *And be it further enacted*, That all penalties and forfeitures incurred by force of this act, shall and may be examined, mitigated, and remitted, in like manner, and under the like conditions, regulations, and restrictions, as are prescribed, authorized, and directed by the act, entitled "An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned;" and all penalties and forfeitures, which may be recovered, in pursuance of this act, in consequence of any seizure made by the commander of any public armed vessel of the United States, shall be distributed according to the rules prescribed by the act, entitled "An act for the government of the navy of the United States;" and all other penalties arising under this act, and which may be recovered, shall be distributed and accounted for in the manner prescribed by the act, entitled "An act to regulate the collection of duties on imports and tonnage."

SEC. 10. *And be it further enacted*, That nothing contained in this act shall extend to any ship or vessel to which the President of the United States shall grant a permission to enter and clear; provided such ship or vessel shall be solely employed, pursuant to such permission, for purposes of national intercourse; and shall not be permitted to proceed with, or to bring to the United States, any cargo or lading whatever, other than necessary sea-stores.

SEC. 11. *And be it further enacted*, That the act entitled "An act further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," shall be, and is hereby continued, and shall be taken to be in force in respect to all offences, which shall have been committed against the same, before the expiration thereof; and to the intent that all seizures, forfeitures, and penalties, arising upon such offences, may be had, sued for, prosecuted, and recovered, any limitation of the said act to the contrary hereof notwithstanding.

SEC. 12. *And be it further enacted*, That this act shall be and remain in force until the third day of March, one thousand eight hundred and one: *Provided, however*, the expiration thereof shall not prevent or defeat any seizure, or prosecution for a forfeiture, incurred under this act, and during the continuance thereof.

Approved, February 27, 1800.

An Act providing for the second Census or enumeration of the inhabitants of the United States.

Be it enacted, &c., That the marshals of the several districts of the United States and the secretaries of the Territory of the United States Northwest of the river Ohio, and of the Mississippi Territory, respectively, shall be, and they are hereby authorized and required, under the direction of the Secretary of State, and according to such instructions as he shall give pursuant to this act, to cause the number of the inhabitants within their respective districts and territories to be taken; omitting in such enumeration Indians not taxed, and distinguishing free persons, including those bound to service for a term of years from all others; distinguishing also the sexes and colors of free persons, and the free males under ten years of age; those of ten years and under sixteen, those of sixteen and under twenty-six, those of twenty-six and under forty-five, those of forty-five and upwards. And distinguishing free females under ten years of age, those of ten years and under sixteen, those of sixteen and under twenty-six, those of twenty-six and under forty-five, those of forty-five and upwards; for effecting which purpose, the marshals and secretaries aforesaid shall have power to appoint as many assistants within their respective districts and territories, as aforesaid, as to them shall appear necessary; assigning to each assistant a certain division of his district or territory, which division shall consist of one or more counties, cities, towns, townships, hundreds, or parishes, or of a territory plainly and distinctly bounded by water courses, mountains, or public roads: The marshals or secretaries, as the case may be, and their assistants, shall, respectively, take an oath or affirmation, before some judge or justice of the peace, resident within their respective districts or territories, previous to their entering on the discharge of the duties by this act required. The oath or affirmation of the marshal or secretary shall be: "I, A. B. marshal of the district of ——, (or secretary of the territory of ——, as the case may be,) do solemnly swear or affirm, that I will well and truly cause to be made a just and perfect enumeration and description of all persons resident within my district or territory, and return the same to the Sec-

retary of State, agreeably to the directions of an act of Congress, entitled 'An act providing for the enumeration of the inhabitants of the United States,' according to the best of my ability." The oath or affirmation of an assistant shall be: "I, A. B., do solemnly swear (or affirm) that I will make a just and perfect enumeration and description of all persons resident within the division assigned to me by the marshal of the district of ——, (or the secretary of the territory of ——, as the case may be,) and make due return thereof to the said marshal, or secretary, agreeably to the directions of an act of Congress, entitled 'An act providing for the enumeration of the inhabitants of the United States,' according to the best of my abilities." The enumeration shall commence on the first Monday of August next, and shall close within nine calendar months thereafter. The several assistants shall, within the said nine months, transmit to the marshal or secretaries, by whom they shall be respectively appointed, accurate returns of all persons, except Indians, not taxed, within their respective divisions; which returns shall be made in a schedule, distinguishing in each county, parish, township, town or city, the several families, by the names of their master, mistress, steward, overseer, or other principal person therein, in the manner following, that is to say: The number of persons within my division consisting of ——, appears in a schedule hereto annexed, subscribed by me this —— day of ——, A. B. assistant to the marshal of —— or to the secretary of ——.

Schedule of the whole number of persons in the division allotted to A. B.

Name of county, parish, township, town, or city, where the family resides.
Name of head of family.
Free white males under ten years of age.
Free white males of ten and under sixteen.
Free white males of sixteen and under twenty-six, including heads of families.
Free white males of twenty-six and under forty-five including heads of families.
Free white males of forty-five and upwards, including heads of families.
Free white females under ten years of age.
Free white females of ten years and under sixteen.
Free white females of sixteen and under twenty-six, including heads of families.
Free white females of twenty-six, and under forty-five, including heads of families.
Free white females of forty-five and upwards, including heads of families.
All other free persons, except Indians not taxed.
Slaves.

Sec. 2. *And be it further enacted*, That every assistant, failing to make a proper return, or, making a false return of the enumeration to the marshal or secretary (as the case may be) within the time by this act limited, shall forfeit the sum of two hundred dollars.

Sec. 3. *And be it further enacted*, That the marshal and secretaries shall file the several returns aforesaid, with the clerks of their respective districts or superior courts, (as the case may be,) who are hereby directed to receive and carefully preserve the same. And the marshals or secretaries, respectively, shall, on or before the first day of September, one thousand eight hundred and one, transmit to the Secretary of State the aggregate amount of each description of persons within their respective districts or territories. And every marshal or secretary failing to file the returns of his assistants, or any of them, with the clerks of their respective courts as aforesaid, or failing to return the aggregate amount of each description of persons in their respective districts or territories, as the same shall appear, from said returns, to the Secretary of State, within the time limited by this act, shall, for every such offence, forfeit the sum of eight hundred dollars; all which forfeitures shall be recoverable in the courts of the districts or territories where the offences shall be committed, or in the circuit courts to be held within the same, by action of debt, information, or indictment; the one half thereof to the use of the United States, and the other half to the informer; but where the prosecution shall be first instituted on behalf of the United States, the whole shall accrue to their use. And for the more effectual discovery of offences, the judges of the several districts, and of the supreme courts, in the territories of the United States, as aforesaid, at their next sessions, to be held after the expiration of the time allowed for making the returns of the enumeration hereby directed, to the Secretary of State, shall give this act in charge to the grand juries, in their respective courts, and shall cause the returns of the several assistants to be laid before them for their inspection.

Sec. 4. *And be it further enacted*, That every assistant shall receive at the rate of one dollar for every hundred persons by him returned, where such persons reside in the country, and where such persons reside in a city or town containing more than three thousand persons, such assistant shall receive at the rate of one dollar for every three hundred persons, but where, from the dispersed situation of the inhabitants in some divisions, one dollar for every one hundred persons shall be insufficient, the marshal or secretaries, with the approbation of the judges of their respective districts or territories, may make such further allowance to the assistants in such divisions, as shall be deemed an adequate compensation: *Provided*, The same does not exceed one dollar for every fifty persons by them returned. The several marshals and secretaries shall receive as follows: The marshal of the district of Maine, two hundred dollars; the marshal of the district of New Hampshire, two hundred dollars; the marshal of the district of Massachusetts, three hundred dollars; the marshal of the district of Rhode Island, one hundred and fifty dollars; the marshal of the district of Connecticut, two hundred dollars; the marshal of the district of Vermont, two hundred dollars; the marshal of the district of New York, three hundred dollars; the marshal of the district of New Jersey, two hundred dollars; the marshal of the district of Pennsylvania, three hundred dollars; the marshal of the district of Delaware, one hundred dollars; the marshal of the district of Maryland, three hundred dollars; the marshal of the district of Virginia, five hundred dollars; the marshal of the district of Kentucky, two hundred and fifty dollars; the marshal of the district of North Carolina, three hundred and fifty dollars; the marshal of the district of South Carolina, three hundred dollars; the marshal of the district of Georgia, two hundred and fifty dollars; the marshal of the district of Tennessee, two hundred dollars; the secretary of the Territory of the United States Northwest of the Ohio, two hundred dollars; the secretary of the Mississippi Territory, one hundred dollars.

Sec. 5. *And be it further enacted*, That every person whose usual place of abode shall be in any family on the aforesaid first Monday in August next, shall be returned as of such family, and the name of every person who shall be an inhabitant of any district or territory, but without a settled place of residence, shall be inserted in the column of the aforesaid schedule, which is allotted for the heads of families in that division where he or she shall be, on the said first Monday in August next, and every person occasionally absent at the time of the enumeration, as belonging to that place in which he or she usually resides in the United States.

Sec. 6. *And be it further enacted*, That each and every free person, more than sixteen years of age, whether heads of families or not, belonging to any family, within any division, district, or territory made or established within the United States, shall be, and hereby is, obliged to render to such assistant of the division, a true account, if required, to the best of his or her knowledge, of all and every person belonging to such family, respectively, according to the several descriptions aforesaid, on pain of forfeiting twenty dollars, to be sued for and recovered by such assistant, the one half for his own use, and the other half to the use of the United States.

Sec. 7. *And be it further enacted*, That each assistant shall, previous to making his returns to the marshal or secretary, (as the case may be,) cause a correct copy, signed by himself, of the schedule containing the number of inhabitants within his division, to be set up at two of the most public places within the same, there to remain for the inspection of all concerned, for each of which copies the said assistant shall be entitled to receive two dollars; provided, proof of the schedule having been so set up and suffered to remain, shall be transmitted to the marshal or secretary, (as the case may be,) with the return of the number of the persons; and in case any assistant shall fail to make such proof to the marshal or secretary, as aforesaid, he shall forfeit the compensation by this act allowed him.

Sec. 8. *And be it further enacted*, That the Secretary of State shall be, and hereby is, authorized and required to transmit to the marshals of the several States, and to the secretaries aforesaid, regulations and instructions pursuant to this act, for carrying the same into effect; and, also, the forms contained therein of schedule to be returned, and proper interrogatories to be administered by the several persons who shall be employed therein.

Approved, February 28, 1800.

An Act in addition to an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Be it enacted, &c., That the respective points of intersection of the lines actually run, as the boundaries of the several townships surveyed by virtue of the act entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," accordingly as the said lines have been marked and ascertained at the time when the same were run, notwithstanding the same are not in conformity to the act aforesaid, or shall not appear to correspond with the plat of the survey which has been returned by the surveyor general, shall be considered, and they are hereby declared, to be the corners of the said townships; that, in regard to every such township as by the plat and survey returned by the surveyor general is stated to contain four thousand acres in each quarter thereof, the points on each of the boundary lines of such township, which are at equal distance from those two corners of the same township, which stand on the same boundary line, shall be considered, and they are hereby declared, to be corners of the respective quarters of such township; that the other boundary lines of the said quarter townships shall be straight lines, run from each of the last-mentioned corners of quarter townships to the corner of quarter townships on the opposite boundary line of the same township; and that in regard to every such township as by the said return is stated to contain, in any of the quarters thereof, more or less than the quantity of four thousand acres, the corners marked in the boundary lines of such township to designate the quarters thereof, shall be considered, and they are hereby declared, to be the corners of the quarter townships thereof, although the same may be found at unequal distances from the respective corners of such townships. And such townships shall be divided by running lines through the same from the corners of the quarter townships actually marked, whether the interior lines thus extended shall be parallel to the exterior lines of the said township or not; and that each of the said quarter townships thus bounded, shall, in every proceeding to be had under the above-mentioned or this act, be considered as containing the exact quantity expressed in the

plat and survey thereof returned by the surveyor general.

Sec. 2. *And be it further enacted.* That it shall be lawful for the proprietors or holders of warrants for military services, which have been, or shall be, registered at the Treasury, in pursuance of the act entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," during the time, in the manner, and according to the rights of priority, which may be acquired in pursuance of said act, to locate the quantities of land mentioned in the warrants by them, respectively, registered, as aforesaid, on any quarter township or fractional part of a quarter township, in the general tract mentioned and described in said act: *Provided, always,* That the fractional quarter townships upon the river Sciota and those upon the river Muskingum, adjoining the grant made to Ebenezer Zane, or the towns Salem, Gnadenhutten, or Shoenbrun, or the Indian boundary line, shall in every case be accepted and taken in full satisfaction for four thousand acres.

Sec. 3. *And be it further enacted,* That whenever locations shall be made on any quarter township, which, according to the actual survey and plat thereof, returned by the surveyor general, is stated to contain less than the quantity of four thousand acres, except in the case of fractions provided for in the preceding section, it shall be lawful for the Secretary of the Treasury to issue, or cause to be issued, certificates expressing the number of acres remaining unsatisfied of any registry of warrants for the quantity of four thousand acres, made in pursuance of the act before recited, which certificates shall have the same validity and effect, and be liable to be barred in like manner as warrants granted for military services, but no certificate shall be granted, nor any claim allowed for less than fifty acres, nor for the navigable water contained within the limits of any quarter township or fractional quarter township.

Sec. 4. *And be it further enacted,* That whenever a location shall be made on any quarter township, which, according to the actual survey and plat thereof, returned by the surveyor general, is stated to exceed the quantity of four thousand acres, no patent shall be issued in pursuance thereof, until the person making such location shall deposit at the Treasury warrants for military services, or certificates issued by virtue of the preceding section, equal to the excess above four thousand acres, contained in such quarter township, or shall pay into the Treasury of the United States two dollars per acre, in the certificates of the six per cent. funded debt of the United States, or money, for each acre of the excess above four thousand acres as aforesaid.

Sec. 5. *And be it further enacted,* That after the priority of location shall have been determined, and after the proprietors or holders of warrants for military services shall have designated the tracts by them respectively elected, it shall be the duty of the Secretary of the Treasury to designate by lot, in the presence of the Secretary of War, fifty quarter townships, of the lands remaining unlocated, which quarter townships, together with the fractional parts of townships remaining unlocated, shall be reserved for satisfying warrants granted to individuals for their military services, in the manner hereafter provided.

Sec. 6. *And be it further enacted,* That the land in each of the quarter townships designated as aforesaid, and in such of the fractional parts of quarter townships, as may then remain unlocated, shall be divided by the Secretary of the Treasury, upon the respective plats thereof, as returned by the surveyor general, into as many lots, of one hundred acres each, as shall be equal, as nearly as may be, to the quantity such quarter township or fraction is stated to contain; each of which lots shall be included, where practicable, between parallel lines, one hundred and sixty perches in length, and one hundred perches in width, and shall be designated, by progressive numbers, upon the plat or survey of every such quarter township and fraction respectively.

Sec. 7. *And be it further enacted,* That, from and after the sixteenth day of March, it shall be lawful for the holder of any warrant granted for military services, to locate at any time before the first day of January, one thousand eight hundred and two, the number of hundred acres expressed in such warrant, on any lot or lots, from time to time, remaining unlocated within the tracts reserved as aforesaid, and upon surrendering such warrant to the Treasury, the holder thereof shall be entitled to receive a patent, in the manner and upon the conditions heretofore prescribed by law; which patent shall, in every case, express the range, township, quarter township, or fraction, and number of the lot located as aforesaid; but no location shall be allowed, nor shall any patent be issued for any lot or lots of one hundred acres, except in the name of the person originally entitled to such warrant, or the heir or heirs of the person so entitled; nor shall any land so located and patented to a person originally entitled to such warrant, be considered as in trust for any purchaser, or be subject to any contract made before the date of such patent, and the title to lands acquired, in consequence of patents issued as aforesaid, shall and may be alienated in pursuance of the laws, which have been, or shall be, passed in the Territory of the United States Northwest of the river Ohio, for regulating the transfer of real property, and not otherwise.

Sec. 8. *And be it further enacted,* That in all cases, after the sixteenth of March next, where more than one application is made for the same tract, at the same time, under this act, or under the act to which this is in addition, the Secretary of the Treasury shall determine the priority of location by lot.

Sec. 9. *And be it further enacted,* That it shall be the duty of the Secretary of the Treasury to advertise the tracts which may be reserved for location, in lots of one hundred acres, in one newspaper in each of the States, and in the territory aforesaid, for and during the term of three months.

Sec. 10. *And be it further enacted,* That the actual plat and survey, returned by the surveyor general, of quarter townships, and fractional parts of quarter townships, contained in the tract mentioned and described in the act to which this is a supplement, shall be considered as final and conclusive, so far as relates to the quantity of land supposed to be contained in the quarter townships and fractions, so that no claim shall hereafter be set up against the United States by any proprietor or holder of warrants for military services, on account of any deficiency in the quantity of land contained in the quarter township, or fractional part of a quarter township, which shall have been located by such proprietor or holder, nor shall any claim be hereafter set up by the United States against such proprietor or holder on account of any excess in the quantity of land contained therein.

Approved, March 1, 1800.

An Act providing for salvage in cases of recapture.

Be it enacted, &c., That when any vessel other than a vessel of war or privateer, or when any goods which shall hereafter be taken as prize by any vessel, acting under authority from the Government of the United States, shall appear to have before belonged to any person or persons, resident within or under the protection of the United States, and to have been taken by an enemy of the United States, or under authority, or pretence of authority, from any Prince, Government, or State, against which the United States have authorized, or shall authorize defence or reprisals, such vessel or goods not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the former owner or owners thereof, he or they paying for and in lieu of salvage, if retaken by a public vessel of the United States, one-eighth part, and if retaken by a private vessel of the United States, one-sixth part of the true value of the vessel or goods so to be restored, allowing and excepting all imposts and public duties to which the same may be liable. And if the vessel so retaken shall appear to have been set forth and armed as a vessel of war, before such capture or afterwards, and before the retaking thereof as aforesaid, the former owner or owners, on the restoration thereof, shall be adjudged to pay, for and in lieu of salvage, one moiety of the true value of such vessel of war or privateer.

Sec. 2. *And be it further enacted,* That when any vessel or goods, which shall hereafter be taken as prize, by any vessel acting under authority from the Government of the United States, shall appear to have before belonged to the United States, and to have been taken by an enemy of the United States, or under authority, or pretence of authority, from any Prince, Government, or State, against which the United States have authorized, or shall authorize defence or reprisals, such public vessel not having been condemned as prize by competent authority before the recapture thereof, the same shall be restored to the United States. And for and in lieu of salvage, there shall be paid from the Treasury of the United States, pursuant to the final decree which shall be made in such case by any court of the United States, having competent jurisdiction thereof, to the parties who shall be thereby entitled to receive the same, for the recapture as aforesaid, of an unarmed vessel, or any goods therein, one-sixth part of the true value thereof, when made by a private vessel of the United States, and one-twelfth part of such value when the recapture shall be made by a public armed vessel of the United States; and for the recapture as aforesaid of a public armed vessel, or any goods therein, one moiety of the true value thereof, when made by a private vessel of the United States, and one-fourth part of such value, when such recapture shall be made by a public armed vessel of the United States.

Sec. 3. *And be it further enacted,* That when any vessel or goods which shall be taken as prize as aforesaid, shall appear to have belonged to any person or persons permanently resident within the territory, and under the protection of any foreign Prince, Government, or State, in amity with the United States, and to have been taken by an enemy of the United States, or by authority or pretence of authority from any Prince, Government, or State, against which the United States have authorized, or shall authorize, defence or reprisals, then such vessel or goods shall be adjudged to be restored to the former owner or owners thereof, he or they paying, for and in lieu of salvage, such proportion of the true value of the vessel or goods so to be restored, as by the law or usage of such Prince, Government, or State, within whose territory such former owner or owners shall be so resident, shall be required on the restoration of any vessel or goods of a citizen of the United States, under like circumstances of recapture, made by the authority of such foreign Prince, Government, or State; and where no such law or usage shall be known, the same salvage shall be allowed as is provided by the first section of this act: *Provided,* That no such vessel or goods shall be adjudged to be restored to such former owner or owners, in any case where the same shall have been, before the recapture thereof, condemned as prize by competent authority, nor in any case whereby the law or usage of the Prince, Government, or State, within whose territory such former owner or owners shall be resident as aforesaid, the vessel or goods of a citizen of the United States, under like circumstances of recapture, would not be restored to such citizen of the United States: *Provided, also,* That nothing herein shall be construed to contravene or alter the terms of restoration in cases of recapture, which are or shall be agreed on in any treaty between the United States and any foreign Prince, Government, or State.

Sec. 4. *And be it further enacted,* That all sums of money which may be paid for salvage, as aforesaid, when accruing to any public armed vessel, shall be divided to and among the commanders, officers, and crew thereof, in such proportions as are or may be provided by law, respecting the distribution of prize money: And when accruing to

any private armed vessel, shall be distributed to and among the owners and company concerned in such recapture according to their agreements, if any such there be; and in case there be no such agreement, then to and among such persons, and in such proportions, as the court having jurisdiction thereof shall appoint.

SEC. 5. *And be it further enacted*, That such parts of any acts of Congress of the United States, as respect the salvage to be allowed in cases of recapture, shall be, and are hereby, repealed, except as to cases of recapture made before the passing of this act.

Approved, March 3, 1800.

An Act declaring the assent of Congress to certain acts of the States of Maryland and Georgia.

Be it enacted, &c., That the consent of Congress be, and hereby is, granted to the operation of an act of the General Assembly of the State of Maryland, passed on the twenty-sixth day of December, one thousand seven hundred and ninety-one, entitled "An act empowering the wardens of the port of Baltimore to levy and collect the duty therein mentioned," and also to so much of an act of the State of Georgia, passed February the tenth, one thousand seven hundred and eighty-seven, entitled "An act for regulating the trade, laying duties on all goods, wares, liquors, merchandise, and negroes, imported into this State; and, also, an impost on the tonnage of shipping, and for other purposes therein mentioned," as authorizes a duty of three pence per ton on all shipping entering the port of Savannah, to be set apart as a fund for clearing the river Savannah.

SEC. 2. *And be it further enacted*, That this act shall be, and continue in force until the third day of March, one thousand eight hundred and eight, and no longer.

Approved, March 17, 1800.

An Act to alter the times of holding the District Court in North Carolina.

Be it enacted, &c., That the sessions of the district court for the district of North Carolina shall hereafter be holden on the first Monday in February, May, August, and November, annually.

SEC. 2. *And be it further enacted*, That all process which shall have been issued, and all recognizances returnable, and all suits and other proceeding, which have been continued to the said district court on the first Monday in April next, shall be returned and held continued to the said court on the first Monday of May next.

Approved, March 19, 1800.

An Act to extend the privilege of franking letters and packages to Martha Washington.

Be it enacted, &c., That all letters and packages to and from Martha Washington, relict of the late General George Washington, shall be received and conveyed by post free of postage, for and during her life.

Approved, April 3, 1800.

An Act to establish an uniform system of Bankruptcy throughout the United States.

Be it enacted, &c., That, from and after the first day of June next, if any merchant, or other person, residing within the United States, actually using the trade of merchandise, by buying and selling in gross, or by retail, or dealing in exchange, or as a banker, broker, factor, underwriter, or marine insurer, shall, with intent unlawfully to delay or defraud his or their creditors, depart from the State in which such person usually resides, or remain absent therefrom, or conceal him or herself therein, or keep his or her house, so that he or she cannot be taken, or served with process, or willingly or fraudulently procure him or herself to be arrested, or his or her lands, goods, money or chattels to be attached, sequestered, or taken in execution, or shall secretly convey his or her goods out of his or her house, or conceal them to prevent their being taken in execution, or make, or cause to be made, any fraudulent conveyance of his or her lands, or chattels, or make or admit any false or fraudulent security, or evidence of debt, or being arrested for debt, or having surrendered him or herself in discharge of bail, shall remain in prison two months, or more, or escape therefrom, or whose lands or effects being attached by process issuing out of, or returnable to, any court of common law, shall not, within two months after written notice thereof, enter special bail and dissolve the same, or in districts in which attachments are not dissolved by the entry of special bail, being arrested for debt after his or her lands and effects, or any part thereof, have been attached for a debt or debts amounting to one thousand dollars or upwards, shall not, upon notice of such attachment, give sufficient security for the payment of what may be recovered in the suit in which he or she shall be arrested, at or before the return day of the same, to be approved by the judge of the district, or some judge of the court out of which the process issued upon which he is arrested, or to which the same shall be returnable, every such person shall be deemed and adjudged a bankrupt: *Provided*, That no person shall be liable to a commission of bankruptcy, if the petition be not preferred, in manner hereinafter directed, within six months after the act of bankruptcy committed.

SEC. 2. *And be it further enacted*, That the judge of the district court of the United States, for the district where the debtor resides, or usually resided at the time of committing the act of bankruptcy, upon petition, in writing, against such person or persons being bankrupt, to him to be exhibited by any one creditor, or by a greater number, being partners, whose single debt shall amount to one thousand dollars, or by two creditors, whose debts shall amount to one thousand five hundred dollars, or by more than two creditors, whose debts shall amount to two thousand dollars, shall have power, by commission under his hand and seal, to appoint such good and substantial persons, being citizens of the United States, and resident in such district, as such judge shall deem proper, not exceeding three, to be commissioners of the said bankrupt, and in case of vacancy or refusal to

act, to appoint others, from time to time, as occasion may require: *Provided always*, That, before any commission shall issue, the creditor or creditors petitioning shall make affidavit or solemn affirmation, before the said judge, of the truth of his, her, or their debts, and give bond, to be taken by the said judge, in the name, and for the benefit of the said party so charged as a bankrupt, and in such penalty, and with such surety as he shall require, to be conditioned for the proving of his, her, or their debts, as well before the commissioners as upon a trial at law, in case the due issuing forth of the said commission shall be contested, and also for proving the party a bankrupt, and to proceed on such commission, in the manner herein prescribed. And if such debt shall not be really due, or after such commission taken out it cannot be proved that the party was a bankrupt, then the said judge shall, upon the petition of the party aggrieved, in case there be occasion, deliver such bond to the said party, who may sue thereon, and recover such damages, under the penalty of the same, as, upon trial at law, he shall make appear he has sustained, by reason of any breach of the condition thereof.

SEC. 3. *And be it further enacted*, That, before the commissioners shall be capable of acting, they shall respectively take and subscribe the following oath or affirmation, which shall be administered by the judge issuing the commission, or by any of the judges of the Supreme Court of the United States, or any judge, justice, or chancellor of any State court, and filed in the office of the clerk of the district court: "I, A B, do swear, or affirm, that I will faithfully, impartially, and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me, as a commissioner in a commission of bankruptcy against ——, and that without favor or affection, prejudice or malice." And the commissioners, who shall be sworn as aforesaid, shall proceed, as soon as may be, to execute the same; and, upon due examination, and sufficient cause appearing against the party charged, shall and may declare him or her to be a bankrupt: *Provided*, That before such examination be had, reasonable notice thereof, in writing, shall be delivered to the person charged as a bankrupt; or if he, or she, be not found at his or her usual place of abode, to some person of the family above the age of twelve years, or, if no such person appear, shall be fixed at the front or other public door of the house, in which he or she usually resides, and thereupon it shall be in the power of such person, so charged as aforesaid, to demand before, or at the time appointed for such examination, that a jury be empannelled to inquire into the fact or facts alleged as the causes for issuing the commission, and on such demand being made, the inquiry shall be had before the judge granting the commission, at such time as he may direct, and in that case such person shall not be declared bankrupt, unless, by the verdict of the jury, he or she shall be found to be within the description of this act, and shall be convicted of some one of the acts described in the first section of this act: *Provided, also*, That any commission which shall be taken out as aforesaid, and which shall not be proceeded in as aforesaid, within thirty days thereafter, may be superseded by the said judge, who shall have granted the same, upon the application of the party thereby charged as a bankrupt, or of any creditor of such person, unless the delay shall have been unavoidable, or upon a just occasion.

SEC. 4. *And be it further enacted*, That the commissioners so to be appointed, shall have power forthwith, after they have declared such person a bankrupt, to cause to be apprehended, by warrant under their hands and seals, the body of such bankrupt, wheresoever to be found, within the United States: *Provided*, They shall think that there is reason to apprehend that the said bankrupt intends to abscond or conceal him or herself, and in case it be necessary, in order to take the body of the said bankrupt, shall have power to cause the doors of the dwelling-house of such bankrupt to be broken, or the doors of any other house in which he or she shall be found.

SEC. 5. *And be it further enacted*, That it shall be the duty of the commissioners so to be appointed, forthwith after they have declared such person a bankrupt, and they shall have power to take into their possession, all the estate, real and personal, of every nature and description, to which the said bankrupt may be entitled, either in law or equity, in any manner whatsoever, and cause the same to be inventoried and appraised to the best value, (his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding of such bankrupt, only excepted,) and, also, to take into their possession, and secure, all deeds and books of account, papers, and writings, belonging to such bankrupt; and shall cause the same to be safely kept, until assignees shall be chosen or appointed, in manner hereafter provided.

SEC. 6. *And be it further enacted*, That the said commissioners shall, forthwith after they have declared such person a bankrupt, cause due and sufficient public notice thereof to be given, and in such notice shall appoint some convenient time and place for the creditors to meet, in order to choose an assignee or assignees of the said bankrupt's estate and effects; at which meeting the said commissioners shall admit the creditors of such bankrupt to prove their debts; and where any creditor shall reside at a distance from the place of such meeting, shall allow the debt of such creditor to be proved by oath or affirmation, made before some competent authority, and duly certified, and shall permit any person duly authorized by letter of attorney from such creditor, due proof of the execution of such letter of attorney being first made, to vote in the choice of an assignee or assignees of such bankrupt's estate and effects, in the place and stead of such creditor: And the said commissioners shall assign, transfer, or deliver over, all and singular the said bankrupt's estate and effects aforesaid, with all muniments and evidences thereof, to such person or persons as the major part, in value, of such creditors, according to the several debts then proved, shall choose as

aforesaid: *Provided always*, That in such choice, no vote shall be given by, or in behalf of, any creditor whose debt shall not amount to two hundred dollars.

Sec. 7. *Provided always, and be it further enacted*, That it shall be lawful for the said commissioners, as often as they shall see cause, for the better preserving and securing the bankrupt's estate, before assignees shall be chosen as aforesaid, immediately to appoint one or more assignee or assignees of the estate and effects aforesaid, or any part thereof; which assignee or assignees aforesaid, or any of them, may be removed at the meeting of the creditors, so to be appointed as aforesaid, for the choice of assignees, if such creditors, entitled to vote as aforesaid, or the major part, in value, of them, shall think fit; and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come to his or their hands or possession, unto such other assignee or assignees as shall be chosen by the creditors as aforesaid; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them, by the said commissioners; and if such first assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees, of their appointment, as aforesaid, to deliver over as aforesaid, all the estate and effects as aforesaid, every such assignee or assignees, shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

Sec. 8. *And be it further enacted*, That at any time, previous to the closing of the accounts of the said assignee or assignees so chosen as aforesaid, it shall be lawful for such creditors of the bankrupt, as are hereby authorized to vote in the choice of assignees, or the major part of them, in value, at a regular meeting of the said creditors, to be called for that purpose, by the said commissioners, or by one-fourth, in value, of such creditors, to remove all or any of the assignees chosen as aforesaid, and to choose one or more in his or their place and stead; and such assignee or assignees as shall be so removed, shall deliver up all the estate and effects of such bankrupt, which shall have come into his or their hands or possession, unto such new assignee or assignees as shall be chosen by the creditors at such meeting; and all such estate and effects shall be, to all intents and purposes, as effectually and legally vested in such new assignee or assignees, as if the first assignment had been made to him or them, by the said commissioners: And if such former assignee or assignees shall refuse or neglect, for the space of ten days next after notice, in writing, from such new assignee or assignees, of their appointment, as aforesaid, to deliver over, as aforesaid, all the estate and effects aforesaid, every such former assignee or assignees, shall, respectively, forfeit a sum not exceeding five thousand dollars, for the use of the creditors, and shall moreover be liable for the property so detained.

Sec. 9. *And be it further enacted*, That whenever a new assignee or assignees shall be chosen, as aforesaid, no suit at law or in equity shall be thereby abated; but it shall and may be lawful for the court in which any suit may depend, upon the suggestion of a removal of a former assignee or assignees, and of the appointment of a new assignee or assignees, to allow the name of such new assignee or assignees to be substituted in place of the name or names of the former assignee or assignees, and thereupon the suit shall be prosecuted in the name or names of the new assignee or assignees, in the same manner as if he or they had originally commenced the suit in his or their own names.

Sec. 10. *And be it further enacted*, That the assignment or assignments of the commissioners of the bankrupt's estate and effects as aforesaid, made as aforesaid, shall be good at law or in equity, against the bankrupt; and all persons claiming by, from, or under, such bankrupt, by any act done at the time, or after he shall have committed the act of bankruptcy, upon which the commission issued: *Provided always*, That in case of a bona fide purchase made before the issuing of the commission from or under such bankrupt, for a valuable consideration, by any person having no knowledge, information, or notice, of any act of bankruptcy committed, such purchase shall not be invalidated or impeached.

Sec. 11. *And be it further enacted*, That the said commissioners shall have power, by deed or deeds, under their hands and seals, to assign and convey to the assignee or assignees, to be appointed or chosen as aforesaid, any lands, tenements, or hereditaments, which such bankrupt shall be seized of, or entitled to, in fee tail, at law, or in equity, in possession, remainder, or reversion, for the benefit of the creditors; and all such deeds, being duly executed and recorded, according to the laws of the State within which such lands, tenements, or hereditaments may be situate, shall be good and effectual against all persons whom the said bankrupt, by common recovery, or other means, might or could bar of any estate, right, title, or possibility, of or in the said lands, tenements, or hereditaments.

Sec. 12. *And be it further enacted*, That if any bankrupt shall have conveyed or assured any lands, goods, or estate, unto any person, upon condition or power of redemption, by payment of money or otherwise, it shall be lawful for the commissioners, or for any person by them duly authorized for that purpose, by writing, under their hands and seals, to make tender of money or other performance, according to the nature of such condition, as fully as the bankrupt might have done; and the commissioners, after such performance or tender, shall have power to assign such lands, goods, and estate, for the benefit of the creditors, as fully and effectually as any other part of the estate of such bankrupt.

Sec. 13. *And be it further enacted*, That the commissioners aforesaid shall have power to assign, for the use aforesaid, all the debts due to such bankrupt, or to any other person for his or her use

or benefit; which assignment shall vest the property and right thereof in the assignee or assignees of such bankrupt, as fully as if the bond, judgment, contract, or claim, had originally belonged or been made to the said assignees; and after the said assignment, neither the said bankrupt, nor any person acting as trustee for him or her, shall have power to recover or discharge the same, nor shall the same be attached as the debt of the said bankrupt; but the assignee or assignees aforesaid shall have such remedy to recover the same, in his or their own name or names, as such bankrupt might or could have had, if no commission of bankruptcy had issued: And when any action in the name of such bankrupt shall have been commenced, and shall be pending, for the recovery of any debt or effects of such bankrupt, which shall be assigned, or shall, or might become vested in the assignee or assignees of such bankrupt as aforesaid, then such assignee or assignees may claim to be, and shall be thereupon, admitted to prosecute such action in his or their name, for the use and benefit of the creditors of such bankrupt; and the same judgment shall be rendered in such action, and all attachments or other security taken therein, shall be in like manner holden and liable, as if the said action had been originally commenced in the name of such assignee or assignees, after the original plaintiff therein had become a bankrupt as aforesaid: *Provided*, That where a debtor shall have, bona fide, paid his debt to any bankrupt, without notice that such person was bankrupt, he or she shall not be liable to pay the same to the assignee or assignees.

Sec. 14. *And be it further enacted*, That if complaint shall be made or information given to the commissioners, or if they shall have good reason to believe or suspect, that any of the property, goods, chattels, or debts, of the bankrupt, are in the possession of any other person, or that any person is indebted to, or for the use of the bankrupt, then the said commissioners shall have power to summon, or cause to be summoned, by their attorney or other person duly authorized by them, all such persons before them, or the judge of a district where such persons shall reside, by such process, or other means, as they shall think convenient, and, upon their appearance, to examine them by parole, or by interrogatories, in writing, on oath or affirmation, which oath or affirmation they are hereby empowered to administer, respecting the knowledge of all such property, goods, chattels, and debts; and if such person shall refuse to be sworn or affirmed, and to make answers to such questions or interrogatories as shall be administered, and to subscribe the said answers, or upon examination shall not declare the whole truth, touching the subject-matter of such examination, then it shall be lawful for the commissioners, or judge, to commit such person to prison, there to be detained until they shall submit themselves to be examined in manner aforesaid, and they shall, moreover, forfeit double the value of all the property, goods, chattels, and debts, by them concealed.

Sec. 15. *And be it further enacted*, That if any of the aforesaid persons shall, after legal summons to appear before the commissioners or judge, to be examined, refuse to attend, or shall not attend at the time appointed, having no such impediment as shall be allowed of by the commissioner or judge, it shall be lawful for the said commissioners or judge to direct their warrants to such person or persons as by them shall be thought proper, to apprehend such persons as shall refuse to appear, and to bring them before the commissioners or judge, to be examined, and upon their refusal to come, to commit them to prison, until they shall submit themselves to be examined, according to the directions of this act: *Provided*, That such witnesses as shall be sent for, shall be allowed such compensation as the commissioners, or judge, shall think fit, to be rateably borne by the creditors; and if any person, other than the bankrupt, either by subornation of others, or by his or her own act, shall wilfully or corruptly commit perjury on such examination, to be taken before the commissioners as aforesaid, the party so offending, and all persons who shall procure any person to commit such perjury, shall, on conviction thereof, be fined, not exceeding four thousand dollars, and imprisoned, not exceeding two years, and moreover shall, in either case, be rendered incapable of being a witness in any court of record.

Sec. 16. *And be it further enacted*, That if any person or persons shall fraudulently, or collusively claim any debts, or claim or detain any real or personal estate of the bankrupt, every such person shall forfeit double the value thereof, to and for the use of the creditors.

Sec. 17. *And be it further enacted*, That if any person, prior to his or her becoming a bankrupt, shall convey to any of his or her children, or other persons, any lands or goods, or transfer his or [her] debts or demands into other person's names, with intent to defraud his or her creditors, the commissioners shall have power to assign the same, in as effectual a manner as if the bankrupt had been actually seized or possessed thereof.

Sec. 18. *And be it further enacted*, That if any person or persons who shall become bankrupt within the intent and meaning of this act, and against whom a commission of bankruptcy shall be duly issued, upon which commission such person or persons shall be declared bankrupt, shall not, within forty-two days after notice thereof, in writing, to be left at the usual place of abode of such person or persons, or personal notice in case such person or persons be then in prison, and notice given in some gazette, that such commission hath been issued, and of the time and place of meeting of the commissioners, surrender him or herself to the said commissioners, and sign or subscribe such surrender, and submit to be examined, from time to time, upon oath or solemn affirmation, by and before such commissioners, and in all things conform to the provisions of this act, and also upon such his or her examination, fully and truly disclose and discover all his or her effects and estate, real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times he or she hath dis-

posed of, assigned or transferred, any of his or her goods, wares, or merchandise, moneys, or other effects and estate, and of all books, papers, and writings, relating thereunto, of which he or she was possessed, or in or to which he or she was any ways interested or entitled, or which any person or persons shall then have, or shall have had in trust for him or her, or for his or her use, at any time before or after the issuing of the said commission, or whereby such bankrupt, or his or her family, then hath, or may have or expect any profit, possibility of profit, benefit or advantage whatsoever, except only such part of his or her estate and effects as shall have been really and bona fide before sold and disposed of, in the way of his or her trade and dealings, and except such sums of money as shall have been laid out in the ordinary expenses of his or her family, and also, upon such examination, execute in due form of law, such conveyance, assurance, and assignment of his or her estate, whatsoever and wheresoever, as shall be devised and directed by the commissioners, to vest the same in the assignees, their heirs, executors, administrators, and assigns, for ever, in trust, for the use of all and every the creditors of such bankrupt, who shall come in and prove their debts under the commission; and deliver up unto the commissioners, all such part of his or her, the said bankrupt's, goods, wares, merchandise, money, effects, and estate, and all books, papers, and writings, relating thereunto, as at the time of such examination shall be in his or her possession, custody, or power, his or her necessary wearing apparel, and the necessary wearing apparel of the wife and children, and necessary beds and bedding, of such bankrupt only excepted, then he or she, the said bankrupt, upon the conviction of any wilful default, or omission in any of the matters or things aforesaid, shall be adjudged a fraudulent bankrupt, and shall suffer imprisonment for a term not less than twelve months, nor exceeding ten years, and shall not, at any time after, be entitled to the benefits of this act: *Provided always*, That in case any bankrupt shall be in prison or custody at the time of issuing such commission, and is willing to surrender and submit to be examined, according to the directions of this act, and can be brought before the said commissioners and creditors for that purpose, the expense thereof shall be paid out of the said bankrupt's effects, and in case such bankrupt is in execution, or cannot be brought before the commissioners, that then the said commissioners, or some one of them, shall, from time to time, attend the said bankrupt in prison or custody, and take his or her discovery as in other cases, and the assignees, or one of them, or some person appointed by them, shall attend such bankrupt in prison or custody, and produce his or her books, papers, and writings, in order to enable him or her to prepare his or her discovery; a copy whereof the said assignees shall apply for, and the said bankrupt shall deliver to them or their order, within a reasonable time after the same shall have been required.

Sec. 19. *And be it further enacted*, That the said commissioners shall appoint, within the said forty-two days, so limited as aforesaid, for the bankrupt to surrender and conform as aforesaid, not less than three several meetings for the purposes aforesaid, the third of which meetings shall be on the last of the said forty-two days: *Provided always*, That the judge of the district within which such commission issues, shall have power to enlarge the time so limited as aforesaid, for the purposes aforesaid, as he shall think fit, not exceeding fifty days, to be computed from the end of the said forty-two days, so as such order for enlarging the time be made at least six days before the expiration of said term.

Sec. 20. *And be it further enacted*, That it shall be lawful for the commissioners, or any other person or officers, by them to be appointed by their warrant, under their hands and seals, to break open in the day-time the houses, chambers, shops, warehouses, doors, trunks, or chests, of the bankrupt, where any of his or her goods or estate, deeds, books of account, or writings, shall be, and to take possession of the goods, money, and other estate, deeds, books of account, or writings, of such bankrupt.

Sec. 21. *And be it further enacted*, That if the bankrupt shall refuse to be examined, or to answer fully, or to subscribe his or her examination, as aforesaid, it shall be lawful for the commissioners to commit the offender to close imprisonment, until he or she shall conform him or herself; and if the said bankrupt shall submit to be examined, and upon his or her examination, it shall appear that he or she hath committed wilful or corrupt perjury, he or she may be indicted therefor, and, being thereof convicted, shall suffer imprisonment for a term not less than two years, nor exceeding ten years.

Sec. 22. *And be it further enacted*, That every bankrupt, having surrendered, shall, at all seasonable times before the expiration of the said forty-two days, as aforesaid, or of such further time as shall be allowed to finish his or her examination, be at liberty to inspect his or her books and writings, in the presence of some person to be appointed by the commissioners, and to bring with him or her, for his or her assistance, such persons as he or she shall think fit, not exceeding two at one time, and to make extracts and copies, to enable him or her to make a full discovery of his or her effects; and the said bankrupt shall be free from arrests, in coming to surrender, and, after having surrendered to the said commissioners, for the said forty-two days, or such further time as shall be allowed for the finishing his or her examination; and in case such bankrupt shall be arrested for debt, or taken on any escape warrant or execution, coming to surrender, or after his surrender, within the time before mentioned, then on producing such summons or notice under the hand of the commissioners, and giving the officer a copy thereof, he or she shall be discharged; and in case any officer shall afterwards detain such bankrupt, such officers shall forfeit to such bankrupt, for his or her own use, ten dollars for every day he shall detain the bankrupt.

Sec. 23. *And be it further enacted*, That every person who shall, knowingly, or wilfully, receive or keep concealed any bankrupt, so as aforesaid summoned to appear, or who shall assist such bankrupt in concealing him or herself, or in absconding, shall suffer such imprisonment, not exceeding twelve months, or pay such fine to the United States, not exceeding one thousand dollars, as upon conviction thereof shall be adjudged.

Sec. 24. *And be it further enacted*, That the said commissioners shall have power to examine, upon oath or affirmation, the wife of any person lawfully declared a bankrupt, for the discovery of such part of his estate as may be concealed or disposed of by such wife, or by any other person; and the said wife shall incur such penalties for not appearing before the said commissioners, or refusing to be sworn or affirmed, or examined, and to subscribe her examination, or for not disclosing the truth, as by this act is provided against any other person in like cases.

Sec. 25. *And be it further enacted*, That in case any person shall be committed by the commissioners for refusing to answer, or for not fully answering, any question, or for any other cause, the commissioners shall, in their warrant, specify such question or other cause of commitment.

Sec. 26. *And be it further enacted*, That if after the bankrupt shall have finished his or her final examination, any other person or persons shall voluntarily make discovery of any part of such bankrupt's estate, before unknown to the commissioners, such person or persons shall be entitled to five per cent. out of the effects so discovered, and such further reward as the commissioners shall think proper; and any trustee, having notice of the bankruptcy, wilfully concealing the estate of any bankrupt, for the space of ten days after the bankrupt shall have finished his final examination, as aforesaid, shall forfeit double the value of the estate so concealed, for the benefit of the creditors.

Sec. 27. *And be it further enacted*, That if any person shall become bankrupt, and at such time, by consent of the owner, have in his or her possession and disposition, any goods whereof he or she shall be reputed owner, and take upon him or herself, the sale, alteration, or disposition thereof, as owner, the commissioners shall have power to assign the same, for the benefit of the creditors, as fully as any other part of the estate of the bankrupt.

Sec. 28. *And be it further enacted*, That if any bankrupt, after the issuing any commission against him or her, pay to the person who sued out the same, or give or deliver to such person, goods, or any other satisfaction or security, for his or her debt, whereby such person shall privately have and receive a greater proportion of his or her debt than the other creditors, such preference shall be a new act of bankruptcy, and, on good proof thereof, such commission shall and may be superseded, and it shall and may be lawful for either of the judges, having authority to grant the commission as aforesaid, to award any creditor petitioning another commission; and such person, so taking such undue satisfaction as aforesaid, shall forfeit and lose, as well his or her whole debts, as the whole he or she shall have taken and received, and shall pay back, or deliver up the same, or the full value thereof, to the assignee or assignees who shall be appointed or chosen under such commission, in manner aforesaid, in trust for, and to be divided among the other creditors of the said bankrupt, in proportion to their respective debts.

Sec. 29. *And be it further enacted*, That every person who shall be chosen assignee of the estate and effects of a bankrupt, shall, at some time after the expiration of four months, and within twelve months from the time of issuing the commission, cause at least thirty days public notice to be given, of the time and place the commissioners and assignees intend to meet, to make a dividend or distribution of the bankrupt's estate and effects; at which time the creditors, who have not before proved their debts, shall be at liberty to prove the same; and, upon every such meeting, the assignee or assignees shall produce to the commissioners and creditors, then present, fair and just accounts of all his or their receipts and payments, touching the bankrupt's estate and effects, and of what shall remain outstanding, and the particulars thereof, and shall, if the creditors then present, or a major part of them, require the same, be examined upon oath or solemn affirmation, before the same commissioners, touching the truth of such accounts; and in such accounts the said assignee or assignees shall be allowed and retain all such sums of money, as they shall have paid or expended in suing out and prosecuting the commission, and all other just allowances on account of, or by reason or means of their being assignee or assignees; and the said commissioners shall order such part of the net produce of the said bankrupt's estate, as by such accounts or otherwise shall appear to be in the hands of the said assignees, as they shall think fit, to be forthwith divided among such of the bankrupt's creditors as have duly proved their debts under such commission, in proportion to their several and respective debts; and the commissioners shall make such their order for a dividend in writing, under their hands, and shall cause one part of such order to be filed amongst the proceedings under the said commission, and shall deliver unto each of the assignees, under such commission, a duplicate of such their order, which order of distribution shall contain an account of the time and place of making such order, and the sum total or quantum of all the debts proved under the commission, and the sum total of the money remaining in the hands of the assignee or assignees to be divided, and how many per cent. in particular is there ordered to be paid to every creditor of his debt; the said assignee or assignees in pursuance of such order, and without any deed or deeds of distribution, to be made for the purpose, shall forthwith make such dividend and distribution accordingly, and shall take receipts, in a book to be kept for the purpose, from each creditor, for the part or share of such dividend or distribution, which he or they shall make, and pay to each creditor respectively; and such order and receipt shall be a full and effectual discharge to such assignee for so much as he shall fairly pay, pursuant to such order as aforesaid.

SEC. 30. *And be it further enacted*, That, within eighteen months next after the issuing of the commission, the assignee or assignees shall make a second dividend of the bankrupt's estate and effects, in case the same were not wholly divided upon the first dividend, and shall cause due public notice to be given of the time and place the said commissioners intend to meet, to make a second distribution of the bankrupt's estate and effects, and for the creditors who shall not before have proved their debts, to come in and prove the same; and at such meeting, the said assignees shall produce, on oath or solemn affirmation, as aforesaid, their accounts of the bankrupt's estate and effects, and what, upon the balance thereof, shall appear to be in their hands, shall, by like order of the commissioners, be forthwith divided amongst such of the bankrupt's creditors as shall have made due proof of their debts, in proportion to their several and respective debts; which second dividend shall be final, unless any suit at law, or equity, be depending, or any part of the estate standing out, that could not have been disposed of, or that the major part of the creditors shall not have agreed to be sold or disposed of, or unless some other or future estate or effects of the bankrupt shall afterwards come to, or rest in the said assignees, in which cases the said assignees shall, as soon as may be, convert such future or other estate and effects into money, and shall, within two months after the same be converted into money, by like order of the commissioners, divide the same among such bankrupt's creditors as shall have made due proof of their debt under such commission.

SEC. 31. *And be it further enacted*, That, in the distribution of the bankrupt's effects, there shall be paid to every of the creditors a portion rate, according to the amount of their respective debts, so that every creditor having security for his debt by judgment, statute, recognizance, or specialty, or having an attachment under any of the laws of the individual States, or of the United States, on the estate of such bankrupt, (*Provided*, there be no execution executed upon any of the real or personal estate of such bankrupt, before the time he or she became bankrupts,) shall not be relieved upon any such judgment, statute, recognizance, specialty, or attachment, for more than a rateable part of his debt, with the other creditors of the bankrupt.

SEC. 32. *And be it further enacted*, That the assignees shall keep one or more distinct book or books of account, wherein he or they shall duly enter all sums of money or effects, which he or they shall have received, or got into his or their possession, of the said bankrupt's estate, to which books of account, every creditor, who shall have proved his or her debt, shall, at all reasonable times, have free resort, and inspect the same as often as he or she shall think fit.

SEC. 33. *And be it further enacted*, That every bankrupt, not being in prison or custody, shall, at all times after his surrender, be bound to attend the assignees, upon every reasonable notice, in writing, for that purpose, given or left at the usual place of his or her abode, in order to assist in making out the accounts of the said bankrupt's estate and effects, and to attend any court of record, to be examined touching the same, or such other business as the said assignees shall judge necessary, for which he shall receive three dollars per day.

SEC. 34. *And be it further enacted*, That all and every person and persons who shall become bankrupt as aforesaid, and who shall, within the time limited by this act, surrender him or herself to the commissioners, and in all things conform as in and by this act is directed, shall be allowed five per cent. upon the net produce of all the estate that shall be recovered in and received, which shall be paid unto him or her by the assignee or assignees, in case the net produce of such estate, after such allowance made, shall be sufficient to pay the creditors of said bankrupt, who shall have proved their debts under such commission, the amount of fifty per cent. on their said debts, respectively, and so as the said five per cent. shall not exceed in the whole the sum of five hundred dollars; and in case the net produce of the said estate shall, over and above the allowance hereafter mentioned, be sufficient to pay the said creditors seventy-five per cent. on the amount of their said debts, respectively, that then the said bankrupt shall be allowed ten per cent. on the amount of such net produce, to be paid as aforesaid, so as such ten per cent. shall not in the whole, exceed the sum of eight hundred dollars; and every such bankrupt shall be discharged from all debts by him or her due or owing, at the time he or she became bankrupt, and all which were or might have been proved under the said commission; and in case any such bankrupt shall afterwards be arrested, prosecuted or impleaded, for or on account of any of the said debts, such bankrupt may appear without bail, and may plead the general issue, and give this act, and the special matter in evidence: And the certificate of such bankrupt's conforming, and the allowance thereof, according to the directions of this act, shall be, and shall be allowed to be, sufficient evidence, *prima facie*, of the party's being a bankrupt within the meaning of this act, and of the commission and other proceedings precedent to the obtaining such certificate, and a verdict shall thereupon pass for the defendant, unless the plaintiff in such action can prove the said certificate was obtained unfairly, and by fraud, or unless he can make appear any concealment of estate or effects, by such bankrupt, to the value of one hundred dollars: *Provided*, That no such discharge of a bankrupt shall release or discharge any person who was a partner with such bankrupt, at the time he or she became bankrupt, or who was then jointly held or bound with such bankrupt, for the same debt or debts from which such bankrupt was discharged as aforesaid.

SEC. 35. *Provided always, and be it further enacted*, That if the net proceeds of the bankrupt's estate, so to be discovered, recovered, and received, shall not amount to so much as will pay all and every of the creditors of the said bankrupt, who shall have proved their debts under the said commission, the amount of fifty per cent. on their debts respectively, after all charges first deducted, that then, and in such case, the bankrupt shall not be allowed five per centum on such estate as shall be recovered in, but shall have and be paid by the assignees so much money as the commissioners shall think fit to allow, not more than three hundred dollars, nor exceeding two per centum on the net proceeds of the said bankrupt's estate.

SEC. 36. *Provided also, and be it further enacted*, That no person becoming a bankrupt according to the intent and provisions of this act, shall be entitled to a certificate of discharge, or to any of the benefits of the act, unless the commissioners shall certify under their hands, to the judge of the district within which such commission issues, that such bankrupt hath made a full discovery of his or her estate and effects, and in all things conformed him or herself to the directions of this act, and that there doth not appear to them any reason to doubt of the truth of such discovery, or that the same was not a full discovery of the said bankrupt's estate and effects; or unless the said judge should be of opinion that the said certificate was unreasonably denied by the commissioners; and unless two-thirds in number and in value of the creditors of the bankrupt, who shall be creditors for not less than fifty dollars respectively, and who shall have duly proved their debts under the said commission, shall sign such certificate to the judge, and testify their consent to the allowance of a certificate of discharge, in pursuance of this act; which signing and consent shall be also certified by the commissioners; but the said commissioners shall not certify the same till they have proof by affidavit or information, in writing, of such creditors, or of the persons respectively authorized for that purpose, signing the said certificate; which affidavit or information, together with the letter or power of attorney to sign, shall be laid before the judge of the district within which such commission issues, in order for the allowing the certificate of discharge, and the said certificate shall not be allowed unless the bankrupt make oath or affirmation, in writing, that the certificate of the commissioners, and consent of the creditors thereunto were obtained fairly and without fraud; and any of the creditors of the said bankrupt are allowed to be heard, if they shall think fit, before the respective persons aforesaid, against the making or allowing of such certificates by the commissioners or judge.

SEC. 37. *And be it further enacted*, That if any creditor, or pretended creditor, of any bankrupt, shall exhibit to the commissioners any fictitious or false debt or demand, with intent to defraud the real creditors of such bankrupt, and the bankrupt shall refuse to make discovery thereof, and suffer the fair creditors to be imposed upon, he shall lose all title to the allowance upon the amount of his effects, and to a certificate of discharge as aforesaid, nor shall he be entitled to the said allowance or certificate, if he has lost at any one time fifty dollars, or in the whole three hundred dollars, after the passing of this act, and within twelve months before he became a bankrupt, by any manner of gaming or wagering whatever.

SEC. 38. *And be it further enacted*, That if any bankrupt, who shall have obtained his certificate, shall be taken in execution or detained in prison, on account of any debts owing before he became a bankrupt, by reason that judgment was obtained before such certificate was allowed, it shall be lawful for any of the judges of the court wherein judgment was obtained, or for any court, judge, or justice, within the district in which such bankrupt shall be detained, having powers to award or allow the writ of habeas corpus, on such bankrupt producing his certificate so as aforesaid allowed, to order any sheriff or jailer who shall have such bankrupt in custody, to discharge such bankrupt without fee or charge, first giving reasonable notice to the plaintiff, or his attorney, of the motion for such discharge.

SEC. 39. *And be it further enacted*, That every person who shall have bona fide given credit to or taken securities, payable at future days, from persons who are or shall become bankrupts, not due at the time of such persons becoming bankrupt, shall be admitted to prove their debts and contracts, as if they were payable presently, and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much per centum per annum, as is equal to the lawful interest of the State where the debt was payable; and the obligee of any bottomry or respondentia bond, and the assured in any policy of insurance, shall be admitted to claim, and after the contingency or loss, to prove the debt thereon, in like manner as if the same had happened before issuing the commission; and the bankrupt shall be discharged from such securities, as if such money had been due and payable before the time of his or her becoming bankrupt; and such creditors may petition for a commission, or join in petitioning.

SEC. 40. *And be it further enacted*, That in case any person, committed by the commissioners' warrant, shall obtain a habeas corpus, in order to be discharged, and there shall appear any insufficiency in the form of the warrant, it shall be lawful for the court or judge before whom such party shall be brought by habeas corpus, by rule or warrant, to commit such person to the same prison, there to remain until he shall conform as aforesaid, unless it shall be made to appear that he had fully answered all lawful questions put to him by the commissioners; or in case such person was committed for not signing his examination, unless it shall appear that the party had good reason for refusing to sign the same, or that the commissioners had exceeded their authority in making such commitment; and in case the jailer to whom such person shall be committed shall wilfully or negligently suffer such person to escape, or to go without the doors or walls of the prison, such jailer shall, for such offence, being convicted thereof, forfeit a sum not exceeding three thousand dollars for the use of the creditors.

SEC. 41. *And be it further enacted*, That the jailer shall, upon the request of any creditor, having proved his debt, and showing a certificate thereof, under the hands of the commissioners, which the commissioners shall give without fee or reward, produce the person so committed; and

in case such jailer shall refuse to show such person to such creditor requesting the same, such person shall be considered as having escaped, and the jailer or sheriff so refusing shall be liable as for a wilful escape.

Sec. 42. *And be it further enacted*, That where it shall appear to the said commissioners that there hath been mutual credit given by the bankrupt, and any other person, or mutual debts between them at any time before such person became bankrupt, the assignee or assignees of the estate shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side on the balance of such account after such set-off, and no more, shall be claimed or paid on either side, respectively.

Sec. 43. *And be it further enacted*, That it shall and may be lawful to and for the assignee or assignees of any bankrupt's estate and effects, under the direction of the commissioners, and by and with the consent of the major part in value of such of the said bankrupt's creditors as shall have duly proved their debts under the commission, and shall be present at any meeting of the said creditors, to be held in pursuance of due and public notice for that purpose given, to submit any difference or dispute for, on account of, or by reason or means of, any matter, cause, or thing whatsoever, relating to such bankrupt, or to his or her estate or effects, to the final end and determination of arbitrators to be chosen by the said commissioners, and the major part in value of such creditors as shall be present at such meeting as aforesaid, and the party or parties with whom they shall have had such difference or dispute, and to perform the award of such arbitrators, or otherwise to compound and agree the matter in difference and dispute aforesaid, in such manner as the said assignee or assignees, under the direction and with the consent aforesaid, shall think fit and can agree; and the same shall be binding on the several creditors of the said bankrupt, and the said assignee or assignees are hereby indemnified for what they shall fairly do, according to the directions aforesaid.

Sec. 44. *And be it further enacted*, That the assignees shall be, and hereby are, vested with full power to dispose of all the bankrupt's estate, real and personal, at public auction or vendue, without being subject to any tax, duty, imposition, or restriction, any law to the contrary notwithstanding.

Sec. 45. *And be it further enacted*, That if after any commission of bankruptcy, sued forth, the bankrupt happen to die before the commissioners shall have distributed the effects, or any part thereof, the commissioners shall, nevertheless, proceed to execute the commission, as fully as they might have done if the party were living.

Sec. 46. *And be it further enacted*, That where any commission of bankruptcy shall be delivered to the commissioners therein named, to be executed, it shall and may be lawful for them, before they take the oath or affirmation of qualification, to demand and take from the creditor or creditors prosecuting such commission, a bond with one good security, if required, in the penalty of one thousand dollars, conditioned for the payment of the costs, charges, and expenses, which shall arise and accrue upon the prosecution of the said commission: *Provided, always*, That the expenses so as aforesaid to be secured and paid by the petitioning creditor or creditors, shall be repaid to him or them by the commissioners or assignees, out of the first moneys arising from the bankrupt's estate or effects, if so much be received therefrom.

Sec. 47. *And be it further enacted*, That the district judges, in each district, respectively, shall fix a rate of allowance to be made to the commissioners of bankruptcy, as compensation of services to be rendered under the commission, and it shall be lawful for any creditor, by petition to the district judge, to except to any charge contained in the account of the commissioners; and the said judge, after hearing the commissioners, may in a summary way decide upon the validity of such exception.

Sec. 48. *And be it further enacted*, That all penalties given by this act for the benefit of the creditors, shall be recovered by the assignee or assignees by action of debt, and the money so recovered, the charges of suit being deducted, shall be distributed towards payment of the creditors.

Sec. 49. *And be it further enacted*, That if any action shall be brought against any commissioner, or assignee, or other person, having authority under the commission, for anything done or performed by force of this act, the defendant may plead the general issue, and give this act and the special matter in evidence; and in case of a nonsuit, discontinuance, or verdict or judgment for him, he shall recover double costs.

Sec. 50. *And be it further enacted*, That if any estate, real or personal, shall descend, revert to, or become vested in, any person, after he or she shall be declared a bankrupt, and before he or she shall obtain a certificate, signed by the judge as aforesaid, all such estate shall, by virtue of this act, be vested in the said commissioners, and shall be by them assigned and conveyed to the assignee or assignees in fee simple, or otherwise, in like manner as above directed, with the estate of the said bankrupt, at the time of the bankruptcy, and the proceeds thereof shall be divided among the creditors.

Sec. 51. *And be it further enacted*, That the said commissioners shall, once in every year, carefully file, in the clerk's office of the district court, all the proceedings had in every case before them, and which shall have been finished, including the commissions, examinations, dividends, entries, and other determinations, of the said commissioners, in which office the final certificate of the said bankrupt may also be recorded; all which proceedings shall remain of record in the said office, and certified copies thereof shall be admitted as evidence in all courts, in like manner as the copies of the proceedings of the said district court are admitted in other cases.

Sec. 52. *And be it further enacted*, That it shall and may be lawful for any creditor of such bankrupt, to attend all or any of the examinations of said bankrupt, and the allowance of the final certificate, if he shall think proper, and then and there to propose interrogatories, to be put by the judge or commissioners, to the said bankrupt and others, and also to produce and examine witnesses and documents, before such judge or commissioners, relative to the subject-matter before them. And in case either the bankrupt or creditor shall think him or herself aggrieved by the determination of the said judge or commissioners, relative to any material fact, in the commencement or progress of the said proceedings, or in the allowance of the certificate aforesaid, it shall and may be lawful for either party to petition the said judge, setting forth such facts and the determination thereon, with the complaint of the party, and a prayer for trial by a jury to determine the same, and the said judge shall, in his discretion, make order thereon, and award a *venire facias* to the marshal of the district, returnable within fifteen days before him, for the trial of the facts mentioned in the said petition, notice whereof shall be given to the commissioners and creditors concerned in the same; at which time the said trial shall be had, unless, on good cause shown, the judge shall give farther time; and judgment being entered on the verdict of the jury, shall be final, on the said facts, and the judge or commissioners shall proceed agreeably thereto.

Sec. 53. *And be it further enacted*, That the commissioners, before the appointment of assignees, and the assignees after such appointment, may, from time to time, make such allowance out of the bankrupt's estate, until he shall have obtained his final discharge, as in their opinion may be requisite for the necessary support of the said bankrupt and his family.

Sec. 54. *And be it further enacted*, That it shall be lawful for the major part in value of the creditors, before they proceed to the choice of assignees, to direct in what manner, with whom, and where, the moneys arising by, and to be received from time to time out of, the bankrupt's estate, shall be lodged until the same shall be divided among the creditors, as herein provided; to which direction every such assignee and assignees shall conform as often as three hundred dollars shall be received.

Sec. 55. *And be it further enacted*, That every matter and thing, by this act required to be done by the commissioners of any bankrupt, shall be valid to all intents and purposes, if performed by a majority of them.

Sec. 56. *And be it further enacted*, That in all cases where the assignees shall prosecute any debtor of the bankrupt, for any debt, duty, or demand, the commission, or a certified copy thereof, and the assignment of the commissioners of the bankrupt's estate, shall be conclusive evidence of the issuing the commission, and of the person named therein being a trader and bankrupt, at the time mentioned therein.

Sec. 57. *And be it further enacted*, That every person obtaining a discharge from his debts, by certificate as aforesaid, granted under a commission of bankruptcy, shall not, on any future commission, be entitled to any other certificate than a discharge of his person only; unless the net proceeds of the estate and effects of such person, so becoming bankrupt a second time, shall be sufficient to pay seventy-five per cent. to his or her creditors on the amount of their debts respectively.

Sec. 58. *And be it further enacted*, That any creditor of a person, against whom a commission of bankruptcy shall have been sued forth, and who shall lay his claim before the commissioners appointed in pursuance of this act, may at the same time declare his unwillingness to submit the same to the judgment of the said commissioners, and his wish that a jury may be impanneled to decide thereon: And in like manner the assignee or assignees of such bankrupt may object to the consideration of any particular claim by the commissioners, and require that the same should be referred to a jury. In either case, such objection and request shall be entered on the books of the commissioners, and thereupon an issue shall be made up between the parties, and a jury shall be impanneled, as in other cases, to try the same in the circuit court for the district in which such bankrupt has usually resided. The verdict of such jury shall be subject to the control of the court, as in suits originally instituted in the said court, and when rendered, if not set aside by the court, shall be certified to the commissioners, and shall ascertain the amount of any such claim, and such creditor or creditors shall be considered in all respects as having proved their debts under the commission.

Sec. 59. *And be it further enacted*, That the lands and effects of any person becoming bankrupt may be sold on such credit, and on such security, as a major part in value of the creditors may direct: *Provided*, nothing herein contained shall be allowed so to operate, as to retard the granting the bankrupt's certificate.

Sec. 60. *And be it further enacted*, That if any person becoming bankrupt shall be in prison, it shall be lawful for any creditor or creditors, at whose suit he or she shall be in execution, to discharge him or her from custody, or if such creditor or creditors shall refuse to do so, the prisoner may petition the commissioners, to liberate him or her, and thereupon, if, in the opinion of the commissioners, the conduct of such bankrupt shall have been fair, so as to entitle him or her in their opinion, to a certificate, when by law such certificate might be given, it shall be lawful for them to direct the discharge of such prisoner, and to enter the same in their books, which being notified to the keeper of the jail in which such prisoner may be confined, shall be a sufficient authority for his or her discharge: *Provided*, That in either case, such discharge shall be no bar to another execution, if a certificate shall be refused to such bankrupt: *And provided also*, that it shall be no bar to a subsequent imprisonment of such bankrupt by order of the commissioners, in conformity with the provisions of this act.

Sec. 61. *And be it further enacted*, That this act shall not repeal or annul, or be construed to repeal or annul, the laws of any State now in force,

or which may be hereafter enacted, for the relief of insolvent debtors, except so far as the same may respect persons who are, or may be, clearly within the purview of this act, and whose debts shall amount, in the cases specified in the second section thereof, to the sums therein mentioned. And if any person within the purview of this act, shall be imprisoned for the space of three months, for any debt, or upon any contract, unless the creditors of such prisoner shall proceed to prosecute a commission of bankruptcy against him or her, agreeably to the provisions of this act, such debtor may and shall be entitled to relief, under any such laws for the relief of insolvent debtors, this act notwithstanding.

Sec. 62. *And be it further enacted*, That nothing contained in this law shall, in any manner, affect the right of preference to prior satisfaction of debts due to the United States, as secured or provided by any law heretofore passed, nor shall be construed to lessen or impair any right to, or security for, money due to the United States, or to any of them.

Sec. 63. *And be it further enacted*, That nothing contained in this act shall be taken or construed to invalidate or impair any lien, existing at the date of this act, upon the lands or chattels of any person who may have become a bankrupt.

Sec. 64. *And be it further enacted*, That this act shall continue in force during the term of five years, and from thence to the end of the next session of Congress thereafter, and no longer: *Provided*, that the expiration of this act shall not prevent the complete execution of any commission which may have been previously thereto issued.

Approved, April 4, 1800.

An Act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That any goods, wares, or merchandise, which shall be exported from the United States, after the tenth day of April current, in the manner prescribed by law, to the port of New Orleans, on the river Mississippi, shall be deemed and taken to be entitled to such drawbacks of duties as would be allowable thereon when exported to any other foreign port or place, anything in the act entitled "An act to regulate the collection of duties on imports and tonnage," to the contrary hereof notwithstanding.

Approved, April 5, 1800.

An Act to continue in force "An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein," and for other purposes therein mentioned.

Be it enacted, &c., That the act entitled "An act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein," shall be in force, and is hereby continued, for the term of ten years, from the third day of March, one thousand eight hundred, and until the end of the session of Congress next ensuing the expiration of that term, any thing in the ninth section of the said act to the contrary hereof notwithstanding.

Sec. 2. *And be it further enacted*, That the additional allowances which were, by the sixth section of the act, entitled "An act for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," and by the second section of the act, entitled "An act laying an additional duty on salt, and for other purposes," respectively granted to ships or vessels employed in the bank and other cod fisheries, shall be continued to the ships and vessels, respectively, which shall be so employed, in the terms and according to the intent of the said first mentioned act, for and during the further continuance thereof, as aforesaid: *Provided*, That the said allowances shall not be understood to be continued for a longer time than the correspondent duties, respectively, for which the said additional allowances were granted, shall be payable.

Approved, April 12, 1800.

An Act to alter the form of certain oaths and affirmations directed to be taken by the act, entitled "An act providing for the second census or enumeration of the inhabitants of the United States."

Be it enacted, &c., That so much of the first section of the act passed during the present session of Congress, entitled "An act providing for the second census or enumeration of the inhabitants of the United States," as relates to the form of the oaths or affirmations thereby directed to be taken by the marshals, secretaries, and assistants, therein mentioned, respectively, shall be, and hereby is, repealed, and that the said oaths or affirmations shall be in the following form; that is to say, the marshals and secretaries' oath or affirmation in the form following: "I, A. B., marshal of the district of ——, (or the secretary of the territory of ——, as the case may be,) do solemnly swear, or affirm, that I will well and truly cause to be made a just and perfect enumeration and description of the persons resident within my district, (or within the territory of ——, as the case may be,) and will return the same to the Secretary of State, agreeably to the directions of an act of Congress, entitled "An act providing for the second census or enumeration of the inhabitants of the United States," according to the best of my ability: and the assistants' oath or affirmation in the form following: I, A. B., do solemnly swear, or affirm, that I will make a just and perfect enumeration and description of all persons resident within the division assigned to me by the marshal of the district of ——, (or the secretary of the territory of ——, as the case may be,) and make due return thereof to the said marshal, or secretary, agreeably to the directions of an act of Congress, entitled "An act providing for the second census or enumeration of the inhabitants of the United States," according to the best of my ability.

Approved, April 12, 1800.

An Act for the relief of the Corporation of Rhode Island College.

Be it enacted, &c., That the accounting officers of the Treasury be, and they are hereby, authorized and directed to liquidate and settle the claims of the Corporation of Rhode Island College, for compensation for the use and occupation of the edifice of the said college, and for injuries done to the same, from the tenth day of December, one thousand seven hundred and seventy-six, to the twentieth day of April, one thousand seven hundred and eighty, by the troops of the United States; and that the sum which may be found due to the said corporation, for damages done to and occupation of the said edifice, as aforesaid, be paid them out of any moneys in the Treasury not otherwise appropriated.

Approved, April 16, 1800.

An Act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees.

Be it enacted, &c., That all and singular the rights and privileges given, intended, or provided, to citizens of the United States, respecting patents for new inventions, discoveries, and improvements, by the act, entitled "An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose," shall be, and hereby are, extended and given to all aliens who, at the time of petitioning in the manner prescribed by the said act, shall have resided for two years within the United States, which privileges shall be obtained, used, and enjoyed, by such persons, in as full and ample manner, and under the same conditions, limitations, and restrictions, as by the said act is provided and directed in the case of citizens of the United States: *Provided always*, That every person petitioning for a patent for any invention, art or discovery, pursuant to this act, shall make oath or affirmation, before some person duly authorized to administer oaths, before such patent shall be granted, that such invention, art, or discovery, hath not, to the best of his or her knowledge or belief, been known or used either in this or any foreign country; and that every patent which shall be obtained pursuant to this act, for any invention, art, or discovery, which it shall afterwards appear had been known or used previous to such application for a patent, shall be utterly void.

Sec. 2. *And be it further enacted*, That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might, by virtue of this or the above-mentioned act, be granted to such person, as shall die before any patent shall be granted therefor, the right of applying for and obtaining such patent, shall devolve on the legal representatives of such person in trust for the heirs at law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held or might have been claimed or enjoyed by such person, in his or her life time; and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the third section of the before-mentioned act, shall be so varied as to be applicable to them.

Sec. 3. *And be it further enacted*, That where any patent shall be, or shall have been, granted, pursuant to this or the above-mentioned act, and any person, without the consent of the patentee, his or her executors, administrators, or assigns, first obtained in writing, shall make, devise, use, or sell the thing whereof the exclusive right is secured to the said patentee by such patent, such person so offending shall forfeit and pay to the said patentee, his executors, administrators, or assigns, a sum equal to three times the actual damage sustained by such patentee, his executors, administrators, or assigns, from or by reason of such offence, which sum shall and may be recovered by action on the case founded on this and the abovementioned act, in the circuit court of the United States having jurisdiction thereof.

Sec. 4. *And be it further enacted*, That the fifth section of the abovementioned act, entitled "An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose," shall be, and hereby is, repealed.

Approved, April 17, 1800.

An Act to fix the compensation of the Paymaster General, and Assistant to the Adjutant General.

Be it enacted, &c., That the Paymaster General of the Army of the United States shall receive one hundred and twenty dollars per month, with the rations and forage of a major, in full compensation for his services and travelling expenses, to be computed from the commencement of the time of his actual residence at the seat of Government; anything in the "Act for the better organizing of the troops of the United States, and for other purposes," to the contrary notwithstanding.

Sec. 2. *And be it further enacted*, That the pay of the Assistant of the Adjutant General, in addition to his pay and other emoluments in the line of the Army, shall be forty dollars per month, which shall be in full compensation for his extra services and travelling expenses, to be computed from the time of his entering upon actual service.

Approved, April 22, 1800.

An Act fixing the rank and pay of the commanding officer of the Corps of Marines.

Be it enacted, &c., That a lieutenant colonel commandant shall be appointed to command the corps of Marines, and shall be entitled to the same pay and emoluments as a lieutenant colonel in the Army of the United States, anything in the act for the establishing and organizing a Marine corps to the contrary notwithstanding; and that the office of Major of the said corps shall thereafter be abolished.

Approved, April 22, 1800.

An Act to continue in force the act, entitled "An act to authorize the defence of the merchant vessels of the United States against French depredations."

Be it enacted, &c., That the act passed on the twenty-fifth day of June, one thousand seven hundred and ninety-eight, entitled "An act to authorize the defence of the merchant vessels of the United States against French depredations," excepting such parts of the said act as relate to salvage in cases of recapture, shall continue and be in force for and during the term of one year, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, April 22, 1800.

An Act to continue in force, for a limited time, an act, entitled "An act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses."

Be it enacted, &c., That an act passed on the twenty-third day of January, one thousand seven hundred and ninety-eight, entitled "An act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," shall be and continue in force for the term of four years, and no longer.

Approved, April 22, 1800.

An Act supplementary to the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Be it enacted, &c., That, from and after the passing of this act, it shall be lawful for any military officer, who may have charge or custody of any person or persons, who may have been, or shall be, apprehended in the Indian country, over and beyond the boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of the act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," to conduct him or them to some one of the justices of the inferior or county court of any county nearest to the place of his arrest, who, if the offence is bailable, is hereby authorized to take proper bail, if offered, in like manner as the judge of the superior court of any State is authorized to do, in and by the act above recited; unless such person, holden in custody as aforesaid, shall be charged upon oath with murder, or any other offence punishable with death, in which case such justice of any inferior or county court shall not have authority to take bail for such person.

Approved, April 22, 1800.

An Act to establish a General Stamp Office.

Be it enacted, &c., That there shall be appointed an officer, to be denominated Superintendent of Stamps, whose duty it shall be to superintend the stamping and marking of all vellum, parchment, and paper; to distribute the same among the officers who are, or shall be, authorized to secure and collect the duties thereupon, and to keep fair and true records and accounts of his proceedings; which said officer, so to be appointed, shall be subject to the superintendence, control, and direction of the Treasury Department, according to the respective authorities and duties of the officers thereof; and shall, for the better execution of the duties and trusts in him reposed, observe and execute such directions as he shall, from time to time, receive from said department.

Sec. 2. *And be it further enacted*, That the said superintendent shall hold his office at the seat of the Government of the United States, and shall be allowed, as a compensation for his services, the sum of two thousand dollars, annually, to be paid quarter-yearly at the Treasury of the United States; and shall also be allowed the necessary expenses of office rent, fuel, printing, and packing, and of procuring books and stationery for the use of his office, and that all letters and packages to and from him shall be free of postage.

Sec. 3. *And be it further enacted*, That the said superintendent shall, with the approbation of the principal officer of the Treasury Department, employ such number of clerks and other assistants in his office as shall be found necessary; and shall apportion and vary the compensation to each, in such manner as the services rendered by each shall in his judgment require: *Provided*, That the whole amount of the compensations to said clerks and assistants shall not exceed two thousand five hundred dollars annually.

Sec. 4. *And be it further enacted*, That the said superintendent shall, within three months after entering upon his office, give bond, with sureties, for the true and faithful execution thereof, and for the settlement of his accounts at the periods which shall be prescribed by the proper officers at the Treasury Department, in the sum of ten thousand dollars, which bond shall be approved by the Comptroller of the Treasury, and kept in his office, to be by him put in suit for the benefit of the United States, upon any breach of the conditions thereof.

Sec. 5. *And be it further enacted*, That from and after the establishment of the office aforesaid at the seat of Government, and after six months' notice of the new stamps hereby directed to be prepared and issued; which notice shall be given by the Secretary of the Treasury, in the manner directed by the tenth section of the act entitled "An act laying duties on stamped vellum, parchment, and paper;" so much of the act or acts, heretofore passed, as empower and require the supervisors of the revenue to stamp or mark any vellum, parchment, or paper, shall cease and determine.

Sec. 6. *And be it further enacted*, That if any deed, instrument, or writing, whatever, charged by law with the payment of duty, shall have been, or shall be, written or printed, by any person or persons whomsoever, upon vellum, parchment, or paper, not stamped or marked according to law, or upon vellum, parchment, or paper, stamped or marked at a lower rate of duty than is by law required for such deed, instrument, or writing; then, and in every such case, it shall be lawful for the person or persons holding such deed, instrument, or writing, within twelve calendar months after the time of giving notice as aforesaid, or within six calendar months after the execution of such deed, instrument, or writing, to pay to the collector of the revenue, within whose collection district such person or persons shall reside, the duty chargeable by law on such deed, instrument, or writing, together with ten dollars in addition to such duty, which duty and additional sum of ten dollars, such collector is hereby authorized and required to receive, and without fee or reward to endorse a receipt therefor, under his hand and seal, upon some part of such deed, instrument, or writing, which deed, instrument, or writing, so endorsed, it shall then be lawful for such person or persons to produce to the surveyor of the revenue within whose assessment district such person or persons shall reside, which surveyor thereupon shall certify under his hand and seal, and upon some part of the said deed, instrument, or writing, that the same so endorsed as aforesaid has been produced to him, and that the said endorsement is in his belief genuine; after which said endorsement and certificate, and not otherwise, such deed, instrument, or writing, shall be to all intents and purposes as valid and available, as if the same had been or were stamped, counter-stamped, or marked, as by law required, anything in any act to the contrary notwithstanding.

Sec. 7. *And be it further enacted*, That every collector of the revenue shall keep a separate account of all moneys by him received in manner last aforesaid, and shall, at such times as the Secretary of the Treasury shall direct, transmit the said account together with such moneys, and a memorandum of all receipts by him endorsed in manner aforesaid, to the supervisor of the district, or the inspector of the survey, as the case may be; and that every surveyor of the revenue shall, at such time as the Secretary of the Treasury shall direct, transmit to the said supervisor or inspector, as the case may be, a true copy of all certificates given by him as aforesaid, and of the receipts respectively certified, and thereupon such surveyor shall be entitled to receive from the supervisor or inspector fifty cents for every such certificate by him signed as aforesaid.

Sec. 8. *And be it further enacted*, That if any person, with intent to defraud the United States of any sum of moneys directed to be paid by this act, or of any of the duties or duty laid by the act, entitled "An act laying duties on stamped vellum, parchment, and paper," shall counterfeit or forge, or cause or procure to be counterfeited or forged, any of the certificates, receipts, or endorsements, provided for and directed by the sixth section of this act, or shall utter, pass away, vend, or offer in evidence, in any court of justice, any such forged or counterfeit receipt, certificate, or endorsement, knowing the same to be forged or counterfeit, then every such person so offending, and being thereof convicted in due form of law, shall be adjudged guilty of a misdemeanor, and shall be subject to be fined in any sum not exceeding one thousand dollars, and to be imprisoned for any term not exceeding seven years.

Sec. 9. And for the convenience of those persons who may be inclined to have their own vellum, parchment, and paper, stamped or marked, *Be it further enacted*, That when any person or persons shall deposite any vellum, parchment or paper, at the office of any supervisor, accompanying the same with a list, which shall specify the number and denomination of the stamps or marks which are to be thereto affixed, it shall be the duty of the said supervisor to transmit the same to the stamp-office at the seat of Government, where such paper, parchment, and vellum shall be properly marked or stamped, and forthwith sent back to the said supervisor, who shall thereupon collect the duties and deliver the vellum, parchment, and paper, pursuant to the order of the person from whom it was received.

Sec. 10. *And be it further enacted*, That all vellum, parchment, and paper, to be stamped or marked at the said office, shall, before it is delivered for sale, use, or distribution, be carried from the said office to the office of the commissioner of the revenue, and be there counter-stamped or marked, under the direction of the said commissioner, and in such manner as the Secretary of the Treasury shall devise and direct; and after being so counter-stamped, or marked, shall be returned to the office of the Superintendent of Stamps, to be by him distributed according to the true intent and meaning of this act; of all which vellum, parchment, and paper, so sent to be counter-stamped or marked, and so returned to the office of the superintendent aforesaid, an account shall be kept by the commissioner of the revenue, and from time to time returned to the proper officers of the Treasury Department.

Sec. 11. *And be it further enacted*, That if any person or persons, with intent to defraud the United States of any of the duties or duty laid by the act, entitled "An act laying duties on stamped vellum, parchment, and paper," or by any act or acts for amending the same, shall counterfeit or forge, or shall cause or procure to be counterfeited or forged, or shall knowingly or wilfully aid or assist in counterfeiting or forging any stamp, counter-stamp, or mark, which shall be provided or made in pursuance of this act, or shall counterfeit or resemble, or shall knowingly and wilfully aid or assist in counterfeiting or resembling, or shall cause to be counterfeited or resembled, the impression of any such stamp, counter-stamp, or mark, upon any vellum, parchment, or paper, or shall knowingly or wilfully utter, vend, or sell, or offer in evidence in any court of justice, any vellum, parchment, or paper, with such counterfeit mark or impression thereon, or shall privately or fraudulently use any stamp, counter-stamp, or mark, directed or allowed to be used by this act, then every such person so offending, and being thereof convicted in due form of law, shall be adjudged guilty of a misdemeanor, and be subject to be fined in any sum not exceeding one thousand dollars, and imprisoned for any time not exceeding seven years.

Approved, April 23, 1800.

An Act to alter and to establish sundry Post Roads.

Be it enacted, &c., That the following post roads be discontinued, viz: From Washington, to Petersburg, in Georgia; from Augusta, by Robinson's, at the White Ponds, and Gillet's Mills, to Coosawhatchie; from Charlotte, by Lincolnton, to Statesville, North Carolina; from Chester Court-house to Spartan Court-house; from Fayetteville, by Lumberton, to Cheraw Court-house; from Moffat's store to Danville; from Culpepper Court-house, to Orange Court-house; from Leesburg, to Fauquier Court-house; from Tappahannock, by Richmond Court-house, and Westmoreland Court-house, to Kinsale; from Prince Edward Court-house, to Lynchburg; from Easton, by New Market, to Vienna; from Allen's Fresh, by Hoe's Ferry, to Port Conway; from Bladensburg, to Upper Marlborough; from Harrisburg, by Petersburgh, Millerstown, Thompsontown, Mifflintown, Lewistown, Huntingdon, Alexandria, Center Furnace, Bellefont, Milesburg, Aaronsburg, Mifflinsburg, Lewisburgh, Northumberland and Sunbury, to Harrisburg; from Easton, to Sussex Court-house; from New Brunswick to New Germantown; from Washington, in Pennsylvania, to Wheeling, in Virginia; from Old Fort Schuyler, by Cincinnatus, to Oxford; from Vergennes, by Bason Harbour, to Plattsburgh; from Rome to Rotterdam; from Boston, by Taunton, to New Bedford; from Camden, by Lancaster, South Carolina, Charlotte, North Carolina, and Lincolnton, to Statesville, North Carolina; from Fayetteville, to Pittsburg, in Chatham county; from Halifax Court-house, Virginia, by Danville, to Caswell Court-house; from Liberty, by Rocky Mount, to Martinville; from Louisburg, by Nash Court-house, to Tarborough; from Newbern, by Beaufort and Swansborough, to Newbern; from Rutherfordton to Spartanburg; from Springfield, Massachusetts, to Northampton; from Standish, in Maine, by Flint's town, and Fryberg, to Conway, Tamworth, and Sandwich, in New Hampshire; from Suffolk, by South Quay, to Murfreesborough; from Wilmington, North Carolina, to Georgetown, South Carolina; from Petersburgh, by Sussex Court-house, and Southampton Court-house, to South Quay.

SEC. 2. *And be it further enacted*, That the following be established as post roads, viz:

In Georgia—From Augusta, to Petersburgh, by Lincoln Court-house; from Franklin Court-house to Jackson Court-house; from Georgetown to Warrenton; from Louisville to Saundersville; from Washington, to Oglethorpe Court-house.

In South Carolina—From Augusta, Georgia, by the Three Runs, to Coosawatchie; the post road from Edgefield Court-house, to Augusta, shall pass through Campbeltown; from Georgetown, by Willtown, Greenville, and Chatham, to Richmond Court-house, North Carolina; from Statesburg, by Salem Court-house, and Kingstree, to Willtown; from Columbia to Clarendon Court-house; from Chester Court-house, by York Court-house, Pinckneyville, and Union Court-house, to Spartanburg.

In North Carolina—From Washington to Bath, and from thence by Woodstock, to Hyde Court-house; from Fayetteville, by M'Fall's, and Winfield's, to Cheraw Court-house, South Carolina; from Fayetteville, by Lumberton and Barefield's Mill, to Willtown, South Carolina; from Lumberton, by Elizabethtown, to the house of John Andrews, or William H. Beaty, on South River; from Fayetteville to Wilmington; from Charlotte, by Lincolnton, and Morganton, Buncomb Court-house, the Warm Springs, and thence to Grenville, in Tennessee; the post road from Salem, to Salisbury, shall pass through Lexington; the post road from Raleigh, to Newbern, shall pass through the county of Davie; the post road from Moore Court-house to Salisbury, to pass by the new or old Court-house of Randolph, as may be found most eligible; from Rockford, to Grayson Court-house, Virginia.

In Tennessee—From Knoxville to Marysville; from Sullivan Court-house, by Hawkins Court-house, and Orr's tavern, to Knoxville; from Nashville, by Robertson Court-house, and Montgomery Court-house, to Palmyra; from Nashville, to Natchez, in the Mississippi Territory; the post road which now passes from Abingdon, in Virginia, to Knoxville, in Tennessee, shall hereafter pass by Sullivan Court-house, Jonesborough, Greenville, Cheek's cross roads, and Jefferson Court-house.

In Kentucky—From Frankfort, by Versailles, and Richmond, to Orr's tavern, Tennessee; from Danville, by Standford, to Lancaster; from Frankfort, by Clarke Court-house, Montgomery Court-house, and Fleming Court-house, to Washington; from Frankfort, by Scott Court-house, Harrison Court-house, Pendleton Court-house, and Campbell Court-house, to Cincinnati, Northwestern Territory; from Frankfort, by Shelbysville, Bardstown, Hardin Court-house, and Logan Court-house, to Robinson Court-house, in Tennessee; the post road from Washington, in Cincinnati, shall pass by Bracken Court-house; the post road from Beardstown, to Louisville, shall pass through Shepherdsville; from Logan Court-house, by Christiana Court-house, Livingston Court-house, Henderson Court-house, to Muhlenberg Court-house; and from Logan Court-house, by Warren Court-house, and Barren Court-house, to Green Court-house.

In the Northwestern Territory—From Washington, Kentucky, by Manchester, in Northwestern Territory, to Chilicothe; from Louisville, Kentucky, to Vincennes; from Zanes, on the Muskingum, to Marietta.

In Virginia—From Culpeper Court-house, by Madison Court-house, to Orange Court-house; from Fredericksburg, by Spotsylvania Court-house, and Louisa Court-house, to Columbia; from Fredericksburg, by King George Court-house, Mattox bridge, Leedstown, Westmoreland Court-house on Templeman's cross-roads, Richmond Court-house, and Farnham, to Kinsale; from Fredericksburg, by Rogers's mills, Child's store, Chesterfield, Oxford, and Crew's store, to Goochland Court-house; from King and Queen Court-house, to Shackleford's store; from Gloucester Court-house, to Matthews Court-house; from Moorfields, by Franklin, to Bath Court-house; from Richmond, by Coles's, in Chesterfield county, Janetoe bridge, Amelia Court-house, Pridesville, and Ligontown, to Jamestown; from Petersburg, by Amelia Court-house, Nottaway Court-house, Bibb's ferry, on Staunton river, to Halifax Court-house; from Alexandria, by Centreville, Middleburg, Paris, and Millwood, to Winchester; from Cartersville, by New Canton, Buckingham Court-house, and Bent Creek, to Lynchburg; from Romney, by Springfield and Frankfort, to Cumberland, in Maryland; from Centerville, by the Red House, to Fauquier Court-house; from Washington, Pennsylvania, by Charlestown or Brooke Court-house, in Virginia, to Wheeling; the post road from Alexandria to Leesburg, shall pass through Matildaville; and the post road from Leesburg, to Shepherdstown, shall pass through Charlestown, in the county of Berkley; the post road from Sweetspring, to Greenbrier Court-house, shall pass by Monroe Court-house; from Greenbrier Court-house, to Kanawha Court-house; from Lexington, direct to Cabellsburg; from Mecklenburg Court-house, the mail shall return by Christian's store, at Coxe's, to Lunenburg Court-house, and Edmond's store, to Gholson's.

In Maryland—From Baltimore, by Reisterstown, Westminster, Taneytown, and Emmitsburg, to Fairfield, Pennsylvania; from Baltimore, by Libertytown, to Fredericktown; and from Fredericktown, by Harper's Ferry, to Charlestown, in Berkeley county, Virginia; from Port Tobacco, by the Top of the Hill, to Nanjemoy; from Leonardtown, by the Great Mill, to the Ridge; from Washington, to Upper Marlborough; from Washington, by Queen Ann, to Annapolis; from Easton, by Cambridge and New Market, to Vienna; from Easton, by Hillsborough, Denton, and Greenborough, to Whitelysburgh.

In Pennsylvania—From Lancaster, by Elizabethtown, and Middletown, to Harrisburgh, Sunbury, and Northumberland; from Lancaster, to New Holland; from Harrisburgh, by Clark's ferry, Millerstown, Thompsontown, Mifflintown, Lewistown, and Huntingdon, to Alexandria; from Lewistown, by Mifflintown, Aaronsburg, Milesburg, and Bellefont, to Center Furnace; from Lewistown, by Muncey, and Milton, to Williamsport; from Northumberland, to Berwick, and thence by Catawassee, to Northumberland; from Wilkesbarre, by Wyalusing, to Athens; from Union, to New Geneva; from Pittsburg, by Franklin, Meadsville, and Le Beuf, to Presqu'isle; from Washington, to Waynesburg.

In New York—From Hudson, by Katskill, Harpersfield, Ouliout, Unadilla, and Union, to Athens, Pennsylvania; from Athens, Pennsylvania, by Newtown, Painted Post, and Bath, to Canandarqua; from Utica, by New Hartford, Hamilton, and Sherbourne, to Oxford; from Cooperstown, on the State road, to Scipio; from Vergennes, Vermont, by Charlotte, Vermont, and Peru, to Plattsburg.

In New Jersey—From Easton, Pennsylvania, by Belvidere, and Johnsonburg, to Newtown; from New Brunswick, by Somerset Court-house, and Pluckemin, to New Germanton; from Trenton, by Bordentown, Slabtown, Mount Holly, Moorestown, and Haddenfield, to Philadelphia.

In Connecticut—From Fairfield, by Trumbull, Huntington, Newtown, and Brookfield, to New Milford.

In Massachusetts—From Boston, by Bridgewater, and Taunton, to New Bedford; from New Bedford, by Rochester, and Wareham, to Sandwich; from Hanover, by Scituate, Marshfield, and Duxbury, to Kingston; from Truro to Provincetown; from Billerica, by Patucket bridge, to Dracut, and Hovey's tavern, to Pelham, and Nottingham West, in New Hampshire; from Concord, by Groton, New Ipswich, and Jaffray, to Marlborough, New Hampshire.

In Vermont—From Westminster, by Bellows Falls, through Rockingham, Chester, and Cavendish, to Rutland; from Newbury to Danville; from Burlington, through St. Alban's, to Hyegate.

In New Hampshire—From Exeter, by Nottingham, to Concord; from Salisbury, through Grafton, to Hanover.

In Maine—From Portland, by Windham, Waterford, Buckfield, and Turner, to Portland; from Bucktown to Edenton.

SEC. 3. *And be it further enacted*, That nothing contained in this act shall be construed so as to affect any existing contracts for carrying the mail.

Approved, April 23, 1800.

An Act for the better government of the Navy of the United States.

Be it enacted, &c., That from and after the first day of June next, the following rules and regulations be adopted and put in force, for the government of the navy of the United States.

ART. 1. The commanders of all ships and vessels of war belonging to the navy, are strictly enjoined and required to show in themselves a good example of virtue, honor, patriotism, and subordination; and be vigilant in inspecting the conduct of all such as are placed under their command; and to guard against, and suppress, all dissolute and immoral practices, and to correct all such as are guilty of them, according to the usage of the sea service.

ART. 2. The commanders of all ships and vessels in the navy, having chaplains on board, shall take care that divine service be performed in a solemn, orderly, and reverent manner twice a day, and a sermon preached on Sunday, unless bad weather, or other extraordinary accidents prevent it; and that they cause all, or as many of the ship's company as can be spared from duty, to attend at every performance of the worship of Almighty God.

ART. 3. Any officer, or other person in the navy, who shall be guilty of oppression, cruelty, fraud, profane swearing, drunkenness, or any other scandalous conduct, tending to the destruction of good morals, shall, if an officer, be cashiered, or suffer such other punishment as a court-martial shall adjudge; if a private, shall be put in irons,

or flogged, at the discretion of the captain, not exceeding twelve lashes; but if the offence require severer punishment, he shall be tried by a court-martial, and suffer such punishment as said court shall inflict.

ART. 4. Every commander or other officer who shall, upon signal for battle, or on the probability of an engagement, neglect to clear his ship for action, or shall not use his utmost exertions to bring his ship to battle, or shall fail to encourage, in his own person, his inferior officers and men to fight courageously, such offender shall suffer death, or such other punishment as a court martial shall adjudge; or any officer neglecting, on sight of any vessel or vessels of an enemy, to clear his ship for action, shall suffer such punishment as a court martial shall adjudge: and if any person in the navy shall treacherously yield, or pusillanimously cry for quarters, he shall suffer death, on conviction thereof, by a general court martial.

ART. 5. Every officer or private who shall not properly observe the orders of his commanding officer, or shall not use his utmost exertions to carry them into execution, when ordered to prepare for, join in, or when actually engaged in battle; or shall, at such time, basely desert his duty or station, either then, or while in sight of an enemy, or shall induce others to do so, every person so offending shall, on conviction thereof by a general court martial, suffer death or such other punishment as the said court shall adjudge.

ART. 6. Every officer or private who shall, through cowardice, negligence, or disaffection in time of action, withdraw from, or keep out of battle, or shall not do his utmost to take or destroy every vessel which it is his duty to encounter, or shall not do his utmost endeavor to afford relief to ships belonging to the United States, every such offender shall, on conviction thereof by a general court martial, suffer death, or such other punishment as the said court shall adjudge.

ART. 7. The commanding officer of every ship or vessel in the navy, who shall capture or seize upon any vessel as a prize, shall carefully preserve all the papers and writings found on board, and transmit the whole of the originals unmutilated to the judge of the district to which such prize is ordered to proceed, and shall transmit to the Navy Department, and to the agent appointed to pay the prize money, complete lists of the officers and men entitled to a share of the capture, inserting therein the quality of every person rating, on pain of forfeiting his whole share of the prize money resulting from such capture, and suffering such further punishment as a court martial shall adjudge.

ART. 8. No person in the navy shall take out of a prize, or vessel seized as a prize, any money, plate, goods, or any part of her rigging, unless it be for the better preservation thereof, or absolutely necessary for the use of any of the vessels of the United States, before the same shall be adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in and judgment passed thereon, upon pain that every person offending herein shall forfeit his share of the capture, and suffer such further punishment as a court martial, or the court of admiralty in which the prize is adjudged, shall impose.

ART. 9. No person in the navy shall strip of their clothes, or pillage, or in any manner maltreat persons taken on board a prize, on pain of such punishment as a court martial shall adjudge.

ART. 10. No person in the navy shall give, hold, or entertain any intercourse or intelligence to or with any enemy or rebel, without leave from the President of the United States, the Secretary of the Navy, the commander-in-chief of the fleet, or the commander of a squadron; or, in case of a vessel acting singly, from his commanding officer, on pain of death, or such other punishment as a court martial shall adjudge.

ART. 11. If any letter or message from an enemy or rebel, be conveyed to any officer or private of the navy, and he shall not, within twelve hours, make the same known, having opportunity so to do, to his superior or commanding officer; or if any officer commanding a ship or vessel, being acquainted therewith, shall not, with all convenient speed, reveal the same to the commander-in-chief of the fleet, commander of a squadron, or other proper officer whose duty it may be to take cognizance thereof, every such offender shall suffer death, or such other punishment as a court martial shall adjudge.

ART. 12. Spies, and all persons who shall come or be found in the capacity of spies, or who shall bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the navy to betray his trust, shall suffer death, or such other punishment as a court martial shall adjudge.

ART. 13. If any person in the navy shall make or attempt to make any mutinous assembly, he shall, on conviction thereof by a court martial, suffer death; and if any person as aforesaid shall utter any seditious or mutinous words, or shall conceal or connive at any mutinous or seditious practices, or shall treat with contempt his superior, being in the execution of his office; or, being witness to any mutiny or sedition, should not do his utmost to suppress it, he shall be punished at the discretion of a court martial.

ART 14. No officer or private in the navy shall disobey the lawful orders of his superior officer, or strike him, or draw, or offer to draw, or raise any weapon against him, while in the execution of the duties of his office, on pain of death, or such other punishment as a court martial shall inflict.

ART. 15. No person in the navy shall quarrel with any other person in the navy, nor use provoking or reproachful words, gestures, or menaces, on pain of such punishment as a court martial shall adjudge.

ART. 16. If any person in the navy shall desert to an enemy, or rebel, he shall suffer death.

ART. 17. If any person in the navy shall desert, or shall entice others to desert, he shall suffer death, or such other punishment as a court martial shall adjudge; and if any officer, or other person belonging to the navy, shall receive or entertain any deserter from any other vessel of the navy, knowing him to be such, and shall not, with all convenient speed, give notice of such deserter to the commander of the vessel to which he belongs, or to the commander-in-chief, or to the commander of the squadron, he shall, on conviction thereof, be cashiered, or be punished at the discretion of a court martial. All offences committed by persons belonging to the navy while on shore, shall be punished in the same manner as if they had been committed at sea.

ART. 18. If any person in the navy shall knowingly make or sign, or shall aid, abet, direct, or procure the making or signing of any false muster, or shall execute, or attempt, or countenance any fraud against the United States, he shall, on conviction, be cashiered, and rendered forever incapable of any future employment in the service of the United States, and shall forfeit all the pay and subsistence due him, and suffer such other punishment as a court martial shall inflict.

ART. 19. If any officer, or other person in the navy, shall, through inattention, negligence, or any other fault, suffer any vessel of the navy to be stranded, or run upon rocks or shoals, or hazarded, he shall suffer such punishment as a court martial shall adjudge.

ART. 20. If any person in the navy shall sleep upon his watch, or negligently perform the duty assigned him, or leave his station before regularly relieved, he shall suffer death, or such punishment as a court martial shall adjudge; or, if the offender be a private, he may, at the discretion of the captain, be put in irons, or flogged, not exceeding twelve lashes.

ART. 21. The crime of murder, when committed by any officer, seaman, or marine, belonging to any public ship or vessel of the United States, without the territorial jurisdiction of the same, may be punished with death by the sentence of a court martial.

ART. 22. The officers and privates of every ship or vessel, appointed as convoy to merchant or other vessels, shall diligently and faithfully discharge the duties of their appointment, nor shall they demand or exact any compensation for their services, nor maltreat any of the officers or crews of such merchant or other vessels, on pain of making such reparation as a court of admiralty may award, and of suffering such further punishment as a court martial shall adjudge.

ART. 23. If any commander or other officer shall receive or permit to be received, on board his vessel, any goods or merchandise, other than for the sole use of his vessel, except gold, silver, or jewels, and except the goods or merchandise of vessels which may be in distress, or shipwrecked, or in imminent danger of being shipwrecked, in order to preserve them for their owner, without orders from the President of the United States or the Navy Department, he shall, on conviction thereof, be cashiered, and be incapacitated forever afterwards, for any place or office in the navy.

ART. 24. If any person in the navy shall waste, embezzle, or fraudulently buy, sell, or receive any ammunition, provisions, or other public stores; or if any officer or other person shall, knowingly, permit, through design, negligence, or inattention, any such waste, embezzlement, sale or receipt, every such person shall forfeit all the pay and subsistence then due him, and suffer such other punishment as a court martial shall direct.

ART. 25. If any person in the navy shall unlawfully set fire to, or burn, any kind of public property, not then in the possession of an enemy, pirate, or rebel, he shall suffer death: And if any person shall, in any other manner, destroy such property, or shall not use his best exertions to prevent the destruction thereof by others, he shall be punished at the discretion of a court martial.

ART. 26. Any theft not exceeding twenty dollars may be punished at the discretion of the captain, and above that sum, as a court martial shall direct.

ART. 27. If any person in the navy shall, when on shore, plunder, abuse, or maltreat, any inhabitant, or injure his property in any way, he shall suffer such punishment as a court martial shall adjudge.

ART. 28. Every person in the navy shall use his utmost exertions to detect, apprehend, and bring to punishment, all offenders, and shall at all times aid and assist all persons appointed for this purpose, on pain of such punishment as a court martial shall adjudge.

ART. 29. Each commanding officer shall, whenever a seaman enters on board, cause an accurate entry to be made in the ship's books, of his name, time, and term of service; and, before sailing, transmit to the Secretary of the Navy a complete list or muster roll of the officers and men under his command, with the date of their entering, time and terms of their service, annexed; and shall cause similar lists to be made out on the first day of every second month, to be transmitted to the Secretary of the Navy, as opportunities shall occur; accounting, in such lists or muster rolls, for any casualties which may have taken place since the last list or muster roll. He shall cause to be accurately minuted, on the ship's books, the names of, and times at which any death or desertion may occur; and in case of death, shall take care that the purser secure all the property of the deceased for the benefit of his legal representative or representatives. He shall cause frequent inspections to be made into the condition of the provision, and use every precaution for its preservation. He shall, whenever he orders officers and men to take charge of a prize, and proceed to the United States, and whenever officers and men are sent from his ship for whatever cause, take care that each man be furnished with a complete statement of his account, specifying the date of his enlistment, and the period and terms of his service; which account shall be signed by the commanding officer and purser. He shall cause the rules for the government of the navy to be hung up in some public part of the ship, and read once a month to his ship's company. He shall cause a convenient place to be set apart for sick or disabled men, to which he shall have them removed, with their

hammocks and bedding, when the surgeon shall so advise, and shall direct that some of the crew attend them and keep the place clean; and, if necessary, shall direct that cradles, and buckets with covers, be made for their use: And when his crew is finally paid off, he shall attend in person, or appoint a proper officer, to see that justice be done to the men, and to the United States, in the settlement of the accounts: Any commanding officer offending herein, shall be punished at the discretion of a court martial.

ART. 30. No commanding officer shall, of his own authority, discharge a commissioned or warrant officer, nor strike, nor punish him otherwise than by suspension or confinement, nor shall he, of his own authority, inflict a punishment on any private beyond twelve lashes with a cat-of-nine tails, nor shall he suffer any wired, or other than a plain, cat-of-nine tails, to be used on board his ship; nor shall any officer who may command by accident, or in the absence of the commanding officer (except such commander be absent for a time by leave) order or inflict any other punishment than confinement, for which he shall account on the return of such absent commanding officer. Nor shall any commanding officer receive on board any petty officers or men turned over from any other vessel to him, unless each of such officers and men produce to him an account, signed by the captain and purser of the vessel from which they came, specifying the date of such officer's or man's entry, the period and terms of service, the sums paid, and the balance due him, and the quality in which he was rated on board such ship. Nor shall any commanding officer, having received any petty officer or man as aforesaid, rate him in a lower or worse station than that in which he formerly served: Any commanding officer offending herein, shall be punished at the discretion of a court martial.

ART. 31. Any master-at-arms, or other person of whom the duty of master-at-arms is required, who shall refuse to receive such prisoners as shall be committed to his charge, or, having received them, shall suffer them to escape, or dismiss them without orders from proper authority, shall suffer in such prisoners' stead, or be punished otherwise, at the discretion of a court martial.

ART. 32. All crimes committed by persons belonging to the navy, which are not specified in the foregoing articles shall be punished according to the laws and customs in such cases at sea.

ART. 33. All officers not holding commissions or warrants, or who are not entitled to them, except such as are temporarily appointed to the duties of a commissioned or warrant officer, are deemed petty officers.

ART. 34. Any person entitled to wages or prize money, may have the same paid to his assignee, provided the assignment be attested by the captain and purser; and in case of the assignment of wages, the power shall specify the precise time they commence. But the commander of every vessel is required to discourage his crew from selling any part of their wages or prize money, and never to attest any power of attorney, until he is satisfied that the same is not granted in consideration of money given for the purchase of wages or prize money.

NAVAL GENERAL COURTS MARTIAL.

ART. 35. General courts martial may be convened as often as the President of the United States, the Secretary of the Navy, or the commander-in-chief of the fleet, or commander of a squadron, while acting out of the United States, shall deem it necessary: *Provided*, That no general court martial shall consist of more than thirteen, nor less than five members; and as many officers shall be summoned on every such court as can be convened without injury to the service, so as not to exceed thirteen, and the senior officer shall always preside, the others ranking agreeably to the date of their commissions; and in no case, where it can be avoided without injury to the service, shall more than one-half the members, exclusive of the President, be junior to the officer to be tried.

ART. 36. Each member of the court, before proceeding to the trial, shall take the following oath, or affirmation, which the judge advocate, or person officiating as such, is hereby authorized to administer:

"I, A B, do swear (or affirm) that I will truly try, without prejudice or partiality, the case now depending, according to the evidence which shall come before the court, the rules for the government of the navy, and my own conscience; and that I will not by any means divulge or disclose the sentence of the court, until it shall have been approved by the proper authority, nor will I at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

This oath or affirmation being duly administered, the President is authorized and required to administer the following oath or affirmation to the judge advocate, or person officiating as such:

"I, A B, do swear (or affirm) that I will keep a true record of the evidence given to, and the proceedings of, this court; nor will I divulge or by any means disclose the sentence of the court until it shall have been approved by the proper authority; nor will I at any time divulge or disclose the vote or opinion of any particular member of the court, unless required so to do before a court of justice in due course of law."

ART. 37. All testimony given to a general court martial shall be on oath or affirmation, which the President of the court is hereby authorized to administer, and if any person shall refuse to give his evidence as aforesaid, or shall prevaricate, or shall behave with contempt to the court, it shall and may be lawful for the court to imprison such offender at their discretion; provided that the imprisonment in no case shall exceed two months: And every person who shall commit wilful perjury, on examination on oath or affirmation before such court, or who shall corruptly procure, or suborn any person to commit such wilful perjury, shall and may be prosecuted by indictment or information in any court of justice of the United States, and shall suffer such penalties as are authorized by the laws of the United States in case of perjury or the subornation thereof. And in every prosecution for perjury or the subornation thereof, under this act, it shall be sufficient to set forth the offence charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought or intended to be brought before the said court.

ART. 38. All charges, on which an application for a general court martial is founded, shall be exhibited in writing to the proper officer, and the person demanding the court shall take care that the person accused be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest, nor shall any other charge or charges, than those so exhibited, be urged against the person to be tried before the court, unless it appear to the court that intelligence of such charge had not reached the person demanding the court, when the person so to be tried was put under arrest, or that some witness material to the support of such charge, who was at that time absent, can be produced; in which case, reasonable time shall be given to the person to be tried to make his defence against such new charge. Every officer so arrested is to deliver up his sword to his commanding officer, and to confine himself to the limits assigned him, under pain of dismission from service.

ART. 39. When the proceedings of any general court martial shall have commenced, they shall not be suspended or delayed on account of the absence of any of the members, provided five or more be assembled; but the court is enjoined to sit from day to day, Sundays excepted, until sentence be given: And no member of the said court shall, after the proceedings are begun, absent himself therefrom, unless in case of sickness, or orders to go on duty from a superior officer, on pain of being cashiered.

ART. 40. Whenever a court martial shall sentence any officer to be suspended, the court shall have power to suspend his pay and emoluments for the whole, or any part of the time of his suspension.

ART. 41. All sentences of courts martial, which shall extend to the loss of life, shall require the concurrence of two thirds of the members present; and no such sentence shall be carried into execution, until confirmed by the President of the United States; or, if the trial take place out of the United States, until it be confirmed by the commander of the fleet or squadron: All other sentences may be determined by a majority of votes, and carried into execution on confirmation of the commander of the fleet, or officer ordering the court, except such as go to the dismission of a commissioned or warrant officer, which are first to be approved by the President of the United States.

A court martial shall not, for any one offence not capital, inflict a punishment beyond one hundred lashes.

ART. 42. The President of the United States, or, when the trial takes place out of the United States, the commander of the fleet or squadron, shall possess full power to pardon any offence committed against these articles, after conviction, or to mitigate the punishment decreed by a court martial.

SEC. 2. ARTICLE 1. *And be it further enacted*, That courts of inquiry may be ordered by the President of the United States, the Secretary of the Navy, or the commander of a fleet or squadron, provided such court shall consist of not more than three members who shall be commissioned officers, and a judge advocate, or person to do duty as such; and such courts shall have power to summon witnesses, administer oaths, and punish contempt, in the same manner as courts martial. But such court shall merely state facts, and not give their opinion, unless expressly required so to do in the order for convening; and the party, whose conduct shall be the subject of inquiry, shall have permission to cross-examine all the witnesses.

ART. 2. The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and judge advocate, and shall in all cases not capital, or extending to the dismission of a commissioned or warrant officer, be evidence before a court martial, provided oral testimony cannot be obtained.

ART. 3. The judge advocate, or person officiating as such, shall administer to the members the following oath or affirmation:

"You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you, without partiality or prejudice."

After which, the president shall administer to the judge advocate, or person officiating as such, the following oath or affirmation:

"You do swear (or affirm) truly to record the proceedings of this court, and the evidence to be given in the case in hearing."

SEC. 3. *And be it further enacted*, That in all cases, where the crews of the ships or vessels of the United States shall be separated from their vessels, by the latter being wrecked, lost, or destroyed, all the command, power, and authority, given to the officers of such ships or vessels, shall remain and be in full force, as effectually as if such ship or vessel were not so wrecked, lost, or destroyed, until such ship's company be regularly discharged from, or ordered again into, the service, or until a court martial shall be held to inquire into the loss of such ship or vessel; and if by the sentence of such court, or other satisfactory evidence, it shall appear that all or any of the officers and men of such ship's company did their utmost to preserve her, and after the loss thereof behaved themselves agreeably to the discipline of the navy, then the pay and emoluments of such officers and men, or such of them as shall have done their duty as aforesaid, shall go on until their discharge or death; and every officer or private who shall, after the loss of such vessel, act contrary to the discipline of the navy, shall be punished at the discretion of a court martial, in the same manner as if such vessel had not been so lost.

SEC. 4. *And be it further enacted*, That all the pay and emoluments of such officers and men, of any of the ships or vessels of the United States, taken by an enemy, who shall appear by the sentence of a court martial, or otherwise, to have done their utmost to preserve and defend their ship or vessel, and, after the taking thereof, have behaved themselves obediently to their superiors, agreeably to the discipline of the navy, shall go on and be paid them until their death, exchange, or discharge.

SEC. 5. *And be it further enacted*. That the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors; and when of inferior force, shall be divided equally between the United States and the officers and men making the capture.

SEC. 6. *And be it enacted*, That the prize money belonging to the officers and men, shall be distributed in the following manner:

1. To the commanding officers of fleets, squadrons, or single ships, three-twentieths, of which the commanding officer of the fleet or squadron shall have one twentieth, if the prize be taken by a ship or vesssel acting under his command, and the commander of single ships, two twentieths; but where the prize is taken by a ship acting independently of such superior officer, the three-twentieths shall belong to her commander.

2. To sea lieutenants, captains of marines, and sailing masters, two twentieths; but where there is a captain, without a lieutenant of marines, these officers shall be entitled to two-twentieths and one-third of a twentieth, which third, in such case, shall be deducted from the share of the officers mentioned in article No. 3, of this section.

3. To chaplains, lieutenants of marines, surgeons, pursers, boatswains, gunners, carpenters, and master's mates, two-twentieths.

4. To midshipmen, surgeon's mates, captain's clerks, schoolmasters, boatswain's mates, gunner's mates, carpenter's mates, ships's stewards, sailmakers, masters at arms, armorers, cockswains, and coopers, three-twentieths and an half.

5. To gunner's yeomen, boatswain's yeomen, quarter masters, quarter gunners, sailmaker's mates, sergeants and corporals of marines, drummers, fifers and extra petty officers, two-twentieths and an half.

6. To seamen, ordinary seamen, marines, and all other persons doing duty on board, seven-twentieths.

7. Whenever one or more public ships or vessels are in sight at the time any one or more ships are taking a prize or prizes, they shall all share equally in the prize or prizes, according to the number of men and guns on board each ship in sight.

No commander of a fleet or squadron shall be entitled to receive any share of prizes taken by vessels not under his immediate command; nor of such prizes as may have been taken by ships or vessels intended to be placed under his command, before they have acted under his immediate orders; nor shall a commander of a fleet or squadron, leaving the station where he had the command, have any share in the prizes taken by ships left on such station, after he has gone out of the limits of his said command.

SEC. 7. *And be it further enacted*, That a bounty shall be paid by the United States, of twenty dollars for each person on board any ship of an enemy at the commencement of an engagement, which shall be sunk or destroyed by any ship or vessel belonging to the United States of equal or inferior force, the same to be divided among the officers and crew in the same manner as prize money.

SEC. 8. *And be it further enacted*, That every officer, seamen, or marine, disabled in the line of his duty, shall be entitled to receive for life, or during his disability, a pension from the United States, according to the nature and degree of his disability, not exceeding one-half his monthly pay.

SEC. 9. *And be it further enacted*, That all money accruing, or which has already accrued to the United States from the sale of prizes, shall be and remain for ever a fund for the payment of pensions and half pay, should the same be hereafter granted, to the officers and seamen who may be entitled to receive the same, and if the said fund shall be insufficient for the purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of the disabled officers, seamen, and marines, and for such as, though not disabled, may merit by their bravery, or long and faithful services, the gratitude of their country.

SEC. 10. *And be it further enacted*, That the said fund shall be under the management and direction of the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, for the time being, who are hereby authorized to receive any sums to which the United States may be entitled from the sale of prizes, and employ and invest the same, and the interest arising therefrom, in any manner which a majority of them may deem most advantageous: And it shall be the duty of the said commissioners to lay before Congress, annually, in the first week of their session, a minute statement of their proceedings relative to the management of said fund.

SEC. 11. *And be it further enacted*, That the act passed the second day of March, in the year one thousand seven hundred and ninety-nine, entitled "An act for the government of the navy of the United States," from and after the first day of June next, shall be, and hereby is, repealed.

Approved, April 23, 1800.

An Act respecting the Mint.

Be it enacted, &c., That a sum equal to the amount of the cents and half cents, which shall have been coined at the Mint, and delivered to the Treasurer of the United States, subsequent to the third day of March, in the year one thousand seven huudred and ninety-nine, shall be, and the same is hereby, appropriated for the purchase of copper, for the further coinage of cents and half cents; and that a sum equal to the amount of cents and half cents, which shall be hereafter coined at the Mint, and delivered to the Treasurer of the United States in any one year, shall be, and the same is hereby, appropriated for the annual purchase of copper, for the coinage of cents and half cents, which sums shall be payable out of any moneys in the Treasury not otherwise appropriated.

SEC. 2. *And be it further enacted*. That there shall be retained from every deposit in the Mint, of gold or silver bullion below the standard of the United States, such sum as shall be equivalent to the expense incurred in refining the same, and an accurate account of such expense on every such deposit shall be kept, and of the sums retained on account of the same, which shall be accounted for by the Treasurer of the Mint, with the Treasury of the United States.

Approved, April 24, 1800.

An Act to continue in force the act in addition to the act for the punishment of certain crimes against the United States.

Be it enacted, &c., That an act passed on the fifth day of June, one thousand seven hundred and ninety-four, entitled "An act in addition to the act for the punishment of certain crimes against the United States," and which by the tenth section thereof was limited to continue in force for and during the term of two years from passing the same, and from thence to the end of the next session of Congress thereafter, and no longer; and which said act was, by an act passed on the second day of March, one thousand seven hundred and ninety-seven, entitled "An act to continue in force for a limited time, the act in addition to the act for the punishment of certain crimes against the United States," further continued in force for two years from the said second day of March, one thousand seven hundred and ninety-seven, and from thence to the end of the next session of Congress thereafter, shall continue and be in force without limitation of time, anything in any act to the contrary notwithstanding.

Approved, April 24, 1800.

An Act to make further provision for the removal and accommodation of the Government of the United States.

Be it enacted, &c., That the President of the United States shall be, and hereby is, authorized and empowered to direct the various offices belonging to the Executive departments of the United States, to be removed to the City of Washington, at any time that he shall judge proper, after the adjournment of the present session of Congress, and before the time heretofore appointed by law for such removal.

SEC. 2. *And be it further enacted*, That for the purpose of providing furniture for the house erected in the City of Washington, for the accommodation of the President of the United States, a sum not exceeding fifteen thousand dollars be expended, under the direction of the Heads of the several departments of State, of the Treasury, of War, and of the Navy.

SEC. 3. *And be it further enacted*. That for the suitable accommodation of Congress, at the City of Washington, the Secretaries of the four Executive departments, or any three of them, shall be, and hereby are, authorized and directed to cause suitable furniture to be forthwith provided for the apartments, which are to be occupied in the Capitol, at the said city, by the two Houses, respectively, and for the offices and committee rooms of each; and to cause the said apartments, offices, and committee rooms, to be furnished in a suitable manner, so as to be ready for the reception of Congress on the day fixed by law for the removal of the Government to the said city; and that for defraying the expenses incident to the furnishing of the said apartments, offices, and committee rooms, and to the removal of the books, papers, and records, belonging to the said offices, respectively, there shall be, and hereby is, appropriated a sum not exceeding nine thousand dollars.

SEC. 4. *And be it further enacted*. That for the greater convenience of the members of both Houses of Congress in attending their duty in the said City of Washington, and the greater facility of communication between the various Departments and offices of the Government, there shall be made footways in the said city, in suitable places and directions; and that the said footways shall be made by the commissioners of the said city, under the direction of the Secretaries of the four Executive departments of the United States, who, or any three of whom, shall forthwith take order therefor, and in such manner, at such places, and in such directions, as they or any three of them shall judge most proper for the purposes aforesaid, and shall appoint; and that if the said Secretaries, or any three of them, shall find, on examination, that there is not in the hands of the said commissioners a sum sufficient for making the said footways, over and above what may have been destined by the said commissioners, or may, in the opinion of the said Secretaries, or any three of them, be necessary for the accomplishment of other objects necessary for the accommodation of the Government, or its removal as aforesaid, then the said Secretaries, or any three of them, shall be, and hereby are, authorized and required to draw out of the Treasury of the United States, and apply to the purpose of making the said footways, any sum which may be necessary therefor, not exceeding ten thousand dollars; which sum is hereby appropriated for the said purpose. And all the lots in the City of Washington, now vested in the said commissioners, or in trustees, in any manner for the use of the United States, and now remaining unsold, excepting those set apart for public purposes, shall be, and are hereby, declared and made chargeable with the repayment of the said sum of ten thousand dollars, which shall be advanced in pursuance of this act, and the interest accruing thereon.

SEC. 5. *And be it further enacted*, That for the purchase of such books as may be necessary for

the use of Congress at the said City of Washington, and for fitting up a suitable apartment for containing them and for placing them therein, the sum of five thousand dollars shall be, and hereby is, appropriated; and that the said purchase shall be made by the Secretary of the Senate and Clerk of the House of Representatives, pursuant to such directions as shall be given, and such catalogue as shall be furnished by a joint committee of both Houses of Congress to be appointed for that purpose; and that the said books shall be placed in one suitable apartment in the Capitol in the said city, for the use of both Houses of Congress and the members thereof, according to such regulations as the committee aforesaid shall devise and establish.

SEC. 6. *And be it further enacted*, That the several appropriations aforesaid shall be paid out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, April 24, 1800.

An Act to repeal the act laying duties on mills and implements employed in the manufacture of snuff.

Be it enacted, &c., That so much of the act, entitled "An act to alter and amend the act, entitled 'An act laying certain duties upon snuff and refined sugar,'" passed on the third day of March, one thousand seven hundred and ninety-five, as imposes a duty upon mills and implements employed in the manufacture of snuff, or allows a drawback upon the exportation of snuff manufactured within the United States, shall be, and the same hereby is repealed.

Approved, April 24, 1800.

An Act to authorize the President of the United States to accept, for the United States, a cession of jurisdiction of the territory west of Pennsylvania, commonly called the Western Reserve of Connecticut.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized to execute and deliver letters patent, in the name and behalf of the United States, to the Governor of the State of Connecticut, for the time being, for the use and benefit of the persons holding and claiming under the State of Connecticut, their heirs and assigns, forever, whereby all the right, title, interest, and estate, of the United States to the soil of that tract of land lying west of the west line of Pennsylvania, as claimed by the State of Pennsylvania, and as the same has been actually settled, ascertained, and run, in conformity to an agreement between the said State of Pennsylvania and the State of Virginia, and extending from said line westward one hundred and twenty statute miles in length, and in breadth throughout the said limits in length, from the completion of the forty-first degree of north latitude, until it comes to forty-two degrees and two minutes north latitude, including all that territory commonly called the Western Reserve of Connecticut, and which was excepted by said State of Connecticut out of the cession by the said State heretofore made to the United States, and accepted by a resolution of Congress of the fourteenth of September, one thousand seven hundred and eighty-six, shall be released and conveyed as aforesaid to the said Governor of Connecticut, and his successors in said office, forever, for the purpose of quieting the grantees and purchasers under said State of Connecticut, and confirming their titles to the soil of the said tract of land.

Provided, however, That such letters patent shall not be executed and delivered, unless the State of Connecticut shall, within eight months from passing this act, by a legislative act, renounce forever, for the use and benefit of the United States, and of the several individual States who may be therein concerned, respectively, and of all those deriving claims or titles from them or any of them, all territorial and jurisdictional claims whatever, under any grant, charter, or charters, whatever, to the soil and jurisdiction of any and all lands whatever, lying westward, northwestward, and southwestward of those counties, in the State of Connecticut, which are bounded westwardly by the eastern line of the State of New York, as ascertained by agreement between Connecticut and New York, in the year one thousand seven hundred and thirty-three, excepting only from such renunciation the claim of said State of Connecticut, and of those claiming from or under the said State, to the soil of said tract of land herein described under the name of the Western Reserve of Connecticut.

And provided, also, That the said State of Connecticut shall, within the said eight months from and after passing this act, by the agent or agents of said State, duly authorized by the Legislature thereof, execute and deliver, to the acceptance of the President of the United States, a deed expressly releasing to the United States the jurisdictional claim of the said State of Connecticut to the said tract of land herein described under the name of the Western Reserve of Connecticut, and shall deposit an exemplification of said act of renunciation, under the seal of the said State of Connecticut, together with the said deed releasing said jurisdiction, in the office of the Department of State of the United States, which deed of cession when so deposited shall vest the jurisdiction of said territory in the United States: *Provided*, That neither this act, nor anything contained therein, shall be construed so as in any manner to draw into question the conclusive settlement of the dispute between Pennsylvania and Connecticut, by the decree of the federal court at Trenton, nor to impair the right of Pennsylvania or any other State, or of any person or persons claiming under that or any other State, in any existing dispute concerning the right, either of soil or jurisdiction, with the State of Connecticut, or with any person or persons claiming under the State of Connecticut: *And provided, also*, That nothing herein contained shall be construed in any manner to pledge the United States for the extinguishment of the Indian title to the said lands, or further than merely to pass the title of the United States thereto.

Approved, April 28, 1800.

An Act to provide for rebuilding the Light-house at New London; for the support of a Light-house at Clark's Point; for the erection and support of a Light-house at Wigwam Point, and for other purposes.

Be it enacted, &c., That, under the direction of the Secretary of the Treasury, there shall be purchased, for the use of the United States, so much land contiguous to their territory, now occupied for the light-house at New London, as shall be sufficient for vaults, and any other purpose, necessary for the better support of said light-house: *Provided*, That the Legislature of the State of Connecticut shall cede to the United States the jurisdiction of such additional territory.

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized, at his discretion, to procure a new lantern, with suitable distinctions, and to cause convenient vaults to be erected, and the said light-house at New London to be rebuilt.

SEC. 3. *And be it further enacted*, That the light-house lately erected at Clark's Point, so called, at the entrance of Accushnet river, within the town of New Bedford, in the State of Massachusetts, shall and may be supported at the expense of the United States. And the Secretary of the Treasury shall and may appoint a keeper thereof, and take further order respecting the same, as in other cases: *Provided*, That the property and jurisdiction of the said light-house, and sufficient territory for the accommodation thereof, shall be fully ceded and legally vested in the United States.

SEC. 4. *And be it further enacted*, That, under the direction of the Secretary of the Treasury, there shall be provided and maintained at the expense of the United States, not exceeding six buoys, to be placed within Buzzard's Bay, upon the most dangerous ledges there, in such manner as the safety of navigation in that bay requires.

SEC. 5. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on Wigwam Point, so called, within the town of Gloucester, in the State of Massachusetts, where it will best serve the purpose of discovering the entrance of Anesquam harbor, and to appoint a keeper, and otherwise to provide for the support of such light-house, at the expense of the United States. *Provided*, That sufficient land for the accommodation of such light-house, together with the jurisdiction thereof, shall be duly and legally granted to and vested in the United States.

SEC. 6. *And be it further enacted*, That there shall be, and hereby are, appropriated, for providing the said buoys, a sum not exceeding three hundred dollars, and for the erection of the said light-house at Wigwam Point, a sum, not exceeding two thousand dollars, to be paid out of any moneys which may be in the Treasury of the United States, not otherwise appropriated.

Approved, April 29, 1800.

An Act supplementary to the laws now in force, fixing the compensations of the officers of the Senate and House of Representatives.

Be it enacted, &c. That from and after the thirty-first day of December, one thousand seven hundred and ninety-nine, the officers of the Senate and House of Representatives, hereinafter mentioned, shall be, and hereby are, entitled to receive, in addition to their compensations as now fixed by law, the following sums, that is to say: The Secretary of the Senate and Clerk of the House of Representatives, two hundred and fifty dollars each, in addition to their salaries as at present established by law; and each of their principal and engrossing clerks, in addition to their per diem allowance as established by law, two hundred dollars per annum.

SEC. 2. *And be it further enacted*, That the sergeant-at-arms of the Senate, who also performs the duty of doorkeeper, the sergeant-at-arms of the House of Representatives, and the doorkeeper of the House of Representatives, shall be, and hereby are, entitled to receive five hundred dollars per annum each, and two dollars a day during the session; and the assistant doorkeepers of the Senate and House of Representatives four hundred and fifty dollars per annum each, and two dollars per day during the session, in lieu of the compensations heretofore established by law, which compensations shall commence from the commencement of the present session.

SEC. 3. *And be it further enacted*, That this act shall continue in force for and during the term of two years, and no longer.

Approved, May 2, 1800.

An Act to continue in force "An act laying an additional duty on salt imported into the United States, and for other purposes."

Be it enacted, &c., That an act passed on the eighth day of July, one thousand seven hundred and ninety-seven, entitled "An act laying an additional duty on salt imported into the United States, and for other purposes, shall be, and the same is hereby, continued in force for and during the term of ten years, from the third day of March, one thousand eight hundred, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, May 7, 1800.

An Act to divide the Territory of the United States Northwest of the Ohio, into two separate Governments.

Be it enacted, &c., That, from and after the fourth day of July next, all that part of the Territory of the United States Northwest of the Ohio river, which lies to the westward of a line beginning at the Ohio, opposite to the mouth of Kentucky river, and running thence to Fort Recovery, and thence north until it shall intersect the territorial line between the United States and Canada, shall, for the purposes of temporary government, constitute a separate territory, and be called the Indiana Territory.

Sec. 2. *And be it further enacted*, That there shall be established within the said Territory a Government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the Territory of the United States Northwest of the river Ohio; and the inhabitants thereof shall be entitled to, and enjoy all and singular, the rights, privileges, and advantages, granted and secured to the people by the said ordinance.

Sec. 3. *And be it further enacted*, That the officers for the said Territory, who, by virtue of this act, shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations, as by the ordinance aforesaid and the laws of the United States, have been provided and established for similar officers in the Territory of the United States Northwest of the river Ohio: And the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor: *Provided*, That the President of the United States shall have full power, in the recess of Congress, to appoint and commission all officers herein authorized; and their commissions shall continue in force until the end of the next session of Congress.

Sec. 4. *And be it further enacted*, That so much of the ordinance for the government of the Territory of the United States Northwest of the Ohio river, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall be in force and operate in the Indiana Territory, whenever satisfactory evidence shall be given to the Governor thereof that such is the wish of a majority of the freeholders, notwithstanding there may not be therein five thousand free male inhabitants of the age of twenty-one years and upwards: *Provided*, That, until there shall be five thousand free male inhabitants of twenty-one years and upwards in said Territory, the whole number of representatives to the General Assembly shall not be less than seven, nor more than nine, to be apportioned by the Governor to the several counties in the said Territory, agreeably to the number of free males of the age of twenty-one years and upwards, which they may respectively contain.

Sec. 5. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the Government now in force in the Territory of the United States Northwest of the Ohio river, further than to prohibit the exercise thereof within the Indiana Territory, from and after the aforesaid fourth day of July next: *Provided*, That, whenever that part of the Territory of the United States which lies to the eastward of a line beginning at the mouth of the Great Miami river, and running thence due north to the territorial line between the United States and Canada, shall be erected into an independent State, and admitted into the Union on an equal footing with the original States, thenceforth said line shall become and remain permanently the boundary line between such State and the Indiana Territory, anything in this act contained to the contrary notwithstanding.

Sec. 6. *And be it further enacted*, That, until it shall be otherwise ordered by the Legislatures of the said Territories, respectively, Chilicothe, on Scioto river, shall be the seat of the Government of the Territory of the United States Northwest of the Ohio river; and that Saint Vincennes, on the Wabash river, shall be the seat of the Government for the Indiana Territory.

Approved, May 7, 1800.

An Act to enable the President of the United States to borrow money for the public service.

Be it enacted, &c., That the President of the United States shall be, and hereby is, authorized to borrow, on behalf of the United States, from the Bank of the United States, which is hereby authorized to lend the same, or from any other body or bodies politic or corporate, or from any person or persons, and upon such terms and conditions as he shall judge most advantageous for the United States, a sum not exceeding three millions five hundred thousand dollars, in addition to the moneys to be received into the Treasury of the United States from taxes, for making up any deficiency in any appropriation heretofore made by law, or to be made, during the present session of Congress, and defraying the expenses which may be incurred by calling into actual service any part of the militia of the United States, or by arming, equipping, and calling into actual service any regular troops or volunteers, pursuant to authorities vested, or to be vested, in the President of the United States by law: *Provided*, That no engagement nor contract shall be entered into, which shall preclude the United States from reimbursing any sum or sums borrowed, at any time after the expiration of fifteen years from the date of such loan.

Sec. 2. *And be it further enacted*, That so much as may be necessary of the surplus of the duties on imports and tonnage, beyond the permanent appropriations heretofore charged upon them by law, shall be, and hereby is, pledged and appropriated for paying the interest of all such moneys as may be borrowed pursuant to this act, according to the terms and conditions on which the loan or loans, respectively, may be effected; and also for paying and discharging the principal sum or sums of any such loan or loans, according to the terms and conditions to be fixed as aforesaid: And the faith of the United States shall be, and hereby is, pledged to establish sufficient permanent revenues for making up any deficiency that may hereafter appear in the provisions for paying the said interest and principal sums, or any of them, in manner aforesaid.

Sec. 3. *And be it further enacted*, That the sums to be borrowed, pursuant to this act, shall be paid into the Treasury of the United States, and there separately accounted for; and that the same shall be, and hereby are, appropriated in the manner following:

First, to make up any deficiency in any appropriation heretofore made by law, or to be made, during the present session of Congress; and, secondly, to defray the expenses which may be incurred before the end of the next session of Congress, by calling into actual service any part of the militia of the United States, or by raising, equipping, and calling into actual service any regular troops or volunteers, pursuant to authorities vested or to be vested in the President of the United States by law.

Approved, May 7, 1800.

An Act to authorize the sale and conveyance of lands, in certain cases, by the Marshals of the United States, and to confirm former sales.

Be it enacted, &c., That where the United States shall have obtained judgment in civil actions, brought in those States wherein, by the laws and practice of such States, lands or other real estate belonging to the debtor are delivered to the creditor in satisfaction of such judgment, and shall have received seizin and possession of lands so delivered, it shall be lawful for the marshal of the district wherein such lands or other real estate are situated, under the directions of the Secretary of the Treasury, to expose the same to sale at public auction, and to execute a grant thereof to the highest bidder, on receiving payment of the full purchase money; which grant, so made, shall vest in such purchaser all the right, estate, and interest, of the United States in and to such lands, or other real estate.

Sec. 2. *And be it further enacted*, That the sales heretofore made by collectors of certain districts of the United States, of lands or other real estate delivered as aforesaid to the United States, shall be, and they are hereby, confirmed: *Provided*, That this confirmation shall not extend to any sale, unless the condition of such sale has been complied with by the purchaser.

Sec. 3. *And be it further enacted*, That whenever a marshal shall sell any lands, tenements, or hereditaments, by virtue of process from a court of the United States, and shall die, or be removed from office, or the term of his commission expire, before a deed shall be executed for the same by him to the purchaser; in every such case the purchaser or plaintiff, at whose suit the sale was made, may apply to the court from which the process issued, and set forth the case, assigning the reason why the title was not perfected by the marshal who sold the same; and thereupon the court may order the marshal for the time being to perfect the title, and execute a deed to the purchaser, he paying the purchase money and costs remaining unpaid: and where a marshal shall take in execution any lands, tenements, or hereditaments, and shall die, or be removed from office, or the term of his commission expire before sale, or other final disposition made of the same; in every such case, the like process shall issue to the succeeding marshal, and the same proceedings shall be had, as if such former marshal had not died or been removed, or the term of his commission had not expired: And the provisions in this section contained shall be, and they are hereby, extended to all the cases, respectively, which may have happened before the passing of this act.

Approved, May 7, 1800.

An act for the regulation of public arsenals and magazines.

Be it enacted, &c., That the several officers who now are, or hereafter may be, employed in the armories of the United States shall be entitled to, and shall receive, the following compensations, in addition to their pay as established by law, to wit: A superintendent of such armory, three rations per day, or an equivalent in money; and a master armorer, two rations per day, or an equivalent in money.

Sec. 2. *And be it further enacted*, That if any person shall procure, or entice, any artificer or workman, retained or employed in any arsenal or armory of the United States, to depart from the same during the continuance of his engagement, or avoid or break his contract with the United States, or who after due notice of the engagement of any such workman or armorer, in any arsenal or armory, shall, during the continuance of such engagement, retain, hire, or in any wise employ, harbor, or conceal, such artificer or workman, the person so offending, shall, upon conviction, be fined, at the discretion of the court, not exceeding fifty dollars, or be imprisoned for any term not exceeding three months.

Sec. 3. *And be it further enacted*, That if any artificer or workman, hired, retained, or employed, in any public arsenal or armory, shall wantonly and carelessly break, impair, or destroy any implements, tools, or utensils, or any stock or materials for making guns, the property of the United States; or shall wilfully and obstinately refuse to perform the services lawfully assigned to him, pursuant to his contract, every such person shall forfeit a sum not exceeding twenty dollars for every such act of disobedience or breach of contract, to be recovered in any court having competent jurisdiction thereof.

Sec. 4. *And be it further enacted*, That all artificers and workmen, who are or shall be employed in the said armories, shall be, and they are hereby, exempted, during their term of service, from all military service, and service as jurors in any court.

Approved, May 7, 1800.

An Act making appropriations for the support of Government for the year one thousand eight hundred.

Be it enacted, &c., That, for the expenditure of the civil list, including the contingent expenses of the several departments and officers; for the compensation of clerks in the several loan offices, and for books and stationery for the same; for the payment of annuities and grants, for the support of the Mint establishment, for the expenses of intercourse with foreign nations, for the support of light-houses, beacons, buoys, and public piers, and

for satisfying certain miscellaneous claims and expenses; the following sums be, and are hereby, appropriated, that is to say:

For the compensation granted by law to the President and Vice President of the United States, thirty thousand dollars.

For the like compensations granted to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of six months' continuance, one hundred and ninety thousand one hundred and seventy-five dollars.

For the expense of fire-wood, stationery, printing, and all other contingent expenses of the two Houses of Congress, including the sum stipulated to be paid in pursuance of a resolution of March second, one thousand seven hundred and ninety-nine, for supplying both Houses with the journals of Congress, twenty-one thousand six hundred and sixty-four dollars and forty cents.

For the compensations granted by law to the chief-justice, associate judges, district judges, and attorney general, forty-five thousand five hundred dollars.

For the compensations granted by law to the district attorneys, and for defraying the expense of clerks of courts, jurors, and witnesses, in aid of the fund arising from fines, forfeitures, and penalties; and likewise for defraying the expenses of prosecution for offences against the United States, and for safe keeping of prisoners, thirty-three thousand four hundred dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office, eleven thousand one hundred and eighty-nine dollars and eighty-one cents.

For expenses of stationery, printing, translating of foreign languages, allowance to persons employed in receiving and transmitting passports and sea-letters, in the office of the Secretary of the Treasury, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventeen dollars and eight cents.

For expense of stationery, printing, and all other contingent expenses in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand one hundred and sixty dollars and ninety-three cents.

For expense of stationery, printing, and all other contingent expenses in the office of the Auditor, seven hundred and fifty dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, five thousand nine hundred and seventeen dollars and forty-five cents.

For expenses of fire-wood, stationery, printing, rent, and all other contingencies in the Treasurer's office, six hundred dollars.

For compensation to the Commissioner of the Revenue, clerks, and persons employed in his office, six thousand one hundred and ninety-three dollars and six cents.

For expense of stationery, printing, and all other contingent expenses in the office of the Commissioner of the Revenue, four hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand three hundred and forty-two dollars and one cent.

For expense of stationery, printing, and all other contingent expenses in the Register's office, (including books for the public stocks and for the arrangement of the marine papers,) two thousand eight hundred dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, two thousand eight hundred and fifty dollars.

For fire-wood, stationery, office, and store rent, for the Purveyor, nine hundred and sixteen dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For the payment of rent for the several houses employed in the Treasury Department, (except the Treasurer's office,) two thousand seven hundred and thirty dollars and sixty-six cents.

For the expense of fire-wood and candles in the several offices of the Treasury Department, (except the Treasurer's office,) three thousand five hundred dollars.

For defraying the expense incident to the stating and printing the public accounts for the year one thousand eight hundred, (including an increase of two hundred dollars in consequence of an extension of the revenue and expenditures,) one thousand two hundred dollars.

For defraying the expense incident to the removal of the books and records of the Treasury Department from Philadelphia to Trenton, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the several officers, clerks, and messengers in each office, five thousand dollars.

For compensation to the several loan-officers, thirteen thousand two hundred and fifty dollars.

For the expense incident to the removal of the Loan Office of Pennsylvania from Philadelphia, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the clerks in the said office, three hundred and six dollars.

For compensation to the clerks to the Commissioners of Loans, and an allowance to certain loan officers in lieu of clerk hire, and to defray the authorized expenses of the several Loan Offices, fifteen thousand dollars.

For compensation to the Secretary of State clerks, and persons employed in that department, eleven thousand three hundred dollars.

For the incidental and contingent expenses in the said department, thirteen thousand dollars.

For the expenses incident to the removal of the Department of State from Philadelphia to Trenton, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the Secretary for the Department, the clerks and messengers therein, five hundred and eight dollars and sixty cents.

For compensation to the following officers of the Mint:

The Director, two thousand dollars;

The Treasurer, one thousand two hundred dollars;

The Assayer, one thousand five hundred dollars;

The Chief Coiner, one thousand five hundred dollars;

The Melter and Refiner, one thousand five hundred dollars;

The Engraver, twelve hundred dollars:

One clerk at seven hundred dollars, and two at five hundred dollars each; one thousand seven hundred dollars.

For persons employed at the different branches of melting, refining, coining, carpenters, millwrights and smiths' work, including the sum of eight hundred dollars per annum allowed to an assistant coiner and die-forger, who also oversees the execution of the iron work, seven thousand dollars.

For the purchase of ironmongery, lead, wood, coals, stationery, office furniture, and for all other contingencies of the establishment of the Mint, six thousand three hundred dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand one hundred and ninety dollars.

For expenses of fire-wood, stationery, printing, rent, and other contingent expenses in the office of the Secretary of War, two thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand eight hundred and fifty dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For the expense incident to the removal of the War Department from Philadelphia to Trenton, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the Secretary for the Department, the Accountant, the Paymaster General, the Quartermaster General, the keeper of military stores, clerks, and messengers in each office, four thousand four hundred and twenty-six dollars and fifty-six cents.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, including deficiencies in former appropriations for clerk hire, nine thousand one hundred and fifty-two dollars and twenty-five cents.

For the expense of fire-wood, stationery, printing, rent, and other contingencies in the office of the Secretary of the Navy, three thousand three hundred dollars.

For compensation to the Accountant of the Navy, clerks, and persons employed in his office, nine thousand two hundred and fifty dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For expense of removing the Department of the Navy from Philadelphia to Trenton, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the Secretary for the Department, the Accountant, clerks, and messengers in each office, one thousand two hundred and fifty-four dollars and fifty-nine cents.

For compensation to the Surveyor General, two thousand dollars.

For compensation to the assistant surveyors, chain-carriers, axe-men, and other persons employed, stationery, and other contingent expenses in the Surveyor General's Department, (in addition to former appropriations,) two thousand dollars.

For compensation to the Governor, Judges, and Secretary of the Territory Northwest of the river Ohio, five thousand one hundred and fifty dollars.

For expenses of stationery, printing patents for land, office rent, and other contingent expenses in the said territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said territory, three hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, nine thousand three hundred dollars.

For expense of fire-wood, stationery, printing, rent, and other contingent expenses in the office of the Postmaster General, and for the expense incident to the removal of the General Post Office from Philadelphia to Trenton, during part of the summer of the year one thousand seven hundred and ninety-nine, including the extra expenses of the Postmaster General, his Assistant, and clerks; with expenses incurred by the Postmaster at Philadelphia, by a removal of his office to a more healthy part of the city, and of his increased expenses in attending to the duties of his office in the years one thousand seven hundred and ninety-three, one thousand seven hundred and ninety-seven, one thousand seven hundred and ninety-eight, and one thousand seven hundred and ninety-nine, four thousand and eighty-one dollars and forty-nine cents.

For the discharge of such miscellaneous demands against the United States on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For the payment of sundry pensions granted by the late Government, nine hundred and fifty-three dollars and thirty-three cents.

For the maintenance and support of lighthouses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and for occasional improvement in the construction of lanterns and lamps, and materials used therein, and to make good deficiencies in former appropriations occasioned by the increased number of lighthouses, thirty-nine thousand three hundred and ninety-two dollars and three cents.

For repairing Charleston light-house, five thousand nine hundred and fifty dollars.

For erecting a light-house on Old Point Comfort (in addition to former appropriations,) one thousand five hundred dollars.

For rebuilding, altering, and improving the light-house at New London, fifteen thousand seven hundred dollars.

For the payment of contracts entered into for building of a light-house on Cape Hatteras, and a beacon on Shell Castle island, (the balance of former appropriations being carried to the credit of the surplus fund,) thirty-five thousand six hundred and ninety-eight dollars.

For the payment of balances which may be found due to individuals, in consequence of settlements at the Treasury, pursuant to the act of Congress passed on the twelfth day of June, one thousand seven hundred and ninety-eight, entitled "An act respecting loan office and final settlement certificates," &c., twenty-five thousand dollars.

For defraying the expenses of printing, with devices, the subscription certificates, and issuing the same to the subscribers to the loan of five millions of dollars, cost of paper; also, the incidental expenses of said loan in its operation at the Bank of the United States; and likewise for printing certificates of the eight per cent. stock for the Treasury, and the several Loan Offices, including the cost of paper, and other incidental expenses of funding this stock, five thousand dollars.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For the expenses of intercourse with foreign nations during the present year, in addition to the sum of forty thousand dollars appropriated by law for that purpose, the sum of fifty-two thousand dollars.

For further expenses in carrying into effect the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, including the expenses authorized by the act, entitled "An act directing the appointment of agents in relation to the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain," fifty-two thousand five hundred and fifty-six dollars.

For the salaries of the Commissioners under the seventh article of the said treaty, including the contingent expenses, sixteen thousand four hundred and forty-four dollars.

For the salaries, clerk hire, office rent, and other contingencies of the two agents residing in England on business relative to the said seventh article, nine thousand dollars.

For further expenses in carrying into effect the Treaty of Amity, Navigation, and Limits, between the United States and Spain, twenty thousand dollars.

For the difference between the cost of the stipulated articles in the annuity to the Dey and Regency of Algiers, and the permanent appropriation therefor, fifty-six thousand dollars.

For defraying the expenses incident to the valuation of lands and houses, and enumeration of slaves, within the United States, as directed by the act of July the ninth, one thousand seven hundred and ninety-eight, in addition to the sum appropriated by that act, two hundred and fifteen thousand dollars.

SEC. 2. *And be it further enacted*, That the several appropriations hereinbefore made shall be paid and discharged out of the fund of six hundred thousand dollars reserved by the act "making provision for the debt of the United States," and out of any money which may be in the Treasury not otherwise appropriated.

Approved, May 7, 1800.

An Act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred.

Be it enacted &c., That, for defraying the expenses of the Military Establishment of the United States, for the year one thousand eight hundred, the pay and subsistence of the officers and men, bounties and premiums, the clothing, hospital, ordnance, quartermaster and Indian departments, the defensive protection of the frontiers, the contingent expenses of the War Department, for the fabrication of cannon and arms, and purchase of ammunition, and for the payment of military pensions, the sum of three millions forty-two thousand five hundred and seventy-six dollars and thirty-five cents be, and is hereby, appropriated, that is to say:

For pay of the army of the United States, one million eighteen thousand six hundred and twenty dollars.

For the subsistence of the army, seven hundred and eighty-seven thousand seven hundred and eighty-six dollars and thirty-five cents.

For forage, the sum of thirty-six thousand six hundred and seventy-two dollars.

For horses, to replace those which may die, or become unfit for service, the sum of five thousand dollars.

For clothing, the sum of two hundred and fifty-seven thousand nine hundred and fifty-five dollars.

For bounties and premiums, the sum of fourteen thousand dollars.

For the hospital department, the sum of fifty-one thousand dollars.

For the ordnance department the sum of one hundred and thirteen thousand five hundred and twenty-two dollars.

For the quartermaster's department, the sum of five hundred and twenty-eight thousand and sixty-five dollars.

For paying annuities to the following nations of Indians, in pursuance of treaties: To the Six Nations, Cherokees, Chickasaws and Creeks, the sum of fifteen thousand dollars.

For promoting civilization among the Indian tribes, and pay of temporary agents, the sum of fifteen thousand dollars.

For expense attending the running of the line of demarkation between the Indian territory of the United States, including the pay of commissioners, surveyors, and assistants, the sum of four thousand dollars.

For the defensive protection of the frontiers of the United States, including the erection and repairs of forts and fortifications, the sum of sixty thousand dollars.

For loss of stores, allowances to officers on being ordered to distant commands, and for special purposes, advertising and apprehending deserters, printing, purchasing maps, and other contingencies, the sum of forty thousand dollars.

For the annual allowance to the invalids of the United States, for their pensions from the fifth of March, one thousand eight hundred, to the fourth of March, one thousand eight hundred and one, the sum of ninety-three thousand dollars.

SEC. 2. *And be it further enacted*, That for the fabrication of cannon and arms, and purchase of ammunition for the army and navy, and for the militia of the United States, in addition to the sums unexpended of the appropriations made by the acts of Congress of the fourth of May and first of July, seventeen hundred and ninety-eight, the sum of two hundred and sixty thousand dollars shall be, and hereby is, appropriated.

SEC. 3. *And be it further enacted*, That the foregoing appropriations shall be paid out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, May 10, 1800.

An Act to establish the district of Kennebunk, and to annex Lyme to New London; and to alter the district of Bermuda Hundred and City Point; and therein to amend the act, entitled, "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That, from and after the thirtieth day of June next, the towns of Wells and Arundel, in the State of Massachusetts, and all the shores and waters thereof, shall be a district, to be called the district of Kennebunk, of which the port of Kennebunk shall be the sole port of entry; and the ports of Wells and Cape Porpoise shall be ports of delivery only; and a collector for the district shall be appointed, to reside at Kennebunk.

SEC. 2. *And be it further enacted*, That ships and vessels, owned in whole or in part in the towns of Edgecomb and Newcastle, in the district of Maine, having entered in due form of law at the port of Wiscasset, and taken on board an officer, shall be permitted to unlade in the ports of the said towns which adjoin Sheepscut river.

SEC. 3. *And be it further enacted*, That, from and after the thirtieth day of June next, the town of Lyme, in the State of Connecticut, and the shores and waters thereof, shall be annexed, as a port of delivery only, to the district of New London, and all vessels bound to or from the said port of Lyme, shall first come to, enter, and clear, at the said port of New London: *Provided, however*, That the surveyor appointed to reside at Saybrook shall be authorized to visit and inspect ships or vessels arriving at said port of Lyme, and, generally, to perform the duties of a surveyor, as may be requisite within said port.

SEC. 4. *And be it further enacted*, That, from and after the thirtieth day of June next, the district of Bermuda Hundred and City Point, as at present constituted, in the State of Virginia, shall be called the district of Petersburg, to comprehend Petersburg, City Point, and all the waters, shores, bays, harbors, and inlets, of James river, from Hood's and the junction of Chicahoming, to the junction of the James and Appamattox rivers, and from thence to the highest tide-water of Appamattox, and also the Chicahoming to its highest tide-water mark; and the port for the said district shall extend from Petersburg to City Point. And another district shall be formed, to be called the district of Richmond, to comprehend Richmond, Manchester, and Bermuda Hundred, and all the waters, shores, bays, harbors, and inlets, of James river, from Bermuda Hundred, including the harbor thereof, to the highest tide-waters of James river; and the port shall extend from Richmond and Manchester to Bermuda Hundred. The office of collector for the district of Petersburg shall be kept in the town of Petersburg; and a collector shall be appointed for the Richmond district, whose office shall be kept in the city of Richmond; and the surveyors within those two districts shall continue to reside at the places at present established by law.

SEC. 5. *And be it further enacted*, That the master of any ship or vessel, bound to any district of James river above Sewall's Point, shall, before he pass by the said Point, and immediately after his arrival either at the same or at Hampton Road, deposit with the collector of the port of Norfolk and Portsmouth, or of Hampton, a true manifest of the cargo on board such ship or vessel; and the said collector shall, after registering the manifest, transmit the same, duly certified to have been so deposited, to the officer with whom the entries are to be made: And the said collector may, whenever he shall judge it to be necessary for the security of the revenue, put an inspector of the customs on board any such ship or vessel, to accompany the same until her arrival at the first port of entry or delivery, in the district, to which such ship or vessel may be destined: And if the master or commander of any such ship or vessel shall neglect or omit to deposit a manifest in manner as aforesaid, or shall refuse to receive an inspector of customs on board, as the case shall require, he shall forfeit and pay five hundred dollars, to be recovered with costs of suit, one-half for the use of the officer with whom such manifest ought to have been deposited, and the other half to the use of the collector of the district to which the said ship or vessel may be bound.

SEC. 6. *And be it further enacted*, That such part and so much of the act, entitled "An act to regulate the collection of duties on imports and tonnage," as comes within the purview of this act, being contrary hereto, shall be and hereby is repealed.

Approved, May 10, 1800.

An Act supplemental to the act, entitled "An act for an amicable settlement of limits with the State of Georgia; and authorizing the establishment of a government in the Mississippi Territory."

Be it enacted, &c., That so much of the ordinance of Congress of the thirteenth of July, one thousand seven hundred and eighty-seven, and of the act of Congress of the seventh of August, one thousand seven hundred and eighty-nine, providing for the government of the Territory of the United States Northwest of the river Ohio, as relates to the organization of a General Assembly therein, and prescribes the powers thereof, shall forthwith operate, and be in force in the Mississippi Territory: *Provided*, That until the number of free male inhabitants of full age, in the said Territory, shall amount to five thousand, there shall not be returned to the General Assembly more than nine representatives.

Sec. 2. *And be it further enacted*, That until the number of free male inhabitants of full age in the Mississippi Territory, shall amount to five thousand, the county of Adams shall be entitled to choose four representatives to the General Assembly, the county of Pickering four, and the Tensaw and Tombigbee settlements one.

Sec. 3. *And be it further enacted*, That the first election, for representatives to the General Assembly, shall be on the fourth Monday in July next, and that all subsequent elections shall be regulated by the Legislature.

Sec. 4. *And be it further enacted*, That it shall be the duty of the Governor of the Mississippi Territory, to cause the said election to be holden on the day aforesaid, at the most convenient place in the counties and settlements aforesaid, and to nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected.

Sec. 5. *And be it further enacted*, That the representatives shall be convened by the Governor at the town of Natchez, on the fourth Monday in September next.

Sec. 6. *And be it further enacted*, That so soon as the number of free male inhabitants of full age shall amount to, or exceed five thousand, the number of representatives to the General Assembly shall be determined, and the apportionment made in the way prescribed in the ordinance.

Sec. 7. *And be it further enacted*, That nothing in this act shall in any respect impair the right of the State of Georgia to the jurisdiction, or of the said State, or of any person or persons to the soil of the said Territory, but the rights and claims of the said State, and all persons interested, are hereby declared to be as firm and available as if this act had never been made.

Sec. 8. *And be it further enacted*, That the General Assembly shall meet at least once in every year, and such meeting shall be on the first Monday of December, unless they shall by law appoint a different day: *Provided*, That the Governor shall have power on extraordinary occasions to convene the General Assembly.

Sec. 9. *And be it further enacted*, That neither House during the session of the General Assembly shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Sec. 10. *And be it further enacted*, That it shall be lawful for the commissioners appointed, or who may hereafter be appointed on the part of the United States, in pursuance of the act, entitled "An act for an amicable settlement of limits with the State of Georgia; and authorizing the establishment of a government in the Mississippi Territory," or any two of them, finally to settle by compromise with the commissioners, which have been or may be appointed by the State of Georgia, any claims mentioned in said act, and to receive in behalf of the United States a cession of any lands therein mentioned, or of the jurisdiction thereof, on such terms as to them shall appear reasonable: And also, that the said commissioners on the part of the United States, or any two of them, be authorized to inquire into the claims which are or shall be made by settlers or any other persons whatsoever, to any part of the aforesaid lands, and to receive from such settlers and claimants any propositions of compromise which may be made by them, and lay a full statement of the claims and the propositions which may be made to them by the settlers or claimants to any part of the said lands, together with their opinion thereon, before Congress, for their decision thereon, as soon as may be: *Provided*, That the settlement shall be made and completed before the fourth day of March, one thousand eight hundred and three: *And provided, also*, That the said commissioners shall not contract for the payment of any money from the Treasury of the United States to the State of Georgia, other than the proceeds of the same lands.

Approved, May 10, 1800.

An Act in addition to the act, entitled "An act to prohibit the carrying on the slave trade from the United States to any foreign place or country."

Be it enacted, &c., That it shall be unlawful for any citizen of the United States, or other person residing within the United States, directly or indirectly, to hold or have any right or property in any vessel employed or made use of in the transportation or carrying of slaves from one foreign country or place to another, and any right or property, belonging as aforesaid, shall be forfeited, and may be libelled and condemned for the use of the person who shall sue for the same; and such person, transgressing the prohibition aforesaid, shall also forfeit and pay a sum of money equal to double the value of the right of property in such vessel, which he held as aforesaid; and shall also forfeit a sum of money equal to double the value of the interest which he may have had in the slaves, which at any time may have been transported or carried in such vessel, after the passing of this act, and against the form thereof.

Sec. 2. *And be it further enacted*, That it shall be unlawful for any citizen of the United States, or other person residing therein, to serve on board any vessel of the United States employed or made use of in the transportation or carrying of slaves, from one foreign country or place to another; and any such citizen or other person, voluntarily serving as aforesaid, shall be liable to be indicted therefor, and, on conviction thereof, shall be liable to a fine not exceeding two thousand dollars, and be imprisoned not exceeding two years.

Sec. 3. *And be it further enacted*, That if any citizen of the United States shall voluntarily serve on board of any foreign ship or vessel, which shall hereafter be employed in the slave trade, he shall, on conviction thereof, be liable to, and suffer the like forfeitures, pains, disabilities, and penalties, as he would have incurred, had such ship or vessel been owned or employed, in whole or in part, by any person or persons residing within the United States.

Sec. 4. *And be it further enacted*, That it shall be lawful for any of the commissioned vessels of the United States, to seize and take any vessel employed in carrying on trade, business, or traffic, contrary to the true intent and meaning of this or the said act to which this is in addition; and such vessel, together with her tackle, apparel, and guns, and the goods or effects, other than slaves, which shall be found on board, shall be forfeited, and may be proceeded against in any of the district or circuit courts, and shall be condemned for the use of the officers and crew of the vessel making the seizure, and be divided in the proportion directed in the case of prize: And all persons interested in such vessel, or in the enterprise or voyage in which such vessel shall be employed at the time of such capture, shall be precluded from all right or claim to the slaves found on board such vessel as aforesaid, and from all damages or retribution on account thereof: And it shall moreover be the duty of the commanders of such commissioned vessels, to apprehend and take into custody every person found on board of such vessel so seized and taken, being of the officers or crew thereof, and him or them convey, as soon as conveniently may be, to the civil authority of the United States, in some one of the districts thereof, to be proceeded against in due course of law.

Sec. 5. *And be it further enacted*, That the district and circuit courts of the United States shall have cognizance of all acts and offences against the prohibitions herein contained.

Sec. 6. *Provided, nevertheless, and be it further enacted*, That nothing in this act contained shall be construed to authorize the bringing into either of the United States, any person or persons, the importation of whom is, by the existing laws of such State, prohibited.

Sec. 7. *And be it further enacted*, That the forfeitures which shall hereafter be incurred under this, or the said act to which this is in addition, not otherwise disposed of, shall accrue, and be, one moiety thereof to the use of the informer, and the other moiety to the use of the United States, except where the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

Approved, May 10, 1800.

An Act to provide for equalizing the valuations of unseated lands.

Be it enacted, &c., That the commissioners appointed under the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," in those States the valuations and enumerations whereof are not yet closed and returned to the Treasury Department, shall be, and hereby are, authorized and empowered, on examination and consideration, at some general meeting to be convened pursuant to law, of the lists, returns, valuations and abstracts, rendered to them by the assessors within their respective States, to revise the valuations of unseated lands in each and every assessment district of their respective States, and in each and every sub-division of such districts, respectively, and to vary and adjust the said valuations, by adding thereto or deducting therefrom such rate per centum as to them shall appear just and reasonable: *Provided always*, That the relative valuations of differents tracts of unseated land in the same sub-division shall not be changed or affected.

Sec. 2. *And be it further enacted*, That the said commissioners may direct the deductions and additions aforesaid to be made out and completed by the principal assessors of the aforesaid assessment district, respectively, or, if they shall deem it more proper, by their own clerk and by such assistants as they shall find necessary and appoint for that purpose: *Provided, always*, That the compensation to be made to the said assistants shall not exceed the pay allowed to the assistant assessors by the act aforesaid.

Approved, May 10, 1800.

An Act supplementary to an act, entitled "An act to establish the compensation of the officers employed in the collection of the duties on impost and tonnage."

Be it enacted, &c., That, from and after the thirtieth day of June next, there shall be allowed and paid annually, to and for the use of the several collectors and surveyors appointed, and to be appointed pursuant to law, and employed in the collection of the duties of imports and tonnage, in the districts hereinafter mentioned, in addition to their fees and emoluments otherwise allowed by law, the sums following, respectively, that is to say: The collectors of Passamaquoddy, Waldoborough, and St. Mary's, two hundred and fifty dollars each: To the collectors of Machias, Great Egg Harbor, Little Egg Harbor, Perth Amboy, Bridgetown, Sunbury, and Georgetown, in Maryland, one hundred dollars each; and to the collectors of Sagg Harbor, Brunswick, in Georgia, and Dumfries, fifty dollars each: To the surveyor of Bermuda Hundred, one hundred and fifty dollars; and to the surveyors of Newport, Providence, Port Royal, Alexandria, and Saybrook, one hundred dollars each.

Sec. 2. *And be it further enacted*, That, in lieu of the commissions heretofore allowed by law, there shall, from and after the thirtieth day of June next, be allowed to the collectors for the districts of Alexandria, Petersburg, and Richmond,

respectively, two and a half per centum, on all moneys which shall be collected and received by them: To the collector for the district of Boston and Charlestown, and to the collectors of Baltimore and Philadelphia, three-eighths of one per centum: To the collectors of Charleston, South Carolina, Salem, and Norfolk, and Portsmouth, three-quarters of one per centum: To the collector of the district of Portland, one per centum; for and on account of the duties arising on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels.

Sec. 3. *And be it further enacted*, That it shall be the duty of the collectors of the several districts of Philadelphia, New York, Boston, Baltimore, Norfolk, and Charleston, and they are hereby respectively directed, to deposit for collection in the Bank of the United States, or at an office of discount and deposit of the said bank, all the bonds taken, or to be taken by them, for duties, by virtue of any law of the United States; but on all money collected by the said banks the commissions aforesaid are to be allowed the said collectors, in like manner as if received by them.

Approved, May 10, 1800.

An Act to amend the act, entitled "An act providing for the sale of the lands of the United States, in the Territory Northwest of the Ohio, and above the mouth of Kentucky river."

Be it enacted, &c., That, for the disposal of the lands of the United States, directed to be sold by the act, entitled "An act providing for the sale of the lands of the United States, in the Territory Northwest of the Ohio, and above the mouth of Kentucky river," there shall be four land offices established in the said territory: One at Cincinnati, for lands below the Little Miami, which have not heretofore been granted; one at Chilicothe, for lands east of the Sciota, south of the lands appropriated for satisfying military bounties to the late army of the United States, and west of the fifteenth range of townships; one at Marietta, for the lands east of the sixteenth range of townships, south of the beforementioned military lands, and south of a line drawn due west from the northwest corner of the first township of the second range, to the said military lands; and one at Steubenville, for the lands north of the last mentioned line, and east or north of the said military lands: Each of the said offices shall be under the direction of an officer, to be called "The Register of the Land Office," who shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall give bond to the United States, with approved security, in the sum of ten thousand dollars, for the faithful discharge of the duties of his office; and shall reside at the place where the land-office is directed to be kept.

Sec. 2. *And be it further enacted*, That it shall be the duty of the surveyor general, and he is hereby expressly enjoined, to prepare and transmit to the registers of the several land offices, before the days herein appointed for commencing sales, general plats of the lands hereby directed to be sold at the said offices, respectively, and also to forward copies of each of the said plats to the Secretary of the Treasury.

Sec. 3. *And be it further enacted*, That the surveyor general shall cause the townships west of the Muskingum, which by the above mentioned act are directed to be sold in quarter townships, to be subdivided into half sections of three hundred and twenty acres each, as nearly as may be, by running parallel lines through the same from east to west, and from south to north, at the distance of one mile from each other, and marking corners, at the distance of each half mile on the lines running from east to west, and at the distance of each mile on those running from south to north, and making the marks, notes, and descriptions, prescribed to surveyors by the abovementioned act: And the interior lines of townships intersected by the Muskingum, and of all the townships lying east of that river, which have not been heretofore actually subdivided into sections, shall also be run and marked in the manner prescribed by the said act, for running and marking the interior lines of townships directed to be sold in sections of six hundred and forty acres each: And in all cases where the exterior lines of the townships, thus to be subdivided into sections or half sections, shall exceed or shall not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half sections in such township, according as the error may be in running the lines from east to west, or from south to north. The sections and half sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats, respectively, and all others as containing the complete legal quantity: And the President of the United States shall fix the compensation of the deputy surveyors, chain-carriers, and axe-men: *Provided*, The whole expense of surveying and marking the lines shall not exceed three dollars for every mile that shall be actually run, surveyed, and marked.

Sec. 4. *And be it further enacted*, That the lands thus subdivided (excluding the sections reserved by the abovementioned act) shall be offered for sale in sections and half sections, subdivided as before directed, at the following places and times, that is to say: those below the Little Miami shall be offered at public vendue, in the town of Cincinnati, on the first Monday of April, one thousand eight hundred and one, under the direction of the register of the land office there established, and of either the Governor or Secretary of the Northwestern Territory: The lands east of Sciota, south of the military lands, and west of the fifteenth range of townships, shall be offered in like manner for sale at Chilicothe, on the first Monday of May, one thousand eight hundred and one, under the direction of the register of the land office there established, and of either the Governor or Secretary of the said territory: The lands east of the sixteenth range of townships, south of the military lands, and west of the Muskingum, including all the townships intersected by that river,

shall be offered for sale in like manner at Marietta, on the last Monday of May, one thousand eight hundred and one, under the direction of the Governor or Secretary, or surveyor general of the said territory. The sales shall remain open at each place for three weeks and no longer. The superintendents shall observe the rules and regulations of the abovementioned act, in classing and selling fractional with entire sections, and in keeping and transmitting accounts of the sales. All lands, remaining unsold, at the closing of either of the public sales, may be disposed of at private sale by the registers of these respective land offices, in the manner hereinafter prescribed. And the register of the land office at Steubenville, after the first day of July next, may proceed to sell at private sale the lands situate within the district assigned to his direction as herein before described, disposing of the same in sections, and classing fractional with entire sections, according to the provisions and regulations of the abovementioned act and of this act: And the register of the land office at Marietta, after the said first day of July next, may proceed to sell, at private sale, any of the lands within the district assigned to his direction as aforesaid, which are east of the river Muskingum, excluding the townships intersected by that river, disposing of the same in sections, and classing fractional with entire sections as aforesaid.

Sec. 5. *And be it further enacted*, That no lands shall be sold by virtue of this act, at either public or private sale, for less than two dollars per acre, and payment may be made for the same by all purchasers, either in specie, or in evidences of the public debt of the United States, at the rates prescribed by the act, entitled "An act to authorize the receipt of evidences of the public debt in payment for the lands of the United States;" and shall be made in the following manner, and under the following conditions, to wit:

1. At the time of purchase, every purchaser shall, exclusively of the fees hereafter mentioned, pay six dollars for every section, and three dollars for every half section, he may have purchased, for surveying expenses, and deposit one-twentieth part of the amount of the purchase money, to be forfeited, if within forty days one-fourth part of the purchase money, including the said twentieth part, is not paid.

2. One-fourth part of the purchase money shall be paid within forty days after the day of sale as aforesaid; another fourth part shall be paid within two years; another fourth part within three years; and another fourth part within four years after the day of sale.

3. Interest, at the rate of six per cent. a year, from the day of sale, shall be charged upon each of the three last payments, payable as they respectively become due.

4. A discount, at the rate of eight per cent. a year, shall be allowed on any of the three last payments, which shall be paid before the same shall become due, reckoning this discount always upon the sum, which would have been demandable by the United States, on the day appointed for such payment.

5. If the first payment of one-fourth part of the purchase money shall not be made within forty days after the sale, the deposit, payment, and fees, paid and made by the purchaser, shall be forfeited, and the lands shall and may, from and after the day when the payment of one fourth part of the purchase money should have been made, be disposed of at private sale, on the same terms and conditions, and in the same manner as the other lands directed by this act to be disposed of at private sale. *Provided*, That the lands which shall have been sold at public sale, and which shall, on account of such failure of payment, revert to the United States, shall not be sold at private sale, for a price less than the price that shall have been offered for the same at public sale.

6. If any tract shall not be completely paid for within one year after the date of the last payment, the tract shall be advertised for sale by the register of the land office within whose district it may lie, in at least five of the most public places in the said district, for at least thirty days before the time of sale; and he shall sell the same at public vendue, during the sitting of the court of quarter sessions of the county in which the land office is kept, for a price not less than the whole arrears due thereon, with the expenses of sale; the surplus, if any, shall be returned to the original purchaser, or to his legal representative; but if the sum due, with interest, be not bidden and paid, then the land shall revert to the United States. All moneys paid therefor shall be forfeited, and the register of the land office may proceed to dispose of the same to any purchaser, as in case of other lands at private sale.

Sec. 6. *And be it further enacted*, That all and every the payments, to be made by virtue of the preceding section, shall be made either to the Treasurer of the United States, or to such person or officer as shall be appointed by the President of the United States, with the advice and consent of the Senate, receiver of public moneys for lands of the United States, at each of the places respectively where the public and private sales of the said lands are to be made; and the said receiver of public moneys shall, before he enters upon the duties of his office, give bond, with approved security, in the sum of ten thousand dollars, for the faithful discharge of his trust; and it shall be the duty of the said Treasurer and receiver of public moneys to give receipts for the moneys by them received, to the persons respectively paying the same; to transmit within thirty days in case of public sale, and quarterly in case of private sale, an account of all the public moneys by them received, specifying the amount received from each person, and distinguishing the sums received for surveying expenses, and those received for purchase money, to the Secretary of the Treasury, and to the registers of the land office, as the case may be. The said receivers of public moneys shall, within three months after receiving the same, transmit the moneys by them received to the Treasurer of the United States; and the receivers of public moneys for the said sales, and also the receivers of public moneys for the sales

which have taken place at Pittsburg under the act, entitled "An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio and above the mouth of Kentucky river," shall receive one per cent. on the money received, as a compensation for clerk hire, receiving, safe-keeping, and transmitting it to the Treasury of the United States.

Sec. 7. *And be it further enacted*, That it shall be the duty of the registers of the land offices, respectively, to receive and enter in books kept for that purpose only, and on which no blank leaves or space shall be left between the different entries, the applications of any person or persons who may apply for the purchase of any section or half section, and who shall pay him the fee hereafter mentioned, and produce a receipt from the Treasurer of the United States, or from the receiver of public moneys appointed for that purpose, for three dollars for each half section such person or persons may apply for, and for at least one-twentieth part of the purchase money, stating carefully in each entry the date of the application, the date of the receipt to him produced, the amount of moneys specified in the said receipt, and the number of the section or half section, township, and range, applied for. If two or more persons shall apply at the same time for the said tract, the register shall immediately determine by lot, in presence of the parties, which of them shall have preference. He shall file the receipt for moneys produced by the party, and give him a copy of his entry, and, if required, a copy of the description of the tract, and a copy of the plat of the same, or either of them; and it shall be his duty to inform the party applying for any one tract, whether the same has already been entered, purchased, or paid for, and at his request to give him a copy of the entry or entries concerning the same. He shall, three months after the date of each application, if the party shall not have within that time produced to him a receipt of the payment of one-fourth part of the purchase money, including the twentieth part above mentioned, enter under its proper date, in the said book of entries, that the payment has not been made, and that the land has reverted to the United States, and he shall make a note of the same in the margin of the book opposite to the original entry. And if the party shall, either at the time of making the original entry, or at any time within three months thereafter, produce a receipt to him, for the fourth part of the purchase money, including the twentieth part aforesaid, he shall file the receipt, make an entry of the same, under its proper date, in the said book of entries, make a note of the same in the margin of the book, opposite to the original entry, and give to the party a certificate, describing the land sold, the sum paid on account, the balance remaining due, the time and times when such balance shall become due, and that if it shall be duly discharged the purchaser, or his assignee or other legal representative, shall be entitled to a patent for the said lands; he shall also upon any subsequent payment being made, and a receipt from the receiver being produced to him, file the original receipt, give a receipt for the same to the party, and enter the same to the credit of the party, in a book kept for that purpose, in which he shall open an account, in the name of each purchaser, for each section or half section that may be sold either at public or private sale, and in which he shall charge the party for the whole purchase money, and give him credit for all his payments; making the proper charges and allowances for interest or discount, as the case may be, according to the provisions of the fourth section of this act; and upon the payment being completed, and the account finally settled, he shall give a certificate of the same to the party; and, on producing to the Secretary of the Treasury the same final certificate, the President of the United States is hereby authorized to grant a patent for the lands to the said purchaser, his heirs or assigns; and all patents shall be countersigned by the Secretary of State, and recorded in his office.

Sec. 8. *And be it further enacted*, That the registers, of the land offices, respectively, shall also note on the book of surveys, or original plat transmitted to them, every tract which may be sold, by inserting the letter A on the day when the same is applied for, and the letter P on the day when a receipt for one-fourth part of the purchase money is produced to them, and by crossing the said letter A on the day when the land shall revert to the United States, on failure of the payment of one-fourth part of the purchase money within three months after the date of application. And the said book of surveys or original plat shall be open at all times, in presence of the register, for the inspection of any individual, applying for the same and paying the proper fee.

Sec. 9. *And be it further enacted* That it shall be the duty of the registers of the land offices to transmit quarterly to the Secretary of the Treasury, and to the surveyor general, an account of the several tracts applied for, of the several tracts for which the payment of one-fourth part of the purchase money has been made, of the several tracts which have reverted to the United States on failure of the said payment; and also an account of all the payments of moneys by them entered, according to the receipts produced to them, specifying the sums of money, the names of the persons paying the same, the names of the officers who have received the same, and the tracts for which the same have been paid.

Sec. 10. *And be it further enacted*, That the registers aforesaid shall be precluded from entering on their books any application for lands in their own name, and in the name of any other person in trust for them; and if any register shall wish to purchase any tract of land, he may do it by application in writing to the surveyor general, who shall enter the same on books kept for that purpose by him, who shall proceed in respect to such applications, and to any payments made for the same, in the same manner which the registers by this act are directed to follow, in respect to applications made to them for lands by other persons. The registers shall, nevertheless, note on the book of surveys, or original plat, the applications and payments thus by them made, and their right to the pre-emption of any tract shall bear date from the day, when their application for the same shall have been entered by the surveyor general in his own book. And if any person applying for any tract shall, notwithstanding he shall have received information from the register, that the same has already been applied for by the said register, or by any other person, insist to make the application, it shall be the duty of the register to enter the same, noting in the margin that the same tract is already purchased; but upon application of the party made in writing, and which he shall file, he may and shall at any future time enter under its proper date, that the party withdraws his former application, and applies in lieu thereof for any other tract: *Provided, always*, That the party shall never be allowed thus to withdraw his former application, and to apply in lieu thereof for another tract, except when the tract described in his former application shall have been applied for previous to the date of that his former application.

Sec. 11. *And be it further enacted*, That the Secretary of the Treasury shall and may prescribe such further regulations, in the manner of keeping books and accounts, by the several officers in this act mentioned, as to him may appear necessary and proper, in order fully to carry into effect the provisions of this act.

Sec. 12. *And be it further enacted*, That the registers of the land offices, respectively, shall be entitled to receive from the Treasury of the United States, one-half per cent. on all the moneys expressed in the receipts by them filed and entered, and of which they shall have transmitted an account to the Secretary of the Treasury, as directed by this act; and they shall further be entitled to receive, for their own use, from the respective parties, the following fees for services rendered, that is to say: for every original application for land, and a copy of the same, for a section, three dollars; for a half section, two dollars; for every certificate stating that the first fourth part of the purchase money is paid, twenty-five cents; for every subsequent receipt for moneys paid, twenty-five cents; for the final settlement of account, and giving the final certificate of the same, one dollar; for every copy, either of an application or of the description of any section or half section, or of the plat of the same, or of any entry made on their books, or of any certificate heretofore given by them, twenty-five cents for each; and for any general inspection of the book of surveys, or general plat, made in their presence, twenty-five cents.

Sec. 13. *And be it further enacted*, That the superintendents of the public sales, to be made by virtue of this act, and the superintendents of the sales which have taken place by virtue of the act, entitled "An act providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio, and above the mouth of Kentucky river," shall receive five dollars a day whilst engaged in that business; and the accounting officers of the Treasury are hereby authorized to allow a reasonable compensation for books, stationery, and clerk hire, in settling the accounts of the said superintendents.

Sec. 14. *And be it further enacted*, That the fee to be paid for each patent for half a section shall be four dollars, and for every section five dollars, to be accounted for by the receiver of the same.

Sec. 15. *And be it further enacted*, That the lands of the United States reserved for future disposition, may be let upon leases by the surveyor general, in sections or half sections, for terms not exceeding seven years, on condition of making such improvement as he shall deem reasonable.

Sec. 16. *And be it further enacted*, That each person who, before the passing of this act, shall have erected, or begun to erect, a grist-mill or saw-mill upon any of the lands herein directed to be sold, shall be entitled to the pre-emption of the section including such mill, at the rate of two dollars per acre: *Provided*, The person or his heirs, claiming such right of pre-emption, shall produce to the register of the land office satisfactory evidence that he or they are entitled thereto, and shall be subject to and comply with the regulations and provisions by this act prescribed for other purchasers.

Sec. 17. *And be it further enacted*, That so much of the "act providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio, and above the mouth of Kentucky river," as comes within the purview of this act, be, and the same is hereby, repealed.

Approved, May 10, 1800.

An Act to ascertain the compensation of public Ministers.

Be it enacted, &c., That, exclusive of an outfit, which shall in no case exceed the amount of one year's full salary to any minister plenipotentiary or chargé des affaires, to whom the same may be allowed, the President of the United States shall not allow to any minister plenipotentiary a greater sum than at the rate of nine thousand dollars per annum, as a compensation for all his personal services and expenses; nor a greater sum for the same than four thousand five hundred dollars per annum to a chargé des affaires; nor a greater sum for the same than one thousand three hundred and fifty dollars per annum to the secretary of any minister plenipotentiary.

Sec. 2. *And be it further enacted*, That where any sum or sums of money shall be drawn from the Treasury, under any law making appropriation for the contingent expenses of intercourse between the United States and foreign nations, the President shall be, and he hereby is, authorized to cause the same to be duly settled, annually, with the accounting officers of the Treasury, in manner following, that is to say: by causing the same to be accounted for specially in all instances wherein the expenditure thereof may, in his judgment, be made public, and by making a certificate of the amount of such expenditure as he may think it adviseable not to specify, and every such

certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended.

Approved, May 10, 1800.

An Act to make appropriations for the Navy of the United States, during the year one thousand eight hundred.

Be it enacted, &c., That, for defraying the expenses of the navy of the United States, during the year one thousand eight hundred, there shall be, and hereby is, appropriated the sum of two millions, four hundred and eighty-two thousand nine hundred and fifty-three dollars and ninety-nine cents, that is to say: for the pay of the officers of the navy of the United States, the sum of three hundred and ninety-one thousand five hundred and ninety-six dollars; for the subsistence of the officers of the navy, the sum of seventy thousand seven hundred and twenty-two dollars and forty cents; for the pay of the seamen, the sum of eight hundred and eighteen thousand three hundred and forty dollars; for provisions, the sum of six hundred and three thousand six hundred and forty-two dollars and sixty-seven cents; for contingent expenses, including the waste of military stores, the expense of the navy store at Philadelphia, comprising storekeeper's salary, clerk hire, store rent, laborers, porterage, and freight, and for making good deficiencies in former appropriations, and for similar expenses at Boston, Newport, Baltimore, Norfolk, New York, and other ports, the sum of three hundred and ninety-three thousand six hundred dollars; for the expense of hospitals, medicines, and hospital stores, the sum of thirty-two thousand six hundred and forty-seven dollars and twenty cents; for the support of the revenue cutters, while employed in the navy service, the sum of ten thousand dollars; for the pay of the officers, non-commissioned officers, and privates, of the marine corps, the sum of ninety-four thousand seven hundred and thirty-four dollars; for subsistence of the officers of the said corps, the sum of eight thousand and eighteen dollars and sixty cents; for clothing for the said corps, the sum of thirty-three thousand five hundred and thirty dollars and seventy-four cents; for military stores for the said corps, the sum of twelve thousand two hundred and seventy-seven dollars and eighty-eight cents; for the contingent expenses of the said corps, including camp equipage, quartermaster's, barrackmaster's, and hospital stores, and bounties and premiums, the sum of thirteen thousand eight hundred and forty-four dollars.

Sec. 2. *And be it further enacted*, That the aforesaid appropriations shall be paid out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, May 10, 1800.

An Act supplimentary to the act, entitled "An act to establish the Treasury Department."

Be it enacted, &c., That it shall be the duty of the Secretary of the Treasury to digest, prepare, and lay before Congress, at the commencement of every session, a report on the subject of finance, containing estimates of the public revenue and public expenditures, and plans for improving or increasing the revenues, from time to time, for the purpose of giving information to Congress in adopting modes of raising the money requisite to meet the public expenditures.

Approved, May 10, 1800.

An Act to authorize the issuing certain Patents.

Be it enacted, &c., That it shall be lawful, and the proper officer is hereby authorized, to issue patents or surveys, which have been, or may be made within the territory reserved by the State of Virginia, northwest of the river Ohio, and being part of her cession to Congress, on warrants for military services, issued in pursuance of any resolution of the Legislature of that State, previous to the passing of this act, in favor of persons who had served in the Virginia line on the Continental establishment: *Provided*, That the whole quantity of land, for which patents shall issue by virtue of this act, shall not exceed sixty thousand acres; and that the surveys aforesaid shall be completed and deposited in the office of the Secretary of War, on or before the first day of December, one thousand eight hundred and three: *And provided, also*, That this act shall not give any force or validity to the entries, locations, or surveys, heretofore made in pursuance of these warrants, so far as such entries, locations, or surveys, interfere in any manner with those of persons claiming the same lands under entries, locations, or surveys, heretofore made, in pursuance of warrants granted by the State of Virginia to the officers and soldiers in the line of that State on Continental establishment.

Sec. 2. *And be it further enacted*, That in every case of interfering claims under military warrants, to lands within the territory so reserved by the State of Virginia, when either party to such claims shall lose, or be evicted from the land, every such party shall have a right, and hereby is authorized, to withdraw his, her, or their warrant, respectively, to the amount of such loss or eviction, and to enter, survey, and patent the same, on any vacant land within the bounds aforesaid, and in the same manner as other warrants may be entered, surveyed, and patented.

Approved, May 13, 1800.

An Act to enlarge the powers of Surveyors of the Revenue.

Be it enacted, &c., That whenever it shall appear to the surveyors of the revenue, appointed or to be appointed in any assessment district within the United States, under the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," that any tract of land or dwelling-house, situated within his district, and directed by the said act to be included in the lists, thereby required to be rendered and kept, hath been omitted

in the said lists, then, and in every such case, it shall be the duty of such surveyor, and he hereby is authorized and required, to inform himself of the value of such tract of land or dwelling-house, by entry, view, or other lawful ways and means, and to make a list and valuation thereof, in the form and manner prescribed in and by the said act, and to enter and record the said lists and valuation with and among the lists and valuations by him to be kept and recorded pursuant to the said act; and to charge the amount of the said valuation to the person or persons to whom the same ought to be charged, pursuant to the said act and to the act, entitled, "An act to lay and collect a direct tax within the United States;" and that where any assessor, no list having been rendered, shall have estimated any tract of unseated land to contain a greater number of acres than the said tract shall, by the patent or survey of the same, actually appear to contain, it shall appear to the surveyor of the assessment district in which the said land shall be situate, by the production of the said patent or survey thereof, that there has been a mistake in estimating the said number of acres, it shall be lawful for such surveyor to credit the proprietor or proprietors thereof with the number of acres so over-charged: *Provided*, That the said credit shall not operate to lessen the sum directed to be collected by virtue of the present law to lay and collect a direct tax: *And provided also*, That no credit shall be valid until the same shall have been approved by the inspector of the survey, or the supervisor of the district, if comprehending but one survey of inspection; and if any error has happened, by charging any person with being the proprietor of any tract or parcel of unseated land, who was not the owner thereof, on the first day of October, one thousand seven hundred and ninety-eight, or by assessing to any person any tract or parcel of unseated land more than once as proprietor thereof, it shall be lawful in all or any of these cases, for the surveyor of the district in which the said error shall have happened, to correct the same by giving the person so charged such credit in his account respecting the said land as may be just and equitable.

Sec. 2. *And be it further enacted*, That, for the services aforesaid, the surveyors of the revenue shall respectively be entitled to, and receive from the United States, the following compensations, that is to say: For every tract of land or dwelling-house, valued and recorded as aforesaid without entry and view, seventy-five cents; for every tract of land or dwelling-house so valued and recorded with entry and view, two dollars; for every mile of necessary travel in going to make such entry and view and returning, five cents; and that the accounts for the said compensations shall be presented to the supervisors of the districts respectively, and if allowed by them, shall be paid by them and credited to their accounts respectively, in the settlement thereof with the Treasury Department.

Sec. 3. *And be it further enacted*, That whenever any person shall have been charged, pursuant to the above mentioned acts or either of them, or to this act, with the amount of the valuation of any tract of land or dwelling-house; and such person, or his or her legal representatives or assigns, shall afterwards in due course of law have been ejected from such land or dwelling-house, or have had a decision against him, her, or them, upon the title thereof, then, and in every such case, it shall be the duty of the surveyor of the revenue within whose assessment district the said land or dwelling-house shall be situated, and he is hereby authorized and required, on the application of such person, or of his or her legal representatives or assigns, as the case may be, and on the payment or tender by them, or any of them, of the sum of one dollar for every such tract of land or dwelling-house, which sum the said surveyor is hereby authorized to demand and receive in such case, to cancel the valuation on such land or dwelling-house, so far as respects the persons so applying, and to discharge him or her therefrom.

Approved May 13, 1800.

An Act to amend an act, entitled "An act to establish the Judicial Courts of the United States."

Be it enacted, &c., That jurors to serve in the courts of the United States shall be designated by lot, or otherwise, in each State or district respectively, according to the mode of forming juries to serve in the highest courts of law therein now practised; so far as the same shall render such designation practicable by the courts and marshals of the United States.

Approved, May 13, 1800.

An Act to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians.

Be it enacted, &c., That a sum not exceeding fifteen thousand dollars be appropriated, to defray the expense of such treaty or treaties, as the President of the United States shall deem it expedient to hold with the Indians south of the river Ohio: *Provided*, nothing in this act contained shall be construed to admit an obligation on the part of the United States to extinguish, for the benefit of any State or individual citizen, Indian claims to any lands lying within the limits of the United States; and that the compensation to be allowed to any of the commissioners who may be appointed for negotiating such treaty or treaties, shall not exceed, exclusive of travelling expenses the rate of eight dollars per day during the time of actual service of such commissioner.

Sec. 2. *And be it further enacted*, That the sum aforesaid shall be paid out of any moneys in the Treasury of the United States, not otherwise appropriated.

Approved, May 13, 1800.

An Act directing the payment of a detachment of the militia under the command of Major Thomas Johnson, in the year one thousand seven hundred and ninety-four.

Be it enacted, &c., That the proper accounting officers of the Treasury be, and they are hereby,

authorized to settle the accounts of the militia, who served on an expedition, commanded by Major Thomas Johnson, against the Indians, in the year one thousand seven hundred and ninety-four, and that the same be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, May 13, 1800.

An Act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures.

Be it enacted, &c., That, from and after the thirtieth day of June next, two and one-half per centum on the amount of all drawbacks, allowed or to be allowed by law, upon and for the re-exportation from the United States of goods, wares, or merchandise, imported thereinto, shall be retained for the use of the United States, by the collectors paying such drawbacks, respectively; and in addition to the sum of one and one quarter per centum, heretofore directed by law to be so retained.

Sec. 2. *And be it further enacted*, That in case of the re-exportation from the United States of goods, wares, and merchandise, imported thereinto in foreign ships or vessels, no part of the additional duty imposed by law on such goods, wares, and merchandise, on account of their importation in such ships or vessels, shall be allowed to be drawback; but that the whole of the said additional duty shall be retained, in manner aforesaid, in addition to the rate per centum by this and former acts directed to be retained.

Approved, May 13, 1800.

An Act to authorize certain expenditures, and to make certain appropriations for the year one thousand eight hundred.

Be it enacted, &c., That the Secretary of the Senate, and the Clerk of the House of Representatives, respectively, shall have allowed to them, in the settlement of their accounts with the Treasury Department, the expenses by them respectively incurred, pursuant to the directions of the joint committee of the two Houses, in the various measures adopted by the said committee for doing honor to the memory of George Washington, late President of the United States; and that a sum not exceeding three thousand two hundred dollars shall be and hereby is appropriated for defraying the said expenses.

Sec. 2. *And be it further enacted*, That the President of the United States shall be, and hereby is, authorized and empowered to cause to be given, during the present year, to the Choctaw nation of Indians, such presents, not exceeding the value of two thousand dollars, as he shall judge most suitable; and that the sum of two thousand dollars shall be and hereby is appropriated for that purpose.

Sec. 3. *And be it further enacted*, That the President of the United States shall be, and hereby is, authorized and empowered to cause to be expended a sum not exceeding five thousand dollars, for the reimbursement of such reasonable advances of money as have heretofore been, or before the first day of September next may be, made by consuls of the United States, in making and supporting the claims of American citizens for captured property, before the tribunals of foreign countries; and that the sum of five thousand dollars shall be and hereby is appropriated for that purpose.

Sec. 4. *And be it further enacted*, That the sum of forty-four thousand dollars shall be, and hereby is, appropriated for defraying the expense that has been, or during the present year may be, incurred by the payment of costs, in prize causes before the court of admiralty and court of appeals in England.

Sec. 5. *And be it further enacted*, That for defraying the expense incident to the visits of Indians to the seat of Government, the sum of seven thousand five hundred dollars shall be and hereby is appropriated.

Sec. 6. *And be it further enacted*, That for defraying, during the present year, the additional compensations granted in the present session to the Secretary of the Senate, and Clerk of the House of Representatives, and to the clerks in their respective offices, the sum of one thousand five hundred dollars shall be and hereby is appropriated.

Sec. 7. *And be it further enacted*, That for defraying the expenses incident, during the present year, to the establishment of the general stamp-office, including the salary of the superintendent of stamps, clerk hire, office rent, and all contingent expenses, the sum of four thousand dollars shall be and hereby is appropriated.

Sec. 8. *And be it further enacted*, That for defraying, during the present year, the expense incident to the establishment of the government of the Indiana Territory, including the salary of the governor, judges and secretary, and all contingent expenses, the sum of four thousand dollars shall be and hereby is appropriated.

Sec. 9. *And be it further enacted*, That for defraying the expense incident to the exploring of copper mines on Lake Superior, the sum of one thousand five hundred dollars shall be and hereby is appropriated.

Sec. 10. *And be it further enacted*, That there be appropriated for the present year, the sum of one hundred thousand dollars, to be applied to the fortification of the ports and harbors of the United States, in aid of the sums heretofore appropriated for that purpose and remaining unexpended.

Sec. 11. *And be it further enacted*, That the aforesaid appropriations shall be paid out of any money in the Treasury of the United States not otherwise appropriated.

Approved, May 13, 1800.

An Act to lay additional duties on certain articles imported.

Be it enacted, &c., That from and after the thirtieth day of June next, the following duties, in addition to those now in force, and payable on the several articles hereinafter enumerated, shall be laid, levied, and collected upon those articles respectively, at their importation into the United States from any foreign country or place; that is to say: upon all brown sugar, one-half cent per pound; upon all sugar candy, two cents and one-half per pound; upon all molasses, one cent per gallon; and upon all goods, wares, and merchandises, now paying a duty of ten per cent. ad valorem, two and one-half per centum ad valorem.

Sec. 2. *And be it further enacted*, That from and after the thirtieth day of June next, the duties now imposed and payable on wines, imported into the United States from any foreign port or place, shall cease and be abolished; and that in lieu thereof the following duties shall thenceforth be laid, levied, and collected upon all wines so imported in casks, bottles, or other vessels; that is to say: Upon all Malmsey, Madeira, and London Particular Madeira wine, fifty-eight cents per gallon; upon all other Madeira wine, fifty cents per gallon; upon all Burgundy, Champaign, Rhenish, and Tokay wine, forty-five cents per gallon; upon all Sherry wine, forty cents per gallon; upon all Saint Lucar wine, forty cents per gallon; upon all Claret and other wines not enumerated, when imported in bottles or cases, thirty-five cents per gallon; upon all Lisbon, Oporto, and other Portugal wines, thirty cents per gallon; upon all Teneriffe, Fayal, Malaga, Saint George, and other Western Island wine, twenty cents per gallon; and upon all other wines when imported, otherwise than in bottles or cases, twenty-three cents per gallon.

Sec. 3. *And be it further enacted*, That an addition of ten per centum shall be made to the several rates of duties above specified and imposed, in respect to all such goods, wares, and merchandises as aforesaid, as shall after the said thirtieth day of June be imported in ships or vessels not of the United States.

Sec. 4. *And be it further enacted*, That the duties laid by this act shall be levied and collected in the same manner, and under the same regulations and allowances as to drawbacks, mode of security, and time of payment, respectively, with the several duties now in force on the respective articles hereinbefore enumerated.

Sec. 5. *And be it further enacted*, That on account of the additional duties laid on brown sugar and molasses by this act, the following sums respectively shall, from and after the thirty-first day of December next, be added to the drawbacks now allowed by law, on sugar refined within the United States and exported therefrom, and on spirits distilled from molasses within the United States and exported therefrom, that is to say: On all sugar so refined and exported, one cent per pound; and on all spirits so distilled and exported, one cent per gallon; which additional drawbacks shall be allowed and paid according to the regulations now established by law, respecting the present drawbacks allowed on the said articles.

Sec. 6. *And be it further enacted*, That the proceeds of the duties, laid by this act, shall be solely appropriated and applied for the discharge of the interest and principal of the debts of the United States, heretofore contracted, or to be contracted during the present year.

Approved, May 13, 1800.

An Act appointing the time, and directing the place of the next meeting of Congress.

Be it enacted, &c., That the session of Congress next ensuing the present shall be held at the city of Washington, in the District of Columbia, and said session shall commence on the third Monday of November, one thousand eight hundred.

Approved, May 13, 1800.

An Act to make provision relative to rations for Indians, and to their visits to the seat of Government.

Be it enacted, &c., That the President of the United States shall be, and hereby is, authorized and empowered to cause such rations as he shall judge proper, and as can be spared from the army provisions without injury to the service, to be issued, under such regulations as he shall think fit to establish, to Indians who may visit the military posts of the United States on the frontiers, or within their respective nations.

Sec. 2. *And be it further enacted*, That the President of the United States shall be, and hereby is, further authorized and empowered to cause to be defrayed, on the part of the United States, the reasonable expenses of such Indians as may from time to time visit the seat of Government thereof, for their journeys to, stay at, and return from the same; and also to cause to be given to such Indians, during their stay as aforesaid, such presents as he shall judge necessary.

Sec. 3. *And be it further enacted*, That a separate account of all rations issued, and expenses defrayed as aforesaid, and of the expenditures, occasioned by such presents as are aforesaid, shall be kept at the Department of War.

Approved, May 13, 1800.

An Act supplementary to the act to suspend part of an act, entitled "An act to augment the Army of the United States, and for other purposes."

Be it enacted, &c., That it shall be lawful for the President of the United States to suspend any further military appointments, under the act to augment the army of the United States, and for other purposes; and under the ninth section of the act for the better organizing of the troops of the United States, and for other purposes; according to his discretion, having reference to economy and the good of the service.

Sec. 2. *And be it further enacted*, That the President of the United States shall be, and hereby is, authorized and empowered to discharge, on or before the fifteenth day of June next, all such officers, non-commissioned officers, and privates, as have heretofore been appointed, commissioned, or raised, under and by virtue of the said acts, or either of them, except the engineers, inspector of artillery, and inspector of fortifications: *Provided always*, That nothing in this act contained shall be con-

strued to authorize any reduction of the first four regiments of infantry, the two regiments of artillerists and engineers, the two troops of light dragoons, or of the general and other staff, authorized by the several laws for the establishing and organizing of the aforesaid corps.

SEC. 3. *And be it further enacted*, That to each officer, non-commissioned officer, and private, who shall be discharged from service by virtue of this act, there shall be allowed and paid, in addition to the pay and allowances to which they are now entitled by law, a sum of money equal to three months' pay of such officer, non-commissioned officer, and private, respectively.

Approved, May 14, 1800.

An Act supplementary to the act establishing the Mint, and regulating the coins of the United States.

Be it enacted, &c., That until the fourth day of March, one thousand eight hundred and one, the Mint shall remain in the city of Philadelphia, and be carried on as heretofore under the laws now in force; any law to the contrary notwithstanding.

Approved, May 14, 1800.

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That a marble monument be erected by the United States, in the Capitol, at the City of Washington, and that the family of General Washington be requested to permit his body to be deposited under it; and that the monument be so designed as to commemorate the great events of his military and political life.

And be it further resolved, That there be a funeral procession from Congress Hall to the German Lutheran Church, in honor of the memory of General George Washington, on Thursday the twenty-sixth instant, and that an oration be prepared at the request of Congress to be delivered before both Houses on that day; and that the President of the Senate, and Speaker of the House of Representatives, be desired to request one of the members of Congress to prepare and deliver the same.

And be it further resolved, That it be recommended to the people of the United States to wear crape on the left arm, as mourning, for thirty days.

And be it further resolved, That the President of the United States be requested to direct a copy of these resolutions to be transmitted to Mrs. Washington, assuring her of the profound respect Congress will ever bear to her person and character; of their condolence on the late afflicting dispensation of Providence; and intreating her assent to the interment of the remains of General George Washington, in the manner expressed in the first resolution.

And be it further resolved, That the President of the United States be requested to issue a proclamation, notifying to the people throughout the United States the recommendation contained in the third resolution.

Approved, December 24, 1799.

Resolution on the death of General Washington.

Resolved, &c., That it be recommended to the people of the United States to assemble on the twenty-second day of February next, in such numbers and manner as may be convenient, publicly to testify their grief for the death of General George Washington, by suitable eulogies, orations, and discourses, or by public prayers.

And it is further resolved, That the President be requested to issue a proclamation for the purpose of carrying the foregoing resolution into effect

Approved, January 6, 1800.

Resolved, &c., That the Secretary of State be, and he is hereby, authorized and directed to procure and transmit to the Governor of the State of North Carolina, a number of the copies of the laws of the United States, equal to the number which the Secretary was heretofore authorized to transmit to the Governor of the said State, by an act, entitled "An act for the more general promulgation of the laws of the United States," to be deposited and distributed agreeably to the provisions of the said act, for the use and information of the citizens of the United States within the said State.

Approved, February 3, 1800.

Resolved, &c., That the President of the United States be requested to present to Captain Thomas Truxtun, a golden medal, emblematical of the late action between the United States' frigate Constellation, of thirty-eight guns, and the French ship of war La Vengeance, of fifty-four; in testimony of the high sense entertained by Congress of his gallantry and good conduct in the above engagement, wherein an example was exhibited by the captain, officers, sailors, and marines, honorable to the American name, and instructive to its rising navy.

And it is further resolved, That the conduct of James Jarvis, a midshipman in said frigate, who gloriously preferred certain death to an abandonment of his post, is deserving of the highest praise, and that the loss of so promising an officer is a subject of national regret.

Approved, March 29, 1800.

Resolution respecting the copper mines on the south side of Lake Superior.

Resolved, &c., That the President of the United States be authorized to employ an agent, who shall be instructed to collect all material information relative to the copper mines on the south side of Lake Superior, and to ascertain whether the Indian title to such lands as might be required for the use of the United States, in case they should deem it expedient to work the said mines, be yet subsisting, and, if so, the terms on which the same can be extinguished: And that the said agent be instructed to make report to the President in such time as the information he may collect may be laid before Congress at their next session.

Approved, April 16, 1800.

ACTS PASSED AT THE SECOND SESSION OF THE SIXTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, NOVEMBER 17, 1800.

AN ACT extending the privilege of franking letters to the delegate from the Territory of the United States Northwest of the river Ohio; and making provision for his compensation.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the present delegate to Congress from the Territory of the United States Northwest of the river Ohio, and every future delegate from the said Territory, shall be entitled to the privilege of sending and receiving letters, free of postage, on the same terms, and under the same restrictions, as are provided for the members of the Senate and of the House of Representatives of the United States, by the act entitled "An act to establish the Post Office of the United States."

SEC. 2. *And be it further enacted*, That the present delegate from the aforesaid Territory be authorized to receive, free of postage, under the said restrictions, any letters directed to him, and which shall have arrived at the seat of Government, prior to the passage of this act.

SEC. 3. *And be it further enacted*, That the said delegate, and every future delegate from the Territory of the United States Northwest of the river Ohio, shall receive, for his travelling expenses and attendance in Congress, the same compensation as is, or may be allowed, by law, to the members of the House of Representatives of the United States; to be certified and paid in the same manner.

THEODORE SEDGWICK,
Speaker of the House of Representatives.
THOMAS JEFFERSON,
Vice President of the United States, and President of the Senate.

Approved, December 15, 1800.

JOHN ADAMS.
President of the United States.

An Act to provide for the erection and support of a light-house on Cape Poge, at the northeasterly part of Martha's Vineyard.

Be it enacted, &c., That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on Cape Poge, (so called,) on Martha's Vineyard, in the State of Massachusetts, and to appoint a keeper, and otherwise to provide for the support of such light-house, at the expense of the United States: *Provided*, That sufficient land for the accommodation of such light house, together with the jurisdiction thereof, shall be duly and legally granted to, and vested in the United States.

SEC. 2. *And be it further enacted*, That there shall be, and hereby is, appropriated for the erection of said light-house on Cape Poge, a sum not exceeding two thousand dollars, to be paid out of any moneys which may be in the Treasury of the United States, not otherwise appropriated.

Approved, January 30, 1801.

An Act to provide for the more convenient organization of the Courts of the United States.

Be it enacted, &c., That, from and after the next session of the Supreme Court of the United States, the said court shall be holden by the justices thereof, or any four of them, at the City of Washington, and shall have two sessions in each and every year thereafter, to commence on the first Monday of June and December, respectively; and that if four of the said justices shall not attend within ten days after the times hereby appointed for the commencement of the said sessions, respectively, the said court shall be continued over till the next stated session thereof: *Provided always*, That any one or more of the said justices, attending as aforesaid, shall have power to make all necessary orders touching any suit, action, appeal, writ of error, process, pleadings, or proceeding, returned to the said court or depending therein, preparatory to the hearing, trial or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings.

SEC. 2. *And be it further enacted*, That the said court shall have power, and is hereby authorized, to issue writs of prohibition, mandamus, scire facias, habeas corpus, certiorari, procedendo, and all other writs not specially provided for by statute, which may be necessary for the exercise of its jurisdiction, and agreeable to the principles and usages of law.

SEC. 3. *And be it further enacted*, That, from and after the next vacancy that shall happen in the said court, it shall consist of five justices only; that is to say, of one chief justice, and four associate justices.

SEC. 4. *And be it further enacted*, That, for the better establishment of the circuit courts of the United States, the said States shall be, and hereby are, divided into districts, in manner following; that is to say, one to consist of that part of the State of Massachusetts, which is called the district of Maine, and to be called the district of Maine; one to consist of the State of New Hampshire, and to be called the district of New Hampshire; one to consist of the remaining part of the State of Massachusetts, and to be called the district of Massachusetts; one to consist of the State of Rhode Island and Providence Plantations, and to be called the district of Rhode Island; one to consist of the State of Connecticut, and to be called the district of Connecticut; one to consist of the State of Vermont, and to be called the district of Vermont; one to consist of that part of the State of New York which lies north of the counties of Dutchess and Ulster, and to be called the district of Albany;

one to consist of the remaining part of the State of New York, and to be called the district of New York; one to consist of the State of New Jersey and to be called the district of Jersey; one to consist of that part of the State of Pennsylvania which lies east of the river Susquehanna, and the north-east branch thereof, to the line betwixt Northumberland and Luzerne counties; thence westwardly along said line, betwixt Northumberland and Luzerne, and between Luzerne and Lycoming counties, until the same strikes the line of the State of New York, and to be called the eastern district of Pennsylvania; one to consist of the remaining part of the State of Pennsylvania, and to be called the western district of Pennsylvania; one to consist of the State of Delaware, and to be called the district of Delaware; one to consist of the State of Maryland, and to be called the district of Maryland; one to consist of that part of the State of Virginia, which lies to the eastward of a line to be drawn from the river Potomac at Harper's Ferry, along the Blue Ridge, with the line which divides the counties on the east side thereof from those on the west side thereof, to the North Carolina line, to be called the eastern district of Virginia; one to consist of the remaining part of the said State of Virginia, to be called the western district of Virginia; one to consist of the State of North Carolina, and to be called the district of North Carolina; one to consist of the State of South Carolina, and to be called the district of South Carolina; one to consist of the State of Georgia, and to be called the district of Georgia; one to consist of that part of the State of Tennessee which lies on the east side of Cumberland mountain, and to be called the district of East Tennessee; one to consist of the remaining part of said State, and to be called the district of West Tennessee; one to consist of the State of Kentucky, and to be called the district of Kentucky; and one to consist of the Territory of the United States Northwest of the Ohio, and the Indiana Territory, and to be called the district of Ohio.

Sec. 5. *And be it further enacted*, That where any two adjoining districts of the United States shall be divided from each other, in whole or in part by any river, bay, water, water-course, or mountain, the whole width of such river, bay, water, water-course, or mountain, as the case may be, shall be taken and deemed, to all intents and purposes, to be within both of the districts so to be divided thereby.

Sec. 6. *And be it further enacted*, That the said districts shall be classed into six circuits, in manner following; that is to say: the first circuit shall consist of the districts of Maine, New Hampshire, Massachusetts, and Rhode-Island; the second, of the districts of Connecticut, Vermont, Albany, and New York; the third, of the districts of Jersey, the eastern and western districts of Pennsylvania and Delaware; the fourth, of the district of Maryland, and the eastern and western districts of Virginia; the fifth, of the districts of North Carolina, South Carolina and Georgia; and the sixth, of the districts of East Tennessee, West Tennessee, Kentucky, and Ohio.

Sec. 7. *And be it further enacted*, That there shall be in each of the aforesaid circuits, except the sixth circuit, three judges of the United States, to be called circuit judges, one of whom shall be commissioned as chief judge; and that there shall be a circuit court of the United States, in and for each of the aforesaid circuits, to be composed of the circuit judges within the five first circuits respectively, and in the sixth circuit, by a circuit judge, and the judges of the district courts of Kentucky and Tennessee; the duty of all of whom it shall be to attend, but any two of whom shall form a quorum; and that each and every of the said circuit courts shall hold two sessions annually, at the times and places following, in and for each district contained within their several circuits respectively: that is to say, the circuit court of the first circuit, at Providence, on the eighth day of May, and at Newport, on the first day of November, in and for the district of Rhode Island; at Boston, in and for the district of Massachusetts, on the twenty-second day of May and the fifteenth day of October; at Portsmouth on the eighth day of June, and at Exeter on the twenty-ninth day of September, in and for the district of New Hampshire; in and for the district of Maine, at Portland on the fifteenth day of June, and at Wiscasset on the twenty-second day of September. The circuit court of the second circuit, at New Haven on the fifteenth day of April; and at Hartford, on the twenty-fifth day of September, in and for the district of Connecticut; at Windsor, on the fifth day of May, and at Rutland on the fifteenth day of October, in and for the district of Vermont; at the city of Albany, in and for the district of Albany, on the twentieth day of May and twenty-fifth day of October; at the city of New York, in and for the district of New-York, on the fifth day of June and the tenth day of November. The circuit court of the third circuit, at Trenton, in and for the district of Jersey, on the second days of May and October; at the city of Philadelphia, in and for the Eastern district of Pennsylvania, on the eleventh day of May and eleventh day of October; at Bedford, in and for the Western district of Pennsylvania, on the twenty-fifth day of June and twenty-fifth day of November; and at Dover, in and for the district of Delaware, on the third day of June and twenty-seventh day of October. The circuit court of the fourth circuit at Baltimore, in and for the district of Maryland, on the twentieth day of March and fifth day of November; at Lexington in Rockbridge county, in and for the Western district of Virginia, on the fifth day of April and twentieth day of November; and at the city of Richmond, in and for the eastern district of Virginia, on the twenty-fifth day of April, and fifth day of December. The circuit court of the fifth circuit, at Raleigh, in and for the district of North Carolina, on the first day of June and the first day of November; at Charleston on the sixth day of May, and at Columbia on the thirtieth day of November, in and for the district of South Carolina; at Savannah on the tenth day of April, and at Augusta on the fifteenth day of December, in and for the district of Georgia; and the circuit court of the sixth

circuit at Knoxville, in and for the district of East Tennessee, on the twenty-fifth day of March and twenty-fifth day of September; at Nashville, in and for the district of West Tennessee, on the twentieth day of April and twentieth day of October; and at Bairdstown, in and for the district of Kentucky, on the fifteenth day of May and fifteenth day of November; and at Cincinnati in and for the district of Ohio, on the tenth day of June and on the tenth day of December; and so on the several days and at the several places aforesaid, in each and every year afterwards: *Provided always*, That when any of the said days shall happen on Sunday, then the said court hereby directed to be holden on such day, shall be holden on the next day thereafter; and provided also, that there shall be appointed, in the sixth circuit, a judge of the United States, to be called a circuit judge, who together with the district judges of Tennessee and Kentucky, shall hold the circuit courts, hereby directed to be holden, within the said circuit; and that whenever the office of district judge, in the districts of Kentucky and Tennessee, respectively, shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges, in the said circuit, who, together with the circuit judge first aforesaid, shall compose the circuit court of the said circuit.

Sec. 8. *Provided always, and be it further enacted*, That the said circuit courts hereby established shall have power, and hereby are authorized, to hold special sessions, for the trial of criminal causes, at any other time or times than is hereby directed, at their discretion.

Sec. 9. *And provided also, and be it further enacted*, That if, in the opinion of any judge of any of the said circuit courts, it shall be dangerous to hold the next stated session of such court, for any district within the circuit to which such judge shall belong, at the place by law appointed for holding the same; it shall be lawful for such judge to issue his order, under his hand and seal, to the marshal of such court, directing him to adjourn the said session, to such other place within the same district as the said judge shall deem convenient; which said marshal, thereupon, shall adjourn the said court pursuant to such order, by making, in one or more public papers, printed within the said district, publication of such order and adjournment, from the time when he shall receive such order, to the time appointed by law for commencing such stated session; and that the court so to be held, according to, and by virtue of such adjournment, shall have the same powers and authorities, and shall proceed in the same manner, as if the same had been held at the place appointed by law for that purpose.

Sec. 10. *And be it further enacted*, That the circuit courts shall have, and hereby are invested with, all the powers heretofore granted by law to the circuit courts of the United States, unless where otherwise provided by this act.

Sec. 11. *And be it further enacted*, That the said circuit courts respectively shall have cognizance of all crimes and offences cognizable under the authority of the United States, and committed within their respective districts, or upon the high seas: and also of all cases in law or equity, arising under the Constitution and laws of the United States, and treaties made, or which shall be made, under their authority; and also of all actions, or suits of a civil nature, at common law, or in equity, where the United States shall be plaintiffs or complainants; and also of all seizures on land or water, and all penalties and forfeitures, made, arising or accruing, under the laws of the United States; which cognizance of all penalties and forfeitures, shall be exclusively of the State courts, in the said circuit courts, where the offence, by which the penalty or forfeiture is incurred shall have been committed within fifty miles of the place of holding the said courts; and also of all actions or suits, matters or things, cognizable by the judicial authority of the United States, under and by virtue of the Constitution thereof, where the matter in dispute shall amount to four hundred dollars, and where original jurisdiction is not given by the Constitution of the United States to the Supreme Court thereof, or exclusive jurisdiction by law to the district courts of the United States: *Provided always*, That in all cases where the title or bounds of land shall come into question, the jurisdiction of the said circuit courts shall not be restrained, by reason of the value of the land in dispute.

Sec. 12. *And be it further enacted*, That the said circuit courts, respectively, shall have cognizance, concurrently with the district courts, of all cases which shall arise, within their respective circuits, under the act to establish an uniform system of bankruptcy throughout the United States; and that each circuit judge, within his respective circuit, shall and may perform all and singular the duties enjoined by the said act, upon a judge of a district court: And that the proceedings under a commission of bankruptcy, which shall issue from a circuit judge, shall in all respects be conformable to the proceedings under a commission of bankruptcy, which shall issue from a district judge, mutatis mutandis.

Sec. 13. *And be it further enacted*, That where any action or suit shall be, or shall have been commenced, in any State court within the United States, against an alien, or by a citizen or citizens of the State in which such suit or action shall be, or shall have been commenced against a citizen or citizens of another State, and the matter in dispute, except in cases where the title or bounds of land shall be in question, shall exceed the sum or value of four hundred dollars, exclusve of costs, and the defendant or defendants in such suit or action shall be personally served with the original process therein, or shall appear thereto; or where, in any suit or action, so commenced or to be commenced, final jugdment, for a sum exceeding four hundred dollars, exclusive of costs, shall have been rendered in such State court, against such defendant or defendants, without return of personal service on him, her, or them, of the original process in such suit or action, and without an appearance thereto by him, her, or them, and a writ of error, or writ of review, shall be brought by

such defendant or defendants, in such State court, to reverse the said judgment; or where any suit or action shall have been, or shall be commenced in any such court, against any person or persons, in any case arising under the Constitution or laws of the United States, or treaties made or to be made under their authority; then, and in any of the said cases, it shall be lawful for the defendant or defendants, in such suit or action, at the time of entering his, her, or their appearance thereto, and for the plaintiff or plaintiffs in such writ of error, or writ of review, at the time when such writ shall be returnable, to file in such court a petition for the removal of such suit, action, writ of error, or writ of review, to the next circuit court of the United States, hereby directed to be holden in and for the district within which such State court shall be holden, and to offer to such State court good and sufficient surety for entering, in such circuit court, on the first day of its next ensuing session, true copies of the process and proceedings, in such action, suit, writ of error, or writ of review, and also for his, her, or their, appearance in the said circuit court, at the period aforesaid, and then and there entering special bail, in the said suit or action, if special bail was originally demandable and demanded therein; whereupon it shall be the duty of the said State court to accept the said security, and to stay all further proceedings in such suit, action, writ of error, or writ of review, and to discharge any bail that may have been given therein: and that the said copies being filed as aforesaid in such circuit court, and special bail, in manner aforesaid, being given therein, such suit, action, writ of error, or writ of review, shall be therein proceeded on, tried, heard, and determined, in the same manner as if there originally commenced or brought: *Provided always*, That any attachment of the goods or estate of the defendant, by the original process in such suit or action, shall hold the goods or estate so attached to answer the final judgment in the said circuit court, in the same manner as by the laws of the State they would have been holden, to answer the final judgment, had it been rendered by the court in which the suit or action was commenced.

Sec. 14. *And be it further enacted*, That when in any suit or action, commenced, or to be commenced, in any State court within the United States, between citizens of the same State, the title or bounds of land shall come into question, it shall be lawful for either party, before trial, to state to the said court, and make affidavit if thereby required, that he, she, or they, doth or do claim under, and at the hearing or trial shall rely upon a right or title to the lands in dispute, under a grant or grants from a State other than that wherein such suit or action is, or shall be pending; and to produce to the said court the original grant or grants so claimed under, or exemplifications thereof, except in cases where the loss of public records shall put it out of his, her, or their power so to do; and to move that the adverse party do inform the said court, forthwith, whether he, she, or they, doth or do claim the land in dispute, under a grant or grants from the State wherein such suit or action is, or shall be pending; whereupon the said adverse party shall give such information, or otherwise not be allowed to plead, or give in evidence, in the cause any such grant; and that if it shall appear from such information, that the said adverse party doth claim the said lands, under any such grant, or grants, then it shall be lawful for the party moving for such information, if plaintiff or complainant in the said suit or action, to remove the same, by motion, to the next circuit court of the United States, hereby directed to be holden in and for the district within which such State court shall be holden; and if defendant in the said suit or action, then to remove the same, as aforesaid, in the same manner, and under the like regulations, terms, and conditions, as are provided in and by the preceding section of this act, in the cases of actions thereby directed to be removed; and that the said circuit courts respectively, into which such suit or action shall be removed, pursuant to the provisions in this section contained, shall proceed in, try, hear and determine the same, in like manner as if therein brought by original process: *Provided always*, That neither party, so removing any suit or action, shall be allowed, on the trial or hearing thereof, to plead, give evidence of, or rely on, any other title than that by him, her, or them, so stated as aforesaid, as the ground of his, her, or their claim.

Sec. 15. *And be it further enacted*, That any one judge of any of the said circuit courts shall be, and hereby is, authorized and empowered to hold the same, from day to day, not exceeding five days, to impannel and charge the grand jury, to order process on any indictment or presentment found in the said court; to direct subpœnas for witnesses to attend the same, and the requisite process on the non-attendance of witnesses or jurors; to receive any presentment or indictment from the grand jury; to take recognizance for the attendance of any witness, or for the appearance of any person, presented or indicted; to award and issue process, and order commitment for contempts; to commit any person presented or indicted, for want of security or otherwise; to order publication of testimony; to issue commissions for the examination of witnesses, where allowable by law; to grant rules and orders of survey; to take order, where necessary, relative to jurors, to serve at the next stated session of the said court; to direct the examination of witnesses *de bene esse*, where allowed by law; to make rules of reference, by consent of parties; and to grant continuances on the motion of either party, upon such terms and conditions, as shall be agreeable to practice and the usages of law; and that if some other judge of the said court shall not attend the same within five days after the commencement thereof, inclusive, then the said court shall, by virtue of this act, be continued over to the next stated session thereof; in which case, all writs, process, and recognizances, returned and returnable to the said court, and all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, depending before the said court, shall, by virtue of this act, be continued to the next stated session of the same.

Sec. 16. *And be it further enacted*, That no person shall be arrested in one of the said districts, for trial in another, before any of the said circuit courts, in any civil action; and that no civil action or suit shall be brought before any of the said courts, by any original process, against an inhabitant of the United States, in any other district than that whereof he is an inhabitant, or in which he shall be found at the time of serving the writ; nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note, or other chose in action, in favor of an assignee, unless a suit might have been prosecuted in such court to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange.

Sec. 17. *And be it further enacted*, That the trials of all issues of fact, before any of the circuit courts hereby established, except in cases of equity, and admiralty, and maritime jurisdiction, shall be by jury.

Sec. 18. *And be it further enacted*, That any judge of the said circuit courts shall be, and hereby is, authorized and empowered, in all cases cognizable by the circuit court, whereof he shall be a judge, to grant writs of ne-exeat, and writs of injunction to stay waste, or to stay proceedings at law, on any judgment rendered by such circuit court, upon the like terms and conditions as such writs may be now granted, by the justices of the Supreme Court of the United States.

Sec. 19. *And be it further enacted*, That if, in the opinion of any circuit judge, of the circuit within which such district may be situated, the life or lives of any person or persons, confined in the prison of such district, under or by virtue of any law of the United States, shall be in imminent danger, arising from the place of such confinement, it shall, in such case, be lawful for such judge, and he is hereby authorized and empowered, to direct the marshal of such district to remove, or cause to be removed, the person or persons so confined to the next adjacent prison, there to be confined until he, she, or they, may safely be removed back to the place of his, her, or their first confinement; and that the said removals shall be at the expense of the United States.

Sec. 20. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings of what nature or kind soever, depending or existing in any of the present circuit courts of the United States, or in any of the present district courts of the United States, acting as circuit courts, shall be, and hereby are, continued over to the circuit courts established by this act, in manner following, that is to say: all such as shall, on the fifteenth day of June next, be depending and undetermined, or shall then have been commenced and made returnable before the district court of Maine, acting as a circuit court, to the next circuit court hereby directed to be holden within and for the district of Maine; all such as shall be depending and undetermined before the circuit court for the district of New Hampshire, to the next circuit court hereby directed to be holden within and for the district of New Hampshire; all such as shall be depending and undetermined before the circuit court for the district of Massachusetts, to the next circuit court hereby directed to be holden within and for the district of Massachusetts; all such as shall be depending and undetermined before the circuit court of the district of Rhode Island, to the next circuit court hereby directed to be holden within and for the district of Rhode Island; all such as shall be depending or undetermined before the circuit court for the district of Connecticut, to the next circuit court hereby directed to be holden within and for the district of Connecticut; all such as shall be depending and undetermined before the circuit court for the district of Vermont, to the next circuit court hereby directed to be holden within and for the district of Vermont; all such as shall be depending and undetermined before the circuit court for the district of New York, to the next circuit court hereby directed to be holden within and for the district of New York; all such as shall be depending and undetermined before the circuit court for the district of New Jersey, to the next circuit court hereby directed to be holden within and for the district of New Jersey; all such as shall be depending and undetermined before the circuit court for the district of Pennsylvania, to the next circuit court hereby directed to be holden within and for the eastern district of Pennsylvania; all such as shall be depending and undetermined before the circuit court for the district of Delaware, to the next circuit court hereby directed to be holden within and for the district of Delaware; all such as shall be depending and undetermined before the circuit court for the district of Maryland, to the next circuit court hereby directed to be holden within and for the district of Maryland; all such as shall be depending and undetermined before the circuit court for the district of Virginia, to the next circuit court hereby directed to be holden within and for the eastern district of Virginia; all such as shall be depending and undetermined before the circuit court for the district of North Carolina, to the next circuit court hereby directed to be holden within and for the district of North Carolina; all such as shall be depending and undetermined before the circuit court for the district of South Carolina, to the next circuit court hereby directed to be holden within and for the district of South Carolina; all such as shall be depending and undetermined before the circuit court for the district of Georgia, to the next circuit court hereby directed to be holden within and for the district of Georgia; all such as shall be depending and undetermined before the district court of Tennessee, acting as a circuit court, to the next circuit court hereby directed to be holden within and for the district of East Tennessee; all such as shall be depending and undetermined before the district court of Kentucky, acting as a circuit court, to the next circuit court hereby directed to be holden within and for the district of Kentucky; and shall there be equally regular and effectual, and shall be proceeded in in the same

manner as they could have been if this act had not been made.

Sec. 21. *And be it further enacted*, That for the better despatch of the business of district courts of the United States, in the districts of Jersey, Maryland, Virginia, and North Carolina, additional district courts shall be established therein in manner following, that is to say: The said district of Jersey shall be divided into two districts; one to consist of that part thereof which is called East New Jersey, and to be called the district of East Jersey; a district court in and for which shall be holden at New Brunswick, by the district judge of the district of Jersey, on the fourth Tuesday in May, and on the fourth Tuesday in November, in each and every year; and one other to consist of the remaining part of the said district of Jersey, and to be called the district of West Jersey, a district court in and for which shall be holden at Burlington, by the district judge last aforesaid, on the fourth Tuesday in February, and on the fourth Tuesday in August, in each and every year: And a new district shall be established in the districts of Maryland and Virginia, to consist of the Territory of Columbia, of all that part of the district of Maryland, which lies west and southwest of the river Patuxent, and of the western branch thereof, and south of the line which divides the county of Montgomery in the last mentioned district, from the county of Frederick, and of a line to be drawn from the termination of the last mentioned line, a northeast course to the western branch of the Patuxent; and of all that part of the district of Virginia which lies north of the river Rappahannock, and east of the line which divides the counties of Fauquier and Loudon, in the last mentioned district, from the counties of Fairfax, Prince William, and Stafford; which new district shall be called the district of Potomac, and a district court in and for the same shall be holden at Alexandria, by the district judge of the district of Maryland, on the first Tuesday in April, and the first Tuesday in October, in each and every year: And there shall be a new district established in the district of Virginia, to be called the district of Norfolk, and to consist of all that part of the said district of Virginia, which is contained within the counties of Isle of Wight, Nansemond, Norfolk, Princess Anne, James City, New Kent, Warwick, York, Elizabeth City, Gloucester, Matthews, Middlesex, Accomac, and Northampton; a district court in and for which district of Norfolk shall be holden at Norfolk by the district judge of the district of Virginia, on the first Tuesday in February, on the first Tuesday in May, on the first Tuesday in August, and on the first Tuesday in November, in each and every year: And the district of North Carolina shall be divided into three districts; one to consist of all that part thereof, which, by the laws of the State of North Carolina, now forms the districts of Edenton and Halifax; which district shall be called the district of Albemarle, and a district court in and for the same shall be holden at Edenton, by the district judge of the district of North Carolina, on the third Tuesday in April, on the third Tuesday in August, and on the third Tuesday in December, in each and every year; one other to be called the district of Pamptico, and to consist of all that part of the district of North Carolina aforesaid, which, by the laws of the said State, now forms the district of Newbern and Hillsborough, together with all that part of the district of Wilmington which lies to the northward and eastward of the river called New river, and for which district of Pamptico, a district court shall be holden at Newbern, by the district judge last aforesaid, on the first Tuesday in April, on the first Tuesday in August, and on the first Tuesday in December, in each and every year: And one other, to consist of the remaining part of the said district of North Carolina, and to be called the district of Cape Fear, in and for which a district court shall be holden at Wilmington, by the district judge last aforesaid, on the last Tuesday in March, on the last Tuesday in July, and on the last Tuesday in November, in each and every year; which said courts, hereby directed to be holden, shall severally and respectively have and exercise within their several and respective districts the same powers, authority, and jurisdiction, in all cases and respects whatsoever, which are vested by law in the district courts of the United States.

Sec. 22. *And be it further enacted*, That there shall be clerks for each of the said courts, to be appointed by the judge thereof, which clerks shall reside and keep the records of the said courts, at the places of holding the courts, whereto they respectively shall belong, and shall perform the same duties, and be entitled to and receive the same emoluments and fees, which are established by law for the clerks of the district courts of the United States respectively; and that the marshals and attorneys of the United States, for the districts which are hereby divided, or within the limits of which new districts are hereby erected, shall continue to be marshals and attorneys for the courts hereby appointed to be holden within the limits of their present districts respectively, and shall have, exercise, and perform, within the jurisdictions of those courts respectively, all the powers and duties, and receive all the fees and emoluments, appointed and established by law for the marshals and attorneys of the United States.

Sec. 23. *And be it further enacted*, That the stated sessions of the district court of the district of Maryland shall hereafter be holden in Baltimore only.

Sec. 24. *And be it further enacted*, That the district courts of the United States, in and for the districts of Tennessee and Kentucky, shall be, and hereby are, abolished; and that all and singular the powers, authority, and jurisdiction, of the said courts respectively, shall be and hereby are vested in, and shall be exercised by the circuit courts, by this act directed to be holden in and for the districts of East Tennessee, West Tennessee, and Kentucky, respectively, within the limits of their respective jurisdictions; and that the circuit judges to be appointed for the sixth circuit aforesaid, severally, shall be invested with, possess, and exercise, all and singular the powers now vested by law in the district judges of the United States.

Sec. 25. *And be it further enacted*, That, in case of the inability of the district judge of either of the districts of the United States to perform the duties of his office, and satisfactory evidence thereof being shown to the circuit court, in and for such district, it shall be the duty of such circuit court, from time to time, as occasion may require, to direct one of the judges of said circuit court to perform the duties of such district judge, within and for said district, for and during the period the inability of the district judge shall continue: And it shall be the duty of the circuit judge, to whom the duties of the district judge shall be assigned in manner aforesaid, and he is hereby authorized, to perform the duties of said district judge during the continuance of his disability.

Sec. 26. *And be it further enacted*, That the several circuit courts hereby established shall have power to appoint clerks for their respective courts; that is to say, one for each district within which such court is or shall be directed by law to be holden; which clerks respectively shall take the same oath or affirmation, and give the like bonds as are by law required to be taken and given by the clerk of the Supreme Court of the United States, and shall be entitled to demand and receive for their services, respectively, the same fees, to be recovered in the same manner as have heretofore been allowed by law, for the like services, to the clerks of the circuit and district courts of the United States.

Sec. 27. *And be it further enacted*, That the circuit courts of the United States, heretofore established, shall cease and be abolished; and that the records and office papers of every kind, belonging to those courts respectively, shall be safely kept by the clerks thereof, who shall continue in all respects to act as heretofore in the business of the said courts, until it shall otherwise be ordered by the courts hereby established.

Sec. 28. *And be it further enacted*, That the supreme, circuit, and district courts of the United States shall be, and hereby are, constituted courts of record.

Sec. 29. *And be it further enacted*, That all writs and processes whatsoever, issuing from any of the circuit courts hereby established, shall, after the first day of April next, bear test of the presiding judge of such court; before which time, they shall bear test of the Chief Justice of the United States; all which said writs and processes shall be signed by the clerks of the courts, respectively, from which the same shall issue, and shall be made returnable to the next stated or special session of such court, and all writs and processes which have issued, or may issue, before the first day of April next, returnable to the circuit courts heretofore established, or to any district court acting as a circuit court, shall be returned to the circuit courts hereby established, and shall be there proceeded in in the same manner as they could had they been originally returnable to the circuit courts hereby established.

Sec. 30. *And be it further enacted*, That every justice of the Supreme Court of the United States, and every judge of any circuit or district court, shall be, and hereby is, authorized and empowered to grant writs of habeas corpus for the purpose of inquiring into the cause of commitment, and thereupon to discharge from confinement, on bail or otherwise: *Provided always*, That no writ of habeas corpus, to be granted under this act, shall extend to any prisoner or prisoners in jail, unless such prisoner or prisoners be in custody, under or by color of the authority of the United States, or be committed for trial before some court of the same; or be necessary to be brought into court to give testimony.

Sec. 31. *And be it further enacted*, That the several courts of the United States shall be, and hereby are, authorized and empowered to grant new trials and rehearings, on motion and cause shown, and to make and establish all necessary rules and regulations for returning writs, filing pleas, and other proceedings, and for regulating the practice and enforcing the orderly conduct of business in the said courts respectively: *Provided always*, That the said rules and regulations be not repugnant to the laws of the United States: and that all the courts of the United States, and each of the justices and judges thereof, shall be, and hereby are, authorized and empowered, to administer all necessary oaths and affirmations, and to bind to the peace or good behaviour, with surety where necessary, in all cases arising under the authority of the United States.

Sec. 32. *And be it further enacted*, That every person who shall be appointed a judge of any circuit court, hereby established, shall, before he shall begin to exercise the duties of his office, take the following oath or affirmation, that is to say:

"I, A B, do solemnly swear (or affirm) that I will administer justice without respect to persons; and will do equal right to all persons; and will, in all things, faithfully and impartially discharge and perform all the duties incumbent on me as a judge of ——, according to the best of my abilities and understanding, and to the Constitution and laws of the United States."

Sec. 33. *And be it further enacted*, That, from all final judgments or decrees, in any of the district courts of the United States, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the circuit court next to be holden, in the district where such final judgment or judgments, decree or decrees, may be rendered; and the circuit court or courts are hereby authorized and required to receive, hear, and determine such appeal; and that, from all final judgments or decrees in any circuit court, in any cases of equity, of admiralty, and maritime jurisdiction, and of prize or no prize, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, shall be allowed to the Supreme Court of the United States; and that upon such appeal, a transcript of the libel, bill, answer, deposition, and all other proceedings of what kind soever in the cause, shall be transmit-

ted to the said Supreme Court; and that no new evidence shall be received in the said court, on the hearing of such appeal; and that such appeals shall be subject to the same rules, regulations, and restrictions, as are prescribed by law in the case of writs of error; and that the said Supreme Court shall be, and hereby is, authorized and required, to receive, hear, and determine such appeals.

SEC. 34. *And be it further enacted*, That all final judgments in civil actions at common law, in any of the circuit courts hereby established, whether brought by original process in such court, or removed thereto from any State court, and all final judgments in any of the district courts of the United States may, where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, be re-examined and reversed or affirmed, in the Supreme Court of the United States, by writ of error: whereto shall be annexed, and returned therewith, at the day and place therein mentioned, an authenticated transcript of the record and assignment of errors, and prayer for reversal, and also a citation to the adverse party, signed by a judge of such circuit court, or by the district judge, as the case may be; which citation shall be served on the adverse party personally, or by leaving a true copy thereof at his or their usual place or places of residence, at least thirty days before the time mentioned in such writ of error, for the return thereof.

SEC. 35. *And be it further enacted*, That the stipulation, bond, or security, taken upon any writ of error or appeal to be brought or allowed as aforesaid, shall be returned by the judge taking the same, to the clerk or register of the court where the judgment or decree complained of was rendered, to be by him annexed to the transcript of the record, hereby directed to be sent up to the Supreme Court of the United States.

SEC. 36. *And be it further enacted*, That there shall be appointed, in and for each of the districts established by this act, a marshal, whose duty it shall be to attend the circuit courts of the United States hereby established, when sitting within such district, and who shall have and exercise, within such district, the same powers, perform the same duties, be subject to the same penalties, give the same bond, with sureties, take the same oath, be entitled to and receive the same compensation and emoluments, and in all respects be subject to the same regulations, as are now prescribed by law, in respect to the marshals of the United States heretofore appointed: *Provided always*, That the several marshals of the United States, now in office, shall, during the periods for which they were respectively appointed, unless sooner removed by the President of the United States, be and continue marshals for the several districts hereby established, within which they respectively reside; and shall perform the duties, exercise the powers, and receive the emoluments, hereby directed to be performed, exercised, and received, by marshals therein.

SEC. 37. *And be it further enacted*, That there shall be appointed, for each of the districts hereby established, a person learned in the law, to act as attorney for the United States within such district, and in the circuit and district courts which may be holden therein; which attorney shall take an oath or affirmation for the faithful performance of the duties of his office, and shall prosecute, in such district, all delinquents for crimes and offences cognizable under the authority of the United States, and all civil actions or suits in which the United States shall be concerned, except actions or suits in the Supreme Court of the United States; and shall be entitled to, and receive, for their services, respectively, such compensations, emoluments, and fees, as by law are or shall be allowed, to the district attorneys of the United States: *Provided always*, That the district attorneys of the United States now in office shall, severally and respectively, be attorneys for those districts hereby established, within which they reside, until removed by the President of the United States; and shall perform the duties, exercise the powers, and receive the emoluments, hereby directed to be performed, exercised, and received by the attorney of the United States therein.

SEC. 38. *And be it further enacted*, That jurors and witnesses attending any of the courts, hereby established, shall be entitled to, and receive the same compensations, respectively, as heretofore have been allowed by law to jurors and witnesses, attending the circuit and district courts of the United States.

SEC. 39. *And be it further enacted*, That the records of the several circuit courts, hereby established, shall hereafter be kept at the respective places at which the said courts are hereby directed to be holden: *Provided always*, That in the district wherein there are more than one place directed by this act for holding said circuit courts, the records of the circuit court in such district shall hereafter be kept in either of such places, as the said court in such district shall direct.

SEC. 40. *And be it further enacted*, That the privilege from arrest of every person going to, attending at, or returning from, any court of the United States, shall be computed and continue, from the time of his or her departure from his or her habitation, until his or her return thereto: *Provided*, That such time shall not exceed one day, Sundays excluded, for every twenty miles of the distance, which such person must necessarily travel in so going and returning, over and above the time of attendance.

SEC. 41. *And be it further enacted*, That each of the circuit judges of the United States, to be appointed by virtue of this act, shall be allowed, as a compensation for his services, an annual salary of two thousand dollars, to be paid quarter-yearly at the Treasury of the United States; except the judges of the sixth circuit, who shall be allowed the sum of fifteen hundred dollars each, to be paid in like manner; and that the salaries of the district judges of Kentucky and Tennessee shall be, and hereby are, severally augmented to the like sum of fifteen hundred dollars annually, to be paid in like manner.

Approved, February 13, 1801.

An Act making the port of Biddeford and Pepperelborough, and the port of New Bedford, in Massachusetts, ports of entry for ships or vessels, arriving from the Cape of Good Hope, and from places beyond the same.

Be it enacted, &c., That the port of Biddeford and Pepperelborough, and the port of New Bedford, in the Commonwealth of Massachusetts, be, and they are hereby made, ports of entry for ships or vessels arriving from the Cape of Good Hope, and from places beyond the same.

Approved, February 18, 1801.

An Act regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia.

Be it enacted, &c., That the surveyor general be, and he is hereby, directed to cause those fractional townships of the sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second ranges of townships, which join the southern boundary line of the military lands, to be subdivided into half sections, containing three hundred and twenty acres each; and to return a survey and description of the same to the Secretary of the Treasury, on or before the first Monday of December next; and that the said lands be, and they are hereby, set apart and reserved for the purpose of satisfying the claims of persons entitled to lands under the act, entitled, "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia."

SEC. 2. *And be it further enacted*, That the Secretary of the Treasury shall, within thirty days after the survey of the lands shall have been returned to him as aforesaid, proceed to determine, by lot, to be drawn in the presence of the Secretaries of State and of War, the priority of location of the persons entitled to lands as aforesaid. The persons, thus entitled, shall severally make their locations on the second Tuesday of January next, and the patents for the lands thus located shall be granted in the manner directed for military lands, without requiring any fee whatever.

SEC. 3. *And be it further enacted*, That the following persons, claiming lands under the abovementioned act, shall, respectively, be entitled to the following quantities of land, that is to say: Martha Walker, widow of Thomas Walker, John Edgar, P. Francis Cazeau, John Allen, and Seth Harding, respectively, two thousand two hundred and forty acres each; Jonathan Eddy, Colonel James Livingston, and Parker Clark, respectively, one thousand two hundred and eighty acres each; and the heirs of John Dodge, one thousand two hundred and eighty acres; Thomas Faulkner, Edward Faulkner, David Gay, Martin Brooks, Lieutenant Colonel Bradford, Noah Miller, Joshua Lamb, Atwood Fales, John Starr, William How, Ebenezer Gardner, Lewis F. Delesdernier, John McGown, and Jonas C. Minot, respectively, nine hundred and sixty acres each; and the heirs of Simeon Chester, nine hundred and sixty acres; Jacob Vander Heyden, John Livingston, James Crawford, Isaac Danks, Major B. Von Heer, Benjamin Thompson, Joseph Bindon, Joseph Levittre, Lieutenant William Maxwell, John D. Mercier, James Price, Seth Noble, Martha Bogart, relict of Abraham Bogart, and formerly relict of Daniel Tucker, and John Halsted, respectively, six hundred and forty acres each; David Jenks, Ambrose Cole, James Cole, Adam Johnson, the widow and heirs of Colonel Jeremiah Duggan, Daniel Earl, junior, John Pasdell, Edward Chinn, Joseph Cone, and John Torreyre, respectively, three hundred and twenty acres each; Samuel Fales, one hundred and sixty acres; which several tracts of land shall, except the last, be located in half sections by the respective claimants.

Approved, February 18, 1801.

An Act to establish the district of Bristol, and to annex the towns of Kittery and Berwick to the district of Portsmouth.

Be it enacted, &c., That, from and after the thirty-first day of March next, the towns of Bristol, Warren, and Barrington, in the State of Rhode Island and Providence Plantations, and all the shores and waters around the same, within the following limits, viz: a line beginning at the middle of the bay, between Mount Hope and Common Fence Point, running southwesterly through the middle of Bristol Ferry, and continuing such course until it strikes a point of equal distance from Rhode Island to Prudence Island, from thence northwardly on a straight line to the westernmost part of Nahant Point, and from thence to the western shore of Bullock's Point, shall be a district, to be called the district of Bristol, of which the port of Bristol shall be the sole port of entry, and a collector for said district shall be appointed to reside at Bristol, and Warren and Barrington shall be ports of delivery only, and a surveyor shall be appointed to reside at each of the ports of Bristol and Warren; and the surveyor at Warren shall also be surveyor for the port of Barrington.

SEC. 2. *And be it further enacted*, That said port of Bristol shall also be a port of entry, for all ships or vessels arriving from the Cape of Good Hope, or places beyond the same.

SEC. 3. *And be it further enacted*, That, from and after the said thirty-first day of March next, the towns of Kittery and Berwick, in the State of Massachusetts, shall be annexed to the district of Portsmouth, in New Hampshire, as ports of delivery only: *Provided*, That nothing herein contained shall be construed to prevent the master or commander of any ship or vessel, having merchandise on board, destined for either of the said places, from making entry at his option, with the collector of the district of York and obtaining permits for the delivery thereof, as heretofore.

Approved, February 25, 1801.

An Act freeing from postage all letters and packets to John Adams.

Be it enacted, &c., That all letters and packets to John Adams, now President of the United States, after the expiration of his term of office, and during his life, shall be carried by the mail, free of postage.

Approved, February 25, 1801.

An Act to continue in force the acts laying duties on licenses for selling wines and foreign distilled spirits by retail, and so much of the act laying certain duties on snuff and refined sugar as respects a duty on refined sugar, on property sold at auction, and on carriages for the conveyance of persons.

Be it enacted, &c., That an act passed on the fifth day of June, in the year one thousand seven hundred and ninety-four, entitled, "An act laying duties on licenses for selling wines and foreign distilled spirituous liquors by retail;" and that so much of an act passed on the fifth day of June, in the year one thousand seven hundred and ninety-four, entitled, "An act laying certain duties upon snuff and refined sugar," as respects a duty upon refined sugar; and that an act passed on the ninth day of June in the year one thousand seven hundred and ninety-four, entitled, "An act laying duties on property sold at auction;" and which acts were, by an act passed on the third day of March, in the year one thousand seven hundred and ninety-five, continued in force until the first day of March, in the year one thousand eight hundred and one, shall be, and the same are hereby continued in force, without limitation of time: anything in any former act to the contrary notwithstanding.

Sec. 2. *And be it further enacted*, That so much of the thirteenth section of an act, passed on the twenty-eighth day of May, in the year one thousand seven hundred and ninety-six, entitled, "An act laying duties upon carriages for the conveying of persons, and repealing the former act for that purpose," as limits the duration of said act, shall be, and the same is hereby, repealed, and said act is hereby continued in force, without limitation of time.

Approved, February 25, 1801.

An Act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer.

Be it enacted, &c., That the consent of Congress be, and is hereby, granted and declared to the operation of an act of the General Assembly of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, entitled, "An act to appoint a health officer for the port of Baltimore, in Baltimore county," so far as to enable the State aforesaid to collect a duty of one cent per ton, on all vessels coming into the district of Baltimore from a foreign voyage, for the purposes in said act intended.

Sec. 2. *And be it further enacted*, That this act shall be in force for three years, from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, February 27, 1801.

An Act to allow the transportation of goods, wares, and merchandise, to and from Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras.

Be it enacted, &c., That goods, wares, and merchandise, which lawfully might be transported to or from the city of Philadelphia and Baltimore, by the way of Elkton, Bohemia or Frenchtown, and Port Penn, Appoquinimink, New Castle, Christiana Bridge, Newport, or Wilmington, shall and may lawfully be transported, to and from the city of Philadelphia and Baltimore, by the way of Appoquinimink and Sassafras river, and shall be entitled to all the benefits and advantages, and shall be subject to all the provisions, regulations, limitations, and restrictions, existing in the case of goods, wares, and merchandise, transported by any of the routes before mentioned.

Approved, February 27, 1801.

An Act for the relief of Arnold Henry Dorhman, or his legal representatives.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to issue a patent for the thirteenth township, in the seventh range, to Arnold Henry Dorhman, or his legal representatives, agreeably to a resolution of Congress of the first day of October, in the year one thousand seven hundred and eighty-seven.

Approved, February 27, 1801.

An Act concerning the District of Columbia.

Be it enacted, &c., That the laws of the State of Virginia, as they now exist, shall be and continue in force in that part of the District of Columbia, which was ceded by the said State to the United States, and by them accepted for the permanent seat of Government; and that the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that State to the United States, and by them accepted as aforesaid.

Sec. 2. *And be it further enacted*, That the said District of Columbia shall be formed into two counties; one county shall contain all that part of the said district which lies on the east side of the river Potomac, together with the island therein, and shall be called the county of Washington; the other county shall contain all that part of the said district which lies on the west side of said river, and shall be called the county of Alexandria; and the said river in its whole course through said district shall be taken and deemed, to all intents and purposes, to be within both of said counties.

Sec. 3. *Be it further enacted*, That there shall be a court in said district, which shall be called the Circuit Court of the District of Columbia; and the said court and the judges thereof shall have all the powers by law vested in the circuit courts and the judges of the circuit courts of the United States. Said court shall consist of one chief judge and two assistant judges, resident within said District, to hold their respective offices during good behaviour; any two of whom shall constitute a quorum; and each of the said judges shall, before he enter on his office, take the oath or affirmation provided by law to be taken by the judges of the circuit courts of the United States; and said court shall have power to appoint a clerk

of the court in each of said counties, who shall take the oath and give a bond with sureties, in the manner directed for clerks of the district courts in the act to establish the Judiciary of the United States.

Sec. 4. *Be it further enacted*, That said court shall, annually, hold four sessions in each of said counties, to commence as follows, to wit: for the county of Washington, at the city of Washington, on the fourth Mondays of March, June, September, and December; for the county of Alexandria, at Alexandria, on the second Mondays of January, April, July, and the first Monday of October.

Sec. 5. *Be it further enacted*, That said court shall have cognizance of all crimes and offences committed within said district, and of all cases in law and equity between parties, both or either of which shall be resident or be found within said District, and also of all actions or suits of a civil nature at common law or in equity, in which the United States shall be plaintiffs or complainants; and of all seizures on land or water, and all penalties and forfeitures made, arising, or accruing, under the laws of the United States.

Sec. 6. *Provided, and be it further enacted*, That all local actions shall be commenced in their proper counties, and that no action or suit shall be brought before said court, by any original process against any person, who shall not be an inhabitant of, or found within said district at the time of serving the writ.

Sec. 7. *Be it further enacted*, That there shall be a Marshal for the said District, who shall have the custody of the jails of said counties, and be accountable for the safe-keeping of all prisoners legally committed therein; and he shall be appointed for the same term, shall take the same oath, give a bond with sureties in the same manner, shall have generally, within said District, the same powers, and perform the same duties, as is by law directed and provided in the case of marshals of the United States.

Sec. 8. *Be it further enacted*, That any final judgment, order, or decree, in said circuit court, wherein the matter in dispute, exclusive of costs, shall exceed the value of one hundred dollars, may be re-examined and reversed or affirmed in the Supreme Court of the United States, by writ of error or appeal; which shall be prosecuted in the same manner, under the same regulations, and the same proceedings shall be had therein as is, or shall be, provided in the case of writs of error on judgments, or appeals upon orders or decrees, rendered in the circuit court of the United States.

Sec. 9. *Be it further enacted*, That there shall be appointed an Attorney of the United States for said District, who shall take the oath and perform all the duties required of the district attorneys of the United States; and the said attorney, marshal, and clerks, shall be entitled to receive for their respective services, the same fees, perquisites, and emoluments, which are by law allowed respectively to the attorney, marshal, and clerk of the United States, for the district of Maryland.

Sec. 10. *Be it further enacted*, That the chief judge, to be appointed by virtue of this act, shall receive an annual salary of two thousand dollars, and the two assistant judges, of sixteen hundred dollars each, to be paid quarterly, at the Treasury of the United States.

Sec. 11. *Be it further enacted*, That there shall be appointed in and for each of the said counties, such number of discreet persons to be justices of the peace, as the President of the United States shall from time to time think expedient, to continue in office five years; and such justices, having taken an oath for the faithful and impartial discharge of the duties of the office, shall, in all matters, civil and criminal, and in whatever relates to the conservation of the peace, have all the powers vested in, and shall perform all the duties required of, justices of the peace, as individual magistrates, by the laws hereinbefore continued in force in those parts of said District, for which they shall have been respectively appointed; and they shall have cognizance in personal demands to the value of twenty dollars, exclusive of costs; which sum they shall not exceed, any law to the contrary notwithstanding; and they shall be entitled to receive for their services the fees allowed for like services by the laws hereinbefore adopted and continued, in the eastern part of said District.

Sec. 12. *And be it further enacted*, That there shall be appointed in and for each of the said counties, a Register of Wills, and a Judge, to be called the Judge of the Orphans' Court, who shall each take an oath for the faithful and impartial discharge of the duties of his office; and shall have all the powers, perform all the duties, and receive the like fees, as are exercised, performed, and received, by the Registers of Wills and Judges of the Orphans' Court within the State of Maryland; and appeals from the said courts shall be to the circuit court of said District, who shall therein have all the powers of the Chancellor of the said State.

Sec. 13. *And be it further enacted*, That in all cases where judgment or decrees have been obtained, or hereafter shall be obtained, on suits now depending in any of the courts of the Commonwealth of Virginia, or of the State of Maryland, where the defendant resides or has property within the District of Columbia, it shall be lawful for the plaintiff in such case, upon filing an exemplification of the record and proceedings in such suits, with the clerk of the court of the county where the defendant resides, or his property may be found, to sue out writs of execution thereon, returnable to the said court, which shall be proceeded on, in the same manner as if the judgment or decree had originally been obtained in said court.

Sec. 14. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, depending or existing in the courts of hustings for the towns of Alexandria and Georgetown, shall be, and hereby are, continued over to the circuit courts, to be holden by virtue of this act, within the District of Columbia, in manner following; that is to say, all such as shall then be depending and undetermined before the court of hustings for the town of Alex-

andria, to the next circuit court hereby directed to be holden in the town of Alexandria; and all such as shall then be depending and undetermined before the court of hustings for Georgetown, to the next circuit court hereby directed to be holden in the City of Washington: *Provided nevertheless*, That where the personal demand in such cases, exclusive of costs, does not exceed the value of twenty dollars, the justices of the peace, within their respective counties, shall have cognizance thereof.

Sec. 15. *And be it further enacted*, That all writs and processes whatsoever, which shall hereafter issue from the courts hereby established within the District, shall be tested in the name of the chief judge of the District of Columbia.

Sec. 16. *And be it further enacted*, That nothing in this act contained shall in any wise alter, impeach, or impair the rights, granted by or derived from the acts of incorporation of Alexandria and Georgetown, or of any other body corporate or politic, within the said District, except so far as relates to the judicial powers of the Corporations of Georgetown and Alexandria.

Approved, February 27, 1801.

An Act supplementary to an act, entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments."

Be it enacted, &c., That all suits, and process, and proceedings, which on the third day of July, one thousand eight hundred, were pending in any court of either of the counties, which, by the act entitled "An act to divide the Territory of the United States Northwest of the Ohio into two separate governments," has been included within the Indiana Territory; and that all suits, process, and proceedings, which, on the aforesaid third day of July, were pending in the general court of the Territory of the United States Northwest of the Ohio, in consequence of any writ of removal or order for trial at bar, had been removed from either of the counties now within the limits of the Indiana Territory aforesaid, shall be, and they are hereby, revived and continued; and the same proceedings, before the rendering of final judgment, and thereafter, may and shall be had, in the same courts, in all suits and process aforesaid, and in all things concerning the same, as by law might have been had in case the said Territory of the United States Northwest of the Ohio had remained undivided.

Approved, March 2, 1801.

An Act to add to the District of Massac, on the Ohio, and to discontinue the District of Palmyra, in the State of Tennessee, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That the District of Massac, in addition to the territory it already possesses, shall include all waters, shores, and inlets, now included within the District of Palmyra, and all rivers, waters, shores and inlets, lying within the State of Tennessee.

Sec. 2. *And be it further enacted*, That, from and after the thirtieth day of June next, so much of the "Act to regulate the collection of duties on imports and tonnage," as establishes the District of Palmyra, in the State of Tennessee, shall be repealed, except as to the recovery and receipts of such duties on goods, wares, and merchandise, and on the tonnage of ships or vessels, as shall have accrued, and as to the recovery and distribution of fines, penalties, and forfeitures, which shall have been incurred before and on the said day.

Approved, March 2, 1801.

An Act making appropriations for the Military Establishment of the United States, for the year one thousand eight hundred and one.

Be it enacted, &c., That, for defraying the expenses of the Military Establishment of the United States, for the year one thousand eight hundred and one, the pay and subsistence of the officers and men, bounties, and premiums, the clothing, hospital, ordnance, Quartermaster's and Indian departments, the defensive protection of the frontiers, the contingent expenses of the War Department, for the fabrication of cannon and arms, and purchase of ammunition, and for the payment of military pensions, the sum of two millions, ninety-three thousand and one dollars be, and is, hereby appropriated; that is to say,

For the pay of the Army of the United States, four hundred and eighty thousand three hundred and ninety-six dollars.

For the subsistence of the Army, three hundred and six thousand three hundred and ninety-five dollars.

For forage, the sum of seven thousand six hundred and eighty dollars.

For horses to replace those which may die, or become unfit for service, the sum of five thousand dollars.

For clothing, the sum of one hundred and forty-one thousand five hundred and thirty dollars.

For bounties and premiums, the sum of forty-two thousand dollars.

For the hospital department, the sum of twenty thousand dollars.

For the ordnance department, the sum of one hundred thousand dollars.

For the Quartermaster's department, the sum of one hundred and sixty-five thousand dollars.

For paying annuities to the following nations of Indians in pursuance of treaties: To the Six Nations, Cherokees, Chickasaws, and Creeks, the sum of fifteen thousand dollars; and for presents to the Choctaws, two thousand dollars.

For defraying the expense of the transportation of annuities to the Indian tribes, ten thousand dollars.

For promoting civilization among the Indian tribes, and pay of temporary agents, and rations to Indians at the different military posts, the sum of forty-five thousand dollars.

For the defensive protection of the frontiers of the United States, including the erection and repairs of forts and fortifications, the sum of thirty thousand dollars.

For loss of stores, allowances to officers on being ordered to distant commands, and for special purposes, advertising and apprehending deserters, printing, purchasing maps, and other contingencies, the sum of thirty thousand dollars.

For the annual allowance to the invalids of the United States, for their pensions, from the fifth of March, one thousand eight hundred and one, to the fourth of March, one thousand eight hundred and two, the sum of ninety-three thousand dollars.

For the fortification of ports and harbors within the United States, the sum of two hundred thousand dollars.

For the fabrication of cannon and small arms, and the purchase of ammunition, being the balance of appropriations unexpended, which have been carried to the surplus fund, four hundred thousand dollars.

Sec. 2. *And be it further enacted*, That the foregoing appropriations shall be paid out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, March 2, 1801.

An Act to amend the act, entitled "An act to establish a General Stamp Office."

Be it enacted, &c., That whenever any person, or persons, shall pay to a collector of the revenue the duty chargeable by law on a deed, instrument, or writing, on which the stamp duty chargeable by law shall not have been paid, together with the further sum of ten dollars, and shall obtain the endorsement and receipt of such collector, upon such deed, instrument, or writing therefor, agreeably to the provisions of an act, entitled "An act to establish a general stamp office," passed on the twenty-third day of April, in the year one thousand eight hundred, it shall be lawful for such person, or persons, to produce such deed, instrument, or writing, to the supervisor of the revenue within whose district such person or persons shall reside; which supervisor thereupon shall certify under his hand and seal, and upon some part of the said deed, instrument, or writing, that the same, so endorsed, has been produced to him, and that the said endorsement is, in his belief, genuine; after which, said endorsement and certificate, and not otherwise, such deed, instrument, or writing, shall be to all intents and purposes as valid and available as if the same had been or were stamped, counter-stamped, or marked as by law required; anything in any act to the contrary notwithstanding.

Sec. 2. *And be it further enacted*, That so much of the act, entitled "An act to establish a general stamp office," as requires certain duties to be performed by the surveyors of the revenue, shall be, and the same is hereby, repealed.

Approved, March 3, 1801.

An Act providing for a Naval Peace Establishment, and for other purposes.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized, whenever the situation of public affairs shall, in his opinion, render it expedient, to cause to be sold, they being first divested of their guns and military stores, which are to be carefully preserved, all or any of the ships and vessels belonging to the Navy, except the frigates United States, Constitution, President, Chesapeake, Philadelphia, Constellation, Congress, New York, Boston, Essex, Adams, John Adams, and General Greene; and also to lay up all the frigates thus to be retained, except such as are directed by this act to be kept in constant service in time of peace.

Sec. 2. *And be it further enacted*, That six of the frigates to be retained shall be kept in constant service in time of peace, and shall be officered and manned as the President of the United States may direct, not to exceed, however, two-thirds of the present complement of seamen, and ordinary seamen; the residue of the frigates to be retained shall be laid up in convenient ports, and there shall be permanently attached to each frigate so laid up, one sailing master, one boatswain, one gunner, one carpenter, and one cook, one sergeant or corporal of marines, and eight marines; and to the large frigates, twelve, and to the small frigates, ten seamen; the sailing master shall have the general care and superintendence of the ship; and shall generally execute such duties of a purser as may be necessary.

Sec. 3. *And be it enacted*, That, from and after the day when the reduction of the Navy shall take place as aforesaid, the Navy ration shall consist of as follows: on Sunday, fourteen ounces of bread, one and a quarter pound of beef, half a pound of flour, one quarter of a pound of suet, one half pint of distilled spirits; Monday, fourteen ounces of bread, one pound of pork, half pint of pease, one half pint of distilled spirits; Tuesday, fourteen ounces of bread, one pound of beef, two ounces of cheese, one half pint of distilled spirits; Wednesday, fourteen ounces of bread, one pound of pork, half pint of rice, one half pint of distilled spirits; Thursday, fourteen ounces of bread, one and a quarter pound of beef, half pound of flour, quarter pound of suet, one half-pint of distilled spirits; Friday, fourteen ounces of bread, four ounces of cheese, two ounces of butter, half pint of rice, half pint of molasses, one half pint of distilled spirits; Saturday, fourteen ounces of bread, one pound of pork, half pint of pease, half pint of vinegar, one half pint of distilled spirits.

Sec. 4. *Be it further enacted*, That the President of the United States retain in the Navy service, in time of peace, nine captains, thirty-six lieutenants, and one hundred and fifty midshipmen, including those employed on board of the six frigates to be kept in service; and that he be authorized to discharge all the other officers in the Navy service of the United States; but such of the aforesaid officers as shall be retained in the service shall be entitled to receive no more than half their monthly pay during the time when they shall not be under orders for actual service.

Sec. 5. *Be it further enacted*, That all the commissioned and warrant officers, who shall be discharged as aforesaid, shall be entitled to receive

four months pay over and above what may be due to them respectively at the time of their discharge.

Approved, March 3, 1801.

An Act concerning the Mint.

Be it enacted, &c., That the Mint shall remain in the city of Philadelphia, until the fourth day of March, in the year one thousand eight hundred and three.

Sec. 2. *And be it further enacted*, That during the continuance of the Mint at the city of Philadelphia, the duties now enjoined on the Chief Justice of the United States, the Secretary and Comptroller of the Treasury, the Secretary for the Department of State, and the Attorney General of the United States, by the eighteenth section of the act, entitled "An act establishing a Mint, and regulating the coins of the United States," passed the second day of April, one thousand seven hundred and ninety-two, shall be performed by the District Judge of Pennsylvania, the Attorney for the United States in the district of Pennsylvania, and the Commissinoner of Loans for the State of Pennsylvania.

Approved, March 3, 1801.

An Act authorizing the Secretary of the Treasury to employ Clerks for completing the abstracts of the valuations of lands and dwelling-houses, and the enumeration of slaves.

Be it enacted, &c., That the Secretary of the Treasury be, and he is hereby, authorized and directed to employ clerks, for such compensation as he shall judge reasonable, to complete the abstracts of the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States, under the direction of the commissioners authorized to direct the completing of such abstracts, in those States where clerks cannot be procured by the commissioners, for the compensation allowed by law to clerks for performing that business, agreeably to the provisions of the following acts; that is to say an act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" an act, entitled "An act supplementary to the act, entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States;'" and an act, entitled "An act to provide for equalizing the valuation of unseated lands."

Approved, March 3, 1801.

An Act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio.

Be it enacted, &c., That any person or persons, and the legal representative or representatives of any person or persons, who, before the first day of January in the year of our Lord one thousand eight hundred, had made any contract or contracts in writing, or by any note or memorandum thereof in writing, either with John Cleves Symmes, or with any of his associates, or who had made to him or them, any payment of money for the purchase of lands, situate between the Miami rivers, within the limits of a survey made by Israel Ludlow, in confomity to an act of Congress of the twelfth of April, one thousand seven hundred and ninety-two, and not comprehended within the limits of a tract of land conveyed to John Cleves Symmes and his associates, by letters patent, bearing date the thirtieth of September, one thousand seven hundred and ninety-four, in the Territory of the United States Northwest of the Ohio, shall be entitled to a preference, in becoming the purchasers, from the United States, of all the lands so contracted for, at the price of two dollars per acre, exclusive of the surveying fees, and other incidental expenses; and payment be made therefor, to the Treasurer of the United States, or the receiver of public moneys for the lands of the United States at Cincinnati, in like instalments, and under the same conditions, as directed by the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory of the United States Northwest of the Ohio and above the mouth of Kentucky river;'" *Provided however*, That no interest shall be charged upon any of the instalments until they respectively become payable.

Sec. 2. *And be it further enacted*, That every person claiming the benefit of the first section of this act, shall, on or before the first day of November next, deliver to the receiver of public moneys, for the lands of the United States at Cincinnati, a notice in writing, stating the nature and extent of his claim or contract; and if any person shall neglect to give such notice of his claim or contract, or having given the same, shall neglect to make application for the purchase thereof, as hereinafter directed, or shall fail in making the first payment before the first of January next, all his right of pre-emption, on the terms aforesaid, shall cease and become void.

Sec. 3. *And be it further enacted*, That the aforesaid receiver of public moneys, on being paid the fees hereinafter provided, shall receive every such notice of claim, or statement thereof, and give a receipt therefor, and carefully put and preserve on file every such paper or writing, and lay the same before the commissioners, when met, for settling and adjusting the claims aforesaid.

Sec. 4. *And be it further enacted*, That the aforesaid receiver of public moneys, and two other persons, who shall be appointed by the President of the United States, alone shall be commissioners for the purpose of ascertaining the rights of persons claiming the benefits of this act, who, previous to entering on the duties of their appointment, shall respectively take and subscribe the following oath or affirmation, before some person qualified to administer oaths, to wit: "I —— ——, do solemnly swear, or affirm, that I will impartially exercise and discharge the duties imposed upon me, by an act of Congress, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the Ohio,' to the best of my understanding and ability;" and it shall be the duty of the said commissioners to meet at Cincinnati, between the first and tenth day of November next, of which meeting three weeks' previous notice shall be given by them in a public newspaper printed at Cincinnati; and they, or a majority of them, so met, shall not adjourn to any other place, or for a longer time than three days, until they have finally completed the business of the said appointment; and they, or any two of them, shall have power to hear, and decide in a summary manner, all matters respecting all such claims of which notice may have been filed, pursuant to the third section of this act, also to administer oaths, and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity; which determination shall be final; and when it shall appear to them that the claimant is entitled to the right of pre-emption on the terms aforesaid, they shall give a certificate thereof, stating as accurately as may be, the quantity and local situation of the lands to which he may be entitled, directed to the register of the land office at Cincinnati, or when the said register may be a claimant to the surveyor general, copies of which certificates shall be by them recorded, in a book to be provided for that purpose, and deposited for safe keeping with the register of the land office.

Sec. 5. *And be it further enacted*, That the aforesaid register and surveyor general, respectively, upon application of any person or persons, who shall produce a certificate of the commissioners aforesaid, to him directed, before the first day of January next, and shall also produce a receipt from the Treasurer of the United States, or the aforesaid receiver of public moneys, for at least one-fourth part of the purchase money, and also for the payment of three dollars for each half section or smaller quantity, and shall pay him the fees in like case provided by the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory of the United States Northwest of the Ohio, and above the mouth of Kentucky river,'" shall admit such person or persons to become a purchaser or purchasers of the land designated in the said certificate, and shall receive the said certificate, and preserve it on file, and make an entry of the application in his book, kept for the purpose, and on any of the three last payments being made in advance, he shall allow the purchaser the like discount as is allowed by the fourth clause of the fifth section of the act last above recited; and on payment in full, and a final settlement had, he shall give his certificate thereof; upon producing which to the Secretary of the Treasury, a patent shall issue in like manner as is provided by the said act last above recited.

Sec. 6. *And be it further enacted*, That the said receiver of public moneys shall be entitled to have and receive, to his own use, from the respective claimants, the following fees, that is to say; for filing a notice and evidence of claim, or statement thereof, twenty-five cents; for giving a copy thereof, twelve and a half cents for every one hundred words: And the said commissioners shall, as a full compensation for their services, be entitled, jointly, to have and receive from the respective claimants, that is to say; for every determination, and entering the result in their book, at the rate of three dollars for every section; for every certificate, and recording the same, at the rate of one dollar for every section.

Sec. 7 *And be it further enacted*, That all the aforesaid tract of country shall be surveyed by the surveyor general, as soon as may be after the first day of September next, in the manner hereinafter directed.

1. So much of the said tract as lies between the northern boundary line, and the aforesaid patent of John Cleves Symmes, and associates, and Israel Ludlow's southern boundary of the seventh entire range of townships, shall be laid off into sections, agreeably to northwardly and southwardly lines, run under the direction of John Cleves Symmes; and the marks thereon made, at the time of running the aforesaid lines, for the corners of sections shall be established by the surveyor general, and eastwardly and westwardly lines shall be run to intersect the aforesaid northwardly and southwardly lines, in the corresponding marked points.

2. And the residue of the said tract lying north of the aforesaid southern boundary of the seventh entire range, shall be laid off into sections, according to such uniform rule and method, as, in the opinion of the surveyor general, shall best secure the rights and interest of those who are entitled to pre-emption.

3. Such divisions shall be made of sections, according to the claim of such who obtain pre-emption right, and the contents of each and every section, and such division thereof, shall be ascertained, and the surveyor general shall prepare and transmit a plan thereof to the aforesaid register, immediately after the said survey shall be completed, and also forward a copy thereof to the Secretary of the Treasury.

Sec. 8. *And be it further enacted*, That all persons, availing themselves of a pre-emption under this act, shall make application for a section, or any part or parts of a section or sections, according to the estimated quantity of six hundred and forty acres to a section, and the amount of the excess or deficiency shall be added to or deducted from the last payment, and the purchaser shall make payment for and hold the quantity returned and expressed in the plats, let the quantity be more or less.

Sec. 9. *And be it further enacted*, That the duties of the surveyor general, of the aforesaid register and receiver of public moneys, as nearly as may be consistent with this act, shall respectively be the same as directed in and by the last recited act, and the fees and emoluments shall respectively be the same as provided in the said act last recited.

Sec. 10. *And be it further enacted*, That after completing the surveys, agreeably to this act, re-

serving the lots marked sixteen in each township, or fractional part of a township, in which the same may be, for the purposes expressed in the ordinance of Congress of the twentieth of May, one thousand seven hundred and eighty-five, the residue of the lands, and so many of the aforesaid pre-emptions as shall become forfeited by reason of failures of payment, shall be sold agreeably to the last recited act.

SEC. 11. *And be it further enacted*, That this act shall have full operation and effect, anything in any former law to the contrary notwithstanding.

Approved, March 3, 1801.

An Act supplementary to the act, entitled "An act concerning the District of Columbia."

Be it enacted, &c., That the Circuit Courts for the District of Columbia shall be, and they are hereby, invested with the same power respecting constables, inspectors, and the inspection of tobacco and flour, surveyors, mills, highways and ferries, for the county of Alexandia, as have heretofore been vested in county courts of the Commonwealth of Virginia; and for the county of Washington, the same power and authority as have been heretofore exercised by the county and levy courts of the State of Maryland; with power to appoint to all other offices necessary for the said district, under the laws of the respective States of Maryland and Virginia: And all officers for whom no special provision is made by this act, or the act to which this is a supplement, shall receive the same fees and emoluments as they have respectively received under the jurisdiction of the respective States.

SEC. 2. *And be it further enacted*, That all indictments shall run in the name of the United States, and conclude, against the peace and government thereof: And all fines, penalties and forfeitures accruing under the laws of the States of Maryland and Virginia, which by adoption have become the laws of this district, shall be recovered with costs, by indictment or information in the name of the United States, or by action of debt, in the name of the United States and of the informer; one half of which fine shall accrue to the United States, and the other half to the informer; and the said fines shall be collected by or paid to the marshal, and one half thereof shall be by him paid over to the board of commissioners hereinafter established, and the other half to the informer; and the marshal shall have the same power regarding their collection, and be subject to the same rules and regulations as to the payment thereof, as the sheriffs of the respective States of Maryland and Virginia are subject to in relation to the same.

SEC. 3. *And be it further enacted*, That all felonies committed within the county of Alexandria shall be punishable in the same manner as such crimes were punishable by the laws of Virginia, as they existed prior to the year one thousand seven hundred and ninety-six; and the circuit court for the said county of Alexandria shall possess and exercise the same powers and jurisdiction, civil and criminal, as is now possessed and exercised by the district courts of Virginia.

SEC. 4. *And be it further enacted*, That the magistrates, to be appointed for the said district, shall be and they are hereby constituted a board of commissions within their respective counties, and shall possess and exercise the same powers, perform the same duties, receive the same fees and emoluments, as the levy courts or commissioners of county for the State of Maryland possess, perform and receive; and the clerks and collectors, to be by them appointed, shall be subject to the same laws, perform the same duties, possess the same powers, and receive the same fees and emoluments as the clerks and collectors of the county tax of the State of Maryland are entitled to receive.

SEC. 5. *And be it further enacted*, That the clerks of the circuit court shall, within their respective districts, be bound to perform the same duties, respecting the recording of deeds and all other services, and shall receive the same fees and emoluments for the same) except in those cases provided for in the ninth section of the act to which this is a supplement) as are now performed and received by the clerks of the counties of the respective States of Maryland and Virginia.

SEC. 6. *And be it further enacted*, That in all cases where the Constitution or laws of the United States provide that criminals and fugitives from justice, or persons held to labor in any State, escaping into another State, shall be delivered up, the chief justice of the said district shall be, and he is hereby empowered and required to cause to be apprehended and delivered up such criminal, fugitive from justice, or persons fleeing from service, as the case may be, who shall be found within the district, in the same manner and under the same regulations as the executive authority of the several States are required to do the same; and all executive and judicial officers are hereby required to obey all lawful precepts or other process issued for that purpose, and to be aiding and assisting in such delivery.

SEC. 7. *And be it further enacted*, That it shall be lawful for the sheriffs and collectors of public dues for the counties of Montgomery and Prince George's in the State of Maryland, and for the sheriffs of Fairfax county in the Commonwealth of Virginia, and they shall respectively have full power and authority, to enter into those parts of the now District of Columbia, which were heretofore within the limits of their respective bailiwicks, for the purposes of collecting, by distress or otherwise, as they were heretofore authorized to do, all officers fees, State taxes and county taxes, levies, fines and other public dues, which were due on the first Monday of December, one thousand eight hundred, and still remain uncollected, from persons residing or having property, subject to the payment of such officers fees, State taxes and county taxes, and levies within the said district; and all disputes or controversies that do or may arise between such sheriff or collector, and the person or persons from whom he or they may claim such public dues, shall be cognizable before and tried by the respective State courts to whom the trial of such controversies heretofore belonged, and not before the court of the District of Columbia.

SEC. 8. *And be it further enacted*, That it shall and may be lawful for the sheriffs of the said counties of Montgomery and Prince George's in the State of Maryland, and for the sheriff of Fairfax county in the Commonwealth of Virginia, and they shall respectively have full power and authority, to enter into those ports parts of the now District of Columbia, which were heretofore within the limits of their respective bailiwicks, for the purpose of arresting and conducting to the respective jails under their keeping and care, as they heretofore might have done had the law to which this is a supplement never passed, each and every person within the limits of the District of Columbia, upon whom such sheriff hath heretofore served a writ of capias ad satisfaciendum, capias ad respondendum, attachment or other process, issuing from any State court, which commands and requires such sheriff to have the body of the person before the court from which such writ or process hath issued.

SEC. 9. *And be it further enacted*, That where by this act, and the act to which this is a supplement, appointments are authorized to be made by the circuit court of the district, it shall be lawful for the chief judge, with one of the associate justices of the said court, to make such appointments.

Approved, March 3, 1801.

An Act authorizing the remission of duties on certain teas destroyed by fire, while under the care of the officers of the customs, in Providence, Rhode Island.

Be it enacted, &c., That the collector of the district of Providence, in the State of Rhode Island, be, and he is hereby, authorized and directed to remit the duties on such part of a certain quantity of teas, imported into the port of Providence, in the ship called the Resource, on the twenty-ninth day of July one thousand eight hundred, by Thomas Lloyd Halsey, John Corlis, William F. Megee, and Henry Smith, of the town of Providence, merchants, and on such part of a certain quantity of teas, imported into the said port, in the ship called the Ann and Hope, on the twenty-second day of August, in the same year, by John Innes Clarke, of the said town, merchant, as remained deposited to secure the payment of duties under the care of the officers of the customs, on the twenty-first day of January last, in the aforesaid town of Providence, and shall be proved, to the satisfaction of the said collector, to have been burned and destroyed.

Approved, March 3, 1801.

An Act to amend the act altering the district of Bermuda Hundred and City Point.

Be it enacted, &c., That, from and after the passing of this act, the master or commander of any ship or vessel arriving within the districts of Petersburg or Richmond, laden with goods, wares, and merchandise, belonging or consigned to persons resident within both the said districts, shall make entry of such ship or vessel, in manner already prescribed by law, with the collector of that district wherein the owner or consignee, or the husband or acting manager of such ship or vessel, shall actually reside: And the said master or commander shall, at the time of making the entry aforesaid, deliver a duplicate manifest of the cargo, as now required by law, to the said collector, whose duty it shall then be to certify the same as a true copy, and to transmit it to the collector of the other district; and the delivery of such goods, wares, or merchandise, shall be authorized by permits from the collector of each district, respectively, in which the same shall have been duly entered according to law: *Provided*, That no bona fide importer, owner, or consignee, of goods, wares, or merchandise, residing in either district, shall be admitted to make an entry of such goods, wares or merchandise, with the collector of the district in which such importer, owner or consignee, shall not reside: *And provided also*, That all entries for goods, wares, or merchandise, made by agents, for persons residing in other districts, shall be made with the collector of the district in which such ship or vessel may discharge.

Approved, March 3, 1801.

An Act making appropriations for the support of Government for the year one thousand eight hundred and one.

Be it enacted, &c., That for the support of Government, and to discharge certain claims and expenses hereafter enumerated, the following sums be and are hereby appropriated, that is to say:

For the compensation granted by law to the President and Vice-President of the United States, thirty thousand dollars.

For the like compensation to the members of the Senate and House of Representatves, their officers and attendants, one hundred and ninety-three thousand four hundred and seventy dollars.

For the contingent expenses of the two Houses of Congress, including the payment of certain articles of furniture purchased for the accommodation of Congress, and not provided for by former appropriations, seventeen thousand dollars.

For the compensation granted by law to the judges of the United States, the Attorney General, the district attorneys, and marshals, eighty-three thousand four hundred dollars.

For defraying the expense of courts, jurors, and witnesses, and for defraying the expenses of prosecutions for offences against the United States, and for safe keeping of prisoners, thirty thousand dollars.

For compensation to the Secretary of the Treasury, clerks and persons employed in his office, eleven thousand three hundred and nine dollars, and eighty-one cents.

For expenses of stationery, printing, translating foreign languages, allowances to persons employed in receiving and transmitting passports and sea-letters, and all other contingent expenses in the office of the Secretary of the Treasury, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery, printing, and all other contingent expenses in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery, printing, and all other contingent expenses in the Auditor's office, seven hundred and fifty dollars.

For compensation to the Treasurer, clerks, and other persons employed in his office, six thousand three hundred and forty-eight dollars and ninety-eight cents.

For expense of stationery, printing, and all other contingent expenses in the Treasurer's office, three hundred dollars.

For compensation to the Commissioner of the Revenue, clerks, and other persons employed in his office, six thousand two hundred and fifty-three dollars and six cents.

For expense of stationery, printing, and all other contingent expenses in the office of the Commissioner of the Revenue, nine hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars and one cent.

For expense of stationery, printing, and all other contingent expenses in the Register's office, two thousand eight hundred dollars.

For compensation to the Superintendent of Stamps, clerks, and persons employed in his office, and for making good a deficiency in former appropriations for the stamp office, five thousand nine hundred and ninety dollars and twenty-four cents.

For expense of stationery, printing, and all other contingent expenses in the stamp office, six hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For fire-wood and candles for the offices of the Treasury, including the stamp office, and other contingencies, four thousand dollars.

For defraying the expense of stating and printing the public accounts for the year one thousand eight hundred and one, one thousand two hundred dollars.

For making good the deficiency of former appropriations, for the expense of removing the books and records of the Treasury from Philadelphia to Trenton, in the year one thousand seven hundred and ninety-nine, two thousand six hundred and thirty-nine dollars and seventy-six cents.

For the expense of new office furniture for the Treasury, at the city of Washington, two thousand dollars.

For flooring the Treasury, and incidental expenses for securing the buildings and records of the Treasury, three hundred and fifty-nine dollars and eighty-three cents.

For paying two watchmen for the Treasury, six hundred dollars.

For the expense of two buildings for messengers of the Treasury, and sinking two wells for the Treasury, five thousand one hundred and twenty-two dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the Commissioners of Loans, and an allowance to certain loan officers in lieu of clerk hire, twelve thousand one hundred dollars.

For defraying the authorized expenses of the several loan offices, two thousand nine hundred dollars.

For compensation to the Secretary of State, clerks, and persons employed in his office, eleven thousand three hundred and sixty dollars.

For the contingent expenses of the Office of State, thirteen thousand five hundred dollars.

For compensation to the Director of the Mint, officers, clerks, and other persons employed in the Mint establishment, seventeen thousand six hundred dollars.

For repairs, and all other contingent expenses in the Mint establishment, six thousand three hundred dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and ten dollars.

For the compensation of two additional clerks employed by the Secretary of War in copying papers in the office of the Secretary of the Treasury, to replace those lately burnt in the War Office, one thousand two hundred dollars.

For such additional compensation to the clerks of the several Departments of the Treasury, of State, of War, of the Navy, and of the General Post Office, not exceeding for each department, respectively, fifteen per cent. in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks, as the Secretaries of the said departments and the Postmaster General may, respectively, think reasonable for the present year, to be distributed as the said Secretaries and the Postmaster General, respectively, shall think proper, to the clerks in their departments, respectively, eleven thousand eight hundred and eighty-five dollars.

For an additional allowance to the chief clerk in the office of the Secretary of the Navy, for his services in the year one thousand eight hundred, the sum of three hundred dollars.

For contingent expenses attending the office of Secretary of War, and to make good the deficiency of former appropriations, five thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the Accountant's office, one thousand dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, and for contingent expenses of the same, four thousand four hundred and sixty-six dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, nine thousand one hundred and ten dollars.

For contingent expenses in the office of the Secretary of the Navy, three thousand three hundred dollars.

For compensation to the Accountant of the Navy Department, clerks, and persons employed in his office, and to make good a deficiency in the appropriation of the last year, eleven thousand four hundred and forty-nine dollars and forty-one cents.

For the contingent expenses in the Accountant's office, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the General Post Office, nine thousand nine hundred and sixty dollars.

For the contingent expenses of the General Post Office, two thousand one hundred and twelve dollars and fifty cents.

For compensation to the Surveyor General, the contingent expenses in his office, and the expense of executing surveys of the public land Northwest of the river Ohio, twenty-eight thousand two hundred dollars.

For salaries to the Governor, Secretary, and Judges of the Territory Northwest of the river Ohio, and the contingent expenses of that Government, five thousand five hundred dollars.

For salaries to the Governor, Secretary, and Judges of the Mississippi Territory, and the contingent expenses of that Government, five thousand five hundred dollars.

For salaries to the Governor, Secretary, and Judges of the Indiana Territory, and the contingent expenses of that Government, five thousand five hundred dollars.

For the discharge of such demands against the United States, unprovided for, as shall be ascertained and admitted in due course of settlement at the Treasury, two thousand dollars.

For satisfying annuities and grants to Isaac Van Wart, John Paulding, David Williams, Joseph De Beauleau, Joseph Traversie, James McKensie, Joseph Brussels, Elizabeth Bergen, and the children of Major Alexander Trueman and Colonel John Harding, one thousand seven hundred and fifty-three dollars and thirty-three cents.

For the expenses of intercourse with foreign nations during the present year, and making good the deficiency of the appropriation for the year one thousand eight hundred, for the expense of the mission to France, eighty-five thousand dollars.

For carrying into effect the Treaty of Amity, Commerce, and Navigation, between the United States and the King of Great Britain, fifty-eight thousand eight hundred and sixty-four dollars.

For a deficiency of former appropriations for carrying into effect the treaty between the United States and the King of Spain, forty-six thousand five hundred dollars.

For fulfilling the engagements of the United States with the Mediterranean Powers, two hundred and fifty six thousand dollars.

For prosecuting the claims of American citizens for property captured by the belligerent Powers, sixty-four thousand dollars.

For the relief of American seamen, thirty thousand dollars.

For defraying the further expenses incident to the valuation of houses and lands, and the enumeration of slaves, within the United States, forty thousand dollars.

For the support of light-houses, beacons, buoys, and public piers, and other improvements in navigation, thirty-eight thousand six hundred and twenty-two dollars and seventy cents.

For discharging the expense of the second enumeration of the inhabitants of the United States, the sum of sixty thousand dollars.

For discharging such miscellaneous claims against the United States, not otherwise provided for, as shall be admitted at the Treasury, which, according to the usage thereof, require payment in specie, four thousand dollars.

For the expense of returning the votes for President and Vice President of the United States, one thousand five hundred and twenty-four dollars and fifty cents.

For repairing the building occupied by the Treasury Department, the sum of two thousand dollars.

For satisfying the claim of Clement Biddle, twenty-nine thousand eight hundred and fifty-six dollars and sixty-three cents.

For erecting a light-house at Old Point Comfort, the sum of three thousand five hundred dollars.

SEC. 2. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged out of any moneys in the Treasury, not otherwise appropriated.

Approved, March 3, 1801.

An Act making appropriations for the Navy of the United States for the year one thousand eight hundred and one.

Be it enacted, &c., That, for defraying the expenses of the navy of the United States for the year one thousand eight hundred and one, there shall be, and hereby is, appropriated the sum of three millions forty-two thousand three hundred and fifty-two dollars and ninety-five cents, that is to say:

For the pay of the officers of the navy of the United States, the sum of three hundred and eighty-two thousand seven hundred and eighty-eight dollars.

For the subsistence of the officers of the navy, the sum of sixty-nine thousand eight hundred and two dollars and sixty cents.

For the pay of the seamen, the sum of eight hundred and sixteen thousand six hundred and sixty dollars.

For provisions, the sum of five hundred and ninety-seven thousand one hundred and one dollars and thirty-seven cents.

For the expenses of medicines, hospitals, and hospital stores, the sum of thirty-one thousand six hundred and forty-seven dollars and twenty cents.

For the contingent expenses of the navy, including expenditure of military stores, the sum of three hundred and forty-four thousand six hundred dollars.

For salaries to storekeepers, clerks, store rent, laborers, and other contingencies, the sum of thirty-seven thousand eight hundred and fifty dollars.

For the pay of the officers, non-commissioned officers, and privates, of the marine corps, the sum of ninety-nine thousand two hundred and thirty-four dollars.

For the subsistence of the officers and privates of the marine corps, the sum of eleven thousand four hundred and eighty-six dollars and ten cents.

For clothing for the marine corps, the sum of thirty-three thousand five hundred and eighty-one dollars and thirty cents.

For military stores for the marine corps, the sum of nine thousand one hundred and sixty-six dollars and thirty-eight cents.

For the contingent expenses of the marine corps, including camp equipage, quartermaster, barrackmaster, hospital stores, stationery, and other contingencies, the sum of thirteen thousand four hundred and thirty-six dollars.

For the expenses attending six seventy-four gun ships, and for completing navy yards, docks, and wharves, the sum of five hundred thousand dollars.

For erecting marine barracks, the sum of twenty thousand dollars.

For maintenance of French prisoners, the sum of thirty thousand dollars.

For making up deficiency of former appropriations for the maintenance of French prisoners, the sum of forty-five thousand dollars.

Sec. 2. *And be it further enacted*, That the several appropriations hereinbefore made shall be paid out of the unexpended balance of appropriations for the navy, at the close of the last year, and out of any other moneys in the Treasury not otherwise appropriated.

Approved, March 3, 1801.

An Act directing the mode of estimating certain foreign coins and currencies, and of making out invoices in certain cases.

Be it enacted, &c., That, from and after the passing of this act, the foreign coins and currencies hereinafter mentioned, shall be estimated in the computation of duties at the following rates: each sicca rupee of Bengal, and each rupee of Bombay, at fifty cents; and each star pagoda of Madras, at one hundred and eighty-four cents; anything in any former act to the contrary notwithstanding.

Sec. 2. *And be it further enacted*, That, from and after the thirtieth day of June next, the invoices of all goods imported into the United States, and subject to a duty ad valorem, shall be made out in the currency of the place or country from whence the importation shall be made, and shall contain a true statement of the actual cost of such goods, in such foreign currency or currencies, without any respect to the value of the coins of the United States, or foreign coins which now are, or shall be by law made current within the United States in such foreign place or country.

Approved, March 3, 1801.

An Act to augment the salaries of the District Judges in the districts of Massachusetts, New York, New Jersey, Delaware, and Maryland, respectively.

Be it enacted, &c., That, instead of the compensation at present allowed to the district judges for the districts of Massachusetts, New York, Delaware, and Maryland, respectively, there shall hereafter be allowed to the district judge for the district of Massachusetts, the yearly salary of sixteen hundred dollars; to the district judge for the district of New York, the yearly salary of sixteen hundred dollars; to the district judges of the districts of New Jersey and Delaware, the yearly salaries of twelve hundred dollars each; and to the district judge for the district of Maryland, the yearly salary of sixteen hundred dollars, to be paid at the Treasury of the United States in quarter-yearly payments.

Sec. 2. *And be it further enacted*, That, for the year one thousand eight hundred and one, there shall be appropriated the sum of eight hundred dollars, to satisfy the additional compensation hereby allowed to the district judges, to be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 3, 1801.

An act in addition to an act, entitled "An act making provision for the further accommodation of the household of the President of the United States."

Be it enacted, &c., That the Secretary of the Treasury be authorized to appoint a proper person, who shall receive the public property belonging to the household of the President of the United States, and, after taking an inventory of the same, shall deliver it, after the third day of March instant, to the President of the United States.

Sec. 2. *And be it further enacted*, That such articles of the furniture belonging to the President's household as may be decayed, out of repair, or unfit for use, and as the President of the United States, for the time being, may direct, and all the public property, other than furniture, now belonging to the said household, shall be sold, under the direction of the Heads of the several Departments of State, of the Treasury, of War, and of the Navy; and that the proceeds of such sales be expended, in addition the funds already appropriated for that purpose, under the direction of the same officers, for the purpose of providing furniture for the house erected for the accommodation of the President of the United States.

Approved, March 3, 1801.

An Act for altering the times and places of holding certain courts therein mentioned, and for other purposes.

Be it enacted, &c., That the circuit courts of the United States within the districts of Maine, New Hampshire, Massachusetts, and Rhode Island,

shall, after the passing of this act, commence and be respectively held on the several days hereinafter expressed, instead of the times heretofore established by law, that is to say: in and for the district of Rhode Island, at Providence, on every first day of April, and at Newport on every eleventh day of November; in and for the district of Massachusetts, on every eighth day of April and twenty-fifth day of October; in and for the district of New Hampshire, at Portsmouth, on every twenty-third day of April, and at Exeter on every fifteenth day of October; in and for the district of Maine, at Portland, on every first day of May, and at Wiscasset, on every sixth day of October, except when any of those days shall happen on a Sunday, and then the session shall commence on the next day following.

Sec. 2. *And be it further enacted*, That all actions, suits, process, and other proceedings, of what nature or kind soever, depending and undetermined before the circuit courts aforesaid, respectively, or that shall be depending and undetermined on the first day of April next, before the district court for the district of Maine, acting as a circuit court, shall be continued to the next circuit courts, respectively, hereby directed to be holden in and for the districts aforesaid, respectively.

Sec. 3. *And be it further enacted*, That all writs and processes which have been, or shall be duly sued out and made returnable to either of the circuit courts aforesaid, or to the district court for the district of Maine, acting as a circuit court, on either of the days on which the same courts were respectively to have been held prior to the passing of this act, and all recognizances that have been, or shall be, duly taken and made so returnable, (said writs and processes having been duly and seasonably served,) shall be returned to and proceeded upon in the said next circuit courts, respectively, which are next to be holden in and for the districts aforesaid, respectively, as hereby directed; and all property attached by virtue of such writs or processes, shall be held in due form of law, to respond the final judgments that shall be obtained upon the same respectively.

Sec. 4. *And be it further enacted*, That the district courts of the United States, in the State of North Carolina, shall, after the passing of this act, commence and be held on the several days hereinafter expressed, instead of the times heretofore established by law, that is to say: at Edenton, in and for the district of Albemarle, on every last Monday of March, third Monday of June, and last Monday of November; at Newbern, in and for the district of Pamlico, on every first Monday of April, fourth Monday of June, and first Monday of December; and at Wilmington, in and for the district of Cape Fear, on every second Monday of April, first Monday of July, and second Monday of December.

Sec. 5. *And be it further enacted*, That all actions, suits, writs, process, pleadings, and other proceedings, commenced, instituted, depending, or existing, in the district courts of the district of New Jersey and North Carolina, at the time of the passing of this act, shall be continued in manner following, that is to say: all such commenced, instituted, depending, or existing, in the district court of the district of New Jersey, to the next district court to be holden in the district of East Jersey; and all such commenced, instituted, depending, or existing, in the district court of the district of North Carolina, shall be continued to the next district court to be holden in the district of Pamlico.

Sec. 6. *And be it further enacted*, That from and after the passing of this act, the circuit court of the United States for the district of Kentucky shall be holden at Frankfort, within and for said district, on the days already established by law, instead of at Bairdstown, anything in any other law to the contrary notwithstanding.

Sec. 7. *And be it further enacted*, That the chief judge of the district of Columbia shall hold the district courts of the United States in and for the district of Potomac, and shall have, exercise, and perform, within the said district of Potomac, all the powers and duties now possessed, exercised, and performed, by the district judges of the United States within their respective districts.

Approved, March 3, 1801.

An Act to amend the act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," and to repeal the act entitled "An act to enlarge the powers of the surveyors of the revenue."

Be it enacted, &c., That each surveyor of the revenue who has been or shall be appointed under the act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves, within the United States," after completing the lists of the sums payable for every dwelling-house and slave within the district to which such surveyor does or shall belong, and delivering the same to the collector of the revenue, and after taking receipts for such lists from the collector, in the manner provided by the act entitled "An act to lay and collect a direct tax within the United States," shall transmit to the supervisor of the district, or to the inspector of survey, in any district comprehending more than one survey of inspection to which such surveyor does or may belong, the receipts given by the collector for such lists, together with all the records of the lists, valuations, and enumerations, which he has received or shall receive, or which doth or shall exist in his office, under authority of the act first mentioned; and it shall be the duty of such supervisor or inspector to receive such receipts, records, and papers, and safely to preserve the same.

Sec. 2. *And be it further enacted*, That so much of the act entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves," as makes it the duty of the surveyors of the revenue to record the transfers of lands or dwelling-houses included in the said valuations, and to view and apportion the value of such land or dwelling-houses as shall be divided by sale or partition, and to value and assess new dwelling-houses and lands which are exempted,

but which shall cease to be exempted from taxation by the laws of the State where the same shall be situated, and to cancel or reduce the valuation of dwelling-houses which may be damaged or destroyed by fire or other accidents, shall be and the same is hereby repealed.

SEC. 3. *And be it further enacted*, That the act entitled "An act to enlarge the powers of the surveyors of the revenue," passed on the thirteenth day of May, in the year one thousand eight hundred, shall be and the same is hereby repealed.

Approved, February 27, 1801.

An Act further to alter and to establish certain post roads.

Be it enacted, &c., That the following post roads be discontinued:

From Lancaster to New Holland, in Pennsylvania.

From Greenville, in Tennessee, by the Warm Springs, to Buncomb Court-house.

From Elizabeth City, in North Carolina, by New Lebanon, to Northwest river bridge.

From Upper Marlborough to Piscataway.

From Henderson Court-house to Muhlenberg Court-house.

SEC. 2. *And be it further enacted*, That the following be established as post roads:

In Maine—From Standish to Fryburg.

In New Hampshire—From Amherst, by Francistown, Washington, and Claremont, to Windsor, in Vermont.

In Vermont—From Bennington to Brattleborough.

From Newbury, by Bradford, Corinth, Washington, and Barre, to Montpelier.

In Massachusetts—From Leominister, through Westminister, Templeton, and Athol, to Greenfield.

From Worcester, by Mendon, to Providence, and from Worcester to Lancaster.

In Rhode Island—From Providence, by Rehoboth and Attleborough, to Taunton, Massachusetts.

In New York—From Albany, by Duanesburg and Durlock, to Cherry Valley.

From Poughkeepsie, by Sharon, to Litchfield.

In Delaware—From Georgetown, by Concord and the village of Laurel, to Salisbury.

In Maryland—From Annapolis to Easton, by Young Haddaways.

From Annapolis to Centreville, by Kent Island.

From the City of Washington to Piscataway.

From Elkton, by Warwick and Bridgetown, to Greensborough, in Caroline county.

From the City of Washington, by Brookville and W. Hobbs's, in Frederick county, to Taneytown.

From the City of Washington to Wiley's tavern, in Fairfax county, Virginia.

In Pennsylvania—From Pittsburgh, by Georgetown and Canfield, to Warren, in the Northwestern Territory.

From Berwick to Wilkesbarre.

In Virginia—From Richmond to Charles City Court-house.

From Clarkesburg to Marietta.

From Romney to Morganton or Clarkesburg.

From Alexandria, by Thomas's ferry, to Piscataway, in Maryland.

From Halifax Court-house to Danville.

From Bowling Green, by Broaddus's mill, S. Harrison's, and Dunkirk, to New Kent Court-house.

The post road from Jerusalem to Hicks's ford shall pass by the Cross-keys, and from the Cross-keys to Murfreesborough.

From Petersburg, by Sussex Court-house, to Southampton Court-house.

From Jamestown to Farmville.

The mail from Mecklenberg Court-house, in Virginia, to Christianville, shall be carried by Marshall's and Wilson's store.

In the Northwestern Territory—From Cincinnati to Detroit.

In Indiana Territory—From Vincennes, by Kaskaskias, to Kahokia.

In Kentucky—From Harding Court-house to Breckenridge Court-house, to Henderson Court-house, Eddy Grove, and Eddyville, to Fort Massac.

From Breckenridge Court-house, by Hartford and Vienna, to Muhlenberg Court-house.

In Tennessee—From Knoxville, by Sevierville, Newport and the Warm Springs, to Buncomb Court-house.

From Newport, by Cheek's cross roads, to Oresville.

In the Mississippi Territory—From Natchez to the southern boundary line of the United States.

In North Carolina—The post road from Raleigh to Chatham Court-house shall pass through Haywoodsborough.

The post road from Raleigh to Newbern shall pass through Green county.

From Elizabeth City to Indiantown and Tull's creek to Northwest river bridge.

The post road from Winton to Windsor shall pass through Pitch landing and Colerain.

From Louisburg, by Nash Court-house, to Tarborough.

From Charlotte Court-house to York Court-house, in South Carolina.

From Charlotte to Camden, in South Carolina.

SEC. 3. *And be it further enacted*, That all letters and packets from John Adams, now President of the United States, after the expiration of his term in office, and during his life, shall be received and conveyed by post free of postage.

SEC. 4. *And be it further enacted*, That this act shall not be construed to affect any existing contracts.

Approved, March 3, 1801.

An Act for erecting light-houses on New Point Comfort, and on Smith's Point, in the State of Virginia, and on Faulkner's Island, in Long Island Sound, in the State of Connecticut, and for placing buoys in Narraganset Bay.

Be it enacted, &c., That as soon as a cession shall be made by the State of Virginia to the United States, of the jurisdiction over the land proper for the purpose, the Secretary of the Treasury be, and he is hereby, authorized to provide by contract, to be approved by the President of the United States, for building a light-house on New Point Comfort, and another light-house on Smith's Point, both in the State aforesaid, and to furnish the same with all necessary supplies; and, also, to agree for the salaries or wages of the persons who may be appointed by the President for the superintendence and care of the same, and that the President be authorized to make the said appointments.

SEC. 2. *And be it further enacted*, That as soon as a cession shall be made by the State of Connecticut, of the jurisdiction over the land proper for the purpose, the Secretary be, and he is hereby, authorized to provide by contract, to be approved by the President of the United States, for building a light-house on Faulkner's Island, in Long Island Sound, in the said State of Connecticut, and to furnish the same with all necessary supplies, and also to agree for the salaries or wages of the person or persons appointed by the President for the superintendence and care of the same, and that the President be authorized to make the said appointments.

SEC. 3. *And be it further enacted*, That the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be placed one buoy on the shoal south of Kinnimicut Point, and one buoy on a ledge called the Half Way Rock, in the Narraganset Bay, in the State of Rhode Island.

SEC. 4. *And be it further enacted*, That there be appropriated and paid out of the moneys arising from imports and tonnage, the sum of five thousand dollars for the purpose of erecting the light-house as aforesaid on New Point Comfort; the sum of nine thousand dollars for the purpose of erecting the light-house as aforesaid on Smith's Point; the sum of six thousand dollars for erecting the light-house as aforesaid on Faulkner's Island, in Long Island Sound, and the sum of one hundred and fifty dollars for placing two buoys as aforesaid in the Narraganset Bay, in the State of Rhode Island.

Approved, March 3, 1801.

Resolution respecting certain property of the United States in the possession of Thomas Claxton, James Mathers, and Thomas Dunn, Doorkeepers to Congress.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That Thomas Claxton, James Mathers, and Thomas Dunn, be permitted to occupy, free of rent, until otherwise directed by Congress, the houses now in their respective possession, the property of the United States, in the public square in the City of Washington on which the Capitol stands, together with a small piece of ground contiguous to each, for a garden, to be enclosed in such a manner as not to interfere with any of the public streets or avenues passing through the said square.

Approved, March 2, 1801.

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ANNALS

THE CONGRESS OF THE UNITED STATES.

SEVENTH CONGRESS.

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

SEVENTH CONGRESS.

COMPRISING THE PERIOD FROM DECEMBER 7, 1801, TO MARCH 3, 1803, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

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PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, DECEMBER 7, 1801.

MONDAY, December 7, 1801.

The first session of the Seventh Congress of the United States commenced this day, conformably to the Constitution, and the Senate assembled at the Capitol in the City of Washington.

PRESENT:

THEODORE FOSTER, from Rhode Island;
NATHANIEL CHIPMAN, from Vermont;
WILLIAM HILL WELLS and SAMUEL WHITE, from Delaware;
JOHN E. HOWARD, from Maryland;
STEVENS THOMPSON MASON and WILSON CARY NICHOLAS, from Virginia;
ABRAHAM BALDWIN, from Georgia;
JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee.

STEPHEN R. BRADLEY, appointed a Senator by the State of Vermont, for the remainder of the term for which their late Senator, Elijah Paine, was appointed; JOHN BRECKENRIDGE, appointed a Senator by the State of Kentucky; CHRISTOPHER ELLERY, appointed a Senator by the State of Rhode Island, for the remainder of the term for which their late Senator, Ray Greene, was appointed; JAMES JACKSON, appointed a Senator by the State of Georgia; GEORGE LOGAN, appointed a Senator by the Executive of the State of Pennsylvania, in the place of their late Senator, Peter Muhlenberg, resigned; SIMEON OLCOTT, appointed a Senator by the State of New Hampshire, for the remainder of the term for which their late Senator, Samuel Livermore, was appointed; URIAH TRACY, appointed a Senator by the State of Connecticut; and ROBERT WRIGHT, appointed a Senator by the State of Maryland, severally produced their credentials, and took their seats in the Senate.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and ABRAHAM BALDWIN was chosen.

The PRESIDENT administered the oath, as the law prescribes, to Mr. BRADLEY, Mr. BRECKENRIDGE, Mr. ELLERY, Mr. JACKSON, Mr. OLCOTT, Mr. TRACY, and Mr. WRIGHT, and the affirmation to Mr. LOGAN.

Ordered, That the Secretary wait on the President of the United States and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the VICE PRESIDENT, they have elected ABRAHAM BALDWIN President of the Senate, *pro tempore*.

Ordered, That the Secretary acquaint the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business, and that, in the absence of the Vice President, they have elected ABRAHAM BALDWIN President of the Senate *pro tempore*.

A message from the House of Representatives informed the Senate that a quorum of the House is assembled, and have elected NATHANIEL MACON their Speaker, and are ready to proceed to business.

Ordered, That Messrs. ANDERSON and JACKSON be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

A message from the House of Representatives informed the Senate that the House agree to the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States, and have appointed a committee on their part.

Resolved, That a committee be appointed to join such gentlemen as shall be appointed by the House of Representatives, to take into consideration a statement made this day by the Secretary of the Senate, respecting books and maps purchased in consequence of an act of Congress, passed 24th April, 1800, and to make report of their opinion respecting the future arrangement of said books and maps; and that Messrs. TRACY and NICHOLAS be the committee on the part of the Senate.

Mr. ANDERSON reported, from the joint committee, that they had waited on the President of the United States and acquainted him that a quorum of both Houses is assembled, and that the President of the United States informed the committee that he would make a communication to them by message to-morrow.

TUESDAY, December 8.

JONATHAN DAYTON and AARON OGDEN, from the State of New Jersey, and JESSE FRANKLIN,

from the State of North Carolina, severally attended.

Resolved, That two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate for the appointment of a joint committee respecting the books and maps purchased in pursuance of an act of Congress, of the 24th of April, 1800, and have appointed a committee on their part. They agree to the resolution of the Senate for the appointment of two Chaplains during the present session.

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the rate usual for the annual charge of such papers.

PRESIDENT'S MESSAGE.

The following Letter and Message were received from the PRESIDENT OF THE UNITED STATES, by Mr. Lewis, his Secretary:

DECEMBER 8, 1801.

SIR: The circumstances under which we find ourselves at this place rendering inconvenient the mode heretofore practised, of making by personal address the first communications between the Legislative and Executive branches, I have adopted that by Message, as used on all subsequent occasions through the session. In doing this I have had principal regard to the convenience of the Legislature, to the economy of their time, to their relief from the embarrassment of immediate answers, on subjects not yet fully before them, and to the benefits thence resulting to the public affairs. Trusting that a procedure founded in these motives will meet their approbation, I beg leave, through you, sir, to communicate the enclosed Message, with the documents accompanying it, to the honorable the Senate, and pray you to accept, for yourself and them, the homage of my high respect and consideration.

TH: JEFFERSON.

The Hon. the PRESIDENT OF THE SENATE.

Fellow-citizens of the Senate, and House of Representatives:

It is a circumstance of sincere gratification to me that, on meeting the great council of our nation, I am able to announce to them, on grounds of reasonable certainty, that the wars and troubles which for so many years afflicted our sister nations, have at length come to an end; and that the communications of peace and commerce are once more opening among them. Whilst we devoutly return thanks to the beneficent Being who has been pleased to breathe into them the spirit of conciliation and forgiveness, we are bound, with peculiar gratitude, to be thankful to Him that our own peace has been preserved through so perilous a season, and ourselves permitted quietly to cultivate the earth, and to practice and improve those arts which tend to increase our comforts. The assurances, indeed, of friendly disposition, received from all the Powers with whom we have principal relations, had inspired a confidence that our peace with them would not have been disturbed. But a cessation of irregularities which had affected the commerce of neutral nations, and of the irritations and injuries produced by them, cannot but add to this confidence, and strengthens, at the same time, the hope that wrongs committed on unoffending friends, under a pressure of circumstances, will now be reviewed with candor, and will be considered as founding just claims of restribution for the past, and new assurances for the future.

Among our Indian neighbors, also, a spirit of peace and friendship generally prevails; and I am happy to inform you that the continued efforts to introduce among them the implements and the practice of husbandry, and of the household arts, have not been without success; that they are becoming more and more sensible of the superiority of this dependence for clothing and subsistence, over the precarious resources of hunting and fishing; and already we are able to announce that, instead of that constant diminution of their numbers, produced by their wars and their wants, some of them begin to experience an increase of population.

To this state of general peace with which we have been blessed, one only exception exists. Tripoli, the least considerable of the Barbary States, had come forward with demands unfounded either in right or in compact, and had permitted itself to denounce war, on our failure to comply before a given day. The style of the demands admitted but one answer. I sent a small squadron of frigates into the Mediterranean, with assurances to that Power of our sincere desire to remain in peace; but with orders to protect our commerce against the threatened attack. The measure was seasonable and salutary. The Bey had already declared war. His cruisers were out. Two had arrived at Gibraltar. Our commerce in the Mediterranean was blockaded, and that of the Atlantic in peril. The arrival of our squadron dispelled the danger. One of the Tripolitan cruisers, having fallen in with and engaged the small schooner Enterprize, commanded by Lieutenant Sterret, which had gone as a tender to our larger vessels, was captured, after a heavy slaughter of her men, without the loss of a single one on our part. The bravery exhibited by our citizens on that element will, I trust, be a testimony to the world that it is not the want of that virtue which makes us seek their peace, but a conscientious desire to direct the energies of our nation to the multiplication of the human race, and not to its destruction. Unauthorized by the Constitution, without the sanction of Congress, to go beyond the line of defence, the vessel, being disabled from committing further hostilities, was liberated with its crew. The Legislature will doubtless consider whether, by authorizing measures of offence also, they will place our force on an equal footing with that of its adversaries. I communicate all material information on this subject, that, in the exercise of this important function confided by the Constitution to the Legislature exclusively, their judgment may form itself on a knowledge and consideration of every circumstance of weight.

I wish I could say that our situation with all the other Barbary States was entirely satisfactory. Discovering that some delays had taken place in the performance of certain articles stipulated by us, I thought it my duty, by immediate measures for fulfilling them, to vindicate to ourselves the right of considering the effect of departure from stipulation on their side. From the papers which will be laid before you, you will be enabled to judge whether our treaties are regarded by them as fixing at all the measure of their demands, or, as guarding from the exercise of force our vessels within their power; and to consider how far it will be safe and expedient to leave our affairs with them in their present posture.

I lay before you the result of the census lately taken of our inhabitants, to a conformity with which we are now to reduce the ensuing ratio of representation and taxation. You will perceive that the increase of numbers, during the last ten years, proceeding in geometrical ratio, promises a duplication in little more than twenty-two years. We contemplate this rapid growth, and the prospect it holds up to us, not with a view to the injuries it may enable us to do to others in some future day, but to the settlement of the extensive country still remaining vacant within our limits, to the multiplication of men susceptible of happiness, educated in the love of order, habituated to self-government, and valuing its blessings above all price.

Other circumstances, combined with the increase of numbers, have produced an augmentation of revenue arising from consumption, in a ratio far beyond that of population alone; and, though the changes in foreign relations now taking place, so desirably for the whole world, may for a season affect this branch of revenue, yet, weighing all probabilities of expense, as well as of income, there is reasonable ground of confidence that we may now safely dispense with all the internal taxes—comprehending excise, stamps, auctions, licenses, carriages, and refined sugars; to which the postage on newspapers may be added, to facilitate the progress of information; and that the remaining sources of revenue will be sufficient to provide for the support of Government, to pay the interest of the public debts, and to discharge the principals within shorter periods than the laws or the general expectation had contemplated. War, indeed, and untoward events, may change this prospect of things, and call for expenses which the imposts could not meet. But sound principles will not justify our taxing the industry of our fellow-citizens to accumulate treasure for wars to happen we know not when, and which might not, perhaps, happen, but from the temptations offered by that treasure.

These views, however, of reducing our burdens, are formed on the expectation that a sensible, and at the same time a salutary, reduction may take place in our habitual expenditures. For this purpose those of the civil government, the army, and navy, will need revisal. When we consider that this Government is charged with the external and mutual relations only of these States; that the States themselves have principal care of our persons, our property, and our reputation, constituting the great field of human concerns, we may well doubt whether our organization is not too complicated, too expensive; whether offices and officers have not been multiplied unnecessarily, and sometimes injuriously to the service they were meant to promote. I will cause to be laid before you an essay towards a statement of those who, under public employment of various kinds, draw money from the Treasury, or from our citizens. Time has not permitted a perfect enumeration, the ramifications of office being too multiplied and remote to be completely traced in a first trial. Among those who are dependent on Executive discretion, I have begun the reduction of what was deemed unnecessary. The expenses of diplomatic agency have been considerably diminished. The inspectors of internal revenue, who were found to obstruct the accountability of the institution, have been discontinued. Several agencies, created by Executive authority, on salaries fixed by that also, have been suppressed, and should suggest the expediency of regulating that power by law, so as to subject its exercise to legislative inspection and sanction. Other reformations of the same kind will be pursued with that caution which is requisite, in removing useless things, not to injure what is retained. But the great mass of public offices is established by law, and therefore by law alone can be abolished. Should the Legislature think it expedient to pass this roll in review, and try all its parts by the test of public utility, they may be assured of every aid and light which Executive information can yield. Considering the general tendency to multiply offices and dependencies, and to increase expense to the ultimate term of burden which the citizen can bear, it behooves us to avail ourselves of every occasion which presents itself for taking off the surcharge; that it never may be seen here that, after leaving to labor the smallest portion of its earnings on which it can subsist, Government shall itself consume the whole residue of what it was instituted to guard.

In our care too of the public contributions entrusted to our direction, it would be prudent to multiply barriers against their dissipation, by appropriating specific sums to every specific purpose susceptible of definition; by disallowing all applications of money varying from the appropriation in object, or transcending it in amount; by reducing the undefined field of contingencies, and thereby circumscribing discretionary powers over money; and by bringing back to a single department all accountabilities for money, where the examinations may be prompt, efficacious, and uniform.

An account of the receipts and expenditures of the last year, as prepared by the Secretary of the Treasury, will, as usual, be laid before you. The success which has attended the late sales of the public lands shows that, with attention, they may be made an important source of receipt. Among the payments those made in discharge of the principal and interest of the national debt, will show that the public faith has been exactly maintained. To these will be added an estimate of appropriations necessary for the ensuing year. This last will, of course, be affected by such modifications of the system of expense as you shall think proper to adopt.

A statement has been formed by the Secretary of War, on mature consideration, of all the posts and stations where garrisons will be expedient, and of the number of men requisite for each garrison. The whole amount is considerably short of the present Military Establishment. For the surplus no particular use can be pointed out. For defence against invasion their number is as nothing; nor is it conceived needful or safe that a standing army should be kept up in time of peace, for that purpose. Uncertain as we must ever be of the particular point in our circumference where an enemy may choose to invade us, the only force which can be ready at every point, and competent to oppose them, is the body of neighboring citizens, as formed into a militia. On these, collected from the parts most convenient, in numbers proportioned to the invading force, it is best to rely, not only to meet the first attack, but, if it threatens to be permanent, to maintain the defence until regulars may be engaged to relieve them. These considerations render it important that we should, at every session, continue to amend the defects which from time to time show themselves in the laws for regulating the militia, until they are sufficiently perfect: nor should we now, or at any time, separate, until we can say that we have done everything for the militia which we could do were an enemy at our door.

The provision of military stores on hand will be laid before you, that you may judge of the additions still requisite.

With respect to the extent to which our naval prepa-

rations should be carried. some difference of opinion may be expected to appear; but just attention to the circumstances of every part of the Union will doubtless reconcile all. A small force will probably continue to be wanted for actual service in the Mediterranean. Whatever annual sum beyond that you may think proper to appropriate to naval preparations, would perhaps be better employed in providing those articles which may be kept without waste or consumption, and be in readiness when any exigence calls them into use. Progress has been made, as will appear by papers now communicated, in providing materials for seventy-four gun ships, as directed by law.

How far the authority given by the Legislature for procuring and establishing sites for naval purposes, has been perfectly understood and pursued in the execution, admits of some doubt. A statement of the expenses already incurred on that subject is now laid before you. I have, in certain cases, suspended or slackened these expenditures, that the Legislature might determine whether so many yards are necessary as have been contemplated. The works at this place are among those permitted to go on; and five of the seven frigates directed to be laid up, have been brought and laid up here, where, besides the safety of their position, they are under the eye of the Executive Administration, as well as of its agents; and where yourselves also will be guided by your own view in the Legislative provisions respecting them, which may, from time to time, be necessary. They are preserved in such condition, as well the vessels as whatever belongs to them, as to be at all times ready for sea on a short warning. Two others are yet to be laid up, so soon as they shall receive the repairs requisite to put them also into sound condition. As a superintending officer will be necessary at each yard, his duties and emoluments, hitherto fixed by the Executive, will be a more proper subject for legislation. A communication will also be made of our progress in the execution of the law respecting the vessels directed to be sold.

The fortifications of our harbors, more or less advanced, present considerations of great difficulty. While some of them are on a scale sufficiently proportioned to the advantages of their position, to the efficacy of their protection, and the importance of the points within it, others are so extensive, will cost so much in their first erection, so much in their maintenance, and require such a force to garrison them, as to make it questionable what is best now to be done. A statement of those commenced or projected; of the expenses already incurred; and estimates of their future cost, as far as can be foreseen, shall be laid before you, that you may be enabled to judge whether any alteration is necessary in the laws respecting this subject.

Agriculture, manufactures, commerce, and navigation, the four pillars of our prosperity, are then most thriving when left most free to individual enterprise. Protection from casual embarrassments, however, may sometimes be seasonably interposed. If, in the course of your observations or inquiries, they should appear to need any aid within the limits of our Constitutional powers, your sense of their importance is a sufficient assurance they will occupy your attention. We cannot, indeed, but all feel an anxious solicitude for the difficulties under which our carrying trade will soon be placed. How far it can be relieved, otherwise than by time, is a subject of important consideration.

The Judiciary system of the United States, and especially that portion of it recently erected, will, of course, present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending when additional courts and judges were brought in to their aid.

And while on the Judiciary organization, it will be worthy of your consideration whether the protection of the inestimable institution of juries has been extended to all the cases involving the security of our persons and property. Their impartial selection also being essential to their value, we ought further to consider whether that is sufficiently secured in those States where they are named by a marshal depending on Executive will, or designated by the court, or by officers dependent on them.

I cannot omit recommending a revisal of the laws on the subject of naturalization. Considering the ordinary chances of human life, a denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it; and controls a policy pursued, from their first settlement, by many of these States, and still believed of consequence to their prosperity. And shall we refuse to the unhappy fugitives from distress that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on this globe? The Constitution, indeed, has wisely provided that, for admission to certain offices of important trust, a residence shall be required sufficient to develop character and design. But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a bona fide purpose of embarking his life and fortunes permanently with us? with restrictions, perhaps, to guard against the fraudulent usurpation of our flag? an abuse which brings so much embarrassment and loss on the genuine citizen, and so much danger to the nation of being involved in war, that no endeavor should be spared to detect and suppress it.

These, fellow-citizens, are the matters respecting the state of the nation which I have thought of importance to be submitted to your consideration at this time. Some others of less moment, or not yet ready for communication, will be the subject of separate Messages. I am happy in this opportunity of committing the arduous affairs of our Government to the collected wisdom of the Union. Nothing shall be wanting on my part to inform, as far as in my power, the Legislative judgment, nor to carry that judgment into faithful execution. The prudence and temperance of your discussions will promote, within your own walls, that conciliation which so much befriends rational conclusion; and by its example will encourage among our constituents that progress of opinion which is tending to unite them in object and in will. That all should be satisfied with any one order of things, is not to be expected; but I indulge the pleasing persuasion that the great body of our citizens will cordially concur in honest and disinterested efforts, which have for their object to preserve the General and State Governments in their Constitutional form and equilibrium; to maintain peace abroad, and order and obedience to the laws at home; to establish principles and practices of administration favorable to the security of liberty and property, and to reduce expenses to what is necessary for the useful purposes of Government.

TH: JEFFERSON.

DECEMBER 8, 1801.

The Letter and Message were read, and ordered to be printed for the use of the Senate.

The papers referred to in the Message were in part read, and the Senate adjourned.

WEDNESDAY, December 9.

The reading of the papers referred to in the Message of the President of the United States of the 8th instant, was resumed, and five hundred copies of the Message, together with the papers therein referred to, ordered to be printed for the use of the Senate.

The Senate proceeded to the appointment of a Chaplain to Congress on their part, and the Rev. Mr. GANTT was elected.

THURSDAY, December 10.

Resolved, That James Mathers, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant, and two horses, for the purpose of performing such services as are usually required of the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for the purpose during the session, and for twenty days after.

A message from the House of Representatives informed the Senate that the House have appointed a joint committee on their part for enrolled bills, and desire the appointment of such committee on the part of the Senate.

Resolved, That the Senate do concur in the appointment of a joint committee for enrolled bills, and that Mr. WRIGHT be the committee on the part of the Senate.

FRIDAY, December 11.

JONATHAN MASON, from the State of Massachusetts and JAMES SHEAFE, from the State of New Hampshire, severally attended.

The PRESIDENT laid before the Senate a letter from Samuel Meredith, Treasurer, together with his general, navy, and war accounts, ending 31st December, 1800, 31st March, 30th June, and 30th September, 1801; which were read.

Ordered, That they lie on file.

MONDAY, December 14.

JAMES HILLHOUSE, from the State of Connecticut, and DWIGHT FOSTER, from the State of Massachusetts, severally attended.

A message from the House of Representatives informed the Senate that the House have elected the Reverend WILLIAM PARKINSON a Chaplain to Congress, on their part.

TUESDAY, December 15.

The Senate met, but transacted no business.

WEDNESDAY, December 16.

The PRESIDENT laid before the Senate a letter from the Secretary for the Department of State, with an annual return, ending the 9th instant, containing an abstract of all the returns made by the Collectors of the Customs for the different ports, pursuant to the act for the relief and protection of American seamen, together with abstracts from the communications received from the agents employed in foreign countries for the relief of American seamen; which were read, and ordered to be printed.

A motion was made by Mr. JACKSON, seconded by Mr. NICHOLAS, that it be

Resolved, by the Senate and House of Representatives of the United States, in Congress assembled, That, as a testimony of the high sense they entertain of the nautical skill and gallant conduct of Lieutenant Andrew Sterret, commander of the United States' schooner Enterprize, manifested in an engagement with, and in the capture of, a Tripolitan corsair of superior force, in the Mediterranean sea, fitted out by the Bey of that Regency to harass the trade, capture the vessels, and enslave the citizens of these States: the President of the United States be requested to present Lieutenant Sterret with a sword, with such suitable devices thereon as he shall deem proper, and emblematic of that heroic action; and the mercy extended to a barbarous enemy, who three times struck his colors, and twice recommenced hostilities—an act of humanity, however unmerited, highly honorable to the American flag and nation: and that the President of the United States be also requested to present Lieutenant Lane of the marines, who was with a detachment of that corps, serving on board the Enterprize in that engagement, and contributed, by his and his detachment's gallant conduct, to the success of the day, with a medal, with such suitable devices as the President may deem fit.

Be it further resolved, In consideration of the intrepid behaviour of the crew of the Enterprize, under the orders of their gallant commander, and their receiving no prize money, the corsair being dismantled and released after her capture, that one month's pay over and above the usual allowance, be paid to all the other officers, sailors, and marines, who were actually on board and engaged in that action; for the expenditure of which charge Congress will make the necessary appropriation.

And it was agreed that this motion lie for consideration.

Mr. COCKE presented the petition of Daniel Fox, a soldier of the militia, under the command of General Sevier, in the year 1793, rendered incapable of labor by a nervous complaint, contracted in an expedition against the Cherokee Indians; and praying relief. The petition was read.

Ordered, That it be referred to Messrs. COCKE, ELLERY, and NICHOLAS, to consider and report thereon.

On motion, it was agreed, that the Message of the President of the United States, of the 8th instant, be made the order of the day for to-morrow, to be considered as in a Committee of the Whole.

The PRESIDENT laid before the Senate a letter from SIMON WILLARD, to the Secretary of the Senate, on the subject of compensation for an eight-day clock, purchased by order of the 25th of February last, for the use of the Senate Chamber; which was read and referred to Messrs. JACKSON, J. MASON, and T. FOSTER, to consider and report thereon.

THURSDAY, December 17.

The PRESIDENT laid before the Senate the report of the Commissioners of the Sinking Fund; which was read and ordered to be printed for the use of the Senate.

The order of the day, on the Message of the President of the United States of the 8th instant, was postponed until to-morrow.

FRIDAY, December 18.

Mr. TRACY, from the joint committee appointed the 7th instant, on a representation respecting the books purchased in pursuance of a resolution of 24th April, 1800, made report; which was read and ordered to lie for consideration.

Mr. COCKE, from the committee appointed on the 16th instant, to consider the petition of Daniel Fox, made report; which was read and recommitted, further to consider and report thereon.

SATURDAY, December 19.

GOUVERNEUR MORRIS, from the State of New York, attended.

THOMAS SUMTER, appointed a Senator by the Legislature of the State of South Carolina, in the place of their late Senator, Charles Pinckney, resigned, produced his credentials, was qualified, and took his seat in the Senate.

MONDAY, December 21.

The credentials of GEORGE LOGAN, appointed a Senator by the Legislature of the State of Pennsylvania, were presented and read; and the affirmation prescribed by law was administered by the President.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, in obedience to the directions of the act supplementary to the act entitled "An act to establish the Treasury Department;" which was read, and ordered to be printed.

A message from the House of Representatives informed the Senate that the House have passed a resolution that the Secretary of State be directed to cause to be furnished to each member of the two Houses a copy of the laws of the sixth Congress; in which they desire the concurrence of the Senate.

The Senate took into consideration the report of the joint committee, made on the 18th instant, respecting the books purchased in pursuance of a resolution of Congress of the 24th April, 1800; which report was adopted as amended, and sundry resolutions consequent thereon agreed to.

TUESDAY, December 22.

DAVID STONE, from the State of North Carolina, attended.

The resolution, sent yesterday from the House of Representatives, authorizing the Secretary of State to supply the members of Congress with the fifth volume of the laws, was considered, and postponed for further consideration.

Mr. ANDERSON gave notice that he should, to-morrow, ask leave to bring in a bill for the discharge of Laurance Erb from his confinement.

WEDNESDAY, December 23.

A message from the House of Representatives, informed the Senate that the House have passed a bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, in which they desire the concurrence of the Senate.

The bill was read and ordered to lie on the table.

Agreeably to notice yesterday given, Mr. ANDERSON obtained leave to bring in a bill authorizing the discharge of Laurance Erb from his confinement; which was read and passed to the second reading.

Mr. COCKE, from the committee to whom was recommitted, on the 18th instant, the petition of Daniel Fox, made a further report; which was read and ordered to lie for consideration.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate,
and of the House of Representatives:

I now enclose sundry documents supplementary to those communicated to you with my Message at the commencement of the session. Two others, of considerable importance, the one relating to our transactions with the Barbary Powers, the other presenting a view of the offices of the Government, shall be communicated as soon as they can be completed.

DEC. 22, 1801. TH: JEFFERSON.

Gentlemen of the Senate,
and of the House of Representatives:

Another return of the census of the State of Maryland is just received from the Marshal of that State, which he desires may be substituted as more correct than the one first returned by him and communicated by me to Congress. This new return, with his letter, is now laid before you.

DEC. 23, 1801. TH: JEFFERSON.

The Message and papers therein referred to were read, and severally ordered to lie for consideration.

THURSDAY, December 24.

The bill authorizing the discharge of Laurance Erb from his confinement was read the second time, and committed to Messrs. ANDERSON, TRACY, and BRADLEY, to consider and report thereon.

The PRESIDENT laid before the Senate a report of the Postmaster General, in obedience to the "Act to establish the Post Office;" which was read, and ordered to lie for consideration.

The bill, sent from the House of Representatives for concurrence, extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, was read the second time, and the further consideration thereof postponed until Monday next.

MONDAY, December 28.

JOHN EWING COLHOUN, appointed a Senator by the Legislature of the State of South Carolina,

produced his credentials, was qualified, and took his seat in the Senate.

On motion, it was agreed that the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, which was the order of the day, be postponed to the 12th of January next.

TUESDAY, December 29.

The Senate proceeded to the consideration of Executive business.

WEDNESDAY, December 30.

Mr. TRACY gave notice that he should, to-morrow, ask leave to bring in a bill to carry into effect the appropriations of land in the purchase of the Ohio company, in the Northwestern Territory, for the support of schools and religion, and for other purposes.

THURSDAY, December 31.

Mr. BRECKENRIDGE presented the petition of Isaac Zane, stating that he was made a prisoner at the age of nine years by the Wyandot Indians, with whom he remained until he became of age; had a family by a woman of that nation, and a tract of land was assigned him by the said nation, on a branch of the Great Miami, and which tract of land was ceded to the United States by a recent treaty with the said Wyandot Indians, and praying such relief as may be deemed equitable; and the petition was read, and committed to Messrs. BRECKENRIDGE, TRACY, and OGDEN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House disagree to the resolutions of the Senate respecting the books and maps purchased pursuant to a resolution of Congress of the 24th of April, 1800. They have passed a bill concerning the library for the use of both Houses of Congress, in which they desire the concurrence of the Senate.

The bill was twice read by unanimous consent, and committed to Messrs. TRACY, LOGAN, and DAYTON, to consider and report thereon.

The Senate took into consideration the motion made on the 10th instant respecting Lieutenant Sterret, commander of the United States schooner Enterprize; which motion was amended and agreed to, and sundry resolutions adopted accordingly.

MONDAY, January 4, 1802.

Mr. BRECKENRIDGE notified the Senate that he should, on Wednesday next, move for the order of the day on that part of the Message of the President of the United States of the 8th of December last, which respects the judiciary system.

TUESDAY, January 5.

Mr. BROWN, from the State of Kentucky, attended.

REPORTING THE DEBATES.

The PRESIDENT laid before the Senate a letter signed Samuel H. Smith, stating that he was desirous of taking notes of the proceedings of the Senate, in such manner as to render them correct: Whereupon,

Resolved, That any stenographer desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose, at such place within the area of the Senate Chamber as the President may allot:

And, on motion to reconsider the above resolution, it passed in the affirmative—yeas 17, nays 9.

YEAS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Ellery, Dwight Foster, Hillhouse, Howard, Logan, Jonathan Mason, Morris, Ogden, Olcott, Sumter, Tracy, White, and Wright.

NAYS—Messrs. Baldwin, Brown, Chipman, T. Foster, Franklin, Jackson, Nicholas, Sheafe, and Stone.

On motion, to amend the resolution, by adding, after the word stenographer, "He having given bond in the sum of ——, with two sufficient sureties, in the sum of —— each, for his good conduct," it passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, Morris, Ogden, Olcott, Sheafe, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Stone, Sumter, White, and Wright.

On motion, to agree to the original resolution, amended by adding the words "or note-taker," after the words stenographer, it passed in the affirmative—yeas 16, nays 12, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Sheafe, Tracy, and White.

So it was *Resolved*, That any stenographer, *or note-taker*, desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose at such place, within the area of the Senate Chamber, as the President shall allot.*

[From the National Intelligencer of Jan. 8, 1802.]

* On Monday last the editor addressed a letter to the President of the Senate, requesting permission to occupy a position in the lower area of the Senate Chamber, for the purpose of taking with correctness the debates and proceedings of that body.

It may be necessary to remark that heretofore no stenographer has been admitted in this area; and the upper gallery, being open to the admission of every one, and very remote from the floor of the House, has prevented any attempt being made to take the debates, from the impossibility of hearing distinctly from it.

The contents of the letter were submitted by the President to the Senate; and a resolution agreed to, to the following effect: *Resolved*, That any stenographer, desirous to take the debates of the Senate on Legislative business, may be admitted for that purpose, at such

The PRESIDENT laid before the Senate a letter signed William Doughty, clerk, with the general account of the late Treasurer of the United States, to the 30th of September, 1801; which was read, and ordered to lie on file.

WEDNESDAY, January 6.

Mr. BRECKENRIDGE moved that the Senate proceed to the consideration of the President's Message, delivered at the commencement of the session. Agreed to.

JUDICIARY SYSTEM.

Mr. MASON called for the reading of the Message, which was in part read; when the further reading of the whole document was suspended, and that part only read, which relates to the Judiciary System.

Upon which Mr. BRECKENRIDGE, from Kentucky, rose, and stated that two days ago he had given notice that on this day he would submit to the consideration of the Senate two resolutions respecting the Judiciary Establishment of the United States. As, however, those resolutions were not necessarily connected, and as they might be distinctly discussed, he would at present confine himself to moving the first resolution; without however foreclosing to himself the right of submitting the second after the disposition of the first. He, therefore, moved that the act passed last session *respecting the Judiciary Establishment* of the United States, be repealed.

[This is the act which created sixteen new circuit judges.]

The motion was seconded by Mr. MASON.

After the resolution was read by the PRESIDENT,

Mr. BRECKENRIDGE said he did not desire to precipitate a vote on the question. But, having given notice two days since of his intention to move this resolution, he was himself prepared, if other gentlemen were prepared, to offer his sentiments on the subject. But if this were not the case; if gentlemen were not prepared to enter into a discussion of a point of such importance, he was not anxious for immediate consideration.

Mr. TRACY observed that the ordinary mode of procedure in Senate had been to refer, in the first instance, each substantive member of the President's Message to a select committee. But though this was the usual course, yet he felt in no way hostile to any mode of doing business, which should be most agreeable to the gentleman from Kentucky, or to the House. With an adherence to the ordinary course, he would have been better pleased, for the substantial reason, that by a reference of the subject to a select committee, on receiving a report, the minds of the House would be drawn more precisely to the points involved in it, than could be expected from a resolution so loose as the present, which could only give rise to verbal discussions.

Another course of procedure had not been unusual—that of obtaining leave to bring in a bill, in which event, the same result desired by Mr. TRACY would be insured, viz: the reference of the bill to a committee.

Mr. S. T. MASON differed from the gentleman from Connecticut. He believed the mode now pursued, was perfectly correct, and conformable to a principle adopted this session, that the Senate was to be considered as in a committee of the whole on the President's Message, whenever taken up. Nor did he discern the necessity, in a body so select as this, of referring each subject to a select committee. But as the subject is extremely important, and some gentlemen seemed unprepared for the discussion, he moved its postponement till Friday.

Mr. BRECKENRIDGE said, that though he had given notice, in his opinion sufficient, of his purpose, yet, not wishing a precipitate discussion, he would agree to the desired delay.

The consideration of the resolution was then deferred to Friday next.

THURSDAY, January 7.

A message from the House of Representatives informed the Senate that the House have passed a bill for the apportionment of representatives among the several States, according to the second enumeration, in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, a second time.

Ordered, That it be referred to Messrs. LOGAN, NICHOLAS, ELLERY, JACKSON, and STONE, to consider and report thereon.

Mr. TRACY, from the committee to whom was referred the bill concerning the library for the use of both Houses of Congress, reported amendments; which were read, and ordered to lie for consideration.

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place, within the area of the Senate Chamber, as the President shall allot.

Whereupon, a motion was made to reconsider the above resolution, and agreed to. The yeas and nays being taken, which were—yeas 17, nays 9.

It was then moved to amend the resolution by adding after the word "stenographer," "he having given bond in the sum of ——, with two sufficient sureties in the sum of —— each, for his good conduct."

On which the yeas and nays were called, and stood—yeas 10, nays 18.

It was then moved to agree to the original resolution amended, by adding the words, "or note-taker" after the word "stenographer;" which passed in the affirmative. The yeas and nays being required were—yeas 16, nays 12.

On Wednesday the editor had, accordingly, assigned to him a convenient place in the lower area, from which he took notes of the proceedings of the Senate.

On the adoption of the above resolution, which opens a new door to public information, and which may be considered as the prelude to a more genuine sympathy between the Senate and the people of the United States, than may have heretofore subsisted, by rendering each better acquainted with the other, we congratulate, without qualification, every friend to the true principles of our republican institutions.

FRIDAY, January 8.

The PRESIDENT read a letter addressed to him, and signed Thomas Tingey, and others, the vestry of Washington parish, in behalf of themselves and the other members of that church, soliciting the use of the room in the Capitol now occupied by the Court, as a place of worship on Sundays, during the inclemency of Winter.

Mr. LOGAN, from the committee, reported the bill for the apportionment of representatives among the several States, according to the second enumeration, without amendment; and it was agreed that the further consideration of this bill should be postponed to Monday next.

JUDICIARY SYSTEM.

Agreeably to the order of the day, the Senate proceeded to the consideration of the motion made on the 6th instant, to wit:

"That the act of Congress passed on the 13th day of February, 1801, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' ought to be repealed."

Mr. BRECKENRIDGE then rose and addressed the President, as follows:

It will be expected of me, I presume, sir, as I introduced the resolution now under consideration, to assign my reasons for wishing a repeal of this law. This I shall do; and shall endeavor to show,

1. That the law is unnecessary and improper, and was so at its passage; and

2. That the courts and judges created by it, can and ought to be abolished.

1st. That the act under consideration was unnecessary and improper, is, to my mind, no difficult task to prove. No increase of courts or judges could be necessary or justifiable, unless the existing courts and judges were incompetent to the prompt and proper discharge of the duties consigned to them. To hold out a show of litigation, when in fact little exists, must be impolitic; and to multiply expensive systems, and create hosts of expensive officers, without having experienced an actual necessity for them, must be a wanton waste of the public treasure.

The document before us shows that, at the passage of this act, the existing courts, not only from their number, but from the suits depending before them, were fully competent to a speedy decision of those suits. It shows, that on the 15th day of June last, there were depending in all the circuit courts, (that of Maryland only excepted, whose docket we have not been furnished with,) one thousand five hundred and thirty-nine suits. It shows that eight thousand two hundred and seventy-six suits of every description have come before those courts, in ten years and upwards. From this it appears, that the annual average amount of suits has been about eight hundred.

But sundry contingent things have conspired to swell the circuit court dockets. In Maryland, Virginia, and in all the Southern and Southwestern States, a great number of suits have been brought by British creditors; this species of controversy is nearly at an end.

In Pennsylvania, the docket has been swelled by prosecutions in consequence of the Western insurrection, by the disturbances in Bucks and Northampton counties; and by the sedition act. These I find amount in that State to two hundred and forty suits.

In Kentucky, non-resident land claimants have gone into the federal court from a temporary convenience: because, until within a year or two past, there existed no court of general jurisdiction co-extensive with the whole State. I find, too, that of the six hundred and odd suits which have been commenced there, one hundred and ninety-six of them have been prosecutions under the laws of the United States.

In most of the States there have been prosecutions under the sedition act. This source of litigation is, I trust, forever dried up. And, lastly, in *all* the States a number of suits have arisen under the excise law; which source of controversy will, I hope, before this session terminates, be also dried up.

But this same document discloses another important fact; which is, that notwithstanding all these untoward and temporary sources of federal adjudication, the suits in those courts are *decreasing*; for, from the dockets exhibited (except Kentucky and Tennessee, whose suits are summed up in the aggregate) it appears, that in 1799 there were one thousand two hundred and seventy-four, and in 1800 there were six hundred and eighty-seven suits commenced; showing a decrease of five hundred and eighty-seven suits.

Could it be necessary then to *increase* courts when suits were *decreasing*? Could it be necessary to multiply judges, when their duties were diminishing? And will I not be justified, therefore, in affirming, that the law was unnecessary, and that Congress acted under a mistaken impression, when they multiplied courts and judges at a time when litigation was actually decreasing?

But, sir, the decrease of business goes a small way in fixing my opinion on this subject. I am inclined to think, that so far from there having been a necessity at this time for an increase of courts and judges, that the time never will arrive when America will stand in need of thirty-eight federal judges. Look, sir, at your Constitution, and see the judicial power there consigned to federal courts, and seriously ask yourself, can there be fairly extracted from those powers subjects of litigation sufficient for six supreme and thirty-two inferior court judges? To me it appears impossible.

The judicial powers given to the federal courts were never intended by the Constitution to embrace, exclusively, subjects of litigation, which could, with propriety, be left with the State courts. Their jurisdiction was intended principally to extend to great national and foreign concerns. Except cases arising under the laws of the United States, I do not at present recollect but three or four kinds in which their power extends to subjects of litigation, in which private

persons only are concerned. And can it be possible, that with a jurisdiction embracing so small a portion of private litigation, in a great part of which the State courts might, and ought to participate, that we can stand in need of thirty-eight judges, and expend in judiciary regulations the annual sum of $137,000?

No other country, whose regulations I have any knowledge of, furnishes an example of a system so prodigal and extensive. In England, whose courts are the boast, and said to be the security of the rights of the nation, every man knows there are but twelve judges and three principal courts. These courts embrace, in their original or appellate jurisdiction, almost the whole circle of human concerns.

The King's Bench and Common Pleas, which consist of four judges each, entertain all the common law suits of 40s. and upwards, originating among nine millions of the most commercial people in the world. They moreover revise the proceedings of not only all the petty courts of record in the Kingdom, even down to the courts of piepoudre, but also of the Court of King's Bench in Ireland; and these supreme courts, after centuries of experiment, are found to be fully competent to *all* the business of the Kingdom.

I will now inquire into the power of Congress to put down these additional courts and judges.

First, as to the courts. Congress are empowered by the Constitution "from time to time, to ordain and establish inferior courts." The act now under consideration, is a legislative construction of this clause in the Constitution, that Congress may abolish as well as create these judicial officers; because it does expressly, in the twenty-seventh section of the act, abolish the then existing inferior courts, for the purpose of making way for the present. This construction, I contend, is correct; but it is equally pertinent to my object, whether it be or be not. If it be correct, then the present inferior courts may be abolished as constitutionally as the last; if it be not, then the law for abolishing the former courts, and establishing the present, was unconstitutional, and consequently repealable.

But independent of this legislative construction, on which I do not found my opinion, nor mean to rely my argument, there is little doubt indeed, in my mind, as to the power of Congress on this law. The first section of the third article vests the judicial power of the United States in one Supreme Court and such inferior courts as Congress may, from time to time, ordain and establish. By this clause Congress *may*, from time to time, establish inferior courts; but it is clearly a discretionary power, and they *may not* establish them. The language of the Constitution is very different when regulations are not left discretional. For example, "The trial," says the Constitution, "of all crimes '(except in cases of impeachment) shall be by jury: 'representatives and direct taxes shall be apportioned according to numbers. All revenue bills shall 'originate in the House of Representatives," &c. It would, therefore, in my opinion, be a perversion, not only of language, but of intellect, to say, that although Congress may, from time to time, establish inferior courts, yet, when established, that they shall not be abolished by a subsequent Congress possessing equal powers. It would be a paradox in legislation.

2d. As to the judges. The Judiciary department is so constructed as to be sufficiently secured against the improper influence of either the Executive or Legislative departments. The courts are organized and established by the Legislature, and the Executive creates the judges. Being thus organized, the Constitution affords the proper checks to secure their honesty and independence in office. It declares they shall not be removed from office during good behaviour; nor their salaries diminished during their continuance in office. From this it results, that a judge, after his appointment, is totally out of the power of the President, and his salary secured against legislative diminution, during his continuance in office. The first of these checks, which protects a judge in his office during good behaviour, applies to the President only, who would otherwise have possessed the power of removing him, like all other officers, at pleasure; and the other check, forbidding a diminution of their salaries, applies to the Legislature only. They are two separate and distinct checks, furnished by the Constitution against two distinct departments of the Government; and they are the only ones which are or ought to have been furnished on the subject.

But because the Constitution declares that a judge shall hold his office during good behaviour, can it be tortured to mean, that he shall hold his office after it is abolished? Can it mean, that his tenure should be limited by behaving well in an office which did not exist? Can it mean that an office may exist, although its duties are extinct? Can it mean, in short, that the shadow, to wit, the judge, can remain, when the substance, to wit, the office, is removed? It must have intended all these absurdities, or it must admit a construction which will avoid them.

The construction obviously is, that a judge should hold an existing office, so long as he did his duty in that office; and not that he should hold an office that did not exist, and perform duties not provided by law. Had the construction which I contend against been contemplated by those who framed the Constitution, it would have been necessary to have declared, explicitly, that the judges should hold their offices and their salaries during good behaviour.

Such a construction is not only irreconcileable with reason and propriety, but is repugnant to the principles of the Constitution. It is a principle of our Constitution, as well as of common honesty, that no man shall receive public money but in consideration of public services. Sinecure offices, therefore, are not permitted by our laws or Constitution. By this construction, complete sinecure offices will be created; hosts of Constitutional pensioners will be settled on us, and we cannot calculate how long. This is really creating a new species of public debt, not like any other of our debts; we cannot discharge the principal at any fixed time. It is worse than the deferred stock;

for on that you pay an annual interest only, and the principal is redeemable at a given period. But here, you pay an annual principal, and that principal irredeemable except by the will of Providence. It may suit countries where public debts are considered as public blessings; for in this way a people might soon become superlatively blessed indeed.

Let me not be told, sir, that the salaries in the present case are inconsiderable, and ought not to be withheld; and that the doctrine is not a dangerous one. I answer, it is the principle I contend against; and if it is heterodox for one dollar, it is equally so for a million. But I contend the principle, if once admitted, may be extended to destructive lengths. Suppose it should hereafter happen, that those in power should combine to provide handsomely for their friends, could any way so plain, easy, and effectual, present itself, as by creating courts, and filling them with those friends? Might not sixty as well as sixteen, with salaries of twenty thousand, instead of two thousand dollars, be provided for in this way?

The thing, I trust, will not happen. It is presuming a high degree of corruption; but it might happen under the construction contended for; as the Constiution presumes corruption may happen in any department of the Government, by the checks it has furnished against it; and as this construction does open a wide door for corruption, it is but fair reasoning to show the dangers which may grow out of it; for, in the construction of all instruments, that which will lead to inconvenience, mischief, or absurdity, ought to be avoided. This doctrine has another difficulty to reconcile: After the law is repealed, they are either judges or they are not. If they are judges they can be impeached; but for what? For *malfeasance in office* only. How, I would ask, can they be impeached for malfeasances *in office*, when their offices are abolished? They are not officers, but still they are entitled to the emoluments annexed to an office. Although they are judges, they cannot be guilty of malfeasances, because they have no office. They are only *quasi* judges so far as regards the *duties*, but *real* judges so far as regards the *salary*. It must be the *salary*, then, and not the *duties* which constitute a judge. For my part, I do not know under what class of things to range them, or what name to give them. They are unacknowledged by the letter, spirit, or genius, of our Constitution, and are to me non-descripts.

There is another difficulty under this construction still to encounter, and which also grows out of the Constitution: By the Constitution, a new State may be formed by the junction of two or more States, with their assent and that of Congress. If this doctrine, once a judge and always a judge, be correct, what would you do in such an event, with the district judges of the States who formed that junction? Both would be unnecessary, and you would have, in a single State, two judges of equal and concurrent jurisdiction; or one a real judge, with an office, and another a quasi judge, without an office. The States also forming such junction, would be equally embarrassed with their State judges; for the same construction would be equally applicable to them.

Upon this construction, also, an infallibility is predicated, which it would be arrogance in any human institution to assume, and which goes to cut up legislation by the roots. We would be debarred from that which is indulged to us from a higher source, and on subjects of higher concern than legislation; I mean a retraction from and correction of our errors. On all other subjects so legislation we are allowed, it seems, to change our minds, except on judiciary subjects, which, of all others, is the most complex and difficult. I appeal to our own statute book to prove this difficulty; for in ten years Congress have passed no less than twenty-six laws on this subject.

I conceive, sir, that the tenure by which a judge holds his office, is evidently bottomed on the idea of securing his honesty and independence, whilst exercising his office. The idea was introduced in England, to counteract the influence of the Crown over the judges; but if the construction now contended for shall prevail, we shall, in our mistaken imitation of this our favorite prototype, outstrip them, by establishing what they have not, a judicial oligarchy; for there their judges are removable by a joint vote of Lords and Commons. Here ours are not removable, except for malfeasance in office; which malfeasance could not be committed, as they would have no office.

Upon the whole, sir, as all courts under any free Government must be created with an eye to the administration of justice only; and not with any regard to the advancement or emolument of individual men; as we have undeniable evidence before us that the creation of the courts now under consideration was totally unnecessary; and as no Government can, I apprehend, seriously deny that this Legislature has a right to repeal a law enacted by a preceding one, we will, in any event, discharge our duty by repealing this law; and thereby doing all in our power to correct the evil. If the judges are entitled to their salaries under the Constitution, our repeal will not affect them; and they will, no doubt, resort to their proper remedy. For where there is a Constitutional right, there must be a Constitutional remedy.

Mr. OLCOTT, of New Hampshire, thought the subject was of so much importance as to merit further consideration. The arguments of the gentleman from Kentucky, however ingenious, had not convinced him that the law ought to be repealed. It had not risen like a mushroom in the night, but the principles on which it rested had been settled after mature reflection. He thought it would be extraordinary, before any inconvenience had been discovered, to set such a law aside. For these reasons, Mr. O. moved the postponement of the consideration of the question.

Mr. COCKE, of Tennessee.—This act is said to be entirely experimental, and it is further said, that no inconveniences had arisen under it. He thought serious inconveniences had arisen. The inconvenience of paying $137,000 a year was truly serious; and it was an inconvenience which ought to be got rid of as soon as possible. It was

expected that gentlemen opposed to the resolution would come forward with their arguments against it. If, however, they had no arguments to use, he thought his friend from Kentucky had brought forward reasons so cogent and experimental that the House must be convinced of the propriety of the repeal.

Mr. DAYTON, of New Jersey, trusted it was not the disposition of the mover to press a decision to-day. He thought it would be improper to postpone the discussion, as gentlemen would thereby be precluded from offering their opinions on the subject. He hoped the motion for postponement would be withdrawn, that other gentlemen might have an opportunity to speak.

The motion was withdrawn.

Mr. J. MASON, of Massachusetts, said, it would be agreed on all hands that this was one of the most important questions that ever came before a Legislature. Were he not of this opinion he would not have risen to offer his sentiments. But he felt so deep an interest in the question, and from the respect which he entertained for the district of country he represented, he deemed it his duty to meet the subject, and not be satisfied with giving to it his silent negative.

It was well known, and he presumed it would be readily agreed to, that no people on earth, for the last twenty-four years, had been so much in the habit of forming systems of government as the people of the United States. Nor had any people been so fortunately situated for cool and correct deliberation. In the Constitutions they had formed, it would appear that there had been an uniform concurrence in the establishment of one great prominent feature, and also in the application of one uniform principle to that feature: that the Legislative, the Executive, and the Judicial, should form the three great departments of Government, and that they should be distinct from and independent of each other; and the more the proceedings and sentiments of the people were examined, the more clearly would it appear that all the new and additional checks created, had been applied to adjust the relative weakness or strength of the several departments of Government. The same principle had been observed in the old world, whenever an opportunity presented for forming a constitution, having for its object the protection of individual rights. It accorded, too, with the uniform opinions of the most celebrated historians and politicians, both of Europe and America; with the opinions and practices of all our Legislatures. Nor had Mr. MASON ever heard any one hardy enough to deny the propriety of its observance.

He well recollected, that among the great grievances, which had roused us into an assertion of our independence of England, it was declared in the instrument asserting that independence, "that the Crown had the appointment of judges dependent on its will and favor."

From all these circumstances he concluded that the people of America, when they formed a system for their Federal Government, intended to establish this great principle; and the conclusion would be confirmed by an examination of the Constitution, which in every section recognised or referred to it.

The Constitution, in the construction of the Executive, Legislative, and Judiciary departments, had assigned to each a different tenure. The President was chosen for four years; the Senate for six years, subject to a prescribed rotation biennially; the House of Representatives for two years; and the Judiciary during good behaviour. It says to the President, at the expiration of every four years, you shall revert to the character of a private citizen, however splendid your talents or conspicuous your virtue. Why? Because you have assigned to you powers which it is dangerous to exercise. You have the power of creating offices and officers. You have prerogatives. The temptation to an abuse of your power is great. Such has been the uniform experience of ages. The Constitution holds the same language to the Senate and House of Representatives: It says, it is necessary for the good of society that you also should revert at short periods to the mass of the people, because to you are consigned the most important duties of Government, and because you hold the purse-strings of the nation.

To the Judiciary: What is the language applied to them? The judges are not appointed for two, four, or any given number of years; but they hold their appointments for life, unless they misbehave themselves. Why? For this reason: They are not the depositaries of the high prerogatives of Government. They neither appoint to office, or hold the purse-strings of the country, or legislate for it. They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be disposed to pervert their power to improper purposes. What are their duties? To expound and apply the laws. To do this, with fidelity and skill, requires a length of time. The requisite knowledge is not to be procured in a day. These are the plain and strong reasons which must strike every mind, for the different tenure by which the judges hold their offices, and they are such as will eternally endure wherever liberty exists.

On examination, it will be found that the people, in forming their Constitution, meant to make the judges as independent of the Legislature as of the Executive. Because the duties which they have to perform, call upon them to expound not only the laws, but the Constitution also; in which is involved the power of checking the Legislature in case it should pass any laws in violation of the Constitution. For this reason it was more important that the judges in this country should be placed beyond the control of the Legislature, than in other countries where no such power attaches to them.

Mr. MASON challenged gentlemen to exhibit a single instance, besides that lately furnished by Maryland, of a Legislative act repealing a law passed in execution of a Constitution, under which the judges held their offices during good behaviour. In truth, no such power existed, nor was it in the power of any Legislature, so circumstanced, by a single law to dash them out of existence.

The opinion of Mr. MASON, therefore, was, that this Legislature have no right to repeal the judiciary law; for such an act would be in direct violation of the Constitution.

The Constitution says: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

Thus it says, "the judges *shall hold* their offices during good behaviour." How can this direction of the Constitution be complied with, if the Legislature shall, from session to session, repeal the law under which the office is held, and *remove the office?* He did not conceive that any words, which human ingenuity could devise, could more completely get over the remarks that had been made by the gentleman from Kentucky. But that gentleman says, that this provision of the Constitution applies exclusively to the President. He considers it as made to supersede the powers of the President to remove the judges. But could this have been the contemplation of the framers of the Constitution, when even the right of the President to remove officers at pleasure, was a matter of great doubt, and had divided in opinion our most enlightened citizens. Not that he stated this circumstance because he had doubts. He thought the President ought to have the right; but it did not emanate from the Constitution; was not expressly found in the Constitution, but sprang from Legislative construction.

Besides, if Congress have the right to repeal the whole of the law, they must possess the right to repeal a section of it. If so, they may repeal the law so far as it applies to a particular district, and thus get rid of an obnoxious judge. They may remove his office from him. Would it not be absurd still to say, that the removed judge held his office during good behaviour?

The Constitution says: "The judges shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office." Why this provision? Why guard against the power to deprive the judges of their pay in a diminution of it, and not provide against what was more important, their existence?

Mr. MASON knew that a Legislative body was occasionally subject to the dominance of violent passions; he knew that they might pass unconstitutional laws; and that the judges, sworn to support the Constitution, would refuse to carry them into effect; and he knew that the Legislature might contend for the execution of their statutes: Hence the necessity of placing the judges above the influence of these passions; and for these reasons the Constitution had put them out of the power of the Legislature.

Still, if the gentlemen would not agree with him as to the unconstitutionality of the measure proposed, he would ask, was it expedient? Were there not great doubts existing throughout the United States? Ought not each gentleman to say, though I may have no doubts or hesitancy, are not a large portion of our citizens of opinion that it would violate the Constitution? If this diversity of sentiment exists, ought not the evils under the judiciary law to be very great before we touch it? Ought we not to aim at harmonizing, instead of dividing our citizens? Was not the Constitution a sacred instrument; an instrument ever to be approached with reverence; an instrument which ought not lightly to be drawn from its hallowed retreat, and subjected to the flux and reflux of passion? But where is the evil complained of? This system was established only last session; scarcely had it been yet organized; scarcely had we tried it on its very threshold; where then the necessity of being so pointed, as to destroy a system scarcely formed three days ago? Does not this manifest precipitation? Will it not manifest more magnanimity, more rationality, to abide by it until we try it; instead of taking up a pen and dashing it out of existence?

The reason that the suits depending were not so numerous, arose from the nature of the old establishment. That establishment had no parallel. It carried with it the seeds of its own dissolution. No set of judges could be found physically hardy enough to execute it. Such was the labor of their duties, that they were denied time for study or improvement. Besides, a case was heard at one term by one judge, and postponed for consideration to the next term. At that term another judge appeared, and all the arguments were to be gone over anew, and the same thing might happen again and again. Was this the way to extend justice to our citizens? Was not the delay equivalent to a denial of justice? It was a fact that three-fourths of the time of the judges had been taken up in travelling.

It may be true, that the number of suits in the federal courts is lessened; and if the internal taxes are to be swept away, it may be still more lessened as far as depends upon that source. But is it possible, that suits will go on diminishing as the gentleman seems to think? Is reason so predominant? Is the millenium so near at hand? On the contrary, is not our commerce increasing with great rapidity? Is not our wealth increasing? And will not controversies arise in proportion to the growth of our numbers and property? controversies, which will go to the federal tribunals, as soon as the judiciary system is fully established?

By the documents quoted by the gentleman from Kentucky, it appears that more business has been lately done in the federal courts than in any other antecedent time, except in one or two counties in Pennsylvania.

Besides, said Mr. M. even if there be not a great pressure of business, had we not better pay the paltry sum of thirty or forty thousand dollars for a system too broad, than have one that is too narrow?

Is it not a melancholy consideration, that in many of the European States, the costs are equal to the principle contended for? It would be honorable to the United States to exhibit a different example. It would be honorable to them to hold out an example, even if confined to foreigners, of prompt and efficacious justice, though at the expense of $100,000. Such an example would be a cause for national triumph, and our people would exult in it.

Inasmuch, therefore, as to render the judges respectable, it was necessary to make their appointments permanent: as time, labor, experience, and long study, were required to perfect any man in a knowledge of the laws of his country; inasmuch as it has been thought good policy, that the judges should be well paid, and that they should be so placed as to be divested of all fear, and neither to look to the right nor left; inasmuch as they should be so placed as to render them independent of Legislative as well as of Executive power; he hoped this law would not be repealed.

These were the reasons which Mr. M. assigned as those which would influence his decision. He acknowledged, that he had not entered the House prepared to offer his sentiments; but, as the question was about to be put, he had thought it best to offer them, such as they were, rather than to give a silent vote on a subject of such great importance.

Mr. WRIGHT, of Maryland, said it must be agreed that the subject was one of great importance, from its effect upon our revenues. If the repeal of the act of last session was Constitutional, he presumed there could be little doubt of its expediency, from the documents on our table. Has the Constitution vested the Legislature with a power over the subject of the resolution? If so, then should a law, which had been the effect of a flux of passion, be repealed by a reflux of reason. He believed that it had been introduced at the period of an expiring administration. It had been resisted by the republican side of the Senate, and he trusted that now, on the return of reason, it would be repealed.

An allusion has been made to the State of Maryland, which had repealed a law respecting the judiciary. Mr. W. here quoted the constitution of that State, whose provisions, he observed, so far as respected the tenure of the office of a judge, corresponded with those of the Constitution of the United States. The Legislature of that State had been of opinion, and correctly too, that they did possess the power of repealing a law formed by their predecessors. And the Legislature of the United States possessed the same power. This they had already determined by the very act of the last session, which, while it created a number of new judges, abolished the offices of several district judges.

It was clear that the Constitution meant to guard the officer and not the office. Will it be said that what the Legislature makes to-day, cannot be annihilated to-morrow? Even as to the judges of the Supreme Court, had not the law first constituted six, and was it not now by law reduced to five? And if Congress has power to reduce the number of the superior, have they not the same power to reduce the number of the inferior judges? Are we to be eternally bound by the follies of a law which ought never to have been passed?

Why the expression in the Constitution, "The judicial power shall be vested in such inferior courts as Congress may, *from time to time*, ordain and establish," if it had been intended, as is now contended, that the office being once bestowed, no change can be made?

If the case of those who have accepted those offices, be considered as a hard one, may it not be said that they knew the Constitution, and the tenure by which their offices were to be held? In our regard for individual interest, we ought not to sacrifice the great interests of our country; and was it not demonstrable that, if twenty-one judges were sufficient when twelve hundred suits existed, they were equally so when there were no more than seven hundred?

The gentleman from Massachusetts was wrong in stating that Maryland was the only State that had repealed a law creating judiciary offices. Virginia, if he was not misinformed, had done the same thing. But he wanted not these precedents. Our own archives furnished us with abundant precedents. We had reduced the judges of the Supreme Court from six to five; we had annihilated two districts. The very gentlemen opposed now to the repeal of this law, had voted for these measures. Thus it appeared, that, though the Constitution justified the measure *then*, it prohibited it *now!*

Believing the Judiciary law of the last session had arisen from a disposition to provide for the warm friends of the existing Administration; believing that great inconveniences had arisen under it; believing its expense to be oppressive; and believing that if one Legislature had a right to pass it, another Legislature had the same right to repeal it; he trusted that, however a preceding Legislature might have been governed by passion, the present Legislature would, by repealing it, show that they were governed by reason.

Mr. MORRIS, of New York.—Mr. President, I am so very unfortunate, that the arguments in favor of the motion have confirmed my opinion that the law to which it refers ought not to be repealed. The honorable mover has rested his proposition on two grounds:

1st. That the Judiciary law passed last session is unnecessary; and.

2dly. That we have a right to repeal it, and ought to exercise that right.

The numerical mode of argument made use of to establish his first point is perfectly novel, and commands my tribute of admiration. This is the first time I ever heard the utility of the courts of justice estimated by the number of suits carried before them. I have read that a celebrated monarch of England, the great Alfred, had enacted such laws, established such tribunals, and organized such a system of police, that a purse of gold might be hung up on the highway without any danger of being taken. Had the honorable gentleman from Kentucky existed in those days, he would, perhaps, have attempted to convince old Alfred that what he considered as the glory of his reign was its greatest evil. For, by taking the unfrequency of crimes as a proof that tribunals were unnecessary, and thus boldly substituting effect for cause, the gentleman might demonstrate the inutility of any institution by a system of reasoning the most fallacious.

But, sir, if, with that poor measure of ability which it has pleased God to give me, I march on that ground which I have been accustomed to deem solid, I should say that, in so far as the terror of our Judicial institutions prevented the perpetration of crimes, in that same degree are those institutions useful. This would be my mode of reasoning, but for the wonderful discovery made by the honorable mover of the resolution.

We have been told of the great expense of the Judiciary—that it amounted to $137,000. And thus attributing the whole expense of the establishment to this particular law, it has been assumed in argument that to repeal the law would save $137,000. If the other arithmetical arguments of the gentleman were equally incorrect, his inferences will be entitled to but little attention.

Of this sum, it appears, from a report of the Secretary of the Treasury, that $45,000 are for the contingent expenses of jurors, witnesses, &c., which serves in some measure to show that it is expected much business will be actually done.

The expense arising under this law, that it is proposed to repeal, amounts to thirty thousand dollars, exclusive of fifteen thousand dollars estimated for contingent expenses, making, together, forty-five thousand dollars. But let us not stint the allowance; throw in a few thousand more, and let the whole be stated at fifty-one thousand; apportion this sum among the people of the United States, according to the census lately taken, and you will find that each individual will pay just one cent. And for this insignificant saving of a cent a man, we are called upon to give up all that is valuable to a nation.

One of the great purposes of a Government is to secure the people from foreign invasion. To be ready to repel such invasion requires a great revenue, and many officers become necessary to collect it. Such an invasion, however, may or may not take place. If I judge from certain documents laid before us, those who administer our affairs have but little apprehension of that event. If, then, there be little or no such danger, or if the people be sufficiently secured against it, what else have they a right to ask for in return for their money expended in the support of Government? They have a right to ask for the protection of the law in proper courts of justice, to secure the weak against the strong, the poor against the rich, the oppressed against the oppressor. And is this little which they ask to be denied? Are the means by which the injured can obtain redress to be curtailed and diminished? Much may be feared from armies. They may turn their swords against our bosoms; they may elevate a Chief to despotic power. But what danger is to be apprehended from an army of judges?

Gentlemen say, recur to the ancient system. What is the ancient system? Six judges of the Supreme Court to ride the circuit of America twice a year, and sit twice a year at the seat of Government. Without inquiring into the accuracy of a statement made by the gentleman respecting the courts of England, in which, I apprehend, he will find himself deceived, let me ask what would be the effects of the old system here? Cast an eye over the extent of our country, and a moment's consideration will show that the First Magistrate, in selecting a character for the bench, must seek less the learning of a judge than the agility of a post-boy. Can it be possible that men advanced in years, (for such alone can have the maturity of judgment fitting for the office;) that men educated in the closet—men who, from their habits of life, must have more strength of mind than of body; is it, I say, possible that such men can be running from one end of the continent to the other? Or, if they could, can they find time to hear and decide causes? I have been told by men of eminence on the bench, that they could not hold their offices under the old arrangement.

What is the present system? You have added to the old judges seven district and sixteen circuit judges. What will be the effect of the desired repeal? Will it not be a declaration to the remaining judges that they hold their offices subject to your will and pleasure? And what will be the result of this? It will be, that the check established by the Constitution, wished for by the people, and necessary in every contemplation of common sense, is destroyed. It had been said, and truly, too, that Governments are made to provide against the follies and vices of men. For to suppose that Governments rest upon reason is a pitiful solecism. If mankind were reasonable, they would want no Government. Hence, checks are required in the distribution of power among those who are to exercise it for the benefit of the people. Did the people of America vest all powers in the Legislature? No; they had vested in the judges a check intended to be efficient—a check of the first necessity, to prevent an invasion of the Constitution by unconstitutional laws—a check which might prevent any faction from intimidating or annihilating the tribunals themselves.

On this ground, said Mr. MORRIS, I stand to arrest the victory meditated over the Constitution of my country; a victory meditated by those who wish to prostrate that Constitution for the furtherance of their own ambitious views. Not of him who had recommended this measure, nor of those who now urge it; for, on his uprightness and their uprightness, I have the fullest reliance; but of those in the back-ground who have further and higher objects. These troops that protect the outworks are to be first dismissed. Those posts which present the strongest barriers are first to be taken, and then the Constitution becomes an easy prey.

Let us then, secondly, consider whether we have constitutionally a power to repeal this law. [Here Mr. MORRIS quoted the third article and first section of the Constitution.] I have heard a

verbal criticism about the words *shall* and *may*, which appeared the more unnecessary to me, as the same word, *shall*, is applied to both members of the section. For it says "the judicial power, &c. *shall* be vested in one Supreme Court and such inferior courts as the Congress *may*, from time to time, ordain and establish." The Legislature, therefore, had, without doubt, the right of determining, in the first instance, what inferior courts should be established; but when established, the words are imperative, a part of the judicial power shall vest in them. And "the judges shall hold their offices during good behaviour." They shall receive a compensation which shall not be diminished during their continuance in office. Therefore, whether the remarks be applied to the tenure of office, or the quantum of compensation, the Constitution is equally imperative. After this exposition, gentlemen are welcome to any advantage to be derived from the criticism on *shall* and *may*.

But another criticism, which, but for its serious effects, I would call pleasant, has been made: the amount of which is, you shall not take the man from the office, but you may take the office from the man; you shall not drown him, but you may sink his boat under him; you shall not put him to death, but you may take away his life. The Constitution secures to a judge his office, says he shall hold it, that is, it shall not be taken from him during good behaviour; the Legislature shall not diminish, though their bounty may increase, his salary: the Constitution provides perfectly for the inviolability of his tenure; but yet we may destroy the office which we cannot take away, as if the destruction of the office would not as effectually deprive him of it as the grant to another person. It is admited that no power derived from the Constitution can deprive him of the office, and yet it is contended that by repeal of the law that office may be destroyed. Is not this absurd? It had been said, that whatever one Legislature can do another can undo; because no Legislature can bind its successor, and therefore that whatever we make we can destroy. This I deny, on the ground of reason, and on that of the Constitution. What! can a man destroy his own children? Can you annul your own compacts? Can you annihilate the national debt? When you have by law created a political existence, can you, by repealing the law, dissolve the corporation you had made? When, by your laws, you give to an individual any right whatever, can you, by a subsequent law, rightfully take it away? No. When you make a compact you are bound by it. When you make a promise you must perform it. Establish the contrary doctrine, and what follows? The whim of the moment becomes the law of the land: your country will be looked upon as a den of robbers; every honest man will fly your shores. Who will trust you, when you are the first to violate your own contracts? The position, therefore, that the Legislature may rightfully repeal every law made by a preceding Legislature, when tested by reason, is untrue; and it is equally untrue when compared with the precepts of the Constitution; for, what does the Constitution say? "You shall make no *ex post facto* law." Is not this an *ex post facto* law?

Gentlemen say the system of the last session is mere theory. For argument sake, it shall be granted; and what then is the language of reason? Try it; put it to the test of experience. What respect can the people have for a Legislature that, without reflection, meets but to undo the acts of its predecessors? Is it prudent, is it decent, even if the law were unwise, thus to commit our reputation and theirs? Is it not highly dangerous to call upon the people to decide which of us are fools, for one of us must be?

And what would be the effect on the injured man who seeks redress in a court of justice, and whom, by this repeal, you shall have deprived of his right? You have saved him a miserable cent, and you have perhaps utterly ruined him.

But the honorable mover of the resolution has told us not only what is, but what is to be. He has told us not only that suits have decreased, but that they will decrease, and, relying on this preconception, informs us that the internal taxes will be repealed; and grounds the expediency of repealing the judiciary law, on the annihilation of these taxes. Thus, taking for granted the non-existence of a law that yet exists, he infers from its destruction, and the consequent cessation of suits under it, the inutility of the judicial establishment. And when he has carried his present point, and broken down the judiciary system, he will tell us, perhaps, that we may as well repeal the internal taxes, because we have no judges to enforce the collection of them.

But what will be the effect of these repeals, and of all these dismissions from office? I impeach not the motives of gentlemen who advocate this measure. In my heart I believe them to be upright. But they see not the consequences. We are told the States want, and ought to have, more power. We are told that they are the legitimate sources from which the citizen is to derive protection. Their judges are, I suppose, to enforce our laws. Judges appointed by State authority, supported by State salary, and looking for promotion to State influence, or dependent upon State party. There are some honorable gentlemen now present, who sat in the Convention which formed this Constitution. I appeal to their recollection, if they have not seen the time when the fate of America was suspended by a hair? my life for it, if another convention be assembled, they will part without doing anything. Never, in the flow of time, was there a moment so propitious, as that in which the Convention assembled. The States had been convinced, by melancholy experience, how inadequate they were to the management of our national concerns. The passions of the people were lulled to sleep; State pride slumbered; the Constitution was promulgated; and then it awoke, and opposition was formed; but it was in vain. The people of America bound the States down by this compact.

One great provision of the Constitution—a provision that exhibited the sublime spectacle of a great State bowing before the tribunal of justice

is gone! Another great bulwark is now to be removed. You are told you must look to the States for protection; your internal revenues are to be swept away; your sole reliance must rest upon commercial duties. In this reliance you will be deceived. But what is to be the effect of all these changes? I am afraid to say; I will leave it to the feelings and consciences of gentlemen. But remember, the moment this Union is dissolved, we shall no longer be governed by votes.

Examine the annals of history. Look into the records of time, see what has been the ruin of every Republic. The vile love of popularity. Why are we here? To save the people from their most dangerous enemy; to save them from themselves. What caused the ruin of the Republics of Greece and Rome? Demagogues, who, by flattery, gained the aid of the populace to establish despotism. But if you will shut your eyes to the light of history, and your ears to the voice of experience, see at least what has happened in your own times. In 1789, it was no longer a doubt with enlightened statesmen, what would be the event of the French Revolution; before the first of January, 1790, the only question was, who would become the despot. The word liberty, indeed, from that day to this, had been sounded in our ears, but never had any real existence; there is nothing left but the word.

We are now about to violate the Constitution. Once touch it with unhallowed hands; sacrifice but one of its provisions, and we are gone. We commit the fate of America to the mercy of time and chance.

I hope the honorable gentleman from Maryland will pardon me, if, from the section of the law which he has cited, I deduce an inference diametrically opposite to that for which he has contended. He has told us that "the last Congress, in reducing the judges of the Supreme Court from six to five, have exercised the right which is now to be used, and made a legislative construction of this clause in the Constitution." But look at the law; it declares that this reduction shall not be made until, by death or resignation, only five judges shall remain. Thus, in the very moment when they express the opinion, that five judges are sufficient, they acknowledge their incompetency to remove the sixth judge, and thereby make the Legislative declaration, that they had not the right now contended for.

Mr. M. here noticed some other remarks which had fallen from the gentleman from Maryland, (Mr. WRIGHT,) on the construction of the Constitution; and concluded by recapitulating his arguments. A contract, said he, is made between the Government and the Judiciary; the President appoints; the Legislature fixes his salary; he accepts the office; the contract is complete. He is then under the protection of the Constitution, which neither the President nor Congress can infringe. The contract is a solemn one. Can you violate it? If you can you may throw the Constitution into the flames—it is gone—it is dead.

When Mr. MORRIS had concluded his remarks, the Senate adjourned.

MONDAY, January 11.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I now communicate to you a memorial of the Commissioners of the City of Washington, together with a letter of later date, which, with the memorial of January 28, 1801, will possess the Legislature fully of the state of the public interests and of those of the City of Washington confided to them. The moneys now due, and soon to become due, to the State of Maryland, on the loan guarantied by the United States, call for an early attention. The lots in the city which are chargeable with the payment of these moneys are deemed not only equal to the indemnification of the public, but to insure a considerable surplus to the city, to be employed for its improvement; provided they are offered for sale only in sufficient numbers to meet the existing demand. But the act of 1796 requires that they shall be positively sold in such numbers as shall be necessary for the punctual payment of the loans. Nine thousand dollars of interest are lately become due; three thousand dollars quarter-yearly will continue to become due; and fifty thousand dollars, an additional loan, are reimbursable on the first day of November next. These sums would require sales so far beyond the actual demand of the market, that it is apprehended that the whole property may be thereby sacrificed, the public security destroyed, and the residuary interest of the city entirely lost. Under these circumstances I have thought it my duty, before I proceed to direct a rigorous execution of the law, to submit the subject to the consideration of the Legislature. Whether the public interest will be better secured in the end, and that of the city saved, by offering sales commensurate only to the demand at market, and advancing from the Treasury, in the first instance, what these may prove deficient, to be replaced by subsequent sales, rests for the determination of the Legislature. If indulgence for the funds can be admitted, they will probably form a resource of great and permanent value; and their embarrassments have been produced only by overstrained exertions to provide accommodations for the Government of the Union.

TH: JEFFERSON.

JANUARY 11, 1802.

The Message and papers therein referred to were read, and referred to Messrs. TRACY, WRIGHT, and HOWARD, to consider and report thereon.

The Senate proceeded to consider the amendments reported by the committee to whom was referred the bill, entitled "An act concerning the library for the use of both Houses of Congress," and the amendments, with further amendments, were adopted.

The bill was then read the third time and passed, as amended.

APPORTIONMENT BILL.

The Apportionment bill, as received from the House of Representatives, was taken up. This bill fixes the ratio of representation at one member for every 33,000 persons in each State.

Mr. WELLS moved to strike out 33,000, his object being to introduce 30,000, for which he assigned his reasons at some length.

On this motion a debate of some length ensued, in which the provisions of the bill as they stood were supported by Messrs. JACKSON, MASON, WRIGHT, and COCKE; and opposed by Messrs. WELLS and HILLHOUSE.

Mr. WHITE, of Delaware.—Believing as I do, sir, that the minds of gentlemen on this floor are thoroughly made up as to the present subject, and that any observations now to be offered will not influence a single vote, but merely occupy the time of the Senate to no useful purpose, I shall ask your indulgence but a few moments. I cannot, sir, sit quietly and see this bill reported by your committee, meditating as it certainly does a manifest injury to the State I have the honor in part to represent, pass into a law, without doing more than oppose to it a silent negative; without holding up my voice and protesting most solemnly against the extreme injustice of the measure. If, sir, this bill passes in its present shape, there will be left in the State of Delaware twenty-eight thousand eight hundred and eleven people unrepresented in the popular branch of their Legislature. Gentlemen may say, that this is only a fraction, and that in a general apportionment of representation, fractional numbers are unavoidable. Sir, I acknowledge it is only a fraction, but it is a fraction that includes one-half the population of that State, and amounts, even upon the present contemplated plan, to within four thousand of the number sufficient to gain another Representative. Sir, twenty-eight or thirty thousand would, to one of the large States, be an inconsiderable fraction. Apportion that number, for instance, among the twenty-one Representatives from Virginia, and you give to each member but a fraction of about thirteen hundred; whereas from Delaware, there will be but one representative, and over and above his legal number a fraction of near twenty-nine thousand people unrepresented. Is this fair, sir? Is this equitable? I ask, gentlemen, is it not unfriendly and wrongful? And can it be possible, sir, that the transcendent omnipotence of a majority have fated, if I may use the expression, this injustice upon a sister State? Suppose, sir, Delaware to have but one Representative and Virginia twenty, a fraction of five thousand to the former is equal to a redundant number of one hundred thousand to the latter; or take, sir, the present case, and you will find that the fraction of twenty-nine thousand in the State of Delaware, apportioned upon the representation, is at least equal to a redundant number in the State of Virginia of three hundred thousand. If, sir, the divisor is fixed at thirty thousand, Delaware will have two Representatives; her weight, then, in the other House, will, in relation to Virginia, be as one to twelve, but if she is compelled to submit to the divisor of thirty-three thousand, you allow her but one Representative; you deny her nearly one-half her rightful influence, and place her on the floor of the House of Representatives in a relative situation toward Virginia, as one to twenty-one. Sir, an additional Representative to any of the larger States is not of the same consequence as another would be to Delaware. To Virginia, for instance, one is but the twentieth part of her force, to Delaware it would be one-half her force. Gentlemen may say that Delaware is the smallest State; but let it be remembered, sir, that her rights are equally sacred with those of the largest States; and although her citizens are not so numerous, yet, sir, their State sovereignty and other Constitutional rights are quite as dear and valuable to them, as the blessing can be to any other people; and, let me add, sir, she is among the oldest States; her history travels back through the bloody scenes of your Revolution; she dates her era at your Declaration of Independence, and I am proud to say, and can do so without detracting from her neighbors, in proportion to her population, her resources, and extent, during the severe contest for American liberty, she contributed, in blood and treasure, as freely to its support and permanent establishment, as any State in the Union.

But, Mr. President, there is another point of light in which I must be permitted to present the glaring injustice of this measure. By the Constitution of the United States, taxation is not apportioned among the respective States according to representation, but according to population. Delaware, then, although in the House of Representatives, where the money affairs of our country are principally managed, she has but one member, and Virginia twenty-one, is not taxed to the amount only of the twentieth part of the taxes of Virginia, according to representation, but to the amount of the twelfth part of the taxes of that State, according to population. Thus, sir, nearly one-half the citizens of Delaware are obliged to pay their proportion of taxes to the support of your Government, when you allow them no voice in either laying and disposing of those taxes, or, what is perhaps even more material, in pointing out the objects of taxation. Their situation may, in some respects, be likened to a very memorable grievance once heavily complained of, in this country, when the Parliament of Great Britain arrogated to themselves the right of taxing our fathers without their consent.

Sir, the doctrine urged by some gentlemen that the divisor of thirty thousand will increase the House of Representatives to a body too large and unwieldy for the convenient and ordinary purposes of business, seems to me totally without foundation. The observation and experience of every man must be sufficient at once to satisfy him that this cannot be the consequence; we have before our eyes, sir, examples that prove directly the reverse. This divisor will give to your House of Representatives but one hundred and fifty-seven members; the State of Virginia has in the popular branch of her Legislature one hundred and eighty members, and we have not been told that it is too numerous. The British House of Commons, before the union with Ireland, consisted of about five hundred and fifty members, and we heard no complaint of the numbers; on the contrary, sir, the nation wished a fuller representation: and it is from that House, too, sir, that, according to this logic, must be so extremely riotous and disorderly, we have drawn most of the rules that govern the proceedings of this honorable body.

Again, sir, the nature and spirit of your Government requires a full representation in the Legislature. It is a Government that must depend alone for its support upon the affections of the people; and the best security for their affections is to extend to them, upon as large a scale as comports with the public safety, the freedom of choice, and right of representation. In so extensive a country as this, many parts of which are thinly inhabited, and the election districts consequently including vast tracts of territory, it must often happen that the electors are entirely unacquainted with the person for whom they vote; but if you increase the representation, you reduce the size of the election districts; you bring the candidate within the very neighborhood of the electors; they see him, they know him; they are better enabled to estimate truly his character, and judge of his capacity and disposition to serve them. This, sir, will secure, in a great degree, the constituent from imposition, and attach to the Representative a higher and more immediate responsibility; it will inspire the people with confidence in your Government, and induce them more cheerfully to acquiesce in your laws. But, above all, sir, the divisor of thirty thousand leaves throughout the United States a less aggregate of unrepresented fractions than any divisor you can take; less, permit me to say, sir, by one hundred and sixteen thousand, than the one contemplated in the bill; and I am sure gentlemen on all sides of the House wish the country as fairly represented as possible. To my mind this is a most conclusive argument in favor of the divisor of thirty thousand.

I am told, sir, that this has been made a party question; that party considerations influence it. What could have induced to this, is not for me to say; I will attribute no improper motives to any honorable gentleman, but it has not pleased God to bless me with sagacity enough to discover anything in it that even savored of party. Sir, parties have already attained in this country a sufficient height, not only for our happiness but for our safety; and it argues but a small regard for the public good, to stamp every subject with that complexion. If this question involves any separate interests, they are those, sir, of the smaller and larger States. With the former, then, the cause I advocate is a common cause, and I am sure gentlemen will give it due consideration, and not suffer any party feelings, however disguised, to influence them. Sir, a doctrine has of late been publicly avowed, which I must be permitted to notice, as, in my estimation, extremely hostile to the rights of the smaller States; it is said that the House of Representatives is not their ground, that they must look to themselves in the Senate, and take care on this floor that sovereignties are not destroyed. I hope gentlemen representing the smaller States will profit by this warning; it is well worth their attention; it comes, sir, from the largest and most influential State in the Union. The point it leads to, I presume not to say, and fear, sir, even to conjecture.

The question was now taken on the motion to strike out 33,000, and lost—ayes 11, noes 15.

Mr. MORRIS then moved, and Mr. TRACY seconded the motion to add, after "one representative for every 33,000," the words "and one representative for every fractional number of 27,000 persons;" The number 27,000 was used to avoid a violation of the Constitution, which prohibits the allotting to each State more representatives than one for every 30,000. Thus, in the case of Delaware, the ratio being 33,000, Delaware would be entitled to one member for 33,000, and one for the fraction of 27,000: both which numbers would amount to 60,000; which last number entitled a State to two members without violating the Constitution. This motion was opposed by Messrs. WRIGHT and ANDERSON, and was lost—ayes 10, noes 15.

On the question to agree to the final passage of this bill, it was determined in the affirmative—yeas 23, nays 5, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, Logan, S. T. Mason, J. Mason, Morris, Nicholas, Sheafe, Stone, Sumter, and Wright.

NAYS—Messrs. Hillhouse, Olcott, Tracy, Wells, and White.

The bill was then read a third time, and passed.

TUESDAY, January 12.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

I now communicate to you a letter from the Secretary of State, enclosing an estimate of the expenses which appear at present necessary for carrying into effect the Convention between the United States of America, and the French Republic, which has been prepared at the request of the House of Representatives.

TH: JEFFERSON.

JANUARY 12, 1802.

The Message and papers accompanying it were read, and ordered to lie for consideration.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, "That the act of Congress passed on the 13th day of February, 1801, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' ought to be repealed."

Mr. JACKSON, of Georgia.—I rise with an impression of awe on the present question; for we must tread on Constitutional ground, which should not be lightly touched on, nor too hastily decided. Every step we take ought to be well examined, and our minds convinced before we give that vote which cannot be recalled, and which will fix a principle on Legislative construction, which, perhaps, will prevail as long as we remain a nation.

In the early stage of this discussion, I had almost determined to say nothing, and am at pres-

ent determined not to say much: but a justification of the vote I shall give, has impelled me to offer my reasons for it to the State I represent; and I have made up my mind, decidedly, to vote for the resolution before you, if I cannot be otherwise convinced.

I conceive, that as this subject requires from us a legislative construction, that construction may as well, and indeed better, be now made; there will undoubtedly hereafter be a clashing of powers. I therefore think it is much better to decide it now, when the injury is felt, than to suffer it to take root until it shall extort a different and more violent decision than that of a deliberative body.

The reasons for the resolution have been so ably stated, and strongly enforced, by the gentleman from Kentucky who moved it, as to expediency, and the burden of the expenses on the present system, that I shall therefore say little about them.

The expenses, however, of the Judiciary establishment, I deem the least important consideration attached to the subject. Yet, I do not agree with the gentleman who has spoken, that the expense is trifling. The gentleman from New-York had held up the insignificancy of a cent a person, and had told us of Alfred's purse, which no one dared to take away. Let that gentleman calculate twelve souls to a family, and he will see that each family would pay twelve cents; a sum, however insignificant to the pocket of that gentleman, that might furnish a comfortable meal to a poor family. With the gentleman from Kentucky, however, I contend that the principle is as much settled by one cent as by a million. And this observation becomes incalculably dangerous, if it is to be drawn into precedent on every new project or improper measure, that it costs but a cent a person. And as to the remarks about Alfred, I might retaliate upon the gentleman, and say, that at that day twelve cents might have been a year's salary for a judge.

We have been asked, if we are afraid of having an army of judges? For myself, I am more afraid of an army of judges, under the patronage of the President, than of an army of soldiers. The former can do us more harm. They may deprive us of our liberties, if attached to the Executive, from their decisions; and from the tenure of office contended for, we cannot remove them; while the soldier, however he may act, is enlisted, or if not enlisted, only subsisted, for two years; whilst the judge is enlisted for life, for his salary cannot be taken from him. [See 12th division, 8th Sect. 1st Art. Constitution.] Sir, it is said these evils will not happen. But what security have we for the truth of the declaration? Have we not seen sedition laws? Have we not heard judges crying out through the land, sedition! and asking those whose duties it was to inquire, is there no sedition here? It is true, the sedition law had expired with the last Administration, and he trusted it would not exist, or at least be acted on, under the virtuous Jefferson. But hereafter if it should exist, your judges, under the cry of sedition and political heresy, may place half your citizens in irons. I thank God, that no such law now exists, or is likely to exist. I thank God, that we are not now under the influence of an intolerant clergy, as is evident from their abuse of the President; and that we are not under dread of the patronage of judges, is manifest, from their attack on the Secretary of State. And I trust, that we shall long keep this patronage off, by not sanctioning the religious persecution of the clergy on the one hand, nor the political violence of the judges on the other.

But I will forbear making any further remarks of this kind, and go into an examination of the Constitutional grounds.

[Mr. J. here quoted the third article, first section of the Constitution.]

Here then, said he, are two tribunals. First, the Supreme Court, the creature of the Constitution, the creature of the people; the other, the inferior jurisdictions, the creature of the Legislature. And notwithstanding the play of gentlemen upon the words shall and may, they are in meaning essentially different. The word *shall*, applied to the Supreme Court, is imperative and commanding, while the word *may*, applied to the inferior courts, is discretionary, and leaves to the Legislature a volition to act, or not to act, as it sees fit.

Again, why are the peculiar and exclusive powers of the Supreme Court designated in the following section of the Constitution, but because the Constitution considered that tribunal as absolutely established; while it viewed the inferior tribunals as dependent upon the will of the Legislature? And that this was the case was evident from the conduct of the Supreme Court on the pension act, which that court had some time since declared unconstitutional; and which declaration, he was convinced, would not have been hazarded by an inferior tribunal.

But does this conclusion rest on judicial power alone? Is it no where else found under other heads of Constitutional power? Yes, sir, under the Legislative head of power, which is the first grant of power made by the Constitution. For by the eighth section of the first article of the Constitution, after enumerating the power of laying taxes, &c., it is declared in the ninth division thereof, "to extend to constitute tribunals inferior to the Supreme Court." Here, then, is a Legislative power given expressly to that body, without restriction or application to any other branch of the National Government. Let those lawyers who hear me decide on the construction of all grants or deeds, if two grants be made in the same deed to two different powers or persons, if the first does not exclusively vest?

Is there a single argument that can be assigned to oppose this construction of the Constitution? Do not the observations of gentlemen, who insist upon the permanent tenure of the Judicial office, place the creature above its creator, man above his God, the model above its mechanic? A good mechanic, when he constructs a machine, tries it; and if it does not succeed, he either mends it or throws it away. Is there not the same necessity for acting in the same way with the inferior tribunals of the Judiciary, which is no other than the machine of the Legislature?

But, upon the principles of gentlemen, the law

which creates a judge cannot be touched. The moment it is passed, it exists to the end of time. What is the implication of this doctrine? To alter or amend what may greatly require alteration or amendment, it is necessary to return to the creator, and to inquire what this creator is. My principle is, that the creator is the people themselves; that very people of the United States whom the gentleman from New York had declared ourselves to be the guardians of, to save the people themselves from their greatest enemies; and to save whom from destroying themselves he had invoked this House. Good God! is it possible that I have heard such a sentiment in this body? Rather should I have expected to have heard it sounded from the despots of Turkey, or the deserts of Siberia, than to have heard it uttered by an enlightened legislator of a free country, and on this floor.

But, said Mr. J., let us examine how we are to get at the creator. If the honorable gentleman will put us into the way of doing this with effect, I will abandon all my arguments for this motion. Look to the Constitution, and see how it is to be amended. It can only be amended on the recommendation of two-thirds of both Houses, or, on the application of two-thirds of the States, a convention shall be called, who are to propose amendments, afterwards to be ratified by three-fourths of the States.

There is required first, then, two-thirds of both Houses of Congress. Can this two-thirds be found now, or is there any probability of its being found for twenty years to come, who will concur in making the necessary alterations in the Judiciary system that are now, or may hereafter, be required? On this subject there are as many opinions as there are persons on this floor. I have indeed never found two persons precisely agree. How, then, can we expect three-fourths of the Legislatures of the several States to agree when we cannot agree among ourselves. There is, in fact, no amendment which could reach the case, and exhibit to view all the requisite and necessary regulations for such an extent of country. Such an attempt must form a volume, a Constitution by itself, and after all fall short of the object.

I am clearly, therefore, of opinion, that if the power to alter the Judiciary system vests not here, it vests no where. It follows, from the ideas of gentlemen, that we must submit to all the evils of the present system, though it should exhibit all the horrors of the Inquisition.

But, said Mr. J., gentlemen say the United States embrace a vast extent of territory, from fifteen to seventeen thousand miles in length. What is the inevitable deduction to be drawn from this fact? Why, that a system which is to apply to this extent of country, embracing different laws and different habits, will require frequent alterations: whereas, if we are tied down to a system of inferior tribunals once formed, we cannot even touch the plan of the Judicial system of the little District of Columbia. Nor can we touch the inferior jurisdictions in the Northwestern Territory, or in the Mississippi Territory, in both of which the systems were acknowledged to be adapted only to present circumstances, and in the last of which the rights of Georgia were implicated. It follows, that whatever these rights may be, the system is sacred; and, as to the Mississippi Territory, if grounded on this doctrine, notwithstanding the claim of Georgia, her jurisdiction is totally lost. To revert to the sedition law. If the doctrine supported now were true, then, had the sedition law been incorporated as a system by itself, an inferior tribunal, and officers been attached to it, would it have been perpetually tacked to the Constitution? That law under which so many of our citizens have been imprisoned for writings and speakings; and one, among others, for wishing that the wadding of a gun had been lodged in a certain Presidential part.

The gentleman had dwelt on the inconveniences and evils of the old system, and had particularly condemned that part of it, which, as he termed it, had converted the judges into post-boys. But I will appeal to the gentleman, if in England, where so much more business is done, there are more than twelve judges, and whether those judges do not ride the circuit? And why shall our judges not ride the circuits? Shall we have six judges sitting here to decide cases which require a knowledge of the laws, the morals, the habits, the state of the property of the several States? Would not this knowledge be much better obtained by their riding the circuits, and in the States themselves, making themselves acquainted with whatever relates to them, and the cases of appeals to come before them? It has been remarked by a celebrated writer on the English Constitution, that one of the greatest political evils that could befall a people was the existence of large judiciary bodies. To illustrate his ideas, he had instanced the Parliaments of France. If the spirit which last session gave existence to sixteen new judges continued, who could say by what number they would be limited? They might indeed soon become, what they had been likened to, an army of judges.

I do not wish to be severe in my remarks on the conduct of the late Administration. I admire the private character of Mr. Adams. But I do believe the succession of his political acts tended ultimately to accumulate in, and attach all powers to, a particular person or favorite family.

If I wished to bestow on Mr. Jefferson this mass of patronage, which I contend this horde of officers bestows, I should be in favor of the bill that it is now moved to repeal; but, as a political person, I am no more for Thomas Jefferson than for John Adams. When he acts, according to my opinion, right, I will support him; when wrong, oppose him; and I trust a majority on this floor will act in the same way.

A gentleman from Massachusetts has asked if suits will go on diminishing, and if the millenium is so near at hand? Sir, different opinions are held on this subject; for some suppose the millenium to have arrived long since, and others that it may arrive, and others again that it never would arrive; but there is one thing certain, that the more courts

you have, the greater temptation there is for litigation, and more suits, or rather evils, will flow from them. Law itself is but a necessary evil; for if mankind were perfect—were it not for their frailties and passions—there would be no occasion for it; and lawyers are a still greater evil, although, he acknowledged, a necessary one. They seldom discourage litigious suitors, and swarm in our courts; and there are here, as well as in every other country, persons so fond of law, and of persecution, that rather than not be in courts at all, they would direct their lawyers, as I have been formerly told of a man who applied for advice, and was informed he had no ground of action, to bring, then, a spite action. The State courts are open and competent to most of the inferior court business, and it ought to be thrown into that channel as much as possible.

With respect to the usefulness of the additional judges, created by the act of last session, it was, perhaps, unnecessary to add anything to what had been so ably observed by the gentleman from Kentucky. But I will state, for the information of the Senate, that in the Southern States of Georgia, South and North Carolina, a ground of great litigation is removed, one which had originated at least two hundred and fifty suits. Miller & Co. had obtained a patent for a ginning machine (God knew where it came from, but I believe that neither of them invented it) so as to make those States tributary to them, and embroil them in disputes. South Carolina had purchased that patent for $50,000, and had therefore dried up this source of litigation in that State.

The recovery of British debts, too, was nearly over. This had been a fruitful source of litigation. Our citizens had been sued, and their late hard earnings of property had been seized to satisfy British demands, whilst their former property had been taken from them by British arms during the war.

I am surprised to hear the cry, that our liberties and the Constitution are endangered, from the quarter from whence it is now urged. When such remarks had been made by those gentlemen with whom I generally acted on former occasions, the instantaneous cry was against demagogues, who, by artfully inflaming the passions of the people against the Government, wished to break down the Constitution.

A gentleman had talked about a victory meditated over the Constitution. Not by the President; not by us. By whom then was it meditated? Was it by the House of Representatives? Or was it by the people themselves—that same people whom we were to save from their greatest enemy, themselves? For my part, I believe in the meditation of no such victory. Sooner, for my part, than participate in it, by voting for this resolution, if I thought it would have such a tendency, I would cut off my hand, or cut out my tongue. I respect and love the Constitution, and my great wish is, with father Paul, to cry out, as respects it, *esto perpetua*.

Mr. TRACY, of Connecticut.—Feeble as I am, I have thought it my duty to offer my sentiments on this subject. Owing to severity of indisposition I have not been in my place, nor have I heard any of the discussion. This circumstance will be my apology, if, in the remarks I shall make, repetitions shall occur on the one hand, and apparent inattention to arguments on the other.

Having been a member of this Government during several years, and being impressed with the difficulties attending the formation of a judiciary system, I have thought proper to give a concise history of Legislative proceedings on this important subject. Permit me to say, sir, that the first institution of such a system must be an experiment. It is impossible to ascertain until tried the effects of a system co-extensive with the vast territory of the United States, and which ought to be adapted to the different laws and habits of the different States.

Soon after the first law was enacted, as early as the year 1793, and I believe sooner, complaints were made of the system of circuit courts. The Union then being divided into three circuits, and two of the six judges were obliged to attend each court, if one judge failed, all the business of course was continued to the next term. Judges complained of the distance they had to travel, and suitors and lawyers complained of delays. In 1793, if my memory is correct, the law passed allowing one judge to attend with the district judge in each district, with some other modifications not important in the present view of the subject. If, by reason of distance, badness of roads, sickness, or any other accident, this one judge failed of attendance, or if he and the district judge differed on any point, a delay was occasioned. If the same judge attended the same circuit at the next term, another delay, and so on, till experience taught us, that some alteration in the system was requisite. It will be recollected, that the judges had to travel over this extensive country twice in each year, and to encounter the extremes of both heat and cold. Of this they complained; but this was not all; the business was not done.

At several sessions of Congress, the subject of the circuit courts was before them; committees were appointed in both Houses, and in more than one communication of the Executive at the commencement of sessions, a revision of the system was recommended. I cannot, on memory, detail the exact particulars, or order of time; but in the Speech made by the President at the opening of the session of 1799, the subject is stated as follows:

"To give due effect to the civil administration of Government, and to insure a just execution of the laws, a revision and amendment of the judiciary system is indispensably necessary. In this extensive country, it cannot but happen, that numerous questions respecting the interpretation of the laws, and the rights and duties of officers and citizens, must arise. On the one hand, the laws should be executed—on the other, individuals should be guarded from oppression; neither of these objects is sufficiently assured, under the present organization of the judicial department; I therefore earnestly recommend the subject to your serious consideration."

Although this subject had been recommended before, and committees had contemplated a revision and alteration of the system, I do not remember that a bill had ever been presented to either House of Congress until 1799. In that session, a bill was reported similar in its features to the act which passed last session. It might have been acted upon in the House of Representatives; of this however I am not confident; but I recollect it was printed, and the members of both Houses had it before them; and at the last session, with some alterations and amendments, it was enacted into a law. I believe all parties wished for a revision and amendment of the system, in respect to circuit courts; the difference of opinion was principally this:—some supposed an increase of the judges of the Supreme Court to such a number as would render the duties of the circuit practicable for them, and provide for the completion of business, would be the best amendment; the others thought the law, as it passed, was preferable.

I acknowlege, that in deliberating upon this subject, we always assumed the principle, that the establishment of courts was important to protect the rights of the people; we did not fear an army of judges, as has been hinted by the gentleman last up. (Mr. JACKSON.) In this opinion we might be mistaken, but we were honest in our professions. Although some believed, that more of the business of the United States might be confided to the State courts; yet it is not within my recollection, that the question was considered in any measure a party question. I am confident, that at the session of 1799, and for a long time before that, the friends of this law, which eventually passed last Winter, could not, nor did not, contemplate any change of administration. A revision of the system was long a subject of deliberation; we believed an increase of circuit judges, to the number requisite to perform the duties, would be an inconvenient increase of the Supreme Court; and though it was desirable for the judges of the Supreme Court to see the people and be seen of them, yet the preference was given to the system now proposed to be repealed. We supposed it would be an evil to increase the number of judges of the Supreme Court to thirteen, fifteen, or seventeen. A court which is to act together, should not be numerous; on this subject all men have agreed; here may be danger of an "army of judges," as the gentleman says; for although in Great Britain the twelve judges are sometimes called to give an opinion, yet no man will feel equal confidence in a tribunal of judges for the business of a court, consisting of many as of few; from three to five, the good sense and experience of all nations has declared to be about the proper number; and we thought it conducive to the general good, to establish tribunals in such manner as to carry justice to the door of every man.

In this modification of the system, the jurisdiction of the circuit court has been extended, as it respects the sum in demand, of which they are to take cognizance, and as it respects the disputes which arise concerning the title of lands; and exclusive jurisdiction is given of all crimes committed within fifty miles of their place of session. The intention was, to insure a prompt execution of justice, and experiment alone can test the wisdom of the plan.

I take it to be a sound rule, adopted by all wise and deliberate bodies, not to repeal an existing law, until experiment shall have discovered errors, or unless there is a vice so apparent on the face of the law, as that justice shall require an immediate destruction of it. Has there been time to gain information by experiment? No man will pretend this as a justification of the repeal; for the little time the law has been in force, so far as I have obtained any knowledge upon the subject, it has gained credit.

Another maxim in legislation, I think, is correct, not to give up a law in existence, which is conversant about extensive and important concerns of the community, and about which there is a necessity of enacting some law, without seeing clearly what can be substituted for it, and that the substitute has manifest advantages. This resolution leads to no result, but a repeal. I have stated the errors of the former system of circuit courts, and if expense is an objection to the present system, as I have heard urged out of doors, the same, or nearly as much, must be incurred, if we increase the number of judges of the Supreme Court, as to effect a reform in the Circuit Court. Why repeal this law then, and leave us without any, or without any adequate to its purpose?

Is this system so very vicious, that it deserves nothing but abhorrence and destruction? It costs us a little more than thirty thousand dollars, and by it the number of circuit judges is increased to sixteen; and by it likewise is contemplated reducing the number of supreme judges to five, when it can constitutionally be done. Is the expense an object, when by that expense we extend the jurisdiction of a court over this vastly extensive, growing country, and carry law and protection to every man? This country is in a singular condition; a great tract of unsettled lands is peopling with rapidity, and numerous emigrations increase our population far beyond its natural increase; is it not of importance that courts should be located among them, early, to correct the restless spirit which is frequent in new and scattered settlements? And are not the emigrations composed of such as require the prompt assistance of the law, to preserve among them regularity? Punishment, to us, and to all good men, should be a strange work; but to prevent crimes, is the work of a God. I speak to gentlemen, who have many of them graced the judge's bench, and adorned the professional robe they have worn, and am therefore not obliged to be particular that I may be understood; a word to the wise will be sufficient. A judiciary, in a national point of view, is absolutely necessary, and an extension of it to every national purpose is equally necessary. To depend upon State courts, not under obligations nor amenable to you, besides having as much business allotted to them by the respective States as they can accomplish, and depending upon them, and not on us, for existence—will require only to be mentioned, to be exploded. Locating your

judges in various parts of the country, by them promulgating the national laws, which it is well known has been a subject of great difficulty, and giving them daily opportunity of mixing with people, not well disposed to order and law; may prevent disorders and insurrections, and save millions of expense, which pecuniary saving will be the least of the important events arising from such a system.

But it will probably be said, the courts have not business to employ them; and the documents received from the Executive will be produced in evidence. And it may further be said, the President has in his Message recommended a repeal of this law. The words of the Message are: "The 'Judiciary system of the United States, and especially that portion of it lately erected, will of course 'present itself to the contemplation of Congress; 'and that they may be able to judge of the proportion which the institution bears to the business it 'has to perform, I have caused to be procured from 'the several States, and now lay before Congress, 'an exact statement of all the causes decided since 'the first establishment of the courts, and of those 'that were depending when additional courts and 'judges were brought in to their aid."

Is this a recommendation to repeal? Suppose for argument's sake it is. Let us look at this "exact" statement. In the recapitulation, 19th page of document S, there appears to have been instituted 8,276 suits, and pending, when this court went into operation, 1,539. But on further inspection it will be found, that Maryland is entirely omitted; this omission is unaccountable, since the means of knowledge were so near at hand.—119 causes undecided in Tennessee; 134 in North Carolina, and 331 in Virginia, are omitted; making in the whole an error of five or six hundred causes. In addition to this, the number of suits in New York are not stated correctly by the statement of the attorney when he made the return, and not one is carried out as pending in the recapitulation; and the return of Massachusetts is incorrect on its face; so that nothing more than conjecture can be derived from this "exact" statement. The President is usually more correct, and how this peremptory language in the Message comports with the document, every man can see for himself. I am not disposed to attribute intentional error to any man, much less to the Executive; but in point of use the statement amounts to nothing; we may just as well imagine without it as with it, how many suits were pending at the institution of the new courts.

But I acknowledge that the number of suits pending is not in my mind any criterion upon which a correct judgment may be formed of the utility or necessity of courts; or, to say the most of it, it forms but one ground of judging, and that not a very conclusive one. In a country thinly settled it is frequently as important to establish courts as in a more populous country; and as this Government is situated, it may be more so; and yet the number of suits will bear no proportion. Why did we establish courts in our territorial government but on this principle?

A number of courts properly located will keep the business of any country in such condition as but few suits will be instituted; and courts badly organized will discourage suitors, and there will be but few actions returned. From the number of suits alone, there can no sound judgment be formed.

But there is another objection to the repeal of the judiciary law, which in my mind is conclusive: I mean the letter and spirit of the Constitution.

In the formation of every Government, in which the people have a share in its administration, some established and indisputable principles must be adopted. In our Government, the formation of a Legislative, Executive and Judiciary power, is one of the incontrovertible principles; and that each should be independent of the other, so far as human frailty will permit, is equally incontrovertible. Will it be expected, that I should quote Sidney, De Lolme, Montesquieu, and a host of elementary writers, to prove this assertion? There is probably no conflict of opinion upon this subject. When we look into our Constitution of Government, we shall find, in every part of it, a close and undeviating attention to this principle. Our particular form is singular in its requirements, that full force and operation be given to this all important principle. Our powers are limited, many acts of sovereignty are prohibited to the National Government, and retained by the States, and many restraints are imposed upon State sovereignty. If either, by accident or design, should exceed its powers, there is the utmost necessity that some timely checks, equal to every exigency, should be interposed. The Judiciary is established by the Constitution for that valuable purpose.

In the British Government, the legislature is omnipotent to every legislative effect, and is a perpetual convention for almost every Constitutional purpose. Hence it is easy to discern the different part which must be assigned to the judiciary in the two kinds of government. In England the Executive has the most extensive powers; the sword or the military force; the right of making war, and in effect the command of all the wealth of the nation, with an unqualified veto to every legislative act. It is, therefore, rational for that nation to preserve their judiciary completely independent of their Sovereign. In the United States, the caution must be applied to the existing danger; the Judiciary are to be a check on the Executive, but most emphatically to the Legislature of the Union, and those of the several States. What security is there to an individual, if the Legislature of the Union or any particular State, should pass a law, making any of his transactions criminal which took place anterior to the date of the law? None in the world but by an appeal to the Judiciary of the United States, where he will obtain a decision that the law itself is unconstitutional and void, or by a resort to revolutionary principles, and exciting a civil war. With a view to those principles, and knowing that the framers of our Constitution were fully possessed of them, let us examine the instrument itself. Article third,

section first: "The judicial power of the United 'States shall be vested in one Supreme Court, and 'in such inferior courts as the Congress may, from 'time to time, ordain and establish. The judges, 'both of the supreme and inferior courts, shall 'hold their offices during good behaviour; and 'shall, at stated times, receive for their services a 'compensation, which shall not be diminished 'during their continuance in office." Are there words in the English language more explicit? Is there any condition annexed to the judge's tenure of office, other than good behaviour? Of whom shall your judges be independent? We are led to an erroneous decision on this, as well as many other governmental subjects, by constantly recurring to Great Britain. That their courts should be independent of their Sovereign is an important object; he is the fountain of honor and power, and can do no wrong; our President, at least for several years past, has been considered as the fountain of dishonor and weakness, and if there was any maxim upon the subject, it was that he could do no right. Of course the great object of the independence of the Judiciary must here have reference not only to our Executive, but our Legislature. The Legislature with us is the fountain of power. No person will say that the judges of the Supreme Court can be removed, unless by impeachment and conviction of misbehaviour; but the judges of the inferior courts, as soon as ordained and established, are placed upon precisely the same grounds of independence with the judges of the Supreme Court. Congress may take their own time to ordain and establish, but the instant that is done, all the rights of independence attach to them.

If this reasoning is correct, can you repeal a law establishing an inferior court, under the Constitution? Will it be said, that although you cannot remove the judge from office, yet you can remove his office from him? Is murder prohibited, and may you shut a man up, and deprive him of sustenance, till he dies, and this not be denominated murder? The danger in our Government is, and always will be, that the Legislative body will become restive, and perhaps unintentionally break down the barriers of our Constitution. It is incidental to man, and a part of our imperfections, to believe that power may be safely lodged in our hands. We have the wealth of the nation at command, and are invested with almost irresistible strength; the judiciary has neither force nor wealth to protect itself. That we can, with propriety, modify our judiciary system, so that we always leave the judges independent, is a correct and reasonable position; but if we can, by repealing a law, remove them, they are in the worst state of dependence.

I have exhausted myself, and I fear, the patience of the Senate, and regret exceedingly that my indisposition prevented me from a better preparation upon this important question. I have attempted to show, that the establishment of a judiciary system for this country is, and must be, attended with difficulties; and that the Legislature have taken such measures as to a majority of them appeared most reasonable, after much attention to the subject, to cure the evils of the old system, by the substitution of a new system.

And let it be remarked, that the law now under consideration, although it modified our courts, is strictly guarded against a violation of the principles I have here contended for. The Supreme Court is to consist of but five judges after the next vacancy shall happen; and the district judges of Tennessee and Kentucky are associated with a circuit judge, to perform the duties of circuit judges, which duties it is well known they performed ever since the district courts were established; and in the clause which increases their salaries, they are styled the district judges; and all the alteration made in their circumstances, is, an increase of duty, and of salary. I have attempted to show the primary necessity of rendering the Judiciary of this confederated Government completely independent, not only of the Executive, but especially so of the Legislature.

And by adverting to the words of the instrument itself, I have attempted to show, that the Judiciary are secured, so far as words can do it, as well from a circuitous removal, by repealing the law constituting the court of which they are judges, as by any direct removal.

I am strongly impressed with the magnitude of this subject; perhaps the whims of a sick man's fancy have too much possessed me, to view it correctly; but, sir, I apprehend the repeal of this law will involve in it the total destruction of our Constitution. It is supported by three independent pillars; the Legislative, Executive and Judiciary; and if any rude hand should pluck either of them away, the beautiful fabric must tumble into ruins. The Judiciary is the centre pillar, and a support to each by checking both; on the one side is the sword, and on the other is the wealth of the nation; and it has no inherent capacity to defend itself.

These very circumstances united, may provoke an attack, and which ever power prevails so far as to vest in itself, directly or indirectly, the power of the Judiciary, by rendering it dependent, it is the precise definition of tyranny, and must produce its effects. The Goths and Vandals destroyed not only the Government of Rome, but the city itself; they were savages, and felt the loss of neither; but if it be possible there can be an intention, like the son of Manoah, with his strength, without his godliness, to tumble this fabric to the earth, let it be remembered it will crush in one undistinguished ruin, its perpetrators, with those whom they may call their political enemies.

I most earnestly entreat gentlemen to pause and consider. I apprehend the repeal of this act will be the hand-writing on the wall, stamping *Mene Tekel* upon all we hold dear and valuable in our Constitution. Let not the imputation of instability, which is cast upon all popular bodies, be verified by us—in adopting laws to-day, and repealing them to-morrow, for no reason, but that we have the power, and will exercise it.

This Constitution is an invaluable inheritance; if we make inroads upon it and destroy it, no matter with what intentions, it cannot be replaced; we shall never have another.

WEDNESDAY, January 13.

THE JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th inst. that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed.

Mr. MASON, of Virginia.—I feel some degree of embarrassment in offering my sentiments on a subject so fully and so ably discussed. I believe that the ground taken by my friend from Kentucky has not been shaken by any arguments urged in opposition to the resolution on the table. Yet as some observations have been made, calculated to excite sensibility, not here, but abroad; as they appear to have been made with a view to that end; and as an alarm has been attempted to be excited on Constitutional ground, I think the observations ought not to go unnoticed.

I agree with gentlemen, that it is important, in a well regulated Government, that the judicial department should be independent. But I have never been among those who have carried this idea to the extent which seems at this day to be fashionable. Though of opinion that each department ought to discharge its proper duties free from the fear of the others, yet I have never believed that they ought to be independent of the nation itself. Much less have I believed it proper, or that our Constitution authorizes our courts of justice to control the other departments of the Government.

All the departments of a popular Government must depend, in some degree, on popular opinion. None can exist without the affections of the people, and if either be placed in such a situation as to be independent of the nation, it will soon lose that affection which is essential to its durable existence.

Without, however, going into an inquiry of what kind of organization is most fit for our tribunals; without inquiring into the fitness of making the judges independent for life, I am willing to enter into a consideration, not of what ought to be, but of what is. Whatever opinion I may individually entertain of the provisions of the Constitution relative to the Judiciary, sitting here under that Constitution, I am bound to observe it as the charter under which we are assembled.

When I view the provisions of the Constitution on this subject, I observe a clear distinction between the Supreme Court and other courts. I am sensible that when we come to make verbal criticisms, any gentleman of a sportive imagination may amuse our fancies by a play upon words. But this is not the way to get rid of a genuine construction of the Constitution. With regard to the institution of the Supreme Court, the words are imperative; while, with regard to inferior tribunals, they are discretionary. The first shall, the last may be established. And surely we are to infer from the wise sages that formed that Constitution, that nothing was introduced into it in vain. Not only sentences, but words, and even points, elucidate its meaning. When, therefore, the Constitution, using this language, says a Supreme Court shall be established, are we not justified in considering it as of Constitutional creation? And on the other hand, from the language applied to inferior courts, are we not equally justified in considering their establishment as dependent upon the Legislature, who may, from time to time, ordain them, as the public good requires? Can any other meaning be applied to the words "from time to time?" And nothing can be more important on this subject than that the Legislature should have power, from time to time, to create, to annul, or to modify the courts, as the public good may require, not merely to-day, but forever; and whenever a change of circumstances may suggest the propriety of a different organization. On this point, there is great force in the remark of the gentleman from Georgia, that among the enumerated powers given to Congress, while there is no mention made of the Supreme Court, the power of establishing inferior courts is expressly given. Why this difference, but that the Supreme Court was considered by the framers of the Constitution, as established by the Constitution, while they considered the inferior courts as dependent upon the will of the Legislature.

We find the phrase, "from time to time," in another part of the Constitution. The 3d section of the 2d article says, the President shall, from time to time, give to the Congress information of the state of the Union. That is, he shall occasionally, as he sees fit, give such information. So shall Congress occasionally, as they see fit, establish annual or regulate inferior courts, accordingly as the public welfare requires.

The arguments of gentlemen go upon a mistaken principle. They express the liveliest sympathy and commiseration for this poor, this weak department of our Government. They tell us the judges have a vested right to their offices—a right not now derived from the law, but from the Constitution; and they assimilate their case to that of a public debt; to the right of a corporation; a turnpike company, or a toll-bridge. But is not all this reasoning predicated on the principle that the courts are established, not for the public benefit, but for the emolument of the judges; not to administer justice, but for their personal aggrandizement? I believe that a Government ought to proceed upon different principles. It ought to establish only those institutions which the good of the community requires; when that good ceases to need them, they ought to be put down, and, of consequence, the judges should hold their appointments so long, and no longer, than the public welfare requires.

If the arguments now urged be correct, that a court once established cannot be vacated, we are led into the greatest absurdities. Congress might deem it expedient to establish a court for particular purposes, limited as to its objects or duration. For instance: the United States has taken possession of the Mississippi Territory, rightfully or not, I will not pretend to say. This territory has been heretofore in the hands of various masters, viz:

France, England, Spain, and Georgia; and it is now possessed by the United States. All these Governments, except the United States, made certain grants of lands in the territory, and certain settlers spread their conflicting patents over the country. These different titles will open a wide field for litigation, which will require able tribunals to decide upon. Suppose, then, Congress should establish special tribunals to continue for three, four, or five years, to settle these claims. Judges would be appointed. They would be the judges of an inferior court. If the construction of the Constitution now contended for be established, what would the judges say, when the period for which they were appointed expired? Would they not say, we belong to inferior courts? Would they not laugh at you when you told them their term of office was out? Would they not say, in the language of the gentleman from New York, though the law that creates us is temporary, we are in by the Constitution? Have we not heard this doctrine supported in the memorable case of the mandamus, lately before the Supreme Court? Was it not there said that, though the law had a right to establish the office of a justice of the peace, yet it had not a right to abridge its duration to five years; that it was right in making the justices, but unconstitutional in limiting their periods of office; that, being a judicial officer, he had a right to hold his office during life—or, what is the same thing—during good behaviour, in despite of the law which created him, and in the very act of creation limiting his official life to five years.

I may notice another case, more likely to happen, to show the absurdity of this construction. Congress have assumed jurisdiction over the Mississippi Territory, and have established a court, composed of three judges, which court is as much an inferior court as the circuit or district courts. Of this jurisdiction Georgia denies the validity. The contest is in a train of settlement. Suppose it shall turn out that the United States are convinced of the injustice of their claim, relinquish it, and restore the territory to Georgia, what becomes of the judges? Their offices, their duties, are gone! Yet they will tell you, we are vested with certain Constitutional rights, of which you cannot deprive us. It is true the territory is no longer yours. You have no jurisdiction, and we have no power, yet we are judges by the Constitution. We hold our offices during good behaviour, and we will behave well as long as you will let us. Is not this a strange situation? You have judges in a territory over which you have no jurisdiction; and you have officers which are perfect sinecures, pensioners for life. Such an absurdity I am sure the Constitution never meant to justify. It is an absurdity equally repugnant to the letter and the genius of the Constitution.

Suppose another case. Suppose, what I trust will never happen, a war should take place. Suppose that a part of the United States should be conquered, and that we should be compelled to cede it to a foreign nation. In this district your jurisdiction is gone; your power is gone; the office of a judge is destroyed, and yet the officer holds his appointment for life; this case may be considered as inapplicable to the United States. It may be said that we have no right to cede a State, or a part of a State. But I believe a different sentiment has been entertained, and perhaps in this House.

But suppose this event to occur in relation to territory not attached to a State. Suppose the Government should find it necessary to establish an inferior court in an island of Lake Superior. Suppose it should be the fortune of war to place in the possession of the enemy, one of the States, and the question shall be, will you give up this territory in the frozen regions of the Lakes; or suffer the State to remain in the possession of the enemy, you being unable to take it from him? If you give up the territory, your court is annihilated, yet the judges claim a tenure in their offices for life; and this in a country that no longer belongs to you: does not such a result strike every mind as absurd? Is it not apparent, that whatever claim such men might have upon the generosity of the Government, they can have no claim to offices that do not exist? Nay, further, it might, upon the construction now contended for, be insisted that the Constitution forbids you to make a peace upon those terms; that by ceding an inconsiderable territory which you did not want, to secure a whole State, you would abolish the office of a judge, which the Legislature had there erected; that this would be an express violation of your Constitution; and therefore you must leave a whole State in the possession of the enemy, unless this judge would give you leave to make terms by resigning his office!

I believe, sir, that we should not differ much, if we came to a proper understanding of the true principle on which this question depends. If we establish the principle that from the nature and essence of the public institutions, they are made for the good of the people, and not for that of the individual who administers them, we shall experience no difficulty. Gentlemen, in speaking of a judge, had emphatically called it *his* office. But it is not *his* office, but the office of the people. He is only the person appointed to perform certain services required by the public good, and when those services are no longer necessary for that public good, his duties are at an end, his service may be dispensed with, and he ought to retire to private life.

The case had been assimilated to a bridge. But he who builds a bridge does a public good, that entitles him to a growing remuneration forever. But here the good is temporary. The truth is, the judge is more like the man who collects the toll, and who receives the promise of an annual payment as long as he discharges his duties faithfully. But a flood comes, and sweeps away the bridge. Will the toll-gatherer, like the judge, contend, that though the bridge is gone, and the owner ruined, that he shall, notwithstanding, receive his compensation for life, though he cannot continue those services for which his annual stipend was to be the compensation and reward?

But it would seem that the argument urged on this occasion, and the general course of our legislation, had been grounded more on the convenience and emoluments of those appointed to office than on grounds of public utility. First, we appointed six judges of the Supreme Court, divided the United States into three circuits, two judges to ride each circuit, in which, with the district judge, to form a court. The law fixed the duties and the compensation, and gentlemen of the first character were ready to accept the places. The salaries indeed had been thought high; in some parts of the Union they were thought enormous. But a little time passed before they complained of the hardships of their duties; and the law was altered, not so much for the public good as for their personal convenience. Where two judges were required to hold a court, one was now declared sufficient. Thus you continued their full salaries, while you lopped off half their duties. Shortly after you assigned them, under the pension law, inconsiderable duties; and they refused to perform them. Thus, while they showed themselves ready to abate of their duties, they adhered to their salaries. Next came the law of last session, which takes away all their duties. It leaves them simply a court of appeals. And what have they got to do? To try ten suits; for such is the number now on their docket, as appears from a certificate just put into my hands; and the average number on their docket amounts to from eight to ten. Thus, for the trial of the immense number of eight or ten suits, you have six judges, one with a salary of four thousand, and five others with salaries of three thousand five hundred dollars each.

I fear, said Mr. M., that if you take away from these judges that which they ought officially to do, they will be induced, from the want of employment, to do that which they ought not to do; they may do harm. They may be induced, perhaps, to set about that work gentlemen seem so fond of. They may, as gentlemen have told us, hold the Constitution in one hand, and the law in the other, and say to the departments of Government, so far shall you go and no farther. This independence of the Judiciary, so much desired, will, I fear sir, if encouraged or tolerated, soon become something like supremacy. They will, indeed, form the main pillar of this goodly fabric; they will soon become the only remaining pillar, and they will presently become so strong as to crush and absorb all the others into their solid mass.

We have been told, that no State in the Union has presumed to touch the Judiciary establishment, except the State of Maryland. I will not answer for others; but with respect to Virginia, I will answer that she has touched it. Her Constitutional provision for the independence of the judges is nearly similar to that of the United States, and yet she has established, modified, and entirely put down particular departments of her system.

[Here Mr. M. went into a particularization of the different changes the Judiciary system of Virginia had undergone.]

After the particularization, Mr. M. proceeded:

And yet our judges, who are extremely tenacious of their rights, did not complain. They thought, as I think, that they should not be removed from their offices that others might be placed in them; and that while they did continue in office their salaries should be preserved to them. And I believe the whole of our Constitutional provision amounts to this; that, unlike other officers appointed by the President, they shall not be removed by him; that their salaries shall not be diminished by the Legislature: and that while the Legislature may continue any particular Judicial establishment under which a judge is appointed, he shall hold that appointment in defiance of both the other departments of Government. A judge may say, I am not to be turned out of office by the President on the one hand, or starved by the Legislature on the other. He may say to the Legislature or the President, and to both of them combined, you shall not turn me out of this office as long as it exists, to gratify your enmity to me, or your favoritism to another person; so long as the interest and convenience of the people require this institution, they are entitled to my services; they shall have them, and I will be paid for them to the utmost farthing, in spite of your displeasure or caprice.

Notwithstanding the remarks of gentlemen, I am inclined to think these ideas of the extreme independence of the judges, and the limited powers of the Legislature, are not very old, but that they are of modern origin, and have grown up since the last session of Congress. For in the law passed last session, that very law which it is now proposed to repeal, is to be found a practical exposition in direct hostility with the principle now contended for, which does not betray that sacred regard for the office of a judge, that is, on this occasion, professed: in that very law will be found a clause which abolishes two district courts. The words of the twenty-fourth section say, expressly, "the district courts of Kentucky and Tennessee shall be and hereby are abolished." Will gentlemen tell this House how this express provision came into the act of the last session; and will they say, that though they voted for this law, yet no power exists in the Legislature to abolish a court? It is true, that it has been said, that though you put down two district courts, you promoted the officers, by increasing their salaries and making them judges of the circuit courts; but the fact is, you have abolished their offices; they are judges no longer of the districts of Kentucky and Tennessee; and they are to every purpose, whatever may be their name, in reality circuit judges. Though you have not lessened their salaries, you have deprived them of their offices. However, therefore, gentlemen may calculate as to the benefit or injury done these two judges, the principle is not affected by any result; their offices are gone. It is not enough to say, that though you destroyed their offices, you offered them others with higher salaries. You took away from them, in express terms, their offices, by abolishing the offices. You had stripped them of their offices, you had robbed

them of their vested right, and then, to make friends, offered them a compensation; but whether the compensation thus offered for the deprivation they had suffered, was really equivalent to their loss, is a mere matter of calculation, and does not affect the Constitutional principle. It is proper, however, to observe, that they were no parties to the proposed compromise, and that indeed they had no choice left them. They were obliged to accept of what you offered them, or have nothing. If they did not agree to become judges of the newly organized circuit courts, they could not remain judges of the district courts, for these courts were absolutely and completely abolished.

Were I, Mr. President, to make a calculation on the comparative increase of duties and additional salary, in the case of one of those gentlemen, (Judge Innes, of Kentucky,) I should have no hesitation to say, that the bargain which has been made without his consent, and without his being a party to it, is a very bad one for him. Knowing, too, his particular situation, I am persuaded that if the law had left him any election between his former and new situation, he would have preferred remaining where he was, and, without a moment's hesitation, he would have rejected your proffered promotion, as it is called. This gentleman resides within a very few miles of Frankfort, where, as District Judge of Kentucky, he held his court. Attached to domestic life, and enjoying all its felicities, engaged in, and pleased with, agricultural pursuits, he was never under the necessity, even during the sessions of the courts, to sleep out of his own bed one night, or to be separated a single day from his family. He could every morning give directions for the management of his farm, and return early enough in the evening to see whether his orders were executed. How is he situated under the change which has been forced upon him? Instead of attending one court, almost at his door, your late law obliges him to attend four; the nearest, at Bairdstown, fifty or sixty miles from home. You oblige him to travel through dreary and inhospitable regions to the Northwestern Territory, something short of an hundred miles; and much greater distances to and through still worse countries, Knoxville and Nashville, in Tennessee. In going from one to the other of those last mentioned places, he will have to pass through the country of the Cherokee Indians, nearly one hundred miles over the Cumberland mountains, where he will be exposed to every inclemency of the weather, without a shelter to retire to, for there is not a house or a hut in the whole journey; a journey in which all travellers are obliged, at all times, and of unavoidable necessity, to sleep one night, at least, and from the fall of rains, and rise of water-courses, often many nights, without a roof to cover them from the beating of the storm; and, moreover, where they are liable at every step to be robbed by the Indians, as I myself experienced passing through that wilderness. Can it be supposed, that the five hundred dollars added to the salary of Judge Innes, should, by a person situated as he was, be deemed a sufficient compensation for the additional duties, the toils, the dangers, and the deprivations to which that law subjected him? In continuing to serve his country, I am sure he must have been influenced more by a sense of duty than a regard to private interest, or a belief that the change was, in any respect, advantageous to him.

By the seventh section of the law of the last session, which transforms the district into circuit courts, which melts down the judges and recoins them, it is enacted, that there shall be a circuit court, composed of one new circuit judge and two old district judges, to be called the Sixth Circuit. Have you not then established a new office by the destruction of the old one? Have you not done more? Have you not violated the Constitution, by declaring, by law, who shall fill this new office, though the Constitution declares, article second, section two, "That the President shall nominate, 'and, by and with the advice and consent of the 'Senate, shall appoint all officers which shall be 'established by law."

Where were these guardians of the Constitution—these vigilant sentinels of our rights and liberties, when this law passed? Were they asleep on their post? Where was the gentleman from New York, who has, on this debate, made such a noble stand in favor of a violated Constitution? Where was the *Ajax Telamon* of his party, or, to use his own more correct expression, the *faction* to which he belonged? Where was the hero with his seven-fold shield—not of bull's hide, but of brass—prepared to prevent or to punish this Trojan rape, which he now sees meditated upon the Constitution of his country by a wicked *faction*? Where was Hercules, that he did not crush this den of robbers that broke into the sanctuary of the Constitution? Was he forgetful of his duty? Were his nerves unstrung? Or was he the very leader of the band that broke down these Constitutional ramparts?

I shall now, sir, trouble you with a few remarks on the expediency of repealing this law. It has been said, that there is nothing peculiarly disgustful in this law; that there has been no public clamor excited against it; that it was enacted with solemnity, on calm and deliberate reflection; and that time has not yet been given to test it by experience.

As no member, who has taken part in debate, was a member of this body when the law passed, I will say something of its history. I am not disposed to excite the sensibility of gentlemen, by any remarks which I shall make, or to call up unpleasant recollections of past scenes. But when I hear it said that this law was passed with calmness, after mature reflection, and that we are now, in a fit of passion, going to undo what was thus wisely done, I think it necessary that the public should have a correct statement.

It is true, that under the last Administration when there existed (what I trust will never, in an equal degree, exist again,) an immoderate thirst for Executive patronage, a proposition was made to establish a new judiciary system; a system worse than the present; as it proposed, according to my recollection, thirty-eight judges instead of

sixteen. This law was very near passing. It was, however, rejected in the House of Representatives by a very small majority. But it was circulated as a project of a law among the people. It was illy received. It was thought too rank a thing, and met with general disapprobation throughout the United States, so far as I have been able to learn. After this reception, it was softened down to the plan introduced at the last session. What temper accompanied the progress of the bill in the other House I know not, or, if I did know, would it be proper for me here to say? But with respect to the acts of this body, I am not of opinion they added any dignity to our common course of procedure. The bill was referred to a committee, who, though it was very long, reported it without any amendment. Various amendments were offered, some of which were admitted to be proper. But they were not received. One, indeed, proposed by a member from Connecticut, who was chairman of the committee and was then hostile to the plan, did pass, in the early stages of the bill, but on the third reading it was expunged. All amendments proposed by the minority were uniformly rejected, by a steady, inflexible, and undeviating majority. I confess that I saw no passion, but I certainly did see great pertinacity; something like what the gentleman from Connecticut had termed *a holding fast*. No amendments were admitted; when offered, we were told, no; you may get them introduced by a rider or supplementary bill, or in any way you please; but down this bill must go; it must be crammed down your throats. This was not the precise phrase, but such was the amount of what was said.

I will say that not an argument was urged in favor of the bill, not a word to show the necessity or propriety of the change. Yet we are told that there was great dignity, great solemnity in its progress and passage!

But there is something undignified in thus hastily repealing this law! in thus yielding ourselves to the fluctuations of public opinion! So we are told!—But if there be blame, on whom does it fall? Not on us, who respected the public opinion when this law was passed, and who still respect it; but on those who, in defiance of public opinion, passed this law, after that public opinion had been decisively expressed. The revolution in public opinion had taken place before the introduction of this project; the people of the United States had determined to commit their affairs to new agents; already had the confidence of the people been transferred from their then rulers into other hands. After this exposition of the national will, and this new deposit of the national confidence, the gentlemen should have left untouched this important and delicate subject—a subject on which the people could not be reconciled to their views, even in the flood-tide of their power and influence; they should have forborne, till agents, better acquainted with the national will, because more recently constituted its organs, had come into the Government. This would have been more dignified than to seize the critical moment when power was passing from them, to pass such a law as this. If there is error, it is our duty to correct it; and the truth was, no law was ever more execrated by the public.

Let it not be said, postpone the repeal till the next session. No—let us restore those gentlemen to private life, who have accepted appointments under this law. This will be doing them greater justice, than by keeping them in office another year, till the professional business, which once attached to them, is gone into other channels.

[Mr. MASON went into an examination of the number of suits depending at the time the law was passed, and particularly the number brought within the twelve months preceding its passage; from the fewness of which, and their being in a state of diminution rather than increase, he inferred the inutility of the additional judges.]

He continued: If, on this review, we find the number of suits decreasing instead of increasing; if the courts then established were found competent to the prompt and faithful discharge of all the duties devolved upon them, the law was unnecessary; and, if unnecessary, the additional expense incurred by it was unnecessary; and all unnecessary expense should be saved. It is true that fifty thousand dollars divided among the people of the United States amounted to but one cent a man; but the principle was still the same. It has been very fashionable of late to justify every unnecessary expense by stating each item by itself, and dividing it among the whole people. In this way every expense is held forth as of little consequence! Gentlemen say, in this case, it is only one cent a man! In the case of the Mausoleum, two hundred thousand dollars came to only four cents a man! In the direct tax, it is only forty cents! They talk of our army, it only comes to a few cents for each person, who may sell as many cabbages to the soldiers themselves as to pay it! So in a navy. In this way are the most extravagant expenses whittled down to a mere fraction. But this kind of Federal arithmetic I can never accede to. It may suit an expensive Government; but it is an imposition upon the people.

It has been urged with some force, by the gentlemen from New York and Connecticut, that the small number of suits is an evidence of the efficacy and ability of our courts of justice. I am willing to admit the force of this remark; but I must apply it very differently from those gentlemen. I must apply it to the state of the dockets when this law passed; and from there being very few at the time, I must infer that the system existing then was an excellent one, as it wielded the power of the laws so effectually, that there was but little necessity for enforcing the law against delinquents.

From the remarks made by the gentleman from Connecticut, it might be inferred that we were about to destroy all our courts, and that we were in future to have no courts. Is this the case? Are we contending for breaking down the whole judiciary establishment? On the contrary, we barely say, the courts you had before the passage of this law were sufficient; return, therefore to them.

This law, which we wish repealed, imparts no new authorities to your judges; it clothes them with no additional terrors; it adds not to their axes, nor increases the number of their rods. It only enlarges their number, which was before large enough.

The gentleman from New York has amused himself with a great deal of handsome rhetoric; but I apprehend without bearing much upon the question. There is one idea, however, which he has seized with extacy, the idea of a great State kneeling at the altar of Federal power; and he deplores that this spectacle, the most sublime that his imagination can conceive, is vanished forever. But if he will consult those stores of history with which he so often amuses and instructs his audience, he will find still more splendid humiliations. He will find the proud monarchs of the East, surrounded with all the decorations of royalty, dragged at the chariot wheel of the conqueror. In more modern times he will behold a King of England and of France, one holding the stirrup and the other the bridle, while the Pope mounted his horse. If not contented with the contemplation of these illustrious degradations, he may resort to Sacred Writ, to which he so often appeals; and in the very Book of Judges, he will behold a famous King of Jerusalem, surrounded by three score and ten dependent Kings, picking up the crumbs from under his table, and, what made the humiliation more charming, all these Kings had their thumbs and great toes cut off.

But if the gentleman from New York wishes to be gratified with a more modern idea of sovereign degradation, I would refer him to the memorable threat of an individual, a servant of the people, to humble a whole State, a great State too, in dust and ashes. A State upon her knees before six venerable judges, decorated in party-colored robes, as ours formerly were, or arrayed in more solemn black, such as they have lately assumed, hoping, though a State, that it might have some chance for justice, exhibits a spectacle of humble and degraded sovereignty far short of the dreadful denunciation to which I allude! If the gentleman feels, as I know many do, rapture at the idea of a State being humiliated and tumbled into the dust, I envy him not his feelings. At such a thought I acknowledge I feel humbled. If the degradation were confined to kings and tyrants, to usurpers who had destroyed the liberties of nations, I should not feel much commiseration; but when applied to governments instituted by the people for the protection of their liberties, and administered only to promote their happiness, I feel indignant at the idea of degraded sovereignty. I should feel the same interest for any State, large or small, whether it were the little State of Delaware herself, or the still more insignificant Republic of St. Marino.

Mr. STONE, of North Carolina.—The importance of the present question might, I presume, justify any member in delivering his sentiments without apology. But from the able manner in which the subject has already been discussed, I should have been induced to adhere to my usual course since I have been a member of this body, and, leaving its elucidation to others of greater experience and more talents, have been contented with a silent vote. As, however, the State whose servant I am, and whose faithful servant I wish at all times to be found, has instructed her members on this subject, I will endeavor, in the plain way of which alone I am capable, to assign the reasons for my vote. And, in doing this, I rather wish than hope that I may state anything worthy the consideration of this enlightened assembly.

The argument upon this question has naturally divided into two parts, the one of expediency—the other of constitutionality. If the repeal of this law shall be deemed expedient, the Senate will doubtless consider it their duty to repeal it if no Constitutional objection opposes it; but if it shall be deemed unconstitutional to repeal it, then no considerations of expediency can stand in the way of that solemn instrument we are all sworn to support.

Before entering into an examination of the expediency of the repeal, it may be proper to remark, that gentlemen who have spoken against the repeal, whose talents and eloquence I highly admire, have not correctly stated the question. The true question is, not whether we shall deprive the people of the United States of all their courts of justice, but whether we shall restore to them their former courts. Shall we, or shall we not, continue an experiment made, or attempted to be made, I will not say improperly, because my respect for this body and for my country, forbid the imputation; but I will say that the length of time we remained without this system, and the repeated ineffectual attempts made to establish it, presents strong reasons for inferring that there are not those great apparent reasons in favor of it that have been stated. A system somewhat similar to the present had been rejected by the Legislature because they preferred the former system. Another evidence to the same purport is, that during the last session, when the subject was again revived, and the present plan adopted, an amendment was offered, to amend by extending and enlarging the former establishment.

[Here Mr. S. read the amendment proposed, which augmented the number of judges of the Supreme Court, and assigned their circuits.]

This amendment was rejected, and from the vote entered on the Journal of that day, it appears that the difference of votes against the amendment was formed of those gentlemen who were nominated to appointments made vacant by the promotions under the new law. I do not state this circumstance as an evidence that these gentlemen were influenced by improper motives; but to show that the manner in which the new system was formed was not calculated to establish, in the public mind, a decided preference of it over the old system. Having made these remarks on the great deliberation said to have been manifested in the adoption of this plan, I hope I may be permitted to express my perfect coincidence with the gentleman from Connecticut, that courts are necessary for the administration of justice, and that, without them, our laws would be a dead letter.

But it appears to me essential to the due administration of justice, that those who preside in our courts should be well acquainted with the laws which are to guide their decisions. And, I apprehend, that no way is so much calculated to impart this knowledge, as a practical acquaintance with them, by attending courts in the several States, and hearing gentlemen who are particularly acquainted with them, explain and discuss them. It is, therefore, absolutely necessary, in my mind, that the judges of the Supreme Court, whose power controls all the other tribunals, and on whose decisions rest the property, the reputation, the liberty, and the lives of our citizens, should, by riding the circuit, render themselves practically acquainted with their duties. It is well known, that the knowledge of the laws of a State is not to be suddenly acquired, and it is reasonable to conclude, that that knowledge is most correctly possessed by men whose whole lives have been devoted to the acquisition. It is also perfectly well known, that the knowledge of the modes and principles of practice in the different States, or of any State, is most effectually to be acquired in courts, where gentlemen of skill and experience apply those principles to use upon existing points.

This defect, then, of the present plan, is, in my opinion, so radical, that, of itself, it would decide, with me, the question of expediency.

With regard to the expense of this new system, I will say, that it weighs as much as it is worth. The single consideration of an expenditure of thirty thousand dollars may not be deemed of much importance, when weighed with the benefits derived from an administration of justice over this extensive country. If this great object can be better effected with the additional expense, then it is proper to consider whether the amelioration is worth the price; but, if it is not better effected, it surely cannot be the wish of any gentleman to incur a useless expense. If, when this law passed, the business, to the transaction of which the old courts were fully competent, was lessening, then surely there was no occasion for additional tribunals.

The more important consideration involves the Constitutional question: Can we, according to that sacred instrument, repeal this law, and destroy the offices created by it? If we cannot, I hope the Senate will reject the proposition on your table. But if we can, as on examination I think we may, I trust the resolution will be adopted.

The gentleman from Kentucky, who introduced this subject, has so fully and forcibly stated that part of the argument which establishes that the office of judge, being declared by the Constitution to be during good behaviour, must evidently apply to existing offices, not to contest the power of the Legislature in doing away offices, that I shall not touch it.

I have taken a view of the Constitution, which, though new in this argument, appears to me to be correct and conclusive. The fourth section of the second article of that Constitution declares, that "the President, the Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

This section being added to the article establishing the Executive power, evidently operates as a restraint or curb to that power, to prevent the President, Vice President, or any officer in the appointment of the President, from remaining in office, when, in the opinion of the Legislature, the public good requires them to be displaced. The practical construction put upon this article, in connexion with other parts of the Constitution, is, that all officers in the appointment of the President may be removed at his will; but that those officers, together with himself and Vice President, shall be removed upon impeachment and conviction, by the Legislature. No part of the Constitution expressly gives the power of removal to the President; but a construction has been adopted and practised upon from necessity, giving him that power in all cases in which he is not expressly restrained from the exercise of it. The judges afford an instance in which he is expressly restrained from removal; it being declared, by the first section of the third article of the Constitution, that the judges both of the supreme and inferior courts shall hold their offices during good behaviour. They doubtless shall, (as against the President's power to retain them in office,) in common with other offices of his appointment, be removed from office by impeachment and conviction; but it does not follow that they might not be removed by other means. They shall hold their offices during good behaviour, and they shall be removed from office upon impeachment and conviction of treason, bribery, and other high crimes and misdemeanors. If the words, impeachment of high crimes and misdemeanors, be understood according to any construction of them hitherto received and established, it will be found, that although a judge, guilty of high crimes and misdemeanors, is always guilty of misbehaviour in office, yet that of the various species of misbehaviour in office, which may render it exceedingly improper that a judge should continue in office, many of them are neither treason, nor bribery, nor can they be properly dignified by the appellation of high crimes and misdemeanors: and for the impeachment of which no precedent can be found; nor would the words of the Constitution justify such impeachment.

To what source, then, shall we resort for a knowledge of what constitutes this thing, called misbehaviour in office? The Constitution, surely, did not intend that a circumstance so important as the tenure by which the judges hold their offices, should be incapable of being ascertained. Their misbehaviour certainly is not an impeachable offence; still it is the ground upon which the judges are to be removed from office. The process of impeachment, therefore, cannot be the only one by which the judges may be removed from office, under, and according to the Constitution. I take it, therefore, to be a thing undeniable, that

there resides somewhere in the Government a power to declare what shall amount to misbehaviour in office, by the judges, and to remove them from office for the same, without impeachment. The Constitution does not prohibit their removal by the Legislature, who have the power to make all laws necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States. But, says the gentleman from New York, the judges are officers instituted by the Constitution, to save the people from their greatest enemies, themselves; and therefore, they should be entirely independent of, and beyond the control of the Legislature. If such was the design of the wise men who framed and adopted the Constitution, can it be presumed they would have provided so ineffectual a barrier as these judges can readily be shown to be? It is allowed, on all hands, the Legislature may modify the courts: they may add judges, they may fix the times at which the courts shall sit, &c. Suppose the Legislature to have interests distinct from the people, and the judges to stand in the way of executing any favorite measure—Can anything be more easy than for the Legislature to declare that the courts, instead of being held semi-annually, or oftener, shall be held only once in six, eight, ten, or twenty years? Or, in order to free themselves from the opposition of the present Supreme Court, to declare, that court shall hereafter be held by thirteen judges. An understanding between the President and the Senate would make it practicable to fill the new offices with men of different views and opinions from those now in office. And what, in either case, would become of this boasted protection of the people against themselves? I cannot conceive the Constitution intended so feeble a barrier; a barrier so easily evaded.

What danger is there to the people from the Legislature which the courts can control? The means of oppression nearest at hand to the Legislature, and which afford the strongest temptation to their use, are, the raising extravagant and unnecessary sums of money, and the imbodying large and useless armies. Can the courts oppose effectual checks to these powers? I presume not. The Constitution permits their exercise to any extent within the discretion of the Legislature.

The objects of courts of law, as I understand them, are, to settle questions of right between suitors; to enforce obedience to the laws, and to protect the citizens against the oppressive use of power in the Executive offices. Not to protect them against the Legislature, for that I think I have shown to be impossible, with the powers which the Legislature may safely use and exercise; and because the people have retained, in their own hands, the power of controlling and directing the Legislature, by their immediate and mediate elections of President, Senate, and House of Representatives.

It is not alone the sixteen rank and file, which the gentleman from New York has so ludicrously depicted, that I apprehend immediate danger from, but it is the principle which converts the office of judge into an hospital of incurables, and declares, that an expiring faction, after having lost the public confidence, may add to those sixteen, until they become sixteen hundred or sixteen thousand; and that the restored good sense of the Legislature, the whole Government and Constitution, retains no means of casting them off, but by destroying itself, and resorting to revolutionary principles. The Legislature may repeal unnecessary taxes, may disband useless and expensive armies, may declare they will no longer be bound by the stipulations of an oppressive treaty; and if war should follow, the Constitution is still safe. But if the construction which gentlemen contend for, be correct, a band of drones, to any amount in number, under the denomination of judges, may prey upon the substance of the people, and the Government retains not the power to remove them but by destroying the Constitution itself.

I beseech this enlightened assembly to pause before they adopt a construction capable of producing so great a mischief, and so ineffectual to the ends proposed.

The question is not now, as it would seem from the arguments of gentlemen, they understood it to be, whether we shall abolish offices without compensating the officers for the sacrifices they may have made. If a proposal to compensate them shall be brought forward, the Legislature will surely do what honor and justice shall require.

If I possessed equal powers of speech with the gentleman from Connecticut, I might be tempted to make as impressive an address to the feelings of the Senate. Sure I am I feel as deep an interest in, and solicitude for, the Constitution as that gentleman. I view it, with him, as the bond of our Union, and the foundation of our safety. But it must be supported on reasonable and practical grounds. My understanding is incapable of seeing how the absurdities and evils of the construction contended for can be avoided. I hope, therefore, that the power of the Legislature to put down as well as to build up courts of justice, as the public good may require, will be established.

Not having accustomed myself to deliver my sentiments in this or the other branch of the Legislature, I may not have comprised them in so short a compass, nor in such orderly shape, as would be proper in submitting them to this enlightened assembly. If, however, I have succeeded in stating intelligibly the grounds of my conviction, I am satisfied. If my remarks have contributed to elucidate the subject to others, I shall rejoice; but if, failing in this, they also are mixed with error, I trust gentlemen will set them right.

THURSDAY, January 14.

The Senate took into consideration the resolution of the House of Representatives of the 21st of December last, authorizing the Secretary of State to furnish the members of both Houses with a copy of the laws of the sixth Congress, and concurred therein.

A message from the House of Representatives

informed the Senate that the House agree to some and disagree to other amendments of the Senate, to the bill concerning the library for the use of both Houses of Congress. They have passed a bill authorizing the discharge of John Hobby from his confinement; in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the courts of the United States," ought to be repealed.

Mr. OLCOTT, of New Hampshire, said this subject was of the most important kind, and though many able arguments had been already offered, he could not pass it over with a silent vote.

It has been suggested that the act now proposed to be repealed, came in on the influx of passion, and that the influx of reason should sweep it away. He did not know that this was the case. Some gentlemen contend that it was adopted with great deliberation.

He thought the reasons for a repeal of this law insufficient. It is not said, that if the Constitution vests a right to office in the judges, that we can affect them. He thought the Constitution did vest the right, and he held it to be sacred.

The provisions of the Constitution appeared to him so plain, that they scarcely admitted of illustration. He who undertakes to explain the text, must find more explicit terms than those contained in it. He could not find any.

After dwelling upon the different provisions of the Constitution, Mr. O. went upon the question of expediency, at some length, and concluded that a repeal was as inexpedient as unconstitutional.

Mr. COCKE, of Tennessee, followed Mr. OLCOTT. He said he was sorry gentlemen attempted to make quack doctors of them, by saying we may give a wound but cannot heal it. He wished the Senate to inquire whether the law now proposed to be repealed was Constitutional or not. If it was not, we should act like honest men, acknowledge that we have violated the Constitution, and restore it to its purity by repealing the law. Let us recur to the journals of 1799, and see what was the understanding of these champions of our liberties, and whether they have not since changed. The journals would prove that the judges were to mix with the Legislature, were to be locked up in a closet, and to declare who was to be our Executive Magistrate.

[Mr. COCKE here went into an examination of the arguments on the Constitutional point.]

We have been told that the nation is to look up to these immaculate judges to protect their liberties; to protect the people against themselves. This was novel, and what result did it lead to? He shuddered to think of it. Were there none of these judges ready to plunge their swords in the American heart? He did not think it proper to be alarmed by the terrors held out. He wished to know no man; to take things as they are. But if gentleman will attack, they must expect a reply.

Mr. COCKE then dilated upon the several points of the discussion, and concluded with the expression of the hope that the Legislature would repeal the law, and that they would not give way to the ideas of gentlemen, that the Government was made for a chosen few, for the judges, to whom we are to look up for every thing.

Mr. MORRIS.—Mr. President, I had fostered the hope that some gentleman, who thinks with me, would have taken upon himself the task of replying to the observations made yesterday and this morning, in favor of the motion on your table.—But since no gentleman has gone so fully into the subject as it seems to require, I am compelled to request your attention.

We were told yesterday, by the honorable member from Virginia, that our objections were calculated for the bystanders, and made with a view to produce effect upon the people at large. I know not for whom this charge is intended. I certainly recollect no such observations. As I was personally charged with making a play upon words, it may have been intended for me. But surely, sir, it will be recollected that I declined that paltry game, and declared that I considered the verbal criticism which had been relied on, as irrelevant. If I can recollect what I said, from recollecting well what I thought, and meant to say, sure I am that I uttered nothing in the style of an *appeal to the people*. I hope no member of this House has so poor a sense of its dignity as to make such an appeal. As to myself, it is now near thirty years snce I was called into public office; during that period I have frequently been the servant of the people, always their friend; but at no one moment of my life their flatterer, and God forbid that I ever should be. When the honorable gentleman considers the course we have taken, he must see that the observation he has thus pointed, can light on no object. I trust that it did not flow from the consciousness of his own intentions. He, I hope, had no view of this sort. If he had, he was much, very much mistaken. Had he looked round upon those who honor us with their attendance he would have seen that the splendid flashes of his wit excited no approbatory smile. The countenances of those by whom we were surrounded, presented a different spectacle. They were impressed with the dignity of this House; they perceived in it the dignity of the American people, and felt, with high and manly sentiment, their own participation.

We have been told, sir, by the honorable gentleman from Virginia, that there is no independent part of this Government. That in popular Governments the force of every department, as well as the Government itself, must depend upon popular opinion. And the honorable member from North Carolinia has informed us that there is no check for the overbearing powers of the Legislature but public opinion; and he has been pleased to notice a sentiment I had uttered—a sentiment which not only fell from my lips, but which flowed from my heart. It has, however, been misunderstood and misapplied. After reminding the House of the dangers to which popular governments are exposed, from the influence of designing demagogues upon popular passion, I took the liberty to say, that *we*, we the Senate of the United States, are assembled here to save the people from their most *dangerous* enemy, to save them from themselves; to guard them against the baneful effects of their own precipitation, their passion, their misguided zeal. 'Tis for these purposes that all our Constitutional checks are devised. If this be not the language of the Constitution, the Constitution is all nonsense. For why are the Senators chosen by communities, and the Representatives directly by the people? Why are the one chosen for a longer term than the other? Why give one branch of the Legislature a negative upon the acts of the other? Why give the President a right to arrest the proceedings of both, till two-thirds of each should concur? Why all these multiplied precautions, unless to check and control that impetuous spirit, that headlong torrent of opinion, which has swept away every popular Government that ever existed?

With the most respectful attention, I heard the declaration of the gentleman from Virginia, of his own sentiment. "Whatever," said he, "may be *my opinion* of the Constitution, I hold myself bound to respect it." He disdained, sir, to profess an attachment he did not feel, and I accept his candor as a pledge for the performance of his duty: But he will admit this necessary inference from that frank confession, that although he will struggle (against his inclination) to support the Constitution, even to the last moment; yet, when in spite of all his efforts it shall fall, he will rejoice in its destruction. Far different are my feelings. It is possible that we are both prejudiced, and that, in taking the ground on which we respectively stand, our judgments are influenced by the sentiments which glow in our hearts. I, sir, wish to support this Constitution, because I love it; and I love it, because I consider it as the bond of our union; because in my soul I believe that on it depends our harmony and our peace; that without it we should soon be plunged in all the horrors of civil war; that this country would be deluged with the blood of its inhabitants, and a brother's hand raised against the bosom of a brother.

After these preliminary remarks, I hope I shall be indulged while I consider the subject in reference to the two points which have been taken, the *expediency* and the *constitutionality* of the repeal.

In considering the *expediency*, I hope I shall be pardoned for asking your attention to some parts of the Constitution, which have not yet been dwelt upon, and which tend to elucidate this part of our inquiry. I agree fully with the gentleman, that every section, every sentence, and every word of the Constitution, ought to be deliberately weighed and examined; nay, I am content to go along with him, and give its due value and importance to every stop and comma. In the beginning we find a declaration of the motives which induced the American people to bind themselves by this compact. And in the fore-ground of that declaration, we find these objects specified, "to form a more perfect union, to establish justice, and to insure domestic tranquillity." But how are these objects effected? The people intended *to establish justice*. What provision have they made to fulfil that intention? After pointing out the courts which should be established, the second section of the third article informs us:

"The judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

"In all cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."

Thus then we find that the judicial power shall extend to a great variety of cases, but that the Supreme Court shall have only appellate jurisdiction in all admiralty and maritime causes, in all controversies between the United States and private citizens, between citizens of different States, between citizens of the same State claiming lands under different States, and between a citizen of the United States and foreign States, citizens, or subjects. The honorable gentleman from Kentucky, who made the motion on your table, has told us that the Constitution, in its judiciary provisions, contemplated only those cases which could not be tried in the State courts. But he will, I hope, pardon me when I contend that the Constitution did not merely contemplate, but did, by express words, reserve to the national tribunals a right to decide, and did secure to the citizens of America a right to demand their decision, in many cases evidently cognizable in the State courts. And what are these cases? They are those in respect to which it is by the Constitution presumed that the State courts would not always make a cool and calm investigation, a fair and just decision. To form, therefore, a more perfect union, and to insure domestic tranquillity, the Constitution has said there shall be courts of the Union to try causes, by the wrongful decision of which the Union might be endangered or domestic tranquillity be disturbed. And what courts? Look again at the cases designated. The Supreme Court has no original jurisdiction. The Constitution has said that the judicial powers shall be vested in the supreme and inferior courts. It has declared that the judicial power so vested shall extend to the cases mentioned, and that the Supreme Court shall not have original jurisdiction in those cases. Evidently, therefore, it has declared that they shall

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(in the first instance) be tried by inferior courts, with appeal to the Supreme Court. This, therefore, amounts to a declaration, that the inferior courts shall exist. Since, without them, the citizen is deprived of those rights for which he stipulated, or rather those rights verbally granted would be actually withheld; and that great security of our Union, that necessary guard of our tranquillity, be completely paralyzed, if not destroyed. In declaring then that these tribunals shall exist, it equally declares that the Congress shall ordain and establish them. I say they shall; this is the evident intention, if not the express words, of the Constitution. The Convention in framing, the American people in adopting, that compact, did not, could not presume, that the Congress would omit to do what they were thus bound to do. They could not presume, that the Legislature would hesitate one moment, in establishing the organs necessary to carry into effect those wholesome, those important provisions.

The honorable member from Virginia has given us a history of the judicial system, and in the course of it has told us, that the judges of the Supreme Court knew, when they accepted their offices, the duties they had to perform, and the salaries they were to receive. He thence infers, that if again called on to do the same duties, they have no right to complain. Agreed: But that is not the question between us. Admitting that they have made a hard bargain, and that we may hold them to a strict performance, is it wise to exact their compliance to the injury of our constituents? We are urged to go back to the old system; but let us first examine the effects of that system. The judges of the Supreme Court rode the circuits, and two of them, with the assistance of a district judge, held circuit courts and tried causes. As a Supreme Court they have in most cases only appellate jurisdiction. In the first instance, therefore, they tried a cause, sitting as an inferior court, and then on appeal tried it over again, as a Supreme Court. Thus then the appeal was from the sentence of the judges to the judges themselves. But say, that to avoid this impropriety, you will incapacitate the two judges who sat on the circuit from sitting in the Supreme Court to review their own decrees. Strike them off; and suppose either the same or a contrary decision to have been made on another circuit, by two of their brethren, in a similar case: For the same reason you strike them off, and then you have no court left. Is this wise? Is it safe? You place yourselves in the situation where your citizens must be deprived of the advantage given to them of a court of appeals, or else run the greatest risk that the decision of the first court will carry with it that of the other.

The same honorable member has given us a history of the law passed the last session, which he wishes now to repeal. That history is accurate, at least in one important part of it. I believe that all amendments were rejected, pertinaciously rejected; and I acknowledge that I joined heartily in that rejection. It was for the clearest reason on earth. We all perfectly understood, that to amend the bill was to destroy it; that if ever it got back to the other House, it would perish. Those, therefore, who approved of the general provisions of that bill, were determined to adopt it. We sought the practicable good, and would not, in pursuit of unattainable perfection, sacrifice that good to the pride of opinion. We took the bill, therefore, with its imperfections, convinced that when it was once passed into a law, it might be easily amended.

We are now told, that this procedure was improper; nay, that it was indecent. That public opinion had declared itself against us. That a majority (holding different opinions) was already chosen to the other House; and that a similar majority was expected from that in which we sit. Mr. President, are we then to understand that opposition to the majority in the two Houses of Congress is improper, is indecent? If so, what are we to think of those gentlemen, who, not only with proper and decent, but with laudable motives, (for such is their claim,) so long, so perseveringly, so pertinaciously opposed that voice of the people, which had so repeatedly, and for so many years, declared itself against them, through the organ of their representatives? Was this indecent in them? If not, how could it be improper for us to seize the only moment which was left for the then majority to do what they deemed a necessary act? Let me again refer to those imperious demands of the Constitution, which called on us to establish inferior courts. Let me remind gentlemen of their assertion on this floor, that centuries might elapse before any judicial system could be established with general consent. And then let me ask, being thus impressed with the sense of the duty and the difficulty of performing that arduous task, was it not wise to seize the auspicious moment?

Among the many stigmas affixed to this law, we have been told that the President, in selecting men to fill the offices which it created, made vacancies and filled them from the floor of this House: and that but for the influence of this circumstance, a majority in favor of it could not have been found. Let us examine this suggestion. It is grounded on a supposition of corrupt influence derived from a hope, founded on two remote and successive contingencies. First, the vacancy might or might not exist; for it depended as well on the acceptance of another as on the President's grant: and secondly, the President might or might not fill it with a member of this House. Yet on this vague conjecture, on this unstable ground, it is inferred that men in high confidence violated their duty. It is hard to determine the influence of self-interest on the heart of man. I shall not, therefore, make the attempt. In the present case, it is possible that the imputation may be just, but I hope not. I believe not. At any rate gentlemen will agree with me, that the calculation is uncertain, and the conjecture vague.

But let it now, for argument sake, be admitted, saving always the reputation of honorable men, who are not here to defend themselves. Let it, I say, for argument sake be admitted, that the gentlemen alluded to acted under the influence of improper motives. What then? Is a law that has

received the varied assent required by the Constitution, and is clothed with all the needful formalities, thereby invalidated? Can you impair its force by impeaching the motives of any member who voted for it? Does it follow, that a law is bad because all those who concurred in it cannot give good reasons for their votes? Is it not before us? Must we not judge of it by its intrinsic merit? Is it a fair argument, addressed to our understanding, to say, we must repeal a law, even a good one, if the enacting of it may have been effected in any degree by improper motives? Or is the judgment of this House so feeble, that it may not be trusted?

Gentlemen tell us, however, that the law is materially defective, nay, that it is unconstitutional. What follows? Gentlemen bid us repeal it. But is this just reasoning? If the law be only defective, why not amend? And if unconstitutional, why repeal? In this case no repeal can be necessary; the law is in itself void; it is a mere dead letter.

To show that it is unconstitutional, a particular clause is pointed out, and an inference is made, as in the case of goods, where, because there is one contraband article on board, the whole cargo is forfeited. Admit for a moment, that the part alluded to were unconstitutional, this would in no wise affect the remainder. That part would be void, or, if you think proper, you can repeal that part.

Let us, however, examine the clause objected to on the ground of the Constitution. It is said, that by this law the district judges in Tennessee and Kentucky are removed from office by making them circuit judges. And again, that you have by law appointed two new offices, those of circuit judges, and filled them by law, instead of pursuing the mode of appointment prescribed by the Constitution. To prove all this, the gentleman from Virginia did us the favor to read those parts of the law which he condemns, and if I can trust to my memory, it is clear, from what he read, that the laws does not remove these district judges, neither does it appoint them to the office of circuit judges. It does indeed put down the district courts; but is so far from destroying the offices of district judge, that it declares the persons filling those offices shall perform the duty of holding the circuit courts. And so far is it from appointing circuit judges, that it declares the circuit courts shall be held by the district judges. But gentlemen contend, that to discontinue the district courts, was in effect to remove the district judge. This, sir, is so far from being a just inference from the law, that the direct contrary follows as a necessary result; for it is on the principle that these judges continue in office after their courts are discontinued, that the new duty of holding other courts is assigned to them. But gentlemen say, this doctrine militates with the principles we contend for. Surely not. It must be recollected, sir, that we have repeatedly admitted the right of the Legislature to change, alter, modify, and amend the judiciary system, so as best to promote the interests of the people. We only contend, that you shall not exceed or contravene the authority by which you act. But, say gentlemen, you forced this new office on the district judges, and this is in effect a new appointment. I answer, that the question can only arise on the refusal of those judges to act. But is it unconstitutional to assign new duties to officers already existing? I fear that if this construction be adopted, our labors will speedily end; for we shall be so shackled, that we cannot move. What is the practice? Do we not every day call upon particular officers to perform duties not previously assigned to, or required of them? And must the Executive in every such case make a new appointment?

But as a further reason to restore, by repealing this law, the old system, an honorable member from North Carolina has told us, the judges of the Supreme Court should attend in the States, to acquire a competent knowledge of local institutions, and for this purpose should continue to ride the circuits. I believe there is great use in sending young men to travel; it tends to enlarge their views, and give them more liberal ideas than they might otherwise possess. Nay, if they reside long enough in foreign countries, they may become acquainted with the manners of the people, and acquire some knowledge of their civil institutions. But I am not quite convinced that riding rapidly from one end of this country to the other is the best way to study law. I am inclined to believe that knowledge may be more conveniently acquired in the closet than in the high road. It is moreover to be presumed, that the First Magistrate would, in selecting persons to fill these offices, take the best characters from the different parts of the country, who already possess the needful acquirements. But admitting that the President should not duly exercise, in this respect, his discretionary powers, and admitting that the ideas of the gentleman are correct, how wretched must be our condition! These, our judges, when called on to exercise their functions, would but begin to learn their trade, and that too at a period of life when the intellectual powers with no great facility can acquire new ideas. We must, therefore, have a double set of judges. One set of apprentice-judges to ride circuits and learn; the other set of master-judges, to hold courts and decide controversies.

We are told, sir, that the repeal asked for is important, in that it may establish a precedent, for that it is not merely a question on the propriety of disbanding a corps of sixteen rank and file; but that provision may hereafter be made, not for sixteen, but for sixteen hundred or sixteen thousand judges, and that it may become necessary to turn them to the right about. Mr. President, I will not, I cannot presume, that any such provision will ever be made, and therefore I cannot conceive any such necessity; I will not suppose, for I cannot suppose, that any party or faction will ever do anything so wild, so extravagant. But I will ask, how does this strange supposition consist with the doctrine of gentlemen, that public opinion is a sufficient check on the Legislature, and a sufficient safeguard to the people? Put the case to its consequences, and what becomes of the check? Will gentlemen say it is to be found in the force of this

wise precedent? Is this to control succeeding rulers in their wild, their mad career? But how? Is the creation of judicial officers the only thing committed to their discretion? Have they not, according to the doctrine contended for, our all at their disposition, with no other check than public opinion, which, according to the supposition, will not prevent them from committing the greatest follies and absurdities? Take then all the gentleman's ideas, and compare them together, it will result that here is an inestimable treasure put into the hands of drunkards, madmen, and fools.

But away with all these derogatory suppositions. The Legislature may be trusted. Our Government is a system of salutary checks: one Legislative branch is a check on the other. And should the violence of party spirit bear both of them away, the President, an officer high in honor, high in the public confidence, charged with weighty concerns, responsible to his own reputation, and to the world, stands ready to arrest their too impetuous course. This is our system. It makes no mad appeal to every mob in the country. It appeals to the sober sense of men selected from their fellow-citizens for their talents, for their virtue; of men advanced in life, and of matured judgment. It appeals to their understanding, to their integrity, to their honor, to their love of fame, to their sense of shame. If all these checks should prove insufficient, and alas! such is the condition of human nature, that I fear they will not always be sufficient, the Constitution has given us one more: it has given us an independent judiciary. We have been told, that the Executive authority carries your laws into execution. But let us not be the dupes of sound. The Executive Magistrate commands indeed your fleets and armies; and duties, imposts, excises, and other taxes are collected, and all expenditures are made by officers whom he has appointed. So far indeed he executes your laws. But these, his acts, apply not often to individual concerns. In those cases, so important to the peace and happiness of society, the execution of your laws is confided to your judges; and therefore are they rendered independent. Before then that you violate that independence, pause. There are State sovereignties, as well as the sovereignty of the General Government. There are cases, too many cases, in which the interest of one is not considered as the interest of the other. Should these conflict, if the judiciary be gone, the question is no longer of law, but of force. This is a state of things which no honest and wise man can view without horror.

Suppose, in the omnipotence of your Legislative authority, you trench upon the rights of your fellow citizens, by passing an unconstitutional law. If the judiciary department preserve its vigor, it will stop you short. Instead of a resort to arms, there will be a happier appeal to argument. Suppose a case still more impressive. The President is at the head of your armies. Let one of his generals, flushed with victory, and proud in command, presume to trample on the rights of your most insignificant citizen: indignant of the wrong, he will demand the protection of your tribunals, and, safe in the shadow of their wings, will laugh his oppressor to scorn.

Having now, I believe, examined all the arguments adduced to show the expediency of this motion, and which, fairly sifted, reduce themselves at last to these two things: restore the ancient system, and save the additional expense—before I close what I have to say on this ground, I hope I shall be pardoned for saying one or two words about the expense. I hope, also, that, notwithstanding the epithets which may be applied to my arithmetic, I shall be pardoned for using that which I learned at school. It may have deceived me when it taught me that two and two make four. But though it should *now* be branded with opprobrious terms, I must *still* believe that two and two do *still* make four. Gentlemen of newer theories, and of higher attainments, while they smile at my inferiority, must bear with my infirmities, and take me as I am.

In all this great system of saving; in all this ostentatious economy, this rage for reform, how happens it that the eagle eye has not yet been turned to the Mint? That no one piercing glance has been able to behold the expenditures of that department? I am far from wishing to overturn it. Though it be not of great necessity, nor even of substantial importance; though it be but a splended trapping of your Government; yet, as it may, by impressing on your current coin the emblems of your sovereignty, have some tendency to encourage a national spirit, and to foster the national pride, I am willing to contribute my share for its support. Yes, sir, I would foster the national pride. I cannot indeed approve of national vanity, nor feed it with vile adulation. But I would gladly cherish the lofty sentiments of national pride. I would wish my countrymen to feel like Romans, to be as proud as Englishmen; and, going still farther, I would wish them to veil their pride in the well bred modesty of French politeness. But can this establishment, the mere decoration of your political edifice, can it be compared with the massy columns on which you rest your peace and safety? Shall the striking of a few half-pence be put into a parallel with the distribution of justice? I find, sir, from the estimates on your table, that the salaries of the officers of the Mint amount to $10,600, and that the expenses are estimated at 10,900; making $21,500.

I find that the actual expenditures of the last year, exclusive of salaries, amounted to $25,154 44; add the salaries, $10,600, and we have a total of $35,754 44. A sum which exceeds the salaries of these sixteen judges.

I find further, that during the last year they have coined cents and half cents to the amount of 10,473 dollars and 29 cents. Thus their copper coinage falls a little short of what it costs us for their salaries. We have, however, from this establishment, about a million of cents—one to each family in America—a little emblematical medal, to be hung over their chimney pieces. And this is all their compensation for all that expense. Yet not a word has been said about the Mint; while the judges, whose services are so much greater,

and of so much more importance to the community, are to be struck off at a blow, in order to save an expense which, compared with the object, is pitiful. What conclusion then are we to draw from this predilection?

I will not pretend to assign to gentlemen the motives by which they may be influenced; but if I should permit myself to make the inquiry, the style of many observations, and more especially the manner, the warmth, the irritability, which have been exhibited on this occasion, would lead to a solution of the problem. I had the honor, sir, when I addressed you the other day to observe, that I believed the universe could not afford a spectacle more sublime than the view of a powerful State kneeling at the altar of justice and sacrificing there her passion and her pride; that I once fostered the hope of beholding that spectacle of magnanimity in America. And now what a world of figures has the gentleman from Virginia formed on his misapprehension of that remark. I never expressed anything like exultation at the idea of a State ignominiously dragged in triumph at the heels of your judges. But permit me to say, the gentleman's exquisite sensibility on that subject, his alarm and apprehension, all show his strong attachment to State authority. Far be it from me, however, to charge the gentleman with improper motives. I know that his emotions arise from one of those imperfections in our nature, which we cannot remedy. They are excited by causes which have naturally made him hostile to this Constitution, though his duty compels him reluctantly to support it. I hope, however, that those gentlemen who entertain different sentiments, and who are less irritable on the score of State dignity, will think it essential to preserve a Constitution, without which the independent existence of the States themselves will be but of short duration.

This, sir, leads me to the second object I had proposed. I shall therefore pray your indulgence, while I consider how far this measure is *Constitutional*. I have not been able to discover the expediency, but will now, for argument's sake, admit it; and here, I cannot but express my deep regret for the situation of an honorable member from North Carolina. Tied fast, as he is, by his instructions, arguments, however forcible, can never be effectual. I ought, therefore, to wish, for his sake, that his mind may not be convinced by anything I shall say; for hard indeed would be his condition, to be bound by the contrarient obligations of an order and an oath. I cannot, however, but express my profound respect for the talents of those who gave him his instructions, and who, sitting at a distance, without hearing the arguments, could better understand the subject than their Senator on this floor, after full discussion.

The honorable member from Virginia has repeated the distinction before taken between the supreme and the inferior tribunals; he has insisted on the distinction between the words *shall* and *may;* has inferred from that distinction, that the judges of the inferior courts are subjects of Legislative discretion; and has contended that the word *may* includes all power respecting the subject to which it is applied, consequently to raise up and to put down, to create and to destroy. I must entreat your patience, sir, while I go more into this subject than I ever supposed would be necessary. By the article so often quoted, it is declared, "that the judicial power of the United · States *shall* be vested in one Supreme Court, and · in such inferior courts as the Congress *may* from · time to time establish." I beg leave to call your attention to what I have already said of these inferior courts. That the original jurisdiction of various subjects being given exclusively to them, it became the bounden duty of Congress to establish such courts. I will not repeat the argument already used on that subject. But I will ask those who urge the distinction between the Supreme Court and the inferior tribunals, whether a law was not previously necessary before the Supreme Court could be organized. They reply, that the Constitution says, there *shall* be a Supreme Court, and therefore the Congress are commanded to organize it, while the rest is left to their discretion. This, sir, is not the fact. The Constitution says, the judicial power shall be vested in one Supreme Court, and in inferior courts. The Legislature can therefore only organize one Supreme Court, but they may establish as many inferior courts as they shall think proper. The designation made of them by the Constitution is, such inferior courts as the Congress may from time to time ordain and establish. But why, say gentlemen, fix precisely one Supreme Court, and leave the rest to Legislative discretion? The answer is simple: It results from the nature of things from the existent and probable state of our country. There was no difficulty in deciding that one and only one Supreme Court would be proper or necessary, to which should lie appeals from inferior tribunals. Not so as to these. The United States were advancing in rapid progression. Their population of three millions was soon to become five, then ten, afterwards twenty millions. This was well known, as far as the future can become an object of human comprehension. In this increase of numbers, with a still greater increase of wealth, with the extension of our commerce and the progress of the arts, it was evident that although a great many tribunals would become necessary, it was impossible to determine either on the precise number or the most convenient form. The Convention did not pretend to this prescience; but had they possessed it, would it have been proper to have established, then, all the tribunals necessary for all future times? Would it have been wise to have planted courts among the Chickasaws, the Choctaws, the Cherokees, the Tuscaroras, and God knows how many more, because at some future day the regions over which they roam might be cultivated by polished men? Was it not proper, wise, and necessary, to leave in the discretion of Congress the number and the kind of courts which they might find it proper to establish for the purpose designated by the Constitution? This simple statement of facts—facts of public notoriety—is alone a sufficient comment

on, and explanation of, the word on which gentlemen have so much relied. The Convention in framing, the people in adopting, this compact, say the judicial power shall extend to many cases, the original cognizance whereof shall be by the inferior courts; but it is neither necessary, nor even possible, now to determine their number or their form; that essential power, therefore, shall vest in such inferior courts as the Congress may from time to time, in the progression of time, and according to the indication of circumstances, establish; not provide, or determine, but establish. Not a mere temporary provision, but an establishment. If, after this, it had said in general terms, that judges should hold their offices during good behaviour, could a doubt have existed on the interpretation of this act, under all its attending circumstances, that the judges of the inferior courts were intended as well as those of the Supreme Court? But did the framers of the Constitution stop here? Is there then nothing more? Did they risk on these grammatical niceties the fate of America? Did they rest here the most important branch of our Government? Little important, indeed, as to foreign danger; but infinitely valuable to our domestic peace, and to personal protection against the oppression of our rulers. No; lest a doubt should be raised, they have carefully connected the judges of both courts in the same sentence; they have said, "the judges both of the supreme and inferior courts" thus coupling them inseparably together. You may cut the bands, but you can never untie them. With salutary caution they devised this clause to arrest the overbearing temper which they knew belonged to Legislative bodies. They do not say the judges, simply, but the judges of the supreme and inferior courts shall hold their offices during good behaviour. They say, therefore, to the Legislature, you may judge of the propriety, the utility, the necessity, of organizing these courts; but when established, you have done your duty. Anticipating the course of passion in future times, they say to the Legislature, you shall not disgrace yourselves by exhibiting the indecent spectacle of judges established by one Legislature removed by another. We will save you also from yourselves. We say these judges shall hold their offices; and surely, sir, to pretend that they can hold their office after the office is destroyed, is contemptible.

The framers of this Constitution had seen much, read much, and deeply reflected. They knew by experience the violence of popular bodies, and let it be remembered, that since that day many of the States, taught by experience, have found it necessary to change their forms of government to avoid the effects of that violence. The Convention contemplated the very act you now attempt. They knew also the jealousy and the power of the States; and they established for your and for their protection this most important department. I beg gentlemen to hear and remember what I say: It is this department alone, and it is the independence of this department, which can save you from civil war. Yes, sir, adopt the language of gentlemen, say with them, by the act to which you are urged, "if we cannot remove the judges we can destroy them." Establish thus the dependence of the judiciary department, who will resort to them for protection against you? Who will confide in, who will be bound by, their decrees? Are we then to resort to the ultimate reason of Kings! Are our arguments to fly from the mouths of our cannon!

We are told that we may violate our Constitution, because similar constitutions have been violated elsewhere. Two States have been cited to that effect, Maryland and Virginia. The honorable gentleman from Virginia tells us that when this happened in the State he belongs to, no complaint was made by the judges. I will not inquire into that fact, although I have the protest of the judges now lying before me; judges eminent for their talents, renowned for their learning, respectable for their virtue. I will not inquire what Constitutions have been violated. I will not ask either when or where this dangerous practice began, or has been followed; I will admit the fact. What does it prove? Does it prove that because they have violated, we also may violate? Does it not prove directly the contrary? Is it not the strongest reason on earth for preserving the independence of our tribunals? If it be true that they have, with strong hand, seized their courts, and bent them to their will, ought we not to give suitors a fair chance for justice in our courts, or must the suffering citizen be deprived of all protection?

The gentleman from Virginia has called our attention to certain cases which he considers as forming necessary exceptions to the principles for which we contend. Permit me to say, that necessity is a hard law, and frequently proves too much; and let the gentleman recollect, that arguments which prove too much, prove nothing.

He has instanced a case where it may be proper to appoint commissioners for a limited time to settle some particular description of controversies. Undoubtedly it is always in the power of Congress to form a board of commissioners for particular purposes. He asks, are these inferior courts, and must they also exist forever? I answer, that the nature of their offices must depend on the law by which they are created; if called to exercise the judicial functions designated by the Constitution, they must have an existence conformable to its injunctions.

Again, he has instanced the Mississippi Territory claimed by, and which may be surrendered to, the State of Georgia, and a part of the Union which may be conquered by a foreign enemy. And he asks triumphantly, are our inferior courts to remain after our jurisdiction is gone? This case rests upon a principle so simple that I am surprised the honorable member did not perceive the answer in the very moment when he made the objection. Is it by our act that a country is taken from us by a foreign enemy? Is it by our consent that our jurisdiction is lost? I had the honor, in speaking the other day, expressly, and for the most obvious reasons, to except the case of conquest. As well might we contend for the government of a town swallowed up by an earthquake.

Mr. MASON explained.—He had supposed the case of territory conquered, and afterwards ceded to the conqueror, or some other territory ceded in lieu of it.

Mr. MORRIS.—The case is precisely the same; until after the peace the conquest is not complete. Everybody knows that until the cession by treaty, the original owner has the postliminary right to a territory taken from him. Beyond all question, where Congress are compelled to cede the territory, the judges can no longer exist unless the new sovereign confer the office. Over such territory the authority of the Constitution ceases, and of course the rights which it confers.

It is said, the judicial institution is intended for the benefit of the people, and not of the judge; and it is complained of, that in speaking of the office, we say it is *his* office. Undoubtedly the institution is for the benefit of the people. But the question remains, how will it be rendered most beneficial? Is it by making the judge independent, by making it *his* office, or is it by placing him in a state of abject dependence, so that the office shall be his to-day and belong to another to-morrow? Let the gentleman hear the words of the Constitution: It speaks of *their* offices; consequently, as applied to a single judge, of *his* office, to be exercised by him for the benefit of the people of America, to which exercise his independence is as necessary as his office.

The gentleman from Virginia has, on this occasion, likened the judge to a bridge, and to various other objects; but I hope for his pardon, if, while I admire the lofty flights of his eloquence, I abstain from noticing observations which I conceive to be utterly irrelevant.

The same honorable member has not only given us his history of the Supreme Court, but has told us of the manner in which they do business, and expressed his fears that, having little else to do, they would do mischief. We are not competent, sir, to examine, nor ought we to prejudge, their conduct. I am persuaded they will do their duty, and presume they will have the decency to believe that we do our duty. In so far as they may be busied with the great mischief of checking the Legislative or Executive departments in any wanton invasion of our rights, I shall rejoice in that mischief. I hope, indeed, they will not be so busied, because I hope we shall give them no cause. But I also hope they will keep an eagle eye upon us lest we should. It was partly for this purpose they were established, and, I trust, that when properly called on, they will dare to act. I know this doctrine is unpleasant; I know it is more popular to appeal to public opinion—that equivocal, transient being, which exists nowhere and everywhere. But if ever the occasion calls for it, I trust the Supreme Court will not neglect doing the great mischief of saving this Constitution, which can be done much better by their deliberations, than by resorting to what are called revolutionary measures.

The honorable member from North Carolina, sore pressed by the delicate situation in which he is placed, thinks he has discovered a new argument in favor of the vote which he is instructed to give. As far as I can enter into his ideas, and trace their progress, he seems to have assumed the position which was to be proved, and then search through the Constitution, not to discover whether the Legislature have the right contended for, but whether, admitting them to possess it, there may not be something which might not comport with that idea. I shall state the honorable member's argument as I understand it, and if mistaken, pray to be corrected. He read to us that clause which relates to impeachment, and comparing it with that which fixes the tenure of judicial office, has observed that this clause must relate solely to a removal by the Executive power, whose right to remove, though not, indeed, anywhere mentioned in the Constitution, has been admitted in a practice founded on Legislative construction.

That, as the tenure of the office is during good behaviour, and as the clause respecting impeachment does not specify misbehaviour, there is evidently a cause of removal, which cannot be reached by impeachment, and, of course, (the Executive not being permitted to remove,) the right must necessarily devolve on the Legislature. Is this the honorable member's argument? If it be, the reply is very simple. Misbehaviour is not a term known in our law; the idea is expressed by the word misdemeanor; which word is in the clause respecting impeachments. Taking, therefore, the two together, and speaking plain old English, the Constitution says: "The judges shall 'hold their offices so long as they demean themselves well; but if they shall misdemean, if they 'shall, on impeachment, be convicted of misdemeanor, they shall be removed." Thus, sir, the honorable member will find that the one clause is just as broad as the other. He will see, therefore, that the Legislature can assume no right from the deficiency of either, and will find that this clause which he relied on, goes, if rightly understood, to the confirmation of our doctrine.

Is there a member of this House, who can lay his hand on his heart, and say that, consistently with the plain words of our Constitution, we have a right to repeal this law? I believe not. And if we undertake to construe this Constitution to our purposes, and say that public opinion is to be our judge, there is an end to all constitutions. To what will not this dangerous doctrine lead? Should it to-day be the popular wish to destroy the First Magistrate, you can destroy him; and should he to-morrow be able to conciliate to him the popular will, and lead them to wish for your destruction, it is easily effected. Adopt this principle, and the whim of the moment will not only be the law, but the Constitution of our country.

The gentleman from Virginia has mentioned a great nation brought to the feet of one of her servants. But why is she in that situation? Is it not because popular opinion was called on to decide everything, until those who wore bayonets decided for all the rest? Our situation is peculiar. At present our national compact can prevent a State from acting hostilely towards the general

interest. But let this compact be destroyed, and each State becomes instantaneously vested with absolute sovereignty. Is there no instance of a similar situation to be found in history? Look at the States of Greece. They were once in a condition not unlike to that in which we should then stand. They treated the recommendations of their Amphictionic Council (which was more a meeting of Ambassadors than a Legislative assembly) as we did the resolutions of the old Congress. Are we wise? So were they. Are we valiant? They also were brave. Have we one common language, and are we united under one head? In this, also, there was a strong resemblance. But, by their divisions, they become at first victims to the ambition of Philip, and were at length swallowed up in the Roman empire. Are we to form an exception to the general principles of nature, and to all the examples of history? And are the maxims of experience to become false, when applied to our fate?

Some, indeed, flatter themselves that our destiny will be like that of Rome. Such, indeed, it might be, if we had the same wise but vile aristocracy, under whose guidance they became the masters of the world. But we have not that strong aristocratic arm, which can seize a wretched citizen, scourged almost to death by a remorseless creditor, turn him into the ranks, and bid him, as a soldier, bear our Eagle in triumph round the globe! I hope to God we shall never have such an abominable institution. But what, I ask, will be the situation of these States (organized as they now are) if, by the dissolution of our national compact, they be left to themselves? What is the probable result? We shall either be the victims of foreign intrigue, and split into factions, fall under the domination of a foreign Power, or else, after the misery and torment of civil war, become the subjects of an usurping military despot. What but this compact—what but this specific part of it, can save us from ruin? The Judicial power, that fortress of the Constitution, is now to be overturned. Yes, with honest Ajax, I would not only throw a shield before it, I would build around it a wall of brass. But I am too weak to defend the rampart against the host of assailants. I must call to my assistance their good sense, their patriotism, and their virtue. Do not, gentlemen, suffer the rage of passion to drive reason from her seat. If this law be indeed bad, let us join to remedy the defects. Has it been passed in a manner which wounded your pride, or aroused your resentment? Have, I conjure you, the magnanimity to pardon that offence. I entreat, I implore you, to sacrifice those angry passions to the interests of our country. Pour out this pride of opinion on the altar of patriotism. Let it be an expiatory libation for the weal of America. Do not, for God's sake, do not suffer that pride to plunge us all into the abyss of ruin. Indeed, indeed, it will be but of little, very little avail, whether one opinion or the other be right or wrong; it will heal no wounds, it will pay no debts, it will rebuild no ravaged towns. Do not rely on that popular will, which has brought us frail beings into political existence. That opinion is but a changeable thing. It will soon change. This very measure will change it. You will be deceived. Do not, I beseech you, in reliance on a foundation so frail, commit the dignity, the harmony, the existence of our nation to the wild wind. Trust not your treasure to the waves. Throw not your compass and your charts into the ocean. Do not believe that its billows will waft you into port. Indeed, indeed, you will be deceived. Cast not away this only anchor of our safety. I have seen its progress. I know the difficulties through which it was obtained. I stand in the presence of Almighty God, and of the world; and I declare to you, that if you lose this charter, never, no, never will you get another! We are now, perhaps, arrived at the parting point. Here, even here, we stand on the brink of fate. Pause—pause! For Heaven's sake, pause!

Mr. BRECKENRIDGE.—It is high time, Mr. President, that the attention of the Committee should be again called to the real merits of the question under discussion. We have wandered long enough, with the gentleman in the opposition, in those regions of fancy and of terror, to which they have led us. They must indulge us in returning and pursuing our object.

I cannot, however, in justice to my feelings, go into the discussion, without making some remarks on the manner with which the attempts of those who are in favor of this repeal, have been treated. It has been echoed and re-echoed at every sentence, that we are attacking a law, matured by wisdom, and upon which the rights and security of the nation depend. That we are about to demolish the principal pillar in the fabric of our Constitution, and thereby dissolve the Union: and we are politely reminded by the gentleman from Connecticut, that the Roman Government, also once the favorite of the world, sunk under the rude stroke of Gothic hands. Without inquiring what has entitled these honorable gentlemen to assume to themselves the exclusive guardianship of the Constitution; and without inquiring what their attachment to it is; I do pretend, sir, and without paying to myself any compliment, that great as theirs may be, mine is not less. Gentlemen may, therefore, for the future, save themselves the trouble of attempting to arouse my fears on this subject, when I once for all assure them, that my duty as a citizen, and my oath as a Senator, are more operative with me, than the warning voice of any man, or set of men, from what quarter soever it may come, and however high the pretensions to experience and patriotism are, which they may choose to assume. But, notwithstanding my anxiety to preserve inviolate this Constitution, I am not to be diverted from my object, by every tocsin of alarm which gentlemen may think fit to sound. Let me not be told of dangers to the Constitution, and of dangers to the Union. Contemptible, indeed, is the basis on which that Constitution rests, poor is the compliment to the good sense and patriotism of the people of America, if that Constitution and their liberties can, as has been contended, be shaken to the centre by the repeal of a single law, of but a

single year's duration; suspicious indeed in its origin, burdensome and useless to the community, and affecting simply a few individuals, interested against that repeal, by paltry pecuniary considerations only.

I shall commence the remarks I am about to make, by asking a single question, which applies to all the observations of the gentleman in the opposition. Has any gentleman shown, or attempted to show, that the increase of courts and judges by this law was necessary or justifiable from the state of things, at the time it was passed? They have, I admit, attempted to show by reasoning at a great distance, that they may be wanting hereafter, that our empire is large, that it is populating fast, and that insurrections might happen. Indeed the gentlemen in the opposition have taken different and inconsistent ground. The honorable gentleman from New Hampshire, venerable from his years, and respectable from his talents, tells us, this law was not the offspring of a night, but has been well matured. The gentleman from Vermont requests that we may not prostrate measures from pique. The gentlemen from Massachusetts takes different ground and denies the power of Congress to repeal the law; and the gentleman from Connecticut says, that the original law establishing the judiciary was but an experiment; and that experience was the only sure test of all human contrivances.

Now for the consistency of gentlemen. Some contend that the law was well matured, and ought not to be dispensed with. Others, that we cannot repeal it at all, whether matured or not matured; and others, that it is part of a system of experiment. If, sir, the first law was an experiment, this law is, of course, an experiment upon an experiment. Now for the reasoning of the gentleman from Connecticut. "Experience is the only sure test of all regulations;" therefore you may make an experiment, and even an experiment upon an experiment, but yet these experiments are unalterable. This is really an original notion about experiments; that you may try them to see if they will answer, but whether they do or not, they are fastened on you.

The honorable gentleman from Georgia could not, after two explanations, atone to the gentleman from Connecticut for an inadvertent expression, dropt by him in the warmth of argument, which carried an insinuation that this law was made in a passion. Let the gentleman from Connecticut, therefore, have it as he stated it, that the law passed with great coolness and deliberation; if gentlemen then supposed it was to be an irrepealable experiment, and to be entailed on their country. I will say, it was a wanton experiment; I will say more, it is an experiment which, instead of being justified by a shadow of necessity, was negatived by the existing state of things when it was made; and that it was an experiment never made upon earth before, to try how courts and judges would answer without business. The absurdity, moreover, with respect to this strange doctrine of irrepealable experiments, is increased, because some gentlemen admit, that you may modify and change the law, but not so as to affect the judges. I understand them then on that point to mean, that you may modify and change the law as you please, provided you increase the number of judges, or the expense of the system; but that you violate the Constitution, if you diminish the number of judges, or attempt to economise the system: or, in other words, it is Constitutional to abolish any part, or all of the system, but what relates to the salary part of it; which in plain English would be, "do what you please, gentlemen, with our system; but spare, oh spare those for whom the system was made, the judges."

The gentleman from Massachusetts asks for any instance of an attempt similar to the one under consideration. If he meant of an example of the abolition of courts and judges, which had become unnecessary, I refer him to the examples of Maryland and Virginia, already cited; States composed of one million two hundred thousand inhabitants, and composing more than one fifth part of the Union, who have each exercised that power. An instance, exactly or very nearly similar to the one under consideration, cannot, I suppose, be adduced; for I would ask him, in my turn, if he can show me in the Union, or the universe, an instance of a set of courts created without any business for them to act on, and beneficial to the judges only?

The gentleman from Massachusetts has conceded a point, which is at variance with the principal ground he has taken. He admits, if a judge in a particular district be incompetent from insanity, disability, or other sufficient cause, to perform his duties, Congress might repeal so much of the law as relates to his district, and thereby put down that judge. How is this? If a law can be repealed, and a judge be put down, because he is unable to discharge the duties of his office, cannot a law be repealed, and a judge be put down, where he has no duties to discharge? If, because a judge who cannot discharge the duties actually assigned him, (although by the act of Government) may be dispensed with, is it sound reasoning to say, that you cannot dispense with a judge, although you have abolished his duties? Again, pursuing the gentleman's own case, if part of a law can be repealed, and a particular district and judge put down, what is it that arrests your power, as to all the districts, and the whole corps of judges?

[Here Mr. J. MASON rose to explain, and said the gentleman had misunderstood him. The idea he intended to convey was, that if Congress had power to put down one judge or one district, they had the power to put down all the courts and judges, but that they had no power to do either.]

Mr. BRECKENRIDGE said he was sorry he had misunderstood the gentleman; he had so noted his observation; but he would then beg leave to notice an observation of the gentleman from New York, which applies to this part of the subject. That gentleman has admitted that you may new-model your courts for the benefit of the people, but you cannot affect the judges, for they are *in* (to use his expression) under the Constitution; and he contends that not only the first section of the third article is imperative, but also the eighth

section of the first article, which gives Congress the "power to constitute tribunals inferior to the Supreme Court." This last section gives to Congress the power also to pass bankrupt laws, naturalization laws, tax laws, &c. &c. Are all these powers imperative also? And after you have established a post-road, passed a bankrupt law, or a tax law, are they all irrepealable, and are the officers created by them all *in* also under the Constitution? The same construction applies to all, and shows them all to be discretional powers. But this modification is to be for the benefit of the people. Can it be for the benefit of the people never to abolish courts? Two instances have been already cited. And what principle is it which ought solely to actuate legislators in enacting, modifying, or repealing any law, but the good of the people? Gentlemen really argue as if they considered courts made for the judges and not for the people.

Suppose this subject could be discussed by the people and the judges, what would be the language of each? The people would say, these additional courts are totally useless. The judges would reply, (if they hold the same opinions that the gentlemen in the opposition do,) that they are not useless, for they tend to inspire terror, and keep men honest. The people allege there is no business for them to transact. The judges answer, that the country is increasing fast in population, and there will be business, perhaps, by and by. The people contend they ought not to incur an expense without some advantage. Their honors reply, it amounts to but one cent a man, and is not worth growling about. The people, however, declare their determination to abolish these courts, as things for which they have no use. The judges then reply, in the language of the gentleman from New York, "You are a den of robbers, your Constitution is gone, and all men fly your shores."

The gentleman from Massachusetts admits the President has power to remove at pleasure all officers appointed by him but the judges, but does not see the force of my application of it. I apply it in this way: Although those officers have a right to hold their offices at the will of the President, and the Legislature cannot remove them during the continuance of their offices, yet the Legislature can remove without the will of the President, by abolishing their offices. In case, for example, the excise law is repealed, what will become of the supervisors, and other officers created by that law? They will go out with the law; for an extinguishment of their duties will necessarily carry with it an extinction of their offices, whether the President wills it or not.

But a judge stands on more independent ground. He shall not be removed at the will of the President, nor be starved out by the Legislature. He shall be removed from the exercise of his duties for misbehaviour only, whilst exercising those duties; and during the continuance of his office, or, in other words, his duties, the Legislature shall not diminish the consideration annexed to those duties. His independence and honesty in office, therefore, are sufficiently secured against Executive or Legislative influence.

But the gentleman from New York has racked his very fertile imagination to render familiar to us by comparisons this wonderful and unprecedented thing—an officer without an office, a judge without a court, without duties, or without authority. He has likened him to a bridge, to a boat, to the national debt, and to an eight per cent. usurer. I will spare your gravity, and that of the Committee, by refraining to examine the similitude as to the first two objects. What likeness is there between the salary of a judge and the national debt? The national debt is a vested right—a right not accruing for services which may be rendered, but for services or money actually rendered or advanced. It is a debt, the consideration for which we have acknowledged to have received, and for the discharge of which we have pledged ourselves. It is a debt we are under moral obligations to pay, having previously received from the creditors its equivalent. How stands the case of the salary, which is said to be apposite? Is that a vested right? Is that a debt for which the community have received an equivalent? It is neither. It is a debt which, from its nature, the public faith cannot stand pledged to pay, except so far only as the services actually performed require; it being dependent in its very creation on services to be performed, and which may be dispensed with when they are no longer wanted.

Is the case of the eight per cent. usurer more apposite? If the occasions of men induce them to resort to the hoards of usurers, it is a voluntary act; they know its intent and consequences, and they ought, in justice, to be bound by their contract. Although Shylock may not be entitled to his pound of flesh, yet he is entitled to his usury and interest. And the case of the petty usurer stands on the same ground with all those important usurers who loaned at eight per cent. their money and stock to the United States during her late preparations to fight the French.

The gentleman from New York expresses his utter astonishment at the idea of judges and courts being too numerous, and refers us to the example of Alfred, whose courts and judges were so numerous and well organized, and had imposed such terror into his kingdom, that a purse of gold might lie in safety on the highway. I remember reading, long since, of these hundred courts, courts leet, courts baron, &c., and, if I am not mistaken, sir, he had a court of chivalry, too, of much about the same value and advantage in his kingdom as your additional courts are here. But if the gentleman meditates such extension and perfection in our Judicial system, why not resort to the fountain-head, and take example from Moses, who is certainly higher authority. He, sir, established his rulers, or judges, of thousands, of hundreds, of fifties, and of tens; and men, too, says the book, hating covetousness; that is, I presume, having no salaries. But I take it that both Alfred and Moses had a wider range in legislation than this Senate, and therefore their regulations cannot be very applicable.

The gentlemen both from New York and Connecticut have pressed upon us the policy of increasing courts and judges, to prevent crimes and wrongs, to protect the weak against the strong, and insure virtue and humanity among the people. I deny both the proposition and inference drawn from it, in the extent contended for. From whence, I ask, do gentlemen draw their authority for such extensive legislation? From whence arises their power to pass these laws to prevent crimes, to protect the weak against the strong, and to punish the guilty? Not from the Constitution, I will safely affirm; for, under it, but three or four species of crime are punishable by Federal laws, to wit: treason, piracies, and felonies on the high seas, offences against the laws of nations, and counterfeiters of securities or coin of the United States. These constitute their powers on the subject of criminal jurisprudence, and are the sum total of our powers, written or unwritten; unless, indeed, the gentlemen draw some of their authority for their extensive notions of legislation, from the *lex non scripta* of Alfred's country, which I am told some gentlemen consider as attaching itself to our Constitution. But, admitting the proposition to be true, is the conclusion drawn from it well founded, that a multiplicity of courts and judges inspire terror, and prevent litigation and the commission of wrongs? I confess I am now for the first time to learn, that to inspire terror and prevent wrongs you ought to imbody an army of judges; and that to support or discourage litigation, you ought to imbody another set of men, their general attendants, called lawyers, who, it seems, for the first time, are to become peace makers; who, with their robes and green bags, will strike such terror into the nation, that a purse of gold may hang in safety on the highway. Halcyon days these, indeed, which are promised from a continuance of these judges; and if not visionary, I could then answer the gentleman from Massachusetts in the affirmative, that the millenium was indeed approaching.

The necessity for numerous courts and judges is also insisted on by suggestions that foreign invasions may happen; that consequently great revenues will be wanting, and consequently numerous courts to enforce their collection. This is reasoning at a very great distance indeed from the subject, to prove its utility. But I am willing to indulge the gentleman, and admit that invasion will happen, and annually, if he chooses, and insurrections quarterly; I will then contend, that, until the population of America amounts to five times the present number, we shall not need as many judges as there now are, to administer justice on all the subjects which can rightfully, under the present Constitution, be carried to Federal adjudication.

The gentleman from New York has favored us with another argument on this head, not addressed to the fears, but to the pride of the people, and asks if the paltry additional expense ought to have any weight, when it cannot amount to more than one cent a man? I answer, sir, that one cent a man, will not, to be sure, oppress the people; but this is a very unfair way of appealing to the ability of the people, by showing them among the thousand items which compose the aggregate of their burdens, what each man's proportion is of one very small item. But as that honorable gentleman has told us, "that he considers the government resting on the reason of man, as a solecism," I should suppose, with due deference to him, that the better way would be, to govern this machine, man, to increase the army, rather than the judiciary. Twenty thousand regulars, properly disposed of, would make us as honest as Alfred's subjects, and would cost us only three or four dollars a head. This too is a kind of terror familiar in countries like Alfred's; but an army of judges is a new experiment, as we have been told this law is, and was reserved for the politicians of these, our enlightened times.

Much has been said about the hardship which will arise to judges, who have quitted lucrative employments and taken seats on the bench, considering them as permanent provisions. One gentleman describes them as a venerable set of men, bending under the weight of years, and not possessing the agility of post-boys: another, as men who have been induced to abandon the active and lucrative pursuits of the law. Take them as portrayed by either gentleman. If they are men of the first description, there can be little hardship in permitting them to return to that state of tranquillity and retirement, from which they must have been no doubt reluctantly drawn; and to which their age and infirmities must again invite their return. If they are men of the last description, can they not readily return to those same active and lucrative pursuits which they had quitted? Have their talents and faculties, for the pursuits to which they were bred, been palsied, by a seat for a single year on the bench? And can that single year's derangement of their affairs be retributed only, by a pension of two thousand dollars a year for life? Such calculations and demands must illy comport with the characters of those of the first description; and they are poor compliments indeed to the talents, legal acquirements, and legal standing of the second. But is there no hardship on the side of the community? Is it enough for them to be told by these judges, true it is, you have established a useless set of courts; but we have been lucky enough to get into office, the Constitution protects us there, and get us out if you can? I doubt, sir, this reasoning would not be satisfactory, to men possessing common honesty, and the ordinary notions of right and wrong. It would not, however, be taken as a satisfactory set off against the fifty thousand dollars annually.

The gentleman from New York has contended strongly against an idea which he apprehends is entertained, of increasing the power of the States, by lessening your Federal courts.

I hold out no such idea; it was a surmise of the gentleman. I wish the Federal Government to possess and exercise all its rightful powers, but no more. I wish the States also to be left in the exercise of theirs. I do not wish to see everything

valuable extracted from them. I do not wish to see all possible subjects drawn into the great vortex of Federal legislation and adjudication. I do not, in short, wish, as some gentlemen may do, to see one mighty and consolidated sovereignty collected from and erected on the ruins of all the State sovereignties.

It is now growing late, and the Committee must be fatigued; I will trespass very little longer on them. Many of the observations which I have answered, were, it is true, very foreign and irrelevant to the subject. They were, it is true, but the gleanings, as the gentlemen who have preceded me left little for me to answer.

But permit me, for a single moment, to draw gentlemen's attention to the real merits of this question, and ask, have the arguments been fairly and satisfactorily answered by the gentlemen in the opposition; arguments which went to the many difficulties and absurdities which would grow out of the Constitution under the construction against which I have contended; which went to show, that the Constitution could only be fairly and rationally construed to secure the independency of a judge in office during the continuance of that office; which went to show, that the power of Congress to erect inferior courts was discretional, and was therefore necessarily accompanied by the power to abolish them; that by the construction contended for, sinecure offices for life would be erected under the Constitution; that the absurdity of an officer without an office would exist; that the power of legislation on judicial subjects would in effect be arrested; indeed, destroyed; and that it would produce the extraordinary phenomenon in our Government of an officer not amenable to your laws, to your Constitution, or to the people themselves? I appeal to gentlemen if these have been fairly and satisfactorily answered? They have not.

FRIDAY, January 15.

AARON BURR, Vice President of the United States and President of the Senate, attended.

The bill, authorizing the discharge of John Hobby from his confinement, was read the second time, and referred to Messrs. BALDWIN, J. MASON, and TRACY, to consider and report thereon.

The Senate took into consideration their amendments disagreed to by the House of Representatives, to the bill concerning the library for the use of both Houses of Congress; and

Resolved, That they do insist on the said amendments, ask a conference thereon, and that Messrs. TRACY and BALDWIN be managers on the part of the Senate.

JUDICIARY SYSTEM.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed.

Mr. BALDWIN, of Georgia, observed, that in the seat* with which he had been honored by the Senate during the preceding part of this debate, his duty had obliged him to pay particular attention to gentlemen who rose to offer their opinions: he had felt himself pleased and instructed by one of the most luminous discussions, in both views of the question, that he had ever witnessed, which he hoped and trusted would guide the Senate to a useful and proper result. In this late stage of the debate it could not be expected of him to be able to contribute anything new or important. But, as gentlemen had so generally thought proper to express their opinions, he would not withhold a public declaration of his own.

He thought the range of this question and the field of argument had been made more extensive than strictly related to the question; but they might be useful in leading to a final determination on the subject of the resolution now under consideration. The remarks that had been made of improper motives and designs, on the one side and on the other, either that there was an intention to urge forward the powers of the Government, till it was carried altogether beyond its principles, or that there was an inveterate system of opposition to it, which sought nothing less than its overthrow, he should take no notice of, as they had already been extended further than he had wished. His respect for worthy gentlemen, with the greater part of whom he had so long labored in our public councils, his respect for the people whom they represented, and for the State Legislatures who had, on this occasion, preferred them to their fellow-citizens, it is to be presumed, from full experience of their talents and virtues, forbade him to entertain any doubt of their desire to promote the best interests of their country, and to preserve our excellent Constitution, which they are all sworn to support. If, at any time, observations different from these escaped him, he hoped they would be considered as the suggestions of his own infirmity, and not the result of deliberate reflection. His own general opinion on such subjects was, that it is the nature of all delegated power to increase; it has been very aptly said, to be like the screw in mechanics; it holds all it gains, and every turn gains a little more; the power keeps constantly accumulating, till it becomes absolutely insupportable, and then falls in ruins in a tremendous crash, and the accumulation begins again; so that the history of civil society is but a general view of these vast waves following each other, oftentimes in dreadful succession. That this was the tendency of society, he thought appeared in some measure from our own short history, whether viewed in relation to our State or Federal Governments; several of them had already made considerable advances in this course; he knew of none of them that had declined. Though he hoped and trusted that this fatal progression would be slower in our country than it had ever

*In the absence of the Vice President of the United States, Mr. Baldwin had been President *pro tem.* of the Senate, from the commencement of the debate, until this day, when the Vice President took his seat.

been before on the face of the earth, and that it would allow to us many ages of great political happiness, yet he did not expect it would be found in the end to be an exception to his general remark. He alluded to several instances in the Federal Government, and observed generally, that as we were now in the thirteenth year under the present Constitution, as we had been thirteen years under the old system of the Articles of Confederation, he thought it useful in our reflections to make a comparison between them. During the first period of thirteen years, the Federal Government, as it was called, possessed neither Legislative nor Judicial power, nor any revenue at all; they were not able even to form their own body by compelling the attendance of their members; they attended, or were absent, as they pleased. Their ideas of the encroachments that it was necessary to make on the powers that were then in the possession of the State Governments, appeared to have been very different from ours; they carried on a long and obstinate war, and, as they supposed, had nearly finished a settlement of their accounts; and yet there was much less complaint of a want of power, or uneasiness and struggles for more, at the close of that first period of thirteen years, than at the present time. He should not enlarge on this view of the subject: when he saw that he was speaking in the assembly of the most ancient statesmen of our country, he knew that, though he barely glanced at the ideas, their own recollections would present them in all their extent. The observations that had been before made by gentlemen on this view, had been so general, that he could only meet and qualify them by other general observations, and he thought they did not furnish a foundation to apprehend an overthrow of the Government.

The resolution now under consideration proposes to reconsider and repeal the new Judiciary law passed last session. It does not follow that this is an effort of a general plan of destruction as applied to our Federal Government. All public bodies must, at some times, review their own proceedings, while the maxim remains true, that it is the lot of human nature to err, this must be the case; parliamentary assemblies have provisions for reconsidering their questions, and courts of justice for granting new trials.

The first and most natural source of argument that presents itself on such occasions is, the circumstances in which the act took place; to inquire whether there was any surprise or unfairness, not according to principle or customary form. Gentlemen have had the candor several times to acknowledge, and it was very fresh in his own recollection, that this was the case on the passage of the law which the motion proposes to repeal, that it was verily believed at the time not to possess an actual majority of the votes of the other House, and therefore every proposed amendment was rejected by its friends in the Senate, as they did not consider it safe to send it back open to any question in the House of Representatives. He instanced the proposed amendment to strike out Bairdstown, the place fixed by the law for the court in Kentucky, which was acknowledged to be a proper amendment, and afterwards introduced in a supplemental law. He said he was himself now acting under an impression that the law never did unite here in its favor an actual majority of votes, according to the rules of the Senate and of the Constitution. He then read the rule of the Senate which forbids a Senator to vote on a question where he is interested, and a clause in section six, article one, of the Constitution, which prohibits a Senator or Representative from making an office to hold it himself. He referred, also, to the settled principle in the investigation of truth, that a person's relation of a common matter of fact in a question of a few shillings value could not be relied on, if he had even a remote interest in the result of it. He hoped his assurances would be accepted; that he did not make these remarks to excite any unpleasant sensations. He wished to avoid them; he touched them as lightly as he could, giving them their proper place in the argument; he was sensible they did not prove that law to be a bad one; but they formed the first and the strongest reason why the subject should be reconsidered, which is the main object of the present motion; for it was open to all amendments in its progress.

Another obvious source of argument, Mr. B. said, on this subject of repeal, is, the comparative merit between this new Judiciary law and the old one, which will be restored, if this is repealed, with such other provisions as may be thought necessary. The whole of the discussion at the last session was on this ground; it is familiar to us all; it was then ample and convincing, so as to produce the effect which has been acknowledged; no doubt it would do the same if repeated at this time; it is to be presumed the effect of it is not lost; to pursue it in all its details on this occasion would make the discussion altogether too prolix and tedious. There were, however, two or three points in the comparison, he begged leave a little to dwell upon. In taking a general look at the two systems, the strongest point of distinction which seizes the first view, is, that in the old system the same judges hold the Supreme Court here, and a court in each of the States, with the exception of the States over the mountains; in the new system, now proposed to be repealed, this is not the case; the courts in the several States are held by different judges. This had ever appeared to him a radical and vital failure in the new system; it deprives the judges of the opportunity of a full knowledge of local laws and usages, and destroys the possibility of uniformity; it is also a main artery of healthful circulation in the body politic. In giving a satisfactory administration of a Government over a country of this vast extent, the great object must be to avoid the necessity of dragging the people from the remote extremes, the distance of thousands of miles, to the seat of our Government, or far from their homes, where they cannot have the usual advantages in courts of justice. While two of the judges of the Supreme Court held a court in each State, this was almost entirely avoided, except in

some of the largest States. The suits were rarely determined at the first court; at the second court, the judges were considered as bringing the sense of the Supreme Court on the subject; it seemed to give as satisfactory a conclusion to the business as if the parties had been themselves before the Supreme Court. Though gentlemen all appear to submit to the force of this argument, yet they suppose they defeat it by the vague and general declaration, that experience has proved it to be impracticable; that we should have no more venerable judges; that men must be appointed for their agility rather than their wisdom, &c. He averred experience had determined no such thing; very venerable judges had gone through that duty from the beginning of the Government, without any apparent injury to their constitutions, with as few resignations as ordinarily take place among the State judges, and, in fact, with less bodily labor than is required of many members of Congress for a much smaller compensation. He thought experience proved that men equal to the labor, and also well fitted for the office, might be found, rather than give up so indispensable a provision, especially as, under the present motion, additional provisions may be made to render the system more practicable and less laborious. The change that had been made was, no doubt, a great relief to the judges; but we have other and more numerous constituents whose relief must also be attended to.

2. Another strong point in the comparative view of the two systems is, that the new law now proposed to be repealed, attempts to draw off more business from the State courts to the Federal courts. When gentlemen talk of expediency, may they not be asked, what is the expediency of that measure? Will it make a more convenient and complete organization? When they talk of carrying justice to the door of every man, may they not be asked, whether that is most perfectly carrying justice to the door of every man? His situation in the former part of the debate was such, that his duty would not permit him to take notes of what was then said, but if he had the arguments of the gentlemen on this head before him, he should be pleased in applying it to every one of them, to see how they would appear to defeat themselves by the application of this principle. This, said he, goes directly to the great defect in the theory of the Federal Government, which has at all times given uneasy apprehensions to its best friends respecting the final success of this vast and benevolent experiment in Government. The idea of a Continent uniting under a General Government, which should settle general regulations, and do away the most common causes of war, is not a thought so much out of the ordinary subjects of reflection as to require any inventive or profound genius to call it into view. It is readily conceived, that the Eastern Continent, as well as this Western, might have often reflected on the practicability of this vast experiment; the great discouragement which has probably prevented it, has been, that the immense and unwieldy enginery which would be necessary to carry it on, to administer its laws, and manage its money transactions, with tolerable intelligence and fidelity, and keep up the great vital circulation, is not within the compass of human faculties and endowments. If ours fails, it will be from that cause; its wisest and best friends appear always to have been aware of it, and therefore have, as far as possible, directed it to a few great and general regulations, which seem indispensable, and which were least difficult in their operation; but that it should be put to ordinary business, then well done by the States, as though in its nature better suited to it than ordinary Governments, had always appeared to him to be the most unpromising direction that could be given to it. He considered that as the strongest possible objection to the new Judiciary law, now proposed to be repealed, that it was unnecessarily drawing the business from the States, where it was as well lodged, and probably as well conducted, as in any Government on earth, to the Federal establishment, where, if it was possible to conduct it at all, it was not possible to conduct it so well, and so much to the satisfaction of the people, for whom alone Governments are instituted.

The third source of argument which he should notice, was the document No. 8, sent by the Executive. As this had already been the principal topic of argument to several gentlemen, and had been placed in so irresistible a point of view, in support of the proposed resolution, he should add but few words upon it. It is said the document is incorrect; it is sufficiently correct for all the purposes of the argument, which depends not on there being three or four more or less suits in a particular place, but to show that the old Judiciary system was perfectly sufficient for all the business, and that the business was actually decreasing when the system was extended. To this the document is perfectly sufficient and conclusive. On this it has been observed, that there being but little business, and that decreasing, is so far from being an objection to the system, that it is the best argument in its favor; but this proves the perfection of the old Judiciary system, which was the cause of it, and is now proposed to be restored, and not the new, which is yet scarcely got into operation. If the decrease of business proved the necessity of the further extent of the system, in the new Judiciary law, the continuing to decrease, which appears since that time, proves that the system ought now to be still further extended.

Mr. B. said, he would proceed to submit a few remarks on the view that had been taken of the subject in its relation to the Constitution. It seems that this part of the Constitution is considered as capable of different meanings, and from so many different opinions expressed upon it, he had no doubt it was the case. Although Governments of written laws, and written constitutions, are undoubtedly a great and invaluable security to the regular administration of public affairs, yet it must be acknowledged, that, like everything human, they are imperfect; they clearly define and settle many things which would otherwise be afloat;

but they do not settle everything; questions will arise in administering them, which occasion honest doubts. When a new law is passed, the most upright and enlightened courts require a length of time to settle the practical questions under it, and to give definitive meaning and precision to all its parts. This must be more likely to occur in written constitutions, which embrace such variety of important subjects, generally in a very small compass. Many questions of this kind have already been so far settled by practice on our Constitution, that they have rarely been stirred of late. Those occasions had been represented at the time, as very threatening to the Government; Congress was then nearly equally divided upon them, and they did not, in the end, prove so disastrous as had been predicted; they had generally terminated in favor of the strict rather than the literal construction of the instrument, not to make the words cover the most that they possibly could. It had been contended in the early years of the Government, repeatedly, and with much earnestness, that the preamble of the Constitution was a grant of powers, and when a measure was proposed, if it could be shown to have a tendency "to form a more perfect union, establish justice, and insure domestic tranquillity, &c., it was Constitutional; the words "general welfare" in article 1, section 8, had been often urged for the same purpose, and as authorizing Congress to build manufacturing towns, a National University, and to carry on any pecuniary enterprises, with the public money; deliberate practice seems for many years to have settled the construction that those words should not be considered as a distinct grant of power, but a limitation of the power granted in the former part of the article, to lay and collect taxes, &c. He instanced also the power of the President to remove officers, and several others to the same effect. It was some reward, he said, for the trouble they had on similar occasions, that the greater part appeared now to be settled, as such instances occurred much less frequently than formerly: the one which now presents itself is new; he expressed his confidence that a result as proper and satisfactory would take place on this, as on former occasions.

He believed there were several points of this nature in relation to the Judiciary on which the other departments of the Government considered themselves as yet to have no settled practice; on which he observed generally, that if it had been intended to convey those distinguished powers which have lately been claimed in their favor, it might naturally have been expected that it would have been done in very conspicuous characters, and not left to be obscurely explored by construction, not enlightened by the least recollection from anybody, on a subject and on an occasion certainly of the most impressive kind, and so little likely to have been forgotten. He said, the extent that is now claimed to those words in article 3, section 1, "that the judges should hold their offices during good behaviour," was greater than he had before contemplated. His own judgment adopted the construction that had been given by several gentlemen who supported the resolution, and which they had illustrated so much at large, and so ably supported, that he should add but few words upon it. The phrase creating or establishing office, is familiar in our Constitution and laws, and may be done by the Constitution or by the Legislature; its attributes are like the ordinary attributes of legislation, to be conducted as the wisdom of the Legislature, and the circumstances of the country, may direct. Office, in its original use, is synonymous with duty. When the system of duties is so particularly defined and prescribed by the Constitution, that the functionary is able to go on in the discharge of the duties, the office is created or established by the Constitution; when this is done by law, it is said to be created or established by law; the first may be of equal duration with the Constitution; when it is created by law it may be of equal duration with the law, but in neither case can it be of longer duration; to suppose it, appeared to him absurd. When it is said, "the judges shall hold their offices during good behaviour," the first and obvious meaning is, that it should be theirs during life, or as long as there was such an office, unless they resigned or were removed for misbehaviour, that it should not be taken from them to be given to another. In such questions of constructions as to the meaning of words and phrases, it is very difficult to prove that they must mean precisely this and nothing else; it was satisfactory to him that this construction fully satisfies the meaning of the words; without doing violence to the other parts of the instrument, it does not interfere with and destroy the words which gave the Legislative powers to Congress. It is known that the importance of the integrity of Legislative power, which is sometimes spoken of under the expression "omnipotence of Parliament," is at least as favorite a part of the theory which we have been most in the habit of consulting, as the independence of the judges, particularly in the extent which it is now proposed to give it. This clause is speaking of the *tenure* of the office, and not of the *existence* of the office; that had been aptly disposed of in that part of the instrument which is on that subject, and is to be sought for among the Legislative powers and prohibitions of power.

On the tenure of office, the Constitution says, "the President shall hold his office for four years, Senators for six years," &c., "judges during good behaviour."

All these suppose the office to be in existence, but are not designed to authorize the functionaries to hold over beyond that period, or to affect the power which is given to change those instruments. The judges shall have the highest possible tenure, they shall hold their offices as long as the Constitution of the country, and the constitution of their offices exist, if they behave well. He could not consider the Constitution as contemplating their surviving or holding beyond the existence of the Constitution of the country, or the constitution of their office. It would be a very strained construction to consider that as intended. It would also be a very useless one; it goes to

prevent the Legislature from the right to make laws on the subject, as the circumstances of the country may require, without which he did not see how the Government could be carried on, and yet does not secure the judges from intolerable persecutions and oppressions by those laws; in short, it does all the harm and does no good.

The more violent partisans of this theory of independence of judges say, that our construction destroys the principle altogether, that the Constitution might as well have said nothing, that it leaves the judges entirely at the mercy of the Legislature. This is arguing from the abuse of power, and ought not to be admitted. It is not to be presumed that when a Constitution or a Judiciary system is well adapted to the circumstances of the country, and gives satisfaction to the people, that it will be lightly changed or altered, or that it can be put down or destroyed merely to get rid of the officers; they may abuse any other article of power to as great excess; they might prescribe intolerable duties, as has been observed, and thus oblige the judges to resign, &c. He would not pretend to deny but that the words might be taken in a more extensive scale, but he thought this the most natural, and sufficient to satisfy them, and that there are not many pages in the Constitution in which as probable and promising a criticism as the one that has been made on this occasion, might not be taken and introduced to disturb and unsettle our practice. It is to be recollected that this theory of the independence of judges has already been carried by us further than anybody else has carried it, in placing them beyond the reach of removal, on the joint address of both branches of the Legislature; he was not convinced that any important effects had flowed from it, or that experience had as yet determined anything so certain and encouraging on this theory, as, at this time, to warrant a further extension of it by construction.

Another meaning which has been given to the words, is, that the Legislative power on this subject shall remain entire, to institute and shape the courts as they may think proper, with the one exception, that "there must be one Supreme Court;" but that judges, once appointed, are authorized to hold their pecuniary emoluments during life, unless removed by impeachment. This construction does not go to defeat the proposed resolution; the resolution says nothing about what shall be done with the present judges; they may get their full salaries during life, if it is their Constitutional right. He thought that of very small importance in the argument, and hoped those gentlemen would not be prevented by it from voting for the resolution, if they thought it had been sufficiently supported by arguments derived from the nature of the subject, which he thought was the true ground on which the question ought to turn.

But a much more extravagant construction on those words, he said, had been taken; that the words, "they shall hold their offices during good behaviour," were to be considered as a limitation of the power of the Legislature in creating and fashioning their offices; that the offices are to be considered as theirs, as a vested right; that it would be absurd to say they should hold their offices, that they were a vested right, &c., when they might any day be taken away by a change of the Constitution, or a repeal of the law which creates it, and which is the constitution to that office; that you should not kill the man, but might sink the ship on which his life depended. Some also lay particular stress on the words "their offices," as meaning a particular and definite system of duties, which the judges had received from the Government by the contract; that the Legislature had no right greatly to vary or change this definite system of duties, so as to make it very burdensome and oblige them to resign, and in that way affect this all-important provision of the Constitution, the independence of judges. This appeared to him so extravagant, and inevitably led to such a train of consequences, as had been fully stated by those who had gone before him—he was so confident it could not be adopted and practised upon, that he scarcely apprehended any danger from it. To be sure, if the offices are theirs, a vested right, a matter of contract between them and the Government, there is an end to all power in the Legislature to change them, or even legislate upon them, without the consent of the judges; they must survive the law creating them; and they must also survive, even though the Constitution itself should be changed. If any construction does violence to the Constitution, and defeats its most essential provisions, this is the one, and needs to be made the subject of all the warnings which had been addressed to us on those important grounds.

Mr. HILLHOUSE, of Connecticut, observed, that he opposed the passage of the law now proposed to be repealed; but for the purpose of getting rid of a law which he did not like, he could not feel himself justified in tearing out a leaf of the Constitution. In attempting to correct an error of a former Legislature, we should be careful not to commit one, in its consequences, more fatal than the first. He did not hesitate to declare it as his opinion, that not only the law under consideration, but every other that had been passed on that subject, might be repealed; but he was surprised to hear it said that this could be done in a way that should deprive a judge, duly appointed, of his office and salary. The words of the Constitution are direct and positive, that "the judges both of 'the supreme and inferior courts shall hold their 'offices during good behaviour; and shall, at stated 'times, receive for their services a compensation 'which shall not be diminished during their con-'tinuance in office." The Constitution no where says that the Judiciary system of the United States, when once formed, cannot be altered, the courts new organized, old ones put down, and new ones created; that is left to Legislative discretion, under this restriction only, that there shall always be a Supreme Court, and that no judge shall be deprived of his office or salary. To abolish a court, without destroying the office or salary of the judge, has not in practice been found difficult. Most of the States, where judges hold their offices during good behaviour, have been in the habit of doing it; the United States have done it; but in no instance has a judge been deprived of his office or salary, unless in that stated to have recently happened in Maryland; which, if the facts are rightly reported, ought not to be respected, much less imitated by this Senate. By the law of Maryland, courts had been established, and judges appointed, who, by the Constitution, hold their offices during good behaviour. This law was repealed, and, during the same session of the Legislature, a new law was passed establishing the same courts, and almost in the same words of the former law. What could be the object of this repeal? Surely none other than the turning the judges out of office. Could that be less a violation of their Constitution than the passing of a law directly removing from office the same judges? It is too absurd to say that indirect means may be used to effect what might not be done by a direct and positive law, or is absolutely forbidden by the Constitution to be done at all.

Here Mr. H. stated the various laws of Virginia, in which they new-modelled or altered their Judiciary system, by which, said he, it appears that this ancient and important State has ever been careful not to violate the principle here contended for, and had, in no instance, deprived a judge of his office or salary.

To justify such a construction of the Constitution as will warrant a repeal, it is said if a law may pass one session authorizing the appointment of sixteen judges, who cannot be removed, it may be extended to sixteen thousand—arguing that, because the power may be abused, that therefore it does not exist. But will this argument do? Let it be tested by other parts of the Constitution. Congress are not limited in their power to borrow money, or raise armies, which, during the period of one Congress, might be used to the total and irretrievable ruin of the nation. The treaty-making power is vested in the President and Senate, a power which has been recently exercised in ratifying the convention with France, by which is relinquished the claims of the citizens of the United States for spoliation to a great amount; there is nothing in the Constitution that restrains this power or the abuse of it, or that would have prevented the introduction of an article into this same convention stipulating the payment to France of an annual tribute of twenty or thirty millions of dollars, a sum absolutely ruinous to the United States. The same remarks will apply to sundry other powers; yet it will not be said, that because these powers are liable to this abuse that therefore they do not exist. There never was a Constitution or form of Government which contemplated it as a possible case, that the Legislative power should be lodged in the hands of madmen, or which attempted to provide against such an event. Should this be the unhappy situation of any country, there would be no remedy but a resort to revolutionary principles. From whom is this abuse of power respecting the Judiciary apprehended? The Legislature; the same Legislature in whose hands we are told the rights and liberties of the people are perfectly safe. In no part of the Constitution is the President directly vested with power to remove any one from office; on that subject it is silent; the restriction therefore, in relation to the judges, cannot refer to the President, it must have been intended to secure them against every department of the Government. Any other construction would render the restriction futile, and wholly destroy the independence of the judges, who would be liable to be removed from office at every session of Congress. All that would be necessary would be a repeal of the law under which they hold their appointments, which, if the principle of this resolution is admissible, may be done without any violation of the Constitution; it will certainly carry us to that extent. It was most certainly the intention of the Convention who framed the Constitution, to secure the independence of the judges; it was thought by every one to have been done in a most effectual manner, until this new discovery, which is of very recent date, of resorting to a repeal of the law. The independence of the judges is certainly very important to insure a due administration of justice, which in every well regulated Government is considered as a matter of primary importance. Other departments of the Government may be more splendid, but courts of justice come home to every man's habitation; their importance is felt by every individual, to them he looks for security and the protection of his person and property.

The Constitutions of States are limited in their operation, and may be easily altered or amended; different, far different is that of the United States. This is the bond of union between sixteen sovereign independent States, spread over a country of vast extent, influenced by different views and interests; watching with a jealous eye the movements of the General Government; and whom it has been found difficult, and will grow more and more difficult, to unite in any agreement to alter or amend this Constitution, and which, if once destroyed by any important or flagrant violation it is my firm belief will never be renewed.

Mr. WRIGHT, of Maryland, observed, that he had been called forth early in this debate rather to defend the State he had the honor to represent, from the unkind imputation of "a violation of her Constitution," (in which he flattered himself he had succeeded even to the satisfaction of the honorable gentleman himself, who, he presumed, from misinformation, had been induced to make it,) than from any desire at that time to enter into the discussion of the merits of the resolution then under the consideration of the Senate. He, therefore, hoped he should now be indulged with a few observations on the merits of the resolution before them, and although it had already occupied so much of the time of the Senate, and had been so ably and so fully discussed by honorable gentlemen of great abilities and experience on both sides, yet he should presume to call their attention to such prominent features of the case as had been impressive on his own mind.

This subject has been brought before us in the

imposing shape of a recommendation of the President of the United States, the national, the constitutional organ of the Government, in his official Message to Congress on the state of the Union; a duty imposed on him by the express letter of the Constitution; a duty he was bound by the most solemn obligations Constitutionally to discharge; a duty that renovated and enlightened America had too recently selected him to discharge, to readily to believe he would unconstitutionally abuse.

Sir, this subject has been submitted to the consideration of the Congress of the United States—a body selected for their patriotism, their wisdom, and their virtues—the Constitutional organ of the legislative will of the nation, in order to inform their minds, and point their attention to the great and important subjects on which they were convened to deliberate, on the honest discharge of which everything valuable to America depends. This subject had not been brought before them in a manner to coerce a hasty or an immature decision on the subject, nor had it been left on the vague foundation of suggestion or conjecture, but it had been brought before them in a manner that imposed deliberation, and had been supported by documents that had paralyzed and almost sealed the lips of opposition on the point of its expediency.

But, however imposing the manner, or however incontrovertible the matter on which the resolution was predicated, yet, honorable gentlemen are found on this floor to oppose it as a measure of that Administration they feel indisposed to support, particularly as it implicates the policy of the late Administration, and indeed a measure which was the work of their own hands, which mankind at all times have been prone to admire, and however convinced of their errors, have, with great reluctance, been brought to confess them.

Sir, it would seem by the course of the arguments on the present question, that we had it in contemplation to break down the Federal judiciary altogether, and to subvert *ancient* foundations, and as if the agents or *perpetrators*, (as the gentleman from Connecticut has politely called them,) with polluted hands intended to destroy that Constitution they had sworn to support, and to leave the community without a judiciary to enforce obedience to the laws, whereby the strong might give law to the weak, the rich oppress the poor, and the artful and the wicked impose on the weak and uninformed; and all with impunity; and indeed would induce a belief, that they alone had either life, liberty or property to be protected. But the fact is, that the old judiciary system, that has answered every necessary purpose from the commencement of the Government, remains inviolate. It is the new system established at the last period of the last session of Congress—a system whereby sixteen new judges were introduced as circuit judges, several of whom had been promoted to be circuit judges from district judges, to make room in the district courts for gentlemen of Congress, who assisted to establish this new system, and who therefore were by the Constitution disqualified to accept that office, created during the time for which they were elected to serve in Congress, and, as he had said before, thereby indirectly minted offices for themselves, and the favorites of an expiring Administration—a measure resisted by the Republicans in both branches of the National Legislature; a measure which was carried into operation by those from whom the people have revoked their confidence, at the moment their power was passing away, at a time when the business in the Federal courts had declined nearly one-half, and when the Sedition law had ceased to be an engine to restrain the liberties of the press, and to punish men for the expression of their honest political opinions, was all that was intended to be repealed.

Here let me call your attention to the letter of the resolution, which, on reading it, will be found to extend no further than to the repeal of the act of Congress of the last session, by which sixteen new *Federal* judges had been created, and a system established at the annual expense of $130,000. We are now called on, as the representatives of the nation, as the organ of their legislative will, to determine whether this law, which has been ever odious in the sight of the people, and whose birth was not entirely legitimate, shall be repealed. We are informed by the President himself, that it is unnecessary, and that fact has been established by the document submitted to us on the subject of the judiciary courts of the United States. We are informed also, that on the repeal of this law, and the making some retrenchments in the Naval and Military Establishments, which have been already progressed in, is predicated the repeal of the odious internal taxes; and in this manner, and to effect this desirable purpose, this subject is brought before us. Can we then hesitate to relieve our people from the burden of their odious internal taxes, by the repeal of this unnecessary law? I should presume not, if governed *singly* by the regard to the public welfare; but we have, notwithstanding, been told by honorable gentlemen, on the other side of the House, that this law ought not to be repealed:

1. Because it is inexpedient;
2. Because it is unconstitutional.

Upon the first point, that of its expediency, he should not detain the Senate longer than to observe, that the document on our table shows, that the old judiciary system, which had been coeval with our Government, and had been in operation from its commencement, had been at all times sufficient for the transaction of all the judicial business of the Union; that the business in the courts had already declined nearly one-half under the old system, even at the moment of the establishment of the new one; also, that it was contemplated to repeal the odious internal taxes—a considerable source of litigation; and that the more odious Sedition law had expired, which they all knew had been a source of considerable litigation, and he was sorry to add, had not placed the judiciary above the reach of abuse; but whether deservedly or not, he *dared* not affirm; and that the peace we had lately established with France had put an end to another source of litigation, that of admiralty causes on the prize side of the court of admiralty. From this view of the subject, he himself was entirely satisfied of the expediency of the repeal, and had little doubt that every gentleman was equally so, that *any* evidence could convince.

As to the point of its being unconstitutional: It will be recollected that the President himself has recommended the repeal of this law; an evidence of its constitutionality of so high authority with the enlightened people of America, that if it stood singly on that, it would require a *federal host* to shake it; but we know there are honorable gentlemen on this floor not disposed to *confess* their respect for that authority on this occasion. Those gentlemen I will refer to the Constitution itself, from whence I presume it will appear that the power now proposed to be exercised is clearly delegated.

In the eighth section, ninth article, Congress shall have power to constitute tribunals inferior to the Supreme Court; in the seventh article, Congress shall have power to establish post offices and post roads. These are the precise expressions by which Congress acquire the power over the subjects of the inferior courts, and of the post offices; there is no other authority given them but by these articles; there is no express authority to abolish either courts or post offices, but the subjects are respectively given to Congress to exercise their legislative will upon, in such manner as should best promote the public good. I would ask gentlemen if Congress have not established post offices without number, and abolished them at their will and pleasure, by virtue of their authority under the seventh article above stated; and I should be glad to hear from whence the authority to abolish post offices is derived, unless from the article that *only* expressly authorizes their establishment, and whether the authority given over the subject has not in all past times been held sufficient to justify the abolishing as well as establishment of post offices? He then called on the gentlemen in the opposition to point out a difference between the powers of Congress over the inferior courts and the post offices, and to show how it was that Congress could abolish the post offices under an authority to establish them, and not to abolish the inferior courts under the like authority to establish them; and how the same phraseology that is used in vesting the power in Congress over the post offices and inferior courts, can be tortured so as to authorize the abolishing post offices, and not to authorize the abolishing the inferior courts. But we have been told that by the first section of the third article, this business is to be explained; let us examine it: The judicial power of the United States *shall* be vested in one Supreme Court, and in such inferior courts as Congress *may* from *time to time* ordain and establish. The judges of the supreme and inferior courts shall hold their office during good behaviour. By this it has been insisted, that the judges of the inferior as well as the superior courts hold their offices during good behaviour, and that we have no power to pass this repealing law because it would operate to dismiss the judges. He said that Congress, by an extraordinary legislative act, with the concurrence of two-thirds of the States, had a power to abolish even the Supreme Court. He asked, in such case, what would become of the judges? Would they be entitled to hold their offices as judges, when in the eye of the Constitution there was no such office? No, certainly! The Constitution meant, and could mean nothing else than a judge under the Constitution, and the moment the Constitution discontinued the office the judge, under the Constitution ceased to have a political existence, and would not be known to the Constitution as a judge. So, he concluded, by an ordinary act of legislation, the Congress might repeal the law erecting the inferior courts, and on the repeal of the law from whence the legal existence had been derived, constituting them judges, he should be glad to hear how they could be judges; that being created by the law, they derived their existence from the law, and could not as judges survive it; the Constitution means a judge known to the law, and not the man who had been a judge, after his political dissolution. He insisted that Congress can establish legislatively a court, and thereby create a judge; so they can legislatively abolish the court, and eventually annihilate the officer; that the inferior courts are creatures of the Legislature, and that the creature must always be in the power of the creator; that he who createth can destroy. But we are asked, by the honorable gentleman from New York, in answer to this, "has a man a right to destroy his own children?" Mr. W. said he had been taught to believe that man had not been his own creator, but the happy instrument of creation. But this power that is now denied to us, had been exercised by the gentlemen themselves, in the very law that is now intended to be repealed. You will see, by adverting to that law, the district courts of Tennessee and Kentucky are expressly abolished, and the office of a district judge for the States of Tennessee and Kentucky annihilated. But we are told by honorable gentlemen that there was a circuit court established, consisting of these two States and another State, and that the judges of the district courts were appointed judges of the circuit courts, and accepted their commissions as such, and therefore they say that they did not destroy the office of the district judges of Tennessee and Kentucky. He asked if each other State had not district courts; he asked if there had not been circuit courts established in all the States by that law, and if the district courts of the other States had not been continued; and can it be said that a district court composed of a single State, as in the case of Tennessee and Kentucky, is not abolished, and the office of a district judge destroyed, because in the same law a circuit court is established, and the district judges appointed circuit judges? Can it be said in fact that it is the same office, when the duties are extended to three States, to sit in three places, as it was when limited to one State and one place; or will gentlemen tell us that if the judges of the district courts had refused to act as

judges of the circuit courts, whether they would have been still judges of the district courts after they had been abolished? Or will they say that the commission of a district judge limiting his jurisdiction to a State is the same as that of a circuit judge extending it over three States? And whether the law authorizing the commission over three States ought not to precede the commission vesting that authority?

Mr. W. asked if Congress, when exercising their authority in the first instance to establish inferior courts, had not the right to limit their continuance to any period, and that at the end of that period, if the law was not continued, what would be the situation of the judge appointed under the law, would his authority continue? Certainly not. And will any gentleman contend on this floor, that if a former Congress had a right to give limitation to the continuance of a law that the present Congress have not the same authority to limit or to discontinue? Honorable gentlemen, however ingenious, will find themselves, he presumed, unable to solve these difficulties, or to reconcile these inconsistencies; for his part, the authority by which this subject had been brought before them, the recommendation of the President, had been powerful. The letter and spirit of the Constitution, when recurred to, had established him in that opinion, that they were justified in the measure now proposed, and the practice of Congress in abolishing the district courts of Tennessee and Kentucky, satisfied him that it was no new idea—no new exercise of power; and further, that nothing in the form of a Constitution can be drawn so guardedly that gentlemen may not be found to differ on its true construction, and even, as in the present case, at different times and on different occasions, differ themselves in the construction of the same instrument. If all these considerations were not sufficient to satisfy gentlemen, and we were obliged to recur to the principles on which this instrument must have been established, we shall find that we do not in any degree violate them by the construction we put on them. If the British Government is recurred to, from whence the State Governments borrowed their principles, or if the State Constitutions are resorted to, we shall find thoroughly incorporated the principles for which we contend, that the judges are independent only of the Executive, but never above the law giving them their political existence. He admitted, with the gentleman from New York, that judges ought to be the guardians of the Constitution, so far as questions were constitutionally submitted to them; but he held the Legislative, Executive, and Judiciary, each severally the guardians of the Constitution, so far as they were called on in their several departments to act; and he had not supposed the judges were intended to decide questions not judicially submitted to them, or to lead the public mind in Legislative or Executive questions; and he confessed he had greater confidence in the security of his liberty in the trial by jury, which had in all times been considered as the palladium of liberty, than in the decision of judges who had at some time been corrupt. For his part, he did not wish to break down the judiciary or the judges, or to violate the Constitution, though he confessed he should feel as secure in the decision of the State judges in even federal questions, with an appeal to the Supreme Federal Court, as in the present judges; and indeed the Constitution, in the fourth article, second section, which imposes on all State judges the oath to observe the Constitution and laws of the United States, always seemed to him to consider the State courts in a certain degree judges of federal questions. Nor had he ever been able to raise a doubt in his own mind as to the propriety of trusting State judges to decide federal questions, with an appeal to a federal court, when he considered that State juries had always been trusted to decide all questions, from whose decision there was no appeal; and indeed the State courts at all times had been the only judicial guardians of our rights, whose integrity had never been impeached. The gentleman from New York is so careful of the Constitution, that he wished it secured by walls of brass. Does he apprehend others wish to violate it, and himself its exclusive guardian, and that other gentlemen do not hold themselves equally bound to protect it, or have nothing worth protecting? For his part he had sworn to support it, and never should intentionally violate it; but he believed that no human invention could make it more secure than it was, deposited in that hallowed temple, and locked by the key of our holy religion.

MONDAY, January 18.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed. And, on motion of Mr. DAYTON,

Ordered, That the further consideration thereof be postponed until to-morrow.

The letter laid before the Senate on the 8th instant, signed Thomas Tingey and others, the vestry of Washington parish, was considered.

Resolved, That the President of the Senate, for the time being, be requested to make such order respecting the said letter as he may think proper.

TUESDAY, January 19.

A message from the House of Representatives informed the Senate that the House insist on their disagreement to the fourth, sixth, and seventh, amendments of the Senate, to the bill concerning the library for the use of both Houses of Congress; they agree to the conference desired by the Senate on the subject-matter of the said amendments, and have appointed managers on their part.

JUDICIARY BILL.

The Senate resumed the consideration of the motion made on the 6th instant, that the act of Congress passed on the 13th day of February, 1801, entitled "An act to provide for the more convenient organization of the Courts of the United States," ought to be repealed.

Mr. WHITE, of Delaware.—I shall be believed, sir, when I assure you, that nothing short of the highest sense of duty, and the great responsibility of the seat I have the honor to hold, could enable me to overcome the extreme embarrassment I feel in rising to present my sentiments to the Senate on this the most important question ever before them. I presume not to think, after the superior eloquence and talents that have been here displayed, it will be in my power to cast on the subject a single additional ray of light. Already, sir, has it been exhausted, and were I to consult my own feelings only, I should not now have to trespass upon your patience, whilst in the execution of a sacred duty, I pass hastily over part of the same ground that has before been trod by some of my honorable friends, making such additional remarks as might have escaped them. In the course of my observations, I shall confine myself to the same division of the question pursued by the honorable mover, and which it naturally presents.

1. As to the expediency. 2. As to the constitutionality of the measure proposed in the resolution.

That some system of courts is necessary in our country for the execution of laws and the administration of justice, gentlemen most hostile to the present establishment will readily admit. It is acknowledged, too, on the other side of the House, that the expenses of the present judiciary are unworthy of your consideration; that it is one of the least evils attending it; but, say gentlemen, it is upon too large a scale, it is useless, it is dangerous.

Sir, upon the original plan of the courts, it was found impossible that the six presiding judges traversing this extensive country, and holding their sessions in every State, could either do justice to the business, or at their advanced periods of life, withstand the fatigue of such severe and constant exercise; some alteration, some amendment of the system was found indispensable; the interest of the country demanded it of those in office, and it is for the execution of this duty that their political memories are now so illiberally reviled. It is well known, sir, that the United States are increasing in population, commerce, and wealth, beyond any former example; that new subjects of litigation are every day finding their way into your courts, and short-sighted indeed would have been the founders of the establishment now under consideration had they confined their views to the present time. Previous to the passing of this law, no man who could avoid it would commit his business to your courts, their arrangement amounted almost to a denial of justice; suitors preferred taking their chance in the State courts to the delay and expense attendant upon the proceedings in those of the United States. The constant change of presiding judges at every succeeding court, totally unacquainted with what had been done by their predecessors, and introducing new rules of practice, together with the unavoidable shortness of the terms, hung up the business to the great inconvenience and injury of many suitors, and must in a short time have rendered that system not only useless, but even a nuisance to the country; people could not be expected to apply for justice to a bench where time was not given to administer it.

These, sir, among many others, are some of the reasons why business had not been originated in your courts antecedent to the present law. These are the reasons, sir, why their dockets are now so low; and permit me say, that the extracts contained in this document, even supposing them correct, which happens to be far from the fact, prove nothing; they were taken at a time when the present courts had scarcely commenced their operations, immediately after the first circuit, when no gentleman will undertake to say, there had been any thing like an opportunity at a fair experiment of them. And now, sir, before the people of the country have even become acquainted with the system, and before any man, unless by the power of inspiration, can judge of its utility, it is in a moment to be dashed to pieces. Why, I ask, sir, this precipitance? Do gentlemen fear that if the measure is delayed until another session the experiment might render the system popular? And these hateful judges—for there is the rub, sir—these hateful judges will not be so safely got rid of. I hope gentlemen, at least for the present, will quiet their fears; they need not. I can assure them, apprehend any immediate danger from this mighty army of judicial veterans, so terrible in sound; they are now, I believe, sir, in Winter quarters, and even if continued in service another year, could not totally ruin and enslave the country; or, as has been indeed very feelingly expressed by the honorable gentleman from Georgia, on my right, (Mr. JACKSON,) lay our virtuous citizens in irons. The honorable gentleman from the same State, on my left, (Mr. BALDWIN,) has been pleased to tell us, that the same justice was not to be expected from the courts of the United States, as from those of the individual States, because the judges of the former cannot have a sufficient knowledge of the usages and customs of the country, and their jurors not being of the vicinage, can know nothing of the parties or their suits. I admired much, sir, the ingenuity and candor of that gentleman, but this was certainly among the least solid parts of his argument; unhappily the very reasons he adduced, proved directly the opposite of what he wished. Judges, sir, should be governed only by the law of the land; they carry it with them; they are its expositors, and are sworn to decide according to it; and have nothing to do with the usages and customs of the neighborhoods where they may happen to sit. And I have always understood that the greatest possible security for the impartiality of jurors is their being entire strangers to the contending parties, and totally ignorant of their causes, until empannelled to decide them; they then view nothing but the naked facts arising out of competent testimony, and are influenced only by law and justice. And such, sir, is the frailty of our nature, that the best man in society may be acting under

the influence of politics, friendship, passion, or prejudice, when he supposes himself governed by the purest motives. Well aware though, as I am, sir, that nothing short of the Constitution itself, and I fear that not even that will be sufficient to preserve the independence of the judiciary from this bold onset, I shall now proceed to the second division of the question.

I admit, sir, that the law proposed in the resolution to be repealed, is capable of much amendment, and it has never been denied but that Congress had the power of altering it in any way, so as not to impair the independence of the judiciary, by touching the offices or salaries of the judges; this cannot be done, the words of the Constitution on the subject are as explicit and certain as language can be. By the first section of the third article it is declared, that "the judicial power of 'the United States shall be vested in one Supreme 'Court, and in such inferior courts as the Con-'gress may, from time to time, ordain and estab-'lish. The judges, both of the supreme and infe-'rior courts, shall hold their offices during good 'behaviour." Does our language admit of words more positive than these, sir? Not a letter, nor even a comma, is wanting to complete the meaning we assign to them; and I ask gentlemen to point out any other words that the framers of this instrument could have used, that would have been less equivocal, or that could import with more certainty the construction we now contend for; it has not yet been done, and I defy them to do it; and if a different construction can be given to these words, this written Constitution is not worth a sous; it is to all useful purposes a mere *carte-blanch* upon which a Legislative majority may write what they please.

In a preceding part of this Constitution, power is given to Congress to constitute tribunals inferior to the Supreme Court; by the act to which the resolution on your table refers, they did so, and in pursuance of that act, the President of the United States issued commissions to certain gentlemen as judges, they accepted of those commissions, and at the moment of their becoming judges, the Constitution attached to their offices, and guaranteed to them, the same independence and permanency as judges of the Supreme Court, for it makes no distinction. "Judges both of the su-'preme and inferior courts shall hold their offices 'during good behaviour." On the acceptance of their commissions, a complete contract was formed between them and the Government; the Constitution told them that the tenure of their offices should be their own good behaviour; the law told them that, for their services, they should receive a certain sum annually; these were the terms, sir, that tempted them to leave their other pursuits in life, and carry into execution this contract; and it is a contract that no power on earth can dissolve but by first altering this Constitution in the manner it directs, or by violating it; and any law attempting its dissolution, operates retrospectively, is an *ex post facto* law, and in that respect, too, unconstitutional.

But, sir, in order to place beyond a question forever the entire independence of the judiciary, the Convention went still further, and in this same section, nay, in this same sentence, for they followed the thing closely up, they declared that these judges, viz., of the supreme and inferior courts "shall, at stated times, receive for their ser-'vices a compensation which shall not be dimin-'ished during their continuance in office." And under the words of this Constitution, we have just the same power to diminish their salaries whilst they continue in office, as we have to remove them from their offices and strip them of all salary; they hold their offices during good behaviour, and the full amount of their salaries whilst in office by the same strength and power of language; for can it be said, sir, that the words "shall not" are more prohibitory than the word "shall" is mandatory? Certainly not. These latter words apply especially to Congress; they must have been introduced for the express purpose of fixing and marking the bounds of Legislative authority towards the judiciary. And it would seem as if the wise framers of this instrument had feared not, sir, that Congress would ever presume themselves authorized absolutely to remove any judges from their offices without cause, as is contemplated in that resolution, for such an idea could never have entered their minds, after they had the moment before expressly declared, in so many words, that the judges, both of the supreme and inferior courts, should hold their offices during good behaviour, but that the aspiring pride and ambition of Legislative power, in some unhappy moment of intemperance or party warmth, might attempt to impair the independence of the judiciary in another way, by assuming a discretionary power over the salaries of the judges, and thus, rendering them dependent upon Legislative pleasure for a precarious support, make them servile and corrupt.

Gentlemen acknowledge that the judges of the Supreme Court are out of their reach, (thank Heaven that they happen to think so, or they, too, would accompany their brethren;) but, say they, the judges of the inferior courts are creatures of our own, and we can do with them as we please. Let me admit, sir, for argument sake, the positive meaning of the Constitution to the contrary notwithstanding, that these words, "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour," are equivocal. What reasons can gentlemen have to believe, upon what possible grounds can they presume, that the makers of this Constitution did not intend to place the judges of the inferior courts upon the same independent footing as those of the superior courts? Do they not belong to the same great department of your Government; intended to be kept separate and distinct from the other two great departments? Is not their independence equally important to the faithful administration of justice? Certainly, sir, and if possible more so, for it is to them the people, in most instances, must first apply for justice, and a vast proportion of the most important business that passes through their hands, is never carried into the Supreme Court.

As to the outcry that has been raised about sixteen hundred, or sixteen thousand, or sixteen millions of judges, if gentlemen please—calculating on the abuse of power by the constituted authorities in the use of it, the honorable gentleman from Connecticut has so fully and unanswerably replied to it, that I shall make no observations on the subject.

The gentleman from Georgia, on my right, has told us that the Constitution cannot be altered in any other way than by two-thirds of Congress agreeing to it, and then very emphatically asked, will two-thirds now agree? I hope not, sir; but because a sufficient number of us cannot agree upon altering it Constitutionally, will gentlemen force their way through it by violence, in order to get at these judges? The same honorable gentleman has been pleased to compare this system and these judges to a cotton machine; when done, if it should not work to suit the maker, he tears it all to pieces and makes a new one. Are we at liberty to infer from this, sir, that the present judges connot be made to work to suit the present rulers, and that this system is to be demolished to displace them, in order to make a new one, and seat upon your benches of justice creatures more pliable? I hope not, sir; I am sure such cannot be the views of any honorable gentleman.

It has been day after day echoed and re-echoed from one side of the Chamber to the other, that this law was one of the last expiring acts of the former Administration; that the Legislature had no right to pass it, because they knew it would be repealed. What, sir, are we told that a majority of the last Congress had no right to pass a Constitutional law? This is novel doctrine, indeed; and were they to omit doing good because they had reason to believe their successors would do evil? I acknowledge, sir, that the establishment of this Judiciary system was one of the last acts of the former Administration, and it was the very best act; the destruction of it is likely to be one of the first acts of the present Administration, and I pray God that it may be the worst; but from such a beginning the end is indeed incalculable.

Sir, these judges may, by the strong arm of Legislative power, be driven from their seats; not their own unimpeachable integrity, their virtue, and their learning, or even the sacred barriers of the Constitution itself may be sufficient to avert their fate; but remember, though advanced in years, many of them will live to see what the gentleman from Maryland has called the efflux of passion and reflux of reason—they will live to see the people of this country review with horror the present attempt; and, if till then they should happily preserve their peace and liberties, wonder how it has happened.

I will now, sir, in conclusion, notice, in a style that it deserves, the language of the gentleman from Virginia, in the discussion of this question, applied to the State of Delaware—language unworthy of this floor. He tortured an expression of my honorable friend from New York to furnish himself with an opportunity of travelling far out of the subject, in order to insult the honor of the State I belong to. After speaking of the suability of States, he observed that he should feel the same 'interest for any State, large or small, whether it 'were the little State of Delaware herself, or the 'still more insignificant Republic of St. Marino." The speech is not yet in print, but if I am wrong the gentleman will correct me. [Mr. MASON explained; he did not mean by what he said anything derogatory to the State of Delaware; on the contrary, he entertained a high respect for that State.] Mr. WHITE.—I hope, Mr. President, I may be further indulged; I did not at the moment distinctly hear what the gentleman said, but now must insist on knowing explicitly from him, not only what he meant, but whether he believes the word "insignificant," as used by him, could in any way apply to the State of Delaware? [Mr. MASON was about to explain further, when the VICE PRESIDENT rose from his seat and observed, that he was not in the Senate when the gentleman from Virginia spoke, but if he had used any such words as were charged to him, they were improper, and ought not to have been permitted. That no reflections on any State or gentleman should be suffered in the Senate, and he hoped the gentleman from Delaware would take no further notice of it.] Mr. WHITE.—As the gentleman is now pleased to deny his intention, in obedience to the Chair, I shall spare myself the trouble and his feelings the pain of a retort that very readily presents itself.

Mr. CHIPMAN, of Vermont.—Mr. President, after the length of time which has already been consumed, and the abilities which have been displayed in this debate, I can have but little hope of exhibiting anything new for the consideration of the Senate. Yet, momentous as I consider the decision to be made on the present question, involving consequences powerfully affecting the most important principles of the Constitution, I cannot persuade myself to give a merely silent vote on the occasion. In the observations which I intend to make, I shall endeavor, briefly, to examine some of the principal arguments only, which have been offered in favor of the resolution on your table.

The arguments in support of the resolution have been reduced under two general heads:

1. The expediency of repealing the law contemplated in the resolution, and

2. The Constitutional power of Congress to repeal that law.

To evince the expediency of the measure, it has been said that the system of 1793 was adequate to all the purposes of the National Judiciary; and that the judges appointed under that system were competent to all the Judicial duties required. Upon this, sir, I shall briefly observe, that from the number of terms of the supreme and circuit courts, and the immense distance to be travelled, the labor was unreasonably great. From the labors and fatigues of riding the circuit, there could not be allowed time sufficient for those studies, and for that calm and deliberate attention which is so necessary to a proper discharge of the duties of a judge.

At times, it has happened that a supreme judge could not attend a circuit court; from this circumstance, the court in the district to which I have the honor to belong, has more than once failed to be holden. At other times, the arrival of the judges has been so late that the proper business of the term could not be completed. These failures occasioned very great delay, expense, and vexation to the suitors; and we know that the same or greater failures and delays have unhappily been experienced in other parts of the United States—failures and delays which I cannot attribute to any criminal negligence of the judges, but to the burdensome duties imposed by that system, and the infirmities and accidents to which men must ever be exposed, in the performance of labors so arduous and extensive.

To prove that judges of the Supreme Court must have been competent to all the duties of that and the circuit courts, the honorable gentleman who brought forward the resolution drew a comparison from the courts and judges in England. He has told us that in England there are but twelve judges and three principal courts; that these courts embrace, in their original or appellate jurisdiction almost the whole circle of human concerns; that the two courts of King's Bench and Common Pleas, consisting each of four judges, entertain all the common law suits of forty shillings and upwards, arising among nine millions of the most commercial people in the world; and that they have, moreover, the revision of the proceedings of the subordinate courts in the Kingdom, down to the courts of *pie-poudre;* and that from long experience these courts have been found fully competent to all the business of the Kingdom. This statement, sir, is by no means correct. In England, the House of Lords is the supreme court of appeals in the last resort, in causes both in law and in equity. Instead of three, there are four superior courts. The court of Chancery, in which are decided all suits and matters in equity, including a very numerous and important class of causes. The courts of King's Bench, Common Pleas, and Exchequer, all of which have original jurisdiction in civil causes; and the King's Bench, besides being the highest court of criminal jurisdiction, has also the correction and revision of the proceedings of all the subordinate courts, by writ of error or otherwise. The subordinate courts, which were barely mentioned, are very numerous. There are in England, exclusive of Wales, more than forty counties, all of which have their separate courts and judges. Some of the counties are regular franchises. Lancaster, Chester, and Durham, have their separate courts, both of law and equity, which claim cognizance of causes and parties within their respective jurisdictions, even against the courts at Westminster. There are also an immense number of cities and towns corporate throughout the Kingdom; the courts and judges, of which, though more or less limited in their jurisdiction, entertain a vast variety of civil suits. There are, besides these, the high court of admiralty, which has an exclusive jurisdiction in maritime causes; the courts of the two universities, the prerogative court of the Archbishop of Canterbury, the archiepiscopal court of York, the diocesan and other ecclesiastical courts, having also an extensive jurisdiction, of a civil nature, in causes testamentary, and those relating to the distribution of the goods of intestates.

Wales is a principality, and its courts have exclusive original jurisdiction within the territory. The great sessions is the highest court of the principality from which a writ of error lies in the Court of King's Bench. The subordinate courts and judges are equally numerous, in proportion to the territory and inhabitants, with that of England. I omit the courts of conscience and other inferior courts, and magistrates almost without number. From this view, though imperfect, it is evident that the comparison attempted by the honorable gentleman, is by no means favorable to his conclusion. The population of that country exceeds in number that of the United States by one third, perhaps more; but its whole extent, inclusive of Wales, though not comprehended in the *Nisi Prius* circuits, does not equal one of the circuits of the United States, under the system of 1793; and yet that country employs, it is believed, more courts and judges, not only than the Government of the United States, but than all the individual States taken in addition. I do not however conceive that any advantage is to be derived from the comparison, to the one side or the other. The situation of property and civil policy, numerous and complicated rights, introduced by ancient usages, and supported by laws and habits, and by interests public and private, may render a greater number of courts and judges, a more extensive judicial system, necessary in one country than in another: I think it ought to be laid wholly out of the question.

It has been said, sir, that a knowledge of the local laws, of the customs and manners of the several States, is necessary to the judges of the Supreme Courts, and cannot be dispensed with on appeals in causes arising in different parts of the Union, and that the judges can acquire this knowledge in no way but by attending the circuit courts in the several States. But let me observe, sir, that the laws of the several States, which vary from the common law, are to be found in their statute books, in the decisions of their courts and their rules, of practice; for no custom can as such become a law, until it shall have been adopted by usages and established by judicial decisions. All these may be made to appear on an appeal, either on the face of the records in the pleadings, or in the special verdict, or by proper exemplification, and will afford the court in such case a more correct knowledge than the recollection of a judge, of what he has caught in the hurry and fatigue of the circuit.

A further objection has been urged against the continuance of the present judicial system, from the additional number of judges which it has introduced, which it is said may prove dangerous to the liberties of the country. An honorable gentleman from Georgia (Mr. JACKSON) cited the opinion of an author who has written on the British constitution, that the greatest political evil which could befall the country, was the existence of large

judiciary bodies, and who had illustrated his ideas on that subject by instancing the Parliaments of France. This observation does not, neither was it meant by the author, to apply to any particular number of courts in due subordination, each consisting of a small and limited number of judges and employed solely in proper judicial business. But it applies with force to courts composed of numerous members and forming large bodies, who, in addition to their proper judicial functions, are permitted to assume an authority in the political concerns of the nation. Such were the Parliaments of France, the late judicial courts of that country; particularly the Parliament of Paris. The members of this body were very numerous, and as it was necessary that all royal edicts, before they were to be considered as laws, should be registered in that court, they claimed the right of deliberating and deciding on the registration of any edict offered by royal authority, and consequently of permitting or refusing it the sanction of a law. With this claim that body certainly became dangerous to the existing Government, and the contest which ensued between them and the King on this subject, had no doubt a powerful effect in precipitating the late revolution in that country. But there is nothing in all this which can be applied to the courts of the United States. Let me observe, sir, that there has always appeared to me, in the system of 1793, which is sought to be restored, a very great and manifest impropriety. The circuit courts were in that system, though subordinate, in some measure blended with the Supreme Court, one or more of the judges of the Supreme Court being always judges of the circuit courts. This rendered the Supreme Court a fluctuating body, some of the judges of the Supreme Court being always excluded in the decision of causes coming by appeal from the different parts of the United States. And when two supreme judges held the circuit courts of the four remaining judges, who were to decide on an appeal, three might reverse a judgment against the opinion of the fourth, and the opinion of the two judges in the circuit court, unless those judges, from whose judgment the appeal was made, gave also their opinions in favor of an affirmance, and which they might do, their exclusion being indeed only voluntary, from a high and just sense of propriety. This has always appeared to me, to say no more, a very glaring impropriety in that system. The circuit courts under that system have indeed been compared to the *Nisi Prius* courts in England, but the slightest attention will convince any one that they do not compare. The circuit courts in our system are courts of original and distinct jurisdiction; not so the courts of *Nisi Prius* in England; they are considered as a branch of the superior courts, at Westminster, and are held by a commission of assize usually issued to a judge of one of the superior courts, and an associate for each of the six circuits into which England is for that purpose divided. When a cause in any of the superior courts is by the pleadings put on an issue of fact, it is with the record sent to be tried at *Nisi Prius* by a jury of the proper county; instead of calling up a jury to try it at the bar in Westminster Hall. After the trial at *Nisi Prius*, the verdict with the record is remitted to the court, out of which it was sent, and there the opinion of the *Nisi Prius* judge and the conduct of the jury are examined, and considered as matters passing in the same court. Here then the comparison wholly fails: there is no similarity between the two systems, except that of a judge riding the circuit.

Here, sir, I shall waive any further observations on this part of the subject, and come to the great question which it is necessary to decide. Have Congress the Constitutional power to repeal the law as contemplated by the honorable mover of this resolution? To abolish the courts established by that law, put down the judges, and abolish their salaries? It is true, as was observed by the honorable gentleman from Georgia, (Mr. BALDWIN) that the resolution does not necessarily involve that question, because the repealing act, if the resolution should be adopted, may be so modified as to avoid any difficulty on the great point. But as the honorable mover avowed his intention to be an abolition of the courts, the offices of the judges and their salaries, and as the principal arguments have in the course of this debate been directed by that view of this subject, I shall be permitted to consider it on that ground.

One source of argument in favor of the measure proposed, has been derived from the powers considered as incident to every legislative body. It is said that a power to repeal all its legislative acts is inseparably incident to every sovereign Legislature—that the act, the repeal of which is contemplated, is a legislative act of Congress, therefore Congress necessarily have the power to repeal it—that to admit the contrary, is to say that the power of Congress at one time is not equal to its power at another time—that a subsequent may be bound by the acts of a former Congress, contrary to a very important maxim in legislation—in a word, that it is to make the creature greater than the creator, as it denies to Congress the power over its own acts, which it has passed, and will in course put a stop to all amendments, all improvements of our laws. This doctrine, here meant to be asserted, is not in the full extent applicable to the legislative powers under our Constitution. There are acts which Congress are by that instrument expressly denied the power of passing—there are acts which, whenever passed, Congress cannot repeal, or rather the effects of which they cannot even suspend, much less can they destroy. They are expressly denied the power of passing *ex post facto* laws; and this applies no less forcibly to a repealing act than to any other act—it is by its operation that the nature of the act is in this case determined. Every act which in its operation attempts to divest any right previously acquired, whether by a former act of legislation, or by any other lawful means of acquisition, is in name, nature, and essence, *ex post facto*.

Indeed, sir, I apprehend that some gentlemen have been led into a mistake on this subject, by an incautious admission of maxims and theories of legislative powers in another Government; but which do not apply to our Government, as insti-

tuted and limited by our Constitution. There are, sir, in every nation two kinds of legislative powers. The one is original and extraordinary; and may be called the power of political legislation. It is by an associating nation employed in forming and organizing the Government, in disposing its powers and defining or limiting their exercise. The other is derivative, the ordinary power of legislation, and is employed in the civil regulations of the community. In the first consists the political sovereignty of the nation. This power is transcendent. It is paramount to all other powers in the nation. It can create powers, rights, and duties, and can abolish them at pleasure; not because what it does, is always wise or even just; but because no other power in the nation can have a right, or can be equal to control its operations. In Great Britain, from ancient usage, the consent of the nation witnessed, by long and general acquiescence, both the ordinary and extraordinary powers of legislation are considered to be vested in the Parliament of the nation. Acting in this capacity of political sovereign of the nation, the British Parliament can create rights, and can destroy existing rights, at will; although in exercising such acts of power, they proceed with great caution, and are careful to indemnify individuals, whose rights they may have injured. In this capacity it can, as it has done, new-model the Government. It can fix and alter the duration of Parliaments, and change and limit the descent of the Crown. Indeed, vested with this power, in addition to the ordinary powers of legislation, the figure is hardly too bold, by which, when acting on subjects within the reach of its authority, it is said to be omnipotent. Not so the Congress of the United States; they possess not that transcendent power, that uncontrollable sovereignty of the nation; they possess the ordinary powers only of legislation; and these powers they derive under the Constitution of the United States: by this instrument their powers are instituted, limited and defined. This instrument is the act of the political sovereign, the People of the United States. To them it was proposed, and they, through their agents empowered for that purpose, enacted it the fundamental and supreme law of the National Government. They have said, as they had a right to say on this subject, Congress shall act; or that they may act at their discretion; here the Congressional power is limited, there is placed a barrier which shall not be passed. Congress, as I observed, possess not this paramount power; but in one mode, provided for altering and amending the Constitution, they are, under certain restrictions, permitted an inceptive power. They have a right to originate proposals of amendments, which, when ratified by three-fourths of the State Legislatures, to whom the national sovereignty is in this instance referred, are adopted into, and become a part of that instrument. In another mode, the State Legislatures have the power of inception; they also may originate proposals of amendments, which Congress must refer to a convention of the people for their ultimate acceptance and ratification. In this instance alone, have the people of this country reserved to themselves a portion of the national sovereignty, in the exercise of which is only found that voice of the people, which, because it is not to be resisted, is sometimes called the voice of God. This, sir, is the authority of that supreme law under which we act, the Constitution of the United States; an authority indispensably binding. We have no right, when we wish to carry a favorite measure, to which we find some barrier opposed by the Constitution, to prostrate or to overleap that barrier. We have no right to say that the national sovereign, could it now be consulted, would dispense with the limitation, would remove the barrier, which, in our present opinion, stands opposed to the public good. No, sir, we may not approach this ground. It is dangerous; it is an usurpation of the national sovereignty. We are but agents of the nation, acting under a limited authority. All our acts which exceed that authority are void.

These are the principles to be applied in the investigation of Constitutional powers. Let us then examine the Constitution upon these principles, and fairly determine whether we are permitted the power for which it has been contended, the Constitutional power to remove a judge, by abolishing the office, and consequently to deprive him of his salary? The first provision which we find in the Constitution relating to the judicial department, is in the second section, where, among other powers enumerated, it is declared that Congress shall have power "to establish tribunals inferior to the Supreme Court." Upon this it was observed, by the honorable gentleman from Georgia, (Mr. JACKSON,) that this being a grant to Congress of a legislative power to establish inferior courts, necessarily includes the incidental power to repeal; that this being a first grant, cannot be restrained nor taken away by any subsequent provision in the Constitution upon the same subject; that we are to take the rule of construction, that the first grant, and the first word of a grantor in a deed, shall prevail over a subsequent grant, or subsequent words of a different import. Are we, indeed, sir, to apply in the construction of the Constitution, the law, the supreme law of the nation, the rules devised for the construction of a deed, a grant, by which a few paltry acres are transferred from one individual to another? No, sir, very different are the rules of construction; the first act of the grantor, but the last act of the Legislature, shall prevail; or where, in any case, is the power to repeal? Another rule, more universally applicable, is, that you shall so construe a law that every part of it, if possible, may stand together, that every part may have its operation. Thus, if there be a general provision in the former part of a law, and there follow a particular provision, which cannot take effect unless some part of the former provision be set aside, the latter shall be considered as a limitation of the former, and which shall be carried into effect so far only as it is not incompatible with the latter.

In the third section of the Constitution is a further provision: "That the judicial power of 'the United States shall be vested in one Supreme

'Court, and in such inferior courts as the Con'gress may, from time to time, ordain and ap'point." The highest judicial authority shall not be divided into two courts. It shall, to use a ruder phrase, be one and indivisible. I consider it as imperative on Congress to establish, not only a Supreme Court, but also to establish some courts of inferior jurisdiction, which may be modified and extended from time to time, as experience and future expedience shall dictate, so that it be without violence to any part of the Constitution. The words, "as Congress may, from time to time, ordain and appoint," were introduced with intent so far to give a discretion on the subject. The power of erecting courts, is here taken for granted, as is contained in the clause before cited, from the second section, supplied by the general clause, by which it is declared, that "Congress shall have 'power to make all laws which shall be neces'sary and proper for carrying into effect all the 'powers vested by the Constitution in the Gov'ernment of the United States, or in any officer, 'or department of the Government." I cannot understand it; for how is it possible so to understand it, that the words, "may ordain and appoint," in their connexion imply also to abolish? Certainly it is not a necessary implication. That Congress are required to make a provision of inferior courts; that the thing is not merely optional, is very clear from another part of this section, declaring to what class the judicial authority of the United States shall be extended. [Read that part of the section.] Here observe, the Supreme Court has original jurisdiction in the smaller number only of the cases specified; so that without a provision of inferior courts there would be no provision for the greater number, and the judicial authority, instead of being extended to all the cases enumerated, would in fact be limited to a few only. Let us now examine the provision relating to the judges, which is contained in the former part of this section—a provision intended to secure to the judges a proper degree of independence. It is declared, that "the judges both of the 'Supreme Court and inferior courts, shall hold 'their offices during good behaviour." The judges of all the courts are placed on the same footing. The expression is not, that they shall continue in office, which might seem to be compulsory, but shall hold their offices, implying at their option, during good behaviour. For a judge may resign; he may accept a place incompatible with the office of judge, as he may, on election, accept the place of Senator or Representative in Congress, by which his office of judge would be vacated by his own act, implying a resignation. The force of the expression clearly is, that no judge, either of the supreme or inferior courts, so long as he continues to behave well, can be removed from the office, or the office removed from him by the act of any other. For the expression being general, with only one exception, in the nature of a proviso, that he continues to behave well, it is exclusive of every power either to remove the judge from the office, or, as has been ingeniously indeed suggested, of removing the office from the judge, causing it to vanish from its hold on any other ground or pretence whatever. It is a well-known rule, that the expression of an exception in any provision, excludes every other exception by implication. Next it follows, "and shall (the judges 'shall) at stated times receive for their services a 'compensation, which shall not be diminished du'ring their continuance in office." How long shall they continue to receive, or be entitled to receive, an undiminished compensation or salary? So long as they shall continue to hold their respective offices. And how long are they entitled to hold their offices? So long as they shall continue to behave well. That is, the duration of the time for which they shall be entitled to receive an undiminished salary, shall be equal to the duration of the time for which they are entitled to hold their offices, equal to the duration of the time in which they shall continue to behave well. What rarely happens in subjects of this nature, the position that the judges cannot, during good behaviour, without a direct violation of the Consitution, be deprived of holding their offices, or of receiving their salaries, is capable of the highest proof, not merely by a train of probable and metaphysical reasoning, but by the clearest and plainest mathematical demonstration. It is a comparison of quantities in the duration of time; or shall it now for the first time be said, that when one quantity, or one length of duration is equal to a second, and the second to a third, that nevertheless they are not equal each to the other? Have intuitive truths at length changed their nature? Are they in these times inverted to falsehoods? Have the clearest axioms of ancient science suffered a revolutionary subversion? No, sir, they remain the same; they are still capable of assisting us to the same infallible conclusions.

The gentleman from Kentucky has told us, that if the construction against which he contended had been contemplated by the framers of the Constitution, it would have been explicitly declared, that the judges shall hold their offices and salaries during good behaviour; fairly admitting, that a declaration thus explicit, would have been conclusive for the construction of his opponent. Surely it will not be contended, that the idiom of the English language is so inflexible, and its interpretation so precise, that identical positions to be equally clear and explicit, can be expressed by identical words and phrases only. Had the expression been, they should hold their offices and receive their salaries during good behaviour, would not the meaning have been the same and equally expressive? Indeed the word hold, though well applied to an office, is not very properly applied to taking the payment of a salary. Or had it been, "they shall 'hold their office during good behaviour, and 'while they continue in office, which is to be du'ring good behaviour, they shall continue to re'ceive their salaries, which shall not during that 'time be diminished," it certainly would have been a declaration equally explicit with that suggested by the gentleman. And this it has been clearly and demonstrably proved, is the same as that which is expressed in the Constitution.

I will here, sir, though it might perhaps have been more properly done before, make a few observations on the independence of the judiciary. It has been said by some gentlemen, in effect, that though the judges ought to be independent of the Executive—though they ought not to hold their offices or salaries dependent on the will of the President, yet, in a Government like ours, there can be no reason why they should not, like the other departments of the Government, be dependent on public opinion, and on Congress, as properly representing that opinion. That if the judges are made thus independent; if Congress cannot remove them by abolishing their offices, or in any other way, except that of impeachment for misbehaviour, they will become a dangerous body in the State; they may, by their discussions on the constitutionality of a law, obstruct the most important measures of Government for the public good.

Unfortunately for the argument, this doctrine agrees neither with the nature of our Government, which is not vested with the unlimited national sovereignty, but from that derives its powers, nor with the positive and solemn declaration of the Constitution. That Constitution is a system of powers, limitations, and checks. The Legislative power is there limited, with even more guarded caution than the Executive; because not capable of a check by impeachment, and because it was apprehended, that left unlimited and uncontrolled, it might be extended to dangerous encroachments on the remaining State powers. But to what purpose are the powers of Congress limited by that instrument? To what purpose is it declared to be the supreme law of the land, and as such, binding on the courts of the United States, and of the several States, if it may not be applied to the derivative laws to test their constitutionality? Shall it be only called in to enforce obedience to the laws of Congress, in opposition to the acts of the several States, and even to their rightful powers! Such cannot have been the intention. But, sir, it will be in vain long to expect from the judges, the firmness and integrity to oppose a Constitutional decision to a law, either of the national Legislature, or to a law of any of the powerful States, unless it should interfere with a law of Congress; if such a decision is to be made at the risk of office and salary, of public character, and the means of subsistence. And such will be the situation of your judges, if Congress can, by law, or in any other way, except by way of impeachment, deprive them of their offices and salaries on any pretence whatever. For it will be remembered, that the legislative powers of the several States, as well as those of Congress, are limited by the Constitution. For instance, they are prohibited, as well as Congress, to pass any bill of attainder or *ex post facto* law. The decisions of the judges upon such laws, and such decisions they have already been called upon to make, may raise against them, even in Congress, the influence of the most powerful States in the Union. In such a situation of the judges, the Constitutional limitation on the Legislative powers, can be but a dead letter. Better would it be they were even expunged.

Thus, sir, it appears, that the independence of the judges, even of Congress in their Legislative capacity, is agreeable to the nature of our Government, to the whole tenor as well as the express letter of the Constitution. But, sir, at this late stage of the debate I will not farther enlarge; I will only add, that upon these principles, and with these views of the subject, I shall give a hearty negative to the resolution on your table.

Mr. WELLS, of Delaware.—I know not what apology I shall make for rising at this late period of the debate, unless I find it in the importance of the subject under discussion. Coming, as I do, from one of the smaller States, all of whom, from their peculiar situation, feel perhaps more than a common interest with their sister States in the preservation of this Constitution, I could not be indifferent to the progress of the present question. To a State circumstanced like that to which I have the honor to belong, the Constitution of the United States is the charter of her rights and the palladium of her liberties. I must, therefore, be forever induced by sentiments of attachment as well as duty to resist a measure calculated to subvert that Constitution. Such, I believe, is the tendency of the resolution on your table. When I say so, I do not mean to impute any unworthy motive to the gentleman who moved the resolution, or to those who have supported him. Assured I am, that those gentlemen regard this business in a very different light from what we do, or they would not have brought it forward. Believing that the law in question is a bad one, and may be constitutionally repealed, it was their duty to endeavor to effect its repeal.

Permit me now, sir, to glance in as cursory a manner as possible, that I may take up no more of your time than need be, at some of the reasons which have been assigned by the friends of this resolution. We have been told that the law proposed to be repealed, is unnecessarily expensive. That it is not calculated to promote the proper objects of a judiciary, and may be constitutionally repealed. That the old system, which this has superseded, was sufficient for the due administration of justice, and therefore it is expedient to revive it.

It is true, sir, that the retrenchment of expenses has been recommended to us by the President. It was his duty to do so. It is what the people had a right to expect from us as well as him. And these expectations, I trust, would not have been disappointed, even if our attention to it had not been invited by the Executive. We are placed now in a very different situation from what we have been for several years. The war in Europe is over. A war, permit me to say, more dreadful than any we read of. It has raged like a tremendous tempest, bearing down almost everything before it. It was not to have been expected that this our nation, towering like the majestic oak, should have escaped its fury, yet it has left us standing—the pride of the forest, and the only one to which it has not done some cruel mischief. But

the storm is passed by; the danger is over, and many expensive establishments may now be reduced which could not before have been relaxed. It may now be economy to save, what it would have then been ruin not to have expended. But is the Judiciary of a nature to be reduced to what is called a peace establishment? From the manner in which gentlemen have talked of the expense of this department, it would seem that the sum to be saved by the measure now contemplated, was one hundred and thirty-seven thousand dollars, whereas the real amount is only about thirty thousand dollars. It is true, sir, this sum itself, were it even less, would be too much to squander away. But when you consider, that if you revive the former law, you must unavoidably increase the number of the judges of the Supreme Court, the difference of expense between the two systems will, probably, be about twelve or fifteen thousand dollars. And for this sum, amounting, among the people, to less than one third of a cent per man, will gentlemen persist in a measure calculated, in the opinion of almost half of the members of this body, to subvert your Constitution? Is this the economy which our constituents require from us? Do they wish us, like rash and greedy gamesters, to risk their *all* upon one single cast of the die? If the gentlemen are right, we save about twelve or fifteen thousand dollars. If they are mistaken in their opinions, we lose our Constitution. Is there any possible comparison between the advantage and the risk? But for argument sake be it admitted, that the danger on either hand is equal. Let us then examine the claims of each opinion to preference.

By the former law, which it is now proposed to repeal, there were six judges of the Supreme Court appointed in the United States. In each State was placed one district judge. For each State there was held a circuit court twice a year: this was composed of one or more of the judges of the Supreme Court and the district judge. The district judge in each State held a court of his own four times a year. The judges of the Supreme Court, besides holding these circuit courts, were twice a year to hold a Supreme Court at the seat of Government. One objection, in my mind, to the old system, was the duties of the inferior and superior judges being blended together and not sufficiently separated. Thus the judge of the district court was called to go up and associate himself with the judge of the Supreme Court: who was obliged to come down from the highest court to hold a circuit court. Your judges were like a Proteus; constantly changing their character. Each set of judges, in my opinion, ought to have their appropriate sphere, and should never be suffered to move out of it. Another objection is not without its weight. The same judges did not always attend the same circuit court; and, according to the gentleman from Georgia, (Mr. BALDWIN,) this change is necessary, in order that the judges may in turn become, all of them, acquainted with the municipal laws and customs of the different States. What was the consequence? A judge, after attending a circuit court, and hearing a learned argument, was obliged sometimes to postpone his determination to the next term. When that arrived, a judge of the Supreme Court attended; but not being the same that attended before, a new argument became necessary. This, sir, may have been delightful sport for the gentlemen of the bar: the poor clients must have felt far differently. But the strongest objection to the system was the impossibility of the judges discharging the duty required of them. These six judges were to attend, among them, eight and thirty courts in one year. Considering the immense extent of country over which these courts were spread, and making due allowances for the many causes which would probably always prevent two or more of the judges from attending the circuits, each judge would have to attend twelve courts in a year. If this system is to prevail, you must select your judges as you enlist soldiers. Instead of inquiring for lawyers of integrity and talents, you must look out for able-bodied men; for such as are best fitted to stand the fatigue of constant travelling, and least liable to be affected by the inclemencies of weather. It is impossible, if gentlemen will reflect, that they can believe it expedient to revive a system so liable to objections, so impossible to be executed.

Let us now for a moment examine the law which is proposed to be repealed. It classes the United States into six circuits. In each of the States comprising a circuit, there is a circuit judge. In each circuit there is a court composed of the circuit judges, living within that circuit. The judges of the Supreme Court hold their sessions at the seat of Government twice a year. There is an appeal from the district court of each State, to the court of the circuit within which that State is classed. From the determination of the circuit court there is a final appeal to the Supreme Court. The same judges are not here, as under the former law, judges of the superior and inferior courts. Each has his proper station. No judge will here have to act upon an appeal from his own decision. In the one there is order and symmetry; in the other naught but confusion.

But it would seem in vain to reason upon the relative value of the two systems; for gentlemen think that they have discovered, by arithmetical calculations, that the late law was unnecessary. They endeavor to prove that the suits were decreasing in number at the time the additional judges were appointed. The document they rely upon for this purpose, is a return made from the clerks of the different circuit courts, showing the annual number of suits brought in each court since the year 1790. This return is not only inaccurate, but furnishes directly the reverse conclusions from those which have been drawn from it. I say it is inaccurate, because the return from the court of Maryland is entirely omitted, and the aggregates of the suits in the States of Tennessee and Kentucky are only given. It is incorrect in another respect. On the returns from the States of Massachusetts, and Virginia, it is stated that the *suits depending* are not included in those columns which show the number of suits annually instituted. This document, therefore, is too glaringly

incorrect to be relied upon for establishing any conclusion which ought to guide us in business of this importance. But let us take it as we find it, and see if the calculations of the gentleman from Kentucky (Mr. BRECKENRIDGE) are more to be relied upon than the document itself. The gentleman says that in 1799 there were twelve hundred and seventy-seven suits instituted; and in 1800 there were six hundred and eighty-seven suits commenced; showing a decrease, "notwithstanding," as he says, "all the temporary and untoward sources of federal adjudication," of five hundred and ninety suits. There is one circumstance of importance to be noted in making this calculation. In the year 1799 there were four hundred and twenty-three suits brought in South Carolina, which is more than one half of the whole number of suits brought in that State for ten years together. The greater part of these suits were brought by Miller and Company, for the infringement of a patent right which they had obtained. The largest number of suits brought in that State, in any one year preceding the year 1799, was one hundred and four. The gentleman from Kentucky includes these suits in that year's account - - - - - - - - - 423
He includes all the criminal suits brought in those States from which the returns are made, amounting to 132, and all other suits, amounting to 722 - - - - - 854

Making, for suits brought in the year 1799, the number of - - - - - - - 1277
Then he allows for suits of 1800, only 687
He omits the whole of the criminal suits of that year, which amounted to 102, and of other suits 100; making together, thus omitted, - - - - 202
Making together - - - - - - 889

Leaving a decrease of suits, instead of 590, only - - - - - - - - - 388
It will be observed, as before mentioned, that there are included in the account of suits brought in the year 1799, 423 suits brought that year in the State of South Carolina. These exceed by 319 the highest number of suits brought in any preceding year in that State. It will therefore be necessary to deduct these out of the above number, in taking a fair view of this subject - 319

The real decrease between the years 1799 and 1800 will only be - - - - - 69

But, in order to place this business in a still clearer point of view, I beg leave to submit a calculation showing the annual aggregate number of suits from 1790 to 1800, from which I have excluded the whole of the suits brought in South Carolina since the first establishment of the courts, viz:

In 1790, one hundred and eleven; in 1791, three hundred and six; in 1792, three hundred and eleven; in 1793, four hundred; in 1794, three hundred and sixty-five; in 1795, five hundred and twenty-seven; in 1796, four hundred and sixty-six; in 1797, nine hundred and twenty-four; in 1798, six hundred and fourteen; in 1799, eight hundred and fifty-four; in 1800, seven hundred and eighty-one.

The following calculation is made in order to show the number of suits brought, *including* those of South Carolina, from 1790 to 1800, viz:

In 1790, one hundred and eleven; in 1791, three hundred and thirteen; in 1792, three hundred and thirty-three; in 1793, four hundred and forty-six; in 1794, three hundred and eighty-five; in 1795, six hundred and fourteen; in 1796, four hundred and ninety; in 1797, nine hundred and seventy-seven; in 1798, seven hundred and nineteen; in 1799, twelve hundred and seventy-seven; in 1800, eight hundred and eighty-nine.

Thus, although it is apparent that there has been a gradual increase of suits, since the first establishment of the judiciary, yet the gentleman from Kentucky has endeavored to impress an opinion, that the suits have decreased in the proportion that six hundred and eighty-seven bears to twelve hundred and seventy-seven; and this, to use the gentleman's language, "notwithstanding all the temporary and untoward sources of federal adjudications." Yet he has taken special care, in order to swell up the suits of the year 1799, to draw from "these temporary and untoward sources of federal adjudications," all the criminal suits of that year, and to include the three hundred and nineteen suits of Miller and Company; but observe, when he comes to put down the suits of 1800, to contrast them with the number brought in 1799, these "untoward sources" are immediately dried up; for he excludes from his account all the criminal suits of that year, and one hundred other suits. Pray, sir, what kind of arithmetic is this? Is this the federal arithmetic which gentlemen have talked so much about?

Permit me now, sir, to say but a word or two upon the unconstitutionality of this measure. The Constitution has declared that the judicial power shall be vested in a supreme court, and in such inferior courts as Congress may, from time to time, create. It has added, that the judges of both the inferior and superior courts shall hold their offices during good behaviour; but may be removed on impeachment, by the House of Representatives and conviction by two-thirds of the Senate.

What words can go stronger to the exclusion of every dependence of that department upon the pleasure of any other? The people have thus duly secured the two great objects they had in view, the independence of the judges, and their responsibility. This, however, is a new way of getting at the judge without affecting his independence. We will not touch the judge, but we will slip the office from under him. We will not lower his salary while he is in office, but we will so contrive it that he shall be divested of his office and salary at the same time. Thus, a mere majority of each House, with the concurrence of the President, shall effect, without any fault in the judge, what the people designed should be brought about only by impeachment. But we are asked, "suppose Congress should appoint an army of judges?" I will

suppose no such thing. There is every security the nature of the case will admit of, that they will not do it. I will suppose the abuse of no power which is delegated by the Constitution, except what is supposed and guarded against by that Constitution. If gentlemen will suppose the abuse of power in creating unnecessary offices, it is equally fair to suppose the abuse of the power they contend for, viz: that of destroying the courts. I may suppose that it will be done to get rid of judges, however salutary the system under which they may be appointed.

I trust, therefore, sir, that this resolution will not prevail, since it manifestly appears that the system which gentlemen propose to destroy, is in itself preferable to that which they intend to revive; and that the expense between the two is inconsiderable. But how much more ought this measure to fail, when, without any possible benefit from the change, it is to destroy the independence of the judges, and prepare the way for the subversion of our Constitution!

Mr. WRIGHT observed, by the constitution of Maryland the judges of the Supreme Courts hold their commissions during good behaviour; the justices of the peace, who hold their county courts, were subject to an annual appointment, but it being found impracticable to procure law characters to act as justices of the peace, and that none other were qualified to decide questions of law, it became necessary to change the system, and, in 1793, a law was passed dividing the State into five districts, with a law character at the head of each district to ride the circuit, who, with two associates for each county, composed the county courts instead of the justices under the old system. These new judges were appointed by the law during good behaviour; but this law being like all new laws, a measure of experiment, was limited to a short duration, and has been from time to time continued. At the last session many important amendments being contemplated, the law was repealed, and a new law passed embracing the proposed amendments.

I have heard of but two judges being appointed under the new law; both of them were judges under the old law, and both were Federalists.—Mr. Ridgely, formerly a Republican, latterly a Federalist; Mr. Tilghman, always a Federalist, who, although he supported his own opinions with firmness, always treated the opinions of others with respect and politeness, whose amiable private character and judicial integrity had been so generally satisfactory, that not a member of either branch of the Legislature intimated his removal. From this view it must appear, that our Government, which is truly Republican, was not impelled by the unworthy motives that have been ascribed to her, and that Federalists of merit where they can be found are treated there with respect. Now, let me call your attention to a case in Maryland, when the Government was Federal, and in doing that, if I should in any respect misstate it, I hope my colleague, who, I believe, at that time was a member of the State Senate, will correct me. In 1791, it was found necessary to establish a criminal court for Baltimore town, and a law passed authorizing the appointment of a judge with a salary, and four associates, (whose commissions were during good behaviour,) to hold that court. This law was also limited to a short period; Mr. Chase, then judge of the general court, then a Republican, was appointed the judge of the criminal court. At the next session of the Legislature, there was an attempt to impeach him on the ground that the offices were constitutionally incompatible; this, however, failed; the Legislature, then, to get rid of Mr. Chase, repealed the law, and renewed it "*totidem verbis*." The Executive, however, renewed Mr. Chase's commission; but, at the next session, so fixed were the Federalists on their purpose, that they repealed that section of the law that related to the judges, and amended it, that "the district judge should be the judge of the criminal court," and thus dismissed Mr. Chase, the obnoxious judge. But, during all this business, in neither case was the Constitutional right to repeal these laws ever questioned, although the judges' commissions were during good behaviour; which must show the Legislative opinion, that a commission during good behaviour could not be beyond the law that created it, and must furnish strong evidence to the point before us, at two different periods in the politics of Maryland, that will suit each side of the House, and form a contrast in which I think the Republicans will not suffer.

Mr. COLHOUN, of South Carolina.—Much time, Mr. President, has been spent in the important debate on the resolution before you; great ingenuity, great abilities, and much eloquence, have been displayed on the occasion, by gentlemen on both sides of the question, and the subject presented in almost every possible point of view. For me, therefore, at this late stage of the debate, to rise, for the first time, in this House, on a subject of such magnitude and intricacy, already so ably discussed, and expect to throw much light on the subject, or find much new ground to tread on, would be presumptuous. But, thinking as I do, that the present question, both in principle and in its consequences, is of the highest importance to the Union; under this impression, under this conviction, I should be unfaithful to my own feelings, were I to give a silent vote on the occasion. If I can, therefore, throw but the weight of a feather in the scale that I think ought to preponderate, I shall think myself justified in doing so. But, sir, the subject has been so much exhausted, as well as the patience of the House, that I shall endeavor to be as concise as possible, and draw into as narrow a circle as so extensive a subject will admit, the leading features of the case, which, I apprehend, should have most weight in deciding the question.

First, then, I shall endeavor to show, that the present resolution, in its effect, is repugnant to the express letter and spirit of the Constitution. And, secondly, I shall contrast the obvious and natural consequences that will arise from agreeing to the resolution, with those that would follow should we disagree.

On the first point, the most important, as well as the most proper question, is, have we power, under the federal Constitution, to repeal the late act of Congress, so far as it respects the office and salary of the judges appointed under that act? If, by the letter and express words of the Constitution, we have not the power, then farther reasoning on the subject would be unnecessary, and arguments drawn from expediency or inexpediency would be useless and irrelevant to the question.

I am not, sir, disposed to advocate the late Judiciary system in all its modifications, as I think it imperfect, and not adequate to the purposes intended, and that it is not such an arrangement of the Judiciary as ought to have been adopted. But, as it has got into existence, and is in operation, and the judges appointed under the act, commissioned agreeably to the Constitution, during good behaviour, the ground is now changed; and although, previous to the adoption of the act, opposition to the inexpediency of the measure would have been right, would have been proper; yet now, under existing circumstances, as the law has passed, and the Constitution has attached to the office of the judges appointed under it, durability of office, coextensive with good behaviour, to amend would be proper, but to repeal the act, at least so far as it respects the judges, would be unconstitutional; for I am of opinion, that as soon as their appointments were completed, and their commissions during good behaviour received, that then their offices as judges were completely beyond the reach of Legislative power; and that therefore the present resolution, in its operations, so far as it respects the office of the judges, is unconstitutional, and ought not to be agreed to.

Permit me here, sir, to define the legal rule of explaining a deed, a law, or Constitutional point, and then to apply the part of the Constitution in question to that rule. The rule of law is to make such an exposition of the section or clause under consideration, as will comport with its plain meaning when the words are taken in their common and usual acceptation, agreeably to the English language. If the clause is composed of dubious and uncertain expressions, that will admit of different meanings, or if several parts of the instrument seem to contradict, or be repugnant to each other, then the rule is, to make such a construction, if possible, as will be consistent with reason, and agreeable to the intention and purview of the whole instrument taken together. I think I am correct on the rule of law. Let us now examine the parts of the Constitution connected with the present subject, and apply to them the rules of law. Amongst the detailed powers of the Legislature, under the eighth section of the first article of the Constitution, we find the following, to wit: "to constitute tribunals inferior to the Supreme Court."

If this was the only clause giving them power to establish the inferior courts, I would readily grant that the Legislature could make the law, and at pleasure repeal it, and that the judges, as to the tenure of their office under the act, would be at the will of the Legislature, the existence of the law determining the office of the judge, precisely in the same manner and on the same footing as of the Secretary of State, the Secretary of the Treasury, and the Secretary of the Navy. But the subject is more fully expressed and explained under the proper head, in the first section of the third article of the Constitution, where it says: "The judicial power of the United States shall be 'vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, 'ordain and establish. The judges, both of the 'supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated 'times, receive for their services a compensation 'which shall not be diminished during their continuance in office."

Here the intention of the Constitution is explicit, and cannot be doubted; plainer words and a more clear constructed sentence cannot be penned. "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." We all fully and at once understand what is good behaviour in a judge, the oath he takes and the very nature of his office show it; to act with justice, integrity, ability and honor, and to administer justice speedily and impartially, is good behaviour; if he acts contrary, it would be misbehaviour, and the Constitution in that case has given a remedy by impeachment. If the clause, therefore, admits a certain, clear, and consistent construction, and no other part of the Constitution contains any article contradictory to it, which I contend is the case, the construction given by the gentlemen on the other side, being by implication only, and that against the plain and express words of the clause, will not be warranted by the principles of law; for if the Constitution is paramount to an act of the Legislature, then to hold an office during good behaviour, and during the pleasure of the Legislature, are synonymous terms; it must be so, or the act would be repugnant to the Constitution. The Constitution, on the face of it, appears to have been drawn with precision and correctness, nothing superfluous, nothing deficient. Had the Convention intended the construction now insisted for by the favorers of the resolution, to wit: that the judges of the inferior courts held their offices, not during good behaviour, but at the will of the Legislature, an explanatory clause after the words "good behaviour," would have been necessary and should have been inserted, to this effect: "Provided always, that the judges of such inferior courts shall hold their offices *only* during the existence of the law under which they may be appointed." By the clearness with which every part of the Constitution has been penned, it is right, it is fair, by analogy of reasoning, to say, that as no such provision is inserted, no such supposed construction was intended, and that therefore the plain letter and spirit of the Constitution must prevail. But, if possible, to make the matter more clear and conclusive, I beg indulgence, whilst I state three collateral arguments which greatly strengthen and enforce the construction which I advocate of that part of the Constitution. The first is, that all enlightened statesmen, at least since the American Revolution, with concurrent testimony, agree, that the Judiciary ought to be kept separate from, and independent of the Legislative and Executive powers; that without this check and control, there could be no true and rational liberty. Secondly, that the framers of the Constitution, who were themselves amongst the best informed and most distinguished citizens of the Union, intended to keep them distinct and separate, as the three great divisions and supporting pillars of the Constitution; this appears from the distinct position they assigned each on the face of that instrument. And thirdly, by the latter part of the first section of the third article, the Legislature have no power to lessen a judge's salary, even to the amount of one cent. This restriction must refer to the Legislature, as they alone have control over the funds of the Government; for the rule of law is, "that is certain, which can be rendered certain." If, therefore, this clause restrains the Legislature from even diminishing the salary of the judge, *a fortiori*, it prevents the removal from the office itself, as the words composing the whole clause are equally plain and expressive. Thus it appears, at least to me, by the plain and obvious construction of the words of the Constitution, confirmed and explained by the makers of it, that all the judges have a right to hold their offices during good behaviour, and that the Legislature, as a creature of that Constitution, cannot by any Legislative act, remove them. The gentlemen who advocate the resolution, in support of the measure, say, that Virginia, Maryland, and the last Congress, afford examples of the Legislature abolishing courts, and removing from office judges who, under a Constitution, held their appointments as in the present case, during good behaviour. Let us examine the facts, and see if they apply. Virginia had a general court, with common law jurisdiction, which extended throughout the State, a court of chancery, with equitable jurisdiction, equally extensive, and a court of admiralty; the judges of these three courts constituted the court of appeals. About the year 1787, the Legislature of that State found it necessary to establish circuit courts, and in the law enacted, that "the judges of the court of appeals should be the circuit court judges." This law the judges refused to execute as unconstitutional, and said, "they 'considered themselves as forming one of the three 'pillars on which the great fabric of government 'was erected, and that, when this pillar was endangered, a resignation would subject them to the reproach of deserting their stations, and betraying 'the sacred interests of society, entrusted with 'them; that the propriety and necessity of the 'independence of the judges, is evident in reason 'and the nature of their office, and that this applies more forcibly to exclude a dependence on 'the Legislature, a branch of whom, in case of impeachment, is itself a party." This was the opinion formed on the law by the then judges, who were some of the ablest lawyers, and greatest statesmen in the Union. I believe the event was, they protested against the law as unconstitutional, resigned their offices, had the resignation recorded, and afterwards were appointed circuit judges. If this statement is correct, which I presume in substance it is, can it be said, that it affords an example that would justify, or in the smallest degree support the principles of the resolution? In the case of Maryland, I have not had full information, therefore cannot decide. In the case of Tennessee and Kentucky, the district courts were abolished; the judges were not removed from office; but by law continued as circuit court judges, with additional duties and additional salary of five hundred dollars each. They neither vacated their office, nor had to take a new oath or new commissions; therefore, in this case, there was no violation of the Constitution. But, to sum the business up, the case of Virginia is against them; the case of Kentucky and Tennessee, not in point; and Maryland, should it afford an example, is the only and solitary one. But, let us now suppose for argument sake, though the fact is otherwise, that half of the States in the Union passed such laws; if those laws are founded on wrong and unconstitutional ground, should they be a precedent for us? Surely not. If they were founded in error, we ought to correct and not continue the error.

Some gentlemen have said, although we cannot remove the judge from the office, yet we can remove the office from the judge. To me this is a paradox in legislation. Do we mean to act indirectly, what we would not profess to do openly and directly? Are the gentlemen prepared to meet this question in all its consequences? Let me suppose they are, and sketch a law founded on the consequences of their repealing act, and exhibit the case in its real and true light. In framing a law the preamble should state facts, and explain the reasons for passing the act. Suppose, then, we should introduce, instead of their present repealing law, the following, viz: Whereas A, B, C, &c., the sixteen Federal judges appointed under the late act of Congress, although they have been commissioned during good behaviour, and have discharged the duties of the office with integrity, ability, and honor, yet we, the Legislature, in Congress assembled, finding their number to be more than we judge necessary for the administration of justice to the good people of the United States, and deeming the law under which they act not the best possible system that could be adopted, and thinking, also, that the public good requires that the judges of the inferior courts should not hold their offices during good behaviour, but should hold them at the will of the Legislature: Be it therefore enacted, &c., That the said sixteen Federal judges shall be, and they hereby are, removed and discharged from their respective offices as judges, and shall not be entitled to any compensation or salary after the passing of this act. This act and preamble would be in truth only what the repealing act in its effects intended, and will naturally produce.

Are we prepared to vote for a law in this form, with all the true reasons stated on the face of the act, and to wish that publicity should be given to it among our constituents, as an act that completely destroys the independence of their judges?

For the removal of the judges, I may venture to assert, is the great object of the repeal; and in this consists the injury from the Legislature assuming a power, without giving any reason in the act, as in the present case, "to repeal at pleasure any law establishing an inferior court," and by that means dismissing the judges from office. Party spirit, caprice, or personal dislike, would be sufficient cause of removal from office; the judges would know this, and perhaps some of them soon feel it. Let us suppose, and it is even supposable, that a cause came on before one of the dependent judges, between an influential member of Congress and a poor and obscure citizen; would any person say that the parties stood on equal ground, and that the scales of justice hung equal between them?

It would be almost beyond human nature for this dependent judge to be impartial, especially if his salary was the only means of subsistence; and men of great abilities, and well fitted for the office, might be in that situation, for a wise man tells us, that "the race is not always to the swift, nor riches to men of understanding." So fully am I convinced that the judges ought to be independent of the Legislature as well as of the Executive, that if there could be a doubt that they are not fully and completely so, the Constitution ought to be amended for that express purpose. Hitherto, the judges have supposed themselves to be independent, and the people have acquiesced under that belief, and ought and do wish their judges to be independent. One or two observations will prove their opinion on this point. All the States in the Union have, in their several constitutions, made their judges independent. The people at large, in every State, having sent members to their respective conventions, those conventions having fixed the conditional durability of offices in their judges, and the people uniformly acquiescing under their system, afford sufficient evidence of the public sentiment. Besides, in the case of Mr. Chief Justice Jay, when appointed Envoy Extraordinary to the Court of Great Britain, was not opposition to the appointment echoed from one end of the Continent to the other? That the example was dangerous, it put the judges under the influence of the Executive; that, although the prospect of an honorary appointment within the gift of the President was remote, yet it might influence and lessen their independence. If, then, the people were so alive and quick in feeling, when the causes of alarm were so remote and contingent, what will, what must, be their opinion, when they find out that the judges, from being independent, by holding their offices during good behaviour, are reduced to the servile situation of holding the office at the will, at the caprice of a Legislature? Is the public mind prepared for a shock of this kind? Shall the Legislature with a strong arm, and by an assumed power, destroy their independence, and thereby their existence as one of the pillars of the Constitution? In this situation of your Judiciary, will the streams of justice flow equally to the habitation of the rich and cottage of the poor? No man who knows human nature will answer in the affirmative.

Let us now for a moment examine the consequences of giving a negative to the present resolution. If the resolution is not agreed to, what are the dreadful and fatal consequences that would follow? I answer, the worst that can possibly happen is, the annual payment of about thirty thousand dollars, the salaries of all your circuit court judges, who do the whole business of these circuits throughout all parts of the Union. Their number will neither impede justice, nor injure the principle or execution of it. It is not in controversy, the right of the Legislature to arrange and modify all the courts of justice, so as to make them best answer the distribution of justice with convenience to the citizens; the whole Judiciary can be systematized and put on the best and most respectable footing, without violating your Constitution. If the circuit court judges are too numerous, say in your revising law, when vacancies happen, that such vacancies shall not be filled up until the whole are removed, or as many of them as it may be necessary to remove. Thus the evil would be continually remedying itself, and at no very remote period would be totally removed, and that without any interference with the Constitution.

On the other hand, should the resolution be carried, what are the evils that would result? Your judges in that case would hold their offices at the will of the Legislature, and be their mere creatures, subservient to all their whims, caprice, and party spirit; would cease to be a check or barrier between them and the people, in cases of unconstitutional acts and abuse of power. It would also produce, agreeable to the course of human nature, a servile disposition, which by degrees would enervate the mind, and completely, in process of time, destroy that manly independence and firmness, so essential to an upright and good judge.

If, then, the evils, as I have stated, would be greater from adopting the resolution, than those that would result from passing a negative on it; and we add to that balance, at least the doubt of its being against the Constitution—and that this doubt is well founded is evident from the nearly equally divided opinions of the members within the walls of the Senate, and by the sentiments of thousands throughout the United States, of the ablest statesmen and best citizens—let us, then, on this, at least precarious and doubtful ground, tread light and step with caution; for to destroy the independence of the judges, is wounding the Constitution in a vital part—it is removing one of the main pillars that support it. If we begin to infringe the Constitution in one instance, we may in another, and, by slow and imperceptible degrees, alter all the great and leading principles of it, until at last the substance would be gone, and the shadow only remain: for, like a body of water, if one drop makes its passage, the whole stream will soon follow.

Mr. C. then went at some length into a full statement of the duties and jurisdictions of the

supreme, circuit, and district courts; showed where he thought them defective, and pointed out the practical amendments necessary to make a complete and uniform Judiciary; he urged that such amendments would produce a system much preferable to either the present or former, and would render the present motion for a repeal unnecessary. This statement he gave preparatory to his motion, which was as follows:

"*Resolved*, That a committee be appointed to inquire if any, and what, alterations are necessary in the Federal Judiciary system."

This was rejected by the VICE PRESIDENT as being out of order; which gave rise to a verbal amendment, that the word "repealed," in the original motion be struck out, and the words "revised" and "amended," be inserted, moved by Mr. DAYTON, to the original resolution, on which the yeas and nays were taken, and it was determined in the negative, as follows:

YEAS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Sheafe, Tracy, Wells, and White—13.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright—15.

The main question was carried by a similar division, and Messrs. ANDERSON, BALDWIN, and BRECKENRIDGE, were appointed a committee to bring in a bill.

WEDNESDAY, January 20.

The Senate assembled, but, there being no quorum, adjourned.

THURSDAY, January 21.

The credentials of SAMUEL WHITE, appointed a Senator by the Legislature of the State of Delaware, to supply the vacancy occasioned by the resignation of their late Senator, Henry Latimer, were presented and read, and the oath prescribed by law was administered to him by the VICE PRESIDENT.

Mr. ANDERSON, from the committee to whom was referred the bill authorizing the discharge of Laurence Erb from his confinement, reported an amendment; which was read.

Ordered, That it lie for consideration.

Mr. TRACY, from the committee of conference upon the differing votes of the two Houses, on the amendments to the bill concerning the library for the use of both Houses of Congress, made a report, and the report was adopted: Whereupon.

Resolved, That the Senate do adhere to their fourth and sixth amendments, and recede from their seventh amendment, to the said bill.

FRIDAY, January 22.

A message from the House of Representatives informed the Senate that they recede from their disagreement to the fourth and sixth amendments to the bill concerning the library for the use of both Houses of Congress. They have passed a bill fixing the Military Peace Establishment of the United States, and a bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and, by unanimous consent, was read a second time, and referred to Messrs. JACKSON, DAYTON, and HOWARD, to consider and report thereon.

The bill last mentioned in the message was read the first, and, by unanimous consent, a second time, and referred to Messrs. BALDWIN, SHEAFE, and MORRIS, to consider and report thereon.

Mr. ANDERSON, from the committee to whom was referred, on the 19th instant, the resolution for the repeal of an act of Congress, passed on the 13th day of February, 1801, reported a bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes; which bill was read, and ordered to the second reading.

The Senate proceeded to consider the amendment, reported by the committee, to the bill authorizing the discharge of Laurence Erb from his confinement, and the report was adopted, and the bill being further amended; on motion to expunge the last proviso, to wit:

"That the said judgment shall remain in full force against any estate, real or personal, which the said Laurence Erb may hereafter acquire, and that process may at any time be thereupon issued against the same:"

It passed in the negative—yeas 4, nays 21, as follows:

YEAS—Messrs. Jackson, Morris, Wells, and Wright.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Dayton, Ellery, T. Foster, Franklin, Hillhouse, Howard, Logan, S. T. Mason, J. Mason, Nicholas, Olcott, Sheafe, Stone, Sumter, and White.

On motion, that this bill pass to the third reading as amended: it was determined in the affirmative—yeas 19, nays 4, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Chipman, Cocke, Dayton, Ellery, Franklin, Jackson, S. T. Mason, J. Mason, Nicholas, Olcott, Sheafe, Stone, Sumter, Wells, and Wright.

NAYS—Messrs. T. Foster, Hillhouse, Howard, and Morris.

MONDAY, January 25.

JAMES ROSS, from the State of Pennsylvania, attended.

The bill, entitled "An act authorizing the discharge of Laurence Erb from his confinement," was read the third time, and passed.

Mr. ROSS presented the memorial of the Philadelphia Chamber of Commerce, signed Thomas Fitzsimons, President, stating the decayed situation of the piers erected in the river Delaware, for the protection of vessels in the Winter season, and praying Congress to make such appropriations,

and take such other order thereon, as the necessity of the case requires; and the petition was read.

Ordered, That it lie for consideration.

The bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes, was read a second time; and, it was agreed that the consideration of this bill should be the order of the day for to-morrow.

TUESDAY, January 26.

Mr. BALDWIN, from the committee to whom was referred the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, reported amendments; which were read.

Ordered, That they lie for consideration.

The Senate resumed the second reading of the bill to repeal certain acts respecting the organization of the courts of the United States, and for other purposes; and, having agreed to sundry amendments.

On motion of Mr. DAYTON,

"That the bill be referred to a select committee, with instructions to consider and report the alterations which may be proper in the Judiciary system of the United States, and the provision to be made respecting the judges of the circuit courts, established by the act of the 13th of February, 1801, in case the said act shall be repealed:"

It passed in the negative—yeas 14, nays 16, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On the question to agree to the reading of this bill as amended, it was determined in the affirmative—yeas 15, nays 15, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

The VICE PRESIDENT determined the question in the affirmative.

So it was *Resolved*, That this bill pass to the third reading as amended.

WEDNESDAY, January 27.

A message from the House of Representatives informed the Senate that the House have passed a bill to repeal, in part, the act, entitled "An act regulating foreign coins, and for other purposes," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. MORRIS presented the petition of White, Brothers & Co., and others, in behalf of the hat manufacturers of the city of New York, praying additional duties on the importation of foreign hats, and the repeal of the duties on wool and hat trimmings; and the petition was read.

Ordered, That it lie on the table.

Mr. BALDWIN, from the committee to whom was referred, on the 15th instant, the bill authorizing the discharge of John Hobby from his confinement, reported the bill without amendment.

The Senate took into consideration the amendments reported by the committee to the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, which were adopted; and, on motion to strike out the third and fourth sections of the bill, it was agreed that the further consideration thereof be postponed until to-morrow.

The Senate proceeded to the consideration of the report of the committee on the bill authorizing the discharge of John Hobby from his confinement; and, on the question to agree to the third reading of this bill, it passed in the negative So the bill was lost.

On motion, that it be

Resolved, That —— be, and they are hereby, appointed a committee to inquire whether any, and, if any, what regulations are proper to be adopted respecting public officers and agents who shall squander public money officially entrusted to them, with leave to report by bill, bills, or otherwise:

Ordered, That this motion lie for consideration.

JUDICIARY SYSTEM.

The bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, was read the third time, and the blanks were filled, when

Mr. DAYTON said, that although he had been defeated in two attempts to arrest the progress, or turn the course of this business, he was not, however, so far discouraged as to be deterred from making one other. It would, he said, be recollected, that all which had been asked by him and by the opposers of this measure, in the first instance, was to attempt some modification of the law proposed to be repealed; but this was refused them. It was then proposed that both parties should unite their labors with a view to revise and amend the whole Judiciary system, but this also was denied them. Yesterday he had offered an amendment combining both objects; but it was negatived. He was encouraged, however, to renew it, with a little variation, even in this late stage of the bill, because he had learned that it had not been perfectly heard and understood by one of the gentlemen who had voted against it. He took leave to remind honorable members, that these conciliatory motions had been rejected by a majority of one, or at most two only, and that of course the Senate were almost equally divided.

Mr. D. concluded by saying, that it could not come to good, if measures, admitted by some to be bold and violent, and believed by many others to be unconstitutional, should be carried by a bare majority, and he trusted, therefore, that this proposition would now succeed. He then moved

that the bill be referred to a select committee, with instructions to consider and report the alterations which may be proper in the Judicary system of the United States.

Mr. COLHOUN begged to be indulged with the expression of a few ideas, which he considered the more important as the bill was likely to be carried by a casting vote. He had before thought, and he still thought, the best way was to appoint a committee to prepare a system that would accommodate the varying ideas of gentlemen. He had voted yesterday against the proposition made, under the impression that provision was thereby to be made for the judges. This he thought quite premature, before it was known that the act would be repealed; as it was at any rate doubtful whether one-half of the Senate did not think the meditated repeal a violation of the Constitution. He thought, for harmony, it were better to refer the bill to a select committee. The session would be two or three months longer, and if the report made by the committee should not prove agreeable, there would be time enough to bring in another bill. This attempt to harmonize all parties can do no injury, while, on the other hand, a system might be framed that gentlemen may be better pleased with than even a repeal of the act.

Mr. NICHOLAS said, he flattered himself the subject was well understood by the Senate. What is now the question? The same that has been so often decided. Gentlemen, in opposition, have said amend, but do not repeal. He could say that every vote of that House, in every stage of the discussion, had said repeal and do not amend. He believed the old system required but little amendment. It was the best suited to the interests of the United States and of the States. The law of the last session was in fact a bar to improvement. Gentlemen say, why not provide for these judges as you have provided for a judge of the Supreme Court? He would reply that the last operation was simple and easy of execution; but how were we in this mode to get rid of the circuit judges without having these courts in one part of the Union and not in another?

The gentleman from New Jersey has said that this measure is admitted to be bold and violent. By whom is it admitted? Not by me, or gentlemen who think with me. As to a regard to the Constitution, there is no man here, let his boast of federalism be what it may, who can take stronger ground than I hold. Gentlemen profess a great respect for the Constitution; but our principles are not to be evidenced by mere professions. They are to be evidenced by the series of our actions. My conduct, said Mr. N., since the formation of the Constitution to this day, is known by those who know me, as well as the conduct of gentlemen is known by those who know them. To the people I appeal. I am not to be alarmed by the tocsin of hostility to the Constitution that is so loudly sounded in our ears. I hope, sir, we shall have the question.

The question was then taken on Mr. DAYTON's motion by yeas and nays, and resulted—yeas 15, nays 15, as follows:

YEAS—Messrs. Colhoun, Chipman, Dayton, D. Foster, Hillhouse, Howard, [illegible], Morris, Ogden, Olcott, Ross, Sheafe, Tracy, [illegible], and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Ellery, T. [illegible], Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

There being an equal vote, the VICE PRESIDENT declared himself in the affirmative, and the reference was carried.

The VICE PRESIDENT said he felt disposed to accommodate the gentlemen in the expression of their wishes, the sincerity of which he had no reason to question, to ameliorate the provisions of the bill, that it might be rendered more acceptable to the Senate. He did this under the impression that their object was sincere. He should, however, discountenance, by his vote, any attempt, if any such should be made, that might, in an indirect way, go to defeat the bill.

A committee of five members was then balloted for; the following is the result of the ballots:

Mr. BALDWIN 16. Mr. COLHOUN 16. Mr. DAYTON 15. Mr. ANDERSON 15. Mr. MORRIS 15. Mr. BRECKENRIDGE 14. Mr. BROWN 14. Mr. CHIPMAN 14. Mr. HILLHOUSE 14. Mr. COCKE 11. Mr. ELLERY 2. Mr. S. T. MASON 2. Mr. ROSS 2.

The five first named constitute the committee.

THURSDAY, January 28.

The bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," was read the second time, and referred to Messrs. ANDERSON, ELLERY, and LOGAN, to consider and report thereon.

The Senate resumed the second reading of the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, together with the motion made yesterday for expunging the third and fourth sections; and

Ordered, That the bill be committed to Messrs. BALDWIN, MORRIS, and SHEAFE, further to consider and report thereon.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and of the House of Representatives:

I lay before you the accounts of our Indian trading houses, as rendered up to the first day of January, 1801, with a report of the Secretary of War thereon, explaining the effects and the situation of that commerce, and the reasons in favor of its further extension. But it is believed that the act authorizing this trade expired so long ago as the third of March, 1799. Its revival, therefore, as well as its extension, is submitted to the consideration of the Legislature.

The act regulating trade and intercourse with the Indian tribes will also expire on the third day of March next. While, on the subject of its continuance, it will be worthy the consideration of the Legislature, whether the provisions of the law inflicting on Indians in certain cases the punishment of death by hanging, might not permit its commutation into death by military execution; the form of the punishment in the former way being peculiarly repugnant to their ideas,

and increasing the obstacles to the surrender of the criminal.

These people are becoming very sensible of the baneful effects produced on their morals, their health, and existence, by the abuse of ardent spirits, and some of them earnestly desire a prohibition of that article from being carried among them. The Legislature will consider whether the effectuating that desire would not be in the spirit of benevolence and liberality which they have hitherto practised towards these our neighbors, and which has had so happy an effect towards conciliating their friendship. It has been found too, in experience, that the same abuse gives frequent rise to incidents tending much to commit our peace with the Indians.

It is now become necessary to run and mark the boundaries between them and us in various parts. The law last mentioned has authorized this to be done, but no existing appropriation meets the expense.

Certain papers explanatory of the grounds of this communication are herewith enclosed.

THOMAS JEFFERSON.

JANUARY 27, 1802.

The Message and papers therein referred to were read, and ordered to lie for consideration.

Mr. JACKSON, from the committee to whom was referred, on the 17th of December last, the letter of Simon Willard to the Secretary of the Senate, relative to a clock executed by the said Willard for the use of the Senate, together with his account therefor, made report, which was read, and ordered to lie for consideration.

The VICE PRESIDENT laid before the Senate the memorial of Narsworthy Hunter, stating that he is appointed a Representative in Congress of the Mississippi Territory, and the inconveniences to which he is subjected from the delay of the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation. Whereupon, the bill was read the second time and referred to Messrs. JACKSON, TRACY, and BALDWIN, to consider and report thereon.

Ordered, That the following resolution be referred to the same committee.

Resolved, That a committee be appointed to bring in a bill providing for the payment and extending the privilege of franking to any person who may attend as a member of the House of Representatives from any district under the jurisdiction of the United States.

The Senate resumed the consideration of the motion made yesterday,

That —— be, and they are hereby, appointed a committee to inquire whether any, and, if any, what regulations are proper to be adopted respecting public officers and agents who shall squander public money officially entrusted to them, with leave to report by bill, bills, or otherwise.

And the motion was adopted.

Ordered, That Messrs. TRACY, NICHOLAS, and OGDEN, be that committee.

FRIDAY, January 29.

A message from the House of Representatives informed the Senate that the House have considered the resolutions of the Senate in respect to Lieutenant Sterret, the officers, and crew of the United States schooner Enterprize, and do not concur therein. They have passed two resolutions expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, and the officers and crew of the United States schooner Enterprize; in which they desire the concurrence of the Senate.

The resolutions were read, and ordered to the second reading.

Mr. BALDWIN, from the committee to whom was referred, on the 28th instant, the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, reported the bill without further amendment; and the report was adopted.

Ordered, That this bill pass to the third reading as amended.

MONDAY, February 1.

The resolutions expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, the officers, and crew of the United States schooner Enterprize, were read the second time, and, by unanimous consent, had a third reading.

Resolved, That the Senate do concur therein.

The bill, entitled "An act for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas," was read the third time.

On motion, to add to the preamble these words: "whereby a state of war now exists with the said Regency;" it passed in the negative.

Resolved, That this bill pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan; in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. CHIPMAN, DWIGHT FOSTER, and WRIGHT, to consider and report thereon.

Mr. BRECKENRIDGE gave notice that he should, to-morrow, move for the discharge of the committee, appointed the 27th of January last, to whom was referred the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, with instructions to consider and report the alterations which may be proper in the Judiciary System of the United States.

TUESDAY, February 2.

Mr. ROSS presented the memorial of Jared Ingersoll and others, counsellors, practising in the courts of Pennsylvania, and in the Circuit Court of the United States, for the eastern district of Pennsylvania, submitting their unanimous opinion, deliberately and anxiously formed, that the circuit court, on the principles of its present organization, is an important medium for the administration of justice, and that the abolition of

the court will probably be attended with great public inconvenience; and the memorial was read, and ordered to lie for consideration.

Mr. ROSS, on presenting the above memorial of the bar of Philadelphia, against the repeal, observed that it was not his intention to embarrass the motion of the gentleman from Kentucky,* by moving, in the present stage of the business, its reference to the committee now proposed to be dissolved. He offered it, that the Senate, having before them the opinions of a respectable set of men, might be properly impressed by them. The opinions expressed were unanimous, and were strongly enforced in a letter accompanying the memorial, addressed to his colleague and himself, and signed on behalf of the bar, by Messrs. Dallas and McKean, the one the Attorney of the District, and the other the Attorney General of Pennsylvania.

A Message from the House of Representatives informed the Senate that the House have passed a bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I now lay before you—

1. A return of ordnance, arms, and military stores, the property of the United States.

2. Returns of muskets and bayonets fabricated at the armories of the United States at Springfield and Harper's Ferry, and of the expenditures at those places; and,

3. An estimate of expenditures which may be necessary for fortifications and barracks for the present year.

Besides the permanent magazines established at Springfield, West Point, and Harper's Ferry, it is thought one should be established in some point convenient for the States of North Carolina, South Carolina, and Georgia. Such a point will probably be found near the border of the Carolinas, and some small provision by the Legislature, preparatory to the establishment, will be necessary for the present year.

We find the United States in possession of certain iron mines and works, in the county of Berkley, in the State of Virginia, purchased, as is presumed, on the idea of establishing works for the fabrication of cannon and other military articles by the public. Whether this method of supplying what may be wanted will be most advisable, or that of purchasing at market, where competition brings everything to its proper level of price and quality, is for the Legislature to decide; and, if the latter alternative be preferred, it will rest for their further consideration in what way the subjects of this purchase may be best employed or disposed of. The Attorney General's opinion on the subject of the title accompanies this.

There are, in various parts of the United States, small parcels of land which have been purchased at different times for cantonments and other military purposes. Several of them are in situations not likely to be accommodated to future purposes. The loss of the records prevents a detailed statement of these until they can be supplied by inquiry. In the mean time, one of them, containing eighty-eight acres, in the county of Essex, in New Jersey, purchased in 1799, and sold the following year to Cornelius Vermule and Andrew Codmas, though its price has been received, cannot be conveyed without authority from the Legislature.

I enclose herewith a letter from the Secretary of War, on the subject of the islands in the lakes and rivers of our northern boundary, and of certain lands in the neighborhood of some of our military posts, on which it may be expedient for the Legislature to make some provision.

TH. JEFFERSON.

FEBRUARY 2, 1802.

The Message was read; and,

Ordered, That the Message and papers therein referred to lie for consideration.

JUDICIARY SYSTEM.

Mr. BRECKENRIDGE introduced the motion, of which he gave notice yesterday, that the committee appointed the 27th of January last, to whom was referred the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes, with instructions to consider and report the alteration which may be proper in the Judiciary System of the United States, be discharged.

Mr. BRECKENRIDGE.—It will be recollected I yesterday gave notice, that I should this day move to discharge the select committee, to whom the judiciary bill was last week committed. As there are some gentlemen now in the Senate who were not present during any part of the discussion, I deem it proper to say a few words as to its progress, and as to the real situation in which it now stands.

Early in January this discussion commenced, on a resolution going to the unqualified repeal of the judiciary law of last session. After many days' debate, and at the moment when the question was about to be put on the resolution, a motion was made to transform it into a resolution for the amendment, instead of the repeal of the law. This was negatived. The resolution was then passed; a bill brought in, and carried to the second reading, when another motion was made to recommit it to a select committee, for the purpose of amending the system. This was also negatived. The bill was then ordered to its third reading, and, on the question for its passage, another motion was made for its commitment to a select committee, and carried by the casting vote of the Chair. In this situation it now rests.

During the whole of the discussion, those who were in favor of the repeal uniformly argued and voted against anything like amendment. They over and again avowed it as their opinion, that they would not consent to go into any amendments in the judiciary system, until that law was repealed; that they considered its existence as an insuperable bar to all amendments; and that indeed the only great amendment which they wished for,

* Mr. BRECKENRIDGE, the preceding day, gave notice that he should this day move to discharge the committee.

at this time, was a repeal of that law, the obnoxious tendencies of which were, cancer-like, to be certainly removed by cutting it out by the roots.

On the other hand, the gentlemen in opposition contended, that the law was enacted and made with great deliberation and wisdom; that it was essential to the due administration of justice, and to the peace of the nation; that it requires no amendment, that it cannot be amended; for that even admitting the courts and judges erected by that law were useless and burdensome, yet Congress have not the power to put down those courts and judges, because they are in under the Constitution. We are therefore at issue upon the simple point, shall this law be repealed or not.

From this state of things, what can be expected from the labors of this committee? Can they, on the one hand, forward the views of those who carried to a third reading a bill to repeal a certain act which they considered as fundamentally vicious, by attempting to amend that act? Or, on the other hand, can they forward the views of those who think this law the result of experience and wisdom, and moreover fastened on the nation by the Constitution, by attempting to make radical changes in it? Can they, in short, from two such contradictory and opposite opinions, opinions at variance in principle and not in detail, ever hope to produce anything that will be satisfactory to both sides? They cannot. And it appears to me impossible that gentlemen can seriously expect it.

I consider it, Mr. President, as a great contest on principle, and not on detail. A committee cannot, and ought not to settle principles. On the floor of this House alone ought principles, furnishing the ground-work of legislation, to be originated and settled. Details only are proper from your select committees. We cannot abandon this question. It cannot be suffered to escape us, or be entangled in forms. It must be settled. We will have no modification of this bill. We must, on this floor, meet the plain unqualified question of repeal. And in order that we may be enabled to do so, I now move you, that the committee to whom the bill was referred on Wednesday last, be discharged from proceeding further therein. The bill will then be ready for its passage, and the whole merits of the subject open to discussion.

Mr. DAYTON.—I should not have arisen so soon in the debate, had the member from Kentucky been more correct in the information he has given the Senate. It must be recollected by the Senate, contrary to the gentleman's statement, that neither the first, second, or third motions made on the subject were the same. The first motion was to revise and amend, instead of repeal the act of the last session, and was negatived; the second was for revising the whole Judiciary system, and connecting therewith a proposition to make provision for the judges, which had been disapproved of by one honorable gentleman, and also negatived; the third so far differed from the second, as to be agreeable to that honorable member, and was agreed to. A committee was appointed. He recollected the anxiety of the friends of the honorable member, and of the honorable member himself, at not being one of the committee. He was sorry his anxiety had produced the extravagant proposition on the table. Is not the gentleman's ambition satisfied? He might have been contented with the agency he already had in this business. He had already delivered two speeches that had been listened to with attention.

Gentlemen had, in the first stages of this business, been permitted to take their own course; while employed in the holy work of destroying the Constitution, they were suffered to go on, until their course was arrested by the reference of the bill. He would ask, if, when the subject was so referred, for the purpose of revising the whole Judiciary system, it was proper, wise, or decent, to discharge the committee, without their asking their discharge? He trusted a majority would not be found to sanction such a step. He trusted one at least, perhaps many, would be found among those in favor of a repeal, who would vote against discharging the committee. He trusted that a regard to appearances would save them from sanctioning such a procedure. The committee had not been inattentive to their duty. No such thing was even suggested. He trusted, therefore, the proposition would be rejected, and that in its adoption would not be found a practical comment on the conciliatory recommendation of the President, which had been echoed by gentlemen on that side of the House.

Mr. ROSS.—I have long had the honor of a seat in this House, and this is the first time I have ever heard a motion for the discharge of a committee, unless by a member of the committee itself. And what is the reason assigned? Difference of opinion on principle. With whom existed this difference? Surely not with one political side distinguished from another. For we have just heard the opinions of gentlemen of high talents, and of firm adherence to the same politics as those of the honorable gentleman, stating that the system is susceptible of amendment. Are gentlemen prepared to decide instantaneously, without information, against opinions so respectable? Surely this would not be legislating with accustomed caution. Are gentlemen prepared to say there is no middle ground? The wisest men deliberate the longest. Why then not wait until the committee report? Hear what they offer. If bad, reject it, but first hear. What appearance would this hasty procedure present? One day the Senate are equally divided, and, by a caution and moderation not easily forgotten, the bill is referred. Afterwards, though opinion is strengthened on one side, all modification whatever is rejected, and the subject is brought forward for a hasty decision. This Mr. R. did not think wise. He hoped the House would proceed cautiously. He hoped they would not proceed by rapid steps to a point that might be attended with serious consequences.

Mr. BRECKENRIDGE.—It is said that what I have done should satisfy a moderate man, and that my ambition should be satisfied. But what ambition can I feel? What prospects of ambition lie before me, in proposing the repeal of this law; when, instead of opening prospects of office to me, the effect is directly the reverse, by destroying those very offices which I might expect? No, sir, my ambition on this, as I trust it will be on all other occasions, is to put down a system fundamentally pernicious. I have stated the grounds on which I deem it so, and I am ready to meet the sentiments of my country.

We are now told that we are to suspend this business for a short time to stop us from sealing the death-warrant of the Constitution. Let me tell these gentlemen, whatever expressions of terror they may make, that they pass by my ear like the wind, and leave not a trace behind. Where is the precipitation talked of? Did not this discussion originate on the eighth of January, and did not the business travel as slow as it could? Had not gentleman acknowledged it had been fully and deliberately discussed? He knew but one subject which had been so fully discussed. What can this select committee do? Have gentlemen answered my arguments on this point? If our opinions on the constitutionality of the bill are so various and contradictory, what can we expect from the magic of a committee but delay? I am sure, therefore, gentlemen are not serious, when they profess an expectation that the report will furnish a plan of accommodation. The principle must be settled here.

Mr. MORRIS begged leave to mention, that the statement made by the honorable member from Kentucky as fact, was not fact. Half of it was true; the gentleman had said we will listen to no amendment, we will have a simple repeal. But it was not true, that this side of the House had declared the system was pure, and admitted not of amendment. It had, on the contrary, been acknowledged by every member that had spoken, to be capable of improvement, and gentlemen had been called upon to point out the defective parts.

But, says the gentleman from Kentucky, we will have no modification of the bill. Is that gentleman, then, the keeper of the consciences of half the House, and the other half too? This is a degree of presumption I never before heard of—that he should get up and say that nothing could be offered which would be approved of. Mr. M. believed a system could be devised better than either the old or the new one.

Nay, Mr. M. said, he would appeal to the language of the gentleman himself, who had told us that, after all, we were content to repeal the law so that we spared the judges. Did not a member from Connecticut delare that he had voted against the law last session, believing it then, and still believing it to be a bad one? He could go on citing every member, that had spoken on his side, to the same effect.

Mr. BRECKENRIDGE.—The gentleman last up has misunderstood what I have said, and built all his observations upon it. I appeal to the House, whether I did not state, in so many words, when I made the motion to-day, that all the gentlemen in the opposition had, during the whole course of the discussion, contended that the courts and judges could not be put down? I have not said that all the gentlemen in the opposition were opposed to any amendment in the system, and, therefore, there was no possibility of the committee's forming any system to meet the wishes of both sides of the House.

Mr. COCKE spoke in favor of the motion.

Mr. S. T. MASON.—I thought my friend from Kentucky had stated grounds that would not have been treated so rudely and abruptly by the gentleman from New York, who had so sternly reproached him with the charge of presumption. His friend had stated truly, that the question was repeal or not repeal, and it was on this question that the House had so often decided. As to the idea of the gentleman from Pennsylvania, that to discharge the committee would be indecent and improper, he really did not see in what possible light it was so. Committees were the mere creatures of the House—even the Committees of the Whole—and nothing was more common than to discharge them. This had been often done, and yet no complaint had been before heard of it.

[Mr. MASON here cited an instance in the Senate, where two members of a committee of three were prepared to report, when the third member, who was against the report, on motion, obtained the discharge of the committee.]

Mr. ANDERSON said, as he was one of the select committee, he thought it his duty to inform the House, that on his making inquiry, he found it had been determined by the committee to admit of no amendments to the system that were not connected with a provision for the judges. This fact would enable the Senate to judge what prospect there was of a report that would be satisfactory to them.

Mr. DAYTON contested the fact, and declared, that though one of the committee, he had no recollection of it. Mr. D. then went somewhat at large into the subject of reference.

Mr. ANDERSON replied.

Mr. TRACY.—In my opinion, few committees have been raised for more important purposes than that now proposed to be discharged; it has been raised for the purpose of considering and reporting such amendments as it would be expedient to make to the whole Judiciary system of the United States. They have sat but a short time; too short, I conceive, to be prepared to decide on the objects for which they were appointed, with sufficient deliberation and maturity of thought. What light has been shed upon the subject since their appointment to alter the course of proceeding then marked out by a Constitutional majority of the Senate? If proper then, is it not equally proper now to aim at a plan of accommodation? No new arguments have been urged. Are gentlemen determined at all events not to change their opinions? This would be improper. Daily instances occur—he hoped they always would occur—and he was sure they would occur in proportion to our desire of imbibing correct opinions, founded on truth. It will be recollected what fell from the Chair on that memorable day, that if the object of gentlemen appeared to be delay, it would not be permitted; but when the House was nicely balanced, it was desirable to give an opportunity to those who desired to devise a plan of accommodation.

Are gentlemen sincerely for making the plan as unexceptionable as possible? They may have their wishes gratified by giving us an opportunity of improving it; and then, if our amendments are not agreeable to them, they may reject them.

I voted for the act of the last session because I thought it a good one; I still think it so; but I declare that, for the good of my country, I will sacrifice all my pride of opinion, and immolate it unhesitatingly whenever that good requires. Is not prudence and caution pre-eminently required at this time? Does not the state of parties, for parties there are, require that we should heal, instead of irritating their wounds? If in this body to-day, one party adopts a particular measure, and to-morrow another party by accident gains an ascendence and destroys it, what would be thought of our proceedings? Was this the dignified mode in which legislation should go on? He was sure gentlemen would not in their hearts say so.

Mr. MORRIS spoke against the motion.

Mr. BALDWIN said, that from the subject as it now stood before the Senate, he was disposed to vote for the discharge of the committee, and that the Senate should itself proceed and finish the business. His reason was, that his own mind was made up to come to a decision on the main question, which had been for a month under discussion; and he had no reason to believe but that this was the case with the other members of the Senate. He also thought there could not be expected a more favorable moment to come to a fair and proper decision. He hoped he should never be in any Legislative Assembly in which it would not be his wish to have the actual majority of the Legislature make the laws and decide all legislative questions. It would give him great pleasure to see every member of the Senate present on this occasion; next to that was the pleasure of having reason to believe that the decision will now be the same as if the whole number was present; he had no doubt but it was generally so understood. This is the highest evidence that can be had in any deliberative assembly of what is their duty, and is the only thing that can be expected to give the most general and permanent satisfaction. He thought it very far from being a disrespect to the committee, or an unusual mode of proceeding; when the Senate is not ready to proceed in a business, they either postpone, commit, or adjourn it; whenever, in the opinion of the majority, the cause for the delay is removed, whether by the labors of the committee or of an individual member, the House proceed in the business, discharge the Committee of the Whole or the select committee, as is seen in every day's practice of Parliamentary Assemblies.

In the discussion of this morning, gentlemen appeared to have, in a great degree, given up what they had before considered their strong ground, viz., the superior excellency of the new judiciary system of last session, now proposed to be repealed. The argument this morning has turned on the incompetency of that system, and the importance of keeping the committee in session, to devise another new one, to be composed out of both the former ones. He must beg leave to submit to the candor of the gentlemen, whether, if that was at present the state of their minds, they had not better let the old system, which has been in operation ever since the beginning of this Government, with which the country is well acquainted, and to which they have been so much accustomed, be continued in operation till their minds are more settled, and till more time can be given to mature and perfect amendments and alterations, which it seems now to be proposed to make as to juries, and other important provisions, which seem now to be in contemplation. He was very unwilling to distract the country by many propositions of new judiciary systems, following each other every session of Congress; he thought it more clearly evident than before, that it was best to go on and restore the old system for a year or two longer at least. As a member of the committee, he must declare it as his opinion, that there was very little prospect of their devising a new one, during the remainder of the present session, which would be so likely to be acceptable as the old; especially as it had never been pretended that the old one was so extremely vicious and intolerable that it might not be continued a year or two longer, till experience and reflection could devise something in which we could be more unanimous than in anything which has as yet presented itself.

The debate was further continued by Messrs. JACKSON, S. T. MASON, and WRIGHT, for the motion, and Mr. ROSS against it.

The yeas and nays were then taken, and were—yeas 16, nays 14, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Chipman, Colhoun, Dayton, Dwight Foster, Hillhouse, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

So it was *Resolved*, That the said committee be discharged.

WEDNESDAY, February 3.

The bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the second time, and referred to Messrs. TRACY, DWIGHT FOSTER, and BROWN, to consider and report thereon.

JUDICIARY SYSTEM.

The Senate resumed the third reading of the bill to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes.

On motion by Mr. ROSS, to amend the first section, by adding thereto, "excepting so much thereof as relates to the courts thereby established in the third district;" it was determined in the negative—yeas 14, nays 16, as follows:

YEAS—Messrs. Chipman, Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

Mr. BRADLEY thereupon rose.—Mr. President, I shall vote for the repeal, because it seems to me that we have got no use for these courts. The business was decreasing when they were appointed, and the old system seems to me to be much better than the new one. The lawyers of Philadelphia like the new one best, but it is for their interest to have a great many courts. Now, Mr. President, I look upon the repeal of this law only as one part of a great system. The system recommended by our worthy President, is a system of more glory than our country ever had. This system is to be completed by lessening all our expenses; by reducing our Military Establishment; by disciplining our militia; by repealing our internal taxes; and then, sir, we shall soon pay our debts, and with a great population of free citizens, we shall make all the tyrants of Europe tremble on their thrones, and in the middle of their armies. None of them will dare to attack this country. This is a glorious system. And then, Mr. President, I do not see how this can be so unconstitutional as the gentleman in the opposition pretend. The words in the Constitution, "to hold during good behaviour," have been interpreted very differently in different States; so I think we cannot apply to the States to fix a right meaning to these words. Well, who then shall we apply to? It seems to me we ought to apply to that country where these words were first used. Now, sir, in that country an act of Parliament can put down any courts or judges, though they do hold their offices during good behaviour. I do not see then, sir, why an act of Congress should not put down courts and judges in this country. The judges will still hold their offices during good behaviour, as much as they do in England.

Besides, Mr. President, I think if we interpret the Constitution as these gentlemen propose, it will amount to a perpetuity for this expensive system; because when a judge dies out, the President is bound to fill up his place; and even if they should all happen to die together, he must appoint sixteen new ones; so I don't see how we are ever to get rid of this system; 'tis an absolute perpetuity, unless God should be moved, as he was by the sins of the old world, to destroy us all by a flood. So, sir, I shall vote for the repeal.

Mr. ROSS.—I regret extremely that by an absence from the earlier part of this session, I have lost the interesting information which has been offered by the able and eloquent discussion of the question. When the intelligence reached me that such a bill was proposed, I lost no time in repairing to my seat, that I might, at least, discharge the melancholy duty of entering my solemn protest against a measure more pernicious in its nature, and more fatal in its consequences, than any ever proposed in this House.

Having already [in the debate on Mr. Ross's motion to except the third circuit from the repealing law] stated my reasons for preferring the present to the former organization of the circuit courts of the United States, I shall repeat nothing respecting expediency, but confine myself strictly to an examination of our Constitutional power to pass the bill now under consideration. And in doing this, I do not mean to deny the power of Congress to add new judges to existing courts; to forbid the filling of vacancies so as to lessen the number of judges; to devolve new duties upon the courts, or take away old, but unnecessary jurisdiction; nor will I dispute their authority to abolish a particular court, where it can be no longer employed for the purposes of its institution, provided such abolition be attended with regulations guarding against the violation of public engagements. All these points may be safely conceded, and the concession will at once silence those gentlemen, who have as erroneously as boldly asserted, that the law of the 13th February, 1801, embraces a principle and furnishes a precedent as broad and as pernicious as the present.

That law declares that the first vacancy in the Supreme Court of the United States shall not be filled up. This would reduce the future number of that court to five.

How does this affect the independence of the court, or of any member of it? Surely there is no breach of your engagement with any individual, nor can I discover what gentlemen intended to condemn.

The same law, in the 21th section, provides that the district judges of Kentucky and Tennessee shall be component members of the courts in the sixth circuit; and it is now asserted that thereby the old courts are abolished, the judges divested of their old commissions, and appointed by the Legislature to fill the new offices vested by that act. But when the old system is examined, we find that the judges in those States had the power of holding *circuit* courts as well as district courts within their respective States. That by the late law they still remain judges of the circuit courts as before, and retain all the powers of *district judges*. That, as some new duties have been devolved upon them, a large additional compensation for their services has been added to their original salaries; and that they have all their original, jurisdiction and more; they sit in the same court, hold the same office, have the assistance of other judges; they lose none of their independence, but gain a great increase of compensation. The law of 13th February, 1801, then displays the sacred regard of the last Congress for the Constitutional permanency of the Judiciary, instead of furnishing a precedent for the Legislative removal of judges from office.

By the bill on your table, the Legislature asserts and exercises the new and dangerous power of abolishing *all* the circuit courts of the United States, of removing from office *all* the judges of these courts, erecting new courts of the same name and with precisely the same jurisdiction, to be held by other persons, who are designated in the bill. The judges are displaced, not because you will no

longer employ circuit judges—for you appoint and employ other circuit judges; the courts are nominally abolished, not because inferior or circuit courts of the United States are useless, or the purposes of their institution at an end—for other courts, of the same name, with the same powers, and for precisely the same purposes, are enacted by this very bill. Whatever its title may be, the bill itself is nothing less than an act of the Legislature removing from office *all* the judges of *all* the circuit courts of the United States. It is a declaration that those officers hold their offices at your will and pleasure. That by law you signify your preference of other men, and that these shall serve you no longer.

This is a direct and palpable violation of the Constitution. After providing for the internal security of a nation, the great care of every legislator is directed towards the pure and prompt administration of justice. It is for the attainment of this great end, that government is principally instituted, and the people are happy, or miserable, as the Judiciary is pure, wise, and independent, or otherwise. The Executive, and Legislative authority, instead of being in their nature paramount, are rather auxiliary and subservient in promoting the free and irresistible operations of the judicial power. In our national Government these three great powers are clearly separated, and deposited in different hands. It is a Government of departments, each representing and exercising the sovereignty for a particular purpose, and each prohibited from enroaching upon or exercising the powers of another.

By article third, sections one and two, the judicial power is vested in a Supreme Court, and such inferior courts as Congress may from time to time establish. The judges of all courts of the United States are to hold their offices during good behaviour, and to receive a compensation, which shall not be diminished during their continuance in office.

The provision for their independence, both of Legislative and Executive power, was wise and absolutely indispensable. From the Constitution itself they have a transcendent jurisdiction, not only between citizen and citizen, but between a State and citizen, between different States, and between the United States and the several States. It would have been preposterous to subject the courts to those whose acts they are directed to interpret and control. The laws of Congress organizing the courts, define the number of judges in each court, fix their compensations and designate the extent of their jurisdiction. But the tenure of office is not derived from the laws, but from the Constitution; Congress cannot erect courts to be held by judges commissioned during the pleasure of the Executive, or of the Legislature, or during five or ten years only; such a law and such a tenure would be clearly unconstitutional.

But it is contended, that although the Constitution prohibits the Executive and Legislature from displacing a judge directly or by name, yet the Legislature may abolish the office, and thereby indirectly effect the same end. For then there will be no office in which the judge can continue, nor any service rendered for which he ought to receive a compensation. There is no violation then of the letter of the Constitution, and the Legislature are the sole judges of its true spirit.

I answer, that no device, however subtle, will protect us in producing a forbidden result. An unlawful end cannot be reached by lawful means. This is a moral and logical truth of the old school, which I believe the new philosophy will find no process of reasoning to overturn; and I should be obliged to any ingenious gentleman for stating a syllogism which would produce such a conclusion. I know well that, by metaphysical abstractions, you may imperceptibly gain a little and a little more, until at last the illusion of the fallacy is scarcely within the compass of detection; but here, where every step can be so distinctly traced, the delusion is impossible. You admit that the dismission of sixteen judges, by name, would be unconstitutional. What difference is there between this and your bill, which declares that the circuit courts shall no longer be held by the present judges, but by certain other men? You do not destroy the office of circuit judge, for you still retain the circuit courts. You remove the office from one set of men who now hold it, and give it to another set that pleases you better. Then you contend that this operation, being a removal of offices from men, is not a removal of men from office, as if your purpose was not as effectually attained by inverting the order of the words as without it; you say there shall be a removal, and yet admit that direct removal by you is unlawful. Surely so barefaced an evasion, so undisguised an usurpation of power, can deceive no man who is not already resolved to be deceived.

The honorable gentleman from Vermont has said, in this debate, that the words, "holding during good behaviour," used in the Constitution, have been very differently understood in the different States; and that the English courts, whose judges hold their office during good behaviour, may be abolished by an act of Parliament, which is held to be omnipotent.

The gentleman ought to recollect that there is no analogy in this respect between our national Government and that of Great Britain. There an act of Parliament can change the constitution. Here the written Constitution, established by the people, restrains the Legislature to the exercise of delegated power, and fixes immutably certain bounds which it may not pass. If it should rashly exceed the delegated power, our Judiciary, sworn to support the Constitution, must declare that the great *irrepealable statute* made by the people shall restrain and control the unauthorized acts of agents who have exceeded the limits of a special authority.

I could easily produce opinions of high respectability, from many of the States, showing that by the words, "during good behaviour," was understood a complete independence of the Legislative as well as Executive power, but at present I shall only refer to a case from Virginia, which is directly in point, and decided by men of great eminence, whose talents and political opinions will not be questioned by gentlemen who are friends of this bill. As the case and opinion are printed, and in the hands of everybody, I merely repeat that the judges of Virginia, Mr. Pendleton at their head, did refuse to execute a law of that State as unconstitutional, and assigned their reasons in writing, among which are the following:

"The propriety and necessity of the independence of the judges is evident in reason and the nature of the office; since they are to decide between Government and the people, as well as between contending citizens; and if they be dependent on either, corrupt influence may be apprehended, sacrificing the innocent to popular prejudice, and subjecting the poor to oppression and persecution by the rich. And this applies more forcibly to exclude a dependence on the Legislature, a branch of whom in cases of impeachment, is itself a party.

"This principle supposed, the court are led to consider whether the people have secured or departed from it in their Constitution or form of Government. In that solemn act they discover the people distributing the Governmental powers into three great branches, Legislative, Executive, and Judiciary, in order to preserve that equipoise which they judged necessary to secure their liberty; declaring that those powers be kept separate and distinct from each other, and that no person shall exercise at the same time an office in more than one of them. The independence of the two former could not be admitted, because in them a long continuance in office might be dangerous to liberty, and therefore they provided for a change by frequent elections at stated periods; but in the last, from the influence of the principle before observed upon, they declared that the judges should hold their offices during good behaviour. Their independence would have been rendered complete by fixing the quantum of their salaries."

After stating the vast increase of duty, without a correspondent increase of salary, which they deemed such an attack on their independence that it would be inconsistent with a conscientious discharge of duty to pass it over, they say:

"For vain would be the precaution of the founders of our Government to secure liberty, if the Legislature, *though restrained from changing the tenure of judicial offices*, are at liberty to compel a resignation by reducing salaries to a copper, or by making it part of the official duty to become hewers of wood or drawers of water."

From which there can be no doubt that in the opinion of the highest law characters in Virginia, the words "during good behaviour," even without a provision for compensation, do secure to the judges a complete independence of the Legislature, as well as of the Executive power, in the tenure of their offices; and should an indirect attempt be made upon that independence, either by withholding pecuniary compensation, or by devolving duties too burdensome, the judges themselves may take up the law, and declare it to be void. I shall only add that the Legislature of Virginia, with moderation and good sense highly honorable to themselves, yielded to the judges, and new-modelled their law.

The same gentleman from Vermont has also complained that all our inferior courts, as well as the Supreme Court, would, according to our doctrine, be unchangeable and eternal. This position is altogether incorrect and fanciful: for we admit that the Legislature may add to, or diminish jurisdiction; may forbid vacancies to be filled, and do many other acts contended for. But we deny that they can remove officers at their pleasure, and put others in their stead; that they can vacate the seats of all our criminal and civil judges, and fill them again with their own men. In one word, that they can assume Executive power over the Judiciary, and destroy and create in the same statute. The judicial power is in its nature as permanent and as unchangeable by the Legislature or Executive as the Constitution itself, and when it loses these attributes, we lose all security for property, for fame, and for life—we have nothing left that is worth preservation.

Some gentlemen have said in this debate, that the Supreme Court is better secured by the Constitution against the Legislature, than the inferior courts, and have made a grave distinction between the words "shall" and "may." I see no difference in the security of the judges of the respective courts. Try the efficacy of the new doctrine upon the Supreme Court. It is organized by law. The power which enacted, can repeal the law. We will remove the office from the judges, not the judges from the office. At present there are six judges in that court. There will be a *Supreme Court* if we repeal the law as to three. You may say the three eldest, the three youngest, or the three who wear wigs, shall hereafter hold the court. Nay, the principles of the present bill would warrant you in enacting that the present Supreme Court shall be abolished; and that the Supreme Court shall hereafter be held by the district judges, or any given number of them. And your justification is the same. You have legislated respecting the office only, although the fact will also be that the office is the same, but the officers are all changed by the new operation of your law.

By this horrid doctrine, Congress erects itself into a complete tyranny. All the judges of your civil and criminal courts hold their offices at the will of the Legislature. A majority of the two Houses is in reality the national Judiciary. "During good behaviour" means as long as the prevailing party in Congress choose to continue one of their own laws. When parties change, the judges must all go out. What can our citizens, what can strangers expect from such courts? If you pass laws impairing the obligations of contracts, or violating our public faith, or *ex post facto* in their operation, will our courts have courage enough to obey the Constitution and their oaths, by declaring such acts void? If you infringe the rights of a State, or deny the privileges secured to it by the Constitution, what remedy, what hope has the State? Will the judges dare to resist your law, or refuse to execute it? If they do, their doom is certain; you sweep away their offices by a law, and appoint others to do their duty; or you nominally erect new courts with the same jurisdiction, and leave the Executive to hunt for

more pliant men. Nay, should the courts and the Legislature be in session at the same time, and in the same place, the whole business may, on Legislative whim or passion, be taken out of the hands of the court who had began to hear it, and given to men more favorable to the claims of popular suitors, or the acquittal of favorite criminals. The Legislature thus becomes a corrupt despotism, under which no wise man would live, and to which no freeman ought to submit.

Instead of an august and venerable tribunal, seated above the storms and oscillations of faction, prepared to rescue innocence from the fangs of the oppressor, to stand in the gap as mediators between the great officers of Government and the people, between the National Confederacy and the individual States; you have a transient, artificial body, without a will or understanding of its own, impelled by your own machinery, and destitute of the celestial fire which should animate and direct its course. It will be the mimickry and the mockery of justice. No more will you see in the administration of justice, those men, whose acquirements and talents have called them to eminence at the bar. They will never consent to become the tools and victims of factions contending for mastery in the State. Even mediocrity in the profession will not leave ease and dignified independence for a seat of precarious duration, and where the hazard of degradation is imminent and irretrievable. You must resort to the dregs of the law, to the pests of social life, where you may find impudence without science, zeal without judgment, self-sufficiency without moral principle, and we shall soon see executioners instead of judges in the sacred seats of justice. When popular leaders sue before such courts, their adversaries must be manifestly in the wrong, and when the ruling party accuses, the prisoner at the bar will never be found guiltless. Such a state of things is certainly deprecated by every honorable member of this House, and yet, in my apprehension, this fatal measure, if carried through, will hurry us forward into calamity and misfortune beyond the faculties of man to foresee or describe. Let us then stop while we are yet safe, while the boundaries of our power and our duty are yet visible; while we have a Government founded on opinion, unaided by force and supported by affection; a Government secured by solemn covenant and compact to abstain from the exercise of prohibited power. Upon our observance of this easy condition hang the hopes and happiness of the new world. The day we transgress, we fall from our high and happy state. Touch not then the forbidden tree; the taste may perhaps be sweet, but the sin is mortal, and from that moment our Paradise is lost.

Mr. ANDERSON.—Mr. President, when the subject now under consideration was first brought before the Senate, I did not intend to have taken any part in the debate. But the alarm which the gentlemen in the opposition have attempted to excite, and the impression they have endeavored to make upon the public mind, impels me to offer a few reasons in justification of the vote I mean to give; and in offering these reasons I will endeavor to show, that if this law should not be repealed, it will, from the circumstances under which it passed, establish a precedent dangerous to the independence of this body, and subversive of the true principles of the Constitution. The gentleman from Pennsylvania, (just sat down,) has said that we cannot make use of lawful means to obtain an unlawful end. We do not mean to attempt it. But I trust that the reverse of the gentleman's position is equally correct: that this House ought not to have made use of unlawful means to have obtained a lawful end. It was lawful for Congress to have passed the law under consideration. But I cannot admit that either House were at liberty to make use of unlawful means to effect it.

In order to show that such means have been used in the passage of the law, I must refer to the admission of a fact, by the honorable member from New York. He has conceded, and it was well understood, that if any amendment had been made to this law, when in the shape of a bill before the Senate, and the bill had thereby been returned to the House of Representatives, the voice of the people would there have been spoken—their veto would have been given, and the bill would never have passed into a law. It must further be admitted, for your Journals prove it, that several amendments to the bill would have obtained, had not three of your Senators, who were appointed judges, in consequence of the passage of this law, voted against the amendments; and I believe it will not be denied, that if this law had not passed, no new judicial offices would then have been created, and that if those three Senators had not voted upon the bill, the law would not have passed. It then fairly follows, that the votes of those Senators created new offices, which thereby made places for themselves. I mean not to impeach the integrity of those gentlemen. But thus I conceive, that unlawful means have been used to effect the passage of this law. Means, in my judgment, directly contrary to the true intent and meaning of the Constitution; for, by article first, section sixth, it is declared that no Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time. I believe, sir, it was intended by this clause, that no member of Congress should be capable of giving any vote that might directly or indirectly put him into office, and yet we have seen three Senators, under this very law, put into offices by the effect of their own votes. The honorable member from New York has told us, that he would wish us to be as virtuous as Romans; I, sir, would wish to see every member of this Senate not only virtuous, but without suspicion. In the passage of this law, and the appointments made out of this body in consequence thereof, I conceive the Constitution to have been dangerously infringed. I therefore consider it highly expedient, in order to preserve the sacred principles of our Government, to

preserve the character and independence of the Senate, that this law, which has thus passed, should be repealed; for, if the Senate do not show their marked disapprobation by its repeal, it will countenance the practice which has been adopted, and virtually sanction the right of the President to select members from this body and place them in offices which have been created by their own votes, and thereby establish a precedent subversive of the true intent and meaning of the Constitution, and destructive of the independence of the Senate; for it is a maxim in all Governments, that what has been once done, and acquiesced in, from thenceforth becomes a precedent. May we not then expect that some future President, desirous of carrying some favorite point, will have recourse to the same expedient to provide for his warm friends or favorites, and thus, from time to time, by enlisting a sufficient number of members in his interest, may he not acquire a very dangerous ascendency, and thus most injuriously extend Executive patronage—than which nothing is more dangerous to the principles of a free Government? It is laid down by Paley, a very able writer upon the subject of free Governments, "that patronage 'universally is power—that he who possesses in a 'sufficient degree the means of gratifying the desires of mankind after wealth and distinction, by 'whatever checks and forms his authority may be 'limited or disguised, will direct the management 'of public affairs. Whatever be the mechanism 'of the political engine he will guide the motion." Let us, then, keep the Executive power within its due Constitutional limits—less, I wish it not to have, and more, I am unwilling to give.

I will now, Mr. President, offer a few observations upon the constitutionality of repealing this law.

The gentlemen opposed to the repeal of this law, upon Constitutional grounds, have said that it will destroy the independence of the judges; and in order to support this position, much pains has been taken, so to blend and consolidate the whole judicial power as to make the offices of the judges of the supreme and inferior courts rest upon the same tenure. This, sir, is highly politic; for if the gentlemen could really persuade some of us that this doctrine is correct, they might prevent the repeal. But, sir, from the most impartial examination which I have been able to give this question, I am of opinion that the Supreme Court is created, ordained, and established, by the Constitution, and must continue to exist; and there is centred that independence, so much desired by the gentlemen in the opposition, and absolutely necessary, in my opinion, in every free and well regulated Government. The Constitution contemplates the existence of the Supreme Court from the very first organization of the Government; for it not only says, the judicial power of the United States shall be vested in one Supreme Court, and such inferior courts as Congress may, from time to time, ordain and establish; but it expressly says, there shall be a Chief Justice, and that when the President of the United States is tried, the Chief Justice shall preside. Thus is the Chief Justice as expressly spoken of in the Constitution as the President, and I do believe that we might as well attempt to abolish the office of President as that of Chief Justice. Assistant justices are also necessary to fill up the true meaning of the Constitution, for without them there could not properly be a Chief Justice; there might be a justice, but he could not be a chief, unless there were subordinate justices. Our Constitution was formed at a time when parties did not exist—the framers, no doubt, expected our first Legislature would organize the Government in all its parts, in conformity with the true intent and meaning of the Constitution, according to the principles of sound reason and common sense. Upon those principles has our Supreme Court been organized, and the judges thereof must, in my opinion, continue to hold their offices independent of the Legislature, and cannot be removed but by impeachment. But, sir, the courts intended to be abolished by the repeal of this law, having been created by Legislative will, and not by the Constitution, they are, in my opinion, in the power of that body who created them, in the same manner as the judges of the Supreme Court are in the power of the people, who created the Constitution, by which they hold their offices, and from which they can be removed by the people whenever they choose to change their Constitution. The power of Congress over the inferior courts having been very ably elucidated by several gentlemen who have preceded me, and with whom I accord in opinion, it being now late, I will make but few more observations before I conclude. I mean, however, Mr. President, to extend my views to that country from which we derive almost our whole system of jurisprudence, which has uniformly been acknowledged the best in the world, and principally on account of the great independence of the judges, and compare the independence of the judges of England with that of the American judges. I have said that our supreme judges are in office by the Constitution, consequently not removable at the will of the Legislature. The English judges are differently situated—they have no fixed Constitution to protect them, and are liable to be removed in two ways, either by the address of Parliament, or by the repeal of the law—yet have they long been considered as independent, because they are no longer removable at the pleasure of the King. But, sir, the judges of our inferior courts are more independent than those of England, for the judges of our inferior tribunals cannot be removed from office but by a repeal of the law which created their offices, or by impeachment. I have thought proper to take this concise view, and thus to compare the independence of the American judges with those of England, because from that country have we borrowed our ideas of the necessary and proper independence of a judge, and on the comparison we find that under the construction we give to the Constitution, the American judges are infinitely more independent than those of England. The fears, therefore, of the gentlemen in the opposition, which they have painted in so lively colors,

must certainly be unfounded, and believing that it is both expedient and Constitutional to repeal the law, I shall give my vote for the passage of this bill.

Mr. OGDEN.—Mr. President, those who may vote for the repeal of the late judiciary law, must be prepared to say, in the first place, that the new system has not advantages over the old, which will compensate the difference of expense; and then, secondly, that the Judiciary branch of the Government is altogether dependent on the Legislative branch.

As I cannot, Mr. President, subscribe to either the one or the other of these propositions, I feel it to be a duty, which I owe to my constituents and myself, to lay before the Senate those sentiments which shall actuate my vote on this occasion.

The only reason which I recollect to have been urged by the honorable mover of the resolution, upon which this repealing law is predicated, was, that there were no benefits in the new system, so superior to those in the old system, as would justify the additional expense. I shall, therefore, in the first place, examine and compare the principles of these two systems, in this view of the subject.

Permit me to observe, Mr. President, that, in my apprehension, the duties of the judges of the Supreme Court, and the duties of judges of inferior courts, as contemplated by the Constitution, are distinct duties, and that the old system is objectionable, because it assigns to the same set of men, these distinct, and in some measure, incompatible offices.

To show that these offices are thus distinct, I beg leave to refer to the Constitution, which in article one, section eight, says, "Congress shall have power to constitute tribunals inferior to the Supreme Court." Thereby plainly contemplating the one court as distinct from the other.

Again, article three, section one, provides that "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices," &c. From whence the inference is irresistible, that the office of a judge of the one court was designed, by the Constitution, to be distinct from the office of a judge of the other courts; and that this conclusion is right, beyond all question, is manifest from the next section of the same article, which provides, that in two of the cases to which the judicial power of the United States was extended, "the Supreme Court shall have original jurisdiction, and in all other cases, the Supreme Court shall have appellate jurisdiction." Now, nothing in nature can be more distinct than the office of the judges to whom an appeal is made, and the office of the judges from whom an appeal is made; and yet under, the old system, the function of these entirely distinct and incompatible offices were performed by the same persons, who on one day sat as judges of an inferior court, exercising original jurisdiction in the cause, and, in a few days after, as judges of a Supreme Court, exercising appellate jurisdiction in the self-same suit.

This solid objection against the old system is remedied by the new.

But it has been urged, that this objection may be done away by preventing the same judge who gave his opinion, while sitting in an inferior court, from giving an opinion in the same cause, when sitting in the Supreme Court. I answer, that in such case, you must always lose one-sixth of the benefit of this great national tribunal, and frequently much more. It may happen, that in the same suit one judge may decide an important question of jurisdiction, upon a plea in abatement at one inferior court, and another judge the merits upon a question for a non-suit at the next court, and a third judge upon the form of action upon a motion in arrest of judgment at a succeeding court. Now, in cases like these, the Supreme Court would be reduced to one half of its number, and it might be shown that the most important questions, affecting the most important interests of this great community, under the Constitution, might be finally decided, upon writ of error, by two, nay, even one judge.

Let me ask, Mr. President, are there not a sufficient number of actors to be found who can, with ability, fill all the great characters in this great national drama? Or are we so poor, that in order to save a cent a man, we must compel one set of persons to play two parts? I hope, sir, this is not the case, but that the improvement which has been made in this particular alone, will be found worthy of the additional expense which it creates.

But, sir, there is another objection to the old system, now about to be revived, which appears to my mind to be insurmountable. I mean the natural impossibility of all the functions both of judges of the Supreme Court and inferior courts, of courts of original and courts of appellate jurisdiction, being performed by the six judges of the Supreme Court, either with tolerable convenience to themselves or to the public.

This position will, I think, be manifest when we consider the extent of this vast country, and that the same six judges must hold inferior courts of original jurisdiction twice in each year, in each State, (except in Tennessee and Kentucky,) and that all the judges must assemble twice a year in this Capitol, to officiate in the Supreme Court in the exercise of their appellate jurisdiction, so that the age and agility of a post-boy would be more necessary qualifications for judges, than that appropriate maturity and gravity for which they have been selected. Candor must admit, that to revert to this old system, would be to place upon our judges a most intolerable task and burden.

Again, under this old system, courts were frequently lost; a judge sometimes was sick, sometimes the rains descended, the floods rose, the roads became broken up, so as to render it impossible to hold the inferior courts at the prescribed times; by this means, suitors, parties, jurors, and witnesses, were disappointed, and thus was produced the law's delay; which is the greatest curse that can attend it.

Besides, you might see one judge beginning a cause, another and another deciding, in its intermediate progress, and a different one entirely making the rendition of judgment.

These facts, sir, are completely proved by the memorial from the bar of Pennsylvania, now lying on the Secretary's table, and it has been admitted that if the testimony of the majority of the bar within the United States could be obtained, that it would prove the same thing.

That the new system remedies all these inconveniences, has not been disputed, and now it is about to be thrown away to save the community a paltry cent per man; *no, not so much, not a cent.*

But, sir, it has been objected that the judges of England ride the circuit of that kingdom, and decide many more causes than come before our courts.

Let me ask, whether, because twelve judges, assisted by as many other men learned in the law as they may require, to hold in their stead courts of Nisi Prius, can in *England* accomplish their business in an extent of three hundred miles square, does it follow that *in this country*, six judges, unassisted, can perform as much business over an extent of country of sixteen hundred miles square? And yet it has been so argued. *Admirable logic indeed!*

It has been further objected, that the State courts may be resorted to for that business which, by the Constitution has been assigned to the Courts of the United States, whereby the additional expense of the late establishment may be saved. What! are we so poor that the United States must thus ask alms from the individual States, by declining to continue a proper provision for such courts as may be necessary for the determination of the causes that may arise under the Constitution and laws of the United States? We might as well, upon the same principle, ask the State Governments to perform for the United States its Executive and Legislative duties; and what will this mighty saving be? the smallest part of a miserable cent apiece. Such a want of provision of a competent number of judges on the part of the United States, to afford prompt and convenient justice, in all cases arising under our Constitution and laws, is not only, in my mind, unworthy of this country, but seems like a denial to our citizens of the benefit of those stipulations made in their favor when that Constitution was adopted which brought us, and now binds us together.

It may be here worthy of remark, that if the State courts are to be resorted to, and the Legislature should take away appeals from such courts to the Supreme Court, as they seem authorized to do by the second section of the third article, which provides that "the appellate jurisdiction shall be liable to such exceptions, and such regulations as Congress should make;" then it will happen, that all Constitutional questions between the General Government and State Governments, must be decided by State tribunals; and everything thrown back, as far as relates to this subject, to that state of things which existed under the Old Confederation.

But, sir, in my apprehension of this subject, the Legislature were bound to have made provision for a competent number of national courts of original as well as appellate jurisdiction; the one to be filled by inferior, and the other by Supreme Court judges. When this provision has been made, and when it is upon the full tide of successful experiment, is it wise, is it prudent, thus shortly, without the test of experience, to throw away these provisions, for the miserable savings now contemplated?

It has been, moreover, objected, that the business of the national courts has decreased, and that the same necessity for the new establishment, as formerly, does not now exist.

Permit me, sir, to observe that, while our population is increasing beyond all former example, while our treaties are growing in number, and our statute book is enlarging, it is a necessary consequence that the business of our courts must increase; and if business did not increase under the old system, it is a conclusive proof that that system was radically wrong. I admit that it is very difficult to make a provision exactly commensurate with the public wants; but it is certainly more safe to have such provision too broad than too narrow; and as the system must be uniform, it must be so extensive as to afford a speedy and convenient administration of justice to such portions of the country as most require it.

The result, Mr. President, of this comparison, under all these circumstances, clearly is, according to my judgment, that the system has such advantages over the old, as well in its greater propriety as in its perfect practicability and superior convenience, as will, by many times, outweigh that trifling additional expense which ought never have been set up against it.

But, sir, the gentlemen on the other side of the room appear to me, in a great measure, to have given up this point, and seem ardent to rush, even without a necessity, to give such a construction to the Constitution, as will render the Judiciary entirely dependent on the Legislature; this opens a great Constitutional point, to the discussion of which I approach with trembling.

It appears to me, sir, that the three pillars, namely, the Legislative, Executive, and Judicial, upon which our Government stands, are entirely independent of each other; that the functionaries in these three great departments are irresponsible to each other, and that they equally derive their official being and existence immediately from the Constitution itself, and not from any laws which may, from time to time, become necessary to bring these great departments into complete operation.

I say, sir, they are independent of each other, because there is no dependence or connexion between them, created by the Constitution; the first article whereof, sections one and two, provides for the Legislative, the manner in which they shall be chosen, and the term of their offices. So article two, section one, provides in like manner

for the Executive; and article three, section one, makes similar provisions for the Judicial. Now, sir, the sages who framed this Constitution would not have made these branches thus co-equal, co-ordinate, and independent of each other, if they had intended that either one might, by a law, be rendered dependent on either of the others; they perfectly knew, that it is as natural in politics as attraction is in physics, that the greater body must eventally draw within its vortex every lesser one, unless balanced and counteracted; they, therefore, instead of creating any dependence of any one branch upon any one of the others, which they would have done if they had so intended, have expressly provided that the Executive should continue in office for four years, Senators for six years, Representatives for two years, and Judges during good behaviour. How can it be said that one co-ordinate branch can abridge the time of the political existence of either of the others? And who can show that, if the Legislature can do this in regard to one of the other branches, why it may not do the same in regard to the other?

It has been observed, that independent judges for life may become dangerous, by having a complete control over your laws. I answer, that we are here not making but acting under the Constitution which has created this independence, and we are bound not to impair it. But, sir, I believe that the independence is in perfect conformity with the genius of the American people, and that it is dear to them.

Our forefathers came from a land where this independence existed in the then greatest extent in the known world. They boasted of it with pride to their children, as the highest birthright of a free citizen. They complained incessantly that here it was not so; that their judges were not independent, and this very reason, in our Declaration of Independence, is assigned as one of the causes of our separation from our mother country.

All the American Constitutions, in conformity to this idea, have endeavored to preserve the same independence of judges, by the most express terms, and the instrument now under consideration, uses the most unequivocal language that human wisdom can dictate, to secure (as far as it can be secured by paper) the independence of the Judiciary. Suffer me further to observe, that our Government is one of checks; that the power given by the Constitution to the Legislature is not general, but special; that it is not omnipotent, but limited; and that, therefore, necessarily a check against it must somewhere exist. Suppose the Legislature should pass bills of attainder, or an unconstitutional tax, where can an oppressed citizen find protection but in a court of justice firmly denying to carry into execution an unconstitutional law? What power else can protect the State sovereignties, should the other branches combine against them? And let me ask, where can such power be more safely lodged than in that branch of the Government, which, holding neither the sword nor the purse of the nation, cannot have either the ambition or the means of subverting, to their own benefit, the provisions of our Constitution? I contend, sir, that by our Constitution, judges are not only independent, but irresponsible, except in the mode therein pointed out, which is by impeachment, and if liable to be put down in any other way, they will become dependent and servile creatures. If the proposed law obtains, they will be put down without impeachment, without trial, and for no reason whatever, except it be, either to save the smallest part of a miserable farthing, or on account of the great sin of having been appointed under the former Administration. I hope, sir, that such an unworthy reason, or such vindictive passions, will never operate to produce a measure which will shake and diminish the confidence which considerate men have hitherto had in that security, which they thought they possessed under this Constitution.

The argument most worthy of notice from the other side of the House, appears to me to be that which is founded on an idea that the judges about to be put down were not created by the Constitution, as it is said the judges of the Supreme Courts were, but by the Legislature; and that as the creature cannot be out of the reach of the creator, so these judges must be dependent on the Legislature.

First, I answer, that no sound distinction can be made between the tenures by which judges of the supreme and judges of the inferior courts hold their offices, according to the Constitution, and it having been admitted in argument, that the judges of the Supreme Court are not thus liable to be put down, it follows that judges of the inferior courts are not thus liable. But, sir, a distinction has been aimed at; it has been said, that the word *shall* has been used in reference to the one, and the word *may* in reference to the other; but I believe the word *shall* is equally applicable to both cases. Take the words, "the judicial power shall be vested in one Supreme Court, and in such inferior courts as Congress *may*, from time to time, establish." Can any one doubt that the word *shall* is not equally imperative in the cases of both species of courts, and that the evident meaning of the Constitution is, that Congress shall appoint as well inferior court judges as Supreme Court judges, and that the word *may* is only introduced to take away, in regard to the inferior courts, that limitation which is made in respect to the Supreme Court? The language then is, there shall be but one Supreme Court, although there shall be as many inferior courts as Congress may establish. But this distinction, in regard to the tenure by which these respective judges hold their offices, altogether vanishes from my mind when I read in the Constitution that the judges both of the supreme and inferior courts shall hold their offices during good behaviour? The wit of man could not have invented more explicit terms. But it is said, that a law was necessary to bring into official existence the judges of inferior courts. I answer, a law was equally necessary to bring into official existence judges of the Supreme Court, and a law for the purpose was actually passed. How, then, can it be said, the one corps is created by the Constitution, and the other by a law? The truth is, sir, that no such distinction exists as the one which has been set up; and if the present law passes, it will be an irresistible precedent to any future Legislature who may be disposed, by a law, to put down the Supreme Court judges, and no ingenuity will be able to point out any solid distinction between the two cases.

Again, Mr. President, it is evident that the necessity of having made a law, in order to give official being to these judges, does not make them dependent on the Legislature, or prove that they do not hold their offices under the Constitution; because if such reasoning were good, it would equally prove, that the President, Vice President, Senators, and Representatives, do not hold their respective offices under the Constitution; but under those respective laws which have been necessarily passed to bring them into existence; such as the laws for the appointment of electors for election of Senators and Representatives, and for determining the number of Representatives by fixing the ratio. Will any one pretend, that by repealing the respective laws under which elections have been had, and the number of Representatives ascertained, that thereby the tenure of their offices, in respect to the time of duration, as fixed by the Constitution, can be impaired? Permit me to mention one more case: by section three, of article one, it is provided that new States may be admitted by Congress into this Union. Now, laws for this are absolutely necessary, such laws have passed; but, when passed, will any say that the political existence of these new States depends on the laws? No, sir, it depends on the Constitution, and, for this reason, a repeal of such laws, after admission, cannot annihilate the new States or affect their independence.

The necessary result of this inquiry is, that the office of inferior judges is derived from as high a source—and is equally independent of the Legislature—as that of the judges of the Supreme Court, the President, Vice President, Senators, and Representatives; that the official life and being of each is derived from the Constitution, and that the Legislature has been merely the organ made use of under the Constitution in bringing them into existence.

Has our Constitution then provided for our citizens this immense security of independent tribunals, and shall the Legislature now render them dependent on its own will and pleasure? Life, as well as property, may be at stake before our courts, and are they to be filled by independent judges, who are regardless equally of the smiles or frowns of men in power, or by the dependents of the party coming in and going out of office at each alternate change? Violent times have happened in other countries; there may be such times here; and if our criminal tribunals are then filled by the miserable minions of power, who can answer for the consequences? Who can say that blood will not flow down our streets in torrents?

I see gentlemen on the other side of the House are smiling; but I beg them to recollect that such things may be brought home to ourselves; that I am not putting an extreme case; what has happened may happen. We have seen in France a Constitution universally adopted, and fidelity sworn to it in the face of Heaven; we have seen one independent branch of the Government first trench upon and then destroy another independent branch; we saw then the criminal tribunals filled, not with independent judges, but, instead thereof, with *monsters* and *executioners*, the vile dependents of the National Legislature, who were themselves, by means of these very tribunals, under the control of the infamous Robespierre; these cruelties were succeeded by another Constitution, and another; the independence of the National Legislature was, in its turn, trenched upon by the Executive, and finally, all the several branches of Government swallowed up together by the transaction at St. Cloud. I beg gentlemen to remember these awful dispensations of Providence: we are informed by the sure word of prophecy, that "the measure we mete unto others shall be meted unto us again; and if we sow the wind, we shall reap the whirlwind."

Bear in mind I beseech you, that justice is evenhanded, and that she may return to our own lips the bitter ingredients of this same bitter cup. Recollect that times have been when a Legislature has been turned out of their hall by armed soldiers; nay, stamped out of existence. Let us not, I pray, set an example which may hereafter plague us. Let us not be the first independent branch of the Government, which shall attempt the independence of another co-equal and co-ordinate branch. Let us follow the maxim of wisdom by resisting beginnings.

The gentlemen on the other side of the House have been peculiarly called the friends of the people; remember a friend in need is a friend indeed. Is there, then, not some one who will step out from among them to save this tottering branch of our Government from falling! Rest assured, it is dear to our fellow-citizens. Ask them, and every highminded American will answer at once, "Save us from the injustice, the oppression, and the miseries of dependent tribunals, by preserving to us, forever, the entire independence of our national judges."

Mr. NICHOLAS rose with the Constitution in his hand, but shortly after opening the book, and looking at it, sat down again.

Mr. BRECKENRIDGE.—Mr. President: While my honorable friend recollects himself, I beg leave to say a few words in answer to an an argument which has been much pressed to-day. I did not intend to rise again on this subject, especially at so late an hour (about five o'clock) and I promise to detain the House but a few minutes.

I did not expect, sir, to find the doctrine of the power of the courts to annul the laws of Congress as unconstitutional, so seriously insisted on. I presume I shall not be out of order in replying to it. It is said that the different departments of Government are to be checks on each other, and that the courts are to check the Legislature. If

this be true I would ask where they got that power, and who checks the courts when they violate the Constitution? Would they not, by this doctrine, have the absolute direction of the Government? To whom are they responsible? But I deny the power which is so pretended. If it is derived from the Constitution, I ask gentlemen to point out the clause which grants it. I can find no such grant. Is it not extraordinary, that if this high power was intended, it should nowhere appear? Is it not truly astonishing that the Constitution, in its abundant care to define the powers of each department, should have omitted so important a power as that of the courts to nullify all the acts of Congress, which, in their opinion, were contrary to the Constitution?

Never were such high and transcendent powers in any Government (much less in one like ours, composed of powers specially given and defined) claimed or exercised by construction only. The doctrine of constructions, not warranted by the letter of an instrument, is dangerous in the extreme. Let men once loose upon constructions, and where will you stop them. Is the *astutia* of English judges, in discovering the latent meanings of law-makers, meanings not expressed in the letter of the laws, to be adopted here in the construction of the Constitution? Once admit the doctrine, that judges are to be indulged in these astute and wire-drawn constructions, to enlarge their own power, and control that of others, and I will join gentlemen of the opposition, in declaring that the Constitution is in danger.

To make the Constitution a practical system, this pretended power of the courts to annul the laws of Congress cannot possibly exist. My idea of the subject, in a few words, is, that the Constitution intended a separation of the powers vested in the three great departments, giving to each exclusive authority on the subjects committed to it. That these departments are co-ordinate, to revolve each within the sphere of their own orbits, without being responsible for their own motion, and are not to direct or control the course of others. That those who made the laws are presumed to have an equal attachment to, and interest in the Constitution; are equally bound by oath to support it, and have an equal right to give a construction to it. That the construction of one department of the powers vested in it, is of higher authority than the construction of any other department: and that, in fact, it is competent to that department to which powers are confided exclusively to decide upon the proper exercise of those powers: that therefore the Legislature have the exclusive right to interpret the Constitution, in what regards the law-making power, and the judges are bound to execute the laws they make. For the Legislature would have at least an equal right to annul the decisions of the courts, founded on their construction of the Constitution, as the courts would have to annul the acts of the Legislature, founded on their construction.

Although, therefore, the courts may take upon them to give decisions which impeach the constitutionality of a law, and thereby, for a time, obstruct its operations, yet I contend that such a law is not the less obligatory because the organ through which it is to be executed has refused its aid. A pertinacious adherence of both departments to their opinions, would soon bring the question to issue, in whom the sovereign power of legislation resided, and whose construction of the law-making power should prevail.

If the courts have a right to examine into, and decide upon the constitutionality of laws, their decision ought to be final and effectual. I ask then, if gentlemen are prepared to admit, that in case the courts were to declare your revenue, impost and appropriation laws unconstitutional, that they would thereby be blotted out of your statute book, and the operations of Government be arrested? It is making, in my opinion, a mockery of the high powers of legislation. I feel humbled by the doctrine, and enter my protest against it. Let gentleman consider well before they insist on a power in the Judiciary which places the Legislature at their feet. Let not so humiliating a condition be admitted under an authority of resting merely on aplication and construction. It will invite a state of things which we are not justified by the Constitution in presuming will happen, and which (should it happen) all men of all parties must deplore.

Mr. MORRIS.—I rise to congratulate this House, and all America, that we have at length got our adversaries upon the ground where we can fairly meet. They have now, though late, reached the point to which their arguments tended from the beginning. Here I knew they must arrive, and now I ask, if gentlemen are prepared to establish one consolidated Government over this country? Sir, if the doctrine they advance prevail, if it be the true doctrine, there is no longer any Legislature in America but that of the Union.

All the arguments they have used in this debate went, of necessity, to that conclusion which is now happily avowed. The honorable member tells us the Legislature have the supreme and exclusive right to interpret the Constitution, so far as regards the making of laws; which, being made, the judges are bound to execute. And he asks where the judges got their pretended power of deciding on the constitutionality of laws? If it be in the Constitution (says he) let it be pointed out. I answer, they derived that power from authority higher than this Constitution. They derive it from the constitution of man, from the nature of things, from the necessary progress of human affairs. When you have enacted a law, when process thereon has been issued, and suit brought, it becomes eventually necessary that the judges decide on the case before them, and declare what the law is. They must, of course, determine whether that which is produced and relied on, has indeed the binding force of law. The decision of the Supreme Court is, and, of necessity, must be final This, Sir, is the principle, and the source of the right for which we contend. But it is denied, and the supremacy of the Legislature insisted on. Mark, then, I pray, the result. The Constitution says, no bill of attainder, or *ex post facto* law shall

be passed, no capitation or other direct tax shall be laid, unless in proportion to the census or enumeration to be taxed; no tax or duty shall be laid on articles exported from any State; no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another. Suppose that, notwithstanding these prohibitions, a majority of the two Houses should (with the President) pass such laws. Suppose, for instance, that a capitation tax (not warranted by the Constitution) or a duty on exports were imposed. The citizen refuses to pay; but courts dependent on the will and pleasure of the Legislature are compelled to enforce the collection. Shall it be said, that there is an appeal to the Supreme Court? Sir, that appeal is subject to such exceptions and regulations as Congress shall make. Congress can, therefore, defeat the appeal, and render final the judgment of inferior tribunals, subjected to their absolute control. Nay, sir, to avoid all possible doubt or question, the honorable member last up has told us in so many words, that the Legislature may decide exclusively on the Constitution, and that the judges are bound to execute the laws which the Legislature enact. Examine then the state to which we are brought. If this doctrine be sustained, (and it is the fair logical deduction from the premises laid down) what possible mode is there to avoid the conclusion that the moment the Legislature of the Union declare themselves supreme, they become so? The analogies so often assumed to the British Parliament, will then be complete. The sovereignty of America will no longer reside in the people, but in the Congress, and the Constitution is whatever they choose to make it.

I saw the end to which those arguments went but I would not throw it out to the people. Gentlemen will however recollect, that early in this debate I prayed them to pause and consider. I mentioned to them without this bar the result of their doctrine, and yesterday I warned them to beware of deciding on abstract propositions. But they insisted on the decision, and they still persist; let me then ask, what safety is left for the States?

Experience under the old Confederation had shown, that applications made by Congress to large communities were nugatory, and that to carry on the business of the National Government, it should be invested with a right of applying directly to individuals. But then the danger that it might swallow up the sovereignty of the States became evident. To provide against that danger, the Constitutional doctrine was established, that no power should be exercised by Congress but such as was expressly given, or necessarily incident, and as a farther security, provision was made prohibiting certain definite acts. But of what avail are such securities, when your Legislative authority is to be bounded only by your own discretion?

While I was far distant from my country, I felt pain at some things which looked like a wish to wind up the General Government beyond its natural tone; for I knew, *that if America should be brought under one consolidated Government, it could not continue to be a Republic.* I am attached to Republican Government, because it appears to me most favorable to dignity of sentiment and character. I have had opportunities to make the comparison. But if a consolidated Government be established, it cannot long be republican. We have not the materials to construct even a mild monarchy. If, therefore, the States be destroyed, we must become the subjects of despotism.

It may perhaps be said that all judges are bound by oath to support the Constitution; but I ask, how is that to be done? Their power over your laws is denied, and when once it is established that you and you alone are the legitimate interpreters of the Constitution, *they* must be bound by your construction.

Gentlemen may flatter themselves that the danger from this quarter is remote or ideal. I know that so long as peace shall last, the States will be the general favorites, because they offer numerous objects to gratify little ambition; but no sooner shall this country be involved in war, than all men will look up to the National Government for patronage and protection. Having then the command of a large military force, it must, under the construction now set up, become supreme. Remember that the old Congress conferred (without authority) dictatorial power over a large extent of country, and that it was exercised and submitted to without opposition. Gentlemen in this House represent the sovereignty of the States. I now call upon them. Are they ready to prostrate that sovereignty at the feet of the General Government? I, sir, on the part of the State of New-York, beg leave to enter my solemn protest.

Mr. JACKSON.—Mr. President, the gentleman from New-York really frightened me; for there is nothing I fear so much as a consolidated Government in America. I think as he does, sir, that the moment it takes place there is an end to our liberty. But upon reflection, I think that gentleman has raised an alarm without foundation; for he says, sir, that if the Congress should pass laws injuring the States, the inferior courts would execute them, because they are to be dependent upon the will of Congress. But, sir, if the gentleman will look at the Constitution, he will find it is there said, in the second section of the third article: "In all cases affecting Ambassadors, other public Ministers and Consuls, 'and those in which a State shall be a party, the 'Supreme Court shall have original jurisdiction. 'In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction 'both as to law and fact." The gentleman therefore may dismiss his fears, as to what may be done by the inferior courts, for there is always an appeal to the Supreme Court. I have always considered the independence of the several States as the safeguard of our liberties; they are the sixteen pillars which support the great arch of our empire, and I hope that nothing will ever be done to shake them.

Mr. DAYTON.—Mr. President, what has fallen from the gentleman who has just sat down, reminds me of the story of a man who boldly denied the existence of a Deity, and undertook to prove

it from Scripture. He opened the sacred volume, and read therein the words, "there is no God." A bystander, who was not disposed to take such things upon trust, took up the book and recited the whole phrase: "The fool hath said in his heart there is no God;" and the position of this daring infidel vanished into air. Upon the same frail foundation rests the answer which has just been given by the last speaker to the irresistible arguments of my honorable friend from New York. It was stated by my honorable friend most distinctly, that although it might be pretended that there was an appeal from the inferior courts to the Supreme Court, yet, as that appeal was subject to such exceptions and regulations as Congress should make, it was in the power of Congress to defeat it altogether. The gentleman from Georgia has undertaken to prove, from the Constitution, that my honorable friend was mistaken; and how has he done it? He reads these words, "In all other 'cases before mentioned, the Supreme Court shall 'have appellate jurisdiction, both as to law and 'fact;" here he stopped, and grounded his argument on the part which he read. Had he carried his eyes to what follows in the same sentence, and in the next two lines, he would have found that the clause stands thus: "In all the other cases be-'fore mentioned, the Supreme Court shall have 'appellate jurisdiction, both as to law and fact, 'with such exceptions and under such regulations 'as the Congress shall make," being precisely what the gentleman from New York had stated, and what the gentleman from Georgia had thought proper to contradict.

But, sir, the object of the last speaker was not the single one of making an impression by a partial quotation from the Constitution. He saw the delicate, dangerous, and alarming ground upon which the member from Kentucky, who had been the prime mover of this measure, and the mouth-piece of his party, had placed the subject, and he was emulous of diverting us who are in the opposition, from exhibiting those newly professed, although secretly harbored, doctrines, in their true colors. Their deformity and dangerous tendency have, however, been so ably and strikingly displayed by the honorable gentleman from New-York, that they cannot fail to make a serious impression on the public mind. And whatever may now be said or concealed, it must hereafter be understood, that upon the success of this measure depended one of the most precious provisions of our Constitution.

The question was then taken on the final passage of the bill and determined in the affirmative—yeas 16, nays 15, as follows.

YEAS—Messrs, Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs, Chipman, Colhoun, Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, Wells, and White.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act to repeal certain acts respecting the organization of the courts of the United States, and for other purposes."

THURSDAY, February 4.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of Lyon Lehman; in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

FRIDAY, February 5.

The bill for the relief of Lyon Lehman was read the second time, and referred to Messrs. BRADLEY, TRACY, and OGDEN, to consider and report thereon.

Mr. CALHOUN presented the memorial and petition of Adam Tunno and others, merchants, of Charleston, South Carolina, stating that they were owners of the ship South Carolina, Paul Post, late commander, taken by certain Spanish privateers, and carried by them to Palma, in Majorca, and there condemned with her cargo in the year 1799, under the edict of the King of Spain; and praying the interposition of Government for their relief; and the petition was read.

Ordered, That it be referred to the Secretary for the Department of State, to report thereon to the Senate.

Mr. ROSS presented the memorial of the merchants of the city of Philadelphia, signed Willing and Francis, and others, stating that severe injuries have been inflicted on their commerce during the late European war, from the predatory cruisers of the contending Powers; reparation for which has been demanded, and, in some measure, obtained from Great Britain and Spain; but in consequence of the convention lately ratified with the Government of France, they are precluded from recurrence to the justice of that nation for damages sustained; and therefore pray redress from their own Government; and the petition was read.

Ordered, That it lie for consideration, and that it be printed for the use of the Senate.

Mr. TRACY, from the committee to whom was referred, on the 2d instant, the bill to authorize the settlement of the account of Samuel Dexter for his expense in defending against the suit of Joseph Hodgson, reported it without amendment.

Ordered, That the consideration of this bill be the order of the day for Tuesday next.

MONDAY, February 8.

The Senate took into consideration the memorial of the merchants of Philadelphia, presented on the 5th instant.

Ordered, That it be referred to Messrs. BALDWIN, BROWN, BRECKENRIDGE, ANDERSON, and HILLHOUSE, to consider and report thereon to the Senate.

TUESDAY, February 9.

The Senate resumed the second reading of the bill to authorize the settlement of the account of

Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson; and on the question to agree to the third reading of this bill, it passed in the affirmative—yeas 14, nays 14, as follows:

YEAS—Messrs. Chipman, Dayton, T. Foster, D. Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Sheafe, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Colhoun, Ellery, Franklin, Jackson, S. T. Mason, Stone, Sumter, and Wright.

The VICE PRESIDENT determined the question in the affirmative.

So it was *Resolved*, That this bill pass to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage; in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

A motion was made "That a committee be appointed to take into consideration the expediency of continuing in force, and of revising and amending the act, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,"

And it was agreed that this motion lie for consideration.

Mr. JACKSON, from the committee to whom was referred, on the 22d of January last, the bill fixing the Military Peace Establishment of the United States, reported amendments; which were read.

Ordered, That they lie for consideration.

Mr. S. T. MASON gave notice that he should, on Thursday next, ask leave to bring in a bill to repeal the act, entitled "An act for the punishment of crimes therein specified."

WEDNESDAY, February 10.

The VICE PRESIDENT laid before the Senate a letter from Mr. ARMSTRONG, one of the Senators of the State of New York, resigning his seat in the Senate.

On motion, it was

Resolved, That the Vice President be requested to notify this resignation to the Executive of the State of New York.

Mr. JACKSON, from the committee to whom was referred, on the 28th of January last, the bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation; and to whom was also referred the motion that a committee be appointed to bring in a bill providing for the payment, and extending the privilege of franking, to any person who may attend as a member of the House of Representatives, from any district under the jurisdiction of the United States, reported amendments to the bill first mentioned; which were read and considered.

Ordered, That the further consideration thereof be postponed until to-morrow.

The bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage, was read the second time, and referred to Messrs. TRACY, BROWN, and SHEAFE, to consider and report thereon to the Senate.

Mr. DAYTON presented the memorial of Abraham D. B. Marentille, stating that he had invented certain machines for the preservation of persons exposed to drowning by shipwreck, and praying a patent therefor; and the petition was read.

Ordered, That it lie on the table.

The bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time and amended.

Resolved, That this bill pass as amended.

The motion made yesterday, "That a committee be appointed to take into consideration the expediency of continuing in force, and of revising and amending the act, entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was agreed to, and referred to Messrs. ANDERSON, TRACY, and BROWN, to report thereon to the Senate.

THURSDAY, February 11.

Mr. BRADLEY, from the committee to whom was referred, on the 5th instant, the bill for the relief of Lyon Lehman, reported an amendment; which was read and disagreed to.

Ordered, That this bill pass to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill making certain partial appropriations for the year one thousand eight hundred and two; and a bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

On motion, it was

Ordered, That Mr. BRADLEY be on the committee to consider the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan, in place of Mr. CHIPMAN, absent with leave.

The Senate took into consideration the amendments yesterday reported by the committee to the bill extending the privilege of franking to the delegate from the Mississippi Territory, and making provision for his compensation; which report was amended and adopted, and the bill passed to the third reading as amended.

Agreeably to notice given yesterday, Mr. S. T. MASON obtained leave to bring in a bill to repeal an act, entitled "An act for the punishment of certain crimes therein specified;" and the bill was read, and ordered to a second reading.

FRIDAY, February 12.

The bill to authorize the collection of fees due to the officers of the respective courts of the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district, was read the second time, and referred to Messrs. WRIGHT, S. T. MASON, and ANDERSON, to consider and report thereon.

The bill making certain appropriations for the year one thousand eight hundred and two was read the second time, and referred to Messrs. BALDWIN, TRACY, and ELLERY, to consider and report thereon.

The bill to repeal an act, entitled "An act for the punishment of certain crimes therein specified," was read the second time; and, on the question to agree to the third reading of this bill, it passed in the negative. So the bill was lost.

The bill for the relief of Lyon Lehman was read the third time and amended.

On the question to agree to the final passage of the bill as amended, it was determined in the affirmative—yeas 16, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Dayton, Ellery, T. Foster, Franklin, Jackson, S. T. Mason, J. Mason, Stone, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Hillhouse, Howard, Ogden, Olcott, Ross, Sheafe, and Tracy.

So it was *Resolved*, That this bill do pass with an amendment.

A message from the House of Representatives, informed the Senate that the House have passed a bill to amend an act entitled "An act to lay and collect a direct tax within the United States;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. S. T. MASON presented the memorial of the merchants of Alexandria, in the District of Columbia, signed William Hartshorn, and others, stating that they have sustained heavy losses, and, in some cases, entire ruin, while in prosecution of fair neutral commerce, from the depredations of French cruisers during the late European war, and praying redress; being precluded from a recurrence to the Government of France by the ratification of the late convention between the United States and the French nation; and the petition was read.

Ordered, That it be referred to the committee appointed on the 8th instant, who have under consideration the petition of the merchants of Philadelphia on the same subject, to report thereon to the Senate.

The bill extending the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation, was read the third time, and the title amended.

Resolved, That this bill do pass as amended.

MONDAY, February 15.

The VICE PRESIDENT laid before the Senate the report of the Secretary for the Department of State, on the petition of Adam Tunno and others, to whom it was referred on the 5th instant; and the report was read, and ordered to lie for consideration.

The bill to amend the act, entitled "An act to lay and collect a direct tax within the United States," was read the second time, and referred to Messrs. BRADLEY, HILLHOUSE, and NICHOLAS, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 12th instant, the bill making certain partial appropriations for the year one thousand eight hundred and two, reported the bill without amendment.

Ordered, That this bill pass to the third reading.

Mr. BROWN presented the petition of John James Dufour, stating that he had been regularly instructed in the occupation of a vinedresser, and praying a grant, to himself and associates, of a tract of land suitable for a vineyard, on the Great Miami river, on the terms mentioned in the petition; and the petition was read, and ordered to lie for consideration.

Ordered, That so much of the Message of the President of the United States, of 2d February, 1802, as refers to certain small parcels of lands purchased under the authority of the United States, for cantonments and other military purposes, be referred to Messrs. OGDEN, BRADLEY, and BROWN, to report thereon by bill or otherwise.

Ordered, That so much of the Message of the President of the United States, of 2d February, instant, as refers to the report of the Secretary of War, on the subject of the islands in the lakes and rivers of our northern boundary, and of certain lands in the neighborhood of our military posts, be committed to Messrs TRACY, BRADLEY, and BROWN, to consider and report thereon by bill or otherwise.

TUESDAY February 16.

The bill, entitled "An act making certain partial appropriations for the year one thousand eight hundred and two," was read the third time.

Resolved, That this bill do pass.

Ordered, That the amendments reported by the committee on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States, be the order of the day for to-morrow.

Ordered, That the petition of John James Dufour, presented yesterday, be referred to Messrs. BROWN, BALDWIN, and TRACY, to consider and report thereon to the Senate.

Mr. ROSS presented the memorial of the merchants and traders of the city of Philadelphia, signed Thomas Fitzsimons and others, stating their opinion that the present organization of the Judicial courts of the United States is highly beneficial in the administration of justice, and that its abolition will be of much detriment, and praying that, at least, it may be preserved so far as respects the courts of the third circuit; and the memorial was read, and laid on the table.

WEDNESDAY, February 17.

Two Messages were received from the President of the United States.

Agreeably to the order of the day, the Senate took into consideration the amendments reported by the committee on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States; and, after progress, the Senate adjourned.

THURSDAY, February 18.

The Message communicated yesterday from the PRESIDENT OF THE UNITED STATES were read, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

I now transmit a statement of the expenses incurred by the United States in their transactions with the Barbary Powers, and a roll of the persons having office or employment under the United States, as was proposed in my Messages of December the 7th and 22d. Neither is as perfect as could have been wished; and the latter not so much so as further time and inquiry may enable us to make it.

The great volume of these communications, and the delay it would produce to make out a second copy, will, I trust, be deemed a sufficient reason for sending one of them to the one House, and the other to the other, with a request that they may be interchanged for mutual information, rather than subject both to further delay. TH. JEFFERSON.

FEBRUARY 16, 1802.

Gentlemen of the Senate, and
of the House of Representatives:

I lay before both Houses of Congress for their information the report from the Director of the Mint now enclosed. TH. JEFFERSON.

FEBRUARY 17, 1802.

The papers referred to in the Messages were read, and ordered to lie for consideration.

Mr. OGDEN, from the committee appointed on the 15th instant, reported a bill to authorize the President of the United States to convey certain parcels of land therein mentioned; and the bill was read, and ordered to the second reading.

Ordered, That Mr. S. T. MASON be on the committee to consider the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," in place of Mr. LOGAN, absent with leave.

The Senate resumed the consideration of the amendments reported by the committee, on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States.

Ordered, That the further consideration thereof be postponed until to-morrow.

FRIDAY, February 19.

The bill to authorize the President of the United States to convey certain parcels of land therein mentioned, was read the second time; and it was agreed that it should lie for consideration.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

In a Message of the 2d instant, I enclosed a letter from the Secretary of War on the subject of certain lands in the neighborhood of our military posts, on which it might be expedient for the Legislature to make some provisions. A letter recently received from the Governor of Indiana presents some further views of the extent to which such provision may be needed, I therefore now transmit it for the information of Congress. TH. JEFFERSON.

FEBRUARY 18, 1802.

The Message and letter therein referred to were read.

Ordered, That the letter be referred to Mr. TRACY and others, the committee appointed on this subject the 15th instant, to consider and report thereon to the Senate.

Mr. TRACY, from the committee to whom was referred, on the 10th instant, the bill to allow a drawback of duties on goods exported to New Orleans; and therein to amend the act to regulate the collection of duties on imports and tonnage, made a report; which was read.

Ordered, That this report lie for consideration.

Mr. BRADLEY communicated sundry resolutions of the Legislature of the State of Vermont; which were read, as follows:

State of Vermont, in General Assembly:

Resolved, That, in the opinion of the Legislature, the following amendments to the Constitution of the United States would conduce to the happiness of the citizens thereof, by the establishment of an uniform mode for the choice of Electors of President and Vice President of the United States and of Representatives to Congress:

1st. That after the third day of March, in the year one thousand eight hundred and one, the choice of Electors of President and Vice President shall be made by the Legislature of each State, dividing the State into a number of districts equal to the number of Electors to be chosen in such State, and by the persons in each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Elector in the manner which the Legislature thereof shall prescribe; which district, when so divided, shall remain unalterable until a new census of the United States shall be obtained.

2d. That the elections of Representatives to serve after the third day of March, in the year one thousand eight hundred and three, shall be by dividing each State, by the Legislature thereof, into a number of districts, equal to the number of Representatives to which such State shall be entitled, and by the people within each of those districts who shall have the qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Representative in the manner which the Legislature thereof shall prescribe; which district, when so divided, shall remain unalterable until a new census of the United States shall be obtained.

MONDAY, February 22.

The Senate transacted no business to-day.

TUESDAY, February 23.

DE WITT CLINTON, appointed a Senator by the Legislature of the State of New York, in the place of John Armstrong, Esquire, their late Sen-

ator, who has resigned, produced his credentials, was qualified, and took his seat in the Senate.

The Senate resumed the second reading of the bill to authorize the President of the United States to convey certain parcels of land therein mentioned.

Ordered. That this bill pass to a third reading.

Mr. ANDERSON, from the committee to whom was referred on the 28th of January last, the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes," reported it without amendment.

WEDNESDAY, February 24.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I communicate to both Houses of Congress a report of the Secretary of the Treasury on the subject of our marine hospitals, which appear to require Legislative attention.

As connected with the same subject, I also enclose information respecting the situation of our seamen and boatmen frequenting the port of New Orleans, and suffering there from sickness and the want of accommodation. There is good reason to believe their numbers greater than stated in these papers. When we consider how great a portion of the territory of the United States must communicate with that port singly; and how rapidly that territory is increasing its population and productions, it may, perhaps, be thought reasonable to make hospital provisions there of a different order from those at foreign ports generally.

TH. JEFFERSON.

FEBRUARY 24, 1802.

The Message and papers therein referred to were read and ordered to lie for consideration.

Mr. MORRIS communicated sundry resolutions of the Legislature of the State of New York, which were read, as follows:

Resolved, As the sense of the Legislature, that the following amendments ought to be incorporated into the Constitution of the United States, as a necessary safeguard against pernicious dissensions in the choice of a President and Vice President, and as the most eligible mode of obtaining a full and fair expression of the public will in such election:

1. That the State Legislature shall, from time to time divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President and Vice President, in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature; and that the districts, so to be constituted, shall consist, as nearly as may be, of contiguous territory, and of equal proportion of population, except where there may be any detached portion of territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unalterable until a new census of the United States shall be taken.

2. That in all future elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

The Senate resumed the consideration of the amendments reported by the committee, on the 22d of January last, to the bill fixing the Military Peace Establishment of the United States, which were in part adopted; and, after progress.

Ordered. That the further consideration thereof be postponed.

THURSDAY, February 25.

The Senate resumed the consideration of the report of the committeee on the bill fixing the Military Peace Establishment of the United States; which were in part adopted; and having agreed further to amend the bill, the Senate adjourned.

FRIDAY, February 26.

The Senate resumed the consideration of the report of the committee on the bill fixing the Military Peace Establishment of the United States;

Ordered. That the bill be recommitted to Messrs. BRADLEY, NICHOLAS, and JACKSON, further to consider and report thereon to the Senate.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

No occasion having arisen since the last account rendered by my predecessor of making use of any part of the moneys heretofore granted to defray the contingent charges of the Government, I now transmit to Congress an official statement thereof to the 31st day of December last, when the whole unexpended balance, amounting to twenty thousand nine hundred and eleven dollars and eighty cents, was carried to the credit of the surplus fund, as provided by law; and this account consequently becomes finally closed.

TH. JEFFERSON.

FEBRUARY 25, 1802.

Gentlemen of the Senate, and
of the House of Representatives:

Some statements have been lately received of the causes decided or depending in the courts of the Union in certain States, supplementary or corrective of those from which was formed the general statement accompanying my Message at the opening of the session. I therefore communicate them to Congress, with a report of the Secretary of State, noting their effect on the former statement, and correcting certain errors in it which arose partly from inexactitude in some of the returns, and partly in analysing, adding, and transcribing them, while hurried in preparing the other voluminous papers accompanying that Message.

TH. JEFFERSON

FEBRUARY 26, 1802.

The Messages and papers therein referred to were read, and ordered to lie for consideration.

Mr. WRIGHT, from the committee to whom was referred, on the 12th instant, the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland from persons residing within the Territory of Columbia, by the marshal of the said district, reported amendments; which were read.

Ordered, That they lie for consideration.

MONDAY, March 1.

Mr. BRADLEY, from the committee to whom was referred, on the 15th of February last, the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States," reported amendments; which were read.

Ordered. That they lie for consideration.

The bill to authorize the President of the United States to convey certain parcels of land therein mentioned, was read the third time, and amended.

Resolved. That this bill do pass, that it be engrossed, and that the title thereof be "An act to authorize the President of the United States to convey certain parcels of land therein mentioned."

The Senate resumed the second reading of the bill to repeal in part the act, entitled "An act regulating foreign coins, and for other purposes."

Ordered, That this bill pass to the third reading.

The Senate took into consideration the amendments reported by the committee, on the 26th of February last, to the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; and having in part agreed thereto,

Ordered. That the further consideration of this bill be postponed until to-morrow.

Mr. CLINTON presented the petition of Ebenezer Stevens, merchant, of the city of New York, stating that Thomas Watson, late master of the sloop Harriot, which was shipwrecked in the West Indies, soon afterwards purchased, with the funds of the petitioner, a certain American built ship called the Bellona; prior to which, and unknown to the purchaser, the said ship had been employed in illicit commerce, and, in consequence whereof, on her arrival at New York, she was seized by the revenue officers of that district, and there condemned; and that the petitioner can only obtain that relief which he prays by a special act of the Legislature; and the petition was read.

Ordered. That it be referred to Messrs. CLINTON, BROWN, and HILLHOUSE, to consider and report thereon to the Senate.

TUESDAY, March 2.

The VICE PRESIDENT laid before the Senate a report of the Secretary for the Department of Treasury, with a statement of the emoluments of the officers employed in the collection of the customs for the year 1801; also, a statement of the sums paid into the Treasury, by the collectors of each port, during the same year; which were read.

Ordered. That they severally lie on file.

The Senate resumed the second reading of the bill to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district; and having agreed to a further amendment,

Ordered. That this bill pass to the third reading as amended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I transmit, for the information of Congress, letters recently received from our Consuls at Gibraltar and Algiers, presenting the latest view of the state of our affairs with the Barbary Powers. The sums due to the Government of Algiers are now fully paid up; and of the gratuity which had been promised to that of Tunis, and was in a course of preparation, a small portion only remains still to be finished and delivered.

TH. JEFFERSON.

MARCH 1, 1802.

The Message and papers referred to were read, and ordered to lie for consideration.

The Senate took into consideration the amendment reported by the committee, the 19th of February last, on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage; and the amendment was not adopted.

Ordered. That the further consideration of this bill be postponed until to-morrow.

Mr. BRADLEY, from the committee to whom was recommitted, on the 26th of February last, the bill fixing the Military Peace Establishment of the United States, reported amendments, which were read.

Ordered. That they lie for consideration.

WEDNESDAY, March 3.

Ordered. That the Message of the President of the United States, of the 1st instant, and the papers therein referred to, be committed to Messrs. TRACY, DAYTON, and CLINTON, to consider and report thereon to the Senate.

The bill, entitled "An act to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing within the Territory of Columbia, by the marshal of the said district," was read the third time.

On the question, Shall this bill pass? it was resolved in the negative.

So the bill was lost.

The bill, entitled "An act to repeal, in part, the act, entitled 'An act for regulating foreign coins, and for other purposes,'" was read the third time; and a motion was made for an amendment; and it was agreed that it should lie for consideration.

The Senate took into consideration the amendments reported by the committee on the 1st instant to the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" and, having adopted the same,

Ordered. That this bill pass to the third reading as amended.

THURSDAY, March 4.

Mr. BRADLEY presented the petitions of Samuel Blodget, Thomas Tolman, and Aaron Shepard, collectors of the direct tax within the State of

Vermont, stating that they have incurred, in the prosecution of that business, certain expenses, more than the compensation allowed by law; suggesting the expediency of further provisions on the subject, and praying the interposition of the Legislature for their relief; and the petitions were read.

Ordered, That they be severally referred to Messrs. BRADLEY, CLINTON, and HILLHOUSE, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee on the 2d instant to the bill fixing the Military Peace Establishment of the United States, which were amended and adopted; and

Resolved, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act to regulate the collection of duties on imports and tonnage.

And on the question, Shall this bill pass to the third reading? it passed in the negative—yeas 2, nays 21, as follows:

YEAS—Messrs. Morris and Nicholas.

NAYS—Messrs. Baldwin, Breckenridge, Brown, Clinton, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Hillhouse, Howard, Jackson, Logan, S. T. Mason, J. Mason, Ogden, Olcott, Sumter, Tracy, White, and Wright.

So the bill was lost.

FRIDAY, March 5.

The bill, entitled "An act fixing the Military Peace Establishment of the United States," was read the third time and further amended; and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 10, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Clinton, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, and White.

So it was *Resolved*, That this bill pass as amended.

Ordered, That Messrs. DAYTON, MORRIS, and BALDWIN, be a committee to revise the rules for conducting business in the Senate, and to report such alterations and amendments as in their opinion may be necessary.

Mr. DWIGHT FOSTER, from the committee to whom was referred, on the first of February last, the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan, reported the bill without amendment.

Mr. TRACY reported, from the committee to whom was referred the papers mentioned in the Message of the President of the United States, of the 1st instant, that the publication thereof would be unnecessary.

MONDAY, March 8.

The Senate resumed the second reading of the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan.

Resolved, That this bill be postponed until the next session of Congress.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes.'"

Ordered, That the further consideration of this bill be postponed until the first Monday in April next.

The bill entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" was read the third time.

Resolved, That this bill do pass as amended.

Ordered, That Mr. TRACY be of the committee appointed the 1st instant on the petition of Ebenezer Stevens, in place of Mr. HILLHOUSE, who has obtained leave of absence.

TUESDAY, March 9.

Mr. S. T. MASON presented the petition of Albert Russell and others, stating that they were respectively entitled to quotas of land in consequence of their services in the Virginia line of the army, during the Revolutionary war, and having obtained warrants and surveys thereof, they were casually lost, and cannot be renewed without legislative interference, and therefor praying relief; and the petition was read.

Ordered, That it be referred to Messrs. TRACY, BALDWIN, and BRADLEY, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth Harbor—for rebuilding the light-house at the eastern end of New Castle Island—for erecting a light-house on Lynde's Point, and for other purposes; also, a bill for the accommodation of persons concerned in certain fisheries therein mentioned; and a resolution appointing a joint committee for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress; in which bills and resolution they desire the concurrence of the Senate. They agree to some and disagree to other amendments of the Senate to the bill fixing the Military Peace Establishment of the United States.

The bill first mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. JACKSON, DWIGHT FOSTER, and OLCOTT, to consider and report thereon.

The other bill mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. FRANKLIN, JONATHAN MASON, and BALDWIN, to consider and report thereon.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read, and ordered to lie for consideration.

The amendments disagreed to by the House of Representatives to the bill fixing the Military Peace Establishment of the United States were read, and the consideration thereof postponed until to-morrow.

Mr. ANDERSON gave notice that he should, to-morrow, ask leave to bring in a bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee.

WEDNESDAY March 10.

A message from the House of Representatives informed the Senate that the House agree to the amendment of the Senate to the bill, entitled "An act to amend the act, entitled 'An act to lay and collect a direct tax within the United States,'" except to the fourth amendment, to which they disagree. They have passed a bill, entitled "An act for the relief of Francis Duchoquet," in which they desire the concurrence of the Senate.

The bill last mentioned in the message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. DWIGHT FOSTER, BALDWIN, and BROWN, to consider and report thereon.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act fixing the Military Peace Establishment of the United States."

Resolved, That they recede from their fourth and fifth amendments, and insist on their fifteenth amendment to the said bill.

The Senate took into consideration their amendment disagreed to by the House of Representatives to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States.'"

Resolved, That they do insist on the said amendment, ask a conference thereon, and that Messrs. BRADLEY and TRACY be the managers on the part of the Senate.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read the second time, and ordered to the third reading.

Agreeably to notice, yesterday given, Mr. ANDERSON had leave to bring in a bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee, and the bill was read, and ordered to the second reading.

THURSDAY, March 11.

Mr. DWIGHT FOSTER, from the committee to whom was referred, on the 10th instant, the bill, entitled "An act for the relief of Francis Duchoquet," reported the same without amendment; and the bill was ordered to the third reading.

On motion, that it be

"*Resolved*, That a committee be appointed to inquire what further and more effectual means ought to be provided by law for carrying the mail of the United States:"

It was agreed that this motion should lie for consideration.

Mr. FRANKLIN, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act for the accommodation of persons concerned in certain fisheries therein mentioned," reported the bill without amendment, and it was ordered to the third reading.

The resolution of the House of Representatives for the appointment of a joint committee for the further purchase of books and maps for the use of both Houses of Congress, was read the third time.

Resolved, That the Senate do concur therein, and that Messrs. BALDWIN, CLINTON, and LOGAN, be the committee on the part of the Senate.

The bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee, was read the second time, and referred to Messrs. ANDERSON, NICHOLAS, and BALDWIN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House recede from their disagreement to the fourth amendment of the Senate to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States;'" also, from their disagreement to the fifteenth amendment of the Senate to the bill, entitled "An act fixing the Military Peace Establishment of the United States." They have passed a bill, entitled "An act for revising and amending the acts concerning naturalization," in which they desire the concurrence of the Senate.

The bill last mentioned in the message was read, and ordered to the second reading.

Mr. CLINTON presented the petition of John Thomas, and others, aliens, residing in the city of New York and its vicinity, praying relief under certain unfavorable provisions in the act to establish an uniform rule of naturalization; and the petition was read.

Ordered, That it lie on the table.

Mr. ANDERSON, from the committee to whom the subject was referred on the 10th of February last, reported a bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers; and the bill was read, and ordered to the second reading.

FRIDAY, March 12.

The bill, entitled "An act for the accommodation of persons concerned in certain fisheries therein mentioned," was read the third time.

Resolved, That this bill do pass.

The bill, entitled "An act for the relief of Francis Duchoquet," was read the third time, and passed.

The bill, entitled "An act for revising and amending the acts concerning naturalization," was read the second time, and referred to Messrs.

CLINTON, LOGAN, and SUMTER, to consider and report thereon.

The Senate took into consideration the motion made yesterday "that a committee be appointed to inquire what further and more effectual means ought to be provided by law for carrying the mail of the United States;" and it was agreed that Messrs. JACKSON, BRADLEY, and FRANKLIN, be the committee.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," in which they desire the concurrence of the Senate.

They have resolved to attend the funeral of Narsworthy Hunter, late a delegate to Congress from the Mississippi Territory, to-morrow at twelve o'clock, and desire the attendance of the Senate.

The bill mentioned in the message was read, and ordered to a second reading.

Mr. LOGAN presented the memorial and petition of the Illinois and Oubache land companies, signed William Smith and John Shee, the surviving committee on their behalf, praying Congress to devise some mode for a final investigation and decision of their claims, and the petition was read; and, on motion

Resolved, That this petition be rejected.

Mr. SUMTER presented the petition of Bailey and Walker, and others, merchants, of Charleston, in the State of South Carolina, stating that they have sustained considerable losses by irregular and illegal captures from privateers and other armed vessels cruising under the flag of the French Republic, whilst in pursuit of their lawful commerce, and that, by the late convention ratified by the two Governments, they are precluded from recurrence to the justice of the French nation for redress, and therefore praying relief from the Government of the United States; and the petition was read.

Ordered, That it be referred to the committee appointed the 8th of February last, on petitions of a similar nature, to report thereon.

Resolved, That the Senate will attend the funeral of Narsworthy Hunter, late delegate in the House of Representatives of the United States, to-morrow at 12 o'clock.

MONDAY, March 15.

Mr. BROWN, from the committee to whom was referred, on the 16th of February last, the petition of John James Dufour, reported a bill to empower him and his associates to purchase certain lands; and the bill was read.

Ordered, That it pass to a second reading.

The bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," was read the second time, and referred to Messrs. S. T. MASON, COCKE, and LOGAN, to consider and report thereon.

The bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, was read the second time and amended.

Ordered, That this bill lie for consideration.

TUESDAY, March 16.

Mr. TRACY, from the committee appointed the 18th of February last, on the subject, reported a bill for the better security of public money and property in the hands of public officers and agents; which was read, and ordered to a second reading.

The bill to empower John James Dufour and his associates to purchase certain lands, was read the second time and amended.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Ordered, That it be recommitted to Messrs. ANDERSON, TRACY, and BROWN, the committee who brought in the bill, further to report thereon.

WEDNESDAY, March 17.

Mr. BRADLEY reported, from the committee to whom were referred, on the 4th instant, the several petitions of Samuel Blodget, Thomas Tolman, and Aaron Shepard, that the act lately passed, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" hath made all the Legislative provision in their judgment at present necessary, and, therefore, that the several petitioners have leave to withdraw their petitions; and the report was adopted.

The bill for the better security of public money and property in the hands of public officers and agents, was read the second time.

Ordered, That the consideration of this bill be postponed.

The bill to empower John James Dufour and his associates to purchase certain lands, was read the third time, and the blank in section 3d being filled with the word six,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to empower John James Dufour and his associates to purchase certain lands."

THURSDAY, March 18.

The Senate resumed the second reading of the bill for the better security of public money and property in the hands of public officers and agents.

Ordered, That the further consideration of this bill be postponed until Monday next.

Mr. COLHOUN presented the petition of Alexander Gardner and Thomas Pinckney, of South Carolina, praying compensation for two negroes, their property, stated to have been drowned in the public service; and the petition was read.

Ordered, That it be referred to Messrs. COLHOUN, BALDWIN, and BROWN, to consider and report thereon.

Mr. CLINTON, from the committee to whom was referred, on the 12th instant, the bill, entitled "An act for revising and amending the acts concerning naturalization," reported amendments; which were read.

Ordered, That they lie for consideration.

On motion, that it be

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts to establish the judicial courts of the United States; and that the committee have power to report by bill or otherwise:

It passed in the affirmative—yeas 22, as follows:

YEAS.—Messrs. Anderson, Baldwin, Bradley, Brown, Clinton, Cocke, Colhoun, Ellery, T. Foster, Dwight Foster, Franklin, Jackson, Logan, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

Ordered, That Messrs. ANDERSON, BROWN, BRADLEY, NICHOLAS, and JACKSON, be the committee.

FRIDAY, March 19.

Mr. ANDERSON, from the committee to whom was recommitted, on the 16th instant, the bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, reported further amendments; which were read, and in part adopted, together with further amendments to the said bill; and, on motion, to insert these words, section 16th, after the word "removal," "unless upon special cause to be certified by the commanding officer," it passed in the affirmative—yeas 12, nays 8, as follows:

YEAS—Messrs. Bradley, Dayton, T. Foster, Dwight Foster, Logan, Morris, Ogden, Olcott, Ross, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Clinton, Cocke, Franklin, Jackson, Nicholas, and Sumter.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to alter the times of holding the district court in the district of Maine," in which they desire the concurrence of the Senate.

The bill was read.

Ordered, That it pass to the second reading.

The Senate took into consideration the amendments yesterday reported by the committee on the bill, entitled "An act for revising and amending the acts concerning naturalization."

Ordered, That they be the order of the day for Tuesday next.

MONDAY, March 22.

The bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, was read the third time.

On motion, it was agreed to amend section 14, and strike out "eighteen" and insert "twelve;" also, to amend sixteenth section after the word "than," and strike out "three" and insert "five;" also, to strike out, after the word "removal," the words "unless upon special causes to be certified by the commanding officer;" and, in the last section, to strike out all the words after "operate."

Whereupon, *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act to regulate trade and intercourse with the Indian tribes, and preserve peace on the frontiers."

Mr. TRACY, from the committee appointed the 15th of February, on the Message of the President of the United States of 2d February last, reported, in part, a bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada; and the bill was read.

Ordered, That it pass to a second reading.

Mr. JACKSON, from the committee appointed the 9th instant, on the bill for the rebuilding of the light-house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes, reported amendments; which were read.

Ordered, That they lie for consideration.

The bill to alter the time of holding the district court in the district of Maine was read the second time, and referred to the committee appointed the 18th instant, on the subject of the judicial courts, to consider and report thereon.

Mr. BRADLEY notified the Senate that to-morrow he should ask leave to bring in a bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned."

TUESDAY, March 23.

The Senate took into consideration the amendments reported yesterday to the bill for rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes; and having adopted them, together with further amendments to the bill,

Ordered, That it pass to the third reading.

A message from the House of Representatives informed to the Senate that the House have passed a bill, entitled "An act to repeal the internal taxes," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The Senate resumed the second reading of the bill for the better security of public money and property in the hands of public officers and agents; and having agreed to sundry amendments,

Ordered, That the bill be recommitted to Messrs. TRACY, NICHOLAS, and OGDEN, the committee who brought it in, further to consider and report thereon.

WEDNESDAY, March 24.

Mr. LOGAN presented the petition of John Hewson and others, calico printers, in the city of Philadelphia and its vicinity, praying Legislative encouragement in the prosecution of that business; and the petition was read and ordered to lie on the table.

Agreeably to notice given on the 22d instant, Mr. BRADLEY had leave to bring in a bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein

mentioned;" and the bill was read, and ordered to the second reading.

The bill, entitled "An act to repeal the internal taxes," was read the second time, and referred to Messrs. BALDWIN, CALHOUN, FRANKLIN, COCKE, and CLINTON, to consider and report thereon.

The bill for rebuilding the light house on Gurnet Point, at the entrance of Plymouth harbor, and for other purposes, was read the third time.

Ordered, That the further consideration of this bill be postponed until to-morrow.

The Senate resumed the consideration of the amendments reported by the committee on the 18th instant, to the bill for revising and amending the acts concerning naturalization.

Ordered, That the further consideration thereof be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill making an appropriation for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic; also, a resolution authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the second Monday in April next; in which bill and resolution, respectively, they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The resolution respecting an adjournment of the two Houses of Congress on the second Monday in April next was read and considered; and the further consideration thereof postponed until the ninth day of April next.

THURSDAY, March 25.

The bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada, was read the second time, and ordered to a third reading.

The bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," was read the second time, and referred to Messrs. BRADLEY, MORRIS, and TRACY, to consider and report thereon.

The Senate resumed the third reading of the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of New Castle Island; for erecting a light-house on Lynde's Point; and for other purposes;" which was further amended by adding these words to the amendment of the fifth section, after the word "dollars" in the first instance, "for making the surveys," and by filling the blank therein with the words "ten thousand;" also, the blank in the new section adopted, with the words "thirty thousand;" and by amending the title to be read as follows: "An act authorizing the erection of certain light-houses, and for other purposes."

Resolved, That this bill do pass as amended.

The bill making appropriations for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic, was read the second time, and referred to Messrs. NICHOLAS, BALDWWIN, and ANDERSON, to consider and report thereon.

Ordered, That Mr. TRACY be on the committee to whom was referred, on the 8th of February last, the memorials of the merchants of the cities of Philadelphia, Alexandria, and Charleston, in place of Mr. HILLHOUSE, absent with leave.

The Senate resumed the consideration of the amendments to the bill for revising and amending the acts concerning naturalization; which were in part adopted; and

Ordered, That the bill be recommitted to Messrs. CLINTON, LOGAN, and SUMTER, the committee originally appointed on the bill, further to consider and report thereon.

Mr. TRACY, from the committee to whom was recommitted, on the 23d instant, the bill for the better security of public money and property in the hands of public officers and agents, reported further amendments; which were read.

Ordered, That they lie for consideration.

FRIDAY, March 26.

Mr. BALDWIN, from the committee to whom was referred on the 24th instant, the bill entitled "An act to repeal the internal taxes, reported amendments; which were read.

Ordered, That they lie for consideration.

The bill making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada, was read the third time; and after filling the blank with the words *ten thousand*,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act making appropriations for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada."

Mr. CLINTON, from the committee to whom was recommitted, on the 25th instant, the bill for revising and amending the acts concerning naturalization, reported further amendments; which were read.

Ordered, That they lie for consideration.

The Senate took into consideration the amendments reported by the committee, on the 25th instant, to the bill for the better security of public money and property in the lands of public officers and agents; which were further amended and agreed to.

Ordered, That this bill pass to the third reading as amended.

Mr. NICHOLAS, from the committee to whom was referred, on the 29th instant, a bill making appropriations for defraying the expenses which may arise from carrying into effect the convention between the United States and the French Republic, reported it without amendment.

Ordered, That the further consideration of this bill be postponed to Monday next.

Mr. ANDERSON, from the committee to whom the subject was referred on the 18th instant, reported a bill to provide for the more convenient organization of the courts of the United States; which was read.

Ordered, That this bill pass to a second reading.

A message from the House of Representatives, by Mr. BECKLEY, their Clerk—

The House of Representatives have passed a bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine; in which they desire the concurrence of the Senate. They have directed me to bring to the Senate a statement communicated to the House of Representatives by the President of the United States, with his Message of the 17th ultimo; and to ask of the Senate, in exchange therefor, the roll of the persons having office or employment under the United States, which was communicated to them with a Message of the same date.

The bill last mentioned was read, and ordered to the second reading.

Ordered, That the Secretary do carry to the House of Representatives the roll of the persons having office or employment under the United States, as requested in the above recited message.

SATURDAY, March 27.

The bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine, was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of United Brethren for propagating the Gospel among the heathen;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to a second reading.

The Senate took into consideration the amendments yesterday reported by the committee to the bill to repeal the internal taxes; and the amendments were in part adopted.

On the question, Will the Senate adopt that part of the report of the committee which goes to strike out the eighth section of the bill?

It passed in the negative—yeas 8, nays 17, as follows:

YEAS—Messrs. Baldwin, Breckenridge, Clinton, Cocke, Colhoun, Franklin, Jackson, and Sumter.

NAYS—Messrs. Anderson, Bradley, Dayton, Ellery, T. Foster, Dwight Foster, Howard, Logan, S. T. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Tracy, Wells, and White.

On motion to amend the 8th section, to be read as follows:

And be it further enacted, That all persons who shall, on or before the 30th day of June next, have any blank vellum, parchment, or paper, which has been stamped by the Superintendent of Stamps, and counter stamped by the Commissioner of the Revenue, and on which a duty has been paid to the use of Government, shall be entitled to receive from such Collector or Collectors of the Customs, or other revenue officers in the respective States or districts, as may be designated for that purpose by the Secretary of the Treasury, the value of the said stamps, after deducting in all cases *seventeen* and a half per cent.; and that the said officers are hereby authorized to pay the same: *Provided*, That the said blank vellum, parchment, or paper, be presented within four months after the 30th day of June next:

A motion was made to strike out "seventeen" and insert "seven;" which passed in the affirmative—yeas 21, nays 2, as follows:

YEAS—Messrs. Bradley, Breckenridge, Clinton, Cocke, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

NAYS—Messrs. Baldwin, and Colhoun.

MONDAY, March 29.

Mr. BRADLEY, from the committee to whom was referred, on the 25th instant, the bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," reported amendments to the said bill, and further, that the committee are of opinion that any additional provisions in the act to promote the progress of useful arts are unnecessary.

The Senate resumed the consideration of the bill to repeal the internal taxes, and the amendments reported by the committee were in part adopted, together with further amendment.

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill making an appropriation for defraying the expenses which may arise for carrying into effect the convention made between the United States and the French Republic.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill making a partial appropriation for the support of Government, during the year 1802, in which they desire the concurrence of the Senate.

The bill mentioned in the said message was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. NICHOLAS, TRACY, and BALDWIN, to consider and report thereon.

The bill for the better security of public money and property in the hands of public officers and agents, was read the third time and amended, by striking out the third section, after the words "so much" the words "and no more, as near as may be." And in the same section, after the word "therefore," the words "as may be necessary,"

and section fourth, after the word "given," by expunging the word "public;" and

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 24, nays 2, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Logan, S. T. Mason, J. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Sumter, Tracy, Wells, and White.

NAYS—Messrs. Bradley and Jackson.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act for the better security of public money and property in the hands of public officers and agents."

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

The Secretary of State, charged with the civil affairs of the several territories of the United States, has received from the Marshal of Columbia a statement of the condition, unavoidably distressing, of the persons committed to his custody on civil or criminal process, and the urgency for some Legislative provisions for their relief. There are other important cases wherein the laws of the adjoining States, under which the territory is placed, though adapted to the purposes of those States, are insufficient for those of the territory, from the dissimilar or defective organization of its authorities. The letter and statement of the Marshal, and the disquieting state of the territory, generally, are now submitted to the wisdom and consideration of the Legislature.

TH. JEFFERSON.

MARCH 29, 1802.

The Message and papers therein referred to were read, and committed to Messrs. MORRIS, S. T. MASON, and HOWARD, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of Isaac Zane; also, a bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" in which bills they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the 2d day of March, one thousand seven hundred and ninety-nine.

Ordered, That it be referred to Messrs. T. FOSTER, CLINTON, and TRACY, to consider and report thereon.

The bill for the more convenient organization of the courts of the United States was read the second time.

On motion, it was agreed that this bill be the order of the day for Thursday next.

The bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the second time, and referred to Messrs. FRANKLIN, BRECKENRIDGE, and SUMTER, to consider and report thereon.

The bill for the relief of Isaac Zane was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to the committee last mentioned, to consider and report thereon.

The bill last mentioned in the message from the House of Representatives last recited was read, and ordered to the second reading.

On motion that it be

Resolved, That the Secretary of the War Department be requested to prepare and lay before this House a statement of the expenses actually incurred in support of the late Military Establishment for the last year, for which accounts have been rendered; and likewise, an estimate of the sums necessary to defray the first year's expenses of the present Military Peace Establishment:

Ordered, That this motion lie for consideration.

TUESDAY, March 30.

Mr. JACKSON, from the committee to whom was referred the resolution of the Senate of the 12th March, to inquire what further and more effectual means ought to be provided by law for the carrying the mail of the United States, reported a letter from them to the Postmaster General, and sundry letters and documents from the Postmaster General to the committee, in reply thereto.

Ordered, That the same be printed for the use of the Senate.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

The Secretary of War has prepared an estimate of expenditures for the Army of the United States during the year 1802, conformably to the act fixing the Military Peace Establishment; which estimate, with his letter accompanying and explaining it, I now transmit to both Houses of Congress.

TH. JEFFERSON.

MARCH 30, 1802.

The Message and estimate were read, and ordered to lie for consideration.

The bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the second time, and referred to Messrs. J. MASON, TRACY, and ELLERY, to consider and report thereon.

Mr. ROSS presented the petition of sundry merchants of the city of Philadelphia, signed Thomas Fitzsimons, and others, praying relief from the operations of the act passed May 13, 1800, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" and the petition was read, and referred to the committee last mentioned to consider and report thereon.

The bill, entitled "An act to repeal the internal taxes," was read the third time, and amended, by striking out of section 1st, line 2d, after the word

"next," the words "the collection of;" and section 2d, line 1st, after "and," by inserting "be;" and in line 2d by making the word "discontinue" "discontinued." And, after debate, the Senate adjourned.

WEDNESDAY, March 31.

Mr. NICHOLAS, from the committee to whom was referred, on the 29th instant, the bill making a partial appropriation for the support of Government during the year one thousand eight hundred and two, reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. FRANKLIN, from the committee to whom was referred, on the 29th instant, the bill for the relief of Isaac Zane, reported it without amendment. And on motion, the bill was amended, and ordered to the third reading as amended.

INTERNAL TAXES.

The Senate resumed the third reading of the bill, entitled "An act to repeal the internal taxes."

Mr. ROSS, of Pennsylvania, rose and said, he had not expected that bill to be called up for this day's discussion, and was of course unprepared to go into its merits with as much correctness as he had intended; but as the bill was now on its passage, he would make a few remarks. He said, whatever might be his conduct, were the laws laying the internal taxes now before the Senate to be passed for the first time, he had no hesitancy in opposing the repeal.

He was convinced that the public exigencies required the whole of our revenue, including these taxes, and that the future impost, and other revenues, had been overrated by the Secretary of the Treasury in his estimate. The sale of our Western lands had been charged as productive of the annual sum of $400,000. He had many reasons for doubting that result, as the best of them were already sold, as money would become scarce in this country on the introduction of peace in Europe, and as agriculture would be less profitable with the peace prices.

Our expected neighbors, too, in Louisiana, and the Western Territory becoming an independent State, as was contemplated, might have an influence which could not now be foreseen with much certainty. Upon the whole, he thought the sum of $400,000 much too high for that part of our revenue. He supposed the duties on impost and tonnage must suffer a considerable diminution from the introduction of peace in Europe, and wished, in a particular manner, that gentlemen would attend to the solemn pledge of these internal taxes, to pay the interest and principal of the public debt—especially the interest of foreign loans, referred to in the act passed March 3d, 1791, in which directions were given that a separate account of the duties on domestic distilled spirits and stills, &c., should be kept, to the intent that they should never be diverted. He adverted to all the laws laying and altering these internal taxes, and the solemn pledging of them for the payment of the interest and principal of foreign loans, and the promise to substitute other funds of equal value, if these were diverted. He called upon gentlemen to justify, if they could, this flagrant breach of public faith, which was contained in the abolishing of these taxes without any substitute; and, on pretence of having made savings of public expense, which he declared would amount to little more than savings on paper.

Mr. MORRIS.—Mr. President, not having expected that this question would come on before to-morrow, I shall not be able to deliver my sentiments with the brevity and method I could have wished for my own ease and the convenience of the Senate. Though unwilling to trespass on their patience, I must entreat their attention to a subject highly important; more so, perhaps, than it has yet been considered. And I must so much the more solicit their kind indulgence, as I cannot hope to offer amusement, much less to convey instruction. It would, indeed, be vain to attempt to decorate logical deduction, or the meager results of arithmetical calculation. I shall, therefore, merely endeavor to recall to the recollection of gentlemen who hear me, the ideas which have already passed in their own minds; and I pray them to cast off, for a moment, all prejudice which they may have taken up, and go patiently along with me, into the fair investigation of those points on which the question turns.

I mean, sir, to comprise what I have to say under three heads:

1st. I shall, on general principles, compare internal taxes with those on the importation of commodities.

2dly. I shall examine how far we can rely for revenue upon the latter, supposing no frauds to be committed; and

3dly. I shall consider the danger to which that revenue may be exposed by smuggling.

First, then, let us compare internal taxes with duties on merchandise imported. And here let me premise, that in subjects of this sort there is no universal proposition. We must legislate on principles generally true, and be careful not to assume an exception as the ground of a rule, or believe that one solitary fact is sufficient to disprove conclusions drawn from the general state of things.

In the comparison now to be made, the first leading feature is the superior cheapness of internal taxes. This may seem extraordinary, and perhaps paradoxical, after what we have seen and heard of the expense of collecting them. On that expense, however, I must observe, in the first place, that, by extending this tax to a greater variety of objects, the collection will cost less in proportion to the amount; and, secondly, that although the sparseness of population in particular districts may prevent, as to them, an economical administration, yet this special circumstance, the effect of which must daily diminish, ought not alone to induce a preference for another general system.

Taking things as they are, let us place this question of expense on its true ground. By the cost of collection, I understand the difference between what the Treasury receives and what the people pay. If the necessary sums be (as an internal tax)

collected from the people immediately, they pay no more than what goes into the public coffers after deducting a certain per centage to the officers employed in the collection. But if the same sums be raised by duties on articles imported, it is evident that the merchant must take an advance on that part of his capital employed in payment of the duty, as well as on that which has been applied to the purchase and importation of the article. Where he received a credit for the duty this profit will be less in proportion to the length of that credit. The amount will necessarily vary according to a variety of circumstances; any hypothetic statement of it, therefore, to be tolerably accurate, must be so varied and diffused that we can better comprehend it as a logical proposition, than explain it as an arithmetical problem. The precise amount, moreover, is not essential to our present inquiry. The retailer purchases of the merchant with cash or credit. He of course pays, or engages to pay, the price; that is to say, the prime cost and charges (in which the duty is included) and the merchant's profit on both cost and charges: for these taken together constitute the merchant's price. After this, the retailer removes the commodity so purchased to the place where it is to be vended. It will be noted that in some cases articles pass through intermediate hands between the merchant and retailer, whereby an addition is made to the price, either as profit or as commission. But a consideration of these cases would render the inquiry too complex. Confining ourselves, then, to the simple transaction between the merchant and retailer, it is evident that when the latter has paid the price (including the merchant's profit on the duty) he must take a profit on the whole of that price, and on the charges he incurs for packages, freight, and transportation. In this profit he will of course include the interest of his own capital, or that which he pays to another for the use of money, or that which (in the shape of advanced price) he is bound to pay where he has purchased on credit. It is evident, also, that this profit must be sufficient to compensate him, not only for the employment of his stock, but for the labor and professional skill, by which he is to support himself and provide for his family. It is, therefore, equally evident that the advance must be great in proportion as the place in which he vends the goods is remote from that in which he made the purchase, and that it must increase when sales are slow, because a small profit often repeated is better than a large one which seldom recurs. On the whole, we may fairly conclude that the price of imported goods will be greatest in places most distant from the ports, and in those where (from the state of population or from other circumstances) the consumption is small. In such places, therefore, the duty will fall most heavily on the consumer.

It is proper, in this place, to distinguish between articles of mere luxury and those of real utility. It is of little consequence to the community that the luxurious should pay dear for the gratification of their appetites. It is indeed advantageous, because the high price of such things diminishes the consumption, operating thereby as a regulation of police or sumptuary law. But the case is widely different when we come to articles of indispensable use, or those which long habit has rendered almost, if not altogether, necessary to the great body of the people. It is from such alone that copious revenue can be drawn. And with respect to them, it is clear that in the form of profit, to those who make successively an advance of the duty, the consumers pay much more than they would pay for the cost of collecting the same sum, by an internal tax, levied on the same articles at the moment of consumption. Let this cost then be extended, if gentlemen please, to ten or to fifteen per cent., still they will find that it is but light in comparison with the other. They will find, also, that those parts of the country most distant, and those which are least able to bear the public burdens, will pay far more than the wealthy and populous parts for collection of their quota. And it will perhaps command their particular attention, that inhabitants of the large cities will (in this mode of taxation) have a prodigious advantage over those at a distance. Finally, if it be objected that, for the internal taxes, we have hundreds of collectors appointed by the President, gentlemen must see that, for the duties, there are thousands of collectors, self-appointed. Let us not then be terrified by the idea of Executive patronage, for admitting it to be an evil, we shall find it to be unavoidable but by greater evil. The true question is (or ought to be) how the public necessities can be supplied with least inconvenience to the people.

There is another point of view, also, in which, on principles of sound policy, a preference is to be given to internal taxes. The collection of them keeps money in the country, whereas other taxes necessarily draw it away to the seaports, creating a distressful scarcity of cash in remote districts. Now there is nothing which tends so much to private economy as money dealing, for there is always more profusion where articles are procured on credit, than where they are paid for with cash. On the one hand, the consumer is more at the mercy of those who supply his wants, and, on the other, the trading part of the community is more exposed to loss from insolvency; and, as a result of both, the sum of national prosperity is diminished. It may be necessary perhaps to elucidate this position, and some others connected with it. Let us then take for an example the tax on distilled spirits; and to this effect let us suppose a district surrounding a large distillery, and trading with the manufacturer. The necessity of money to pay the tax will, by degrees, introduce money dealing between the distiller and the farmers. He will pay to these, in cash, for their grain, and they will purchase with cash the spirits they consume. Those not consumed will be sold by him, and the needful money be thereby obtained both to pay his tax and to support the commerce of the district. The farmer, having sold his grain, will purchase no more spirits than he wants, and will pursue his business so much the more steadily and cheerfully, as he finds for his produce a ready

money market at his door. But if the tax be taken off and the former practice recur, so that the farmer must exchange his grain for spirit, he must either waste time in seeking a purchaser of the quantity he has beyond what he wants, or he must consume it himself. Taking the community in mass, there will happen a little of each, and the general result of both will be an excessive use of spirit, and a considerable waste of time, pernicious to individuals, and injurious to the State. I entreat gentlemen, then, to beware, lest mistaking the true interest of those they represent, like watermen who look one way and row another, they at each successive effort recede from the object they have in view. They contemplate a benefit to the interior country by this proposed repeal, which will produce a contrary effect. It will occasion great distress for the want of cash.

I foresee that I shall (before I have done) fatigue the patience of the Senate, and shall therefore, omit many observations which I have yet to make on this head. I trust however that, as a general proposition, the advantage of internal taxes over duties on importation, so far as concerns articles of necessary or general consumption, is sufficiently evident. But there is one point particularly applicable to our system, which must not be wholly forgotten. A long credit for the duties is, in many cases, given by Government. Let it not be understood, that I object to this facility afforded to your merchants. I know it to be proper, necessary, and beneficial to the community; but there is a result from it, which will not perhaps meet with general approbation. So far as this duty goes, Government furnishes to the merchant a capital on which to trade; and on this capital the merchant derives a profit from the people. A profit by no means so great, indeed, as if he had been obliged to pay the duty in the first instance; still, however, it is clear, that high duties involve the necessity of a credit (equivalent to an advance) by Government to self-appointed collectors of the revenue, from which they benefit at the public expense. This surely is no recommendation of the system. Let it not be understood, however, that I object absolutely to a duty on imports. This would be running into another extreme, and extremes are seldom either reasonable, just, or safe. But I contend that duties should be moderate, with a view as well to economy in the collection, as to the danger of contraband. I contend, also, that when a large sum is to be raised by a tax on consumption, it cannot be otherwise collected than as an internal tax, either with certainty, or with economy. Let me also observe, in this place, (what I ought to have mentioned before,) that I must consider the system, such as it shall stand after the repeal now demanded, as the system of the present Administration. It is as much so as if the whole were now about to be enacted; and it will not do for gentlemen to say, these duties were imposed by our predecessors, or by this, that, or the other class, set, or sect. They might have had some pretext (though not indeed any good reason) for saying so, had they left things as they found them; but the moment they make a change, the whole of what remains is completely their own. The reason is evident, it is palpable. Every part is in their power, as well that which they take, as that which they leave. Their choice therefore decides.

I conclude here, sir, my observations on the first head, and proceed now to consider what reliance is to be made on the revenue, supposing no frauds to be committed. Before I go into the detail of particular calculations, I must pray to be indulged with the preliminary remark, that, during the late war, there has been an increased consumption of foreign articles, because the means of procuring them were increased. To show this, I must be permitted to observe, first, that (as a necessary consequence of the war) our merchants found a great demand for their ships, which, sailing under a neutral flag, enjoyed (though not without interruption) the rights of neutrality. Freights, therefore, being high, many ships were built, and the labor applied to ship-building and navigation advanced in price; secondly, from the same general cause, occasioning large demands for our produce, and particularly for provisions, a similar effect was produced on the labor employed in agriculture; and, thirdly, the dearness of labor in agriculture and navigation increased the price of that engaged in domestic manufactures. The profit therefore, to merchants, to manufacturers, to farmers, to labor of every kind, being great, each class of society was enabled to consume more of those foreign articles which were suited to its particular taste and inclinations. All this is evident, and requires no other proof than a reference to recent facts. But there is one circumstance which may not so immediately strike the eye of observation, and which is of leading importance to our present inquiry. This increase of means arose principally from abroad, and must cease with the change of exterior circumstances. Could it be wholly (or principally) attributed to an ameliorated condition of our interior circumstances and resources, it might be expected to continue, and continually to produce the same, or similar effects; but, depending on the war, with the war it must cease. This point may require elucidation. To bring it, therefore, distinctly within our mental view, let us select one imported and one exported article of general use. Let us, for the first, take cloth, and for the second, wheat. Six yards of cloth cost, in Europe, ninety-nine shillings sterling, to which may be added (for the proportion of packages) one shilling, making together one hundred shillings. To this is added in America, by law, as the probable expense and risk of transportation, ten per cent. An average taken, I believe, with sufficient accuracy and fairness, is ten shillings. The amount is one hundred and ten shillings. On which the duty is twelve and a half per cent., or thirteen shillings and ninepence. This brings the cost in a seaport to one hundred and twenty-three shillings and ninepence. If we add about ten per cent. for the merchant's profit, or eleven shillings and threepence, we have a total of one hundred and thirty-five shillings, or thirty dollars, being five dollars per yard, to which must be added about twenty per cent. to the re-

tailer. Hence it appears that cloth, which costs in Europe sixteen shillings and sixpence sterling, will be retailed in America for about six dollars. When wheat is, in America, at one dollar and a half per bushel, three yards of cloth (costing eighteen dollars) will be paid for by twelve bushels of wheat; but when the price of wheat is only one dollar, the same cloth cannot be purchased with less than eighteen bushels: and, on the other hand, when wheat, in Europe, is at six shillings sterling per bushel, the manufacturer can, with three yards of cloth, purchase more than eight bushels, but when the price rises to ten shillings, he cannot, with the same quantity of cloth, procure quite five bushels. Thus, on the interchange of the same specific articles, under the different circumstances of peace and war, the American farmer (in the latter predicament) saves six bushels on eighteen, and the European manufacturer loses more than three bushels out of eight.

Proceeding on this simple ground, we shall be enabled to take a more general view of the subject with equal perspicuity. To this effect, assuming cloth and wheat as representatives of our consumption and produce, let us suppose twenty bushels of wheat to be the average of our total export, and three yards of cloth to be the average of our total consumption of articles imported. If, on these assumptions, we consider the price of cloth to be about the same, both in peace and war, namely sixteen shillings and sixpence in Europe, and six dollars in America, and if we consider the peace price of wheat to be, in America, one dollar, and, in Europe, six shillings per bushel, and finally, if we consider the war price of wheat to be, in America, one and a half dollars, and, in Europe, we have these results:

1. As to America. In peace, twenty bushels of wheat sold at one dollar each, gives twenty dollars, and three yards of cloth purchased at six dollars per yard, cost eighteen dollars; leaving a balance gained to the country of two dollars.

But, in war, the same twenty bushels sold at one and a half dollar each, give thirty dollars; and the same three yards purchased as before for eighteen dollars, leave a gain of twelve dollars.

The difference, therefore, between the war and peace prices leaves an advanced gain of ten dollars, equal to one-half the produce at the peace price. Such is the result as to the husbandry of America.

2. In Europe, we have, in peace, twenty bushels of wheat sold for six shillings per bushel, which produce one hundred and twenty shillings, and three yards of cloth purchased for fifty shillings; leaving a difference of seventy shillings; which, after deducting the gain by the American husbandry of two dollars, or nine shillings, leaves a final balance of sixty-one shillings to those concerned in commerce, for commissions, freight, insurance, &c.

But, in war, the same twenty bushels at ten shillings will produce two hundred shillings. From which, deducting, as before, for cloth purchased, fifty shillings, there remains a balance of one hundred and fifty shillings; and, taking from this the twelve dollars gained by the husbandry of America, or fifty-four shillings; there remains a final balance of ninety-six shillings to those concerned in commerce. But we have seen that this balance was in peace only sixty-one shillings. There is, therefore, in war, an increased gain to those concerned in commerce of thirty-five shillings.

Hence, then, it appears, that with the same produce, and the same demand for necessary consumption, the means of every order of our citizens have been greatly increased, by the contingencies of war, at the expense of foreign countries. Objections, I know, may be made to this conclusion, and instances may be adduced to support them; still, however, as a general proposition, it will appear to be true, and it is not contended for as an universal proposition. Adopting it, then, with all reasonable modification, let us now, sir, proceed to examine those statements of our commerce and revenue which the Secretary of the Treasury has laid before you. Among these I find a statement (in the table L,) of articles supposed to have been consumed annually during two distinct and successive periods; and, on this hypothetic ground, an estimate is made (according to an assumed rule of proportion) of the revenue to arise from the present duties for eight years to come. It appeared to me, sir, when I looked at the Secretary's report, that his mode of reasoning, (by supposition grounded on supposition,) however it might tend to elucidate propositions, could by no means serve as dialectic argument to arrive at truth. His conclusions may perhaps be just, but I cannot persuade myself that the ground on which they are raised is sufficiently solid.

In order to arrive at something more like certainty, I have endeavored, in the first place, to make estimates on facts, in so far as the documents he has transmitted would enable me. And I have taken the average annual consumption of articles and of duties payable on them, for the longest terms mentioned in the tables annexed to his report; because it appeared to me that the average of a long term was less likely to be affected by accidental circumstances than of a short one. I find, then, from the table marked A, that the amount of merchandise paying duty ad valorem for eleven years, is $257,728,492. And I find, from the table marked E, in which the articles are classed according to the rate of duties on them, that a value of $185,887,546 would, with the present duties, yield a gross sum of $24,351,054. It may be presumed, therefore, that $287,728,492, the value imported during eleven years, would have yielded $37,692,089. If this be right, we have an annual average of $16,157,135 value, paying a duty of - - - - - $3,426,553

By the table A, the quantity of foreign spirits, consumed in eleven years, amounts to 55,475,505 gallons; by the table F, that 42,942,322 gallons paid $12,227,719; we have, therefore, by the rules of proportion, annually, 5,043,227 gallons, and a duty of	1,436,047
The molasses, by the same table A, is 46,809,917 gallons, or annually 4,255,447, which, at five cents, give -	212,772
The wine, by table C, is for six years, 12,470,657 gallons, which, at the present rates, would have paid $4,374,743; this gives annually 2,078,443 gallons, and a duty of - -	729,124
The tea, by table G, is, for eleven years, 28,548 pounds, which paid a duty of 4,190,184, being annually 2,545,504 pounds, and a duty of - -	380,925
The coffee, by table A, for eleven years, is 73,827,542 pounds, being, annually, 6,711,595 pounds, at five cents, is	335,797
The sugar, by table A, is for eleven years, 391,653,372 pounds, being annually 35,604,852 pounds, at two cents and a half, is - - -	$90,121
The salt, by table A, is for eleven years, 22,087,507 bushels, being annually 2,007,955 bushels, at twenty cents, is	401,591
The average of sundry articles in the table H, is for eleven years -	362,237
The average of the duty on tonnage and passports for the last three years of actual receipts, the accounts of which have been settled, is, by table I,	120,666
The gross amount is - - -	8,295,833
Deducting, for collection three and eight-tenths per cent, or - -	315,241
There remains net - -	- $7,980,592

I have taken the expense of collection according to the table I, which gives the precise amount during ten years. This differs a little from the rate assumed in the table L, which, as you will see, sir, is $3 62 per $100. According to this table, the net annual amount for six years, is taken at 8,350,000, being 369,408 more than the average of eleven years just stated. I shall compare the various items of these two accounts when I come to consider the probabilities of future receipt.

I have in my hand a detailed examination of the various articles contained in the table H, so as to ascertain, respecting each article, the relation of the general average for eleven years, 1790 to 1800, inclusive, to the special average for six years, 1793 to 1798, inclusive. I shall not at present, however, call the attention of the Senate to this detail, their time is too precious; but on some of the items I must say a few words by-and-by.

It will be observed, sir, that the general average of the net amount of duties and tonnage, for the longest period which the documents in our possession will enable us to examine, is something short of $8,000,000. The Secretary has taken the net average of six years, 1792 to 1798, inclusive, at $8,350,000, as appears by the table L; between that and a preceding period, he concludes there will be a future advance to the amount of above a million annually. I remark, however, that in the gross amount of duties in the last column of that table, viz: - - - $8,663,000

There are sundry articles which I wholly omit. The first of these is an extra duty of ten per cent. on goods imported in foreign vessels, to which merchants will not, I believe, subject themselves without necessity; it is stated at - -	$113,000	
And for the same reason I omit the next article, resting on the same ground, which is - - -	43,000	
The next is a supposed deduction on drawbacks, which can have no existence when the drawbacks cease, and there is little probability that they will in future amount to anything worth notice. The sum stated under this head is - - - - -	$6,000	
These deductions, taken together, amount to - - -		242,000
So that the gross amount, when stripped of them, will be but - -		$8,421,000
Which differs from the gross amount of the general average I have already detailed, only - -		125,167
		$8,295,833

Let me observe here that, although it may have been proper to insert these articles for the species of calculation contemplated by the Secretary, they are wholly foreign from my view of the subject; for the Senate will recollect that my object is to consider the probable amount of duties to be collected in future, supposing no fraud to be committed. To this effect I mean to set out from the existent state of things, and under each distinct head, consider the chance of increase and decrease; comparing, as I go along, what I shall call the general average; that, for eleven years, with the particular average, by which I mean, that for the six years, 1793 to 1798. And before I begin with this detail, it may not be improper to observe, in gross, that the difference above noted, of about $125,000, is not material. I had, indeed, taken, in another view, an estimate of the amount which I will not now detain the Senate to consider, but merely mention that it is somewhat less. On the whole, therefore, I feel myself justified in taking eight millions of dollars as a present ground on which to stand, in examining future probabilities.

The first article in the list is the duties ad valorem, which, like all the rest, except wine, is the average of eleven years, which amounts to - - - - - - $3,426,553

The particular average of the table L, is - - - - -	3,543,000
Making a difference of - -	$116,447

On which I observe, in the first place, that this difference is nearly equal to that between our respective totals; so that those which exist between other items, nearly compensate each other. I must observe, in the second place, that many of the articles subject to this duty have been imported during the war, to supply other countries, and that for some of them the duty has not, from particular circumstances, been drawn back on exportation. I must, in the third place, observe, (recurring to the table A.) that, out of eleven years, the two of greatest import were the years 1796 and 1800; the year 1800 exceeds the general average above eight millions of dollars, and the year 1796 exceeds it above ten millions. In fine, the year 1796 exceeds the year 1800 two millions. It is therefore clear that this increased importation is not conclusive evidence of increased consumption; and therefore it should not be taken as an admitted point from which to deduce, by proportional estimate, the future probabilities.

Let me remind gentlemen, also, of the general principle already established; that a decrease of the means to purchase many articles of mere luxury, will, of course, diminish the consumption. And, let me add, that many such articles, on which the duty has already been paid, remain unsold. As to the rest, looking over the list which comes under this head, I see several, the importation of which will diminish from other causes.

There are various articles of glass ware, which pay twenty per cent. duty. We already have glass houses established, and if we do not now make this substance cheaper than it can be imported, the cause of that and of such other inabilities must be sought in the high price of labor. This price will fall. And let me here, sir, say a few words on that subject, because we are now entering a field, in many parts of which it must recur.

The high price of labor has a two-fold effect upon manufactures, to enhance the price. The laborer receives more wages, and he does less work. When in great demand, he dictates his own terms, and is more master than his employer, who is frequently obliged to overlook his negligence, lest reproof should drive him away. Enabled to subsist a week from the work of two days, he spends much time in debauchery; and when he returns is frequently incapable of performing his business. The high price of home manufactures, which results from these circumstances, operates inversely to decrease the quantity. The great demand keeps up the price of wages, and while wages are high and journeymen idle, they consume more and produce less than when, wages being low, they live in habits of industry and economy; they are also much less happy; and, however paradoxical it may seem, it is a truth vouched by experience that if they do not grow rich with low wages, they become with high wages miserably poor. While labor is so much in demand as it has lately been, the protecting duties, which many were inclined to rely on as the source of public prosperity, produce an effect contrary to that which was intended. The home manufactures are thereby diminished, and importations increased, of all which the consumer is the victim; but whenever circumstances shall, by lowering the price of labor, the price of produce, and the freight of ships, effect the radical cure of this evil, more hands will be engaged in manufacturing, because none but good husbandmen and good seamen will be employed in tillage and navigation. Add to this that a given number of manufacturers will perform more work, and thus the means of increase to our domestic manufactures being doubled, the proportion of our imports to our consumption must be reduced; so that, in many cases, notwithstanding an increased demand, there will be a diminished importation.

Let us, after this digression, return to the object we left. Not only the more high priced, such as flint glass paying 20 per cent., but window glass, which pays 15 per cent., will be manufactured in this country; for it will be noted that the difference, duty included, between the prime cost and the mercantile price of articles imported, which pay 20 per cent. will be about 45 per cent.; on those which pay 15 per cent. it will be about 39 per cent.; and on those which pay 12 per cent. it will be about 36 per cent. The importation to firearms, if it do not diminish, will hardly increase. Hats were made in America so well and so cheap, while we were British colonies, that it was thought proper to pass an act of Parliament, to lay restrictions on that business. The furs are in our country, and are carried thence to Europe; we have wool in abundance; the logwood is at our door. Can it then be supposed that the artists of Europe will long support their competition, when a hat which costs four dollars in Europe cannot be retailed here under six dollars? Copper, pewter, and tin manufactures are already made among us in great quantities. The importation of them will, I believe, diminish. Earthen and stoneware (at least those articles that come under that description) are so cumbersome that, even without a duty, they would be made at home; and it will not, I believe, be long before our industry shall embrace some of the finer sorts. Leather and manufactures of leather are at a price so great as cannot but excite surprise. Thirty years ago our manufactories of leather were in a flourishing condition. Neither the capital nor the skill are diminished. Our export of beef shows that our stock of hides has increased. Bark, also, we export, and the enterprising industry of our fishermen leaves no lack of oil. Why, then, should we be under the necessity of importing the coarser manufactures of leather? This can arise only from the common cause of so many other woes, the extravagant price of labor; a cause which soon must cease. Marble and stone will, I believe, be imported to very small amount. Stockings, mittens, and gloves, have long been made at home. What may be the future amount of those imported will depend, perhaps, on fashion. It will consist of the finer sorts. Paper hangings and cartridge paper can both be made at home; much of the former is consumed, and there can be no good reason why that consumption should not be supplied, in a great degree, without recurring to

foreign shops. Glass bottles, anvils, hinges, hoes, and brushes, are among the coarse articles which must soon be exclusively made at home. Anchors and sail cloth will both be manufactured in America; not, perhaps, to great extent, still, however, the importation must diminish, even though our commerce should increase. American vessels will supply themselves with anchors, sails, and rigging, in Europe, on which at their return they pay no duty. The ropemakers, sailmakers, and riggers of the United States will feel the consequences; for which, however, there is no remedy but by taking off some of the duties. It may, perhaps, be objected that this practice has not hitherto prevailed. To which I reply, that, during the war, these articles being in great demand in the ports of belligerent Powers, and being contraband of war, so as not to be carried thither under a neutral flag, were dear. It was not, therefore, desirable for a ship to procure her outfit in such ports; but the peace will operate a total change in that respect. Linen and cotton manufactures are increasing daily, and when the price of produce diminishes, our fellow-citizens in the country must do more to clothe themselves, in proportion as their means of purchase from the store shall be curtailed. Our consumption of stationery will certainly increase; but whether the progress of our manufactures will be equal to that of the demand, depends on circumstances too minute for the present investigation. The last of these articles, which I shall notice, is gunpowder, the importation of which there is every reason to believe will daily diminish. Much of it was, I believe, during the war, exported in contraband, clandestinely, and, of course, without drawback.

Having thus gone through the tedious list of ad valorem articles, and noted such as seemed to require it, let us (before we proceed) look back and consider whether, under all circumstances, it be not highly probable that the duty on this class of articles will rather diminish than increase. I believe, sir, that if gentlemen have attended both to the general observations and the particular details, they must be convinced that, on the total, there will be a defalcation. This single article, however, amounts to near three millions and a half, out of eight millions. And it is on this article also that the increase appears to be the greatest from the first to the second period, which the Secretary has selected as the ground-work of his calculations, you will see, sir, by recurring to the table L. that the sums are as 25 to 35.

That which stands next in order is ardent spirits, the average duty on which is -	$1,436,047
The particular average in the table L. is - - - - - - - -	1,475,000
Making an increase beyond the general average of - - - - - -	38,953

With respect to this article in particular, I wish gentlemen to apply the observations already made on the means of expense in the several classes of our citizens. We have seen that our average import is not less than five million gallons. By recurring to the table A. we shall find that this import has varied much. The year 1793, for instance, stands charged with 700,000 gallons less than the year 1790. The year 1799 is charged with above two million and a half gallons more than the preceding or subsequent year. In a word, the quantity of 1799, exceeds that of 1793, by near four million of gallons. I mention these things to show that we should not take the average import, even of eleven years, as indicating a consumption regularly equivalent. But it is a fact, of public notoriety, that the principal consumption of imported spirits is along the seacoast; and that it has been greatly increased by the advance in the price of labor during the war. The cause ceasing, the effect must cease, and as habits of industry and sobriety prevail, that source of revenue will dry up. If, however, we should be mistaken in our hope as to the public morals, there is a further reason why it would be imprudent to count on a million and a half of dollars from the importation of ardent spirits. When labor and produce fall in price, the domestic manufacture of that article must become more beneficial, and the consequent diminution of its price will necessarily exclude (at least among the poorer classes) the use of foreign spirits. The art of distilling is rendered every day more perfect. Already certain kinds of spirit are prepared which are preferred, even by the rich, as articles of luxury; and there can be little doubt but that in a few years this will become one of our exports. The internal duty which operated (though in a feeble degree) to preserve a balance between domestic and foreign spirits is, by the act now before us, to be repealed. This very act, therefore, will operate against that part of the revenue. I ask, then, Mr. President, whether, under all these circumstances, there be any reasonable hope that this branch of our revenue will increase? Is there even a slight probability that we shall continue to derive one million and a half of dollars from the importation of ardent spirits?

The next article on our list is molasses, the general average of which, during eleven years, has been - - - - - - - -	$212,772
The particular average by table L. is -	191,000
	21,772

leaving a difference of above twenty thousand dollars annually of decrease.

You will observe, sir, by the table A. that the quantity of molasses imported has decreased since the year 1790. The consumption of that and the succeeding year was twelve million gallons. In the year 1799 and 1800, it was but seven million six hundred thousand, making a difference of four million, four hundred thousand, or two and twenty hundred thousand annually. By looking at the table B. we shall find that a great part of the molasses formerly imported was distilled into spirits; but this manufacture has gradually declined. In the year 1790, we find a consumption of 2,305,461 gallons of spirits distilled from molasses, and in the year 1791, 2,536,037.

Making for those years - - -	1.841.498
But the consumption in 1799 and 1800 is only - - - - - -	1.889.864
	2.951.634

being a difference of near three millions.

We shall find that the consumption of molasses in kind has been about three million of gallons annually. I observe, then, in the first place, that though our importation may have been diminished, either by the difficulty of procuring that article in the country where it is produced, or the facility of obtaining one of more value, brown sugar, there is another cause of the same effect, namely, that spirits distilled from domestic materials have supplanted those distilled from molasses. We ought, therefore, to combine the import of spirits with that of molasses. And if this be done for the three years 1790 to 1792, and for the three years 1798 to 1800, we shall find by table A, that in the former period the spirits amounted to, gallons - - - - - - - - 12.326.406
And the molasses to - - - - 16.269.367

Making together - - -	28.595.773
But in the latter period, though the spirits are - -	16.736.977
The molasses are but	11.685.588
Making together only	28.422.565
	173.208

The two periods differ but little, yet that little shows a diminished consumption of the foreign article. This took place while the price of labor and that of grain were high, and while the duty on domestic spirits kept down the competition. I again ask, what hope is there that this part of our revenue will increase?

The next article is wine. The average of the duty for six years, 1795 to 1800, by the table C. is - - - - - - - - $729.124
And the average for six years, 1793 to 1798, by table L. is - - - 714.000
The difference is but - - - 15.124

By recurring to the table C, we shall find that from the year 1795 to the year 1800, the importation has declined; for the first three years it amounted to, gallons - - - - - 7.619.278
And in the last, to but - - - - 4.851.379
Making a difference of - - 2.567.899
Or, annually, above 850.000 gallons.

This diminution may, perhaps, arise from a change in the manners of those who consume that article: for it is, I believe, a fact that, among the wealthier order of citizens, the pleasures of the social board are not so often as in former times extended to the vicious excess of inebriation. Perhaps, also, the art of manufacturing wine among us, is better understood and more practised. Be that as it may, believing as I do that the means of sustaining the expenditure will be rather diminished than increased, I do not think we can count on any considerable advance in this part of our revenue.

The tea imported during eleven years was, we find by the table G, 28.000.548 pounds, which, at the present duties, would have yielded $4.190.184. This gives an average quantity of 2.545.504 pounds, paying annually - - - - $380.925

The average quantity for the six years, 1793 to 1798, by the table L, is 2.175.694 pounds, supposed to pay a duty of $326.000. But this duty is calculated on an average rate taken on the whole quantity, which, applied to that particular part, is too high; if calculated on the actual kinds and quantities, it amounts only to - - - 314.514
Which, deducted from the former, leaves 66.411

Thus, the difference between the average duties for the whole period, and that selected by the Secretary, will be above $66,000. So great an apparent decrease requires examination. I have, therefore, divided the whole term of eleven years into three different periods, namely, the first three, the next five, and the last three years; and I have averaged the consumption of each particular kind of tea, not only for the whole term, but for each of those distinct periods. I find that, in the whole term, the average consumption of—

Bohea, is	1.858.558 lbs.,	paying	$223.027 duty.
Souchong, is	272.988	"	40.136
Hyson, is	216.413	"	69.252
other Green, is	197.544	"	39,509
Being a total	2.545.504	"	380.924

But, in the first period, from 1790 to 1792, inclusive, the average consumption of—

Bohea, is	1.722.194 lbs.,	paying	$206.663 duty.
Souchong, is	197.185	"	35.493
Hyson, is	251.270	"	80.406
other Green, is	45.100	"	9.020
Being a total	2.215.749	"	331.582

In the second period, from 1793 to 1797, inclusive, the average consumption of—

Bohea, is	1.778.863 lbs.,	paying	$213.463 duty.
Souchong, is	214.716	"	38.649
Hyson, is	131.528	"	40.161
other Green, is	107.532	"	21.596
Being a total	2.232.639	"	318.779

In the third period, from 1798 to 1800, inclusive, the average consumption of—

Bohea, is	2.127.719 lbs.,	paying	$255,329 duty.
Souchong, is	415.916	"	80,264
Hyson, is	323,030	"	106.569
other Green, is	500,005	"	100,001
Being a total	3.396.700	"	542.163

Thus, we find a regular though small increase in the consumption of Bohea tea; and an increase as regular, but more rapid, in the consumption of Souchong. That of Hyson seems to have fluctuated, still, however, the increase has been greater than that of Bohea. But it is the article of Green tea (other than Hyson) which has made the most rapid progress. We find it rising from forty-five thousand in the first period, to one hundred thousand in the second, and to five hundred thousand in the third, being nearly equal to one-fourth of the Bohea. In this article, we trace distinctly the effect of those increased means of consumption so often mentioned. They have, we see, extended over a great part of society the use of an article of expensive luxury. It is probable that, by the diminution of those means in future, the further extension will be limited; there can, however, be little doubt that the use of tea (generally speaking) must increase. If, therefore, this branch of the revenue should decay, it will not be from a defect of consumption.

The next article is *Coffee*, the average of which, during eleven years, is 6.711.595 pounds, paying, at five cents per pound. - - - $335.797
The average estimate for six years, by the table L, is 7,351.665 lbs., paying $367,000
Making a difference of - - 31.203

Before I notice this article in particular, I must take the opportunity to observe, in general, that (like other things the produce of the West Indies) the consumption has been much increased by the peculiar cheapness, arising from circumstances which have now ceased to exist. It is notorious, sir, that we have, during several years, been the place of *entrepôt* for these commodities, which have been brought hither to be afterwards distributed throughout Europe. Of course they have been cheaper than they can be in future. And it is further to be observed, that, for a year to come, very little will be brought to us, because the price will naturally rise in the places where they are produced, and fall in those where they are consumed, from the simple consideration that they may now, at small expense and risk, be transported from the one to the other. It must, from that circumstance, happen that the article of sugar, for instance, will be worth near as much, for export to London, in Jamaica as in New York. This being the case, merchants who have a stock on hand, will find their best market at home; and until that stock shall be consumed, will not seek a fresh supply from abroad. We may consider, therefore, the next year's revenue on these articles as little or nothing. It is true that the defalcation will not immediately be felt, because the bonds for preceding years falling due, part duties will be in a train of collection; so that advances and deficiencies being spread through a greater space of time will have a more equable effect. When I speak of the cheapness of these articles, I must not be misunderstood. I do not, in a national point of view, apply that term to the money price. Money is but the counters by which the commercial game is scored, or the figures by whose aid calculations of traffic are made. The real price is the quantity of labor or of produce required to procure the merchandise. And when it is an article of luxury, this further consideration enters into the price: What is the amount which, after the purchase of necessaries, may remain for the gratification of appetite? When labor is at half a dollar per day, or three dollars per week, and board at two dollars, there will remain weekly for clothing, &c., one dollar. But when labor is at one dollar per day, and board at three dollars per week, there will remain three dollars weekly. If, in the former case, one dollar be employed for clothing, washing, and other necessary expenses, and, in the second case, two dollars, there will still remain in this case one dollar for articles of luxury. And the same reasoning applies alike to produce and to labor. After this digression, let us return to the article: We find, sir, by looking at table A, that the consumption has been variable. The average of the three last years, 1798 to 1800, is 7,462.233 pounds, being 750.000 pounds more than the general average; but, in the three first years, 1790 to 1793, it was only 3.836,391 pounds, being 2.875,000 pounds less than the general average. Finally, we shall find the average of the three first and the three last years, taken together, to be near 5.650.000 pounds. Now, it is not, I think, probable, that the consumption of the country will, for some time to come, exceed that quantity. If so, the revenue from it ought not to be estimated above 287.500 pounds, instead of 415.800, the amount relied on by the Secretary; that is to say, an advance of three-sixteenths on 367.000, the amount of the duty by the table L, for the years 1793 to 1798, inclusive. I am the more strongly of this opinion, sir, because it is notorious that during the late war our export of coffee has been very great, and because, on looking at the table A, we find that, although our excess of import in the year 1795, was - 14.674.726 lbs.
Yet the next year there was an excess of export amounting to 5.526.269
9.148.447

Leaving for the excess of imports on those two years little more than nine million pounds.

The next article is sugar, our average consumption of which by the table A, is 35,604.852 pounds, and the duty at two and a half cents is $890.121. The average estimate of the table L, is 36.149.665 pounds, and the duty at the same rate is $903.000. The general observations on the last article will apply to this also. For the same reasons which have been adduced as to coffee, we must doubt the conclusions drawn from both the general and particular average of the consumption of sugar; and we shall find by inspecting the table that the years 1797 and 1800 stand charged with above one hundred million pounds. The year 1799 is alone charged with more than fifty-seven million. The years 1797 and 1799 amount, together, to 106.847,381; the years 1796 and 1798 amount to but 58,-609.976. Finally, if we take the amount of the seven years, 1790 to 1796, we shall find the average

to be 28,723,137. At the end of that period, as at the end of every other during the war, there must have been a considerable stock on hand: so that the average thus found will probaby exceed the actual consumption. If on the one hand, it be assumed, that the increase of population will call for a greater quantity, we must, on the other hand, consider the probable decrease of our means to purchase; and making proper allowances both ways, we shall find, perhaps, that thirty million pounds of brown sugar, yielding at two and a half cents seven hundred and fifty thousand dollars, is as much as can safely be relied on. The Secretary however estimates an advance of three sixteenths on nine million three thousand dollars, making one million and seventy-two thousand dollars, which implies an annual consumption of more than forty million pounds.

The last article, specified in the table L, is salt, the average consumption of which for eleven years, by the table A, is 2,007,955 bushels, yielding at twenty cents $401,591; the six years' average stated in the table L is 2,210,942 bushels paying $442,000. The consumption of this article has certainly increased (a thing which was indeed expected) but this increase has not been, I believe, equal to the expectation. For the future it cannot advance even as it has done before, nor by any means in proportion to our population, because, in the first place, those who live beyond the mountains find a plentiful supply among themselves, cheaper than it can be imported; and because, in the next place, those who live on this side of the mountains will, as the country becomes more populous, require a smaller proportion of salt. Gentlemen may at first view think this proposition paradoxical, but let them consider that when the number of inhabitants in a given district is sufficiently large to consume fresh beef, during the warm season, so that the butcher can keep up a constant supply, less salted meat will be used. It is true that our export of beef, pork, and fish, will increase, but the revenue will not be benefited by that circumstance. On the whole I incline to think that this article will suffer no diminution, and it may perhaps be relied on for the expected amount.

We then come to sundries, as specified in the table H. The general average of eleven years by that table is a revenue of $362,237. The special average of table L, is but three hundred and fifty-two thousand.

I will not, sir, detain the Senate by a particular examination of all the articles in this table, although I have prepared notes for that purpose. Even as to those to which it may be proper to call their attention, I shall briefly state my idea of the future, without dwelling particularly on the reasons; for it is growing late, and I fear much that your patience will be exhausted.

Beer, ale, porter, and cider, yield on the general average $21,305; on the particular average $24,053; leaving $2,748.

We import no cider, and the decrease of the price of grain and of labor will probably enable our brewers (who have already brought their art to great perfection) to supply all our wants of beer, ale, and porter.

Cocoa yields, on the general average, $19,070; and on the particular average, $16,768; leaving $2,302.

As an article of luxury, the consumption will not much increase.

Candles paying two cents per pound, yield on the general average, $1,288; on the special average $2,309; leaving $1,021.

The imports of this article will probably cease, as we export the materials from which it is made, and the quantity will increase with that of salt beef.

Cheese, paying seven cents per pound, yields, on the general average, $12,089; and on the particular average, $15,652; leaving $3,563.

If, sir, we may judge by a great instance (of public notoriety) there can be little doubt but that our cheese-makers will largely supply our wants.

Soap at two cents per pound, yields on a general average, $9,348; and on the particular average, $5,684; leaving $3,664.

This also must decrease as well as the revenue from candles, and from the same cause, for we export fat, tar, and lixivial salts. But I cannot help observing, in this place, that the tax on soap and candles falls heavily on the poor in our large cities. They must consume these articles, which differ in that respect from ardent spirits, and even from coffee, bohea tea, and brown sugar. Let it not however be understood, sir, that in anything I have said, or anything I shall say, it is in the remotest degree my intention to call for a comparison between different articles on which the weight of taxation may fall. The members of the other House, being more immediately representatives of the people, are perhaps better acquainted than we are with the wishes and feelings of our constituents: and whatever may be my private opinions, I shall (from deference to them) presume that they have consulted those feelings and wishes. These indeed ought to be consulted, for it is of consequence that the public burdens be borne not only with ease, but with satisfaction. I do not say that where the people wish for anything which I believe to be pernicious that I would grant it, even in compliance with the will of their immedate representatives. No, sir, it is our duty in such cases to oppose firmly our reason to their will. We owe ourselves to the public—we owe our time, our labor, and our lives. Nay we have a heavier debt. We owe it to the people to incur their displeasure for the promotion of their good. Neither the love of their applause, nor the fear of their censure, should lead us to swerve for a moment from the straight path which is pointed out by reason and duty. Under these impressions of what we owe to the other House, to those whom they represent, and to ourselves, I shall confine myself to the expression of regret, that more attention was not paid to the necessities of the poor who dwell in our cities. They form indeed but a small part of the community; but while we are so busy in taking off the taxes which fall on useless or pernicious expense, through the vast extent of our territory, I wish there had

been some sentiment of commiseration for those who pay more than twenty per cent. advance on articles so necessary as soap and candles.

Tobacco is the next article which I shall notice. At ten cents per pound it yielded on the general average, $4,899; on the particular average, $2,962; leaving $1,937.

The greater part of what we have imported came, I presume, in the shape of Havana cigars; and that port being now shut against us, the importation will probably diminish, if it does not wholly cease. The sooner the better.

The general average of loaf sugar at nine cents per pound, is $7,847, and the particular average is $3,720; leaving $4,127. This shows a diminution of more than one-half, but if we examine the table H, we shall find that the average import of the three years, 1790 to 1792, was 208,540 pounds; that of the six years, 1793 to 1798, was but 41,337 pounds; and that of the two years, 1798 and 1800, only 11,711 pounds.

If the internal duty on this article be taken off, there can be no doubt but the regular importation must cease, and of course the duty.

Cotton has, I find, yielded, by a duty of three cents per pound, on a general average, $17,496, and on the particular average, $29,805; leaving $12,459.

As this article forms one of our principal exports, I cannot suppose that much will be imported. The greater part of what has been collected on it, has, I presume, arisen from the circumstance that it was not an exportation entitled to drawbacks.

Nails and spikes have yielded at two cents per pound, on a general average, $60,788, and on the particular average only $50,116; leaving $10,672.

These are among the principal articles of the table H. I shall dismiss them with a single observation. As a large quantity is made in America, notwithstanding the high price of labor, when the price of labor falls that quantity must increase. The duty is at least twenty per cent, and the packages, freight, and transportation, are great compared with the value. Importations must therefore decline, notwithstanding an increased demand.

Hemp is the next and most considerable article of this table; it amounts, by the general average, at a duty of twenty dollars per ton, to $63,847, and by the particular average to $70,434; leaving $6,587.

In addition to what has already been said, when anchors, sails, and sail-cloth, were under consideration, (which I shall certainly be excused from repeating,) it will be recollected that this is an article of American produce. Much labor being required in preparing it for market, the culture is necessarily limited by the hands to be procured, and the expense attending them. It must also be recollected that, in remote districts, as the price of grain declines, hemp and flax will be cultivated, because they can better bear the cost of transportation. From all these reasons it is evident, that this source of revenue must dry up in no distant period. The duties on hemp, nails and spikes, form one-third the amount contained in table H.

Cables and tarred cordage, paying a duty of thirty-six dollars per ton, yielded by the general average $15,681, and by the particular average $14,545; leaving $1,137.

I will not repeat what I have this instant said about hemp, but I will add, that while, by this duty, we mean to encourage the domestic manufactures at the expense of our navigation, we, by the duty on hemp, discourage the manufacture, but still at the expense of our navigation. Giving thus to agriculture and manufactures such advantages over navigation, we must not be surprised if those concerned in it redress themselves by fitting their vessels in foreign ports. I will not dwell on this subject, but simply remind the Senate that it is no light or trivial matter so to apportion taxes, as to conciliate the jarring interests of society, and produce the greatest possible sum of public prosperity. It requires much cool thought and calm reflection. It is not to be expected from sudden measures, hastily dictated by partial views.

The articles of twine and packthread, producing by the general average $6,256, and by the particular average $5,860, leaving $396, are only mentioned for the purpose of observing, that with a duty of nearly four cents per pound, on an article of such trifling value, there can be no doubt but that our demand will soon be supplied by domestic manufacture.

I shall say nothing of the duty on coal, except that in so far as it is an article of domestic use, the duty falls heavily on consumers, exclusively to be found in large cities; and that, in so far as it is employed in manufactures, the duty is a discouragement of what the Legislature wished to promote. The amount (either thirteen thousand or nine thousand dollars, according to the different periods) is by no means sufficient to counterbalance the disadvantages which result from it. Much coal is used in the coarse manufactures of iron, and it is these, which (of all others) we ought specially to encourage. As there is nothing more generally felt than the high price of iron wares, so it has ever been the object of wise Governments to reduce that price, by every just mode not inconsistent with greater interests.

The duty on shoes, at fifteen cents per pair, produced about twelve thousand dollars annually, and I find by the table a regular increase of importation, the duty notwithstanding—leather shoes, within a dozen years past, have risen to nearly the double of their former price. Fifteen years ago, they were made in this country as cheap according to the quality, as in Europe: but now, with a duty near fifteen per cent, on the real value, importations have increased. Here again we find the ill effects flowing from a high price of labor. They have probably caused this protecting duty to impede the progress it was intended to promote. But from the moment that a fall in price or diminution of the demand (compared with the supply) shall introduce, among our workmen, those habits of industry and economy which high prices have banished, the importation must cease; and unless I

am greatly mistaken this period is not remote. I have now, sir, gone through the tedious detail of all these articles. There remains only the duty on *tonnage* and *passports*, which I have taken at $118,723, and the Secretary of your Treasury at $108,000, making a difference of about 10,000 less than my estimate. As our shipping (much of which has been employed in carrying on the commerce of other nations) will now lose that business, and of course be confined to our own, it will exclude, in a great measure, all foreign bottoms. If so, the foreign tonnage duty must decrease, and our own navigation will, I apprehend, be for some time to come rather stationary. I cannot, therefore, suppose there will be any advance in this branch of our revenue.

And now, I pray gentlemen to look back and consider the various items of the account we have gone over. Will they not be convinced that, if some few articles should remain as they are, or even if one or two of them should increase, yet many others must inevitably decline, and that all the change to be expected from our growing population, will be counteracted, in a great degree, by the decrease of means to purchase foreign luxuries, and still more by the increasing resources and productions of our domestic skill and industry? Can we, I ask, expect that the duties will rise from eight millions to nine and a half? Can we expect that they will long continue even at eight millions? I know, sir, that the deficiency will not immediately be felt. Our Treasury is full. Large sums are still due for the late abundant harvest of revenue. These will supply the ensuing want, so that one or two years may elapse before we awake from the dream of fallacious prosperity. We shall not the less, however, experience a serious diminution of the public income. This event must happen, even if these duties, on which we so vainly rely, should all be regularly and honestly paid: but will that be the case?

This leads me, sir, to the third point with which I proposed to trouble you, and I proceed to consider how far the practice of smuggling may endanger a revenue dependent on high duties. I shall perhaps be told that the merchants of America disdain the vile practice of smuggling, and that no danger on that ground is to be apprehended. I believe, sir, that I duly appreciate and I am sure that I greatly respect the honor and integrity of our merchants. Much I know is due to their patriotism, much to their regard for the Government under which they live, something perhaps to their friendly sentiments for those by whom it was administered; but the commerce of America is not exclusively in the hands of Americans. I know not of any law to prevent foreigners from settling among us and engaging in trade. What common interest, what common feeling have they with our fellow-citizens? By what principle are they bound to support the credit, maintain the honor, or advance the dignity of our Government? What is it to them that our revenue should fail? Why should they wish to strengthen systems under which they neither expect nor wish to live? In coming hither they seek gain, and, if successful, carry the money they have collected to their own hive. Men of this sort, leaving their homes in pursuit of profit, easily find out the left-handed road to fortune. If money is to be got by smuggling, they will smuggle; and the practice once begun, will extend itself, and must at last become general. I say it *must*. The fair trader cannot exist, when driven to a competition with the dealer in contraband. Imagine to yourself a merchant with a store full of goods which he cannot sell but on ruinous terms, and who sees in his neighbor a rival prosperous by illicit means; will such a merchant, when bankruptcy stares him in the face, when the wife of his bosom and the children to whom he is a father look up to him in vain for bread, will he refuse to follow the pernicious example? Can he resist? No, it is not in nature. These strong feelings of the heart will hurry him away. Bind him as you may by oaths and vows, he will, he must break them. He cannot tear from his bosom all the charities of life. It is possible that, in spite of temptation, and with the certainty of ruin, some few instances should remain of unbending principle; but the great mass will undoubtedly fall. The only question then for a legislator is how far the practice will be profitable, or, in other words, what is the proportion between the benefit and the risk.

It has happened to me, sir, in travelling along the coast of Flanders, to learn (both at Dunkirk and Ostend) some facts which may throw light on this inquiry. I select one as the most apposite. Before the commutation act was passed in England, the smuggling of tea in that kingdom was brought to so regular a system that, for a fixed premium of twenty per cent. on the valued invoice, smugglers undertook to deliver specific chests of hyson tea at any place named in the city of London: and failing in the delivery they paid the amount. I have chosen this article, because (the bulk compared with the value) it furnishes a standard tolerably accurate for the average rate of merchandise. The next point is to consider the dangers to be encountered or eluded. The coast of England is stormy and of difficult access. In one season of the year, the approach is dangerous from physical causes, in other seasons there is great risk of discovery, by the numerous cruisers and revenue cutters. In either case, when the goods are landed, new dangers arise, from a host of excise officers, who have a right to examine every package. The country, moreover, is open and highly cultivated; so that the means of concealment are unfrequent. Compare these circumstances with those of our own country. Without noticing the unlimited means of illicit trade in possession of small fishing vessels to the eastward, a single glance at our coast from Cape Hatteras to Cape Cod, is sufficient to show the superior facility of approach. Along the coast, from the beginning of May to the middle of August, vessels may ride at anchor in perfect safety. Innumerable inlets offer to the smuggler a safe retreat. Already flat-bottomed vessels ply between some parts of this country and the West Indies. These can run into water too shoal for your revenue cutters, even if

they were sufficiently numerous to interrupt illicit trade; but did they like the fleets of Britain cover (as it were) the ocean, still they could not interrupt the adventurers; and when smuggling vessels once enter the inlets, should revenue officers attempt a seizure they will be resisted. The people in the neighborhood, deriving advantage from a concern in that business, will join in resisting. Will you quell them? Where I ask, is your military force? You have none! And if you had, what would it avail you? Look again at that extensive coast, see it clothed with vast forests of pine, which, proud of their sterility, bid defiance to the hand of cultivation. See those impenetrable morasses, whose paths are known only to those who inhabit them, and which are intersected by deep creeks with endless variety. Send regular troops of imbodied militia into this region to enforce your revenue laws; they will meet there a race of men bred from infancy to the use of arms and subsisting in no small degree from the chace. Dangerous marksmen, they will support the wastefulness of savage war by the resources of civilized man. Where the practice of smuggling obtains, you have no means of preventing a breach of your laws, but by repealing them. Straining at too much you will lose all. You hastily throw off a small burden now, and you will soon be obliged to take one up which is far more heavy. In the meantime, this country of order, of peace, and happiness, will become the theatre of violence and confusion. The morals of our people, already impaired, will be wholly prostrated. Where all will end is not easy to conceive nor even to conjecture.

But these, it will be said, are illusions of fancy: let us see whether they be not the cool deductions of impartial reason. To this effect I shall beg leave slightly to notice those articles, which, from their bulk, their value, and the amount of duty, will fall properly within the province of the smuggler. Among those which pay twenty per cent. duty are steel springs, coach, and chariot glasses, looking glasses, and cut glass. Of articles paying fifteen per cent., there are plated ware, jewelry, buckles, buttons, clocks, watches, gold and silver lace, China ware, paste work, harness, pocket books, powder flasks, and sundry other articles of leather, raisins, prunes, spices, many cabinet wares, essences, perfumes, dentifrice, bonnets, hats, gloves, silk stockings, lace, ribbons, fans, and other articles of millinery. Finally, among the articles paying twelve and a half per cent., are whips and canes, cambries, lawns, gauze, silks, chintzes, and muslins. Every gentleman who hears me, must perceive, that each article in this long list will pay for the expense and risk of smuggling. Nova Scotia, the Bahamas, the West India Islands, perhaps the Floridas, will be filled with them, and furnish a constant supply. Pursuing our former track, we come (after the articles paying a duty ad valorem) to ardent spirits. The duty, in a document I have before me, is stated to be seventy per cent., it certainly is above fifty per cent. The very lowest is twenty-five cents per gallon, which gives twenty-two dollars for a hogshead of ninety gallons. It can be smuggled for half that sum. Suppose the expense of smuggling, like that of tea into England, were as high even as twenty per cent., there would still remain a profit of above thirty per cent. to the adventurer, can the fair trader meet him on the ground of competition?

The duty on wines, according to the same document, is for small claret in casks, St. Georgio, and other wines of the Western islands, except Teneriffe, one hundred and twenty-five per cent, but were it only half that amount it is more than sufficient—on the best Madeira it is fifty-eight dollars per pipe of one hundred gallons—and it is notorious that for a much smaller sum the duty may be evaded.

The duty on Bohea tea, from India, is twelve cents; it can be imported and sold to a profit for twenty-five to thirty cents; of course the duty amounts to full half the value. On other black teas it is eighteen cents, equal to about one-third the value. On Hyson, thirty-two cents, equal also to near a third; and, on other green, it is twenty cents, which is more than half. Thus, on teas in general, the duty is from one-third to one-half the value. Compare this with the duty in England, which was but one-third; see the consequence in that country, notwithstanding the most jealous care of a vigilant Government, with the peculiar advantage that all licit importation was by a single company and in a single port; then judge of the consequence in this country. It goes to a length you are not aware of. It must, in the end, deprive your merchants of their trade to China. The vessels fit for that commerce are too large for illicit trade, and I repeat it again, the fair trader cannot, where duties are so high, compete with the smuggler. The trade must be abandoned, and the profits of it go into foreign hands. In the Dutch, in the Danish islands, magazines will be filled with teas of inferior quality; your people will purchase them at a high price, the State will lose the revenue, the merchant will lose his business, and the citizen will be obliged to consume articles of inferior quality.

The duty on coffee and on brown sugar is near fifty per cent. These articles are produced in our neighborhood; they are usually brought in small vessels; there cannot be the slightest difficulty in the clandestine trade; it not only will, but it must, (nay, it is almost impossible that it should not,) take place; and, if refiners of loaf sugar are established in our neighborhood, that article also will find its way among us to the exclusion of our domestic manufacture, the repeal of the internal duty notwithstanding. There is one article, playing cards, with which we are already inundated from Canada; and the high price is sustained, although the revenue is defrauded.

Let gentlemen, then, look at the consequences. They complain of the number of officers employed in the collection of direct taxes, but it has been shown that a still greater number is employed in collecting the duties, and now it appears that a great addition must be made (even to that number) for the purpose of defrauding the Govern-

ment, while they collect from the people large taxes, no one dollar of which is to enter the public Treasury. Gentlemen wish to favor the interior country at the expense of the seacoast, and their measures will render the interior tributary to the very worst of those who live along the shores of the ocean. Neither will the merchants who carry on an illicit trade derive from it all the advantage which the public lose. Look, I pray you, at your northern and southern frontiers; see upon the north the most commercial nation on earth; the nation which has most capital, and certainly not the least enterprise; they are separated from you by a long line of water communication, which invites to contraband. On this quarter you can have no means either of prevention or of detection. The merchants of Canada will supply with articles, highly dutied, the whole Western world. Nay, many such articles will, from the facility of communication in the United States, find their way from the St. Lawrence, to the head waters of the Carolinas and of Georgia. To the smugglers of Canada, then, will your citizens pay that tax which they wish to withhold from their own Government. Let it not be understood that I mean to cavil at the particular articles which the majority of the other House have selected. This, as I said before, I leave to them; nor shall my wishes lead either to objection or to complaint. But if, on the consumption of these articles, you persist in raising such large sums, it must be, in part, by an internal tax. Take a moderate share as duty; take what the trade will bear, and what the merchant can pay; take what will give no temptation to fraud; and take the remainder in the only way by which you can get it; take it in the way least burdensome to the people; take it in the way most equal and most just. Let the burden fall in due proportion upon all. Imitate the operations of nature. Let exhalations be drawn from an extended surface, and then fall back to the earth in prolific showers and refreshing dews.

Mr. MASON, of Virginia, said he would not occupy much time, as he concluded every gentleman had made up his mind. He thought the gentleman from Pennsylvania, Mr. ROSS, ought to vote for this repeal, if he would now oppose the first institution of internal taxes. Necessity was the only ground which could justify the imposition of taxes; and, at any time, when such necessity ceased to exist, it would be proper to abolish. If the people saw the Government disposed to lighten their burdens, they would cheerfully submit to taxes in future. He acknowledged it would be difficult to ascertain the result of things in respect to our revenue on commerce, but believed it would keep pace with our increase of population. Drawbacks would now cease, and all our imports would realize a revenue. Depredations had injured us during the European war; they would now cease. He acknowledged that the high prices of our produce increased our means of consumption, but thought gentlemen had not sufficiently attended to the corresponding high prices of foreign articles. Coffee, sugar, and West India produce, he thought, would fall, as much, or nearly as much, as our own produce. He said, gentlemen could better attend to the Secretary of the Treasury's calculations and statements at their lodgings, than here in debate, and believed it best to stick to the Secretary's report, rather than to calculations of anybody else. It was not important or relevant to prove what kind of taxes were best, it was enough that we could do without these, which were odious to the people, and many of them vexatious, such as the stamp duty, &c. As to smuggling, he did not think we were much in danger of it, unless the art should be learnt from the gentleman's (Mr. MORRIS's) speech, who had proved that if it was not moral, it was at least venial to smuggle. The carriage tax, he thought, was unconstitutional. Gentlemen in opposition had triumphantly brought forward the appropriation, and the pledge of these taxes to pay the interest of foreign loans, and, in general, the interest and principal of our national debt; he considered this but a pledge, which we had good right to withdraw, if we had a sufficient sum of other funds pledged to answer all the demands. He considered the savings made already in our current expenses, would release a sufficiency of other funds, to stand in the place of the internal taxes, and justify us in abolishing them.

He thought gentlemen were too tenacious to keep in office their friends; he did not condemn the principle of respecting faithful officers who had left other business to serve the public, but he thought, in this instance, and in every instance this session, when an attempt was made to reduce the number of useless officers, that the opposition were more attentive to the good of those officers of their own creation, than they were to the good of the people, which seemed not to have much weight with them. Upon the whole, he had always considered these taxes as unwise, when laid, and oppressive in their operation; they were the darling child of the first Secretary of the Treasury, who had declared, that excises were forced upon the people in other countries, and that they should go down here. They were, he believed, very obnoxious to the people, who expected those whom their confidence had placed at the head of their affairs, should destroy them; and as he believed it could be done without hazarding our public faith, especially if we economized as we ought in our expenses, he should vote for the repeal.

Mr. TRACY.—Mr. President, I intended to offer my sentiments, upon this subject, more at large than my present strength will enable me to accomplish. But I regret this circumstance the less, since my honorable friend from New York, (Mr. MORRIS,) in his able argument, which was yesterday offered to the Senate, has done so much justice to this important subject.

Without any knowledge of his calculations, I had adopted his mode of ascertaining that a defalcation of our impost and tonnage duties would be the unavoidable consequence of the present state of affairs in the United States and Europe.

I am strongly impressed, sir, with the idea that if gentlemen will permit themselves to give the

calculations and arguments of my honorable friend a candid attention, the result will be a conviction of their force and importance; and that, as far as demonstration, upon such a subject, can be obtained, he has succeeded in demonstrating that our import and tonnage duties will decrease, and of course will not alone be sufficient to meet the public exigencies.

Permit me, however, to bring into view a few points in the same train of argument, which have either not been mentioned at all, or not urged so far, as their importance will justify.

The first question which will occur, when we contemplate the repeal of laws imposing taxes, is, can the public requisitions be met and satisfied without them? To answer this question with propriety, let us cast our eyes upon the expenditures, which are indispensable for eight years to come.

I assume the period of eight years, because within that time our Dutch debt will all fall due, and our eight per cent. stock, will become redeemable.

The statement will be as follows:

Interest and reimbursement of six per cent. stock	$26,802,896	
Interest and reimbursement of Dutch debt	10,617,672	
Interest on three per cent. stock	1,579,429	
Interest on other loans, as per Treasury statement	5,395,414	
Payment on bank loans	2,740,000	
Payment of bank per cent. stock	6,480,000	
Interest on 5½ per cent. stock, not included in Treasury statement, for two years	203,225	
Interest on 4½ per cent. stock	13,534	
Interest on navy stock, 5 years	213,519	
Making in the whole a total of		57,075,580

Divide this total by eight and the sum will be found to be $7,134,447 50 cents, which, in each of the successive eight years, we must pay, to fulfil our public obligations. When I say must pay, it is strictly true in respect to all the above items, excepting the eight per cent. stock, but as that is on an interest so much higher than any other part of the public debt, I presume Government will feel an obligation sufficiently strong to pay it off as soon as it becomes redeemable.

To this sum of		$7,134,447 50
We must add as annual expense,		
civil list	780,690 00	
Foreign intercourse	200,000 00	
*Expenses of navy	900,000 00	
Expenses of army	1,460,000 00	
Making in the whole, a total annual expense of		10,114,447 50

* The current annual expenses are taken from the last and lowest estimates; if any increase in army or navy expenses should happen, these estimates will fall short.

for eight years to come. To which must be added the contingent expenses, which experience has taught us, must and will occur in the most peaceable times; such as expenses to carry into effect treaties, &c., &c., to the annual amount of one of or two millions at least. During this year, the French convention, and a recent one with Great Britain, have made a serious call upon our Treasury, and at all times the sum must be considerable, which prudence will dictate should be kept in the Treasury to satisfy contingencies.

For the payment of this annual sum of $10,114,447 50, with the probable contingencies, what are our means? If these internal taxes are abolished, we must resort to the sales of Western lands, produce of the Post Office, and dividends on bank shares, as the only aids of any amount to our imposts and tonnage revenue. And although I do not believe the sum of $100,000 a year can be expected from the sale of lands, for the reasons offered by the gentleman from Pennsylvania, (Mr. ROSS,) and although it is doubtful to say no more of it, whether we shall not expend all the income of our Post Office in the extension of roads, and other incidents to the Post Office itself, yet I will take the sums calculated by the Secretary of the Treasury to arise from those sources.

Annual sales of lands	$460,000
Do. produce of Post Office	50,000
Dividend on bank shares	71,000
Making in the whole a total of	521,000

If this sum is deducted from our annual expenditure, it will leave $9,593,447 50, which must be paid by the duties on impost and tonnage, or not at all, together with all contingencies. Is it probable that the net produce of our revenues, arising from impost and tonnage will amount to the sum of $9,593,447 50, for each year, during the period of eight years? The answer to this question it must be acknowledged, cannot be mathematically accurate; but it is presumed, that a tolerably correct estimate may be made. Here, sir, I avail myself of the calculations and arguments of my honorable friend. (Mr. MORRIS.)

Consumption must form the basis of our revenue by imposts. And as I believe the maxim to be just, that for a given number of years, no people can consume more of foreign articles than they can pay for, the diminution of means, owing to the lower process of our own products, &c., must diminish consumption. The increase of population will certainly increase home manufactures; labor which has been turned to account, to aid our remittances for imported articles, will of course now be turned to manufacturing; and the very act of repealing the laws laying internal taxes, will lower the price of domestic spirits, loaf sugar, &c., and a resort will be had to them, at the expense of impost on similar imported articles. The six per cent. and other stock of this country, have been articles of remittance, which source must in a measure be dried up, if Europe shall remain in peace.

The article of imported salt, forms an important item in our table of impost. In the statement of the Secretary (marked O) there is stated to have been 2,734,243 bushels of foreign salt, imported into the United States, in the year 1800, upon which a duty of twenty-five cents per bushel was paid, amounting to $546,848 60. All this sum will very soon be taken from our impost, the people at the eastward, are now manufacturing sea-water into salt, with so little labor, and with such success, that I am convinced they can, in a very little time, afford it for less than the ordinary freight from the West Indies. I mention this article of salt, because it is at present an important article of impost, and because I verily believe it must soon cease to be productive; and particularly because I conclude the circumstances of its very successful manufacture, and the facility which with incalculable quantities can be made, have not obtained general notoriety. Can any man with a view of this state of facts, in addition to those mentioned by the gentleman from New York, believe that our impost can be as productive as it has been during the war in Europe? I think not. It is true, that for a year or perhaps eighteen months, the sum of receipts at the Treasury may not be sensibly diminished, by reason of the duties heretofore having been secured by bond and payable in future. But when we take into consideration the very heavy duties on coffee, tea, and brown sugar, which have only been supported by the favorable state of things, arising to this country from its neutrality, during an unparalleled war in Europe, can we be justified in supposing such duties can be supported in time of peace, and consumption suffer no diminution?

And if consumption suffers no diminution will not the revenue be diminished by smuggling articles into a country so favorable to smuggling, and on which the duties are so high as to offer a good premium for the risk? Especially when many articles are highly dutied, and are of great value and small bulk. The gentleman from Virginia (Mr. MASON) supposes that my honorable friend (Mr. MORRIS) has instructed the adventurers of this country in the art of smuggling; he may rely upon it, that the art is in good forwardness, and stands in no need of instruction: the allurement of high duties is too great not to be understood, especially when an extensive coast, unguarded in almost every part, invites to practice. When contemplating this subject, very many facts will crowd themselves upon the mind, tending to a conviction that our revenue by impost must decrease.

I forbear to mention the uncommon supply of dutiable articles on hand; the probability that mercantile enterprise has brought many goods into the country from the expectation of drawback, and from a variety of circumstances, exportation has taken place without the drawback; and many other events similar in their effects, because this Senate are under no necessity of information on such obvious points, and because they have been already urged in this debate, with great force and conclusiveness.

If it be objected, that the result of all this must leave the mind in doubt, and that demonstration is not yet obtained; I ask, if we ought to run the hazard of giving up our internal taxes, if the event is only doubtful? Under such circumstances, is a sober, cautious Legislature justified in taking a step like this?

We have tried the experiment of internal taxes; the obstacles of collection are all or nearly all surmounted; and the people, as far as my information reaches, are becoming reconciled to them; add to all this, it is at least doubtful, whether we can as yet dispense with them, with safety to our public faith. It is now a time of peace, and measures already by law adopted to pay off the national debt, can better now than at any other time, be enforced. I should believe we ought to extend the system of internal taxation, rather than abolish those taxes already established. At any rate, is it politic to adopt this repeal, before experiment shall have informed us what the state of our impost will be in time of peace? It has been said the national debt was an enormous evil, and that to pay it off the people would submit to almost any temporary burdens. When peace has visited the world, and we are in prosperous circumstances, when our internal revenue can better be increased than at any time, for many years past; when our expenses have been and are to be, we are told, lessened in every respect; why should we lose sight of an object so desirable as that of increasing the means of extinguishing the public debt, by calling forth all the energies of the nation, for replenishing our Treasury? Instead of this we are to repeal the system of internal taxation, trust our whole revenue to the winds and the sea, and every other casualty to which human affairs are exposed. The Secretary of the Treasury himself, does not calculate upon a greater sum than nine millions and a half for the annual product of the impost. I think it has been shown, that the amount will fall far short of the sum; but allowing that sum to be realized, still our means will fall short of the necessary expenditure, the sum of $93,447 52 annually. How are we to get along with such a deficit? and this too with no allowance for contingencies. The answer is plain, our debt must accumulate, or some of our necessary institutions must suffer. This suffering I fear will fall upon our navy, and leave our commerce literally to the winds. If we permit these taxes to remain, and experiment shows hereafter that we can do without them, the repeal can be had at any time: but once repeal them, and what is to be the result, if experiment shows we cannot do without them? Can they be revived? No man will pretend a revival to be practicable. Such a measure would shake its revivers from their seats in both Houses of Congress. After the people have once been told by a Legislative act, and that after an Executive recommendation, that the product of the internal taxes are not wanted, it will be a hard matter to convince them that a necessity exists for their revival. If they can ever be peaceably collected, it must be by resisting the unfounded opinion now, that they can safely be abandoned.

Permit me now sir, to make a few observations upon the general subject of internal taxes. I know it has been said, that excises are odious to a free people, and that a part, at least, of those now to be abolished are peculiarly odious. In addition, it has been said, that the cost of collection is very great, and a useless number of Executive dependants are employed as excise officers. I believe all pecuniary impositions are, and always will be, unpopular; but making a reasonable allowance for that general disposition to part sparingly and reluctantly from our money, I believe that a free people can better pay a part of the support which they must afford to the Government, by way of excise, than to pay all by impost. And for this plain reason, because, they can pay by excise much cheaper or with less cost for collection, than by impost. To avoid all dispute on the cost of collecting our internal revenue, let it be set at fifteen per cent., or if you please at twenty. I ought to say here, that by a judicious extension of the objects of stamps, excise, &c., I have no doubt but our internal revenue could be collected for five per cent., probably for less.

But, say it cost fifteen or twenty per cent., does not our impost collection cost much more? The cost of collecting any tax is precisely that sum, which the people pay, more than the sum which is actually paid into the Treasury. Or, to make my position plainer: if one hundred and fifteen dollars are paid by those who use stamped paper, parchment, and vellum, in one year, and the expense paid to officers, &c., is fifteen dollars, then one hundred dollars is the net revenue, and fifteen dollars the cost of collection. Or, in other words, if one hundred dollars are paid by all those who ride in pleasure carriages for one year, and after deducting all expenses of collection eighty-five dollars are paid into the Treasury on account of that tax, then the cost of collection is fifteen per cent.

One thousand dollars worth of goods are imported, of the kind which are dutied at ten per cent. ad valorem; the duties to be paid into the Treasury by the importer are one hundred dollars. The importer pays this sum, but, after deducting collector's fees, &c., the sum paid into the Treasury upon these goods, is but ninety-five dollars. Then the public have received on one thousand dollars, ninety-four dollars. Let us see how much the consumer of these goods pays for collecting the duty. The importer has paid one hundred dollars, on this sum he puts his profit, when he sells the goods, say twenty per cent., that will make the addition for the consumer to pay, and it is easily discerned, that the sum will be one hundred and twenty dollars; the retailer (if there be but one more purchaser before the consumer, but in many instances there are two or three) puts on twenty-five per cent. when he sells to the consumer, which will be thirty dollars more; making in the whole one hundred and fifty dollars paid by the consumer, when the Treasury receives but ninety-five dollars. The difference between ninety-five dollars and one hundred and fifty dollars, amounting to fifty-five dollars, is the sum which the duties on one thousand dollars worth of imported goods costs for collection. When there are no duties, the consumer would receive this one thousand dollars worth of goods for one hundred and fifty dollars less, and all the merchants concerned would receive the same or a proportional profit. The public receives but ninety-five dollars, and for this consideration the consumer pays fifty-five dollars, which is certainly the cost of collection; and that is between fifty-seven and fifty-eight per cent. That those who live in the interior of the country pay more than those on the sea-coast, for collecting the impost, is obvious, from a well known fact, that the goods pass through more hands before they reach the consumer, all of whom will put on a profit.

If these statements are correct, is it not demonstrated that the imputation on excises, for the great cost of collection, is unfounded? In case of excise, the consumer pays but one officer for collection; in the case of impost, a great number must be paid. Are there four or five hundred officers of excise all of whom are checked by law? There are thousands of officers of impost, a great proportion of whom are under no legal restraint. It is fallacious to flatter ourselves that there are but fifty or sixty officers of impost whose fees are limited; there is a host of them, self-created and under no limitation. The question may readily occur, what then shall be done? The answer is easy, regulate your impost, let the duties be reasonable, to avoid smuggling, and so reasonable as not to prevent consumption; increase your excise in objects and sum, and let both proceed together, and a greater sum of revenue, than heretofore, can be raised, and with less oppression to the people. This was the system of those who have been in power, and it will force itself upon those in power, or they will be forced out. Unless your excise is kept in co-operation with your impost, the latter will become intolerable and inefficacious. Especially when an attempt is made to raise by it so great a sum as will be requisite for our national exigencies. That a dangerous Executive patronage is established by the appointment of excise officers, is to me an assertion so contrary to my knowledge of the facts, that I can scarcely believe it deserves a serious answer; but to preserve decorum in debate, my reply to that objection against internal taxes is, that so far as I am acquainted with the subject, the Executive has rather been weakened, by the appointment of those officers; and I can discern no prospect of a dangerous accumulation of power, from the appointment of excise officers, and before I will consent to remedy an evil, I must be convinced that an evil exists.

It is objected further against excises, that the system of espionage and oaths resulting from it, is destructive of the peace of society and of morals. Mr. President, I will not detain the Senate to hear a detail of facts upon these subjects; but I have searched the statutes respecting impost and excise, and believe if any man will do the same, it will be found that espionage and oaths are more dangerously produced by the former than the lat-

ter. The truth is, that Government implies force on the one part, and obedience on the other: and it is easy to discern in its most favorable operations that a clamor can be made against it, especially that necessary part which takes from the people money to support it. No system of taxation under heaven can be carried into effect, without coercing the immoral, and sometimes bearing hardly upon inability itself; suffice it to say, that excises are as unexceptionable in their nature as any mode, and for a country like ours, probably the most unexceptionable.

I hope no member of this Senate can be actuated in his vote upon this subject by any engagements to his constituents—that at all hazards the internal tax should be abolished. I cannot believe any member is under such engagements; if there should be any, I am confident that silence to him will be as efficient as argument. But we are told, the members of the Legislature are not at liberty to act themselves upon this occasion: that the Executive message at the commencement of the session has already, in effect, repealed the laws laying these taxes, and that a collection of them, after the people have been told by the President that they are not wanted, is impracticable. We are told further, that the same opinion is entertained in our financial department. As to the last, if a candid attention is given to the report of the Treasury Department, no recommendation to abolish the internal taxes can be found, but rather a contrary opinion seems to be indicated.

I acknowledge, and with regret, that the President has been unequivocal, and presume it will have great weight with the people, thinking, as I do, that the effects will be pernicious. I can but say, that the closet philosopher is more discernible in this recommendation than the politician. I accuse no man of acting upon this occasion with undue reference to popularity; if it be possible that such a motive could be indulged even for a moment, I am convinced that the time is at hand, when not a rock or mountain can be found in the sterile field of popularity, to hide such an one from the wrath of those very people whom now he thinks to flatter.

The time will arrive, and that speedily, when our public exigencies will require additional revenue. Can you rely on a land tax? Can you increase your impost? Can you reinstate the internal taxes? To all these interrogatories the answer is, no!

I hope I am mistaken in the consequences which I predict, as I sincerely wish this country may prosper in peace and quietness. Were I actuated by party motives only, I should rejoice at this measure. Let the internal taxes go, and you that abolish them, prepare to go with them, for "be ye also ready," is stamped upon the measure in characters too legible to be mistaken. This, it will be remarked, is spoken in reference to a firm belief, that we cannot support our public faith if we abolish these taxes. But, sir, I hope and believe my motives are above all party considerations. How long I am to continue in life I know not. I am admonished by ill health of its frailty; but, sir, I am fully convinced of the fatal tendency of this repeal to the happiness of this rising country; therefore it is, that I oppose it, regardless of any popular, unfounded opinions, which may seem to militate against excises or internal taxes.

The solemnity of the pledge which has been made of these taxes, by the laws originating them, is worthy of observation. They have been pledged for the redemption of the public debt, and every creditor of the United States has an interest in the pledge, which cannot be trifled with. The gentlemen who favor the repeal say, that although true it is, these taxes were pledged, yet we have a redundancy of funds which are likewise pledged, and therefore to withdraw the internal taxes can be no breach of faith.

I am free to acknowledge, Mr. President, that our funds can be in such a condition; for instance, should we proceed successfully for eight years in extinguishing principal as well as interest of our debt, there would then remain no Dutch debt, and a large portion of the principal of our domestic debt would be paid; in such case to say no funds however redundant could, consistently with good faith, be released, because originally pledged till the whole debt was paid, would in my mind be unreasonable. But if my calculations are correct, or anywhere near it, we have no right to presume on a present redundancy of funds, and the obligation contained in the appropriation of these internal taxes, recurs with all its force and solemnity against the repeal. When we take a view of the state of Europe, still agitated, though tending to a state of quietude; the condition of the West Indies, and the condition, as it speedily will be, of Louisiana; when all calculations of revenue from impost are so uncertain as to amount, and the expenses which await us still more uncertain; especially when we look at the Barbary Powers, I ask gentlemen not to give away a source of revenue already productive, and which may be easily made more productive, and not to run the hazard of violating our public faith, when a few years, perhaps a few months, may place us in a situation where certainty may be obtained.

The tax upon pleasure carriages, upon loaf sugar, and that of stamps, are so beneficial to the public, and fall so lightly, if at all, upon the laboring and poorer classes of people, that I should reluctantly give them up; and I am strongly impressed with the idea, that the tax on domestic distilled spirits and stills, is calculated to promote morality, as well as to raise a revenue. In a word, sir, I believe policy and national faith unite in rejecting the repeal.

Mr. JACKSON, of Georgia, said he considered the internal taxes as impolitic and iniquitous when laid; the New England States paid no excise on their orchards, as cider was not taxed; but all the orchards at the southward were, which consisted chiefly of peaches; this was unequal, and of this the people at the southward complained. He believed the recommendation of the virtuous Jefferson was sufficient authority to act upon in repealing those laws. Besides, the savings we had

made already, in the reduction of the army, would amount to a greater sum than the whole amount of the internal taxes. [Here Mr. Jackson turned to the estimates of the army expenditure for 1801, and stated that more than $900,000 was saved by that alone.] The gentleman from Connecticut (Mr. TRACY) has asked us, said Mr. J., where can we resort for taxes if we should be mistaken; and by this repeal there should be a deficit of revenue? I can tell the gentleman we can tax stock of all kinds, bank stock, and all other stock. I see not why great estates, made in a moment by speculation, should not bear a part of the public burdens, the holders are now like drone bees, sucking honey out of the hive, and affording no aid in its procurement. This is my opinion, and I care not who knows it.

Mr. TRACY said he could inform the honorable gentleman from Georgia, that the New England orchards were taxed, as great quantities of cider were annually distilled into brandy, so that the inequality suggested by the gentleman was ideal, and not founded in fact. He said further; he had expected, if the internal taxes were abolished, that the same principle which had done this, would lead the gentleman to tax the funds, as this would be a certain and easy way to pay off the public debt. But he acknowledged, after all the professions of those in power, to treat public credit in a cautious and sacred manner, he did not expect, so soon, an avowal of those principles.

Mr. DAYTON, of New Jersey, said he was astonished that such assertions were made to the Senate, as fell from the honorable gentleman last up. (Mr. JACKSON.) respecting the savings by the late reductions of the army. The utmost that could be pretended, was not more than $200,000, he believed not $100,000. The Secretary of War had said, in a very definite manner, that the saving might be $500,000, more or less; but when an estimate is made for an establishment, an army for instance, the army is supposed to be full; and an allowance is also made for losses and contingencies: every gentleman in the Senate knew that the actual expense paid for our army in 1801, would exceed but a little, the annual sum which must be expended this year? What have we done? said Mr. D.; a few soldiers and a very few officers have been dismissed, and it is mocking to the public and deceiving ourselves, to pretend such great savings have been made by this reduction of the army.

Mr. ROSS was sensible, the more this subject was examined the more reason would be discovered for gentlemen who favored the repeal, to retract their opinions. There was an express engagement, under all the solemnities of a law of the Government, that the taxes on stills and domestic distilled spirits, should forever be appropriated, while a debt existed, to the payment of that debt and the interest upon it; and that there should be no power to repeal this pledge without substituting other adequate funds to those removed. This is represented in all the successive laws on this subject, which places the obligation in a more striking point of view. Now gentlemen say we will repeal the whole at one stroke, and substitute what? Nothing.

The Government have received loan after loan, and repeated promise after promise; yet, upon the spur of the occasion, they retract all their promises, or repeal the laws which contain them; and seem to suppose such conduct will have no influence on public credit. What would, he asked, be the case of an individual who thus trifled with his creditors? What will our creditors at home think, and especially creditors abroad? This debate is in the presence of foreign Ministers, and the declaration goes forth to the world, that the Government of the United States will revoke its promises, however solemnly made, *ad libitum*; and this, because new men have come into power, who say, We have money sufficient to pay our debts, and what signify pledges! We did not make them; let those who made them look to them. No, sir, said Mr. R., our credit is gone if this bill passes; no man will trust you again; you may withdraw future pledges as well as these; and I would not trust a cent to the engagement of such a Government. The present majority have gone on repealing, till we have almost nothing left to repeal. These duties are solemnly pledged, and if you can abolish them, without a substitute, I repeat it, your national faith is violated, it is gone, it is not worth a cent. A gentleman, high in point of ability and standing in his representative capacity, (Mr. JACKSON,) tells the Senate that the public creditor may be taxed. [Here Mr. J. said it was a sentiment of his own, and he repeated it.]

Mr. R. said, let us examine it; instead of paying the money you borrow, you tax your creditor a given sum annually, till it is all swept off, and call this a payment of debts, and sacred preservation of public faith. He said he did not own any stock of any kind, and believed he never should, in this situation of public affairs; therefore, he was interested only to establish public credit for the benefits it would afford to Government itself.

Mr. ANDERSON, of Tennessee, said he could not conceive why gentlemen should lay such stress upon appropriations, inasmuch as our other funds were sufficient to make good all our engagements.

Mr. MORRIS.—Mr. President, the gentleman last up has brought forward in full, and the honorable member from Virginia, (Mr. MASON,) in part, a very extraordinary argument. And yet the gentleman from Tennessee expresses his surprise that we do not at once perceive the force of it, and agree with him that our faith pledged remains inviolate, because a reduction of $650,000 in our revenue is fully equalized by a similar reduction in our expenses. Let this argument be examined in each of its parts. First, he has assumed that $650,000 at least are saved by the reduction of the Military Establishment? But in what is that saving? In paper there is no real saving to that amount, or to anything like it. The gentlemen must find themselves hard pressed indeed when they are obliged to recur to the establishment voted, as the expense incurred, knowing as they do that there is a wide difference.

They know that the army voted was not raised. They know the establishment was never complete. They know we have almost as many soldiers in our service now as we had before, and that all their boasted economy resolves itself into the dismissal of a few officers. The second point of this curious argument shall not be disputed. We readily admit the internal revenue to be full $650,000. But now for the conclusion from these premises: We justify repealing a tax we had promised not to repeal, because we make a saving to the same amount. We had reserved to ourselves the right of repeal, on condition that we should lay an equivalent tax; and a vote to save money comes to the same thing as a tax. Does it, indeed? Do you suppose your creditors will be the dupes of this new-fangled logic? When you took your engagements with them, was there any stipulation that you should be released from it, provided you should make a vote of saving. Was it not always understood that your expenses should be reduced as far and as fast as circumstances would permit, and that your whole surplus revenue should be applied to the payment of your debts? Have you not absolutely mortgaged that surplus to this effect? And can you release yourselves by a vote of saving?

The honorable member from Tennessee went on to express his surprise, that, not liking this plan, we do not come forward to propose amendments. And what have we to do with it? These gentlemen have charged themselves with the conduct of our affairs. They do not deign to ask our opinion on the measures they mean to pursue. Supported by a powerful majority, they do just what they please; and when they have brought forward bad plans, why then forsooth they ask us to mend them. But how mend them? We say that to ameliorate the system of our revenue the duties ought to be lowered; and that you should raise sums equivalent to the reduction by internal taxes. The gentlemen tell us they will have no internal taxes. This is their plan, and they call on us to mend it.

I have noted several things which were said by the gentleman from Virginia, but I will not trespass on the patience of this Senate by a particular reply. Indeed I do not conceive it to be necessary. The whole scope of his argument, like that of his friend from Tennessee, resolves itself into a reliance on the opinions and calculations furnished by the Secretary of our finances. The gentleman from Virginia has told us, that they are better fitted for consideration in our closets, than for debate on this floor. Be it so. He finds it difficult to follow, in argument, statements which vary from or contravert what the Secretary has advanced. This may be the case. He tells us, we must stick to the report; that it has been long in our possession, and that gentlemen fully understand it. Perhaps they do. He says they have made up their minds on this subject. I suppose they have. In fine, he triumphantly read to us a section of the Secretary's report, from the first page, to prove that the Treasury has received from duties the year eighteen hundred and one, ten million and a half of dollars; and that, had things gone on in the same train, the duties payable this year would have amounted to eleven millions. Hence he infers that the estimate of nine millions and a half for some years to come is quite moderate. I will, sir, since it is insisted on, confine myself strictly to this same report. I pray gentlemen, then, to take the trouble of looking at the table (I.) and to follow me in a few observations, which shall be so clear and so simple as to avoid all difficulty.

They will be pleased in the first place to observe, that this table purports to be a "statement 'exhibiting the *actual* amount of duties which accrued on merchandise and tonnage, and of the '*actual* payments for drawbacks on foreign merchandise, for bounties and allowances, and for 'expenses of collection during each of the years '1790 to 1799." They will particularly observe, that the word *actual* is printed in italics, so as to call our special attention to this table as containing a statement of facts in contradistinction to theory. An account of what *actually happened*, and not an estimate of future contingencies founded on hypothetic calculation.

Gentlemen will have the goodness to look towards the bottom of this table for the years 1797, 1798, and 1799. They will find that the amount of duties, was

In 1797 - -	$12,866,984 69	
In 1798 - -	11,402,185 17	
In 1799 - -	15,251,952 68	
Together -		39,521,122 54
That the tonnage was		
In 1797 - -	103,665 20	
In 1798 - -	107,253 88	
In 1799 - -	128,698 39	
Together -		339,617 47
That the passports produced		
In 1797 - -	13,886 00	
In 1798 - -	9,978 00	
In 1799 - -	12,518 00	
Together -		36,382 00
Making a total of		39,897,122 01

They will take notice that there was paid for drawbacks and debentures

In 1797 - -	4,207,728 43	
In 1798 - -	4,799,498 27	
In 1799 - -	5,780,662 72	
Together -		14,787,889 42
And for bounties and allowances		
In 1797 - -	92,874 29	
In 1798 - -	113,904 42	
In 1799 - -	149,375 02	
Together -		356,153 73
Total of payments was		15,144,043 15

Which deducted from the receipts leaves a balance of - - -		24,753,078 86
Finally they will see that the expenses of collection were		
In 1797 - -	342,696 22	
In 1798 - -	375,879 33	
In 1799 - -	414,618 45	
Together -		1,130,194 04
Deducting therefrom the expenses from the gross revenue, there remains a net balance of - -		23,622,884 82
And dividing by three we have for the average net produce of duties, tonnage, and passports, during the last years of which you have a true accouut.		7,874,294 94

Now, sir, it will, I think, be acknowledged that in this calculation there is no difficulty. In this plain state of the fact there is nothing intricate. This is one of the tables on which gentlemen have had time to meditate in their closets. It can be understood with the utmost ease. Here is no supposition, no rule of proportion, but mere addition and subtraction; and from this, which the Secretary has sent you as the thing to be relied on, as the actual state of your revenue, it appears that during the years 1797, 1798, and 1799 you did not receive four and twenty millions. Yesterday I had the honor of stating at large to the Senate my reasons for believing that we could not safely consider this part of our revenue as yielding more than eight millions annually. The most favorable estimate I could make fell a little short of that sum. I explained also my reasons for believing, that it would not for some time to come increase; and for apprehending that it might suffer no small diminution. The honorable gentleman from Virginia, however, tells you that my arguments and my calculations must be disregarded. Be it so. He bids you stick to the report of your Secretary. Agreed. He says you must ground your faith on the statements of that officer. Content. And when you examine that part of them which deals not in splendid conjecture but in sober fact, what is the result? It is, that your annual revenue was not quite seven millions eight hundred and seventy-five thousand dollars, during the three years of greatest consumption, which you have any actual account of; being full one hundred and twenty-five thousand dollars short of that which I was willing to take as the existent amount. Let then what I have said go for nothing, and bring the argument to this short issue. Is there any good reason to believe that during eight years to come your duties on imports and tonnage will yield annually sixteen hundred thousand dollars more than in the years 1797, 1798, and 1799? This may happen, sir, but I do not believe it.

Mr. NICHOLAS, of Virginia, said, he did not believe the gentleman from Pennsylvania (Mr. Ross) thought the majority had any intention of sweeping off the public debt in any other way, than by bona fide payment. As to the pledge so much talked of, it was nothing more, in his opinion, than a declaration that there should always be funds in readiness sufficiently large to meet our engagements. The gentleman from Connecticut (Mr. TRACY) had, he thought, placed this subject on a fair footing. He asked whether gentlemen meant to carry their principles so far as to tie up the hands of all future legislatures by every appropriation they made? He would add that since the pledge of the internal taxes we had greatly increased our impost, and pledged that for the same purposes, of paying principal and interest of the public debt; would not this operate as an equitable release of these taxes? Mr. N. believed his own assertion was as good as that of another, and he supposed our revenue without these taxes would be amply sufficient for every national purpose, therefore he should vote for the repeal.

Mr. Ross said, he could not ascertain what was the general intention of gentlemen as to taxing the public debt, but one of the majority had openly declared his opinion in favor of it; and the journals would show that a gentleman who was not now a member of the Senate, but high in the confidence of the majority, (Mr. Chas. Pinckney,) when he was a member, laid upon the table a law authorizing the taxation of public stock; it was true it did not pass, and was probably not called up by the mover; but he left every one to decide on the appearance which these proceedings had, and if they did not put at hazard the security of our public creditors. Mr. R. said he would add one word as to the pledge. The laws passed in 1791, 1794, and 1795, in which the promise was solemnly made and repeated; and in 1798 the surplus of all our revenue, arising from impost, tonnage, and internal taxes, was pledged for the payment of our debts.

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 11, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, and Sumter.

NAYS—Messrs. Dayton, D. Foster, Howard, J. Mason, Morris, Ogden, Olcott, Ross, Tracy, Wells, and White.

So it was *Resolved*, That this bill do pass as amended.

THURSDAY, April 1.

Mr. S. T. MASON, from the committee to whom was referred, on the 15th March last, the bill for the relief of the Marshals of certain districts therein mentioned, reported it without amendment.

The bill, entitled "An act making an appropriation for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic, was read the third time, and passed.

The bill, entitled "An act making a partial appropriation for the support of Government during the year one thousand eight hundred and two," was read the third time, and passed.

The Senate took into consideration the amendments reported by the committee to whom was recommitted the bill for revising and amending the acts concerning naturalization; and having adopted the amendments, and further amended the bill.

Ordered, That it pass to the third reading as amended.

The Senate took into consideration the amendments reported by the committee to the bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned;" and having agreed thereto.

Ordered, That the bill pass to the third reading as amended.

The bill, entitled "An act for the relief of Isaac Zane," was read the third time, as amended, by striking out the word "that" in the last line of the second section.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, and for other purposes."

FRIDAY, April 2.

The Senate resumed the second reading of the bill for the relief of the Marshals of certain districts therein mentioned.

Ordered, That this bill pass to the third reading.

The Senate took into consideration their amendments, disagreed to by the House of Representatives to the bill for the rebuilding the light-house on Gurnet Point, and for other purposes.

Ordered, That the further consideration thereof be postponed.

The bill for the more convenient organization of the courts of the United States was read the second time and amended.

Ordered, That it be recommitted to Messrs. ANDERSON, BRADLEY, NICHOLAS, and JACKSON, the original committee who brought in the bill: and that Mr. BRECKENRIDGE be added thereto in the place of Mr. BROWN, absent, further to consider and report thereon.

The bill supplementary to the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," was read the third time and further amended, by adding to the end of the fourth section these words: "Provided always, that, in every case for forfeitures hereinbefore given, the action be commenced within two years from the time the cause of action may have arisen." And by filling the blanks in the first, second, and third sections with the words "first" and "January," respectively, and in the last section with the words "one hundred."

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints."

SATURDAY, April 3.

The Senate took into consideration their amendments, disagreed to by the House of Representatives, to the bill for the rebuilding the light-house on Gurnet Point, and for other purposes.

Resolved, That they do recede from the amendments disagreed to, and concur in the amendments of the House of Representatives to their amendments on the said bill.

The bill, entitled "An act for revising and amending the acts concerning naturalization," was read the third time, and the fourth article of the first section was amended by striking out, after the words "1795 may," these words: "within one year after the passing of this act;" and after "on," in the following line, by striking out "his declaring on oath or affirmation in," and inserting "due proof made to;" and after "least," in the next line, by inserting "immediately preceding his application;" and after the word "held," "and on his declaring on oath or affirmation;" and in the last line of the original bill by substituting the word "naturalized" for "admitted:" and,

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 18, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Colhoun, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Morris, Nicholas, Ross, Sumter, and White.

NAYS—Messrs. Dayton, D. Foster, Howard, J. Mason, Ogden, Olcott, Tracy, and Wells.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill declaring the assent of Congress, to an act of the General Assembly of Virginia, therein mentioned, in which they desire the concurrence of the Senate.

The said bill was read and ordered to a second reading.

The bill, entitled "An act for the relief of the Marshals of certain districts therein mentioned," was read the third time, and passed.

MONDAY, April 5.

Mr. ANDERSON, from the committee to whom was recommitted, on the 2d instant, the bill to provide for the more convenient organization of the Courts of the United States, reported amendments, which were read.

Ordered, That they lie for consideration.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes."

The bill declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned, was read the second time, and referred to Messrs. NICHOLAS, STONE, and CLINTON, to consider and report thereon.

Ordered, That the further consideration thereof be postponed.

TUESDAY, April 6.

Mr. BRADLEY presented the petition of Elijah Brainard, a disabled soldier during the Revolutionary war, and praying relief.

Ordered, That the petition be referred to Messrs. BRADLEY, ANDERSON, and D. FOSTER, to consider and report thereon.

On motion, that it be

Resolved, That —— be a committee, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same:

Ordered, That this motion lie for consideration.

The Senate took into consideration the amendments reported by the committee to the bill to provide for the more convenient organization of the Courts of the United States; and, having agreed thereto.

Ordered, That this bill pass to the third reading as amended.

On motion, that it be

Resolved, That a committee be appointed to inquire whether any, and, if any, what, provisions and regulations are necessary in addition to the several acts providing for the sale of the lands of the United States, and that the said committee have leave to report by bill or bills:

Ordered, That this motion lie for consideration.

Mr. T. FOSTER, from the committee to whom was referred, on the 29th of March last, the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the 2d day of March, 1799, reported it without amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill further to alter and establish certain post roads; also, a bill for the relief of Paolo Paoly; in which bills they desire the concurrence of the Senate.

The bill first mentioned in the message above recited was read, and, by unanimous consent, was read a second time, and referred to Messrs. JACKSON, BRADLEY, and FRANKLIN, to consider and report thereon.

The bill for the relief of Paolo Paoly was read the first, and, by unanimous consent, a second time, and referred to Messrs. BRADLEY, D. FOSTER, and WELLS, to consider and report thereon.

The committee to whom was referred the letter of Simon Willard to the Secretary of the Senate, relative to a clock made by the said Willard for the use of the Senate, reported a letter from John E. Rigden, a watch and clock maker of this city, which declares, as his opinion, that five hundred dollars will be an ample and liberal reward for such a time-piece; and the committee recommend the following resolution:

Resolved, That Simon Willard be paid, by the Secretary of the Senate the sum of five hundred dollars for an eight-day clock, set up in the Senate room, and purchased of him, agreeably to a resolution of the 25th of February, 1801, to be defrayed out of the contingent fund.

And the report was adopted.

On motion, that it be

Resolved, That the Secretary of the Navy be requested to prepare and lay before the Senate a statement of the expenses actually incurred in support of the corps of marines for the last year, distinguishing the number and expenses of the officers of each grade:

Ordered, That this motion lie for consideration.

The Senate resumed the consideration of the bill regulating foreign coins; and

Ordered, That it be postponed to Monday next.

The motion made on the 29th of March, for a statement from the Secretary of War, was resumed, and sundry amendments proposed; and on motion, it was agreed that the further consideration thereof be postponed.

WEDNESDAY, April 7.

A message from the House of Representatives informed the Senate that the House of Representatives have passed a bill, entitled "An act for the relief of Thomas K. Jones," in which they desire the concurrence of the Senate.

The bill was read the first time, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. J. MASON, DWIGHT FOSTER, and OGDEN, to consider and report thereon.

Mr. J. MASON, from the committee to whom was referred, on the 30th of March last, the bill to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowances and payment thereof, and in lieu of stamp duties on debentures," reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. NICHOLAS, from the committee to whom was referred, on the fifth instant, the bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned, reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. FRANKLIN, from the committee to whom was referred, on the 29th of March last, the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," reported it without amendment.

On motion, it was agreed to amend the bill, by adding the word "heretofore," fourth section, line first, after the word "certificates."

Ordered, That this bill pass to the third reading as amended.

Mr. OGDEN presented the petition of Jonathan Snowden, a lieutenant in colonel Lee's legion dur-

ing the Revolutionary war, and a captain in the army late under the command of General St. Clair, wounded in the public service, and praying to be put on the pension or half-pay list; and the petition was read.

Ordered, That it be referred to Messrs. BRADLEY, ANDERSON, and DWIGHT FOSTER, the committee appointed on the petition of Elijah Brainard, the 6th instant, to consider and report thereon.

The Senate resumed the second reading of the bill to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, 1799.

On motion, to amend the bill, by striking out, from the word "assembled," in the second line, to the end of the bill, and insert:

"That in lieu of the salaries at present allowed by law to the officers of the Government of the United States herein mentioned, the following annual compensations be, and are hereby, granted to the said officers respectively, from the ——, that is to say: The Secretary of State, $——; the Secretary of the Treasury, $——; the Secretary of War, $——; the Secretry of the Navy, $——; the Attorney General, $——; the Comptroller of the Treasury, $——; the Treasurer, $——; the Auditor of the Treasury, $——; the Commissioner of the Revenue, $——; the Register of the Treasury, $——; the Accountant of the War Department, $——; the Accountant of the Navy Department, $——; the Postmaster General, $——; and the Assistant Postmaster General, $——.

"SEC. 2. *And be it further enacted*, That this act shall continue in force for ——, and no longer;"

It passed in the negative—yeas 9, nays 16, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, Nicholas, Stone, Sumter, and Wright.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the motion made yesterday on the subject of Western lands, which, being amended, was agreed to as follows:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, provisions and regulations are necessary in addition to the several acts providing for the sale of the lands of the United States northwest of the river Ohio, and that Messrs. BROWN, ROSS, and FRANKLIN, be the committee, and that the said committee have leave to report by bill or bills.

On motion, that it be

Resolved, That a committee be appointed to examine and report what regulations ought to be adopted respecting the lands claimed by the United States within the State of Tennessee, and that the said committee do report by bill or otherwise:

Ordered, That this motion lie until to-morrow, for consideration.

THURSDAY, April 8.

Mr. J. MASON, from the committee to whom was referred, on the 7th instant, the bill entitled "An act for the relief of Thomas K. Jones," reported it without amendment.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the motion made yesterday, that a committee be appointed to examine and report what regulations ought to be adopted respecting the lands claimed by the United States within the State of Tennessee

And, on the question, Will the Senate adopt this motion? it passed in the affirmative—yeas 21, nays 3, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, Logan, J. Mason, Morris, Nicholas, Ogden, Olcott, Ross, Stone, Sumter, Wells, and Wright.

NAYS—Messrs. Anderson, and Cocke.

Ordered, That Messrs. BROWN, STONE, BRECKENRIDGE, ROSS, and NICHOLAS, be the committee.

The bill for the more convenient organization of the Courts of the United States, was read the third time, and amended, by adding at the end of section 4th, line 80th, of the printed bill, the words, "except as hereinafter excepted;" and between the 5th and 6th sections of the printed bill, a new section; and section 6th, line 4th, after the word "circuit," insert "or district;" and line 6th, after "circuit," insert "and district." Section 11th, line 7th, original bill, before the word "juror," insert "petit."

And, on motion to strike out the 11th section of the original bill, as amended, to wit:

"*And be it further enacted*, That there shall be appointed, by the President of the United States, from time to time, as many general commissioners of bankruptcy in each district of the United States as he may deem necessary; and, upon petition to the judge of a district court for a commission of bankruptcy, he shall proceed as is provided in and by an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,' and appoint not exceeding three of the said general commissioners, as commissioners of the particular bankrupt petitioned against; and the said commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupts' estate: *Provided*, That the commissioners who may have been, or may be, appointed in any district, before notice shall be given of the appointment of commissioners for such district by the President, in pursuance of this act, and who shall not then have completed their business, shall be authorized to proceed and finish the same, upon the terms of their original appointment:"

It passed in the negative—yeas 11, nays 15, as follows:

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

And it was agreed to amend the title of the bill as follows: "An act to amend the Judicial System of the United States."

And, on the question, Shall this bill pass, as amended? it was determined in the affirmative—yeas 16, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Bradley, Dayton, Dwight Foster, Howard, J. Mason, Ogden, Olcott, Ross, Wells, and White.

So it was *Resolved*, That this bill do pass; that it be engrossed; and that the title thereof be "An act to amend the Judicial System of the United States."

The bill, entitled "An act to revive and continue in force an act, entitled 'An act to augment the salaries of the officers therein mentioned,' passed the second day of March, one thousand seven hundred and ninety-nine," was read the third time.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 23, nays 2, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Dayton, Ellery, T. Foster, Franklin, Howard, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Ogden, Stone, Sumter, Wells, White, and Wright.

NAYS—Messrs. Dwight Foster and Olcott.

The bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" was considered.

Ordered, That it be postponed until to-morrow.

The bill, entitled "An act to amend an act, entitled 'An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures,'" was read the third time, and passed.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned," was read the third time, and passed.

Mr. BRADLEY, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act for the relief of Paolo Paoly," reported it without amendment.

FRIDAY, April 9.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Paolo Paoly."

Ordered, That this bill pass to the third reading.

The Senate resumed the second reading of the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Ordered, That this bill be recommitted to Messieurs FRANKLIN, BRECKENRIDGE, and SUMTER, the original committee, further to consider and report thereon.

The Senate resumed the consideration of the resolution of the House of Representatives, of the 24th March last, authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on the second Monday in April; and agreed that it should be postponed.

The Senate took into consideration the motion made on the 6th instant, that a committee be appointed, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress, in their present session, and when it may be expedient to close the same; and, having agreed thereto,

Ordered, That Messrs. OLCOTT, BRECKENRIDGE, and BALDWIN, be the committee on the part of the Senate.

The bill, entitled "An act for the relief of Thomas K. Jones," was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes; in which they desire the concurrence of the Senate. They agree to the amendments of the Senate to the bill for revising and amending the acts concerning naturalization, with amendments; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to their amendments to the bill last mentioned in the message.

Resolved, That they do concur therein.

Mr. BRADLEY gave notice that he should, on Monday next, move for leave to bring in a bill to alter the term of the district court for the district of Vermont, and for other purposes.

Mr. S. T. MASON gave notice that, on Monday next, he should ask leave to bring in a bill respecting the District of Columbia.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be, and he is hereby, directed to cause to be printed —— copies of the journal, deposited in his office, of the proceedings of the general convention which formed the Constitution of the United States, and to cause the same to be distributed as the laws of the United States have heretofore been:

Ordered, That this motion lie for consideration.

MONDAY, April 12.

A message from the House of Representatives informed the Senate that the House have passed

a bill for the relief of Theodosius Fowler; also, a bill for the relief of Paul Coulon; in which bills they desire the concurrence of the Senate.

The bill for the relief of Theodosius Fowler was read the first, and, by unanimous consent, a second time, and referred to Messrs. J. MASON, BRECKENRIDGE, and ELLERY, to consider and report thereon.

The bill for the relief of Paul Coulon was read, and ordered to the second reading.

The bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, was read the second time, and referred to Messrs. FRANKLIN, BRADLEY, DAYTON, BROWN, and BALDWIN, to consider and report thereon.

The bill, entitled "An act for the relief of Paolo Paoly," was read the third time, and passed.

The Senate took into consideration the motion made on the 9th instant for printing the journal of the proceedings of the general convention which formed the Constitution of the United States, and

Ordered, That it be postponed until Wednesday next.

Agreeably to notice given, on the 9th instant, Mr. BRADLEY had leave to bring in a bill to alter the sessions of the district court for the district of Vermont, and for other purposes; and the bill was read, and by unanimous consent it was read the second time.

Ordered, That it be referred to Messrs BRADLEY, OGDEN, and T. FOSTER, to consider and report thereon.

The following motion was made by Mr. CLINTON, and seconded, and ordered to lie for consideration.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as parts of the Constitution, to wit:

That in all elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

Agreeably to notice given on the 9th instant, Mr. S. T. MASON obtained leave to bring in a bill for establishing the Government of the Territory of Columbia.

The bill was read and ordered to the second reading.

Mr. BROWN from the committee appointed the 8th instant, on the subject of the lands of the United States in the State of Tennessee, reported the following resolution; which was read, and ordered to lie for consideration:

Resolved, That the President of the United States be requested to give directions to the Attorney General to collect, digest, and report to Congress, at their next session, such documents and other information relative to the lands claimed by the United States within the State of Tennessee, under a deed of cession from the State of North Carolina, executed in December, 1789, as shall best serve to exhibit the extent of the claims reserved by the second condition expressed in said deed; and how far the said reservations have been satisfied; also, the situation and probable quantity of said lands which may be at the disposition of the United States, consistently with the conditions of the said deed of cession, and with existing treaties with the Indian tribes.

The Senate took into consideration the resolution of the House of Representatives of the 24th March last, that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on the 12th inst.

Resolved, That they do agree thereto.

The Senate took into consideration the motion made on the sixth instant, requesting the Secretary of the Navy to prepare a statement of the expenses of the Marine Corps; and the motion was amended and adopted as follows:

Resolved, That the Secretary of the Navy be requested to prepare and lay before the Senate an estimate of the expenses of the Marine Corps for the last year, distinguishing the number and expense of the officers of each grade.

The Senate resumed the third reading of the bill, entitled "An act to repeal, in part, the act, entitled 'An act regulating foreign coins, and for other purposes.'"

Ordered, That the further consideration of this bill be postponed until Monday next.

TUESDAY, April 13.

Mr. OLCOTT, from the joint committee appointed, on the 9th instant, to consider what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same, made report; which was read, and ordered to lie for consideration.

The bill for establishing the Government of the Territory of Columbia was read the second time and referred to Messrs. S. T. MASON, WRIGHT, and BALDWIN, to consider and report thereon.

The bill, entitled "An act for the relief of Paul Coulon," was read the second time, and referred to Messrs. FRANKLIN, ELLERY, and LOGAN, to consider and report thereon.

Mr. FRANKLIN from the committee to whom was recommitted, on the ninth instant, the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," reported amendments; which were read, and ordered to lie for consideration.

The Senate took into consideration the motion, made yesterday, for an amendment to the Constitution of the United States.

Ordered, That the further consideration of the subject be postponed until to-morrow.

The Senate took into consideration the report of the committee, made yesterday, respecting the lands claimed by the United States within the State of Tennessee.

Ordered, That the further consideration thereof be postponed until to-morrow.

WEDNESDAY, April 14.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend an act, entitled "An act for the relief of sick and disabled seamen," and for other purposes; in which they desire the concurrence of the Senate. They have passed the bill, sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," with amendments; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The amendments to the bill last mentioned in the message were read, and ordered to lie for consideration.

The Senate resumed the consideration of the motion made on the 12th instant, for an amendment to the Constitution of the United States.

Ordered, That the further consideration thereof be postponed until to-morrow.

The Senate resumed the consideration of the report of the committee, made on the 12th instant, respecting the lands claimed by the United States within the State of Tennessee; and, on motion to amend it, by inserting after the word "lands," these words, line 10th, "to which the Indian claim is extinguished, and which is not covered by legal titles under the State of North Carolina:"

Ordered, That the further consideration thereof be postponed until to-morrow.

Mr. J. MASON, from the committee to whom was referred, on the 12th instant, the bill for the relief of Theodosius Fowler, reported it without amendment; and, after debate,

Ordered, That the further consideration thereof be postponed until to-morrow.

The amendments reported by the committee to the bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," were considered; and, after progress,

Ordered, That the further consideration thereof be postponed until to-morrow.

THURSDAY, April 15.

Mr. JACKSON, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act further to alter and establish certain post roads," reported amendments; which were read, and ordered to lie for consideration.

The VICE PRESIDENT laid before the Senate a report from the Secretary of the Navy, being an estimate of the Marine Corps for the year 1801; which was read, and ordered to lie for consideration.

The Senate considered the amendments of the House of Representatives to the bill, entitled "An act for the better security of public money and property in the hands of public officers and agents."

Ordered, That they be referred to Messrs. TRACY, NICHOLAS, and OGDEN, the committee who brought in the bill, to report thereon.

The Senate resumed the second reading of the bill for the relief of Theodosius Fowler.

Ordered, That this bill be postponed.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Comptroller of the Treasury be, and he is hereby, directed to obtain a continuance or continuances of the suit in favor of the United States against Theodosius Fowler, now pending before the circuit court, in and for the district of New York, until the session of said court which shall be first held after the next meeting of Congress: And in the meantime the accounting officers of the Treasury are directed to resettle and state the accounts of the United States against Theodosius Fowler, upon his contract made with the Secretary of the Treasury, on —— day of ——, giving to said Fowler at least thirty days' notice of the time when he may attend, and produce such claims, vouchers, documents, and testimony, as he may choose; and after fully attending to said accounts, and the claims, &c., of said Fowler, they are directed to make report of their proceedings thereon to Congress, at their next session:

Ordered, That this motion lie for consideration.

The motion made on the 9th instant, that the Secretary of State cause the journals of the General Convention which formed the Constitution of the United States to be printed, was further postponed.

The bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" was read the third time.

Resolved, That this bill do pass with the following amendments:

Section 1, line 3, after the word "act," insert "and until the first day of January next."

Line 4, after the word "warrants," insert "heretofore."

Line 4, after the word "or," insert "registers."

Line 5, strike out the word "by," and insert "agreeable to."

Line 10, after the word "the," in the second instance, strike out to the end of section, and insert as follows:

"Same manner and under the same restrictions as might have been done before the first day of January last, provided that persons holding registers' certificates for a less quantity than one hundred acres may locate the same on such parts of fractional townships as shall, for that purpose, be divided by the Secretary of the Treasury into lots of fifty acres each."

Strike out 2d, 3d, 4th, 5th, 6th, 7th, and 8th sections, and insert a new section.

"*And be it further enacted*, That it shall be the duty of the Secretary of War to receive claims to lands for military services, and claims for duplicates of warrants issued from his office, or from the land office of Virginia, or of plats and certificates of survey founded on such warrants, suggested to have been lost or destroyed, until the first day of January next, and no longer, and

immediately thereafter to report the same to Congress, designating the numbers of claims of each description, with his opinion thereon."

The motion made yesterday, to amend the resolution under consideration on the 12th instant respecting the lands claimed by the United States within the State of Tennessee, was resumed, to wit: To insert, after the word "lands," in the second instance, these words: "to which the Indian claim is extinguished, and which is not covered by legal titles under the State of North Carolina."

And on the question, Will the Senate agree to this amendment? it passed in the negative—yeas 5, nays 20, as follows:

YEAS—Messrs. Anderson, Cocke, Nicholas, Tracy, and White.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, J. Mason, Ogden, Olcott, Stone, Sumter, Wells, and Wright.

On motion to adopt the resolution, it passed in the affirmative—yeas 23, nays 2, as follows:

YEAS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Colhoun, Dayton, Ellery, T. Foster, Dwight Foster, Franklin, Howard, Jackson, S. T. Mason, J. Mason, Nicholas, Ogden, Olcott, Stone, Sumter, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson and Cocke.

So the resolution was agreed to.

A message from the House of Representatives informed the Senate that the House have passed a bill making provision for the redemption of the whole of the public debt of the United States in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and it was by unanimous consent read the second time.

Ordered, That it be referred to Messrs. BALDWIN, BRECKENRIDGE, NICHOLAS, TRACY, and LOGAN, to consider and report thereon.

The bill, entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen, and for other purposes,'" was read the second time, and referred to Messrs. BALDWIN, DWIGHT FOSTER, and TRACY, to consider and report thereon.

Ordered, That the consideration of the motion made on the 12th instant, relative to an amendment of the Constitution of the United States, be postponed until Monday next.

FRIDAY, April 16.

Mr. FRANKLIN, from the committee to whom was referred, on the 13th instant, the bill for the relief of Paul Coulon, reported it without amendment.

Ordered, That the consideration of this bill be postponed until to-morrow.

On motion, by Mr. BRADLEY, that it be

Resolved, by the Senate and House of Representatives of the United States, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States:

That, after the third day of March, in the year one thousand eight hundred and three, the choice of Electors of President and Vice President of the United States shall be made by dividing each State into a number of districts, equal to the number of Electors to be chosen in such State, and by the persons in each of those districts who shall have qualifications requisite for Electors of the most numerous branch of the Legislature of such State choosing one Elector, in the manner which the Legislature thereof shall prescribe:

Ordered, That this motion lie for consideration until Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; a bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city; a bill to regulate and fix the compensations of the officers of the Senate and House of Representatives; a bill for the relief of Fulwar Skipwith; and a bill for the relief of Lewis Tousard; in which bills they desire the concurrence of the Senate.

The bills were read, and ordered severally to the second reading; and, by unanimous consent, the bill to regulate and fix the compensations of the officers of the Senate and House of Representatives, was read the second time, and referred to Messrs. COCKE, DWIGHT FOSTER, and BRADLEY, to consider and report thereon.

Mr. WRIGHT, from the committee to whom was referred, on the 13th instant, the bill for establishing the Government of the Territory of Columbia, reported amendments, which were read, and ordered to lie for consideration.

The amendments reported to the bill, entitled "An act to alter and establish certain post roads," were considered and adopted, together with further amendments.

Ordered, That this bill pass to the third reading as amended.

By unanimous consent, the rule was dispensed with, and the bill for the relief of Lewis Tousard was read the second time, and referred to Messrs. BRECKENRIDGE, ANDERSON, and OGDEN, to consider and report thereon.

By unanimous consent, the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city, was read the second time, and referred to Messrs. NICHOLAS, J. MASON, and WRIGHT, to consider and report thereon.

The VICE PRESIDENT notified the Senate that, as the session was advancing to a close, agreeably to the practice heretofore adopted, he should withdraw himself from further attendance for the remainder of the session.

And on motion, the Senate adjourned until to-morrow.

SATURDAY, April 17.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and the honorable ABRAHAM BALDWIN was chosen.

Ordered, That the Secretary notify the House of Representatives of this election.

On motion, it was

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the Vice President, elected the honorable ABRAHAM BALDWIN their President *pro tempore*.

On motion, it was

Ordered, That Mr. BRECKENRIDGE be of the committee to whom was referred the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, in place of Mr. BALDWIN, elected President of the Senate.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 16th instant, the bill for the relief of Lewis Tousard, reported it without amendment.

Ordered, That this bill pass to a third reading.

The bill for the relief of Fulwar Skipwith was read the second time, and referred to Messrs. NICHOLAS, DAYTON, and CLINTON, to consider and report thereon.

The bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," was read the second time, and referred to Messrs. BROWN, ANDERSON, and TRACY, to consider and report thereon.

Mr. WRIGHT presented the petition of the traders, pilots, builders, and others, concerned in navigation in the district of St. Mary's river, praying that the Collector's office may be established there, being more convenient than at Nanjemoy; and the petition was read.

Ordered, That it be referred to the last mentioned committee, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill for establishing the Government of the Territory of Columbia.

Ordered, That the further consideration thereof be postponed until Monday next.

Mr. BRADLEY, from the committee to whom was referred, on the 12th instant, the bill altering the sessions of the District Court in the district of Vermont, and for other purposes, reported amendments, which were read and adopted.

Ordered, That this bill pass to the third reading as amended.

MONDAY, April 19.

Ordered, That Mr. STONE be on the committee to whom was referred the bill for the relief of sick and disabled seamen, in place of Mr. BALDWIN, President.

On motion, it was *Ordered*, That the committee to whom was referred, on the 1st of March last, the petition of Ebenezer Stevens, be discharged.

A message from the House of Representatives informed the Senate that the House have passed a bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the service of the United States, in which they desire the concurrence of the Senate.

The bill was read, and, by unanimous consent, the bill was read the second time, and referred to Messrs. J. MASON, NICHOLAS, and TRACY, to consider and report thereon.

Mr. COCKE, from the committee to whom was referred, on the 16th instant, the bill regulating and fixing the compensations of officers of the Senate and House of Representatives, reported it without amendment.

Ordered, That Mr. STONE be on the committee to whom was referred the bill making provision for the redemption of the whole of the public debt of the United States, in place of Mr. BALDWIN, President.

The bill, entitled "An act for the relief of Louis Tousard," was read the third time and passed.

Mr. NICHOLAS, from the committee to whom was referred, on the 16th instant, the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city, reported amendments; which were read, and ordered to lie for consideration.

TUESDAY, April 20.

Mr. J. MASON, from the committee to whom was referred, on the 19th instant, the bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States, reported it without amendment.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and of the House of Representatives:

The object of the enclosed letter from the Director of the Mint at Philadelphia being within Legislative competence only, I transmit it to both Houses of Congress.

TH. JEFFERSON.

APRIL 20, 1802.

The Message and letter therein referred to were read, and ordered to lie for consideration.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 15th instant, the bill making provision for the redemption of the whole of the public debt of the United States, reported an amendment; which was read.

Ordered, That it lie for consideration.

Mr. BROWN, from the committee to whom was referred, on the 18th of March last, the petition of Alexander Gardner and Thos. Pinckney, reported that the prayer of the petition cannot be granted, and that the petitioners have leave to withdraw the same; and the report was adopted.

The Senate resumed the second reading of the bill for the relief of Paul Coulon.

On the question, Shall this bill pass to the third reading? it was determined in the negative.

A message from the House of Representatives informed the Senate that the House have passed a bill to amend an act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes: also, a bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two; in which bills they desire the concurrence of the Senate.

The bills were read, and severally passed to the second reading.

Ordered, That the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins, and for other purposes,'" be further postponed.

The bill, entitled "An act further to alter and establish certain post roads," was read the third time, and was further amended.

On motion to strike out the following words from the section last reported as an amendment, to wit:

"And it shall be, and it is hereby declared to be, the duty of drivers of all other carriages, in every reasonable case, to give way to the carriage conveying the mail; and if any person or persons owning or driving other carriages, shall use such marks or signals, or shall refuse to give the road to the carriage carrying the mail of the United States whenever the same may be practicable, such person or persons, so offending, shall forfeit and pay a sum not exceeding thirty dollars for every such offence, to be prosecuted for, and recovered, as in the foregoing section is pointed out:"

It passed in the negative—yeas 7, nays 17, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Franklin, S. T. Mason, and Wright.

NAYS—Messrs. Baldwin, Bradley, Brown, Clinton, Ellery, T. Foster, Jackson, J. Mason, Morris, Nicholas, Ogden, Olcott, Stone, Sumter, Tracy, Wells, and White.

And having agreed to amend the title of the bill,

Resolved, That this bill pass as amended.

Mr. NICHOLAS, from the committee, to whom was referred on the 17th instant, the bill for the relief of Fulwar Skipwith, reported it without amendment.

Mr. OLCOTT gave notice that he should, to-morrow, ask leave to bring in a bill fixing the time for the next meeting of Congress.

Mr. BROWN, from the committee to whom the subject was referred on the 7th instant, reported a bill to extend and continue in force the provisions of an act entitled "An act giving a right of preemption to certain persons who have contracted with John Cleves Symmes or his associates for lands lying between the Miami rivers in the Territory Northwest of the Ohio, and for other purposes:" which bill was read, and ordered to the second reading.

And on motion, the Senate adjourned until to-morrow.

WEDNESDAY, April 21.

Mr. BROWN, from the committee appointed on the bill to extend and continue in force the provisions of an act, entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes," reported an additional section to the said bill; which was read, and, together with the bill, was read the second time.

The bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the second time, and referred to Messrs. ELLERY, CLINTON, and J. MASON, to consider and report thereon.

The bill to amend "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," was read the second time, and referred to Messrs. ELLERY, CLINTON, and WELLS, to consider and report thereon.

Mr. BRADLEY gave notice that he should, to-morrow, ask leave to bring in a bill to establish by law a more uniform manner of holding elections in each State for Representatives in the Congress of the United States.

Agreeably to notice given yesterday, Mr. OLCOTT had leave to bring in a bill fixing the time for the next meeting of Congress, which was read and ordered to the second reading.

The bill altering the sessions of the district court in the district of Vermont, and for other purposes, was read the third time. On the question, Shall this bill pass? it was determined in the negative.

The Senate resumed the second reading of the bill for the relief of Theodosius Fowler.

Ordered, That this bill pass to the third reading.

Mr. TRACY, from the committee to whom was referred the amendments of the House of Representatives to the bill, entitled "An act for the better security of public money and property in the hands of public officers and agents," reported that a conference be asked on the subject-matter thereof: and the report was disagreed to.

Mr. FRANKLIN from the committee to whom was referred, on the 12th instant, the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, reported amendments which were read.

Ordered, That they lie for consideration.

REDEMPTION OF THE PUBLIC DEBT.

The committee to whom was referred the bill making provision for the redemption of the public debt, reported an amendment to the 4th section. This section authorized making loans, in Europe or America, to pay off instalments of the public debt, which fall due in 1803 to 1806, inclusively; and then directs that an equivalent sum shall be laid out in the purchase or redemption

of such parts of the present domestic debt as the Commissioners of the Sinking Fund should think proper. The amendment proposed that, instead of the present domestic debt, it should stand, such parts of the present debt of the United States, and other demands against them, as the Commissioners of the Sinking Fund may lawfully pay agreeably to the provisions hereinbefore made.

In support of this amendment it was alleged, that the act would be defective if the provisions of this clause were not co-extensive with those which are contained in the preceding part of the bill. That it was contemplated, in the bill, to bring three millions, which were in the Treasury, (and which were set apart for payment of demands in consequence of treaties,) to the aid of the present appropriation; and, of course, it would be proper to provide for payment of those demands out of the Sinking Fund. And a reference was made to the third section, in which the special application of the Sinking Fund ($7,300,000) created by the first, and made payable by the second section, is particularly detailed. This application is, 1st. To pay any sums the Commissioners of the Sinking Fund are already bound to pay by former laws.

2d. To pay the interest and charges on the present debt of the United States, including the interest and charges on future loans, for reimbursing or redeeming any instalments or parts of the principal of the said debt.

3d. To pay whatever might be necessary to discharge any instalment or part of the principal of the present debt, and of any future loans which may be made for reimbursing or discharging the same.

4th. To apply the balance of the fund, if any, to the further and final redemption, by payment or purchase, of the present debt, including therein, first, loans for the reimbursement thereof; second, temporary loans from the bank; third, demands against the United States under any treaty or convention with a foreign Power.

It was objected that the act stood better without the amendment. First. Because the object was at once more definite and more proper. The intention avowed had been to apply $7,300,000 to pay the debt foreign and domestic; wherefore, if new loans were made to pay the foreign debt, an equivalent sum ought to be applied to the payment of the domestic debt.

Secondly. Because the amendment seemed to imply the idea that this appropriation was illusory; for that, if it were to be real, the borrowing of any given sum, to meet an instalment of the foreign debt, would leave an equivalent in the Treasury, which would be no otherwise employed than in the redemption of the domestic debt.

Thirdly. Because there was, by the amendment, if not a direct contradiction in terms, such a strange confusion of words as was totally unintelligible. Thus, a part of the second, third, and fourth objects of the Sinking Fund, as pointed out in the third section, is to pay the principal and interest of new loans; and the effect of the amendment is, that a sum equivalent to the new loans should be applied to these objects. Wherefore, it would follow that the money left in the Treasury, by making the new loans, should be applied in paying those new loans.

Fourthly. Because the necessity of the amendment, so far as relates to the demands, in contradistinction to the debts, did not appear; for if, as was stated, a sum of three millions was already appropriated for payment of those demands, any sum borrowed, for temporary convenience, from that fund to aid the sinking fund, must be replaced of course.

Fifthly. Because this amendment tended to defeat the intention of the bill, or at least to render that intention highly questionable. It was reasoning in a circle. Seven millions are to be applied in payment of our debts, foreign and domestic. Instead of paying three millions of foreign debt, which fall due, a new loan of three millions is made. The equivalent sum of three millions, which remains in the Treasury, instead of being applied to pay our domestic debt, is to be employed in satisfaction of demands. And the three millions now in the Treasury, which had been set apart for these demands, instead of being applied to payment of the domestic or foreign debt, is to be thrown into the sinking fund as part of the appropriation which ought to come solely from the revenue.

Sixthly. Because if the effect of the amendment was not such as is last stated, it would at least have that appearance, and give but too much reason for the people to apprehend that they were deceived in the idea held out to them, viz: that, notwithstanding the repeal of the internal taxes, the revenue of the United States would permit the appropriation of so large a sum as $7,300,000 annually to the payment of our debts. Instead of which they would find that this payment was to be made by funds formerly provided, and which are all of them long since appropriated by law to the redemption of the public debt.

The amendment was adopted.

Another amendment was proposed, viz: To strike out from the first section the words "and also future loans which may be made for reimbursing or redeeming any instalment or parts of the principal of the said debt."

In support of the amendment, it was said that the section, as it stood, was unintelligible; and, to prove this, the supporters of the bill were repeatedly called on to explain it; that, if any meaning could be regularly applied to it, that meaning was wholly improper; for it appeared to provide that future loans should be made part of the sinking fund; that, by this section, the sum of $7,300,000, specified therein, was to be made up out of the duties on merchandise and tonnage, if the other objects designated in it should fall short; that these objects are, first, the present sinking fund; second, the sum requisite to pay the principal and interest of the present debt, including temporary loans heretofore obtained: and, thirdly, future loans; that the words moved to be struck out, could not be otherwise interpreted, because it could not, by any figure of speech, be said that the present debt

includes future loans to pay the present debt; that even admitting such a strained interpretation, it could not apply to the present case; because the interest of the present debt, being already provided for by law, forms a proper item in the account of those sums which constitute the sinking fund, but if future loans form a part of the present debt, they certainly are a part for the interest of which no provision has been made; that if it was really intended by the patrons of this act to make up the sinking fund by new loans, the measure was disgraceful to Government, would expose the Legislature to contempt, and justly excite the public indignation.

In opposition to the amendment it was said, that the section was very clear and intelligible. That those who did not understand it, must read the report of the Secretary of the Treasury on which it was founded. That those who properly considered the report would easily comprehend the act. That the words which were proposed to be struck out were necessary. That this necessity would appear from the subsequent provisions of the act.

The amendment was lost—yeas 8, nays 18, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, Morris, Ogden, Olcott, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, J. Mason, Nicholas, Stone, Sumter, and Wright.

It was then moved to strike out the words, "or any individual or individuals," in the fifth section.

In favor of the motion it was said: That the appointment of an agent to remit annually two millions of dollars, would be not only improper in itself, but highly obnoxious to the merchants of America. That, from the nature of the business, it was to be presumed that a man of mercantile education and habits would be chosen. That whether he was allowed to make commercial speculations for the United States, or confined merely to the purchase of bills of exchange, his powers might be applied to personal purposes. That it would be easy for him to employ his particular creatures to purchase cargoes and make shipments; then purchase bills drawn on the credit of such cargoes, if the speculation should prove successful, share in the profit, and, if ruinous, leave the nominal merchant to be relieved by a commission of bankruptcy. That in the present state of things, when mercantile credit is so much shaken, the command of so large a sum (or even one quarter of it) would give to any merchant great advantage over his brethren. That of course it would excite envy and ill-will among that respectable class of citizens: and let the Government act as they might, blame would light on them. That this was a contrivance to relieve from due responsibility the proper officer, and leave in the stead the responsibility of some one not approved of in the mode required by the Constitution. That it opened the door to a species of patronage, of all others the most pernicious.

To these observations it was replied: That the business in question ever had been, and ever must be, managed by subordinate individuals. That when bills were purchased for the public by the banks, it was always done by the agency of the cashiers. That it was impossible the Secretary of the Treasury could be accountable for the conduct of such business, and therefore his responsibility would be merely nominal. That the agent was to be appointed by the Commissioners of the Sinking Fund, and the respectability of the characters which form that board, left no room to apprehend an improper appointment. That if power to contract with the banks alone was given, the public would be entirely in the hands of those who direct the banks, whereas they ought to have the benefit to be derived from competition.

The amendment was lost—yeas 9, nays 17, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

It was then moved to strike out the sixth section, which gives authority to appoint an agent for making loans in Europe.

In support of the amendment it was said: That if any agent were necessary, it ought to be a diplomatic character; because such character, sent to and recognised by the Government of the country, would necessarily have more credit than a common agent. That if any applications should, in the course of such business, be necessary to the Government, it could not be made effectually or properly, unless by such a character. That it did not consist with the dignity of the United States, that an agent charged with an affair so important, should be obliged to apply to under Secretaries, if any business were to be transacted with the Ministers. That the difference of expense (one thousand five hundred dollars annually) was too trivial to enter into so important a consideration; for that one quarter per cent. on six millions would be fifteen thousand dollars. That all business of this sort had hitherto been transacted by the diplomatic servants of America, and had been well transacted. That no man ought to be employed or trusted in so weighty a concern who had not weight of character sufficient for the place of Minister. That if obligations for money borrowed were to be signed, it would have a better appearance that they should be signed by a Minister than by a common agent. That the idea of sending over a mercantile man to do a thing of this sort, founded on an opinion that such men understood it better than others, was unfounded, because it was as foreign to their ordinary occupations as to those of other people. That information on the subject could only be obtained on the spot, and must, from the nature of the case, be derived principally from the bankers of the United States. That the loan must be conducted principally by their skill, and be supported, in a great degree, by their influence; and if not aided by anything more than a common money agent, must

rest solely on their credit; because the money lenders could only know through them that the United States were pledged. That the appointment of such an agent, considered in connexion with the other agent already mentioned, might lead to a suspicion that it was intended to provide for favorites by lucrative jobs.

It was answered: That there could be no propriety in sending a Minister for the mere purpose of borrowing money. That persons might be found well qualified for the transaction of this business, who did not possess all the qualifications necessary for a Minister. That the difference of expense was more than fifteen hundred dollars; for that a Minister was entitled to a year's salary (as outfit,) so that in effect the expense would be greater by six thousand dollars. That it might not perhaps be necessary to send any person; and if it should be, then it was wise to send one at as small an expense as possible. That it was the duty of the Senate to economize the public money, and people would be more apt to lend to a nation in which economy prevailed, than to one which lavished its funds on useless officers.

The amendment was lost. The bill was then ordered to a third reading.

THURSDAY, April 22.

Mr. BROWN, from the committee to whom was referred, on the 17th instant, the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," reported it without amendment.

Mr. ELLERY, from the committee to whom was referred, on the 21st instant, the bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, reported it without amendment.

Agreeably to notice given yesterday, Mr. BRADLEY had leave to bring in a bill to establish, by law, a more uniform manner of holding elections in each State; which was read; and on the question, Shall this bill pass to the second reading? it was determined in the negative.

The bill fixing the time for the next meeting of Congress was read the second time; and on the question, Shall this bill pass to the third reading? it was determined in the negative.

The Senate resumed the consideration of the amendments reported by the committee to the bill for establishing the Government of the Territory of Columbia; and having agreed in part to the amendments reported, on the question, Shall this bill be read the third time, as amended? it was determined in the negative—yeas 13, nays 13, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, S. T. Mason, Nicholas, and Wright.

NAYS—Messrs. Bradley, Dayton, Dwight Foster, Howard, Logan, J. Mason, Morris, Ogden, Olcott, Stone, Tracy, Wells, and White.

A message from the House of Representatives informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill, entitled "An act further to alter and establish certain post roads."

The bill, entitled "An act for the relief of Theodosius Fowler," was read the third time; and, after debate,

Ordered That the further consideration thereof be postponed until Monday next.

FRIDAY, April 23.

The Senate resumed the second reading of the bill to regulate and fix the compensations of the officers of the Senate and House of Representatives.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the amendments reported by the committee to the bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of the loans made by the State of Maryland for the use of the city; and having agreed thereto,

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two.

Ordered, That it be recommitted to Messrs. ELLERY, CLINTON, and J. MASON, the original committee, further to consider and report thereon.

The Senate resumed the second reading of the bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States.

The Senate resumed the second reading of the bill for the relief of Fulwar Skipwith.

Ordered, That this bill pass to a third reading.

Ordered, That this bill be committed to Mr. MORRIS, Mr. DAYTON, and Mr. NICHOLAS, further to consider and report thereon.

Mr. OGDEN presented the petition of John C. Symmes, praying relief from the operations of an act giving a right of pre-emption to certain persons who have contracted with J. C. Symmes, or his associates, for lands lying between the Miami rivers, in the Territory of the United States Northwest of the river Ohio; and the petition was read.

Ordered, That it be referred to Messrs. BRECKENRIDGE, OGDEN, and BRADLEY.

A message from the House of Representatives informed the Senate that the House have passed a resolution, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the 26th instant, in which they desire the concurrence of the Senate. They have passed the bill sent from the Senate, entitled "An act to amend the Judicial system of the United States," with amendments; in which they desire the concurrence of the Senate.

The resolution for adjournment was read, and ordered to lie for consideration.

The Senate took into consideration the amend-

ments reported by the committee to the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; and having in part adopted the amendments, the further consideration of the bill was postponed.

Mr. ELLERY, from the committee to whom was referred, on the 21st instant, the bill to amend "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," reported amendments; which were read, and ordered to lie for consideration.

SATURDAY, April 24.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act further to alter and establish certain post roads;" and

Resolved, That they do insist on said amendments, ask a conference thereon, and that Messrs. JACKSON and TRACY be the managers on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the 26th instant: and

Resolved, That they do not concur therein.

The bill, entitled "An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States," was read the third time.

Ordered, That the further consideration thereof be postponed until Monday next.

REDEMPTION OF THE PUBLIC DEBT.

The bill, entitled "An act making provision for the redemption of the whole of the public debt of the United States," was read the third time.

On motion, to strike out, section first, after the word "that," in the second line, to the word "hereby" in the twelfth line, and insert the words,

"In addition to all appropriations heretofore made for payment of the principal and interest of the debts of the United States, (other than surpluses of revenue) so much of the duties on merchandise and tonnage as will amount, with the said provisions, to an annual sum of seven millions three hundred thousand dollars, be, and the same is hereby, appropriated to the Sinking Fund; and the said sum of seven millions three hundred thousand dollars is:"

Mr. MORRIS.—Mr. President, there is a part of this act which is proper, wise, and I believe indispensable. But in order that it may produce the desired effect it is essential that the intention of it be rendered clear and intelligible. This is far from being the case at present, and therefore I shall offer an amendment for that purpose. It gave me great pain (the other day when I asked an explanation from those who are its supporters) to be referred to a report from one of our officers. Does it consist with propriety to pass a law which even those who vote for it can in no other way explain than by such a reference? If gentlemen mean to derive credit from this measure among the people of America, it must be understood here, and if they expect to borrow money in consequence of it in Europe it must be intelligible there. The state of our finances renders such loans in my opinion indispensable. But there is an act lately passed, which will arrive in Europe, before any loan can be made, and which will materially injure the credit of this Government. I mean that which repeals a tax on stills and distilled spirits, that had been solemnly pledged for the payment of the public debt. The money negotiators in Holland have before them every one of our acts which relates to the public debt. The instant you propose a new loan, they will produce that repealing law, and tell you their confidence is shaken. To remove the unfavorable impression acknowledging the repeal, you aver that you have (in lieu of it) given a pledge much more important—a pledge of seven million three hundred thousand dollars, and you refer to this act. They read it and say "we can't understand it. You may perhaps have meant to appropriate the sum you mention, but it conveys to our minds a different idea. We can perceive no such pledge." My reason for believing that this will be their language is, that I could not understand the act myself; and that when I asked (from its patrons) an explanation, they did not pretend to give it, but referred me to the report of the Secretary of the Treasury. By reading that report I have indeed discovered what it means, but let me say, however, that this meaning is not truly expressed in the act. It was drawn by some person whose vernacular language is not the English, and bears on the face of it evidence of that fact, as I shall presently have occasion to show. This may have occasioned the obscurity which I wish to remedy.

In order that I may convey to the minds of others, those ideas which I have collected from reading and considering the report to which I was referred, I beg leave to make a simple distinction between the first object of the act, which is to appropriate seven million three hundred thousand dollars to the sinking fund, and the subsequent directions how that fund is to be applied. The first object is to be effected by the first section, which, if we are to judge by the Secretary's report, is intended to appropriate (in addition to former appropriations) so much as may be necessary to make up that sum of seven million three hundred thousand dollars. But this does not appear to be the object, if we must judge by the words of the bill. This meaning is not to be collected from them, either on the first impression, or when closely examined. The words are:

"*Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled*, That so much of the duties on merchandise and tonnage as, together with the moneys, other than surpluses of revenue, which now constitute the sinking fund, or shall accrue to it by virtue of any provisions heretofore made, and together with the sums annually required to discharge the annual interest and

charges accruing on the present debt of the United States, including temporary loans heretofore obtained, and also future loans which may be made for reimbursing, or redeeming any instalments, or parts of the principal of the said debt, will amount to an annual sum of seven millions three hundred thousand dollars."

Now, in order that we may clearly comprehend this enigmatical clause, let us have recourse to algebraic expression. Let A be taken from the former appropriation and B for the additional sum, to make up the seven millions three hundred thousand dollars; which, for brevity sake, I will call seven millions. It is evident that every increase of A, must operate to the diminution of B. If A be five millions, B will be two millions. If A be six millions, B will be one million. If A be seven millions, B will be reduced to nothing. In order therefore to determine the amount of B (the present appropriation) nothing more is necessary than to fix the amount of A. By referring to the clause just read, it will appear that A is to consist of the present sinking fund, of the interest of, and charges on our existent debt, and of the interest of future loans to redeem that debt. If then the two former articles amount to five millions, and loans be made, the interest thereof will amount to two millions, A will be seven millions; although the loans so made, should be applied to extinguish an equivalent amount of the present debt. For let that be made certain, which is made capable of being reduced to certainty. Let the present sinking fund and the interest of the present debt be stated in figures at their precise amount. The amount will form a deduction from B, the appropriation now made, according to the tenor and express words of the clause, leaving it less by that amount. And after it is so lessened, a further diminution is to be made for the interest of future loans. This, sir, is the meaning of our appropriation, when properly analyzed; for if it be not, what I pray is the case of the words, "and also future loans which may be made for reimbursing or redeeming any instalments or parts of the principal of the said debt? These words cannot relate to those which immediately precede them, for although the present debt includes temporary loans heretofore obtained, it cannot include future loans which may be made. The reference therefore must be to the interest on these future loans as a distinct object. Will it be pretended that this constitutes any part of the present appropriations? Is it not clear that if such loans be applied to the purpose for which they are made, they must extinguish a part of the existing debt? And is it not clear, also, that each of the three articles specified must diminish the present appropriation? Invert the order and say; we appropriate seven millions, less the sinking fund, and less the interest of our present debt, and less the interest of that we may borrow to pay that debt. Take the first article at three millions, and each of the others at two; then seven millions less the sinking fund will be four millions, and less the interest of future loans to pay that debt will be nothing. Here then is an appropriation (or rather here is the semblance of an appropriation) which means (or may be made to mean) just nothing.

But now I will admit, sir, for argument's sake, that some other construction may be given to this clause, (which, however, I cannot devise,) and then I ask, is it prudent to go to Europe with a law of such doubtful complexion, as the ground on which to borrow money? Is this wise? Let me again repeat, that you have injured your credit by a former act. I mean not to arrogate the merit of superior knowledge on this, or, indeed, on any subject; and, if anything which fell from me the other day, had that appearance, it will, I hope, be attributed to the true cause. No man can always be so completely master of himself, when harassed by the flippancy of debate, as not to drop some hasty expression. It has happened that, being on the spot, I have collected information respecting this business, which gentlemen who have not had the same opportunities may not possess. This information, I hold it my duty to give, and every Senator will draw from it his own conclusions. When you are about to open a loan in Amsterdam you must apply to the commissioners or bankers whom you have already employed. Send thither what agent you may, he must employ them, because others will not undertake it; and for two reasons—first, there is a kind of mercantile honor which will restrain them in a considerable degree, and, secondly, they would apprehend the opposition of those from whom the business was taken, and who certainly could throw great obstacles in their way. Under these circumstances, in which you apply to these bankers, and with this law in your hand, what will you say? They will tell you they cannot understand it; that you have taken away one pledge which they understood and on which they relied. They will ask if this new pledge cannot be taken away as easily as that? Admitting the sincerity of your professions, they will ask what security they have against a change of sentiment in the Legislature? They will inquire what check there is in our political organization to prevent a violation of public faith; and how far such checks are effectual? Suppose a satisfactory explanation can be given in answer to these essential inquiries, they will proceed to ask an explanation of the law itself. They will analyze it, and will doubt of the meaning, or, rather, they will perceive in it the meaning which has already been pointed out. How will your Secretary of the Treasury, or his agent, obviate objections? Must these bankers be, as we were, referred to his report? If so, will they not object that this report forms no part of the law? Will they not put the question which suggests itself at the first blush to the most simple observer, Why, if this was your intention, did you not express it in terms so clear as not to be misunderstood? It will not be decent to reply, that the law was drawn by a foreigner and passed by the two Houses of Congress in blind confidence. These bankers understand English; they will not commit themselves lightly, and even if they should, the success would be doubtful. Those who have opened other loans, and who, from that circumstance, stand in opposition, will point out to money-lenders the defects in this law. These people, they

will say, speaking of us, meant to pledge seven millions three hundred thousand dollars, or they did not. If they meant it, they would have expressed their meaning in such way as could admit of no doubt. If they did not mean it, they could have had no other intention than to deceive by a false appearance. They, but a few days before, repealed a law pledging, in terms clear and unequivocal, a specific tax to the payment of their debts, and now they offer a vague and general appropriation, in terms obscure and equivocal.

This, Mr. President, is a subject in which neither I nor my friends are any otherwise concerned, than as it relates to the national honor and credit. It is not a measure for which we feel responsibility. It does not excite in us a spirit of opposition. But we wish, I repeat it again, to save the honor and the credit of our country. Gentlemen have thrown away the internal taxes, and are about now to tell the American people that, without the aid of those taxes, they can provide for the current service, and appropriate upward of seven millions as a provision for the redemption of the whole of the public debt. This is what they pretend, and I am bound to suppose that this is what they mean; for I cannot presume that they have the wish, much less the intention, to impose upon the people by a vile trick. Surely, they cannot mean, by using an unintelligible jargon, to cheat their fellow-citizens into the idea, that above seven millions are appropriated to this object, when in fact there is no such appropriation. It would be too pitiful a device, and I cannot believe that any gentleman would descend to an expedient so poor, so base, merely to catch a little popularity. Presuming, then, that they really wish what they say, I will now offer an amendment to express that meaning in terms simple, clear, and definite; terms which can easily be understood, and which cannot be misunderstood. I move, therefore, sir, that from the word "that" in the second line, to the word "hereby" in the fourteenth line be struck out, and the words "in addition to all appropriations heretofore made for 'payment of the principal and interest of the 'debts of the United States, (other than surpluses of revenue,) so much of the duties on merchandise and tonnage, as will amount with the said appropriation, to an annual sum of seven millions three hundred thousand dollars be, and the same is hereby, appropriated to the sinking 'fund, and the said sum of seven millions is" be inserted.

Mr. WRIGHT.—I hope we shall not agree to the amendment. This ought not to be done, as appears by the gentleman's own argument. He has said that this law was in the language of a foreigner—meaning, I suppose, Mr. Gallatin. The gentleman has attempted to show the propriety of this amendment, very simply, by using the letters A and B; but he never could get me to C. The language of the act as it stands, is very good, sir. The gentleman finds it very difficult to understand; but, I, sir, understand it fully, and I think it correct and very proper. The Secretary of the Treasury has told us what we ought to do in the premises. He knows, and it is right to do as he says.

Mr. S. T. MASON said: As I understand that amendment, sir, it is to deprive the bill of a very important part of its provisions; to prevent any portion of this money from going to the payment of interest on loans hereafter to be made. If that is the case, I must be opposed to it; and that seems to me to be the intention.

Mr. BRECKENRIDGE.—When that amendment, sir, was first shown to me, I did not perceive any material difference between the amendment and the bill. But, sir, if this word "debt," used in the amendment, is to prevent moneys hereby appropriated from going to the payment of new loans, it varies materially from the bill.

Mr. MORRIS.—I did hope and believe, Mr. President, that the distinction I had taken, and which, at the time, appeared to me almost unnecessary, would have had the intended effect of preventing observations, such as we have just heard. I must again request gentlemen to take notice, that the clause to which I have moved an amendment, relates not to the application, but to the constitution of the proposed fund of seven million three hundred thousand dollars. After determining what that fund is to consist of, the act goes on to declare in what manner it shall be applied. The question is not now on the end of the journey, but on the beginning. The gentleman from Virginia and the gentleman from Kentucky, will see that their observations apply, *not* to the manner in which this fund is *now* to be constituted, but to the directions by which it is hereafter to be used; and these directions are contained in the subsequent parts of the act. The plain case is, seven millions three hundred thousand dollars are to be annually applied in payment of our debts. This is a clear and simple proposition. What gave rise to all our difficulties the other day, was, that we really could not understand the first clause of the act. And when we asked an explanation from those who were presumed to understand, as they seemed determined to vote for it, we were constantly referred to the Secretary's report. This last chapter of the Apocalypse, can, it seems, be exposited, only by that first chapter of Genesis. In obedience to the orders of honorable gentlemen on that day, I have since read, examined, and considered the report; and if they also are acquainted with it, they will see that the amendment now before the House, comes up precisely to the ideas contained in the report. It appropriates, in addition to former provisions, so much as will make up the contemplated sum. This form of expression has the advantage, that it must be understood, and cannot be misunderstood. Nay, it obviates all doubt which may arise upon former laws; for it is perfectly immaterial, whether former provisions amount to one million or to five millions, since the balance, be it what it may, is to be made up from the revenue. Is the revenue mortgaged to the amount of only one million, the additional mortgage, by the act, will be six; is it mortgaged to the amount of five millions, the additional mortgage will be one; in short, the final effect will be

the same in every supposable case, and your revenue will stand pledged, eventually, to the amount required, of seven millions three hundred thousand dollars. This, gentlemen say, is their object. I do not call in question their sincerity; but, instead of a clause which does not clearly express that object, I have offered one which does clearly express it. If they reject the amendment, they must see the natural conclusion. I leave it, therefore, with them to do as they please.

It passed in the negative—yeas 10, nays 16, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

Mr. MORRIS.—I must now move some other amendments to this section, which will relate only to the language; the first is, to strike out the words, "including future," and insert the words, "and the," so that, instead of the present debt including future loans which may be made, the clause may read "the present debt, and the loans which may be made." I suppose the gentleman will reject this, too, and declare, by their votes, that the *present* debt includes *future* loans.

Mr. WRIGHT.—Mr. President, this clause is much better as it is; it is more full and comprehensive. It is according to the meaning and object of the Secretary's report, and I hope it will not be altered.

Mr. DAYTON.—If gentlemen wish to prove that future loans, by which I suppose they mean, if they mean anything, or know what they mean, loans hereafter to be made, are included in the present debt of the United States, they have now a fine opportunity of showing it by their votes, and should reject the amendment.

Mr. WRIGHT.—I insist upon it, sir, the bill stands better as it is; it will not admit of alteration. The language is right enough; it comes up to the object of the Secretary, and to what is proper to be done. I will not agree to alter it.

This amendment was carried.

Mr. MORRIS moved the same amendment in the beginning of the third section.

Mr. M.—This correction of style consists with that which the Senate have already adopted. In fact, sir, the vicious expression frequently occurs, and is merely a Gallic idiom. The word *including*, is a translation of the words *y combris*, and in a French law would do very well, but in English, it is nonsense.

Mr. THEODORE FOSTER.—Mr. President, the words, as they now stand, are "the present debt of 'the United States, including future loans which 'may be made, for reimbursing any instalments 'or parts of the same." This is a common mode of expression. It is more comprehensive than the amendment proposed. I find the same expression occurs frequently. It will take time to alter it, and therefore I hope the amendment will not be agreed to.

Amendment lost—yeas 10, nays 14.

Mr. MORRIS moved several other amendments to the style, most of which were lost.

Mr. MORRIS.—The amendment I now mean to offer is not merely verbal, but of substantial importance; it is, strike out, in the fourth section, the words, "six years after the date of the same, and that the rate of interest thereupon shall not exceed five per centum per annum, nor the charges thereon, the rate of five per centum on the capital borrowed;" and insert the words, "ten years from the period when the same shall be made, and that the total amount of the interest and charges shall not exceed six per cent. per annum on the capital thereof." The object of this amendment, sir, is simply to authorize the Commissioners of the Sinking Fund to make loans not reimburseable in less than ten years, if they should find it adviseable, instead of six years, as stated in the act. The terms I propose are the same, viz., not to exceed six per cent. interest; for the five per cent. commission and five per cent. interest, on a six years' loan, amount to six per cent. interest, or very nearly so, as gentlemen will see at once, by an operation of common arithmetic. If, with the aid of logarithms, they choose to make the calculation accurately, they will find it is within four cents of six per cent. The effect then of the amendment is, to empower the Commissioners of the Sinking Fund to borrow for a term of ten years, if they cannot obtain money on a loan for six years. By stating merely the interest, which is not to be exceeded, it will be in the power of those who execute the business so to arrange it as may be most suitable to the lenders; by commissions, premiums, or otherwise. This, sir, I consider as important; because we cannot, at this distance, determine exactly on the plan which will suit those who are to lend the money; and the way in which loans are made is to inquire into circumstances, and discover the bait which lenders will bite at. One circumstance is important, and must therefore be mentioned. Loans reimburseable at a distant day are more valuable than those of a shorter date. The reason is clear. Those who place their money in public funds, to receive a regular interest, find reimbursement inconvenient, because it compels them to make a new disposition of their capital; and those who buy with a view to subsequent sale, at an advanced price, will of course prefer stock of a durable nature, because it gives sufficient time to look for that advance. Those who, at the close of the American war, bought into the British three per cents., then but little above fifty per cent., and sold out when they had risen much above eighty per cent. (which happened to be the case shortly before the present war,) received near six per cent. interest on their capital, during the investment, and a profit of sixty per cent. on the sale. The English funds are at the door of the Dutch capitalists. They can watch their course, and provide for events as they happen. These and other inducements, to lend money at or near home, will operate against you. It is impossible to say what terms will suit these people, but it is easy to say that certain terms will not suit them. I think you cannot

reasonably expect to borrow money on a short credit, because, if the peace continues, the British stock (the interest of which has for more than a century been regularly paid) offers so clear a prospect of gain, from the rise, that those who have money will prefer it to your obligations. When the British funds rise so high that investments in their three per cents. will not give more than five per cent. interest, you will perhaps succeed in borrowing for six years; but if the war should recommence, you will not, I believe, be able to get money on any terms. I shall press this amendment no farther. What I advance is on the ground of private information, from whence I collect that American obligations bearing an interest of five per cent. were in Amsterdam three per cent. below par. So long as this is the case, it is idle to expect that you can borrow at five per cent. for a short term, because any person inclined to lend in that way would rather purchase the obligations at ninety-seven per cent. I leave gentlemen who are connected with the Administation, and who have I suppose correct information from the Head of the Department, to judge for themselves.

The amendment was lost.

Mr. MORRIS.—The untoward state of so many amendments is a sufficient indication that I need not trouble either the Senate or myself with any thing more of that sort. But I feel it my duty to suggest to gentlemen, whose act this is, the propriety of correcting that part of the fifth section which speaks of purchasing remittances. I the rather avoid all attempt to amend it, as I must again ackowledge my ignorance. I know not what is meant by purchasing remittances. I know what it is to purchase bills, bullion, &c., to make remittances. Whether it is intended that when other people have made remittances the things by them sent shall be purchased, or whether (under this vague term) cargoes of produce and of all kinds of merchandise are to be included, I know not. Whether, by the help of the agent contemplated in this clause, the United States of America are to become a trading company, and the loss on bad speculations in trade, is to be made up by taxes on the people, I cannot discover. This last, however, would seem to be the case, from that provision in the section which appropriates so much from the revenue as may be necessary, to pay "the extra allowance or commission resulting ' from such transactions, and the deficiency arising ' from any loss incurred upon any remittance pur ' chased or procured." I shall not repeat my objections made the other day to the same agent; but I must say, that it behooves gentlemen to render this part of their act more explicit, unless it be indeed their intention that this agent shall make commercial speculations, and when successful pocket the profit—when unsuccessful saddle the public with the loss.

No answer was made to these observations.

The bill was read a third time, and, on the question, shall it pass:

Mr. MORRIS said,—Mr. President, I have always thought this measure unwise; from what has now passed, I think it worse. In the course of my observations I must refer gentlemen to their favorite document—the Secretary's report. But I suppose nothing I can say will avail; they seem determined to pass the law at any rate.

I said the other day, that the surplus of all our revenue beyond the appropriations, was already pledged to the sinking fund. This gentlemen had the goodness to deny. I pray they will now be pleased to turn to the eighth page of the Secretary's report. They will there find, in the eighth section, among the provisions for the redemption of the public debt, "All surpluses of the revenues ' of the United States, which shall remain at the ' end of any calendar year, beyond the amount of ' the appropriations charged upon the said reve ' nues, and which during the session of Congress ' next thereafter, shall not be otherwise specially ' appropriated or referred by law."

It is indeed said, in the third section of the fifth page, that, from certain defects in the mode of doing business, the amount of this surplus cannot be ascertained. He tells us it is uncertain "whe ' ther the proceeds of loans should be included in ' the revenue." I pray gentlemen will attend to this expression. Your Secretary considers it as doubtful whether loans make part of the revenue; and tells you the construction as to that point has not been uniform. He sends you an account to show that, instead of a surplus, there had been a deficiency of near a million from the establishment of the Government to the close of the year 1799; and concludes from that circumstance, that the accounts have been irregularly kept. As to the manner in which the books have been kept, Mr. President, it is of no consequence. It appears by this very report, that, let them have been kept as they may, there is now a surplus of more than three millions of cash in the Treasury. We have just seen that the whole surplus revenue, be it what it may, is appropriated to the payment of our debts. This sum of three millions, therefore, no matter how it got into the Treasury, is already bound to the payment of our debts. As to the difficulties or the blunders in keeping our books, supposing any such to exist, they may be obviated by the Secretary himself, or, if not, it will be easy to make the needful provisions by law. The appropriation formerly made, is not perhaps sufficiently clear and definite, but until the objections be distinctly stated we cannot judge of them, neither can we pretend that any law, much less the law now proposed, can be necessary to remove them. Last of all, can it be pretended that the appropriation does not exist? Let any gentlemen show a single dollar of revenue, except that from the post office, which is not now appropriated. Gentlemen have said otherwise, but let them show it. A part of the internal revenue, indeed, was not specifically pledged, but the whole has been repealed. While I now speak, every farthing of surplus is appropriated to the sinking fund. What then is the effect of this act, fastidiously pretending to redeem the whole public debt? Will it bring one dollar into the Treasury? Or is there a magic in the words of it, by which debts can be paid without money? You undertake to appro-

priate seven millions, and you have it not to appropriate. I say seven millions, leaving out the additional three hundred thousand, for I must now, for the facility of comprehension, confine myself to round numbers. Your Civil List, including foreign affairs, amounts to a million; your Navy to a million; your Military Establishment to a million and a half. Admit, for a moment, that your boasted economy will reduce these items, (by some trifle,) you see at a single glance, that if this act be passed, ten millions and a half of revenue will be required to meet your appropriations. Now, sir, what is your revenue? When this subject was in question, I had the honor to assign my reasons for believing that the duties would not exceed eight millions, supposing them to be regularly and honestly paid. What have you in addition? Arrears of taxes, sales of land, and the post office. The arrears of taxes will be noticed presently. They form part of the surplus already pledged. As to the post office, the fifty thousand dollars to be derived from that source ought to be expended in the extension of communication; at any rate it is a trifle. The sales of lands, then, is the only fair addition to the duties. I know nothing of the circumstances attending your lands. This fund may be prolific; it may produce nothing. I have, however, many reasons to believe that it will yield less than it has done, but admit that, (instead of 400,000 dollars, the sum estimated by the Secretary,) it should amount to half a million. Admit that your duties produce eight millions, you can then count upon eight and a half. Deduct for the support of Government, three and a half, there remains five. And on this you are about solemnly to pledge yourselves for seven. Let gentlemen consider well what they do. Here is no logical, no metaphysical argument. You can neither deceive others, nor have the poor excuse of ignorance for yourselves. It is a question to be solved by the first rules of arithmetic. You are now about to vote against arithmetical demonstration, and that vote shall be recorded. This, I tell you, is one of the most serious subjects you have yet touched; and seriously will you have to answer for the vote which is now to be given. Consider, then, what you are about. You are about to make appropriations in the face of facts. There must be a deficiency of funds. You know there must. Do you mean, then, to come forward next session, (when that deficiency becomes notorious) and repeal this law? Will you make a solemn mockery—a mere farce—of legislation? What excuse can you devise? Folly is not sufficient. Nothing but madness—downright madness—which indeed is an excuse for anything.

Gentlemen may, perhaps, suppose they can cover themselves under their confidence in the Secretary. I will not examine the decency of that defence, but I tell them it will not serve their turn. Look at the language of this Secretary, in whom they put their trust. In his report of December last he acknowledges that our revenues (taken at the amount he states in that report) will fall short of satisfying this appropriation, and the current service, by two hundred thousand dollars; but that sum will he supposes be supplied by an economy to the same amount. In the letter of the 31st of March, to the Chairman of the Committee of Ways and Means which forms their report, and to which we have been so often referred, as the Secretary's report, speaking of the $7,300,000, he says: "The ability of the United States, with their ' present revenue, to apply annually the sum to ' that object, rests on the correctness of the esti ' mates annexed to that report." Your Secretary is a man of sense. He knew better than risk his reputation on this business. He tells you, expressly, that your ability, even with the revenue we possessed prior to the repeal of the internal taxes, could not be relied on, if those estimates were fallacious. Now sir, if that fallacy has not been demonstrated, it has at least been shown that the correctness of the estimates is questionable. And yet gentlemen are about to adopt these doubtful estimates, and give to them the weight and credit of admitted facts. Your Secretary goes on to say, in the same page, that these estimates "will not be ' affected by the repeal of the internal taxes, *provided*, that the retrenchments made in the expen ' diture shall have been equal to the sum of $650,- ' 000, for which credit was taken on account of ' those taxes." Is, then, the Secretary pledged by anything in this report? Not at all. He tells you if your revenue is sufficient, you can make the appropriation, and as you retrench your expenditures, you may diminish the taxes. He tells you, if the retrenchment be equal to the diminution, the diminution will not affect the appropriation. But he tells you expressly, that even if the truth of his estimates be admitted, the appropriation proposed will occasion a deficiency of $200,- 000, to which must be added 650,000 more for repeal of the internal taxes. Here then you have a deficiency of $850,000, to be made up by economy and retrenchment. The language of your Secretary, therefore, is, if you admit the revenue to be $9,950,000, and reduce your expenditures for the support of Government from three millions and a half to $2,650,000, you will then have a residue of $7,300,000. But will your revenue amount to so much? No. Have you brought down your expenditures to a sum so small? No. Does the Secretary affirm either of those facts? No. When you shall find yourselves egregiously mistaken, and resort to your Secretary, he will tell you, that he gave you his calculations, and his reasons, and his opinions. That he told you so. But you reasoned and judged and acted for yourselves. Nay he will prove that, so far from vouching that your revenue would amount to the required sum, he had not only expressed a doubt of the fact, but went on to suggest an expedient by which the deficiency might (in appearance at least) be supplied. In the same page 21, he goes on thus: "But ' in order to run no risk on that ground, I would ' suggest a modification in the manner of making ' the appropriation which will effectually guard ' us, should the annual amount of the net receipts ' in the Treasury, be more affected by the restora ' tion of peace than has been expected." Here then

you see that your Secretary is already employed in guarding against the deficiency, and against the complaints and reproaches which that deficiency must occasion. You will be pleased also to take notice, that this guard is to consist in the manner of making the appropriation. Thus it would seem that your Secretary thinks he can contrive to appropriate from your revenue in such a way as to be effectually guarded, if the revenue does not produce the sum appropriated. But, before you trust to these contrivances, you will do well to consider, that a determination to pay seven millions will not make seven millions.

Let us now look at the Secretary's expedient. We find it in the second section of the twenty-fifth page. After mentioning, in the section which precedes it, a surplus of more than three millions, which had been relied on for special purposes, and of which I shall presently take some notice, he goes on thus: "Those estimated three millions may, therefore, be safely relied on in addition to the permanent revenues; and the modification which I would suggest, consists in making the payment of the eventual demands, which may becomes due to foreign nations, conditionally payable out of the proposed appropriation of $7,300,000 for the debt, with a proviso, that both those demands and the temporary loans might be paid out of other moneys, if the situation of the Treasury should permit it. The effect of this modification would be, eventually, to draw the three millions reserved to assist the current revenues, if these should fall short of the estimates." We find here perhaps the source of that enigmatical language which gentlemen have with such solicitude defended against amendment. Before I examine, however, this modification of the plan held out to us in December, permit me to say some few words about the three million fund. The Secretary tells us these three millions were considered as a provision to meet the probable demands which might arise under the convention with France and the treaty with Great Britain. They were to be derived from the surplus of specie in the Treasury, a sale of bank stock, arrearages of the direct tax, and the stamp duties. The repeal of these last, he tells you, will be more than balanced by arrearages of the internal taxes, which amount to a million. The cash in the Treasury exceeds three million. The bank stock is worth more than a million. Thus we have more than five million, besides the arrears of the direct tax. The conclusion of the Secretary, therefore, that these funds may be relied on for three millions, is so much the more correct, as he has now, in cash, in the Treasury, a greater amount. I must also remind gentlemen of the distinction they dwelt on the other day between debts and demands; a distinction which runs through the law before us. They have insisted that these demands form no part of the debt properly so called. Now they will be pleased to recollect, that the three millions of surplus revenue are already pledged to the sinking fund for payment of the debt. Your Secretary, however, sets it apart to pay these demands, which it seems are no part of the debt; and now he proposes that, by way of modification, it constitute, in aid of the revenue, a part of the new sinking fund, and that this new sinking fund be charged with payment of the demands. Thus, after running round the circle, you have not advanced a single inch. Pretending to make an appropriation of seven millions from the revenue to the sinking fund, it is proposed to take more than three millions from that very fund to eke out deficiencies of the revenue. But, after all, this contrivance will not answer the intended purpose. All the surpluses, be the amount what it may, are already pledged to the payment of our debts; and this amount, be it more or less than the three millions stated, must eventually be known with precision. As far as it goes, it is a provision already made for payment of the public debt; and if, for convenience, it be diverted to any other purpose, it must be afterwards replaced by an equivalent sum. It is, then, proper to view the whole subject together. Your Secretary tells you that upwards of seven millions annually will be required, for three years to come, to pay the principal and interest of your debts, and to this must be added at least one million more for the demands under the convention with France and England. Thus you have, in three years, to pay twenty-four millions. Three millions and more are in hand, belonging to the sinking fund; of course you have the means to pay off these demands. But, seeing a great probability that your revenue will fall short, these three millions are to be applied (in aid of it) to make up the seven millions which should be derived solely from the revenue. It is then a loan from the present sinking fund to the revenue, and must be repaid. It operates, we will suppose, to reduce the twenty-four millions to twenty-one millions; still those twenty-one millions must be paid within three years, and that from the revenue. You, indeed, authorize a loan in Europe to meet emergencies, but you repel the idea of paying your present debt by incurring a new debt to a greater amount. You do not, I presume, mean to subject yourselves to this imputation. Of course, the sums so borrowed must be applied in addition to the seven millions. These foreign loans, then, like the three millions borrowed from the sinking fund, are merely for convenience; and the twenty-one millions are still to be paid within three years, from the revenue of those years. If there be a deficit, therefore, of two millions annually, it must eventually appear and be felt. You may, indeed, by this contrivance, provide for the exigency of the moment, but it amounts to nothing. You may amuse yourselves, from morning till night, by taking money out of one pocket and putting it in the other, you will not be one farthing the richer. Suppose, sir, your revenue should fall short of your expectation; suppose that, altogether, it should amount to but eight millions. You pledge, by this act, seven millions. Of course there remains but one million to pay the current expenses, which will require at least three millions. I presume that gentlemen mean to make this seven millions a real appropriation, notwithstanding the mysterious words of their law, and

not a mere trick. They surely do not mean to deceive the American people by false appearances. What, then, will they do should they find a deficiency of two millions? Will they come forward again with a violation of the public faith, and repeal this law, after making loans on the credit of it? Or, will they come forward and lay two millions of taxes upon the United States? Here they perish. They have thrown away one million, and must lay on two. We may, perhaps, be told that we wish to perpetuate the national debt. We may hear the trite adage that a public debt is a public blessing, and other pretty sayings. But away with all this paltry witticism; the subject is too serious.

Let it be remembered, sir, once for all, that those who make the necessity, are those who lay the tax. If then by this law taxes become necessary, they impose a tax who vote for this law. Yes, you are about to impose a tax of two millions on the American people. Under the circumstances to which they will be reduced, that tax will be extremely burdensome. It will be oppressive. You are about to lay, without necessity, without reason, a most heavy tax. It is madness, it is worse than madness. You will drive many valuable citizens out of the United States, to avoid the pressure of taxation, into Canada and Louisiana—thus you will add to the wealth and strength of neighboring nations, of nations who may soon become hostile. This is treason!—high treason against the interests of our country! Look to it well. You who vote for this law, shall answer for the pernicious consequences.

It has been said, and may perhaps be repeated, that you can reduce the expense below the present standard. You cannot. I do not mean that you cannot make a piece of paper in the form of a law to that effect, but imperious circumstances will render the reduction impracticable. I ask which branch of service is to be reduced? Is it the marine? Already your little force is employed in blocking up a piratical port, and you may to-morrow hear that Morocco has taken part with Tripoli. This may increase, but cannot diminish the expense of your Navy. You may indeed destroy your ships, and leave commerce to take care of itself. This I hear is a favorite idea with some men. But what, in this case, is to become of your revenue? Among the other wise acts of this Congress, we have thrown away every means of supporting Government and paying debts, except those which commerce may supply. As little is it in your power to reduce that little force which is called your Army. Without looking abroad, there is one circumstance of a domestic nature deserving of attention. A considerable portion of the inhabitants of this country is of a particular species of the human race. Events have taken place, at no great distance, which awaken their curiosity and excite their sympathy. Recent information, from a neighboring State, exhibits symptoms of a disposition which may render the operation of military force indispensable. I will not dilate on this subject, it is better that gentlemen listen to the suggestions of their own minds than to arguments which it may not be prudent to utter. One thing however I must mention: the supporters of the act before us, will be pleased to consider that to suppose the Army can be reduced, would be a reflection upon the present Administration. We know they claim the merit of great economy, and we must therefore presume that they have brought the Army down to the lowest possible standard. If anything more can be saved, why is not that saving now made? Since, then, there is no proposition to that effect, we are bound (out of respect to them) to believe that the idea is inadmissible.

But now, sir let us suppose that your revenue should be equal to this appropriation. What follows? It follows that the appropriation is unnecessary. You will observe, that even by this law, every surplus beyond the seven million is subject to the former appropriations. If, after providing for the current service, seven or seventeen million remain, laws long since enacted make that remainder part of the sinking fund. Every provision, therefore, is made already for redemption of the whole of the public debt—every useful provision. That which is now proposed is useless in so far as it can apply to the existing means of Government, and it is useless in that it can produce no single cent to fulfil the pretended intention. But while in this respect it is unnecessary and useless, it is in another respect pernicious. While the revenue is sufficient, it remains without effect; but it imposes upon the Government a necessity of taxing the people to the extent of any deficiency in the revenue, or else to violate the public faith, to be pledged by this appropriation. What then is the effect of this law? Either it is a miserable deception or else it is an appropriation at once useless and dangerous.

Mr. WRIGHT.—The Secretary of the Treasury has told us that this measure is proper. He, sir, has given us many reasons in the premises. We are told by the Secretary, bottoming himself, sir, upon a full view of all the finances of this country, that seven million three hundred thousand dollars may be appropriated. We must believe him. He is, the proper Executive officer. This is his measure. If this bill is rejected, where is the public faith which gentlemen say so much about? It is ruined. I believe there is a disposition to resist the Government; but we will support the operations of Government. We have confidence. Let gentlemen tell us how they made calculations of what sums were necessary. I am clear that this measure is right, and if it should become necessary to tax our citizens, they are honest enough to bear it. The gentleman from New York, says we shall drive them by the weight of taxes into Canada and Louisiana. If, sir, we have any citizens so base that they would, from that cause, or from any other cause, run away to Canada or to Louisiana, the sooner they go the better. I don't want any such citizens. I hope, sir, we shall pass this law, and not be terrified by the idea that we must lay new taxes.

On the question, Shall the bill pass? it was carried in the affirmative—yeas 17, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

So it was *Resolved*, That this bill do pass with amendments.

MONDAY, April 26.

Mr. ELLERY, from the committee to whom was referred, on the 23d instant, the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two, reported amendments, which were read.

Ordered, That they lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill making appropriations for the Military Establishment of the United States for the year one thousand eight hundred and two; a bill making appropriations for the support of Government for the year one thousand eight hundred and two; and a bill to repeal so much of the acts—the one entitled "An act establishing a Mint, and regulating the coins of the United States;" the other an act, entitled "An act supplementary to the act establishing the Mint, and regulating the coins of the United States," as relate to the establishment of the Mint; in which bills they desire the concurrence of the Senate. They insist on their amendments disagreed to by the Senate to the bill, entitled "An act further to alter and establish certain post roads," and agree to the conference proposed by the Senate thereon, and have appointed managers on their part.

The three bills first mentioned in the message were read.

The Senate resumed the second reading of the bill to extend and continue in force the provisions of an act, entitled "An act giving a right of preemption to certain persons who have contracted with John C. Symmes or his associates, for lands lying between the Miami rivers in the Territory Northwest of the Ohio, and for other purposes."

Ordered, That this bill pass to the third reading as amended.

The bill making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and two, was, by unanimous consent, read the second time, and referred to Messrs. BRADLEY, HOWARD, and DAYTON, to consider and report thereon.

The Senate took into consideration the amendments of the House of Representatives to the said bill, entitled "An act to amend the Judicial system of the United States."

Resolved, That they do concur in all the amendments of the House of Representatives to the bill, except that which goes to strike out the fifteenth section, in which they do not concur.

The bill making appropriations for the support of Government for the year one thousand eight hundred and two, was, by unanimous consent, read the second time, and referred to Messrs. BRADLEY, LOGAN, and WELLS, to consider and report thereon.

On motion, it was agreed, by unanimous consent, that the bill to repeal the acts establishing the Mint, and regulating the coins of the United States, be now read the second time.

On the question, Shall this bill pass to a third reading? it passed in the negative.

The bill, entitled "An act to regulate and fix the compensations of the officers of the Senate and House of Representatives," was read the third time, and passed.

The bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city," was read the third time.

Resolved, That this bill do pass as amended.

The Senate resumed the third reading of the bill, entitled "An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the naval service of the United States."

On motion to strike out the second section of the bill, to wit:

"SEC. 2. *And be it further enacted*, That if any commissioned or warrant officer of the Navy, or commissioned officer of Marines, have died, or shall hereafter die, by reason of wounds received while in the actual service of the United States, or have been lost at sea or drowned, or shall hereafter be lost at sea or drowned, while in service as aforesaid, and in the actual line of his duty, and shall leave a widow, or if not, leave a child or children, under age, such widow, or such child or children, as the case may be, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, and for and during the term of five years. And in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay for the residue of the term shall go to the child or children of such deceased officer while under the age of sixteen years; and, in like manner, the allowance to the child or children of such deceased, in case there be no widow, shall be paid no longer than during the time there is a child or children under the age of sixteen years."

It passed in the affirmative—yeas 16, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Brown, Clinton, Cocke, Dayton, T. Foster, Franklin, Jackson, S. T. Mason, Ogden, Olcott, Stone, Sumter, and Wright.

NAYS—Messrs. Ellery, Dwight Foster, Howard, J. Mason, Morris, Nicholas, Wells, and White.

And having agreed to strike out the third section, and to amend the title by striking out the words "or may hereafter die," it was

Resolved, That this bill pass as amended.

The bill, entitled "An act for the relief of Theodosius Fowler," was read the third time; and on the question, Shall this bill pass? it was determined in the affirmative—yeas 14, nays 10, as follows:

YEAS—Messrs. Anderson, Brown, Clinton, Dayton, Ellery, T. Foster, Franklin, Howard, J. Mason, Morris, Nicholas, Ogden, Wells, and White.

NAYS—Messrs. Baldwin, Bradley, Cocke, Jackson, Logan, S. T. Mason, Olcott, Stone, Sumter, and Wright.

Resolved, That this bill do pass.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

In pursuance of the act, entitled "An act supplemental to the act, entitled 'An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory,'" James Madison, Secretary of State, Albert Gallatin, Secretary of the Treasury, and Levi Lincoln, Attorney General of the United States, were appointed Commissioners, to settle, by compromise, with the Commissioners appointed by the State of Georgia, the claims and cession to which the said act has relation.

Articles of agreement and cession have accordingly been entered into and signed by the said Commissioners of the United States and of Georgia, which, as they leave a right to Congress to act upon them legislatively, at any time within six months after their date, I have thought it my duty immediately to communicate to the Legislature.

TH. JEFFERSON.

APRIL 26, 1802.

The Message and documents therein referred to were read, and ordered to be printed for the use of the Senate.

Mr. MORRIS, from the committee to whom was referred the Message of the President of the United States of the 29th of March last, on the police of the City of Washington, reported a bill on that subject, which was read, and, by unanimous consent, had a second reading.

On motion, it was

Resolved, That the motion made on the 16th instant for an amendment to the Constitution of the United States respecting the choice of Electors for President and Vice President be postponed until the next session of Congress.

TUESDAY, April 27.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

The Commissioners who were appointed to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, having differed in their construction of that article, and separated in consequence of that difference, the President of the United States took immediate measures for obtaining conventional explanations of that article, for the government of the Commissioners. Finding, however, great difficulties opposed to a settlement in that way, he authorized our Minister at the Court of London, to meet a proposition that the United States, by the payment of a fixed sum, should discharge themselves from their responsibility for such debts as cannot be recovered from the individual debtors. A convention has accordingly been signed, fixing the sum to be paid at 600,000 pounds sterling, in three equal and annual instalments; which has been ratified by me, with the advice and consent of the Senate.

I now transmit copies thereof to both Houses of Congress, trusting that, in the free exercise of the authority which the Constitution has given them on the subject of public expenditures, they will deem it for the public interest to appropriate the sums necessary for carrying this convention into execution.

TH. JEFFERSON.

APRIL 27, 1802.

The Message was read, and referred to Messrs. NICHOLAS, DAYTON, and LOGAN, to report thereon by bill or otherwise.

A message from the House of Representatives informed the Senate that they have passed a bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government.

On motion, section sixth, to strike out the following words, reported by the committee to be struck out, and which report was amended, as follows:

"*Provided*, That the convention of the said State shall, on its part, assent that each and every tract of land sold by Congress, from and after the 30th day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from and after the day of sale:"

It passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On motion, to strike out the words reported by the committee to be struck out of section sixth, and amended, as follows:

"*Third*. That one-twentieth part of the net proceeds of the lands lying within the said State, sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic to the Ohio, or to the navigable waters thereof, and continued through the said State: such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass:"

It passed in the negative—yeas 12, nays 14, as follows:

YEAS—Messrs. Bradley, Brown, Dayton, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On motion to strike out these words, reported by the committee to be struck out of the sixth section:

"*Second.* That the six miles reservation, including the salt springs, commonly called the Scioto Salt Springs, the salt springs near the Muskingum river, and in the military tract, with the sections of land which include the same, shall be granted to the said State, for the use of the people thereof, the same to be used under such terms, and conditions, and regulations, as the Legislature of the said State shall direct, provided the said Legislature shall never sell nor lease the same for a longer period than ten years:"

It passed in the negative—yeas 8, nays 18, as follows:

YEAS—Messrs. Brown, Dwight Foster, Howard, J. Mason, Morris, Ogden, Olcott, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Dayton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, Wells, White, and Wright.

And the bill being further amended, it was ordered to the third reading as amended.

The bill respecting the lands of the United States in the Northwestern Territory was read the third time.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to extend and continue in force the provisions of an act, entitled 'An act to give a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes.

The bill sent from the House of Representatives, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read, and ordered to the second reading.

The Senate resumed the second reading of the bill, entitled "An act to provide for the establishment of certain districts, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,' and for other purposes."

And, after debate, *Ordered*, That it be recommitted to the original committee, further to report thereon.

WEDNESDAY, April 28.

Mr. BRADLEY, from the committee to whom was referred, on the 26th instant, the bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two, reported it without amendment.

The Senate resumed the third reading of the bill, entitled "An act to repeal in part the act, entitled 'An act regulating foreign coins and for other purposes."

Resolved, That this bill pass with amendment.

Mr. TRACY notified the Senate that he should, to-morrow, ask leave to bring in a bill to carry into effect the resolution of Congress, passed on the 17th day of June, 1777, for erecting a monument to the memory of General Wooster.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes;" which report was in part adopted.

Ordered, That the bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that they have passed a bill to revive and continue in force an act, entitled "An act for establishing trading houses with the Indian tribes;" in which they desire the concurrence of the Senate.

The bill, entitled "An act to revive and continue in force an act, entitled 'An act for establishing trading houses with the Indian tribes;" was read, and, by unanimous consent, had a second reading.

Ordered, That the further consideration thereof be postponed.

Mr. BROWN, from the committee to whom was referred, on the 17th instant, the petition of the traders, pilots, builders, and others concerned in navigation, in the district of St. Mary's river, reported that the petitioners have leave to withdraw their petition; and the report was adopted.

Mr. BROWN, from the said committee, to whom was also referred the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," reported it without amendment.

The bill, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," was read the third time.

On motion to strike out, section 6th, line 18th, after the word "sell," the words "nor lease the same for a longer period than ten years," and insert "the same, nor derive a revenue from the same:"

It passed in the negative—yeas 6, nays 14, as follows:

YEAS—Messrs. Dwight Foster, Morris, Nicholas, Ogden, Olcott, and Tracy.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Stone, Sumter, and Wright.

Same section, line 20th, on motion to strike out the word "sold," and insert the word "granted"—it passed in the negative—yeas 8, nays 14, as follows:

YEAS—Messrs. Bradley, Dwight Foster, Howard, Morris, Ogden, Olcott, Tracy, and Wells.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

And the bill being further amended, on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 16, nays 6, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Howard, Morris, Ogden, Olcott, and Tracy.

So it was *Resolved*, That this bill do pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

THURSDAY, April 29.

Agreeably to notice given yesterday, Mr. TRACY had leave to bring in a bill to carry into effect the resolution of Congress, passed on the 17th day of June, 1777, for erecting a monument to the memory of General Wooster; which was read, and, by unanimous consent, had a second reading.

Ordered, That it be referred to Messrs. TRACY, JACKSON, and NICHOLAS, to consider and report thereon.

Mr. BRADLEY, from the committee to whom was referred, on the 26th instant, the bill making appropriations for the support of Government for the year one thousand eight hundred and two, reported amendments; which were read and adopted.

Ordered, That this bill pass to the third reading as amended.

The bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia," was read the second time, and referred to Messrs. S. T. MASON, HOWARD, and STONE, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two; which were agreed to.

On motion further to amend the bill, by adding a new section, as follows:

"SEC. 3. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to dismiss so many of the officers of the Marine Corps as will reduce their number and grades in legal proportion to the number of marines retained in service, and that the officers who may be so deranged shall be entitled to receive —— months' pay:"

It passed in the affirmative—yeas 15, nays 6, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Stone, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Howard, Ogden, Olcott, Tracy, and Wells.

Ordered, That this bill pass to the third reading as amended.

The bill making appropriations for the Military Establishment of the United States in the year 1802, was read the second time.

Ordered, That this bill pass to a third reading.

The bill, entitled "An act to amend an act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," was read the third time.

Resolved, That this bill pass as amended.

Mr. OGDEN, from the committee to whom was referred, on the 23d instant, the petition of John Cleves Symmes, made report; which was read, and ordered to lie for consideration.

The bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, was read the second time, and referred to Messrs. S. T. MASON, WRIGHT, and HOWARD, to consider and report thereon.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia.

Ordered, That the further consideration thereof be postponed.

The Senate resumed the second reading of the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes."

Ordered, That it pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act to revive and continue in force an act for establishing trading houses with the Indian tribes."

On motion, it was agreed, by unanimous consent, that the bill be now read the third time.

Resolved, That this bill do pass.

Ordered, That the committee to whom was referred, on the 9th of March last, the petition of Albert Russel, and others, be discharged; and that the petitioners have leave to withdraw their petition.

Ordered, That the committee appointed on the 15th February last, on that part of the Message of the President of the United States which refers to the report of the Secretary of War, on the subject of the islands in the lakes and rivers of our nothern boundary, and of certain lands in the neighborhood of our military posts, and to whom also was referred the letter of Governor Harrison, be discharged.

Ordered, That the committee appointed the 11th of March last, on the bill to provide for the more convenient organization of the courts of the United States within the State of Tennessee; also, the committee, appointed the 22d of March last, on the bill to alter the time of holding the district court in the district of Maine, be respectively discharged.

Ordered, That Mr. SUMTER be on the committee to whom was referred the bill for the relief of Fulwar Skipwith, in place of Mr. DAYTON, absent.

Ordered, That the Message of the President of the United States of the 26th instant, relative to articles of agreement and cession with the State of Georgia, be referred to Messrs TRACY, S. T. MASON, and BRECKENRIDGE, to consider and report thereon.

Mr. S. T. MASON presented the petition of Da-

vid Brown, of Massachusetts, praying compensation for his sufferings while imprisoned under sentence of the judicial court, for seditious practices; and the petition was read, and ordered to lie on the table.

FRIDAY, April 30.

Mr. TRACY, from the committee to whom was referred, on the 29th instant, the bill, to carry into effect a resolution of Congress for erecting a monument to the memory of the late General David Wooster, reported amendments; which were read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia.

Ordered, That the further consideration thereof be postponed until to-morrow.

Mr. MASON presented sundry petitions of the inhabitants of Georgetown, on the Potomac, praying to be authorized by law to assess and collect the necessary taxes for the paving and improvement of that town.

Ordered, That these petitions be referred to the committee who have under consideration the bill, entitled "An act to incorporate the inhabitants of the City of Washington."

The Senate resumed the consideration of the report of the committee on the petition of John Cleves Symmes, which was adopted, as follows:

1. That, in the year 1788, the petitioner entered into a contract with the United States, upon a fair consideration, for the purchase of one million of acres of land, in the Northwestern Territory.

2. That, in consequence of such contract, the petitioner made a settlement upon the tract, and sold many parcels thereof to adventurers, who went together with him, into that new country, and located themselves there.

3. That, in the year 1794, the petitioner obtained a patent, under the authority of a law which enabled the President of the United States to make the same, for such proportion of the one million of acres, which had at that time been paid for, pursuant to the said contract, amounting to 311,682 acres of the said million of acres of land.

4. That the petitioner, after the said in part fulfilment of the contract on the side of both the parties to the same, proceeded to make sales (as he before had done in respect to the lands for which he had lately received the patent, as above mentioned) in the residue of the one million of acres, expecting to make the title when he should receive his patent thereof, agreeably to his contract, as he had before practised.

5. That no authority has been given by law, or otherwise, that can be found by your committee, whereby the said contract can be carried into execution on behalf of the United States, upon the payment of the sums further stipulated to be paid by the petitioner, agreeably to his contract, whereby he is entitled to a patent, upon payment of such stipulated sums; which payments the petitioner avers he always has been, and still is, ready to pay and perform, as thereunto required by his contract.

6. That your committee, from the papers and documents laid before them by the petitioner, or from the statement which he has made, do not perceive that the petitioner has done any one act, or omitted to do any act, whereby he has forfeited any right to the full benefit of his contract, before stated.

7. That no authority exists, by law, enabling any person to carry into execution the said contract on behalf of the United States; but, on the contrary, that two laws have been passed predicated upon the idea that the obligations of the United States, under the said contract, have ceased and determined; under the operation of which laws the said petitioner states, and your committee believe, that the said petitioner is suffering very great hardships, tending to the utter destruction and total waste of his whole property.

8. Your committee, the premises considered, beg leave to recommend the adoption of the resolution accompanying this report:

Resolved, That the President of the United States be requested to direct the Attorney General to examine into the contract entered into between the United States and John Cleves Symmes, Esq. and others, bearing date on the 15th of October, 1788, and all the contracts and laws relative thereto; and all the transactions which may legally or equitably affect the same, as far as they may come to his knowledge; and to make a report of the same to the Senate, at their next session, together with his opinion whether the said John Cleves Symmes has any claim, and what, upon the United States, in virtue of the said contract, or any other contract, or law predicated upon the same: and that the further consideration of the petition of said John Cleves Symmes, Esq. of and concerning the premises, be postponed to the first day of the next session of Congress.

And the report was adopted.

Ordered, That the Secretary lay this resolution before the President of the United States.

A message from the House of Representatives informed the Senate that the House have passed a bill making an appropriation to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, in which they desire the concurrence of the Senate.

They agree to the amendments of the Senate to the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city," with amendments; in which they desire the concurrence of the Senate. They have passed a resolution authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on Saturday the 1st of May, in which they desire the concurrence of the Senate.

The Senate resumed the consideration of the amendments of the House of Representatives to the amendments on the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city," and agreed thereto.

The bill, entitled "An act making an appropriation for carrying into effect the convention between the United States of America and His Britannic Majesty," was read and ordered to the second reading.

The resolution of the House of Representatives,

authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on Saturday the first day of May, was read.

The bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and two," was read a third time and passed.

The bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and two," was read the third time.

Resolved, That this bill do pass as amended.

The bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the third time as amended.

On motion to strike out the third section, agreed to yesterday, it passed in the affirmative—yeas 12, nays 11, as follows:

YEAS—Messrs. Bradley, Brown, Dwight Foster, Howard, Morris, Nicholas, Ogden, Olcott, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Clinton, Cocke, Ellery, Franklin, Logan, S. T. Mason, Stone, and Sumter.

Resolved, That this bill do pass with the amendments.

The bill, entitled "An act to provide for the establishment of certain districts, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage, and for other purposes,'" was read the third time, and passed with an amendment.

Mr. BRADLEY, from the committee to whom was referred, on the 6th and 7th instant, the petition of Elijah Brainard, also, the petition of Jonathan Snowden, reported that the consideration of said petitions be severally postponed to the next session of Congress, and that the committee to whom the same were referred be discharged, and the report was adopted.

Mr. S. T. MASON, from the committee to whom was referred, on the 29th instant, the bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, reported amendments; which were read, and ordered to lie for consideration.

On motion, it was

Ordered, That the bill for the better security of public money and property in the hands of public officers and agents, as amended by the House of Representatives, be postponed to the next session of Congress.

Mr. S. T. MASON, from the committee to whom was referred, on the 29th instant, the bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia;" reported amendments, which were read, and ordered to lie for consideration.

SATURDAY, MAY 1.

Mr. TRACY, from the committee to whom was referred, on the 29th April last, the Message from the President of the United States of the 26th, accompanying certain articles of agreement and cession which have been entered into and signed by the Commissioners of the United States and the Commissioners of the State of Georgia, made report—

"That at this very late hour of the session, and from a total want of all information and facts which would be necessary to enable the committee to form a just opinion on the subject of the said agreement, the committee have it not in their power to recommend any measure as necessary to be adopted on the subject."

The Senate took into consideration the resolution of the House of Representatives authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on the first day of May, and agreed to amend the same, by striking out the word "first," and inserting the word "third."

The Senate took into consideration the amendments reported by the committee to the bill, to amend an act, entitled "An act for the relief of sick and disabled seamen, and for other purposes;" and, having agreed thereto, the bill was ordered to the third reading as amended.

Mr. JACKSON, from the managers at the conference on the part of the Senate, reported that the Senate recede from some, and adhere to other, amendments to the bill further to alter and establish certain post roads; and the report was adopted.

The bill making an appropriation for carrying into effect the convention between the United States of America and His Britannic Majesty, was read the second time.

Ordered, That it pass to a third reading.

The Senate took into consideration the amendments of the committee to the bill, additional to, and amendatory of "An act concerning the District of Columbia," and, having agreed thereto, the bill was ordered to the third reading as amended.

Mr. MORRIS from the committee to whom was referred, on the 23d of April last, the bill for the relief of Fulwar Skipwith, reported it without amendment.

Ordered, That it pass to a third reading.

On motion by Mr. OGDEN, that it be

Resolved, That a committee be appointed to bring in a bill for the repealing so much of any former law, as authorizes a certain provisory agreement, lately made and entered into by Commissioners on the part of the United States, and Commissioners on the part of the State of Georgia, bearing date on the 24th of April, 1802, and by which the same may be binding and conclusive on the United States:

It passed in the negative—yeas 11, nays 12, as follows:

YEAS—Messrs. T Foster, Dwight Foster, Franklin, Howard, Morris, Ogden, Olcott, Tracy, Wells, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Ellery, Jackson, Logan, S. T. Mason, Nicholas, Stone, and Sumter.

On motion it was

Resolved, That the committee on the Message from the President of the United States, of the 27th instant, on the subject of the British convention, be discharged.

MONDAY, May 3.

A message from the House of Representatives informed the Senate that the House agree to the report of the committee of conference on the bill, entitled "An act further to alter and establish certain post roads." They have passed a resolution to amend the Constitution of the United States; in which they desire the concurrence of the Senate.

The resolution was read as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as part of the said Constitution, to wit:

"That in all future elections of President and Vice President the persons voted for shall be particularly designated, by declaring which is voted for as President and which as Vice President."

Ordered, That it lie for consideration.

The bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read the third time, and further amended.

On the question, shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 5, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, Dwight Foster, Franklin, Logan, S. T. Mason, Nicholas, Olcott, Stone, and Sumter.

NAYS—Messrs. Howard, Morris, Ogden, Tracy, and Wells

Resolved, That this bill do pass with amendments.

The bill entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen, and for other purposes,'" was read the third time.

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 15, nays 5, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, Franklin, Logan, S. T. Mason, Morris, Nicholas, Olcott, Stone, and Sumter.

NAYS—Messrs. Dwight Foster, Howard, Odgen, Tracy, and Wells.

Resolved, That this bill do pass with amendments.

The bill entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia,'" was read the third time; and being further amended.

Resolved, That this bill do pass as amended.

The bill entitled "An act making appropriation for carrying into effect the convention between the United States of America and his Britannic Majesty," was read the third time and passed.

A message from the House of Representatives informed the Senate that the House concur in the amendment of the Senate to the bill, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia," with an amendment; in which they desire the concurrence of the Senate.

The Senate took into consideration the amendment of the House of Representatives to their amendment to the bill last mentioned.

Resolved, That they do concur therein.

The Senate resumed the second reading of the bill respecting the police of the District of Columbia; and, on motion, the further consideration thereof was postponed until the third Monday in November next.

The bill, entitled "An act for the relief of Fulwar Skipwith," was read the third time and passed.

The Senate took into consideration the resolution of the House of Representatives of the 1st of May, for an amendment to the Constitution of the United States.

And, on the question, Will the Senate concur therein? it passed in the negative—yeas 15, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dwight Foster, Howard, Morris, Olcott, Ogden, Stone, Tracy, and Wells.

So the question was lost, two-thirds of the Senators present not concurring therein.

On motion that the petition of David Brown be postponed until the next session of Congress, it passed in the affirmative.

On motion that it be

"*Resolved*, That the President of the United States be requested to cause to be laid before this House, at the next meeting of Congress, authenticated copies of the proceedings in the Courts of the United States, in all cases in which fines and imprisonments have been inflicted upon the individuals under the act commonly called the Sedition act; and, also, in all cases, if any such there be, in which fine and imprisonment have been inflicted upon individuals in the said courts, under the common law of England:"

It passed in the negative.

Mr. TRACY presented the memorial of David Austin, "praying Legislative attention to the order of Providence in the affairs of the nation;" and the memorial was read.

On motion the Senate adjourned to half past seven o'clock this evening.

MONDAY EVENING, 7½ o'clock.

A message from the House of Representatives informed the Senate that the House have appointed a committee on their part, with such as the Senate may appoint, to wait on the President of the United States, and notify him that, unless he hath any further communications to make to the two Houses of Congress, they are ready to adjourn, and they desire the appointment of a committee on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives appointing a committee, jointly, with such as the Senate may appoint, to wait on the President of the United States and notify him of the proposed adjournment of the two Houses of Congress; and

Resolved, That they do concur therein, and that Messrs. ELLERY and CLINTON be the committee on the part of the Senate.

Mr. ELLERY, from the joint committee, reported that they had waited on the President of the United States, agreeably to the vote of the two Houses, and that he informed them he had no further business to communicate.

Ordered, That the Secretary notify to the House of Representatives that the Senate, having completed the business of the session, are ready to adjourn.

A message from the House of Representatives informed the Senate that the House of Representatives, having completed the business before them, are about to adjourn.

Whereupon, the Senate adjourned to the first Monday in December next.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, DECEMBER 7, 1801.

MONDAY, December 7, 1801.

This being the day appointed by the Constitution for the annual meeting of Congress, the following members of the House of Representatives appeared, produced their credentials, and took their seats in the House, to wit:

From New Hampshire—Abiel Foster, George P. Upham, and Samuel Tenney.

From Massachusetts—William Eustis, John Bacon, Phanuel Bishop, Joseph B. Varnum, Richard Cutts, Lemuel Williams, William Shepard, Ebenezer Mattoon, Nathan Reed, Josiah Smith, and Manasseh Cutler.

From Rhode Island—Thomas Tillinghast, and Joseph Stanton, jr.

From Connecticut—Roger Griswold, Samuel W. Dana, John Davenport, Calvin Goddard, Benjamin Tallmadge, Elias Perkins, and John C. Smith.

From Vermont—Israel Smith.

From New York—Samuel L. Mitchill, Philip Van Cortlandt, Theodorus Bailey, John Smith, Benjamin Walker, Thomas Morris, Killian K. Van Rensselaer, Lucas Elmendorf, David Thomas, and John P. Van Ness.

From New Jersey—John Condit, James Mott, William Helms, Henry Southard, and Ebenezer Elmer.

From Pennsylvania—William Jones, Michael Leib, John Smilie, William Hoge, Isaac Vanhorne, Joseph Heister, Robert Brown, Henry Woods, John A. Hanna, John Stewart, Thomas Boude, and Joseph Hemphill.

From Delaware—James A. Bayard.

From Maryland—John Archer, Joseph H. Nicholson, Samuel Smith, Richard Sprigg, John Dennis, and Thomas Plater.

From Virginia—Thomas Newton, jr., John Randolph, jr., George Jackson, Philip R. Thompson, John Taliaferro, John Stratton, William B. Giles, Abram Trigg, John Trigg, Anthony New, John Smith, David Holmes, Richard Brent, Edwin Gray, and Matthew Clay.

From Kentucky—Thomas T. Davis, and John Fowler.

From North Carolina—Nathaniel Macon, Willis Alston, Richard Stanford, Charles Johnson, Archibald Henderson, and John Stanley.

From Tennessee—William Dickson.

From South Carolina—Thomas Sumter, Thomas Moore, and Thomas Lowndes.

From Georgia—John Milledge.

From the Northwest Territory—Paul Fearing.

From Mississippi Territory—Narsworthy Hunter.

A quorum, consisting of a majority being present, the House proceeded, by ballot, to the choice of a Speaker; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of NATHANIEL MACON, one of the Representatives for the State of North Carolina: Whereupon, Mr. MACON was conducted to the Chair, and he made his acknowledgments to the House, as follows:

"GENTLEMEN: Accept my sincere thanks for the honor you have conferred on me, in the choice just made. The duties of the Chair will be undertaken with great diffidence indeed; but it shall be my constant endeavor to discharge them with fidelity and impartiality."

The House proceeded, in the same manner, to the appointment of a Clerk; and, upon examining the ballots, a majority of the Whole House was found in favor of JOHN BECKLEY.

The oath to support the Constitution of the United States, as prescribed by law, was then administered by Mr. GRISWOLD, one of the Representatives for the State of Connecticut, to the SPEAKER; and then the same oath, or affirmation, was administered, by Mr. SPEAKER, to each of the members present.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business; and that, in the absence of the Vice President, they have elected the honorable ABRAHAM BALDWIN, President of the Senate, *pro tempore*.

Ordered, That a message be sent to the Senate to inform them that a quorum of this House is assembled, and have elected NATHANIEL MACON, one of the Representatives of the State of North Carolina, their Speaker, and are now ready to proceed to business; and that the Clerk of this House do go with the said message.

The House proceeded, by ballot, to the choice of a Sergeant-at-Arms, Doorkeeper, and Assistant Doorkeeper; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of JOSEPH WHEATON, as Sergeant-at-Arms, and, also, an unanimous vote in favor of THOMAS CLAXTON and THOMAS DUNN, severally, the former as Doorkeeper, and the latter as Assistant Doorkeeper.

A message from the Senate informed the House that the Senate have appointed a com-

mittee on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may think proper to make to them.

The House proceeded to consider the said message of the Senate, and concurred therein.

Ordered, That Mr. SAMUEL SMITH, Mr. GRISWOLD, and Mr. DAVIS, be appointed a committee on the part of this House, for the purpose expressed in the message of the Senate.

On motion, it was

Resolved, That the rules and orders of proceeding established by the late House of Representatives, shall be deemed and taken to be the rules and orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

Ordered, That a committee be appointed to prepare and report standing rules and orders of proceeding to be observed in this House; and that Mr. VARNUM, Mr. GILES, Mr. LEIB, Mr. DAVENPORT, and Mr. HENDERSON, be the said committee.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members, respectively, shall choose, to be delivered at their lodgings.

Mr. SAMUEL SMITH, from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled and ready to receive any communication he may think proper to make to them, reported that the committee had performed that service, and that the President signified to them that he would make a communication to this House, to-morrow, by message.

A message from the Senate informed the House that the Senate have agreed to a resolution appointing a committee, on their part, jointly with such committee as may be appointed on the part of this House, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same; to which they desire the concurrence of this House.

The House proceeded to consider the said resolution: Whereupon,

Ordered, That Mr. NICHOLSON, Mr. BAYARD, and Mr. RANDOLPH, be appointed a committee on the part of this House, pursuant thereto.

Resolved, That, unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

TUESDAY, December 8.

Several other members, to wit: from Pennsylvania ANDREW GREGG: from Virginia, SAMUEL J. CABELL; from North Carolina, JAMES HOLLAND; and from South Carolina, WILLIAM BUTLER; appeared, produced their credentials, and took their seats in the House; the oath to support the Constitution of the United States being first administered to them by Mr. SPEAKER, according to law.

A petition of John McDonald, late of the city of Philadelphia, was presented to the House and read, praying that he may be employed to superintend the arrangement and safe-keeping of the books intended for the library of the two Houses of Congress; and that he may receive such compensation for his services, in that capacity, as to the wisdom of Congress shall seem meet.

Ordered, That the said petition be referred to the committee appointed yesterday, on the part of this House, jointly with the committee appointed by the Senate, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same.

The following Committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections—Mr. MILLEDGE, Mr. TENNEY, Mr. CONDIT, Mr. DENNIS, Mr. HANNA, Mr. STANLEY, and Mr. JOHN TALIAFERRO.

Committee of Revisal and Unfinished Business. Mr. DAVENPORT, Mr. CLAY, and Mr. ALSTON.

Committee of Claims—JOHN COTTON SMITH, Mr. GREGG, Mr. HOLMES, Mr. MATTOON, Mr. JOHN SMITH, of New York, Mr. PLATER, and Mr. MOORE.

Committee of Commerce and Manufactures—Mr. SAMUEL SMITH, Mr. EUSTIS, Mr. DANA, Mr. MITCHILL, Mr. JONES, Mr. NEWTON, and Mr. LOWNDES.

Resolved, That a standing Committee of Ways and Means be appointed, whose duty it shall be to take into consideration all such reports of the Treasury Department, and all such propositions, relative to the revenue, as may be referred to them by the House; to inquire into the state of the public debt, of the revenue, and of the expenditures; and to report, from time to time, their opinion thereon.

Ordered, That Mr. RANDOLPH, Mr. GRISWOLD, Mr. ISRAEL SMITH, Mr. BAYARD, Mr. SMILIE, Mr. READ, Mr. NICHOLSON, Mr. VAN RENSSELAER, and Mr. DICKSON, be appointed a committee, pursuant to the said resolution.

Resolved, That Mr. CUTTS and Mr. ABRAM TRIGG be appointed a Committee for Enrolled Bills, on the part of this House, jointly, with such committee as shall be appointed for that purpose on the part of the Senate.

A message from the Senate informed the House that the Senate have agreed to a resolution that two Chaplains, of different denominations, be appointed to Congress, one by each House, to interchange weekly; to which they desire the concurrence of this House: Whereupon,

Resolved, That this House doth concur with the Senate in the said resolution.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia;

and that they be authorized to report by bill or otherwise.

Ordered, That Mr. SPRIGG, Mr. BRENT, Mr. FOSTER, Mr. SUMTER, Mr. PLATER, Mr. STRATTON, and Mr. BACON, be appointed a committee, pursuant to the said resolution.

Ordered, That the credentials of NARSWORTHY HUNTER, who has appeared as a Delegate from the Territory of the United States known by the name of the Mississippi Territory, be referred to the Committee of Elections; and that they be directed to report whether the Territory is entitled to elect a Delegate, who may have a seat in this House.

The SPEAKER laid before the House a letter from THOMAS CLAXTON, the Doorkeeper, stating that, in the execution of the various duties attached to his station, certain expenditures will be requisite, and further assistance necessary to be allowed by the House; which was read, and referred to Mr. ELMENDORF, Mr. GRAY, and Mr. BACON.

A petition of James McCashen, and others, was presented to the House and read, stating that they are subjected to great and heavy losses and distresses by the operation of an act, passed at the last session of Congress, giving to persons claiming, by purchase from John Symmes and his associates, a right of pre-emption in certain lands purchased of the United States, to the prejudice of your petitioners' claims as original purchasers under said Symmes, and praying for relief.—Referred to Mr. DAVIS, Mr. HOGE, and Mr. FEARING; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. Lewis, his Secretary, as follows:

Mr. SPEAKER: I am directed by the President of the United States to hand you a Letter, accompanying a Communication, in writing, from the President to the two Houses of Congress.

The said Letter and Communication were read. [*Vide* Senate Proceedings of this date, *ante*, page 11.]

Ordered, That the said Letter and Communication be committed to the Committee of the Whole House on the state of the Union.

ACCOUNTS OF T. PICKERING.

Mr. NICHOLSON moved that the House do come to the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House an account of all moneys received by Timothy Pickering, Esq., former Secretary of State, together with Mr. Pickering's account of disbursements, and his vouchers for the same.

Mr. NICHOLSON observed, that he conceived this measure necessary on account of the clamor that had been raised, the publications of various newspapers, and the agitation of the public. He considered it a duty due to his constituents to give them complete satisfaction on this subject. Mr. N. was one of the committee appointed to examine the accounts of the Treasurer the last session. He did not think that committee authorized to attend to any other than the Treasurer's accounts, and the mode of keeping them. He hoped, for the reasons before mentioned, and for the entire satisfaction of all, that the resolution would be adopted.

Mr. GRISWOLD rose.—He observed that he also was a member of that committee; that he differed much from the gentleman last up, relative to the powers of that committeee. He believed that committee were authorized to examine all the accounts of the Treasury; that Mr. Pickering's accounts were examined, and that the vouchers were also examined, a certain bundle of papers excepted, which the committee were informed were vouchers on a particular account, but which the committee thought it too tedious to critically investigate as they were knowing to the appropriations. Mr. G. thought the argument of present alarm or public agitation futile, as that clamor had existed previous to the investigation of the committee a year since; that it was needless to investigate those accounts again and again; it would employ their whole time. But he wished particularly to know the gentleman's object; something appeared to be in view which he could not understand; he wished the gentleman fully to explain himself. Mr. G. conceived that it did not come within the precinct of the duties of the House to settle the accounts of Mr. Pickering; that House was not a board for that purpose. Mr. G. had no objection, other than on the grounds of inconsistency, to the resolution.

Mr. NICHOLSON said, the gentleman and himself differed as to the power of the committee that had attended to the investigation of the Treasury accounts; he believed they were not authorized to enter into an inquiry whether all the moneys received by Mr. Pickering were properly appropriated; this was his object. He had been informed, of late, that Mr. Pickering had, in some instances, appropriated more money than he was allowed, and had sometimes appropriated money to purposes, though public purposes, otherwise than ordered; it was his wish that the House should adopt some regulations in these matters, not having appropriations discretionary with officers, and the better to enable the Comptroller to settle his accounts. He was sensible of the impossibility of their making a thorough investigation, and that they must trust to the Treasury for information; but that when the attention of the people was called to particular characters in this manner, it was their duty to satisfy them; he did not wish to single out Mr. Pickering alone; he wished equal reference to others. The proposed resolution was not on account of any doubts in his mind; he did not entertain the least suspicion that Mr. Pickering had ever appropriated to his own use, or defrauded the public of a single dollar; he believed him to be a man of irreproachable honesty and integrity; but the report of the former committee did not say enough.

Mr. GRISWOLD.—He presumed it very probable that there had been occasionally excess of appro-

priations; every man acquainted with public business knew that the public service would have suffered had not this been the case. Most members knew how often this had happened, and how often Congress had justified, and granted afterwards, this excess of appropriations; laws cannot always touch contingencies. It had often been the case in the office of the Secretary at War; Congress afterwards made up the expenditure, the excess appearing fairly and necessarily applied; so it may have been in the office of the Secretary of State.

The resolution was postponed till Monday next, and then the House adjourned.

WEDNESDAY, December 9.

Another member, to wit: JOHN CAMPBELL, from Maryland, appeared, produced his credentials, was qualified, and took his seat in the House.

A petition of Henry Mumbower and others was presented to the House and read, praying a reimbursement of the fines and penalties incurred by the petitioners, for a supposed attempt to impede the execution of the law laying a tax on lands and dwelling houses within the United States, and for which they were convicted and sentenced by the circuit court of the United States for the district of Pennsylvania.—Referred to Mr. LEIB, Mr. CAMPBELL, and Mr. JOHNSON, to examine and report the same, with their opinion thereupon to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting an account of the receipts and expenditures of the United States for the year 1800, together with a letter from the Register of the Treasury, in relation thereto; which were read, and ordered to be referred to the Committee of Ways and Means.

THURSDAY, December 10.

Mr. MITCHILL presented a petition of certain aliens residing in New York and its vicinity, stating the injuries they suffer from the naturalization law, and praying the House to afford such relief as they shall deem fit.

After some conversation as to the disposition of the petition, it was agreed that it lie on the table, until that part of the President's Message on the same subject be taken up by the House.

A petition to the same effect was presented by Mr. MITCHILL from certain alien residents in the county of Montgomery, State of New York.

Mr. GILES moved the reference of this petition to the Committee of the Whole, to whom had been referred the President's Message.

Mr. G. and Mr. MITCHILL considered this mode of disposition proper to be pursued in all cases where abstract principles were to be settled. Such was the present case. The facts were notorious and indisputable.

Mr. GRISWOLD advocated the reference of all petitions to a select committee. In considering them, facts might arise, which could only be elucidated by a select committee.

Mr. GILES's motion was carried.

A petition of Sarah Fletcher and Jane Ingraham, widows and relicts of Patrick Fletcher, late commander of the United States' frigate Insurgent, and of Joseph Ingraham, late a lieutenant on board the United States' brigantine of war Pickering, was presented to the House and read, praying that the petitioners may receive, for and during their respective lives, an annuity equivalent to the half pay of their husbands, respectively, in consideration of their loss, in the capacities aforesaid, with their vessels and crews, whilst in the public service of the United States, some time in the year 1800.—Referred to Mr. EUSTIS, Mr. GODDARD, Mr. NICHOLSON, Mr. GILES, and Mr. STANTON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. ELMENDORF, from the committee to whom was referred, on the eighth instant, a letter from THOMAS CLAXTON, the Doorkeeper of this House, relative to certain expenditures, and further assistance necessary to be allowed for enabling him to execute the duties of his station, made a report; which was read and considered: Whereupon,

Resolved, That THOMAS CLAXTON be, and is hereby, authorized to employ, under his immediate direction, one additional assistant, two servants, and two horses, for the purpose of performing such services and duties as are usually required by the House of Representatives, during the present session, and for four days thereafter; and the sum of five dollars and seventy-five cents per day be allowed to him for that purpose; and that he be paid therefor out of the fund appropriated for the contingent expenses of the House.

A message from the Senate informed the House that the Senate have proceeded to the appointment of a Chaplain to Congress, on their part, and the Rev. Mr. GANTT has been duly elected.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have power to report by bill or otherwise.

Ordered, That Mr. SOUTHARD, Mr. ARCHER, Mr. NEW, Mr. BOUDE, Mr. BUTLER, Mr. WALKER, and Mr. LEMUEL WILLIAMS, be appointed a committee, pursuant to the said resolution.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House: and, upon examining the ballots, the majority of the votes of the whole House was found in favor of the Reverend WILLIAM PARKINSON.

FRIDAY, December 11.

Several other members, to wit: from New Hampshire, JOSEPH PEIRCE; from Massachusetts, PELEG WADSWORTH: from Virginia, THOMAS CLAIBORNE and JOHN CLOPTON; and, from North Carolina, WILLIAM H. HILL, appeared, produced their credentials, were qualified, and took their seats in the House.

Mr. MILLEDGE, from the Committee of Elections, reported that the committee had, in part, examined the certificates and other credentials of the members returned to serve in this House, and had agreed upon a report; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from Samuel Meredith, late Treasurer of the United States, accompanying his general accounts of the receipts and expenditures of public moneys, from the first of October, one thousand eight hundred, to the thirtieth of June, one thousand eight hundred and one, inclusive; also, his accounts of receipts and expenditures for the Navy and War Departments, commencing the first day of October, one thousand eight hundred, and ending the thirtieth of September, one thousand eight hundred and one; which was read, and referred to the Committee of Ways and Means.

Mr. NICHOLSON observed that, during the last session a committee had been appointed to inquire into the expediency of amending an act entitled An act respecting fugitives from justice, and persons escaping from the service of their masters; but, from the lateness of the period when the committee was appointed, and from the pressure of other business, the subjects, though important, had been neglected. He, therefore, now moved the appointment of a committee for the same purpose.

The motion was agreed to, as follows:

Resolved, That a committee be appointed to inquire into the expediency of amending the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and that the said committee be authorized to report by bill, or otherwise.

Ordered, That Mr. NICHOLSON, Mr. GODDARD, Mr. HOLLAND, Mr. JOHN SMITH, of Virginia, and Mr. LOWNDES, be appointed a committee pursuant to the said resolution.

REVENUE LAWS.

Mr. S. SMITH, after a few introductory observations, moved that the Committee of Commerce and Manufactures be directed to inquire whether any, and what alterations may be necessary in the acts laying duties on goods, wares, and merchandise, imported into the United States.

Mr. GRISWOLD thought that the subject, belonging to the revenue, properly attached itself to the Committee of Ways and Means. He contended that any alteration whatever would either increase or diminish the revenue, and therefore belonged to the financial system, which the Committee of Ways and Means especially had in charge; on that account he moved its reference to that committee.

Mr. SMITH contended that it was usual and necessary for the subject to be discussed by commercial men, of whom alone the Committee of Commerce and Manufactures was composed. It was desirable to consolidate all the revenue system as much as possible into one law; it was also desirable to know the precise state of our imports, and of our progress in manufactures. By a reference to commercial men, the House, besides those, might be acquainted with a very desirable object, to wit: how far certain articles would bear additional duties, or how far others admitted a diminution, proportioned to the wants of the country.

Commercial men were practical men, and, therefore, without disparaging the merits or talents of gentlemen composing the other committee, whose express appointment did not so pointedly relate to commerce, but to revenue, he thought the original motion ought to be carried.

Mr. GRISWOLD had no doubt, but that either committee would do justice to the subject; but it was a usual reference for all subjects relating to revenue. It certainly contemplated a total revision of that part of the revenue, and he again contended that all matters relating to revenue ought to go to the Committee of Ways and Means, for which purpose alone that committee was formed. He should not have risen, he said, but that he did not see the chairman of that committee in his seat.

The SPEAKER said, that either reference was perfectly in order; and that, therefore, either motion would have been proper. The reference to the Committee of Commerce and Manufactures, at present, had the preference, being first moved.

Forty-six rising in the affirmative, and being a majority, the reference moved by Mr. SMITH was carried.

MONDAY, December 14.

Another member, to wit: LEWIS R. MORRIS, from the State of Vermont, appeared, produced his credentials, was qualified, and took his seat in the House.

A memorial of John Hobby, late Marshal of the District of Maine, in the State of Massachusetts, was presented to the House and read; stating that he is now, and has been for more than five months past, confined in Portland jail, in said State, for a debt due from the memorialist to the United States, which he is unable to pay; and praying such relief in consideration of his past services, advanced age, and injuries sustained in his health by the imprisonment to which he has been subject, as to the wisdom of Congress shall seem meet.—Referred to the Secretary of the Treasury, to report his opinion thereupon to the House.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of the sums necessary to be appropriated for the service of the year one thousand eight hundred and two; also, a statement of the receipts and expenditures at the Treasury of the United States, for one year preceding the first day of October, one thousand eight hundred and one; which were read, and ordered to be referred to the Committee of Ways and Means.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency or inexpediency of giving further time to persons entitled to military land warrants to obtain and locate the same.

Resolved, That a committee be appointed to report

what provision ought to be made, by law, to authorize the Secretary of War to issue military land warrants; and that the committee also report, what provision ought to be made, by law, to authorize the Secretary of War to issue duplicates where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud.

Ordered, That Mr. DAVIS, Mr. JACKSON, Mr. TALLMADGE, Mr. DENNIS, and Mr. FEARING, be appointed a committee, pursuant to the said resolutions.

The Committee of Revisal and Unfinished Business reported, in part, that they had examined the Journals of the late House, and found in an unfinished state sundry bills, reports, and petitions, which they specify. The committee concluded with a resolution that all petitions, &c., depending in the last House, be taken up at the instance of a member, or on the application of the petitioner.

Mr. GRISWOLD moved that the Committee of Claims be directed to inquire into the expediency of allowing the refugees from Canada and Nova Scotia further time for exhibiting their claims for lands under the act for their relief.—Agreed to. 40 to 33.

DISBURSEMENT OF PUBLIC MONEY.

Mr. NICHOLSON called up the resolution, laid by him on the table, respecting the expenditure of public moneys by Timothy Pickering, Esq., late Secretary of State. Mr. N. observed, that some ideas expressed by a gentleman from Massachusetts, when this subject was before the House, had weight with him, and had induced him to modify his motion. It had been very properly, in his opinion, remarked, that such a motion should not point at any particular officer, but that it should be extended to all officers who superintended the disbursements of public money. He had, therefore, prepared another resolution, which, while it embraced his first object, would be seen to be connected with other objects equally interesting, as follows:

"*Resolved*, That a committee be appointed to inquire and report, whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with the public money."

Mr. BAYARD declared his high pleasure at the liberality and candor which characterized the mover of the resolution; which had been manifested on the institution of it, as well as in the modification now offered. The motion, as it now stood, however, was not confined to one department, but embraced the whole. He thought it would be best to confine it to one department; but to give it a more retrospective effect, and to apply it not to Mr. Pickering only, but also to Secretaries of State that preceded him. He believed that, on investigation, it would be found that moneys disbursed had not been expended conformably to the strict letter of appropriations. But such a deviation was the result of necessity. The public service forbade delaying certain measures, for the execution of which competent appropriations had not been made, to the next session of Congress. He believed that the same thing had occurred in other departments. It had been the custom, in cases where money was wanted for one, though appropriated to another, under the same department, to take it from the latter and to apply it to the former. This was illegal; but its being the custom palliates it.

Mr. B. could not but approbate the conduct of the gentleman from Maryland. He had, honorably to himself and honorably to Mr. Pickering, declared his conviction that Mr. Pickering had acted like a man of honor and integrity; and that though he had sanctioned departures from the letter of appropriations, yet, that this had been only as he had termed it a technical misapplication of money. For this inquiry, Mr. B. thought there was sufficient cause. The public mind had been agitated. The vilest slanders had been circulated. It had been averred, not merely that Mr. Pickering had violated the appropriation of public moneys, but that he had applied them to his own personal purposes. But, after the praiseworthy candor of the gentleman, he trusted that all false impressions would be removed; and that it would be found that all the noise made, arose from inattention to prescribed appropriations of money; and that the same inattention applied to the other departments.

Mr. B. desired to know the extent of the motion. If confined to the Department of State, embracing all the Secretaries, he would be in favor of it.

Mr. NICHOLSON would answer the gentleman from Delaware, that it was his intention that the motion should apply, as far as it affected the Department of State, not only to Mr. Pickering, but to his predecessors also; and he had so framed it as to include the Departments of War and the Navy, in case the committee saw fit so far to extend their inquiries. The accounts of the Department of State could be easily examined, while those of the War and Navy Departments, from the want of specific appropriations, precluded so precise an investigation. But the committee may examine the subject, and the terms of the resolution gave them authority to pursue their inquiries, if they thought fit, into those departments. They may also go back, if necessary. For himself, Mr. N. had no objection to this. Not that he thought such a measure necessary, as it was well known that the accounts of Mr. Pickering's predecessor had been settled, and that a suit, which had arisen from such settlement, was now depending. He had plainly answered the inquiries of the gentleman, and he hoped satisfactorily.

Mr. GILES observed, that he had always been in favor of giving the people the fullest information on the expenditures of public money. It would be recollected that he was among the first to institute an inquiry into the disbursements of the Treasury under this Government. It was

true that his efforts were attended with but little success; they had been treated with but little respect; and he might, perhaps, add that they had been treated with some share of disrespect. He rejoiced, however, in the change which had taken place, and he expected that this House would hereafter be as jealous of public disbursements as he had long been.

The disbursement of public treasures excited, and deservedly excited, the national sensibility. The people felt it as all important. He was, therefore, well pleased with the resolution, whose effect would be to inquire into the conduct of all present and past Secretaries. As the whole would be included, it would exclude all party consideration.

He hoped that they were now assembled to legislate for the public good; and that, standing on the ground of truth, all calumny, let it come from whatever quarter, would be dismissed. He felt no ill will to any public officer, but he thought the official conduct of all of them should be tested by facts. He believed there had existed practices dangerous to our happiness, and his remarks were directed against those practices, not against any particular persons. If inconvenience and injury had sprung from the practices, we should find a remedy for them.

Mr. G. hoped that, at the commencement of a new Administration, all the doors of information would be thrown open, that the people might be well informed, and be able to repel all calumnies that were propagated, and know where real blame attached.

Mr. G. said, he wished to know when the practice alluded to commenced. The House sat here as a board of inquiry into the transactions of the Government, and without respect to any particular man; it was their duty to inquire into the conduct of all. He, therefore, hoped not only that this motion would pass, but that something similar to it would be incorporated in the standing rules of the House, whereby the act of inquiry would be general and a matter of course. If this should be done, the measures of all the departments would pass in review every session, and checks would be sufficiently multiplied to satisfy the public mind.

Mr. MITCHILL professed himself well pleased with the substitute offered to the original motion, which had, in some measure, excited his surprise. When an individual of great probity, and who had long served his country, was pointed at by the original motion, he could not avoid a painful sensation. The mover had wisely resolved, under the influence of such feeling, to modify his motion, and to make it general, instead of particular. Mr. M. did not know how business had been transacted in the departments, but he did know that suspicions and slanders had been levelled at our public officers. It was in the power of the House, if they were unfounded, to disperse them. The House might be considered as the protector of the innocent.

Mr. M. did not believe the gentleman pointed at had been guilty of corruption. He believed what was so called, was an allowable departure from the strict letter of the law, in order to promote the public good.

Mr. BACON said, if he understood the motion, it had nothing to do with the conduct of Mr. Pickering—it not only contained no particular reference to him, but avoided all personal reference to any of the officers. It applied solely to the expenditure of public money. He, therefore, saw no reason for bringing him or any other person into view. When an inquiry had been made, it would be time enough to approve or condemn the conduct of public agents.

Mr. BAYARD perceived no difference of opinion among gentlemen. All expected in the abstract, as well as in the present case, that the conduct of public officers should be examined, and the result laid before the House. He, however, did not think the statement made by the gentleman from Virginia perfectly correct when he told the House that his endeavors to obtain an inquiry into the state of the Treasury had been treated by a late House with disrespect.

Mr. B. said, his own information might be incorrect, as it was taken principally from the prints of the day; but he would say, that since he had been a member of that House, there had been no case, where an investigation was asked, in which a majority of the House had not sanctioned it without hesitation.

He recollected an investigation made at the instance of the gentleman from Virginia, into the conduct of a former Secretary of the Treasury; that the investigation did proceed; and that the very gentleman had a full opportunity of satisfying his own mind on the correctness of the conduct of that officer. If there had been a case in which a majority of that House had opposed an investigation, it was not within his knowledge. For his own part, he never had opposed, nor never would, the freest investigation of the measures of public agents, whatever Administration had the Government in its hands.

With respect to the contemplated motion announced by the gentleman from Virginia, Mr. B. did not know but it might produce the most serious inconveniences, if not injuries, to the Government. An imperious and irresistible necessity might force your officers to go beyond the limits of an appropriation. Appropriations that are made are usually prospective. They are necessarily, in many cases, imperfect. They may, of course, either exceed or fall short of the object for which they are intended; and you must, to make good the deficiency of one, draw upon the excess of another. This procedure had been introduced, and had been formed, he believed, into a general practice. He did not know that any department had exceeded its aggregate appropriation; but the redundancy of one appropriation had been made use of to supply the deficiency of another, under the same department. He did not know that any detriment would flow from such procedure. The officer who made the deviation, knew that he did it on his own responsibility, and that his conduct would be strictly scrutinized. From this view of

the subject he did not dread the inconvenience suggested.

Mr. B. said, he would illustrate his ideas by stating what had come to his particular knowledge. According to one of the stipulations made between the United States and Spain, a boundary line was to be run between the United States and the possessions of Spain, for which $60,000 were appropriated. The act of running the line was in execution, unfinished, and our commissioners in the wilderness, when the appropriation run out; and this was during the recess of Congress. What was to be done? Were we to disappoint a foreign Government and stop the whole business? No. There being money appropriated to the department for other purposes, more than was required, the Secretary of State applied it to this purpose.

Mr. B. thought it proper, on this occasion, to state that Mr. Pickering had clearly shown that every dollar of public money that had gone through his hands had been applied to the public service. This information he had from the most authentic source; nor should he here state it were it not entitled to the fullest confidence.

Mr. B. concluded by observing that, in his opinion, the resolution was too broad; it applied to all moneys expended, no matter by whom; it was imperative upon the committee to make the most extensive inquiry. To obviate this difficulty, he would move, if agreeable to the mover of the original resolution, to confine it to the Heads of the Departments.

Mr. Bacon thought the resolution stood very well. Instances would doubtless occur under every Government that would justify a deviation from the rigid prescription of law. But he was of opinion that it would be time enough to make such remarks as had fallen from gentlemen, when such instances are satisfactorily shown to have occurred.

Mr. Giles was happy in the calm spirit with which the session commenced, and he hoped the same spirit would attend the deliberations of the whole session. He must, however, be permitted to say that the gentleman from Delaware had been inattentive to the course of events, or he would have been more correct in his statement of the circumstances which had attended the case to which he (Mr. G.) alluded.

There was no doubt that after great efforts made by him to obtain an investigation of the official conduct of the Secretary of the Treasury, an inquiry had been made: but the result of that inquiry, as submitted, was far from being satisfactory, and did not embrace many of the material points. The gentleman was incorrect in another statement. He had not, as declared by the gentleman, yielded his assent to the correctness of conduct of the Secretary of the Treasury. The gentleman, doubtless, had the information he gave the House from certain newspapers that he and many other gentlemen were in the habit of reading.

But such authority did not authenticate the information. The fact was otherwise. The inquiry made had produced different convictions on his mind. From the inquiry then made, which, in its review the House may deem it proper to avail itself of, it would be found that the gentleman then at the head of the Treasury, had been employed for three years in drawing money from Holland, and that on this was founded the Bank of the United States. Mr. G. thought it barely necessary to make this explanation. He was sorry for the necessity of making it on this occasion, which he should not have done but that it was extorted from him by the incorrect remarks of the gentleman from Delaware, which rendered it necessary for him further to say, that he never had been, and never could be, satisfied with the then Secretary for breaking down the great barrier of appropriations.

As to the imperious circumstances, mentioned by gentlemen, which compelled a violation of appropriations, he agreed in the necessity which might sometimes exist; but when such a violation occurred, the causes of it ought to be truly imperious, and ought to be stated immediately to Congress, who was the only judge of the propriety of the measure, and not the man who had usurped their decision.

But the deviations are not new; they appeared to be of long standing, from which, in his opinion, great mischief and no good had resulted. He, however, did not wish to enter into a discussion until a report was made. He forbore, therefore, making any further remarks.

Mr. Lowndes hoped the inquiry would take place; but thought the terms of the resolution too comprehensive. It does not say where the examination shall begin or where terminate. The committee may examine into the conduct of one officer, or every officer. He believed it to be the practice of all deliberative bodies to prescribe definite duties to its committees. He, therefore, hoped that the House would limit the report to certain points, that a definite duty may be required, and a definite report made. The task, unless defined, would be herculean.

Mr. Claiborne was surprised at the expression of any sensibility for Mr. Pickering, or any other man: when he read that part of the Constitution that directed that all moneys should be expended under appropriations made by law, and heard gentlemen justify departures from this Constitutional injunction, he was truly astonished. If Mr. Pickering had departed from the directions of the law, to say so was no calumny. The committee proposed to be formed will inquire into all circumstances, and the public officers will be applauded or virtually censured. We are accountable to the people for the expenditure of their money, and it is proper that our public officers should be accountable to us.

The question was then taken on Mr. Nicholson's motion, without modification, and carried without a division, and a committee of seven members appointed, viz:

Mr. Nicholson, Mr. Griswold, Mr. Giles, Mr. Hastings, Mr. Jones, Mr. Bayard, and Mr. Elmendorf.

PRESIDENT'S MESSAGE.

The House, according to the standing order of the day, resolved itself into a Committee of the whole House on the state of the Union, the Message of the President being under consideration.

Mr. S. Smith observed that, among other objects to which the President had attracted the attention of the House, was our commercial situation. We were informed that the United States were at peace with all nations, and that peace had taken place among the Powers of Europe. It became Congress to direct its attention to consequences that might proceed from such a state of things; and particularly to the injuries that might attach to our carrying trade. It was known that under the British Treaty, Great Britain, going perhaps beyond the meaning of the treaty, had imposed heavy countervailing duties on our goods, and that certain acts of France had the same effects, whereby many of our most valuable exports would cease to be carried in our own bottoms. Early under the present Government it had been deemed wise to lay discriminating duties, which had tended greatly to assist our carrying trade. Our capital had greatly increased, and if foreign nations restricted our trade by unfair regulations, it became us to adopt counteracting measures; and this could now be done with the more safety and effect from the force of our capital. He, therefore, moved the following resolution:

"*Resolved*, That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, ought to be repealed; such repeal to take effect whenever the President shall be informed that the discriminating duties of foreign nations, so far as they operate to the disadvantage of the commerce of the United States, shall have been abolished."

Ordered, To lie on the table.

Mr. Giles.—Among the various topics of the Message is that in relation to the Census. It is important that Congress should be early occupied in deciding the ratio of representation, as many of the State Legisletures are now in session, and will be specially convened, if they shall rise before Congress shall pass a law upon the subject. He, therefore, moved the following resolution:

"*Resolved*, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in a ratio of one Representative for every thirty-three thousand persons in each State."

On which the question was taken, and the motion carried without a division.

Mr. S. Smith said, another important member of the President's Message respected our situation with the Barbary Powers. It became Congress immediately to come to a decision that would enable the President more efficiently to protect our trade. He, therefore, moved the following:

"*Resolved*, That it is expedient that the President be authorized by law, further and more effectually to protect the commerce of the United States against the Barbary Powers."

Mr. Nicholson said, he did not like the resolution, as it had reference to a point with which we were unacquainted. The President had informed us that he had sent a squadron into the Mediterranean. It may have been a wise act, but he did not wish the House to commit itself until fully informed. He moved, with this view, to strike out the words "further and more effectually."

Mr. Giles proposed that the motion lie on the table until the documents on this subject were printed; which was agreed to.

Mr. Mitchill alluded to his having presented two petitions from aliens in New York, and then moved the following:

"*Resolved*, That the laws respecting naturalization ought to be revised."

Mr. Giles thought the motion ought to be so drawn as to bring the principle before the House, for which purpose he moved to add "or amended." Agreed to.

So the motion, as amended, was carried.

The Committee then rose, and reported the two resolutions agreed to.

Tuesday, December 15.

A memorial of William Kilty, chief judge of the circuit court of the District of Columbia, was presented to the House and read, stating that by the last section of an act of the last session of Congress for altering the time and places of holding certain courts therein mentioned, it has been made the duty of the memorialist to hold the district courts of the United States in and for the District of Potomac, in virtue of his office, under a prior act of Congress concerning the District of Columbia; and praying an increase of the compensation allowed him by law, in consideration of the additional labor and inconvenience to which he is thereby subjected.—Referred to Committee of Claims.

The House proceeded to consider the resolutions reported yesterday from the Committee of the Whole on the state of the Union: Whereupon, the first resolution being again read, in the words following, to wit:

"*Resolved*, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in the ratio of one Representative for every thirty-three thousand persons in each State."

Ordered, That the consideration of the said first resolution be postponed until to-morrow.

The second resolution being again read, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That the laws respecting naturalization ought to be revised and amended.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Mitchill, Mr. Goddard, Mr. Smilie, Mr. Thompson, Mr. Lewis R. Morris, Mr. Wadsworth, and Mr. Stanford, do prepare and bring in the same,

Ordered, That it be an instruction to the committee to whom it was referred to report by bill, or otherwise, whether any, and, if any, what alterations or amendments are necessary in the act concerning post offices and post roads, that they make provision for extending the privilege of franking to the Attorney General of the United States.

BARBARY POWERS.

The House resolved itself into a Committee of the Whole on the State of the Union, the following resolution being under consideration:

"*Resolved*, That it is expedient that the President be authorized by law, further and more effectually to protect the commerce of the United States against the Barbary Powers."

Mr. NICHOLSON said, that when this resolution was yesterday laid on the table, he had moved, for reasons that he had assigned, to strike out the words "further and more." He was, on reflection, more and more persuaded of the accuracy of his objections to the unqualified terms of the original motion. If we adopt it, we pledge ourselves to increase the naval force at present at the disposition of the President. But if his modification were agreed to, every gentleman would remain at liberty to put his own construction on the words "effectual force." Uninformed as we were as to the necessity of increasing the force, it would be highly improper to commit ourselves by any precipitate decision. He, therefore, moved to strike out the words "further and more."

Mr. GILES opposed the striking out the words, which, in his opinion, did not relate to the quantum of force placed under Executive disposition, but to the measures proposed to be taken by the Executive. He should vote for the motion unamended, though he had been, and still was, as averse as any gentleman in that House to an improper augmentation of the Army or Navy. With respect to the Navy, he was friendly to it as it now stood, or to an augmentation of it to meet any particular emergency.

Mr. S. SMITH said, that as he understood the resolution, it went not to pledge any man to augment the Navy, but to authorize the President, with the present force, to take measures for the defence of our trade. We were at war with Tripoli. Against that Power, therefore, the President felt himself at liberty to act efficiently. But gentlemen should advert to our situation with regard to Algiers and Tunis. Those Powers may become hostile. They may become so in the recess of Congress. It may be necessary without delay to protect our trade against them. Will you then confine the President, in relation to these Powers, to a Peace Establishment? Certainly, when these circumstances were duly weighed, no gentleman will refuse the power which this resolution is intended to confer.

Mr. SMILIE was in favor of the amendment for one reason. He was ready at all times to grant commerce every necessary protection. But, by adopting this resolution we pledge ourselves, without inquiring into the necessity, to extend further protection. No doubt further protection will be required. But he thought it premature to make any pledge until all the documents connected with the subject were before the House.

Mr. MITCHILL suggested the propriety of amending the original resolution, by inserting after the word "law," "if necessary." This would render the resolution conditional. To the resolution he was a friend. For, when the aspect and extent of the United States were considered, it must be evident to every man that we were a commercial people. The bulk and extensiveness of our produce required vessels to carry it to foreign countries. The carriage required protection. The Government must of course give protection. With respect to the Mediterranean expedition, no plan under the Government had been better devised; and he had no hesitation to say that if the Mediterranean trade required further protection, he would be for making further appropriations of the public moneys.

Mr. NICHOLSON said he could not agree to the suggestion of the gentleman from New York, as by adopting it we should do nothing. How does the matter now stand? Congress has put into the hands of the President six frigates, which he had used for the public service in the Mediterranean. This was not a fit time to express his opinion on the propriety of the measures of the Executive. But when a fit occasion did offer, he would have no hesitation to say the President had done right.

To return to the point—the President had now six frigates. If we agree to the resolution, do we not pledge ourselves to increase this force?

One squadron had been sent to the Mediterranean; another was in operation to go there, he understood. This was all right. But there followed no necessity from these circumstances to pledge ourselves to increase the force.

We were not even acquainted with the sentiments of the President on this point. His communications did not inform us that he desired a larger force. If he did desire it, he would say so. He had, on the contrary, recommended a reduction of the Army and Navy; and to desire an augmentation of the latter, would be, in the same breath, to say one thing and another.

Mr. EUSTIS.—The President, in his communications, has informed us that he has hitherto acted on the defensive. The simple question now is, whether he shall be empowered to take offensive steps. This has no relation, therefore, to an increase of the force, nor shall we, by adopting it, pledge ourselves to such effect.

Mr. GILES was happy that the discussion was one more of words than of principles. He perfectly coincided with the gentleman from Maryland, who had moved the amendment, in his general sentiments. It would be wrong in this House prematurely to pledge itself for an increase of naval force. But the words of the resolution do not relate to the quantum of force, but entirely to the measures to be taken with any force. When the President is authorized further and more effectually to protect our trade, it was not said that

we will give him four or six additional frigates: but merely that he is to have means, more or less, which shall be adequate to make offensive operations against those who shall make offensive operations against us.

It was well understood that he was for keeping the Navy within proper bounds; but if ever there was a case where it was required, this was the case; and he acknowledged that he was for empowering the President to authorize, not merely a dismantlement of a vessel, but her capture.

Mr. S. SMITH said it was true that six frigates had been given to the President; but it was also true that, when given, they were contemplated chiefly as a nursery for our seamen, in which view they were directed to be only two-thirds manned. Would gentlemen contend that it was fit they should go out in this insufficient state? By the prescriptions of the law, the President deemed himself bound. Already the whole number of seamen authorized by law are employed on board four frigates; and for the want of hands the second squadron cannot be fitted out. The time of the first would expire in one year from their departure. It was, therefore, absolutely necessary that there should be more seamen.

The question was then taken on Mr. NICHOLSON's amendment, and lost.

When the original motion of Mr. SMITH was carried.

Ordered, That a bill or bills be brought in, pursuant to the said resolution: and that Mr. EUSTIS, Mr. SAMUEL SMITH, Mr. DANA, Mr. MITCHILL, and Mr. JONES, do prepare and bring in the same.

DISCRIMINATING DUTIES.

The following motion, made by Mr. S. SMITH, was then taken up, viz:

Resolved, That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, ought to be repealed; such repeal to take effect whenever the President shall be informed that the discriminating duties of foreign nations, so far as they operate to the disadvantage of the commerce of the United States, shall have been abolished.

Mr. GRISWOLD hoped the gentleman who had made the motion before the committee, would assign the grounds on which it was made. The acts imposing discriminating duties had long existed, with great and good effect to our commercial interests. He wished to know what effects would flow from a revocation of those restrictions, and whether the proposed measure would not operate to the prejudice of the United States. In its effects, the Eastern States would be particularly interested, and the more especially at this period when, from the consequences likely to ensue from peace, our ships may be thrown out of employment.

Mr. S. SMITH assured the gentleman from Connecticut that if the measure he proposed had, in his opinion, the least tendency to injure the commerce of the country, he should not have advocated it, as well from a regard to the deep stake he himself held, as from a regard to the interests of his constituents. The system of discriminating duties was a wise one in the early existence of the Government; our own shipping was then unequal to the carrying of our produce. The discrimination operated as a charm in producing a rapid extension of shipping beyond the most sanguine expectation.

Our trade remained in this situation until the formation of the British Treaty. By that instrument Great Britain was permitted to lay countervailing duties, and these had been so imposed as, in time of peace, to destroy the advantages attached to our shipping over theirs. The effects of this regulation were not immediately felt by us. England was at war, and her freights were charged with war insurance, while ours were exempt from such charges. Under these circumstances English bottoms could not enter into competition with American, as the war insurances of the former exceeded the inconveniences imposed on the latter.

But peace being now restored, British ships will have such an advantage over our ships, that no man will ship tobacco, rice, or any other bulky articles in American bottoms.

The effect of the countervailing duties of England would be, that an American ship carrying tobacco to England would pay eighteen shillings sterling more on the hogshead than a British ship. The usual freight of a hogshead was thirty-five shillings. The difference, therefore, constituted more than one-half.

Our situation was still worse in relation to France. Of the restrictive acts of that Government he could not give a precise idea; but he was enabled to state, from a conversation had with a gentleman from that country, high in office, that so decided a preference was given to her over foreign bottoms, that a duty of ten livres upon every hundred weight of tobacco was laid on the latter, which was equivalent to one hundred and twenty livres on a hogshead. He further understood that six per cent. difference was imposed upon all other articles. Peace being now restored, French vessels will enter our ports, and become the carriers to France of all our productions.

How were these effects, so alarming to our trade, to be met? He replied that it was by taking off our discriminating duties, and by placing our merchants on equal terms with the merchants of other nations.

And, sir, said Mr. S., have we not enterprise; have we not capital, to hold an honorable, a successful competition with the whole world? No man that knows the character of an American merchant will doubt his ability to sustain such a competition. The discriminating duties, once useful, have ceased to be so. Our shipping has increased, and we now want more to enter into the ports of other nations, than that other nations should enter into ours. We are willing to free trade from its trammels. Let the trade be taken

by those who can carry the cheapest. As a merchant, he was convinced that we could carry cheaper than any other nation. Our materials for ship-building were at hand; were cheaper, and we could navigate our ships with fewer seamen than any other nation.

The crisis required that we should take efficient measures. Unless such measures be taken, our commercial rivals will seize the sweets offered by the present opportunity. It was true that in two years the British Treaty would expire. But he understood that the British Ministry demurred to the construction which considered that part of the treaty under which countervailing duties were imposed as expiring at that time.

Mr. Griswold declared himself not satisfied with the explanation made by the gentleman from Maryland. It was certainly desirable to secure the carrying of our bulky articles in our own ships; and if the resolution would have this effect, he should be decidedly for it. But he could not discern such to be the effect. With regard to England, it was true that tobacco was there charged with a heavy duty; but it was well known that England consumed but a small portion of what was sent there—the rest was exported, and a drawback of all duties allowed. As to the great mass of this article, therefore, it was not charged any more than it would have been charged, had it been directly exported to other countries.

For his part, he firmly believed, that our carrying trade would be effectually injured by allowing a free trade, whereby English ships would enter our ports upon the same terms with our own ships. It was well known, that before the war, the tobacco imported into France had been farmed out by the Government, and that it had been a great source of revenue. He was persuaded that France would not permit that article to be free.

From these and other considerations, Mr. G. declared himself unprepared to decide upon a question of so great importance. He was not prepared to say what would be the effects of the principle offered to the House, particularly as the resolution does not say, in the event contemplated, who shall decide, whether the President or Congress.

Mr. S. Smith agreed with the gentleman from Connecticut that the great bulk of our exports required an uncommonly large tonnage. But this was an argument why we should secure this important object even if we lost the carriage of the imports of other nations.

The gentleman had referred to the mass of shipping in the Eastern States; but he would inform the House that the Middle States were competent to carrying their own produce. The gentleman was mistaken in one of his deductions, viz: that which respected our merchants deriving no inconvenience from English duties, as to the quantity of tobacco exported from England on which a drawback was allowed. He affirmed the injury to be great. For he would ask what merchant would like to export to England under the uncertainty of his exporting his produce again to other countries?

The gentleman was also mistaken in his allusion to the farmers-general of France. They did not monopolise that article. Every man had a right to go there with tobacco. They were only the venders of it. The gentleman was, therefore, further mistaken, when he said our merchants could not compete with French merchants.

Mr. S. was anxious that the earliest attention of Congress should be paid to this important subject. France had not at present vessels to carry our produce; availing ourselves of the situation in which she was at present placed, we might by this proposition gain her assent to the principles of a free trade, whereby a large share of our carrying trade would be preserved, which otherwise might be lost. Unless the opportunity that now offered was immediately seized it might never return.

Mr. Giles had at first thought the resolution a very plain one; but he was almost induced to think differently of it on finding gentlemen, who were deeply interested in its effects, holding contrary opinions. As to himself, Mr. G. said, he did not feel a very lively interest on the subject. The Southern States, in a pecuniary view, would not be directly affected by it, as their interests would not be materially promoted or impaired, whether their productions were carrried by foreign merchants or by those of other States. Not but that they would greatly prefer the latter mode.

From the remarks which had fallen from the gentleman from Connecticut, he appeared entirely to mistake the effects of the resolution.

Mr. G. believed the countervailing duty laid by the British to be unauthorized by the treaty. Taking our duties as the basis they had countervailed them, and applying the countervailing standard to separate and distinct articles, they had imposed heavy duties upon them, below, however, the maximum; giving up, as they said, a right, and granting what they called a favor. The result was the preference of British bottoms over American, as stated by the gentleman from Maryland.

Under the British Treaty, Britain was authorized to lay countervailing duties, but we were prohibited from countervailing them. The only question, then, was, whether we would patiently submit to the present inequality, whereby nearly the whole of our carrying trade might be destroyed, or take our chance in an equal competition.

The ideas of the gentleman as to dispatch were certainly correct. No time ought to be lost consistently with deliberation. It was not, however, the desire of Mr. G. to be precipitate. The moment was propitious; we ought to seize it. France is now without shipping, but she has great resources, and may, unless we adopt decisive measures, buy from us those very vessels with which we now carry our own produce, for the purpose of carrying it for us. Hence, it was desirable that an early decision should be had. If delayed till the next session of Congress, or even for six months, great mischief might be done, as he presumed the laying up our merchant vessels for six months will be nearly equivalent to a destruction of them.

Mr. Griswold offered some additional remarks; when, on motion of Mr. Randolph, the Committee rose, leaving the question undecided.

Wednesday, December 16.

Another member, to wit: Benjamin Huger, from South Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

The Speaker laid before the House a letter from the Secretary of State, accompanying an annual return, ending the ninth instant, containing an abstract of all the returns made to him by the Collectors for the different ports in the United States, pursuant to the "Act for the relief and protection of American seamen;" also, extracts from the communications received from the agents in foreign countries for the relief of American seamen; which were read, and ordered to lie on the table.

The Committee of Elections made a further report, stating certain members to be duly elected; and further stated, that in consequence of the erection of the Mississippi Territory, under the ordinance of Congress, that Territory was entitled to a Delegate when the Territory was entitled to a Legislature. This period having arrived, the committee report an opinion that Narsworthy Hunter be considered as a Delegate, with the right of deliberating, but not of voting.

Mr. Milledge could not agree to the report, as by so doing he would vote for a measure that would affect the sovereignty of Georgia. He, therefore, moved a reference to a Committee of the Whole, in order to have the subject discussed. Agreed to, and made the order for Friday.

RATIO OF REPRESENTATION.

The House, according to the order of the day, proceeded to consider the first resolution reported yesterday from the Committee of the whole House on the state of the Union, in the words following, to wit:

"*Resolved*, That the apportionment of Representatives amongst the several States, according to the second enumeration of the people, ought to be in a ratio of one Representative for every thirty-three thousand persons in each State."

Mr. Griswold remarked that the effect of adopting this resolution would be an increase of members in that House; that the number would amount to nearly one hundred and fifty. He was of opinion that the present House was sufficiently numerous for every correct purpose, as well of legislation, as for obtaining all desirable information from the people. Should an augmentation be made, the consequences would be an increase of expense, and business would inevitably be protracted. He moved, therefore, to strike out the words "thirty-three," meaning, if they were stricken out, to propose the substitution of a larger number.

On this motion a desultory debate ensued, in which Messrs. Griswold, S. Smith, Nicholson, Giles, Bayard, Alston, Elmer, Eustis, Sprigg, and other gentlemen, took part.

Mr. Griswold stood alone in advocating an apportionment of one member to every 40,000 persons.

Messrs. Giles and Bayard were for one member for every 30,000.

Messrs. S. Smith, Nicholson, and Eustis, were for one member for 33,000.

Mr. Allston was in favor of one representative for every 31,000.

The preferences avowed by the several speakers, appeared to arise from the application of that divisor to the State from which each member came, which left the least fraction.

Some gentlemen, however, declared, and particularly Mr. Giles, that he had made no calculation, and that his preference of the smallest ratio proposed was the preference of principle.

Those in favor of a small ratio argued that, though the expense attending the compensation of the members might be somewhat increased; yet, that it would be trifling compared with the great advantages that would result from a larger representation; that such a representation would be productive of true economy, as it would oppose all extravagant expenditure of money; that the weight of expense incurred by the Government did not arise from the expense of the civil list, which formed but a speck in the mass of expenditure. That it was important to this Government to adopt those measures which would insure the respect and the confidence of the people; that this end would be best attained by each Representative being familiarly acquainted with the interests of his constituents; and that this could only be the case, when the number of his constituents were limited within certain bounds. It was true that it had been said that a body of more than one hundred, even though it be composed of philosophers, was a mob; but it was replied that the long experience of this country had proved the reverse, for that many of the State Legislatures consisted of more members.

These ideas were but feebly opposed. The diversity of opinion expressed, chiefly arose from a division of the House on the ratios of thirty thousand and thirty three-thousand. The former was advocated principally from a regard to Delaware and Rhode Island, which, by its adoption, would have each two Representatives, instead of one, if a higher ratio were preferred.

During the discussion, it was moved to strike out the word "three;" leaving thirty thousand as the ratio. This motion was lost—yeas 43, nays 46.

Mr. Bayard then moved to strike out "thirty-three," leaving the resolution blank, in order that it might be filled up with such number as should be agreeable to the House.

This motion was opposed chiefly by Mr. Nicholson and Mr. Eustis, who were of opinion that the progressive increase of the members would be sufficiently large on the ratio of thirty-three thousand persons to a member. They were also fur-

ther in favor of this number as it left the fewest fractions. The only two States much injured by it would be Delaware and North Carolina; whereas if the ratio was increased to thirty-five thousand, New Jersey would have a fraction of 31,000; Delaware of 26,000; Maryland of 30,000; Georgia of 23,0000; and Kentucky of 29,000.

On the question being taken for striking out "thirty-three," there rose only thirty-one members. It was therefore declared to be lost.

The question was then taken on the original motion, and carried without a division, and a committee of three members appointed to bring in a bill conformably thereto.

THURSDAY, December 17.

Another member, to wit: DANIEL HEISTER, from Maryland, appeared, produced his credentials, was qualified, and took his seat.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying two statements of the importations in American and foreign vessels, from the first day of October, one thousand seven hundred and ninety-eight, to the thirtieth day of September, one thousand seven hundred and ninety-nine; also, similar statements, from the first day of October, one thousand seven hundred and ninety-nine, to the thirtieth of September, one thousand eight hundred, inclusive; which were read and referred to the Committee of Ways and Means.

The SPEAKER laid before the House a report from the Commissioners of the Sinking Fund, enclosing a report made to them by the Secretary of the Treasury, and a statement of the proceedings which have been authorized by the Board since their report of the twenty-eighth of November, one thousand eight hundred; which were read, and referred to the Committee of Ways and Means.

Mr. RANDOLPH, a member of the Committee of Ways and Means, informed the House that certain documents just directed to be printed, owing to the state of the manufacture in this place, could not be printed in less than twenty days; during which time the proceedings of the committee would be arrested. He, therefore, moved a committee be appointed to devise a plan for expediting the printing work of the House.

A committee of three, viz: Messrs. RANDOLPH, NICHOLSON, and L. R. MORRIS, was appointed.

It was moved that the House do go into a Committee of the Whole on the Apportionment bill.

Mr. BAYARD moved to postpone its consideration till Monday.

After a short debate, the question of postponement was lost—yeas 39, nays 45.

The motion to go into a Committee of the Whole on the above bill was then withdrawn, under the understanding that it would be renewed to-morrow. The bill was ordered to be printed.

The committee, to whom was referred the resolution for a new apportionment of Representatives among the several States, reported a bill, which gives to the States the following members, viz: New Hampshire, five; Massachusetts, seventeen; Vermont, four; Rhode Island, two; Connecticut, seven; New York, seventeen; New Jersey, six; Pennsylvania, eighteen; Delaware, one; Maryland, eight; Virginia, twenty-two; North Carolina, twelve; South Carolina, eight; Georgia, four; Kentucky, six; Tennessee, three. The bill was read a second time, and referred to a Committee of the Whole this day.

FRIDAY, December 18.

Mr. NICHOLSON, from the committee appointed, presented a bill to amend the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" which was read twice and committed to a Committee of the whole House on Monday next.

PUBLIC PRINTING.

Mr. RANDOLPH, chairman of the committee appointed to see what alterations were necessary to expedite the printing business of the House, reported that the committee thought it expedient to request the Heads of the Departments to attend and inspect the printing of all such documents, reports, and statements, as are directed by law to be annually laid before the House; and that it was necessary that a printer to the House be appointed, who should be responsible for the faithful and prompt execution of all business confided to him by order of the House.

Mr. GRISWOLD wished the report altered to a resolution; to the first part of it he should agree, but doubted whether the latter part would be concurred in. He did not think it sufficient or expedient to appoint but one; the business would require more, particularly at the close of the session. He could see no reason for altering the mode in which the printing business was now and had ever been done; it now lies with the Clerk, who is empowered to employ as many persons as he pleases or deems expedient. If such printer should be appointed, he will become an officer of the House; he will not be responsible to the Speaker. We have officers enough already; it is needless to multiply.

Mr. RANDOLPH said the committee had considered these objections; but, he believed, sufficient reasons might be offered to convince the House of the expediency of this measure. If one be appointed, he will know his duty and be prepared; he will employ as many hands as he wishes. Had there been one appointed by the House last session, he would have been on the spot now, fully prepared promptly to execute the orders of the House; nor should we have such delay as that by which we are now unfortunately troubled.

Mr. NICHOLSON.—We have but few printers in this vicinity, nor is it probable their number will be soon increased. The printing for the House is said to be worth $4,000 per annum: if one be appointed for that purpose he will have everything in readiness, and be responsible for his faithful duty.

Mr. S. SMITH thought a printer thus appointed

might perform a considerable part of his duty previous to each session: to many documents he might attend. Mr. S. wished such printer appointed as a permanent officer.

Mr. LOWNDES.—If he thought such officer necessary he should not oppose the measure, but at present he did not think such appointment necessary. He conceived the Clerk to be responsible to the House; that it was his duty to attend to the printing; that he could employ whom and as many as he pleased. Whence, then, the necessity of such appointment? Besides, such printer will become an officer of this House, must have a salary, and will be called the printer of the House: and, if printer of a paper, whatever sentiments might be advanced in such paper would perhaps be considered as the sentiments of the House.

Mr. EUSTIS considered it altogether unnecessary, disadvantageous, and troublesome.

The first was carried: that relating to the appointment of a printer not carried; about twenty only rising in favour of it.

APPORTIONMENT BILL.

The House resolved itself into a Committee of the Whole on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. MACON (Speaker) moved to strike out "thirty-three," the ratio fixed by the bill, for the purpose of inserting "thirty."

Mr. M. observed that it did not appear from the different ideas expressed by different gentlemen, that any material inconvenience would result from the increased number of members that would be created by the ratio of thirty thousand being adopted. Whereas on the ground of principle a great benefit would flow from it. In his opinion, to secure the confidence of the people in the Government, it was essential to lessen the districts as much as possible, that the elector might know the elected. At present, particularly in North Carolina, they were so large that a voter depended more upon the opinion of others than upon his own information. The ratio of thirty thousand would not introduce into the House more than one hundred and sixty members, which number did not equal that of the members in several of the State Legislatures, of which no complaints had been made, and from which no inconvenience had arisen. He felt particularly for Delaware, which would be severely affected by the ratio in the bill.

Mr. GILES hoped the motion would obtain. As far as respected the State of Virginia, he felt little or no anxiety. But he, on general principles, preferred the smallest ratio. It was an essential principle of a Republican Government that the people voting should know whom they vote for; that the elector should be well acquainted with the elected. To insure this effect the districts should be small. He was aware of the impossibility of reaching this point precisely: but it was our duty to approach it as nearly as possible. Though, in relation to the situation of Delaware, he did not subscribe fully to the ideas of some gentlemen, as the case was an extreme one, and he knew the impropriety of relying upon such case, as the reasoning from an extreme generally led to an extreme, yet he thought the relative circumstances of Delaware and Virginia, as stated, to be correct; for it was a fact that Virginia, entitled to twenty-two Representatives, was not so much affected by any given fraction, as Delaware, entitled to but one Representative.

But the reply to the inequality of her representation here is, that she has two Representatives in the Senate; and it is inferred that she will hence derive a larger weight in the Union. Such was the theory of the thing. But what was the result of experience? Mr. G. said, he had once supposed that the small States would have an undue advantage over the large States. His opinion had since altered. All the small States were surrounded and compressed by large States, and derived their political sympathies from them. It was true, the small States had each two votes in the Senate. Yet, what superior advantage have they in the Government generally? He was, therefore, clearly of opinion that the claims of the small States to the largest representation that could be constitutionally given them, ought not to be affected by their representation in the Senate. The fact was that this House was the basis of confidence in the Government. We had heard much about an alarm, about disorganization, and the disposition of large States to swallow up the rights of all the other States. He would ask, whether the adoption of a large ratio would lessen this clamor, promote the general confidence, and increase the stability of the Government?

Mr. JONES hoped the amendment would prevail. There was not a doubt but that the small States would be materially affected by the ratio in the bill. It was true, that, according to the theory of our Government, the members of that House did not represent the States. But, what was the fact? In truth, our representation was that of absolute locality. Can I, said Mr. J., represent as effectually Massachusetts, or Vermont, as Pennsylvania?

Mr. VAN NESS declared himself to be uninfluenced by local considerations, or particular inconveniences. If we attempted to avoid them by the adoption of any ratio, we should be mistaken. The inequality of States could not be remedied. If a remedy was sought, it must be found in the Senate. The large States had not that exclusive weight which had been stated. If the number of the large States in this House should overbear the smaller States, they would find their protection in the Senate. The fractional loss, so much dwelt on, was not a loss to the State, it was only a loss to that part of the State which was unrepresented, and the loss would be the same to a larger State, if its unrepresented fraction was equally great.

Mr. V. N. said, it had always been his desire to consult the wishes of the people and to conform to them. He considered those wishes as solemnly expressed in the Constitution, which had decided that the ratio should not be less than thirty thou-

sand, and in the law passed immediately after the adoption of the Constitution, fixing the ratio at thirty-three thousand.

As to the experience of the States, so often appealed to, he would state that of his own. The constitution of New York originally fixed the representation in one branch at three hundred, and in the other at one hundred and fifty. After suffering the inconveniences of so large a legislative body, a convention had been called, which reduced the one branch to one hundred and fifty, and the other to thirty-two members.

It was the opinion of some gentlemen that the essential principle of our Government was the equal representation of the States in the Senate. This was a mistaken opinion. The federalism of the Government might have been as well preserved by an unequal representation in the Senate. The feature was not the offspring of principle, but of concession. If we looked to antiquity, we would observe the smaller States of a Confederation always inferior to the larger; and he recollected one case of a Confederation, in which one State was entitled to three, another to two, and the third to one representative.

Mr. SMILIE heartily concurred in opinion with the gentleman from New York, that we ought not to respect local feelings, but that we ought to go upon general grounds. Possessing these principles, we still know how difficult it is to do complete justice. For himself he would be satisfied with the ratio of thirty-three, if he could not obtain that of thirty thousand. He was in favor of a large representation, because he relied on that for safety and economy. For, when he considered the great powers of the other branches of the Government, (powers, in the opinion of some men, too great,) he thought it was their duty to impart to that House all the Constitutional power that could be conferred. This would enable the House to resist all encroachments attempted to be made upon it.

Mr. BACON said that, for himself, he was satisfied with the present ratio, as it stood in the bill. This was the ratio which had been adopted when our numbers were much less than they now are; that it did not appear but that it had given general satisfaction; and that no other inconveniences had accrued than such as might be expected to follow from the adoption of any other ratio whatever. It would seem to be rather unnatural, and the reverse of what was contemplated by those who enacted the Constitution, as our numbers increase, to lessen the ratio of representation. He was, therefore, against striking out the number thirty-three, with a view to insert a lower number.

A divisor of thirty-three thousand would now give a House consisting of at least one hundred and forty members, which, even on the present ratio, must soon become not only too expensive, but unwieldy. It had been repeatedly urged that the present ratio leaves a very large fraction to the State of Delaware. This, it was admitted, was matter of regret; but that, let what ratio might be adopted, such fractional parts must be expected to fall somewhere; that such fractions would be likely to vary, from time to time, and shift from State to State, as the population may increase and vary in the several States. And Mr. B. did not conceive that the particular case of Delaware, hard as it might seem, furnished a sufficient reason for altering an entire system.

As to what had been urged of the disadvantage to which Electors were subjected in large districts, of not knowing the characters of their Representatives and candidates, Mr. B. observed that this was a disadvantage which was lessening with rapidity from year to year, and from one election to another; that to whatever inconvenience electors may heretofore have been subjected by the want of a knowledge of their candidate, from this inconvenience they are already in a great measure relieved; and it must, in a very short time, entirely case to exist. If any inconvenience of this kind still remains, by an election or two more, it would be entirely removed. It had been urged that Delaware had but one Representative, and every State ought to have two. But, why two, Mr. B. queried, rather than three? It is true, that two are better than one; and three are better than either one or two; for, as we have long since been told, "a three-fold cord is not easily broken."

Mr. B. concluded by saying that, as thirty-three thousand was the ratio which had been adopted when our population was much less than it now is; and as it has been practised upon without any inconvenience or general dissatisfaction, he was unwilling to risk the uncertain consequences of an innovation at this particular time.

Mr. T. MORRIS was of opinion that the arguments drawn from the representation in the Senate had nothing to do with this question. The House had a Constitutional duty to perform, that was highly interesting. The only question is, How it shall be performed? The people ought to be fully represented; that is, the number of their representatives should be increased until that number became inconvenient for the transaction of business. He had never been a friend to an enormous Legislature; such as that in France, a mob convention. He thought the idea incorrect that this House should acquire a weight that might cause it to bear down the other branch of the Legislature. He hoped, if any such attempt should be made, that body would have sufficient spirit to resist it; and he trusted there would always be firmness enough here to resist any encroachment attempted.

As to the present ratio guiding, he did not think that the House should be governed by any uniform rule. They ought, on the contrary, to be governed by the existing circumstances. Not believing that any inconvenience would arise from the augmented representation on the ratio of thirty thousand, he would be in favor of it from the reasons he had assigned.

Mr. DENNIS did not rise to say anything new on the subject; but merely, as he had altered his mind since the business was before the House, to assign some of the reasons which had influenced him. He was now in favor of the ratio of thirty thousand. His first impressions were against it

from an apprehension that the increased numbers of the House would increase expense, and produce disorder. But he acknowledged himself convinced by the arguments which had fallen from the gentleman from Virginia, which he thought counterbalanced his previous apprehension. Mr D. thought it all important to preserve an equilibrium between the different departments of the Government, and he was convinced that this would be best effected by making the representation in this House as large as the Constitution permitted, and convenience justified. If we expected to retain the confidence of the people, it was necessary to increase the Representative branch; for it would be in vain to look for that confidence necessary to give it a proper portion of energy, unless there existed a sympathy between the elector and the elected.

Mr. RANDOLPH hoped the amendment would not obtain. The difference between the effects of the two ratios was not very important; but it was highly important that a doctrine so heretical and improper as that which had been avowed, should be exploded on its first annunciation. He meant that doctrine which considered this House as the Representatives of the people. When the Constitution was formed, two great difficulties presented themselves. The large States refused to confer on the Government greater powers than those it enjoyed, which deeply affected their wealth and their numbers, unless, according to the ratio of their numbers, they should participate in the administration of it; while the smaller States withheld their concurrence, unless their sovereignties were guarantied and protected. These two difficulties were surmounted by the plan of the present Constitution; according to which the members of this House were the Representatives, not of the people, but of the States in proportion to their numbers. This was the theory of the Government for which he must contend.

Mr. R. believed that the strongest objection urged against the adoption of the Constitution, was, that it tended to a consolidation of the States. But when he looked into it with a Federal eye, (and with no other eye could he ever look at it,) he saw the State sovereignties in all its parts acknowledged and protected. Of this, the very bill was itself a proof. For the apportionment was not among the people, but among the States, according to the numbers of each. Believing that this House is the representative of States, it was his opinion that so long as the relative weight of States could be preserved, it was immaterial that each State should be represented by a large number of members.

It was with extreme regret, and some diffidence, Mr. R. said, that he differed from his colleague on this subject. His colleague wished to increase the House to such an extent as to make it the depository of the whole confidence of the people. Mr. R. wished it to possess that confidence so far as related to Federal objects, but no further. Increase it, according to the theory of gentlemen, make it in point of numbers, a British Parliament, or a French Convention, and you will proportionably diminish the confidence of the people in the State governments. They will become feeble barriers against the powers of the General Government; and the people will inquire for what purpose they elect their State Legislatures. Mr. R. believed it to be of infinite importance that the poises of the Government should be preserved; that it should confine itself to Federal objects. His object, therefore, was to preserve on that floor the proportionate weight between the several States which the Constitution had fixed.

Had any objection been made to the old Congress under the Confederation, that was federally organized, for the want of talents or integrity? No. The only objection was, that they wanted power. Had the public affairs been conducted with less ability than they are at present? He had neither heard, nor did he believe that they had.

Mr. R. concluded, by making some remarks on the score of convenience, similar to those already stated.

Mr. MITCHILL, in a speech of some length, supported the ratio of thirty thousand.

Mr. S. SMITH felt indifferent whether the ratio of thirty-three, or that of thirty thousand, were adopted; but felt anxious that justice should be done to the State of Maryland. He understood that radical errors existed in the numbers given to that State; that in Harford county there were returned only three thousand slaves, whereas there ought to have been returned eighteen thousand; and that in Cecil there had been returned nine thousand, instead of fifteen thousand. He hoped, in order to have these errors corrected, the Committee would rise, that the original returns in the office of State might be examined.

This motion gave rise to a conversation of some length, in which on one side the impropriety and injustice of making an apportionment under the existing errors, and without the return from Tennessee, were argued; and, on the other side, the great inconvenience of delay, and the inability of the House to obtain a correction of errors, which, if attempted in one instance, might be attempted in many.

Mr. VAN NESS informed the Committee that the return from Tennessee was received at the office of State, and that it made the population of that State amount to ninety-two thousand free inhabitants, and thirteen thousand slaves.

It was ultimately agreed that the Committee rise, report progress, and ask leave to sit again; which was granted.

MONDAY, December 21.

A petition of sundry inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, praying that a law may pass to authorize the Corporation of the said town more effectually to enforce the collection of taxes for corporate purposes.

Also, a petition of sundry inhabitants of the City of Washington, in the said District of Columbia,

praying that Congress will adopt such regulations for the purchase and sale of victuals and provision, as may tend to establish and support a market in the said city.

Ordered, That the said petitions be referred to the committee appointed on the eighth instant, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise.

Mr. Randolph, from the joint committee appointed, on the seventh instant, to take into consideration a statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same, made a report; which was read, and ordered to lie on the table.

On motion that the House do come to the following resolution:

"*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of State be directed to cause to be furnished to each member of the two Houses of Congress, a copy of the laws of the sixth Congress:"

It was resolved in the affirmative.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a report and sundry statements, prepared in pursuance of the act "Supplementary to the act, entitled 'An act to establish the Treasury Department;'" which were read, and ordered to be referred to the Committee of Ways and Means.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying two statements, marked (A) and (B) relating to the Internal Revenue of the United States; also, a letter to him from the Commissioner of the Revenue, explanatory thereof; which were read, and referred to the Committee of Ways and Means.

On motion, it was

Resolved, That provision ought to be made by law for extending the privilege of franking to the Delegate, for the time being, from the Mississippi Territory; and for making the same compensation for his travel and attendance, that is allowed the Representatives of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Davis, Mr. Tillinghast, and Mr. Josiah Smith, do prepare and bring in the same.

On motion, it was

Ordered, That the Committee of Commerce and Manufactures be authorized to report by bill, or bills, or otherwise, on all such matters as shall from time to time be referred to them by the House.

A petition of Peter Lee, a free negro, was presented to the House and read, praying relief, in consideration of the loss of an eye, and other injuries received, whilst a soldier in the American Army during the Revolutionary war with Great Britain.

A motion being made, and the question put, that the said petition be referred to the Committee of Claims, to examine and report thereon, it passed in the negative.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying two letters from the Commissioners of the City of Washington, and sundry documents exhibiting a state of their receipts and expenditures, and the progress made in the public buildings, from the 18th day of November 1800, to the 18th of November, 1801; which were read and referred to the Committee of Ways and Means.

DELEGATE FROM MISSISSIPPI.

The House resolved itself into a Committee of the whole House on the report of the Committee of Elections, to whom were referred the credentials of Narsworthy Hunter, who has appeared as a Delegate from the Territory of the United States known by the name of the Mississippi Territory.

Mr. Milledge spoke forcibly, and with considerable eloquence against agreeing to the report of the committee; he said it was not a matter of private but of general concern—that Georgia had jurisdiction over that Territory; to prove this, he called for the reading of the memorial of Georgia to the Legislature of the Union.

[The memorial was extremely long, and was read but in part.]

Mr. M. insisted on the right of Georgia to the soil; he would assert to that body and to the world that she had never given up that right; and that therefore the laws that had been passed by Congress for the government of that Territory were void, and the gentleman elected as a delegate to Congress by the Legislature of that Territory had no right to a seat in the House. Gentlemen might say what they please of the expediency of Congress making laws for the government of that Territory, yet that expediency must yield to justice and to just claims; depriving Georgia of her command over that soil and over the people of that soil, was a glaring violation of right. Commissioners had been appointed to settle the dispute between the United States and Georgia; those commissioners are here, and probably it will not be long before those claims are adjusted; he hoped and trusted no further proceedings would take place till the dispute was completely settled.

Mr. Bayard.—The gentleman from Georgia appeared to mistake the object of the report of the select committee; that committee was appointed to examine the credentials of Mr. Hunter, and to see whether the Legislature of the Mississippi Territory had a right, by the law of Congress regulating that government, to send a delegate, to exercise here the right of debating, but not of voting; it was not to admit into the Union a new State, or to erect a new State within the bounds of another. The law of Congress, establishing the government of that Territory, declares that when in that Territory there shall be such a number of inhabitants, they shall have a House of Representatives and a Legislature; and that when their inhabitants shall have increased to such a number, the Legislature may appoint a delegate to Congress, with the right of debating, but not of voting. It is not now a question whether a new State shall be erected, but whether this member be duly chosen. Nor are the interests of Georgia at all affected: the fifth section of the law establishing this Government expressly declares that nothing in the law for establishing a temporary government there, shall in any manner affect any claims of the State of Georgia to that soil. Commissioners are appointed on the part of the United States and Georgia to settle the dispute between the two Governments; but till, those disputes shall be settled, shall the inhabitants of that Territory be without a government? No sir, it is not a matter of discretion with us; we are bound by a positive law of Congress. If the gentleman was urgent against Mr. Hunter's taking his seat, the only way to effect it is, by repealing the law of Congress establishing the Government of the Mississippi Territory.

Mr. Davis.—The House have no business to meddle, in this case, with the claims of the United States, or of Georgia, to that Territory; we have only to examine the credentials of the member, and to see whether the Legislature, in conformity to the act of Congress, were authorized, or not, to send a delegate. If that act of Congress be unconstitutional, it must be repealed by the Senate and House; yet, as it now is, we are bound to but one decision on this subject.

Mr. Randolph.—He thought gentlemen did not treat the member from Georgia with due candor and respect. It should be remembered that Georgia had ever protested against the laws relative to the Mississippi Territory. It was the duty of that gentleman, as a member from the State of Georgia, to dissent; constructions might be put on silence. The United States had arrogated the power of governing that Territory, at the same time saying that such assumption of power should not affect any claims of Georgia; but did not this very assumption of a right to govern, prejudge claims? We are told the commissioners are on the eve of settling the dispute; let us wait till this be accomplished. Mr. R. motioned that the committee rise.

Mr. Claiborne—He thought it right in the gentleman from Georgia to dissent; it was to be expected; he did not rise to censure him. He did not conceive that any gentleman in the House wished, in this matter, to do anything that would prejudice the interest or claims of Georgia. The assumption of a power to give laws to the Mississippi Territory arose from the necessity of the thing, and from benevolence to the inhabitants; he would not suffer an infraction of the Constitution for the world; no, not to save a world. [The Chairman called him to order: the question was now on the Committee's rising.] Mr. C. said he did not know but he might be out of order, but if he was, he believed others had been in the same situation. He wished to express his opinions on the subject in common with others. It should be considered that the delegate from the Mississippi Territory would have no right to vote, but only to debate; he would be only a sting, but without poison. We ought, morever, to oblige our brethren of that southern hemisphere; we ought to hear their statements, attend to their wants, &c.

Mr. Dana.—He was for the Committee's rising. It had been usual to suffer the reports of the Committee of Elections to lie on the table, and if no protest or complaint were entered, nothing further was done with them, and the members kept their seats. In the case of the Northwestern and Indiana Territories, they were obliged to inquire, if it was the first time, whether there was a right to send a delegate; such is the situation now of the member from the Mississippi Territory; the records show their right to send, the report states that this delegate is duly chosen. Let the report lie on the table, and the member keep his seat.

Mr. Griswold.—He was not in favor of the Committee's rising. It was extremely unpleasant to the delegate from the Mississippi Territory to remain in this situation; he himself claimed a seat in that House, not as a matter of favor but of right; and this House had not the power of depriving him of this right, without repealing the act of Congress establishing a government over that Territory. Some gentlemen have said that the rights of Georgia will be affected by the admittance of this member to a seat; such certainly could not be the case; if the claims of Georgia are at all affected, it is done already by act of Congress; yet, for his part, he did not consider the claims of Georgia as affected or injured. Nor ought we to wait the decision of the commissioners: that decision may take place in a month, and perhaps will not these six months.

Mr. Macon.—There ought to be some petition or statement of facts presented by the member from Georgia, or some other person, to justify a discussion at this time, or to prevent the delegate from taking his seat. He wished his right and his credentials treated as those of any other member. He agreed with the gentlemen from Connecticut, (Mr. Dana,) that it were better for the committee to rise, without leave to sit again; the member would then be entitled to his seat and his pay, till it should be shown that he has no claim to them.

Mr. Bayard.—He did not agree with the Speaker; the face of the report of the select committee gives sufficient cause for a decision of the Committee of the Whole. The gentleman from Georgia opposes the decision of the select committee; and it is due to the member from Georgia, and to the delegate, to have the opinion of the House—to have a prompt decision. The mere question is, whether he has been duly elected; not whether the Legislature of the Mississippi Territory had a right to elect him. Gentlemen have said we are prejudicing the claims of Georgia, that their rights are implicated in this step; they have said that the act of Congress establishing a government was an assumption of power; not so: by the Spanish Treaty that Territory was ceded to the United States; the inhabitants were without a government; they petitioned Congress for some form of government. What was to be done? The interposition of Congress arose *ex necessitate rei*: It was no assumption of power or assertion of claims. It was a necessary establishment of a temporary government, to continue while there was necessity. He was for an immediate decision.

Messrs. Randolph, Davis, Bayard, S. Smith, Macon, and Griswold, continued the debate.

The report of the select committee was agreed to. Mr. Milledge wished the yeas and nays, even if he stood alone. They were taken, and stood, yeas 77, nays 8, as follows:

Yeas—Willis Alston, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hodge, David Holmes, Benjamin Huger, George Jackson, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Thomas Moore, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, John Stanley, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., Benjamin Taliaferro, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horn, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—John Bacon, Samuel J. Cabell, William Eustis, Michael Leib, John Milledge, John Randolph jr., John Smilie, and Richard Stanford.

Ordered, That the residue of the said report of the Committee of the whole House do lie on the table.

Tuesday, December 22.

Another member, to wit: John Rutledge, from South Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamped duties on debentures;" which was read twice and committed to a Committee of the whole House on Monday, the fourth day of January next.

Mr. Davis, from the committee appointed yesterday, presented a bill to extend the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation; which was read twice, and ordered to be engrossed, and read the third time to-day.

Ordered, That Mr. Gregg be added to the committee, appointed on the eighth instant, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, in the room of Mr. Sumter, elected a Senator of the United States for the State of South Carolina.

A Message was received from the President of the United States, by Mr. Lewis, his Secretary, transmitting certain documents supplemental to those already transmitted; and informing the House that two other documents, viz: one respecting the Barbary Powers, and the other exhibiting a view of the officers of the Government of the United States would be transmitted as soon as prepared.

The documents received were: 1. The Census of Tennessee. 2. A letter from Mr. Humphreys respecting Algiers. 3. Extract of a letter from Commodore Dale to the Secretary of the Navy. 4. Extracts of letters from Capt. Sterret. 5. Letters from the Bashaw of Tunis, dated April 15, 1801, and the answer of the President, dated September 9, 1801.

Ordered to be printed

Such papers as respected the Barbary Powers were referred to the committee already appointed on that subject; and the Census of Tennessee was referred to the Committee on the Apportionment bill.

Mr. Smith called up the resolution, yesterday made by him, for the adjournment of the two Houses from the 26th inst., to the 2d of January.

On which, the question being taken, it was lost—ayes, 23.

An engrossed bill to extend the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation, was read the third time and passed.

A Message from the Senate informed the House that the Senate have agreed to several resolutions, in the form of joint resolutions of the two Houses, "making provision for the disposition and arrangement of the books and maps purchased, pursuant to law, for a Congresssional Library;" to which they desire the concurrence of this House.

The said resolutions were read, and ordered to be committed to a Committee of the whole House to-morrow.

MILITARY PEACE ESTABLISHMENT.

The House according to the standing order of the day, resolved itself into a Committee of the whole House on the state of the Union.

Mr. S. Smith made the following motion:

"*Resolved*, That it is expedient to fix the Military Peace Establishment."

The motion was opposed by several members as unseasonable. The President in his Message had informed Congress that the Secretary at War would lay before them a statement of the military force of the United States, and of the posts and fortifications requiring protection. Until this information was received, it was thought premature in the House to come to any decision.

After a conversation of some length, Mr. Smith withdrew his motion.

Mr. Gregg then moved three resolutions.

The first was amended, and agreed to. It was, in substance: That it is expedient that the law for regulating the militia of the United States be revised and amended. This was afterwards confirmed in the House, and a committee of nine appointed.

The second was for the appointment of a committee to inquire whether any, and what, additions are necessary to be made to the military stores of the United States.

The third was for the appointment of a committee to inquire whether any, and what, amendments are necessary to be made in the laws respecting the fortifications of the harbors of the United States.

These two resolutions were agreed to by the Committee, and reported to the House, who postponed the consideration of them till Monday, for the purpose of gaining the information promised on this subject in the President's Message.

Mr. Randolph then moved that the Secretary of War be directed to lay before the House a statement of the present Military Establishment, together with an estimate of all the posts and stations where garrisons will be expedient, and of the number of men requisite for each garrison.

Agreed to.

Wednesday, December 23.

The Speaker laid before the House a plan of the lands of the United State within the boundary line northwest of the river Ohio, transmitted by the Secretary of the Treasury, as referred to in his report respecting the public debt and finances of the United States, received on the twenty-first instant: Whereupon,

Ordered, That the said plan be referred to the Committee of Ways and Means.

A petition was read from sundry inhabitants of the District of Columbia, praying the aid and patronage of Congress in the establishment of a company for building a bridge over the Potomac.

Referred to the Committee on the Territory.

A Message was received from the President, transmitting a more correct return of the Census of Maryland, ju- received from the Marshal, than that before presented.

On motion, it as *Ordered*, That the copy of the act of the British Parliament, entitled "An act for carrying into execution the Treaty of Amity, Commerce, and Navigation, concluded between His Majesty and the United States of America," heretofore transmitted to this House by the Secretary of State, be printed for the use of the members of both Houses.

LIBRARY OF CONGRESS.

In Committee of the Whole, the resolutions of the Senate relative to books, maps, &c., were considered. The third resolution was amended so as to give the right of taking books from the Congressional Library to the Attorney General, the Judges of the Supreme Court, while that court is in session, and to foreign Ministers.

On the fifth resolution, that of appropriating one thousand dollars annually for the increase of the library, some debate took place.

Mr. Bayard advocated the appropriation, should it extend to ten or twenty years.

Mr. Varnum thought the mode of appropriating money by resolution simply, improper; he thought a law ought to be passed.

Mr. Bayard removed those objections by saying, that that would be done when the resolutions came before the House.

Mr. Macon thought the time of the appropriation ought to be limited.

Mr. Lowndes moved to strike out the word "annually." Agreed to.

Mr. Bayard, in considering the resolutions of the Committee of the Whole, was for striking out the words "Secretary of the Senate and Clerk of the House," supposing a Librarian ought to be appointed by the President.

When the subject was under discussion before the House, Mr. B. advocated the annual appropriation of one thousand dollars for ten years. He thought such measure advisable in preference to expending that sum at once, as there are continually new books, maps, &c., published, and there was the greater probability of being able to procure the most valuable publications.

Mr. Randolph talked much of old practices; practices of expending unnecessarily, &c.; he said that expectation was on tiptoe to see the new practices, the practices of saving. For his part he was unwilling to expend the public money, except in cases of absolute necessity.

Mr. Bacon, on mere principles of economy, would leave it indefinite, and a succeeding Congress might diminish or add to the sum to be annually expended for the library, as they pleased. He had not made a calculation, but he believed the House expended as much in deliberating as the sum about which they were contending would amount to.

Mr. Goddard, of Connecticut, spoke in favor of one thousand dollars annually.

Mr. Elmer spoke against it.

Mr. Bayard said, in reply to Mr. Randolph, as the gentleman had talked so much of the disposition of the House heretofore to expend unnecessarily public money, he wished he would specify to what measures he alluded. It had been common to make such charges generally; he believed few dared specify. For his part he believed he was anxious as any one to hold fast and tight the purse-strings of the public. He would be as willing to curtail Executive power as any one: but if the gentleman's principles are carried to their extent, they should indeed spend but little. It had been said, we were the most enlightened people on earth; if that be not altogether true, let us make it as much so as possible.

Mr. Bacon was in favor of ten thousand dollars annually. He thought it a moderate sum and a necessary appropriation.

It was carried in favor of one thousand dollars, but only for one year.

Mr. Bayard moved that, instead of the Secretary of the Senate and the Clerk of the House, a Librarian be appointed by the President; which proposition, after some debate, was not carried.

Thursday, December 24.

The Speaker laid before the House a letter and report from the Postmaster General, accompany-

ing a list of post roads which have not produced one-third of the expense of carrying the mail on the same, after having been established for two years, transmitted in pursuance of the "Act to establish the Post Office of the United States;" which were read, and ordered to be referred to the committee appointed, on the tenth instant, to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States.

On motion, it was *Resolved*, That the Secretary of State be directed to lay before this House a table showing the comparative duties paid, in the ports of Great Britain, on goods imported into Great Britain in American, foreign, and British bottoms, since the fifth of January, one thousand seven hundred and ninety-eight, so far as the same respects the commerce of the United States.

The Speaker laid before the House a letter from the Secretary of War, accompanying a statement of the present Military Establishment of the United States, marked [A], and an estimate of all the posts and stations for which garrisons will be expedient, and of the number of men requisite, in his opinion, for each garrison, marked [B]; transmitted in pursuance of a resolution of this House of the twenty-second instant; which were read, and ordered to be referred to the Committee of the whole House on the state of the Union.

On motion, it was *Resolved*, That the Secretary of State be directed to lay before this House the laws of the Northwestern and Indiana Territories, imposing taxes on the lands of non-residents.

On a motion made and seconded, it was

Ordered, That the order of the day for the House to resolve itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration, be postponed until Monday, the fourth day of January next.

The House adjourned to Monday.

Monday, December 28.

The Speaker laid before the House a letter from the Secretary of State, accompanying his report on the memorial of Philip Sloan, referred to him by order of the House, on the fourteenth instant; which were read, and referred to a Committee of the Whole House on Wednesday next.

Tuesday, December 29.

A petition of sundry citizens of the United States, resident in the Territory of Columbia, was presented to the House and read, praying that a bridge may be erected from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac.—Referred to the committee appointed on the eighth instant, to inquire whether any, and if any, what alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. Varnum, from the committee appointed, on the seventh instant, to prepare and report such standing rules and orders as are proper to be observed in this House, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. Davenport, from the Committee of Revisal and Unfinished Business, to whom it was referred, to examine and report such laws of the United States as have expired, or are near expiring, made a report, in part; which was read, and ordered to lie on the table.

Mr. Randolph, from the committee on the resolutions of the Senate, on the subject of a Congressional library, begged leave to report by bill, which, being granted, he reported a resolution, "that the House disagree to the said resolutions." The House concurred.

Mr. Randolph moved the following resolution:

"*Resolved*, That it is expedient to reduce the Military Establishment of the United States."

It was not the wish of Mr. Randolph to precipitate a decision on this important subject. He, therefore, was willing that his resolution should lie for consideration at some future day.

Ordered, That it do lie on the table.

LIBRARY OF CONGRESS.

Mr. Randolph reported a "bill concerning the library for the use of both Houses of Congress;" which, after being twice read, was committed to a Committee of the whole House: Mr. Rutledge in the Chair.

The bill provided that the members of both Houses, the President and Vice President of the United States, and the Judges of the Supreme Court, should have liberty to take any book from the library to read.

Mr. Sprigg moved, to add the Judges of the District of Columbia. He was supported in argument by Mr. Dennis, upon the ground of the importance of the causes which this especial district would present, and the great expense and extreme scarcity of some most valuable and necessary law books.

Mr. Bayard objected to the motion, because he could discover no reason for distinguishing the judges of the district from others; but Judges of the Supreme Court being far from their libraries, required such references. He hoped the Congressional Library would never be subjected to the abuse which books used in courts of justice were too liable to.

The motion was not agreed to.

Some observations were made as to the time which the library was to remain open.

Mr. Griswold moved to confine it to the time of the session of Congress.

It was carried, with an exception moved by Mr. Southard, in favor of the Judges of the Supreme Court, whose sessions do not accord with those of Congress.

A blank was left as to the sum to be appropriated, in addition to the remaining part of the five thousand dollars heretofore appropriated, for the purchase of books.

On the Chairman's asking the sum with which to fill the blank, Mr. Randolph moved to strike

out the sections, observing that, of that sum, not more than $2,200 had been used, and $2,800 remained unexpended. He entertained no doubt but Congress would aid the institution by every timely grant.

It was stricken out. The bill was postponed till to-morrow.

The several sections of the bill prescribe—

1. That the library, consisting of all the books of the two Houses, be kept in the room, last session, occupied by the House of Representatives.

2 and 3. That the President of the Senate and the Speaker of the House of Representatives appoint a librarian; and that the President and Speaker have the superintendence of the library, subject to the provisions of the act. The librarian to be allowed two dollars a day.

4. No map to be taken out of the library; and the books to be taken out by the President and Vice President of the United States, and the members of the two Houses, by the Heads of Departments and Attorney General, during the sitting of the Legislature, and by the Judges of the Supreme Court, during its sittings.

The unexpended balance of sums heretofore appropriated, viz., $2,800, to be applied to the purchase of books, under the direction of a joint committee of three members of each House.

The House then resolved itself into a Committee of the whole House, on the said report and bill; and, after some time spent therein, the Speaker resumed the Chair, and Mr. Rutledge reported that the committee had had the said report and bill under consideration, and directed him to report to the House their agreement to the resolution contained in the report, and several amendments to the bill.

Wednesday, December 30.

A petition of Elias B. Caldwell, clerk of the Supreme Court of the United States, was presented to the House and read, stating the insufficiency of the fees and other emoluments allowed him by law, and praying that the same may be increased, and rendered more adequate to his services; also, that provision may be made, by law, for the safekeeping of the books and records of the said Court.—Referred to Mr. Dennis, Mr. Thomas, and Mr. Bishop; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. Davis, from the committee appointed on the 14th instant, to inquire into the expediency of giving further time to persons entitled to military land warrants, to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud, made a report, in part; which was read, and ordered to lie on the table.

The House took up the Library bill, when Mr. Randolph moved to strike out that part which gave permission to the Heads of Departments, Judges of the Supreme Court, and foreign Ministers, to take out books; which was agreed to, and the bill was ordered to be engrossed for a third reading to-day.

On motion of Mr. Randolph, the House went into Committee of the Whole on the state of the Union; when Mr. Randolph submitted his motion of yesterday, viz: "that it is expedient to reduce the Military Establishment of the United States." He made the motion in Committee of the Whole as it appeared to be more consonant to the proceedings of the House.

The resolution was agreed to without a division, and reported to the House, who concurred, and appointed a committee of five to bring in a bill.

Thursday, December 31.

An engrossed bill concerning the library for the use of both Houses of Congress was read the third time, and passed.

Resolved, That the said bill do pass, and that the title be, "An act concerning the library for the use of both Houses of Congress."

A message was received from the Senate, offering, for the concurrence of the House, resolutions, approving the gallant conduct of Captain Sterret and his crew in the capture of a Tripolitan corsair of superior force; requesting the President to present Captain Sterret with a gold medal with suitable emblems; and to present the other commissioned officers with swords; with a concluding resolution, that the non-commissioned officers and crew receive an extra month's pay.

Ordered, To lie for consideration till Monday.

INTERNAL TAXES.

Mr. Davis moved the appointment of a committee to inquire into the expediency of repealing the acts imposing duties on stills and distilled spirits, on refined sugars, on sales at auction, and on pleasure carriages.

Mr. Davis said his object, in making this motion, was, that the House should accomplish that directly, which had been this session attempted in so circuitous a way as to embarrass and delay its proceedings. He saw no reason for going into a Committee of the Whole, in order to arrive at decisions that might better be made directly by the House itself.

On this motion a debate of considerable length ensued, in which, on the one side, the reference to a select committee, and, on the other, a reference to a Committee of the whole House was advocated. No decision was had, and of course the motion of Mr. D. was ordered to lie on the table.

Mr. Mitchill observed, that it was contemplated, in the President's Message, that it would be necessary to appropriate an annual sum for Naval purposes. It appeared, also, from the Message, that some doubt was entertained by the Executive of the competency of his power to employ superintendents, and to fix navy yards. He mentioned these circumstances with the view of offering a resolution that a committee may be formed

on the subject, who should inquire into the expediency of applying to naval purposes the proceeds of the sales of public vessels.

On the suggestion of the SPEAKER, Mr. MITCHILL moved the going into a Committee of the Whole on the state of the Union, in which he would make his proposed motion.

On this motion, a debate of considerable length ensued, in which Mr. DAVIS declared that he thought this the fit time to determine the propriety of that circuitous mode of procedure, which had been practised this session.

Mr. DAVIS, for reasons which he assigned at length, in which Mr. EUSTIS fully concurred, supported the propriety of a reference in the first instance to a select committee.

Messrs. GRISWOLD, RUTLEDGE, BAYARD, RANDOLPH, and DANA, supported a reference to a Committee of the Whole.

The House decided in favor of going into a Committee of the Whole; when

Mr. MITCHILL moved, that so much of the President's Message as relates to naval preparations and to the establishment of sites for naval purposes, be referred to a select committee, which was agreed to in Committee, confirmed in the House, and a committee of five appointed.

Mr. BAYARD, during the course of the debate—in allusion to the adoption yesterday of the resolution of Mr. RANDOLPH for reducing the Military Establishment, which he thought premature, not considering the House as sufficiently acquainted with the details of the subject to act upon it—said, that if gentlemen were for reducing the Army in whatever degree, or for abandoning it altogether, he should go with them. He would, on such occasion, be governed by the same principles which had hitherto guided him. He had heretofore been disposed to repose a liberal confidence in the Executive of the United States; and when an increase of our military force had been recommended by the President, he had invariably been for it; much more would he be disposed, when a reduction was recommended from the same quarter to sanction it by his vote. With the Executive rested the responsibility of the exterior defence of the nation; and if the Executive was of opinion that the nation was secure with a force of three, two, or one thousand, or without even a single man, he would concur with him in giving effect to such a conviction.

Mr. RANDOLPH was called up by these remarks. He had little thought that his motion, agreed to yesterday *sub silentio*, and without the least hesitation, would have been made the topic of such animated animadversion as he had heard to-day. He would tell the gentleman from Delaware, that his motion had neither been immature in substance, nor premature as to time. It would be recollected, that previous to its adoption, the Secretary of War had been called upon to furnish information to the House. He had furnished information, to his mind completely satisfactory. He had stated the establishment to be five thousand men; and his opinion that all the garrisons required only three thousand men. Could it, then, with any reason be called premature to act upon such information? If the gentleman from Delaware, or other gentlemen thought so, why not combat a decision at the time? Did they imagine that, without the expression of a murmur by them, the mover would himself rise and oppose his own motion?

As to the delay which had been noticed, as having taken place in the transaction of business, it was not to be ascribed to any particular mode of procedure; but to the unusual languor of the season; to the absence of several members of great weight; to the augmentation of new members not yet fully acquainted with the forms of business, and to the unusual mass of information presented to the House, which enlarged the field of action, and to the delays of printing arising from the unusual quantity of matter submitted.

INTERNAL TAXES.

Mr. BAYARD moved that the House resolve itself into a Committee of the Whole on the state of the Union, for the purpose of enabling him to offer a resolution to the following effect:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire into the expediency of repealing the laws laying duties on stills and distilled spirits, on refined sugar, on sales at auction, on pleasurable carriages, on stamps, and on postage of letters."

Mr. BAYARD made this motion for the purpose of placing the important subject contemplated by it in a train for decision. He thought it full time to commence our proceedings on it; and in his opinion, it was fit that the consideration of the subject, generally, should go before the Committee of Ways and Means. The subject was so important as to strike at the vital principles of our revenue. The repeal of the internal taxes involved a reduction of six hundred thousand dollars in our receipts. The propriety of such a reduction did not constitute a distinct subject for consideration, but depended upon the deductions made on a comprehensive view of our finances, which could only be taken by the Committee of Ways and Means, to whom was committed generally whatever regarded revenue.

If the minds of gentlemen, said Mr. B., were made up to abolish all the internal taxes, it must be to them perfectly immaterial to what committee a reference was made. He knew the flattering prospects held out by the President, and he hoped they would all be verified. But his own mind was not made up, nor did he know that the minds of other gentlemen were made up on the propriety of dispensing with these taxes. He was led to this inference by observing no official notice to such effect in the communications made by the Secretary of the Treasury. On the contrary, the Secretary had so made his calculations, predicated as they were upon the continuance of these taxes, that his calculations would be greatly deranged by dispensing with them. Mr. B. knew not that we were prepared to leap this precipice. If the public burdens could be reduced, he would be delighted with the act of reduction. Yet still, if the sum of six hundred thousand dollars, derived

from these taxes, could be dispensed with, doubts might be entertained whether the internal taxes were those which should be first either reduced or abolished. He held it to be a correct principle, that taxation should be equal, and that no one class of citizens should be burdened to the exemption of all other classes. From a slight consideration of the subject, he had found no other way of enabling our brethren to the westward to participate in the public burdens than by affording them an opportunity of paying their portion of internal revenue. It might appear, on investigation, that more substantial relief would be afforded to the various descriptions of our citizens, by continuing the internal taxes, and reducing those on imports: and if it should be thought proper to diminish the burden imposed on our Western citizens, he would ask whether that effect would not be more substantially accomplished by reducing the tax upon salt? It would be recollected that great opposition had been made to the imposition of this tax, which had been denominated oppressive, as it fell upon an article of necessity.

Attention ought, also, to be paid to the liability of several articles to be smuggled, the only mode of preventing which was well known to be a reduction of the duties.

Mr. B. stated these circumstances, not as evidences of having matured his own ideas; but to show the necessity of referring the subject to a committee, whose special duty it was to take a general view of the resources and expenses of the nation, and who, therefore, in the present stage of the session, were alone in a situation to make the requisite inquiry.

Mr. EUSTIS said that the reasons offered by the gentleman from Delaware were with him conclusive that this was not the proper time for considering the subject. Until we know the reductions in the expenditures of the Government that are to be made, it is impossible that we can say how far it will be expedient to reduce or abolish our taxes. We had not determined to what extent the Army or the Navy should be reduced, nor had we come to any ultimate decision on any reduction whatever. For these reasons he must oppose a decision at this time upon the subject, whether that decision was in this or any other shape.

Mr. BACON concurred with Mr. EUSTIS in considering any decision as at present premature.

Mr. RUTLEDGE viewed the subject as of great importance. He could not figure to his imagination one likely to occur this session of equal importance. The President contemplated a repeal of all the internal revenues, and the imposition of all taxes upon imported articles. The Secretary of the Treasury appears, by implication, to be of a different opinion, and contemplates a continuance of these duties. What is the object of the gentleman from Delaware? Why, delay; time for consideration, by reference of the subject to a committee most competent to inquire? As to the public burdens, every member on the floor had a common feeling. We do not wish to lay unnecessary taxes. But when taxes are laid, when they are uncomplained of, it was indeed deeply interesting without consideration to decide on their abolition. Mr. R. said, for himself, he should be embarrassed by being forced into an immediate decision. We want information before we are called upon to decide. The motion seeks that information. It sends the business to the Committee of Ways and Means, to whom it belongs of right. It is their duty to consider it, for whatever relates to revenue must go to them. Gentlemen cannot say that they are surprised. By the resolution, they are not called upon to decide upon the subject; they are only called upon to place it in a train for decision.

Mr. MACON hoped the business would be taken up, and the sooner it was done the better. It was certainly of great importance, and the earlier the House proceeded to consider it, the sooner would they be prepared for deciding upon it. If the vote of reference was final, the arguments of the gentleman from Massachusetts would apply. But this was not the case.

It had been said that the President had declared his opinion that we can dispense with these taxes. The statement was not correct. His opinion was contingent. He had said, we may dispense with these taxes in case we proportionably reduce the expenses.

As to the remarks made respecting the different opinions of the President and Secretary of the Treasury, they likewise were erroneous. Distinct views were taken by each. The President, contemplating a reduction in the expenses, intimates the expediency of repealing the internal taxes; whereas the Secretary of the Treasury, taking things as they are, states the effects of their continuance. From these circumstances, no diversity of opinion could be inferred.

Mr. M. concluded by expressing a hope that the expenses of the Government would be reduced, that the internal taxes would be taken off, and that immediate measures would be pursued for preparing the House for a final decision.

Mr. EUSTIS was alike hostile to the present motion and to that which had been made by the gentleman from Kentucky, who had yesterday introduced the subject. He had heard the motion with a sensation of uncommon surprise; for he was of opinion that the public attention should not be attracted, or the public sensation excited, till we should be able to determine the course proper to be pursued. He felt himself unprepared to decide, and believed other gentlemen were equally unprepared. He hoped that he cherished a suitable respect for the President of the United States, though he did not know that he would go so far as the gentleman from Delaware, and disband a whole army at his word.

The wisest course was to wait until information was obtained. This would in fact be gaining time. If the Committee of Ways and Means were to consider the subject, it must be under the present state of things. They could not take for granted what might or might not be done by Congress; and before Congress could decide, they must have information which they do not yet possess. He who, under present circumstances, attempted

to say to what length our retrenchments would go, and what taxes we could spare, might indeed be called a prophet.

We ought not, said Mr. E., to stir the public sensibility improperly or prematurely. By exciting that sensibility before we had determined how to act in future, impressions may be raised which we shall not be able to satisfy.

Mr. Smilie concurred in opinion with Mr. E., and moved, as the best mode of disposing of the subject, that the Committee rise.

Mr. Griswold declared himself against delay. He knew not why the House were not prepared to decide immediately. The President had introduced the subject, and if any sensibility had been excited, it must be ascribed to him, and not to us. Nor did he think that any ill effects would flow from attracting the public attention. The President did not know, when he addressed us, that we would be for a reduction of the expenses; yet, thinking as he did, it was highly proper in him to give his opinion to the House. So proposed to us, it would exhibit a want of respect to that Magistrate not to take it up immediately. Not to act upon it promptly would be subversive of the national tranquility after the attention of the public had been directed to it.

Mr. Smilie had thought the gentleman from Connecticut was too well acquainted with the proceedings of that House to say that the Committee of Ways and Means were prepared to act upon this subject. Did they know how far we would reduce the Army, the Navy, or the Judiciary?

Mr. Varnum hoped the Committee would rise. Any disposition of the subject was at present premature. As to the calculations of the Secretary, alluded to, they were made from the existing revenue, and all his deductions were made therefrom. The President had taken another view of the subject. Contemplating the probability of a reduction in our expenses, he had stated that, in such event, we could dispense with the internal taxes. But whether the contemplated reduction could be made, the House were not prepared to say. Of one thing he was sure, that not a single necessary tax would be abandoned.

Mr. Dana said, that more than three weeks have elapsed since the President's communication has been laid before us, and, during that time, a sense of decorum has not induced us to take up one of the most important parts of it. He certainly agreed with gentlemen that we ought to take up the subject and decide for ourselves. If we concur with the President, we shall repeal the laws; if we do not concur, we may, it is true, risk our popularity by opposing so favorite a measure with the people. But, placed as we shall be between popularity on the one hand, and duty on the other, as honest men we should do our duty. But certainly it is our duty now to examine the subject. Grant that the reduction in our expenses may extend to a million, though scarcely half that sum could be hoped for; still the question remains what taxes shall be diminished. He could not, for his part, feel all that horror of public sensibility that had been portrayed by the gentleman from Massachusetts. What have we to fear, suppose we interfere with that sensibility? If we do so in the discharge of our duty, he was perfectly willing it should be excited; nay, it would be useful to the people themselves.

Mr. Eustis was perfectly ready to meet the public sensibility, whether for or against us. We had already tried it both ways. He was much pleased with the respect professed by gentlemen for the public sensibility, and also for the communications of the President. But there were parts of those communications, which, notwithstanding the impatience of gentlemen, they would not be displeased at laying unacted upon, not merely three weeks, but three months.

Mr. Bayard did not expect an opposition to his motion from the quarter from which it came; for he had a right to expect as much deference to the President from the opposite, as from his own side. For his part he felt no terrors at meeting the whole, or any part of the President's communications. Whatever he recommended that was right, he would vote for, and whatever was wrong, he would oppose. Though his former habits had led him to cherish a respect for the President, of which he did not repent, yet he felt no servility that would lead him to repress an expression of his sentiments.

A gentleman from Pennsylvania had talked about reducing the Army, the Navy, and the Judiciary. But there were other expenses which the gentleman might have dwelt on. Why silent on the Legislature? Let us reduce the length of our sessions. It did not appear consistent in that gentleman to strike at the Judiciary, and other departments, and leave untouched whatever affected himself.

Mr. Randolph did not desire to occupy much of the time of the Committee, as he thought it immaterial whether the Committee rise or not. But he wished, for the information, and perhaps for the satisfaction, of the gentleman from Massachusetts, to state that, among other members, he was one who had not decided whether Government could dispense with the internal taxes. He hoped, and was inclined to believe, that they might be dispensed with. The Secretary of the Treasury had expressly stated that part of his report was speculative, viz: that part which inferred the effects of peace. The correctness of the opinion of the Secretary on this point must decide the House as to the propriety of giving up these taxes. He was one who, though he did not think a state of peace would materially affect the revenue, had not decided whether a reduction of the public impositions in this or that species of revenue should be made. He noticed these things, to prevent an impression being made on the public mind that the House were for precipitating a decision. As to the public sensation, he felt no alarm. He knew that our measures must depend upon the reductions we shall make.

Mr. R., for these reasons, was against any decision now; and had the gentleman from Kentucky pressed his motion yesterday, he was prepared to

move a postponement of it. In the mean time, there were other important topics involved in the Message that might be referred and acted upon.

Mr. Dana presumed that the honorable gentleman from Massachusetts had done him the honor of alluding to him in his remarks. He was not very solicitous that the subject should be inquired into, but since it was brought up, he must say that nothing short of the talents of the honorable gentleman could furnish a semblance of reason for not going immediately into the inquiry. That gentleman errs egregiously if he imagines that I can dread an investigation of any point involved in the President's Message. He would add, that whatever his particular opinion might be of the person to whom had been confided the Government of the nation, it became him only to see in him the First Magistrate of the country, and to treat him with correspondent respect, and to see in what he did, not the man, but the measure.

The question was then taken on the Committee rising, and lost—yeas 29, nays 48.

The reference to the Committee of Ways and Means was then carried, both in Committee and in the House, without a division.

The House adjourned till Monday.

Monday, January 4, 1802.

William Barry Grove, from North Carolina, appeared, produced his credentials, and took his seat in the House.

Ordered, That Mr. Milledge be appointed to the Committee of Ways and Means, in the room of Mr. Dickson, who is sick and unable to attend.

Petitions of sundry aliens residing in the county of Lancaster, in the State of Pennsylvania, were presented to the House and read, respectively praying a modification or repeal of the act of Congress, passed the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend, the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject."—Referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws respecting naturalization.

The Speaker laid before the House a letter from the Secretary of the Navy, enclosing a report from the Commissioners appointed under the act, entitled "An act for the better government of the Navy of the United States," passed the twenty-third of April, one thousand eight hundred, relative to the proceedings of the Board since their last report, dated the twenty-ninth of November, one thousand eight hundred; which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from Samuel Dexter, late Secretary of War, praying to be indemnified in the case of a suit now pending against him in the capacity aforesaid, in the court of the United States for the District of Columbia, on account of a contract entered into with a certain Joseph Hodgson, in behalf of the United States, for the rent of a house in the City of Washington, as a War Office, in the year one thousand eight hundred, and which, whilst occupied as aforesaid was consumed by fire.

Ordered, That the said letter be referred to Mr. Griswold, Mr. Hanna, Mr. Dennis, Mr. Eustis, and Mr. Nicholson, to examine and report their opinion thereupon to the House.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on the memorial of John Hobby, late Marshal of the District of Maine, referred to him by order of the House, on the fourteenth ultimo; which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting an account of the receipts and expenditures of the United States for the year one thousand seven hundred and ninety-nine; also, tables exhibiting the accounts of the collectors and supervisors of the revenue for the same year; which were read and ordered to lie on the table.

JUDICIARY SYSTEM.

Mr. Randolph moved that the House should go into a Committee of the Whole on the state of the Union, with the view of submitting three resolutions to the Committee, viz:

"*Resolved*, That it is expedient to inquire whether any, and what, alterations should be made in the Judicial Establishment of the United States.

"*Resolved*, That provision ought to be made for the impartial selection of juries.

"*Resolved*, That it is expedient to inquire whether any, and what, reductions can be made in the civil expenses of the Government of the United States."

The House accordingly went into Committee.

Mr. Bayard presumed an agreement to these resolutions would, in their present shape, meet with no opposition. It was impossible to determine what shape they would ultimately assume. The Judiciary system was doubtless susceptible of amendment, and if any proper amendments should be proposed, he would concur in their adoption. With respect to the second resolution, though he did not know that there was any necessity for altering the mode at present practised of selecting juries, not having heard of any complaints under it, yet, as the resolution only led to an inquiry into the subject, he would not object.

With regard to the last resolution, it was one in which we must all concur. The object, if attainable, would be extremely grateful to all of us.

The three resolutions were agreed to without a division. The Committee then rose, and reported them to the House.

On the report being taken up, Mr. Randolph moved that the consideration of the two first resolutions be postponed till the third Monday of January.

Mr. Bayard hoped the motion for postponement would not prevail. The propositions were abstract ones, leading to inquiry, and the sooner they were acted upon the better. The mode pursued by the gentlemen from Virginia, if his simple object was to give notice, was the least happy that he could

have devised, for it gave to gentlemen no opportunity to prepare themselves as they were totally unacquainted, in the present stage of the business, as to what would be the alterations proposed. If a committee were now appointed, they would have time to deliberate on a subject of the utmost importance—one so complicated as to require great attention. When their report was made, he would be one of those who would ask from the candor of the House time to consider it.

Mr. RANDOLPH said, he was at all times willing to accommodate gentlemen of every political description on proper occasions. Apprehending that his resolutions, if taken up in the House, would give rise to discussion, he had moved for their postponement, from a wish not to interfere with the desire of the gentleman from Pennsylvania, and other gentlemen, to act on the apportionment bill. As his motion for postponement appeared likely to be itself productive of discussion, by which the time of the House would be exhausted, and the means he used defeat the end he had in view, he would withdraw his motion.

The House then agreed to the resolutions without a division.

Mr. RANDOLPH moved the reference of the two first resolutions to the same committee.

He said, in reply to the gentleman from Delaware, that he made the motion respecting juries not because any complaint did at present exist of the exercise of the powers under which jurors were selected, but because they had not long since existed, and because in similar circumstances they might again exist. He was glad the gentleman from Delaware had no reason to complain of their present abuse. But this was no security against the future.

Mr. BAYARD said that he had spoken as he had done, not for the purpose of expressing any opinion that any abuse respecting juries had been recently removed under the present state of things; but to state that he had never heard of any complaints on this subject in the part of the Union from which he came; and he had particularly alluded to the mode of designating jurors in his State, which was by ballot. But if there were complaints in other parts of the Union, he would co-operate in any means that could be devised for removing them.

Mr. SMILIE said, that since the gentleman from Delaware had introduced the subject, and had declared that no complaints existed, he would say that complaints had existed, that just grounds for them existed, and that they had been expressed in the loudest tone. And he would appeal to the gentleman from Delaware whether any man could be safe who was at the mercy of a marshal, who was the mere creature of the President.

Mr. BAYARD.—While man continues as he is, there will be complaints on this subject. We are divided into parties. The people as well as the President must belong to one side or the other; and whether we have sheriffs chosen by the people or marshals appointed by the President the evil will still exist. He had no objection, if it were the wish of gentlemen, that the marshals should be appointed by the people; though we know that the people are as apt, nay, more apt, to be infected with violent political feelings than an Executive officer.

Mr. RANDOLPH said, that without desiring to exhaust the time of the House on a point where there was no difference of opinion, he could not permit the observation of the gentleman from Delaware to pass unnoticed; that an officer, holding a lucrative office, appointed by the President, and dependent upon his will, is as independent as a sheriff, elected in some States annually by the people, and in other States appointed in a manner calculated to insure his independence. He would instance the State of Virginia, in which the sheriffs were nominated by the justices of the county courts, who, it was understood, were to hold the office of sheriff in rotation. Will the gentleman say that these men, who are independent of the pleasure of any man, are liable to be made the same tools, with officers who hold their appointments at the absolute will of one man?

Mr. R. would further say, that the remark of the gentleman from Delaware, that the existence of no complaints had ever come to his ears, had excited his extreme astonishment. In North Carolina, he believed, no legal jury had been selected since the establishment of the Federal Government. In that State, in the State courts, all juries are first selected in the inferior courts, and then sent to the superior courts. He would ask, how, under these circumstances, a jury could be struck in a federal court in that State agreeably to law? In Virginia and Pennsylvania the independence of sheriffs is secured, therefore, no restrictions are imposed upon them in selecting juries; whereas, in the federal courts the Marshal is the abject creature of the Executive—and yet we are told the security is the same! Mr. R. did not wish to consume the time of the House; but when views are taken by gentlemen calculated, either as to fact or sentiment, to lead the public mind astray, if other gentlemen did not, he would invariably notice them.

Mr. BAYARD desired to explain. He had not meant to contend that sheriffs chosen for three years by the people were as dependent as similar officers appointed by the President. He had alluded to the effects which flowed from a marked division of parties. We were in all events subject to that evil. It was a truth that men deeply infected with party were more apt to be chosen by the people than by an Executive magistrate; because the people felt more strongly a degree of political fanaticism.

After some further debate, it was determined to refer the two first resolutions to a committee of seven, and the last to a committee of five members.

Ordered, That Mr. NICHOLSON, Mr. JOHN TALIAFERRO, Jr., Mr. GODDARD, Mr. RUTLEDGE, Mr. ISRAEL SMITH, Mr. HENDERSON, and Mr. BAILEY, be appointed a committee, pursuant to the first and second resolutions.

Ordered, That Mr. BACON, Mr. GROVE, Mr. ELMENDORF, Mr. HEMPHILL, and Mr. ABRAM TRIGG, be appointed a committee, pursuant to the third resolution.

APPORTIONMENT BILL.

The House again resolved itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. BAYARD moved to strike out the ratio of 33,000, for the purpose of substituting 30,000.

He was in favor of this last ratio, because it was the one within our Constitutional limits which left the fewest unrepresented fractions, and because he thought it very important that that ratio should be adopted, which would entitle the smaller States to at least two Representatives; that in case one of the Representatives were sick, or unavoidably absent, the State might not go unrepresented. Besides it was of great moment to a State, particularly to the State which he represented, that its Representative should have a coadjutor with whom to consult on its interests.

The ratio of 33,000 would be peculiarly severe in its operation on Delaware, as it would leave an unrepresented fraction of 29,000.

The ratio of 30,000 was still more to be preferred on general than on local principles. He had always been for increasing the strength of the Government of the United States; no further, it was true, than to enable it to protect itself from subversion or depression by the unconstitutional encroachments of the States. He might in some measure have derived these views from the relation in which he stood to a small State; for it was certain that the smaller States had a deeper interest in the Federal Government than the larger States; as, without the protection of that Government, they might be overwhelmed by the larger States.

He never had believed that the strength of the Government was to be increased by extending the power of the Executive. But he believed its strength would be increased by augmenting the numbers of that House, which would invigorate the affections of the people; and he believed that by thus increasing the energies of this body, more power would be conferred on the Government by an addition of ten members, than would be conferred by giving it an army of 10,000 men.

The gentleman from Virginia had denied that this House was the representative of the people, affirming it to be the representative of the States. Mr. B. hoped, if he misinterpreted his ideas, that the gentleman would explain.

Mr. RANDOLPH would explain. He had said that this House was not the representative of the people over the United States, but the representative of the people of the individual States in their sovereign State capacities.

Mr. BAYARD considered the opinion of the gentleman incorrect, and thought it extremely important that on this point correct ideas should be entertained. He viewed the representation in that House as national, and he considered himself as much the Representative of Virginia as the gentleman himself. In this House we have no other relation to the States than that which regards our origin. We form a great national body, designed for national purposes; and as soon as we come here we lose our State characters. The Government is of a mixed kind. In the Senate the States are completely and exclusively represented. But on this floor there subsists no relation to States. We are solely related to the people, and our representation is in proportion to the numbers of the people.

There was one argument to him conclusive. A majority of Representatives may bind a majority of States; and the Representatives of three or four States, forming that majority, may bind the whole Union.

Mr. B. knew that the arguments he had urged had been met by the expression of a fear that this body might gain an influence that would outweigh the several States; and that this Government might become too strong for the governments of the States. But his fear was that the governments of the States might become too strong for this Government. What reason was there to apprehend danger from the augmentation of the members of this House from about one hundred and forty, of which it would consist according to the ratio of 33,000, to one hundred and fifty-four, of which it would consist according to that of 30,000? Can the States apprehend any danger? For instance can Virginia entertain alarm? When at present she sends here nineteen members, and has in her own legislature from one hundred and ninety to two hundred members; and when, according to the two ratios proposed, she will send either twenty-two or twenty-four members? Is it conceivable that the confidence of the citizens of Virginia can be shaken in her own State representation, by this inconsiderable addition to her federal representation?

Mr. B. concluded by recapitulating his arguments in favor of the ratio of 30,000.

Mr. RANDOLPH considered this question as involving two points: The one, which was of inferior magnitude, whether the representation upon this floor should be increased, by a few members, with a view to the relative weight of this or that State; the other, which was of the last importance, whether it should be so increased for the purpose avowed by the gentleman from Delaware, of augmenting the power, as yet too small, of this Government, and of course so far diminishing that of the States. Thus the question, in itself a matter of comparatively small moment, becomes of serious consequence as a test of political opinion. I wish to put it upon that issue, to see whether a majority of this House are disposed to advocate the position of that gentleman. Without entering into the question, whether the power devolved on the General Government by the Constitution, exceeded that measure, which, in its formation, he would have been willing to bestow, he had no hesitation in declaring that it did not fall short of it; that he dreaded its extension, by whatever means, and should always oppose measures whose object or tendency it was to effect it. The gentleman tells you, sir, that from the number of

its connexions with the people, the State governments possess their confidence in a high degree: that there is danger of an abuse of this confidence; that through it the large States may thwart and control the General Government; that it then behooves the small States to come into the measure which he proposes, from a consideration that it will operate, in that way, to reduce the power of the large States. An increase of representation, we are told, will do more towards increasing the power of the General Government than a military force. But when military and naval preparations and every other expedient devised for carrying that power beyond the Constitutional limit has failed, I trust that this House is not to be sent on that forlorn hope, at the instance of those whose interest it is in the distribution of power between the several branches of this Government, to transfer as much of it as possible to the other branches; who have, in the pursuit of this system, contended that we did not possess a discretion over the public money, but were bound to appropriate it on requisition from the Executive.

This House, I trust, is not become an engine in such hands for engulfing into the vortex of the General Government the powers of the States, and then settling the distribution of those powers. They will recollect that the exercise of this power, to be wrested from the States, is to be shared by co-ordinate branches of the Government, where the weight which regulates this body is felt, either partially, or not at all; I mean the population of the States. If a consolidation into one great National Government is to take place; if ever the State governments are to be set aside; if the powers of this Government are to extend beyond objects federal in their nature, let us not suppose that the people of the United States would freely consent to the exercise of those powers by a Government which, if viewed as the Government of an individual sovereignty, and not as that of a number of confederated States, contains principles which are highly objectionable; which are even repugnant to our received truths respecting the nature of Government. For, sir, I hold that if there be a principle fixed in politics, it is that the people of every country should have their equal weight in the direction of their Government. But suppose the State governments gone, or existing as the mere skeletons of power while this Government, in high political health and vigor, is in the exercise of every right belonging to an individual sovereignty. Look to the distribution of those powers; see by whom they are to be exercised. In this branch alone you will find the Republican character; in the other it is not to be seen. There is that principle virtually acknowledged which gives to Old Sarum and Newton a representation equal to that of London; a principle which is believed by some essential to the existence of that well-ordered Government, or perhaps of any other which they are willing to bestow upon man; the principle that the governors are not to be under the complete control of the governed; in other words, that the majority ought not to govern. In the appointment of the Executive the same spirit prevails, although somewhat modified. When a Government thus constructed is to exercise the power, our surprise is somewhat diminished that those who would possess so undue a share of that power, were it once consolidated, should feel disposed to augment the influence of the Government; nor that those who would be dispossessed, in that event, of their full share in the direction of affairs, should be equally anxious to restrict it. But the Committee will perceive the wide distinction between this Government and that of an individual State. The one is simple, and all parts of it are referable to a great principle; the other is the creature of compromise, instituted for Federal purposes, to which the States were incompetent. The proposed devolution of power was so great, so intimately affecting the wealth and population of the States, as to excite in the large States an invincible repugnance to part with it, unless its exercise was in some measure regulated by the quantum of the population and wealth. Hence the origin of this House, elected by the States, in the ratio of population and wealth; while in the Senate the sovereignties, as such, are allowed an equal representation, and the influence in the appointment of the Executive is compounded of these. And even this power of choosing the Chief Magistrate of the Union, is, in a certain event, which has already occurred, and which will be memorable as long as this Government endures, to be exercised by this House, voting not so that the delegations shall represent the population and wealth of the States, but their sovereignty only. Did not the gentleman from Delaware feel his weight on this floor to be equal to that of nineteen Delegates from Virginia? This spirit of compromise, sir, I conceive to be the key of the Government. It is the principle which pervades it throughout and resolves every question which arises on its nature. This shows, sir, that it is to exercise Federal powers, leaving to the States the regulation of internal concerns. For this object, it is constructed so as to compose the jarring interests of the States. Extend it further, let it embrace objects for which it was not designed, let it trench upon the powers of the States; make it a National Government, in the sense contended for, and it becomes a Government vicious in its organization, since the reasons for that organization cease to apply whenever it ceases to be a Government of States, and becomes a Government of the people in the aggregate. And yet it is affirmed that we are not the Representatives of the States—that is, of the people of those States in their respective sovereign capacities—but of the aggregate of the people of the United States, in their national capacity. If that be the case, should we not apply the ratio to the aggregate of persons entitled to representation in the United States, and not to those portions in the respective States? If this be true, where is the Federal character of this Government? And yet the gentleman affirms that he is the Representative as much of Virginia as Delaware, and the Representatives of the first are equally the Representatives of the last. Wherefore? Because his acts are to bind Virginia as well as Delaware. If this proved anything it would prove that the Senators of each State represented all the States, for certainly their acts are binding upon them. But if the gentleman does represent Virginia, certain I am that I do not represent Delaware; I am not elected by the people of that State; I receive no credentials from it to this House; I hold not myself responsible to it. I know it not on this floor, except through the medium of its legitimate organ, through which it speaks to us, its Representative. Upon this view, sir, what becomes of the complaint that the gentleman is destitute of a colleague with whom he may consult; possessing as he does the whole Committee for his colleagues?

As another motive to accede to his proposition we are told that it will increase the relative weight of one or more small States. I hope I shall be pardoned for observing that this motive has been selected with singular infelicity, since it is addressed to the large States, who may, without improper imputation, be supposed of opinion that the weight of the small States is already sufficiently felt, and that it does not behoove them to give their aid to increase that weight in this branch of the Legislature, to the comparative diminution of their own, to the utmost limits which the Constitution will permit.

Mr. R. concluded by observing, that he thought the House would be sufficiently numerous, at the ratio contemplated by the bill, for all Federal purposes; that to increase the representation to meet the views of the gentleman from Delaware, would, in their fullest extent, were it practicable, supplant the State governments. That the difference of five or ten members more or less on that floor was in itself unimportant. That if the ratio had been fixed originally at thirty thousand he should have felt little disposed to increase it, but he would not carry it back merely to answer the purpose for which it was fixed at thirty-three, the accommodation of certain States—much less with a view to decrease the influence of the State governments.

Mr. Griswold had at the first been for a higher ratio than that of 33,000; and he would still be in favor of it did there appear any chance of its success. But as the dispute seemed to be between the ratios of 33,000 and 30,000, and as the former was the worst possible ratio that could be adopted, as it left the greatest aggregate of fractions, and operated with the greatest severity upon the small States, he should be for that of 30,000 in preference.

He had been surprised at the remark which had fallen from the gentleman from Virginia, that the members on the floor of this House were not the Representatives of the people; and he was more particularly astonished at this remark coming from the large States. He deemed the principle on which it was founded a dangerous principle, one subversive of the Government, and in the face of the Constitution, one which called upon every friend of the Constitution, and of the national harmony, to repel it, as calculated to confer on the large States all power.

What does the Constitution say: "We the people of the United States," (not of Virginia, &c.,) "form a Government." It is afterwards declared to be established for the United States. It is the Constitution of the people of the United States. It constitutes a Senate and House of Representatives. Whose Senate and whose House of Representatives, he would ask? The Constitution would answer, not of the particular States, but of the United States. Is not this the plain reading of the Constitution? Can any gentleman say, he represents only Pennsylvania, or Virginia? No, sir, he comes not to consult the interest of Pennsylvania, or Virginia, but of the whole United States.

If the opposite principle be adopted, viz: that members are the Representatives of the States from which they come, then are the effects obvious. A combination of the Representatives of four States, composing a majority of this House, may overwhelm the whole interests of the United States. It had been said out of doors that such a prospect existed. He had not believed it. He did not wish still to believe it; and he hoped the Committee, seeing the danger of such an impression, would avoid whatever went to countenance it.

Mr. Bacon.—The question before the Committee is an interesting one, and gentlemen who have risen to speak to it, appear to feel it to be such. There is reason to believe that whenever the question is determined, it will be done on uniform and moderate principles. It is to be hoped that few, if any, will be influenced to act by a fondness for extremes. Because I cannot be gratified by the adoption of one extreme, I will not rush to the opposite one.

A principal reason that is offered in favor of the amendment seems to be, the accommodation of Delaware; it is to relieve that State from a large fraction, and to give her two members in the House of Representatives.

I would pay the same respect to the State of Delaware that I would pay to any other State of the Union in like circumstances. The reason that is urged for striking out thirty-three, with a view to insert thirty, so far as it relates to the accommodation of Delaware, must, as I conceive, be predicated either on the principles of the Constitution, or on the principles of equity.

By the Constitution they are entitled to two members in the Senate. This, I believe, is about five times their equal proportion of representation in that branch of the Legislature, if the calculation was to be made either on their numbers or their property. But, in answer to this, it is said, and I readily admit that the answer is a just one: This is a right which they hold by mutual compact, that is, by the Constitution; and therefore ought not to be taken into consideration in determining the present question.

On the other hand, it must also be admitted that, by the same Constitution, they are entitled to that proportion of representation, and no more, in the

other branch of the Legislature, which may fall to them on any given uniform ratio which Congress are authorized and see fit to adopt. This position is no less equitable, sound, and rational, than the other; consequently, no argument can, as I conceive, be drawn from the principles of the Constitution in favor of the proposed amendment, as it may affect the particular case of Delaware.

Again: If leaving the general principles of the Constitution we recur to mere principles of equity, I believe the result will be nearly the same in both cases.

On mere principles of equity, I suppose it will be admitted that each State in the Union is entitled to a representation in Congress proportioned either to the number of its inhabitants, or to what it contributes to the support of the Government, which are considered as amounting to nearly the same thing. Calculating on these principles, then, the State of Delaware, even on the present ratio of 33,000, will have nearly one third more than its equal proportion of representation in the Congress. I can see no reason, therefore, to alter the present ratio, and thereby to create an annual and permanent expense of twenty or thirty thousand dollars, only for the sake of lowering a fraction and thereby adding one more Representative to the State of Delaware; and especially when I consider that, as the ratio now stands, she has more than her full proportion of representation in the Legislature; and that, whether the calculation is made on mere principles of equity, or on the common or the most rigid principles of the Constitution.

It has also been mentioned, as a reason for lowering the present ratio of representation, that the extent of election districts will thereby be contracted, and that, in this way, an opportunity will be furnished for Electors to become acquainted with the sentiments and conduct of their Representatives, so as not to be under the necessity of acting wholly in the dark in the execution of the right of suffrage.

I am apprehensive that recent experience has taught us that it is not necessary at this day to lower the ratio, for the purpose last mentioned. From a uniform practice upon the present ratio, which has now become familiar, and the repeated elections which have taken place under it, the object mentioned seems to have been already attained. It is obvious, I suppose, that a very considerable change has lately taken place in the political sentiments of our fellow-citizens throughout the United States. This change of sentiment is supposed by many to be for the better, and that it has been effected by the diffusion of information among the people, and a more thorough and competent acquaintance with the sentiments and characters of their Representatives and candidates. Those, therefore, who believe that such interesting and salutary effects have occurred from a uniform practice on the present ratio, and that the effects of the same practice are meliorating from year to year, and from one election to another; such, I say, who believe this to be our case while practising on the present ratio, cannot consistently, as I conceive, wish to have it altered with a view to try a different one, since this has been found to answer the end desired.

There are others, no doubt, who verily believe that the former days were better than these, and that the elections that were made on the present ratio, when it bore a much greater proportion to the whole number of citizens than it now does, were more wisely conducted, and that they were attended with much more salutary effects than those are which lately have been made. Those who are of this opinion, I must suppose, cannot consistently wish to lower the ratio, so that it may bear a still less proportion to the whole number of citizens than it even now does, for this would tend to enhance and not to remedy the evil complained of. Let the subject, then, be viewed in either of those lights which have now been mentioned, and I cannot see but that if we act consistently, as I presume we shall, that it will be almost the unanimous opinion of the Committee that it is not expedient to adopt the motion, and to strike out the number 33, with a view to insert 30.

It has been suggested that we ought to increase the representation, because we shall thereby increase the confidence of the people in the Government. I suspect this to be a reason that exists in theory rather than in fact. So far as my observation has extended, I have not found that the confidence of a people in their government is always in proportion to the number of those who administer it; nor yet that the confidence which is reposed in the different departments of the same Government is in exact proportion to the numbers which compose those departments respectively. How is it in our own Governments, both National and State? I need not descend to a minute comparison; I will only observe that, by showing a disposition to increase our own numbers beyond what is necessary, would, in my opinion, tend rather to diminish than to increase the confidence of the people in their Government.

Mr. Davis.—Two ratios are brought to our view, those of 30,000 and 33,000. The former leaves unrepresented fractions amounting to 15,700; the latter leaves fractions amounting to 221,000. It would be most equitable to adopt the former but for its operation upon a number of States. Six States, of which Kentucky is one, will be peculiarly affected by it. They will relatively lose their portion of representation in a great degree. They will lose as many members as the ten remaining States, whereas by the ratio of 33,000 the evil will be, as to those States, greatly diminished. For this reason, notwithstanding the unpleasant situation of Delaware, Mr. D. must vote for the ratio of 33,000.

Mr. Macon never had considered this as a consolidated Government, which might be inferred from the arguments of some gentlemen. The Constitution established a directly opposite principle. It declared the Constitution to be established for the United States, not for the people; and in all its parts it bore a Federal complexion. In the arguments made use of when it was adopted, it had always been declared by its friends to

be Federal; and the Representatives were particularly designated as the Representatives of particular States.

Mr. M. did not think 30,000 too small a ratio. He wished the people to know their Representatives, and the more numerous the last were, the greater was the chance of this knowledge; nor did he think that the enlarged representation would augment the expenses of the Government. The House knew he had never been prodigal of public money. He believed we should save money by an enlarged representation, for the public expenses did not proceed so much from the compensation rendered to the members of this House, as from the adoption of improper measures, which an enlarged representation would defeat.

With regard to the abstract arguments made, did not the dispute about different numbers show that we are all the Representatives of particular States? Else, why take Delaware as the minimum and Virginia as the maximum? This demonstrated the question to be one entirely of calculation.

Mr. S. Smith had listened to the discourses of gentlemen on the abstract question introduced, and yet he had found that every gentleman, before he sat down, proved himself to be the Representative of a particular State, after all that he had said. The truth was, the point was one altogether of calculation. The gentleman from Connecticut had been strong for 40,000; and now, after making his calculation, he agrees with his friend from Delaware in preferring 30,000; not, perhaps, because it peculiarly benefits Connecticut, but because it benefits the party with whom he acts. Let us view the gentleman from Delaware, and we see him pursuing the interests of Delaware, and caring nothing for other States, and thus he shows us that he is the Representative of the State of Delaware. The gentleman from North Carolina, heretofore always economical of the public money, is for once prodigal in wishing an enlarged representation; and why? Because he thereby will promote the interest of his State. This was perfectly fair and right; and if he, Mr. S., were similarly situated he should act in the same way. But, Maryland happened to be differently situated. The ratio of 30,000 would leave a fraction to her of 29,000. Could it, therefore, be expected that any member of that State would be for that ratio?

Mr. Smilie observed that he had originally been in favor of the ratio of 33,000, from the influence of general principles. But since one gentleman had shifted from 40,000 to 30,000, from considerations of policy, and other gentlemen seemed to feel the same motives, he thought it was high time for each State to take care of itself. He would, therefore, vote for the ratio of 33,000.

Mr. Dana said he would not question the purity of the principles of the gentleman from Maryland or Pennsylvania. Yet he must say that, however honorable to the frankness of character of the gentleman from Pennsylvania, was the avowal of his sentiments, yet it did no honor to the principles of equity which ought to govern that House. As to the question of confidence or consolidation, he deemed it a mere question of words. It was right that we should consult the interests of our constituents, because we were better acquainted with them than with those of the other States. But that we should exclusively consult them, to the disregard of the general principles of justice, of the great interests of the United States; such a principle ought not to be tolerated. Though the question was, in a great measure, one of calculation, yet he was astonished at an avowal of one gentleman to conform to unjust principles because another gentleman had in his opinion adopted the same course.

Mr. D. then went into a detailed comparison of the different bearings of the two ratios, from which he was in favor of 30,000.

He then proceeded. The question between the two ratios is not simply important as it relates to this House; but as it settles the relative weight of the States in the election of our two first Executive magistrates. Just as you diminish the ratio you increase the weight of the large States; and this may be done until you shall give the large States the entire monopoly of Executive power. He would not say that the large States were not entitled to a monopoly of this power. He would not say that a majority of talents and virtue correspondent to the magnitude of the States, did not subsist; but until he was sure of this, he would not be for conferring a monopoly of power on four States. Those States being the most important, it may be thought right to take the Chief Executive Magistrate from them, and the other chief officers; and this may become so much a matter of course, that it may be deemed injurious to disturb the established harmony of things. For these reasons Mr. D. was against the ratio which gave undue weight to the large States.

Mr. Eustis said, there was a sound principle which applied itself to the elucidation of this question. The present ratio had given general satisfaction. As to the abstract questions which had been discussed, they were wholly immaterial. Let us go back and view the circumstances under which this House was organized. It was so constituted as to afford the people of the United States an opportunity of expressing their feelings and representing their interests. Has any inconvenience resulted from the ratio of thirty-three thousand, long since adopted? Has it not been recommended by experience? And will not any desire to augment the representation be fully satisfied by the increase from one hundred and six to one hundred and forty-two? Whether the number was great or small, he had no idea that the powers of the House could receive correspondent augmentation or diminution. He believed that a body of fifty men would not want decision to oppose unconstitutional encroachments, and that a body of one thousand would not dare to transcend Constitutional powers.

Though he felt for the situation of Delaware, yet, if the principle was correct that the ratio of thirty-three thousand would constitute a body sufficiently large, we must, of necessity, abandon any particular regard to that State.

There was another circumstance worthy of mention. A diminution of power was abhorrent to all bodies. If a great increase of the members of the House increased its power, and a precedent be now set of greatly enlarging our number, it may be followed in future, until the House becomes so large as to render it a nuisance.

The Committee rose, reported progress, and had leave to sit again.

Tuesday, January 5.

A memorial of sundry aliens, residing in the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House, and read, praying a repeal of an act of Congress, passed the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend, the act entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject;'" which was referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in bill or bills for a revision and amendment of the laws respecting naturalization.

CONNECTICUT RESERVE.

A petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut antecedent to the trial before the Court of Commissioners between the States of Pennsylvania and Connecticut, was presented to the House, and read, praying that the authority of the Supreme Court of the United States to re-examine and reverse or affirm a final judgment or decree in the cases provided for in the 25th section of the Judiciary act, may be extended or declared already to extend to cases of criminal prosecutions as well as of civil actions; that original and exclusive jurisdiction may, agreeably to the Constitution, be given to the proper courts of the United States in all controversies between citizens of the same State claiming lands under grants of different States; and that the Supreme Court may be empowered, at their discretion, to direct the trial of such causes, to be holden in districts other than the States in which the two opposite titles are claimed, (unless the claimant under the other than that in which the land is, shall waive the right of trial in a Federal court,) or that some other adequate relief may be granted in respect to the disputed claims of the petitioners for the lands aforesaid.

Mr. Goddard moved to refer the petition to the committee appointed to inquire into the expediency of making any alterations in the Judicial Establishment of the United States.

Those who supported the reference were Mr. Goddard, Mr. Bayard, Mr. T. Morris, Mr. Bacon, Mr. Hemphill, and Mr. Rutledge.

Those who opposed the reference were Mr. Smilie and Mr. Randolph.

In support of the reference it was declared that all petitions couched in decent terms ought to be referred, else the House would be precipitated into decisions without possessing correct information; that this case was important in its effects upon a large class of citizens, who had a right to be attended to by Congress; that the controversy to which the petition related, was of long standing, and that it became that House to treat the prayer of the memorialists with respect; that it was believed that Congress neither could or would interpose; and that, if such were the determination of Congress, expressed after mature consideration, it would tend more effectually than a present suppression of the petition to deprive the memorialists of any expectations derived from the hoped-for interposition of the Federal Legislature; that, in this result, Pennsylvania was as deeply interested as the petitioners.

On the other hand, it was declared that Congress had no power to interfere; that the question was entirely judicial, and had been decided by the first judicial authoritips of the nation; that the rights of Pennsylvania were conclusively established; and that Congress could do nothing that would impair them.

A reference at last obtained, by general consent, under the suggestion that the memorial prayed for a revision of the Judiciary System, so far as relates to the selection of juries.

PERFECT MOTION.

A memorial was presented from Lewis Dupre, of which the following is a copy:

To the Government of the United States in Congress assembled.

Dear Friends: It has pleased Almighty God (for purposes most extensively benevolent) to discover to me the principles of the *perfect* motion, (vulgarly called *perpetual* motion,) for which I trust I am thankful, (as, no doubt, every citizen of the super-eminently favored land of Columbia ought to be,) for the peculiar blessing.

In prosecuting a suit for the customarily exclusive pecuniary advantages which the practice of ancient liberality has established, as the reward of *persevering* ingenuity and industry, I meet with difficulties insurmountable without the aid of Legislative interference.

I, therefore, trust that your justice and republican patriotism will induce you to take the subject into consideration, and as speedily as possible obtain, from the critical casket where it remains deposited, the precious bounty, to effectuate which you hereby possess a promise of the cordial co-operation of your real friend and fellow-citizen,

LEWIS DUPRE.

50th day of perfect motion, Jan. 1, 1802.

On the motion to refer the above petition to a select committee.

Mr. Mitchill said, if there was a case in which it was proper to decide against the reference of a petition to a committee, that was such an one. It was evident on the face of the petition just read, that it was a strange, disordered composition; and the object which the petitioner pretended to have attained, was contrary to the physical laws of matter. All experience and all philosophy was opposed to the notions of the kind contained in the paper before the House. He hoped there would be no reference of such a visionary scheme to any committee whatever. It was not worthy of the

National Legislature to give a serious attention to physical impossibilities.

After some debate about the disposal of the petition, it was ordered to be referred to a select committee; and Mr. Southard, Mr. Lowndes, and Mr. Mitchill, were appointed.

APPORTIONMENT BILL.

The House again resolved itself into a Committee of the whole House on the bill for the apportionment of Representatives among the several States, according to the second enumeration.

Mr. Bayard said, he should beg the indulgence, before the question was taken, of a few observations is reply to the arguments of the gentlemen opposed to him. The peculiar interest in the subject which attached to his State would apologize for the trouble he had given the Committee. It had been said that Delaware ought to be satisfied; that, if she had ground to complain of the want of a complete representation on this floor, the equality she enjoyed in the Senate, and her weight in the election of President, were juster grounds of umbrage to the larger States. He was surprised at such an intimation.

The Constitution had settled the political pretensions of the States, and each one had a right to insist upon the full advantages which justly belonged to it on Constitutional grounds. Delaware was satisfied with the Constitution; but it was not to be expected she would yield a pretension she could rightfully claim.

In the present instance, what was insisted on, he could demonstrate to be equitable.

It was only asked, that the State should be represented in the proportion she was taxed, in the proportion she supported the burdens of the Union.

In the apportionment of the direct tax lately levied upon the United States, the quota of Delaware, relative to Virginia, was as one to eleven; relative to Pennsylvania, as one to seven. The apportionment of representation upon the ratio adopted by the present bill, was in relation to Virginia, as one to twenty-two; and in relation to Pennsylvania, as one to eighteen.

He would appeal to the candor of the House, if it could be just that the proportion of taxation should be double the proportion of representation. The Constitution had connected them, and evidently contemplated thir proceeding in the same progression.

He could not help indulging a hope, that neither the apathy nor the interests of the larger States would induce them to oppose the justice of a case which was so glaring.

He would add, on this head, that the white population of Virginia, in relation to Delaware, did not exceed the proportion of nine to one; and he did not believe that a greater portion was paid by Virginia of the taxes derived from excises and the duties upon imports, which composed the principal pecuniary burden of the United States.

In the militia requisitions, Delaware stood, in relation to Virginia, as one to ten; in relation to Pennsylvania, as one to nine. In short, turning his views to every object, he could discover no equality between the burdens supported and the representation allowed to Delaware by the present bill. On the contrary, the ratio of her burdens was, in all cases, double; and in many, more than double that of her representation.

Some gentlemen had asserted that it was indifferent to what part of the nation the unrepresented fraction belonged, whether to a small or to a large State.

If, said Mr. B., we had interests as a nation only, and not as States, the assertion might be correct. But was he to be told it was the same thing to Virginia, whether she had twenty-two or twenty-three members, as it was to Delaware, whether she had one or two? With a view to every State consideration, the loss of a member to Delaware was equal to the loss of eleven to Virginia. Suppose Virginia to have twenty-two representatives, Delaware two, and the other States in their several proportions, and a general agreement is made to strike off one-half of the representation. The loss to Delaware would be one member, to Virginia eleven, and the other States in proportion.

Mr B. said, he might console himself and comfort his constituents, if it were practicable, and gentlemen were disposed to equalize the ratio of taxation with that of representation. But of this he had no hope, either as a thing feasible under the Constitution, or as a thing to which the House would be ever brought to consent. He had no other resource, than to rely that the magnanimity of the larger States would protect from injustice and oppression their smallest and weakest sister.

Mr. B. said, he was not governed in the opinion he had adopted in relation to the ratio by the consideration solely of State interest. His great object was to augment the members of the Representative branch of the Government. He believed that the strength of the National Government existed in that House; and by increasing the members of this House, its weight and strength were augmented. He confessed it to be his object to make the General Government so strong as to be able, with equal certainty, to control the largest as the smallest States. It was now able to govern the small States; but if one of the largest should deny and resist the authority of the Union, he doubted the ability of the Government to enforce obedience to its laws. He had occasionally advocated an increase of Executive authority. He had then been charged with views unfriendly to republicanism. He was now contending for an increase of the weight of the popular branch of the Government.

He was actuated by the same motive which had always induced him to give his support to the Executive. His uniform object had been, and would continue to be, to maintain the independence of the General Government, and to render it efficient enough to curb the ambition, and to repress the dominating spirit which was inseparable from the large States. His voice had never been to vary the relative powers of the Executive and Representative branches; but generally by increasing

the strength to confirm the stability of the Government. An opportunity now presented itself of promoting the same object by augmenting the weight of the popular branch; he embraced it with more zeal than he had ever felt in the support of the Executive prerogative. He rejoiced in an occasion which enabled him to manifest, that the true object of his views was not inimical to the equal rights and Constitutional liberties of his country.

He was firmly convinced that the House of Representatives was, and necessarily would be, the main pillar of the General Government. While this branch retained the attachment and possessed the confidence of the nation, the Government would endure, but if any State could succeed in weaning the affections of the people from this House, and transferring their confidence exclusively to the States, the Government would perish. He wished to enlarge the field of action and employment under this Government. So small a number occupy the ground upon the floor of this House, that the talents and ambition of the mass of men aspiring to distinction are directed to State objects, and seeking the aggrandizement of the States, eventually become hostile to the General Government. The representation of the country was too sparse, it was not sufficiently united and bound to the bosom of the nation.

The same sympathy and confidence did not subsist between a Representative and a constituent when widely separated. Under the State governments, the representatives proceeded from every neighborhood. They were well known, connected by common interests and friendship, and thence enjoyed the entire confidence of their constituents. Whereas, a Representative in this House is known by name only, to the greater number of those who elect him.

This evil will always remain, but it may be diminished. A gentleman from Virginia (Mr. Randolph) expressed his apprehensions that, by augmenting the members of this House, the splendor of the State Legislatures would be obscured, and they might ultimately dwindle into insignificance. Mr. B. said, that it was certainly strange that when Virginia alone had a House of Representatives composed of 190 members, such an apprehension should be expressed, when it was proposed to allow to all the United States only 156. In her State Legislature, Virginia would have 190 members, when her representation here would consist only of twenty-four.

It had been insinuated that he was unfriendly to the State governments. He declared the insinuation to be without the smallest foundation. On the contrary, his principles and conduct demonstrated his attachment to those governments. The safety of the State governments reposed upon the strength of the General Government. The Constitution expressly guaranties the integrity of the States. He could conceive of no motive which could lead to the abolition of the State governments. Suppose them abolished, what advantage would the inhabitants of a small State derive. They are melted down into a national mass, but they acquire nothing which they did not enjoy before, nor anything which every one does not enjoy in common with them. The insinuation supposes some greater advantage or greater honor, in living in a large State than in a small one. Of any such thing, he was not in the smallest degree sensible. He felt the same satisfaction, and was quite as proud to represent the State of Delaware, as he could be to represent a district of Virginia. If the case was otherwise, and he could feel any little pride in saying he belonged to a large State, it was a feeling which a trifling change of place might gratify. But, said Mr. B., the people of the small States have as great a stake in their governments as those of the large.

Upon those governments depend their peculiar laws, their moral and religious institutions, which have fashioned their manners, and habits, and sentiments, and opinions. It is impossible to imagine that the people of any State would be willing to see the system of rights and obligations, of wrongs and remedies, belonging to private life, which has been hallowed and consecrated by antiquity and usage, liable to be broken down by the powers of a General Government.

Is this supposed, too, to be the project of the Eastern gentlemen? For his part, he was infinitely more apprehensive, that the disposition of the Eastern people was to separate, rather than politically to amalgamate themselves with the Southern.

Taking an opposite view of the subject, Mr. B. said, he could discover motives which might lead the aspiring men of large States to seek the depression of the General Government. The General Government removed, they stood like the lofty oaks among the brambles of the forest.

All experience had shown political bodies, equally with individuals, stimulated or impelled by the passion of aggrandizement. It was possible for the great States to see an interest in the depression or dissolution of the Federal Union; but it was impossible for the small States to derive an advantage from the abolition of the State authorities. The danger, therefore, to be apprehended, was a dissolution of the Union by the large States, and not a consolidation by the small.

It had been denied by a gentleman from Virginia, (Mr. Randolph,) that this House represented the people of the United States; and asserted that we are to be considered on this floor as the Representatives of the people of the States. By this he understood that the representation of each State were to be considered as representing only the people of their own State. This doctrine he considered as repugnant to the nature of the Government, and tending to efface its leading features. The gentleman had recourse, for the support of his position, to the words of the Constitution, which declare that the Representatives should be chosen "by the people of the several States."

In fact, by the laws of the several States, and particularly of Virginia, the Representatives were chosen in districts; and if there was anything in

the gentleman's argument, the members from that State ought not to be severally considered Representatives of the State, but of the particular districts for which they were chosen.

Mr. B. here quoted the provisions on the same subject, of the constitutions of Virginia, North Carolina, and Pennsylvania; and remarked that the expression more strongly confined the election of the members of the State Legislatures to persons residing in the several counties; and observed that there would be the same propriety in contending that the members of the State Legislatures were not to be considered as representatives of the whole State, but each of the respective county by which he was chosen.

Much had been said about consolidation, with little attention to the subject to which the term was applied. Nobody could deny that the General Government was a consolidated Government, to the extent of its powers. The States remained unconsolidated, but the powers delegated to the General Government were consolidated. Within the sphere of its power, there was the same unity of action as in the State governments. The Government was created for national purposes, and was constructed on national principles. Its powers are limited, but, in the exercise of its powers, it acts as a national, and not as a federate body. Mr. B. here read the letter of General Washington to the President of the Old Congress, announcing the adoption of the Constitution; and particularly remarked on the following: "In all 'deliberations on this subject we kept steadily in 'view, that which appears to us the general interest of every true American, the consolidation of 'our Union, in which is involved our prosperity, 'felicity, and safety, perhaps our national existence."

The sentiments of the letter maintained the doctrines for which he contended. It was the source of peculiar gratification to have the support of an authority which once commanded universal respect, and for which his own reverence had not in the smallest degree abated.

Mr. B. said, he had been reproached with a wish to increase the power of the Government; that failing, to increase the power of one branch, as a last resort, an attempt was now made to increase that of another. Nothing could be more unfounded than this charge. The measure he proposed added nothing to the powers of any branch of the Government. It was simply to increase the number of hands in which the existing power was to be deposited. The point of difference between him and the gentlemen opposed to him, was, that he was desirous of committing the powers of the Government to a greater, and they to a smaller number. He wished to multiply the representatives of the people; they to diminish. Whether the House consisted of one hundred or of one hundred and fifty members, the powers of the Government remained the same, though probably a power exercised by 150 would be more likely to be attended with effect, than if supported only by 100.

Mr. B. concluded, with a brief recapitulation and application of the general points of the argument.

Mr. Mitchill said, he hoped the motion would not prevail. He wished the interests, the rights, and even the feelings of the people of America, to be fairly and fully represented. But he was by no means persuaded that this desirable object would be, in any sensible degree, promoted by the motion before the Committee. The bill contemplates the establishment of the ratio of representation, which the citizens of the United States shall have in this branch of the National Legislature. Various ideas had been entertained and stated, concerning the nature and object of this Legislature. It had been urged by one gentleman that States only were represented here. It had been contended by another, that the members of this House, though chosen by States, ought to be totally detached from State influence. He believed neither of these conclusions were strictly correct. His own opinion was, that the Federal Constitution was an institution for which there was no example in history. In vain was any Government like it looked for among the Republics of ancient Greece. The Achæan league was, indeed, a noble, though inefficient attempt, at something of the kind. In modern Italy, warfare and contention had generally kept the Republics at variance; and the struggles between the rival Powers of Genoa and Venice, had manifested as uneasy a spirit abroad, as the Athenians and Florentines had shown at home. Even among the Swiss and the Grisons, there was a confederation of States, and not a representation of them, in a general council. The cantons of Helvetia were a mere confederacy of Republics; that is, a leagueing together of distinct and independent sovereignties, by compacts and treaties, for the safety of the contracting parties. But there was no general council of the nation. In the United Netherlands, some approach towards a form of government had been made; yet the system was immature and imperfectly elaborated.

In America, the organization of the political system was widely different. Here, different colonies had been settled and provinces conquered, under European Governments. They grew and prospered as dependents upon a transatlantic sovereign. In process of time, oppression threatened them with her iron rod, and they declared, with one voice, they would be free. Instantly each colony and province was erected into a free and independent commonwealth. The pressure of external foes forced them all to combine in a common cause. A sense of impending danger made it necessary for all those newly erected sovereignties to associate for the purposes of general defence. They bound themselves by an article of agreement for that great purpose, and associated themselves, as well as they could. But the coalition was too lax and incoherent to endure long. As soon as peace was made, and the fleets and armies of the enemy were withdrawn, the Congress was found to be nerveless, and without power.

Another attempt was made to meliorate the plan of the General Government. And the result

of that effort, is the present happy and unexampled Constitution under which we are assembled; a form of policy without parallel in the annals of nations. For here, the commonwealths of America, reserving to themselves the right of sovereignty as to local, individual, and internal affairs of each, send Representatives to this House, to deliberate upon the more extended, general, and exterior matters which are interesting to them all. It is only in relation to this latter object, that the establishments and powers of the House of Representatives ought to be contemplated. And this object was particularly defined in the Constitution of the United States. So far as power was given by that Magna Charta of our liberties, and no further, did the Legislative powers of this body extend. The great regulations by which the security of our reputation, our property, and our lives, were guarantied, rested chiefly with the State Legislatures; and he was happy he had left all those invaluable rights provided for, and well preserved at home. For the regulation of the principal part of territorial and local concerns, involving the right of individuals, and the relation of these to things, as well as the modes of preventing and punishing crimes, he was perfectly satisfied that the requisite power and wisdom resided in the respective States; and there it ought to reside. How, then, is this House constituted? By the States, whose qualified inhabitants chose Representatives. For what object is it constituted? To deliberate upon those general questions, merely, which are expressed in the Constitution, and are truly of a federal, universal, or national nature.

He considered such a Government as of a new and peculiar construction. It had been called by some, "Federal;" he questioned the correctness of that term, as both the words federal and confederated, if regard was had to their etymology and derivation, meant a connexion of independent States by treaties. By others, it had been termed a sort of consolidation, as respected a number of great and leading objects. He believed that there might be some hesitation at admitting either of these terms. It was certainly not a confederacy of States; and it was no less evident it was not a consolidation. This peculiar Government, for which, as far as his recollection went, there hardly existed an appropriate name, seemed to him a kind of political partnership, where each of the parties concerned, besides a separate interest, has a joint interest in the common stock.

Now, these conjoint interests are so blended and mingled together, that, in the important points of general welfare and common defence, there is a community extending to the whole; and so analogous are the predominating benefits to be derived from this organization, that, on the great outlines of the subject, there is a remarkable similitude of sentiment. From the limited extent of the Constitutional powers of this House, a very small representation, that of thirty thousand, had been thought sufficient by the framers of the Constitution. And from the community of interest in the greater part of the subjects delegated to them by the States, there would be seldom a difference about principles, but the variations, whatever they were, would exist, in the modes and forms of doing things.

Considering how comparatively few things this House had to attend to, he thought that ratio a large one. At the close of the former census, a preceding Congress had thought so. They even determined to lessen it, by declaring that one for every thirty-three thousand was enough. He believed the interests and liberties of the citizens were sufficiently secured at that ratio. If he had any reason to doubt this, he would consent to enlarge the number to the utmost of the limits of the Constitution. But ten years experience had shown that the representation had been not only equal, but adequate. He had not heard of complaints abroad upon this subject. He believed the citizens were satisfied with it. He thought that public opinion and public confidence had been so long accustomed to the ratio of thirty-three thousand to one Representative, that it was at least useless, it possibly might be injurious, to change it.

Judging upon the matter on principle, he considered thirty thousand for one, as a large allowance; and now, aided by experience, he was convinced one to thirty-three was not too small. He had stated to the House, in a former debate, his opinion on a too numerous Legislative body. He should not repeat what he then had advanced; but only observe that, in an excessive representation, there certainly would be more expense and less dispatch in business. As to the State of New York, whence he had the honor to come, there had been lately a strong expression of the sense of the citizens on this subject. In a convention lately held for the purpose, it was ordained that the ratio of representation should be lessened in the branches of the Legislature.

Much had been said concerning the large fraction in the State of Delaware. This was to him a matter of secondary importance. This fraction, and all other fractions, would be virtually represented in the proposed ratio, as well as in any other that could be proposed. The peculiar and exquisite manner in which that House was constituted, gave every one of its members an interest in the whole of the national concerns before them. And it was the privilege and the duty of a member from New York, to consult the welfare of Maine and Tennessee; and of the members from those States to consult for the good of all the other States.

This community of interest, he contended, went so far, that even, in the case of laying a direct tax, that House could not, without violating the Constitution, cause Delaware to pay more of it than her rateable proportion. The census gave the number of her inhabitants, and beyond the amount of her population, it was not in the power of Congress to make her pay. And this rule would be inviolably regarded, even if her Representative should, by sickness or any unavoidable accident, be prevented from attending in his place.

Great apprehensions had been expressed of the

overbearing disposition of the larger States. He believed nothing had been advanced, during the session, so chimerical. The fears about rapacity, selfishness, and dominion, were visionary. When New York, a strong and powerful State, surrendered her impost, and poured her wealth into the national treasury, was that rapacity? In this magnanimous act, was there anything that looked like selfishness? Was the delivery of the key into the hand of the nation, a grasping for dominion? No; there was nothing like it; nor was there any probability that such proceedings would ever happen. The smaller States were the most benefited by the ratification of the present Constitution. They were accordingly the first to adopt it. And they had uniformly found it a system, not of oppression, but of protection; and that protection would never, with his consent, be withdrawn from them.

In the course of his remarks, Mr. M. animadverted on the proposition made some time since, in the State of Delaware, to abolish the sovereignty of that State, and to merge it in that of an adjoining State.

Mr. BAYARD said, that he would furnish the House with some information respecting the proposition alluded to by the gentleman from New York. The proposition had been made. He would inform the House by whom it had been made, and what were the motives of those who made it. It had been made by a set of men once called Jacobins, then Democrats, and who now called themselves Republicans. It had been opposed by the Federalists, who, having most strength, frustrated it. It had been the desire and effort of the former description of men to get all the offices of the State into their hands, in which, having failed, they wished to be annexed to Pennsylvania, where democratic principles held sway.

Mr. VAN NESS.—After the great display of talents and abilities which we have had upon this subject, it is not to be expected that I shall rise to detain you more than a moment or two. I have attended, sir, with great deference and respect to all the gentlemen who have been up before me. I have heard an eloquent discussion, extremely entertaining and improving, but which, being rather too much confined to abstract principles, I think, has not been, in all its parts, immediately applicable to the question before us.

Gentlemen, sir, surely deserve credit for their candor, at least, who avow their motives to be local prepossessions or partialities. Considerations of this kind, particular attachments, appear, indeed, too operative in the present case; but, sir, I think, and I believe the sentiment is common to a majority of my colleagues, that we ought not to be wholly actuated by such motives. We have heard much upon the question, whether we are the Representatives of the States, or of the people of the different States, or whether we are the Representatives of the *whole people* of the United States? I must confess, sir, that the moment I enter this House, I consider myself as bound by general obligations towards the whole nation. My obligations and duties extend to all the United States; and in an act of national legislation, I do not feel myself justified in consulting the particular and more immediate interest of any individual State, as contradistinguished from those of the others. No arrangements tending in its result to general benefit or advantage, ought to be varied or rejected, merely upon the ground of partial inconvenience to any particular State. This doctrine savors too much of the narrowness of that contracted illiberality which ought never to govern the mind of the Legislature. He should take extensive views of his subject, and be influenced only by a liberal policy.

Our Government is, after all, but a Government of experiment. We have opened a new road to ourselves, and are travelling on in it without knowing, to a certainty, what dangers may await us by the way. We should therefore, sir, proceed

"With cautious steps, and slow."

We have been, in number, as low as 65. We have increased to 106. We now propose to rise to 141, (at 33,000;) that is, to considerably more than a duplication in about thirteen or fourteen years. Is not this, sir, advancing with pretty rapid strides? We all acknowledge we must stop somewhere.

There is a certain point, sir, that point where security and convenience for the transaction of public business meet, which we must not pass; if we do, we may find it difficult and embarrassing to recede. The constitution of human nature is such, that we are all gratified with the enjoyment and exercise of power. Tell the people they shall choose a certain number of Representatives; and if, upon experiment, it is found too large, you will find it difficult to diminish. We may hesitate, ourselves; we may not be disposed to lessen our chances of re-election. The people will hesitate to relinquish or abridge their right. And, sir, if once we have plunged ourselves into the dilemma of too numerous a representation, all the dreadful evils incident to such a state, and which, in a particular instance, excites the sensibility of some gentlemen, may be produced before a preventive can be adopted.

I confess, sir, I am one of those who, though differing in this particular from some gentlemen on this side of the House, whose opinions I highly respect, believe that an increase of members in a public body, to a certain extent, will increase the confidence of the community in that body. I do not mean, sir, such an increase as would exceed the line that I have before marked out, and which would expose the body alternately to ridicule and contempt, and to the dangerous operation of those licentious and ungovernable passions which frequently rage in society; but a moderate, reasonable augmentation, such a one as is calculated and adapted to secure the advantages incident to a wholesome deliberative assembly. I say, sir, in this case, an increase of members will generally increase confidence; and that confidence will be attended with a correspondent augmentation of powers, since the Representative body will have a greater influence over the physical force of the

community. It certainly, sir, appears to me that we ought to be extremely careful how we increase this power in the General Government. I believe, sir, with many others, that the influence of that Government has been bearing very hard upon the State governments. I believe, sir, whatever was the theory, that the practice, for some time, has tended to the substantial reduction of the State governments. I believe this has been the policy, and perhaps consistently with their principles, of some who have borne a conspicuous part in the administration of our Government; but, I flatter myself, the doctrine is exploded. In this view, that is, with respect to the State governments, I do not wish to see our own powers too much increased in the augmented numbers of this House.

I do not wish to see the State Governments, which I regard, indeed, as the pillars on which the fabric of our liberty rests, drawn within and swallowed up by the vortex of Federal power and influence. In another view, I do not wish to see the powers of this House imprudently enlarged, by too rapid an increase of members. The established theory of our Constitution I admire; I adore it; I believe the arrangement and distribution of power among the several branches of the Government is, in the main, salutary and correct. The equilibrium is well established, and may continue, whilst we are careful not to add too great a weight to either branch. But, sir, give this House too decided a preponderance, by means of its numbers, increased public confidence, and its consequent increased strength, and you hazard all.

We have seen melancholy instances of public evils resulting from struggles for power between different branches of the same political establishment. When, by accident, intrigue, or other circumstances, the physical power of a people has been more peculiarly and completely attached or devoted to one of those branches, we have frequently beheld it, conscious of this advantage, and under the influence of the most dangerous passions, sweep everything before it that opposed the gratification of those passions. I need not particularize; the history of every country that has ever enjoyed even a semblance of liberty, where there has been even a pretended division or distribution of power, will furnish us with cases. I do, therefore, feel a strong regard, a strong solicitude for the preservation and permanent firmness of the other branches of the present Government, whilst I am augmenting the numbers, confidence, and power, of this House. We are at present, and, by a moderate progression, will continue, a sufficient counterbalance to the other branches. If we practise upon the pure principles of the Constitution, I am persuaded it is so.

But, sir, it is said by some gentlemen, that the difference for which we contend, is trifling; neither on the score of economy, or any other, can it be material, &c. I confess, the number of fifteen, abstractedly, is not very large; but is not the addition of thirty-five members, which will be the increase, according to the ratio of 33,000, a considerable one? Is it not large, when compared to the whole number of members? Will not this satisfy the country? When our population was three millions, our representation on this floor consisted of sixty-five members. When our population was nearly four millions, our number of Representatives here was one hundred and six, and so continued until the present day. When our population appears to be five millions, shall we call for one hundred and fifty-six, in direct violation of the principle heretofore established, instead of one hundred and forty-one, which will be the number afforded by the divisor of 33,000, and which is the number we ask for.

I repeat, sir, we must rest somewhere; we cannot long proceed at this rapid rate of increase, in direct proportion to our population. And it appears more reasonable, more politic, gradually to lessen our proportional increase, until we arrive, by a moderate progression, at an ultimatum, than to proceed in full career, and with an intemperate zeal for increase; and thus presently do violence to the habits and expectations of the country, by a sudden, an abrupt discontinuance.

I would therefore prefer even a larger ratio than 33,000 to 30,000, but this not appearing desirable to any part of the House, I shall adhere to *that* number which appears to me most proper and consistent of any that has been under consideration. As I have before said, I respect the feelings and sentiments of the public upon every occasion, particularly upon the present, when we are upon a subject more interesting to them than any other object of legislation. They are generally right. Taking, necessarily, a strong interest in public affairs, after having bestowed due deliberation and reflection upon a subject, they arrive at the truth. This remark applies to an enlightened country, a country like our own. I consider their opinions as unequivocally expressed, in the first instance, by our Constitution, which directs that the number of Representatives shall not exceed one for every 30,000, even at the period of its formation, when our population was so much inferior to the present, clearly implying that even in *that* state of our population, this ratio was fully low enough; and, of course, that as the population advanced, the ratio or divisor ought to be increased: by the law of Congress passed very soon afterwards, and after the taking of the first census, which, pursuing this principle, raised the ratio to 33,000, by the recommendation of Congress, (two-thirds of both Houses concurring,) of an article, by way of amendment, to the Constitution, regulating, in effect, the ratio by the population. Here, indeed, some gentlemen triumphantly exclaim: "But that recommended article was rejected; it was not adopted by three-fourths of the States." Those gentlemen, however, should recollect that it was not rejected on account of its principle. It contained, probably through the inadvertence of its framers, a proposition which was inconsistent and contradictory in itself. By the terms of it, after the number of Representatives should have amounted to two hundred, the proportion was to have been so regulated that there were not to be less than two hundred members, nor more than one for every 30,000;

whereas it might have happened from the state of population, that taking the ratio (the least possible, according to the proposed article) the number of members would have fallen short of two hundred. Here, then, in the same breath, it was proposed that the number of members should *not* be less, and that it *might* be less than two hundred. To this intrinsic defect in the form, and not to the radical principle out of which it had grown, the proposed amendment owed its rejection. Notwithstanding all this imperfection of form, and perhaps substance, in which it was submitted, a number of States, though not, indeed, three-fourths, assented to it; and the concurrent evidence of the public sentiment in favor of the principle which I contend for, is the satisfaction of the country with the practice under that principle. I would, indeed, prefer a moderate increase of the ratio, as the most reasonable arrangement; but, since that seems not to be desirable by any part of this House, I shall adhere to 33,000; for to descend from that, appears, upon the ground of general principle, to be reversing the order of things, and to be in direct hostility to every idea of propriety.

The examples of particular States have been cited in favor of the more numerous representation; but I presume it will be recollected that, from the difference between the objects of State and those of Federal legislation, a correspondent difference may be proper in the relative proportion of representation. The one embraces the minute and particular interests of the different districts and parts of the individual States; the other, objects of a more general nature. In the one case, therefore, a more intimate local knowledge is requisite than in the other; and this is to be obtained only by a more numerous representation. In the State, however, which I have the honor to represent, after an experience of twenty-four years, and upon the most mature deliberation, they have lately reduced their limitation to one hundred and fifty members, in the popular branch, their present number consisting of a few more than one hundred. In the most important Eastern State, indeed, one of the most important in the Union, although they have a right to elect a number considerably larger than here contended for, still I believe that right, from political inconveniences, has frequently remained unexercised. And here, sir, permit me to add, (if I am mistaken the gentleman from that State will correct me,) that in the internal arrangement or apportionment of the Representatives from the different towns in that State, is observed the very principle for which we now contend: that, is an increase of ratio in some proportion to the increase of population or electors; and I think sixty members, whatever may be the whole eligible number which particular emergencies may draw forth, is a quorum to proceed to business. The same principle, that is, a proportionate increase of ratio, is adopted, I think, in New Hampshire. All the other States, perhaps one or two excepted, are below even our present number, in this popular branch; many of them very inferior indeed.

It has been strenuously urged and insisted upon, that every precaution ought to be taken to prevent a combination of the larger States against the smaller. That the former would always feel a strong disposition to oppress, and, finally, to crush the other. But are not those fears chimerical? How are they warranted by experience in similar cases? Why, most of the small States, or nations, in the world, are brought into existence, and afterwards supported and reared by the jealousies and enmities of the large ones, towards each other. They are not jealous of the weak, but of the strong; and neither of them will voluntarily suffer a powerful rival to accumulate a degree of strength, dangerous to herself. Hence has, for a long time, proceeded the safety of most of the small States in the world—I might instance, among others, Holland and Switzerland, in Europe—I might call the attention of this House to our own political history. And has not even the State of Delaware discovered in her sister States the most friendly, the most conceding disposition, on all important occasions? They will acknowledge the fact. Now and then, indeed, a solitary instance of a foolish division occurs; but they are rare; ambition, rapacity—those very passions that move the plunderers to the measure, generally produce a difference about a division of the spoil.

The gentleman from Delaware contends, that he is the Representative of all the United States; and still, the moment he views the fraction likely to remain to *that* State, his feelings seem to whisper to him, "you are the Representative only of Delaware;" for, if that gentleman will, for a moment, examine the general result to all the small States, in case of the division of 30,000, he will find that the aggregate fraction is larger than in the case of 33,000, and not smaller, as some gentlemen have erroneously stated. Gentlemen are very fearful, indeed, that the four larger States will obtain a majority of votes on this floor. What, sir, are the gentlemen Republicans? Do they pretend that the people ought to be represented, and a majority of them so represented, ought not to govern? and are they not willing to allow, if a majority of the Constitutional electors of the country are found within any particular States or parts of the Union, that they should also have a majority on this floor? This is proceeding upon the true principles of representation, which, I presume, they are not ready to contest. The majority of population is unquestionably contained in those States. But the danger is idle. Among other reasons, we need not now repeat the disproportionate weight which the small States have in the choice of the other branch of the Legislature and of the Executive.

Something has been said about economy; that the difference in expense would be trifling, &c. This opinion comes, in one instance particularly, from a respectable quarter; but when I reflect that, besides the additional consumption of time which must necessarily result, there will be a saving in the course of ten years, of between two and three hundred thousand dollars in the immediate pay of the members, I cannot think so lightly of it. I think it would make a respectable item in a list of retrenchments. I would not, indeed,

sacrifice to this object any important advantages of a Representative Government: but there is no danger of such a consequence.

The gentleman from Delaware, in adverting to a struggle which, some time since, took place in his State, respecting a surrender of their sovereignty, acknowledged the fact, but very unnecessarily went on to tell us that the attempt was made by those who were formerly called Jacobins, afterwards Democrats, and who now call themselves Republicans. It is a little extraordinary, I confess, and only to be accounted for by local circumstances, unknown to us, that they should have had to contend in a struggle of this kind with a set of people formerly called Federalists; afterwards, Aristocrats; and now called Royalists. The opposition of this latter class cannot have been consistent with their usual principles; principles which, after full experience, have met with the public reprobation.

Mr. Van Rensselaer did not rise with a view to offer any arguments to the committee in expectation that any one member would be influenced thereby, so as to induce him to change his opinion different from what he had expressed on the floor of the House, or signified by a vote on the different questions that have been decided; but merely to express his opinion and to assign his reason for the vote he was about to give. When the question now before the Committee was first introduced into the House an honorable gentleman from Connecticut, (Mr. Griswold,) moved to strike out the divisor 33,000, for the purpose of introducing 40,000; he voted for it, but the motion did not obtain. Circumstanced as he was, in the shape the business now stood before the Committee, he would vote for striking out 33,000, in hopes of obtaining a divisor of 40,000. In doing this he was actuated by the same motive that influenced him on a former occasion—that of opposing a too numerous representation. As to two of the reasons his colleague (Mr. Van Ness) had offered in support of the present bill before the committee—the act of the House of Representatives, in the year 1793, fixing the ratio at 33,000, and the instance of the late convention in the State of New York lessening the State legislature—Mr. Van R. said they made more in favor of the divisor of 40,000 than otherwise; for that the ratio of 33,000 for each member in 1793 was on three million, which made a very considerable augmentation to the House. In the present case the divisor ought to be received because we have at this time upwards of five million of souls. If, then, precedents and local considerations might be brought to bear on the present question, it certainly would give the preference to the divisor of 40,000 rather than 33,000.

Mr. S. Smith, and Mr. Lowndes followed, and assigned reasons in favor of the ratio of thirty-three thousand.

On the question being taken for striking out thirty-three, it was lost—yeas 42, nays 48.

Mr. Dennis moved to strike out eight, the number of Representatives allotted to Maryland, and insert nine; which amendment had been rendered necessary by the supplementary return received from Maryland.

On this motion a very desultory debate took place, which was twice interrupted by motions for the Committee to rise, which were both lost.

Much personal recrimination, chiefly on the charge of delay on the one side, and precipitation on the other, was exchanged.

The amendment was at last agreed to—yeas 57.

The Committee then rose and reported the bill as amended.

The House immediately took up the report of the Committee, agreed to the amendments, and ordered the bill to be engrossed for a third reading to-morrow.

Wednesday, January 6.

The bill for the apportionment of Representatives coming up for its third reading, a motion was made to recommit the bill to the Committee of the Whole, that certain returns of the new census, not made precisely according to law, might receive legislative sanction before the apportionment among the several States should be made.

[The Marshal of South Carolina had not taken the oath prescribed by law, though he took an oath some days after he made the return, that it was faithfully made.]

Mr. Rutledge said he would not struggle against the sense of the House when unequivocally expressed. It had been determined yesterday not to strike out, for the purpose of not diminishing the ratios in the bill; but it had not been determined that the ratio should not be increased. Thirty-five thousand would be the most convenient ratio for the State he had the honor to represent, and he thought that number would obtain if the question could fairly be brought before the House. As the bill was engrossed for a third reading, no alteration could be made in it without a recommitment. He hoped therefore the motion would pass.

Mr. Elmer would not be opposed to a recommitment if thirty-five would suit the States generally better than thirty-three, and there was a prospect of carrying that number; but he believed that number would be injurious to the small States; he should therefore be opposed to the motion.

Mr. Southard thought, as the subject had been long before the House and under solemn consideration, there was no occasion for the postponement. By increasing the ratio, Rhode Island and some other of the small States would be deprived of a member. This had heretofore been viewed as a very important consideration, and he hoped it would be so viewed, and that the bill would not be recommitted.

Mr. Dennis said, one reason assigned for recommitting was, in order to pass a law to make the return from South Carolina valid. He believed this would legalize that return as much as if fifty bills should be passed on the subject. He was not for being over-scrupulous on such occasions.

Mr. Bayard hoped the bill would be recommitted to a Committee of the Whole. It was very discernable that the House yesterday was not disposed to hear arguments on the subject. He thought the efficacy of the law was at stake by a hasty determination. Irregularities have occurred in the returns in many instances, and it was improper to countenance such proceedings. In respect to South Carolina, the marshal had not taken an oath prior to his making the return, and yet gentlemen say it is valid, although the law requires an oath. If this is admitted, how can we expect that such requisitions will in future be attended to? If there be any solemnity in an oath, it is not to be so easily dispensed with, or hereafter there may be a general failure in complying with the laws respecting the census. By passing a law on the subject, that danger will be avoided. Without they proceeded in that way their laws would become mere waste paper, or dry leaves, that the winds would drive about in every direction.

There were perhaps but little hopes of success as he had brought forward the motion, yet he had been long enough in the House to know that they might vote one way to-day and differently to-morrow. Mr. B. was not confident that there might not be a change of opinion. Yesterday there was not sufficient calmness and sober judgment to hear arguments, but the House decided rather by the impulse of feeling. On the motion for recommitment he intended to call for the yeas and nays.

Mr. S. Smith trusted that the House would not recommit the bill. They had with tranquillity listened yesterday to every word the gentleman from Delaware had to say on the occasion. They could not expect anything new on the subject. If anything new were possible he was persuaded the ingenuity of that gentleman would have brought it forward. It has been said the return from South Carolina is not according to law; but it should be remembered it was not the intention of the law to preclude any State from its proper number of representatives. There was a penalty upon the marshal if he did not comply with the law, but that was not to make the census ineffectual. He considered the return from New York a fair return, although it was not made within the time prescribed by law. The Marshal of South Carolina, though he did not take the oath before he made the return, yet in a few days he took an oath that it was faithfully made. The intention of the law was to give a fair ratio according to the returns, and any little informality did not invalidate them. He was suprised that a gentleman so correct as the gentleman from Delaware usually was, should charge the House with want of temper. Mr. S. had been long a member, and never saw the House preserve its temper better than it did yesterday; but he had on former occasions, when gentlemen of different political sentiments from the present majority possessed an ascendency, seen a want of temper, such as the gentleman now without reason complained of.

Mr. Goddard was unacquainted with the conduct of the House formerly. Yesterday he did think the conduct of the House was very strange when it was by some claimed to be the first republican representation under the new Constitution. Was there not a temper unbecoming the Legislature of a great nation? Did not it appear so when a gentleman from Massachusetts (Mr. Bacon,) whose age and steady sober habits he revered, rose in his place, and declared that, sooner than agree to any postponement, he would sit there for forty-eight hours? He thought such a temper did not become those who were about to correct the line of conduct pursued for twelve years past.

Are gentlemen afraid to trust to themselves, that they oppose the recommitment of the bill? Were they afraid to have the question fully discussed? He never did agree to vote for thirty thousand as the ratio. The arguments of the gentleman from Massachusetts, (Mr. Eustis,) struck him as forcible, that a principle appeared to be formerly fixed, that the ratio of representation should increase with our population. Mr. G. thought the bill ought to be recommitted, as the return from Tennessee was not before them, and no legal return from another State. The census was the basis of legislation on this subject. He wished that ratio to be fixed that would be best adapted to the interest of the United States; nor was he afraid to trust himself or others on this subject, which did not appear to be the case with those opposed to a recommitment.

Mr. Rutledge thought that calmness did not exist yesterday, that should always be observed by the House. If one gentleman were willing to stay, others were not. He had heard of a permanent session of a Legislature, and of great corruption that ensued; and he did not wish to see the experiment here. It frequently occurred yesterday, that when gentlemen rose to deliver their sentiments, there were repeated calls for the question, and therefore gentlemen would not force themselves upon the House.

The question should be fully debated: this had not been the case. He allowed it had been sufficiently debated whether it should be thirty or thirty-three thousand, but not in respect to a higher number. He was for thirty-five thousand, and hoped it would obtain, not by any new light that would be thrown on the subject; but as several persons yesterday expressed themselves in favor of a higher number, he believed many would vote for thirty-five. He did not see why they should have the doors closed upon them, and be thus prohibited from further debate with respect to higher numbers. His State felt a deep interest in the subject, and he should vote for a recommitment.

Mr. Bacon said, a principal reason urged for a commitment was the unbecoming and unmanly conduct of the House yesterday, and he had been held up as eminent in the unworthy affair. The gentleman from Connecticut, (Mr. Goddard) had discovered in him a disposition unbecoming his age and the sober habits of his native State.

He confessed he did think it strange yesterday, when some gentlemen assigned as a reason for postponing the bill, that the last return from Maryland had not been compared with the former return, when they were told it was on the Clerk's table, where they might satisfy themselves by comparing it with the former, which was also there. He saw it with his own eyes. He did

suppose that something unfair must be intended by that objection being perseveringly urged, when every member could so easily satisfy himself.

Under these circumstances, he would submit it to the House, whether it was unbecoming his years, or the sober habits of his native State, to say that he would sit there till that time the next day, to hear any arguments the gentlemen could offer, that another day need not be lost on the subject.

Mr. T. Morris was in favor of the recommitment, not for the purpose of altering the ratio, which he considered as already fixed by the House, but for making the returns valid by law. Without doing this he believed they would establish a dangerous precedent.

Mr. Smilie was not surprised to see the dissatisfaction that prevailed as to the decision made yesterday; it was the consequence of State interests and State attachments. He thought full time had been given for gentlemen to make up their minds upon different returns. The House, he contended, had a right to decide when the question should be put, and he thought it was then ripe for the question. The proceedings that morning were a mere trial of strength between the ratio of thirty and thirty-three thousand. Gentlemen want time, for what? To carry their point.

Mr. Upham believed the question had been decided, that a smaller number than thirty-three thousand should not be inserted. He wished the bill recommitted to try that point, yet he did not know that it would be in favor of New Hampshire to raise the ratio.

Mr. Van Ness was more than ever convinced that local interest should not be attended to on this subject. He supposed that inflicting the penalty of the law on delinquent marshals would be the best mode of preventing future neglect. The temper of the House yesterday had been adverted to, and an expression made by a gentleman from Massachusetts had been spoken of with considerable animation. But was there not the same temper manifested by the minority? The gentleman from South Carolina had talked of permanent sessions, turning his eye, he supposed, across the Atlantic. He might have found them nearer home. Mr. Van Ness had read of nocturnal sessions of that House, and also in the Parliament of the United Kingdom of Great Britain and Ireland. He did not, however, approve of nocturnal sessions.

Mr. Dana could not pretend to measure the minds of other gentlemen by his own, though some appeared to go on that plan. He could not wrap himself up in his own superlative intelligence and say that nothing new could be adduced; and he thought when such insinuations were thrown out, there was a want of that urbanity which should prevail in the House. He and his friends were charged with urging unnecessary delay; he felt no solicitude for any further discussion on the subject, but he did feel a solicitude as to the impropriety of their proceedings. Yesterday manifested, that public bodies are at times actuated by strong sympathy, and push forward with intemperate zeal, and an obstinacy unfavorable to fair discussion.

Mr. Dana then detailed the necessary formalities in the returns; if they were not complied with the business ought not to be rashly passed over. That the House were to examine and determine on the validity of returns, and the mode should be uniform. Some of the returns on their face are liable to suspicion. If they received those returns, would it not be waiving the penalty laid on marshals; or be sufficient to induce the President to enter a *nolle prosequi*?

Mr. Randolph perceived this business was likely to go out to the people in a shape calculated to make them believe a majority of this House were disposed to suppress discussion, and act on illegitimate documents. It was proper to inquire whether that was the fact. The passage of that bill, as the gentleman from Maryland (Mr. Dennis) justly observed, makes the informal returns valid. They were compelled to act upon those returns or not at all. Gentlemen complained they could not get at the question of raising the ratio; this is not the fact. If the House refuse to recommit, does it not show clearly it is opposed to raising the ratio? As to obstinacy, might not the charge be recriminated? Did not reiterated motions for the Committee to rise show as much obstinacy as when gentlemen say they would decide before they rose? There were instances of sittings being continued until nine or ten o'clock, formerly, to decide questions. A gentleman from Connecticut says this disposition comes into existence when there is the first republican House of Representatives. Mr. R. denied that this was the first republican House. He was of opinion that the republican interest went out of that House when the British Treaty came in. After the law for carrying that treaty into effect passed, the gentlemen now in the minority gained an ascendency. He was unwilling to admit that to be the first republican House of Representatives.

Mr. Goddard explained, and stated that he said, "which some claimed to be the first republican House:" but it was far from being his opinion; he believed all former Houses had been republican, and he hoped this would show itself to be so too.

Mr. Dennis thought they must receive the returns as they were. He was not for the present ratio; yet he thought it was fairly taken; still he was in favor of going into the Committee of the Whole to bring the question for a higher ratio fairly before the House. The arguments about the formality of returns proved too much. According to them a new census should be taken in South Carolina. They should not be so rigid in that House as in a court of justice; they had every reason to suppose the returns were properly taken. If the bill should be recommitted he believed he would move for thirty-seven instead of thirty-three thousand; and if he could not get that, he would be for thirty-five thousand.

Mr. Perkins considered the subject of importance as it respected the regularity of proceeding, which was certainly a matter of very great importance. He would not say the returns ought

not to be admitted, but he would say they should only be admitted according to law. The law says they shall be made within a certain time; if they are not, a future law only can make them legal. Neither the Committee of the Whole nor the House could dispense with the law. Suppose it had been made the duty of the President to apportion the representation; would any gentleman in that case say he could receive any return of the census not made according to law? No; nor can this House. He wished a recommitment, to correct inaccuracies; and he believed it a great inaccuracy that this was not considered yesterday. He would have the penalties of the law inflicted upon the marshals, that a member need not in future have occasion, when the appointment was about to be made, to rise from his seat and call for an additional return.

Mr. Nicholson did not believe that passing over the informality of the returns in silence, as gentlemen call it, will exempt the marshals from the penalty, but he thought that passing a law to legalize the returns would screen them. Two reasons are assigned for going into Committee of the Whole again on this bill. One, to pass such laws; the other to scuffle again for the ratio, which he considered as fairly fixed yesterday. The great object of the gentleman from Delaware was to scuffle again for the ratio; by persevering he hoped to succeed: perseverance was very commendable, but he hoped that gentlemen would pardon the majority if they also persevered.

Mr. S. Smith.—It has been observed on the proceedings of yesterday, that a fair, open discussion did not take place. He confessed an obstinacy was discovered. He had been the greater part of his life in minorities, and he never saw a minority discover so much obstinacy as yesterday. The observation of the gentleman from Massachusetts was not a relinquishment of his steady habits, but an evidence of them; and he believed that declaration obtained the vote. Calculation was a fair ground of decision on this subject, and it became some gentlemen to examine whether, in wishing to take a higher ratio, they were not actuated by a spirit of envy towards Rhode Island, that because she had lately taken a more proper bent in politics they wished to deprive her of one member. A higher ratio would also deprive republican Maryland of one member, and give a greater proportional weight over her to another State not republican.

Mr. Griswold wondered much to hear on that floor such distinctions, that one State was republican and another was not; he thought they had it from very high authority, and such as that gentleman, he supposed, would greatly respect, that we were all republican, all federal.

Mr. G. believed there were many reasons for recommitting the bill. First, that a critical examination of the returns might be made. The law prescribed certain modes which, in many instances, the returning officers have deviated from. In the return from Tennessee, which he had before him, but which had never been printed for the use of the House, and which very few members had ever seen, in that return there was no certificate that the marshal had taken any oath. He did not say there had been no oath on that occasion; but there was no evidence of it before that House. He did not think it was a correct mode of doing business to admit such informalities without any investigation.

He also wished the bill recommitted for the purpose of re-examining the ratio. He was originally for 40,000, and would still be for that number, as he believed the ratio should progress with the population of the country. In the nature of things we must advance the ratio at some period or other, and when shall we begin it if not now?

Mr. Southard spoke against recommitment. He thought it a dangerous and disorganizing attempt. They must act upon the evidence they had of the census, or not at all. Some gentlemen were in favor of raising the ratio, after it had been solemnly argued, and so much had been said in favor of a large representation. Did they wish now to retrace their steps after the subject had been decided, and enlarge the ratio, to the great injury of some of the small States?

Mr. Dennis said, in these enlightened days of new-born republicanism, he did not expect to hear gentlemen charged with a desire to punish the citizens of Rhode Island and Maryland because those States had undergone a political regeneration. He could not imagine how his colleague (Mr. Smith) could attribute such unworthy motives to him.

He had formerly stated why he varied his vote from 33 to 30; his great object was to strengthen the General Government, not, as some reporters had represented, to give that House greater weight than the Senate, for he had always believed that in a conflict between the different branches, that House would bring the Senate and President prostrate at its feet. His object in enlarging the representation was to enable its members to counteract the misrepresentations which have been industriously spread through the country, and which are calculated to destroy that Government, and erect the State government on its ruins. He was now inclined to meet the objection as to inconvenience in having a great number in that House. By raising the ratio to 37,000, it would give that House, he believed, about 120 members. The interest of Maryland was in favor of strengthening the Federal Government rather than increasing its own relative weight.

Mr. T. Morris gave an account of the manner in which the returns from New York and Maryland had been made. If the Marshal of the latter possessed one-tenth of the zeal that the gentleman from Maryland (Mr. Smith) had, he might unintentionally make a mistake in his last return. Since that return, the gentleman from Maryland had argued the bill with a precipitancy that party calculations only could impel. He wished to be convinced that the first return was inaccurate. The addition of one member to any State was of importance to the Union.

Mr. Eustis was against recommitting the bill. Yesterday he voted for the Committee to rise, but

was now satisfied as to the returns from Maryland and South Carolina. Substance he thought should never be sacrificed to form. The principle he started upon was 33, and he still adhered to that. He thought it incorrect to say the powers of the House would be increased by increasing its members; vary the number as you please, the Constitutional powers remain the same. If, the House decide against going into Committee, it is as much as saying they are satisfied with 33,000, the ratio fixed in the bill. He had no idea of crowding or bearing down the minority by the majority, nor did he think there was any ground for making such a charge. Gentlemen have a full opportunity now on the question of going into Committee to offer their arguments in favor of increasing the ratio, and he had no doubt they would be patiently heard.

Mr. Bayard observed, that from the explanations made about ill-humor yesterday, it was possible he and his friends might mistake. Gentlemen say they were patient and willing to hear discussion. There had been imputations made by gentlemen yesterday and that day, that the motives by which the minority were influenced were neither fair nor honorable. Was that candid? When complaints were made of the conduct of the House yesterday, it was replied that the House were formerly guilty of similar impropriety. He would not defend the conduct of any former Congress; if it was wrong then, it would be equally wrong now. It would be more laudable to vary from it than to imitate it.

Mr. B. said there were many grounds upon which a recommitment could be urged. In point of fact the census was not such as to enable them to act. Mr. B. then gave a history of the returns, &c.

An honorable gentleman had said we should not sacrifice form to substance, but where, he asked, could the line be drawn? It might at length be urged, that the oath was entirely a matter of form, and therefore to be wholly dispensed with. One State might expect a cargo of United Irishmen, and another a cargo of a different description, to swell their population; they would, therefore, defer their return, disregarding anything and everything the law prescribed, as mere matter of form. Unless attention is paid to the forms prescribed, the nation is exposed to perpetual fraud. A return was not true or legal if not made within the time limited. Gentlemen say, pass this bill, and then make a law to legalize the returns; this, he said, to use a vulgar adage, would be putting the cart before the horse. As to inflicting a penalty upon the marshals, it could not be done if that House say the returns are legal.

Mr. B. said he did not expect to hear from a gentleman so urbane and well-bred as the one from Maryland, (Mr. Smith,) arguments founded on the supposition of one State being republican and another not so. He hardly knew how to excuse the gentleman when he said the minority are not republicans. If he did mean to apply such an epithet to them, Mr. B. said he would oppose a flat denial to his assertion; he knew not what pretensions there could be for saying so. Can it be alleged that we ever urged anything that was anti-republican? The gentleman must have forgot himself. He surely thought he was addressing a mob on some electioneering occasion. I may have mistaken the gentleman; there are many kinds of republicans. Bonaparte called himself a republican, although he was more absolute than Louis XIV, ruling the nation with a rod of iron. Bonaparte called himself a republican, to get the station he now holds. If, with a certain high authority, the gentleman does believe "we are all federalists and all republicans," he should define what species of republicanism he meant when he made use of the term. [Mr. B. was called to order here and in one or two other parts of his speech, but the Speaker declared him to be in order.]

Mr. B. proceeded, and observed he was about to say we (the minority) are not such republicans as Monsieur Bonaparte or Robespierre; we do not wish to make a general prostration of every civil institution, and of all respect for morals and religion.

As to this being the first republican House of Representatives, or republicanism going out when the British Treaty came in, he believed no such opinion was ever entertained until the country was infected with French principles. Then one party was called British and the other French. He did not know that we had suffered from that treaty, but we owed our war with France to it. It had been reiterated that there was an anti-republican party in that House. He was sorry to see the House divided by such artificial distinctions. He wished all would co-operate in dispelling such imputations, and allow that all are equally interested in promoting the welfare of our common country. He was sorry to hear that these explanations as regarded parties are matters of form, and as the gentleman from Massachusetts says these are of no importance, he hoped they would be discarded.

As to there being pertinacity or obstinacy in the minority in making motion after motion yesterday, he wanted no precedent for his justification: he was satisfied with himself, and would proceed in that line of conduct which he felt to be his duty. Must gentlemen be told they are guilty of obstinacy because they do not bow the neck or humble themselves in the dust to every measure of the majority? Or must they bear the charge of not being actuated by proper motives if they venture to differ from the majority? He hoped no one would be intimidated by such unjust imputations.

Mr. Rutledge expressed his opinion in favor of the propriety of answering the imputations which had been made; but he hoped the business would cease there, and that they should not proceed with recrimination, which was calculated to do injury abroad.

Mr. S. Smith replied to Mr. Bayard. He was pleased that Mr. B. allowed he had behaved with politeness to gentlemen and avoided personalities. When he spoke of temper, it was not his own,

but that of the House, he praised. If he had attempted an eulogium on the mildness of his own temper it would have been very ill-judged; he believed few would have given credit to it. The gentleman from Delaware complains of party distinctions being made in this House; but he started the subject himself yesterday. A gentleman from New York, in the course of debate, had observed that it had been made a question in the State of Delaware whether sovereignty was of any real advantage, and whether they would not be in a better situation by being united to another State. The gentleman from Delaware rose in his place and said it was true such a question was agitated, but by whom? By a set of persons originally called jacobins, then democrats, and now republicans. What was their object? They had been long struggling to get the offices of that State into their hands, but failing in their attempt, they wished to throw themselves into the State of Pennsylvania. Mr. S. said the gentleman to be sure had a right thus to abuse his own constituents, and he had nothing to do with it; he could not at the time help regretting that the gentleman had not a colleague to answer him. If he had been his colleague he would have answered him in this way: Who opposed giving up the sovereignty of the State of Delaware? A set of men formerly called old tories, next aristocrats, then monarchists, and now federalists. The gentleman from Delaware might in his way be a republican, and so might Bonaparte in his way. Mr. S. did not think we are all federalists and all republicans, though he believed the great mass of the people of the United States were so. He believed some leading characters in the country were led away by the intrigues and influence of Britain; while they could make a handle of French malconduct and French depredations, the people were led away by these characters; but when the days of delusion were over, the people returned to their sober senses. He had been forced into the observations he made relating to party.

Mr. Bayard thought the gentleman from Maryland (Mr. Smith) had betrayed sensibilities not justified by anything which had occurred. The gentleman must certainly have taken to himself what was designed for others, for he had not observed any personal remark which had been directed to his feelings. On the contrary he had thought the gentleman was treated with great decorum. But, said Mr. B., be the case as it will, the gentleman is not excusable for making a charge against me neither correct nor candid. He has stated that I have abused my constituents; there is not the smallest ground for such a statement. Mr. B. said he was incapable of abusing his constituents, or suffering them to be abused by others. He would take the liberty of examining the grounds of the gentleman's charge.

In the debate of a former day it had been insinuated that he was inimical to the State governments, and it was stated upon the occasion that an attempt had been made to abolish the sovereignty of his State, and to unite the territory with other States. There could have been no intention in stating the fact, but to support the insinuation of his hostility to the State governments. It therefore became him to disclose the whole truth, that the attempt referred to had been made, but that it was made by the party to which he was opposed, and repelled by the party to which he was attached.

The parties could not be discriminated without naming them, and as his opponents had been distinguished by several names, he had a right to suppose he should give the least offence by using them all, and allowing them to make their selection. The gentleman had said he had abused his constituents. Sir, said Mr. B., I believe there were very few of my constituents who co-operated in the project of pulling down the State government, for the purpose of submitting themselves to the yoke of the democracy of Pennsylvania. The gentleman might be assured that they who had sent him here were disposed to pull down no government.

But he would ask, where was the use in describing people by the names they had assumed themselves? Was it abusing the party to call them democrats? There had been a democratic society formed in our first city, and some men now high in office had become members of it. They were then not ashamed, but proud of the appellation of democrat. The name might not be deemed as honorable as formerly, but he had not been sensible before that it was considered as a term of abuse.

The gentleman had said a great deal about British influence. He does not believe that we are infected with it, or the people in general, but he believes there are leading characters in the country led away by the intrigues and influence of Britain. Sir, said Mr. B., I am ignorant of the sources of that gentleman's information; but if the gentleman ventures his assertion upon the ground of public news—upon the ground of what has been circulated in the newspapers and credited by certain people—give me leave to tell him that there is the same foundation to assert that some leading men in the country have been led away by French influence and French intrigues. He believed that France had employed more agents in the country than Britain who had held out more allurements, and employed greater and more successful means to seduce the integrity of our citizens than British agents—at least such things had been said and believed by as many people as those who entertained the opinion expressed by the gentleman. For his own part he could hope that neither belief had any other foundation than the noise and clamor of party. He deprecated the consequences of distinction drawn from supposed connexions with foreign nations. If there must be party, let us divide as Americans, and not as French and English. The very distinction tends to embitter the spirit of party and weaken the attachment to our country. He was sorry that upon the floor of that House gentlemen should employ themselves in blowing the flame of civil discord. It would be a worthier office to harmonize and to remove the errors of public opinion,

which we know to be groundless, and which divide the country. He did not know that he had heretofore transgressed the doctrine he had inculcated, but if he had he would endeavor in future to practise it.

About half after 3 o'clock an adjournment was called for, but not agreed to.

Mr. ELMER advocated an immediate decision of the question; nor did he think that could be justly called obstinacy, as all the information wanted on the subject was before the House. He expressed his regret for the personal allusions that had been made.

Mr. GODDARD said he would consider it one of the most unfortunate incidents of his life if what he had said had necessarily given rise to the party allusions that had been made. He thought the House must have had a strong predisposition to the disease with which it had been that day infected if it had been excited by his observations.

Mr. G. was convinced that prejudices and passions crept imperceptibly upon the public mind. He had examined himself as to the charge made by the gentleman from Maryland, (Mr. SMITH,) and would repeat what he had before observed, that he was willing to deprive his own State of a Representative to benefit the Union. If the gentleman has not patriotism himself to act in that manner, he trusted it would be allowed a human mind might be actuated by such motives. As to being influenced by envy towards Rhode Island on account of its political regeneration, he assured the gentleman envy was the last passion that would rankle in his mind.

The question for recommitment was taken by yeas and nays. Yeas 34, nays 56, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Peirce, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Nott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

And then the main question being put that the said bill do pass, it was resolved in the affirmative—yeas 85, nays 4, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, Thomas T. Davis, John Dennis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, William H. Hill, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Joseph Pierce, Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, John Smilie, Israel Smith, John C. Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Davenport, Thomas Morris, Killian K. Van Rensselaer, and Benjamin Walker.

THURSDAY, January 7.

A memorial of Evan Thomas and others, a committee appointed for Indian affairs by the yearly meeting of the people called Friends, held in the town of Baltimore, was presented to the House and read, praying the attention and interference of Congress to prevent the supply of spirituous liquors to the Indian tribes residing in the Territory of the United States Northwest of the river Ohio, by traders and settlers on the frontiers, and to introduce among the said Indian tribes the most simple and useful arts of civil life.—Referred to Mr. SAMUEL SMITH, Mr. GRISWOLD, Mr. DAVIS, Mr. HOGE, and Mr. RANDOLPH, to examine and report their opinion thereupon to the House.

A memorial of Isaac Zane was presented to the House and read, praying that he may be permitted to retain the possession of a certain tract of land which was granted to him by the Wyandot nation of Indians, and which, by the cession of lands since made by the said nation, falls within the boundary of the United States.—Referred to Mr. JACKSON, Mr. FEARING, Mr. VAN HORNE, Mr. ELMER, and Mr. JOSIAH SMITH; to examine and report their opinion thereupon to the House.

A memorial of sundry delegates chosen by, and in behalf of, a number of aliens residing in the county of Chester, in the State of Pennsylvania, was presented to the House and read, praying a repeal or amendment of an act of Congress, passed on the eighteenth day of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend the act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject."—Referred to the committee appointed, on the fifteenth ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws respecting naturalization.

The SPEAKER laid before the House a letter from the Secretary of State, enclosing a table showing the comparative duties paid in the ports of Great Britain on goods imported into Great Britain, in American, foreign, and British bottoms, since the 5th of January, 1798, so far as the same respects the commerce of the United States, made in pursuance of a resolution of this House of the 24th ultimo; which were read, and ordered to be referred to the Committee of the whole House on the state of the Union.

The SPEAKER laid before the House a letter from William Doughty, principal clerk in the office of the Treasurer of the United States, accompanying an account of Samuel Meredith, the late Treasurer, of receipts and expenditures of public moneys, from the first of July to the thirteenth of September, one thousand eight hundred and one; which was read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement exhibiting the amount of duties and drawbacks on goods, wares, and merchandise, imported into the United States, and exported therefrom, during the years one thousand seven hundred and ninety-eight, one thousand seven hundred and ninety-nine, and one thousand eight hundred, in pursuance of a standing order of the House of the third of March, one thousand seven hundred and ninety-seven; which were read, and ordered to lie on the table.

The House proceeded to consider the second and third resolutions reported, on the twenty-second ultimo, from the Committee of the whole House on the state of the Union; and the same being severally twice read were agreed to by the House, as follows:

Resolved, That it is expedient to inquire whether any, and if any, what, addition it may be necessary to make to the military stores of the United States.

Resolved, That a committee be appointed to inquire and report whether any, and, if any, what, amendments are necessary in the laws respecting the fortifications of the harbors of the United States.

Ordered, That Mr. GREGG, Mr. L. R. MORRIS, Mr. LOWNDES, Mr. NEWTON, and Mr. CUTTS, be appointed a committee, pursuant to the first resolution.

Ordered, That Mr. EUSTIS, Mr. DAVIS, Mr. WALKER, Mr. JOHN TALIAFERRO, Jr., and Mr. JONES, be appointed a committee, pursuant to the second resolution.

Mr. S. SMITH reported a bill for the protection of American commerce and seamen in the Mediterranean and adjoining seas, which empowers the President fully to equip and employ such vessels of the United States as he shall deem requisite; that they be empowered to capture Tripolitan vessels; and that the President be authorized to commission private vessels, with power to capture vessels of Tripoli.

Read twice, and referred to a Committee of the Whole.

Mr. NICHOLSON presented a letter which he had received from the Governor of Maryland, enclosing a letter from the Commissioners of the City of Washington, addressed to the Legislature of that State, stating their present inability to defray the interest accruing on loans of about $250,000, made by Maryland, and suggesting the expediency of that Legislature offering to receive from Congress, who had guarantied the loans, six per cent. stock at par; the loans having been originally made in six per cents., with an engagement that repayment should be made in specie. Also, resolutions of the Legislature of Maryland, agreeing to the proposition of the Commissioners.—Referred to the Secretary of the Treasury.

STANDING RULES AND ORDERS.

The House went into Committee of the Whole on the standing rules of the House.

Mr. LEIB moved the addition of the following rule:

"The Speaker shall assign such places to the stenographers on the floor as shall not interfere with the convenience of the House."

Mr. LEIB prefaced his motion, by observing that, in the standing rules proposed, no provision appeared to be made for the admission of stenographers. They had heretofore been subject to the will of the Speaker. However great his respect for the present Speaker, he was of opinion, that they should not depend for their accommodation upon the will of any man; and he thought it became the House, on this occasion, to establish a precedent which would place those who took the debates above the caprice of any individual.

Mr. HUGER moved to amend the motion so as to read as follows:

"Stenographers shall be admitted, and the Speaker shall assign such places to them on the floor as shall not interfere with the convenience of the House."

Mr. LEIB agreed to this modification.

The motion was opposed by Mr. GRISWOLD, Mr. RUTLEDGE, Mr. VARNUM, Mr. HEMPHILL, Mr. T. MORRIS, Mr. EUSTIS, Mr. DANA, Mr. ELMER, and Mr. GODDARD; and supported by Mr. LEIB, Mr. S. SMITH, Mr. NICHOLSON, Mr. CLAIBORNE, Mr. SMILIE, Mr. HOLLAND, and Mr. SPRIGG.

Mr. HUGER opposed the original motion of Mr. LEIB, but supported the motion, as amended by himself.

The opponents of the motion declared, that it did not relate to substance, but merely to form; that it was allowed on all hands, that the debates should be taken, and that stenographers should, consequently, be admitted. But the single question was, how, and under what authority, they should be admitted. They remarked, that they had heretofore been admitted by the Speaker, under whose direction they had remained; that the

Speaker was the only proper authority under whose direction they ought still to remain; that, as the preservation of order and decorum rested with him, the stenographers, as well as other persons, should be permitted by him to enter the House, and be by him excluded, whenever, in his opinion, the order and a respect for the House required it. That, in case stenographers deported themselves in a disrespectful manner, or grossly misrepresented the ideas of members, the Speaker was the only person who could effectually cure the evil; that there had been, and might again be, instances of such misconduct; that, in one case, a stenographer had entered the House in a state of intoxication; another case, a speech of a gentleman, from South Carolina, had been perversely misrepresented, and the stenographer had refused to correct his errors, for which he had been expelled the House; and that, in another case, the Speaker, considering himself as misrepresented, had expelled the stenographer.

Among the opponents of the motion, a great diversity of opinion prevailed. Mr. EUSTIS, Mr. VARNUM, and Mr. ELMER, objected to it, merely on the ground that it was improper to come to any solemn decision, which was the less necessary, as the stenographers already occupied convenient seats, from which there was no probability of their being extruded by the Speaker.

Those who supported the motion, considered its decision as involving an important point; a point no less important than, whether the debates of that House should be taken with accuracy, and published without fear or partiality. They averred it as a fact, that, owing to the unwarrantable conduct of the Speaker, this had heretofore, at many periods, not been the case. The public had sought information without being able to get it. It was true, that a stenographer had been expelled for publishing a speech of a gentleman from South Carolina; but it was not for misrepresenting that speech, but for faithfully publishing it; and in the other case alluded to, a stenographer had been expelled by the Speaker, for stating, with correctness, what the Speaker had himself said. These were alarming facts, not to be forgotten, and which claimed the interposition of the House. If stenographers should be guilty of indecorum, they could still, this rule notwithstanding, be expelled the House. It was acknowledged that the gentleman who at present filled the Chair, was entitled to the full confidence of the House, but it was dangerous to vest arbitrary power in the hands of any man, and it was peculiarly proper to provide in fair, for foul weather; and it was added, that though the proposed rule would not be obligatory upon a future House, yet it would form a precedent, which they might see fit to respect.

The motion, as modified by Mr. HUGER, was then agreed to—yeas 47, nays 32.

The Committee then rose, and reported the rules with the above amendment.

The amendment was immediately taken up; when,

Mr. RUTLEDGE moved to amend the report of the Committee, by making it read as follows:

"Stenographers may be admitted under the direction of the Speaker, who shall assign to them such places on the floor as shall not interfere with the convenience of the House."

On this amendment a further debate ensued; after which, the yeas and nays were called, and were—yeas 27, nays 51, as follows:

YEAS—John Campbell, Samuel W. Dana, Franklin Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, William H. Hill, Benjamin Huger, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, John A. Hanna, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Sprigg, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Isaac Van Horne.

Another motion was then made and seconded to amend the said amendment, by inserting after the words, "stenographers shall," the following words "until otherwise ordered by the House:"

And, the question being thereupon taken, it passed in the negative.

And the main question being put, that the House do agree to the amendment for an additional rule, as reported from the Committee of the whole House, it was resolved in the affirmative—yeas 47, nays 28, as follows:

YEAS—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, John Taliaferro, jr., David Thomas, John Thompson, Abram Trigg, John Trigg, and Isaac Van Horne.

NAYS—John Bacon, John Campbell, Samuel W. Dana, John Davenport, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William B. Grove, Daniel Heister, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stratton, Samuel Tenney, Thomas Tillinghast, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

Resolved, That this House doth agree to the said standing rules and orders, amended to read as followeth:

Rules and orders for conducting business of the House of Representatives of the United States.

First—Touching the duty of the Speaker.

He shall take the Chair every day at the hour to which the House shall have adjourned on the preceding day; shall immediately call the members to order; and, on the appearance of a quorum, shall cause the Journal of the preceding day to be read.

He shall preserve decorum and order; may speak to points of order, in preference to other members, rising from his seat for that purpose, and shall decide questions of order, subject to an appeal to the House by any two members.

He shall rise to put a question, but may state it sitting.

Questions shall be distinctly put in this form, to wit: "As many as are of opinion that (as the case may be) say Ay;" and, after the affirmative voice is expressed, "As many as are of a contrary opinion, say No." If the Speaker doubts, or a division be called for, the House shall divide; those in the affirmative of the question shall first rise from their seats, and afterwards those in the negative. If the Speaker still doubts, or a count be required, the Speaker shall name two members, one from each side, to tell the numbers in the affirmative; which being reported, he shall then name two others, one from each side, to tell those in the negative; which being also reported, he shall rise, and state the decision to the House.

All committees shall be appointed by the Speaker, unless otherwise specially directed by the House, in which case they shall be appointed by ballot; and if, upon such ballot, the number required shall not be elected by a majority of the votes given, the House shall proceed to a second ballot, in which a plurality of votes shall prevail; and in case a greater number than are required to compose or complete the committee shall have an equal number of votes, the House shall proceed to a further ballot or ballots.

In all cases of ballot by the House, the Speaker shall vote; in other cases he shall not vote, unless the House be equally divided, or unless his vote, if given to the majority, will make the division equal; and, in case of such equal division, the question shall be lost.

All acts, addresses, and joint resolutions, shall be signed by the Speaker; and all writs, warrants, or subpœnas, issued by order of the House, shall be under his hand and seal, attested by the Clerk.

In case of any disturbance or disorderly conduct in the gallery or lobby, the Speaker (or Chairman of the Committee of the whole House) shall have power to order the same to be cleared.

Stenographers shall be admitted; and the Speaker shall assign such places to them on the floor, as shall not interfere with the convenience of the House.

Secondly—Of Decorum and Debate.

When any member is about to speak in debate, or deliver any matter to the House, he shall rise from his seat, and respectfully address himself to Mr. Speaker.

If any member, in speaking, or otherwise, transgress the rules of the House, the Speaker shall, or any member may, call to order; in which case, the member so called to order shall immediately sit down, unless permitted to explain, and the House shall, if appealed to, decide on the case, but without debate. If there be no appeal, the decision of the Chair shall be submitted to. If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, and the case require it, he shall be liable to the censure of the House.

When two or more members happen to rise at once, the Speaker shall name the member who is first to speak.

No member shall speak more than twice to the same question, without leave of the House, nor more than once, until every member, choosing to speak, shall have spoken.

Whilst the Speaker is putting any question, or addressing the House, none shall walk out of, or across, the House; nor, in such case, or when a member is speaking, shall entertain private discourse, nor, whilst a member is speaking, shall pass between him and the Chair.

No member shall vote on any question, in the event of which he is immediately and particularly interested; or in any other case, where he was present when the question was put.

Upon a division and count of the House on any question, no member without the bar shall be counted.

Every member who shall be in the House when a question is put shall give his vote, unless the House, for special reasons, shall excuse him.

When a motion is made and seconded, it shall be stated by the Speaker, or, being in writing, it shall be handed to the Chair, and read aloud by the Clerk, before debated.

Every motion shall be reduced to writing, if the Speaker or any member desire it.

After a motion is stated by the Speaker, or read by the Clerk, it shall be deemed to be in the possession of the House, but may be withdrawn at any time before a decision or amendment.

When a question is under debate, no motion shall be received, unless to amend it, to commit it for the previous question, to postpone it to a day certain, or to adjourn.

A motion to adjourn shall be always in order, and shall be decided without debate.

The previous question shall be in this form, "Shall the main question be now put?" It shall only be admitted when demanded by five members; and, until it is decided, shall preclude all amendment and further debate of the main question.

On a previous question, no member shall speak more than once without leave.

Any member may call for the division of a question, where the sense will admit of it.

A motion for commitment, until it is decided, shall preclude all amendment of the main question.

Motions and reports may be committed at the pleasure of the House.

No new motion or proposition shall be admitted, under color of amendment, as a substitute for the motion or proposition under debate.

When a question has been once made and carried, in the affirmative or negative, it shall be in order for any member of the majority to move for the reconsideration thereof.

When the reading of a paper is called for, and the same objected to by any member, it shall be determined by a vote of the House.

The unfinished business, in which the House was

engaged at the time of the last adjournment, shall have the preference in the orders of the day; and no motion on any other business shall be received, without special leave of the House, until the former is disposed of.

In all other cases of ballot, than for committees, a majority of the votes given shall be necessary to an election; and when there shall not be such majority on the first ballot, the ballot shall be repeated until a majority be obtained.

In all cases, when others than members of the House may be eligible, there shall be a previous nomination.

If a question depending be lost by adjournment of the House, and revived on the succeeding day, no member, who has spoken twice on the day preceding, shall be permitted again to speak without leave.

Every order, resolution, or vote, to which the concurrence of the Senate shall be necessary, shall be read to the House, and laid on the table, on a day preceding that in which the same shall be moved, unless the House shall otherwise expressly allow.

Petitions, memorials, and other papers, addressed to the House, shall be presented by the Speaker, or by a member in his place; a brief statement of the contents thereof shall verbally be made by the introducer, and shall not be debated or decided on the day of their being first read, unless where the House shall direct otherwise; but shall lie on the table, to be taken up in the order they were read.

Any fifteen members (including the Speaker, if there is one) shall be authorized to compel the attendance of absent members.

Upon calls of the House, or in taking the yeas and nays on any question, the names of the members shall be called alphabetically.

Any member may excuse himself from serving on any committee, at the time of his appointment, if he is then a member of two other committees.

No member shall absent himself from the service of the House, unless he have leave, or be sick and unable to attend.

Upon a call of the House, the names of the members shall be called over by the Clerk, and the absentees noted; after which the names of the absentees shall be again called over: the doors shall then be shut, and those for whom no excuse, or insufficient excuses are made, may, by order of the House, be taken into custody, as they appear, or may be sent for and taken into custody, wherever to be found, by special messengers to be appointed for that purpose.

When a member shall be discharged from custody, and admitted to his seat, the House shall determine whether such discharge shall be with, or without paying fees; and, in like manner, whether a delinquent member, taken into custody by a special messenger, shall, or shall not, be liable to defray the expense of said special messenger.

A Sergeant-at-Arms shall be appointed, to hold his office during the pleasure of the House, whose duty it shall be to attend the House during its sitting; to execute the commands of the House, from time to time; together with all such process, issued by authority thereof, as shall be directed to him by the Speaker.

The fees of the Sergeant-at-Arms shall be: for every arrest, the sum of two dollars; for each day's custody and releasement, one dollar; and for travelling expenses of himself, or a special messenger, going and returning, one-tenth of a dollar per mile.

Five standing committees shall be appointed at the commencement of each session, viz:

A Committee of Elections, to consist of seven members;

A Committee of Claims, to consist of seven members;

A Committee of Commerce and Manufactures, to consist of seven members;

A Committee of Ways and Means, to consist of seven members;

And a Committee of Revisal and Unfinished Business, to consist of three members.

It shall be the duty of the said Committee of Elections to examine and report upon the certificates of election, or other credentials, of the members returned to serve in this House, and to take into their consideration all such petitions, and other matters touching elections and returns, as shall or may be presented, or come in question, and be referred to them by the House.

It shall be the duty of the said Committee of Claims to take into consideration all such petitions, and matters or things touching claims and demands on the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report their opinion thereupon, together with such propositions for relief therein, as to them shall seem expedient.

It shall be the duty of the said Committee of Commerce and Manufactures, to take into consideration all such petitions, and matters or things touching the commerce and manufactures of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House; and to report, from time to time, their opinion thereon.

It shall be the duty of the said Committee of Ways and Means to take into consideration all such reports of the Treasury Department, and all such propositions relative to the revenue, as may be referred to them by the House; to inquire into the state of the public debt, of the revenue, and of the expenditures, and to report, from time to time, their opinion thereon; to examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and, also, to report, from time to time, such provisions and arrangements, as may be necessary to add to the economy of the departments, and the accountability of their officers.

It shall be the duty of the said Committee of Revisal and Unfinished Business to examine and report what laws have expired, or are near expiring, and require to be revived or further continued; also, to examine and report, from the Journal of the last session, all such matters as were then depending and undetermined.

No committee shall sit during the sitting of the House without special leave.

The Clerk of the House shall take an oath for the true and faithful discharge of the duties of his office, to the best of his knowledge and abilities; and shall be deemed to continue in office until another be appointed.

It shall be the duty of the Clerk of the House, at the end of each session, to send a printed copy of the Journal thereof to the Executive, and to each branch of the Legislature, of every State.

Whenever confidential communications are received from the President of the United States, the House shall be cleared of all persons, except the members and the Clerk, and so continue during the reading of such communications, and (unless otherwise directed by the House) during all debates and proceedings to be had thereon. And when the Speaker, or any other member, shall inform the House that he has communications to make, which he conceives ought to be kept secret, the House shall, in like manner, be cleared till the communication be made: the House shall then determine whether the matter communicated requires secrecy or not, and take order accordingly.

Thirdly.—Of Bills.

Every bill shall be introduced by motion for leave, or by an order of the House on the report of a committee, and, in either case, a committee to prepare the same shall be appointed. In cases of a general nature, one day's notice, at least, shall be given of the motion to bring in a bill; and every such motion may be committed.

Every bill shall receive three several readings in the House, previous to its passage; and all bills shall be despatched in order as they were introduced, unless where the House shall direct otherwise; but no bill shall be twice read on the same day, without special order of the House.

The first reading of the bill shall be for information, and if opposition be made to it the question shall be, "Shall the bill be rejected?" If no opposition be made, or if the question to reject be negatived, the bill shall go to its second reading without a question.

Upon the second reading of the bill, the Speaker shall state it as ready for commitment or engrossment; and if committed, then a question shall be, whether to a select or standing committee, or to a Committee of the whole House; if to a committee of the whole House, the House shall determine on what day. But if the bill be ordered to be engrossed, the House shall appoint the day when it shall be read the third time.

After commitment and report thereof to the House, a bill may be recommitted, or at any time before its passage.

All bills ordered to be engrossed, shall be executed in a fair round hand.

When a bill shall pass, it shall be certified by the Clerk, noting the day of its passing at the foot thereof.

Fourthly.—Of Committees of the Whole House.

It shall be a standing order of the day, throughout the session, for the House to resolve itself into a Committee of the whole House on the state of the Union.

In forming a Committee of the whole House, the Speaker shall leave his chair, and a Chairman to preside in committee shall be appointed by the Speaker.

Upon bills committed to a Committee of the whole House, the bill shall be first read throughout by the Clerk, and then again read and debated by clauses, leaving the preamble to be last considered; the body of the bill shall not be defaced or interlined; but all amendments, noting the page and line, shall be duly entered by the Clerk on a separate paper, as the same shall be agreed to by the committee, and so reported to the House. After report, the bill shall again be subject to be debated and amended by clauses, before a question to engross it be taken.

All amendments made to an original motion in committee shall be incorporated with the motion, and so reported.

All amendments made to a report committed to a Committee of the whole House shall be noted and reported as in the case of bills.

All questions, whether in committee, or in the House, shall be propounded in the order in which they were moved, except that, in filling up blanks, the largest sum and the longest time shall be first put.

No motion or proposition for a tax, or charge upon the people, shall be discussed the day in which it is made or offered, and every such proposition shall receive its first discussion in a Committee of the whole House.

No sum or quantum of tax or duty, voted by a Committee of the whole House, shall be increased in the House, until the motion or proposition for such increase shall be first discussed and voted in a Committee of the whole House; and so in respect to the time of its continuance.

All proceedings, touching appropriations of money, shall be first moved and discussed in a Committee of the whole House.

The rules of proceedings in the House shall be observed in committee, so far as they may be applicable, except the rule limiting the times of speaking.

That no person shall be admitted within the lobby, but members of the Senate, officers of the General or State Governments, foreign Ministers, and such as are introduced by the members of the House.

No standing rule or order of the House shall be rescinded without one day's notice being given of the motion therefor.

Joint rules and Orders of the Two Houses.

In every case of an amendment of a bill agreed to in one House, and dissented to in the other, if either House shall request a conference, and appoint a committee for that purpose, and the other House shall also appoint a committee to confer, such committees shall, at a convenient hour, to be agreed on by their Chairman, meet in the conference chamber, and state to each other verbally or in writing, as either shall chose, the reason of their respective Houses for and against the amendment, and confer freely thereon.

When a message shall be sent from the Senate to the House of Representatives, it shall be announced at the door of the House, by the Doorkeeper, and shall be respectfully communicated to the Chair, by the person by whom it may be sent.

The same ceremony shall be observed, when a message shall be sent from the House of Representatives to the Senate.

Messages shall be sent by such persons, as a sense of propriety, in each House, may determine to be proper.

While bills are on their passage between the two Houses, they shall be on paper, and under the signature of the Secretary or Clerk of each House respectively.

After a bill shall have passed both Houses, it shall be duly enrolled on parchment, by the Clerk of the House of Representatives, or the Secretary of the Senate, as the bill may have originated in the one or the other House, before it shall be presented to the President of the United States.

When bills are enrolled, they shall be examined by a joint committee of one from the Senate, and two from the House of Representatives, appointed as a standing committee for that purpose, who shall carefully compare the enrolment with the engrossed bills, as passed in the two Houses, and, correcting any errors that may be discovered in the enrolled bills, make their report, forthwith, to the respective Houses.

After examination and report, each bill shall be signed in the respective Houses, first by the Speaker of the House of Representatives, and then by the President of the Senate.

After a bill shall have thus been signed in each House, it shall be presented by the said committee to the President of the United States, for his approbation, it being first endorsed on the back of the roll, certifying in which

House the same originated; which endorsement shall be signed by the Secretary or Clerk (as the case may be) of the House in which the same did originate, and shall be entered on the journal of each House. The said committee shall report the day of presentation to the President, which time shall also be carefully entered on the journal of each House.

All orders, resolutions, and votes, which are to be presented to the President of the United States, for his approbation, shall also, in the same manner, be previously enrolled, examined, and signed, and shall be presented in the same manner, and by the same committee, as provided in case of bills.

When the Senate and House of Representatives shall judge it proper to make a joint address to the President, it shall be presented to him in his audience chamber, by the President of the Senate, in the presence of the Speaker and both Houses.

FRIDAY, January 8.

Mr. MILLEDGE, from the Committee of Elections, reported that the committee had examined the certificates and other credentials of the members returned to serve in this House; and had agreed to a further report; which was read, and ordered to lie on the table.

On motion, it was

Resolved, That a committee be appointed to inquire and report whether any, and what, alterations are necessary to be made in the "Act respecting quarantine and health laws."

Ordered, That Mr. MITCHILL, Mr. EUSTIS, Mr. LEIB, Mr. ARCHER, and Mr. LOWNDES, be appointed a committee, pursuant to the said resolution.

On motion, it was

Resolved, That the President of the United States be, and he is hereby, requested to cause to be laid before this House an estimate of the expenses which are necessary for the carrying into effect the Convention between the United States of America and the French Republic.

Ordered, That Mr. RANDOLPH and Mr. BAYARD be appointed a committee to present the foregoing resolution to the President of the United States.

On motion, it was

Resolved, That the President of the United States be requested to cause to be laid before this House such information and documents as are in possession of the Department of State, relative to spoliations committed on the commerce of the United States, under Spanish authority; and, also, relative to the imprisonment of the American Consul at Saint Jago de Cuba.

Ordered, That Mr. BAYARD and Mr. RANDOLPH be appointed a committee to present the foregoing resolution to the President of the United States.

The House proceeded to consider the report of the committee appointed, on the fourteenth ultimo, "to inquire into the expediency or inexpediency of giving further time to persons entitled to military land warrants to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud;" which lay on the table: Whereupon,

Ordered, That the farther consideration of the said report be postponed until Monday next.

The House resolved itself into a Committee of the whole House on the report of the Secretary of the Treasury, of the fourth instant, to whom was referred, on the fourteenth ultimo, the memorial of John Hobby, late Marshal of the district of Maine; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

MONDAY, January 11.

Another member, to wit: SETH HASTINGS, from Massachusetts, produced his credentials, was qualified, and took his seat in the House.

A petition of Thomas Bruff, of Joseph, in the State of Maryland, dentist, was presented to the House and read, praying the aid and patronage of Congress, to enable the petitioner to complete a machine for producing perpetual motion, or to perform continual revolutions without winding; the principles of which he discovered in the year one thousand seven hundred and ninety.—Referred to Mr. SOUTHARD, Mr. LOWNDES, and Mr. MITCHILL, the committee to whom was referred, on the fifth instant, the petition of Lewis Dupre, on the same subject.

On a motion made and seconded that the House do agree to an amendment to the eleventh rule of the joint rules and orders of the House, relating to "Committees of the whole House," so as the said rule shall read as follows:

"That no person shall be admitted within the bar of the lobby, but members of the Senate, officers of the General or State Governments, and foreign Ministers:"

And, on the question that the House do agree to the said amendment, it passed in the negative.

A Message was received from the President of the United States, transmitting a memorial and documents of the Commissioners of the City of Washington; which were referred to Mr. NICHOLSON, Mr. BAYARD, Mr. JOHN TALIAFERRO, jun., Mr. HASTINGS, and Mr. ALSTON.

The House again resolved itself into a Committee of the Whole House on the report of the Secretary of the Treasury, of the 4th instant, on the memorial of John Hobby, late Marshal of the district of Maine; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That it is expedient to appoint a committee to bring in a bill to authorize and direct the Marshal of the district of Maine to discharge from confinement John Hobby, late Marshal of the said district, on his making a surrender of all his property to the United States.

Ordered, That Mr. WADSWORTH, Mr. JOHN TRIGG, and Mr. STEWART, be appointed a committee pursuant to the said resolution.

Mr. JACKSON, from the committee to whom was

referred, on the 7th instant, the memorial of Isaac Zane, made a report; which was read, and ordered to lie on the table.

Mr. GRISWOLD, from the committee to whom was referred, on the fourth instant, a letter from Samuel Dexter, late Secretary of War, made a report; which was read and considered: Whereupon,

Resolved, That the accounting officers of the Treasury be authorized to adjust the account of Samuel Dexter, Esq., for the expense which has arisen, or which may arise, in defending against the suit of Joseph Hodgson, brought on the covenants in the lease of a house improved for a War Office; and that the same be paid from the Treasury of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. GRISWOLD, Mr. HANNA, Mr. DENNIS, Mr. EUSTIS, and Mr. NICHOLSON, do prepare and bring in the same.

Mr. VARNUM, from the committee appointed, on the thirtieth ultimo, presented a bill fixing the Military Peace Establishment of the United States; which was read twice and committed to a Committee of the whole House on Thursday next.

The House resolved itself into a Committee of the whole House on the bill for the protection of the commerce and seamen of the United States, in the Mediterranean and adjoining seas; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

The House went into a Committee of the Whole on the resolutions of the Senate respecting Captain Sterret; when, after some consideration thereof, the Committee rose, and the House refused them liberty to sit again.

This was done at the suggestion of several members, that it would be the most proper course to refer the resolutions to a select committee, for the purpose of ascertaining the degree of honor, that it would be fit to bestow upon Captain Sterret, his officers, and crew. After this vote, a reference was made to a select committee.

MEDITERRANEAN TRADE.

Mr. RANDOLPH moved a resolution directing the Secretary of the Treasury to lay before the House an estimate of the value of the exports of the United States, for the last five years, to ports situated within the Straits of Gibraltar, discriminating articles of American growth from other productions.

Mr. RANDOLPH observed that he was aware of the inability of the Secretary to distinguish precisely the exports of the United States, carried to the Mediterranean ports of France and Spain, from those carried to their other ports. But still he thought it probable that the Secretary might be able to furnish information that would be valuable.

Mr. S. SMITH said that when the report was made by the Secretary, it would be a report of deception. A great part of our trade to the Mediterranean had been lopped off in consequence of the war.

Mr. SMITH afterwards remarked that on the report being made, he feared the inquiry would be, whether we should give up the protection of the Mediterranean trade, or not. Gentlemen would probably go into a calculation of figures; and if the expense of protection appeared to be greater than the benefit of the trade, they might be for withholding protection. There was one description of trade to the Mediterranean, which we could obtain no estimate of, which was however very important—the tonnage of American shipping employed in going from European ports to the Mediterranean, and from the Mediterranean to European ports, and American shipping employed between the East Indies and the Mediterranean. This trade the Government was as much bound to protect, as it was bound to protect the landed interest of the country. Still Mr. S. knew not that it would be proper to oppose the passage of a resolution that asked for information.

Mr. SMILIE knew not what information we could receive; but he knew that whatever it should be, it could do no harm.

Mr. NICHOLSON remarked that the House would not be in a worse situation after the report than it was now. For himself, he was in a state of total ignorance, and he believed a large part of the House was also ignorant of the extent of our Mediterranean trade. It was impossible that the House could be deceived by the report; as, if any part of it should be calculated to deceive us, his colleague would be able to detect its errors. He had heard, and that too from commercial men, that our Mediterranean trade was not valuable, and not worth the expense of the squadron fitted out to protect it. He was at a loss to decide between these opinions and those of his colleague.

Mr. MITCHILL spoke in favor of the resolution.

Mr. GRISWOLD had no objection to obtaining the estimate, if desired by gentlemen; not that he supposed the report could present the information that was desired. With regard to our Mediterranean trade, it was well known, that lately, owing to our contest with Algiers, our fish and oil went in European bottoms, which could not be noticed in the Treasury statements, as they went first to other ports.

Mr. EUSTIS was perfectly willing to obtain the report, that the great increase in our trade to the Mediterranean should be seen; from which its great value would fully appear, and its claim to encouragement.

Mr. VARNUM suggested the propriety of a reference to a select committee, which, from the documents before the House, could select the desired information.

Mr. RUTLEDGE feared, that the call for this information would delay the passage of an important bill before the House for the protection of our Mediterranean commerce. He hoped, in order as promptly as possible to obtain information, the Secretary of the Treasury would be called upon for it. With respect to the protection of our trade in the Mediterranean, it was, in his opinion, unimportant what its extent was. We were bound to protect the commerce of our citizens in all its ramifications, whether great or small.

The resolution was then agreed to.

Tuesday, January 12.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning the library for the use of both Houses of Congress," with several amendments; to which they desire the concurrence of this House.

Mr. J. C. Smith, from the Committee of Claims, to whom was referred, on the fourteenth ultimo, the petition of Caleb Eddy, with instructions to inquire into the expediency of extending to the refugees from the British provinces of Canada and Nova Scotia a further time for exhibiting their claims for lands, under the "Act for the relief of the refugees from the British provinces of Canada and Nova Scotia," made a report; which was read, and ordered to lie on the table.

A Message was received from the President of the United States, transmitting a letter from the Secretary of State, containing an estimate of the expenses necessary for carrying into effect the Convention between the United States of America and the French Republic; which Message, and papers accompanying the same, were read, and ordered to be referred to the Committee of Ways and Means.

Mr. Wadsworth, from the committee appointed yesterday, presented a bill authorizing the discharge of John Hobby, from his confinement; which was read twice and committed to a Committee of the whole House.

DUTY ON SALT.

Mr. Bayard moved the following resolution:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duty on salt."

On which motion, the previous question being called for by five members, to wit: "Shall the main question to agree to the said motion, be now put?"

And debate arising thereon, Mr. Bayard, the member from Delaware, was called to order by Mr. Randolph, one of the members from Virginia, on an opinion that he was debating the merits of the main question; and the Speaker having decided that the member from Delaware was in order, an appeal was made to the House from the decision of the Chair; and, on the question, "Is the member from Delaware in order?" it was resolved in the affirmative. And then, after farther debate, the previous question was taken, to wit, "Shall the main question to agree to the said motion be now put?" and passed in the negative—yeas 41, nays 49, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William Hoge, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Smilie, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Andrew Gregg, Daniel Heister, Joseph Heister, William Helms, James Holland, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Joseph B. Varnum.

Wednesday, January 13.

Ordered, That so much of the report of the Committee of Revisal and Unfinished Business, as relates to the claim of the legal representatives of Samuel Lapsley, deceased, be referred to the Committee of Claims.

On motion, it was

Ordered, That the Committee of Ways and Means be authorized to report by bill or bills, or otherwise, on all such matters, as shall, from time to time, be referred to them by the House.

A bill was reported which provides for indemnifying Samuel Dexter for any expenses that may be incurred by him in consequence of the suit instituted by Joseph Hodgson, and for any judgment that may be rendered in that suit. The bill was read twice, and referred to a Committee of the whole House.

The House went into Committee of the Whole on the bill for the relief of John Hobby.

Mr. Gregg proposed an amendment to the bill which would provide the same relief for a collector of excise in the county of Northampton, State of Pennsylvania, who was a delinquent for about two thousand dollars, and had been confined in jail for more than two years.

Messrs. Rutledge, Mason, and Huger, opposed the amendment. They urged the propriety of deciding upon every case of this kind singly. They stated the importance of being very cautious in granting relief to the receivers of public money who embezzled or squandered it away.

The amendment was not agreed to.

Messrs. Stanley, Bacon, and Elmendorf, opposed the bill. They thought such defaulters should be rigorously dealt with, to deter others from violating the public confidence reposed in them.

Messrs. Davis, Perkins, Wadsworth, and S. Smith, advocated the bill.

The Committee rose, and reported the bill with amendments, which were agreed to, and it was ordered to be engrossed for a third reading to-morrow, forty-four voting in favor of it.

Mr. Randolph, with leave, presented a bill to amend an act, entitled, "An act to lay and collect a direct tax;" which was read twice, and made the order of the day for Friday, and ordered to be printed.

This bill provides for the collection of the arrearages of that tax.

The House then took up the bill respecting the Library, as amended by the Senate: they agreed to some of the amendments and disagreed to others.

The Senate proposed that the Librarian should be appointed by the President, which the House did not agree to.

Mr. S. Smith observed that the law regulating coin would expire at the end of this session of Congress, and that great inconvenience would be experienced by the banks and individuals; as foreign gold was not to be received in payment of duties, &c. He therefore moved that a committee be appointed to bring in a bill to continue in force the present law on the subject of foreign coin. The motion was agreed to, and then the House adjourned.

Thursday, January 14.

Another member, to wit: John Dawson, from Virginia, appeared, was qualified, and took his seat in the House.

An engrossed bill authorizing the discharge of John Hobby from his confinement was read the third time and passed.

Mr. Randolph, from the Committee of Ways and Means, presented a bill to prevent intrusions on the public lands, and for other purposes; which was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Secretary of State, to whom was referred, on the 14th ultimo, the memorial of Philip Sloan; and, after some time spent therein, the Committee rose and reported thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That a committee be appointed to bring in a bill to authorize the payment of two thousand eight hundred dollars to Philip Sloan, from the Treasury of the United States, as a full compensation for his claims.

Ordered, That Mr. Jones, Mr. Clopton, and Mr. Huger, be appointed a committee, pursuant to the said resolution.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government for the year one thousand eight hundred and two; which was read twice, and committed to a Committee of the whole House on the first Monday in February next.

The House proceeded to consider the report of the committee to whom was referred, on the 7th instant, the petition of Isaac Zane, which lay on the table: Whereupon,

Resolved, That a committee be appointed to bring in a bill authorizing the President of the United States to convey, in fee simple, to Isaac Zane, six sections of land, of one square mile each, within the Northwestern Territory, on any lands not heretofore appropriated, and that the Indian title thereto has been extinguished.

Ordered, That Mr. Jackson, Mr. Fearing, and Mr. Van Horne, be appointed a committee pursuant to the said resolution.

The Speaker laid before the House a letter from the Secretary of State, enclosing certain laws of the Northwestern and Indiana Territories of the United States, in pursuance of a resolution of this House, of the twenty-fourth ultimo; which were read and ordered to lie on the table.

The House went into a Committee of the Whole on the bill to amend the act, entitled "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

Friday, January 15.

A petition of sundry citizens of the District of Columbia, in opposition to a petition from other citizens of the said District, presented on the twenty-third ultimo, "praying the aid and patronage of Congress in the establishment of a company for the building of a bridge across the Potomac river, from the western and southern extremity of the Maryland Avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the said river," was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Ordered, That so much of the Message from the President of the United States, of the twenty-second ultimo, as relates to a schedule of the whole number of persons within the district of Tennessee, be printed for the use of the members.

A message from the Senate informed the House that the Senate insist on their amendments, disagreed to by this House, to the bill, entitled "An act concerning the library for the use of both Houses of Congress," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers on their part.

Mr. S. Smith, from the Committee of Commerce and Manufactures, made report on the petition of Thomas K. Jones, of Boston. It was in favor of granting the drawback on ten pipes of wine re-exported.—Referred to the Committee of the Whole on Monday next.

Mr. Jones presented a petition from the assessors of the direct tax in the city and county of Philadelphia, praying for additional compensation.—Referred to a committee of three, viz: Mr. Jones, Mr. John C. Smith, and Mr. Smith of New York.

Mr. Gregg moved that the return of the census of Tennessee, should be printed, to make the documents on that subject complete. Agreed to.

Mr. Dawson (who took his seat yesterday) observed, that he understood some gentlemen were in doubt whether he was entitled to a seat. He

wished the Committee of Elections to make an early report, that if the employ with which he had been honored was incompatible with the character of a legislator, according to the Constitution which he had sworn to support, it would be so declared; and that the district which had chosen him might have an opportunity of again expressing their sentiments in the choice of a representative.

Mr. S. Smith observed, there could be no difficulty in the gentleman's taking his seat until the Committee of Elections should make their report.

Mr. Milledge, chairman of the Committee of Elections, mentioned that there were no credentials relative to Mr. Dawson before the committee. Mr. M. had written to the Governor of Virginia, on Monday last, on the subject, and expected an answer by Monday next.

FUGITIVE BILL.

The House then resolved itself into Committee of the Whole on the bill respecting fugitives from justice, and persons escaping from the service of their masters.

The bill contemplates inflicting a penalty of five hundred dollars on any person harboring, concealing, or employing, runaway slaves. Every person employing a black person, unless he had a certificate with a county seal to it, or signed by a justice of the peace, would be liable to the penalty.

The debate on the bill was protracted until after three o'clock.

It was opposed by Messrs. Varnum, Bacon, T. Morris, Eustis, Smilie, Goddard Dana, Hemphill, and Southard, who were in general unwilling that he who should employ a black person who was a stranger to him, and did not, within one month, publish in two newspapers an advertisement giving a description of the person so employed, should incur a penalty of five hundred dollars. They did not wish to compel every free person of color in the Middle and Eastern States to procure and carry about with them such a certificate.

The bill was supported by Messrs. Nicholson, Huger, Rutledge, Van Ness, Claiborne, and Holland. They considered it a great injury, to the owners of that species of property, that runaways were employed in the Middle and Northern States, and even assisted in procuring a living. They stated that when slaves ran away and were not recovered it excited discontent among the rest. When they were caught and brought home they informed their comrades how well they were received and assisted, which excited a disposition in others to attempt escaping, and obliged their masters to use greater severity than they otherwise would. It was, they said, even on the score of humanity, good policy in those opposed to slavery to agree to this law.

A motion was made to strike out the second section of the bill, which would create therein and inflict the penalty for employing a person of color who had not a certificate of his freedom. The Committee were equally divided, thirty-eight voting for striking out and thirty-eight against; so the motion was not carried.

The Committee then rose, and a motion was made to adjourn, but did not succeed. The House took up the amendments of the Committee, but, before they got through them, an adjournment was carried, and the House adjourned until Monday.

Monday, January 18.

The Speaker laid before the House a letter from Samuel Coleman, Assistant Clerk to the Council of the State of Virginia, enclosing a return of the election of John Dawson, to serve as a Representative for the said State, in the seventh Congress of the United States; which were read, and ordered to be referred to the Committee of Elections.

A petition of John Cleves Symmes was presented to the House and read, praying that Congress will accept of the release and relinquishment of the petitioner, to the United States, of all his legal and equitable claim, and colorable right, by patent or contract, statute or possession, whatsoever, to a certain quantity of land, lying north of the lands granted by the United States, on a contract with the petitioner and his associates, in the Territory Northwest of the river Ohio, for the reasons and on the terms and conditions therein specified.—Referred to the committee to whom was referred, on the eighth ultimo, the petition of James McCashen and others; and that Mr. D. Heister, and Mr. Claiborne, be added to the said committtee.

A petition of sundry citizens of the District of Columbia, in opposition to the prayer of a petition from sundry other citizens of the said district, presented on the twenty-ninth ultimo, for the erection of a bridge from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac, was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, accompanying a statement of the value of the exports of the United States, to the ports of Italy, Gibraltar, and the Barbary Powers, for each of the five years preceding the thirtieth of September, one thousand eight hundred and one, in pursuance of the resolution of this House of the eleventh instant; which were read, and ordered to be referred to the Committee of the whole House to whom was committed, on the seventh instant, the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas.

The House resolved itself into a Committee of the whole House on the bill fixing the Military Peace Establishment of the United States; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

The House proceeded to consider the message from the Senate of the fifteenth instant, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act concerning the Library for the use of both Houses of Congress;" Whereupon,

Resolved, That this House doth insist on their disagreement to the fourth, sixth, and seventh amendments of the Senate, disagreed to by this House, and insisted on by the Senate to the said bill.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendments, and that Mr. Bayard, Mr. Nicholson, and Mr. Dawson, be appointed Managers at the said conference on the part of this House.

FUGITIVE BILL.

The House resumed the consideration of the amendments reported on the fifteenth instant from the Committee of the whole House to the bill to amend the act, entitled, "An act respecting fugitives from justice, and persons escaping from the service of their masters;" and the same being severally twice read, were, on the question being put thereon, agreed to by the House.

The said bill was then further amended at the Clerk's table: and on the question that the said bill, with the amendments, be engrossed and read the third time, it passed in the negative—yeas 43, nays 46, as follows:

Yeas—Willis Alston, James A. Bayard, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, William Barry Grove, Daniel Heister, Joseph Heister, John Holland, Benjamin Huger, George Jackson, Charles Johnson, Michael Leib, Thomas Lowndes, John Milledge, Thomas Moore, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Rutledge, John Smith, of Virginia, Samuel Smith, Richard Sprigg, Richard Stanford, John Stratton, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness.

Nays—John Bacon, Phanuel Bishop, Robert Brown, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, John A. Hanna, Seth Hastings, Joseph Hemphill, Archibald Henderson, William Hoge, Ebenezer Mattoon, Samuel L. Mitchill, Thomas Morris, Jas. Mott, Joseph Pierce, Elias Perkins, Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Josiah Smith, Henry Southard, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, Henry Woods.

And so the said bill was rejected.

Tuesday, January 19.

A memorial of Fulwar Skipwith, late Consul General of the United States at Paris, was presented to the House and read, praying the liquidation and settlement of a claim for official services rendered, and advances of money made by the memorialist, in the capacity aforesaid, on account of the United States.—Referred to the Secretary of State, with instruction to examine the same, and report his opinion thereupon to the House.

A petition of sundry inhabitants of the city of Washington, in the District of Columbia, was presented to the House and read, praying the aid and patronage of Congress to enable the petitioners and others to connect the waters of the river Potomac and the Eastern Branch of the said river, by opening and completing a canal along the Tiber creek, through the low ground at the foot of the Capitol Hill, in said city.—Referred to the Committee appointed on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. Stanley, one of the members from North Carolina, presented to the House a petition of Memucan Hunt, William Polk, and Pleasant Henderson, for themselves and others, addressed to the General Assembly of that State; also, sundry resolutions of the said Assembly, respecting a claim of the petitioners for the value of certain lands in the State of Tennessee, held under grants from the State of North Carolina, prior to the cession of the said lands to the United States, accepted by an act of Congress passed the second day of April, one thousand seven hundred and ninety; which were received and read: Whereupon,

Ordered, That the said petition and resolutions be referred to Mr. Stanley, Mr. Rutledge, Mr. Dawson, Mr. Dickson, and Mr. Fowler; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on a letter from the Governor of Maryland, and sundry documents respecting loans from the said State to the Commissioners of the City of Washington, referred to him by order of the House, on the seventh instant; which were read, and ordered to be referred to the committee appointed on the eleventh instant, to whom was referred a Message of the President of the United States on the same subject.

Mr. Tallmadge, from the committee to whom were referred, on the eleventh instant, the resolutions of the Senate, "in respect to Lieutenant Sterret, the officers, and crew, of the United States schooner Enterprize," made a report; which was read, and, together with the said resolutions, ordered to be committed to a Committee of the whole House to-morrow.

The House again resolved itself into a Committee of the whole House on the bill fixing the Military Peace Establishment of the United States; and, after some time spent therein, the Committee rose and reported several amendments thereto.

Ordered, That the said bill, with the amendments, do lie on the table.

Wednesday, January 20.

A petition of sundry citizens of the District of Columbia, in opposition to the prayer of a petition

from sundry other citizens of the said District, presented on the twenty-ninth ultimo, "that a bridge may be erected from the western and southern extremity of Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the river Potomac," was presented to the House and read.—Referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations are necessary in the existing government and laws of the District of Columbia.

Mr. Fearing presented a law of the Legislature of the Territory Northwest of the Ohio, for the division of that Territory into three Governments, the Western Middle, and Eastern, and pointing out the boundaries for States as laid out by the Old Confederation. Mr. F. moved to refer it to a select committee.

Mr. Giles observed, that the law would place the people of that Territory in a very disagreeable situation, and it should be decided as early as possible. He had in his hands petitions signed by above one thousand inhabitants of that Territory against the law. The law would remove them further from a State government. Its only tendency would be to perpetuate the office of Governor and the Territorial Legislature.

Mr. Davis moved to refer the law to a Committee of the whole House, as it would give an earlier decision to the subject.

It was referred to the Committee of the Whole, made the order of the day for to-morrow, and ordered to be printed.

Mr. Giles then presented the petitions he alluded to, and moved a reference to the Committee of the Whole, and one of them to be printed; which was agreed to.

Mr. Davis mentioned that he had received a communication from the Treasury Department respecting the location of military land warrants, which he moved should be printed; agreed to.

Mr. Jackson moved that the ordinance of 1787, respecting the Northwestern Territory, should be printed for the use of the members; which was agreed to.

On motion, it was

Resolved, That the Committee of Ways and Means be authorized to cause to be printed under their inspection, all such reports and documents, touching the matters referred to them, as may appear necessary to the committee, previous to the presentation of the same to the House.

MILITARY PEACE ESTABLISHMENT.

The House then took up the amendments to the bill fixing the Military Peace Establishment.

Mr. Bayard moved to strike out the office of Brigadier General. He said there could not be any occasion for such an officer, as the men were scattered over the whole extent of our frontiers and Atlantic coast, and placed in small divisions.

This brought on a debate which was continued until after three o'clock.

The question was taken by yeas and nays for striking out—36 against it, 54 for it, as follows:

Yeas—Willis Alston, James A. Bayard, William Butler, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Joseph H. Nicholson, Elias Perkins, John Randolph, jr., John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, John P. Van Ness, and Lemuel Williams.

Nays—John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, John Campbell, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, William Hoge, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, James Mott, Anthony Newton, jr., Joseph Pierce, Nathan Reid, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

Mr. Bayard moved to strike out the office of Colonel, and add one to the number of Majors; but it was not agreed to.

The bill proposed to give those officers who should be deranged, three months' pay when they were dismissed from the service.

Mr. Griswold moved to strike out "three months," that a greater compensation might be given to those who have grown gray in the service of their country. He thought more was due to them than what the bill proposed to allow.

Mr. Varnum said, his own opinion was in favor of a greater compensation; but he owed it to a majority of that House to yield his opinion to what they had fixed it at. He said there was nothing due to those officers, as nothing had been promised them.

Mr. Mitchill was in favor of striking out, for the purpose of inserting a compensation proportionate to the length of time the officers had been in service.

Mr. Bacon differed as to the principle laid down by gentlemen. When officers were wanted there was great competition for the appointments. They were desirous to receive the pay and emoluments. He did not think there was anything due to them.

Mr. S. Smith was for pursuing some system in this business, and keeping to a uniform principle. When a reduction was made in 1796, six months' pay and subsistence was granted. He would be in favor of that at this time.

Mr. Dana believed those officers accepted their appointments under an idea of its being the permanent Peace Establishment, and therefore something was due to them when dismissed from the public service.

Mr. Smilie said, they knew the terms on which they entered the service, and they entered voluntarily. How could anything, then, be due to them? It would be more proper to give the men something when disbanded than to provide for the officers. It was not long since that about forty were wanted, and there were thirteen hundred applications. Men could not always be obtained. When the ten regiments were ordered to be raised, the officers were soon obtained; but, after recruiting a long time, the proper number of men could not be procured.

The question for striking out was taken by yeas and nays—for it 26, against it 56, as follows:

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, William Eustis, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, Charles Johnson, Thomas Lowndes, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Benjamin Walker, and Lemuel Williams.

Nays—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Seth Hastings, Daniel Heister, Joseph Heister, William Helms, William Hoge, David Holmes, George Jackson, William Jones, Michael Leib, Ebenezer Mattoon, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stewart, John Taliaferro, jr., Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

Mr. S. Smith made a motion to raise it to the same as was granted in 1796.

Mr. Eustis advocated it, but it was not carried, there being 26 for it, and 45 against it.

Mr. S. Smith moved a section repealing former laws that came within the purview of this.

Mr. Bayard did not think such a section necessary; at any rate, he wished time to consider what laws came within the purview of this, before he agreed to it.

Mr. Giles advocated the section; which was agreed to.

The bill was ordered to be engrossed for a third reading to-morrow.

Thursday, January 21.

A petition of Anthony Addison, of Prince George's county, in the State of Maryland, was presented to the House and read, praying that he may be authorized by law to erect a bridge over the Eastern Branch of the river Potomac, at, or near the place where a ferry belonging to the petitioner is now kept.

Ordered, That the said petition be referred to the committee appointed, on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

On motion of Mr. Nicholson, it was

Resolved, That the committee appointed, on the fourteenth ultimo, "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons intrusted with public money," be, and they are, authorized to cause to be printed, for the use of the members of the House, such papers and documents relating to the subjects of their inquiry as they may think necessary.

Mr. Davenport, from the Committee of Revisal and Unfinished Business, presented a bill to continue in force an act supplementary to an act, entitled "An act regulating foreign coins, and for other purposes;" which was read twice and committed to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate adhere to their fourth and sixth amendments, and recede from their seventh amendment to the bill, entitled "An act concerning the Library for the use of both Houses of Congress," on their disagreement to which this House hath insisted.

On motion, it was

Ordered, That Mr. Nicholson be excused from serving on the committee appointed, on the fourth instant, "to inquire whether any, and what, alteration should be made in the Judicial Establishment of the United States; also, to report a provision for securing the impartial selection of juries in the courts of the United States," and that Mr. Giles be appointed of the said committee, in his stead.

Mr. Bayard, from the managers appointed on the part of this House to attend a conference with the Senate on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act concerning the Library for the use of both Houses of Congress," made a report; which was read and considered: Whereupon,

Resolved, That this House doth recede from their disagreement to the fourth and sixth amendments, adhered to by the Senate to the said bill.

MILITARY PEACE ESTABLISHMENT.

An engrossed bill fixing the Military Peace Establishment of the United States was read the third time.

Mr. Bayard observed that he should vote for the bill, because he thought it better than the former system, and it would be of much saving as to expense. He was, however, very far from being pleased with a part of that bill, that part relating

to the Brigadier General and his aid de camp. This office he knew to be a perfect sinecure; no such officer was necessary: he could have no duties to perform. He would not, however, vote against the whole bill on account of this.

Mr. RUTLEDGE.—The first section was very disagreeable to him, as it went to the establishment of a perfect sinecure. He was willing to do homage to the merit of the officer who was to benefit; but he rather thought it would be more consonant with justice, if money must be needlessly sported with, to suffer such money to be given to those who have been long in service—some fifteen or twenty years—and who are now by this bill suddenly forced to quit their present, to seek some new way of obtaining a livelihood, in circumstances, many of them perhaps, not enviable.

Mr. R. was not pleased with the so great reduction of the artillery; he thought the retention of the artillery of more importance than that of the infantry. He had hoped the artillery would have been retained to keep in order the forts already built in different part of the United States; the small number remaining was quite incompetent to preserving them in order, or preserving them from decay. The Secretary of War mentions one fort in South Carolina. There are, sir, four forts in the harbor of Charleston alone, some of which must go to decay. He should vote for the bill, because it went to make great reductions of expense, which reductions circumstances now allow us to afford; but the sinecure was obnoxious to him, and he was not pleased with the reduction of the artillery.

On the question that the bill do pass, it was resolved in the affirmative—yeas 77, nays 12, as follows:

YEAS—Willis Alston, John Bacon, James A. Bayard, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, William B. Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Wm. Helms, Joseph Hemphill, Wm. H. Hill, William Hoge, James Holland, Benjamin Huger, George Jackson, Charles Johnson, Wm. Jones, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph Pierce, Nathan Reed, John Rutledge, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Abram Trigg, John B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Davenport, Calvin Goddard, Roger Griswold, Archibald Henderson, Ebenezer Mattoon, Lewis R. Morris, Elias Perkins, John Randolph, jr., William Shepard, Josiah Smith, John Stratton, and Benjamin Walker.

MEDITERRANEAN TRADE.

The House again resolved itself into a Committee of the whole House on the bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas.

Mr. BAYARD offered an amendment, the purport of which was to give to the President the power of granting letters of marque and reprisal, to affect Algiers and Tunis as well as Tripoli. Mr. B. thought that it would be unsafe to neglect a cautionary step like this, because there was great danger, from the similarity of religion and manners, of a union taking place between Tunis, Algiers, and Tripoli; they may be brought into the war with Tripoli against us. It would be a matter of prudence to be prepared.

Mr. DANA thought it very probable that further information would be received from the Barbary Powers, when we shall be the better enabled to judge what will be expedient. He did not like the appearance of the amendment; it seemed to invite war.

Mr. BAYARD considered there was a great difference between the Barbary Powers and civilized nations; it was on account of the perfidiousness of those Powers, that he wished it left to the direction of the President to exercise the power vested in him when he should think proper; there was no trusting to them. He wished the President to do this by the authority of law; this would prevent those doubts that have been expressed, by some, of the constitutionality of his measures the last Spring and Summer; though for his part he was disposed to approbate the proceedings of the Executive on that occasion. As to its having the appearance of threatening, he did not think so; nor did he believe it would have any effect on those Powers; he hardly believed that the Dey of Algiers ever read the acts of Congress.

Mr. DANA was opposed to considering the subject at present; he was for postponing till further information should be received.

Mr. GILES was against the amendment; he thought it had the appearance of inviting them to an attack, of challenging them to combat, of irritating and provoking them: he believed there would be ample time to act on this matter hereafter, when they would have a better knowledge of circumstances, and of what to expect.

Mr. BAYARD said he was by no means disposed to withdraw his motion. You are at war with one of these nations; the others are connected with them by their religion and habits, by their government some, and by their interest more. I have been told that there is no connexion between my amendment and the bill; but I am confident there is the same connexion that there is between Tripoli and the other Powers; and it is proper to extend the bill so as to embrace Tunis and Algiers, as well as Tripoli. The gentleman from Connecticut (Mr. DANA) says there are no doubts on his mind but that the President has a Constitutional right, as the Commander-in-chief of the Army and Navy, to do as he has done; but it should be remembered that many have doubts;

and why should the gentleman be opposed to this amendment, which will preclude all doubt on the subject?

The amendment was not carried.

DIRECT TAXES.

The House went into Committee of the Whole, on the bill for amending the act for laying and collecting a direct tax.

The first section repeals the thirteenth section of the act of 1798, which prescribes that lands on which taxes remain unpaid for one year, shall be sold, subject to the right of redemption within two years after sale.

Mr. RANDOLPH stated that the provisions proposed to be repealed were unsusceptible of execution, inasmuch as the expenses of advertising required, exceeded in many cases, by four or five times, the amount of the tax, and which exceeded the per centage allowed; and inasmuch as no person would buy the land offered for sale, when he might be deprived of it by a redemption within two years.

Documents were read, which substantiated this statement.

Mr. S. SMITH opposed the repeal, as going to deprive the owners of lands of the right of redemption; which he deemed a valuable provision; without which the owners of land, particularly non-residents, would be deprived of their property, without a knowledge of the tax imposed, or being able, however desirous, to pay it.

Mr. RUTLEDGE also opposed the repeal, as imposing hardships upon those who have not paid the tax, which were not imposed upon those who have paid. He further stated that the non-payment in the Southern States had arisen, not from indisposition to pay, but from want of collectors to carry the law into execution; the compensation allowed having been so inadequate as in many districts to have disabled the Government from obtaining officers.

Messrs. GRISWOLD, MILLEDGE, STANLEY, and MORRIS, delivered their sentiments against the first section; when, on motion of Mr. MACON, the Committee rose, and asked leave to sit again, which was granted.

FRIDAY, January 22.

Another member to wit: ROBERT WILLIAMS, from North Carolina, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas, was read the third time, and passed.

Mr. JACKSON, from the committee appointed, on the fourteenth instant, presented a bill for the relief of Isaac Zane; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. JOHN C. SMILIE, from the Committee of Claims made report on the petition of William Kilty, Chief Justice of the District of Columbia.

The committee were of opinion that when he accepted of his appointment he knew the duties required from him and the salary; they were not therefore in favor of increasing his salary.

The House concurred with the report, and leave was granted to withdraw the petition.

The House then went into Committee of the Whole on the unfinished business of yesterday, viz: a bill respecting the arrearages of the direct tax.

The first section of the bill was struck out, and Mr. ELMENDORF proposed some amendments.

Mr. GRISWOLD moved that the Committee should rise, that the bill might be referred back to a select committee, as it was difficult to settle the detail of a bill in the House. The Committee rose and were discharged. The bill was recommitted to the Committee of Ways and Means.

Mr. DENNIS proposed two resolutions, one respecting the establishment of a Chancery Court in the District of Columbia; the other relating to the public lots, squares, and streets, in the City of Washington, which had never yet been properly conveyed to the United States. There were also different plans of the city; he considered it important that public sanction should be given to the more correct one.

Mr. RANDOLPH observed that in the statement of indemnities under the treaty with France a large sum was put down for captures which were not brought into the United States, and which were condemned. Those made by the public armed vessels amounted to $122,000. He wished to know how far the commanders of the public and other vessels were authorized by their instructions in making these captures. He proposed a resolution, nearly as follows: *Resolved*, That the Secretaries of State and the Treasury be directed to lay before this House copies of all the instructions given to every description of vessels to capture French vessels.

Mr. EUSTIS, from the select committee appointed on the subject, made a report which proposes to give four months' pay to the representatives of the officers, seamen, and marines, who were on board the Insurgent, and that the widows and children should have half pay for five years.

The resolutions were twice read, referred to a Committee of the whole House, and made the order of the day for Tuesday.

DUTIES ON IMPORTS.

Mr. RUTLEDGE rose and observed, that he intended to move a resolution calling the attention of the Committee of Ways and Means to the articles of brown sugar, bohea tea, and coffee. There was not a hut or log house in this extensive country where these articles were not used. The duty on sugar and tea was fifty per cent. on the original cost, and coffee forty per cent. It was, he said, essentially necessary to reduce these high duties on what may fairly be termed necessaries of life. The general peace in Europe would be followed by a reduction in the price of articles generally, and the earnings of labor in this country would not be so much as heretofore, as the price of produce would not be so high in the coming period as in the past.

From this view of the subject, it became them to look into the duties, and see whether they would not reduce those on the necessaries of life. These articles, from the customs and habits of the poor, might be deemed as much the necessaries of life as salt. Mr. R. was sorry the article of salt was not permitted to go to the Committee, when proposed the other day by his honorable friend from Delaware. When gentlemen said they were pleased to see it emanate from the quarter it did, he expected a unanimous vote in favor of the resolution respecting salt; he did not revert to what so suddenly took place when gentlemen immediately changed their minds.

Mr. R. said, what he was about to propose was a very favorite project with him, not only that it should go to the Committee, but be carried through the House.

We are told that such is the prosperity of the country that we may reduce even the taxes on luxuries—carriages, stamps, &c., have been particularly mentioned.

Mr. R. then read his resolution, as follows:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duties on brown sugar, coffee, and bohea tea."

There was a call for the question, and also that it should be taken by yeas and nays.

Mr. Claiborne hoped the resolution would be treated as it deserved. He was surprised when he saw gentlemen who were formerly so fond of this mode of taxation, now so strenuous against it. He could not view the resolution in any other light than being introduced merely for popularity. He did not blame gentlemen for a wish to be popular; he liked the principle, but would vote against the resolution, and still he would maintain his popularity. Unless gentlemen would show him they could repeal the internal taxes, and part with some of the remaining revenues, and yet leave sufficient for the exigencies of Government, he would not agree to this resolution. Do gentlemen, who are for taking the funds from the present Administration, like it less than they did the last? He thought they did not. Mr. C. hoped the mover of the resolution would let it lie for consideration.

The question was again called for.

Mr. Dana hoped the proposition would be treated as it ought, and that it would not be scouted from the House without consideration, because it interfered with a favorite measure of some gentlemen.

Mr. D. said, upon general principles, he was in favor of the resolution going to the committee, that a fair comparison between the external and internal duties might be made. The duties on articles then before the House, were specific and not ad valorem duties, and they were laid with a view to war prices, and not what they would be in time of peace. Thirteen per cent. was about the average rate of ad valorem duties, and twenty per cent. the highest, and those were the articles consumed by the wealthy.

The report of the Secretary of the Treasury shows clearly that the price of the articles in the resolution are nearly all doubled in war, and the duty is not to fall with the fall of prices in time of peace, yet the ad valorem duties come down with the prices of the articles.

Is there, said Mr. D., a single principle of finance in favor of the inequality? The same proportion of duties to prices should be observed in peace as in war, or it would be a great temptation to smuggle. Wicked people would engage in it, if strong temptation were thrown in their way. For this reason the duties should be reduced.

There was another point of view in which this subject should be considered—that the duties were paid chiefly by the commercial part of the community.

Mr. D. said he knew they were doomed to bear whatever certain gentlemen chose to lay upon them; but he would not be laughed out of the object which his duty pointed out to him. The articles in the resolution were more used in the Northern than Southern States, and were paid chiefly by the poor; therefore, the proposed inquiry was perfectly proper, unless gentlemen were determined the internal duties should first be repealed, before any consideration should take place, as to what duties were most proper to be reduced.

Mr. S. Smith observed, that he did not rise to offer any arguments against the resolution, as he did not consider it intended for that House, but for the public. He was opposed to the resolution because the subject was already generally before the committee.

Mr. Rutledge said, he would state, for the information of the gentleman from Maryland, that he might not hereafter misunderstand him, that he always had one meaning in what he said to that House. The good of the people was the object he had in view.

Mr. Griswold said, according to his idea, this subject was not before the committee; they had the subject of duties generally before them, and would make a general report; but if these three articles are referred, they must report on them, and the House must decide specifically on these three. Were gentlemen afraid to let the House decide on these three?

He was at a loss to see any reasons for such an objection. The tax on sugar and coffee was fifty per cent. on the first cost, and on tea more. It becomes a matter of serious consideration, said Mr. G., whether you can retain the present taxes on them in time of peace, and prevent smuggling. It is a clear principle, that revenue is diminished when taxes are carried too far. When we connect with this truth, the fact that these articles are of prime necessity, and used principally by the poor, and it is determined the rich shall not pay for their carriages, &c., it cannot be denied that this resolution ought to go to the committee for their consideration?

Mr. Dana thought it prudent for the gentleman from Maryland to decline answering the arguments urged in favor of the resolution. The duty on the articles included in it amounted to $220,000.

Mr. Bayard did not know but it would be giving the House unnecessary trouble to offer his sentiments on the resolution. As no arguments had been used against it, it was not to be presumed that a majority of the House could be opposed to it.

The object of the resolution was not to diminish but to make inquiry on the subject, and know whether the duty on certain articles, the consumers of which were but little able to pay it, might not be reduced. Will gentlemen scout it out of the House, as has been said, without deigning to answer the arguments in favor of the measure? It has been said, Mr. B. observed, that the subject is referred generally. The general reference is not for the committee to inquire into the propriety of reducing the duties, but to know whether the laws are sufficiently energetic to insure the collection of the duties, and to bring all the laws, on the subject of the revenue, into such a compass as to be more plain and simple. The general reference has nothing to do with the motion before the House.

The fortunate situation in which we find ourselves, enables gentlemen on all sides to agree in reducing the public expenses. By the bill reducing the Army $450,000 will be saved, much also in the Naval department, and a vast deal in the Civil List, perhaps $800,000. Is it not expedient to make inquiry on the subject? Must we confine ourselves to philosophic revenues alone, without any reference to what is useful? Because it has been mentioned by the President in his Message, that the taxes on luxuries may be reduced, shall we inquire as to the necessaries of life and the interests of the country? Will not gentlemen give up their favorite project as to internal taxes, even for the welfare of the country?

It is now before the Committee of Ways and Means to consider whether the internal revenues may not be altogether abolished.

The resolution, Mr. B. said, which he had the honor to propose a few days ago, was to have the salt tax compared with the tax on carriages, and thus determine which would be the most beneficial to the country, to be reduced or abolished. Gentlemen gave the subject the go-by, by the previous question. Now they are prepared to vote on this without saying a word. Mr. B. trusted the motives of his friends were as pure and patriotic as theirs. He said, we wish the subject to go to the committee that the necessary burdens might be placed on those who were best able to bear them.

Mr. Goddard alluded to the observation which was made, as to the motive in bringing forward this resolution, that it was not for that House but the public, and said we must be permitted to attend to the interest of our constituents. He thought there was more cause for alarm when gentlemen said, and it would go forth to the world, that the subject of the resolution was already before the committee. It amounts to saying you shall not direct the committee to any particular articles, because they have the general reference before them. The committee, under the general reference, are to inquire respecting the duties, as to their effect on finance, not as to the burdens they impose on the people. Those who oppose the reference of the resolution offered by the gentleman from South Carolina, do not treat with proper respect those who complain of grievances.

Mr. Smilie said, gentlemen complain that their arguments are not answered. He thought there was not a new idea started in the course of the debate; perhaps there could not be anything said either for or against the resolution, different from what was said when the resolution respecting salt was before the House. It would, therefore, be a mere waste of time to answer gentlemen.

Mr. Claiborne never thought it a waste of time to debate on any subject that came before the House. He continued: I said it had a tendency to popularity; that was an inadvertent expression. I did not mean to propose that the motion should be scouted from the House; I would never treat gentlemen with such disrespect. I asked the mover to let it lie on the table until we repealed the excise. When we have done that I will agree to this resolution, if we can spare any more from our revenue.

Mr. Rutledge replied to the gentleman from Pennsylvania, (Mr. Smilie,) as to the charge that there were no new arguments that day. Mr. R. said, either the gentleman from Pennsylvania has not heard the arguments that have been used this day, or I did not hear those which were used when the resolutions relating to salt were before the House. He alleged, nothing new has been said. I think that nothing has been said analogous to what was expressed about the salt tax. The articles in this resolution are, of all the foreign productions, most consumed; they are most generally consumed; indeed, almost exclusively, by the poor; whereas, salt is an article of general consumption, and but a small proportion by the poor. Are not these facts? Look at the report of the Secretary of the Treasury. The duty on brown sugar is 2½ cents per pound, or $2 50 per cwt., and the original cost is not more than six dollars or 6½ per cwt. The amount of duty on brown sugar is $903,000 annually. This shows how much is consumed, and that, too, by the poor; and yet gentlemen will not let the subject be referred to the committee.

Mr. R. adverted to the internal taxes which had been recommended to their consideration by the President in his message. He had a proper respect, he said, for the Chief Magistrate; he believed he had never treated him with disrespect, and trusted he never should.

Mr. R. continued.—Yet we are not to be stopped in this business, by being told the President has recommended a reduction of this tax, and he has not called our attention to that. It is a duty members owe their constituents, when the President has not called their attention to what bears heavy upon them, to bring it forward in this House. What! must the tax on carriages, stills, and the stamp tax, be abolished; and when we want equality of burdens only, and propose a question with that view, shall gentlemen who have a favorite project in view, say we will not hear

what you have to say; we will not answer? Will the country be satisfied with such procedure?

Mr. R. had no objection to the internal taxes being discontinued, but he thought they should take a comprehensive view of the subject, and see whether that would be the most favorable to the country. It is a favorite project, he said, with some gentlemen, to abolish the stamp tax; but, Mr. R. said, his constituents did not feel it; there was not, perhaps, one of them who paid three dollars a year; yet he had no objection to discontinuing it. Nor did they feel the tax on stills. He thought the House should not attend exclusively to taxes that bear hard only upon particular parts of the country. To refuse a reference was not treating gentlemen with that respect which was reciprocally due from members of that House.

Mr. Southard wished to give his reasons for voting against the resolution. He was of the same opinion as to this, that he was when the resolution respecting salt was offered to the House. he believed it completely before the committee, and it was their duty, under the general reference, to take into view each article. It was, therefore, unnecessary for members to offer resolutions on each article of importation. It was erroneous to say coffee was exclusively used by the poor; they scarcely used any; and brown sugar was used with coffee, and but little of it consumed by the poor; almost the whole of these articles were used by the rich. The taxes could never fall equally upon all parts of the country. In the carriage tax, New Jersey pays more than some large States. They should go upon the general good in regard to taxation.

Mr. S. thought it unnecessary and improper in every point of view, that the Committee should be directed to each particular article. One gentleman might rise in his place, and propose a resolution on the carriage tax, another on stills, a third on stamps, and so on, to the great delay of business. It was premature to offer any resolutions, until the Committee of Ways and Means made their report on the general reference.

Mr. Rutledge said, when he submitted the resolution, he did not expect any serious opposition would be made to it, but, finding it was opposed, he would vary his motion, so as to read,

"*Resolved*, That the duties on brown sugar and bohea tea, and coffee, ought to be reduced."

Mr. Randolph did not think the House prepared to decide on the resolution.

If the revenue should be found sufficient to extinguish the national debt within the time mentioned in the report of the Secretary of the Treasury, pay the expenses of Government, repeal the internal taxes, and yet leave a surplus, he would be happy to join gentlemen in making reduction on their imposts.

Mr. R. hoped to live to see the time, when the General Government would only net the five per cent. ad valorem duty, agreeably to the resolution of the Old Congress, but he would not agree to any reduction until he could see his way clear into the necessary expenses of Government. Mr. R. said, we are told we should not repeal the internal taxes, because the rich pay them. The taxes on carriages and loaf sugar are given as instances. And we are urged to reduce the taxes on salt, brown sugar, bohea tea, and coffee, because the poor pay it.

Mr. R. had no difficulty in saying, he was in favor of repealing the internal taxes, to get clear of the perplexities of the excise system, and the expenses incurred in collecting the internal duties. These taxes were not paid by the rich. Domestic distilled spirits were used by the poor. A principal objection with him to the internal taxes, was the host of officers brought under Executive patronage, who take their tone from those on whom they depend, and are ready to disseminate through the country the principles held by the Executive. Gentlemen appeared desirous of retaining that rampart of protection the Executive has been raising around him. His object in repealing the excise, was as much to get clear of this host of officers as to be relieved from the taxes.

Mr. R. said, he would endeavor to get clear of this question in the way appointed for Legislative bodies to get clear of questions calculated to embarrass them, and would move the previous question.

Mr. Dennis moved a postponement of the resolution, which he thought would supersede the previous question.

Some observations were made as to points of order.

Mr. Giles said, it was necessary certain rules should be had for the government of deliberative bodies; the previous question was adopted to get clear of subjects prematurely brought before them; this was its original intention. That was one of the questions this rule was calculated for. The only proper question, was the previous one.

Gentlemen have now placed themselves in the situation they blamed others for taking. They have reversed the situation of things as to the internal revenue. Instead of contrasting the taxes, it is proposed to reduce the impost on certain articles.

There was no cause for gentlemen to say they are treated with disrespect. There was an evident precipitation in the business, and when that was the case, it was not the proper time for gentlemen to give their sentiments on a subject.

Mr. Rutledge then restored his resolution to its original form.

The previous question was called, and ayes and noes agreed to be taken.

Mr. Goddard said, there were, daily, references made of petitions on various subjects, and therefore this resolution ought to be referred.

The constituents of some gentlemen think proper to petition Congress on particular subjects. The constituents of others depend upon their Representatives to bring their grievances before the Legislature, and in this way, shall a reference be refused?

Mr. Giles wished the question had been taken directly, and was prepared to give it his negative He should be now in favor of the previous question. He thought it improper to refer particular articles, when the committee had them generally before them.

Mr. G. said, ninety-nine hundredths of brown sugar were consumed by the rich, or by those in middling circumstances. This was the case with the taxes generally. There were not sufficient grounds for saying the poor were affected by these taxes.

Mr. Elmer spoke against the resolution. He thought the poor consumed very little of the articles mentioned; many of them were, for months together, without having any sugar in their houses. He was in favor of the previous question.

Mr. Dennis said, he was prepared to vote against the previous question, and for the main question. He thought it very unusual to oppose the reference of such a resolution.

Mr. Dana considered it proper, when an abstract proposition was presented to the House, that it should be decided there, or in Committee of the Whole; but a resolution like the one before the House, even upon the principles of the gentlemen who oppose it, should be referred, as proposed, to the Committee of Ways and Means.

Mr. Smith agreed with his colleague in opinion, that it would be best to decide on the proposition directly. Early in the session, he proposed a resolution, that the external duties should be brought before the committee, and he mentioned, at that time, one of the articles (salt) which has occasioned so much debate since. It was his opinion, therefore, that the subject was already before the committee. He then read from the Journal the resolution he alluded to.

"*Resolved*, That the Committee of Commerce and Manufactures be directed to report whether any and what alterations are necessary in the laws imposing duties on the tonnage of ships or vessels, and on goods, wares, and merchandise, imported into the United States.

"*Resolved*, That said resolution be referred to the Committee of Ways and Means."

Mr. Smith said, it would unnecessarily swell the journals to refer specific resolutions on each article. When the committee make a general report, it will be in the power of each gentleman to move a reduction on any article he may think proper.

Mr. Griswold considered the arguments used by the gentleman from Virginia, (Mr. Giles,) respecting the previous question, went to show that the main question ought then to be put; he had also said he was prepared to give it his negative. Why, then, vote for the previous question?

Mr. Randolph wished to withdraw the previous question.

The Speaker said, it required five members to agree in moving the previous question, and therefore it could not be withdrawn by one member.

Mr. Bayard thought it clear that the main question should be then put. He had heard two arguments only used against it; one, that the resolution was already referred; but this was denied. He asked, would the committee fail in their duty if they did not report on this subject? Could you impeach them of disobedience? Let me appeal to the candor of gentlemen. Many wish it referred because they think it is not before the committee. Where, then, can be the harm of referring it? They agree that the committee should make the inquiry, but say it is already referred. We think not. What, then, can be the injury upon their own grounds, if it should be referred? It is a proposition allowed on all hands to be proper for the committee to take under consideration.

Gentlemen say, delay is our object in bringing it forward. They are the authors of the delay. If they had taken a more proper mode, and, give me leave to say, a wiser mode, it would have been avoided. Further delay may now be avoided by them. The debate has been provoked. To offer a resolution on every article would not delay an hour in the session. Nor could we produce delay if they did not oppose us. The gentleman from Maryland (Mr. Smith) talks about swelling the journals by that mode. Is he afraid of increasing the labors of the Clerk, or making work for your printers? What motive can there be for us to increase expenses in this way?

The resolution is not to reduce the taxes on those articles, but to make inquiry on the subject. Three hundred and fifty thousand dollars may be dispensed with, besides the internal taxes. We wish the whole subject before the committee, for them to calculate the two species of taxation, internal and external, that they may decide which taxes would be most beneficial to the community to be reduced. Will gentlemen say that these internal taxes shall be reduced, even in opposition to public utility?

The gentleman from Virginia (Mr. Randolph) says, they create a host for Presidential patronage. We have no desire to send Executive influence over the country. These motives would influence me against these taxes. It is a great national object we have in view. If there should be any system of espionage in the tax on stills, this will not apply to the tax on loaf sugar, on carriages, &c. It has been said that it takes twenty per cent. on the aggregate amount of this tax to pay for collecting. But this is not the case with each particular item. On stamps it does not amount to six per cent., and if a number of these duties may be retained, and the expense of collection not exceed what is paid for collecting the impost, their great argument is invalidated. If the tax on necessaries is more burdensome than on luxuries, which the excised articles are, will they pay the tax on imports if it should not be reduced?

Mr. Nicholson could not agree with the gentleman from Delaware as to the cause of delay. When the resolution was proposed, the question was called for, different gentlemen in favor of it continued to speak, although not opposed; it was not therefore his friends who occasioned the delay. He was opposed to referring the resolution, because the subject was already before the Committee. He hoped they would have the question.

Mr Griswold observed that every member who spoke on the subject said he was prepared to vote

on the main question—that the Committee of Ways and Means should not be instructed to inquire into the propriety of reducing the tax on the articles mentioned in the resolution. The subject was important, and the attention of the committee should be called particularly to it. Under the general reference, the Committee of Ways and Means can only say it is expedient that the Committee of Commerce and Manufactures be instructed to prepare a bill on imposts generally. A gentleman from New Jersey (Mr. Southard.) had said the carriage tax bore hard upon that State; that subject was referred to the committee. Another gentleman from the same State (Mr. Elmer.) said, sugar was not much used by the poor in his part of the country. Mr. G. said that it was very different where he was acquainted, for there they consumed great quantities of it.

Mr. Dana thought it important that this subject should be fairly met. As to swelling the Journal and increasing the expenses in that way, he was surprised to hear that objection made by the gentleman from Maryland, (Mr. Smith.) who had proposed that Congress should adjourn for eight or ten days, which would have occasioned an expense to the nation of as many thousand dollars, and now he objects to the paltry, inconsiderable expense of swelling the journals. He was not for taking the bread from the mouth of the laborer. In his part of the country, the poor did consume the articles mentioned in the resolution. By poor, he did not mean beggars, but people who labored for their living; and he gloried that, in his part of the country, they could, and did use these articles.

Mr. D. said, if the public good required it, he would tax his constituents whether they agreed to it or not; but he would never agree to tax them severely, to gratify the whim of any part of the country.

Mr. Davis said, as it would no doubt be gratifying to the gentleman who had just sat down, he would answer him; he might otherwise think his arguments unanswerable. He believed the gentleman's constituents would have but little cause to thank him for his present attempts to serve them. The gentleman has been long in majorities, but never before made any attempt to serve them in this way. But when he is placed in the back-ground, when he has no longer any power to serve them, then forsooth he is very ready to do it. The gentlemen who are now so much in favor of repealing these taxes, when they were in a majority laid these taxes; and now, when in a minority, they call upon us to take them off. They say the state of the country is altered. True it is the state of the country is altered; we then pretended to fear a war from a nation surrounded by enemies, and so hedged in by enemies that they could not get at us. Then a quarrel was feared, and now we have a war actually on hand. The officers employed in collecting the internal taxes were too numerous to keep up that mode of taxation. It would be dangerous to take off the impost—as it was once said, What would be the effects of the general peace?

Mr. D. hoped the experience of that day would teach the majority to let the minority speak as they pleased on such questions, without making them any answer.

Mr. T. Morris said, the gentleman from Kentucky has given a new turn to the debate. He says the gentleman from Connecticut, while in a majority, taxed his constituents, and now calls on the present majority to take off these taxes. Mr. M. asked if that assertion was correct. If it was considered minutely, he thought it would not appear to be so. From whence did the call for reducing the taxes come? From the other side of the House. It came originally from the Executive. Was it fair then to say, the minority were attempting to take from the Government the means of supporting itself? Surely it was not so. It is a sentiment of the Executive and the Legislature to reduce the taxes. Should not an inquiry take place as to what taxes are the most proper to be reduced? Mr. M. thought it was due to his constituents to make the inquiry, in order to ascertain which should be repealed, and this liberty of thinking has called forth what we have just heard. He thought they were sent there to confer together about the public good. It was but fair to consider arguments, give them due weight, and meet them fairly. A proposition, when offered to that House, ought to be discussed.

Mr. Dana said, that he had voted for the taxes formerly, he was not ashamed to deny; when it was necessary these expenses should be augmented, he chose that his constituents should pay their part. Now, when the taxes are to be reduced, were they to be denied the privilege, not of lessening them, but of making inquiry on the subject? He did not ask it as a favor, but he claimed it as a right.

The gentleman from Kentucky had mistaken what he said in another particular; when he reminded the Committee that the taxes on the articles mentioned in the resolution were laid with a view to war prices, he did not mean we had war in this country, but there was a general war over the commercial world, and the man must be an ignoramus not to know that was his allusion.

The previous question was then put in these words—"Shall the main question be now put?" There were yeas 45, nays 49, as follow:

Yeas—Willis Alston, Theodorus Bailey, James A. Bayard, John Campbell, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Abiel Foster, John Fowler, Calvin Goddard, Roger Griswold, John A. Hanna, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, Robert Williams, and Henry Woods.

Nays—John Archer, John Bacon, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Thos. Claiborne, John Condit, Richard Cutts, Lucas Elmendorf, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, Andrew Gregg, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, and Philip Van Cortlandt.

Monday, January 25.

Mr. S. Smith, from the Committee of Commerce and Manufactures, presented a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice and committed to a Committee of the whole House tomorrow.

The Speaker laid before the House a letter from the Secretary of the Navy, enclosing copies of the instructions heretofore given by the Department of the Navy, to the commanders of vessels in the public service, authorizing the capture of vessels belonging to the French Republic, in pursuance of a resolution of this House of the twenty-second instant; which were read and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act authorizing the discharge of Lawrence Erb from his confinement;" to which they desire the concurrence of this House.

The said bill was read twice and ordered to be committed to a Committee of the whole House to-morrow.

The Speaker laid before the House a letter from the Secretary of State, enclosing a copy of the instructions heretofore issued to the commanders of private armed vessels of the United States, from the Department of State, under the direction of the President, in virtue of an act of Congress, entitled "An act further to protect the commerce of the United States," transmitted in pursuance of a resolution of this House, of the twenty-second instant; which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on the petition of Joseph Ward, for himself and others, holders of certain bills of credit, referred to him by order of the House, on the eighth instant; which were read, and ordered to be committed to a Committee of the whole House to-morrow.

The House proceeded to consider the report of the Committee of Claims, of the twelfth instant, to whom was referred, on the fourteenth ultimo, the petition of Caleb Eddy, "with instruction to inquire into the expediency of extending to the refugees from the British provinces of Canada and Nova Scotia, a further time for exhibiting their claims for lands under the "Act for the relief of the refugees from the British provinces of Canada and Nova Scotia," which lay on the table; Whereupon,

Ordered, That the report be committed to a Committee of the whole House on Thursday next.

Mr. T. Morris called up the resolution he laid on the table on Friday last, viz:

"*Resolved*, That the Secretary of the Treasury be directed to lay before this House the amount of duties paid on stamps in each State, specifying what proportion was paid by the commercial cities."

The question being put, there were for it 34, against it 54—so it was not carried.

IMPORT DUTIES.

Mr. Nicholson called up the resolution he laid on the table on Friday, for instructing the Committee of Ways and Means to report generally on the subject of impost duties.

Mr. Lowndes wished to amend it so as to direct the attention of that committee particularly to the article of salt, brown sugar, coffee, and Bohea tea.

This the Speaker considered out of order, as resolutions on those subjects were then before the House.

Mr. Rutledge and Mr. Bayard wished to withdraw the resolutions they had offered on the articles of salt, brown sugar, &c.

The Speaker considered the resolutions in possession of the House, as they had been debated, and the previous question taken on them, and no motion could be made while another motion was pending.

Mr. Bayard asked for information whether it was in order for him to state that he withdrew in his resolution?

Some conversation took place as to points of order.

The question on the resolution was called for.

Mr. Dana said there was no instruction given to the committee by the resolution of December 13, to make a report on the subject of imposts and tonnage. He was pleased to see this resolution moved by the gentleman from Maryland, as it showed his belief to be that the subject was not referred to the committee.

Mr. Dana expressed his wish that two things should be referred to the Committee of Ways and Means: First, a general view of the duties of imposts and excise that they might be contrasted; and, secondly, that certain articles should be specifically referred to them.

Mr. Nicholson said the gentleman from Connecticut was very much mistaken as to the object of his resolution. It was not that he did not think the subject before the committee, but as so much had been said about the former general reference, he wished to prevent the gentleman from Connecticut from quibbling respecting the reference.

[Here Mr. N. was called to order by Mr. Griswold. The Speaker declared it as his opinion that the gentleman was in order. Mr. Bayard

appealed to the House, and called the yeas and nays, which were agreed to be taken.]

Some gentlemen wished the words made use of by Mr. Nicholson to be stated, that the House might determine whether it was in order to make use of such expressions, but it was put in the usual mode. Mr. Dana and Mr. Nicholson were excused from voting.

The question, "Was the gentleman in order?" was then put, and carried in the affirmative—yeas 56, nays 30.

Mr. Nicholson's resolution was to the following effect:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire into the laws laying impost and tonnage duties, and report to this House."

It was put and carried.

INTERNAL REVENUES.

Mr. Bayard called up the following resolution, which he had some days previously laid upon the table, viz:

"*Resolved*, That the Secretary of the Treasury be required to lay before this House an account, in detail, of the expenses incurred in the collection of the internal revenues of the United States; distinguishing, where the same may be practicable, the expenses attending the collection in each branch of the said revenue, and, also, an estimate of reduction of said expenses which may conveniently be made."

The resolution having been read, Mr. B. said: As it is extremely possible, Mr. Speaker, that it is designed that this resolution shall share the same fate with that which the resolution of the gentleman from New York experienced this morning, I shall be allowed at least by publicly stating, to justify to the world, the motive which induced me to bring it forward. [Mr. B. alluded to a resolution offered by Mr. T. Morris, the object of which was, to direct the Secretary of the Treasury to state to the House the amount of stamp duties collected in each State, distinguishing what part was paid by the commercial cities. When the resolution was taken up there was a call for the question. Nothing was said against the propriety of it. It being merely a call for information, and considered so much a matter of course to agree to such resolutions when no opposition was made to them, it was not supposed necessary to say any thing on the propriety and reasonableness of the resolution. Yet, to the astonishment of its friends, when the question was put, there were for it 34, against it 54.]

Gentlemen are infinitely deceived, said Mr. B., if they think our object is, by any particular mode of proceeding, to gain an unfair advantage of public opinion. If such a suspicion be entertained, our conduct has been viewed with a jaundiced eye. It is a motive which never has, and I hope never will direct our measures. If popularity is to be gained only by a prostitution of principle to ignorant and unthinking prejudice, we are content to forego it. I am far from being indifferent to public opinion; the approbation of our fellow-citizens is the only reward we can expect for our services; but it is a reward no honest man will seek, if it is to be acquired only by artifice and deception.

I have avowed and avowed sincerely, that I am disposed to go hand and hand with gentlemen in the reduction of public burdens. When it was necessary I assisted in imposing them—now that circumstances permit I more cheerfully co-operate in taking them off. My true object is to make the most of our situation; not to be deluded by empty theories, or speculative systems, but, by an enlarged view of the various interests of the country, to discover by the reduction of, what taxes the society would be the most substantially benefited.

The reduction of the Military Establishment creates considerable savings; other retrenchments are contemplated in the Navy and civil administration. These savings enable us to dispense with certain taxes; but is it not wise to examine diligently the operation of the several taxes which exist, and, after being informed by the various views which belong to the subject, to exonerate the community from those which, with the least benefit, are the most burdensome?

One great objection to the internal taxes is the expense of collection. I wish to know the particulars of this expense, in order to see whether it may not be curtailed. I wish also to be informed of the expenses attending each branch of the revenue, for the purpose of judging whether it may not be expedient to retain some branches, while it may be wise to part with others. These are my objects; do they not entitle us to the information asked?

We know in one instance, that the expense in collecting the stamp duty is less than five per cent. This appears by the report of the Secretary of the Treasury; but we are not informed of the particular expenses belonging to the other branches of the revenue.

Do gentlemen mean to lock up the doors of the Executive offices, and deny the information those offices were designed to supply to this House? Are they afraid of the light which may be thrown on this subject. Are they afraid that it will be discovered that it is not the general good which they are pursuing, but local and private advantages? Can information injure us? If the project contemplated is a correct one, will it not be promoted rather than obstructed by the information called for? For my own part, said Mr. B., I want this information, in order to discover the course which it is my duty to pursue. I do not feel myself committed as to any particular plan.

If it should really be found, that it is better to tax articles of necessary consumption than those of mere luxury, that a tax on carriages is more oppressive than a tax on salt or brown sugar, I should certainly yield to the conviction, however unexpectedly it might assail me.

Sir, said Mr. B., I must rely that the resolution will be agreed to; there is not a precedent in our annals of opposition to such a resolution; if, however, one is now to be introduced, I think it proper that the names of those gentlemen should hereafter appear by whom it was resisted, and by whom

it was established. He therefore hoped the question would be taken by yeas and nays.

The Clerk, at the request of Mr. Randolph, read an extract from the report of the Secretary of the Treasury, as follows:

"It will appear by the same statement, [M.] that while the expenses of collection on merchandise and tonnage, which are defrayed out of the revenue, do not exceed four per cent., those on permanent internal duties amount to almost twenty per cent. This, however, is an inconvenience which, on account of the great number of the individuals on whom the duties are raised, and of their dispersed situation throughout the whole extent of the United States, must, more or less, attach to the system of internal taxation so long as the wants of Government shall not require any considerable extension, and the total amount of revenue shall remain inconsiderable."

Mr. T. Morris.—If the honorable gentleman from Virginia (Mr. Randolph) thinks that the extract of the report of the Secretary of the Treasury, the reading of which he has called for, furnishes the information demanded by my honorable friend from Delaware, he is mistaken. The Secretary's report gives you a general estimate of the expense of collecting the aggregate of the internal taxes, but does not specify the charge falling on each separate tax. From the statement exhibited by the Secretary, it appears that it costs twenty per cent. to collect the whole of the internal taxes; but if the detailed statement asked for by the gentleman from Delaware is furnished, it will appear that the collection of some of those taxes does not cost more than five or six per cent. To show how unfair it is to connect together the expense attending the collection of all the internal taxes, I need only refer gentlemen to an authority which I believe they will not dispute. If my memory, sir, is not very incorrect, it will appear by a publication of the present Secretary of the Treasury, written in the year 1796, that the tax on country distilleries cost in its collection near thirty per cent.; that on city distilleries about nineteen. These, sir, and other reasons, may evince the propriety of repealing the tax on country distilleries; but because this tax is expensive in its collection, because it may be liable to objections, does it follow that other taxes, such as the tax on carriages, on refined sugars, &c., which fall on the rich, and which are not expensive in the collection, does it follow, I say, that because it may be proper to repeal the first, that these are to fall too? It is, sir, in order to be enabled to make proper discrimination, to be enabled to know which of these taxes ought to be repealed, and which retained, that the gentleman from Delaware has moved his resolution. And here, sir, let me be permitted to express a hope, that the resolution now before you may not meet with the silent negative which was the fate of one intended also to procure information, and which I had the honor of laying on your table. I did and do still believe, sir, that the majority of this House could not have been actuated by proper motives in refusing that information. [Here Mr. Randolph called Mr. Morris to order, saying that he had no right to impeach the motives of members. Mr. M. observed that for his part he was at a loss to know what was considered disorderly in that House, but that he would submit to the correction of the Chair. The Speaker determined him to be in order, and Mr. M. proceeded.] With regard, sir, to the course of proceeding which gentlemen have lately adopted, persevering in an inflexible silence, rejecting every proposition made by a member in the minority, without deigning to show its fallacy, refusing public documents for our information and that of our fellow-citizens, without showing, or even pretending to show, that they are unnecessary, I can only say that it militates against all my ideas of propriety. I have always hitherto supposed that every Representative on this floor had a right to be heard; that he had a right to call on the majority for their reasons both when they supported and opposed public measures. Gentlemen may, if they please, meet in what they have denominated caucusses when power was in other hands; they may then confer together about the measures in which they may think proper to unite; but, sir, if their debates are to take place there, and there alone, if we are not to be furnished here by them with the reasons which induce them to adopt public measures, they ought at least to open their doors to the minority, in order that, if they cannot hear their arguments in the proper place, they may not close them altogether. I trust, sir, that gentlemen themselves will see the impropriety of persevering in this line of conduct, and that they will consent to pay, if not to gentlemen in the minority, at least to their propositions, the attention and respect which they may deserve.

Mr. Griswold said, that he presumed the gentleman from Virginia (Mr. Randolph) had requested that the extract from the report of the Secretary of the Treasury might be read, and which the House had just heard, for the purpose of proving that the resolution under consideration ought to pass. Indeed that report, and the statement to which it referred, evinced in the most satisfactory manner that the information required by the resolution was absolutely necessary for the purpose of enabling the House to decide understandingly on the proposition, which it was expected would soon be brought forward, for abolishing the internal taxes. The Secretary in his report had declared that the expense of collecting the internal taxes amounted nearly to twenty per cent. on the amount collected. It appeared, however, from the statements to which the Secretary had alluded, that the tax on stills, the carriage tax, the tax on licenses, on sales at auction, and the tax on refined sugar, had been included in one class, and the expense of collecting all those taxes, without distinguishing the charges on each branch, had been stated to be nearly twenty per cent., whilst the expense of collecting the stamp duty, another branch of the internal taxes, was short of five per cent., varying only a fraction from the charges on the revenue from impost and tonnage. These statements might be satisfactory as far as they went, but it was obvious that in examining

the branches of a revenue, with a view to the expense of collection, it became necessary to ascertain the precise charge which had fallen on each branch, and to obtain this necessary information, and which the report and statements had left defective, the resolution had been principally brought forward. And what had rendered this information peculiarly necessary at this time was the ground which had been taken in opposition to the internal taxes. The only argument which he had heard against those taxes, and which did not equally apply to the impost, was drawn from the great expense which had arisen in the collection. To enable the House, therefore, to decide whether the fact existed on which that argument had been founded, it became necessary to inquire in the manner proposed by the resolution whether the extraordinary expense with which those taxes had been charged might not be diminished, and whether the expense really existed in relation to each description of them.

Mr. G. said that he presumed no gentleman was prepared to say that the general expense of collection might not be diminished, and so far was he from believing that every branch of the internal taxes was subjected to the charge of nineteen or twenty per cent., he was perfectly confident that if gentlemen would agree to the resolution, the detailed statements, which the Secretary would furnish in obedience to it, would prove that the expense of collecting certain branches of those taxes would fall much short of the sum at which the same has been estimated.

The consent of the House, said Mr. G., to every call for information, had formerly been so much a matter of course, that he should not have troubled the House with any remarks upon so plain a question as the present, had not the experience of this day proved, that gentlemen were not always to be indulged by the House with the information which they required; and the profound silence which had at this time been observed by those gentlemen who could either admit or reject the resolution, appeared to indicate a determination on their part to refuse the important and necessary information required by the resolution. He did presume, however, that upon this occasion the House would consent to the resolution, and more particularly, as the report of the Secretary of the Treasury, which had been read at the request of the gentleman from Virginia, proved so clearly the necessity of passing it.

Mr. HUGER could not reconcile it with his sense of duty, to give a silent vote on the present occasion, nor could he but lament the strange and novel course of proceeding which gentlemen had thought proper to adopt. The intention it would seem, was to repeal the internal taxes, right or wrong, and at all events; and so determined were gentlemen on carrying this favorite project into execution, that everything like previous investigation, or even a wish to gain information on the subject, was hooted at and treated with the most sovereign contempt. Every, the smallest, reduction on taxes of any other description, was avowedly to be excluded, nor was any proposition to this effect deemed worthy of even a moment's consideration. The measure proposed, however, interested in a very particular manner that part of the community he had the honor to represent. They paid, it was true, a small portion of the internal taxes, but the various other taxes upon salt, brown sugar, coffee, &c., and the duties on imposts generally, fell more immediately and far more heavily on them. Was it not natural, therefore, that he should have some hesitation on the subject; that he should feel anxious to see this project thoroughly and completely investigated; that he should wish to receive every possible information which might either tend to satisfy his mind as to the expediency of repealing the internal taxes only, to the total exclusion of all others, or enable him to propose some other project, equally beneficial perhaps to the public at large, and which might at the same time accord better with the immediate interests of his constituents?

That peace had been restored to the country, and the moment consequently approached when that House might hope to diminish the burdens of their constituents, could not but afford infinite satisfaction to every gentleman present. He rejoiced most sincerely at the pleasing prospect, and felt much gratification in the idea of contributing with others to afford this relief to the community. He had not, indeed, any very particular hostility to the repeal of any items of the internal taxes which might be found oppressive or inconvenient to any portion of his fellow-citizens; nor would he object even to the exclusive repeal of the whole of them, if, upon due consideration, it appeared that by so doing, such peculiar and important advantages would accrue to the great family of America, as would, upon an enlarged and national view of the subject, compensate his constituents for the greater quantum of public burdens which would thereby be entailed on them. When fortunately, however, the state of things seemed to admit a diminution of the public burdens, he did conceive that every portion of the country was equally entitled to the attention of the Legislature, and that the reductions should, if possible, be effected in such manner as to extend an equal and proportionate relief to every description of citizens—as well those who were scattered along the shores of the Atlantic, as those who inhabited the interior of the country, or had emigrated beyond the mountains. The House would recollect how much warmth—notwithstanding the previous determination to silence—had been in the course of a former debate evinced by the gentleman from Kentucky, (Mr. DAVIS.) He could not tolerate a doubt as to the propriety of a total repeal of these taxes. The reason of this was very evident. This description of tax was that by which his constituents principally contributed to the exigencies of the Government. To that gentleman, of course, everything militating against or tending to delay for a moment the success of this favorite project, was highly objectionable, and would excite all his sensibility. And was it not, Mr. H. asked, to be expected that he, too, should feel some little anxiety at the idea of

this relief being extended to a favored portion of the community, whilst those he had the honor to represent were left to struggle under the weight of all those burdens which bore most hard and most immediately on them? His constituents, he was proud to say it, had ever contributed with alacrity and cheerfulness to the wants and exigencies of the Union. They were prepared and willing, he was confident, to do so still; and he made not the least doubt but that they would readily subscribe to the exclusive repeal of the internal taxes, and submit without a murmur, to the continuation of all the other taxes, however burdensome to themselves, provided they are convinced and well satisfied that this measure was fairly and impartially adopted for the welfare of the whole, and not for the benefit of the one at the expense of the other division of the country. It was for this purpose, therefore, that he wished the present motion to be adopted, and that he had desired the attention of the Committee of Ways and Means to be directed particularly to those articles of importation and of general use and necessity, such as salt, sugar, coffee, common teas, &c. He was desirous that these and similar items should be compared with the carriage tax, the tax on licenses to retail spirituous liquors, and various other similar items of the internal taxes, and that the House might be furnished with such information with respect to both, as might enable him to judge, whether there might not be a partial repeal as well of some of the external as internal taxes, and not a total and exclusive reduction of the latter, as was contemplated; whilst all the former, however grievous and inconvenient, were to be retained. Did he then ask anything which was unreasonable or improper? Could any possible inconvenience accrue from allowing him to obtain the information he desired? If not, why refuse to indulge him in what he deemed useful, and what (at the worst) could only be regarded by gentlemen themselves as superfluous information? Was it fair; was it becoming; did it comport with that civility and politeness which was due from the one to the other, by citizens of a common country, assembled together for the express purpose of consulting upon their common interests, to treat thus cavalierly what must at least be allowed to be a respectable minority?

When on his return home, he was asked by his constituents, how it happened that the burdens on their brethren of the interior country had been entirely taken off, and that not the smallest relief had been extended to them, what answer was he to give them? The President, he must say, had hinted something of the kind in his message to the two Houses, at the commencement of the session, and the Secretary of the Treasury had casually observed in one of his reports, that the internal tax required more officers and greater expense to collect it than the duties on imports. For himself, he certainly had all due deference for these two officers. He felt personally very great respect for the gentleman who at this time filled the office of Chief Magistrate of the United States. He held also in high estimation the talents of the Secretary of the Treasury, but notwithstanding what had fallen from these two gentlemen, his mind was not convinced, nor did he think these were documents sufficient to satisfy the minds of that portion of our fellow-citizens who, from the appearance of things at least, might conceive that their interests had not been sufficiently attended to, and that in the reduction of the taxes now existing, justice had not been dealt out with an impartial and equal hand. Will not this impression be rendered still more strong, when the citizens in this situation learn that even the information requested from the public departments by those to whom they judged proper to entrust their interests, had been denied them, without one solitary reason being given for the refusal? when they are further told, that the various references which were attempted to be made in different shapes, or for an inquiry as to the propriety and possibility of effecting a partial repeal of the most burdensome external as well as internal taxes, were again and again rejected?

With respect to the two only reasons which had ever been offered in favor of the exclusive repeal of the internal tax, viz: the expense and number of officers required to collect it, was it not the immediate and precise object of the resolution under debate to inquire whether it was not possible to devise some means by which these inconveniences might be obviated, or at least greatly lessened? And what objection could there be to the inquiry? Were gentlemen perfectly and entirely convinced that nothing of the kind could be done, or were they apprehensive that the thing was in itself so feasible, that an inquiry of this kind would throw a stumbling-block in the way of the project already determined on, which although he would freely acknowledge, that as an abstract proposition it was expedient as much as possible, and to collect your taxes at as small an expense, and by means of as few agents as conveniently could be done, yet there was another still more important maxim which ought never to be lost sight of: this was, that the burdens of the Government, as well as the advantages which flowed from it, should be fairly, equally, impartially, and equitably distributed among every description of the citizens, in whatever part of the country they resided. If, therefore, it did happen, that a few more officers and a somewhat greater per centage were required to collect the taxes in one than in another part of the country, this alone would most certainly and indubitably not be a sufficient reason to do away all the taxes in the one, and throw the whole burden of the Government on the inhabitants of the other.

Mr. H. concluded by observing that he had endeavored to consider this whole business as coolly and with as much temper as was in his power—that he could not, however, but again express his regret at the line of conduct adopted by gentlemen, and that, as he could not see, nor had there been pointed out, any possible inconvenience which could accrue from adopting the resolution, he really thought the wishes of himself and those who thought with him on the present occasion, for in-

formation, ought, in fairness and candor, to be gratified—supposing even that the information requested did not appear equally important and necessary to those who differed with them in opinion.

Mr. Rutledge confessed himself much puzzled by the new forms of proceeding this day adopted. Ever since he had had the honor of a seat in Congress, it had been invariably the practice, when measures were proposed not agreeable to the majority, for them to offer their objections to them. This had ever been the practice, and the experience of its convenience offered strong reasons for its continuance. When the majority stated their objections to any measure, the minority in sustaining it answered them fully: thus, both sides acted understandingly, and when the proceedings of the National Legislature went out to the people, they were at the same time informed of the reasons under which their Representatives had legislated. This had not only been the usage in Congress, but the form of proceeding in all representative bodies with whose history we are acquainted. Even in the British House of Commons, which gentlemen had often and emphatically styled a mockery of representation, so great is the respect paid to public opinion, that the majority deem it their duty to assign in debate the reasons of their conduct. Although the Minister in England has quite as much confidence in the strength of his majority as gentlemen here can have in theirs, yet, in feeling power, he does not forget right, and his regard for public opinion is so great, that he never secures his measures by a silent vote. In these days of innovation, we, it seems, are to pursue a different course. When the resolution offered this morning by his honorable friend from New York (Mr. Morris) was taken into consideration, not a voice was raised against it. This profound silence made us expect a unanimous vote; but, in consequence, he supposed, of some out-door arrangments, it was rejected by this silent majority. He had seen many deliberative assemblies, but never before witnessed such a procedure. He would not say whether this was respectful towards the minority, who, we have been told from high authority, have their equal rights—he would not say whether it was dignified as it regarded the majority, but, without pretending to any spirit of prophecy, he would venture to say it could not be deemed politic or wise by the people of this country.

When the doors of Congress were open, and persons admitted to take the debates, the people expected to be fully informed of the views and motives which governed the votes of their Representatives. But it seems our constituents are not to be treated with this heretofore common civility. In proposing measures we are obliged to guess at what gentlemen feel against them, (for they say nothing,) and to defend them, without knowing in what they are objectionable to those who govern in this House. This kind of governing is but ill calculated to produce harmony, to restore social intercourse, and to heal the wounds inflicted on society by the spirit of party.

His friend from Delaware, not satisfied with the report made by the Secretary of the Treasury respecting the expense of collecting the internal revenues, begs that we may have a further report, and one more in detail, and declares that we really want more information to assist us in forming our opinions. But gentlemen refuse this reasonable request. They may have sufficient information; they may be in habits of intimacy with the heads of departments; in daily communion with them; but we are not, and should act with impertinence, were we, by our personal applications, to occupy the time of the heads of departments, which is fully engaged during the sitting of the Legislature.

The regular mode of obtaining information is, for the House to ask for it. When heretofore in a majority, he and his friends had always consented to call upon the heads of departments for any information the minority said they wanted; he should continue to vote for asking whenever any gentleman said he wanted it—though probably he should not be thanked for it, as gentlemen on the other side were now so strong as not to want his vote. A bill had lately been introduced for the protection of our Mediterranean trade, and the gentleman on my right, from Virginia, with his friends, wanted information from the Secretary of the Treasury respecting the extent and value of this trade—to know whether it was worth protecting. I voted for the resolution of the gentleman from Virginia, because he said he wanted information. I did not want any, for the reports of the Secretary of the Treasury for some years past had showed the amount of the trade; besides, I deemed it our duty, this nation being highly commercial, to protect our trade in all its branches. Gentlemen on the other side seem to shrink from all our propositions, lest they should interfere with the favorite project of annihilating all our internal revenues. There is no cause for this apprehension. The President's Message invites to this measure, and the friends of the recommendations of the Executive are too numerous to have their measures obstructed by our efforts. All we ask for is information relative to the expense of collecting this part of the public income. Gentlemen say we shall not have it, and yet, on all past occasions, they talked about the propriety, in a popular Government, of giving information to the public, of not economising in diffusing information—they who now refuse information which is solicited by a large portion of the Representatives of the people. Gentlemen not only withhold information from us, but will not assign their reasons for withholding it; and to all, we urge they will not deign to say anything but No.

Mr. Bayard.—I thank God, if we have not the advantage of hearing gentlemen on the other side express their opinions, we have still the liberty of expressing our own sentiments. Not knowing how long we may have that liberty, I will now state further my opinion on the subject before the House.

The gentleman from Virginia, (Mr. Randolph,) without condescending to speak himself, has deigned to ask the Clerk to read—what! an extract from the report of the Secretary of the Treasury, showing the aggregate expense attending the collection of the internal revenue to be about twenty per centum. But is this an answer to my inquiry, when I want particular information that shall discriminate the expense of collecting the different branches of this revenue?

I have another object in view. I wish to know whether the Secretary of the Treasury may not devise a plan by which these taxes may be collected on as good terms as on articles of impost.

When information has been called for heretofore, has it ever been denied? Have gentlemen a precedent for their conduct? Is there an instance at any epoch when the strength of a silent vote opposed information that was wanted? Will this information thwart the favorite views of some? Are gentlemen afraid of information, lest they could not carry a favorite project when it should appear to be opposed to the public benefit? Are they afraid to let information come here lest it should go out to the people?

If the information we want is refused, without any reasons being assigned, I do not see what business we have to do here. Do gentlemen mean to drive us from this floor? Are they ready to say our services are no longer wanted? If it is enough for us to ask a thing to be denied; if whatever we propose is rejected; if no answer is given to our arguments; if we are listened to only to indulge the laugh of insolent power, I think the sooner we go home the better. We shall at least save the money of the nation. And I am satisfied, if this conduct be pursued, we shall not only be justified, but it will be expected by the nation that we no longer keep our seats, which are not merely useless but burdensome to the country.

Mr. Goddard said, that he had until this time consoled himself with an idea, that whatever measures might be adopted the present session, he and those with whom he acted would at least have been permitted to understand the principles upon which those measures would be supported. This consolation he had derived from a declaration, made at an early period of the session, by an honorable gentleman from Virginia, (Mr. Giles,) that economy of information was not what he wished to be practised. But of that solitary consolation, he had this day been bereft. We have already made such advances in the system of economy, as to have arrived at a point where it is thought necessary to practise economy of information. He inferred this, from the manner in which the resolutions which had been called up, had been treated. Several motions had been made, to instruct the Committee of Ways and Means to inquire into the expediency of reducing the duties upon certain imported articles, necessaries of life; they had been uniformly repelled. Gentlemen wished, when the flourishing condition of our finances enabled us to reduce taxes, to take a view of the whole ground—to compare, with each other, the system of internal and external taxation.

To enable us to do this, a resolution had been offered, the object of which was to obtain, from the proper department, information necessary to this purpose:—that also had been repelled. Another resolution is now offered, which has in view the same object, relating to another subject. Gentlemen seem determined to dispose of that also, in the same manner, by a silent vote.

Mr. G. said that he could not be persuaded but that gentlemen would candidly review the course they had adopted, and yet suffer us to have, from the public offices, the information necessary to enable us to act correctly upon the business before us.

The question was taken, and it passed in the negative—yeas 37, nays 57, as follows:

Yeas—John Archer, James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Bacon, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Sprigg, Richard Stanford, Jos. Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

DUTIES ON IMPORTS.

Mr. Rutledge called up for consideration the resolution which he moved on Friday, on which the previous question was then taken, viz:

"*Resolved*, That the Committee of Ways and Means be instructed particularly to inquire into the expediency of reducing the duties on brown sugar, coffee, and bohea tea."

Mr. Griswold hoped the resolution would be decided upon.

Mr. Rutledge hoped the reference would obtain. These articles paid the highest rate of duties and were of the first necessity. In looking over the rates of duties on imports, he saw many articles that were taxed enormously high. Those in the resolution were of the first necessity, the duty high, and laid when they were at war prices: while the people received war prices for their produce, they could with convenience pay for these articles, though high. The object of the resolution was merely to inquire, and he did not see how it could interfere with any object gentlemen have in view.

Mr. Dana.—I beg liberty to tender the homage of my profound respects, for the dignified situation in which gentlemen have now placed themselves, and congratulate them on their silence. There is something peculiarly impressive in this mode of opposing everything that is urged. It is seldom that gentlemen have exhibited such a remarkable appearance of a philosophical assembly.

"That dumb Legislature will immortalize your name"—is said to have been the language of a certain distinguished General to a certain nominal Abbé, who has been represented as having pigeon-holes full of constitutions of his own making. During the memorable night at St. Cloud, when the French Council of Ancients, and Council of Five Hundred, were adjourned—to meet no more—it may be recollected, the powers of executive government were provisionally committed to three persons, styled Consuls, and two of them were the General and the Abbé. From each of the Councils, twenty-five members were selected, to compose a commission, and assist the provisional Consuls in preparing a constitution for France. Of the numerous projects of constitutions presented by the Abbé, it is said no part was finally adopted, except the plan of a dumb Legislature. This, the General instantly seized, with apparent enthusiasm, exclaiming to the Abbé, "that dumb Legislature will immortalize your name!" And it was determined to have a *corps legislatif* that should vote, but not debate.

It was scarcely to be expected that anything like this would soon take place in our own country. But it is the prerogative of great geniuses, when in similar circumstances, to arrive at the same great results, although with some difference in the process. Nor can I forbear offering my tribute of admiration for the genius who has projected a mode of proceeding among us, that so nearly rivals the plan adopted in France. I know not to whom is due the honor of this luminous discovery. After ascribing to him, however, all merited glory, permit me to examine the force of the argument relied on by gentlemen in opposition to the proposed resolution.

Their argument is silence. I hope to be excused if I do not discuss this subject in the most satisfactory manner; as silence is a new species of logic, about which no directions have been found in any treatise on logic that I have ever seen. It will be my endeavor to reply to gentlemen by examining some points which may be considered as involved in their dumb arguments.

One of these points is—that certain members of this House have pledged themselves to their constituents, for repealing all the internal taxes. They may have declared their opinions to this effect, before the election; and, being chosen under such circumstances, may now deem themselves bound in honor not to vary. The terms assented to between their constituents and themselves may, therefore, be viewed by them as the particular rule of their own conduct. But is this House to be regarded in the same light with the English House of Commons, during the early period of their history, when the knights of shires, and the representatives of cities and boroughs, were instructed on what terms they should bargain with the Crown for special privileges, and were limited to the price agreed on by their constituents? The situation of gentlemen who have thus pledged themselves to vote for repealing the internal taxes, must be irksome, indeed, if on mature consideration they should believe it more proper and more beneficial for the country to have other taxes reduced. Those who have entered into a stipulation of this sort, so as to feel it as a point of honor, are so peculiarly circumstanced that they might think it too assuming in me, were I so much as to express a desire that they would vote for reducing some of the duties on imports, instead of repealing all the internal taxes. It is to be hoped, the number of members who have pledged themselves in this manner, does not exceed twenty-five or thirty.

Another point involved in this argument of silence is, that other gentlemen may have pledged themselves to these, and given them a promise of support on this subject. It must be acknowledged that this was more than was required on account of their seat in this House. If any gentlemen have absolutely so pledged themselves to others who had before pledged themselves to their constituents, it must indeed be difficult to convince them. On this point, their minds must be so differently constituted from mine, that there does not seem to be any common principle between us that can be assumed as the basis of argumentation.

Another point is, the Executive has recommended a repeal of all the internal taxes, and not any reduction of the impost. And will gentlemen act upon this as a sufficient reason for their conduct? Is it now to become a principle, that the Executive is to deliberate, and the Legislature to act, and that no measure is to be adopted unless proposed by the Executive? Would it not be better for the country to abolish this House, and to avoid useless expense, if it is to be nothing more than one of the ancient Parliaments of France, employed to register the edicts of a master?

The silence of the gentlemen may also be considered as having relation to their great desire for the harmony of social intercourse. To prevent its being disturbed in the House by debating, they may have come to a determination that all the great questions shall be settled by gentlemen of a certain description, when met in nocturnal conclave, and be only voted upon in this place. If such be the fact, it seems but reasonable that any of the members of this House should be admitted in meetings of the conclave, as delegates from the territorial districts are admitted into Congress, with a right to debate, although not to vote. If, however, this is thought too much, gentlemen should at least have galleries provided, so that other members of the Legislature might be admitted as spectators, and have the opportunity of knowing the reasons for public measures.

The question was called for, when Mr. Eustis begged the Speaker would state it, as, in listening to the arguments of the gentleman from Connecticut, he had forgotten it.

Mr. Rutledge said he was much pleased by the question of the honorable gentleman from Massachusetts. When gentlemen ask, What is the question? it is to be hoped that they will respect its merits; but, from the scene this day acted, he had learned that the only inquiry with gentlemen would be, from what side does this come?

The question was then taken by yeas and nays, and lost—yeas 35, nays 58, as follows:

Yeas—James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Wm. Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Wm. H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thos. Morris, Joseph Pierce, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne and Robert Williams.

DUTY ON SALT.

The House then proceeded to the further consideration of a motion on which the previous question was called for and taken on the twelfth instant; and the said motion being amended to read as follows:

"*Resolved*, That the Committee of Ways and Means be instructed, particularly, to inquire into the expediency of reducing the duty on salt; and, also, the duties on articles of necessary consumption, and more especially the duties oppressive to the agricultural and mechanical interests of the community."

The main question was taken that the House do agree to the said motion, as amended, and passed in the negative—yeas 32, nays 57, as follows:

Yeas—James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Jos. Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thos. Morris, Joseph Pierce, Elias Perkins, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thos. Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Sprigg, Richard Stanford, Jos. Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And the House adjourned.

Tuesday, January 26.

Memorials of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, purchasers and settlers on the lands originally contracted for by John Cleves Symmes, between the Great and Little Miami rivers, were presented to the House and read, respectively praying that Congress will extend the time for the payments to be made by the memorialists, on account of the contract between the United States and the said John Cleves Symmes, and his associates, for the reasons therein specified; or grant such relief in the premises, as to their wisdom shall seem meet.

Ordered, That the said memorials be referred to the committee appointed, on the eighth ultimo, to whom was referred the petition of James McCashen and others; and to whom was also referred, on the eighteenth instant, the memorial of John Cleves Symmes.

The House, resolved itself into a Committee of the whole House on an act of the Legislature of the Territory of the United States Northwest of the river Ohio, entitled "An act declaring the assent of the Territory Northwest of the river Ohio, to an alteration in the ordinance for the government thereof;" to which Commitee of the whole House were also referred, on the twentieth and twenty-fifth instant, the petitions of sundry inhabitants of the said Territory, in opposition to the recited act; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

An engrossed bill to continue in force an act, passed on the first day of February, one thousand seven hundred and ninety-eight, entitled "An act supplementary to the act, entitled 'An act regulating foreign coins, and for other purposes,'" was read the third time, and passed.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, to whom was referred, on the eighth instant, the petition of sundry merchants of the city of Philadelphia, made a report; which was twice read, and agreed to by the House as follows:

"The Committee of Commerce and Manufactures,

to whom was referred the petition of Daniel W. Coxe and others, merchants of Philadelphia, report:

"That the petitioners state that they are deprived of the drawbacks on goods of foreign growth and manufacture, and on salted provisions, shipped by them from the port of Philadelphia to ports of foreign nations, although they had complied with every requisite required by law for the obtaining of such drawbacks, save only the taking of the oaths within the ten days prescribed by law, to wit: 'That the goods were truly intended to be exported, and were not intended to be relanded within the United States;' and the giving bond that the said goods, or any part thereof, should not be landed within the United States.

"The petitioners further state, that they appeared at the custom-house within a very few days after the ten days (prescribed by law) had expired, and offered to take the said oaths, and to give the bond required by law; when, to their surprise, the Collector informed them that it was no longer in his power to afford them relief: They, therefore, solicit Congress to authorize the Collector for the port of Philadelphia to issue the debentures due to them respectively.

"The committee are of opinion that the prayer of the petitioners ought to be granted, and submit a bill to that effect."

Mr. SAMUEL SMITH, from the same committee, presented a bill for the relief of Daniel W. Coxe and others; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. SPRIGG reported a bill for the government of the Territory of Columbia.

[The bill establishes a Legislature, chosen by the taxable citizens of the United States one year resident in the Territory, composed of a House of Representatives, to consist of twenty-five members, seven whereof to be chosen by the district of Rock Creek, seven from the part west of Rock Creek, and eleven by the county of Alexandria. The Governor to be appointed by the President of the United States. The Territory to pay the Legislature, and the United States the Governor. The judges to hold their offices during life, unless removed by the President on the application of two successive Legislatures.]

Referred to the Committee of the whole House on Tuesday next.

A memorial and remonstrance of sundry inhabitants of the county and town of Alexandria, in the District of Columbia, was presented to the House and read, praying that Congress will not agree to any plan, or pass any bill respecting the government of the said District, which shall, by the establishment of a subordinate Legislative or subordinate Executive, or otherwise, tend to unite under its power, the two parts of the district, as separated by the river Potomac.—Referred to the Committee of the whole House last appointed.

Ordered, That the letters of the Secretary of the Department of the Navy and of State, enclosing copies of instructions heretofore issued from the said Departments, under the direction of the President, to commanders of armed ships and vessels of the United States, in virtue of an act of Congress, entitled "An act further to protect the commerce of the United States," which were received, read, and ordered to lie on the table, on the twenty fifth instant, be referred to the Committee of Ways and Means.

The House resolved itself into a Committee of the whole House on the bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson; and, after some time spent therein, the Committee rose, and reported the bill without amendment.

Ordered, That the bill be engrossed, and read the third time to-morrow.

On motion, it was

Resolved, That a committee be appointed to inquire into the situation of the several tracts and parcels of land which have been granted, appropriated, or reserved, for the support of public schools and seminaries of learning, and for the support of religion, within the Territory of the United States Northwest of the river Ohio; and that the committee take into their consideration what measures are necessary, and ought to be adopted, to carry fully into effect the design of every such grant, appropriation, or reservation.

Ordered, That Mr. FEARING, M. DAVIS, Mr. GRAY, Mr. ROBERT WILLIAMS, and Mr. FOSTER, be appointed a committee, pursuant to the said resolution; and that the said committee be authorized to report by bill, or bills, or otherwise.

Mr. MITCHILL, from the committee appointed, on the fifteenth ultimo, presented a bill for revising and amending the acts concerning naturalization; which was read twice and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Commerce and Manufactures, of the fifteenth instant, to whom was referred the memorial of Thomas K. Jones; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the resolution contained therein; which is in the words following, to wit:

"*Resolved*, That the Collector for the port of Boston and Charlestown be, and he hereby is, authorized to issue to Thomas K. Jones the debentures on ten pipes of wine, imported by said Jones, in the ship Juno, Captain Thomas Dingley, and exported, on the fifteenth of June, last, in the ship Enterprize, Captain Hearsy, for Havana, on full and satisfactory proof being made to the said Collector of the actual quantity of wine in the said pipes at the time of their being shipped, as aforesaid: *Provided*, that every other requisite shall have been pursued, agreeably to law, for the obtaining the said drawback."

On the question to agree with the Committee of the whole House in their disagreement to the said resolution, an adjournment was called for; whereupon, the House adjourned.

WEDNESDAY, January 27.

An engrossed bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time; and the further consideration of the said bill was postponed until Monday next.

Petitions of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, whose names are thereunto respectively subscribed, to the same effect with the petitions of sundry other inhabitants of the said Territory, presented on the twentieth instant, were presented to the House and read.—Referred to the Committee of the whole House to whom is committed an act of the Legislature of the said Territory, entitled "An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof."

A memorial of the Philadelphia Chamber of Commerce, signed by Thomas Fitzsimons, their President, was presented to the House and read, praying that a law may be passed by Congress to authorize an appropriation for the expenses of supporting, and keeping in repair, certain piers heretofore erected in different places in the river Delaware, for the protection of vessels, in inclement seasons, navigating the said river.—Referred to the Committee of Commerce and Manufactures.

Mr. JONES, from the committee appointed on the fourteenth instant, presented a bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was referred, on the thirteenth instant, the petition of John Carr, and two reports of committees thereon, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

A Message was received from the President of the United States, transmitting the accounts of Indian trading houses, as rendered up to the first day of January, one thousand eight hundred and one, with a report of the Secretary of War thereon, explaining the effects and the situation of that commerce, and the reasons in favor of its further extension. The Message and the documents accompanying the same were read, and ordered to be referred to the committee appointed, on the seventh instant, to whom was referred the memorial of Evan Thomas and others.

Ordered, That the report of the Committee of Commerce and Manufactures, of the fifteenth instant, on the memorial of Thomas K. Jones, to which the Committee of the whole House reported their disagreement on the twenty-sixth instant, be recommitted to the Committee of Commerce and Manufactures.

NORTHWEST TERRITORY

The House again resolved itself into a Committee of the Whole on an act of the Legislature of the Territory of the United States Northwest of the river Ohio, entitled "An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof;" to which Committee of the whole House were also referred the petitions of sundry inhabitants of the said Territory in opposition thereto: Whereon a debate of some length ensued, on the motion of Mr. FEARING, deciding the constitutionality of the act, which was supported by Messrs. FEARING, and GRISWOLD; and opposed by Messrs. DAVIS, GILES, and BAYARD. On the question being taken, it was lost. Mr. GILES's motion, verbally modified, was then agreed to; when Mr. JOHN C. SMITH, the Chairman, reported that the Committee had come to the following resolution:

Resolved, As the opinion of this committee, that the act passed by the Legislature for the Territory Northwest of the river Ohio, entitled "An act declaring the assent of the Territory Northwest of the river Ohio to an alteration in the ordinance for the government thereof," ought not to be assented to by Congress.

The House then proceeded to consider the said resolution, and the same being again read, the question was taken, that the House do concur with the Committee of the whole House in their agreement to the said resolution, and resolved in the affirmative—yeas 81, nays 5, as follows:

YEAS—Willis Alston, John Archer, John Bacon, James A. Bayard, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Andrew Gregg, William Barry Grove, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, Michael Leib, Ebenezer Mattoon, John Milledge, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, Lemuel Williams, Robert Williams, and Henry Woods.

NAYS—Thomas Boude, Manasseh Cutler, Abiel Foster, Seth Hastings, and George B. Upham.

THURSDAY, January 28.

The House went into a Committee of the Whole on the bill sent from the Senate, entitled "An act authorizing the discharge of Lawrence Erb from his confinement; and, after some time spent therein, the Committee rose, and reported the bill without amendment.

Ordered, That the said bill be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;"

and, after some time spent therein, the Committee rose, and reported several amendments thereto; which were severally read twice, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. Sprigg, from the committee appointed on the eighth ultimo, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, to whom was referred, on the 11th instant, the memorial of Samuel Harvey Howard, register of the court of chancery in the State of Maryland, made a report; which was read and considered: Whereupon,

Resolved, That it is expedient to pass a law authorizing and directing the Marshal for the District of Columbia to collect, by distress and sale of the goods and chattels of the debtors, or by execution against their persons, all fees due from residents in the said territory, which have become due, or may become due, to the solicitors, attorneys, registers, clerks, and other officers of any courts in Maryland, on any suits, process, or proceedings, pending in the said courts on the twenty-seventh day of February, one thousand eight hundred and one.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Sprigg, Mr. Brent, Mr. Foster, Mr. Gregg, Mr. Plater, Mr. Stratton, and Mr. Bacon, do prepare and bring in the same.

Mr. Eustis, from the committee appointed on the seventh instant, to inquire and report whether any, and, if any, what, amendments are necessary in the laws respecting the fortifications of the harbors of the United States, made a report; which was read and considered: Whereupon,

Resolved, That no amendments in the laws aforesaid are necessary.

The House resolved itself into a Committee of the Whole on the report of a select committee of the nineteenth instant, on the resolutions of the Senate, in the form of joint resolutions of the two Houses, "in respect to Lieutenant Sterret, the officers, and crew of the United States' schooner Enterprize;" to which Committee of the whole House were also referred the said resolutions of the Senate; and, after some time spent therein, the Speaker resumed the Chair, and Mr. Davis reported that the Committee had had the said report and resolutions under consideration, and directed him to repeat to the House their disagreement to the said resolutions of the Senate, and their agreement to two resolutions contained in the report of the select committee thereupon, in the form of joint resolutions of the two Houses; which he delivered in at the Clerk's table.

The House then proceeded to consider the said report and resolutions: Whereupon, the resolutions of the Senate, to which the Committee of the whole House reported their disagreement, being twice read at the Clerk's table, in the words following, to wit:

"*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled*, That, as a testimony of the high sense they entertain of the nautical skill and gallant conduct of Lieutenant Andrew Sterret, commander of the United States' schooner Enterprize, manifested in an engagement with, and in the capture of, a Tripolitan corsair, of superior force, in the Mediterranean sea, fitted out by the Bey of that Regency to harass the trade, capture the vessels, and enslave the citizens, of these States, the President of the United States be requested to present Lieutenant Sterret with a gold medal, with such suitable devices thereon, as he shall deem proper, and emblematic of that heroic action, and the mercy extended to a barbarous enemy, who three times struck his colors, and twice recommenced hostilities; an act of humanity, however unmerited, highly honorable to the American flag and nation; and that the President of the United States be also requested to present to each of the Lieutenants, Porter and Lawson, of the Navy, and Lieutenant Lane of the Marines, who were serving on board the Enterprize in the engagement, and contributed, by their gallant conduct, to the success of the day, a sword, with such suitable devices as the President may deem fit.

"*Be it further resolved*, In consideration of the intrepid behaviour of the crew of the Enterprize, under the orders of their gallant commander, and their receiving no prize money, the corsair being dismantled and released after her capture, that one month's pay, over and above the usual allowance, be paid to all the other officers, sailors, and marines, who were actually on board and engaged in that action; for the expenditure of which charge Congress will make the necessary appropriation."

The question was taken that the House do concur with the Committee of the whole House in their disagreement to the same, and resolved in the affirmative.

The resolutions contained in the report of the select committee, to which the Committee of the whole House reported their agreement, being twice read, in the words following, to wit:

"*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled*, That they entertain a high sense of the gallant conduct of Lieutenant Sterret, and the other officers, seamen, and marines, on board the schooner Enterprize, in the capture of a Tripolitan cursair, of fourteen guns and eighty men.

"*Resolved*, That the President of the United States be requested to present to Lieutenant Sterret a sword, commemorative of the aforesaid heroic action; and that one month's extra pay be allowed to all the other officers, seamen, and marines, who were on board the Enterprize when the aforesaid action took place."

The question was taken that the House do concur with the Committee of the whole House in their agreement to the same, and resolved in the affirmative.

Ordered, That the said resolutions be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the twenty-fifth instant, to whom was referred the memorial of Lyon Lehman; and, after some time spent therein, the Committee rose, and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of the said Lyon Lehman is reasonable, and that the said petitioner ought to be refunded the sum of one thousand six hundred and eighty-four dollars, being the amount of duties he paid on the importation of three thousand five hundred rifles and carbines, and two hundred and eighty-seven pair of pistols, into the United States, in the year one thousand seven hundred and ninety-nine.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Mr. Giles laid on the table a resolution to the following purport:

"*Resolved*, That the census of the Northwestern Territory be referred to a committee, to consider whether any and what measures are necessary at this time relative to granting the people of that Territory a State Government, and to provide for their being admitted into the Union."

Mr. Nicholson offered a resolution to the following effect:

"*Resolved*, That the Secretary of the Treasury be directed to report to this House what loan office and final settlement certificates are outstanding and not paid, and whether accounts have been so kept at the Treasury that provision can be made for paying them without subjecting the United States to be defrauded."

This resolution brought on a debate which occupied the remainder of the sitting. In the course of it a great diversity of opinion appeared, and the propriety of altering the statutes of limitation was discussed. A majority of the House appeared to be opposed to touching those statutes, and the resolution was finally rejected.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of Lyon Lehman; which was read twice and committed to a Committee of the whole House to-morrow.

Ordered, That the committee appointed, on the twenty-second ultimo, to prepare and bring in a bill or bills for a revision and amendment of the laws for regulating the militia of the United States, have leave to sit during the sessions of the House.

On motion, it was

Resolved, That the Secretary of the Navy be directed to lay before this House a statement of the vessels now belonging to the Navy of the United States, with their present state of equipment, and the service in which they are, respectively, employed.

Friday, January 29.

An engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time; and, on a motion made and seconded, ordered to be recommitted to the Committee of Commerce and Manufactures.

The bill sent from the Senate, entitled "An act authorizing the discharge of Lawrence Erb from his confinement," was read the third time and passed.

The resolutions in the form of joint resolutions of the two Houses, which were ordered to be engrossed on the twenty-eighth instant, "expressing the sense of Congress on the gallant conduct of Lieutenant Sterret, the officers, and crew, of the United States' schooner Enterprize," were brought in engrossed, and read the third time: Whereupon,

Resolved, That this House doth agree to the same, without amendment; and that the Clerk of this House do carry the said resolutions to the Senate, and desire their concurrence.

A petition of George Ash was presented to the House and read, praying that Congress will pass a law to confirm to the petitioner a right, in fee simple, to a certain quantity of land opposite the mouth of Kentucky river, in the Territory of the United States Northwest of the river, which has heretofore been granted to him by the Shawanese tribe of Indians, for various services rendered to the said tribe of Indians by the petitioner; and, also, that he may be entitled to the benefits and privileges of a citizen of the United States.—Referred to Mr. Davis, Mr. Mattoon, and Mr. Gregg; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Ordered, That Lewis Dupre, who presented a petition to this House on the fifth instant, relative to the principles of *perpetual motion*, which, as the petitioner suggests, have been discovered by him, have leave to withdraw his said petition.

Mr. J. C. Smith, from the Committee of Claims, to whom was referred, on the twenty-fifth instant, the petition of John Brainerd and others, made a report; which was read: Whereupon,

Ordered, That the consideration of the said report be postponed until Monday next.

Mr. Nicholson moved the following resolution:

"*Resolved*, That provision ought to be made by law for the payment of such loan office and final settlement certificates, as may have been lost, and for the payment or renewal of which application was made prior to the 12th of June, 1799."

Mr. Nicholson wished the resolution to be referred to the Committee of the Whole.

Mr. Griswold suggested the propriety of making the first reference to the Committee of Claims, to ascertain facts; in which he was supported by Mr. Bayard, and opposed by Mr. Southard.

The reference to a Committee of the Whole was lost; and then it was referred to the Committee of Claims.

On motion of Mr. Giles, it was

Resolved, That the census of the inhabitants of the Territory Northwest of the river Ohio be referred to a select committee, with instructions to report whether any, and what, measures ought, at this time, to be taken for enabling the people of the said Territory to form a State government for themselves, to be admitted into the Union upon the same terms with the original States.

Ordered, That Mr. Giles, Mr. Griswold, Mr. Robert Williams, Mr. Rutledge, Mr. Jones,

Mr. Lewis R. Morris, and Mr. Condit, be appointed a committee, pursuant to the said resolution.

Petitions from sundry inhabitants of the Territory of the United States Northwest of the river Ohio, whose names are thereunto respectively subscribed, were presented to the House and read, praying that Congress will consider the present situation of the petitioners, and disagree to any law or plan that may be passed or devised, contrary to their benefit and accommodation, and which may tend to a separation of the said Territory into one or more divisions, in opposition to the wishes and interest of the petitioners, and other inhabitants of the said Territory; also, that Congress will be pleased to consider what measures may, at this time, be proper to be taken for the establishment of a State government in the said Territory, and its admission into the Union.

Ordered, That the said petitions, together with such parts of the petition of sundry other inhabitants of the said Territory, as relate to the admission of new States into the Union, whenever it may be deemed expedient by Congress, presented on the twentieth, twenty-fifth, and twenty-seventh instant, be referred to the committee last appointed; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A memorial of George Helmbold, jun., of the city of Philadelphia, was presented to the House and read, praying that Congress will, by law, extend to all paintings, portraits, and engravings, executed and published within the United States, the benefits and privileges contained in the act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned," passed the thirty-first day of May, one thousand seven hundred and ninety.

Ordered, That the said memorial be referred to Mr. Jones, Mr. Cutler, and Mr. Mitchill; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan; was taken up in Committee of the Whole, and ordered to be engrossed, and read the third time on Monday, next.

Resolved, That the Committee of Revisal and Unfinished Business be directed to inquire into the expediency of continuing in force, for a longer time, the whole, or any part of an act, entitled "An act to augment the salaries of certain officers therein mentioned," passed the second of March, one thousand seven hundred and ninety-nine, which act will expire the second of March next, and that the committee be authorized to report such alterations in the salaries of said officers as to them may seem advisable; and that said committee report by bill, or otherwise.

Mr. Giles said as a report was soon expected from the Committee of Ways and Means, it was important to ascertain the sense of Congress on the continuance of an establishment attended with a considerable expense. He said he alluded to the Mint. If it should appear that this establishment cost more than the benefits derived from it, he presumed it would be discontinued. He, therefore, submitted a resolution, declaring that the several acts in relation to the Mint ought to be repealed.

Ordered to lie on the table.

Monday, February 1.

An engrossed bill authorizing the payment of two thousand and eight hundred dollars to Philip Sloan was read the third time, and passed.

Mr. Lewis R. Morris, one of the members for the State of Vermont, presented to the House two resolutions of the General Assembly of the said State, agreed to by the two branches of the Legislature, on the nineteenth and twenty-third of October, one thousand eight hundred and one, proposing certain amendments to the Constitution of the United States in the case of the choice of Electors for President and Vice President of the United States, and of Representatives to Congress from the States, respectively, which were read, and ordered to lie on the table.

On motion, it was

Ordered, That the committee appointed, on the thirty-first of December last, on "so much of the Message of the President of the United States as relate to naval preparations, and the establishment of sites for naval purposes," be authorized to cause such documents to be printed for the use of the members, as may be deemed proper by the said committee, previous to the presentation of the same to the House.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the protection of the commerce and seamen of the United States, in the Mediterranean and adjoining seas," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill last mentioned: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to a Committee of the Whole to-morrow.

The Speaker laid before the House a letter from the Secretary of the Navy, enclosing a statement of the vessels now belonging to the Navy of the United States, with their present state of equipment, and the service in which they are respectively employed, in pursuance of a resolution of the House of the twenty-eighth ultimo; which were read and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill to prevent intrusion on the public lands, and for other purposes; and, after some time spent therein, the Committee rose, reported progress, and had leave to sit again.

SAMUEL DEXTER.

A bill for the settlement of the account of Samuel Dexter, Esq., relative to the suit instituted by Joseph Hodgson, was read a third time.

Mr. Alston moved to postpone the farther consideration of this bill, until the first Monday in December next. He thought it altogether improper to do anything in the business at that time.

Mr. Eustis, opposed the postponement and stated the grounds on which the committee went who reported the bill. The suit he said was in fact the suit of the Government. Mr. Dexter ought to be indemnified for his expense and time.

Mr. Giles advocated the postponement.

Mr. Bayard observed that the principles had been correctly stated by the gentleman from Massachusetts. The suit was substantially the suit of the Government, and, said Mr. B., I ask if anything can be more flagrantly wrong, more iniquitously unjust, than to allow the suit to be the suit of the United States, and yet, because we have the power, deny to pay the expenses.

Mr. Bayard, spoke at some length in favor of the bill and against a postponement, and was followed by Messrs. Griswold, Rutledge, T. Morris, and Hastings, on the same side. Messrs. Holland, Bacon, and Sprigg, spoke in favor of postponing. The question for postponement was then put—for it 36, against it 56.

It was then referred to a Committee of the whole House, and Mr. J. C. Smith, took the Chair. The bill was so amended as to authorize the accounting officers of the Treasury to settle Mr. Dexter's account for the expenses incurred by the suit, and for his time and personal expenses, not exceeding six dollars a day, for the time necessarily employed in attending to the suit and in travelling. In the House the amendment was agreed to, and ordered to be engrossed for a third reading—51 voting in favor of it.

Mr. Giles called up his resolution respecting the Mint, which he moved should be referred to the Committee of the Whole; which was agreed to, and made the order of the day for to-morrow.

Tuesday, February 2.

An engrossed bill to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson, was read the third time and passed.

Mr Sprigg, from the committee appointed, presented a bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland; which was twice read and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved, That the President of the United States be requested to inform this House whether any, and what, measures have been taken for treating with the Indians south of the Ohio, in consequence of an act of Congress, passed the thirteenth of May, one thousand eight hundred, entitled "An act to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians."

Ordered, That Mr. Stanley and Mr. Dawson be appointed a committee to present the foregoing resolution to the President of the United States.

The House resolved itself into a Committee of the Whole on the amendments of the Senate to the bill, entitled "An act for the protection of the commerce and seamen of the United States in the Mediterranean and adjoining seas;" and, after some time spent therein, the Committee rose and reported their agreement to the same, without amendment.

The House then proceeded to consider the said amendments; and, on the question that the House do concur with the Committee of the Whole in their agreement to the same, it was resolved in the affirmative.

The House again resolved itself into a Committee of the Whole on the bill to prevent intrusion on the public lands, and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be recommitted to the Committee of Ways and Means.

A Message was received from the President of the United States transmitting returns of arms, fortifications, &c.

The said Message, and the documents accompanying the same, were read: whereupon,

Ordered, That such parts thereof as relate to the military stores of the United States be referred to the committee appointed on the 22d of December last, on the same subject.

Ordered, That the residue of the said Message do lie on the table.

On motion, it was

Resolved, That the Secretary of the Navy be directed to furnish this House with copies of any documents in his office relative to the object of the voyage or crews of the frigate Insurgent and brigantine Pickering, lately belonging to the Navy of the United States; and, also, to state the time when, and the place from whence, they sailed, together with any other information respecting their loss, which it may be in his power to furnish.

Wednesday, February 3.

Mr. Davis, one of the members from the State of Kentucky, presented to the House a letter from the Secretary of the Treasury, addressed to him as Chairman of the committee to whom were referred, on the eighth of December last, and the eighteenth, twenty-fifth, and twenty-sixth ultimo, the petition of James McCashen and others, the memorials of John Cleves Symmes, and of George Turner, and the petitions of sundry purchasers and settlers on the lands originally contracted for by John Cleves Symmes, between the Great and Little Miami rivers, enclosing a letter and report from the Receiver of the Land Office at Cincinnati, respecting the lands applied for under an act of the last session of Congress, giving a pre-emption right to certain purchasers under John Cleves Symmes; which were read, and ordered to lie on the table.

On motion, it was

Ordered, That the report of the committee of

the thirtieth of December last, appointed on the fourteenth of the same month, "to inquire into the expediency or inexpediency of giving further time to persons entitled to military land warrants to obtain and locate the same; and, also, to report what provision ought to be made by law to authorize the Secretary of War to issue military land warrants, and duplicates of the same, where satisfactory proof is made that the originals have been lost, destroyed, or obtained by fraud," which lay on the table, be committed to a Committee of the Whole House immediately.

The House accordingly resolved itself into the said committee; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That further time ought to be given to the holders or proprietors of military land warrants to register and locate the same.

Resolved, That provision ought to be made by law, authorizing the holders of warrants, or certificates in the nature of warrants, under an hundred acres, to locate the same.

Resolved, That all warrants or certificates located on a less quantity than four thousand acres, shall be located on the unlocated parts of the fifty quarter townships and fractional quarter townships.

Resolved, That warrants, or certificates in the nature of warrants, which have or shall issue for a quantity less than an hundred acres, shall be located on the fractional parts of lots that are less than an hundred acres, and in no other place.

Resolved, That the holders or proprietors of warrants for military services, who shall locate the same on the quarter townships, or fractional part of quarter townships, after the —— day of —— next, shall obtain patents in their own name.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that Mr. DAVIS, Mr. JACKSON, Mr. TALLMADGE, Mr. DENNIS, and Mr. FEARING, do prepare and bring in the same.

The House then went into a Committee of the Whole on the bill for the relief of Lyon Lehman.

The Committee rose and reported the same without amendment; and the bill was ordered to be engrossed, and read the third time to-morrow.

The House went into a Committee of the Whole on the bill for the relief of Daniel W. Coxe and others; and, after some time spent therein, the Committee rose without coming to any decision.

THURSDAY, February 4.

An engrossed bill for the relief of Lyman Lehman was read the third time, and passed.

A remonstrance of sundry inhabitants within the jurisdiction of the Corporation of Georgetown, in the District of Columbia, was presented to the House and read, praying that Congress will not pass into a law the bill for establishing the Territory of Columbia, now pending before this House; or that the said bill may be so amended or modified as to augment the powers of the Corporation of Georgetown, for the convenience and benefit of the remonstrants, and the other inhabitants of the said District.—Referred to the Committee of the Whole House appointed on the twenty-sixth ultimo, to whom was committed the bill referred to in the said remonstrance.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes;" to which they desire the concurrence of this House.

The House went into a Committee of the Whole on the bill for the relief of Daniel W. Coxe and others; and, after some time spent therein, the Committee rose and reported the bill with an amendment.

The House then proceeded to the consideration of the said bill and amendment: Whereupon, a motion was made, and the question being put, that the said bill, with the amendment, be recommitted to the consideration of a Committee of the whole House, it passed in the negative.

Ordered, That the farther consideration of the said bill and amendment be postponed until Monday next.

Mr. THOMAS moved the following resolution:

"*Resolved*, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States."

Ordered, That the said motion be committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Navy, enclosing copies of the sailing orders given to the commanders of the frigate Insurgent and brigantine Pickering, transmitted in pursuance of a resolution of the second instant; which were read, and ordered to lie on the table.

JUDICIARY BILL.

The bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," was read a first time, and Mr. GILES moved that it should have a second reading.

Mr. BAYARD supposed the object in having it read a second time was for the purpose of committing the bill. He thought it should be committed to the select committee appointed some weeks ago to take this subject under consideration. Mr. B. said it was not to produce delay that he proposed this. On common occasions, there was no doubt a subject would be so disposed of. He had no wish to affect any favorite plan gentlemen have determined on, by proposing this reference.

Mr. RANDOLPH thought it proper the principle of the bill should be settled in Committee of the Whole, and moved a reference to that effect.

Mr. GILES was in favor of its being referred to a Committee of the Whole; there was no detail, he said, in the bill. If it should be referred to the committee proposed, there was no prospect

that they would in any reasonable time make a report. One of the gentlemen appointed on that committee had been prevented by indisposition from even attending it, and there was very little prospect of that committee coming to any agreement without that member.

[Mr. G. must have alluded to the members being equally divided in political sentiments.]

But, said Mr. G., this is not my only reason for wishing it to go to the Committee of the Whole. Gentlemen are mistaken if they think there has been any concert on this subject; or, if there has been any, it is wholly without my knowledge.

He wished the bill to be taken up on Monday; there had been great agitation in the community excited by the subject of that bill. It had been very ably discussed in the Senate, and it was very necessary to decide this great Constitutional question in this House as early as would be consistent with the importance of the subject; because he believed the agitation produced in the country would subside as soon as the business was settled in this House.

Mr. RUTLEDGE said he was really surprised at this motion's coming from the gentleman from Virginia. (Mr. RANDOLPH.) who had moved the resolution, in consequence of which the select committee had been raised on the subject of this bill. The Chairman of that committee had never called the members together, but let the subject lie dormant, because he knew it was before the other branch of the Legislature, and waited for a decision there; and now, when it has come to us, that gentleman is for sending it to another committee, without first moving to discharge the select committee. He hoped gentlemen in favor of this bill would not whip on with such unusual speed because they are the majority.

Mr. R. said he really could not understand another gentleman from Virginia, (Mr. GILES,) when he says, to refer the bill to the select committee, will be to delay the business, because there would be a tie in the committee, the umpire being detained by indisposition from attending. If this tie was in the House instead of the committee, there would be some grounds for the objection. But if there should be any appearance of delay in the committee, the majority of this House would discharge them immediately.

Mr. R. was disposed to adhere to the forms usually observed; it was the most correct as well as fairest mode of transacting business.

Mr. GRISWOLD agreed that in Committee of the Whole was the proper place to discuss and decide great and general principles. But in this bill there were considerable details, and was it not, he asked, more correct to send it to a select committee to settle that detail, which could not be properly done in Committee of the Whole? As to the absence of one gentleman on the select committee, that could be easily remedied by appointing another in his place.

Suppose the House should go into Committee on the bill, and a majority say they like the principle but do not the detail, must it not then be referred to a select committee to settle the detail? Mr. G. said it had been the uniform practice of the House to refer in the first instance, and he hoped the House would not deviate from it. If, instead of this bill, there was a resolution offered to this House proposing to repeal the two laws of last session respecting the Judiciary, then it would be proper to decide on it first in Committee of the Whole.

Mr. SMILIE advocated a reference to the Committee of the Whole.

Mr. GODDARD expressed his solicitude that the bill should go first to the select committee, that everything like the pride of party or the pride of opinion might be prevented from attaching itself to this bill. When the select committee reported, and that was taken up in Committee of the Whole, the discussion would be entered upon with more candor, and gentlemen would be more likely to be open to conviction.

Mr. MILLEDGE was in favor of the motion; he wished to call the attention of the House to two instances where bills had been reported by select committees without the principles being settled in Committee of the Whole, and he begged gentlemen to call to mind the consequence of that mode of proceeding, and the great delay it occasioned.

Mr. S. SMITH observed, as there had been something like censure thrown on the committee appointed on the subject of the Judiciary, he would mention some reasons why that committee could not be expected to have considered the subject very fully. Some considerable time after the appointment of that committee, the Chairman (Mr. RANDOLPH) informed the House that he was Chairman and member of so many committees that he could not attend to them all, and asked to be excused from serving on this committee; when another gentleman was appointed in his place, so that the subject could only be considered as being before the committee from about the 20th of January.

Mr. GILES said he had been in some measure anticipated by the gentleman last up. It had been urged, give the bill to a select committee first to settle the detail; when it comes forward here, if a majority should be opposed to the principle, he would ask whether the reference in such a case would not be wholly unnecessary? The principle, he contended, should first be settled in a Committee of the Whole.

The select committee to whom some gentlemen wished to refer this bill, had, since the 20th of January, had an important and the most voluminous subject under consideration that would come before the House the present year. He alluded to the petition of the Wyoming claimants and the documents accompanying it, which would take up the time of the committee for two weeks to read them through.

Mr. G. said, that if party sensations ever could be buried, the subject of the bill before them was the most proper for making an effort, and have that disposition discovered. Party triumph, he agreed, had too long predominated, and he hoped the time would soon come when such triumph

would cease. He thought this great Constitutional subject had come forward for decision at a most fortunate period. There was a general tranquillity in the country and a fair discussion could be had. The whole bill was a single proposition, to wit. Shall two laws of last session be repealed? and it could be very well determined in a Committee of the Whole.

Mr. Dana acknowledged himself particularly pleased with the sentiments of the gentleman who had just sat down. He thought it highly interesting to our common country that the triumph of party should be checked on this occasion. The most likely mode of checking such triumph would be that the whole business should proceed in its usual course, and that the majority should not precipitate it excessively. Some most important subjects had been delayed by the members not being in possession of the documents. This subject ought to come before them in its least exceptionable shape, that discussion may be had with an understanding of the subject. It had been said this bill from the Senate was a single proposition, because it only proposes to repeal two laws. Gentlemen might call it a single proposition if it were proposed that the Constitution should be destroyed. Though it is called a single proposition, it is not a simple one; on the contrary it is one of the most complex. It is already determined the Judiciary system shall be abolished, that it shall swallow up every thing that comes in its way; yet he thought it ought to be done in such a way as to do as little injury to others as possible.

Mr. Bayard.—It is urged we should go into Committee of the Whole to settle the principle of the bill. There is no principle in the bill. I do not mean any play upon the words. If a single insulated principle were to be settled, the course proposed by gentlemen would be correct. But we are going to decide a general question, involving vast details. If gentlemen will unfetter themselves from the manacles of party prejudice, they will on examination find it the correct course that this bill should go to the select committee.

The object is to repeal the law of last session. Are there six gentlemen in this House who can say what that law is? Is there one who can tell me even how many sections there are in it, or what is contained in a single section? Is it possible that the blindness of party spirit can say we will repeal a law though we do not know what it is? Would you not on any other subject send a bill repealing very complex laws to a select committee?

You could scarcely find a section of any law having so much detail as the first section of this bill; the second has also much and the third more detail. It is not easy to say what acts would be repealed by this bill. The laws of the last session were not confined to merely establishing new courts and new judges, but there were many wholesome amendments to the old system incorporated in these laws, which, if you repeal by this repealing act, you will be obliged again to establish in some other way.

A month of close application, by the most industrious person could not make him master of this subject, so as to see the operation of this bill on those it is intended to affect. And are gentlemen prepared to say they will repeal those laws even if on examination they find them useful?

In another more important detail, I will pledge myself to prove it defective:—with respect to suits existing originally in the old court, by the laws of last session, brought into the new court, and now transferred to the old court again. Can gentlemen say no criminal will escape justice, and no man lose his suit by passing this bill? There never was a general question involving more detail than this bill.

Gentlemen are even frustrating their own object. What is the object of gentlemen? They will lose no time by the mode we propose, we shall gain none. I believe the laws of last session will be repealed; they are considered as repealed through the country. A gentleman has said there was no concert on this subject; I do not know that it has been debated in what are called caucuses. [Mr. Randolph called to order. The Speaker decided against him.] Mr. B. proceeded: I was about to say, Mr. Speaker, there was no need of concert in the business. I was not blaming these meetings, in what are called caucuses. I do not see why thirty or forty members may not meet together to talk on politics, or any other more entertaining subject, as well as a smaller number. I was astonished to hear the gentleman from Virginia (Mr. Giles) say what he did about the agitation of the public mind. Does he tremble at the agitation this subject has excited? Does his security consist in the apathy of public sentiment? The public mind should be agitated on this question; the people should know what we are about. If they have any thing to say, I wish to hear it. I wish it to go to the people, and even that it should be decided by their vote. This is not a measure originating from the people; if it were, the more it should be agitated by the people the better it would be for that gentleman.

I meant no reflection on the select committee to whom the subject of this bill was referred. I was not dissatisfied with them, but I am dissatisfied with the excuse the gentleman from Maryland has made for them. I am sorry he implicated the Speaker in that apology, who, it must be presumed, knew what committees the gentleman from Virginia (Mr. Randolph) was chairman of, and of how many he was a member when appointed chairman of another, from attending which he very properly afterwards requested to be excused. It is proper this bill should go to the select committee, that the general question may be so presented to the House, as that it may be fairly discussed.

The question on referring the bill to the Committee of the Whole was then taken, and carried—54 voting in favor of it.

When the Speaker asked, "For what day shall it be made the order?" Mr. Davis proposed Monday week.

Mr. Giles believed the business of the session would not progress until this subject was decided; he wished it the order for Thursday next.

Mr. Bayard hoped Monday week would be agreed to; he had not heard much of the debate in the Senate, or read a single speech. He wished time to read the speeches. He knew they could only rely on the candor and accommodation of gentlemen for this indulgence. As to those who had made up their minds upon the subject, and who did not intend to speak, they could not have a common feeling with him on this occasion. If gentlemen would allow them time to prepare, they would meet the friends of the bill, and discuss its merits with all that calmness and deliberation on their part that could be expected. But if they were hurried into the subject, he feared, that with the exercise of all their Christian patience and forbearance, it would not be possible.

Mr. Nicholson said, as the gentleman from Delaware has promised, on the part of his friends, to meet us in the discussion of this question with a great deal of forbearance, like good Christians, if it be postponed until Monday week, I shall vote for that day, and hope it will be carried.

The question for Monday week was then put and carried—54 voting for it.

Friday, February 5.

Mr. Smith, from the Committee of Commerce and Manufactures, to whom was recommitted, on the twenty-ninth ultimo, an engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," reported an amendment thereto; which was twice read, and, together with the said bill, ordered to be committed to a Committee of the Whole House to-day.

A memorial of sundry citizens of the United States, and resident merchants of the city of Baltimore, and State of Maryland, was presented to the House and read, praying relief in the case of numerous and heavy losses sustained by the memorialists, in consequence of the illegal capture and confiscation of their property, under the authority of the French Government, prior to the promulgation of the late Convention between the United States and France; in the provisions of which compact the memorialists discover an unqualified surrender of their claims, instead of the redress which they expected to obtain.—Referred to Mr. Giles, Mr. Mitchill, Mr. Eustis, Mr. Lowndes, Mr. Milledge, Mr. Tallmadge, Mr. Robert Williams, Mr. Davis, and Mr. Gregg; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On a motion made and seconded that the House do come to the following resolutions:

"*Resolved*, That the President of the United States be, and he is hereby, authorized and empowered to appoint one or more Commissioners, as he may deem necessary, on the part of the United States, to adjust, on principles of equity, the existing disputes between the Commissioners of the City of Washington and the Trustees of the city property, original proprietors, and other persons who conceive themselves injured by the several alterations which, from time to time, have been made in the plan of the city; and, having adjusted the same, that he be, and he is hereby, requested to endeavor to procure from the trustees aforesaid, a conveyance to the United States of the streets, squares, and other public grounds therein.

"*Resolved*, That the President of the United States be, and he is hereby, requested to cause to be prepared and laid before Congress, for their sanction, a plan of the City of Washington, conforming, as nearly as may be, to the original design thereof, except where, in consequence of the alterations made in the same, the rights of individuals, the principles of justice, and the manifest interest of the United States, may require a deviation."

Ordered, That the said motion be referred to Mr. Dennis, Mr. John Taliaferro, Jr., Mr. Griswold, Mr. Sprigg, and Mr. Dawson; to examine and report their opinion thereupon to the House.

The House resolved itself into a Committee of the whole House on the engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the Committee rose and reported their agreement to the amendment proposed by the Committee of Commerce and Manufactures thereupon; which was again read, and, on the question put thereupon, agreed to by the House; and the bill, with the amendment, was ordered to be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the whole House on the bill for the relief of Isaac Zane; and, after some time spent therein, the Committee rose and reported progress; and on the question that the Committee of the whole House have leave to sit again on the said bill, it passed in the negative.

Ordered, That the Committee of the whole House be discharged from the farther consideration thereof; and that the said bill be recommitted to Mr. Jackson, Mr. Fearing, Mr. Van Horne, Mr. Davis, and Mr. Bayard.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making certain partial appropriations for the year one thousand eight hundred and two; which was twice read and committed to a Committee of the whole House on Monday next.

On motion, of Mr. Giles, it was

Resolved, That the committee to whom was referred a Message from the President of the United States, of the eleventh ultimo, accompanying a memorial and letter to him, from the Commissioners of the City of Washington, be instructed to inquire into the expediency of discontinuing the offices of the Commissioners of the said city; and to report by bill or otherwise.

Monday, February 8.

An engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time.

Ordered, That the further consideration of the said bill be postponed until to-morrow.

A memorial of sundry merchants of the city of Philadelphia was presented to the House and read, praying relief in the case of injuries inflicted on the commerce of the memorialists, during the late European war, by the predatory cruisers belonging to the French Republic.—Referred to the committee appointed on the fifth instant, to whom was referred a memorial of sundry merchants of the city of Baltimore, to the same effect.

A memorial of sundry citizens of the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," for certain reasons therein specified.—Referred to the Committee of the whole House to whom was committed, on the fourth instant the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. SOUTHARD, from the committee to whom was referred, on the eleventh ultimo, the petition of Thomas Bruff, of Joseph, in the State of Maryland, relative to the principles of *perpetual motion*, which, as the petitioner suggests, have been discovered by him, made a report; which was read and considered: Whereupon,

Resolved, That the petitioner have leave to withdraw his petition.

Mr. D. HEISTER, from the committee appointed on the 22d of December last, presented a bill supplementary to an act, entitled "An act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States," passed the eighth of May, one thousand seven hundred and ninety-two; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. MITCHILL, from the committee to whom was referred, on the thirty-first of December last, so much of the Message of the President of the United States as relates to "naval preparations, and the establishment of sites for naval purposes," made a report; which was read, and ordered to be committed to a Committee of the whole House on Wednesday next.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was recommitted, on the twenty-second ultimo, the bill to amend an act, entitled "An act to lay and collect a direct tax," reported an amendatory bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" which was read twice and committed to a Committee of the whole House on Wednesday next.

IMPRISONMENT FOR DEBT.

Mr. SMILIE called up his resolution that a committee be appointed to revise the laws respecting imprisonment for debts due the United States. His objects, he said, were two; to secure the debtor's property, and to inflict some penalty or provide some remedy instead of imprisonment for life.

Mr. RUTLEDGE was opposed to imprisonment for life, where the debtor gave up his whole property, and was unable to pay all. He had known, in South Carolina, revenue officers imprisoned for debts due the United States, who had been many years confined; men of good character, men of honesty, but who, through ignorance of transacting certain business, or their misfortunes, were unable to pay. He knew an individual of that State who had applied to that House for relief; his petition was referred to the Secretary of the Treasury; the Secretary felt a delicacy in interfering in the case; the petition was not granted; and the person had now been in jail five years, though his inability to pay did not arise from having wasted the public money, or from aught but misfortune; for he was acknowledged to be a man of good character. He was averse to such cruelty. Hence the necessity of making some provision that the innocent, when distinctions can, as in most instances, be made, may not be subjected to cruel punishments, that were of no benefit to the United States. Why send him to jail? Why lock him up there? Why prevent his being able to support his family?

Mr. SMILIE.—It is the case that when you exceed in making your laws what is reasonable, those laws, as the present concerning debtors to the United States, will not be executed. The present law cannot be put in execution. He wished some sufficient penalty. This was not the proper stage to give his sentiments; were it, he should say, he thought the defaulter ought to give up the property, and perhaps be imprisoned a period. But the Legislature are not the proper judges, and ought not to interfere; the Legislative and Judicial departments should be kept separate. We want some uniform law, operating on all according to their demerit.

The subject was postponed till to-morrow.

THE MINT.

The House, resolved itself into a Committee of the Whole on the motion referred to them, on the first instant, viz:

Resolved, That so much of the acts, the one entitled "An act establishing a Mint and regulating the coins of the United States," the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relate to the establishing a Mint, ought to be repealed.

Mr. GILES said, he had seen a bill making appropriation for continuing the Mint Establishment; he knew it was questionable whether or not it was intended to repeal the law creating that establishment; his wish was to discover the opinions of the House on the subject. He had ever been opposed to the establishment from the beginning; he thought we ought to have no establishment the expenses of which surpassed the profit—that is, he would have no sinecures, or persons receiving money without rendering adequate services.

Mr. G. here showed the deficiencies of the Mint Establishment. He further observed that the gold and silver coined in the Mint were better than the coins of other countries, and were much of them used by jewellers and silversmiths. The machinery of the Mint, he was informed, wanted repair; he had also been informed that the machinery might be disposed of to advantage to the Bank of the United States; and, perhaps, that bank might coin for us, and save much expense. On the whole, he was firm in the opinion that it was a needless expense, and ought not to be continued.

Mr. DANA.—If the standard coin is better than that of other countries, we have only to make the proper alterations. The question is, whether we shall have one of our own? By not having one of our own, we shall, as we have been before, be exposed to many disadvantages, to many frauds from the circulation of base metal, especially copper.

Mr. LOWNDES.—We proceed with too much precipitation. This establishment was made after mature deliberation, let it not be abolished without hesitation. We ought to make inquiry; we want information on the subject. If, after such information on the subject is received as will enable us to vote understandingly, it shall appear improper to continue the establishment, I shall be as forward as any one in repealing the law by which it was made. I am not in favor of sinecures, more than the gentleman from Virginia, or any other member. I will go as far in preventing sinecures, or the payment of money where services adequate are not rendered, as any man. I would not stop here; where such sinecures appear, I will join to abolish them. The duties of the Secretary of War, especially since the late reduction of the Army, are now very inconsiderable; the duties of the Secretary of the Navy and those of the Secretary of War can easily be performed by one officer. [Called to order.] I wish delay till we shall receive the necessary information on the subject.

Mr. S. SMITH said, he believed the books now in the House, and the last report of the Director of the Mint, furnished all the information necessary.

Mr. LOWNDES observed, that there has been no report this session. A report appears the more necessary at this time, when the abolishment is contemplated.

Mr. GILES said, by the report of last session we have or can receive information sufficient. By that and other reports it will be found that the establishment is expensive, is unprofitable, and will probably continue so. I can see no need for revising. I am for abolishing altogether. Perhaps the coinage may be done by the Bank of the United States, if it be necessary that it should be done. I can see no propriety in continuing the establishment. The gentleman from Connecticut speaks of uniting the office of Secretary of War and of the Navy. [Called to order.]

Mr. HOLLAND thought gentlemen had all made up their opinions; it was, plainly, expensive and unprofitable. He should vote for repealing.

Mr. MITCHILL spoke at considerable length, discovering much ingenuity and acquaintance with the subject. He was against a total repeal, especially as we should be subjected to great inconveniences from abolishing the copper coinage.

Mr. RUTLEDGE.—If it be true that it is useless, all will agree in abolishing. It has heretofore been customary to show, when about to abolish an establishment, what the state of that establishment was. No such statement has been given. Two years ago it was attempted to abolish this establishment, all suitable information was received at that time, and the bill for repealing was lost. Shall we proceed to act now without information?

Mr. R. regretted that he was unable to hear the gentleman from New York, (Mr. MITCHILL.) He perceived that that gentleman had viewed the subject thoroughly and found that it would be improper to repeal; he hoped the observations of that gentlemen would have due effect on the opinion of the House. Mr. R. wished the Committee to rise, without leave to sit again, that the matter might be referred to a select committee, who could examine the subject, and would be enabled to make a report, founded on a knowledge of facts. He would, however, declare that he had no predilection for the establishment, nor any wish to have sinecures, but he had not sufficient knowledge of the present state of the establishment to vote understandingly.

Mr. GRISWOLD.—It is admitted there are advantages arising from the establishment. It has driven from circulation the base gold of Germany, and English silver. I had hoped the gentleman who introduced this resolution would have given us a statement of the present situation of the Mint. He was unable to decide till he should have more knowledge of the subject. If the advantages exceed the expense, he should be for continuing; if not, for repealing.

Mr. S. SMITH.—If we could gain any further information, he should be for the Committee's rising; but he thought no further information of importance could be had. Mr. S. went into a brief examination of the expense and the profits. Among other objections he said that it cost half a dollar to coin a cent.

Mr. S. observed that we might, at much less expense than as now, send to Birmingham, England, to have our copper coined. If there were a probability of our having mines of our own, there might be some pretext for their continuance.

Perhaps a national pride, or national dignity, may be the inducement. Such motives did not actuate him. He had as high sense of national pride as any, but did not imagine that this was any mark of national dignity. The small States of Germany still coin money, so does Scotland, but he did not think such coinage any mark of their independence.

Mr. DANA.—If we allow the gentleman to attribute motives to others, he can set up his men of straw as easily as we can pull them down. We have no such Scotch pride, as represented. It is important that we should have some Mint

establishment. We ought not to have a fluctuating medium. Whether the present be the best mode of coinage I know not. I am willing to make any revisions that may be found necessary. The gentleman from New York has gone into the matter fully—has said much to confirm me in the opinion that this establishment is necessary.

The gentleman from Maryland has told us that the coinage of every cent costs half a dollar; this is an assertion that he thought would have exceeded even the legislative intrepidity of that gentleman.

Mr. Rutledge.—The gentleman from Maryland has said much on the subject, all of which, he believed, could be answered in a few words. Make your copper lighter, if it ought to be; give alloy to your gold, if that of other countries is not so valuable. Let the subject go to a select committee, who can see what alterations can and ought to be made; what offices reduced; what departments combined, or, perhaps, what parts of the establishment may be abolished.

Mr. Elmer.—He hoped it would go to a committee. We want information. We ought well to consider the inconveniences that may arise from abolishing. If more evils than benefits grow out of the establishment, he should be for abolishing; if more benefits than disadvantages, he should wish it to continue. But he wanted information. He was not then content to decide.

Mr. Mitchill.—We were again unable fully to hear Mr. M. His observations appeared to be mostly directed to the subject of copper coinage, and to show the necessity of coining our own. He corrected Mr. S. Smith with respect to his statement of Scotland's coining her own money. The place where the coining was done, to which Mr. S. alluded was a place of confinement for convicts—he had been there and well knew. Mr. M. went largely into the subject of base copper coinage; the danger of great disadvantages arising to us from the introduction of it here, unless we had copper coinage of our own to prevent it.

Mr. S. Smith.—He could not see how we should be able to obtain further information. He would explain as to what the gentleman from Connecticut had said. His assertion of the expense (that every cent costs half a dollar) was a *lapsus linguæ*; he did not mean to have it understood as literally true.

Mr. Bayard.—It was not to be supposed that because gentlemen wished the Committee to rise, they were opposed to the resolution—the object was to have the subject go to a select committee, who might give it an attentive examination, from documents which they might, but which were not now obtained. In addition to the learned and cogent observations of the gentleman from New York, he would ask what he had to guard against the introduction of base coins? We had been, and we should again be, liable to impositions, especially from the circulation of Spanish gold.

Another consideration was, the necessity of some regulated medium in small change. Coppers had heretofore passed two, four, and six for one. There were persons whose sole business was speculating in these base metals. Coppers were brought by the cask from Birmingham; after a short time circulating their baseness was discovered—their value sunk, and the loss generally fell on the poorer class of citizens. The poorest of the people were in this manner taxed in one year far more than the amount of supporting this establishment.

Mr. B. duly appreciated the knowledge and talents of the gentleman who introduced this resolution. They may be equal to the united talents and knowledge of a committee of five; yet such was not common. It was not usual for *one* to inquire so deeply—so fully—as a committee of several.

The gentleman from Maryland informs us that we can send to Birmingham to have our coining done; true, but the gentleman might have gone much further; the expenses of legislation are great; we may also send to Westminster to have our laws made, and thus save the expense of four or five hundred thousand dollars. Our own coinage is moreover emblematic of our sovereignty; this consideration ought to have some effect.

If on inquiry it should be found proper to abolish wholly the institution, he should readily join; but he was not ready without reflection or distinction to go any length with those who seem actuated only by an indiscriminate rage for pulling down and destroying establishments.

Mr. Randolph.—He thought the banks were sufficient to prevent the circulation of base money. He asserted that nineteen-twentieths of the silver in circulation was not coinage of our own, but Spanish milled dollars and their parts. He could not see how our sovereignty was affected by having our coinage done elsewhere, any more than by the purchase of cordage or the casting of cannon.

The gentleman from Delaware laughs at the idea of going to Westminster for our laws. Mr. R. was surprised at this. He had thought the gentleman a great advocate for such laws—that it was his favorite doctrine to go there for our laws. The gentleman had lately taken up the cause of the poor—a cause with which he is just becoming acquainted. Should those who had always advocated their cause become hardened by prosperity, and forget the professions which had gained them the confidence of the people, he hoped and expected they should be dismissed by them.

Mr. R. begged pardon for having detained the Committee, but as it seemed the order of the day when a subject was started to consume the whole day, he believed he was not out of order.

Mr. Giles.—In the discussion of this subject gentlemen had branched out exceedingly, but he believed it all came to one point—the want of information. He had some days since notified that he should introduce the resolution. He was satisfied no further information of consequence would be obtained, and there is already sufficient to enable us to judge correctly. It is hinted that it will be proposed to obtain a report from the Mint. He believed it unnecessary. Mr. Boudinot is in Philadelphia. We must send to him—he will report when he pleases, and after all we shall receive no information of any consequence.

There is a difference between this and other countries. Other nations need to coin their own money; it is not with them the general, but the partial good; it is aggrandizement of individuals, the trappings of royalty. Here it is true you established a Mint; you have raised armies and fleets, &c. to create an Executive influence; but what do the people say now? They send men here now to govern, who shall not govern for themselves, but for the people.

Mr. Dana.—When we shall be deprived of the right of debating, it will be full time for gentlemen to criminate, but not now. The gentleman from Virginia, as usual, talks more or *less* to the purpose on every subject on which he undertakes to speak; like the sun on a cloud he may illuminate in some measure, but neither give nor leave any lasting substance or weight. Mr. D. was in favor of the resolutions going to a select committee.

Mr. Macon.—The Mint has been in operation ten years—see what has been done—its inutility is evident. Money goes constantly from here to the East Indies; will not the American dollars go? Shall we be always coining? Mr. M. thought the Bank of the United States might be authorized to coin.

Mr. S. Smith was of the same opinion.

Mr. Rutledge, also; and he wished inquiry might be made of the bank whether it could be done, and on what terms, before he undertook to abolish.

Mr. R. dilated on the necessity of continuing the copper coinage, at least; and he wished the resolution to go to a select committee, who should thoroughly understand the subject, and show what could best be done; he was not for thus rapidly hastening in the work of indiscriminate demolition.

Mr. Griswold.—The gentleman from Virginia thinks he has all necessary information on the subject; far was Mr. G. from thinking he had; he would inform the gentleman from Virginia that the coinage of copper will pay its own expense, and more. Perhaps it will be best to abolish the coinage of gold and silver, and retain only the copper; he did not know; he wished it referred to a committee who should be able, on examination, to decide.

Mr. Bayard.—He acknowledged there had been aberrations from the subject; but he believed those had been most guilty who had made the most complaint of others. We have been told that it is our object to delay. Why is this charge made? Has it any foundation in truth? If there be delay, the fault is not ours; and I call on them to show whence is the delay of which they complain, and from what cause it arises. If there be delay, those are the authors of it who have all power in their own hands—not the minority.

Gentlemen have said we have all necessary information on the subject. I have not—others have not. We know not on what terms it might be possible to agree with the bank, should it be thought advisable to discontinue the establishment ourselves; should it be thought best to continue the establishment, we know not how much lower might be the salaries of the officers concerned; from the vaunting declarations of some gentlemen, that we are become so much more enlightened, so much more patriotic than formerly, so ready to hug the doctrine of virtue's being its own reward, he was induced to think there might be found men who would conduct the establishment, without salaries, without any other fee or reward than the sweet gratification of having served the people. Any communication from the Director of the Mint can be easily and readily procured, if necessary.

Gentlemen have informed us that the coinage of every cent costs fifty cents. Is it this kind of information that gentlemen have, and on which they rely? The fact is not so. The establishment has been expensive from the coinage of gold and silver, not from that of copper, which more than pays itself.

Gentlemen talk of royalty, and very awkwardly charge the late administrations of attachment to monarchical measures; if they prefer the subject to any other irrelevant matter, he had no objection, but he did not wish to have attributed to himself sentiments he had never suggested. He had said that the coining of our own was a mark of our sovereignty, not of our royalty, as insinuated. He did not consider that royalty and sovereignty was the same thing; the people originally, or their power given to their delegated government, constituted the sovereignty. Why do gentlemen endeavor to catch the popular ear by their empty vociferations, charging the late administrations, and the present minority in Congress, with a fondness for royalty? Why forever sounding this imaginary attachment in our ears? The time will come—it must come—when the people will be undeceived; when they will judge of men, of their Government, not by their vain professions, but by their actions.

The gentleman (Mr. Randolph) endeavors to have it believed that I am attached to English laws; so, indeed, I am to many of the sacred principles of those laws—the trial by jury, the habeas corpus, &c.—principles avowed in the Bill of Rights of our constitutions, principles brought with us from England, in which we have been educated, and which I hope will ever continue to distinguish, to govern us; principles that could never impel me to tear down or root up, with the rage of revolutionary spirit, all that is useful or valuable, without hesitation, without distinction; yet that gentleman never heard me express a fondness for English laws, in the sense in which he wishes it to be understood.

The gentleman talks of my taking just now the poor under my protection. The time did exist when the poor did not need that protection, when nothing was done to injure them; it is now altered; now the rich are to be freed from taxes, &c., and the poor to be oppressed; never was there a time when, more than now, they needed protection.

On dividing, there appeared in favor of the Committee's rising 33—against it 54.

Mr. Rutledge then moved that the resolution be referred to a select committee; he hoped his motion would prevail, if it should not, he should not regret having made it; that when this mania for ruin should be over, and the time should come for cool reflection, it might appear that attempts were made for stopping it.

Mr. Giles.—Gentlemen talk of warmth; he had not seen it; it is, however, natural for them to be warm; they were in the minority; but he did not wish the imputation of warmth thrown on himself.

Mr. Bayard.—I acknowledge the gentleman has been cool, but he has said warm things; he has accused the last Government of an attachment to monarchy; he has talked much of royalty, Executive influence, &c. He may feel very cool himself when making these unfounded suggestions, but they are not calculated, nor do they appear intended to make others so.

Mr. Dana.—The gentleman says he is cool; I have observed he is usually so when employed, as he often is, in eulogizing himself and friends; he talks with all the coolness of self-complacency.

Mr. Dennis.—Gentlemen have acknowledged the probability that the coining of copper, at least, may be profitable; why not, then, consent to refer to a select committee, who can make all necessary arrangements? It were curious, indeed, that a resolution to repeal should go to a committee to alter and revise. He had no predilection for the Mint Establishment; he believed, as it was now managed, it was expensive, and he doubted the propriety of continuing it without alterations; those alterations ought not to go to the coining of copper; for that would certainly be useful.

A motion was then made and seconded that the said resolution be referred to a select committee, to consider and report thereupon to the House.

On which motion the question being taken that the House do agree thereto, it passed in the negative—yeas 33, nays 54, as follows:

Yeas—James A. Bayard, Thos. Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Condit, Thos. T. Davis, John Dawson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Sprigg, Richard Stanford, Joseph Stanton, jun., John Taliaferro, jun., David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And then the main question being put, that the House do agree to the said resolution, as reported from the Committee of the Whole House, it was resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Giles, Mr. Mitchill, and Mr. Holland, do prepare and bring in the same.

Tuesday, February 9.

The House proceeded to the farther consideration of an engrossed bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," which was read the third time on the eighth instant: Whereupon,

Resolved, That the said bill do pass, and that the title be, "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'"

Mr. Sprigg, from the committee to whom was referred, on the nineteenth ultimo, the petition of sundry inhabitants of the City of Washington, in the District of Columbia, made a report; which was read and considered: Whereupon,

Resolved, That it is expedient to pass a law incorporating a company for the purpose of opening a navigable canal, to connect the waters of the Potomac river with those of the Eastern Branch thereof, through Tiber creek, and the low lands at the foot of the Capitol Hill.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that Mr. Sprigg, Mr. Brent, and Mr. Foster, do prepare and bring in the same.

Mr. Davenport, from the Committee of Revisal and Unfinished Business, presented a bill to continue in force "An act to augment the salaries of certain officers therein mentioned," which was read twice and committed to a Committee of the whole House on Monday next.

The Speaker laid before the House a letter from the Secretary of the Treasury, the Secretary of War, and Comptroller of the Treasury, to the Commissioners appointed in pursuance of the act, entitled "An act, for the relief of the refugees from the British provinces of Canada and Nova Scotia," enclosing certain documents relative to the claims of Elijah Ayer, deceased, and Elijah Ayer, junior, refugees from Nova Scotia; which was read, and ordered to be referred to the Committee of the whole House to whom was committed, on the twenty-fifth ultimo, the report of the Committee of Claims on the petition of Caleb Eddy.

Ordered, That the Committee of the whole House to whom was committed, on the eighth instant, the report of the committee appointed on the thirty-first of December last, on so much of the

Message of the President of the United States as relates to "naval preparations, and the establishment of sites for naval purposes," be discharged from the consideration thereof; and that the said report be recommitted to Mr. Mitchill, Mr. Rutledge, Mr. Eustis, Mr. Newton, and Mr. Johnson.

The House resolved itself into a Committee of the whole House on the bill making certain partial appropriations for the year one thousand eight hundred and two; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the whole House on the bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

Wednesday, February 10.

Mr. S. Smith, from the Committee of Commerce and Manufactures, to whom were referred the memorials and petitions of sundry manufacturers of gunpowder, of hats, of types, of brushes, and of stone ware, within the United States, made a report; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the twenty-seventh ultimo, to whom were referred the petition of John Carr, and two reports of committees thereon; and, after some time spent therein, the Committee rose and reported their disagreement to the same.

Ordered, That the said report of the Committee of the whole House do lie on the table.

An engrossed bill making certain partial appropriations for the year one thousand eight hundred and two, was read the third time, and passed.

INTERNAL REVENUES.

Mr. Davis moved the following resolution:

"*Resolved*, That the several laws imposing duties on stills, and on domestic distilled spirits, refined sugar, licenses to retailers, sales at auction, pleasurable carriages, and on stamped vellum, parchment, and paper, ought to be repealed; and that the Committee of Ways and Means be, and they are hereby, instructed to report a bill conformably to this resolution."

Mr. Davis assigned as reasons for this motion, that the business, though long submitted to the Committee of Ways and Means, had not yet been reported upon, and the necessity of coming to an immediate decision.

Those opposed to the motion stated that it had been determined in that committee to repeal the internal revenues; that certain details in the repealing bill were not yet settled, but soon would be; and that of consequence no time would be gained by its adoption.

On the question, whether the House would take the above motion into consideration, it passed in the negative—yeas 40, nays 57, as follows:

Yeas—Willis Alston, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, John Dennis, William Dickson, John Fowler, Edwin Gray, William Barry Grove, John A. Hanna, Joseph Heister, Joseph Hemphill, Archibald Henderson, William Hoge, George Jackson, Michael Leib, Thomas Moore, Thomas Morris, James Mott, Thomas Plater, John Rutledge, John Stanley, John Stratton, John Taliaferro, jun., Philip R. Thompson, Abram Trigg, George B. Upham, Isaac Van Horne, Benjamin Walker, Robert Williams, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Thomas Claiborne, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, Seth Hastings, Daniel Heister, William Helms, William H. Hill, James Holland, David Holmes, Benjamin Huger, Charles Johnson, William Jones, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Thomas Newton, jun., Joseph H. Nicholson, Joseph Pierce, John Randolph, jun., Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Ordered, That the said motion do lie on the table.

COURTS OF MARYLAND.

An engrossed bill for the relief of Samuel Harvey Howard, and other officers of the courts of Maryland, was read the third time; and, on the question that the same do pass, it passed in the affirmative—yeas 56, nays 36, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, John Dennis, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, John Fowler, William B. Giles, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, David Holmes, George Jackson, William Jones, John Milledge, Samuel L. Mitchill, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stratton, John Taliaferro, jun., Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

NAYS—Thomas Boude, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Dickson, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, William Hoge, Benjamin Huger, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Thomas Morris, James Mott, Joseph Pierce, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Robert Williams.

Resolved, That the title be "An act to authorize the collection of fees due to the officers of the respective courts in the State of Maryland, from persons residing in the Territory of Columbia, by the Marshal of the said District."

THURSDAY, February 11.

The Speaker laid before the House a letter from RICHARD SPRIGG, one of the members for the State of Maryland, containing his resignation of a seat in this House; which was read, and ordered to lie on the table.

On motion, it was

Ordered, That Mr. J. TALIAFERRO, Jr., be appointed of the committee "to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise," in the room of Mr. SPRIGG, who hath, this day, resigned his seat in the House.

Mr. DAVIS, from the committee appointed, presented a bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" which was read twice, and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement of goods, wares, and merchandises, exported from the United States, from the first of October, one thousand eight hundred, to the thirtieth of September, one thousand eight hundred and one, inclusive; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to authorize the settlement of the account of Samuel Dexter, for his expenses in defending against the suit of Joseph Hodgson," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments of the Senate: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole House on the bill to amend an act, entitled "An act to lay and collect a direct tax within the United States;" and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Ordered, That the memorial of Charles Pettit, of the city of Philadelphia, presented on the thirty-first of December, one thousand seven hundred and ninety-nine, and the documents accompanying the same, be referred to the Secretary of the Treasury, with instruction to examine the same, and report his opinion thereupon to the House.

JOHN CARR.

The House proceeded to consider the report of the Committee of Claims, of the twenty-seventh ultimo, on the petition of John Carr, to which the Committee of the whole House reported their disagreement on the 10th instant; and, the said report being twice read at the Clerk's table, in the words following, to wit:

"That they have duly considered the same, and have agreed to the report made by the Committee of Claims, at a former session of Congress, and which is herewith reported.

'The Committee of Claims, to whom was referred the petition of John Carr, with the report of a select committee thereon, having examined and considered the same, report:

'That the petitioner seeks to obtain the pay and emoluments of a lieutenant, as if he had continued in the service of the United States till the end of the war.

'A particular statement of this gentleman's case is contained in a letter from the Accountant for the Department of War, which is subjoined, and to which the committee ask leave to refer, and pray that the same may be received as a part of this report.

'They are of opinion it would not now be expedient to re-settle accounts which have been, so long since, adjusted in the proper Departments, and by persons duly authorized; and, therefore, that the prayer of the petition ought not to be granted."

The question was taken that the House do concur with the Committee of the whole House in their disagreement to the same, and passed in the negative—yeas 32, nays 58, as follows:

YEAS—Willis Alston, John Archer, Thomas Boude, Samuel J. Cabell, John Campbell, Matthew Clay, John Dawson, John Fowler, William B. Giles, Daniel Heister, William Hoge, James Holland, William Jones, Michael Leib, Thomas Lowndes, John Milledge, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Smilie, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Benjamin Walker.

NAYS—John Bacon, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, William H. Hill, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, Ebenezer Mattoon, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Morris, James Mott, Joseph Pierce, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, Israel Smith, John Cotton Smith, John Smith, of New York, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, George B. Upham, John P. Van Ness, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

And then the main question being put that the House do agree to the said report of the Committee of Claims, it was resolved in the affirmative, and so the said petition was rejected.

FRIDAY, February 12.

An engrossed bill to amend an act, entitled "An act to lay and collect a direct tax within the United States," was read the third time, and passed.

A petition of William Henry Harrison, John Gibson and others, trustees for establishing and founding an academy, called "The Jefferson Academy," at Vincennes, in the Indiana Territory, was presented to the House and read, praying that a donation of lands, to which the Indian title has been, or may be, extinguished, may be granted to the trustees of the said academy for the accommodation and benefit thereof, under the regulations therein specified.

Ordered, That the said petition be referred to Mr. RANDOLPH, Mr. CUTLER, and Mr. CONDIT; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House

On motion, it was

Resolved, That the Speaker address a letter to the Executive of the State of Maryland, informing him of the resignation of RICHARD SPRIGG, one of the members of this House, of his seat in this House, in order that measures may be taken to supply the vacancy occasioned thereby.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to extend the privilege of franking letters to the delegate from the Mississippi Territory, and making provision for his compensation," with several amendments; to which they desire the concurrence of this House. The Senate have, also, passed the bill, entitled "An act for the relief of Lyon Lehman," with an amendment; to which they desire the concurrence of this House.

Ordered, That Mr. D. HEISTER be appointed of the committee to whom was referred, on the fifth instant, a motion, in the form of two resolutions of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Washington and other persons who may conceive themselves injured by the several alterations made in the plan of the said city; also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with certain exceptions," in the room of Mr. SPRIGG, who resigned his seat in the House on the eleventh instant.

Mr. NICHOLSON, from the committee to whom had been referred the Message of the President of the 11th ultimo, and a resolution of the 5th instant, made a report which concluded with resolutions to the following effect:

"That, from the 1st of March next, the offices of two of the Commissioners of the City of Washington ought to be abolished, and all the duties of the commission be thereafter vested in one commissioner.

"That the accounts of the commission be settled with the accounting officer of the Treasury before the 1st of March.

"That such portion of city lots pledged for the repayment of loans made of Maryland, be annually sold, so as to meet accruing instalments, unless, in the opinion of the President, too great a sacrifice would thereby be made; in which case he is authorized to advance the sum needed from the public Treasury."

Referred to a Committee of the Whole on Monday next.

The House took up the report of a select committee on the petition of McCashen and others, which involves the controversy respecting lands granted to John Cleves Symmes.

Mr. DAVIS made a brief statement of the facts attending the business; when, on motion of Mr. NICHOLSON, the report of the select committee was referred to a Committee of the Whole on Monday week, in order to give time to the members to examine documents, and in other respects to make themselves acquainted with the case.

STATE BALANCES.

Mr. THOMAS called up his motion respecting State Balances, which is as follows:

"*Resolved*, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States, and that the said committee have leave to report by bill or otherwise."

Mr. TILLINGHAST moved to insert in the 7th line, after the words "United States," the words "and certain balances reported to be due from the United States to the individual States."

Mr. GRISWOLD observed that there were no such balances in existence—they had all been extinguished by being paid.

The amendment was lost without a division.

Mr. BAYARD hoped the resolution would prevail. The debtor States, not satisfied with the settlement made by the Board of Commissioners, had asked for information respecting the grounds on which it had been made. The information had been imperiously refused. In his opinion it was but right, if the debtor States did not dispute the validity of the debts due to the creditor States, that they should agree to expunge the claims against the debtor States. Indeed, he had been assured that the commission was not instituted with a view of sustaining any charges against the debtor States, but for ascertaining the amount due to the creditor States, and funding them; and he believed it had been so understood at the time. This was an affair not determinable by the ordi-

nary rules applied to individual cases. Many of the States, not expecting a settlement, had kept no accounts or vouchers; and however great the supplies they contributed under such circumstances, they received no credits for them; while those States which had been most careful in the preservation of vouchers, shared a different and a better fate.

Mr. B. believed it was the true policy of the creditor States to agree to the extinguishment of these balances. He believed they never could be paid, because no State allowed them to be due. They would not, therefore, be paid voluntarily; and he knew of no force in the United States to compel payment. Why, then, keep up a source of irritation, which could do no possible good, and which could only tend to repel some States from that Constitution, which we all ought to endeavor to make the object of general affection?

Mr. SOUTHARD said, he had yet heard no reason that convinced him that the resolution offered was just or proper. It would be recollected that this contract was made under the Confederation. In the establishment of our independence, great and various exertions had been made. In the contributions made, great inequalities took place, which were unavoidable. Generally, where the war existed, the States became creditor States. It was just that those States which had contributed more than their share should be repaid, and that those who had paid less should make up the deficiency. If the debtor States were not to pay their balances, why settle the accounts? To relinquish the payment would be, in his opinion, not only unjust but unconstitutional. The Constitution says, "All debts contracted, and engagements entered into, before the adoption of this Constitution, 'shall be as valid against the United States, under 'this Constitution as under the Confederation;" and the present Government had recognised those debts as just. The gentleman from Delaware says, the settlement is not just. But this was barely the suggestion of his own mind. To sustain it, he ought to have shown its defects; but this he had not done.

Mr. NICHOLSON said, the Constitution declares that engagements under the new Constitution shall be as valid as under the Confederation; that all the debts of the one should be paid by the other; but not, as the gentleman from New Jersey seemed to imply, that the United States should not release their debtors. We do not say, if we extinguish those balances, that we will destroy our moral obligation to pay what we owe, but that we will release those who are said to be indebted to us. Mr. N. believed the balances ought to be extinguished. To have enforced their payment when they were first declared to be due, might have hazarded the integrity of the Union; and he was persuaded that it would not be politic in the United States at any time hereafter to call for them. But the present motion goes no further than to appoint a committee to inquire into the expediency of extinguishing them, and he presumed that there would be no objection to making the inquiry.

Mr. MITCHILL was in favor of the resolution, as he believed a refusal to adopt it would be attended with unpleasant sensations. He judged so from an historical review of the business. The several States had associated together for their common defence, and, in the eye of equity, whatever that defence required, should constitute a common charge. The accounts of expenses thus incurred were not settled till the new Government was established. That Government fixed the mode of settlement; it appointed a board of referees, to report the debts and credits of the respective States. In this report, it was the fortune of certain States, notwithstanding the greatness of their contributions, to be reported debtor States. These States became debtors from the independent spirit with which they asserted their sovereign rights. Not relying on the general contributions, they furnished great supplies without making any charge to the Union; by exerting all their strength, they paid as they went, and preserved no vouchers of what they paid. This, he averred, was the case as to the State which he had the honor in part to represent; a State as willing as able to contribute, and which did contribute to a great extent; but which had neglected to preserve her vouchers, the preservation of which would have made her a creditor State. He believed, therefore, that in equity, the States were not bound to pay these balances. But to this it is replied, the award is final. He would not agree to that; he denied it. Besides, there was a want of coercive power in the United States to enforce those demands. From this consideration alone, we ought to proceed with lenity, and endeavor to make the settlement a peaceable one. As in other circumstances, we ought to make a virtue of necessity.

Mr. MITCHILL said, he had been told by a former Secretary of the Treasury, that this settlement was only intended as a record for the books of the Treasury, and never intended to be carried into execution as to the debtor States.

Mr. ELMER had no objection to the business going to a committee. But he would observe that it was considered at the time the board was formed, that, on a settlement, the debtor States should pay, and the creditor States be paid. On examining the journals of Congress, it would be found that payment had been actually pledged. It would be found, too, that the debtor States had gained greatly by the war. For instance, New York, which had such an extensive western territory, had gained more than New Jersey, which had none. Whatever may have been the secret understanding that the debtor States were not to pay, it was not so understood by the people of the United States.

It is said that there is no way of enforcing these balances; but that is no argument for striking them off altogether. Though they are now enforced, there may be future circumstances under which the States will be willing to pay them. New York had already done something, and he had no doubt other States would do something. Besides, no State in its sovereign capacity had applied for an extinguishment. There appeared, therefore, no propriety in proceeding to such a measure at this time. If a regard to harmony was pleaded, that was a strong argument. But, as yet, we had heard no murmur from the States.

Mr. S. SMITH said, he did not rise to take any part in the debate, but in order to bring the subject directly before the Committee. To do which, he moved so to amend the resolution as to make it read, "Resolved, That it is expedient to extinguish the claims," &c.

Mr. LOWNDES hoped the amendment would not be agreed to. He did not see the expediency of volunteering a relinquishment of the claims established against several of the States. The amendment was calculated to take the Committee by surprise. The original resolution went merely to consider the expediency of a relinquishment; the amendment involved the principle itself.

Gentlemen had gone into the merits of the main question. It was true, that all the States had been engaged in one common cause, and it was true the contribution should have been general. But it was known, that the old Government had not the power of obtaining money from the States in proportion to their capacity; its only mode was to recommend. It was known that some complied with the recommendation, and some did not. The great business, however, was effected. After which, to settle the accounts, a board was established, in which he believed each State was represented, which declared certain balances to be due. Objections are now urged because the proceedings of this board were not re-examined. But he would ask whether the debtor States would be satisfied with any result that brought them in debt? It was well known, that in private transactions, it was usual to submit the settlement of a controversy to a board of arbitrators, whose award was final.

Mr. L. supposed that this plan had been the result of accommodation. In consequence of it, certain States had been found debtor, which he presumed had not made proportionate advances. Surely, therefore, it was right they should pay. For these reasons he hoped the Committee would not be surprised into an adoption of the amendment. He had, however, no objection to refer the business generally to a select committee.

Mr. SMILIE said, he had seconded the motion to amend, not because he was in favor of the motion as amended; for, on this subject, he thought with the gentleman from South Carolina. But he thought the principle ought to be settled in Committee of the Whole, and not in a select committee. That principle, he thought, was as well understood now as it ever could be. It lay within very narrow bounds. Will you forgive your just debts on the ground of generosity?

Mr. RUTLEDGE did not think the gentleman from Maryland had played the General to-day, though he often did so in that House. He had made a motion, as if he wished the debtor States discharged from their balances, and the gentleman from Pennsylvania had seconded the motion for the very opposite reason. He had believed that the sensibility of the debtor States would have induced the House to indulge them with a reference, which would produce a complete development of the business. He was willing to have got this information very fully; to this he had no objection, but he certainly felt strong objections to the amendment.

We are told, said Mr. R., that the tranquillity of the debtor States is disturbed by hanging up these debts in your statute books. But where was the evidence of this? The settlement had been made many years since, and no State had expressed any alarm at the prospect of the balances being paid. If any State had felt an alarm, why had not the members in this House been requested, and those in the other branch been instructed to pursue measures for getting rid of them. The gentlemen from Delaware and New York talk about the sensibility of the debtor States, and yet they tell you the States know they cannot be compelled to pay. He did not understand this kind of logic.

Mr. R. could not at present vote for a discharge of these balances. Circumstances may hereafter arise, which may induce the States to pay them. Formerly it had been said by a gentleman from New York, that that State would not pay a cent; and yet she had paid a million, which would otherwise have been paid out of the Treasury of the United States.

[Some gentlemen contested the sum paid by New York.]

Mr. RUTLEDGE resumed.—If not a million, yet certainly great payments had been made, and the States may find themselves, in peace or in war, in such a state, as to be benefited by paying these debts. They may be greatly benefited in discharging them by making roads, opening rivers, digging canals, and raising bridges. These improvements would be highly interesting to several of the States, and to New York in particular; and he believed the time would come when they would be willing to discharge the debts in this way, to enhance the value of their lands. These were his impressions. To the reference he had no objection. But he was not prepared in the present state of things, without any application from the States, to vote for releasing them.

Mr. HILL was desirous the amendment should not be made, not from any indisposition himself to agree to it, but from a regard to the sentiments of other gentlemen. Even if it was ascertained that these debts had arisen on a just consideration, yet, in his opinion, they ought to be extinguished, from the principle that, in our Government, whatever hazarded the harmony of the Union, ought to be avoided. Precedents were not wanting in which sacrifices were made to this principle. He alluded to the quieting the claims under Connecticut rights. But, whatever might be the general ideas on this subject elsewhere, he knew not a man in North Carolina, who did not believe the adjustment iniquitous. To show the Committee how the citizens of that State felt, he would state a case that had occurred before the Board of Commissioners. Two claims had been made, both for the same amount and the same description of supplies, one on one side and one on

the other side, of Pedee river; one in North, and the other in South Carolina; and, in one case, seven shillings had been allowed, and in the other, only sixpence for the bushel of wheat. The business generally was entitled to the attention of Congress. It had, in fact, already been attended to at different times. New York had extinguished eight hundred thousand dollars of her balance under certain provisions applied to her case.

Gentlemen talk of the moral obligation to discharge these balances; but they go on the principle that these debts are established. This we deny. We say that in all contracts there are two parties, and that the United States saying it is a debt, does not make it so.

The gentleman from South Carolina enforces the propriety of all the States contributing for the general defence. We say we have contributed our full share. This subject had been before the last Congress. A report was made, but, owing to press of business, it was postponed. Mr. H. saw no reason for shutting the door of inquiry, and therefore, though he felt no hesitation to vote for the resolution as proposed to be amended, yet to indulge other gentlemen, he was in favor of a reference to a select committee.

Mr. DENNIS was against the amendment, as he wished the subject to go to a select committee, with a view of obtaining a detailed statement of all the information connected with it.

Mr. HOLLAND stated that the reason of North Carolina being a debtor State was, that she had preserved no vouchers of the operations of her militia. He was indifferent whether the subject was taken up directly or referred; but he was convinced it ought to be examined and elucidated. The public mind ought to be settled. Why hold it up in the present state? Is it that the General Government may gain a greater ascendency over the States?

Mr. BACON said, if the object of the motion was to go into a new liquidation of the old accounts between the United States and the several States, it would not only take up every day of the present session, but the work would be left unfinished for our successors. These debts had been incurred in a common cause, in which each State was equally interested, and towards which each State was bound equally to contribute. When Congress made requisitions on this principle, they were accompanied by a promise that there should be a final liquidation. This liquidation was made; the settlement was complete. But this settlement is now objected to, and what is to be done? Why we must annul the contract. This might satisfy some of the States, but he was sure it would dissatisfy others. He saw, therefore, no end to be answered by the motion. We must either set aside all that had been done, and begin *de novo*, to which this body is incompetent, or rest satisfied with what is already done.

Mr. R. WILLIAMS observed, that since he had held a seat in the House, this subject had been almost every session called up. The more he had heard it discussed, the more he became convinced of the necessity of getting it out of the way. He found that whenever it was brought up, all was imagination. One State contended that it had contributed largely, and another, that its exertions had not been surpassed.

We are asked, why relinquish these balances before we are solicited by the States? He would reply that North Carolina never had recognised the debt, and, in his opinion, never would apply for its extinguishment. He was in favor of the amendment, because the principle ought to be decided here, and not in a select committee. What, indeed, could such committee report? There were no vouchers or books whereon the settlement had been made to be got at. All they could do, then, would be to report the balances alleged to be due, which any member could at any time learn.

It seemed almost useless to go into arguments to show the injustice of the claim, and of consequence, the justice of the resolution. It had been justly said, that those States which had contributed the most, had, by the report of the Commissioners, the most to pay; and this was peculiarly so with the State of North Carolina.

There were other considerations independent of those of justice, which recommended this measure. Had any way been pointed out in which these claims could be enforced? But, say gentlemen, some fortuitous events may happen that may induce the States to discharge these balances by building bridges, &c. But, inasmuch as these claims cannot be enforced, inasmuch as they rest upon no moral obligation; to continue to hold them up was to keep alive a perpetual source of irritation, not in the States, which felt too much indifference to be solicitous, but in this House—a source of irritation that involved a great waste of time and money.

Mr. W. had forborne to dwell on the injustice of these demands. But were he to enter on that branch of the discussion, he should say that the very act of destroying all the vouchers was of itself sufficient to justify any suspicion. He should say, that for what, in some States, there had been an allowance of one hundred pounds, North Carolina had not been allowed twenty shillings. Could, then, gentlemen talk of moral obligation, and say that this was a just debt?

Mr. T. MORRIS said, it was contended that the accounts should be opened anew and re-examined. The fears, therefore, of the gentleman from Massachusetts, were entirely visionary. The resolution was a simple one. It proposes to inquire into the expediency of doing away these debts. The amendment goes to determine the principle here. He thought it proper the principle should be settled here. But gentlemen say they want information. If so, after the amendment is agreed to, they may move for a postponement. If the amendment were carried, he would himself move a postponement.

It had been said that New York had had eight hundred thousand dollars of her debt remitted by the United States. But how did the case really stand? New York had availed herself of the Act of Congress, not because she acknowledged the debt to be just, but because she preferred doing

something to remaining in the situation towards the United States in which she stood. It was strange, then, to hear gentlemen say that New York had been favored. What was the fact? North Carolina, according to the gentleman, had not, and would not, pay one cent; and New York had discharged a greater sum than was due by all the other debtor States, with the exception of Delaware. She was, therefore, instead of being favored, placed in a worse situation than any other State. It was from the existence of this state of things that he wished a final decision to be made this session. New York having agreed to make certain payments to the United States, it was important to her to know whether the United States meant to enforce payment by the other States. Her situation would be truly unfortunate, if, after agreeing to pay, the United States suffered her claims against the other States to sleep. She would not only have to pay her quota of the debts, but would see no prospect of deriving her share of benefit from the payments of the other debtor States.

Mr. MACON said the subject was a very old one, which had occupied much time every session for many years, and he thought it would be as well to try the question now as at any other time. No information of a select committee could throw any new light upon it.

There was a fact which ought to have great weight with the Committee. One of the Commissioners who made the settlement, who was a member of this House, had, after the settlement, proposed a resolution to extinguish the balances of the debtor States; and he had stated, as a reason for this measure, that the principle adopted by the board had operated very harshly upon particular States. Mr. M. had it from authority not to be questioned, that in the settlement by the Commissioners, teams, with the usual number of horses, had not produced twenty shillings.

This subject had hung over our heads for eight years, and no scheme was yet devised for collecting the balances. How could they be collected? Congress had, it is true, authorized expenditures by the States in the erection of fortifications; but this very act was a tacit confession of the impracticability of getting the money into the public Treasury. As to a settlement with North Carolina, it was involved in great difficulty. In the act of cession of lands by that State to the United States, it was provided that the territory ceded should be pledged to pay a proportional share of the balance due the United States. How could that share be estimated?

Mr. M. regretted that this subject had been brought up. He should not himself have been for bringing it up, for he thought the claims of the United States not worth a rush. The truth was, the States had all exerted themselves in one great and common cause; they had done their best; they had acted with great glory. As to the State which he represented, he would ask if the first blood that had been spilled after that shed at Boston was not in North Carolina? and that was the blood of brother against brother. He desired not, however, to make comparisons, which were always unpleasant, but to show that North Carolina had no reason to shrink from an inquiry which would demonstrate that she had fully contributed her share in the common cause, without meaning to assert that she had done more than other States. Let, then, Congress decide at once, and abandon the claims altogether, or devise some plan for collecting them, that we may know how we stand.

Mr. S. SMITH said, that when he proposed the amendment before the Committee, he had assigned his reasons for it. He had observed that the debate went to the merits of the main question, and was apprehensive that, after spending the day in discussing it, we should at last take a vote, not on it, but on an incidental point. His object, therefore, was to bring the specific proposition before the Committee. I had, also, another motive. I wanted to spare the time of the Committee. This was my object. But the gentleman from South Carolina attributes to me a different motive. He considers me as interested so far as relates to Maryland. But that gentleman, it will be recollected, constantly checks other gentlemen in ascribing any motives to him, though it is scarcely possible, in the freedom of debate, to avoid occasionally noticing the motives of gentlemen. He should, therefore, on this point, be extremely cautious, while he will not suffer others to attribute motives to him, to refrain from attributing motives to them. The truth, however, was, that Maryland, though nominally a debtor State, was really a creditor State, and therefore whatever interest he felt from his relation to that State, would produce an effect the opposite of that ascribed to him.

The gentleman from South Carolina is also pleased to call me a General; he adds, however, that I have not on this, as on other occasions, played the General. I will tell that gentleman in reply, that, in Congress, I never think of playing the General. My object is always to go directly to the point, and though I am always disposed to give the gentleman credit for every good thing he says, yet I cannot do so on this occasion, as I recollect to have found the very same thing in a newspaper a day or two ago.

This question is of no importance to Maryland, but it is very important to the United States to come to a decision upon it. He thought it proper that the United States should relinquish these balances. It was also important, so far as it respected New York, whom he thought much injured, because, willing to comply with the law of Congress, she had paid liberally, while other States had paid nothing. Why continue the debtor States? Will it pay a shilling into your Treasury? No, it will only sour their minds towards the Union. Were there any mode of enforcing the payment of this debt, I should be for it, but there is no chance of it. I believe that every State in the Union exerted itself in our common cause. I believe that no State exerted itself more than another. We all fought together like brothers. Where there was danger we appeared, and wherever the enemy was we met him. There was not a field of battle in South Carolina where

there were not to be found the blood and bones of Marylanders and citizens of other States.

Mr. Rutledge said he was called up by the observations of the gentleman from North Carolina, who asks, with some force, and seems to place reliance upon the question, if gentlemen will not consent to review this settlement? He would answer, no. We cannot do it. The thing is impossible; the vouchers are destroyed; the materials for a new settlement do not exist: and they were properly destroyed. The settlement once made, they were useless.

The gentleman from Maryland, alluding to what I said respecting his being a General, says he cannot give me credit for my remark, as he had before seen it in a newspaper. Now, sir, I declare I never saw it in any newspaper; and I will assure that gentleman, I feel very sorry for it, as I think every article that relates to that gentleman well worthy my attention. Nay, I will seek for the newspaper, that I may see it. I do not, when I have anything to say, appear in the press, but I address myself to this House.

Mr. Dana said, I hope the amendment will not be agreed to. However gentlemen may be possessed of a wholesale intellect, that enables them to decide on interesting questions without a moment's reflection, I confess I am not blessed with so happy an intuition. I do not know that I have ever been called upon to form an opinion on this subject. As to a reference of it to a committee, I think their investigation may be useful, and after we get that, we may take time to decide. But now the plan is changed, and we are called upon to decide at once the principle. This mode of transacting business may be called an economy of time. You may give it the name, but it is not the substance. For my part, I desire to proceed according to our old plan, and go through the slow process of investigation. This is my way, and gentlemen may rest assured that this mode of hurrying business is not the way to save time, but to lose it.

Mr. Bayard declared himself in favor of the amendment, and he could not think, notwithstanding the remarks of his honorable friend from Connecticut, that any gentleman in the House was unprepared to vote upon it. The subject had been frequently discussed, and he believed that the House was then as well prepared for a decision as they would be for a century to come. It involved but a single principle; and, as to information, he could scarcely tell what information was wanted. He felt much of the indifference of the gentleman from North Carolina, (Mr. Macon.) He was sure the United States had neither the right, or the power to recover these balances; and he repeated it as his opinion, that it had not been the original intention that the debtor States should pay them. Will gentlemen recollect that the commission was instituted under the old Confederation. Had Congress, then, a right to do any thing to bind the sovereignties of the independent States? All they could do was to pass resolutions making requisitions, which the States might or might not comply with. They could appoint commissioners to settle the accounts, but could they impose the debts upon the States? No, they could not. It, therefore, never could have been contemplated that they would establish those debts. The only effect that could have been contemplated, was, that the creditor States might rely that, on a settlement, Congress would assume their balances.

Mr. B. said, though he thought, and others who had taken a view of the subject, thought, that these balances never could or would be recovered, yet others did not hold the same opinion. He alluded to those who were not competent to the taking an enlarged and correct view of the question. The opinion entertained by this description of citizens, however unimportant it might be in other States, was particularly detrimental to the State of Delaware. He believed that the apprehension that the balance allotted to Delaware would have to be paid, materially affected the value of property in that State. Mr. B. went, at considerable length, into the general merits of the question.

Mr. Griswold said he wished the subject referred to a select committee, that it might be fully developed. The ideas of the gentleman from Delaware were certainly new, and which themselves required inquiry, though he believed the gentleman had overlooked several of the acts of the present Government. It would be found that in 1789, and in 1790, the board had been recognised. The acts of those years gave all the sanction to the measure that was proper to be given by the new Government; and he had supposed that the settlement made was final and conclusive. He had been heretofore inclined not to discharge the States from the payment of these balances. Yet he felt much disposed to attend to the ideas of gentlemen. It appeared that the prospect of a recovery was nearly desperate. He still, however, wished the whole subject to be investigated by a select committee, whose report would enable the House to arrive at a proper decision.

On the question being put, the amendment was lost—yeas 41, nays 46.

When the original resolution for referring to a select committee the consideration of the expediency of extinguishing the balances was carried.

Ordered, That Mr. Thomas, Mr. Bayard, Mr. Dana, Mr. Hill, and Mr. Butler, be appointed a committee, pursuant to the said resolution.

And the House adjourned.

Monday, February 15.

A petition of sundry inhabitants of the county of Fairfield, in the Territory of the United States Northwest of the river Ohio, was presented to the House and read, praying that the purchasers of lands formerly the property of the United States, in the said Territory, may be exonerated from the payment of interest which may have, or shall in future accrue on the amount of the principal, until the different instalments shall, respectively, become due; that the laws of Congress respecting the purchase and title of the lands aforesaid may

be revised and amended; also, that two sections of land in each township, in the said county of Fairfield, may be granted as a donation for the purpose of encouraging seminaries of learning therein.

Ordered, That such parts of the said petition as relate to the payment of interest until the instalments of the principal shall, respectively, become due, and to a revision and amendment of the laws of Congress respecting the purchase and title of lands, in the said Territory, be referred to the Committee of Ways and Means.

Ordered, That the residue of the said petition do lie on the table.

A memorial of sundry merchants of the town of Alexandria, in the District of Columbia, whose names are thereunto subscribed, was presented to the House and read, praying relief in the case of depredations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.—Referred to the committee appointed on the fifth instant, to whom was referred a memorial of sundry citizens of the United States and resident merchants of the city of Baltimore, and State of Maryland, to the same effect.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act extending the privilege of franking letters to the Delegate from the Mississippi Territory, and making provision for his compensation:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The Speaker laid before the House a letter from the Secretary of State, accompanying his report on the memorial and petition of Adam Tunno, and James Cox, and of Thomas Tunno, and John Price, of Charleston, in South Carolina, merchants and citizens of the United States, referred to him by order of the House, on the third instant; which were read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Lyon Lehman:" Whereupon,

Ordered, That the farther consideration of the said amendment be postponed until Monday, the first of March next.

Mr. Walker, one of the members from the State of New York, presented to the House certain resolutions agreed to by the two branches of the Legislature of the said State, on the thirtieth ultimo, and the first instant, proposing amendments to the Constitution of the United States, respecting the choice of a President and Vice President; which were read, and ordered to lie on the table.

Mr. Fearing, from the committee appointed on the twenty-sixth ultimo, presented a bill authorizing the conveyance of certain public lands within the Northwest Territory; which was read twice and committed to a Committee of the whole House on Friday next.

JUDICIARY BILL.

Mr. Davis called for the order of the day on the Judiciary bill from the Senate.

Mr. Bayard moved a postponement of this bill to the third Monday in March.

He said he made this motion, as it was not in the least important that the business should be taken up on the present day, whereas there were other objects which required an early attention. No object could so conveniently be postponed as this, as it was not to take effect till the first of July. It was, therefore, substantially the same thing whether the bill passed to-day or three weeks hence. Its passage now would not save a cent, or the sooner abolish the circuit courts.

On the other hand, great benefit might be derived from the postponement. It would afford time to discern the operation of the proposed measure on the public mind. On former occasions gentlemen had contended that the public impression should have its weight in this House; he hoped, therefore, on this occasion, they would not abandon their old principle.

For himself he had not been in the habit so frequently of applying to the public opinion as some gentlemen in the House, because few occasions had occurred so important as this. He did presume that those who consider this Government as the mere creature of the national will, will not object to the delay asked on purpose to collect that will. He knew that a great impression had been made on the public mind by the passage of this act in the other branch; he knew that the people in various quarters of the Union were preparing to tell us what they thought on the subject. Since this business had been before Congress it was impossible it could have been felt in all its importance, or contemplated in all its views in the remote portions of the Union. On this interesting point the public mind ought to be known; he wished it to be profoundly agitated; he wished to destroy all apathy where the vital principles of the Constitution were so deeply affected. For he believed if the Constitution were saved, it must be by the people.

Already a great deal of important business was before the House; business, and particularly that which respected the internal revenues, that claimed an early attention. We were told the people felt anxious for a repeal of those taxes; that they begin to think we are not sincere. It was therefore high time to take that subject up and decide it. He could mention many other interesting points that claimed an early attention.

Mr. Rutledge said he had seconded the motion of postponement without intending to have troubled the House on it. But he was called up by the cry on the left for the question. Such a mode of procedure may comport with the system of gentlemen who are prepared on all occasions how to vote; but it was a course to him novel, and, he would say, to the nation extraordinary. He had hoped that on a question of such importance—on a subject infinitely more important than any ever before discussed within those walls—

gentlemen would have honored the supporters of this motion with their reasons against it. Gentlemen may make light of this business, but the time will come, and shortly too, when they will feel the subject to be of importance. The people are thinking, deeply thinking, on it. Before he took his seat in that House, he did not hear that such a measure was contemplated; he did not believe that even in this wild season of innovation, so bold a measure would be attempted; the people had no idea of it until taken up in the Senate; and what was the effect? The moment they saw their rights affected they came forward with memorials against it. The respectable bar of Philadelphia had memorialized against it. The Legislature of Pennsylvania were of a different opinion.

To collect the public opinion, we ask the indulgence of a short time; no reasons are urged against our request; but the question is called for, and we are to be put down by the vote of a majority, by a silent vote. He begged gentlemen to overlook us, and to look at the nation. On former occasions gentlemen talked much of the people. On this occasion, when we wish a development of the public mind, they say no; and the question is called for. Are gentlemen for acting as on a former occasion? Do they think the minority have no rights? We had been told from high authority, that a minority has rights, has equal rights. He begged to know the meaning of the declaration; he supposed it meant we should have the right of debating.

If gentlemen are determined to have a silent vote, we shall deem it our duty to express our sentiments fully. They cannot expect a vote to-day or to-morrow. The subject is too important to be dismissed on a hasty consideration. If, then, the subject is of such a nature as necessarily to consume time, will not other important measures be neglected? The gentleman who had made the motion for going into a Committee of the Whole, had himself complained of the tardiness of the Committee of Ways and Means. Will not the discussion of this question, of such vast moment, still longer prevent the House from getting at the business confided to that Committee? whereas, if that be taken up now, it may be despatched in a short time.

Mr. GILES said he felt every degree of respect for the gentlemen, and he was persuaded they must be sensible that as far as gentlemen on his side of the House had gone they had treated them in a manner particularly respectful. He was still under the same impression, which alone induced him to oppose the motion for a postponement. When this bill came from the Senate, some gentlemen were for taking it up at an early day. This was alleged to be unexpected; a comparison of opinions took place, and the time for consideration was fixed, and, as he supposed, satisfactorily; this was the tenth day since the bill came from the Senate. Some gentlemen then thought three days sufficient for consideration; but ten days were asked, and granted. He then thought, and he still thought, the indulgence granted sufficient. It was true he had not replied to the remarks of the gentleman from Delaware, because he did not think a reply necessary, and that from a sentiment of respect to the whole House, whom he thought fully competent without any remark from him to decide whether they were then prepared to enter upon the discussion, after the subject had laid over for ten days. Yet we are told we are precipitating the business. He believed the indulgence granted was as great as was usual; and it will be found that the time now given is greater than that allowed the opponents of the bill when it passed. He referred to the Journals to prove that there was not then that forbearance that gentlemen now recommend.

Gentlemen seem to apprehend that this subject will be treated as one other has been, by a silent vote. Mr. G. hoped the House would proceed on it with calmness, dignity, and reflection. He viewed it as an all-important question, and from a respect to himself, to those associated with him, and to the nation, he would endeavor to present the most correct view he could take of it. And permit me to say, said Mr. G., that when subjects occur that require discussion in this House they will be discussed. But gentlemen go too far when they expect us to enter upon a discussion of propositions that require no examination. Such propositions had been made, when gentlemen requested information already in the possession of the House.

But gentlemen say this subject is recent; they had heard no mention of it before they took their seats in the House. Surely those gentlemen are not much in the habit of reading newspapers, or they would have seen that since March, 1800, it had occupied more of the public attention than any other subject. There was another circumstance that proved this step was not so unexpected as gentlemen say it is. Appointments had been made to the new offices under the system of individuals, who held places under the old, and who, from an expectation that this law would be repealed, had refused to accept them.

Gentlemen say they wish to agitate the public mind. I have no doubt they wish to agitate it. But I have no doubt, too, of their entire incompetency to raise alarm, because they are on the wrong side of the question. I have said that I wish to discuss this subject with calmness. This is still my wish. I wish to take it up free from all partiality or prejudice, and to examine it on its intrinsic merits. But it is not to be inferred from this that we fear the impression of the public sentiment on our side. I believe that sentiment is with us. A great majority of the Legislature of Pennsylvania has declared for a repeal of the law. North Carolina had instructed its Senators to the same effect before this discussion. Yet gentlemen say the subject had not been thought of, though two States had declared themselves in favor of the repeal, and Maryland had decided indirectly to the same effect. From these considerations, I should think it proper to delay the discussion no longer. I hope gentlemen will therefore agree to take up the subject, and enter upon an examination of it, not with a view to triumph, but to truth. If, after we have progressed, em-

barrassment should occur, or information be wanted, we can have no objection to a postponement.

Mr. GRISWOLD.—We ask for a postponement of this question, and gentlemen answer us, the day for discussion is fixed—it is the order of the day for this day. If this answer is sufficient in this case it is sufficient in every other. Do we not make bills the order for a certain day, but do we scarcely ever take them up on that day? Why, then, deviate from our ordinary rules? Are there not strong reasons for a postponement? First, much other business requires to be despatched. It is not contemplated that this law shall go into operation till the first of July. While therefore this is not, others are pressing. Why, then, take up this, and postpone them? Besides, is not the subject of vast importance—of more importance than any which ever came before this House? Why, then, deny time? Will not the discussion deeply involve the feelings? Are there not many honorable gentlemen who think that, by passing this bill, the Constitution is prostrated forever? Can gentlemen, after that, go on calmly discussing other business? Are not gentlemen then willing to postpone this question for the purpose of passing upon other subjects that involve no Constitutional question? Then, if they please, they can bring forward this bill, which, it was feared, would be the last act of the session.

Mr. DAVIS.—No gentleman on this floor would pay more respect to public opinion than I would. But I know the difficulty we experience here in ascertaining that sentiment. When in Philadelphia, where it was certainly more easy to acquire it, we had received memorials from ten thousand citizens, and this was called public opinion; but when the elections came on we found it was incorrect. I know no better way of ascertaining the public opinion than through gentlemen who represent the several districts of the country. For my part, I know the sentiments of the State I represent. I know it to be in favor of the repeal. But gentlemen beg for more time before we adopt so bold a measure. To my knowledge, so much time was not allowed when this law was carried. They require time for consideration. I presume that they who have passed the law have already considered it. Are gentlemen ready to say they passed it without consideration? We are told this is a bold measure. Permit me to say the passing the bill, and the mode of passing it, was a still bolder measure. Attempts were made to amend. But no; not a word was suffered to be added, though the bill was allowed to be defective. The honorable gentleman from Delaware wishes us to wait for an expression of the public opinion, and yet he tells us he will vote at last from the dictates of his own mind; from which I must infer that be the public opinion what it may, he will not listen to it.

Mr. RUTLEDGE was sorry gentlemen referred to newspapers for what was to be done here. They ask whether I have not seen this measure proposed in the newspapers? Yes; I have seen it proposed there. But I did not suppose that the wild projects of newspapers for prostrating the judiciary, for robbing the Senate of the treaty-making power, and other projects, were to be effected by us.

They say, too, as an evidence that this measure was expected, that district judges appointed under this law refused their new appointments through the fear of being driven from their seats by its repeal. But I will tell gentlemen that as to two of these judges, and I know of no other, the fact is not so. In the case of the judge of South Carolina, I know it it is not so, from personal knowledge, and from good authority I know it not to be so in the case of the district judge of North Carolina. As to the instructions of North Carolina, I believe they were drawn from the attention of Congress being excited to the subject by the President.

Gentlemen say the law, now proposed to be repealed, was itself passed precipitately. But after it was proposed two sessions passed, at the end of one of which it was published for consideration, and taken home by the members, before it was finally enacted.

Mr. R. WILLIAMS said the resolutions of North Carolina passed on the 17th of December, and the communication of the President was made on the 6th of December. He was therefore warranted in saying the communication of the Executive had no effect on this measure.

If the business is so all important as gentlemen say, ought we not immediately to enter upon its discussion? But I never expected to hear such a warning in this House. Are we to be told that we are not only to dread the effects of the repeal of this law upon the nation, but that business cannot be transacted afterwards in this House? I disregard such threats, and I will say, with the gentleman from Delaware, that I will proceed, and pursue the dictates of my own mind.

Mr. DENNIS spoke in favor of the postponement to the same effect with the preceding speakers. In alluding to the act of the State of Maryland he said he did not know how it had become fashionable to consider the sentiments of the Legislature as synonymous with those of the people. He did not believe the opinion of the people in favor of the repeal. In the district he represented, their opinion was decidedly against it.

The gentleman from Kentucky says we had a full opportunity of investigating this question when the bill passed. But it is necessary to say that the Constitutional question involved in the repeal could not be involved in passing the law.

Mr. BAYARD.—I am bound to acknowledge my gratitude to the gentleman from Virginia for the respect he entertains for us, and in return I beg leave to tender him the homage of my high respect.

Gentlemen say we have been accommodated with a postponement according to our wishes, and that they had not expected any delay after this accommodation. I confess this was my expectation at the time. But this error arose from the bill then on our table being blank as to the time of its taking effect. I did not then know that its operation was not to take effect till the 1st of July.

Mr. B. did not believe the subject was in a state of maturation for decision. It was declared the new courts had no business—that the old ones were sufficient. But on what was this declaration founded? On Presidential information, in which several errors had been pointed out, and which was very incorrect. Besides, he believed the President had no right to obtain this information in the mode he had used, and the clerks of the courts were not bound to comply with the request of the Secretary of State. From his own personal knowledge, he knew the document to be incorrect, as far as related to his district, in which no chancery suits were stated to have been brought, whereas he had been engaged in several. This was an additional reason for further delay to get more accurate information.

Mr. Hemphill had always thought it was a rule in deliberative bodies, when a single member asked time for information to grant it, when no other business would be deranged by it. Besides, he felt himself in a peculiar situation. The Legislature of Pennsylvania was about instructing its representatives to vote for a repeal of the law of the last session. If the reasons they assigned should be satisfactory to him, he should vote for a repeal. He wished time to consider them.

Mr. Smilie said he believed the minds of the members were not to be made up by the talking of gentlemen, though they may think we stand in need of their instruction. At one circumstance he could not help expressing great pleasure. The people are now of some consequence. How often had he heard in that House the terms "sovereign people," pronounced with a sneer. But he thanked God the people were now acknowledged to be of some consequence. He had always thought the public opinion should be attended to, and if he thought that opinion against the repeal, he would not vote for it.

It was said the respectable bar of Pennsylvania had petitioned against the repeal, and great weight was attached to their sentiments. But who are these characters? Are they disinterested? Were they not lawyers, and did they not know the more courts the more business? But in opposition to their interested opinions were to be placed the sentiments of the Legislature of Pennsylvania, declared by a great majority of both Houses.

Mr. Eustis having been for the postponement until this day, could not sit silent under the imputation of precipitancy. The recollection of every gentleman must convince him of the extreme candor and fairness of the majority of the House. The gentleman from Delaware, when this business was first brought up, had asked for a postponement, and had said that if postponed to this day, he would be prepared to enter upon the discussion. He had been indulged in his request. This then is not our, but their measure; not our day, but their day. He must say the indulgence had proceeded from a very honorable and accommodating disposition, that called for a different return from that side.

Whatever was the ultimate disposition of the business, on which he felt not very solicitous, he thought it his duty to state these circumstances. Gentlemen, too, must see that this motion is perfectly fruitless, for whatever might be the real question before the House, the merits of the main question were sure to be discussed.

Mr. Goddard was sorry any charge of precipitancy had been made. Yet he thought there were weighty circumstances that recommended a postponement. He had wished for a reference to a select committee, that should fully examine the subject. But this was refused. He now wished to avoid the Constitutional question. Gentlemen seem to think the Constitutional question the only one on which we can vote. He saw not this. Gentlemen will not surely, to establish a Constitutional question, repeal a law that is useful. He wished, then, to avoid the necessity of giving a legislative construction to the Constitution, as he feared deciding a question that will go greater lengths than gentlemen are aware of. He would wait for an expression of the public will whether the law was promotive of national good. If it appeared that it was, they might be willing to avoid the Constitutional question. They might agree to bury the hatchet as to that question, a decision of which may extremely agitate the public mind.

Gentlemen say we are afraid to meet the Constitutional question. I am, said Mr. G., afraid to meet it. It may perhaps be owing to the weakness of my nerves; but I feel as if I should be brought by it into a very unpleasant situation. Not because I have not made up my mind on the constitutionality of it, but from other motives.

Mr. Griswold said he should not have again troubled the House, but for the remarks of the gentleman from Massachusetts, who had said this is our day; but certainly he had mistaken the transaction. When the bill came from the Senate, we asked for a reference to a select committee to elude the Constitutional question. This was negatived. We then asked for delay. An early day was named. The gentleman from Kentucky had the generosity to name this day. It is not then our day, but their day.

The gentleman from Pennsylvania, alluding to the memorial from the bar of Philadelphia, says they are mere lawyers, interested in what they pray for. But he would say that bar was elevated too high to be affected by anything that could fall from the gentleman from Pennsylvania. Their interest was directly the reverse of that ascribed to them. The fewer the courts the greater the delay, and the greater delay the more the business.

Mr. S. Smith said he had now little hopes that the discussion of the main question would commence to-day, which was already too far gone to expect it. Still he hoped the motion of postponement would not prevail, so that the House might be prepared to enter upon the subject to-morrow. He agreed with the gentleman from Massachusetts that this was emphatically their day. True it was, the gentleman from Kentucky had named it; but had not the gentleman from Delaware got up and solicited for this day, and declared that, if

the indulgence were granted, he would feel it a duty to be prepared to go on with the subject with calmness, dignity, and deliberation?

I came to the House, therefore, said Mr. S., with this expectation, and I fully expected that gentleman would open the discussion. I came prepared to listen to him. Why? Because this is a subject on which I want information; and being one in which I could take but little share, I wished to profit by the ideas of ingenious gentlemen who may discuss it. Gentlemen now say they want information. Thence the necessity of commencing that discussion which is to give them information. They say they wish to remove all prejudices. Why not, then, openly and boldly eradicate them? The gentleman from Delaware had told us he would obey the public will; and he adds, if the bill passed it will prostrate the Constitution. Will he, then, if the public will shall appear to be for a repeal, vote for it? I am inclined to think the gentleman went further than he intended when he made this declaration. The information gentlemen say they want can have no effect upon those who have made up their minds upon the Constitutional question, for I cannot believe they would violate their oaths to conform to the public will. Is it to operate upon us? No; for we are ready to act—to say we have heard the public voice, and are prepared to obey it.

Mr. Holland spoke against the postponement. After assigning his reasons at some length, he proceeded:—Why, then, wait? For the single reason offered by the gentleman from Connecticut, viz: his wanting to avoid the Constitutional question; did he not mean by this to delay, to embarrass, and perhaps defeat the bill? Give me leave to say, said Mr. H., I do want to meet it, and to get rid of it, that we may proceed to other business.

Mr. Dana.—The gentleman from North Carolina need not to have told us he meant not to compliment us. We might have learned that from his conversation. But I wish to know what authorizes him to make these charges? My colleague has said he did not wish to meet the Constitutional question. But has he said he meant to procrastinate, to embarrass, to defeat it? Is that gentleman so much in the habit of expediting business as to be authorized to make these charges? I acknowledge that my mind recoils at the decision of the Constitutional question, because I deprecate the result, if decided in one way. My mind recoils, because it goes to shake the foundations of society; because it shakes questions that I thought were fixed, and which were not to be discussed; because if decided one way, we shall be sent back to the first principles of society. The gentleman cannot tell why we are for delay. The gentleman from Massachusetts is a scholar. He may appreciate my remarks, if others cannot. We want information—that information which flows from books—he, having enriched his mind with the stores of knowledge, knows its value. Can any man show me a library, public or private, where I can get this information? We labor here under peculiar disadvantages. But it is probable that gentlemen, after representing their civility to us, will at last vote us down.

Mr. Goddard explained what he had previously said.

Mr. Bayard.—It is my misfortune to be perpetually misunderstood by the gentleman from Maryland. I am at a loss to know how gentlemen on this side are more misunderstood by him than any other member. Is it that his anxiety to answer us induces him to state fallacies in order that he may refute them? He says, I stated that I would come perfectly prepared to-day. I did not say we would come forward to discuss the subject. The same gentleman charged me with saying I would instruct the House. This is impossible. It might be compatible with the character of that gentleman, but I never could say so.

The gentleman has also charged me with saying I would vote for the repeal, if the public will was for it. I said not so. I did say the Constitution was the property of the people; that the majority had a right to construe it as they pleased; and that I would obey their construction, that is, I would bow to what appeared manifestly the sense of the majority. The gentleman from Massachusetts had said this is our day. Perhaps, it is emphatically our day—perhaps our last day. I have no doubt gentlemen would be gratified if it were our last day.

The fact is, when an unprecedented precipitation was attempted, I agreed to this day, because I could not expect a longer day would be granted. It was, however, as much a forced day, as any other day could have been. As to the remarks of the gentleman from Pennsylvania, it was painful for strangers to be obliged to defend the friends of that gentleman from reflection. But I will say to that gentleman there was no ground of fact to justify his aspersion. He had charged his political friends with having apostatized—with having renounced their party—with having violated their political faith.

Mr. Smilie said he had said no such thing.

Mr. Bayard was glad the gentleman knew what he did say, which was an unusual thing. I understood him to say they acted from interested motives. I drew the inference. If governed by interest, I ask whether they are not apostates; whether they have not renounced their political creed? Could anything be more base, on a question involving Constitutional grounds, than to be governed by motives the most wretched and contemptible?

The question of postponement was then taken by yeas and nays: which were—yeas 35, nays 61, as follows:

Yeas—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George

B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Motion to adjourn. Lost—yeas 37.

Mr. Dennis moved a postponement till Monday next.

Mr. Randolph.—I will state as briefly as possible the motives which influence me to be against the postponement moved by the gentleman from Maryland. I am sensible his motives for a postponement may be pure. I believe they are pure. But when I compare the reasons of the friends of the postponement, and find them so various and irreconcilable, I can discover no reason for gratifying their request. One gentleman says he wants information of the state of the public will. Another gentleman says it is a great Constitutional question, and whatever may be the public opinion, he must vote from the dictates of his own judgment. Another gentleman wishes to understand the resolutions of the Legislature of Pennsylvania, by which he may perhaps be governed. Another gentleman says the legislative vote is no indication of the public mind. Gentlemen say their reasons are cogent; but I beg them to tell me on which of their various and contradictory reasons they mean to vote for a postponement—reasons so irreconcilable that if one was correct the others must be false.

I should not have risen now, but from seeing the day nearly gone, and from being prepared for a reiteration of motions that will consume the whole of it.

Other reasons are urged. We are told the great Constitutional question may be evaded. When I say so, I do not mean to impute to gentlemen any disposition to embarrass the discussion, but a disposition to shrink from a question which they say will give a stab to the Constitution. Believing as they do, I think the fear an honorable fear. But thinking differently myself, it becomes me to speak differently. It becomes me to declare that this is a great Constitutional question that ought to be decided, and decided soon. It ought not to be left till the public mind shall be acted upon incorrectly—till some twenty or thirty years hence it shall be operated upon by war, by intrigue, or by improper excitement. When I see all the dangerous motives, such as war without and treason within, which too frequently operate, and compare the state of the country under their influence, with its present situation, entirely free from them, I say this is the period for decision. For decided it must be. I feel for gentlemen, whose correct disposition it is to shrink from a question whose result must be adverse to them. I have been in the same situation. I, like them, have shrunk from some questions. But did they wait for me, till their power was taken from them? According to this course, no decision can take place but that which conforms to the fears of a minority.

I recollect an eloquent member of this House from Massachusetts having deprecated indecision as the worst of all decisions. The saying was paradoxical, but the doctrine was sound. I wish the Constitution settled, that it may be no longer afloat. I wish the nation to settle it, that all further discussion may be removed. I wish to know whether the Judiciary is a co-ordinate or a paramount department of Government.

We have heard much on the points of constitutionality and expediency. All these considerations belong in strictness to that state when the bill shall be taken up, and not to that state when the only question is, shall the bill be taken into consideration? But as gentlemen have reiterated their objections on the point of expediency, and in supporting those objections have taken only one ground, I hope I shall be indulged in stating that the very reasons of the gentlemen on that ground would govern me in making a different decision. They tell us that by the bill we propose to repeal justice is brought home to every man's door. But the House will please to recollect that we are not to decide whether justice shall be brought home to every man's door; this is not the exclusive legislature to which this only belongs. It belongs to the States, and I will say, if they do not perform their duty, this House cannot assume the performance of it. The Constitution never intended it, and this bill does not accomplish it: because while the large States, under the State governments are subdivided into twenty districts, this law only divides them into two. Nor is it necessary under our law that there should be this subdivision, because the Federal authority of the courts does not extend to cases between man and man, or to those ordinary cases that require that justice should be brought to the door of every citizen. So long as Federal courts exist, to which there may be an appeal or removal; so long as the States are prevented from emitting paper currencies; so long as one part of the Union is prohibited from cheating its neighbors; so long as the foreigner has an impartial tribunal to appeal to, the Constitution is satisfied. This it is for which the Constitution was made, and that which makes the gentleman from Connecticut vote against the repeal of this act, makes me for it. I mean in connexion with other motives.

These are my reasons for opposing the motion. The question of repeal is a great Constitutional question, and we must settle it. It is a question

that will be agitated so long as we remain a nation, until it shall be decided, and this is the only tribunal before which it can be decided.

Mr. Dennis rose to explain what he said about the will of the people being evinced in the votes of their Legislature. He did not say that this was altogether to be disregarded, but he had some reason to believe that in the State of Maryland, the people did generally approve of the act in debate which passed that State. What criterion of the public will was the votes of a State on a particular question about which, at the time of election, the candidate was not questioned as to his opinion? None. When this Legislature was elected, Mr. D. did not suppose there was a citizen of Maryland who supposed this question would have been agitated. How often were Congress told that the Alien and Sedition bills were contrary to the will of the great majority of the people of the United States? and yet those bills were passed. A good proof that it was not then the opinion of the gentlemen that the Legislative acts were criterions of the public will.

Mr. Nicholson had no doubt but a majority of the people of Maryland would approve of this repealing law. What evidence could his colleague (Mr. Dennis) have to the contrary? He believed that the gentleman spoke the truth when he said that the people would not approve of it in the district he represented, but that could by no means be a criterion by which to judge of the whole State: that was yet to be tried. In a Government like ours, depending upon the popular will for its support, it were to be wished that this popular will could be accurately collected on every important question, previous to the discussion of the Legislature. If it could be, he would be willing to modify his vote by that will. From present impressions, he had no doubt but the popular will would operate in favor of the bill under consideration, and against the new system. He knew of no way to obtain that will better than it could be known by the representatives immediately from the people; and even waiting till March would not evince that will with more accuracy than it was now known, although even 50,000 people should petition the Legislature. He referred to a period in the British history when a petition from 80,000 people was presented to Parliament against a certain measure, and yet it was said not to be the popular will. If they could by any means obtain the popular will, Mr. N. declared himself willing to sit here six, eight, or ten months to await it; but as they could not, the responsibility must rest on the persons who gave their votes. He was perfectly willing that the public eye should observe his conduct, uninformed as it appears to some gentlemen to be.

The question was then taken by yeas and nays, and the motion of postponement lost—yeas 34, nays 58.

Yeas—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Jos. H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Giles moved that the House resolve itself into a Committee of the Whole.

Mr. Rutledge moved an adjournment. Lost, yeas 38, nays 44.

Mr. Giles's motion was then agreed to, and the House went into a Committee of the Whole, Mr. J. C. Smith in the Chair.

The Committee then rose, and asked leave to sit again.

Tuesday, February 16.

A representation of sundry merchants and traders of the city of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying that an act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," may be continued in force; or that, if it shall be deemed expedient by Congress to repeal the provision of the said act in relation to the general establishment of the courts therein mentioned, the said repeal may not extend to the courts of the third circuit of the United States, for the reasons specified in the said representation.

Also, a memorial of the Corporation of the Chamber of Commerce of the City of New York, praying that this House will not pass into a law a bill sent from the Senate, and now depending before the House, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Ordered, That the said representation and memorials be referred to the Committee of the whole House to whom was committed, on the fourth instant, the bill from the Senate last mentioned.

The House resumed the consideration of the amendment reported on the fourth instant, from the Committee of the whole House, to the bill for the relief of Daniel W. Coxe and others; and, hav-

ing made a farther progress therein, the further consideration was postponed till to-morrow.

JUDICIARY SYSTEM.

The House then went into Committee of the Whole on the Judiciary bill from the Senate.

Mr. HENDERSON.—I should not rise to offer my opinion on the great question before the Committee, were I not placed in a situation different from that in which I have been since I have had the honor of a seat in this House. The Legislature of the State of North Carolina, one of whose representatives I am on this floor, have seen proper to instruct their Senators and to recommend to their Representatives in Congress, to use their exertions to procure a repeal of the law passed the last session of Congress, for the more convenient organization of the Courts of the United States, and the bill on your table has for its object the repeal of this law, and as I shall probably vote against its passage, a decent respect for the opinions of those who have framed and sent forward those resolutions, demand that I should give the reasons which influence my conduct.

And here, sir, I cannot forbear lamenting extremely that I should unfortunately be placed in a situation where the highest obligations of duty compel me to act in opposition to the wishes of that community to which I immediately belong. It is certainly of great importance that, as public functionaries, we should not only discharge those trusts committed to us with fidelity, and for the general good, but in such a manner as to give satisfaction to those for whom we are acting.

And if I know the feelings of my own heart, I declare that, next to the consciousness of having performed my duty with uprightness, my highest satisfaction is the knowledge that in the discharge of this duty I meet the approbation of my fellowmen. But, sir, if this approbation is only to be obtained by the unconditional surrender of my understanding, and the violation of my oath, I hope I shall be excused if I do not make this sacrifice at the altar of public opinion. Indeed, sir, were I disposed to forego my own opinion, and adopt that of the Legislature of my own State—were I inclined to say, thy will be done, and not mine, I should first demand of them an absolution from the oath which I have taken to support the Constitution of the United States. As long as that oath is binding on me, I see an insuperable objection to my acting in conformity to their wishes.

I will further remark, sir, that I am not a little surprised that that august body should have undertaken to decide on a question not necessarily before them, without having an opportunity of hearing the arguments which may be used here, either on one side or the other. I will not permit myself for a moment to believe the measure originated in a want of confidence in those who represent the State and the people in this Assembly. And yet, if that confidence exists, the reasons for this procedure do not immediately present themselves to the mind.

I hope, sir, it will not be understood that I mean to cast the most distant shade of disrespect on that body. I feel too great a respect for the Legislature of my native State to be guilty of such an attempt. No doubt but that they were influenced by the purest and most correct understanding. It does not follow, by any means, that because my weak and feeble mind cannot discover perfect propriety in the conduct of men, that therefore it does not exist.

Having premised thus much, Mr. Chairman, I will proceed to an examination of the question under consideration. It has been usual to divide it into two parts: first, the expediency; and, secondly, the authority of Congress to pass the law on the table. This is a natural and correct division; but I shall invert the order of considering the question, and first examine our power to act, before we consider the expediency of acting. And if, after a calm and candid review of the Constitution, it should be found that we are prohibited from passing the bill, there will be no necessity for inquiring into the expediency of repealing the law passed at the last session of Congress for organizing our courts of justice. The relative merits of the old and new Judiciary system will be entirely out of view. For I am confident that there is not a member of this body who would wish to pass the bill on your table, if in doing it we must violate the sacred charter under which we are now assembled.

The people of America have obtained and established that the powers of Government shall be vested in three great departments: the Legislative, the Executive, and the Judicial. They have said that there shall be a House of Representatives, the members of which shall be chosen by the people of the several States every second year. Though this House is composed of members chosen by the people immediately; though they can have no other interest than the great community from which they were sent; though they must return to the common mass in the short period of two years; yet enlightened America did not see proper to entrust the power of making laws to this body alone; they knew that the history of man, and the experience of ages, bore testimony against the safety of committing this high power to any one Assembly not checked by any other body. They have therefore erected another branch of the Legislature, called the Senate, the members of which are not to be elected by the people immediately, but by the sovereignties of the several States; they are to be chosen for six years, and not for two; and the qualifications requisite to entitle those to a seat is different from that of a member of this House. To these bodies are given the power of initiating all laws; but after a bill has passed both of these Houses, before it becomes of binding obligation on the nation, it must be approved of by the President; it is a dead letter, until life is given by the Executive. The President is elected not by the people, not by the Legislatures of the several States, not by either House of Congress, but by Electors chosen by the people. He is to hold his office during four years. This is the second great department

of the Government. It will be easily discovered from this cursory view of our Constitution, the caution and jealousy with which the people have conferred the power of making laws, of commanding what is right, and prohibiting what is wrong. But, sir, after this law was made, after its authoritative mandate was acknowledged by the nation, it became necessary to establish some tribunal to judge of the extent and obligation of this law. The people did not see proper to entrust this power of judging of the meaning of their laws, either to the Legislative or to the Executive, because they participated in the making of these laws; and experience had shown that it is essential for the preservation of liberty that the Judicial and Legislative authorities should be kept separate and distinct. They therefore enacted a third department, called the Judicial, and said that "the Judi-'cial power of the United States shall be vested in 'one Supreme Court, and in such inferior courts 'as Congress may from time to time ordain and 'establish. The judges both of the Supreme and 'inferior courts shall hold their offices during good 'behaviour, and shall at stated times receive for 'their services a compensation which shall not be 'diminished during their continuance in office."

It is admitted, I understand, by all parties, by every description of persons, that these words, "shall hold their offices during good behaviour," are intended as a limitation of power. The question is, what power is thus to be limited and checked? I answer, that all and every power which would have had the authority of impairing the tenure by which the judges hold their offices, (if these words were not inserted,) is checked and limited by these words; whether that power should be found to reside in Congress, or in the Executive. These words are broad and extensive in their signification, and can only be satisfied by being construed to control the Legislative as well as the Executive power. But gentlemen contend that they must be confined to limiting the power of the President. I ask gentlemen, what is there in the Constitution to prove their signification to this end alone? When you erect a court and fill it with a judge, and tell him in plain, simple language, that he shall hold his office during good behaviour, or as long as he shall behave well; what, I beseech you, sir, will any man, whose mind is not bewildered in the mazes of modern metaphysics, infer from the declaration? Certainly that the office will not be taken from him until he misbehaves; nor that he will be taken from the office during his good behaviour. Under this impression he enters upon his duty, performing it with the most perfect satisfaction to all persons who have business before him; and the Legislature, without whispering a complaint, abolishes the office and thereby turns out the judge. The judge is told this is no violation of the compact; although you have behaved well, although we have promised that as long as you did behave well you should continue in office, yet, there is now no further necessity for your services, and you may retire. These words, "during good behaviour," are intended to prevent the President from dismissing you from office, and not the Legislature from destroying your office. Do you suppose, sir, that there is a man of common understanding in the nation, whose mind is not alive to the influence of party spirit, that would yield his assent to this reasoning? I hope and believe there is not. But, sir, how is it proved that the President would have had the power of removing the judges from their office, if these words, "during good behaviour," had not been inserted in the Constitution? Is there any words in that instrument which gives the President expressly the power of removing any officer at pleasure? If there are, I call upon gentlemen to point them out; it does not result from the fashionable axiom, that the power which can create can destroy. The President can nominate, but he can appoint to office only by the advice and consent of the Senate. Therefore, it would follow, if the power of displacing results from that of creating, that the Senate should participate in displacing as well as creating officers. But however this may be, it is certainly a mere constructive power which he has exercised, because the Legislature have, from motives of expediency, acknowledged that he had it. If the Constitution does not necessarily give the President the right of removing officers at pleasure, and if that right depend upon Legislative acts or constructions, where would have been the necessity for inserting these emphatic words as a check and limitation of Executive power, where without them the President has no such power? You are taking great pains to control a power which does not exist. The persons who framed our Constitution knew that a power of removal in ordinary cases must exist somewhere. They took care, therefore, that in whatever hands it might fall, the language of the Constitution respecting the tenure of the office of a judge should be co-extensive with the whole power of removal, whether it should reside in one or in more hands.

But, sir, these words, "during good behaviour," are familiar to the American people. When the political bands which united us with Great Britain were burst asunder, and we assumed among the nations of the earth an independent station, most, if not all the States introduced these words into their constitutions. They were deemed essential, and a meaning has been stamped upon them which it is not in the power of this House to change. Let us for a moment examine some of the State constitutions, and see what signification must of necessity be given to these words. I will first advert to the Constitution of North Carolina, as being one with which I am best acquainted. In that instrument it is said, "that the 'General Assembly shall, by joint ballot of both 'Houses, appoint judges of the supreme court of 'law and equity, judges of admiralty, and an at-'torney-general, who shall be commissioned by the 'Governor, and hold their offices during good be-'haviour." I ask gentlemen what power is intended here to be limited and checked by the words "shall hold their offices during good behaviour?" Not the Executive, for it is well known that the Gov-

ernor of that State cannot appoint even a constable. It could not be the meaning of that constitution to check his power of removal, for that of appointment is not anywhere given to him. Then these words must mean, that the Legislature should not have the power of removing the judges from office as long as they behaved well. If you do not give this signification to the words, they are of no importance, and might as well have been left out of the instrument. I hope the feelings of the people of North Carolina will not be hurt, and their understandings insulted, by telling us that the meaning of the words may be satisfied by construing them to extend to a prohibition of the Legislature displacing the judges, and proceeding to the election of others, without those displaced being guilty of misbehaviour. If this is correct, what security, sir, have the people then for the independence of their judges? The Constitution has told them that they should be judged by men who, during the time they behaved well, should continue in office, or what is the same thing, should hold them during good behaviour. But they are now informed that this was intended to operate as a check upon the Legislature's displacing them by selecting others to fill their offices when they had not misbehaved, but not to prevent their passing a law repealing that act by which the appointment to office was made; or in other words, our Assembly are expressly forbidden to impair the tenure by which our judges hold their offices, as long as they behave well; but they can repeal the law, and the judges are out of office, though they may be the most virtuous, upright, and able men in the country, and have discharged their duties faithfully. Are the gentlemen on this floor from North Carolina prepared to give this construction to that constitution? Are they prepared to tell their constituents that the provisions of their constitution may be thus evaded, and the whole power of Government, Legislative, Executive and Judicial, be concentrated in the General Assembly, and absolute despotism imposed upon them? If they are not, I conjure them to pause before they give their vote for the passage of the bill on the table. I will further observe, Mr. Chairman, that words of the same import with those I have quoted from the Constitution of North Carolina, are to be found in the Virginia and South Carolina constitutions, in neither of which States hath the Governor the right of appointing judges.

In Virginia, sir, the judges of the supreme court, in 1792, declared that the Assembly of that State had not the power of imposing chancery duties on the district judge, and in delivering their opinions descanted at large on the independence of the judiciary, and said that the Assembly could not annihilate the office of a judge, which was secured to him by the constitution. If this is a true exposition of the constitution of that State, I ask gentlemen by what authority they now attempt to impose a different meaning on the same words, when found in the Constitution of the United States? Are we to suppose that the whole people of America were less regardful for their rights, less solicitous for independent judges, than the people of a particular State? And unless this is conceded, the doctrine of gentlemen who advocate the passage of this bill must be incorrect.

But it has been said that the powers of each Congress are equal, and that a subsequent Legislature can repeal the acts of a former; and as this law was passed by the last Congress, we have the same power to repeal it which they had to enact it. This objection is more plausible than solid. It is not contended by us that legislatures who are not limited in their powers have not the same authority. The question is not what omnipotent Assemblies can do, but what *we* can do under a Constitution defining and limiting with accuracy the extent and boundaries of our authority. The very section in the Constitution (sec. third, art. first) which I have read, is a proof against the power of every Congress to repeal the acts of their predecessors. In the latter part of the eighth section it is proposed that the judges shall receive for their services a compensation which shall not be diminished during their continuance in office; and yet the salary was ascertained and fixed by a former Congress. The same observations may be made with respect to compensation for the President, which can neither be increased nor diminished during the period for which he shall have been elected. It is not competent for this Congress to vary the compensation to him which has been fixed by a prior Legislature. It is clearly seen, upon a little investigation, that the position which gentlemen take is too extensive, and leads immediately to a destruction of the Constitution. It does away all check, and makes the Legislature omnipotent. It has been asked, that if a corrupt and unprincipled Congress should make an army of judges, have not a subsequent Congress the right of repealing the law establishing this monstrous judicial system? I answer that they have not; the same mode of reasoning which attempts to prove this right from an abuse of power will also prove that you may lessen the compensation of your judges. May not equal oppression be imposed upon the people by giving your judges exorbitant salaries as by increasing their numbers? May not the same corrupt and unprincipled motive which would lead men to the raising of an army of judges lead them to squander the public money? And may they not, instead of giving their judges two thousand dollars a year, give them two hundred thousand? And yet, sir, if it were to take place, I know of no authority under the Constitution to lessen that exorbitant compensation. The Government of our country is predicated upon a reasonable confidence in those who administer our public affairs. They must have the power of acting for the public welfare, and this would never have been given them if the possible abuse of this power were a sufficient reason for withholding it.

I will take the liberty of observing further, that this part of the Constitution, which forbids lessening the compensation to the judges during their continuance in office, furnishes a strong argument that it was the intention of the people to place their judges out of the control of the Legislature as long as they behaved well; that they did mean to render them independent of the Legislature to a certain extent, is obvious, inasmuch as they inhibit the power of reducing their salaries. For it is evident, that if they could take from them their compensation, they might drive them from office, and the consequence would have been, that our judges would have felt all the dependence which results from a consciousness that another body has the power of diminishing their comforts. I ask gentlemen if the framers of this Constitution intended to give Congress the power of abolishing the office of a judge, by repealing the law which created the office, and thereby displace the judge, where could have been the propriety of forbidding his salary to be diminished during his continuance in office?

Is it possible to suppose that they were more anxious to secure that independence which results from permanency of compensation, than that which results from permanency of the office itself? That they should have been altogether regardless of the power which Congress was to have over the office, but limit with the utmost strictness their power of diminishing the salary, when the office itself, upon which the salary depends, was to be at the mercy of Congress? I believe that such folly cannot, with justice, be attributed to those great men who gave existence to this instrument.

Again, sir, the construction which gentlemen on the other side of the House contend for, tends to the concentration of Legislative and Executive powers in the same hands. If Congress, who have the power of making laws, can also displace their judges by repealing that which creates the offices they fill, the irresistible consequence is, that whatever law is passed the judges must carry into execution, or they will be turned out of office. It is of little importance to the people of this country whether Congress sit in judgment upon their laws themselves, or whether they sit in judgment upon those who are appointed for that purpose. It amounts to the same despotism; they in fact judge the extent and obligations of their own statutes by having those in their power who are placed on the sacred seat of justice. Whatever the Legislature declares to be law must be obeyed. The Constitutional check which the judges were to be on the Legislature is completely done away. They may pass ex post facto laws, bills of attainder, suspend the writ of habeas corpus in time of peace, and the judge who dares to question their authority is to be hurled from his seat. All the ramparts which the Constitution has erected around the liberties of the people, are prostrated at one blow by the passage of this law. The monstrous and unheard of doctrine which has been lately advanced, that the judges have not the right of declaring unconstitutional laws void, will be put into practice by the adoption of this measure. New offences may be created by law. Associations and combinations may be declared treason, and the affrighted and appalled citizen may in vain seek refuge in the independence of your courts. In vain may he hold out the Constitution and deny the authority of Congress to pass a law of such undefined signification, and call upon the judges to protect him; he will be told that the opinion of Congress now is, that we have no right to judge of their authority; this will be the consequence of concentrating Judicial and Legislative power in the same hands. It is the very definition of tyranny, and wherever you find it, the people are slaves, whether they call their Government a Monarchy, Republic, or Democracy.

Mr. Chairman, I see, or think I see, in this attempt, that spirit of innovation which has prostrated before it a great part of the old world—every institution which the wisdom and experience of ages had reared up for the benefit of man. A spirit which has rode in the whirlwind and directed the storm, to the destruction of the fairest portion of Europe; which has swept before it every vestige of law, religion, morality, and rational government; which has brought twenty millions of people at the feet of one, and compelled them to seek refuge from their complicated miseries in the calm of despotism. It is against the influence of this tremendous spirit that I wish to raise my voice, and exert my powers, weak and feeble as they are. I fear, sir, on the seventh of December, it made its appearance within these walls, clothed in a gigantic body, impatient for action. I fear it has already begun to exert its all-devouring energy. Have you a judiciary system extending over this immense country, matured by the wisdom of your ablest and best men? It must be destroyed. Have you taxes which have been laid since the commencement of the Government? And is the irritation consequent upon the laying of taxes worn off? Are they paid exclusively by the wealthy and the luxurious part of the community? And are they pledged for the payment of the public debt? They must be abolished. Have you a Mint establishment, which is not only essentially necessary to protect the country against the influx of base foreign metals, but is a splendid attribute of sovereignty? It must be abolished. Have you laws which require foreigners coming to your country to go through a probationary state, by which their habits, their morals, and propensities may be known, before they are admitted to all the rights of native Americans? They must be repealed, and our shores crowded with the outcasts of society, lest oppressed humanity then should find no asylum on this globe!

Mr. Chairman, if the doctrine contended for by gentlemen on the other side of the House should become the settled construction of the Constitution, and enlightened America acquiesce with that construction, I declare for myself, and for myself alone, I would not heave a sigh nor shed a tear over its total desolation. The wound you are about to give it will be mortal; it may languish out a miserable existence for a few years, but it will surely die. It will neither serve to protect its friends nor defend itself from the omnipotant energies of its enemies. Better at once to bury it with all our hopes.

Mr. R. Williams said he could not believe it

necessary in the discussion of this question, which he acknowledged to be important, to reply to the remarks of his colleague on the danger of a destruction of the Constitution, if this bill passed; nor could he believe there existed any analogy between our situation and that of countries in a revolutionary state. Nor could he see the connexion between this subject and a repeal of the internal taxes, diminution of the army, or the abolition of the Mint. He should, therefore, take the liberty of placing all these considerations aside, as having no real relation to the subject.

My colleague has commenced his remarks with deploring that the Legislature of North Carolina should give instructions on a subject on which they cannot possess so much necessary information as is required for a correct decision. In this regret he could not agree with his colleague. He believed they had all the information requisite for a correct judgment. If this subject is so all-important, if it involves a great constitutional question, how can we presume the Legislature of a State which must be deeply interested in it, to be ignorant of its merits? How will the doctrine of the gentleman, which attaches so much importance to the petitions on your table, apply? Will he pretend to say the Legislature of that State is less informed than citizens who occupy but a small section of the country?

In considering this question, his colleague had gone on the ground of constitutionality. In his arguments he has formed a chain of reasoning merely on the abuse of power. He would agree with him that it was impossible to devise any system of Government from which effects may not follow that shall be pernicious. But is this any good reason against giving effect to a reasonable construction? Is it fair to say, because the Legislature have the power of abolishing the office of a judge, that therefore they will turn every judge out of office? This was to suppose that we were lost as to the principle of Government, and ripe for a revolution.

That there must be some place where the true meaning of the Constitution must be determined, all would agree. Where then is it? In what department? The people have constituted two departments of authority, the Executive and Legislative, emanating directly from the people; and have directed them to form another, further removed from the people. Are we then to be told there is more safety in confiding this important power to the last department, so far removed from the people, than in departments flowing directly from the people, responsible to and returning at short intervals into the mass of the people?

Agreeably to our Constitution a judge may be impeached. But if the doctrine contended for on the opposite side prevails, how is this salutary part of the Constitution to operate? Suppose a law to pass, prescribing any duties to a judge; he is to decide whether it is constitutional or not; if he has this right, however he may err, he commits no crime; how, then, can he be impeached?

But my colleague says this is turning the judges out of their offices. But I do not see it in this point of view. I believe the natural consequence of our construction is, that the judge shall hold the office while it exists, and so long as he behaves well, independent of any Legislative or Executive control.

But the appointment of a judge is said to form a contract. Between it and a contract I can see no analogy. There must be two parties to a contract. I will ask, whether a judge is to be considered as a party at the time when the law passed, before there are any courts established, and which are only contemplated to be established?

Again: for whose interest were these offices created? Not for the interest of the individual officers, but the people. If, then, the passage of the law sprang from a regard to the interest and convenience of the people, ought not its continuance to depend upon the same interest and convenience?

To make the judge independent in the tenure of his office, while it remains, and to protect his salary from diminution is sufficient; and it is making him as independent as judges ever have been in the country to which gentlemen are so apt to refer for whatever is worthy of imitation. In England, the Judiciary is said to form the strongest pillar of the Government, and the greatest security of the people; and yet are they independent of the Legislature? Are they not easily removable on the address of the two Houses, while here they can only be removed on the conviction of a crime?

If this doctrine is to extend to the length gentlemen contend, then is the sovereignty of the Government to be swallowed up in the vortex of the Judiciary. Whatever the other departments of the Government may do, they can undo. You may pass a law, but they can annul it. Will not the people be astonished to hear that their laws depend upon the will of the judges, who are themselves independent of all law?

My colleague has made use of an expression made before, but which I hoped would not have been repeated in this House. He says the judges were intended to guard the people from their worst of enemies—from themselves. Are the people to be told that they are so lost to a sense of their own interests, so ignorant and regardless of them, that they must take fifteen or twenty men to guard them from themselves? Is it possible that any man can attempt to make the people believe they are themselves their greatest enemies?

I will agree that there are times when checks and balances are useful. Legislative bodies may occasionally, in a gust of passion, pass improper laws; but because in a solitary instance we may pass such laws, shall we pass all authority into the hands of a few men, who, gentlemen say, know none of these passions, who are calm, cool, and wise men, who know no interests of their own, but are totally absorbed in that of the people? Suppose in our construction we should err, the evil can last no longer than two, at most six years, which are the durations of our office. The people will then dismiss us. But how can the judge be checked, or the evil he commits be remedied?

In no way but by a recurrence to revolutionary principles.

But my colleague has read the Constitution of North Carolina, which says that the judges shall be chosen by the joint ballot of the two Houses, and shall hold their offices during good behaviour. And he says this limitation cannot extend to the Executive, because the Executive has no agency in the appointment. It must, therefore, he contends, prohibit the Legislature from repealing the laws which create the office of judge. But was it not possible for the gentleman to conceive that the Legislature might, were it not for the Constitution, have said a judge shall be removed, and passed a law to that effect? Without this Constitutional provision, what would prohibit the Legislature from sweeping off all their judges, and voting in new ones?

After making these remarks on the constitutionality of the measure, I will ask what preference this law, which it is now proposed to repeal, has over the previous system? Does it pay more regard to the convenience of the people? I believe that under it only four States are divided; in all the others, the districts remain as before; and suitors, witnesses, and jurors, have to attend at the same place, under all the inconveniences they before experienced; with this difference, that the jurisdiction of the federal courts is brought down to four hundred instead of five hundred dollars.

If I believed, with my colleague, that a repeal of this law would give a death-blow to the Constitution, I would be the last man to vote for it. But believing, as I do, on the contrary, that the doctrine now contended for would destroy the vital principle of the Constitution, by submitting the entire sovereignty of the nation to judiciary control, and that the only way of resisting this doctrine is to repeal the law, I vote most cheerfully for its repeal.

Mr. HEMPHILL said he would claim the attention of the Committee a short time upon the important question now before them; that his task would principally be to arrange arguments which he had already heard or seen.

He would say but very little as to the expediency of passing the bill on the table; he would not go into a minute comparison of the two judicial systems; but should content himself with submitting a few general observations. The alleged inutility of the law passed the 13th of February, 1801, rested principally upon document No. 8, which accompanied the President's Message. That document contains a list of all suits at common law, suits in chancery, criminal prosecutions, and admiralty causes, which have been commenced in any of the federal courts in the United States, from May, 1790, to April, 1801. It appears that within the time included, eight thousand two hundred and seventy-six causes have been instituted, and of that number one thousand five hundred and thirty-seven are now depending; in the enumeration the State of Maryland is omitted, and probably, with the addition of causes in that State, the aggregate number would be nine thousand, and the causes now depending about one thousand six hundred. With a list of one thousand, six hundred causes undecided, and an annual increase of seven or eight hundred, is it possible, with no other assistance than would be received from the district judges, that six men could perform all this multiplicity of business in its original and final stages, to be transacted at so many different and distinct places, in a country extending one thousand six hundred miles; and that the causes could be decided with that dispatch which the public good requires? What every one would suppose to be the natural consequence of such a system, has been witnessed by the gentlemen of the bar in the eastern part of Pennsylvania; who have deliberately and anxiously declared to you, that in their opinion a renewal of the late system would be attended with great public inconvenience, and without adverting to the casualties of weather or indisposition, as inevitable consequences, were embarrassment, uncertainty, and delay.

Sixteen judges were appointed at an expense of thirty-two thousand dollars, three thousand dollars of which will be saved on the first vacancy in the Supreme Court; and when we are about calculating the expense, we should deduct the savings which the new system will certainly make. It must be acknowledged that many of the parties and witnesses will not have so far to attend court. It must be acknowledged that the causes would be sooner decided than under the old system; the unfinished business will rather increase than diminish. Omitting the admiralty causes, there will be about one thousand five hundred undecided causes remaining, and of course three thousand suitors, and if only one witness to a cause, there will be four thousand five hundred people in motion, attending courts. From the two causes which I have mentioned, there will necessarily be a considerable saving; some estimate might be made, and this saving will in some measure be equalized, as no person knows how soon he will be a party or a witness. It is for the trifling difference between this saving and the salaries of a few judges, that the liberty of the people is to be endangered; and, if I am not mistaken, a gentleman from Virginia, (Mr. GILES,) when the apportionment bill was before the House, declared that the expense of the Civil List was a trifling thing, a mere speck on the pages of expenditure, and that it was the expense of maintaining armies and fleets that we should guard against.

The expense of the augmented representation in this House will be nearly, if not quite, equal to the salaries of the judges. I think I may with great safety appeal to the people, and ask them which expense will be most to their advantage? Before I enter into the discussion of the main question, I beg leave, Mr. Chairman, to make a few preliminary remarks. The first is, as to the salaries of the judges of the district courts of Kentucky and Tennessee, which were increased by law, which must be acknowledged to be so far Constitutional. Can you repeal the law generally, and thereby diminish the compensation of the judges? I do not mean to contend that the office

of a judge is to outlive the Constitution. Every officer is removable by a change in that part of the Constitution on which his office depends; if, by any event, the Constitution should be entirely dissolved, the officers will revert to the common class, and the people must again begin to build up a new government. It has been said that our Constitution exhibits the absurdity of an office without an officer; *quasi* a judge, entitled to his salary, without any duty to perform, and the strange phenomenon of an officer not amenable to your laws, to your Constitution, or to the people. These observations amount to nothing; they are taking that as data which is the only thing to be proven; for the sole question is, can an office be taken away from a judge? I think no person will seriously contend that the framers of the Constitution ever intended that a man should be entitled to his salary, when he is not in the possession of his office; indeed, the words in the Constitution do not embrace the extent of the proposition; the words are, "during his continuance in office."

In regard to the main question, Mr. Chairman, I will in the first place read the ninth and tenth amendments to the Constitution:

"9. The enumeration, in the Constitution of certain rights, shall not be construed to deny or disparage others, retained by the people.

"10. The powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The question is between the United States and their rulers. In behalf of the people it is contended, that the power you are about to exercise does not belong to you, but that it was reserved to the people at the formation of the Constitution; the rulers say no, the power belongs to us, and we can and will exercise it, whenever we deem it expedient. I submit to the consideration of this honorable Committee, if in such a case there should be a reasonable doubt, whether it will not be most delicate and safe to let that doubt operate in favor of the people. We are not here, sir, clothed with the full power of the American people; we are here in a circumscribed sphere, exercising a limited power. The people are the original fountain of all power; we only possess a part of their power. Bearing constantly this view of the subject in our minds, many questions put may be readily answered. As when it is asked, is the creature greater than its God? Cannot he who makes destroy? Has not one Legislature as much power as another? As to the two first, the idea is correct, when applied to the original power; it is correct or incorrect when applied to a limited power, according to the words and meaning of the instrument giving that power; the instrument giving power to Congress, has inhibited the power which has a right to create, from destroying, as in the case of the salary of the President, and the compensation of the judges; the President and Senate also have the power to appoint judges, but not to remove them, and the question is, does not the instrument giving power to Congress restrain them from taking away the office of a judge, as in the above instance, giving a power to create and not to destroy? As to the question, has not one Legislature as much power as another? I answer yes; both deriving their power from the same instrument must be precisely the same; but this proves nothing till it is shown that any Legislature can take away the office of a judge. Many other ideas advanced on this subject are predicated upon the supposed abuse of power, and strike at the very existence of written constitutions, and tend to show the impracticability of being governed under them. Suppose one Legislature was to create a million of judges, who is to correct the evil? Is it possible, it is asked, that another Legislature should not have power instantly to correct the shameful abuse of the people's right? Suppose, on the other hand, that a Legislature, previous to the President's election, should raise his salary to a million a year, will it be contended that the next Legislature, agreeably to the Constitution, could decrease the salary? It will not; and why not have the power in one case as well as in the other? There are many cases under our Constitution, where the people run the risk of the abuse of power, and have retained the power of correction in their own hands: and what is the plain remedy for an evil in the present case, if it should exist? If the number of your judges is a little too great, declare that vacancies shall not be filled; if they become corrupted, impeach them; if, by any uncommon event in the circumstances of the country, or the wickedness of the Legislature, the number should be extravagantly great and useless, put them down by changing that part of the Constitution. And this, sir, is not a monstrously difficult thing. We have already had amendments to the Constitution, when the emergency was not so great. If an evil should grow out of any part of the Constitution, it can easily be removed by the hands of the people constitutionally raised; the judges are secure and not within the reach of a raging party, yet they must always remain within the reach of the cool reflection of the nation; and if the people will not agree to make this change, it will be a proof that the evil does not exist, and the great order of things ought not to be changed for mere imaginary complaints.

If Congress, in coming here, and carrying with them the sentiments of the people, and as their immediate representatives, can do everything which may appear to them for the good of the people, under every change of circumstances, a written Constitution would be useless. Upon this principle the Senate is unnecessary. The gentleman from North Carolina (Mr. Henderson) has properly dilated upon this view of the subject. Our Constitution is founded on different principles, and such ideas ought not to govern in putting a construction on it. The people have retained power to themselves, and have said to the Legislature, thus far shall you go and no farther. There are certain cases wherein you shall not be the judges of what will or will not be for our advantage. We have fixed the principle, and have taken the responsibility upon ourselves—on this reserved ground you are not to walk. One of the

great and leading principles agreed upon by the people, we contend, was the independence of the judges. They calculated that the great good flowing from this principle would far outweigh any apprehension of the abuse of this power in giving birth to too many or improper judges. If, Mr. Chairman, I have perfectly comprehended the arguments of our opponents, they all converge to one or other of two points: 1st. That the words in the Constitution refer exclusively to the Executive, and are meant to render the judges independent of him only; the second point, which is rather a subordinate one, operating in support of the first, is that the office of judge is created by law, and not by the Constitution; that it is a creature of the law, whose life and death is to proceed from the same hand. I will proceed to examine these two points, giving my hearty assent to the acknowledgment of our opponents, that it is dangerous to the liberties of the people to legislate upon constructive power.

As to the first point, I would ask on what part of the Constitution is this opinion founded? where is it so expressed? If there had been an express provision that the Executive might remove officers at pleasure, there would be some weight in the argument, though far from being conclusive, that this clause was intended to prevent him from exercising a power in regard to the judges, which he was allowed to exercise as to all other officers. When nothing of this appears on the face of the Constitution, how can you infer it, for the purpose of making one implication assist you in making another? You make words, which are general, apply to a part; by implication, you say that the power that has a right to create has a right to destroy, if not prohibited. By this rule the Executive can remove all officers of his own appointment. By the same rule of implication, Congress can abolish all officers of their own creating, if there is no restriction. In this way the Executive and Congress have each of them the office in their power; the Executive can remove the man, Congress can remove the office, then comes in a general clause of the restriction, including both the man and the office, and to whom is it to refer? If words are the signs of ideas, to both most inevitably; and, besides, as a proof that it does not refer exclusively to the Executive, he is not named in the section; yet Congress are named, and acts to be done by Congress run all through it. In the first section of the third article, it is declared that "a judge shall hold his office during good behaviour." The office is an object of Legislative creation, and the thing thus to be created by the Legislature the judge is to hold for a certain time. If the object is to prevent the Executive from taking away the officer, leaving the office, a correct expression of that intention would have been, that the judges shall not be removed from office; and these words are used in the affirmative, when the officer and the office are to be separated, and the office left. [Here Mr. Hemphill read from the Constitution third section first article, No. 7, 1st section second article, No. 6, and fourth section second article.] But when the office and the officer are inseparable for a certain time, different words are used. The President shall hold his office during the term of four years; the judge shall hold his office during good behaviour. The tenure of office in each case is included in the same words.

As to the other point, that it is an office created by law, and not by the Constitution, and therefore may be removed by a law, let this principle be tested by the Constitution itself, and not from anything out of it. I aver, that in every instance where the Constitution has spoken of the continuance of any one thing, although the creation of the particular object is optional with Congress, yet the moment they give it existence it is out of their power, and must continue during the time mentioned in the Constitution. Apply this principle first to the salary of the Executive and judges. The salaries are created by law, and when created, their continuance is fixed by the Constitution. Apply the principle to the members of this House. When the bill fixing the ratio of representation was before us, could we have fixed a ratio decreasing the present number of representatives, and have made the law take effect immediately, and thereby disqualified members now on the floor from taking their seats next session, when they had been elected for two years? Yet their right to seats here was created by a law which was discretionary as to the number. Apply the principle to the Senators. New States may be admitted by Congress into the Union; yet when the new States shall have been admitted, and two Senators chosen in consequence of the law, can Congress repeal the law, dismember the Union in part, and turn out the Senators? The right of citizenship also is acquired by a law; yet when strangers have become members of our nation, in virtue of a law, can Congress repeal that law, and thereby disfranchise a part of her citizens? Yet in both of these cases it might be said that they were the throes of a dying Administration to provide for its friends. The law also fixing the permanent seat of Government, agreeably to the Constitution, seems to afford an analogous case, and I question if it could be repealed, unless words mean anything, and then Congress can do anything.

To come to a right understanding of the Constitution, it will be necessary to inquire what was the generally received opinion about the time the Constitution was adopted. I have ever understood that there was no difference of opinion on this point; that the general opinion was, that the words in the Constitution rendered the judges independent of both the other branches of the Government. This appears from the debates in the Convention in Virginia to have been their opinion; it appears, also, from the strongest implication, to have been the opinion of the author of the Notes on Virginia. If we can receive no aid from any of these sources, we must take up the Constitution, and apply to it the general rules for the interpretation of solemn instruments of writing. If in this instrument we find one express and positive provision, it must have its full force, unless we

find another provision equally positive, and so inconsistent, that one or the other must give way. In the Constitution we find these words: "The 'judges, both of the supreme and inferior courts, 'shall hold their offices during good behaviour," without any other condition or qualification; take these words detached from any other part of the Constitution, and I ask, do they not contain an express and positive provision? If so, what part of the Constitution is so inconsistent as to change the nature of this provision from a positive into a conditional one, and, in substance, to add these words, viz: "on this condition, that Congress permit the office so long to remain." It is said, in the eighth section of the first article, that "Con-'gress shall have power to constitute tribunals in-'ferior to the Supreme Court." This power was necessary to be given, otherwise the tribunals could not have been constituted, and when constituted, the duration of the office is limited in another part of the Constitution; and any implied power therein contained cannot be inconsistent with an express provision; for a mere implication is never to take preference to a positive provision. The other words relied upon are contained in the first section of the third article. What is the meaning of the words, *from time to time?* They are used but in three parts of the Constitution, and when used they do not convey the idea of undoing what may be done. Indeed, they are used in cases where it is impracticable to undo what shall have been done. [Mr. H. here read the fifth section, first article, No. 3; ninth section, first article, No. 6; and the third section, second article.] What do these words mean in that part of the Constitution under this discussion? The Supreme Court had been mentioned in the second and third article; the Supreme Court, which implies that there should be but one. They were not used to give Congress power to constitute inferior courts, for that power had been previously given, and if the inferior courts, together with the offices of the judges, are, as is contended, subjects of ordinary legislation, those words were unnecessary to enlarge the power of Congress on them, for on all subjects of ordinary legislation, Congress have an unquestionable right to enact and repeal at pleasure. It is not said in the eighth section, first article, that Congress shall have power to borrow money from time to time, to regulate commerce from time to time, or to establish post offices and post roads from time to time; yet nobody doubts that Congress have a right to make and repeal laws on these subjects, when it may appear expedient; and the same power would have extended to the clause giving power to constitute inferior tribunals, if there had been no restriction in any other part of the Constitution. As these words are unnecessary to give the power contended for, they must have some other meaning. The plain meaning is this: that these words, together with the first part of the section, were not used to give a power to constitute courts, for that power had been previously given; they were merely introduced to dispose of the Judiciary power, and to declare where it should reside. "The Judiciary power of the United States shall be vested in the Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish;" meaning the power before given, which was discretionary as to number; the clause in the eighth section of the first article is brought here into view, and in the very next sentence the offices are positively fixed and limited. Here, then, is an express and positive provision, uncontradicted by any express declaration, or by any violent implication. It is said, that there are words of negation used as to the compensation of the judges, and why not to the offices? If the words had been: and shall at stated times receive for their services a compensation during their continuance in office—will any man in his senses say that the compensation could be taken away during that continuance? Yet, although the compensation could not be taken away, it might be lessened, and the words of negation were to prevent that diminution; but as the legal signification of an office could not be lessened, the words there would have been surplusage.

But, Mr. Chairman, is it probable that the framers of the Constitution ever intended to invest Congress with a power to destroy the office of a judge, in a rising country like this, where all the various sources of litigation are daily increasing? They foresaw that new judges would be wanted from time to time, but they never could have pictured to themselves a necessity of dispensing with the old judges. If we were framing a Constitution this moment, if we had any regard for the independence of the judges, would we invest Congress with a power to remove them, or take away the offices? We could calculate with reasonable certainty, that if there should at any time be a necessity for their appointment, there would always in this country be a necessity for their continuance; and we could trust this power to one Legislature as confidently as to another. If the framers of the Constitution could have entertained any suspicion that a Legislature, in 1801, would have created useless judges for party purposes, with equal propriety they might have supposed that a Legislature, in 1802, would destroy useful judges for party purposes. But the independence of the Judicial department was the object. This was the invaluable principle, and not more liable to abuse than the other principles fixed by the Constitution, and there was no principle so necessary to be settled as the independence of the judges. If we are to argue from the abuse of power, what is there to prevent Congress from admitting into the Union more new States than would be for the advantage of the nation? The late Administration, with the consent of the Legislature of Massachusetts, might have erected the province of Maine into fifteen or twenty States. The fact is, if there is a necessity for a new State, at the time of its admission into the Union, the probability is, there will always be a necessity. So, if there is a necessity of a judge at the time of his appointment, the probability is that there will always be a necessity, and the Legislature

giving birth to one or the other, are the Constitutional judges of that necessity, and no other Legislature has a right to interfere. My opinion is, that the framers of the Constitution intended that the judges should be independent of both the other branches of Government; that they have spoken plainly and unequivocally; and that the moment that the judge is appointed, the office is ingrafted in, and becomes a part of the Constitution, and cannot be taken away without impairing the Constitution itself.

With regard, Mr. Chairman, to the distinction that is taken between the supreme and inferior courts, for my own part I cannot see any force in the argument. Any person of common candor must acknowledge, when he reads the first section and second section of the third articles that there is as imperative an injunction to establish some inferior courts, as there is to establish one supreme court. It is said that the Supreme Court shall have appellate jurisdiction, and of course there must be inferior courts, from which the appeals are to be made, and the duration of office in both courts is contained in the same sentence and words; and it is absurd to suppose that the framers of the Constitution affixed a double meaning to these words. The reasons urged against our construction, apply as well to the Supreme Court as to the inferior courts. A dying Administration could provide for its friends by increasing the number of judges in the Supreme Court, with as much facility as by creating inferior tribunals. But, sir, if Congress have the power contended for, there is not a judge on the supreme bench who is not completely in their power. The Constitution does not say how many judges there shall be, so that you may remove all but one, or you may pass a law placing six new judges on the bench, by the side of the present judges, and then, for the good of the people, conclude that twelve judges are unnecessary, and repeal the law which created the first six judges, and the imperative words in the Constitution will be complied with; the Supreme Court being always in existence. I see nothing in the Constitution which prohibits Congress from changing the name of an inferior court, if by the same act the office with all that appertains to it is some where preserved. And that Congress have a right to transfer some of the duties of the judges from one tribunal to another, is clear and evident; it is incident to the power of constituting new tribunals; for when a new court is created, some of the business which would have been cognizable in the old court, must be transferred to the new tribunal. It was this kind of power that Congress exercised in passing the law last session; but they did not touch the office, which consists in certain powers, jurisdiction, and authority, conferred on a particular person, requiring of him certain duties which may be exercised in a court bearing a different name from that of the judge. Under the old system the district judges sat in the circuit courts, the supreme judges sat in the circuit courts; and under the old system the district judges of Kentucky and Tennessee had the powers cognizable in a circuit court, with some exceptions as to appeals and writs of error; and the twenty-fourth section of the law of February 13, 1801, which abolishes the two district courts; transferred the Constitutional parts of the offices, to wit: all the power, authority, and jurisdiction of the said courts into the circuit courts; and by the seventh section of the same law, the district judges of Tennessee and Kentucky, with a circuit judge, are to hold the circuit courts; and in the same section it is expressly declared, that when the offices of the district judges, in the districts of Kentucky and Tennessee respectively, shall become vacant, such vacancies shall be supplied by the appointment of two additional circuit judges, which appointments, of course, must be made in the usual way. And in the third section of the same law, Congress have virtually acknowledged their want of power to take away the office of a judge, and have provided, that after the next vacancy in the Supreme Court, it shall consist of five justices only. And as to the additional salaries of the district judges, they will be presumed to be equal to the additional duties, until a complaint is made, and then the fact must be ascertained.

This law, then, Mr. Chairman, which expressly recognises the judge, which expressly continues his duties, and which expressly continues his salary, is likened to a law which destroys the office of a judge, takes away his duty, takes away his salary, and leaves his commission a blank piece of paper; and this is the rock on which gentlemen stand, when they triumphantly ask, were we the guardians of the Constitution when the first law passed?

Mr. Chairman, ingenuity has been exhausted in contriving cases wherein it is said our construction will not hold good. It is asked if, in the case of a war, a whole State should be ceded, if the offices of judges would remain? Certainly not; but here the provision of the Constitution would not be complied with, the whole strength of the nation would not be sufficient to protect it; yet it would be a case of necessity, calamity, or war, which no Constitution can provide against; and, in the case put, the most important part of the Constitution would not be complied with, which guaranties to each State in the Union a Republican form of Government; yet in that event the people of the ceded State might become the slaves of a tyrant.

But, Mr. Chairman, a doctrine new and dangerous has began to unfold itself. It is said that the Judiciary is a subordinate and not a co-ordinate branch of the Government, that the judges have no right to declare a law to be unconstitutional; that no such power is given to that branch in the Constitution. Why, sir, it is nowhere declared that Congress have a right to exercise their judgment, or to consider the expediency of a measure; the Judiciary, from the nature of their institution, are to judge of the law and what is the law. The Constitution is paramount and supreme. The judge is bound by oath to support it. The Legislature have a right to exercise their judgment as to the constitutionality of a law on

its passage; but the Judiciary decide at last, and their decision is final. This doctrine is admitted in the debates of the Convention of Virginia—in the case of *Vanhorne, lessee, vs. Dorrance.* Judge Patterson has expressed the same opinion, when he could have had no view to this question:

"I hold it to be a position equally clear and sound, that in such a case, it will be the duty of the court to adhere to the Constitution and to declare the act null and void. It is an important principle, which, in the discussion of questions of this kind, ought never to be lost sight of, that the Judiciary in this country is not a subordinate, but co-ordinate branch of the Government."

The Chief Magistrate of Pennsylvania has recently expressed the same sentiment, and the correctness of his legal opinions will not be called in question by any party; in assigning his reasons for not approving a law, he says:

"And I cannot, from a confidence in the legal knowledge, integrity, and fortitude of my former brethren in the Supreme Court, risk my character in a Judicial decision on this question, when I do not foresee any advantage to be derived to my country, from a possibility of success."

But, sir, if it is once established that the Judiciary is a subordinate and dependent branch of the Government, I acknowledge that they have no right to judge of the constitutionality of a law, or, if they have the power, they will be afraid to exercise it. Upon this principle, where will an influential partisan and an insignificant individual meet to adjust their claims? In this House, or in a tribunal under the influence of this House? Where will the powerful State of Virginia and the State of Delaware meet upon terms of equality; in this House, or in a tribunal under the immediate control of this House? Where could the Federal administration of justice in this country be deposited with more safety than where it is? Intrenched as our judges are, they can do but little harm, but much good; from their situation they can have no temptation to make inroads upon the rights of the people; there is no such thing as Judicial patronage; they can appoint no officers, collect no moneys, raise no armies, raise no fleets. They have nothing but their virtue and talents to recommend them to the people. If it is within the power of human contrivance to select a spot where the streams of justice will flow pure and uncontaminated, it is in a tribunal of independent judges.

The three grand branches of our Government are well arranged. The President has his proportionate weight in the Judiciary, by appointing the judges; when they are appointed they are independent, and in this situation are to guard the Legislature from making encroachments on the liberties of the people. The Legislature, in turn, have a check on them by bringing them to trial and punishment, if they should become corrupted; this trial is to commence in this House, which will always be a repository of a sufficiency of passion and spirit to commence the impeachment, if there is a reasonable cause; the trial is to be ended in the Senate, where the members, from their permanency, will be likely to be cool, and not convict unless they are guilty. Thus the parts are interwoven, operating as checks and controls on each other; but once cut the ligament, and perhaps the dreadful consequences have not been too highly colored. The effect may not be immediate, but let the principle be practised upon by two or three changes of administration, and it will become as much a matter of course to remove the judges as the heads of departments, and in bad times the judges would be no better than a sword in the hands of a party, to put out of the way great and obnoxious characters for pretended treasons.

The independence of the judges was a great point gained by the people of England. While the tenure of office depended on the nod of the Crown, they supported the arbitrary measures of the King; in one instance they decided that the King had a right to levy ship-money, without the consent of Parliament or people; and many an instance might be brought to the recollection of this honorable Committee, where they determined through fear, and not from judgment. It is said they are not independent of Parliament. Why, sir, nothing is independent of Parliament; and there is not the same necessity there. There being no written constitution in England, the Judiciary forms no check upon Parliament; and, besides, our Government is not a copy of the British Government; and this is not the only solitary instance where we have outstripped, as it is called, our too favorite prototype. There is not a leading feature in the Constitution that bears testimony of any servile imitation; it is our opponents who wish to test our Constitution by the principles of the British Government; it is they who wish that a construction be put upon the Constitution by Congress, which shall be considered as the Constitution itself; and are unwilling that there should be any check to oppose it; and of course, every construction put on it by the different Legislatures, will exhibit the appearance of a new Constitution, a constitution to be tossed and blown about by every political breeze. The powers of Congress will be equal to the powers of the English Parliament, transcendant, splendid, and without control. I little expected that such lordly power would be grasped at by our plain Republicans, who have no ambitious desires, and who wish rulers to be contented with humble prerogatives.

Mr. Chairman, when I reflect upon the intrinsic nature of the question, I am confounded and amazed; it is vast indeed—from a dread of its terrible consequences. Yet, in its nature, it consists in the open denial of the obvious meaning of a few words in the Constitution; we repeat these words, gentlemen deny their plain sense. We read "That the judges, both of the supreme and 'inferior courts, shall hold their offices during 'good behaviour." Our opponents say that these words do not mean "that the judges both of the 'supreme and inferior courts shall hold their offi-'ces during good behaviour." The meaning of these words is entirely different; it is, in fact, the

reverse; they do not infringe our power; they refer to the Executive; although the office to be holden is not of Executive creation, and he can neither make it nor destroy it: the thing to be holden during good behaviour, is an object of Legislative creation. Certainly our opponents cannot drive us out of the firm ground on which we stand, and tell us that these words are not in the Constitution. They are, and how are they to be got rid of? No other way, under Heaven, Mr. Chairman, than by a bold and arbitrary assertion that they do not bear their natural meaning; that they do not bear the same meaning which they bear in another part of the Constitution. The people have said that a judge shall *hold* his office until a certain event shall happen; the rulers say no, we will shorten the period, and this is not breaking the Constitution; or, in other words, the people have said that a judge shall hold his *office* during good behaviour; the rulers say, the meaning of that is, that the office can be taken away at any moment. Why, sir, what part of the Constitution will hold gentlemen? what words are in it that are strong enough, and what meaning cannot be as easily distorted and perverted? We have a right to our seats here for two years, if we do not behave disorderly; yet it might as well be said that the meaning of that is, that two-thirds can expel the other third at any moment, notwithstanding their good behaviour. Our opponents complain of the want of power; that their power would be too much cramped and restrained from its natural freedom by our construction. Why, sir, that is the object of a written Constitution, to place objects out of the reach of Legislative power. It is its great and grand design.

I ask pardon of the Committee for detaining them so long. I ascribe no wicked motives to our opponents. I have the charity to believe that their motives are good and virtuous; yet I am confident, that through a mistaken zeal for the good of the people, they are going too far, and are destroying the Constitution of our country.

The further consideration of the said bill was postponed till to-morrow.

WEDNESDAY, February 17.

A representation of sundry counsellors at law, practising in the Courts of the State of New Jersey, and in the Circuit Court of the United States for the District of New Jersey, was presented to the House and read, praying that the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States," may not be repealed, for the reasons specified in the said representation.—Referred to the Committee of the whole House to whom was committed, on the fourth instant, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Ordered, That Mr. DENNIS be added to the committee appointed, on the ninth instant, to prepare and bring in a bill or bills "for opening a navigable canal to connect the waters of Potomac river with those of the Eastern Branch thereof, through Tiber Creek, and the low lands at the foot of the Capitol Hill," in the room of Mr. SPRIGG, who resigned his seat in the House on the eleventh instant.

On motion, it was

Ordered, That Mr. BRENT be excused from serving on the committee appointed, on the eighth of December last, "to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia, and to report by bill, or otherwise;" and that Mr. CAMPBELL be appointed of the said committee in his stead.

A Message was received from the President of the United States, transmitting the report of the Director of the Mint. The said Message, and the report referred to therein, were read, and ordered to lie on the table.

Another Message was received from the President of the United States, transmitting a statement of the expenses incurred by the United States in their transactions with the Barbary Powers, and a roll of the persons having office or employment under the United States. The Message was read, and, together with the documents accompanying the same, ordered to lie on the table.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. THOMPSON.—I find the opinions I entertain, so extremely adverse to the sentiments yesterday expressed on this subject by the honorable gentleman from North Carolina, (Mr. HENDERSON,) who opened this debate, and the honorable gentleman from Pennsylvania, (Mr. HEMPHILL,) whose great ingenuity I feel pleasure in acknowledging, that I feel myself impelled to offer to the consideration of the Committee a few observations in reply to the arguments used by those gentlemen. But, Mr. Chairman, while I pay the tribute of my respect to the eloquence and ability which the gentleman from North Carolina has displayed in the discussion of this subject, I must pray that honorable gentleman to pardon me when I declare myself unable to follow him, when, soaring on fancy's airy pinion, he transported us across the Atlantic, and presented to our view, in the most vivid colors which language can portray, the spirit of innovation, sweeping morality and good order from the earth. Nor will I pretend, sir, that my humble genius will enable me to pursue him, when he forced this same spirit of innovation to mount the whirlwind and lash on the storm. But, sir, with such talents as I am endowed with, I have no objection to going into the consideration of the question before the Committee, and pursuing the order which the gentleman has had the goodness to suggest, as the most natural into which the subject can be divided—that

is, 1st. The power of the Legislature to pass, and 2dly, The expediency, under the existing state of things, of passing the bill now upon your table.

Under these two heads, I will endeavor to meet, as far as I shall be able to recollect them, the most impressive arguments which have been used by the gentlemen; and I will beg leave in the first place to call the attention of the Committee to the eighth section of the first article of the Constitution, which has been very slightly touched on by the gentleman from North Carolina, and which has been attended to, with much ingenuity, by the gentleman from Pennsylvania. By this section the Legislative powers of Congress are defined. "Congress shall have power," says the Constitution, "to levy taxes, to borrow money, to coin money," and, among a variety of other powers, "to constitute tribunals inferior to the Supreme Court." It is an axiom in politics that an ordaining power always embraces a repealing power; if Congress have a right to constitute courts, they have the right to modify and to annul the courts so constituted; this, like various others, is merely a discretionary power, to be exercised, or not exercised, as Congress shall find conducive to the public welfare: the granting a power does not oblige the exercise of that power; neither does the exercise of power make the laws resulting from that Constitutional exercise of power unchangeable and irrepealable. The same Constitution, giving this power, gives various other powers, as I have already shown; yet it has never been contended that the laws passed under these conceded powers are irrepealable. Still, by a parity of reason, and with a reference to this particular section of the Constitution, if the laws relating to the Judiciary establishment of the United States are irrepealable, so must the various laws passed under these granted powers, relating to your revenue, to your army, to your navy, to your mint, be irrepealable. But every gentleman knows that laws resulting from these powers have been passed, have been modified, and have been repealed; and so likewise has the law establishing the Judiciary system. Without carrying you through the tedious detail of the twenty-six or twenty-seven laws which have been passed upon this subject, it will be quite sufficient for my purpose to notice the law of the last session of Congress, the 27th section of which begins with these words:

"*And be it further enacted*, That the circuit court of the United States heretofore established shall cease and be abolished."

We travel not then in a wilderness, Mr. Chairman, untrodden by human footsteps; our immediate predecessors, it appears to me, are the pioneers who point out to us the path we should pursue for the benefit of our constituents. They have not only abolished the circuit courts, but reorganized the whole system; they have constituted new courts and new judges, and they have lessened the duties of the judges of the supreme courts. To say that a subsequent Legislature have not a right to repeal a law of a precedent Legislature is to proclaim such precedent Legislature infallible—that they are more just, more wise, more competent to the exercise of their functions, than any Legislature which shall follow them. It is a contradiction of the progress of knowledge, and of the improvements which may result from experience; it is a denial of the utility of frequent elections; because that Legislature which had attained the acme of perfection ought to be permanent and unchangeable. The law, however, of the last session, which I have just now cited, having modified the courts of the United States, concedes the power of modification to be in the Legislature. But, sir, even this concession, such as it is, is now, by the arguments of gentlemen, so clogged with appendages, so qualified by expositions, that whilst with one breath the power of modification is admitted, with the very next that power is unnerved, is rendered useless; for, says the gentleman from North Carolina, a department of the Government has been erected, called the Judiciary, not holding their office during pleasure, but during good behaviour, and whatever power attempts to deprive them of their offices violates the Constitution. It is admitted, then, that Congress have power to modify the law; but it is denied that they have power to abolish the offices of the judges.

Let us then inquire, Mr. Chairman, by what tenure the judges hold their offices: "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour."—*Constitution, article* 3, *section* 1. The gentleman from North Carolina inquires, If they have been guilty of any misdemeanor? How, then, are we to break down this Constitutional rampart with which they are entrenched? How, to use the gentleman's own expression, are the judges to be hurled from their offices? There is no gentleman, Mr. Chairman, within these walls, who would more sincerely wish the Judiciary to possess a due and proper independence than myself; but although I do not admit the right of the Legislature to hurl these judges from their offices, yet I must contend and shall ever contend for the right which Congress possesses to abolish an office; or, in other words, to repeal a law creating an office, whenever it shall be plainly proved to them that such an office is unnecessary and oppressive. They may hold their offices during good behaviour, if their offices exist; but most certainly the moment the office is legally destroyed—that is, the moment the law establishing the office is repealed, there must be an end of the tenure. Those sages who formed the Constitution, Mr. Chairman, never contemplated a privileged order of men in that society for whose happiness they formed that instrument. The exposition, which is now given to it, is very different indeed from that which was intended by them. I have read, and have heard, sir, that this is a Government of experiment. That in the annals of nations it has no likeness—no prototype. The effects of this particular department of the Government were not better understood than the effects of the other departments of the Government; it was to be tested by experience, the touchstone of truth; if

one system in its operation did not answer the expectation of the Legislature, ample room was allowed for the introduction of some other, and for the abolition of the former; hence come the expressions "from time to time ordain and establish." What says the Constitution? "The Judicial power of the United States shall be vested in one Supreme Court, and such inferior courts, as Congress shall from time to time ordain and establish." Congress may, then, or Congress may not from time to time ordain and establish courts. But, if they establish courts, so likewise may they abolish courts. Into what a variety of absurdities shall we be plunged, if we reject this reasonable interpretation? The right to modify the law being conceded, but not the right to deprive the judges of their offices, our country would exhibit a spectacle which it never has yet, and I hope never will exhibit—officers without offices—judges without courts—a privileged order—out of the reach of the Constitution, (for being deprived of their offices they cannot be impeached,) drawing money from the Treasury and rendering no services for their salaries. Is this the meaning of that Constitution which declares, that "The judges during their continuance in office shall receive a compensation for their services?" A compensation?

But suppose, Mr. Chairman, they perform no service—suppose there be no service for them to perform, what, then, is to be their compensation? Will the judge say to the Legislature, increase my duties, make them proportionate to my salary, and I will perform them? Not so, Mr. Chairman: an increase of salary is never objected to; a diminution of duty is never objected to; but, if duties are increased, salaries must also be increased. If I understand the word "compensation," it signifies a something given for a something performed. But, if there be no duty performed (and if there be no office there can be no duty) then there ought to be no compensation. In the English language there is such a word as "sinecure." This is a word, Mr. Chairman, which as yet we do not practically understand. This is a word abhorrent to the spirit of our Constitution. Yet, sir, if the construction of the Constitution, which is now contended for, be admitted, this will be a word which we shall soon practically feel, and practically understand. We shall have a set of men receiving the public treasures not in consideration of public services, but without any services whatever being performed; or, in other words, we shall lay the foundation of a sinecure system, the consequences of which will be incalculable, and the effects of which will be indescribably destructive.

But, Mr. Chairman, I will show you a precedent, and a recent one, too, where the Legislature put a different construction upon the Constitution; I will show you a precedent where a Federal Congress, our immediate predecessors, did not hesitate to exercise the powers we contend for. By the 27th section of the law of the last session, which I have had occasion before to advert to, the circuit courts are abolished. Then that Congress not only thought themselves justifiable in touching the judges of the inferior courts, but of the Supreme Court likewise; for you will find that the same law which constituted the Supreme Court, allotted to the judges of that court, particular and express duties or offices—that is, to perform the duties of a judge of the Supreme Court, as is in that law defined, and to perform the duties of judges of the circuit court, as is likewise defined in that law; and in abolishing the circuit courts, half the offices of the judges of the Supreme Court were abolished.

Perhaps, Mr. Chairman, that Congress had as great a right to abolish the whole office as half the office; but whether that was an infraction of the Constitution, or whether it would be an infraction of the Constitution to abolish the office of a judge of the Supreme Court, I will not detain you to inquire, because it appears to bear but little upon the immediate subject before us, it not being the intention of the bill, as I understand it, to interfere with the offices of the judges of the Supreme Court, further than to restore them to that firm, that rightful, that Constitutional ground, on which they stood previously to the passage of the law of the last session, and to all the duties and immunities of which I most sincerely wish to see them restored.

But, Mr. Chairman, the gentleman from Pennsylvania has informed us, it is acknowledged that the law of the last session is Constitutional; in this I can by no means agree with that gentleman. There is one section in that law, sir, which in my humble opinion is a flagrant violation of the Constitution. By the 24th section of that law the district courts of Kentucky and Tennessee are abolished. Had our predecessors stopped at this point, we should have no cause on this day to charge them with a violation of their charter, they would have done no more in principle than we now contend we have a right to do. But they went further—they usurped a power in my opinion not given them by the Constitution, they usurped a power exclusively vested in the President and Senate. By the seventh section of the same law, the judges of the district courts of Kentucky and Tennessee, are appointed circuit judges in fact, not indeed in name, but in reality the duties of circuit judges of the sixth circuit are assigned them. The district courts of Kentucky and Tennessee are abolished, and I wish to be informed if they are not circuit judges to all intents and purposes, and I wish further to be informed, if they are not circuit judges appointed by the Legislature, and in direct violation of that article of the Constitution, which has, in the most express terms, vested this power in the President and Senate? Sir, did I apprehend the gentleman from Pennsylvania aright, when I understood him to say, the name of a judge does not define or constitute the duty of a judge?

This is indeed a melancholy exemplification. Shall I be told that by the law they are styled district judges? How long, Mr. Chairman, are we to be imposed on by sound, how long are we to be entangled with the cobwebs of sophistry? But

sir, the gentleman from North Carolina has warned us, solemnly warned us, against a violation of the Constitution. Was that gentlemen a member of this House when the law which I have just been speaking of, passed? I perceive by your journals that he was—why then, sir, were not these sensations, which he now experiences with such exquisite sensibility, awakened? Why were they not awakened a year ago, when he might perhaps have prevented an actual violation of the Constitution? I ask the honorable gentleman, sir, when with a sacrilegious hand this vital wound was inflicted on the Constitution, if he raised the plaintive cry of—Spare, oh! spare the Constitution of my country? Yesterday, sir, the gentleman informed us if the bill on your table should pass he would heave no sigh, he would drop no tear over the expiring Constitution. When that law passed, did he heave no sigh, did he drop no tear? Oh, no, sir, very different was the course which was then pursued. With cool, with cruel deliberation, the devoted victim was immolated, and the blood which issued from the gaping wound will forever stain the pages of your statute book.

Mr. Chairman, the expediency of the law now under consideration, and the propriety of adopting a measure of this nature, at the present time, have been so fully and so satisfactorily discussed in the Senate, not many days ago, that to this point I shall apply but few observations. Coming from a State where justice is administered with promptness and frugality, I confess that the stupendous fabric of the Federal Judiciary excites my astonishment. I had, sir, supposed, that the document, which has been furnished by the Executive, would be a full and complete answer to anything that could be said on this division of the subject; but, sir, the gentleman from Pennsylvania has informed us that if the undecided causes of the State of Maryland were added, the aggregate number of depending causes in the courts of the United States would probably amount to sixteen hundred, and he inquires if it is practicable for the courts, after the repeal of the law of the last session, to determine this number of causes scattered over the United States? Sir, when I cast my eyes across the Potomac, and call to recollection the system of jurisprudence established in my country, I cannot hesitate a moment in giving him an affirmative answer.

I have not, Mr. Chairman, nor was it possible for me to procure, documents from the district courts of my State to show to the Committee the number of suits which are depending in them. But, sir, when I reflect how often I have seen a venerable citizen of that State, respectable for his great learning, respectable for his irreproachable life, and respectable for his years, (being aged I believe, full seventy,) who is judge of the high court of chancery there, devoting his days and his nights to the avocations of his office, in the plain garb of a common citizen, dispensing justice and satisfaction to the multitude of citizens whose causes are tried before his tribunal; when I reflect on the number of citizens whose causes are tried before his tribunal; when I reflect on the number of decisions which are made in his court in the course of a year; and when I overlook a document which I have now in my possession from the clerk of that court, and which I shall presently offer to the view of this Committee, I can have no difficulty in pronouncing the sincere opinion which I entertain that he performs more duty, and perhaps with greater ability, than the whole judicial corps of the United States. [Mr. T. here read the document.]

And what, Mr. Chairman, is the compensation which this venerable citizen receives? Fifteen hundred dollars—no more; compare this with the sum which supports and decorates the fair composite column which we are informed is one of the strong pillars of our Government; and to touch which we are told will occasion the beautiful fabric to tumble in the dust. Have we not State courts diffused in abundance over every commonwealth composing this Union? Are they not competent to the decision of all cases of controversy between citizen and citizen? Is not the jurisdiction of the Federal court extremely limited from the true and genuine construction of the Constitution? Where then was the necessity of the law of the last session which ramified and increased these courts? But, sir, the gentleman from North Carolina has found another use for them; he has told us, "the people, when they 'established this Constitution did not delegate the 'power of legislation to the House of Representatives alone. They established the Senate as a 'check upon the House of Representatives; knowing the violent impulses which often actuate popular assemblies, they gave the President, too, the 'power to negative laws. When a law had passed 'these various branches of the Government, it became necessary to erect a third department, called 'the Judiciary, not holding their offices during 'pleasure, but 'during good behaviour.'" Did I comprehend the argument of gentlemen when I supposed it went to the establishment of this department as a check upon the Legislature, and did I comprehend the argument of the gentleman from Pennsylvania, when he cited Judge Paterson's charge, which I have not seen, but from which, as he read, I noted these words "I hold it to be the duty of the court in such case, to declare the law null and void." If I have not misunderstood the gentleman, I confess my eyes are now opened. I begin to feel some of those apprehensions which have been so strongly talked about, and which heretofore I have not been accustomed to experience. Not, sir, from a fear of usurpation of power on the part of the Legislature, for they are biennially responsible to their constituents for the sacred observance of the charter of their rights; not, sir, from a fear of usurpation of power on the part of the Executive, for the term of his service is limited to four years, and therefore he is liable to lose his office in case of an infraction of the Constitution on his part, but from a desire which, I fear, this check-department of the Government has to grasp at all power. Give the Judiciary this check upon the Legislature, allow them the power to declare your laws null and void; allow the common law, a system extending to all persons and to all things, to be attached to the Constitutton, as I understand it is contended; and in vain have the people placed you upon this floor to legislate; your laws will be nullified, your proceedings will be checked. As long as the office exists the judge holds it during good behaviour; he is, then, independent. Being independent, and not having that degree of responsibility attached to his office which is attached to the Legislature or to the Executive, the powers granted by the Constitution are to be strictly construed; nothing is to be left to implication; nothing to construction; the letter is to determine the extent of their power, and I conceive it never was intended they should transcend it. I have, sir, looked into the Constitution with a scrutinizing eye, to discern, if possible, whence these pretensions are derived. There are but two clauses of the Constitution, which can even give a pretence for the power which is contended for. The first is as follows:

"The Judicial power of the United States shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority."

To declare a law null and void is certainly not such a case, either in law or equity, arising under the Constitution, as was contemplated to be embraced by the paragraph I have cited. It will be in vain to say that, without such a construction, the Constitution cannot be satisfied. I am not now to learn that there are two descriptions of cases which will be fully sufficient to satisfy the terms there expressed, in their utmost extent, as where cases shall arise between citizens of different States, or between citizens and foreigners, which are to be decided either by State laws or by foreign laws; or where cases shall arise between citizens of the same State in consequence of an unconstitutional exercise of power on the part of the State, in emitting and making bills of credit a lawful tender. The other clause of the Constitution is as follows:

"This Constitution and the laws of the United States, which shall be made in pursuance thereof, &c., shall be the supreme law of the land, and the judges in every State shall be bound thereby."

This, certainly, from the words with which it concludes, was intended as an instruction or direction to the judges of the State courts; and if they were transposed, perhaps, would more fully communicate the intention of their framers, reading in this form: "The judges in any State shall be bound by this Constitution," &c. Is there any reasonable person, sir, after this explanation, will say that by either or both of these clauses a power is given to your Judiciary to declare your laws null and void? They may, to be sure, for a while impede the passage of a law, by a decision against its constitutionality; yet, notwithstanding the law is in force, is not nullified, and will be acted upon whenever there is a change of opinion. The Legislative, Executive, and Judicial departments should be kept separate and distinct. This I agree to, it has become an axiom in politics that they should. Yet, I inquire, will this be the case if you allow to the Judiciary the power to annul your laws, and contend that the common law is attached to the Constitution? I am persuaded you thereby concentrate all power in one department. The common law is the Constitution, and the court may, if they please, declare it void.

But I have not heard it explained whether the common law simply, without statutory amendments, or the common law with statutory amendments, or with what statutory amendments, is to be attached to the Constitution? I believe it is intended they have a right to apply such parts of it as are applicable to the Constitution. The common law extends to all persons and all things. The judges have the right of adopting this law, or such parts as they may deem applicable; they can annul your laws. If these powers are really contended for on the part of the Judiciary, and if these powers should ever be conceded, they would without doubt possess an unlimited and uncontrollable power of legislation. I am free for my own part to declare, that I had rather live under the government of a lenient despot than such a government of judges. And if those powers are really contended for, I feel no hesitation in informing you, Mr. Chairman, that this is the tree where despotism lies concealed. And this, too, is the auspicious moment when those branches shall be pruned away, which of late have vegetated with extraordinary luxuriancy. But, sir, nurture it with your treasure, stop not its ramifications, and suffer me seriously to inquire, What will be the consequence? It will overshadow your extensive Republic; your soil will become too sterile for the plant of liberty; your atmosphere will be contaminated with its poisonous effluvia, and your soaring eagle will fall dead at its root.

Mr. Davis.—Mr. Chairman, I beg leave to be indulged with a few remarks on this subject, which I shall submit with great diffidence, being sensible of my incompetency to illustrate a subject of such immense importance; but as I am to give a vote, the reasons that govern that vote I think it my duty to express. I rejoice that we are called upon to decide this great national question at a time when the public mind is calm and tranquil, when, uninfluenced by extrinsic circumstances, we can settle a principle of such magnitude to our country.

I did hope we should have taken up this subject with cool deliberation, and I have to lament that the honorable gentleman from North Carolina (Mr. Henderson) who opened the debate, instead of appealing to our sober reflections, sounded the trump of alarm. That honorable member told us we were about to prostrate the Constitution. If this really be the case, the sound of danger is proper, and we, who are about to do it, must expect to answer it to our country, and to generations yet unborn. But above all, we must expect to answer for it in a day of awful reckoning. The honorable member told us "that the spirit that had rode on the whirlwind and directed the storm—the spirit that had brought twenty millions of people

to bow to a single despot—had entered this House on the seventh day of December last, and with gigantic strides was bearing down all before it." When the honorable member spoke of this tremendous spirit, I was at a loss how to understand him. I thought he alluded to a spirit that a few years ago threatened to humble my parent State in dust and ashes, because her citizens refused to sing praises to the late Administration, and own its superior wisdom and patriotism. But when the gentleman spoke of twenty millions of people, I found he alluded to the French nation. On a subject where the interest of the United States is alone concerned, and which furnishes matter for the most brilliant or diffusive genius, I wonder that gentlemen will not confine themselves to America, and not seek for occurrences among the transatlantic nations. But I ask that honorable member if he is now prepared to degrade that spirit so much approved by the Great Washington of America, that in addressing a late Minister of that nation, he spoke the following words: "To call your nation brave is but to pronounce common fame. Wonderful people!" Is he prepared to degrade a spirit that resisted the union of Kings and Emperors against an infant Republic? This, as well as other remarks, are foreign to the subject, but deserve to be considered. The honorable member then told us that everything that bore the majesty of the people was about to be destroyed. The excise, he says, pledged to pay the national debt, is to be repealed. Has that honorable member forgotten the agitations that this excise law cost the public? Has he forgotten that the prison of Philadelphia was filled with those who resisted the law? Has he forgotten that citizen was armed against citizen, and State against State, to enforce this law, and that it was carried into execution at the point of the bayonet? Does that gentleman think the majesty of the people consists in holding the law in one hand and the sword in the other, and ruling the nation with a rod of iron? The Mint, he says, is to be knocked down. Surely he does not remember that it cost us twenty-one thousand dollars per annum, and renders us no service. Does he think the majesty of the people consists in useless expensive establishments from which no good has, or ever will result?

The gentleman then reads the Constitution, and tells us the acceptation of the office of judge, is a contract between the Government and the individual who undertakes the office. The words on which he relies are, "the judges of the Supreme and inferior courts shall hold their offices during good behaviour," hence he infers that the Government is obliged to continue the office to the judge as long as he behaves well, whether it has anything for him to do or not; and that to take the office from him is a violation of the contract and Constitution. Let me examine this principle and see to what it leads. If it be a contract, it is equally binding on the judge and Government; if the words "shall hold his office during good behaviour," mean that the Government shall continue the office during that time, it must also mean that the judge shall fill the office during that time, and that he cannot resign without first misbehaving, which is not correct; because we know that judges have resigned, and have been removed by more eligible appointments; neither of which could be done, if the principle be a sound one; for then the contract operates unequally, as the Government is bound to continue an office, and the judge is at liberty to vacate when he pleases. If therefore it is a contract between the judge and Government, to make it equal, the Government should have the right to abolish the office when it thought it expedient, and the judge the right to vacate it when he thought proper; and this I hold to be the proper ground. But I make a material distinction between removing a judge from office and abolishing the office; the first implies guilt, the latter that the office is useless, and abolishing it imports no blame to the judge. The office is created by act of law; the appointment to fill it is by Constitutional authority; to remove a judge without proper complaint would be wrong, but to abolish an office created by law, when found useless or inexpedient, would be proper. The gentleman reads further, "And shall receive for their services a compensation which shall not be diminished during their continuance in office." It is worthy of remark, that the word compensation is not annexed to the word office, but is attached to the word services.

This evinces to my mind that the compensation is for services to be performed by the judges, and not for holding the office. Thus, when we abolish the office, we leave no services for him to perform; but he retains his commission, which we have no power to wrest from him, and the latter words go to prove it, "shall not be diminished during their continuance in office." The word compensation being attached to the word service, to complete the right to compensation, there must be an office of judge, and services rendered in that office. When this law we are about to repeal passed, this seems to have been the opinion of those who passed it. For by a Legislative act they abolished the district courts in Tennessee and Kentucky, and created circuit courts in their stead, and directed the judges of the district courts to perform circuit court services. Where, let me ask, is the difference between our abolishing courts and a former majority doing it? This I take to be the only difference, we abolish courts and do not order judges to do services in other courts. The last Congress abolished courts and then seized the power confided by the Constitution to the President and Senate, namely, the appointment of judges in certain newly created courts.

But it is said the law of last session is admitted to be Constitutional, and that we have no power to repeal it. Look at the second section of this law, and compare it with the Constitution, and no candid man will declare it Constitutional. The original jurisdiction given by that section to the judges of the Supreme Court exceeds those intended by the Constitution. [Here Mr. Davis read the law and Constitution.] Besides this I think there is an infraction of the Constitution in the

twenty-seventh section, as well as in that part which relates to the judges of Tennessee and Kentucky before alluded to. As to the right of repealing, I cannot hesitate, because I believe this Congress possesses equal power with the former, and that the power of making and repealing laws is at all times vested in the Legislature. If this be not the case, we lose the benefit of experience, the only faithful guide to human concerns. Most of our statutes are experimentally adopted, and when we find that they operate disadvantageously, we doubtless have the power of repealing. The Constitution in giving power to Congress says, they shall have power to "provide for the common defence and general welfare of the United States." In another place it says, "Congress shall have power to make all laws which shall be necessary and proper to carry into effect the foregoing powers." Those powers are to provide for the general welfare. Now we think, to provide for the general welfare, we ought to make a law declaring the late Judiciary law repealed. Again, it has often been said, that our Government depends very much on the opinion of the people. This Government is divided into three distinct departments. A late ruling party, finding their power about to be wrested from their hands by the people who elect the Representatives and the State who elect the Senators, in the last moments of power passes a law by which they completely take hold of one entire branch of our Government, and fill it with men whose politics are at war with the people. There a majority does not rule; the minority in defiance of the majority hold one branch. I ask, if this is compatible with general opinion or the settled principles of our Government? The honorable member from Pennsylvania, (Mr. Hemphill,) in his argument, puts me in mind of the boy who fights his shadow; he raised arguments for us, and then combatted them; the man who runs by himself is sure to win, so the gentleman was sure to triumph, because he took for us the weakest ground, and for himself the strongest. Those who read his speech will suppose the arguments he combatted had been advanced on this floor; but the fact is otherwise; he was the third who spoke, and all who hear me know that the ground he took and called ours, was not occupied by any of us. Is this a fair and candid manner of acting? He tells us that besides the judiciary laws there are other laws that Congress cannot repeal; that a State is admitted into the Union by law, and that there is no power can repeal that law; that a man is admitted to citizenship by law, and no repeal of that law can affect the citizen. The reason is obvious. If a law admits a State into the Union, and the State comes in according to the provisions of the law, the law having had its effect, having discharged its functions, it becomes dead and cannot be repealed. But if Congress should now say the Northwest Territory should, in the year 1806, be admitted into the Union as a State, at any time before the law takes effect the repeal is in the power of Congress. The same may be said as to citizenship. I found my opinion of the expediency of repealing the Judiciary law, on another reason in addition to that of the courts being unnecessary; I mean the power they declare they have, in the language of Judge Patterson, to "declare a law null and void." Never can I subscribe to that opinion. Never can I believe the Judiciary paramount to both branches of the Legislature; if it is, I have yet to learn it: there is an end to legislation; a knave or a fool can make void your best and most wholesome laws. In the present state of things, how will it affect us? The minority possessing one department of Government, completely frustrates the views of the other two, and governs the nation against the will of the people and the Legislative and Executive power. I am willing to admit the Judiciary to be coordinate with the Legislature in this respect, to wit, that judges thinking a law unconstitutional are not bound to execute it; but not to declare it null and void. That power rests alone with the Legislature. But we are told this Judiciary is necessary to check this House and the Senate, and to protect the people against their worst enemies. This is saying to the people, you are incapable of governing yourselves, your representatives are incapable of doing it; in the Judiciary alone you find a safe deposit for your liberties; and saying also, that the Judiciary is the vitals of the nation, wherein all power, all safety dwells; that the Legislature is subordinate thereto and a mere nominal thing, a shadow without substance, its acts perfectly within the control of the Judiciary. I tremble at such ideas. The sooner we put men out of power, who we find determined to act in this manner, the better; by doing so we preserve the power of the Legislature, and save our nation from the ravages of an uncontrolled Judiciary.

Mr. Bacon.—In this bill two important inquiries are involved.

1. Is it consistent with the Constitution? 2. Is it expedient to repeal those acts?

Before I proceed to speak directly to either of these questions, I must take the liberty to advert to an important observation made yesterday by the gentleman from Pennsylvania, (Mr. Hemphill.) In his very decent and ingenious speech with which he then favored the Committee, he gave an explanation of the terms *office* and *court*. Indeed very much depends, as I conceive, on fixing accurate ideas to those particular terms. Until this is done, that part of the Constitution which applies to the present subject, must remain in a great measure unintelligible, to me at least. Fixing the true meaning of these terms, will, I conceive, go far towards solving any doubt that may exist relative to the constitutionalty of the present bill. This idea, there is reason to believe, did not escape the discerning mind of that worthy gentleman, when he observed, that "*office* consists in certain 'power, jurisdiction and authority, conferred on a 'person, requiring certain duties. The *court*, the 'name of the institution, wherein that office is to 'be exercised. The name of the court may be 'changed, and also the place where first holden, 'and the office be exercised in another place."

Those were the words which he used. I fully accede to his explanation of the term *office*, but very much doubt the correctness of his explanation of the term *court*, as it is used in the Constitution. And I am not certain but that the question of constitutionality will very much depend upon the idea that is affixed to this identical term. I believe the term *court*, as it is used in that instrument, means something more than a mere name. Although I will not undertake to give an authoritative and perfectly accurate explanation of the term, yet I may venture to say, that, as used in the Constitution, and in the law proposed to be repealed, it seems to convey the idea of an institution ordained and established for the legal administration of justice. Those things termed courts in the Constitution, are vested with power, and are to exercise jurisdiction, original and appellate. These are attributes which, to my mind, indicate something more than what is merely nominal. I have considered courts as being composed of persons vested with power, jurisdiction and authority, and of whom certain duties are required, that is, as being composed or consisting of officers, particularly of judges; and I am apprehensive that it would be not less difficult to conceive of a court, in the meaning of the Constitution, as existing without officers, than it would to conceive of a Legislature without legislators, or of an officer without an office. If this is not a true, and the only explanation of the term *court*, as used in the Constitution and in the act referred to in the present bill, I shall wish to hear it otherwise explained. If the explanation is just, I believe it will be found in the sequel of debate to go towards a determination of the question relative to the constitutionality of the bill now under consideration.

I will now, sir, proceed to speak directly to the subject of the bill; and will consider in the first place, the constitutionality of repealing the act therein referred to.

If it should be found to be unconstitutional to repeal those acts, no consideration of expediency ought to have the least weight. As to the mere unconstitutionality of the measure, I am apprehensive this will be found not to be a question of vast intricacy and inexplicable doubt, unless we are disposed to make it such.

There are some things relating to this question, and which may tend in some measure to illustrate the subject, about which there can be no reasonable doubt. It will probably be admitted that the Constitution does not require the Legislature to furnish business sufficient to employ the time and talents of all the judges of all the courts of the United States, let their number be ever so great. It will probably be also admitted, that the Legislature are not restricted by the Constitution from so amending and altering the laws from time to time, as may on the one hand tend to diminish, and on the other to increase the business to be transacted in our judiciary courts respectively, nor are they restricted from transferring business from one judiciary court to another. And if the Legislature may, by way of transfer, or otherwise, diminish or withdraw one part of the business from a judiciary court, they may on the same general principle withdraw another, unless specially restricted by the Constitution. Consequently they may, if they see fit, withdraw the whole in the same way.

All this, it is believed, will not only be readily admitted, but that precedents, from the actual exercise of the power of the Legislature which is here mentioned, are abundantly furnished in the act itself which it is proposed to repeal. And a better authority in this particular case, cannot possibly exist, than what is furnished by this act. It is an authority which, as it applies to this particular case, is not inferior to the Constitution itself. It is an authority which can neither be explained away, nor misunderstood. It may with propriety be said, that in this particular case, it is an authority *instar omnium;* it is indeed equal to all others; because, if I am not mistaken, it absolutely, unequivocally determines the question relative to the constitutionality of the present bill. I should be willing, for myself, to rest the issue entirely on this ground. This is the principal ground that I shall take.

By section tenth of this law, the powers in general which, by the late law, were vested in the former circuit courts, are transferred from those courts to the circuit courts which are established by the present law.

By section twentieth, it is expressly provided that "all actions, suits, process, pleadings, and 'other proceedings, of what nature and kind soever, depending or existing in any of the present 'circuit courts of the United States, or in any of 'the present district courts of the United States, 'acting as circuit courts, shall be, and hereby are, 'continued over to the circuit courts established 'by this act."

By section tenth, it is provided that the circuit courts established by this act shall have cognizance of a great number of causes which were not in like manner cognizable before the former circuit courts, viz: "of all actions cognizable by the 'judicial authority of the United States, where 'the matter in dispute is between four and five 'hundred dollars."

By the twenty-fourth section, it is "enacted 'that the district courts of the United States, in 'and for the districts of Tennessee and Kentucky," in particular, "shall be, and hereby are, 'abolished."

By the twenty-seventh section, "it is further 'enacted," generally, "that the circuit courts of 'the United States, heretofore established, shall 'cease and be abolished."

Here we have a precedent for abolishing, by a single Legislative act, all the judicial courts of a certain description throughout the United States.

In short, sir, the present circuit courts are not only vested with powers different from the former circuit courts, but they are composed of different men; and that while the former judges of these courts are still living, during their good behaviour, and without their resignation, impeachment, or conviction.

All former circuit courts are, by the law in

question, *ipso facto* abolished. If the circuit courts, established by the law in question, are Constitutional courts, as I take for granted they are, then the former circuit courts do not now exist. And what has become of them? They have been annihilated. By what power have they been annihilated? The answer is ready. They have been annihilated by the same power which first gave them existence, and on the same likewise on which the present circuit courts now depend for their continuance in existence. If, as some gentlemen contend, it is a violation of the Constitution for the Legislature to abolish a judicial court, the law itself which it is in contemplation to repeal, must be an unconstitutional law. And I should not suppose it to be a violation of the Constitution for the Legislature to repeal an unconstitutional law.

The act in question, by which the late circuit courts were abolished, and the present circuit courts established, either is, or is not, a Constitutional act. If it is a Constitutional act, then it was not a violation of the Constitution for the last Congress to pass it. And if it was not a violation of the Constitution for the last Congress to pass the act by which they abolished the circuit courts which then were, and established those which now are, it cannot be any more a violation of the Constitution for the present Congress, by repealing that act, to abolish the circuit courts which now are, and to establish new ones. If, on the contrary, the act in question is an unconstitutional act, I should suppose that of itself was a sufficient reason for repealing it; and that the Constitution, instead of forbidding, demands a repeal of it. So that, whether it is or is not a Constitutional act, the result must be the same; to repeal it cannot be a violation of the Constitution.

I am not disposed to play upon terms, nor would I knowingly descend to a strain of mere metaphysical quibbling on this serious and important subject. I may be mistaken, but I feel as if the argument was not only rational, but absolutely conclusive. If it is fallacious, let it be fairly met, and the fallacy will easily be detected. The sentiments which I now express are not the cursory thoughts of a moment, which have occurred on the spur of the occasion. Whether right or wrong, they are the result of serious and mature reflection. If they are not sound, if they are not salutary, if they are not predicated on those principles of the Constitution which are to be considered as immoveable by any authority short of that by which they were first established, let them be rejected with all that abhorrence which the tongue of man can express, or the human mind conceive. For, I readily admit that the effects resulting from a violation of the Constitution by the Legislature are not less, but, if possible, infinitely more to be dreaded than what any gentleman has described.

Questions of this nature, sir, are not to be determined by mere popular declamation, by a flood of metaphors, nor yet by the less attractive force of opprobrious terms. It is ardently to be desired that nothing of this kind may ever be suffered to tarnish the deliberations of this House. The subject before us is such as merits the most impartial, candid, firm, and liberal attention. And such, I hope, it will receive. Admitting that the law in question was passed "in a gust of passion"—"at a midnight hour"—and even with views hostile to the equal rights of a free people—still it ought to be met, if met at all, on principles directly the reverse of all these. Otherwise, the remedy applied may prove to be infinitely worse than the disorder itself of which we complain.

It ought, I think, to be agreed by all, that the judges both of the supreme and of "such inferior courts as Congress may from time to time ordain and establish," shall hold their offices during good behaviour; because this is expressly provided for in the Constitution. But, sir, I conceive that, to abolish an office, and to remove an officer from an office while that office exists, are, in the meaning of the Constitution, as well as in common speech, distinct acts, however one of these acts may affect the other. To justify a distinction of this kind, I need only to refer again to the act proposed to be repealed. Is that an act for removing from office a number of judges who, by the Constitution, are entitled to hold their offices during good behaviour? If it is, I will agree with gentlemen on the other side, that it is an unconstitutional act. And I shall expect that, for this reason alone, if there was no other, they will agree with me, that it ought to be repealed. And not only so, but that it is the indispensable duty of the Legislature to repeal it, and to restore those courts which have been thus wantonly abolished, together with the judges who have been thus unconstitutionally removed from office. Even without the aid of the act in question, I believe the distinction between removing an officer and abolishing an office will be found to be a real and obvious one.

Congress are undoubtedly vested with Constitutional power to repeal the act for laying and collecting internal taxes; and in doing this, to abolish all the offices that have been instituted for that purpose. But it will not be pretended that Congress have power, by a Legislative act, either to appoint to, or remove from office, a single officer in that department. A power then to abolish an office, and a power to remove an officer from office are in their nature distinct powers. Admitting therefore, as I really do, that Congress are not, in the meaning of the Constitution, vested with power to remove an officer from office, (whether Judiciary or Executive it matters not,) it will by no means follow that they have not power to repeal the law instituting that office. Should a resolution be brought forward for repealing the law laying duties of excise on stills, &c., would any gentleman who might be opposed to such a resolution, venture to ground his opposition on the unconstitutionality of the measure from this consideration, that it would in effect abolish three-fourths of the offices in the revenue department of the Government, and in this indirect way deprive a host of officers of the offices which the Constitution has

placed as much without the power and control of the Legislature, as it has those of the Judiciary department? Sir, I believe not. The argument, however, would be neither more nor less conclusive in one case than in the other. It is urged, within doors and without, that to repeal the law would be no other than an indirect way of removing judicial officers from office, and of destroying that legal tenure by which they hold their offices. This argument, if such it may be called, and if I understand it, takes for granted the principal if not the only matter in dispute, viz: that every Judicial officer has such a tenure in his office, as puts the office itself entirely beyond the power and influence of the Legislature; so that when the Legislature have, by their own Legislative act, once instituted such an office, they can never afterwards abolish or touch that office without violating the Constitution under which they act. This, sir, is a doctrine abhorrent from the principles of all free governments; it is abhorrent from what has been demonstrated, as I conceive, to be consonant to the principles of the Constitution of the United States; it is abhorrent from the sense and uniform practice of the Legislature, ever since our Government was established; it is more especially abhorrent from the express provisions of the act itself, the repeal of which is now in contemplation.

But, sir, permit me to ask, what would be the consequence of adopting the sentiment of our opponents? Would not this be a cunning and indirect way of tying up the hands of the Legislature, and of restricting that body in the exercise of those powers which the Constitution has vested them with for the safety and welfare of the community at large? Would it not be a cunning and indirect way of fixing an immoveable and intolerable burden on the honest and industrious citizens of the United States, for the private emolument of court favorites, and idle sycophants, and useless drones? And would conduct like this in representatives evince a becoming and sacred regard to the spirit of the Constitution, and to the trust reposed in them by their constituents? Or, would it not rather furnish a melancholy instance of the betrayment of both? Let candor, let common sense, let solid learning, let sound policy, decide these solemn queries.

A decision grounded on all, or on any one of these principles, is such as we wish to abide. And I mean not to suggest a doubt but that our opponents are equally disposed to abide the same impartial test. By what I have now said, I mean no more than to express that clear conviction which exists in my own mind, that the principle for which our opponents contend has a natural and direct tendency to such a state of things as I have mentioned, however pure their views may be who contend for it.

Whether the judges will be entitled to retain their offices and to receive their salaries, provided the act should be repealed, is, as I conceive, a question entirely distinct from that which is now before the Committee. It may perhaps hereafter be made a question, either before the Legislature, or before a judicial court. Whenever this shall happen, then will be the proper time to consider it. If from a fair and candid examination of the subject it appears, as I think it does, that there is nothing in the Constitution which in the least degree militates against the repeal of the acts, then the only question which remains to be considered is, whether it is expedient to repeal them.

With respect to this question, I will not go into a minute discussion of it. I will only observe, in general, that from the documents which we are furnished with, and from the present situation and state of the nation in general, it does not appear necessary to retain all the courts which by that law have been constituted. It does not appear but that, to say the least, the business of these courts may be transacted equally well by a less number. And as it is in itself not only imprudent, but unjust, to lay unnecessary burdens on our constituents for the private advantage of individuals; as this would have a natural and most direct tendency to weaken the Government, by destroying the confidence of the citizens in it, and alienating their affections from it, I am, for myself, fully convinced that these laws ought to be repealed, and, with my present views of the subject, I shall give my vote accordingly; although, I confess, I am not entirely satisfied with the act proposed to be revived. And I will here take occasion to say, I should, for myself, wish to add two or three more judges to the Supreme Court, and to strike out of that act the sum of five hundred dollars, and insert a much larger sum. Perhaps something like this may take place, either as an amendment to the present bill, or at some future day. If such an amendment might be obtained, I should be much better pleased with it than I am at present.

Mr. T. Morris, of New York.—I did flatter myself when the honorable gentleman from Virginia (Mr. Thompson) detailed to this Committee the mode of administering justice in the State which he represents, that he would also have added what the decisions and opinions of the courts of that State have been, on questions analogous to those which we are called upon to decide. But, sir, since that honorable gentleman has thought proper to refer to his own State as far only as arguments drawn from thence could answer his purpose, and has not communicated information which might have been adduced from the same quarter, and much more applicable to the present question, I hope that it will not be deemed presumptuous in me to do it. There is not, sir, a State in the Union where the independence of the judiciary has been more highly valued than in Virginia. There is no part of America where a commission during good behaviour has been construed to confer a more independent official tenure on a judge than in the State to which I have alluded. The construction, sir, which my friends and myself are now contending for, is more fully and completely established by the opinions and decisions of the Virginia judges than it is by those of any other part of the Union. And, sir, if I am entitled to form an opinion from the evidence I hold in my hand of the decisions which have at different times been made by the judges of that State, if I

am permitted to draw any conclusion from the universal acquiescence which they have met with from its citizens, I must believe that if a bill similar to the one before us was introduced into the Virginia Assembly, that so far from meeting with the countenance of that body it would be scouted out of it with indignation. Having made these observations, I must entreat the patience of the Committee, while I read the opinions to which I have alluded.

[Here Mr. Randolph asked from what book these opinions were quoted.]

Mr. Morris replied, from a "Friend to the Constitution;" and added, that he believed that they were published with a view to this question; that they had been the subject of much examination and conversation, but that he had never heard their authenticity doubted.

Mr. Morris then read the following extracts:

"The Constitution of Virginia declares, that 'both Houses of Assembly shall, by joint ballot, appoint judges of the supreme court of appeals, and general court, judges in chancery, judges of admiralty, secretary and attorney general, to be commissioned by the Governor, and continue in office *during good behaviour*.'"

"The supreme court of appeals in Virginia consisted of the judges of the court of chancery, general court, and court of admiralty, who were by law declared to constitute a court of appeals. The Legislature found the system inconvenient, and determined to change it.

"In 1787 this subject was taken up by the Legislature; a system of circuit courts was adopted, and it was enacted, that the judges of the court of appeals should perform the duty of circuit judges. This law the judges refused to execute as unconstitutional, and agreed unanimously (Edmund Pendleton, George Wythe, John Blair, Paul Carrington, Peter Lyons, William Fleming, Henry Tazewell, Richard Cary, James Henry, and John Tyler, being present,) on a remonstrance, from which will be extracted such parts as are deemed applicable to the present inquiry."

"In deciding the act, the judges declare that the Constitution and the act are in opposition, and cannot exist together; and that the former must control the operation of the latter."

"The propriety and necessity of the independence of the judges is evident in reason and the nature of the office; since they are to decide between government and the people, as well as between contending citizens; and if they be dependent on either, corrupt influence may be apprehended, sacrificing the innocent to popular prejudice, and subjecting the poor to oppression and persecution by the rich: and this applies more forcibly to exclude dependence on the Legislature, a branch of which, in cases of impeachment, is itself a party."

"The people, continues the Court of Appeals, 'have, in their form of government, declared that the judges should hold their offices during good behaviour.' Their dependence would have been rendered complete by fixing the quantum of their salaries."

"On a subsequent occasion a contest, not very different in principle, arose, in the same State, between the Legislative and Judicial Departments, in which the point in controversy was again yielded by the Legislature."

"In 1794 it was enacted that the judges of the district courts, who are also judges of the general court, should so far exercise chancery jurisdiction as to grant injunctions to their own judgments, and decree finally, in cases of an equitable nature, which originated by way of injunction.

"It will be recollected, that by the Constitution of Virginia, the two Houses of Assembly, 'by joint ballot appoint judges of the supreme court of appeals and general court, judges in chancery,' &c.

"Under the act just stated, an application was made to the district court at Dumfries for an injunction, which was referred to the general court, and, on solemn consideration, was unanimously rejected, on the principle that the law was unconstitutional. In giving their opinions, some of the judges stated reasons entirely applicable to the subject we are now considering.

"Judge Roane observed, 'Though a judge is interested privately in preserving his independence, yet it is the right of the people which should govern him; who, in their sovereign character, have provided that the judges should be independent: so that, in fact, it is a controversy between the Legislature and the people, though perhaps the judges may be privately interested.

"If there can be judges in chancery, who have, on commission, during good behaviour, their tenure in office is absolutely at the will of the Legislature, and they consequently are not independent. The people of Virginia intended that the Judiciary should be independent of the other departments. They are to judge where the Legislature is a party, and therefore should be independent of it; otherwise they might judge corruptly in order to please the Legislature, and be consequently continued in office. It is an acknowledged principle in all countries that no man shall be judge in his own cause; but it is nearly the same thing where the tribunal of justice is under the influence of a party. If the Legislature can transfer from Constitutional to Legislative courts, all judicial powers, these dependent tribunals, being the creatures of the Legislature itself, will not dare to oppose an unconstitutional law."

"Judge Tyler.—The Constitution says, that 'judges in chancery shall be appointed by joint ballot of both Houses of Assembly, and commissioned by the Governor during good behaviour;' and for the most valuable purpose—to secure the 'independence of the Judiciary.' Contrary to this express direction, which admits of no doubt, implication, or nice construction, that bane to political freedom, the Legislature, has made the appointment by an act mandatory to the judges, leaving them not at liberty to accept or refuse the office conferred, which is a right every citizen enjoys in every other case; a right too sacred to be yielded to any power on earth; but were I willing to do it, as relates to myself, as a judge I ought not, because it would frustrate that important object beforementioned, intended by the Constitution to be kept sacred, for the wisest and best of purposes: to wit, that justice and the law be done to all manner of persons, without fear or reward. For how would the right of individuals stand when brought in contest with the public, or even an influential character, if the judges may be removed from office by the same power which appointed them, to wit, by a statute appointment, as in this case, and by a statute disappointment, as was the case in the courts of appeals? Might not danger be apprehended from this source when future times shall be more corrupt?" "Let me now compare the law with the Constitution in another point; that of the want of a commission during good behaviour, and the reasons will

fully and forcibly apply. When I receive the commission I see the ground on which I stand; I see that my own integrity is that ground, and no opinions but such as are derived from base motives can be sufficient to remove me from office; in which case, whensoever an appeal is made to me by an injured citizen, I will do him justice as far as my mental powers will enable me to discover it, without any apprehensions of an unjust attack."

"Judge Tucker, in a very elaborate opinion, which will do credit to his talents so long as it shall be read, thus expressed himself:

"The independence of the Judiciary results from the tenure of their office, which the Constitution declares shall be during good behaviour. The offices which they are to fill must therefore be permanent as the Constitution itself, and not liable to be discontinued or annihilated by any other branch of the Government. Hence the Constitution has provided that the Judiciary department should be arranged in such a manner as not to be subject to Legislative control. The court of appeals, court of chancery, and a general court, are tribunals expressly required by it; and in these courts the Judiciary power is either immediately or ultimately vested.

"These courts can neither be annihilated nor discontinued by any Legislative act, nor can the judges of them be removed from their office for any cause except a breach of their good behaviour."

"But if the Legislature might at any time discontinue or annihilate either of these courts, it is plain that their tenure of office might be changed, since a judge, without any breach of good behaviour, might in effect be removed from office by annihilating or discontinuing the office itself."

Mr. MORRIS then proceeded: I have stated these opinions at full length, because I conceive that they determine every principle that we are contending for. We find, sir, the ablest judges who have graced the bench of Virginia, deliberately declaring acts of the Legislature of that State unconstitutional. We find them contending for, and maintaining their independence against all legislative attempts to lessen or destroy it. We find them claiming this independence from the words of a Constitution, which declares that they shall be commissioned during good behaviour. We find, also, that in a contest on this subject between the Legislature and the Judiciary, that the latter prevailed; from whence we have a right to infer, that the public sentiment was with the judges. Why then, Mr. Chairman, are most of the gentlemen who represent that State, anxious to divest the General Government of a privilege so highly valued in their own State? Is the independence of the national Judiciary of less importance than that of Virginia? I trust it is not. A State Judiciary, according to the opinion of the Virginia judges, has to protect a citizen against the Government as well as to decide between citizen and citizen. What have the national tribunals to do? Why, sir, they have not only to protect a citizen against a State government, not only to protect him also against the General Government, but, sir, they may be even called upon to decide between a State and the General Government. These are the great purposes for which your Constitution has vested your Judiciary with powers independent of other departments of the Government, that it may effectually interpose between the meanest of your citizens and secure them against the oppression either of an arbitrary Legislature or a tyrannical Executive.

Sir, previous to the commitment of this bill, when an incidental question arose on it in the House, an honorable gentleman from Virginia (Mr. RANDOLPH) spoke of the present as a very favorable moment for us to determine this great Constitutional question. An honorable gentleman from Kentucky has this day expressed the same sentiment. Sir, I cannot agree with either of these honorable gentlemen. I believe that this is of all moments the most unfortunate for such a determination. I believe so, because such have been the fatal effects of Executive persecution, that it has wrought up party spirit to its highest pitch of irritation. [Here there was a cry of order from different parts of the House.]

Mr. MORRIS observed that he did not mean to say anything that was disorderly, but that having occasion to allude to the present state of irritation of the public mind, he could not help attributing it to what he believed to be the true cause of it. Mr. M. then proceeded: Sir, I am incapable of attributing to a majority of this House a settled determination of violating the Constitution of their country, but I do believe that if they act from the impulse of the present moment, that valuable instrument will be sacrificed at the altar of resentment. And how can this belief be resisted, when you hear so respectable a gentleman as the honorable member from Kentucky so far get the better of his usual discretion as to permit himself to say in his place, that with the public sentiment judges and other officers ought to be changed, and that he would vote for the bill because in no other way can judges be driven from their posts? Sir, such a sentiment expressed on the floor of this House, is of itself convincing, that gentlemen are not in a state of mind to examine this subject coolly and dispassionately, and therefore I must repeat again, that it is the most unfortunate of all moments for its discussion.

The further consideration of the bill was then postponed till to-morrow.

THURSDAY, February 18.

Memorials of sundry inhabitants of the city and county of Philadelphia, in the State of Pennsylvania, whose names are thereunto subscribed, were presented to the House and read, respectively praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one entitled "An act to provide for the more convenient organization of the Courts of the United States."—Referred.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred a resolution of this House of the twenty-ninth ultimo, presented a bill for the accommodation of persons concerned in certain fisheries therein mentioned; which was read twice and committed to

a Committee of the Whole House on Monday next.

A Message was received from the President of the United States, transmitting a letter from the Secretary of War on the subject of certain lands in the neighborhood of our military posts, on which it might be expedient for the Legislature to make some provisions. A letter was also received from the Governor of Indiana, on the same subject. The said Message and letter were read, and ordered to lie on the table.

THE JUDICIARY BILL.

The House again resolved itself into a Committee of the Whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States and for other purposes."

Mr. STANLEY.—Mr. Chairman, the impression I feel of the importance of the question at present before us, would alone induce me to assign the reasons of the vote which I shall give; but, sir, I am urged by another strong reason to justify that vote. The Legislature of the State of North Carolina, a part of which I have the honor to represent, has thought proper to recommend to her Representatives on this floor, to use their endeavors to effect the measure contemplated by the bill on your table for the repeal of the act of the last Congress, entitled "An act for the more convenient organization of the Courts of the United States." Holding myself responsible to my constituents for the vote which I shall give on this, as on every other question, I cannot admit the right of any other authority, however respectable, to control, or in any manner to influence my conduct. The high respect I feel, and which is justly due to the honorable body which has made this recommendation, has induced me to review, with deliberation and caution, the opinion I had formed, and though it is painful to differ from those whom I esteem, yet my duty to my constituents compels me to do so in this instance. I owe, also, a duty to myself, to give no vote which my conscience and my understanding do not approve.

Every measure which is brought under the consideration of a Legislature must first be tested by its expediency. Unhappily, in the present instance, another question arises—its constitutionality. I will endeavor, concisely, to examine the subject on both those points. And, first, as to the expediency of ths measure. In order to form a correct estimate between the present Judiciary system of the courts of the United States and that for which it was substituted, it is proper to take a comparative view of both.

Under the former system, there were six judges of the Supreme Court of the United States, who held two sessions of the Supreme Court in each year, at the seat of Government. Those judges also held in each State a circuit court, two terms in each year, in which the judge of the district was associated with the circuit judge. The organization of the district courts having jurisdiction, principally, of matters affecting the revenue and admiralty causes, not being connected with the present question, need not be examined. From the errors of this system resulted, first, a delay of justice. The judges bound to hold courts in succession at remote parts of the continent, were continually travelling; from the variety of accidents to which travellers are subjected in this country, from the condition of roads and overflowing of rivers, it frequently happened that the judges failed in their attempts to get to the courts, or arrived so late that little business was done. Suitors, jurors, and witnesses, were subjected to the trouble and expense of attending courts without the accomplishment of their business; hence resulted a delay of justice. In the State to which I belong, during the few years existence of the former system, this was the case frequently.

Another great evil resulting from that system was, its tendency to lessen the character and respectability of the Federal bench. Those best acquainted with the profession of the law will most readily admit, that even a life of patient study is unequal to the complete attainment of principles and rules; and that much labor and industry are necessary to preserve that which is gained. Consequently, that extent of legal knowledge, correctness of judgment, and respectability of character, which should designate the persons qualified for this important trust were seldom to be found, but in men far advanced in years. Men possessing these qualifications, not inured to labor, are seldom equal to the fatigue of their duty; or, if at the time of appointment, fast approaching to the infirmities of age, were not to be expected to relinquish the enjoyments of private life for an office, which, however honorable, subjected them to the fatigue of a day laborer. The office, with its incumbrances, was, as it were, offered to the lowest bidder. And men best qualified to honor the bench, were driven from it. True it is, men have been found eminently uniting virtue and talents, who have accepted the office under all its distressing circumstances, but we owe this rather to their patriotism than to the advantages of the situation. Let it also be remembered that, in some instances, gentlemen who would have adorned the seat of justice of any country, were compelled to relinquish their seats; and in others, refused to accept the appointment.

Another error of that system was, that the judges of the Supreme Court, the court in the last resort, before whom the errors of the inferior circuit courts were to be corrected, were the same men who presided in those circuit courts. With great deference for the opinions of gentlemen who prefer that system, I pronounce my opinion, that its errors were radical; that those who justly estimated the importance to our interest and national character, of a speedy and correct administration of justice, ought to have desired a change. The present system has happily obviated these errors. The States are divided into six circuits; in each State is appointed one judge, called a circuit judge; the judges of the States, composing one circuit, ride together into the States of their circuit, and together hold the court. The much smaller distance which those judges have to travel

than the circuit judges, under the former system, secures their due attendance; a portion of their time is left them to study and reflection, and the same persons presiding at successive terms, a uniformity of decision is preserved. The six former judges hold the Supreme Court, with original Constitutional jurisdiction in matters of the utmost national importance, and appellate jurisdiction, in certain cases, where the sum in dispute is two thousand dollars; they are also the court in which the errors of the circuit court are examined and corrected.

If, sir, the organization of the circuit courts could have been improved by a system preferable to the present, it is my misfortune not yet to have heard of it. I will now, sir, examine the objections which are urged against the present system, and the gentleman from Kentucky (Mr. Davis) must pardon me, if, in doing so, I notice some not yet advanced on this floor; which, though he is pleased to term "shadows," have yet been imposed on the American people for *substance*. The honorable member from Virginia (Mr. Thompson) has charged this system with a great increase of expense. What, sir, is the amount of this increase of expense? The estimate from the Treasury Department informs us that the salaries of the judges created under the act of last Congress, and the addition made to the salaries of the judges of Tennessee, Kentucky, and Northwest Territory, amount to thirty-two thousand dollars. Some contingent expenses are necessary, which cannot be estimated at more than eight thousand dollars; making, together, the sum of forty thousand dollars; a sum which, when compared with the magnitude of the object, or the vast revenue and resources of the country, becomes an atom, the dust of the balance. But, sir, permit me to ask, when was it discovered that the people of America were so sordid as to consider their gold their chief good? I had believed, sir, they justly estimated it the instrument by which their good might be promoted. When we took the field for independence, did any cool calculator estimate the cost? Is our Republican Government, founded on, and guaranteeing, the equal rights of man, preferred, because of its cheapness? No, sir; with the honest pride of an American, I reply, they act from nobler motives. If the purpose on which the money is bestowed be necessary, the people ought to submit to the expense; for an improvement in so valuable an institution as the Judiciary, by which the weak and the poor are protected against the great and the opulent, the people will submit to it.

The President has laid before us a document, exhibiting the business which has been decided in the Federal courts, with a statement of what was pending when this document was taken. I shall say nothing further of the errors which have been detected in this document, than that I do not attribute them to the Executive; as he received it, I presume, he submitted it to us. But, sir, I cannot but express my admiration of the novelty, if not the solidity of the argument, founded on this document, that courts are necessary and useful, in proportion to the quantity of business before them. Can gentlemen believe that because, at the time of taking these statements, there was less business than there had been before, that, therefore, litigation would decline; that nothing would exist but peace and good will among men? If this is not believed; if commerce will continue, and passion rule us, so long will there be litigation, so long will there be a necessity for courts; their existence will be beneficial, though without business; they show to the citizens and to the world, that we are prepared to punish crimes and administer justice; and it becomes our duty to establish that system which shall best promote the great objects of a speedy and correct administration of justice. The argument drawn from this document is fallacious on another ground; the paucity of suits is owing, not to the want of litigation on questions within Federal jurisdiction, but because of the erroneous organization of the courts under the former system, suitors were driven into the State courts.

The same honorable member from Virginia, has told us the former courts were sufficient; and, to establish his point, has adduced evidence from that respectable State, the Ancient Dominion; the gentleman tells us that, in that State, one venerable man has the whole extensive chancery jurisdiction of the State, the docket of which contains 2,600 causes. Without inquiring what portion of this multitude of business the judge is able to perform, I do not hesitate to say, the fact can have no weight, in establishing the gentleman's argument. We did not complain, sir, that, under the former system, the judges had too extensive a jurisdiction, nor that there was a multitude of causes; but that the discharge of their duty, however limited their jurisdiction, however few the causes, compelled them to a perpetual travelling, leaving them no time for study, and subjecting the courts to delay; though their jurisdiction had been limited to one species of action only, and the business in court reduced to a single cause, the labor and uncertainty of travelling from New Hampshire to Georgia was still the same.

It is objected against the act proposed to be repealed, that a dangerous patronage is created by it for the President. I shall pass over what I consider an inconsistency in this objection coming from gentlemen who profess that implicit confidence is due to the man chosen by the people, who, in his appointments, speaks not less the voice of the people than the voice of God, and examine the weight of the objection. If this apprehended patronage means the power of appointing the Judiciary, that power is given by the Constitution, and is the same, whether the power of the Judiciary be vested in six or in sixteen judges. If it fear an undue control over the people in favor of the Executive, through the Judiciary, make the judges as independent as we contend they are and ought to be, and they are placed beyond the necessity of descending to the practice of improper means to preserve Executive favor.

We have been told, sir, that it is necessary the judges should ride into the States to gain a knowledge of the laws by which, in many cases, they are to decide. Until this occasion I have never heard that the laws of a country could only be acquired in the atmosphere of that country where they are in force. Nine-tenths of the decisions in our State courts and Federal courts turn on questions of common law; yet, has it ever been suggested that an American judge was incompetent to decide on common law questions, because he had not studied in England? No, sir, the knowledge in both cases may be acquired in the closet. To these observations permit me to add, that the remonstrances from the bar of Philadelphia, composed of gentlemen no less celebrated for the respectability of their private than of their professional character, who, on this occasion, so interesting to the welfare of their country, have sacrificed their political prejudices, strongly expressing their decided preference of the present system to the former, is, to my mind, conclusive, that it ought to be preferred. I am, therefore, of opinion, that it is inexpedient to pass the present repealing bill; and so long as my opinion is supported by the respectable authority I have just alluded to, and opposed only by the objections which I have noticed, I shall feel satisfied that opinion is correct.

In approaching the second question which I proposed to examine—the constitutionality of the measure—whether I reflect on the magnitude of the question on the one hand, or my inability on the other, I am, indeed, humbled before the undertaking.

Without examining whether Government, according to the modern opinion, should be founded on the reason and sense of justice of man, it is certain our Government is calculated to guard against his weakness and his wickedness. Our Government has been particularly cautious on this subject; it has left nothing to the hazard of reason or sense of justice; it has carefully delegated powers to three distinct departments, and separated these departments by boundaries plainly marked and formed, each so as not to control, at least to check, the other. The Legislative powers, though vested in men chosen frequently and by the people themselves in one branch, and by the immediate agents of the people in the other, are nevertheless the object of suspicion and caution. Their powers, far from resting on their discretion or sense of expediency, are expressly and cautiously limited. The Executive conditional veto forms one check on the Legislature; the Judiciary, I shall contend, are a check on both. Here, permit me to say, that from the spirit and the words of our Constitution, I infer that the Judiciary are a co-ordinate department with the Executive and Legislative. The framers of our Constitution, satisfied that the powers of well organized Governments ought to be divided into three branches—Legislative, Executive, and Judicial—have nowhere expressly declared there shall be such departments, but, after premising the objects of the Government, proceed to ordain how the Legislature shall be composed; and article two, section two, declares, "The power shall be 'vested in a President of the United States of 'America; he shall hold his office during the term 'of four years," and prescribes the mode of election. Article three, section one, also declares, "The 'Judicial power of the United States shall be vested in one Supreme Court and in such inferior 'courts as the Congress may from time to time 'ordain and establish," and the judges of the supreme and inferior courts shall hold, &c., during good behaviour. By comparing these sections of the Constitution, it appears the Judiciary and the Executive are expressly created by the Constitution, and nothing is left to the discretion of Congress, as to the existence of these departments; they are created by the same words; and if the Legislature claim a right to put down the Judiciary at pleasure, before the happening of that event till which the Constitution secures their offices—their misbehaviour—they may as well assume the right to remove the President before the happening of that event till which his office is secured, to wit, the expiration of four years. I shall attempt to establish as a first principle, that the Judiciary are a check on the Legislature, and thence to show first, that, by the spirit of our Constitution, the Judiciary ought to be independent, beyond the control or influence of either of the other departments of power; and, secondly, that, by the words of the Constitution, they are so secured.

First, then, that the Judiciary are a check on the Legislature. In the Constitution, we find certain powers delegated to Congress; we also find they are prohibited from exercising certain powers; among which are, they shall pass no *ex post facto* law, no bill of attainder, no law respecting religion, &c. Should, unhappily, a Legislature be found who, from weakness or wickedness, or the union of both, should transgress the bounds prescribed, what is the security of the citizen? After all the experience derived from the example of other Governments, after all the deliberation and wisdom of our sages who framed the Constitution, are we left, in this important instance, as under the despotism of a monarch, to seek redress through the throes and convulsions of a revolution? No, sir. The Judiciary are our security. The Legislature may enact penalties, and denounce punishments against those who do not yield obedience to their unconstitutional acts; their penalties cannot be exacted, nor punishments inflicted, without the judgment of a court. The judges are to expound the law, and that fundamental, paramount law, the Constitution. To this purpose they are sworn to support the Constitution. While the Judiciary firmly, independently, and uprightly, discharge their duty and declare the act of the Legislature contrary to the Constitution, to be void, the Legislature are checked, and the citizen shielded from oppression and persecution. But, ask gentlemen whence do the courts derive this power, and the honorable gentleman from Virginia, (Mr. Thompson) says, we are contending for this common law doctrine, that the courts are a check on the Legislature. If I misunderstood the gentleman, I trust he will

correct me. Sir, that gentleman, I am willing to presume, knows, what I assure him no gentleman with whom on this occasion I act, is ignorant of, that this is not a common law doctrine; that in England their courts have no check on the Legislature—their Parliament are emphatically styled omnipotent, and if they violate the few natural rights that remain to the citizens, they have no remedy but in a resort to revolutionary principles; it was the want of this check to the oppressions of their rulers, which has produced civil wars, and driven one monarch from his kingdom, and sent another to the scaffold. This power exists in no other Government, because under no other Government does there exist a Legislature with limited powers; under our Government it is the very essence, the constitution of a court, the oath enjoined on them to support the Constitution. The exercise and the admission of this right are not new in America; instances must be in the recollection of every gentleman. I will cite a few most prominent: The honorable member (Mr. Thomson) has been pleased to call the attention of the Committee to the examples drawn from his State; I beg leave to profit from the same source. In 1787, the Legislature of that State passed an act making new arrangements in the jurisdiction of the courts. The judges, among whom was that venerable gentleman mentioned by the member from that State, whose merits and worth command the sincere homage of my respects, protested against this act, and refused to carry it into effect; the Legislature acquiesced, and the law was repealed.

Upon the imposition of the carriage tax by Congress, a citizen of Virginia refused to pay the tax, on the ground that it was unconstitutionally laid. He was sued for the penalty in the circuit court of that State, from whence, by writ of error, the suit came before the Supreme Court; in this case the defendant relied solely on the unconstitutionality of the act of Congress, and on this ground was defended by the attorney general of the State of Virginia, and the attorney general of the State of Pennsylvania. At this time, then, it appears that these learned gentlemen, the judges, and the citizens, thought the court competent to relieve in case the law was judged to be unconstitutional. In 1792, Congress passed an act imposing certain duties respecting invalid pensioners, upon the judges of the circuit court. The judges, at the first court after this act, protested against it; their protests were transmitted to the President of the United States—that President who had presided in the General Convention which framed the Constitution, and, therefore, as likely to understand the powers of Congress on the judiciary as any other man, so far sanctioned their opinions as to transmit them to the next Congress, where the act was reconsidered and repealed. I beg leave, also, to allude to the authority before mentioned, by my friend from Pennsylvania, (Mr. Hemphill,) which I should think of some weight here. It is the opinion of a gentleman, venerable for his age, respectable for legal knowledge, and distinguished for what, in the fashionable language of the day, are termed republican principles. I mean the Executive of Pennsylvania; that gentleman, in assigning to the Legislature of his State his reasons for not approving an act they had laid before him, after expressing his doubts of the constitutionality of the act, declares, "he cannot, from a confidence in 'the legal knowledge, integrity, and fortitude of 'his former brethren in the Supreme Court, risk 'his character in a judicial decision on this ques-'tion, when he does not see any advantage to be 'derived to his country from a possibility of suc-'cess." If any words can make more plain the opinion here conveyed, it is that he considers the judges have the power and will exercise it, to declare the act unconstitutional.

To my mind, these considerations are satisfactory, that, from the very constitution of our courts, from the practice and admission of our State courts and State Legislatures, and Federal courts, and Federal Legislature, that the judges of the United States, sitting in court, have the power, and by oath are bound to pronounce, that an act contrary to the Constitution, is void. From the establishment of this proposition, that the judges are the expounders of the Constitution, and the laws made under it, and that they are thereby a check on the Legislature, I shall infer that, by the spirit of our Constitution, they ought to be independent of the other branches of Government, but particularly so of the Legislature. The concentrating the branches of power either Executive and Legislative, or Legislative and Judiciary, in the same hands, is the very essence of tyranny; in proportion as we advance towards the union of those powers, in the same proportion do we recede from liberty. Are these departments separate, unconnected—if the Legislature by any means procure their will either directly or indirectly, to be substituted for or to overrule judicial judgment? Whether the Legislature expound and adjudge their acts themselves, or submit them to the exposition and judgment of a judiciary subservient to them, is essentially the same. If the Legislature exercise the power of removal from office by the direct means of a vote of removal, or by the indirect means, the legislative legerdemain of a repealing act, is precisely the same thing, the judges are no longer independent, but dependent on the Legislature for their offices, and subject to their control; a consequence entirely repugnant to the spirit of our Constitution. I shall attempt to show, that by the words of our Constitution, the judges are placed beyond Legislative control. Article three, section one: "The 'judges, both of the supreme and inferior courts, 'shall hold their offices during good behaviour, 'and shall, at stated times, receive for their ser-'vices a compensation which shall not be dimin-'ished during their continuance in office." Until the contemplation of the present measure, I incline to believe, it never entered the mind of any man acquainted with this clause of the Constitution, that judges should be removed otherwise than by impeachment for misdemeanor. The advocates for this Legislative power contend that the tenure

of "good behaviour" in this article of the Constitution is intended to restrict Executive and not Legislative power. It does not appear probable that an express restriction should be introduced against a power which is nowhere expressly granted; for gentlemen know that the Executive power of removal from office is a power admitted from construction, and not founded on anything drawn from the Constitution. I say this rather, because, by the Constitution, the aid of the Senate is necessary to appoint, and *a fortiori* should be necessary to remove. It is important to ascertain what was the intention of the framers of the Constitution in introducing the words "good behaviour." The most correct source in our power from which this aid may be derived, is the writings and opinions at that day of those who aided in the great work. Among those publications which were written for the purpose of explaining and recommending this Constitution, the most celebrated are those pieces over the signature of "Publius," written by the pens of gentlemen of leading influence in the Convention, and whose talents and patriotism are still honored by the nation. In that part of this work which treats of the tenure of the office of judge during "good behaviour," I find this strong expression:

"The standard of good behaviour for the continuance in office of the judicial magistracy, is certainly one of the most valuable of the modern improvements in the practice of Government. In a monarchy, it is an excellent barrier to the despotism of the prince. In a republic, it is a no less excellent barrier to the encroachments and oppressions of the representative body."

This, sir, to my mind, is conclusive, that the Convention intended this tenure as a restriction no less on Legislative than on Executive power, and that, in this sense of the phrase, the people of America received this part of the Constitution. In ascertaining the import of the words "during good behaviour," it is certainly important to inquire the end to which they have been used in other similar cases. My colleague (Mr. Henderson) has, with much abler talents, shown that, in most of the State constitutions, which existed before our Federal Constitution, these words are used to fix the tenure of offices where the Executive have neither express nor constructive power of removal; consequently, they are in those constitutions restrictive of the Legislative power. If, then, the framers of our Constitution borrowed this tenure from these State constitutions, it is fair and reasonable to conclude they used them in the sense in which they were previously received. But, says my colleague on the other side of the House, (Mr. Robert Williams,) the judges in England hold their offices by the tenure of "good behaviour," and yet are removable on an address from both Houses of Parliament, and he infers that the terms may have been taken from England. To this I will first observe, that no fair argument can be drawn from the existence of this Legislative power there, for the exercise here. The mode of appointment there may render such control over the Executive necessary, which, from the provisions of our Constitution, are not wanted here. In England, the King has the sole power of appointment—the people have no previous check. In this country, the Executive appointment is checked by the requisite sanction of the Senate. But is this Legislative power in Great Britain usurped by construction? No, if the gentleman will read again the statute of 13 William III., he will find that this power of removal is expressly granted by the Crown to Parliament. If, then, one convention had this statute before them, in adopting that part which relates to the tenure of office, and omitting that part which gives the power of removal, it is not to be presumed they intended so important a power should depend on construction. The same gentleman (Mr. Robert Williams) also contended that it could not be presumed the Convention intended to restrict the power of the Representatives of the people, the friends of the people. What will the gentleman say of the correctness of his opinion, when I remind him that our powers are all expressly restricted; that the same article which fixes the tenure of "good behaviour," expressly and undoubtedly guards against the power of the Representatives of the people, the friends of the people, by securing the salaries of the judges undiminished during their continuance in office.

But, as strong an argument as can be used against this constructive Legislative power, is the evils which may result from the exercise of it. Popular assemblies are as much under the dominance of passion as individuals; they feel as sensibly and resent as malignantly. He who has not made this observation is a stranger to what has passed in all popular governments; and I am sorry to add, a stranger to what has so lately passed in this country. By the exercise of this power, firm, upright judges, men of unbending virtue, are to be removed upon every change of administration, to make way for more pliant minions, the humble instruments of the Legislature. The bulwark of our liberties against Legislative encroachment, the independence and purity of our Judiciary, is tumbled into ruins, and the rights of millions are crushed by its fall. The sacred altar of justice is polluted, the sword of justice becomes the rod of oppression. On the other hand, what danger is to be apprehended from that independence of the judges for which the friends of the Constitution contend? Not that bad and corrupt men will be fastened on us. No, the Constitution provides for their removal by impeachment. Not that they will viciously oppose the Constitutional acts of the Legislature. No, the Legislature are a check upon them by the mode of impeachment, in which the House is the accuser and the Senate the judge. If the judge be corrupt, if he misdemean himself, he may be removed. If he continue pure and upright, he ought not to be removed; no earthly power, but the mighty hand of the people, which formed the Constitution and can destroy it, can legally remove him. Should this measure be adopted, and the independence of our Judiciary destroyed; should the administration of our Government un-

fortunately pass into the hands of men who feel power and forget right, our Constitution becomes indeed "a Lilliputian tie;" and this measure will be the first link in that chain of measures which will add the name of America to the melancholy catalogue of fallen Republics.

Mr. Giles said that he felt some degree of apprehension, that, in the course he deemed it necessary to take in the discussion of this question, some observations might fall from him which might not be in strict harmony with the feelings of some gentlemen of the committee. He should regret, however, if a compliance with a sense of duty should produce that effect. He said, therefore, that he wished to apprize gentlemen, that he intended to direct his observations as much as possible to the effects and tendencies of measures; and that when he was constrained to speak of the views of gentlemen, it would be with respect to what he conceived to be their opinions in relation to the general interests, and not to private gratifications. He said it was natural that men should differ in the choice of means to produce a given end, and more natural that they should differ in the choice of political means than any other; because the subject presented more complicated and variable objects, out of which to make a choice. Accordingly, a great portion of the human mind has been at all times directed towards monarchy, as the best form of government to enforce obedience and insure the general happiness; whereas another portion of the human mind has given a preference to the republican form, as best calculated to produce the same end; and there is no reason for applying improper motives to individuals who should give a preference to either of the principles, provided in doing so they follow the honest dictates of their own judgments. It must be obvious to the most common observer, that, from the commencement of the Government of the United States, and perhaps before it, a difference of opinion existed among the citizens, having more or less reference to these two extreme fundamental points, and that it manifested itself in the modification or administration of the Government as soon as it was put in operation. On one side, it was contended, that in the organization of the Constitution a due apportionment of authority had not been made among the several departments; that the Legislature was too powerful for the Executive department; and to create and preserve a proper equipoise, it was necessary to infuse into the Executive department, by legislation, all artificial powers compatible with the Constitution, upon which the most diffusive construction was given; or, in other words, to place in Executive hands all the patronage it was possible to create, for the purpose of protecting the President against the full force of his Constitutional responsibility to the people. On the other side, it was contended, that the doctrine of patronage was repugnant to the opinions and feelings of the people; that it was unnecessary, expensive, and oppressive, and that the highest energy the Government could possess, would flow from the confidence of the mass of the people, founded upon their own sense of their common interests. Hence, what is called party in the United States, grew up from a division of opinion respecting these two great characteristic principles. Patronage, or the creation of partial interest for the protection and support of Government, on the one side: On the other side, to effect the same end, a fair responsibility of all representatives to the people; an adherence to the general interests, and a reliance on the confidence of the people at large, resulting from a sense of their common interests. A variety of circumstances existed in the United States, at the commencement of the Government, and a great number of favorable incidents continued afterwards to arise, which gave the patronage system the preponderancy, during the first three Presidential terms of election; notwithstanding it was evident, that the system was adopted and pursued in direct hostility to the feelings and opinions of a great portion of the American people. The Government was ushered into operation under a vast excitement of federal fervor, flowing from its recent triumph on the question of adopting the Constitution. At that time a considerable debt was afloat in the United States, which had grown out of the Revolutionary war. This debt was of two kinds: the debt proper of the United States, or engagements made by the United States in their federal capacity; the other, the State debts, or engagements entered into by the respective States for the support of the common cause.

The favorers of the patronage system readily availed themselves of these materials for erecting a moneyed interest; gave to it a stability, or qualified perpetuity, and calculated upon its certain support in all their measures of irresponsibility.

This was done not only by funding the debt proper of the United States, but by assuming the payment of the State debts, and funding them also; and it is believed, extending the assumption beyond the actual engagements of the States. Hence the Federal axiom, that a public debt is a public blessing. Shortly after this event, an Indian war sprang up—he would not say by what means—in consequence of which an army was added to the list of patronage. The Algerines commenced a predatory war upon the commerce of the United States, and thence a navy formed a new item of patronage. Taxes became necessary to meet the expenses of this system, and an arrangement of internal taxes, an excise, &c., still swelled the list of patronage. But the circumstance which most favored this system was, the breaking out of a tremendous and unprecedented war in those countries of Europe with which the United States had the most intimate relations. The feelings and sympathies of the people of the United States were so strongly attracted by the tremendous scenes existing there, that they considered their own internal concerns in a secondary point of view. After a variable conduct had been pursued by the United States in relation to these events, the depredations committed upon commerce, and the excitements produced thereby, enabled the Administration to indulge themselves in a more

decisive course, and they at once pushed forward the people to the X, Y, Z, of their political alphabet, before they had well learned and understood the A, B, C, of the principles of the Administration.

Armies and navies were raised, and a variety of other schemes of expense were adopted, which placed the Administration in the embarrassing predicament, either to violate their faith with their public creditors, or to resort to new taxes. The latter alternative was preferred, accompanied with other strong coercive measures to enforce obedience. A land tax was laid for two millions of dollars. This measure awakened the people to a sense of their situation; and shook to the foundation all those federal ramparts which had been planned with so much ingenuity, and erected around the Executive with so much expense and labor. Another circumstance peculiarly favorable to the advocates of Executive patronage was, that during the two first Presidential terms, the Chief Executive Magistrate possessed a greater degree of popularity and the confidence of the people than ever was, or perhaps will ever be again attached to the person occupying that dignified station. The general disquietude which manifested itself in consequence of these enterprising measures, in the year 1800, induced the Federal party to apprehend that they had pushed their principles too far, and they began to entertain doubts of the result of the Presidential election, which was approaching. In this state of things, it was natural for them to look out for some department of the Government in which they could entrench themselves in the event of an unsuccessful issue in the election, and continue to support those favorite principles of irresponsibility which they could never consent to abandon.

The Judiciary department, of course, presented itself as best fitted for their object, not only because it was already filled with men who had manifested the most indecorous zeal in favor of their principles, but because they held their offices by indefinite tenures, and of course were further removed from any responsibility to the people, than either of the other departments. Accordingly, on the 11th of March 1800, a bill for the more convenient organization of the courts of the United States, was presented to the House of Representatives. This bill appears to have had for its objects, First, the gradual demolition of the State courts, by increasing the number and extending the jurisdiction of the Federal courts. Second, to afford additional protection to the principles of the then existing Administration by creating a new corps of judges of concurring political opinions. This bill, however, was not passed into a law during that session of Congress, perhaps from an apprehension that it would tend to increase the disquietudes which other measures had before excited, and therefore operate unfavorably to the approaching Presidential election. At the next session, after the result of the late election was ascertained, the bill, after having undergone some considerable alterations, was passed into the law now under discussion. This law, it is now said, is inviolable and irrepealable. It is said, the independence of the judge will be thereby immolated. Yes, sir, this law is now considered as the sanctuary of the principles of the last Administration, and the tenures of the judges as the horns of inviolability within that sanctuary. He said, we are now called upon to rally round the Constitution as the ark of our political safety. Gentlemen, discarding all generalising expressions, and the spirit of the instrument, tie down all construction to the strict letter of the Constitution. He said, it gave him great pleasure to meet gentlemen on this ground; and the more so, because he had long been in the habit of hearing very different language from the same gentlemen. He had long been in the habit of hearing the same gentlemen speak of the expressions of "the common defence and the general welfare," as the only valuable part of the Constitution; that they were sufficient to obliterate all specifications and limitations of power. That the Constitution was a mere nose of wax, yielding to every impression it received. That every "opening wedge" which was driven into it, was highly beneficial in severing asunder the limitations and restrictions of power. That the republicanism it secured, meant anything or nothing. It gave him therefore, great pleasure at this time to obey the injunctions of gentlemen in rallying round the Constitution as the ark of our political safety, and of interpreting it in by the plain and obvious meaning and letter of the specified powers. But, he said, as if it was always the unfortunate destiny of these gentlemen to be upon extremes, they have now got round to the opposite extreme point of the political compass, and even beyond it. For, he said, they not only tie down all construction to the letter of the instrument, but they tell us that they see, and call upon us also to see written therein, in large capital characters, "the independence of judges;" which, to the extent they carry the meaning of the term, is neither to be found in the letter or spirit of that instrument, or in any other political establishment, he believed, under the sun. Mr. G. said he rejoiced that this subject was now to be discussed; he thought the crisis peculiarly auspicious for the discussion. He said the European world, with which the United States have the most relations, is now tranquilized. The tremendous scenes of blood and revolution which had agitated that portion of the globe, had at length subsided into profound peace; and had left mankind in silent amazement, to retrospect the wonderful events which were passed; and he hoped, with calm deliberation, to improve the lessons they had furnished for the benefit of mankind in time to come. The interests and sympathies, which the people of the United States felt in these events, no longer turn their attention from their internal concerns; arguments of the highest consideration for the safety of the Constitution and the liberty of the citizens, no longer receive the short reply, French partisans! Jacobins! Disorganizers! And although the gentleman from North Carolina sees, or thinks he sees, the destructive spirit mount in

the whirlwind and direct the storm, let him be consoled by the information, "that all these, our actors, are mere spirits, and are dissolved into thin air." Yes, sir, these magical delusions are now vanished, and have left the American people and their Congress, in their real persons, and original American characters, engaged in the transaction of American concerns.

Upon taking a view of our internal situation, he observed, although party rage may not be done away, it may be said, its highest paroxysm is past. And although the gentleman from New York, (Mr. T. MORRIS) yesterday observed that the President had commenced a system of persecution, so ignorant, he said, he was of the existence of a such system, that he could not conceive to what the gentleman alluded. It is sometime, Mr. Chairman, since a member of this House, and sundry printers throughout the United States, have been amerced and imprisoned to appease the vengeance of an unconstitutional sedition act, merely for publishing their own sentiments, which happened to be unpalatable to the then existing Administration! It is sometime, sir, since we have seen judges, who ought to have been independent, converted into political partisans, and like Executive missionaries, pronouncing political harangues throughout the United States! It is sometime, sir, since we have seen the zealous judge stoop from the bench to look out for more victims for judicial vengeance! It is sometime since we have seen the same judicial impetuosity drive from the bar the most respectable counsel, who humanely proposed to interpose between a friendless and unprotected man and the judicial vengeance to which he was doomed! It is sometime, sir, since we have seen the same judicial zeal extending the provisions of the sedition act, by discovering that it had jurisdiction of the *lex non scripta*, or common law! It is sometime since we have seen the Chief Executive Magistrate dooming to humiliation "in dust and ashes" a great portion of the American people! Yes sir, these terrific scenes are past. These noisy declamations, and this judicial zeal, are hushed into silence by the audible pronunciation of the public will. He said, we may even indulge the hope, Mr. Chairman, that our pulpits will not much longer be converted into political forums; and that the meek and humble teachers of the Christian faith, instead of stirring up all the angry and destructive passions of the human mind, will ere long once more condescend to teach those lessons of humility, forbearance, and toleration, taught them by their Divine Preceptor. Those precepts so essential to the discovery of truth, by predisposing the mind to deliberation and reflection.

The present Executive, pursuing the general good, and supported by the general confidence, stands not in need of these artificial aids. He invites inquiry. He knows that the highest encomium which can be bestowed upon his administration would flow from a correct understanding of his motives and his conduct. Instead of calling in the aid of sedition acts to the defamatory scribblers, who appear to increase in numbers and in impudence in proportion to the desperation of their cause and their security from punishment, he has said, "Let them stand undisturbed, as monuments of the safety with which error of opinion may be tolerated, where reason is left free to combat it." Under these auspicious circumstances, he said, he proceeded to the discussion of the important question before us with pleasure, conscious that he was subject to error, and knowing that if he did err, it was his interest to be corrected; confident, also, that there was a mass of intelligence and calm reflection at this time in the people of the United States, competent to detect the error and apply the corrective. Impressed with these sentiments, he differed widely in opinion with the gentleman from North Carolina, (Mr. HENDERSON,) who had said, that "If the bill upon your table should pass into a law, he would not heave a sigh or drop a tear upon the instantaneous dissolution of the whole Constitution. The sooner it was done the better." Sir, this gentleman and his associates in political opinions have termed themselves "lovers of order." Is this an evidence of the practice we are to expect from those gentlemen, under their professions so long and so loudly made to the people of the United States? Cannot that gentleman find some reason to regret that sentiment in the confidence due to the intelligence and patriotism of a great portion of his fellow-citizens who differ with him on that point? Or do the gentleman and his political associates claim, with presumptuous vanity, not only the appellation of the exclusive "lovers of order," but also the monopoly of all the intelligence and patriotism of the nation? He had too much respect for gentlemen to suppose they would place their pretensions on this ground. He begged pardon of the Committee for this digression; he had been impelled to it from the course the debate had taken, and particularly from the indecorous attacks made on the President of the United States.

He said he would now proceed to examine whether the repeal of the Judiciary law of the last session of Congress would in any respect violate that salutary and practicable independence of the judges which was secured to them by the Constitution. He said the term *independence of Judges or of the Judiciary department* was not to be found in the Constitution. It was therefore a mere inference from some of the specified powers. And he believed in the meaning of gentlemen, and to the extent they carry it, that the term is not to be found either in the spirit, general character, or phraseology, of any article or section of the Constitution. He meant to give the Constitution the most candid interpretation in his power, according to the plain and obvious import of the English language. He should discard, in his interpretation, the terms "common defence and general welfare," which had been resorted to by some gentlemen. He considered these words as containing no grant of power whatever, but merely the expression of the ends or objects to be effected by the grants of specified powers. He therefore protested against drawing any aid whatever from them in his construction of the instrument. He

said he had read through the whole Constitution, to enable him to form his opinion upon this question, for fear there might be in some hidden corner of it some provision which might demonstrate the unconstitutionality of the present bill; and if so, (although he should lament such a provision,) he would instantly give up the bill. But his researches had terminated in a different result. He said he found, from the general character of the Constitution, that the general will was its basis, the general good its object, and the fundamental principle for effecting this object was the responsibility of all public agents, either mediately or immediately to the people. He said the context of the Constitution would demonstrate the two first points, which he begged to read:

"We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Here we find the Constitution founded upon the will of the people, and the object declared to be the good of the people. Through the whole body of the Constitution may be discerned the responsibility of all public agents, either mediately or immediately, to the people. This responsibility results, first, from the division of authority into different departments; secondly, from a specification and limitation of the authorities of all and each of the departments; thirdly, from periodical appointments of the public agents. The first clause declares there shall be a Congress, to whom the business of legislation is confided. This Congress is to consist of a House of Representatives, to be chosen by the people immediately, and responsible to them at the end of every two years; and a Senate, to be chosen by the Legislatures of the different States, who are chosen by the people—one-third of the Senators to be chosen every two years, and responsible at the end of every six years. The Executive power is vested in a President, who is chosen by Electors, who are chosen for the express purpose by the people, and responsible at the end of every four years. The President may be considered as immediately responsible to the people, although chosen through the medium of Electors; because it is found, in practice, that the Electors are constrained to avow the vote they intend to give before they are chosen, and the people have generally made their elections with a view to that object.

Thus, then, are formed two departments, their powers specified and defined, the times for extending their powers fixed, and indeed a complete organization for the execution of their respective powers, without the intervention of any law for that purpose. A third department, to wit: the Judiciary department, is still wanting. Is that formed by the Constitution? How is that to be formed? It is not formed by the Constitution. It is only declared that there shall be such a department; and it is directed to be formed by the other two departments, who owe a responsibility to the people. Here there arises an important difference of opinion between the different sides of this House. It is contended on one side, that the Judiciary department is formed by the Constitution itself. It is contended on the other side, that the Constitution does no more than to declare that there shall be a Judiciary department, and directs that it shall be formed by the other two departments, under certain modifications. Article third, section first, the Constitution has these words: "The Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish." Here, then, the power to ordain and establish inferior courts is given to Congress in the most unqualified terms, and also to ordain and establish "one Supreme Court." The only limitation upon the power of Congress in this clause, consists in the number of supreme courts to be established; the limitation is to the number of one, although that is an affirmative and not a negative expression. The number of judges, the assignation of duties, the fixing compensations, the fixing the times when, and places where, the courts shall exercise their functions, &c., are left to the entire discretion of Congress. The spirit, as well as the words of the Constitution, are completely satisfied, provided one Supreme Court be established. Hence, when all these essential points in the organization and formation of courts is intrusted to the unlimited discretion of Congress, it cannot be said that the courts are formed by the Constitution. For further restraints, therefore, upon the discretion of Congress, the remaining part of the same section must be consulted. Here he begged leave to remark, that he had often felt a veneration for the wisdom of the sages who formed this Constitution; considering the difficulties they had to encounter, resulting from the various local prejudices and local interests of the different parts of the United States, and the vast variety of opinions which the subject presented, it was almost wonderful to conceive how they should have hit upon a system so admirably calculated to protect and to promote the general interests, when administered according to its original meaning and intention. He could not go so far as to say it was perfect. He admitted, like other human productions, it was stamped with the common fallibility of man. That he wished, however, to see no radical changes in its principles. He wished to hand it down to posterity with those amendments only which experience should suggest, and which would grow out of the continually varying state of the nation. He said it was not only remarkable for the wisdom of its arrangements, but the correct and technical mode of expression. The part of the section now to be examined, was an example of the justice of both these remarks. The words are, "the judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office."

The first part of the sentence respects the relationship between the Executive and the Judiciary departments. It respects judges or officers of the courts who are appointed by the President. The last part of the sentence respects the relationship between the Legislative and Judiciary departments. It respects the creation of offices, the fixing the compensation of the officers or judges, and their continuance in office. These are the peculiar attributes of the Legislative department. Accordingly, the most correct and technical words are used in relation to both these objects. The term "hold their offices during good behaviour." relates merely to the Executive department. The term "hold," is the common technical word used to convey the idea of tenure. Tenure requires two parties. The one granting, the other holding or receiving the grant. Let the inquiry be made, of whom do the judges hold? The Constitution furnishes the answer, of the President. One of the most obvious rules in the construction of instruments of writing is, that the whole of it must be taken together, and not one particular part by itself. The following words will be found in the second section of the second article of the Constitution: "And he (to wit, the President) shall 'nominate, and, by and with the advice and con-'sent of the Senate, shall appoint Ambassadors, 'other public Ministers and Consuls, Judges of 'the Supreme Court, and all other officers of the 'United States, whose appointments are not 'herein otherwise provided for, and which shall 'be established by law." In the third section of the same article, are these words: "And shall (to wit, the President) commission all the officers of the United States." These three sentences contain the relationship between the Executive and Judiciary departments, so far as respects the objects of the present discussion.

To ascertain the real meaning and import of these sentences, they should be read in connexion with each other, excluding therefrom all intermediate words not immediately bearing on the subject. In that case the Constitution would read thus: "He (to wit, the President) shall nominate 'and appoint the judges of the Supreme Court, 'and all other officers of the United States, and 'shall commission all the officers of the United 'States. The judges both of the supreme and 'inferior courts shall hold their offices during good 'behaviour." It may now be asked, if this case of the judges of the supreme and inferior courts be not an obvious exception out of the general Presidential discretion of appointing and commissioning all officers of the United States during pleasure? After the Government has been in operation above twelve years, and the principle of commissioning all Executive officers during pleasure, has been practised upon during the whole of the period by the Executive, as well as the Legislative department, the propriety of that practice is for the first time now become questionable. It is said that the right to commission during pleasure, is by implication. It is readily admitted that there are no express words in the Constitution to that effect; but the inference from the words which are there, is almost as strong as the words themselves, if they had been inserted. The President is authorized, without limitation, to "commission all the officers of the United States." The question arises, by what tenure? The reply is, according to his pleasure or discretion. It was not difficult to foresee, that if the President was fully empowered to commission as he pleased, he would please to commission during his pleasure. The Legislature has no more control over an officer who holds an Executive commission during the pleasure of the President, than over a Judicial officer holding his office during good behaviour. The remedy given by the Constitution being the same in both cases, to wit: impeachment. Nor is there any reason why the office of the one should be less subject to the discretion of the Legislature, than the office of the other; and it seems to be universally agreed, that although the Legislature cannot deprive an Executive officer of his office in any other way than by impeachment, during the continuance of such office, yet the office itself is always subject to be abolished. The same reasoning will hold with equal force respecting a judge and a Judicial office. The reason why the Executive is proscribed from the removal of a judge, is to secure to the judge a complete independence of the President, who is not responsible for the discharge of Judicial duties; but the removal is perfectly correct in the case of an Executive officer, because the President is highly responsible for the due discharge of Executive duties. The Legislature is not responsible for either, and of course stands in the same Constitutional relation to both. This appears obvious from furnishing to the Legislature the same means of removing both, as will appear by the fourth section of the second article, in the following words: "The President, Vice President, and 'all civil officers of the United States, shall be 'removed from office by impeachment for, and 'conviction of treason, bribery, or other high 'crimes or misdemeanors." He now begged to call the attention of the Committee particularly to the last clause of the sentence, which ascertains the Constitutional connexion between the Legislative and Judicial departments, so far as respects the limitation of the Legislative, in the exercise of the power committed to it, for the organization of the Judicial department. He should place particular emphasis on these words of the Constitution in the exposition he proposed to make. The words are: "And shall at stated 'times receive for their services a compensation, 'which shall not be diminished during their con-'tinuance in office." The first part of this section having given to Congress the power of creating courts, ascertaining the number of judges, &c., these last words may be considered as containing explanations and limitations of the general power of Congress, as was the foregoing part of this sentence a limitation of the general Executive power. And accordingly the most correct terms are used for limiting Legislative discretion, and explaining its objects; according to the words of this sentence, the judge is to receive a

compensation for his services. To whom are these services to be rendered? To the people, for the benefit of the people. Who is to judge of the necessity or utility of these services? The Constitution has ordained, that Congress, or in other words, the Representatives of the people, shall be the tribunal. Suppose there should be no services required, none for the judge to perform, and that Congress should so think and determine: Is the judge entitled to compensation? He is not. The condition of service for the benefit of the people, is the express consideration upon which the compensation accrues. No service is rendered, the competent tribunal says, there is none required, of course no compensation accrues. The judge is entitled to receive none. On this point, an obvious and most important difference of opinion exists between the two sides of the Committee. On one side it is contended, that the office is the vested property of the judge, conferred on him by his appointment, and that his good behaviour is the consideration of his compensation; so long, therefore, as his good behaviour exists, so long his office must continue in consequence of his good behaviour, and that his compensation is his property in virtue of his office, and therefore cannot be taken away by any authority whatever, although there may be no service for him to perform. On the other side, it is contended that the good behaviour is not the consideration upon which the compensation accrues, but services rendered for the public good; and that if the office is to be considered as a property, it is a property held in trust for the benefit of the people, and must therefore be held subject to that condition, of which Congress is the Constitutional judge. Mr. G. said, considering the boundary line between these conflicting opinions to be the boundary line between the offices held for public utility, and offices held for personal favor, he could not bestow too much attention upon this part of the discussion; for if the construction gentlemen contend for should prevail, in vain have the framers of the Constitution, with so much jealous circumspection, erected so many ramparts against the introduction of some of these offices in the Government of the United States. A sinecure office is an office held without the condition of service; often for past services already compensated; often for present favor, without the condition of any service. For the purpose of excluding from the Federal Government all sinecure offices, the sages who formed the Constitution have through every part of it connected services and compensation, and they ought never to be separated in construction. The sixth section of the first article is in these words: "The Senators and Representa-'tives shall receive a compensation for their ser-'vices, to be ascertained by law." &c., and so far has this principle of the rendition of service been carried, that the service of the Senate and Representatives is to be rendered every day, and unless they do daily render service, they are not entitled to their day's compensation. In the first section of the second article of the Constitution, are these words: "The President shall, at stated times, receive for his services a compensation." &c. In the forty-first section of the act under which the judges claim their compensation, are these words: "That each of the circuit judges of the United 'States, to be appointed by virtue of this act, 'shall be allowed as a compensation for his servi-'ces," &c. These expressions all demonstrate the importance of coupling the service and compensation of office. But the jealous caution of the framers of the Constitution did not stop at choosing the best affirmative expression for excluding this doctrine of sinecure offices, they also applied negative restraints.

In the ninth section of the first article of the Constitution, are these words, "No money shall be drawn from the Treasury but in consequence of appropriations made by law." In the the same section, "No title of nobility shall be granted by 'the United States, and no person holding any of-'fice of profit or trust under them, shall, without 'the consent of Congress, accept of any present, 'emolument, office, or title, of any kind whatever, 'from any King, Prince, or foreign State." If then services rendered for the public benefit, be the essential consideration, upon which the compensation does accrue to the judges; if the Congress be the proper tribunal for pronouncing upon the necessity or utility of such service, and if they decide that no such service is necessary or useful; the judge sustains no injury in not receiving the compensation, because he does not comply with the condition on his part; nor does he sustain a hardship thereby, because it must be presumed that he understood the second conditions attached to his office at the time of his acceptance. It has been admitted by all gentlemen, that Congress is the Constitutional tribunal for deciding respecting the services to be performed. They admit that Congress may modify the courts, diminish or add to their duties, alter the terms of their sessions, or make any other arrangements respecting them which do not go to take away or diminish their compensations. It is to be observed that there is not one of these powers specified in the Constitution; they are therefore necessary inferences from the paramount power "to ordain and establish," and the power of repeal, or to take away all the services to be performed, is as necessary an inference as either of the others, and has uniformly resulted from every other specified power in the Constitution. From this part of the sentence, therefore, it is deducible, that the only restraint upon the general power given to Congress in the first part of the section to ordain and establish courts, is, that the compensations of the judges should not be lessened during their continuance in office; not during their good behaviour. And in this part of the sentence the correct phraseology of the Constitution is worthy of observation. In speaking of the Executive attribute, to wit, the appointing and commissioning officers, the term *good behaviour* is used. In speaking of the Legislative attribute, to wit, the creation of the offices and fixing compensations, the term *during their continuance in office* is used. The reason for this variation of expression is ob-

vious. It was known that the office might be discontinued, and the judge continue to behave well; the limitation was therefore applied to the office, and not the good behaviour, because if the office should be discontinued, which is clearly implied in this expression, it was not the intention of the Constitution that the compensation should be received, no service in that event being to be rendered. From this interpretation of the Constitution, all of the departments are preserved in the due exercise of their respective functions for the general good, without any of the mischievous and absurd consequences resulting from the opposite construction. It is admitted that the first part of this section expressly vests Congress with the general power to ordain and establish courts; and, if there had been no other restriction, the consequent power to unordain, or abolish. The restriction relied upon is not a restriction in express words: there are no words in the Constitution prohibiting Congress from repealing a law for organizing courts; the restraint contended for, therefore, is by implication, and that implication, to say the least, not expressly connected with any Legislative attribute. Is it right, is it a correct interpretation, that when a power is given in express words for the most important purposes, that it should be restained or prohibited by implication? Can so much inattention and folly be attributed to the framers of the Constitution, as would result from the supposition that if it was their intention that a law growing out of one of the specified powers, in contradistinction to all others, should be irrepealable when once passed, that so extraordinary a principle would be left to mere implication? Such a supposition would be the highest injustice to the superior intelligence and patriotism of those gentlemen, manifested in every other part of the instrument. No, sir, they would have made notes of admiration; they would have used every mark, adopted every caution, to have arrested and fixed the attention of the Legislature to so extraordinary a principle.

They would have said, Legislators! be circumspect! Be cautious! Be calm! Be deliberate! Be wise! Be wise not only for the present, but be wise for posterity! You are now about to tread upon holy ground. The law you are now about to pass, is irrepealable! Irrevokable! We are so enamored with the salutary and practical independence of the English Judiciary system, that in infusing its principle into our Constitution, we have stamped it with the proverbial folly of the Medes and Persians! If this principle had been introduced into the Constitution in express words, it would have formed an unfortunate contrast to all other parts of the instrument; yet gentlemen make no difficulty in introducing that principle by construction, which would have appeared so stupid and absurd if written in express words in the body of the instrument. But there is no such language in the Constitution. Let us see what is the language of that instrument. "The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish." Here, then, instead of cautioning the Legislature that a law for the organization of courts, when passed, can never be repealed, it contains an invitation to a revision from time to time. It contains an intimation, that the subject is new and difficult, and an injunction to ordain and establish your courts from time to time, according to the results, which an experience of the system alone could suggest. The gentleman from Pennsylvania, (Mr. Hemphill,) observed that the character of irrepealability was not exclusively attached to this law, and attempted to furnish instances of other laws of the same character. He instanced a law for the admission of a new State into the Union.

The gentleman from Kentucky (Mr. Davis,) had given a proper reply to that remark; the strongest instance the gentleman gave, was of a law executed. After the new State is admitted into the Union, in virtue of a law for that purpose, the object of the law is answered. The State admitted has no stipulated duties to perform on its part, no services to render; in the case before the Committee the law is in a state of execution, and the judges have services to render on their part which the competent tribunals may determine to be neither useful nor necessary. A law for the appropriation of money to a given object, may be adduced as an instance; the money is applied; its object is answered; the law may be said to be irrepealable, or, in other words, the repeal would produce no effect. That is not the case of the law in question. Mr. G. said he had no doubt but that the framers of the Constitution had particular reference to the British act of Parliament of William the III. for the establishment of the independence of the judges in that country, in framing the section for the establishment of the Judicial department in the United States; and it is not a little remarkable, that whilst gentlemen in one breath speak of the independence of the English judges, as the boast and glory of that nation, in the next breath they tell us that by the repeal of the present act, the independence of the judges here would be immolated. Let this subject be examined. In the third chapter of the first book of Blackstone's Commentaries, the independence of the English Judiciary is fully explained. He begged to read the exposition of that commentator on that subject.

"And, in order to maintain both the dignity and independence of the judges of the superior courts, it is enacted by the statute, 13 W. III. c. 2, that their commissions shall be made (not, as formerly, *durante bene placito*, but) *quam diu bene se gesserint*, and their salaries ascertained and established; but that it may be lawful to remove them on the address of both Houses of Parliament. And now, by the noble improvements of that law in the statute of Geo. III. c. 23, enacted at the earnest recommendation of the King himself, from the Throne, the judges are continued in their offices during their good behaviour, notwithstanding any demise of the Crown, (which was formerly held immediately to vacate their seats,) and their full salaries are absolutely secured to them during the continuance of their commissions. His Majesty having been pleased to declare, that "he looked upon the independence and uprightness of the judges, as essential to the impartial

administration of justice; as one of the best securities of the rights and liberties of his subjects; and as the most conducive to the honor of the Crown."

Now, sir, under the doctrine contended for by the repeal of this law, let us see whether the judges of the United States are not more independent than the judges of England. In the first place, Congress have the power of originating, abolishing, modifying, &c., the courts here. The Parliament in England have the same power there. Congress cannot remove a Judicial officer from his office so long as the office itself is deemed useful, except by impeachment, two thirds of the Senate being necessary to a conviction. In England, judges can be removed from their offices, although the offices may be deemed useful, by an address of a majority of the two Houses of Parliament. Here then is one essential advantage in favor of the independence of the judges of the United States. Congress cannot diminish the compensation of the judges here during their continuance in office. In England, the Parliament may diminish the compensation of the judges at their discretion, during their continuance in office. Here then, is another obvious advantage in favor of the independence of the judges of the United States; whence is it, then, that we hear of the independence of the English Judiciary, as being the boast and glory of that country, and with justice too, and at the same time hear the cry of the immolation of the independence of the judges of the United States, when, under the interpretation of the Constitution by the favorers of the repeal, the judges here are more independent than the English judges? It can have no other object than to excite a popular clamor, which, if excited at all, can have only a momentary effect, and will be dissipated as soon as the subject shall be thoroughly examined and understood. But it appeared to him, that if gentlemen really do value the independence of the judges, they have taken an unfortunate ground in the interpretation of the Constitution. Under their construction the judges may be placed not only in a dependent, but a ludicrous point of view.

Gentlemen admit that Congress may constitutionally increase or diminish the duties of judges; give or take away jurisdiction; fix the times of holding courts, &c., saving therefrom the salaries of the judges. Under this admission, Congress may postpone the sessions of the courts for eight or ten years, and establish others, to whom they could transfer all the powers of the existing courts. In this case, the judges would be held up to the people as pensioners, receiving their money and rendering no service in return; or Congress might convert them into mere courts of piepoudre, assigning them the most paltry duties to perform, and keep them continually in session, in inconvenient places; whilst new courts could be erected to perform all the essential business of the nation. This would be taking down the high pretensions assigned to the judges by the gentleman from North Carolina, (Mr. Henderson,) of being formed into a permanent corps for the purpose of protecting the people against their worst enemies, themselves; and degrading them into pitiful courts of piepoudre, rendering little service and receiving large compensations. And this would be the case, if party purposes were the object, and not the general good. According to his construction, these absurd results could not take place, unless by a virtual breach of the Constitution. Because, he contended, that service and compensation were correlative terms; and that there ought always to be a due apportionment of service to compensation. This he considered as the plain and sound interpretation of the Constitution, and the moment it is departed from, infinite absurdities ensue. He intended to have taken another view of this subject, as it respects the relative influence of the law of the last session, and the proposed repeal upon this question; but the gentleman from Massachusetts (Mr. Bacon) has put this subject in so much stronger point of view than he could do, that he would refer to his remarks thereupon, observing only that he had no doubt but that the law of last session, now proposed to be repealed, was in every respect as much opposed to the doctrine of gentlemen, as the contemplated repeal could be. The sections of the law particularly alluded to, are the twenty-fourth, in these words, "and be it further 'enacted, that the district courts of the United 'States, in and for the districts of Tennessee and 'Kentucky, shall be and are hereby abolished," and the twenty-seventh, in these words, "and be 'it further enacted, that the circuit courts of the 'United States, heretofore established, shall cease 'and be abolished."

He said he would now examine some of the consequences of the doctrine against the repeal, and see if it can be recommended from that consideration. First, as it respects the Judicial department. Its first effect is to produce a perpetual increase of judges and salaries, without any practicable mode of reducing them. This is inconsistent both with the general sentiment of the people and the Constitution, that requires that no compensation shall be received, without an equivalent service rendered.

The gentleman from Pennsylvania supposes that there would be as much danger that a corrupt legislature would give an enormous sum, say two hundred thousand dollars, to one judge, as to increase too great a number of judges. Yet he says the Legislature is restrained in express words from lessening the salary, and infers from that circumstance that it is also restrained from lessening the number of officers. Mr. G. made from it the direct contrary inference. If there be neither the power to lessen the sum nor abolish the office, there is no remedy for the evil the gentleman suggests. It is an incurable mischief. There is, therefore, a necessity for a power to abolish the office, as a remedy against the enormous abuse of giving so large a sum without the rendition of equivalent service. And as express words were deemed necessary to limit the discretion of Congress against diminishing the sum, so would there have been greater necessity for express words to limit the discretion of Congress against the abolition of unnecessary offices.

Mr. G. said, that according to a sound rule of interpretation, where a general grant of power is made, and one limitation to the general power is expressed, the expression of that limitation is an exclusion of all intention to make any other limitation whatever, by inference or implication. And this rule will apply to all other cases put by gentlemen, where there is an express limitation of Legislative authority. But the most important consequence from this doctrine is, that it erects the judges into a body politic and corporate, in perpetual succession, with censorial and controlling powers over the other departments. And for what purpose? The gentleman from North Carolina (Mr. Henderson) has informed us, "to protect the people against their worst enemies," themselves! This is the real exposition of the object in very few but emphatical words. As the inducement to the adoption of this principle, gentlemen have reminded us of the fate of a foreign country, of the violent passions which agitate popular assemblies, of the age, experience, the unassuming talents and unambitious virtue of judges. He said the judges were selected from their fellow-citizens, and he presumed possessed the same human propensities. He said all men love power, and in general, those love it best who know best how to use it. Let us apply this remark to the judges of the United States.

Very shortly after the establishment of the courts, the judges decided that they had jurisdiction over the States in their sovereign capacity. Did this, in the judges, seem unambitious? The States thought it did not. It happened that during the Revolutionary war, the State of Massachusetts had issued certain obligatory bills, which were made transferable, and which were outstanding without any provision for their payment; suits were instituted on these bills. The court determined to bring the great State of Massachusetts, and not Virginia, on its knees, not at the feet of justice, but policy. Upon the representation of Massachusetts, an amendment was made to the Constitution of the United States, declaring that the Constitution should not be construed to extend to authorizing the courts to arraign and pronounce judgment against States which had not consented to give up their sovereignty. Thus this unambitious project of the judges was prostrated by a Constitutional interposition. He read the amendment, in the following words: "The judicial power of the United States shall not be construed to extend to 'any suit in law or equity, commenced or prosecuted against one of the United States by citizens 'of another State, or by citizens or subjects of any 'foreign State." The judges have determined that they are judges in the last resort upon the constitutionality of your laws. He proposed not to discuss this question, because he did not think it pertinent to the question before us. He only mentioned it to show their unlimited claims to power. The judges have determined that their jurisdiction extends to the *lex non scripta*, or rather to the *lex non descripta*, or common law. Does this, in the judges, seem unambitious? This law pervades the whole municipal regulations of the country. It is unlimited in its object, and indefinite in its character. Legalize this unassuming claim of jurisdiction by the judges, and they have before them every object of legislation. They have sent a mandatory process, or process leading to a mandamus, into the Executive cabinet, to examine its concerns. Does this, in the judges, seem unambitious? Now, sir, examine and combine the extraordinary pretensions to power, legalize them, and you have precisely that body politic and corporate which gentlemen deem so important in the United States "to protect the people from their worst enemies—themselves!" He should not resort so frequently to this expression, but that he did consider it as the candid and correct exposition of the object of gentlemen opposed to the repeal. It was the doctrine of irresponsibility against the doctrine of responsibility. The latter, he had endeavored to show, characterized the Constitution of the United States. It was the doctrine of despotism, in opposition to the representative system. It was an express avowal, that the people were incompetent to govern themselves. This he believed to have been the great characteristic difference, from the commencement of the administration of the Government to the present day. If, indeed, there be a political corps necessary to interpose between the people and themselves, he considered the Judiciary corps, supported by the doctrines on this floor, well calculated to effect that object.

He said he would now examine the consequences of the doctrine against the repeal, as it respected the Legislature. He said it would have a direct tendency to impair the responsibility of the Representatives to the people. He could not illustrate this observation better than by giving the history of the law proposed to be repealed.

The first bill for changing the organization of the courts of the United States was reported to the House of Representatives the 11th of March, 1800: after undergoing some discussion and amendment, it was recommitted and reported again the 31st of March, 1800; on the 14th of April it was postponed by a majority of two votes. At this time the Presidential election was approaching, and the result uncertain. The bill upon which the law in question was founded, was reported to the House of Representatives the 19th December, 1800, and passed that House the 20th January, 1801. It was read in the Senate the 21st of January, 1801, and passed the 7th of February, 1801. At this time the Presidential election, so far as it respected the then existing President, was ascertained.

Mr. G. said, he proposed to be particular in ascertaining the facts respecting the passage of this law and its execution, because gentlemen had complained that rumors had gone into circulation respecting its passage, and the appointments under it, not warranted by the facts; a sense of justice had therefore induced him to make the strictest inquiry into the dates and facts, and the result of that inquiry, upon his mind, had been as unfavorable to its advocates as any impression which had been made by the rumors complained of. He said, at the time of passing the law, no complaints had been presented to Congress against the competency of the former system; not even a memorial from the bar of Philadelphia. He believed the former system to have been amply competent. The business, indeed, had very much declined; he observed that, in the Spring of 1799, the whole number of causes instituted, exclusive of Maryland and Tennessee, amounted to seven hundred and three, besides seventy-eight criminal prosecutions in Pennsylvania. In the Fall of 1800, there were instituted only three hundred and fifty-five; without any information, however, on this point, the law was passed. On the 13th of February, 1801, it was approved by the President. On turning to the Journals of that day, it will be found that the House of Representatives was not engaged in the ordinary business of the session; they were engaged in the extraordinary business of electing a President.

In a note made on that day on the Journals will be found a Message from the President in these words: "A Message was received from the Pres-'ident of the United States by Mr. Shaw, his Sec-'retary, notifying that the President did this day 'approve and sign an act which originated in the 'House of Representatives, entitled 'An act to 'provide for the more convenient organization of 'the courts of the United States." Upon examining the Journals themselves, he said, he found an entry in these words: "The time agreed upon 'by the last mentioned vote being expired, the 'States proceeded in manner aforesaid to the 'twenty-ninth ballot; and, upon examination 'thereof, the result was declared to be the same." Mr. G. said, need I remind gentlemen, now present, who were agents in the exciting scenes, of the extraordinary situation of Congress at that moment? When in the House of Representatives the ordinary business of legislation was suspended, a permanent session decreed; when lodging and subsistence were furnished the members within the walls of the Chamber; when even a sick bed was introduced to enable its patient to discharge a sacred duty. Need I awaken the recollection of our fellow-citizens, who were looking with indignant anxiety on the awful scene; beholding their representatives, urged by the most tempestuous passions, and pushing forward to immolate the Constitution of their country? No, sir, the awful scene is freshly remembered! And what was its object? To prevent the fair and known expression of the public will in the highest function it has to perform—in the choice of the Chief Executive Magistrate of the nation. In this state of things, when all confidence amongst the members of this House was lost, in the highest paroxysm of party rage, was this law ushered into existence. And now its advocates gravely tell us to be calm—to guard against the danger of our passions. They tell us, at the same time, that the law they have passed is sacred! inviolable! irrepealable! Does it merit this extraordinary character from the circumstances which accompanied its passage? It does not.

Let us examine how this law was carried into effect. Members of the Legislature who voted for the passage of the law were appointed to offices, not indeed created by the law, the Constitution having wisely guarded against an effect of that sort, but to judicial offices previously created, by the removal, or what was called *the promotion* of judges from offices they then held, to the offices newly created, and supplying their places by members of the Legislature who voted for the creation of the new offices. In this substitution, however, it appears that no respect was paid to another provision of the Constitution. The sixth section of the first article of the Constitution contains these words: "No Senator or 'Representative shall, during the time for which 'he was elected, be appointed to any civil office 'under the authority of the United States, which 'shall have been created, or the emoluments 'whereof shall have been increased during such 'time; and no person holding any office under 'the United States shall be a member of either 'House during his continuance in office." If vacancies had existed in the previously existing judicial establishments, the appointments of the members of the Legislature might not be considered as a direct breach of this provision in the Constitution; but this was not the fact, no vacancies did exist. It was necessary to make provision for members voting for the law that vacancies should be made by the removal or promotion of the then existing judges. This was done under this authority in the Constitution—second section, second article: and he, to wit. "the Presi-'dent of the United States shall nominate, and by 'and with the advice and consent of the Senate, 'shall appoint Ambassadors and other public 'Ministers and Consuls, Judges of the Supreme 'Court, and all other officers of the United States," &c. Again: "The President shall have power 'to fill up all vacancies that may happen during 'the recess of the Senate, by granting commis-'sions, which shall expire at the end of the next 'session." How did the then President exercise the power in the present case? He did not wait until the vacancies should happen. He attempted to make vacancies by what he called the promotion of judges, although they held their commissions of him "during good behaviour;" and, without waiting to know whether the judges would accept the promotion or not, upon which event alone a vacancy could accrue, he proceeded to appoint and actually commission members of the Legislature to offices then actually held by other commissions granted to other persons. What was the effect of this procedure? That two persons held commissions to perform the same duties, although one person only was authorized by law to discharge those duties, whilst the office where the promotion was refused remained vacant. This was actually the case in several districts of the United States. This subject will be put into a still stronger point of view by examining the Journals of the Senate, which he was sorry to do for that purpose. When discussing the bill in question in the Senate, he found this entry on their Journals, "on motion to strike out the whole

'of the bill after the words 'from and after,' section first, line second, for the purpose of inserting as follows, to wit, a substitute for the bill." On the question to agree to this motion, it passed in the negative—yeas 13, nays 17. He observed among the nays the names of Mr. Green, of Rhode Island, and Mr. Read, of South Carolina. Both these gentlemen received appointments in virtue of the promotion of judges under this law. If these gentlemen had voted on the opposite side of the question, the law would never have been in existence. He mentioned this circumstance not to impugn the motives of any gentleman, but to demonstrate the temptation held out to the members of the Legislature under the doctrine contended for against the repeal of this law. The refusal of the present President to correct what was called a mistake in Mr. Green's appointment having excited some clamor, it was necessary to put that subject in a correct point of view. It seems, that in filling up Mr. Green's commission, the word "circuit," instead of the word "district," was inserted, it is presumed, by mistake. If the commission was intended for the circuit court, it was a breach of the Constitution in its most obvious letter. If it was intended for the district court, it was void *ab initio*; because, at the date of the commission, no vacancy had happened, and the President's right to appoint depended on that precedent condition, and he, therefore, in making the appointment, attempted to exercise a power he did not possess. It must be obvious to every gentleman that Mr. Green's accepting the commission, under all the incidents attending the case, could furnish but a negative recommendation of Mr. Green in his application for that or any other appointment. Upon a review of the history of the law in question, according to the doctrine of its advocates, the temptation to the Legislature to make permanent, irrevocable provision for themselves, must be obvious to every impartial observer. If, when a judicial establishment be once made, it becomes irrevocable, how easy would it be for a Legislature, combined with the Executive, to compensate themselves for the loss of the confidence of their constituents, by following the example before us? By erecting a new tier of judges, holding out to them additional emoluments, and by filling up the vacancies occasioned by their promotion with the members of the Legislature.

This operation would be most likely to take place when the Representatives had lost the confidence of their constituents, and of course less likely to be influenced by considerations of public good. Again, sir, the sinecure system thus established would have the advantage of all other similar systems existing in the world; because, if in other countries, the sinecure system has become oppressive to the people, they have the consolation to recollect, that the evil may be lessened by the competent authority; but, according to the doctrine upon which the system is bottomed in the United States, no remedy can be applied to the mischief by the union of all the responsible agents of the people. How, sir, would the framers of our Constitution lament, after all the care and circumspection they had used to exclude this system entirely from the practical operation of the Government, that the Constitution itself should be made the instrument of its introduction, and its permanent irrevocable establishment! And this, too, at the moment of an expiring Administration, when the passions of men just parting from power were breaking down every impediment which stood in the way of attaining their object! Upon the whole, therefore, it appears, that this doctrine of the irrepealability of laws derives no consideration from the consequences which naturally flow from it.

Mr. G. said, that having exhausted so great a portion of the time and attention of the Committee in discussing the Constitutional question, which had been made the cardinal point in the debate, he proposed to confine himself to very few observations upon the expediency of the contemplated repeal. He said he took it for granted, that the former Judicial system was competent to the discharge of all the judicial business in the United States; but if that should be denied, he thought it demonstrable from the document before the Committee. The gentleman from Delaware (Mr. Bayard) had intimated a doubt whether the President had acted correctly in favoring us with the document. He should only observe in reply, that the Constitution imposed a duty upon the President, from time to time, to give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. He said that the number of suits in the courts of the United States must always be very small from the limited objects of their jurisdiction; this will appear by reading the second section of the third article of the Constitution, limiting their jurisdiction. The whole expense of the existing system is $137,000, of which forty or fifty thousand may be attributable to the new system, the estimates differing between these two sums. Whether the expense be estimated either according to the service to be rendered, or by comparison with any other system, it appeared to him to be enormous. He examined the document before us by way of ascertaining the relative view of expense and service, and also the competency of the former system to the discharge of the business. He would not, however, be responsible for precise clerical accuracy in his addition, which has also been deemed a subject worthy of criticism against the President of the United States. But if it be within twenty-five per cent. of being correct, it will demonstrate, first, that the former courts were competent to the business; secondly, that the number of causes bear no proportion to the expense of the institution.

Mr. G. said he would present to the view of the Committee the whole number of causes instituted at the respective sessions of the courts, from the Spring of 1796 to the Spring of 1801. He had fixed upon the year 1796, because the business began then to increase under the influence of the British Treaty. In all the circuit courts of the United States, except Maryland and Tennessee, the whole number of causes of every description instituted in the Spring of 1796, were two hundred and ninety-four; Fall, one hundred and ninety-two: 1797, Spring, four hundred and eighty-one; Fall, three hundred and ninety-seven: 1798, Spring, three hundred and twenty-five; Fall, three hundred and ninety-seven: 1799, Spring, seven hundred and three, exclusive of ninety-eight criminal prosecutions in Pennsylvania; Fall, four hundred and fifty-five: 1800, Spring, four hundred and fifty-one—seventy criminal prosecutions in Pennsylvania; Fall, three hundred and fifty-five: 1801, Spring, three hundred and fifty; making the common calculation of suits settled between the parties without trial, dismissions, abatements, &c., &c., and it would appear that the whole number of judgments against solvent persons would hardly compensate the expense of the institution. It also appears that the number of causes left to be tried could easily be decided by the six former judges.

Mr. G. said, upon looking over the number of suits in the Eastern circuit, it appeared to him strange, that the members representing that part of the country should insist upon increasing the expense of the system, when the courts have there scarcely any business to attend to; and that gentlemen in the Southern States, where the business was greater, should be willing to lessen the expense. He said he never heard the smallest complaint in the State he represented respecting the incompetency of the former courts to discharge the business in that State. He believed they had always gone through the docket, whenever they attended, and as far as his own observations went, that was the fact. He said, it appeared strange to him, that the new courts and new expenses should be called for in other parts of the United States, when the old courts were competent to the business in that State, where the business has been considerably more than in any other State, although it is now very much declined, and probably will decline still more. In the courts of Maine, West Pennsylvania, West Virginia, and West Tennessee, no suit at all had been instituted in June last.

Under the view of the subject thus presented, Mr. G. considered the late courts as useless and unnecessary, and the expense, therefore, was to him highly objectionable. He did not consider it in the nature of a compensation, for there was no equivalent rendition of service. He could not help considering it as a tribute for past services; as a tribute for the zeal displayed by these gentlemen in supporting principles which the people had denounced. He thought the federal maxim always was, "millions for defence, not a cent for tribute." He could not consent to tax the people even one cent, as a tribute to men, who disrespected their principles. Another objection he had to the new organization of the courts was, their tendency to produce a gradual demolition of State courts, by multiplying the number of courts, increasing their jurisdiction, making bonds or obligatory bills assignable, with the privilege of bringing suits in the name of the assignee, &c., or as gentlemen say, bringing federal justice to every man's door; the State courts will be ousted of their jurisdiction, which he thought by no means a desirable event. Under this consideration alone, and under the conviction he felt of the inutility of the courts, he should vote for the repeal.

Mr. G. concluded by observing, that, upon the whole view of the subject, feeling the firmest conviction that there is no Constitutional impediment in the way of repealing the act in question, upon the most fair and candid interpretation of the Constitution:—believing that principles advanced in opposition, go directly to the destruction of the fundamental principle of the Constitution, the responsibility of all public agents to the people—that they go to the establishment of a permanent corporation of individuals invested with ultimate censorial and controlling power over all the departments of the Government, over legislation, execution, and decision, and irresponsible to the people; believing that these principles are in direct hostility to the great principle of Representative Government; believing that the courts formerly established, were fully competent to the business they had to perform, and that the present courts are useless, unnecessary, and expensive; believing that the Supreme Court has heretofore discharged all the duties assigned to it in less than one month in the year, and that its duties could be performed in half that time; considering the compensations of the judges to be among the highest given to any of the highest officers of the United States for the services of the whole year; considering the compensations of all the judges greatly exceeding the services assigned them, as well as considering all the circumstances attending the substitution of the new system for the old one, by increasing the number of judges, and compensations, and lessening their duties by the distribution of the business into a great number of hands, &c., while acting under these impressions, he should vote against the motion now made for striking out the first section of the repealing bill.

Friday, February 19.

A petition of sundry citizens of Huntingdon county, in the State of Pennsylvania, was presented to the House and read, praying a revision and amendment of the act of Congress passed on the eighteenth of June, one thousand seven hundred and ninety-eight, entitled "An act supplementary to, and to amend the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject."—Referred to the Committee of the Whole House to whom was committed, on the twenty-sixth ultimo, the bill for revising and amending the acts concerning naturalization.

On motion made and seconded that the House do come to the following resolutions:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That

the following articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the Constitution, to wit:

1st. That the State Legislatures shall, from time to time, divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President and Vice President in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature; and that the districts, so to be constituted shall consist, as nearly as may be, of contiguous territory, and of equal proportion of population, except where there may be any detached portion of territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unalterable until a new census of the United States shall be taken.

2d. That, in all future elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

Ordered, That the said motion, together with the resolutions of the Legislature of the State of New York, proposing amendments to the Constitution of the United States, respecting the choice of a President and Vice President, which were read and ordered to lie on the table on the fifteenth instant, be referred to the Committee of the Whole House on the state of the Union.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the Whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States and for other purposes."

Mr. BAYARD.—Mr. Chairman, I must be allowed to express my surprise at the course pursued by the honorable gentleman from Virginia, (Mr. GILES,) in the remarks which he has made on the subject before us. I had expected that he would have adopted a different line of conduct. I had expected it as well from that sentiment of magnanimity which ought to have been inspired by a sense of the high ground he holds on the floor of this House, as from the professions of a desire to conciliate, which he has so repeatedly made during the session. We have been invited to bury the hatchet, and brighten the chain of peace. We were disposed to meet on middle ground. We had assurances from the gentleman that he would abstain from reflections on the past, and his only wish was that we might unite in future in promoting the welfare of our common country. We confided in the gentleman's sincerity, and cherished the hope, that if the divisions of party were not banished from the House, its spirit would be less intemperate. Such were our impressions, when the mask was suddenly thrown aside, and we saw the torch of discord lighted and blazing before our eyes. Every effort has been made to revive the animosities of the House, and inflame the passions of the nation. I am at no loss to perceive why this course has been pursued. The gentleman has been unwilling to rely upon the strength of his subject, and has therefore determined to make the measure a party question. He has probably secured success, but would it not have been more honorable and more commendable to have left the decision of a great Constitutional question to the understanding, and not to the prejudices of the House? It was my ardent wish to discuss the subject with calmness and deliberation, and I did intend to avoid every topic which could awaken the sensibility of party. This was my temper and design when I took my seat yesterday. It is a course at present we are no longer at liberty to pursue. The gentleman has wandered far, very far, from the points of the debate, and has extended his animadversions to all the prominent measures of the former Administrations. In following him through his preliminary observations, I necesssarily lose sight of the bill upon your table.

The gentleman commenced his strictures with the philosophic observation, that it was the fate of mankind to hold different opinions as to the form of government which was preferable. That some were attached to the monarchal, while others thought the republican more eligible. This, as an abstract remark, is certainly true, and could have furnished no ground of offence, if it had not evidently appeared that an allusion was designed to be made to the parties in this country. Does the gentleman suppose that we have a less lively recollection than himself of the oath which we have taken to support the Constitution; that we are less sensible of the spirit of our Government, or less devoted to the wishes of our constituents? Whatever impression it might be the intention of the gentleman to make, he does not believe that there exists in the country an anti-republican party. He will not venture to assert such an opinion on the floor of this House. That there may be a few individuals having a preference for monarchy is not improbable; but will the gentleman from Virginia, or any other gentleman, affirm in his place, that there is a party in the country who wish to establish monarchy? Insinuations of this sort belong not to the Legislature of the Union. Their place is an election ground or an alehouse. Within these walls they are lost; abroad, they have an effect, and I fear are still capable of abusing the popular credulity.

We were next told of the parties which have existed, divided by the opposite views of promoting Executive power and guarding the rights of the people. The gentleman did not tell us in plain language, but he wished it to be understood, that he and his friends were the guardians of the people's rights, and that we were the advocates of Executive power.

I know that this is the distinction of party which some gentlemen have been anxious to establish; but this is not the ground on which we divide. I am satisfied with the Constitutional powers of the Executive, and never wished nor attempted to increase them; and I do not believe that gentlemen on the other side of the House ever had a serious

apprehension of danger from an increase of Executive authority. No, sir, our views as to the powers which do and ought to belong to the General and State governments, are the true sources of our divisions. I co-operate with the party to which I am attached, because I believe their true object and end is an honest and efficient support of the General Government, in the exercise of the legitimate powers of the Constitution.

I pray to God I may be mistaken in the opinion I entertain as to the designs of gentlemen to whom I am opposed. Those designs I believe hostile to the powers of this Government. State pride extinguishes a national sentiment. Whatever is taken from this Government is given to the States.

The ruins of this Government aggrandize the States. There are States which are too proud to be controlled; whose sense of greatness and resource renders them indifferent to our protection, and induces a belief, that if no General Government existed, their influence would be more extensive, and their importance more conspicuous. There are gentlemen who make no secret of an extreme point of depression, to which the Government is to be sunk. To that point we are rapidly progressing. But I would beg gentlemen to remember, that human affairs are not to be arrested in their course, at artificial points. The impulse now given may be accelerated by causes at present out of view. And when those who now design well, wish to stop, they may find their powers unable to resist the torrent. It is not true that we ever wished to give a dangerous strength to Executive power. While the Government was in our hands, it was our duty to maintain its Constitutional balance, by preserving the energies of each branch. There never was an attempt to vary the relation of its powers. The struggle was to maintain the Constitutional powers of the Executive. The wild principles of French liberty were scattered through the country. We had our Jacobins and disorganizers. They saw no difference between a King and a President, and as the people of France had put down their King, they thought the people of America ought to put down their President. They who considered the Constitution as securing all the principles of rational and practicable liberty, who were unwilling to embark upon the tempestuous sea of revolution, in pursuit of visionary schemes, were denounced as monarchists. A line was drawn between the Government and the people, and the friends of the Government were marked as the enemies of the people. I hope, however, that the Government and the people are now the same; and I pray to God that what has been frequently remarked may not in this case be discovered to be true, that they who have the name of people the most often in their mouths, have their true interests the most seldom at their hearts.

The honorable gentleman from Virginia wandered to the very confines of the Federal Administration, in search of materials the most inflammable and most capable of kindling the passions of his party.

He represents the Government as seizing the first moment which presented itself to create a dependent moneyed interest, ever devoted to its views. What are we to understand by this remark of the gentleman? Does he mean to say that Congress did wrong in funding the public debt? Does he mean to say that the price of our liberty and independence ought not to have been paid? Is he bold enough to denounce this measure as one of the Federal victims marked for destruction? Is it the design to tell us that its day has not yet come, but is approaching; and that the funding system is to add to the pile of Federal ruins? Do I hear the gentleman say we will reduce the Army to a shadow; we will give the Navy to the worms; the Mint, which presented the people with the emblems of their liberty, and of their sovereignty, we will abolish; the revenue shall depend upon the winds and waves; the judges shall be made our creatures, and the great work shall be crowned and consecrated by relieving the country from an odious and oppressive public debt? These steps, I presume, are to be taken in progression. The gentleman will pause at each, and feel the public pulse. As the fever increases he will proceed, and the moment of delirium will be seized to finish the great work of destruction.

The assumption of the State debts has been made an article of distinct crimination. It has been ascribed to the worst motives—to a design of increasing a dependent moneyed interest. Is it not well known that those debts were part of the price of our Revolution? That they rose in the exigency of our affairs, from the efforts of the particular States, at times when the Federal arm could not be extended to their relief? Each State was entitled to the protection of the Union, the defence was a common burden, and every State had a right to expect that the expenses attending its individual exertions in the general cause, would be reimbursed from the public purse. I shall be permitted further to add, that the United States, having absorbed the sources of State revenue, except direct taxation, which was required for the support of the State governments, the assumption of these debts was necessary to save some of the States from bankruptcy.

The internal taxes are made one of the crimes of the Federal Administration. They were imposed, says the gentleman, to create a host of dependents on Executive favor. This supposes the past Administrations to have been not only very wicked, but very weak. They laid taxes in order to strengthen their influence. Who is so ignorant as not to know, that the imposition of a tax would create an hundred enemies for one friend? The name of excise was odious; the details of collection were unavoidably expensive, and it was to operate upon a part of the community least disposed to support public burdens, and most ready to complain of their weight. A little experience will give the gentleman a new idea of the patronage of this Government. He will find it not that dangerous weapon in the hands of the Administration which he has heretofore supposed it; he will probably discover that the poison is accom-

panied by its antidote, and that an appointment of the Government, while it gives to the Administration one lazy friend, will raise up against it ten active enemies. No! The motive ascribed for the imposition of the internal taxes is as unfounded as it is uncharitable. The Federal Administration, in creating burdens to support the credit of the nation, and to supply the means of its protection, knew that they risked the favor of those upon whom their power depended. They were willing to be the victims when the public good required.

The duties on imports and tonnage furnished a precarious revenue—a revenue at all times exposed to deficiency, from causes beyond our reach. The internal taxes offered a fund less liable to be impaired by accident—a fund which did not rob the mouth of labor, but was derived from the gratification of luxury. These taxes are an equitable distribution of the public burdens. Through this medium the Western country is enabled to contribute something to the expenses of a Government which has expended and daily expends such large sums for its defence. When these taxes were laid they were indispensable. With the aid of them it has been difficult to prevent an increase of the public debt. And notwithstanding the fairy prospects which now dazzle our eyes, I undertake to say, if you abolish them this session, you will be obliged to restore them or supply their place by a direct tax before the end of two years. Will the gentleman say, that the direct tax was laid in order to enlarge the bounds of patronage? Will he deny that this was a measure to which we had been urged for years by our adversaries, because they foresaw in it the ruin of Federal power? My word for it, no Administration will ever be strengthened by a patronage united with taxes which the people are sensible of paying.

We were next told, that to get an army an Indian war was necessary. The remark was extremely bald, as the honorable gentleman did not allege a single reason for the position. He did not undertake to state that it was a wanton war, or provoked by the Government. He did not even venture to deny that it was a war of defence, and entered into in order to protect our brethren on the frontiers from the bloody scalping-knife and murderous tomahawk of the savage. What ought the Government to have done? Ought they to have estimated the value of the blood which probably would be shed, and the amount of the devastation likely to be committed before they determined on resistance? They raised an army, and after great expense and various fortune, they have secured the peace and safety of the frontiers. But why was the Army mentioned on this occasion, unless to forewarn us of the fate which awaits them, and to tell us that their days are numbered? I cannot suppose that the gentleman mentioned this little army, distributed on a line of three thousand miles, for the purpose of giving alarm to three hundred thousand free and brave yeomanry, ever ready to defend the liberties of the country.

The honorable gentleman proceeded to inform the Committee, that the Government, availing itself of the depredations of the Algerines, created a navy. Did the gentleman mean to insinuate, that this war was invited by the United States? Has he any documents or proof to render the suspicion colorable? No, sir, he has none. He well knows that the Algerine aggressions were extremely embarrassing to the Government. When they commenced, we had no marine force to oppose to them. We had no harbors or places of shelter in the Mediterranean. A war with these pirates could be attended with neither honor nor profit. It might cost a great deal of blood, and in the end it might be feared that a contest so far from home, subject to numberless hazards and difficulties, could not be maintained. What would gentlemen have had the Government to do? I know there are those who are ready to answer: abandon the Mediterranean trade. But would this have done? The corsairs threatened to pass the Straits, and were expected in the Atlantic. Nay, sir, it was thought that our very coasts would not have been secure.

Will gentlemen go further, and say that the United States ought to relinquish their commerce. It has been said that we ought to be cultivators of the earth, and make the nations of Europe our carriers. This is not an occasion to examine the solidity of this opinion; but I will only ask, admitting the Administration were disposed to turn the pursuits of the people of this country from the ocean to the land, whether there is a power in the Government, or whether there would be if we were as strong as the Government of Turkey, or even of France, to accomplish the object? With a seacoast of seventeen hundred miles, with innumerable harbors and inlets, with a people enterprising beyond example, is it possible to say, you will have no ships or sailors, nor merchants? The people of this country will never consent to give up their navigation, and every Administration will find themselves constrained to provide means to protect their commerce.

In respect to the Algerines, the late Administration were singularly unfortunate. They were obliged to fight or pay them. The true policy was to hold a purse in one hand and a sword in the other. This was the policy of the Government. Every commercial nation in Europe was tributary to these petty barbarians. It was not esteemed disgraceful. It was an affair of calculation, and the Administration made the best bargain in their power. They have heretofore been scandalized for paying tribute to a pirate, and now they are criminated for preparing a few frigates to protect our citizens from slavery and chains! Sir, I believe on this and many other occasions, if the finger of Heaven had pointed out a course, and the Government had pursued it, yet that they would not have escaped the censure and reproaches of their enemies.

We were told that the disturbances in Europe were made a pretext for augmenting the Army and Navy. I will not, Mr. Chairman, at present go into a detailed view of the events which compelled the Government to put on the armor of defence, and to resist by force the French aggressions. All the world know the efforts which were made to accomplish an amicable adjustment of differences with that Power. It is enough to state, that Ambassadors of peace were twice repelled from the shores of France with ignominy and contempt. It is enough to say, that it was not till after we had drunk the cup of humiliation to the dregs, that the national spirit was roused to a manly resolution, to depend only on their God and their own courage for protection. What, sir, did it grieve the gentleman that we did not crouch under the rod of the Mighty Nation, and, like the petty Powers of Europe, tamely surrender our independence? Would he have had the people of the United States relinquish without a struggle those liberties which had cost so much blood and treasure? We had not, sir, recourse to arms, till the mouths of our rivers were choked with French corsairs; till our shores, and every harbor, were insulted and violated; till half our commercial capital had been seized, and no safety existed for the remainder but the protection of force. At this moment a noble enthusiasm electrized the country; the national pulse beat high, and we were prepared to submit to every sacrifice, determined only that our independence should be the last. At that time an American was a proud name in Europe; but I fear, much I fear, that in the course we are now likely to pursue, the time will soon arrive when our citizens abroad will be ashamed to acknowledge their country.

The measures of 1798 grew out of the public feelings; they were loudly demanded by the public voice. It was the people who drove the Government to arms, and not (as the gentleman expressed it) the Government which pushed the people to the X. Y. Z. of the political designs before they understood the A, B, C, of their political principles.

But what, sir, did the gentleman mean by his X. Y. Z? I must look for something very significant—something more than a quaintness of expression, or a play upon words—in what falls from a gentleman of his learning and ability. Did he mean that the despatches which contained those letters were impostures, designed to deceive and mislead the people of America—intended to rouse a false spirit not justified by events? Though the gentleman had no respect for some of the characters of that embassy; though he felt no respect for the Chief Justice, or the gentleman appointed from South Carolina—two characters as pure, as honorable, and exalted, as any the country can boast of—yet I should have expected that he would have felt some tenderness for Mr. Gerry, in whom his party had since given proofs of undiminished confidence. Does the gentleman believe that Mr. Gerry would have joined in the deception, and assisted in fabricating a tale, which was to blind his countrymen, and to enable the Government to destroy their liberties? Sir, I will not avail myself of the equivocations or confessions of Talleyrand himself: I say these gentlemen will not dare publicly to deny what is attested by the hand and seal of Mr. Gerry.

The truth of these despatches admitted, what was your Government to do? Give us, say the Directory, 1,200,000 livres for our own purse, and purchase $15,000,000 of Dutch debt, (which was worth nothing,) and we will receive your Ministers, and negotiate for peace.

It was only left to the Government to choose between an unconditional surrender of the honor and independence of the country, or a manly resistance. Can you blame, sir, the Administration for a line of conduct which has reflected on the nation so much honor, and to which, under God, it owes its present prosperity?

These are the events of the General Government which the gentleman has reviewed, in succession, and endeavored to render odious or suspicious. For all this I could have forgiven him, but there is one thing for which I will not, I cannot, forgive him—I mean his attempt to disturb the ashes of the dead; to disturb the ashes of the great and good WASHINGTON! Sir, I might degrade by attempting to eulogize this illustrious character. The work is infinitely beyond my powers. I will only say that, as long as exalted talents and virtues confer honor among men, the name of WASHINGTON will be held in veneration.

After, Mr. Chairman, the honorable member had exhausted one quiver of arrows against the late Executive, he opened another, equally poisoned, against the Judiciary. He has told us, sir, that when the power of the Government was rapidly passing from Federal hands—after we had heard the thundering voice of the people which dismissed us from their service—we erected a Judiciary, which we expected would afford us the shelter of an inviolable sanctuary. The gentleman is deceived. We knew better, sir, the characters who were to succeed us, and we knew that nothing was sacred in the eyes of infidels. No, sir, I never had a thought that anything belonging to the Federal Government was holy in the eyes of those gentlemen. I could never, therefore, imagine that a sanctuary could be built up which would not be violated. I believe these gentlemen regard public opinion, because their power depends upon it; but I believe they respect no existing establishment of the Government; and if public opinion could be brought to support them, I have no doubt they would annihilate the whole. I shall at present only say further, on this head, that we thought the reorganization of the Judicial system a useful measure, and we considered it as a duty to employ the remnant of our power to the best advantage of our country.

The honorable gentleman expressed his joy that the Constitution had at last become sacred in our eyes: that we formerly held that it meant everything or nothing. I believe, sir, that the Constitution formerly appeared different in our eyes from what it appears in the eyes of the dominant party. We formerly saw in it the principles of a fair and goodly creation. We looked upon it as a source of peace, of safety, of honor, and of prosperity, to the country. But now the view is changed; it is

the instrument of wild and dark destruction; it is a weapon which is to prostrate every establishment to which the nation owes the unexampled blessings which it enjoys.

The present state of the country is an unanswerable commentary upon our construction of the Constitution. It is true that we made it mean much; and hope, sir, we shall not be taught by the present Administration that it can mean even worse than nothing.

The gentleman has not confined his animadversions to the individual establishment, but has gone so far as to make the judges the subject of personal invective. They have been charged with having transgressed the bounds of Judicial duty, and become the apostles of a political sect. We have heard of their travelling about the country for little other purpose than to preach the Federal doctrines to the people.

Sir, I think a judge should never be a partisan. No man would be more ready to condemn a judge who carried his political prejudices or antipathies on the bench. But I have still to learn that such a charge can be sustained against the judges of the United States.

The Constitution is the supreme law of the land, and they have taken pains, in their charges to grand juries, to unfold and explain its principles. Upon similar occasions, they have enumerated the laws which compose our criminal code, and when some of those laws have been denounced by the enemies of the Administration as unconstitutional, the judges may have felt themselves called upon to express their judgments upon that point, and the reasons of their opinions.

So far, but no farther, I believe, the judges have gone. In going thus far, they have done nothing more than faithfully discharge their duty.

But if, sir, they have offended against the Constitution or laws of the country, why are they not impeached? The gentleman now holds the sword of justice. The judges are not a privileged order; they have no shelter but their innocence. But, in any view, are the sins of the former judges to be fastened upon the new Judicial system? Would you annihilate a system because some men under part of it had acted wrong? The Constitution has pointed out a mode of punishing and removing the men, and does not leave this miserable pretext for the wanton exercise of powers which is now contemplated.

The honorable member has thought himself justified in making a charge of a serious and frightful nature against the judges. They have been represented going about searching out victims of the Sedition law. But no fact has been stated: no proof has been adduced, and the gentleman must excuse me for refusing my belief to the charge till it is sustained by stronger and better ground than assertion.

If, however, Mr. Chairman, the eyes of the gentleman are delighted with victims, if objects of misery are grateful to his feelings, let me turn his view from the walks of the judges to the track of the present Executive. It is in this path we see the real victims of stern, uncharitable, unrelenting power. It is here, sir, we see the soldier who fought the battles of the Revolution; who spilt his blood and wasted his strength to establish the independence of his country, deprived of the reward of his services, and left to pine in penury and wretchedness. It is along this path that you may see helpless children crying for bread, and gray hairs sinking in sorrow to the grave! It is here that no innocence, no merit, no truth, no services, can save the unhappy sectary who does not believe in the creed of those in power. I have been forced upon this subject, and before I leave it, allow me to remark, that without inquiring into the right of the President to make vacancies in office, during the recess of the Senate, but admitting the power to exist, yet that it never was given by the Constitution to enable the Chief Magistrate to punish the insults, to revenge the wrongs, or to indulge the antipathies of the man. If the discretion exists, I have no hesitation in saying that it is abused when exercised from any other motives than the public good. And when I see the will of a President precipitating from office men of probity, knowledge, and talents, against whom the community has no complaint, I consider it as a wanton and dangerous abuse of power. And when I see men who have been the victims of this abuse of power, I view them as the proper objects of national sympathy and commiseration.

Among the causes of impeachment against the judges, is their attempt to force the sovereignties of the States to bow before them. We have heard them called an ambitious body politic; and the fact I allude to has been considered as full proof of the inordinate ambition of the body.

Allow me to say, sir, the gentleman knows too much not to know that the judges are not a body politic. He supposed, perhaps, there was an odium attached to the appellation, which it might serve his purposes to connect with the judges. But, sir, how do you derive any evidence of the ambition of the judges from their decision that the States under our Federal compact were compellable to do justice? Can it be shown, or even said, that the judgment of the court was a false construction of the Constitution? The policy of later times on this point has altered the Constitution, and, in my opinion, has obliterated its fairest features. I am taught by my principles, that no power ought to be superior to justice. It is not that I wish to see the States humbled in dust and ashes; it is not that I wish to see the pride of any man flattered by their degradation; but it is that I wish to see the great and the small, the sovereign and the subject, bow at the altar of justice, and submit to those obligations from which the Deity himself is not exempt. What was the effect of this provision in the Constitution? It prevented the States being the judges in their own cause, and deprived them of the power of denying justice. Is there a principle of ethics more clear than that a man ought not to be a judge in his own cause, and is not the principle equally strong when applied not to one man, but to a collective body? It was the happiness of our situation which enabled us to force the greatest State to submit to the yoke of justice, and it would have been the glory of the country in the remotest times, if the principle in the Constitution had been maintained. What had the States to dread? Could they fear injustice when opposed to a feeble individual? Has a great man reason to fear from a poor one? And could a potent State be alarmed by the unfounded claim of a single person? For my part I have always thought that an independent tribunal ought to be provided to judge on the claims against this Government. The power ought not to be in our own hands. We are not impartial, and are therefore liable, without our knowledge, to do wrong. I never could see why the whole community should not be bound by as strong an obligation to do justice to an individual, as one man is bound to do it to another.

In England the subject has a better chance for justice against the Sovereign than in this country a citizen has against a State. The Crown is never its own arbiter, and they who sit in judgment have no interest in the event of their decision.

The judges, sir, have been criminated for their conduct in relation to the Sedition act, and have been charged with searching for victims who were sacrificed under it. The charge is easily made, but has the gentleman the means of supporting it? It was the evident design of the gentleman to attach the odium of the Sedition law to the Judiciary; on this score the judges are surely innocent. They did not pass the act; the Legislature made the law, and they were obliged by their oaths to execute it. The judges decided the law to be Constitutional, and I am not now going to agitate the question. I did hope, when the law passed, that its effect would be useful. It did not touch the freedom of speech, and was designed only to restrain the enormous abuses of the press. It went no further than to punish malicious falsehoods, published with the wicked intention of destroying the Government. No innocent man ever did or could have suffered under the law. No punishment could be inflicted till a jury was satisfied that a publication was false, and that the party charged, knowing it to be false had published it with an evil design.

The misconduct of the judges, however, on this subject, has been considered by the gentleman the more aggravated, by an attempt to extend the principles of the Sedition act, by an adoption of those of the common law. Connected with this subject, such an attempt was never made by the judges. They have held generally, that the Constitution of the United States was predicated upon an existing common law. Of the soundness of that opinion, I never had a doubt. I should scarcely go too far, were I to say, that, stripped of the common law, there would be neither Constitution nor Government. The Constitution is unintelligible without reference to the common law. And were we to go into our courts of justice with the mere statutes of the United States, not a step could be taken, not even a contempt could be punished. Those statutes prescribe no forms of pleadings; they contain no principles of evidence; they furnish no rule of property. If the common law does not exist in most cases, there is no law but the will of the judge.

I have never contended that the whole of the common law attached to the Constitution, but only such parts as were consonant to the nature and spirit of our Government. We have nothing to do with the law of the Ecclesiastical Establishment, nor with any principle of monarchical tendency. What belongs to us, and what is unsuitable, is a question for the sound discretion of the judges. The principle is analogous to one which is found in the writings of all jurists and commentators. When a Colony is planted, it is established subject to such parts of the law of the mother country as are applicable to its situation. When our forefathers colonized the wilderness of America, they brought with them the common law of England. They claimed it as their birthright, and they left it as the most valuable inheritance to their children. Let me say, that this same common law, now so much despised and villified, is the cradle of the rights and liberties which we now enjoy. It is to the common law we owe our distinction from the colonists of France, of Portugal, and of Spain. How long is it since we have discovered the malignant qualities which are now ascribed to this law? Is there a State in the Union which has not adopted it, and in which it is not in force? Why is it refused to the Federal Constitution? Upon the same principle that every power is denied which tends to invigorate the Government. Without this law the Constitution becomes, what perhaps many gentlemen wish to see it, a dead letter.

For ten years it has been the doctrine of our courts, that the common law was in force, and yet can gentlemen say, that there has been a victim who has suffered under it? Many have experienced its protection, none can complain of its oppression.

In order to demonstrate the aspiring ambition of this body politic, the Judiciary, the honorable gentleman stated with much emphasis and feeling that the judges had been hardy enough to send their mandate into the Executive cabinet. Was the gentleman, sir, acquainted with the fact when he made this statement? It differs essentially from what I know I have heard upon the subject. I shall be allowed to state the fact.

Several commissions had been made out by the late Administration for justices of the peace of this Territory. The commissions were complete; they were signed and sealed, and left with the clerks of the Office of State to be handed to the persons appointed. The new Administration found them on the Clerk's table, and thought proper to withhold them. These officers are not dependent on the will of the President. The persons named in the commissions considered that their appointments were complete, and that the detention of their commissions was a wrong, and not justified by the legitimate authority of the Executive. They applied to the Supreme Court for a rule upon the Secretary of State, to show cause why a mandamus should not issue, commanding

him to deliver up the commissions. Let me ask, sir, what could the judges do? The rule to show cause was a matter of course upon a new point, at least doubtful. To have denied it, would have been to shut the doors of justice against the parties. It concludes nothing, neither the jurisdiction nor the regularity of the act. The judges did their duty; they gave an honorable proof of their independence. They listened to the complaint of an individual against your President, and have shown themselves disposed to grant redress against the greatest man in the Government. If a wrong has been committed, and the Constitution authorizes their interference, will gentlemen say that the Secretary of State, or even the President, is not subject to law? And if they violate the law, where can we apply for redress but to our courts of justice? But, sir, it is not true that the judges issued their mandate to the Executive; they have only called upon the Secretary of State to show them that what he has done is right. It is but an incipient proceeding which decides nothing.

Mr. Giles rose to explain. He said that the gentleman from Delaware had ascribed to him many things which he did not say, and had afterwards undertaken to refute them. He had only said that mandatory process had issued; that the course pursued by the court indicated a belief by them that they had jurisdiction, and that in the event of no cause being shewn, a mandamus would issue.]

Mr. Bayard.—I stated the gentleman's words as I took them down. It is immaterial whether the mistake was in the gentleman's expression or in my understanding. He has a right to explain, and I will take his position as he now states it. I deny, sir, that mandatory process has issued. Such process would be imperative, and suppose a jurisdiction to exist; the proceeding which has taken place, is no more than notice of the application for justice made to the court, and allows the party to show, either that no wrong has been committed, or that the court has no jurisdiction over the subject. Even, sir, if the rule were made absolute, and the mandamus issued, it would not be definitive, but it would be competent for the Secretary in a return to the writ, to justify the act which has been done, or to show that it is not a subject of judicial cognizance.

It is not till after an insufficient return that a peremptory mandamus issues. In this transaction, so far from seeing anything culpable in the conduct of your judges, I think, sir, that they have given a strong proof of the value of that Constitutional provision which makes them independent. They are not terrified by the frowns of Executive power, and dare to judge between the rights of a citizen and the pretensions of a President.

I believe, Mr. Chairman, I have gone through most of the preliminary remarks which the honorable gentleman thought proper to make before he proceeded to the consideration of those points which properly belong to the subject before the Committee. I have not supposed the topics I have been discussing had any connexion with the bill on your table; but I felt it as a duty not to leave unanswered charges against the former Administrations and our judges, of the most insidious tendency, which I know to be unfounded, which were calculated and designed to influence the decision on the measure now proposed. Why, Mr. Chairman, has the present subject been combined with the Army, the Navy, the internal taxes and the Sedition law? Was it to involve them in one common odium, and consign them to one common fate? Do I see in the preliminary remarks of the honorable member the title-page of the volume of measures which are to be pursued? Are gentlemen sensible of the extent to which it is designed to lead them? They are now called on to reduce the Army, to diminish the Navy, to abolish the Mint, to destroy the independence of the Judiciary, and will they be able to stop when they are next required to blot out the public debt, that hateful source of moneyed interest and aristocratic influence? Be assured, sir, we see but a small part of the system which has been formed. Gentlemen know the advantage of progressive proceedings, and my life for it, if they can carry the people with them, their career will not be arrested while a trace remains of what was done by the former Administrations.

There was another remark of the honorable member which I must be allowed to notice. The pulpit, sir, has not escaped invective. The ministers of the Gospel have been represented, like the judges, forgetting the duties of their calling, and employed in disseminating the heresies of Federalism. Am I then, sir, to understand that religion is also denounced, and that your churches are to be shut up? Are we to be deprived, sir, both of law and Gospel? Where do the principles of the gentlemen end? When the system of reform is completed, what will remain? I pray God that this flourishing country, which, under his Providence, has attained such a height of prosperity, may yet escape the desolation suffered by another nation, by the practice of similar doctrines.

I beg pardon of the Committee for having consumed so much time upon points so little connected with the subject of the debate. Till I heard the honorable member from Virginia yesterday, I was prepared only to discuss the merits of the bill upon which you are called to vote. His preliminary remarks were designed to have an effect which I deemed it material to endeavor to counteract, and I therefore yielded to the necessity of pursuing the course he had taken, though I was conscious of departing very far from the subject before the Committee. To the discussion of that subject I now return with great satisfaction, and shall consider it under the two views it naturally presents; the constitutionality and the expediency of the measure. I find it most convenient to consider first, the question of expediency, and shall therefore beg leave to invert the natural order of the inquiry.

To show the inexpediency of the present bill, I shall endeavor to prove the expediency of the

judicial law of the last session. In doing this it will be necessary to take a view of the leading features of the pre-existing system, to inquire into its defects, and to examine how far the evils complained of were remedied by the provisions of the late act. It is not my intention to enter into the details of the former system; it can be necessary only to state so much as will distinctly shew its defects.

There existed, sir, a Supreme Court, having original cognizance in a few cases, but principally a court of appellate jurisdiction. This was the great national court of dernier resort. Before this tribunal, questions of unlimited magnitude and consequence, both of a civil and political nature, received their final decision; and I may be allowed to call it the national crucible of justice, in which the judgments of inferior courts were to be reduced to their elements and cleansed from every impurity. There was a Circuit Court, composed in each district of a judge of the Supreme Court and the district judge. This was the chief court of business both of a civil and criminal nature.

In each district a court was established for affairs of revenue, and of admiralty and maritime jurisdiction. It is not necessary for the purposes of the present argument to give a more extensive outline of the former plan of our Judiciary. We discover that the judges of the Supreme Court, in consequence of their composing a part of the circuit courts, were obliged to travel from one extremity to the other of this extensive country. In order to be in the court-house two months in the year they were forced to be upon the road six. The Supreme Court being the court of last resort, having final jurisdiction over questions of incalculable importance, ought certainly to be filled with men not only of probity, but of great talents, learning, patience, and experience. The union of these qualities, is rarely, very rarely found in men who have not passed the meridian of life. My Lord Coke tells us no man is fit to be a judge until he has numbered the lucubrations of twenty years. Men of studious habits are seldom men of strong bodies. In the course of things it could not be expected that men fit to be judges of your Supreme Courts would be men capable of traversing the mountains and wildernesses of this extensive country? It was an essential and great defect in this court, that it required in men the combination of qualities, which it is a phenomenon to find united. It required that they should possess the learning and experience of years and the strength and activity of youth. I may say further, Mr. Chairman, that this court, from its constitution, tended to deterioration and not to improvement. Your judges, instead of being in their closets and increasing by reflection and study their stock of wisdom and knowledge, had not even the means of repairing the ordinary waste of time. Instead of becoming more learned and more capable, they would gradually lose the fruits of their former industry. Let me ask if this was not a vicious construction of a court of the highest authority and greatest importance in the nation? In a court from which no one had an appeal and to whom it belonged to establish the leading principles of national jurisprudence?

In the constitution of this court, as a court of last resort, there was another essential defect. The appeals to this court are from the circuit courts. The circuit court consists of the district judge, and a judge of the Supreme Court. In cases where the district judge is interested, where he has been counsel, and where he has decided in the court below, the judge of the Supreme Court alone composes the circuit court. What, then, is substantially the nature of this appellate jurisdiction? In truth and practice, the appeal is from a member of a court to the body of the same court. The circuit courts are but emanations of the Supreme Court. Cast your eyes upon the Supreme Court; you see it disappear, and its members afterwards arising in the shape of circuit judges. Behold the circuit judges; they vanish, and immediately you perceive the form of the Supreme Court appearing. There is, sir, a magic in this arrangement which is not friendly to justice. When the Supreme Court assembles, appeals come from the various circuits of the United States. There are appeals from the decisions of each judge. The judgments of each member pass in succession under the revision of the whole body. Will not a judge, while he is examining the sentence of a brother to-day, remember that that brother will sit in judgment upon his proceedings to-morrow? Are the members of a court thus constituted, free from all motive, exempt from all bias, which could even remotely influence opinion on the point of strict right? and yet let me ask emphatically, whether this court, being the court of final resort, should not be so constituted that the world should believe and every suitor be satisfied, that in weighing the justice of a cause, nothing entered the scales but its true merits?

Your Supreme Court, sir, I have never considered as anything more than the judges of assize sitting in bank. It is a system with which perhaps I should find no fault, if the judges sitting in bank did not exercise a final jurisdiction. Political institutions should be so calculated as not to depend upon the virtues, but to guard against the vices and weaknesses of men. It is possible that a judge of the Supreme Court would not be influenced by the *esprit du corps*, that he would neither be gratified by the affirmance, nor mortified by the reversal of his opinions; but this, sir, is estimating the strength and purity of human nature upon a possible, but not on its ordinary scale.

I believe, said Mr. B., that in practice the formation of the Supreme Court frustrated, in a great degree, the design of its institution. I believe that many suitors were discouraged from seeking a revision of the opinions of the circuit court, by a deep impression of the difficulties to be surmounted in obtaining the reversal of the judgment of a court from the brethren of the judge who pronounced the judgment. The benefit of a court of appeals, well constituted, is not confined to the mere act of reviewing the sentence of an inferior court; but is more extensively use-

ful by the general operation of the knowledge of its existence upon inferior courts. The power of uncontrollable decision is of the most delicate and dangerous nature. When exercised in the courts, it is more formidable than by any other branch of our Government. It is the Judiciary only which can reach the person, the property, or life of an individual. The exercise of their power is scattered over separate cases, and creates no common cause. The great safety under this power arises from the right of appeal. A sense of this right combines the reputation of the judge with the justice of the cause. In my opinion, it is a strong proof of the wisdom of a Judicial system when few causes are carried into the court of the last resort. I would say, if it were not paradoxical, that the very existence of a court of appeals ought to destroy the occasion for it. The conscience of the judge, sir, will no doubt be a great check upon him in the unbounded field of discretion created by the uncertainty of law; but I should, in general cases, more rely upon the effect produced by his knowledge, that an inadvertent or designed abuse of power was liable to be corrected by a superior tribunal. A court of appellate jurisdiction, organized upon sound principles, should exist, though few causes arose for their decision: for it is surely better to have a court and no causes, than to have causes and no court. I now proceed, sir, to consider the defects which are plainly discernable, or which have been discovered by practice in the constitution of the circuit courts. These courts, from information which I have received, I apprehend were originally constructed upon a fallacious principle. I have heard it stated that the design of placing the judges of the Supreme Court in the circuit courts, was to establish uniform rules of decision throughout the United States. It was supposed that the presiding judges of the circuit courts, proceeding from the same body, would tend to identify the principles and rules of decision in the several districts. In practice, a contrary effect has been discovered to be produced by the peculiar organization of these courts. In practice we have found not only a want of uniformity of rule between the different districts, but no uniformity of rule in the same district. No doubt there was an uniformity in the decisions of the same judge; but as the same judge seldom sat twice successively in the same district, and sometimes not till after an interval of two or three years, his opinions were forgotten or reversed before he returned. The judges were not educated in the same school. The practice of the courts, the forms of proceeding, as well as the rules of property, are extremely various in the different quarters of the United States. The lawyers of the Eastern, the Middle, and Southern States, are scarcely professors of the same science. These courts were in a state of perpetual fluctuation. The successive terms gave you courts in the same district, as different from each other as those of Connecticut and Virginia. No system of practice could grow up, no certainty of rule could be established. The seeds sown in one term scarcely vegetated before they were trodden under foot. The condition of a suitor was terrible; the ground was always trembling under his feet. The opinion of a former judge was no precedent to his successor. Each considered himself bound to follow the light of his own understanding. To exemplify these remarks, I will take the liberty of stating a case which came under my own observation. An application before one judge was made to quash an attachment in favor of a subsequent execution creditor; the application was resisted upon two grounds, and the learned judge, to whom the application was first made, expressing his opinion in support of both grounds, dismissed the motion. At the succeeding court, a different judge presided, and the application was renewed and answered upon the same grounds. The second learned judge was of opinion, that one point has no validity, but he considered the other sustainable, and was about also to dismiss the motion, but upon being pressed, at last consented to grant a rule to show cause. At the third term, a third learned judge was on the bench, and though the case was urged upon its former principles, he was of opinion, that both answers to the application were clearly insufficient, and accordingly quashed the attachment. When the opinions of his predecessors were cited, he replied, that every man was to be saved by his own faith.

Upon the opinion of one judge, a suitor would set out in a long course of proceedings, and after losing much time and wasting much money, he would be met by another judge, who would tell him he had mistaken his road, that he must return to the place from which he started, and pursue a different track. Thus it happened as to the chancery process to compel the appearance of a defendant. Some of the judges considered themselves bound by the rules in the English books, while others conceived that a power belonged to the court, upon the service of a subpœna, to make a short rule for the defendant to appear and answer, or that the bill should be taken *pro confesso*. A case of this kind occurred where much embarrassment was experienced. In the circuit court for the district of Pennsylvania, a bill in chancery was filed against a person, who then happened to be in that district, but whose place of residence was in the Northwestern Territory. The subpœna was served, but there was no answer nor appearance. The court to which the writ was returned, without difficulty, upon an application, granted a rule for the party to appear and answer at the expiration of a limited time, or that the bill be taken *pro confesso*. A personal service of this rule being necessary, the complainant was obliged to hire a messenger to travel more than a thousand miles to serve a copy of the rule. At the ensuing court, affidavit was made of the service, and a motion to make the rule absolute. The scene immediately changed, a new judge presided, and it was no longer the same court.

The authority was called for to grant such a rule. Was it warranted by any act of Congress, or by the practice of the State? It was answered there is no act of Congress—the State has no court of chancery. But this proceeding was instituted, and has been brought to its present stage at considerable expense, under the direction of this court. The judge knew of no power the court had to direct the proceeding, and he did not consider that the complainant could have a decree upon his bill without going through the long train of process found in the books of chancery practice. The complainant took this course, and at a future time was told by another judge, that he was incurring an unnecessary loss of time and money, and that a common rule would answer his purpose. I ask you, Mr. Chairman, if any system could be devised more likely to produce vexation and delay? Surely, sir, the law is uncertain enough in itself, and its paths sufficiently intricate and tedious not to require that your suitors should be burdened with additional embarrassments by the organization of your courts.

The circuit is the principal court of civil and criminal business; the defects of this court were, therefore, most generally and sensibly felt. The high characters of the judges at first brought suitors into the courts; but the business was gradually declining, though causes belonging to the jurisdiction of the courts were multiplying, the continual oscillation of the court baffled all conjecture as to the correct course of the proceeding or the event of a cause. The law ceased to be a science. To advise your client it was less important to be skilled in the books than to be acquainted with the character of the judge who was to preside. When the term approached, the inquiry was, what judge are we to have? What is his character as a lawyer? Is he acquainted with chancery law? Is he a strict common lawyer, or a special pleader?

When the character of the judge was ascertained, gentlemen would then consider the nature of their causes, determine whether it was more advisable to use means to postpone or to bring them to a hearing.

The talents of the judges rather increased the evil, than afforded a corrective for the vicious constitution of these courts. They had not drawn their knowledge from the same sources. Their systems were different, and hence the character of the court more essentially changed at each successive term. These difficulties and embarrassments banished suitors from the court, and without more than a common motive, recourse was seldom had to the Federal tribunals.

I have ever considered it, also, as a defect in this court, that it was composed of judges of the highest and lowest grades. This, sir, was an unnatural association; the members of the court stood on ground too unequal to allow the firm assertion of his opinion to the district judge. Instead of being elevated, he felt himself degraded by a seat upon the bench of this court. In the district court he was everything, in the circuit court he was nothing. Sometimes he was obliged to leave his seat, while his associate reviewed the judgment which he had given in the court below. In all cases he was sensible that the sentences in the court in which he was, were subject to the revision and control of a superior jurisdiction where he had no influence, but the authority of which was shared by the judge with whom he was acting. No doubt in some instances the district judge was an efficient member of this court, but this never arose from the nature of the system, but from the personal character of the man. I have yet, Mr. Chairman, another fault to find with the ancient establishment of the circuit courts. They consisted only of two judges, and sometimes of one. The number was too small, considering the extent and importance of the jurisdiction of the court. Will you remember, sir, that they held the power of life and death, without appeal? That their judgments were final over sums of two thousand dollars, and their original jurisdiction restrained by no limits of value, and that this was the court to which appeals were carried from the district court.

I have often heard, sir, that in a multitude of counsel there was wisdom, and if the converse of the maxim be equally true, this court must have been very deficient. When we saw a single judge reversing the judgment of the district court, the objection was most striking, but the court never had the weight which it ought to have possessed, and would have enjoyed had it been composed of more members. But two judges belonged to the court, and inconvenience was sometimes felt from a division of their opinions. And this inconvenience was but poorly obviated by the provision of the law that in such cases the cause should be continued to the succeeding term, and receive its decision from the opinion of the judge who should then preside.

I do not pretend, Mr. Chairman, to have enumerated all the defects which belonged to the former judicial system. But I trust those which I have pointed out, in the minds of candid men, will justify the attempt of the Legislature to revise that system, and to make a fairer experiment of that part of the plan of our Constitution which regards the judicial power. The defects, sir, to which I have alluded, had been a long time felt and often spoken of. Remedies had frequently been proposed. I have known the subject brought forward in Congress or agitated in private, ever since I have had the honor of a seat upon this floor. I believe, sir, a great and just deference for the author of the ancient scheme prevented any innovation upon its material principles; there was no gentlemen who felt that deference more than myself, nor should I have ever hazarded a change upon speculative opinion. But practice had discovered defects which might well escape the most discerning mind in planning the theory. The original system could not be more than experiment; it was built upon no experience. It was the first application of principles to a new state of things. The first judicial law displays great ability, and it is no disparagement of the author to say its plan is not perfect.

I know, sir, that some have said, and perhaps not a few have believed, that the new system was introduced not so much with a view to its improvement of the old, as to the places which it provided for the friends of the Administration.

This is a calumny so notoriously false, and so humble, as not to require nor to deserve an answer upon this floor. It cannot be supposed that the paltry object of providing for sixteen unknown men could have ever offered an inducement to a great party basely to violate their duty, meanly to sacrifice their character, and foolishly to forego all future hopes.

I now come, Mr. Chairman, to examine the changes which were made by the late law. This subject has not been correctly understood. It has everywhere been erroneously represented. I have heard much said about the additional courts created by the act of last session. I perceive them spoken of in the President's Message. In the face of this high authority, I undertake to state, that no additional court was established by that law. Under the former system there was one Supreme Court, and there is but one now. There were seventeen district courts, and there are no more now. There was a circuit court held in each district, and such is the case at present. Some of the district judges are directed to hold their courts at new places, but there is still in each district but one district court. What, sir, has been done? The unnatural alliance between the supreme and district courts has been severed, but the jurisdiction of both these courts remains untouched. The power or authority of neither of them has been augmented or diminished. The jurisdiction of the circuit court has been extended to the cognizance of debts of four hundred dollars, and this is the only material change in the power of that court. The chief operation of the late law is a new organization of the circuit courts. To avoid the evils of the former plan, it became necessary to create a new corps of judges. It was considered that the Supreme Court ought to be stationary, and to have no connexion with the judges over whose sentences they had an appellate jurisdiction.

To have formed a circuit court out of the district judges, would have allowed no court of appeal from the district court, except the Supreme Court, which would have been attended with great inconvenience. But this scheme was opposed by a still greater difficulty. In many districts the duties of the judge require a daily attention. In all of them business of great importance may on unexpected occurrences require his presence.

This plan was thought of; it was well-examined and finally rejected, in consequence of strong objections to which it was liable. Nothing therefore remained but to compose the circuit court of judges distinct from those of the other courts. Admitting the propriety of excluding from this court the judges of the supreme and district courts, I think the late Congress cannot be accused of any wanton expense, nor even of a neglect of economy in the new establishment. This extensive country has been divided into six circuits, and three judges appointed for each circuit. Most of the judges have twice a year to attend a court in three States, and there is not one of them who has not to travel further, and who in time will not have more labor to perform than any judge of the State courts. When we call to mind that the jurisdiction of this court reaches the life of the citizen, and that in civil cases its judgments are final to a large amount, certainly it will not be said that it ought to have been composed of less than three judges. One was surely not enough, and if it had been doubtful whether two were not sufficient, the inconvenience which would have frequently arisen from an equal division of opinion, justifies the provision which secures a determination in all cases.

It was, additionally, very material to place on the bench of this court a judge from each State, as the court was in general bound to conform to the law and the practice of the several States.

I trust, sir, the Committee are satisfied that the number of judges which compose the circuit court is not too great, and that the Legislature would have been extremely culpable to have committed the high powers of this court to fewer hands. Let me now ask, if the compensation allowed to these judges is extravagant? It is little more than half the allowance made to the judges of the Supreme Court. It is but a small proportion of the ordinary practice of those gentlemen of the bar, who are fit, and to whom we ought to look to fill the places. You have given a salary of two thousand dollars. The puisne judges of Pennsylvania, I believe, have more. When you deduct the expenses of the office, you will leave but a moderate compensation for service, but a scanty provision for a family. When, Mr. Chairman, gentlemen coolly consider the amendments of the late law, I flatter myself their candor will at least admit that the present modification was fairly designed to meet and remedy the evils of the old system.

The Supreme Court has been rendered stationary. Men of age, of learning, and of experience, are now capable of holding a seat on the bench; they have time to mature their opinions in causes on which they are called to decide, and they have leisure to devote to their books, and to augment their store of knowledge. It was our hope, by the present establishment of the court, to render it the future pride, and honor, and safety of the nation. It is this tribunal which must stamp abroad the judicial character of our country. It is here that ambassadors and foreign agents resort for justice; and it belongs to this high court to decide finally, not only on controversies of unlimited value between individuals, and on the more important collision of State pretensions, but also upon the validity of the laws of the States, and of this Government. Will it be contended that such great trusts ought to be reposed in feeble or incapable hands? It has been asserted that this court will not have business to employ it. The assertion is supported neither by what is past, nor by what is likely to happen. During the present session of Congress, at their last term, the court was fully employed for two weeks in the daily hearing of causes. But its business must increase. There is no longer that restraint upon appeals from the circuit court, which was imposed by the

authority of the judge of the court to which the appeal was to be carried; no longer will the apprehension of a secret unavoidable bias in favor of the decision of a member of their own body, shake the confidence of a suitor, in resorting to this court, who thinks that justice has not been done to him in the court below. The progressive increase of the wealth and population of the country, will unavoidably swell the business of the court. But there is a more certain and unfailing source of employment, which will arise in the appeals from the courts of the National Territory. From the courts of original cognizance in this Territory, it affords the only appellate jurisdiction. If gentlemen will look to the state of property of a vast amount in this city, they must be satisfied that the Supreme Court will have enough to do for the money which is paid them.

Let us next consider, sir, the present state of the circuit courts.

There are six courts, which sit in twenty-two districts, each court visits at least three districts, some four. The courts are now composed of three judges of equal power and dignity. Standing on equal ground, their opinions will be independent and firm. Their number is the best for consultation, and they are exempt from the inconvenience of an equal division of opinion. But what I value most, and what was designed to remedy the great defect of the former system, is the identity which the court maintains. Each district has now always the same court. Each district will hereafter have a system of practice and uniformity of decision. The judges of each circuit will now study, and learn, and retain the laws and practice of their respective districts. It never was intended, nor is it practicable, that the same rule of property or of proceeding should prevail from New Hampshire to Georgia. The old courts were enjoined to obey the laws of the respective States. Those laws fluctuate with the will of the State Legislatures, and no other uniformity could ever be expected, but in the construction of the Constitution and statutes of the United States. This uniformity is still preserved by the control of the Supreme court over the courts of the circuits. Under the present establishment, a rational system of jurisprudence will arise. The practice and local laws of the different districts may vary, but in the same district they will be uniform. The practice of each district will suggest improvements to the others, the progressive adoption of which will in time assimilate the systems of the several districts.

It is unnecessary, Mr. Chairman, for me to say anything in relation to the district courts. Their former jurisdiction was not varied by the law of the last session.

It has been my endeavor, sir, to give a correct idea of the defects of the former judicial plan, and of the remedies for those defects introduced by the law now designed to be repealed. I do not pretend to say that the present system is perfect; I contend only that it is better than the old. If, sir, instead of destroying, gentlemen will undertake to improve the present plan, I will not only applaud their motives, but will assist in their labor. We ask only that our system may be tried. Let the sentence of experience be pronounced upon it. Let us hear the national voice after it has been felt. They will then be better able to judge its merits. In practice it has not yet been complained of; and as it is designed for the benefit of the people, how can their friends justify the act of taking it from them before they have manifested their disposition to part with it?

How, sir, am I to account for the extreme anxiety to get rid of this establishment? Does it proceed from that spirit which, since power has been given to it, has so unrelentingly persecuted men in office who belonged to a certain sect? I hope there will be a little patience; these judges are old and infirm men; they will die; they must die: wait but a short time, their places will be vacant; they will be filled with the disciples of the new school, and gentlemen will not have to answer for the political murder which is now meditated.

I shall take the liberty now, sir, of paying some attention to the objections which have been expressed against the late establishment. An early exception, which, in the course of the debate, has been abandoned by most gentlemen, and little relied on by any one, is the additional expense. The gentleman from Virginia stated the expense of the present establishment at one hundred and thirty-seven thousand dollars. On this head the material question is, not what is the expense of the whole establishment, but what will be saved by the repealing law on the table. I do not estimate the saving at more than twenty-eight thousand five hundred dollars. You save nothing but the salaries of sixteen judges, of two thousand dollars each. From this amount is to be deducted the salary of a Judge of the Supreme Court which is three thousand five hundred dollars. Abolishing the present system will not vary the incidental expenses of the circuit court. You revive a circuit court whose incidental expenses will be equal to those of the court you destroy. The increased salaries of the district judges of Kentucky and Tennessee must remain. It is not proposed to abolish their offices, and the admissions upon the other side allow that the salaries cannot be reduced.

If there were no other objection, the present bill could not pass without amendment, because it reduces the salaries of those judges, which is a plain, undeniable infraction of the Constitution. But, sir, it is not a fair way of treating the subject to speak of the aggregate expense. The great inquiry is, whether the judges are necessary, nad whether the salaries allowed to them are reasonable? Admitting the utility of the judges, I think no gentlemen will contend that the compensation is extravagant.

We are told of the expense attending the Federal Judiciary. Can gentlemen tell me of a Government under which justice is more cheaply administered? Add together the salaries of all your judges, and the amount but little exceeds the emoluments of the Chancellor of England. Ascertain the expenses of State justice, and the

proportion of each State of the expense of federal justice, and you will find that the former is five times greater than the latter. Do gentlemen expect that a system expanded over the whole Union is to cost no more than the establishment of a single State? Let it be remembered, sir, that the Judiciary is an integral and co-ordinate part with the highest branches of the Government. No Government can long exist without an efficient Judiciary. It is the Judiciary which applies the law and enables the Executive to carry it into effect. Leave your laws to the judiciaries of the States to execute, and my word for it in ten years you have neither law nor Constitution. Is your Judiciary so costly that you will not support it? Why then lay out so much money upon the other branches of your Government? I beg that it will be recollected that if your Judiciary costs you thousands of dollars, your Legislature costs you hundreds of thousands, and your Executive millions.

An objection has been derived from the paucity of causes in the federal courts, and the objection has been magnified by the allegation, that the number had been annually decreasing. The facts admitted, I draw a very different inference from my opponents. In my opinion they furnish the strongest proof of the defects of the former establishment, and of the necessity of a reform. I have no doubt, nay, I know it to be the fact, that many suitors were diverted from those tribunals by the fluctuations to which they were subject. Allow me, however, to take some notice of the facts. They are founded upon the Presidential document No. 8. Taking the facts as there stated, they allow upwards of fifty suits annually for each court. When it is considered that those causes must each have exceeded the value of five hundred dollars, and that they were generally litigated cases, I do not conceive that there is much ground to affirm that the courts were without business. But, sir, I must be excused for saying, I pay little respect to this document. It has been shown by others in several points to be erroneous, and from my own knowledge, I know it to be incorrect. What right had the President to call upon the clerks to furnish him with the list of the suits which had been brought, or were depending in their respective courts? Had this been directed by Congress, or was there any money appropriated to pay the expense? Is there any law which made it the duty of the clerks to obey the order of the Executive? Are the clerks responsible for refusing the lists, or for making false or defective returns? Do we know anything about the authenticity of the certificates made by the clerks? And are we not now aiming a mortal blow at one branch of the Government, upon the credit, and at the instigation of another and a rival department? Yes, sir, I say, at the instigation of the President, for I consider this business wholly as a Presidential measure. This document and his Message, show that it originated with him: I consider it as now prosecuted by him, and I believe that he has the power to arrest its progress, or to accomplish its completion. I repeat that it is his measure. I hold him responsible for it; and I trust in God that the time may come, when he will be called upon to answer for it as his act. And I trust the time will arrive, when he will hear us speaking upon the subject more effectually.

It has been stated as the reproach, sir, of the bill of the last session, that it was made by a party at the moment when they were sensible that their power was expiring and passing into other hands. It is enough for me, that the full and legitimate power existed. The remnant was plenary and efficient. And it was our duty to employ it according to our judgment and conscience for the good of the country. We thought the bill a salutary measure, and there was no obligation upon us to leave it as a work for our successors. Nay, sir, I have no hesitation in avowing, that I had no confidence in the persons who were to follow us. And I was the more anxious while we had the means to accomplish a work which I believed they would not do, and which I sincerely thought would contribute to the safety of the nation, by giving strength and support to the Constitution through the storm to which it was likely to be exposed. The fears, which I then felt, have not been dispelled, but multiplied by what I have since seen. I know nothing which is to be allowed to stand. I observe the institutions of the Government falling around me, and where the work of destruction is to end God alone knows. We discharged our consciences in establishing a judicial system, which now exists, and it will be for those who now hold the power of the Government to answer for the abolition of it, which they at present meditate. We are told, that our law was against the sense of the nation. Let me tell those gentlemen, they are deceived, when they call themselves the nation. They are only a dominant party, and though the sun of Federalism should never rise again, they will shortly find men better or worse than themselves thrusting them out of their places. I know it is the cant of those in power, however they have acquired it, to call themselves the nation. We have recently witnessed an example of it abroad. How rapidly did the nation change in France? At one time Brissot called himself the nation; then Robespierre, afterwards Tallien and Barras, and finally Bonaparte. But their dreams were soon dissipated, and they awoke in succession upon the scaffold, or in banishment. Let not those gentlemen flatter themselves, that Heaven has reserved to them a peculiar destiny. What has happened to others in this country, they must be liable to. Let them not exult too highly in the enjoyment of a little brief and fleeting authority. It was ours yesterday, it is theirs to day, but to-morrow it may belong to others.

[Mr. BAYARD here stated, that he had gone through the remarks he had to make connected with the first point of the debate; that he observed, that the common hour of adjournment had gone by, and that he should sit down in order to allow the Committee to rise, if they thought proper; and that he should beg leave to be heard the following day upon the second point. After some conversation, the Committee rose, reported—and the House adjourned.]

SATURDAY, February 20.

A memorial of sundry inhabitants of the city and county of Philadelphia, in the State of Pennsylvania, was presented to the House and read, praying a repeal of the act of Congress, passed on the thirteenth of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the Courts of the United States."—Referred.

Mr. STANLEY, one of the members from the State of North Carolina, presented to the House certain resolutions agreed to by the two branches of the Legislature of the said State, on the fifteenth of December last, proposing amendments to the Constitution of the United States, respecting a choice of a President and Vice President, and the election of Representatives to Congress from the several States; which were received, read, and ordered to be referred to a Committee of the whole House on the state of the Union.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. BAYARD.—I owe to the Committee the expression of my thanks for the patience with which they attended to the laborious discussion of yesterday.

It will be my endeavor, in the remarks which I have to offer upon the remaining part of the debate, to consume no time which the importance of the subject does not justify. I have never departed from the question before the Committee, but with great reluctance. Before I heard the gentleman from Virginia, I had not an observation to make unconnected with the bill on the table. It was he who forced me to wander on foreign ground; and be assured, sir, I shall be guilty of no new digressions where I am not covered by the same justification.

I did think that this was an occasion when the House ought to have been liberated from the dominion of party spirit, and allowed to decide upon the unbiassed dictates of their understanding. The vain hope which I indulged that this course would be pursued was soon dissipated by the inflammatory appeal made, by the gentleman from Virginia, to the passions of his party. This appeal (which treated with no respect the feelings of one side of the House) will excuse recriminations which have been made, or which shall be retorted. We were disposed to conciliate, but gentlemen are deceived if they think that we will submit to be trampled on.

I shall now, sir, proceed to the consideration of the second point which the subject presents. However this point may be disguised by subtleties, I conceive the true question to be, Has the Legislature a right, by a law, to remove a judge? Gentlemen may state their question to be, Has the Legislature a right by law to vacate the office of a judge? But, as in fact they remove the judges, they are bound to answer our question.

The question which I state they will not meet. Nay, I have considered it as conceded, upon all hands, that the Legislature have not the power of removing a judge from his office; but it is contended only that the office may be taken from the judge. Sir, it is a principle in law, which ought, and I apprehend does, hold more strongly in politics, that what is prohibited from being done directly, is restrained from being done indirectly. Is there any difference, but in words, between taking the office from a judge and removing a judge from the office? Do you not indirectly accomplish the end which you admit is prohibited? I will not say that it is the sole intention of the supporters of the bill before us to remove the circuit judges from their offices, but I will say that they establish a precedent which will enable worse men than themselves to make use of the Legislative power, for that purpose, upon any occasion. If it be Constitutional to vacate the office, and in that way to dismiss the judge, can there be a question as to the power to re-create the office and fill it with another man? Repeal to-day the bill of the last session, and the circuit judges are no longer in office. To-morrow, rescind this repealing act, (and no one will doubt the right to do it,) and no effect is produced but the removal of the judges. To suppose that such a case may occur, is no vagary of imagination. The thing has been done, shamelessly done, in a neighboring State. The judges there held their offices upon the same tenure with the judges of the United States. Three of them were obnoxious to the men in power. The Judicial law of the State was repealed, and immediately re-enacted, without a veil being thrown over the transaction. The obnoxious men were removed, their places supplied with new characters, and the other judges were re-appointed. Whatever sophistry may be able to show in theory, in practice there never will be found a difference in the exercise of the powers of removing a judge and of vacating his office.

The question which we are now considering depends upon the provisions contained in the Constitution. It is an error of the Committee, upon plain subjects, to search for reasons very profound. Upon the present subject, the strong provisions of the Constitution are so obvious that no eye can overlook them. They have been repeatedly cited, and, as long as the question stated is under discussion, they must be reiterated. There are two prominent provisions to which I now particularly allude: first, the judges shall hold their offices during good behaviour; secondly, their compensation shall not be diminished during their continuance. These are provisions so clearly understood, upon the first impression, that their meaning is rather obscured than illustrated by argument. What is meant, and what has been universally understood, by the tenure of "good behaviour?" *A tenure for life*, if the judge commit no misdemeanor. It is so understood and expressed in England, and so it has always been received and admitted in this country. The *express* provision, then, of the Constitution, defines the tenure of a judge's office—a tenure during life. How is that tenure *expressly* qualified? By the good beha-

viour of the judge. Is the tenure qualified by any other *express* condition or limitation? No other. As the tenure is *express*—as but one *express* limitation is imposed upon it—can it be subject to any other limitation not derived from necessary implication? If any material provision in the Constitution can in no other manner be satisfied than by subjecting the tenure of this office to some new condition, I will then admit that the tenure is subject to the condition.

Gentlemen have ventured to point out a provision which they conceived furnished this necessary implication. They refer to the power given to Congress, from time to time, to establish courts inferior to the Supreme Court. If this power cannot be exercised without vacating the offices of existing judges, I will concede that those offices may be vacated. But, on this head, there can be no controversy. The power has been, and at all times may be, exercised, without vacating the office of any judge. It was so exercised at the last session of Congress, and I surely do not now dispute the right of gentlemen to establish as many new courts as they may deem expedient. The power to establish new courts does not, therefore, imply a power to abolish the offices of existing judges, because the existence of those offices does not prevent an execution of the power.

The clause in the Constitution to which I have just alluded has furnished to gentlemen their famous position, that, though you cannot remove a judge from his office, you may take the office from the judge. Though I should be in order, I will not call this a quibble; but I shall attempt, in the course of the argument, yet more clearly to prove that it is one. I do not contend that you cannot abolish an empty office; but the point on which I rely, is, that you can do no act which impairs the independence of a judge. When gentlemen assert that the office may be vacated, notwithstanding the incumbency of the judge, do they consider that they beg the very point which is in controversy? The office cannot be vacated without violating the express provision of the Constitution in relation to the tenure.

The judge is to hold the office during good behaviour. Does he hold it when it is taken from him? Has the Constitution said that he shall hold the office during good behaviour, unless Congress shall deem it expedient to abolish the office? If this limitation has been omitted, what authority have we to make it part of the Constitution?

The second plain, unequivocal provision on this subject is, that the compensation of the judge shall not be diminished during the time he continues in office. This provision is directly leveled at the power of the Legislature. They alone could reduce the salary. Could this provision have any other design than to place the judge out of the power of Congress? And yet how imperfect and how absurd the plan! You cannot reduce a part of the compensation, but you may extinguish the whole. What is the sum of this notable reasoning? You cannot remove a judge from office, but you may take the office from the judge. You cannot take the compensation from the judge, but you may separate the judge from the compensation.

If your Constitution cannot resist reasoning like this, then indeed is it waste paper.

I will here turn aside, in order to consider a variety of arguments drawn from different sources, on which gentlemen on the other side have placed a reliance. I know of no order in which they can be classed, and I shall, therefore, take them up as I meet with them on my notes. It was urged by the honorable member from Virginia, to whom I have so frequently referred, that what was created by law might by law be annihilated. In the application of his principle, he disclosed views which I believe have not been contemplated by gentlemen of his party. He was industrious to show that not only the inferior courts, but the Supreme Court derives its existence from law. The President and Legislature exist under the Constitution. They came into being without the aid of a law. But, though the Constitution said there should be a Supreme Court, no judges could exist till the court was organized by a law. This argument, I presume, was pushed to this extent in order to give notice to the judges of the Supreme Court of their fate, and to bid them to prepare for their end.

I shall not attempt to discriminate between the tenure of the offices of the judges of the supreme and inferior courts. Congress has power to organize both descriptions of courts, and to limit the number of judges, but they have no power to limit or define the tenure of office. Congress creates the office, the President appoints the officer; but it is neither under Congress nor the President, but under the Constitution, that the judge claims to hold the office during good behaviour. The principle asserted does not in this case apply; the tenure of office is not created by law, and if the truth of the principle were admitted, it would not follow that the tenure of the office might be vacated by law. But the principle is not sound. I will show a variety of cases which will prove its fallacy. Among the obnoxious measures of the late Administration, was the loan of five millions, which was funded at eight per cent. The loan was created by a law and funded by law. Is the gentleman prepared to say that this debt, which was funded by a law of the former Legislature, may be extinguished by a law of the present? Can you, by calling the interest of this debt exorbitant and usurious, justify the reduction of it? Gentlemen admit that the salary of a judge, though established by a law, cannot be diminished by a law. The same thing must be allowed with respect to the salary of the President. Sir, the true principle is, that one Legislature may repeal the act of a former, in cases not prohibited by the Constitution. The correct question, therefore, is, whether the Legislature are not forbidden by the Constitution to abridge the tenure of a judicial office?

In order to avoid cases of a nature similar to those which I have put, the gentleman from Kentucky, (Mr. DAVIS,) and, after him, the gentleman from Virginia, endeavored to draw a distinction between laws executed and laws executory.

The distinction was illustrated by reference to the case of a State admitted by law into the Union. Here, it is said, the law is executed, and *functus officio*, and if you repeal it, still the State remains a member of the Union. But it was asked by the gentleman from Kentucky, supposing a law made to admit a State into the Union at a future time, before the time of admission arrived, could not the law be repealed? I will answer the question to the satisfaction of the gentleman, by stating a case which exists: By an ordinance of Congress, in the year 1787, Congress ordained, that when the population within the limits of a State within the Northwestern Territory should amount to sixty thousand souls, the district should be admitted as a member of the Union. Will the gentleman venture to doubt as to this case? Would he dare to tell the people of this country that Congress had the power to disfranchise them?

The law, in the case I refer to, is executory, though the event upon which it is to take effect is limited by population, and not by time.

But, sir, if there were anything in the principle, it has no influence upon the case to which it has been applied. A law has created the office of a judge, the judge has been appointed, and the office filled. The law is, therefore, executed, and upon the very distinction of the gentleman, cannot be repealed. The law fixing the compensation is executory, and so is that which establishes the salary of the President; but, though executory, they cannot be repealed. The distinction, therefore, is idle, and leaves the question upon the ground of the repeal being permitted or prohibited by the Constitution. I shall now advert, sir, to an argument urged with great force, and not a little triumph, by the honorable member from Virginia. This argument is derived from the word "hold," in the expression, the judge shall *hold* his office during good behaviour. It is considered as correlative to tenure. The gentleman remarks, that the Constitution provides that the President shall nominate the judge to his office, and when approved by the Senate, shall commission him. It is hence inferred that, as the President nominates and commissions the judge, the judge holds the office of the President; and that when the Constitution provides that the tenure of the office shall be during good behaviour, the provision applies to the President, and restrains the power which otherwise would result in consequence of the offices being holden of him, to remove the judges at his will. This is an argument, sir, which I should have thought that honorable member would have been the last person upon this floor to have adopted. It not only imputes to the President royal attributes, but prerogatives, derived from the rude doctrines of the feudal law.

Does the gentleman mean to contend that the President of these States, like the Monarch of England, is the fountain of honor, of justice, and of office? Does he mean to contend that the courts are the President's courts, and the judges the President's judges? Does he mean to say, sir, that the Chief Magistrate is always supposed to be present in these courts, and that the judges are but the images of his justice? To serve the paltry purposes of this argument, would the gentleman be willing to infuse in our Constitution the vital spirit of the feudal doctrines? He does not believe, he cannot believe, that when the word "hold" was employed, any reference was had to its feudal import. The language of the Constitution furnishes no support to this feudal argument. These officers are not called the judges of the President, but the judges of the United States. They are a branch of the Government equally important, and designed to be co-ordinate with the President. If, sir, because the President nominates to office and commissions, the office is held of him, for a stranger reason where by patent he grants lands of the United States, the lands are held of him. And upon the grantee's dying without heirs, the lands would escheat not to the United States, but to the President. In England, the tenure of lands and offices is derived from the same principle. All lands are held mediately or immediately of the Crown, because they are supposed to have been originally acquired from the personal grant of the Monarch. It is the same of office, as the King is supposed to be the source of all offices. Having the power to grant, he has a right to define the terms of the grant. These terms constitute the tenure. When the terms fail, the tenure ceases, and the object of the grant reverts to the grantor. This gentleman has charged others with monarchical tendencies, but never have I before witnessed an attempt so bold and strong to incorporate in our Constitution a rank monarchical principle. If, sir, the principle of our Constitution on this subject be republican and not monarchical, and the judges hold their offices of the United States, and not of the President, then the application of his argument has all the force against the gentleman which he designed it should have against his adversaries. For, if the office be held of the United States, and the tenure of good behaviour was designed to restrain the power of those of whom the office was holden, it will follow that it was the intention to restrain the power of the United States.

We have been told by gentlemen that the principles we advocated tended to establish a sinecure system in the country. Sir, I am as little disposed to be accessary to the establishment of such a system as any gentleman on this floor. But let me ask how this system is to be produced? We established judicial offices, to which numerous and important duties were assigned. A compensation has been allowed to the judges, which no one will say is immoderate, or disproportioned to the service to be rendered. These gentlemen first abolish the duties of the offices, then call the judges pensioners, and afterwards accuse us of establishing sinecures. There are no pensioners at present; if there should be any, they will be the creatures of this law. I have ever considered it as a sound and moral maxim that no one should avail himself of his own wrong. It is a maxim

which ought to be equally obligatory upon the public as upon the private man. In the present case, the judge offers you his service. You cannot say it is not worth the money you pay for it. You refuse to accept the service; and, after engaging to pay him while he continued to perform the service, you deny him his compensation, because he neglects to render services which you have prevented him from performing. Was injustice ever more flagrant? Surely, sir, the judges are innocent. If we did wrong, why should they be punished and disgraced? They did not pass the obnoxious law; they did not create the offices; they had no participation in the guilty business; but they were invited upon the faith of the Government to renounce their private professions, to relinquish the emoluments of other employments, and to enter into the service of the United States, who engaged to retain them during their lives, if they were guilty of no misconduct. They have behaved themselves well, unexceptionably well, when they find the Government rescinding the contract made with them, refusing the stipulated price of their labor, dismissing them from service, and in order to cover the scandalous breach of faith, stigmatizing them with names which may render them odious to their countrymen. Is there a gentleman on the floor of this House who would not revolt at such conduct in private life? Is there one who would feel himself justified, after employing a person for a certain time, and agreeing to pay a certain compensation, to dismiss the party from the service upon any caprice which altered his views, deny him the stipulated compensation, and to abuse him with opprobrious names for expecting the benefit of the engagement?

A bold attempt was made by one of the gentlemen from Virginia (Mr. GILES) to force to his aid the statute of William III. I call it a bold attempt, because the gentleman was obliged to rely upon his own assertion to support the ground of his argument. He stated that the clause in the Constitution was borrowed from a similar provision in the statute. I know nothing about the fact, but I will allow the gentleman its full benefit. In England, at an earlier period, the judges held their commissions during the good pleasure of the Monarch. The Parliament desired, and the King consented that the royal prerogative should be restrained. That the offices of judges should not depend on the will of the Crown alone, but upon the joint pleasure of the Crown and of Parliament. The King consented to part with a portion of his prerogative by relinquishing his power to remove the judges without the advice of his Parliament. By an express clause in the statute, he retained the authority to remove them with the advice of his Parliament. Suppose the clause had been omitted which reserved the right to remove upon the two Houses of Parliament, and the statute had been worded in the unqualified language of our Constitution, that the judges should hold their offices during good behaviour, would not the prerogative of removal have been abolished altogether? I will not say that the honorable member has been peculiarly unfortunate in the employment of this argument, because, sir, it appears to me that most to which he had recourse, when justly considered, have operated against the cause they were designed to support.

The gentleman tells us that the Constitutional provision on this subject was taken from the statute of William. Will he answer me this plain question? Why do we find omitted in the Constitution that part of the statutory provision, which allowed the judges to be removed upon the address of the two branches of the Legislature? Does he suppose that the clause was not observed? Does he imagine that the provision was dropt through inadvertency? Will he impute so gross a neglect to an instrument, every sentence, and word, and comma of which, he has told us was so maturely considered, and so warily settled? No, sir, it is impossible; and give me leave to say, that if this part of the Constitution were taken from the statute, (and the gentleman from Virginia must have better information on the subject than I have,) that a stronger argument could not be adduced to show that it was the intention of those who framed the Constitution, by omitting that clause in the statute which made the judges tenants of their office at the will of Parliament, to improve in this country the English plan of judicature, by rendering the judges independent of the Legislature. And I shall have occasion, in the course of my observations, to show that the strongest reasons derived from the nature of our Government, and which do not apply to the English form, require the improvement to be made.

Upon this point, sir, we may borrow a few additional rays of light from the constitutions of Pennsylvania, of Delaware, and of some other States. In those States, it has been thought that there might be misconduct on the part of a judge, not amounting to an impeachable offence, for which he should be liable to be removed. Their constitutions, therefore, have varied from that of the United States, and rendered their judges liable to be removed upon the address of *two-thirds* of each branch of the Legislature. Does it not strike every mind that it was the intention of those constitutions to have judges independent of a *majority* of each branch of the Legislature? And I apprehend, also, that it may be fairly inferred, that it was understood in those States when their constitutions were formed, that even two-thirds of each branch of the Legislature would not have the power to remove a judge, whose tenure of office was during good behaviour, unless the power was expressly given to them by the Constitution. I cannot well conceive of anything more absurd in an instrument designed to last for centuries, and to bind the furious passions of party, than to fortify one pass to judicial independence, and to leave another totally unguarded against the violence of Legislative power.

It has been urged by the gentleman from Virginia that our admission, that Congress has power to modify the office of a judge, leads to the conclusion, that they have the power to abolish the

office; because, by paring away their powers, they may at length reduce them to a shadow, and leave them as humble and as contemptible as a court of *pie-poudre*. The office of a judge consists of judicial powers, which he is appointed to execute. Every law which is passed increases or diminishes those powers, and so far modifies the office; nay, it is competent for the Legislature to prescribe additional duties or to dispense with unnecessary services, which are connected with the office of judge. But this power has its bounds. You may modify the office to any extent which does not affect the independence of the judge. The judge is to hold the office during good behaviour; now modify as you please, so that you do not infringe this Constitutional provision.

Do you ask me to draw a line and say, thus far you shall go and no further? I admit no line can be drawn. It is an affair of sound and *bona fide* discretion, because a discretion on the subject is given to the Legislature; to argue upon the abuse of that discretion is adopting a principle subversive of all legitimate power.

The Constitution is predicated upon the existence of a certain degree of integrity in man. It has trusted powers liable to enormous abuse, if all political honesty be discarded. The Legislature is not limited in the amount of the taxes which they have a right to impose, nor as to the objects to which they are to be applied. Does this power give us the property of the country, because, by taxes, we might draw it into the public coffers, and then cut up the Treasury and divide the spoils? Is there any power in respect to which a precise line can be drawn between the discreet exercise and the abuse of it?

I can only say, therefore, on this subject, that every man is acquitted to his own conscience who *bona fide* does not intend, and who sincerely does not believe that, by the law which he is about to pass, he interferes with the judges holding their offices during good behaviour.

I am now brought, Mr. Chairman, to take notice of some remarks which fell from the gentleman from Virginia, which do not belong to the subject before us, but are of sufficient importance to deserve particular attention. He called our attention, in a very impressive manner, to the state of parties in this House at the time when the act of the last session passed. He describes us in a state of blind paroxysm, incapable of discerning the nature or tendency of the measures we were pursuing; that a majority of the House were struggling to counteract the expression of the public will, in relation to the person who was to be the Chief Magistrate of the country.

I did suppose, sir, that this subject was at an end; and I did imagine that as gentlemen had accomplished their object, they would have been satisfied. But as the subject is again renewed, we must be allowed to justify our conduct. I know not what the gentleman calls an expression of the public will. There were two candidates for the office of President, who were presented to the House of Representatives with equal suffrages. The Constitution gave us the right, and made it our duty to elect that one of the two whom we thought preferable. A public man is to notice the public will, as Constitutionally expressed. The gentleman from Virginia, and many others, may have had their preference, but that preference of the public will did not appear by its Constitutional expression. Sir, I am not certain that either of those candidates had a majority of the country in his favor. Excluding the State of South Carolina, the country was equally divided. We know that parties in that State were nearly equally balanced, and the claims of both the candidates were supported by no other scrutiny into the public will, than our official return of votes. Those votes are very imperfect evidence of the true will of a majority of the nation. They resulted from political intrigue and artificial arrangements.

When we look at the votes, we must suppose that every man in Virginia voted the same way. These votes are received as a correct expression of the public will. And yet we know that, if the votes of that State were apportioned according to the several voices of the people, that, at least, seven out of twenty-one would have been opposed to the successful candidates. It was the suppression of the will of one-third of Virginia which enables gentlemen now to say, that the present Chief Magistrate is the man of the people. I consider that as the public will, which is expressed by Constitutional organs. To that will I bow and submit. The public will, thus manifested, gave to the House of Representatives the choice of the two men for President. Neither of them was the man whom I wished to make President; but my election was confined, by the Constitution, to one of the two, and I gave my vote to the one whom I thought was the greater and better man. That vote I repeated, and in that vote I should have persisted, had I not been driven from it by imperious necessity. The prospect ceased of the vote being effectual, and the alternative only remained of taking one man for President, or having no President at all. I chose, as I then thought, the lesser evil.

From the scene in this House, the gentleman carried us to one in the Senate. I should blush, sir, for the honor of the country, could I suppose that the law designed to be repealed owed its support in that body to the motives which have been indicated. The charge designed to be conveyed, not only deeply implicates the integrity of individuals of the Senate, but of the person who was then the Chief Magistrate. The gentleman, going beyond all precedent, has mentioned the names of members of that body, to whom commissions issued for offices not created by the bill before them, but which that bill, by the promotions it afforded, was likely to render vacant. He has considered the scandal of the transaction as aggravated by the issuing of commissions for offices not actually vacant upon the bare presumption that they would become vacant, by the incumbents accepting commissions for higher offices which were issued in their favor. The gentleman has particularly dwelt upon the indecent appearance

of the business, from two commissions being held by different persons at the same time for the same office.

I beg that it will be understood, that I mean to give no opinion as to the regularity of granting a commission for a judicial office, upon the probability of a vacancy before it is actually vacant: but I shall be allowed to say, that so much doubt attends the point, that an innocent mistake might be made on the subject. I believe, sir, it has been the practice to consider the acceptance of an office as relating to the date of the commission. The officer is allowed his salary from that date, upon the principle that the commission is a grant of the office, and the title commences with the date of the grant. This principle is certainly liable to abuse, but where there was a suspicion of abuse, I presume the Government would depart from it. Admitting the office to pass by the commission, and the acceptance to relate to its date, it then does not appear very incorrect in the case of a commission for the office of a circuit judge, granted to a district judge, as the acceptance of the commission for the former office relates to the date of the commission, to consider the latter office as vacant from the same time. The offices are incompatible. You cannot suppose the same person in both offices at the same time. From the moment, therefore, that you consider the office of circuit judge filled by a person who holds the commission of district judge, you must consider the office of district judge as vacated. The grant is contingent. If the contingency happen, the office vests from the date of the commission; if the contingency does not happen, the grant is void. If this reasoning be sound, it was not irregular in the late Administration, after granting a commission to a district judge, for the place of a circuit judge, to make a grant of the office of the district judge, upon the contingency of his accepting the office of circuit judge.

I now, sir, return to that point of the charge which was personal in its nature, and of infinitely the most serious import. It is a charge, as to which we can only ask, is it true? If it be true, it cannot be excused; it cannot be palliated; it is vile, profligate corruption, which every honest mind will execrate. But, sir, we are not to condemn till we have evidence of the fact. If the offence be serious, the proof ought to be plenty. I will consider the evidence of the fact upon which the honorable member has relied, and I will show him, by the application of it to a stronger case, that it is of a nature to prove nothing.

Let me first state the principal case. Two gentlemen of the Senate, Mr. Read, of South Carolina, and Mr. Green, of Rhode Island, who voted in favor of the law of last session, each received an appointment to the place of district judge, which was designed to be vacated by the promotion of the district judge to the office of circuit judge. The gentleman conveyed to us a distinct impression of his opinion, that there was an understanding between these gentlemen and the President, and that the offices were the promised price of their votes.

I presume, sir, the gentleman will have more charity in the case which I am about to mention, and he will for once admit that public men ought not to be condemned upon loose conclusions, drawn from equivocal presumptions.

The case, sir, to which I refer, carries me once more to the scene of the Presidential election. I should not have introduced it into this debate, had it not been called up by the honorable member from Virginia. In that scene I had my part; it was a part not barren of incident, and which has left an impression which cannot easily depart from my recollection. I know who were rendered important characters, either from the possession of personal means, or from the accident of political situation. And now, sir, let me ask the honorable member what his reflections and belief will be, when he observes that every man, on whose vote the event of the election hung, has since been distinguished by Presidential favor? I fear, sir, I shall violate the decorum of Parliamentary proceeding, in the mentioning of names; but I hope the example which has been set me will be admitted as an excuse. Mr. Charles Pinckney, of South Carolina, was not a member of the House, but he was one of the most active, efficient, and successful promoters of the election of the present Chief Magistrate. It was well ascertained that the votes of South Carolina were to turn the equal balance of the scales. The zeal and industry of Mr. Pinckney had no bounds. The doubtful politics of South Carolina were decided, and her votes cast into the scale of Mr. Jefferson. Mr. Pinckney has since been appointed Minister Plenipotentiary to the Court of Madrid; an appointment as high and honorable as any within the gift of the Executive. I will not deny that this preferment is the reward of talents and services, although, sir, I have never yet heard of the talents or services of Mr. Charles Pinckney. In the House of Representatives I know what was the value of the vote of Mr. Claiborne, of Tennessee. The vote of a State was in his hands. Mr. Claiborne has since been raised to the high dignity of Governor of the Mississippi Territory. I know how great, and how greatly felt, was the importance of the vote of Mr. Linn, of New Jersey. The delegation of the State consists of five members. Two of the delegation were decidedly for Mr. Jefferson; two were decidedly for Mr. Burr. Mr. Linn was considered as inclining to one side, but still doubtful. Both parties looked up to him for the vote of New Jersey. He gave it to Mr. Jefferson, and Mr. Linn has since had the profitable office of supervisor of his district conferred upon him. Mr. Lyon, of Vermont, was, in this instance, an important man. He neutralized the vote of Vermont. His absence alone would have given the vote of a State to Mr. Burr. It was too much to give an office to Mr. Lyon: his character was low. But Mr. Lyon's son has been handsomely provided for in one of the Executive offices. I shall add to the catalogue but the name of one more gentleman, Mr. Edward Livingston, of New York. I knew well, full well I knew the consequence of this gentlemen. His means were not limited to his own vote; nay, I always considered more than the vote of New

York within his power. Mr. Livingston has been made the attorney for the district of New York; the road of preferment has been opened to him, and his brother has been raised to the distinguished place of Minister Plenipotentiary to the French Republic.

This catalogue might be swelled to a much greater magnitude; but I fear, Mr. Chairman, were I to proceed farther, it might be supposed that I myself harbored the uncharitable suspicions of the integrity of the Chief Magistrate, and of the purity of the gentlemen whom he thought proper to promote, which it is my design alone to banish from the mind of the honorable member from Virginia. It would be doing me great injustice to suppose that I have the smallest desire, or have had the remotest intention to tarnish the fame of the present Chief Magistrate, or of any of the honorable gentlemen who have been the objects of his favor, by the statement which I have made; my motive is of an opposite nature. The late President appointed gentlemen to office to whom he owed no personal obligations, but who only supported what has been considered as a favorite measure. This has been assumed as a sufficient ground, not only of suspicion, but of condemnation. The present Executive, leaving scarcely an exception, has appointed to office, or has, by accident, indirectly gratified every man who had any distinguished means in the competition for the Presidential office, of deciding the election in his favor. Yet, sir, all this furnishes too feeble a presumption to warrant me to express a suspicion of the integrity of a great officer, or of the probity of honorable men, in the discharge of the high functions which they have derived from the confidence of their country. I am sure, sir, in this case, the honorable member from Virginia is as exempt from any suspicion as myself. And I shall have accomplished my whole object, if I induce that honorable member, and other members of the Committee, who entertain his suspicions as to the conduct of the late Executive, to review the ground of those suspicions, and to consider that in a case furnishing much stronger ground for the presumption of criminality, they have an unshaken belief, an unbroken confidence in the purity and fairness of the Executive conduct.

I return again to the subject before the Committee, from the unpleasant digression to which I was forced to submit, in order to repel insinuations which were calculated to have the worst effect, as well abroad as within the walls of this House. I shall now cursorily advert to some arguments of minor importance, which are supposed to have some weight, by gentlemen on the other side. It is said, that if the courts are sanctuaries, and the judges cannot be removed by law, it would be in the power of a party to create a host of them to live as pensioners on the country. This argument is predicated upon an extreme abuse of power, which can never fairly be urged to restrain the legitimate exercise of it: as well might it be urged that a subsequent Congress had a right to reduce the salary of a judge, or of the President, fixed by a former Congress; because, if the right did not exist, one Congress might confer a salary of five hundred thousand or one million dollars, to the impoverishment of the country. It will be time enough to decide upon those extreme cases when they occur. We are told that the doctrine we contend for, enables one Legislature to derogate from the power of another. That it attributes to a former, a power which it denies to a subsequent Legislature.

This is not correct. We admit that this Congress possesses all the power possessed by the last Congress. That Congress had a power to establish courts; so has the present. That Congress had not, nor did it claim the power to abolish the office of a judge while it was filled. Though they thought five judges under the new system sufficient to constitute the Supreme Court, they did not attempt to touch the office of either of the six judges. Though they considered it more convenient to have circuit judges in Kentucky and Tennessee than district judges, they did not lay their hands upon the offices of the six judges. We therefore deny no power to this Congress which was not denied to the last. An honorable member from Virginia seriously expressed his alarm, lest the principles we contended for should introduce into the country a privileged order of men. The idea of the gentleman supposes that every office not at will establishes a privileged order. The judges have their offices for one term; the President, the Senators, and the members of this House, for different terms. While these terms endure, there is a privilege to hold the places, and no power exists to remove. If this be what the gentleman means by a privileged order, and he agrees that the President, the Senators, and the members of this House, belong to privileged orders, I shall give myself no trouble to deny that the judges fall under the same description; and I believe that the gentleman will find it difficult to show, that in any other manner they are privileged. I did not suppose that this argument was so much addressed to the understandings of gentlemen upon this floor, as to the prejudices and passions of people out of doors.

It was urged with some impression by the honorable member from Virginia, to whom I last referred, that the position that the office of a judge might be taken from him by law, was not a new doctrine. That it was established by the very act now designed to be repealed, which was described in glowing language to have inflicted a gaping wound on the Constitution, and to have stained with its blood the pages of our statute book. It shall be my task, sir, to close this gaping wound, and to wash from the pages of our statute book the blood with which they are stained. It will be an easy task to show to you the Constitution without a wound, and the statute book without a stain.

It is, sir, the twenty-seventh section of the bill of the last session which the honorable member considers as having inflicted the ghastly wound on the Constitution, of which he has so feelingly spoken. That section abolishes the ancient cir-

cuit courts. But, sir, have we contended, or has the gentleman shown, that the Constitution prohibits the abolition of a court when you do not materially affect, or in any degree impair the independence of a judge? A court is nothing than a place where a judge is directed more to discharge certain duties. There is no doubt you may erect a new court and direct it to be holden by the judges of the Supreme or of the District Courts. And if it should afterwards be your pleasure to abolish that court, it cannot be said that you destroy the offices of the judges by whom it was appointed that the courts should be holden.

Thus it was directed by the original judicial law, that a circuit court should be holden at Yorktown in the district of Pennsylvania. This court was afterwards abolished, but it was never imagined that the office of any judge was affected. Let me suppose that a State is divided into two districts, and district courts established in each, but that one judge is appointed by law to discharge the judicial duties in both courts. The arrangement is afterwards found inconvenient, and one of the courts is abolished. In this case will it be said, that the office of the judge is destroyed, or his independence affected? The error into which gentlemen have fallen on this subject has arisen from their taking for granted what they have not attempted to prove, and what cannot be supported, that the office of a judge and any court in which he officiates, are the same thing. It is most clear, that a judge may be authorized and directed to perform duties in several courts, and that the discharging him from the performance of duty in one of those courts cannot be deemed an infringement of his office. The case of the late circuit courts as plainly illustrates the argument, and as conclusively demonstrates its correctness, as any case which can be put. There were not nominally any judges of the circuit court. The court was directed to be holden by the judges of the supreme and of the district courts. The judges of these two courts were associated and directed to perform certain duties; when associated, and in the performance of those duties, they were denominated the circuit court. This court is abolished; the only consequence is, that the judges of the supreme and district courts are discharged from the performance of the joint duties which were previously imposed upon them. But is the office of one judge of the supreme or of the district courts infringed? Can any judge say, in consequence of the abolition of the circuit courts, I no longer hold my office during good behaviour? On this point, it was further alleged by the same honorable member, that the law of the last session inflicted another wound on the Constitution by abolishing the district courts of Kentucky and Tennessee. The gentleman was here deceived by the same fallacy which misled him on the subject of the circuit courts. If he will give himself the trouble of carefully reviewing the provisions of the law, he will discern the sedulous attention of the Legislature to avoid the infringement of the offices of those judges. I believe the gentleman went so far as to charge us with appointing by law those judges to new offices.

The law referred to, said Mr. B., establishes a circuit, comprehending Kentucky, Tennessee, and the district of Ohio. The duties of the court of this circuit are directed to be performed by a circuit judge and the two district judges of Kentucky and Tennessee. Surely it is competent for the Legislature to create a court, and to direct that it shall be holden by any of the existing judges. If the Legislature had done with respect to all the district judges what they have with respect to those of Kentucky and Tennessee, I am quite certain that the present objection would have appeared entirely groundless. Had they directed that all the circuit courts should be held by the respective judges within the circuits, gentlemen would have clearly seen that this was only an imposition of a new duty, and not an appointment to a new office.

It will be recollected, said Mr. B., that under the old establishment, the district judges of Kentucky and Tennessee were invested generally with the powers of the circuit judges. The ancient powers of those judges are scarcely varied by the late law, and the amount of the change is, that they are directed to exercise those powers in a court formerly called a district, but now a circuit court, and at other places than those to which they were formerly confined. But the district judge nominally remains; his office both nominally and substantially exists, and he holds it now as he did before, during good behaviour. I will refer gentlemen to different provisions in the late law, which will show beyond denial that the Legislature carefully and pointedly avoided the act of abolishing the offices of those judges.

The seventh section of the law provides that the court of the sixth circuit shall be composed of a circuit judge, "and the judges of the district courts of Kentucky and Tennessee." It is afterwards declared in the same section, "that there 'shall be appointed, in the sixth circuit, a judge of 'the United States, to be called a circuit judge, 'who, together with the district judges of Tennessee and Kentucky, shall hold the circuit courts 'hereby directed to be holden within the same 'circuit." And, finally, in the same section it is provided, "that whenever the office of district 'judge in the districts of Kentucky and Tennessee respectively shall become vacant, such va-'cancies shall respectively be supplied by the 'appointment of two additional circuit judges in 'the said circuit, who, together with the circuit 'judge first aforesaid, shall compose the circuit 'court of the said circuit." When the express language of the law affirms the existence of the office and of the officer, by providing for the contingency of the officer ceasing to fill the office, with what face can gentlemen contend that the office is abolished? They who are not satisfied upon this point I despair of convincing upon any other.

Upon the main question, said Mr. B., whether the judges hold their offices at the will of the Legislature, an argument of great weight, and,

according to my humble judgment, of irresistible force, still remains. The Legislative power of the Government is not absolute, but limited. If it be doubtful whether the Legislature can do what the Constitution does not explicitly authorize; yet there can be no question that they cannot do what the Constitution expressly prohibits. To maintain, therefore, the Constitution, the judges are a check upon the Legislature. The doctrine I know is denied, and it is therefore incumbent upon me to show that it is sound.

It was once thought by gentlemen who now deny the principle, that the safety of the citizen and of the States rested upon the power of the judges to declare an unconstitutional law void. How vain is a paper restriction, if it confers neither power nor right! Of what importance is it to say, Congress are prohibited from doing certain acts, if no legitimate authority exists in the country to decide whether an act done is a prohibited act? Do gentlemen perceive the consequences which would follow from establishing the principle, that Congress have the exclusive right to decide upon their own powers? This principle admitted, does any Constitution remain? Does not the power of the Legislature become absolute and omnipotent? Can you talk to them of transgressing their powers when no one has a right to judge of those powers but themselves? They do what is not authorized, they do what is inhibited, nay, at every step they trample the Constitution under foot; yet their acts are lawful and binding, and it is treason to resist them. How ill, sir, do the doctrines and professions of these gentlemen agree! They tell us they are friendly to the existence of the States; that they are the friends of a federative, but the enemies of a consolidated, General Government, and yet, sir, to accomplish a paltry object, they are willing to settle a principle which, beyond all doubt, would eventually plant a consolidated Government, with unlimited power, upon the ruins of the State governments. Nothing can be more absurd than to contend that there is a practical restraint upon a political body who are answerable to none but themselves for the violation of the restraint, and who can derive from the very act of violation, undeniable justification of their conduct.

If, said Mr. B., you mean to have a Constitution, you must discover a power to which the acknowledged right is attached of pronouncing the invalidity of the acts of the Legislature which contravene the instrument. Does the power reside in the States? Has the Legislature of a State a right to declare an act of Congress void? This would be erring upon the opposite extreme. It would be placing the General Government at the feet of the State governments. It would be allowing one member of the Union to control all the rest. It would inevitably lead to civil dissension and a dissolution of the General Government. Will it be pretended that the State courts have the exclusive right of deciding upon the validity of our laws? I admit that they have the right to declare an act of Congress void. But this right they enjoy in practice, and it ever essentially must exist, subject to the revision and control of the courts of the United States. If the State courts definitively possessed the right of declaring the invalidity of the laws of this Government, it would bring us in subjection to the States. The judges of those courts, being bound by the laws of the State, if a State declared an act of Congress unconstitutional, the law of the State would oblige its courts to determine the law invalid. This principle would also destroy the uniformity of obligation upon all the States, which should attend every law of this Government. If a law were declared void in one State, it would exempt the citizens of that State from its operation, whilst obedience was yielded to it in the other States. I go further, and say, if the States or State courts had a final power of annulling the acts of this Government, its miserable and precarious existence would not be worth the trouble of a moment to preserve. It would endure but a short time, as a subject of derision, and, wasting into an empty shadow, would quickly vanish from our sight. Let me now ask if the power to decide upon the validity of our laws resides with the people? Gentlemen cannot deny this right to the people. I admit that they possess it. But if, at the same time, it does not belong to the courts of the United States, where does it lead the people? It leads them to the gallows. Let us suppose that Congress, forgetful of the limits of their authority, pass an unconstitutional law. They lay a direct tax upon one State and impose none upon the others. The people of the State taxed contest the validity of the law. They forcibly resist its execution. They are brought by the Executive authority before the courts upon charges of treason. The law is unconstitutional, the people have done right, but the court are bound by the law, and obliged to pronounce upon them the sentence which it inflicts. Deny to the courts of the United States the power of judging upon the constitutionality of our laws, and it is vain to talk of its existing elsewhere. The infractors of the laws are brought before these courts, and if the courts are implicitly bound, the invalidity of the laws can be no defence. There is, however, Mr. Chairman, still a stronger ground of argument upon this subject. I shall select one or two cases to illustrate it. Congress are prohibited from passing a bill of attainder; it is also declared in the Constitution, that "no attainder of treason shall work corruption of blood or forfeiture, except during the life of the party attainted." Let us suppose that Congress pass a bill of attainder, or they enact that any one attainted of treason shall forfeit to the use of the United States all the estate which he held in any lands or tenements. The party attainted is seized and brought before a federal court, and an award of execution passed against him. He opens the Constitution and points to this line, "no bill of attainder or *ex post facto* law shall be passed." The attorney for the United States reads the bill of attainder.

The court are bound to decide, but they have only the alternative of pronouncing the law or the Constitution invalid. It is left to them only to

say that the law vacates the Constitution, or the Constitution avoids the law. So in the other case stated, the heir, after the death of his ancestor, brings his ejectment in one of the courts of the United States to recover his inheritance. The law by which it is confiscated is shown. The Constitution gave no power to pass such a law. On the contrary, it expressly denied it to the Government. The title of the heir is rested on the Constitution, the title of the Government on the law. The effect of one destroys the effect of the other; the court must determine which is effectual.

There are many other cases, Mr. Chairman, of a similar nature, to which I might allude. There is the case of the privilege of habeas corpus, which cannot be suspended but in times of rebellion or of invasion. Suppose a law prohibiting the issuing of the writ at a moment of profound peace. If in such case the writ were demanded of a court, could they say, it is true the Legislature were restrained from passing the law, suspending the privilege of this writ, at such a time as that which now exists, but their mighty power has broken the bonds of the Constitution, and fettered the authority of the court. I am not, sir, disposed to vaunt, but standing on this ground I throw the gauntlet to any champion upon the other side. I call upon them to maintain, that in a collision between a law and the Constitution, the judges are bound to support the law, and annul the Constitution. Can the gentlemen relieve themselves from this dilemma? Will they say, though a judge has no power to pronounce a law void, he has a power to declare the Constitution invalid.

The doctrine for which I am contending is not only clearly inferrible from the plain language of the Constitution, but by law has been expressly declared and established in practice since the existence of the Government.

The second section of the third article of the Constitution expressly extends the judicial power to all cases arising under the Constitution, the laws, &c. The provision in the second clause of the sixth article leaves nothing to doubt. "This Constitution, and the laws of the United States which shall be made in pursuance thereof, &c. shall be the supreme law of the land." The Constitution is absolutely the supreme law. Not so the acts of the Legislature. Such only are the law of the land as are made in pursuance of the Constitution.

I beg the indulgence of the Committee one moment, while I read the following provision from the twenty-fifth section of the judicial act of the year seventeen hundred and eighty-nine:

"A final judgment or decree in any suit in the highest court of law or equity of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity, &c. may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error."

Thus, as early as the year 1789, among the first acts of the Government, the Legislature explicitly recognised the right of a State court to declare a treaty, a statute, and authority exercised under the United States, void, subject to the revision of the Supreme Court of the United States; and it has expressly given the final power to the Supreme Court to affirm a judgment which is against the validity either of a treaty, statute, or an authority of the Government.

I humbly trust, Mr. Chairman, that I have given abundant proofs from the nature of our Government, from the language of the Constitution, and from Legislative acknowledgment, that the judges of our courts have the power to judge and determine upon the constitutionality of our laws.

Let me now suppose, that in our frame of government the judges are a check upon the Legislature; that the Constitution is deposited in their keeping. Will you say afterwards that their existence depends upon the Legislature? That the body whom they are to check has the power to destroy them? Will you say that the Constitution may be taken out of their hands, by a power the most to be distrusted, because the only power which could violate it with impunity? Can any thing be more absurd than to admit, that the judges are a check upon the Legislature, and yet to contend that they exist at the will of the Legislature? A check must necessarily imply a power commensurate to its end. The political body designed to check another must be independent of it, otherwise there can be no check. What check can there be when the power designed to be checked can annihilate the body which is to restrain it?

I go farther, Mr. Chairman, and take a still stronger ground. I say, in the nature of things, the dependence of the judges upon the Legislature, and their right to declare the acts of the Legislature void, are repugnant and cannot exist together. The doctrine, sir, supposes two rights—first, the right of the Legislature to destroy the office of the judge, and the right of the judge to vacate the act of the Legislature. You have a right to abolish, by a law, the offices of the judges of the circuit court; they have a right to declare the law void. It unavoidably follows, in the exercise of these rights, either that you destroy their rights, or that they destroy yours. This doctrine is not an harmless absurdity, it is a most dangerous heresy. It is a doctrine which cannot be practised without producing not discord only, but bloodshed. If you pass the bill upon your table the judges have a Constitutional right to declare it void. I hope they will have courage to exercise that right; and if, sir, I am called upon to take my side, standing acquitted in my conscience and before my God, of all motives but the support of the Constitution of my country, I shall not tremble at the consequences.

The Constitution may have its enemies, but I know that it has also its friends. I beg gentlemen to pause before they take this rash step. There are many, very many, who believe, if you strike this blow, you inflict a mortal wound on the Constitution. There are many now willing to spill their blood to defend that Constitution. Are gentlemen disposed to risk the consequences? Sir, I mean no threats, I have no expectation of appalling the stout hearts of my adversaries; but if gentlemen are regardless of themselves, let them consider their wives and children, their neighbors and their friends. Will they risk civil dissension, will they hazard the welfare, will they jeopardize the peace of the country, to save a paltry sum of money—less than thirty thousand dollars?

Mr. Chairman, I am confident that the friends of this measure are not apprized of the nature of its operation, nor sensible of the mischievous consequences which are likely to attend it. Sir, the morals of your people, the peace of the country, the stability of the Government, rest upon the maintenance of the independence of the Judiciary. It is not of half the importance in England, that the judges should be independent of the Crown, as it is with us, that they should be independent of the Legislature. Am I asked, would you render the judges superior to the Legislature? I answer, no, but co-ordinate. Would you render them independent of the Legislature? I answer, yes, independent of every power on earth, while they behave themselves well. The essential interests, the permanent welfare of society, require this independence. Not, sir, on account of the judge—that is a small consideration, but on account of those between whom he is to decide. You calculate on the weaknesses of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is, therefore, essential to the purity of your Judicial tribunals.

Let it be remembered, that no power is so sensibly felt by society, as that of the Judiciary. The life and property of every man is liable to be in the hands of the judges. Is it not our great interest to place our judges upon such high ground, that no fear can intimidate, no hope can seduce them. The present measure humbles them in the dust, it prostrates them at the feet of faction, it renders them the tools of every dominant party. It is this effect which I deprecate, it is this consequence which I deeply deplore. What does reason, what does argument avail, when party spirit presides? Subject your bench to the influence of this spirit, and justice bids a final adieu to your tribunals. We are asked, sir, if the judges are to be independent of the people? The question presents a false and delusive view. We are all the people. We are, and as long as we enjoy our freedom, we shall be divided into parties. The true question is, Shall the Judiciary be permanent, or fluctuate with the tide of public opinion? I beg, I implore gentlemen to consider the magnitude and value of the principle which they are about to annihilate. If your judges are independent of political changes, they may have their preferences, but they will not enter into the spirit of party. But let their existence depend upon the support of the power of a certain set of men, and they cannot be impartial. Justice will be trodden under foot. Your courts will lose all public confidence and respect. The judges will be supported by their partisans, who in their turn will expect impunity for the wrongs and violence they commit. The spirit of party will be inflamed to madness; and the moment is not far off when this fair country is to be desolated by civil war.

Do not say, that you render the judges dependent only on the people. You make them dependent on your President. This is his measure. The same tide of public opinion which changes a President, will change the majorities in the branches of the Legislature. The Legislature will be the instrument of his ambition, and he will have the courts as the instrument of his vengeance. He uses the Legislature to remove the judges, that he may appoint creatures of his own. In effect, the powers of the Government will be concentrated in the hands of one man, who will dare to act with more boldness, because he will be sheltered from responsibility. The independence of the Judiciary was the felicity of our Constitution. It was this principle which was to curb the fury of party upon sudden changes. The first moments of power, gained by a struggle, are the most vindictive and intemperate. Raised above the storm, it was the Judiciary which was to control the fiery zeal, and to quell the fierce passions of a victorious faction.

We are standing on the brink of that revolutionary torrent, which deluged in blood one of the fairest countries of Europe.

France had her National Assembly, more numerous and equally popular with our own. She had her tribunals of justice, and her juries. But the Legislature and her courts were but the instruments of her destruction. Acts of proscription and sentences of banishment and death were passed in the cabinet of a tyrant. Prostrate your judges at the feet of party, and you break down the mounds which defend you from this torrent. I am done. I should have thanked my God for greater power to resist a measure so destructive to the peace and happiness of the country. My feeble efforts can avail nothing. But it was my duty to make them. The meditated blow is mortal, and from the moment it is struck, we may bid a final adieu to the Constitution.

Mr. Randolph said, that he did not rise for the purpose of assuming the gauntlet which had been so proudly thrown by the Goliah of the adverse party; not but that he believed even his feeble powers, armed with the simple weapon of truth, a sling and a stone, capable of prostrating on the floor that gigantic boaster, armed cap-a-pie as he was; but that he was impelled by the desire to rescue from misrepresentation the arguments of his colleague, (Mr. Giles,) who was now absent during indisposition. That absence, said Mr. R., is a subject of peculiar regret to me, not only because I could have wished his vindication to have devolved on abler hands, but because he had to-day lost the triumph which, yesterday, he could not have failed to enjoy; that of seeing his opponent reduced to the wretched expedient of perverting and mutilating his arguments through inability to meet and answer them. Mr. R. said,

that this was the strongest proof which could be given of inadequacy to refute any position. He, therefore, left to the gentleman the victory which he had obtained over his own arguments; but, while he felt no disposition to disturb him in this enjoyment, he hoped he should be permitted to correct some of the misstatements which had been made of his colleague's observations.

In the view which he had taken of the conduct of our predecessors, in the chain of whose measures the law now proposed to be repealed formed an important link, the funding of the debt of the United States, and the assumption of those of the individual States, were comprehended. An attempt is made to construe this disapprobation into a design of violating the public faith. Mr. R. denied that one syllable had fallen from his colleague, indicative of a right, or disposition on his part, to withhold the payment of any public engagements. Against those destructive measures his colleague had raised his voice; against the fatal and absurd maxim, that a public debt was a public blessing, he had indeed protested; but not a word escaped his lips, because no such sentiment lurked in his heart, which could be construed into a declaration that the present Legislature possessed the same power over the engagements of former Legislatures which they possessed over ordinary laws; that of modifying or abrogating them with the same freedom which had been exercised in their establishment. Since the gentleman had betrayed such peculiar sensibility on the subject of the debt, Mr. R. relied on his support, when a measure should be brought forward for its final and rapid extinguishment, not by a sponge, but by a fair reimbursement of one hundred cents for every dollar due.

On other topics, the Algerine depredations, Indian war, &c., it might as easily be shown that the representation had been equally unfair. He should not dwell upon them, because they were less calculated to make the unfavorable impression on the public mind, which had been attempted on the subject of the debt. He would dismiss them with a single remark: the uses to which these incidents were applied, and not the events themselves, formed the subject of his colleague's animadversions.

But to the long catalogue of unpopular acts which have deprived their authors of the public confidence, the gentleman tells us, he and his friends were "goaded" by the clamor of their opponents. He solemnly assures us, that in the adoption of those measures they clearly foresaw the downfall of their power; but impressed with a conviction that they were essential to the public good, and disdaining all considerations of a personal nature, they nobly sacrificed their political existence on the altar of the general welfare; and we are called upon now to revere in them the self-immolated victims at the shrine of patriotism. These are, indeed, lofty pretensions; and although I shall not peremptorily deny, in this age of infidelity, I may be permitted to doubt them; for I call upon this Committee to decide whether, in this day's discussion, the gentleman has evinced that purity of heart, or that elevation of sentiment, which could justify me in clothing him with the attributes of Curtius or of the Decii?

In the wide range which the gentleman has taken, the question how far the common law of England is the law of the United States in their confederate capacity, has been raised. We are told "that the terms of the common law abound in every page, and in almost every line of the Constitution; that without it, that instrument is unintelligible and inefficent; that, therefore, it attaches to the Constitution. Moreover, that it is the law of the States, by the acknowledged principle, that colonists carry to their newly adopted country, so much of the law of their parent State, as is applicable to their new condition." That the common law is to settle the meaning of common law phrases, few will feel disposed to deny: that when the Constitution uses the term "court," it does not mean "jury," and that by "jury," is not intended to express court, seems plain enough to any capacity. But because the common law is to be resorted to for an explanation of these and similar terms, does it follow that that indefinite and undefinable body of law is the irrepealable law of the land? The sense of a most important phrase, "*direct tax*," as used in the Constitution, has been, it is believed, settled by the acceptation of Adam Smith; an acceptation, too, peculiar to himself. Does the Wealth of Nations, therefore, form a part of the Constitution of the United States? Will gentlemen please to specify, also, whether that common law which they have adopted for the United States, be the common law as it stood modified by statute in the reign of Elizabeth and James the First, prior to the existence of the act of habeas corpus, divested of all the salutary provisions afterwards introduced at the Revolution; or, whether it be the common law of the time of George the Second? Whether we are to be governed by the common law of Sir Walter Raleigh and Captain Smith, or that which was imported by Governor Oglethorpe; or on which of the intermediate periods they have chosen as fixing the common law of these States?

I wish especially to know, whether the common law of libels which attaches to this Constitution, be the doctrine laid down by Lord Mansfield, or that which has immortalized Mr. Fox? And whether the jurisdiction thus usurped over the press, in defiance of an express amendatory clause, which must be construed to annul every previous provision, if any such there be, which comes within its purview, be an example adduced to illustrate the position, which I certainly shall never contest, that "what the Constitution does not permit to be done by direct means, cannot, constitutionally, be indirectly effected?" But to reconcile us to this usurpation, we are informed, that the principles of the common law are favorable only to liberty; that they neither have been, nor can be enlisted in the cause of persecution. If I did not misunderstand the gentleman, he said, that no prosecution had occurred under that law. He has therefore never heard of the case of Luther Baldwin. I speak of the New Jersey case; nor

that of Williams. Other instances, I learn from high authority, have taken place in Vermont.

Mr. R. apologized for detaining the Committee so long on topics irrelevant to the subject. He said he would offer some reasons in favor of the expediency and constitutionality of the bill before them. He had not heard any argument on this occasion more satisfactory to him than those urged at the time when the law was passed, in favor of the expediency of the measure. He had waited in expectation that gentlemen would endeavor to prove, that the former judges, under a different arrangement, would be inadequate to the duty of holding the circuit courts. A belief that every real objection to the former system might have been obviated by some modification of this kind, had induced him to dissent to the passage of the law in the first instance. That dissent was recorded on the journals of the House; and so many members of the Committee stood in the same predicament, that if a sense of his duty to himself and the House were insufficient to deter him, that fact alone, of which the gentleman was himself a witness, ought to have repressed the aspersions which he cast upon a great portion of the Committee, whom he represented as the mere puppets of Executive influence, acting upon no convictions of their own, but played off by an invisible, although not unknown hand. Yes, sir, objections to this system are treated as if altogether unheard of until of late, although a very formidable minority have uniformly been found opposed to it. Nevertheless, this is altogether the work of the Executive, who, by the slightest expression of disapprobation, could yet arrest the measure and save the Constitution.

Mr. R. said he was unhackneyed in the ways of majorities; his experience had been very limited; but was he to conclude, from these observations, that it was the common law, the uniform usage heretofore of this Government, for this House to be the mere instrument for effecting the Executive will, a Chamber for enregistering Presidential edicts? It is said, that the document on this subject was one which the Executive had no right to lay before the House. When did the right of the President to recommend modifications of the Judiciary system cease? Such recommendations had heretofore formed a prominent feature in two successive Executive communications made at the commencement of two successive sessions of Congress. Did the right of the Executive to recommend, and of Congress to act, cease at the precise period when the faultless model of the last session was perfected? Mr. R. said, that the gentleman from Delaware had taken such a range, and thrown out such a vast deal of matter, that, in attempting to reply to some of his observations, he was necessarily led into many desultory remarks. The present system, it seems, was necessary, from the inevitable corporeal infirmity of the judges: the unavoidable effect of the tedious probation indispensable to that venerable station.

Let us compare the former practice with the present theory. The judge of one of the two districts into which Virginia had been divided, was contemporary with him at school. He is certainly neither an infirm nor hoary sage. His associate from Maryland had been an active and gallant partisan at the siege of Pensacola, during our Revolutionary war: not contending, however, under those banners where you would have expected to find a man who occupied so dignified a station under the Government of the United States; but fighting the battles of his King. Bravely, yet, alas! unsuccessfully contending against the spirit of insubordination and jacobinism which threatens to sweep from the earth everything valuable to man, against which the gentleman from Delaware is also eager to enter the lists. The selections which have been made from either House of Congress seem to have had as little reference to age and experience, which are said to be indispensable to the Judicial character. Upon a subject connected with those appointments, we have been told that the Executive had a right to presume a vacancy in all cases where a judge of an inferior tribunal had been appointed to a seat on the bench of a superior court; and that the new office vests, not at the time when the judge is notified of his promotion, nor at the date of his acceptance, but from the date of his commission. Mr. R. said, that he certainly did not mean to contend with the gentleman from Delaware on points of law, yet he would put a question to that gentleman. It will readily be conceded, that the vacating of the former office is the condition of the acceptance of the latter. Suppose a judge, after the date of his new commission, but prior to his notification or acceptance thereof, perform a Judicial act, was that act, therefore, invalid? Could his successor, on the receipt of his commission, exercise the functions of judge, prior to the resignation of the former incumbent? Could any office be at the same time in the possession of two persons? Did not this doctrine imply a right on part of the Government to anticipate the resignation of any judge, to compel his assent to an act vacating his office? The new commission, under these circumstances, either did or did not give a claim to its possessor on the office. If it did not, the Executive had a right to withhold it. If it did, a judge may be expelled from office, without his consent, and provided at any time afterwards he shall acquiesce, the expulsion is legal. Besides, by what authority does a member of this House hold his seat under an election previous to his appointment of district judge of North Carolina? For this office a commission was issued, as I am credibly informed. But, sir, we shall be told, that the manner in which this affair was transacted ought not to affect our decision. It is with me an irrefragable proof of the inexpediency of the law, and of course conclusive evidence of the expediency of its repeal.

But the Constitution is said to forbid it. And here permit me to express my satisfaction, that gentlemen have agreed to construe the Constitution by the rules of common sense. This mode is better adapted to the capacity of unprofessional men, and will preclude the gentleman from arrogating to himself, and half a dozen other characters in this Committee, the sole right of expound-

ing that instrument, as he had done in the case of the law which is proposed to be repealed. Indeed, as one of those who would be unwilling to devolve upon that gentleman the high-priesthood of the Constitution, and patiently submit to technical expositions which I might not even comprehend, I am peculiarly pleased that we are invited to exercise our understandings in the construction of this instrument. A precedent, said to be quite analogous, has been adduced—the decision of the judges of Virginia, on a similar question. A pamphlet, entitled "A Friend to the Constitution," has been quoted. Public opinion informs me that this is the production of the pen of a gentleman who holds a pre-eminent station on the Federal bench. Am I so to consider it? If this be understood, it is entitled to high respect; the *facts*, at least, must be unquestionable.

The courts of Virginia consisted of one general court of common law; a court of chancery, composed of three judges; and a court of admiralty. The judges of all those courts held their offices during good behaviour; and did, by law, constitute a court of appeals. The general court becoming manifestly incompetent to the extensive duties assigned to it, a system of circuit courts was adopted in 1787, and the judges of the court of appeals were appointed to ride the circuits. This law the judges pronounced unconstitutional, and agreed, unanimously, to remonstrate against it. After lamenting the necessity of deciding between the Constitution and the law, and that, in a case personally interesting to themselves, they say, "on 'this view of the subject, the following alternatives presented themselves; either to decide the 'question, or resign their offices. The latter 'would have been their choice, if they could have 'considered those questions as affecting their individual interests only." Yes, sir, and such was the character of those men, that none doubted the sincerity of this declaration. They then go on to declare, that the Legislature have no right even to increase their duties, by a modification of the courts; a privilege for which no one here has contended. In respect, much more, it is believed, to the characters of those venerable men, than to this opinion, the Legislature did not enforce the new regulations. The law was new-modelled, a separate court of appeals established, the judges of which were to be elected by joint ballot, in conformity with the Constitution. New members were added to the general court, and it was declared to be their duty to ride the circuits. The judges of chancery, of the general court, and court of admiralty, who had not been elected, in pursuance of the Constitution, judges of appeals, but on whom that duty was imposed by law, were relieved from the further discharge of it. In this arrangement several of the judges were understood to have been consulted; and on the ballot, the six senior judges were elected, five into the court of appeals, and the sixth in the court of chancery. Nevertheless, against this law the judges also protested, as an invasion of the Judiciary establishment, denying the right of the Legislature to deprive them of office in any other mode than is pointed out in the Constitution, (impeachment;) but to make way for the present salutary system, they do, in their mere free will, resign their appointments as judges of the court of appeals, and, as they do not hold any separate commission for that office, which might be returned, they do order the same to be recorded.

Now, sir, I shall not contend, as I certainly might, and with great reason, that the practice of Virginia must be considered as settling the Constitutional doctrine of the State, the opinions of individuals, however enlightened and respectable, notwithstanding; under which practice two chancellors have been removed from their office of judges in chancery, as well as of appeals, and the judges of the general court and court of admiralty also divested of their seats on the bench of the court of appeals, although a court of appeals was supposed necessary, and was retained in the new system; nor shall I insist on the disparity between the stability of the judicial branch of Government in the eye of the constitution of Virginia, and that of the United States, respectively, as surely I might. For the constitution of Virginia has a retrospect to pre-existing Judicial establishments, which experience had tested, which were allowed to be beneficial, and which it is contended were sanctioned by it. That of the United States, formed when the Confederacy had no such establishments, is to be created, from time to time: in other words, to be modified, as experience shall point out their defects—this power being devolved on a body constituted by express *unalterable* provisions. No, sir, I shall not dilate upon these forcible topics; I will concede, for argument-sake, that the doctrine contended for by the judges of Virginia, was the true Constitutional doctrine, and will apply it to the bill on your table, having first applied it to the act on which it is intended to operate. Previous to the existence of that act, the duty of judge of the circuit court was performed by the judges of the Supreme Court, who constituted a court of appeals, and by the judges of the respective districts. These were judges of the circuit court to every intent and purpose, as completely as the judges of Virginia were judges of appeals. By the operation of the law of the last session, they have been divested of this *office*, and other persons have been appointed to it. Much stress is laid, much ingenuity exercised to make metaphysical distinctions between the court and the office. I will grant all that gentlemen contend for, that there is a wide distinction. Does it affect the case? Does it alter the fact? The late circuit courts were not only abolished—the persons holding the office of judge of those courts no longer hold it: they have neither been impeached, nor have they resigned. They have not even accepted any new appointment inconsistent with it, and by which it became vacant. The function of judge of the circuit court does or does not constitute an office. If it does, then the judges of the supreme and district courts have been deprived of their offices, (the discharge of whose duties, be it remembered, constitutes no small part of the consideration for which they receive their

salaries.) If it does not, then the circuit judges are not now about to be deprived of their offices. On the passage of the law of last session, did we hear any protest against its unconstitutionality from the supreme or district courts? Of any resignations of the office of judge of the circuit court, in order "that a salutary system might take effect?" And yet, sir, is not that office as distinct from that of supreme or district judge, as the office of judge of appeals in Virginia is from that of judge of the general court, chancery, or admiralty? Are not the jurisdictions of those courts separate and distinct? Both never having original jurisdiction of the same subjects; and an appeal lying from the inferior to the superior tribunal, as in Virginia, although the officers of those tribunals may be the same individuals? What, then, is the difference between taking the office of appellate jurisdiction from the judge who possessed original jurisdiction, or taking the office of original jurisdiction from the appellate judge? How is the independence of the judge more affected by the one act than by the other?

To prove the unconstitutionality of this bill, then, by a recurrence to the doctrine of the judiciary of Virginia, is to prove the unconstitutionality of the law of which it will effect the repeal. And no argument has been, or, in my poor opinion, can be, adduced, to prove the unconstitutionality of the one, which will not equally apply to the other. No, sir, gentlemen are precluded by their own act from assuming the ground of the judges of Virginia; they are obliged to concede that we have the power, because they have already exercised it, of modifying the courts, and here they concede the question. They tell you that this, however, must, to be Constitutional, be a "bona fide" modification. It becomes them to prove, then, that this is a *mala fide* modification.

Gentlemen have not, they cannot meet the distinction between removing the judges from office for the purpose of putting in another person, and abolishing an office, because it is useless or oppressive. Suppose the collectors of your taxes held their offices by the tenure of good behaviour, would the abolition of your taxes have been an infraction of that tenure? Or would you be bound to retain them, lest it should infringe a private right? If the repeal of the taxes would be an infringement of that tenure, and therefore unconstitutional, could you ring all the changes upon the several duties on stamps, carriages, stills, &c., and, because you had retained the man and any one of these offices without diminishing his emoluments, abolish the others? Would not this be to impair the tenure of the office which was abolished, or to which another officer might have been appointed by a new regulation? Have not the judges, in the same manner, been deprived of one of their offices? And is not the tenure as completely impaired thereby, as if the other had been taken away also? Although it will be granted that the *tenant* is not so much affected, since, with one office, he has the salary formerly attached to both.

I agree that the Constitution is a limited grant of power, and that none of its general phrases are to be construed into an extension of that grant. I am free to declare, that if the intent of this bill is to get rid of the judges, it is a perversion of your power to a base purpose; it is an unconstitutional act. If, on the contrary, it aims not at the displacing one set of men, from whom you differ in political opinion, with a view to introduce others, but at the general good by abolishing useless offices, it is a Constitutional act. The *quo animo* determines the nature of this act, as it determines the innocence or guilt of other acts. But we are told that this is to declare the Judiciary, which the Constitution has attempted to fortify against the other branches of Government, dependent on the will of the Legislature, whose discretion alone is to limit their encroachments. Whilst I contend that the Legislature possess this discretion, I am sensible of the delicacy with which it is to be used. It is like the power of impeachment, or of declaring war, to be exercised under a high responsibility. But the power is denied since its exercise will enable flagitious men to overturn the Judiciary, in order to put their creatures into office, and to wreak their vengeance on those who have become obnoxious by their merit. Yet the gentleman expressly says, that arguments drawn from a supposition of extreme political depravity, prove nothing; that every Government pre-supposes a certain degree of honesty in its rulers, and that to argue from extreme cases is totally inadmissible. Yet the whole of his argument is founded on the supposition of a total want of principle in the Legislature and Executive. In other words, arguments drawn from the hypothesis are irresistible when urged in favor of that gentleman's opinion; when they militate against him, they are totally inapplicable. It is said that the bill on your table cannot constitutionally be passed, because unprincipled men will pervert the power to the basest of purposes; that, hereafter, we may expect a revolution on the bench of justice, on every change of party, and the politics of the litigants, not the merits of the case, are to govern its decisions. The Judiciary is declared to be the guardian of the Constitution against infraction, and the protection of the citizen, as well against Legislative as Executive oppression. Hence the necessity of an equal independence of both. For it is declared to be an absurdity, that we should possess the power of controlling a department of Government which has the right of checking us; since thereby that check may be either impaired or annihilated. This is a new doctrine of check and balance, according to which the Constitution has unwisely given to an infant Legislature the power of impeaching their guardians, the judges. Apply this theory to the reciprocal control of the two branches of the Legislature over each other and the Executive, and of the Executive over them. But sir, this law cannot be passed, because the character of the bench is to be given to it by the Legislature, to the entire prostration of its independence and impartiality. It will be conceded, that measures, such as have been portrayed, will

never be taken, unless the sentiment of the ruling party is ready to support them. Although gentlemen contend, that the office of judge cannot be abolished, they are not hardy enough to deny that it may be created. Where then, sir, is the check, supposing such a state of things as the gentleman has imagined, (and which he has also declared cannot be conceived,) which shall prevent unprincipled men from effecting the same object by increasing the number of judges, so as to overrule, by their creatures, the decisions of the courts? Would not public opinion be as ready to sanction the one as the other of these detestable acts? Would not the same evil which has excited such apprehension in the minds of gentlemen, be thus effected by means even more injurious than those which they have specified? Without any breach of the Constitution an unprincipled faction may effect the end which is so much apprehended from the measure now contemplated to be adopted. I might add, that, when the public sentiment becomes thus corrupt, the ties of any Constitution will be found too feeble to control the vengeful ambition of a triumphant faction. The rejection of this bill does not secure the point which has furnished matter for so much declamation. Its friends are represented as grasping at power not devolved upon them by the Constitution, which hereafter is to be made the instrument of destroying every judicial office, for the purpose of reviving them and filling the places with their partisans.

I have long been in the habit of attending to the arguments of the gentleman from Delaware, and I have generally found, in their converse, a ready touch-stone, the test of which they are rarely calculated to withstand. If you are precluded from passing this law, lest depraved men make it a precedent to destroy the independence of your Judiciary, do you not concede that a desperate faction, finding themselves about to be dismissed from the confidence of their country, may pervert the power of erecting courts, to provide to an extent for their adherents and themselves? and that however flagrant that abuse of power, it is remediless, and must be submitted to? Will not the history of all Governments warrant the assertion, that the creation of new and unnecessary offices, as a provision for political partisans, is an evil more to be dreaded than the abolition of useless ones? Is not an abuse of power more to be dreaded from those who have lost the public confidence than from those whose interest it will be to cultivate and retain it? And does not the doctrine of our opponents, of administration, the probably to be doubled? Does it not involve the absurdity that, in spite of all Constitutional prohibitions, Congress may exercise the power of creating an indefinite number of placemen, who are to be maintained through life at the expense of the community? But, when these cases are cited, you are gravely told that they suppose a degree of political depravity which puts an end to all argument. Here, sir, permit me to state an important difference of opinion between the two sides of this House. We are accused of an ambitious usurpation of power; of a design to destroy a great department of Government, because it thwarts our views, and of a lawless thirst of self-aggrandizement which no consideration can restrain. Let us not be amused by words. Let us attend to facts. They will show who are contending for unlimited, and who for limited power. The opponents of this bill contend that they did possess the power of creating offices to an indefinite amount; which, when created, were beyond the control of the succeeding Legislature. They, of course, contend for the existence of such a power in the present Legislature, for whose exercise there is no security but their self-respect. In other words, that if the present majority should incur the suspicion of the people, they may, as soon as there is any indication of their having forfeited the public confidence, on the signal of their dismissal from their present station, make ample and irrepealable provision for themselves and their adherents, by the creation of an adequate number of judicial offices. Now, sir, this is a power which we reject, though it is insisted that we possess it. We deny that such an authority does exist in us. We assert that we are not clothed with the tremendous power of erecting, in defiance of the whole spirit and express letter of the Constitution, a vast judicial aristocracy over the heads of our fellow-citizens, on whose labor it is to prey. Who, then, are, in reality, the advocates of a limited authority, and who are the champions of a dangerous and uncontrollable power? In my estimation, the wisest prayer that ever was composed is that which deprecates the being led into temptation. I have no wish to be exposed myself, nor to see my friends exposed, to the dangerous allurements which the adverse doctrine holds out. Do gentlemen themselves think that the persons, whom I see around me, ought to be trusted with such powers? Figure to yourselves a set of men, whose incapacity or want of principle have brought on them the odium of their country, receiving, in the month of December, the solemn warning, that on the fourth of March following, they are to be dismissed from the helm of government; establish the doctrine now contended for, and what may we not expect? Yes, sir, the doctrine advanced by our opponents is that of usurpation and ambition. It denies the existence of one power by establishing another infinitely more dangerous; and this you are told is to protect, through the organ of an independent judiciary, the vanquished party from the persecution of their antagonists, although it has been shown that, by increasing the number of judges, any tone whatever may be given to the bench.

The theory for which gentlemen contend seems to me far-fetched and overstrained. A mighty enginery is set in motion, which to all good purposes is ineffectual, although formidable in the perpetration of mischief. If, however, the people should be of a different opinion, I trust that at the next election they will apply the Constitutional corrective. That is the true check; every other check is at variance with the principle, that a free people are capable of self-government.

But, sir, if you pass the law, the judges are to put their veto upon it by declaring it unconstitutional. Here is a new power, of a dangerous and uncontrollable nature, contended for. The decision of a Constitutional question must rest somewhere. Shall it be confided to men immediately responsible to the people, or to those who are irresponsible? for the responsibility by impeachment is little less than a name. From whom is a corrupt decision most to be feared? To me it appears that the power which has the right of passing, without appeal, on the validity of your laws, is your sovereign. But an extreme case is put; a bill of attainder is passed; are the judges to support the Constitution or the law? Shall they obey God or Mammon? Yet you cannot argue from such cases. But, sir, are we not as deeply interested in the true exposition of the Constitution as the judges can be? With all the deference to their talents, is not Congress as capable of forming a correct opinion as they are? Are not its members acting under a responsibility to public opinion, which can and will check their aberrations from duty? Let a case, not an imaginary one, be stated: Congress violate the Constitution by fettering the press; the judicial corrective is applied to; far from protecting the liberty of the citizen, or the letter of the Constitution, you find them outdoing the Legislature in zeal; pressing the common law of England to their service where the sedition law did not apply. Suppose your reliance had been altogether on this broken staff, and not on the elective principle? Your press might have been enchained till doomsday, your citizens incarcerated for life, and where is your remedy? But if the construction of the Constitution is left with us, there are no longer limits to our power, and this would be true if an appeal did not lie through the elections, from us to the nation, to whom alone, and not a few privileged individuals, it belongs to decide, in the last resort, on the Constitution. Gentlemen tell us that our doctrine will carry the people to the gallows if they suffer themselves to be misled into the belief that the judges are not the expositors of the Constitution. Their practice has carried the people to infamous punishment, to fine and imprisonment; and had they affixed the penalty of death to their unconstitutional laws, judges would not have been wanting to conduct them to the gibbet.

A case in the Supreme Court has been mentioned. I certainly do not mean to put my opinion in competition with that of the gentleman from Delaware on a professional subject; but I cannot agree with him that the granting of the rule was not an assumption of the jurisdiction. Suppose a motion made in a court of Virginia for a rule to be served on the Governor of Massachusetts, to show cause why a mandamus should not issue, commanding him to do a specific act; to my unlettered judgment the acceptance of the motion would be to presume, that if the Governor could not show cause, the mandamus might issue. Would not any court reject such a motion, on the consideration that the Chief Magistrate of another State was not amenable to their jurisdiction? The gentleman from Delaware, doubtless, recollects, and, probably, better than I do, for I believe he was a spectator of the trial, the refusal of a subpœna to a man under a criminal prosecution, (I allude to the case of Cooper, in Philadelphia,) to be served on the President, as a witness on the part of the prisoner. Was that a subject of inferior magnitude to a mere question of municipal regulation? This court, which it seems has lately become the guardian of the feeble and oppressed, against the strong arm of power, found itself destitute of all power to issue the writ. Was it because of the influence and interest of that persecuted man, or of his connexions, that it was unnecessary at that time to exert that protecting power? No, sir, you may invade the press; the courts will support you, will outstrip you in zeal to further this great object; your citizens may be imprisoned and amerced, the courts will take care to see it executed; the helpless foreigner may, contrary to the express letter of your Constitution, be deprived of compulsory process for obtaining witnesses in his defence; the courts, in their extreme humility, cannot find authority for granting it; but touch one cent of their salaries, abolish one sinecure office which the judges hold, and they are immediately arrayed against the laws, as the champions of the Constitution. Lay your hands on the liberties of the people, they are torpid, utterly insensible; but affect their peculiar interest, and they are all nerve. They are said to be harmless, unaspiring men. Their humble pretensions extend only to a complete exemption from Legislative control; to the exercise of an inquisitorial authority over the Cabinet of the Executive, and the veto of the Roman Tribunate upon all your laws, together with the establishing any body of laws which they may choose to declare a part of the Constitution. Grant this authority, sir, to your judges, and you will have a Constitution which gentlemen who are such enemies to dumb legislation may indeed approve, because it is the very reverse of that which has been the object of their animadversions. To you will indeed belong the right of discussing—there ends your power; the judges are to decide, and without appeal. In their inquisitorial capacity, the Supreme Court, relieved from the tedious labor of investigating judicial points by the law of the last session, may easily direct the Executive by mandamus, in what mode it is their pleasure that he should execute his functions. They will also have more leisure to attend to the Legislature, and forestall, by inflammatory pamphlets, their decisions on all important questions; whilst, for the amusement of the public, we shall retain the right of debating but not of voting.

A new mode of appeal—that of the sword—has been lately produced. It is worthy of remark, that the era of this appeal commenced with the downfall of the power of the last Administration. The political opponents of that gentleman have set him an example of which, I hope, he and his friends will profit. They knew that the Constitution had been violated. It was no

business of speculation, but a plain matter of fact. What was their conduct? They preferred submission to civil dissension. They addressed themselves to the good sense of the community, and their judgment has been affirmed by the people, through the medium of the elections. But, sir, another objection is held up as fatal to the bill on your table: that it diminishes the salaries of the district judges of Kentucky and Tennessee, by repealing the law which increased them. Let us examine this fact. By this very law the courts of those districts were expressly abolished; the office of judge of those courts was destroyed. The men, it is true, were retained, and a judicial office given them; but an office entirely different from the former, with distinct functions and jurisdiction, and with different salary. We propose to restore those judges to their old offices by abolishing the new ones, to which they never were Constitutionally appointed. If their appointment was, however, Constitutional, I leave it to the Committee to decide, whether the district judge of Kentucky might not, on the theory of our adversaries, demand both salaries, since you had no right to take away his old office and salary? I have not the pleasure of a personal acquaintance with the gentleman who fills that office; but his reputation is too high to lead me to suppose such a claim possible. I mean no disrespect to him, far from it, in putting this case. Instead, as has been asserted, of rendering the office of judge a sinecure, as a pretext for abolishing it, we propose to restore the establishment to its primitive purity; to give the judges, both of the district and supreme courts, duties to perform—the latter being, it seems, now destitute of any other employment than keeping the consciences of the inferior courts. We mean to restore the district judges to their office of circuit judge, for exercising whose duties they have been amply paid by the public; to restore the judges of the Supreme Court to the same office of which they have been deprived, not believing a sinecure court of appeals to be desirable. Whence then the clamor that the judicial authority is to be perverted to the vile purpose of wreaking party vengeance? Suppose a case to occur, are not the persons who are to decide of the same political character with the minority? Would that gentleman have any cause to fear the decision of a controversy with a person of a different political complexion, because of that difference? Is not the Judiciary left precisely in the state in which it was a twelvemonth ago? Are not the same principles to govern, and the same individuals to decide?

It is not, however, on account of the paltry expense of the new establishment that I wish to put it down. No, sir, it is to give the deathblow to the pretension of rendering the Judiciary an hospital for decayed politicians; to prevent the State courts from being engulfed by those of the Union: to destroy the monstrous ambition of arrogating to this House the right of evading all the prohibitions of the Constitution, and holding the nation at bay.

If gentlemen dread the act which we are about to pass, they will remember that they have been the means of compelling us to it. They ought to have had the forbearance to abstain from such a measure at such a crisis. They have forced upon us the execution of a painful duty by their own want of prudence. If they wished the judges, like the tribe of Levi, to have been set apart from other men for the sacred purposes of justice, they should have considered well before they gave to publicans and sinners the privilege of the high priesthood. It is said that there is irrefragable proof in the smallness of the salaries annexed to them, that those offices were not established under any improper bias. If such bias had existed, $10,000, or a larger sum, might have been given. To execute a proposition of this sort, I believe nerve would have been found wanting. On that, as on another occasion which has been mentioned, we should have had blank votes. This is, however, triumphantly brought forward as an instance of the want of power in one Legislature over the acts of another. The President's salary might have been increased, or that of the judges, to a million or more of dollars; where would be your remedy? I will tell gentlemen: in a refusal of appropriation. Who would hesitate in such a case? The salary might exceed the annual revenue. This, too, is another instance, I suppose, of the inadmissibility of extreme cases. I should not hesitate, sir, to refuse an appropriation in such a case, and throw myself on the good sense of my country.

The example of a mighty nation has been held up as a solemn warning against an act which is said to prostrate the barriers of the Constitution; to that example be the decision of this question referred. A Government entrenched beyond the reach of public opinion, had for ages been accumulating one abuse upon another; against an authority which time served but to render more intolerable, the nation was compelled to seek refuge in a recurrence to revolutionary principles. And are we, therefore, to sanction a construction of the Constitution which claims irresponsibility for public agents? Which allows no remedy for grievances but revolution, and that perhaps when a recurrence to such a measure shall be too late? Who, after such an example, ought to contend for a perversion to individual aggrandizement of that power which was delegated for the public good?

I have endeavored, Mr. Chairman, in my poor desultory way, to repeat some of the arguments which have been offered by the gentleman from Delaware. Upon some topics it has been extremely painful to me to dilate; they could not have been avoided; they were obtruded upon me. There is one, however, on which it may be expected I should say something. I believe it unnecessary; the poison carries with it its own antidote. Who could have expected such remarks from that gentleman? If, however, he is now anxious to protect the independence of this and the other House of Congress against Executive influence, regardless of his motives, I pledge myself to support any measure which he may bring forward for that purpose;

and I believe I may venture to pledge every one of my friends.

The Committee now rose, and the House adjourned till Tuesday next.

Tuesday, February 23.

JUDICIARY BILL.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. Huger.—I have endeavored to catch your eye, Mr. Chairman, at this time, under the expectation and in the hope, that as the Committee have, during the two last days, enjoyed a vacation from public business, I shall run the less risk of exhausting its patience, and may calculate the more largely on the good nature and indulgence of gentlemen, in the course of the few observations I shall venture to submit to their consideration. Little accustomed to deliver my sentiments before a public audience, from my mode and habits of life seldom obliged even to concentrate my ideas on a particular subject, I have at no time presumed to address this honorable body but with great diffidence, with the utmost deference. Never, I can truly say, have I felt more strongly and sincerely these sensations than at the present moment—nor have I without great difficulty, and after much hesitation, ventured to offer myself to your regards, and take possession of the floor. Believing however, as I do, that the dearest interests of the community, the very existence of our national Government and Union, are involved in this momentous question, I feel myself compelled, in duty and in conscience, to express my dissent, and enter my protest against the (in my humble opinion, unconstitutional and mischievous) measure, which we are now called upon to adopt, in language more strong and decided than might be conveyed by a silent vote.

When I was before up, Mr. Chairman, on the motion for the postponement, made by the member from Delaware, I took occasion to express my regrets, that a Constitutional point of the first magnitude and importance should be brought forward at a moment so inauspicious to a fair and impartial investigation of it; at a time when the passions of gentlemen had been so greatly excited; when party feelings and party zeal must necessarily have so powerful an influence on their minds; when they had just gained, after a long and irritating struggle, a complete victory over their political opponents, and found themselves at a moment's warning, put in possession of the whole power of the Government. I could not but lament and deplore the fallibility of human nature, and what appeared to me to be the infatuation of men, whom I knew to be wise and honorable. I deprecated and protested against the haste and precipitancy, with which this measure was so unnecessarily hurried on for consideration, and conjured gentlemen to pause and consider whether it was at this moment, and under the present circumstances, that they ought to give a loose to their feelings, and urge the House to decide irrevocably and finally a great and all important national and Constitutional question; involving in its decision the prostration and complete overthrow of the only bar, the only efficient check, which the Constitution had provided, to their newly acquired power; implicated, as it unfortunately was, with another subject, peculiarly obnoxious to them, as a party, and necessarily exciting in their minds so many unpleasant and irritating recollections. Now, sir, let me ask, I submit it to the candor of the Committee to determine, whether the course which has been pursued, and the occurrences which have since taken place, do not fully warrant and clearly evince the correctness and propriety of the observations I made on that occasion? Which of the honorable gentlemen, who have advocated the measure now submitted to your consideration—which of them I pray you, has been able to divest himself of his party feelings and enthusiasm, and laying aside all extraneous matter, has confined himself to the real merits of the question? An honorable member from Virginia (Mr. Giles.) not now in his place, who has, however, taken an active part in the debate, and who, without disparagement to other gentlemen may be regarded as the *premier*, or *prime minister* of the day, promised us on a former occasion that he would endeavor to take this course. He told us, that if party sensations ever could be buried, the subject of the bill before us was the most proper to induce both sides of the House to make an effort to that effect—that he hoped and sincerely wished all extraneous and foreign matter might be laid aside, and that gentlemen would meet the question with coolness and temper, and make up their opinions on the subject with a view merely to the simple merits of the case. And if I am not greatly mistaken, the honorable member pledged himself, that he would endeavor to enforce this doctrine by his own example. But what was the fact? Had that gentleman confined himself in the same degree to the real merits of the case? Had he not on the contrary put his memory and invention equally to the rack, in order to ferret out proper subjects for irritation, and to excite to the highest pitch the party feelings and the party spirit of the Committee? Had he not gone back to the very commencement of the Government, giving an *ex parte* history of all its operations for twelve long years, and brought to our recollection every topic, every subject, which during this period had been conjured up and made use of to prejudice and inflame the public mind against those who have heretofore administered the Government? He had not been satisfied to avail himself even of living objects, but had raked up the ashes of the dead, not certainly to prove the expediency or constitutionality of the measure proposed, but for the charitable purpose of throwing an odium on his political opponents. So far was he indeed from confining himself, as he had promised, to the point in dispute, that his sole aim, his only object, would seem to have been to show that the act of the last session was passed with party views, and party purposes, and upon the same grounds ought now to be done away.

When a gentleman of such high talents and extensive acquirements addresses himself so much to the passions and party feelings, and so little to the reason and understanding of his audience, does it not, sir, afford a strong presumption that he is neither convinced of the soundness of the doctrine he advances, nor satisfied with the strength of the arguments he has to adduce in support of the measure he wishes to carry?

I observe, Mr. Chairman, on running my eye over the notes which I have taken in the course of the present debate, one circumstance which has been noticed by several gentlemen, and upon which they dwell with apparent triumph. They tell us that the members of the present Congress were elected with a view to the repeal of the act of the last session; that the people have thereby shown their disapprobation of the new organization of the Judiciary then adopted, and have expressed in a manner not to be misunderstood their sentiments in favor of the Constitutional doctrine now contended for. Gentlemen should really, however, consult facts and dates, before they indulge themselves in these round assertions. Is it not, sir, in the present instance, notorious to every body that the great majority, three-fourths at least, of the members of the present Congress, were chosen antecedent to the passage of the law in question? The elections, it is well known, had taken place in South Carolina, North Carolina, Pennsylvania, New Jersey, New York, and, I believe, all the New England States, before it was adopted. How, then, can gentlemen pretend to tell us at this day that the majority of the House were elected with a view to the repeal of a law which was not in existence at the time of their elections, and that the people had in this way expressed their opinions and sentiments on a Constitutional question, which could not, in the nature of things, have been before them?

I shall now, sir, and before I proceed to the discussion of the main question, beg leave to say a few words with respect to the document No. 8, which was presented to this House by the Executive, for the purpose of throwing additional light on the subject of the Judiciary, and which has been printed and dispersed throughout the continent with so much diligence and liberality. But allow me, sir, in the first place, to call the attention of the Committee to the President's Message at the commencement of the session, and remind them of what he there says on the subject. Speaking of the Judiciary, he expresses himself in the following words:

"The Judiciary system of the United States, and especially that portion of it recently erected, will of course present itself to the contemplation of Congress; and that they may be able to judge of the proportion which the institution bears to the business it has to perform, I have caused to be procured from the several States, and now lay before Congress, an exact statement of all the causes decided since the first establishment of the courts, and of those which were depending, when additional courts and judges were brought to their aid."

I know not, sir, whether this part of the Message made the same impressions on the mind of every gentleman who heard it read; but to me and all those to whom I have spoken on the subject, it certainly did appear to hold out the idea that the Executive had caused to be procured from the several States, and then laid before Congress, an exact statement of all the causes decided since the first establishment of Federal courts, and which were still depending before them. For myself, I did understand and expect that we were to have a complete and general view of the Judiciary in all its branches and ramifications. I observe, moreover, that all those gentlemen who either in this or the other branch of the Legislature, have referred to document No. 8, acted under this impression, and spoke of it as affording a general view of all the business which had been brought before the various and different courts of the United States. And such, in my humble opinion, ought in fact to have been the statement. We ought to have had a full and not a partial view of the subject, if it was necessary that we should have any official information at all with respect to it. Instead, however, of a general and comprehensive view of all the business before the Federal courts, we have only a partial and incorrect statement of the business which has been brought before a proportion (not all even of these) of the circuit courts under the old establishment: the very courts whose organization we contend was defective, and which the honorable and learned member from Delaware has proven beyond all possibility of doubt to have been found so very inconvenient in practice that suitors were driven from them, and forced, however against their inclination, to have recourse to other tribunals. If the document, therefore, incorrect as it avowedly is, proves anything, it goes to establish what we aver and contend for, to wit, that these courts were heretofore improperly organized, and did not afford that prompt and equal justice which the people of the United States have a right to expect, and ought to find in the national tribunals. And although I have not had an opportunity of procuring any information on the subject from my own immediate State, nor can be expected, being no professional man, to have acquired any practical knowledge of the business of the courts in the various parts of the Union, yet I have casually received some information from a neighboring State, which will at once show under how different an aspect the subject would present itself; how much more considerable the quantity of business brought before the Federal Courts would appear to have been had there been presented to our view a general statement of all the causes which have been or are now depending in all the different courts. It has been stated to me, on authority upon which I have every reason to rely, that the President had applied for cases in the city courts only, not in district courts; that there have been and are still, however, depending in the district courts of Virginia alone, suits to the number of twelve hundred, more than half of which are yet undetermined, and that there is no

doubt but that other States have their suits in the same proportion.

The Committee will at once perceive in how very different a light this subject would have appeared to the eyes of the American world, both as to the quantity and importance of the business, under the cognizance of the Federal Judiciary, had a general statement, as was expected, of all the causes which have been brought before any and each of the courts, been submitted to us by the Executive.

Whilst on this subject, I beg permission, sir, to state another piece of information which I have received with respect to the courts of Virginia. It is stated in the document No. 8, respecting the circuit court which sits at Lexington, for the western district of Virginia, "that no causes were decided or depending in the circuit court of the western district of Virginia." But no reason is given; and the inference necessarily drawn from this by the public must no doubt be, that there was no business to be done in that court. I am credibly informed, however, that there was neither a marshal nor an attorney for that court when the judges met, nor was there any jury summoned. The commission, it seems, of marshal, for Mr. Grattan, and of attorney for General Blackburn, which had been made out, sealed, and ordered to be put into the post office, under the old Administration, (without being actually put in the mail,) were suppressed upon a change taking place in the Administration; and it was not until after the date of the docket, that Mr. Moore and Mr. Monroe received their commissions as marshal and attorney of that district. I am further told, that, as soon as the federal court met, thus organized, fifteen suits were instituted. Now, sir, were not these facts known to those who framed the document No. 8? And, if known, ought there not, in fairness and candor, to have been some notice taken of them in the exact statement, instead of admitting the insinuation which it conveys, as it now stands, viz: that there was no business at all to be transacted in the circuit court for the western district of Virginia?

[Here Mr. HUGER was interrupted by Mr. HOLLAND, from North Carolina, who wished to know the authority upon which he made these statements. Mr. H. said, in reply, that he did not conceive himself bound to give his authority; nor did he think proper to gratify the honorable gentleman's curiosity, in this respect, unless called upon to do so by the House. It was sufficient that he believed the information he had received to be correct: he stated what he conceived to be facts in his place. If he was incorrect, or misinformed, it became gentlemen on the other side to deny the facts, and point out to the Committee in what respect the information he had given was erroneous.]

Mr. H. then continued. I shall not, sir, encroach further on the time and indulgence of the Committee by any other desultory observations, but shall proceed to consider, as well as my feeble means will permit, the merits of the main question, and the bill now under consideration.

The bill sent down from the Senate, and now before the Committee, involves two very distinct questions. It is proposed, in the first place, to repeal the act for the better organization of the Judiciary, passed at the last session, and thereby to revive the former Judicial establishment. Was this the only consequence—the whole effect of the bill—I should feel little anxiety as to the result of the present debate. For, defective as the old system is conceived to have been, I have no doubt but that we might have hobbled on with it a few years longer, until further experience should have induced some future Congress to alter and amend it. Certain additional judges, however, having been required and appointed under the act of the last session, a simple and unqualified repeal of that act necessarily deranges and deprives them of their offices. Hence arises another question of far greater magnitude—in my estimation all-important, viz: Whether this can be constitutionally done? In other words, whether the judges of the federal courts are to hold their offices during good behaviour, as the Constitution would seem to require, or at the pleasure of the other two branches of the Legislature—the construction now contended for?

Having been one of those who, in a former Congress, contributed to bring about those alterations in the federal courts, which it is at this time proposed to do away, I may well be supposed to feel a partiality for, and to be prejudiced in favor of, them. To this partial feeling—to these prejudices—it is perhaps owing, Mr. Chairman, that, notwithstanding all that torrent of abuse which has been so liberally, but with so little foundation, bestowed on the law of the last session; notwithstanding the labored and learned arguments which I have heard and read on the subject, both within and without these doors, I am still so much of a heretic as to believe that the former organization of the Federal Judiciary was defective, and that it has been improved upon and amended by the new system. I am still so unreasonable as to suppose (judging from my own feelings and impressions) that the framers of the law it is now proposed to repeal might have been actuated by motives less criminal and impure than those which have been so charitably attributed to them by their political opponents, and that some grounds might be adduced in favor of the provisions introduced into it not altogether untenable. It has, however, been echoed and re-echoed, from one end of the continent to the other, that the present was a hasty and novel system—totally unnecessary—suddenly brought forward with party views—adopted for party purposes, and hurried through the last Congress by small majorities, in either branch of the Legislature. I will not undertake to say, sir, that those who passed the law, now so much deprecated, were totally exempt from party feelings; nor will I deny that it was adopted at a late stage of the last session, and carried by no very large majority, either in the Senate or the House of Representatives. I do contend, however, that the measure cannot, in fairness and candor, be attributed to mere party motives, distinct from all public advantage; that the defects of the old system have been for years back complained of; that

Congress have been again and again called on to remedy them, and that the most important change—the vital principle contained in the new system—has been in contemplation from the very commencement of the present Government, and has been heretofore warmly advocated by gentlemen of the very political sect which now raise such a clamor against it. Let us test these assertions by facts and dates.

One of the most pressing and not least important duties of the first Congress, under the present Constitution, was to organize and establish national tribunals for administering justice, and carrying the laws of the Union into effect. They took the business up, therefore, at a very early period, and adopted a plan, of which I request to give the outlines.

The United States were divided into thirteen districts, to each of which a resident judge was appointed. These districts (except those of Kentucky and Maine) were again classed into three circuits—the eastern, middle, and southern. In compliance with the express injunctions of the Constitution, a Supreme Court was also established, the members of which were composed of a chief justice and five associate judges. The chief justice and his associates were not only to do the duty of judges of the Supreme Court, but alternately to make the tour of the United States; and two of them, united with the district judge of the district in which they met, were to hold the circuit court. North Carolina and Rhode Island having afterwards accepted the Federal Constitution, were erected into new districts, as were also Vermont and Tennessee, upon their being admitted into the Union as separate and distinct States.

Such, in a few words, was the system originally adopted in the year 1789. But no sooner had it been put into operation, than the inconveniences and defects of it began to be perceived and felt. In the very next year, (as early as the year 1790,) the attention of Congress was called again to the Judiciary; and the Attorney General (Edmund Randolph) was desired to report, and did present a very detailed and elaborate report, on the subject. In the course of this report, Mr. Randolph (as I shall presently show) disapproves, in the most unequivocal terms, of the principle which had been adopted of making the judges of the Supreme Court ride the circuits, and recommends the very change which was introduced into the law of the last session, and is now so much reprobated by his political friends. Nothing, however, having been done in the business at that time, complaints continued to pour in from all quarters: and a succeeding Congress found themselves (in 1799) obliged to modify the law so far as to do away the necessity of two judges in the Supreme Court attending the same circuit, and to allow a circuit court to be held by the district and a single judge of the Supreme Court. This modification of the law lessened, it is true, the bodily labors of the judges, and so far obviated the inconveniences which had been experienced. But the remedy was still not found equal to the disease. Did a judge attempt to proceed by sea, from the eastern or middle, to South Carolina, or any other of the Southern States, the vessel failed perhaps to sail at the time appointed, or was delayed by contrary winds, and the business of the court was consequently delayed, or postponed altogether to another term. Was a land conveyance preferred, the rising of rivers, bad roads, bad horses—a thousand other accidents to which travellers are necessarily liable—not unfrequently interrupted in the same way the business of the courts; and suitors, after a great expense of time, money, and trouble, were sent home as they came, with their business unsettled and undecided.

These physical impediments alone, not to speak of the instability and want of uniformity in the decisions and proceedings of the circuit courts, which were the necessary and inevitable consequences of this constant change in the person of the judges living in different parts of the United States, and accustomed in their several States to such different and sometimes contradictory rules and modes of transacting business; these physical impediments, I say alone, soon convinced all reasonable men, who had anything to do with the courts, how defective and inadequate to the due administration of justice, must necessarily be this system of sending the judges, like so many post-boys, whipping and spurring through mud and mire, from one end of this vast continent to the other. Complaints and representations, therefore, were still made from various quarters, and a revision of the Judiciary was again and again, year after year, recommended to Congress, as well by the Executive as the judges themselves. I well recollect, indeed, from the time of my return from Europe, in the latter end of the year 1791, and long before I had it even in idea that the indulgence and partiality of my fellow-citizens would honor me with a place on this floor—I well recollect to have heard this plan of an itinerant judiciary complained of and reprobated in every company, and not the least by those characters in my own State, whose opinions and judgments I was most accustomed to respect and revere. I recollect equally well, sir, that at the commencement of the session, in which I was first honored with a seat in Congress, a revision of the Judiciary was recommended by the Executive, and a committee, composed of some of the most able and respectable members of this House, were appointed for the purpose of taking this subject into consideration, and did report a bill for the better organization of the Judiciary. This bill, after having been a number of times under consideration, and undergone a variety of amendments, was recommitted to the same committee, who, in conformity with the amendments adopted in the House, gave it a new shape and reported a second bill, of which the present law is, I believe, nearly an exact copy.

And here, sir, permit me to observe, in contradiction to what has fallen from several gentlemen, the honorable member from Virginia (Mr. Giles) in particular, and what has been so constantly urged out of doors, that the present organization of the Judiciary was predicated entirely on party

grounds, and with a view to the changes of party which have since taken place; in contradiction to this assertion, permit me to observe that, at the time I am now alluding to, when a revision was recommended by the Executive, and the bill, of which I have just spoken, was presented to the House, the Federal sect, as it has been since termed, was in the zenith of its glory, in the height of its power. An election had lately taken place, and a larger majority was returned in favor of the Federal Administration, than had ever before appeared in any former Congress, nor was there the least reason to anticipate the change of men which has since taken place. The framers, therefore, of the new system, have been most erroneously and unjustly accused of bringing it forward in the expectation of such a change; the very contrary being the fact, and the present system having been presented to Congress at the very moment when their political prospect bore the brightest and most promising aspect. Partly owing, however, to the deference which many had for the gentleman who was the author of the old plan, partly owing to the difference of opinion among the Federalists themselves, whether it was most expedient to change this plan altogether, or to endeavor to remedy the evils complained of, by adding a certain number of additional judges to the Supreme Court, and partly to the press of business, and an inclination to give time for further consideration, the subject was allowed to lie over until the next session.

We had scarcely met, however, for the first time at the present seat of Government, long before the fate of the Presidential election was known, when the subject was again taken up, and the House were called on to adopt the law, which finally prevailed. After this plain tale, this simple narrative, the truth and correctness of which no one will deny, I leave it to the Committee and to the world to decide, with what propriety or justice this system has been branded and reprobated in such glowing colors as a hasty, novel, and unnecessary measure, hurried through the two Houses at the fag-end of a dying Administration, for the purpose of affording sinecure retreats to a few favorite characters. Gentlemen may show their ingenuity and inventive talents by the fabrication of such tales at the time of elections, but let us hear no more of them in this place.

There appears to me, indeed, Mr. Chairman, to have been a radical error in the original organization of that part of the old plan which relates to the circuit courts. In this opinion I am happy to have it in my power to show that I am supported by that of the gentleman already alluded to, Mr. Edmund Randolph, a gentleman high in the ranks, and high in the estimation of our political opponents. In the report presented by Mr. Randolph to Congress, in the year 1790, and which I have before quoted, to prove that the principle adopted in the present law, so far from being a novel one, was in contemplation from the very commencement of the Government. In this report, Mr. Randolph expresses himself in the following words, which, as they come from a quarter gentlemen cannot object to, will, I trust, command their attention, and have due weight with them in making up their minds on the present question:

"A third alteration which the Attorney General cannot fail to suggest is, that the judges of the Supreme Court shall cease to be judges of the circuit courts. It is obvious that the inferior courts should be distinct bodies from the Supreme Court. But how far it may confound these two species of courts to suffer the judges of the supreme to hold seats on the circuit bench, he declines the discussion, and circumscribes his reflections within the pale of expediency only:

"1. Those who pronounce the law of the land without appeal, ought to be pre-eminent in most endowments of the mind. Survey the functions of a judge of the Supreme Court. He must be master of the common law in all its divisions; a chancellor, a civilian, a federal jurist, and skilled in the laws of each State. To expect that, in future times, this assemblage of talents will be ready without further study for the national service, is to confide too largely in the public fortune. Most vacancies on the bench will be supplied by professional men, who, perhaps, have been too much animated by the contentions of the bar deliberately to explore this extensive range of science. In a great measure, then, the supreme judges will form themselves after their nomination. But what leisure remains from their itinerant dispensation of justice? Sum up all the fragments of their time, hold their fatigue at naught, and let them bid adieu to all domestic concerns, still the average term of life, already advanced, will be too short for any important proficiency.

"2. The detaching of the judges to different circuits defeats the benefits of an unprejudiced consultation. The delivery of a solemn opinion in court commits them, and should a judgment rendered by two be erroneous, will they meet their four brethren unbiassed? May not human nature, thus trammelled, struggle too long against convictions? And how few would erect a monument to their candor at the expense of their reputation for firmness and discernment!

"3. Jealousy among the members of a court is always an evil, and its malignity would be double should it creep into the Supreme Court, obscure the discovery of right, and weaken the respect which the public welfare seeks for its decrees. But this cannot be affirmed to be beyond the compass of events, to men agitated by the constant scanning of the Judicial conduct of each other.

"4. If this should not happen, there is fresh danger on the other side, lest they should be restrained by delicacy and mutual tenderness, from probing, without scruple, what had been done in circuit courts. A schism of sentiment before a decision and after a free conference is not esteemed harsh; but it is very painful to undertake to satisfy another that, in a public opinion, already uttered, he has been in the wrong.

"5. Situated as the United States are, many of the most weighty Judiciary questions will be perfectly novel. These must be hurried off on the circuits, where necessary books are not to be had, or relinquished for argument before the next set of judges, who, on their part, may want books and a calmer season for thought. So that a cause may be suspended until every judge shall have heard it.

"6. The supreme judges themselves, who ride the circuits, will be soon graduated in the public mind in

relation to the circuits; will soon be considered as circuit judges, and will not be often appreciated as supreme judges. When a discomfited party looks up to the highest tribunal for redress, he is told by the report of the world, that in it every quality is centered necessary to justice. But how would his sanguine hopes be frustrated, if, among six judges, two are most probably to repeat their former suffrages, or to vindicate them with strenuous ability, or if to avoid this, the wisdom of the third of the number must be laid aside?"

I am, then, supported by this high authority and these powerful arguments in saying, that the inferior courts ought to be distinct bodies from the Supreme Court. It is evident, however, that, under the old organization of the Judiciary, these two species of courts were, in a great degree, amalgamated and confounded. I do regard this, sir, as a radical vice in the old system, and I have my doubts, (which seems also to have been the case with the learned gentleman whom I have just quoted, though he does not, it is true, express himself to this effect, in clear and positive terms;) I have my doubts whether the plain meaning and intention of the Constitution has not been in this point infringed. When that instrument provides "that there shall be a Supreme Court and such 'other inferior courts as Congress shall from time 'to time ordain and establish," can any one suppose the object of this provision to be merely that the courts should be nominally distinct, and be known under different appellations, but might be all held by the same individuals, the same set of judges, presiding alternately in each of them? This system of constantly appealing from the decisions of men, sitting in a lower, to the same men, seated under a new title, in a court of higher grade, appears to me neither to satisfy the obvious intention of the Constitution, nor to comport with the dictates of common sense. But, if such a principle be tolerated even in the inferior courts, it is obviously incorrect as relates to the Supreme Court, a court of the last resort, and from the decisions of which there is no appeal. Let me ask, sir, what must be the feelings, what necessarily the impression on the minds of foreign or domestic suitors, drawn from the remote parts of the Union, who, on an appeal from the decision of a district judge, meet the same individual seated in a higher capacity, on the circuit bench, and when again on a further appeal to the Supreme Court, they recognise the same faces, the same individuals, from whose decisions in the circuit courts, they had just before appealed? Can it be presumed that suitors will, in this case, go away as well satisfied, as perfectly convinced of the equity and justice of a confirmation of the decisions of the courts below, as they might be expected to do, had they found this final and ultimate decree to proceed from an entirely new set of judges, unprejudiced and unfettered by what had preceded, and presumed from their high grade, to be of the most eminent talents and first standing in society? Yet such was the necessary consequence of the former organization of the courts. And what else has been contemplated in the new system, but to obviate this inconvenience, and do away this exceptionable part of the old plan? The only change, in fact the vital principle of the present law, is nothing more nor less than to establish the point that, instead of the same individuals sitting and holding the different courts, each district court should have its separate and distinct judge or set of judges. Now where, I pray you, sir, is the mighty error, the great crime committed in bringing about this change? I ask with confidence, whether the principle be not correct in itself, and whether it does not accord equally with the dictates of common sense, and the plain meaning and fair construction of the provisions contained in the Constitution?

If, however, it can be for a moment supposed to have been the intention of the wise men who framed the Constitution, that the national courts were to be distinct in name, but to be all held by the same individuals, the same set of judges; if it be the wisdom and enlightened policy of the present day to establish, not the most wholesome and convenient organization of the Federal Judiciary, but that which will save the greatest number of pence and require the smallest possible number of judges, why not get rid at once of all the judges of the inferior courts? The Chief Justice and his five Associates, or even the half of them, could no doubt dispatch all the business of the Federal courts. They might be packed up in a State wagon, make in due course the small circuit of this petty empire, and decide all the trifling and unimportant causes which would be brought before them, alternately sitting as judges of the district, circuit, and supreme courts. We should, by such an arrangement, not only save the twenty or thirty thousand dollars, which is so much complained of, and may be appropriated so much more advantageously to the payment of the President's salary, but a still further sum of seventy-seven to eighty thousand dollars; a sum equal to the whole amount of that most abominable of all abominable taxes, that tax so grinding to the poor, which, we are told, it requires such a host of officers and such an enormous per centage, to collect which takes from the mouth of labor such an immense portion of its earnings, and which of course must and ought to be repealed. I allude, Mr. Chairman, to the tax so well known under the title of a tax on pleasurable carriages. Gentlemen would, in all probability, have the further gratification of seeing the number of causes diminish daily in the Federal courts, and when we are favored with another exact statement on this subject, it will be found, perhaps, that they are reduced, as they no doubt ought to be, merely to those affecting Ambassadors, other public Ministers and Consuls. The whole business of the Union will thus be happily restored to the State courts, to which it of right belongs, and from which it has been torn, *vi et armis*, under the wicked Administrations of Washington and Adams, and heretofore retained, in spite of, and in direct opposition to, the wishes of the parties most immediately concerned.

But in another and still more comprehensive view of the subject, it would seem to me, Mr.

Chairman, improper and inexpedient to repeal the law of the last session at this time. It is but too true, we all know it, sir, that parties do exist in our Government; that shades of political difference do unfortunately divide the American people. In free Governments this must ever be the case. Still, however, let it not be forgotten that we are citizens of one and the same country, and have a common interest in the public and general welfare. Would it not then be wise and prudent, would it not tend to do away, in a great measure, the baneful effect of party, and to promote harmony among our fellow-citizens, if in the changes of men and of parties, which must necessarily take place in the administration of public affairs, we accustomed ourselves to act with some little delicacy towards each other, and to pay some little respect to the measures of those who have immediately preceded us? Whilst we improve and amend what in practice is found useless or inadequate to the end proposed, would it not be as well to forbear from making innovations merely for the sake of change, or to gratify our party pique or party feelings? The present system, it is granted, has been established by the political opponents of those now in power. Be it so. The preceding organization of the Judiciary, however, was avowedly defective and inadequate to the due administration of justice. Some amendments have been made to it. A new system has been adopted. It is just carried into operation, and all the inconveniences and expense which usually attend such changes, have been felt and incurred. No one can pretend to complain of any defects in the present establishment from experience, for it is scarcely yet carried into complete operation. Would it not be as well, then, to try the experiment, to wait and see the practical advantages or disadvantages of the system? It would be prudent also, I humbly conceive, sir, to take this course for another reason, viz: the effect which these frequent and sudden changes in our most important establishments must be expected to have on our credit, and in no small degree, perhaps, on the reputation of our Government among foreigners. Fickleness and instability have ever been the bane of republican institutions. The nations of Europe know this well. They have their eye upon us, and watch all our motions. This want of stability in our establishments; these sudden and hasty changes in our measures, cannot, therefore, but affect our reputation and character, as well abroad as at home.

One word, sir, before I conclude my observations on this part of the subject, with respect to the additional expense incurred by the new arrangement. It has been said, that the Federal Judiciary costs the United States one hundred and thirty or forty thousand dollars; and from the manner in which this sum is brought forward and presented to our view, it might seem that the whole of this expense was to be attributed to the new system. What, however, is the fact? Upon a fair statement, and after making the deduction of the salary of one judge of the Supreme Court, whose place is vacated after the death of the present incumbent, the additional expense will be only from twenty-five to thirty thousand dollars. It is further to be observed, even with respect to this sum, that the number of judges of the Supreme Court, had the old establishment been retained, or should it now be revived, is allowed on all hands to be inadequate to the bodily fatigue and duties imposed upon them. Gentlemen have consequently all acknowledged it heretofore, and several of them, the member from Massachusetts (Mr. Bacon) in particular, have in the course of the present debate stated it as their opinion, that it would be necessary to increase the number of judges of the Supreme Court, if the present bill prevails. Now it is to be recollected, that the associate judges receive a salary of three thousand five hundred dollars each, and laying aside the danger of rendering this body inconveniently numerous and unwieldy, by augmenting their numbers, each additional judge must receive the above salary of three thousand five hundred dollars; whilst the present circuit judges are allowed but two thousand dollars per annum. The addition, therefore, of half the number of judges to the Supreme Court (which there is every reason to believe it is in contemplation to make, if the circuit judges are gotten rid of) would cost the United States, within a few hundred pounds, if not quite as much, as the additional judges required under the present arrangement, to get rid of whom such extraordinary pains are taken, and an expense of twenty or thirty thousand dollars already incurred, even in carrying the business thus far through the two Houses of Congress. Such is the saving wisdom, the wonderful economy, of these enlightened days! We set the whole nation in a flame, and spend thousands in one way, to the end that we may have the appearance of saving a few hundreds in another.

But, however wholesome and proper the amendments which took place at the last session in the organization of the Federal courts, appear to me to have been, I should submit without difficulty to the proposed repeal, did it only involve the mere question of expediency. I should be perfectly satisfied to gratify the whim and caprice of the majority who have at the present time the control over public affairs, in this as well as so many other respects. It is not on this ground, sir, that I am led to make so decided an opposition to the measure under consideration, and look forward with such trembling anxiety to the result of the present debate. Very different motives, considerations of a far more important nature influence my conduct and vote on this occasion. To me it appears that one of the great principles, one of the leading excellencies of our national compact is in danger of being destroyed. I feel a strong conviction on my mind, that the most stable support, the main pillar of the noble fabric already totters on its foundation, and is about to be tumbled prostrate in the dust.

We have heard a great deal, Mr. Chairman, both within and without these walls, of the discoveries and improvements which have of late years been made in the science and practice of government. Among these I had been taught to regard as by

no means the least important, that maxim, which goes to establish the complete separation of the three great branches of Government, the Executive, Legislative, and Judiciary. I had, till the present day, been taught to reverence as a still more important discovery, as the climax of improvement in modern jurisprudence, the principle we now contend for, and which asserts the absolute independence of the latter of the other two branches of Government. Such is the doctrine I have seen inculcated in all modern authors of reputation, which have fallen into my hands. This political creed I had, I thought, imbibed from the best publications, and most approved authorities of our own country, and from none more decidedly than that so well known under the title of "The Federalist;" a work attributed to the joint labors and combined talents of three of the most able statesmen America can boast, and avowedly the best commentary on the Federal Constitution which has made its appearance in print. I will not take up the time of the Committee by referring to the different parts of this celebrated work, which go to the support of the doctrine we advocate. It is in the hands of every one, and I call upon, I challenge gentlemen to point out the page, the sentence, or the line, which does not inculcate and strongly enforce this principle of the entire and absolute independence of the Judiciary. There is another authority, however, of equal eminence, though of later date and less notoriety, to which I shall beg leave to call the attention of the Committee.

In the former part of my argument, I had it in my power to produce in support of the expediency of the judicial system, adopted by us at the last session, an official opinion, (given at an early period of the present Government,) of a learned gentleman, high in the ranks, and no less high in the estimation of that very party which now oppose it with such vehemence and clamor. I am so fortunate, sir, as to be at present able to offer to the Committee, an authority equally high, and in no way less respectable, also drawn from the State which at this time takes the lead, and from the ranks of our political opponents, to prove the Constitutional doctrine we are contending for. I have in my hands, sir, a paper containing the sentiments on this subject, delivered long before it was foreseen that the present question would be agitated on this floor, of one of the most eminent law characters of the State of Virginia—the gentleman who has been selected to inculcate the principles of republicanism in the minds of the youth of that country, and to teach them the genuine doctrines of our State and Federal Constitutions. I now allude to Judge Tucker, professor of law in the college of William and Mary, and one of the judges in the Supreme Court of Virginia. This document, from which I am about to state the opinion of the learned judge on this Constitutional point, does not, it is true, come recommended by an official stamp, as did the report of the Attorney General. It carries, however, with it, every mark of authenticity, nor have I any reason to doubt, but that it contains the genuine sentiments of this celebrated professor, as coolly and calmly made up in the retirement of his study, and delivered by him to his pupils in his public lectures. If I am mistaken, and the sentiments which have been attributed to Mr. Tucker are not genuine, there are several gentlemen, one in particular, not now in his seat, but in the House I believe, (Mr. Randolph,) who will have it in their power to correct me, and state the truth to the Committee. Having premised this much, sir, I shall now beg leave to state the opinion and sentiments of the learned Judge in his own words, to wit:

"The Constitution and powers of the Judiciary department of the Federal Government have been equally the subject of applause and censure, of confidence and jealousy.

"The unexceptionable mode of appointing the judges and their Constitutional independence of every other branch of the Government, merit an eulogium, which all would have concurred in bestowing on this part of the Constitution of the United States, had not the powers of that department been extended to objects, which might hazard the tranquillity of the Union in attempting to secure it."

[Mr. Tucker then proceeds to define more at large the powers and objects here alluded to, but concludes with the following remarks:]

"All these objections, seem, however, to be completely removed by the amendments which were recommended by the first Congress, and have since been ratified."

[The Judge here again goes on to speak of the suability of the States, through which subject, the Constitution being in that respect also amended, it is unnecessary to follow him; after which he thus proceeds:]

"But whatever objections may be made to the Judicial power of the Federal Government, as it relates to the States, in other respects, as now organized and limited by the Constitution itself, by the amendments proposed by Congress, and since adopted, and by the act above referred to, (to wit, the act limiting the jurisdiction to a certain sum,) we may venture to pronounce, that it is worthy every eulogium that ever has been pronounced on the Judiciary of Great Britain, to which it is in no respect inferior; being indeed in all respects perfectly assimilated thereto, with the addition of a Constitutional instead of a legal independence only. Whatever there has been said by Bacon, Montesquieu, Delolme, Blackstone, or any other writer, on the security derived to the subject from the independence of the Judiciary of Great Britain, will apply at least as forcibly to that of the United States. We may go still further: In England the Judiciary may be overwhelmed by a combination between the Executive and Legislature. In America it is rendered absolutely independent of and superior to the attempts of both to control or crush it. First, by the tenure of office, which is during good behaviour." Secondly, by the independence of their salaries, which cannot be diminished. Thirdly, by the letter of the Constitution, which defines and limits the powers of the several branches of Government. Lastly, by that uncontrollable authority in matters of legislation, which is exclusively vested in this department, and which extends to every possible case, that can affect the life, liberty, or property of the individual, as a member of the Federal Republic, except in the case of impeachment. The American Constitution appears to be the first in which this absolute independence of the Judiciary has been carried into full effect. Dr. Rutherford considers the Judiciary as a branch of the Executive authority, and such in strictness it may still be considered in other countries, since its province is to advise the Executive rather than to act independently thereof. In this sense, the Judiciary are said to be one of the King's councils in England—but with us the Judiciary power is a distinct and independent branch of the Government, recognised as such in express terms in our State bill of rights and constitution, and demonstrably so too, by the Constitution of the United States, from which it derives all power, in like manner as the Executive and Legislative powers are distributed to the other departments of the Government. The obligation which the Constitution of the United States imposes upon the Judiciary to support the Constitution would be nugatory, if it were dependent on either of the other branches, or in any manner subject to control by them, since such control might operate to the destruction of the Constitution."

"And here we cannot but observe, that the Judiciary power cannot of itself oppress the citizen. The Executive must lend its aid in every case, where oppression can ensue from its decisions; but its decisions in favor of the citizen are carried into instantaneous effect, by delivering him from the coercion of the Executive officer, the moment that judgment of acquittal is pronounced, and herein consists the excellence of our Constitution, that no individual can be oppressed whilst this branch of the Government remains uncorrupted: it being a necessary check upon the encroachments of power by either of the other. Thus, if the Legislature should pass a law dangerous to the liberties of the people, the Judiciary are to pronounce not only whether the party accused be guilty of a violation thereof, but whether such law be permitted by the Constitution. If, for example, a law were passed prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people to assemble peaceably, or to keep and bear arms, it would be the province of the Judiciary to decide that the power of the Legislature did not extend to the making of such a law, and consequently to acquit the prisoner from any penalty, which might be annexed to the breach of such an unconstitutional law.

"Should he be persecuted by the Executive, it is the province of the Judiciary to decide, whether there be any law that authorizes the proceedings against him, and if there be none, to acquit him not only of the present but of all future prosecutions for the same cause. The power of pardon, which is vested in the Executive, constitutes a proper check on the Judiciary in its turn. On this circumstance, however, no great stress can be laid, since in criminal prosecutions the Executive is, in the eye of the law, always plaintiff, and where the prosecution is actually carried on by its direction, the purity of the Judiciary is the only security for the citizen. The Judiciary, therefore, are that department of the Government, to whom the protection of the rights of the citizen is by the Constituton especially confided."

Such, sir are the sentiments of this learned and enlightened judge; a gentleman, as I before observed, avowedly and well known to be of the political party of the other side of the House. And let me ask, whether it be possible to bring, on any subject, an authority more to the point in dispute; or whether Mr. Tucker could have expressed, in terms more forcible and less equivocal, his opinion in favor of the doctrine we advocate, viz: that the Judiciary is a distinct and separate branch of the, Government, and that it is equally and absolutely independent, as well of the Legislature as the Executive, or of both united. Such, too, I contend, and firmly believe, to have been heretofore the approved and generally received doctrine of the American world, and such appears to me to be the language which the people of America have spoken, as well in their State constitutions as in our federal compact. Will you permit me, sir, to turn to these constitutions and see what is the language they hold on this subject.

In the bill of rights, prefixed to that of New Hampshire, I find these words: "The three essential powers of Government, viz. the Executive, Legislative, and Judicial, ought to be kept as separate from, and independent of each other, as the nature of a free government will admit." In another section, "It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit. It is therefore, not only the best policy, but for the security of the rights of the people, that the judges should hold their offices so long as they behave well." These provisions were, I believed, borrowed from, and are to be found nearly verbatim in the constitution of Massachusetts. In New York, Pennsylvania, and Delaware, I find these three branches separated with the same care, and the judges declared to hold their offices during good behaviour. The constitution of Maryland expressly provides "that the Executive, Legislative and Judicial powers of the government ought to be forever separate and distinct from each other, and that the judges ought to hold their commissions during good behaviour." In the constitution of the State of Virginia, I meet with the same sentiments, to wit: "The Legislative, Executive and Judiciary departments shall be separate and distinct, so that neither exercise the powers properly belonging to the other;" and I find it further provided, that the judges shall continue in office during good behaviour. But it would be superfluous to encroach longer on the patience of the Committee, by other examples from the State constitutions. They all of them establish the complete separation of the three great branches of government; all of them inculcate, more or less strongly, the independence of the Judiciary on the other two branches, and, with one or two exceptions, all adopt the tenure of good behaviour, as that, under which the judge are to hold their offices. In this place, therefore, it may not be amiss to say a few words with respect to this tenure, and to examine how far it extends.

To an unprejudiced mind, to a man of plain but sound understanding, making up his opinion from the usual meaning and common acceptation of words, it would I think appear, that a right or power given to be held and exercised during good behaviour, would, and ought to be retained by the person, on whom it was bestowed, so long as he continues to behave well, nor could he forfeit it otherwise than behaving ill, i. e. ceasing to behave

well. It is now contended, however, that we are not to judge of the force and effect of these words, according to their plain meaning and common acceptation. We are told, that the words "holding during good behaviour" compose a technical phrase, and that in order to apply them correctly, we must cast our eyes across the Atlantic, and see what is their operation in England, the country from which we derive them.

Mr. Chairman, it has not been my good fortune to be initiated in the mysteries of the law. I am no professional man; nothing more or less than a plain farmer, or to use a more appropriate term of my native State, a plain and, I trust, honest planter. I cannot hope, therefore, to throw much light on a legal question; nor do I feel myself adequate to the discussion of legal terms and nicetics. I will, nevertheless, claim the indulgence of the Committee, while I make a few observations on the subject, even in this point of view.

In the earlier stages of the English, as well as many other European Governments, the King sat and administered justice in his own immediate person. This state of things, however, neither could nor did last for any very considerable length of time. It was soon found expedient to dispense with the personal attendance of the Prince, and the administration of justice devolved on certain substitutes, who were still supposed to represent his person, acted in his name, and held their offices at his pleasure. As the darkness and ignorance of the middle ages were dispersed, and the inhabitants of Europe became more enlightened, the feudal chiefs in the first instance, and afterwards the people, generally, increased in power, and procured to themselves certain rights and charters. By degrees they came also to participate in the legislation and government of the country. But the laws were still interpreted, and justice administered, by the creatures of the Crown; and experience sufficiently proved, that while the judges were left at the mercy of the Prince, they would invent modes and find evasions, by means of which the will of him on whom they depended might be carried into execution. The necessity, therefore, of establishing the independence of the judges became evident, and the people of England, after a long struggle, succeeded in carrying this point. The judges, instead of holding their commissions *durante bene placito*, during pleasure, as heretofore, received them under a new tenure, *quam diu se bene gesserint*, during good behaviour; nor could the King any longer remove them, except on an address from both Houses of Parliament. This was all that was necessary, all that was required, all that could be done; for, as the two Houses of Parliament and the Crown united, possess what has been styled political omnipotence, as they act not only in the confined sphere of agents, bound down by certain fixed rules and a written constitution, but are supposed also to represent the nation in its original capacity, there is nothing so sacred under this system of government which they cannot and do not control and alter at their pleasure and discretion. The Judiciary continues, nevertheless, in that country, to be a subordinate department; the judges continue still to hold of, and from the Crown, to administer justice in its name, and are supposed to be an emanation from the regal power. The courts are still called the King's courts; the judges, the King's judges. This being the case, as respects the King's power and prerogatives in England, gentlemen now bring forward the monstrous doctrine, that the Executive stands precisely in the place of the Crown, and imply that the Judiciary are placed in precisely the same relative situation with respect to him as that of England is to the Crown. Is this really the case, Mr. Chairman? Is the Judiciary of the United States really subordinate to the Executive? Do the judges indeed hold, as the gentleman from Virginia (Mr. Giles) tells us, of and from the President, that very President, at whose trial, in case of impeachment, one of them is to preside; do they indeed administer justice in his name? Does their power emanate from him? Are the Federal courts the courts of the President, the Federal judges his judges? No, sir, the Federal courts are the courts of the United States. Justice is administered in the name of the United States. The judges are only known as judges of the United States. They hold their commissions of and from, and act under the authority of the United States. What, then, is the fair inference? Against what power under our Constitution was the tenure of good behaviour intended to operate? I say, sir, the fair and honest inference is, that this tenure was intended as a limitation and restraint against the United States in its corporate capacity; that is, against the Government of the United States, which in fact and in truth, are placed in the same relative situation with respect to the Judiciary, in which the Crown stands in that country of which we have been speaking. The native citizens of America, Mr. Chairman, are a plain but shrewd people, of sound and distinguishing minds, and possessed of their full share of common sense. They are not apt to do things idly, to adopt measures which mean nothing, and are of no avail. It, therefore, is paying them but a poor compliment, to suppose that when they adopted this tenure they intended it to operate only against that branch of the Government which did not possess the powers and prerogatives, against which the check was originally aimed and directed in the country from whence we are supposed to borrow it. They looked not, sir, to the sound, but the substance; they regarded not the name or the title, but the thing itself; they meant not to combat a shadow, a nonentity, but to limit and restrain the power itself, in whatever branch it might appear to have been deposited under the Constitution, and which, possessing or assuming the prerogative of the British Crown, might be disposed to make the Judiciary a subordinate department of the Government, or to affect the independence of the judges. Therefore, whatever branch of the Government assumes this power from whatever quarter the attempt is made to render the Judiciary subordinate to its will and pleasure, and to infringe the independence of the judges, this Constitutional barrier stares them in

the face, and upon a fair and honest construction of the tenure under which the people have willed that the Federal judges should hold their commissions, they can only forfeit them, (while the Constitution lasts, or until the people think proper to alter it) they can only forfeit them by ceasing to behave well; they can only be deprived of them by impeachment.

That this is the construction heretofore given to the tenure of good behaviour in the American world may, I think, also be proved by a further reference to the State constitutions. In those of New Hampshire and New York, it is expressly declared, that the judges, who hold their offices during good behaviour, shall not continue in them after reaching a specified age—sixty or seventy years—and in that of Massachusetts, that the Governor, with the consent of Council, may remove the judges, holding under the same tenure, upon the address of both Houses. Here I say, in the first instance, the exception proves the rule. If the judges were not to hold their offices (but for this exception) during their lives and good behaviour; to what end, with what possible view, was the exception as to age introduced? In the latter case, if the other two branches have, (as is contended) in the nature of things, and of course, the right of deranging and the power of depriving the judges of their offices, why was the proviso adopted? What necessity could there have been to grant this power expressly to them in the Constitution? Is it not fair and correct to imply from this proviso, this express grant; that, in the opinion of the framers of that Constitution, the Legislature would not otherwise have possessed the power therein given? Again; in the constitutions of Pennsylvania, Delaware, &c., it is provided, that the judges shall hold their offices during good behaviour, (subject however to impeachment;) but for any reasonable cause, which shall not be a sufficient ground of impeachment, the Governor, at his discretion, may remove any of them on the address of two thirds of each branch in Pennsylvania, and in Delaware, on the address of two thirds of all the members of each branch of the Legislature. Now, sir, does not the *major* include the *minor?* If then, it was contemplated by those who framed these constitutions, that a simple majority of the two Houses could pass a law, which would, to all intents and purposes, derange and remove the judges from office, why in the name of common sense require, as we have just shown is done in the constitutions of Pennsylvania and Delaware, an union of two thirds of all the members of both branches of the Legislature to effect the same thing, viz: the removal of the judges?

Far, however, as these examples go to show the effect which this tenure was supposed to have in restraining the power, as well of the Legislature as the Executive, the point is still more triumphantly and unanswerably proved in the case of those States in whose constitutions no specific mode is provided of removing the judge, except by impeachment, and in which the Executive neither exercises, nor has the power of removing an incumbent from office. Such is, for example, the case in North Carolina, and in the State I have the honor immediately to represent. Here the judges are chosen by joint ballot of both Houses, and hold their offices during good behaviour. The Executive however neither does nor can remove any civil officer from office who holds a commission at pleasure. Did the judges, therefore, hold under this inferior tenure, they would be still out of his reach, beyond his authority and control, yet the Constitution declares, "they shall hold their commissions during good behaviour." Why, then, is this particular tenure secured to them by the Constitution? In whose hands is the power placed against which it is intended to operate and secure them? Certainly not in the hands of the Executive, for we have just seen that he cannot remove from office even in cases where the commissions run "during pleasure." If, therefore, anything is meant by this provision in the constitutions of these States, the intention and object must have been thereby to limit and restrain the power of the Legislature; and as I have never yet heard it contended that a public officer, holding during good behaviour, could be turned out of office by a simple vote or resolution of the two Houses, or by an express act passed for that purpose, it follows, that this tenure was adopted to prevent them from doing the same thing by a side wind, by deranging the individual thus secured, and taking his office from him.

From this hasty review of the State constitutions it would appear, that in the general received opinion of the American people, the tenure of good behaviour, where no express provisions to the contrary were introduced in their State constitutions, went to secure the independence of the judges and their continuance (the very term made use of in the constitution of Virginia) in office, equally against the attempts and encroachments of the Legislature and Executive.

The wise men who framed our Federal compact were perfectly aware of this. The State constitutions were all before them. They were well acquainted with the sentiments and opinions of the people in every part of the continent. They deemed it, however, most expedient to omit the various exceptions, contained in the several State constitutions; and in establishing the Federal Judiciary, they carefully provided that the judges, both of the supreme and inferior courts, should hold their office under the pure and simple tenure of good behaviour, subject to a possibility of removal from office in no other way under the Constitution, save only by impeachment. So far were they, indeed, from intending that a bare majority of the two branches of the Legislature, uniting with the Executive, should have the important and effectual power of deranging and getting rid of the judges by putting down their offices, that they would not even trust them with the much inferior power of reducing their salaries, but expressly provide that the salaries of the judges should not be diminished during their continuance in office. In the only instance in which they grant the power of removal, viz: by im-

peachment, they avoid giving the Executive any agency whatever in the business; they suspend all the Legislative functions of the Senate and House of Representatives, and introduce them entirely in a new character, by making of the latter a body of accusers, and converting the Senate into a court of justice. They go further, and from abundant caution provide at the same time in cases of impeachment, that no person shall be convicted without the concurrence of two-thirds of the members of the Senate, before whom he is impeached.

But granting for a moment that the tenure of good behaviour was intended more immediately as a check against the Executive; whence, I pray you, does the Legislature obtain the right of disregarding this check, and removing the judges in spite of this express limitation of any and every such power? Will any one contend that they can exercise a power not given them by the Constitution? If not, I repeat the request of the member from Pennsylvania, (Mr. HEMPHILL,) that gentlemen will turn to the page and point their finger to the clause which gives even the semblance of any such power to the Legislature alone, or united with the Executive. And if, as is the fact, no such power is given in the Constitution, I ask with the same gentleman, how this Committee can possibly get over the provisions contained in the tenth amendment to the Constitution? viz: "The powers not delegated to the 'United States by the Constitution, nor prohibi-'ted by it to the States, are reserved to the States 'respectively or to the people."

In the face of all this, and contrary to the practice which has heretofore invariably prevailed as well under the State governments, as that of the Union at large, gentlemen now tell us that the members of this separate, distinct, and co-ordinate branch, are left at the mercy of every political gale that blows, and subject to the whim and caprice of every party, which may chance from day to day predominate in the other two branches of the Government.

The error of this novel doctrine seems to me, sir, to arise from an impression on the minds of gentlemen which lead them to suppose, that as the Executive and Legislative branches are elected by, and therefore presumed to be the more immediate representatives of the people, they are in fact one and the same with the people, and possess all the powers of the great body of the nation in its original capacity. They forget in how narrow and limited a sphere they are delegated to act, assimilate themselves to the Parliament of Great Britain, and would fain assume the political omnipotence, which is supposed to vest in that body; or to express my idea still more clearly, and in American language, they regard themselves, not merely as sitting here in a legislative capacity under a written constitution, but as possessed of the much higher and more important powers of a convention. But will any one at this time, whatever may be done hereafter, come boldly forward and openly avow this doctrine? No, sir, the fact is far otherwise. We are nothing more or less than the mere agents of the people, empowered to transact the current business of the day: honored, it is true, by the confidence and trust they place in us, but bound down by written rules or instructions, and under an obligation to move within a confined sphere, and within narrow and specified limits. The Constitution is the power of attorney under which we act, and I might as well be told that an agent empowered to dispose of my personal, had of course a right to do the same with my real property; as that we are to judge of the expediency and propriety of the *quantum* of power vested in this or that branch of the Government by the Constitution, and to make its express provisions bend to what we deem right, and what comports best with our own immediate purposes and wishes. When, therefore, the Constitution says, article third, section one, "The judicial power shall be vested in a Supreme 'Court, and in such other inferior courts as the 'Congress may from time to time ordain and es-'tablish." I contend such must necessarily be the organization of the Federal Judiciary. When it goes on and provides in the subsequent part of the same section, that the judges both of the supreme and inferior courts shall hold their offices during good behaviour, I boldly affirm, that such only can be the tenure under which they can hold their offices; nor have the Government any other means of getting rid of them than that pointed out by the fourth section, second article, viz: impeachment. The Legislature and Executive, whether acting separately or in unison with each other, have no more Constitutional right to evade or contravene the fair and honest meaning of the express tenure, i. e. good behaviour, under which the judges hold, and to derange or displace a judge, either of the supreme or inferior courts, whilst he continues to behave well, than they have to diminish the number of years, during which the Executive now remains in office, or to increase that for which the members of the Senate and House of Representatives are at present elected.

I am not only, however, Mr. Chairman, strongly impressed with the conviction that the framers of the Federal Constitution intended to secure the absolute independence of the Judiciary, as well against the power and control of the Legislature as the Executive, but humbly conceive that they have wisely done so. We have, indeed, heard a great deal of rhodomontade about the dangers which were to be apprehended from an independent Judiciary. We are threatened with an army of judges, and some gentlemen, whom neither the roar of cannon, nor glistening of steel could ever appal, begin already to tremble at the idea of facing a few decrepid old men seated on the bench of justice. But this is the first time, Mr. Chairman, I must confess, that I have ever heard or imagined the independence and consequent impartiality of the judge could give alarm to honest men, strong in the rectitude of their intentions and conduct. To the guilty, indeed, I have been taught to believe such a tribunal, before which party influence and the power of friends

could afford no protection, was truly awful. The conscious culprit might well tremble—might well dread to appear before a tribunal of this kind. But reverse the position; destroy the independence of the Judiciary; let the judge depend on the nod of the Legislature, or rather of the party which may for the moment prevail in the Legislature, and of what avail will innocence itself be to the accused? Can his innocence protect him against the power of his oppressor, armed with the whole force of the Government, and on a compliance with whose will the judge knows his subsistence to depend? Alas! sir, they are little acquainted with human nature, who suppose that in such a state of things innocence will avail aught.

Those who have power will use it—will command. Those who are subject to and feel the effects of that power, must obey and will forget right. From an *ex post facto* law, from a suspension of the *habeas corpus* in time of peace, from a bill of attainder, or from any other act of violence, however unconstitutional, on the part of the Executive and Legislature, where are we to look up for relief? To what tribunal are we to apply for the protection of our persons and our rights against the predominant faction, or leaders of a faction—against the rage and violence of party zeal and party animosity—if this tribunal, instead of being a barrier, behind which the weak may take shelter, is to become the tool of those in power, and to be made use of as the instrument of their persecution and oppression? In contests between individuals of different States, between the different States themselves, what reliance will be placed in the Federal courts, when deprived of their Constitutional independence? What confidence could one of the smaller States—Delaware, for example, placed as she now is, in the minority, and exposed to a contest of rights with the great and powerful State of Virginia, possessed of the preponderating influence she avowedly has at this moment, in the two branches of the Legislature, and one of her immediate citizens armed with the whole power and influence of the Executive department—what confidence could the State of Delaware place in the impartiality and justice of the national tribunals, if those who are to preside in them and decide on their conflicting claims, are to be dependent on the Legislature and Executive, and of course on the nod and pleasure of Virginia, the most powerful of the parties concerned? What, sir, must necessarily be the consequence of such a state of things? Must it not, will it not, give rise to jealousies, and excite the fears and apprehensions of the least powerful States? Will they not be seeking out for some other protection, some greater security for their rights; and must not the want of an independent tribunal, in which all parties might equally confide, drive the weaker into compacts for their mutual protection against the encroachments of the larger and most powerful States? The next step is an appeal to arms, and a civil war follows. Such must be the natural course of things. Such has been the invariable effect produced by the same causes among other nations. And I hesitate not in saying that, between an independent Judiciary, constituting a tribunal which can control the unconstitutional attempts of the other two branches of the Government, which dares, without dread or fear, to deal out justice, with an impartial hand, between the weak and the strong, the great and the small; between such a tribunal and the bayonet there remains no resource or alternative.

The great object of Government, Mr. Chairman, is to provide against danger from abroad, and to insure protection at home. For these purposes adequate powers must be lodged somewhere. Place them in what hands you please, dispose of them as you will, still you are exposed to the risk of their being abused, and converted to improper ends. In those governments which approach nearest to monarchy, the powers of the Executive will, of course, preponderate. In proportion, on the other hand, as a government verges more or less to democracy, will the powers of the government vest more or less in the popular branches of it. To show that these branches are liable to error, and will abuse the power entrusted to them, as well as the Executive, cannot be at this day necessary. The experience of every gentleman who hears me, must convince him of this fact. Every page of history equally corroborates it, and proves beyond all doubt that, in the most popular governments, power is at times abused, and injustice and tyranny carried to the utmost unjustifiable lengths. The American people, from one end of the continent to the other, are convinced of these truths. Hence the care and anxiety with which they have separated and balanced the powers vested in different branches of their State governments. Hence the limitations and checks they have introduced with so much caution in their State systems. The sages, who were drawn together from every part of the Union, and who framed the Federal Constitution, knew equally well that the powers necessary to provide for the common defence against foreign invasion, no less than to insure domestic tranquillity, were liable to abuse, might be converted to improper uses, in whatever hands they were placed. These wise men, therefore, endeavored to steer a middle course, and to divide and balance in various ways the power given for these purposes. They deposited such power with the Executive as was sufficient to carry the laws into execution, and to give energy to the national force in times of danger. They gave him a temporary and limited control over the proceedings of the Legislature, as well to protect his own right as to check, in some degree, that fervent zeal and headlong impetus to which all numerous bodies are more or less subject.

With the same view of insuring greater moderation and reflection, and as a mutual check on each other, they divided the Legislature into two distinct branches. Still the history of other nations, the experience of past ages, taught them that all this was not sufficient. They foresaw that popular branches by uniting might overpower the

Executive; or the Executive might, by corruption, induce them to favor his views; or, finally, from whatever cause, these two branches might come to an understanding and unite in a common interest. They had seen examples of all this in the very country from which their forefathers had emigrated; and they well knew that, if these two branches were by any means induced to unite in a common cause, they would construe the Constitution as might best suit their purposes, and all power would of course be in their hands. Civil wars and dissensions, they were perfectly aware would, as had been heretofore invariably the case in other countries, necessarily follow; and this happy country must, sooner or later, swell the long catalogue of Republics which have fallen victims to the same or similar causes, and now exist but in name. To obviate this fatal catastrophe, one only alternative, hitherto unknown or untried by other nations, presented itself to them. This was to establish a third co-ordinate and equal branch in the Government—an independent Judiciary, which, without interfering in the peculiar duties of either of the other two, without having anything to do either in making the laws, or when made, in calling forth the force necessary to carry them into execution, should serve as a protecting shield, as well to individual citizens as the States themselves against the encroachments and attacks of either or both these branches, acting either separately or in union; should keep each of them in its proper sphere, and check the career of one or both, when stepping beyond the limits which had been assigned them; when trampling on the Constitution, under which the people had authorized them to act, they undertook to extend their powers at pleasure, and to make their will, instead of the written will of the people, the criterion by which their powers were to be judged? These, sir, were the august functions, the all-important purposes, for which the Federal Judiciary were originally intended. And can it be said, is it reasonable, that the judges who were destined to check the assumption of powers not given, ought or could have been intended to have been left in the power and at the mercy of those very branches whom they are to check and control?

Was this the intention of the Constitution? Was there no other object contemplated in the establishment of the Judiciary, than to have such courts, as might be necessary to dispatch the current business of the day? It would have been sufficient to have given Congress the general power of establishing such courts, as might from time to time be found necessary, and to have simply included it in the enumeration of other powers delegated to Congress in the eighth section of the first article. But what have the framers of the Constitution done in this respect; have they not established the Judiciary in as pointed and direct terms; have they not made it as necessary and distinct a branch of the Government, as either the Executive or Legislature? Turn to the Constitution and you will find, sir, that the same formalities, the same divisions, the very same expressions are made use of in establishing the one, as the other of these three great departments of the Government.

The first article declares that all Legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. The second, in the same way, that the Executive shall be vested in a President of the United States of America. And what says the third article? Why in the very same words, *mutatis mutandis*, that the judicial power of the United States shall be vested in one Supreme Court and such other inferior courts as the Congress may from time to time ordain and establish. Again, article first: "The House of Representatives shall be composed of members chosen every second year; the Senate of the United States of two Senators from each State, chosen for six years." Article second: "The President shall hold his office during the term of four years." Article the third: "The judges, both of the supreme and inferior courts, shall hold their offices, during good behaviour." Thus sir, in vain do I con over each article and section of the Constitution. I see not the smallest difference in the divisions, terms, or expressions, made use of in the establishment of these three departments. I cannot find a word or syllable which goes to establish and declare the Judiciary of the United States to be a subordinate or dependent department, and not a co-ordinate and independent branch of Government.

And as to the danger to be apprehended from an independent Judiciary; what can it be? Whence can it arise? The number of judges of the United States, must necessarily be curtailed; increase them, even as far as the imagination of any gentleman will carry him, still they cannot act effectually without the aid of the Executive and Legislature. They are besides scattered over an immense continent; never assembled together in a body; and four-fifths of them will in all human probability, remain utter strangers to each other, except by name and reputation. They neither wield the sword, nor have the purse-strings at their command. They cannot move until the other two branches have acted. They can neither say what laws are to be made, or direct what measures must be pursued. Their whole power consists in assisting to carry the laws and measures, adopted by the other two branches, into operation; in dealing out justice, protecting the weak against the strong, and restraining and checking the unconstitutional attempts of the Government. Their only shield is the Constitution; their only force, argument. They not only are without the means of acting offensively, but the very situation in which they are placed, at the moment I am speaking, shows how unequal they act, even to the defence of their Constitutional rights; and proves but too clearly the justice and truth of an observation made by one of the most eminent writers of modern times. "Of the three branches of Government,' says President Montesquieu, speaking of the Executive, Legislative, and Judiciary, "the latter is, in some measure, next to nothing." By what means indeed are the judges to obtain an undue and overweening influence? From what source are they to acquire to themselves a dangerous and preponderating control over the other two branches? They have nothing to give, no inducement of power or profits to hold out to their friends and supporters. Their age, their habits of life, decorum, every circumstance, combines to deprive them of the use of those means which lead to popularity; and popularity, in a Government like ours, is real strength. In a contest, therefore, with the other two branches, the Judiciary has nothing but the sober reason, and good sense of the community to depend upon for its support. How unequal then must be the contest? How few are the chances of defending with success their rights and Constitutional power on the part of the Judiciary! For we all know but too well, how frequently the phrenzy of the moment, the rage of the day, clouds and overwhelms the sober reason and good sense of mankind.

These few observations, Mr. Chairman, I have deemed it my duty to offer to the Committee. They have been dictated however, I will honestly and candidly confess, rather in the hope that they may serve as a justification of my conduct and vote on this awful occasion, to those who have done me the honor of sending me here, than from the most distant expectation that they could have the least effect on this floor. No, sir, all my hopes of stopping the further progress of this, in my humble opinion, unconstitutional and baneful measure through this House, have long since vanished. The bill on your table, I foresee, will pass. The dyke is broken down—the torrent must have its way—and God grant that its ravages in that fertile region through which it has to flow, may be confined within a narrow and circumscribed channel. In one point, however, I differ with those who think with me on the present question. I am perhaps of a more sanguine complexion than most of them. I do not, therefore, despair of the Republic. I have the most perfect confidence in the good sense and wisdom of the American people. I believe they are strongly impressed with the necessity of having an independent and impartial Judiciary, and will not allow myself to doubt, but that they will at no distant period restore to this branch of the Government its wonted splendor and independence, and close the wound which we are about at this time to inflict on the Constitution. Under these impressions, and in this hope, I shall patiently, though with pain and anguish (I confess) submit to the will of the majority, whatever it ultimately may be, on the subject now under consideration.

Mr. Smith, of Vermont.—Mr. Chairman, I rise for the purpose of offering you my opinion upon the motion now under consideration. I do it with great diffidence, because I am fully apprized of the importance of the question, and am conscious it merits an investigation far beyond anything I am able to give it. My diffidence is still further increased, from the recollection that this subject has already been discussed with the most profound ability, and the most moving eloquence. Little now can remain to be said; if, however, I should contribute in any small degree to elucidate the subject, I am satisfied, from the patience the Committee have manifested during this debate, the attempt I am about to make will be acceptable. I take it Mr. Chairman, the motion is, to strike out the first section of the bill. I presume the honorable mover made it from a conviction that the bill was inexpedient, or unconstitutional, or both. Whatever reasons he might have, it is incumbent on those who advocate the passage of the bill, to show, that the enacting this bill into a law, is both Constitutional and expedient. I shall first attend to the question relating to the constitutionality. The first point to be established under this head is, "the general power of Congress to repeal a law constituting tribunals inferior to the Supreme Court." In the eighth section of the first article of the Constitution, the powers of Congress are enumerated; it says, the Congress shall have power to lay and collect taxes, to borrow money, to regulate commerce, to establish a uniform rule of naturalization, to coin money, to establish post offices and post roads, and among many other powers, "to constitute tribunals inferior to the Supreme Court." *The* Congress shall have power. The Congress here spoken of, by way of eminence, unquestionably means, not the Senate and House of Representatives which may be composed of members first chosen under the Constitution, but every succeeding Senate and House of Representatives composed as aforesaid; as if it had said, the Congress for the time being shall have power. The words "shall have power" evidently imply, that Congress may do, or omit to do, or undo, any thing which relates to the subjects here committed to their charge, as sound discretion shall dictate, and the public good require.

If Congress will that tribunals inferior to the Supreme Court shall exist, they express that will in forms prescribed by law, and they are constituted: if they will them not to exist, the same forms are pursued, and their existence ceases. It is to be observed, that the power of Congress in relation to their inferior tribunals, is spoken of in the same general terms in which all the other subjects to which their powers extend, are mentioned. It is incumbent on gentlemen, who deny the power of Congress to pass this bill, to show us in which part of the Constitution this power is taken away. They direct us to the third article, first section, of the Constitution, where it says, "the judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour." Words spoken or written, are to be understood as relating to a subject or subjects immediately under consideration, and not to subjects which at the time are not presented to the mind of the speaker or writer. It ought here to be noticed, that the advocates of the bill contend that these words apply to the Executive, and not to the Legislative authority. To ascertain more clearly the extent of the meaning which the framers of the Constitution meant should be affixed to this sentence, on which the gentlemen opposed to the bill so much rely, it will be particularly useful to attend to the orderly arrangement

of the subjects treated on in the Constitution: perhaps a more correct and uniform arrangement never took place in any composition. It begins by a division of the powers of Government into three departments; the Legislative, the Executive, and Judiciary. These separate departments of the Government are considered separately, under three distinct articles. The first article speaks of the Legislative power; it declares that "all Legislative 'powers herein granted shall be vested in a Con-'gress of the United States, which shall consist 'of a Senate and House of Representatives." It first speaks of the investment of Legislative power; it then tells how the bodies who are to possess this power are to be composed; it then declares how they shall be inducted into office, or in other words, of their election, and the tenure of their offices in virtue of such election. The Senators shall be elected for six years, the Representatives for two years. It then proceeds to point out the qualifications of the electors and the elected, and some further regulations relative to the government of their own bodies respectively; and lastly speaks of their powers and duties. Here the second article is introduced: it begins with declaring, that "the Executive power shall be vest-'ed in a President of the United States of Ameri-'ca; he shall hold his office during the term of 'four years, and, together with the Vice-President, 'chosen for the same term." It then speaks of his induction into office, or the manner of election, and the qualifications of electors and elected, and lastly points out his powers and duties. Now comes the third article, which treats of the judicative powers; it begins as before, by declaring that "the judicial power of the United States shall be 'vested in one Supreme Court, and in such inferior 'courts as the Congress may, from time to time, or-'dain and establish." Here is introduced the clause, or sentence, on which the gentlemen opposed to the bill on your table so vehemently insist. It is in these words; "the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." I am here constrained to notice, that the words "appointed by the President," are omitted in this sentence. It will probably be asked, why was it so? It is answered, on the page preceding, speaking of the powers of the President, it says, "he shall appoint ambassadors, other pub-'lic ministers and consuls, judges of the Supreme 'Court, and all other officers of the United States, 'whose appointments are not herein otherwise pro-'vided for, and which shall be established by law." To have repeated in this sentence the words which were to authorize the President to appoint judges, would have been more than unnecessary; it would have been tautology.

It follows, then, that the sentence of which we have been speaking should be understood thus: "the judges both of the Supreme and inferior 'courts shall be appointed by the President, and 'shall hold their offices during good behaviour." The subject which presented itself to the consideration of the framers of the Constitution, evidenced by the words themselves, and the analogy which the article bears to both the preceding articles, was, first, the power of the President to appoint the judges; second, the tenure of their offices in relation to such appointment. This clause in the Constitution establishes, in the first place, that the President shall appoint the judge, and not the Legislature, which otherwise might have been doubtful; secondly, the judges should hold their offices, not at the will of the President, nor for any limited period, at the expiration of which the President might again exercise his will upon the tenure of their offices; but it should, after the appointment is made, be held independent of any exercise of his will thereafter. It should be during good behaviour. Every appointment of the Executive for an indefinite period, is an appointment at will. The nature of the power implies it. A power to be exercised at will, without any limitation upon it, must at all times necessarily depend upon the exercise of that will. There can be no necessity for a chain of reasoning upon this point. It has been the universal practice of this Government, and I believe of every other, when the Executive has had the power of appointments, that a person receiving an appointment, where neither the Constitution or laws have defined the period for which he is to hold it, it is considered as held at the will of the Executive. In the Government from which we derive much of our knowledge of jurisprudence, it had long been deemed an evil that the judges held their offices at the pleasure of the Crown. This tenure has finally been changed into a tenure for good behaviour, defeasible, however, upon the application of both Houses of Parliament. The framers of our Constitution most unquestionably saw good and sufficient reasons for giving the same independence to our judges, and the words which they have introduced into the Constitution for this purpose, are strictly applicable to that subject; not a word could be added or taken away, without injury to their meaning. It should seem, then, that the judges are independent of Executive will, subject, however, to the ordinary power of the Legislature, in constituting, altering, and modifying the courts, in such manner as, in their opinion, the public interest may require. If this clause of the Constitution, about which so much has been said, was not intended by the framers of the Constitution to be understood in subordination to Legislative power, and exclusive of it, they should have inserted some words which would plainly inhibit Congress from altering or modifying the courts; they ought to have said, not only they shall hold their offices, but their offices shall not be abolished during good behaviour; their offices are the work of the Legislature, they have their existence in Legislative will; the power of the President to appoint, and the tenure of their offices in virtue of that appointment, are all suspended on the existing pleasure of Congress, expressed in your law; if that is withdrawn, the whole fabric tumbles into ruin. Gentlemen have said much about the co-ordinate powers of the Government, and that the Executive and Judiciary are co-ordinate with the Legislature. So far as they have a Constitutional existence, independent of Legislative will, they are so, but when their existence or power depends on the exercise of that will, they are dependent. This is one of those cases; gentlemen are endeavoring to take from the Legislature their power, by inference and implication. They reason thus: "the judges shall hold their offices during good behaviour." If you repeal the law, they cannot hold their offices; therefore you cannot repeal the law. Will not this reasoning apply to every law constituting an office held at the will of the President? Your supervisors hold their offices at the will of the President; if you repeal the law constituting these officers, you determine the President's will, and deprive them of their offices; therefore you cannot repeal the law.

"The President shall be Commander-in-Chief of the Army." If you repeal the law organizing an army, he will not be the Commander-in-Chief; therefore you cannot repeal the law organizing the army, and so on of the navy and militia. The only explanation which can be given for this apparent contradiction and absurdity is, it must be understood in subordination to, and exclusive of, Legislative power. Should doubts still remain about the application of these words in the Constitution, it appears to me the rule for construing statutes would be sufficient for our purpose. When a statute is passed granting general powers, and there is a proviso introduced limiting those general powers, and a proviso within the proviso, with expressions broad enough to affect many of the general powers in the body of the statute, the rule is, the last proviso shall be confined to the providing clause, and not extend to the body of the statute. Now, apply this rule to the nature of Government and of the Constitution. The Legislative is the primary and original power; it comprehends in it all Executive and Judicative powers. That authority which can make laws (when no restrictions are expressly imposed) can cause those laws to be executed; for, what would be the authority of a lawgiver if he did not possess the means of enforcing obedience? In ancient times, and in many countries at present, where the science of Government is very imperfectly understood, the Executive are the mere creatures of the lawgiver, and wholly dependent on his will; but as advances have been made in the science of Government, the propriety of dividing the power of Government, and giving the Executive independence to a certain extent, has been confirmed. The Executive, also, charged with the execution and application of the laws to these various objects, both *civiliter et criminaliter*, found it expedient to call to his aid judges who might inform the Executive who were objects of animadversion and remuneration. These judges, at first, were the mere creatures of Executive will; this will was a long time severely and oppressively felt in the British Government; they have now obtained a very high degree of independence of the Executive. This view of the progress of Government gives us to understand that Executive authority is nothing more or less than a reservation and limitation from Legislative authority; and in the same manner the Judicial authority is a limitation and reservation from Executive authority. Apply these rules for construing statutes to the Constitution and the three branches of your Government. The Executive authority being a reservation of authority out of the general powers of the Legislature, when applied to them, is to be construed strictly, and to take nothing by implication. The Judicial power, also growing out of the Executive, and reserved from it every enlargement of right or power in behalf of the Judiciary, is to be taken as applicable to the Executive and not the Legislature, excepting when they are expressly pointed out.

Mr. Chairman, the reasons which I have already offered to the Committee, have induced me to believe the Constitution, when it says, "the judges shall hold their offices during good behaviour," did not intend to deprive the Legislature of their ordinary power to constitute tribunals inferior to the Supreme Court, or abolish or modify, from time to time, as in their opinion the public good, and the due administration of judicial justice might require. If, however, in the estimation of gentlemen, the construction which I have attempted to give the Constitution, is inadmissible, I ask of gentlemen to reflect on the absurdities which grow out of their construction, and the absolute inefficiency of this instrument, to produce the result for which they contend? Gentlemen say, the Constitution authorizes the judges to decide your laws unconstitutional, and they are to hold their offices independent of the Legislature, to give greater efficiency to this salutary check. I beg leave to inform gentlemen, the Constitution has established no such principle. It is true your judges have authority, derived from the nature of their power as judges, to decide in this way; but the clause which the gentleman speaks of has nothing to do with this question. Whether the judge holds his office at the will of the President, or for one year, or during good behaviour, it is equally his duty to decide a law void, which directly infringes the Constitution. When there is a onstitution of government, this principle is inseparably united with the judiciary authority; but prudent judges will exercise this right with great caution, knowing the Legislature has an equal right to put constructions; they will also consider the Legislature are obliged to precede them in their construction. The evil resulting from a difference in opinion cannot escape them. Hence it has been said, that the judges, in deciding the question on the carriage tax, observed they never would exercise this right, unless this law and the Constitution were absolutely irreconcilable. It might as well be said, this was an evil inseparable from judicial authority, as to call it a salutary principle of the Constitution. Why is it thought that the barriers which the Constitution has opposed to the passage of hasty, inconsiderate laws, are not sufficiently multiplied? Here is a House of Representatives composed of about one hundred members, coming from every part, and representing every interest in the United States; on every law which passes this House, the different interests and feelings of its members are

rallied to guard the passage. The other branch is composed of members differing in number, in years, and the interests they represent. All calculated to impose a restraint on such interests and passions which, from any circumstance, might have found way for a bill through this body. It is finally to be presented to the President, who represents the entire interest of the people of the United States; and is accountable to them by an election every fourth year; if he dissents, it must be re-enacted by two thirds of both Houses. What further checks can be wanting? There is a point of precaution, beyond which it would not be salutary to go. If the framers of the Constitution contemplated your judges as the great safeguards against the encroachments of the Legislature in passing unconstitutional laws, I ask, how does it happen that the Constitution does not provide, that every bill, previous to its becoming a law, should be laid before the judges of the Supreme Court, for them to decide on its constitutionality? The evils which result from a postponement of this decision until the law has gone into operation, are too obvious to have escaped their notice. A law which concerns the life, the liberty, and property of the citizen, may be many years in operation, before any decision had, and then called up collaterally perhaps in the case of an individual, in which it will have little effect upon its general operation. Instead of placing the judges where they might have rejected the cause which some gentlemen seem to think likely to produce unconstitutional laws, they are left to maintain a perpetual, but ineffectual combat, against the effects of such laws. This view of the subject convinces me the framers of the Constitution never deemed the check of which the gentlemen speak of any importance.

It has also been said, this part of the Constitution was intended to guard against the assumption of judicial powers by the Legislature. That part of the Constitution which declares, that "the Judicial power of the United States shall be vested 'in one Supreme Court, and in such inferior 'courts as the Congress may, from time to time, 'ordain and establish," is the Constitutional safeguard, in this respect. Congress not only can have no pretensions for assuming and exercising Judicial powers, but the manner in which they are organized utterly forbids it. Congress, sitting as a court of judicature, would immediately become contemptible; nor will history, since the separation of the Judicial from the other powers of the Government, furnish a single instance of an assumption by the Legislature. If such tendency could possibly exist, this holding of offices, as gentlemen insist, would furnish the best possible pretext for an encroachment. A violent assumption of all Judicial power, at once, would be thought too daring; the attack must be insidious; your courts are badly constituted; the tenure of their offices stands opposed to a reform; you must wait until death or misbehaviour remove them. This gradual extinction of your courts calls for the substitution of other tribunals in their place. Congress, during the progress of their extinguishment, assumes to itself the exercise of such Judicial powers as the courts become incapable of exercising, until a convenient and Constitutional opportunity presents, of constituting a judicial system, which shall better answer the purposes intended by it. The plea of necessity is powerful; the ambitious and assuming rarely neglect to improve it. An opportunity is also afforded disappointed legislators of securing for themselves and friends a safe retreat. Here, by the power of the Executive, is to be found an ample reward for the loss of popularity.

Mr. Chairman, gentlemen say, their construction of the Constitution alone will give firmness to the judges in checking the unconstitutional acts of the Legislature. Can they entertain an opinion of their judges so unfavorable? Will the judges, under an apprehension of removal from office by the Legislature, under the pretext of a law for the better and more perfect organization of courts, give up all their independence of opinion? Will they forget their oaths? Will they forget everything which constitutes the excellency of a judge, for the paltry consideration of a salary, which, gentlemen say, is no more than adequate to their services? Your judges are, or ought to be, the first in talents and information; they must have experienced, as the gentlemen observed, the *viginta annorum lucubrationes;* they cannot, therefore, become the mere dependants on public favor. If the Government has no further employment for them, their talents will secure for them a private employment equally lucrative. This retreat will neither injure their property or hazard their reputation. I should have thought, if the dependence of the judges were to give the alarm, the power of impeachment vested in this House must have occasioned it. It is in vain we talk of independence of judges, whilst the rod of chastisement hangs over them. Let us suppose a law in which this struggle between the Legislature and courts is most likely to be put to the test. In some great national emergency the Legislature pass a law which, in their opinion, is highly promotive of the public good; the safety of the country, in the opinion of the Legislature, depends on its execution; your judges paralyze the operations of Government by deciding that law unconstitutional. Here is a collision of opinion destructive in its nature, and for which a remedy must be devised. The Legislature have decided it compatible with the Constitution; your judges the reverse; here is an impeachable fact; an impeachment is ordered. Gentlemen will say, the safety of the judges is in the purity of their intentions; I answer, I have seen with what facility gentlemen can impeach motives; I have seen it here; I have seen it in solemn trials at the bar. It is this uncharitable spirit which has deluged the world with blood; which, from the Christian era, and before, has swept from the earth a great portion of its inhabitants. We cannot easily discern how the same truths, presented to different minds, should appear different, especially after we have shown to such minds the connexion of truth, as it exists in our own. We look for other causes, we ascribe it to that corruption of heart which we

know, upon so many occasions, perverts the understanding. But, granting a conviction is not produced, and they escape with impunity, where will they find thereafter that delicacy of character which is essential, so absolutely necessary, to men of their pre-eminence? They are, at best, either left without a character, or forced and driven from political life with infamy and disgrace. Mr. Chairman, there are Constitutional modes in which obnoxious judges are exposed to be assailed by the Legislature. It is said, you cannot abolish the office of a judge, yet, you are at liberty to vary the duties of the office. It is said, you must leave enough of the duties to preserve the office. Gentlemen have not clearly pointed out the distinction between office and the duties belonging to it. That the duties of the office of a judge may be varied or taken away, to a certain extent, has been denied by no one. The gentleman from Delaware has attempted to fix the right of the Legislature in passing on this subject, upon the *bona fide* intention with which they act. You may legislate about the jurisdiction of courts, both civil and criminal; you may alter the jurisdiction of a court, or transfer the jurisdiction to another court, or give it to a court newly constituted; but this must be done with an upright intention, not to destroy the office. Where there is no other limitation to our power but the purity of intention with which we act, the necessary inference is, that there is no Constitutional barrier in the way, provided a majority are of opinion the measure is expedient. The Legislature has too frequently varied the jurisdiction and duties of their courts to admit any dispute on that point. They must show us the true line of distinction between the office of a judge and the duties belonging to it, that, while we do our duty in relation to one, we need not overleap the bounds of the Constitution in relation to the other.

The truth is, and I am ready to admit it, the officer, the office, and the duties of the office, are separate distinct things. An office may be thus defined: "A place created by the Legislature, 'for the purpose of having some person placed 'therein to discharge such duties as may be as-'signed to it; the place created is the office; the 'person placed in it is the officer, and the duties of 'the office, the services to be performed, be they 'more or less." Suppose your public debt all discharged, would the loan offices established in the different States for the purpose of aiding the discharge of that debt, necessarily be abolished? I take it not. The duties of an office are the reasons which induce the Legislature to create the officer, not the office itself. Congress are the sole judges of the quantum of duties necessary to justify them in creating an office, and when the office is created, it remains, let the amount of service assigned to it be ever so small, until abolished by the power creating it. Should any of your courts render themselves obnoxious to Congress by deciding their laws unconstitutional, what is to be done? Take from them all their jurisdiction, both civil and criminal, and transfer it to other courts, who will decide more in unison with your own opinion. By this measure you remove every obstacle which the judges, by declaring your laws unconstitutional, might throw in your way. Will it be said, if the office and salary remain, Congress will never take from the courts their jurisdiction? If it should become an object of magnitude, they certainly would. Wherever Congress have the power to act, and the doing of that act would, in the opinion of Congress, be promotive of the public interest, that power is immediately converted into duty, and the obligation resting on them to do the thing is indispensable. How, I ask then, is this construction which gentlemen contend for, to end? In some embarrassment of the Legislature, but no possible advantage to the public. It terminates in a mere personal advantage to the judges; they hold their offices to preserve their salaries. Will this be thought a wise and national provision? The office was created because there were duties to assign to it, and the salary was given for the discharge of those services. Congress have seen cause, in a Constitutional mode, to dispense with those services. I ask, then, ought not the office to be abolished, and the salary given up? The maxim is, all compensations given to the public agents of every description, are upon the principle of rendition of services, and not as sinecures. In this view of the subject, will Congress conceive it their duty to appropriate money for the payment of their salaries? Will gentlemen, the friends of those judges, ask it? Will the judges themselves receive it? I cannot say what the feeling of others may be; but for myself, at the stretching forth my hand for such purpose, the suffusion of shame would redden in my face. I should blush from a consciousness of guilt.

Mr. Chairman, I shall say a few words in answer to some observations advanced by the gentleman from Delaware. He said we could not do that indirectly which we could not do directly. Meaning, I suppose, since we could not remove the judges from their offices without abolishing them, we could not abolish their office, and thereby do it. This proposition is so far from being true, that the converse of it is nearer true. We cannot make a single appointment to office; but we can create offices by which it becomes indispensably necessary for others to do it. We cannot directly take from the inhabitants of this city a shilling's worth of property, but indirectly, by the removal of the seat of Government, we can take from them one-half they possess. We can create and abolish offices, because we have duties assigned to us in relation to them, and we are responsible to the community for the faithful discharge of those duties; but in relation to appointments we have no duties, we have no responsibility. The gentleman last mentioned, in answer to an observation which had been advanced by some gentleman opposed to him, that the power to pass a law necessarily implied a power to repeal it, showed us two instances in which that right did not exist. First, where the right to repeal the law was expressly taken away, as in the case of diminishing a judge's salary; this right was never contended for. The second instance was, where the

law was in the nature of a contract; no one ever supposed a contract could be repealed. The gentleman was candid enough to inform us at the time, that he did not pretend it applied to the case under consideration. Lastly, he urged very strenuously the British statute, which provides that the King, upon the application of both Houses of Parliament, should have power to remove the judges; and also the constitutions of two of the States, nearly to the same effect. From the insertion of the provision in the British statute, and in the constitutions of the two States respectively, he insisted it was a fair inference, that no such power previously existed. It is true no such power did previously exist. The inserting this proviso in the act of Parliament, and the State constitutions before mentioned, enabled the Parliament and Legislatures of the two States respectively, to operate on the persons of their judges, to remove them from office; an operation wholly unwarrantable without such provisions.

Mr. Chairman, I shall take the liberty to say a few words upon the episode of this debate, the eulogy of the late Administration. Gentlemen say the affairs of the Government, by them intrusted with its management, have been conducted with the greatest wisdom and purest intentions. I am not disposed to arraign motives. I am inclined to give full credit on that score. It has been said in justification, that the expensive measures into which we have been led by the Government, arose not from any causes reprehensible in the Government, but from causes imputable to others, from circumstances and events not indeed excusable in those who produced them; but on the side of your Government uncontrollable, irresistible.

All our troubles, external and internal, from the commencement of the Government to the present time, are said to be of this description. They ask, and appeal for the decision, whence your Indian war? On the part of your Government, say they, was displayed wisdom, prudence, moderation, and conciliation, towards those hostile tribes. There was an allowance for the ignorance, the prejudices, and the weaknesses of a savage people. A disposition to enlighten, persuade, and inspire those barbarian nations with a sincere confidence and belief in the friendship of the United States. But on the opposite side was displayed a spirit implacable, revengeful, blood-thirsty; a disposition to imbrue their hands in the blood of your children; a spirit which nothing but the most lively apprehension for their own safety could extinguish. It is inquired also, from whence arose your Western insurrections? Did they proceed, say gentlemen, from your Government's deprecating this principle, that the understanding as well as the will of the people should bow to the laws? Were not the singular and formidable appearances arising out of a new Government sufficiently explained? A second Government, bringing with it a debt of eighty millions of dollars, a heavy impost, and a demand for further contributions in a way of all others the most detestable to the people. Is there not a manifest distinction to be taken between a heavy and insupportable burden of taxes, when demanded by a foreign Government, and when levied by your own? Is an explanation to the people of the justice and propriety of your laws to be expected from your Government, or is it sufficient that they cause them to feel submission to them? Your people stand in need of Government, and the rulers do right in seeking occasions to exercise it, so long as they discover an indisposition to submit. The constituted authorities of a country should never cease governing until there is manifested on the part of the people a disposition to acquiesce in laws in which they can discover no traces either of utility or justice: your Government stands justified. But on the part of the insurgents was evidenced a spirit hostile to all Governmental authority; a spirit opposed to every species of subordination; a Jacobinical spirit, a disposition which originates from an aversion to all authority, government, and subordination; a savage dissocial spirit, which fattens on its own sinister views and purposes, but pines at the prosperity of others. Gentlemen speak also of the misunderstanding with the French Republic, and of the evils and troubles dependent thereon. On the part of your Government, say they, was entertained a high sense of gratitude for the great and essential services rendered by that nation during a long, distressing, bloody Revolutionary war, in which we had lately been engaged. Their present circumstances excited compassion. A great, a generous nation, struggling for the blessing and sunshine of liberty, opposed by internal dissensions, and resisted by every earthly power. At a time when despair began to brood on the countenance, and they were sinking under the monstrous pressure of external and internal force, assistance and favors were asked of your Government by their Minister, which he declared was not intended to exceed, on our part, the strict position of a neutral situation. They were refused, it is true, but in a manner so pleasant and agreeable, it ought not to have given offence. Their pressing and urgent solicitations were continued until the American Government were compelled to refuse the civility of an answer. Offended at this necessary and justifiable conduct of your Government, their Minister withdrew, and what followed? They discovered, by a treaty presently made with a belligerent nation, you had violated your neutrality by authorizing the capture and condemnation of French property on board of American vessels, and by permitting American vessels, bound to French ports with provisions, to be delivered, upon paying a reasonable mercantile profit. They therefore, under a sentence to be found in your treaty with them, placing them upon the footing of the most favored nation, authorized the capture of British property found on board American vessels. It is said they are an aspiring ambitious nation; their rulers thirst for domination; there is no medium between resistance and unconditional submission. I have no disposition, on the present occasion, of entering into a minute investigation of the merits of this controversy. An attempt of that sort would prove ineffectual. All the minutiæ of circumstances necessary to

form a correct opinion, cannot, at this late period of time, be brought up. These circumstances and events have all passed in review before the people of the United States; their judgment has been made up; they have rendered judgment, and the judgment is against those gentlemen to whom we stand opposed. They should acquiesce; they should not argue after judgment.

Mr. Chairman, in relation to the expediency of this measure, gentlemen should consider we have the most expensive Government on earth. It may be denominated *imperium in imperio;* doubly harassed with Legislative, Executive, and Judicial officers. A Government so complicated and expensive ought to be administered with economy. We should reflect, the bane of all Governments has been the extravagance of their expenses. Government is instituted for the protection of property; but when the expense of protection nearly equals the amount protected, it defeats its own end. By the document on your table relating to these courts, it appears, that, in a period of ten years, there has been depending therein upwards of eight thousand suits, which will fall short of one thousand a year. The yearly salaries of the judges exceed thirty thousand dollars. This expense, averaged upon the suits, exceeds thirty dollars in each suit, simply for the salaries of the judges alone. If other expenses of suits are proportioned, the bill of cost must be enormous. Compare this expense with the expense of State courts. In the State in which I live, the county courts are the courts of entry for civil actions or suits; the compensation of the judges is paid by the suitors. Their whole compensation, when averaged on the suits, does not exceed a dollar and a third of a dollar to each. The disproportion of expense then, by this calculation, is more than twenty to one. I am of opinion the number of suits in the circuit courts of the United States will be less for ten years to come, than they have been for ten years past. Several causes have existed which served to increase the number of causes for the period which is past. The troubles in Europe, and the embarrassed situation of our commerce for the most of that period, has greatly increased our maritime suits, both civil and criminal. The probability, and almost certainty of the relinquishment of all your internal taxes is another cause which will tend to a further decrease. That spirit of speculation which was created and put in operation by funding the public debt, and other measures of the Government, since it commenced its operation, has been a fruitful source of litigation in these courts. None of the beforementioned causes, it is hoped, will hereafter exist, particularly for a considerable period of time. My reasons, however, for the expediency of this measure, are not grounded on a calculation of expense. I have no idea that the circuit courts of the United States ought entirely to be done away. My opinion is, the present judges of these courts are supernumerary. You may preserve the circuits of the United States as they now are, viz: six. You may associate one of the judges of the Supreme Court with the three district judges residing in each of these circuits. Let these judges constitute the circuit court in their respective circuits. In trials at law uniformity of decision is said to be the great desideratum. In effecting this end, we are to look to the influence your Supreme Court will have over the other tribunals. This court, as was beautifully expressed by the gentleman from Delaware, is the conscience which is to actuate all the subordinate courts. But how is this conscience to operate under the present system? There is no personal connexion between these courts. The few solitary suits which may be brought up by appeal to the Supreme Court, will have but little influence, and even these present themselves in so new and doubtful a shape, that very little is to be understood about the justice or legality of the judgment in the court below. Upon the plan which I propose, one of the judges of the Supreme Court will be present in your circuit courts, by means of which an opportunity will be afforded him of infusing into every part of a trial, that superior legal knowledge which he may possess. Your district judges will also profit from this connexion. It will be a source from which they will derive much legal knowledge and improvement; and it will show itself in the trial which may be had in their respective districts. No means can be derived to give the judges of your Supreme Court so correct and so universal influence over judges of subordinate tribunals. I am also persuaded that all the business which belongs to the courts of the United States, can conveniently be done by associating the supreme judges and the district judges, in the manner proposed. If so, the present judges of your circuit courts are supernumerary, and their salaries are, as it relates to the public, thrown away. The gentleman from Delaware has indeed suggested, the judge of the Supreme Court who may have presided in a trial below, when the same is removed into the Supreme Court, may set himself to intrigue, and condescend to low arts and management, to gain over the other judges to the support of his opinion. This is too improbable to merit a serious refutation. It is the pride of a judge, particularly in a station so exalted, to hold himself at all times open to conviction, and nothing gives him greater pleasure than to have it in his power to correct an error, which he may discover in a former opinion. For these reasons, Mr. Chairman, I am against striking out the first section of the bill.

Mr. Macon.—As no other member at present seems disposed to take the floor, I will ask the attention of the Committee for a few minutes. I have attended with the greatest patience and diligence to the arguments of gentlemen who oppose the bill as unconstitutional; and had they produced a single doubt in my mind on the point of constitutionality, I should most certainly have voted with them against the bill on your table; but I can with truth say, I have not heard any argument which has in the least changed my first conviction, that we have a Constitutional right to pass it.

I should not, I believe, have spoken on this question, had not my colleagues, who differ with me in

opinion, thought proper to bring into view a vote of the Legislature of the State, instructing her Senators and recommending it to the Representatives to use their best endeavors to obtain a repeal of the last Judiciary act. On this resolution of the State Legislature, they made some extraordinary remarks, which I mean to notice; but first permit me to inform the Committee, that it has been the constant practice of the Legislature of that State, from the commencement of the General Government to the present day, to instruct her Senators, and to recommend to her Representatives, to pursue such measures on all the great national questions that have occurred, as the Legislature judged the interest of the State required, and this proceeding has never been considered improper. I shall endeavor to answer the gentlemen in the order they spoke, beginning with my colleague (Mr. Henderson) who was first on the floor. If I understood him rightly, (and if I do not he will correct me, because it is not my desire to misstate a single word,) he said that the Legislature of the State might have adopted the resolutions in consequence of the Message of the President; but, upon examination of the dates, this will be found to be impossible. The Message could not have reached the Legislature before the question on the resolutions was taken and decided; and on no important question was that body ever more unanimous; and though my colleague has said the question was there viewed but on one side, and decided in a manner *ex parte*, yet I will be bold to say, if there were any member in that Legislature who thought on this subject as he does, he enjoyed the same right there that my colleague does here, to deliver his sentiments.

Knowing as I do, the great talents and integrity of my colleague, and I believe no one on this floor knows them better, I was surprised when he charged others with being under the influence of passion, when his conduct must convince them that he was guided by the very passion which he attributed to others. He quoted the constitution of North Carolina; let us examine it, and see whether his argument can be aided by the practice under that instrument. The thirteenth article is in the following words; that "the General Assembly shall, by joint ballot of both Houses, appoint 'judges of the supreme court of law and of equity, 'judges of admiralty, and attorney general, who 'shall be commissioned by the Governor, and 'hold their offices during good behaviour." On this clause he noted the independence of the State Judiciary; and they are independent so long as the law creating their office is in force, and no longer; and it is worthy of notice, that in this section no mention is made of salary, and yet the judges have been considered as independent as the judges of the United States. Soon after the adoption of the Constitution, the Legislature of the State established courts in conformity thereto: first county courts, and then superior, and afterwards, by a Legislative act, without electing a single new judge, gave the superior courts the additional jurisdiction of a court of equity, and never a solitary complaint, that this law was unconstitutional; and it must be acknowledged, that if you can make a court of law also a court of equity, by a Legislative act, you can by the same power take it away; and what becomes, in this case, of the commission which is to be held during good behaviour? It is, according to my construction, to last no longer than the law which created the office remains in force, and this is long enough to make the judges independent. As to the salary of the judges of North Carolina, the twenty-first section of the Constitution says, "they shall have adequate salaries during their continuance in office," and yet with this clear right in the Legislature, to lessen as well as to add to their salaries, the judges, it is agreed, are independent. My colleague well knows, that many attempts have been made to deprive the superior courts of exercising any jurisdiction in cases of equity; and he also knows, that attempts have been made to establish a court of appeals, which should revise the decisions of the superior courts now in being; and by the constitution of the State any supreme court may, on presentment of a grand jury, try the Governor for mal-administration, &c., and I believe the present courts are authorized to do this. I have not at this place been able to see the act which gives this authority, but no doubt is entertained of the fact.

It is clear then, that in North Carolina, all parties have thought, that "during good behaviour," only meant so long as the office existed; because, by establishing a court of appeals, the judges now in being would not be supreme judges, and in all these various attempts no one ever charged either of them to be unconstitutional. On examination of the constitution of North Carolina, it will be found that it makes provision for the appointment of other officers by the Legislature, but says nothing about adequate compensation, except in the section last read, and if you take the office away, what is an adequate compensation for doing nothing? Another proof might be drawn from the constitution of North Carolina, in favor of the opinion I hold, which is taken from the twenty-ninth section, that "no judge of a Supreme Court shall have a seat in the General Assembly," and my colleague knows, that the present judges could not hold a seat there, because they are supreme judges. And he also knows, that no one ever doubted the Constitutional right of the Legislature to establish the courts before mentioned; and it seems to me this, on his construction, would be a violation of the Constitution, because, having once made a Supreme Court, it must always remain so, to secure, what he calls, the independence of the judges.

Sir, I was astonished when my colleague said, that the judges should hold their offices, whether useful or not, and that their independence was necessary, as he emphatically said, to protect the people against their worst enemies, themselves; their usefulness is the only true test of their necessity, and if there is no use for them, they ought not to be continued. I will here ask my colleague whether, since the year 1783, he has heard of any disorder in the State we represent, or whether

any act has been done there which can warrant or justify such an opinion, that "it is necessary to have judges to protect the people from their worst enemies, themselves." I had thought we, the people, formed this Government, and might be trusted with it. My colleague never could have uttered this sentence, had he not been governed by that passion which he supposes govern others. It is true that we are not a rich and wealthy State, but it is equally true, that there is no State in the Union more attached to order and law; and my colleague himself would not say that it was necessary to have judges for this purpose in the country we represent; the people there behave decently without having Federal judges or standing armies to protect them against themselves. Is it not strange, that the people should have sense enough to pay their taxes without being driven to it by superior force, and not have sense enough to take care of themselves without this new Judiciary? They certainly contrived to do this before the act establishing this Judiciary passed.

Another expression of his equally astonished me; he said, that on the 7th day of December, a spirit which had spread discord and destruction in other countries, made its entry into this House. What! are we to be told, because at the last election the people thought proper to change some of their representatives, and to put out some of those who had heretofore been in power, and to put others in power of different opinions, that a destroying spirit entered into all the public functionaries? For what, sir, are elections held, if it be not that the people should change their representatives when they do not like them? And are we to be told from the house-tops, that the only use of elections is to promote, not public good, but public mischief? We are also told, that this Constitution was to be destroyed by the all-devouring energies of its enemies. Who are its enemies? We are not, nor do I think there are any in this House; but there are parties as well in this House as out of doors, and no man wishes more sincerely than I do that they were amalgamated, that we might get rid of all party gall, and free ourselves from improper reflections hereafter. But by what energy is the Constitution to be destroyed? The only energy heretofore used, and which made the change so much complained of, was the energy of election. Sir, I scarcely know what to say when I hear such uncommon sentiments uttered from a head so correct and a heart so pure; it is the effect of a passion of which he is unconscious. Again he says, if you repeal this law, the rich will oppress the poor. Nothing but too much law can anywhere put it in the power of the rich to oppress the poor. Suppose you had no law at all, could the rich oppress the poor? Could they get six, eight or ten per cent. for money from the poor without law? If you destroy all law and Government, can the few oppress the many, or will the many oppress the few? But the passing the bill will neither put it in the power of the rich to oppress the poor, nor the poor to oppress the rich. There will then be law enough in the country to prevent the one from oppressing the other. But while the elective principle remains free, no great danger of lasting oppression can be really apprehended; as long as this continues the people will know who to trust.

He has also brought into view the repeal of the internal taxes, and the naturalization law, and these are some of the measures which this destructive spirit approves; and will they oppress the poor; will the repeal of taxes oppress the poor, or will it oppress anybody? If it will, the people will cry out with the gentleman from Virginia, (Mr. Randolph,) give us more oppression. You cannot give us too much of this kind of oppression, provided you pay our debts and protect us at home and abroad. One word respecting the naturalization law—observe the danger apprehended by North Carolina on this head; the fortieth section of her constitution is in the following words: "That every foreigner who comes to 'settle in this State, having first taken an oath of 'allegiance to the same, may purchase, or by other 'just means, acquire, hold, and transfer land or 'other real estate, and after one year's residence 'shall be deemed a free citizen." After this, can we believe that the people of that State have any fear of the few aliens that may wish to settle among them?

It is asked, will you abolish the Mint, that splendid attribute of sovereignty? Yes, sir, I would abolish the Mint, that splendid attribute of sovereignty, because it is only a splendid attribute of sovereignty, and nothing else; it is one of those splendid establishments which takes money from our pockets, without being of any use to us. In the State we represent, I do not believe there are as many cents in circulation as there are counties. This splendid attribute of sovereignty has not made money more plenty; it has only made more places for spending money.

My colleague next said, what I sincerely wish he had not said, that if you pass the bill, he would neither shed a tear nor heave a sigh over the Constitution. If we pass the bill, and the people should think we did wrong in so doing, nay, that it violates the Constitution in their opinion, have they not the power to bring it back to its original stamina, by a peaceable corrective, which they can exercise every two years at the elections? Suppose this done, would not the Constitution then be worth something, even in his estimation? Would it not be better to cherish this expectation than to destroy the Constitution, and put every thing afloat? Would not this be much better than confusion, anarchy, and the sword of brother drawn against brother? As to myself, I confide in the people, firmly believing they are able to take care of themselves, without the aid or protection of any set of men paid by them to defend them from their worst enemies, themselves.

Permit me here, sir, to advert to the resolutions of North Carolina. [Mr. Macon here read them.] In commenting upon these resolutions, my colleague certainly used very complaisant language towards the Legislature of that State; but it seemed to me that he gave them a back-handed compliment when he said they passed these resolu-

tions without a fair hearing. But, sir, is there anything indecent in them? Have they expressed a sentiment which they had not a perfect right to express? They wish the law repealed, because they believe the old system adequate. They wish the law repealed, because it produces a useless expense. This, perhaps, they more sensibly felt from being in the habit of conducting their public affairs with the greatest economy; and, finally, they wish the law repealed, because it is an useless extension of Executive patronage; and they at the same time declare that they have due confidence in the Chief Magistrate of the Union. Yet they do not wish offices continued merely that persons may be appointed to fill them. I perfectly agree with them in every particular.

We have heard much about the judges, and the necessity of their independence. I will state one fact, to show that they have power as well as independence. Soon after the establishment of the Federal courts, they issued a writ—not being a professional man I shall not undertake to give its name—to the Supreme court of North Carolina, directing a case then depending in the State court to be brought into the Federal court. The State judges refused to obey the summons, and laid the whole proceedings before the Legislature, who approved their conduct, and, as well as I remember, unanimously; and this in that day was not called disorganizing.

As so much has been said about the resolutions of North Carolina, I will repeat again, that it is no uncommon thing for the Legislature to express their opinion on great national subjects, and will ask my colleagues whether they ever heard any complaint of the resolutions about the Western land? And whether none of them in the Legislature never voted for the resolutions about the Western land, nor about post offices and post roads? The Legislature surely had as much right to give an opinion as the Chamber of Commerce of New York; but, put it upon what footing you please, it is entitled to respect, as the uninfluenced opinion of so many respectable individuals; and the Legislature never intended nor wished that the recommendation to the representatives should be binding on them at all events; and if I believed the bill to be unconstitutional, I should not vote for it, but as I do not, I hope the gentleman will pardon me for pursuing my own sentiments, and voting for it. I hope no man will ascribe to me a disposition to produce anarchy in my native country. Although poor myself, I feel as strong a desire as any one on this floor for the preservation of good order and good government.

It has been asked, by the gentleman from Delaware, (Mr. Bayard) will the gentleman from Virginia (Mr. Giles) say, the assuming the State debts was improper? I have no hesitation to say that it was done at an improper time; and, in showing that it was, I hope I shall be pardoned for travelling over topics that really have nothing to do with the merits of the present question. That act is now done, and, by what I say, it is not to be understood that I wish Congress should put their hands upon it. It will be noticed that Congress are authorized to establish post offices and post roads for the general and equal dissemination of information throughout the United States; and is it not known that no act was passed on that subject before the assumption of the State debts, and that there was only one post road which run near the seacoast? Of course, the people in the interior country had no communication with those in the Government, nor had they any knowledge of what was doing. But the rich speculator, who was on the spot, by going into the country where the people were ignorant of what had been done, purchased up their certificates—the only reward they had received for their toil and wounds—at about one-tenth of their value. And it is possible that many of these purchases may have been made with public money. And it is clear to me, that if a proper number of post roads had been established, before the act was passed for assuming the State debts, the war-worn soldier would not have lost half as much as he did by the speculation on his certificates.

The gentleman from Delaware says we drove them to the direct tax. This is the first time I ever heard of a minority driving a majority. Is such a thing possible? Did we drive them to the measures that made such immense expenditures of the public money necessary? No, sir, we opposed those measures as useless; and the true ground of the direct tax is this: the public money was expended; public credit was stretched, until, to preserve it, it became necessary to provide for paying, and the means adopted were the direct tax.

The same gentleman tells us there is nothing sacred in the eyes of infidels. We know our opponents. The allusion here is too plain not to be understood; and evidently is, that those who differ with him in opinion are infidels. This is a strong expression; it would have seemed that his love of Americans ought to have prevented the use of it. I shall make no answer to it, except to remind him that in a book, the truth of which he will not deny, he will find these words, "*Judge not, lest ye be judged.*" He also said that gentlemen might look to the Executive for victims, and not to the judges. Notwithstanding this remark, and without condemning or approving the appointments made by the late President, I hope I may be permitted to express my own ideas, without being considered as under the influence of the present President. Prior to the fourth of last March, all, or nearly all, the offices in the gift of the Executive were in the hands of men of one political opinion. On that day the people changed the President, because they did not like measures that had been pursued. But, to those who have attended to the debates in this House, it must appear strange, indeed, to hear gentlemen complain of the President having in office those who agree with him in opinion, when we were formerly told that the President would do wrong if he appointed to office those who differed from him in political opinion; and whenever he had done it, he had had cause to repent of it. Was that opinion then correct, and now false, in the estimation of gentlemen? For my part, I did not think the opinion correct when I first heard it,

nor have I since been convinced of its propriety. Indeed, before I can think so, I must have a worse opinion of human nature than I now have, and think of men as they pretend to think of us, which God forbid! But, taking things as they are, what course, on this point, is most fair and tolerant? The community, as well as this House, is divided into two parties. It seems to me, that all the most tolerant could wish, would be an equal division of the offices between the parties, and thus you might fix a reciprocal check on each other. But I ask gentlemen to be candid, and tell me whether they are at this time equally divided? Sir, they know that there are many more persons who now fill offices who agree with them in opinion than agree with us. As to myself, I care not who fill offices, provided they act honestly and faithfully in them. I can with truth say, so little party attachment have I on this head, that I never solicited to have any man discharged from office. Knowing that a large majority of those now in office agree with those gentlemen in political opinion, I am at a loss for the cause of all this clamor. They have no doubt some reason for it, which has not been declared. The fact is, they have a majority of the offices, and a majority of the people are with us. I am contented it should be so.

The gentleman has dwelt much on a subject which, from my habits of life, I am not enabled fully to notice; I must decide for myself, and, judging with the small share of information I posess, I cannot agree with him. I do not pretend to understand the subject as well as he does, but certainly he was not so perspicuous as it might have been expected. I mean, sir, his opinion on the common law. He told us that the judges only adopted such parts of the common law of England as suited the people, and that he apprehended no danger from this. Sir, I do apprehend danger from this, because I cannot find any authority given them in the Constitution to do it, and I suppose it is not an inherent right. Without pretending to know the extent of this common law, it has always appeared to me to be extremely dangerous to the rights of the people, for any person not elected by them, to undertake to exercise the power of legislating for them, and this adopting the common law is only another name for legislation. He has also told us, that the States had adopted it. If the States adopted it, it became a law of the State and not of the United States; but the adoption of it by the individual States, could not give the judges a right to adopt it for the United States. The judges have no powers but what are given by the Constitution or by statute, and this power cannot be found in either. He even told us, that the Constitution was a dead letter without it. I do not believe this was the opinion of the Convention that formed it, and by an examination of the debates of the State conventions that ratified it, it will not be found to be their opinion; nor is it, I believe, the opinion of all the judges of the Supreme Court, that the Constitution would be a dead letter without the common law of England. I have understood, that one of them has given it as his opinion, that the common law was not in force in the United States. The gentleman told us, that the Sedition law was Constitutional, and that the judges had so determined. This we have often been told before; but, in my opinion, the contrary is the fact. I firmly believe there is no authority given in the Constitution to pass that law, and although the judges agree with him in opinion, I believe the people agree with me. He, like my colleague, did not pretend to say that the judges under the old system had too much business, but too much riding. The whole burden of the song seems to be riding and salary, salary and riding; you may destroy the office, but the officer must have his salary, and this I suppose without riding. The old system was, in my opinion, equal to every object of justice contemplated by its establishment.

The gentleman has ascribed to us the wish to have the courts viciously formed. Is it possible, that he can have so degrading an idea of the American people, as to suppose they would send men here to legislate on their dearest interests, so base and corrupt, as to wish their courts so formed that vice and not virtue should prevail in them? I am happy to say that gentleman is the only one who has uttered a sentiment so abhorrent to human nature. He also said, if you permit the State courts to execute your laws, you would have no Constitution in ten years. I have not heard any one express a desire that you should have no courts, or that the State courts should execute all your laws; but I do not believe, that if the State courts were to execute your laws, that they would destroy the Constitution which they are sworn to support. He has told us that we paid millions for an army which might be useless, and refused thousands to a Judiciary which was useful. As to the army, those who agree with me in sentiment are as clear of it as it is possible for men to be of any political sin whatever; we always considered them useless, except in a small degree, and voted against them.

But, says he, this is the President's measure; he may prevent it. This is indeed a bold assertion. Are a majority of this House so degraded, so mean, so destitute of honor or morality, as to act at the nod of a President? What the majority may hereafter do, I cannot tell; but I can say, as yet they have done nothing which even the eye of criticism can find fault with. But are we to infer from these charges, that it has heretofore been the practice for the President to give the tone to the majority of the House, and to wield them about as he pleased? I had, before, a better opinion of our adversaries. I had thought, and still think, that no man can wield a majority of this House; that the House is, and has been, too independent for this; to think otherwise, would be degrading to my country. Sir, I do not believe the gentleman from Delaware himself, with all his talents, can wield those with whom he generally votes, at his will and pleasure.

Much has been said about the manner in which the late law was passed, and the purpose for which it was done. I hope I shall be pardoned for saying nothing on this subject; enough, if not

too much has already been said on it; nor can I conceive that it has anything to do with the question.

The true question is, were there courts enough under the old system to do the business of the nation? In my opinion there was. We had no complaints that suits multiplied, or that business was generally delayed; and when gentlemen talk about Federal courts to do the business of the people, they seem to forget that there are State courts, and that the State courts have done, and will continue to do almost the whole business of the people in every part of the Union; that but very few suits can be brought into the Federal courts, compared with those that may be brought into the State courts. They will be convinced that under the old system we had federal judges and courts enough; besides, sir, I believe each State knows best what courts they need, and if they have not enough, they have the power and can easily make more. I am sure the old system answered every purpose for the State I live in as well as the new.

Until the present session, the people have not presented a single petition to this House on the subject of courts; and now, I believe, there are a majority of the petitioners in favor of the repeal; but their not having heretofore petitioned, is conclusive, in my mind, that they were perfectly satisfied with the old system. They know that they have the right to petition, and we know that they have exercised it whenever they pleased, and if they wanted these new courts, they would have told you so by petition.

The gentleman said he would forgive the gentleman from Virginia (Mr. Giles) for everything he said, except disturbing the ashes of the venerable dead. I did not understand the gentleman from Virginia to say a word about the illustrious Washington. It is needless for me to say what I think of him; I have said before what my opinion was; I sincerely regret that ever his name should be mentioned in this House in such debates as these; respect for his memory ought to forbid it.

He also told us, that we attempt to do indirectly what we cannot do directly. I do not know of any such attempt. The bill is certainly a direct attempt to repeal the act of the last session; but I have seen things done indirectly which I believe could not have been done directly: such was the army of volunteers; it surely was an indirect attempt to officer and get possession of the militia. The same gentleman challenges us to say there are any in the United States who prefer monarchy. In answer to this I say, there were such during the American revolutionary war, and I have not heard that they had changed their opinion; but as he has told us there were jacobins in the country, it is not unfair to suppose there are monarchists, they being the two extremes. We are also charged with a design to destroy the whole Judiciary. If there is such a design, this is the first time I ever heard it; no attempt of the kind is yet made. But what is the fact? We only propose to repeal the act of the last session, and restore the Judiciary exactly to what it was for twelve years, and this is called destroying the Judiciary.

The same gentleman told us that under the new system you would have an uniformity of decision in each circuit, and that it was not very desirable to have it uniform in every circuit. I differ with him; I think uniformity of decision desirable, for this reason, that a person knowing a decision of the Federal court on any given point in any part of the Union, may know that the same decision would prevail in every other court of the United States; and unless there is an uniformity of decision, you may have a different one in each circuit; a determination one way in Delaware, and another in Maryland. But, sir, from the very nature of the courts, you must have an uniform decision in either system; because, if different courts should decide differently, appeals would soon be carried to the Supreme Court, where the question would be finally settled.

Another curious principle was advanced by the same gentleman, which was this, that the judges received their pay from the date of their commissions. If they do, I am confident they are the only officers appointed by Government that do. I had always before understood, that the pay of officers did not commence until they accepted their appointments. On his idea a judge might have pay as a circuit judge, while he was holding a court as district judge, because he might be a district judge, and appointed a circuit judge without his knowledge; and before he was informed of his new appointment, might hold the court under the old, and the gentleman himself would not pretend to say that the proceedings of the court in such case would be illegal or irregular. The salary of the President is brought into view. I have never heard these gentlemen before complain that it was too high; if it is, I am perfectly willing to join them, and diminish it to what shall be deemed only an adequate compensation for services actually rendered, for the next Presidential term; sooner, the Constitution will not authorize its reduction.

To complete the scene, we were told of the sword, of civil discord, and of the sword of brother drawn against brother. Why such declamation? Why do we hear of such things on this floor? It is for them to tell who use the expressions; to me they are too horrid to think of. Do gentlemen appeal to our fears rather than to our understanding? Are we never to be clear of these alarms? They have often been tried without producing any effect. Every instrument of death is dragged into this question: sword, bayonet, hatchet, and tomahawk; and then we are told that the passing this bill may be attended with fatal consequences to the women and children. Can it be possible, sir, that the gentleman was really serious when he talked about an injury to women and children? He also told us, if you pass the bill and it should produce a civil war, not only himself but many enlightened citizens would support the judges. And have we already come to this, that enlightened citizens have determined on their side in case of a civil war, and that it is talked of in this assembly with deliberation and coolness? We certainly were not sent here to talk on such

topics, but to take care of the affairs of the nation, and prevent such evils. In fact, it is our duty to take care of the nation, and not destroy it. Compare this with the conduct of the former minority. I challenge them to show anything like it in all their proceedings. Whenever we supposed the Constitution violated, did we talk of civil war? No, sir; we depended on elections as the main corner-stone of our safety; and supposed, whatever injury the State machine might receive from a violation of the Constitution, that at the next election the people would elect those that would repair the injury, and set it right again; and this in my opinion ought to be the doctrine of us all; and when we differ about Constitutional points, and the question shall be decided against us, we ought to consider it a temporary evil, remembering that the people possess the means of rectifying any error that may be committed by us.

Is the idea of a separation of these States so light and trifling an affair, as to be uttered with calmness in this deliberative assembly? At the very idea I shudder, and it seems to me that every man ought to look on such a scene with horror, and shrink from it with dismay. Yet some gentlemen appear to be prepared for such an event, and have determined on their sides in case it should happen. For my part, sir, I deplore such an event too much to make up my mind on it until it shall really happen, and then it must be done with great hesitation indeed. To my imagination the idea of disunion conveys the most painful sensations; how much more painful then would be the reality! Who shall fix the boundaries of these new empires, when the fatal separation shall take place? Is it to be done with those cruel engines of death that we have heard of, the sword, the bayonet, and the more savage instruments of tomahawk and hatchet? And is the arm of the brother to plunge them into the breast of brother, and citizen to be put in battle array against citizen, to make this separation which would ruin the whole country? And why is all this to be done? Because we cannot all think alike on political topics. As well might it be said, because we cannot all agree in the tenets embraced by each particular sect of our holy religion, because one is a Calvinist and another a Lutheran, that each should be employed in plunging the dagger into the heart of the other. But suppose, sir, you agree to divide these States, where is the boundary to be? Is it to be a river, or a line of marked trees? Be it which it may, both sides must be fortified, to keep the one from intruding on the other; both the new Governments will have regular soldiers to guard their fortified places, and the people on both sides must be oppressed with taxes to support these fortifications and soldiers. What would become, in such a state of things, of the national debt, and all the banks in the United States? If we do wrong by adopting measures which the public good does not require, the injury cannot be very lasting; because at the next election the people will let us stay at home, and send others who will manage their common concerns more to their satisfaction. And if we feel power and forget right, it is proper that they should withdraw their confidence from us; but let us have no civil war; instead of the arguments of bayonets, &c., let us rely on such as are drawn from truth and reason.

Another topic has been introduced, which I very much regret: it is the naming of persons who have received appointments from the late or the present President. I hope I shall be pardoned for not following this example. And one gentleman is named as having been an important member during the election of President by the late House of Representatives. It ought to be remembered there were others as important as the gentleman named. In talking about the late or the present President, it ought not to be forgotten that they both signed the Declaration of Independence, that they have both been Ministers in Europe, and both Presidents of the United States. Although they may differ in political opinion, as many of us do, is that any reason we should attempt to destroy their reputation? Is American character worth nothing, that we should thus, in my judgment improperly, attempt to destroy it on this floor? The people of this country will remember that British gold could not corrupt nor British power dismay these men. I have differed in opinion with the former President, but no man ever heard me say, that he was either corrupt or dishonest; and sooner than attempt to destroy the fame of those worthies, to whose talents and exertions we owe our independence, I would cease to be an American; nor will I undertake to say that all who differ from me in opinion are disorganizers and jacobins.

We have heard much about the document No. 8, sent to this House by the President, and are told that it is not correct. Admit everything which has been said about it, and does it amount to anything like the least invalidating it? No, it only shows a clerical error of no importance, and it must be agreed to be sufficiently correct to prove the inutility of the late system. The gentleman from South Carolina told us, that many learned men who agreed with us generally in politics, differed with us on the present question. This I never heard before; but, suppose the fact to be so, it unquestionably proves that with us each man makes up his own opinion for himself. He told us of one, who had lately held a high office under the federal Government, who had, when in office, made a report, a part of which was directly against our opinion, and that he was high in the ranks of the opposition. The opinion of that gentleman formerly given is nothing more than this, that he at that time thought the then Judiciary system might be amended. From the rank which he assigned to the author of the report, he is certainly much better acquainted with the opposition than I am. He included, among those who differed with us on the question, and who generally agreed with us, all the judges of Virginia. I am not acquainted with but few of these gentlemen, and do not know anything of the political sentiments of those with whom I am not acquainted; but if the few with whom I am acquainted differed with us in opinion, they would not esteem us the more for

relinquishing an opinion before we were convinced it was erroneous. But, sir, judging from a pamphlet which has been read during this debate, and said to contain their opinion, it is clear to my mind, that we perfectly agree. The same gentleman read to the Committee a part of a lecture of one of the judges of Virginia, which, if it strengthened his opinion on the present question, ought to convince him that the Sedition law was unconstitutional. And what will he say to the opinion of the same judge, on the favorite doctrine that the common law of England is in force in the United States? He told us, by passing the bill we shall not save more than the small sum of $5000. Here he and my colleague (Mr. Stanley) differ a little in opinion. My colleague thinks the saving will be somewhere about $10,000, though not a dust in the balance. Sir, I would vote for the bill, on the principle of economy, if it would only save the useless expenditure of $1,000 of the public money. Let it be remembered that public money in all countries is drawn from the sweat of the people.

The same gentleman also told us, that we ought to keep up these courts to convince the nations of Europe of the stability of our Government; to look respectable abroad. Sir, the public good alone shall be the principle by which I will always govern myself, without considering what the people of Europe may think. I will never consent to keep up what I deem useless and expensive establishments, merely because it may make us look respectable abroad, or to convince the people of Europe of the stability of our Government. Nor can I believe that the passing the bill, which is altogether an internal regulation, can affect our national character in Europe; it is one of those internal regulations that the Governments of Europe care nothing about. All that independent nations require of each other is, that they govern themselves with honesty and equity towards other nations.

The gentleman asked us to show him the clauses in the Constitution which authorize the repeal of the late Judiciary act. I will answer this question, by asking another: Can he show any clause in the Constitution which gives express and direct authority to repeal any law? He cannot; there is no such clause. But the authority given to pass laws, gives also the authority to repeal, except in cases named, where you are expressly forbid, and this is not a forbidden case. The whole authority to repeal is an implied one; you may establish post offices and post roads, you may establish courts, and if you can repeal the one, you may repeal the other.

The same gentleman says, if you pass the bill, you make the Judiciary dependent on a faction. Who is the faction, sir, the majority or the minority? Formerly, I have heard it in said this House, the majority was the nation, and the minority a faction; and has the meaning of these words now changed? This the gentleman did not tell us.

He also told us, there were but two ways of governing; one by the Judiciary and the other by the bayonet. Sir, we are so daily in the habit of hearing of all the instruments of death, that a stranger would suppose no other articles were manufactured or used in the United States, and that it was a standing order of the day to be told of them; and it is a little extraordinary, that most of the gentlemen who have spoken on the other side, have reminded us of them. Power, says the gentleman, in whatever hands it may fall, will be abused. I hope that he is mistaken, and that time will convince him of his error; but if it should be so, no one in this country will hold power long, because there is a peaceable corrective in the nation, the application of which is perfectly well understood, and is, in my opinion, a sovereign antidote to prevent this abuse. I mean a remedy to which I have often already referred the gentleman; it is an answer of itself to almost everything that has been said—I mean elections. These gentlemen seem to depend on threats and bayonets. We always had a better dependence; it was elections and the good sense of the people; and these, it seems to me, is what every true republican ought to depend on, in a country where the people would as soon change a President as a constable for doing wrong.

Do gentlemen expect to affright us by the constant cry of terror, or do they intend to prepare the nation for civil war, and all the evils consequent to such a state of things? If such be their object, let me tell them they will find themselves mistaken in both respects; they will not deter us from doing what we think ought to be done; and if all Congress were to join, they could not produce a separation of the States: the people would laugh to scorn all those who should wickedly make the attempt; they would say to them, in language not to be misunderstood, We gave you no authority to divide us from our brethren, we are determined never to fight them, let you determine what you may. Instead of fighting our neighbors, we will hold elections, and send more faithful men to fill the places you have disgraced.

It is rung in our ears from all quarters, that we shall destroy the Constitutional divisions of the departments by passing this bill. The Legislative, the Executive, and Judicial, will all be unhinged by keeping them exactly in the same situation they have been for twelve years; and to add to all the other mighty charges, we are told, that we are about to repeal the law because the judges do not agree with us in political opinion. This could scarcely be thought to have much weight, if the gentleman will reflect that six judges are quite enough to sound the tocsin, whenever there shall be danger that the other departments are about to invade the liberty of the people; or is it necessary to keep up these new judges to prepare the people for this terrible work of plunging the bayonet into the breast of their nearest kinsman or neighbor? Whatever may be the opinion of the judges lately appointed in other States, I hope I may be permitted to state, that the judge appointed in North-Carolina does not disagree with us in politics; and if a sincere and disinterested friendship for a worthy man, whom I have known from his infancy, and who left a lucrative practice, when he took a seat on the bench, could influence my vote, I should certainly vote against the passage of the bill. But, sir, shall friendship, shall respect for a worthy man, induce us to give a vote which we know to be wrong? Were it possible, we should not only despise ourselves, but every man of worth and candor would also despise us.

Mr. Chairman, it was my intention when I rose, to have examined more particularly the Constitutional ground which the gentlemen on the other side have taken; but as I most cordially agree in the opinion delivered on this subject, by a very respectable member from Massachusetts, (Mr. Bacon,) and as I also agree with the gentleman from Virginia, (Mr. Giles,) it would be needless to take up the time of the Committee in repeating arguments which have been some days delivered and remain yet to be answered.

I beg pardon of the Committee for the time I have occupied—I did not expect to have detained them so long, but the importance of the subject, and the wide field into which it has been branched by those who preceded me, will be my apology.

The further consideration of the bill was then postponed till to-morrow.

Wednesday, February 24.

A memorial of sundry merchants and underwriters of the City and State of New York, was presented to the House and read, praying relief in the case of the capture and condemnation of certain vessels and their cargoes, of which the memorialists are owners or assurers, by the cruisers and courts of the French Republic, during the late European war.—Referred

A Message was received from the President of the United States, communicating a report of the Secretary of the Treasury on the subject of Marine Hospitals, which appear to require Legislative attention; also, information respecting the situation of seamen and boatmen frequenting the port of New Orleans, and suffering there from sickness, and the want of accommodation. The Message and documents accompanying it, were read, and ordered to be referred to the Committee of Commerce and Manufactures.

Resolved, That a committee be appointed to bring in a bill to alter the time of holding the District Court of Maine.

Ordered, That Mr. Wadsworth, Mr. Cabell, and Mr. Van Ness, be appointed a committee, pursuant to the said resolution.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. Goddard.—Mr. Chairman, the bill on your table having been so long before the Committee, and the principle of the first section, now under consideration, having been so fully and ably discussed, that I should content myself with a silent vote, if the subject was of less importance. To this course I should be more inclined, as gentlemen on the other side of the House have already expressed an opinion that nothing new could be offered to the Committee, and manifested an uneasiness that the debate should be further protracted.

But, sir, the man who deems this subject as important as I do—as one involving the dearest and best interests of our common country—will seek rather for an apology for silence than for speaking.

Before I enter upon a distinct consideration of the two questions involved in this discussion, I hope the Committee will pardon me for adverting to the history of this bill in this House. When the bill first came from the Senate, a motion was made to refer it to a select committee, which had been appointed in this House on the subject of the Judiciary system of the United States. That motion I then supported, with an anxious hope that it might prevail. The gentleman from Virginia, (Mr. Giles,) being chairman, and myself a member of that committee, I felt extremely solicitous there to meet—to lay aside all party feelings or prejudices: to banish all considerations, when or how the act now proposed to be repealed, was passed; to confine ourselves to the inquiry whether the existing system does not afford to the citizens of the United States a fairer chance to obtain prompt and speedy justice in their courts, than the former system now proposed to be revived. But, sir, the chairman of that committee then told us, that a great Constitutional question had been raised; that such questions were improper for the consideration of select committees; that a fortunate period had arrived for its discussion; that it was proper to be considered only in Committee of the Whole; and that it must be decided.

On a subsequent occasion, when a motion was made to postpone the consideration of this bill to a future day, the solicitude which I had felt to avoid an unnecessary decision of the fatal question was revived; my dormant hopes returned, fortified by petitions from respectable sources, informing us that the present organization of the courts, in one circuit at least, was not only superior to the old system, but absolutely necessary to the attainment of justice in that circuit. Animated with a hope, excited by those petitions; deeply impressed with a sense of the dangerous and deadly blow which I then was, and still am, persuaded the repeal of this law will give to the Constitution, I then expressed a wish, which, although it drew upon me from one gentleman a charge to delay and embarrass the business of the session, was the honest effusion of my heart; that an opportunity might still be given to ascertain whether the act proposed to be repealed is not what its title imports: "An act for the more convenient organization of the courts of the United States." That our inquiries might still be confined to that question, and if the result of such inquiries should prove to us that the courts as organized by the act, now proposed to be repealed,

were throughout the petitions prove them useless—a dangerous constitutional question might told, sir, by another gentleman from Virginia, (Mr. RANDOLPH,) that a great Constitutional question had been raised, (raised let me add by the gentlemen who support the bill,) and that it must be decided. That gentleman then told us what that question was, "Whether the Judiciary is a co-ordinate or subordinate branch of our Government?" Defeated in both these attempts, we are at length brought to a consideration of the important principles on your table.

After the repeated declarations of the two gentlemen from Virginia, that the great Constitutional question must be decided, although in doing it a judicial establishment may be abolished, which is necessary to the administration of justice, those who oppose the passage of the bill might be excused from making any remarks on the question of expediency. Yet, sir, lest silence on that question should, by some others, be construed into an admission that the new system is not preferable to the old, now to be restored, I will take the liberty to submit a few remarks on that question.

I am induced to believe that there must exist between the several gentlemen from Virginia, who have spoken on this subject and myself, some radical difference of opinion as to what is a due administration of justice in courts of law. One gentleman from Virginia (Mr. THOMPSON) expressed his astonishment at what he was pleased to call, this immense establishment. To prove its inutility, he declared that he came from a State where justice was "truly and speedily" administered, and produced to the Committee a document to show that there are now pending before a court in that State, in which only one old man sits as judge, no less than two thousand six hundred and twenty-seven causes undecided.

On a former occasion, which has been alluded to, I took the liberty to suggest, as a reason for confining ourselves to an inquiry into the expediency of the measure only, that the organization of the courts, as it now exists, was calculated to carry justice home to every man's door; another gentleman from Virginia declared that to be the very reason why he should vote for the repeal of the law, intimating that we had too much Federal justice. I must believe that those gentlemen take, as the basis of their opinions, the position, that suits at law are evils in community, and infer that the organization of courts, which is best calculated to deter citizens from applying to them, is the best. Hold out to the citizens a prospect of an endless continuance of the evil, and they will not involve themselves in it.

For, sir, what prospect of justice can that suitor promise himself who sees that two thousand six hundred and twenty-seven causes, which have been accumulating for ten or twelve years, must be decided before his can be attended to? This administration of justice may suit the state of United States what these to be in the third circuit: an discussion of the Constitutional question might be avoided. We were then told, sir, by another gentleman from Virginia, (Mr. RANDOLPH,) that a great Constitutional question had been raised, (raised let me add by the gentlemen who support the bill,) and that it must be decided. That gentleman then told us what that question was, "Whether the Judiciary is a co-ordinate or subordinate branch of our Government?" Defeated in both these attempts, we are at length brought to a consideration of the important principles on your table.

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For, sir, what prospect of justice can that suitor promise himself who sees that two thousand six hundred and twenty-seven causes, which have been accumulating for ten or twelve years, must be decided before his can be attended to? This administration of justice may suit the state of society in Virginia, but it is not such as the people of the United States meant to provide for themselves under that happy form of Government which they have adopted. In looking into the sixth article of the amendments to the Constitution, which have been adopted by the people, I find this expression of the public will. "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial." &c. If, sir, the old system is to be revived, what, let me ask, will be the condition of persons accused of crimes? And who may not be accused? It is acknowledged by those who advocate the repeal of this law, that under that system, owing to the vast distance which judges were obliged to travel, the rising of rivers, impassable roads, and various inevitable accidents, judges could not, and frequently did not, arrive in time to hold a court. The same thing, owing to the same causes, will happen hereafter. What will be the consequence? Persons accused of crimes and confined in your jails to await their trials, must continue perhaps in the confinement of a dungeon six months longer before they can have an opportunity of having their guilt or innocence ascertained before a court of law. What, under this system, becomes of the right of the accused to a speedy trial, sacredly guarantied to him by the Constitution? If innocent, you punish him; if guilty, you inflict a double punishment, one before, and one after conviction. This consideration alone, in a free country, ought to outweigh all arguments arising from the trifling additional expense to which we are subject by the act proposed to be repealed. But however important the speedy administration of justice in criminal prosecutions, that alone was not all which the citizens intended to secure to themselves when they adopted this Constitution. The speedy administration of justice in civil actions was then deemed important. The Convention of the State of Virginia, when this Constitution was adopted, proposed certain amendments to it, and, among others, a bill of rights. In that bill of rights I find the twelfth article expressed in this manner: "That every freeman ought to find a 'certain remedy, by recourse to the laws, for all 'injuries and wrongs he may receive in his per-'son, property, or character. He ought to obtain 'right and justice freely, and without sale; com-'pletely, and without denial; promptly, and with-'out delay; and that all establishments or regula-'tions, contravening these rights, are oppressive 'and unjust." The Convention of North Carolina, copying after Virginia, adopted precisely the same amendments. Both those States then thought, that all establishments or regulations contravening the right of obtaining justice, promptly and without delay, were oppressive and unjust. Those amendments were proposed to the Constitution of the United States, and regarded the attainment of justice in the courts of the United States. Those States, then, were not afraid of a too prompt administration of federal justice. Now a system, which has confessedly been found to prevent courts from being holden, and to postpone suitors from term to term without trial, and which,

from the very nature of its organization, will often produce that effect, is to be restored; and one which all agree is calculated to insure a speedy trial, is to be abolished. I am not disposed to dwell long upon this subject, not having been a member of this House when the act now to be repealed passed. But, sir, when I heard the objections to the old system, and the advantages of the new one, so fully stated by the gentleman from Delaware, (Mr. BAYARD,) when I found that the plan of separating entirely the supreme from the circuit courts originated as early as the year seventeen hundred and ninety, and was then recommended to Congress by the then Attorney General, (Mr. RANDOLPH,) as appears by his report, read yesterday by the gentleman from South Carolina, (Mr. HUGER;) when, as that gentleman has truly observed, the document before us contains only the business done by the judges of the supreme and district courts in the circuit courts, and not the business of their own particular courts also; when I reflect on the appellate jurisdiction of the Supreme Court, and the extreme absurdity of subjecting, in another place, the determinations of the same men to the revision of themselves, might I not rationally indulge the hope that gentlemen would have been satisfied, that the Judicial establishment, as it now exists, does furnish to the citizens a much fairer chance for the attainment of justice than the old one? and that they would have permitted the Constitutional question to have slept for the present? But, sir, we are compelled to consider whether the bill on your table can pass without a violation of the Constitution. Before other considerations are attended to, I hope I may be permitted to present to the Committee one argument, derived from the progress of the bill itself. A gentleman from Massachusetts, (Mr. BACON,) told us some days past, that, on this subject, the Constitution speaks a plain and intelligible language. Let me inquire where gentlemen have found this plain and intelligible language. One gentleman, taking for granted the position to be proved, and reasoning *ab inconvenienti*, has found it in the evil consequences, resulting from establishing a different doctrine:—"an army of unimpeachable judges, with salaries, and without offices."

Another has found it, in a distinction between supreme and inferior courts, derived from the words "may" and "shall." Another, in the words, "from time to time." Another, in that clause of the Constitution, which authorizes Congress to establish tribunals inferior to the Supreme Courts supplying the word *abolish*, omitted by the Convention which framed the instrument. Another, in a discovery, that misbehaviour is no crime in a judge, for which he can be impeached; and therefore the Legislature must, *ex necessitate rei*, possess the power of removing judges from office.

Another has found the language in "the will of the people," not literally expressed in their written Constitution, but in their elections, in a change of rulers; believing, I presume, that the *vox populi* is *vox dei*, and that human, must yield to divine laws and constitutions.

Another has found it in the tyranny which will be established, if you suffer the judges to test the laws by the Constitution. Another, in the words "to promote the welfare," in the preamble to the Constitution. Another, in an exposition of the word "hold," connected with that clause of the Constitution, which authorizes the President to grant commissions.

And last of all, the gentleman from Virginia, (Mr. R.) abandoning all these, has found it in the "*quo animo*," as he expresses it, with which you give your vote: erecting in every man's mind a tribunal before which to test the constitutionality of measures. The doctrine is—believe that you do not violate the Constitution, and it is not violated! This last position, whatever its merits, has not novelty to recommend it. "As a man thinketh, so is he," has been taken for the basis of many false speculations before this time. Instead of finding this plain language in any one part of the Constitution, ought not the various grounds which have been taken by the friends of the bill, to teach gentlemen to distrust the soundness of the doctrine which they wish to support? Shall I be told, in answer to this, that those who oppose the bill have taken grounds as various in their opposition to it? No, sir, we uniformly ground our arguments on two plain and unequivocal sentences in the Constitution: "The judges both of the superior 'and inferior courts shall hold their offices during 'good behaviour; and shall receive for their ser-'vices a compensation, which shall not be diminish-'ed during their continuance in office." Those who oppose, are indeed obliged to follow those who support the bill, in their devious course; and find arguments to answer the constructions, by which these words, which are truly plain and intelligible, are attempted to be done away. But having been apprized by the gentleman from Virginia, that the great Constitutional question to be decided is, whether the Judiciary is a co-ordinate or subordinate branch of our Government; and whether it is competent for the courts to decide upon the constitutionality of laws; and this bill having been brought forward at a period, which gentlemen are pleased to call fortunate for that purpose, I hope I shall be excused for requesting the attention of the Committee for a few moments to this question. One gentleman, from Virginia, (Mr. RANDOLPH) having said he was not disposed to contend about the terms co-ordinate and subordinate, I am willing to substitute others. Is the Judiciary a distinct and independent branch of the Government, ordained and established by the Constitution as such? In examining this question, I may be permitted to inquire, whether it is competent for the judges to pronounce on the constitutionality of your laws. One gentleman from Virginia (Mr. GILES) seemed disposed to waive this inquiry, probably in consequence of the sentiments of a different kind, avowed by his friend from Massachusetts, (Mr. BACON,) yet it deserves to be considered; and that gentleman could not suffer it to pass in silence, but charged the claim of such power to the judges as one of their crimes.

Although proving this, does not, I admit, prove

that the judges of our courts are, by the Constitution, rendered independent of the Legislative power; yet it furnishes a strong reason for giving to that instrument, if it will bear it, such a construction as will make them so. Judges dependent on the Legislature for their continuance in office, for the continuance of their offices, or for a continuance of their salary, cannot be expected to decide against the wishes of those on whom they depend. Gentlemen ask, where we find in the Constitution a power given to the judges to decide against the constitutionality of laws? I answer, in the sixth article, these words: "This 'Constitution and the laws of the United States, 'which shall be made in pursuance thereof, and 'all treaties made, or which shall be made, under 'the authority of the United States, shall be the 'supreme law of the land." The judges are not only sworn to support the Constitution, but their oath of office binds them to judge "agreeably to the Constitution and the laws." The expression, "supreme law of the land," imports inferior and subordinate laws. What are those laws, unless acts of Congress? The expression respecting laws made pursuant to the Constitution, necessarily implies that laws may be made which will not be pursuant to that instrument. Such are not the supreme law of the land. They are not law. Shall not the judges, when called upon to decide if, in their opinion, a bill should be passed by Congress against the Constitution which assumes the form of a law, declare it, I will not say null and void, if gentleman dislike those terms, but to be no law?—not being made pursuant to the power delegated to Congress by the Constitution. In the case of Vanhorne *vs.* Dorrance, decided in the circuit court for the district of Pennsylvania, reported in *Dallas's Reports*, Judge Patterson is made to say:

"What is a Constitution? It is the form of Government delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or altered only by the authority that made it. The life giving principle and the death-doing stroke, must proceed from the same hand. What are Legislatures? Creatures of the Constitution; they owe their existence to the Constitution; they derive their power from the Constitution; it is their commission; and therefore all their acts must be conformable to it, or else they will be void. The Constitution is the work and will of the people themselves in their original, sovereign, and unlimited capacity. The one is the work of the creator and the other of the creature. The Constitution fixes limits to the exercise of Legislative authority, and prescribes the orbit within which it must move. In short, the Constitution is the sun of the political system around which all Legislative, Executive, and Judicial bodies must revolve. Whatever may be the case in other countries, yet in this there can be no doubt that every act of the Legislature repugnant to the Constitution is absolutely void."

In another part of the same case, the same Judge, speaking of an act of the Legislature of Pennsylvania, upon the constitutionality of which he was then deciding, says:

"If this be the legislation of a Republican Government, in which the preservation of private property is made secure by the Constitution, I ask, wherein it differs from the mandate of an Asiatic Prince? Omnipotence in legislation is despotism. According to this doctrine, we have nothing we can call our own, or are sure of for a moment; we are all tenants at will, and hold our property at the mere pleasure of the Legislature. Wretched situation, precarious tenure! And yet we boast of property and its security, of laws, of courts, of constitutions, and call ourselves free!"

Before I lay aside this case, I will take the liberty to read the remarks of the same Judge, respecting the tribunals of justice:

"The rights of private property are regulated, protected, and governed by general, known, and established laws, and decided upon by general, known, and established tribunals—laws and tribunals not made and created on an instant exigency, or an urgent emergency, to serve a present term or the interest of a moment. Their operation and influence are equal and universal; they press alike on all. Hence security and safety, tranquillity and peace. One man is not afraid of another, and no man afraid of the Legislature."

In another case, reported in the same book, Judge Iredell, speaking of Congress, says:

"Upon this authority, there is, that I know, but one limit, that is, that they shall not exceed their authority. If they do, I have no hesitation to say that an act to that effect would be utterly void, because it would be inconsistent with the Constitution, which is a fundamental law, paramount to all others, which we are not only bound to consult, but sworn to observe."

In the case of Bull and wife against Calder and wife, as well as in several other cases, the same doctrine is maintained by the Judges of the Supreme Court. And, sir, it is to this doctrine that we owe our liberty—which consists in security to our persons, our property, and reputation. And will the gentleman from Virginia impute the maintaining of this doctrine to the judges as a crime? Is this the question to be decided? Are we to show our control over the courts, to repeal this law, and put the judges down? Let it be remembered that, in these decisions, the judges were not "claiming powers," as the gentleman from Virginia has been pleased to express it, but solemnly deciding between citizen and citizen, the rights of private property. And let us arrogate to ourselves as much wisdom as we please, who, let me ask, are most competent to decide correctly important questions arising under the Constitution, our judges or our legislators? Legislatures will, in violent times, enact laws manifestly unjust, oppressive, and unconstitutional; and that, too, under the specious pretext of relieving the burdens of the people. Such laws, it is the business of the judges, elevated above the influence of party, to control. Let me mention an instance: Previous to the adoption of this Constitution, and during the time of the paper-money system of the State of Rhode Island, an act was passed by the

Legislature of that State, subjecting to a penalty any person who should refuse that money, then in a very depreciated state, for articles offered for sale in the market; and a new and summary mode of prosecution and trial was provided. The money was offered to a butcher in the market for his meat; it was refused. An action was brought to recover the penalty, and I now see in his place an honorable member of this House, then a judge of the supreme court of that State, who concurred with the rest of the judges of that court in declaring the law to be unconstitutional and void.

The consequence was, that the judges were summoned to appear immediately before the Legislature to answer for their conduct, and it was with the greatest difficulty that the Legislature were prevented from dismissing them instantly from office. I mention this to show, that such has been, and such will be, the conduct of Legislative bodies. Such ought always to be the conduct of judges, and this can with certainty be effected in no other way than by rendering them independent of the Legislature, subject only to removal by impeachment. But, sir, I beg leave again to recur to the amendments which were proposed by certain States to the Constitution, at the time of its adoption, to show what was the sense of those States, at that time, on the importance of the independence of the Judiciary to the liberties of the people of this country. In the declaration of rights proposed by the Convention of the State of Virginia, I find the fifth article is in these words, "that the Legislative, Executive, 'and Judiciary powers of Government, should be 'separate and distinct, and that the members of the 'two first may be restrained from oppression by 'feeling, and participating in, the public burdens, 'they should, at fixed periods, be reduced to a private station, return into the mass of the people, 'and the vacancies be supplied by certain and 'regular elections." Then, sir, the doctrine of the responsibility of the judges to the will of the people, did not prevail in Virginia. It was not then thought necessary that the judges should return to the mass of the people, to restrain them from oppression. The Convention of the State of North Carolina recommended a bill of rights as an amendment to the Constitution, containing precisely the same words; and to render the judges as independent as possible, the convention of each of those States recommended also an amendment, that the salaries of the judges should neither be increased nor diminished during their continuance in office. Who, then, can say that a limitation of the Legislative power was not intended by those who adopted the Constitution? and, sir, it was intended by those who framed the Constitution. Gentlemen admit that the words in the first section, article third, of the Constitution, "The 'judges, both of the supreme and inferior courts, 'shall hold their offices during good behaviour, 'and shall, at stated times, receive for their service a compensation, which shall not be diminished during their continuance in office," were designed to secure the independence of the judges while in the exercise of their official duties, as long as the office continues. Let me ask gentlemen, if, upon their construction, that you may abolish the office, this end is really attained? In what consists the independence of a judge? It consists in having his mind elevated above the fear of any evil consequence resulting to him from rendering upright and impartial judgments; in his being so situated as not to have his mind wrought upon, directly or indirectly, by any other considerations than those arising from the justice of the causes which he is about to decide. Considering the infirmities of human nature, the framers of the Constitution supposed it necessary, in order to secure an administration entirely impartial, that the judge should know that, let him decide as he will, provided he acts honestly, he shall not be deprived of his office, nor suffer a diminution of his salary.

Here, let me ask, what difference in effect there can be upon the mind of a judge, while in the administration of justice, to know that, in consequence of the decision which he is about to make, his office will be taken from him, or he taken from his office? Will not the effect be precisely the same in one case as the other? In either case the office and the judge are separated from each other. Upon the construction given to this part of the Constitution by the friends to the bill, the judge is not to be turned out of office, nor his salary diminished, lest his independence should be impaired; and yet he is to cease to exercise judicial functions, and to cease to receive any salary if he decides against the wishes of the Legislature—and still be independent! If the Constitution meant to secure the independence of the judges, while in office, let gentlemen apply to it one rule of construction of instruments of writing; so construe "*ut res magis valeat quam pereat.*" And, then, let them ask themselves, if, upon their construction, the end which they acknowledge the Constitution had in view is attained? But if the gentleman from Virginia (Mr. Giles) can avoid the first part of the sentence, "the judges shall hold," &c., by considering hold, as implying tenure under the President, and not operating as a limitation upon Legislative power; how does he avoid the second: "They shall at stated times receive for their services a compensation which shall not be diminished," &c.? I am sensible it has been attempted, by saying that compensation is given for services rendered, and if you deprive the judges of the power of rendering services, by abolishing their offices, the compensation ceases of course. But, I apprehend, you cannot entirely dispense with his services. If you abolish the court in which he ordinarily administers justice, he may still grant commissions of bankruptcy, issue judicial writs, and perform various other services. To my mind the plain language of the Constitution is this: Congress may "from time to time," as the exigencies of the country, arising from its increasing population, growing commerce, or other causes, shall require, ordain and establish such inferior courts as may be deemed necessary. In the exercise of this power, the Constitution supposes that a sound discretion will govern

that there will be no abuse of it. That, as the country shall advance in population and wealth, its situation may be such as to require more inferior courts, but never less. That when courts are once established, you may, if you please, alter, modify, change, or transfer jurisdiction from one court to another. But whatever is done upon this subject, must always be done with a sacred regard to the inviolability of the judges already in office: and if you wish entirely to change the organization of the courts, it can only be done when the offices of the judges are vacant, or with reference to the happening of that event. You cannot totally divest a judge of all judicial authority or diminish his salary, and thereby compel him to resign his office; nor deprive him both of office and salary. Upon any other construction, the provisions of the Constitution intended to secure the independence of the judges, are not only inefficient, but absurd. The word *hold*, itself, upon which the gentleman from Virginia has predicated his argument, supports this construction. It implies an inseparable connexion between the person holding and the thing held, which can no more be dissolved in one way than in another. All means looking to that end are alike forbidden.

A gentleman from Massachusetts (Mr. Bacon) has defined a court to be an institution for the administration of justice; and said that he could no more conceive of a court without a judge than of a Legislature without legislators.

[Mr. Bacon explained.—He said he was not responsible for the definition, he took it from the gentleman from Pennsylvania, (Mr. Hemphill.) He did not say "without judges, but without offices."]

Mr. Goddard proceeded. I am not able to recollect the force of the gentleman's argument, unless he meant to say that the abolition of a court necessarily put down a judge. The gentleman quoted the twenty-seventh section of the act of last session, which abolished circuit courts, as a precedent in point to justify the repeal of that law. But the abolition of a court does not necessarily imply that a judge is put out of office, or the office itself discontinued. Congress, by law, erect courts, give names to those courts, and create offices; but this same justice cannot be administered in them until afterwards, by an act of the President, judges are appointed. The circuit courts, as organized before the act of last session were holden by judges of the Supreme Court, assisted by district judges. Abolishing circuit courts did not affect the judges of the Supreme Court, or the district judges; each remained independent judges, holding their proper offices. A name of the institution is nothing, and I very much question, whether the name of the Supreme Court may not be changed. The Constitution, it is true, has said that there shall be one Supreme Court. It implies that there shall be one court, supreme or superior to all others—but may it not be called by what name you please? But it has been said, upon the same principle that you can withdraw from a court a part of its jurisdiction, you may withdraw the whole, and leave a naked judge, without any jurisdiction, following a salary; this does not follow. As I have before remarked, a judge may exercise many judicial functions without a court to sit in; and I have also remarked, that the power to erect new tribunals from time to time, was always to be exercised with sound discretion. The Constitution does not go on the ground that it will be abused; that new courts will unnecessarily be erected; that power is no otherwise limited than by enjoining upon the Legislature, to do all which is done on this subject with an eye to the independence of judges already in office. To aid us, sir, in our construction of the Constitution of the United States, I beg leave to turn the attention of the Committee for a few moments to some of the State constitutions. I believe we shall not only find, in many of them, the principle of the independence of the Judiciary admitted; but, in some of them, expressly, the doctrine for which I now contend. Some of the State constitutions existed in their present form anterior to the adoption of the Constitution of the United States; some have been since amended. In the bill of rights prefixed to the constitution of New Hampshire, are these words: "It is, therefore, not only the best policy, 'but for the security of the rights of the people, 'that the judges should hold their offices, so long 'as they behave well." In the constitution of that State, under the head of the Judiciary power, are these expressions: "The General Court are hereby 'empowered to make alterations in the power and 'jurisdiction of the courts of common pleas, and 'general sessions of the peace, respectively; or if 'they shall judge it necessary for the public good 'to abolish those courts," &c. Previous to the adoption of this constitution, which was but a revision of a former one, there existed in that State a Supreme Court, the judges of which, as well as those of the inferior courts, held their offices during good behaviour.

The people of that State supposed it necessary expressly to delegate to the Legislature the power of abolishing inferior courts, the judges of which hold their offices during good behaviour, and for that purpose, among others, amended their constitution. And, sir, delegating to the Legislature the power of abolishing inferior courts, clearly implies that the power of abolishing the Supreme Court was withheld. Can, then, the Legislature of New Hampshire repeal the law organizing the Supreme Court of that State? Clearly not. In the bill of rights, as well as in the constitution of Massachusetts, the independence of judicial officers is provided for, and in the article which relates to the Executive power, I find these expressions: "as the public good requires that the Gov-'ernor should not be under undue influence of 'any of the members of the General Court, by a 'dependence on them for his support," &c.; then follows a provision for an honorable salary to be provided for him, also for the judges of the Supreme Court. I read this for the purpose of showing that, if the public good requires that the Governor should be elevated above an undue influence of the members of the General Court, it

much more requires that the judges should be above that influence. But, sir, I will not detain the Committee by adverting to all the State constitutions, in which the independence of the Judiciary department is established; I will only notice the expressions in that of New Jersey: "The 'judges of the Supreme Court shall continue in 'office for seven years." An act of the Legislature of that State would be necessary to organize that court. Can a subsequent Legislature repeal that act before the expiration of seven years? Can a judge be said to continue in office after the office is abolished? I presume not. The Constitution is imperative—he shall continue in office. Here the word hold, implying tenure, is not used, and yet the principle is precisely the same as that adopted in the Constitution of the United States. The difference consists only in the time for which the office is held. In New Jersey, the time is definite; in the Constitution of the United States, indefinite, until the happening of an event—the misbehaviour of the judges. In many of the State constitutions, provision is made for the removal of the judges upon the joint application of both branches of the Legislature, to the Executive. Having these constitutions and the statute of 12th and 13th William, which introduced that provision in England, before them, the framers of our Constitution chose to discard it, and provide for the removal of judges only on impeachment of the House of Representatives before the Senate, and a judgment of that body, in which two-thirds must concur. Gentlemen admit that, in England, the independence of the judges has ever been the pride and boast of that country. That it has tended to the preservation of the liberties of the people. But, they say, upon our construction of the Constitution of the United States, judges will be more independent than they are in England. Suppose it is admitted; what follows? Nothing, but that the liberties of the people of this country are better secured than in that. From the nature and principles of the British Government, there is no danger of the judges being removed but for misbehaviour. One branch of the Legislature of that country being hereditary, the other elective, if the judges decide uprightly, but against the wishes of the popular branch, the other branch will not probably concur in a vote to remove them. If they decide uprightly, but against the wishes of the hereditary branch, the other will not probably concur in such a vote, and they can be removed only upon the joint address of both branches. Our Government being more free, and wholly elective, a mode that gives greater independence to the judges than that is adopted. No joint vote of both branches of the Legislature can, in no way, remove a judge or separate him and his office. A vote of the House of Representatives may impeach; a vote of the Senate, two-thirds concurring, may remove. Several gentlemen, in discussing this subject, have gone very far from the question before us, in bringing into view matter foreign from the merits of the question. I shall not attempt to follow them. But, sir, suffer me for a moment to notice one charge which is brought against the judges: They have attempted, say gentlemen, to introduce the common law into this country, and this gentlemen seem to consider as a crime. I had, indeed, believed that the people of this country esteemed the common law as their privilege. In the seventh article of the amendments which have been adapted to the Constitution, it is expressly recognised, "in all 'suits at common law, where the value in controversy shall exceed twenty dollars, the right of 'trial by jury shall be preserved; and no fact tried 'by a jury shall be otherwise re-examined in any 'court of the United States, than according to the 'rules of the common law." The people of the State of Maryland esteemed it so important, as to introduce a provision respecting it, into their bill of rights, the third article of which declares, "that 'the inhabitants of Maryland are entitled to the 'common law of England, and the trial by jury 'according to the course of that law." But, sir, I will not pursue this subject. Gentlemen have told us that they are honest—that they have the good of their country at heart; that elections in this country are always to be confided in; that the people will, by their votes, cure all the evils which may be introduced. Let the motives and views of gentlemen be ever so pure, I cannot but shudder at a principle, which is calculated to prostrate at the feet of one department of the Government, another department co-ordinate with itself—independent of it; and unless gentlemen can prove to me that there is something more than human in the American character, I cannot cease to fear the evils which will result from this measure. Ought not gentlemen, at the moment of the triumph of one party over another, to distrust themselves? The human mind is often influenced by motives which it does not acknowledge, even to itself. Hazael, when told that he would set fire to the strong holds of Israel, and commit other abominable crimes, exclaimed, "But what! Is thy servant a dog, that he should do this great thing?" But he went away and did the very things which he thus spurned at. I do not believe that gentlemen wish to introduce into this country the horrid scenes which have lately passed in review before us in France. But they are too recent and too horrible to be soon forgotten. Too horrible, indeed, to be mentioned.

Let gentlemen ask themselves if this measure does not look the same way? There was a time when the Brisotines in France were thought honest, virtuous, and patriotic. They claimed from the people unlimited powers; confiding in them, unlimited powers were granted. Let gentlemen call to mind the time when, in that country, Legislative, Executive, and Judicial powers were exercised by the same persons; let them remember the scenes, too dreadful to be repeated, which flowed from the concentration of all the powers of Government in one branch. And let them ask themselves if we have no reason to tremble at the consequences which may result from the introduction of the same principle, by the passage of the bill on your table?

Mr. Rutledge.—I have kept my seat, Mr.

Chairman, until this late stage of the debate, under a hope that the arguments of gentlemen who advocated the passing of this bill would convince me it is not unconstitutional; but, after having listened most attentively to them for many days, I find the deep impression made upon my mind that it attacks the very vitals of our Constitution, has been fortified and extended instead of being dismissed.

It is not necessary, sir, for me to call to your recollection what was the situation of America anterior to the formation of the present Government. Our State Governments had proved to be mere ropes of sand. Experience had shown the Confederation to be miserably defective in all its parts. Those evil times, when anarchy and jealousy distracted our State Governments, and clashing interests threatened to break our Federal Union, called all America to action. The people of this nation summoned their wisest and best men to meet in Convention, to form a Constitution which should promote the lasting welfare of our country, and secure the liberties their valor and wisdom had won. The difficulty of the task was fully equal to its importance.

In reviewing the histories of other Republics, the Convention saw that, like the splendid shows of a magic lantern, they had appeared and disappeared in almost the same moment of time: as had been observed by a celebrated writer, they rose like a rocket and fell like the stick. Although their existence had every where been transient, yet it had been protracted wherever the institutions of the country had excited any kind of veneration for its judicature. At Athens in particular, and indeed throughout Greece, the liberties of the people were for a season preserved by the respect felt towards the august Court of Areopagus. Notwithstanding the aspiring ambition of some of the States, the intrigues of powerful demagogues, and the general degeneracy of manners, yet, as long as this venerable judicature was respected, Greece continued free. As soon as it lost its influence the people lost their liberties. Taught, by these examples, the value of a good judiciary, the patriots who met at Philadelphia determined to establish one which should be independent of the Executive and Legislature, and possess the power of deciding rightfully and finally on conflicting claims between them. The Convention laid their hand upon this invaluable and protecting principle; in it they discovered what was essential to the security and duration of free States; what would prove the shield and palladium of our liberties; and they boldly said, notwithstanding the discouragement in other countries in past times, to efforts in favor of republicanism, our experiment shall not miscarry, for we will establish an independent Judiciary; we will create an asylum to secure the Government and protect the people in all the revolutions of opinion, and struggles of ambition and faction. They did establish an independent Judiciary. There is nothing, I think, more demonstrable than that the Convention meant the Judiciary to be a co-ordinate, and not a subordinate branch of the Government. This is my settled opinion; but on a subject so momentous as this is, I am unwilling to be directed by the feeble lights of my own understanding, and as my judgment, at all times very fallible, is liable to err much where my anxieties are much excited, I have had recourse to other sources for the true meaning of this Constitution. During the throes and spasms, as they have been termed, which convulsed this nation prior to the late Presidential election, strong doubts were very strongly expressed whether the gentleman who now administers this Government was attached to it as it is. Shortly after his election, the Legislature of Rhode Island presented a congratulatory address, which our Chief Magistrate considered as soliciting some declaration of his opinions of the federal Constitution; and in his answer, deeming it fit to give them, he said: "The Constitution 'shall be administered by me, according to the safe 'and honest meaning contemplated by the plain 'understanding of the people at the time of its adoption; a meaning to be found in the explanations of 'those who advocated, not those who opposed it. 'These explanations are preserved in the publications of the time." To this high authority I appeal—to the honest meaning of the instrument; the plain understanding of its framers. I, like Mr. Jefferson, appeal to the opinions of those who were the friends of the Constitution at the time it was submitted to the States. Three of our most distinguished statesmen, who had much agency in framing this Constitution, finding that objections had been raised against its adoption, and that much of the hostility produced against it had resulted from a misunderstanding of some of its provisions, united in the patriotic work of explaining the true meaning of its framers. They published a series of papers, under the signature of *Publius*, which were afterwards republished in a book called the *Federalist*. This cotemporaneous exposition is what Mr. Jefferson must have adverted to, when he speaks of the publications of the time. From this very valuable work, for which we are indebted to Messrs. Hamilton, Madison, and Jay, I will take the liberty of reading some extracts, to which I solicit the attention of the Committee. In the seventy-eighth number we read:

"Good behaviour for the continuance in office of 'the judicial magistracy, is the most valuable of the 'modern improvements in the practice of Government. 'In a Republic it is a barrier to the encroachments and 'oppressions of the representative body. And it is the best 'expedient that can be devised in any Government to 'secure a steady, upright, and impartial administration 'of the laws. The Judiciary, in a Government where 'the departments of power are separate from each other, 'from the nature of its functions, will always be the 'least dangerous to the political rights of the Constitution. It has no influence over the sword or the 'purse, and may truly be said to have neither force nor 'will, but merely judgment. The complete independence of the courts of justice is essential in a limited 'Constitution; one containing specified exceptions to 'the legislative authority; such as that it shall pass no 'ex post facto law, no bill of attainder, &c. Such limitations can be preserved in practice no other way than

'through the courts of justice, whose duty it must be to 'declare all acts manifestly contrary to the Constitution, 'void. Without this, all the reservations of particular 'rights or privileges of the States or the people would 'amount to nothing. Where the will of the Legislature 'declared in its statutes, stands in opposition to that of 'the people, declared in the Constitution, the courts 'designed to be an intermediate body between the people and the Legislature, are to keep the latter within 'the limits assigned to their authority. The Convention acted wisely in establishing good behaviour as the 'tenure of judicial offices. This plan would have been 'inexcusably defective had it wanted this important 'feature of good government."

The authority I have read proves to demonstration, what was the intention of the Convention on this subject; that it was to establish a Judiciary completely independent of the Executive and Legislature, and to have judges removable only by impeachment. This was not only the intention of the General Convention, but of the State conventions, when they adopted this Constitution. Nay, sir, had they not considered the judicial power to be co-ordinate with the other two great departments of Government, they never would have adopted the Constitution. I feel myself justified in making this declaration by the debates in the different State conventions. From those of the Virginia convention, I will read some extracts, to show what were there the opinions of the speakers of both political parties. The friends of the Constitution insisted that our federal judges would be independent of everything but their behaviour and their God. The opposers of the Constitution insisted that they would not be perfectly independent of the Legislature, because they might increase their salaries. Most affectionately attached to the sovereign rights of the States and the people, the opposers of the Constitution displayed all the suspicion of jealous lovers. They supposed the judges would not be completely independent, and insisted if they were not, there would soon be a concentration of all powers in the Legislature, and a perfect despotism in our country. Hence it appears, that both parties thought the judges ought to be beyond the reach of the Legislature, except by impeachment. The friends of the Constitution insisted they were so; the opposers feared they were not. Let us attend to the debates in the convention of Virginia.

General Marshall, the present Chief Justice, says:

"Can the Government of the United States go beyond those delegated powers? If they were to make a law, not warranted by any of the powers enumerated, it would be considered as an infringement of the Constitution, which they are to guard: they would not consider such a law as coming under their jurisdiction; they would declare it void."

Mr. Grayson, who opposed the Constitution, we find saying:

"The judges will not be independent, because their salaries may be augmented. This is left open. What if you give six hundred pounds or one thousand pounds annually to a judge! It is but a trifling object, when, by that little money, you purchase the most invaluable blessing that any country can enjoy. The judges are to defend the Constitution."

Mr. Madison, in answer, says:

"I wished to insert a restraint on the augmentation, as well as diminution, of the compensation of the judges, but I was overruled; the business of the courts must increase. If there was no power to increase their pay, according to the increase of business, during the life of the judges, it might happen, that there would be such an accumulation of business as would reduce the pay to a most trivial consideration."

Here we find Mr. Madison not using the words good behaviour, but says, "what we say was meant for good behaviour," during the life of the judges. The opinions of Mr. Madison I deem conclusive, as to the meaning of the words good behaviour; but I will read what was said by Mr. Nicholas, which is substantially the same. [Here Mr. R. read several extracts from the debates in the Virginia convention. Those quotations show that, in Virginia at least, the public wish and intention was to have an independent Judiciary.] Let us now see what was the opinion on this subject of the first Congress under the Constitution, when the first Judiciary bill was debated. Mr. Stone says: "The establishment of the courts is immutable." Mr. Madison says: "The judges are to be removed only on impeachment, and conviction before Congress." Mr. Gerry, who had been a member of the General Convention, expresses himself in this strong and unequivocal manner:

"The judges will be independent, and no power can remove them: they will be beyond the reach of the other powers of the Government; they will be unassailable, and cannot be affected but by the united voice of America, and that only by a change of Government."

Here it is evident, Mr. Gerry supposed a project, like the present, could only be effected by the people, through the medium of a convention; he did not suppose it possible for Congress ever to grasp at this power. The same opinions were held by Mr. Lawrence and Mr. Smith. [Here Mr. R. read further extracts from the Congressional Debates.] In addition to those high authorities, permit me, Mr. Chairman, to read some parts of the lectures on the Judiciary of the United States, of the celebrated Judge Tucker, the present Professor of Law at the University of William and Mary, in Virginia. [Here Mr. R. read from Tucker's Lectures.] I wish gentlemen, who compare the official tenure of our judges with those of Great Britain, to attend to the wide distinction between their independence, as shown by the learned judge and professor, whose lectures I have cited; he shows that the judges in England have only a legal independence; while in America, they enjoy Constitutional independence.

The advocates of this bill say, the people could not have meant to establish an independent Judiciary, because a permanent body of men, beyond all control, would prove hostile to the liberties of the people. Sir, we do not contend for any such establishment; we do not wish for a Judiciary permanent and beyond control. No, sir, all we insist upon is, that the judges are liable to that sort

of control only which the Constitution establishes; that "good behaviour" is the tenure by which they hold their office, and that they cannot be removed from it but by impeachment. That the Judicial authority was never designed to depend upon the Executive and Legislative powers, but, in some sort, to balance them. That our federal judicature was meant to give to the Government a security to its justice against its power: it was contrived to be, as it were, something exterior to the State. The honorable gentleman from Vermont, (Mr. Smith,) who preceded me, says, our construction of the Constitution is derived from implication. This is not the case, sir; we require no ingenuity, no sophistry, no metaphysical distinctions to bear us out in our construction. We resort to the plain meaning of the words of the Constitution. Knowing the Constitution would contain the seeds of its dissolution, should it contain articles liable to ambiguity, the Convention cautiously avoided obscurities; they selected as plain words as any in our language, to represent their intention of having an independent Judiciary; they used words that are intelligible to almost every capacity. Let us read them. "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour." These are the words of the Constitution; and what words, sir, could have been found more express, more unequivocal in their meaning? Let us suppose, that, instead of being the Legislature, and instead of having the Constitution before us upon trial, and (as is the case I fear) being about to sign its death warrant, we were a convention, called by the people, to form a constitution; that we had determined to establish an independent Judiciary, to have judges removable only by impeachment; that, having decided this principle, it was referred to a committee to draught a clause conformably to the idea of having the Judiciary entirely independent of Executive and Legislative power; and that this service was assigned to the honorable gentleman from Virginia, (Mr. Giles;) could his ingenuity, could his knowledge of our language, furnish words to represent the intention of having an independent Judiciary, more appropriate, more unequivocal, more familiar, than the words used by the Convention, and which I have just read? They are explicit, simple, unqualified, and, at the same time, imperative. The understanding of the Convention, of the States, and of the people at large, was, that our Judiciary should be independent. They deemed this Constitutional check essential to the duration of the Government: and until the fourth day of last March, I believe the Judiciary was considered as sacred. The State Governments, and the people, and the friends of our Federal Union, reverenced it as the fortress and ark of their safety.

While this shield remains, it will be difficult to dissolve the ties which knit and bind the States together. As long as this buckler remains to the people, they cannot be liable to much or permanent oppression. The Government may be administered with indiscretion and with violence; offices may be bestowed exclusively upon those who have no other merit than that of carrying votes at elections; the commerce of our country may be depressed by nonsensical theories, and public credit may suffer from bad intentions; but, so long as we may have an independent Judiciary, the great interests of the people will be safe. Neither the President nor the Legislature can violate their Constitutional rights. Any such attempt would be checked by the judges, who are designed by the Constitution to keep the different branches of the Government within the spheres of their respective orbits, and say, thus far you shall legislate, and no farther. Leave to the people an independent Judiciary, and they will prove that man is capable of governing himself; they will be saved from what has been the fate of all other Republics, and they will disprove the position that Governments of a Republican form cannot endure. I did hope, from the promises made by the honorable gentleman from Virginia, (Mr. Giles,) on a former occasion, when we attempted to postpone this bill, that he would have given it an unimpassioned consideration. If it were possible for him to dismiss party feelings, and argue any question upon its real merits, it was to be hoped he would have given a cool and deliberate consideration to this all important subject, and argued it upon the ground of Constitutionality. But, unmindful of his promise not to consider this a party question, the gentleman prefaced his observations with saying, he designed to make them personal.

His preliminary remarks were highly afflictive to myself and friends. We deprecated this course, but the gentleman's crimination must be deemed a justification of the recrimination which he has rendered necessary.

This is a painful task, and if gentlemen should feel themselves or their friends wounded by any of our observations, they must recollect the situation in which they have placed us, and that the necessity of defending ourselves has been imposed upon us by their attacks. In a speech which occupied two hours, ten minutes only of that time were given to a consideration of the constitutionality of this measure, and then the gentleman found it convenient to employ the rest of it in fulminating his anathemas against the past Administrations, and reiterating those invectives and censures which on all past occasions he has indulged himself in bestowing upon those who are no longer in power. Whether attacks are to be continued upon the past Administrations to divert the public eye from the present Administration, or whether they are calculated to raise a smoke, under the cover of which gentlemen may march unobserved to attack the vitals of our Constitution, is best known to themselves. The gentleman from Virginia has rendered homage to the Judiciary of Great Britain; acknowledges much of the prosperity of that nation to be produced by the independence of their judges; says ours are at least as independent, but that the doctrine of making them completely independent, is a monstrous one. Sir, there is no kind of analogy between the Governments of America and Great

Britain, and none between the situation of the judges in that and in this country. The people of England gained much, and an abundant source of oppression dried up, when they got their judges made independent of the Monarch, whose creatures they had been, and whose arbitrary measures they had been obliged to support. But, sir, it was impossible to make the judges a check upon Parliament, for nothing in that Government is independent of Parliament. In this country things are far different; we have a written Constitution; the people have given certain powers to the Executive, other defined powers to Congress, and delegated other powers to the Judiciary. But the gentleman from Virginia wishes to make Congress as powerful as the Parliament of Great Britain; he wants the Legislature in America to be (like the Parliament in England) without control; he wants to destroy that check which the people in their Constitution formed for us; he wants to prostrate that protecting principle which was never before known in a Republican Government, and for want of which all Republics have perished. In England the independence of the Judiciary, as far as it goes, I highly appreciate; but I venerate the independence of our judges (as designed by the people when they adopted the Constitution) because it is complete; in England it is not. There they have a legal independence; here a Constitutional one. Although the independence of the judges in England is partial, yet it has been productive of vast good; although they may be said to be in some measure still dependent on the Monarch, inasmuch as pensions and places are in his gift, yet it is well known the independence they do possess of the Crown prevents reasons of State from entering the courts, and that the royal will sinks into nothing and disappears at the seat of justice when opposed by the law. From many proofs of this fact, I beg leave to select the case of Mr. Wilkes, at the time of his second election, and when he had been outlawed: although the whole power of the Crown was most actively employed to crush this obnoxious subject, yet Lord Mansfield, and the whole bench of judges, declared the outlawry contrary to the principles of common law, and reversed it as being illegal. Permit me to read this case. [Here Mr. R. read an account of the proceedings, and the whole of Lord Mansfield's celebrated speech.] The Judiciary on this occasion we see checking arbitrary Executive measures, because they were independent of the Executive.

In America the Judicial power was designed as a Constitutional check upon both the Executive and Legislature; but gentlemen on the other side, deprecating all control, are for prostrating the check imposed by the people on their Representatives, and the destruction of which will make them omnipotent. The gentleman from Virginia says the Judicial power was not formed by the Constitution. I shall not be surprised by any declaration he may make about the meaning of the Constitution after this. Sir, the Judicial power is established by the Constitution equally with the Executive and Legislature. The organization of the courts has been left to Congress, but the instrument under which we act has established the Judiciary, and has also assigned its duties. A charge has been made against us by the honorable gentleman, which I must deny; I plead not guilty to it, and say he is wholly mistaken. He has charged us with having changed with the times, and with having formerly advocated the extension of the powers of this House. Sir, this is not the case, *tempora mutantur sed non mutamur in illis*. Knowing how strongly disposed in Governments like ours the popular branch always is to grasp at illegitimate powers, we have in times past struggled hard for preserving to all the branches of the Government the powers delegated to them respectively by the Constitution. We have ever been watchful of Executive and Judicial rights, and defended them from the encroachments attempted by the Legislature. The gentleman from Virginia must permit me to call to his memory the course of conduct we pursued on a very memorable occasion, when he and his friends wished this House to arrogate Executive powers. I refer to the proceedings on a motion made by the honorable gentleman then his colleague, who is not now a member of this House, (Mr. Nicholas,) in the debate on the foreign intercourse bill. Mr. Nicholas said:

"I believe all governments like ours tend to produce a union and consolidation of all its parts in the Executive department, and the limitations of each other will be destroyed by Executive influence, unless there is a constant operation on the part of the Legislature to resist this overwhelming power. A representative Government may be made the most oppressive, and yet preserve all its Constitutional forms, and the Legislature shall appear to act upon its own discretion while that discretion shall have ceased. Where under our Government the Executive has an influence over the Legislature, the Executive is capable of carrying its views into effect in a manner superior to what can be done in a despotic monarchy. Mischiefs will be carried further, because the people will be inclined to submit to a Government of its own choosing. Monarchs cannot carry their oppression so far without resistance as Republics. Suppose Executive patronage had extended its influence into the Legislature, and that in consequence of a thirst for office majorities were formed in both branches of the Legislature devoted to the views of the Executive; where would be a check to objects hostile to the public good? In what branch of the Government would you look for it? Was it the Senate? Will you look to this House? The majorities are humble expectants of office. Where then will you find anything capable of controlling the overbearing influence of the Executive? It must be in small and feeble minorities, who, by their opposition, and attention to the interests of the people against arbitrary power, may rouse the people to a sense of their danger, and force the public sentiment to be respected; this, he conceived, would be the only check."

It hence appears, that those gentlemen have availed themselves of every occasion to extend the powers of Congress, and had their attempts been successful, we should ere this have had a consolidated Government; a kind of Government which the people of this country never wished to estab-

lish, and which is incompatible with their best rights. The gentleman from Virginia, whose argument I have quoted on the subject of the foreign intercourse bill, shows that those who were then in the minority extended their project so far as to count upon the minority to check the powers of the other departments of Government. Not so, sir, is the case with us; we do not count upon the efforts of feeble minorities: we do not wish to guard the Constitution by appeals to the people; we will do nothing calculated to produce insurrection: we do not want to protect the great charter of our rights by the bayonet. No, sir, we rely on honest and legitimate means of defence; we wish to check these gentlemen only with Constitutional checks. The people of America say in their Constitution, the Judiciary is designed as a check upon the Legislature and Executive, and as a barrier between the people and the Government. We say it is the sheet-anchor which will enable us to ride out the tornado and the tempest, and that if we part from it there is no safety left; that it is the only thing which can preserve us from the perilous lee-shore, the rocks and the quicksands, where all other Republics have perished. The Judiciary is the ballast of the national ship: throw it overboard and she must upset.

[Mr. Giles begged leave to explain. He said the gentleman had not quoted his arguments fairly; he never held the ideas ascribed to him; he certainly had not said the gentleman from South Carolina wished, on former occasions, to confide power to the popular branch of the Government. The gentleman from South Carolina, he believed, never wished this or any other popular branch of Government trusted with power.]

Mr. R. said, on a subject so momentous as this he would not trust to his memory; that he had taken down the words of the gentleman from Virginia; he certainly did not mean to misrepresent him, and was sorry he had supposed he had not quoted him fairly. It has been further said by this gentleman, that as the Judiciary was established for the benefit of the people, and is maintained by their money, the people must wish it put down when the proper authority tells us it has no duties to perform, and is a mere sinecure. I should be glad to know, sir, what is meant by the proper authority; are we to judge in this business, or is the Executive to judge for us? Sir, the Executive has seen fit to judge for us; but I believe he has gone beyond the line of his duty: and it would be more proper to call this document, now in my hand, an officious than an official act. However unpleasant it may be to gentlemen to call this an Executive measure, the great solicitude discovered by the President to get disembarrassed of this most salutary Constitutional check, proves it his measure. It is not the measure of Congress nor of the people, but of the Executive. Not satisfied with calling the attention of Congress to this subject, he has, in his zeal to furnish arguments to those who support here his measures, given us a table showing what business had been done in the Federal courts prior to the late organization of them. Had the former President furnished the late Congress with such a document as this, it would have been considered as abundant evidence of the inconvenient organization of the Federal courts, and furnished arguments for the change in the system which we did make. The result of this document is, that owing to the inconvenient arrangement of the system, suitors were deterred from entering the national courts. It shows how insufficient the provision for doing business was under the ancient system, and not how little there is to do. In a nation so great, and so growing in its greatness as ours is; among a people so commercial, so enterprising, and so attached to right as are the people of this country, there must be much law or there will be no justice. But had the late Executive furnished, unsolicited by Congress, such a document, the whole nation would have rung with censures. He would have been charged with considering Congress as a mere bureau; a committee or commune through which the Executive was to make his projects and his propensities felt. In this document, No. 8, we see the arm of the Executive raised against the Judiciary, and in his Message we hear him say it must fall. If he had contented himself with merely directing our attention to the law he wishes repealed, we might have obtained much more useful information for ourselves than what he has been pleased to give. If he had only adverted to this subject as one requiring the consideration of Congress, and they had wished for information, they would have called upon the proper officer for it, and have directed the Attorney General to furnish a table, showing what business had been done in the circuit courts since the time of their establishment. Such a document would have shown whether the existing law be beneficial or not. But the President, it seems, did not deem it wise to leave us the usual course of obtaining information; perhaps he had sufficient reasons for this; probably such a document as I have mentioned would have given a result not suited to Executive views. It would have shown that much important business had been done in the circuit courts, although they had but a short existence. Whether the Executive was incited to act with the promptitude he did, to prevent its being known of what vast utility the law is, it is not for me to say. I must be permitted, however, Mr. Chairman, to say, that having passed the last Summer in the Eastern States, I know that in that section of the Union the circuit court was fully occupied during its session. It is within my own knowledge, that at Portsmouth, in New Hampshire, there was much business done; at Boston there was a great deal of important business despatched, much to the satisfaction of suitors, and I learned from an authentic source that the court was a highly popular one. At Newport, in Rhode Island, there was so much business, that the court was under the necessity of holding evening sessions. In Vermont, I know that much business was done, and done much to the satisfaction of the public. From the gentlemen of the bar in New Jersey, we have a

memorial, stating that there had been many causes tried in the circuit court in that State. In Philadelphia, the gentlemen of the bar, of both political parties, have united in informing us that they deem the continuance of this court not only useful but necessary. From the Chamber of Commerce at New York, and from the merchants in Philadelphia, we have received petitions, praying for a continuance of the law, which has been denounced, and which the Executive thinks unnecessary. These facts make a mass of high evidence, which on ordinary occasions would weigh much. But I hear it will not preserve the law in question. It has been frowned upon from high authority, and I fear it must perish.

Sir, this document, No. 8, is as little calculated to serve the purposes of gentlemen who appeal to it, as is the document produced some days past by a gentleman from Virginia. (Mr. Thompson:) he gave us a record from the court of chancery, in Virginia, to show how much business there is done in that court, where, he says, there is but one judge, and his salary is only one thousand five hundred dollars. The honorable gentleman says, in Virginia they have but one chancellor, with the salary of one thousand five hundred dollars, who renders as much service as all the national courts; and to prove this, he reads to us a certificate from the clerk of the court of chancery, stating, that on the chancery docket there were two thousand six hundred and twenty-seven causes. This paper serves to show, not what business is done, but what a mass of business there is undone, and which the court is incompetent to dismiss. What a frightful picture has he given of the judicature of his own State! How alarming must it be to foreigners, and the citizens of other States, who may have causes depending in Virginia! What chance can a citizen of South Carolina, Massachusetts, or elsewhere, have of obtaining justice before the lapse of many years, if the history given by the gentleman from Virginia be correct! Should a citizen of another State be a suitor in Virginia, it is competent to the citizen of that State to carry the cause into the court of chancery, where a mass of business presents itself to his view, and he finds two thousand six hundred causes must be dismissed before his can be heard. Where would the citizens of other States, having debts in Virginia, attempt their recovery? They would seek justice, sir, in the Federal circuit court, which gentlemen now are endeavoring to annihilate, and not in the State courts, which may be more properly called a bed of justice than a court of justice, if justice sleeps there, as the gentleman has represented. He also states, that State justice is cheaper than national justice. I do not believe this a correct position. I am very willing to enter into a comparison, but must exclude from it Virginia, because he has shown that justice is denied there, it being greatly delayed. I did hope, Mr. Chairman, the motion made before I got up, for the rising of the Committee, would have obtained, and should not have commenced offering my observations at so late an hour, had there not been a loud call for the question; but as I am unwilling to abuse the patience of the Committee, as I have detained them I find more than two hours, and have not yet offered half of the observations I am desirous of submitting, I will suspend them for the present and continue them to-morrow, or will now proceed, as shall be most agreeable to the Committee.

On motion of Mr. S. Smith the Committee rose.

Thursday, February 25.

A memorial of John Gardiner, an alien, now an inhabitant of the City of Washington, was presented to the House and read, stating that the memoralist has brought his family into the United States, with an intention to reside permanently therein; and praying, that, therefore, he may be enabled to obtain a patent for discovery of a method of constructing dry docks to repair and build ships in, on navigable waters, where the rise and fall of tides is inconsiderable.—Referred.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, to whom were referred, on the ninth instant, the petitions of John Caldwell and others, merchants and traders in the State of Connecticut, and of sundry merchants and inhabitants of the town of Plymouth, in the State of Massachusetts, reported a bill for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes; which was read twice and committed to a Committee of the whole House on Monday next.

JUDICIARY SYSTEM.

The House then went into a Committee on the bill, sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. Rutledge.—I beg leave, Mr. Chairman, to proffer my thanks to the Committee for the indulgence with which they favored me yesterday, and at the same time to acknowledge the respect excited by the politeness of the honorable gentleman from Maryland, who moved for its rising. In the course of the observations I yesterday offered, I endeavored to show that it was the intention of the Convention to make our judges independent of both Executive and Legislative power; that this was the acknowledged understanding of all the political writers of that time; the belief of the State Conventions, and of the first Congress, when they organized our Judicial system. If I have been successful in my attempt to establish this position, and if (what I suppose cannot be denied) it be true in jurisprudence that whenever power is given specially to any branch of Government, and the tenure by which it is to be exercised be specially defined, that no other, by virtue of general powers, can rightfully intrude into the trust; then I presume it must follow, of consequence, that the present intermeddling of Congress with the Judicial department is a

downright usurpation, and that its effect will be the concentration of all power in one body, which is the true definition of despotism. As, sir, every thing depends upon the fair construction which this article in the Constitution respecting the Judiciary is susceptible of, I must again read it. [Here Mr. R. read several clauses of the Constitution.] Some of the clauses we see are directory and others prohibitory. Now, sir, I beg to be informed of what avail are your prohibitory clauses, if there be no power to check Congress and the President from doing what the Constitution has prohibited them from doing? Those prohibitory regulations were designed for the safety of the State governments, and the liberties of the people. But establish what is this day the ministerial doctrine, and your prohibitory clauses are no longer barriers against the ambition or the will of the National Government; it becomes supreme and is without control. In looking over those prohibitory clauses, as the representative of South Carolina, my eye turns with no inconsiderable degree of jealousy and anxiety to the ninth section of the first article, which declares—[Here Mr. R. read the article respecting migration before the year 1808.]

I know this clause was meant to refer to the importation of Africans only, but there are gentlemen who insist that it has a general reference, and was designed to prohibit our inhibiting migration as well from Europe as any where else. It is in the recollection of many gentlemen who now hear me, that in discussing the alien bill, this clause in the Constitution was shown to us, and we were told it was a bar to the measure. And an honorable gentleman from Georgia, then a member of this House, and now a Senator of the United States, (and who had been a member of the Convention,) told us very gravely, he never considered this prohibition as relating to the importation of slaves. I call upon gentlemen from the Southern States to look well to this business. If they persevere in frittering away the honest meaning of the Constitution by their forced implications, this clause is not worth a rush; is a mere dead letter; and yet, without having it in the Constitution, I know the members from South Carolina would never have signed this instrument, nor would the convention of that State have adopted it. My friend from Delaware, standing on this vantage ground, says to our opponents, Here I throw the gauntlet, and demand of you how you will extricate yourselves from the dilemma in which you will be placed, should Congress pass any such acts as are prohibited by the Constitution? The judges are sworn to obey the Constitution, which limits the powers of Congress, and says, they shall not pass a bill of attainder or *ex post facto* law; they shall not tax articles exported from any State, and has other prohibitory regulations. Well, sir, suppose Congress should pass an *ex post facto* law or legislate upon any other subject which is prohibited to them, where are the people of this country to seek redress? Who are to decide between the Constitution and the acts of Congress? Who are to pronounce on the laws? Who will declare whether they be unconstitutional? Gentlemen have not answered this pertinent inquiry. Sir, they cannot answer it satisfactorily to the people of this country. It is a source of much gratification to me to know, that my sentiments on this subject, as they relate to the constitutionality of it, are in unison with those of the wisest and best men in my native State. The Judicial system had proved so inconvenient there, as to render a new organization of it necessary some years past. There were gentlemen in the Legislature as anxious to send from the bench some of the judges as gentlemen here are to dismiss our federal judges. Personal animosities existed there as well as here, though not to so great an extent; but it was the opinion of a large majority of the South Carolina Legislature, that as the Constitution declares "the judges shall hold their offices during good behaviour," the office could not be taken from them, the measure was abandoned, and the wise and cautious course pursued, which we wish gentlemen here to follow: the system was not abolished, but modified and extended; the judges had new duties assigned to them, and their number was increased, but no judge was deprived of his office. In South Carolina they have a court of chancery, consisting of three chancellors, and the law establishing it requires the presence of two judges to hold a court. During a recess of the Legislature one of the chancellors resigned and another died. The functions of this court of consequence became suspended. All the business pending in it was put to sleep. The public prints were immediately filled with projects for destroying the court, which had been denounced as unnecessary. As the citizens of the western part of the State had not participated much in the benefits derived from the court of chancery, many of the most influential of them deemed it of little utility. The opposition assumed so formidable an aspect as to determine the Governor (who exercises the power of appointing judges during the recess of the Legislature) not to make any appointment, believing the court would be abolished. When the Legislature met, an effort was made to abolish the court; but a large majority giving to the Constitution the honest meaning of its framers, considered the judges as having a life estate in their offices, provided they behaved well; and the vacancies on the chancery bench were immediately supplied.

That the national Judiciary Establishment is comparatively more costly than are the State Judiciaries, is far from being the case, I believe. It may be so in Virginia, where they have one chancellor, with little salary and much business, but it is not so in other States. In South Carolina, we have six judges at common law, at six hundred pounds sterling a year each; three chancellors at five hundred pounds each; which, together with the salaries and fees of office of the attorney general, master in chancery, solicitors, clerks, and sheriffs, amount to six thousand two hundred pounds sterling. And yet, sir, justice, I believe is no where cheaper than in South Carolina. By the judicious structure of her Judiciary system,

the streams of justice are diffused over the whole State, and every man is completely protected in his life, liberty, property, and reputation. The courts are almost constantly in session. The judges are gentlemen of high talents, integrity, and strict impartiality; and every one who goes into the court of that State, not only obtains ample justice, but obtains it promptly; this, sir, is what I call cheap justice. The gentleman from Virginia has seen fit to notice the law which laid a direct tax, and said it was imposed when we knew the Administration of this Government was soon to pass from those then in power, and was resorted to as a means of extending Executive patronage, and to make provision for the friends of an expiring Administration. Can the honorable gentlemen be serious in all this? Does he remember when we passed this law? It was in 1798, when I will be bold to say, the Administration enjoyed the highest degree of popular favor. In no popular Government, perhaps, was an Administration more popular than was the former Administration, at the time this tax was laid. Sir, this law had no connexion with personal or party considerations. Like all the measures of the past Administration, it was designed to promote the public good. Had we, like our opponents, consulted the caprices and prejudices, and not the real interests of our constituents; had we been merely attentive to popular favor, we should not have passed this law. At the crisis it was passed, the public good demanded it, and we were regardless of every other consideration. A nation that had lighted up the flame of war in every corner of Europe, that was prostrating the liberties of every free people, and subverting the Government of every country, saw fit to menace us. Told us for the preservation of our peace and independence we must pay tribute. This degrading measure was scornfully rejected by our Administration; they said, if we must fall, we will fall after a struggle; and our citizens prepared themselves for war with alacrity, and regarded every sacrifice as inconsiderable, compared with the great sacrifice of our independence. With this prospect of immediate war, we should have acted not only unwisely but treacherously, had we trusted for public income to the revenue derived from trade. Had our trade been destroyed, there would have been a complete destitution of revenue, and to place the means of national defence as far beyond the reach of contingency as possible we imposed the direct tax. We knew this law would prove arms and ammunition to those who were inventing all the falsehood credulity could swallow, and who were busily employed in misrepresenting and calumniating the conduct of the Government. We did suppose they might make this law their artillery to batter down the Administration; but we were not deterred from our honest purposes by this expectation; a change of men, when compared with a change of government, weighed with our minds as dust does in the balance; our measures did not aim at popularity, and we were just to our country, regardless of party consequences. At this early period, says the gentleman, it was to have been calculated what would be the result of the Presidential election. Sir, those must have been gifted with second sight, they must have been prophets indeed, who could have then foretold how the election would issue; the result was as doubtful as any event could be, till within a few days of the election. It is recollected that everything depended upon the South Carolina vote; all the gentlemen in nomination went there with an equal number of votes; the anxiety displayed at the time by the gentlemen here from Virginia, proved they then deemed it doubtful how the election would terminate. Indeed, sir, nothing could have been more doubtful, and I believe it is fully known to the ministerial side of this House, that it depended upon one of the gentlemen nominated, who had not the Carolina votes, to have obtained them, and produced to the election a different result; but his correct mind was obnoxious to any intrigue; it would not descend to any compromise, and this honorable man knew that no station could be honorable to him unless honorably obtained. In the very wide range which the gentleman from Virginia has permitted himself to take, he has been pleased to notice the conduct of the late Congress when they were occupied in the election of a President of the United States, and he has said we were then "pushing forward to immolate the Constitution of our country." What does all this mean, sir? What, sir! because we, of the two gentlemen who had from the electors an equal number of votes, did not prefer him who was from Virginia, are we to be charged with an immolation of our Constitution? Sir, the gentleman from Virginia was not a member of the last Congress, and lest he should not know the history of the transaction to which he alludes, I will give it.

The Electors chosen in the different States gave the same number of votes for Thomas Jefferson and Aaron Burr; there being a tie, it devolved, by the direction of the Constitution, upon the House of Representatives to make an election. We sincerely believed that Mr. Burr was the best and the most fit man to be President, and we accordingly voted for him; we continued to vote for him six and thirty times; we were anxious to have him elected, and we deprecated the election of the other candidate; but when we found gentlemen were determined not to have the candidate from New York, and said they would have him from Virginia President, or they would have no President, we, who venerated our Constitution too sacredly to do anything which should hazard the loss of it, yielded. We believed Mr. Jefferson radically and on principle hostile to the National Constitution; we believed some of the most important features in it obnoxious to him; we believed him desirous of destroying the independence of our Judiciary; we believed him opposed to the Senate as now organized, and we believed him destitute of that degree of energy necessary to maintain the general liberty of the people of the United States. With these impressions deep upon our minds, we should have been traitors to our

country had we voted for the gentleman from Virginia, as long as there was any prospect left to us of elevating the gentleman from New York; but when we found the object of our preference was so obnoxious to gentlemen on the other side, that they would hazard the having of no President rather than have him, we ceased our opposition. And this is what the honorable member from Virginia has been pleased to call 'pushing forward to immolate the Constitution."

I regret, Mr. Chairman, being compelled to mention names and say anything of a personal nature, but I am obliged to do it in pursuing the gentlemen from Virginia, who in his extraordinary course has not only mentioned the names of gentlemen, but ascribed unworthy motives for their conduct. He has said Mr. Read and Mr. Green voted for the law under which they got appointments. Although I have abundant proof that neither of these gentlemen solicited their offices, that they were given spontaneously, and without being expected, yet I will merely answer this observation by mentioning what is very generally known to all gentlemen who have been of late in the councils of the nation; it is, that it was the invariable practice of the former Executive to appoint gentlemen to office without previously advising with them. It is well known that under the law gentlemen are now endeavoring to repeal, Mr. Jay was appointed Chief Justice, and about the same time several gentlemen in this House were appointed to some of the most honorable stations under our Government; the Executive's intention, it is well known, had not been previously notified to them; it is well known they all declined accepting the places proffered to them. Permit me, sir, to give a brief history of the case of Mr. Green, on which the gentleman from Virginia has dwelt so much.

The district judge in Rhode Island was appointed circuit judge, and Mr. Green was appointed district judge. On the fourth day of March, Mr. Green took his seat in the Senate; the friends of the Administration objected to his keeping it; they said he was a judge, as appeared by the journals of the Senate; they here made a complete recognition of his appointment as judge, and he vacated his seat. After getting home he received his commission, in which the blanks had been filled up with the words circuit judge, instead of district judge. Mr. Green enclosed his commission to the Executive, in a letter most profoundly respectful, and requested the errors of the clerk in the Department of State might be corrected, and his commission made to conform to the appointment, as recorded on the Senatorial journal. To this letter, which was in highly respectful terms, the President would not deign to have any answer given; he pocketed Mr. Green's commission, and placed another gentleman in his office. This is a history of the appointment of Mr. Green, and the manner in which the President "corrected the procedure." To my friend from New York, (Mr. Morris,) who some days past adverted to the President's system of persecution, the honorable gentleman from Virginia says he is so ignorant of the existence of any such system that he cannot conceive what is alluded to; and my friend from North Carolina, (Mr. Henderson,) who spoke of the destructive spirit which had mounted in the whirlwind and now directs the storm against one-half of the community, he charges with having winged his flight into the regions of fancy; and tells us the spirit he sees is a mere spirit, thin as air, and without real form or substance. Sir, my honorable friend from North Carolina is under no magical delusion; the spirit he noticed is a gigantic spirit, and with a giant's size unites a giant's appetite: it attacks the independence of mind, and violates the right of opinion; it establishes a mental tyranny; tampers with integrity and poisons morals; it has arraigned one-half of the community against the other; it denounces as a "*sect*" in our country all those whom the illustrious Washington took to his confidence and invested with his favor. It establishes boards of inquisition to know how men who are in office voted at the last election, and if they did not then subserve the views of the ruling party they are stripped of their offices. Many of the proscribed are veterans of '76. They wasted their youth and their substance in fighting our Revolutionary battles, and as a small reward for great services, they had offices given them by the distinguished Washington. Most of those who had been appointed by him, this destroying spirit has turned adrift, and to those who are not yet destroyed, it gives (in the New Haven reply) the promise of Polypheme to Ulysses, and says, "you shall be devoured last." This is the spirit, sir, against which my friend from North Carolina has raised his voice, and if the gentleman from Virginia will appeal to the wives and children of ninety or a hundred meritorious men who have been hurled from office to make way for those who are willing, without examination, to yield a blind support to ministerial measures; to sing hosannas to the President, and bend to his will as the oser does to the breeze; I say, sir, if he will appeal to the wives and children of those gentlemen, who have been degraded, disgraced, and reduced to want, as far as it was in the power of the Executive to degrade and reduce them, they will tell him this is a spirit of substance, and not thin as air. Fatigued by its labors, we now see this great spirit resting on its club; it no longer dispatches its victims as heretofore, by batches, but, as strength and appetite return, proscriptions are continued, though in detail. Since the meeting of Congress, there have been many dismissals; in the last week only, I heard of that of a meritorious officer, who is an aged and war-worn soldier. To this gentleman, who had grown grey in the service of his country, General Washington gave an office which might cheer the evening of his days; the duties of it were discharged with industry and fidelity. He has been a useful citizen; he has thirteen children, and most of them are daughters—the oldest has scarcely numbered eighteen years, and the youngest not more than eight months. This gentleman has been placed on the proscribed list; not, sir, because he had been negligent of any one of his duties, but because some of those hands which (as it has been modestly said) burst open the doors of honor and confidence, were widely stretched out for rewards; to give them loaves and fishes they have been taken from the support of this numerous and lovely family. Sir, there not only exists, as my friend from North Carolina tells us, a great and destroying spirit, but there are also subordinate spirits employed in this goodly work of proscription; the master-spirit, unable to take a view of the whole ground, has its under spirits; these minor spirits, within the spheres of their respective departments, are singling out objects of Executive vengeance. By some of the papers which lie before me on my desk, I see the Postmaster General is busily employed; every postmaster, and every little deputy-postmaster, who cannot prove his claims to Executive favor by proofs of conformity to the orthodox faith of the day, is considered as a heretic. In the persecution of the Postmaster General, of those who are not devoted to the party, I observe something truly ridiculous. Thinking, I suppose, that public opinion would demand some justification of this conduct, he undertakes to assign reasons for it. I observe in the paper of this morning the Postmaster General has removed one of his deputies at Augusta, in Georgia, and makes a sort of an apology for it. He tells the man it is because he is a printer, and the occupations are incompatible. This gentleman writes to him that he is not a printer and that he never was concerned, directly nor indirectly, in the publishing of a paper. It seems, then, the Postmaster General was mistaken, but the deputy lost his office. This lesson will prevent future explanations, probably, by the Postmaster General. It will be more convenient for him to wrap himself up in Executive infallibility and insist "the King can do no wrong." The gentleman from Virginia has noticed the Sedition act, and says, the present Executive requires no such shield for his protection; that he wants no artificial means of defence; yet, in the very same breath, we hear the gentleman complaining of defamatory scribblers, and of the profligacy of our presses. It does not become the honorable gentleman to complain of the public prints. It is well recollected, that when heretofore we endeavored to check the licentiousness of the press, he and his friends insisted that its licentiousness and liberty were so closely allied, that should we attempt to touch this vein, we would run the hazard of giving a mortal wound to the great arteries of the body politic. This was formerly the language of gentlemen who are now, it seems, suffering from the effects of their past policy. They are now experiencing what they might have learned from a good old book, "He who soweth the wind shall reap the whirlwind." It did not become them (to use our Saviour's expression) to "cast the first stone." I shall here, sir, close my observations in answer to those offered by the gentleman of Virginia, to whom I have had occasion to refer so often. Permit me, however, before taking my leave of him, to express my sorrow that he deemed it necessary, in ranging the wide field he occupied, to visit Mount Vernon, and attempt to disturb the ashes of our political father. This circumstance was not required to prove that pre-eminence is often obnoxious; "and why must Aristides be called more just than others?" was asked by the envious Athenian who voted for his banishment. Another honorable gentleman from Virginia asks my friend from North Carolina why he now mourns and sighs over the Constitution, which he last year assisted to violate, and insists upon it we did wound the Constitution in putting down the two courts of Kentucky and Tennessee? Sir, it has been satisfactorily shown by my learned friend from Delaware that the offices were not, in those two instances, destroyed, but modified, and that we did not take their offices from the judges, but merely assigned them new duties. This, however, the gentleman from Virginia calls wounding the Constitution, and proceeds to say, you did destroy two courts, and we will destroy sixteen. What, sir, will he tell us that our hands are red with the blood of the Constitution, to justify his imbruing his? Because he thinks we then violated the Constitution, will he now murder it? Sir, it was by sounding the alarm about meditated violations of the Constitution, and by gross misrepresentations of our intentions, and reiterated charges of not respecting the Constitution, that public opinion was vitiated, the public mind misled, and the administration of our Government placed where it now is. But almost in the moment of changing, when the present Administration is in its gristle, it assumes the attitude of a gladiator, attacks the Judiciary, violates the rights of the judges, and says to us, *you set the example*. Sir, had we set them the example, it was a bad one, and it does not become them to follow it; but we never gave any such examples; we always reverenced the Judiciary as the bulwark of the Constitution, and considered the rights of the judges as the rights of all the people of America. It is said by the gentleman from Virginia, that our devotion to the Judiciary establishment makes us wince at any attempts to strip off some of its superfluous and expensive trappings, and that we will not part with the Corinthian and Composite pillars which have been added for its decoration.

Sir, the Judiciary is, in the fabric of the Constitution, not a Corinthian pillar, not any ornament added by Congress. It is, sir, the grand Doric column; one of three foundation pillars, formed, not by Congress, but by the people themselves; it binds together the abutment, is laid in the foundation of the fabric of our Government, and if you demolish it, the grand arch itself will totter and the whole be endangered. We are asked by the gentleman from Virginia if the people want judges to protect them? Yes, sir, in popular governments Constitutional checks are necessary for their preservation; the people want to be protected against themselves; no man is so absurd as to suppose the people collectedly will consent to the prostration of their liberties; but if they be

not shielded by some Constitutitional checks they will suffer them to be destroyed; to be destroyed by demagogues, who filch the confidence of the people by pretending to be their friends; demagogues who, at the time they are soothing and cajoling the people, with bland and captivating speeches, are forging chains for them; demagogues who carry daggers in their hearts, and seductive smiles in their hypocritical faces; who are dooming the people to despotism, when they profess to be exclusively the friends of the people. Against such designs and artifices were our Constitutional checks made to preserve the people of this country. Will gentlemen look back to the histories of other countries, and then tell us the people here have nothing to apprehend from themselves? Who, sir, proved fatal to the liberties of Rome? The courtier of the people; one who professed to be "the man of the people," who had willed his fortune to the people, and had exposed his will to the public eye; a man who, when a Crown was proffered to him, shrunk from the offer, and affectedly said, it did not come from the people. It was Julius Cæsar who prostrated the liberties of Rome; and yet Cæsar professed to be the friend of Rome, to be in fact the people. Who was it, that, in England, destroyed the Representative Government, and concentrated all its powers in his own hands? One who styled himself the man of the people; who was plain, nay studiously negligent in his dress; disdaining to call himself Mister, it was plain unassuming Oliver; Oliver Cromwell, the friend of the people, the protector of the Commonwealth. The gentleman from Virginia says he would rather live under a despot than a Government where the judges are as independent as we would wish them to be. Had I his propensities, I, like him, would fold my arms and look with indifference at this attack upon the Constitution. It has been my fortune, Mr. Chairman, to have visited countries governed by despots. Warned by the suffering of the people I have seen there, I am zealous to avoid anything which may establish a despotism here. It is because I am a republican in principle and by birth, and because I love a republican form of Government and none other, that I wish to keep our Constitution unchanged. Independent judges, at the same time that they are useful to the people, are harmless to them. The judges cannot impose taxes; they cannot raise armies; they cannot equip fleets; they cannot enter into foreign alliances: these are powers which are exercised without control by despots; and as the gentleman from Virginia does not hold despots in abhorrence, he and I can never agree in our opinions on Government.

Whether another honorable gentleman from Virginia (Mr. Randolph) has derived all the service from his sling and his stone he had expected, or whether he feels acquitted of his promise, and now thinks himself capable of prostrating the Goliah of this House, armed cap-a-pie with the Constitution of his country, I cannot conjecture. Whether he has discovered the skill and the prowess of David, or whether he is likened to him only by the weapons he wars with, it is for the Committee to judge; for myself I must say, that his high promises had excited expectations which in me have not been realized, and when the gentleman sat down I was sorry to find my objections to the bill on your table undiminished. I say sorry, for I can lay my hand upon my heart, and in the fullness of sincerity declare, there is nothing I desire more anxiously than to be convinced by gentlemen that this measure is not unconstitutional. It is not competent for us to decide where the power of judging shall be placed, as is supposed by the gentleman from Virginia, who says the only question is where this power shall be placed. Sir, the true question is where was this power placed by the Constitution? And the honest answer will be, that it was obtained to the Judiciary by the will of the people; their power is paramount to that of the Legislature, and revocable only by the authority that gave it. In deprecating the adoption in this country of the common law of England, which was brought to it by our ancestors, and the principles of which are the fundamental maxims of our liberties, the gentleman from Virginia has attempted to show the inconveniences resulting from its uncertain rules, and has noticed the case of Williams, which occurred in Connecticut. Sir, I am surprised that a gentleman so correct as he generally is, should have fallen into the inaccuracy he has. The case of Williams is a notorious one, and it was not a prosecution at common law. The history of it is, that when General Pinckney was at Paris he learned that some of the privateers which were then cruising against the American commerce were commanded by Americans. As soon as this information reached Congress, they passed a law to prohibit our citizens from going into the service of any of the belligerent Powers. Williams continued to command a French privateer and he had captured many of our vessels; he was afterwards brought into Connecticut, and there tried and punished; not under the common law, as the gentleman from Virginia supposed, but under our statute, under the law we passed in 1798.

The gentleman has asked whether, if we had created an army of judges, and given them monstrous high salaries, it would not be right to repeal the law; that if the power exists to repeal any law which might have passed on this subject, it might not now be used? and has been pleased to say, we would have created more judges and given them higher salaries, if we had not wanted nerves; and tells my honorable and learned friend from Delaware that we were restrained by the same feebleness of nerve which induced us at the Presidential election to put blank votes into the ballot box. Sir, my friend from Delaware does want that sort of nerve that some gentlemen now discover. Although he is as brave as he is wise, yet in living without fear he will live without reproach, and never make himself liable to the charge of prostrating the Constitution of his country; for such a work it is true he has no nerve. The observations of one honorable gentleman from Virginia (Mr. Giles) being now reiterated by another respecting the course of conduct we pursued at the Presidential election, shows that time has not abated the resentment of Virginia which we excited by our not voting for the Virginia candidate. Permit me here to declare, sir, that in reviewing all my public conduct, I can discover no one act of which I am more satisfied than my having put a blank vote into the ballot-box. Much has been said on this subject. My friend from Delaware and myself have been denounced by the jacobins of the country; at their civic feasts, and in their drunken frolics, we have been noticed. European renegadoes, who have left their ears on the whipping posts of their respective countries, or who have come to this country to save their ears, have endeavored to hang out terrors to us in the public prints; nay, sir, circular letters have been diffused through the country, charging us with the intention of preventing at one time the election of a President, and at another with the design of defeating the vote of the Electors and making a President by law. This was all a calumny, and as it relates to the South Carolinia delegation, I declare they had no intention of defeating the public will; they never heard of any project for making a President by law; they had but one object in view, which they pursued steadily as long as there was any prospect of attaining it. The gentleman from Virginia and the gentleman from New York had an equal number of votes; we preferred the latter; we voted for him more than thirty times, but when we found our opponents would not unite with us, and seemed obstinately determined to hazard the loss of the Constitution rather than join us, we ceased to vote; we told them we cannot vote with you, but by ceasing to vote, by using blank votes, we will give effect to your votes; we will not choose, but we will suffer you to choose. Surely, Mr. Chairman, there was nothing in all this which had any aspect towards defeating the public will. Why I did not prefer the gentleman who ultimately was preferred, has already been mentioned. This is a subject on which I did not expect to be called upon to explain; but the gentlemen from Virginia have called, and it was necessary to answer. Permit me to state, also, that besides the objections common to my friend from Delaware and myself, there was a strong one which I felt with peculiar force. It resulted from a firm belief that the gentleman in question held opinions respecting a certain description of property in my State, which, should they obtain generally, would endanger it, and indeed lessen the value of every other. Following the example set by his colleague, the gentleman from Virginia has bestowed much censure on the past Administration, and made it a serious charge against them, having appointed under this law a gentleman of Maryland, who he says was not with us formerly, but unfurled his standard in the service of his King, and fought against his countrymen, whom he then deemed rebels. I did not expect, Mr. Chairman, to hear this observation from one of the friends of the Executive. Since the fourth of March last, I thought philosophy had thrown her mantle over all that had passed; that sins were to be forgotten and forgiven, and to prove the sincerity of this forgiving spirit, sinners were to be distinguished by Executive favors. One would have thought so in reviewing Executive conduct; where persons had been imprisoned and fined under our laws, they we know were released; where fines had actually been paid, the officers of Government had been ordered to return them, and not only tories had been appointed to office, but old tories, rank old tories, who had been banished. The present collector of Philadelphia, for the internal revenue, has been appointed since the fourth of March last, and although he never, like the gentleman alluded to, shivered lances in the service of his King, yet he was actively employed in the more safe service of giving information to the British Generals, and marching before Sir William Howe, decorated with laurels, conducted him into the metropolis of his native State. Sir, there are many instances of this kind. Have gentlemen forgotten the young Englishman who was so busily employed here last Winter during the Presidential election, that in seeing him one would really have supposed him not only a member of this House, but, like him of Tennessee, holding an entire vote at his command? This youngster was sent out here by some merchants in England to collect debts due to them in this country, and his father, whose tory principles carried him from America early in the Revolution, is now subsisting on a royal pension; and this young man has been appointed our Consul at London, and the former consul, a native and staunch American, whose conduct had been approved by merchants generally, has been turned out to create a vacancy. The gentleman from Virginia has repeated the observation of his colleague, that the people are capable of taking care of their own rights, and do not want a corps of judges to protect them. Human nature is the same everywhere, and man is precisely the same sort of being in the New World that he is in the Old. The citizens of other Republics were as wise and valiant and far more powerful than we are. The gentleman from Virginia knows full well, that wherever the Roman standard was unfurled, its motto, "*Senatus Populusque Romani*," proclaimed to a conquered world that they were governed by the Senate and the people of Rome. But now, sir, the Roman lazzaroni, who, crouching at the gates of his Prince's palaces, begs the offals of his kitchen, would never know that his ancestors had been free, nor that the people had counted for anything in Rome, or that Rome ever had her Senate; did he not read it on the broken friezes and broken columns of the ruined temples, whose fragments now lie scattered over the Roman forum!

Sir, the mournful histories of the Republics of Rome and Greece are not the only beacons which warn us of the danger of instability and innovation. All Europe was once free. But where now is the Diet of Sweden? Where are the States of Holland and Portugal, and the Republics of Switzerland and Italy? The people of those countries were once free and happy, but their Governments, for want of some protecting check, some

inherent principle to defend themselves, have all been subverted; they have all travelled the same road; it is as plain as a turnpike; it is pointed out by the ruins of other Republics; everywhere the same causes have produced the same effects. The Government gets into the hands of theorists, and they make inroads on the Constitution, perhaps with honest views; but these innovations are precedents to sanction subsequent innovations of men with bad views, and despotism succeeds to anarchy. This is what we learn from every page of history. Let us profit by these monitions; let us take experience as our guide. We all have one common interest in this Constitution, let us then leave it untouched; if you touch, others will ruin it; what has happened elsewhere will happen here: these gentlemen are not masons in politics and government; they cannot build up again; they are mere sappers and miners, and if they pull down this mild Government, those who come after them will build up a despotic one. If you will not reject this measure, postpone it for a year; the people want no change of our Constitution, give them but time, and my life on it they will say so. The President will respect public opinion; give time for its expression, and the President will subordinate his desire to destroy, to theirs to preserve. Is there no ground upon which gentlemen will meet us and compromise? If the remnant of the Army is disliked, we will abolish it; if a further reduction of our little Navy is desired, we will reduce it; we will join in abolishing the internal revenue; sir, indeed, there is no sacrifice we will not make to prevent the sacrifice of this Constitution. Gentlemen say the Constitution will live. Sir, it may last our time, but it will drag out a miserable existence after receiving this wound; it will be mortal; inflict it, and you doom it to ruin: like the best and most lovely part of God's creation, violate, and you destroy it. As has been observed in the House above, by a countryman and honorable friend of mine, it will be with this Constitution as with a confined fluid, if a drop of it escapes, the leak through which it steals will soon become a breach by which the whole will pass away. This bill is an egg which will produce a brood of mortal consequences. Although the blow aimed at the Constitution will not immediately destroy, the injurious effects will be immediately felt; it will soon prostrate public confidence; it will immediately depreciate the value of public property. Who will buy your lands? Who will open your Western forests? Who will build upon the hills and cultivate the valleys which here surround us? He must be a speculator indeed, and his purse must overflow, who would buy your Western lands and city lots, if there be no independent tribunals where the validity of your titles will be confirmed. Have gentlemen forgot the sales of public lands made in France? The national domain was sold for assignats; after they had been all sold and one instalment was paid, the terms of payment were changed, and the purchasers were obliged to pay in specie or relinquish the lands. Sir, look at home and we see examples to prove the necessity of an independent Judiciary. Have we not seen a State sell its Western lands, and afterwards declare the law under which they were sold made null and void? Their nullifying law would have been declared void, had they had an independent Judiciary.

Whenever in any country judges are dependent, property is insecure. An honorable gentleman from Kentucky says, he does not want to seek examples across the Atlantic. Sir, is this wise? Are we to shut our eyes to the light of history and turn away from the voice of experience? Sir, the untutored Indian marks on his tomahawk great events as they pass, and argues what will happen from knowing what has happened; and shall we travel on without noticing the finger-boards erected by historians for our security? The gentlemen censures our having noticed France, and read a passage from a speech of our illustrious Washington, where he called the French a great and wise people. What has been the fate of this gallant people? Where is their constitution? We have seen Lafayette in the Champ de Mars, at the head of fifty thousand warriors, who, with one hand grasping their swords and the other laid on the altar, swore, in the presence of Almighty God, they never would desert their constitution. Through all the departments of France similar pledges were given. Frenchmen received their constitution as the followers of Mahomet did their Koran, as though it came to them from Heaven. They swore on their standards and their sabres never to abandon it. But, sir, this constitution has vanished; the swords which were to have formed a rampart around it, are now worn by the Consular janissaries, and the Republican standards are among the trophies which decorate the vaulted roof of the Consul's palace.

Respecting the expediency there was for passing the law which gentlemen now seek to repeal, I shall say nothing, as my honorable friend from Delaware has entered into a most ample detail of it. Indeed, sir, he ravelled through so extensive a field of inquiry respecting the unconstitutionality of the repeal, as well as of the expediency of having passed the law, that he has greatly narrowed the ground for all who follow him; his range was commensurate with the extent of his mighty mind and with the magnitude of the subject; a subject, sir, let me tell the gentlemen, that is perhaps as awful a one as any on this side the grave. This attack upon our Constitution will form a great epoch in the history of our Government. In the important changes we read of in the systems of other Governments, we find some public benefit to have been intended; something plausible at least was offered in justification. But here, "when we are in the full tide of experimental success," a revolution commences without any necessity of pretence. It is not to be presumed that the Executive has been incited to this by the paltry consideration of saving thirty thousand dollars. He has proved by his expenditures, since the fourth of March, that our nation is not in great want of money. The fact is, sir, that so good was the management by the past Administration

of our fiscal concerns that our Treasury overflows with money; to this cause may be ascribed some of the great expenditures made during the recess, and which to me appear to have been perfectly useless; but perhaps they were not so. Although the Senate, last year, appointed a Minister to France, immediately upon its rising the President appointed another honorable gentleman (who now sits near me) Envoy to carry over the treaty; although the French had called in their cruisers, and for us it was a time of profound peace, this gentleman was sent over in a man-of-war, at an enormous expense. If gentlemen will look at the printed report of the Secretary of the Navy for the last year, of money necessary to be appropriated, they will read, in page fifty-two, that the expenses of the ship Maryland are estimated, for a year, at $37,269 77. The Maryland was seven months in carrying our Envoy, waiting his orders, and returning to America; and for seven months the expense of this ship would be twenty-three thousand four hundred and seven dollars. Perhaps all this was necessary on the part of the Executive. I barely state the fact. Another which I will notice is, that without waiting for the final ratification of the treaty, or for Congress to make appropriations for its fulfilment, the Executive had the ship Berceau repaired, to be delivered up to the French Government, at the enormous expense of thirty thousand dollars. Besides this, the officers were paid, when at Boston, six dollars per day. How does all this agree with assailing the most precious part of our Constitution to save a little money? But if I am under any delusion, and we are not rich; if we want to save, and must save money, let us turn to something else; let us begin with ourselves. The Speaker of this House receives twelve dollars a day, give him six; we receive six, let us be content with three: on our side we cheerfully agree to this reduction. If gentlemen will look at the catalogue of expenses, under the head of "Legislature," they will find a number of items which, if summed up, will amount to $193,470; let us retrench, as I have proposed, and save to the nation one half of this sum; we will, in doing so, save nearly $100,000 a year.

Sir, gentlemen may depend upon it the people of this country are too intelligent to ascribe this measure to the mere desire of saving a little money; they will view it as the vengeance of an irritated majority. I conjure gentlemen to celebrate their victory by more harmless sports. Let them triumph over us, but not by immolating the Constitution; let them beware, that in erecting a triumphal arch for the celebration of their success, they do not dig a grave, and decree funeral rites for our Constitution. I repeat again, that this is not a way to save money. If saving really be the object, let our opponents procure it by more gentle means. To attempt saving a little money by injuring the Constitution, would be like taking from the foundation to patch the roof; like digging up for use the roots of a tree, instead of lopping off the boughs. To the confidence inspired by the independence of our judges are we indebted for much of our national prosperity. Pass this law and the tribunals in America will be like those of France, as described by the most brilliant scholar and sagacious statesman of the age. On the subject of the French judges, Mr. Burke has said: "In them it will be vain to look 'for any appearance of justice towards strangers; 'towards the obnoxious rich; towards the minority of routed parties; towards all those who in 'the election have supported unsuccessful candi-'dates. The new tribunals will be governed by 'the spirit of faction." I feel myself much honored, Mr. Chairman, by the great attention the Committee have given to my observations. They have, I fear, exhausted all your stock of patience. I find they have exhausted all my strength; but the magnitude of the subject will, I trust, be an apology for their length. Permit me here to express my sorrow at hearing the declaration of an honorable gentleman from Pennsylvania, (Mr. Gregg,) who yesterday, after joining in the call for the question, rose, and said it was useless to continue the debate, as the minds of the majority were fully made up. It seems the gentlemen are not open to conviction, and that they have determined to violate the sanctuary. Myself and my friends will not, however, be deterred by this menace. We have always been the sincere friends of this Constitution, and we will attempt its defence as long as we have the means of making it. We will struggle to the last; if we cannot command success we will endeavor to deserve it. If the friends of the Constitution are subdued by numbers, the Ministerial phalanx, in bursting into the temple, will, I hope, find them all at their posts; they will be in the portico, the vestibule, and around the altars, grasping, grappling the Constitution of their country with holds of death, and with *nollumus mutari* on their lips.

Mr. Dawson.—When we are told, sir, that we are about to pass a law which violates that Constitution which we have all sworn to support; when this is echoed over and over again from every quarter of this House, I can no longer, sir, indulge that disposition which I have to be silent; and I now rise to enter my protest. When we are told, sir, that we are about to adopt a measure which will endanger the peace and happiness of our country, it behooves us to summon all our wisdom, to investigate the subject with all deliberation, and to ascertain clearly those great principles which, while they guard our Constitution, secure the rights, the liberties, and property of the people. Such, sir, is the language which we have heard for the last ten days from gentlemen on the other side of the question, and such, sir, is the course which has been adopted by us. I believe, sir, that there never was any subject in any country, and at any time, more ably discussed than this has been in the other branch of the Legislature. I believe, sir, that few subjects have been more fully investigated than this has been in this House. Sir, the arguments used by an enlightened and venerable gentleman from Massachusetts, on my right; by an honorable gentleman from North Carolina, on my left, and by several of my colleagues must still be fresh in the recollection

of every gentleman of this Committee. Permit me to say, that their conclusive strength has not been impaired by anything which has fallen in reply, nor do I mean to enfeeble them by any observations of mine, either as to the expediency or constitutionality of the measure.

Sir, in a field extensive as this, it is more than probable that some gleanings do still remain; the collection of those I shall leave to other gentlemen, more ingenious and more industrious than myself, and will beg leave to reply to some of the observations of a collateral nature, which have just fallen from the gentleman from South Carolina. Think not, Mr. Chairman, that I mean to notice those which may be considered of a personal nature; the respect which I have for you, for this Committee, and for myself, all forbid it; there are others to which I will advert.

The dreadful picture which has been drawn by that gentleman of the situation of our country, should we pass this bill, will for a long time haunt the recollection of every gentlemen of the Committee, and, if true, disturb the peaceful slumbers of that honorable gentleman. Whether he has drawn the picture to the life, or whether it is too highly colored, it rests with this Committee to determine. To a gentleman, sir, of his fancy, of his imagination, the task was easy, and I may add, it was a very unnecessary one. It is admitted by us, that the Constitution of our country is the ark of our covenant; the rock of our salvation, on which political storms and the rage of party may beat, and subside. This is the doctrine for which we have always contended; which we support on this day; and could the friends of this repeal be taught to doubt the constitutionality of the measure, I am bold to say, they would immediately withdraw their support. Nay, sir, for myself, I avow, that was I not persuaded that the public good and the public will do imperiously command the repeal, sympathy and a regard for the feelings of men, who have been invited into office by a public act, and sanctioned by a public appointment, would induce me to oppose this bill. But believing as I do, that the public will and the public good do command the repeal, and that the Constitution of our country does not forbid it, I shall vote in favor of the repeal, and lend to it my feeble aid.

Mr. Chairman, in the course of this debate, a new character has been introduced, and has occupied much of our attention; it was presented to us by the honorable the mover of the amendment from North Carolina; it has been invoked and pretty freely used by his neighbor, who has just sat down. It is a spirit, sir. Mr. Chairman, you will confess, that there is some difficulty in meeting an opponent of this sort, and in answering arguments drawn from this source. I believe it best done by declaration. For myself, then, I declare that spirit of which we have heard so much, that spirit of innovation which gentlemen so highly deprecate, is that spirit which I adore.

It is not, Mr. Chairman, that spirit which, fearful of itself, gave to us an Alien and Sedition law, thereby driving the invited stranger from your shore, and rendering each neighbor suspicious of the other.

It is not that spirit, sir, which, in defiance of a positive injunction of our Constitution, placed a gag on our press, to prevent an investigation of its own proceedings. It is not that spirit, sir, which threatened a transportation of your citizens to their enemies, and the humbling of them in dust and ashes, because they dared to express their sentiments on their own concerns. In fine, sir, it is not that spirit which, by the creation of useless and expensive establishments, loaded your citizens with taxes and stained your country with insurrection. No, sir, it is the counter spirit! It is that spirit which places confidence in our fellow-citizens, and fears not the machinations of those who may visit us; which pronounces freedom to religion; freedom to the press; which restores economy in your public expenditures, thereby rendering to labor its full reward. It is that spirit, sir, which has required the repeal of the obnoxious laws I have mentioned, and of many more; and which now commands the repeal of this law: it is the voice of the people!

But, sir, gentlemen, not content with hunting down that spirit in this country, have, in the whirlwind of their fury, crossed the Atlantic and sought it in a far distant world. Sir, the time has been, nor is it far distant, when it was the rage, the fashion of the day to pour forth abuse on every act of the French Republic, from the commencement of the revolution; and, perhaps, sir, the aggressions of that nation on us might seem some justification. Often, sir, have I heard in this House woful lamentations for a murdered King, as gentlemen were pleased to call him. Often have I seen their warmest sensibility excited for the violated sanctity of the Holy Father, as they were pleased to term him. Whatever might have been the passions of gentlemen at that day, I did hope that they would have subsided at this, when we have made a peace with that Republic; and, let it here be impressed on the minds of every gentleman of this Committee, a peace on the very terms which the political friends of these gentlemen were pleased to prescribe; terms, which thus prescribed, have already brought many petitions to your table, and will, I fear, draw much money from your Treasury.

How far observations of the nature of those to which I have alluded, comport with the dignity of the National Legislature; how far they give respectability to our proceedings, or policy to our Government, I will leave to those gentlemen who use them to determine, and will notice some of the remarks which fell from the gentleman from Delaware.

Sir, that gentleman, in vindicating the Judiciary of the United States, has been pleased to whirl his censures against the Executive department; by the first, he declares, that there has not been a single act of persecution, to his knowledge, though many by the latter; that observation has been answered by one of my colleagues, and need not now be adverted to by me. I will only express, that I feel much pleasure at that gentleman's tender regard for these persecuted individuals. But the gentleman has not been content in censuring the conduct of the Executive; he has come upon this floor and cast out suspicions, at least, on the conduct of many gentlemen, who were members on a very memorable occasion. Sir, when these observations were made, I own to you, they did excite my astonishment; I did not expect them from that quarter. It is known to every gentleman of this Committee, that that gentleman represents a State, and that he always is a very efficient member on this floor. It will be remembered by many now present, that on a very memorable occasion, which, with him, I do believe the people of this country will long remember, that gentleman took a very distinguished, zealous, and persevering part. By a reference to your Journals, it will be found that it was not until the 17th day of February, when, on the 36th ballot, Thomas Jefferson was declared to be elected President of the United States; on inquiry, I find that, on the said 17th day of February, James A. Bayard was nominated Minister Plenipotentiary to the French Republic. Nay, I find more, that this nomination, although not handed to the Senate until the 17th, was dated the 13th, two days after we went into conclave; and was not confirmed until the 19th, two days after we came out. Sir, in making this statement, I mean not to impeach the motives or the conduct of the gentleman from Delaware; the high opinion which I entertain of his political morality, and the regard which I owe to truth and to candor will preclude it; neither do I mean, in making the application, to follow the example which he has set me, and to use towards him, although present, the terms which he has been pleased to use towards others, although absent; the respect which I owe to myself will forbid me to do that. I mean not to say, as he does, when speaking of our Minister at the Court of Spain, that I am yet to learn that Mr. Bayard is a man of talents, and who has rendered services; neither do I mean to consider his observations as injuring the reputation of my valued friend from New York; but I mean to say what I do believe, that, had the present President approved of that nomination made by the last, the persecuted veteran would not have received the sympathy of that gentleman, on this floor, at this day; nor should we daily have heard fulminations against the Chief Magistrate of our country, and philippics against men pre-eminent for their talents and virtues.*

Yes, sir, the gentleman has issued a dreadful fulmination, indeed; he has told us "that the day 'will come, he trusts in God it will come, when 'our Chief Magistrate will be responsible, when 'he will answer for his conduct." I was somewhat at a loss, and I still am, to know what the gentleman meant by this ejaculation; did he mean it as mere declamation? This I can scarcely think. Did he mean it as a discharge of that gall which may canker near his heart? If he did, I sincerely congratulate him on his deliverance. Or did he, in a more benevolent spirit, mean to express a hope, that our Chief Magistrate will live until that day when he shall be responsible to the people in that way which the Constitution points out? If this was his meaning, I most devoutly join him in his prayer; and on that day I believe it will be found, that the giving of information to the nation on the state of the Union; that the giving of information to this House, on a subject which he has thought proper to recommend to our consideration, will not be read among his political crimes. Perhaps, though, Mr. Chairman, the honorable gentleman meant something else; perhaps, he meant to say, that the President of the United States ought to be impeached for this his conduct; if this was his meaning, that gentleman knows full well that the door is open, that the Constitution points out the mode to him, nor do I doubt his zeal to adopt; the Chief Magistrate of your country will advance to meet it; and I am bold, sir, to believe, that while he shall pursue that line of conduct which has heretofore marked his administration, it will be as difficult to establish a tribunal to rob him of the honors which his fellow-citizens have thought proper to confer on him, as it was to erect one to prevent his taking possession of them.

Sir, it is with pain I heard some observations during this discussion, to which I turn with reluctance, but which seem to demand a reply. Gentlemen, while they reprobate one spirit, seem to be possessed of another, a more evil one. We have heard of groans, sighs, and tears, over our prostrated Constitution; we have heard of disunion, civil war, and of blood. A whole host of the evils of the enemy to mankind have been conjured up to arrest the havoc of the assassin, as they are pleased to call us.

I demand to know, sir, what gentlemen mean by observations of this kind; are they addressed to our fears? I trust, sir, they know us too well to believe that an appeal of that sort can have any impression, while we are pursuing what we deem the public good. And yet, sir, I am at a loss to conjecture, for what other purpose they could be made. Whatever that purpose may be, I deem it proper for me at this time to declare, and in making this declaration I believe I shall speak the sentiments of all those with whom it is my pride to associate, that we consider the Constitution of our country as the greatest of all good, and the wilful violator of it, as the greatest of all traitors; that we mean to administer it according to its fair construction, regardless of the clamors of others; that we view a disunion of the States and civil war as the greatest of all human calamities, which are so far hidden in the veil of futurity that no eye can penetrate them, or mind think of them without horror; that we mean, sir, to guard our Con-

* Upon a subsequent day, Mr. Dawson stated, what he considered due to the gentleman from Delaware and to his own character, to declare, that he never personally knew any act of the gentleman from Delaware manifesting his willingness to continue as Minister to the French Republic under Mr. Jefferson; that whatever impressions of that kind had been made on his mind by others, were now removed by the positive assurances to the contrary, made by Mr. Bayard to him.

stitution and to cherish our Union. But, sir, should the awful day, which Heaven avert! ever arrive, when, by the folly of some and the madness of others, this fair fabric, the world's best hope, shall be endangered; when a discontented minority of this House, or a discontented member of a minority shall join the standard of the judge in opposition to the law, and thereby destroy the peace of our country; I say, sir, should that day ever arrive, I trust with confidence that the friends to the bill before you; the friends to the Constitution of their country, conscious of the integrity of their views and the soundness of their principles, will be found as ready to meet danger, and as firm in supporting what they consider the true interest of their country, as their vaunting opponents.

I solicit your pardon, sir, for these hasty and incoherent observations; they have been called forth by what fell from the gentleman from South Carolina, and by a recollection while up, of some of the many observations made by the gentleman from Delaware. I will close them, sir, in reply to the wish of the gentleman, who has just sat down, for a delay, by offering my congratulations to you, sir, and to this Committee, on the time and circumstances under which this great question must be met, and must be decided. Whatever that decision may be, I devoutly hope that it will promote the good of our common country. Whatever that decision may be, it will not be considered as the result of our fears, nor will the friends to the repeal be charged with an improper hostility to the present Administration. The days of terror and alarm are past, and I trust for ever. No longer does the sound of foreign invasion and domestic treason assail our ears, and serve as arguments for the violation of the Constitution of our country. No longer, sir, do the dangers of the commonwealth authorize infringements on that sacred instrument; peace and confidence are restored, and while the friends to the repeal rejoice at this state of things, while they mean not to violate the Constitution of our country, they mean to prevent a useless expenditure of public money, and to guard against an increase of Executive power, whether that power shall be continued in the hands of the present Chief Magistrate, or transferred to some other person.

Mr. Griswold.—Mr. Chairman. I make no apology for entering upon the discussion of the subject now before the Committee, because I have considered the first section of the bill on your table, and which the motion of my honorable friend from North Carolina proposes to strike out, as implicating not only the dearest interest of the people of this country, but directly prostrating the fairest feature of the Federal Constitution. And I believe it to be the duty of every man, every friend to the Constitution, who has a right to be heard on this floor, to raise his voice against a measure so ruinous and destructive.

I do not however expect, nor am I indeed vain enough to imagine, after the extensive and critical view which has been taken of the subject, that it will be in my power to add much to what has been already urged. This consideration however presents to my mind no objection to the claims of being heard; for although the arguments of my friends remain unanswered, yet upon an occasion so important as the present, I deem it proper that these arguments should be repeated over and over again, that no gentleman may hereafter say, when the passion of the moment has subsided, that the objections to this measure were not sufficiently urged and explained.

This subject has presented to every gentleman who has examined it, two questions for consideration: First, can the Legislature by the Constitution destroy the judges of the circuit courts by repealing the law which authorized their appointment?

Second, admitting the power to exist; is it expedient to exercise it upon this occasion? I shall not attempt to deviate from this natural arrangement, but in the beaten track of those who have gone before me pursue the same objects.

The first of these questions is by far the most important, and if decided one way, will necessarily preclude all examination into the other; for if Congress cannot, without a violation of the Constitution, destroy the judges as proposed by this bill, it is useless to inquire into the expediency of doing it, for nothing can be expedient which is repugnant to the Constitution.

But the great importance of this question, and the necessity of considering in some stage of the discussion the comparative merits of the two systems under which the courts have been organized, will be my apology for taking the same course which gentlemen have taken before me, and directing my remarks in the first place to what has been called the expediency of the measure.

The mere expediency of maintaining the system under which the courts were organized by the law of the last session, must depend on a comparative view of the provisions of that law, with the system which the present bill proposes to revive. And here I must be permitted to say, that the provisions and effects of the two systems were, a few days ago, so fully examined, and completely stated by my friend from Delaware, that it is impossible the subject should be at this time misunderstood: indeed, sir, no gentleman can misunderstand it, or resist that conclusion which has been drawn by my friend in favor of the law of the last session.

The defects of the former system under which the courts were organized had been obvious for many years, and during the whole period within which the last law was under consideration, no gentleman attempted to defend it; it was then well understood, and universally admitted, that under the old arrangement, the Judicial power could not accomplish the objects for which it was designed; and the necessity of a change had become too apparent to be denied: the only question which then divided the opinions of those who were disposed to execute with good faith the provisions of the Constitution in relation to the Judicial power, was, whether it was proper to adhere to the principle of the old system, and fill up the outline which had been drawn by adding to the judges of the Supreme Court, or, leaving those

judges to their proper jurisdiction, to organize a new circuit court with adequate powers.

The great and prominent defects of the old system, and which have been so fully pointed out upon this occasion, were not only understood but acknowledged. The absurdity of placing the same judges in the court of appeals to decide in the last resort upon judgments rendered by themselves in the courts below, was seen and felt. The effect of associating a district judge with a justice of the Supreme Court upon the circuits, could not escape the most cursory observer; and experience had confirmed the opinion, which has been long entertained, that such an association was unnatural, and whilst it destroyed the dignity of the district judge, necessarily lessened the respectability of the court itself.

The constant changes of judges from one circuit to another was also found to embarrass the business of the courts, and particularly in matters of form and practice: and the immense extent of country through which the judges were obliged to travel on the circuits; the accidents to which they were exposed, and the failure of courts, not only within the recollection of the members of the House, but proved by the laws which had been passed to revive the suits which had been discontinued from these causes, all united to satisfy gentlemen at that time that a new arrangement was indispensable. Indeed, sir, every gentleman, who has been in the least acquainted with our courts, must have seen the great delays and vexations which have arisen to suitors from the causes which have been mentioned; and that in many cases those individuals who were entitled by the Constitution to trials in the national courts, and were desirous of obtaining them, were compelled to seek for justice in the State tribunals.

There is no axiom better understood in this country than that a delay of justice is a denial of it; and whilst the old arrangements existed, although you proffered justice to your citizens and to foreigners who demanded it in your courts, yet in effect, by the embarrassments and delays to which that arrangement exposed them, justice was but a name; it was a mockery, from which they were compelled to run away with disgust.

It is true, that there was a description of persons within the United States, and perhaps within the walls of this House, who were disposed to prostrate in effect the national courts, and transfer to State judicatures the whole Judicial power. To persons of this description it is obvious that every proposition which was calculated to improve the organization of the Federal courts, would be highly displeasing, because they knew full well that whenever the national courts should be so organized as to offer to suitors speedy and certain justice, the business of those courts would be increased, their influence and their character more highly respected. But the wishes of those gentlemen did not prevail. It was then believed, and the same opinion must always prevail with all well informed men, that a reputable and independent national Judiciary is equally necessary for the preservation of the Government, and the fair execution of the Constitution. The absurdity of relying on State justice for the execution of our penal laws, or the laws which relate to revenue, cannot be overlooked; and in respect to private suits, it is well known that the Constitution has guarantied to citizens of a certain description, the right of trying their causes in the national courts; and you cannot, without a violation of rights, turn over these suitors to a Virginian chancellor, with his three thousand causes on the docket.

We are not yet to learn that the State courts are not the best tribunals for the trial of causes in which the nation or foreigners are concerned. The paper money systems of some States, and the breach of treaties in respect to the collection of debts in others, taught the framers of our Constitution a conclusive lesson on this subject, and they have wisely provided for the establishment of national courts, where these evils may be avoided, and made it our duty to provide for their efficient organization.

Again, it is idle to disguise the opinions which are entertained of State judicatures by persons who have a right of trial by the Constitution in your national courts. Sir, they have no confidence in some of those judicatures; and when they look at the delays which have always attended justice in many of them; when they see themselves liable to be thrown into a court of chancery, and compelled from the mass of business alone to wait eight or ten years for a trial, their confidence cannot be increased. To these persons, and to all those who may be charged with offences against the nation, the Constitution has secured the existence of national courts, and it is a gross evasion of the Constitution to leave the organization of these courts materially defective. It cannot, upon this occasion, become a question of any importance whether your courts are more or less expensive than State courts. The people have not left this question in our hands; they have declared by their Constitution that the courts shall exist; they have said that confidence is not, and ought not, to be reposed in State courts for the decision of national causes, or causes of a civil nature, between citizens of different States; they have left nothing upon this subject for us to do, or to decide, but what relates to the form of organizing the national tribunals.

All arguments, therefore, which are calculated to prove either the merits or defects of State judicatures are irrelevant to the present question. The Constitution having declared that the Judicial power shall be vested in one Supreme Court and in inferior courts, and that the jurisdiction of these courts shall extend to a great variety of causes, it only remains to organize them in such a form as to render justice speedy and certain. And this the people have a right to demand at our hands. The parties in civil actions are entitled to tribunals where justice will not slumber for the want of judges to decide. The unfortunate who are accused of crimes, and the people who are interested in public prosecutions, have an equal right to require that the innocent, when accused, shall be speedily tried and acquitted, and that the

guilty shall be as speedily condemned. The arguments, then, which relate to the purity of State justice, ought to be laid entirely aside, and gentlemen on both sides of the House ought to admit that the Legislature must provide for such an organization of the courts as will secure the speedy and certain administration of justice; and the question will again return, was the organization of the circuit courts, and which is to be revived by the present bill, adequate to these objects?

After all that has been said, after the experience of ten years, I might safely appeal to gentlemen to decide whether that system was calculated to accomplish these objects? Sir, there is not a gentleman on this floor who can lay his hand on his heart and pronounce so preposterous an opinion. Indeed, some gentlemen have admitted, and particularly a gentleman from Vermont, (Mr. SMITH,) who was up yesterday, that the old system was obviously defective, and ought to be changed, but that gentleman had not the goodness to inform us what changes he would propose to remedy these obvious defects. If gentlemen are really desirous of improving the system, why do they pursue the path of destruction? They admit the defects of the old system; they must admit the advantages of the new one, and yet they hasten forward to destroy that which is good, and to revive that which is bad, without proposing a single improvement to render it tolerable. Sir, this does not look like a disposition to improve our judicial arrangements, it looks more like a determination to prostrate our national courts in the dust, and to elevate the judicatures of States on their ruins.

It has been said in the course of this discussion, that the old arrangement might be improved by adding to the judges of the Supreme Court. This proposition has been repelled whenever it has been urged. It may not, however, be improper at this time to observe, that such an arrangement would be exposed to most of the absurdities and inconveniences which attended the old arrangement itself. The unnatural association of supreme and inferior judges on the same bench would continue the same. The absurdity of a judge sitting in an inferior court and deciding causes on one day, and reversing his own judgments the day following, in a supreme court, is not removed. The shifting of judges from one circuit to another at every term, and the consequent want of identity in the circuit judges, remains as the old system has left it. The certainty of courts may be somewhat increased, but the geographical extent of the country is not diminished, nor can the circuit duty be lessened, provided you send two justices of the Supreme Court into each circuit. And, after all, what will you gain by such an organization? As to economy, which is so much the order of the day at this time, you will not promote it in any essential point; the salaries of your new judges will amount nearly to as much money as the salaries of your present circuit judges, and the expense of holding courts will be precisely the same. That uniformity of decision, which is so necessary throughout the United States, will not be materially promoted by this arrangement; because the provision already made for that object, by writs of error and appeals to the Supreme Court, will preserve that uniformity in every point, which is not a mere matter of form; and, in respect to the forms of business, it is of little importance whether the forms of one or the other part of the country are preserved, provided the principles of decision are the same. There is, however, one object which will be gained by the proposed arrangement. You will gain a great accession of numbers to the Supreme Court, and you will make that tribunal in which the justice of the country is to reside, to resemble a popular assembly, and liable to those party agitations which are so uniformly found in every large assemblage of men.

Some gentlemen, however, have said, that without increasing the number of judges in the Supreme Court you may render the sessions of the circuit court more certain, and identify the judge upon each circuit, by dividing the United States into as many circuits as you have judges of the Supreme Court, and attaching one of the judges of the Supreme Court permanently to each circuit. Sir, of all possible expedients, this, in my opinion, is the worst, for, without removing the most formidable objections to the old system, it absolutely renders the decision of causes impracticable. If the judge of the Supreme Court, and his associate, the district judge, shall differ in opinion upon any cause which comes before them, there can be no decision; and justice becomes more uncertain (if possible) than in the court of a Virginia chancellor.

On the whole, said Mr. G., the gentlemen who advocate the present bill have proposed no substitute for the system which it is calculated to abolish, and whilst they admit the necessity of courts, and the defects of the old system, they cannot in this hasty manner prostrate an useful institution, erected in obedience to the Constitution, on any principle of decency or patriotism. It is certainly true that no exertions have been spared by the Executive power to prove the inutility of the present circuit courts, and the novel expedient has been gone into of sending into the Judicial department for a report of all the causes which have been returned to the national courts, and from these reports, the President has sent to this House the document number eight. Sir, many of the errors which that document contains have been already exposed, and I have not troubled myself to investigate them further, because I have considered the document itself of no importance. I will however observe, that if my information is correct, in relation to returns from the circuit court of Connecticut, and I presume it must be, because it is derived from the clerk of that court, the return on your table is not the return which was sent to the Executive from that circuit. That return included the names of the parties in each action now depending, and if it had been sent to us unmutilated, it would have appeared whether the aggregate of causes had been truly extracted, and it would likewise have appeared who were

the defendants in that court, from what class of citizens the President had made the late Executive appointments in that State, and who the persons were, who are now probably afraid of federal justice. But, sir, this document, imperfect and erroneous as it is, still proves (if, indeed, it proves any thing) the necessity of these courts; it proves that much business has been transacted in the national courts, and that much remains to be done. But if the business was much less than it really is, could that consideration afford any conclusive argument against the existence of the courts? This, I believe, is the first time that the utility of courts has been tested by the number of causes depending in them. In a country so commercial as this is, and embarked in so many enterprising pursuits, in which foreigners are concerned as well as our own citizens, it is impossible to prevent the existence of disputes; and if a small number of suits only have been carried into the courts for decision, it proves either that the courts were so badly organized that justice could not be obtained in them, or that justice has been so well administered, that men have been induced to do justice to each other without any appeal to the courts.

But this inquiring into the number of causes depending or tried in the courts, tends more to embarrass the question than to guide the judgment in its decision. It is not important to be informed how much business has been or may be done in the courts; it is sufficient to know that the existence of national courts is not only necessary, but expressly required by the Constitution, and that they must be so organized as to render justice speedy and certain to every man who has the right to apply for it; and whilst it is both provided and admitted that the old arrangement could not secure this object, and that the new one has greatly promoted it, it must necessarily result that a determination to destroy the one and restore the other, can only arise from a spirit hostile to the judicial power of the Union.

I will, however, detain the Committee no longer upon this part of the subject, but call their attention to the great question which has grown out of the present question; I mean the Constitutional right of the Legislature to destroy the judges by repealing the law which regulated the mode of their appointment. And here I ask the liberty of observing, that I feel no terror in approaching this interesting question. Its importance can only animate us in the inquiry, and stimulate our exertions in the defence of truth and the Constitution. Nor am I intimidated by any arguments which have been urged in support of this novel claim of the Legislature, because those arguments, in my judgment, have been as often refuted as they have been urged.

With the gentleman from Virginia (Mr. GILES,) I believe that the power of the Legislature must be ascertained by the words of the Constitution itself. With that gentleman, I think that this instrument is expressed in clear and unequivocal language. And he cannot admire with more ardor than I do the wisdom of the sages who formed it, or the provisions which it contains. Indeed, sir, I admire not only the provisions of the instrument, but the order and arrangement in which it is expressed. And I fully believe, if gentlemen will attend to the order as well as the provisions of it, they will find themselves less embarrassed in the expositions which they must pronounce.

Sir, the framers of the Constitution have kept every object which it contemplates perfectly distinct; they have blended no two subjects together; each point is settled by itself, and never embarrassed by involving the definition of other points or other powers under the same head. This order and symmetry will be apparent, when gentlemen turn to the Constitution. It will be there found that the first article relates exclusively to the Legislative department. The mode of election, the term of service, and the power of the Legislature, are there fully and clearly defined; and it will be found that there is not a section in the article, nor a sentence, which delegates power to any other department, nor can there be found in any other article an expression which conveys an atom of power to the Legislature. The second article, pursuing the same order, treats exclusively of the second department, and does not include a word which does not relate to the Executive power. The third article, with the same precision, is confined to the Judiciary department. The fourth relates to the authority of the States, and the duty and power of the National Government, both as it regards States and public property. The fifth article provides for amending the Constitution. The sixth defines the duty of Government in relation to debts, and the effect of the Constitution and laws made under its authority; and the seventh prescribes the mode of ratification.

To investigate, then, the powers of the Legislature in relation to the Judicial power, I must beg the attention of the Committee in the first place to that part of the first article which relates to this subject. And here it will be found that there is not an expression in this article, or in any part of the Constitution, which delegates to Congress any power on this subject but what is contained in two sentences in the eighth section of this article: The first declares that "Congress shall have 'power to constitute tribunals inferior to the Supreme Court;" the second, "to make all laws 'which shall be necessary for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department 'or office thereof." By the first of these provisions Congress are clothed with unlimited power in the erection of inferior courts, both in respect to the number and their jurisdiction; and if this power had not been limited in other parts of the Constitution, it is certain that the jurisdiction of those courts, both in criminal and civil causes, might have been extended to every case which could possibly arise in any State or within the United States. And, if gentlemen please, under this general and unlimited delegation of power to erect courts, Congress might not only create and abolish courts and judges at will, but might limit

the tenure of office to a term of years, to be held at the pleasure of the President or any Executive officer of the Government. It is under the authority of this part of the Constitution that the inferior courts have been established, and it is apparent that the power given to the Legislature by these general words is not only broad enough to cover all the ground demanded, but much more; and for myself I shall readily admit that, unless this power has been limited by the subsequent parts of the Constitution, Congress may at this time do what they please with courts and judges. Under the second provision which I have cited, Congress were authorized to pass the law organizing the Supreme Court and establishing the salaries of the judges of all the courts, and to pass all laws which were necessary to give complete efficacy to the Judicial power.

I will not detain the Committee by examining the particular provisions of the second article, because that relates exclusively to the Executive power, and is not materially connected with this subject, but will pass to the consideration of the third article, and to which I now beg the particular attention of the Committee.

The third article of the Constitution does not delegate any power to the Legislature; its object is to make a disposition of the Judicial power, to limit and to define it; these are the great objects, and the article has provided for them in the following manner: By designating the courts in which the Judicial power shall vest; by securing to the judges a tenure of office commensurate with good behaviour, and a compensation for services which cannot be diminished; by defining the jurisdiction which the courts shall exercise; the mode in which trials shall proceed, and the facts which shall constitute certain crimes.

The courts in which the Judicial power shall vest are designated by the following words: "The 'Judicial power of the United States shall be 'vested in one Supreme Court, and in such inferior courts as the Congress may from time to 'time ordain and establish." It is evident, both from the subject-matter of this article and the expression which I have repeated, that the framers of the Constitution only intended in this place to dispose of the Judicial power; and to authorize the erection of courts by Congress. The words "in such inferior courts as the Congress may from time to time ordain and establish," were never intended to convey a power to Congress to establish such courts, because that power had already been given in the first article of the Constitution, to which I have before directed the attention of the Committee, and no surplusage can be found in the instrument, and because the object of the expression being to vest the Judicial power in certain courts, the subject-matter does not admit of any such construction. The expression then plainly intends nothing more nor less than this: the Judicial power shall vest in one Supreme Court, and in such inferior courts as Congress under authority of the first article of the Constitution shall establish. It is further to be remarked, that the expression presupposes the existence of a Supreme, and of inferior courts, and the article contains no imperative language commanding the organization either of the one or the other. The provisions of the article likewise require as much the existence of inferior as a Supreme Court, because the words which define the jurisdiction of the Supreme Court, giving that court an appellate jurisdiction in certain cases, cannot be satisfied without the existence of inferior courts, from whose decisions the appeals may be taken; and the expression itself, declaring that the Judicial power shall vest in a Supreme and inferior courts, necessarily divides to the inferior courts a portion of that power, and renders the existence of such courts necessary for the reception of the power thus delegated.

The inference which I draw from these considerations is, that the Supreme and inferior courts are creatures of the Constitution, and not of the law; their existence having been rendered necessary for the reception of the Judicial power, by clear and unequivocal language; that the judges when appointed, are of course equally creatures of the Constitution, and hold their offices under that instrument in as full a manner as the President himself.

It is true that neither the inferior or the Supreme Court could have been organized, and the judges appointed, without a previous law regulating the mode of performing the operation; and it is equally true, that neither the Representatives on this floor nor the President himself, can at this time be appointed without the aid of a law apportioning the representation in one case, and directing the meeting of Electors in the other. Indeed, sir, at the commencement of the Government it was impossible, and still remains so, to obtain the appointment either of President, Senators, or Representatives, without the aid of State laws; but the man must be wild indeed, who imagines that these officers are not the creatures of the Constitution because their mode of appointment has been regulated by law, and in my judgment the man must be equally deranged who imagines that the courts and the judges are not the creatures of the Constitution because the mode of their organization and appointment has been regulated in the same manner. The truth is, that the Constitution has required with great precision the existence of a President, of Senators, of Representatives, and of judges, and in every case left the mode, and in the cases of Representatives and of judges, the number to be regulated by law. And after your law has passed and the appointments have been made, all these officers hold their offices under the Constitution, and you may as well remove the President, the Senators, or the Representatives, by repealing the law which directed the mode of their elections, as to destroy the judges by repealing the law which regulated their number, the mode of their appointment, or their jurisdiction. Sir, the principle can never be admitted; but the reverse is true, that all these officers, having been once appointed, must remain in office during the term, and under the conditions which the Constitution has prescribed. This then brings me to the second object of the third article, and to inquire by what tenure the judges are to hold their offices, or, in other words, how long is the judge to remain in office, having been once in under the Constitution?

The words of the Constitution are, the "judges both of the Supreme and the inferior courts shall hold their offices during good behaviour." To my mind no language can be more clear and explicit than this is. "The judges shall hold their offices during good behaviour;" indeed it is difficult to explain the expression in terms more certain or explicit than these are. Ask the merest school-boy who runs through your streets, how long is a judge to hold his office, who is to hold it during good behaviour? And he will reply, without hesitation, that he must hold it as long as he behaves well; he must hold it for life, if he does not misbehave during that term.

It is, however, our misfortune, in this rage for innovation, to find that language and those terms which but a few years ago were not only clear and explicit, but well understood, tortured from their obvious meaning; and we are compelled to follow gentlemen through their novel expositions, and endeavor to restore the terms and expressions of our language to their former import.

Gentlemen appear, however, to be aware, that it would at this time be rather too bold to deny the ordinary effect of the "good behaviour," but they contend that there is a latent meaning in those words when applied to the Constitution, which has lately been discovered, and which, as I suppose, cannot be easily discerned by those whose minds have not been illuminated by the new philosophy. And if I understand the purport of this discovery, as explained to us, it is, that although the Constitution absolutely requires "that the judges shall hold their offices during good behaviour," yet that nothing is intended by this, but that the judges shall hold their offices against the power of removal in the President; and one gentleman from Virginia (Mr. Giles) has gravely attempted to support this strange exposition, by saying that the term "hold," used in this part of the Constitution, warrants the construction that the term "hold" implies tenure, and tenure implies not only a person holding, but a person or body under whom held; that the expression the judges "shall hold their offices during good behaviour," necessarily and only implies, that they shall hold against the person or authority appointing, so long as they behave well; and as the second article of the Constitution has designated the President to appoint judges, with the advice of the Senate, and to commission them, it follows that the judges do hold their offices under the President, and are only secured by the Constitution against his power of removal so long as they behave well, being still liable to be destroyed by the Legislature in the manner now proposed.

Much credit is undoubtedly due to the gentleman from Virginia for the novelty of his exposition, but I must be permitted to say that the gentleman has fallen into an error in two essential points—he has, in the first place, entirely mistaken the import of the word *hold;* and, secondly, his construction, if the same had been correct, could not apply to the present question. Sir, the term *hold* does not imply, in a legal, political, or ordinary sense, a person holding and a person or body under whom held; it implies nothing more nor less than absolute possession; and to hold is to possess, to occupy, to enjoy; and the tenure by which a thing is held, or the condition annexed to it, must be defined by other words. Whatever I hold I possess, and whether it is the gift of a friend, the fruit of my personal exertions, or a loan for a term of years, it is nevertheless absolutely held, possessed, and enjoyed. So in the present case, the judges are to hold their offices during good behaviour, that is to say, they shall absolutely possess, occupy, and enjoy their offices so long as they behave well, against every power of removal. The gentleman's exposition then, having been founded upon the misconstruction of a single term in the Constitution, has altogether failed at the threshold, notwithstanding the promise of that gentleman to illumine our minds by the clearness of his logic.

But if the definitions of the gentleman had been correct, they could not have been applied to the present question. Admit, for the sake of the argument, that the term hold implies all that the gentleman contends for, it does not follow that the President is the person under whom the office is held; on the contrary, it is impossible for the gentleman to establish his assertion, without investing the President of the United States with all the prerogatives of the British monarch. Sir, it is true, that the King of England is the fountain from whence all the honors of that government flow, and of whom all offices are supposed to be held; but I thank God, notwithstanding the opinion of the gentleman from Virginia, that is not the case in this country; the President is not the fountain of honors with us; the offices of government are not held under the President, but of the people, and the President himself is as much the agent of the people as any subordinate agent in the nation, and his acts, when performed within the pale of the Constitution, are the acts of the people, executed by their agent. Admitting, then, that the judges hold their offices under a superior power, and it is certainly true that they do hold under the Constitution, and of the people, although the term *hold* does not imply it, yet a consequence directly the reverse of that contended for by the gentleman from Virginia, will follow; for, according to that gentleman, the expression, that the judges shall hold their offices during good behaviour, being a limitation of the power of removal, in a body under whom the office is held, and these offices being held under the Constitution and of the people, it necessarily results, that the people themselves cannot, either in person or by their agents, remove the judges, so long as they behave well, without a change of the Constitution.

Again, the gentleman from Virginia might as well contend that the judges hold their offices under the Senate or the Legislature itself, as under

the President. The Legislature pass the law which regulates the mode of appointment; the Senate concur in the nominations of the President, and in this form all have an agency in the appointment of judges, and the judges hold their offices under the Legislature, the President and the Senate, and, consequently, the restriction upon the power of removal applies as well to the Legislature as to the President.

There is another strange position which has been advocated upon this occasion, and which deserves some attention, because it has been often repeated. It is that, although you cannot remove the judge from the office, you may remove the office from the judge. To this extraordinary assertion I answer, that the words of the Constitution admit of no such construction. The expression being, that the judge shall hold his office during good behaviour, necessarily implies and secures a union of the office and the officer, so long as the officer shall behave well, and a removal of the office from the judge destroys as effectually this union as the removal of the judge from the office could do. Gentlemen admit that the judge cannot be removed from his office, because the Constitution has united the officer and the office together, and declares that the union shall remain inviolate so long as the judge behaves well; and yet, strange to tell, you may destroy this union at a stroke, by destroying the office itself! I request gentlemen to review this assertion, and to inform the Committee what possible difference there can be, in effect, between removing the man from the office and the office from the man. If constructions of this kind can be admitted, there is not a crime which was ever perpetrated by man, which cannot be justified. Sir, upon this principle, although you may not kill, by thrusting a dagger into the breast of your neighbor, yet you may compel your neighbor to kill himself by forcing him upon the dagger; you shall not murder, by destroying the life of a man, but you may confine your enemy in prison, and leave him without food, to starve and to die. These may be good distinctions in the new system of philosophy, but they can never be admitted in the old school. I will not, however, consume the time of the Committee by any further remarks on the extraordinary distinction which has been taken between the power of removing a judge and that of removing an office. If such distinctions can gain credit in this Committee, it is idle to attempt to repel them.

Although it is not in my power to discern any difficulty which can arise in the construction of the Constitution upon this subject, yet, as I am bound to imagine that some doubt does exist, because gentlemen declare so, I will now take the liberty of referring gentlemen to a source of information, from whence they may ascertain the precise effect of those words in the Constitution which relate to the tenure of the office of the judge. I mean the construction which was put upon the Constitution by those who framed it, and by the contemporary writers of the day, who treated of this subject whilst the Constitution remained before the State conventions for their adoption. The meaning of the words must, in the nature of things, be at at first arbitrary, but it would be madness to admit that the power of changing their meaning remains equally so, after they have been introduced, with a precise meaning, into a written instrument.

Fortunately, for our present purpose, the tenure by which the judges of our national courts were to hold their offices, was an object of too much importance to escape the critical examination of the friends and enemies of the Constitution, and it is a fact no less important than true, that the construction which we contend for, was at that time given by the writers of all parties and of all descriptions, without an exception to the contrary. Sir, the people of this country have been long attached to an independent Judiciary; they draw their attachment not only from the thing itself, but from the principle of the British Government, from whence we have drawn so many of our political opinions, and from the evils actually experienced by many States under their colonial governments for the want of an independent Judiciary. These circumstances will account for the critical attention which was paid to this part of the Constitution in its formation and adoption.

The extent and meaning of the terms *during good behaviour*, have not only been ascertained by contemporary writers, but antecedent to our Constitution. The statute of England, which has been already alluded to, is one of these authorities, and proves directly the converse of that which has been supposed. That statute declares that the judges of England shall hold their offices during good behaviour, providing, however, that they may be removed by the King upon the joint application of the two Houses of Parliament. Now, sir, no gentleman can be so ignorant as not to know, that the exception of this proviso in this statute proves the rule; it proves that the authority given to judges to hold their offices during good behaviour would have completely placed them beyond the reach of King, Lords, and Commons, so long as they behaved well, and so long as the statute continued, if the proviso had not limited the effect of the general words.

In respect to the contemporary writers, I will first mention the author of the Notes on Virginia, an authority which I presume gentlemen on the other side of the House will respect. The writer of those Notes has published a constitution drawn up by himself for the State of Virginia. This form of a constitution, although never adopted by that State, yet serves to prove what was, in the opinion of Mr. Jefferson, the extent and meaning of the words, "during good behaviour." In that constitution, Mr. Jefferson provides that the judges of the higher grades of courts shall hold their offices during good behaviour, but in the inferior courts they shall hold their offices during good behaviour and the existence of the courts. I ask gentlemen why this mode of expression was introduced in relation to the inferior courts? Why, sir, but for the reason which gentlemen must

be blind if they do not see; because the tenure of office during good behaviour was so broad and extensive, that the judges once in under that tenure would hold their offices for life if they behaved well, beyond the power of the Executive or Legislature to remove or destroy them; and in order to enable the Legislature to remove the judge, or, if gentlemen please, to remove the office, and limit the general words, it became necessary to provide that the existence of the judge should only be commensurate with the court, thereby giving in effect a power to the Legislature to destroy the judge by abolishing the court in which he was to act.

The periodical papers of the day under the signature of *Publius*, which it is now well known were written by some of the ablest men of this or any other country, and by those who were members of the General Convention, and were published for the purpose of explaining and recommending the Constitution to the people of the United States before its adoption, contain the same exposition of the tenure of the office of judge, and place the judge equally beyond the power of the Executive and the Legislature.

The decisions and legal opinions of the State judges of Virginia, upon those parts of their constitution which relate to this subject, go to the same point. The same expressions in the State constitutions themselves, and the application of that language to the question, in those States where the Legislature appoint the judges, prove that the limitation of the power of removal applies as well to the Legislature as to any other department.

The debates in all the State Conventions for adopting the Constitution, and particularly in the Convention of Virginia, in which this subject was fully explained, both by the friends and the enemies of the Constitution, can leave no doubt in regard to the construction at that time given to the words which define the tenure of the office of judge.

Indeed, sir, I challenge the gentlemen who are opposed to the construction now contended for, to produce a sentence from any contemporary writer of reputation, which is opposed to the correctness of our construction. Nay, sir, I go further, I challenge the gentlemen to produce a paragraph from a newspaper of that day, which impugns the exposition now supported. And permit me to observe this subject was as interesting at that time as it is now, and was as well understood.

There is moreover a further authority to this point, which ought to be considered as conclusive; it is the authority of the Convention itself. Upon this great question of rendering the judges independent of the other departments, it was thought by some, that they ought not to be made completely so, and a proposition was brought forward in the Convention to authorize the removal of the judges by the President, upon the joint application of the two Houses of Congress, and this proposition was deliberately rejected. Sir, it is impossible a proceeding should more clearly expound the intention of the Convention, than this has done; an intention which cannot be mistaken, of placing the judges beyond the direct or indirect power of the Legislature.

Sir, it is perfectly apparent that the meaning of the expressions of the Constitution which relate to the subject, were fixed and well understood, both by the Convention and those who adopted the Constitution; and I ask gentlemen before they press forward to a decision, to examine whether it is proper? Whether it is competent for us at this time to set at naught the constructions which were then given? Sir, where are we to stop? What security have we, that every feature of the Constitution will not be defaced by some new definition of words and expressions? Our fathers and our brothers who formed and who adopted this Constitution, thought they understood its provisions and its effect; but alas! they were ignorant and blind, and knew not the import of the instrument which they subscribed.

Sir, if Congress can set aside these solemn and settled constructions, there is not a provision in the Constitution too sacred to escape the rapacious hand of the Legislature. A majority may hereafter say, that two really means ten, and the members of this House shall hold their seats for ten instead of two years; or that four means twenty, and that the President shall continue in office for that period of time.

An independent Judiciary is the greatest object which can be obtained by any Government; on this depends the property, the lives, and the liberties of the people. It was the fairest feature which the Constitution presented for our acceptance; strip it of this; let it be the settled construction of the Constitution, by a final decision of these courts who must pronounce on your law, and I will unite with my friend from North Carolina in declaring, that I will not heave a sigh, or drop a tear for its loss forever.

Sir, if your Constitution is to be blown about by every wind; if it is to be curtailed or enlarged, as the caprice or the ambition of every new man shall desire, there is no security to be derived from it. Your experience will only confirm what many sagacious men have predicted, and all wise men have feared, that a Constitution upon paper can never endure; that the ingenuity of man will be continually exerted to pervert its meaning; to make it a nose of wax, to turn it in every direction, as the convenience of the moment or the projects of a faction shall require. Sir, let us not by our conduct verify these predictions; let us not leave behind this melancholy lesson to the world; if we love the Constitution, if we honestly wish to preserve it, we must admit of no new sophisticated expositions; we must not only support it, but we must support it in the constructions given to it at its adoption. Sir, if you transgress these bounds, you are afloat upon an ocean which has no limits; innovate but in one essential point, the constructions then given, and a few short years will prove that the rapacious hand of power will not leave a vestige of the mighty fabric.

The strong inducements which presented themselves to the Convention to render the Judicial power independent of the Legislature, furnish a

further argument in favor of our construction; for although I admit that this argument cannot be conclusive, because it is not so much the inquiry what the Constitution ought to be, as what it really is, yet if any doubt in fact hangs over the language, it is fair to ascertain the meaning by recurring to what must have been the wish and intention of those who formed the instrument.

The power given to the courts to pronounce on the constitutionality of laws would be entirely defeated, in those times when the exercise of that power becomes most necessary, if the judges are not placed beyond the power of the Legislature. The idea of giving this power to the courts, and at the same time of leaving the courts at the mercy of that department over which the power is to be exercised, is rather too absurd for gentlemen, even in these days of extravagance; and gentlemen, aware of this, have had the confidence to deny that this power resides in the courts. Sir, upon this point, it is not necessary to say, that these declarations are opposed to all former opinions and decisions. It is well known to every member of this Committee, that the right of the courts to decide on the constitutionality of your laws, has been recognised in your laws themselves; has been exercised by the courts; your laws have been pronounced unconstitutional and void, and that decision has not only been acquiesced in by the Legislature, but the act itself has been removed from your code of statutes. Nor is this principle peculiar to your national Government; it exists, and is exercised under every State Government, where the powers of the Legislature have been limited by a written Constitution. The principle not only exists, and results from the nature of this Government, but is provided for by the terms of the Constitution itself. The words declare that the Constitution shall be the supreme law, and the judges are not only bound to respect it as such, but have sworn to support it, and they would be guilty of perjury if they should knowingly decide for the execution of an act which the Constitution did not warrant. Nor can any embarrassment result from the execution of this principle; the judges must pronounce upon your laws generally; they find two statutes in your law book which are repugnant to each other; they must decide which of the statutes shall bind: they find the law of the Constitution and the law of the Legislature clashing with each other; they know the first is paramount, and limits as well the power of the Legislature as the power of the court, and they must decide either that the law of the Constitution or the law of the Legislature is void. In such a case there is nothing left to discretion, the Constitution is peremptory and commands the obedience of every department.

If this power of checking the unconstitutional acts of the Legislature is necessary, where can it reside with so much propriety as in your courts? This department, from its nature, must be filled with men of learning, wisdom, and moderation. It possesses none of the prerogatives which can be dangerous to public liberty. It commands neither the wealth nor the force of the nation; its province is to pronounce upon the law; to declare what is right and what is wrong. And that this power ought to reside somewhere, cannot be doubted by any man who sincerely wishes to perpetuate our form of Government.

Sir, if there is no power to check the usurpations of the Legislature, the inevitable consequence must be that the Congress of the United States becomes truly omnipotent. All power must be concentrated here, before which every department and all State authorities must fall prostrate. Admit this principle, and nothing can resist the attacks of your national laws upon our State sovereignties. Here is an end of your Federal Government. A consolidation of the States is the immediate effect, and in a few short years these sovereignties will not even obtain the name.

But a further effect will result from this principle, which, in my opinion, is still worse than that which I have described. All the authority which unlimited power can exercise, must not only be concentrated in the Legislature, but must ultimately fall into this House, where numbers and predominating influence must swallow up the other departments, and in this mode there must be erected a despotism as terrible as it is powerful. It is the despotism of one hundred and six men, clothed with unlimited power, and liable, from its organization, to all the passions and all that fluctuation which can ever agitate a popular assembly. From such a despotism I pray God to deliver this country, and entreat gentlemen to stop in that mad career which leads inevitably to this result.

I have now gone through with the general remarks which I deemed proper to submit to the Committee upon this subject, and might perhaps with propriety dispense with all further observations; but some of the arguments which have been urged in support of this measure, have not been particularly noticed; and, upon an occasion so interesting as this is, I shall be excused for calling the attention of the Committee to those which now occur to my recollection.

Before I enter however into a particular consideration of the arguments of gentlemen, I take the liberty of saying that gentlemen in this House, whatever may have been done in another place, have placed this question in one respect upon its true ground; they have made no distinction between the authority of the Legislature over the judges of the supreme and the inferior courts. All their arguments have gone to prove that no such distinction can exist. Indeed, sir, it is impossible to perceive the shadow of a difference. The judges both of the supreme and the inferior courts are equally creatures of the Constitution, and the mode of appointment in both cases has been regulated by law, and if you can destroy the judges of the inferior courts by repealing the law which limited their number, and directed the mode of appointment, you may destroy the judges of the Supreme Court by repealing the law which limited the number and organized that court. I wish it then to be as perfectly understood in every part of this country, as it is in this House, that the principle

contended for by the supporters of the bill goes equally to the destruction of the judges of the supreme as of the inferior courts.

One argument, which has been urged in support of this bill, has been that the law of the last session, which it contemplates to repeal, was in itself unconstitutional, and for that reason ought to be repealed and removed out of the way; and a gentlemen from Kentucky (Mr. Davis) has referred us to the second section of that act, as proof of this assertion, and appears to imagine that the authority given to the Supreme Court to issue certain writs cannot be warranted by the Constitution. Sir, without entering into an examination of the Constitutional authority of the Supreme Courts, to issue the writs which have been enumerated, I take the liberty of referring the gentleman from Kentucky, to the last part of the section of which he complains; he will there find that the power of the courts to issue the writs is confined to cases where it becomes necessary to issue them for the exercise of its jurisdiction, and that they shall be only issued agreeably to the principles and usages of law; and I believe that the gentleman from Kentucky himself will scarcely assert that an authority to issue writs under such limitations, is not warranted by the Constitution.

Gentlemen have also referred us to those parts of the law of last session which abolish the old circuit courts, and the district courts of Kentucky and Tennessee, and appear to imagine that, by abolishing these courts, the judges who were authorized to hold them were destroyed. Sir, those gentlemen who have called our attention to this point, appear to have fallen into a mistake, which has been very common with gentlemen of a certain description; they have pursued a theory and overlooked the fact. What judges were destroyed by abolishing the old circuit courts, and the district courts of Kentucky and Tennessee? I inquire for the fact. Sir, gentlemen will find that no judge was destroyed by the putting down of these courts. By whom were the old circuits held? If gentlemen do not know, I will inform them, that those courts were held by a judge of the Supreme Court, and by a district judge, and gentlemen cannot be so ignorant as not to know that the judges of the Supreme Court and the district judge remain in office, notwithstanding their services in the circuit court have been dispensed with. Besides, those judges were never appointed or commissioned to be judges of a circuit court; they hold but one commission, and that commission in the first case, is as judge of the Supreme Court, and in the second, as district judges; and the old law, in assigning to these judges their duties, required that they should at stated times associate together, and hold a court, which was denominated a circuit court, and no man ever doubted the power of the Legislature to enlarge or diminish the jurisdiction of a judge, so far as it could be done without invading his independence. The fact, then, in respect to the old circuit courts, is opposed to the theory. No judge has been destroyed by the act of the last session, and in respect to the district judges of Kentucky and Tennessee, the fact is precisely the same, for although the courts which these judges were authorized to hold under the old law, were dispensed with by the new law, yet the judges remain as they always were, judges of the United States, under the name of district judges, and the jurisdiction which they formerly exercised in most respects is to be performed by associating with the circuit judge of the sixth circuit, and holding courts to be denominated circuit courts for that purpose.

The difficulty into which gentlemen have fallen, appears to arise from confounding the terms court and judge together; they appear to suppose that these terms are synonymous, whereas no two terms can be more distinct in their significations. A court is not a judge, nor is a judge a court. A judge is a public officer clothed with judicial powers. A court is a place where justice is administered, or an assemblage of judicial officers, organized for the exercise of judicial powers. The term court has a variety of significations, but never can be construed to mean a judge; a judge may be authorized to hold a particular court, but it would be absurd to say, that because his authority to hold that court was taken away, that the judge himself no longer existed. Sir, if gentlemen did not perplex themselves with unfounded theories, there would be no difficulty in this part of the subject. It is admitted by all parties that the jurisdiction of judges may be varied as often and to any extent which the Legislatures deem expedient, provided, in doing this, you preserve inviolable the independence of the judge. The Legislatures may dispense with the attendance of judges in old courts, and require their attendance in new courts, at will. This, and this alone, has been done in the case under consideration, and the existence of no judge has been affected. It may be further remarked, that our judges are in a strict sense judges of the United States, and the names which may be given to them, whether taken from the courts in which they are to act, or the country in which they reside, has no connexion with their judicial powers; and being judges, by whatever name they are called, their jurisdiction may be varied; the places for holding the courts may be changed and their associates varied, as the necessities of the country shall, in the opinion of the Legislature, require; keeping, however, always in view the substantial independence of the judge. It was on these principles that the authorities of the district judges of Kentucky and Tennessee were extended. Those judges were originally confined to their respective districts, but the law of the last session required their attendance in the adjoining districts, where they were to associate with the circuit judge, and exercise the jurisdiction which had been given by law; and to compensate them for those additional services, the same law provided an increase of salary.

A further argument has been urged in favor of this claim to destroy our judges, which is founded on the following general assertion, that the power to create necessarily includes a right to destroy.

In answer to this assertion, I take the liberty of saying, that it is neither true in fact, nor can it be applicable, if true, to the present question. A power to create does not include a right to destroy. This may be proved by stating a great variety of cases, but I will confine myself to the Constitution, and select one or two provisions, about which there can be no dispute. The Legislature have power to fix the compensation of the President, but they cannot vary it during the term of the incumbent. The Legislature have power to fix the salaries of the judges, but they cannot diminish those salaries whilst the judges remain in office. The truth, then, is, that the right to destroy does not depend on the power of creating. In many cases the right to destroy must depend on the immutable principles of morality. In civil transactions it will often depend upon the stipulations of a contract, and in the business of legislation it will depend entirely on the nature and limitations of your Government. So that the inquiry will still return, does the nature and limitation of our Government give to the Legislature a right to destroy the judges?

Nor could the assertion apply to the present question, if it had been true, because the judges were not created by the Legislature, but by the Constitution—the mode of appointments, &c., having been only left to the Legislative department.

One further general assertion has been made, from whence gentlemen have thought proper to derive arguments in support of their claims. It is, "that ours is a Government of responsibility, and that the departments are responsible to each other." This assertion is undoubtedly true, but the logic must be novel indeed, which can force this principle to bend to the purposes designed. The theory of our Government certainly embraces the principle of responsibility, but it is precisely that responsibility which is delineated in the Constitution. The members of each House of Congress are responsible to their respective bodies, and may be expelled whenever two-thirds of the members of that House to which the individual belongs shall think proper to exercise the power of expulsion. The Legislature itself is responsible to the Judiciary department for the constitutionality of its acts, and those acts, as has been already shown, may be declared void, if they are not warranted by the Constitution, and the members of the Legislature are responsible to the people upon the returns of every new election. The President himself is responsible upon an impeachment before the Senate, and upon a conviction by the sentence of two-thirds of that body, he may be removed from office, and he is again responsible to the electors at the end of four years. The judges also are responsible upon impeachment, and may in the same manner be removed from office, whenever they shall be found guilty of misdemeanors, by two-thirds of the Senate. When we speak, then, of the independence of our judges, we intend only that Constitutional independence which places them above the power of any department to remove them, except upon impeachment.

Under this general scheme of responsibility, one gentleman has gone so far as to say, that the judges are responsible to the Legislature under the power given to appropriate money for the payment of their salaries, and if we do not like the judges or think the salaries too high, we may refuse the necessary appropriations. Sir, I will not insult the understandings of the Committee by answering this argument; and I only mention it at this time to express my astonishment, that a principle only calculated to "stop the wheels of Government," should at this time be renewed on the floor. If gentlemen are really determined in this form to arrogate all power to this House, it will be more manly to assume it openly and without disguise. Still, however, pursuing this plan of responsibility, a gentleman from Kentucky has told us that the judges are responsible to the people upon every new election, and whenever it shall appear by the result of the elections, that the people are opposed to the political opinions of the judges, they are, as I suppose, to be tumbled from their places, and the seats of justice are to be filled with men whose minds will bend more easily to the will of the prevailing faction. On what page of the Constitution the gentleman from Kentucky has found this alarming principle, it is impossible for me to say. I can, therefore, only declare that, in my judgment, it is subversive of every provision in that instrument, and must convert the courts into revolutionary tribunals, and render them the mere agents of a prevailing faction to execute vengeance on their political opponents.

A further argument has been urged to prove the dependence of judges on the Executive power, and that the limitation in the Constitution upon the power of removal, applies only to the President, drawn from a principle which exists in all monarchical governments; that principle is, that the Judicial authority is only an emanation from the Executive power, and a branch of it. Sir, gentlemen who have repeated this principle appear to be insensible that it has no application to the form of government in this country. In unlimited monarchies, it is true, the Legislative, the Executive, and the Judicial powers, are all united in the same person. The monarch makes the law, decides upon it, and carries it into execution. This constitutes the essence of despotism. In limited monarchies, such as that of England, the Legislative power is at this time in reality separated from the Executive; and, although the Judicial power remains still nominally united to the Executive, and was so in fact before the Revolution, yet, in effect, the act of Parliament, which renders the judges independent, has separated this department from the Executive power; and, in this country, pursuing the great object of rendering the three departments of government independent of each other, we have, as well in our National as State constitutions, provided that these departments should not depend upon or be subordinate the one to the other. The theory of our Government supposes that the department which enacts the law should neither expound it or carry

it into execution; that the department whose province it is to expound the law, should not be entrusted with its execution. By assigning to each department in this form its distinct duties, and establishing the independence of each, in the exercise of its appropriate functions, we have attained, if the principle is preserved, more security against the power of oppression, than any nation ever enjoyed. The Legislature may pass unconstitutional laws, depriving the people of rights which the Constitution has guarantied; but these laws can never be executed so long as an enlightened and independent court remains to expound them.

The ambition of an unprincipled First Magistrate may desire the ruin of individuals who are opposed to his ambitious projects; but the vengeance of Executive power can never reach the man of virtue, so long as he is protected by the courts of his country. Gentlemen, then, who attempt to engraft upon our Constitution the theory of monarchies, ought to learn that they do not apply to our form of government, and that the expression of the Constitution which was designed to give independence to the judges, could not have been designed to guard the judges against the Executive more than the Legislative power. Its object was to render the Judicial a distinct department, and to leave the judges, without the fear of removal, to exercise their legal and Constitutional powers.

Gentlemen have likewise said, that our theory destroys itself; that, whilst we are supporting the independence of the judges, we admit that they are exposed to an impeachment by one branch of the Legislature before the other, on which they may be found guilty of misdemeanors, and expelled from office; and that the fear of impeachment will operate more strongly upon the passions, render them more submissive to the Legislative will, and more effectually destroy their independence, than the power of removal claimed under the present bill. To this consideration, I answer, that a judge can only be removed upon impeachment, by the concurring voices of two-thirds of the members of the Senate; and if the period ever should arrive when a majority of the House of Representatives should become sufficiently corrupt to go into the Senate with an impeachment against a virtuous judge, and two-thirds of that body should be found base enough to support it, it will then be of little importance what becomes of your courts or your judges. The form of Government which we have established can never survive the corruption of that day; and when depravity shall have gained so strong a foothold in the Legislative department, the whole political body must be contaminated; and, instead of being the citizens of a free Government, we shall be fit only to be the slaves of a master. Sir, the Constitution, by requiring that a majority of the House of Representatives and two-thirds of the Senate shall concur in an impeachment and conviction, has secured to the judge his independence in ordinary and in violent times; but it was impossible to secure him against the convulsions of a revolution, or the more certain effects of total degeneracy and corruption.

Again, it is said that the power of the Legislature to vary the jurisdiction of the judges, and to create new courts, may be used to destroy their independence, and whilst we admit the existence of that power, we may as well admit all that the bill claims. Sir, I have two answers to give to the argument. The argument itself is drawn from a supposed abuse of power, which can never be admitted in any deliberative body, because it goes to the destruction of all power, for all power may be abused, and therefore no power ought to exist. But a consideration perhaps more conclusive is, that an abuse of power in the case stated can never take place unless attended with circumstances so violent as to appal the intrepidity of any Legislature. And again, the evil will, in some measure, correct itself. For, if you diminish the jurisdiction of your old judges, and confer their important powers on new judges, who may be taken from the prevailing sect, the consequence will ordinarily be, that your new judges, having obtained the object of their ambition, being removed by their independence beyond the power of their own party to remove them, will find it for their own interest to administer justice according to their best discretion, so that the principle of independence which we contend for, will, in its operation, correct that abuse of power, which might otherwise prove so destructive.

I have now, Mr. Chairman, noticed all the arguments which occur to me, and which have been urged in support of the present bill, and I hope shall be pardoned, if, upon this all-important occasion, I again turn back to the emphatic words of the Constitution, on which we principally rely. "The judges both of the supreme and inferior courts shall hold their offices during good behaviour." If words so explicit in their meaning, if an expression so well understood by every capacity, can be construed away, by the metaphysics of the day, with much more ease may we ourselves, or our successors, remove, by construction, every barrier which limits the power of the Legislature. It is declared in the Constitution, that the migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808. If this spirit of construction is admitted, how easy will it be for gentlemen to say migration or importation does not mean introduction; and that Congress may prevent the introduction, although they could not prohibit the migration or importation, and in this mode the security of the States will be entirely destroyed. Acts of attainder may not be passed; but gentlemen may hereafter say, that an act to confiscate the property of an individual, and to banish him to a foreign country, under pain of death, if he return, is no act of attainder, and within the powers of Congress. A capitation tax can only be laid by an apportionment among the States; but it may be said that a tax upon all persons able to carry arms, is no capitation tax within the meaning of the Constitution, and may be laid without an ap-

portionment. No money shall be drawn from the Treasury without an appropriation by law; but your President may hereafter say, that this does not extend to money in the hands of collectors. In fine, there is not a prohibitory clause within the Constitution which may not be evaded, if this spirit of construction is tolerated.

Sir, do gentlemen see the extent to which they are going? Do they see in this bill a principle which goes to prostrate all State authority; which goes to demolish every department, except that of the Legislature, and to concentrate all power within these walls? Gentlemen must pardon me when I entreat them not to abandon the plain meaning of terms; if we suffer ourselves to be seduced into this wide field of conjecture and construction, your Constitution will retain no more certainty than the wind; its value will become less than the paper on which it is written.

I should now close the observations which I had to submit to the Committee upon this interesting question, had not the gentlemen on the other side of the House thought proper to involve in this debate a discussion of several topics, not necessarily connected with the subject. These topics have been urged, undoubtedly, with a view to influence the decision of this question, and, although I cannot see their application, yet I am not disposed to set up my discernment as the standard of infallibility, and shall therefore now pay due respect to the path which those gentlemen have marked out.

The gentleman from Virginia, (Mr. Giles,) as an apology for the extensive range which he has taken upon this occasion, has informed us that one act of the last session was but a single link in one great chain of the political measures, and for the purpose of understanding this particular measure, it became necessary to review the whole chain of political events.

The gentleman begins his remarks, by saying that two parties have existed in this country from the commencement of the present Government; the one, what the gentleman has been pleased to denominate a party of energy, and the other a party of responsibility; the first, disposed to go forward with the affairs of the Government with energy, as they deemed right and expedient, and the other only in submision to the public will. Sir, it can be no news to the members of this Committee that two parties exist in this country, nor can gentlemen be ignorant that two parties did exist in the nation at the adoption of the Constitution: the one consisting of its friends, and the other composed of its enemies; nor is it necessary for me to say how the present have grown out of these original parties. It is sufficient for my present purpose to say that the parties alluded to by the gentleman from Virginia, are characterized by prominent features, and cannot easily be mistaken. Some of these features I will describe, and leave to the decision of the Committee which party really deserves best of the community. One great feature which has characterized those whom the gentleman has been pleased to denominate the party of energy, has been their strong attachment to the present Constitution; and a determination not only to leave each department to the exercise of its proper functions, but to support them in it. Their opponents, to say nothing of their attachment to the Constitution, have on the contrary been disposed to bring all the powers of the Government into the House of Representatives, and in that way to strip the other branches of their Constitutional authorities. This was attempted some years ago in a very interesting question, which related to the British Treaty. For although the Constitution had expressly delegated the treaty-making power to the President and Senate, yet the gentleman from Virginia and his friends were determined to grasp it for the House of Representatives. Pursuing the same spirit of hostility to the other departments, the gentleman and his friends are at this time attempting to make an inroad in the Judicial department, and to bring in effect the powers of that department into this House.

Again, this party of energy was disposed to establish and support public credit, in which their opponents did not agree. This party of energy was likewise determined to defend their country against the hostile attacks of the enemy, and to support the interest, the safety, and honor of the nation; their opponents, on the contrary, were disposed to prostrate everything that was dear, to the will of the enemy. One party was disposed to build up and support, while the other were, and still are, determined to pull down and destroy. The spirit with which this determination is pursued will appear, from the allusions which have been made to the most prominent measures of the former Administration.

The public debt has been spoken of, and it has been charged as a crime that these solemn engagements, which were the price of our independence, and for the discharge of which the national faith was pledged, have been provided for by the old Administration. Sir, are we to understand that this crime is to be ultimately atoned, by wiping out the debt with a sponge? Surely the gentleman cannot intend this, and yet I can give no other solution to the remark.

The Indian war has also been alluded to in very extraordinary language, as an event which was greedily seized to enlarge the field of Executive patronage. Sir, the gentleman cannot intend to insinuate that the Indian war was excited by the Administration; the causes which produced that war are too publicly known to be forgotten or misunderstood. And has it indeed, at this time, become criminal for the Government to defend the inhabitants of our frontier from the attacks of the savages?

The gentleman has likewise told us that the depredations upon our commerce by the Barbary Powers, and by the French cruisers, was made a pretext for commencing a Naval Establishment, and in this way of extending this bugbear of Executive patronage. Sir, this remark gives me no surprise. I know perfectly well, that there is a party in this country who are opposed to our commerce and to our navy. I shall long recollect the depredations which were made upon our commerce

by the French, and the difficulty with which gentlemen were persuaded to repel those depredations. I cannot forget that before they would consent to our first measure of defence, that the cruisers of France were capturing your ships within the Delaware bay. It is certainly true that the old Administration was neither the enemy of commerce, nor of the navy; and it is as certainly true that they were equally disposed to defend your citizens against Algerine slavery, and the depredations of France. And to merchants and seamen of this country, and the community at large, I am willing to refer the question, whether it was proper to surrender our commerce to the enemy, and give up our seamen to slavery, or defend both by an adequate Naval Establishment?

Gentlemen have complained of the haste with which the last Judiciary act was passed; but when gentlemen indulge themselves in these suggestions, they ought to examine whether the fact of which they complain has really existed. They ought to recollect that the journals of this House will decide this point, and that by these journals it will appear that this very law, in its principles, was under the consideration of Congress for two sessions; that the subject had for years been contemplated by the members of the Legislature, and that no act of the Government (unless we except the act of bankruptcy) was ever passed with more deliberation.

There was, however, one circumstance attending the passage of this law which in the opinion of the gentleman from Virginia (Mr. Giles) cannot be excused: the law received the signature of the President whilst the House of Representatives were engaged in the late Presidential election. The gentleman has indulged himself, by saying that this obnoxious law was approved by the President whilst the House of Representatives were engaged in the election of a Chief Magistrate, and, influenced by the violence of party, were attempting to defeat the public will. Sir, what does the gentleman from Virginia intend by these declarations? Are we to understand that the determination is now avowed on this floor, which we have heard so often repeated beyond the walls of this House, that no man but a Virginian is hereafter to become a President of the United States? And are we indeed reduced to this, that the members of this House, when exercising the sacred right of suffrage, on one of the most important occasions which can ever arise, are to be charged with attempts to defeat the public will, because they would not consent to violate their consciences, in voting for a particular candidate merely because he lived on the other side of the Potomac? Sir, this language may perhaps accord with the sentiments of this meridian, but give me leave to tell the gentleman from Virginia, that it will not be relished by one part of the United States, and give me leave further to say that there are States in this Union, who will never consent, and are not doomed to become the humble provinces of Virginia.

Sir, I consider the question we are now about to decide, as more important than any which ever occupied the attention of the National Legislature. The Constitution has guarantied to the people of this country an independent Judiciary, but the moment the bill on you table becomes a law, that independence is gone, and your courts become the passive agents of the Legislature to execute its commands. And whatever may be said on this subject, it is impossible to prevent the members of this Committee and the people of the United States, from tracing this destructive measure back to the fountain from whence it has proceeded. Who recommended a revision of the act of the last session? Who sent us the document on which gentlemen have predicated so many of their arguments? Who, sir, but the President of the United States? on whose head must fall the whole weight of responsibility for this invasion of the Constitution.

Before I sit down, permit me once more to appeal to the intelligence, and to the patriotism of the members of this Committee. Permit me to say that there is no middle ground between a government of laws and a government of men; that the former can only be supported by an independent Judiciary, and if by the passage of this bill you destroy this only barrier, the people of the country are left at the mercy of a host of despots, whose will is law, and whose enmity is death.

Mr. Milledge said, he hoped the Committee would spare him a few moments of their time, that he had no intention of saying a word on the important question before them, and meant to have contented himself by giving a silent vote; but as some remarks had fallen from the gentleman from South Carolina, (Mr. Rutledge,) in the course of his argument delivered yesterday, respecting the removal of a postmaster in the State he had the honor to represent, that for the present he would pass any explanation by on that subject, and, as he was drawn on the floor, he conceived himself bound to make some few observations on the bill now under consideration, that his constituents might know what guided him in his vote; that it was useless on any other score; that the subject was exhausted; nor had he the vanity to suppose that anything that should drop from him would influence a single member; that from the doctrine held by gentlemen who differed from him on political points, he was one of those on that account who solemnly believed that the passage of that bill, as handed by the Senate, fixed a principle as to the Judiciary, on which, in his opinion, depended the liberty, property, and happiness of his country. He stated that, though true, it was imperative on the first Congress to establish a national Judiciary, it certainly was also true that all their plans were speculative. He said, let it be supposed for a moment that, in forming that system, they had made sixteen circuits and assigned duties to sixteen judges; that instead of two courts of appeal within the year, they had made four; that when this theoretical system had become tested by experience, it was found that the interest of the nation in that department could be as well and better conducted by having only six circuits and six judges, and by two courts of appeal instead of four. Would not Congress have the

right to modify the law to meet the general welfare in that respect? It is not denied nor brought into question but that they have the power of extending the courts; then surely they have the same right to abridge. But it is said that the judges, when once appointed, hold their office during life, from the tenure of their commission being during good behaviour, and receive for their services a compensation which shall not be diminished during their continuance in office; and, independent of the power that gave them existence, except by impeachment. He said, he admitted that it was true, to a certain extent, they were independent of the Executive, because his whim and caprice could never affect them; they were independent of the Legislature for they could not constitutionally pass a law to remove an individual judge or judges from office; that the Legislative power was confined to the system of jurisprudence by which the general welfare of the nation was to be consulted, either to extend or abridge; that in case of abridging, and courts were abolished, the duties are taken from the judges, therefore they cannot receive compensation, for they have no service to perform; they are not independent of the law, but depending for their existence as judges on the law: when the law goes down, they tumble with it; that on the subject of the rightful and necessary independence of the judges, that so much had been said about, that it had been long his opinion that our late great and virtuous President, WASHINGTON, had surely been ill-advised when he took from the bench of judges the Chief Justice, Jay, and sent him not on a Judicial but a diplomatic errand, when it was afterwards followed up by the late Administration in sending a similar high character, on a similar errand; then it was, and not till then, that the independence of the judges became prostrated not by Legislative power, but to the Executive authority under the influence of its patronage. Mr. M. said that, on the subject of expediency, he was one of those who always thought it was the interest of the nation to lessen by every means in its power the foreign connexions; that we are at peace with all the world except the Barbary Power, Tripoli, whose trade is war—and peace in Europe; that it was fair to presume, for those reasons, that few cases would come before the national courts, on what is called the law of nations, and that the Constitution gives a right to foreigners as well as citizens of a different State to sue in the Federal courts: that the animosities and prejudices that grew out of the war for our independence would daily abate; that the right of action in these courts should by degrees be narrowed, from a persuasion that the State courts administered justice as ample and as speedily as the national courts; that as to foreigners and citizens of different States not being able to obtain complete justice in the State courts, that argument could now have no possible weight; that, on the contrary, it always appeared to him that strangers from whatever quarter they might come, if they brought with them a good character, always met with a partial leaning of the citizens in their favor; he therefore thought that the old system, with a few amendments, was commensurate to all the objects of national jurisprudence. Mr. M. said, that he had discovered that gentlemen, throughout the discussion of this important question, had read considerably from newspapers and other writings, he hoped he might be indulged in turn; that he had been favored with extracts from two letters, sent to an honorable member of the Senate from no less characters than Governor McKean and the celebrated John Dickenson, the Pennsylvania farmer. Governor McKean's letter says:

"The vote of the Senate of the United States on the question for repealing the late Judiciary law accords with my sentiments, as it seems to have been contrived and executed rather to serve the interest of a few zealous partisans than the people at large. That a Legislature have the power at a subsequent session to repeal any act passed before, cannot admit of much doubt in a reflecting mind; the same power that creates can assuredly annihilate, where there is no Constitutional impediment; an office may be abolished when it shall be deemed mischievous or unnecessary, though the officer may not otherwise be removable, but after the conviction of some misdemeanor, and when there is no existing office, there cannot be any officer to execute it, both are nonentities."

Mr. Dickenson writes thus:

"It seems to me that there should be the clearest and strongest provisions made against any ingraftment of any elements or powers from principles of common law upon the specified, limited, delegated, defined authorities, confided by the several States to the Union; how has the understanding of united America been insulted by sophistical argumentations drawn from this source, and from the paragraph of the eighth section of the first article of the Constitution to reconcile us to boundless powers in the Federal Government, (a danger against which the framers of that Constitution strove with the utmost anxiety to guard such assumptions,) which would turn judges into legislators, and trustees into usurpers. I had rather that the whole Judiciary system of the Union should be abolished than that it should exist with those dangerous pretensions, threatening perdition to our best securities against future oppressions; they will entangle us in endless labyrinths of confusion. Is it not very extraordinary that, under our Constitution, judges should declare the nation to be in a state of war, when the Legislature is silent on that momentous point?"

Such, Mr. Chairman, are the sentiments of those two venerable patriots, statesmen, and lawyers; our country can claim none higher in the possession of those qualities. What more, then, can be said on the subject? It forecloses all argument. The gentleman from South Carolina (Mr. RUTLEDGE) had said that, in looking over a newspaper that he had before him, it appeared that even a postmaster in Georgia had been turned out of office because he was a printer, yet the person denies his being a printer. Mr. M. observed that, so far as respected himself being brought into question by the publication alluded to, he felt no hesitation to declare the part he had taken on that occasion. He said he had mentioned that the editorial part of the paper, called the *Augusta Herald*, was supposed to come from the pen of

Mr. Hobby; that he was not the mechanical operator; that the press was generally considered to be under his control, and that that paper teemed with invective against the principal officers of the present Administration. Mr. M. further observed that, as the gentleman (Mr. R.) had passed into the State he had the honor to represent in search of matter for his argument, he begged he might be permitted, in turn, to view him a little within his own limits; he had informed the Committee that the vote he had given for President, which was a blank, he had the gratification to think was not only conformable to his own feelings, but he believed to those of the people of South Carolina. Mr. M. said, he hoped he did not misquote the gentleman. That the Committee had been favored with much newspaper information; he also sometimes read newspapers, and in one he had seen an account of the decided disapprobation of some of his fellow-citizens in South Carolina for his blank vote. He would ask that gentleman whether his country had not on a former occasion called on him within his State to exercise a similar duty, and whether he then put in a blank, or whether he voted for "a man of the people, a demagogue;" a man of plain and simple attire without a "Mister before his name—an Oliver Cromwell?" If he did, he left to the gentleman's own reflections the propriety of what fell from his lips yesterday.

FRIDAY, February 26.

The SPEAKER laid before the House a letter from William Henry Harrison, Governor of the Indiana Territory of the United States, enclosing certain resolutions of the grand jury of the county of Knox, in the said Territory, at a term of the court of general quarter sessions of the peace, held for the said county, in the present month, asserting the rightful claim of the Territory aforesaid to the island of Michilimackinac, and its dependencies, as an integral part of the said Territory, in opposition to the claims of the Government of the Northwestern Territory to the same; which were read, and ordered to be referred to Mr. THOMPSON, Mr. DENNIS, and Mr. DICKSON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

No occasion having arisen, since the last account rendered by my predecessor, of making use of any part of the moneys heretofore granted to defray the contingent charges of the Government, I now transmit to Congress an official statement thereof, to the thirty-first day of December last, when the whole unexpended balance, amounting to twenty thousand nine hundred and eleven dollars and eighty cents, was carried to the credit of the surplus fund, as provided for by law; and this account consequently becomes finally closed.

TH. JEFFERSON.

FEBRUARY 25, 1802.

The said Message was read, and, together with the official statement referred to therein, ordered to lie on the table.

Another Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

Some statements have been lately received of the causes decided or depending in the courts of the Union, in certain States, supplementary, or corrective, of those from which was formed the general statement accompanying my Message at the opening of the session. I therefore communicate them to Congress, with a report of the Secretary of State, noting their effect on the former statement, and correcting certain errors in it, which arose partly from inexactitude in some of the returns, and partly in analyzing, adding, and transcribing them, while hurried in preparing the other voluminous papers accompanying that Message.

TH. JEFFERSON.

FEBRUARY 26, 1802.

The said Message, and the documents accompanying it, were read, and ordered to be referred to the Committee of the Whole to whom was committed, on the fourth instant, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

JUDICIARY SYSTEM.

The House then went into Committee on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. NICHOLSON.—I lament, Mr. Chairman, that I am under the necessity of rising at this late hour, as I am fearful the patience of the Committee is well nigh exausted. I am sensible that the uncommon length of the discussion has left me but a very narrow ground to tread on; but as the question has become highly important, from the Constitutional objections which have been started, I will venture to solicit your indulgence while I offer some remarks that appear to my mind applicable to the subject now under consideration.

The very uncommon direction which has been given to the debate, will, I trust, be a sufficient apology for my noticing a variety of observations made by gentlemen on the other side of the House, which have no connexion with the bill on the table. I should have felt a singular pleasure in following the honorable member from Connecticut, (Mr. GRISWOLD,) but for his concluding remarks. In the anterior part of his speech, that gentleman kept his eye steadily fixed either upon the expediency or constitutionality of the question, and did not indulge himself in those wanderings of the imagination, which so eminently distinguished his friends who have preceded him; but the close was marked with a shameful virulence, calculated to excite indignation and not to convince the understanding.

Sir, when I am told that the party advocating this repeal have grown out of the party originally opposed to the Constitution, and are now about to prostrate it, I feel more than I am willing to ex-

press; but when gentlemen talk about parties in this country, permit me to turn their attention to an earlier period of our political history; to that period when our liberties and independence were at stake, and when every nerve was strong to resist the encroachments of tyranny. At this time where were many of that gentleman's political friends? Upon examination it will be found, that many of them basely deserted their country in her distress, and were openly fighting in the ranks of her enemies. In the list of my political friends, none such are to be found, for we do not require their support. But I can look about me, upon my right hand and upon my left, and can see men, even upon this floor, advocating the present bill, who bore the burden of the Revolutionary war, who drew their swords to establish the independence we now enjoy, and who will not hesitate to draw them again, if those threats are carried into execution which have been recently thrown out against the Constitution. I know men too, equally distinguished for their talents and their virtues, friendly to this repeal, who signed the Constitution as members of the General Convention, who used every effort to promote its adoption, and who, I have no doubt, are ready to defend it, to the last moment. There are men likewise, and gentlemen dare not contradict me, who refused their signatures to the Constitution as members of the General Convention, and who opposed it in every stage of its adoption, but were afterwards received into favor, and were high in the confidence of the former Administration. Which of these two descriptions of persons are most likely to cherish the Constitution, I cheerfully leave to the American people to decide. It is extremely possible that some of my political friends were opposed to its adoption, without certain amendments at that time urged with great force, because they thought the liberties of the nation not sufficiently secured; and I wish I could say that no events have since taken place to justify the uneasiness which at that time existed. A recurrence to some of those events by my friend from Virginia (Mr. Giles) has been warmly commented on, and he has been charged with introducing subjects which have formerly excited irritation, for the purpose of catching the popular ear. I trust I shall be pardoned for saying that, in my judgment, a recurrence to those events was in a great measure rendered necessary, by the unjustifiable remarks with which the debate was opened by a gentleman from North-Carolina, (Mr. Henderson.)

Let it be recollected, sir, that a few days past, when the gentleman from Delaware (Mr. Bayard) was begging for a postponement of the bill for a week only, he promised for himself and his friends that if we would indulge them, they would meet us with calmness, and would proceed to the discussion with a spirit of Christian meekness. After the postponement was consented to, and after this voluntary promise, I came to the House with an expectation of hearing the subject discussed with that coolness and deliberation which are truly desirable in the investigation of truth; but I soon discovered that this expectation was vain and illusory; that the expected calm had roused itself to a whirlwind, and the spirit of Christian meekness was transformed into a spirit of anger and crimination.

The gentleman from North Carolina, who opened the debate, forgetful of the promise which had been made for him by his friend from Delaware, commenced an unwarrantable attack upon a majority of the House, by declaring that on the seventh of December the same spirit of innovation had entered these walls, which had laid waste the fairest portions of Europe; that it was now about to tear down all the valuable institutions which had been erected by former Administrations, and even to destroy the Constitution itself. Did gentlemen imagine that such observations were to pass unnoticed? Did they suppose that we would sit tamely down under an imputation at once so heavy and so groundless? Was it not natural that we should go back and look into the nature and origin of those measures which had been denominated the fairest institutions, and which the gentleman had particularized as the debt, the taxes, the Judiciary, and the Mint? Yes, sir, the gentleman from Virginia did take a view of these fair institutions, and did show, whatever might have been the motives of their authors, that their inevitable tendency was to strengthen the power of the Executive. It is this undue influence of the Executive power of the Government that we wish to reduce; it is this influence that we wish to confine within its proper limits, in order to prevent the Government from taking that course which most Republican Governments have heretofore taken; to prevent it from arriving at that goal where the spirit of republicanism is lost, and monarchy commences. Permit me to ask the gentleman from Delaware if he was serious when he said there were no friends to monarchy in this country? Does he not recollect a proposition that was made in the General Convention, when our present Constitution was framed? And does he not recollect by whom that proposition was made? The form of Government contained in that proposition bore, indeed, the name of a Republic, but was marked with the strongest features of monarchy and aristocracy. The Chief Magistrate and Senate were to hold their seats during good behaviour, or, as gentlemen now contend, for life; the Chief Magistrate was to have an absolute negative on all laws, and the sole direction of war, after its commencement; the Senate to have the exclusive right to declare war; the Governors of the respective States to be appointed by the General Government, and to have an absolute negative on the laws of the States. All the militia of the States was to be under the direction of the General Government, by whom the militia officers were to be appointed. The immediate representatives of the people were to be chosen for three years, but their powers were not defined: it is certain however, that they could pass no laws which were not under the control and subject to the rejection of the Senate and Chief Magistrate, who were placed above all responsibility to the nation. When I say "all responsibility," I mean not to forget that they were liable to impeachment for corrupt conduct in office; yet it may be remembered, and the history of other nations warrants the opinion, that rulers may be guilty of ten thousand oppressions, without the possibility of proving that their conduct was founded on corruption. These impeachments, too, were to be tried, not by persons holding their appointments from the people, or responsible to them, but by the chief judge of each State, who it was expressly provided should hold his office during good behaviour. That this proposition was made, no gentleman will doubt; or if a doubt rests on the mind of any man, I refer him to members of the General Convention who are now present, and who agree in political opinion with our opponents. I venture to hazard the assertion, that the information I have given will be found to be correct, because I have derived it from the most authentic source—from members of the Convention, in whose hands copies of the plan are now to be seen, which were taken by them at the time. If, however, my information is incorrect, there are gentlemen now in my view who can furnish the means of setting me right, and I call upon my adversaries to contradict me upon any authority whatever. But, sir, I have no apprehension that I shall be contradicted; gentlemen are too well acquainted with the fact to risk a controversy about it; for it has been published and commented on in every State of the Union, and never has been denied. Among other publications, I have one in my hand, of an official nature, given to the world by a member of the Convention in his official capacity, and bearing an authenticity that is not to be disputed. It is, sir, a communication made in the month of January, in the year 1788, to the Legislature of Maryland, by Luther Martin, Esq., one of the delegates from that State to the General Convention, in which he assigns his reasons for refusing to sign the Constitution. After having said that there were three parties in the Convention, with different views and sentiments, he proceeds, in the tenth page:

"One party, whose object and wish it was to abolish and annihilate all State Governments, and to bring forward one General Government over this extensive continent, of a monarchical nature, under certain restrictions and limitations. Those who openly avowed this sentiment were, it is true, but few, yet it is equally true that there was a considerable number who did not openly avow it, who were, by myself and many others of the Convention, considered as being in reality favorers of that sentiment, and, acting upon those principles, covertly endeavoring to carry into effect what they well knew openly and avowedly could not be accomplished."

After this, let no man doubt that there are advocates for monarchy in this country, and advocates too who have been high in the confidence of the nation; for we have been told that they were members of the General Convention, and were anxious to give the essence of monarchy to that Constitution under which we now live. Nor should it be forgotten, that we have heard from another authority, at one time at least very much respected by federal gentlemen, that a monarchical Government with an aristocratic and a democratic branch, was not only a Republic, but the best kind of Republic.

But, Mr. Chairman, if there are friends to monarchy in this country, who think that the nature and constitution of man will bear no other form of Government, it is not for me to censure them. I thank God we are free, and that there is no more persecution for political than religious opinion. Yet while I refrain from censuring, I will also take the liberty of saying that I never will trust those who entertain such opinions, but will at all times use my endeavors, feeble as they may be, to correct such of their errors as in my judgment may have an injurious operation either upon the Government or the nation.

When we attempt to correct these errors, let us not be told that we are about to prostrate the Constitution. The Constitution is as dear to us as to our adversaries, and we will go as far to support it. It is by repairing the breaches that we mean to save it, and to set it on a firm and lasting foundation, that shall resist the attacks of its enemies, and defy the encroachments of ambition. We are yet a young nation, and must learn wisdom from the experience of others. By avoiding the course which other nations have steered, we shall avoid likewise their catastrophe. Public debts, standing armies and heavy taxes, have converted the English nation into a mere machine to be used at the pleasure of the Crown. After having struggled nearly six hundred years for their liberties, they now find themselves almost at the same point from which their ancestors set out. This is not barely an opinion of my own, formed upon cursory observation, but is sanctioned by the authority of a universally admired writer, known to most of us. Sir William Blackstone, in the fourth volume of his valuable commentaries on the laws of England, speaking of the various reductions that have been made in the prerogative of the Crown since the Revolution of 1688, and the consequent apparent advantages derived to the nation, uses a language which I fear is too applicable to our own situation:

"Yet, though these provisions have in appearance, and nominally, reduced the strength of the Executive power to a much lower ebb than in the preceding period, if, on the other hand, we throw into the opposite scale (what perhaps the immoderate reduction of the ancient prerogative may have rendered in some degree necessary) the vast acquisition of force arising from the riot act and the annual expenditure of a standing army, and the vast acquisition of personal attachment, arising from the magnitude of the national debt, and the manner of levying those yearly millions that are appropriated to pay the interest; we shall find that the Crown has gradually and imperceptibly gained almost as much in influence, as it has apparently lost in prerogative."—p. 440.

Mr. Chairman, if a man acquainted with the history of our Government, would attend to the remarks just read, he would suppose that this was the chart by which our political course had been

steered. It is true we have had no riot act, but we have had a Sedition act, calculated to secure the conduct of the Executive from free and full investigation; we have had an army, and still have a small one, securing to the Executive an immensity of patronage; and we have a large national debt, for the payment of the principal and interest of which it is necessary to collect "yearly millions," by means of a cloud of officers spread over the face of the country. By repealing a part of the taxes from which a part of this money has been raised, we not only lessen the burdens of the people, but we likewise discharge a large portion of those officers who are appointed by the Executive, and who add greatly to his influence.

This debt, which now hangs as a dead weight about us, has been called the price of our independence, and has been spoken of as a debt due to the "war-worn soldier," which we assumed and funded to alleviate his sufferings. This position I cannot assent to. When the veteran soldier returned from the fatigues and hardships of the war, to enjoy domestic comfort, he brought with him, as an evidence of the service he had rendered, nothing but his certificates and his wounds. They were, indeed, honorable testimonials; the latter he felt would remain with him while life lasted, and the former he held with the hope that, one day or other, his country would be in a situation to pay him; but the hard hand of poverty pressed upon him, and stern necessity compelled him to part with them for a pittance. The rich and cunning speculator, who had sheltered himself from the storm, now came out to prey upon his distress, and, for two shillings and sixpence in the pound, he purchased this poor reward of toil and hardship. When you were about to make provision for the payment of this debt, you were called on, loudly called on, by the voice of humanity, by the spirit of justice, to make a discrimination in favor of the soldier. He asked you to give to the speculator what the speculator had advanced; but to give the balance to the poor, though valiant soldier, who had faithfully earned it in the frozen regions of Canada, or the burning sands of South Carolina; you regarded him not; to his tale of distress you turned a deaf ear; his services and his sufferings were forgotten; the cold and hunger he had endured, the blood he had spilt, were no longer remembered; you cast him upon the unfeeling world, a miserable dependent upon charity for subsistence. Let not then the gentleman from Delaware call this debt the price of our independence, or a compensation to the war-worn soldier. To him it was a poor compensation indeed. Its effect was to intrench yourselves around by rich speculators, whose interest and influence you secured, and who would be ready to support you in any measures, provided you would insure them the payment of the interest on that debt, which was funded for their benefit, but which was created at the hazard and expense of a brave and meritorious soldiery. From motives of a shameful policy you enabled the proud speculator to roll along in his gilded chariot, while the hardy veteran, who had fought and bled for your liberties, was left to toil for his support, or to beg his bread from door to door.

But this debt, iniquitous as we deem the manner of its settlement, we mean to discharge; but we mean not to perpetuate it; it is no part of our political creed that "a public debt is a public blessing." We will, I trust, make ample provision for its final redemption; and when in a few days a proposition shall be submitted for the annual appropriation of seven millions and three hundred thousand dollars to this object, I challenge gentlemen on the other side of the House, who express so much anxiety about public faith, to be as forward in support of this measure as I shall be. We will then show to the American nation who are most inclined to support the public credit; whether those who are desirous of paying the debt, or those who are anxious for its perpetuation.

The member from Delaware told us that the gentleman from Virginia (Mr. GILES) after exhausting one quiver, had unlocked another and discharged it upon the judges; those judges whose victims he has never heard of. If that gentleman has never heard of a judge's stooping from the bench to look for victims, I have. Let me direct his attention even to his own State. Let me ask him if he has never heard of a judge commanding the district attorney to search a file of newspapers, in order to discover something upon which a prosecution might be grounded? Let me ask him if that judge did not detain the grand jury at a busy season of the year, for the avowed purpose of finding an indictment, not upon any fact known to the judge, but upon a mere report which the judge had heard, that there was a seditious paper printed in the State. This looks like stooping from the bench to search for a victim. But the gentleman from Delaware looks to the Executive for victims—for those widows and orphans who demand the commiseration of the people. Mr. N. said he could not conceive how widows and orphans could be affected by the Executive, for he did not know that widows and orphans had been dismissed from office, as he never had understood that it was usual to give them appointments. He had heard that some persons had been dismissed for being public defaulters, and others for revolutionary toryism; but he had not heard that any had been dismissed for refusing to sign an address offering up adulation to Presidential vanity. He had indeed understood that two men had been restored to office, who were dismissed under a former Administration for this crying sin. But why all this uneasiness about dismissals from office? Have the friends of gentlemen heretofore been so eager in their pursuit of the loaves and fishes that they are now unwilling to surrender them? Have they enjoyed them with such peculiar delight, that they now murmur at the exercise of the Constitutional right which the President possesses of displacing from office all those whom he thinks unfit for the duties, and of putting in those who, in his opinion, are better qualified? Surely when gentlemen are so strenuously

contending for the Constitutional rights of the Judiciary, they ought not to murmur at the exercise of a Constitutional right by the Executive. Nor do I think they can with any propriety complain, when it is recollected, that although the President had the power of disposing of all offices, yet he has left by far the larger proportion in the possession of men who are personally and politically his enemies. From the great discontent expressed on the subject of removals, it might seem that the judges themselves were rather the objects of general solicitude, than the system or Constitutional privileges of the Judiciary.

This Judiciary, however, the gentleman from Delaware has said, in that same spirit of Christian meekness which appears to have characterized him throughout, he never considered a sanctuary, because he knew that nothing was sacred in the eyes of infidels. May I be permitted to ask, what the honorable gentleman means by infidels? The expression excited some degree of surprise, because, as the gentleman had, on a former occasion, talked so much of Christian meekness, I had flattered myself that he felt some little of Christian charity. The hope, I fear, was a vain one. The honorable member and his friends are orthodox; we and our constituents are heretics. If, sir, an unqualified aversion to the high-fashioned opinion, that a public debt is a public blessing; if a total unbelief in the propriety of laying heavy and oppressive taxes, to pay a useless and expensive army; if the strongest reprobation of every law calculated to restrain the liberty of the press, and thereby prevent the nation from inquiring into its own concerns; if the entire rejection of the odious principle, that the reins of Government are to be placed in the hands of a set of men who are independent of and beyond the control of the people, afford any evidence of infidelity, then do I avow myself as much an infidel as any man living. And if Christianity and infidelity be the two principles, diametrically opposed to each other, it is most certain that the gentleman and myself are as far asunder as if we inhabited different hemispheres. He is a political christian, and I a political infidel. He offers up his sacrifices upon the altar of independent rulers; I bow at the wide distance I trust will ever be preserved between us, while the gentleman holds his present political creed.

Was there a man who did not feel the highest astonishment at the honorable member's doctrine in relation to the common law? Is there any one who believes with him, that "stripped of the com-'mon law, we have neither Constitution nor Gov-'ernment; that our Constitution would be unin-'telligible, and our statutes useless?" Sir, the gentleman tells us "we must leave it to the discretion 'of the judges to declare what belongs to us, and 'what is unsuitable." He says we have nothing to do with anything of a monarchical tendency; yet even upon his own ground this is a question for the discretion of the judges. Have the people of this country ever consented to vest the judges with this extensive discretionary power? Have they ever sanctioned the principle that the judges should make laws for them instead of their Representatives? Is it not legislation to all intents and purposes, when your judges are authorized to introduce at pleasure the laws of a foreign country, to arm themselves with power? The American people never dreamed of such a principle in the Constitution, and never will submit to it. They never ought to submit to it. It is giving to the judges a power infinitely more transcendant than that vested in any other branch of the Government. The Legislature cannot recognise any principle of the common law having a monarchical tendency; yet this principle the judges may recognise, if you leave it to their discretion to introduce any part of the common law which they may think proper.

I have so often heard the gentleman from Delaware maintain upon this floor an opinion that the common law of England was the common law of the United States in their national capacity, and that therefore the Federal courts have a general common law jurisdiction, that I think proper to offer some remarks upon it, lest silence on our part should be construed into acquiescence.

Let us then examine this subject, and inquire when and how the common law was introduced into this country. The gentleman from Delaware supposes it was brought here by our forefathers at the time of their emigration. To this opinion I might oppose that of the celebrated Judge Blackstone, who, in the first volume of his Commentaries on the laws of England declares, in the most positive terms, that the American plantations were either ceded by treaties, or conquered from the natives; and that therefore the common law of England, as such, had no force or authority there; but wherever it is in force, it arises from their having ingrafted it into their own municipal regulations. [Mr. NICHOLSON read sundry extracts from the 106th, 107th 108th and 109th pages of 1st vol. of Blackstone, to show that this was the opinion of the learned Judge.] For this opinion, however, sir, of Judge Blackstone, I do not contend. I have seen it very powerfully opposed by able writers, and I think the usage and practice of the colonies themselves furnish a sufficient argument against it. It may perhaps be correct in its application to New York, New Jersey, Pennsylvania, and Delaware, which, I believe, were originally settled by the Dutch and Swedes, and were ceded to the English by the Treaty of Breda, in the year 1667. These were therefore conquered countries, and the common law of England could not have been brought into them by the original emigrants. It may have been since practised under in these States, but is indebted for its introduction either to express statute, or to common usage. It goes however to establish the principle for which I contend, that our forefathers brought with them no law having a uniform operation over all the extent of country now contained within the limits of the United States; for when gentlemen speak of a common law of the United States, they must mean a law uniform throughout the whole extent, and equally obligatory upon the whole nation. I entertain no

doubt myself that the common law of England, or so much of it as was applicable to their situation, was brought over by the original emigrants, to New England, to Maryland, to Virginia, and the other Southern States; and that it continued to be the law of the provinces until altered by their respective Legislatures. But it was the law of each province only, and not a general law operating upon the whole; for each was independent of the other, and the municipal regulations of the one could not bind the other. Thus the rule of succession to real estate by primogeniture continued in most of the provinces till about the commencement of the Revolution; but in Massachusetts, as early as the year 1648, they declared by law that lands should descend and be held in common among the children. In Virginia a *fieri facias* could not be laid on lands, nor can it even at this time; but in Maryland this rule of the common law was changed by statute in the reign of George the Second, and lands were made equally liable to debts as personal property. In Massachusetts, blasphemy and perjury were made capital offences by their own statutes, neither of which were capital at common law, and their punishment has been otherwise provided for in other States, particularly in Maryland. The doctrine of forfeitures was entirely done away in Massachusetts by their own local laws, and traitors and felons were allowed to devise away their lands, goods, and chattels; while, in most of the other provinces, the forfeiture upon conviction and attainder continued as at common law. Numberless instances might be adduced, in addition to these, to show the total disagreement of the various changes made in the common law by the several Provincial Legislatures at different times; but I apprehend those mentioned are sufficient to convince any candid mind, that there was no general uniform law or rule of conduct operating upon the respective Colonies prior to their confederation for the purposes of general defence. Permit me likewise to remark, that even if the common law had remained unaltered by the several Colonial Governments, yet it could not have been considered as a uniform rule of law operating upon them as a nation, because each was independent of the other and had emigrated at different periods, while the common law of England was undergoing the most material changes by act of Parliament. The colonization of Virginia took place in the reign of Queen Elizabeth, that of Maryland in the reign of Charles the First, and that of Georgia in the reign of George the Second. In the intervening spaces of time, the common law had been greatly ameliorated; and if it is now to be insisted on as constituting the law of the United States, in consequence of its introduction by our forefathers at the time of their emigration, we should be at a loss to determine which of these periods we should fix on as that which was to give the character to the common law; whether it is to be the common law in force in the reign of Elizabeth, or the common law as ameliorated by statute, between that time and the reign of George the Second. I need not enter into a detail of these changes, for they will readily occur to most gentlemen who hear me; but as very material changes were made, I think it cannot be contended that the law as existing at one period or the other could have any uniform operation upon the several colonies, who were, as to each other, independent States governed by their own laws, and without any connexion, common government, or general law, prior to the declaration of independence.

These observations have been made with a view of showing, that as British colonies, although each might have adopted the common law of England for its own purposes, yet each having adopted it at different periods, and modified it in various ways, there was no uniformity in the law; and even if there had been a uniformity, we were not a nation, and therefore could have no law common to the whole. These arguments would likewise apply to show that it was not adopted by the United States in their confederated capacity when they first took a rank among the nations of the earth, or in other words, when they declared themselves independent of Great Britain, and associated for the purposes of common defence. The object of this confederation was defence only, and not internal government. The States each became sovereign and independent, and reserved to themselves the power of self-government. Many of them, by their constitutions, adopted the common law as it had been modified by their own provincial statutes, and gave to their Legislatures the power of changing it whenever circumstances might require. Congress had no powers given to them: but everything was done by recommendation, and when afterwards certain powers were vested in Congress by the Articles of Confederation in 1781, they were of a general nature, relating to the war only, and nothing like an authority to establish courts or to grant judicial powers; and I think it would look like an absurdity to say that the common law of England became at that time the common law of the United States, when the only body representing the United States (that is, Congress) had no power to establish tribunals to carry this into operation. But, sir, I think it will not be seriously contended, that the common law of England became the common law of the United States, either as a consequence of the emigration of our forefathers, or by virtue of the Declaration of Independence, or by the Articles of Confederation. I shall therefore beg leave to examine another ground, which gentlemen may think more tenable.

We have been told by the member from Delaware, that without the common law the Constitution would be a dead letter. Every State in the Union, he says, has adopted it; and he asks why it is denied to the Federal Constitution? I could have wished that on this subject, as well as many others, the gentleman had offered us something like argument, instead of mere wild and arbitrary assertion. However highly we may estimate his talents, he must not expect that we are to yield to his political dogmas. We flatter ourselves that the Constitution may stand and flourish without those invigorating principles of the common law, which the gentleman is anxious to infuse into it.

I agree that it has been adopted under various modifications by the respective States; but I do not admit that it has been adopted by the Federal Constitution. Where the States have adopted it, it has been by a solemn and positive act, expressly recognising it as a part of their code of laws. I might challenge the gentleman to put his finger on any part of the Federal Constitution containing any recognition of it whatever, as a law of the United States. Is it to be found in the enumeration of the powers vested in the Legislature? Is it to be found in the enumeration of the powers vested in the Executive, or in the enumeration of the powers vested in the Judiciary? It is to be found in neither. Is this adoption of the common law to be found in any article contained in the original instrument, or in any of the amendments afterwards ingrafted upon it? In one of the amendments, we find the words *common law* used, but I presume it will not be contended that the common law was adopted by this article; for it must be obvious to the plainest legal understanding, that the words "suits at common law" are only used in contradistinction to suits in equity. In the latter cases, the trial by jury is not used, but in the former the trial by jury is preserved by this amendment. And when the rules of the common law are mentioned in the latter part of the same article, they are merely referred to as rules of proceeding which are to govern in motions for new trials, and a few other cases, where facts decided by the verdict of a jury may be re-examined; but it can have no operation to confer jurisdiction. Might I not be permitted to ask why the common law of England was adopted by our Constitution more than the laws of any other nation; more than the laws of France, Spain, Sweden or Holland? When the Constitution was formed we were more intimately connected with those countries than with England, because with some of them we had treaties of alliance, with all we had treaties of commerce. Besides, if the common law of England was adopted by the Constitution, a very serious question might arise whether the common law did not thereby become a part of the Constitution; and, if a part of the Constitution, all laws since passed by Congress contrary to the principles of the common law would be null and void; such, for instance, as the act declaring the punishment of manslaughter and several others. That this would be a fair construction may be gathered from the opinions of those who formed the constitutions of New York, New Jersey, Delaware, Maryland and South Carolina, and likewise from the Convention of Virginia; who all retained the common law, but expressly declared it to be subject to the future alterations of their respective Legislatures. Now, if the common law was adopted by the Constitution without any provision that it should be subject to future alteration by Congress, a question might certainly arise whether Congress would have the power of passing any law varying the common law. However, if this difficulty is got over, another not very inferior in importance immediately presents itself. If the Constitution adopted the common law, or the common law attached itself to the Constitution, it immediately became a law of the United States, and is paramount to the laws and constitutions of the individual States. Wherever, therefore, the constitutions or laws of the States modified the common law, such modification was of no effect; for whenever a law of the United States clashes with the constitution or law of one of the States, the State Constitution or law must give way, as has been solemnly decided by the Federal courts in more instances than one; particularly in the case of Vanhorne's lessee against Dorrance, in the circuit court of Pennsylvania, and in the case of Ware and Hilton upon a writ of error in the Supreme Court of the United States. Whether the people of this country are inclined to submit to the train of evils which would follow the establishment of this principle, does not, I presume, admit of a doubt.

The gentleman from Delaware, however, seems to consider the existence of the common law, as a law of the United States, as a matter of necessity. He tells you if you go into your courts of justice with the mere statutes you cannot proceed a step, you cannot even punish a contempt. I shall here be allowed to ask if it is the idea of that gentleman that our Federal courts have an authority to enforce the common law doctrine of contempts? If by the operations of the common law they have a right to punish one contempt, I presume they have the same right to punish all. Let us then take a view of these common law contempts.

If one man strikes another in the superior courts in England, or even at the assizes, it is a contempt of a very high nature, and is punished at common law by cutting off the right hand, imprisonment for life, forfeiture of goods and chattels, and of the profits of land during life. To rescue a prisoner from any of the said courts is another very high contempt, and is punished by the common law with imprisonment for life, forfeiture of goods and chattels, and of the profits of land for life. There are a great variety of smaller offences likewise denominated contempts, for which the common law inflicts fine and imprisonment, and if the court pleases, corporal or other infamous punishment. This is a slight specimen of that common law, upon which the member from Delaware has pronounced so high an eulogium; and these are the punishments which your courts of justice could not inflict without the wholesome assistance of the common law. But sir, it may be shown that the courts of justice of the United States do not require the aid of the common law to enable them to punish contempts; for it is declared expressly by the seventeenth section of the act of September 1789, establishing the courts, that they shall "have power to punish by fine and imprisonment, all contempts of authority in any case or hearing before them." The gentleman therefore was grossly mistaken when he said it was necessary to call in the common law, to authorize the courts to punish for contempts; although the act of Congress does not go quite so far as the mild provisions of the common law, which cut off the right arm of the offender. By

this act it is likewise declared, that the Federal courts shall have power to grant new trials, and to administer all necessary oaths and affirmations. This was certainly quite nugatory, if the common law had attached itself to the Constitution; because these are powers which the State courts and those of England exercise by virtue of the common law; and if it had been the idea of those who have gone before us, that this common law was the law of the United States, they would not have vested in the courts the same authorities which they had by the common law. I believe, sir, I could take up our laws relative to the Judicial establishment, from the commencement of the Government to the present day, and could show that Congress had from time to time vested in the courts and judges a variety of powers, which they would have had, if the common law had been the law of the United States in their Federal capacity. But I will refer to one instance only, where it was thought necessary to pass a special law for the purpose of giving to your judges one of the lowest common law authorities. In the year 1798, an act, of one section only, passed, authorizing the judges of the several district courts, Supreme Court, and of the to hold to security of the peace and good behaviour in any case arising under the Constitution and laws of the United States. At common law the judges are by virtue of their commissions, *ex officio* conservators of the peace, and if this law had been the Federal law, there could have been no necessity for passing the act just alluded to.

Again, by the common law, a person charged with treason is allowed a peremptory challenge of thirty-five jurors; yet this right of challenge is likewise expressly given by the act of Congress passed in 1789. The same act provides for the punishment of murder, in places under the exclusive jurisdiction of the United States, as forts, arsenals, &c., and limits the number of challenges to twenty; yet these provisions are precisely the same as at common law, amended by a variety of statutes a long time before the emigration of our ancestors; and I presume it is not contended that the common law was brought here without the changes antecedently made. If, however, the common law was introduced originally by our forefathers, and afterwards attached itself to our Constitution by its own wonderful magic, I ask why not the statute law likewise? The same juridical principle will apply as well to the statute law as the common law, and the two together will furnish gentlemen with an extensive field to wander in, which I cheerfully abandon to them.

I think, sir, I have fully proved that the common law of England was not introduced by our ancestors at the time of their emigration, as a general and uniform law prevailing over all the extent of country comprised within the present limits of the United States; because the several colonies were planted at several periods, some of which were as remote from each other as one hundred and fifty years; because it was changed and modified at pleasure by the respective provinces, and because we were not at that time a nation, and therefore required no general uniform law to govern us. I think I have proved that it was not adopted by the Declaration of Independence, because we associated only for mutual defence against a common enemy, and there were no general questions among us which could possibly require the interference of common law, and Congress had no power to establish courts to carry the law into execution. And I think I have proved that it was not adopted by the Constitution, because there is no part of the Constitution declaring it to be the law of the land; because its implied adoption, without limitation or restraint, would either make it a part of the Constitution itself, and thereby prevent a most valuable exercise of Legislative authority, or by making it a law of the United States, would give it a controlling and repealing or nullifying power over the laws and constitutions of the individual States; and because almost every Congress, by enacting a variety of provisions already established by the common law, expressed an opinion, most unequivocally, that the common law was not the law of the United States in their national capacity.

The common law can have no possible existence in this country, but as it has been introduced by the different States. Some have engrossed it into their body of laws by their constitutions; others by express statute, and in one or two instances perhaps, the States have used and practised it from their original colonization: for it is not denied that the several colonies brought with them such both of the statute and common laws as were applicable to their situation. But the common law as introduced, used, and practised in any one State, can only be considered as a State law. After it was retained by Maryland, by an express article of her constitution, it was no longer the common law of England as such, but thereby became the law of the State of Maryland, under the various modifications which had been made by the provincial assemblies; and such it remains at this day. As a State law then, it cannot be construed to give jurisdiction to the Federal courts, any more than the numerous acts of Assembly which have passed both before and since the Revolution. By the common law of England, as it exists there, and as it likewise exists in Maryland, kidnapping, or the forcible abduction or stealing of man, or woman, or child, is an offence punishable with fine, imprisonment, and pillory; a statute of Maryland declares the stealing of a slave to be a capital offence. Now neither of these laws can give the Federal courts any jurisdiction over these offences, because they are both State laws, although one of them is likewise a part of the common law of England.

Murder is an offence punishable, I believe, in all the States with death, and remains as at common law, modified by several old statutes, which our forefathers brought with them at the time of their emigration, yet the Federal courts can have no jurisdiction over the crime of murder, unless committed in a fort or arsenal; and this is expressly declared by act of Congress to be punishable with death if committed in those places. And permit

me once again to observe, that this shows that Congress at the time of passing the law (in 1789) entertained no idea that the Federal courts could punish murder by virtue of any other authority than that expressly derived from a statute.

"Cursing or wishing ill to the King," is an offence punishable at common law by fine, imprisonment, and pillory; but this is not the law of any of the States, because after the Declaration of Independence we had no King, and therefore it was not applicable to our situation. To curse or wish ill to the Governor of a State, could not be punished, although he is the Chief Magistrate of the State; because cursing or wishing ill to the King of England is a contempt against his person and Government: but in America we do not regard the majesty of persons, nor do we admit that the Government belongs to any one man, but to the whole people. However, even if this part of the common law did form any part of the codes of the respective States, it could give no jurisdiction to the Federal courts, being a State law. It is with much regret, Mr. Chairman, I have heard that a man in New Jersey was indicted at common law and punished by a Federal court, for expressing a ludicrous wish in relation to a former President of the United States—a personage not known to the common law. Yet common law jurisdiction was assumed by the Federal court over this offence, and the sacred person of the President was substituted for the sacred person of the King.

In fine, sir, my opinion is, and I sincerely believe it to be a correct and Constitutional opinion, that the common law of England, either as such or as it has been introduced into the several States, is not the common law of the United States in their national or federal capacity, and therefore cannot operate to give to the Federal courts any jurisdiction. On the present occasion, I wish to express my decided disapprobation of the doctrine contended for by the gentleman from Delaware, that the Federal judges have a discretionary power to introduce such parts of the common law as they please, and as they may think do or do not belong to us. This discretionary power in a judge is dangerous to liberty. It will sap the foundation of your Constitution itself. It will place the life and property of every man in the community in the most precarious situation. All security will be lost, all confidence will be destroyed. To vest a discretionary power of this kind in a judge, is to vest him with an arbitrary and unconstitutional power. That able and upright judge, the most excellent Lord Camden, who was an ornament not only to his profession, but to his country and to human nature, declares, that "the 'discretion of a judge is the law of tyrants; it is 'always unknown; it is casual, and depends upon 'constitution, temper, and habit. In the best it 'is often caprice; in the worst it is every vice, 'folly, and passion, to which human nature is 'liable."

I have dwelt longer on this subject, Mr. Chairman, than I intended; but as it is important, I trust I shall obtain the pardon of the Committee; thinking as I do, it was impossible for me to have said less. Having several times heard the gentleman from Delaware maintain a similar doctrine on this floor, I have to-day thought it my duty to examine it; to state some reasons to show the doctrine to be incorrect, and others why it ought not to be admitted. How far I have succeeded the Committee will decide. Infinitely more might be said, but as the evening is advancing I will no longer trespass on your patience now. To-morrow I will again ask the indulgence of the Committee for the purpose of offering some remarks more immediately connected with the subject under consideration.

Mr. N. sat down; the Committee rose, and the House adjourned.

SATURDAY, February 27.

A representation of the inhabitants of Fairfield county, in the Northwestern Territory of the United States, was presented to the House and read, praying that the said Territory may be admitted as a State, into the Federal Union, on an equal footing with the original States.—Referred.

JUDICIARY SYSTEM.

The House again resolved itself into a Committee on the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. NICHOLSON (in continuation) offered his acknowledgments to the Committee for consenting to hear him again to-day, after the very tedious, though he hoped not uninteresting discussion of yesterday, in relation to the common law. From the construction which had been given to our laws and Constitution, not only in the House, but as he had understood by some of the Federal Judiciary, he thought it the duty of every man to direct his attention to this subject, as it involved principles more important than were apparent at first view. Under this impression he had offered some observations to the Committee, which he flattered himself would not be totally unacceptable. In doing this he had been as brief as possible, for he well knew it would fill a volume, if all were collected which might be said in opposition to the opinion that the common law of England was the common law of America, as a nation. He would now, however, proceed to the discussion of the subject more immediately under consideration.

As I have already occupied more time than I either expected or wished, I have no doubt I shall be excused for passing over the immense folio of extraneous matter which the gentleman from Delaware has introduced. It will afford me an opportunity, at the same time, of passing by that list of names which the gentleman held up to our view, and which he exhibited in colors by no means flattering. Were I inclined to pursue the course which he has pointed out to me, I might present a catalogue of his political friends, covered with as miserable a daubing as his own; but I disdain it. Private feeling and private character

shall never be made the subject of my animadversions in this House.

The expediency of the present repeal is the first point to which gentlemen seem to have directed their attention. In order to show the necessity of the law of the last year, they have pointed out numerous defects, as they suppose, in the old system. The member from Delaware, after lavishing the highest encomiums on the gentleman who is said to be the author of that system, has undertaken to show that it was constructed upon fallacious principles. The fallacy of these principles, he says, was discovered in practice, and a new organization of the courts became necessary. Since I have been able to form an opinion of the relative merit of the political characters in this country, there are very few indeed whose talents I have heard more commended than those of the gentleman alluded to. On no occasion has his wisdom or the solidity of his judgment appeared more conspicuous to my mind than in the formation of the first Judiciary system of the United States. In a Government like ours, extending over a large tract of country, and composed of sovereign States, independent of each other, confederated for the purpose of mutual defence and mutual protection, it was rightly judged that its Judicial powers should not extend to any other cases of Judicial cognizance, than those which might be deemed somewhat of a general nature, and whose importance might affect the general character or general welfare of the Union. It was foreseen that these cases would not be very numerous, and experience has proved the correctness of this opinion; for in the twelve years that have elapsed, but about eight thousand four hundred suits have been brought in the Federal courts, exclusive of Admiralty causes; or about seven hundred suits for each year in the whole of the sixteen States. Of these, fifteen hundred now remain undecided, which are nearly equal to those of the two last years. In order to show the incompetency of the courts, as existing under the old establishment, gentlemen ought to prove that this is an unreasonable number to be at this time pending. I ask them if this does not prove as great a despatch of business as in any courts of the world? In the circuit court of Maryland, I believe the same rules have been adopted for the despatch of business as are practised in the General or Supreme Court of the State: and I believe it is likewise a rule, that causes shall continue the same length of time. By the laws of Maryland, a cause may continue two years in that court, and of course a cause may continue two years in the circuit court. What the rules may be in other courts respecting the continuance of causes, I do not know, but if a similar rule prevails in all the courts, no doubt can possibly exist that business has been as well despatched in the Federal circuit courts as it can ever be. Most of the causes brought in the Federal courts, I presume, are unimportant, and are controverted. Whenever there is a controversy it is almost impossible to get your pleadings in a state for trial in less than two years, where there are only two terms in each year; and this of necessity compels a continuance for two years. My idea on this point is easily exemplified:

Suppose three hundred and fifty suits brought at May term, 1799	350
The same number at October term, 1799	350
The same number at May term, 1800	350
The same number at October term, 1800	350
The same number at May term, 1801	350
	1,750

It would follow that seventeen hundred and fifty suits would be brought to those five terms, and the dockets of May, 1801, would exhibit seventeen hundred and fifty suits then depending. If the first three hundred and fifty were decided at that time, fourteen hundred would be left on the dockets in June, 1801, at which time the list now before us was taken. But the delays which are necessarily incident to trials at the bar, and in chancery, would furnish at least a possible presumption that the whole brought at the first term could not readily be tried at the fifth, for want of testimony, the defective state of the pleadings, demurrers, motions for new trials, and sundry other causes. Let me then again repeat, that as fifteen hundred suits only remain pending, business must appear to have been well despatched, and no argument can be drawn from the supposed incompetency of the courts.

But, sir, the first objection which gentlemen have started to the old system, arises from the itinerancy of the judges. They are stated to be old men, who have passed the meridian of life, and it cannot be expected that they should ride through the continent for the purpose of holding courts. They number, says the member from Delaware, the *viginti annorum lucubrationes*, and must now have leisure to read, to repair the ravages of time, or, in other words, to prevent them from forgetting what they had before learned. I trust, Mr. Chairman, that I feel as much reverence for old age as most men, and I flatter myself I am not totally unacquainted with the requisite qualifications of a judge: but indeed gentlemen must excuse me, if I do not consent to pay a man four thousand five hundred dollars a year "to prevent him from forgetting what he had before learned."

Give me leave, however, to ask if these are the evils which have been discovered by practice? This old system has been called an experiment. Permit me to ask, if these are the evils which experience alone has brought to view?

When the great man, alluded to by the gentleman from Delaware, framed this system; when he defended it in the Senate of the United States, as I am told he did, with all the energies of his mind, against the objections which were then urged to it, was it not in his power to calculate the labor of travelling over a certain extent of country? Or, if this was an exaction too great for his powers, were there no men in Congress with sagacity enough to discover this mighty objection? Was it one of the *arcana* left for the laborious researches of the present day? The extent of country has not since increased. Bridges are not kept

in worse order, nor do rivers rise higher now than they did at that time. In truth, all the means of travelling are more eligible and commodious. The roads are better, the houses of entertainment more numerous, the number of stages greatly increased, and gentlemen are not now under the necessity of using their own carriages. Yet, notwithstanding these difficulties which then presented themselves, but have since been removed, men of the most eminent talents were readily found, who were willing to accept the places of judges, and were not afraid of meeting the inconveniences which are now complained of. It cannot, therefore, be urged with propriety that the itinerancy of the judges is one of the objections which has been proved by a trial of the experiment. But it is said to be too laborious, too fatiguing for a judge to be compelled to ride from New Hampshire to Georgia, for the purpose of holding a court. Sir, when these courts were first organized, the United States were divided into three circuits; the Eastern, the Middle, and the Southern. Six judges were appointed, two of whom were to ride in each circuit for the purposes of holding a court in conjunction with the district judge. Of this, however, the judges complained; and, for their relief, a law passed requiring *one* supreme judge only to associate himself with the district judge. This was, in fact, dividing the United States into six circuits, for no one judge was compelled to ride beyond the two States immediately adjoining that in which he lived. It is true, that no judge was obliged to go twice into the same State, until every one of his brethren had taken his turn in it; but this was optional with them; and if, through caprice, or a desire of change, or any other cause, they could not agree among themselves, I cannot think that it ought to be considered a sufficient reason to reorganize the whole system. By the act of 1792, they were authorized to assign to each other the several circuits in which they were respectively to ride: and if they have made inconvenient arrangements, it can only be imputed to themselves; they are at liberty to change them whenever they think proper. Why, then, is it alleged, that a judge was obliged to ride from New Hampshire to Georgia, when a gentleman living in the New England States was never compelled, by law, to come into any district farther South than Connecticut? But no arrangement of this kind was made. A judge residing in the Eastern States, for the sake of pleasure, to see the country, or for some other cause, we find travelling with "all the agility of a post-boy," from New Hampshire to Georgia, for the purpose of holding a court; while another, residing in the Southern country, with the sprightliness and activity of youth, "studying the law upon the road," has flown from Georgia to New Hampshire, and held his court there. I again ask, where was the necessity of this? If they impose upon themselves labor four or five times greater than that which the law requires them to perform, is it right to call this excess an evil, and impute that evil to the law?

If the bill now upon the table should pass, let the judges of the Supreme Court make such amendments as will be agreeable to themselves. Let the judge residing in Massachusetts confine himself to the New England States: let the judge in North Carolina travel Southward; and let the other judges perform their duties in the Middle States. They will not then suffer the inconvenience complained of. The mountains which have been raised by the gentleman from Delaware, will fall before them. The wilderness which has sprung up in his imagination, will be turned into fruitful plains and pleasant villages. The judges will have leisure to read to prevent them from forgetting what they had before learned, and will be enabled to add to the *viginti annorum lucubrationes*.

But gentlemen have resorted to another part of the Constitution, which they say contains the restrictions; not indeed in express terms, but by implication. Sir, this doctrine of implication is a dangerous one. A departure from the letter in order to pursue the spirit, may lead to incalculable mischief, and must ultimately destroy the Constitution itself. It leaves it to the discretion of every succeeding Congress to give to the Constitution any meaning whatsoever, that their whim or caprice may suggest; to assume to themselves, and to attach to the other branches powers never intended to be delegated. We say that we have the same right to repeal the law establishing inferior courts, that we have to repeal the law establishing post offices and post roads, laying taxes, or raising armies. This right would not be denied but for the construction given to that part of the Constitution which declares that "the judges both of the supreme and inferior courts shall hold their offices during good behaviour." The arguments of gentlemen, generally, have been directed against a position that we never meant to contend for: against the right to remove the judges in any other manner than by impeachment. This right we have never insisted on; we have never in the most distant manner contended that the Constitution vested us with the same power that the Parliament of England have, or that is given to the Legislatures of Pennsylvania, Delaware, New Jersey, and some others. Our doctrine is, that every Congress has a right to repeal any law passed by its predecessors, except in cases where the Constitution imposes a prohibition. We have been told that we cannot repeal a law fixing the President's salary, during the period for which he was elected. This is admitted, because it is so expressly declared in the Constitution; nor is the necessity so imperious, because, at the expiration of every four years, it is in the power of Congress to regulate it anew, as their judgments may dictate. Neither can we diminish the salary of a judge so long as he continues in office, because in this particular the Constitution is express likewise; but we do contend that we have an absolute, uncontrolled right to abolish all offices, which have been created by Congress, when in our judgment those offices are unnecessary, and are productive of a useless expense.

Let us examine the objections which have been

raised to this upon that part of the Constitution in which it is said that "the judges both of the su-'preme and inferior courts shall hold their offices 'during good behaviour, and shall receive, at 'stated times, a compensation for their services, 'which shall not be diminished during their con-'tinuance in office." It has already been stated by some of my friends, and I shall not therefore dwell upon it, that the prohibition contained in these words was of two kinds: the one applying to the Legislature, and prohibiting a diminution of salary; the other applying to the Executive, and forbidding a removal from office. The first prohibition our adversaries readily admit, but the second, they say, applies as well to the Legislature as to the Executive. I should agree to this, too, were there any necessity for it, but it is not pretended by us that we have the right to remove from office any officer whatsoever—not only a judge, but even a revenue officer; there would, therefore, be no necessity for imposing a restriction upon Congress in relation to a judge any more than in relation to an officer concerned in the collection of the revenue. They are each appointed by the President and Senate, but the Executive officer holds his place at the will of the President, the judge holds his office during good behaviour, and neither subject to removal by the Legislature. The term good behaviour is said to secure to the judge an estate for life in his office, determinable only upon impeachment for, and conviction of bribery, corruption, and other high crimes and misdemeanors, and that inasmuch as his good conduct is the tenure by which he holds his office, he cannot be deprived of it so long as he demeans himself well. As our system of jurisprudence has been borrowed from Great Britain, it may not be amiss to refer to the history of that nation, in order to discover whether they have given the same construction to these words as is now contended for by gentlemen on the other side of the House. It is certain that, in England, it has, in some cases, been considered, that the words good behaviour, in a commission, confer the office for the life of the officer, provided he shall so long demean himself well; but I do not know that a question has ever arisen there, how far the power creating the office could afterwards abolish it. It appears to me to follow so necessarily, that for myself I should never have started a doubt; it is however most clear, that these words have not, even in England, been thought to give the judges an estate for life in their offices. Antecedent to the accession of William the Third, all judges were appointed by, and held their commissions during the pleasure of the King; but, in the reign of that monarch, it was declared by the Act of Settlement, that judges after that time should hold their commissions during good behaviour, removable upon the address of both Houses of Parliament. The tenure of office then became precisely similar to that of our judges at this time, with the single exception, that it was in the power of Parliament to remove them; they were to hold their offices so long as they demeaned themselves well, and could secure the good will of the Legislature. Yet this was not considered there as an estate for life, because it is well known that their appointments became vacant upon the demise of the Crown, and their commissions were no longer in force. It was the settled opinion and uniform practice for sixty years. The judges never ventured to maintain a contrary doctrine, but acquiesced in it from the reign of William the Third to that of George the Third. It was not only the practice, but it was recognised by the acts of several succeeding Parliaments; for, in the first year of the reign of Queen Anne, an act of Parliament passed, declaring that the judges should hold their commissions six months after the demise of the Crown. Here it was decidedly the opinion of Parliament, that the judge did not hold his office during life, because it was admitted that the commission was properly annulled by the demise of the Crown, and they declared that, in future, it should continue in force for six months after. This practice of vacating the commissions of the judges, six months after the demise of the Crown, was regularly pursued upon the death of Queen Anne, of George the First, and George the Second, without any doubt being entertained as to its propriety. In the reign of George the Third, Parliament again acknowledged it to have been the settled and established law of the realm, by enacting a particular statute to change it, in which they declared, that the commissions of the judges should not determine upon the demise of the Crown, and so the law stands at this day. I have given this as an example to show that, in England, the words good behaviour did not invest the judges with an estate for life in their offices; but that, notwithstanding these words in their commissions, in conformity to an act of Parliament, they were still left subject to the established principle of the common law, that the commissions of all offices in the appointment of the Crown were vacated by the death of the reigning monarch. It is a maxim universally admitted, that the common law may be repealed by statute, but it was not considered in England that a fundamental principle could be repealed in an incidental manner, by declaring that the commissions of the judges should continue during good behaviour. It is a fundamental principle in every Government, that the power having the right to enact has likewise the right to repeal a law. It is the existence of this fundamental principle in our Government which gives to Congress the right of repealing their own laws; for the power to repeal is no where expressly vested in them by the Constitution, and it would be absurd to suppose, that when a law is once enacted, it is to continue forever in force. The Act of Settlement is as much a part of the Constitution of England as the third article is a part of our Constitution; yet the provision in this act which declares that the judges shall hold their commissions during good behaviour, was never considered as destroying that fundamental principle of their Government by which all commissions were vacated upon the demise of the Crown. So in our own country, although the third article of the Constitution declares, that the judges of

the inferior courts shall hold their commissions during good behaviour, yet it cannot operate to destroy the fundamental principle of our Government, by which Congress is authorized to repeal all laws which they have enacted, and to abolish all offices they have created. An express statutory provision was deemed necessary in England to prevent the commissions of the judges from being vacated by the demise of the Crown, and was accordingly made in the reign of George III. An express Constitutional provision must be made before Congress can be divested of the right of repealing a law which they have enacted. Until our Constitution is amended to this effect, which I hope never to see done, the right to repeal a law constituting an inferior court, can no more be denied than the right to repeal a law establishing a post road, laying a tax, or raising an army.

Having shown that, in England, the tenure by which the judge held his office was not, of itself, deemed sufficient to destroy a great and leading principle of their Government, I will now endeavor to prove that the tenure of office cannot and ought not to produce this effect in the United States. I will not dispute with the gentleman from Connecticut (Mr. Griswold) about the meaning of the word *hold*, because it equally answers my purpose to say, that the judge shall *possess* his office during good behaviour. I cannot, however, agree with him, that the judge holds his office of the people, for he is not appointed by them; besides, if he is to hold his office during good behaviour, of the people, a doubt perhaps might arise, whether, under these circumstances, even a change of the Constitution could affect him. It is true he is not called the President's judge; neither is a Minister to a foreign Court called the President's Ambassador, but the Ambassador of the United States; yet it will not be contended, that the Ambassador holds his place of the people.

It is necessary to examine whether the tenure by which any officer of the United States holds, or, if gentlemen please, possesses, his office, can destroy the inherent right of Congress to repeal the law by which the office is created. In order to do this, it may be proper to refer to an early period of the political history of the present Government. In the year 1789, soon after the Government was organized, when Congress were about to establish the office of Secretary of Foreign Affairs, since called Secretary of State, a question arose, whether the officer was to be removed at pleasure by the President; whether by the President and Senate who appointed him, or whether he was to hold his place during good behaviour.

These different constructions of the Constitution were contended for by three different classes of gentlemen, who severally urged, that each was the true meaning of the Constitution. A gentleman of distinguished talents, at that time representing South Carolina, (Mr. William Smith,) advocated with very great ability the opinion, that the Constitution had pointed out but one method of removing an officer, (by impeachment,) and therefore that he could not be removed so long as he demeaned himself well. Finally, however, a majority agreed, that the true meaning of the Constitution was that the power of removal was of an Executive nature, and therefore belonged solely to the President. This construction was adopted, and has ever since been sanctioned by uniform practice. But I will suppose that Mr. Smith's construction had been agreed to, and it must be allowed to be extremely plausible, would Congress thereby have been prevented from repealing a law by which an Executive officer had been created, because the officer could only be removed by impeachment? I presume no gentleman will say so. But let us take the case as it now stands. Your supervisors, who superintend the collection of your excise duties, are appointed by the President and Senate, and hold their offices under the Constitution, not during good behaviour, but during the will and pleasure of the President. The tenure by which he holds his office is completely beyond the power of the Legislature, and they cannot remove him. So long as he can secure the good will of the President, he is to hold his office against the whole world. It is as sacred, in relation to the authority of Congress, as that of a judge. They both hold their offices independent of the Legislature; the one during good behaviour, the other during the pleasure of the President. It is not in our power to remove an excise officer, so long as his office continues, any more than to remove a judge, so long as his office continues. The authority vested in us is entirely Legislative, and has nothing to do with the Executive power of removal. Yet is there any man on earth can say that we have not a Constitutional right to repeal the laws laying excise duties, by which the office of supervisor is created? And can any one say that we can remove the supervisor in any other manner than by repealing the law? We do not contend for the right to remove the judge any more than for the right to remove the supervisor, neither of which we can do, each holding his office independent of us; but we allege that the tenure by which either holds his office cannot prohibit us from repealing a law by which the office is created. It is the tenure of office which is now urged against the repealing power of Congress. This tenure is completely independent of Legislative will, and therefore we are told we cannot pass a law to affect it. I have, however, shown that the tenure by which the supervisor holds his office is as completely independent of Legislative will, as that by which a judge holds his office; yet no man will be hardy enough to dispute the Constitutional right of Congress to repeal the excise laws, and thereby to dismiss all the persons holding offices under them. I am aware that I may be told that the President, in giving his sanction to the law, at the same time impliedly signifies his consent to the removal of the officer. But permit me to suppose that the President refuses his signature to the law, and tells you that these officers hold their commissions independent of you, and there-

fore you have no right to dismiss them; that the Constitution authorizes them to hold their places during his will and pleasure, and that it is his will and pleasure they shall continue in office. Here the tenure is as strong and inviolable by the Legislative power as the tenure of the judge; yet Congress may, notwithstanding, afterwards pass the law by the concurrence of two-thirds, and destroy this sacred tenure of office.

If, then, the tenure of office in the one case cannot destroy the right to repeal, why shall it destroy it in the other? Both tenures are equally independent of Legislative control—the one securing an estate defeasible by misbehaviour, the other securing an estate defeasible by the will of the President; but neither dependent on Congress for continuance in office, so long as the office itself exists. Gentlemen say we cannot do that by indirect means which we cannot do directly; that is, that we cannot remove a judge by repealing this law, inasmuch as we cannot remove him by direct means; but I have proved beyond the possibility of doubt that we may indirectly remove an excise officer by repealing the law under which he was appointed, although we have no authority to remove him in any direct manner. If the principle laid down by gentlemen is not true in the one case, it cannot be true in the other.

For my own part, Mr. Chairman, I think no doubt can be entertained that the power of repealing, as well as of enacting laws, is inherent in every Legislature. The Legislative authority would be incomplete without it. If you deny the existence of this power, you suppose a perfection in man which he can never attain. You shut the door against a retraction of error by refusing him the benefit of reflection and experience. You deny to the great body of the people all the essential advantages for which they entered into society. This House is composed of members coming from every quarter of the Union, supposed to bring with them the feelings and to be acquainted with the interests of their constituents. If the feelings and the interests of the nation require that new laws should be enacted, that existing laws should be modified, or that useless and unnecessary laws should be repealed, they have reserved this power to themselves by declaring that it should be exercised by persons freely chosen for a limited period to represent them in the National Legislature. On what ground is it denied to them in the present instance? By what authority are the judges to be raised above the law and above the Constitution? Where is the charter which places the sovereignty of this country in their hands? Give them the powers and the independence now contended for, and they will require nothing more; for your Government becomes a despotism, and they become your rulers. They are to decide upon the lives, the liberties, and the property of your citizens; they have an absolute veto upon your laws by declaring them null and void at pleasure; they are to introduce at will the laws of a foreign country, differing essentially with us upon the great principles of government; and after being clothed with this arbitrary power, they are beyond the control of the nation, as they are not to be affected by any laws which the people by their representatives can pass. If all this be true; if this doctrine be established in the extent which is now contended for, the Constitution is not worth the time we are spending upon it. It is, as it has been called by its enemies, mere parchment. For these judges, thus rendered omnipotent, may overleap the Constitution and trample on your laws; they may laugh the Legislature to scorn, and set the nation at defiance.

To me it is a matter of indifference by what name you call them; I care not whether it be kings or judges. Arm them with power, and the danger is the same. For myself I have no hesitation in declaring that I would rather be subject to the absolute sway of one tyrant, than to that of thirty; as I would prefer the mild despotism of China to the hated aristocracy of Venice, where the vilest wretch was encouraged as a secret informer, and the lion's mouth was ever gaping for accusation.

I must now be permitted to turn my attention to various authorities which gentlemen have introduced, and which, I presume, they thought would fully establish the position they have taken. I deem it peculiarly fortunate for us, sir, that, although volumes have been ransacked, though heaps of newspapers and pamphlets have been resorted to, and the journal of the Convention itself has been produced as authority, yet the whole furnish not a single argument—not one solitary idea—to prove the unconstitutionality of the measure now under consideration. They have been read, it is true, with much apparent triumph, and have afforded gentlemen an ample opportunity to display their eloquence and ingenuity, but certainly have no bearing on the question.

The first of these authorities is of very high nature, not only because it is the decision of a court of judicature, but because that decision was made by men whose talents are acknowledged, and whose characters command universal respect. Let the case, however, be fairly stated, and it will be found to bear no analogy to the subject now before us. I shall refer to the same pamphlet which has been quoted on the other side of the House, and therefore there can be no difference between us as to facts. We find in page twenty-fourth, that by the Constitution of Virginia, the two Houses of Assembly were to appoint, by joint ballot, judges of the supreme court of appeals and general court; judges in chancery, and judges of admiralty, who were to be commissioned by the Governor, and to continue in office during good behaviour. In the twenty-fifth page it is said that, by the first judicial system of Virginia, one general court was constituted with common law jurisdiction; one court of chancery, and one court of admiralty; and by the law the judges of these three courts were declared to constitute the court of appeals, but as such had no commissions given to them. In 1787, the Legislature passed a law erecting a system of circuit courts, and declared that the above named judges should execute the

duties of circuit judges, in addition to their duties as judges of the other courts. This law the judges refused to execute as unconstitutional, because they said the Legislature had no right to impose new duties on them without giving them additional salary.

This is a plain and simple statement of the case, with the decision of the court, and I am astonished that any man should attempt to apply it to that now under consideration. We do not propose to add new duties to those now performed by the circuit judges; but we propose to take from them all duties whatsoever, so that the two cases are not at all analogous. If, indeed, the opinion be a sound one, (and I certainly shall not undertake to question it,) it clearly proves that the law of last session was unconstitutional, because that law imposed new and more arduous duties on the judges of the district courts of Tennessee, Kentucky, and Maryland. It might likewise prove the bankrupt law to be unconstitutional, because it imposed a great variety of additional duties on the district judges throughout the United States. The bill now under consideration does not add new duties to those of the judges of the Supreme Court and the judges of the district courts, but replaces both in the situation in which they were prior to the passage of the law which we are now about to repeal. I must say, therefore, that this authority fails altogether.

Another decision of the same judges has likewise been adduced to prove the unconstitutionality of the present bill, which is equally inapplicable with the other; but perhaps it may be found in the end to apply more forcibly to the Judiciary system of last session. The same author from whom our opponents have derived their information, tells us (in page 30) that after the judges had refused to do the duties of circuit judges as just mentioned, "the Legislature, apparently acquiescing in their decision," new modelled the law, and established a separate court of appeals, the judges of which were to be elected by the joint ballot of the two branches, agreeably to the Constitution. The former judges, who had before jointly performed the duty of judges of the court of appeals under a law of the State, were relieved from the further discharge of it, and six of them were elected judges of the new court of appeals now created separately, others being appointed in their places as judges of the court of chancery, general court, and court of admiralty. This law they likewise declared to be unconstitutional, not because a court which had been created by law was abolished, (for the court of appeals was expressly established by the Constitution,) but because, in their own language, it was "an amotion from office of the whole bench of judges of appeals, and the appointment of new judges to the same court."

Now, sir, I aver that the very proceeding which the judges of Virginia declared to be unconstitutional was the effect of the Judiciary bill which it is now proposed to repeal. For, by the former system, the judges of the Supreme and district courts of the United States were made judges of the circuit courts, and continued to hold them until they were "amoved from the office" of judges of the circuit courts by the law of last session. So that this decision cannot apply to the bill now on the table, but is directed with great force to that passed by our adversaries early last year, and which it is our intention to repeal.

I have been thus concise in the examination of these two opinions, because it was only necessary to show the points in dispute, to convince the most prejudiced mind that they could have no bearing on the present question. They may, indeed, serve to show that the judges thought themselves authorized to declare an act of the Legislature unconstitutional; but this is by no means the question before us, although it has been dragged into the discussion.

While I am on this part of the subject, I will endeavor to prove that the last Congress set us an example of abolishing courts and vacating the places of judges, although gentlemen who were then in the majority now contend that a similar proceeding on our part will be unconstitutional. The twenty-fourth section of the Judiciary act of last session declares "that the district courts of the United States in and for the districts of Tennessee and Kentucky shall be, and they hereby are, abolished;" and by the same section it was provided that the jurisdiction of those courts should be afterwards vested in, and exercised by, the circuit courts of Tennessee and Kentucky respectively. The question necessarily arising is, what was the effect of abolishing these courts? I have no hesitation in saying that, in my opinion, the offices of the judges were likewise abolished. It is true, that by the seventh section it is declared that the circuit court of the sixth circuit shall be composed of a circuit judge, and of the judges of the district courts of Tennessee and Kentucky, thereby retaining them in office, and, as gentlemen say, not affecting their independence. This point I shall remark on presently, but will now confine my observations to that part of the law which abolishes the district courts.

The words *judge* and *court* are correlative terms, and by the Constitution are inseparably connected with each other; for in no part of the Constitution do we find any other judges spoken of than judges of the Supreme and inferior courts. A court may be composed of one or more judges; as the district court is composed of one, and the Supreme Court of six judges. It is the legal name of one man, or of a body of men in their collective capacity, vested with certain powers, authority, and jurisdiction, to be exercised by them agreeably to the established laws of the country; as the word *Congress* was, under the Confederacy, the political name of a body of men in their collective powers of a certain extent. When you abolish the court, you take from the persons composing the court all the powers vested in them as a court; as when the old Congress was abolished, they were divested of all powers vested in them as a Congress. When the district court of Kentucky was abolished, the gentleman who was then judge, was no longer judge of the district court, for there was no such court in existence. I would

ask, then, of what he was the judge? For the idea of a judge without a court is an absurdity. I trust I shall not be told that he was judge of the district of Kentucky, for the Constitution knows of no judge either of the Supreme or of an inferior court; and the judge of a district, without a court, is no where recognised by the Constitution. I think, therefore, I am warranted in saying that when the district courts of Tennessee and Kentucky were abolished, the offices of judges of these courts were likewise abolished. This is precisely the effect now contemplated. The bill upon the table, if enacted into a law, will abolish the circuit courts which were created last year, and will at the same time abolish the offices of the judges of these courts.

But we are told that, by abolishing the district courts of Tennessee and Kentucky, the independence of the judges of these courts was not affected, because they were by the same law appointed to hold the circuit court of the sixth circuit. This is the part of the law which the gentleman from Virginia said had violated the Constitution, and this opinion I do, without hesitation, concur in. By the twenty-seventh section of the act passed last session, the circuit courts then in existence were entirely abolished, and by the seventh section, new circuit courts were created. The Constitution has given to the President and Senate the power of appointing all judges both of the Supreme and inferior courts; the circuit court of the sixth circuit is an inferior court, and by the Constitution the judges ought to have been appointed by the President and Senate. Yet in the face and in violation of the Constitution, the Legislature of the last session did appoint the judges of the district courts of Tennessee and Kentucky to hold the courts of the sixth circuit, which courts were created anew by that law, and ought to have had their judges appointed by the President and Senate. This, sir, was the measure which the gentleman from Virginia said had inflicted a ghastly wound on the Constitution, and not that part of the law, as has been contended, by which the two district courts were abolished.

The gentleman from Connecticut, (Mr. GRISWOLD,) in order to show that we are not authorized to abolish these courts, and thereby to vacate the commissions of the judges, has referred us to the draught of a constitution made for the State of Virginia, in the year 1783, by the present President of the United States. It must be remembered, sir, that this is nothing more than the opinion of an individual on a subject not growing out of the Constitution of the United States, which was not then formed, and, I believe, not even dreampt of; but, as I feel a high respect for the opinions of this gentleman on all subjects, I shall beg leave to examine that alluded to by the member from Connecticut. And, to me, it is a matter of some gratification that the man who has been so long and so unjustly the object of federal calumny, should at last receive even this slight retribution from federal authority. In this reference, however, the honorable member has been peculiarly unfortunate, for it will be found that this draught of a constitution shows the opinion of Mr. Jefferson to have been, at that day, precisely the opinion which we now entertain on the subject before us. Happily for the nation, it is not the only instance in which the sentiments of the Chief Magistrate are in direct opposition to those of the gentleman from Connecticut, and his friends. If the gentleman had turned to the book itself, which I now have in my hand, instead of relying on the scraps of anonymous scribblers, who, for aught I know, are interested in giving a false coloring, he would not have been imposed on. In the third article of the plan of a constitution proposed by Mr. Jefferson, it is declared that "the Judiciary powers shall be 'exercised by the county courts, and such other 'inferior courts as the Legislature shall think 'proper to continue or erect; by three superior 'courts, to wit: a court of admiralty, a general 'court of common law, and a high court of chan-'cery; and by one supreme court of appeals." This language is very similar to that of our Constitution, which says that "the Judiciary power 'shall be vested in one Supreme Court, and such 'inferior courts as Congress may, from time to 'time, ordain and establish." Now, sir, the precise point of difference between us is, whether it was at that time the idea of the President, that the judges of these inferior courts who, I will show you, were likewise to hold their commissions during good behaviour, could be removed from office, by abolishing their respective courts. The plan already alluded to, proceeds to declare that the judges of the court of chancery, of the general court, and court of admiralty, shall hold their commissions during good behaviour; and afterwards, in page 371, provides that "the justices or judges 'of the inferior courts, already erected or hereaf-'ter to be erected, shall be appointed by the Gov-'ernor, on advice of the Council of State, and 'shall hold their offices during good behaviour, or 'the existence of their court." This, then, clearly shows it to have been the idea of the writer, that the inferior courts, which the Legislature were authorized to erect, as they might think proper, might afterwards be reduced by the Legislature, and the judges displaced, although they were to hold their commissions during good behaviour. As I before said, this is nothing more than an opinion on a subject somewhat similar to that before us, and is not directly in point; but as the member from Connecticut thought proper to call it into his aid, I think, when it is found to be against him, it may very fairly be thrown into the opposite scale.

The gentleman has likewise referred to the journals of the Convention by whom the Constitution was framed, and has said a proposition was there made, that the judges should be removed upon the address of the Legislature, as in England. As this was not inserted in the Constitution, he infers that we have not the power. Is it necessary, sir, again to repeat, that this is a power which we do not contend for? But does it therefore follow that we have not the power to repeal a law? There has been no proposition that we should exercise such a power. We have no complaints

against the judges. They may all be, as I know some of them are, men of honor and integrity. We have no desire to remove them and put others in their places, but we wish to abolish a system which, in our consciences, we believe to be useless and unnecessary, and which is supported at a heavy expense, that the nation is neither able nor willing to pay.

But, sir, I believe it has not heretofore been supposed, that a refusal by the Convention to grant a power expressly, prevented Congress from an exercise of that power. When it was formerly proposed to grant a charter of incorporation to the Bank of the United States, it was stated by a member of this House, who had likewise been a member of the Convention, (Mr. MADISON,) that an attempt had been made in the Convention to invest Congress with this power, and that the proposition was rejected; yet, this argument had no effect whatever, for Congress did proceed to incorporate the Bank, and the incorporation stands at this day. If, therefore, the present quotation from the journal was in point, we might be excused for suffering it to have no weight with us, as we should at least be justified by the precedent of federal authority. But it bears no analogy to the present question, and ought to have no influence in its decision.

The extracts which have been read from Judge Tucker's lecture, from the debates of the Virginia convention, and from the writings of "Publius," are equally irrelevant. They contain some general ideas on the independence of the Judiciary, without any definition of that independence which can possibly affect the bill on the table. The independence of the three branches of Government has, in my opinion, been much talked of without being fairly defined, or correctly understood. The powers of our Government are distributed under three different heads, and are committed to the different departments. The Legislative power extends to the enacting, revising, amending, or repealing all laws, as the various interests of the nation may require. The Judiciary power consists in an authority to apply those laws to the various controversies which may arise between man and man, or between the Government and its citizens, and to pronounce sentence agreeably to the dictates of their judgment and consciences. After the Judicial decree, it then becomes the business of the Executive to carry it into effect according to its true intent, and conformably to the laws of the land. In all Governments where they have the semblance of freedom the great *desideratum* has been, to keep these three branches so entirely separate and distinct as that the powers of neither should be exercised by the other; or, in other words, that the Legislative powers should never be exercised by the Executive or Judiciary, that the Judicial powers should not be exercised by the Legislative or Executive, and that the Executive powers should not be exercised by the Legislature or Judiciary. But there is no Government on the face of the earth, whose history I am acquainted with, in which a total and entire independence has been established. In England the judiciary hold their offices at the will of Parliament. In the States of Vermont, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Delaware, Maryland, and Georgia, the judges are either elected by the Legislature for a limited time, or are subject to removal by them; in New York, some of the judges are in the same situation; in New Hampshire, the Legislature are authorized to limit the duration of their commissions, and, I believe, are in the habit of doing so; and in Maryland, Virginia, North Carolina, South Carolina, and Georgia, the Executive is absolutely dependent on the Legislature for his continuance in office, being annually or biennially elected. In Tennessee, and in most, perhaps all of the others, both the Judiciary and the Executive are dependent on the Legislature for the amount and payment of their salaries. Yet, sir, in all these States, where we find no such idea of independence as is now contended for, there has been no confusion, no disorder. The people are happy and contented, and I venture to affirm, are more free than the inhabitants of any other part of the globe. They are happy, because none can oppress them; they are free, because they have a control over their public agents. But if the public agents of the Federal Government are to be set above the nation, and are to be invested with the arbitrary and uncontrolled powers which some gentlemen insist on, who can say where they will stop, or what bounds shall be prescribed to them? Man is fond of power, is continually grasping after it, and is never satisfied. He is not, therefore, to be trusted. Unlimited confidence is the bane of a free Government. Those who would retain their freedom, must likewise retain power over agents, or they will be driven to destruction. I have been taught to believe, that the power is never so safe as in the hands of those for whose benefit it is to be employed. I consider it in their hands when it is delegated to representatives freely chosen by themselves for a short period, and immediately responsible to them for its use. "Power in the people has been well compared to light in the sun; native, original, inherent, and not to be controlled by human means." But power, when once surrendered to independent rulers, instantly becomes a despot, and arms itself with whips and chains. While the people retain it in their own hands, it exalts the character of a nation, and is at once their pride and their security; if they surrender it to others, it becomes restless and active, until it debases the human character, and enslaves the human mind; it is never satisfied until it finally tramples upon all human rights. It is against this surrender of power that I contend; it is this vital principle of the Constitution that I never will yield. The people are the fountain of all power; they are the source from which every branch of this Government springs, and never shall any act of mine place one branch beyond their control.

But, Mr. Chairman, I will conclude. I have already said more than I could have wished, but the subject demanded it. The question has become important, and the Constitution loudly calls

for its decision. I entreat gentlemen, however, to examine calmly this new doctrine of the independence of judges, before they establish the principle that the tenure of office is to prevent the repeal of a law, by which the office is created. It will equally apply to every office under the Government for all are held equally independent of the Legislative will. It is no more in our power to remove an executive than a judicial officer, and if we are to be prevented from repealing a law, because we have no right to remove an officer, not only the present expensive Judiciary must continue, but the army and the navy may be increased hereafter, and no future Congress will be authorized to reduce them; and the odious excise duties are entailed upon us for ever. This is an extent, I presume, to which no gentleman is willing to go. It may indeed secure the judges in their offices, and afford them the much wished for independence, but it will sacrifice the independence of the nation, and render the Constitution of no avail. It may leave us the name and the shadow of liberty, but the essence and the spirit of representative government will be totally destroyed.

I therefore cherish the hope, that this Constitutional question will be decided by passing the bill upon the table, and that a majority of this House will vote against striking out the first section.

Mr. DENNIS.—Mr. Chairman, indisposed as I have been, since the first commencement of this discussion, and indisposed as I still am, prudence, perhaps, would have dictated to me silence on this occasion; and sure I am, I should not have risen at this late hour of the day, but for the observations of my honorable colleague (Mr. NICHOLSON.) Had I offered my sentiments at an earlier period of this discussion, it would have been my primary object to have taken an analytical view of the Constitutional question, to have shown what the Constitution has said, and to have proven that it means what its language certainly imports, no less a restriction on Legislative, than on Executive power. But this will now be but a subordinate consideration, and my object will be rather to pursue certain gentlemen through their boundless excursions into almost every region of our political history, than to attempt a methodical investigation of the subject before us. In the course of my observations, I beg my colleague to be assured, I shall not omit to pay him the homage of my most profound respect and high consideration; yet he must excuse me, since he has thought proper to reiterate the preliminary remarks of his friend from Virginia (Mr. GILES,) if I should assign to that gentleman the priority in the application of my remarks. And here, Mr. Chairman, I will not promise, like little David (Mr. RANDOLPH) to slay the Philistine, (Mr. GILES,) but will endeavor to aid my friends in repelling his unprovoked and ungodly attacks on the children of Israel and their illustrious chieftain; that chieftain who may be emphatically denominated the father of his country, and who was the President of the Convention who formed that sacred instrument of which you are about to make a burnt offering, a propitiatory sacrifice to appease the vengeance of party prejudice and political hostility, to a few obnoxious individuals. Great geniuses, Mr. Chairman, in the political, may be aptly assimilated to comets, in the natural world; they serve rather to excite our admiration and wonder and astonishment, than contribute to the order or perfection of the general system. Such a genius is the gentleman from Virginia (Mr. GILES.) That gentleman we all know has light in abundance, and if the path we have to explore be dark and intricate, he might have taken his lantern and have gone before us; we should have been glad to have followed him and had the benefit of his illumination. But he has departed from the highway leading to the place of destination, and, like an *ignis fatuus*, has attempted to lead us through bogs and morasses, in order that we might mire or get lost on the way. My friend from Delaware has, however, taken him by the skirts and never let go, and is the evil spirit which haunts and pursues him wherever he flies. The honorable gentleman from Virginia commenced his observations by giving us a retrospective narrative of the rise and progress of political parties, their respective views and their different tendencies. And truly, sir, the history which he gave us was such a one as I have long since read in Callender's History of the United States, and his "Prospect Before Us;" but such a one as I had not expected from the urbane, accomplished, and very enlightened gentleman from Virginia. It the more resembles these histories, because, to the best of my recollection, there is in them both an open attack on that illustrious name which was once dear to us all, and which, however it may now be sought to be tarnished by foreign convicts and a few gentlemen who stand high in the honors of their country, is, I trust, still sweet in the lips of the great mass of the American people. This great name is now to be put down, together with all those federal ramparts which have originated under its auspices, and been sheltered in its shade. But whence this hostility to this name? That great man, (WASHINGTON,) whose strong penetrating intellect and sound discriminating judgment seldom led him astray, in a letter to a citizen of Maryland, happened to express a sentiment, that the democratic party in this country had been the cause of all the expense incurred in our preparations for resistance to the French aggressions. And is this the reason why to this moment, with all power in their hands, no one has been found making one solitary effort for the erection even of a pedestrian statue, expressive of a nation's gratitude to a nation's saviour, to whom there has been assigned by the Chief Magistrate of our country, for his revolutionary services, (nothing, sir, for his civil labors) the fairest page in the volume of faithful history? The gentleman from Virginia (Mr. GILES) proceeded to state, that there exists in this country a certain party whose object it has ever been, to embrace every opportunity of extending Executive patronage, and of nerving the Executive arm, for the purpose of elevating the constituted authorities above responsibility to the public will; that with this view, they, with that great man at their head,

(WASHINGTON,) had recognised, as a favorite maxim, the paradoxical maxim, that a national debt is a national blessing. My colleague has also observed, that such a party has existed and still does exist, and has endeavored to enforce the assertion of the gentleman from Virginia. I wish, sir, these gentlemen had been a little more particular and condescended, instead of dealing in general assertions, to have given us the names, the time when and place where these sentiments have been expressed. But it is well understood that these gentlemen allude to Mr. Hamilton, the first Secretary of the Treasury, and the author of the funding system. I think it is time these assertions should be repelled, or supported by better evidence than mere assertion. In order to see how far these categorical allegations are supported by the fact, I must solicit the indulgence of the Committee whilst I read to them, from Mr. Hamilton's report of the fifteenth of January, 1795, a few passages illustrative of this subject; The report begins thus:

"The President of the United States, with that provident concern for the public welfare which characterizes all his conduct, was pleased in his speech to the two Houses of Congress, at the opening of the present session, to invite their attention to the adoption of a definitive plan for the redemption of the public debt, and to the consummation of whatsoever may remain unfinished of our system of public credit, in order to place that credit on grounds which cannot be disturbed, and to prevent that progressive accumulation of debt which must ultimately endanger all government."

In page fifty-six of the same report, after recapitulating the different acts of the Government relative to the public debt, and the revenues provided to meet it, he goes on strongly to urge the propriety and necessity of establishing a sinking fund for its speedy extinguishment. Here follows his remarks on that proposition:

"There is no sentiment which can better deserve the serious attention of Congress than the one expressed in the Speech of the President, which indicates the danger to every Government from the progressive accumulation of debt; a tendency to it is perhaps the natural disease of all Governments; and it is not easy to conceive anything more likely to lead to great and convulsive revolutions of empire. On the one hand, the exigencies of a nation creating new causes of expenditure, as well from its own as from the ambition, rapacity, injustice, intemperance, and folly of other nations, proceed in unceasing and rapid succession. On the other hand, there is a general propensity in those who administer the affairs of Government, founded in the constitution of man, to shift off the burden from the present to a future day; a propensity which may be expected to exist in proportion as the form of the State is popular. To extinguish a debt which exists, and to avoid contracting more, are ideas almost always favored by public feeling and opinion; but to pay taxes for the one or the other purpose, which are the only means of avoiding the evils, is always more or less unpopular. These contradictions are in human nature, and the lot of a country is enviable indeed, in which there were not always men ready to turn them to the account of their own popularity, or to some other sinister account. Hence it is no uncommon spectacle to see the same men clamoring for occasions of expense, when they happen to be in unison with the present temper of the community, well or ill directed, declaiming against a public debt, and for the redemption of it as an abstract thesis, yet vehement against every plan of taxation which is proposed to discharge old debts, or to avoid new, by defraying the expenses of exigencies as they emerge. These unhandsome arts throw artificial embarrassments in the way of the administrators of Government; and co-operating with the desire which they themselves are too apt to feel to conciliate public favor, serve to promote the accumulation of debt, by leaving that which at any time exists without adequate provision for its reimbursement, and by preventing from laying with energy new taxes, where new occasions of expense occur. The consequence is, that the public debt swells until its magnitude becomes enormous, and the burdens of the people increase until their weight becomes intolerable. Of such a state of things, great disorders in the whole political economy, convulsions, and revolutions of empire, are natural offsprings."

How far this report, when it speaks of a description of characters in all countries, whose business it is to indulge a constant clamor about the existence of a public debt, and who are equally noisy whenever a tax is proposed to reduce it, has described the gentleman from Virginia (Mr. GILES) and some of his adherents, I shall leave it to this Committee and the world to decide; but I am sure that his and my colleague's assertions are unsupported by the evidence before us. This man (General Hamilton) who has been constantly represented in all the jacobinical gazettes, and by the gentleman from Virginia, as wishing to create and perpetuate a public debt, it appears, was the first to propose a sinking fund for its extinguishment; in conformity with whose proposition that fund was established, and we were rapidly progressing in the extinction of the debt, and in the year 1798 had actually extinguished the sum of $3 972 873. Here, sir, our operations were suspended; everybody knows the cause, and the gentleman from Virginia and my colleague ought to remember it. French depredations were now at their height, and whilst on the one hand they diminished our resources, on the other they created a necessity for augmenting our expenditures. The question was no longer how we should best diminish our debt, but how we should save our expiring commerce, a dilapidated revenue, and defend our territory.

But, Mr. Chairman, with all our anxieties for building up this system of patronage, and for accumulating the debt to effect it; with all our predilections for the British Government and subserviency to British influence, I believe there is no man to be found among us, whose solicitudes have been so ardent, as to prompt him to propose to lend, or rather to give, to a foreign Government, five millions of dollars. Is the gentleman from Virginia (Mr. GILES) acquainted with the Governor of Virginia? Does he recollect of his being our Minister Plenipotentiary to the French Republic? Does he remember that whilst there he proposed to our Government, with no little importunity, to lend to our sister Republic, who was engaged in the common cause of republicanism

five millions of dollars, not absolutely to be repaid, but only to be repaid "if possible?" And did he express the opinion, that the people of the United States would cheerfully submit to bear the tax to raise this money, when they knew it was thus to be employed?

[Here Mr. RANDOLPH called Mr. DENNIS to order, stating it to be improper to allude to the official conduct of a man who was not present to defend himself. Mr. DENNIS being permitted to explain, said he had not approved the latitude in which some gentlemen had indulged themselves; but it must be in the recollection of the Committee that others had far exceeded him in the freedom of animadversion on absent characters; and that the gentleman from Virginia (Mr. RANDOLPH) had in a particular manner, distinguished himself by his attack on a judge of Maryland. The Chairman decided against Mr. RANDOLPH, and declared Mr. DENNIS in order. Mr. RANDOLPH appealed; the Committee confirmed the opinion of the Chairman.]

Mr. DENNIS proceeded—It is remarkable, Mr. Chairman, the sum which that gentleman proposed to lend or rather grant, to the French Republic, was precisely the sum which we have borrowed at eight per cent. The only difference between us is this; that gentleman was willing to tax the people for the benefit of a foreign Government, and the money lent might have been, and probably would have been, employed in building vessels to prey upon our commerce. We were of opinion that it was better to borrow money, even at eight per cent. than to submit to the loss of our commerce; and that to employ it in procuring the necessary implements of war, for the defence of our territory and the assertion of our invaded rights, would be making a proper use of our money. But does the gentleman (Mr. GILES) suppose that Mr. Monroe, in his willingness to accumulate our debt, was actuated by the political maxim, that a public debt is a public blessing? And is that gentleman, notwithstanding, still high in his confidence? If we have ever expended money, we have erected forts and fortifications, replenished your arsenals and magazines with arms and military stores, and put into your hands a valuable navy, which we have employed to much advantage ourselves; a part of which the present Administration is now employing to advantage, and still will continue, I hope, so to employ. We have consolidated your resources, provided for the debt of the old Confederation, and left in your hands, after all the difficulties we had to encounter during a war, unexampled on many accounts in the annals of nations, more than four millions of national property.

But my colleague (Mr. NICHOLSON) has said a great deal about the war-worn soldier having petitioned Congress for a discrimination in his favor, between the original holders of the national debt and those in whose hands it was at the time this Government provided for its payment; and that when he petitioned he was scornfully rejected, sent away to starve, and the speculator is now rolling in his chariot and fattening on his spoils. Here, Mr. Chairman, my colleague is wholly mistaken in point of fact, for your war-worn veterans never did petition for a discrimination. They had no interest in a discrimination, for after they had sold their claims to these speculators, though they had great reason to regret they had done so, they had no claim and never set up any claim on the Government. The old Confederation was considered as bankrupt, unable to pay its debts; and not foreseeing the establishment of a Government better disposed, and more competent to do it, some of these soldiers sold their certificates for whatever they could get; and those who sold have never petitioned us. Perhaps he alludes to certain cases barred by the statute of limitations; if so, he will do me the justice to say, that I have been always in favor of the war-worn soldier, who has a claim, though it may be barred by the statute. If he will look around he will find as many of his political friends, who have opposed the opening of this statute, as of his opponents; and it is not at all a question connected with those different views which characterize the different parties. With respect to the proposition for discrimination between the purchaser and original holder, I shall be permitted to remark, that the principle in the first place is extremely questionable, and in the next is impracticable in its execution.

[Here Mr. DENNIS proceeded to animadvert on both these propositions at some length.]

He then proceeded—But, Mr. Chairman, why do these gentlemen talk so much about paying the war-worn soldiers; have they ever consented to a tax to raise money for them, or for any other purpose?

But, sir, we have created an army, according to the gentleman from Virginia (Mr. GILES) not because the threatening aspect of our affairs required it, or our views of impending danger suggested the propriety of the measure, but for the extension of Executive patronage; and, according to the intimations of my colleague, (Mr. NICHOLSON) to overawe five hundred thousand freemen, with arms in their hands and courage in their hearts, and humble them in dust and ashes. Since these gentlemen so often allude to the expense of the army, without any allusion to the crisis in which it was created, I must beg leave to recapitulate some of the circumstances which existed at the time. France, inspired with Roman ambition, and setting up pretensions to Roman supremacy, was at this time overstriding Europe, and trampling under foot every Republic in that quarter of the globe. The patriots of these Republics (for they had their patriots) complained of the tyranny of their rulers, the heavy taxes which they imposed, and called on this kind-hearted Republic for aid and assistance, to remove these oppressions. All on the alert, she readily obeyed the summons, invaded them as a friend, and demolished their ancient institutions, substituted in their place a military despotism, and at the point of the bayonet levied contributions in a few months, to an amount greater than these people had before paid for their own benefit in half a century. This, however, was then styled liberty and republicanism.

By the treaty of Campo Formio, the armies of France were liberated from employment in Europe, and they had nothing to do but look out for foreign conquests. The importunate demands of the soldiery for their pay, and the inadequacy of the means to pay them, rendered it very desirable to the Directory to get clear, on any terms, of fifty or a hundred thousand men. Bonaparte had collected at Brest and Toulon forty thousand veterans, with every requisite to transport them wherever his enterprising spirit might direct him. His destination was the subject of conjecture, and we had as much reason to apprehend it was for Louisiana, or some part of the United States, from the irritation which they had discovered towards us, as to suppose it was for the invasion of Egypt, whose barbarian regions held out much less inducements, and who had not provoked their resentment. In this situation we created a small military force, not to supersede the use of the militia, but who might be in readiness to meet the first onset of the invader, infuse into them a spirit of military discipline, stand in front of the battle, and cover a retreat, if a retreat should be necessary. This was my motive in raising this army, and I believe it to have been that of all those who united in the measure. Nor do I know, but for Nelson's victory and Suwarrow's campaigns, which we had not the powers of prophecy to foretell, these gentlemen would now be constrained to acknowledge the wisdom of the measure, and to regret that it was not further extended, instead of denouncing us as the enemies of the liberties of our country and its republican institutions.

Again, sir, we are told we created a navy; not because the French Republic, after plundering us under one pretext or another, for five years together, at length issued an *arrêt* which authorized an indiscriminate seizure of your merchantmen, and amounted to an universal proscription of your commerce. Not because her gun-boats were found in your own jurisdiction and limits, searching your most valuable shipping in your very ports and harbors; but for the purpose of strengthening the arm of the Executive, and introducing principles of the British monarchy. Those who are conversant with the history of that period, must remember that the only question to be decided when this navy was created, was, whether we should abandon the ocean, and basely surrender our unquestionable rights, or determine to defend them with all our energies. Whether we should abandon a commerce little inferior to that of any nation in the world; give up seven or eight millions of revenue; nine hundred and twenty thousand tons of shipping; sixty thousand seamen; and leave to your merchants the forlorn hope of deriving their subsistence from the plough, the axe, or hoe, and of being reduced to beggary and starvation; or whether, animated with the spirit of freemen, we would determine to protect them against the unprovoked aggressions, even of this mighty Republic. And it is well known, that the party opposed to us were disposed to consider the mercantile part of the community as so many outlaws, unworthy of our protection. The gentleman from Virginia (Mr. GILES) has now discovered the importance of your merchants, and thinks there ought to be a strong sympathy between them and the Government; for they collect your revenues, and may greatly defraud you, unless you conciliate them by a reasonable attention to their interest. A friend in need, sir, is a friend indeed; and the sympathies of this gentleman and others, ought to have had an ample reason for their exercise on the occasion I allude to; but these benevolent sentiments at that time had no room in their breasts; This navy has re-produced again and again, the reimbursement of its expenses, and in a financial view has been all important. They talk of the direct tax; of their's being the repealing system; of abolishing the internal revenues; and claim great credit that they are enabled to dispense with them. What is the source from whence you derive ten millions of dollars? You must answer, from commerce. What would have become of this revenue, if, according to their system, it had been abandoned to its fate, and no navy created for its protection? What, if, according to them, we had not permitted the merchants to arm their own ships at their own expense? What would have been the resources on which you would rely for the payment of your debt, which they tell us they mean honorably to discharge, without borrowing? and what your means to meet the ordinary expenses of your Government? Alas! but for this navy, and the measures of those whose motives it is so desirable to gentlemen to asperse, instead of repealing your internal revenues, you would have been now under the necessity of increasing them tenfold! We have enabled them to pay the debt, to pay their friends now at the head of affairs, and to repeal the internal taxes, by the protection of our commerce; and whilst they claim all the credit from this measure of repeal, they cease not to villify the only act without which it could not have been accomplished. The only thing to be lamented, sir, is, that the creation of your navy was so long postponed; for otherwise we should not now be called on by your mercantile citizens for a reimbursement of those twenty or thirty millions which have gone into the pockets of French privateersmen.

But, Mr. Chairman, let us have a word or two on the subject of this Executive patronage. My colleague has said, we have looked up to the British monarchy as our prototype, and has read to us a passage from "Blackstone's Commentaries," to prove we have been servilely devoted to the principles therein contained. If he means that there is, and has been a party in this country that believes that the House of Representatives is not the sole depository of power in our Government; but that the Executive is as much the representative of the people for executive purposes, and the Judiciary the agents of the people, for judicial purposes, as we are for Legislative purposes; and that this party has constantly maintained a conflict, for the purpose of preserving to each department the powers which have been delegated to them by the people, against those who have un-

ceasingly exerted themselves to draw all power into the hands of this body; then I confess myself obnoxious to the charge. We have apprehended, on the contrary, that a success on the part of our opponents, in prostrating the Executive power with respect to treaties and foreign intercourse, so often essayed under the former Administration by the friends of the present Executive, and other powers which belong to that department over which this House has hitherto claimed a control; and as we now suppose the prostration of the Judiciary, which will be the inevitable result of this measure, would establish over our free and happy country, a legislative despotism, no less tolerable than the despotism of a monarch. That having broken down the other branches, they would proceed to organize their committees of Interior and Exterior Relations, of War and the Navy, of Finance, and ultimately of Justice; and absorb all the powers of Government in the tremendous vortex of legislation.

Mr. Chairman, the era of Executive patronage is precisely coeval with the commencement of the present Administration; yes, sir, it has been reserved for this Administration to attempt to establish a complete dominion over the heretofore free minds of your Executive officers, and to invade one of the most sacred rights of an American citizen, the right of suffrage! To expect, sir, that any President of this country can ever render himself formidable to our liberties by directly arrogating powers not vested in him by the Constitution, is farcical in the extreme. Our ancestors emigrated to this country, when regal prerogative was in its meridian in the mother country; and, persecuted and suffering under the pressure of executive authority, all the jealousies of their descendants are directed to that quarter. But they are not aware of the various shapes which the Legislature may assume, from the indefinite nature of their powers, for the establishment of an unlimited authority. The Executive power is more definite, and the Executive Magistrate in this country who shall ever attempt a struggle with the Legislature, must yield in the conflict. But he may stoop to conquer, and by appearing to submit himself to the will of the Legislature, in order the more completely to govern them, and through them the people, under pretext of economy, or some other pretext, may rule us with an iron rod.

My colleague has said, he has heard of but few removals from office of Executive officers, and those defaulters and old tories. He has formerly been in the habit of reading newspapers, for I recollect he gave us an account, which he said was taken from a newspaper, at the last session, of a man who died a victim under the Sedition law, who turned out still to be alive; and if he continues to be in the same habit still, he must have seen accounts of twenties and fifties of officers turned out of office, who were of neither of the descriptions alluded to.

Indeed I have known many war-worn soldiers deprived of their offices, but no old tories. But suppose there were some of them old tories, if they had been ousted to make room for whigs, there would have been some excuse; but to turn out old tories to put in old tories, did not appear to be altogether consistent. [Mr. DENNIS then proceeded to state some instances of this nature, in support of his proposition]

The gentleman from Virginia (Mr. GILES) has told us, that the tenure of good behaviour in the judges is only restrictive on the Executive, because it is an exception from the power previously delegated to the President, of displacing all other officers at pleasure. Has he shown us the passage in the Constitution which gives the President this general power of removal? He first supposes the power to exist by express delegation, which is no where to be found, and then makes this an exception from it. But he thinks he finds this power in the right of the President to commission all officers; and says, as he is to judge of the nature of the commission, he will of course commission them during his pleasure. Admit, sir, that he possesses this power under the Constitution, (but the truth is he possesses it under a Legislative act,) still it is but a constructive power, and the remark of the gentleman from Pennsylvania (Mr. HEMPHILL,) that they make one implication assist another implication in bolstering up this authoritative claim, remains unshaken. We have been told by my colleague and others, that the Legislature possesses the same power of creating and putting down courts and the judges, as of dismissing excise officers, and of changing post roads and postmasters; but these gentlemen wholly forget, that in relation to these no restriction on the Legislative power exists with respect to the tenure of their offices: and on this principle the tenure of good behaviour means nothing, and is no restriction whatever. I have, however, said that our opponents claim not only the prerogative of a British monarch, but also the omnipotency of the British Parliament; and as I think I have proved the first, will endeavour to support the second proposition. Here let me add together the different propositions which different gentlemen have advanced, in favor of their claims to legislative supremacy, and let me then resort to Sir Edward Coke's definition of the extent of Parliamentary authority, and I think it will result from the comparisons, that there is scarcely any power contained in the one which is not included in the other. The gentleman from North Carolina (Mr. WILLIAMS) says the sovereign power here, as in all other countries it must do, resides in the Legislature. The gentleman from Massachusetts (Mr. BACON) supposes we have the same power over the judges as over any other officer. A gentleman from Virginia says one Congress can undo whatever another has done (notwithstanding a Constitutional prohibition to the contrary.) My colleague (Mr. NICHOLSON) says the power of the people is like the sun, original and inherent, and we possess their power as their immediate representatives; and the gentleman from Kentucky has discovered a cure for all difficulties, and with his sweeping clause, tells us Congress have the power of providing for the general welfare, and may do whatever they may choose

to declare is for the public good. Now, sir, I will read to you the definition of the powers of the Parliament, and will defy those gentlemen to show me one of the high and mighty prerogatives inherent in that body, which they do not contend for.

[Here Mr DENNIS read, from Blackstone, Sir Edward Coke's definition of the powers of Parliament.]

He then proceeded.—Shall I be told, sir, they do not claim the ecclesiastical power? No, sir, for they are claiming an exemption from all the limitations of the Constitution, and converting it into an unlimited power of legislation. Yes, sir, to complete the catalogue of their unlimited demands, we are told the judges are bound to pocket their oaths, when they are called on to decide between a law and the Constitution, and are bound to yield to the will of Congress declared by law, rather than the will of the people proclaimed through the Constitution; that Congress, the creatures and agents of the people, are greater and more powerful than their creators, the people themselves. Congress, sir, are the attorneys of the people, and to them, the people, who are our principals, have not given an unlimited but a special authority to do certain things, and have expressly forbidden them from doing certain other things. We, however, not only do things not within our commission, but something expressly forbidden, and the judges are called on to decide between the people, their principals, and us, their agents; and we are told they are bound to decide, in this case, in favor of the usurped authority of the agent.

The Constitution declares, "Congress shall make no law respecting an establishment of religion," &c. Suppose we make a law establishing a national church, and compel persons of every religious denomination to attend that church under a certain penalty. Other sectaries refuse to comply, incur the penalty, and are prosecuted for its recovery. The defendant pleads the Constitution, which is the act of the people and the paramount law, and you say the courts are bound to convict them. Again, "Congress shall make no law abridging the freedom of speech or of the press." I have thought there is a distinction between the freedom and licentiousness of the press, and that, though a man publish what he pleases, if it be not wilfully and maliciously false; if he publish what he knows at the time to be false and malicious, in order to stir up sedition, tumults, and opposition to legitimate authority, he is an offender, and ought to be punished. But suppose, instead of punishing, as did the Sedition act, only malicious fals hood, Congress, in imitation of the Directory and Charles the First, should determine to put down all the presses which they suppose unfavorable to their ambitious views, and declare no man shall publish a newspaper without a previous license from an officer appointed by the Government; and suppose a printer proceed to edit a paper after being refused this license, and he is prosecuted, are the judges bound to convict? They say they are. Then, sir, the judges are the creatures of the Legislature, and not of the people; and whether they belong to us or the people, is the question now between us. Shall they be our judges, and as in England they are said to be the mirror which reflects the image of the King, here reflect our image? If so, instead of being a security to the lives, liberties, and property of the people, they are to be made the engines of party vengeance, and the efficacious weapons of arbitrary and tyrannic power. Charles had his Star Chamber, and Robespierre his Revolutionary Tribunal, and by the sanction which the forms of justice gave to the indulgence of their wicked and vile propensities, they were enabled to veil the acts of oppression which their private animosities and aspiring views might prompt them to execute on suffering innocence. In this country, we may have our Hampdens and our Sidneys, some great characters, whose resplendent talents, whose prominent virtues, may render them obnoxious to the Government, and the united rays of Legislative and Executive indignation may kindle upon them; to what refuge will they fly? Shall I be told, if their estates are confiscated, if Legislative attainders should denounce them as traitors to their country, a Judiciary, the mere creature of the Legislature, is to protect them? Should they be imprisoned by the exertion of usurped authority, shall I be told we have a habeas corpus to bring them and their cause of commitment before the eyes of the public? Your habeas corpus is worse than nothing in the hands of judges, the mere sycophantic minions of Legislative influence. Tell me not I am winging my flight on fancy's pinions; the Constitution has supposed the existence of these abuses, and to say they will not happen is to be wiser than the Constitution. Let us, sir, be more just to that enlightened and patriotic Convention who formed that instrument, than to suppose they meant to guard only against the remoter evils of Executive influence, and leave your Judiciary to the varying dominance of alternate Legislative factions. No, sir, they read of Legislative attainders, Legislative confiscations, and Legislative banishments, and therefore declared, "no bill of attainder, or *ex post facto* laws, shall be made." Nor were they such mere novices in political science and the knowledge of human nature, as not to know, that these paper restrictions were of little avail without the practical means of giving efficacy to these declarations. And it was for this purpose that they rendered the Judiciary a co-ordinate department of our Government. I can hardly forbear to smile at the ridiculous conceit, when I consider this subject in connexion with the constitution of Maryland. That constitution declares, "the independence of the judges is essential to the upright and impartial administration of justice and a great security to the lives and liberties of the people." Against whom are the judges this security? They answer, only against the Governor. Who is the Governor, and what the extent of his powers? The mere President of a Council, who, together with himself, are annually chosen by the Legislature, and possesses scarcely any attributes of sovereignty, whilst the Legislature are invested with almost unlimited power. Now let me ask our opponents if it be expedient, if it be desirable to any party, that all our politi-

cal prejudices, our party passions, should mingle themselves in our Judicial tribunals; that causes should not be decided according to their merits, but according to the political principles of the litigants? Spies and delators will swarm around, and hold inquisitions over your courts; and instead of applying to the Executive, as at present, for removals of Executive officers, a base sycophantic tribe will assail us with continual applications for the abolition of offices.—"In a certain cause, a certain judge has abandoned his party and decided in favor of an aristocrat, and has held doctrines incompatible with republicanism; he no longer deserves well of his party, and his office must be abolished, to make room for a more zealous partisan." Such will be the language of your patriots, and such the result of the principles of the bill before us.

We are about to revive the old system; a system which heretofore has been universally admitted to be defective, but which is now discovered to be susceptible of no amelioration.

Here, sir, I cannot but express my own, and I am sure the world will unite in the expression of their astonishment, that they should declare, that a federal Congress, who never did one solitary thing before which has not called down upon it the reprobation of these gentlemen, should have made on the first experiment, a system involving above all others the most complicated and difficult questions, which is so entirely perfect as that the united republican wisdom of all the departments cannot discover one single amendment. Sir, I cannot believe it, but must suppose that this old system is to be restored, not because it is the most perfect which can be devised, but because it may be more compatible with the views of our opponents to provide for some of their political friends than the one now in existence. It will not do for them to abolish the existing courts, and re-enact them for the purpose of substituting, in the place of the present judges, others of their own political principles. This is too bold a measure even for the enterprising spirit of the majority to attempt. But they may restore the old system, and add a few of their friends to the Supreme Court. But have they answered the objections to that system? Have they refuted the invincible observations of my friend from Delaware, on the oscillation of justice, and the irretrievable injury resulting to suitors, from the constant change of judges, with their predilections for, or their antipathies to the varying practice of different States? No, sir, here little David himself, in the stoutness of his heart, thought proper to shrink from the conflict. Alas! he had now lost both his stone and his sling, found it prudent to fly from the field of battle, and had ample reason to regret his disobedience to the admonition of Saul, for refusing in his eagerness for the combat to bring with him his brazen hemlet and his coat of mail. Are they afraid to give this system one year's experiment, lest it should refute their calumnies, and demonstrate to the public that these judges, whom they are pleased to denominate pensioners, will have business enough, and more than they can perform? I will dare predict, sir, that another session shall not have transpired, when they will discover, what everybody now perceives, the defects of this very perfect old system, and improve it by the addition of seven new judges. Can nothing stay the uplifted arm of party vengeance from prostrating our political fabric in the dust? It is in vain that we have with us in opinion the whole choir of Virginia judges, formerly expressed on an analogous occasion; and among these I recognise the names of Pendleton, of Wythe, of Tazewell, of Tucker, of Tyler, and of others, who for the respectability of their legal and political information, are, with our opponents, in high estimation, and all of whom are associated in their political labors with a majority of this Committee. It is vain that the nation is divided, and men of all parties, respectable for their information, contemplate this repeal as aiming a vital blow at the fundamental principles of the federal compact; yes, they have commenced the work, and it must be accomplished. It is equally vain that we recommend to them the perusal of Mr. Jefferson's Notes on Virginia, in which he deplores that in that State all the powers of the Government were resolved into the will of the Legislature; that it had been the intention of the framers of their Constitution, to keep separate the three departments; but as the Judiciary and Executive were left dependent on the Legislature for subsistence, and some of them for their duration in office, the Legislature were daily in the habit of directing them both, in the performance of duties exclusively delegated to those departments. We deplore the circumstance, that by these means there was a consolidation of all power in the hands of the Legislature, which, says he, is precisely the definition of despotism. It does not avail us that they are chosen by ourselves, an elective despotism, says he, was not what we fought for. We are to reject, however, all those high authorities and many others, and all those important considerations, in pursuit of British analogies.

Sir, there are but two alternatives if we abolish this system. You must either increase the number of the judges of the Supreme Court, in which case no money will be saved, or devolve on State authority the execution of your laws. I have always conceived the greatest improvement of this Constitution over the old Confederation, consists in its having the capacity to act on individuals and not on States merely, in their corporate capacity. But we are now to be carried back to that old exploded system, and as we formerly depended upon requisitions for revenue, are now to resort to them for supplies of justice. In case of conflicting laws between the States and the United States, we are to depend on State judges, the dependants of State authority, and the servants of State Legislatures. Here, Mr. Chairman, I find it vain for me to attempt a development of all the different topics. I feel myself greatly exhausted, and I feel for you, sir, and for the Committee. It was my intention to have given a particular detail of the circumstances attending the Presidential election; but I will content myself with a few

remarks concerning it, and conclude with them my observations on the bill before you. The gentleman from Virginia (Mr. GILES) has mentioned this subject for reasons apparent to us all, but from his own statement, that perturbation, and those angry passions with which he would persuade us the act of last session was accompanied, were excited long subsequent to the passage of the bill. He has read to us the journals to show, that when the bill was returned, signed by the President, we were about to proceed to the twenty-sixth ballot. But the bill had originated and passed this House, gone to the Senate and passed through its various forms, before we commenced that operation which excited that ill humor and those party feelings which he attributes to that transaction.

But that gentleman is under a great mistake in point of fact. Yes, I believe the general idea, during that memorable occurrence, was, that we were influenced with all that passion and irritation which party zeal and mutual hatred could inspire, and were tearing each other to pieces, whilst shut up in conclave. Nothing, however, is more remote from the fact. Called on to ballot periodically, and liberated from that rigid confinement to our seats, necessary in the transaction of our ordinary business, we were at liberty to mix together, and indulge ourselves in social intercourse; and since I have been a member of this body, I never saw so much freedom of communication and good nature displayed by gentlemen of different parties, as prevailed on that occasion. I happened to be one of those who were rendered conspicuous from having it in my power to decide the vote of a State. From the moment I knew the two candidates, I did not hesitate to decide that, in my opinion, the interests of the nation would be best promoted in the election of the Vice President. The friends of these gentlemen had presented them to us as equal in their view, and constitutionally they were equally favored with the public will. I did believe there was great doubt on which side the majority of the people preponderated. Almost all those denominated federalists, I did presume, preferred Mr. Burr; and, by adding to them his particular friends in New York and elsewhere, it was problematical, at least, whether he had not with him the major part of the community. One gentleman (Mr. RANDOLPH) has alluded to the blank votes, which from certain States were the evidences of a dereliction of the contest; and has intimated that they were put in from a fear of responsibility, and for purposes of concealment. That gentleman was at the time applying his observations to the gentleman from Delaware, and it is wonderful he did not perceive that as he (Mr. BAYARD) was sole Representative from the State, that object would not have been effected. It is a notorious fact, however, that before the ballot, it was known by the whole delegation of Maryland, and of other States, who put in the blanks, and to all those who sat in the vicinity of them, that this was the mode in which the contest was to be abandoned. Our reasons for this mode are best known to ourselves. I have no particular objection to explain them, however, had they any application to the subject before us. I will now conclude, though I have not exhausted the observations which I had to make on this subject, and with great cheerfulness resume my seat.

Mr. S. SMITH.—The question, Mr. Chairman, is not whether it was the President or Vice President of the United States whom the people meant should preside over the affairs of the Union. The question is not whether Bonaparte ought to have detached the right wing of the army of Egypt to this country, in order to verify the fears of certain gentlemen. The question is not whether the President was justifiable in selecting for the high offices of Government, men eminent for their talents, men distinguished for their republican principles, for their abhorrence of the system heretofore pursued, and friends to a system which the people had, by their late elections, strongly marked as that which they wished to be adopted. The question is not whether Mr. Charles Pinckney, who signed the Constitution of the United States, a gentleman always high in the confidence of the citizens of South Carolina, whom they had twice elected their Governor: whose services were so highly approved, that immediately after his last term as Governor had expired, the Legislature of that State had chosen a Senator of the United States, was or was not a bad character. The question is not whether Mr. Edward Livingston, whose shining talents are well known to members in this House, had discovered some new merit that had induced the President to believe him fit for the post of District Attorney. No, sir; the question is, shall the first section of the bill (now on your table) to repeal the act entitled "An act to provide for the more convenient organization of the courts of the United States," be struck out? This subject, Mr. S. said, had been very properly divided into two parts, the one the constitutionality, the other the expediency of the measure.

To prove that Congress have not the power to repeal the law in question, the gentleman from Pennsylvania (Mr. HEMPHILL) has favored the Committee with his observations, nor had he, Mr. S. since heard anything on the Constitutional point that had not been embraced by the speech of that gentleman. He had been fully answered in a very luminous speech by the gentleman from Virginia, (Mr. GILES,) and very ably by the other gentlemen on the same side of the question. It will not, Mr. Chairman, be expected that one whose pursuits in life have not been professional, will attempt to expound the Constitution to this enlightened body, even if he had the power. Mr. SMITH said he would not be able to find one idea not already presented to the House by gentlemen who had preceded him. He hoped, however, that he would be permitted to say, that in that House, in the Senate, nay, throughout the United States, gentlemen learned in the law were divided on this question. Did this division arise solely from a collision of sentiments? Or did it arise from the line which divides the parties of this nation? Wherever he looked he found the professional gentlemen of one party (with a few exceptions) giving their decided

opinion one way, and those of the other directly the reverse. How then are men not professional to form their opinions on this great and important question? He knew but one way; that was, to read the Constitution with care, with attention, and to judge for themselves. This, Mr. S. said, he had done, and he had no hesitation in saying, on the oath he had taken, that Congress had the Constitutional power to pass the bill on your table. In this opinion he was warranted not only by the opinions expressed in this House, but by men highly respected for their talents, integrity, and enlightened understanding, in the different States. He had seen the opinion of a great law character in Massachusetts; he had understood it also to be the opinion of a gentleman in Connecticut, not inferior to any in the bar of that State. He knew it to be the opinion of gentlemen of the very first legal abilities in the State of New York. It was unquestionably the opinion of some of the legal characters, the most eminent at the bar of Philadelphia; and the letter read yesterday had shown it to be the opinion of the greatest law character in that State (he meant the Governor) that Congress had the Constitutional right to repeal the law in question. In the State of Maryland, Mr. S. said, many gentlemen, learned in the law, concurred with him in opinion on this important subject. One gentleman of high federal authority had told him, that he had no hesitation in saying, that Congress had the Constitutional right to repeal the law of the last session, but that Congress were bound to provide for the payment of the judges' salaries. This opinion, high in authority, concurs fully in the power of the Constitutional right Congress has to pass the bill before you. The providing for the judges' salaries will be an after consideration. Congress may hereafter determine whether men rendering no service ought to be paid out of the public treasury. He might, he said, go through the States southward, and quote the opinions of gentlemen equally eminent for their talents and ability, confirming the one he had formed, but this he conceived would be unnecessary.

When the gentleman from Virginia (Mr. Giles) had quoted the statutes of Great Britain, he did not understand him to give them a preference over the Constitution under which we act. On the contrary, he quoted them to show, that although the judges were removable by a joint vote of Parliament to the King, yet that it had never been said that the judges of England were not sufficiently independent; their complete independence has been admitted by gentlemen here, and has been the glory and boast of Englishmen. An instance of that independence had been given in their conduct in the case of Wilkes, read (with a contrary view) by the gentleman from South Carolina. The gentleman from Virginia (Mr. Giles) meant to show, and in his opinion did show, that if the judges of England had been deemed independent for ages, although removable by a joint address of Parliament, that the judges of the United States were much more so, when, agreeable to his construction of the Constitution, they were not removable in any way but by impeachment, or when the courts in which they presided were deemed by the three branches of the Legislature to be useless and unnecessary. The gentleman (Mr. Giles) stated emphatically, that the judges were not removable from office, either by the President, or by the two Houses of Congress. But he contended, and with great force, that the power which had organized new courts, could constitutionally put them down. In answer to this, the gentleman from Delaware had said, and seemed to rely much on the observation that it is truly paradoxical, that the body having the power to check, should be at the feet of the body to be checked. The gentleman from Delaware has himself favored the Committee with a solution of this paradox; for he has said, that by the Constitutions of Delaware and Pennsylvania, judges in office during good behaviour may be removed by a joint address of two thirds of both branches of the Legislature to the Governor. On such address the Governor cannot refuse to remove. Here then the gentleman has himself shown, that the judges of Delaware and Pennsylvania having the power to check by declaring a law unconstitutional, can be brought to the feet of the body checked, to wit, the Legislature, who can, by a joint address, cause them to be dismissed; yet those judges are quoted by the gentleman himself, as being completely independent. Will the gentleman from Delaware say, that the judges of that State are as secure in their offices as the judges of the United States, under the construction of the Constitution assumed by the majority? He certainly will not. The gentleman from Delaware has said, that worse men will probably succeed the present majority, who will repeal the Judiciary laws, and re-enact them immediately, for the express purpose of dismissing the judges; and this, he says, has been done in Maryland. In that State, the gentleman said, they had repealed their Judiciary law for the avowed purpose of dismissing certain judges obnoxious to their politics, and re-enacted the same law without making one solitary amendment. The gentleman was totally mistaken. The fact is, that many valuable amendments had been made.

His colleague (Mr. Dennis) had also said, that the gentleman who had introduced the bill to repeal the judiciary law of Maryland, had avowed that his sole object was the dismissal of the judges. Suppose this to be the fact, does it prove that the law was passed with that view? No, sir, the law would not have passed, had there not been many and very beneficial amendments introduced into it. Mr. S. said, he believed that this was not the first attempt made in Maryland. His colleague, (Mr. Dennis,) would remember an attempt to put down the General Court, and make the judges ride the circuits to each county; lest however he should have forgotten, he would remind him that the gentleman who had proposed putting down the court, had likened it to a faro table. His colleague will probably recollect that he was himself the prime mover in that attempt. His colleague, (Mr. Dennis,) had read a part of the Bill of Rights of Maryland, and said, he could not but smile when he heard a gentleman from

that State (Mr. Nicholson) endeavoring to destroy the independence of the judges, in direct violation of the Bill of Rights of his own State. Had this gentleman read farther, he would have found that a judge of Maryland "holding his office during good behaviour" may be removed by a vote of two-thirds of each branch of the Legislature. Is their security in office, Mr. S. asked, equal to that of the judges of the United States? And yet his colleague would not say, that the judges of Maryland were not independent. Mr. S. then said, that although unequal to the discussion of the Constitutional question, yet he hoped he might be permitted to judge of the expediency of the measure. It had been objected to the old Judiciary system, that men, venerable for their years, were unequal to the labor of travelling from one end of the United States to the other to hold their courts; he would admit that two of the judges of the Supreme Court were advanced in life, but he could not admit that the other four were; they were all younger than himself. But he asked, why did the judges ride? They were not compelled by law. It was optional with themselves, under the first law, to have divided the circuits, so as each should have taken that circuit most convenient to himself, nor is there anything in that law as it now exists to prevent them. Why did the judges not make such a division? Perhaps, he said, they might have had a desire to see the country, and proposed riding, or it may be that a mode so troublesome might be expected to promote the favorite object of confining their duties to their holding the Supreme Court only. If that was their object, they fully succeeded by the passage of the Judiciary bill, now meant to be repealed. When the present bill has passed, it will be fully in our power (and he would not vote for its passage, if he was not perfectly assured that it would be done) to introduce a bill amending the old system, so as that each judge of the Supreme Court shall have his particular circuit designated, at which he shall preside. For instance, the United States may be divided into seven circuits; the first circuit to include New Hampshire and Massachusetts, where Judge Cushing may preside, his associate judges to be the district judges of those two States. The second circuit to include Vermont, Connecticut, and Rhode Island, where Judge Patterson may preside, and his associates may be taken from the district judges of those States. The third circuit to include New York and New Jersey, where Judge Marshall may preside, and be associated with the district judges. The fourth circuit to include Pennsylvania, Delaware, and Maryland, at which Judge Chase may preside. The fifth to include Virginia and North Carolina, at which Judge Washington may preside. The sixth to include South Carolina and Georgia, at which Judge Moore might preside. The seventh to include Kentucky and Tennessee, which may be conducted as it now is, or it may return to the ancient system, or a new judge of the Supreme Court may be appointed to preside there, as gentlemen from those States may conceive will best answer the interests of their fellow-citizens. On this plan, the objections of the gentleman from Delaware (to wit: that three judges had, all coming in turn to one court, decided differently on the same case,) will be avoided. This system will satisfy the bar of Philadelphia, for it will secure to them a court in the same manner as it now is held, with the additional dignity of having at its head one of the Supreme Judges of the United States; and it will obviate the objection made on account of the judges travelling; none of the gentlemen will have more riding than what will conduce to their health; and above all, it will avoid that want of uniformity in decisions, which must result out of the present system. It has been observed that more speedy justice is had in the courts of the United States than in the State courts, and therefore strangers would prefer going into them. It is true, Mr. S. said, that this had been the case, when the judges of the supreme courts presided in the circuit courts, but not so now. He spoke only of Maryland: in the last circuit court held in that State, a rule was adopted and established, by which it requires the same time to obtain judgment in that court, as it does in the General Court of Maryland. Here, then, is an essential difference already commenced in the manner of conducting our courts. For instance, a citizen of Maryland sues a citizen of Pennsylvania in the circuit court of that State, and recovers the first or second court; the same citizen of Pennsylvania brings a suit in the circuit of Maryland, and to his astonishment he will find his recovery procrastinated from year to year, perhaps for four years; thus the plaintiff is greatly injured, so far as relates to the State of Maryland by the new system. Let us go back, he said, to the ancient system, and we may then expect an uniformity in the courts throughout the Union.

Mr. S. then said, that he would take leave to remark on some of the observations made by gentlemen in the course of the debate. The gentleman from Virginia (Mr. Giles) had taken a very masterly view of the measures pursued from the commencement of the Government, which, in his opinion, led towards monarchy; he criminated the views of none, but showed that such measures, had they been pursued, would have gone to the destruction of our republican form of Government; he terminated this view by showing that the Judiciary law was passed the last session by an expiring party, not as a shield to protect them, but as a strong arm (to which they willed all power) held over the Administration, always uplifted, and ready to thwart, perplex, and strike the Government. And has not the gentleman from Delaware fully warranted this opinion, when he said that the judges ought to be of a different opinion from the Legislative and Executive branches? For those two, he said, will always come into power with the same sentiments and at the same time. Is it not fair then to conclude, from this candid declaration, that the law which gentlemen from the Federal party would not themselves permit to pass in 1800, when they retained the power, they did pass in 1801, when they knew that all

power had been taken from them? Is it not fair to conclude that the law was passed for the sole purpose of embarrassing the new Administration, by a new corps of men, clothed with omnipotent power, and hostile towards it? And is it not just, is it not right, to repeal a law passed with views so wicked? It has been said by the gentleman from Delaware, that he never did hear a Federal man even hint the most distant wish towards a consolidation of these States. He could not doubt the gentleman's veracity; but he would say, that he (Mr. S.) had been warned by a Federal gentleman against the Judiciary bill, when introduced in 1800; he had been then told that this was considered as an entering wedge, and that the Federalists hoped, if they succeeded, to be able to establish courts in every county of the States; that it was believed causes would be more speedily decided in courts of the United States than in the State courts; that State courts would first be neglected and afterwards deserted, then declared useless, and thus, step by step, we should be led to a national Government. But he did not mean to say that such was the opinion of all the Federal party; he would indeed be sorry to think it was.

Objections had been made to the President for presenting the document No. 8. It had been said that he had no right to send that document; that it was officious. This, Mr. S. said, was a doctrine entirely new to him. The President might send documents relative to every other subject, but he must not peep into the courts; and why? Because it is said that no other President ever did furnish a judicial document. And here, Mr. S. said, he could but express his regret that the last President had not (when he pressed the law upon Congress) supplied such documents; if he had, every gentleman would then have seen how unnecessary the law was, and no member would have been bold enough to have proposed the creation of sixteen new judges, with salaries of two thousand dollars per annum, when it would have been palpable there was no business for the six judges then in commission.

Mr. S. said, that of all the abuse poured out in this House, or in public prints, to sully the fair fame of the Chief Magistrate of the Union, none had so much surprised him as that which had just fallen from his colleague (Mr. Dennis.) What spirit was it that could induce a gentleman so mild to enter into such unqualified abuse of the President, and through him of gentlemen in private life, and in public employ, by name? The gentleman had, contrary to all order, attacked the Governor of Virginia; he had charged Judge Stevens, of Georgia, with having deserted to the enemy. For this he has been severely checked by the gentleman from Georgia, (Mr. Milledge,) who declared that information to be a malicious calumny against a man who more than once fought in his country's cause, and ultimately was taken a prisoner; as an apology his colleague (Mr. Dennis) said he had his information from the Washington Federalist. His colleague had charged the President with turning out an old and meritorious officer, the late Navy Agent of New York, and appointing an old tory in his room; here his colleague had again been mistaken. The President has nothing to do with the appointment of the Navy Agents; they are appointed by the Secretary of the Navy, and by him considered as a merchant, doing business on commission. Of the high respectability of Mr. Ludlow, as a merchant and an honest man, no person would express a doubt; of his predecessor he would say nothing; a suit was now depending between him and the United States; until that was determined it would be highly improper to give an opinion of his conduct anywhere, but at all times improper, by name, in this House. His colleague had heard of hundreds of meritorious officers turned out of office without fault, and this he also got from newspapers. Mr. S. doubted whether there were five turned out of office on political ground. If gentlemen really wished for information, why an officer had been put out, let them apply to the proper office and they will be informed. He (Mr. S.) had done so; in the case of the Collector of Savannah he did so, because he had seen several names (which he knew) to an address to that gentleman, highly censuring the President for his dismissal; on inquiry he had found that the collector was not dismissed on political ground, but because he had never settled one single account from the time of his appointment, although the law is peremptory that every collector of the customs shall settle his accounts every quarter of a year. Let gentlemen inquire and they will find that there has been good cause for most of the removals. But they will not inquire. It is better for men disposed to calumniate the Administration to take newspapers than official information. Mr. S. again inquired what spirit of faction was it that could induce a gentleman so amiable in private life, to permit himself to assail gentlemen by name under the privilege of that House? His colleague stumbled on the case of the Berceau, and charged the President with expending the public money on that ship without authority. Does he mean to insinuate that the President is prodigal of the public treasure? If he does, nobody will believe him. How is the fact? The late Secretary of the Navy directed on the nineteenth of December, eighteen hundred, that the Berceau should be purchased for the United States; the same gentleman directed that she should be restored under the treaty, with all her guns, ammunition, apparel, and everything belonging to her; that the delivery should be made as if there was no reluctance accompanying the restoration, and in such manner that no cause of complaint should lie against the Government or its agents. And conformably with the opinion and advice of the late Secretary of the Navy, Mr. Stoddert, a letter was written on the first of April (the day after that gentleman resigned) in the following words, to wit:

"I have to request that you will be pleased to ascertain, without delay, the state of the French national ship Le Berceau was in at the time of her capture, as to her armament, stores and provisions, and to cause her to be put in the same condition before she is delivered to the French Government."

He knew the amount of repairs must appear large; but he had such high confidence in the Navy Agent of Boston, that he would not believe one dollar had been spent improperly. The ship having been bought for the use of the United States, the appropriation for the navy (of which she then was one) fully covered the money expended. His colleague (Mr. Dennis) in a triumphant manner had boasted that near four millions of the principal of the public debt had been paid off against the year 1798. If there was credit assumed for paying less than four millions in nine years, how much more is due to the present Administration which in nine months had paid off two millions two hundred and seventy nine thousand dollars of the principal of the debt, and had then remaining as much money in the Treasury as had been received from the late Administration? It will perhaps, he said, give his colleague pleasure to know that at least four millions more of the principal of the debt will be paid off in the course of 1802. Our constituents, he believed, will be better pleased with the payment of the old debt, than the contracting of a new debt at an interest of eight per cent. His colleague had asked, who was it that talked of the merchants as outcasts of society, as men not worthy of protection? Mr. S. in return, asked who ever did? No person had in that House during the present session; and before this session, he had never known gentlemen of any party so far forgot themselves as to go into unqualified abuse of men by name. He had known on former occasions the measures attacked, but never the men. That conduct was left for the friends of order to assume.

Mr. S. said that, during his absence for a few minutes from the House, he had been told that a gentleman from South Carolina (Mr. Rutledge) had charged the President with having thrown away thirty-two thousand dollars in the expenses of sending a gentleman to France, in the frigate Maryland. In this charge the gentleman was unfortunate. He had stated the cost at thirty-two thousand dollars: the real cost of the voyage was but seventeen thousand four hundred and twenty-eight dollars, as appeared by a statement which he read. How was the fact? The Maryland was prepared by an order of the last President, and was actually held in readiness from the beginning of February, to sail at a moment's notice with a Minister for France. Her crew was on board, and the ship was anchored below the fort.

The Maryland being prepared, it would have been the height of folly not to have sent the treaty by her. Suppose a messenger had been sent by a private ship, and she had been met by a British ship-of-war or privateer, is it not certain that she would have been detained? And would not the gentleman from South Carolina, in such case, have censured the President for an ill-judged economy? Would not the merchants very properly have complained at the delay occasioned thereby to the restoration of their ships? These circumstances, he presumed, had induced the President to direct the Secretary of the Navy, on the 17th of March, to order the Maryland to proceed with the gentleman who was bearer of the treaty.

Mr. S. then read the President's letter to Mr. Stoddert, the Secretary of the Navy, in which were the following words: "The gentleman who 'is the bearer of the treaty is of course to have 'good accommodations in the vessel, and a partici'pation of such fare as is provided for the offi'cers themselves."

Observe, said Mr. S., that particular expense on account of the bearer of the treaty was actually forbid.

The gentleman from South Carolina had also (if he had been rightly informed) been unfortunate when he said that an enormous expense had been incurred by sending the Boston to carry Mr. Livingston to France. The Boston was considered as one of the six ships peremptorily ordered by law to be kept in constant service. She was bound on a cruise to join the Mediterranean squadron, called at New York for Mr. Livingston, and on her route landed him at L'Orient, the nearest port in France. This cost the United States only the short delay of the ship; for Mr. Livingston found his sea-stores at his own expense. Under the late President the sea-stores of Ministers and Envoys were found, when on board a ship-of-war, at the public expense, and seldom cost less than one thousand five hundred dollars—sometimes much more.

[Here Mr. Rutledge assured Mr. Smith that he had not mentioned the Boston, and Mr. S. had been misinformed by his friend.]

Mr. S. then said, that he had no doubt of the constitutionality of the repeal, nor any of its expediency, and therefore should give his vote against striking out the first section, and in favor of the bill.

When Mr. S. had concluded, a motion was made that the Committee should rise, which was supported by Messrs. Hill, Huger, Dana, Bayard, Macon, Holland, Griswold, Bacon, Claiborne, and Plater; and opposed by Messrs. Alston, Giles, and Smilie.

At eight o'clock the question was taken—yeas 46, nays 43.

The Committee rose, and asked leave to sit again; on granting which there was a division—yeas 48, nays 37.

Monday, March 1.

A memorial of Stephen Sayre was presented to the House and read, praying that Congress will consider and decide on the petitions heretofore presented by the memorialist, relative to an adequate compensation for his services and expenses as Secretary to the Commissioners of the United States at the Court of Versailles, in the year seventeen hundred and seventy-seven.

Ordered, That the said memorial be referred to the Committee of Claims.

JUDICIARY SYSTEM.

The House then resolved itself into a Committee on the bill, sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes."

Mr. Hill said the few observations he had to make he would have offered before to the Committee could he have done so without interfering with other gentlemen better qualified to do justice to the subject.

The best exertions of his humble talents would at all times prove unequal to a question of such magnitude as the one under consideration. Vain indeed then must prove the attempt after the subject had been so well considered, and the arguments so entirely exhausted.

He had determined to express his opinion by his vote merely. He lamented the impulse which obliged him to forego that determination—an impulse created by allusions too direct to be mistaken.

His respect for the Legislature of the State from which he came also required he should assign his reasons for the conduct he should pursue. That Legislature had recommended to the Representatives of that State to vote in conformity to the bill on the table. However great his respect for that Legislature—however much he was inclined to obey its requisition—yet, when he found that respect conflicting with important duties—when those requisitions are opposed to obligations, sacred obligations, which imperiously direct another course, he could not hesitate in his decision. His conduct must be consistent; he voted for the law proposed to be repealed under the full persuasion that it was expedient; he could not vote for the repeal, because he was equally persuaded it was inexpedient; because he did not consider himself authorized so to vote. He stated that when he came into Congress, he came with the conviction full on his mind, that the Judiciary was a distinct, important, independent branch of the Government; that to be efficient it ought to be well organized; that the then organization was defective, greatly so; that he knew from experience it was greatly defective; having been for several years an officer of the United States, in their established courts, he had an opportunity of acquiring this knowledge by experience; that to a reform of the then existing system, the only alternative which presented itself was a resort to the courts of the several States. Considering it a solecism in the science of Government, that one Government should intrust the administration of its laws to the officers of another, over whom it had no control; believing that no responsibility attached to the State judiciaries, which would oblige them to perform duties imposed on them by the General Government, and knowing the jealousy of the State governments, which had been frequently evidenced against an amalgamation of National and State authorities, the necessity of a reform presented itself with great force.

The circuit courts, as formerly established, were directed to be holden by the judges of the Supreme Court, and the district judges in their respective districts. By this arrangement six judges were required to ride over this vast country twice in each year; to hold courts as often in every State, and this in addition to the duties required of them as judges of the Supreme Court; the consequence was, that with all their exertions these judges found themselves unequal to the performance of those duties; and nothing but a reliance on the wisdom of Congress, which cherished the hope of a new arrangement, retained them in office. Under that establishment the lapse of terms would unavoidably occur; it did occur frequently, and occasioned great injury to all concerned in the courts. Another evil was the want of identity, and the resulting want of consistency of decision in those courts—productive of delays and uncertainties, which could not fail to depreciate the character of the Judiciary, however upright and independent the judges—that was an important defect also which allowed the same judge to decide on your appeal, who had pronounced judgment in your cause in the inferior court. These and many other important reasons which had been or might be adduced, had decided his mind in favor of a reformation in the Judiciary system. Accordingly, in the first session of the sixth Congress, he had given his vote for a more convenient organization of the courts of the United States, and in the last session he pursued the same course. Actuated by a wish to promote the due administration of justice, to elevate the character of the American Judiciary, and to insure the independence of the judges, as the safeguard of the Constitution, he had invariably given his support to the law proposed to be repealed; he believed it to be expedient; he was satisfied it was Constitutional; he still had the same impressions; and when he added, that not a doubt existed in his mind that a violation of the Constitution is involved in the proposed repeal, he should be justified in voting as he should vote on the present occasion. But, sir, it is said that the Constitution has already been violated; that the law proposed to be repealed violated the Constitution; that this assertion was groundless, Mr. H. apprehended, had been clearly demonstrated. But suppose it was fact, would that justify a second violation? He knew that in some languages it was taught that two negatives made an affirmative; but he had yet to learn the principle in morals which establishes that two wrongs will make one right. If gentlemen really believe the Constitution has been violated, let it be to them an example to deter; let us unite our efforts to heal the wound, and join in deprecating the attempt that would enlarge it. But how has the Constitution been violated? By detaching, it is said, from the judges of the Supreme Court, and the district judges, the right of holding the circuit courts; let us examine this. It will be recollected, that previous to the law of last session there was no circuit judge; the duties of the circuit court were imposed on the judges of the Supreme Court and the district judges; to relieve those judges from this imposition was one object of that law; another object was to make an arrangement that should not require the judges to perform greater duties than they were able to perform. Is it not a strange doctrine that the lessening the burdens of office, the diminution of the duties required to be performed by a judge should

be considered as an infraction of his rights? But the last law imposed on some of the judges other duties, which might be considered in lieu of some of those from the performance of which they were relieved; for instance, by certain provisions in the law, the judge of North Carolina district is required to hold nine district courts in each year, and at three places in the district; previously he held but four district courts, and those at the same place; that judge might have supposed himself aggrieved by these provisions of that law; but it had not been suggested that he considered his rights infringed by being relieved from other duties. As he was instrumental in making this arrangement, as to the courts of that district, Mr. H. hoped he might be indulged in explaining the reasons which had induced him to think these provisions necessary, and as the law on the table went to their repeal, he should not be considered out of order. The State of North Carolina has an immense extent of seacoast. The chief seaports are Edenton, Newbern, and Wilmington. The first and the last are at the distance of two hundred miles the one from the other; Newbern about one hundred miles from each. The residence of the judge is the interior of the country, near two hundred miles from Wilmington, the place of most trade, and about one hundred miles from each of the other ports; the objects of the jurisdiction of the district courts are chiefly causes of admiralty and maritime jurisdiction. The court to be useful and convenient could only be made so by bringing the judge, at fixed periods of time, to the commercial points of his district. The difficulty of instituting a suit in the district court of North Carolina, and the inconvenience of attending it there, amounted nearly to a prohibition of the process of individuals; and, Mr. H. said, he knew demands had been relinquished and claims abandoned rather than encounter these obstacles. For these reasons the provisions on this subject were introduced into the last law, at his motion. And although much benefit may not yet have been experienced by the new arrangement, he had no doubt that great advantage would result therefrom eventually; he stated that he had been informed, at a late term of one of those courts, near thirty suits had been instituted. He was thus furnished with another reason against the bill on the table: for an amendment which should retain the benefit of these provisions of the last law was inhibited by the consideration that the imposition of duty would thereby be too great on the judge of that district, who will have the duties of the circuit court again imposed on him. Mr. H. had listened with great attention, and weighed with due deliberation all the arguments which had been offered on this important question; his conviction of the inexpediency and unconstitutionality of the proposed repeal was thereby enforced. When he found the best argument, the one most relied on by the advocates of the repeal, on the Constitutional point, was derived from a distinction, a fancied distinction—a distinction without a difference, between a removal of a judge from office and the taking away the office from a judge; when it is acknowledged on all hands that we have no power to remove the judge from office; yet it is held that the thing may be effected by taking the office from the judge; he must be excused in declaring his belief that such arguments, analyze or examine them as you will, whether opposed by "boys" or contested by men, would alike be found to be but "shadows" indeed.

He considered the Judicial power of the United States as a vested power—a power vested in the judges constitutionally appointed; it is vested by the Constitution and cannot be taken away by law. It was vested by the people in the majesty of their power, and cannot be divested by any power inferior to that of the people in the exercise of their sovereignty.

The Constitution declares that "the Judicial 'power shall be vested in one Supreme Court, and in 'such inferior courts as Congress may from time 'to time ordain and establish." The Constitution arranges the different branches of Government; to each department a distinct article is appropriated, vesting power and defining its limitation. By the first article the Legislative power is vested in the Congress of the United States, subject to a limited veto of the President. By the second article the Executive power is vested in the President of the United States; and the third article vests the Judicial power in the judges of the United States, who "shall hold their offices during 'good behaviour, and shall, at stated times, receive 'for their services a compensation which shall not 'be diminished during their continuance in office." The three branches of Government are thus made distinct and independent of each other. By what authority is it that one or two departments can put down the third department? Where is it to be found? Is it found by construction? Then construction makes it as competent for the judge and the Legislature to declare they have the right to divest the President of the Executive power, as the Legislature or the Executive, or both, to declare they have the right to divest the judges of the Judicial power. To his mind it appeared clear and certain that no such right as the one claimed did exist.

The members of both branches of the Legislature and the President are periodically elected, and their continuance in office limited and defined by the Constitution; they depend on the people in the exercise of their elective franchise for their continuance in office. The judges, who are to hold their offices so long as they behave well, depend only on God and their own conduct for their continuance in office.

'The judges shall hold"—What? "Their offices," says the Constitution. How then can the assertion be sustained that the Constitution is not infringed, when that is taken from the judge which the Constitution declares the judges shall hold? Has not the taking the office from the judge precisely the same operation as the removal of the judge from office? Surely this will not be denied. Is not then the provision in the Constitution as certainly contravened by the one as the

other procedure? The framers of the Constitution appear to have been jealous, anxiously jealous, of an interference with the independence of the judges; not satisfied with guarding them from a direct removal from office, they endeavored to provide against indirect means whereby the removal might be effected, hence the provision which forbids a diminution of the salary of a judge. But, say gentlemen, compensation has a relation to services so intimate, that unless one is performed the other shall not be paid; that when the office is abolished, no service can be performed; consequently no compensation is demandable, and thus the difficulty is avoided. This, to be sure, is a most convenient kind of casuistry; an argument not expected to be heard in this House; subterfuges which could not fail to attach disgrace on individuals, surely must be unworthy of Government. To what does the argument amount? Does it amount to more than this? (asked Mr. H.) I engage a man for a stipulated sum to perform for me a certain service, and while, in pursuance of his contract, he is engaged in the work, in order to avoid the payment of the sum stipulated, I disable him from performing the service; would this be warrantable? could I justify it? Most unquestionably no. It is of the highest importance the judges should be independent; they are intended to stand between the Legislature and the Constitution, between the Government and the people; they are intended to check the Legislature. Should the Legislature even surmount the barrier of the Constitution, it is the duty of the judges to repel it back within the bounds which limit its power. Were they not independent, would they be equal to this duty? Could they perform it—dare they perform it, if on the Legislature they were dependent? But, it is said, with a Government of responsibilities like ours the uncontrollable power of the judges is incompatible. Sir, no such power is claimed for the judges; their office and duty is to prevent the exercise of unauthorized power; they are not without responsibility; they may be controlled; the Constitution provides the means. The tenure of their office is their good behaviour; when that ceases their term expires; and whether they behave well or ill, it is not for them, but the Legislature, to judge and decide. And here is the Constitutional check on the judges; this House may impeach, and the Senate evict from office a judge. If he behave ill, a judge may thus be removed, and the Legislature is restrained from an unwarrantable use of this power by its own responsibilities. Mr. H. declared himself without a doubt on the Constitutional point in question.

Much had been said concerning the manner in which the law proposed to be repealed had been passed. A gentleman from Virginia, (Mr. Giles,) who had been up early in the debate, had taken occasion to mention by name certain Senators, and alleged that their votes carried this law. A recurrence to the Journals of that day would show the fact to be otherwise, unless the gentleman meant to suggest, that the votes of those Senators would have been the reverse of what they were but for the prospect of their subsequent appointments. He would not suppose the gentleman intended this—it would be attaching on the characters of those Senators motives too corrupt for that gentleman to charge on others in their absence. The same gentleman, with great emphasis, has marked the time when the Presidential approbation of this law was announced to this House, the 13th day of February, when this House was engaged in the choice of President! And then the gentleman directs his attention to the circumstance of some of the members of this House being afterwards appointed to office. As to the time when this approbation was announced, whether combined or not with the circumstance of the subsequent appointments, Mr. H. declared his incapacity to discover what impression the gentleman thereby intended to make. He could not have supposed it had any influence on the passage of the bill, for that was a retrospective relation which could not exist. Did the gentleman mean to suggest it had, or was intended to have, any influence on the pending election? This was a suggestion unfounded. It was never understood, at least within his knowledge, that the late President directly or indirectly interfered with this House in the choice of his successor; nor did he ever hear that the late President espoused the cause of either the one or the other of the candidates for the suffrages of the States in this House; equally difficult is it to discover the relationship which the subsequent appointments bear to the subject of that election. Wherefore were those appointments mentioned? Did the gentleman mean to suggest that the members of this House, who were distinguished by the President in his subsequent nominations, were actuated by the prospect or promise of such appointments? He was unwilling to believe the gentleman did; such a suggestion would be unworthy any man who did not feel himself liable to be actuated by such motives; and should such suggestions be made, existing facts would not sustain it; the conduct of the members alluded to would prove it to be groundless, and the majority in this House on that occasion was too decided to countenance a belief that such means could be necessary.

Other members on this occasion and other occasions had undertaken to make their allusions, to express their insinuations on the subject of these appointments—discovering a disposition to ascribe improper motives to gentlemen on this floor. Mr. H. said, for his part, he was no motive monger, and although gentlemen differed from him in political sentiments, he was inclined to appreciate properly their views; they were as much entitled to suppose themselves correct as he was; and he was willing to believe that gentlemen generally were disposed to do right. He would, however, caution those members who are inclined to criminate, to be certain before they did so that the means of recrimination were not at hand. He might say, that inducements to put down the present judges, were to be found in the wishes of gentlemen to advance themselves, or to make places for their friends on the bench of the United

States. He might say, that the proposed repeal had numerous advocates, because it was a measure which emanated from the Executive; because his smiles are courted; his favor hoped for; his power to grant appointments regarded. He might also say, that "if republicanism," as it is called, "did leave this House when the British Treaty came into it," that treaty had brought into this House many foes to the Constitution; for the energies of that Government, which enforces the payments of debts long withheld, are not likely to find friends or admirers among the coerced debtors; these things he might say.

He would not, however, make the charges, because it was possible they might not be well founded. He disdained such motives himself, and reprobated the practice of imputation too sincerely to pursue it.

Mr. H. would inform the other gentleman from Virginia, (Mr. Randolph,) who had alluded to a gentleman from North Carolina on that floor as a commissioned judge, that the member alluded to never had such commission presented to him—of course he had never the opportunity to accept or reject it; he apprehended that it would be admitted that the acceptance of a commission was necessary to make an officer, and that member held his seat here by an authority equal to that by which the seat of any other member was held; the free suffrages of a large and respectable majority of the freemen of the district he represents is his authority. The gentleman from Virginia has certainly been greatly misinformed as to the member from North Carolina. If he alluded to the same member, when he assimilated certain characters as to their political tendencies to that of his Pensacola Hero, his informer had grossly deceived him. The fact or sentiment of an anti-revolutionary adherence to the enemies of his country never had attached, nor ever could attach, on the character of the member alluded to. The fact was directly the reverse; that member had not ceased to lament that his ability had not equalled his inclination to serve his country in her glorious contest for liberty and independence; during that time he was but a boy; the only one of his family who was able, did share in the toils, the perils, and the glory of the contest, and was found among those who gathered laurels at the springs of Eutaw.

The gentleman from Virginia was also mistaken as to the fortuitous circumstances relating to the salary of the district judge of North Carolina, at the last session. That was not a fortuitous occurrence; it was designed; that gentleman's friend from North Carolina was one of a committee appointed to report on the salaries of the officers; and, as Mr. H. had understood, opposed in the committee the measure of augmentation generally, and especially the increase of the salary of the North Carolina judge, and as to that judge prevailed in the committee. In the House, to the surprise of his co-members of the committee, the same member moved an amendment to their report whereby that judge's salary should be included among those which were to be increased; the design was obvious; the circumstances being known, the amendment was rejected.

Mr. H. said the member alluded to lamented not that he possessed the good opinion of the late administrations; it was his pride to have been so distinguished. The suggestion was unfounded, which had been made by some, that favoritism was exemplified by the appointment of that member by the late President. The relationship of affinity or any consanguinity between the President or any part of his family and that member did not exist, he had not that honor; but he had filled an office before in the same department, under a commission conferred by the first President. To have been thus distinguished by the preceding Presidents, that member considered as highly honorable to himself. But it seems sufficient reason with some to excite their irritation and display their irrascibility; the motives and feelings of that member are therefore to be assailed; the victim is to be sacrificed; and the means are disregarded by which the offering is to be made; the well turned period of pointed invective, the gross terms of mere vulgarity, the keen knife of the skilful surgeon, or the edgeless tool of the clumsy operator, are instruments alike acceptable. But he would take leave to say, that the character of that member is fortified by a barrier of integrity which defies the malice and machinations of his enemies; happily possessed of *mens conscia recta*, he disregards the imputations which have been made; thus shielded, the shafts of malice however directed, fall harmless at his feet, or are repelled with accumulated force on those who cast them. Mr. H. concluded with expressions of regret that he had exhausted any part of the time of the Committee in observations extraneous to the subject under consideration; but impelled as he had been he hoped to be excused; he would return to the question before the Committee, and close his remarks with one additional observation; that, believing as he did believe, the essence of civil liberty to be security, and that this blessing would only be insured to ourselves and to our posterity by the government of laws directly administered by upright and independent judges, it was his duty to withhold his support from any measure which might possibly contravene this all-important principle; he should therefore give his vote for striking out the first section of the bill on the table.

Mr. Cutler.—Mr. Chairman: It is with great reluctance that I rise on this question, especially at this late period of the discussion. Unaccustomed to legislative debates, and conscious to myself that, on a subject which has already had so able and copious a discussion, it is not possible for me to say anything which is not familiar to every gentleman in this House, I should much have preferred giving my silent vote.

But, sir, viewing, as I do, the magnitude of this question, I feel it a duty which I owe to my constituents—a duty, sir, which I owe to myself, to state some of the reasons which have directed my judgment, and on which I have founded my opinion, in deciding on the bill before you. At the

same time I feel it to be very unpleasant to solicit the attention of the Committee when I see the patience of gentlemen so much exhausted. I will detain them but a very short time.

In the pursuits of my life, sir, I have not been led to turn my attention very much to systems of jurisprudence, nor have I been conversant in courts of justice; but, on a subject as momentous as this which now occupies the attention, not only of this Committee but the nation at large, I believe it not necessary to be an adept in political science, in order to form a correct opinion.

Sir, I well recollect the time when the Constitution, which authorizes us to sit here, was under consideration in the State from which I came; and I am certain if the important feature of an independent Judiciary had not been clearly discovered in it, the adoption of it would not have been effected. Independent of what, sir? Of the overbearing power of the Executive and Legislative branches of the Government on the one hand, and of popular whim and caprice on the other. The people, generally, so far as my information extends, and myself among the rest, believed that our safety in life, property, liberty, and reputation, was secured by this all-important feature in a Government, emphatically introduced "to establish justice, to insure domestic tranquillity, and to secure the blessings of liberty." And I feel myself utterly incapable of comprehending what gentlemen mean, when they suppose we are safe under the administration of a Judiciary liable to be removed by the Legislative body any more than if they are liable to be removed by the Executive. If passion, or any improper motives, may induce the Executive to abuse such a power, may not passion, or improper motives, operate upon a Legislative body? And if I understand the import of responsibility, as attached to a man or men in public office, and producing the salutary effects of checking any of the imperfections incident to man, this same responsibility operates stronger upon an individual than upon a numerous body of men; and I must believe, because such is the irresistible conviction of my mind, that it would be safer to trust our Judiciary to be removed at the will of the Executive, chosen, as he is, once in four years, and solely responsible, than to the Legislative body, who, by dividing the blame, if any be imputable, will unavoidably reduce it to nothing.

Mr. Chairman, with these impressions upon my mind, and understanding, as I do, the words of the Constitution, I have not a doubt the independence of the Judiciary was intended to be secured, as much against the power of the Legislature as the Executive. If words are to convey ideas to plain men, not used to the subtilties of legal proceedings, which I must believe was the intention when this Constitution was composed, they can, in this case, convey but one idea. When plain men, of common sense, read this part of the first section of the second article, "the judges of both the supreme and inferior courts shall hold their offices during good behaviour," will not the irresistible impression be, that these words were intended to give entire security to the judges so long as they behave well? That good behaviour should be their security against the encroachments of any power created by this instrument? And will not the impression be precisely the same when it is read by men of the strictest logical and grammatical correctness? If no crafty imposition upon the public mind was intended—if the true construction of an instrument, involving their dearest rights, was not concealed under implications and far-fetched deductions—if there was not an intention to deceive, can this plain sense of it be rejected?

But, sir, if the construction of the Constitution gentlemen contend for be correct, this article gives not the least security. If the Legislature can remove the office when they please, and of course the judges, can gentlemen show what security is given by this article? If it was intended to guard only against the power of the Executive, why was it not so expressed? The security is no more nor better than it would have been if the article had expressly said: "The judges of both the supreme and inferior courts shall hold their offices during the pleasure of the Legislature." If we depart from the plain letter, to make out a meaning by hard construction, we may give any sense to the Constitution we please. Here an insuperable objection arises in my mind to the constitutionality of this bill. Much ingenuity has been displayed in the course of this discussion, by gentlemen who advocate the bill, but the point on which the question of constitutionality principally bears, has been slightly passed over, or the plainest and most forcible arguments left unconfuted. The unsophisticated common sense of honest men, who have only common understanding, will compel them to believe the Legislature is not vested with power to remove judges at pleasure. If the Constitution does not place the Judiciary out of the reach of removal, as well by the repeal of the law establishing the courts, by which they act as judges, as in any other way, they hold their offices, not during good behaviour, but during the pleasure of the Legislature.

If the judges should misbehave, the Constitution has wisely authorized an impeachment, and a conviction involves in it a removal from office. In a very few words the wisdom and design of the Constitution is developed. We are not to suffer under the administration of bad men, because if their conduct is bad, they can be removed. Neither are we to suffer from a fear which the judges may feel of being crushed by the weight of Executive or Legislative power, nor from the sovereignty of the people operating in elections. "The fear of man bringeth a snare," and in no case can this fear do so much injury, as in the character and person of a judge. But I will not, Mr. Chairman, take up the time of the Committee in reiterating arguments which have been so clearly and forcibly impressed, at least, upon my mind, by the honorable gentlemen who have opposed this bill.

Sir, this Government has been emphatically styled a Government of checks and balances; it

has been so understood by the people; and in this, more than in anything else, have they seen their own safety in the delegation of power. I believe it was the intention of the wise framers of the Constitution, that the Judiciary should form, not a "subordinate, but a co-ordinate, branch of the Government." By making the Judiciary, equally with the other branches, a component part, a check was formed, not less necessary to the security and freedom of the people, than any other contained in the Constitution. This check erects a barrier between the Government and the people, and becomes the bulwark of equal justice and equal liberty. It is the only effectual security against the encroachments of the Legislature upon the Constitutional rights of the people, and forming a wise and free Government, it will forever be a *desideratum* to establish, immoveably, an impartial, inflexible and sacred administration of justice. I was happy to hear the other day, an opinion which was in perfect unison with my own, so decidedly advanced by my honorable colleague, on the opposite side of the House (Mr. Bacon.) He declared it was an opinion he had weighed in his own mind, and whatever conclusions might result, he should still adhere to it, that the judicial officers of every grade, from the judge of the Supreme Court of the United States down to the common justices of the peace, not only have a right, but are bound by their oaths of office, to judge of the constitutionality of the acts of Congress. And I should be still more happy to find the opinion of that gentleman according with my own, in opposing an act which is hostile to the very principle he so confidently advanced.

It has been, Mr. Chairman, repeatedly said, that this independence of the Judiciary would involve in it a destruction of the Legislature; that the independence contended for, would in its consequences erect the Judiciary into a despotism. But it has as often been answered, that the Judiciary commands no money—makes no laws—and this completely removes from my mind every apprehension of danger. Any power the Judiciary can assume over the Legislature is merely negative—it is of the preventive kind—it is only calculated to prevent injury and not to inflict it. The moment they attempt to inflict punishments, not authorized by law, an impeachment is an effectual remedy.

Sir, if the bill on your table passes into a law, I can see no obstacle to the passing another similar to the act repealed or varying from it, establishing the same or a greater number of judges. The next Congress may go on to do the same, and a perpetual fluctuation of your judges must be the inevitable consequence. If the Constitution was not meant, among other things, to guard against such an abuse of power, I cannot see for what purpose those words were introduced, showing the tenure of office in your judges to be solely that of good behaviour. If the words in the Constitution have not done it, I cannot discover the use of words, nor the benefit of intellect in giving them an explanation. I must subscribe to the opinion of the President of the United States, expressed on a late occasion, which I believe to be perfectly correct, that the true construction of the Constitution, is the "safe and honest meaning contemplated by the plain understanding of the people at the time of its adoption."

Mr. Chairman, before I sit down, I will make one or two remarks, on an observation I do not recollect to have been noticed, which fell from an honorable gentleman from North Carolina, whose political knowledge and talents I respect, and with whose candor I was much pleased. This gentleman (the honorable Speaker of the House) has said, and seems to rely much upon it, that all the evils which can possibly be apprehended from the passing of the bill, or any other improper act of the Legislature, may be cured by future elections. I cannot help doubting whether the gentleman has contemplated the full extent of this doctrine. It goes, in my opinion, wholly to set aside a written constitution. It is not in my power to conceive that elections are a remedy for every encroachment the Legislature may make on the Constitution. It must be a very uncertain corrective in instances of the most flagrant violations, and in smaller ones, it is none at all. There is not responsibility enough attached to the individual members of this House to render elections a sufficient corrective for the abuse of power. If the acts of the Legislature, which shall violate the most plain and positive provision of the Constitution, can only be corrected by an appeal to the opinion of the people, to be manifested by the exercise of their right of election, we lose the advantages we expect to derive from a written Constitution. And public opinion, which can never be accurately ascertained, and which is continually liable to fluctuation and change, will be our political constitution. If the time should come, which I hope has not yet arrived, when public opinion is to be the only corrective of the abuse of power, Constitutional rights will be reduced to a phantom, and the fair fabric of our national independence, liberty, and safety, will be levelled with the dust.

But, sir, I will not detain the Committee at this late period of the discussion, when it is not possible for me to add to the weight of argument and mass of information, which, in a manner so lucid and impressive, has been given to this House. I have thought it a duty thus far to state my own ideas on a subject which has excited much apprehension. The distinguished talents and information of gentlemen, who are of opinion that the passing this bill will be no infringement of the Constitution, command my respect. But when I find them leaving the plain words of the Constitution—the plain import of terms used without limitation, without being applied to any particular department—implying no more restraint upon the Executive than upon the Legislature, and undertaking to support their opinions on constructions and implications—when I find them denying that the Judiciary ought to be independent, I am forcibly led to the conclusion, that they are mistaken. And if the case is even doubtful, that the safest way is not to act at all. I had rather leave the laws in operation than hazard a breach of this inviolable

instrument. What evils may we not suffer, if we by repealing this law shall in event, be found to have broken the Constitution! They may extend beyond the power of calculation. It must be left to imagination alone to portray the picture which may be dreadfully realized.

What shall we suffer, sir, if, by doubting its constitutionality, we suspend the repeal to another session? I must confess to you, sir, my information is too limited to attempt a consideration of the expediency of the repeal. But so far as I can judge from the copious information given to the Committee, the expense, compared to the benefits which may arise from the present system, bears no proportion to them. I am as much disposed to promote economy as any gentleman on this floor, but economy becomes a public injury when it is not subservient to the public good. The saving expense alone, in this case, can afford little or no argument in favor of the repeal. From many parts of the Union, we find the courts, by the little experience already had, are in high estimation. I should therefore wait until further experience determine the propriety, or impropriety of a repeal. Diffident as I may feel of my own opinions on a subject like this, when called to vote under a sense of moral obligation, and the solemnity of an oath I have taken on this floor to support the Constitution, I must give a decided negative to the bill on your table.

Mr. Holland.—At this advanced period of the debate it would be improper for me to enter largely into the discussion of the present question, a regard for our time, a respect for the honorable gentlemen that have gone before me, and a respect to you, sir, forbid it. I shall, therefore, confine my remarks to the most prominent objections that have been made to the passage of the bill on your table.

The first objection to the passage of the bill is, the want of Constitutional power in the Legislature to pass it; and the second ground of objection is, that if the Legislature have the power, that it is improper to pass it at this time.

As to the first objection, it is laid down as a maxim, that the same power that can create can destroy, and that the power that gives has a right to take away that which is given. The first maxim relates to the Legislative, the second to the Executive power. But it is said, that these maxims do not apply to the present case. That the Legislative powers have been limited by the charter under which we legislate, and that the limitation extends to the present case. And it is also contended that the appointment of judges is not an Executive act, but the act of the people, and therefore they cannot be removed but by the people. If, upon examination, either of these assertions are true, I shall be ready to concede the point, and shall say at once that the bill ought not to pass, and will give it my veto.

As to the first maxim, I shall contend that if it holds good in any case, it ought to hold in legislation; legislation being a science so essential to the happiness of man, and so little understood, owing to the many obstructions that have been thrown in the way by wicked and designing men, that it ought to be at liberty; the Legislative mind should be at liberty to reconsider its own acts, in order to benefit by experience. In the Executive and Judicial departments, the greatest part of their acts are mechanical; having no will of their own, they are obliged to execute the will of the nation; but even they have a right to correct their own errors. The Executive can dismiss from office persons that he has taken into service by mistake. The Judiciary can revise and reconsider their own judgments, reverse their own decrees, and correct their own errors. Indeed, this seems to be a common inherent right in all men, whether considered in a private or public capacity. And in all limitation to this rule the act may be properly said to be not the act of the agent but the act of the principal, the agent not being responsible for the result. But, with respect to the powers assigned to Congress, they are ample to all objects submitted to them, they are numerous and defined in the eighth section of the first article of the Constitution; there is not the smallest indication of a restriction where they have power to act, or had acted, except in the case of the compensation of the President and judges' salary, they are not to be diminished during their continuance in office. This does not restrict Legislative power over the institution under which the judges hold their office; if this restriction had been intended it would have been expressed in unequivocal words; words that would have applied to the office and not to the officer, such as that the judges shall hold their office during good behaviour, and the office shall not be abolished. This not having been said, I am unwilling to suppose that the framers of the Constitution intended to restrict Legislative power; that they intended to prevent them from having it in their power at all times to reconsider their own acts, and to put down useless, inconvenient or expensive institutions. I am unwilling to suppose that the convention intended to keep up the office for the sole use of the officer. That the office and the officer being created by the people in their Legislative and Executive capacity, the people in the same capacity can dispense with them, when, in their opinion, they are useless; a contrary construction would be an improper limitation of Legislative powers, and preclude the benefit of experience.

I shall now consider more particularly to whom the words, "and they shall hold their office during good behaviour," alluded to. By the eleventh section of the second article of the Constitution, "the President shall have power, by and with the advice of two-thirds of the Senate, to make treaties, to nominate and appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court," &c., and by the last clause the President has power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. From this section it is evident that the appointment to office is an Executive act, that the Senate, when advising, are in the exercise of Executive duties; the appointment

is an Executive choice, it is an Executive gift to the person to whom the office is conferred, he has it not by purchase, he has given nothing in exchange, but holds it as a gift, and unless otherwise checked, at the will of the giver. Hence the framers of the Constitution thought proper to restrain the power of the giver, to wit, the Executive, by inserting the words before stated, "and he shall hold his office during good behaviour." If these words had not been inserted the judges would have held their offices by the same tenure as Ambassadors and other officers under his gift, subject to be removed by Executive pleasure. And I cannot but think, that the Convention had a reference to the tenure of the judges in Great Britain, and observing that the will of the Executive was there limited, they thought proper to make a similar restraint upon the will of the Executive in this country. This, sir, is the most correct opinion that I am able to form as to our having a Constitutional power to pass the bill on your table.

My colleague (Mr. Henderson) says, that the tenure under which the judges hold their offices in the State from which we come is the same with the tenure of the judges of the United States. He is correct; not only the judges, but all the justices of that State hold their offices by the same tenure, during good behaviour. But I think differently from him when he says he considers it not an Executive but a Legislative restriction. Soon after the formation of our Constitution, our Legislature passed laws organizing courts of justice, constituted of inferior and superior courts; the superior courts were held in districts by judges whose authority extended to the utmost limits of the State, and had unlimited jurisdiction; the inferior courts were holden by the justices of the respective counties, and had a limited jurisdiction with respect to officers, and unlimited as to civil actions, subject to an appeal to the superior court in all cases by the party who thought himself aggrieved.

Notwithstanding the Legislature at sundry times has attempted to change the Federal system both of the superior and county courts, an attempt was once made to repeal the law constituting the superior court, with an intent to vest superior power in the county courts; if this project had carried, the judges would have been put down; and, indeed, when this subject was on the tapis, I never once heard it suggested, that on account of the office of the judges, that the Legislature had not a power to make any arrangements they thought proper; indeed, it was said by members, that the repeal would answer one good purpose, if no other, that by it the State would get rid of one or two judges who were incapable of performing their duties; but so it happened that no substitute could be proposed that obtained a majority of the members, and no material change has been made. And I am pretty certain had the friends of the judges suggested that the Legislature had not a Constitutional power to repeal the law on account of the offices of the judges that it would have contributed to the repeal.

And with respect to the justices who hold their offices by the same tenure as that of the judges, as before stated. The Legislature, for the more convenient administration of justice, have thought proper to divide a number of their counties; in some instances neither division retained its original name, as in the case of the county I live in, and the county adjacent, both of which were once known by the name of Tryon, after the British Governor who joined His Majesty's forces, which occasioned the Legislature, on the division, to name the counties after two American officers—Lynch and Rutherford. In this case the whole of the justices were out of commission, occasioned by a Legislative arrangement, and the Legislature did not feel themselves bound to re-commission said justices, their reappointment depended upon the opinion that was entertained of their merit. And in all this it never once occurred to the Legislature of North Carolina, that they had infringed the rights of office or violated the constitution of the State; and, of these transactions, I appeal to all my colleagues that hear me. And I further say that the late Judiciary bill, even before and since its passage, has been a subject of much conversation, and opinions freely given as to the propriety of its repeal, but in all that I have heard respecting it, the Legislative power of Congress never was called in question. I further say, that the objection is so new to me that I never heard of it until I came to this city; and after I found it insisted on by gentlemen, I have paid due attention to all the arguments that have been advanced by them, but to no purpose; my first opinion stands unshaken, and I think, with the former Legislatures of the State that I have the honor to represent, and with the present Legislature as announced by their resolution on your table, that the words, "that the judges shall hold their offices during good behaviour," are not a Legislative but an Executive restriction, and, under this impression, I feel at liberty to exercise my influence according to the wish of the Legislature of the State to repeal the act contemplated by the bill before you. And I am far from thinking with my colleague, (Mr. Henderson,) that the Legislature of that State stood in need of the arguments of this place to enable them to form a correct opinion as to the expediency or constitutionality of the repeal. With regard to the expediency, so far as relates to their State, they are the most competent on account of a complete representation of all the counties in all their remote or various situations must be fully understood. And with respect to the constitutionality of the repeal they would be at no loss, having the whole evidence before them—the act and the Constitution—this being all that was necessary to the forming of their judgment. I would ask my colleague first up, and the gentleman just sat down, if they think the multiplied arguments made use of on this occasion, have proselyted a single gentleman? I think it will be answered in the negative. I shall now proceed to make a few observations on the expediency of the passage of the bill, drawn principally from what comes within my own knowledge. I think I attended at two courts in the city of Ra-

leigh; it was at the time of the sitting of the General Assembly of that State, in the year 1797-'98. I was in court in 1798, when his honor gave his charge to the grand jury; it principally consisted in an eulogium on the administration of the General Government, after which the court adjourned; and on the next day the court met, made up two or three issues, and, perhaps, tried a suit; and on the third day the court having nothing to do, adjourned until court in course. And I have understood that, in the other parts of the State, the business was conducted nearly in the same way. Indeed, I have understood that the Federal courts there had little to do. There was one case that came within my own knowledge; it was a suit that was brought against a poor man, on the other side of the Appalachian mountain, as a delinquent under the excise law, where the demand was about seventeen dollars; and, after the poor man had rode near two hundred and fifty miles once or twice, he paid the large sum of one hundred dollars cost, and came off clear. These circumstances, with the resolution of the State Legislature, is to me conclusive evidence that the original courts were adequate to all the business for which they were instituted in that State.

Having thus got over the objections relative to the want of power, and shown the expediency of passing the bill on your table, I shall take some notice of another objection that has been greatly insisted upon, namely, if we pass this bill we destroy the independence of our Judiciary. And if, on examination, it is found that, after this bill pass, our Judiciary will possess more independence, that they will stand further from the grasp of Legislative or Executive power than any other judiciary on earth, I hope gentlemen will concede to the passage of the bill. In looking at this subject it will be proper to take a view of the judiciary of Great Britain: that is admitted to be the best judiciary in the world, where independence and fidelity have been admitted to be the glory of the English nation.

The tenure of the judge's office there is during good behaviour, or, in other words, against the will of the Chief Executive Magistrate; subject to be removed by a joint address of both Houses of Parliament; and, in this case, the King has no discretion, the address is imperious. Here, by our construction, the judges cannot be removed so long as the Constitution, under which they hold their offices, exists. To repeal this institution there must be not only a majority of both branches of the Legislature, but the consent and approbation of the Executive are necessary, or otherwise a Constitutional majority of both Houses. A gentleman from Connecticut, (Mr. Goddard,) has said that he has no apprehension of an abuse of power in England; that it is not reasonable to suppose that Parliament would make an improper address for the removal of their judges; for that the Parliament consisted of a democratic and an aristocratical branch that would remain firm against any improper impulse; but that he apprehends that there is not the same security in this country. As the gentleman has not given a reason for his apprehensions, it is but fair to presume that he has a higher confidence in the British House of Commons and Lords of Parliament than he has in the American Senate and House of Representatives, with the further additional security of the Executive of the United States.

A gentleman from Pennsylvania (Mr. Hemphill) asked, what could induce the framers of the Constitution to leave it in the power of the Legislature to let their judges drop by repealing the law by which they held their commissions? I will answer that honorable gentleman by asking him what induced the convention that formed the constitution of his State, to put it in the power of the Legislature to remove their judges by a joint address of two-thirds of the Legislature to the Executive of that State? The motives that governed in the one case probably governed in the other, and I will submit to the opinion of the gentleman whether the removal by address is not easier effected than by repealing the institution under which the judges acted; the vote of the Governor being equal to one-third of the Legislature, equal to the Constitutional vote of the President of the United States? A gentleman from South Carolina (Mr. Rutgedge) says, that if we pass this bill we not only destroy the independence of the Judiciary, but that we voluntarily stab the Constitution in the most mortal part. To both charges, I say not guilty. But to prove the truth of the charges, he introduced the outlawry of Wilkes, in England, and stated that the judges had fortitude, fidelity, and independence sufficient, and reversed the outlawry. This case proves the reverse of the position intended; it proves that although the judges in England held their offices by the courtesy of Parliament, yet they had integrity and independence equal to the discharge of their duties, from which it must be inferred that our judges, not holding their offices at the will of the Legislature, are more independent and more capable of discharging their duties.

And, as a further proof of our destroying the independence of the Judiciary, and stabbing the Constitution, the same gentleman informed us that by this means all Republics had been destroyed; that Greece had fell, Rome had fell, and that Venice, and the Republic of Switzerland, had fallen. I expected that the honorable member was about to show that those Republics had fallen because they had written constitutions, vesting certain powers in their Judiciary, and that the Legislative branches of those Governments had destroyed their independence. The honorable gentleman says that we are the enemies of the Constitution, and that he and his honorable friends would do anything to save it. The manner that those gentlemen formerly and at this time have portrayed the Constitution, puts me in mind of Achilles the Grecian chief: the Constitution, like this hero, at some times was invulnerable; it was adequate to every purpose; it was broad, and extended its force against all opposition, like the hero it nursed, and levelled armies, and now, like him, the only mortal part that the shaft of death can enter is at the heel. It is in the minor branch of

the Executive, the Judiciary, and in the minor branch of that branch, the sixteen judges.

A gentleman from Pennsylvania, and my colleague from North Carolina, has compared this tenure of the judges to a contract, and says that the same rule of justice should be applied to them as to individual contracts. I am not disposed to contest this point. And what is the rule upon contracts where work and labor is to be done? Suppose a firm of merchants employs a clerk to act as a clerk in their firm during good behaviour, for which services said clerk had a covenant with said firm by agreeing for a monthly payment of a sum not to be diminished during good behaviour? Is the contract binding upon the firm, so that they cannot dissolve it? Suppose said firm dissolves, what becomes of the contract? Can the agent maintain an action in law or equity for the recovery of moneys for services which he never did perform, or for services not wanted? I believe not, sir; and the principle holds good in all contracts where services are to be rendered. If anything occurs that renders the services unnecessary or improper, the contract is concluded, it is at an end, a contrary principle would lead to many absurdities. A gentleman from Connecticut has said that the words "during good behaviour" are so plain and easily understood, that a school-boy would, without hesitation, answer that it meant so long as he behaved well, that it meant during life, and would not a school-boy also answer that no person should be continued in service longer than his services were wanted, and that as soon as the services could be dispensed with that the person performing services should be discharged, and, after the discharge, would not the school-boy say that the payment should stop? The gentleman has said we may not commit murder by running our sword through a man, but may push a man against a sword. Is there any similarity in this case, in discontinuing a man from service whose services are not wanted, in discontinuing an office that is unnecessary to be kept up, and even expensive and injurious to the community, and that of taking the life of a citizen? I must confess I see none. One being an act arising from just impressions of duty, the other an act of high criminality. The same gentleman has said that we ought to be cautious in passing laws by constructive right on the Constitution. This caution comes with a bad grace from that quarter. Has the honorable gentleman forgot the law passed by his support, where by a construction of guarding against the licentiousness of the press, they passed the Sedition act, contrary to the express words of the Constitution? These things are of so recent a date that they cannot be forgotten. We have been too long amused by sound, by declarations from that side of the House, but it is now too late for declarations to obtain credit, when contrary to experience. We have been told by a gentleman from Delaware that he wishes to support the sovereignty and dignity of the United States, and at the next breath he tells us and tells the world, that he has no confidence in the majority of the Legislature, and that he has no confidence in the Executive. Is this the means that he employs to support the dignity of the United States? He has also said that the assumption of the State debts was necessary for the remuneration of the war-worn soldiers; these were the declarations by which this measure was carried. But my friends in the opposition then declared that it would not have that effect, that, on the contrary, the soldiers that had performed the services, and that the citizen that had advanced his property for the public service, would not be remunerated, but that the whole would be cast into the hands of a few speculators, and that the public debt would be greatly augmented. And has not all this been realized to a greater extent than was even apprehended by my friends? The same gentleman has said, with one other gentleman from Maryland, that the war in Europe, and the extent of the French arms, made it necessary to augment and raise the additional army, or to put it in the power of the President to do so. My friends then thought, as they still think, that the French, whatever intentions of hostility they bore to this country, would not invade it; that they were so encompassed by the Powers of Europe, the thing was impossible. To these reasonings my friends received in reply, that they were Jacobins, Democrats, French partisans; then was the time of political intolerance. But, having carried the army, more was necessary, the opposition must not talk, or at least they must not write about it, unless they had always legal evidence in their pocket: to justify the Sedition law, it was necessary to put down free inquiry; and, after all this, we are still told all has been well conducted; and we are further threatened with civil war, if we strike down this institution, and recommended to take care of our wives and children. We are threatened with the bayonet. Are these gentlemen prepared, like their famous leader and author of the funding system at New York, to shed their hearts' blood in the opposition? I trust they are not prepared—they have no army of dependants to second them in a design of that kind. The good sense of America has at length seen their projects, and cannot longer be imposed upon by them.

A gentleman from Maryland (Mr. Dennis) begins his remarks by giving us the homage of his esteem. I would ask the gentleman, is this an indication of approbation or contempt? He dwells much on the name of General Washington, and says that no monuments are building for him. I cannot conceive any relation that this has to the present question. And he says that Mr. Hamilton, although he was the author of the funding system, did not consider a national debt as a national blessing, and, to prove it, reads a long report of Secretary Hamilton to Congress.

It is true, in this report, there is no express avowal of an opinion that a national debt would be a national blessing; nor is it reasonable to believe that this avowal would accompany an official report. But we are to judge of the intentions of men by their actions, more than by their declarations—the actions on many measures adopted by Government lead to the proof—and I think I

have seen a publication, (as publications have been admitted as evidence by gentlemen on the other side)—which publication has been ever considered as the production of that gentleman—which went to prove that a national debt was a national blessing. The doctrine has been so well understood in theory and practice, that I had thought the principle had been settled. The gentleman says that it was impossible to do justice in the funding system; this would be a good argument not to have touched it.

He says at the time the additional army was raised France had forty thousand troops, and had nothing to do, and she might have bent her course this way. If this was true, France has one hundred and fifty thousand troops at present, and less to do; we therefore ought to be raising armies.

He says our navy protected our trade. It may be so, but was there a necessity to build the six ships-of-the-line, that could not in any short time be brought into action, at a time when we had to borrow money at eight per cent.? He says, our side of the House never wished to pay the public debt. This I deny; my friends never wished unnecessarily to augment the public debt by creating and keeping up useless institutions. But they at all times, when a debt has been created, although ever so improperly, have wished to extinguish it by actual payment; to prove this, examine the records and journals of Congress, and the votes will be there seen. The gentleman has said much about our destroying the independence of the Judiciary, and attempting to violate the Constitution, in common with other gentlemen on that side of the House, equally unjust and defamatory, for which no apology can be given unless it be admitted to be the last convulsions of an expiring party. Sir, as I am fully convinced that we have a Constitutional right to pass the bill on your table, and as I do believe that it is expedient to pass it, and as I further believe that it does not violate the independence of the Judiciary; that if they have a right to judge of the constitutionality of law, they will continue unimpaired to have the same right, and in every respect remain in their Constitutional independence, I shall therefore vote against the proposition of my colleague for striking out the first section of the bill.

Mr. GREGG.—Several days ago, Mr. Chairman, I expressed an anxious wish that this question might be decided, and assigned as a reason for my anxiety, the length of time it had already occupied, and the belief I entertained, that if the discussion was continued any longer, it must be by the repetition of arguments we had already heard, and by introducing extraneous matter, which very probably had better be kept out of view. I confess that I have heard nothing since to convince me, that the opinion I had then formed was incorrect. It is true, the argument has been conducted with great ingenuity and address on both sides, but it must be acknowledged, that there has been much repetition, and many subjects brought into view, which, as they have very little bearing on the present question, had certainly better been left untouched.

It has appeared to me, that a stranger coming into the House at some periods of the debate, would at once have concluded the subject of discussion to be, whether the measures of the Government during the Administration preceding the present, tended to monarchy or aristocracy? At other times he would have apprehended the question to be, whether the common law attaches to the Constitution of the United States, and forms a part of it? From the course of the arguments at other times, he would be inevitably led to conclude, that the main question to be decided was, how far the courts have a Constitutional right and power to declare laws passed by Congress unconstitutional and void. These, to be sure, are interesting and important subjects, and we have had much useful information to aid us in forming an opinion, should we even be called to decide on them, but they appear to me so entirely irrelevant to the subject immediately before the Committee, that I have regretted to hear them, thus incidentally drawn into the present discussion. Entertaining the opinion which I before expressed, and which I have now repeated, of the exhausted state of the subject, it would certainly be improper in me to detain the Committee by entering minutely into the argument. I assure the Committee I have no such intention. My principal object in rising is to correct some information with which a gentleman from South Carolina (Mr. RUTLEDGE) favored the Committee a few days ago, respecting an official character in Pennsylvania, the State from which I have the honor to come, as one of its Representatives. I would have done this at the time the information was given, had I not been prevented by the reluctance I always have felt at seeing a gentleman interrupted in his observations. Had it been done, then, the gentleman from Maryland (Mr. DENNIS) would perhaps have spared the allusion made by him to the same person on Saturday.

A gentleman from Virginia, in speaking on the subject of appointments to office, mentioned that a person, not only hostile to our independence during the Revolutionary war, but who had even joined the British army, and distinguished himself as an active partisan in their service, had been appointed to the important office of a judge, by the late President. The gentleman from South Carolina, in searching for an officer under the present Administration, supposed to have been possessed of similar principles, during that interesting period in the affairs of this country, as a set-off to the appointment of the judge, travelled into Pennsylvania, and fixed on the collector of the internal revenue for the city and county of Philadelphia, in that State. He informed the Committee, that when the British army under Sir William Howe, made its triumphal entry into Philadelphia, that person was its conductor; that in manifestations of his joy on the occasion, he rode before with his head wreathed with laurel, and that he was afterwards proscribed for his conduct by an act of the Legislature of the State. That the person alluded to, with many others, did precede the British army when it marched into Philadelphia, exhibiting evident demonstrations of joy, I believe has never been contradicted. That he was proscribed by an act of the Legislature, I believe is equally certain. But I never until now heard, that he was the conductor of the army on that occasion. I have always heard him spoken of as being too young to be entrusted with so important a commission. His youth, and his being under the direction of friends, who, on that occasion, were supposed to have exercised a controlling power over him, pleaded so powerfully in his favor, that this political transgression was forgiven by his country, and the proscription revoked. I wish the gentleman had proceeded with the history of this person. It would then have appeared to the Committee, that the war had not long terminated before he was brought into public notice, and placed on the theatre of public life, by that very description of people who now arrogate to themselves the appellation of Federalists. It would also have appeared, that shortly after the establishment of the present Government, he was appointed Assistant Secretary of the Treasury by General WASHINGTON, then President, and that when that office was abolished, he was appointed to be Commissioner of the Revenue by General Washington also. Yes, sir, he was appointed to both these important offices by General WASHINGTON. This consideration alone, it might have been supposed, would, in the opinion of gentlemen, have been sufficient to justify the present President in giving him the appointment he now holds, had it been given by him; but it is a subordinate office he holds; it does not come under the immediate notice of the President; it is within the gift of the Supervisor of the District.

Here, Mr. Chairman, I must beg leave to observe, and I think it will not be improper in this place to take some notice of the clamor that has been excited, and the charges that have been made against the President for removing the late Supervisor of that district, and appointing as his successor the person who now holds the office. I have before me a newspaper containing a number of toasts given at an entertainment, on a late memorable occasion in this city, in one of which the injury done the late Supervisor is represented to be so great as to warrant a kind of appeal to the people for obtaining him redress. I have seen, in another newspaper, (and newspaper information is become very fashionable on this occasion,) a paragraph in these words: "General Miller, the 'accomplished, the war-worn soldier, has been 'removed from the office of Supervisor of the 'District of Pennsylvania, to make room for one 'Muhlenberg, a Dutchman." Now, sir, what must have been the object of the author? Most undoubtedly to impress the minds of strangers with a belief that the former was a man of distinguished merit, and the latter, the reverse. In this, as in other cases, it is fair and proper that the whole truth should be declared. It is not pretended to be denied, that the late Supervisor is a man of merit. It would ill become any person at the present day to attempt to divest him, or any of the brave men to whose exertions our country is indebted for its independence, of the honors justly acquired by their services during the Revolutionary war. That gentleman entered into the Army very early in the war, and continued in service until 1779 or 1780. He then retired, and was shortly after appointed to a lucrative civil office under the State, which he held till 1794, at which time, I believe, he was made Supervisor of the District.

Let us now, said Mr. G., inquire what are the pretensions of his successor in office. His military career also commenced with the Revolution, nor did he lay down his sword until, at the conclusion of the war, the Army was disbanded. The importance of his services through that whole period I have never heard questioned. If, therefore, being war-worn constitutes any just demand on the Government for official remuneration, (and I must declare I have always viewed it in that light,) the person who now holds the office has a superior claim as having been longer in service than his predecessor, and because, in the last years of the war particularly, the pay of the officers could not be considered an adequate compensation for their services.

Permit me, sir, whilst I am on the floor, to advert for a moment to an address from the bar of Philadelphia to the Senate, on this subject, to which frequent allusion has been had, and on which great stress is laid in this discussion. As the address is not before the House, I much question whether arguments drawn from it are strictly in order. But if it even was on your table, I would ask what influence should it have on the decision of the present question? The respectability of the bar of Philadelphia is acknowledged to be very great. It is composed of men as eminent for their professional abilities as they are distinguished for personal merit. I feel no disposition to detract from their reputation in either of these respects, even was it in my power. But, sir, it is well known to every person living in Pennsylvania, that the lawyers of the whole State, with few exceptions, whatever their professional abilities and personal merit may be, have uniformly been advocates of that system of politics, and all those measures which distinguished the former administration of our Government. The public debt, a large Army, an increased Navy, and the whole catalogue of taxes, received their countenance and support, as contributing to the extension of Executive influence and power. Surely, then, it cannot be accounted strange—nay, is it not to be expected, that these men should rally round the Judiciary, and endeavor, by adding to its influence, to compensate for their loss of power in the proposed reduction of some of the other establishments?

With respect to the address itself, it may be observed, that it cautiously avoids giving any opinion on the Constitutional power of Congress to pass the bill on the table, and confines itself to a simple statement of the expediency of the present organization of the courts, as ascertained by the practice of the gentlemen who have signed it. Even as to the expediency of the system, I have

been informed that they were not unanimous, and that a few, not inferior in talents, absolutely refused signing. Had it touched the Constitutional question, or contained even an implied doubt of the Constitutional power of Congress to repeal the laws to which it alluded, I feel myself warranted in saying, that some at least whose names are now in it, would have refused their signatures. Indeed, I am inclined to think, that a regard for consistency would prevent them, generally, from giving their sanction to any instrument embracing that principle, and this opinion I conceive will appear to be sufficiently warranted by this consideration.

In the State of Pennsylvania the judges hold their commissions by the same tenure by which the judges of the United States hold theirs. During good behaviour are the terms used in both constitutions. The Judiciary system, in Pennsylvania, has been long thought to be imperfect and defective. An attempt is now making to improve it. I have this morning seen a bill on the subject, which, I understand, is likely to pass in the House of Representatives. I believe that bill is supported by all the professional gentlemen who are members of the House. I have not heard that any of those who are not members are protesting against it as being unconstitutional; and yet it goes to abolish the offices, and of course to put down more than a hundred judges, who are all commissioned during good behaviour. If these gentlemen believed that measure to be unconstitutional, their patriotism surely would lead them to protest against it, and to exert their influence to prevent its passage. This, sir, it appears to me, may be considered as pretty conclusive evidence, that it is a received opinion in that State, not objected to even by professional gentlemen, that it is competent to the Legislature to abolish an office, which on experience is found to be inexpedient and unnecessary, even although the officer holding it is commissioned during good behaviour; and this is conformable to the opinion of the chief executive Magistrate of that State, expressed with reference to this particular subject, in a letter to a friend, which has been already stated by a gentleman from Georgia. Unless the Legislature does possess this power, or if the doctrine of the independence of the Judiciary should prevail to the extent that has been contended for, it appears to me, that what I have always considered as the most important principle of the Constitution, is destroyed. Responsibility in public agents I have always considered as the best, the only security the people have against imposition. While that is preserved, they are in great danger; destroy it, and where is their security? If the judges even of inferior courts are to be so independent, as that their offices must be sacred, and beyond the reach of the Legislature, and if their power in deciding on the constitutionality of laws, is to be unlimited, and without any qualification, the Legislature is but a subordinate branch of the Government—the Judiciary is paramount—the supreme power is in their hands. Such a doctrine appears to me repugnant to common sense, to the vital principles of our Government, and to the plain and obvious meaning of the Constitution.

I must, Mr. Chairman, take this opportunity of expressing the regret with which I have heard during the present discussion, the friends of this bill branded with epithets and loaded with charges, which, to say no worse of them, are certainly highly improper in this place. They have been charged with being actuated by motives hostile to the Constitution and Government of their country. They have been represented as being led on by a principle of innovation, and a destructive spirit, which after deluging Europe in blood, is now exerting its baneful influence over them. They have been called tools of the President, mere automatons, prepared to execute all his mandates. They have been held up as disorganizers, jacobins, and infidels—and all this is done under the privilege of freedom of debate. This, sir, is not freedom of debate. It is a gross abuse of that privilege. It is licentiousness of debate, and if continued to be practised, its inevitable consequence will be, to sink the reputation of this House in the estimation of every wise and good man. I have lamented exceedingly, that any gentleman on this side of the House could have thought himself justifiable in descending to make any reply to such insinuations.

I was, Mr. Chairman, a member of Congress at the time the system was adopted, which it is the object of the present bill to repeal. I was then opposed to it. I did not think so extensive an organization of the courts necessary. The expense created by it I considered a serious evil. The courts, under the old system, I believed to be competent to the discharge of all the business which would be likely to come under their cognizance for a long time. The document which has been laid before us by the President, containing a list of all the causes which have been entered, and which yet remain undecided in the courts of the United States, has fully confirmed me that I was not mistaken in that opinion. The number therein stated even falls short of what I supposed it might be. Believing, therefore, the present system to be unnecessarily extensive, viewing its expense as oppressive, seeing no article or section in the Constitution, which, either in its plain letter or by any fair construction, prohibits to the Legislature the power of repealing it, and considering the doctrine of the independence of the Judiciary in the extent contended for, as not only incompatible with, but as repugnant to the vital principle of the Constitution, I shall give my decided vote in favor of the bill, and against the present motion for striking out the first section.

Mr. HASTINGS.—I rise to express my sentiments upon the bill now under consideration of the Committee—not that I expect to add many new reasons against the principles of the bill to those that have already been offered by gentlemen who have preceded me in the discussion; but when the Constitution of our country, the ark of our political safety, is in danger; when, in my apprehension, it is threatened with a blow that may prove fatal to its existence; when we contemplate that a dissolution of the Union may be the final result, our fears are excited, the imagination is alarmed, and every exertion ought to be made to avert the impending evil.

Under our present Constitution of Government (which I believe to be the best and most perfect in the world) the American people have been happy beyond all former example, and whether our national prosperity and union shall be preserved or destroyed, depends alone upon ourselves, upon the preservation of the existing Constitution.

The subject now under consideration of the Committee involves in it an important Constitutional question: Shall the independence of our Federal Judiciary be impaired or destroyed? shall it be maintained in that state of inviolability in which the people, the creators of the Constitution, placed it, or shall the independence of this important branch of our Government be prostrated at the feet of the National Legislature?

I have always believed, that for a Government to be free, it must have three separate, distinct, and, as far as possible, independent branches—the Legislative, Executive, and Judicial; that these three branches, though co-operating with, ought mutually to be checks upon each other, and that whenever one of those branches assumes the powers constitutionally belonging to the other, there is an end to the freedom and security of that Government; and I have uniformly believed that it was the sense of the American people, that the powers of their Government should be thus arranged and distributed. It is possible that a Legislature may sometimes be under the influence of popular passions, and that the Executive may not be wholly free from them; to gratify popular clamor, laws may be enacted unconstitutional and oppressive. What power, then, to check the Legislature in their wild career, but an upright and firm Judiciary, that is not dependent upon popular will? Judges who are independent, holding their offices during good behaviour, and who, uninfluenced by popular or party views, will operate as a check upon those, who, in factious times, may attempt to break down the barriers of the Constitution, and by the exercise of this Constitutional power, preserve the liberty, freedom, and independence of their Government and country?

I believe it is often true that there is a strong disposition in Legislative bodies to encroach upon the other branches of the Government, because perhaps they are generally the weaker branches. If we turn our attention to England, we shall discover this spirit displayed in the conduct of the British Parliament during the reign of the elder Charles. He was an arbitrary Prince; he levied money from his subjects without the consent of Parliament, and against law. The Parliament resisted his claims, and he surrendered them; but the Parliament was not satisfied with reducing the royal prerogative within reasonable and Constitutional bounds. They stripped the King of all his Executive powers, and then sent him to the scaffold. The Parliament then assumed and exercised all the Legislative and Executive powers of the Government. Confusion ensued, and order was not restored until Oliver Cromwell, with military force, and without the consent of the people, forcibly seized upon the Government.

If we look to France, we may there behold the same encroaching spirit, which discovered itself and prevailed in the National Convention. The Executive of the nation, deprived of all his powers and prerogatives, which were usurped and exercised by the Convention, who tried, condemned, and doomed the King to the guillotine. The same Convention, afterwards exercising all the powers of Government, detached judges and commissioners from their own body into every part of the country to inflict revolutionary vengeance upon the suspected enemies of the Revolution; and thousands suffered under the arbitrary decrees and sentences of those revolutionary judges. I hope, sir, that the same encroaching spirit upon the Constitutional independence of our national Judiciary has not entered this House; but what has happened once may happen again. The opinion and practice in those States that have provided by their constitutions of government that the judges shall hold their offices during good behaviour, (which is the case, I believe, with nine or ten States in the Union,) must be a good rule by which to ascertain the understanding of the people respecting this tenure of office. In Massachusetts the judges hold their offices during good behaviour. In that State, I apprehend, the people never supposed that their judges were liable to be removed from office but for misbehaviour; and I have believed this to have been the prevailing opinion in all the other States where good behaviour is the tenure of the judge's office. Upon this point I cannot entertain a doubt; the meaning of the words in our national Constitution, "that the judges of both the supreme and inferior courts shall hold their offices during good behaviour," is clear, precise, certain, and free from all ambiguity; it requires no nice metaphysical investigation or distinctions to ascertain their true intent and meaning. But to be a little more particular upon this point, the Judicial power is one of three separate branches of our Government; and it is as essential to the happiness and security of the people that the independence of this branch of their Government should be preserved as entire as the other two branches. The American people have declared, in their Constitution, that "the 'judicial power of the United States shall be 'vested in one Supreme Court, and in such infe-'rior courts as the Congress may from time to time 'ordain and establish." Here the word *shall* applies as well to the inferior courts as to the Supreme Court; and is as imperative to the one court as to the other court. I apprehend the true meaning to be this, that there *shall* be a Supreme Court, and there *shall* be inferior courts, both of which *shall* be ordained and established by Congress: the Constitutional injunction upon Congress to establish courts being as strong and direct in the one case as in the other; and the Constitution contemplates the constituting of courts inferior to the Supreme Court, having appellate jurisdiction. Then follows another part of the sec-

tion, "the judges of both the supreme and inferior courts shall hold their offices during good behaviour." Here the expression that "the judges of both the supreme and inferior courts shall hold their offices during good behaviour," is as imperative as the former part of the section, that the judicial power *shall* be vested in a Supreme Court &c. If it is a Constitutional command upon the Legislature that they *shall* ordain and establish a Supreme Court, and also inferior courts, the command is as positive that the judges of both the courts *shall* hold their offices during good behaviour; now the advocates for the repeal of the law constituting and establishing the present circuit courts, say that the Supreme Court being a Constitutional court, cannot be affected by the Legislature; but I see no reason why you cannot as easily get rid of the judges of your Supreme Court, by repealing the law organizing that court, as you can remove the judges of your circuit courts by repealing the law that establishes those courts; the principle and process is the same; for both courts equally depend upon a Legislative act to constitute and ordain them; and if the principle is once adopted, why not remove your President from office? For can there be a President constitutionally elected but by the intervention of the Legislature? You make a law determining the time of choosing the electors of President and Vice President, and the day on which the electors shall give their votes. You ordain and establish courts by law. The President is one Constitutional branch of the Government; the judges also are another Constitutional branch of the Government. The President shall hold his office during the term of four years; the judges shall hold their offices during good behaviour. If, by repealing the law constituting the court, you can displace your judges, why not also, by a cunning decree, remove the President by repealing the law determining the time for choosing the electors of President? Convinced, therefore, from the best attention I have been able to give the subject, that if the bill before the Committee is finally passed, it will be an infraction of the Constitution, I shall only add, that two or three reasons alone are satisfactory to my mind, why (if it were Constitutional) it still would be inexpedient to abolish the present system of circuit courts, and restore the old one. First, under the old system the manifest impropriety and absurdity of a judge's sitting and deciding causes in an inferior court, and upon an appeal from his decision to the Supreme Court, the same judge sitting and deciding upon the same cause in that court. Secondly, the great inconvenience and difficulty that the judges of your Supreme Court, under the old system, were subjected to, being obliged to travel from one end of the United States to the other to hold circuit courts; their long absence from their families and studies; the failure of holding courts, prevented by sickness and a variety of accidents; and the great expense to suitors consequent thereon. By the present system these evils and defects so much complained of under the old system are remedied.

But, in the course of the discussion, another doctrine has been advanced by the advocates for the bill, in my opinion dangerous to the rights and liberties of the people, and wholly destructive of the Judiciary; I mean, that the Judiciary is no check upon the Legislature; that the Legislature expresses the public will; that the public will, thus expressed, is to be carried into effect by the Judiciary, however the law may be in direct violation of the Constitution; and we are told by an honorable member of the Committee, that, if we pass this bill, and thereby violate the Constitution, it will only be for two years; in two years the people may send other Representatives, and restore the law; and this, it is said, is the corrective principle in the Constitution. But if this doctrine be true, if the Judiciary power has no Constitutional check upon the acts and doings of the Legislature, Congress may pass an *ex post facto* law by which I may be deprived of my estate or life, before this correcting principle can operate and have effect. We are also told that, by abolishing the present circuit courts, we shall get rid of the expense of supporting sixteen circuit judges, an expense to the United States of about thirty thousand dollars a year; but I ask, what is this expense, which one of the advocates for the repeal has said is paltry, compared to the advantages of a more prompt administration of justice than was the case under the old system? Gentlemen may talk about saving expense; I am disposed to go as far as they will, in saving the public money in every proper way; but I never can consent to abolish expense, at the expense of the Constitution. It is said, also, that the business in the circuit courts has diminished, and this is urged as another reason for abolishing these courts; it appears that sixteen hundred and thirty-five suits were depending in the six circuit courts; this number will average about two hundred and seventy-two suits to each of the courts; this shows pretty conclusively, that there is business sufficient for those courts to do; and the less business the less delay, and the more prompt will be the administration of justice; besides, is not this country rapidly increasing in population and wealth? Contrary to all experience, therefore, are we to conclude that litigation and suits will decrease in a ratio with the increase of our population and wealth?

Mr. Chairman, an honorable member from Virginia has told us that the judges have claimed powers, which, I understand that gentleman to mean, do not belong to them; and he says, that it was the State of Massachusetts which was first attempted to be brought to the feet of Judicial policy; I would ask that, when the judges found, by the Constitution, that a State was liable to be sued, and therefore sustained the action of an individual against the State, if this was an unconstitutional usurpation of power? And are the judges for this to be censured and charged with claiming power, which did not Constitutionally belong to them to exercise? Upon the principles of justice, I apprehend, no sufficient reason can be given, why a State should not be as compellable to pay her debts, as an individual; or is justice and moral obligation different, as applied to a State or an individual?

The same honorable gentleman has said, that we may now indulge the hope, that our pulpits will not much longer be converted into political forums. How this may be in Virginia I know not; but, sir, as it respects the clergy in New England, it is not true; we are blessed there with a learned, pious, and patriotic clergy; who, from their good conduct, have acquired, and deservedly possess, the confidence of the people; a clergy, sir, that, during the Revolutionary war, were the zealous supporters of the rights and liberties of their invaded country; a clergy that, by their influence in their parishes, by animating and encouraging the people, in the most gloomy periods of that war, to persevere in the prosecution of it, were as useful, almost, as an army in the field; and who made as great sacrifices in the common cause, by receiving their small salaries in a depreciated paper currency, as any other class of people in the country. Our clergy, too, like our judges, hold neither the sword nor the purse; like our federal judges, too, their tenure of office is, certainly, during good behaviour; for misbehaviour only can they be removed from office. Our clergy are the advocates of civil and religious liberty; they are the friends and patrons of order and good government. We consider them, in New England, to be a useful and invaluable class of citizens; we wish not to part with them, nor to have their respectability and worth lessened by groundless calumny or outrageous abuse.

Mr. Chairman, an honorable member from Maryland has given the Committee a long dissertation upon common law, and read a number of passages from Judge Blackstone's Commentaries, with a view, I conceive, to convince the Committee that our federal courts have no Constitutional right to use and exercise common law powers; if the gentleman had turned his attention to the 67th and 68th pages of the first volume of the same author, I think his difficulties and doubts, upon this subject, must have been, in a great measure, removed. That correct writer there, treating of the common law of England, says:

"This unwritten or common law is properly distinguished into three kinds:

"1. General customs, which are the universal rule of the whole Kingdom, and form the common law, in its stricter and more usual signification.

"2. Particular customs; which, for the most part, affect only the inhabitants of particular districts.

"3. Certain particular laws, which, by custom, are adopted and used by some particular courts, of pretty general and extensive jurisdiction. As to general customs or common law, properly so called, this is that law by which proceedings and determinations in the King's ordinary court of justice are guided and directed. This, for the most part, settles the course in which lands descend by inheritance; the manner and form of acquiring and transferring property; the solemnities and obligations of contract; the rules of expounding wills, deeds, and acts of Parliament; the respective remedies of civil injuries; the several species of temporal offences, with the manner and degree of punishment; and an infinite number of minuter particulars, which diffused themselves as extensively as the ordinary distribution of common justice requires."

It was so much of the common law of England, of the first description, that our ancestors brought with them and adopted in this country as was applicable to their situation and circumstances; that part of the general common law of England, which the English people have always held dear, and claimed as their birth-right; upon which depends a great proportion of their rights and liberties; and against which no complaints have been made by the people in England. This important and beneficial part of the common law of England was adopted by the first English settlers in this country; by them it was nourished and preserved, and transmitted to their posterity; under it we have prospered; it enters into all our proceedings; a principal part of our rules of evidence are derived from it; and it is to the common law we must look for the origin of the invaluable right of trial by jury. Take away the common law from your courts of law, as usual in this country, and your courts cannot proceed a step. The common law doctrine of contempts of courts in England, and the common law punishment that the offender should lose his right hand for certain contempts, never was considered, used, or claimed to be used, as law by the courts in this country.

The same honorable gentleman has said, that we ought to go back to the commencement of our Revolution for the origin of parties in this country—Whigs and Tories. I believe, sir, that the party distinction of Whig and Tory, ceased, pretty much, with our Revolutionary war; upon the promulgation of the present Constitution, a party, I believe, in every State opposed its adoption; and was it not this same party that, for twelve years, opposed all the most important measures of the Federal administration? Was it not this party that assailed, with every species of calumny and abuse, the illustrious Washington, for issuing, at the commencement of the late European war, a proclamation of neutrality to this country? Was it not this same party that formed and instituted Democratic societies throughout the Union, to overawe and control the constituted authorities of our Government? Was it not the spirit of this party that excited two insurrections in a part of our country? And had not the spirit of this party been checked, it would, most undoubtedly, have involved this country in a war with a powerful foreign nation.

The same honorable member has told us, too, that, if the circuit courts are abolished, still the Federal party will have more than their proportion of the loaves and fishes; and he thinks his party is entitled to a share of them; that is candid and sincere—was it, then, for the loaves and fishes that the honorable gentleman and his friends contended for twelve years? I believe the honorable gentleman; the loaves and fishes have been taken from the meritorious—from the war-worn soldier—from those against whom no complaint of misconduct in office was ever made, and given to the friends and favorites of the present Chief Magistrate. According to the principles of our

Constitution, these officers, like all other officers of our Government, are the agents of the people, made and created for the people's benefit; and while they are conducted properly and to the satisfaction of the people, I cannot discover either the justice, propriety, or regard to the wishes and interest of the people in the Executive, to remove them from office.

Mr. Chairman, I will forbear saying anything more; I have already consumed more time than I intended. I can only express a hope, that the bill before the Committee will not be finally passed into a law.

Mr. Hastings closed his remarks at four o'clock, when Mr. Rutledge moved, that the Committee should rise: he was supported by Mr. Griswold.

The motion was opposed by Messrs. Newton, S. Smith, and Mitchell.

The question for the rising of the Committee was lost—yeas 31, nays 52.

Mr. Dana rose and adverted to some of the observations which had been made respecting the influence of a gentleman from Virginia. He was called to order by Mr. Giles.

The Chairman, Mr. John C. Smith, said, that observations tending to show that any one gentleman on the floor possessed an undue influence in the House, could not be in order. He said he would entreat his honorable colleague, notwithstanding the wide range taken by other gentlemen in the course of the debate, to abstain as much as possible from all personal allusions and irritating expressions.

Mr. Dana.—Mr. Chairman, I was disposed to do justice to certain members of the House between whom and myself there might be supposed to exist some of those differences of opinion which have been styled unessential. It was my intention to vindicate them from the imputation of being under the influence of the gentleman from Virginia. This was very different from what he probably imagined at the time of calling me to order. But it shall now be waived. The recommendation from the Chair is entitled to respectful attention.

It is with deep regret, sir, that I have seen the present measure pushed forward upon this House. Yet I will acknowledge that, since the commencement of the main debate, I have experienced a peculiar satisfaction in witnessing the disposition to allow so fair an opportunity for discussion. It is like the sensation which accompanies the return of health, after having suffered severely from the violence of disease.

Whatever difference of political sentiment may exist among us, all will agree, I trust, in its being to the common reputation of gentlemen, that, in the present instance, the deliberations have been conducted with such impressive order. It may be further remarked, as a source of grateful reflection, that, on this momentous subject, we have not been addressed as if the eloquence of avarice were the only eloquence becoming the American Congress. In the course of debate, indeed, there has been some notice of the expense of the Judicial establishment, as organized by one of the acts passed at the last session; but this has not, to my recollection, been insisted on, in this House, as the principal motive for adopting the bill on your table. On the contrary, one of the zealous advocates of the bill (Mr. Randolph) has spoken of the expense as being a paltry sum, and disclaimed the being actuated by this consideration.

Such a frank declaration, on his part, was alike honorable and proper. For what is the additional expense that must ultimately be incurred for the support of the Judicial establishment, according to the principles of the act now proposed to be repealed? Permit me, sir, to state it distinctly.

The act in question is, "An act to provide for the more convenient organization of the courts of the United States;" which was approved on the 13th of February, 1801. By that act, six circuits were established; five for the Atlantic States, and a sixth for Kentucky, Tennessee, and the District of Ohio.

To each of the five first circuits, three circuit judges were assigned, and an annual salary of two thousand dollars was allowed to each judge. In the sixth circuit, the judicial duties were to be performed by a circuit judge, with the assistance of the district judges of Kentucky and Tennessee. An annual salary of fifteen hundred dollars was allowed to the circuit judge; and the two district judges were each to receive the same sum. By this establishment, the district judge of Kentucky became entitled to five hundred dollars annually, in addition to his former salary; and the district judge of Tennessee, to seven hundred dollars.

According to this statement, there are for five circuits, the salaries of fifteen judges, at two thousand dollars - - - - -	$30,000
For the sixth circuit, the salary of one circuit judge - - - - -	1,500
The additional sums allowed to the two district judges - - - - -	1,200
The amount of the whole for a year, is	$32,700

It is to be remembered, however, that, after the office of one of the Associate Justices of the Supreme Court shall become vacant, by resignation, death, or Constitutional removal, the vacancy is not to be supplied by a new appointment; but the court is thereafter to consist of no more than five justices; that is, of one Chief Justice and four Associate Justices. This is the purport of the third section of the act. All the justices having been duly appointed, and having accepted their commissions, were entitled to their offices so long as they should behave well. As none of them could Constitutionally be divested of office by an act of Congress, the court must continue to consist of six justices, until one of them ceases to hold his office; in which event, the office, and with it, the salary, can rightfully be discontinued. After a Constitutional vacancy shall exist, this part of the act may have effect; and there will then be a reduction of three thousand five hundred dollars for the salary of one Associate Justice.

The salaries of the judges in the respective circuits being therefore stated at -	$32,700
Deduct the allowance for one associate justice of the Supreme Court - - -	3,500
And the difference being - - - -	$29,200

is the additional expense to be ultimately incurred for the support of the Judicial establishment. This is the clear result of the whole. It has now been stated particularly, that the truth might be precisely ascertained on this point.

An expense of twenty-nine thousand two hundred dollars annually, it will be readily acknowledged, might be considered as a large sum, if it were to be paid by an individual in this country. But it should be kept in mind that this expense is for a public establishment interesting to the whole people of the United States. It is to be paid by a nation—"a rising nation spread over a wide and 'fruitful land, traversing all the seas with the rich 'productions of their industry, advancing rapidly 'to destinies beyond the reach of mortal eye."

If you compare this with your permanent expenditures as estimated by the present Secretary of the Treasury, you will find it is not the one hundredth part of the amount to be paid for the current service of the year, even if you exclude all the payments on account of the public debt. It is not the third part of what is estimated as necessary for maintaining one of your frigates.

If you compare the expense with the means of paying it, you will find the whole sum for the circuit judges of the fourth circuit does not amount to the duties payable on seven hundred coaches, chariots, post-chariots, post-chaises, phaetons, and coachees owned in Virginia. That State, it is to be remembered, forms a part of the fourth circuit; and on examining the Treasury documents laid before Congress, you will find, that during the year 1800, there were in Virginia seven hundred and nine pleasurable carriages, such as I have just mentioned; besides upwards of three hundred other four-wheel carriages paying inferior rates of duty.

If you compare the additional expense, which has been stated, with the population of the United States, and apportion it accordingly, you will find it to be but very little more than half a cent for each person.

It would be a national reproach, it would be an infamy to the American name, if the consideration of such an expense could excite the solicitude which has been manifested respecting the question now in debate. The expense is not, cannot be the true cause of what has been witnessed on this subject. Considerations of a different nature, such as appeal more eloquently to the passions, must have operated to produce the effect. You may form some judgment of them, from what was said by a gentleman from Virginia (Mr. Giles) when he referred to the journals of the last session, and spoke about opposing the public will.

But before replying to that part of his observations, I beg liberty to advert to what has been said respecting the character of officers who have been dismissed since the 4th of March. It might have been hoped that it would be sufficient for gentlemen to be in possession of power, without attempting to deprive those whom they have driven from office of their well earned reputation. Are the persons now in power sensible of a deficiency of their own stock? And do they expect to supply it by this species of plunder?

A gentleman from Maryland (Mr. S. Smith) has made some observations conveying a general allusion to negligencies and delinquencies in office; but he did not profess to apply the allusion to all the gentlemen who have been dismissed. If I did not misunderstand him, he would admit, that there were some worthy men among them. I regret that the gentleman from Maryland is not now in his place. If he were present, I am persuaded he would not wish that his observations should be left so as to be construed to the injury of meritorious officers. Lest they should be thus misconstrued with reference to the State from which I am a representative, I could have wished to inquire whether he would be understood as imputing any misconduct to the gentlemen who have been dismissed in Connecticut.

It is well known that it has been the Executive pleasure to dismiss a supervisor of the revenue for Connecticut, and two collectors of the customs. The gentleman from Maryland, I firmly persuade myself, could not intend to accuse them. I know them personally. They are men of worth. I am confident no gentleman who knows the truth and respects it, will affirm, that either of those officers was incompetent to his office, or inattentive to his duty, or unfaithful to the Constitution. Nor can it, with a color of justice, be pretended, that they were hostile to our Revolution. They all gave decisive proofs of their attachment to it. No anti-revolutionary adherence to our enemies can, with truth, be charged against them; and their official integrity is irreproachable. If criminality is to be imputed to them it must be for a new species of crime; they have been guilty of obeying the laws of their country.

Was it a reason for their dismission, that some of the persons high in office did not expect them to be so devoted to particular views as was wished? Whatever it may have been, I will not, in this place, imitate gentlemen on the other side who have so freely called in question the characters of persons differing from themselves in political opinions. Nor will I here undertake to draw a comparison between the officers who have been dismissed and those who have been appointed to their places. I waive any general investigation of the characters of men recently placed in office. It might occupy too much time, especially at this late hour. I quit the topic with a general remark: gentlemen should remember their glass house is not a fortress.

After this vindication of meritorious men who have been removed from office, I will now attend more particularly to some observations of the gentleman from Virginia. He has spoken of the judicial act of the 13th of February, 1801, as if the passage of it had been attended with improper circumstances, and thence has attempted to de-

duce the inference that it ought to be repealed. He read part of the Journal of the last session, and charged certain members of the House with having been engaged in opposing the public will at the time when the act was approved. The Journal shows, that on the 13th of February, eighteen hundred and one, the representatives, voting by States, proceeded to the twenty-ninth ballot for President, and the result was the same as had taken place before; the votes of eight States given for Thomas Jefferson; the votes of six States for Aaron Burr; and the votes of two States divided. Much has been said on this topic, which has at length been brought forward as a public charge by the gentleman from Virginia. It is now time that it should be examined.

According to the principles of our Government, the public will, when explicitly ascertained by an authentic act, is the law of the land, and must be obeyed. Of this there can be no doubt; it is beyond all question. But this public will is not merely the will of part of the community, a section of the people; it is the will of the great body of American citizens. The highest and most solemn expression of the public will in this country is the Constitution of the United States. This was agreed to by the General Convention; was transmitted to the Legislatures of the several States by the unanimous resolution of Congress under the Confederation; was recommended by all those Legislatures, when they passed laws for submitting it to conventions for their ratification, and was finally ratified by the conventions of all the States in the Union. It was thus established by the general consent. In this we should acknowledge the high authority of the public will.

There is, however, a misfortune which attends the argumentation of some gentlemen. They substitute a part for the whole; and would confound the will of a certain portion of the people, however vaguely expressed, with the will of the whole public body as explicitly manifested by an authentic act.

What manifestation was there of the public will relative to the late election of a President of the United States? The only authentic evidence of the public will on this subject proved, that Thomas Jefferson, of Virginia, and Aaron Burr, of New York, were equally the objects of approbation. The majority of the electors had given them an equal number of votes. What then was the difference of right between them? Was it, that one of the candidates was a Virginian? Was it that the members of Congress were assembled on the banks of the Potomac, with Virginia in view on the other side? Must it be acknowledged as the prerogative of that State to impose a Chief Magistrate on the Union? Or was there a difference of right, because Virginia, with its extent and population, could make more clamor than any other State? The noise of so great a State may sometimes seem loud enough for the voice of the people of the United States. And are they, therefore, in this House to be confounded with each other? If so, the observations about the public will, of which we have lately heard so much from a certain quarter, must be understood to mean the will of Virginia; and we may thus judge of the argumentation when gentlemen from that State are speaking of the respect due to the public will.

Two persons were presented, in Constitutional form, to the House of Representatives, as being equally candidates for the office of President: one from Virginia and the other from New York. When they were so presented, the choice between the two candidates was devolved on the Representatives, by the Constitution of the United States. After maturely considering the question, it was for them, as ultimate electors, to vote as they judged to be most for the public welfare. They voted by States, as required by the Constitution. And are gentlemen to be here accused for exercising the Constitutional right of election according to the conviction of their own judgments? When called upon, under the Constitution, to elect one of the two candidates, were they not bound, by the nature of their duty, to give their votes according as the one or the other was by them judged to be more or less preferable? Upon what principle can gentlemen be accused of hostility to the interest of the people, because they did not think proper to elect the candidate from Virginia? Are our affairs already reduced to such a situation that it is to be charged as a public offence, if any member of this House has failed to vote for a Virginian to be the President of the United States?

It was the Constitutional right of members of this House, in deciding between the two candidates, to give their ballots for the one whom they believed to be superior in practical capacity for administering the Government—one whom they believed to be not hostile to the commercial interests of the country, and not disposed to subject the Union to the domination of a particular State, whatever might be its lordly pretensions in consequence of extent of territory or antiquity of dominion.

As the gentleman from Virginia has thought proper to speak of events which took place about the time of passing the act in question, allow me, sir, to mention one circumstance, of which he has said nothing. The act, as finally enrolled, was signed by the Speaker of the House of Representatives after the balloting for a President had commenced; and the Clerk carried it to the other House for the signature of their President. The candidate from Virginia was then in the Chair of the Senate. The Clerk of this House, on first presenting himself, as was customary, at the door of the Senate Chamber, was not admitted. The situation came to the knowledge of a Senator, and was communicated to the Senate. After the sense of that body was found to be for his admission, the door was opened, and the Clerk was admitted to deliver his message, and present the enrolled bill for signature. It was then signed by the President of the Senate.

What should be thought of this, as taken in connexion with the fate of the act and pendency of the Presidential election? Was it a circumstance which must ever be remembered with

mortification, and which therefore will never be forgiven?

To give a further color to the suggestion that the passage of the act was attended with improper circumstances, the attempt has been made to impress an idea that it was adopted without mature deliberation, and hurried through its different stages in a reprehensible manner. If we are not willing to be misled by pretext, let us examine what was the fact.

A recurrence to the Journals of the House will prove that the subject of the Judicial establishment was recommended by the President of the United States to the attention of Congress at two successive sessions. In his communication at the opening of the first session of the sixth Congress, he recommended the subject in the following terms:

"To give due effect to the civil administration of Government, and to insure a just execution of the laws, a revision and amendment of the Judiciary system is indispensably necessary. In this extensive country it cannot but happen that numerous questions respecting the interpretation of the laws and the rights and duties of officers and citizens must arise. On the one hand, the laws should be executed; on the other, individuals should be guarded from oppression. Neither of these objects is sufficiently assured under the present organization of the Judicial department. I therefore earnestly recommend the subject to your serious consideration."

In the House of Representatives, this part of the President's Speech was referred to a select committee. They reported a bill which contained a variety of provisions for amending the system. The bill was referred to a Committee of the Whole, in which it was discussed several days, and was afterwards recommitted to the same gentlemen who had reported it. As it was printed for the use of the members, and the subject was extensively interesting to the community, it was judged proper to defer a final decision until another session, and in the mean time gentlemen might have opportunity to acquire information that would assist them to form a more satisfactory judgment.

At the second session of the sixth Congress, the subject was again recommended by the President. These are his words:

"It is, in every point of view, of such primary importance to carry the laws into prompt and faithful execution, and to render that part of the administration of justice which the Constitution and laws devolve on the Federal courts, as convenient to the people as may consist with their present circumstances, that I cannot omit once more to recommend to your serious consideration the Judiciary system of the United States. No subject is more interesting than this to the public happiness; and to none can those improvements which may have been suggested by experience be more beneficially applied."

On this recommendation a select committee was appointed. That committee reported a bill to provide for the more convenient organization of the courts of the United States. The bill underwent a long discussion and a variety of amendments. It was finally passed in the House of Representatives by a majority of 51 to 43; and in the Senate by a majority of 16 to 11. After knowing these facts, will gentlemen have the hardihood to call this a hasty measure?

Compare the whole proceedings with what took place respecting a former act. Gentlemen have spoken of the general power of Congress to repeal acts passed by their predecessors. Are they prepared to repeal the act to which I now refer? It is the act relative to the temporary and permanent seat of Government, passed, in July, 1790. That act was carried in the Senate by a majority of 14 to 12. In the House of Representatives, a Committee of the Whole agreed to it as it came from the Senate. Twelve different amendments were proposed in the House; the yeas and nays were taken on each of them, and every amendment was rejected—all in one day. A motion was then made for the third reading of the bill on the Monday following; the motion was negatived. It was moved that the third reading should be on the next day; this was negatived. The yeas and nays were taken twelve times during the sitting. A motion was made to adjourn; this was negatived. The general rule of the House being against reading a bill twice on the same day without special order, a motion for then reading the bill the third time was made on the part of its advocates, and carried. On taking the yeas and nays, for the thirteenth time in one day, the bill passed by a majority of 32 to 29. Mark the smallness of the majority in both Houses; the utter rejection of every amendment in the House of Representatives; the hurried manner in which it was forced on to the final question. Recollect other considerations relative to the passage of that act, and then judge whether it was not attended with circumstances signally improper. If matters of this kind constitute a sufficient cause for gentlemen to repeal any act passed by their predecessors, why should we remain here in pursuance of that act? Will any gentleman say it is for our personal convenience that the seat of Government is now at this place? Is it at present for the public convenience? Is it less expensive for individuals, or for the public, than it would be in some of your commercial cities? Have you here the opportunities for valuable information which might be had elsewhere? What, then, should detain us, if it be not a regard to stability and consistency in public proceedings, combined with a regard to the expectations of respectable persons seriously interested in the question? But if you may repeal the act organizing the Judicial system, what principle is there that ought to confine the Government to the place in which we are now assembled? Repeal this act, as is proposed by the bill on your table, and you shake the principle of public stability and consistency. Repeal this act, and there can be no principle of Constitutional obligation, none of political honor, or legal right, to detain you here.

Gentlemen in favor of the proposed repeal have spoken about the act as if this organization of the courts did not contribute to the more convenient

administration of justice. The argument deserves examination.

According to the original system, as delineated in the Judicial act that was approved in September, 1789, two courts, to be called circuit courts, were to be annually holden in each district of the respective circuits, by any two Justices of the Supreme Court, and the district judge of such district. The attendance of two Justices of the Supreme Court at each circuit court in the respective districts, besides two sessions of the Supreme Court annually holden by all the Justices at the seat of Government, required of those gentlemen such burdensome services that they at length addressed a letter on this subject to the President of the United States, who communicated it to Congress. On recurring to the Journal of the second session of the second Congress, it will be found that the communication was made on the 7th of November, 1792. The copy of the letter, as sent by the President, has been obtained from the Clerk's office. It bears date Philadelphia, 9th August, 1792, and is in the following terms:

Sir: Your official connexion with the Legislature, and the consideration that applications from us to them cannot be made in any manner so respectful to Government as through the President, induces us to request your attention to the enclosed representation, and that you will be pleased to lay it before Congress.

We really, sir, find the burdens laid upon us so excessive, that we cannot forbear representing them in strong and explicit terms.

On extraordinary occasions we shall always be ready, as good citizens, to make extraordinary exertions. But while our country enjoys prosperity, and nothing occurs to require or justify such severities, we cannot reconcile ourselves to the idea of existing in exile from our families, and of being subject to a kind of life on which we cannot reflect without experiencing sensations and emotions more easy to conceive than proper for us to express.

With the most perfect respect, esteem, and attachment, we have the honor to be, sir, your most obedient and most humble servants,

JOHN JAY,
WILLIAM CUSHING,
JAMES WILSON,
JOHN BLAIR,
JAMES IREDELL,
THOMAS JOHNSON.

The President of the United States.

It was undoubtedly in consequence of this communication that the system was revised at the same session of Congress. A further act respecting the courts was passed, and approved on the 2d of March, 1793. By that act the system was altered, so that the attendance of one Justice of the Supreme Court was to be sufficient for holding a circuit, with the district judge. In case of their being divided in opinion on the final hearing of a cause, or on a plea to the justification, the cause was to be continued to the succeeding court, when another Justice might attend.

This arrangement afforded a relief to the Justices of the Supreme Court; but, on experiment, it was found to produce serious inconveniences to suitors in the circuit courts.

It should be recollected, that the circuit courts decided, without appeal, all causes of a civil nature, at common law or in equity, where the value of the matter in dispute was between five hundred and two thousand dollars. To refer causes of this importance to a final decision of a single judge must be contrary to the sound principles of jurisprudence. But the mode adopted for avoiding this impropriety subjected the parties to accumulated disadvantages and expense, in consequence of delays which were continually occurring. Will it be too much to admit, that the decisions on the respective causes were generally delayed at least for one term in a year? What would be the average expense to the parties on account of such delay? If you include the expense for counsel, for witnesses, for the attendance and travel of the parties, on both sides, is it not moderate, very moderate, to estimate the amount of these items at twenty dollars for each cause? The expense for fifteen hundred causes amounts at this rate to the aggregate sum of thirty thousand dollars, payable by the suitors for delays resulting from the defective nature of the Judicial system. Compare this with what has been stated as the additional expense to the Government, on account of the new organization of the courts! A tax of thirty thousand dollars annually, levied solely on the suitors in the circuit courts, and levied in consequence of defects in your laws, was a burden of which they might reasonably complain. It was a burden whose oppressive weight the Government ought not to continue upon persons who had the right to demand justice freely, and without delay. The act of the last session, as it obviates the former causes of delay, relieves the suitors from this unreasonable and vexatious tax. This statement is not a mere affair of speculation. Who disputes the fact of there being at least fifteen hundred causes depending in the courts of the United States? It is proved by a document before the House. The document No. 8, notwithstanding its defects, exhibits enough to prove this fact.

The superior convenience of the new system is sufficiently proved, if it be possible for gentlemen to want proof of what is so evident, by the representations from the bar of Philadelphia, and the bar of New Jersey, if you regard professional experience, and by the representations from the respectable bodies of merchants in Philadelphia and New York, if you regard mercantile knowledge. Other considerations might be mentioned, to evince the general convenience of the new system, and the inconvenience of the former one; but the delays, uncertainties, and contradictory proceedings, which resulted from the late defective arrangement, have already been pointed out with such clearness and force of illustration, that it must be superfluous for me to dwell upon this part of the subject.

On the other side, reference has been had to a document received from high authority. It is the document No. 8, which has been laid before us by the President of the United States. If the Congress had wanted the information which that document professes to give, they would have called for it, I presume, from a subordinate officer, whose

proper duty it would be to give it—the Attorney General, not the President. On this occasion, however, the Chief Magistrate has been pleased to volunteer his services. The purity of his motives is not now arraigned; but the propriety of his conduct is not perfectly unquestionable. Let me not be understood as insinuating, that he has intentionally given us incorrect information. The extreme impropriety of any such intention, without regard to the hazard of eventual exposure, should repel every idea of this kind: but the purity of motive does not impair the evidence of fact. No doubt it was the object to give us such information as had been procured. Yet, when information was not desired, why should we have such as has been laid before us?

This document, with a boldness of language bordering on poetic license, has been called an exact statement. After its incorrectness has been detected and exposed, we have a supplementary document sent to us, stating (I am not confident that I precisely recollect the mollifying style of the last communication, but I think it was nearly to this purpose) that there was some deficiency in exactitude. What opinion is to be formed of this proceeding? The Chief Magistrate comes forward, unrequired, unasked, and communicates a statement which is explicitly declared to be exact; and yet he afterwards corrects that statement by following it up with another. It must be unfortunate for the Legislature and for the Chief Magistrate, that errors of this kind should take place, because they tend to excite doubts where no doubt ought to exist. When the President of the United States, with his high responsibility, and all his means for information, is induced to come forward, in the face of the whole American people, and to make to them, through the Legislature, an official declaration relative to facts, it becomes his advisers to be well assured of the correctness of such declaration. When the President gives the sanction of his authority to any statement of facts, and affirms it to be exact, it should be entitled to full credit, beyond any possible contradiction.

The manner in which this document was mentioned, in the communication of the President at the opening of the session, would lead to the idea of its containing ample information respecting the business in the courts of the United States. At present, laying aside all the clerical errors which have been pointed out, I must be permitted to think, there are some others of such importance as to deserve animadversion.

After what has already occurred, I confess the communication itself strikes my mind as an Executive manifesto against the former Administration; and I deem myself warranted to consider the present attack on the Judiciary as having been comprehended in the general plan of hostile operations.

In a concern so important as this, where the stake was so great, and the game to be played so deep, it is not to be presumed that the First Magistrate would recommend the measure, as he has done, without advising previously with the Ministers, of whom he may be considered as the head. If his powers are to be assimilated to the prerogatives of the British monarch, according to the spirit of what we have heard from some of the advocates of the present bill, it must of course be warrantable for the greater freedom and decorum of debate, to consider him as surrounded by his Ministers in council, and acting with their advice.

Taking up the communication, however, as we find it, what do we further observe? It is well known that circuit courts were holden in the Spring the last year, and again in the Autumn. Yet the document (No. 8) has reference to the 15th of June. If it was the wish to give a complete statement, upon which we might properly act with respect to an important system, why did not the Executive, with his Ministers, think fit to cause the suits for the whole year to be communicated, instead of a part of the year, during which the system could not have gone into fair operation? Why could not we be furnished with a report of the business before the circuit courts at their last autumnal sessions? Has there not been sufficient opportunity for obtaining the information? Why, then, is it that we have a statement for only the first part of the year, and not for the whole? Is this giving to us, or to the public, full and fair information? It cannot certainly be pretended that we have before us all the official information which might have been given upon this subject, although its importance is not to be denied. If we were to act on the information sent us, we ought to have been presented, as far as practicable, with a full view of the business in the circuit courts since their late organization.

But is the utility of courts to be tested solely by the number of causes, and not by the magnitude of the questions decided? A thousand causes, before courts of very limited jurisdiction, such, for example, as those before justices of the peace in some of the States, are of far less consequence than a single cause that might come before a court of the United States. Did the Ministerial advisers of the Executive hold the discernment of the American Congress in such low estimation as to imagine that, in legislating on this subject, the nature of the business before the respective courts would be wholly disregarded? Where great questions are litigated, your courts should be so constituted as to authorize great confidence in their decisions. The value of the interests immediately in controversy, and the extensive influence of the principles on which the decisions must depend, should both be considered in estimating the importance of a judicial establishment. Where life may be taken by sentence of the court, and where causes may be decided of the value of many thousand dollars—causes in whose proper decision the commerce of the country is seriously interested; where the causes are of this nature, it is important that the organization of the court should be such as to inspire confidence by its tendency to unite talents and character, with ample opportunity for mutual comparison of opinions and mature deliberation. Were the Ministry wholly regardless of these principles? Notwithstanding the facility with which further informa-

tion might have been given as to the nature of the respective causes, especially in relation to the value in controversy. It is to be remarked, that the communication is wholly silent respecting these objects.

As I see the gentleman from Maryland (Mr. S. Smith) in his place, I beg liberty to notice again the dismissions from office in Connecticut. I refer to the case of the supervisor of the revenue and two collectors of the customs. If I understood the gentleman when he was speaking about the officers who have lately been removed, he would allow that there were some worthy men among them, although he appeared to be satisfied that, in general, they ought to have been dismissed for not conducting properly in office. His sense of justice, I am persuaded, would not permit him to apply this censure to the gentlemen whom I have mentioned. But as he did not make any particular exceptions, and his language might, perhaps, be construed so as to implicate persons very differently from his intentions, I could wish the gentleman to state whether he would have his observations understood as implicating the gentlemen who have been dismissed in Connecticut? If he will be so good as to do this I will give place to him.

Mr. S. Smith.—My observations did not apply to those gentlemen. I said nothing against them.

Mr. Dana.—I am happy to have had this opportunity of making the inquiry. I believed the gentleman from Maryland to have been in situations where he might be informed respecting those gentlemen; and was satisfied that, if he had become acquainted with their true characters, he could not be willing to accuse them of having conducted improperly in office.

To resume the consideration of the document (No. 8.) it is to be observed, there is another material deficiency. The document has been recommended to our attention as if it were an exact statement of all the causes decided or pending before the courts of the United States. But is it so? No, sir! It is but an imperfect docket of the circuit courts; we must include in this description, however, the courts holden by such district judges as exercise the powers of circuit courts. There is no mention of the causes before the ordinary district courts. Not a word about the causes in the Supreme Court. Why are all these omitted? Is it of no moment for us to be acquainted with them, if we are to revise the whole "Judiciary system of the United States?" After the recommendation of this revision, at the opening of the session, such an imperfect document serves to argue an expectation that Congress would proceed to alter the system without examination of the subject. If it was prepared with a view to inform the people, what information does it give? Such as cannot be relied on. We have been called upon to receive it as completely correct; it is found to be palpably erroneous and defective.

In addition to what has been communicated to us on the part of the Executive, the system, which the present bill is designed to repeal, has been censured in the memorials of sundry inhabitants of the city and county of Philadelphia. Their memorials are all alike; different persons having signed printed copies to the same effect. What are their complaints against the act in question? The time of bringing it forward, the manner of conducting it though the several stages, the subsequent appointments under it, are all mentioned, and, for reasons in favor of repealing the act, there is a general reference to the debates in the Senate. It is not in order, sir, for any member of this House to mention, in debate, what has been said in the other House. By your rules, I am not permitted to reply to any of the arguments which have been urged by those Senators who advocated the repeal. This part of the memorial, therefore, cannot, without inconsistency, be regarded by this House. For the rest, what information is given you? The proceedings of Congress appear from their records, and, it is to be presumed, are at least as well known to the respective members, as to the memorialists. The mention of appointments under the act may perhaps be considered as implying some information unfavorable to the characters of the circuit judges. But, as to them, the memorialists cannot be presumed to have particular knowledge, unless it be with respect to judges in the third circuit. And these judges are spoken of in terms of high respect, by the gentlemen of the bar in Philadelphia and New Jersey. This honorable testimonial is from gentlemen of professional eminence, who have had an opportunity of personally observing the judges in attending the respective courts. To this effect too, you have the testimony of the very respectable body of merchants in Philadelphia, whose representation on this subject has been submitted to the House. They fully concur with the gentlemen of the bar in highly appreciating the services of the circuit judges. The characters of those judges are, unquestionably, placed on a basis too firm to be affected by any thing insinuated against them.

The representations from the gentlemen of the bar in Philadelphia and New Jersey, furnish a strong body of evidence in favor of the new organization of the courts. They are gentlemen accustomed to the transaction of professional business, and have experienced the comparative effects of the former system and the present. In a manner honorable to themselves and to their profession, the gentlemen of the bar in Philadelphia, although well known to entertain different sentiments on political topics, have laid aside their political distinctions to attend to this subject, which concerns the common interest of honest men of all parties; and have united to support a system which they believe to be of high importance for the due administration of justice. It is to be regretted that any member of the National Legislature should be induced, from any cause whatever, to give utterance to such sentiments as have been thrown out against the professional gentlemen who have borne testimony in favor of the present organization of the courts. Persons who have been intimately acquainted with none but the mere underlings of the profession, might perhaps be expected to indulge

suspicions, that gentlemen so respectable as these, would state their opinions in favor of a system, solely from motives of pecuniary interest, and not from the conviction of their unbiassed judgment. An acquaintance with the course of professional business, however, might satisfy men of candid minds, that pecuniary motives cannot have induced the gentlemen of the bar to address you as they have done. It is to be hoped, for the honor of the House, that we shall not act upon sentiments so little worthy of the National Legislature, and so unjust to gentlemen of professional reputation. Sir, the testimony of the gentlemen of the bar on this subject, is one of the most respectable sources of opinion.

After what they have said, to evince the superior convenience of the present organization of the courts, if any doubt can exist as to the fact, it is to be recollected there is the additional testimony of mercantile gentlemen in the populous cities of Philadelphia and New York. It is observable, however, that the merchants of Philadelphia, and the Chamber of Commerce in New York, like the gentlemen of the bar, have abstained from any discussion of Constitutional or political questions. With a delicacy as honorable to themselves as it is respectful to the Legislature, they have left it for the respective members to reason on general topics; and have spoken of what has passed within their own observation and experience. The merchants address you with a particular reference to the commercial interests of the country. Will you deny their practical knowledge with respect to the business in which they are occupied, and for which they were educated? They speak of the proposed repeal as a measure which must be seriously prejudicial to their commercial concerns. It should be remembered, that the questions which very frequently occupy the courts of the Union, are such as relate to commerce, not only with foreigners, but between persons of different States. On these subjects Congress have power to legislate, and the Judiciary to judge. Much of the credit of the country, the assurance of obtaining justice, the national character for integrity, depends on a system for the wise and impartial decision of judicial questions. Is it not necessary to your commercial prosperity, that the foreign creditor of your merchants should have a security for as ample justice here as he could in his own country? Is it not necessary, in a national view, that there should be such an organization of the courts as will fully satisfy creditors abroad, or in the respective States, that their claims shall be fairly tried without being subjected to the influence of local prejudices? Let me ask, sir, are your merchants generally such capitalists as to make instant payment for everything they import?—They cannot do it. They must have credit, if the country is to continue its accustomed commerce. And we know that credit is not an object of compulsion, as it respects those who give it. They require a just cause of confidence. Credit is free as human thought. Mercantile gentlemen in Virginia, in Georgia, or any other State, when it is known that ample justice is assured to creditors in the courts of the United States, may obtain a credit abroad which otherwise would never be given them. Without a confidence of this kind, you must not, you cannot speak of your country as being in good credit. When gentlemen of extensive mercantile information address you in favor of these courts, as requisite for securing mutual justice and the prosperity of commerce, they are entitled to attention. They are a body of men who have too much honor to state for true, anything of which they are not well satisfied that it is the fact; and they have too much knowledge to err on a point so intimately connected with their pursuits.

What, sir, I pray you, must be the consequence of measures contemplated at the present session of Congress? If you abolish the internal revenues, and lay upon the commercial interest the burden of supporting Government, will you superadd the destruction of an establishment which authorizes general confidence, and is beneficial to your commerce both foreign and domestic?

Consider the representation from the respectable body of mercantile gentlemen of Philadelphia. If you abolish all the other courts, they request that the circuit court may be preserved in the third circuit. This, it is known, extends over New Jersey, Pennsylvania, and Delaware. The merchants request the preservation of this court, as being an institution in which their commercial welfare is most intimately concerned. If you resolve that all the expenses of Government shall be defrayed from commerce, will you not pursue an institution which may assist the merchants to obtain the means of paying the sums which you demand from them?

Gentlemen have undertaken to inform us that the State courts will be sufficient; and appear to have a peculiar jealousy of the Federal courts. But they may be reminded, that the present question is not what they may think, but what others will think of the courts of their respective States. Whatever may be the administration of justice in any of the State courts, yet they are not sufficient, in a national view, if foreigners or citizens of other States have not a confidence in them. The declarations of gentlemen, therefore, in commendation of the courts of their own State, cannot, in the present case, establish the point in their favor, unless it is also shown that equally favorable opinions of them are entertained by persons who live without the State. But why are some gentlemen so zealous for State courts, to the destruction of the courts of the Union? Shall we be told that such is the will of the people? While I speak, sir, of the people in this manner, I mean Virginia. Why should that particular State have a predominant influence for governing the Union? And why should a zeal against the Federal courts be particularly manifested from that quarter? Is it apprehended, if these courts should continue and become objects of general approbation, that the effect may be incompatible with some part of their policy? Is it apprehended, that there may eventually be issued, from the Federal courts, a process which will seriously affect some of their baronial estates? It would be too much, for this

cause, to abolish a system which is so evidently formed for the convenient administration of justice.

As a further reason for repealing the act in question, it has been contended, that some of its provisions are unconstitutional. This, however, if true, does not require you to repeal the whole of an act, containing a variety of distinct provisions; although it might be a sufficient cause for amending the act, so as to remove from your statute book such parts as are judged to be not agreeable to the Constitution. A single provision which may be thought exceptionable, does not necessarily contaminate the whole of a system. Gentlemen have spoken as if the act in question had inflicted a wound on the Constitution. But will you, to cure a supposed wound, employ the guillotine?

A gentleman from Kentucky, (Mr. Davis,) has charged the act with being unconstitutional, because it authorized the Supreme Court to issue writs of mandamus. He founds his charge on the idea that the jurisdiction of the Supreme Court is appellate, and that the writ of mandamus must issue from a court of original jurisdiction. Will the gentleman say, that it is legally correct to call the mandamus an original writ? Will he state what is the nature of the writ of mandamus? It is essentially appellate. It is in the nature of an appeal to a superior tribunal for redress, in cases where it is alleged that justice has not been done by a subordinate tribunal or officer. There is no novelty, sir, in allowing to the Supreme Court the power of issuing writs of mandamus. A provision to this effect is found in the thirteenth section of the original Judicial act, passed in 1789. Applications have been repeatedly made to the Supreme Court for such writs. Allow me to state one of them. It was founded on an act of Congress respecting invalids, passed in 1792. That act referred it to the judges holding the several circuit courts, to examine the claims to invalid pensions, and to certify the result, with their opinion in each case, to the Secretary of War, who was accordingly to place the name of such applicants on the pension list, except in any case where he should have cause to suspect imposition, or mistake. The judges, as such, did not think the act Constitutionally obligatory upon them: but, in several circuits, they agreed to consider themselves as commissioners designated by the act, and, under this character, proceeded to examine the claims. The result, when in favor of a claimant, was certified to the Secretary of War. There were questions, however, respecting the whole business; a further act relative to invalids was passed in February, 1793; and the Secretary did not place any of the persons, whose claims had been allowed by the judges, on the list of pensioners. It was for the purpose of having the names of one of these claimants placed on the pension list, that an application was made to the Supreme Court. In behalf of the claimant, Mr. Edmond, of Connecticut, moved for a mandamus. The motion was made in February term, 1794. I have an extract from the minutes of the Supreme Court, certified by the Clerk of the court:

"*Wednesday, February* 5, 1794.—Present: The honorable John Jay, Chief Justice; William Cushing, James Wilson, John Blair, and William Patterson, Associate Justices.

"Mr. Edmond, of counsel for John Chandler, a citizen of the State of Connecticut, this day moved for a mandamus to the Secretary of War, for the purpose of directing him to cause the said John Chandler to be put on the pension list of the United States, as an invalid pensioner, conformably to the order and adjudication of the honorable James Iredell and Richard Law, Esq'rs, judges of the circuit court of the United States.

"The court informed Mr. Edmond, that when the trial of the cause now before the court should be finished, they would hear him in support of his motion.

"*Friday, February* 7, 1794.—The court proceeded to hear Mr. Edmond on the subject of his motion made on the 5th instant, and agreed to hold the same under advisement.

"*Thursday, February* 13, 1794.—The court proceeded to hear argument of counsel on the motion of Mr. Edmond, for a mandamus to the Secretary of War, made on Wednesday, the 5th instant.

"*Friday, February* 14, 1794.—The court having taken into consideration the motion of Mr. Edmond, of the 5th instant, and having considered the two acts of Congress relating to the same, are of opinion, that a mandamus cannot issue, to the Secretary of War, for the purpose expressed in said motion."

There does not appear to have been any question respecting the general power of the Supreme Court, to issue a mandamus to the Secretary of War, or any other subordinate officer. The thirteenth section of the original judicial act expressly gave the "power to issue writs of mandamus, in cases warranted by the principle and usages of law, to any courts appointed, or persons holding offices under the authority of the United States." And a motion for a mandamus was a regular mode for obtaining a decision of the Supreme Court, respecting the validity of a claim to a pension in the case stated. The decision was against the claim. Of course, a mandamus could not issue for the purpose expressed in the motion.

When such has been the unquestioned usage heretofore, is it not extraordinary that there has not been prudence enough to say less about the case of Marbury against the Secretary of State? In this case however, no writ of mandamus has been issued; although there has been a preparatory process of an inferior nature. On motion of Mr. Marbury, at the last term of the Supreme Court, a rule was made for the present Secretary of State to show cause why a mandamus should not be awarded to him for the delivery of a commission which was claimed by Mr. Marbury, as a justice of the peace in the District of Columbia. This was but a regular notice to the Secretary, of the application which had been made to the court. If no cause is shown, the next process is not a peremptory mandamus. For there are two writs of mandamus which are issued in succession; the first being the alternative, to do this, or signify reason to the contrary; and then, if no sufficient reason is signified, a peremptory writ may issue. But in the present case, neither of these writs have been awarded. By a rule to

show cause, the court has required that notice shall be given of the purpose for which Mr. Marbury has made his appeal to them. This was not a mandate sent into the Executive cabinet, as has been represented. I have a certified copy of the rule of court, comprehending a statement of the principal allegations as they appeared in evidence. It does not make any mention whatever of the present President of the United States. But that a Secretary of State is amenable to a writ of mandamus from the Supreme Court, is a position clearly warranted by principle and precedent. A Secretary of War, under a former Administration, was not supposed to be exalted above the reach of such a process. He did not consider himself degraded by being called upon in this form where a question of right was to be decided, and a specific relief was the object. Is there anything, in a case like this, to make a difference between a former Secretary of War and the present Secretary of State? What are the facts respecting the application of Mr. Marbury? Several of them are stated in the rule of court, which has been published in a variety of papers. Mr. Marbury had been, with the advice and consent of the Senate, appointed and commissioned, by the late President of the United States, as he fully believed, to be a magistrate for the county of Washington, in this district; and he applied to the Secretary of State for the commission. On principles of ordinary courtesy it would not have been expected, but it appears to have been the fact, that the Secretary of State was so far from delivering the commission, that he did not even answer the inquiry of Mr. Marbury, when he requested to be informed whether the commission for him was signed by the late President, and sealed with the seal of the United States.

There are some other circumstances which do not appear on the face of the rule to show cause, although they are mentioned in the affidavits, of which I have certified copies. After mentioning the demand of the commission, it is stated in one affidavit, "that when the demand was made upon 'the Secretary of State, he referred to his chief 'clerk, who answered, that the commission was 'not in the office, and had been delivered to Mr. 'Lincoln, the Attorney-General."

From another affidavit it appears, that Mr. Marbury "applied to Jacob Wagner, chief clerk in 'the Department of State, for an affidavit respecting the commission being sealed with the seal of 'the United States, and that the said Jacob Wagner declined making a voluntary affidavit, alleging that he did not conceive himself at liberty 'to make such an affidavit, in consequence of his 'official relation."

The chief clerk has undoubtedly conducted as became his peculiar situation. It was to be expected that he would consult the Secretary of State on the subject. Whatever personal civility might be agreeable to the disposition of Mr. Wagner, it was not proper for him, in a case so circumstanced, voluntarily to contravene the instructions of the Head of the Department.

On such facts it may be asked, why the point in question was so much avoided? Why was there this shunning, and changing from one to the other? Why all this dodging? Why all this consultation? Why give all this trouble about ascertaining facts, if they are doing right?

The next objection is one which has been made by a gentleman from Virginia, (Mr. Randolph.) I refer now to the gentleman who came forward assuming the humble style of a shepherd, and appeared so confident that the work must be done, and well done, on his coming to the encounter with his sling and his stone, as if to evince the nature of his pious zeal, he afterwards (if I did not mistake his expressions) gave us to understand, that in a certain supposed case, he would violate the Constitution, although sworn to support it, and then throw himself on the mercy of the people for pardon.

He has contended that the act in question should be considered as unconstitutional, because of the abolition of the former circuit courts. His objection proceeds upon the idea, that in abolishing those courts, the act abolished the office of circuit judge, and thereby excluded from office the justices of the Supreme Court, and the district judges.

Upon this point it is to be observed, that there never was, before the last session of Congress, such an office as that of circuit judge of the United States. It is true, that justices of the Supreme Court, with the respective district judges, were authorized to hold what were styled circuit courts. But the justices were all appointed, commissioned and sworn into office as justices of the Supreme Court, and not as circuit judges. In like manner the district judges were appointed, commissioned, and sworn as such, and not otherwise; this was their official character. The title of circuit judge was unknown in the laws of the United States. This objection therefore fails essentially. It is founded on the supposed destruction of the office of circuit judge, which in fact, never had a legal existence, until it was created by the new judicial act.

Another objection relates to certain district judges. It has been mentioned with an air of confidence, as if those judges were deprived of office by the abolition of certain district courts. And yet it is certain, that the office of district judge is not necessarily connected with the existence of what has been styled a district court under the laws of the United States. No office of judge of a district court, by that name and designation, was ever created by any of the laws. The name, however, by which a judicial office is designated at its creation, is perhaps as essential in a legal view as the name which designates a corporation. The only judicial officers of the United States, before the passage of the new judicial act, were the chief justice and associate justices of the Supreme Court, and the district judges resident in the respective districts. This residence is one of the essential qualifications with respect to the office of district judge; and from this the official name is taken. By the original judicial act, passed in 1789, the United States were distributed into districts, and provision was made for having

in each of the districts, "one judge, who shall 'reside in the district for which he is appointed, 'and shall be called a district judge." In making these remarks, I have reference to the observations of a gentleman from Massachusetts, (Mr. Bacon,) who expressed himself, more logically, perhaps, than the Virginian shepherd.

If I clearly apprehended his observations, the argument was founded on the use of the term court. He treated the subject as if court and judge were completely synonymous, proceeding upon the idea that there was a perfect identity in their meaning; and thence would have it inferred, as a necessary consequence, that you could not dismiss the court without dismissing the judge. Now, if this idea be correct, we might use "court" instead of "judge," and *vice versa*. How will this answer? Would the gentleman think proper in all cases, to substitute the word judge or judges, instead of the word court, as used in the Constitution and laws of the United States?

The Constitution, in the third section of the third article, speaks of "confession in open court." Would he agree to the substitution of "judge" for "court" in this case? Among the amendments to the Constitution you may find an article where it would be equally improper to use the "judge" as a substitute for the "court." "No 'fact, tried by a jury, shall be otherwise re-ex-'amined in any court of the United States, than 'according to the rules of common law."

This too, it may be remarked, is a Constitutional recognition of the common law, if the objection about admitting it in courts can be thought relevant to the question on the present bill.

In the fourth section of the judicial act of 1789, after defining the circuits, it is said, "there shall 'be held, annually, in each district of said circuits, 'two courts, which shall be called circuit courts." As used in this place, the word courts cannot mean judges, but must mean, judicial sessions. And will any gentleman say that these sessions could not be altered, or that one of them could not be abolished, if necessary, without abolishing the office of judge?

The truth is, sir, that the word court is used in various significations, all of which have reference to objects of a judicial nature. One of its plainest significations perhaps is, a seat of justice, a place where justice is administered judicially. It has another signification, as it is used for a judicial body, or the form of a judicial institution. We have seen that it is used to signify a judicial session. And there is a further use of it, somewhat different from either of these; when, after the session has been commenced for several days, the clerk is directed by the judge to open the court: here the word does not signify either the place for administering justice, or the judge, or a judicial body, or form of institution, or session, but the sitting for a particular day. And there need be no difficulty about understanding the term, although used so variously. The true meaning in any place may be sufficiently ascertained by attending to the subject-matter. And this is a sound rule of construction.

What were the powers of a district judge, as he is legally styled, under the act by which the office was created? In his district court, sitting alone, he might take cognizance of offences, where the punishment could not exceed thirty stripes, or a fine of one hundred dollars, or imprisonment for six months. Besides this, the act gave him cognizance of suits by aliens for any tort in violation of the law of nations, or a treaty of the United States; and of suits against Consuls or Vice Consuls, of all civil causes of admiralty and maritime jurisdiction; seizure, and suits of penalties, under laws of the United States, and suits at common law in behalf of the United States, for the value of not less than one hundred dollars. Appeals and writs of error from his decisions to circuit courts, were allowed in admiralty causes, where the value in dispute was more than three hundred dollars and in civil actions where it was more than fifty dollars exclusive of cost. This was the general jurisdiction vested in the district judges, when holding the ordinary district courts. The principal business related to causes of a maritime nature, and bonds taken of the custom-houses.

The new judicial act has been censured for abolishing the district courts in Kentucky and Tennessee. But what were these courts? The jurisdiction of the district judges, when holding the respective courts for these districts, was materially different from the ordinary jurisdiction. It extended to all causes cognizable in a circuit court, except appeals and writs of error. And for this exception, there was this decisive reason, that the district judges of Kentucky and Tennessee exercised the power both of district court and a circuit court: it would have been an absurdity to say, that either of these judges should try appeals and writs of error from his own decisions. As there was this union of district and circuit powers, it was provided, that writs of error and appeals should lie, from their decisions, immediately to the Supreme Court, in the same causes as from a circuit court to the Supreme Court, and under the same regulations.

And it is well known, that the jurisdiction which might be exercised in the circuit courts was of an extensive nature. In criminal affairs it extended to inflicting the punishment of death. In affairs of a civil nature, it extended to suits at common law or in equity, where the value in dispute exceeded five hundred dollars, and might rise above this sum without limitation. Appeals and writs of error to the Supreme Court were allowed only in causes for more than two thousand dollars in value.

What, sir, was done by the new Judicial act? It abolished the Judicial sessions that were styled district courts in Kentucky and Tennessee, and established new sessions under the name of circuit courts. But not a single Judicial office was abolished. Will it be said that the district judges of Kentucky and Tennessee do not still hold their offices, merely because they are to sit with a third judge, who resides in the circuit and is called a circuit judge? All the former powers and jurisdiction of the courts may now be exercised

in the circuit courts to be holden in those districts. For these circuit courts, it should be remembered, are different from the other courts of this name. The general power of ordinary district courts and circuit courts may both be exercised in the courts for the sixth circuit. Where the Judicial powers remain so essentially the same, will gentlemen contend, that this change of the mere name of the courts has abolished the office of those judges? The new Judicial act has drawn a clear distinction between the first five circuits and the sixth. By the seventh section of the act, it is provided that there shall be in each of the aforesaid circuits, except the sixth circuit, three judges of the United States, to be called circuit judges, one of whom shall be commissioned as chief judge; and that there shall be a circuit court of the United States, in and for each of the aforesaid circuits, to be composed of the circuit judges within the five first circuits respectively. With respect to the circuit which includes Kentucky and Tennessee with the district of Ohio, it is provided that

"There shall be appointed in the sixth circuit a judge of the United States, to be called a circuit judge, who, together with the district judges of Kentucky and Tennessee, shall hold the circuit courts hereby directed to be holden within the said circuit; and that whenever the office of district judge, in the districts of Kentucky and Tennessee, respectively, shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit."

And, by the twenty-fourth section of the act, it is provided:

"That the circuit judges to be appointed for the sixth circuit aforesaid, severally, shall be invested with, possess and exercise all and singular the powers now vested by law in the district judges of the United States."

As the act required from the district judges of Kentucky and Tennessee additional duties, although of precisely the same nature with those which they performed before, an addition was made to their compensation. But is there any power which either of those judges might before exercise in his official capacity, from which he is now excluded? This is so far from being the case, that even the circuit judges, who may be appointed to succeed the present judges in Kentucky and Tennessee, whenever their offices respectively shall become vacant, are severally authorized to exercise all the powers vested in the district judges of the United States.

Nor is this last a useless provision. For a district judge, although not sitting in what is legally styled the district court, may exercise various powers in virtue of his judicial office. For example, he may administer the oaths of office, and take depositions under the laws of the United States, and issue writs of habeas corpus, in which case he may decide judicial questions of a very interesting nature. He may also issue commissions of bankruptcy; and in such case may cause a jury to be empannelled for inquiring into facts before him, and after attending to the various proceedings, he may finally decide, as to allowing the bankrupt a certificate of discharge.

As to the question that arises under the Constitution, let me now ask what is the office of a judge of the United States? Is it not an authority or legal right to exercise the power, and to receive the compensation appertaining to a judicial employment? Upon this construction you cannot apply the terms court and office indiscriminately, and say that they have each the same effect. Is not this idea of the judicial office correct? Permit me, sir, considering its bearing on the present subject, to repeat the definition. The office of judge under the Constitution of the United States is an authority to exercise the power, and to receive the compensation appertaining to a judicial employment. An authority to exercise judicial power, a legal right to receive a determinate compensation, are of the essence of the office. While the judge is not divested of either of these essential attributes of his office, the judicial sessions may be altered, new names may be given them, and the jurisdiction may be increased or diminished. But this power of modifying the courts and varying the judicial duties, may not be exercised in such a manner as to produce the effect of depriving the judge of office by circuitous operation. This would be an abuse of power, which ought to be condemned as contrary to the spirit of the Constitution. The letter of the Constitution does not permit you, while a judge behaves well, to divest him at once of every species of jurisdiction. Nor indeed does it permit you wholly to divest him of the jurisdiction appropriate to his office.

With respect to jurisdictions, the Constitution, if you will attend to it, will be found to have marked one great distinction. Some of the judicial officers of the United States are to have authority for deciding in the last resort. Others are to exercise a subordinate power; and their decisions are subject to the revision of a superior tribunal. This distinction is important in jurisprudence; and very different qualifications might be judged requisite in appointing persons to offices so distinguished from each other. The Constitution establishes no other distinction of courts than that of supreme and inferior. It has made no distinction of grades between the various inferior courts which may be established by Congress. The jurisdiction of them all has the character of subordinate. And while you assign only subordinate power to a judge of the inferior grade, you observe the Constitutional distinction respecting judicial offices. The essential difference between them is in the jurisdiction. The decisions of judges invested with none but subordinate jurisdiction, are liable to be controlled by the supreme judicial authority. The justices composing the Supreme Court are invested with jurisdiction in the last resort; their decisions are above all judicial control. Vary, therefore, the judicial sessions and the judicial duties as may be found expedient; yet, if you do not change the jurisdiction from subordinate to supreme, the essential qualifications and rights of the judges of inferior courts may be

said to remain inviolate, according to the principles of the Constitution.

Before the passage of the new judicial act, the district judges of Kentucky and Tennessee were authorized to exercise judicial power in an inferior court. For this they still have authority; and their jurisdiction, retaining its subordinate character, is perfectly distinct from that of the Supreme Court.

By the Constitution, all the judges of inferior courts are to hold their offices by the same tenure as those of the Supreme Court. In this respect there is no distinction between them; and the principle has never been infringed by any act which has yet been passed concerning the courts of the United States.

The district judges, it may be recollected, were invested with original jurisdiction in admiralty and maritime causes, which might ultimately be removed into the Supreme Court by appeal. But what business of this kind was to be expected in Kentucky and Tennessee? Although officers of the customs have been appointed, I do not see a single suit mentioned in the report, as coming from those States.

Mr. Davis made some observations as to the reason of there being nothing from them seen in the returns.

Mr. Dana.—However that might be, so little business is done there that considerable salaries are allowed to the officers in addition to their fees. From all this I would only infer, that there cannot be in that quarter of the Union, many custom-house bonds, nor many seizures under the laws of trade, nor many prizes for the cognizance of any court. It may be presumed that district courts were established there from civility to those States, which had been recently admitted into the Union; for as to the principal business of ordinary district courts there could be none to require them. It was, therefore, no injury to the people of those States to modify the courts there according to the new judicial act. The business, whatever it was, has been transferred to a circuit court, which is to be held in each of the districts within the circuit. In this court the district judges are to sit, and with a circuit judge, are to have cognizance of every cause of whatever nature which was before cognizable by them, sitting in what were styled district courts. The judicial sessions have been varied; but no judicial office has been taken away. The jurisdiction to be exercised by the judges is, in its nature, the same as before; and the objects of it are as before, in all such causes as are cognizable in the ordinary district and circuit courts. The judges continue to hold their offices by their original titles; they remain authorized to exercise judicial power in an inferior court, and are legally entitled to receive their compensation, which has not been diminished, but increased.

There is one other argument in favor of the proposed repeal. It is in substance, that the act should be repealed to manifest the power of Congress over the Judiciary department.

In this view of the question, the bill on the table has been zealously supported. It is certainly a singular principle of legislation that you should legislate merely to show your power. But even if the bill should be passed, will it manifest the necessity or propriety of your exercise of power in the present instance? Although it may prove that you are in possession of power, will it prove your Constitutional right to displace the judges?

"During good behaviour" is the tenure by which every judge of the United States holds his office. If the idea were to be expressed in a negative form, it may be said no judge shall be divested of his office while he behaves himself well. Here the general sentiment is the same as when it is said "the judges shall hold their offices during good behaviour."

If the term *hold* has any appropriate or legal meaning, so the term *divest* has its appropriate meaning on the other part. And when it is said a person shall hold an office or an estate, it is equivalent to saying that he shall not be divested of it. The question then is, whether the present bill goes to divest the circuit judges of their offices?

Will gentlemen say that this is not the object? What else can they mean? Every part of the bill is calculated for this purpose. It is the very essence of a Judicial office under the Constitution to be entitled to exercise Judicial power, and receive a regular compensation. But this bill seizes on the power and the salaries at once, and deprives the judges of both. It is not the act of the last Congress which directed that certain Judicial sessions should cease, while the judges were to exercise their official power in the same causes as before, although they were to hold their courts according to a new arrangement; their salaries, too, were not only continued, but diminished. By this bill you now strike at the Judicial sessions, at all the power of the judges, at all their services, and the whole are to fall together.

Are we to be told that this bill is directed against the office, and that in this view it is not infraction of the Constitution to pass it? Will gentlemen say that the procedure does not touch the judge, but merely his office? How is it possible to maintain such a position? It has hitherto been understood, sir, that a judge is a person having a Judicial office. If the office is destroyed, although the man may exist, the judge is no more.

We have been told by a gentleman from Virginia (Mr. Giles) that the term *hold* is technical, having reference to a person holding and a person granting. He, as I understood him, would have it believed that the President of the United States is the person granting, and that the judges hold their offices of the President. To support this doctrine, the gentleman reminded us that the President, according to the Constitution, has power to nominate, and, by and with the advice and consent of the Senate, appoint the judges and other officers, and to commission all of them. So, too, a gentleman from Vermont (Mr. I. Smith) has contended that the power of appointment, as vested in the President, implies the power of removal, and, therefore, that the expression "during good behaviour," having reference to this power, is to

guard the judges against being removed by the President.

As to the power to remove from office, I believe it is no where in the Constitution given explicitly to the President, with respect to any officer, although of his sole appointment; and it is to be remembered that the Senate have a voice with the President in appointing the judges of the United States. When the Department of State, of the Treasury, and of War, were established, at the first session of the first Congress, the Secretaries, by the terms of the act respecting them, were declared liable to be removed from office by the President. By the Judicial act passed in 1789, the marshals were removable at his pleasure. As the principle was recognised in this manner by acts of Congress, the power of removing other Executive officers has been considered as left to the President, wherever there is no prohibition. But the power of appointment does not, in its nature, comprehend the power of removal. These powers are not the same in essence. They are so different from each other as to be, in some cases, very properly vested in different persons. The marshals in the several Judicial districts may appoint deputies; but these deputies are removable from office at the pleasure of the judges. Under the Confederation, all officers of or under the rank of Colonel, for the Army of the United States, were appointed by authority of the respective States, but were commissioned by Congress, and removable by sentence of a court martial. As it respects Executive officers, however, it may be said that the President should possess the power of removal, because he is supposed to have the whole Executive power, and is to take care that the laws be faithfully executed by those officers. Although I do not question the general propriety of such reasoning, yet I may ask, whether Congress may not regulate the tenure of any Executive office which they establish? Where is the clause in the Constitution to restrain them from doing this? But after what has been done with respect to the heads of the several Executive departments, if the law establishing any Executive office is silent on this subject, the power of removal may be considered as resulting to the President by admitted construction. It is no part, however, of the Executive power, as such, nor does it concern the proper office of the President to remove any of the judges of the United States.

The gentleman from Virginia would have us believe, that the tenure "during good behaviour," as mentioned in the Constitution, has reference solely to the President of the United States. He has attempted to show, by his remarks on the word hold, that the judges hold their offices under the President. Now, if this doctrine can be completely refuted, the argument fails. Let us examine the Constitution. If the terms "shall hold their offices during good behaviour," as used in the first section of the third article, are to be understood according to the use of terms in other parts of the Constitution, it is evident to demonstration, that the judges hold their offices, not under the President, but under the United States. In article first, section third, clause seventh, speaking of judgment in cases of impeachment, mention is made of "disqualification to hold any office of honor, trust, or profit, under the United States." In the same article, section sixth, clause second, "no person holding any office under the United States, shall be a member of either House during his continuance in office." In the same article, section ninth, clause seventh, "no person, holding any office of trust under them (the United States) shall, without the consent of the Congress, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State." In article second, section first, clause second "no person holding an office of trust or profit under the United States, shall be appointed an elector." In article sixth, clause third, "no religious test shall ever be required as a qualification to any office of public trust under the United States." Whenever the Constitution speaks of holding an office, and mentions under whom, it is invariably mentioned as being holden under the United States. The officers themselves are uniformly styled officers of the United States, and not of the President. In article second, section second, clause second, mention is made of judges and other officers of the United States. In the same article, section third, the President "shall commission all the officers of the United States." In article sixth, clause third, "all Executive and Judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution." The third article says, "the judges shall hold their offices during good behaviour." And the second article says, "the Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years." If all offices are holden under the President, under whom does he hold his office? As it respects the power under which their offices are holden, the Constitution speaks of the judges and of the President, in precisely the same terms. According to the manifest principles of the Constitution, they all hold their offices under the United States.

In England the principle is different. There everything, every office, all landed property, public and private, is supposed to be holden of and under the the Monarch, because he is regarded as the Sovereign. There the doctrine of feudal tenure prevails; and, according to this, the whole realm is considered as holden of the Monarch. But it is a novel opinion, that, notwithstanding the express language of the Constitution on this subject, the feudal prerogatives of the British Monarchy are to be adopted as the rule for construing the powers of the President of the United States. I had before supposed, that the principle of tenure in this country, since the establishment of independence, was essentially different from that in England. I had supposed that the doctrine of allodial tenure was the true doctrine here, and that the landed proprietors in the United States were regarded, by the Constitution and laws, as the lords of the soil. Such I know is the declared principle of tenure in one of the States. Is it to

be now assumed as a rule of construction in this House, that the President of the United States, like the Monarch of Great Britain, is clothed with sovereign power? Where then is the Sovereignty of the United States?

The Sovereign in this country is not the President, but the great body of the citizens, the whole people of the United States. This is the import of the Constitution. The result of the principle is, that all offices are holden under the people, who have ordained a Constitution, in order to establish justice, and have declared it to be their will, that the judges shall hold their offices by the tenure of good behaviour. The first words in the Constitution, "We the people of the United States," and every succeeding part of it, may be cited to prove, that all the powers of this Government have originated from the people, and that the offices of those in power are all holden under the people as sovereign.

Gentlemen have dwelt on the word services, as used in the Constitution, with respect to the judges: to whom are these services to be rendered? Are they to be rendered to the President, as feudal lord paramount? Or are they to be rendered to the United States, for the public good? Whose judges are they? By whose authority do they sit in judgment? In administering justice the judges of the United States render their services to the people.

In England the principle and language of the Government are different. From the Crown are supposed to be derived power, honor, office, and privilege. According to the feudal principle, the Monarch was regarded as the General, the Legislator, and the universal Magistrate of the realm. Even to this day the style of acts of Parliament has reference to the Legislative powers of the Crown. "May it please your Majesty, that it be enacted, and be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords and Commons in Parliament assembled." His Majesty's army, his Majesty's Parliament, his Majesty's judges, his Majesty's officers, his Majesty's revenue, the accustomed forms of language, all have reference to the feudal prerogatives of the Monarch. Are gentlemen disposed to imitate all this with respect to the President? And must we now learn to say, the President's army, the President's judges, the President's officers?

If gentlemen are not prepared to go so far as this, the argument about the doctrine of tenure, which has been founded upon the supposed technical import of the term hold, must be given up. And if they stop short of attributing sovereign power to the President, and should wish to avail themselves of the doctrine of subinfeudation, their British precedents utterly fail them; for it was the law of England, as early as the reign of Edward the First, that in cases of feoffment the feoffee should hold only of the chief lord of the fee, and has ever since been the law. Any idea of regarding the President as a sort of intermediate lord, therefore, is inadmissible in the present case.

Indeed, the whole argument drawn from the practice under the British monarchy is inconclusive, even upon the principles of that Government. It is contended, in favor of the present bill, that the same power which can create a Judicial office, may destroy it at pleasure, and thereby deprive the judge of his office. And thence gentlemen would have it inferred, that the office of circuit judge, which was established by act of Congress, may be rightfully abolished by enacting the present bill. But the Constitution has directed, that the judges of the inferior courts, as well as those of the Supreme Court, shall hold their offices during good behaviour. Gentlemen, therefore, give to this part of the Constitution a construction accommodated to their own purposes, and say, that it has reference solely to the President's power of appointing and removing officers, and not to the power by which offices may be established. This is the scope of the argument. Let us now try it according to English principles, on which the gentlemen so much rely for the support of the cause.

In England, according to Sir William Blackstone, the "King is considered as the fountain of justice. The Judicial authority has immemorially been exercised by the King or his substitutes. All jurisdiction of courts are either mediately or immediately derived from the Crown." Of consequence, the Judicial proceedings are held in his Majesty's name, and all delegations of Judicial authority are regarded as grants flowing from the royal prerogative. The whole of the royal prerogative is considered as a family estate, descendable to the heirs of the blood royal. It participates of the nature of an entertainment; and the Monarch, for the time being, is accordingly regarded as having an estate in the prerogative but for his own life. It is, too, an acknowledged principle, that a person who has an estate only for his own life, cannot make a grant of any part of it which shall be valid for a longer time. If he should make a grant for the life of another, yet, upon his decease, the person next in expectancy becomes entitled to the whole estate. This idea serves to explain the doctrine, that all Judicial processes were abated, and all commissions discontinued by the demise of the Crown. These, and other public inconveniences, resulted from the principle, that a reigning monarch had an estate in the prerogative but for his own life, and that he could not alienate any part of it to the prejudice of his lineal heirs. The interposition of Parliament was therefore esteemed requisite to enable the King to make grants of Judicial authority, which should be valid after his decease.

These, indeed, are not the doctrines of our Constitution. But, if they were, they would not authorize the measure now proposed. In England, the power which erects courts of judicature, and establishes Judicial offices, cannot abolish the offices at pleasure. This power is uniformly acknowledged to be controlled in every case where the judges hold their offices during good behaviour. Speaking of the King, Sir William Blackstone says: "He has alone the right of erecting courts of judicature." This clearly results from

his being considered as the fountain of justice. It is at the same time within his power to determine what number of judges shall compose any of the courts. This is but conformable to the principle, that he is the fountain of honor and of office. It is, in fact, his acknowledged prerogative, to create Judicial offices by his grants, which are matter of public record. These grants, or letters patent, must pass by bill, prepared by the attorney and solicitor general. And yet it is indisputably the law of England, that the offices of the judges cannot be abolished at pleasure by the same power which established them. The offices cannot be abolished while the judges behave themselves well. This is settled by the statute, (12 and 13 William III. c. 2,) "For the farther limitation of the Crown, and better securing the rights and liberties of the subject." From its relation to the Crown, this statute, of course, forms a part of what is called the Constitution of England. There is, therefore, a strong analogy between the two cases. After limiting the succession to the Crown in the Protestant line, the statute contains various provisions which were deemed of importance to the liberties of the realm. One relates to the judges; it directs that their commissions, after the limitation should take effect, be made *quamdiu bene se gesserint*, and their salaries ascertained and established.

Since that time it has been the settled principle, that the power by which the offices of the judges are established, cannot constitutionally abolish them during the life of the judges, respectively, unless there should be a forfeiture by breach of the condition of good behaviour. This gives to the judges a title to exercise Judicial power, and to receive determinate salaries. But the provisions respecting the judges were not deemed sufficient; for the King, having an estate in the prerogative but for his own life, was not considered as having the power to make a valid grant of any part of the prerogative of his successor. A subsequent statute was therefore passed, (1 George III., c. 23,) in relation to the commissions and salaries of the judges. By this statute provision was made, that the commissions of judges should be in full force during their good behaviour, notwithstanding any demise of the Crown, and that their salaries should be paid so long as the patents or commissions should continue in force; and the funds were designated out of which the salaries were to be paid after the King's demise.

The Constitution of the United States was, undoubtedly, framed with a view to the provisions of the two statutes. But there is reason to believe it was intended to give to the judges of the United States a greater stability in office than it secured to the English judges. In England, according to both the statutes, any of the judges may be removed, upon the address of both Houses of Parliament. The amount of this is, that the two Houses of the Legislature, together with the Executive, may divest a judge of his office. There is no such provision in our Constitution; but this omission did not result from inattention to the subject. From a message of the first President of the United States to the House of Representatives, in the year 1796, it appears that he had deposited the Journal of the General Convention in the office of the Department of State. The President referred the House to a vote which appeared on that Journal respecting the power of treaties, and alluded to the security of the smaller States under the Constitution, which he considered as being the result of a spirit of mutual concession. On examining the Journal, it is found that a motion was made in the Convention to this effect, that the judges might be removed by the Executive, on application of the Senate and House of Representatives. On taking the question by States, the motion was explicitly rejected. And yet, if the present bill should be passed by both Houses of Congress, and presented to the President, is not this, in principle and effect, an application to the Executive for the removal of the judges?

Evidence too may be found, which goes to disprove the doctrine, that the tenure during good behaviour has reference solely to the power of the President, with respect to appointments and removals. Among the documents deposited in the Office of State, there is a printed draught of a form of Government for the United States. From this it appears that the Convention had agreed that the judges of the Supreme Court should be appointed by the Senate, although they were to be commissioned by the President, and should hold their offices during good behaviour. In this case, the terms "during good behaviour," could not be intended to guard the judges against any supposed power of the President to remove, for he had not the power to appoint. These facts any member of this House may ascertain for himself at the Office of State. They are decisive as to the opinion entertained by the General Convention in 1787, and prove it to have been the reverse of the construction now attempted to be given to the Constitution.

Much has been said about the principle of responsibility, as if that could vindicate the passage of the present bill. The true principle upon this subject, sir, is that of personal responsibility. But where do the gentlemen find their doctrine of a collective responsibility? The President is personally responsible; but not the Executive authority, as such, for this is one of the three integral departments of Government. The members of Congress are personally responsible; but not the collective body. So the judges, as individuals, are responsible; but there is no such thing in the Constitution as a collective responsibility of the whole body of judges.

The President, indeed, may put his negative upon acts of Congress. The Senate may refuse to advise and consent to an appointment where the President has made a nomination. The Judiciary may say, that unconstitutional acts are not obligatory. But these powers of the respective departments in relation to each other, are not what is meant by this principle of responsibility. The President is responsible on impeachment and at elections. The members of Congress are responsible at elections, if not on impeachment. The

judges individually are responsible on impeachment, where they may claim the right of justifying themselves against any accusers; as to them, there are no periodical elections. The principle of responsibility is applicable where persons can meet and answer the charges which may be made against them for their official conduct. This may be done by gentlemen, if they think proper, at elections, particularly where such proceedings are customary; they may know the time and place for hearing, and for deciding as to their conduct; and they may prepare their answers to charges, however vaguely exhibited. In cases of impeachment, there are formed articles of charge, a regular trial, and ample opportunity for defence. But, upon the plan of the present bill, the judges are to be divested of their offices, without being either accused or heard. The bill strikes at the collective body, under a vague idea of their being responsible; and yet there is not a single charge against them, and if there were, they have no opportunity of answering for themselves, before the men who undertake to decide against them.—There is nothing in the Constitution to warrant such a responsibility as this.

The gentleman from Vermont, (Mr. I. Smith,) spoke of the acknowledged power of impeachment as rendering it vain to talk of the independence of judges. He appeared to consider such a responsibility as destructive of this independence. Another advocate of the bill, a gentleman from Virginia, (Mr. Randolph,) spoke of the responsibility of impeachment as amounting to nothing in practice. To arrive at a just conclusion, it may be proper to take an intermediate course between these two extremes of opinion. When we speak of an independent Judiciary, the correct meaning is, that this department should not be particularly dependent for existence on the Executive or on the Legislature. This relative independence is perfectly consistent with the principle of personal responsibility. With respect to the departments of Government, their general independence of each other is a common security of them all. But the several judges, individually, ought to be responsible on impeachment for ill behaviour. The mere act of impeachment does not destroy the reputation. A person might be impeached for party purposes; officers have been dismissed on this account; but no man can say, with justice, that they merit reproach merely for this.

It is a decisive reason against admitting the power now claimed over the Judiciary, if they are to judge whether the acts of Congress are conformable to the Constitution. This, however, has been denied by several of the gentlemen who advocate the present bill. It is said, that this question must be decided by Congress. And gentlemen would now decide, for the first time, that the Constitutional validity of the acts of Congress is to be determined only by the result of elections; and that the judges, as composing a Constitutional department, have nothing to do with such questions. We say, if Congress can pass any acts at pleasure, and there can be no judicial opinion as to their validity, Congress might destroy the Supreme Court altogether. As to this power of destroying judges, there is no difference, in the principle, between those of the Supreme and those of inferior courts. The offices of the justices of the Supreme Court have been established by act of Congress. That act may be totally repealed as well as the act now in question. The present bill, therefore, in its principle, is a claim of power in Congress to divest the judges of the Supreme Court of their offices. This is a more serious claim of power than has been advanced before. Whatever may have been said of former administrations, they never claimed to command the whole powers of the Government through the Legislative body. Whatever might be said on the other topics, whatever questions might be made about the constitutionality of measures, there was one principle constantly admitted; and that was, to consider the judges of the United States, while behaving well, as placed beyond the reach both of the Legislature and the President. This gave a security to all parts of the community, against unconstitutional measures. For the judges, being independent of the Legislative and Executive departments, might, in the faithful discharge of their duty, refuse to give effect to acts contravening the Constitution. It was not pretended, that Congress, with the President, were authorized, at pleasure, to deprive the judges of the means of subsistence, by abolishing their offices.

It is for the judges faithfully to administer justice according to the Constitution and laws. No menacing power should exist to bias their decisions by the influence of personal hopes and fears. They are undoubtedly to give effect to acts of Congress in pursuance of the Constitution. But the Constitution, which granted to Congress their Legislative powers, is the supreme law; and the judges, from the very nature of the case, must pronounce on the validity of acts of Congress, as compared with the imperative provisions of the Constitution. When they are called to decide a cause, if they find on the one side an act of Congress, and, on the other, the Constitution of the United States, when they find these placed in opposition to each other, what is their duty? Are they not to obey their oath, and judge accordingly? If so, they necessarily decide, that your act is of no force; for they are sworn to support the Constitution.

This is a doctrine coeval with the existence of our Government, and has been the uniform principle of all the constituted authorities. The contemporaneous use of terms, the undisputed practice under the Constitution, have settled the principle. These determine the sense of the Constitution, by which we should now be guided.

Sir, it is not a new opinion in this country, that the judges have authority to decide against an act of Congress, if unconstitutional. This was the opinion which was practised upon in the year 1792. A question arose from the act of the 23d of March, 1792, respecting invalids. The act has been mentioned already. The judges in the three circuits determined it was unconstitutional, and communicated their opinion to the first President

of the United States, who laid the subject before Congress.

From the journals of the House it appears, that the President sent a Message, on the 16th of April, 1792, with a statement of the opinion of the judges attending the circuit court in New York.

The statement, as sent to the House by the President, has been found in the Clerk's office. It is a copy, certified by Tobias Lear, Secretary to the President of the United States.

"At a stated circuit court of the United States, held for the district of New York, at the city of New York, on Thursday, the fifth day of April, one thousand seven hundred and ninety-two, at ten of the clock antimeridian:

"Present—The honorable John Jay, Esq., Chief Justice of the United States, the honorable William Cushing, Esq., one of the associate justices of the Supreme Court of the United States; the honorable James Duane, Esq., judge of the district of New York.

"The court proceeded to take into consideration the following act of the Congress of the United States, viz: 'An act to provide for the settlement of the claims of widows and orphans, barred by the limitations heretofore established, and to regulate the claims to invalid pensions."

The act, which is that of the 23d of March, 1792, is then recited at full length. It is unnecessary to repeat it now; and I will proceed to the opinion of the court.

"The court were thereupon unanimously of opinion, and agreed,

"That, by the Constitution of the United States, the Government thereof is divided into three distinct and independent branches; and that it is the duty of each to abstain from, and oppose encroachments on either.

"That neither the Legislative nor the Executive branches can constitutionally assign to the Judicial any duties, but such as are properly judicial, and to be performed in a judicial manner.

"That the duties assigned to the circuit courts, by this act, are not of this description, and that the act itself does not appear to contemplate them as such; inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the Secretary at War, and then to the revision of the Legislature: whereas, by the Constitution, neither the Secretary at War, nor any other Executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.

"As, therefore, the business assigned to this court, by the act, is not judicial, nor directed to be performed judicially, the act can only be considered as appointing Commissioners, for the purposes mentioned in it, by official instead of personal descriptions.

"That the judges of this court regard themselves as being the Commissioners designated by the act, and therefore as being at liberty to accept or to decline that office.

"That, as the objects of this act are exceedingly benevolent, and do real honor to the humanity and justice of Congress, and as the judges desire to manifest, on all proper occasions and in every proper manner, their high respect for the National Legislature, they will execute this act in the capacity of Commissioners."

The remainder of the opinion relates to extending the session of the court for the term of five days, and need not be read at this time. The judges agreed, that the Legislature had a right to extend the session, and that the direction of the act, as to this particular, ought to be observed.

On the 21st of April, 1792, the President sent another Message, with the copy of a letter, communicating the opinion of the judges attending the circuit court in Pennsylvania.

I have the copy as laid before this House. Permit me to read it:

"Philadelphia, *April* 18, 1792.

"Sir: To you it officially belongs, to 'take care that the laws' of the United States 'be faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments which, on a late painful occasion, governed us with regard to an act passed by the Legislature of the Union.

"The people of the United States have vested in Congress all Legislative powers 'granted' in the Constitution.

"They have vested in one Supreme Court, and in such inferior courts as the Congress shall establish, 'the Judicial power of the United States.'

"It is worthy of remark, that, in Congress, the whole Legislative power of the United States is not vested. An important part of that power was exercised by the people themselves, when they 'ordained and established the Constitution.'

"This Constitution is 'the supreme law of the land.' This supreme law, 'all judicial officers of the United States are bound, by oath or affirmation, to support.'

"It is a principle important to freedom, that, in Government, the Judicial should be distinct from, and independent of the Legislative Department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.

"They have placed their Judicial power not in Congress but in courts. They have ordained that the 'judges' of those courts 'shall hold their offices during good behaviour;' and that, 'during their continuance in office, their salaries shall not be diminished.'

"Congress have lately passed an act 'to regulate,' among other things, 'the claims to invalid pensions.'

"Upon due consideration we have been unanimously of opinion, that, under this act, the circuit court held for the Pennsylvania district could not proceed:

"1. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States, the circuit must consequently have proceeded without Constitutional authority.

"2. Because, if, upon that business, the court had proceeded, its judgments (for its opinions are its judgments) might, under the same act, have been revised and controlled by the Legislature, and by an officer in the Executive Department. Such revision and control we deemed radically inconsistent with the independence of that Judicial power which is vested in the courts, and consequently with that important principle which is so strictly observed by the Constitution of the United States.

"These, sir, are the reasons of our conduct. Be assured, that though it became necessary, it was far from being pleasant. To be obliged to act contrary, either to the obvious direction of Congress, or to a Constitutional principle, in our judgment equally obvious, ex-

cited feelings in us, which we hope never to experience again. We have the honor to be, with the most perfect consideration and respect, sir, your most obedient and very humble servants,

"JAMES WILSON,
"JOHN BLAIR,
"RICHARD PETERS.

"The PRESIDENT OF THE UNITED STATES."

On the 7th of November, 1792, the President sent a further Message, communicating the opinion of the judges attending the circuit court in North Carolina. Their opinion was against the act as being unconstitutional. The reasons for this opinion were given in a letter addressed to the President. I have before me the copy of the letter as it was sent by the President to this House. It is dated "Newbern, North Carolina, June 8, 1792." It is signed "Ja. Iredell, one of the associate justices of the Supreme Court of the United States; Jno. Sitgreaves, Judge of the United States, for the North Carolina district."

The reasons for their opinions against the act are stated at considerable length. The opinion of these judges is substantially to the same effect with that of the judges in the two other circuits. A part of the letter may be read, notwithstanding the lateness of the hour. In assigning their reasons for being against the act as unconstitutional, it is the first position:

"That the Legislative, Executive, and Judicial departments are each formed in a separate and independent manner, and that the ultimate basis of each is the Constitution only; within the limits of which each department can alone justify any act of authority."

The question, if any question could be made about the authority of the judges to decide respecting the unconstitutionality of the acts of the Legislature, was now placed directly before Congress and the first President of the United States. What was done by them on this subject? Another act relative to invalids was passed by Congress and approved by the President on the 28th of February, 1793. This act prescribed new regulations for ascertaining the claims to invalid pensions. And the third section directed that no person who was not on the pension list before the 23d of March, 1792, should be entitled to a pension unless he complied with these regulations. It contained, however, a clause for saving to all persons their rights, founded upon legal adjudications under the former act. And there is one provision in the same section which is particularly observable as it respects the present question. It is in these words:

"It shall be the duty of the Secretary at War, in conjunction with the Attorney General, to take such measures as may be necessary to obtain an adjudication of the Supreme Court of the United States on the validity of any such rights, claimed under the act aforesaid, by the determination of certain persons styling themselves Commissioners."

The force of this provision will be instantly perceived on recollecting that the judges in some of the circuits had agreed to act as Commissioners under the act of the 23d of March, 1792.

We will now attend to what was done in consequence of the injunction laid on the Secretary of War by this second act respecting invalids. From the Journals of the House it appears that the Secretary made his report to Congress on the 21st of February, 1791. The original report has been filed in the Clerk's office.

WAR DEPARTMENT, *Feb.* 21, 1794.

The Secretary of War respectfully reports to the Senate and House of Representatives of the United States:

That, by the act passed the last session of Congress, entitled "An act to regulate the claims to invalid pensions," it was made the duty of the Secretary at War, in conjunction with the Attorney General, "to take such measures as might be necessary to obtain an adjudication of the Supreme Court of the United States on the validity of the rights claimed by invalids (under the act, entitled 'An act to provide for the settlement of the claims of the widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions,' passed March 23d, 1792,) by the determination of certain persons, styling themselves Commissioners."

That, in obedience to the said act, an unsuccessful attempt was made in August last, to obtain an adjudication of the Supreme Court upon the claims of the said invalids, as will appear by the report of the Attorney General, herewith submitted, No. 1.

That such adjudication, however, has been recently obtained, and that the determinations of the Commissioners were held to convey no legal rights to the invalids claiming under them, as will appear by the report of the Attorney General, hereunto annexed, No. 2.

All which is humbly submitted to the Senate and House of Representatives of the United States.

H. KNOX, *Secretary of War.*

No. 1.—*Copy of a letter from the Attorney General of the United States to the Secretary of War, dated*

PHILADELPHIA, *August* 9, 1793.

SIR: In consequence of our arrangement, I moved the Supreme Court of the United States on Tuesday last for a *mandamus* to be directed to you, as Secretary of War, commanding you to put on the pension list one of those who had been approved by the judges, acting in the character of Commissioners. The decision of one case would have involved every other. But two of the judges having expressed their disinclination to hear a motion in behalf of a man who had not employed me for that purpose, and I being unwilling to embarrass a great question with little intrusions, it seemed best to waive the motion until some of the invalids themselves should speak to counsel. To this end I beg leave to suggest the propriety of a letter from your office to such of the invalids as have been certified to be proper for pensions, and perhaps it may be well to intimate the turn which the affair has taken, and I have just mentioned. It was very unlucky that, although one of the invalids was in court when I made the motion, and heard the difficulty, he omitted to notify himself to me until the court had risen, and it was too late. I have the honor to be, &c.,

EDM. RANDOLPH.

No. 2.—*Report of the Attorney General to the Secretary of War, dated*

PHILADELPHIA, *February* 17, 1794.

SIR: I have to report that, in consequence of measures taken to obtain a decision of the Supreme Court of the United States upon the validity of the adjudications of certain persons styling themselves Commissioners under the act of the 23d of March, 1792, the court has this day determined (in the case of Yale Tod) that such adjudications are not valid.

I have the honor to be, with great regard, sir, your most obedient servant,

WM. BRADFORD.

The SECRETARY OF WAR.

We here find that the authority of the judges to decide questions arising under the Constitution was fully recognised. The first President of the United States, the Congress, and the Judges of the Supreme Court, all sanctioned the opinion by their official proceedings. And it is well known that many of them were members of the General Convention or of State Conventions, which agreed to the Constitution.

In 1796, the authority of the judges to decide as to the constitutionality of acts of Congress was further recognised. A question respecting the constitutionality of the act laying a duty on pleasurable carriages, was brought forward from Virginia. The Attorney General of the United States for that district had filed a bill in the circuit court against Daniel Lawrence Hylton for not paying the duties on a number of carriages, as required by the act. The material facts in the cause were argued. The defence was, that the act was unconstitutional. Judgment was rendered against the defendant in the circuit court. The cause was carried to the Supreme Court of the United States by writ of error. I have a certified extract from the minutes of the Supreme Court, stating the whole proceedings before that court. The error, for which a reversal of the judgment of the circuit court was prayed, was assigned to be, "That judgment ought to have been 'rendered for the defendant and not for the plaintiffs; whereas the same was rendered for the 'plaintiffs, there being no law binding on the citizens of the United States upon which the judgment could be rendered." This assignment of error shows that the constitutionality of the act of Congress was the point in controversy. But if there could be any doubt as to the fact, it is clearly established by an agreement which appears on file. It is in these words:

VIRGINIA *January* 25, 1796.

"I agree that the writ of error, 'Daniel L. Hylton *vs.* the United States,' which is now depending before the Supreme Court of the United States, be heard and determined at the approaching session of that court. I certify this agreement, that the cause may not be continued on my account; my object in contesting the law upon which the cause depends, being merely to ascertain a Constitutional point, and not by any means to delay the payment of a public duty.

"DANIEL L. HYLTON."

The Supreme Court affirmed the judgment of the circuit court in this cause, and thereby decided in favor of the validity of the act of Congress. Three gentlemen were engaged to assist the Attorney General as counsel in behalf of the United States. One of these gentleman was from Virginia; another from Pennsylvania, and another from New York. It was a cause of peculiar interest and expectation. The Constitutional validity of an act of Congress for raising revenue, was to receive a final decision before the highest court in the United States.

On examining the annual statement of receipts and expenditures for 1796, it appears that the sums paid to the three gentlemen for their professional assistance, amount to nearly a thousand dollars. (The precise amount was nine hundred and sixty dollars, sixty-six cents.) There is no room to question that all this was well understood at the time. The statement was printed and laid before Congress. The payment to the gentleman from Virginia, (whose name is first mentioned in the statement) is expressly said to be "for his fees as 'agreed with the Attorney General, for arguing 'the cause before the Supreme Court in February term, 1796, respecting the constitutionality 'of the act imposing duties on carriages."

You here find the principle was so fully admitted, that the constitutionality of a revenue law was submitted to the decision of the Supreme Court; and, with the full knowledge and sanction of Congress, the sum of nearly one thousand dollars was paid to counsel, on behalf of the United States, for assisting the Attorney General in defending the act as Constitutional.

The principle, therefore, which is now disputed, has been settled for years. It is the established principle of the Constitution.

What, then, is the question under debate? It is a question between the whole people of the United States on the one part, and their delegated authorities on the other. Shall the Constitution continue to be what the whole American people have made it, or shall it be whatever the Congress and President may choose?

Say gentlemen, Congress must be answerable at the period of elections. This is all admitted. But why would you stake the whole control of their power merely on elections? On our part it is said, let there be all the security which elections can give; but let there be at the same time, the further security of the judicial power. If there can be no regular decision of Constitutional questions by judicial authority, if there can be no check except elections, what effectual check will finally exist? Why would you diminish the number of securities for the public liberty? This is too precious to be exposed to needless hazard, by abandoning any of the means established for its preservation.

While I speak of liberty, sir, let me not be misunderstood. I do not mean a liberty, the love of which is nothing but a general hatred of control. I mean the liberty which is guided by wisdom, and venerates the maxims of integrity. This is the liberty which should be valued as the political pearl of great price. But it is said, no man will consent to throw away his liberty, and be a slave. Would you therefore leave him no security for his liberty except elections? Ought there to be no other Constitutional barrier against usurpation? Whence is it, that so many nations of

the earth, after breaking their chains have had them riveted again? Others, before ourselves, have had the right of elections; others have enjoyed the fruit of their industry; they have had public virtue; they have had personal integrity and wisdom. But to how many of them have their liberties been lost! The French had their elections, perhaps as free as ours; but we see they have lost their liberty.

What, sir, is the fair import of this language about elections? The principle, as far as it is correct, can amount to no more than this, that the majority should control the affairs of Government, and that the elections ascertain the sense of this majority. Apply then the principle to this House. How are the Representatives apportioned among the several States? A majority of the whole number of free inhabitants in the United States do not elect a majority of the Representatives. The owners of slaves, besides other advantages allowed them in the Constitution, are privileged to have a greater voice in elections than the free inhabitants who hold no persons in servitude. The State which owns the greatest number of slaves, derives a preponderating influence in this House, from having the Representatives apportioned according to the whole number of free inhabitants, and three-fifths of the persons holden in slavery.

Where then is the Constitutional security for the States whose free inhabitants cultivate their own soil, against the States where the tillage of the earth is the task assigned to slaves? Compare the multitude of slaves to the south of the Delaware or Potomac, with the small number to be found in the States north! What is there to counterbalance the advantage given to the States where the slavery of the blacks is most prevalent? The Constitutional security is not to be found in the result of elections, according to the present rule of apportioning representatives. A security might be found in a judicial body, composed of men venerable for their virtues and talents, and placed beyond the reach of this House.

For such a security the Constitution was understood to have made provision, when it was ratified in the several States. By what right can you now rescind the compact?

Will gentlemen say, the Government cannot go on if there should be this check against unconstitutional acts? This might be pronounced a bold assertion, when it is remembered, that the Government has gone on, and gone on for twelve years, in the exercise of its acknowledged powers, with this principle uniformly admitted in practice, any of the people being at liberty as freemen to object, in court, against any act as unconstitutional; and yet laws have been enacted, and carried into full effect.

If any unconstitutional act is passed, what must be done for relief against it, according to the plan of gentlemen who advocate the bill on the table? Under all the disadvantages to which the free inhabitants of certain States are liable, in consequence of the number of representatives allowed for three fifths of the slaves, will gentlemen explain in what mode any of those inhabitants are to obtain relief? Must persons be subjected to the operation of an unconstitutional act until the period of elections comes round, and in the mean time be sending from State to State with a view to influence the electors not to vote for such representatives again?

Instead of all this sufferance, instead of all these efforts, which may at length be found wholly ineffectual for obtaining redress, especially under the present apportionment of representatives, why may not the injured citizen appear before wise and upright judges, and present to them the Constitution of his country, and receive from their decisions that relief to which he is justly entitled? While there are judges who are dependent on no party, but dependent on the fidelity with which they exercise their functions, men of learning and wisdom, who are placed under no bias from persons in power, but act according to the impulse of duty alone, I should suppose that they might be trusted to expound your laws, and guard the Constitution. Such an establishment is every man's guard against despotism. It is the protection of integrity against violence. It affords a covert against the tempest of party. It is the strength of the feeble against the mighty. Here the honest man might appear with confidence, assured that in trial and in judgment, truth and justice, and these alone, will prevail. Although covered by political clamor, with the opprobrium of guilt, while meriting by his conduct the honors of virtue, he might stand alone, strong in his innocence, and put to confusion a host of accusers.

Yet such an establishment is what is now complained of as an evil. Those who make the complaint, indeed come forward in the humble guise of respect for the wishes of the people, and claim to hold a control at pleasure over the judges. But who are such novices as to be regardless of the event of compliance with their views? When gentlemen arrogate to themselves a power never claimed before in the United States, it ought to teach them, and others, to be cautious. Gentlemen at least ought to hesitate, and reflect, that those who framed and adopted the Constitution, and have practised under it, knew something of its true import. If it is now supposed doubtful on this subject, where should we look for the rule of construction, if not to contemporaneous opinions and usage? Usage forms the standard of language. And whatever might be thought of the phraseology of the Constitution if now introduced for the first time, yet the sense in which it is known to have been understood, when adopted, and a period of years immediately subsequent, is that sense of the Constitution which the people of the United States have ratified, and which we are bound to support.

A number of interesting questions might be expected to arise, when the Constitution was formed. They were to be expected from the nature of a system intended to unite in one Government a variety of States, each of which were to retain their particular powers. When the system changed, from the terms of the Confederation to those of

the Constitution, the riches and the forces of the United States were to be placed directly within the command of the Government; and the several States were no longer to have an equal voice in Congress, as before. But there were, at the same time, various restrictive provisions in the Constitution, which appear framed to guard against evils which might be apprehended from the change of system. Restrictions were imposed on the powers of Congress, and the respective States. Some of the restrictions, undoubtedly, were to guard individuals against public oppression; and some, to guard the particular States against the Government of the United States, or against each other. Controversies were known to exist between particular States, and others might be expected to arise, as well as controversies between a State and the United States. The parties in such controversies would be powerful; each might put armed forces in motion. When provision was to be made for questions of this nature, who could hesitate to acknowledge the importance of establishing an impartial tribunal, beyond the immediate control of either party? A tribunal, the constitution of which might inspire general confidence, and thereby prevent the recourse to a very different mode of deciding conflicting pretensions. And how were the restrictions on the powers of Congress to be rendered effectual, except by the intervention of such a tribunal? In what other mode could a fair construction of the Constitution be uniformly secured to the respective citizens and to the several States? This impartial tribunal, independent of party, and placed beyond suspicion of undue influence, should be formed into a Supreme Court, vested by the Constitution with power to decide in the last resort. Will you say that Congress may give a construction to the Constitution? So, too, a State Legislature may give it; and there might be as many constructions as there are State Legislatures. Will you then say, that the State Legislatures shall submit without reserve, to any construction that may be given by Congress? The members of the State Legislatures are bound to support the Constitution; and may they not judge of their duty as well as yourselves? Will you force them to submit? Remember the particular States divide the power of the militia with the Government of the United States. With respect to the acts of Congress, and of the State Legislatures, as compared with the Constitution, and with respect to the acts of particular States, when in opposition to each other, who shall decide questions so interesting as these? The Constitution has provided for having them determined by a Supreme Court of the United States. But if this court can be put down at pleasure by Congress, if the judges of the United States can be divested of office as often as parties change, what will be said by the several States? Will they not be naturally led to attend to the great disproportion between States, and the consequent power of one over the other? Virginia, for example, is extensive, and to add to her influence in this House, there are to be representatives allowed for three-fifths of the slaves. With all the preponderance of such a State, could a small State place a reliance on the decisions of this House, where the interests of the two States should be in competition? So, too, if a judicial controversy should arise between the preponderating State and one of the smaller members of the Union, will the small State have equal confidence in the decision of the judges, if they may at any time be divested of office by act of Congress? No, sir! In common sense it will be understood, that the power which may displace the judges at pleasure, and thereby deprive them of subsistence, can be master of the decisions. Establish then the principle of this bill, and who will be the lords of the Judiciary? If this principle should be ultimately established, you may look for such lords to the south of the Potomac—you may look for them among the masters of the three hundred thousand slaves that stock the plantations of Virginia.

The establishment of an impartial tribunal to decide on the fundamental principles of the Government, is totally unknown under the British monarchy. The opinion of Sir William Blackstone is express, that in one and the same nation when the fundamental principles of their common union are supposed to be invaded, the only tribunal to which the complainants can appeal is that of the God of battles; the only process by which the appeal can be carried on is that of intestine war. Sir, it was because there was no such impartial tribunal to check the progress of usurpation, that the appeals to arms have been made in England, and "one monarch was sent to the scaffold, and another was hurled from his throne." It was not to weep over a fallen monarch, that these examples were mentioned by my friend from North Carolina (Mr. STANLEY.) It was to seize the spirit of history, and to remind us of the instruction to be derived from its admonitions. It was to prove, that when there are great and powerful parties in a country, with arms at command, if there is no impartial tribunal to decide between them the violence of their prejudices, when provoked, will prompt them to make the extreme appeal.

Sir, is it possible, in the nature of things, that injustice should result from allowing the judges of the United States to be independent of the Legislature? If they are once appointed to office, and you have no power to displace them, will not their regard to reputation influence them to do what is right? If they are men of talents, if they understand their duties, and are perfectly secure of being in office, so long as they behave well; if, when in office, they are rendered completely independent of the party by which they were appointed, there can be but little cause of apprehension respecting the decisions of the judge, whatever may have been the particular politics of the man. Place any gentleman of professional ability in such a situation, and he will know and feel, that he has an official reputation to support, and while he is free from any dependence on party, he must be weak indeed if he will sacrifice his character and rights of office, by submitting to be but the tool

even of the party by whose influence he was appointed.

In the course of observations which have been made by some of the advocates of the present bill, there has been mention of what could be done in the case of extreme events. I hope none of the opposers of the bill has any idea of doing any thing unbecoming his situation, or injurious to the country. But it is not the part of wisdom to be blind to the tendency of measures. It therefore cannot be improper to reflect on the probability, if there is no independent judiciary, of seeing the States at length brought into collision. Unless there is a common tribunal which they will believe to be impartial, and to which they may resort for settling the Constitutional distinctions between their respective powers in a satisfactory manner, what must be the event but a return to the state of things under the Confederation, or a worse, as my friend from North Carolina (Mr. Henderson) has depicted? Reflect on the rival pretensions of different States before the adoption of the Constitution! Their rivalries and interfering claims were producing animosities which menaced the country with civil discord. And what enmity is more direful? Advert but to the scenes of the Revolutionary war, especially in those parts of the country where the inhabitants were most divided in political views, and were arranged against each other under the well known names of the different sides which they espoused!—When they were thus divided into hostile parties, was not their animosity far more violent than is known in any contest against a foreign Power? When the nearest relatives become open enemies, are they not of all enemies the most bitter? So when the people of the same country are rent asunder by the violence of civil dissensions, and are armed to contend against each other, are they not then their worst of enemies? And is there no danger of a condition of things like this? From this evil, it is peculiarly the duty of those entrusted with the Government to endeavor to save the people. An impartial tribunal, in which all may confide, is a great Constitutional security against such a calamity. This security, my friend from North Carolina (Mr. H.) is zealous to preserve.

We have been told of officers of the Revolutionary army who knew how to fight, and could fight again. When gentlemen tell us what they can do, we should not be unwilling to believe that such is their opinion. But would it not be better for the country to maintain the judges of the United States in office, and pay their compensations annually, rather than hazard a decision of this kind? When gentlemen speak in such a manner, do they expect all who are against them to be crushed in an instant? Sir! There are also men who fought in the war of our Revolution, who think this bill unconstitutional; men who have given as decisive proofs of their military spirit and talents as any on the other side. Can it be the wish of gentlemen, that these gallant defenders of the country should be arrayed against each other? Say, they have their officers! Have gentlemen also considered, what are their various means for so serious a trial? If they would have us judge, are they prepared to say what is the amount of their strength? What is the population of those parts of the country on which they rely? What is the number of the free men, which they might think expedient to be sent from home? What is the whole number fit to bear arms? What their state of equipment and discipline? And what their resources for supporting troops in the field? Are their armies already prepared? Since so much has been said about this very undesirable resort, let me observe, that, to the north of the Hudson, there is a single division of militia, respecting which perhaps it is not too much to say, that if, with a conviction of its being their public duty, and on the call of proper authority, they should be assembled complete in arms, for the defence of their Constitutional rights against usurpation, they would not easily be subdued by any force which could soon be sent against them, from the South, by the present Administration. They are commanded by a gentleman who is now a member of this House. But, sir, let me not be understood to say, there would be any disposition to rebellion in that section of the country to which I allude in general, although they should believe the present bill, if passed, to be an infraction of the Constitution of the United States. To say this, would not be doing justice to their character. No, sir! Whatever unconstitutional measures may be adopted, whatever powers may be assumed over the Constitution, gentlemen may rest assured, with respect to that portion of the country, in any event of the opinions of the inhabitants, that there will not be a rebellion.

In making these remarks, I speak of the tendency of measures. The principle, sir, of an impartial tribunal to decide questions respecting the fundamental rights of the society and Government, is an original principle of this country. When adopted in the United States, it was a novelty in the history of nations. The experiment thus far has been successful. To have established this principle of Constitutional security, is the peculiar glory of the American people. It enables the respective parts of the country to assert their Constitutional rights, and at the same time secures internal tranquillity. If you now destroy it, will not the people of particular States have cause to complain that they have been deceived, in the event, and that their property and liberties are not secured according to their just expectations? When the Constitution was adopted, was it not right to expect, that the observance of it would be guarded by the judicial authority, which might hold in check the Legislature and the Executive, if ever they should unfortunately be disposed to overleap the established barriers? Without this, what is the protection for the feeble States, if any of the large and powerful States should influence Congress and the President to concur in unconstitutional acts, and to raise armies, and to draw forth the treasure of the United States, to confirm their usurpations? The union of the States, according to the true principles of the Constitution, is highly, very highly to be prized, as it interests

the whole American people. You might talk of this Union as a blessing, after the Constitutional security, which renders it precious, should be utterly destroyed. But there might then be many who will feel that the empty sound, although retained, is such a blessing as but afflicts them with the recollection of their ruined hopes.

Mr. Dana closed his remarks against the bill at twenty minutes past nine o'clock.

When Mr. Bayard moved the rising of the Committee. Motion lost—yeas 32, nays 58.

Mr. Plater.—I did hope, sir, from the proceedings of Saturday, that gentlemen who are advocates for this bill would have manifested a similar spirit of accommodation at this late hour of the night in granting us further time to express our sentiments. It is now ten hours since I have been in the possession of my seat, and I would put it to the candor of gentlemen, if the fatigue of the day does not incapacitate them from fully discussing a subject of such magnitude. I confess I feel myself unable to do that justice to the question which an earlier hour would have afforded. I shall, therefore, forbear a reference to the variety of notes I have been at the trouble of taking, and only state a few of the principles (without illustration) which will influence my vote, and then resign myself to the consequences resulting from the adoption of the bill. I cannot, however, avoid expressing my surprise that an honorable member from North Carolina (Mr. Holland) should say everything which has been delivered in favor of striking out the first section of the bill is declamation, and nothing can shake his opinion. I very much fear, such is the temper of mind of most gentlemen on his side of the Committee, if an angel was to descend from heaven with a view of conviction, the attempt would be vain. I believe, if we recur to the President's Message, we shall discover he suggests a consideration of this subject, grounded on a statement of the number of causes instituted and decided since the establishment of these courts. Notwithstanding the document showing this statement is admitted by all gentlemen who have spoken on each side of this question to be inaccurate and fallacious, yet I will myself give it the authority they wish, and it will demonstrate that there is a sufficiency of business to justify the continuance of these courts in the circuits of Pennsylvania and Virginia. Is it then reasonable or right to deny the inhabitants therein law, justice, and protection, for the reason the same quantum of business does not exist in the eastern and southern circuits? This would be measuring justice with a partial and sparing hand indeed. Sir, the paucity of suits in these courts is the strongest evidence to my mind that injuries, wrongs, and oppressions have been prevented by the speedy and faithful manner in which justice has been administered, or the legal remedy in the old system was so great as induced suitors to give the State courts a preference to the Federal; consequently, its abolition, for the purpose of a change to the former establishment, must be productive of great delay of justice, great inconvenience and hardship to the judge. I did expect the ability and ingenuity of gentlemen, particularly some who have the advantage of being frosted by experience, would have given stronger reasons for discontinuing a system which was considered so requisite as to induce the most intelligent characters who sat on the floor of the last Congress to organize and mature, but in this I am disappointed.

Sir, the exclamation of the day is retrench, retrench! In my soul would I unite in this system of retrenchment, did I conceive it for the benefit of society; but when I see gentlemen determined to explode from office a certain set of men who are personally obnoxious to them, and thereby pull down and destroy a law before it is tried, it is impossible, under these circumstances, I can concur in this system of retrenchment. Permit me the liberty of asking if twelve months are sufficient to test the utility of this law? No, sir, they are not; neither any law whatever—the business of a court is not complete in extent in this limitation of time; but as commerce flourishes, population increases, and the transactions of men become more general and extensive, so are objects for the jurisdiction of a court promoted and augmented. How can it be expected we shall have characters valuable for integrity, legal information and respectability, to fill the Judiciary, when we destroy the very inducements to their acceptance—I mean the tenure of office? Is it to be presumed that men who are in the habit of acquiring a plentiful support by their profession will relinquish that for an appointment liable, on account of its uncertainty and instability, to terminate at a succeeding session of Congress? No, sir, your courts will be filled by needy adventurers seeking a support for the object of peculation, men of small talents, perfectly inadequate to gather the fruits produced by superior abilities. When I look into the Constitution and read, "the judges 'both of the superior and inferior courts shall hold 'their offices during good behaviour," these last words so clearly show the intention of making the judges independent of others for continuance in office, that every construction tending to pervert this meaning must assail and radically destroy the fundamental principles of the Constitution. There is no proposition more generally admitted and agreed to, and I can say with truth on which the judgment of the people of this country is more completely made up than that of the independence of the judges; it is esteemed essential to the security of life, liberty, property, and reputation, and this the Constitution has wisely guarded by its express provisions. If it is considered an office held during good behaviour is removable by the Legislature, you make good behaviour and legislative will of the same meaning and synonymous terms; this is so contrary to the common acceptation of these words among us, and the contradiction apparently so great, that I really have not heard one gentleman unfold and explain it; but they tell us we must resort to the jurisprudence of England for the definition of it. Can it be possible gentlemen are satisfied the men who compose the Parliament of Great Britain should

be the expounders of a Constitution made by the people of America? This would, indeed, be a resignation of all law and language. A case which arose in Virginia has been frequently mentioned, whether an office held during good behaviour was subject to Legislative interference? The greatest law characters of the State determined unanimously it was not; in which the Legislature acquiesced. I repeat this in order it may bear on the mind of an honorable gentleman from Virginia, (Mr. RANDOLPH,) who is now in his seat. When a petition not many weeks past was before this House, the subject matter of which had received a previous judicial decision, he rose from his chair and expressed an anxious wish that the House would not interfere with the decision of a court. Now, sir, the bill upon your table is well assimilated, the judges of Virginia have unanimously decided on its constitutionality, and it is known that nine-tenths if not all the judges of the United States are of the same opinion, and nothing but the mere form of a record is necessary to make the case the same. I therefore should presume, if consistency is to characterize the legislative proceedings of the honorable gentleman, he must withdraw his support from the bill upon your table.

Sir, it is a principle universally acknowledged that no man shall be a judge in his own cause; once you transfer the judicial power to courts under the influence and control of a Legislature you frustrate the impartial administration of justice. I consider the Judicial department as the protector of the Constitution; it stands between the people and the Legislature to check the abuse of a trust committed to them; it is a particular province to determine the constitutionality of all laws—the case may arise wherein it will become the duty of the Judiciary to decide between the Legislature and the President. Should the judges be dependent on either, great apprehensions might exist; they would lean to that side on which their dependency existed. And should the Legislature and Executive unite to invade this Constitution, we should be left without a tribunal to give an impartial and disinterested decision. Thus, sir, you are dispensing with the only check to the oppression of an uncontrolled and unlimited power. And thus this fair and beautiful fabric, so much admired, by being deprived of its greatest ornament and best support, in consequence of this night's decision, before to-morrow's sun fulfils his usual course, will, I fear, vanish from your view.

Mr. FOSTER moved that the Committee should rise. The motion was supported by Mr. GODDARD, and opposed by Mr. DAWSON.

For rising—yeas 33, nays 57.

Mr. TALLMADGE.—Mr. Chairman: Before this honorable Committee had, by their vote, decided the question a second time that they would not rise, I had fostered the hope that from compassion to the Chairman, (who has been confined to the chair more than ten hours,) they would have consented to postpone the further consideration of the question under debate, until to-morrow. I was encouraged in this belief from a consideration of the great fatigue which every member present must have experienced from the close attention which has been paid to the subject; and especially from a regard to any gentleman who might wish to offer his sentiments on the occasion. Since I am disappointed in this wish, notwithstanding the extreme bad state of the air within these walls, the very late hour of the night, [ten o'clock,] or my own lassitude and fatigue from these circumstances combined, I must beg the indulgence of this honorable Committee, while I submit a few remarks for their consideration.

The subject now under examination having been so ably and so minutely discussed by gentlemen of different political sentiments on the floor of this House, I had almost determined to signify my opinion by a silent vote, but when I reflect on the solemnity and importance of the present question, involving in my view, the dearest interests of society, I cannot excuse myself to my immediate constituents, to my country at large, or to my own conscience, without briefly stating the reasons which will influence my mind in the vote I am about to give. In doing this I will not trespass long on the patience of the Committee, which from the length of the discussion must be nearly exhausted; and especially when I reflect that the system to which the bill on your table immediately refers, is most probably devoted to destruction.

The first question naturally presented for consideration is, whether the law now under discussion, can be constitutionally passed by this House? And secondly, if it be lawful, whether such a measure would be expedient at this time?

Before I proceed to make a single remark on the merits of the present question, I take the liberty to assure this honorable Committee, that I shall not follow some gentlemen in their wild excursions after objects of extreme irritation and mutual recrimination. I fear, sir, they have already been too freely indulged, in the course of this debate, to be useful to this Committee, or beneficial to our constituents. It would, however, be improper to pass over the whole unnoticed and unrefuted.

Very early in the debate, an honorable member from Virginia (Mr. GILES) introduced by way of preliminary remarks a prospectus of the foregoing Administrations. As if delighted with those subjects, which, in their nature are calculated to excite popular odium, he has with much industry selected those which would be most likely to make a deep and lasting impression on the public mind. We have been told, sir, that the creation of a public debt, which in court language has been called a public blessing, that the origin and establishment of the funding system, with all its attendent evils; the assumption of the State debt, &c., took early root and flourished under the fostering hand of the illustrious WASHINGTON.

With equal candor and similar good intentions has the odious system of internal taxation and excise been called in to his aid; the formation of banks, moneyed capitals and loans, with exorbitant interest, have been also held up to view; and what is more astonishing than all, the former Administrations have been accused of wantonly provoking

an Algerine war, three thousand miles from our country, and an Indian war on our frontiers, for the purpose of extending Executive influence, by the creation of an army and a navy. Not contented with the imposition of burdens almost too grievous to be borne, they are held up to public view as inviting the barbarians of Algiers and the savages of the wilderness to indiscriminate pillage, torture, and death. To finish the picture, we have been kindly informed that when the authors and abettors of these national evils were about to be hurled from their power, the late Judiciary establishment (now about to be immolated) was formed as a sanctuary, or city of refuge, into which a few might escape to avoid the impending storm. These and similar remarks have been offered to the consideration of the Committee, during the discussion which has taken place; and to my astonishment and deep regret, the name of the illustrious WASHINGTON has been drawn in, if possible to tarnish his unrivalled glory, and to grace the triumphs of those who have but recently been advanced to power. On what other ground is it possible to account for this wanton introduction of characters and principles into the present debate?

Without attempting a reply to any one of those charges (all of which I think capable of the most complete refutation, and which have been particularly noticed by the honorable gentleman from Delaware) I cannot but express my astonishment that any such remarks should have been offered to the consideration of this Committee. For, in the first place, they could have no possible relation to the question under debate; and secondly, the great sensibility which was thereby excited, has been but too apparent to all who have attended to the subsequent debates. It was impossible to suppose that such bold and unfounded attacks would not be repelled with asperity and warmth. I shall, therefore dismiss the whole, with a most sincere desire that no occasion may again occur which shall induce gentlemen to wander so widely from the path of strict propriety and duty.

It has been well remarked by some who advocate the passage of this law, that if they supposed the Constitution would thereby be infringed, no consideration whatever, either of inconvenience or expense, which may be supposed to grow out of the present system, would justify so dangerous an experiment. To this point, therefore, it becomes proper that we particularly, though briefly, attend.

In the first section under the third article of the Constitution of the United States it is thus written: "The Judicial power of the United States 'shall be vested in one Supreme Court, and in 'such inferior courts as Congress may from time 'to time ordain and establish." Here appears to be a provision, exhibiting a positive injunction on the Legislature to form, and an assurance to the people of the United States that they should have a Judiciary establishment, to consist of one Supreme Court and other inferior courts, the number and titles of which should depend solely on the discretion of the Legislature.

In the same article it is further ordered "that 'the judges both of the Supreme and inferior 'courts shall hold their office during good behavi-'our." In this clause, the tenure or condition on which the judges hold their offices is expressly pointed out.

"And shall at stated times receive for their services a compensation which shall not be dimin-'ished during their continuance in office." By this clause express provision is made for the salaries of your judges, which cannot be diminished, but may be increased.

In searching after truth, it is always deemed prudent and wise to make use of such terms to convey ideas as are most familiar and obvious; and in deciding on the meaning of words, not above ordinary comprehension, it will never be deemed unsafe to give them that construction which they usually convey in the common occurrences of life.

As the very essence of the question now under debate depends materially, if not solely, on the true import of the terms made use of in the article recited, "during good behaviour," it must be of primary importance that their meaning be well understood.

In forming the three great branches of our Government, the Legislative, the Executive, and the Judicial, the Constitution has very wisely prescribed to each the manner of its election or appointment; the powers they shall severally exercise and enjoy, and the duration of their services, or their continuance in office. The members composing the House of Representatives are elected to serve for two years, the Senate for six years, and the President and Vice President for four years, after which they all return to the mass of citizens from whence they were taken. But when the courts are ordained, their continuance in office is expressly declared to depend solely on the contingency of their good behaviour. By what construction of language, I beg leave to ask, Mr. Chairman, is it found that the exercise of their functions, thus particularly marked out, can be construed to depend on Legislative will? Surely, sir, there must be something mysterious and unintelligible in these words, "during good behaviour," which in common life are vastly easy and familiar, if they can possibly be construed to mean during the pleasure of the Legislature. I think I have endeavored, in the integrity of my heart, to discover the true intent and meaning of that article or clause in the Constitution which ordains and establishes the Judiciary system, and I am constrained to acknowledge that I can hardly conceive of words more emphatical or more explicit than those which are made use of.

Let me invite the attention of the honorable Committee to the following plain proposition, and, aside from the question now under discussion, let each member decide for himself what would be the fair and honest construction of the contrast. A landlord offers to his tenant the occupancy of a farm, or any other privilege, which, for the consideration of his service, he conveys over to him to hold and enjoy during good behaviour. In process of time, and confessedly with-

out any complaint of malconduct on the part of the tenant, the landlord turns him off, and deprives him of his living. What verdict would this Committee render if such a cause was now under trial? Or, in other words, may I not venture confidently to declare, that every honorable member on the floor of this House would advocate the cause of the tenant against his landlord, as the cause of innocence and justice against violence and oppression? I humbly trust I may. The same remarks will hold equally good when applied to a privilege or benefit granted, or covenanted to be bestowed on an individual, or on persons in their collective capacity. If this inference is correct, on what principles of justice or equity can the Legislature of the United States assume to itself the right of violating a contract, the outlines and leading features of which are expressly laid down in the Constitution?

When a court is constituted by a Legislative act, the proposition made, or the inducement held out to the candidate, through the Constitutional organ, is the honor of an appointment as a judge, and the salary which by law is attached to the office. The Constitutional obligation on the Government is, that it shall not deprive you of your office during good behaviour. When the appointment is thus constitutionally made, and the judge shall have accepted of the same, the contract is ratified and becomes complete in all its parts. The Legislature having thus fulfilled their duty by obeying the injunctions of the Constitution, has nothing farther to do in the business. The court thus constituted becomes a constituent or co-ordinate, not a subordinate branch of the Government, subject only to Constitutional control. Thus it appears demonstrably clear that the Constitution founds the tenure of office solely on the contingency of good behaviour; the Legislature affixes the salary to the office, and the judge cannot be deprived either of office or salary but in the mode expressly pointed out in the Constitution. Is not this the plain interpretation of the Constitution? Is not this a construction which may very emphatically be termed legal, political, and moral, accommodated to the understandings of all men, even of the most ordinary capacities?

But, sir, if gentlemen are determined on having the judges of your courts subject to removal, on other grounds than by impeachment, why is this power to be vested in the Legislature? Those who advocate the right which the President so freely exercises, of making removals, and thereby causing vacancies to happen at pleasure, would probably be more consistent if they would allow him the power of removing the judges also. If it should be objected that the Constitution gives to him no such power, I answer, that the Constitution gives no express power to the President to make any other removals. In the one case, the Constitution is silent with respect to removals from office, while in the other (viz: in the case of the judges) the tenure of office is expressly mentioned, and the negative may be fairly implied.

Our Constitution guaranties us a Government of checks and balances, so organized that the several branches of it have a necessary dependence on each other. No legislative act, however useful or desirable it may appear, can be performed by one branch of the Government without the consent and accordance of the others, constituted for this purpose. Hence is derived to our constituents a degree of safety and prudence of immense value; and every day's experience demonstrates to us the benefits and blessings of these mutual checks. There is a responsibility attached to the Executive, very different from that which belongs to the Legislative branches of your Government; for while the latter are responsible only to the people, by whom they are appointed to office, the former is amenable for all his official conduct, immediately to the two branches of your Legislature, by one of whom he may be impeached and by the other removed, if found guilty, and absolutely disqualified from holding any office under the Government. If therefore the power of removal, now contended for, is about to be assumed, I ask gentlemen, whether, on the principles of our Government, the power would not be more safely lodged in the hands of the President than with the Legislature? Not that I would for a moment consent that this power can be constitutionally exercised by either; but if the independence of the Judiciary must be prostrated, I submit to the consideration of those who advocate the passage of the law which annihilates the late Judiciary system, whether the exercise of a power, which I conceive to be fraught with so much danger, would not be more safely lodged in the hands of the Executive.

If the doctrine of independency is taken away from the Judiciary, is there no danger that the Legislative power may be degraded to gratify the most vile and malignant passions? Surely, Mr. Chairman, there must be some radical evil, some very powerful difficulty, which needs the strong arm of the Legislature to correct and remove. This physical strength, I know, may accomplish the end, but in my view of the Constitution, it cannot sanction the wrong; it may indeed inflict the wound, of which I very much fear this *magna charta* of our independence will linger and die. The very circumstance of strength, or power, which the Legislature possesses, affords cause for apprehension, that when the barriers of your Judiciary are thus thrown down, it may at any time be wantonly assailed by superior force.

The Judiciary being a co-ordinate branch of the Government, with the Legislative and Executive, is a wholesome check upon their proceedings, and in this way may very justly be considered the guardian of the people's liberties. These three legitimate branches of the Government when united, may defy any attack; but the Judiciary from its very nature, being the most feeble, if unprotected by the others cannot long endure. Whenever a predominant faction shall exist (and factions may always be looked for under free and popular Governments) and your Judiciary shall interpose to arrest its progress towards any unconstitutional end, how unsafe and precarious must be our situation! It is therefore not only forbidden to assail her walls by any form of attack, but the contrary duty is forcibly impressed, to nourish and cherish this helpmate of the Constitution, as every noble and honest heart would the fair partner of his domestic bliss. In executing this duty, the Legislature perform one of the implied functions of their appointment, and a very important duty attached to their office. If this doctrine is correct, then it will undeniably follow, that every attempt to prostrate the dignity and independence of the Judiciary system, is an attack upon an important constituent branch of your Government, and ought to be resisted. Encroachments by the Legislature are perhaps the most dangerous, because the least suspected and accompanied by the most power.

Having thus briefly explained the unsophisticated meaning of the words in the Constitution, by which the Judiciary system is established, I shall forbear to make any remarks on the construction which some of the States may have given to the same expressions in their State Constitutions. Nor will I detain the Committee at this late hour of the night, to draw the parallel between the Judiciary establishment of Great Britain and that of the United States, in point of independency and inviolability. Had I time, I might quote copious extracts, from high authority, in point; I mean from the writings of the President of the United States. In his Notes on Virginia, he appears to have handled this subject with great perspicuity and precision, placing the independence of the judges on high ground. For the present I must content myself by referring gentlemen to that treatise, and particularly to that part of it which proposes a constitution for the State of Virginia. Indeed these points, with others which might be noticed, have been accurately explained and enforced by gentlemen who have preceded me in their remarks.

In determining the true meaning of the Constitution of the United States, it must be vastly important to know what were the arguments of the leading members of the Convention, when that memorable instrument was framed. Had I time, and was not the patience of the Committee nearly exhausted by the very lengthy discussion which has taken place, I would read many extracts from the debates of some of the most prominent speakers on that occasion. By these, we might with great accuracy test the opinion of the General Convention on almost every article of the Constitution. My honorable friend from South Carolina (Mr. RUTLEDGE) has favored us with some of those sketches, with great correctness, which must be in the recollection of this honorable Committee. One very important fact I shall not feel justified to omit. A motion was made in the General Convention, when the article respecting the Judiciary establishment was under consideration, to authorize the President of the United States to remove a judge from office, on the joint application of both Houses of Congress. This motion, after being thoroughly debated and maturely considered, was negatived. Sir, I am happy in being able to lay before this Committee such high authority; and in remarking that the enlightened framers of our Constitution, viewing the independence of the Judiciary of such vast importance, rejected the propositions as dangerous to the liberties of a free and independent people. What strong and irrefragable evidence does this, afford, Mr. Chairman, that the principle which I contend for is correct, and that the ground on which we wish to place this important branch of our Government is the same which it occupied when the Constitution was framed? Should any gentleman wish further information on this head, give me leave to refer him to the original documents in the office of the Department of State.

A further proof in favor of our position is derived from the reception which it met with in the State conventions. When the Constitution was sent to the several States for adoption, every article and clause of it underwent a severe scrutiny and a most critical examination. Perhaps no article was more minutely examined than that which respects the Judiciary establishment, and from what I then heard and have since been informed, I am induced to believe that the Constitution would not have been adopted, if the independence of your judges had not been deemed to be secured by that instrument. In most of the States, where the debates were preserved, it appears that this particular clause was discussed in direct reference to the independence of the judges, or the tenure by which they hold their offices. In Virginia, the doctrine which we contend for, has always been strenuously and honorably maintained.

It is objected to the doctrine that I contend for, that if the Legislature cannot annul the courts when once organized agreeably to the Constitution, they are paramount to the Legislature themselves. A very slight attention to this subject, I am persuaded, will prove this reasoning very incorrect. Legislative provision is necessary to bring into office the President of the United States. Yet the Legislature, as such, cannot remove him. Does it hence follow that he is paramount to the Legislature?

It is also remarked by those who advocate the passage of the law on your table, that the power which creates of necessity possesses the right and ability to destroy. The same Legislative power necessary to call a court into being, is also necessary to lay a tax, or pass any other law. I beg leave here, also, to take a difference in the two cases. The Judiciary is a constituent part or branch of the Government, by an express provision in the Constitution, and the Legislature only pursues the Constitutional will, as its organ, by giving to it existence and form; but its inherent powers are all expressly derived from the Constitution, which, I trust, will not be claimed to belong to any other law. The absurdity of this objection will further appear if the Constitutional mode of organizing the Government is but slightly examined. When the census of the United States is laid before Congress, a law must be passed apportioning to each State its number of Representatives. This law is again brought under the Legislative direction of the several States be-

fore the House of Representatives can be formed. Will this give to the Legislature a power to extend or limit the periods of their service, or in any shape to vary or alter their duties, different from the Constitutional provisions? I presume it will not. The same remarks will, in a certain degree, apply to your President, Vice President, and Senate.

It may be further remarked, that the salary of the President of the United States is fixed by law, even by an act of this omnipotent Legislature; and, by the Constitution, "it may not be increased or diminished during the period for which he shall have been elected." Will any gentleman of this Committee contend that the Supreme Legislature have a right to vary that compensation, even by the wholesome corrective, a refusal to appropriate? I trust not.

Of equal avail do I consider another argument, which is much relied on by our opponents, viz: that if you cannot constitutionally remove the judge, you may, nevertheless, take away or destroy his office. Really, Mr. Chairman, there appears to be a degree of chicanery and cunning in such a proposition, highly unbecoming the Legislature of any country whatever.

All laws, human and divine, require that the parent and the master should both feed and clothe the child or the servant. Yet if the master should neglect to furnish necessary clothing, and the servant should die in consequence of such neglect, the master, by this novel construction, would be clear. The judge, in this case, is not removed from his office, but the office from the judge.

It is further urged, that the national sentiment is expressly in favor of the repeal. But, now, sir, does this appear? Because a majority of the members, returned to serve in the present Congress, are in favor of this measure, does it conclusively follow that the great body of our constituents wish such an event? Is it not true, beyond contradiction, that many of the most prominent features of the late Administrations have been represented as involving our country in the most disastrous evils, and even tending to establish a monarchy over the people? Need I call to the recollection of this honorable Committee, the base attempts which have been made use of, to calumniate and traduce some of the fairest characters that have appeared during our glorious struggle for liberty and independence? For the honor of my country, and the dignity of human nature, I wish a veil could be drawn over the conduct of some who were so base as to assert, and others who were so scrupulous as to believe that the great founder of our independence had become an apostate. Well may America blush, when she is told that the illustrious Washington, whose bravery and wisdom so eminently contributed to establish our independence, has been libelled as a monarchist, and accused of renouncing those principles of rational freedom in which he embarked. If the virtues of his private life, and the more glorious and resplendent actions which adorn his public character, could not secure him from the envenomed shafts of envy and malice while he lived, it could not be expected that his political administration would pass unnoticed and uncensured when he should sleep in the tomb. Had the honorable gentleman from Virginia (Mr. Giles) respected the feelings of those who venerate the memory, as they value the services of the unparalleled man, the ashes of the hero and the patriot would not have been disturbed on this occasion. Attempts like these have been but too successfully employed to excite the popular clamor against measures which have proved vastly beneficial to our country, against men whose services and sacrifices merit the gratitude of all. And permit me, Mr. Chairman, in this place, to deplore the prevalence of that party spirit which our great political father and friend, as in prophetic vision, foresaw would, if indulged, commit the peace and destroy the happiness of our rising Republic. I have indulged these few desultory remarks, founded, I trust, on solid fact, that I might hence infer the true ground of popular clamor, and that the repeal of the late Judiciary system has been called in to aid the design. How is it possible, Mr. Chairman, that the great body of the people should be so unfriendly to the late establishment, as the advocates for the repeal assert, when neither time nor opportunity has been afforded them to judge of its merits or defects! Surely, sir, there can be no solid weight in this objection, and I trust it will be abandoned.

I am not, sir, a professional man myself, nor have I any kinsman, however remote, who is to be benefitted in the smallest degree by the late Judiciary establishment; of course I can have no motive in defeating the passage of this law, but what is connected with the general interest of my fellow-citizens. So far as my knowledge and information have extended, I should have pronounced very favorably of the late system, as promoting dispatch in the administration of justice, and remedying many defects which were apparent in the old law.

Many other objections have been made to the independence of the judges, on the principles that we contended for, of which I will briefly state a few as they have occurred.

Say our opponents, if putting down or annulling a court violates the Constitution, this was effectually done by enacting the law now proposed to be repealed. If the fact should be admitted, what argument can possibly be drawn from hence to favor the proposed repeal? If a former Legislature has done wrong, is the evil remedied by continuing the practice? But I trust, sir, the principles and provisions of that law are capable of the most complete and perfect defence; nor would I now omit the reply, had I not a full belief that this honorable Committee must be impressed with what has been urged on that subject, especially by my colleague. (Mr. Griswold.) viz:

The expense and dangerous tendency resulting from such a number of judges.

The small number of causes which have been brought into those courts.

The peculiar benefits to be derived from State tribunals.

The omnipotence of Federal courts, and the aspiring ambitious views of the judges, manifested in their calling States to bow to their sovereign mandates, and using the late Sedition law as a political engine for persecution.

Judges becoming Federal apostles, preaching up federalism when on the duties of their circuits, and looking for objects on which to satiate their vengeance.

The peculiar state of the Legislature when the law now under consideration was passed.

These and a variety of similar objections have been stated, and the same have been so fully and repeatedly refuted, that any further attempt on my part to obviate their force, or expose their absurdities, I am aware, might be deemed by many, but useless repetitions. I cannot but consider them as calculated for no better purpose than to inflame and mislead the public mind, and to divert its attention from a consideration of the true merits of the question now before the Committee.

The honorable gentleman from Virginia, (Mr. Giles,) has thought proper to introduce the teachers of religion into his argument for abolishing the Judiciary. They have been represented as converting their pulpits into political forums, and stirring up all the angry passions of the human mind. If these assertions were literally true, it is not perceived that they could have any possible bearing upon the present question. But in justice to that venerable class of our fellow-citizens I feel constrained to declare that I think them undeserving so general and so illiberal an attack. Throughout New England, they have long and deservedly been considered as a learned, pious, unaspiring, and very useful class of men. Devoted to study and instruction, and relieved from the cares and the burdens of State, their time and talents are devoted to moral pursuits. To this, as one of the most prominent features in the establishment of the Northern and Eastern States, may it safely be asserted, that we owe much of that sobriety and regularity which has heretofore so eminently contributed to our prosperity and glory. When suitable occasions present, wherein consists the political sin, or even the impropriety, that the teachers of morality should also be instructers in the science of good government? Through the late Revolutionary war, no class of men were more eminent for their exertions in the cause of our country, and at no period have they been found opposing the general good, manifested in the Constitution and laws of our country. Among this class of men, so far as my knowledge has extended, anarchy and disorganization have found few, very few, abettors. However irrelevant these remarks may appear to the subject now under discussion, I deem no apology on my part necessary, when it is known that a meritorious class of our citizens have been wantonly attacked, without the power of vindication or reply.

But, Mr. Chairman, I beg leave further to remark, that if the constitutionality of the law in question admitted of no doubt, still the expediency of the measure, at this juncture, is very questionable indeed.

The importance of having Federal tribunals open to all who may prefer them to the State courts.

The prospect of obtaining speedy and prompt decisions with the least possible expense.

The favorable reception on which the new establishment has met with, evidenced by declarations and memorials from those the most competent to estimate its utility and worth.

The special and peculiar benefits hence resulting to the commercial interest, from which your revenue is almost exclusively drawn. And the manifest inconveniences and defects of the old system, which are in a great measure remedied by the new, are reasons of no small or trifling consideration, to induce the continuance of the new establishment. On each of these I might dilate, but presume that every member of this Committee must feel impressed with their importance. Innovations on established principles and forms have ever been deemed dangerous; at any rate it is a mark of prudence not to run hastily into them. In the case before us, time has hardly been given for a fair experiment; and if the institution is to be tested by its usefulness, no prudent and unprejudiced man can say that we are ripe for such a decision. If it should, therefore, only be doubtful as to its utility and expediency, may it not be hoped that a majority of this Committee will declare, by their vote, that they will at least give it a further trial. If, on further experiment, the system should be found defective, or inexpedient, will it not then be as fully within the power of the Legislature to repeal the law in question as at the present time? If gentlemen who advocate a repeal of the late Judiciary establishment are correct in their ideas, that a majority of our constituents prefer such a measure, surely there can be no danger of their losing either the power or the inclination to accomplish so desirable an end. I would further remark, that if the accession of moneyed men to the community, may be considered of any avail, no circumstance of governmental interference will contribute so effectually to this end, as the establishment and maintenance of an independent Federal Judiciary. To this branch of your Government, men of property always look with confidence for support. Without stability in this important branch, your moneyed capitals will be drawn off, and those which were designed for this country will be turned into some other course. The same remarks will apply with equal force to the sale of your wild lands. Need I turn the attention of this Committee to those States which have been recently formed for examples. The iniquities and evils which have been practised on non-resident proprietors, under State Legislatures and State Judiciaries, have been incalculably great; and if your Federal tribunals should be prostrated, or the confidence of the community in them weakened, these evils would undoubtedly increase, and the value of your new land would greatly diminish. Let it not be remarked that the State courts are sufficient for all these salutary purposes, as well to excite confidence as to protect property. These institutions

of our State governments, I venerate as much as any man, but where strangers and foreigners are concerned, or even citizens of different States, the objection is of no avail.

Mr. Chairman, we have now progressed thirteen years, under the auspices of a constitution, ordained for the express purpose to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, and until very lately I have never heard the independence of your Judiciary called in question. Give me leave, sir, to call on gentlemen, from whom I differ in sentiment on this subject, to inquire coolly and dispassionately of each other, whether they would have contested this principle if the late appointments in the Judiciary had not taken place. Sir, if this barrier should be broken down, I see nothing to prevent a future Legislature, if it should be so disposed, from prostrating your Supreme Court at their feet. In fact the principle now contended for by the advocates of the present bill, goes all lengths towards prostrating the independence of your Judiciary in all its branches. Are gentlemen prepared to adopt such a system as this? Are the advocates for this novel doctrine willing to declare that the temple of justice shall be broken up, her purity violated, and her glory, honor and independence buried in ruins? Surely, sir, these are not visionary ideas; but they appear to me to result naturally, if not necessarily, from the success of the present measure. I am by no means disposed to excite needless alarm; far less do I wish to portray the evils attendant on civil war. Too much, it appears to me, has been said on that subject already. Some gentlemen talk of a civil war, of a revolution in our country, of swords and bayonets, and of friends and relatives set in hostile array against each other, as of the most trifling, and common occurrences in life. Indeed one gentleman (Mr. Nicholson) has borrowed an unusually bold metaphor and has told us of a cloud of bayonets: and, as if not contented with calling in domestic force to his aid, it would seem as if celestial interference was expected. Sir, I have passed through one revolution, and shared in its toils from its commencement to its issue, and most devoutly do I pray never to behold another. The language sometimes held upon the floor of this House, looks more like preparation for battle, than for cool and deliberate discussion. Although I accord with the honorable Speaker in his remarks on this particular point of the subject, yet I cannot believe him correct in the full extent of his doctrine. He supposes it would be hardly possible to bring our country to such a state of irritation as to take up arms against each other. Sir, the seeds of every evil passion are the native production of every heart, and suitable excitement will bring them into exercise. Let this Government and Constitution be prostrated, and I have no hesitation in declaring that a civil war must be our portion. For heaven's sake, for our country's sake, let every thing tending to such an issue, be most carefully avoided!

Although I am not about to say, that if you pass the bill on your table, a revolution will ensue, yet I do say that such terrific declarations as are held up to our consideration, have a tendency to prepare the public mind for such a deplorable issue. The National Legislature not only gives law but also a kind of political tone to our country. It ought therefore to be a school not only of sound policy and good Government but also of urbanity and politeness. When our constituents are persuaded that our conduct is influenced by a regard to their interests and the public good, it may be hoped that they will imitate our example.

The blessings of peace and independence were but half secured, before the Constitution of the United States was formed and adopted; and give me leave to add that the brightest star in this new political constellation is your independent Judiciary.

In the present constitution of human nature, Government and efficient laws are absolutely necessary; in the structure of which passion and party views too frequently mislead the judgment and obscure the understanding. A sober and dispassionate corrective becomes, therefore, absolutely necessary. Your tribunals of justice afford the necessary relief. Here the rich and the poor, the strong and the weak, meet on equal ground; and what I claim to be a principal excellence, inherent in their very nature, may here be found, viz. a right to decide between the Constitution and the law. However terrific this may appear to some gentlemen, who advocate the omnipotence of the Legislature, I consider the power which the Judges from the very nature of their office possess, of declaring a law null and void which contravenes the Constitution, to be of the highest importance, and attended with the happiest effects. What safety is there to any individual, or even to the community at large, if this Constitutional check should be removed! If the Legislature are to judge in the last resort on the constitutionality of their laws, what hope can there be entertained of redress, even should they violate the principles of the Constitution in the most flagrant manner? A consolidated Government is the direct result of Legislative and Judicial powers being vested in the same body. No people can long remain free, whose Legislature assumes the right first to enact and then to expound her laws. The late revolutionary tribunals in France advanced but one grade further, and executed their laws themselves, and surely no people were more wretched, and no tyranny more complete. Every encroachment on Constitutional prerogatives, tends to absolute and complete despotism. If a law should be declared unconstitutional by a court, it would by no means follow from thence, that they claimed superiority over the Legislature; but that in the exercise of their functions, they pronounce the sovereign will of the people, expressed or implied in the Constitution, which is superior to both. Indeed, if this part of their duty should be omitted their oaths would be ineffectual, and perjury would be justly imputed to them. I am happy that on that point of the argument, one of our opponents (Mr. Bacon) fully accords with us in sentiment and allows to all courts the discretion of pronouncing between the Constitution and the law.

Between a government of laws and a government of force there is no medium. If your fountains of justice are pure, independent, and free from restraint, your land will enjoy prosperity, and your people will be tranquil and happy; but if the law on your table should have a tendency (as I very much fear is the case) to make the Judiciary the subservient panders and tools of the Legislature, too late will posterity bewail the decision of this inauspicious day.

Mr. T. concluded his remarks against the bill a quarter before eleven, after which, Mr. Lowndes spoke for a few minutes against the passage of the bill.

When the main question was taken, on striking out the first section of the bill, and lost—yeas 31, nays 60.

Mr. Bayard rose and stated his desire to offer certain amendments, the objects of which he specified; and his preponderating wish that they should be discussed in the Committee of the Whole. But he added, that he should not object to the Committee rising and reporting the bill, provided an opportunity were allowed in the House to offer them.

Mr. Griswold was of opinion that it was most proper that the amendments should be made in the Committee; he therefore moved that the Committee rise and ask leave to sit again, in order that the amendments might be submitted to-morrow. The question on rising was taken and lost—yeas 37, nays 54.

The remaining sections of the bill were then read, without any amendments being offered. When the Committee rose, and reported the bill without amendments; and then the House adjourned, at a quarter past eleven o'clock.

Tuesday, March 2.

A Message was received from the President of the United States, transmitting letters recently received from our Consuls at Gibraltar and Algiers, presenting the latest view of the state of our affairs with the Barbary Powers.

The Message and letters were read, and ordered to be referred to the committee appointed, on the fifteenth of December last, to prepare and bring in a bill or bills further and more effectually to protect the commerce of the United States against the Barbary Powers.

A petition of sundry inhabitants of the county of Wayne, in the Territory of the United States Northwest of the river Ohio, was presented to the House and read, stating certain inconveniences to which they have been, and are now, subjected, in consequence of the Indian claims to lands in the said Territory not having been yet extinguished, and the right of the same vested in fee simple to the petitioners; also, of the want of post roads extended to their settlement, and praying relief in the premises; also, that one or more townships of land may be granted for the purpose of erecting and endowing an academy or college in the said county of Wayne, for the instruction of youth in that Territory.

Ordered, That so much thereof as relates to an establishment of a seminary of learning in the said county of Wayne, be referred to the committee appointed on the twelfth ultimo, to whom was referred a petition of the Trustees of "Jefferson Academy," at Vincennes, in the Indiana Territory; that they do examine the matter thereof and report the same, with their opinion thereupon to the House.

Ordered, That the residue of the said petition do lie on the table.

Memorials of sundry merchants of the city of Hartford, in the State of Connecticut, and of sundry inhabitants of the town of Washington, in the State of North Carolina, were presented to the House and read, respectively praying relief in the case of the capture and condemnation of their property by the cruisers and courts of the French Republic, during the late European war.—Referred.

The Speaker laid before the House a letter from the Secretary of Treasury, accompanying annual statements of the district tonnage of the United States on the thirty-first of December, one thousand eight hundred, formed from the quarterly abstracts rendered by the several collectors, together with certain observations explanatory of the said statements; which was read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his reports on the petitions of James Bell, by Peter Mills, his attorney, and of Isaac Sawyer and others, referred to him by order of the House, on the twelfth and seventeenth ultimo; which were read, and ordered to be committed to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to authorize the President of the United States to convey certain parcels of land therein mentioned;" to which they desire the concurrence of this House.

The said bill was twice read and committed to a Committee of the whole House on Monday next.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a statement of the emoluments of the officers employed in the collection of the customs for the year 1801, and a letter, to him, thereon, from the Comptroller of the Treasury; also, a statement of the sums paid into the Treasury of the United States, by the Collectors of each port, during the same year; which were read, and ordered to be referred to the Committee of Commerce and Manufactures.

JUDICIARY SYSTEM.

The House then proceeded to consider, at the Clerk's table, the bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," to which the Committee of the whole House, on the first instant, reported no amendment: Whereupon,

Mr. Bayard moved to strike out the first section of the said bill, in the words following, to wit:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act of Congress, passed on the thirteenth day of February, one thousand eight hundred and one, entitled 'An act to provide for the more convenient organization of the Courts of the United States,' from and after the first day of July next, shall be and is hereby repealed:"

And, on the question thereupon, it passed in the negative—yeas 30, nays 55, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Smilie, John Smith, of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Bayard then moved to amend the bill, by adding to the first section thereof, the following words: "except so much of the forty-first section of the said act as provides for the augmentation of the salaries of the District Judges of Kentucky and Tennessee:"

And, on the question thereupon, it passed in the negative—yeas 40, nays 53, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Smith, of New York, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Thomas, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, S. L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, junior, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Bayard then moved to amend the bill, by inserting after the words "one thousand eight hundred and one," in the fifth section thereof, the words following, to wit: "if the same be returnable after the said first day of July next:"

And, on the question thereupon, it passed in the negative—yeas 37, nays 51, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Smith, of New York, John Stanley, John Stewart, B. Tallmadge, S. Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Thomas, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Bayard moved to amend the bill, by adding, to the end thereof, a new section, in the words following, to wit:

"*And be it further enacted*, That all proceedings of a criminal, penal, or a civil nature, which have been commenced in the circuit court created and established by the act first herein mentioned, and whereof the circuit courts existing prior to the passing of the said act, had not cognizance, shall be cognizable in the circuit courts revived by this act, and may be proceeded in, in the same manner, and with the same effect, as they could have been in the circuit courts established by the aforesaid act:"

And, on the question thereupon, it passed in the negative—yeas 39, nays 49, as follows:

Yeas—John Archer, John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John C. Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, James Holland, David Holmes, Geo. Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, James Mott, Anthony New, Thomas Newton, junior, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. Griswold moved to amend the bill, by adding to the end thereof a new section, in the words following, to wit:

"*And be it further enacted*, That all suits, process, pleadings, and other proceedings of what nature or kind soever, depending in the circuit court in the district of Ohio, and which shall have been commenced within the Territory of the United States Northwest of the river Ohio, shall be, and hereby are, from and after the first day of July next, continued over to the superior court of the said Territory, next thereafter to be holden; and all other suits, process, pleadings, and other proceedings of whatever nature or kind soever, depending or existing in the circuit court of the said district, shall be, and hereby are, from and after the first day of July next, continued over to the next superior court of the Indiana Territory of the United States next thereafter to be holden."

Messrs. Griswold, Fearing, Dana, Lowndes, Eustis, Bayard, and Rutledge, spoke in favor of amending, and Messrs. Giles, Bacon, Elmendorf, S. Smith, and Holland, spoke against amending the bill.

Mr. Eustis.—In the negative given to the several amendments which have been offered, I perceive a determination to pass the bill in its present form. This I regret. I have voted for those amendments from a conviction that they were proper and necessary, and that others ought to be made before the bill should pass; that the defects of the old system be supplied at the same time and by the same act which abolishes the present system.

Satisfied in my own mind of the Constitutional right to pass the bill, I have hitherto been silent on that and every other part of the subject; but as two of my honorable colleagues have brought the sentiments of Massachusetts into the scale of the unconstitutionality, I may be permitted to state one fact expressive of the ideas which which have prevailed in that State. Several years past, and when no party spirit mingled itself with the consideration, repeated attempts were made to abolish the whole set of inferior courts, and to establish circuit courts in their stead. A bill for this purpose passed one branch of the Legislature after a long discussion, was considered and debated in the other branch; an election intervened, the subject was again revived, and I have never heard that the Constitutional right was called in question. The judges of these courts, of our Supreme Court, and the judges of the courts of the United States, hold their offices by the same tenure; the cases are similar; and so far as my information extends, the sentiment which prevailed in the Legislature pervaded the State. Had this House been equally free from the spirit of party, I cannot believe this objection would have arisen to such an height. Confining themselves to the use of terms, and under the influence of other circumstances, gentlemen appear to me to be wrought up to a zeal which has beguiled their judgments. With a proper respect for those who differ from me, I am perfectly satisfied of the Constitutional right to abridge or abolish, as well as to extend and establish courts, as the public good or the public necessity may require. For the soundness of this doctrine, without a comment on the Constitution, without opening it in this place, I should be willing to trust to the construction which would be given by the common sense of the people of the United States, and to rest my reputation on their decision.

The doctrine contended for by some gentlemen, is so foreign to the meaning and fair construction of the instrument, so fatal to a primary and elementary principle, and ultimately and in its consequences so destructive to the very independence of the Judiciary, for which they contend, that I would consent to pass the bill, imperfect as it is, was there no other way to repel it. But this is not necessary; the Constitutional question was decided by the vote of last evening.

The right having been established, in what manner should it be exercised? Not on ordinary occasions or light causes. A high and solemn discretion should preside over and direct its use. Is this an occasion which requires it? On what ground is the bill on your table predicated? On a conviction that the courts, as established by the law of the last session, are not required by the wants or circumstances of the country; that the provisions therein made are unnecessary and burdensome to the people; and that they ought, therefore, to be reduced. This the bill is intended to effect; it abolishes the present and revives and restores the past system. But the system revived is allowed to be materially defective. The judges of the Supreme Court have not been able to comply with the duties required of them. The association of the supreme with the district judges has occasioned a want of uniformity of decision, and an increased uncertainty of the law, different

judges being called to preside in the same court, and often over different stages of the same cause; whole terms have failed; Legislative acts have repeatedly been found necessary to continue action.

What, then, is to be done? At the same time that you restore the one and abolish the other, that which is restored ought to be amended and rendered competent; the act should carry on the face of it its own justification. But, say gentlemen, we will first repeal the existing law, abolish the present system, and afterwards, by another bill, we will provide for the defects of the old. One of my honorable colleagues believes neither to be perfect, but that the old is preferable to the new. This belief will justify his voting for the bill. Perfection is not to be expected. But what is the fact? By passing the bill as it now stands, we take away a system too competent, and restore one superior in principle, but practically defective. To justify the change, that which is restored ought to be rendered competent to the due administration of justice, or we may be accused of legislating for men and not for measures. One honorable gentleman objects to amending this bill, because amendments were not permitted by the last Congress to be made to the act which is now intended to be repealed. This, surely, is not a good reason. The gentleman would not have us pursue a line of conduct which he, on a former occasion, disapproved.

It is objected that, in attempting to amend, the bill may be lost. How can it be lost? Will it not be under a constant control of the majority? If there be danger of losing the bill, there is greater danger of losing the necessary amendments after the bill is past. Should this be the case, what is hazarded? The imputation of having abolished the present system, because you had the power, or because you had the will, or from some motive not honorable or satisfactory. If the repealing act, on the other hand, restores the old system, superior in principle, competent to the due administration of justice, and free from objection, (and I would amend it until every reasonable objection was satisfied,) what is the impression? You have abolished a system which was unnecessary and burdensome, and have restored another and a better in its place. You shut the mouths of your enemies; you command the public confidence.

Let the true reason be assigned. The patience of the House is exhausted. They have seen two weeks wasted in a wild deviation from the subject. Far from a wish to revive, I would throw a veil of oblivion over the past, impenetrable, if possible, to the eye of a discerning people; too often already has the public repose been disturbed by altercations within these walls. Let them cease. Let us recollect that we owe something to the community—to ourselves. For once let us bring our prejudices and passions to the law of our country.

Let the bill rest on the table for a few days, until the necessary amendments can be prepared. In the mean time let the other business of the session go on. Take the collected wisdom of the House, take the assistance of the minority. Gentlemen say they cannot be confided in, as they have declared the act unconstitutional. Make the trial. If they refuse their aid they give you a triumph; if they discover the disposition to embarrass, take the business out of their hands and complete it. Much has been said of public sentiment. Sir, the people of this country are weary of professions. They require the evidence of facts to satisfy them. They ought, in my opinion, to have that evidence in the present case; this bill ought to carry on the face of it unequivocal evidence of the good faith with which it is enacted; in forming this opinion, I acknowledge that I look beyond the walls of this House.

This is the course which an honorable gentleman from Virginia has stated his wish that the business should have taken at first. This is the course it ought to have taken, and which it ought now to take; it is not too late.

With perfect confidence in the sincerity of gentlemen who tell us that the amendments will be made in a supplementary bill, I have also learned, from some small experience, that there is no certainty for the future, especially in public bodies. Gentlemen cannot command or engage for others. After the bill is passed, I am very apprehensive the amendments may be disagreed to, and finally lost. As no hazard is required, so none ought to be incurred.

This has been my view of the subject from its first origin. Every day has confirmed me that it was a just view. It has governed my conduct hitherto, and will direct the vote I shall finally give.

The question being taken on Mr. Griswold's amendment, it passed in the negative—yeas 37, nays 52, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, Wm. Shepard, John C. Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Wm. Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Isaac Van Horne.

Another motion was then made, and, the question being put that the said bill be recommitted to a select committee, to consider and report thereon to the House: it passed in the negative—yeas 36, nays 55, as follows:

Yeas—J. A. Bayard, Thos. Boude, John Campbell, Manasseh Cutler, S. W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Another motion was then made and seconded to amend the bill, by adding, to the end thereof, a new section, in the words following, to wit:

"*And be it further enacted*, That, in all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy issued from a circuit court, or a circuit judge, in pursuance of the aforesaid act, entitled 'An act to provide for the more convenient organization of the courts of the United States,' the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have been issued:"

And, on the question thereupon, it passed in the negative—yeas 33, nays 36, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thos. Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, S. L. Mitchill, Jas. Mott, Thomas Moore, Anthony New, Thomas Newton, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Israel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Horne, and Robert Williams.

Another motion was then made and seconded that the said bill be read the third time on Monday, the fifteenth instant; and, on the question thereupon, it passed in the negative.

Another motion was then made, and the question being put, that the said bill be read the third time on Monday next, it passed in the negative.

And then the said question being taken that the said bill shall be read the third time to-morrow, it was resolved in the affirmative.

Wednesday, March 3.

JUDICIARY SYSTEM.

The bill sent from the Senate, entitled "An act to repeal certain acts respecting the organization of the Courts of the United States, and for other purposes," was read the third time.

Mr. Clopton rose and said—Mr. Speaker, having voted against striking out the first section of the bill before you, and intending to vote for the passage of it, I wish that the principal reasons which govern me in that vote should go forth with it. I, therefore, am induced to ask the indulgence of the House for a few minutes, in order to state those reasons. In doing this, I beg leave to assure the House, that I shall not depart from the question to wander into remote regions, but shall confine myself closely to the bill itself; that I shall endeavor strictly to avoid the introduction of extraneous matter; that, as I have risen purely for the purpose of announcing the reasons on which my vote is grounded, so shall it be my particular care, not to trouble the House with any remarks which do not apply to the important subject on which that vote is to be given.

Gentlemen opposed to the bill have contended that it is both unconstitutional and inexpedient.

With respect to the latter point of discussion, I will remark, in a very few words, that I am strongly impressed with a belief, that it is expedient, from a view of the business now before the courts, which it proposes to discontinue. From the decrease of that business, which has, in fact, been brought about under the old system; from the actual decrease and great probability of still further decrease of the sources of future litigation on subjects properly of Federal jurisdiction, it appears to me, sir, that the new courts are entirely unnecessary. The document, which has furnished

a statement of the business, though it has been much cavilled at, and, by some gentlemen, declared to have been improperly communicated to the House, I consider, not only a very proper subject of communication, but as furnishing a degree of information highly useful to guide our inquiries on this point. To me, I confess, it has afforded a view of the subject, which contributes very much towards convincing me of the inutility of the courts, to discontinue which, is the object of this bill. Under these circumstances, while I believe it to be a good maxim not to multiply offices unnecessarily, nor to create expensive systems that are useless, both from political considerations and from considerations of economy, my impressions are, that the bill is expedient and proper.

On the other point of discussion, much, indeed, has been said. On this ground, gentlemen have declaimed with great vehemence. They have displayed much animation, much pathos, and with abundant zeal, they have contended that the Constitution gives no authority to pass this bill.

In support of this doctrine, that part of the Constitution is taken for its strong ground, which is contained in the first section of the third article; for reading which section, I hope the House will pardon me, although it has already been often read—in these words:

"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour; and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Gentlemen opposed to the bill have contended that this section secures a perpetuity to all courts. They have contended that, if Congress shall, at any time, have exercised the power granted in the first article—that of "constituting tribunals inferior to the Supreme Court," by this section they are inhibited from annulling any of them on any account whatsoever. They have contended that, if a power to abolish is admitted, the independence of the judges will vanish; and that an act to abolish will deprive the judges of an absolute right, which, they say, is vested in them by this section of the Constitution.

In considering this part of the subject, I beg leave, first, to make a few remarks on that independence, a theme on which gentlemen have dilated very copiously.

Here, sir, I would beg leave to ask, are not the judges as completely guarded as they can be, against any arbitrary removal from office? It is by all acknowledged, that they are placed beyond the reach of the Executive department. They are also placed above any dependence on the Legislature for compensation for their services, by having salaries previously ascertained by law, which cannot be diminished during their continuance in office. So long as they behave well, they cannot be removed from their offices, but are entitled to hold them, if the offices exist so long, and their salaries cannot be reduced. During their continuance, therefore, in office, while in the actual performance of their duties, the actual exercise of administering justice, the great end of securing their independence in the exercise of the duties of their offices, under the construction contained in this bill, is, I conceive, as effectually answered, as if the courts were immovably fixed, and were to exist for ever. If at any time it should be found that any of the courts are unnecessary, and that it will be more for the public interest to abolish, than to continue them, with their abolition their duties cease; and then the judges will have no services to render, and, consequently, no longer need to be shielded from improper influences.

For what reason, I would ask, was the principle of securing the independence of judges adopted? Was it not for the purpose of promoting a faithful and upright discharge of their duties in office? Surely, it was; and in order to place them beyond the power of removal by one branch of the Government, and beyond the fear of having their salaries reduced by the other branch, lest, if they should be left subject to either of those impressions, they might, in the exercise of the duties of their offices, be too much inclined to subserve the other branches; this provision, I apprehend, was inserted in the Constitution in order to secure that important object, their independence in office, which independence, I believe, remains unshaken by the principle of the bill, as to all the purposes intended, and fully satisfies the Constitution. It is sufficient that this object be secured so long as there is a necessity for it; that is to say, so long as there is a necessity for keeping up the courts. If that necessity ceases, or if courts have been created when there existed no necessity for them, can it be a rational, can it be a proper construction of this part of the Constitution, or, indeed, of any other part of it, to say that, although the courts should be unnecessary, (for such is the extent of the doctrine opposed to the bill,) and, although the independence of the judges is complete during their continuance in the offices, nevertheless, the courts must be for ever kept up? Does such a construction necessarily result from these words: "the judges, &c., shall hold their offices during good behaviour?" Is there any idea of perpetuity attached to the word "offices," or to any other words, in this sentence? Sir, I cannot perceive any such necessary construction. I cannot perceive that any such idea is involved in the sentence. I cannot discover any natural connexion between any such idea and this sentence, or any part of it. The phrase, "during good behaviour," is a phrase well understood, as contradistinguished from the phrase "during pleasure," and attaches no idea of perpetuity to the office. It has no reference to the duration of the office. It imports, indeed, that the office shall be holden, not at the will of another person, but on the good behaviour of the officer. It does not follow, therefore, that the duration of the office must necessarily be commensurate with the good behaviour of the person on whom the office had been conferred, or his own

will to hold. I believe that an office may be created expressly for a term of years, and be filled by an officer to hold during good behaviour. Although he continues to behave well beyond the term, yet, at its expiration, there is an end of the office. Thus an office may be created for a term of ten years. A may be appointed to hold this office during good behaviour. You cannot remove him from this office at all, while he behaves well; but, at the expiration of ten years, the office ceases, of course. A cannot be said to be removed from the office by its cessation; for he cannot be removed from a nonentity. But if he hold at the pleasure of B, at any time before the expiration of the term, B may deprive him of the office; and then he may be said to be removed from the office, because it still continues in existence. So, also, I think, an office created for an indefinite term, as these courts are, may be discontinued; and, although the officer hold during good behaviour, he cannot be said to be removed by its discontinuance; but, if he hold at the pleasure of another person, he may, by him, be removed before a discontinuance of the office. The cases are analogous, I think, at least in relation to the effect produced by a cessation of the offices in both cases. For, as in the first case, the officer is entitled to hold the office during the term of ten years, which is the whole term of its existence, if he continues to behave well; so, in the latter case, the officer is entitled to hold during the existence of the office, if he exists so long and continues to behave well.

It will not be pretended that the tenure of the office, in the first case, is violated by its cessation at the fixed period of ten years, the term for which it was created: neither can it be justly said that, in the latter case, the tenure is violated by the determination of the office, although no definite term of existence was affixed to it at the time of its creation. In each case the tenure of the office rests equally on the ground of "good behaviour," and continues on that ground, without interruption, during the existence of the office. Hence, the words, "shall hold their offices during good behaviour," can only apply to existing offices, and designate the species of tenure, by which they are holden during their existence; but do not refer to the duration of the offices, or determine the period of their existence. The whole reasoning of gentlemen against this principle is grounded on the position, that the phrase gives a kind of perpetuity to the offices. This is, undoubtedly, begging the question. It is first assumed as a *datum* that the offices derive such a perpetuity from those words, and then it is inferred that the power of the Legislature cannot reach them. On the other hand, the converse of this proposition is believed to be true. It is contended, in favor of the bill, that a contrary construction is most natural; that it is more apparent that the words give no such perpetuity; that, consequently, the offices may be abolished by the same power which created them; and that such abolition does not violate the tenure by which the judges held them. Sir, from such a view as I have been able to take of this subject, and which I have had the honor just now to submit to the House, this deduction appears to me to be a fair and a regular one.

I will now proceed, sir, to consider the other position, which has been laid down by gentlemen, that the judges have a vested right in their offices, from whence it has been argued, that an act to abolish courts deprives the judges of that right; and upon that ground it has been contended, that the section of the Constitution which has been cited, inhibits the Legislature from passing any such act. It has been strongly insisted that, from these words, "the judges, &c., shall hold their offices during good behaviour," the duration of the offices, that is, of the courts, shall be at least commensurate with the duration of the good behaviour of the judges; indeed, the idea seems rather to be that, when once created, they cannot be constitutionally abolished; that, so long as the judges behave well, the offices belong to them; and that the court must be continued in existence for their benefit, whether the public interest requires it or not, or even although a continuance of them should be injurious to the public interest.

In considering the force of this reasoning, though I have already troubled the House with some remarks, which, I think, apply to this point; yet, I hope to be pardoned for taking a further view of it, in doing which I beg leave to revert to the first clause of the section which has been cited—"the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish." This clause, I think, in express terms, recognises in the Legislature a full power over this subject. Here, Mr. Speaker, notwithstanding what has been said to the contrary, it is clear that the words, "may from time to time ordain and establish," do leave a discretion with the Legislature; and if it were to be admitted, as seems to have been contended for, that the Constitution, by designating and limiting the jurisdiction of the Supreme Court, presupposes the expediency of establishing some inferior courts; yet I apprehend that it will not be denied, but by all acknowledged, that the clause gives to Congress a discretionary power of determining the number and the kind of courts. If so, and if, in the exercise of this discretionary power, at any time, the Congress discovers that too many courts of improper structure have been created, does there not exist in the Congress which discovers this evil, the same and equal power to correct it, with that which existed to authorize the former Congress to create those courts. To deny this, would be to deny this Congress powers of legislation equal to those which the former Congress possessed.

Again, would it not be preposterous to say, that the Congress have a discretionary power of fixing the number of courts, and yet shall exercise that discretionary power but in one way; that is, in augmenting the number, but shall never exercise it in diminishing the number. This would, indeed, be a curious kind of discretion. It would be the acme of absurdity to call it a discretion. They must, therefore, have the discretion in the latitude contended for, or they have none at all;

and, if they have any at all, they have the power to annul courts when the public good requires it, as well as to create them. It is evident, therefore, that such a discretionary power as this which I have stated does exist; and that the section of the Constitution which has been adduced for the purpose by the opponents of this bill, does not vest in the judges such a right, such an absolute property in their offices, as to place them beyond the reach of the Legislature, and so as to inhibit the Legislature from annulling such of the courts as it shall be found necessary or expedient for the public good to annul.

Further to test the accuracy of this deduction, permit me, sir, to take a view of the Constitution, and to analyze its principles. Whenever I contemplate this valuable system, I perceive, from its nature, as a Federal Government, that it is a Government of specific, limited powers. I perceive, to a demonstration, that, wherever power is granted, the benefit or good of the people must always be understood to be the primary object of the grant; that the powers granted are special powers for special and particular purposes, which are secondary objects and means of attaining the primary one; that the department to which a power is entrusted should be always responsible to the people for a proper application and use of that power towards the attainment of both objects; and that it must be competent to the particular purposes for which it was granted; otherwise, there would be a responsibility on the department, without sufficient power to discharge its obligation to the community.

I will now beg leave, sir, to apply these principles to some of the grants of power enumerated in the Constitution; and, if they apply to any, they apply to all. I will begin with the first grant.

The Congress shall have power "to lay and 'collect taxes, duties, imposts, and excises; to 'pay the debts and provide for the common defence and general welfare of the United States; 'but all duties, imposts, and excises, shall be uni-'form throughout the United States." These are the special purposes for which the power is granted. The Congress is the department, in exercising this power, to effect these purposes in the best manner it can, and most for the interest and convenience of the people, under the restrictions specified in the grant; herein consists its responsibility. Its power must be competent to make such laws immediately connected with these objects, as shall be necessary to effect them: otherwise, it would be responsible, without sufficient power to discharge that obligation.

Passing over other grants, for the sake of brevity, I will proceed, sir, to a grant immediately relating to the subject, which has been debated.

The Congress shall have power "to constitute tribunals inferior to the Supreme Court." Here the special purpose for which the power is granted, is to "constitute inferior courts." Again, the Congress is the department to whom the power is entrusted. It is responsible to the people, to provide, from time to time, for the due administration of Federal justice, in the best manner it can, and most for the interest and convenience of the people; and it must be competent. Here, sir, is the important point in question—it must be competent to what? According to the principles which have been stated, it must be competent to enact, from time to time, such laws immediately relating to that subject as shall be necessary and proper for making such provision; otherwise its responsibility would be unattended with power adequate to a full discharge of its obligation. The friends of the bill before you contend, sir, that towards the establishment of such a provision that bill is necessary and proper; that the interest and convenience of the people will be better served by abolishing the system than by its continuance.

But gentlemen have contended that the power in this case does not extend so far as to authorize the repeal of a law which had already created courts; for, that the clause only expresses a positive grant of power to constitute courts; that the grant merely authorizes a creation of new courts, in addition to the old, or a new organization of the old courts. Sir, the same feature marks every clause in the enumeration. How, then, is that inference drawn in this particular case? Is it contended for, because a power to repeal is not expressed in the grant? No such power is expressed in any of the grants. Will it, therefore, be also contended that a law "to lay and collect taxes, duties, imposts, or excises," cannot be repealed; or that, if any law should be passed relative to either of those subjects, it must be a law either for laying and collecting new taxes, duties, imposts, or excises, in addition to the old, or for new modelling the old ones? Sir, I can undertake to vouch for gentlemen, that such an absurdity will not be assented to; and yet I do not see how it can well be avoided, if the inference is insisted upon in the other case. The power of repeal, I believe, sir, equally exists in both cases; and the responsibility attached to this department of the Government requires an exercise of that power, in both cases, whenever it is found to be expedient for the public good, as well as in all other cases where that power exists. To deny this, would be a denial of all discretion to the Legislative department; a denial of sufficient power to support its responsibility, or to effect the purposes for which the special grants of powers had been confided to it.

Mr. Speaker, having endeavored to show (and, to my mind, the deductions are perfectly clear) that the doctrine which has been contended for by gentlemen opposed to this bill, is not supported by the section of the Constitution which has been often cited, and on which they have much relied, that it is not adverse to the principle of the bill, but reconcilable to it, and will not be violated by its operation, either as it respects the required independence of the judges, or as it regards the tenure of their offices, I will now, with permission of the House, proceed to state a few ideas resulting from a comparison of their doctrine and their construction of that section with the general principles of our Government.

I presume, sir, that in the construction of an instrument it must ever be incorrect to give such interpretation to any clause of that instrument as would militate against the main design or end of the instrument. I apprehend that every construction to be correct must support that object. This I hold to be a good rule in respect to any instrument, however small its dignity. If this be a correct idea, of how much importance must it be to adhere to the rule in constructions of the Constitution of our Government!

Sir, I profess not to be a legal character, or to derive ideas on this head from that kind of research which professional gentlemen are accustomed to pursue. I form my opinion from the reasonableness of such a rule, and the obvious tendency of a contrary rule. I figure to myself a striking distinction between the two modes of construction. While the one cherishes and preserves the Constitution in its true and natural state of energy, the other must unquestionably enfeeble it, and eventually annihilate its vital principles.

The American mind is so well instructed in the great and essential principles which form the basis of our Government, the leading characteristic features of which are so strongly marked; its pre-eminent attributes so clearly distinguished from the genius of the corrupt systems of the old world, and springing, as it does, from the only legitimate source on earth—the people; that its first and greatest object is universally recognised, and would have required no explicit declaration to the world to show what it was, yet it is seen in the preamble of the Constitution. Among other important purposes for which the people of the United States have declared that they ordained and established this Constitution, one is to promote the general welfare. This indeed may be said to comprehend all the other specific objects of its institution; and every benefit and advantage derivable to the United States from a just and proper exercise of the powers delegated to them by this Constitution may, not improperly, be concentrated in this expression. I consider the term as synonymous with the public good. I believe, therefore, that I am bound to keep steadily in view this great object, whenever I venture to put constructions on any part of the Constitution, and to explode all constructions not compatible therewith.

Sir, when I listened (as I have with close attention) to gentlemen, and heard them contending with unusual degree of warmth, that the Legislature have no authority to annul courts, and urge for reasons that the judges have a property in their offices, I was induced to believe from the course of their arguments that, if we are to be guided by them, they would direct us to this conclusion, that, if no salaries were involved in the question, in discussing the constitutionality of this bill, proposing a repeal of "certain acts respecting the organization of the courts of the United States," there would be no inquiry into the right of merely abolishing the courts; that it is the effect which the abolition will have in relation to the salaries, and not the effect which it will have in respect to the administration of justice, which is considered as rendering the repeal unconstitutional, or rather the constitutionality of it would not then be questioned at all. This object, so zealously contended for, is called the independence of the judges. It is not deemed sufficient security for their independence that they really possess it by having salaries, which cannot be diminished while they continue in office, and from which offices they cannot be removed while they behave well, even if it be to the end of their lives, if the office exist so long; but it is urged also that the offices must be perpetual, in order to perpetuate the salaries. Considering this object, therefore, as the mainspring of the doctrine which has been thus advocated, I contend, sir, that it cannot stand when tested by sound principles. I feel certain in my mind that it is incompatible with the genuine republican principle which ought ever to be maintained as a vital, essential attribute of our Government—incompatible with that fundamental principle, which makes the good of the people the paramount object of our Constitution.

In this Government, then, where the good of the people so confessedly is the supreme object, I believe it is dangerous to sanction a doctrine like this, which goes to declare that in fact no considerations of public utility are allowed by the Constitution to be of sufficient avail to abolish any courts which have once been created, merely because such abolition will affect the interest of the judges.

This doctrine may suit the genius of despotic government, wherein not the welfare of the people, but the aggrandizement of their rulers is almost the sole object; where the body of the people are indeed considered as mere property, and even preserved in existence more for the purpose of swelling the pomp, the pageantry, the splendor and magnificence of those who domineer over them than for any other purpose; where the great mass of the people, so far from having any rights protected by the Government, are the miserable subjects of oppression in every shape which fancy can devise, and which a mixture of whim and cruelty can inflict. In that kind of Government there is indeed color for a doctrine, which would perpetuate offices for the benefit of those who hold them, in exclusion of every consideration in respect to the people.

But does not the genius of our free Government utterly forbid that the interest of any individual should be consulted in preference to the good of the community, when the good of the community and the interest of that individual shall come in competition? Surely it does, and yet what is the scope of the doctrine which has been so strenuously contended for in opposition to a repeal of the law in question? It positively maintains that, although the present Legislature should have the strongest evidence that the courts created by that law are unnecessary, or even if there should be unquestionable ground to believe that a continuance of them would be injurious to

the interests of the community; nevertheless, because an abolition of them will be followed by a cessation of salaries to the judges, whereby their interests will be affected—the interests of those particular individuals shall preponderate and forbid the repeal. Does not this position flatly contradict that valuable principle of our Government, which maintains that the good of the community should be the great object of all our institutions? To my mind, this conclusion is perfectly clear, and the doctrine is in complete hostility to that principle.

If, sir, we retrace the course of discussion in this case, how has it stood? On the one hand the bill has been advocated and supported, as to its expediency, on the ground that the courts in question are unnecessary and productive of useless expense to the community; that this circumstance of itself would be good reason, if no other existed, though it is deemed that other strong reasons, taken in connexion with this, do exist, why the courts should be discontinued. On the other hand, the doctrine contended for in opposition to this bill is tantamount to a positive affirmance that, whether the courts are necessary or unnecessary, you must not put them down; that, in whatever manner the public interest may be affected, the courts must be suffered to remain in force; that the interest and convenience of the public in this case, must yield to the particular interest and convenience of the judges; that the courts were no sooner created than they were enshrined within the veil of the Constitution; that the Constitution is to them a sanctuary, which should protect them against the rude hand of legislation; that you break through this sanctuary, you sacrilegiously violate it, if you dare to enter and interrupt the permanence of the courts; that you strike with unhallowed hands, if you presume to strike out of existence any of those offices, after having once been in possession of the judges; that howmuchsoever you may think the public good requires it, however detrimental to the public interest you may think a continuance of the courts will be, you must not touch the law which creates them, at least, any further than to amend; that the courts are sacred, because, if you undertake to annihilate them, the consequence will be that the judges will sustain the loss of salaries; and you have no authority to cause such a loss to the judges, in order to promote that which you conceive to be the public good or to discontinue what you apprehend to be injurious to the public interest; that the Constitution secures to those officers salaries for life, and inhibits you from any act, which directly or indirectly, mediately or immediately, has a tendency to operate a deprivation of them, notwithstanding any such public considerations. Such, sir, is the very essence of the arguments adduced by gentlemen opposed to the bill before you, so far as they apply to the question of constitutionality. But, good God! can this be the language of our Constitution? If every page in the volume of this sacred instrument was to be carefully unfolded, and examined with the strictest eye, is there a single sentence to be found which breathes such language? Can the eye trace out by the most laborious search even a single word which can bear such construction? I am persuaded, Mr. Speaker, that I should commit an high offence against the sanctity of this venerable instrument, were I for a moment to indulge a belief that such a sentence, such a word, could be found.

In another point of view, Mr. Speaker, I consider the tendency of this doctrine to be highly objectionable. It is confidently believed, as has been before stated, that the courts proposed to be annulled by the operation of this bill are unnecessary; that consequently a continuance of them will be attended with an useless expense. If, then, the due administration of justice, the only object for which courts ought to be established, does not require the aid of those additional courts in order to effect that object, they must be an useless burden upon the country.

Contemplating these circumstances, therefore, as attending this case, and supposing the doctrine which has been advocated to operate as gentlemen have contended for, I am inevitably drawn to this conclusion, that, if it should be established as a principle that courts once constituted, though on experiment, cannot be abolished by any power existing under the Constitution, however unnecessary, however burdensome they may be found to be; then will the Constitution exhibit that singular phenomenon in the political world, which will be capable of producing an evil, to which it will not be capable of applying any remedy, after that evil is found to have been produced. It will then be determined that this instrument gives power to legislate so as to create an evil, and then to augment that evil, but that it gives no power to legislate so as to diminish the evil; that it authorizes an extension of the mischief *ad infinitum*, but that it denies all right or authority to contract the sphere of the mischief.

There is another consideration of no small moment, and highly worthy of remark. Public institutions in all governments, particularly in their infancy, and still more particularly in the infancy of Republics, are more or less experimental. What a solecism, then, does this doctrine present to us! It pronounces this strange and contradictory proposition that, although a system, originated merely by legislative act, should be tried and found useless, defective, or even vicious, nevertheless it cannot be subject to any radical correction; that the power which formed the system is incompetent to cure its defects; has no right or authority to ameliorate the system in such a manner or to such extent as that power should deem necessary and proper. Sir, what would be the consequence of the establishment of such a principle as this? Would it not have a direct tendency to arrest the benefits derivable to society from the progress of experience? Such undoubtedly would be its operation—an operation which would in fact go to defeat one of the greatest advantages accruing to mankind from the social state.

Experience must be acknowledged to be a great source of improvement, and it is an important attribute of free government, which requires that its institutions should receive such improvements, as shall be discovered from that source to be essential for the benefit of the people. Hence the doctrine, which has been contended for, presents itself in an attitude extremely hostile to that principle, inasmuch as it does not allow that extent of improvement in judicial systems which experience might dictate; for it is not to be imagined that these systems any more than other institutions can always receive the highest degree of improvement from merely a new modification of the existing arrangements; but that sometimes more radical alterations may be necessary in order to the attainment of that end. The system now proposed to be discontinued is believed to be precisely in that predicament. I am not unmindful, Mr. Speaker, that gentlemen have said that this system has not been tried long enough to test its propriety or usefulness. On the other hand it has been equally contended that the system, although it has not been for any considerable time in operation, is nevertheless attended with sufficient evidences of its inutility; and, indeed, that the circumstances of the country did not require it at the time of its creation; that it had all the marks of impropriety about it when first brought into existence. But, independently of these circumstances, I cannot accede to the doctrine. Its principle is the same, and would equally apply, if the system had been commenced with the first transactions of the Government, and had been found from an experience of twelve years to be palpably useless. It is the principle of the doctrine, which would operate universally, and apply as well to a long as to a short term of experience, that I explode.

Mr. Speaker, I have submitted to the honorable House these reasons, which are most impressive on my mind, in favor of the vote which I am about to give on the very important subject of the bill before you. Those which have reference to the great Constitutional question that has been agitated, are the result of such a view of the Constitution, as my own judgment has been able to take on a serious and diligent examination of it. On a subject so momentous, I have deemed it a duty which I owe to my country and to myself to pursue this course of investigation. While I have approached this subject with a degree of awe, I have endeavored to bestow upon it the most deliberate consideration. I have also attended closely to the arguments of gentlemen against the bill, and, weighing them dispassionately and with candor, I must say that I have heard nothing which has convinced me that the issue of my researches is an improper one; on the contrary, I feel confirmed in the belief that the doctrine which gentlemen have advocated in opposition to the bill, is neither supported by any express provision in the Constitution, nor compatible with its essential principles.

In this discussion gentlemen have taken a wide range, and travelled into fields far remote from the real object of debate. But, not content with such a latitude of argument, some have intermingled with their remarks many insinuations that the friends of this bill are careless whether they violate the Constitution or not. Sir, I regret that sentiments so uncharitable should have been fostered. At the same time I owe it to myself utterly to deny the justice of the imputation. I owe it to myself to assert, that, notwithstanding all the noisy declamation we have heard, and all the pompous declarations of zeal for the Constitution which have been uttered, I will not consent to yield to any of those gentlemen, either in veneration for this sacred instrument, or in solicitude for its defence against any kind of infraction. I entertain not the smallest doubt but that those gentlemen with whom I have the honor to act are animated with similar sentiments.

Sir, we have been warned, frequently and solemnly warned, against passing this bill. Alarm upon alarm, and threat after threat, have been sounded in our ears. The cry of "unconstitutionality" has been reverberated again and again. In language strong, positive, and unequivocal, we have been repeatedly told that we are about to break down one of the main pillars of our Constitution, and to unsettle the whole foundation of our Government. We have been emphatically called upon to stop—to pause—to reflect—to reconsider, and to desist from this attempt!

Sir, I should not have waited for either the threats or the admonitions of those gentlemen, if I had felt any apprehension that this bill would violate the Constitution. Far, very far be it from me to sanction any act whatsoever of such a tendency. Had I believed, or had gentlemen convinced me by argument, that the bill before you is a measure of that sort, instead of advocating, most assuredly I should give it my decided negative. If such was my impression, neither threats nor admonitions would have been necessary to impel me to take such a part. Neither threats nor admonitions can influence me to take such a part without conviction of its propriety. But far from believing that it is a measure of that description; and at the same time believing that it will be for the interest of my country so to do, I shall vote for the passage of it: and I assure the gentleman from Delaware that this vote will not be given under the impression of Executive influence; as he has been pleased very plainly to insinuate that those who favor this bill are acting under such an influence. I assure him, and I assure others, who may have thought proper to indulge similar sentiments, that although I highly revere the eminent virtue, patriotism, and abilities of the great man who now fills the Executive Department——

[Here the Speaker said, that remarks of this kind were not in order.]

Mr. Clopton, after premising that nothing could be farther from his intention than any wilful transgression of the rules of the House, observed that the remark was intended solely to vindicate himself against an imputation, in which he felt himself included, as the insinuation pointed generally to the favorers of the bill—that although with the utmost deference to the opinion of the Speaker, he believed that, situated as he was, the

rules of the House would justify him; he should conclude (as he was near a conclusion at the time when his remark was objected to) with saying that his object was to declare that although the great endowments of the Executive Magistrate commanded his highest esteem—although his opinion at all times merited the utmost respect, and whenever known were respected by him in the first degree; yet his decision on this important occasion, as well as on all others, had been pursuant to the dictates of his own judgment, by which he should be guided in every instance, where he should have the honor of voting in this House.

Mr. VARNUM said, he had determined to content himself with giving a silent vote on the question before the House; but the observations made by two of his colleagues, (Mr. CUTLER and Mr. HASTINGS,) induced him to make some remarks, in which he would endeavor to show, that the sense of the people, in the part of the Union in which he lived, relative to the constitutionality of the question, was, at the time of the adoption of the Federal Constitution, directly the reverse of that which they had stated. Sir, in the consideration of this subject, we ought to bear in mind the nature of the Government, and the very small number of causes cognizable in the Federal Judiciary, when compared with those cognizable in the State judiciaries, in order, with correctness, to ascertain the extent to which it is necessary to carry the one, and at the same time to avoid any encroachment on the other.

Nothing would be clearer in my mind than the Constitutional right, in Congress, to repeal the law, which the bill before you contemplates. By article first, section eighth, in the Constitution, Congress is vested with power, "to constitute tribunals inferior to the Supreme Court," precisely on the same principle, and under similar expressions, with the other powers vested by the same section "to establish an uniform rule of naturalization, uniform laws on the subject of bankruptcies;" "to establish post offices and post roads;" "to raise and support armies;" "to provide and maintain a navy," &c. And it never has been contended, that Congress have not a Constitutional right to repeal any law which may have been passed on any of these subjects, except the judiciaries, whenever the good of the public may require it. If, then, it is admitted that Congress have a Constitutional right to repeal laws which may have been passed on these subjects, when the public good requires it—and to deny it, would be subversive of the best interest of the people—from what principle of the Constitution is it found to be unconstitutional to repeal a law relative to the establishment of inferior courts, when it is conceded that the power to legislate on that subject is delegated by the Constitution on precisely the same principle with the other powers which have been mentioned? The principal reason relied on is, that the judges are to hold their offices during good behaviour, that therefore Congress have not a Constitutional right to repeal a law, which will in any degree affect their offices or salaries. But this objection applies quite as strong against the repeal of a law on the subject of post offices and post roads, as it does in the other case, for Congress have no more power to remove the postmaster from office, than they have to remove a judge from office. The judge holds his office during good behaviour; the postmaster holds his office during the pleasure of the President of the United States; it will also, in like manner, apply against the repeal of a law upon any other subject, which creates an office held during the pleasure of the President, with equal force. So that, if the objection has any weight in the case to which it has been applied, it will go to the subversion of the principle, that Congress have a right to repeal laws on other subjects aside the Judiciary creating offices held during the pleasure of the President. If the principle is correct, where is the advantage of successive elections of the Legislature? By the third article and first section of the Constitution, it is provided that the Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may, from time to time, ordain and establish. Which provision, in connexion with that which vests Congress with power "to constitute tribunals inferior to the Supreme Court," clearly evince, that the Constitutional establishment of the inferior courts of the United States, places their existence exactly commensurate with the will of the Legislature, expressed by law, from time to time, as the circumstances of the country, and the public good, may require. The judges are to hold their offices "during good behaviour," but it would be absurd in the extreme to pretend, that this tenure could entitle a man to hold an office which has no Constitutional existence, and hence, the tenure of office of a judge of an inferior court of the United States cannot extend beyond the existence of the establishment by which such office is created.

But, should the construction of the Constitution contended for by the opposers of the bill prevail, it is impossible to foresee all the evils which would necessarily result. As a demonstration, I will put only one case. Suppose the existence of a war with the most powerful nation in Europe, and the necessity which in that case there might be, of the establishment of Admiralty Courts in all your principal seaport towns, for the trial of prizes which your armed vessels would send in for adjudication; and at the close of the war, when no further services could be rendered by these courts, the Constitutional question meets you, and forbids their abolition, because it will affect the salary of the judges; and the people must be taxed to pay these sinecure officers. If such was the true construction of the Constitution, in vain have the people declared in its preamble, that it is ordained and established to promote the general welfare, and secure the blessings of liberty to themselves and posterity.

In addition to the construction of the Constitution, in regard to this question, which seems to me indisputable from the face of it; the construction given it by the people, at the time of its adoption, or, in other words, the sense in which they viewed it at that time, ought to have great weight in the decision; and, perhaps, that sense will be the best ascertained, by a recurrence to the State constitutions, and the practice of the States under them. The Constitution of New Hampshire, in the thirty-seventh article of the bill of rights, very happily expresses the sense of the people of that State, in regard to the independence of the Judiciary, in these words:

"In the Government of this State, the three essential powers thereof, to wit, the Legislative, Executive, and Judicial, ought to be kept as separate from, and independent of, each other, as the nature of a free Government will admit, or as is consistent with that chain of connexion that binds the whole fabric of the Constitution in one indissoluble bond of union and amity."

The constitution of that State vests in the Legislature, forever, full power and authority to erect and constitute judicatories, and courts of record, or other courts, with all the powers incident to a Judicial department: and with special power to abolish the courts of common pleas, and courts of general sessions of the peace, and establish other courts with the same power, as they may, from time to time, judge expedient for the due administration of law and justice, yet the tenure of the office of judge in that State, is the same as under the United States. And, sir, notwithstanding the entire dependence on the Legislature for the existence of the courts of common pleas, I cannot imagine that the independence of the judges has ever been affected by it. There is an honorable gentleman from that State now on this floor, a judge of one of those courts, who, with his associates, had the independence, since the adoption of the Constitution, in their official capacity, to declare an act of the Legislature unconstitutional. This is a demonstration that the independence of judges does not, in all cases, depend on the certainty of holding their offices, or on receiving the emoluments thereof for life.

The constitution of New Hampshire was revised and amended shortly after the adoption of the Federal Constitution; many parts of it are assimilated to the corresponding parts in the Federal Constitution. And I cannot doubt, that the power vested in the Legislature, relative to the superior courts of the State.

In Massachusetts, the judges both of the supreme judicial court, and of the inferior courts, hold their offices under the same tenure as is by the Federal Constitution attached to the judges of the Supreme Court, and inferior courts of the United States. By the Constitution of the United States it is provided, that "The judges, both of 'the supreme and inferior courts, shall hold their 'offices during good behaviour; and shall, at 'stated times, receive for their services a compensa-'tion which shall not be diminished during their 'continuance in office." By the Constitution of Massachusetts, it is provided that "All Judicial 'officers duly appointed, commissioned, and sworn, 'shall hold their offices during good behaviour, 'excepting such concerning whom there is differ-'ent provision made in this constitution." This exception has relation to justices of the peace, whose commissions are, by the Constitution, limited to seven years, and not to the judges of the supreme or inferior courts, except so far as it respects the courts of general sessions of the peace, formed by the justices within their respective counties. Therefore, the tenure of office is the same under both constitutions.

The Legislature is vested with power co-extensive with the Constitution, to establish judicatories, and all kinds of judicial courts which the welfare of the Commonwealth may require. This power is couched in such terms as I think will not admit of a doubt, of its extending, as well to the abolition of inferior courts, which may be found not to promote the best interest of the community, as to the establishment of those which may be deemed useful and necessary. And further, the Constitution has vested the Governor, with the consent of the Council, upon an address of both Houses of the Legislature, with power to remove the judges of any of the State courts; and this may be done without assigning a reason. And in addition to this Constitutional definition of the paramount power of the Legislature over the establishment of Superior Courts, we have, from time to time, for fourteen years past, at various periods, been furnished with the most ample testimony of the uniform and invariable sense of the people of that State on the subject. A short time after the adoption of the Federal Constitution in Massachusetts, a committee appointed by the Legislature for revising the code of laws in that State, (on which committee, if my memory is correct, were all the judges of the Supreme Judicial Court) made a report to the Legislature in favor of the abolition of all the courts of common pleas in the State, and for establishing circuit courts with similar powers; this report was accompanied with bills for carrying the principle into effect; the plan would have discharged from service about sixty judges. The same system has been brought forward within these seven years, at every session of two or three succeeding Legislatures, and strongly advocated by able men learned in the law; in one Legislature, a bill for carrying the system into effect passed the House of Representatives, but failed in the Senate. In a succeeding Legislature the bill passed in the Senate, but failed in the House; and it has finally failed. But, sir, neither the judges of the supreme judicial court, who reported the system, nor the gentlemen, learned in the law, who supported it, could have entertained an idea that it was unconstitutional; and I have been repeatedly informed, from indisputable authority, that through all the different discussions of the subject, the idea of its being unconstitutional was never suggested by either party: but that the expediency of the measure was the only ground of debate, and ultimate decision.

I was not a little astonished to hear my colleagues (Mr. CUTLER and Mr. HASTINGS) avow on this floor, that the people in Massachusetts never would have adopted the Federal Constitution, had they not viewed it in the same light with

those gentlemen who are opposed to the bill under consideration, when they must have been acquainted with the State constitution, and the proceedings under it, which I have mentioned. It is in effect charging the people of that State with the inconsistency of providing by the Constitution for the establishment of inferior courts, which cannot be abolished by the Legislature during the life of any of the judges; although they might be found unnecessary, burdensome, and oppressive; and with vesting in the judges of these courts power, not only over the establishment under which they hold their offices, and over the salaries granted at a time when the establishment might be thought necessary, but a controlling, independent power over the Legislature of the Union, and all the departments in the Government, and were I to say, over the Constitution itself. I do not think it would be an exaggeration of the construction contended for by some gentlemen on this occasion.

Now, sir, while the constitution of Massachusetts vests the Legislature of that State with powers respecting Judicial establishments under the State government, exactly similar to the powers vested in Congress, by the Federal Constitution, respecting Judicial establishments under the General Government; when the people of that State have, by the same constitution, so clearly defined the independence of the judges, and their continuation in office, by the power delegated to the Governor and Council, upon the address of both Houses of the Legislature, to remove them from office, and by the paramount control vested in the Legislature over the establishments by which their offices are created; and when it is so well known that the judges of the supreme judicial court, and gentlemen of high legal knowledge and reputation, have, for many successive years and under different aspects, been advocating the abolition of the inferior courts in the State, and the people of all classes and denominations, constant and uniform in exhibiting their unanimous acquiescence in the constitutionality of the measure; what foundation is there for the declaration made by my colleagues? Is there the least color of reason for the assertions? But, on the contrary, is it not fair and candid to conclude, from the statement which has been made, that the people of Massachusetts entertain the same opinion as to the constitutionality of the repeal contemplated, which has been avowed by the friends to the bill now under consideration on this floor? Is not this the only conclusion which can result from the evidence in the case? I presume, sir, that every impartial inquirer will answer in the affirmative; and, may I be permitted further to observe, that the people of Massachusetts are true friends to order and good government, strongly attached to the Federal Constitution; and whatever may have been their difference of sentiment in regard to the administration of the General Government, this difference has arisen, generally, from honest motives, grounded on the broad basis of general welfare, although accompanied with a diversity of ideas as to the mode of administration best calculated to effect this object. They are industrious and economical, and wish to have their honest earnings secured to them by the Government; but they have an innate opposition to useless expensive establishments and sinecure offices. In Rhode Island all the Judicial officers are chosen annually by the Legislature, yet we do not hear any complaint of the want of independence in the judges.

But, sir, when I recur to the charter under which the people act in the State of Connecticut, I am astonished to find the members from that State in Congress, advocating the necessity of an absolute independence in the judges of the inferior courts of the United States; not only an independence above the control of the Legislature, but completely dictatorial of its measures, in order, as they tell us, to secure the rights of the people. It would seem, from the system of jurisprudence in that State, at the time of the adoption of the Federal Constitution, that a radical change had, since that time, taken place in the minds of the people, if they are now truly represented on this floor, which I am by no means disposed to dispute. In that State the judges of all their courts, both supreme and inferior, are appointed annually by the Legislature; and in addition to the complete control which the Legislature have a right to exercise over the judges annually, they have the power of calling to an account any court or magistrate for any misdemeanor and mal-administration; and for just cause (the Legislature being the only judges of the justice of the cause) may fine, displace, or remove them. The people of that State have continued this kind of Judiciary from the commencement of their government to this time. And, sir, what injuries have arisen to the people of that State on account of the subordinate dependence of the Judiciary on the Legislature? Has not justice been as fairly and promptly administered there as in any other State in the Union? Has there ever been a complaint that the judges were deficient in a degree of independence necessary to support the dignity of their stations, or for the impartial administration of justice? Is there a State in the Union; nay, sir, is there a State or nation in the world, where the people exhibit a greater degree of politeness, urbanity, steady habits, knowledge, and morality, than is to be found in Connecticut? And yet, sir, all these excellent qualities have been acquired under a Judicial system, the principles of which are profoundly execrated by the members from that State as well as others, and considered totally inefficacious when applied to that State, and to the other States in the Union under the Federal Government. But, sir, is it not natural to conclude, from the happy effects which the Connecticut system has had in that State, and from the universal satisfaction which, through the experience of ages, it has afforded the people, that it is at least as good as any one which can be devised? Under this view of the subject, will any rational man believe, that the people in Connecticut had any apprehension that the Federal Constitution relative to the national Judiciary now contended for at the time

they adopted it? Or would anything save the part which the members from that State have taken in the question before you, have convinced this House that the people of that State do wish at this time to see the construction prevail, which is calculated to tax themselves, their fellow-citizens in the other States, and posterity, with the support of unnecessary, expensive judiciary systems, so diametrically opposed to that under which they live in their own State; and which is so universally approved and admired by them? In the State of Vermont the constitution provides, that "The Legislative, Executive, and Judiciary 'departments, shall be separate and distinct, so that 'neither exercise the powers properly belonging 'to the other." But, sir, the judges of all the judicial courts are chosen annually, or oftener, if need be, by the Legislature. From this view of the constitutions in the five Northern or Eastern States, it appears, that the Legislatures thereof are all vested with complete control over the establishments of inferior courts, either with power to abolish them, and establish others, as they may judge most conducive to the public good, or by a periodical election of the judges.

From an examination of the constitutions of the other States in the Union, and the construction which has been given to the State constitutions in some of the States, it will be found that the Legislatures in all of them have the same control over the establishment of inferior courts. It may be further observed, that the State constitutions of all the States in the Union except six, to wit: New Hampshire, New York, Virginia, North Carolina, South Carolina, and Tennessee, provide for the removal of the judges from office, either by a periodical election or by the Executive, upon an address of both Houses of the Legislature, in some cases requiring the concurrence of two thirds of each House: and, sir, notwithstanding the State Legislatures have this complete control over the establishment of inferior courts within their respective States, independent of any regard to the judges which may hold offices under them; the judges in all the States, except where they are periodically elected, hold their offices precisely on the same tenure by which the judges of the inferior courts of the United States hold theirs.

Mr. Speaker, when the Constitutional establishment of the State judiciaries is compared with the national Judiciary, their similarity impartially viewed, and the construction which has uniformly been given to the State systems by their Legislatures and gentlemen the most eminent for law knowledge, with the perfect acquiescence of the body of the people, is attended to with candor and without party views, do they not exhibit the most incontestable evidence, that the people of the United States, when they adopted the Federal Constitution, did it with the impression that Congress was thereby vested with the power of repealing any establishment of inferior courts, which might be made by them, and afterwards prove useless or burdensome, as well as to establish such as they might consider unnecessary? Yes, sir, this must be acknowledged by all who would not charge them with the gross inconsistency of adopting a language in their State constitutions, to which they have given one uniform construction, and precisely the same language in the Federal Constitution, with a construction diametrically opposite; which character, however it may be calculated to promote party views, I apprehend never can be ascribed to the great body of the American people. For what purpose is this might Constitutional objection set up? Gentlemen who urge it can best answer the question. But let me entreat them to consider the principles of the law about to be repealed, and compare them with the bill under consideration, by which they must see that the law which they brought forward, supported and passed the last session of Congress, embraces the same great principle which they now contend is a violation of the Constitution. That law, in express terms, abolished all the circuit courts established in the United States under the General Government prior to that time, which were then in existence, and established other circuit courts with similar power. The bill under consideration contemplates the abolition of the circuit courts established by the law of the last session, and the re-establishment of those abolished by that law. Where, then, is the difference in the principles of that law and those in the bill before you? I can conceive of none as it relates to their constitutionality. If, therefore, that law is a Constitutional law, the bill must be Constitutional also; and the same gentlemen who oppose the bill, have decided the principle and established a precedent, which will have weight in future procedure in like cases by the passage of the law. If the law is unconstitutional, those gentlemen who are now sounding the tocsin of alarm for the fate of the Constitution, are the very men who have given it the vital stab; and, even in that case, there can be nothing unconstitutional in the bill, for no one will contend that it is unconstitutional to repeal, abolish, and annul, an unconstitutional law.

As it relates to the expediency of the repeal, we should take into consideration the quantum of business to be transacted in the circuit court, and the capacity of the judges to perform it without an interference with their duty as judges of the Supreme Court and district courts; and if we bear in mind the small number of objects embraced by the Federal Judiciary when compared with those which arise under the State governments, there is every reason to believe that the state of the business in the circuit courts will, for a long time to come, be such, that it can be performed by the judges of the other courts with facility, and without any interference with their other functions. A recurrence to fact clearly evinces, that this has been the case from the commencement of the Government up to the time of the passage of the law which abolished the former system. But, say gentlemen, there have been instances in which the circuit courts have failed of transacting the business before them on account of the non-attendance of the judges. This is true; but the cir-

cumstances which produced those failures were such as never ought to be imputed to any defect in the system. Over such an extensive territory as the United States, it is to be expected, that some failures of this kind will occur, unless indeed you do carry those courts to every man's door, (as some gentlemen have been pleased to express themselves,) and appoint your judges so nigh the place of holding the courts, that neither freshets in rivers, the breaking down of bridges, or other natural impediments, (which often occur in the country, and especially in the Southern States, so as to prevent travelling for many days together) could operate to prevent the attendance of the judges; and, even in that case, such failures could not be entirely guarded against, for sickness, or the sudden death of the judges, over which you can have no control, might produce them. But failures of the kind have not been so frequent as was to have been expected, from the nature of the case; nor is it by any means certain that the system now in operation is better calculated to prevent them than the old one. Nothing of the kind has ever happened in the State of Massachusetts. The business in the circuit courts of that State has always been despatched with great promptitude, and without delay, unwished for by the suitors: the business has been so inconsiderable, that the sessions of the courts have always been short; and, until the existing system was brought forward in the House, I never heard a single person suggest that the old one was inadequate to the purposes of its institution.

It has been further urged, on the expediency of this question, that it was highly necessary and important to extend the powers and jurisdiction of the Federal Judiciary, on account of the inadequacy of the State courts, to decide on important questions. This, upon impartial investigation, will be found to be a frivolous, unfounded pretext. If it was in my power, I am sure, I have no inclination to derogate from the high character of the judges of the courts of the United States; nor shall I in any respect do it, when I state to you, as my opinion, that there never has been a court of the United States, of which the judges possessed more eminence of character, ability, law knowledge, impartiality, correctness of decision, and moral principle, than has adorned the bench of the supreme judicial court of Massachusetts, from its first establishment, under the present State constitution, to this time. In this opinion, I presume my colleagues will acquiesce, notwithstanding we are so unfortunate as to disagree on some other important points; and, sir, I can conceive of no reason to doubt of the other States in the Union being provided with alike respectable judiciaries; and there never has been an instance in which a State court has refused or neglected to decide with their usual promptitude, all actions which have arisen under the Federal Government, and come within their cognizance. Is there any reason, then, for extending the Federal Judiciary, on account of any judicial imbecility or inattention, in the State courts? No, sir, it would be highly derogatory to our country to admit the idea. The observations seem calculated solely to affect the eminent and important character of the State courts, but I trust, in the wisdom of my country, that every attempt of that kind will be rendered abortive.

Much has been said on the part of the opposition in regard to the security of life, liberty, and property, afforded by the act about to be repealed, and that the repeal would lay prostrate the great bulwark of our prosperity and independence, the national Judiciary. Can gentlemen be serious in these declarations? What is the fact? Sir, it is well known, that, by the old judiciary system, about to be revived, there is a Supreme Court, to hold its sessions at the seat of Government; a district court in each State in the Union, and a circuit court in each State in the Union, except Kentucky and Tennessee; that the duties of the circuit courts were performed in the respective States by a judge of the district court, except in the States of Kentucky and Tennessee, the judges of the district courts performed the duties incident to the circuit court without the aid of a judge of the Supreme Court. By the existing system, which is about to be repealed, the Supreme Court possesses the same powers which were delegated to them by the old system; the district courts in each State also retain the same powers under the present system, which they were vested with under the former one, and the principal powers of the circuit courts in each State are the same as under the old system. Where, then, is the mighty difference in the two systems as it relates to the administration of justice? Why do gentlemen exclaim, and so often reiterate the exclamation, the destruction of the Judiciary! the destruction of the Judiciary! when they know that the bill before you provides for keeping, in full force, precisely the same Judiciary system under which the people have enjoyed so much prosperity, from the adoption of the present Government to the last session of Congress, and that the denomination of the courts are the same, and the powers similar to those designated in their favorite system? It is not my intention to dilate on the motives of gentlemen; but I must take the liberty to observe that the declarations which insinuate that the bill under consideration goes in any respect to the destruction of the Judiciary, or to impede the due administration of justice, are futile and unfounded. The old system, which the friends of the present bill wish to see revived and continued in force, was adopted after much labor and investigation, (in which I have understood that great law character, the late Chief Justice of the United States, took a conspicuous part) as the most propitious mode of administering justice under the Federal Government which could be devised. I have always conceived it much better calculated to promote general justice, by producing a greater uniformity of decision in the different parts of the Union, than that adopted the last session: because the judges of the Supreme Court, after riding the circuits, have an opportunity, on their assemblage at the seat of Government, to compare their decisions, and, from time to time, agree on uniform

principles, to be observed, both in the decision of great questions, and the forms to be pursued in the circuit courts. No such advantages can be derived from the system of the last session, the judges of each circuit are distinct; they have no immediate connexion with the judges of other circuits, or with the judges of the Supreme Court, and therefore their rules of procedure will vary according to the practice in the State courts, and will probably be different in each circuit; their decisions will probably be different in different parts of the Union, in many instances, where the questions are similar, which will cause additional appeals, produce a delay of justice, and subject the suitors to additional expense, trouble, and fatigue; and, in addition to the reasons which have been offered in favor of the old system, the saving of an expense of more than forty thousand dollars annually ought to have some weight with faithful Representatives of a free people, unless a public debt is in fact to be considered a public blessing.

I am of opinion, said Mr. V., that some amendments which have been moved, and for which I have given my vote, would render the bill more perfect, and that it would be better to incorporate them in this bill than to make them the subject of a separate bill; but in this I have been overruled. The question now is on the passage of the bill without amendment; to which I shall give my yea, believing the Judiciary system to be revived and continued in force by the bill, to be preferable to that which it repeals. At the same time I rest assured, that if the defects which have been named, or others, do actually exist, the wisdom of the Legislature will discover them, and speedily provide a remedy.

Mr. Lowndes moved that the further consideration of the bill be postponed until the first Monday in December next; on which a debate of considerable length ensued; when, the question being taken thereupon, it passed in the negative—yeas 32, nays 59, as follows:

Yeas—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Wm. Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, Wm. Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

And, after debate thereon, the main question was taken that said bill do pass, and resolved in the affirmative—yeas 59, nays 32, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Henry Woods.

Nays—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

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[The following remarks of Mr. Bacon, supplemental to his speech on the Judiciary, delivered in Committee of the Whole on the above bill, on the 17th of February, should follow the conclusion of his remarks on that subject on page 564 *ante*, immediately preceding Mr. F. Morris. These supplemental remarks were written out and published subsequently to the first report of his speech in the National Intelligencer, and did not find their way to the Collection of the Debates on this subject afterwards printed in an octavo volume.—*Editors.*]

Mr. Bacon, in continuation.—However I may differ in opinion from some with whom I have the honor generally to agree, I may not deny, but must frankly acknowledge the right of judicial officers of every grade to judge for themselves of the constitutionality of every statute on which they are called to act in their respective spheres. This is not only their right, but it is their indispensable duty thus to do. Nor is this the exclusive right and indispensable duty of the Judiciary department. It is equally the inherent and the indispensable duty of every officer, and I believe I may add, of every citizen of the United States. The Constitution is emphatically the law of the

land. It certainly cannot be less so than the statute made present pursuant thereto. It is indeed paramount with us to all other human laws that can be made. In whatever capacity I may be called to act, where the law is to be the rule of my conduct, if two laws are found to clash with each other, in such case I cannot be governed by them both. Of necessity, therefore, I must either not act at all, or reject both, or else determine which shall give way. Should the Constitution and statute be found to contradict each other, the former, with me, must be preferred. But although this is a right of which every officer of the United States, as such, is constitutionally possessed; yet, for the due exercise of this, as also of all other such rights, he is responsible. He is not vested with a right to do wrong.

We have heard much of late about the peculiar and absolute independence of the Judiciary. Although this is a term unknown in the Constitution as applying particularly to the Judiciary department of the Government, yet it may, and ought to be admitted to be, in a certain sense, and in some respects true. The Judiciary are so far independent of the Legislative and Executive departments of the Government, that these, neither jointly or separately, have a right to prescribe, direct, or control its decisions. It must judge for itself, otherwise the decisions made in that department would not be the decisions of that, but of some other department or body of men. The Constitution, and the laws made pursuant thereto, are the only rule by which the Judiciary, in their official capacity, are to regulate their conduct. The same is the case with other departments. The Judiciary have no more right to prescribe, direct or control the acts of the other departments of the Government, than the other departments of the Government have to prescribe or direct those of the Judiciary.

The Judiciary are occasionally dependent on the President and Senate for their offices. They are in like manner dependent on the Legislature for the salaries which are assigned them for their services; although when once obtained, they cannot be deprived of either, unless in certain ways prescribed by the Constitution. The same is the case with all other offices. Some are independent in one respect, others in another.

The Judiciary are at all times dependent for their continuance in office on the judgment which the Senate and House of Representatives, acting in separate capacities, may pass on their conduct, so that whatever may be the case with judges in other countries, or in the particular States, or whatever pretensions may be made to the independence of the Judiciary of the United States the fact is, that agreeable to the Constitution our Judiciary are on the whole, much more dependent on the other departments of the Government, than the other departments, as such, are on the Judiciary. This being the case, it is in vain to exclaim about the dreadful consequences which may result from the doctrine for which we contend. For my own part, after all that I have heard, I am not at all alarmed at the imaginary consequences that may result from this doctrine. I see, at least I think I see, much greater reason to be alarmed at the consequences resulting from the opposite doctrine. But be the consequences what they may, the only remedy must be, either to alter, or to pervert the Constitution.

If we honestly and sincerely wish to understand in what respects our judges are independent, (if indeed they are so in any,) we are to recur to the Constitution, and that alone, and not first assume an independence for them such as we would wish, and thence infer such a meaning of the Constitution as will support the independence thus assumed, as seems to be the practice of one description of men among us. This is no other than reasoning in a circle, and drawing premises from conclusions—a species of logic which I do not understand.

Much has also been said by the opposers of the bill about checks and balances, and the same improvement is made of these alleged ingredients of our Government which has been made of that independence which has been assumed for the judges of our courts. Unfortunately, however, for them, these favorite and important terms are, in the Constitution, equally unknown with the independence of the judge. Perhaps it may be true that our Government is, in some respects, a Government of what may be termed checks and balances. But what those checks and balances are, we must learn from the same authentic source from whence our information is derived respecting the independence of our judges. It is a novel kind of logic with which we find ourselves assailed. In this case, as in that of the alleged independence of judicial courts, such checks and balances as suit the taste are first assumed, and from such assumed balances and checks the meaning of the Constitution is inferred, to prove the assumed fact. In any other case, and from any other men, we should be led almost to suspect such reasoning as this to be sophistical.

If such provisions as I will name are to be denominated checks and balances, we are happy to find that the Government of the United States is filled with them. The House of Representatives may pass a bill; the Senate may negative it, and *vice versa*, the Senate and House may both concur in the passing of a bill; the President has power either to approve, or to pass a qualified negative upon the same. The Senate and House can, in their turn, provided two-thirds of each agree, destroy the whole effect of such negative. The Judiciary may judge of the meaning of a law, when made, but they cannot make the law. The judges on the trial of a cause can neither acquit nor condemn which party they please; the jurors have a power to determine, as to the suit at least. The Executive is vested with power to execute the sentence of the judge, to nominate, and by and with the advice and consent of the Senate, to appoint and commission to office, and to perform other duties assigned to him by law; but he has not power, as I contend, to create either the law, the sentence, or the office. If the Executive or Judiciary, in their official capacity, violate the Constitution, or the laws made pursuant thereto, the House of Representatives may impeach and the Senate may try, condemn, and evict from office both the President and the judge. The Senators and the Representatives are originally dependent on the people for their appointment to office, and at certain periods, are in like manner dependent for a re-appointment. If these are to be considered as checks and balances, they are abundantly provided in the Constitution. Such checks and balances as these comport with that construction of the Constitution which we contend for. If there are others, either of a similar or of a different kind, let them be first pointed out, and they will be candidly acknowledged and respectfully received, at least by me.

But, with the Constitution open before me, and knowing, as I do, that all civil rule, power, and authority that exists in the community to which I belong, are to be brought to the test of that supreme, plain, and finished instrument, I can hardly be induced to act the preposterous part of recurring to the vague and doubtful postulates of men like myself to learn its contents

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Thursday, March 4.

Mr. Giles, from the committee appointed, on the twenty-ninth of January last, to whom was referred the census of the inhabitants of the Territory of the United States Northwest of the river Ohio, with instructions to report whether any, and what measures ought, at this time, to be taken, for enabling the people of the said Territory to form a State Government for themselves, to be admitted into the Union upon the same terms with the original States; and to whom were also referred petitions from sundry inhabitants of that Territory to the like effect, made a report; which was read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Lyon Lehman:" Whereupon, it was moved that the further consideration of the said amendment be postponed until the first Monday in December next; and, the question being put thereupon, it passed in the negative; and then the main question being taken that the House do agree to the amendment proposed by the Senate to said bill, it was resolved in the affirmative.

The House resolved itself into a Committee on the bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose and reported progress.

Friday, March 5.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That a committee be appointed, on the part of this House, to join such committee as may be appointed on the part of the Senate, for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress:

And, the question being taken thereupon, it was resolved in the affirmative.

Ordered, That Mr. Nicholson, Mr. Bayard, and Mr. Randolph, be appointed of the said committee on the part of this House, pursuant to the foregoing resolution.

The House then went into a Committee on the bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and what, provisions ought to be made, by law, for allowing pensions to persons who do, at this time, labor under disabilities in consequence of known wounds received in the actual service of the United States, and who have not heretofore been provided for; and that the committee report by bill, or otherwise.

Ordered, That Mr. Giles, Mr. Griswold, Mr. Eustis, Mr. Lewis R. Morris, and Mr. Gregg, be appointed a committee, pursuant to the said resolution.

The House went into Committee on the bill for the accommodation of persons concerned in certain fisheries therein mentioned. The Committee rose and reported the bill without amendment, and it was ordered to be engrossed and read the third time on Monday next.

The House went into Committee on the bill for the rebuilding the light-house on Gurnet point, at the entrance of Plymouth harbor, for rebuilding the light-house on the Eastern end of New Castle Island, for erecting a light-house on Lynde's point and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House. The said bill was then further amended; and, together with the amendments ordered to be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the nineteenth ultimo, on the petition of Francis Duchouquet; and after some time spent therein, the Committee rose and reported a resolution; which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Francis Duchouquet, out of any moneys in the Treasury not otherwise appropriated, the sum of two hundred and ninety-one dollars and eighty-four cents, in full compensation for moneys by him advanced to redeem certain American citizens captured by the Indians.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. J. C. Smith reported, from the Committee of Claims, on the petition of Jonathan Snowden.

The report was, that the prayer of the petition ought not to be granted. The reasons urged were, that the claim was barred by the statute of limitation.

Mr. Giles moved its reference to a Committee of the whole House, as the case was a peculiar one; the petitioner having been wounded, but whose wound was healed, and did not again break out until after the statute was passed. Being now a cripple, he prays a pension.

This gave rise to a lengthy discussion upon the general principles of doing justice to these unfortunate men, by again opening the pension list.

Mr. Eustis strenuously pressed these cases generally upon the justice of Congress. The subject was postponed till Monday.

Mr. Giles afterward moved the appointment of a committee to consider of the subject, with leave to report a bill generally.

STATE BALANCES.

Mr. Thomas, from the committee appointed to inquire into the expediency of extinguishing the claims of the United States, for certain balances, which, by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States, made a report, as follows:

That the following balances were, by the said Commissioners, reported to be due from the States hereinafter mentioned, to wit: From the State of New York, two millions seventy-four thousand eight hundred and forty-six dollars; from the State of Pennsylvania, seventy-six thousand seven hundred and nine dollars; from the State of Delaware, six hundred and twelve-thousand four hundred and twenty-eight dollars; from the State of Maryland, one hundred and fifty-one thousand six hundred and forty dollars; from the State of Virginia, one hundred thousand eight hundred and seventy-nine dollars; and from the State of North Carolina, five hundred and one thousand and eighty-two dollars.

That, as none of these States has evinced a disposition to pay any part of those balances, except the State of New York, which has been credited on the books of the Treasury for two hundred and twenty-two thousand eight hundred and ten dollars and six cents, for money expended in erecting fortifications, pursuant to an act of Congress, passed the 5th of February, 1799; but as it would be unequal to ask a further payment from that State exclusively, and as it does not appear that any measure of coercion can ever be resorted to, a further continuance of the demands against those States, the justice and equity of which they do not admit, will, in the opinion of the committee, answer no useful purpose; but, on the contrary, is calculated to occasion perpetual irritation and disquiet, as well to the creditor as to the debtor States.

The committee are, therefore, of opinion, that it is expedient to extinguish the claims of the United States for those balances, and for that purpose report a bill, which is herewith submitted.

The report was laid on the table. The bill was twice read, and committed to a Committee of the whole House on Wednesday next.

NAVY DEPARTMENT.

Mr. Griswold called for the resolution of Mr. Lieb, for the appointment of a committee to consider the propriety of abolishing the Navy Department. He thought it very improper to let a resolution of the importance this was, lie on the table so many days, as it certainly excited much alarm, from the impression that it was an opening wedge to the destruction of the Navy altogether.

Mr. Leib said it would be recollected that when he proposed the resolution, the House were engaged on the Judiciary bill, and consequently there was not time to call it up till after the subject was settled. The time since that had not allowed of it.

Mr. Giles did not wonder that a state of alarm existed, when it was recollected that, during the late debate, gentlemen had descanted so largely on the destruction of these institutions. Mr. G. proceeded to vindicate himself from the charge made by some gentlemen, during that debate, of being opposed to the Navy altogether. He declared he was not opposed to a Navy under certain restrictions. He did, to be sure, vote against building the frigates, and he was not yet sorry for it. The professed object of them was to go against the Algerines, who were at that time molesting our commerce. But what did they do towards that service? Nothing. But, added to the expense of building those six frigates, was the payment of an enormous sum of money to purchase the peace.

Mr. Rutledge hoped the subject would soon be gone into; he had heard of the proposition creating alarm. The motion might now be taken up, and made the order for some other early day, which would, in some measure, subside the alarm.

Mr. Gregg hoped it would now be taken up, and decided upon, as a saving of time.

It was taken up, when Mr. Leib relieved the embarrassment of gentlemen, and their fears of alarm, by withdrawing the resolution.

And the House adjourned.

Monday, March 8.

An engrossed bill for revising and amending the acts concerning naturalization was read the third time: Whereupon, a motion was made, and the question being put, that the fourth section of the said bill be re-committed to the consideration of a Committee of the whole House to-day, it was resolved in the affirmative.

An engrossed bill for the accommodation of persons concerned in certain fisheries therein mentioned was read the third time and passed.

An engrossed bill for rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, for rebuilding the light-house at the eastern end of Newcastle Island, for erecting a light-house on Lynde's Point, and for other purposes, was read the third time, and passed.

Mr. Giles, from the committee appointed, on the fourth of January last, to inquire whether any, and what, alterations should be made in the judicial establishment of the United States, and to

report a provision for securing the impartial selection of juries in the courts of the United States, to whom was referred, on the fifth of the same month, a petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut antecedent to the trial before the court of commissioners between the said States of Pennsylvania and Connecticut, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole on Wednesday next.

Resolved, That a committee be appointed to inquire into the expediency of providing for the settlement of the claims to the lands held by settlers and traders at Detroit, and within the jurisdiction and precinct thereof, which they may have a right to, by virtue of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States; and that the said committee report by bill, or otherwise.

Ordered, That Mr. Fearing, Mr. Jackson, Mr. Tenney, Mr. Elmer, and Mr. Boude, be appointed a committee, pursuant to the said resolution.

Mr. Randolph, from the Committee of Ways and Means, who were instructed to inquire into the expediency of repealing the laws laying duties on stills and domestic distilled spirits, on refined sugar, licenses to retailers, sales at auction, pleasurable carriages, stamped vellum, parchment, and paper, and postage on newspapers, made a report; which was read, and ordered to be committed to a Committee of the Whole on Monday next.

Mr. Randolph, from the same committee, presented a bill to repeal the internal taxes; which was read twice and committed to the Committee of the whole House last appointed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act fixing the Military Peace Establishment of the United States," with several amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" with several amendments; to which they desire the concurrence of this House.

Mr. J. C. Smith, from the Committee of Claims, presented a bill for the relief of Francis Duchouquet; which was read twice and committed to a Committee of the Whole to-morrow.

MILITARY PEACE ESTABLISHMENT.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act fixing the Military Peace Establishment of the United States:" Whereupon.

Resolved, That this House doth agree to the first, second, third, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, sixteenth, and seventeenth amendments proposed by the Senate to the said bill.

On the question that the House do agree with the Senate in their fourth amendment to the said bill, to wit: section fourth, line second, strike out "*twenty-five*," and insert "*forty*," it passed in the negative—yeas 24, nays 59, as follows:

Yeas—Willis Alston, Robert Brown, John Campbell, John Condit, Richard Cutts, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, Benjamin Huger, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Anthony New, Thomas Newton, jun., Samuel Smith, Philip Van Cortlandt, Joseph B. Varnum, Killian K. Van Rensselaer, Benjamin Walker, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Thomas Boude, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Lowndes, Thomas Moore, Joseph H. Nicholson, Joseph Pierce, Nathan Read, John Rutledge, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Isaac Van Horne, Peleg Wadsworth, and Robert Williams.

Resolved, That this House doth disagree to the said amendment.

On the question that the House do agree with the Senate in their fifth amendment to the said bill, to wit: section fifth, line sixth, strike out "*twenty*," and insert "*forty*," it passed in the negative.

Resolved, That this House doth disagree to the said amendment.

On the question that the House do agree with the Senate in their fifteenth amendment to the said bill, to wit:

Section twenty-fourth, strike out all the words after "discharge" in the third line, and insert as follows, viz: "To each officer, whose term of service in any military corps of the United States shall not have exceeded three years, three months' pay; to all other officers so deranged, one month's pay of their grades respectively, for each year of past service in the Army of the United States, or in any regiment or corps, now or formerly in the service thereof:"

It passed in the negative—yeas 36, nays 35, as follows:

Yeas—Willis Alston, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Nathan Read, John Rutledge, Samuel Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Abram Trigg, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, and Benjamin Walker.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John

Dawson, Lucas Elmendorf, Edwin Gray, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Moore, Anthony New, Thomas Newton, jr., John Smilie, Israel Smith John Smith, of New York, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, and John Trigg.

Resolved, That this House doth disagree to the said amendment.

TUESDAY, March 9.

A memorial of sundry merchants of Charleston, in the State of South Carolina, and citizens of the United States, was presented to the House and read, praying relief in the case of depredations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.

Also, a memorial of sundry inhabitants of the county of New London, in the State of Connecticut, and citizens of the United States, to the same effect.

Ordered, That the said memorials be referred to the committee appointed on the fifth ultimo, to whom was referred a memorial of sundry citizens of the United States, and resident merchants in the city of Baltimore, to the same effect.

A petition of sundry merchants residing in the city and State of New York, importers of cotton hides, and other raw materials, for manufacture, was presented to the House and read, stating the inconveniences and expense to which the petitioners are subjected, by being obliged, under the quarantine laws of the said State, to unlade and deposit, for a limited time in every year, the said articles on Staten Island; and praying that they may be permitted to keep the same in the public storehouse of the United States erected on the island aforesaid, free from storage, during the period of such quarantine.

Ordered, That the said petition be referred to the committee appointed, on the eighth of January last, to inquire and report whether any, and what, alterations are necessary to be made in the "Act respecting quarantine and health laws."

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States;'" Whereupon,

Resolved, That this House doth agree to the first, second, and third amendments.

Resolved, That this House doth disagree to the fourth amendment of the Senate to the said bill.

The House went into Committee on the bill for the relief of Francis Duchouquet; which was reported without amendment, and ordered to be engrossed, and read the third time to-day.

The House went into Committee of the Whole on the fourth section of the engrossed bill for revising and amending the acts concerning naturalization; and, after some time spent therein, the Committee rose, and reported an amendment thereto; which was read, and being further amended at the Clerk's table, was again read, and, on the question put thereupon, agreed to by the House.

Ordered, That the said fourth section as amended, together with the bill, be engrossed, and read the third time to-morrow.

An engrossed bill, entitled "An act for the relief of Francis Duchouquet," was read the third time, and passed.

The House then went into a Committee of the Whole on the report of the Committee of Commerce and Manufacture, of the tenth ultimo, on the memorials and petitions of sundry manufacturers of gunpowder, of hats, of types, of brushes, and of stone-ware, within the United States; and after some time spent therein, the Committee rose, without coming to any decision.

DANIEL W. COXE.

The House resumed the consideration of the amendment, reported on the fourth ultimo, from the Committee of the whole House, to the bill for the relief of Daniel W. Coxe and others, in the words following, to wit;

Section first—lines fourth and fifth, strike out the words, "by Daniel W. Coxe."

And on the question that the House do concur with the Committee of the whole House in their agreement to the said amendment, it was resolved in the affirmative—yeas 43, nays 36, as follows;

YEAS—John Bacon, Theodorus Bailey, Rob't Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Condit, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, William Dickson, Lucas Elmendorf, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Heister, Archibald Henderson, William Hoge, David Holmes, Michael Leib, Ebenezer Mattoon, Thomas Moore, Joseph Pierce, Nathan Read, John Rutledge, John Smilie, John C. Smith, Josiah Smith, Henry Southard, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, Thomas Boude, John Campbell, Samuel W. Dana, John Dawson, John Dennis, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, Andrew Gregg, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Thomas Lowndes, John Milledge, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Samuel Smith, Richard Stanford, Joseph Stanton, jr., David Thomas, Abram Trigg, John P. Van Ness, Isaac Van Horne, Killian K. Van Rensselaer, Benjamin Walker, and Robert Williams.

And then the question being taken that the said bill, with the amendment, be engrossed, and read the third time, it passed in the negative. And so the said bill was rejected.

WEDNESDAY, March 10.

A message from the Senate informed the House that the Senate insist on their fourth amendment, disagreed to by this House, to the bill entitled "An act to amend an act, entitled 'An act to

lay and collect a direct tax within the United States;'" and desire a conference with this House on the subject-matter of the said amendment; to which conference they have appointed managers on their part. The Senate also recede from their fourth and fifth amendments, disagreed to by this House, and insist on their fifteenth amendment, also disagreed to by this House, to the bill entitled 'An act fixing the Military Peace Establishment of the United States."

The House proceeded to the farther consideration of the amendment, disagreed to by this House and insisted on by the Senate, to the bill entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States;'" Whereupon,

Resolved, That this House doth recede from their disagreement to the said fourth amendment.

Mr. MITCHILL, from the Committee appointed on the thirty-first of December last, on "so much of the Message of the President of the United States, of the eighth of the same month, as relates to Naval preparations, and the establishment of sites for Naval purposes," to whom was recommitted on the ninth ultimo a report on the same subject, made an amendatory report, in part, thereupon; which was read, and ordered to be committed to a Committee of the whole House on Friday next.

An engrossed bill for revising and amending the acts concerning Naturalization was read the third time, and on the question that the same do pass, it was resolved in the affirmative—Yeas 59, nays 27, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Wm. B. Giles, Andrew Gregg, William Barry Grove, Joseph Heister, William Helms, Joseph Hemphill, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Robert Williams, and Henry Woods.

NAYS—John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Plater, Nathan Read, John Rutledge, John C. Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

MOTION FOR ADJOURNMENT.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the second Monday in April next.

A motion was made, and the question being put, that the consideration of the said motion be postponed until the fourth Monday in the present month, it was resolved in the affirmative—yeas 46, nays 42, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, William Butler, Samuel J. Cabell, Thos. Claiborne, Matthew Clay, John Clopton, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, Charles Johnson, Samuel L. Mitchill, Thomas Moore, Thos. Newton, jun., Jos. H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, and Robert Williams.

NAYS—James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, John Campbell, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, George Jackson, William Jones, Michael Leib, Thos. Lowndes, Ebenezer Mattoon, John Milledge, Lewis R. Morris, Anthony New, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

MILITARY PEACE ESTABLISHMENT.

The House then proceeded to the farther consideration of the fifteenth amendment, disagreed to by this House, and insisted on by the Senate, to the bill entitled "An act fixing the Military Peace Establishment of the United States:" Whereupon,

A motion was made, and the question being put that the House do recede from their disagreement to said fifteenth amendment of the Senate, it was resolved in the affirmative—yeas 56, nays 30, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, John Campbell, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, William Eustis, Abiel Foster, William B. Giles, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, Wm. H. Hill, William Hoge, Benjamin Huger, Charles Johnson, William Jones, Thomas Lowndes, Ebenezer Mattoon, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Anthony New, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Smith, of Virginia, Samuel Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Abram Trigg, Geo. B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, William Butler, Samuel J. Cabell, Matthew Clay, Thomas T. Davis, Lucas Elmendorf, William Helms, James Holland, David Holmes, Geo. Jackson, Michael Leib, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith of New York, Josiah Smith, Henry Southard, Richard Stanford, Jos. Stanton, jun., John Stewart, David Thomas, Thomas Tillinghast, John Trigg, and Robert Williams.

Thursday, March 11.

A memorial of the Illinois and Ouabache Land Companies was presented to the House and read, praying that Congress will be pleased to devise some speedy and effectual mode for a final investigation and decision of the claims of the memorialists, as proprietors of lands purchased from the Indians prior to the American Revolution, either in the courts of the United States, or by law commissioners, specially to be appointed for that purpose.

Ordered, That the said memorial be referred to the committee appointed on the fourth of January last, to inquire whether any, and what, alteration should be made in the Judicial Establishment of the United States, and to report a provision for securing the impartial selection of juries in the courts of the United States; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, to whom was recommitted on the twenty-seventh of January last, their report on the memorial of Thomas K. Jones, made an amendatory report thereon; which was read and considered: Whereupon

Resolved, That the Collector for the port of Boston and Charlestown be, and he hereby is, authorized to issue to Thomas K. Jones the debentures on ten pipes of wine, imported by said Jones in the ship Juno, Captain Thomas Dingley, and exported on the fifteenth of June last, in the ship Enterprise, Captain Hearsay, for Havana, on full and satisfactory proof being made to the said collector of the actual quantity of wine in the said pipes, at the time of their being shipped, as aforesaid: *Provided*, that every other requisite shall have been pursued, agreeably to law, for obtaining the said drawback.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Mr. John C. Smith, from the Committee of Claims, to whom was referred on the thirteenth of January last the petition of David Mead Randolph, made a report, which was read and considered: Whereupon

Resolved, That the Secretary of the Treasury be, and he hereby is, authorized and directed to apportion to the several Marshals of Virginia, Maryland, and Pennsylvania, respectively, who have been employed or concerned in taking the late Census, the compensation allowed by the "Act providing for the second census or enumeration of the inhabitants of the United States," according to the service each Marshal may have performed.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed, on the fifth instant, on the part of this House, "for the purpose of laying out, agreeably to law, the unexpended balance of a sum of five thousand dollars, heretofore appropriated to purchase books and maps for the use of the two Houses of Congress."

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the sum of —— dollars ought to be appropriated to the erection and repair of piers in the river Delaware:

Ordered, That the said motion be referred to the Committee of Commerce and Manufactures.

Mr. John Cotton Smith, from the Committee of Claims, presented a bill for the relief of certain districts therein mentioned; which was read twice and ordered to be engrossed, and read the third time to-morrow.

Mr. Griswold laid the following motion, in substance, on the table:

Resolved, That it is proper to make provision by law towards indemnifying the merchants of the United States for French spoliations, so far as claims for the same have been abandoned by the convention with France.

Ordered to lie on the table.

WYOMING CONTROVERSY.

The House went into a Committee of the Whole on the report of the committee to whom was referred the petition of sundry inhabitants of the State of Pennsylvania, settled on the lands claimed under grants from the State of Connecticut, antecedent to the trial before the court of commissioners between the State of Pennsylvania and Connecticut.

The report of the committee embraces an historical view of the Wyoming controversy, recites the act of Pennsylvania, for preventing intrusions upon land in Northampton, Northumberland, and Luzerne counties. The report then proceeds to state:

"The petitioners complain of these acts as unconstitutional, and pray that provision may be made by law for transferring the proceedings under these laws from the State Courts of Pennsylvania to the Courts of the United States; and that further provision may be made by law, that in the trial of any prosecution in virtue of the said acts the defendant may have a venire facias to summon juries from some State, other than Pennsylvania. Your committee conceive, that the right of jurisdiction was finally settled by the decree of Trenton, of the 30th December, 1783, and that by the decision of the circuit court for the district of Pennsylvania in April 1795, the whole question of the right of soil was fully taken up and decided by the court, in a case the most favorable for the defendant; which decision not having been revised and reversed, should also be considered as final and conclusive.

Your committee therefore, upon the whole circumstances of the case, are of opinion, that the measures contemplated by the petitioners would tend very much to increase the embarrasments already experienced by the State of Pennsylvania, in extending and enforcing its lawful jurisdiction over the lands in question, and that it would be highly inexpedient on the part of the United States to interfere with the regulations of the States in that respect, or to countenance, by any means whatever, any circumstances of insubordination to the State authority.

Your committee are therefore of opinion, that the prayer of the petitioners ought not to be granted."

After a debate, the Committee rose and reported their agreement to the report.

A motion was made and lost to recommit the report to a select committee.

It was then moved to postpone the further consideration of the report till the last day of November next. Not carried.

The question was then taken on concurring with the Committee of the Whole in their report, by yeas and nays, and agreed to—yeas 60, nays 17, as follows:

Yeas — Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Andrew Gregg, Seth Hastings, Joseph Heister, William Helms, Joseph Hemphill, William H. Hill, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Samuel Tenney, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, Benjamin Walker, and Henry Woods.

Yeas—John Bacon, Phanuel Bishop, Thomas Claiborne, Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, Archibald Henderson, John Pierce, Nathan Read, John Rutledge, John Cotton Smith, Benjamin Tallmadge, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

And so the petition was rejected.

Friday, March 12.

An engrossed bill for the relief of the marshals of certain districts therein mentioned was read the third time and passed.

The House being informed that Narsworthy Hunter, the Delegate from the Mississippi Territory, in this House, died last evening:

On motion, it was

Resolved, That a committee be appointed to take order for superintending the funeral of Narsworthy Hunter, late a Delegate from the Mississippi Territory; and that this House will attend the same.

Resolved, That the members testify their respect for the memory of the said Narsworthy Hunter, by wearing a crape on the left arm, for one month.

Resolved, That the Speaker of this House address a letter to the Governor of the Mississippi Territory, to inform him of the death of Narsworthy Hunter, the Delegate from the said Territory in this House, in order that measures may be taken to supply the vacancy occasioned thereby.

Ordered, That Mr. Leib, Mr. Davis, Mr. Holland, Mr. Rutledge, and Mr. Lewis R. Morris, be appointed a committee, pursuant to the first resolution.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of Thomas K. Jones; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Jackson, from the committee to whom was re-committed, on the fifth ultimo, the bill for the relief of Isaac Zane, reported an amendatory bill; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between the United States and the French Republic; which was read twice and committed to a Committee of the whole House on Monday next.

Ordered, That a message be sent to the Senate to inform them that the funeral of Narsworthy Hunter, late a Delegate from the Mississippi Territory, who died last evening, will be attended to-morrow, at twelve o'clock; and that the Clerk of this House do go with the said message.

STATE BALANCES.

The House resolved itself into a Committee of the Whole on the bill to extinguish the claims of the United States for balances reported against certain States by Commissioners appointed to settle the accounts between the United States and the individual States.

Mr. Thomas.—Mr. Chairman, I rise, with a great deal of diffidence, to deliver my sentiments on this floor, as I have not been accustomed to public speaking; however, a sense of my duty as a Representative of the United States, as well as the immediate Representative from the State of New York, impels me, on this occasion, to ask the indulgence of the Committee while I make a few remarks on the subject of the bill now under consideration.

Sir, a number of the debtor States, and particularly the one which I have the honor to represent, have always believed that they were prodigiously injured in the settlement that was made; they have always believed that there was something radically wrong, grossly unequal, in the accounts exhibited by the individual States, and allowed by the Board of Commissioners; in this belief, they have frequently called for information

on the subject, for a re-examination of that settlement, and have as often been denied it.

Much might be said to prove that the very economical system adopted and adhered to by the State of New York in limiting the prices of produce, and in liquidating the accounts of her citizens for supplies furnished during the Revolutionary war, operated particularly prejudicial to that State in the settlement. I shall, however, waive any remarks on this for the present, and confine myself principally to the rule which was adopted for apportioning the expenses of the war among the several States. Sir, the Committee will recollect that by an act of Congress passed in the year 1789, the enumeration of inhabitants made in the year 1791 was adopted as the rule for apportioning this debt among the thirteen States.

I shall in the first place examine the original contract entered into by these States, and under which these expenses were incurred, and then endeavor to show the effect which, adopting an enumeration made seven or eight years after the close of the war, had upon the several States different from what the same rule would have produced had the apportionment been made according to the numbers in each State at that period, say 1784.

In the year 1778, the people of these States entered into a Confederation for various purposes, one of which was, to prosecute the war against Great Britain. In the eighth article of this compact it was expressly agreed that—

"All charges of the war, and all other expenses that should be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, should be defrayed out of a common treasury, which should be supplied by the several States in proportion to the value of all lands within each State granted to or surveyed for any person as such lands and the building and improvements thereon should be estimated, according to such mode as the United States in Congress assembled, should from time to time direct and appoint."

This, Mr. Chairman, was the agreement under which this debt was incurred; and here allow me to ask the honorable gentleman from Massachusetts (Mr. Bacon) whether he was correct when he told us the other day that this settlement had been made agreeably to the articles of Confederation; and, further, whether, agreeably to that compact, the State which he represents would have been allowed for her losses in the Penobscot expedition, which has enabled her to become a creditor State of upwards of one million two hundred thousand dollars, and more than one-third of the whole amount of the balances. Sir, had the original agreement under which these expenses were incurred been adhered to in the settlement, no one ought now to complain; but, in order to comply with it, the expenses of the war ought to have been apportioned among the several States according to the value of the lands and buildings at the time these expenses were incurred, and I do contend that the period immediately after the termination of the war was the only proper one for carrying into effect this stipulation. I am persuaded that no gentleman on this floor will deny that the existing circumstances of the several States at that period was the most proper to determine the just proportion which each State ought to pay of these expenses, by whatever rule might be adopted. Admitting, then, that Congress had the power, and it was judged expedient to deviate from the original contract, and adopt as the rule of apportionment the enumeration of inhabitants as a more practicable one, ought it not to have had reference to the numbers in each State at the close of the war? Most unquestionably, Mr. Chairman, no gentleman will deny this, and that the year 1784 was the proper time. It may, however, be said that no enumeration was made till the year 1791, seven years afterwards. I grant it. But will this alter the justness of my position? Not at all. It must be obvious in the mind of every gentleman who has reflected on the subject, that the relative numbers in each State had changed materially between the year 1784, when this settlement ought to have been made, and the year 1791, when it was made. In order to establish this fact, I have adopted this method; I have admitted what I believe every gentleman who hears me will, without hesitation: that there has been no material variation in the increase of population in the several States since the year 1784; that the increase was nearly, if not correctly, in the same ratio between the years 1784 and 1791, with the increase between the years 1791 and 1801; that is, that the relative increase of population in the several States was nearly, if not correctly, in the same proportion for the seven years previous to the year 1791 that it was for the ten years subsequent to that period.

This I have established as my data, by which I have ascertained the numbers in each State in the year 1784, and having apportioned the whole debt among the several States, according to the enumeration, I find the following to be the result:

That the State of Massachusetts, instead of being a creditor of $1,248,801, she would have been a creditor for only $863,267; that the State of Connecticut, instead of being a creditor State of $619,121, she would have been a debtor State for $235,419; that the State of Rhode Island, instead of being a creditor State for $299,611, she would have been a debtor State for $13,212; that the State of New Jersey, instead of being a creditor for $49,030, she would have been a debtor State for $300,201; that the State of New York, instead of being a debtor State for $2,074,846, she would have been a creditor State for $965,921, &c.

This, Mr. Chairman, would have been the situation of those States had the apportionment been made according to the numbers in each State in the year 1784. As for the accuracy of this statement I think I can with safety pledge myself; it is, however, open for any gentleman who will give himself the trouble to examine it for himself. The principles on which it has been made cannot be disputed, as it respects the State of New York; if anything, it does not make enough in her favor, for it is evident that the emigration into that State from the neighboring States was greater for the

first seven years after the close of the war than it has been for any subsequent seven years.

Will, then, Mr. Chairman, any gentleman hesitate a moment to pronounce the rule of apportionment which was adopted unjust, unequal, and erroneous? Will any gentleman say, sir, that the rule of apportionment was a just one, or as just as the nature of the case would admit of, which brought the State of New York in debt upwards of two millions—two-thirds of the whole amount of the balances—when, on the principles of righteousness, on the principles of legal contract, or any other principles, but an unauthorized act of Congress, that State would have been a creditor State for nearly a million?

Mr. Chairman, I admit, as the settlement has been made, and the creditor States have received their balances, that it would be improper now to take up this subject *de novo*, and endeavor to compel those States to refund what they have received more than they were entitled to; this is not expected—it is not asked; all that is asked of you is, that you render such justice to those injured States as the present situation of this transaction will admit of; this is all that is contemplated in the bill now before us.

Sir, as to the present situation of the State of New York with respect to this subject, she has not acknowledged the justice of this claim, as was stated by some gentlemen when this question was under consideration the other day; she has uniformly denied it. It is true she did comply with the act of Congress passed in February, 1799, and has expended and been credited on the books of your Treasury for $223,810 under that act; she did this, not from a conviction of the justice of the claim, but from motives which have always actuated her conduct, as well during the Revolutionary war as since, to do everything in her power for the general welfare of the nation, whenever its exigencies required it, and also from an expectation that the other States called debtor States would do the same, and thereby get rid of an evil which she considers as having a tendency to alienate the good will and cordial affection so necessary to be cherished between these States—a cause, sir, which has and will, while it is suffered to exist, occasion perpetual irritation and disquiet, as well to the creditor as to the debtor States, and which may at some future period produce consequences more fatal.

I say, sir, these were her motives in agreeing to that measure; and did she not evince a magnanimous spirit by doing it? A willingness to suffer an additional injury herself, rather than not remove a cause which might put in jeopardy the peace and harmony of these United States? But, Mr. Chairman, as it can answer no useful purpose to have the remainder of the money expended in the manner directed by the act—and this I am warranted in stating to the Committee, not only as my own opinion, but as the opinion of the gentleman who was employed under Government as an agent or commissioner to superintend the expenditure already made—as no other State has evinced a disposition to extinguish these balances by paying any part of them, or by complying with any of the terms heretofore offered by Congress; and as it must be admitted on all hands that Congress have no power to effect it by eviction, I ask gentlemen if it would be just or reasonable that the State of New York, who has been injured more in the settlement than any other State in the Union; who has already paid upwards of $220,000 towards these balances, and who is the only State that has, or in all probability ever will, pay a cent towards them—I say, I ask gentlemen of the Committee whether it would be just that that State should now be driven to one of two alternatives; either to draw near a million of dollars from her citizens and expend it where it will answer no useful purpose to the State nor to the nation, or to withhold any further appropriations, and thereby incur the imputation of having violated her faith? I call upon gentlemen seriously to consider whether it would not be prodigiously unjust to hold that State in this predicament; whether it would not be adding injury to injustice to do it?

Mr. Chairman, I do flatter myself that the representatives of this nation, convened here to legislate on fair and equitable principles, will not suffer a new wound to be inflicted on that State, but that they will unite with one accord in passing the bill now before us, and thereby not only heal the one already made on that, as well as several of her sister States, but remove a rock which may endanger our Federal ship.

The bill was supported by Messrs. Randolph, Van Rensselaer, Hill, Van Ness, Gregg, Bayard, Smilie, Macon, S. Smith, Claiborne, and Holland—and opposed by Messrs. Elmer, Bacon, Eustis, Hastings, and Butler.

The question was then taken on the Committee rising, and reporting the bill without amendment, and carried—yeas 47, nays 33.

A motion was then made that the bill be engrossed for a third reading on Tuesday, and carried—yeas 47, nays 35.

A motion was then made by Mr. Leib to recommit the report of the select committee on which the above bill was founded, in order to correct an erroneous statement in relation to Pennsylvania.

Saturday, March 13.

The House met, but no quorum being present, adjourned till Monday.

Monday, March 15.

Mr. Gregg, from the committee appointed, on the seventh of January last, "to inquire whether any, and, if, any, what, addition it may be necessary to make to the military stores of the United States," made a report; which was read, and ordered to lie on the table.

On motion, it was

Resolved, That the Committee of Claims be instructed to inquire whether any further compensation, than is already provided by law, ought to be made to the Commissioners of the direct tax,

or any of them; and that they report by bill, or otherwise.

Mr. THOMAS, from the committee to whom was re-committed, on the twelfth instant, a report of the same committee, appointed "to inquire into the expediency of extinguishing the claims of the United States for certain balances, which by the Commissioners appointed to settle the accounts between the United States and the individual States, were reported to be due from several of the States to the United States," made a report thereon; which was read, and ordered to lie on the table.

Mr. RANDOLPH called for the order of the day on the bill for repealing the internal taxes.

FRENCH SPOLIATIONS.

Mr. GRISWOLD said that he hoped the resolution which he had laid on the table for indemnifying for French spoliations would be first taken up. It was important, before a decision was made on the repeal of the internal taxes, that the extent of indemnities made by Government should be known. He therefore moved a postponement of the bill on internal taxes till to-morrow, that, in the meantime, his motion might be acted upon. He concluded by desiring the yeas and nays.

The motion of Mr. GRISWOLD is as follows:

"*Resolved*, That it is proper to make provision by law towards indemnifying the merchants of the United States for losses sustained by them from French spoliations, the claims for which losses have been renounced by the final ratification of the Convention with France, as published by proclamation of the President of the United States."

Mr. LOWNDES observed, that it was nearly two months since the Committee was raised, to whom had been committed the petitions of merchants praying indemnities; notwithstanding this length of time, the Committee had not yet met. He hoped this resolution would induce the Committee to meet.

Mr. S. SMITH said, that he had presented the first petition on the subject of French spoliations, and that it had been immediately referred to a select committee, who, though they had made progress in the business committed to them, had not considered it fair to decide until all the petitions expected on the subject had been received. One indeed had been presented only this morning. Mr. S. asked if this mode was not perfectly just and fair? For himself, on this subject, he was precluded from voting, as he was deeply interested in the decision of the House. He mentioned this circumstance that the reason might be understood why particular gentlemen from different parts of the Union did not vote on this question in its several stages.

Mr. LOWNDES said he did not consider the right of deciding the principle delegated to the select committee. That must be decided in the House. It was the duty of the committee barely to make arrangements to protect the House from imposition on the score of facts. If it shall be determined by the Government, that it is improper to make compensation—though he thought such a decision scarcely possible—the select committee may be discharged. If, on the other hand, it is thought proper to compensate, the committee may go into the investigation of details.

The order of the day is called for on repealing the internal taxes. But ought not the House to understand the amount with which the Government will stand charged on these indemnities, before those taxes are repealed? Mr. L. said he was of opinion the claims could not be rejected. They were too just to be disregarded. It was the duty of the Government to protect its citizens from the depredations of an enemy. Government, for a certain national good, had thought proper to abandon the claims of its citizens on the French Government. Surely no man would say, the Government possessed the right to seize the property of a certain description of its citizens, and appropriate it to general purposes. He repeated, that these claims must be paid by the Government. Was it not then proper to determine their extent before the internal taxes were taken off?

Mr. JOHN C. SMITH submitted it to the candor of the gentleman from Virginia to waive his motion until that made by the gentleman from Connecticut, respecting French spoliations, should be referred to a Committee of the Whole.

Mr. MITCHILL felt it an obligation, that the case of those whom he had the honor to represent, and that of the other merchants in the United States, should be taken up and receive from this House the most deliberate and serious consideration. He had before submitted to the House his ideas on the proper course to be pursued, which it was not necessary for him to repeat. He would, however, observe, that the resolution now made was so broad as entirely to defeat its object. The first reference of this business was to a select committee instructed to examine all the papers and documents in relation to it, with an instruction to report their opinion to the House; on receiving which the House might be able to come to a decision. On the other hand, the present proposition goes to commit the House on the whole extent of the subject without any examination whatever.

Mr. M. said, he would suggest a few reasons, which satisfied his mind that a decision should not be too rapidly pressed. The vessels taken by the French admitted of various classifications. One class consisted of those that were captured before the dissolution of our treaty with France; another class of those which were captured after that event; another class of those that were captured by picaroons without commissions; and another class, where captures were made on account of contraband goods. All these classes involved distinct considerations; and when the subject was presented to the House in a form so complicated, was it proper precipitately to decide a principle that might bind the Government to make indemnity for all cases whatever?

Mr. M. said he had no doubt but that such property of the citizens of the United States as came fairly under the character of spoliated property, would be considered as a fit subject of indemnity. He was one of those who thought that in such cases payment ought to be made. He considered the merchants as a very important class of citizens, and that their interests ought to be protected. This he thought the more necessary from the consideration of the bill on the table, which, when passed, will render the Government very dependent on mercantile credit.

Mr. M. was of opinion that the best way of accomplishing the object of the merchants was not to precipitate the subject. On the other hand, he was of opinion that the best chance of success would arise from an examination of the various classes of spoliations, from separating them from each other, thereby enabling the House to act understandingly upon them. The resolution of the gentleman from Connecticut was so vague as not to be susceptible of any distinct meaning. He hoped, therefore, the subject would be suffered to undergo a full and deliberate investigation in the select committee, which he, as a member of that committee, assured the House was progressing as fast as a sense of justice and a regard to our merchants require.

Mr. DANA.—The object of the present motion is to take up the resolution of my colleague, and to take order upon it—not to decide definitely upon it. This being the true question, I hope the gentleman from New York will not think it improper in me to say that many of his remarks do not apply to it. As the question is not whether we shall immediately decide the point, but only place it in a train for decision, it must be discussed either in a Committee of the Whole, or in a select committee; and we ask the House now to decide which, that it may be progressing towards a final decision.

The resolution states a general principle. If it is the fixed determination of the majority, without an inquiry, not to grant any relief whatever, there is an end of the business. But if you agree to grant any relief, the resolution ought to be adopted. The principle is then established of indemnifying; after which you my discriminate.

The principle on which the resolution is founded is not that Government has declined to insist upon the claims of its citizens against the French; but that it has undertaken to abandon their claims, so that no citizen can now come forward with his claim either against the French Government or any citizen of France. For this is the construction of the treaty as finally ratified by the Government. It is a complete surrender and renunciation of all demands. Among the first claims of our citizens are some of private right, which, were it not for the treaty, could be recovered in the courts of France, but which the treaty bars. This constitutes a class of claims which the Government cannot refuse to indemnify. There are other descriptions of claims which might require discrimination; in some of which the degree of compensation should be varied, and others in which there should be no compensation whatever. I think, therefore, it is proper for the Government to say the business shall be attended to; at some future time an inquiry may be made into the nature of the various claims, This is all we ask.

Mr. GRISWOLD said that the gentleman from New York had misapprehended the order of proceeding in that House. He supposes the present resolution so vaguely worded as to be improper to be passed. But, if taken up, that very gentleman may offer any amendment he pleases. I do, however, apprehend that it is so worded as to bring the subject fairly before the House. It is worded even with caution. Its sole object is to bring the principle of indemnity before the House, unfettered, that its decision might not be embarrassed by any details; supposing there would be an indisposition in the House to pledge the nation to an unlimited extent, the words used are, "towards indemnifying." Gentlemen, therefore, who are disposed to do anything, can feel no objection to a resolution so qualified. Other parts of the resolution are worded with equal caution, so as to extend only to cases where losses are renounced by treaty. Are gentlemen unwilling to indemnify for such losses?

This is a principle proper for decision in Committee of the Whole. Why take it to a select committee? It involves no details; it requires the elucidation of no facts. We know the losses of our merchants, and we know the treaty has renounced them. The House is, therefore, prepared to say whether it will or will not indemnify. When the principle is decided, it may be sent to a select committee to settle the details. I hope that it will be taken up, and an early day fixed for consideration.

The gentleman says the committee are progressing. It may be so. Though I observe the gentleman from South Carolina says the committee has not yet met. How progressing? Without meeting? I do not understand this new mode, though I will not say that it is not a very correct mode. The gentlemen further says the committee have not progressed because they wished to have first all the petitions before them; but the principle to be settled is as much involved in one petition as in all.

Mr. GREGG said he should not have risen but for the remarks of the gentleman from South Carolina, and after him those of the gentleman from Connecticut, who had stated that the committee had not met. Being a member of the committee he would inform those gentlemen that the committee had met; that they had perused a number of the papers, and had determined that it was improper to proceed until they had received documents that would show the extent of the claims.

As the business now stands, we find it referred to a select committee, instructed to examine the papers, and report their opinion thereupon. This report will form the grounds of decision for the House. Now the gentleman would wrest the business from the committee, and urge the House into a decision without any of the necessary information. The attempt was unprecedented. Mr. G. said he never knew a similar instance where the select committee had not been previously discharged.

Mr. Lowndes rose to explain. He said that when he informed the House that the committee had never been called together, he had been induced to say so, from never having been himself notified, though a member of the committee.

Mr. Bayard thought the motion ought to prevail for the reason assigned by the honorable gentleman from Connecticut. He has properly remarked that we are not now called on to decide the abstract question, but only to say what course of proceeding shall be pursued. The point ought now to be decided whether the business shall be sent to a select committee, or to a Committee of the Whole. The gentleman from Pennsylvania says it is altogether unprecedented to take a subject out of the hands of a select committee. But this will not be the effect of the resolution; which will only facilitate the business before the committee, and shed additional light on the path they ought to pursue. We do not wish to interfere with the operations of the committee, but to decide a question that will greatly facilitate their proceedings, and which question ought to be settled in a Committee of the Whole. It is peculiarly and strikingly proper to postpone the question of repealing the internal taxes until a decision shall have been made on these claims. Not that we are anxious to decide upon them immediately, but because we are solicitous not to prejudge all claims to indemnity by repealing the very taxes on which the indemnity must depend. Do gentlemen mean to decide at once thus precipitately against all indemnity whatever? If they are not in favor of so deciding, surely they will not be for immediately deciding on the internal taxes.

Let the gentleman from New York classify the claims as he pleases, can he tell the extent of the demands? May they not amount to five million or ten million of dollars? And it to either sum, can we with propriety dispense with the internal taxes? It appears from the report of the Secretary of the Treasury that the whole of the revenue for the year 1803 and 1804 will be wanted. If, then, these claims shall be allowed, and shall produce an increase of the public debt, the fund derived from the internal revenue will be required.

It is cruel to decide at once against the claims of our merchants. If it is predetermined not to give them relief, at least allow them the consolation of a hearing. Whoever votes for now taking up the question of the repeal of the internal taxes, votes, not only against indemnifying, but also against hearing the merchants; because he votes away all means of indemnification. It is hard, peculiarly hard, that at the moment when you are about to throw the whole burdens of the Government upon the merchants, you should deny them a hearing, an impartial hearing, of their claims. Suppose there should be a combination of these men, seeing the Government act towards them with such flagrant injustice, to refuse all importations. I ask, if you do not, by such treatment, put the Government entirely into their hands?

If gentlemen will agree to postpone the question of internal taxes, we will agree to postpone this question, if they are not prepared to decide upon it. The subject of the internal taxes is the least pressing of all the subjects before the House. The bill, indeed, ought not pass until we know the appropriations that are necessary to be made for the present year. Have gentlemen shown, can they show, that with propriety these taxes can be dispensed with from any retrenchments that can be made in our expenditures? I do not know any official document on this point, except that of the Secretary of War, who, in his very correct report, says there will be a saving in his department of a little more or less than $500,000; which report I confess I do not understand. The Committee of Ways and Means say there will be a retrenchment in the War Department of a sum not exceeding $400,000; which mode of expression I do not precisely comprehend. Surely we ought to know with precision the sums that will be required for the objects of the Government before we abandon our resources.

Mr. Eustis thought the object of indemnity to our merchants very important both in its nature and its consequences. And, first, as to its amount, it was known to be great. The consequence of these applications will be a hearing, and procedure thereon. And the amount of the claims, as well as the nature of them, ought to have great influence on the deliberations of the House. And yet we talk of deciding the abstract question, when the very facts on which we are to decide are not before us. For it will be perceived by the public prints that the claims of the merchants of the State of Massachusetts are not yet brought forward. The necessary evidence is not before the House. I appeal to the gentlemen to know how we are to act, understandingly, if the subject be taken up now. What is the abstract question? Will gentlemen say they will pay all demands before they know anything of their nature or amount?

The gentleman from Delaware had stated fairly that this is a question whether the internal taxes shall be repealed or not. I know the internal taxes must be repealed. I consider the conversations and proceedings which have already taken place here and elsewhere as having shaken that revenue to its centre; as having placed it in such a situation as to prevent your officers from being able to collect it—its collection being peculiarly dependent upon the good faith of the community. My own opinion was, that the repeal of these taxes should have been the last act of the session; but a different aspect has been given to the subject; the people expect the taxes to be immediately taken off; and I therefore think it best to pass the bill at an early day.

The claims of our merchants are very serious, and merit great consideration. But the revenue, which gentlemen are so anxious to retain, to them will be but as the light dust in the balance. I presume that the losses of the merchants of Massachusetts alone are not less than five to ten millions of dollars. But to act understandingly upon them we must have evidence as well of their

amount as their nature, both of which we at present want.

Mr. Rutledge.—I am sorry the resolution of my honorable friend from Connecticut is not acceptable to the gentleman from New York. It is not the least indelicate to that committee. On the contrary, were I a member of that committee, I should feel infinitely gratified by it. I would ask solicitously, whether it were possible that Congress would agree to this principle before the details were gone into. We are now for giving that information to the committee.

The honorable gentleman says this resolution conveys no light. But I will say, that, if adopted, it will confer not only light, but comfort to our merchants. It will foster their hopes, and animate them to meet the difficulties under which they are staggering.

The gentleman from Massachusetts says there is no evidence of fact. What fact? Surely he will not say there is no evidence of the French having condemned our vessels, and of their having committed vast spoliation. If this were so, how happens it that an American embassy had demanded compensation; and that, on the ulterior negotiations of the Government, the Government had said we will abandon it, that we may release ourselves from guarantying to France her colonial possessions. Had this not been so, France might have called upon us to guaranty her West India possessions, and to supply her with men and money. From this situation we have been kept by those negotiations which terminated in an abandonment of the just claims of your merchants on the French Government or her citizens. And this constitutes your good bargains.

If these are facts, we possess sufficient evidence not only to justify, but to compel our paying the merchants, if under the influence of common honesty. The amount is perfectly immaterial. Whatever it is we must pay it. It is true that of the millions claimed, Government may not in law or equity be compelled to pay more than a small part. But if you establish the principle that there shall be an indemnity made, you enable your committee to devise the mode of collecting evidences of and settling the validity of the claims.

The gentleman from Massachusetts has observed that my honorable friend from Delaware has boldly avowed his object to be to refuse to repeal the internal taxes. We do avow it. For if we once repeal them, then we shall be told there is no money wherewith to pay these claims however just.

Before we repeal these taxes we ought clearly to understand the state of our Naval Establishment. We ought to see whether it is to be fostered or starved. I perceive that the Naval Committee call for $160,000; but where is it to come from?

But the gentleman from Massachusetts says these taxes, right or wrong, must be repealed. For, he says, the public expectation has already decided the question; and that, indeed, the public officers could not now collect them. But I hope for the honor of the Government, and of the American people, this opinion is not correct. I hope the Government has still energy enough to collect, and the people honesty enough to pay them, without resistance. In certain sections of the Union the payment has been resisted. But those who opposed were compelled to pay the tax. It is possible that in some quarters there may be further resistance. But it will be partial. The people generally will pay; and I am sorry any contrary suggestion has been made. I hope, too, the people will not be led astray either by Executive communications or conversations.

Mr. Mitchill begged to be indulged in making a few observations on what had fallen from the gentleman from South Carolina. I do not know that these observations will satisfy his mind, but they will at least serve to justify my own character as a Representative of a portion of the Union respectable for its mercantile opulence. I believe the subject of indemnities, in the contemplation of gentlemen, has swelled much beyond its real magnitude. I believe that a large portion of losses were so covered by insurance that Government will not be obliged to pay for them. I feel as sincerely for the merchants as any gentleman; yet I do not wish to swell the subject to an improper magnitude. Suppose, as the gentlemen wish, we say we will indemnify, does that pay the claims?

Besides, it is not so evident, as some gentlemen assert, that our merchants have been deprived of valuable rights by the mode in which the French Convention has been ratified. Let gentlemen recollect the mass of depredations committed by Great Britain, and the engagements, under treaty, of the British Government to make reparation for them. Yet, notwithstanding this engagement, reparation has been to this day evaded, under the pretext that the claims under one article depend on the construction given to a preceding article. Now, suppose in the French Treaty there were the same provisions as in the British Treaty, would this have produced payment? No. The operations under the treaty might have gone on as long as under the British Treaty, with the like effect, and without any substantial provision being made. I state these circumstances barely to show that the renunciation in the French Treaty is not so grievous as some gentlemen imagine.

It is manifest that an inattention to similar claims has been considered as less a departure from right among nations than among individuals. And, judging of the future by the past, my opinion is that a retention of the article stricken out of the French Convention, would not have benefited the claims of our merchants, or afforded them any adequate eventual compensation. In France, as on the other side of the Channel, there would have been claim raised against claim, pretext against pretext, and the boards for adjusting the several claims might have been, in this case, as in the other, dissolved.

It is said by the gentleman from Delaware, that it is the object of gentleman on his side of the House to prevent a repeal of the internal taxes. Though I admire the gentleman's candor, I be-

lieve it is needful to repeal these laws. I believe, too, the people wish them repealed. But I further believe, that if future events shall show the necessity of restoring these taxes, the good sense of the people will restore them; and if the indemnities agreed to be made shall require them, I believe they will be restored. The work of examining these claims will be the work of years. What is the consequence? Will the present repeal of the internal taxes intertere with the doing substantial justice to our merchants? Suppose these taxes are removed, are not the products of the country increasing? and are not our resources increasing with our population? The truth is, whenever your Treasury wants a fresh supply of resources, the people will submit to what their Representatives desire. Are we to legislate for succeeding ages? No. We are to suffer our successors to act for themselves; and I have no doubt either of their ability or their inclination to do justice.

From a review of the whole subject, I see nothing to shake the confidence of the public, or to alarm the merchants. I conceive that the repeal of the internal taxes to-morrow would not be in the least injurious to the mercantile claims. When these, however, are brought forward on their substantial merits, I have no doubt they will be heard, and provided for.

The gentleman from South Carolina asks, if the internal taxes are repealed, from what source the $160,000 for naval purposes will be drawn? I will inform that gentleman that it will be derived from an unexhausted appropriation, and that the money is now on hand.

The gentleman has insinuated the existence of a disposition that the Navy should be crushed. I know of no such intention. I believe true policy dictates that a prudent course should be pursued by this country for the protection of commerce; and that we should take a middle course between no navy and a widely extended one.

Mr. John C. Smith wished to save time, and would therefore decline entering into a discussion of the merits of the mercantile claims. He would merely observe, that a refusal to take up the subject at this time would be considered as an entire refusal to attend to it. He could not help congratulating the gentleman from Massachusetts (Mr. Eustis) on at last finding a reason for voting in favor of the repeal of the internal taxes. But though that reason may be satisfactory to him, I must say, it is not so to me. It is, however, to be regretted that the honorable gentleman had not sooner discovered it, as it might have influenced his vote on a former occasion.

Mr. Dana.—If I understood the honorable member from New York, he admitted the propriety of making some indemnity; and if so, I could not understand why he dwelt so elaborately upon the minutiæ of detail, to show why we ought not to indemnify. Nor can I yet understand him, unless his object be to let the subject sleep, and to say that the longer it is delayed, the less the chance of reparation.

The gentleman says, property insured cannot be recovered. But is that gentleman, coming as he does from the first commercial city in the Union, yet to learn that, in the case of loss, the insurer stands precisely in the place of the insured? Is he so ignorant of this fact as not to know that the underwriter, in such circumstances, becomes entitled to the same indemnity with him who is underwritten?

With regard to the analogy attempted between the British Treaty and the French Convention, it is totally incorrect. For, in the British Treaty, we had insisted upon the claims of our merchants to reparation by Britain, or her subjects; whereas, in the French Convention, we had renounced all claim. Nor were the remarks of the honorable member more fortunate respecting the operations under the British Treaty; for he must know that our merchants have, in many cases, received compensation under it.

One concession has been made which I did not expect would be avowed so early, either by the gentleman from Massachusetts or the gentleman from New York; a confession that is founded on the principle that the House, before examining the important details which ought to regulate their decision, are so placed by the head of the Executive ministry, that certain taxes, recommended to be abrogated, must be repealed. You must repeal them. The public clamor is excited, and you must obey it. I did not suppose it would so soon have been avowed that we are under the absolute rule of Executive influence, and that, to obey it, we are compelled to perjure our understandings.

The gentleman considers himself as instructed by the will of his constituents. Forlorn, indeed, is our situation, if we are so bound down. If other gentlemen are so instructed, for myself I disclaim such degrading fetters; I disclaim the ignominious insinuation of acting either under Ministerial influence, or under popular instructions; and I can only say, I consider the confession of the honorable members from Massachusetts and New York the more precious, as coming from gentlemen so well acquainted with Ministerial mysteries.

Mr. Bayard.—The honorable gentleman from Massachusetts has thanked me for the candor of my avowal that I am opposed to the repeal of these taxes. But I do not wish to be thanked for more than I really said. It is true, that I do not think this the proper time to repeal all of those taxes, because I do not know that Government may not want them.

Gentlemen charge us with an undue attachment to these taxes. But, why do we wish them? They bring no money to us, or to our friends. We participate not, nor expect to participate in the loaves and fishes. We expect no offices. We know that, in a few days, there may not be even a deputy postmaster on our side to share them. Why, then, can gentlemen attribute to us a wish to support taxes to feed their creatures, or to pamper their luxurious appetites? No, sir, these are not our motives. We are anxious to preserve them while they appear to us to be necessary to support the credit of the Government; because

we are convinced that on it depends not only our present welfare, but that of future times. But the moment gentlemen, by fair calculation, show us that we can do without these taxes, that moment I will agree to take them off, and all others that they show to be unnecessary.

The gentleman from Massachusetts has broached a new species of ethics. He says, if the amount of claims shall be small, we may pay, but if large we cannot. But I will tell that gentleman I have never acknowledged such a principle of morality. I believe if the merchants have a just demand for one dollar, we must pay it; and if they have a just demand for one hundred millions, we must pay that too. Nor can I too forcibly express my astonishment at an opposite principle avowed by this House.

The gentleman says you want evidence, and therefore ought not to act. But can you examine each distinct case? If the subject goes to a select committee, and they shall be allowed years to decide, still they will have to establish some principle; for instance, that a certain description of vessels was captured unjustly by the French; that the injured merchants had a moral claim on the French Government for reparation; that the United States had bartered away their rights, and that Government, in consequence, is bound to indemnify. If the House decide that the Government is bound to relieve in one case, are they not bound to afford relief in all similar cases? Will you not, then, be obliged to make a general provision that all claims, so circumstanced, shall be allowed? Here is a great mass of claims; some made now, and some not likely to be made for years. What more, then, can you do, than decide the principle which shall be applied to them?

My opinion as to indemnity is, that whoever had a valid claim against the French Government, which the United States extinguished, has a demand against the United States, which she must satisfy. Put the case to its consequence: Will gentlemen tell me whether, according to any principle of morality, where you have taken from your citizens all chance of recovery, you are not bound to indemnify for that of which you have deprived them? Where the French Government was not bound to pay before the convention, you are not now bound to pay. So, in the case of war, you are not bound. But where the claim on the French Government was perfect, and you destroyed that claim, your obligation to pay cannot be evaded. I wish to know if the establishment of this principle requires facts?

With respect to the circumstances of particular cases, this House cannot act. On those numerous grades of credibility that will be attached to the various claims that shall be made, you cannot decide. To effect this you must establish some competent tribunal. You can establish the principle; but the details could not be settled by Congress, even if their attention were exclusively directed to that subject, in three years. Having decided the principle, it will be proper to leave the application of it to your courts of law.

Mr. Bacon hoped that a great deal of time would not be spent in exploring the secret motives of individual members. He supposed they should all stand or fall on their own consciences. He hoped, therefore, they should have the question.

Mr. S. Smith.—I am against the proposition of the gentleman from Connecticut, because to act now upon it will be in direct opposition to the uniform order of the House. If our attention is thus to be withdrawn from every important object before us, I do not know how we are possibly to progress with the public business. I know of no case, where a particular subject has been referred to a select committee, and it has afterward been taken up in the House, while it remained with the committee. I should have understood the motion, if it had been to discharge the select committee, and to refer the subject to a Committee of the Whole.

As gentlemen, however, have taken so wide a range in the field of debate, I hope their course will produce a saving of time, and that we shall not have their speeches over again on repealing the internal taxes.

It is not my purpose, at this time, to enter into a discussion of the claims of our merchants, because I think this is not the proper occasion. But I will tell gentlemen, that if they were disposed to destroy those claims, they could not have pursued a plan more effectually calculated to do it. Had such been my intention, I would have offered a resolution so broad and vague as to alarm the whole community as to the amount of indemnity. I would have endeavored to throw the censure attached to their losses on the present Administration. I would have opposed their claims to the wish of the nation to repeal the internal taxes. All these steps I would have taken to frustrate any indemnity; and they are just the steps taken by gentlemen who profess so strong a regard for the merchants. Let me tell those gentlemen until they shall pursue a far different plan, we must doubt whether they are in earnest to pay the merchants for their losses.

If the public business is to be thus perpetually procrastinated, I hope the gentlemen with whom I act will be firm enough, after rejecting this motion, to pursue the other business even to a late hour.

The yeas and nays were then taken on Mr. Griswold's motion, to postpone taking up the bill on internal taxes till to-morrow, in order to take up his resolution on French spoliations; and decided in the negative—yeas 33, nays 54, as follows:

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Chas. Johnson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Previous to the call of the yeas and nays, Mr. S. Smith desired to be excused from voting, as he was interested in the question.

INTERNAL TAXES.

The House then went into Committee of the Whole on the bill for repealing the internal taxes.

Mr. Dennis moved to strike out of the first section all the words between "spirits" and "paper." He said his object was to discriminate between the tax on stills and distilled spirits, and all the other internal taxes. He believed the collection of the tax on stills and distilled spirits more difficult and extensive than that on the other objects of internal taxation. He was far from giving into the opinion that he must keep up the same number of officers to collect a part as the whole of these taxes. He believed that all the taxes excepting those on stills and distilled spirits, may be collected without any of the officers at present employed in the collection of the internal revenue. The collection may be entirely turned over to the collectors of the customs and the deputy postmasters. In case his amendment did not prevail, Mr. D. said he did not know how he should afterward vote. The collection of the tax upon stills has been said to be productive of a system of espionage hateful to a free people. His objection did not apply to the other articles. He was of opinion that, in the collection of the duties upon stills, in order to prevent frauds upon the revenue, it was necessary to enter into regulations so complex as to render the tax very obnoxious; regulations so complicated that few are competent to the understanding of them. He believed it was this which had rendered the tax so unpopular, if it really was unpopular. On the other hand, he believed that all the other internal taxes could be collected for five per cent.

Mr. D. said he did not hesitate to say that, if it should be found that the Government were possessed of more means than were required to support public credit and defray the expenses of Government, the taxes on brown sugar, salt, coffee, molasses, &c., should be reduced, instead of taking off the taxes on pleasurable carriages, sales at auction, &c., as the former were drawn principally from the poor, while the latter were paid by the rich and luxurious. It was a fact well known that brown sugar, coffee, bohea tea, salt, and molasses, were necessaries of life, and that there was scarcely a person in the community, however low his circumstances, that did not consume a portion of them.

Mr. Huger inquired, whether the amendment could not be divided so as to take a distinct question upon each article?

The Chairman said it could.

The question was then taken on striking out refined sugar, and lost—ayes 24.

On striking out licenses to retailers, lost without a division.

On striking out sales at auction; lost—ayes 25.

On striking out pleasurable carriages; lost—ayes 22.

On striking out stamped vellum, parchment, and paper; lost—ayes 14, noes 52.

Several amendments were then made by Mr. Randolph affecting the details of the bill; which were ordered to be printed, and then the House adjourned.

Tuesday, March 16.

Mr. John C. Smith, from the Committee of Claims, who were instructed on the 29th of January last, "to inquire into the expediency of making provision, by law, for the payment of such loan office and final settlement certificates as may have been lost, and for the payment or renewal of which application was made prior to the twelfth day of June, 1794," made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

Mr. Randolph, from the Committee of Ways and Means, to whom were referred, on the fifteenth ultimo, such parts of a petition of sundry inhabitants of the county of Fairfield, in the Northwestern Territory of the United States, "as relates to the payment of interest on the principal amount of the purchase money due by the petitioners to the United States, for lands in the said Territory, until the instalments of the principal shall, respectively, become due, and to a revision and amendment of the laws of Congress respecting the purchase and title of the said lands," made a report thereon; which was read and considered: Whereupon,

Resolved, That so much of the said petition, referred to the Committee of Ways and Means, as hereinbefore recited, ought not to be granted.

STATE BALANCES.

The bill for extinguishing State balances was read a third time, when Mr. Davis moved its postponement to the first Monday in November.

This motion was supported by Messrs. Davis, Bacon, Elmer, and Goddard, who declared themselves adverse to the passage of the bill; and opposed by Messrs. Bayard, T. Morris, Randolph, and Nicholas, who declared themselves in favor of the bill.

Mr. Griswold delivered his sentiments against the postponement, declaring, however, his determination to vote against the passage of the bill.

The question of postponement was taken by yeas and nays, and carried—yeas 48, nays 42, as follows:

Yeas—John Bacon, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, Ebenezer Elmer, William Eustis, John Fowler, Calvin Goddard, Edwin Gray, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, Benjamin Huger, George Jackson, Michael Leib, Thos. Lowndes, Ebenezer Mattoon, John Milledge, Thomas Moore, Anthony New, Joseph Pierce, Nathan Read, John Smilie, Israel Smith, John C. Smith, Josiah Smith, Henry Southard, Joseph Stanton, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Samuel W. Dana, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Abiel Foster, Andrew Gregg, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, William H. Hill, James Holland, David Holmes, Charles Johnson, William Jones, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, John Stanley, John Stewart, John Stratton, David Thomas, Philip R. Thompson, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Benjamin Walker, Robert Williams, and Henry Woods.

INTERNAL TAXES.

The House went into a Committee of the Whole, on the bill for repealing the internal taxes.

The amendment offered yesterday by Mr. Randolph, and other amendments offered by him, affecting the details of the bill, were agreed to without a division: when the Committee rose and reported the bill and the amendments.

The House immediately took up the report of the Committee, and agreed to all the amendments except one, with other amendments.

Several additional amendments were suggested, when Mr. Dennis moved to recommit the bill, for amending the details, to the Committee of Ways and Means.

The motion was supported by Messrs. Dennis, Dana, Goddard, and Bayard; and opposed by Messrs. Randolph, Smilie, and Varnum.

Before the question was taken an adjournment was called for, and carried.

Wednesday, March 17.

Petitions of sundry inhabitants of the Territory of the United States Northwest of the river Ohio, were presented to the House and read, stating their disapprobation of certain proceedings of the Legislative and Executive authorities thereof; and praying that a State Government may be established for the people of the said Territory, to be admitted into the Union upon the same terms with the original States.—Referred.

Mr. Wadsworth, from the committee appointed, on the twenty-fourth ultimo, presented a bill to alter the time of holding the district court in the district of Maine; which was read twice, and ordered to be engrossed and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to empower John James Dufour, and his associates, to purchase certain lands;" to which they desire the concurrence of this House.

Mr. Gregg observed that the acts of Congress respecting a marine corps allowed the President to dismiss the privates, but not the officers; in consequence of which restraint, though a considerable reduction of the men had taken place, all the officers were yet retained. He thought it proper that the President should have the same power to reduce the officers as the men. He, therefore, moved the following resolution:

Resolved, That a committee be appointed to inquire, whether any, and, if any, what alterations are necessary in the several acts relative to the establishment of a marine corps, and in an act fixing the rank and pay of the commanding officers of the corps of marines; and that the committee be authorized to report by bill or otherwise.

Ordered to lie on the table.

Mr. Gregg further offered the following resolution:

Resolved, That the President of the United States be requested to communicate to this House such information as he may have received, relative to the copper mines on the south side of Lake Superior, in pursuance of a resolution passed the 16th day of April, 1800, authorizing the appointment of an agent for that purpose.

Ordered to lie on the table.

Mr. Griswold observed that the general estimate of the Secretary of War, made to the Committee of Ways and Means, on the saving that would probably result from the reduced Military Establishment of the present year, which made it amount to the sum of four or five hundred thousand dollars, was to him not perfectly satisfactory. He therefore moved that the Secretary of War be directed to lay before this House a statement of the number of troops which were actually in the pay of the United States during the year 1801, together with the expense which has in fact arisen for the support of the Military Establishment for the same year.

Mr. Randolph remarked that, as the Committee of Ways and Means required no other than the result of the saving likely to arise from the military reduction, the Secretary had given all the information asked for.

The consideration of this subject was postponed till to-morrow.

INTERNAL TAXES.

The House then took up the bill for repealing the internal taxes.

Mr. Randolph hoped the motion, made yesterday, to recommit the bill, would not prevail, as he

was prepared to offer immediately to the House the amendments which gentlemen required.

The question on recommitment was then taken, and lost without a division.

Several amendments, relating to the details of the bill, were made.

When Mr. Dennis renewed the motion made by him in Committee of the Whole, somewhat varied, viz: to strike out of the repealing clause all the articles of internal taxation, excepting "stills and domestic distilled spirits, and stamped vellum, parchment, and paper."

He moved that the question be taken by yeas and nays on each article distinctly.

The question was accordingly stated on striking out "refined sugars."

Mr. S. Smith desired to be excused from voting, as he was interested in a sugar refinery.

The question was put and lost—yeas 30, nays 54, as follows.

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Dennis then moved to strike out "refined" for the purpose of inserting "brown" sugar. He said he did this the more forcibly to contrast the votes of gentlemen who were in favor of a discrimination between the necessaries and luxuries of life.

Mr. Claiborne desired the Speaker to read the title of the bill; which he did, as follows: "a bill for repealing the internal taxes;" when Mr. C. asked if brown sugar was within the meaning of the term "internal taxes."

Mr. Dennis replied that it was always in order to amend the title of a bill.

The Speaker declared the motion out of order, as a decision had just been made against striking out the whole term "refined sugars."

Mr. Randolph wished with the gentleman from Maryland, (Mr. Dennis,) a distinct question to be taken upon each of the articles of internal revenue. He believed the abolition of one constituted the most forcible reason for repealing the whole. If there were a disposition to abolish taxes on the necessaries, and to retain those on the luxuries of life, let us see who are for the one, and who for the other.

Mr. Dennis, equally with the gentleman from Virginia, was for a discrimination. In compliance with the decision of the Chair, he would withdraw his original motion, and now move to strike out "licenses to retailers," in order to insert "bohea tea."

Mr. Varnum here asked for a division of the question.

The Speaker said it was indivisible.

Mr. Huger said it had been his intention, after the motions before the House were disposed of, to have moved to insert an amendment for a reduction of the duty on salt; he inquired if he was not precluded from so doing by the decision of the Chair.

Mr. Dennis replied that it was his purpose to move the insertion of "salt," in the room of "pleasurable carriages."

Mr. Huger observed that the principal object of his motion would be to show that the amount of duties on salt was about equal to the whole saving of this bill.

The question was then taken by yeas and nays, on striking out "licenses to retailers," in order to insert "bohea tea," and lost—yeas 31, nays 57, as follows:

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, L. R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Benjamin Walker, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, Wm. Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. Dennis next moved to strike out "sales at auction," and insert "coffee."

A division of the question was called for, which the Speaker declared not to be in order.

Mr. Eustis inquired whether it could be in order to insert expressions that might grossly vitiate the bill, and wrest it from its main purpose? He said this was not the place to contrast the relative merits of a tax upon sales at auction, and a duty upon coffee. He had not the least objection, at a proper season, to afford gentlemen the opportunity of contrasting the advantages attending the repeal of these taxes, and the duties on other articles.

Mr. S. Smith appealed from the decision of the Chair, on the division of Mr. Dennis's motion.

Mr. Thomas Morris called for the yeas and nays.

Mr. S. Smith called for the reading of the rule which declares, that "any member may call for a division of a question where the sense will admit of it."

The question was then taken by yeas and nays on concurring in the decision of the Chair, and lost—yeas 40, nays 48; and the motion was determined to be divisible.

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Lucas Elmendorf, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Smith, of New York, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Robert Williams.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William H. Hill, James Holland, George Jackson, Charles Johnson, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Isaac Van Horne.

The question was then stated on striking out "sales at auction."

Mr. Huger said he entertained doubts of the propriety of repealing the internal taxes. If those to whom has been devolved the management of our public concerns, say they can spare six hundred and fifty thousand dollars, the amount of these taxes, be it so. But if this sum can be dispensed with, he said he was anxious that at least a part of it should go to relieve those who do not pay a large share of the internal taxes from the burden of other taxes. He was solicitous, therefore, to give his vote in such a way as to exhibit to his constituents his efforts to reduce the duty upon salt and other necessaries of life.

Mr. S. Smith remarked that the gentleman from South Carolina doubted the possibility of sparing six hundred and fifty thousand dollars. If he really entertains such a doubt, it must be entirely destroyed when he learns that the duty on salt, which he wishes to take off, alone amounts to above seven hundred thousand dollars!

Mr. Huger replied that he was not so anxious for popularity as some gentlemen. With regard to salt he only wished to reduce the duty so as to affect the revenue about two hundred and eighteen thousand dollars.

The question was then taken by yeas and nays on striking out "sales at auction," and lost—yeas 32, nays 58, as follows:

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benj. Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchell, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

The Speaker.—The question now is on the remainder of the motion to insert "coffee."

Mr. Griswold observed that the gentleman from Massachusetts had supposed this was not the proper place to decide whether we will reduce the duties on imported goods. But if the word "coffee" be inserted, the effect will be that all duty upon that article will cease. Gentlemen may suppose that it is not proper to dispense with the whole duty; but if it be repealed, there will be nothing to prevent the imposition of a new duty by a new bill. Mr. G. thought the present duty too high; he thought it would be productive of smuggling, and he thought it oppressive.

Mr. S. Smith said the present, in his opinion, was not the proper place to introduce the repeal of the duty on coffee. It will be remembered that early in the session he had brought forward a resolution, which was committed, to inquire whether any and what alterations were necessary in the laws imposing duties on imports. He then stated that he was disposed to reduce the duty on coffee, as now proposed by the gentleman from Connecticut, (Mr. Griswold,) and when that question should come in the proper place, he would be

found voting with him to reduce the duty on coffee.

Mr. Dennis said his object was not to dispense with the entire duty on bohea tea, sugar, salt, and other imported articles. But he had no other opportunity than that which he now embraced. For after it shall have been decided to abolish the whole internal taxes, gentlemen will tell us they cannot dispense with any of the duties upon imported articles. The only question at present is, whether we shall make a reduction of the duties on imported articles, or totally abolish the internal taxes.

Mr. Lowndes said the subject was so important that he must beg the indulgence of the House while he submitted a few remarks. The motion goes to abolish the present duty on coffee, in order to lay a smaller one. A gentleman from Maryland, (Mr. S. Smith,) informs us that he feels a conviction that the present duty is too high, and that it may introduce the practice of smuggling. But that gentleman must excuse my saying that his professions differ from his practice. He is now for voting away all revenue derived from the luxuries of life, from pleasurable carriages, from refined sugar, and other articles, and tells us after getting rid of these resources he will, by and by, vote for more moderate duties on imported articles. Good God! Is not this course putting it entirely out of his power to do so? The people of this country deserve some consideration. This is a new era. The people are reduced from a state of opulence to much distress by the cessation of European hostilities. The carrying trade, so lucrative to our merchants, is taken away. Labor has heretofore been high in our cities, from the activity of commerce. Now there is an alarming stagnation, and the most valuable portion of our citizens are without occupation; and yet taxes, predicated on the existence of the war, are to be continued on a peace. Gentlemen who have gotten power seem to have forgotten the people who gave it to them. By the stagnation of trade our farmers will be injured. Flour, which lately sold for thirteen dollars per barrel, now sells for six dollars. If the profits of the farmer be reduced ought not his expenses of living also to be reduced? What good can result from repealing the duties on stills, or pleasurable carriages, and on sales at auction? Is not the tax on stills a good one, and has it not been approved by experience, ever since it came into operation in the year 1790? Have any inconveniences been experienced? Have not, on the other hand, the distilleries increased to the enormous number of twenty-two thousand? Has not the revenue likewise increased? and are not these strong evidences of the propriety of the tax? Suppose it should restrain the immoderate use of spirituous liquors, is not the result beneficial to the morality of our citizens?

But the articles of tea and coffee are different in their nature—they are promotive of morality, and restrain the use of ardent spirits. The gentleman from New Jersey has informed us, that the lower class of citizens in his State do not in general consume tea and coffee. But, however it may be in New Jersey, I will inform the gentleman that in Charleston the lower class of citizens—the very carmen—do consume these articles, which, after the fatigues of the day, are their evening solace.

The gentleman from New Jersey has told us, that the people of this country have never been oppressed by taxes. I am happy to hear gentlemen on that side of the House make this confession. I believe they never have been oppressed by our predecessors. I will not say they have never felt the burden of taxation, because I believe they have felt it. But they have considered the taxes laid necessary for the security of the Government.

This tax upon coffee appears to me to be unnecessary, impolitic, and oppressive. It was laid when we were subjected to the depredations of foreign nations, and menaced with hostility; and yet it is to be continued after the occasion for which it was created has ceased. The people will feel it. They will discriminate between the tax, and the price of the commodity, and they will understand from what quarter the tax proceeds.

There is another pernicious consequence that will result from the continuance of this high duty upon coffee. It will hold out a dangerous temptation to the merchants to smuggle. Coffee and sugar are articles of great value and small bulk. The day is not distant when the circumstances of the country, the great extent of the seacoast, and our numerous ports, combined with this temptation, will introduce the pernicious practice. I hope, for these reasons, the House will agree to reduce these taxes, and hold out to the country those enjoyments which have been heretofore possessed.

Mr. Elmer said, that as to those articles which are necessaries, and those which are luxuries, gentlemen will differ. He thought it, however, extraordinary that it should be insisted that bohea tea and coffee are necessaries of life, and carriages luxuries. He certainly considered pleasurable carriages as of this description; yet many carriages, and more than one-half of those in use in New Jersey were of the first necessity. He would feel very happy in reducing the duty upon tea and coffee, if our circumstances shall admit it. But though they may be extensively used, it by no means follows that it is good policy to encourage the consumption of them. He believed some of our own products would form a very good substitute for coffee. With regard both to tea and coffee, he knew that so far from being necessaries of life they were consumed by the citizens generally in proportion to their wealth.

Mr. E. said he had not expressed the sentiment ascribed to him by the gentleman from South Carolina. He had neither said that the people had been, or had not been oppressed by taxes. He had said that tea and coffee were not necessaries of life. As well might tobacco, which was in general use, be called a necessary of life.

Mr. E. concluded by observing that he should be pleased with a diminution of the duties upon tea and coffee; but that it must be evident this

was not the proper time to consider its expediency, as the bill then before the House respected exclusively the repeal of the internal taxes.

A member inquired where the word "coffee" was to be inserted.

Mr. Nicholson said the motion made had been to strike out the words "sales at auction," and insert "coffee." The House having determined not to strike out, there was of consequence no place wherein to insert.

Mr. Griswold replied that the difficulty into which gentlemen were thrown, arose from their having reversed the decision of the Chair, but that the question on inserting "coffee" must be put.

Some additional conversation ensued, when Mr. Hill observed that he had voted against the decision of the Chair from an impression that it was wrong, but he was now satisfied it was correct; he, therefore, moved a reconsideration of the decision of the House.

Mr. Davis moved to adjourn.

Mr. Southard said he felt no embarrassment. In his opinion the decision not to strike out entirely superseded the motion to insert.

The question of adjournment was lost.

Mr. S. Smith asked whether the question of reconsideration was a question of order, or whether it was one that admitted of debate?

The Speaker said he would consult the rule respecting questions of reconsideration.

Mr. Bayard said, in order to allow time, he moved now to adjourn; carried—ayes 46, noes 38.

Thursday, March 18.

An engrossed bill to alter the time of holding the district court in the district of Maine was read the third time, and passed.

Mr. John Cotton Smith, from the committee, to whom was referred, on the twenty-ninth of January last, the petition of Alexander Roxbourgh, made a report thereon; which was read, and referred to the Committee of the whole House to whom was committed, on the sixteenth instant, a report of the Committee of Claims on the subject of Loan office and final settlement certificates.

The bill sent from the Senate, entitled "An act to empower John James Dufour and his associates to purchase certain lands," was read twice, and committed to a Committee of the Whole.

INTERNAL TAXES.

The House resumed the consideration of the bill for repealing the internal taxes.

When the motion of Mr. Hill to reconsider the decision of the House of yesterday, reversing the decision of the Chair on the point of order, was put, and the yeas and nays called, on motion of Mr. Stanley, and lost—yeas 38, nays 42, as follows:

Yeas—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, William Jones, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John C. Smith, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, James Holland, George Jackson, Charles Johnson, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

Mr. Randolph observed that in the repealing bill before the House, there was a deviation from the terms of the bill proposed to be repealed, in relation to the tax on carriages. In the last bill the terms were "carriages for the conveyance of persons"—in the bill before the House the expression was "pleasurable carriages." He moved therefore to strike out "pleasurable," and insert after "carriages" the words "for the conveyance of persons."

Mr. T. Morris called for a division of the question.

The question was then stated on striking out "pleasurable," and carried without a division.

Mr. Griswold then moved to strike out "carriages."

Mr. G. said he hoped the House would agree to retain this tax, as it fell exclusively on the rich. It had been said by the gentleman from New Jersey, that it did not fall exclusively upon the rich in that State; but in all the other States it certainly did. It will be easy to collect it, without a train of supervisors and collectors. You may make it the duty of the owners of carriages to enter them with the collectors of customs, or deputy postmasters, and inflict a penalty on a default of payment. In this way the collection will not cost you more than four or five per cent.

This expense is much lower than that paid on imported articles, no part of which, in the collection, costs less than forty per cent. The importer pays five per cent. to the collector. This he charges upon the retailer. He also charges his profit upon the duties, as well as the first cost and expenses of importation; the retailer again charges his thirty-three or forty per cent.; and all these accumulated charges are paid by the consumer. If this be the case is it not best, if there be any reduction in our taxes, is it not demonstrable that we ought to repeal those which operate exclusively on the poor, and whose collection costs at least forty per cent., rather than those which are derived from the rich, and whose collection does not cost more than five per cent?

Mr. Bacon observed, that he thought the argument of the honorable gentleman from Connecti-

cut not altogether correct. That, in his opinion, this particular species of tax, in New England, fell heavier, he believed two-fold heavier at least, on the clergy, in proportion to their wealth, than on any other description of men in the community; that the clergy in general, particularly in Massachusetts and Connecticut, were by no means opulent; that, as it was necessary for the accommodation of their families, they generally kept a horse and chaise; that the clergy were greatly revered in New England, and that so tender were the State laws in Massachusetts and Connecticut, that they were never permitted to affect the property of that venerable body of men by way of taxation; that it appeared rather extraordinary that the honorable gentleman from Connecticut should be so desirous, by a law of the United States, to subject our clergy to a tax so unequal in its operation, and which bore so hard upon them in particular, compared with the rest of the community.

Mr. Southard.—Under the existing law, which this motion proposes to continue so far as it respects the tax on carriages, in order to collect this tax it will be necessary to retain about four hundred and fifty officers, to pay whom the whole proceeds of the carriage tax will be inadequate. I believe the people have no idea of paying a direct tax to support officers for collecting a carriage tax. The gentleman says we may authorize the collectors or deputy postmasters to collect it. What! Shall the citizen be obliged to go fifty or a hundred miles to pay the tax? It will be a heavy tax indeed, if, in addition to it, the citizen is burdened with the expenses of a long journey. A large class of the carriages taxed are of small value. In the State of New Jersey five hundred and forty two are of this description, which are principally market-wagons, and not designed for pleasurable purposes—one hundred and fifteen are of another description, called windsor chairs, and are generally owned by people that are very poor. Add on these to the two dollars tax, the expense of going a great distance to make payment, and the fine for neglecting to do it, and you will perceive the extent of the burden.

This tax is also unequal in its operation on the States.—$5,252, are paid by New Jersey; $7,325, by Pennsylvania, and $7,807, by New York. Thus it appears that the State of New Jersey pays almost as much as these large and wealthy States, and that the sums paid hold no proportion to the population of the States. The same inequality will be found in other States.

Since gentlemen have taken the poor under their protection, I hope they will treat them with especial care; and that from regard to them they will leave this tax to the States, who instead of oppressing their poor with a poll and house tax, may avail themselves of this source of revenue. If collected by the States, the collection will be liberated from a heavy expense, as it is well known that the expense of collecting taxes in the States is very small compared with that of the Union.

Mr. Huger.—Gentlemen may well be in favor of taking off this tax, who know that after it is taken off, we are to bear the burden of the day. The gentleman from New Jersey says carriages are necessaries of life in his State. This puts me in mind of the boy who pelted stones at the frog, and who, when called upon to say why he did so cruel a thing, said it is a very pleasant thing to me. No doubt it is a very pleasant thing to the gentleman from New Jersey to get rid of this tax. But it is impossible to imagine a tax more easy of collection or less oppressive.

Contrast the operation of the internal and external duties upon the different States. Of the impost, Virginia pays about eight hundred thousand dollars, while South Carolina, a comparatively small State, pays about eight hundred and four thousand dollars, which is four thousand dollars more than the great State of Virginia. Of the internal duties, Virginia pays one hundred and thirty-four thousand dollars, while South Carolina pays only twenty-three thousand dollars; and if these taxes are repealed, South Carolina is to console herself for being released from the payment of twenty-three thousand dollars, while Virginia is released from the payment of one hundred and thirty-four thousand dollars.

The observation of the gentleman from Massachusetts, respecting the clergy, is extremely curious. I hope I respect the clergy as much as that gentleman, or any member on the floor. However the clergy may be treated in Massachusetts, in South Carolina we support and pay them well, and we treat them as citizens. The very argument of the gentleman, that in his State they are exempt from all State taxes, is an argument for taxing them by the United States.

The arguments of gentlemen are very strange. They say the repeal of these taxes has been talked of all over the continent, and because talked of, and expected, they must be repealed. What does this mean other than this? If you elect me, I will get rid of these taxes; and gentlemen now gravely get up, and assign this as a reason for their votes.

The next argument is not less curious. We are told that though a particular branch of the internal duties does not fall heavily, yet that if one be repealed, we must repeal the whole, from the expense of collection. But if one of these taxes be wrong, why not repeal it, and let the others stand? I say with the gentleman from Virginia, that if we cannot collect the tax on whiskey without a system of espionage odious to a free people, I have no objection to doing it away.

When, too, we call upon gentlemen for particular information to enable us to determine the comparative merits of internal and external taxes, we are answered by the exhibition of a profound and philosophic style of silence. I conceive that when the time comes for a repeal of certain taxes, we ought to have statements in black and white; we ought to have chapter and verse; and I have always thought it best ever to show our ways before we do away our means.

Though I shall vote against giving up the carriage tax, and other branches of the internal revenue, yet if these amendments do not succeed, I shall, notwithstanding, vote for the bill. For though I have strong doubts that the United States cannot do without these taxes, I am one of the minority; I stand not on the vantage ground. Having therefore strove ineffectually to relieve my constituents from the burden that is likely to be thrown upon them, I will vote for the bill, though I think gentlemen ought not to have attempted this thing till the last moment of the session, until the savings which are talked of had clearly been exhibited.

Have these savings appeared? No! According to the report of the Secretary of the Treasury not a cent can be spared. The Secretary of the Navy stated that his Department required more than a million; and yet in the report of the Committee of Ways and Means this sum is pared down, and two hundred thousand dollars taken from it, without assigning any reason for the reduction. It is a fact, then, that these taxes are to be demolished, and the funds of the Navy and Treasury Departments to be cut down. When then, the resources are not over the demands for the year, and gentlemen are inflexibly bent on this act, I must say that it is my opinion it is predicated on popularity. I do not say the present Administration are for destroying public credit, the army, and navy. I hope in God it is not so. But gentlemen will recollect that they have been charged with these designs. I will ask if it would not be more prudent first to make savings, and at the next session, if admissible, to take off these taxes? But gentlemen are scarcely six months in the Government, when they pursue measures, not to pay the public debt, but to destroy the means of paying it. I speak the more boldly on this point, as I have no interest in the funds, and am a mere planter.

The expense of collecting these taxes, is insisted on. But it has been shown that many, if not all the present offices may be done away, and the expense reduced to a level with the expense of collecting the imposts; and thus every reason for the repeal is done away. Do gentlemen, casting their eyes over the world, see the defenceless state of our trade? Do they see a large army in St. Domingo? Do they regard the report that we are about to change our neighbors, and have a great nation along side of us? Do they not perceive that the peace in Europe is barely an armed neutrality? And yet do they imagine the golden age has come; and that this is the moment to alter our wary plan, to reduce our resources, and to leave everything at sixes and sevens?

I have heard no complaint of any of these taxes, except those on stills. Let then the last be repealed or modified, and retain the rest. They yield about two hundred and forty thousand dollars. Retain these, and take off the eight cents upon salt, which produce two hundred and fourteen thousand dollars; leaving twenty-six thousand dollars for the collection. I will ask if the great bulk of the people will not be benefited by this change?

Had not things taken their present course, I should not have called upon the gentleman from Virginia, (Mr. Randolph,) to support me in my present proposition. But I recollect that at the time when the present duty on salt was laid, that gentlemen inveighed so eloquently against the measure, that he almost persuaded me to vote against it. Why then this change? Do not the people feel it as heavily now as they did then?

The present state of trade ought to influence our decision on this subject. Our merchants are in a serious situation. I know, as a planter, that my produce stands unsold, even at reduced prices, owing to the embarrassments of our merchants. The want of circulating coin will prevent the merchants from importing, and us from buying goods. It is possible that our commerce may not, but it is probable that it will decline. It ought to be recollected, that for some years past we have enjoyed the advantages of neutrality amidst belligerent nations. Hence our tonnage had greatly increased. It must now decline, and I cannot conceive that our external duties will be commensurate to the demands of the Government for the next year. You will observe that the Secretary of the Treasury calculates for a number of years; whereas the Committee of Ways and Means calculate only for this year. Though, therefore, there may be resource enough for the present year, there will be a defalcation the next year, from the increasing instalments of foreign debt.

I have made these remarks, because I think they clearly apply to the proposition before us; and because I think gentlemen should show us clearly and unequivocally that this measure is proper, before we are called upon to support it. I make this opposition, not because I have any objection to cutting down the expenses of the Government. I have no interest against their retrenchment. I have never received, or expect to receive anything from the Government.

I have also made these objections to account to my constituents for my voting against these articles distinctly, in order to effect a diminution of external duties, and relieve others from the unequal burden imposed upon them. But still, as I before observed, if these motions are all rejected, I shall finally vote for the passage of the bill.

Mr. Varnum—It has been stated that the tax on carriages falls altogether on the opulent part of the community. But, as this observation applies to the State which I have the honor in part to represent on this floor, the statement is not founded in fact. In that State there are four thousand, two hundred and sixty-one chaises and other two wheel carriages, on which are paid annually more than $12,000 tax. The whole tax on carriages of all kinds in that State, is $14,096. The chaises and other two wheel carriages in that State, are by no means exclusively owned by the opulent; yet that description of carriages pays the principal part of the tax. There are, in that State, nearly six hundred clergymen, the principal part of whom are owners of chaises; and such are their avocations that they cannot conveniently dispense with the use of them. But this class of citizens, although very justly held in high estimation, are very far from being in aflu-

ent circumstances; many other persons who are owners of that description of carriages, have been in the habit of attending public worship at least once a week, since they have been on the stage of action; which, from their local situation, and the infirmities of age, it would be extremely difficult for them to continue to do, if they should be deprived of that mode of conveyance; many of this description of citizens are also far from being in affluent circumstances. It is a fact, that the tax is a very unequal one, as it relates to the value of the property on which it is laid, and a burdensome one to many who pay it, especially to the clergy and the description last mentioned.

But, sir, there is another reason which operates in my mind against the motion, viz: the extreme inequality of the carriage tax as it applies to the individual States. The whole tax amounts to $77,871. Massachusetts pays $14,096 of that sum, whereas she ought to pay but $10,284, according to the Constitutional mode of apportioning direct taxes; that State therefore, is compelled, by this mode of taxation, to pay at least one quarter-part more than her just proportion. Is that the case with the State of Connecticut, or South Carolina? No sir, Connecticut pays considerably less than her proportion when compared with all the States; and not two-thirds of her proportion when compared with Massachusetts. She pays $4,564, and her proportion compared with Massachusetts would be $7,048. South Carolina pays $4,329; her proportion with Massachusetts would be $6,041. If it is extremely difficult for gentlemen on this floor, as well as elsewhere, to divest themselves of self, and the pecuniary interests of their constituents, will not this view of the subject, in some measure, account for the pertinacity of the gentleman last up from Connecticut, and the last gentleman up from South Carolina, on the question before you? But if these gentlemen are for continuing the tax on carriages, because it operates favorably to their constituents, it is to be hoped that the candor of the gentlemen will permit the members from Massachusetts to vote in favor of the repeal of a tax so apparently unequal and unjust as it relates to that State. There is as great a disparity in the proportion of this tax paid by Massachusetts, when compared with Virginia, North Carolina, Kentucky, and Tennessee, as when compared with the other States which I have mentioned; but much to the honor of the gentlemen from those States, they are willing to repeal the tax, and equalize the public burden.

Mr. Speaker, I may be permitted to make one remark, relative to the repeal of the internal taxes contemplated by the bill under consideration. In the first place, it is an obvious fact, that they operate extremely unequal among the several States. Massachusetts alone has stood chargeable with nearly one fifth part of them when taken all together, from their first introduction up to this time. It will not, therefore, be thought improper in the members from that State, to solicit the repeal of so unequal and so unjust a burden. But, sir, the high and satisfactory motive for a repeal, is derived from a firm belief that they are no longer necessary. The retrenchments of the present session will be paramount to their product, and the remaining revenue will be amply sufficient to secure the public credit, and meet the exigencies of Government. It is therefore to be hoped, that the motion for striking out carriages will be rejected, and that the bill will be passed.

Mr. Randolph.—I shall give a different reason from any yet assigned, for voting against the motion to strike out carriages. Sensible of the fatigue of the House, I shall be as brief as possible in the expression of my sentiments, as well from a respect to their feelings, as from a regard to my own.

My reason for repealing this tax, is not because I think there ought not to be a carriage tax; nor because I do not consider that description of tax as fair and proper; but because I view it as a part of a system of taxation which is unequal and oppressive.

I am glad to hear that the importer receives double the sum collected. I will not deny, though I might, this extraordinary statement. I will only make one use of it, in which I am fairly warranted; and that is, that this imposition, which we have been so often told is paid by the merchants, and falls with such peculiar weight upon them, so far from being a tax levied on them, and so far from oppressing them, is, indeed, collected by them, advanced by them, but for which they receive an ample return from the labor of the community. As, therefore, we are told that the merchants do not receive less than a hundred per cent. on all sums advanced in anticipation of the revenue, it is to be hoped that we shall hear no more clamor about taxing one class of citizens to the exclusion of all the rest. The fact is, that the external duties are not an exclusive tax on that class of citizens; for there is no class, but that of the great mass of the people, that can afford to pay the enormous sums levied on imposts.

We are told the additional imposts upon salt, coffee, brown sugar, &c., were predicated upon war measures. The answer is, let us retain these taxes to pay war loans, for which the war men of this country have made no provision.

If this tax on carriages be taken off, I have no idea that carriages will remain entirely exempt from taxation. The States will tax them, which, at present, they are, in many cases, unable to do, without rendering the tax a prohibition of the use of the article taxed.

A gentleman has told the House, on a former occasion, what is the interest of himself and his friends on the subject of taxation. He said, we have no interest to insist on the continuance of taxes, and asked, are we to be reimbursed what we pay? Are we not, on the contrary, to be ejected from all participation in the loaves and fishes? If gentlemen have no interest in these taxes, why persist in their system? I will answer for the gentlemen, what interest they have to continue the system, such as it was when they went out of power. A system of patronage has, with them, been a favorite measure; and they have the

same interest to continue this part, as the other parts of their system; because, if that party, as it is termed, should again come into power, as soon as an occasion offers, the same system will be brought again into operation.

We are told that the external taxes fall exclusively upon the consuming States. I am glad to hear it. It follows, then, that the manufacturing States pay the least portion of them. All know, it requires no superior intelligence to comprehend it, that every dollar laid on foreign productions operates as a tax on the consumer, and as a bounty upon our own productions. It must, then, be acknowledged that there is but little difference between the standing of the Southern and the other States. And when it is said that they pay a lesser proportion of the internal duties than the other parts of the Union, I ask if that is not proper; inasmuch as they pay more than their proportion of the external duties?

When this Government was first thought of, what was the contemplation of the nation as to taxes? Was it not conceived that Congress would be confined to an ad valorem duty upon imported articles? Instead of that, the Government was vested with ample powers. In addition to the exclusive power over duties on imports, the whole field of excise, direct taxation, &c., was opened to them. But was it not understood that these latter sources were only to be used on extraordinary emergencies?

I will ask, if the cultivators of tobacco, cotton, and other valuable productions, do not consume imported articles in a greater proportion, than is consumed in States without staples. You then tax those who are not only able, but willing to pay. And let me say, there is no species of taxation so oppressive, whatever its amount, as that which compels the individual taxed to retrench his personal freedom, that calls upon him to pay a specific sum, and compels him to pay, no matter what his ability is. Thus, the contribution of the consumer of imported articles depends upon his ability and disposition to pay, and if he pays more than his proportion, he can censure no one but himself. Observe the difference between the situation of this man, who pays his tax voluntarily, and that of him who is called upon to pay for his still, or for a stamped instrument of paper, predicated on an existing debt, but from which not a farthing may accrue to either party.

Besides, there is one great distinction between the effects of reducing the external taxes, and abolishing the internal revenues. If you reduce the duties on salt, tea, sugar, &c., you do not abolish a single office. But, by taking off the internal duties, you abolish a host of offices. Look, too, at the facility with which the duties on imposts are collected. Eleven millions are collected in fifty-four towns, by a few collectors, surveyors, and naval officers. Compare, with this view, the large number of officers required to collect the small sum derived from the internal revenues; and yet, the tax upon imposts is unequal, because Virginia only imports six millions, while South Carolina imports fourteen millions. I had not supposed that a gentleman whom I have known from infancy, and for whom I have invariably entertained the greatest respect, would, knowingly, have attempted to mislead the House. No doubt, the gentleman thought his statement correct. But I will ask, what respect ought to be paid to the facts of a gentleman, or to arguments deduced from those facts, who makes the total amount of imports and exports introduced into, or taken out of the respective States, the same with the amount of articles consumed or raised in those States? Do we not know, for instance, that Charleston is the great market, not only for South Carolina, but also for other adjoining States; that it is the importing and exporting town of an extensive district of the Union; and is not the case precisely the same in other parts of the Union? I am the more authorized to make this appeal, from the gentleman having told us that our tonnage is about to be reduced; that our merchants are about selling their vessels to foreigners; and that, therefore, we are about to lose a valuable branch of our revenue. But let us attend to the relative amount of domestic tonnage and foreign tonnage. Let us recollect, too, that our own tonnage is precisely in the inverse ratio of our revenue; and that, in proportion as we have substituted American in the room of European shipping, has our revenue derived from tonnage diminished.

The gentleman says, he wishes to retain these taxes, because the Western States pay so small a proportion of the duties on imported articles. But the fact is, that the States of Kentucky and Tennessee pay their full proportion. It is true that they do not themselves import, but they consume goods imported into Charleston, Norfolk, Baltimore, &c., which goods find their way to those States.

The gentleman condemns me for not now voting for a repeal of the tax on salt, inasmuch as on a former occasion I was strenuous against the imposition of it. But I will ask that gentleman whether, when I was so strenuous against the imposition of that tax, either he or his friends offered to commute the whole internal taxes for it? I am ready whenever circumstances shall admit, to diminish that duty, but not with the views of gentlemen, who are not so much in favor of reducing the public burdens, as for throwing an odium upon other measures equally necessary, and for casting a shade of unpopularity upon this act. Why do I say so? Because, when power was in their hands, they were not for reducing them an iota. On the contrary, their system was to get all they could, and keep all they got. They would not commute even the Sedition law for any duty or tax. As it had been well said by a gentleman from Kentucky, now power has parted from gentlemen, they are willing to reduce the taxes, to take them entirely out of our hands, and instead of letting us apply them, they say let us do it, and let us use your power to do that which is disagreeable to us, in the way that is most agreeable to you. This, and nothing more nor less, is the amount of the remarks of gentlemen.

After having experienced the benefits of the

system of these gentlemen, we are now told they have made a great discovery in the mode of reducing the public expenses. Pity it was not made while those gentlemen were in power. So long as they enjoyed the power, the idea of reducing the public burdens never entered into their minds; at any rate we heard nothing of it if it did. But so soon as the nation had dismissed them from power, so soon as any disposition to that effect became inefficient, we hear the gentlemen loudly contending for a reduction.

When gentlemen say they are not anxious for extending a system of Executive patronage, we are willing to give them credit for what they say. But let us see what credit we are entitled to when we say the same thing. We show, on this occasion, as I trust we shall on all occasions, that we do not take up their principles with their power; that, on the contrary, we advance the same principles now, when in possession of power, that we did, when we had scarcely any prospect of getting into power.

Of all the articles of internal revenue, if any were retained, no doubt that upon stamps should be retained, as it is at once the most productive, and the least expensive in collection; and yet, what do gentlemen propose? To retain the tax upon carriages, that only yields the inconsiderable sum of eighty thousand dollars, and give up that on stamps, which produces two hundred and forty thousand dollars. Why? because the latter falls on the merchants; and yet gentlemen say, in the same breath, the external duties fall on the consumer, and not on the merchant.

For my part, I am not to be deterred by any attempt to render this measure unpopular, from pursuing steadily that system which is congenial to the spirit of the Constitution, viz: to throw back the internal taxes into the hands of the States, only to be used by this Government on a national emergency. When this Government was established, we were informed that these taxes were never to be laid but on such emergency. Yet the Government had not been in operation more than two years, when they were seized, to rear that system of patronage, which, from the commencement of the Government, has been so favorite a measure. It is not my purpose here to trace that system of patronage through its various modifications, which has been more happily done by my colleague on a late occasion. But it is my object to restore the Constitution to its healthful state, by doing away these taxes; of which should we retain a part, however small, we might, on a mere change of men, see it soon ramified to the greatest extent.

Gentlemen tell us no saving has been shown to be made; but I think it has been clearly shown, that a saving has already been made more than commensurate to the whole amount of these internal taxes. In addition to this sum, is the difference between the amount received and that which is payable, which is more than one hundred thousand dollars, for which the Committee of Ways and Means have made no allowance. The fact will show the disposition of the committee, not to insist upon items of small amount, though in the aggregate those items amount to nearly two hundred thousand dollars, which is one fifth of the whole sum of these taxes.

We are told this act is unwise, as the state of things abroad is perilous, and that we ought not to part with the sum of $650,000, because the revenue from imports may fail. Do gentlemen mean to say that, in such event, we can rely on the sum of $650,000, for a defalcation in a revenue of eleven millions? If this argument means anything, it would dictate the organization of the system of internal taxation commensurate to the meeting of any defalcation that may accrue. Let us give them all they want. That defalcation may be thirty, fifty, or one hundred per cent.; and it follows that we ought to raise from these taxes five or ten millions of dollars. It is from the fact that this source is unequal to the supply of any great defalcation, that we are for giving it up.

I am sensible of having detained the Committee longer than I myself had intended, or they may have wished; but, from the situation in which I was placed as a member of the Committee of Ways and Means, I felt it my duty to trouble them even at this late hour. Before, however, I sit down, I must say that the committee have shown that a saving at least equal to, and probably a much greater sum than the amount of the internal revenues will be made. Estimating the contemplated reductions at the lowest rate, there will be saved in the appropriations for the army $400,000; for the navy $200,000—these will cover the internal taxes. The committee have said nothing about the abolition of the Mint, which will save $30,000; or of the Judiciary; nor have they brought into view the large amount of custom-house bonds not yet collected.

But we are told that this repeal is to take place at the expense of the navy, and that the navy is an institution to which the people are attached. The people certainly have a right to decide, whether they will vest large sums in the building of seventy-fours, or small sums, that they may pay their debts.

The estimates on which the gentleman from South Carolina relies, are not estimates made by the Secretary of the Navy for the present year, but for the last year, and the gentleman will find that the expenses of the present year, supposing that we keep up the squadron in the Mediterranean, will amount to a sum less, by $500,000, than the expenses of the last year. Is the gentleman prepared to show the statement of the Secretary of the Treasury to be incorrect? Is he prepared to say, that we cannot keep up the amount for what he estimates it at? We have heretofore heard much of confidence in Executive officers. I am not one of those who are for bestowing confidence, where it is not merited; but I have no hesitation to say, I will, until gentlemen show strong reasons for the contrary, give confidence to officers, whose character and whose offices depend on the fairness of their statements.

Mr. HUGER explained.—He said, he had not stated that South Carolina consumed the whole

that she imported; he knew the contrary. But he contended that South Carolina, and other States on the seaboard, paid a larger share of the duties on imported articles than the interior parts of the Union. Neither did he say, that the reduction in our tonnage would have any very great effect. He was aware of the difference between foreign and domestic tonnage. Yet, certainly, if the effect of a peace was the losing a large portion of our carrying trade, the amount of tonnage must sink.

[A motion was made to adjourn, and lost.]

Mr. GRISWOLD.—The question is, whether we shall strike out carriages. On this limited motion, I did not expect to have heard gentlemen go into a full examination of the merits of the whole internal revenue. Having, however, indulged themselves in the inquiry, it seems necessary to follow them, even though my remarks should fail in their application to the carriage tax. It is not true, as stated by the gentleman from Massachusetts, (Mr. BACON,) that the clergy of New England are paupers; they are not paupers.

Mr. BACON said, he had stated no such thing.

Mr. GRISWOLD.—They are not paupers, sir. They are able and willing to pay, with cheerfulness, their portion of the public burdens. It is not true that Connecticut does not pay her proportion of the carriage tax. The document shows that she does pay her proportion of it, though that proportion is not so high as that paid by Massachusetts. Gentlemen have made it needful to state the situation of the clergy of New England, in order to remove the imputation against that order of men, and to state the proportion of the tax paid by us to prove that we are not particularly interested in the continuance of this tax.

We wish to retain it, because we deem it necessary, because we deem it a reasonable tax; and because it is one that is less expensive in collection than other taxes.

We are persuaded that, if gentlemen will examine the documents on the table, they will find that though vast credit is due to the last Administration for the skill manifested by them in the establishment of the revenue; yet they will see that there is no certainty of its amount for the eight coming years being so productive as they seem to suppose. If they refer to the document, they will find that for the three successive years of 1790, 1791, and 1792, the average product of imports, calculated on the present rate of duties, was $6,153,000; they will also find that, for the six succeeding years, the average product was $8,350,000. Now, I think it is not safe to estimate the receipts for the eight coming years higher than those of these six years. It is to be observed, that these six years included a period of war, which extended the value of our exports, rendered the consumer better able to pay, from the high price received for the productions of his labor; and increased the consumption of luxuries more than in time of peace. It will also be evident that a variety of items which have gone to make up the aggregate of the revenue, will, in time of peace, fail. There are $86,000 estimated on drawbacks, which arose from duties paid on imported articles, afterwards exported from the United States, and which will cease the moment the carrying trade ceases. Will any gentlemen say, that in time of peace we shall continue to import articles for the consumption of Europe, the Spanish colonies, &c. This item, from its nature, is calculated to cease at the end of the war. It must cease.

Some duties must be reduced. Of wines, the average product of the duties for the years 1790, 1791, and 1792, was $317,000; for the six succeeding years, it was $714,000. Do gentlemen think this amount will be kept up? During war, your citizens are able to purchase. In peace the ability must decline.

The duty on sugar, in three years, has risen from $560,000 to $902,000. The duty on coffee has risen almost in the same proportion; and if it is not reduced, you will lose by its being smuggled; the temptation will be too strong to be resisted.

You cannot, therefore, calculate upon more than the average of the above six years. Indeed, you cannot with safety calculate so high. The Secretary of the Treasury has grounded his calculations on the idea that the consumption of foreign articles will increase with our population. But I totally disagree with him. I will ask whether you will consume more than you can pay for? I will ask how you will be enabled to pay for more now, in a time of peace, than you were enabled to pay for formerly? Are the European markets, or those of the West Indies increased? If not, it will follow that the consumers of your produce are not increased, though your productions are increased. And this state of things, instead of increasing the consumption of foreign goods, will only tend to increase your manufactures.

Other circumstances, too, have arisen, that have enabled us for some years past to pay for more goods than we can expect to be able to pay for hereafter; viz: the funding the national debt, and the selling a large amount of stock abroad. I hope we shall have no more national debts to fund.

If it is not safe to rely upon a higher amount of duties than the average receipts of the last six years, then you cannot rely upon a higher annual receipt, for duties on foreign articles, than $8,350,000. But suppose you derive $8,500,000 from this source. In addition to this fund, the Secretary of the Treasury calculates upon receiving annually $400,000 for the sale of lands. I am inclined to believe the amount will not be so large; but set it down at that. The postage of letters will yield $50,000, and the dividends upon bank stock $71,000. And here you have the whole amount of your revenue, with the exception of a trifling sum for patents, fines, &c. The whole in the aggregate amounts to $9,071,000.

I will now inquire into the expenses for the eight coming years. According to the Secretary of the Treasury, we are to pay $7,300,000 on account of the debt. But I will not take his calculation. I will state it at $7,000,000, which we must pay; the civil list $780,000—it will be understood that this is only what is absolutely necessary; the foreign intercourse, &c., estimated

at $200,000; the Military Establishment $1,420,000, as estimated at the opening of Congress, and which is the estimate of the ensuing, and not of the past year, as stated by the honorable member from Virginia.

Mr. Randolph said he did not state it to be the old estimate, but an estimate formed on the old basis.

Mr. Griswold—I took it so. It is not safe to put the expenses of the Military Establishment, for the eight coming years, lower than this estimate. Gentlemen ought to consider the situation in which we are placed. They ought to consider our neighbors on the frontier, and those who are likely to be our neighbors. They ought to consider the accidents to which all nations are exposed. They ought to consider the necessity of sending a strong garrison to the posts on the Mississippi; and when they consider all the circumstances, they will agree with me, that it is not safe to trust the defence of the country to arrangements that will involve a smaller expense.

At the beginning of the session, the expense of the navy was estimated at $1,100,000 dollars; we since find it reduced to $900,000. On this estimate I have two remarks to make. I ask whether gentlemen are content to take this estimate for the eight coming years. How is it to be made out? By striking off $150,000 appropriated to progressing in the building of the seventy-fours, and $50,000 for making navy yards. What is meant by this? May not gentlemen as well lay down the navy at once? You have not at present a single dock where a large vessel can be commodiously repaired; and to make such a dock will cost at least $50,000. It is easy to make this reduction on paper; but we may as well burn our ships of war, or give them as a present to our sister republic. I trust, however, the country is prepared to give up the protection of commerce; and if not prepared, we must devote annually $1,100,000; which indeed, is short of what will be required.

Taking the old estimates, which are the only correct ones, Government must expend annually $10,500,000. But make a reduction for the Military and Naval Establishments of $500,000, which the necessary measures of the Government will not warrant—and the annual expenditure will be $10,000,000; compare with this, your revenue, which only amounts to $9,071,000.

And in this estimate, I have made no allowance for that infinite variety of contingent events that under every Government are constantly arising. I ask, then, if it is safe, or proper, to give up the carriage tax, and all the other internal taxes, when they will probably be wanted for the expenses of the Government?

I am perfectly aware that our finances are in such a state, owing to the great skill with which they were managed under the old Administration, that we have now three millions of surplus revenue in our Treasury; and that gentlemen, by applying this sum to the wants of the two or three coming years, may meet the expenses of the Government, and perhaps go on till another Presidential election. But I trust we shall not act upon this narrow system. I trust we shall not look forward only to another Presidential election. But that taking into our view the eight ensuing years, at the expiration of which time, in consequence of the reduction of the debt which will then have been accomplished, a large sum can be dispensed with, we will wait till that period arrives, before we dispense with these branches of revenue, or any other.

Believing it unsafe to abandon any of these taxes, I shall vote against repealing all of them. I have, of consequence, no idea of giving up the tax either upon stamps or stills. I believe all to be necessary; as necessary for the support of public credit, as for the honor and safety of the nation.

We have no pecuniary interest in retaining these taxes. We share not the loaves and fishes; but we are deeply interested in the support of public credit, in the safety and honor of the nation; and let money go where it may, I will always vote for money enough to support public credit, and to maintain the honor and safety of the nation.

I believe that, in this project, more is intended than is expressed. I know, whenever a deficiency shall occur, where it will fall. I know that it will fall on our Naval Establishment. Look back to the sentiments and conduct of those who once held seats on this floor, and who now hold high offices under the Executive, and show me when they voted a cent for a Navy. Did they not invariably say, let commerce take care of itself? Yes I have heard these declarations, and they account for these measures to starve the Navy. It is, therefore, I feel alarmed, knowing full well where the deficiency is to fall.

But it is said, the collection of the internal taxes is attended with great expense, and, therefore, they ought to be given up; that they increase Executive patronage, and, therefore ought to be surrendered. I deny that their collection costs more than that of duties on imports. It is stated by the Treasury officers, that the expense on imposts is only five per centum. But how often have you been told that your merchants are only your collectors. Gentlemen have never heard me say that all the duties fall on the merchant. I know the contrary; and I know that, to protect the fair trader from injury, all you have to do is to make them so high as to produce smuggling, or so prompt in their payment as to prevent the merchant from collecting them from the consumer before he pays them into your Treasury. But the merchant sells to the retailer, whom he charges twenty or twenty five per cent. on the duties paid by him. Before the articles sold get into the hands of the retailer, they come charged with an advance of twenty-five per cent. The retailer sells to the consumer with his thirty-three per cent. added. I did not say they stood charged with one hundred per cent., but with forty per cent. at least. All those who make these charges are collectors; so that the fact is, that instead of costing five per cent., as asserted, they cost to the

man who pays the tax—the consumer—more than forty per cent.

Let us in this view of comparative expense, turn to the other branch of the subject:

1. As to carriages.

The Secretary of the Treasury informed us, at the beginning of the session, that the internal revenues, taken together, cost in collection nineteen per cent. Now that officer acknowledges that they do not cost more than fifteen per cent. When an officer states one thing to day, and another thing to-morrow, I submit whether it is not better to make our own calculations. It is easy to prove that, in Massachusetts, the collection of the internal taxes does not exceed eight per cent., and it may be made equally low elsewhere. Therefore you may reduce this sum within ten per cent. Indeed, if you carry these taxes as far as you ought to do, to meet and equalize the duties on imported goods, you may bring the collection down to five per cent. Carry the duty on distilled spirits as high as on imported spirits, and my life for it, the expense will not be greater.

But, from another view, it will appear that the expense paid by the consumers of the objects of internal revenue, is not so high as on imported articles. For instance, distilled spirits are either retailed by the distiller, or sold directly to the retailers, and the distiller charges ordinarily no advance upon the tax, but gets his profit by being paid for the labor of distillation; this makes a difference of twenty per cent. In other articles, in licenses to retailers, there are no additional charges, no twenty per cent. Sales at auction are in the same situation; with respect to carriages, there is a still greater difference. The consumer pays nothing but the tax, without paying any commission or profit. Stamps are precisely so situated in most parts of the country.

The calculation, therefore, is fallacious, that makes the expense of collecting the internal revenue greater than that on imported articles; as, with regard to the latter, the consumer, in paying your duties, not only pays the collection, but also pays the merchant and retailer. So that these internal taxes are collected with the least expense of any. For what matters it to the consumer, whether he pays twenty per cent. to the merchant, or to the retailer, or to your officer? He actually pays it in either case.

Now, this being clear, and also that the taxes may be so modified as to be collected still lower, particularly that on carriages, (which may be collected by the deputy postmaster, who may receive the tax of persons living at a distance through the mail,) I ask, why give up the internal taxes in preference to those on imported articles? The gentleman from Virginia (Mr. Randolph) tells us that the system of internal taxes is repugnant to the theory of a free government; that it requires a host of officers to collect them. But what is the danger from this source? Is it not well known that the tax gatherer is always odious, and that instead of having influence to subvert the Government, he ceases, as soon as he becomes an officer, to have that influence he would otherwise have possessed? The officers, too, are very few—only one supervisor and a few collectors in each State. The gentleman must think very contemptuously of the people, to suppose that they can be corrupted by a few officers, with inconsiderable salaries. For these reasons, I consider the objection an argument against everything; as applicable to the Army, the Navy, and every other important object that can be named. It is an objection which may do to talk about, but which has no solidity in it.

I have only one further observation to make; and that is, that if we can part with any taxes, though my opinion is, that if we sincerely mean to support the credit of the Government we cannot part with any, but if we can, we ought to give up the tax on some imported articles. Coffee is taxed five cents a pound; the present price, including the impost, is not more than twenty cents; the duty is more than fifty per cent. on the cost abroad. This enormous duty is a great temptation to smuggling. It can be easily done. Let gentlemen look to the seacoast. The temptation to gain fifty per cent. is immense; and I am apprehensive the practice may be gone into, unless you lessen the inducement; and in that event your revenue is gone; for the payment of it depends upon the honor of your merchants. Such is your seacoast, that the vigilance of a thousand officers could not resist the practice, if the disposition were not wanting. If this duty on coffee shall produce smuggling in the merchant who imports it, his neighbor, who imports sugar, will say, my neighbor is growing rich by this practice; I have the same right with him; and the practice will catch like wild-fire. We ought, therefore, to put these excessive duties down.

Besides, as to sugar, that, in my opinion, is a necessary of life. The duty is fifty per cent. on its first cost. It must, therefore, be oppressive; and if we can dispense with any of the impositions, it ought to be with those which fall upon the necessaries of life, which are consumed by the poor.

For these reasons I am for retaining the carriage tax, for retaining all the internal taxes, and for modifying and improving them. I believe that in this way the expense of the collection may be greatly lessened, and such a modification of the taxes take place as shall produce an equal pressure of the public burdens upon the whole community.

Mr. Bacon said he should reply to the honorable gentleman from Connecticut only by declaring in so many words, that his (Mr. G's.) answer to his (Mr. B's) observations, was predicated solely on his own assertion, as a fact, and on the repetition of the same assertion, of what was totally void of truth; and that, for a reason sufficiently obvious, he had refused to give him an opportunity, in its proper place, to correct the error.

An adjournment was moved, and lost.

The question was then taken by yeas and nays, on striking out carriages, and lost—yeas 25, nays 48, as follows:

Yeas—Manasseh Cutler, Samuel W. Dana, John

Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Ebenezer Mattoon, Thomas Morris, Thomas Plater, Nathan Read, John C. Smith, John Smith, of Virginia, John Stanley, John Stratton, Samuel Tenney, David Thomas, Thomas Tillinghast, John P. Van Ness, Killian K. Van Rensselaer, and Peleg Wadsworth.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

Mr. RANDOLPH moved to insert in the room of "pleasurable carriages"—"carriages for the conveyance of persons," the terms of the law contemplated to be repealed. Carried without a division.

Mr. DENNIS moved to strike out "refined," for the purpose of inserting "brown" sugar.

He said it had been his purpose substantially to offer this amendment before. He had frequently made the attempt, but had as frequently been foreclosed by the embarrassing motions of his opponents, and their rules respecting order.

Mr. RANDOLPH said he believed there were no internal duties imposed on brown sugar. Such an amendment will make the bill perfect nonsense.

Mr. DANA suggested to the gentleman from Maryland a modification of his motion, so as to introduce the words, "imported brown sugar" between "carriages" and "stamped vellum," in the sixth line.

Mr. S. SMITH wished to know whether it was consistent with the order of the House, or with the decency which one gentleman owes to another, to ascribe to those who had thought it their duty to make certain motions, motives and intentions different from those they had avowed? He said he was unwilling to enter into altercation with his colleague, or with anybody; but if gentlemen do not restrain themselves in their reflections on us, they will compel us to be as indelicate as themselves, and this House will be converted into a bear-garden.

Mr. SMILIE said, he had not the least disposition to prevent any motion being made that was designed to make an impression upon the public mind. But he was certain he did not transgress decency in saying that he had never seen such conduct displayed in a deliberative assembly—so many questions introduced to embarrass and distract the House. Gentlemen, however, calculated wrongly respecting the public mind. If he believed the observations of gentlemen, he should despair of the Republic. He entertained, however, little fear. If gentlemen sincerely believe our measures subversive of the public happiness, he did not blame them for their conduct. It is their duty to act as they do. But he could not forbear one remark: Who laid these taxes? As to the salt tax, gentlemen took pains to convince us that it will not be improper to reduce this tax. Mr. S. said he was no friend to the tax on salt; but as it did not form a part of the branch of internal revenues, he thought it improper in this place to take any notice of it. There was no district in the United States more affected by the tax on salt, or less by that on carriages, than the district he represented. But the people in that district consider the tax upon carriages as a part of a pernicious system, and will cheerfully bear all the present duties upon imported articles, that this odious system may be abolished, and they will feel that in doing what we have done, we have done all we could do.

Mr. DENNIS.—I may perhaps have expressed my impressions of the motives of my colleague too strongly. I did however think that I had been treated injuriously, and that I had been deprived of the right to make a motion which I thought I possessed.

With respect to the popularity alleged to be intended to be derived from these little motions, I am ready to acknowledge my object is to gain popularity; but it is that kind of popularity that arises from measures calculated to benefit the nation. With this object in view, I believe the internal taxes ought to be retained, and the duties on imports diminished.

But while gentlemen are charging us with aiming at popularity, are they indifferent to it themselves? Has not this report of the Committee of Ways and Means been three months in the making, and when made is it not blazoned in a certain print in a type three times as large as any other of our proceedings are printed in? I do not know why there is this distinction in the type, unless the object of gentlemen be popularity.

Mr. NICHOLSON asked if it were in order, or whether a member had any right to talk about the conduct of a particular printer.

Mr. DENNIS observed, that he would make no addition to his preceding remarks, as he had just finished when his colleague interrupted him.

Mr. S. SMITH said, he did not think his colleague correct in the information he had given the House. He did not himself recollect that he had avowed his intention to renew this motion. Nor did he know that it was his duty to omit doing what he thought right, though it might interfere with his colleague's popularity. He may distinctly take up each of these points; but Mr. S. said he had never seen this mode pursued of jumbling things together. As to the popularity which the gentleman courts, he would inform him that he had voted for the duty on salt, on sugar, and almost all the other dutied articles, and yet he had never lost popularity. He had always thought the best way to get popularity was to act right.

Mr. JACKSON wished, in order to save time, gentlemen would agree to take a question upon all the articles at once.

Mr. T. MORRIS said, in that case he should call for a division.

Mr. RANDOLPH moved the previous question. He said that whenever he perceived a question brought forward to vex, to retard, and embarrass the transaction of business, he should deem it proper to require the previous question. Gentlemen may persist in calling the yeas and nays; but, on as many such questions as they choose to move, he said he would call for the previous question.

The yeas and nays were then taken on the previous question, viz. shall the main question, to insert, after "stamped vellum, parchment and paper," the words "the duties on imported brown sugar," be now put? and lost—yeas 25, nays 51, as follows:

YEAS—Manasseh Cutler, Samuel W. Dana, John Dennis, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Reed, Henry Southard, John Stanley, John Stratton, Benjamin Tallmadge, George B. Upham, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Robert Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, and John P. Van Ness.

Mr. T. MORRIS moved to insert the words "duties on imported coffee;" which motion the Speaker declared out of order.

A call was then made, for the question to engross the bill, in order to its being read a third time: On which call,

Mr. SPEAKER declared that, in his opinion, it was not in order to engross the bill, until the main question on the motion on which the previous question had been called for and taken, should be put and decided by the House; and that it was farther the opinion of the Chair, it was not in order to call for, or put the main question on any motion the same day on which the previous question on such motion was called for, and decided in the negative, by the House.

Whereupon, an appeal was demanded from the decision of the Chair; when, an adjournment was called for, and carried.

FRIDAY, March 19.

A memorial of the Washington Building Company was presented to the House and read, praying that an act of Congress may pass to incorporate the said company, to encourage and promote the erecting, building, finishing, and purchasing dwelling-houses, and other buildings, in the city of Washington.

Ordered, That the said memorial be referred to the committee appointed on the eighth of December last, to inquire whether any, and, if any, what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the twenty-seventh of January last and the seventeenth instant, the memorials of the Philadelphia Chamber of Commerce, and of sundry inhabitants of the town of Newcastle and its vicinity, and of other citizens of the State of Delaware, and to whom was also referred, on the eleventh instant, a motion "for the appropriation of —— dollars, for the erection and repair of piers in the river Delaware," made a report thereon; which was read, and ordered to be committed to a Committee of the Whole House on Monday next.

Mr. S., from the same committee, presented a bill relative to public piers in the river Delaware; which was read twice, and committed to the Committee of the Whole House last appointed.

Mr. SOUTHARD, from the committee appointed on the tenth of December last, presented a bill further to alter and establish certain post roads; which was read twice, and committed to a Committee of the Whole House on Monday next.

Mr. DAVENPORT, from the Committee of Revisal and Unfinished Business, to whom it was referred, to examine and report such laws of the United States as have expired, or are now expiring, made a further report, in part; which was read and considered: whereupon,

Resolved, That the Committee of Revisal and Unfinished Business be instructed to report a bill fixing the compensation of the officers of the Senate and House of Representatives.

INTERNAL TAXES.

The House resumed the consideration of the bill to repeal the internal revenues. Whereupon, the appeal from the decision of the Chair, demanded yesterday, and suspended by the adjournment of the House, was renewed.

Mr. L. R. MORRIS called for the yeas and nays.

A division of the question on the said appeal, was called for by Mr. BAYARD.

And on the question, "is the first part of the decision of the Chair in order, to wit: 'That in the opinion of the Speaker, it was not in order to engross the bill, until the main question on the motion on which the previous question had been called for and taken, should be put and decided by the House?"

It was resolved in the affirmative—yeas 48, nays 29, as follows.

YEAS—James A. Bayard, Robert Brown, Thomas Claiborne, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William

Dickson, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, William Jones, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchill, Thomas Morris, Joseph H. Nicholson, Joseph Pierce, Thomas Plater, Nathan Read, John Smilie, John Cotton Smith, John Smith, of New York, Richard Stanford, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, John P. Van Ness, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, William Butler, Samuel J. Cabell, Mathew Clay, John Clopton, John Dawson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, William Helms, James Holland, Benjamin Huger, George Jackson, Michael Leib, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph jr., John Stewart, Joseph Stanton, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Joseph B. Varnum.

On the question, "is the second part of the decision of the Chair in order, to wit: 'and that it was further the opinion of the Chair, it was not in order to call for or put the main question on any motion the same day on which the previous question on such motion was called for and decided in the negative, by the House?"

It was resolved in the affirmative—yeas 69, nays 4, as follows.

Yeas—John Archer, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, William Jones, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchill, Thomas Moore, Thomas Morris, Anthony New, Thomas, Newton, jr., Joseph Pierce, Thomas Plater, John Randolph, jr., Nathan Read, John Smilie, John Cotton Smith, John Smith, of New York, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

Nays—John Bacon, William Butler, John Dawson, and George Jackson.

Mr. Dennis moved to insert after "paper," in the sixth line, "duties on imported brown sugar."

Mr. Dana said it was not his object at this time to enter into a comparative view of the internal and external duties, but to state, that if it was the sense of the House that the duties on imported articles should be reduced, the regular mode was first to abolish, and then reduce them. This is the regular mode, because by pursuing it, one law will contain the whole rate of duties. This mode had been pursued in revenue acts heretofore passed. [He here quoted the provisions of several acts, which he stated to be to this effect.] He knew the title of the present bill was to repeal the internal taxes; but the title being the last part of the bill agreed to, may be easily altered and accommodated to its contents. This course, Mr. Dana thought the most consistent, as this may be the only revenue bill brought before the House during the session, and may present the only opportunity of contrasting the external and internal duties.

Mr. Holland.—I am opposed to the proposition made by the honorable gentleman from Maryland, as I conceive it incompatible with the principles of the bill; were this a bill to regulate duties on foreign imposts, a proposition to insert or strike out brown sugar might be proper, as it would also be proper to insert or strike out salt, coffee, &c., as has been so often attempted, with a view, as I suppose, to obstruct or embarrass the passage of it.

Gentlemen on the other side of the House have been told by the patronizers of this bill, that it is a bill to repeal the internal taxes. This being the sole object of the bill, gentlemen cannot suppose that the advocates of it would suffer anything to be attached to it, that would have a tendency to protract or prevent its passage. As I view the proposition to insert imported brown sugar, as having no relation to the repealing the whole system of internal tax-laws, and as I consider the proposition calculated to defeat the passage of the bill, I am opposed to it. I am the more decidedly opposed to it, because the gentleman on the other side of the House have uniformly declared their opposition to the repeal of the internal tax-laws, and have at all times attempted to procrastinate the passage of this bill; this proposition being one other evidence of their intentions, excites me the more strongly to oppose it.

Mr. Speaker, I have long wished to see the time that Government would have it in its power to dispense with these taxes, particularly with excises and stamp duties, because I think them hostile to the genius of our Government. I know that Government has a Constitutional right to impose these taxes. But let it be remembered, that at the time the Constitution was formed and adopted, both by the Federal and State Conventions, it was then understood, that this power was only to be exercised in cases of the greatest necessity.

It was then said by those who advocated this power to be given to the General Government, that nothing but extreme necessity would ever influence the General Government to lay excise, or levy stamp duties; and that the necessity would not probably ever exist. Calculations were then made, and confidently asserted, that three and a half or four millions of dollars of an annual revenue would be quite sufficient to discharge our national obligations, and answer all the demands of the Federal Government; and that a duty on imports of five per cent. would afford this revenue. Under these impressions the Constitution was adopted; and I yet believe, had the Government observed a proper and sound economy, in her first

advances, that there would not have been a necessity to have resorted to those taxes. But, contrary to the opinions entertained when the Constitution was formed, and without any occurrence that rendered it necessary, soon, very soon, indeed, Government proceeded to lay internal taxes; and, without any regard to the prepossessions or prejudices of the great bulk of her citizens, she resorted to the most odious of all taxes—excise and stamps—the names alone carrying an odium that cannot be wiped off during the existence of the present generation. Our fathers from Europe, perhaps from the abuse in the collection of those kinds of taxes, or from whatever other cause, held those taxes as obnoxious, and will continue to consider them as odious, in whatever mode you place them. The odium extends into the domestic retirement of the husbandman, and it is in vain that gentlemen say that the citizens are contented with those taxes: let an inquiry be made of the honest laboring husbandman throughout this extended country. Let gentlemen travel and make the inquiry, and it will be found that nothing short of a love of their country, and a desire of peace, have caused the people to be passive under their operation, and they look forward with anxious hope for the time that they are to be relieved from them. The time, I hope, is now come, that their expectations are to be realized.

No part of the country consumes a greater quantity of salt, in proportion to their other consumption of foreign articles, than that part of the country which I have the honor to represent. It is a necessary of life; all descriptions of people must have it. Notwithstanding, if the Government must have the money drawn from them by excise and stamps, and had they their choice, they hold those taxes in such abhorrence that they would tell you to lay the excess upon salt, or upon any other necessary of life, and put down those obnoxious taxes. Such is the disposition of the human heart that you had better take one hundred cents from them in the way they approve than to take a single cent from them contrary to their approbation. These are my impressions of the opinion of my constituents, and notwithstanding the declaration of the honorable gentleman from South Carolina, (Mr. Huger,) respecting the opinions of his constituents, I think them the same with those of mine. I live near South Carolina, and know their localities, prepossessions, and habits, and do not hesitate in saying that the great mass of the people of that State would prefer a discontinuance of those taxes to any partial reduction of the duties on salt, brown sugar, or coffee.

The gentleman has informed us that his constituents consume a vast quantity of imports, and that the high duties bear hard upon them. I have no doubt but that the citizens on the seacoast, and in the gentleman's immediate district, live fast. Some of them have the character of living fast, and they are able to indulge themselves in luxuries. But the major part of the citizens of that State live in much the same manner as the citizens of North Carolina, or as those of other States; and I am confident would be highly gratified by a total abolition of the internal taxes.

The same gentleman has supposed that members on this side of the House, to procure their elections, have committed themselves to their constituents for the repeal of those taxes. I know not by what means that gentleman has procured his seat. It may be by his promising to his constituents to have the duties on salt, sugar, and coffee, taken off, and from this circumstance may arise his suspicion of us, and his great anxiety to comply with his promise.

But I will candidly say, so far as comes within my knowledge, no idea existed that Government could do without those taxes. The citizens expected some more favorable modification, so as to enable small distilleries (that at present are entirely cut up) to go on—distilleries that were carried on not from the profit arising from the liquor, but for the benefit of live stock, that, to the great injury of the country at large, cannot work under the present law, which is a much greater number than those that do work—for those that do distil are persons of large capital; persons of small capital not being able to comply with the requisitions of the law. Arrangements of this kind were expected; but the people at large, as well as myself, thought that it would take some time, spent in economy, after such a scene of extravagance, before the taxes could be dispensed with. I had no conception that so great saving could be made by lopping off officers. I had no knowledge of their enormous number; and I am now happy to find that greater retrenchments than were expected can be made, and am highly pleased that Government can go on without those taxes. They have been odious to the people, partial in their operation, and unproductive in the result; and if you charge to their account the evils they have produced, they have brought little money into your Treasury: they are odious and impolitic, for they hold out a premium for perjury. They operate on the moral part of your citizens, by reason of false returns made by those that are regardless of their oaths. They are unproductive, from the expense of collection, the host of officers that must be engaged in the collection, and from the evils they will for ever produce. Evils of this kind are not casually attached to other kinds of taxation; duties on salt, sugar, and coffee may be oppressive, but they are not odious, and they are productive, few persons being engaged in collection.

But it is said by a gentleman from Connecticut (Mr. Griswold) that we cannot do without the revenue arising from internal taxes, and that the people are in the habit of paying them, and that it would be dangerous to discharge them from what they have been accustomed to. It is true that the citizens have been in the harness, and drove on until they have no idea of resistance. But I wish to see the harness thrown off them. I wish to see them restored to that state of freedom that was contemplated at the time of our entrance into the Federal Government; and that they should not be fettered with taxes, that were only intended as the last resort; that were only intended in cases

of the first necessity; and whatever may be the consequence of this emancipation, if it throws us in the back-ground, I shall be contented under a belief that it will not be in the power of any succeeding Administration to resort to excises for twenty years to come, unless there is the most urgent necessity. That they will not dare to do it upon imaginary or pretended necessity. The necessity must exist, and not till then I wish to see those taxes resorted to. The honorable gentleman tells us that he has no reliance on the heads of departments, and that more money will be necessary than is required by them.

I believe that it is the first time that the heads of departments in any Government have been suspected of not asking money enough for the administration of Government. It is the first time that the Administration of the American Government has been liable to this charge; and had the former Administration continued, they most assuredly would not have been chargeable with this offence. And permit me to say, that a much larger sum would have been necessary. But the Administration has changed, and with it a change of measures; the enormous sums of thirteen or fourteen millions of dollars per annum are no longer consumed. But does the gentleman suppose that his opinion should be substituted for the calculations made by our heads of departments: that the Legislature ought to adopt his suggestions in lieu of official documents? This, to be sure, would be treating that gentleman with a high degree of complaisance and respect. The honorable gentleman has also informed us that owing to the great industry of the late Administration there are two or three millions of dollars in the Treasury, and by this means Government may go on a year or two. I am willing to admit that the late Administration has been exceedingly industrious in drawing money from the people, and that their invention and industry have extended in every direction and to every object, and that nothing from which money could be drawn was left untried or untouched. But I think in these respects they have drove on too fast, and drawn from the people as much money in six years as ought to have been taken in twelve years. Indeed I believe that by the time the direct tax is paid, that Government will have received all the money that is in circulation. Some time will be necessary to enable the people to obtain a fresh supply.

I also think it bad policy in Government to wrest from the people all their circulating cash. I think it better for the Government that the Treasury should be poor and the people rich, than that the Treasury should be rich and the people poor. If the people are left with money in their hands, it adds to the means of their wealth, and when the necessity of Government calls for aid, that will be given by her virtuous citizens; but it is otherwise if the Treasury is rich and the people poor. I therefore wish to see a rich and independent people, and a poor Treasury, in preference to an indigent people and a rich Treasury.

Much has been said respecting an expression that dropt from a gentleman from Massachusetts, who I trust is a friend to this bill; the expression was, that the taxes were already half repealed; this has been tortured to mean that the friends of this bill are under Executive influence, and because of an indication in his Message in favor of the repeal the report is an Executive measure. Sir, not only the Executive, but the corresponding good sense of the most enlightened citizens of this country, has already more than half repealed those taxes, and had the sound understanding of the people been consulted, those taxes would not have been laid; and, as we now know from the best authority that Government can go on without them, we should be unmindful of our duty and of the voice of the nation were we not to repeal them.

An honorable gentleman from Maryland, (Mr. Dennis,) who is the author of the proposition to insert imported brown sugar, announced to the House that his object in this and in all the propositions that he has made on this occasion, is popularity. This being his object he is entitled to all the benefits that he can derive from them. I know not that gentleman's constituents, but it appears to me that they will understand the history of his measures, and if they do, I shall not envy him all the popularity that he shall take by his measures. His constituents will discover, that if any one species of internal taxes is retained, that the system is preserved; and would they, for a reduction of the duties on salt, sugar, and coffee, agree to keep up four hundred and sixty lazy drones, that must have a salary equal to the amount of their collection? I think their constituents would think it more advisable to discontinue the system of internal taxes, and thereby compel those idlers to labor for their support, as it is not to be presumed that they are persons of opulence. The benefit the community would draw from their honest labor would be more than the amount of their collections; for I take it that Government is benefited in proportion to the increased productions arising from the labor of her citizens. It is therefore impolitic and odious to increase or continue useless officers. I therefore consider this amendment, with all the others proposed by the gentlemen on the other side of the House, as calculated to obstruct or prevent the passage of the bill, and as I am fully impressed with a belief that the bill ought to pass, I shall vote against the proposition to insert imported brown sugar.

Mr. Dennis said he only wished a fair decision on his motion, and had intended to leave it to its fate, without a single comment.

His proposition had, however, been from time to time suspended; sometimes by the previous question, sometimes by being divided, and by appeals from the Chair. He wished not to produce delay, but he should continue to persevere in the right to have the question fairly stated to the public, until that object be attained. After the delay arising from appeals from the Chair, and divisions of motions, &c., and the long speech of the gentleman yesterday, he hoped the majority would no longer complain of procrastination. He did not mean to reply to the whole of the observations of the gentleman last up, for they were generally out

of order, and much more applicable to the whole bill on its final passage, than to the motion before the House.

That gentleman, said Mr. D., has told us that the object of this bill is to repeal the internal taxes. This, I suppose, we should have discovered without the aid of the gentleman's sagacity. On the contrary, it is my object to retain the tax on carriages, on refined sugar, on retailers, and on sales at auction, because they are applicable to luxuries used by the rich; and to reduce the tax on brown sugar, on coffee, bohea tea and salt, or on some of them, because they may be considered as necessaries of life. We are told this is not the proper place to make the comparison, and the gentleman (Mr. Holland) tells us, after this bill is passed, he will co-operate with us in reducing the tax on brown sugar. That gentleman, sir, must know that we cannot dispense with these taxes, and those on sugar and coffee likewise; and that when this bill shall have passed, it will be too late to attempt the reduction he speaks of. This is then the only time and place, when and where we can take the comparison, and make our election, whether we will repeal the tax on carriages, on retailers, on sales at auction, and loaf sugar, or reduce them on brown sugar, tea, and other articles beforementioned.

But the gentleman from North Carolina (Mr. Holland) says the very name of excise is odious to a free people, and that it has been found so in practice. When he proceeds to prove his assertion, he appeals solely to the tax on stills. Without inquiring into the truth of the assertion as applicable to stills, Mr. D. said he would remind him the first motion he made on this subject was, to distinguish between the tax on stills and other internal revenues. Mr. D. said he was willing now to repeal the tax on stills; and if they would confine themselves to that tax, he would co-operate in the measure. He conceived the tax on stills as standing on different ground from the tax on carriages, retailers, and sales at auction, and on refined sugar, precisely because it was very troublesome in its collection, and requires a great many officers to collect it. This gentleman and his coadjutors are very anxious to repeal these taxes, they tell us, because they wish to get clear of a host of officers. They cannot surely expect this to delude the public.

Take off the tax on stills, and they may discharge all these officers, and still collect the tax on the residue of these duties at a lower rate than we collect the impost. They may devolve on the deputy postmasters in some cases, and on the collectors of the customs in others, the collection of these taxes; and thus, sir, all this noise about a host of officers is hushed into silence.

A gentleman from New Jersey (Mr. Southard) supposes if we devolve the collection of the tax on carriages on the deputy postmasters, it will become burdensome to make the entries—and asks, with a great deal of emphasis, What! will you compel your citizens to travel forty or fifty miles to enter a carriage? Now let us see how far these assertions are supported by the fact. I know of no county, where there is, at present, more than one collector of this tax; but I know it is common to find three or four, and sometimes half a dozen deputy postmasters in a county; so that the distance to be travelled, to make these entries, would be diminished rather than augmented; and yet, sir, this is the kind of reasoning by which we are to be persuaded it is best to release carriages, and continue the taxes on the necessaries of life.

But, says the gentleman from North Carolina, the people wish to be released from taxes; ask them if they do not. I have no doubt it is at all times pleasing to be released from taxes. But the question is not, in the abstract, whether they wish to be relieved from taxes; nor is this the fair way of stating the question. No, sir, ask the American people these questions; whether if we cannot repeal both the internal revenues, and reduce the internal duties, they would prefer to continue the tax on carriages, in order that they may reduce the tax on salt; whether they had rather take off the tax on loaf, or reduce it on brown sugar; whether they will continue to tax retailers of spirituous liquors, in order that they may reduce the tax on coffee; whether they would continue to tax sales at auction, to release the duty on bohea tea: and I will vouch for them they will answer, continue the duties on carriages, on loaf sugar, sales at auction, and retailers, (for these relate to mere luxuries,) and take off the taxes on the other articles, which are necessaries of life.

On yesterday it was intimated I was seeking after popularity, and that this was the object of my motion. This sentiment has been reiterated by the gentleman from North Carolina. Without inquiring what is the object of that gentleman and the patrons of this bill, I will candidly confess I do expect popularity from this measure. Popularity, however, is but a secondary consideration, and as such I shall always be happy to enjoy it. My duty I conceive is, whenever a question presents itself, first to consider what system of conduct will be most conducive to the public interest, and secondly, what will best comport with the public will; and if my views of public interest correspond with the national voice, I shall always be happy in the approbation of my fellow citizens. I believe this to be case in the present instance, and therefore I expect to derive popularity from these measures. But at the same time, I will tell that gentleman, that the popularity I aim at is popularity for that political party with which I am associated, and on the prevalence of whose principles rests, in my opinion, the prosperity of this country, and not my own personal popularity. Permit me to tell that gentleman, too, that a seat on this floor is not of so much importance to me as he may imagine, and perhaps not of so much consequence as he may deem it to himself; and that it is at least questionable whether I shall again solicit the representative character. I did not intend, as I before intimated, to pursue that gentleman through his desultory harangue, for the reasons before assigned, and will barely repeat that I will agree to repeal the tax on stills, but that I think, if any revenue can be spared, it is much

better that we continue to collect the duties on carriages, refined sugar, and other luxuries, than to continue the present high duties on coffee, bohea tea, salt, and brown sugar.

Mr. HUGER.—I merely rise to answer the observations of the gentleman from North Carolina respecting the remarks I have made on this subject. I had observed that if the object of gentlemen was not merely to acquire popularity, wisdom would have first dictated the making savings, and then the doing away unnecessary taxes. I also stated, that if we could spare $650,000, it was proper for us to take a general view of the community, and mitigate those burdens which were the most oppressive. I also stated that I was in favor of doing away the tax upon stills and stamps, and for retaining the other sources of internal revenue. With respect to popularity, I will say, that when I first entered into public life, it was at the fag-end of an Administration; and that it has been my misfortune to vote on all occasions for giving to Government the money wanted for the good of the country, and to vote against paying tribute to a foreign nation. I have never told my constituents not to pay their taxes; I have written no pamphlets against the Navy; I have never voted for paying tribute to our enemies, or for refusing to defend my country.

I know that, in the upper part of South Carolina, the tax on stills is heavy. I am, therefore, for modifying it. But I will ask whether in that district of country the taxes on carriages, refined sugar, &c., fall heavily? I said that no State in the Union, in proportion to its numbers, consumed more imported goods than South Carolina; and, therefore, concluded that the taxes on imports should not be continued longer than necessary. With respect to popularity, I have no objection to it; but if ever I obtain it, I hope it will be that which flows from good conduct, and not from my voting this way to-day and that way to-morrow.

Mr. BACON said he did not rise to give information to the House. He believed every gentleman had digested the subject before him, and had formed his opinion upon it; and that nothing more was now necessary than to express that opinion by a formal vote. He believed the only effect of prolonging the debate would be to waste time and incur expense. He conceived that, with regard to all the particular articles in contemplation to be inserted in the bill, they might be introduced with greater propriety into the bill on post roads than into the present bill. Both these bills related to revenue. The post office bill had the superior advantage of being a permanent law, while the object of the present bill is to do away a law, an entire system, odious and expensive; expensive because it requires a vast number of officers to execute it; and odious, because it increased a patronage hostile to a free Government.

The yeas and nays were then called on Mr. DENNIS's motion, to insert after "paper," the words, "duties on imported brown sugar;" which was lost—yeas 31, nays 53, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Mr. DENNIS then moved to insert "duties on imported coffee." On which the yeas and nays were called, on the motion of Mr. DANA, and were —yeas 28, nays 53, as follows:

YEAS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, John Stanley, John Stratton, Benjamin Tallmadge, Thomas Plater, Nathan Read, John Cotton Smith, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

An amendment was then made, on the motion of Mr. BAYARD, authorizing the return of money received by Government for the purchase of stamps remaining in the hands of the purchaser.

The question was then put on engrossing the bill.

Mr. BAYARD moved the postponement of the question till Monday.

The question was taken on Mr. BAYARD's motion and lost.

The question was then taken by yeas and nays on engrossing the bill, and carried—yeas 69, nays 26, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Archibald Henderson, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

NAYS—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Joseph Pierce, Thomas Plater, Nathan Read, John Cotton Smith, John Stratton, Benjamin Tallmadge, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, and Lemuel Williams.

When, Monday was fixed for the third reading, and the bill, with the amendments, ordered to be printed in the mean time.

MONDAY, March 22.

A petition of sundry merchants of the town of Natchez, in the Mississippi Territory of the United States, was presented to the House and read, praying such a revision and amendment of the laws of revenue as will relieve them from the payment of double duties on merchandise shipped from the ports of the United States to any port in the said Territory.

Memorials of sundry merchants of the town of Boston, and its vicinity, in the State of Massachusetts, and of sundry inhabitants of the towns of Norwich and New Haven, in the State of Connecticut, were presented to the House and read, respectively praying relief in the case of depredations committed on the vessels and cargoes of the memorialists, while in pursuit of their lawful commerce, during the late European war, by the ships and cruisers of the French Republic.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" to which they desire the concurrence of this House.

INTERNAL TAXES.

The bill for the repeal of the internal taxes was read the third time.

On motion of Mr. RANDOLPH the blank in the first section was filled with the 30th day of June next, which fixes the period of repeal of the internal taxes; and the blank in the second section was filled with the 30th of April, which is the day from which the office of superintendant of stamps is to be discontinued.

The question was then put on the passage of the bill, when Mr. S. SMITH spoke in favor of its passage.

Mr. S. SMITH.—Mr. Speaker, I was one of those who, at the meeting of Congress, did believe that it would be prudent to repeal the stamp tax only at the present session, and to permit the other internal taxes to remain until the next session of Congress. The repeal of the whole of those taxes being proposed, it became my duty to examine the subject fully; this I have done, and the result has been favorable to the repeal. I shall ask leave to make a few observations on the bill now on its passage.

It does not appear that any gentleman desires to prevent the repeal of the tax on domestic distilled spirits, for no member has moved to strike it out of the bill. I take it for granted, therefore, that its repeal is desired by all. Nor do I believe that the repeal of the stamp act is seriously objected to. I shall, in consequence, confine my observations principally to those duties, the repeal of which has been opposed. Three of those I voted for retaining in the bill, that is, for the repeal, to wit: licenses for retailers of liquors, sales at auction, and carriages for the conveyance of persons. My reasons I will now submit to the House. The laws laying those duties passed in 1794 for two years, were afterwards continued until August, 1801, and on the 23d of February of that year, were made perpetual. I have never yet heard any good reason assigned why a retailer of liquors should be compelled to pay for permission to pursue his business more than a wholesale dealer in liquors, a retailer of dry goods, a wholesale merchant, a lawyer, a doctor, or any other profession by which man obtains an honest livelihood. The exigency of the times induced the laying of that tax; but it was then said, that it was only for a short time, and would be repealed whenever it could be spared; it can now be spared, and ought to be repealed, for it is unjust. This tax ought to be repealed for another reason; its inequality as it relates to the States, and particularly as it relates to Maryland, the State I have the honor to represent. I have examined the documents from the Treasury, and find that Maryland paid for licenses in 1800, four thousand three hundred and ninety dollars, having nine members (under the new census.) Virginia having twenty-two, paid only five thousand six hundred and eighty dollars, and North Carolina, having twelve members, paid but two thousand five hundred and fifty-five dollars. Nay, Mr. Speaker, Maryland paid more than was paid by all the five States of Rhode Island, Vermont, Kentucky, Tennessee, and South Carolina, the whole of those States paid only four thousand five hundred and fifty-five dollars for retailers' licences. Can this be just? Can it be right? Ought a member from Maryland to continue a tax so unequal on his fellow-citizens?

Sales at auction.—This tax falls on those who, from necessity, or from a desire to raise money to meet particular objects, send their goods for public sale; or, it is paid by persons about to remove from one part of the country to another, and sell their little all to enable them to remove with their families. I have never yet heard any reason of force to show why a man who sells his goods at public sale should pay a duty on sales not paid by those who sell at private sale. This tax is still more unequal in its operation than that on licenses. Maryland paid, in 1800, for the tax on auctions, six thousand seven hundred and thirty-four dollars; Virginia, four thousand seven hundred and thirty-one dollars, and Connecticut only one hundred and forty-two dollars. Can it be just, that Connecticut, having nearly as many inhabitants, shall pay but one hundred dollars of a tax, where Maryland contributes to the same six thousand seven hundred and thirty-four dollars? It may operate with gentlemen from that State as a good reason for retaining the tax, but certainly ought to have had a contrary effect on my colleague, (Mr. Dennis.) The great inequality of the tax on auctions will appear more striking when gentlemen turn to the document, and see that Maryland actually paid more than eleven States, to wit: New Hampshire, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Kentucky, Tennessee, North Carolina, Georgia, and South Carolina; those States will have fifty-eight members on this floor, and paid, in 1800, but five thousand six hundred and twenty-six dollars on the tax on sales at auctions, when Maryland paid six thousand seven hundred and thirty-four dollars.

Carriages for conveyance of persons.—This tax has been considered by many as a direct tax under the Constitution. I did not think so on its passage, and voted for it, but now I cannot but have doubts on the subject, when I recollect the operation of the late direct tax, and the inequality of the carriage tax, as it respects the States. Wagons, on similar principles, might be taxed, and if they were, the New England States would pay no part of the tax. Would this be just? Maryland paid, of the duty on carriages, eight thousand six hundred and eighty-three dollars; Connecticut only four thousand five hundred and sixty-four dollars, being little more than one-half thereof, and the seven States of New Hampshire, Rhode Island, Vermont, Kentucky, Tennessee, South Carolina, and Georgia, pay together only three hundred and one dollars more than Maryland. The tax on carriages falls particularly hard on the district I represent. In the city of Baltimore more than one hundred carriages for hire parade the streets, besides a large number employed from that city on the roads. The owners earn an honest livelihood thereby; a tax on their carriages for conveyance of persons appears to me as unjust as a tax would be on carriages for conveyance of goods. Sir, this tax does not fall, in my district, on the luxurious alone. I am inclined to believe that more than two thirds of the tax is paid by citizens keeping carriages for hire, nearly the whole of the other third by our citizens for their convenience. I am persuaded that my district alone paid more, in 1800, to the carriage tax than was paid by Vermont, Kentucky, and Tennessee, and perhaps Georgia together. Can I (knowing this circumstance) ever give my consent to continue a tax every way so unequal?

I will be told, that, taking the whole four objects proposed to be struck out together, to wit: licenses, auctions, carriages, and refined sugar, that the result would be more equal. Sir, I have examined that subject also, and have found the result nearly similar. The gross amount collected on those four objects is two hundred and fifty-nine thousand eight hundred and ninety dollars; of this sum Maryland paid thirty thousand and sixty dollars, one eighth of the whole, and nearly double the fair proportion of that State. Connecticut paid but ten thousand five hundred and twenty-one dollars, being little more than one-third of that paid by Maryland. I will not say that this was good cause for gentlemen from that State to vote for the continuance of those taxes, but I will say, that it would be a bad reason for my colleague (Mr. Dennis) to offer for moving to strike them out of the repealing law. But, sir, the inequality, and, of course, injustice, will be more clearly shown, when it is known that Maryland paid nearly two thousand dollars more of those four taxes than were paid by the seven important States of New Hampshire, Vermont, North Carolina, South Carolina, Georgia, Kentucky, and Tennessee. Those seven States will have, after the next election, in this House, forty-two members, and have paid only twenty-three thousand three hundred and four dollars, when Maryland paid thirty thousand and sixty dollars, and will have nine Representatives. This must be unjust: the repeal ought to be made, or on some future occasion those States may think it convenient to increase those taxes of which they pay so very little.

But, Mr. Speaker, we have been told that taking the whole objects of internal taxation into one view, they will be found nearly equal as respects the States. I have also examined that subject, and have found the inequality as it respects the State I have the honor to represent, continued. Maryland paid, in 1800, of the amount actually received into the Treasury, charges and drawbacks deducted for that year, seventy-two thousand seven hundred and thirty-five dollars. Connecticut paid only twenty-two thousand six hundred and ninety-three dollars, not one-third of the payment made by Maryland. North Carolina paid forty-six thousand four hundred and seventy-nine dollars, and the whole seven following States only fifty-nine thousand and ninety-three dollars, to wit: New Hampshire, three thousand one hundred and forty-nine dollars; Vermont, one thousand three hundred and ninety-seven dollars; New Jersey, sixteen thousand one hundred and nine dollars; Delaware, seven thousand eight hundred and thirty-six dollars; Georgia, three thousand dollars; Tennessee, four thousand nine hundred and nine dollars; and Connecticut, twenty-two thousand six hundred and ninety-three dollars:

Add to those the amount paid by the wealthy and important State of South Carolina, and it will be found that one half the States of the Union paid less than ten thousand dollars beyond the single State of Maryland of the whole internal taxes for the year 1800. Thus you see that New Hampshire, having more than half the inhabitants of Maryland, and Vermont having nearly half her numbers, pay scarcely any part of the internal taxes. Are we, then, to be surprised if those States which scarcely pay anything—or if Connecticut, which pays so small a part of the internal taxes—should be found voting against the repeal? Yes, sir, we ought to be surprised; the injustice is so glaring, that the members must, in honor, vote for the repeal of taxes to which their citizens contribute so little; justice demands it of them, and they will obey her voice.

The very great inequality of each of those taxes—of the four conjointly, or of the whole of the internal duties taken together—will plead my apology with such of my colleagues as may have conceived that those taxes ought not to be repealed. Indeed, sir, I cannot but believe that had the subject presented itself to the mind of my colleague (Mr. Dennis) as it has to mine, he would not have given the opposition he has to the repeal. I must believe that he will not now vote for the continuance of taxes which fall so unequally on his State as those do. We have been told that the subject ought to be considered in a national point of view, and that those duties are objects of luxury. To the first, I do not subscribe. I have always supposed that my duty was to prevent an inequality of taxes being imposed on the State I was elected to represent, and carefully to attend to the interest of my constituents. I have yet to learn what luxury there is in drinking whiskey; nor have I been informed that retailers of liquors find much luxury in paying for their licenses. Does the seller at auction find it luxurious to pay a duty on the amount of his goods sold? The owner of an elegant carriage may feel the luxury of riding in it; but I doubt whether the man who keeps carriages for hire, or the people who keep chairs to carry their families to church, find much luxury in paying the tax. My colleague (Mr. Dennis) will tell us what is the luxury arising out of the stamp act. It is true that four hundred officers will be dismissed by the repeal; but however I may regret the injury some of my acquaintances may suffer, yet I do not believe that their loss of office will greatly disturb the tranquillity of the people; and permit me here to remark, that had the taxes on the licenses, auctions, refined sugar, and carriages, been continued, it would have required a great proportion of those four hundred officers to collect them; the cost of which would have been too great for their amount to bear. May not the desire of keeping their friends in pay, be a strong inducement with gentlemen to retain the taxes? To create offices has been the favorite system with some gentlemen; the system of the Republicans is to lessen their numbers, and dismiss all that are useless.

Mr. Speaker, it has been said that the revenue will not be sufficient (without the aid of the internal duties) to meet the exigencies of our Government; and yet we have seen those very gentlemen who make use of that argument, voting to repeal (in addition to the internal taxes) the whole duty on bohea tea, sugar, coffee, and salt, making together an amount of more than two millions of dollars. Had they succeeded, the Government must have stopped; it could not have met its engagements. But did they intend to succeed? No, sir, if they could have tacked those items to the bill, they would then have voted. I have no doubt, against the whole bill, and thus attained their sole object, to wit: to prevent the repeal of any of the internal taxes, or any reduction of the duty on salt, sugar, &c. Can we, sir, spare these taxes, and meet the wants of Government? I think we can. The Secretary of the Treasury reports, and it is conceded by all, that the revenues were fully equal to the expenditures under the existing laws, at the commencement of the present session; that having been the case, if the present Congress have already made savings by a reduction of the army, and a dismissal of useless officers to the amount of the internal taxes, then certainly the Government will be fully competent to meet every demand. Have we done this? I think we have, to wit:

On the Army Establishment, the difference of expenditure between that repealed and the law just passed, is, agreeably to the report of the Secretary of War - - -	$500,000
On the Naval Establishment (between the sum estimated on the meeting of Congress and that now required) a saving will be in consequence of a fall of wages and provisions of -	200,000
On the Judiciary (the law repealed) -	31,500
On the forts (less than the estimate) -	70,000
Making together - - -	801,500

The average annual receipts arising from the permanent internal taxes, has been declared by the Committee of Ways and Means (and their report has been admitted to be correct) to amount only to $600,000; the highest calculation has been $650,000. This being the fact, we can safely spare taxes to that amount, having already retrenched our expenses above $800,000. We shall make yet other savings, so as to make the whole, as I expect, amount nearly to one million of dollars. To save from public expense will be more pleasing to the people than to raise a similar sum from them by taxes.

It may be thought by gentlemen who have not particularly attended to the subject, that we shall be unprepared to meet the demand against the United States lately arranged under the British Treaty. I do not know the precise amount of the claim stipulated to be paid, but I do know the sum limited by the late Administration, beyond which our Minister could not go, and I have not a doubt of our being prepared to pay that amount. Gentlemen will turn to page eleven of the Secretary's report, and they will be satisfied. The Sec-

retary says, after stating a number of items of receipts, "Those several items (exclusively of several balances due by individuals, a part of which 'will eventually be received into the Treasury) 'constitute a sum exceeding three million of dollars, and may for the present be considered as resources sufficient to meet the demands against the 'United States, which may be eventually payable 'on account of the sixth article of the treaty with 'Great Britain, and of the —— article of the 'convention with France."

Mr. Speaker, it cannot fail to give pleasure to our constituents, when they know that we have met the payment of the interest on the deferred debt; that we have as much money in the Treasury as was left there by the late Administration; that we have discharged, in the course of the year 1801, of the principal of the public debt, two million two hundred and twenty-nine thousand dollars; that we have a fund amounting to three million of dollars ready to meet the demand under the British and French Treaties, or to meet any unforeseen deficiencies of revenue, that we can, with perfect safety (as it relates to our revenue) repeal the internal taxes; and can, notwithstanding appropriate a sum toward the discharge of the public debt, such as will, in eight years, pay thirty-two million of dollars, and in fifteen, completely discharge the whole debt. My colleague (Mr. Dennis) boasted that in nine years, four million of the debt had been paid, the same sum will, in future, be paid off annually, and that without laying any new tax; on the contrary, I am of opinion, that we may soon lessen the duties on some of those articles that gentlemen wished to clog this bill with.

Mr. Speaker, during the recess of Congress, the President by reducing the marine corps from twelve to four hundred men; by an excellent arrangement, as related to our debt to Algiers, by the recalling of unnecessary Ministers at foreign Courts; by the dismissal of useless officers, by an economical arrangement of the Quartermaster's department of the Army, and by other judicious measures, did save to the United States an annual expenditure of nearly four hundred thousand dollars. The President has recommended the lessening other expenses, and Congress have adopted, and will adopt, such as will, I expect, amount to one million of dollars. Let us therefore give his honest endeavors to save the public money, and to relieve the burdens of the people, our warm support and assistance.

Mr. Speaker, seeing that the internal taxes taken collectively, or each tax taken separately, are unequal in their operations as it relates to Maryland, and particularly so as it relates to my district—seeing that their collection requires four hundred officers, and that the pay of those officers consumes a large proportion of the money collected from the people—seeing by the saving made from our usual annual expenditure that we can safely spare the amount of those taxes; and believing that the people will the more readily submit to pay taxes that are necessary when they know that they will be relieved therefrom whenever the exigency shall cease to exist; I shall conclude by expressing a wish, that the bill to repeal the internal taxes may pass.

Mr. Dana said he could have wished, before the observations of the gentleman from Maryland, to have submitted a few remarks on the defects of the bill. [He here specified some amendments, which, in his opinion, the bill required.]

Mr. Griswold moved to recommit the bill to the Committee of the Whole House for amendment, and stated wherein he conceived it to require amendment.

Messrs. Randolph, Jones, Johnson, and Griswold, vindicated the correctness of the provisions of the bill; when the motion to recommit was taken, and lost—yeas 26.

Mr. Dennis.—Having been up frequently and involuntarily on this bill, it is with reluctance that I rise again. I have to regret my absence at the time my colleague animadverted upon the remarks which had previously been made by me, or on the proceedings in the progression of the bill in which I took a part.

Mr. S. Smith said he had made no remarks respecting his colleague in his absence.

Mr. Dennis.—I beg pardon for the mistake. My colleague, however, seems to have discovered a new argument, not derived from the general principles of the bill, but from local considerations. He conceives that Maryland pays infinitely more than her proportion of these taxes, and that it is therefore his duty to vote against their continuance. But I have frequently observed that the only way to inquire into this subject is to compare our internal and external revenue. Had my colleague attended to this circumstance he would have spared his remarks.

We have not documents whereon to ground a general view of the subject. But in the last year it appears there were collected of the internal taxes $72,735 in Maryland, and in the whole United States $919,719. I will remark, that if Maryland pays more than her proportion of the internal revenue, she pays infinitely more of the external duties. Of these last, Maryland pays more than a million, while the whole amount is only ten millions; that is, she pays one-eighth part of the whole external revenue, which is greater than the proportion of seventy-two thousand to eight hundred and nine thousand dollars, the sum calculated upon by the gentleman from Maryland.

I do not conceive that any accurate estimate of the sum actually paid by each State can be derived from the documents before us. I know that though a million of external duties is paid in Baltimore, yet that the whole of that sum is not paid even by the whole State of Maryland. The same is the case with the internal duties—for instance, that on stamps is first paid by the merchants, who do not ultimately pay it, but throw it on the consumer. The same is the effect of the duties on refined sugar and on sales at auction. For no duty is derived from sales at auction under an order of court. The sales, on which duties are paid, are chiefly derived from large commercial towns, and they are not paid exclusively there, but by

the great body of citizens of the United States, who consume the articles sold.

In Virginia, there is paid on stamps $17,000; in Maryland, $23,000. Thus it appears that in Maryland, which is so much smaller than Virginia, there is paid in the first instance a greater proportion of the duties on stamps; yet I cannot suppose there is a greater proportion of this tax actually paid in Maryland than in Virginia, as I know that Virginia consumes more. The document, therefore, throws no light upon the subject; the whole statements of my colleague are fallacious. The internal taxes, too, are chiefly imposed upon luxuries, the consumption of which bears no proportion to population. They are taxes operating upon a particular description of citizens; in general upon the wealthy; of course, where there are most wealthy citizens, the greater portion of these taxes is paid. This is particularly the case with the carriage tax.

I have before expressed my disposition to repeal the tax upon stills, not for the reason assigned by my colleague, because Maryland pays more than her legitimate proportion of this tax. I know that those who distil the most consume the least of imported spirits. Now the tax upon domestic spirits is infinitely less than that on imported spirits. The first pays —— cents, and the last 40 cents. The necessary consequence, then, of substituting domestic in the room of foreign spirits is, that we are liberated in that proportion from the duty on the latter. I am, therefore, for abandoning this tax, not because I think Maryland pays more than her proportion of it, but because it is inconvenient in the collection, and requires a great number of officers to collect it.

The real question is, whether the tax on internal articles is greater than that upon imported articles? No doubt the honorable gentleman (Mr. Smith) pays a greater tax upon internal than upon imported articles. But let the question be put to the mechanics of the country, and they will answer, retain the taxes upon all the internal articles except stills, and reduce the duties on those imported articles which are necessaries of life. Though a few wealthy individuals may pay large sums to the internal revenue, yet it will be found that nineteen-twentieths of the citizens of Maryland pay the most on imported articles.

This comparative view, in my opinion, is the only accurate one which can be taken. I am, therefore, still under the impression that if we can dispense with part of our burdens, it is better to retain part of the internal taxes, all excepting that on stills, and make a diminution in the duties on imported articles of the first necessity.

Mr. T. Morris.—We are called upon to destroy at one blow all our sources of internal revenue, and to rely for the protection of the Government exclusively on the external taxes. I am, for two reasons, against this step. In the first place, I am not convinced that we can do without this revenue. It may be deemed rash in me, after the gentleman from Maryland (Mr. S. Smith) has declared that he has inquired into the expenditure and the savings, and is satisfied of the extent of the last, to say that I am not convinced that we can dispense with these taxes. If I had not doubted before, his style of reasoning would not have convinced me. We do not know what sum we may be obliged to pay to Great Britain under our treaty with her, nor do we know the extent of our obligation, which a large portion of our citizens think well founded, to indemnify for French spoliations. Is it then proper to diminish our revenue before we have inquired into these circumstances?

But, in the second place, however well convinced I might be that we could spare these taxes, I would vote against the repeal of the taxes upon pleasurable carriages, sales at auction, refined sugar, and licenses to retailers, because they are for the most part paid by the wealthy and luxurious.

The gentleman from Maryland (Mr. S. Smith) objects to the tax upon carriages, because it falls heavily upon the State; he says, in Baltimore there are a great number of hacks, which are not owned by the rich. But I will ask the gentleman who pays the hack hire, the poor or the rich? Do the poor of Baltimore ride about in hacks? The very circumstance of the existence of so great a number of hacks proves the carriage tax not to be oppressive.

The aggregate of the taxes upon carriages, brown sugar, licenses, sales at auction, and stamps, is $481,000. Make a deduction of $24,000 for the expenses of collection, which I am persuaded will be quite sufficient, and there remains a balance of $457,000.

If the state of the finances admitted this reduction, I would prefer lessening the burden on the other articles, which chiefly falls on the yeomanry of the country; on bohea tea, for instance, which pays twelve cents, and on brown sugar, which pays five cents per pound.

What are the objections made by gentlemen to our plan? They say they are for repealing the internal taxes in preference to all others, because they require a host of officers, and because they increase Executive patronage, which is odious to the American people, and hostile to the genius of a free Government. But I take this to be fallacious. For I cannot conceive that those who object to Executive patronage are seriously adverse to it. We are to judge, not from their professions, but actions; and when we see men of merit over the whole Union deprived of their offices——

Mr. Nicholson called to order.

Mr. Morris.—If the objection derived from the alleged expense of collection be solid, it may easily be removed by turning over the collection to the deputy postmaster, who will consider five per cent. as a sufficient premium. Whence, then, the necessity of destroying a whole system because a part of it is defective? If the number of officers or the expense be too great, lessen them, but do not on that account destroy the system altogether.

Much has been said respecting the duty upon stamps. I will acknowlege that, when it was first laid, it was odious, because it was not then understood. I believe, however, that it is now a

popular tax in a great part of the Union: and if the House had permitted a document for which I moved, to have been produced, it would have appeared to be a tax chiefly paid by the opulent part of the community. I believe that in my part of the country it is as popular a tax as any paid.

Gentlemen say the people are averse to these internal taxes, and in the same breath they inform us that if they are laid aside by this Government they will be resumed in the several States. I do know that in some of the States they are so little odious that there is a double tax, one laid by the State and the other by the United States. This of itself is sufficient to prove that the disposition of the country is not against them.

Had gentlemen convinced me that we could dispense with the tax on stills, I would have agreed to abandon it. But they have not convinced me, and I am not, therefore, in favor of abandoning it. But if they are willing to double the tax on the other five sources of internal revenue, I will join them in taking off the duty on stills.

A strange charge is brought by gentlemen. They accuse us with courting popularity. But how long is it since, in the estimation of gentlemen, it has been a crime to appeal to the sentiments of their constituents? What! if it is deemed by a part of the House that a tax should be taken off of some articles, though the majority are for taking it off of others, are we to be called base courters of popularity, when we address our remarks, not only to the sober sense of the House, but also to that of the people? If the charge of courting popularity apply anywhere, it is to the President. Was it proper in him to designate any particular tax as a fit one to be removed? I must say that this was going beyond his duty. For, as all revenue systems must originate in this House, it rested with us exclusively to originate as well as decide whatever relates to revenue.

I have another objection to the repeal. Should war, or any other untoward event occur, I ask, what resource is there left to which we can resort? If such untoward events should occur, we cannot resort to our taxes on articles of luxury, for the means of indulgence will be gone. We must resort to excises. It is owing to the flourishing situation of the country that we are now enabled to tax luxuries. But when they cease to be consumed, we must resort to objects of prime necessity. I ask, then, if the situation of the country is such as to warrant this abandonment of all our internal resources? Do we not know that a formidable foreign Power is to settle on our frontier? Do we not know that a nation, not the most tranquil, is to take possession of Louisiana and Florida? Are we, then, in such critical circumstances, to squander away our revenues?

Mr. LOWNDES.—I did intend to reply to the remarks of the gentleman from Maryland (Mr. S. SMITH,) but I have been anticipated by the gentlemen who have preceded me. I will therefore confine my remarks to points not animadverted upon by those gentlemen.

The gentleman observed that these taxes, if hereafter required, may be restored, and he added the people of this country are not like the people of other countries. This I do not believe. I believe they are like other people. I will not be their flatterer. I believe that they, like other people, when a new tax is laid, will be against it. I should not have troubled the House on this subject, had not the Committee of Ways and Means remarked, that however favorable they might be in the abstract to a repeal of these taxes, they would not have recommended a repeal, if they believed that it would interfere with a punctual compliance with our engagements. If this was their opinion, it was incumbent upon them to show us that the repeal would not interfere with a punctual compliance with our engagements, which they have not done.

I have voted for striking out all the articles moved, not that I am against retaining the tax on stills. On the contrary, I believe it the best tax, because it is paid by those who pay no other tax, and because taxes should be equally distributed throughout the community. Besides, the duty on distilled spirits is but thirteen cents, while that on imported spirits is twenty-eight cents. Surely, then, those who consume the former have no reason to complain. The difference of duty is a bounty on the consumers of distilled spirits: and is there any reason why the consumer of home made spirits should be more exempt from taxation than the consumer of foreign spirits?

Another objection to this tax is urged. It is said, that it creates an Executive patronage hostile to the genius of a free people; and that it is oppressive in the collection. But in what is it oppressive? Have we received a single petition against it? Nor can I conceive how it is odious to the genius of a free people. I know that formerly in other countries excises were odious. Collectors possessed summary jurisdiction, and the trial by jury was taken away. But do those regulations exist with us? I have read some petitions that were formerly presented on this subject; wherein the petitioners complain that they were obliged to write in large letters, "Stills," on their houses. But, if there existed no stronger ground of complaint, this is a proof that the tax was neither inconvenient nor oppressive.

We are told the collection requires a great number of officers, and that it extends the patronage of the President. There are about four hundred officers, scarcely twenty to a State; and yet gentlemen are alarmed at the danger of this patronage to the liberties of the people. Some of these officers receive only thirty-two dollars a year, and these are the hosts that are to destroy the liberties of the country. I think differently of Executive patronage. It may extend so far as to excite the hopes of expectants, but not to gratify them. Every appointment that makes one friend, creates twelve enemies. The Executive will derive no security to his power from this patronage. He can only excite expectation. As a proof of this, we see, from the papers, that, instead of filling up vacancies in a Constitutional manner, the people are called together to designate the officer, and

what was intended to be committed to the discretion of a constituted agent, is exercised by a junto.

The tax on stills has existed since the year 1790. Of late we have heard no complaints, we have seen no petitions; and I think it can impose no hardship on the community, because I see the revenue steadily increasing. But suppose there are hardships, is there no medium between the entire continuance and abolition of it? Gentlemen have long enough exercised their talents for destruction; let them now use them for beneficial purposes.

We have heard much about retrenchments; but the retrenchments yet made, consist altogether in sound. It is said the Judiciary is abolished. I am sorry for it. But I have seen a letter from a gentleman on the other side of the House, which says, the salaries of the judges are not touched. There is, therefore, on this head, no retrenchment; and if it is the intention of gentlemen to appoint other judges, the expense will be increased.

The Secretary of War has told us laconically that in his department there will be a saving of four or five hundred thousand dollars. But are we to be guided by expressions so vague? How is this saving to result? What difference is there between the present and the old establishment? As to men there is no real reduction, as the old establishment was not full. On the other hand, there will be an increased expense, from the dismissed officers receiving one month's pay for every year they have been in the service.

It is also said there is to be a reduction of $200,000 in the Navy Department. But one report of the Secretary says there is to be no reduction, and another that there is to be a reduction of $200,000. Which is to be credited?

But are there no new expenses? Have gentlemen forgotten that we have passed a law for an increased representation, which will add forty-three members to the present number, at an expense of about $1,000 a year. I say that this new expense amounts to more than all their boasted savings. If, however, they really wish a saving of the public money, why not reduce our own compensation to two dollars a day? This would have two good effects. It would lessen our per diem allowance, and shorten our sessions.

I have another reason against the repeal of these taxes. I am informed that the President has received official information that Louisiana and Florida are ceded to France. We know there is a dispute respecting the boundaries of these provinces. Is it then wise, at this critical period, to dispense with your internal resources? In case of a war, your revenue derived from imposts would be suspended. If these internal taxes are retained, in such an event they might be improved and enlarged.

I have another strong argument against the repeal. I allude to the claims of our merchants, whose justice cannot be resisted. I believe this country has acquired a fortunate release from its obligation to guaranty the possessions of France in the West Indies. Had we been called on during the war in Europe to take efficient measures to guaranty these possessions, a refusal would have been a cause of war. I think, therefore, we have purchased the exemption cheap. But on every principle of justice or honor we are bound to make good the claims of our merchants on the French Government, which we have thereby extinguished.

We have heard from gentlemen much about their intention to reduce the national debt, and I believe the Committee of Ways and Means have reported an appropriation of seven million three hundred thousand dollars for that object. I would be glad to know where this sum is to come from? If gentlemen are sincere in their desire to pay off the debt as speedily as possible, they should have postponed, at least for one year, the repeal of these taxes. They should have recollected, that they are as yet inexperienced and untried in the administration of the Government.

Mr. LOWNDES concluded by observing, that in his opinion, the patronage of the Executive in appointment to office, was not to be dreaded; but that if ever the time should come, which, he hoped to God, never would, when members of this House should be so obsequious to the will of the President, as to vote for a bill at his nod, such patronage would be dangerous indeed.

A motion was made to adjourn, which was lost.

Mr. DANA.—It is not my purpose to detain the Committee long; but as the subject is important, it cannot be improper to offer some observations upon it. It may seem strange that any person should be induced to oppose an abolition of taxes. The affairs, however, of Government, the honor and public faith of the nation, cannot be always supported without some pecuniary burdens, and when these require the imposition, taxes should be levied, however unpopular the act. We were told, at the opening of the session, that strong and efficient measures would be taken for the speedy discharge of the public debt. This is the first revenue bill introduced into the House. Is it an evidence of such disposition? I know no proper way of extinguishing the public debt, except by paying it honestly. I do not know how gentlemen mean to extinguish it; but I am sure they cannot rightfully extinguish it by destroying the means of payment. If they wish rightfully to free the country from it, instead of continuing the taxes, they ought to devote themselves to its extinction. The Navy six per cent. may be redeemed at pleasure. Other stock, too, is comparatively low in the market, much lower than it may be in a few years. This, therefore, is an eligible season for the advantageous purchase of it with the proceeds of the taxes.

I have a further argument to oppose to the abolition of these taxes. They are pledged explicitly to the payment of the public debt. [Mr. D. quoted the law to that effect.] These sources of revenue are the more important to the public creditors, as they may be compared, in point of security, to a mortgage of real estate, not subject to the casualties of war or other misfortunes.

What will be the effect of the proposed repeal? Your public debt is to be paid. You abolish an annual revenue of several hundred thousand dol-

lars. Compute the time during which you will be discharging the debt, and you will see that the abandonment of these taxes will be equal to an abandonment of six or seven millions. To this amount you throw additional burdens upon commerce, and to a proportionate extent of time, you postpone the ultimate payment of the debt.

What proof is there that this debt will be speedily extinguished by payment? Is it intended that the Navy shall pay it? The Secretary of that department strikes out $200,000 from his former estimate: but is it not known, that the plan of naval supplies must be, in part, if not wholly abandoned under this last estimate?

The report from the War Department is of a still more singular kind. The Secretary says, the difference between the expense of the present and the last establishment, will be little more or less than five hundred thousand dollars. The Committee of Ways and Means say there will be a saving of a sum exceeding $400,000. Thus we see there is a difference between the two statements of about $100,000. Is this information sufficiently correct to rely upon?

But is there really such a saving? The only evidence we have on which we can depend must be derived from the experience we have had. A difference between the military expenses of the last and the present year may arise from the reduction of price as to provisions, clothing, and transportation. But this reduction has been estimated at no more than $200,000 for both the Army and Navy. The estimate of the Secretary of War for posts and garrisons, evidently is predicated upon the principle of having the full number he has stated, of effective men. What then is the real military reduction? As to the former establishment, it is well known that it never was full. According to the return laid before the House, there were in the service 4,051 men including the officers. According to the Peace Establishment, lately adopted, there will be 3,040 men, besides officers, making together about 3270. The difference between the two is 780. What would be the cost of these 780 men? In ordinary service, the average of $200 a year has been computed as sufficient for officers and men. Suppose the service on the frontier to be more expensive, and make an allowance of $300 for each military individual—then the whole cost will amount to between $200,000 and $240,000. If you allow $400 for a year, which is double the ordinary average, the amount will be about $300,000. During the Indian war, when the prices were enormous, the average expense for each military person did not, I believe, exceed $400. It cannot now, therefore, be so high—and it follows that the actual saving cannot be so great as that estimated by the Minister at War, by one or two hundred thousand dollars.

Much has been said respecting the carriage tax. It is said that in New Jersey there are a great number of carriages owned by persons in moderate circumstances, which pay a duty of two dollars. If the tax operates oppressively, modify it. The whole number of carriages, which I suppose are referred to, is but about eight hundred for the United States. All that is derived from that species of tax does but little exceed the sum of $1,600. Strike it out then, if improper—it amounts to nothing in this question. The gentleman from Massachusetts, (Mr. Bacon,) affects particular solicitude for clerical men. I am not disposed to question the sincerity of his regard for them, but the argument proceeds on a supposition which is fallacious. Undoubtedly it would be improper to select that description of citizens, or those in the habit of attending public worship, as peculiar objects of taxation. If this were the principle of the duty on pleasure carriages, it might justly be censured. But when such citizens are able to keep their carriages, and exhibit the ordinary evidences of prosperity, they, like other persons in similar circumstances, may be taxed by the Government; and I hope gentlemen do not mean to evince their ideas of those who are religious by considering them as doomed to perpetual poverty.

Some of the reasons of the Committee of Ways and Means merit attention. They say that excises are hostile to the genius of a free people. But were the members of the General Convention of that opinion when they agreed to a Constitution which conferred on the General Government the power of laying them? Or did the people believe them to be hostile to their liberties when they ratified that Constitution? At the time of that ratification were the people free, or were they slaves? The truth is, the Constitution has explicitly given authority to lay excises, and the principle is settled.

It is said that the collection of these taxes requires a great host of officers. I am not disposed at this time to discuss the question of Executive patronage. I shall dismiss it with saying the officers are public agents, not those of the President. The doctrine that they are the agents of the Executive Magistrate, and not of the public, is a new one. I am not disposed to admire a principle that makes all the public agents the obsequious instruments of an individual in power.

The Committee say that these taxes lead to a system of *espionage*. It is to be hoped that the terrors of Gallic phraseology will not awe gentlemen into a surrender of their intellectual faculties. Is this anything more than a mere imagination, or fanciful nullity? Are those who make and vend whiskey examined with the same jealous care as the merchants? The master of an American merchant vessel, importing goods from a foreign port, must have on board a manifest of the cargo. When arrived within four leagues of the coast, he may be met and boarded by one of your revenue cutters. A manifest must be exhibited, and a copy of it delivered to the officer of customs on board the cutter, who is to forward it to a custom-house. When arrived within the limits of the custom-house district, the vessel may be again boarded by an officer of the customs, when a manifest must be again exhibited and another copy must be delivered. The master must afterward make his report and entry, and exhibit a manifest at the custom-house. A distinct entry is also required in various instances, to be made by the merchant. The entries must be verified on oath. In addition to all these precautions, an inspector is put on board the vessel, to watch the landing of every article. Nothing is allowed to be delivered out unless in open day, except by special license. And the inspector may secure the hatches for the night, by locks and other fastenings, as he shall judge necessary.

Compare this system of regulations with that for collecting the internal duties. In point of strictness, is the last equal to the former? Will it be said that those who make and deal in whiskey are more worthy of respect and confidence than the American merchants and commanders of merchant vessels?

If your jealous regulations are odious in their application to the internal revenue, are they not ten-fold more odious in their application to the external?

There is another principle advanced by the committee that is deserving of attention. It is that the United States should derive their revenue from the duties of the customs, and leave to the particular States their revenue to be derived from internal taxes. Has it not been assured as a principle, that taxation and representation should be reciprocal?

The Constitution has provided, that representatives and direct taxes should be apportioned among the respective States according to the number of free inhabitants, and three-fifths of the black population. Why was the allowance made for these three-fifths? Was it not on the principle of making the representation conformable to internal taxation? If gentlemen considered it as the true policy of the United States to continue in peace with all the world, and if there are to be no internal taxes except in time of war, why should fourteen or fifteen representatives be ultimately allowed to certain States on account of the blacks whom they hold as property? As they extend through the interior of the country, and may assist the Government in equalizing the public burdens, and the various parts of the community, internal duties are so far analogous to direct taxes. Yet some gentlemen appear to refuse to the Government of the United States the exercise of internal taxation altogether, and yet would assure to particular States that extraordinary number of representatives which they are allowed for the number of their slaves. Gentlemen should be cautious, and not press their advantage too far. The benefits which the Constitution has given them, with respect to persons holden in servitude, may be very agreeable to them, but abuses of the power thus put into their hands may render certain provisions of the Constitution peculiary odious to other parts of the Union.

Mr. Dana was followed by Messrs. Huger, Hastings, and Griswold, who made a few remarks against the passage of the bill, and by Mr. Varnum in favor of it.

When the question was taken on the passage, and carried—yeas 61, nays 24, as follows.

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Charles Johnson, William Jones, Michael Leib, John Milledge, Thomas Moore, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, John Randolph, jun. John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Nays—James A. Bayard, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, William H. Hill, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Joseph Pierce, Nathan Read, John Cotton Smith, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Tuesday, March 23.

The bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read twice and committed to the committee to whom were referred, on the seventh and twenty-seventh of January last, the memorial of Evan Thomas, and others, and a Message from the President of the United States on the subject of Indian affairs.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations are necessary in the several acts relative to the establishment of a marine corps, and in an act fixing the rank and pay of the commanding officer of the corps of marines, and that the committee be authorized to report by bill, or otherwise.

Ordered, That the consideration of the said motion be postponed until Thursday next.

On motion, it was

Resolved, That the President of the United States be requested to communicate to this House such information as he may have received, relative to the copper mines on the south side of Lake Superior, in pursuance of a resolution passed the sixteenth day of April, one thousand eight hundred, authorizing the appointment of an agent for that purpose.

Ordered, That Mr. Gregg and Mr. Stratton be appointed a committee to present the foregoing resolution to the President of the United States.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between

the United States and the French Republic; and, after some time spent therein, the Committee rose and reported several amendments thereto.

The House then proceeded to consider the said amendments at the Clerk's table. Whereupon, the first amendment reported from the Committee of the whole House, to fill up the blank in the bill with the words "three hundred and eighteen thousand dollars," being twice read, was, on the question put thereupon, agreed to by the House.

The second amendment, reported from the Committee of the whole House to the said bill, being twice read, as follows: Strike out the words "first, out of the proceeds of any French prizes which have or may come into the Treasury of the United States, and which have not yet been otherwise applied; and secondly:"

The question was taken that the House do concur with the Committee of the whole House in their agreement to the said amendment, and resolved in the affirmative—yeas 52, nays 26, as follows:

YEAS—James A. Bayard, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Daniel Heister, William Helms, Joseph Hemphill, William H. Hill, William Hoge, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Thomas Newton, jr., Joseph H. Nicholson, Joseph Pierce, Nathan Read, John Cotton Smith, John Smith, of New York, Samuel Smith, Henry Southard, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, William Dickson, Lucas Elmendorf, Edwin Gray, Andrew Gregg, David Holmes, George Jackson, Charles Johnson, William Jones, John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., and Isaac Van Horne.

The other amendment, reported from the Committee of the whole House, was, on the question put thereupon, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

WEDNESDAY, March 24.

A new member, to wit: WALTER BOWIE, from the State of Maryland, returned to serve in this House as a member for the said State, in the room of Richard Sprigg, who has resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill making an appropriation for defraying the expenses which may arise from carrying into effect the Convention made between the United States and the French Republic was read the third time and passed.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a letter to him from the Comptroller of the Treasury, and sundry statements, marked A. B. C. D. and E. prepared in pursuance of an act, entitled "An act establishing a Mint, and regulating the coins of the United States;" which were read, and ordered to lie on the table.

Mr. DENNIS, from the committee appointed on the ninth and seventeenth ultimo, presented a bill for opening a canal to communicate from the Potomac river to the Eastern branch thereof, through the City of Washington, which was twice read and committed to a Committee of the whole House on Friday next.

Mr. JOHN C. SMITH, from the Committee of Claims, to whom was referred, on the first instant, the memorial of Stephen Sayre, made a report; which was read and considered: Whereupon,

Resolved, That the memorialist have leave to withdraw his said memorial.

Mr. STANLEY, from the committee to whom was referred, on the nineteenth of January last, a petition of Memucan Hunt and others, addressed to the General Assembly of the State of North Carolina; and to whom were also referred sundry resolutions of the said Assembly, respecting a claim of the petitioners for the value of certain lands in the State of Tennessee, held under grants from the State of North Carolina, prior to the cession of the said lands to the United States, made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

The House proceeded to the consideration of a motion, made the tenth instant, in the words following, to wit:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the second Monday in April next.

And, the question being taken that the House do agree to the same, it was resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to authorize the President of the United States to convey certain parcels of land therein mentioned;" and, after some time spent therein, the Committee rose and reported the bill without amendment.

The said bill was read a third time and passed.

Mr. SAMUEL SMITH, from the committee to whom was yesterday committed the bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," reported the same to the House, without amendment: Whereupon,

Ordered, That the said bill be read the third time to-morrow.

The House went into a Committee of the Whole on the bill to continue in force an act to augment the salaries of certain officers therein named.

The Committee rose and reported the bill with an amendment, that the law should continue two years instead of three.

Ordered to lie on the table.

THURSDAY, March 25.

The bill sent from the Senate, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," was read the third time and passed.

Mr. MILLEDGE, from the Committee of Elections, to whom were referred the credentials of Walter Bowie, returned to serve in this House as a member for the State of Maryland, in the room of Richard Sprigg, who has resigned his seat, made a report thereon; which was read, as follows:

"That it appears, from a certificate signed by the Governor of the State of Maryland, in Council, and under the seal of the said State, that Walter Bowie was duly elected to serve as a member of the House of Representatives of the United States, in the place of Richard Sprigg, who had resigned his seat.

"That the resignation of Richard Sprigg satisfactorily appears from his letter of the tenth of February last, addressed to the Speaker of the House of Representatives.

"*Resolved*, That, in the opinion of the committee, Walter Bowie is entitled to take a seat in the House, as one of the Representatives for the State of Maryland, in the room of Richard Sprigg."

Ordered, That the said report do lie on the table.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes," with several amendments; to which they desire the concurrence of this House.

On motion, it was

Resolved, That the Secretaries of the Departments of State, Treasury, War, and Navy, respectively be, and they are hereby, directed to lay before this House, a statement of the application of the appropriations made by Congress for clerkhire in their respective Departments, specifying the persons, and the salaries allowed to each, for the last three years.

PAY OF MEMBERS.

Mr. BACON moved the following resolution:

Resolved, That a committee be appointed to consider whether any, and, if any, what, reduction ought to be made from the pay of the Senators and Representatives in Congress, as now established by law, and that the said committee have leave to report by bill, or otherwise.

Mr. BACON said he had always thought that, in a Government like ours, compensations to public agents ought not to be high; that in such Governments, public offices, if lucrative, will become objects of envy, and, from being objects of envy, will become objects of hatred, until, finally, the Government itself will become an object of hatred. He had reason to believe that the salaries and compensations, heretofore allowed by the United States, had not been duly apportioned among the officers; and he considered this as applicable to the members of the Legislature. He therefore moved, in substance, that a committee be appointed to inquire whether any, and what, reduction is necessary to be made in the compensation of the members of the Senate and of the House of Representatives, as fixed by law.

Mr. DAVIS wished, if the gentleman intended to act upon a general principle, that he would extend his motion to the Clerk of the House.

The question was put upon taking up Mr. BACON's motion, and carried—yeas 49.

Mr. DAVIS moved to add to Mr. BACON's motion "and officers of the House."

Mr. ALSTON considered this amendment unnecessary, as the object was now before a committee who had maturely considered it, and were ready to report.

Amendment lost—yeas 22.

Mr. ELMENDORF entertained no doubt, when he considered the quarter from which the motion came, of its having been maturely digested. He hoped, in order that the House might learn what deduction could be made, that it would be unanimously committed.

Mr. DANA hoped the yeas and nays would be taken, that it might be seen whether the House were unanimous.

Mr. CLAIBORNE said that, as he should probably vote against the resolution, he would assign the reasons that governed him. In 1793 or 1794 he said he had offered a similar resolution. At that time he was not acquainted with the necessary expenses attending a seat in this House, being a new member. Besides, he was persuaded that the unavoidable effect of reducing the compensation so low that men of moderate property could not hold seats, would be that Congress would be filled with nabobs.

Mr. BAYARD said, he presumed the honorable gentleman from Virginia (Mr. CLAIBORNE) would scarcely accuse his friend from Massachusetts with a disposition to introduce nabobs into this House, or to exclude good democrats. Nor is this our object. But we do conceive that, when gentlemen are for tearing down every old establishment, in order to prove their patriotism, they ought to bring home to themselves the effect of these operations. Mr. B. said he did not, however, like the shape of the present motion. He believed that it was meant to import something not likely to be seen by the House. The sending that to a committee, which every member must understand, appeared to him a work of supererogation. What can that committee do? Simply collate the allowance with the expense of living. This every member can do as well for himself. The report, therefore, can furnish no new information. In order to test the sincerity of gentlemen on this subject, he would make a direct motion. Not that he thought six dollars a day too much on the old system. But the present compensation ought to be accommodated to the new plan. He therefore moved that a committee be appointed to bring

in a bill to reduce the compensation of members from six to four dollars a day.

Mr. Davis moved to strike out four, and insert two dollars a day.

Mr. Dana inquired, whether it was in order to divide the question?

The Speaker replied in the affirmative.

Mr. Dawson moved the postponement of the question until the last Monday in November. He stated that, in making this motion, his only wish was to prevent a waste of the public time, and not from an unwillingness to meet the question; and he took occasion to declare, that he should vote against every proposition which went to change the present pay, which he considered as not more than adequate, and to which all liberal and reasonable men would assent.

Mr. Nicholson hoped the postponement would not take place. He had no hesitation to say that he found six dollars not more than sufficient. But if gentlemen were ready to make sacrifices he would be as ready as any of them. He hoped, therefore, the question would be immediately taken, and that it would be seen how far gentlemen were for making sacrifices.

Mr. Huger hoped the motion would not prevail. He had no hesitation in saying he was against all reduction. He knew that it was a popular thing to reduce salaries, and that those who make such motions may get credit abroad. Without ostentation, he might say the compensation was no object to him. If there were no compensation, he would still return to his seat, if he offered and should be elected.

He conceived the reduction in every way improper. Every gentleman must know the inconvenience of leaving home, and of neglecting a farm or a profession. Gentlemen do not consider the sacrifice that is made. A gentleman is brought here in the honorable character of a Representative of the people. He would ask, if he was not obliged to live in decent style? He believed that many able and respectable men could not afford to attend without a compensation. As far as his information extended, he believed that, in his State, many men whose talents would confer honor on their country, were prevented from coming here from the smallness of the compensation. He believed it was a great object to have fit men in office, and this end could not be attained without the allowance of decent emolument. It is a dreadful thing that you are to carry a man from his family and friends, and then grudge him the small pittance of six dollars a day. The natural effect of reducing the compensation so low, is to throw the best men out of office. Perhaps no class of citizens is more fitted for public stations than that description of citizens who can just live at home, without having anything over to spare. Can such a man come here, return home, and find himself in as good a situation as when he left it? Can it be the wish of the American people to reduce men, who serve them, to this situation? Mr. H. said, it was not his wish to see the Government managed exclusively by the rich, or by those who had no stake in the country. The effect of this resolution will be not to put better men in office, but to abridge the field of choice. We have heard no complaints from the people respecting the present compensations. No gentleman will say this is a cheap place. Expenses here are greater than in Philadelphia. Here you are obliged to incur a considerable expense, or you must live miserably.

As to other contemplated diminutions, he was against them as well as this; he would rather disband the whole army than reduce the compensation paid to members. If reduced, what shall we gain? a mere bagatelle! As had been observed by the gentleman from Virginia, the Civil List did not constitute the great expense of the Government. Economy is a good thing, but let us be moderate and wise in our application of it. Mr. H. concluded by observing, that he should not have made so strong an opposition to the motion, if the present compensation were any object to him.

Mr. Smilie said, he had often seen this game played in Legislative bodies; but he did not recollect that he had ever before seen it played in Congress. He had not so contracted an idea of the American people as to believe this mode of obtaining popularity would succeed. The only way, in his opinion, to obtain popularity, was to do what was right. This had been his course; he had hitherto stood tolerably well with his constituents; and so long as he continued to pursue the same course, he had no doubt his constituents would continue to approve his general conduct.

As to any reduction whatever in the compensation of members, he would not say that it was improper, but he would say that the proposed reduction was too great. The general plan of reduction, to which gentlemen had alluded, was a different one from the present. The former was to dispense with all establishments that were useless. So far, he concurred in the plan, and deemed it correct. Whether it would be expedient to reduce the salaries of some officers, he was not prepared to say, though he was inclined to think there were some officers, among whom were some of the collectors of ports, who appeared to receive too much.

If one event take place; if we reduce the salaries of officers generally, then we ought to reduce our own. He concurred with the gentleman from South Carolina (Mr. Huger) in the opinion that it was not proper to reduce the compensations so far, as to deprive the intermediate classes of our citizens of the power of serving their country. This was not intended by the Constitution, which even in the qualifications of a President required the possession of no property. It was, therefore, clearly intended that the people should enjoy the right of calling all classes of citizens into the public service. Suppose we were to declare, by law, that no man that was possessed of property to the amount of ten thousand dollars should be elected to a particular office, would not this be unconstitutional? Yet, may we not accomplish the same end in a different way?

Mr. S. supposed this motion was to be considered as an electioneering business. As to himself, personally considered, it was a matter of indifference to him, whether he was here or at home. He had never considered a seat in this House as a matter of emolument; and he believed every member viewed the compensation in the same light. He would, therefore, vote both against the postponement and against the resolution.

Mr. Dawson withdrew his motion of postponement. He had made it to save time, but as it appeared to have an opposite effect, he declined persisting in it.

Mr. Bayard said he agreed to vary his motion so as to insert two dollars instead of four dollars.

Mr. Giles observed, that he only wished to remind gentlemen that they had yesterday passed a resolution for adjourning on the second Tuesday of April. He believed there never was a subject before Congress that required less reasoning; and if gentlemen will spare remarks not calculated to promote the dignity of the Government, they will confer a favor on the House. He was himself perfectly persuaded that the compensation of six dollars was not too high. In entertaining this opinion he was quite disinterested, as it was his purpose to be a constituent instead of a Representative, though he possibly might continue to serve in the latter character during the next Congress.

Mr. Bacon said, he did not rise to enter into the debate. He rose to make himself understood. When he acted, he must act for himself, and pursue his own judgment, though he stood alone. The resolution was predicated upon plain Democratic principles; and he hoped never to be engaged in any cause that would constrain him to descend to the grovelling act of inquiring into the secret motives of men.

He had long been of opinion that, in general, the compensations have been too high in a Government like ours. He might be mistaken, but such was his opinion. If the motion he submitted was predicated upon true principles, he expected it would be popular. He was sorry the resolution had taken up five minutes' attention. But the observations made by other gentlemen had induced him to reply. He said that he acted in concert with men with whom he generally agreed, but upon the merits of a specific question, he must judge for himself. He concluded by moving the insertion of five dollars a day.

Mr. Goddard had no doubt but that the degree of confidence the gentleman reposes in gentlemen will be reciprocated; but he could not refrain from reading a resolution passed on the fourteenth of January last.

[Here Mr. G. read an extract from the Journal, containing a resolution appointing a committee, on which Mr. Bacon was named, to inquire into the expediency of making reductions in the Civil List.]

Mr. T. Morris said his object was to insert four dollars for each member, and six dollars for the Speaker.

Mr. Elmer felt very little anxiety respecting the fate of the motion; nor did he know that the compensation did not stand at a just rate. But he hoped gentlemen would be actuated by the public good, and not carried away by party motives. He would rather that the compensation should be reduced to five dollars. It was certain that gentlemen in lucrative professions made great sacrifices. But it did not comport with the genius of the Government, or the habits of the people to make compensations, for public service, that were lucrative. Five dollars might answer, but two dollars were certainly inadequate.

Mr. Milledge said it was clearly his opinion, that six dollars were little enough. But if gentlemen are making sacrifices, he was ready to go as far as they pleased. If they are for reducing, let them do it handsomely, and show the extent of their patriotism.

Mr. D. Heister moved to add, "during the present session of Congress."

Mr. S. Smith said, he had always thought six dollars a proper allowance. But if a majority of the House should be willing to make sacrifices, he would not differ with them; he had never considered the pay as an object. He had been some time in public service, and never saved anything from his pay; he had generally found his expenses exceed his allowance. But if a majority were of opinion that one dollar was sufficient, he was willing; if for nothing, he had no objection as to himself.

Mr. Bayard hoped it would be remembered, that the proposition to reduce the compensation to two dollars a day was not his. It was not his object to turn the business into ridicule; or with the gentleman from Maryland, to vote for two dollars, or one dollar, or no dollar, as that gentleman said he had been in the habit of serving his country. He had wished to see the compensation fixed at a moderate and reasonable sum. This had comported with his serious views. But as gentlemen were disposed to make a flagrant display of their patriotism, he was willing to go with them, and to sacrifice with them, because he thought that, while we are sacrificing others, we ought to make some sacrifices ourselves.

Mr. Holland was opposed to the resolution, and to every amendment which had been offered. He believed six dollars, at the commencement of the Government, was sufficient, and much more ample than at present. The Legislature had seen fit to continue that compensation to the present day, and he believed the expenses of living were not now reduced. There was, therefore, in his mind no necessity for inquiry. He had another reason for being against the motion; and that was his wish, that our successors may be as well accommodated as we are.

Mr. S. Smith said, he had intended to make some explanation on the misrepresentations of the gentleman from Delaware. But, on reflection, he was convinced that the House was so well able to understand the manner in which that gentleman acts, that they will be able, on this occasion, to judge, without any explanation from him.

Mr. J. C. Smith said it must be evident to the House, that the resolution of the fourth of Janu-

ary, involved the object of the present motion. To the committee then appointed, it was certainly most correct to refer this motion, though he did not know why that committee had not yet reported. He therefore moved the reference of the motion to that committee.

Mr. Griswold said he had contemplated, at a future stage of the business, the instructing that committee to make this inquiry. It certainly was the correct course to refer the motion to that committee, which was under the superintendance of the gentleman from Massachusetts, (Mr. Bacon.) As that committee had slept from the fourth of January, and as their nap had been a very long one, it might be time to awaken them.

Mr. Bacon observed that, as he was called on as chairman of the committee alluded to, to render an account, he would state that the committee had met early and repeatedly; that they had thought it expedient to refer to the heads of departments for information. They were informed that there would be a document, in a short time, presented, that would afford them better information than any which could then be furnished. They would, notwithstanding, have progressed, but for a change in the committee; one gentleman had quitted his seat in the House, and another (the Chairman) had obtained leave of absence.

Mr. J. C. Smith said that the mode pointed out by his colleague was the most correct. But his object, in the motion he had offered, was to preclude this useless and unpleasant discussion.

Mr. Elmendorf thought the reference perfectly useless. As a member of that committee, he had expressed his opposition to the proposed reduction.

Mr. Nicholson did not know a stronger reason for that reference.

Mr. Dana declared himself in favor of a reduction. He had no hesitation to say that the compensation of six dollars was not too much. But under present circumstances, gentlemen might expect him to go full length, that they may themselves feel the force of their own acts. He was, therefore, for the reference, and to that particular committee.

The question was then taken on the motion of Mr. J. C. Smith to refer Mr. Bacon's motion to the committee appointed on the fourth of January, and carried.

SALARIES OF OFFICERS.

The bill reported from the Committee of the Whole, to continue in force an act, entitled "An act to augment the salaries of certain officers therein mentioned," was taken up.

The amendment agreed to in the Committee to limit the duration of the law to two years instead of three, was agreed to.

Mr. J. C. Smith said that, as he was fully impressed with the propriety of the motion which he had made in Committee, he could not, notwithstanding its fate, agree to abandon it. He believed it most fair that the compensations allowed to officers should appear on the face of the bill, instead of referring to an old law. He therefore moved to strike out the words "said act be revived," &c., and that the following words should be introduced, "the following salaries shall be allowed to the Secretary of State," &c.

This motion was supported by Messrs. J. C. Smith, Dana, Griswold, Elmer, Huger, Morris, Goddard, and Bacon; and opposed by Messrs. Gregg, S. Smith, Nicholson, Varnum, and Giles.

Those who supported the motion contended that no analogous instance to the present bill could be found; that there was no instance in which a law had actually expired being revived, and taking effect from the period of expiration; that the law intended to be restored, had expired on the 31st of December last; and that the present law was, in fact, a new proposition, to augment the salaries of several of the heads of departments, from $3 500 to $5,000, &c.; that though they had no objection to continue most of the salaries at their augmented amount, there might be some of the compensations that did not bear a proper proportion to the rest; that this was actually the case with respect to the Secretary of the Navy and of War, and the Attorney General; the two former of which were not sufficiently high, and the latter, which appeared to be the most useless of all the offices, from the officer absenting himself so frequently from the seat of Government, was too high; that it would be invidious to be constrained, from the manner in which the bill was drawn, to move a distinct proviso in the case of a particular officer thus circumstanced; that many of the present members of the House were not in the Legislature when these compensations were fixed; and that they ought to have an opportunity of comparing them with each other; that though the present Secretary of the Treasury had himself voted against the increase of salary, that could be no inducement with them to vote against it; that, if it were meant, by gentlemen who brought in the bill, to conceal from the people that these salaries were augmented by the present Legislature, they would be deceived; that they would, on the other hand, gain credit by an open avowal of the fact; if this was not done, it would be said, here are gentlemen who have been declaiming against high salaries until they obtain the offices of the Government, and then they allow those high salaries, and attempt to conceal the allowance; that the late salaries, being predicated upon a state of war, might, perhaps, be too high for permanent salaries; and if so, required reduction; that, in order to determine the point, each salary should appear on the face of the bill; and this would be in conformity to the universal practice of the House, which, in all cases where a law was revived which involved a principle implicating details, had revived the law, not generally, but specifically, as to those details, thereby giving an opportunity to the members of the House to modify or vary those details.

Those who opposed the motion denied the accuracy of the precedents alluded to by the gentlemen on the other side; and contended that all similar acts to the present had been revived in a similar style; that this had been invariably and

frequently the case; they professed themselves astonished at hearing it said that the present course pursued was unfair; if unfair, gentlemen had themselves set the example; an example set in every deliberative body in the world, practised in the British Parliament, and, it was believed, in every body where the parliamentary mode of transacting business was adopted; nor was it believed that it precluded any proposition of amendment: as to salaries, it was deemed correct to continue them, without alteration, as they had for several years stood, and as they had been fixed by the gentlemen who now opposed the bill. If there was any disposition to vary them, the objections of gentlemen might apply. With respect to the compensation allowed to the Attorney General, it was the same with that which had been permanently fixed; an additional compensation had been allowed him for prosecuting claims under the British Treaty, but that sum was not included in the salary allowed in the bill; that, as to the imputation attempted to be fixed, of a disposition to conceal from the people the effects of this bill, it was absurd, as the people were well acquainted with the details of the law to which this bill referred, and no misapprehension could take place, except from intentional deception.

The amendment of Mr. Smith was lost—yeas 37, nays 46, as follows:

Yeas—John Bacon, James A. Bayard, Walter Bowie, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, William H. Hill, William Hoge, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Joseph Pierce, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, David Thomas, Thomas Tillinghast, George B. Upham, Isaac Van Horne, Killian K. Van Rensselaer, Benjamin Walker, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, Theodorus Bailey, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

The question was then taken on engrossing the bill, and carried—yeas 39, nays 30.

Friday, March 26.

Mr. John Cotton Smith, from the Committee of Claims, who were instructed, on the fifteenth instant, "to inquire whether any further compensation than is already provided by law, ought to be made to the Commissioners of the Direct Tax, or any of them," made a report thereon; which was read, and ordered to lie on the table.

The House proceeded to consider the amendments proposed by the Senate, to the bill, entitled An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor; for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to the Committee of Commerce and Manufactures.

On motion of Mr. Jackson, it was

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency or inexpediency of authorizing the Secretary of the Treasury to remit the duties, in all cases, which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary, that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidabe casualty; and that the said committee have leave to report thereon by bill or otherwise.

The House resolved itself into a Committee of the Whole on the bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" and, after some time spent therein, the Committee rose and reported the bill with an amendment which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

A message from the Senate, informed the House that the Senate have passed a bill, entitled "An act making appropriation for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the whole House.

The House went into Committee of the Whole on the report of a select committee for admitting the Northwestern Territory as a State into the Union.

Without proceeding to the discussion of the report, the Committee rose in consequence of an intimation made by Mr. Hastings, that Mr. Fearing, the Delegate of the Northwestern Territory, was absent from indisposition, and that it was his wish to be present when the report was discussed.

Upon motion of Mr. Davis, the House went into Committee of the Whole on the bill respecting the location of military land warrants.

Mr. Davis moved an amendment restricting the right of location to original holders of warrants; lost without a division.

Several amendments were made, affecting the details of the bill; when the Committee rose, and some of the amendments were agreed to, and the

bill ordered to be engrossed for a third reading to-morrow.

Mr. S. Smith presented a petition from the citizens of Washington, praying that such a system of internal government, or police, may be adopted, as Congress shall see fit.—Referred to the Territorial Committee.

SALARIES OF OFFICERS.

An engrossed bill to continue in force an act, entitled "An act to augment the salaries of certain officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine, was read the third time.

Mr. Dawson.—I voted against the law of 1799, which increased the salaries of certain officers of our Government, and I propose now to vote for that bill which continues the augmentation. I will state to this House the reasons for these my votes, in a concise manner; for, sir, on this and on all occasions, I shall avoid going into arguments which do not bear on the question, and the only effect of which is a waste of our time and of the public money. I will not inquire what is the state in which a gentleman ought to live, and what are the expenses attendant thereon; I will not inquire whether all or any of our officers do live in that state. These, sir, are questions which we are not in duty bound to examine.

The duties of our public officers, and a proper compensation for services, are the only questions which it belongs to us to examine.

Sir, it must be remembered by you, and by every gentleman of this House, and especially by those who were members in 1799, what was our situation at that time; we were constantly told that we were threatened with a foreign war, and were called on to make exertions to meet the danger. Every means in our power were resorted to: armies were raised, and fleets set on float; taxes of various kinds were imposed to meet these expenses, and individuals were invited to make sacrifices; loans at eight per cent. were negotiated, and voluntary contributions were solicited. At a time like that, and under such circumstances, I did think it unjust, I did think it impolitic, to raise the salaries of any set of men; and it was for this reason, and for this chiefly, that I voted against the augmentation; for, permit me here to observe, that while I am an advocate for putting down all useless and expensive offices, my decided opinion ever has been, that we should pay well those we do retain. This, in my judgment, is right; it is just; I believe it to be politic, and I am sure it is sound republicanism.

Our situation is different now from what it was in 1799; none of the causes which I have mentioned do now exist, and it is for that reason, in part, that I shall vote now differently from what I did at that time.

There are other reasons, sir, in forming an opinion on the question now before us—the knowledge of facts which every gentleman must possess, and his own experience thereon must furnish the best data, and assist his judgment more than any observations which can be made on this floor. Every gentleman must know what are the official duties of our public officers, and every gentleman must feel what are the expenses of living at this place, and from thence what is a proper compensation.

I believe, sir, that most gentlemen will unite with me in saying, that those who inform us that the expenses of living are less than they were in 1799; that they are less in Washington than they were in Philadelphia, are wofully mistaken; experience has taught to me the contrary, and if it has not to other gentlemen, I congratulate them thereon.

Sir, there is one consideration which has not been mentioned, which, although not conclusive, I own has some weight with me. When these gentlemen, some of them at least, came into office, these were the salaries then established; they had reason to conclude they would be continued, except there was good reasons to the contrary. None, sir, do exist; and while no attempt is made to raise salaries, according to the constant practice heretofore, while the expenses are at least equal to what they ever were, and the inconveniences of living greater, I do think it would be unjust now to diminish them.

For these reasons, I shall vote for leaving the salaries as they now are, although I voted against the increase in 1799, under the then situation of the country.

Mr. Goddard.—I did not think of rising today, nor should I now rise but for the remarks made by the gentleman from Virginia. I have no necessity for making an apology to the House for any apparent inconsistency of vote on this occasion, as I have never before voted on the subject, not having had, when the bill alluded to passed, the honor of a seat on this floor. To me, however, the reasons of the honorable gentleman appear very inconclusive. He says that, in 1799, such was the situation of the country, that every citizen was called upon to make a sacrifice of his personal interests. But if the situation of the country was at that period such as called for sacrifices, was it not also such as required the incurring additional expenses and new debts; and is not our present situation such as requires a payment of the debts then contracted?

The gentleman has also observed, that those in office accepted their places under an expectation that the old salaries would be continued. Strange! Did they not know that the law fixing those salaries was limited in its duration? They cannot, therefore, with any appearance of justice, say that the good faith of the Government is pledged to continue those salaries. I apprehend, on the contrary, they had good reason to expect they would be discontinued, because these very gentlemen had declared to the nation that the expenses of the Government had been profuse; that the salaries of public officers had been too high, and they ought to have calculated that the system of economy they are for applying to others would also be extended to them.

The other reason assigned by the gentleman—the present increased expense of living—is not

correct. Whatever the present expenses may be, it is not probable that the expenses for the ensuing two or three years will be so great as those which succeeded the passage of the law proposed to be re-enacted. The greatest part of the European world was then at war—now there is peace; and it may rationally be expected that there will be a gradual appreciation of money, and that the price of articles of consumption and rents will fall. I do not believe that all the salaries are too high; but I do believe that some are, and that the proportion between them is not correct. For these reasons I am compelled to vote against the whole bill.

Mr. Smilie.—The yeas and nays are called for by gentlemen, and I am glad of it. I have no diffidence to record my opinion. I am happy that, in my vote on this occasion, I shall not be obliged to depart from the principle on which I have always acted, viz: that it is beneficial to the community that the officers of Government should be supported in a reputable manner. I never deviated from this principle, either in the Legislature of Pennsylvania, or in Congress, excepting in one instance, for which I can easily account. Nor have I ever varied my vote in consequence of any particular person being in office; for I have always considered the emoluments allowed as attached to the office and not to the officer. The case to which I allude is the compensation given to the judges last year. I voted for a smaller one than that which obtained. But as I was adverse to the establishment, and thought it would soon be set aside, I do not think the vote given on that occasion a deviation from the principle.

I believe it is good policy, in a republican government, so to support your public officers, as to command the first talents in the country. Many of the officers, whose salaries are fixed in the bill, are of this character, and on whose talents depend, in a great degree, the honor of the Government. I believe salaries ought to be neither so high as to make the fortune of the officer, or so low as to disable an individual from living comfortably. This is the golden mean.

I am not a little surprised, Mr. Speaker, to see how the sentiments of gentlemen vary with circumstances. We had some time since before us a bill for reducing the compensations of certain collectors of ports. I know that, on that occasion, many members were in favor of reducing some of the compensations; but I do not recollect that any member was for reducing the compensation of those collectors who received within $5.000. And yet now we find gentlemen opposing the same allowance to these high and respectable officers.

I believe this measure will prove perfectly agreeable to the people, and that it will be approved by their good sense. Much has been said about the expenses of living, and some gentlemen have said those expenses have not increased. But I have only to appeal to themselves to know whether the expenses of living here are not greater than in Philadelphia. For my part I have experienced a considerable increase, and I have no reason to infer that other gentlemen have not felt the same increase.

Mr. T. Morris.—I shall vote against the bill, not because I object to the greater part of the salaries, but because it is so drawn as not to enable us to discriminate respecting the several salaries, being obliged to vote in lump for or against the whole of it. It is not material to me whether the gentleman from Virginia (Mr. Dawson) has acted consistently or not. Be that as it may, I must act from my own conviction. I am desirous of making a necessary and proper provision for our public officers. I would not even deny to the present Secretary of the Treasury the additional allowance of this bill, because, when on this floor, he denied it to his predecessor. To the salary of the Secretary of the Navy I would be glad to make an addition, because I believe that his duties are as laborious as those of the other Secretaries. As to the expense of living, I do not believe it is comparatively so great to the officers provided for in this bill as to us, as they make arrangements for the whole year.

Mr. Alston.—The very reason which will induce the gentleman last up, from New York, (Mr. T. Morris,) to give his vote against the passage of the bill upon the table, is the reason which induces me to give it my support and assent. For if the salary of any one of the officers which that bill contemplates the continuing in force, was to be changed or lessened, I would most assuredly vote against the whole bill. I have heard no objection, specifically made, to any one of the salaries, except that of the Attorney General, and if even an alteration had been made in his salary from what had been heretofore established by law, I should give my negative to the bill.

The uniform practice of reviving and continuing old laws in force for a longer time, ever since the establishment of the present Government, has been the very course now pursued by the Committee of Revisal and Unfinished Business, who reported this bill.

I can see no reason why the present officers of Government should not receive the same compensation that had heretofore been allowed to others. I really believe that if gentlemen were to go into an investigation of the salary of every officer which it was proposed to continue in force, that they would be satisfied that a saving could not be made worth the detail of a bill, and that if the alteration which gentlemen contended for, had been made in the form of the bill, and the smallest alteration had been made in the salary of any one of the officers from that from which they had heretofore been accustomed to receive, it would have been, in my opinion, a sufficient cause to justify a rejection of the bill. I, therefore, hope the bill may be permitted to pass in its present form.

Mr. Tallmadge.—I am against the passage of the bill, because I think the form of it improper, and because I do not believe that the reasons now exist which formerly induced the Legislature to

pass the law now proposed to be revived. My first objection arises from the rejection of every amendment that has been offered. Had the amendments prevailed, I should have voted for the great outlines of the bill. I am a friend to liberal salaries; but inasmuch as we are prevented from apportioning the salaries, I am against the whole bill.

With respect to my second objection, I must remark that the old salaries were fixed on war prices; and this was the reason why the Legislature limited the duration of the old law to three years, expecting that, by the removal of the seat of Government, and the termination of the war, a reduction in the expenses of living would take place. I cannot agree that the expenses here are greater than in Philadelphia. But, provisions and labor are certainly lower here than there, and the effects of peace will make them still lower. I will not say that I shall be influenced to vote against the bill because one of the officers voted against the augmentation. Such prejudices shall have no influence with me. I have made these remarks because I am unwilling that my vote should go abroad without my reasons against the bill. If gentlemen had given us an opportunity to vary the compensation, I will not say that I would not have finally assented to the bill; and if the bill had been detailed, and a majority of the House had agreed to all its parts as it now stands, I might even then have assented to it. But under existing circumstances I cannot.

Mr. Bacon.—Having heretofore expressed my own sentiments on the subject of salaries and compensations for public services in general, in a Government like ours, I should not have attempted to say anything further on the question had it not been from a consideration of the manner in which the resolution has been treated, which I had the honor yesterday to lay before the House. Although that resolution has been committed to a special committee, yet, from the manner in which it has been treated by gentlemen on both sides, and in all parts of the House, it seems to be apparent that there exists almost a unanimous determination not to make any reduction from our own pay.

I conceive it to be highly important, not only that legislative bodies should act, but that they should appear to act with uniformity. And in nothing is this uniformity of conduct more important than in the apportionment of compensations for services among the various descriptions of men who perform them. The appearance of partiality in the Legislature, especially in their own favor, is peculiarly odious; and in proportion as it is odious, it is hurtful to the Government.

No evidence has yet been adduced to show that the present apportionment of salaries and compensations is not equal and just. If it is not, who but former majorities were responsible for any inequalities that may exist? The present apportionment is the result of actual experiment, which is said to be the best evidence with respect to propriety of conduct in the management of human affairs.

At the commencement of the Government, the pay of the members of Congress was set the same as it now stands. The salaries of those civil officers which are named in the present bill, were then set considerably lower than what they now are. The establishment of salaries and compensations which was first made, neither was, nor could be, any other than an establishment of experiment. It was found by experience, after several years practice, that the apportionment was unequal; that the payment of the Senators and Representatives was out of proportion to that of the officers named in the bill. Our predecessors, therefore, who were then in the majority, increased the salaries of the latter, while they permitted their own pay to remain as it was first established. This, it must be presumed, was found to be in fact the case, unless we conclude that the Congress at that time established a system of favoritism, the most distant idea of which may not be indulged.

It has been, and still is, a prevailing opinion with me, that in a Government like ours, the salaries and compensations established by law are generally too high, and I sincerely wish that they might be uniformly reduced. At the same time, I cannot feel myself justified in giving my vote to reduce the compensation of others, while there appears to be no disposition to lower our own. This, in my opinion, would indicate an undue regard to our own private interest, and give occasion to our adversaries to speak reproachfully of us.

Mr. Nicholson.—I will state but a single fact. I have heard only one salary objected to by gentlemen as too high, viz: that of the Attorney General. They have informed the House that the annual allowance of six hundred dollars has been made that officer in consideration of services rendered under the British Treaty. It is true that sum was allowed in 1797. At that time the salary was $2,000. In 1799, when the law, now proposed to be revived, was passed, the salary was fixed at $3,000. The then Attorney General, and the present Attorney General, both drew from that time $3,600. But the operations under the sixth article of the British Treaty must now cease, and of course the additional six hundred dollars must also cease; the salary will hereafter stand as fixed by the act of 1799, and there can exist no reason, in consequence of a diminution of services arising from the termination of the operations of the sixth article of the treaty, for a diminution of the fixed salary.

Mr. Elmer said, he had thought the amendment offered proper, but as it had not been carried, he would pursue a different line of conduct from that pursued by the gentleman from Connecticut. Though he might not be of opinion that there was an exact proportion preserved in the compensations made to the several officers, yet as he was satisfied with the general provisions of the bill, he would vote for it.

Mr. Claiborne declared himself in favor, and Mr. Hastings against the passage of the bill; when the question was taken by yeas and nays, and carried—yeas 50, nays 22, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, John Campbell, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, William Helms, William H. Hill, James Holland, Benjamin Huger, William Jones, John Milledge, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, John Stanley, Joseph Stanton, jr., John Taliaferro, jr., Samuel Tenney, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Killian K. Van Rensselaer.

Nays—Samuel J. Cabell, Thomas T. Davis, Abiel Foster, Calvin Goddard, Seth Hastings, William Hoge, David Holmes, George Jackson, Ebenezer Mattoon, Thomas Moore, Thomas Morris, Joseph Pierce, Richard Stanford, John Stewart, John Stratton, Benjamin Tallmadge, David Thomas, Thomas Tillinghast, John Trigg, Isaac Van Horne, Benjamin Walker, and Robert Williams.

Resolved, That the title be, "An act to revive and continue in force an act, entitled 'An act to augment the salaries of the officers therein mentioned,' passed the second day of March, one thousand seven hundred and ninety-nine.

The said bill was then further amended at the Clerk's table; and, together with the amendments agreed to, ordered to be engrossed, and read the third time to-morrow.

Saturday, March 27.

An engrossed bill in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the third time and passed.

An engrossed bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," was read the third time: Whereupon,

Ordered, That the farther consideration of the said bill be postponed until Monday next.

A memorial of sundry merchants of the town of Portsmouth, and its vicinity, in the State of New Hampshire, was presented to the House and read, praying relief in the case of depredations committed on vessels and cargoes of the memorialists while in pursuit of their lawful commerce, by the privateers of the French Republic, during the late European war.—Referred.

A petition of the Mayor, Recorder, Aldermen, and Common Council, of the Corporation of Georgetown, in the District of Columbia, was presented to the House and read, praying that Congress will empower the said Corporation to lay a tax on landed property within the said town, and its additions, for corporate purposes.—Referred.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making a partial appropriation for the support of Government during the year one thousand eight hundred and two; which was read twice and committed to a Committee of the Whole House immediately.

The House, accordingly, went into the said committee; and, after some time spent therein, the Committee reported the bill without amendment, and it was ordered to be engrossed, and read the third time to-day.

The House went into a Committee of the Whole on the amendatory bill for the relief of Isaac Zane; and, after some time spent therein, the Committee reported the bill without amendment, and it was ordered to be engrossed, and read the third time on Monday next.

The House then resolved itself into a Committee of the Whole on the bill further to alter and establish certain post roads; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were read.

Ordered, That the said bill, with the amendments, be recommitted to Mr. Southard, Mr. Archer, Mr. New, Mr. Boude, Mr. Butler, Mr. Walker, and Mr. Lemuel Williams.

Monday, March 29.

An engrossed bill for the relief of Isaac Zane was read the third time and passed.

Mr. Davenport, from the Committee of Revisal and Unfinished Business, presented a bill to regulate and fix the compensations of the officers of the Senate and House of Representatives; which was read twice and committed to a Committee of the Whole House on Wednesday next.

A Message was received from the President of the United States, transmitting a statement by the Marshal of Columbia, of the condition, unavoidably distressing, of the persons committed to his custody on civil or criminal process, and the urgency for some legislative provisions for their relief. The Message and the papers accompanying the same were read, and ordered to be referred to the committee appointed on the eighth of December last, "to inquire whether any, and, if any, what alterations or amendments may be necessary in the existing government and laws of the District of Columbia."

The House proceeded to consider, at the Clerk's table, the report of the committee of the fourteenth of December last, on the petition of James M'Cashen and others, referred on the eighth of the same month: Whereupon,

Resolved, That those persons who purchased lands of John Cleves Symmes, prior to the first of January, one thousand eight hundred, ought to have further time allowed them to pay the money, than is allowed by the act of Congress, of the third of March, one thousand eight hundred and one.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Davis, Mr. Hoge, and Mr. Fearing, do prepare and bring in the same.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act for the better security of public money and

property in the hands of public officers and agents;" to which they desire the concurrence of this House.

An engrossed bill, making a partial appropriation for the support of Government, during the year 1802, was read the third time and passed.

Previous to its passage, conversation took place respecting an alleged loosness of appropriation. This objection was made by Mr. Griswold, and supported by Mr. Dana, who were of opinion that the sum in the bill should be more specifically appropriated.

The objection was repelled by Messrs. Milledge, Giles, Elmendorf, Randolph, and Alston, who contended that the objection did not apply, and that no inconvenience could arise from a partial appropriation made in the bill and contempated for a definitive object.

A motion made to recommit the bill was lost: when the bill passed—yeas 45.

DISTRICT OF COLUMBIA.

The order of the day was called for on the bill respecting the government for the District of Columbia.

Mr. T. Morris moved to postpone the consideration of the bill til the 4th Monday of November next.

Mr. Morris made this motion from a conviction that the provisions of the bill were disagreeable to a great majority of the inhabitants. From this circumstance it had been his opinion that the bill would have been suffered to sleep.

Mr. Nicholson seconded the motion.

Mr. Bacon asked gentlemen to assign some specific reasons for the motion.

Mr. Nicholson said his specific reason for a postponement was his dislike to the system laid down in the bill. He believed that system, if established, would prove very oppressive, from the great expense attending it. Another reason with him was that the inhabitants of the District are very generally averse to it. Should the House go into a Committee, he had no doubt, but that after consuming days, the bill would be finally rejected. The question of postponement would determine the sense of the House respecting a Territorial Legislature.

Mr. Dennis said he had early taken up the opinion, that it would be as well for the interest of the United States as for that of the District, to establish a system of local authority. But as no person could be more opposed to the provisions of the bill than he was, and finding almost the whole of the inhabitants against it, he should vote for the postponement: though the principle which the House was in favor of adopting might perhaps be best settled by a motion to strike out the first section of the bill. Should the House take up the bill, he was prepared to move a number of amendments, one of which would be for incorporating a Senatorial branch. Believing that the present bill would be rejected, and that it was necessary for Congress immediately to do something in relation to the affairs of the territory, he would vote in favor of the motion.

The question of postponement was put and carried—yeas 42.

When on motion of Mr. Dennis, the Committee of the Whole was discharged from the further consideration of the several subjects connected with the Territory, and reference made thereof to a select committee.

DRAWBACKS.

The House proceded to the further consideration of an engrossed bill to amend an act, entitled "An act to retain a further sum on drawbacks for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures;" which was read the third time on Saturday last: Whereupon, a motion was made, and the question being put, that the said bill be recommitted to the Committee of Commerce and Manufactures, it passed in the negative.

And then the main question being taken, that the same do pass, it was resolved in the affirmative, yeas 38, nays 32, as follows:

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, John Campbell, Thomas Claiborne, John Clopton, John Condit, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Andrew Gregg, John A. Hanna, Daniel Heister, David Holmes, William Jones, John Milledge, Samuel L. Mitchill, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Smilie, John Smith, of New York, John Smith, of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

Nays—Phanuel Bishop, Thomas Boude, Matthew Clay, Manasseh Cutler, John Davenport, Thomas T. Davis, Ebenezer Elmer, Calvin Goddard, Edwin Gray, Roger Griswold, William Helms, William H. Hill, William Hoge, Benjamin Huger, George Jackson, Charles Johnson, Lewis R. Morris, Thomas Morris, Nathan Read, John Cotton Smith, Josiah Smith, Henry Southard, John Stanley, Joseph Stanton, Joseph Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, Killian K. Van Rensselaer, Benjamin Walker, and Henry Woods.

Tuesday, March 30.

A petition of sundry members of the Roman Catholic Church, residing in the city of Washington, was presented to the House and read, praying that Congress will grant them the privilege of raising by the means of one or more lotteries, a sufficient sum of money to build and endow a church in the said city, for the accommodation and benefit of the petitioners, and of the religious society to which they are attached.—Referred.

Mr. Eustis, from the Committee of Commerce and Manufactures, to whom were referred, on the twenty-sixth instant, the bill, entitled "An act for the rebuilding the light house on Gurnet Point, at the entrance of Plymouth harbor: for rebuilding the light-house at the eastern end of New Castle Island: for erecting a light house on Lynde's Point, and for other purposes," and the amendments proposed by the Senate thereto, made a report thereon; which was read, and together with the said amendments of the Senate, ordered to be committed to a Committee of the whole House to-morrow.

A Message was received from the President of the United States, transmitting an estimate of expenditures for the Army of the United States, during the year one thousand eight hundred and two. The Message and papers transmitted therewith were read, and ordered to be referred to the Committee of Ways and Means.

The bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," was read twice and committed to a Committee of the whole House on Monday next.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That, in case of the death of a member of the House of Representatives at the seat of Government, while Congress is in session, the expenses accruing, in conformity to an order of the House, made to testify their respect for the deceased member, shall be paid out of the contingent funds of the House, and not out of his wages for travelling home, as is now allowed by law:

Ordered, That the said motion be referred to Mr. Davis, Mr. Lewis R. Morris, and Mr. Nicholson, to consider and report thereon to the House.

The Speaker laid before the House a letter from the Secretary of State, enclosing a statement of the application of the appropriations made by Congress for clerk hire in his Department, specifying the names of the persons, and the salaries allowed to each, for the years one thousand seven hundred and ninety-nine, one thousand eight hundred, and one thousand eight hundred and one, in pursuance of a resolution of this House of the twenty-fifth instant; which were read, and ordered to lie on the table.

NORTHWESTERN TERRITORY.

The House then went into a Committee of the Whole, on the resolutions of a select committee, respecting the admission of the Northwestern Territory, as a State, into the Union.

[As the report of the select committee is necessary to elucidate the several points raised in the discussion, it is presented entire, as follows:

That it appears to your committee, that the ordinance of the 13th of July, 1787, between the original States and the people and States within the Territory Northwest of the river Ohio, contains the following stipulation, that: "Whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its Delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever; and shall be at liberty to form a permanent constitution and State government: Provided the constitution and government, so to be formed, shall be Republican, and in conformity to the principles contained in these articles; and so far as it can be consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in any State than sixty housand." It also appears from the census of the inhabitants within the Eastern division of the said Territory, taken more than twelve months since, in virtue of a law of the United States for that purpose, that there were then in the said Eastern division, 45,365 inhabitants, from which are to be deducted 3,400 inhabitants living north and west of the line proposed for the boundary of the said Eastern division.

It appears that, since the time of taking the census, the United States have sold 553,995 acres of land within the Eastern division of the Territory, amounting in value to $1,147,585. It also appears from the best information to be procured, that, in the year 1794, the number of inhabitants within the present Northern division of the Territory, did not exceed six thousand. From the progressive increase of population since that period, and the sale of lands recently made by the United States, it is probable that, before all the measures necessary for the formation of a constitution, putting into operation a State government, and its admission into the Union, can be effectuated, the number of inhabitants will amount to sixty thousand, the number requisite, according to the terms of the ordinance, for giving them an absolute right of forming a constitution and State government for themselves, as well as the absolute right of admission into the Union, upon the same footing with the original States in all respects whatever.

It also appears to your committee, that great and increasing disquietudes exist among the inhabitants within the Territory from various occasions, and particularly in consequence of the act lately passed for altering the boundary lines of the States in the Territory, as established by the ordinance of the 13th of July, 1787.

Your committee, from a due consideration of all the foregoing circumstances, are of opinion that it is at this time expedient to make provision for enabling the people within the Eastern division of the Territory Northwest of the river Ohio, to form for themselves a constitution and State government, to be admitted into the Union upon the same footing with the original States in all respects whatever, and that such admission, at this time, is consistent with the general interests of the Confederacy, according to the said ordinance, although the number of inhabitants may not amount to sixty thousand. The committee, therefore, recommend the following resolutions:

1st. *Resolved*, That provision ought, at this time, to be made by law, for enabling the inhabitants of the Eastern division of the Territory Northwest of the river Ohio to form for themselves a constitution and State government, provided the same be republican, and not repugnant to the ordinance for the government of the Territory Northwest of the river Ohio, of the 13th of July, 1787, nor repugnant to the Constitution of the United States; and also for the admission of such State, when the government thereof shall be formed, into the Union, upon the same footing with the original States in all respects whatever, by the name of the State of ——.

2d. *Resolved*, That the said State of ——, ought to consist of all the territory included within the following boundaries, to wit: Bounded on the east by the Pennsylvania line, running from the territorial line in Lake Erie to the Ohio; on the south by the Ohio to the mouth of the Great Miami; on the west by a line drawn due north from the mouth of the Great Miami aforesaid; and on the north by an east and west line, drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid from the

mouth of the Great Miami, until it shall intersect Lake Erie or the territorial line, and thence with the same through lake Erie to the Pennsylvania line aforesaid, or place of beginning; provided that Congress shall, at any time hereafter, be at liberty either to attach all the territory lying east of the line, to be drawn due north from the mouth of the Miami aforesaid, to the territorial line, and north of an east and west line drawn through the southerly extreme of Lake Michigan, running east as aforesaid to Lake Erie to the aforesaid State, or dispose of it otherwise, in conformity to the fifth article of the compact between the original States, and the people and States to be formed in the Territory Northwest of the Ohio.

3d. *Resolved*. That provision ought to be made by law for calling a Convention within the Eastern division of the Territory, to be composed of members to be apportioned among the several counties therein, in a ratio of one Representative for every —— inhabitants of the said counties, according to the last enumeration of inhabitants thereof; also, for fixing the time, place, and mode of making elections of members to compose such Convention, and the time and place for the meeting of the same; which Convention, when met, shall first determine by a majority of the members present, provided the number present shall be a majority of the whole number chosen, whether it be or be not expedient at that time, to form a constitution and State government for the people within the said Territory, and if it be determined to be expedient, then, in the next place, the Convention shall be authorized to form a constitution and State government, provided the same shall be Republican, and not repugnant to the ordinance of the 13th of July, 1787, between the original States and the people and States of the Territory Northwest of the river Ohio, nor repugnant to the Constitution of the United States.

4th. *Resolved*. That, until the next general census shall be taken, the State of —— shall be entitled to —— Representatives in the House of Representatives of the United States.

The committee observe, in the ordinance for ascertaining the mode of disposing of lands in the Western Territory of the 20th of May, 1785, the following section, which, so far as respects the subject of schools, remains unaltered:

"There shall be reserved for the United States, out of every township, the four lots, being numbered 6, 11, 26, 29; and out of every fractional part of a township, so many lots of the same numbers as shall be found thereon, for future sale. There shall be reserved lot No. 16, of every township, for the maintenance of public schools within the said township; also, one-third part of all gold, silver, lead, and copper mines, to be sold, or otherwise disposed as Congress shall hereafter direct."

The committee also observe, in the third and fourth articles of the ordinance of the 13th of July, 1787, the following stipulations, to wit:

"Art. 3d. Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged," &c.

"Art. 4th. The Legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents."

The committee, taking into consideration these stipulations, viewing the lands of the United States within the said Territory as an important source of revenue; deeming it also of the highest importance to the stability and permanence of the union of the eastern and western parts of the United States, that the intercourse should, as far as possible, be facilitated; and their interests be liberally and mutually consulted and promoted; are of opinion, that the provisions of the aforesaid articles may be varied for the reciprocal advantage of the United States, and the State of —— when formed, and the people thereof; they have, therefore, deemed it proper, in lieu of the said provisions, to offer the following propositions to the Convention of the Eastern State of the said Territory, when formed, for their free acceptance or rejection, without any condition or restraint whatever; which, if accepted by the Convention, shall be obligatory upon the United States:

1st. That the section No. 16, in every township sold, or directed to be sold by the United States, shall be granted to the inhabitants of such townships, for the use of schools.

2d. That the six-miles reservation, including the salt springs, commonly called Scioto salt springs, shall be granted to the State of —— when formed, for the use of the people thereof; the same to be used under such terms, conditions, and regulations, as the Legislature of the said State shall direct, provided the said Legislature shall never sell, nor lease the same for a longer term than —— years.

3d. That one-tenth part of the net proceeds of the lands lying in the said State, hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied to the laying out and making turnpike or other roads leading from the navigable waters emptying into the Atlantic, to the Ohio, and continued afterwards through the State of ——, such roads to be laid out under the authority of Congress with the consent of the several States through which the road shall pass, provided that the Convention of the State of —— shall, on its part, assent, that every and each tract of land sold by Congress, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of ten years, from and after the completion of the payment of the purchase money on such tract, to the United States.

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CITY OF WASHINGTON, *Feb.* 13, 1802.

SIR: I have examined, in consequence of our conversation, the articles of compact which make part of the Territorial ordinance. The more I have reflected on the subject, the more fervently have I been impressed with the importance of making some effectual provisions which may secure to the United States the proceeds of the sales of the Western lands, so far at least as the same may be necessary to discharge the public debt, for which they are solemnly pledged.

That part of the system of taxation, adopted in the Northwestern Territory, which relates to non-resident owners, undoubtedly affects the value of the public lands, and will eventually diminish the amount of sales. Yet, upon due consideration, there is but one provision, which, in my opinion, would be inconsistent with the rights of the United States, as secured by the articles of compact. An attempt, on the part of the Legislature of the Territory or new State, to render lands, sold under the laws of Congress, but for which no patent has yet issued, liable to be sold for non-payment of taxes, would interfere with the regulations adopted by Congress for the "primary disposal of the soil," since, by these, the lands remain mortgaged to the United States, until after complete payment of the purchase money, and, in case of failure thereof, are directed to be sold.

But it does not appear to me that the United States have a right to annex new conditions, not implied in the articles of compact, limiting the Legislative right of taxation of the Territory or new State. The limitations, which they may rightfully impose, are designated by the articles themselves, and these being unalterable unless by common consent, all Legislative powers, which of right pertain to an independent State, must be exercised at the discretion of the Legislature of the new State, unless limited either by the articles or by the Constitution of the United States or of the State. Indeed the United States have no greater right to annex new limitations than the individual State may have to infringe those of the original compact; and I cannot see that this position is in any degree altered by the circumstance of admitting into the Union, in pursuance of an express provision of the articles, a State at an earlier period than that at which it must necessarily be admitted.

The conditions inserted in the fourth article of the compact in relation to that object, and which constitute all that Congress thought at the time necessary to reserve in order to secure to the Union their right to the soil, are: 1st, that the Legislatures of the districts or new States shall never interfere with the primary disposal of the soil by Congress, nor with regulations which Congress may find necessary for securing the title in such soil to the bona fide purchasers; 2d, that no tax shall be imposed on lands the property of the United States; and 3d, that in no case shall non-resident proprietors be taxed higher than residents. Farther than that Congress cannot demand; and it is on account of the second provision that the district or State Legislature has not a right to tax, or, at least to sell, for non-payment of taxes, the lands on which, although conditionally sold, the United States still retain a lien.

It follows that, if it be in a high degree, as I believe it is, the interest of the United States to obtain some further security against an injurious sale, under the Territorial or State laws, of lands sold by them to individuals; justice not less than policy requires that it should be obtained by common consent. And as it is not to be expected that the new State Legislature should assent to any alterations in their system of taxation which may affect the revenue of the State unless an equivalent is offered which it may be their interest to accept, I would submit the propriety of inserting in the act of admission a clause or clauses to that effect, leaving it altogether optional in the State Convention or Legislature, to accept or reject the same.

The equivalent to be offered must be such as shall not affect the value of the pledge which the public creditors now have by the appropriation of the lands, and as shall be fully acceptable to the State, and, at the same time, prove generally beneficial either in a political or commercial view to the Union at large. From the best view I have been able to take of the subject, the following provisions appear to me fully adequate to answer those several objects, namely:

That, provided that the Convention or Legislature of the State shall assent, that every and each tract of land sold by Congress shall be and remain exempt from any tax raised by or under the authority of the State, whether for State, county, township, or any other purpose, for the term of ten years, from and after the completion of the payment of the purchase money on such tract to the United States, the United States shall on their part agree:

1st. That the section No. 16 in every township sold or directed to be sold by the United States shall be granted to the inhabitants of such township for the use of schools.

2d. That the six-miles reservation, including the salt springs, commonly called the "Scioto salt springs," shall be granted to the new State for the use of the people thereof, the same to be used under such terms, conditions, and regulations as the Legislature of the said State shall direct, provided that the said Legislature shall never sell nor lease the same for a longer time than —— years.

3d. That one-tenth part of the net proceeds of the lands lying in said State, hereafter sold by Congress, after deducting all expenses incident to the same, shall be applied towards laying out and making turnpike or other roads, leading from the navigable waters emptying into the Atlantic to the Ohio, and continued afterwards through the new State; such roads to be laid out under the authority of Congress, with the consent of the several States through which the same shall pass.

That such conditions, instead of diminishing, would greatly increase the value of the lands, and therefore of the pledge to the public creditors, and that they would be highly beneficial and acceptable to the people of the new State, cannot be doubted. And they are particularly recommended, as among the most eligible which may be suggested, from the following considerations.

The provision for schools, exclusively of its intrinsic usefulness, made a part of the former ordinance of Congress for the sale of lands; the grant has actually been made in the sale to the Ohio company, and to John C. Symmes; and, although the ordinance be no longer in force, and such a grant be no part of the articles of compact, yet it has always been at least hoped by the inhabitants of the Territory that it would be generally extended.

The grant of the Scioto salt springs, will at present be considered as the most valuable, and alone would, most probably, induce a compliance, on the part of the new State, with the condition proposed by Congress. And if it is considered that at least one-half of the future population of that district will draw their salt from that source, the propriety of preventing the monopoly of that article, falling into the hands of any private individual, can hardly be disputed.

The tenth part of the proceeds of the lands, as it will be coextensive with the sales, will continue to be considered as an equivalent until the sales are completed, and after the present grant might have ceased to operate on the minds of the people of the new State. The roads will be as beneficial to the parts of the Atlantic States, through which they are to pass, and nearly as much to a considerable portion of the Union, as to the Northwestern Territory itself. But a due attention to the particular geographical situation of that Territory and of the adjacent Western districts of the Atlantic States, will not fail to impress you strongly with the importance of that provision, in a political point of view, so far as it will contribute toward cementing the

bonds of union between those parts of the United States, whose local interests have been considered as most dissimilar.

I have the honor to be, with sincere respect, your obedient servant,

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

The first resolution being under consideration. Mr. FEARING said he should oppose this resolution, but not on the ground of expediency. As the business had been urged forward hastily, he had not had an opportunity of consulting his constituents, to many of whom he had forwarded the report of the select committee on its being presented. He would, therefore, waive any remarks on the expediency of it until a bill was brought in, in the event of the resolution being agreed to, in the mean time expecting to hear from his constituents. But he was opposed to the resolution on Constitutional principles. He conceived Congress had nothing to do with the arrangements for calling a Convention. It was neither necessary, on general principles, nor under the compact, that the Territory, in order to be admitted into the Union, should form a constitution. By the compact, Congress can give their assent to admit the Territory into the Union before the population amounts to sixty thousand. Their power extends no further. The compact is the supreme law of the land, and is in the nature of a treaty. What it prescribes must be executed; but as to arrangements not made in it, they may or may not be made, and they may be made either by law, or by a constitution, as the Territory may see fit. Can Congress exercise powers given exclusively to the people? He conceived it would be as great an encroachment upon their rights to say they shall meet together in Convention and form a constitution, as it would be to say so to any State in the Union.

Gentlemen may say that this power is given to Congress by the consent of the people. The printed documents accompanying the report, if they mean anything, mean to express the opinion of the people. Among these is the letter of Samuel Findley to T. Worthington. [Mr. F. here quoted the concluding part of the letter.] Now, if this committee at Chillicothe speaks the voice of the Western Territory, the Congress have the right contended for; but this the citizens of other towns and counties will not admit. What example will the adoption of this measure hold out to the people of the Territory? If Congress violate the compact, will not the people of that Territory have an equal right to violate it? He hoped, for these reasons, that Congress would, on their part, preserve it inviolate.

Mr. DAVIS said he was as unwilling as any member on that floor, or as the Delegate from the Territory, to violate the compact; nor did he believe Congress would violate it by adopting the resolutions before them. Surely, to allow to the people of the Territory the liberty to become a State could not be considered as a violation of it. The honorable gentleman says, the Territory may come into the Union with or without a constitution, and yet the ordinance reads that "they shall be at liberty to form a constitution, provided it be republican." It says, therefore, they shall form a constitution on no other ground but its being republican.

When the population of the Territory amounts to sixty thousand, "it shall be admitted into the Union." This obligation is as binding upon Congress to admit, as upon the Territory to be admitted into the Union. Suppose, then, when the Territory shall have reached a population of sixty thousand, it should not consent to become a State. Can it be doubted whether Congress will have power, notwithstanding, to admit them?

But the ordinance says: "Congress shall have power to admit them before their numbers amount to sixty thousand." Before the existence of a certain population, there can be no territorial Legislature. But, suppose Congress thought fit, before those numbers were attained, to admit them, they having by the compact the undisputed right to do so? Thus it appears they could admit them when there was no Legislature in the Territory, to give its assent, which demonstrates that the assent of the Legislature is not necessary.

We are not, however, for doing anything compulsory. We only propose doing that, which, unless confirmed by the people of the Territory, will amount to nothing. Congress can only prescribe terms by which itself will be governed; nor can I see that the privilege of admission into the Union can infringe in the least the rights of the Territory. I am in favor of admitting the Territory into the Union for the reasons detailed in the report, and particularly from the general dissatisfaction which prevails under their present form of Government. We all know the great dissatisfaction that has existed in all the territorial governments, and I believe that a very great dissatisfaction exists in this Territory.

Mr. GRISWOLD.—This is not the first project started this session that goes to a consolidation and destruction of all the States. That this will be the effect of the present measure cannot, I think, be denied. What is the condition of the people of the Territory? They are not, it is true, as to every purpose of government, a State. But they have a complete Legislature, as fully competent to legislate as the Legislature of Maryland, or any other Legislature in the Union. They are fully competent to the making of all laws to regulate the internal concerns of the government. Now these resolutions go to interfere with these internal concerns, and to regulate them by a national law. When the gentleman from Kentucky (Mr. DAVIS) undertakes to decide the terms on which the members of the Convention shall be chosen, I ask him where is the power? Are not the powers of the Territorial Legislature as full as those of the Legislature of Maryland; and have not we as good a right to interfere with the State concerns of Maryland as to interfere with the concerns of the Territory? I call, then, upon gentlemen to say, whether they are willing to sanction a principle that goes to the length of consolidation of these States? We have the determination of the territorial Legislature that it is not desirous of forming a Constitution at this time. If, then, we go abreast of the determination of one Legislature, why not of another? If we go abreast of that of the Northwestern Territory, why not go abreast of that of Maryland? If, too, you may legislate for these people before they are admitted into the Union, you may also legislate for them afterwards; and if you do not like the constitution they now form, you may pass a law for another Convention. By a parity of reasoning you may force down a constitution on Connecticut, and say that as that State has no written constitution, you will give her one. Acting under such a principle, there can be no stopping, you may go any length. If you interfere with the authority vested in others, you may proceed any length, and that consolidation of the States, which some gentlemen wish to see effected, will be accomplished. I am, therefore, on Constitutional ground, opposed to these resolutions. I do not inquire into the expediency of the measure. Let the people judge of this. If they wish a constitution, I have no objection; but I would not impose upon them what the compact does not warrant, nor would I impose arbitrary power any more upon them than upon any of the States.

The report says:

"*Resolved*, That provision ought to be made by law for calling a Convention within the Eastern division of the Territory, to be composed of members to be apportioned among the several counties therein, in a ratio of one Representative for every —— inhabitants of the said counties, according to the last enumeration of inhabitants thereof," &c.

I understand the project is to portion out the people into districts to choose members of Convention; and I say, as you have not the power, it is arbitrary and unjust.

Mr. NICHOLSON.—I am surprised at the ground taken by the gentleman from Connecticut. I never doubted the authority of Congress to admit new States into the Union, as the Constitution expressly declares that new States may be admitted. That gentleman says, this measure tends to a consolidation of the State governments. I do not know what idea he entertains of consolidation, nor do I know to whom he alludes, when he says a consolidation of the States is the wish of certain members of this House. I can only say, that I have heard gentlemen on this floor express their universal abhorrence of this event, because they knew that, if the States are destroyed, we shall have a consolidated instead of a confederated Government.

The gentleman says that, if we pass these resolutions and authorize the people of the Territory to form a government for themselves and come into the Union, we might as well say the same thing to the people of Maryland. Was there ever a more absurd doctrine that States, acknowledged to be sovereign and independent, should be compared to a Territory dependant upon the General Government? I ask if Maryland can be compared to the Territory? Have both similar powers? What power has Maryland? The power of altering her form of government whenever she sees fit, so that she does not change it for an anti-republican form of government. Have the people of the Territory the same right? No; because the Governor and Legislative Council are appointed by the President, and have the power of preventing the passage of all laws. Hence the powers are different, and essentially dissimilar. Congress have passed an ordinance, which is in some measure the constitution of the Territory, and from which they cannot deviate.

The gentleman from Connecticut calls these resolutions an interference with the Legislative rights of the Territory, and asks, if the Territory has not as complete Legislative rights as any of the other States? I answer that, in some respects they have, and in other respects they have not. They have not the right of saying how their Governor shall be elected, or their judges appointed, as in Maryland; the Governor and judges are, in fact, prescribed them by the United States.

If these resolutions are passed, they do not interfere with the rights of the citizens of the Territory; they do not say they shall come into the Union, or that they shall form a constitution; they only lead to the passage of a law enabling them to do that which, it is allowed on all hands, they have themselves a right at present to do.

The gentleman says, we ought to wait for the approbation of the Legislature. But if the government of the Territory were to remain organized as at this time, I believe we might wait till doomsday, before we obtained their approbation. Have we not seen a law passed by that Legislature, not for bettering the condition of the people, but for dividing them in such a manner as to protract their admission into the Union, and thus enabling the present Governor and judges to hold their offices after the Territory, from its population, ought to become a State? I ask if, under these circumstances, it is to be expected that the Governor and Legislative Council would consent to the application of the petitioners? The thing is impossible. And it will appear that they have taken every step in their power to prevent the people from enjoying the rights of citizens as attached to a State. By subdividing the Territory, they have reduced their numbers so low that there is not a probability that they would come into the Union for ten years to come. And yet we are told the people ought to wait until the government of the Territory applies for admission into the Union. The Governor and Legislative Council are not chosen by the people, who may therefore earnestly desire an admission, as long as they please, without the power to obtain it. This scheme, in fact, puts everything in the power of the President of the United States.

The people, to the number of several thousands, have expressed a wish to be admitted into the Union. Who makes objection? It is merely made by the Delegate from the Territory, who tells you he has no instructions, and yet he is the only man in the whole Territory that opposes the

wishes of the whole people of the Territory. If we are not to attend to the voice of the people, and are to wait for Legislative interposition, we may wait until the present Governor's time expires, and, until the President shall choose a better man; by better man, I mean no other allusion than to the fact that the present Governor has declared that it is not his wish that the Territory should be admitted into the Union. Thus you would put it in the power of the President to keep this district under a Territorial government as long as he pleases. We ought not, then, to run the chance of the President's appointing a particular man to the office of Governor; but at once to regard and conform to the reasonable wishes of the people of the Territory.

I repeat it, that, in these resolutions, there is nothing compulsory. If the people of the Territory do not think proper to form a State government there is no compulsion to do it.

Mr. R. Williams said, he had hoped the gentleman from the Territory, when he was up, would have given some information to the Committee, in answer to the inquiry made by the member from Pennsylvania (Mr. Gregg) as to the petitions on this subject. But he had thought proper to avoid it, for what purpose he knew not, unless from a conviction that their objects and numbers would militate against his wishes; this, he presumed, was the true reason, which forbid a compliance. He said he had, in haste, attempted a selection of those petitions, but really found them so numerous as to render it perhaps improper to attempt to detail them to the Committee at this time. He would only state that, since Congress had rejected the law passed by the territorial Legislature for dividing it, more than twenty petitions had come on, signed by thousands of the inhabitants, and many by select men chosen for the express purpose by the people, and these, too, from almost every county in the Territory, praying for a State government, and stating their grievances in the most respectful terms. He said there were also a much greater number against the law which he had just mentioned, which also had the same object in view, that of a State government; as it was known the effects of this law and its objects were to prevent a State government, by cutting them into small sections and dividing the population, so that their numbers in no part should be sufficient to entitle them to a State government.

Mr. W. said, from every information he could obtain, he had no doubt but that nine-tenths of those people were in favor and wished a State government. Nay, there was not a solitary petitioner to the contrary, except the member from the Territory, notwithstanding his great desire to defeat this measure, by opposing the will of the people whom he ought to represent on this floor. The gentleman from Connecticut (Mr. Griswold) has started a Constitutional objection to this resolution, to enforce which he had supposed it to be intended for one of the States now in the Union, and asking, whether Congress have the right to direct the State of Maryland to call a Convention, &c.? No. Mr. W. said, he could see no analogy between the case put by him, and the present one before the Committee. The State of Maryland was an independent State, and was so before the formation of the Federal Government, and had her constitution independently of the General Government, which she as well as every other State, has a right to alter at discretion, and many of which have done so, since the present Government. But what is the situation of this Territory? Here is a tract of country belonging to the United States, which they wish to settle; they form for the people who shall go there, a temporary government, and at the same time, agree that, whenever this tract of country shall have a certain number of inhabitants, to wit: sixty thousand, it shall be admitted into the Union; and, if consistent with the general interest, such admission may be sooner, and when there may be a less number of inhabitants than sixty thousand.

It is to be observed that the term of admission is two-fold; first, when they have the number sixty thousand, the right of admission is absolute; in the second, when they have not the numbers, it is discretionary with Congress; but this discretion, he presumed, ought to depend on the expediency and policy of the measure; but, surely, gentlemen will not contend there is any Constitutional impediment in the way, if gentlemen will attend to the ordinance, and the Constitution giving the right to Congress to form and lay out new States.

The same gentleman (Mr. G.) has stated, as a further objection, that this application for admission into the Union, does not come through a proper channel, by which we are to know the public will, and says it ought to have come through the Legislature of the Territory; that this is the source from which we are to look for an expression of the public will; and again refers to what ought to be an application from any of the States.

Mr. W. said, although he admitted it was not common for that gentleman and himself to agree, as to what ought to be an expression of the public will, yet, on the present occasion, for argument sake, he would agree to the case stated, that we should regard the act of the Legislature of any of the States as expressive of the will of the people in such State, and still it does not bear on the present case. In all the States, said he, the people have a government of their own choice, which themselves have formed; they are represented by those of their own appointment, and who are responsible to the people at short and stated periods by elections; hence we may infer that, in their public acts, the interest as well as opinions of the people are consulted. But, how is it as to this Territory? Have the people a government of their own choice? Are not two branches of the Legislature, the Governor and Council, appointed by the President of the United States, independent of the people, and under no kind of responsibility to them? Even the salary which the Governor receives is paid by the United States. The Representatives are chosen by the people, but by a very limited suffrage in-

deed; and the Governor, it is to be observed, has an unqualified negative on all the acts of the Legislature, with a power to dissolve, and prorogue them, &c.

Mr. W. said, this being the situation of those people as to a government, he would venture to say that, if Congress disregarded the direct application of the people for a State government, and wait for a Legislative application, that it never would be made; for it is not to be supposed that those men who have the power to nullify every act of the people, through their Legislature, will ever sanction one which is calculated to put an end to their political existence. Nay, said Mr. W., have we not had, before the present session, a memorial, for example, which proves what those men would do had they the power? Did they not pass a law, which this Congress almost unanimously rejected, in palpable violation of their constitution (the ordinance) and which was intended solely to prevent the people from obtaining a State government, by dividing the population in such manner as that their numbers would not entitle them to a government? When, said he, men will so far disregard their oaths and the interest of the people, as to do acts of this kind, what may we not expect them to do, in order to promote their own private views? Thus, he said, we might fairly conclude, that neither from the nature nor practice of this Government, was an expression of the public will to be expected through its Legislature, but the reverse. But, it is asked, why force these people into a State government? This is not a fact, as relates to the petitioning of the people, or the report of the Committee; if gentlemen will attend to the report, they will find it is left optional with those people, when in Convention, to say whether they will go into a State Convention, or not. Where is the impropriety? It only gives them a fair opportunity of exercising those rights, which belong to every people, and which it seems strange any should be disposed to deny them. It also will afford a fair opportunity of trying the validity of the assertion, made on this floor, that these people do not wish a State government; should that be the case, no doubt they will act accordingly, and all parties be satisfied in the will of the majority.

Mr. W. said, these territorial governments, which the United States have been obliged to resort to, were arbitrary at best, and ought not to exist longer than they could with propriety be dispensed with. They were, he said, opposed to the genius of the people of this country, and in direct hostility with their notions of government; of course we were not to suppose they would be satisfied under them any longer than they may be incapable of self-government. He said he did not wish to take up the time of the Committee in detailing the powers of this Government, and the abuse of them by the government of the Territory, to prove what he had just stated, because he believed they were well known to every member of the Committee, which was quite sufficient for the present purpose.

Mr. W. said, he believed it to be a degree of justice due to those people, as well as sound policy in the General Government, to admit them into the Union at this time. The people resident in the Territory had emigrated from the different States in the Union, where they had been in the habit of enjoying the benefits of a free form of government; they no doubt looked forward to a very short period, at which they might again enjoy the same as pointed out by the ordinance, to effect which, it was natural to suppose they had invited a migration to their country; but if the doctrine now contended for in opposition, shall prevail in this House, all their hopes are blasted. Ought we not, said he, to have a fellow-feeling for those people? Let any gentleman make their situation his own, and will he longer hesitate as to the propriety and justice of the measure? It cannot be doubted but that these people are ripe for self-government; they now have, or will by the time proposed for their admission, the number required by the ordinance, viz: sixty thousand. By a recurrence to the census taken more than a year past, it will be found their numbers were forty-five thousand; since which we are to suppose a great increase of population, for we find that the United States since then have sold more than a half million acres of land within this Territory, for a sum amounting to more than a million of dollars. It is also to be observed that agreeable to the census taken in that country in the year 1794, the number of its inhabitants did not exceed six thousand; thus in about seven years we find an increase in this country of about forty thousand people. They now pay an expense nearly equal to some of the States, to support their government. From this statement of facts, Mr. W. said, by the time proposed for their admission by the report of the Committee there could be no doubt of their absolute admission into the Union under the ordinance.

Mr. W. said he had stated that it would be the policy as well as the interest of the Federal Government to admit this State into the Union; he believed there were many considerations to warrant this opinion. The General Government owned much valuable land in this country which it wished to sell; that it was a source from which much of our revenue is calculated to be drawn. Certainly then to form this country into a State, and the people to have a free government of their own choice, and enjoy their natural and political rights, will contribute more to the settlement and increase of its population, than under the present form of government. The natural consequence will be a demand for our land as well as an increase in its value; but let Congress once show a disposition not to admit them to those rights, or delay them, and the reverse will certainly be the fact; for it is not to be supposed that the people of America will be disposed to go from a free, into an almost arbitrary form of government, or to remain there. Again, the United States pay towards the support of this Territorial government, between four and five thousand dollars annually, which they will be freed from by adopting the proposed measure. Mr. W. said there was

one further consideration, which he thought ought to have weight on the present occasion; he confessed it had much weight with him: which was, that the people in this country were extremely dissatisfied with their present government, and particularly its administration; and this dissatisfaction would increase in proportion to their sense of being entitled to, and ripe for a better. He conceived it to be the duty of all Government to make its people as quiet and happy as possible, consistent with the general good, and to effect which it is of primary importance to grant their reasonable requests. In the present case, he could see no way so well calculated effectually to remove this dissatisfaction, as to give them the liberty of forming for themselves a government. That there would be some still dissatisfied, he had no doubt, but who would they be? He supposed those now in power, and their adherents, who hold offices and appointments not derived from the people, but independent of them; this was a natural consequence. It was not to be expected they would ever agree to a change likely to prove unfavorable to their present situation.

Mr. W. said he would further remark, that, in admitting the Territory to become a State at this time, certain articles of compact were proposed to the convention to be called for forming a government, which, if agreed to, he thought, must prove highly beneficial to the United States as well as that State; among which was, that the lands of the United States to be sold, should be exempted from taxation by that State for a term of years: those articles, to be sure, they were free to reject; yet, he believed, they would be agreed to, as there was an equivalent tendered on the part of the United States, which would induce acceptance. But, in case Congress disregard the wishes of these people at present and keep them out of the Union, until they shall be admitted under absolute right, we are not to expect any favor but in the same way.

Mr. W. said that, in every point of view in which he had been able to consider this subject, its propriety presented itself to his mind so forcibly, that he could not but be surprised at the opposition of some gentlemen. The people settled a country under an express agreement with the United States, that at a certain period they should be admitted to the rights of a free Government, and form a member of the Union. They now come forward, ask it, and show themselves entitled: and that the present Government you have given them has become oppressive, and incompetent to promote their happiness; yet are they to be told, remain as you are, because a few interested characters among you are not agreed that you shall be free. He concluded by saying, however some members of the Committee might be opposed to the measure, he hoped that there would be found a large majority in favor of it.

Mr. BACON.—These resolutions involve two questions. The first of which respects their constitutionality; and the second, their expediency. With respect to the first question, there appears to me to be no reasonable doubt. By the Constitution, the power of admitting new States into the Union is vested in Congress. The third section of the fourth article says: "New States may be admitted by the Congress into the Union." The mode of admission is left discretionary. The power, then, being vested in Congress, and the mode in which this power may be exercised being determined in that other part of the Constitution, which says, Congress shall have power "to 'make all laws which shall be necessary and 'proper for carrying into execution the foregoing 'powers, and all other powers vested by this Con'stitution in the Government of the United States, 'or in any department or officer thereof;" if this resolution be necessary to carry the vested power into effect, every objection against the constitutionality of the measure must vanish. Not only the power of admission, but also the power of passing the laws necessary for admission must be granted.

As to the expediency of the measure, we may not be so competent to judge; but by the ordinance we find that, when the Territory shall attain a population of sixty thousand, it shall be admitted as a State into the Union; and that, so far as it may be consistent with the general interests of the Confederation, it shall be admitted earlier. If, then, the admission be consistent with the general interests, Congress having the power to admit, ought to exercise it. For we all know that the possession of liberty is a very desirable thing, and ought to be extended liberally, especially where no injury can arise from it.

Mr. GRISWOLD.—I have long been persuaded that when gentlemen are determined upon any particular measure, they can readily find pretexts for it. The Constitution is brought in to their aid, though the fact is, that Territory existed before the Constitution was formed. The people of the Territory never consented to it; nor are they bound by any part of it which gives more power to the Federal Legislature than it gives by the compact. Their rights, under the compact, cannot be taken away by any provisions of the Constitution, to which they were not a party. I shall, therefore, lay the Constitution totally out of the question.

The gentleman from Maryland (Mr. NICHOLSON) and myself, agree in one or two points. We agree that it is competent to Congress to admit the Territory into the Union before it has attained a population of sixty thousand. If this were the sole object of the resolutions, I would agree to them. We agree in another point; that Congress has not the right to impose a convention upon these people without their consent. The question, then, is, whether it is, or is not, the object of these resolutions to impose a convention. Let us turn to the third resolution, which is calculated, in express words, for calling a convention by a law of the United States, and by taking the population of the last census as the basis of representation. If the principle be a sound one, that we have a right to impose a convention upon the people of the Territory, without their consent, how are the opinions of the people on the calling a convention

to be obtained? How is their consent to elect Delegates to be obtained? The consent expressed on the face of the petitions before you cannot be said to be a legal consent. How else, then, can such consent be obtained? In no other way, than by an act of the Territorial Legislature, or by going round to every man in the Territory, and obtaining his opinion. If this be left undone until the election for members of the convention, the result will be a partial expression of the public mind. For one man may vote, and another refuse to vote. Thus you may get a partial convention, composed of a few demagogues. I say, therefore, that, however defective the provisions of the compact, you must obtain the consent of the Territorial Legislature, before you take the step of calling a convention.

Believing the inevitable effect of these resolutions will be to impose a convention on the Territory, I am justified in saying they involve a usurpation of power by the United States, of power not belonging to them. If the resolutions amount to anything, they amount to this; if gentlemen will first obtain the consent of the Territory, in a proper mode, though their population does not amount to sixty thousand, I will consent to their admission into the Union. I am disposed to let them act for themselves, to let them divide, or not divide, the Territory into States, as they please; but I am against imposing anything upon them contrary to their will. They are more deeply interested than we are in the establishment of a proper form of government. They, and not we, are to be bound by it. They, then ought, in its establishment, to act for themselves, and not we for them. I contend that such a measure is extraordinary in this country. I know that it has been practised in other countries. I know that, in Switzerland and in Holland, the people were told by the Republic of France, they had bad constitutions that required alteration, and that the Republic, with sisterly kindness, without asking their consent, imposed conventions upon them, which formed for them entirely new systems of government. But I trust the same thing will not be done here.

I do not think it necessary to inquire into the expediency of this measure, as I have no objection to giving my consent to the admission of the Territory into the Union, even without a population of sixty thousand, if wished for by the people; though I have no idea that the people will be benefited by it, as they will then have taxes to pay, from which they are now exempt. But I do not consider this as a proper objection for us to make, as it ought to rest with the people to say, whether they are willing to pay those taxes.

I say again, we have no right to impose a convention. I believe that the principle on which we take this step goes the full length I have stated, and may, if adopted in relation to the Territory, be applied to all the States. The powers of the Territory, on this head, are as complete as those of the States; and if we interfere with the first, we may interfere with the last. I know that, in Connecticut, the Legislature may regulate the choice of Governor, and that the Legislature of Maryland chooses the Governor; but these provisions do not give a right to the National Government to interfere in the regulations of the one or the election of the other. So, if the Legislative powers of the Territory are limited, no power is thereby given to the National Legislature over those powers which exclusively belong to the Territory.

Gentlemen may say what they will, but there is nothing under the ordinance to prevent an expression of the public voice of the Territory. It is true that one branch of the Territorial Legislature is chosen by the President, but the other branch is chosen directly by the people. It is, therefore, perfectly safe to trust to the expression of the public will through a Legislature, which is chosen every two years. If gentlemen will confine themselves to giving the assent of the Government to the calling a convention, I will agree to it; I cannot agree to impose one.

Mr. NICHOLSON.—I will not undertake to say, with the gentleman from Connecticut, (Mr. GRISWOLD,) that the people of the Northwestern Territory are not bound by the Constitution, as that doctrine might carry us farther than we mean to go; but I will say, there is nothing in these resolutions that abridge the rights of the people. They, in fact, extend them; and though, in the opinion of the gentleman, the people may not be bound by the Constitution, they may not be unwilling to accept the privileges we now offer them. We are about to bestow upon these people, what man has ever considered as his greatest blessing, the right of self-government; to offer them a full participation in all our rights. They have a right, if they please, to accept these high privileges, which we have a Constitutional right, if we please, to bestow. I do not know that I said, what the gentleman from Connecticut ascribes to me, that Congress has no right to impose upon these people the calling a convention. I did say that Congress had no right to give them a constitution, without their consent. But take gentlemen on their own ground; grant, for argument sake, that we have no right to impose upon them a convention. Is there anything like this contained in the resolution? We only enable them, by the first resolution, to come into the Union under principles not repugnant to the Constitution, or to the ordinance of 1787.

The gentleman from Connecticut says, we are not to collect from the petitions on our table, that every man in the Territory should be admitted into the Union. True, we see that this is not the case. We have evidence here, from the language of the Delegate of the Territory, that there is one man, at least, against it. But, from the complection of these petitions, and from the great number of signatures, we have reason to believe that a large majority of the citizens are for the admission, particularly as we have received no opposing petitions. We have reason to believe that a portion of the people are opposed to the admission, because those elected by the people have communicated to us their indisposition to come into the

Union; also, the Governor, and the member on this floor, are of the same opinion; but when the small number of this description of citizens is contrasted with the several thousand petitioners, who pray for admission, the fair inference is, that a large majority wish to be admitted.

The gentleman from Connecticut says, there is no way of getting the consent of the Territory, but through their usual Legislative organs, or by going throughout the Territory and collecting the opinion of every citizen. But I will ask him how the assent of the people of the United States was obtained to the Constitution, under which we now live? Was it obtained by the assent of all the Legislatures, or by that of every man in the country? No; the same mode was then adopted that we are now pursuing. Conventions were assembled, which ratified the Constitution for their respective States, which was not binding upon those States that ratified it, until adopted by nine States; and then it was adopted as the supreme law of the land in those States. Now, what do we wish? Not to impose a convention upon the people of the Territory, or to say, when the convention shall be convened, they shall adopt a constitution. We take, on the contrary, the same mode pursued by the grand Convention, which did not say that every State should elect conventions, but that, when the conventions of nine States should adopt the Constitution it should be in those States the supreme law of the land. So we say that, when the people of the Territory shall have elected a convention, and adopted a constitution, it shall be valid. Here is no compulsion; we only take the best measures we can devise for obtaining the sense of the people. This, while it is the only is also the fairest opportunity they can have of freely and fully expressing their sentiments, because, by voting for a man who shall declare himself an advocate of, or an opponent of the measure, the sense of the public will be obtained. This will be accomplished more completely and distinctly, by voting for a man, whose duties will be confined to this single object, than by electing to a Legislature men whose duties are various and multiform.

I must say that I do believe that the wishes of the people will be better expressed by a convention appointed by the people themselves, than by a Legislature, two branches of which are appointed by the President of the United States.

As to pecuniary considerations, I am at a loss to understand the gentleman from Connecticut, who seems to think that the Territory, when formed into a State, actuated by the inordinate possession of power, will be likely to grasp at our lands. But there will be this difference between his plan and ours. If we admit them now into the Union, we may make very important terms, which they will observe inviolate, if not lost to every principle of good faith: whereas, if we wait until they shall have acquired the right of admission, without our consent, we can make no terms with them whatever.

Mr. Goddard.—The present question arises out of a question decided before. A proposition was made by the Legislature of the Territory to divide it; an application to this effect was made to Congress, who refused their assent to it. The people, in consequence of that refusal, now come forward and ask to be adopted as a State into the Union, and we are now called upon to make them a State. If the object of these resolutions were barely to say, they *might* be a State, I should have no objection; but we are about exercising a power over that Territory, that belongs to the Legislature of the Territory. Does not that Legislature possess every power that we are called upon to exercise? Suppose Congress were to decide that they should be admitted; would not the Legislature of the Territory have the power of deciding whether, and how, a convention should be called? Take the case of Maine. Suppose that we not only admit Maine into the Union, but say that a convention shall be called. Would we not, in that case, interfere with the powers of Massachusetts? And do we not, in these resolutions, violate the power of the Territorial Legislature in the same way?

[Here Mr. G. read the third article, which respects the calling a convention.]

The adoption of the first resolution being perfectly useless without the adoption of the third resolution, we are to infer that, if one shall be adopted, the other will also be adopted. For, if this should be the case, we must wait for the expression of the Legislative will of the territory, which we may as well wait for before we adopt the first resolution. It is to be remembered also, that under these resolutions Congress are to pay the expenses of the convention, and that the whole business is indeed under the direction of Congress. Why precipitate this measure, when in all probability, before these details can be made, the Territory will have obtained the number of sixty thousand, and be entitled of right to admission into the Union? For these reasons, I am of opinion, that it will be best to leave the business where it is.

Mr. Macon said the House was brought to a consideration of this subject by the petitions of the people of the Northwestern Territory, who were dissatisfied with their present situation. The people not only of this Territory but of all Territorial government, will be dissatisfied, from the very nature of the government. We first live in one kind of government, and then go into territorial government and we don't find there the same government with the one under which we previously lived. Hence the invariable dissatisfaction.

The only question now is, on agreeing to the first resolution, that is, to give our consent to the Territory being admitted as a State into the Union, before they have attained a population of sixty thousand inhabitants. It seems to me from the petitions before us that a decided majority of the people are in favor of being admitted. These numerous signatures could not be obtained in a corner, or without being known over the whole Territory; and had sentiments prevailed in the Territory different from those expressed in the petitions, we should have had before this time our table covered with counter-petitions.

Mr. M. said he had never heard a Constitutional

question started where there was so little ground for it. He asked whether there was any violation of the Constitution in admitting the Mississippi Territory to the rights of a Legislature before their numbers justified them in requiring it?

The gentleman from the Territory says they may be admitted without a Constitution. But does not the ordinance require that the government shall be republican, and he would ask whether the present government is republican? He believed not. So much did he dislike these Territorial governments, that he wished all the Territories were formed into States, that they might have a share in passing the laws by which they are governed.

The gentleman from Connecticut says this measure will lead to a consolidation of the States. Its effects will be directly the reverse, for the more States there are in the Union, the farther removed shall we be from a consolidation.

We are told that if this application were regular, the gentlemen would have no objection to it. But can any act be more regular than that which proceeds directly from the people?

Mr. Fearing conceived nothing would be more likely to promote disturbances in the Territory than this law, as he conceived a large portion of citizens would not consider themselves bound by it, and of consequence not send delegates to the convention. He conceived it unconstitutional, as under it a convention might be called, a constitution made, and yet that constitution be void. For suppose that under the act proposed to be passed a convention should be chosen according to the present census, and a constitution formed by them; and suppose that another constitution should be formed by a convention convened by the Legislature of the Territory under a different census; which would be the real constitution of the Territory? Certainly the last, because formed on a true apportionment of the population, and under a law of the Legislature by which the Territory is governed.

The gentleman from Maryland says, that unless Congress interfere, the Territory can never become a State; and to prove this, he refers to the law of the Territorial Legislature, lately before us, expressive of their disapprobation of coming into the Union. But this opinion is not correct; for many of the people of the Territory, though better pleased with the division of the Territory proposed in the law, would still wish a State government, in the event of that division being rejected; and it appears on the journals of the Legislature that some members voted for a State government in that event. If the arguments of gentlemen are sound, we might be kept from obtaining a State government for one hundred years, in case the President should appoint or continue a Governor hostile to such a government. But, Mr. F. said, he conceived the people had a right, when their numbers amount to sixty thousand, to be admitted, even if Congress shall be against admitting them, or the Governor and upper House in addition. He conceived that, under the resolutions of the representatives proposing a convention, if the people agreed to them, a constitution might be formed that would be fully obligatory.

Mr. F. said, when the gentleman from North Carolina (Mr. Williams) spoke in relation to the petitions on the table, he had presumed that he was going to state the number of petitions in each county. This, however, he had not done. As to himself he did not know from which counties the petitions came, but he presumed they were principally from Ross and Adams.

The gentleman from North Carolina has said, the present revenue of the Territory is sufficient to support a State government, as appeared from the contents of the petitions. The reverse, however, of this is clear, by a document on the table, which furnished information more worthy to be relied on than that of the petitioners, who, themselves, he presumed, paid little, as the present revenue was derived altogether from land.

If the Constitution is as binding as gentlemen contend, Mr. F. conceived that the law of Congress had vested a right in the Territory which Congress cannot impair, viz: the right of the Legislature to call a convention when the numbers of the Territory shall reach sixty thousand.

As to the idea of gentlemen respecting a republican form of government, Mr. F. conceived Connecticut to be under a republican form of government, which, however, consisted of nothing more than fixed habits, which depended upon a law which might at any time be repealed. There was, in reality, no constitution, therefore, in Connecticut; so he conceived the Territory at liberty to form, or not to form, a constitution. If not at liberty, the terms of the ordinance would have been imperative.

Mr. Goddard moved to amend the first resolution, by inserting the words "for giving the consent of Congress;" so as to read, "that provision 'ought at this time to be made by law for giving 'the consent of Congress to the inhabitants of the 'Eastern division of the Territory, to form for 'themselves a constitution and State government," &c.

Mr. G. said, his only objection to the original resolution was that, under it, Congress usurped powers vested in other bodies. Should this amendment prevail, there would be no occasion to inquire into the principles involved in the subsequent resolutions.

The question was taken on this amendment, and lost—yeas 13.

The question was then taken on the first resolution, and carried—yeas 47.

Wednesday, March 31.

Mr. Davis, from the committee to whom was yesterday referred a motion respecting "members of this House dying at the seat of Government during a session of Congress," made a report thereon; which was read and considered: Whereupon,

Resolved, That the expenses accruing by order of the House, in attending the funeral of Narsworthy Hunter, a member from the Mississippi

Territory, be paid out of the contingent funds of the House.

Resolved, That the legal representatives of a member of this House, who shall die at the seat of Government during the session, shall be entitled to receive the same allowance for his itinerant expenses, as the member would have been entitled to, had he returned to his place of abode.

A petition of David Austin, in behalf of himself and others, inhabitants of the City of Washington, in the District of Columbia, was presented to the House and read, praying that such a sum of money as Congress, in their wisdom, may deem sufficient, may be appropriated for the building of a house for the exercise of public worship, on the Capitol Hill, for the accommodation and benefit of the inhabitants, and the improvement of the said city.

Ordered, That the said petition be referred to a Committee of the whole House on Friday next.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

According to the desire expressed in your resolution of the twenty-third instant, I now transmit a report of the Secretary of State, with the letters it refers to, showing the proceedings which have taken place under the resolution of Congress, of the sixteenth of April, one thousand eight hundred. The term prescribed for the execution of the resolution having elapsed before the person appointed had set out on the service, I did not deem it justifiable to commence a course of expenditure after the expiration of the resolution authorizing it. The correspondence which has taken place, having regard to dates, will place this subject properly under the view of the House of Representatives.

TH. JEFFERSON.

MARCH 31 1802.

The said Message was read, and, together with the papers referred to therein, ordered to lie on the table.

Mr. SOUTHARD, from the committee to whom was recommitted, on the twenty-seventh instant, the bill further to alter and establish certain post roads, reported an amendatory bill, which was twice read and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved, That a committee be appointed to prepare and report a bill declaring the assent of Congress to an act of the General Assembly of Virginia, entitled "An act to amend, and reduce into one, the several acts of Assembly for improving the navigation of Appomattox river, from Broadway to Pocahuntas bridge."

Ordered, That Mr. GILES, Mr. WALKER, and Mr. STANFORD, be appointed a committee pursuant to the said resolution.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to repeal the internal taxes," with several amendments; to which they desire the concurrence of this House.

NORTHWESTERN TERRITORY.

The House went again into Committee of the Whole on the report of a select committee respecting the admission of the Northwestern Territory as a State into the Union.

The second resolution being under consideration,

Mr. FEARING referred to the provisions of the ordinance empowering Congress to divide the Territory, from which he inferred that Congress had not the right to divide the Territory so as to form one part of it into a State, while the remaining section was not made a State, without the consent of the Territory; he conceived that Congress must, in such event, form this section also into a State. He, therefore, was of opinion that Congress must consult the people of the Territory before they shall divide the Territory.

As to the expediency of the resolution, he thought it very inexpedient to make the division therein marked out. The effect of it would be that the whole of Lake Erie would be thrown out of the State to be formed, and the inconvenience to the section of the Territory not incorporated in the new State would be very great, if it should be attached to the Indiana Territory, from its great distance, which he understood was contemplated.

Mr. GILES said that the committee who reported these resolutions, so far from entertaining a disposition to change the ordinance, had strictly observed the conditions therein prescribed. [Mr. G. here quoted the ordinance.] It appeared therefrom that Congress was under an obligation, after laying off one State, to form the remainder into a State. But when? Hereafter, whenever they shall think it expedient to do so.

Mr. BAYARD agreed that there was no obligation imposed upon Congress to decide definitively the boundary of a State. If the ultimate right of Congress, after the formation of a new State, to alter the boundary be doubted, they have a right to remove all doubts by so declaring at this time. It is certain that at present great inconvenience would arise from drawing the boundary as fixed in the resolution.

The population of the Territory does not amount to that which is sufficient to give it admission into the Union. He had, however, no disposition to oppose its admission, notwithstanding this circumstance. The population in the Eastern State does not exceed forty-five thousand. We are now about to pare off five or six thousand inhabitants, which will bring it down to thirty-nine thousand. A population of forty-five thousand is quite small enough for an independent State. It is a smaller population than exists in any of the present States in the Union. From this consideration, it might have been expected that Congress would take no step whose effect would be a diminution of that population.

The division, as made in the resolution, is manifestly unjust, as far as it relates to the people north of the dividing line. By it they are about to be severed from their connexion with the other portion of the Territory. Mr. B. wished to know to whom they are to be attached? If attached to the Indiana Territory, the inhabitants, to arrive at the seat of Government, will be obliged to go across the new State, a distance of two or three

hundred miles. Besides, after having advanced them to the second grade of territorial government, you will consign them back again to the first, and thereby give them a system of government extremely odious, and which we ought to get rid of as soon as possible. Thus, after having held out to them the flattering prospect of being elevated to the high rank of a State, you degrade them, contrary to their expectations, to the humblest condition in the Union. Mr. B., therefore, thought it would be most just and politic to include this population of five or six thousand in the bounds of the new State, subject to the reserved right of Congress to alter the boundary hereafter.

Mr. GILES said he was not tenacious of his opinions; but it was necessary to justify the contents of the report by stating some considerations that might not be generally known to the members of the House.

Mr. G. said he supposed the section of the Territory, not embraced in the new State, would be attached to the Indiana Territory; nor would any great hardship result from this disposition; and such as did result would arise from their local situation, and not from any circumstances over which the National Legislature had a controlling power. He believed that people, to reach the seat of Government, had as far to go now as they will then have. His object was to reserve in future to Congress the right of determining the boundary of the States in the Territory. If this section should once be admitted, he believed it would be very difficult, however proper, to detach it from the State to which it had become attached.

The report contemplates the forming a constitution. Should the people on the northwardly side of the line be admitted as a part of the State, they will participate in the formation of the constitution—a constitution which will not be ultimately for themselves, but after a short time exclusively for others. This participation would be unjust. The question then is, whether you will suffer those to form a constitution who are not to be permanently affected by it; and whether, if you once constitute a State, you will be able hereafter to alter its boundaries? For if this section be now admitted, gentlemen, by looking at the map, will see that the boundary now fixed cannot be permanent.

As to the remarks made by the gentleman from Delaware, Mr. G. said he was extremely glad that gentleman was for giving to the Territory the right of a State. If, however, he had attended to the report, he would have found that his calculation of numbers was incorrect. The population of five thousand had been deducted by the Committee, and after that deduction forty-five thousand remained. Though the numbers in the Territory proposed to be formed into a State amounted, a year ago, to no more than forty thousand, yet it might be stated upon strong ground, that, before the new government can get into operation, there will be a sufficient population to demand admission as a matter of right. By attaching the inhabitants on the north of the line to the Indiana Territory, they will remain in the same grade of government they now are, and not be degraded, as stated by the gentleman from Delaware, to a lower state. This disposition appeared to Mr. G. the best that could be made. But if, when gentlemen came to the details of the bill, it should be thought best to introduce into the new State the population north of the line, he said he might have no objection.

Mr. FEARING stated the great inconveniences that would be felt by the inhabitants north of the line, if attached to the Indiana Territory. He considered the remarks of the gentleman from Virginia, (Mr. GILES,) respecting the participation of this description of citizens in forming a constitution for others as entitled to little weight. Such a measure was by no means uncommon. It had been done in the case of Kentucky, and other States.

Mr. F. conceived that the people of the Territory had all equal rights under the ordinance; they had been virtually promised that they should not be attached to any other Western Territory, and Congress had only reserved to themselves the right of admitting them into the Union as States. More they could not do, without their consent.

Mr. BAYARD moved to strike out of the resolution the words that fix the boundary, for the purpose of introducing words that should prescribe that the new State be circumscribed by the original boundaries of the Eastern State, referring to Congress the right of making one or more States in said State at any future time.

Mr. GILES said that the State, as formed in the report, was one of the most compact and convenient in the Union. The amendment would materially change its character. Besides, it would in fact impair the right of Congress to accommodate the boundaries to future circumstances. It was well known, and sensibly felt, that there were many inconvenient boundaries to several of the States now in the Union; yet so great was the difficulty attending their alteration, that they could not be changed.

Mr. BAYARD was not so sensible of the difficulty of altering the boundaries as the gentleman from Virginia, who had stated that Congress would not have power to alter them when once fixed. This difficulty might exist as to the States now in the Union, because Congress had not the Constitutional power to alter them without the consent of the adjacent States. But if this power be referred to Congress, which will be a disinterested tribunal, there will be no difficulty in varying the boundaries as circumstances shall dictate.

Mr. B. asked, if, while gentlemen are attending to the interests and wishes of one part of the people, they are disposed to disregard the interests and wishes of another part? If they were not, they ought to admit the section, proposed by the resolution to be cut off, to a participation in State rights.

Mr. BACON objected to the amendment. He said that Congress were vested by the Constitution with certain powers which they cannot increase, or diminish, or delegate. By the Consti-

tution, likewise, the several States are vested with certain powers which they cannot increase, diminish, or divest themselves of. By the third section of the fourth article of the Constitution, "new States may be admitted by the Congress into the Union." This act proposes to make this Territory a State with State powers under the Constitution. How, then, can these people, once a State, divest themselves of these powers. This is a question that does not interest simply the State proposed to be formed, but every State in the Union. All are equally interested in preserving the powers vested in them by the Constitution.

Mr. Goddard said, that were he to vote for making the Territory a State, he should be in favor of extending State rights to all the inhabitants of the Territory. He moved to strike out the proviso to Mr. Bayard's motion, which reserves to Congress the right of altering the boundary.

Mr. Fearing remarked that he was not a little surprised to find gentlemen, who a few days since voted that the Legislature of the Territory had not a right to alter the boundaries without the permission of Congress, now contending that Congress have that right exclusively.

Mr. Bayard said he did not see any occasion for striking out the proviso. The gentleman from Massachusetts, (Mr. Bacon,) goes on the principle that Congress has only a right to admit, without any reservation. Mr. B. said he had always believed the greater included the smaller. If you are vested with the greater power of admitting, you have certainly the minor powers included in the greater power. From the nature of the ordinance, it constitutes the fundamental principle on which the States are admitted—they are not admitted under the Constitution. They are to be admitted exclusively under the provision of the ordinance. You may, therefore, say that you will not now exercise the whole power committed to you, but reserve the right of exercising it hereafter.

Mr. Smilie did not consider the principle laid down by the gentleman from Delaware as Constitutional. We must be governed by the Constitution. If the Territory be admitted as a State into the Union, when admitted it must be bound down by the Constitution, which says the boundaries of States shall not be altered but with the express permission of the State.

The question on striking out the proviso was lost without a division.

The question was then taken on Mr. Bayard's amendment; which was lost—yeas 18, nays 38.

Mr. Fearing moved to strike out that part of the resolution which reserves to Congress the right of altering the boundary after the State is admitted. Lost—yeas 20.

The question was then taken on the second resolution, and carried in the affirmative—yeas 42.

The third resolution was then agreed to—yeas 42.

The fourth resolution was agreed to without a division.

On motion of Mr. Fearing the right to two salt springs, besides those at Scioto, was vested in the new State.

Mr. Griswold moved to strike out the third article, which provides that one-tenth part of the net proceeds of the sales of Western lands should be applied to the making roads "leading from the navigable waters emptying into the Atlantic to the Ohio, and continued afterwards through the State of ——."

Mr. G. said he objected to this article, because the proceeds of the Western lands had been appropriated to the payment of the public debt, and to make roads for the States of Virginia and Pennsylvania would be the sole effect of this article. This, however disguised, would be the effect. Mr. G. said he knew how large and powerful were the delegations of Virginia and Pennsylvania on that floor; yet he hoped, notwithstanding their strength, so unjust a measure would not be agreed to. He knew the proposition came from a public officer, whose estate lay in the western parts of Pennsylvania, whose value must be appreciated by the roads contemplated in the resolution. He alluded to the Secretary of the Treasury, whom he was justified in considering as the author of the plan from his letter accompanying the report.

Mr. Giles said he was sorry there was any part of the report that had a local aspect. But this was unavoidable. Local considerations were often necessarily blended with principles of general utility. He recollected the passage of several bills for the erection of light-houses; though he did not recollect how many of these were raised at the public expense on the Connecticut shore. Considering them as useful, though they had a local effect, he had always voted for them. He would also mention certain circumstances attending the aiding of the fisheries to the eastward, to which certain benefits were attached that were derived from the contributions of other parts of the Union. Yet he had always voted for them, notwithstanding their local application.

So far as relates to Virginia, the simple effect of this resolution will be to form a road over a mountainous country. Mr. G. said he was himself as little interested as the gentleman from Connecticut. Yet, where measures were devised whose great object was the general benefit, though they might be attended with local advantages, he had no objection to them. He believed the State of Maryland, the Federal City, Alexandria, Baltimore, and Philadelphia, would be most benefited by facilitating an interchange of commodities.

Mr. G. said he considered the circumstances of connecting the different parts of the Union by every tie as well of liberal policy as of facility of communication highly desirable. He further believed that the devoting one-tenth of the proceeds of the lands to the laying out new roads would be in fact no relinquishment on the part of the United States, as the lands thereby would be greatly enhanced in value. If, however, it shall be thought that this sum will be better applied in the opening roads in the interior of the State, he should have no objection to that.

The gentleman from Connecticut, (Mr. Griswold,) affects lately to have discovered a great deal of disguise in the proceedings of this House. What disguise? What were the committee to do? This country is placed in a certain peculiar situation. We have waters running to the East—they to the West; and the committee thought it was desirable to connect these by good roads. With the committee, State principles or interests had no influence—they were governed entirely by general principles and the common interest.

The gentleman has also insinuated that the Secretary of the Treasury holds lands that will be benefited by these roads. It may be so. Mr. G. had not inquired; but he supposed he did not hold all the lands. Congress may lay out these roads as they please. He could foresee how Congress would lay them out, and it is a million to one that they will not touch his lands.

The United States are about making a new contract. These propositions are made as additional securities for the national property. The Secretary of the Treasury having estimated the annual product of these lands at four hundred thousand dollars, Mr. G. said, as chairman of the committee, he had applied to him to know his opinion of the manner in which this sum could be best secured, and he gave his opinion that this provision would be most likely to effect that object. This is all the mystery and disguise attending the resolution.

Mr. Smilie said when gentlemen charge particular States with injustice, they ought to be prepared to prove what they advance. If there had been any co-operation between the delegations of Virginia and Pennsylvania on this occasion, he had never heard of it. The fact was, that no peculiar good could result to Pennsylvania from this measure. The great object was to keep up that intercourse which will attach the people of the Territory to you. When the Territory shall become a State, she will have a right to tax your lands. This benefit, together with the salt-springs, as I understand, is proposed as a substitution for the relinquishment of those rights.

Mr. Fearing said he considered a part of the rights of the Territory given up by this resolution; and though the Territory would be highly benefited by the projected roads, and the cession of the salt-springs, yet he conceived they would be much more benefited by laying out the roads within the Territory.

Mr. Griswold said he was glad the honorable gentleman from Virginia had assured the House there was no disguise in this business. If the object be to make an advantageous contract with the Territory to secure our Western lands, let us offer them five per cent. of the proceeds of those lands, to be paid into their treasury. If they shall be disposed to make roads through Pennsylvania and Virginia, he should have no objection.

He was as sensible as the gentleman from Virginia, that whatever improves a part of the Union improves the whole; though this was undoubtedly the case, he was not of opinion that a sum of money should be taken from the public treasury, and specially applied to local purposes. Under this resolution, according to the calculation of the Secretary of the Treasury, forty thousand dollars was the smallest sum that would be annually applied to the laying out those roads. Mr. G. said he thought the sum too large to be withdrawn from the national treasury, and directed to local objects.

The allusion of the gentlemen to light-houses raised on the Connecticut shore does not apply. There was but one light-house in Connecticut, ordered to be built by this House, for which the *enormous* sum of twenty-five hundred dollars had been appropriated. Yet this solitary measure had been rejected by the Senate. This is the great boon given to Connecticut!

For these reasons Mr. G. hoped the article would be stricken out, and that, if it was necessary to make terms with the new State, they might receive five per cent. on the receipts of the land, to be paid into their own treasury, disposable by themselves as they saw fit.

Messrs. R. Williams, Jackson, and Holland, said a few words in favor of retaining the article; when the question was taken on striking it out, and lost—yeas 17.

Mr. Fearing, wishing that half the proceeds of the Western lands should be laid out on roads within the Territory, made a motion to that effect; lost—yeas 25.

The report of the select committee, without further amendment, was then agreed to, and a bill ordered in conformity thereto.

Thursday, April 1.

Mr. Dennis, from the Committee of Claims, presented a bill for the relief of John Travers and Charles A. Beatty; which was read twice and committed to the Committee of the whole House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes;" Whereupon, the said bill, together with the amendments, was committed to the Committee of Ways and Means.

On motion, it was

Resolved, That the Secretary of the Treasury be directed to furnish this House with an estimate of the expenses incurred by the United States in the exercise of jurisdiction over the Territory of Columbia, since the assumption of jurisdiction by Congress.

The House, resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act making appropriation for defraying the expense of a negotiation with the British Government to ascertain the boundary line between the United States and Upper Canada; and, after some time spent therein, the Committee rose and reported the bill without amendment.

The bill was then read the third time and passed.

The House went into a Committee of the Whole on the bill sent from the Senate, entitled "An act to empower John James Dufour and his associates to purchase certain lands. After making some progress therein the Committee rose and were re-

fused leave to sit again; so the bill was recommitted to Mr. Elmendorf, Mr. Davis, and Mr. Cutler.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Isaac Zane," with an amendment; to which they desire the concurrence of this House.

The House then resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the thirtieth ultimo, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act for the rebuilding the light-house on Gurnet Point, at the entrance of Plymouth harbor, for rebuilding the light-house at the eastern end of Newcastle Island; for erecting a light-house on Lynde's Point, and for other purposes;" and, after some time spent therein, the Committee rose and reported their agreement to the same.

The House then proceeded to consider the said report and amendments at the Clerk's table: Whereupon,

Resolved, That this House doth agree to the first, third, fifth, and sixth amendments.

Resolved, That this House doth also agree to the second part of the second and fourth amendments, with amendments to the same, respectively.

Resolved, That this House doth disagree to so much of the second and fourth amendments of the Senate, as proposes to strike out certain words in the fourth and fifth sections of the original bill.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of Isaac Zane:" Whereupon,

Resolved, That this House doth agree to the said amendment.

CITY OF WASHINGTON.

The House went into Committee of the Whole on a report respecting the City of Washington.

In lieu of the first resolution, one was substituted, on motion of Mr. Dennis, for abolishing the present Board of Commissioners, and empowering the President to appoint one or more agents to manage the affairs of the city.

Mr. Griswold moved to amend the third resolution by striking out that part which empowers the President to advance moneys from the Treasury to pay the instalments of $200,000, and, in case too great a sacrifice would be made by selling city lots.

This motion was opposed by Mr. Nicholson, and lost—yeas 20.

Mr. Gregg moved to strike out the proviso in the fourth resolution, which saves from immediate sale a certain portion of city lots pledged to the payment of $50,000 loaned of Maryland.

This motion was supported by Messrs Griswold, Eustis, Mitchill, Bacon, Randolph, and Alston; and opposed by Messrs. Nicholson and Holland; and carried—yeas 45, nays 20.

Mr. Nicholson moved to strike out the first part of the fourth resolution, and insert in lieu thereof a provision that in case the proceeds of the lots do not prove adequate to repay the loan of Maryland, the deficiency shall be paid out of the Treasury.

This motion was supported by Messrs. Nicholson, Alston, T. Morris, and Dennis, and opposed by Mr. Gregg.

The Committee rose without coming to a decision, and asked leave to sit again.

Friday, April 2.

Mr. Bacon, from the committee appointed on the fourth of January last, to whom it was referred, on the twenty-fifth ultimo, "to consider whether any, and if any, what, reduction ought to be made from the pay of the Senators and Representatives in Congress, as now established by law," made a report; which was read, and ordered to lie on the table.

Mr. Giles, from the committee appointed on the thirty-first ultimo, presented a bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned; which was read twice and ordered to be engrossed, and read the third time to-morrow.

Mr. Giles, from the committee appointed on the eighth of February last, presented a bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States," the other, "An act entitled 'An act supplementary to the act establishing a Mint, and regulating the coins of the United States,'" as relate to the establishment of the Mint; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. Randolph, from the Committee of Ways and Means, who were instructed, on the twenty-sixth ultimo, "to inquire into the expediency or inexpediency of authorizing the Secretary of the Treasury to remit the duties, in all cases which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidable casualty," made a report thereon; which was read and considered: Whereupon,

Resolved, That it is inexpedient to authorize the remission of the duties which have accrued, or may accrue, on distillation, in any case whatever.

Mr. Giles, from the committee appointed on the thirty-first ultimo, presented a bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes; which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. Randolph, from the Committee of Ways and Means, to whom were yesterday referred the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes," reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned,'" and extending the benefits thereof to the arts of designing, engraving, and etching, historical and other prints; to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole House.

The House proceeded to the further consideration of the amendments proposed by the Senate to the bill, entitled "An act to repeal the internal taxes;" to which the Committee of Ways and Means this day reported their agreement: whereupon,

Resolved, That this House doth concur with the committee in their agreement to the amendments of the Senate to the said bill.

The House resolved itself into a Committee of the Whole on the report of the committee of the twenty-sixth ultimo, on the petition of Richard Soderstrom, attorney in fact for Paolo Paoly, a subject of the King of Denmark, referred the twenty-second of the same month; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That provision ought to be made by law to refund and pay to the petitioner, Paolo Paoly, out of any money in the Treasury not otherwise appropriated, the sum of seven thousand and forty dollars and fifty-five cents, it being the amount of damages and costs of suit awarded by the circuit court of Pennsylvania, in its judgment of restitution, on behalf of the petitioner, against Captain William Maley, commander of the public armed vessel the Experiment, belonging to the United States.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that Mr. Eustis, Mr. Gregg, and Mr. J. C. Smith, do prepare and bring in the same.

Ordered, That Mr. R. Williams be added to the committee appointed on the fourteenth of December last, "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons entrusted with the public money," in the room of Mr. Jones, who has obtained leave of absence for the remainder of the session; and that the said committee have leave to sit to-morrow, during the sitting of the House.

CITY OF WASHINGTON.

The House again resolved itself into a Committee of the Whole on the report of the committee of the twelfth of February last, to whom was referred a Message from the President of the United States, transmitting a memorial and letter to him from the Commissioners of the City of Washington; and to whom was also referred, on the fifth of the same month, a motion respecting the discontinuance of the offices of the said Commissioners; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

1. *Resolved*, That, from and after the —— day of —— next, the Board of Commissioners in the City of Washington ought to be abolished, and thereafter all the powers vested in the said Board ought to be vested in, and discharged by, an agent, to be appointed by, and to be under the control of, the President of the United States.

2. *Resolved*, That, prior to the first day of March next, the said Commissioners ought to settle their accounts with the accounting officers of the Treasury; and all debts which have been contracted by them in their capacity as Commissioners, and for the payment of which no particular provision is hereinafter made, ought to be discharged in the usual manner, by the said agent.

3. *Resolved*, That so many of those lots in the City of Washington which are pledged for the re-payment of a loan of two hundred thousand dollars, made by the State of Maryland, in the years one thousand seven hundred and ninety-six and one thousand seven hundred and ninety-seven, to the Commissioners of the said city, ought to be annually sold, as may be sufficient to pay the interest and instalments of the said loan as they may respectively become due: *Provided*, That if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency ought to be advanced from the Treasury of the United States.

4. *Resolved*, That all the lots in the said city which were sold prior to the sixth day of May, one thousand seven hundred and ninety-six, and have since reverted to the Commissioners, in consequence of a failure on the part of the purchasers to comply with their contracts, ought to be sold for the purpose of paying to the State of Maryland the sum of fifty thousand dollars, with the interest thereon, on or before the first day of November next; which said sum was loaned by the said State, in the year one thousand seven hundred and ninety-nine, to the Commissioners, for the use of the City of Washington: *Provided*, That if a sufficient sum to meet the objects aforesaid cannot be raised by the sale of the whole of the lots, then so much money as will be sufficient to make up the deficiency ought to be advanced from the Treasury of the United States.

5. *Resolved*, That all moneys advanced out of the Treasury of the United States, in pursuance of these resolutions, ought to be reimbursed as soon as possible, after the debts already contracted by the Commissioners have been discharged, by applying towards the reimbursement every sum of money which may be afterwards raised out of the city funds, until the whole of the money advanced shall be repaid.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that Mr. Nicholson, Mr. Bayard, Mr. J. Taliaferro, jun., Mr. Hastings, and Mr. Alston, do prepare and bring in the same.

SATURDAY, April 3.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned, was read the third time and passed.

A petition of James Johnson and others, justices of the court of common pleas of the county of Knox, in the Indiana Territory of the United States, was presented to the House and read, praying that the ordinance of Congress under the former Government, of the thirteenth of July, one thousand seven hundred and eighty-seven, may be so far revised and amended by law, as to give chancery powers to the judges of the said Territory.

Ordered, That the said petition be referred to the committee appointed on the fourth of January last, "to inquire whether any, and what, alteration should be made in the Judicial establishment of the United States; and to report a provision for securing the impartial selection of juries in the courts of the United States."

A memorial of the Mayor and Commonalty of the town of Alexandria, in the District of Columbia, was presented to the House and read, stating the inconveniences and injury sustained by the poorer classes of citizens in the town and county of Alexandria, by the operation of the existing laws for the government of the said District, in the case of fees allowed to be taxed upon suitors, to the lawyers, marshal, attorney for the District, and for the attendance of witnesses, in the circuit court of the United States, held in and for the said city and county; and praying relief in the premises. Referred.

On motion of Mr. MILLEDGE, it was

Resolved, That the Secretary of War be directed to cause such documents as may remain in the War Office, or such as he may be able to procure from the files of the Executive of Georgia, for the years one thousand seven hundred and ninety-one, one thousand seven hundred and ninety-two, one thousand seven hundred and ninety-three, one thousand seven hundred and ninety-four, and one thousand seven hundred and ninety-five; also, from the agent of the War Department for the Southern district, for those years; with every other statement and paper he may become possessed of respecting the militia claims of that State against the United States, together with his opinion of the propriety and justice of allowing the same; and that he report such opinion and documents appertaining thereto, on the first day of the next session of Congress.

Mr. EUSTIS, from the committee appointed, presented a bill for the relief of Paolo Paoly; which was read twice, and committed to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee of the Whole on the amendatory bill further to alter and establish certain post roads; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally read, and agreed to by the House.

Ordered, That the further consideration of the said bill be postponed until Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for revising and amending the acts concerning naturalization," with several amendments; to which they desire the concurrence of this House.

The House went into Committee of the Whole on the report of the committee, of the twenty-fifth ultimo, to whom was referred the petition of Theodosius Fowler, presented the third of February, one thousand eight hundred and one; and, after some time spent therein, the Committee rose and reported two resolutions; which were read, amended, and agreed to by the House, as follows:

1. *Resolved*, That the claim of the United States against Theodosius Fowler, for moneys advanced or paid on account of his contract with the Secretary of the Treasury, dated the twenty-eighth day of October, one thousand seven hundred and ninety, ought to be extinguished.

2. *Resolved*, That the suit commenced by the United States against the said Theodosius Fowler, in the circuit court of the district of New York, for a claim on account of the said contract, ought to be no further prosecuted, and that the Comptroller of the Treasury be, and is hereby, authorized and required to cause the same to be withdrawn.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that Mr. ELMENDORF, Mr. L. R. MORRIS, and Mr. HOLMES, do prepare and bring in the same.

MONDAY, April 5.

A petition of sundry citizens of Georgetown and its vicinity, in the District of Columbia, was presented to the House and read, praying that the present directors of "The Columbian Library Company," therein named, and their legal successors, may, by law, be incorporated, and constituted a body politic, with such privileges and immunities as are usual in such cases. Referred.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a statement of goods, wares, and merchandises, exported from the Mississippi district during the year 1801, in addition to the general statement of exports received by the House on the eleventh of February last; which were read, and ordered to lie on the table.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; which was read twice, and committed to a Committee of the Whole House on Wednesday next.

The House proceeded, at the Clerk's table, to the farther consideration of the amendatory bill further to alter and establish certain post roads; and the same being further amended, was, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled

"An act for revising and amending the acts concerning naturalization:" Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. MITCHILL, Mr. GODDARD, Mr. SMILIE, Mr. THOMPSON, Mr. LEWIS R. MORRIS, Mr. WADSWORTH, and Mr. STANFORD.

The House resolved itself into a Committee of the Whole on the amendments proposed by the Senate to the bill, entitled "An act to authorize the settlement of the account of Samuel Dexter, for his expense in defending against the suit of Joseph Hodgson;" and, after some time spent therein, the Committee arose and reported their agreement to the same. The House then proceeded to consider the said amendments at the Clerk's table: Whereupon, the question being taken that the House do concur with the Committee of the whole House in their agreement to the same, it was resolved in the affirmative.

Mr. VAN NESS submitted the following resolution:

Resolved, That any ship or vessel, two-thirds of which shall have been, or may be, rebuilt within the United States, of American materials, and belonging wholly to a citizen or citizens of the United States, may be registered, and considered as an American ship or vessel: and that it shall be the duty of the collector of the district within which such ship or vessel is or may be owned, upon satisfactory evidence of the above facts, to grant such register, according to the rules by law established in other cases.

The House resolved itself into a Committee of the Whole on the bill for the relief of Paolo Paoly. The Committee reported the bill without amendment; and it it was ordered to be engrossed, and read the third time to-day.

A bill from the Senate for the better securing of public property in the hands of public agents, was read a second time.

Mr. BAYARD stated the great inconveniences which, in his opinion, would arise from the provisions of this bill; one of which made the bonds given by the public agents a lien on the landed property, the existence of which bonds, not being entered of record, could not be known to the purchaser. Mr. B. stated further reasons, which induced him to move a reference of the bill to a select committee.

After a short discussion the question of reference obtained.

Mr. ELMENDORF, from the committee appointed, presented a bill for the relief of Theodosius Fowler; which was read twice and committed to a Committee of the whole House to-morrow.

CORVETTE BERCEAU.

Mr. GRISWOLD remarked that much had been said respecting the money expended on the Berceau. In order to obtain correct information he submitted a resolution substantially as follows:

Resolved, That the Secretary of State be directed to report to this House whether the sum of $32,839 54, laid out in repairing the corvette Berceau, before her delivery to the French Republic, was expended, in order to equip her for the service of the United States, or for the purpose of delivering her to the French Republic, agreeably to the stipulations of the Convention between the United States and France.

Mr. S. SMITH said this object had been already reported upon, and full information obtained. Now gentlemen want to arrive at the motives of the Executive, and desire this House to aid them in their efforts. He believed, however, it was the first time the motives of public officers had been called for by Congress.

Mr. GRISWOLD.—The fact is ascertained that the money has been taken from the Navy fund; also, that the Berceau became by capture an American vessel; but other important facts are not ascertained. It is a little extraordinary that, if the repairs were made for the Berceau as an armed vessel of the United States, they should have been made after a law had passed reducing the public armed vessels to thirteen. If the information required be a secret of State, it ought not to be disclosed; but I suppose it is no secret; I see no valuable purpose to be answered by secrecy. Further, when these repairs were put on the corvette, the convention was partially ratified, and the vessel in fact was given up before the treaty was returned from France. I suppose, therefore, the repairs were put upon her for the purpose of delivering her up to the French Republic. I wish to know whether they were made for this object.

Mr. S. SMITH.—The gentleman from Connecticut is under a mistake. The Berceau did not become a vessel of the United States in consequence of her capture. She was purchased in by the Navy Department. I believe that everything the House has a right to demand from the Executive has been given. I do not see the reason for asking why the Executive did such or such a thing. The House have a right to ask for facts, but not opinions.

Mr. GILES hoped the resolution would be suffered to lie on the table. He did not believe there existed any precedent to warrant it. He was surely one of those who desired everything to be disclosed. He believed, however, the Secretary of State knew nothing about the business of the Berceau, which came not properly before his department. Much had been said respecting the Berceau. He believed very little could be obtained by gentlemen from all the inquiry they could make. The fact was, that, under the late Administration, the Berceau had been purchased, and by the late Secretary of the Navy, for the purpose of delivery. This information, Mr. G. said, he had from the late Secretary himself.

Mr. BAYARD.—The honorable gentleman from Virginia has given the House sufficient cause for complying with the wishes of the mover of this resolution. He has stated certain information obtained by word of mouth from the late Secretary of the Navy. I also possess information derived from the same gentleman, but directly the reverse of that given by the gentleman from Virginia. My information, too, is extremely recent, and therefore such as I cannot but depend upon. However, all this shows the necessity of having written and official information, which can be sub-

ject to no misconception. As the gentleman has stated his information, I will state mine, received recently from the Secretary at a dinner table.

From the late Secretary, I understood that after the proceedings in the district court of Massachusetts, and the property was ordered to be sold, it was thought by the Secretary of the Navy that there would be a great sacrifice, and he directed her to be bought in; but he expressly directed that there should be no repairs made, as it was not then known whether she would be the property of the United States—his orders directing barely so much to be done as to prevent the corvette from being deteriorated. I also understood that the gentleman from Maryland, (Mr. S. Smith,) the day after the former Secretary went out of office, ordered the repairs.

I do not see how gentlemen can resist agreeing to such a resolution—a resolution which simply calls for information. It is said the Secretary of State knows nothing about the business. If so, it is easy to insert the name of the proper officer, viz: the Secretary of the Navy.

The information required is proper for this House to possess. Before this Congress, I never knew that any information had been refused, necessary to enable the members to form opinions on subjects properly under their direction. If such information ever has been received, it was wrong, and the precedent ought not to govern us.

The gentleman from Maryland says we are not to call for this thing or that thing from the Executive officers. But if such a doctrine as that prevails, they will soon cease to be the servants of the nation. And surely they have at present no reason to complain of the trouble we give them, as we are about to be liberal and to augment their salaries.

This resolution contains no reference to motives; it is an inquiry into facts, whether the repairs put upon the Berceau were made for the purpose of retaining her as an armed vessel of the United States, or for the purpose of delivering her to France under the convention with that nation. Are not these facts? Are France and the United States the same nation? Gentlemen can discover no other way of getting rid of this resolution, but by declaring an identity between them. Were we to call upon the Executive to say why the Berceau was delivered to the French Government, gentlemen might complain; but we simply ask a fact.

If it shall be replied that the repairs were made, in order to deliver her up to France, I am not prepared to say they were improperly made. After the answer is given it will be in season to judge. Our object in making this motion is no secret. We wish to know from what fund the money has been taken, or whether from any fund. Holding the purse-strings of the nation, we have a right to be acquainted with these circumstances; that if public money has been properly disbursed, we should be satisfied of the fact: if wrongly disbursed, that such fact also should be known to us.

Mr. S. Smith.—So far from there being any secret in this business, I read in a late debate, from documents then in my possession, whatever related to it. The arguments of gentlemen show that the resolution should be suffered to lie on the table. If it is sent to the Secretary of State, he will reply, that he knew nothing about the business. It does not properly come under his department. Why, then, refer a business to him which he cannot elucidate, especially when his ill state of health should recommend forbearance? The statement of the gentleman from Delaware is not entirely correct; indeed, I am inclined to believe with him, that he received it at a dinner table. I believe the whole letters will be exhibited, and that there is not the least secret in the whole affair. It is true, that the last order was given by me. But before issuing that order, it was submitted to the former Secretary of the Navy, and the letter accompanying it was drawn by his advice and with his approbation. The fact is, that at that time I was engaged in rendering some assistance to the department, until it should be filled by a permanent officer, and that the place was offered to me and other gentlemen. That letter, to which I have just alluded, gave instructions to put the Berceau in the precise situation she was in at the period of capture.

Mr. Dana said there might be an error in the style of the resolution, and it might be proper to substitute Secretary of the Navy in the room of Secretary of State.

Mr. Giles.—The gentleman from Delaware says, that the information to him by the late Secretary of the Navy differs essentially from that given by me. I believe that is not the case. The information given to me was not verbal, but written. The only difference between the gentleman and myself is, that he states that the late Secretary did not give the orders, whereas I stated that he had advised and approved them on a new Secretary coming into office.

Mr. Bayard.—I certainly thought there was a material difference between our statements. I understood that gentleman (Mr. Giles) to have said that the orders were actually given by the former Secretary. I may have forgotten what he said; or he may have forgotten, and may deem himself at liberty to retract his expressions. We are now told that the late Secretary only advised and approved. I was correct, therefore, in saying the orders were not given by the late Secretary.

I cannot say with certainty what the private opinion of the former Secretary is. I am, however, rather inclined to think, though I express it doubtfully, that his opinion was, that the repairs were proper.

The gentleman from Maryland says my statement is not correct, and adds, it may have been obtained at a dinner table. But it is perfectly immaterial whether obtained at a dinner or a breakfast table. That gentleman, though from his situation better acquainted with the circumstances of this transaction than any member on this floor, has not invalidated any part of my statement.

I do not, however, wish to inquire into the private opinions of the Secretary of the Navy, either those of the past or present officer. I do not know what they have to do with the subject before us. If the orders were given under the present Secretary, or the past Secretary, still the President is answerable for them, and it is totally immaterial who was consulted on the occasion. Our only wish is to get this information, and why we are denied it I am at a loss to know.

Mr. Randolph moved to postpone the resolution till to-morrow. He was not disposed to deny gentlemen any proper information that they might want. But gentlemen have so repeatedly asserted that there was a disposition in those opposed to taking up this resolution, at the present time, to deny all information.

Mr. Bayard said the gentleman was mistaken; he said no such thing.

Mr. Randolph.—The gentleman asked, why evince this disposition to deny information? Does not the House recollect the words? We have so often heard from gentlemen what are and what are not precedents that have taken their rise in this House, that sometimes I have been tempted to doubt whether I have heretofore been a member of the House. But I will refer to a case where information was asked and denied; such information as, in the opinion of those who required it, was calculated to criminate the Executive; and on the refusal of which another resolution, approbatory of the conduct of the President, was grounded. Gentlemen on that occasion declared that they wanted information to form their judgments; yet the information was denied.

[Mr. Randolph referred to the case of Jonathan Robbins.]

I am not, however, for imitating gentlemen in refusing information. But I think it improper to act on a minute's notice. If the information asked be so important, I see no reason why a motion for it was not brought forward at an earlier day. I see no reason for demanding us to act *instanter*, at a period when important business is pressing upon us. I should, indeed, wish to see the practice introduced of notice being given of all business of importance. It is known, that though not strictly conformable to the rules of the House, committees do sit during its session. Without such notice, opportunities may be watched, and seasons seized for unfairly carrying a favorite measure.

Mr. Bacon hoped the consideration of the resolution would not be postponed. Gentlemen say there is nothing so intricate in it. It only requires facts to be exposed. They disclaim all relation to views. Now, what facts do gentlemen want? I verily believe the official documents before the House display every fact in relation to the business; one fact is, that the Berceau has been repaired; another is, that she has been delivered to the French Republic; and from these facts it is for us to infer the design.

Mr. S. Smith said he was against the postponement. He wished to meet the object fairly. He hoped, therefore, the gentleman from Connecticut would withdraw his motion, or that the House would reject it, for the purpose of introducing in its room one which he held in his hand, and which he read, (calling upon the Secretary of the Navy for all papers respecting the repairs of the Berceau.)

Mr. Griswold.—I hope the consideration of the resolution will not be postponed. There is no perplexity in the resolution proposed by me; it is even more simple and correct than that of the gentleman from Maryland. By the Messages received from the President, this subject appears to be before the Department of State.

Mr. Randolph withdrew his motion of postponement. He said he would only observe, that all the information gentlemen wanted had been already given. Both the gentlemen from Connecticut and Delaware were members of the Committee of Ways and Means. They cannot surely have forgotten the answer of the Secretary of the Navy to a letter from the Secretary of State, who had been applied to on the subject by the Committee of Ways and Means. The amount of that answer was, that the Berceau, being a vessel of war of the United States, was repaired, and the expenses of repair derived from the fund provided for the repairing national ships. Gentlemen, therefore, must know, not only the amount of the repairs, but also the fund from which those repairs were paid for.

Mr. Bayard believed the better way would be to call upon the President to decide whether the repairs were made on the Berceau as a national ship, for the purpose of her delivery to the French; and, also, to lay before the House the papers, &c.

Mr. B. said the gentleman from Virginia, (Mr. Randolph,) had observed that there was one case in which the House had requested information, and that was the case of Jonathan Robbins. He hoped the gentleman from Virginia, (Mr. Randolph,) would excuse him for correcting his statement, which he would do by appealing to the Journals, from which it would appear that the only information sought was received and acted upon. He remembered, too, that the information required by the motion of a gentleman from New York was of such a nature as to wound the feelings of the then President, inasmuch as it was contemplated as the ground of severe crimination; yet the information was not refused.

[Mr. B. here read extracts from the Journal in the case of Jonathan Robbins.]

He said he hoped the same course would be pursued on this occasion that had been on that.

As to the information being before the Committee of Ways and Means, that was altogether immaterial, since the information possessed by that Committee was not in the possession of the House; but the information possessed by that Committee does not go to the extent of the resolution; it only goes so far as to ascertain the amount of expense and the fund from which it had been drawn; whereas the object of this resolution is to ascertain whether the repairs were made for an armed national vessel, or for a vessel to be delivered to the French under the stipulations of the convention.

Mr. Randolph said he did not expect that any

difference of opinion would have been manifested on the facts stated by him to have taken place in the case of Jonathan Robbins. He did not state those facts with any view to the drawing them into a precedent on this occasion for refusing information. God forbid! that this or any other of the transactions attending that case, should be called up by him as a precedent to influence the proceedings of the House. But he had stated it as a fact, to demonstrate the inconsistency of gentlemen, that information contended to be necessary by several members on this floor had been denied by the majority.

[Mr. R. here read extracts from the Journals, to show that in the case of Jonathan Robbins, a resolution had been offered for obtaining a certificate of the proceedings of the Federal court, relative to the delivery of Jonathan Robbins; which resolution was rejected—yeas 44, nays 57.]

Mr. R. said that from the Journals it appeared that among those who voted in the negative were the honorable gentlemen from Delaware and Connecticut, (Mr. Bayard and Mr. Griswold.) He said he had never asserted that information asked in this case from the Executive had been withheld by the Executive; but he had said that information decisive, perhaps, of the important question before the House, had been withheld by the vote of the majority. The proceedings of the court, and the evidence there given, were the pivot on which the case turned, viz: whether Jonathan Robbins was a citizen of the United States or not.

Mr. Griswold agreed to modify the motion by introducing Secretary of the Navy, in the room of Secretary of State, and to add to his original motion, the words calling for papers, as proposed by the gentleman from Maryland. (Mr. S. Smith.)

Mr. S. Smith said, he then moved to strike out all the resolution, excepting that which called for papers.

Mr. T. Morris called for the yeas and nays on striking out.

Mr. Nicholson.—I shall vote for the amendments. This is the first time I have ever heard public officers called upon to assign their motives of action. That the Berceau has been repaired, and $32 000 expended, is known to the gentlemen, and not denied by us. Gentlemen do not pretend to say they are not acquainted with these circumstances. But they are not satisfied with a knowledge of these facts, but offer a resolution requiring the Secretary of the Navy to do a thing not in his power to do. The fact is he was not in office when these repairs were made. Now, what was the view with which these repairs were made by the former Secretary of the Navy, or by my colleague, who was in the temporary discharge of the duties of the Navy Department, it is impossible for the present Secretary to say. But even if the information could be furnished by the present Secretary of the Navy, I cannot see the propriety of calling upon him for his motives, which cannot vary the propriety of the measures. The ship belonged to the United States; there existed a fund out of which vessels of the United States are repaired; out of this fund the Berceau was repaired. Now, where can be the use of inquiring into the motives of the Executive? We know that the Berceau was delivered to France repaired. If improperly delivered, that will form a subject of distinct consideration. The gentleman from Connecticut says he wants information. All the information the gentleman desires is already before us, derived from the report of the Secretary of the Navy. Gentlemen who support this resolution might as well call upon the President to inform them with what view he has recommended certain things to our attention in respect to the Judiciary, the internal taxes, and other subjects.

Mr. S. Smith said, that though he thought the call now made improper, yet being willing to give gentlemen all the information they desired, he would withdraw his motion to strike out, suggesting the propriety of amending the resolution by introducing the words "to purchase," before the word "repairs."

Mr. Griswold said he had no objection.

Mr. Eustis said he hoped the amendment would go further, and state the "time of sale, purchase, and repair;" then the whole business would be before us. This was the more important, as a very material fact was involved in the sale.

Mr. Griswold had no objection to making the resolution as extensive as was desired by the gentleman from Massachusetts. Gentlemen are not correct in saying this resolution is a demand of motives. I will mention a parallel case in which gentlemen will not say that similar information will not involve important, and even necessary, facts for us to know. Suppose an appropriation is made for cannon ball for the Army, and one also for the Navy—a purchase of this article is made in the interior of the country—it is necessary to know for which department the purchase is made, that we may determine whether the money disbursed is taken from the Army or Navy fund. So, in this case, it is equally necessary that we should know whether the Berceau was repaired for the service of the United States, or to be delivered up to the French nation, that we may determine whether the proper fund has been drawn on.

Mr. Giles said, that though he concurred with the gentleman from Maryland, that this was an inquiry into motive, and though it appeared to him to be a pernicious precedent—one which might lead to improper purposes—yet to satisfy the zeal of gentlemen, he was disposed to vote for it. He said he had never felt any disposition to deny useful information to the members of this House, or to the people. So far from that being the case, he had sometimes voted for information, to satisfy the wishes of gentlemen, even when that information was already on the table.

The case put by the gentleman from Connecticut (Mr. Griswold) was not apposite. It would have been apposite had there been connected therewith an inquiry into the motives of the Executive in the purchase. As well might we, said Mr. G., demand of gentlemen their motives for this resolution; we might say it was designed to excite popular clamor—not that he believed it would have that effect, for he knew that the more the actions of the Executive were examined the more they would be approved.

There was one insinuation often made, not only here, but throughout the United States, that a moment's reflection would dissipate—an insinuation that could not produce the effect intended—an insinuation that the measures of the Executive, in the delivery of the Berceau, were grounded on a disposition to favor the French Republic. Mr. G. said, he would ask whether such an insinuation was not the most vain, unfounded, and irrational, that could be conceived? He would beg gentlemen who fostered it, to turn their attention to the situation of the French Republic, and they would there see whether there was the smallest probability, or least possibility, of the existence of any sympathy between the Executive of France and the American Administration; they would see whether, in their principles, they agreed in a single point. It may not, perhaps, be strictly proper on this floor to say anything of the leaning of our Executive to European Powers; but, on this occasion, it might be permitted to say that there was no analogy or sympathy between the Executive of the one country and the other. There could be no analogy or sympathy while the measures of the two Administrations were so essentially different. Mr. G. said, he believed the Executive entertained no sympathy or predilection for any European Powers; but there was not a reflecting man in the United States, in France, or in the world, who marked the course of the two Governments of the United States and France, who would not mark the essential difference between them. All this, Mr. G. said, he did not express from any kind of authority, or from personal acquaintance with the Executive Magistrate, but from the reflection of his own mind.

Mr. Bacon moved for a division of the question. He was in favor of that part of the resolution which called for papers, but opposed to that part which related to the design of the Executive.

Mr. T. Morris moved so to amend the resolution, as to make it read that the President be requested to inform this House—with the variation at the close—and to direct the proper officer to lay before the House papers, &c.

Mr. Griswold agreed to this modification; when, on motion of Mr. Nicholson, the House adjourned—yeas 55, nays 30.

Tuesday, April 6.

An engrossed bill further to alter and establish certain post roads was read the third time, and passed.

An engrossed bill for the relief of Paolo Paoly was read the third time, and passed.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report on the petition of Arthur Morrison, referred to him by order of the House, on the fourth ultimo; which were read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill to amend an act, entitled "An act for the relief of sick and disabled seamen," and for other purposes; which was read twice, and committed to a Committee of the whole House on Thursday next.

The House resolved itself into a Committee of the whole House on the bill for the relief of Thomas K. Jones which was reported without amendment and ordered to be engrossed and read the third time to-morrow.

On motion it was

Ordered, That the Committee of the whole House to whom was committed, on the thirty-first ultimo, a letter from the Secretary of the Treasury, accompanying sundry documents relating to the claim of Comfort Sands, and others, be discharged from the consideration thereof; and that the said letter and documents be referred to Mr. Bacon, Mr. Thomas, Mr. Goddard, Mr. Hanna, and Mr. Clay.

CORVETTE BERCEAU.

Mr. Griswold said, that in order to meet the ideas of gentlemen who had spoken yesterday, he would withdraw the motion he had made, and in the room thereof propose the following:

"*Resolved*, That the President of the United States be requested to direct the proper officer to report to this House, whether the sum of 32,839 dollars and 54 cents was expended for repairing the corvette Berceau, after it was determined to deliver up the same to the French Government, agreeably to the stipulations of the convention between the United States and France; and to lay before this House copies of all papers and documents which relate to the sale, purchase, and repairs of that vessel."

Mr. Giles moved to strike out that part which related to the purpose of the Executive. He said he wished to carry the point of information as far as any person; but he believed that going the extent of the motion was going beyond the powers of the House; as he believed that in the present case the provisions of the treaty were merely of an Executive nature, and the repairs made of the same nature. He had himself, in his personal capacity, no objection to the President fully developing his motives, believing those motives to be highly honorable; but he did not wish unconstitutionally to interfere with the Executive Department. We have heretofore heard much about the independence of the departments and particularly of the Executive Department. He believed that during the period when a description of citizens now the majority, were in the minority, and who were then branded with the name of disorganizers, no such motion had ever been made by them. He knew not the views of gentlemen, who now made this motion; but it appeared to him the most disorganizing motion that had ever been made in that House.

Mr. G. said he held in his hand a paper which showed that which he had yesterday stated was perfectly correct. He would therefore, again remark that the business had taken its direction under the former Administration, and had been

only continued in that direction by the present Administration.

Mr. G. concluded by moving to strike out, "whether the sum of 32,832 dollars 54 cents was expended for repairing the corvette Berceau, after it was determined to deliver up the same to the French Government agreeably to the stipulations of the Convention between the United States and France, and."

Mr. BACON believed the resolution required explanation. It indicated, perhaps, too great jealousy of the motives of the Executive. He was at a loss to know what was referred to by the words "after it was determined;" by whom determined? By the President of the French Republic?

Mr. GRISWOLD trusted the amendment would not prevail. The French corvette has been delivered up. This is a fact. The gentlemen has expounded this to be an Executive act. The vessel could not have been delivered without the determination of the Executive. Now, we are not for inquiring into the motives of the President. We state the facts, that the repairs have been made, the vessel has been delivered, and the determination must have taken place before the delivery; we ask then why gentlemen refuse us the knowledge of the fact whether the repairs were made after it was determined to deliver the Berceau to the French? This is a fact; it is not a motive. These 32,000 dollars are public money, applied to the support of the Naval Establishment. We wish to know whether this sum has been properly or improperly applied to naval purposes as appropriated by law, or whether it has been applied to the execution of a treaty. That that treaty ought to be carried into execution cannot be doubted. This we all admit. But we say that this money ought to be taken from its proper fund. I do not see why gentlemen deny this information. Our only inquiry is into certain facts, and I have never known such an inquiry prohibited. We are not inquiring into the secret motives of the Executive for carrying this treaty into effect before it was ultimately ratified by France. That measure was probably correct. The fact is well known, and yet I hear no gentleman condemn it.

The objections, therefore, of gentlemen are incorrect. We are not for inquiring into the secret motives of the President; his motives were undoubtedly virtuous and honorable, and his measures may have conduced to the welfare of the nation. But we simply want the fact whether the repairs were made before or after the determination to deliver the corvette to the French. This House has a Constitutional right to inquire into the faithful expenditure of the public money. We appropriate money for a marine barracks, and we find a Secretary of the Navy building with the public treasure an extensive house on his own estate; have we not a right to inquire for what purpose the money is applied?—to know whether the appropriations made by law have been observed? This is all we now desire; that we may ascertain whether the money laid out on the Berceau has been applied to naval purposes, or to other purposes. This we have a right to know, and I think gentlemen cannot refuse it. Mr. G. concluded by asking for the yeas and nays.

Mr. T. MORRIS was astonished gentlemen interfered to prevent information being given to the House. What! Have we not a right to know how the public money has been applied? Have we not a right to know how these 32,000 dollars have been expended? We know they have been expended; we know there is no fund out of which the money could have been taken. Have we then not a right to inquire into the circumstances attending the disbursement, and shall we be told that in making this inquiry, we are prying into Executive secrets! This is indeed going farther than has ever been done before. The gentleman from Virginia says, the conduct of the Executive will redound to his honor—why not then disclose the circumstances attending that conduct.

Mr. DAVIS.—Gentlemen were all day yesterday employed in framing a resolution; sometimes proposing one amendment, and then withdrawing that amendment to make room for another; and now, when it is nearly fitted to the mind of the whole House, it is withdrawn by the mover (Mr. GRISWOLD) and another substituted in its place, and we are again to occupy a whole day in talking about it. For what is this proposed? Are we about to engage in any Legislative act that renders it necessary that we should have the information it asks? If we are not, I cannot see the propriety of so much useless discussion about it. I therefore, move that its further consideration be postponed till the third Monday in November; and I hope those who are for going on with the public business will agree to postpone it till that time, and let those gentlemen, whose curiosity leads them to pry into the motives of the Executive, go to the public offices, and there obtain the information they say they want, while we are progressing in the public business.

Mr. LOWNDES said he was one of those who the most anxiously wished the public business despatched. But he knew no business so important as that which respected the expenditures of the public money. He did not conceive that one solitary objection could be urged against the motion. Gentlemen say, we are calling upon the Executive for his motives; but, Mr. L said, he did not understand the English language, if this resolution involved an inquiry into motives. If the answer of the Executive shall be that these repairs were made in order to restore the Berceau to the French, will that be anything like a motive? Is it not a simple and abstract fact? Suppose the answer given shall be, that the Berceau was repaired that she might be employed in the service of the United States, will that be a motive? It will be a simple abstract fact; gentlemen, in truth, to resist the motion, are driven to the shift of saying, we are forced into Executive motives.

Mr. LOWNDES said, he was also anxious that the resolution should prevail, for the reason assigned by a gentleman from Massachusetts, (Mr. EUSTIS,) who had stated, that some important facts were involved in the business. That gentleman, and gentlemen on his side of the House,

may be acquainted with these facts from the facility with which they are enabled to get information from the Executive offices; but are not we entitled to the same information derived from official sources?

The gentleman last up asks for what purpose is this information wanted?—is it intended as the ground of a Legislative act? The proper answer to such a question is, that we must have the information first. If the repairs were made to fit the Berceau for the public service, Mr. L. said the expenditure was unwarrantable; and if they were made in order to deliver her to the French, he would say, the expenditure was without law. The gentleman from Virginia has said, that he is not disposed to be economical of information, but that his economy would be directed to the expenditure of public money. If so, he ought not to oppose this motion.

Mr. GILES said he had never been disposed to be economical of information. His only object at present was to be economical of an invasion of the Executive Department. He was not disposed to deny an atom of information that was required to enlighten our minds; and the resolution, as modified by his amendment, would give gentlemen all the information that is proper to be furnished. The gentleman from South Carolina says he has not the same facility with us of obtaining information; and he immediately goes on to decide on the conduct of the Executive, and he says that conduct is not lawful. But, on inquiry, it will be found that both the past and present Administration believed there was a law which warranted all the steps taken.

Gentlemen were informed yesterday, that the Berceau was purchased under the old Administration. This is a fact. It is also a fact that the purchased money was paid out of the contingent fund of the Navy Department, and that the repairs were made out of the same fund. Gentlemen say they wish to know the purpose, and not the motives of the Executive, as if purpose did not involve motive.

It had been truly said, there was no precedent for such a motion. If there were one, gentlemen would, without doubt, have brought it up. The most notable precedent that bore any application to the present case was that under the British Treaty. On that occasion we only asked the President to lay such information before the House as in his opinion might be disclosed without inconvenience to the nation; and yet for this reasonable request we are branded with the reproachful epithet of disorganizers. But now gentlemen, who were then so liberal in their reproaches, call upon the Executive to state—not any particular information in his possession, but the purpose for which he did certain acts. Notwithstanding the distinctions of gentlemen, we do understand the English language very differently from them if they do not admit that the term *purpose* includes in it motive and inducement.

However, if gentlemen will examine the resolution as it stands, after striking out the first part of the sentence, they will find that it will give them all the information the President can furnish from which any inferences can be drawn.

Mr. G. believed the purchase of the Berceau had been made under the old Administration; he believed it had also been made out of the Navy fund. For what purpose she was purchased was not specified at the time; and it would have been improper if it had been specified. After being purchased, she had been dismantled; and it was to this circumstance that the consequent embarrassment was to be ascribed. The repairs were only such as to place her in the situation she was in when captured. All this information will be derived from the resolution which shall remain, after the words are stricken out, which I have moved to strike out. Is not this information enough? Shall we go on and say to the Executive, why did you this or that act? Mr. G. was of opinion that it would be improper to reduce him to the necessity of refusing our request, which he believed he would and ought to do, as no right to make the request belongs to us. He at the same time declared himself as averse to concealment as any man. He concluded by saying that he was happy to find gentlemen on the opposite side of the House actuated by so lively a spirit of inquiry; he hoped they would continue to be animated by the same laudable spirit, as in this way the Government would be kept pure. The principle of giving all useful information was that of the present Administration, and he trusted it would be extensively practised, though he was not for carrying it so far as to interfere with the right of the other departments.

Mr. LOWNDES.—The gentleman has misconceived me. I did not say there was no legal appropriation for repairing the Berceau. This we cannot know until we shall hear with what view she was repaired.

The gentleman says the order to repair was given under the former Secretary of the Navy. But it is quite immaterial to me and to the House under what Administration it was given. It is possible it might have been given by the late Secretary of the Navy, and notwithstanding be the act of the President, as that officer continued in the place for some time, under the present Chief Magistrate.

Mr. BACON required to know what the original resolution could precisely mean? What can the phrase *determination* refer to? Does it mean after the Executive had made up his mind to sign the convention, after he had actually signed it, or after the Senate ratified it? Surely it is so vague and inexplicit that it requires explanation before it is adopted.

Mr. S. SMITH said, he did not rise to take a part in the debate; but barely to notice a remark made by the gentleman from Connecticut (Mr. GRISWOLD;) a remark not probably meant to have the effect which it might have, if suffered to pass unnoticed, upon the public mind. He alluded to that part of the gentleman's speech, which put the case of a Secretary of the Navy building a marine barracks upon his own estate. Lest an unintentional impression should be produced by this re-

mark, Mr. S. said he would observe that no such thing had occurred in relation to the Secretary of the Navy; and that the site on which the marine barracks was built was in the City of Washington, and had been purchased from the Commissioners of the city.

Mr. GRISWOLD said he had not the least allusion to any such thing having occurred. He had only used it as an argument to them, that such an event might occur.

Mr. G. thought it important that this information should be obtained for two purposes. The first was, in order to pass a proper appropriation act on the subject. Gentlemen would recollect that we had replaced the amount of the purchase money to the Navy fund; if the repairs were made from the same fund, the amount ought to be replaced to the proper fund. In the second place, it is our duty to inquire into the due expenditure of public money. The Constitution requires that this shall be done; and if it shall be doubted whether the Executive has committed a mistake in the expenditure of the public money, the subject ought to be inquired into. If it shall appear that the Executive has committed a mistake, it does not follow that the Executive is to be criminated; the Executive cannot be criminated; but in such case there ought to be an appropriation subsequent to the expenditure, to cover it. This has been often done, viz: in the Western Insurrection, more money was expended than was authorized by law; but the expenditure was necessary, the Legislature deemed it right, and it was covered by a new law.

Mr. G. wished that the gentleman from Virginia had stated more clearly how we are impeaching the motives of the President by calling for this information. We say it is a fact that the Berceau was delivered to the French nation, that the expense of repairing her before delivered was $32,000; and all that we wish to know is whether this expense was incurred before or after the determination to deliver her.

Mr. G. said he would put a case. Suppose a certain sum of money should be appropriated for naval purposes. The treaty-making power resides in the President. Suppose he forms a treaty which stipulates the giving to a foreign Power a thirty-two gun ship. Suppose, for the purpose of carrying into effect this stipulation, the President takes the money necessary to build this ship from the Navy fund. Would it not be proper in Congress to inquire from what fund the money is taken? The Executive had actually stipulated to deliver to the Dey of Algiers, and had built for that purpose, a thirty-two gun frigate. Yet it had not been considered that the money for that object could be taken from the Navy fund; but that it was proper to take it from the fund created to defray the expenses of foreign intercourse.

This proposed inquiry is not only right, but it is our duty to make it, as it may be necessary to pass a law covering the expenditure. He did not, by this motion, mean to impeach the motives of the President. But when the information we request is received, we shall be able to judge whether the President has observed or transgressed the appropriation law, and whether this has been the act of the former or present President.

Mr. T. MORRIS had said that $32,000 had been laid out, without a dollar being appropriated. This he had stated on the authority of a paper exhibited by a gentleman from Virginia. It did appear from the letter of the Secretary of the Navy that the Berceau was purchased and repaired in order to be delivered to the French Republic; and if the purchase and repairs were made for this purpose, he did say the money had been expended without any appropriation by law.

Mr. SMILIE.—It has been truly said that no demand similar to the present has ever been made—nor ought such a demand now to be made. I hope, therefore, that the amendment will obtain; and that we shall agree to that part of the resolution which is proper. We have a right to call for papers, and I hope we will exercise that right; but we have no right to demand from the President a knowledge of his motives, and I hope we shall not require to know them. Gentlemen say we refuse them information. It is, however, a little extraordinary, how differently the same gentlemen think at different times. In 1796, a proper demand was made and refused. The President was requested to lay before this House the instruction given to our Minister who negotiated the British Treaty; with the express reservation that he should withhold such parts as it be improper to communicate. Yet the request was not complied with; and if gentlemen will examine the journals they will see that the names of the gentlemen from Delaware and Connecticut (Messrs. BAYARD and GRISWOLD) are among those who were against granting the information.

Mr. ELMER said he hoped the postponement would not prevail. He was so solicitous to get information, that he would agree to almost any mode of obtaining it: though he thought the House had nothing to do with the motives of the President, and that, of consequence, the amendment ought to prevail.

Mr. S. SMITH.—The gentleman from Connecticut has stated a case, in his opinion, analogous to the present—that of the frigate built by a former President for the Dey of Algiers. I remember well that that vessel was built without any authority derived from law. I do not recollect whether at the next session of Congress we appropriated money for that object; but I remember that though it was said to be a considerable exercise of power on the part of the President, it was thought on the whole to be right, though there was no appropriation for it.

I remember too that a former Secretary of War did, unauthorized by law, build two galleys on the Ohio which cost $20,000, for which there was no appropriation; but the expenses of which were taken from the Quartermaster's department; and all this was done without any investigation.

With respect to the purchase of the Berceau, that measure took place on the 19th of December. Gentlemen say it was under the Treaty. But the truth is, that no official information of the treaty had then arrived. Notwithstanding this, the former President had directed the purchase, and perhaps very wisely. Here then was an expenditure without any appropriation other than that of the Navy fund. Of consequence, whatever sum was applied to the repairs of the Berceau will be charged to this fund, as well as the sum expended in the purchase.

Gentlemen too will find, notwithstanding all they have said, that no order for repairs has ever been issued; but only an order to inquire into the situation of the vessel, as to arms, provisions, and stores, at the time of the capture, and to replace everything as existing at that time.

The yeas and nays were then taken on postponing the consideration of the resolution to the third Monday in November, and lost—yeas 4, nays 75, as follows:

YEAS—Thomas T. Davis, Daniel Heister, William Hoge, and Josiah Smith.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Thomas Boude, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W Dana, John Davenport, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, William Helms, Archibald Henderson, William H. Hill, James Holland, David Holmes, Benjamin Huger, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Joseph H Nicholson, Thomas Plater, John Randolph, jr., Nathan Read, John Smilie, Israel Smith, John C. Smith, John Smith, of New York, John Smith of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Lemuel Williams, Robert Williams, and Henry Woods.

Mr. GILES' amendment to strike out recurring—

Mr. BAYARD said, I hope the amendment will not prevail. I am surprised to find that, notwithstanding the most unlimited professions of gentlemen to give information, under the most nice and subtle distinctions, they now tell us we are calling for information which we have no right to possess. It has been said over and over again that the acts of this House do not furnish a precedent for such a refusal. Gentlemen in reply have referred to several cases. Among these they have referred to the case of the British Treaty. What was the conduct of the House on that occasion? Did they not enter a resolution calling upon the Executive to give information. It is true the Executive refused to give it. So, on this occasion, let us do our duty, and if the Executive is not possessed of the information we seek, or thinks it improper to give it, he will say so. Gentlemen say they have no doubt but that the conduct of the Executive will, on investigation, appear laudable. If so, why refuse to the Executive the opportunity of exhibiting documents which have convinced the honorable gentleman, and such as will convince the whole American people of its rectitude? For my part, I am not prepared with gentlemen to applaud the conduct of the Executive; respecting the propriety of his conduct, I am neither ready to doubt nor to believe. The honorable gentleman from Virginia (Mr. GILES) may be prepared. He may have access to information which I have not. If this information be of the kind he represents, why not furnish it, that the whole American nation may possess the same opportunity of judging that he possesses?

It is said that we have no right to inquire into the motives of the Executive. We do not wish to inquire into his motives; we wish facts. We want to know whether the Executive did or did not determine to deliver up the Berceau at a certain time. Is this a motive? We call it a fact. The truth is, that under this pretext, if at any future time we call for information, gentlemen may charge us with seeking into motives, and thus resist our reasonable request.

This determination to deliver the Berceau does or does not appear on the face of the papers before us. If it does appear, why will gentlemen trouble themselves in resisting a request at least so harmless? But if it does not appear on the face of the papers, is it not proper to have a direct communication from the Executive? This information is most important to us, who wish to know whether the Berceau was repaired as a French or American vessel; that we may know whether the price of those repairs has been taken from a legal fund. If she was repaired as an American vessel, the expenditure was legal; if as a French vessel, it was not legal. Will gentlemen say it is unimportant to determine whether the legal application of money has been observed? This information is also important to determine the propriety of the extent of the repairs made. If the Berceau was repaired as an American vessel, the extensive repairs may have been proper and reasonable; but if she was repaired as a French vessel, they appear to have been wanton and extravagant. To make such repairs we were not bound by treaty. I will agree that we were bound to restore her in the state in which she was brought in, but not in the state in which she was previous to the engagement; because that engagement was a legitimate act, as we were then in a state of war. We were simply bound to place her in the condition she was in when the treaty was formed; and I apprehend that would not have cost $32,000.

Mr. BACON.—Gentlemen are correct in denying the similitude of any precedents to the present resolution. I do not believe that a similar precedent can be found on the journals, or anywhere else, except in those Popish countries where there are inquisitions. Gentlemen disclaim inquiring into the motives of the President. But does not the determination they wish to arrive at the knowledge of, involve motive? And of whom? Of the President. The only object then of this motion is to find out the secret design of the President. For such an inquiry, can you find any precedent extant

but in countries where there are established inquisitors? And this is a foreign authority that I should scarcely expect the gentlemen to quote in this House. I repeat it, this resolution can mean nothing else than to ferret out the secret intentions of the President: and gentlemen dare not face these remarks by saying with what intention it is really made.

Mr. Goddard said he did not know that a free country could furnish a precedent of such a refusal; but he believed that no country could long remain free that did furnish such a precedent.

Gentlemen say much about the secret doings of the President. Mr. G. said he did not before know that there were any such.

Gentlemen say, you may call for all official papers, and you ought to be satisfied with them. But suppose your public officers expend the public money, without keeping records of the expenditure, would it not sound strange that you should be denied the right of calling upon them for other sources of information in their power to furnish? Suppose the President now called upon to say wherefore the Berceau was repaired, would that be improper?

Mr. Dana.—The proposition to amend the resolution offered by my colleague appears to be founded upon misapplication. The plain object of the resolution is to ascertain the fact whether the Berceau was repaired as an American or French vessel. This is the proper and sole object. As to the real intention of the Executive, I should not suppose gentlemen would be afraid to avow it. How can we determine this point, which must depend on the facts for which we ask, without first receiving them from the Executive? In the proceedings on the British Treaty, the case was different. In that case the call was for information respecting the negotiation of a treaty; this call respects the execution of a treaty, which we can know nothing of, but through the Executive. The determination with which we wish to be acquainted must be a Governmental act; as to any secret opinion confined to the President, that could not be contemplated by the resolution. The gentleman from Massachusetts (Mr. Bacon) asks whether the determination we wish to possess is that of the American or French Government? I will answer him by saying I had not imagined that any gentleman could have supposed that the French Government would have delivered up a vessel itself.

For myself, I think it proper to call for this information, not that I would be very critical with the Government. But here is an expenditure of $32,000, on the face of it questionable. It is proper then to get information that will enable the people to judge for themselves. For my own part, I have had doubts of the propriety of the expenditure, either from the fund for foreign intercourse or from the Navy fund. I do not mean, however, to give this as my prevailing opinion; nor would I wish, in this stage of the debate, to implicate censure upon the Executive. If it shall appear on inquiry, when we have all the information before us, that the Executive has acted right in this transaction, I am one of those who shall deem it my duty to put down all the clamor that has been raised throughout the nation; and even if it shall appear that the President has acted substantially right, though he may have deviated from the strict letter of the law, I would wish to sanction his measures by a new law.

Mr. Griswold.—I rise to advert to the decision of the House in the case of the British Treaty. I did not suppose that that case would have been attempted to have been assimilated to this. The ground on which the resolution then proposed was founded, was, that the House of Representatives had a right to participate in the treaty-making power; and on that ground it was opposed. On that ground too the information asked from the President was refused.

[Mr. G. here quoted the President's remarks in reply to the resolution of the House.]

Is that the case here? Do we claim a right to interfere by giving our assent to, or in executing the treaty with France? No; we only ask for the single fact whether the repairs of the Berceau were or were not made before it was determined to deliver her to the French. We ask this, that if it shall apear there was no existing appropriation, the expenditure may be covered by a new law, as has been the case in all instances where expenses have been incurred without existing appropriations.

The question was then taken by yeas and nays on the amendment of Mr. Giles, and carried—yeas 40, nays 27, as follows:

Yeas—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Hoge, James Holland, David Holmes, George Jackson, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro jr., David Thomas Philip R. Thompson, Abram Trigg, John Trigg, Philip, Van Cortlandt, John P. Van Ness, and Robert Williams.

Nays—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John C. Smith, John Stanley, John Stratton, Samuel Tenney, George B. Upham, Killian K. Van Rensselaer, and Lemuel Williams.

Mr. Dana moved to suspend the resolution, by requiring a statement of the sums paid to the officers and men of the Berceau, together with all papers relating thereto.

Mr. Giles.—The gentleman from Connecticut says, the precedent in the case of the British Treaty does not apply, as the resolution then passed related to the negotiation and not to the execution of the treaty; but the fact is, that resolution did

relate to the execution of a treaty, as the treaty was already finally negotiated. Mr. G. said, he had introduced this observation to show that there was no analogy whatever between the passage of that resolution, or an agreement to this resolution as submitted by the gentleman from Connecticut, (Mr. Griswold.) But that resolution was precisely like this, as proposed to be altered, with one reservation; in the former case it was proposed that the President should withhold all such information as he should think improper to communicate, whereas in the present case there is no such reservation. Yet the gentleman from Connecticut, (Mr. Griswold) as appears from the yeas and nays, was, in the former instance, against the call. The fact is, notwithstanding the remarks of that gentleman, there was nothing in the resolution agreed to by the House, in the case of the British Treaty, that involved the claim of the House to participate in the treaty-making power. We now conform the present resolution to that then offered, except that we do not reserve, as we did then, the right to the President to withhold a part of the papers; that is, we give to gentlemen all and even more, than they then denied us. The gentleman from Connecticut (Mr. Griswold) on that occasion made a handsome speech to show that we did not possess a Constitutional right to call for papers; but he now tells you, that you have not only the right to call for papers, but you have the additional right to call on the Executive for his purposes.

Mr. G. begged leave to know whether this change of conduct evidenced that respect for the Executive department which gentlemen had heretofore so often professed? He also begged leave to compare the spirit of those gentlemen, with whom he then acted, with the spirit of other gentlemen now, and to ask whether the spirit then manifested was not a spirit of forbearance, and one which gentlemen, on this occasion, altogether disregarded? Those who then voted for papers, have since uniformly voted for papers, and now vote for them.

The gentleman has spoken of the accommodation of the French officers of the Berceau. The fact is, that the officers and men were, in the first instance, placed upon the same footing; both were allowed two dollars a week. On this sum, it was feared, the officers could not subsist. Application was made to the Executive that the officers taken should receive a larger allowance, on the ground that France should pay the sums allowed. Mr. G. would ask whether there was ground for crimination here? Whether it was improper to respect the law of nations, and to treat the French officers as officers, under similar circstances, are always treated? And yet this conduct of the Executive, which, while it manifested a respect to the law of nations, also evidenced an equal regard to economy, had excited a great clamor.

Mr. G. concluded by expressing a hope that the gentlemen would get all the information possessed by the Executive, from which they will find that the most scrupulous regard had been paid by the Executive to the laws, and particularly to those that respected the expenditure of public money.

Mr. Dana said he begged to observe that he had not said that any part of the Executive conduct, in this affair, was wrong. If the statement made by the gentleman from Virginia was correct, he would not hesitate to call what he had heard a popular clamor, and would do all in his power to put it down.

Mr. Randolph read a document, in the possession of the House, to show that the information, desired by Mr. Dana, respecting the sums paid to the officers and men of the Berceau, was already before Congress.

Mr. Dana withdrew his motion.

Mr. Nicholson renewed it.

Mr. Griswold said he had voted against the call for papers under the British Treaty. He should vote for this call. He had before stated, and he repeated it, that the ground on which that call was made, was, that the House had a right to participate in the treaty-making power.

The volume of the debates, which then took place, will show that both parties considered the call in that light. We then said, if it is your object to impeach Executive officers, or to know how much money has been expended, you have a right to the papers; but when you avow your object to be an interference with the Constitutional powers of other departments, we refuse them; so also said the President. But in this case we only call for papers in relation to the sale, purchase, and repairs of the Berceau. And have we not a right to inquire into the expenditure of public money? No one has ever doubted this right.

Mr. G. said he would, for these reasons, vote for the present call, believing that his vote on this occasion would be perfectly consistent with that under the British Treaty.

Mr. Giles said, he denied that the House of Representatives, in 1796, claimed a participation in the treaty-making power.

They contended for the right, a right which, he trusted, they would never abandon, of obtaining information whenever they were called upon to carry a treaty into operation. The first resolution of the House, adopted on that occasion, expressly disavows the right to participate in the making of treaties. [Mr. G. quoted the Journals to this effect.]

Mr. Griswold said, he was astonished at the gentleman having read a resolution that altogether defeated his own argument.

[Mr. Griswold here read the Journal.]

The question was then taken by yeas and nays, and the resolution carried by a unanimous vote.

Ordered, That Mr. Griswold and Mr. Giles be appointed a committee to present the foregoing resolution to the President of the United States.

Wednesday, April 7.

An engrossed bill for the relief of Thomas K. Jones was read the third time, and passed.

The Speaker laid before the House a letter from the Secretary of State, accompanying his

report on the memorial of Fulwar Skipwith, referred to him by order of the House on the nineteenth of January last; which were read, and ordered to be committed to a Committee of the whole House on Friday next.

Mr. John C. Smith, from the Committee of Claims, to whom was recommitted, on the fifteenth ultimo, their report on the memorial of Paul Coulon, a French citizen, made a supplementary report thereon; which was read, and ordered to be referred to a Committee of the whole House to-day.

On motion, it was *Resolved*, That a committee be appointed to examine and report the state of the office of the Clerk of this House.

Ordered, That Mr. Clay, Mr. Huger, and Mr. Southard, be appointed a committee pursuant to the said resolution.

Mr. Mitchill, from the committee to whom were referred, on the fifth instant, the amendments proposed by the Senate to the bill, entitled "An act for revising and amending the acts concerning naturalization," reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

NORTHWESTERN TERRITORY.

The House resolved itself into a Committee of the Whole on the bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes.

Mr. Fearing moved to amend the bill so as to embrace the population of the eastern division as bounded by the articles of the ordinance, the effect of which motion would be to include about thirty thousand inhabitants of that division, that are excluded by the provisions of the bill, and respecting whom it is provided in the bill, that they may hereafter be added by Congress to the new State, or disposed of otherwise, as provided by the fifth article of the compact.

This motion gave rise to a debate of considerable length, in which Messrs. Fearing, Bayard, Griswold, Goddard, Henderson, and Randolph, supported; and Messrs. Giles, Bacon, and R. Williams, opposed the amendment.

Those who supported the amendment contended that the exclusion of that portion of territory occupied by about three thousand inhabitants was both unconstitutional and inexpedient. On the ground of constitutionality, they contended, that under the articles of the compact, which were to be considered as the constitution of the Territory, Congress had only the right of forming the eastern division into one, two, or three States: and that under this power, no right existed to form one part of the division into a State, and leave the remaining sections in a Territorial condition; that the rights of the whole of the inhabitants of the eastern division were equal, and if one part was, so also must the remaining part be, admitted to the privilege of a State.

On the ground of expediency, it was contended that the situation of the excluded inhabitants would be peculiarly hard; that, if attached to the Indiana Territory, they would be placed two or three hundred miles from it; that they would be furthermore degraded from the second to the first branch of Territorial government, and that they would be deprived, by the reduction of their numbers, from the prospect of being admitted for a great number of years, to State rights.

On the contrary, the opponents of the amendment contended that the provisions of the bill were both Constitutional and expedient; that under the compact the right was given to Congress of admitting the eastern division into the Union, in the form of one, two, or three States; that this right involved a discretion to admit a part of that division at one time, and the remaining part at a subsequent period; that if the whole division were once admitted into the Union, Congress would be prohibited from dividing hereafter, when it was acknowledged such division would be expedient, the said division into two or more States, without the consent of the State now formed.

That, as to considerations of expediency, the hardships likely to be felt by the excluded inhabitants were such as arose, not from the provisions of the bill, but from their local situation; and that it was not true that they would be degraded by annexation to the Indiana Territory, to a lower grade of Territorial character than they at present enjoyed—the grade being the same.

Mr. Randolph supported the amendment on peculiar ground, declaring that if the amendment should not prevail, he would still vote for the admission. He declared himself in favor of the amendment, principally from a desire to avoid the introduction of too many small States into the Union.

The question was then taken on Mr. Fearing's amendment, and lost—yeas 34, nays 38.

Mr. Fearing moved so to amend the bill as to leave to the new State the right of naming itself. Agreed to.

After some discussion of the details of the bill, the Committee rose and reported the bill, with amendments.

Ordered, That the said bill, with the amendments, do lie on the table.

Thursday, April 8.

Mr. John Taliaferro, Jun., from the committee to whom was referred, on the fifth instant, the petition of sundry citizens of Georgetown, in the District of Columbia, with instruction to report thereon by bill or otherwise, presented a bill to incorporate the Directors of the Columbian Library Company; which was read twice, and committed to a Committee of the whole House on Monday next.

Mr. Dennis, from the committee to whom was referred, on the fifth of February last, a motion, in the form of two resolutions of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Washington, and other persons who may conceive themselves injured by the several alterations made in the plan of the said city; also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with certain exceptions," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

Mr. John Taliaferro, Jun., from the committee appointed, presented a bill to incorporate the inhabitants of the City of Washington, in the District of Columbia; which was read twice and committed to a Committee of the whole House on Monday next.

The Speaker laid before the House a letter from the Secretary of the Treasury, enclosing a statement prepared by the Register, of the application of the appropriations made by Congress for clerk-hire, in the several offices of the Treasury Department, specifying the names of the persons, and the salaries allowed to each, for the three last years, in pursuance of a resolution of this House, of the twenty-fifth ultimo; which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying two statements, marked A and B, relative to expenses incurred by the United States in the exercise of jurisdiction over the territory of Columbia, since the assumption of jurisdiction by Congress, prepared in pursuance of a resolution of this House of the first instant; which were read, and ordered to be referred to the committee appointed, on the eighth of December last, to inquire whether any, and, if any, what alterations or amendments may be necessary in the existing government and laws of theDistrict of Columbia.

The House proceeded to consider the report of the select committee to whom were referred, on the fifth instant, the amendments of the Senate to the bill, entitled "An act for revising and amending the acts concerning naturalization," which lay on the table: Whereupon,

Resolved, That this House doth agree to the said amendments, with amendments, to the section proposed to be substituted by the Senate in lieu of the first and second sections of the original bill.

Mr. Nicholson, from the committee appointed on the second instant, presented a bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city; which was read twice and committed to a Committee of the whole House on Monday next.

Mr. Nicholson, from the committee appointed, presented a bill to provide more effectually for the due application of public money, and for the accountability of persons entrusted therewith; which was read twice and committed to a Committee of the whole House on Monday next.

The House, resolved itself into a Committee of the Whole on the supplementary report of the Committee of Claims of the seventh instant, to whom was recommitted, on the fifteenth ultimo, their report on the memorial of Paul Coulon, a French citizen; and, after some time spent therein, the Committee rose and reported a resolution which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Paul Coulon, as agent for the captors of the ship Betty Cathcart and brig Aaron, prizes to the French privateer La Bellone, out of any moneys in the Treasury not otherwise appropriated, the sum of six thousand two hundred and forty-one dollars and forty-four cents, being the amount retained by the Treasury Department from the sales of the ship Betty Cathcart, and for duties on the cargo of the brig Aaron.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

NORTHWESTERN TERRITORY.

The House proceeded to consider the amendments reported yesterday from the Committee of the Whole to the bill to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes, which lay on the table; and the same being severally twice read, were, on the question put thereupon, agreed to by the House.

A motion was then made, further to amend the said bill, at the Clerk's table, by striking out, in the sixth, seventh, eighth, ninth, and tenth lines of the second section thereof, the following words: "and on the north, by an east and west line, drawn through the southerly extreme of Lake Michigan, running east, after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie or"—and inserting in lieu thereof, the word "to:"

It passed in the negative—yeas 27, nays 44, as follows:

Yeas—James A. Bayard, Thomas Boude, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, John A. Hanna, Daniel Heister, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Robert Williams.

Mr. John C. Smith moved farther to amend

the bill, by striking out the third section thereof, in the words following, to wit:

"*And be it further enacted*, That all male citizens of the United States, who shall have arrived at full age, and resided within the said Territory at least one year previous to the day of election, and shall have paid a territorial or county tax, and all persons having, in other respects, the legal qualifications to vote for Representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose Representatives to form a Convention, who shall be apportioned amongst the several counties within the Eastern division aforesaid, in a ratio of one Representative to every —— inhabitants of each county, according to the enumeration taken under the authority of the United States, as near as may be, that is to say: from the county of Trumbull, —— Representatives; from the county of Jefferson —— Representatives, —— of the —— to be elected within what is now known by the county of Belmont, taken from Jefferson and Washington counties; from the county of Washington —— Representatives; from the county of Ross —— Representatives, —— of the —— to be elected in what is now known by Fairfield county, taken from Ross and Washington counties; from the county of Adams —— Representatives; from the county of Hamilton —— Representatives, —— of the —— to be elected in what is now known by Clermont county, taken entirely from Hamilton county: and the elections for the Representatives aforesaid, shall take place on the second Tuesday of October next, the time fixed by a law of the Territory, entitled "An act to ascertain the number of free male inhabitants of the age of twenty-one, in the Territory of the United States Northwest of the river Ohio, and to regulate the elections of Representatives for the same," for electing Representatives to the General Assembly, and shall be held and conducted in the same manner as is provided by the aforesaid act, except that the qualifications of electors shall be as herein specified."

The motion to strike out was supported by Messrs. John C. Smith, Goddard, Fearing, and Henderson, and opposed by Messrs. Giles, Mitchill, R. Williams, Elmer, and Holland, on the ground that the right of the United States to admit necessarily involved the power of prescribing a convention.

The yeas and nays were taken, and it passed in the negative—yeas 26, nays 48, as follows:

Yeas—Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Richard Brent, William Butler, Samuel J. Cabell, Thomas Claiborne, John Clopton, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Robert Williams.

Mr. Fearing said he was of opinion that some provision ought to be made for the inhabitants excluded from the new State, and the continuance of suits from the old to the new Government: for these purposes he moved the recommitment of the bill. Lost.

Mr. Dana proposed so to amend the fourth section, as that a majority of the whole number of delegates elected in the Convention, instead of a majority of those present, should first determine whether it be or be not expedient to form a constitution, &c.

The yeas and nays were called, and the motion carried—yeas 38, nays 33, as follows:

Yeas—Thomas Boude, William Brent, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Joseph Hemphill, Archibald Henderson, William Hoge, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, Henry Southard, Richard Stanford, Joseph Stanton, junior, John Stewart, John Stratton, Samuel Tenney, Thomas Tillinghast, John Trigg, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Richard Cutts, John Dawson, William Dickson, William B. Giles, William Helms, James Holland, David Holmes, George Jackson, Charles Johnson, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, and Robert Williams.

The bill was then ordered to be engrossed for a third reading to-morrow.

Friday, April 9.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the Judicial System of the United States;" to which they desire the concurrence of this House.

[The chief alterations made from the old system consist in the holding the Supreme Court only once a year by four justices, and the establishment of six circuits, within each district of which circuit courts are to be holden twice a year, composed of one justice of the Supreme Court and the judge of the district, in which said court is held.]

The bill was read twice, and referred to a select committee.

The House, resolved itself into a Committee of the Whole on the bill for the relief of Theodosius Fowler. The Committee rose and reported the bill without amendment.

The House then proceeded to consider the said bill, at the Clerk's table: Whereupon, a motion was made, and the question being put, that the farther consideration thereof be postponed until the third Monday in November next, it passed in the negative.

Ordered, That the said bill be engrossed, and read the third time on Monday next.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with such committee as may be appointed on the part of this House, to consider and report what business is necessary to be done by Congress, in their present session, and when it may be expedient to close the same.

The House proceeded to consider the said message: Whereupon,

Resolved, That this House doth agree to the same; and that Mr. S. Smith, Mr. Bayard, Mr. J. Smith, (of New York,) Mr. Henderson, and Mr. Giles, be appointed a committee on the part of this House for the purpose expressed in the message from the Senate.

Mr. Randolph, from the Committee of Ways and Means, to whom it was referred to take into their consideration the subject of the public debt, and the provisions requisite for effecting its ultimate redemption, made a report thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

Mr. Randolph, from the same committee, presented a bill making provision for the redemption of the whole of the public debt of the United States; which was read twice and committed to the Committee of the whole House last appointed.

Mr. J. C. Smith, from the Committee of Claims, presented, according to order, a bill for the relief of Paul Coulon; which was read twice and committed to a Committee of the Whole House to-day.

NORTHWEST TERRITORY.

An engrossed bill to enable the people of the Eastern Division of the Territory Northwest of the river Ohio to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes, was read the third time, and the blanks therein filled up: And, on the question that the same do pass, it was resolved in the affirmative—yeas 47, nays 29, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, William Hoge, James Holland, David Holmes, George Jackson, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Nays—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Lemuel Williams, and Henry Woods.

Monday, April 12.

An engrossed bill for the relief of Theodosius Fowler was read the third time, and passed.

The House went into Committee of the Whole on the bill for the relief of Paul Coulon, which was reported without amendment, and ordered to be engrossed and read the third time to-day.

Mr. S. Smith, from the committee appointed, presented a bill for the relief of Lewis Tousard; which was read twice and committed to the Committee of the Whole for to-morrow.

Mr. Clay, from the committee appointed on the seventh instant, to examine and report on the state of the office of the Clerk of this House, made a report: which was read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House, resolved itself into a Committee of the Whole on the report of the Secretary of State, of the seventh instant, to whom was referred, on the nineteenth of January last, the memorial of Fulwar Skipwith; and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That provision ought to be made by law, for the payment of four thousand five hundred and fifty dollars, unto Fulwar Skipwith, (which sum was advanced by him to the United States,) with an interest of —— per centum, from the first of November, one thousand seven hundred and ninety-five.

Resolved That provision ought to be made by law for compensating the said Fulwar Skipwith, for his services from the first of November, one thousand seven hundred and ninety-six, to the first of May, one thousand seven hundred and ninety-nine, at the rate of —— dollars, per annum.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Mr. Dawson, Mr. Van Cortlandt, and Mr. Stanton, do prepare and bring in the same.

The House, then went into Committee of the Whole on the report of the committee of the twenty-second of January, on the petition of Sarah

Fletcher and Jane Ingraham, referred to them on the tenth of December last, and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

Resolved, That it is expedient to grant to the widows and children, as the case may be, of the officers, seamen, and marines, who were lost at sea, on board the ship Insurgent and brigantine Pickering, lately in the service of the United States, four months' pay of their respective husbands or fathers.

Resolved, That it is expedient to provide by law for the payment of five years' half pay to the widows and children, as the case may be, of such officers in the Naval service of the United States as shall be slain in battle, or die, when in the actual line of their duty.

Resolved That the widows and children of those officers who were lost at sea in the ship Insurgent and brigantine Pickering, shall be entitled to this provision.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Mr. Eustis, Mr. Goddard, and Mr. Stanton, do prepare and bring in the same.

An engrossed bill for the relief of Paul Coulon was read the third time and passed.

Mr. S. Smith, from the committee appointed the ninth instant, on the part of this House, jointly, with the committee appointed on the part of the Senate, "to consider and report what business is necessary to be done by Congress in their present session, and when it may be expedient to close the same," made a report thereon; which was read, and ordered to lie on the table.

The House went into Committee of the Whole on the bill for the relief of sick and disabled seamen.

Mr. Eustis moved to strike out the first section which forms the moneys devoted to the above object into a general fund, to be applied according to the discretion of the President, instead of suffering it to remain, as heretofore, applied to the particular ports, (or those in the vicinity,) from which the moneys are derived.

This motion was supported by Messrs. Eustis, Mitchill, and Dana, and opposed by Messrs. S. Smith, Milledge, Davis, Macon, and Huger.

The question was then taken on striking out the first section, and lost; when the Committee rose, and reported the bill with amendments.

Tuesday, April 13.

An engrossed bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes, was read the third time, and, on a motion made and seconded, ordered to be recommitted to a Committee of the whole House to-morrow.

Ordered, That the committee to whom was referred, on the eleventh ultimo, a memorial of the Illinois and Ouabache land companies, be discharged from the consideration of the same.

Mr. Giles, from the committee to whom was committed, on the ninth instant, the bill sent from the Senate, entitled "An act to amend the Judicial System of the United States," made a report thereon; which was read, and, together with the bill, ordered to be committed to a Committee of the whole House on Friday next.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and two; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Bayard, from the committee to whom was recommitted, on the fifth instant, the bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time to-morrow.

Mr. Dawson, from the committee appointed yesterday, presented, according to order, a bill for the relief of Fulwar Skipwith; which was read twice and committed to a Committee of the whole House to-morrow.

SICK AND DISABLED SEAMEN.

The House took up the bill to amend an act for the relief of sick and disabled seamen, as reported by the Committee of the Whole, and agreed to the amendments with other amendments.

Mr. Bishop moved to add to the first section a provision for applying $20,000 to the erection of a hospital in Massachusetts.

Mr. S. Smith moved to insert in the room of "$20,000, the sum of $15,000," which he considered as adequate to commencing such building.

Mr. Bishop agreed to the amendment.

This motion was supported by Messrs. Bishop, S. Smith, Huger, Bacon, and Eustis, and opposed by Messrs. Elmendorf, Davis, Milledge, and Randolph.

Mr. Milledge moved an amendment, applying $5,000 to the erection of a hospital in Savannah.

The proposition to appropriate $15,000 to the erection of a hospital in Massachusetts, was agreed to—ayes 39, noes 29.

The bill was ordered to be engrossed for a third reading to-morrow.

UNITED STATES DEBT.

The House then went into Committee of the Whole, on the bill providing for the payment of the whole debt of the United States.

Mr. Mott moved so to amend the first section that the appropriation of $7,300,000 applied to the annual discharge of the debt until the whole shall be redeemed should be stricken out, and words introduced making such appropriation for two years only.

Mr. Mott said that his reasons for the motion were that $7,300,000 was so large a proportion of the whole revenue of the United States, that an appropriation of that sum for any great length of time might embarrass the operations of the Government. Though we are now in a state of peace,

we cannot promise ourselves that we shall remain so for ten, fifteen, or twenty years. By the provisions of this bill the Commissioners of the Sinking Fund are to be entrusted with the disposition of this large sum, and not the Legislature. He was against reposing this extensive confidence for so great a length of time. He knew no reason for such a measure but the fear of trusting a subsequent Legislature. He was as much in favor of a speedy extinguishment of the public debt as any man; but he was averse to tying the hands of the Legislature in this way. Of the propriety of continuing this appropriation, the Legislature in existence two years hence, will be better judges than we now are, as they will be better acquainted with the situation of the country than we can possibly be.

If we shall be involved in war, we shall be obliged, under the provisions of this bill, to incur new loans; or we shall be obliged to raise additional taxes, the collection of which being necessarily very slow, will not save us from the necessity of making loans. To refuse to trust a subsequent Legislature must be on the contemplation that such Legislature will not be so righteous or virtuous as ourselves; which opinion Mr. M. said he could not entertain. For these reasons he hoped his amendment would prevail.

Mr. Randolph.—I hope the amendment will not be adopted, and that for the plainest reason that can be assigned, that its adoption will be equivalent to the rejection of the bill. The amendment proposes to limit the appropriation to two years; or, in other words, to make no appropriation at all. For, by a reference to the report of the Secretary of the Treasury, it will be seen that the necessary reimbursement of the public debt for the ensuing two years requires within about $200,000 of the $7,300,000 proposed to be appropriated by this bill.

The gentleman says, and I agree with him in the opinion, that future Congresses will be as wise as we are, and equally competent to provide for the discharge of the public debt. Those Legislatures may say the same thing of their successors, and in this way provision will never be made. The great question now is, whether Congress will provide for paying the public debt, for which there is now no adequate provision? Whether this bill be passed or not, you must pay above $7,000,000. By passing it, you make no new appropriation; you only provide for paying that which you are already pledged to pay. It is true that you may incur new loans, or you may prolong old ones to pay the instalments becoming due; but I hope the Committee will not agree to do this. I trust that the Committee will be of opinion that this is the time to take efficient measures for the discharge of the whole debt.

The gentleman fears that the Government may be hereafter embarrassed by this large appropriation. On what are his apprehensions founded? Is it apprehended that the revenue beyond the $7,300,000 will not be equal to the current expenditure of the Government? If such are his apprehensions, he ought not to have let go the old taxes which we have recently taken off, and he ought to be ready to lay new ones. But have we not reason to believe that the revenue will be equal to the calls of the Government, when it is recollected that our duties on imports amount to $9,500,000? Instead of devoting to the payment of the debt, the surplus above the expenditures of the Government, it is proposed by this bill to give the Commissioners of the Sinking Fund a definite sum, which shall not be affected by the expenses of the Government. Gentlemen will see, by documents on the table, what these surplusses have been under the old system. It will appear that the expenditure has in many cases exceeded the receipts.

It is certainly true, that occurrences may take place that shall call for resources beyond our total revenue. But does it follow, that Government, under such circumstances, will be hampered by this provision? One million, two hundred thousand dollars only is granted beyond the sum already appropriated, which may be considered as vested in the Sinking Fund. The expedient therefore, of limiting the appropriation does not limit our resources; and a provision is introduced into the bill to derive from the sum of $7,300,000, the expenses incurred under treaties, if it shall be necessary; thus providing for a contingent defalcation of revenue. But if the situation of the country shall be such as to render it necessary to provide for a great defalcation, these provisions will not check us—we must borrow money. What then will be our situation? We shall be paying $1,200,000 with one hand, while we are borrowing a large sum with the other.

The sole effect of the operation effected by this bill, during this and the ensuing year, will be to take a certain portion of the revenue and apply it to the discharge of the debt, leaving the balance to meet the expenses of the Government, instead of first paying the expenses of the Government, and then applying the surplus to the Sinking Fund.

If there shall be a great emergency, will the people have any objection to the imposition of necessary taxes, or to the making loans? When I speak of a great emergency, I allude entirely to war, as no other emergency can happen which will require great expenditures.

Let us take a case which has already occurred. Exclusive of the six per cent. interest which we are bound to pay, we engaged to pay, annually, two per cent. on the principal. Circumstances occurred which called for greater sums than the amount of our revenue. If then the money devoted to this purpose had not been vested in the Sinking Fund, it would have been a resource for navies and armies. We now propose to make the same provision for the deferred and other stock. What would have been the effect upon our stock, if the same provision had been heretofore made, which is now proposed by the gentleman from New Jersey? We might perhaps have had two per cent. instead of eighteen redeemed.

A great effect of this appropriation will be to insure an economical disbursement of the public money, which will be sufficient for every purpose

of Government, in case a great emergency does not arise. And should such an emergency arise, can the Committee suppose that a nation which has taken such steps for the establishment of her credit, will be at a loss to borrow money? And money you must borrow, if such an emergency occur; for, in case of a war, the first gun fired will cost you more than $1,200,000, the additional sum appropriated by this bill. It will also be remarked that the sole object of this bill is to provide for the redemption of the public debt, the ensuing years after this and the next year; and if the effects of the peace do not disable us from complying with our engagements in 1802 and 1803, it is clear that we shall be able to apply to the further payment of the debt the same sum thereafter.

I believe the Committee will have little difficulty in agreeing, that if the whole revenue that can be spared shall be applied to the extinguishment of the debt, the situation of the United States will be more advantageous, than if such application had not been made. The national credit must thereby be increased, which will rise in proportion to our ability and disposition to pay. But if we now refuse to make a permanent, irrepealable provision for all the debt, which the first Administration has wisely done in relation to a part, then we may hereafter, at a critical period, be obliged to borrow at an interest, perhaps of ten or twelve per cent.

I regard this bill as involving a principle more important than any which has been adopted by this Government, or which is likely to be adopted, for several years. I regard the motion now made as a death-warrant; as it goes to deprive it of its vital principle—that of guarding the application of the resources of the Government to the diminution of the debt, unless in a great crisis. It is true that in such a case, you cannot touch the revenue which is now pledged; but you can borrow more: and wherein consists the difference between applying your ordinary revenue to the discharge of the debt, and creating by loan an equivalent debt; and the applying the ordinary revenue in the first instance to the current expenses of the Government? The effect is precisely the same.

The question was then taken on the amendment of Mr. Mott, which was lost without a division.

Mr. Griswold moved to strike out the fourth section, which authorizes the Commissioners of the Sinking Fund, with the approbation of the President, to reloan any of the instalments of the Dutch debt becoming due.

Mr. Griswold said he did not know any necessity for reloaning the foreign debt. The instalstalment due this year amounts to above $2,000,000. This instalment, we are told by the gentleman from Virginia, has been already remitted. The instalment due the next year amounts to $2,347,000; that due on the ensuing year is short of $2,000,000. Now we have in the Treasury $3,000,000 of specie. Where then can be the difficulty of remitting under these circumstances? The bill purports to be a bill for extinguishing the whole debt, and yet here is a provision to perpetuate it. I hope the section will be stricken out, and that no further authority will be given to extend the debt.

Mr. Randolph.—I believe the gentlemen from Connecticut on reconsidering the reasons which he assigned, will be averse to striking out the section. Let us recur to the report of the Secretary of the Treasury. He therein says:

"The inconvenience of paying the large instalments of Dutch debt, which fall due this and the ensuing years, is much increased by the obligation of discharging them abroad, on account both of the injury arising from such considerable portion of the circulating capital of the United States being thus drawn abroad, and of the difficulty and risk which attach to the purchase of so large an amount of remittances. Although those difficulties must be met if they cannot be obviated, it seems proper to adopt every measure which may diminish them. The plan contemplated by the act of the third March, 1795, of converting that debt into a domestic debt, has heretofore been found impracticable, and, from the latest advices, the event of peace absolutely precludes any expectation of its being carried into effect."

The gentleman has offered one of the strongest reasons which could have been assigned, for retaining this provision of the bill, and that is, that the instalment due on the ensuing year exceeds $2,000,000. Wherefore object, instead of making payment of the Dutch debt in the existing instalments, (some of which are extremely burdensome, and others as trivial,) to paying it in equal instalments, and to applying the difference between the amount to be paid, and that actually paid to the extinguishment of the debt at home? By this means the discharge of the debt will be as rapidly going on, and the ultimate period of payment will not be protracted.

It is a fact that the difficulty and danger of payment abroad are much greater than at home, as clearly appears in the case of Fulwar Skipwith, recently before the House. In the transaction to which that case refers, the Secretary of the Treasury encountered such difficulty in obtaining remittances, that he was obliged to contract for the purchase of bullion at a loss of $4,000. This difficulty is at present great, and it is likely to increase. It is so great that the Bank of the United States, though highly disposed to aid the fiscal operations of the Government, and notwithstanding the offer to lodge the money with them six months before the payment is to be made abroad, have formally declared they cannot undertake the agency. Now, after the opinion of the Bank of the United States, (which must be so much better acquainted with the necessary arrangements attending the remittance of money, than any member on this floor,) may I not be permitted to take that opinion, as better authority than the gentleman from Connecticut? Is it not somewhat surprising, that, under such circumstances, the gentleman from Connecticut is opposed to giving to the Government a facility to comply with its engagements, not in the least degree calculated to impair a speedy discharge of the public debt?

The gentleman says that in this bill, professing to discharge the whole debt, there is a clause giving perpetuity to it. It is to be presumed that the gentleman has read the bill. If so, I cannot reconcile the avowal of such an opinion with the intelligence and discernment of that gentleman. The gentleman knows that the Dutch debt, consisting of six instalments, is to be paid within six years. He knows, too, that this provision does not delay, but only equalizes them.

Mr. S. Smith.—I am not fully acquainted with the contents of the bill, and when the gentleman from Connecticut was up, I felt disposed to consider this provision for a reloan as unnecessary; but the arguments of the gentleman from Virginia have convinced me that it is necessary, and that the operation may be a good fiscal operation. The fund resulting from the re-exportation of imported articles, will in a great measure cease with the war; and we will of course be thrown for reliance on the exports of our own articles. These for the past year do not amount to more than $33,000,000. From the fund derived from these we will be obliged to pay the value of our imports, and the additional sum for bills of exchange to the amount of these $2,000,000 of Dutch debt. This extraordinary demand for bills of exchange, will probably raise them five per cent. There will, therefore, on the purchase of $2,000,000 in bills, be a charge of $10,000. The like occasion for bills existing for three years will add one-fifteenth part to the whole demand. It may therefore be good policy to vest in the Commissioners, subject to the control of the President, in case the price of bills should be injuriously high, a power to reloan any part of these instalments.

Mr. Griswold.—I think I cannot be mistaken in the effect of this provision in perpetuating the debt—a provision that authorizes the Commissioners of the Sinking Fund, with the approbation of the President, when instalments become due on the Dutch debt, to reloan them for six years. The Commissioners and the President may, if they see fit, reloan the whole sum becoming due this year, and so on, and thus perpetuate the debt with new charges; a premium in addition to the ordinary charges. The bill provides that the interest shall not exceed five per cent., and the premium one per cent., so that the amount may be six per cent. interest, which shall continue for six years; and then if you are not ready to pay, I suppose you must go again upon new loans. I am against such a provision, and in favor of that which shall immediately discharge the debt as it falls due.

Nor do I think there will be any inconvenience attending the operation. The Secretary of the Treasury has remitted the whole of the instalment due this year. He has now in the Treasury a specie balance of three millions, with which to pay the two instalments of about two millions each, due for the two ensuing years. Saying there is a difficulty to remit which, with this sum in the Treasury, is, I conceive, saying a very strange thing. I believe the remittance will be perfectly safe and easy, and that it can be better made in peace than in war. The difficulty in the case alluded to, arose altogether from the war. In times of peace there can be no difficulty in remitting. We ought, therefore, to avail ourselves of the present period of peace; we are possessed of ample funds; and though the immediate payment of the debt may subject us to some little inconvenience, I think it is better to submit to that, than to postpone the payment. I know that the millions reloaned might be applied to the reduction of the domestic debt; but I deem it most important to extinguish the foreign debt.

For these reasons, I do say that the tendency of this section is to perpetuate the foreign debt; and though, according to the provisions of this bill, the prolongation can only be for six years, yet at the expiration of that time some new cause may exist for a new loan, and another provision to the like effect be introduced.

Mr. Randolph.—With regard to the zeal of the gentleman from Connecticut to extinguish the debt, I suppose it is sufficiently great; but when that gentleman alludes to the whole sum due this year being paid, the Committee will pardon me for considering the zeal and activity of the Secretary of the Treasury as at least equal to the zeal and activity of that gentleman. Now the Secretary of the Treasury, who has demonstrated his zeal by substantial acts, which have produced a benefit to the nation, tells you that it is, in his opinion, necessary to equalize the Dutch debt. The gentleman from Maryland, (Mr. S. Smith,) whose commercial knowledge no one will deny, tells you that in his opinion, there will be difficulties in obtaining bills of exchange to so large an amount as will be required to meet the existing instalments. The Secretary of the Treasury, though he had engaged all the banks to obtain the best bills, (yet from the recent failures, some will no doubt be bad,) tells you he has experienced great difficulty in making remittance, and infers that there exists no necessity for this provision. He says the large sum of $2,300,000 may be remitted with facility, immediately after the Secretary says it cannot be effected without difficulty; and after the Bank of the United States has determined that the difficulty and danger attending the operation are so great that they will not undertake it; and at the same time that they offer to purchase for the Government all the good bills they can obtain without a commission. Now on which information am I, an ignorant man, unacquainted with mercantile arrangements, to act? that of the Secretary of the Treasury, who has had the experience derived from the purchase of two millions of bills, and of the Bank of the United States; or that of the gentleman from Connecticut, whose talents and knowledge, however, I feel no disposition to depreciate?

Does the gentleman wish the United States to buy good or bad bills? If good, on what basis? Or is his zeal so great that he is willing to remit in specie? I believe, if he stands on this ground, he will find himself in a small minority.

The demand now made by the Secretary of the Treasury shows by his previous conduct that it is

not made with the view that is now assigned. The man who, by his indefatigable diligence, has procured the whole remittances of the present year in one third of the time allowed, proves to you that it is no object with him to retard the operations connected with an extinguishment of the present debt. After contemplating the great exertions made by the Secretary, and witnessing the good that has accrued from them, I will not hesitate to give credit to the report of such an officer. That officer might undertake to remit the instalments falling due; he might promise to remit them; but he might, notwithstanding every possible effort, be unable to perform. As therefore he sees that, after all his exertions, difficulties may exist which he cannot surmount, like a good officer, he recommends a legal provision for complying with the engagements of the nation. And this is now to be refused by gentlemen who are not acquainted with the peculiar circumstances that attend the making remittances to Europe. For my part, I know nothing about bills of exchange; but I do know that the Secretary, from the commencement of the session, has regretted the difficulty of purchasing safe bills wherewith to make remittances.

"The difficulties and risks," says the Secretary, "attaching to the purchase of remittances, and which can only be obtained at a distance from the Treasury Department, and without any immediate control of any officer of the Government, may not be obviated by any means."

And yet, after this information, gentlemen are prepared to tell the Secretary of the Treasury, who had been two years employed in making these remittances, and who from experience ought to be presumed to be well acquainted with circumstances. We are better acquainted with the duties of your station than you, and we will not grant your request, though you are of opinion that it is required for the preservation of public credit.

Mr. BAYARD.—I do not mean on this occasion to question the eulogium, pronounced by the gentleman from Virginia, on the Secretary of the Treasury, or to say that he is not entitled to our passive confidence; but I mean to say, that according to the provisions of his report, the propriety of this provision cannot be maintained. By his first report, it appears that, in his opinion, it was not necessary to reloan the whole of the Dutch debt. He says "the inconvenience and difficulty of procuring remittances to that amount, and the real injury arising from such heavy disbursements abroad, render an extension of the terms of payment, by partial reloans, a desirable object."

He says "partial reloans"—the bill before us authorizes a reloan of the whole Dutch debt. The Secretary goes on—"All that seems wanted is, that the gross amount of payments, which are to take place during the eight next years, should be more equally apportioned among those years."

Now, according to this report, the bill before us is improper. But, in my opinion, it can be demonstrated that it is good policy as soon as practicable to pay off the whole of this foreign debt. We are told by the Secretary that we have the power to pay it off. We do not know that we shall next year have the power. Before that time we may be involved in war, and then we shall not be able to pay it. Now we have the power. I ask then whether it is not now better to pay it, than to trust to contingencies which may prostrate our public faith? I find that for the last year nearly the same sum was remitted as will be required for the year 1803; and what was the impression then made? I do not know any great inconvenience that was then experienced; nor do I know that bills are now higher than they then were. But, even if there should be a small inconvenience attending the discharge of this debt, I ask whether it would not be proper, notwithstanding, to put our shoulders to the wheel at this favorable period?

It has been properly remarked, by the gentleman from Connecticut, (Mr. GRISWOLD,) that this provision may augment the debt; for we know that loans cannot be made without additional charges. We cannot therefore see from any information before us, that we should be able to make a reloan for a lesser expense than that attending a remittance.

If gentlemen will look at the documents on the table, they will see that the Secretary contemplates the extinguishment in 1809 of certain portions of the debt, in which are included the payment of all the instalments of Dutch debt; on this system any reloan will break in.

Upon the whole, as the inconvenience urged is entirely specious, as it is at best possible, and may probably be altogether avoided, I think it best to run the risk, rather than endanger the early payment of the debt.

Mr. NICHOLSON.—We find by the report of the Secretary of the Treasury an appropriation of $7,300,000, proposed to be annually applied to the discharge of the whole public debt. In the accompanying documents it is stated that one instalment on the Dutch debt of $2,271,692 will be due in 1802; $2,347,038, in 1803; $1,942,028, in 1804; $1,734,119 50, in 1805; and $1,325,019 in 1806.

Instead of paying off these sums as they become due, which, it will be observed, are various in amount, the Secretary has thought that it would be most prudent to equalize the instalments. To effect this object he has requested that authority may be vested in the President to make partial reloans. According to the present terms, the Dutch debt will be entirely paid in 1809; and it is not intended that any of the proposed reloans should retard the extinguishment. I am inclined to think this provision of the bill is not so precise to this effect as it ought to be; as by it the new loans are not necessarily reimbursable till a period beyond 1809. I will therefore move so to amend the bill as to make all the reloans reimbursable before 1809.

[Mr. N. offered a motion to this effect.]

Mr. GRISWOLD.—I do not like that arrangement. The eight per cent. stock is calculated to be paid off in 1809. If you carry forward to that period the final payment of the Dutch debt, you will necessarily prevent the payment of the eight per cent. stock, from the inability of the Government

at one time to pay both. It is to be considered that the interest of eight per cent. is war interest, and that it will be the interest of the Government to pay off the principal as soon as possible; and the ability to pay that stock in 1808 and 1809 will arise principally from the smallness of the foreign instalments.

I am also opposed to procrastinate the payment of the Dutch debt by reloans, as they will probable cost more than any other description of debt, perhaps equal to the eight per cent. stock, from the premium and charges which always attend loans. I am also opposed to this measure from the difficulty of making remittances in time of war.

With respect to the merits of the Secretary of the Treasury in remitting, I do not wish to detract from them; though the operation is as plain as A, B, C. Bills are below par, there is money enough in the Treasury, and all that the Secretary has to do is to direct the cashiers of the banks to buy bills. I have no doubt, the Secretary has acted in this business with propriety, as every Secretary ought to, and would act. I am sensible too that bills may next year be above par. But still, should this be the case, the expense will not equal that of reloans.

As to the conduct of the banks on this occasion, I know not how it is; but I presume it is such as the gentleman from Virginia has stated it. They may not make the remittance without compensation; but I have no doubt but that if a proper premium is offered they will undertake it. They are like merchants, and we must pay for these agencies what other people pay.

Mr. RANDOLPH.—The gentleman from Connecticut seems to reason, as if this provision were imperative; whereas it does not declare that the instalments of the Dutch debt shall not be paid in the precise proportion of the existing instalments; it only vests a discretionary power, because those who are well acquainted with the business of remittance, know the difficulty attending it, and wish to meet it by legal provisions.

It is probable that the Secretary will be obliged to buy bills above par on England, and then buy bills below on Holland, thus incurring a double loss. For my part I have no objection to vesting in the Commissioners of the Sinking Fund and the President, this discretionary power, because I believe the existing instalments, without a recurrence to reloans, will be paid, if the payment be advantageous to the United States.

The gentleman says, if the Dutch debt is left to 1809, we shall not be able to pay the eight per cent. domestic debt. But, by withholding the payment of the intermediate instalments, you will be in a situation to meet the whole Dutch debt in 1809; and if the price in the market of the eight per cent. will admit it, it may be bought with the millions spared by the postponement of the payment of the Dutch debt.

The remarks of the gentleman respecting bills being below par, and the facility of purchasing them, may apply perhaps to ordinary cases, where only small sums are required; but when a demand for two millions, beyond the current demand, is superadded, will not the necessary effect be to enhance the price of bills? But suppose the individuals from whom bills are generally purchased have no right to draw beyond the ordinary demand for bills, what will be the effect? Is Government to be driven, no matter what length—to put, as the gentlemen say, their shoulders to the wheel? In answer, I will say that the Government have put their shoulders to the wheel, and have manifested in their actions the most unequivocal disposition to pay off the debt; but, notwithstanding this disposition, they are unwilling to put the country to the inconveniences that may arise from the payment of the large instalment due in 1803—they are therefore in favor of equalizing it.

Besides, if every dollar that is saved from the Dutch debt be applied to the payment of bank loans, navy stock, or eight per cents, will there be less debt extinguished? Will not such application of the public moneys promote as highly the public interest; and have gentlemen shown that the ultimate redemption of the debt will be prolonged for a moment?

Mr. S. SMITH said this section, and others that follow, were of considerable importance; the effects of which he had but little considered. He therefore wished the Committee might rise, and time be allowed for further consideration until to-morrow. It appeared to him that the provision in the bill would answer one good object at least. Persons who have bills, may hold them up, and the Secretary of the Treasury, having this power, may keep down the price. If the provisions should have no other effect, this may be a very important one.

The Committee rose, and had leave to sit again.

WEDNESDAY, April 14.

The bill sent from the Senate, entitled "An act for the better security of public money and property in the hands of public officers and agents," together with the amendments agreed to yesterday, was read the third time and passed.

An engrossed bill to amend an act for the relief and protection of disabled seamen, was read the third time, and passed—yeas 36, nays 33.

Previously to the passage, Mr. ELMER spoke at some length against the bill.

Mr. ELMENDORF moved the appointment of a committee to inquire into the expediency of making further regulations respecting the marine corps. The object of this motion was to authorize the President to reduce the officers of the corps proportionably with the reduction made of the privates, who had been reduced from one thousand two hundred to four hundred, whereas the number of officers remained forty, though twenty were sufficient.

In reply, it was stated by Mr. S. SMITH, that fifteen vacancies had occurred, which the President had declined filling; that the present number of officers was twenty five; and when five more vacancies should occur, the relative proportion of officers and privates would be attained; that it

was proper to leave the disposition of the corps under the discretion of the President, as in the event, during the recess, of a war with the Emperor of Morocco, which was far from improbable, an augmentation might be expedient.

The motion of reference was lost—yeas 29, nays 43.

UNITED STATES DEBT.

The House again resolved itself into a Committee of the Whole on the bill making provision for the redemption of the whole of the public debt of the United States.

Mr. Griswold's motion, to strike out the fourth section, being under consideration—

Mr. Randolph said: I rise to repeat the reasons which I urged yesterday against the prevalence of this motion. I believe that every substantial objection may be avoided by a slight amendment, so that the power given may be to borrow in relation to the instalments now due, and not again to reloan for the new loans that may be made. This will remove all idea respecting the effect of this provision to perpetuate the public debt. The powers of the Commissioners of the Sinking Fund enable them now to borrow, provided remittances cannot be made. The power to borrow forms a prominent feature in all your sinking funds. They have also a power to sell, below par, stock created by themselves. It is evident, therefore, that by this provision no new powers are given; but that, on the contrary, old powers are limited and restricted; nor will there be one dollar less applied to the redemption of the public debt under this clause than if it had never existed.

Gentlemen not acquainted with this subject know not the difficulty of making remittances to Holland. To meet these difficulties this section proposes to vest discretionary powers in the Commissioners and the President. If struck out, it must be from diffidence in the persons in whom you have heretofore so liberally confided; and this will be in direct hostility with the principles of the sinking fund, which confer on the board such tremendous powers, even the power of selling half the stock they create below par. Is not, then, the extent of the power given by this section less destructive than that already vested? For there is now a sum of near five millions, which it is in the power of the Commissioners to create, and to sell half of it below par.

It does not belong to me to question the motives of the gentleman from Connecticut (Mr. Griswold) in making this motion; but what will be the effect of it should it prevail? The Government will be either entirely unable to make remittances to Holland, or be obliged to remit to Holland, through England, at an expense of at least ten per cent., or to remit the specie. What will be the consequence? Why that same clamor in the nation that some gentlemen would wish now to produce. I hope that the gentleman from Connecticut is not of this description of persons, and that he will not be for precipitating the Government, by their own acts, into a situation which shall hereafter create popular clamor.

I trust that the Committee will consider these circumstances, and perceive that the discretionary powers given by this act to the Commissioners under the direction of the President is a necessary power, and one, by the exercise of which, the public welfare cannot be hazarded. Before the year 1801, the instalments on the Dutch debt were trifling in amount; as they never exceeded annually more than a million. Does the gentleman from Connecticut believe, or is he prepared to acknowledge the former Secretary to be inferior to the present? and what will he say to the conduct of the former Secretary, who was obliged to create stock at a loss of twelve per cent.? If, then, this took place under the former Secretary, when it was not required to remit more than a million, may not the difficulty be greater when the instalments are more than double? Strange to tell, the gentleman from Connecticut has ascribed the difficulty, under the late Secretary, to the existence of war, which was the very reason for facilitating remittance, owing to our extended trade. But when trade shall be restored to its ancient channels, the probability is, that bills to so great an amount on Holland, as will be required, cannot be purchased, and it is probable that a double loss will be incurred by purchasing bills through England.

Mr. Griswold.—I do not perfectly understand the arguments of the gentleman from Virginia. He says that the Commissioners of the Sinking Fund have greater powers than are conferred by this law, and that this law is designed to limit them; and yet he says if we do not confer these powers, we shall hazard the public credit. I do not understand how these two arguments can stand together. I believe that this fourth section confers greater powers than the Commissioners now possess. The gentleman says, that under the act of March 3, 1795, powers are given the Commissioners commensurate to the objects of their institution. But the power given to meet the instalments on the Dutch debt was only to borrow when necessary. I have no objection to give this power when the state of the Treasury requires it. I, therefore, do not propose to repeal that act. But that act gives no power to borrow, when the money wanted is in the Treasury; and, for that reason, this section has been introduced. Conceiving, therefore, that this section will extend, instead of limit, the powers of the Commissioners, I object to it.

Again, the gentleman from Virginia says, that by the act of May, 1796, which gave authority to borrow five millions, the Commissioners have more extensive power, and that that power still exists. If it does exist, the section is not calculated to abridge it, for this law expressly continues it. But I think that act does not give the present power to borrow the sum therein authorized. [Here Mr. G. quoted the act.] Now, it appears that the authority to borrow five millions was in order to pay the debt due to the Bank of the United States, branch bank of New York, and the instalment of the Dutch debt due that year. That year is passed; the debts then due are paid, and of course the power is gone with

the occasion for which it was created; the law was only passed to enable the Commissioners of the Sinking Fund to meet the pressing demands of that year. Those demands have been satisfied, and the power consequently ceases. The power given by the law of 1795 is all that is necessary; and under that power it never was contemplated that the Commissioners should borrow when there was money sufficient in the Treasury. For these reasons I do not think we ought to enlarge the powers of the Commissioners. Nor do I believe that there will be any difficulty in making remittance for 1803. There is no prospect that bills on Europe will be under par; the prospect is that they will rise. In consequence of the great price of our produce, we have had a great influx of cash, by which we have been enabled to pay off a great proportion of debt due in Europe, and there is less amount of debt due now than at any former period since the war. We shall not probably run in debt as formerly, and bills will rise; our credits in Europe will extend, with which the demand for bills will increase; they will of course rise, and in two or three years we shall be obliged to give more for them than now. This, therefore, is the time to make remittance for 1803. Why we should be exposed to the postponement of this payment, when it can now be made on better terms than hereafter, is to me unintelligible. If we do not do this, the effect will be to perpetuate the debt.

It does not appear to me clear, that under this section, the Commissioners may not reloan after the six years during which the present instalments are due; and, in this way, the debt may be perpetuated to the end of time. I, therefore, am decidedly of opinion, that it is best to go on in the old way, until some embarrassment shall occur, which we shall be in time to provide for at the next session of Congress.

I have no objection to repose, with the gentleman from Virginia, implicit confidence in the Executive. But I never have thought that it was a sufficient argument for the adoption of any measure, to say that it had been recommended by a Secretary of the Treasury. I have always thought that we ought to judge for ourselves; and, so judging, I think we must conclude that this provision is unnecessary.

Mr. Randolph.—I am sorry to be so unintelligible to the gentleman from Connecticut; but when the laws of the United States are so unintelligible to that gentleman—those laws which are doubtless drawn with perspicuity, and some of them drawn by himself—how can an individual member expect to be understood? The gentleman says the Commissioners have no power to borrow money for the payment of the instalments of Dutch debt under the act of May, 1796. Now, I am willing to test everything I have said by the accuracy of the construction which I have put on that law. I wish the Committee to attend to the act, and to see what reliance ought to be placed on the facts or deductions of that gentleman. The act says:

"That it shall be lawful for the Commissioners of the Sinking Fund, with the approbation of the President of the United States, to borrow, or cause to be borrowed, on the credit of the United States, any sum not exceeding five millions of dollars, to be applied to the payment of the capital or principal, of any parts of the debt of the United States now due, or to become due, during the course of the present year, to the Bank of the United States, or to the Bank of New York," "or for any instalments of foreign debt." And yet the gentleman gravely says, that this law only applies to one year. Now, let me ask, is the sum due abroad in 1802 an instalment of foreign debt, or is it not? The words "now due, or to become due," clearly refer to this foreign debt, and the term "any instalment," refers to future instalments becoming due.

The gentleman further says that this section gives powers in addition to those already possessed by the Commissioners. It is true that they are in addition, but it is also true that they are in qualification of those powers. If the debt provided for were a domestic debt, there would not be a shadow of difference. This provision will not prevent the Commissioners from buying good bills; but it will provide for the contingency of your having abundance of money here, and but little whereon to draw in Holland. Your engagements must be complied with. Now, is it best that, in order to provide for such an emergency, the Commissioners should have the power granted in this section, which will not prolong the final payment of the debt, or that they should be obliged to exercise the power of creating stock not redeemable till 1819, which will be the case with stock created under the act of May, 1796?

The gentleman further says, that this provision will perpetuate the debt. But a simple amendment to inhibit reloans, additional to those contemplated to be authorized by this bill, will prevent this. But we are charged with the strange and novel doctrine of confidence in the Executive. And what does this charge arise from? An officer, who has remitted two millions nine months before it was due, a gentleman whose fiscal knowledge the gentleman from Connecticut might have availed himself of, is not to be confided in; while the mere *ipsi dixit* of the gentleman from Connecticut is to be confided in! Upon my soul, while I admire the ingenuity, I cannot admire the modesty of the gentleman!

The gentleman says, it is time enough to meet embarrassments when they occur; but I will tell him it is our business to prevent them from occurring; and, I believe, the gentleman from Connecticut has not given evidences of greater knowledge on this subject than the Secretary of the Treasury, or the Bank of the United States, or the best informed merchants. For my part, I do not pretend to mercantile knowledge. I am ready to grant that the mercantile knowledge of that gentleman is much greater than mine. I do confess, that, on such subjects, I have always relied upon the Secretary of the Treasury, the banks, or the best informed merchants. But, while I allow the superior mercantile information of the gentleman, I

doubt the accuracy of the sources from which it is drawn, the more especially as I do not find it supported by the information of mercantile men from the seaports, and from other respectable sources.

The question was then taken on striking out the fourth section, and lost—ayes 21, noes 41.

Mr. Nicholson moved, and Mr. Randolph seconded, an amendment limiting the power of the Commissioners to the reloan of the instalments of Dutch debt becoming due in 1803, 1804, 1805, and 1806.

Mr. Nicholson said he offered this amendment to meet the ideas of gentlemen who considered the original provisions of the bill as vesting a power that might be exercised to the prolongation of the ultimate payment of the Dutch debt.

The amendment was agreed to without a division.

The sixth section, being under consideration, is as follows:

"*And be it further enacted*, That the Commissioners of the Sinking Fund be, and they hereby are, empowered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe, for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loan authorized by this or any other act, for the purpose of discharging the same; and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated."

Mr. Griswold said he did not see the necessity of an agent in Europe. The business had heretofore been well done by bankers. If an individual be sent, he may not be perfectly responsible in fortune or character. Mr. G. concluded by moving to strike out the sixth section.

Mr. Randolph.—In answer to the gentleman I will read an extract from the report of the Secretary of the Treasury. He says: "For this purpose it would be necessary to give an express authority to the Commissioners of the Sinking Fund; and, in order to enable them to transact in the most advantageous manner, both that and any other business relative to that debt, it would be eligible to give them a power, if they shall find it necessary, to employ a special agent in Holland. The usefulness of that arrangement had been some years ago suggested by this department; and its necessity is now much increased by the increased extent of the payments and transactions in Holland relative thereto."

By this section no reflection is intended on the agents heretofore employed; their abilities have never been questioned. But it will be recollected that these agencies may be required in England, as the stock is generally lower in the Seven Provinces than in England. I should have expected that the appointment of a responsible agent would have been the last thing objected to. It is not proposed to make him our cashier, but to place him under the direction of the Secretary of the Treasury, to do whatever the interests of the United States require in relation to the debt. This, too, is a power, which is only to be exercised when the Commissioners of the Sinking Fund shall think it necessary. Now, is it not strange to deny a power of appointing an agent at an expense not exceeding three thousand dollars, where you already have given the power of disposing of millions?

Mr. Griswold.—I do not know whether the Commissioners will not have the power of appointing agents without this provision; but I am afraid that it may be intended, in this formal way, to transfer the payment of the debt from the bankers to this agent. I would, therefore, rather leave the business where it now is, to be exercised under the responsibility of the Commissioners of the Sinking Fund.

The question was then taken on striking out the sixth section, and lost—ayes 30, noes 38.

Mr. Griswold.—If the object of the fifth section is only to get the bank to remit to Holland, I presume gentlemen will have no objection to strike out the words, "or individuals."

[Those words, in connexion, stand thus: "The Commissioners are empowered to contract, either with the Bank of the United States, or with any other public institution, or with individuals, for the payment in Holland of the whole, or any part of the Dutch debt."]

This power, said Mr. G., is very extensive. Nine millions are due in Holland, for the payment of which the Commissioners may make a contract with an individual, and, if he fail, the public may be obliged to pay the whole over again, and thus endanger the public property. I, therefore, move to strike out the words, "or with individuals."

Mr. Randolph said he did not say that the sole object of the section was to enable the Commissioners to contract with the bank, though he presumed the Commissioners would prefer contracting with the bank. The gentleman surely did not mean it as a serious argument in favor of his motion, that the individual contracted with will run off and endanger the public property; as he knows that, at present, the Commissioners buy bills from individuals, and if they fail, the public loses. It is obvious, therefore, that this section increases the security of the Government.

Mr. Griswold.—I have always thought it a bad mode of paying debts through contractors. I know that Government purchases bills from individuals, but I know that the amounts purchased are small, and, therefore, the loss inconsiderable that arises from the failure of an individual; but if you contract with individuals for the whole, if you lose at all, you will lose to an enormous amount. I believe Government will act right; but several things are said; it is said the French Government would wish to contract for the payment of the Dutch debt, and that we would advance the money to them here. I believe that that would be a very bad bargain.

Mr. Bacon thought this power very different from that of buying bills. It must be a very important individual who shall be equal to the payment of this debt, and equal to securing the United States in any contract he may make with them. Mr. B. said that this was his opinion, though he might be mistaken.

Mr. Randolph.—The gentleman is mistaken. This provision gives no power to the Commissioners to contract with an individual. They may negotiate with a number of individuals, in proportion to the number of whom the security is enhanced.

Mr. Bayard moved to strike out all that part of the section (including the words to be stricken out by Mr. Griswold) which authorizes the Commissioners to contract for the payment of the Dutch debt. He said he saw neither the necessity or utility of this provision for paying the debt, which must be made with individuals, or with bodies corporate. He wished to know why the Commissioners could not pay it themselves? He wished to know if the provision would have any other effect than to augment the sum paid; in fact to create two debts; for, by incurring the last, you do not expunge the first. By this section there is no limitation. The Commissioners may contract with individuals to pay the whole nine millions.

Mr. Randolph.—I will ask one simple question. At whose risk are the payments now made? By whom are they now paid? It is very easy for one man to pay a debt to his neighbor; but if he has to make payment in Europe or India, it must be by others. There will, of course, be a risk; and even if he insures, he does not insure the solvency of the insurer. Does the gentleman mean to say that the actual payment of the foreign debt is not worth more than the nominal amount of it? If so, why have Congress offered to foreign creditors a transmutation of their demands into a domestic debt, with one-half per cent. increase? The French creditors availed themselves of the offer; but the Dutch creditors would not, and the whole present inconvenience arises from this refusal. You are now obliged to make payment in Holland, and yet the gentleman says such pay is worth nothing. What is this provision but saying that, instead of relying on the individual drawers of bills, we prefer to rely on the banks, or on a number of individuals?

The question was taken on Mr. Bayard's motion to strike out, and lost—ayes 28, noes 42.

When Mr. Griswold's motion recurred to strike out, "or with individuals;" which was lost.

Mr. Bayard then moved the following amendment: "Provided the United States shall not pay more than the nominal amount of the debt, and the expenses thereon authorized by this act."

Mr. Bayard.—My object now is very different from that which I had in the motion I previously made. Under this power the Commissioners may contract to pay twelve or fifteen millions instead of nine millions of dollars. I am not opposed to a liberal confidence in the Executive; but I am more disposed to trust our laws, to rely on ourselves, and we are surely unworthy of legislating when we cease to pursue our own judgments. I have no other view in this motion than to say that my sole object is to prevent the payment of more than the nominal amount of this debt. In this amendment I have designated the expenses authorized by this law beyond the principal and interest. Now, I call upon gentlemen, if there are any proper expenses not designated, to designate them. Let them do this, and then we shall be acting upon ground that we understand. Do gentlemen want greater power than this? As the matter now stands, you may not only pay the principal and interest of the foreign debt, but a profitable job may be made of it. I do not mean to insinuate that any such thing is intended; but I do not see the propriety of giving more power than is necessary. I hope, therefore, that this amendment will prevail, and that we shall not give the unlimited power contained in the bill.

Mr. Randolph.—I am sorry to be so troublesome to the Committee, but I deem it necessary to defend the bill against the objections of gentlemen who do not seem to understand it. The gentleman asks what risks are to be avoided by this provision? I will answer him; that very risk of making remittances, which has cost so much, and for getting rid of which half of one per cent. has been offered to be sacrificed. If the Commissioners, according to the gentleman from Delaware, wish to make a lucrative job, what have they to do but to give more than the value of bills? Is not the discretion given by the bill necessarily involved in the nature of the institution? They may now sell one-half the stock they issue for one cent in the dollar; and, by collusion, they may buy bad bills. These are the powers they now possess. It is evident, therefore, that the whole objection is futile.

Mr. Griswold.—The object of the amendment is to limit the profit allowed to contractors. I do not see why we ought not to limit it. If the gentleman is disposed to allow a profit, let it be limited, and let them not grasp at too much. I do not believe it will be in the power of the bank, or of individuals, to make remittance better than the Government itself. I aver that this has been done under as good terms by the Government as it can be done by individuals. This has been the case heretofore, and it will undoubtedly continue to be the case.

Mr. Bayard.—My object simply is to act on this subject as on all others. We are bound to our constituents to know the expenses attending this business before we allow them. Now I call upon gentlemen to say whether they are ready to pay, not only the amount of the debt, but all expenses, no matter however great, which may be incurred? We are told by the gentleman from Virginia, that we have given almost unlimited discretion to the Commissioners of the Sinking Fund, and the inference he draws from this fact is, that we should now take away all limits to discretion. We go on a different principle; we are willing to delegate all necessary powers; the power, for example, of purchasing bills; but we are not willing to convert a debt of nine millions into one of fifteen millions. Are gentlemen, in short, prepared to authorize expenses they know nothing about? This is a new doctrine, and particularly from gentlemen on the other side.

The question was then taken on Mr. BAYARD's amendment, and lost—yeas 23, nays 42.

Mr. B. then moved so to amend the fourth section, by striking out certain words, as to prevent the bill from empowering the Commissioners of the Sinking Fund to borrow under the law of May, 1796, under a construction, which he contended the bill gave, that that act was in force. As soon as the year in which that act was passed was over, those debts were paid, and the act ceased; a Legislative construction that that act is still in force, may perhaps justify the Executive in considering it so. Suppose it is in force, there will be nothing in this act to repeal it. If the object is not, by a side-wind, to authorize the borrowing of five millions, under the idea that this act is still in force, gentlemen will have no objection to this amendment. This I affirm can be the only effect of the present provision. If gentlemen have this object let them avow it. I am, indeed, greatly surprised at these provisions in this bill. Its title is very splendid and promising; but when we come to the bill, we find it contains an authority to loan nine millions abroad, and to borrow five millions at home; and in this way gentlemen mean to extinguish the debt. I, therefore, do hope, that if it is not the intention of gentlemen indirectly to revive this loan, authorizing the borrowing of five millions, they will agree to my amendment.

Mr. RANDOLPH.—If the gentleman from Delaware can prove to me that the act of May, 1796, has expired, I should be the first to second his motion. But I am convinced that it has not, and cannot, so long as any instalment of foreign debt remains due. These are the terms of the act, which fix its duration. For my part I should be pleased to have it proved that it is not in force, and that there was no such power vested in the sinking fund, to create stock, as therein authorized, in any circumstances.

When the Committee draughted this bill, it became them to provide, that all the powers already vested in the Commissioners of the Sinking Fund should not be invalidated. Suppose, in this bill, such a provision should have been omitted, we would have been then told, that the public faith was endangered; that there was no telling what might happen in two or three years; and that, if this power were taken away, the Commissioners might be disabled from complying with the engagements of the Government with the public creditors. We should have heard of injuries inflicted on public credit, and of violation of the public faith! This provision has in truth no other effect than that of leaving things exactly where they are, and telling the courts that this present act shall not affect a previous law. This act, therefore, really does nothing. It is clear, however, to me, that the provision of the act of May, 1796, is still in force, and that you can only get rid of it in two ways, either by paying off all the instalments of foreign debt, or by the Commissioners' borrowing to the extent of the five millions.

The gentleman says, that while we profess to pay the public debt, we are calling, by side-winds, for the power to borrow five millions. We say no such thing; we only say that the authorities of the sinking fund, heretofore given by law, shall not be affected by this bill. When we want loans, we will call for them directly. We trust that none of the provisions of the act of May, 1796, will be necessary, and that we shall not be obliged to create stock irredeemable till the year 1819, or to sell half the stock created at any market value below par. If the gentleman had examined attentively this proviso, he would have found it to be a thing of course, and copied almost verbatim from former acts.

Mr. GRISWOLD.—It is admitted that no part of this bill goes to repeal the act of May, 1796; that act, therefore, cannot be affected by this. I ask, then, why this section is introduced? Can it be introduced for no other purpose than to give the consent of the Legislature to the existence of that law? Is it proper to give a Legislative sanction to the continuance of the act of May, 1796? The gentleman from Virginia says, he would wish to see this power out of existence. Why, then, not leave it where it is? That the power has expired is evident from the words. They are: "That the Commissioners may borrow any sum not exceeding five millions of dollars, to be applied to the payment of the capital, or principal, of any parts of the debt of the United States, now due, during the course of the present year, to the Bank of the United States, or to the Bank of New York, or for any instalment of foreign debt."

The plain meaning of these words is, that the Commissioners may borrow, for any part of the debt now due, to or become due during the current year, first to the Bank of the United States, secondly to the Bank of New York, and, lastly, for any instalment of foreign debt. This is the plain meaning of the statute, and this must be the construction put upon it, for the authority to borrow is expressly confined to that year. It was not contemplated at the passage of the act that the power should be continued beyond the year. The fact is, we had contracted debts with the banks, and instalments of foreign debt were due; and to save our credit, a loan of five millions was authorized to meet those specific objects. It, therefore, is evident that this provision of the law of May, 1796, has expired, and the effect of the present provision of this law is to revive the power of making a loan of nearly five millions; for, under the act of 1796, the Commissioners only borrowed about eighty thousand dollars. I, therefore, hope the words will be stricken out.

Mr. BAYARD said he would only ask if the act was in force which gave authority to borrow five millions, whether the gentleman could have thought it necessary now to give the power of reloaning the instalments on the Dutch debt here, or in Europe? On this point he thought it was impossible to doubt. He beseeched gentlemen to examine the bill. He did not know who drew the bill. He presumed it was drawn by the chairman of the Committee of Ways and Means; but he was sure that he had introduced into it an idea not intended by him.

Mr. NICHOLSON.—The gentleman from Delaware asks, if the law of 1796 is still in force, where is the necessity of the power given in the present act to reloan the instalments of the Dutch debt? I will answer the gentleman in a few words. That power is necessary because the loan authorized by the act of 1796 is not reimburseable till the year 1819, whereas, under this law, the reloans of the Dutch debt are reimburseable within six years.

Mr. RANDOLPH.—If the gentleman from Delaware will look into the act of 1796, he will find that an indefinite power is thereby given to the Commissioners to borrow any sums to meet the instalments of debt become due, provided that no greater interest than six per cent. be allowed.

The question was then taken on Mr. BAYARD's motion, and lost—ayes 28, noes 37.

The Committee then rose, and reported the bill with one amendment, which was immediately agreed to.

Mr. BAYARD renewed his motion, made in Committee of the Whole, viz: to strike out, at the end of the fourth section, the following words:

"*Provided always*, That the power herein given shall not be construed to repeal, or affect the power given to the Commissioners by an act, entitled 'An act making provision for the payment of certain debts of the United States,' to borrow certain sums, and to sell the shares in the Bank of the United States belonging to the United States, in the manner, on the terms, and for the purposes authorized by the said act."

On which the yeas and nays were—yeas 27 nays 46, as follows:

YEAS—John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, William Hoge, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John Cotton Smith, Josiah Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. BAYARD moved to amend the bill by adding to the end of the fourth section the following additional proviso, to wit:

"*And provided further*, That nothing herein contained shall be construed to revive any act, or part of an act, authorizing the loan of money; and heretofore expired."

Mr. RANDOLPH said he had no objection to the amendment; which was carried without a division.

Mr. GRISWOLD renewed a motion made by him in the Committee of the Whole, to strike out of the fifth section the following words, that are in italics, viz:

"That, for the purpose of more effectually securing the reimbursement of the Dutch debt, the Commissioners of the Sinking Fund may, and they hereby are empowered, with the approbation of the President of the United States, *to contract either with the Bank of the United States, or with any other public institution, or with individuals, for the payment, in Holland, of the whole, or any part of the principal of the said Dutch debt, and of the interest and charges accruing on the same, as the said demands become due, on such terms as the said Commissioners shall think most advantageous to the United States; or*"

Mr. G. called the yeas and nays, which were—yeas 26, nays 48, as follows:

YEAS—John Bacon, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John C. Smith, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Mr. GRISWOLD moved to amend the fourth section by inserting the words following, in brackets:

"*Be it enacted*, That the Commissioners of the Sinking Fund be, and they hereby are, empowered, with the approbation of the President of the United States, [in case the advance upon exchange between the United States and Holland shall exceed five per cent.; and in case difficulty shall occur in making remittance,] as any instalments, or parts of the principal of the said Dutch debt become due, to borrow on the credit of the United States, either in America or abroad, either by a reloan or prolongation of the loan heretofore obtained, or by new loan, the sums requisite for the payment of the said instalments, or parts of principal."

Mr. RANDOLPH moved to amend the foregoing amendment, by striking out the word "and," and inserting in lieu thereof the word "or."

Mr. GRISWOLD said the word "or" was a small word, but in this case it was a very important one, as it entirely defeated the object of his amendment. He must, therefore, request the yeas and nays on inserting it; which were accordingly taken as follows:

YEAS—Willis Alston, John Archer, John Bacon,

Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Robert Williams.—47

NAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Nathan Read, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.—22

Mr. BAYARD moved to amend the amendment. The word "difficulty" was so indefinite as to mean anything. He, therefore, moved to introduce, after the word "difficulty," the following words, "such 'as shall render it impracticable to make remittances of any instalments becoming due on the 'Dutch debt." Motion lost.

Mr. NICHOLSON.—I voted against the motion of the gentleman from Delaware, because I considered it too vague to have any good effect; but as I am disposed to accommodate him in the adoption of his idea, I move further to amend the said amendment, as now amended, by striking out therefrom the words "difficulty shall occur in making remittances," and inserting, in lieu thereof, the words "such difficulties shall occur in 'making remittances, as in the opinion of the 'Commissioners shall render the purchase of bills 'inexpedient." Carried without a division.

Mr. GRISWOLD.—Can the question be divided on the amendment as amended? If so, I call for a division at the word "or."

Mr. ELMENDORF.—I take it a gentleman cannot divide his own motion.

The SPEAKER decided that the question was divisible; whereupon the question was taken by yeas and nays, on the call of Mr. GRISWOLD, on the first member of the amendment, as follows—"In case the advance upon exchange between the United States and Holland, shall exceed five per cent., or"—and lost, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, Nathan Read, John Stanley, Samuel Tenney, Killian K. Van Rensselaer, and Henry Woods.—19

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, John Stratton, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, and Robert Williams.—49.

Mr. BAYARD.—The question is now on the second member of the amendment.

Mr. RANDOLPH.—It falls of course with the failure of the first member.

Mr. BAYARD.—I move to strike out the word "or."

Mr. SPEAKER.—The word "or" was put in by a vote of the House; it is, therefore, not in order to strike it out.

Mr. BAYARD.—I move, then, the amendment offered by the gentleman from Maryland. (Mr. NICHOLSON.) as a distinct motion.

Mr. RANDOLPH considered the whole decided on, as the Chair had already determined.

Mr. SPEAKER.—The motion of the gentleman from Delaware is not in order.

Mr. BAYARD.—I have another amendment to offer. The sixth section provides for employing an agent abroad, whom it contemplates to give three thousand dollars a year. I can only consider this provision as intended to create an office, which some one is to fill, and to receive three thousand dollars a year. It is the doctrine of the day to reduce Executive patronage. We ought not, therefore, to knock down one office, and immediately establish another. We have lately put down one office at the Hague, which cost the nation four thousand five hundred dollars a year. The people were congratulated upon the saving. Circulars were written by honorable gentlemen, informing their constituents of it as a great thing; and now we impose upon those gentlemen the necessity of writing other circulars to state that another office is created with a salary of three thousand dollars. It is surely improper to give gentlemen this trouble. Is there any difference between an agent and a diplomatic character? I do not know but that the object may be to have a political agent for the Government to correspond with. If we had no occasion for a Minister, we can have no occasion for an agent. All the business required by this act can be done through a mercantile house, which must at all events be employed by the agent.

There are other parts of the bill from which I find, that though we are saving by parsimony in one hand, we are disbursing with prodigality in the other. One of the provisions of the bill allows one quarter per cent. for borrowing two millions, which commission will amount to six thousand dollars. With respect, however, to this section, I consider it as disbursing the public money unnecessarily. I therefore move to strike out the sixth section, which is as follows:

"*And be it further enacted*, That the Commissioners of the Sinking Fund be, and they hereby are, empowered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe, for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loan authorized by this or any other act, for the purpose of discharging the same: and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated."

Mr. BAYARD called the yeas and nays on striking out, which were—yeas 18, nays 43, as follows:

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Ebenezer Elmer, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, William Hoge, Benjamin Huger, Lewis R. Morris, James Mott, Nathan Read, John Stanley, Killian K. Van Rensselaer, and Robert Williams.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Isaac Van Horne.

Mr. BAYARD moved to amend the fifth section, by striking out the word "fourth" and inserting the word eighth. Mr. B. said this was the commission allowed the agent of the commissioners for purchasing bills, &c. One fourth per cent. commission would on two millions amount to five thousand dollars. One eighth per cent. would amount to two thousand five hundred dollars, which he deemed a competent sum.

Mr. RANDOLPH.—The gentleman from Delaware is indeed grown extremely saving of the public money of late days! We are told that the amount of commissions on the purchase of two millions three hundred thousand dollars will be five thousand dollars. Let it, however, be remarked, that this great sum is to be purchased not by one individual, but by a great many, scattered all over the United States. It is true that the Bank of the United States has offered its services gratis. But it has appeared to me that the commission allowed in the bill is a small charge in the case of a provision like this, and that the individual who is entrusted with such a power ought to receive at least one-fourth per cent. Yet the gentleman inveighs against this as a vast extension of Executive patronage, and this under an Administration by whom hundreds of officers have been abolished. He says two mighty ones are created! I make no doubt but that such a system of patronage will rouse the indignation of the whole American people until it shall equal that of the gentleman from Delaware!

Mr. BAYARD.—This step, if taken, will be progressive. Two offices are now created. This is the time to complain. I understand that more offices are to be made under the Judiciary system. I am very happy at the compliment of the gentleman from Virginia. If those who have been heretofore against expense are now prodigal of the public money, it is necessary to have some men who are economical of it. I do not know that the putting down one office is a reason for putting up other officers. This motion, however, is not for abolishing any office, but for giving two thousand five hundred dollars, which I think a liberal compensation, as the agent can purchase bills through the post office, as the purchase is confined to mercantile towns.

The question was then taken on Mr. BAYARD's motion, and lost—yeas 19.

The bill was then ordered to be engrossed for a third reading to-morrow.

THURSDAY, April 15.

Mr. EUSTIS, from the committee appointed on the twelfth instant, presented a bill for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the naval service of the United States; which was twice read and committed to a Committee of the Whole to-morrow.

Mr. BACON, from the committee to whom was referred, on the sixth instant, a letter from the Secretary of the Treasury, accompanying a communication from the Comptroller of the Treasury, and sundry documents relating to the claim of Comfort Sands and others, made a report thereon; which was read, and ordered to be committed to a Committee of the Whole to-morrow.

The House resolved into a Committee of the Whole on an engrossed bill to provide for the establishment of certain districts; and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; and, after some spent therein, the Committee rose and reported an amendment to the sixth section thereof; which was twice read, and, on the question being put thereupon, agreed to by the House.

Ordered, That the said amendment be presently engrossed, and, together with the bill, read the third time to-day.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the last mentioned bill: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. DAVIS, Mr. DENNIS, and Mr. ALSTON.

The House resolved itself into a Committee of the whole House on the bill to abolish the Board of Commissioners in the City of Washington, and

to make provision for the repayment of loans made by the State of Maryland, for the use of the city; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time.

An engrossed bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes, was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill for the relief of Lewis Tousard; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

An engrossed bill to regulate and fix the compensation of the officers of the Senate and House of Representatives, was read the third time and passed.

The House went into a Committee of the Whole on the bill to establish the Board of Commissioners of the City of Washington and to provide for the payment of several loans to Maryland. The bill was reported without amendment, and ordered to a third reading to-morrow.

An engrossed bill to provide for the establishment of certain districts, &c., was read the third time, and passed.

The House went into Committee of the Whole on the bill to fix the compensation of the officers of the Senate and House of Representatives.

The several blanks were filled, on the motion of Mr. Davenport, with the following sums: an annual allowance of two thousand dollars to the Secretary of the Senate and the Clerk of the House of Representatives; to the principal clerk of each House, one thousand three hundred dollars; to the engrossing clerk of each House, one thousand dollars; to the Sergeant-at-Arms of each House, eight hundred dollars; to the Doorkeeper of the House of Representatives; five hundred dollars, with a per diem allowance during the session of two dollars; and to the Assistant Doorkeeper of each House four hundred and fifty dollars, with a per diem allowance during the session of two dollars.

The Committee rose, and the House took up the report, agreed to it, and ordered the bill to a third reading—afterwards read a third time, and passed.

FULWAR SKIPWITH.

The House went into a Committee of the Whole on the bill for the relief of Fulwar Skipwith.

That part of the bill which allows compensation for stolen ingots was agreed to without a division.

The second section allows an annual compensation for consular services.

Mr. Dawson moved to fill the blank with three thousand dollars.

This motion was opposed by Messrs. T. Morris, Stanley, and Bayard.

A motion was made to strike out the section, which prevailed—yeas 35, nays 18.

The Committee reported, the House immediately took up the report, and agreed to it, by yeas and nays—yeas 43, nays 26, as follows:

Yeas—John Archer, James A. Bayard, Phanuel Bishop, Thomas Boude, William Butler, John Campbell, Thomas Claiborne, Richard Cutts, John Davenport, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, John A. Hanna, William Helms, Archibald Henderson, William Hoge, Benjamin Huger, George Jackson, Michael Leib, Thomas Lowndes, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, James Mott, Anthony New, Thomas Plater, William Shepard, John Cotton Smith, John Smith, of New York, Samuel Smith, John Stanley, John Stewart, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, John Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—John Dawson, Lucas Elmendorf, William Eustis, John Fowler, William B. Giles, Edwin Gray, Daniel Heister, Joseph Heister, James Holland, Thomas Moore, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, and Isaac Van Horne.

Ordered, That the said bill, with the amendment agreed to, be engrossed, and read the third time to-morrow.

UNITED STATES DEBT.

The bill for the redemption of the whole of the public debt was read the third time; when, on the question of passage,

Mr. Dana said that he should trouble the House with but a very few remarks. He considered this bill, so far as it was meant to be an efficient provision for the payment of the public debt, as unnecessary, as the provisions of former laws were completely adequate. When Government has once contracted a debt, and appropriated money to its discharge, there is wanted no special subsequent authority to recognise the full force of the obligation. But he should have no objection to add promise to promise, if the new promise were not connected with a power to make new loans and new foreign connexions and to create new foreign claims. He considered the provisions of the bill to be such as may eventually increase the debt, and lessen the responsibility of the public officers. It was on these grounds principally that he deemed it improper and unnecessary to pass the bill.

The question on the passage of the bill was then taken by yeas and nays, and stood—yeas 55, nays 19, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Archibald Henderson, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams

Nays—Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, John Cotton Smith, John Stratton, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. T. Morris moved to amend the title of the bill, by so altering it as to read, "An act making certain provisions in relation to the public debt."

Mr. Dennis moved, and Mr. Morris agreed to, the addition of the following words, "and authorizing a reloan of parts thereof."

Mr. Bayard supported, and Mr. Van Ness, opposed the motion; when the question was taken by yeas and nays, at the call of Mr. T. Morris, on the joint amendment, and lost—yeas 26, nays 49, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

On the question, that the title be, "An act making provision for the redemption of the whole of the public debt of the United States," it was resolved in the affirmative.

Friday, April 16.

An engrossed bill to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city, was read the third time and passed.

An engrossed bill for the relief of Fulwar Skipwith was read the third time and passed.

Mr. S. Smith, from the Committee of Commerce and Manufactures, to whom were referred, during the present session, the memorials and petitions of sundry calico printers in the city of Philadelphia and elsewhere, in the State of Pennsylvania; of sundry citizens of the States of New Jersey and Delaware; of sundry cordwainers of the States of Massachusetts and Delaware; of Samuel Corp; of sundry merchants of Richmond and Manchester, in Virginia; of sundry shoemakers of the town of Lynn, in Massachusetts, and of Thomas Stagg, jr., and Thomas Snell; and to whom it was referred by a resolution of the House, on the eighteenth of February last, "to inquire and report on the expediency of erecting a port of entry at the town of Beaufort, at present within the district of Newbern, in the State of North Carolina," made a report thereon; which was read: Whereupon,

Ordered, That the consideration of the said memorials and petitions, and resolution of the House, be postponed until the third Monday in November next.

A Message was received from the President of the United States, as follows:

Gentlemen of the House of Representatives:

I now transmit the papers desired in your resolution of the sixth instant. Those respecting the Berceau will sufficiently explain themselves. The officer charged with her repairs states, in his letter, received August 27, 1801, that he had been led by circumstances, which he explains, to go considerably beyond his orders. In questions between nations who have no common umpire but reason, something must often be yielded of mutual opinion, to enable them to meet in a common point.

The allowance which has been proposed to the officers of that vessel being represented as too small for their daily necessities, and still more so as the means of paying, before their departure, debts contracted with our citizens for subsistence, it was requested on their behalf that the daily pay of each might be the measure of their allowance.

This being solicited, and reimbursment assumed by the agent of their nation, I deemed that the indulgence would have a propitious effect in the moment of returning friendship. The sum of eight hundred and seventy dollars and eighty-three cents was accordingly furnished them for the five months of past captivity, and a proportional allowance authorized until their embarkation.

TH. JEFFERSON.

April 15, 1802.

The said Message was read, and together with the documents transmitted therewith, referred to Mr. Eustis, Mr. Tallmadge, Mr. Thompson, Mr. Campbell, and Mr. Hanna; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

LEWIS TOUSARD.

An engrossed bill for the relief of Lewis Tousard was read the third time: Whereupon, a motion was made to amend the bill, by adding to the end thereof the following proviso, to wit:

"*Provided*, That nothing herein contained shall be construed to sanction the conduct of any person who has made advances of money not authorized by law."

And, the question being taken thereupon, it was unanimously resolved in the affirmative.

Ordered, That the said amendment be presently engrossed, and, together with the bill, be read the third time.

The said amendment being brought in engrossed, the bill, as amended, was read the third time, and, on the question that the same do pass, it was resolved in the affirmative—yeas 63, nays 12, as follows:

Yeas—John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Walter Bowie, Robert Brown, Thomas Claiborne, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, Archibald Henderson, William Hoge, David Holmes, Benjamin Huger, Michael Leib, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, John Smilie, John Cotton Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, George B. Upham, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

Nays—Willis Alston, William Butler, Joseph Heister, James Holland, George Jackson, James Mott, Israel Smith, John Smith, of New York, Josiah Smith, John Stewart, Abram Trigg, and John Trigg.

COMFORT SANDS.

The House resolved itself into a Committee of the Whole on the report of the committee to whom were referred a letter from the Secretary of the Treasury, and sundry documents relative to the claim of Comfort Sands and others; and, after some time spent therein, the Committee rose and reported to the House their agreement to the first and second resolutions, and their disagreement to the third and fourth resolutions contained in the report of the select committee; which were delivered in at the Clerk's table, where the same were read, as follows:

1st. "*Resolved*, That provision ought to be made by law to authorize the Attorney General of the United States to agree with such person or persons, or with the legal representative or representatives of such person or persons, as are interested in an award or report of Isaac Roosevelt and others, referees between the United States and Comfort Sands and others, on the twenty-fifth day of October, one thousand seven hundred and eighty-seven, on a statement of a case which shall try and determine the validity of said award or report, before the circuit court of the United States, for such circuit as the Attorney General, and the persons interested as aforesaid, may agree to."

2d. "*Resolved*, That provision ought to be made by law to authorize the Attorney General of the United States, in case the said award or report shall be adjudged to be binding on the United States, to agree on an issue or issues, either in law or in fact, which shall try the question whether William Duer and Daniel Parker, or either of them, were co-partners with the said Comfort Sands and others, in the contracts on which the said award or report was made; and, if so, whether all, or what part of the sums which are due from them, or either of them, to the United States, ought to be deducted from the sum awarded or reported, as aforesaid, under the proviso in the act of Congress passed the second day of March, one thousand seven hundred and ninety-nine, entitled "An act for the relief of Comfort Sands and others."

3d "*Resolved*, That provision ought to be made, by law, to authorize the Attorney General of the United States, in case a decision shall be made against the validity of said award or report, to agree on the appointment, by the said court, of referees to decide conclusively (subject only to legal exceptions to be made before said court) on the merits of the original claim of said Comfort Sands and others, on which said award or report was founded.

4th. *Resolved*, That provision ought to be made by law for the payment of any sum or sums which may be found due from the United States pursuant to these resolutions, and such proceedings as may hereafter be had conformably thereto."

The House then proceeded to consider the said report at the Clerk's table: Whereupon, the first resolution contained in the report of the select committee, to which the Committee of the whole House reported their agreement, being again read, was, on the question put thereupon, agreed to by the House—yeas 43, nays 36, as follow:

Yeas—John Bacon, Theodorus Bailey, James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Daniel Heister, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Samuel L. Mitchill, Lewis R. Morris, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Cotton Smith, Samuel Smith, Henry Southard, John Stanley, John Stratton, Samuel Tenney, Thomas Tillinghast, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, Lucas Elmendorf, Edwin Gray, Joseph Heister, William Helms, James Holland, David Holmes, George Jackson, Michael Leib, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, John Randolph, junior, John Smilie, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, and Robert Williams.

The second resolution contained in the report of the select committee, to which the Committee of the whole House also reported their agreement, being again read, was amended at the Clerk's table, and, on the question put thereupon, as amended, agreed to by the House as follows:

Resolved, That provision ought to be made by law to authorize the Attorney General of the United States, in case said award or report shall be judged to be binding on the United States, to agree on an issue or issues, either in law, or in fact, which shall try the question whether William Duer or Daniel Parker, or either of them, were co-partners with the said Comfort Sands, and others, in the contracts on which the said award or report was made.

The third and fourth resolutions in the report of the select committee, to which the Committee of the whole House reported their disagreement, being again read, the question was severally taken thereupon, that the House do concur with the Committee of the Whole in their disagreement to the same, and resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the first and second resolutions; and that Mr. Bacon, Mr. Thomas, and Mr. Goddard, do prepare and bring in the same.

Saturday, April 17.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented, a bill to amend "An act to establish the compensation of the officers employed in the collection of the duties on imposts and tonnage," and for other purposes: which was read twice, and committed to a Committee of the whole House on Monday next.

[The bill among other provisions directs that hereafter the clear annual receipts of a collector shall not exceed 5,000, of a naval officer 3,500, and of a surveyor 3,000 dollars.]

The House resolved itself into a Committee of the Whole on the bill for the relief of the widows and orphans of certain persons who may have died, or may hereafter die, in the Naval service of the United States; and, after some time spent therein, the Committee rose and reported amendments thereto; which were severally twice read, and, on the question put thereupon, disagreed to by the House.

A motion was then made, and the question being put, to amend the said bill at the Clerk's table, by striking out the word, "seamen and marines," in the fifth line of the first section thereof, it passed in the negative—yeas 21, nays 15, as follows:

Yeas—Willis Alston, Theodorus Bailey, Matthew Clay, Richard Cutts, John Davenport, John Dennis, Abiel Foster, William Helms, George Jackson, Thomas Moore, Thomas Morris, Israel Smith, John Smith, of New York, Samuel Smith, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Peleg Wadsworth.

Nays—John Archer, John Bacon, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, John Condit, John Dawson, Ebenezer Elmer, William Eustis, Calvin Goddard, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Archibald Henderson, James Holland, David Holmes, Benjamin Huger, Michael Leib, Thomas Lowndes, Samuel L. Mitchill, James Mott, Thomas Newton, jr., Thomas Plater, John Randolph, Nathan Read, William Shepard, John Smilie, John Cotton Smith, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton jr., John Stewart, John Stratton, John Taliaferro, jr., Samuel Tenney, George B. Upham, John P. Van Ness, Killian K. Van Rensselaer, Lemuel Williams, and Henry Woods.

The said bill was then amended at the Clerk's table, and, together with the amendments agreed to, ordered to be engrossed, and read the third time to day.

NAVAL APPROPRIATIONS.

The House went into a Committee of the Whole on the bill making appropriations for the Naval service for the year 1802.

Mr. Randolph moved to fill up the several blanks in the bills with specified sums, which were all agreed to, the total of which amounts to nine hundred thousand dollars.

Mr. Dana moved to insert three hundred and five thousand dollars, for the purpose of timber, &c., for the seventy-fours, the sum in the first estimate in the Secretary of the Navy, instead of one hundred and ninety-five thousand dollars, in the last estimate.

Motion lost—yeas 14.

Mr. Dana moved to insert one hundred thousand dollars, for Navy docks, &c., the sum in the first estimate of the Secretary, instead of fifty thousand dollars, in the last estimate.

Motion lost—yeas 17.

Mr. Eustis moved to add a new section to the bill authorizing the Secretary of the Navy, with the approbation of the President of the United States, to carry the excess of any specific appropriation beyond the sum expended to the deficiency arising under any other specific appropriation of the bill.

Messrs. Randolph, Macon, and Bacon, opposed; and Messrs. Eustis and S. Smith supported the motion, which was lost.

The Committee rose, when

Mr. Huger moved to disagree to the report of the committee for filling the blank for contingent expenses of the navy with fifty thousand dollars, with the view of filling it up with one hundred thousand dollars.

It is not my intention, said Mr. H., to go into an argument. The arguments assigned in Committee by two gentlemen, were sufficient to show the impropriety of cutting down so low the contingent fund. This is an extraordinary change in the opinion of the Secretary. I conceive that he had as great a regard to economy in the commencement of the session as he can have now. I cannot, therefore, understand with what view this change has taken place. We have seen, by his estimate offered in the preceding part of the session, that less was required than had been expended the preceding year; afterwards he offers another estimate that required $200,000, less than the first; and now a still smaller sum is required. I have great confidence in our officers generally, and in the Secretary of the Navy in particular; but I am inclined to believe, in this business, he has not been left to his own mind. I was originally a friend to a Navy, and I think this is the time to cherish it. I have, notwithstanding, no objection to econominal arrangements in the Army. I have accordingly voted for reducing the

Army. That establishment you can repair in a short time. But not so with respect to the Navy, for the establishment of which you must prepare for years beforehand.

It seems, however, that $200,000 must be saved, and that this department must be pared down, to the extreme injury of the country. We have heard from gentlemen, that two public vessels, now requiring repairs, will consume the whole of this $50,000. If this be the case, is it right to make our appropriation so low as to provide for no other contingency? Is this right? Will gentlemen suffer our public vessels to rot for want of repairs? I do verily believe this will be the effect of this step. Is this the liberal support which ought to be given to a Navy? Suppose one of your national vessels meet a Tripolitan, must she not repair?

It is true, that we are obliged to keep up the establishment to satisfy the public sentiment; but we are at the same time doing that which will shake the Navy. I believe the first estimate proper, as it was made before the rage for economy was declared in this House. This is the most pitiful of all pitiful economies! If we are not to have a Navy, let us, in God's name, put it fairly and decidedly down.

Mr. S. SMITH.—If the gentleman's motion does not prevail, I will move an addition to the bill which will overcome his objection, and which, I hope, will meet the unanimous approbation of the House, viz: that any excess on the items for which appropriations are made beyond the actual expenditures, shall be applied to the repairing vessels injured in actual service.

Mr. HUGER.—I am opposed to the amendment of the gentleman. The effect of it will be, in order to meet one object, to starve several others. I wish the whole former estimate of the Secretary incorporated in this bill. I wish the live-oak timber to be procured now, for, unless it is, it will soon be cut down, as the land on which it grows is very valuable for rearing the article of cotton. No part of the appropriations are too great. I am for vesting a liberal discretion in the Secretary of the Navy and the President, and on their responsibility; and I think that a specific sum sufficiently great should be appropriated.

Mr. RANDOLPH.—This is one of those questions on which I did not expect to see any, or if any so much warmth as has been manifested by my friend from South Carolina. I believe it would have been as well for the gentleman to have discussed the Army question, or any other question, in its proper place, and to have confined his remarks to the question now before the House.

He tells you that if a specific appropriation is necessary in one case it is necessary in all: and yet, in the next breath he tells you, that the contingencies for repairs are indeterminable; and yet he says it is as necessary to specify this appropriation, as it is to specify those for pay, for provisions, or for any other objects. I do not understand this.

Suppose every public vessel stranded, what becomes of the Navy, even with the appropriation of $100,000 for repairs? The truth is, that the Secretary has made his estimates upon ordinary circumstances, and the amendment proposed by the gentleman from Maryland will enable the Secretary to provide for any casualty, while it will not enable him to travel out of the sum appropriated; but simply to apply a certain sum, originally contemplated for one object, to another.

This is a very different result from that stated by the gentleman from South Carolina, who, I had flattered myself, would have had more respect for the House than to assert, as a matter of fact, that which is not fact. I assert that the effect of the bill will not be to starve the Navy. I state, what cannot be denied, that the head of that department, who is a warm friend of the Navy, has offered us an estimate of the sums required for the present year, which we are now about to adopt. The gentleman should be cautious and not speak in this way of our making pitiful attempts to reduce the Navy by indirect means. I do hope he will in future be more cautious, and speak in a style more becoming this House and himself.

The truth is, when we were for reducing the Army, we disbanded it by an open resolution; and we will do the same thing with respect to the Navy, when we think it proper to reduce it. For my part I am willing to support a Navy, so far as it is required by the welfare of the country. I am now for complying with the estimates of the departments; and when I am for doing this, am I to be told that I am for destroying, by pitiful means, that which the people love? I do not understand this language. I will only say that, in voting appropriations, I will vote what I think enough. If the Executive requires more than is necessary, I will vote less than they require. I believe, however, there is no danger of any Executive demanding too little; and I have no idea of forcing upon them money they do not want.

If the gentleman from South Carolina will act from his own motives, without criminating ours, the public business will go on better than it has hitherto done.

It remains with the gentleman to prove that $50,000 is not sufficient, as well as to prove that his sum is sufficient. Until this shall be proved, I hope the present sum will be retained; and, if deemed important, that the ideas of the gentleman from Maryland will be adopted.

Mr. HUGER.—I certainly feel a great personal respect for the members of this House? But when we are arguing on political points, we must speak of the effects of particular measures, if not of the motives of those who urge them. I must express my surprise at the mode now recommended by the gentleman from Virginia, in wishing to confine this discussion to a particular point, as I believe no gentleman on this floor has more frequently employed his fertile imagination, in similar circumstances, in casting reflections upon others; in branding others with the charge of ragamuffins, &c. It is not, however, extraordinary that, when he is in and I out, he should be offended at the remarks made by me.

The gentleman has mistaken me on the score of specific appropriations. I say let us make a specific appropriation, and make our officers responsible for a deviation from it; whereas he is for making specific appropriations, and for suffering the excess of all to be applied to the deficiency of one. I believe all the items are small enough, and that the effect will be to starve the Navy.

With respect to men in general, I believe that every Secretary of the Navy, or of any other department, will retrench the sums he may think necessary, if those around him say he must reduce them.

With respect to the Army, I repeat it, I am not tenacious. I voted lately in favor of reducing it, and it may, perhaps, be right to reduce it still lower. We have only reduced it by one thousand men less than we had when a bloody war raged in Europe. This is a mighty saving! a wonderful evidence of economy!

When I recollect that gentlemen on the other side are not friendly to a Navy; when I recollect to have heard a respectable gentleman from Virginia say he was not friendly to a Navy, though he was willing to give way to public opinion, I am justified in saying that I was afraid that the intention of gentlemen was to starve the Navy.

Mr. DANA.—I understand the object of the motion is to appropriate $103,000 instead of $50,000, the sum at present in the bill. This is warranted by the estimate of the Secretary of the Navy. At the commencement of the session, when he could have no particular views impressed upon him, he had estimated $103,000 as necessary for the contingent expenses of his department. I ask if that sum is less necessary now than it was then? Then Congress had not given power to the President to equip thirteen national vessels for the protection of our merchant vessels in the Mediterranean and the adjoining seas. We have had, it is true, a subsequent estimate of $50,000; but has any gentleman explained the grounds of this change? If we are to repose confidence in the gentleman from Maryland, (Mr. S. SMITH,) that the Emperor of Morocco is dissatisfied, shall we not probably have occasion for the employment of more ships in the Mediterranean, and will not the expense of their repairs be increased?

The least number of frigates we shall require will be four. Now, when we consider the disasters to which all vessels are subject, is it possible that $50,000 will make them good, particularly when we consider their remote situation from this country? The gentleman from Virginia gives no reason for this change of estimate, but he charges my friend from South Carolina (Mr. HUGER) with putting his opinion in opposition to that of the head of the department. If he had done so, had he not a right to do it? But he stands on higher ground. The Secretary says precisely what my friend says.

I make no doubt the gentlemen are for appropriating what they consider necessary; but some gentlemen may think no appropriation necessary.

The contingent fund should be less circumscribed than any other article; for when the squadron is employed in a distant service, and when your agent draws bills for necessary repairs, will you dishonor them? Shall they be protested? And will you suffer your credit to sink below that of a merchant?

This bill proceeds on the idea of economy; but it is an economy only on paper. I consider it as a waste of public money; for if it is necessary to protect commerce, we must have a Navy, and if we have a Navy, we must pay for it.

I will explain my ideas with respect to specific and general appropriations. With regard to the Navy and Army, no man can predict the occurrence of calamities, when either is in actual service, whether we shall have a battle, and what shall be the event of it. And though it be admitted that there may be some estimate of the cost of a given force, yet when this expense is applied to particular objects, it is difficult to ascertain the precise sum required for each; the true way, therefore, is, in a state of war, to give a general sum, and suffer the specific appropriations made by Congress to designate the general ideas of the Government. But then it is necessary to have a contingent fund for each article. Now, I would prefer a specific sum for a general contingent fund, to one for each specific article.

I object, however, to this item, inasmuch as it is not enough to cover the objects contemplated. Four frigates will be the smallest possible number required—more may be wanted, if danger is apprehended from Algiers and Morocco. I rest, therefore, upon the belief that the Secretary of the Navy, when unbiassed by the opinions of others, stated this sum of $103,000 as necessary.

The yeas and nays were then taken on agreeing to the report of the Committee of the Whole, to insert $50,000, which was carried—yeas 39, nays 24, as follows:

YEAS—John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Condit, Richard Cutts, John Dawson, William Dickson, Ebenezer Elmer, Edwin Gray, John A. Hanna, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, and Isaac Van Horne.

NAYS—James A. Bayard, Thomas Boude, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John Cotton Smith, Josiah Smith, John Stanley, John Stratton, Samuel Tenney, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Mr. HUGER moved to strike out $195,000, appropriated for the purchase of timber, &c., with the view of inserting a larger sum, originally proposed by the Secretary of the Navy.

The question was taken on agreeing to the report to insert $195,000, and carried—yeas 40.

The next appropriation applied $50,000 to navy docks.

Mr. Huger and Mr. Dana objected to this sum, and proposed the application of $100,000.

The report of the Committee to insert $50,000 was carried without a division.

Mr. S. Smith moved a new section authorizing the Secretary of the Navy, with the approbation of the President, to apply any excess of the appropriation, beyond the expenditure of the specific sums appropriated, to the repair of vessels in actual service, if the exigency of the service shall require it; except the sums appropriated for purchase, &c., of timber for seventy-fours and for the improvement of navy yards and docks. The motion was lost.

The bill was then ordered to a third reading on Monday.

Monday, April 19.

An engrossed bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, was read the third time, and passed.

NAVY PENSIONS.

An engrossed bill for the relief of widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 34, nays 29 as follows:

Yeas—John Archer, James A. Bayard, Thomas Boude, Walter Bowie, Manasseh Cutler, John Davenport, John Dawson, John Dennis, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Daniel Heister, William Helms, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Newton, jr., Thomas Plater, Nathan Read, William Shepard, John Smith of Virginia, Josiah Smith, Samuel Smith, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Aston, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Mathew Clay, John Condit, John Fowler, Edwin Gray, Joseph Heister, James Holland, George Jackson, Michael Leib, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith of New York, Henry Southard, Richard Stanford, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, and Robert Williams.

COMPENSATION OF COLLECTORS.

The House went into Committee of the Whole on the bill to amend the act fixing the compensation of officers employed in the collection of duties on imposts and tonnage.

This bill allows certain compensations to collectors of ports, provided the clear annual receipt does not exceed $5,000. A motion was made to strike out $5,000, for the purpose of introducing $4,000.

It was contended that this latter sum was sufficient compensation to any collector; that it greatly exceeded most of the compensations allowed to the Federal officers; and that as money was appreciating, it became necessary to reduce the salaries of officers generally.

In reply, it was observed that very few collectors would receive so large a sum as $5,000—none other than those of New York, Philadelphia, Baltimore, and perhaps Charleston; that the responsibility attached to these officers was greater than that attached to any other, as in some instances two millions of dollars passed through their hands; that the temptation to violate duty was proportionably great; and that, from these considerations, it became the Government to afford them a liberal compensation; and that the sum was considerably below that heretofore allowed.

The question was taken on striking out $5,000, and lost—yeas 26.

Mr. Stanley moved to strike out that part of the bill which deducted from the compensations made to the collectors of Newbern and Edenton, the sum of $250, heretofore allowed beyond their fees.

For this motion he assigned several reasons: among which were the inadequacy of the compensations, viz: about $1,600 to the duties performed, which were notwithstanding the small amount of duties, very burdensome, owing to the smallness of the cargoes imported, and theirs being greatly inferior to the compensations allowed to the collectors of Wilmington and Petersburg.

Mr. S. Smith informed the Committee that the principle on which the several compensations had been graduated was, that when the gross emoluments exceed $2,000, the salary heretofore allowed by law, in addition to the emoluments, should be withdrawn. This was the fact in relation to the ports of Newbern and Edenton; and as the duties in each of these ports did not exceed $15,000, the compensation seemed adequate; he was, however, far from being tenacious, and would have little objection to a vote of the House which should increase it. Motion lost—yeas 25.

The Committee rose, and reported the bill without amendment.

Mr. Southard renewed the motion to strike out $5,000, for the purpose of inserting $4,000, (the same motion made in Committee,) and assigned substantially the same reasons above stated.

Messrs. Stanley, Bacon, and Smilie, delivered a few observations for, and Mr. Huger against, the motion, which was taken by yeas and nays, on the call of Mr. Southard, and lost—yeas 31, nays 40, as follows:

Yeas—John Bacon, Phanuel Bishop, Robert Brown, William Butler, Matthew Clay, Richard Cutts, John Davenport, Lucas Elmendorf, Ebenezer Elmer, John Fowler, John A. Hanna, Joseph Heister, James Holland, David Holmes, George Jackson, Michael Leib, Thomas Moore, Anthony New, John Smilie, John Smith of Virginia, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jun., John Taliaferro, jun., Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, and Robert Williams.

Nays—Willis Alston, John Archer, Theodorus Bailey, James A. Bayard, Thomas Boude, John Condit, Manasseh Cutler, John Dawson, John Dennis, William Dickson, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Daniel Heister, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, James Mott, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, Israel Smith, John Smith of New York, Samuel Smith, John Stratton, Samuel Tenney, Philip R. Thompson, George B. Upham, Philip Van Cortlandt, John P. Van Ness, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. Goddard moved an amendment providing that no collector should be allowed a greater sum for clerk hire than the amount of his own emoluments. Lost—yeas 28.

The bill was then ordered to be engrossed for a third reading.

JUDICIARY SYSTEM.

The House went into a Committee of the Whole, on the bill to amend the Judicial system of the United States.

The first section being under consideration, as follows:

"That, from and after the passing of this act, the Supreme Court of the United States shall be holden by the justices thereof, or any four of them, at the City of Washington, and shall have one session in each and every year, to commence on the first Monday of February, annually, and that, if four of the said justices shall not attend within ten days after the time hereby appointed for the commencement of the said session, the business of the said court shall be continued over till the next stated session thereof: *Provided always*, That any one or more of the said justices attending as aforesaid, shall have power to make all necessary orders touching any suit, action, writ of error, process, pleadings, or proceedings, returned to the said court or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings."

Mr. Bayard moved to strike out "one session," and insert "two sessions."

Mr. B. said, he did not know any necessity why the Supreme Court should not be allowed to sit but once a year. We know that, by the system of 1789, there were two sessions; and that, under every modification of that system there have been two sessions. We know that this court has original jurisdiction in many cases, and that this arrangement will subject suitors to much delay. He knew not from what analogy this system is derived. He knew that the inevitable delays of law are sufficient of themselves, and he should think that system improper which multiplies the delays and vexations to which every system is inevitably subject. It will be recollected that it is impossible to bring a suit to trial the first term. He observed, by this bill, that a certain mongrel court is contemplated, to consist of one justice, vested with power to take preliminary steps without authority to take final ones. When the justices of the Supreme Court had to perform more laborious duties than they will have to perform under this system, they sat twice a year. They then went from one end of the Union to the other; whereas they are now to be confined to two States. He knew not why suitors are now to be deprived of the advantages they then possessed. He therefore hoped the provisions of the former system would be agreed to.

Mr. Nicholson.—I hope the amendment will not prevail. When the gentleman observed that inconveniences would exist under the provisions of this bill, he ought to have pointed them out. For my part I see none. In last June term, there were only eight cases before the Supreme Court. Now, if it is necessary to call the justices of the Supreme Court together twice a year, from all parts of the Union, to try eight cases, I confess I am at a loss to assign the reason for the necessity. Suppose the number of cases should double, for it is probable they will vary from a larger to a lesser number? Suppose, then, they should enlarge to double the number, will it not be infinitely more to the ease of the judges to stay four weeks, once a year, than to stay two weeks twice a year? Nor do I know that any delay will happen in the administration of justice. For one judge is to remain here in the recess to receive pleas, grant rules, &c., and, if any original actions are commenced, they are to take test from the first of August equally with the first of February, according to the time of the year when they are brought. The pleadings may be filed, and all the preliminary steps taken in August, as well as in February. All the necessary orders may be given, as well in the recess as during the sittings of the court. It is barely possible, in some cases, that a delay of six months may happen, and that is all; though I do not know that ever that will occur.

Mr. Bayard.—I thought I had pointed out an inconvenience, the greatest that can attend the administration of justice; I mean a delay attending the trial of causes; equal nearly to a denial of justice. A cause can rarely be brought on the first term, and then there will be no possibility of a trial for a year, whereas if there are two terms, it may be decided upon in six months. The bill says there is no difference between six and twelve months' delay. What temptation does this present to counsel? It is known that appeals are frequently made for the purpose of delay; and if the artifice, delay, can be accomplished for a term, they will gain an entire year. Is this no advantage to a man who has the money of another in his hands, which he does not want to pay?

What is the answer of the gentleman from Maryland? The convenience of the judges will be promoted by this arrangement! This is a laudable spirit, and I am glad to see it come from gentlemen on the other side of the House. But, in my opinion, the justices ought to regard the convenience of the community; and the single question is, whether he will consult the convenience of the justices, or that of the community? I would wish to consult both; but when it interferes, the convenience of the judges must give way to that of the community.

The gentleman from Maryland has mentioned

the paucity of causes before the Supreme Court. But I do not know that a paucity of causes at the end of a term is an evidence of a little business. I do know, from attending the court, that business was left undone at one term that required one week, and at the last term that required two weeks to complete. Besides, the causes decided, though few, are of vast importance. One cause was determined the last term to the amount of $180,000. The delay of such a cause might ruin one man, or make the fortune of another.

I do not know that this amendment will interfere with the other provisions of the bill, and I can therefore see no reason against adopting it.

Mr. Nicholson.—I said there was a possibility of a delay of six months being incurred by this bill. But I do not consider it as so great a hardship as the gentleman does. I do not know the regulations in the Supreme Court for the continuance of causes. But I know that, in Maryland, a cause on appeal may rest for two years. Nor do I think it correct to hurry on a suitor to trial the first term. Besides, in the Supreme Court, under the provisions of this bill, there will be no necessity imposed on the suitor to attend at the August term, the counsel can make the necessary arrangements. I do not speak with absolute certainty when I say that there has been no original cause brought in the Supreme Court. In the State courts few causes are tried the first year; one year, therefore, can be considered as but a small delay; and, in a case where $180,000 is depending, I will ask if the court would order a party unprepared, to go to trial the first term?

Mr. Griswold.—We probably judge of the reasonableness or unreasonableness of delay by the practice of the States from which we severally come. In the State I come from, it has been thought unnecessary to allow one term for delay in the case of writs of error. Because the errors being of record, the defendant always knows the reason on which the appeal is founded. The same principle applies to the courts of the United States. The arrangements of the bill generally produce a postponement of twelve, and at any rate, of six months. In some cases this will be a great hardship, and in others it may ruin the parties. I therefore think it important that the Supreme Court should sit twice a year. On appeals there can be no necessity for delay, as no new facts are to be tried, and all that is required is a decision on points of law.

Mr. Nicholson said, he did not pretend to know the course of proceeding in the courts of Connecticut; but in no court, with whose proceedings he was acquainted, did he know the reasons of error assigned on the record.

Mr. Dennis.—It appears to me, from the provisions of the bill, the Supreme Court may in future be more properly called a court of injustice than a court of justice. I have always thought the delays in the courts of Maryland a great grievance, where, in the case of a simple undisputed bond, a delay may take place of four years. I feel, therefore, no desire to accommodate the system of the United States to that of Maryland; but rather to conform the system of Maryland to that of the United States. I know that the disposition of the defendant is of itself sufficient to produce delay, without any legal aid. I will challenge my colleague, or any other man, to show me a court of appeal that sits but once a year. In such courts it had been usual to assign errors the first time, and try the next. Gentlemen should recollect that, in this District, an appeal lies in all cases above one hundred dollars. The delay in the Supreme Court will certainly encourage appeals, which may be excellent for the counsellors, however unjust or oppressive to the community.

Mr. Nicholson.—I will only say, that if it has heretofore been the practice of the Supreme Court to assign errors the first term, this bill does not abridge that power. They may be stated the first term, and the only delay that can occur will be for one year instead of six months.

Mr. Elmendorf.—It appears to me that the arguments of gentlemen do not apply to the Supreme Court. It is not pretended that this court is calculated for the trial of original causes, but barely for the correction of errors. And, it seems to me, that more delay will be effected by having two terms a year than by having one; for the number of causes actually tried will depend much more on the length than the frequency of terms. If there shall be but one sitting a year the justices will consider themselves under an obligation to try all the causes before them. It will also be recollected that delays in this court, under its present organization, are only to be affected by rules of court and not by our laws.

I wish to know, whether the causes that are likely to arise will not come up from every part of the Union; not merely from Maryland, as might be inferred from the remarks of one gentleman? I would ask, if this be the case, whether the greatest of all possible inconveniences will not result from the frequency of terms? When the counsel are obliged to come on two or three times a year instead of once, will not the expense to the suitor be greatly increased?

It is decidedly my opinion that the expediting of business will principally depend upon the length of the term and the urgency with which the justices push forward the trial of causes.

In the State of New York, the court of last resort sits but once a year; and no inconvenience has been experienced. They sit during the session of the Legislature, and no cause is ever postponed without a sufficient cause for the delay. If, then, we consider that by this bill the inconvenience of a frequent attendance at court is removed, and that the certainty of a trial, perhaps at the first term, is insured, in my opinion we must conclude that this plan is better calculated to expedite business, and to accomplish the due administration of justice, than the having more frequent sessions, sessions which will be shorter, and in which business cannot be so well done.

Mr. Henderson.—Whatever reasons may have influenced gentlemen in bringing forward this bill, I did not expect to hear assigned among them that the frequency of terms is calculated to delay

the administration of justice. If this amendment is not acceded to, the inevitable effect will be that hereafter the docket will be crowded, however it may have been heretofore. It will be recollected that the court is bound to exercise a legal discretion, and whenever a party desires a postponement, the court must decide according to this discretion; and I beg to know whether there will not exist the same reasons for delay when there is but one term a year, that exist when there are two? Must not the court be governed by the same rules in both cases? If so, the chance of getting a cause tried is not in proportion to the paucity of terms.

The gentleman from New York thinks the paucity of terms will prevent delay. But, how can this be? May not suitors in all cases, for sums above $20,000, appeal; and may they not continue their suits from term to term? So also as to writs of error which may be brought as to facts as well as law; this will operate as a complete supersedeas. It seems to me wrong to institute courts for the administration of justice, and only give the citizen an access to them once a year. And if but one term a year, why not, on the same principle, have only one term in two or three years? The same arguments urged in favor of the former might, with equal force, be applied to the latter. He therefore hoped such inconclusive arguments would not prevail.

Mr. Elmendorf.—My ideas on this subject may, perhaps, differ from those of other gentlemen, from the different practices that prevail in different States. It is a fact that, in the State of New York, an appeal cannot be made barely for the purpose of delay. There a writ of error cannot be obtained unless two counsellors, after examination of the record, declare that, in their opinion, there is a material error. And if you make provision, by law, that no removal shall, on the allegation of error, for the mere purpose of delay, take place, will not the court be bound by it? This is the only argument I have heard on the other side, and I have answered it by stating the practice in the State of New York.

Mr. T. Morris said that, when his colleague had stated that the Court of Appeals in New York sits but once a year, and that no inconvenience had been experienced, he ought to have added that the court sits as a branch of the Legislature about three months. It follows that inconvenience may not occur there, though it should elsewhere. Having heard no reason for this innovation, he should vote for the amendment.

Mr. R. Williams.—In addition to the reasons already assigned, I will add that this amendment, if adopted, will derange the whole system. It is possible that, on this plan, there may be delay. I will add that this amendment, if adopted will derange the whole system. It is possible that, on this plan, there may be delays, as it is impossible to organize any system without delay. But I believe that, in legislating, we ought to regard the interests of the whole people. I believe that the causes in the Supreme Court, compared with those in the circuit courts, are very few. If, therefore, this plan insures the holding two circuit courts annually, we ought of preference to suffer a slight inconvenience to exist in the Supreme Court. As to delay, it is not, in general, to be ascribed to the badness of the laws, but to the ingenuity of counsel. There are now but eight causes on the docket of the Supreme Court. Gentlemen say they will increase. If they do, we will have no objection to give that court two sessions. But I have a different opinion. I believe this system will have a different effect, and that it will not increase the present *monstrous* mass of business! It often happens that reasons for postponement arise from the parties not having time to bring forward their evidence. This cannot occur when the terms are at the distance of a year from each other.

Mr. Bayard replied to Mr. Williams, recapitulated his preceding remarks, and concluded by observing that as the old system which gave two sessions to the Supreme Court, had not been complained of either by lawyer or suitors, it appeared to him that the present object was to make Federal justice so inconvenient that suitors would be obliged to abandon the courts of the United States. He asked, if the effect would not be to deteriorate the system, so as to make it odious to the people?

Mr. Dana delivered his sentiments in favor of the amendment.

Mr. Holland.—Gentlemen say, a delay of justice will be a denial of it, and immediately afterward add, that the demands for which suits are instituted in the Supreme Court, are very large. I take it for granted that where the demand is great, the delay should be proportionably long. On this principle we have practised in North Carolina. The great distance, too, of most of the citizens from the seat of Government, is an argument for the paucity of the terms, from the great trouble imposed upon the counsel and suitors. The gentleman from Delaware had lately told us that the convenience of the judges was to be consulted; but now he says, their convenience is not to be regarded. So that, let us form the bill as we please, gentlemen will not be satisfied with it in any shape. I therefore consider the motion made as barely intended to defeat the whole bill.

Mr. Elmendorf observed that the term of the Supreme Court was so fixed as to occur during the session of Congress. He observed that a system of justice ought to be so constructed as to be convenient to the United States; and so that the assistance of counsel could be obtained at the cheapest rate, and who were acquainted with the parties. This will be the case under the new system. This argument in favor of it is invincible; it has not been answered. There are gentlemen of the law from most of the States, who are members of Congress, which will greatly contribute to the convenience of suitors in the most remote States, and particularly as the presence of suitors is not necessary in the decision of questions of law on appeals.

As to the opposition made to this bill, do not gentlemen see who oppose it? They are those who reside in or near this place—gentlemen of the bar, who will monopolize the whole busi-

ness of the courts, and who naturally think the more the terms the better for them.

Mr. Smilie believed gentlemen forgot that the session was drawing near to a close. He hoped the question would be taken without further debate.

The question was then taken on Mr. Bayard's amendment, and lost—ayes 26.

Mr. Bayard moved to strike out the third section, which directs that all suits returnable or continued in the Supreme Court from December term to June term, shall be continued over to August term.

He considered this provision as predicated on injustice. It operated to continue the suits for more than a year. This is the effect of this mighty potchery of legislation! Where suitors are entitled to trial in six months, they are denied even a hearing for fourteen months. He believed this was unprecedented in this or any other country. Will gentlemen say why these causes cannot be decided in June? As the justices expected to meet, as the suitors expected to have their causes tried in June next, if hereafter we are to have only one session, why interpose by a new repealing law, to affect a law which is not at present to be repealed till the first of July?

The question was then taken on Mr. Bayard's motion to strike out, and lost—ayes 23.

Tuesday, April 20.

Mr. Bacon, from the committee appointed, on the sixteenth instant, presented a bill relating to the claim of Comfort Sands and others; which was read the first time: Whereupon, a motion was made, and the question being put, that all further proceeding in the said bill be postponed until the third Monday in November next, it was resolved in the affirmative.

A Message was received from the President of the United States, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

The object of the enclosed letter, from the Director of the Mint, at Philadelphia, being within Legislative competence only, I transmit it to both Houses of Congress. TH. JEFFERSON.

April 20, 1802.

The said Message, and letter therewith transmitted, were read, and ordered to be referred to the Committee of the Whole House to whom was committed, on the second instant, the bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States;" the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relate to the establishment of the Mint.

Another Message was received from the President of the United States, as follows:

Gentlemen of the House of Representatives:

I transmit you a report from the Secretary of State, with the information desired by the House of Representatives, of the eighth of January, relative to certain spoliations, and other proceedings therein referred to.

TH. JEFFERSON.

April 20, 1802.

The said Message was read, and, together with the papers referred to therein, ordered to lie on the table.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act further to alter and establish certain post roads," with several amendments; to which they desire the concurrence of this House.

Mr. Nicholson, from the Committee of Ways and Means, presented a bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. Davis, from the committee to whom was committed, on the fifteenth instant, the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" reported that the committee had had the said amendments under consideration, and directed him to report to the House their agreement to the same.

An engrossed bill amending an act fixing the compensations of officers employed in the collection of duties on imports and tonnage, was read the third time, and on the question, shall the bill pass? Mr. Stanley, considering the compensation of $5,000 too high for any collector, and the compensations in other respects as unequal, moved the recommitment of the bill. Motion lost—yeas 21.

The bill then passed without a division.

The House again went into Committee of the Whole on the bill to amend the Judicial system of the United States.

Mr. Davis moved to amend the fourth section, by constituting an additional circuit, to be called the seventh circuit, composed of the States of Kentucky and Tennessee, his object being that the circuit court therein should be composed of the district judges of Kentucky and Tennessee. Motion carried—yeas 40.

Other amendments were made affecting the details of the bill.

Ordered, That the said bill, with the amendments, do lie on the table.

Wednesday, April 21.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" to which the select committee, to whom they were referred, reported their agreement on the twentieth instant: Whereupon,

Resolved, That this House doth concur with the committee in their agreement to the amendments of the Senate to the said bill.

Ordered, That the Committee of the whole House, to whom was referred, on the fifth instant, a motion, in the form of a resolution of the House, "respecting the registry of ships or vessels, two-thirds of which shall have been, or may be rebuilt within the United States, of American materials, and belonging wholly to a citizen or citizens of the United States," be discharged therefrom; and that the further consideration of the said motion be postponed until the third Monday in November next.

Mr. Bayard moved the taking up for consideration, a motion made yesterday by him for the adjournment of the two Houses on Monday next. The question was put on taking it up, and lost—ayes 33, noes 39.

Mr. Van Ness moved the order of the day, on the going into the Committee of the Whole, on a resolution some time since laid by him on the table, respecting the registering of vessels, &c.

Messrs. Huger and Griswold opposed the taking up this resolution, from the lateness of the session, and moved a postponement of it to the fourth Monday in November. Postponement carried—ayes 51.

JUDICIARY SYSTEM.

The House then took up the amendment of the Committee of the Whole, reported yesterday, to the bill "to amend the judicial system of the United States."

The first amendment was as follows: "And so much of the act entitled 'An act to establish the judicial courts of the United States,' passed September 24, 1789, as provides for the holding a session of the Supreme Court on the first Monday of August annually, is hereby repealed."

On agreeing to this amendment,

Mr. Bayard called for the yeas and nays. He said it was not his intention to consume the time of the House, by repeating the arguments which had been made, without being answered in the Committee of the Whole. He would barely observe that the giving to the Supreme Court one session instead of two, was in a great measure a denial of justice to suitors, and would operate with peculiar injustice on the present suitors.

Mr. Mott declared himself against the amendment, inasmuch as it betrayed great inconsistency in the acts of the Legislature. He believed the law lately passed, respecting the Judiciary system established last session, was right. That law restored the system of 1789, under which two sessions of the Supreme Court were annually held. The repeal, not operating till the first day of July, did not affect the ensuing session in June. If the repealing law was right, we must now be wrong. For this reason, and for others, Mr. M. declared himself against the amendment.

The yeas and nays were then taken on the amendment, and carried—yeas 44, nays 29, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, William Dickson, Lucas Elmendorf, Ebenezer Elmer, Wm. Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, George Jackson, Michael Leib, Samuel L. Mitchill, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Robert Williams.

Nays—James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

The second amendment established an additional circuit, to be called the seventh circuit, consisting of Kentucky and Tennessee.

Mr. Alston said he should be impelled to vote against this amendment, unless it should be shown that it would not materially interfere with the subsequent details of the bill, which, he was at present inclined to believe would be the case.

Mr. Davis said it was far from his intention unnecessarily to consume the time of the House. He begged, however, that the arguments which he had yesterday urged in committee would be attended to by gentlemen. He begged gentlemen to respect the rights of Kentucky and Tennessee, which were equal to those of the other States, all of whom, excepting Maine, were allowed the benefit of circuit courts. The only object of the amendment was to unite the labors of the district judges of Kentucky and Tennessee, without incurring the least additional expense. He defied gentlemen to assign any reasons against extending this benefit to Kentucky and Tennessee. Gentlemen may assign certain motives, but they cannot assign arguments for the refusal.

Mr. Fowler said he had never heard of the existence of any complaints respecting the system, as it would stand, without the amendment of his colleague. He believed it was perfectly satisfactory. As to the motives to which his colleague alluded, he knew of none himself, other than those which were connected with the general good. If his colleague knew of any other, he supposed he would name them.

Mr. Thompson stated the contents of a letter received by him from Judge Innes, stating the small number of suits depending in the district of Tennessee, and stating the great distance which the judges would have to travel in case of a circuit being established, from which Mr. T. inferred the uselessness of such a court.

Mr. Davis replied, and observed, that he knew that a majority, whether right or wrong, will decide as they please; as to the motives to which

he had alluded, gentlemen could be at no loss to understand him; he believed that another session of Congress would unfold those motives.

The question was then taken on the amendment, and lost—ayes 34, noes 42.

Mr. Bayard moved to recommit to a select committee the sixth section, which is as follows:

"That when the judges of any circuit court upon the final hearing of a cause, or of a plea to the jurisdiction of the court, shall be divided in opinion, the Supreme Court upon being notified by the circuit court thereof, shall, at their session to be held next thereafter, assign one other of the justices of the Supreme Court whose duty it shall be to attend accordingly; and upon a second hearing of the said cause the judgment or decree shall be entered up in conformity to the opinion of the court, to be composed of the justice so assigned for the division thereof, and of the judges of the said circuit court: *Provided, nevertheless*, That all questions arising in criminal cases and submitted to the court, shall, in case the court shall be divided in opinion, be considered as adjudged in favor of the prisoner; and if the court shall be divided upon the final judgment or sentence, judgment shall be entered up in favor of the prisoner, and he or she forthwith discharged."

Mr. Bayard stated several points wherein he conceived the section defective; others were stated by Mr. Griswold.

The recommitment was urged by Messrs. Bayard, Griswold, R. Williams, and Nicholson; and opposed by Messrs. Elmendorf, S. Smith, and Smilie.

The recommitment was carried—ayes 45; and a committee immediately appointed, consisting of Messrs. Bayard, Nicholson, and R. Williams.

At the close of the sitting, Mr. Bayard reported the following substitute for the sixth section:

"That whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the Supreme Court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had without prejudice to the merits: *And provided also*, That imprisonment shall not be allowed nor punishments in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment."

Consideration postponed till to-morrow.

POST OFFICE BILL.

The House took up the amendments of the Senate to the Post Office bill.

Among these amendments was one instructing the Postmaster General to establish, if necessary, at the public expense, a line of stages for the carrying of the mail. On this amendment an interesting expression of opinion took place on the propriety and policy of extending the accommodations of the Post Office Department.

Mr. Alston moved to qualify the amendment by a restriction, that the measures contemplated in the amendment should be authorized only so far as the funds of the Post Office Department would admit. Motion lost.

Mr. S. Smith and Mr. Huger supported the amendment.

Mr. Griswold and Mr. Eustis opposed the amendment on the ground of the expense that would arise to the public, and from the present season being premature.

Mr. Milledge contested the remark of Mr. Griswold in relation to expense. To gain information, Mr. M. moved to refer the amendments of the Senate, undecided upon, to a select committee.

Mr. Elmendorf spoke for, and Mr. Holland against the commitment. Motion to commit lost—ayes 18.

Messrs. Holland, Elmer, and Elmendorf, spoke against, and Mr. Milledge for agreeing to the amendment, which, on the question being taken, was lost—ayes 20.

Mr. Huger moved an amendment, authorizing the Postmaster General to allow hereafter one-third more for the conveyance of the mail in close carriages, than is now allowed for the conveyance in chairs, or on horses.

Mr. Shepard spoke for, and Mr. Holland against this motion. Lost—ayes 27, noes 34.

Thursday, April 22.

Mr. Giles, from the committee appointed on the fifth of February last, to whom were referred the memorials and petitions of sundry citizens of the United States, and resident merchants therein, praying relief in the case of depredations committed on their vessels and cargoes, while in pursuit of lawful commerce, by the cruisers of the French Republic, during the late European war, made a report thereon; which was read, and ordered to lie on the table.

JUDICIARY SYSTEM.

The House took up the amendment, reported yesterday, to the Judiciary bill, which recommended the striking out the sixth section, and substituting a section prescribing that wherever the two judges of the circuit court are divided in opinion, a certificate of the case shall be sent up to the Supreme Court, who shall decide, subject to certain qualifications.

Mr. Griswold moved to divide the question, and to take the vote in the first instance on striking out the section. The striking out carried.

Mr. Henderson opposed the amendment on the ground of the delay to which it would give rise. Every question of evidence on which there shall be a division will arrest the proceedings of the court. Are gentlemen willing to give to the people of America a bill, purporting to amend the old system, which will in reality be a snare to

suitors? As much as I should lament the necessity of one judge deciding, I would prefer that plan to placing the citizen in the situation proposed by this amendment. I believe the system would be the better by giving all circuit duties to one judge of the Supreme Court, though that too would be, in my opinion highly defective.

Mr. Nicholson.—The select committee were unanimous in recommending to the House this amendment. It occurred to them that some inconveniences would arise from it; but no substitute offered itself to their minds, from which greater difficulties would not flow. From their knowledge of the administration of justice, they believed that very little inconvenience would arise. In the course of the last eight years, but one instance was recollected, though the circuit courts were often held by two justices, in which there was a division, which rendered it necessary to carry a cause to the Supreme Court. I have now to regret that the gentlemen from Connecticut and North Carolina, (Messrs. Griswold and Henderson,) instead of illuminating our minds, should employ their understandings in opposing the report. I have heard no substitute proposed, excepting the decision by a single judge, which I should not myself consider as an amendment of the amendment, as I have ever understood that in a multitude of counsellors there is wisdom.

The gentleman supposes the amendment will arrest the proceedings of the court in every case of disputed evidence. I am of a different opinion. In the case alluded to, the witness will be allowed to give his evidence, if the court is divided, and the circumstance of a division of the judges will be sent up in the nature of a bill of exceptions to the Supreme Court, who must decide on it. This will not arrest progress in the trial below. In a question of such intricacy, as shall divide the court, will it be a denial of justice to delay the final decision till the Supreme Court shall settle it? Not to do this, might be unjust and iniquitous; and to vest a final decision in the justice of the Supreme Court would be to declare the district judge a mere cypher, and unworthy of confidence. Where is the benefit of a Court of Appeals if an appeal be not allowed in cases of such importance? Inconveniences certainly will happen, but they result from the nature of law, which you cannot make to suit every man's case. You must, therefore, submit to them.

Mr. Griswold.—No case can be brought to the Supreme Court by writ of error under $2,000; nor any to the circuit from the district courts less than $500. Under this provision, sums under $500 may be sent to the Supreme Court; whereby suitors in remote quarters will incur expenses beyond the sum litigated. This will be a mere mockery of justice, and will drive every suitor from your courts. If that be the object of gentlemen, no better mode of accomplishing it can be devised, for no prudent man will run the hazard of going half a dozen times to the seat of Government. I believe with the gentleman from Maryland in the idea that courts are not often divided. I know that they are not often divided on a final question; but there is scarcely a litigated case in which the courts do not concur on collateral points.

As to the admission of a witness, the fact is, if the court differs, there is no admission. This must be the case in States where there is no casting vote. In Connecticut there is a casting vote. The cause, therefore, cannot go on. There will be a delay of ultimate decision until the opinion of the Supreme Court is known.

The gentleman from Maryland says we only find fault with the report without proposing anything amendatory of it. Why, I can propose the re-enaction of the law of the last session just repealed. I believe with him there is safety in a multiplicity of counsellors. He ought to have recollected the motion before he voted for the repeal. Let him, therefore, give force to that law. But I am prepared to propose another plan, that the circuit court consist of one judge. Not that I like this plan, on the contrary, I may almost say I abhor it; but, of the two alternatives, this is the best.

Mr. R. Williams.—It is not to be expected that gentlemen on the other side will agree to this law. I presume it is not their wish to have any of the responsibility attending it. Nor is it my wish that they should. My colleague has said, he would rather strike out the whole section than agree to this amendment. What would be the effect? By this amendment there may be a decision, though there should be some delay. By striking out the section, there would be no decision at all. Under the old law, if division occurred, the case was decided at the next term by the new judge, there being an interchange of judges. The gentleman might, therefore, on the principle on which he now judges, as well object to the delay occasioned by the postponement. I have, however, no partiality to this amendment. I should have no objection to let all preliminary questions fall, if the court is divided, and to allow an appeal only on the ultimate question. In North Carolina there are but two judges. This has been the practice there, without any inconvenience being experienced.

Mr. Henderson.—I believe this bill is composed of such heterogeneous elements that it is impossible for any ingenuity to make anything out of it. But, as it must pass, it is our duty to render it as unexceptionable as possible; and what interest can we have in an imperfect system?

My objection has been attempted to be answered. One of the cases which I put, related to the competency of witnesses. The gentleman from Maryland says, every man is a competent witness until proved not to be so. Now, I ask, if a witness is stated to be interested, and the court is divided, how can the cause go on until a decision is made by the Supreme Court? The gentleman alluded to a bill of exceptions; but that is never offered till the decision of the cause. What exception, moreover, can be taken where there is no decision? Every man, acquainted with legal proceedings, knows such language is unintelligible. In the case of a bond, the whole jot depends upon knowing it; and yet the gentleman says the cause may go on!

I did not say it was better to have no section than this. I said it would be better to retain the section stricken out than this. I hope, therefore, the House will recommit the bill, that we may give the people at least a substance of justice, if nothing else. I fully agree with my friend from Connecticut (Mr. Griswold) that gentlemen by this time see the propriety of keeping the late system, rather than adopt this heterogeneous mongrel system. I do not believe that the ingenuity of man can rear on this basis a tolerable system. I would prefer trusting to a single judge, to the holding out false colors, and promising justice and yet denying it. For, I repeat it, under this plan it will be impossible to try causes, which, if once hung up, will be for life.

The question was then taken on agreeing to the report of the select committee, and carried—ayes 39, noes 27.

Mr. Leib moved to add to the bill the following new section:

"That, from and after the passing of this act, no special juries shall be returned by the clerks of any of the said circuit courts; but that, in all cases, in which it was the duty of the said clerks to return special juries before the passing of this act, it shall be the duty of the marshal for the district where such circuit court may be held, to return special juries in the same manner and form, as, by the laws of the respective States, the said clerks were required to return the same."

Mr. Dennis said, he understood the object of the gentleman was, to prevent the packing of juries. He wished to know whether this effect was likely to follow from transferring the duty from an officer who holds his appointment during good behaviour, and who, he believed, was dependent upon no one, to an officer who was the mere creature of Executive power?

Mr. Leib.—My object is to prevent the packing of juries, which has heretofore been exercised by the clerks. I hold an opinion contrary to that of the gentleman from Maryland. I consider the marshal as a responsible officer, amenable to the President; whereas the clerk is the mere creature of, and dependant on, the court. I, therefore, think a more impartial selection of juries will be obtained by confiding this duty to the marshal than the court.

Mr. Milledge was opposed to the motion.

Mr. Giles hoped the amendment would obtain. the effect of which was simply to transfer to the marshal the duty of selecting special jurors, in those States where this is not already the case. It is easy to see that, if the judges should possess a bias towards particular individuals, no mode could be readier to give efficacy to that bias than by declaring the cause should be tried by a special jury, and make their clerk designate them. He would ask, if, under these circumstances, the clerk would not be most likely, of all other individuals, to summon a jury favorable to the views of the court. We have been informed that there have been inconveniences of this kind experienced, in cases where there have been biasses of courts to particular descriptions of citizens. Mr. G. said, he had no doubt of the existence of such impressions. The first time he heard of this right, possessed by the clerks, he thought it the most extraordinary he had ever heard of. He believed the amendment offered would remedy the present evil, existing in some of the States, without any inconvenience to any other State.

Mr. Davis.—The power of selection must reside somewhere. The officer called upon to perform this duty ought to have some knowledge of men. The sphere of acquaintance enjoyed by the clerk, from the nature of his ordinary duties, is limited, whereas the marshal necessarily becomes acquainted with all the prominent characters in his district. For this reason, I think, the duty will be best confided to the marshal.

Mr. Dennis.—The reasoning of the gentlemen from Virginia and Pennsylvania is founded in mistake. They have taken that for granted which remains to be proved. If the clerks were the creatures of the courts, and removable at their pleasure, there would be some force in their remarks. But that remains to be proved. The courts have the power of appointing, but not of removing; for I take it for granted that the officers appointed by the courts are only removable for malconduct.

It appears to me, since we have heard so much about Executive patronage, that no possible case can be conceived of, where there can be greater danger than in giving the right of selecting jurors to the marshals, who are the mere creatures of the President. We are told, there is no danger from this source, except in cases of a political complexion. But there is no medium through which political prejudices will operate more effectually than through the marshals.

Mr. Bayard said, he did not feel a strong spirit of hostility to the amendment, because, as it was expressed, he deemed it an extremely harmless thing, which tended only to expose the House to ridicule. It provided for jurors being returned by marshals in cases where the clerks of the court had heretofore returned them. Now, sir, no such cases exist; clerks never do nor never did return jurors.

Mr. B. was, however, opposed to the principle, which, he supposed, it was intended to carry into execution. The object of the amendment, it would be perceived, was to prevent special juries. He deemed it very important to retain the power of summoning special juries in certain cases. In questions of great importance, which often arise in courts, and which involve great principles of law as well as intricate questions of fact, special juries are important. However competent ordinary juries may be to decide causes generally, yet when great commercial questions are involved in such decision, it must be very proper to have the power of summoning a jury of merchants to decide. The same remark is applicable to other professions and business in life. Men whose time has been devoted to particular pursuits, ought to be called on to decide in questions which regard their particular business. Clerks of the courts he considered as the proper persons to select such jurors. They are responsible officers, appointed by

the court, dependant on their good behaviour; and who is most competent to decide what is the nature of a cause, the court or the marshal? Marshals are the mere creatures of the Executive, proceeding from the nostrils of your President. Their political existence can be extinguished in a moment.

I am at no loss to see the object of this motion. Notwithstanding the declarations of gentlemen against Executive influence, we have for one year past seen a succession of acts tending to the principle from which they had been before diverging. They are now for making the selection of juries dependent upon a marshal, who is dependant upon the President, as they find that power not in the hands of men so dependant upon them as a marshal. And, from this perishable motive, they are for establishing a precedent so dangerous to the administration of justice.

Mr. Giles.—I did not intend to have risen in this debate, as my indisposition is such as almost to make silence necessary. But the charge of fostering Executive patronage has been so often made that I will trouble the House with a few ideas; and I beg gentlemen to review the measures of the session, and say whether those measures are in the least at variance with the professions under which those now in power came into place, and whether those who have heretofore been the strenuous friends of Executive patronage, have not tried to divest the President of every power constitutionally delegated to him? What has been done this session? The internal revenues have been abolished. I beg gentlemen to look at the volume laid before us, and to see how many offices have been taken from Executive patronage. I have not counted the number, but I observe them in large columns. These have been destroyed at a single blow. Those heretofore, when out of power, against Executive patronage, say to the President, we repeat to you now what we heretofore have told you, and we have therefore taken from you the appointment of more than four hundred officers.

I ask, how many new offices have been created, or transferred to the President? I know of none, unless the Commissioners of Bankruptcy, who, according to this act, are to be appointed in the first instance by the President.

Four or five hundred old officers have been dismissed, no new ones have been created; and yet we are told that we are in favor of swelling Executive patronage. Again, I find several foreign Ministers dismissed, and still we are told that we are favorites of Executive patronage. I deny the point; I deny that we have ever voted for an office that was not necessary. I say, on the other hand, that the number of officers we found in existence has been much lessened, and may be lessened still more.

I must observe, that the gentleman from Delaware has come nearer the true point than the gentleman from Maryland, (Mr. Dennis,) who said, if the clerks are the creatures of the court, there would be some force in objecting to their having the selection of jurors. The gentleman from Delaware says, the court itself has this right. But how long have we heard this doctrine? For my part, when I heard the gentleman make the declaration, that the courts had this power, I thought it most singular. But grant that the courts have this power, what does it amount to? If chosen by the courts, will jurors be independent? In the existence of political divisions, are courts impartial? I say, that it is within my own knowledge, that jurors have been selected with a view to particular ends.

It is true that they are not now so selected. No, sir; for, if the marshal is on one side, the court is on the other, and is a check on his partiality? The court has the power of directing the jury; and, if they see fit, of granting a new trial. And, permit me to say, nothing can be so dangerous as to unite the power of selecting jurors, and of deciding the cause.

We are told there may be commercial cases which require a select jury. In such cases, why may not the marshal make the selection?

But suppose a political case should occur. This is the most likely, when it does occur, to be productive of mischief; and, I believe, if we have had mechanical and commercial, we have also political juries.

The gentleman from Delaware (Mr. Bayard) says, he is not at a loss to understand this question. No doubt, he is not at a loss. He understands all questions. And I wish that that gentleman, as well as every other gentleman, should understand it. I say it is improper that judges should empannel the jury. If there are such marked political divisions, as I fear there are, it is most dangerous to unite the power of empannelling, with that of deciding. If you do this, you give the principle, so long contended for, not that of the independence, but the supremacy of the judges. For, during the whole of this session, gentlemen have been using improper names. No man values more highly than I do the independence of the judges; but the question is a question of supremacy; they are to be made supreme! They are to control all your laws! You have given them a great variety of powers, and now they are to have the power of empannelling juries.

I beg leave to observe that this amendment will not have the smallest operation on Virginia, where the marshal summons all juries; but if there be a part of the United States where this evil exists, it ought to be remedied. Not that I am in favor of any bias whatever in the designation of jurors. I wish there was none; I am sorry that our judges are politicians; and so long as the courts are political, it seems to me necessary, in order to meet them, that there should be political juries. The courts can almost do anything; they decide the evidence received, they charge the jury, and may grant new trials. It is, therefore, improper that the clerk should empannel the jury.

The gentleman from Delaware says, there may be a change of men hereafter. That, to me, is altogether immaterial, as I am for acting on general principles, which shall equally apply to all men.

Mr. Bayard said, he should have no objection to vote for the amendment, if he did not consider it, not only harmless, but absurd. He did not see how political questions had anything to do with struck juries. Such questions arise only on criminal prosecutions; and in those, struck juries are never used; they are summoned in civil actions only. But he considered the amendment as a mere *bagatelle*, it was only a grasp at all power to be placed in the hands of the Executive. As to Executive patronage, the repeal of the internal taxes proved that those who voted for the repeal were for reducing Executive patronage; it proves, also, that those who voted against it were not unwilling to give to the Executive a legitimate exercise of patronage where it was necessary for the public good. But he had seen instances, in cases not calculated to alarm the public mind, where a strong disposition had been shown to extend Executive patronage.

The question was then taken on Mr. Leib's motion, and carried—ayes 41, noes 32.

Mr. Dennis moved to strike out the fifteenth section, which is in the following words:

"*And be it further enacted*, That there shall be appointed by the President of the United States, from time to time, as many general Commissioners of Bankruptcy in each district of the United States, as he may deem necessary; and upon petition to the judge of a district court, for a commission of bankruptcy, he shall proceed in, and by an act, entitled 'An act to establish a uniform system of bankruptcy throughout the United States,' and appoint, not exceeding three of the said general Commissioners of the particular bankrupt petitioned against; and the said Commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day, for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupts' estates: *Provided*, That the Commissioners, who may have been, or may be, appointed in any district, before notice shall be given of the appointment of Commissioners for such district, by the President, in pursuance of this act; and who shall not then have contemplated their business, shall be authorized to proceed and finish the same, upon the terms of their original appointment."

Mr. Dennis called for the yeas and nays. This section says nothing less than that the courts are not to be trusted; and if this power be vested in the President, I can see no reason why the appointment of Commissioners on a petition in chancery may not also be vested in him. Gentlemen have said much about abridging Executive patronage. Permit me to say that this section vests in the President the power of appointing every man, woman, and child in the United States a Commissioner of bankruptcy. But my great objection, is the inconvenience that will attend this mode of appointment. The President must either appoint a vast number of Commissioners, or the inconvenience will be very great. In my opinion, it is improper to appoint general Commissioners; they ought to be appointed in each special case.

Mr. S. Smith.—The House well know that I have always been an advocate for the bankrupt system; I am still an advocate of it; I am a friend to it; and it is because I am a friend to it, that I shall vote against striking out this section. I believe the mode pointed out in this section will be most agreeable to merchants, who are most interested in it. It will be recollected that, at present, the Commissioners are appointed by the district judge, to whom appeals are to be had, when the Commissioners shall be considered as acting wrong. The Commissioners, therefore, will be extremely cautious how they offend the district judge, and be apt to be too much biassed by him. At present, the commission is not general, but formed for every special case. With respect to the Commissioners of Maryland, I have never heard any complaints. They are men of respectability. But I wish this commission to be perfectly independent. This new course will make them more independent. The President will first name the Commissioners, from whom the judge will have an opportunity of selecting fit characters for each case; and I am convinced that this will be the most satisfactory. As to Executive patronage, I can say, with the gentleman from Delaware, I can see no patronage created in this measure. With regard to appointments, they are constitutionally vested in the President, who will, in general, discharge the duty well, though he may be sometimes mistaken.

Mr. Giles said, though in favor of the section, he was not very tenacious of it; but he believed the appointment to office ought to be where the Constitution had placed it, in the hands of the President. The judges have proper subjects on which to exercise their powers; and a preclusion from all other unnecessary objects will best insure their independence. These officers are considered as important and responsible. He did not see any part of the Constitution that gave the judge the power of appointing them.

Mr. Giles said, his indifference to this subject arose from another reason. He believed the bankrupt law the worst act that Congress had ever passed. He was, however, perfectly willing that experience should test it. He had, since its passage, heard of no new proselytes to it, while he had heard of many complaints against it. He believed that, at the next session, the force of public opinion would repeal it; and that this effect would be principally produced by the very persons for whose benefit it was formed.

Mr. Bayard said, he had not the smallest doubt of the sincerity of the gentleman from Virginia, when he tells us the courts of law are the worst possible deposits of appointments. Nor was he at any loss to know to what to ascribe this opinion. He says the President is the natural officer to make appointments. He had no doubt that gentleman now thinks so, as well as other gentlemen, who, until lately, thought very differently.

Mr. B. said, he could convince the gentleman there was no repugnance to the Constitution in vesting this power in the judges. He then read the 2d section of article 2d of the Constitution:

"Congress may, by law, vest the appointment of such inferior officers, as they think proper, in the President alone, *in the courts of law*, or in the heads of departments."

After hearing this section of the Constitution, the gentleman will not say it is more natural to give this power to the President than to the judges. It is a paltry affair. The power to appoint in these cases cannot create a patronage very useful to the President. From all experience, under a system of bankrupt laws, the power now to be given to the President, ought to belong to the judges. In England, the King cannot appoint a Commissioner. The power is appurtenant to the court; and the experience of this country has shown no inconvenience from the power vested in the Chancellor. But why, sir, on a bill professing to amend the Judiciary system, are we led into a discussion of the bankrupt act? Why are we told the law is to be repealed? And why is this section, not relating to the subject of the bill, introduced into it? It is the expectation of taking a miserable power from the courts to vest in your President. Has there been any complaints, remonstrances, or petitions, against abuses of the power in the judges? I have heard of none. Why, then, transfer the power from a department possessing no power, to one already possessing exorbitant powers? Gentlemen will find themselves infinitely mistaken in giving this power to the President; it will not extend his influence so far as his disappointment. When gentlemen recollect seriously the duties of the Commissioners, they must be convinced of the difficulty of the President's filling these appointments. The ordinary characters, fit to fill these offices, and willing to fill them, are infinitely below the knowledge of the President. He must rely on the advice of others. By what light will he be instructed as to the number necessary? In Delaware, there has not been occasion for a single Commissioner of Bankruptcy; in Pennsylvania, only in Philadelphia; but they may be wanted in the other parts of the State; and the nomination must be dispersed over the country. If you are jealous of the judges, how do you operate on them? You take not their power; for, after all, the President does not make them Commissioners, but only qualifies them to serve when selected by the judge; the men thus preferred to the others, are so far obliged by the preference; and if the influence of the judge is feared, here is still a field to exercise it. Your Presidents may fall on men the first victims of the law. The intimate connexion of merchants is so intricate, that no previous appointment can be made, without the hazard of making men judges in their own cause. Upon the whole, I perceive much injury which may result from this innovation, without any benefit. The compensation, by the present section, of twenty-four dollars per day, for three Commissioners and clerk, will eat up every fragment of the bankrupt's estate, for whom nothing will escape, but a miserable remnant.

Mr. Bacon.—I am apprehensive that the determining who are to perform these duties does not depend on a long chain of reasoning. It appears to me that there is a strong impropriety in vesting the same men with the power of appointing and ascertaining the compensation of the person appointed. This is nearly the same as fixing his own compensation; for he has only to appoint his own friend, and then determine his compensation. This is too great a temptation for human nature; and, with me, weighs more than the long train of logical reasoning which we have just heard. I am, therefore, against striking out the section.

Mr. Goddard said that, if he was fully satisfied that the gentleman from Virginia (Mr. Giles) was correct in his opinion of the bankrupt law, and he was not perfectly satisfied that he might not be correct, he should not feel such strong objections to the provisions of the section. But, being willing to give the system a fair experiment, he could not consent to adopt the section; because he believed it calculated to render the law much more inconvenient to the citizens, and to render it odious. The President, by this section, is authorized to appoint, in each State, as many Commissioners of Bankruptcy as he might think proper. This provision might not be productive of any considerable inconveniences to the few large cities; and if bankruptcies could be confined to these cities, he should feel indifferent about this provision. But, in the State which he had the honor to represent, there were no very large trading towns, but many smaller ones, and persons who might be liable to bankruptcy were scattered over all parts of the State. The consequence of this provision would be, that the President must either appoint a host of Commissioners in all parts of the State, or rather capacitate a vast number of persons by commission, under him, to be appointed Commissioners by the judges; or the citizens from the extreme parts of the State, in case no greater number than was originally contemplated, (not less than three nor more than twelve,) must travel to one central spot to have this business done, in case of bankruptcies; either of which would be very inconvenient and oppressive. Besides, those named Commissioners by the President, in the State, of Connecticut, will be incapacitated, under the laws of that State, from being members of the State Legislature.

Mr. Elmendorf.—From representations made to me, I confess I am extremely tenacious of this section. It has been shown, by the gentleman from Delaware, that there are but three modes of appointment; first, by the President; second, by the courts; third, by the heads of departments. When these offices are created, they become the subjects of Legislative discretion. The practice has been, not as stated by gentlemen for the court to appoint for each particular case, but to appoint a general board. From this practice, inconveniences have arisen too intolerable to be borne. Improper persons have been appointed, and enormous emoluments allowed; and the whole fragments of the bankrupt's estate have been destroyed. The provisions of the law have been so tortured, that the Commissioners have received, under the sanction of the court, six dollars a day for every

case of bankruptcy before them. It will be found that the son of a judge has even been appointed. Shall we, then continue this power in the hands of the courts? No; we have tried them abundantly. We ought not, therefore, to shrink from imposing this duty upon the President, which the good of the country requires to be vested in him. I am not a friend to the bankrupt act, not because I am inimical to a proper system of bankruptcy, but because the evils, under the present system, exceed the benefit which it confers. Under this system, from the practice in New York, it would seem that it was not so much for the benefit of the real bankrupt, as for those who can afford to pay well, or can give security for those who wish to become bankrupts.

I will ask, if the provision of this bill will not be a check on the present abuses, by limiting the total daily compensation to six dollars. I would rather limit the allowance to four dollars a day; but I believe ten times six much greater than six. I believe that appointments in the State of New York are considered as more beneficial than any that can be conferred; and, if they are so emolumentary, I fully agree with the gentleman from Virginia, that they ought not to be made the instruments of court patronage. Not that I am for giving improper appointments to the President; on the contrary, I wish less power of this kind had been reposed in him; but, in this respect, I am constrained to obey the Constitution.

Mr. Mott spoke against the section. When the question was taken by yeas and nays, on striking out the 15th section, and lost. Yeas 35, nays 36, as follows:

Yeas—John Archer, James A. Bayard, Walter Bowie, John Campbell, John Condit, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Joseph H. Nichoson, Thomas Plater, Nathan Read, William Shepard, John Smilie, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William B. Giles, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Anthony New, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, and Isaac Van Horne.

Mr. Bayard moved to amend the sixth section by adding to the eleventh line, the words, "and which at the end of the said session shall remain undetermined," and called for the yeas and nays: which were taken, without debate—yeas 32, nays 39, as follows:

Yeas—Willis Alston, James A. Bayard, John Campbell, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, John Dawson, Lucas Elmendorf, John Fowler, William B. Giles, John A. Hanna, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thomson, Abram Trigg, Philip Van Cortlandt, and Isaac Van Horne.

Mr. Bayard offered a new section, to this effect: "That this act shall not go into operation, or take effect, until the first day of July next;" and required the yeas and nays.

Mr. Bayard.—The system lately repealed will not go out of operation until the first of July; otherwise there will be contrarious systems in force at the same time. It is difficult to say what would be the effect of a collision of the two systems. I would wish gentlemen to say, whether the present circuit courts are, or are not, to have a Spring session. This bill creates new circuit courts, to take effect immediately. I am not prepared to say whether the old circuit courts will remain in force after the passing of this act. I am very much inclined to think that the effect of this law may be, to suspend the circuit courts now sitting, and the effect may be to annihilate judgments now given. I would, therefore, wish gentlemen to be explicit.

Mr. Nicholson.—The objection, taken by the gentleman, is fully provided against by the fourth section; wherein it is declared, that none of the circuit courts, created by this bill, shall be held until after the first day of July next. There can, therefore, be no kind of contradiction between this and the repealing law. But I believe the effect of the amendment will be, to give the Supreme Court a June session, which is not intended by the bill.

Mr. Bayard.—The gentleman from Maryland has not answered my objection. His design is, that the present circuit courts shall hold a Spring session. But this will not be the effect of the bill. The basis of the power of the old judges is derived from the old division of the United States into circuits; now, if this basis is changed by a new division, how can the same judges be circuit judges? The effect will be, to have two circuit courts. As legislators, ought we to suffer any doubt to remain on a subject, when we can remove it by a single section? Is it not a matter of serious consideration to the judges and suitors, whether the judgments rendered in these courts are nullities? And what objection is there to

the section now offered? Why, that it gives a session to the Supreme Court in June. But is this a source of alarm? Are the justices of the Supreme Court objects of terror to gentlemen? Was not this session contemplated and expected? The effect of the present bill will be, to have no court for fourteen months. Is this Constitutional? Are the judges to consume their salaries without having anything to do? I call upon gentlemen to consider the alarming principle contained in this bill. They are about to pronounce that the Supreme Court, a court formed under the Constitution, shall not sit for fourteen months, instead of sitting in six months. Are gentlemen afraid of the judges? Are they afraid that they will pronounce the repealing law void? If gentlemen think they have no such power, they will conclude that any interposition of the judges will be rejected by the good sense of the people; and if they have such a power, are they prepared, on a mere political pretence, to deprive them of it? Sir, as far as regards myself, I have not the smallest knowledge that any such interposition will take place. It is not probable that, at present, any one judge knows the opinion of another. My own opinion is, that it is scarcely probable they will interpose. I do not see how that question can come before them. It is ten to one that they will not act upon it.

Mr. Nicholson.—I have no hesitation to declare, that I am not afraid of the exercise of any Constitutional authority of the judges. Such authority can be exercised as well in February as in June. They will have the same opportunity of acting in February as in June. As far as regards myself, I care not whether they pronounce the repealing law unconstitutional or not, though I should regret such an act, as I wish harmony to prevail between all the departments of the Government. My being, therefore, in favor of postponing the session until February, does not arise from any design which I entertain, to prevent the exercise of power by the judges. But we have as good a right to suppose gentlemen on the other side are as anxious for a session in June, that this power may be exercised, as they have to suppose we wish to avoid it, to prevent the exercise.

As to the proposition of one annual session, instead of two, that has been already discussed and decided upon. But, if gentlemen merely wish to save the present circuit courts until the first of July, though I think that is already provided for by the bill, I shall have no objection to an amendment to that effect.

Mr. Griswold.—The fourth section either puts down the present circuit courts, or it establishes two sets of circuit courts. It is, therefore, reasonable and proper to agree to the amendment, that this effect may be prevented. And I cannot believe that this House is afraid of having a session of the Supreme Court in June. I know that it has been said, out of doors, that this is the great object of the bill. I know there have been slanders of this kind; but they are too disgraceful to ascribe to this body. The slander cannot, ought not to be admitted. I, therefore, hope that gentlemen will agree to have a session in June next. For my part, I have strong reasons for wishing a session in June. I believe the repealing act is a usurpation of power by the Legislature; and, whenever I see a usurpation, I think the speedier it is checked the better. I have, therefore, no hesitation to say, I wish an early sitting of the Supreme Court. To their judgments I submit, and I trust every member in the community will also submit.

Mr. Bacon.—I apprehend the gentleman need not labor very hard to dispel the fears entertained of a sitting of the Supreme Court. I apprehend there is no cause of fear. Nor do I see the necessity of the amendment, to save the Constitution; because, if the repealing act be unconstitutional, it is no law, and not in the way of their meeting. If it is so considered by the judges, they will meet together, of course. I, therefore, think that even the gentleman from Connecticut can have no very alarming apprehensions on this score.

The question was then taken by yeas and nays, on Mr. Bayard's motion, and lost—yeas 27, nays 46, as follows:

Yeas—Willis Alston, James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Wm. B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, and Isaac Van Horne.

The bill was ordered to be read a third time to-morrow.

ADJOURNMENT.

Mr. Bayard moved that the House do come to the following resolution:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session of Congress, by adjourning their respective Houses on Monday, the twenty-sixth instant.

The taking up the motion was supported by Messrs. Bayard and S. Smith, and opposed by Mr. Elmendorf.

Mr. D. Heister moved the previous question.

Mr. Nicholson moved an adjournment.

Mr. Bayard called for the yeas and nays on

the question of adjournment; which were taken, and the adjournment lost—yeas 29, nays 41, as follows:

YEAS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, John Campbell, Thomas Claiborne, John Clopton, Richard Cutts, John Davenport, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Helms, James Holland, David Holmes, Michael Leib, Anthony New, Joseph H. Nicholson, Israel Smith, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, jr., John Stewart, Philip R. Thompson, and Philip Van Cortlandt,

NAYS—John Archer, James A. Bayard, Robert Brown, William Butler, Matthew Clay, John Condit, Manasseh Cutler, Samuel W. Dana, John Dawson, John Dennis, William Eustis, Abiel Foster, John Fowler, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, Archibald Henderson, Benjamin Huger, Thomas Lowndes, John Milledge, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, John Smilie, Samuel Smith, Samuel Tenney, John Taliaferro, jr., Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, George B. Upham, Isaac Van Horne, and Lemuel Williams.

The House then proceeded to consider the motion of Mr. BAYARD, for authorizing an adjournment of the two Houses on the twenty-sixth instant.

Mr. GILES moved to postpone the consideration of the motion till Monday next.

Mr. S. SMITH hoped the motion of Mr. BAYARD would be agreed to.

Mr. BAYARD called for the yeas and nays on Mr. GILES's motion.

Mr. GILES said he would much rather withdraw his motion, than consume the time taken in calling the yeas and nays.

Mr. BAYARD then called for the yeas and nays on his own motion; which was carried—yeas 53, nays 13, as follows:

YEAS—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Robert Brown, William Butler, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Dennis, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, William B. Giles, Calvin Goddard, Edwin Gray, Roger Griswold, John A. Hanna, Seth Hastings, Daniel Heister, William Helms, Archibald Henderson, James Holland, Benjamin Huger, Michael Leib, Thomas Lowndes, John Milledge, Lewis R. Morris, Thos. Morris, Anthony New, Joseph H. Nicholson, Thomas Plater, Nathan Read, John Smilie, Samuel Smith, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, David Thomas, Philip R. Thompson, John Trigg, George B. Upham, Isaac Van Horne, and Lemuel Williams.

NAYS—John Archer, Walter Bowie, Thomas T. Davis, John Dawson, William Dickson, John Fowler, David Holmes, Israel Smith, John Smith, of New York, John Smith, of Virginia, John Taliaferro, jr., Abram Trigg and Philip Van Cortlandt.

And then the House adjourned until to-morrow.

FRIDAY, April 23.

The House resolved itself into a Committee of the whole House on the bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two; and after some time spent therein, the Committee rose, and reported several amendments thereto.

Ordered, That the said bill, with the amendments, do lie on the table.

Mr. GRISWOLD made the following motion:

Resolved That the committee to whom was referred the Message of the President of the United States, respecting the French corvette Berceau, be instructed to inquire whether any further appropriations are necessary to cover the expense which has arisen for the purchase and repairing that vessel for the French Government, and for advancing to her officers their monthly pay.

Mr. S. SMITH moved to amend the motion by striking out the words "for repairing for French Government."

Mr. GRISWOLD opposed the amendment.

Mr. GILES hoped the gentleman from Maryland would withdraw his amendment, and that the motion would be agreed to.

Mr. S. SMITH withdrew his motion, in order to save time.

The motion was then agreed to without a division.

JUDICIAL SYSTEM.

The bill to amend the Judicial System of the United States was read a third time.

When Mr. R. WILLIAMS moved to recommit the bill, for the purpose of striking out the 15th section, which gives the nomination of Commissioners of Bankruptcy to the President.

Question on recommitment carried—yeas 37, nays 33.

The House went immediately into Committee of the Whole, Mr. S. SMITH in the Chair, on this section.

Mr. R. WILLIAMS moved to strike it out.

Mr. BAYARD.—I am decidedly opposed to the passage of the law. Its defects are as numerous as its provisions; and it introduces not a single improvement into the system it is designed to amend. I mean not to trouble the House with an extended or detailed view of the subject. Considering the value of our time, from the small portion which remains before the session will terminate, by the resolution we have passed, I shall content myself with pointing out some objections to the bill; which, according to the opinion I entertain, furnish sufficient ground to induce gentlemen to refuse to it their assent.

The ninth section, which happens at present to be under my eye, contains a provision, not simply absurd, but extremely mischievous. I should have moved to recommit the section, could I have flattered myself with the most distant prospect that any motion I made, supported by any reason which could be advanced upon this subject, would have been adopted by a majority of the House.

But, sir, having failed in many amendments,

recommended by a very plain strong sense, I was unwilling to waste time in a vain effort, which would have been resisted, without the trouble of attending to its object.

The section to which I refer, provides, that all causes and process, either of a civil or criminal nature, which shall be depending or returnable in any of the circuit or district courts of the United States, on the first of July next, shall be continued, and transferred, and returnable to the circuit and district courts established by this act.

Causes depending in, or process returnable to, any district court in the United States, are transferred to the circuit and district courts established by the act. By the act there is a circuit court instituted in each district, but no new district court is established, except in the district of North Carolina and Tennessee.

One of two things must, therefore, follow; either, that all causes in the district courts of the other districts must be transferred to the district courts of North Carolina and Tennessee, or be carried into the circuit courts, which the act establishes in the several districts. However absurd this operation may be, yet, as the power of the Legislature to produce it cannot be denied, the express and unequivocal words of the law must take effect.

It is not the design, I presume, to abolish the district courts; and though they are suffered to exist, they are capriciously stripped of all their business which cumulated upon the circuit court. I ask, if gentlemen can give a different construction to this section, if they can deny the operation I attribute to it, and if there be a single member who will undertake its defence?

In looking, Mr. Speaker, through the bill before us, I discover but one defect of the ancient system which it attempts to correct. That is the rotary constitution of the court, in relation to the judges who composed it. The act confines particular judges of the Supreme Court, to several circuits which it creates. This provision designs that the circuit courts shall always be composed of the same judges. This might have been considered as a useful improvement, if pains had not been afterwards taken to render it abortive. The law has not named, though it has contrived to designate, personally, the judges of the Supreme Court, at present assigned to hold the courts in the several circuits. But, as successive vacancies happen on the bench of the Supreme Court, the judges are, by allotment, to be assigned anew to their different circuits.

This provision reproduces the very evil, and the only one which the bill professes to correct in the old system.

As there are six judges, and, generally, advanced in life, vacancies from death or resignation must occur in very short periods. Upon each vacancy, every judge ceases to be attached to a particular circuit, and must wait for a new allotment to know the circuit to which he is to belong. The judges had formerly the power of assigning themselves to particular circuits, and the only change which is introduced, is, that an assignment of the judges once made, it cannot be varied until a vacancy on the bench occurs. This, however, must happen so frequently as to expose the circuit court to the same oscillations, in the administration of justice, as were experienced and complained of under the old system.

I would beg, also, that gentlemen would give us some information upon a point of great importance, and of great doubt, which arises out of the arrangements upon this subject. After a vacancy occurs upon the bench of the Supreme Court, what is the situation of the circuit courts, before a new allotment is made by the judges of the Supreme Court?

Upon every new appointment, the allotment is to be made; and, until it is made, the power of the judges, in their ancient circuits, would seem to be suspended. The allotment can only be made at a session of the Supreme Court; and, as the court has but one annual session in the month of February, if a vacancy should happen, and an appointment be made in the month of March or of April, the circuit courts would be suspended for more than a year, and the whole business of the courts destroyed by discontinuance. Is it possible that gentlemen can give their assent to a bill pregnant with such mischief and injustice? Can they suppose that this thin veil, this gauzy covering, will conceal from the eyes of the world the latent design of destroying the Judiciary power of the United States, by rendering it incapable of attaining justice, and productive only of vexation and expense?

The fourth section of the bill contains a provision which certainly transcends the power of Congress, great as it has appeared during the existing session. It enacts, that the court, in the fifth circuit, shall be holden by the present Chief Justice and the judge of the district in which the court shall be holden. The law has no limitation, and is designed as a permanent system. It supposes, therefore, that the present Chief Justice associated with the district judge, is *for ever* to compose the circuit court of the fifth circuit. This, sir, might have been an oversight in draughting the bill, but what will it be when, with our eyes open, we adopt it in the law. Will the public be satisfied with laughing at the absurdity, without suspecting the integrity of the motive which induced the House to assent to it?

I will not fatigue you, Mr. Speaker, with the useless labor of attending to a critical examination of the incongruities and absurdities which abound in the bill; but I call, and I have a right to call upon the friends of it to come forward, and point out a single particular in which it corrects a defect in the old system.

Do gentlemen suppose that the people of this country have no understanding? Do they imagine that they will always remain the dupes of empty words, that they will look no farther than the title of a law, and continue to repose an implicit faith, after finding themselves repeatedly deceived? You call this a "bill to amend the Judicial system of the United States;" but amendment is not the effect, and nothing is more remote from the design of it.

Having enumerated the defects of the ancient system upon a former occasion, I will not now repeat them; but I affirm, and if I am wrong, the advocates of the bill will expose the error, that not one of those defects is removed by the present law.

There is one view of this subject which requires that information should be given, not to the House simply, but immediately to the nation. Is it the design of gentlemen, by this bill, to destroy the power of the present judges of the circuit courts during the short period of their political existence, allowed by the repealing act which was lately passed? This law is to take immediate effect. It breaks down all the circuits formed by the act of 1801, and throws the districts into new circuits.

The present judges were appointed and commissioned for certain circuits. A judge, commissioned for the first circuit, could exercise no authority in the second. The new arrangement, abolishing the old circuits, how are the judges to determine the boundaries of their power?

I shall be allowed to exemplify my view, by stating the case relative to the State to which I belong. Under the law of 1801, Delaware was a member of the third circuit; by the present bill she is comprehended in the fourth; the question, therefore, is, whether a commission to hold a court in the third circuit, will authorize a judge to hold one in the fourth? Is the point exempt from all doubt? And are we excusable in leaving a doubt upon a point of such consequence and responsibility?

While we are passing this law, the courts are in session; the judges, obedient to the obligations of duty, are exercising the solemn functions of their office; and, while they are occupied as they believe, in administering justice, if we abolish their legitimate authority, we render them, their officers, and suitors, trespassers, and might expose them even to the accusation of murder.

Will not gentlemen avow their intentions on this point, and, by a few plain words, enable the judges distinctly to perceive the path which they are to pursue?

But, sir, when I look to the object of this bill, I become sensible how idle it is for me to ask for anything, however moderate and reasonable it may be. To accomplish that object, every objection will be trodden under foot.

This act is not designed to amend the Judicial system; that is but pretence. If amendment had been in view, gentlemen would have contrived a better plan than the present bill proposes, which I panegyrize, by calling a miserable piece of patchwork. No, sir; the design of this bill, is to prevent the usual session of the Supreme Court in next June.

It is to prevent that court from expressing their opinion upon the validity of the act lately passed, which abolished the offices of the judges of the circuit courts, until the act has gone into full execution, and the excitement of the public mind is abated. I know not that the subject would be brought before the judges, or that they would officially take it up; but it is the fear of their solemn opinion, and a knowledge of the just reverence which the people of this country entertain for judicial decision, which has given birth to the present expedient. Could a less motive induce gentlemen to agree to suspend the sessions of the Supreme Court for fourteen months? The last session was in December; the judges are forbidden to assemble again, until fourteen months from that time have expired. Could a more dangerous precedent than this be established? May it not lead to the virtual abolition of a court, the existence of which is required by the Constitution? If the functions of the court can be extended by law for fourteen months, what time will arrest us before we arrive at ten or twenty years? This objection to the bill alone would be fatal, in my mind. We have offered an amendment upon this point, enabling the judges of the Supreme Court to meet in June. We have begged gentlemen to accede to this amendment, if for no other reason than to banish the aspirations as to the object of the bill, but though we are told they are indifferent as to the opinion of the Supreme Court upon the validity of their late act, yet we find the bill tenaciously adhered to: and that, with all its imperfections about it, it is to be converted into a law. The majority, sir, must have their will; but I am deceived, if their triumph is of long duration. The people of America can be governed but a short time by empty words and hollow pretences.

The motion was further supported by Messrs. R. Williams, Davis, T. Morris, Goddard, Nicholson, and Hastings, and opposed by Messrs. Elmendorf and Bacon.

When the motion to strike out was agreed to—yeas 44, nays 25.

The Committee rose, and reported their disagreement to the 15th section.

Report confirmed in the House.

The question was then put on the passage of the bill.

Mr. Bayard called for the yeas and nays, which were taken, and stood—yeas 46, nays 30, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, William B. Giles, Edwin Gray, John A. Hanna, Daniel Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Anthony New, Joseph H. Nicholson, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Robert Williams.

Nays—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Thos. Lowndes, Lewis R. Morris, Thomas Morris, James Mott, Thomas Plater, Nathan Read, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

THE MINT.

The House then went into Committee of the Whole, on the bill for repealing the several acts establishing the Mint.

Mr. Giles observed, that when he had laid certain resolutions on the table respecting the subject, it was said the House had not sufficient information on which to act. To obtain this information he had suffered them to lay. The information is now received. He believed that information would satisfy the House of the little utility of the Mint. He believed that from the effects of a peace in Europe, we should have silver enough, and that we really had copper enough to serve for several years. There was another circumstance, which made it necessary for the House to act on the subject this session. After the third of March, the establishment will have to be moved to this place. There was also another reason for acting. The Director states the implements to be considerably out of order. Rather than incur the expense of these repairs, he thought it best for the United States to disembarrass themselves of this expense, and save an annual sum of $20,000. This would also afford a relief to the revenue after repealing the internal taxes.

The Committee rose, and reported the bill without amendment.

The report of the Committee was immediately taken up.

Mr. S. Smith.—When this subject was formerly before the House, I said that the gentleman from Virginia was warranted in saying, that the gold coin of the United States was finer than some other in circulation; for the Director of the Mint, in his report for 1800, stated the American gold to be $27 42 on 1,000 pennyweights, finer than the Spanish doubloon; that the same report stated the expense of the Mint Establishment at $20,986—the gain on copper for the same year $5,050—leaving the real cost of the Mint for that year $15,936—the whole copper coin for 1800 being only $29,279; from which it will appear that each cent (as was understood) would cost the United States half a dollar; this, however, was on the presumption that little gold or silver would, in future, be offered for coinage. In answer, a gentleman from Connecticut (Mr. Dana) said, that I was mistaken if I meant to say that each cent had cost the United States half a dollar; that if I had said each dollar's worth of cents had cost half a dollar I should have been more correct. In answer I said that every gentleman must have seen from the statement I gave in figures of the quantity coined, and the cost of the Mint Establishment for a year, that I meant to say that each dollar's worth of cents had cost half a dollar, and that if I had said otherwise, it ought to have been considered as a "lapsus linguæ," and not as an attempt to mislead.

I have considered it proper, in justice to myself, to repeat what I had said on a former occasion on the same subject, because the reporter of that debate had been extremely inaccurate, owing perhaps to his not being accustomed to the taking of debates.* It will be remembered that a similar mistake to that made by me had been made the same day by the gentleman from Connecticut, (Mr. Griswold.) from Delaware, (Mr. Bayard.) and from Virginia, (Mr. Giles.) Indeed, it was not easy to avoid such mistakes in the warmth of debate.

I have now before me the last report of the Director of the Mint, by which I am confirmed in my former opinion, the expense of the establishment has exceeded even my expectations as to the cents. Again I repeat what I formerly said, that the Secretary of the Treasury may be empowered to contract with the bank, or with individuals of the United States, who shall be obliged to stamp the cents within the United States, for the quantity required annually. I observe that the Director imports from England the planchettes, or pieces the size of the cent, and stamps them at the Mint; the same may be done by the banks or individuals without any cost or charge on the Government; and we may put down an establishment that has cost the United States $30,000 per annum.

Mr. Dana.—The gentleman from Maryland, I presume, has reference to me. I have a tolerable recollection of what passed on that occasion, though not a complete one, and I conceive the statement of the gentleman from Maryland (Mr. S. Smith) to be perfectly correct. It will be recollected that after the same mistake had been made by my colleague, and other gentlemen, that I rose and said I was perfectly satisfied that when the gentleman from Maryland said that each cent had cost the United States half a dollar, it was a mistake, and made without any intention whatever of misleading the judgment of the House.

As some observations have been made on the coinage of the precious metals as symbols of royalty, and as an idea has been thrown out that the copper coinage ought to be effected in foreign countries, I will refer to the report of the then Secretary of State, to show the ideas which he entertained on the subject. [Mr. D. here quoted this document.] I consider this as a complete answer to the coins being made in a foreign country.

But my great objection is, that the bill destroys the whole establishment; and that it does this in so instantaneous a manner that it is scarcely possible to sell to the least advantage the implements of the institution; and because the copper coinage is rather a source of profit than loss, as Government may give this description of coins a value far beyond the current price of the metal. I am not tenacious of the whole establishment; but I should wish to see some provision, at least for a copper coinage, made before the whole establishment is broken down. As to the law for fix-

* Allusion is here made to the Washington Federalist.

ing the Mint at Philadelphia expiring next session, that can be very easily obviated. To do this it will be only necessary to continue in force the act lately passed for keeping the Mint at Philadelphia.

Mr. Giles said, that all gentlemen united in opinion that this establishment could only be maintained by a heavy charge to the Government. And if we turn to the report of the Director, we shall find that he himself supposes the gold and silver coinage not now necessary. This is the most expensive part of the system. We must, then, if we keep up the institution, expend annually $20,000, and find that after the expenditure there is very little to be done.

As to the expense of the copper coinage, as stated by the gentleman, it is a mere estimate; whereas the fact is that about $30,000 a year have been expended for ten years; why continue this expense? To coin bullion, when we have no bullion to coin?

The gentleman from Connecticut has read an extract from the report of the Secretary of State, (the now President,) and he infers an opinion of that character, that coining precious metals is an act of national sovereignty. I suppose not to do it is also an act of sovereignty. The truth is, the sovereignty consists merely in the power to do or not to do it. I suppose gentlemen are for laying out $30,000 annually, barely to show that such a power exists. I believe there is another act of dignified national sovereignty—the act of passing wholesome laws; national sovereignty in this case does not consist in making the impression of our laws ourselves, but in having the power to direct it to be done. It would be extraordinary if in this case as the other, we were to lay out $30,000 to show that we possess this attribute of national sovereignty. As to the expending thousands of dollars, every body knows we do that every day on a liberal scale. That, therefore, is no argument with me.

As to the copper coins, I am told there is no deficiency of them. They are, I believe, of very little consequence where I live, for the people will not take them. But I believe there is a sufficient quantity for the country. But if not, this bill does not preclude the obtaining more. I have no objection to making a contract with the bank to supply us with cents, and I believe it may be done in this way without costing us a dollar. The gentleman from Connecticut states the profit that may be derived from depreciating the coin. This, it is true, has often been tried, but it has generally failed. It certainly could not be far extended; for it would soon be discovered to be a mere cheat.

As far as the institution has heretofore gone, out of $30,000 annually expended, about $5,000 has been saved by the copper coin. I believe that profit would induce the bank to undertake the coinage. At present the copper coin is impressed on metal of the same size that is imported here; and the only thing done here is to make the impression. This the bank can do as well as the Government.

Mr. G. said he believed the idea of the gentleman from Maryland (Mr. S. Smith) correct, that our gold coin was so pure that it had tempted workers in the metal to transmute it, and he believed this effect would continue so long as the present law existed. The effect will be, that the Mint will be refining the precious metals barely for the benefit of workers in those metals. This, he believed, was the reason why we had so little coin made from the precious metals; and the consequence will be that in a short time we shall have very little of them. For these reasons he believed the establishment useless, and that the single question was, whether we would abolish an useless establishment, or keep it up at an annual expense of $30,000? If, however, it was the wish of the House to retain it, he would acquiesce, though he thought it best to act up to the principles on which they had started.

Mr. Dana disclaimed all thoughts of adulterating the precious metals. His remarks had applied exclusively to the copper coinage.

Mr. Eustis said it appeared to him that in this establishment much money was paid for but little service rendered. But as this bill had been suffered to lie for a long time, he had entertained the belief that the gentleman who had introduced it had contemplated the retaining some of the offices, while the expenses were reduced. Mr. E. conceived this would be the best policy, as there were men employed in the institution who could not learn in a day or year what it was necessary for them to know. If such men shall hereafter be wanted, they cannot be easily got. It appeared to him that every establishment is responsible for the coin that bears its own stamp. Now, suppose coin is imported, who is to determine its purity? We must have some responsible officer to examine it. It had always appeared to him very desirable to have a coin between the amount of bank notes and copper coin. Such a result certainly should not cost $30,000; he supposed it might be reduced to $10,000. He believed the time would come when we will have a gold and silver coinage—not from a sentiment of national pride, but from its utility. At present bank paper is very useful; but the time may come when it shall be thought proper to substitute coin for it. The idea of importing copper coin had never been agreeable to him. He believed it absolutely necessary to have an assay-master. He would, therefore, rather that the bill should not pass, if not amended; though he wished a reduction of the establishment.

Mr. Griswold.—I do not think the gentleman correct in the view he has taken. I believe the expenses hereafter will be much lower than they have been heretofore, from the cost of the implements. But gentlemen ought to take into view the benefit to the nation derived from this establishment. If bullion be not coined here, it must be sent to Europe, and all the charges of transportation and insurance will be so much expense to us. If gentlemen will attend to the sum coined last year, they will find that the whole expense of the establishment is saved to the nation. If the coins are too fine they may be reduced; for there

is no necessity of having them finer than the coins of England, with whom we have principal intercourse.

With regard to the expenses of coinage, I differ from the gentleman from Maryland, (Mr. S. Smith,) who supposes every dollar of cents cost half a dollar. On the other hand, I believe there is a profit. I have, indeed, no doubt of it. I believe Government is a gainer from that coinage. I know Government can render itself a gainer, as the value of the cent, when coined, is much greater than before; for, with regard to the base metals, it is proper for Government to impress what value it pleases, as they are confined to our own internal commerce. Of course we may subject the copper coinage to such regulations as not to be productive of expense.

It is well known that the amount of the copper coinage is small. If the establishment is destroyed, it will be lessened, and this will be attended with infinite embarrassment to a certain description of citizens. Is it not then essential, at any rate, to pass this bill with some reservations? The great expense is an objection to the establishment. But let us wait, at least for one year, to find whether this expense will not be greatly reduced by peace; and let us postpone the bill to next session.

Mr. G. concluded by offering a motion to this effect.

Mr. Giles.—I think the House prepared to act at this time. Yet, though I shall vote against the postponement, I shall be perfectly satisfied with it, if acceptable to the House. Nor do I object to a regulation to save the copper coinage. I rather believe this will be the better plan; though I believe this cannot be done this session, as it will require a greater knowledge of the necessary offices for it than we can possess.

I differ with gentlemen as to expense. I wish we could obtain a reimbursement of the expense already incurred. I do not like these ideal gains; nor do I believe that bullion has ever been remitted to Europe to be coined, and returned in the shape of English guineas. If remitted, I believe it has been done to pay our debts. I believe the value of the coin is altogether ideal. It is not the shape, but the intrinsic value by which it is estimated. I therefore consider the expense of coinage as so much loss, and infer that we ought to dispense with the establishment.

It is optional in the House to postpone the bill to the next session, or make provision now for a copper coinage. I am perfectly willing to give some officer the power of contracting for a copper coinage. This is the only thing we can now do.

Mr. S. Smith said, that he was against the postponement. He wished the subject decided on during the present session. On examining the last report of the Director of the Mint, he found that the whole quantity of gold, silver, and copper, coined from the commencement of the Mint, until February last, amounted, agreeably to the report, only to $3,045,000. The coinage of which had actually cost the United States $296,957, being nearly ten per cent. on the whole amount coined. If the motion to postpone should not succeed, I will move to recommit to a select committee, in order to bring in a section to provide for the coinage of cents and half cents by contract.

Mr. Elmendorf said, he rose to state the result of his inquiries. On making inquiry of the Secretary of the Treasury, it was stated that Government had a great quantity of copper on hand, which it was found very difficult to dispose of. He gave this information to show that no inconvenience would result from having no new copper coinage during this and the ensuing year. The report states that the expense of importing cents is not more than £20 per ton. This is so much less expensive than to impress the coins ourselves, that I should prefer importing them.

The question of postponement to the next session was then taken, and lost—yeas 32, nays 37.

Mr. S. Smith then moved a recommitment of the bill to a select committee. Carried—yeas 49.

Saturday, April 24.

A message from the Senate informed the House that the Senate insist on their amendments, disagreed to by this House, to the bill, entitled "An act further to alter and establish certain post roads," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers on their part.

The House proceeded to consider so much of the message from the Senate, of this day, as relates to the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads:" Whereupon

Resolved, That this House doth insist on their disagreement to such of the said amendments as have been disagreed to by this House, and insisted on by the Senate, to the said bill.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendments; and that Mr. Elmendorf, Mr. Southard, and Mr. John Taliaferro, jr., be appointed managers at the same, on the part of this House.

The select committee, appointed yesterday, made a report to amend the bill respecting the Mint, by providing that the Secretary, of the Treasury, under the direction of the President, be authorized to contract with the Bank of the United States, or with individuals, for the coinage of cents and half cents, provided the amount coined shall not exceed twenty tons annually, and that no expense shall be incurred by the United States; and by further providing, that all the implements and personal effects of the Mint should be retained.

Mr. L. R. Morris moved to postpone the consideration of the report till the third Monday in November. Lost—yeas 19.

Mr. Griswold moved a postponement until Monday next. Lost—yeas 23.

The report of the select committee was agreed to with an amendment authorizing the sale of the horses employed in the Mint.

So amended the bill was ordered to a third reading on Monday.

CIVIL LIST.

The House then went into Committee of the Whole on the bill making appropriations for the Civil List.

The several blanks were filled up, and some amendments made; when Mr. Nicholson moved a new section, making appropriation of —— dollars to the Attorney General, and other agents for services rendered under the British Treaty.

Mr. Bayard opposed the appropriation as illegal. He stated that as the board of Commissioners, under the article of the treaty to which the appropriation referred, had ceased to sit, and the services of the Attorney General and the agents ceased, in his opinion no allowance should be made.

Mr. Nicholson stated that, under similar circumstances, the late Attorney General had received the additional compensation.

Mr. Bacon opposed the resolution, on the same ground with Mr. Bayard; when the question was taken, and the motion lost without a division.

The Committee rose and reported the bill, which the House immediately took up.

All the amendments were agreed to without a division, excepting one appropriating 15 per cent. in addition to the permanent allowance made to clerks in the respective departments.

Mr. Griswold moved to disagree to this appropriation, on the ground that the expense of living had decreased, and the duties of the clerks declined.

Mr. Nicholson contested both points. He did not think the expenses of living had diminished since the last year, when the same allowance was made; and if the duties to be performed in some departments had diminished, which he did not allow, they had certainly increased in other departments, viz. the Treasury and Post Office departments.

Mr. Griswold's motion was lost—yeas 21, nays 32.

A bill making appropriation for the military service for the year 1802, was read a third time and passed.

Mr. Griswold moved, that the estimate of the Clerk, of the contingent expenses of this House for the present session, be printed.

Mr. S. Smith moved, that there be added thereto the estimate for the year 1798.

The amendment, and the original motion, were carried.

MILITARY APPROPRIATIONS.

The House took up the bill making appropriations for the military service for the year 1802, in which several amendments were made by general consent.

One of the items of appropriation unites the contingent expenses of the War Department, estimated at $16,000, and the expenses of what has heretofore been denominated the Quartermaster General's department, estimated at $48,000 in the sum of $64,000.

Mr. Griswold moved to divide the item appropriating forty-eight thousand dollars for the department of the quartermaster general, and for contingencies.

Mr. Nicholson said he could not agree to the motion. The Secretary of War was a responsible officer, while the quartermaster general was not. He, therefore, wished to place the disbursement under the direction of the Secretary. There had been, to his knowledge, great abuses heretofore in the quartermaster's department. The Secretary is at present not responsible for the quartermaster general, and before his accounts are settled years may elapse. The present mode of appropriation was not unusual. It was so made in 1797. What has hitherto been the usage? To consider the whole appropriation as a general fund from which money might be drawn as the Secretary of War pleases. The law has heretofore lumped in gross the whole sum allowed for military service. But this bill adopts a new plan. It specifies particularly the several payments to be made. But in the quartermaster's department, where it is absolutely necessary to allow some discretion, it has been thought best to blend these two items to make the Secretary responsible. This has been done to prevent abuses.

Mr. Griswold.—The ideas of the gentleman from Maryland furnish a conclusive argument for the separation of these items. For, if blended, the whole sum may be taken for the quartermaster's department. Nor do we by this bill limit disbursements by the quartermaster general; for, under all expenditures, the warrants must be signed by the Secretary of War, This, therefore, does not place the quartermaster general's department more under the control of the Secretary of War, than it was placed before. Now, if we add sixteen thousand, which may go to the quartermaster's department, we extend the power of abuse. I therefore think that on the plan we are pursuing, we ought to make a separation of this appropriation into two items; then the sixteen thousand dollars will be under the direct control of the Secretary, and the remainder under the control of the quartermaster general.

I know the former course was different. Sums appropriated were considered as grants of money to the department, to be applied to military services under law. This course is now complained of. I confess I do not feel great confidence in the course now pursued. But I am willing to try it, and to allow that if it succeeds, it will be a very fortunate and desirable thing. It is for this reason that I wish to pursue all through the plan according to the report of the Secretary.

Mr. S. Smith.—It will be remembered that we have now no such thing as a quartermaster's department. It follows that the gentleman from Connecticut (Mr. Griswold) would fill up the blank with what does not exist. If he will examine the report of the Secretary of War, he will find an appropriation desired for what has heretofore been called the quartermaster general's department. But the gentleman is very candid. He says that he does not like this specific appropriation, and yet he is for carrying it so far as to render it impossible for the department to move!

It is, however, but fair, that when a new experiment is made, it should be tried in conformity to the ideas of its friends; it is not fair that those inimical to it, should oppose it with hostile ideas. The gentleman says, it will be a good thing if it succeeds. Let him, then, suffer it to be tried. If he permits its friends to go on their own way, then if it fails to succeed, he may say: I warned you against it, and the blame is altogether yours. Not so, if the mode is altered by him; for he will himself then be responsible.

In the year 1801, a law passed appropriating the gross sum of $2,093,000. [Mr. S. here quoted the law.] The sums thereafter specified were never considered as a restraint on the department. There was no contingent expense; that was included in the sweeping clause, under which the whole sum appropriated might have been applied to contingencies.

For myself, I would just as lief have the old as the new system. I have great confidence in the heads of departments. I should have been well pleased that each head of department should have returned an account specifying the amount expended on each item, that we might be enabled to see where the sum appropriated was exceeded. But I found that the President had recommended specific appropriations. I found a majority of this House for it. I therefore acquiesced. I hope, therefore, the motion will not succeed; but that we shall give those who approve the new mode a fair chance for trying it.

Mr. Dana supposed, though there might be a change of names, there could not be an army without something like a quartermaster general's department. At the opening of Congress we received from the President a recommendation of specific appropriations. It is well known that there has been a question for some time as to the most expedient mode of making appropriations. For himself, Mr. D. believed the only proper way was for the Army or Navy to receive a general sum, which shall be limited by law, as to pay, provisions, and other ascertained compensations. Latitude will forever be involved in the quartermaster's department, in the contingencies, and for ordnance, &c. These are the only cases where the laws admit a discretion. In the instance before the House, two of these are combined, and, so far as they go, they completely overthrow the idea of specific appropriations. Mr. D. said he was in favor of this, though he believed it against the President's recommendation, and in the very face of specific appropriations. He was, therefore, against the amendment of his colleague.

Mr. Nicholson.—The gentleman from Connecticut (Mr. Dana) says these two items ought not to be involved, because it is in direct opposition to the recommendation of the President, and to our plan. I do not think so. He says there are three objects that necessarily involve great discretion, which are blended in the bill, and that it is proper to blend them. Why, if the gentleman had looked at the bill he would have found the very reverse. For the article of subsistence there is a distinct appropriation amounting to $201,000. This is a sum on which the quartermaster general, if there were one, is not any longer permitted to exercise a discretion; for he cannot now go beyond this expense, if he wished. This, too, is specifically in conformity to the advice of the President. An important limitation is here made, where the quartermaster general used to exercise an unlimited discretion. For the Treasury books will show that the quartermaster general stands charged with the enormous sum of eight hundred thousand dollars. Hereafter the quartermaster general cannot avail himself of this latitude. For this purpose we want specific appropriations; but when we specify we ought to take care that we do not go too far. Though the President has recommended our making appropriations more specific than they have heretofore been, he did not affirm to what length, in his opinion, the specification should extend. But he had seen that great abuses had taken place, and therefore he recommended measures to correct them.

According to the former mode the appropriations were made as general as could be, so that the officers of the War Department could incur nearly such expenses as they please. Not so under this bill. But it ought to be remembered that there may be expenses under the article of contingencies that may exceed sixteen thousand dollars. So in the department of the quartermaster general, they may exceed forty-eight thousand dollars. It is impossible rigidly to assign the limits of those expenditures. It has, therefore, been thought better to blend them together, and make the Secretary responsible. Whether we can make the former Secretary responsible for the quartermaster general I do not know; perhaps we cannot. The quartermaster stands charged with eight hundred thousand dollars; he has sold property to the amount of three hundred thousand dollars, and though written to, his accounts cannot be got. To remedy these evils we now make specific appropriations.

Mr. Eustis said he thought the blending or separation of these items amounted to the same thing. If you appropriate forty-eight thousand dollars to what has heretofore been denominated the quartermaster's department, you allow the Secretary to expend that sum at the different posts.

The question was then taken on Mr. Griswold's motion to separate the items, and lost—ayes 17.

When the bill was ordered to a third reading.

Monday, April 26.

An engrossed bill making appropriations for the support of Government, for the year one thousand eight hundred and two, was read the third time, and passed.

An engrossed bill to repeal so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States," the other an act, entitled "An act supplementary to the act establishing a Mint, and regulating the

coins of the United States," as relate to the establishment of a Mint, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making provision for the redemption of the whole of the public debt of the United States," with several amendments; to which they desire the concurrence of this House.

The House then proceeded to consider the said amendments of the Senate: Whereupon,

Resolved, That this House doth agree to the same.

The House resolved itself into o Committee of the Whole on the bill sent from the Senate, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints;" and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be read the third time to-morrow.

A message was received from the Senate informing the House that they had passed the bill for abolishing the Board of Commissioners of the City of Washington, with certain amendments.

On motion, it was

Resolved, That the Secretary of the Treasury be required to make report and return to this House, in the first week of the next session of Congress, of the abstracts and lists of the valuation of lands and houses made in the several States, pursuant to the act "to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" and that he cause two hundred copies of the said report and return to be previously printed, and transmitted, for the use of Congress, at the time aforesaid.

The House, resolved itself into a Committee of the whole House on the bill to incorporate the inhabitants of the City of Washington, in the District of Columbia; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A Message was received from the President of the United States, in relation to the settlement of limits &c with the State of Georgia. The Message, and papers transmitted therewith, were read, and ordered to lie on the table.

Mr. JOHN TALIAFERRO, junior, from the Committee appointed, presented a bill additional to and amendatory of, an act, entitled "An act concerning the District of Columbia; which was twice read and committed to a Committee of the whole House to-morrow.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States," with several amendments; to which they desire the concurrence of this House.

The House took up the amendments of the Senate to the bill abolishing the Board of Commissioners of the City of Washington, &c.

One of these amendments contained a number of distinct sections for establishing a company for cutting a canal to unite the main Potomac with the Eastern Branch thereof. Committed.

JUDICIARY SYSTEM.

A message was received from the Senate informing the House, that they had agreed to all the amendments made by the House to the bill "to amend the Judicials ystem of the United States," excepting one, viz: that which struck out the section that transferred the nomination of commissioners of bankruptcy from the district judges to the President, on which they insist.

Mr. GILES moved that the House should recede from the amendment.

This motion was supported by Messrs. TALIAFERRO, ELMENDORF, HOLLAND, S. SMITH, and MITCHILL, and opposed by Messrs. BAYARD, GRISWOLD, GODDARD, and MOTT.

The question was taken by yeas and nays, and carried—yeas 45, nays 27, as follows.

YEAS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, William B. Giles, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, John P. Van Ness, and Isaac Van Horne.

NAYS—John Archer, James A. Bayard, John Campbell, Manasseh Cutler, John Davenport, Thomas T. Davis, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, James Mott, Anthony New, Joseph H. Nicholson, Nathan Read, William Shepard, John Smith, of New York, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, John Trigg, Peleg Wadsworth, and Lemuel Williams.

TUESDAY, April 27.

An engrossed bill to incorporate the inhabitants of the City of Washington, in the District of Columbia, was read the third time: Whereupon a motion was made, and the question being put, to amend the bill at the Clerk's table, by adding to the end thereof a new section, in the words following, to wit:

"*Provided always, and be it further enacted*, That no tax shall be imposed by the City Council on real property in the said city, at any higher rate than three

quarters of one per centum on the assessment valuation of such property:"

It was unanimously resolved in the affirmative.

Ordered, That the said amendment be presently engrossed, and, together with the bill, be read the third time. The said amendment being brought in engrossed, the bill, as amended, was read the third time; and, on the question that the same do pass, it was resolved in the affirmative.

The bill sent from the Senate, entitled "An act supplementary to an act, entitled 'An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies during the times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints," was read the third time; and on the question that the same do pass, it was resolved in the affirmative.

A Message was received from the President of the United States, transmitting a copy of the Convention with Great Britain. The Message was read, and, together with the Convention transmitted therewith, ordered to be referred to the Committee of Ways and Means.

Mr. SAMUEL SMITH, from the committee appointed the seventh of January last, on the memorial of Evan Thomas and others, and to whom was referred, on the twenty-seventh of the same month, a Message from the President of the United States relative to trade and intercourse with the Indian tribes, reported a bill to revive and continue in force an act, entitled "An act for establishing trading-houses with the Indian tribes;" which was read twice and ordered to be engrossed and read the third time to-day.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for the relief of the widows and orphans of certain persons who have died, or may hereafter die, in the Naval service of the United States:" Whereupon,

Resolved, That this House doth agree to the said amendments.

An engrossed bill to revive, and continue in force, "An act for establishing trading-houses with the Indian tribes," was read the third time and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to extend, and continue in force, the provisions of an act, entitled 'An act giving a right of preemption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the Whole House to-morrow.

Mr. MITCHILL, from the committee appointed on so much of the President's Message as relates to naval sites, &c., made a further report. The report concludes as follows:

"The committee find that, prior to the fourth of March 1801, the sum of one hundred and ninety-nine thousand and thirty dollars, and ninety-two cents, have been expended in purchasing navy yards and making improvements upon them, without any law authorizing the purchase, or any appropriation of money, either for purchase or improvements."

DISTRICT OF COLUMBIA.

The House went into Committee of the Whole on the bill respecting the District of Columbia.

[This bill vests certain chancery powers in the courts of the District—alters the periods of holding the courts viz: for Washington county to be held in July and December; for Alexandria county in June and November; directs that no person shall be held to bail unless resident for two months in the Territory—directs that no execution on the person of the debtor shall be issued for judgments under twenty dollars, but that all such process shall hereafter go against the effects of the debtor, executed by the constable, under reduced fees; gives to the Corporation of Georgetown the power of taxing town lots for specified purposes; repeals so much of acts of 1801, as provide for the compensation of jurors and witnesses, with other provisions.]

Mr. GRISWOLD moved to strike out the fourth section, which directs that no person shall be held to bail unless resident for two months in the Territory.

This motion was supported by Messrs. GRISWOLD, HENDERSON, BAYARD, and NICHOLAS; and opposed by Mr. TALIAFERRO. The motion was agreed to.

Mr. GRISWOLD moved to strike out the section, which saves the person from arrest for debts under twenty dollars.

The Committee then rose and reported the bill.

Mr. GRISWOLD moved to recommit it. The motion was carried, and the House adjourned.

WEDNESDAY, April 28.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, enclosing his report on the memorial of Ferdinand Mullenheim, referred to him, by order of the House, on the fifteenth ultimo; which were read, and ordered to lie on the table.

Mr. JOHN TALIAFERRO, junior, from the committee to whom was yesterday recommitted the bill additional to, and amendatory of an act entitled "An act concerning the District of Columbia," as amended by the Committee of the Whole House, reported an amendatory bill; which was read twice, and ordered to be engrossed and read the third time to-day.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to repeal, in part, the act, entitled 'An act regulating foreign coins, and for other purposes,'" with two amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments: Whereupon,

Resolved, That this House doth agree to the same.

The House resolved itself into a Committee of the Whole on the amendments of the Senate, to

add nine new sections to the end of the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland, for the use of the city;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same, with several amendments; which were read, and partly considered.

Ordered, That the farther consideration of the report of the Committee of the Whole House be postponed until to-morrow.

An engrossed bill additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia," was read the third time and passed.

A petition of Thomas Cooper, of the county of Northumberland, in the State of Pennsylvania, was presented to the House and read, setting forth that, in the month of April, eighteen hundred, he was tried and condemned at Philadelphia, before Samuel Chase and Richard Peters, judges of the circuit court of the United States there sitting, for having written and published a libel upon the political character and conduct of John Adams, the then President of the United States; and was thereupon adjudged to pay a fine of four hundred dollars, and to suffer an imprisonment of six months; which punishment he accordingly underwent; that he apprehends the said trial, condemnation, and punishment, were unjust: first, because the law, commonly called the Sedition law, under which he was indicted, was passed in direct opposition to the letter and the spirit of the Constitution of the United States; and secondly, because the said judges did not only take for granted the constitutionality of the said law, but did unjustly and improperly refuse to grant him a *subpœna ad testificandum*, directed to the said John Adams; and therefore praying such redress as the wisdom of Congress shall deign to bestow.

Mr. Griswold moved to reject the prayer of the petition.

Mr. Giles moved to postpone the consideration of the petition till the third Monday in November.

On this motion a debate ensued, in which Mr. Giles and Mr. Randolph supported, and Mr. Griswold and Mr. Bayard opposed the motion.

The question on postponement was carried, by a large majority.

Thursday, April 29.

Mr. Nicholson, from the committee appointed on the fourteenth of December last, to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been accounted for, and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with the public money, made a report; which was read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill, entitled "An act to extend and continue in force the provisions of an act, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes;" and, after some time spent therein, the Committee rose and reported progress.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill stated in the foregoing message: Whereupon,

Resolved, That this House doth agree to all the said amendments.

A message from the Senate informed the House that the Senate have also passed the bill, entitled "An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill last mentioned, and, the same being read, were agreed to.

Mr. Randolph, from the Committee of Ways and Means, presented a bill making an appropriation for carrying into effect the Convention between the United States and the King of Great Britain; which was read twice, and committed to a Committee of the whole House this day.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally read and agreed to.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time this day.

The House resumed the consideration of the amendments reported yesterday from the Committee of the Whole to the amendments of the Senate to the bill, entitled "An act to abolish the Board of Commissioners in the City of Washington, and to make provision for the repayment of loans made by the State of Maryland for the use of the city;" and the same being read were agreed to.

Resolved, That this House doth agree to the amendments of the Senate to the said bill.

On motion, it was

Ordered, That the committee to whom was referred, on the twenty-sixth of February last, a letter from William Henry Harrison, Governor of the Indiana Territory, enclosing certain resolutions of the grand jury of the county of Knox, in the said Territory, asserting the rightful claim of that Territory to the Island of Michilimackinac, and its dependencies, as an integral part of the said Territory, in opposition to the claim of the Government of the Northwestern Territory, to the same, be discharged from further proceeding thereon.

Mr. John Taliaferro, Jr., from the Committee appointed to inquire whether any, and what, amendments are necessary in the existing laws and government of the Territory of Columbia, and to whom were also referred sundry memorials and petitions of the inhabitants of the said Territory, made a report thereon: Whereupon,

Ordered, That the Committee be discharged from the further consideration of the said petitions and memorials.

An engrossed bill making an appropriation for carrying into effect the Convention between the United States and the King of Great Britain was read the third time, and passed.

Ordered, That the committee to whom was referred, on the eighteenth of January last, the petition of John Cleves Symmes, be discharged from further proceedings thereon.

Friday, April 30.

A message from the Senate informed the House that the Senate have passed the bill making appropriations for the support of Government for the year one thousand eight hundred and two, with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill last mentioned, and, the same being read, were agreed to.

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session by adjourning their respective Houses on Saturday, the first of May.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House again resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to extend and continue in force the provisions of the act, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio, and for other purposes."

The said bill was then read the third time, and, on the question that the same do pass, it was resolved in the affirmative.

Resolved, That the Postmaster General be requested to establish a post office at or near the Capitol, on or before the next session of Congress.

Mr. Elmendorf, from the committee to whom was committed the bill from the Senate to empower John James Dufour, and his associates, to purchase certain lands, reported that the committee had had the same under consideration, and made no amendment thereto.

The said bill was then read the third time, and, on the question that it do now pass, it was resolved in the affirmative.

Ordered, That the further consideration of the bill to provide more effectually for the due application of public money, and for the accountability of persons entrusted therewith, be postponed until the third Monday in November next.

Ordered, That the further consideration of the report of the committee to whom was referred, on the nineteenth of January, the petition of Memucan Hunt and others, addressed to the General Assembly of North Carolina, and, also, sundry resolutions of the said Assembly, relative to a claim for the value of certain lands in the State of Tennessee, be postponed until the third Monday in November next.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the eighth of March last, on the memorial of Henry Messonier; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Henry Messonier, from any money in the Treasury, not heretofore appropriated by law, the sum of six hundred and fifty-five dollars and ninety cents, being the amount of duties paid by him on fourteen hogsheads of coffee, imported in the ship Pacareau, Captain Latour, and entered at the port of Baltimore, on the eighteenth day of February, one thousand seven hundred and ninety-four, which sum had also been paid, on the same fourteen hogsheads of coffee, by Champaign and Deyme.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

A message from the Senate informed the House that the Senate have passed the bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two, with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments, and the same being read, were agreed to.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of Henry Messonier; which was read twice, and committed to a Committee of the whole House immediately.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time this day.

An engrossed bill for the relief of Henry Messonier was read the third time, and its further consideration postponed until the third Monday in November next.

Resolved, That the Clerk be directed to procure a clock for the use of the House of Representatives, and cause it to be placed in some convenient part of the Representatives' Chamber.

A message from the Senate informed the House that the Senate have passed the bill to provide for the establishment of certain districts, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider said amendment, and the same being read, was agreed to.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

SATURDAY May 1.

Ordered, That there be a call of the House on Monday next, at ten o'clock in the forenoon.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House, of the thirteenth ultimo," authorizing an adjournment of the two Houses of Congress," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment of the Senate, and the same being read, was agreed to.

A message from the Senate informed the House that the Senate have agreed to an amendment and modification of the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads," agreeably to a report thereon, made this day to the Senate, by the conferees appointed on their part.

The House proceeded to consider the message of the Senate of this day, and the report of the joint committee of conference, transmitted therewith, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act further to alter and establish certain post roads:" Whereupon

Resolved, That this House doth concur with the Senate in their agreement to the amendment and modification of the said amendments, as proposed by the Joint Committee of Conference thereon.

DISBURSEMENT OF PUBLIC MONEY.

Mr. GRISWOLD.—Notwithstanding the late period of the session, I feel it my duty to call the attention of the House to a subject of some importance, and which has not, during the session, met with any particular consideration. That subject is, the report of the select committee, who were appointed to investigate, " whether moneys ' drawn from the Treasury have been applied to ' the objects for which they were appropriated."

I should consider myself inexcusable for introducing this subject at the present time, when the session is to continue only one day longer, and the usual hour of adjournment has nearly arrived, if it had been possible to have called it up at an earlier hour; but it is well known that, although the committee were appointed at a very early period of the session, they made their report only the day before yesterday, and it has appeared on our tables in a situation to be examined for the first time this morning.

It may, perhaps, be inquired that, being a member of the committee, if it was my intention to bring the report under discussion, it would not have been my duty to have submitted some motion to the House as soon as the report was first read at the Clerk's table; but if it had been possible for me to have submitted a motion, it is obvious from the length of the report, and the detail which it contains, that it would have been impossible for gentlemen to have understood the subject without having the report in some shape before them. But the fact really is, that, although a member of the committee, I have known little more about the report than any other member of the House.

The course which this subject took in the committee, it may be necessary, in a very concise manner, to explain. The whole committee attended the investigations at the Executive offices, but the minority had no knowledge of the intentions of the majority; and, for one, I declare that, although I attended the committee very regularly in their public investigations, yet I did not receive the smallest hint of the intentions of the majority—what report they intended to make, or whether any, during the present session, until two days before the report was made to the House; on which day the committee were called together an hour before the meeting of the House, to agree upon a report. When we met, the report was presented to us, already drawn up in its present shape, and we were requested to hear it read, to make our objections or give our approbation. This was certainly an unusual and a very short mode of making a report, upon a subject which had been deemed sufficiently important to engage the attention of the committee for nearly five months. We accordingly had the report read, and although it was impossible, from this hasty examination, to go into much detail, yet a single reading was sufficient to enable us to discover that the report was excessively erroneous. Some of the errors were mentioned, and, for reasons which I will not take up the time of the House at this time to detail, the subject was postponed until the next morning, although the majority had designed to make their report on that day. In the mean time, the minority requested copies of the report, that they might deliberately examine every part of it, and compare it with their recollection of facts. These copies it was agreed should be furnished, but, in consequence, I presume, of the length of the report, they were not procured, and the minority had no opportunity of examining the report with any attention. When the committee met the next morning, the subject was again postponed, in consequence of a discussion upon one detached part of the report, and the report was not of course delivered to the House until the morning following, when it appeared in its original form; I mean in every essential point. I have mentioned these circumstances because I think it important that they should be known, and because I believe they will satisfy the House that it has not been in the power of the minority of the committee to enter into a discussion of the report, until they obtained, in common with the

other members of the House, the printed copies this morning.

I will likewise add a further fact, whilst I am explaining the proceedings of the committee. It is: that three members of the seven who composed the committee, were decidedly opposed to the report in all its partial parts; and the report must be considered as the act of a bare majority. The House will be satisfied, I trust, by the reasons which I have stated, that it has not been my fault that the motion which I am now about to submit has been delayed to this late hour.

My motion is, that the report be recommitted to a select committee, for the purpose of correcting the many errors which it contains; and I must be indulged in stating, as concisely as possible, some of the reasons on which I ground this motion.

The report is evidently calculated to impress the public mind with unfavorable sentiments respecting the conduct of the late Administration, and particularly the conduct of several individuals who have been, and still are, held in high estimation by a numerous class of well-informed and virtuous citizens. This impression ought not to be made, because the real facts, which exist in relation to every transaction to which the report alludes, can warrant no such impression.

The report, I shall attempt to show, is excessively erroneous, both in the facts and the inferences which it states. I wish not, however, to be understood, by any remarks which I may make, to implicate the committee; I have nothing to do with the motives which regulated their conduct; I presume they were virtuous, and that when they calmly examine their own proceedings, they will readily consent to correct their errors.

It will be impossible at this time, to go as fully into an examination of the report as I could wish, and I shall be compelled, from the peculiar situation of the House, to confine my remarks to those parts which are the most prominent.

The first object which has received the animadversion of the committee, is the expense of removing the Executive officers and their clerks from Philadelphia to the seat of Government. This expense, which amounted to $32 872 34, the committee say, " was drawn from the Treasury and expended without any legal authority." This is a strong expression, and ought to be very clearly supported, to justify the committee in uttering it. Let us, however, examine the authority under which the money was drawn from the Treasury, in consequence of a decision of the accounting officers of that department, and it will not be doubted but that the law has made it the duty of those officers to decide this very question; nor will it be contended that the decisions of the accounting officers, fairly and honestly made, are not a sufficient justification for the payment of all public accounts. How, then, can the committee say that these moneys were paid without any legal authority, when it is certain that these accounts of expense were regularly presented and allowed by the tribunals who were authorized and directed by law to decide upon them? I should ask the committee, under what other authority than the decisions of the accounting officers, can money, in strictness, ever be legally paid at the Treasury? It is not, certainly, in the power of the House of Representatives to audit the public accounts, or to reverse the decisions of the accounting officers, much less are a committee of the House clothed with any such powers. If the committee, instead of deciding over the head of the regular tribunals, had told us the whole truth upon this point—if they had explained the power of the Treasury Department, and stated the fact, that this department had regularly admitted and paid the accounts, it is certain that the opinion which they have reported would have appeared without any foundation; and although it might remain a speculative question with individuals, and some might be of opinion that the decision of the Treasury was right, and others might believe it to be wrong, yet all parties would concur in the opinion that the decision was conclusive, and the money paid in consequence of it, was paid under a legal authority.

If, however, we indulge ourselves in revising the Treasury decision upon this question, I am inclined to believe that we shall find it correct. The law of 1790, which fixes the permanent seat of Government, provides, "that the offices attached ' to the seat of Government shall be removed to ' the District of Columbia on the first day of December, 1800, by their respective holders," and declared that the necessary expense of such removal should be defrayed out of the duties on imposts and tonnage. By this law, the holders of the offices were directed to remove them, and the question is, how and to what extent was the removal to be made? It will be admitted, I presume, that the offices were to be removed in an efficient manner, that is to say, in such a form as to enable the Executive departments to perform their duties without delay at Washington. The officers, in removing their offices, were certainly obliged to remove themselves, for they held the offices in their own persons, and the operation could not be performed without their personal removal. Nor could the offices be removed in such a form as to perform their duties at the seat of Government without carrying along with them the clerks; the clerks were attached to the offices, and without them, the offices could not be said to be efficiently removed. It would then, I think, result from this view of the subject, that the direction of the statute to remove the offices, necessarily gave an authority to remove every individual connected with the offices, and whose services were necessary for transacting the public business. And if the individuals were to be removed, I should presume that no doubt could exist but that they must and ought to be removed in such a manner as to render their situation comfortable in this place—I mean with their families and furniture; and whether they transported a trunk too much or not, would be an inquiry too contemptible to occupy the attention of the House.

What induces me to think still more favorably of the decision of the Treasury, is the strong equi-

ty on which the decision rests. It is, at this time, well understood, and, indeed, settled, by the act of the present session, that the allowances to the Executive officers and clerks was fixed upon the principle of their remaining permanently at one place, and nothing has been, or now is, included in the regular compensation of those officers for the extra expense of travelling on public business from one place to another; such extra expense must, in the nature of things, be compensated by extra allowances; and, although it is true, as the committee say, that the officers and clerks were at this time receiving their pay from the Government, yet they were only receiving the usual compensation, which was not higher than the same grades of officers receive at this time. Can it, then, be doubted, when the Government required these officers to incur the extraordinary expense of removing one hundred and fifty miles, with their families, that the extra expense should be discharged by Government, whether that expense consisted of losses, resulting from the removal, or charges of travelling? Finding, then, the legal decision and the equity of the case so strongly against the committee, I think myself warranted in saying that this part of the report is erroneous.

It is further to be remarked, that the committee have not explicitly declared by whom these payments were made, but the report is so expressed as to leave no doubt that the committee intended it should be understood that the payments were all made under the former Administration, whereas the fact I believe to have been that, although a greater proportion of them were made under the former Administration, yet that some payments were since made; and if my information is correct, and I trust it will be found so, for it is derived from the most authentic source, one advance was made by the present Secretary of the Treasury by a warrant on the Treasury, even before the account of the individual was settled or allowed. This circumstance is important, inasmuch as it furnishes a recent precedent to justify the former decision, and will induce the committee to examine their proceedings with more caution, when they find that, in condemning the former Administration, they are at the same time implicating their friends; for it will not be contended, I presume, that if, as the committee say, no authority existed for this expenditure, the precedent of the former Administration could justify the advance made by the present Secretary.

The next important object which the report has noticed, is the accounts in the War and Navy Departments. Upon this subject the committee say, there remains in the War Department more than three millions of dollars "unaccounted for or not yet settled," and in the Department of the Navy more than four millions, "an unaccounted for or unsettled balance."

This statement, although it does not contain any explicit charge against those departments, yet it is so expressed as to countenance those infamous falsehoods which have appeared in certain newspapers, charging the departments with the embezzlement of the public money. A charge which the committee certainly did not intend to countenance. The report ought to have been more explicit upon this point; the committee ought to have explained what they intended by "balances unaccounted for or unsettled." I take the liberty of declaring that, although in point of form it may be true, that these sums remain unaccounted for, yet, in fact, nothing comparable to it exists. The mode in which business is transacted in the offices of the accountants of the War and Navy, I understand to be this: whenever a sum of money is advanced to an individual, he is immediately charged with it; and although it may have been advanced for services actually rendered, or supplies furnished, yet nothing is passed to his credit till a voucher is produced for every item in the account, and the account, although nothing is due upon it, remains unsettled, and, in the sense of the committee, a balance unaccounted for. In this manner, these millions mentioned by the committee are principally made up. For instance, in the War Department, the account of the Quartermaster General remains unsettled to the amount of nearly nine hundred thousand dollars; his account, however, has been rendered, accompanied, as I understood, by vouchers which cover the whole amount, but in consequence of some dispute or uncertainty respecting a small part of the account, it remains open, and the whole of this large sum has gone in to make a part of the balance unaccounted for in the War Department. Other accounts are in the same situation, and it is from such facts that the committee have thought themselves justified in declaring that these balances remain unaccounted for.

In the Department of the Navy, although, from the causes which I have mentioned, there remains a great number of open accounts, amounting to more than four millions of dollars, yet the accountant declared to the committee that vouchers had been transmitted to the office, covering the whole sum, except about five hundred thousand dollars; but the accounts were not settled, nor the vouchers carried to the credit of the particular accounts, because the mode of settlement did not warrant the entry of any credit until every item was covered by a voucher. The accountant further declared, that this sum of five hundred thousand dollars consisted principally of moneys recently advanced for the current service, for which vouchers were constantly coming in, and that on winding up the whole account of that department, he was persuaded that Government would not sustain losses to exceed ten or twelve thousand dollars.

Under such circumstances, can it be imagined that the committee were justified in talking about millions unaccounted for? Or, if they thought proper to do it, should they omit to explain, in a more ample and satisfactory manner, their meaning? Ought not the facts which I have mentioned, on every principle of fairness and truth, to have been annexed to that report! If this had been done, it would have appeared that the disbursements of the War and Navy Departments

were made with so much attention and good fortune, that the losses of the Government have been less than are generally experienced by merchants in transactions of equal extent.

It is said, that the documents which attend the report will explain this point. I must be permitted to say that the report will be published in every newspaper, (for which purpose it appears to be principally intended,) whilst the voluminous documents will be very much confined to the members of this House, and never read by those who will read the report.

Again, the committee say that four navy yards were purchased without authority, and the money misapplied which was paid for them. In my judgment, this is one of the most extraordinary opinions ever pronounced. The facts which gave rise to the purchase of the navy yards were as follows: In the year 1799, Congress authorized by law the building of six 74-gun ships, and one million of dollars was then appropriated for that object, and for building six sloops-of-war. The Secretary of the Treasury found that the committee ought to have understood that ships could not be built either in the air or upon the water, and as he was directed to build the ships, that he must, of course, procure land to place them upon, and that the land must be either purchased or hired. He found that there was not a navy yard within the United States calculated for building ships-of-the-line, and that the expense of preparing yards upon private property would be lost the moment the ship was launched, and of course that this would be bad economy. Experience had likewise taught him, that the better mode would be to purchase the ground, as it would then remain at the control of the Government, so long as it was wanted, and the improvements would be saved. This course was accordingly pursued, and I believe that few gentlemen, except the committee, will conclude that it was not the wisest and best. But whether it was the best course or not, it was certainly authorized by law, because it can never be seriously doubted, whether a law which directs a thing to be done, does authorize the agents to be employed to do everything which becomes necessary for accomplishing the object. The laws which have authorized the building of ships have certainly empowered the public agents to purchase timber copper, cordage, and every other necessary material, and yet no law for those objects has ever named any one of those articles. On the same principle, the law which directed the building of these particular ships, necessarily authorized the public agent to procure the ground to place them upon, although it was not said, whether the ships should be built upon the water or upon the land.

But there has been one omission in this part of the report, which, on every principle of fairness ought to be connected with it, and for which purpose the report ought to be recommitted: the omission of the letter of Mr. Stoddert, late Secretary of the Navy, explanatory of the purchase made by him of the navy yards, addressed to the committee, in answer to an application made by them upon this subject. This letter contains, in my opinion, a complete justification of that transaction, and was so viewed by the minority of the committee, who urged that it might, at least, be included in the report; but, to our astonishment, the minority refused this justice to the man whom their report had implicated. This opinion of the majority, in respect to the propriety of including Mr. Stoddert's letter, I must believe, will remain a solitary one, for I can scarcely imagine it possible that any other gentleman in this House would have refused, when they presented a charge against this gentleman with one hand, to offer with the other his vindication, written at their own request. If, however, the motion to recommit should prevail, I will then move an instruction to the committee, which will produce Mr. Stoddert's letter.

The committee have likewise thought proper, in general terms, to censure the expenditure for erecting the public buildings on the banks of the Schuylkill, near Philadelphia. They do not say whether the money expended upon that object was authorized or unauthorized; they only say, that the expense, which amounted to about one hundred and fifty thousand dollars, could not be justified. Without troubling the House with any comments upon the propriety of this conduct of the committee in passing the bounds which their appointment had limited, and erecting themselves into a board of censors, to condemn every expenditure which did not please them, whether authorized or not, I must be permitted to say, that nothing, in my judgment, could excuse them, if they took this course, in suppressing the facts which led to the erection of those buildings.

That the expense was justified by law, I presume cannot be doubted, when the object and the nature of the appropriations for the Military Establishment are considered. And as to the extent of the expense, it is a point about which gentlemen may probably differ in opinion. For my own part, I readily acknowledge that I am not a competent judge, nor do I believe (I speak with great deference) that the majority of the committee possess sufficient experience to decide the question. The former Secretary of War, who commenced the buildings, (Mr. McHenry,) was certainly a man of liberal mind and of large and extensive views, and disposed to found every permanent establishment upon a scale which should in some measure comport with the future prospect of this country, and prove them to be the establishments of a nation, and not of a petty corporation. The circumstances which induced the War Department to commence these buildings, I have understood to be, (without having received, however, any particular information in relation to the fact,) that the military stores at Philadelphia were at that time stored in private buildings without the city, and exposed in those situations to fires and accidents; that Philadelphia being one of the finest mercantile towns in this country, rendered it convenient to collect stores at that point, and being at the same time sufficiently inland to be secure from any foreign attack, and withal some-

what central, it was desirable to render the collection of military stores extensive, and to establish what may be now called an arsenal at that place. To accomplish these objects, and for other military purposes, the buildings were commenced on the Schuylkill. And being disposed to place more confidence in the Secretary of War than in the committee on this point, I can see nothing at present which proves the building to have been unnecessary or too extensive, and I think it highly probable that the founder will hereafter derive more honor from commencing them than the committee will receive from censuring the measure.

What renders the report of the committee still more extraordinary, both in respect to erecting the buildings, and also the purchase of navy yards, is, that another subject, resembling these in principle, was before the committee, and on which they refused to report. This was the erecting of the extensive navy stores in this place by the present Administration.

The present Secretary of the Navy was requested to inform the committee when those stores were erected, and from what fund the money had been taken. His answer satisfied the committee that the stores had been erected by the present Administration, and that the money, if I recollect correctly, had been taken from an appropriation for the 74's, navy yards, and docks. The minority of the committee believed, what I trust will be generally believed by those who examine the question, that this was (to say no more of it) at least as doubtful an expenditure as that for the purchase of navy yards, or for erecting the buildings on the Schuylkill. If an authority to build 74's, to complete navy yards and docks, gave an authority to erect stores for the accommodation of the navy, it was thought that an authority to build ships, necessarily included a power to procure the land to place them upon; and that an authority to purchase military stores and to manage the affairs of the army necessarily included a power to furnish, at the public expense, buildings to cover the stores, and for other necessary military purposes, at the discretion of the officers entrusted with those concerns. The minority of the committee, therefore, urged to include this transaction in the report, together with the letter of the Secretary of the Navy, but the request was rejected by the majority. We believed that the cases were precisely similar in principle, and that it was not conducting with impartiality to include the one without the other; and we have thought that when it was discovered that the present Administration was conducting on principles precisely similar to those of their predecessors, it would greatly tend to satisfy all parties that the conduct of the Government had been correct. I feel no hesitation in declaring that, in my judgment, the present Administration were authorized to erect the navy stores, although I believe that the power may be better questioned than it could be in the other cases. These navy stores, I presume, are useful both for receiving the necessary materials for ship building, and securing the stores of the public ships laid up in ordinary; and although not expressly authorized by the words of the law, may very well be considered as a proper appendage to a navy yard, or as buildings rendered necessary in the finishing of the 74's; and as to the extent of the buildings, I am content to leave that point to the Department to which it has been confided. The propriety, however, of including this statement in the report (I trust) will be apparent to the House, and it will not in this place be thought correct to confine our criticisms exclusively to the past Administration. I therefore urge this as a further reason for recommitting the report.

The committee have likewise mentioned the payment of about two hundred dollars to some persons at Georgetown, on account of a house which had been hired in that place by Mr. McHenry, the former Secretary of War. If the committee believed it proper to trouble the House with this trifling transaction, they ought to have stated every circumstance which attended it, and the House could then decide (if, indeed, it was proper to decide at all) whether the payment was rightly made or not. Since the committee, however, have not done this, I beg leave to state what I have understood to be the circumstances under which this payment was made.

In the Spring of 1800, whilst the Government remained at Philadelphia, Mr. McHenry was Secretary at War, and being obliged to prepare for removing his office, agreeably to law, to the permanent seat of Government, he found it necessary to engage a house in Georgetown, in the vicinity of the public buildings, for himself and family. After this was done, and without any previous notice, he was compelled to resign his office, by a request from the President, which in such case may be considered as a command. The house, of course, became useless to him, and the person of whom he hired it claimed either rent or damages, and, upon a reference, the sum of about two hundred dollars was awarded. It is obvious, from this statement, that the expense was incurred by Mr. McHenry in consequence of being Secretary of War; that it was an extra expense, arising entirely from the order to remove from Philadelphia to Washington, and that it was a dead loss, produced by these causes, and for which Mr. McHenry did not receive the benefit of a cent. Under these circumstances, it was decided that Government ought to pay the loss; and if the committee had given us the facts, it is highly probable that the House would be of opinion that the decision was right.

Much has been said by the committee respecting a payment to Mr. Tracy for his services and expense in visiting the Western posts in the Summer of 1800. And here the committee have again, in the usual manner, excluded from their report the cases which have arisen under the present Administration, and which compare in principle with the case of Mr. Tracy.

It is objected to the employment of Mr. Tracy and the payment to him, because he was at that time a Senator of the United States, and by the

Constitution no member of the Legislature can hold at the same time an Executive office. But the case of Mr. Dawson, who was sent to France with the convention, compares essentially with the case of Mr. Tracy. Mr. Dawson continued in the employment of Government under that agency, and received his pay, after he was elected a member of this House. His account was before the committee, and it appeared that he was paid up to the month of October. And surely the Constitution has made no distinction between the members of the House and of the Senate. If it was right and Constitutional to employ Mr. Dawson on one agency, it was equally so to employ Mr. Tracy on another.

It is likewise objected to the account of Mr. Tracy, that his agency continued up to the commencement of the last session of Congress, and he was paid accordingly, and that in his account, as a Senator, he has likewise been allowed what is usually called travel from Litchfield to Washington, by which means he received (it is said) wages as an agent and travel as a Senator at the same time. But the committee forgot to include the cases of the new Senators who went from this House into the Senate last Spring. Mr. Stone of North Carolina, Mr. Sheafe of New Hampshire, and, I presume, Mr. Muhlenburg, also retained their seats in this House until the 3d of March, and they received their pay up to that time, and their travel at the commencement and at the close of the session; they went the next day into the Senate, and the two former, and probably the latter, received during that short Senatorial session their travel to and from the seat of Government. If it was right to allow those gentlemen what the committee would, I presume, call double pay, it cannot be objected to in the case of Mr. Tracy, who was employed as an agent up to the commencement of the session, entitled to receive his pay as such, and likewise entitled to his mileage as a Senator upon the settlement of that account.

I have not, however, been able to discover that either of these cases are repugnant to law. The Constitution declares "that no person holding any office under the United States shall be a member of either House during his continuance in office." An office can only be created by the Constitution or by law, and there is neither a law or a provision in the Constitution creating an office in which either Mr. Tracy or Mr. Dawson was employed. The employment in which they were engaged was a mere agency, and could not with more propriety be called an office than the employment of purchasing bills for Government, upon commissions, or the building of a light-house upon contract. I cannot, then, see any Constitutional difficulty in either of these cases. If, however, any such objection did exist, I should rather suppose that the right of a Senator had become vacated, belonged exclusively to the Senate, and that the business of investigating the right of the members of this House to their seats belonged to the Committee of Elections.

The objection to what is called double pay, appears to arise from an inattention to the language of the law on this subject. The law fixing the compensation of members of the Legislature does not say a word about travel; the words are: "Each Senator shall be entitled to receive six 'dollars for every day he shall attend the Senate, 'and shall also be allowed, at the commencement 'and end of every such session or meeting, six dol-'lars for every twenty miles of the estimated dis-'tance, by the most usual road, from his place of 'residence to the seat of Congress." The same expressions are used with respect to the members of the House, changing only the names. When a member, then, takes his seat in the Senate, he is entitled to his six dollars for every twenty miles of the estimated distance from his place of residence, let him come from what employment he may. It would, therefore, have been a mere affectation in either of the Senators to have refused this allowance, because in one case they had been engaged in the House of Representatives, and in the other, the gentleman had been employed in transacting business for the War Department. I am, therefore, inclined to believe that the decision in the Senate, which settled this allowance, was correct. I have not mentioned either of these cases with the remotest view of censuring the gentlemen who have been named, but finding a strong similarity existing between them and that of Mr. Tracy, I was compelled to refer to them to show a corresponding practice under the present Administration with that which has been so severely censured by the committee.

I have already mentioned that the case of Mr. Dawson was before the committee, and I will now state that the minority, seeing the strong similarity of his case with that of Mr. Tracy in one important feature, urged to include it in the report, but the majority, by the usual decision, rejected the proposition.

I might go into an examination of every part of the report, but at this late hour, and at the close of the session, I shall scarcely be excused for saying more than is absolutely necessary to explain my motion, and this I trust has already been done.

I have said that the report is erroneous both in facts and in inferences. By the erroneous statement of facts, I principally mean that the facts are not fully stated; that those facts are generally omitted which would most strongly repel the censures which the committee have bestowed upon the former Administration and upon individuals; and I have been always taught that partial statements are misstatements, and that the suppression of truths necessary to be known is as erroneous as the uttering of falsehood. I repeat again, that I have not the smallest intention of charging the committee with drawing up intentionally a partial or erroneous report, but such I think, and trust I have proved it to be, and I must expect from the candor of the committee, when they review their own work, they will unite with me, in the motion for recommitment.

There is one consideration, attending this transaction, which has been already alluded to, and

which ought to impress itself strongly on the House; it is the division under which this report was made. Is it possible, that gentlemen can believe, that a report attended with such circumstances, and so many objections, can be respected? Will it not be considered as the result of party violence, and calculated to agitate the public mind, rather than to elucidate any salutary truths? But I will not enlarge upon these topics; I have in some measure explained my motion, and submit it to the House.

Mr. Nicholson had very little inclination, at this time, to enter into an explanation of this subject, which had been so misunderstood by the gentleman just up, on account of indisposition, nor was he very anxiously opposed to the recommitment, but he could perceive not a shadow of reason why the report should be recommitted.

The gentleman had grounded his motion upon the opinion, that all the necessary facts had not been stated. It was, to be sure, a very late period of the session, and the discussion would therefore consume much precious time; but notwithstanding that, if it should appear that any material facts had been suppressed, there would be good ground for recommitting the report. He should therefore think it necessary to test the grounds advanced, to prove the necessity of the recommitment.

1. It was first stated in favor of the motion, that the expense attending the removal of the Government was a duly authorized expense, because it had been passed by the accounting officers of the Treasury. But the real question is, were those accounting officers authorized to pass this account? In the examination of this question, the committee referred to the act of 1790, section six, in which are these words: "And all offices attached to the said seat of Government, shall accordingly be removed thereunto (Washington) by their respective holders." The question which occupied the committee was, what expense this act was intended to cover. In recurring to the documents, the committee found that $15,000 and odd was paid for removing the furniture of the offices, &c. This the committee did not think an unauthorized expense, because the law empowered it. The books, furniture, records, papers, &c., of the officers, and of the President, they thought the law authorized the removal of; but the committee could see no authority for paying $32,000 for the removal of the heads of departments, their furniture, their clerks and their families and furniture; they could see no reason, for paying to the clerks, &c. for their broken glass, and china, their tavern expenses, and what is called their dead house-rent in Philadelphia. The committee saw no reason, for saying these accounts were passed at the offices of the accounting officers, because it must be well known, that no account could be paid until it had been so passed. The only question which occupied the committee, was, to inquire whether the money so paid was duly authorized. Whether, for instance, one officer for breaking a looking-glass—another a piece of china, &c.—another to receive his house rent—another get his expenses paid, to come here to look after a house, and his tavern expenses while here, were the expenses within the meaning of the law above quoted? Facts of these kinds appearing to the view of the committee, they were bound to express an opinion upon them, for they did not think the accounts were legally passed. The law merely authorized the necessary expense for removing the public offices; it did not authorize the Secretary of the Treasury to be paid five hundred dollars for the removal of his family and furniture, nor the Secretary at War seven hundred dollars. Several others also received as much as five hundred dollars, and thence, from the heads of the departments, down to the clerks, to fifty dollars. The committee did not mean to implicate the characters of these gentlemen for receiving the public money, but they considered it their duty to disclose facts, and to declare that they did not believe the expenditure legally authorized.

The second observation the gentleman made was, from that part of the report which states that an unsettled balance of four millions in the War Department, and of three millions in the Navy Department, remains. He says it was the duty of the committee to have stated, that almost the whole of those sums had been received, although unsettled. If the House will examine the documents accompanying this report, they will find that the sums paid into the Treasury from this large sum, have actually been passed to the credit of the departments. This the committee thought sufficient, because any man who would give himself the trouble to examine, would find that much has been settled. But the committee could not say with precision how much, because the period of the session was such as to prevent them from passing through such voluminous accounts. It would have been an extremely laborious and tedious undertaking, and therefore the committee were obliged to report briefly. The committee could not examine particularly into the items, nor form any comparison whereby to prove their accuracy or inaccuracy: they were obliged to take it for granted that those things were all right. They reported agreeably to the mode of doing business in the Treasury Department. Until the account of any individual is finally closed, let him be indebted ever so little, he is considered, in the Treasury books, a debtor for the whole of the account. In this way the committee reported, and accompanied the document with marginal notes, exhibiting where the accounts have been rendered and partially settled.

As to the navy yards, the committee having been appointed "to report whether moneys drawn from the Treasury, have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for:" and knowing that six navy yards had been purchased, very naturally inquired under what authority these purchases had been made, and how they were paid for. They referred to the law authorizing the building of six seventy-fours and six sloops of war. The committee submitted an inquiry to the former Secretary of the Navy, (Mr. Stoddert,) directing him to inform the committee as to the purchase. Mr. Stoddert answered, that a law had passed, appropriating one million of dollars for building the seventy-fours and sloops of war, and that fifty thousand dollars were also appropriated for two dock yards; and also that two hundred thousand dollars were appropriated for the purchase of timber, or land clothed therewith; and that he thought himself authorized to purchase six navy yards, wherein to build the seventy-fours. To these several laws the committee referred for the authority under which the Secretary acted, but they could find no such authority; they could find no other, than authority to purchase two dock yards, wherein to repair the ships. Now, although not stated in the report, there is very good reason to believe that the fifty thousand dollars never was laid out upon the two dock yards, but that this sum was cast into the surplus fund. Whether Mr. Stoddert's opinion was correct or not, that it would be more economical to build the seventy-fours in public yards, than in private yards at rent, the committee were not appointed to inquire; it was their business to say whether he was authorized to act so, let his private opinion be what it might. The committee were clearly of opinion, that he was not authorized to take money appropriated for one purpose and make use of it for another.

As to the reason, why the gentleman wishes the report recommitted; to wit, to insert Mr. Stoddert's answer with the report; it is true a motion for the insertion was made. But the committee thought that letter was addressed to them, and not to the House; that it was to inform their minds, so as to enable them to make the report. They paid due attention to the reasoning of the letter, but it did not convince them that Mr. S. acted authoritatively. Mr. Stoddert's reasoning upon the subject could not form a part of the report; the committee were called upon to form an opinion, and not to substitute that of any individual. They were to inquire whether moneys appropriated were used to the purposes for which they were appropriated. They thought it was not, because it was appropriated to build ships, and to purchase land with timber on it, or timber alone. The question then is, whether six navy yards are six seventy-four gun ships, and whether six sloops-of-war are lands with timber growing on it or not? If Mr. Stoddert's reasoning had been adopted by the committee, it would have become their reasoning, and except it should be theirs, it would have had no business in the report. If a disposition of vindication could have been admitted, Mr. Stoddert might have been permitted to have appeared with counsel before the committee, but facts alone were required, and facts the committee state. Ships had been built for the public before, but the idea never was entertained to build docks for them. No measure different from those taken in the building of the frigates, except by legal authority, ought to have been taken with the seventy-fours.

The military arsenal at Philadelphia, the gentleman said, was built to keep the stores in with more safety, than they could be kept in private stores, in the neighborhood of which frequently fires occurred. All this might be truth, but if these were facts, Mr. Nicholson would ask, why were not Congress applied to, to say whether they would take the risk, or whether build stores, for the more safe deposit of the public stores? But the money which built this military arsenal or laboratory, (more properly,) he believed it would be found was taken from the Quartermaster's department. Now, was it ever thought, that this fund should supply resources to build a laboratory? Was the Quartermaster's department ever appropriated to, for other than the purposes expressed or intended? No laboratory can be built, but by the authority of the State where erected; but where is the State authority, or where the appropriated fund for this purpose? Upon examination, the committee could see no authority to appropriate or apply public money for this purpose, and yet they found that one hundred and thirty-five thousand dollars were taken from the Quartermaster's department for this military arsenal! The committee could see no authority for the expense, and that fact they have stated.

As to the resignation of Mr. McHenry, whether voluntary or at the request of the President, the committee saw no reason why the Government should provide the house for Mr. McHenry at Georgetown. It might be supposed that neither that officer, nor his friends, would have thanked the committee for reporting any reasons, which might have caused his removal from office:—they had nothing to do with it, having no document upon the subject.

The account of Mr Tracy is next vindicated, and all the gentleman appears to regret here is, that Mr. Dawson's account is not inserted in the report. One general answer might be given to this. It was believed by a majority of the committee that Mr. Tracy did receive money from the Treasury improperly, but it never has been suggested that Mr. Dawson did so, and therefore there is no comparison of the cases. Nay, it was said by the gentleman himself, (Mr. Griswold,) that he did not blame Mr. Dawson. The committee saw a most material distinction in the cases. At the time of Mr. Tracy's appointment, he was a member of the Senate of the United States At the time of Mr. Dawson's appointment, he was a member of neither branch. Mr. Dawson received his warrant of appointment some time in March, but he was not elected to fill a seat in this House till the end of April, and then he was on his mission. His functions of member of Congress had ceased before his appointment, and his appointment took place before his re-election. Again, Mr. Dawson received no pay after some time in October last, which was some months before the sitting of the House. On the contrary, Mr. Tracy received his pay of officer, or agent, or whatever he was, for seventeen days after the sitting of the Senate; so that he was paid as a member of the Senate, and as an officer at the same time. The committee could not discover the cases as parallel to each other, and therefore did not insert the

case of Mr. Dawson, which was moved by the minority.

Several other cases were also mentioned—those of Mr. Sheafe, Mr. Muhlenberg, and Mr. Stone; but whether they were as represented or not, they were not brought into the view of the committee; otherwise there would have been an inquiry.

Mr. GRISWOLD.—I did not mention the case of General Muhlenberg, nor did I charge the other gentlemen with improper conduct: I believe they were strictly warranted to act as they did. I merely stated the reference for the purpose of showing that Mr. Tracy was entitled to the compensation he received for travel, as well as the others, because it has been a long-standing rule of the Senate to allow the travel in such cases. It is not our province, therefore, to object to it. Respecting the decision of the Senate, I wish not to oppose it. And being no uncommon case, there is no necessity to bring up that of Mr. Tracy, whom I consider entitled to his travel, both as an agent and as a Senator.

Mr. NICHOLSON observed, that not being brought before the committee, and he not having heard of the case till this day, it could not be a reason why the report should be recommitted.

The case of the navy yard at this place was brought before the committee. It was the request of the minority that the case should be inquired into. The committee sent to request the Secretary of the Navy to say by what authority the storehouse had been erected here, or from what fund it was paid. The answer was, that the storehouse had been erected out of a fund granted in February, eighteen hundred and one, for completing the seventy-fours, the navy yards, and the docks. The ships had been ordered to be laid up in ordinary at this place, and the navy yard purchased. When the present Secretary of the Navy came into office, he found, that as a navy yard was to be completed here, and as sails, rigging, and other naval stores, must be kept here; and finding that one storehouse was already built, and another begun, here, it would be most prudent to complete that storehouse, as a necessary appendage to a navy yard where shipping would be sent for repairs. To this none of the gentlemen objected, but rather approved; and this is surely a purpose to which the money was appropriated. Whether the other applications are or not, is for the House to decide. The committee have stated the facts.

Mr. DAWSON said, he did not rise to answer the gentleman from Connecticut, (Mr. GRISWOLD,) because he thought that had been ably done by the gentleman last up, and because his observations did not command that respect; but he rose to prevent any improper impression, which the misrepresentations of that gentleman might possibly make respecting himself. The gentleman stated that a member of this House was appointed to an official station on a foreign mission. As stated by the gentleman from Maryland, I did receive the appointment some time last March, said Mr. D. During my absence, the people of my district elected me a member of this House. Some time in October my business was closed. I arrived here some time in January, but did not receive salary as a member till some days after my arrival, and till I had taken my seat. This is well known to that and every other gentleman. Every gentleman must also know, that I could not be a member of this House until I took my seat, and therefore I could not have been appointed to, or held my seat, while exercising the business of the nation abroad. I must therefore say, that unless the other observations of the gentleman (Mr. GRISWOLD) are better founded than his relation of facts, they deserve very little credit indeed.

Mr. R. WILLIAMS always thought that a motion to recommit a report was grounded upon the insufficiency of that report as to facts. But he had hearkened with much attention, and had not discovered any arguments built on a misstatement of facts. If no facts are misstated, then the motion must necessarily fall. That the committee have not given a full and ample report upon the account, is admitted in the report; they say that the business was of such a nature, that it was not in their power, during their limited period, to do it. It was not uncommon, or contrary to rule, for committees to report in part, and this might be taken as a report in part. Did the gentleman mean to say, that no report ought to have been made, till all the subjects upon which the committee might have turned their attention had been fully examined? The committee have said, that there are many things which they should have investigated if they had had time. It is not certain, for instance, to what length the construction of the laws have been carried. The gentleman has said, that a certain construction has been put upon laws making certain appropriations, and this House has nothing to do with it. With this we cannot agree as a Legislative body, because if this length can be admitted, anything can. However men might differ in committees, it is for the House to determine on the facts stated in their report. Here the committee have reported certain facts: they have brought into view the uses to which certain appropriations were applied, to support which they have produced documents, so far as they were able. It is for the House, upon a view of these facts, to say whether or not the moneys have been applied to their proper uses, as directed by law. Upon this single point, he thought the question turned, whether or not these facts were misstated; if not, there could be no ground for a recommitment.

Mr. BAYARD.—I flatter myself, though perhaps vainly, if this report be recommitted, it will assume a very different shape, both in form and substance, upon its appearance at a subsequent session. The report, though the long work of near half a year, is extremely immature and incomplete. Having been a member of the committee, although of the minority, I have a right to suppose myself acquainted with its proceedings. It was impossible, from the course pursued, for the committee to have any correct knowledge, or certain opinion, as to the results which compose their report. We had no time to compare them with the details contained in the documents transmitted to us from the offices, and from which they were derived.

Gentlemen may consider me, if they please, as speaking only of the minority of the committee, for I can speak with certainty only in relation to them. Though the committee existed for more than four months, the report which has been made was not the subject of consideration half the number of days. We had notice one evening to meet the next morning at ten o'clock to receive the report of the committee. I was astonished. The committee had directed no report to be drawn up, they had agreed to no fact, nor resolved upon any principle. We were summoned to meet at the hour to which the House was adjourned, and of consequence had no more time for our deliberation, than the period of grace, between the nominal hour of adjournment and the actual time of the House being called to order. The report was produced and once read. There was not time to compare the statements made with the documents referred to. Our opinions were immediately called for upon the report, as the intention was to present it that morning to the House. Upon a great part of the report, it was impossible for some of us to form so hasty an opinion; but there were some things obviously exceptionable. I shall not be considered as finding fault with the chairman of the committee—I presume he considered himself as conforming to the ordinary course of proceeding. Some of the exceptions which occurred to us, upon the cursory reading of the report, were stated. I will not say that a word was not corrected, but no material change was suffered. Observing that the official conduct of Mr. Stoddert was deeply implicated in the report, we urged that common justice required, that as Mr. S. was on the spot, that we should hear his defence, before we passed our judgments upon his acts. Upon this point the minority was joined by the chairman, and a letter was in consequence addressed to the late Secretary, requesting him to explain the grounds from which the authority was derived to make several disbursements. He was allowed till next morning to furnish an answer to the committee. At our meeting the ensuing day, Mr. Stoddert's answer was received. He had been manifestly hurried, but to the minority of the committee the answer was entirely satisfactory. We endeavored to vary the report accordingly, or at least to have the Secretary's letter annexed, and referred to among the documents. The attempts however were overruled. It occurred to us at this time, that we were bound to observe at least the same appearance of justice in relation to Mr. Tracy, whose conduct was the subject of our animadversion, which had been shown in respect to Mr. Stoddert.

It was therefore insisted, before the report was made, that Mr. Tracy should be allowed an opportunity of explanation. The chairman so far complied with the wish of the minority, as to agree that the report should be shown by a member of the committee to Mr. Tracy, and his answer waited for till the next morning. Upon the third day we made an effort to introduce into the report several cases, which had occurred under the present Administration, which the minority considered as standing upon the same ground with acts of the former Administration, which were condemned in the report. The effort was vain. The cases we referred to were distinguished by the vote of the majority from those which were stated. After one or two small amendments, the report was offered for our agreement, and adopted by four against three. The same morning the chairman presented it to the House.

I have made this statement in order that the House may be acquainted with the ground upon which I undertook to assert that the report was immature.

It was impossible, in the time allowed us, to weigh the evidence of facts, to consider the soundness of principles, or to examine the correctness of statements contained in the report. It will be perceived by those who are accustomed to the forms of proceeding upon committees, that our course has been entirely novel. It was usual heretofore for a committee to agree upon the substance of their report, and then to instruct their chairman to draw up a report in conformity to their opinion. In the present instance our opinions had not been asked, upon any point embraced by the report, before it was offered to us in its complete form.

If the points and cases which the report contains had been separately brought under discussion, they would have been more fully investigated and considered, and the result might, in consequence, possibly have been varied. As it regarded myself, this new mode of proceeding was a complete surprise. I had concluded, from everything which fell under my observation, that the intention of making a report was entirely abandoned. This inference was drawn from the small impression which had ever been observable from any discovery which the committee had made, as well as from the omission of any consultation which usually had been preparatory to a report. It would have been difficult for any of those to have conceived that such a report would have been made, who had never previously, from any one member of the committee, heard that any act of the Administration had been discovered worthy of being made the subject of our censorial power.

I see it stated in the report, that from the year seventeen hundred and ninety-seven to the year eighteen hundred and one, inclusive, a sum was advanced by the Treasury, chargeable to the War Department, exceeding ten millions of dollars, of which upwards of three millions remains unsettled or unaccounted for. And that from the year seventeen hundred and ninety-eight to eighteen hundred and one, a sum exceeding nine millions has been advanced on account of the Navy Department, and a balance unaccounted for, or unsettled, of more than four millions now remains. This statement may be warranted by the mere form in which the balances were transmitted to us, but is calculated to make the most erroneous impression. When the document containing the balances was sent to us, no one supposed it to afford any light, as to the objects of our investigation, or to furnish any complete information, upon which

an opinion could be formed as to the money due to the United States. The face of the document itself, attests, that of the sums stated to be unsettled, the greater part had in fact been accounted for, and the formal closing of the accounts not having been considered very important either to the Government or to the individuals, they have remained open from the most trivial impediments. It would seem, from the mode in which these balances are sustained, that if one hundred thousand dollars have been advanced on a contract and ninety-nine thousand nine hundred and ninety-nine have been accounted for, yet the whole balance will appear to be due, till a voucher is produced for the last dollar. It appears also, in the face of the document, that balances are in some instances stated due to the United States, where it is manifest that the sum stated as a balance was a payment of a debt due from the Government. Many of the items, are money paid to the officers of the Army and Navy on their account of pay and subsistence, where the money was due for services. Nay, there are cases where money has been advanced on account, and afterwards, upon the inspection of the vouchers, the balance ascertained and paid, and yet, from the account not being formally closed, the whole sum appears and is reckoned among the balances due to the United States.

More than four millions are stated as unsettled balances upon the transactions of the Navy Department. I remember well, when we were in the office of the accountant of that department, the accountant stated it as his opinion, that the Treasury was not in advance for the department more than five hundred thousand; and that from his knowledge of those advances, he did not think the United States would lose ten thousand dollars, upon all the transactions of the department. I was struck with the information, knowing that the contracts of the Government are formed and executed by advances, and considering that ten thousand could be deemed but a very small loss upon an expenditure of ten millions of dollars. I considered it as an example of skill, vigilance, and success in the management of the public affairs, that is rarely afforded even in the conduct of private concerns. What has been remarked with respect to the Navy, equally applies to the War Department.

The aggregate balance of near four millions, stated as unsettled or unaccounted for, in the report, is composed of items, which, explained by the notes annexed to them, appear chiefly to be accounted for, to the satisfaction of the War Department. One item, which enters into the general balance, is a sum exceeding eight hundred and eighty thousand dollars. It appears that General Wilkins has furnished vouchers for the whole amount of the advances made to him, but has not furnished accounts for a small quantity of public property sold on the Ohio, (I believe some boats,) and therefore the account is not closed, and the whole amount ever advanced to him is computed among the unsettled balances. I understood the accountant was satisfied with General Wilkins's accounts.

Mr. Nicholson—The gentleman says the accountant of the War Department was satisfied with the accounts of General Wilkins. I did not understand the fact so—vouchers were sent on, but they were not satisfactory.

Mr. Bayard.—I know not that there was complete satisfaction, as to the manner of each disbursement, but I mean, that it sufficiently appeared that the money had been expended on the public account. Thus an unsettled account, probably less in amount than two thousand dollars, gives the appearance of a balance unaccounted for, exceeding eight hundred and eighty thousand dollars. There are numerous instances of the same kind. In the list of balances, is the sum of one hundred and twenty-two thousand dollars, charged against Captain Vance; and it is stated, in the annexed note, that it appears that the whole sum has been duly applied. So against B. Williamson is charged a sum exceeding two hundred and thirty-five thousand dollars, though it is stated that he has furnished accounts of the application of the whole sum. It is needless to cite other instances of a similar kind; those which have been shown must convince the whole House that the report is not explicit, and is extremely exposed to a false interpretation. The objection to this part of the report furnishes the strongest ground for a recommitment. It certainly cannot be the design to raise a belief, that millions of the public money remain unaccounted for, when the documents from which all our knowledge is derived show that a very small sum remains unaccounted for; and when I undertake to say, that the evidence before us is not sufficient to prove that there is a dollar due to the United States. Can it be the interest of any party in the nation, or of any member upon this floor, to destroy the public confidence in the general administration of the Government? Let the peculiar honesty of one Administration be suspected, and their successors will soon sink under the same odious suspicion. On such a subject, we should banish our partialities and antipathies, not merely as a sacrifice which belongs to justice, but as an act required by a great national and common interest. I acknowledge that this part of the report will be harmless in the hands of those who will read, and are able to understand the documents on which it is founded. But the bulk of the document will probably exclude it from the public papers, and the great number of persons who read the report will read it without explanation. The probability, therefore, of the report creating false impressions, of a nature extremely derogatory from the honor of the Government, would alone be a sufficient motive with me to vote in favor of the motion to recommit.

There are many other grounds upon which I consider the report exceptionable. It is not however my intention at this late hour (six o'clock) to enter into all the details of the report. My observations will be confined to a few prominent and important points, upon which the different members of the committee held very opposite opinions. I had no knowledge of the resolution of my friend from Connecticut (Mr. Griswold) to submit the motion on the table, before the meeting of the House this morning, and am therefore the more

gratified that the honorable mover has taken so comprehensive a view of the subject, as to render it totally unnecessary for me to go over the whole ground.

I shall beg the indulgence only of a few words, upon one or two heads, respecting which the opinion I entertain is decidedly opposed to that expressed by a majority of the committee. I cannot well conceive of a plainer mistake, than what appears in the opinion, pronounced on the purchase of six navy yards, made by the late Secretary of the Navy. The committee, I think, ought to be allowed an opportunity of reviewing that opinion. Four of those six yards are considered as purchased without authority, and the money paid for them misapplied.

By the act of the Legislature, of February 1799, the Secretary of the Navy was directed to cause to be built six ships, each to carry not less than seventy-four guns; and six sloops-of-war of eighteen guns. For this purpose, a million of dollars was appropriated; two hundred thousand were appropriated to the purchase of land, bearing timber suitable for the Navy, and fifty thousand dollars for the making of two docks. These laws, passed on successive days, indicated the design of a permanent Navy Establishment. It was perfectly understood that the ships of the line were not directed to be built for the occasional defence of the country at that period, but were intended as the commencement of a lasting system of defence, which was expected to increase with the growth of the commerce and resources of the country. It was far from our expectation that the Navy of the United States was to be limited to six ships of the line, or to any number within the convenient means of the country, short of a force adequate to render our flag respectable and our navigation secure. It was not supposed that the seventy-fours would be launched for several years, but we had hopes when they left the stocks, a flourishing commerce would enable us to lay the keels of new ships in their places. Under this view were the two hundred thousand dollars appropriated, to the purchase of land producing timber fit for a navy. With this knowledge, so plainly derivable from the policy pursued by the Legislature, what was the Secretary of the Navy to do? It was made his duty to build six seventy-fours and six sloops-of-war. It is surely not expected that they were to be built on the water or in the air, and of consequence it will be allowed that he had authority to provide yards, for the purpose of constructing them. The public had no yards, and it was therefore necessary to obtain ground from individuals. As there were no persons disposed to make charitable grants, it remained only for the United States to purchase ground in fee simple, or for a term of years, paying a gross sum or an annual rent. The act of Congress, directing the ships to be built, appropriated not a dollar either for the renting or for the purchase of land. But a million of dollars were appropriated to the building of the ships, which was directed to be done, but which could not be done without an expenditure for land. Can there be a plainer proposition, than that an appropriation for a certain service embraces every article without which the service cannot be performed? In the present instance, the service imposed upon the Secretary could not be performed without obtaining navy yards at the public expense. It therefore rested in his discretion, for the faithful exercise of which he was accountable to the Government, either to purchase or rent the ground, necessary for the yards. It was his duty to conform to the views of the Legislature, and to make such an arrangement as would be most advantageous to the public. If it answered the object, and was most for the interest of the Government to rent, then surely he ought to have rented; but if it comported more with their views, or was more to their benefit to purchase, it was then his duty to purchase.

This inquiry, however, was never made by the committee. They never asked the question whether it was cheaper to buy or to rent, and they have condemned the Secretary for buying and not renting, when he had no more authority to rent than to buy, and when by buying he has probably saved to the United States several hundred thousand dollars. The situation of this officer is peculiarly hard. Having been directed to build a number of ships for the public service, he has purchased navy yards for the purpose, and in consequence has subjected himself to the accusation of expending public money without authority. If he had rented land for the purpose, he would have been equally liable to the same reproach; and if he had neglected to do either, he would have been exposed to an impeachment. The Secretary has it fully in his power to show, that his purchases will save a large sum of money to the United States. A navy yard, for a seventy-four, cannot be prepared without great expense. Under this head, I am informed by the Secretary, that one hundred thousand dollars were expended on one frigate, the Constellation. This was occasioned in a great degree by leasing the yard. At the expiration of the lease, the public lose the benefit of all their expense in preparing and improving the ground.

In addition to the inference which the Secretary might fairly make, of an authority to purchase ground for the navy yards, if a purchase could be made on cheaper terms than a contract of lease, he had further to consider the intention, plainly manifested by the Legislature, of establishing a system which would require the use of these navy yards at a future time, beyond the duration of any common lease. Nay, he knew not what time was to be consumed in building the ships directed, and of course could not know for what term a contract could be made. At present, if the Government should be disposed to sell the ships on the stocks, they have the power to sell the navy yards, and they will have the same power when the ships are launched; and they may thus convert in effect the permanent purchase into a term for years, and restore to the Treasury the money which has been expended. But, sir, what I consider as the hardest act on the part of the majority of the committee, was their refusal to suffer the answer of the Secretary to the letter we addressed

to him, explaining the grounds of his conduct, to accompany the documents annexed to the report. We have been told by the gentleman from Maryland (Mr. Nicholson) that it was not the business of the committee to report the opinions of the Secretary, or of any other individual. If this be correct, I believe it was as little the business of the committee to report their own opinions. They should have confined themselves to the statement of facts, and upon those facts have left the House and the nation at large to form their own opinions.

If this course had been pursued there would have been little occasion to publish the reasoning of Mr. Stoddert; but, as the opinion of the committee is merely their inference from certain premises, it was due to the public, as well as to the Secretary, that the grounds should be explained which had led him to a different conclusion from that adopted by the committee. This report seems, at present, intended only for public information; certainly I must believe to give correct information. The letter of Mr. Stoddert throws great light upon a part of it, and when our object is only to inform the people on a subject, why should we refuse any light which places it more clearly before their eyes?

I shall be allowed to say a few words in relation to the case of Mr. Tracy. I am not satisfied with the opinion or the conduct of the committee in relation to it. The service rendered by Mr. T. was not incompatible with his appointment of Senator. He was employed to visit the posts on the frontiers, and to collect for the Government all the material information respecting them. This was a very delicate, confidential, and difficult service; but the employment constituted no office. It was a simple agency, confined to a single occasion, performed under instructions, but no commission. But, sir, if the case of Mr. Tracy presented anything irregular, some of us conceived that the case of Mr. Dawson, standing on the same ground, ought also to have been stated in the report. The gentleman from Maryland has contended, to-day, that there is a difference between the cases. I am sensible of the difference. The one is the case of Mr. Tracy, the other is the case of Mr. Dawson. I see nothing in it to censure, but still considering it in every material respect the same with that of Mr. Tracy, there was equal reason for making it a part of the report. The chief ground on which it has been attempted to distinguish the cases is, that Mr. T. was a Senator, at the time when he was sent on his mission, and that when Mr. D. was appointed to his, he was not a member of this House. This distinction exists, but I trust I shall be able clearly to show that it is not material. And give me leave here to tell the gentleman from Virginia, (Mr. Dawson,) that in attempting to impeach the credit always due to the statements of my honorable friend from Connecticut, the imputed misstatement arose from his own misapprehension. The gentleman from Connecticut did not mean to state that he was a member of the House at the time of appointment, but that he was a member during a period that he was rendering service under Executive instructions.

I say, sir, that the cases are not materially distinguished by the circumstance that Mr. D. was not a member at the time of his appointment, because the holding a seat in either of the branches of the Legislature, under no Administration, has been considered as forming an incapacity to receive an Executive appointment. Under the former Administrations, several instances of such appointments occur; and under the present, I need only refer to the case of Mr. Pinckney, who was a member of the Senate at the time of his appointment as Minister to the Court of Madrid. The circumstance, therefore, of being or not being a member of the Legislature at the time of an appointment, is wholly immaterial. A member of the Legislature has an unexceptionable right to receive an Executive appointment, but the question is, whether the acceptance or exercise of an office under the Executive, does not vacate a seat in the Legislature. On this subject, I have no doubt that the acceptance of an office under the Executive, does vacate a seat in the Legislature. But the question still remains, whether the employments of Messrs. Tracy and Dawson are to be considered, under the Constitution, as offices. Upon this point, there cannot be a doubt but that the appointment of Mr. Dawson was as much in the nature of an office as that of Mr. Tracy. It will be remembered, that Mr. Dawson invited his constituents to elect him, proffered his services, and engaged to be at his post, when his duty should require his attendance. He was elected in April, and virtually accepted his place from the time of his election, and yet continued to serve under the Executive, and to receive pay for his services till October following. But, sir, I do not conceive that it belonged to the committee, or that it belongs to this House, to interfere in any degree in the case of Mr. Tracy. The employment of Mr. T. was unquestionably unexceptionable. The only question is, whether the employment did not vacate his seat in the Senate? This question, the Constitutional privilege of the Senate confines to that body, and for us to decide upon it, is an invasion of those privileges. If any thing wrong has been done, which attaches blame, it is by the Senate. With a knowledge of the employment in which Mr. T. had been engaged, they allowed him to retain his seat as a member of their body.

It is stated, that Mr. Tracy received pay for mileage as Senator, while the pay of his agency continued. The compensation for travelling is governed by the law of its own nature. Mileage is due where there is no travelling. An allowance is made to members, which is regulated by the distance of the place of their usual residence from the seat of Government. This they are entitled to, independent on their coming from or returning home. When Congress adjourns, a member from Georgia is entitled to his mileage, whether he returns to his State, travels to the North, or remains at the Seat of Government.

It has been the practice in the Senate, when a

member of this House, is appointed to that body, to allow him full mileage, notwithstanding his receiving mileage, for the same travelling, from this House. This happened in the case of Mr. Stone of North Carolina, and Mr. Sheafe of New Hampshire. They were both members of this House, during the last session, and held their seats till the third of March. On the fourth of March, they took their seats in the Senate, which had been called to meet on that day. They received full mileage as members of the respective Houses. Mileage is not a compensation for service, but an indemnification for a supposed expense. A person cannot be a member of the two Houses at the same time, but for the same time he is allowed mileage by each House. If, therefore, the employment of Mr. Tracy were a mere agency, there could be no objection to his receiving his mileage, during the continuance of the agency. The discussion of this subject has been extremely unpleasant to me. It is always unpleasant to have occasion to introduce into debate the names of gentlemen, whose feelings are unavoidably excited and often injured. But considering as a defect in the report, and a reason for recommitment, the statement of a case under the former Administration, and the omission of one precisely similar under the present, I have felt myself justified, as the case of Mr. T. was stated in the report, to state the case of Mr. Dawson in the debate.

I need, sir, say very little relative to the expense attending the erection of the laboratory in the vicinity of Philadelphia. The subject has been well explained by my friend from Connecticut; the building was necessary for the preservation of the arms and stores of the United States, and the expense was therefore properly defrayed out of the appropriations for the Quartermaster's department.

The gentleman from Maryland, in justifying the erection of stores at Washington, has furnished ample authority for the erection of the buildings near Philadelphia. The public stores lately built here, are paid for out of an appropriation for making a wharf. The gentleman, however, has contended that the articles of naval equipment could not be preserved, without the covering and protection of stores, and thence he infers an authority to erect them. I am not disposed to question the soundness of the argument, but it applies with equal force in vindication of the expense incurred in erecting the stores, or the laboratory, as it has been called, which is the subject of animadversion in the report. We contended, on the committee, that the case of the stores erected in this city, ought also to be stated in the report, on the same ground with that of the laboratory, but distinctions satisfactory to the mind of the majority excluded it.

I ask pardon for having detained the House so long at this late hour. The subject is of considerable importance, and I confess I have felt not a little anxiety, to prevent a false impression being made by the report upon some points. I see no reason, which I had the means of explaining, why gentlemen should not agree to recommitment. It is not proposed to act upon the report this session. The committee confess their task is very imperfectly executed. Why send out such an unfinished work to the world? Subject it to the labor of another session. Five months were scarcely sufficient to enable the committee to unfold the papers, which they were assigned to examine. In five years they could acquire but an imperfect knowledge of the several accounts on the files of the different offices. Upon a vast subject our time has been occupied with very small details. We have looked into half a dozen accounts, and discovered a few questionable expenditures. But as to the application of the millions, drawn from the Treasury, for the service of the different departments, it is still covered with the dust of the offices.

I must confess that, according to my view, a committee is altogether inadequate to the task assigned to the Commitee of Investigation. In my opinion, the business belongs to the Secretary of the Treasury, or, if you distrust him, create a standing commission, with powers equal to the object. We were charged to examine into the accounts of all the public money, which had ever been drawn from the Treasury. Our duty confines us the greater part of the day to the floor of this House. How was it possible for a committee of seven, having everything to learn, with the fragments of their hours, to accomplish an object which would require the regular work of years? I conceive the subject, if gentlemen have serious impressions with respect to it, should be sent to the Secretary of the Treasury. He has already more knowledge relative to it, than a committee would acquire during a whole Congress; and if any important discoveries are to be made, it may safely be trusted that he will bring them to light.

Mr. Nicholson said he rose again on this subject, merely to answer the observations of the gentleman who had spoken of the manner in which business had been done in that committee. He (Mr. Bayard) said it was usual to direct the chairman of committees in what way the report was to be made, and presented for acceptance. Having very little of this kind of business to do, Mr. N. said he was not very conversant in the precise manner, but he thought it was usual for the chairman to make propositions to the committee, to call forth their attention. He knew of no way to facilitate business so much, as by bringing in a sketch of a report, comprehending the principal features which the papers before that committee exhibited. This he did on the ninth of April; other business prevented it being done sooner. The length of the report, comprehending all the principles exhibited to view, and including the balances therein drawn, and afterwards copying it, took a considerable length of time. Being then presented to the committee as mere propositions, which they might strike out or amend at pleasure, (which was last Tuesday,) it was resolved to apply to Mr. Stoddert for his answer to that part of the report concerning him. That was done. It was afterwards proposed that Mr. Stoddert's

answer should become a part of the report. This was overruled. A new proposition was then made, that Mr. Dawson's case should be made a part of the report. This the majority thought improper also. Proposition was then made that Mr. Tracy should be heard. A letter written by the gentleman from Delaware to him, for that purpose, was handed to the chairman to sign, but another gentlemen thought it better to wait on Mr. Tracy in person. This was agreed to with some amendment. The report was then postponed till the subsequent day, to hear what Mr. Tracy might say. The committee then met at nine o'clock and waited till twelve, but Mr. Tracy did not come; the report was therefore made up without hearing him. These facts he had thought proper to state, that the House might exonerate the committee from having done wrong.

Mr. Randolph said his illness, and the length of the sitting, rendered him too fatigued to proceed far in the investigation of the observations of the gentleman from Delaware, but he felt one observation so strongly merited reply, that he could not abstain from rising; he meant the particular wherein Mr. Dawson and Mr. Tracy were paralleled. He says, the difference is only in the name of the parties, but he has failed to prove this similarity. The difference is so palpable that no man can fail to perceive the dissimilarity (with the exception, I must say, of the gentleman from Delaware.) Mr. Tracy was a member of the Senate of the United States, when he received his appointment. That he was blameable for taking, or precluded from accepting it, no one will say; unless it can be proved to have been an office, created while he was a member of the Senate. But this was not the case with Mr Dawson. Mr. Tracy being a member of the Senate, I will say that his constituents had no power whatever to revoke their confidence in him, because he did not return to their suffrages. The other gentleman was a private citizen, and the act of placing confidence in him, obtained after his appointment and during his absence on the mission. This was an act for which he was not responsible to any man upon earth, and, therefore, it does not belong to this House. Another distinction in the cases is, that Mr. Tracy accepted an emolument for services rendered, at the same identical time that he was receiving his mileage as a Senator. He certainly, therefore, received double pay for his services. If Mr. Dawson had received his pay as Member of Congress, and his compensation for his mission to France at the same period, the cases would have been so far similar. But it was not so, for his foreign mission ceased long before the House sat. Mr. Tracy received emolument at that time, for an office which he could not and did not fill; and which, if he had filled, was totally incompatible with the office of Senator. This is a true distinction between the cases. The question whether a person holding an office under the Government is eligible to a seat in this House, might easily have been determined by the gentleman, and the question whether Mr. Dawson was eligible to his seat, might also have been determined by him; because Mr. Dawson, submitting to the House, when he took his seat, whether or no it was proper, was publicly invited, because it was considered that a foreign mission was an exceptionable case; and for this reason, because the person is elected by the people, when, from the nature of the case, he must be ignorant of his having been the depositary of their confidence. If, therefore, there is any objection, that objection is removed by this necessary event. But the case of Mr. Tracy is totally different: he not only received and held two commissions at the same time, but he also received the double emoluments.

With respect to the double allowance for travel, the cases of the two gentlemen were mentioned in the Senate as parallels. I will remark that this is a case that does not come before this House, and we are told that it was not offered to the Committee. Indeed, how can we act at all upon the informal, inofficial, and unfounded statements of the gentleman who preceded me? Indeed I should lament if this were a fact: my knowledge of, and acquaintance with one of the gentlemen spoken of, (Mr. Stone,) is such, that to parallel it with the case of Mr. Tracy, would make me lament exceedingly. Indeed I cannot conceive, how they could be said to receive double compensation: they received their full pay for their services in this House, till the fourth of March; they went into the Senate chamber under a new appointment, but they did not in any way hold at the same time two distinct offices, or receive emoluments in that view. I do not mean, however, to defend the usage of the Senate in that particular, because though I cannot call it corrupt, I must call it an abuse; but being an usage it was received.

Another parallel mentioned, was that of building stores on the public grounds in this city, and the military arsenal or laboratory at Philadelphia. Now it appears to me, that you cannot very easily define the term "navy yard," without these appurtenances to preserve the materials in. But there is a material distinction, between building on ground where we have the right of soil and jurisdiction, and building upon the ground of others. Of what importance is it to dwell on these cases, in order to prove that it is unnecessary to recommit the report? It amounts to nothing, but that different officers of the Government have put different constructions on the same law. Does this invalidate the report or the reasoning of the committee? Does it disprove the facts stated, or invalidate the charges exhibited against A or B? The gentleman really reminded me of the exertions of a counsellor defending a criminal at the bar of justice. But I would ask, does it diminish the crime of A or B, that C and D have committed the like crimes? This is a strange mode of defence, though not unusually offered.

Upon the whole, as the lateness of the hour nor my strength will admit of enlargement, I would observe that the committee were appointed to make certain inquiries; they have reported upon those inquiries, and now you are to be told that because different authorities have put different constructions upon the law, the report must be recommitted! Sir, this will be no way ever to discover and bring to light improper conduct; we did not wish to know their construction. The committee have reported in a manner and temper highly honorable to them, and I trust we shall not offer to give a kind of counter report, by sending it back to them, when there is no reason for that measure. This will be giving a color to transactions whose illegality is evident. I see no force in any argument used in favor of the motion.

Mr. Griswold read, without comment, a certificate from the Secretary of the Senate, that Mr. Stone and Mr. Sheafe did receive their mileage from the Senate, for their coming and return to attend the Senate, on the fourth of March.

The question was then taken on the motion to recommit the report, and negatived—yeas 22, nays 46, as follows:

Yeas—James A. Bayard, Thos Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Thomas Morris, Nathan Read, Wm. Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Wm. Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

AMENDMENTS TO THE CONSTITUTION.

Mr. Van Cortlandt moved that the House do now, according to the standing order of the day, resolve itself into a Committee of the whole House on the state of the Union, to take into consideration a motion referred to them on the nineteenth of February last, in the form of a concurrent resolution of the two Houses, proposing two articles of amendment to the Constitution of the United States respecting the election of President and Vice President; to which committee were also referred certain resolutions of the Legislature of the State of New York, to the same effect.

Mr. Huger thought the gentleman from New York could not be serious. He held it a bad precedent at that late period of the session to attempt to alter the Constitution. It mattered not, whether he was for or against the proposed amendment, he should be opposed to agreeing to it at this late day. He believed the Constitution to be the rock of the Union; and he doubted whether as good a one could be formed, were the present one lost. He believed it had been formed by our most distinguished statesmen with the greatest care. Whenever, therefore, it was contemplated to alter a part of this Constitution, it ought to be done with the greatest circumspection. He confessed that he trembled at the idea of altering it, though he was attached to that part of it which gave the right of altering it. As to this particular provision, he was far from having made up his mind on it. It does appear, on first blush, that the people should designate the persons voted for as President and Vice President; but, on second thoughts, there were many reasons against it. Congress having agreed to adjourn on Monday, it was improper now to discuss the subject, as it was impossible to give it a full investigation. The more important we deem the amendment, the greater is the regard which should be paid to the mode of adopting it; and at this moment, when there is scarcely a quorum of members present, if you take it up, you in some measure prevent a discussion of it.

Mr. H. concluded by calling for the yeas and nays on taking up the amendment.

Mr. Foster said he hoped the amendment would not be taken up at this late hour. It would be recollected that at an antecedent session he had laid a similar resolution on the table, when it had been refused by the House to take it up from the late day of the session, though this amendment had been offered at the recommendation of New Hampshire. As this treatment was thought respectful to New Hampshire, Mr. F. did not think that it would be disrespectful to New York.

Mr. Bayard wished to know whether it was in order to move the postponement of the question till November.

The Speaker said such a motion was not in order, as the resolutions had been referred to the Committee of the Whole on the state of the Union.

Mr. Davis was sorry the gentleman from New York (Mr. Van Cortlandt) had thought proper to place the House in so delicate a situation. After suffering these resolutions to lay for some months, they are now brought up on the last day, when the House is not prepared to investigate them, though there may be weighty considerations in favor of them. He was, therefore, against taking them up at present. If taken up, he should be almost compelled to vote against them; not, however, because he was really against them, but from the manner in which they are urged. Are gentlemen prepared to say that the House is in a fit state to investigate them? If there is a determination to carry them whether reasonable or not, it is certain a majority may carry them. Had they been called up a month ago, he should have been pleased; but he thought it the height of imprudence to push them now.

Mr. Van Cortlandt said he was sorry the gentleman from South Carolina (Mr. Huger) was uneasy at the disorder of the House. For his part, he had never seen the House more orderly. As to its being a late hour, that, he conceived, had nothing to do with the business, as the resolutions had lain on the table for a long time, and he pre-

sumed every gentleman, expecting to be called on to vote on them, had made up his mind. As to the remarks of the gentleman from New Hampshire, (Mr. Foster,) it with him to vote now cannot surely be a reason against these resolutions, because the House had formerly been against his resolutions.

Mr. Mott was sorry these resolutions were taken up at this late hour. He did not hesitate to say that he was in favor of them; but he was against taking them up at so late a day of the session.

Mr. Elmendorf said, if the subject required any particular investigation, he should be opposed to taking it up to-day. But it was so exceedingly plain that he was persuaded it ought not to take up much of the time of the House. He certainly wished it had been taken up when there was a fuller House; but he thought it so important, that it would at no time be improper to adopt it by the vote of a Constitutional majority. If it were important that the people should elect the man of their choice, it ought to be adopted. It must be evident to every gentleman, that in the Convention there must have been great contrariety of opinion on this point; and in practising under the Constitution a great variety of evils had been discovered. As, therefore, there had been a practical demonstration of the evils of the present plan, he believed the public mind was prepared to receive the amendment. This being a self-evident truth, he should vote in favor of adopting the amendment at this time.

Mr. Bayard felt strongly impressed by the reasons which had been assigned in point of time. The subject was not totally novel to him; but though he had heard it spoken of, expecting that it would be regularly brought up, he had not examined it in proportion to its magnitude. He believed we ought to be extremely cautious in amending the Constitution, as he believed that no instrument had been better weighed in all its parts. He confessed he was puzzled to account for the regulations prescribed in the election of a President and Vice President; yet he was perfectly satisfied there must have been very strong reasons for it, from his reliance on the talents of those who formed the Constitution. He had, however, no hesitation in saying, from all his reflections on the subject, that he was inclined to be in favor of a discrimination of the individuals voted for as President and Vice President, as well as in favor of districts. But he believed it very improper at this late hour to agitate the subject, and he considered it a bad precedent at the end of a session to make any innovation in the Constitution. However immaterial any amendment might appear to be, it ought to be very circumspectly examined; for often our first impressions are erroneous, and we are induced, on mature reflection, to change them. He was, therefore, in point of time, against taking up the resolutions; he thought it improper, when the members were occupied in preparing to depart, in packing up their clothes, with which they had packed up many of their ideas; when we are here, barely to go through the formalities attending the final passage of bills. He concluded by observing, that he repeated it, that he was friendly to the amendment, but hostile to taking it up at that time.

The question on taking up the resolutions was then taken by yeas and nays, and carried—yeas 38, nays 30, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, Matthew Clay, John Clopton, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Morris, Thomas Newton, jr., John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Robert Williams.

Nays—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, William Helms, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Henry Southard, John Stanley, John Stewart, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Mr. Griswold wished to know, whether, on a preparatory question, the concurrence of two-thirds were required, as this would form a precedent.

The Speaker decided that two-thirds were not necessary.

The House resolved itself into a Committee of the Whole—Mr. S. Smith in the Chair.

As soon as the Chairman had taken the Chair, Mr. Bayard rose, and observed, that he believed the question to be determined was on going into Committee on the state of the Union.

The Chairman said, the decision was for going into a Committee for the purpose of taking into consideration an amendment to the Constitution, "That in all future elections of President and Vice President, the persons voted for shall be particularly designated by declaring which is voted for as President, and which as Vice President."

The Speaker said that question had not been stated from the Chair. The only question was on going into Committee on the state of the Union; and it was now competent to any member to offer any resolution on the state of the Union, or the House may consider the subject notified as continued.

Mr. Bayard moved for that proposition of amendment that related to a division of each State into districts.

The Chairman, having read it, said he had always considered it as the practice, that the Committee must take up that resolution on which it had been moved to go into committee. He, therefore, considered the other resolutions as before the Committee.

Mr. Huger.—I ask if the Committee has not a

right to take up which resolution it pleases? If they have, I hope the motion of the gentleman from Delaware (Mr. Bayard) will prevail.

The Chairman.—The question is already decided.

Mr. Bayard thought there was great justness in the argument of the gentleman from Kentucky, (Mr. Davis,) that the House was not in a state to make an amendment to the Constitution. He could hardly believe that, had it been proposed to amend the Constitution on an earlier day, it would have been done without a word of explanation being uttered. He believed this was doing too much, and without the defect of the former system being pointed out. He believed there was not a more important opinion than that the instrument from which we derive our power, and the nation its liberty, should be touched with a cautious hand. He believed gentlemen would see that this was not the time to touch it, and they will say, we will not agree to this amendment until the other, for districting the States, is first agreed to; he, therefore, moved that the Committee should rise.

Mr. Bacon hoped the Committee would not rise until other reasons were assigned than he had heard. The House had just agreed to take up the resolutions, and it is now moved to recede from the determination of the House without any reason being assigned for the change. The question was important, but not novel. He believed that every citizen called upon to give his vote had paid particular attention to, and had made up his mind upon it. This was the case with himself. He had long been of opinion that such an amendment was very important, and even necessary, and he should continue to think so until he had heard satisfactory reasons in opposition assigned. He was disposed to listen with the greatest attention and candor to the arguments of gentlemen. The gentleman from Delaware urged as a reason against taking up this amendment its great importance; and now he is for taking up another amendment infinitely more important.

Mr. B. concluded by saying that as this was a subject on which the welfare of the United States depended, in his opinion the House could not excuse itself from taking it up.

Mr. Mitchill said he had almost despaired of this subject being acted upon after the late decision of the House. He was, however, very glad to find the House now disposed to take it up. He was much surprised that the gentleman from Delaware wanted information, not only from his usual attention to Constitutional questions, but from the part he took in the Presidential election. He believed the question to be very plain, and one which had been well considered by every citizen in the United States. Under the Constitution electors are to vote for two persons, one of whom does not reside in the State of the electors; but it does not require a designation of the persons voted for. Wise and virtuous as were the members of the Convention, experience has shown that the mode therein adopted cannot be carried into operation; for the people do not elect a person for an elector who, they know, does not intend to vote for a particular person as President. Therefore, practically, the very thing is adopted, intended by this amendment. If this proposition is now adopted by us, it will still have to be sanctioned by the other branch of the Legislature, and afterwards by three-fourths of the States. For these reasons, Mr. M. thought this amendment ought to be adopted. It ought to be adopted, because it had been maturely considered; because it had been recommended by several States, and because serious inconveniences had been, and still more serious inconveniences might be experienced under the present mode.

Mr. Dana said he was for the Committee rising, as this was not a proper time to act on so important a subject. He knew that the gentleman from Massachusetts (Mr. Bacon) had said his mind was made up, though he was ready to hear any arguments against the amendment. He has told us that he guessed every member was ready to act; but as this was only a guess, others may guess as well as he. He also thought his friend from Delaware (Mr. Bayard) inconsistent; but the very remark of the gentleman from Massachusetts fortified the correctness of the observation made by his friend from Delaware, who had said one of the proposed amendments is important, the other is still more important, and thence the necessity of more time for deliberation.

If the subject of amending the Constitution be taken up, a second question may arise, whether a Vice President is wanted at all; whether that office was not created solely to influence the purposes of the present mode. He believed the journals of the Convention would show that the office of Vice President was not introduced till this mode was laid down. Other amendments may be found necessary. He was willing to consider that part of the Constitution which related to the apportionment of representatives, and to determine whether the representatives should be in proportion to the whites, or in proportion to the whites compounded with slaves. He believed, also, when an amendment was proposed, it was proper to view all its parts, and see whether an amendment apparently necessary would not materially differ from other parts of the Constitution equally necessary. For this examination there was not time.

Mr. Huger said he was willing to acknowledge that his bias was in favor of the amendment; but he did not like to be obliged at this late moment to vote on it, without having time to consider it himself, and without giving time to others to investigate it. Besides, it was evident, that if the amendment for a discrimination was first adopted, the other amendment for districts may not be adopted; and in the opinion of some gentlemen it was important to adopt both. This measure is now forced upon us. In this sitting we are obliged to vote in the negative, though rather in favor of the amendment. But when thus improperly forced upon us, we think it the safest course to vote against it.

Where is the necessity of this precipitation?

There cannot be party motives in the measure; for the same Legislature will meet the next session. In these circumstances, he thought it an act of cruelty to force those to vote who are not prepared. He said his mind was not made up, nor did he believe the minds of the community were. He could not say from his own personal knowledge what was the wishes of his constituents; though he was rather inclined to think they were for the amendment. He believed the design of the Constitution in originating this business in these two Houses of Congress, was to have it investigated in a body whose members came from every part of the Union, and by having the debate published in every part of the Union to prepare the people correctly to judge. He, therefore, conceived it of immense importance that every amendment should be maturely investigated. He said, he looked round and scarcely saw a quorum. Are gentlemen prepared to offer arguments? He did not like to allude to party; but do not gentlemen know that those who agree with him have more than a third in this House when it is full? He did not know that that was now the case. In the last count we had only sixty-eight votes, and yet with these numbers we are called upon to decide, at the end of the session, a Constitutional question.

The question was taken on the Committee rising, and lost—ayes 25.

The question was then taken on the resolution of amendment, on which there were—ayes 42, noes 22.

The Chairman.—The question is lost.

Mr. Varnum said he apprehended the Committee were to vote by simple majorities; this is a preparatory step, and the House will decide by a vote of two-thirds.

Mr. Nicholson was clearly of this opinion, that the Committee ought to decide in the usual way.

Mr. Griswold said he did not know how the gentleman could find the mode of deciding in Committee but by that practised in the House.

Mr. Elmendorf thought no more than a simple majority was required. He, therefore, appealed from the decision of the Chair. After some explanation, Mr. E. observed that as the House would have to decide upon the same point, he would withdraw his motion of appeal.

The Committee rose, and reported their disagreement to the amendment—two-thirds of the members, the Constitutional number, not concurring in it.

The question was carried—ayes 42—for taking up the report.

The House immediately took up the report; when

The Speaker put the question on concurring with the report of the Committee of the Whole in their disagreement to the amendment.

Mr. Huger moved to postpone the further consideration of the amendment to the third Monday in November.

Mr. H. said he would not repeat the arguments he had before used. Of those against taking up the amendment at this time, there were, at least the gentleman from Delaware and himself who were likely to be in favor of it, if taken up at a proper time. He should, therefore, regret if, by voting in the negative, it should be lost. He wished it to be understood, and particularly by his constituents, that he voted against it, not because he was really against the amendment, but from the consideration of the improper time at which it was urged. He concluded by calling for the yeas and nays.

Mr. Van Cortlandt said he was very sorry he could not oblige the gentleman (Mr. Huger) with the delay he solicited, and he was also very sorry that that gentleman could not oblige himself and his constituents at the same time. He regretted that it was so late in the session; but had not the subject been before the House for months, and before the people for years? The gentleman says he wants time—to repeat a hundred and a hundred times what the House had heard before. At this endless repetition Mr. Van C. was surprised. He said, he should in many cases have taken a part in debate, if other gentlemen had not expressed the same ideas which he entertained himself. He did not wish to say that other gentlemen had made long speeches for the purpose of appearing in the newspapers; though he must say the conduct of the gentleman from South Carolina looked like it. Mr. Van C. concluded by observing that it was their duty to do good, and if the adoption of this amendment would have that effect, it could never be too late to adopt it.

Mr. Huger said however favorable that gentleman may be to dumb legislation, he confessed he was inimical to it.

The question of postponement was then taken by yeas and nays, and lost—yeas 28, nays 44, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, William Helms, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, Henry Southard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, Matthew Clay, John Clopton, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Morris, James Mott, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

The question recurred, on concurring in the report of the Committee in their disagreement to the amendment.

Mr. Bayard said he was sorry the subject was pressed upon them. It had not undergone in his mind a mature consideration. He considered his giving a vote of concurrence as operating simply a postponement till November. He had voted for the postponement, and he would vote for a concurrence. Next session the subject may be taken up, and maturely considered.

Mr. Nicholson inquired whether the question of concurrence required two-thirds.

The Speaker.—This is the final question, and therefore requires two-thirds. All preparatory questions only require a majority.

Mr. Varnum asked whether the question would be final. It appeared to him that after this is decided, there will be another question on agreeing to the resolution itself.

The question was taken, by yeas and nays, on agreeing to the report, and lost—yeas 24, nays 48—two-thirds voting against concurrence, as follows:

Yeas—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Benjamin Huger, Thomas Lowndes, Lewis R. Morris, Thomas Plater, Nathan Read, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, Wm. Helms, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, Thomas Morris, James Mott, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

Mr. Huger said he would repeat what he had said before, viz: that he did not vote against the amendment because he was opposed to it, but because he was decidedly opposed to the time in which it was proposed.

Mr. Huger moved the postponement of the third reading of the resolution till Monday, lost—ayes 25.

Resolved, That the said resolution be read a third time to-day.

The engrossed resolution was afterwards brought in, and read a third time, when the question was taken on it by yeas and nays, and carried—yeas 47, nays 14, as follows:

Yeas—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, William Eustis, John Fowler, Edwin Gray, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Michael Leib, John Milledge, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

Nays—James A. Bayard, Thomas Boude, Manasseh Cutler, John Davenport, Roger Griswold, Archibald Henderson, Benjamin Huger, Lewis R. Morris, Nathan Read, John Stanley, Benjamin Tallmadge, Samuel Tenney, George B. Upham, and Lemuel Williams.

Ordered, That the Clerk of the House do carry the said resolution to the Senate, and desire their concurrence.

Monday, May 3.

Ordered, That there be a call of the House this day at two o'clock in the afternoon.

Resolved, That the President of the United States be requested to cause the proper officers to prepare and lay before the House, during the first week of the ensuing session of Congress, the following statements:

A detailed account of the expenditure and application of all public moneys which have passed through the Quartermaster General's department, from the first day of January, one thousand seven hundred and ninety-seven, to the thirty-first of December, one thousand eight hundred and one.

A similar account of the expenditure of all public moneys which have passed through the Navy agents.

A similar account of the expenditure and application of all the moneys drawn out of the Treasury for the contingencies of the Military and Naval Establishments.

Copies of the contracts made by the Navy Department for the purchase of timber and stores, and the accounts of the moneys paid under such contracts.

Ordered, That Mr. Robert Williams and Mr. Thomas Morris be appointed a committee to present the foregoing resolution to the President of the United States.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend an act, entitled 'An act for the relief of sick and disabled seamen,'" with two amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill first mentioned in the said message, and the same being severally twice read, were agreed to.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;"

Whereupon, *Resolved*, That this House doth agree to the said amendments.

On motion. *Ordered*. That the call of the House directed by a vote of this day. to be at two o'clock. be postponed until four o'clock in the afternoon.

GEORGIA LIMITS.

Mr. GRISWOLD moved the appointment of a committee to bring in a bill to repeal an act for the amicable settlement of limits with the State of Georgia, &c.

[The object of this motion was to prevent the agreement lately made between the Commissioners of the United States and of Georgia from going into effect before the next session of Congress; the said agreement declaring that the settlement shall be conclusive. unless Congress shall repeal within six months the above law.]

This motion was supported by Messrs. GRISWOLD. HENDERSON. and DAVIS, and opposed by Messrs. MILLEDGE. S. SMITH. and ELMENDORF.

When the yeas and nays were taken. and the motion lost—yeas 24. nays 36. as follows:

YEAS—Thomas Boude, John Campbell, Manasseh Cutler, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, John A. Hanna, Seth Hastings, Archibald Henderson, Thomas Lowndes, Lewis R. Morris, Thomas Morris, Thomas Plater, Nathan Read, William Shepard, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, John Fowler, Edwin Gray, William Helms, James Holland, David Holmes, John Milledge, Thomas Moore, James Mott, Anthony New, Thomas Newton, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, and Robert Williams.

DISTRICT OF COLUMBIA.

A message from the Senate informed the House that the Senate have passed the bill. entitled "An act additional to. and amendatory of. an act. entitled 'An act concerning the District of Columbia," with several amendments; to which they desire the concurrence of this House.

The most material amendments authorize the erection of a jail. appropriating therefor $17.000. and the organization of the militia by the President.

The amendment which authorizes the erection of a jail gave rise to some debate; in which it was supported by Messrs. TALIAFERRO and HUGER. and opposed by Messrs. ELMENDORF, DAVIS. and VARNUM.

Mr. SOUTHARD moved to strike out $17.000 and insert $8.000. This last motion prevailed; and. so amended. the amendment of the Senate was agreed to—yeas 32. nays 26. as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, John Campbell, John Clopton, Manasseh Cutler, John Dawson, Wm. Dickson, Abiel Foster, Calvin Goddard, Roger Griswold, Daniel Heister, William Helms, Archibald Henderson, David Holmes, Benjamin Huger, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Thomas Plater, Nathan Read, John Smith, of Virginia, Henry Southard, John Taliaferro, jr., Samuel Tenney, Philip R. Thompson, Philip Van Cortlandt, John P. Van Ness, and Henry Woods.

NAYS—Thomas Boude, Robert Brown, John Condit, Richard Cutts, John Davenport, Thomas T. Davis, Lucas Elmendorf, John Fowler, John A. Hanna, Joseph Heister, Michael Leib, Samuel L. Mitchill, Thos. Moore, James Mott, John Smilie, John Smith, of New York, Samuel Smith, Richard Stanford, Joseph Stanton, jr., John Stewart, Benjamin Tallmadge, David Thomas, Abram Trigg, John Trigg, Joseph B. Varnum, and Robert Williams.

On the question that the House do agree to the said twelfth amendment of the Senate. as amended, it was resolved in the affirmative.

Resolved. That this House doth also agree to all the other amendments proposed by the Senate to the said bill.

The House then adjourned until five o'clock. post meridian.

FIVE O'CLOCK P. M.

The House met pursuant to adjournment.

A message from the Senate informed the House that the Senate have disagreed to the resolution of this House, in the form of a concurrent resolution of the two Houses, "proposing an article of amendment to the Constitution of the United States, respecting the election of President and Vice President;" two-thirds of the members present in the Senate not having concurred in their agreement to the same.

On motion. *Ordered*. That Mr. GRISWOLD and Mr. SAMUEL SMITH be appointed a committee, on the part of this House. jointly. with such committee as may be appointed on the part of the Senate. to wait on the President of the United States. and notify him of the proposed recess of Congress.

A message from the Senate informed the House that the Senate have appointed a committee on their part. jointly, with the committee appointed on the part of this House, to wait on the President of the United States. and notify him of the proposed recess of Congress.

Mr. GRISWOLD. from the committee appointed on the part of this House. jointly. with the committee appointed on the part of the Senate. to wait on the President of the United States. and notify him of the proposed recess of Congress. reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

Ordered. That a message be sent to the Senate to inform them that this House, having completed the business before them. are now about to adjourn until the first Monday in December next; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that the Senate. having completed the Legislative business before them. are now ready to adjourn. Whereupon,

The SPEAKER adjourned the House until the first Monday in December next.

SUPPLEMENTAL SPEECH.

[The following is the conclusion of the speech of GOUVERNEUR MORRIS, delivered in the Senate on the 31st of March, 1802, on the Repeal of the Internal Taxes,—and which was unavoidably omitted, in its proper place, while the volume was in course of printing. It should have been inserted in page 235, immediately before Mr. MASON.]

Mr. MORRIS. in conclusion.—I have heard it said, that however improper it may be to repeal these taxes, it is now too late to object; for that, after the recommendation of our First Magistrate, they are considered by the people as no longer to be paid. I will not question the veracity of those who make this assertion. but I must beg leave to withhold my assent. The people of this country know. that to their Representatives alone. is delegated the right of taxation. This is no part of the Executive power. I will not say that the recommendation was unconstitutional. I will not say that it was unjustifiable. But I will say that it was imprudent. And if it does, indeed, involve the consequence which has been stated. I must add that it is injurious. It would have been more proper to have left the unbiassed consideration of this great subject to the two Houses of Congress. But, sir, though I cannot approve. I will not condemn the conduct of our First Magistrate. He. I presume, acted from what he conceived to be his duty. Let us then imitate his example, and perform what on due advisement shall appear to be our duty. Let me say, sir, that there is too much of precipitancy, too much of rashness, in this repeal. It would be wiser to wait. until we possess a knowledge of those facts on which a sound system must be founded. Our experience of the past gives no sufficient light for the future. There is. moreover. during the present. and there will be for some succeeding years. an unusual pressure of our public debt, arising from heavy instalments of foreign loans. This therefore. is not the moment to make a change. I have indeed heard the advocates of the proposed repeal say, they are desirous of paying the public debt, not only according to the terms to which we stand pledged, but at an earlier day. If this be so. how can they think of taking off taxes, or by what strange invention or device do they expect to pay debts by diminishing income? I should have supposed that the best way to effect that object would be to increase our revenues, lessen our expenses, and apply our whole means to the payment of what we owe, steadily and faithfully.

Mr. President. one word more. Hitherto, I have considered this question on the broad ground of policy. of expediency. and of public economy. I have endeavored to show that duties are the most expensive species of tax. That. from a change in the political affairs of the world, and in our own particular situation. there is reason to suppose our revenue will suffer considerable diminution. And that it is more than probable, duties so high, as those under which our commerce now labors, will be evaded. And thence. I have endeavored to draw the natural conclusion. that. instead of repealing the internal taxes. we should lessen the duties. and raise that part which is taken off in the seaports. by direct tax in the country. All this was under the idea. that you had a right to repeal these taxes. But. by recurring to the first volume of your laws. in the 335th page. I find that the sixtieth section of an act laying duties upon spirits distilled within the United States, runs thus:

"*And be it further enacted*, That the net product of the duties hereinbefore specified, which shall be raised, levied, and collected by virtue of this act, or so much thereof as may be necessary, shall be, and is hereby, pledged and appropriated for the payment of the interest of the several and respective loans, which had been made in foreign countries, prior to the fourth day of August last; and also upon all and every the loan and loans which have been and shall be made and obtained pursuant to the act, entitled 'An act making provision for the debt of the United States;' and, according to the true intent and meaning of the said act, of the several provisions and engagements therein contained and expressed, and subject to the like priorities and reservations as are made and contained in and by the said act, in respect to the moneys therein appropriated, and subject to this farther reservation; that is to say, of the net amount or product during the present year, of the duties laid by this act, in addition to those heretofore laid upon spirits imported into the United States, from any foreign port or place, and of the duties laid by this act on spirits distilled within the United States, and on stills; to be disposed of, towards such purposes for which appropriations shall be made during the present session. And to the end, that the said moneys may be inviolably applied in conformity to the appropriation hereby made, and may never be diverted to any other purpose, until the final redemption or reimbursement of the loans or sums for the payment of the interest whereof they are appropriated, an account shall be kept of the receipts and disposition thereof, separate and distinct from the product of any other duties, impost, excise, and taxes whatsoever, except those heretofore laid, and appropriated to the same purposes."

And, sir, I find that the sixty-second section of the same act runs thus:

"*And be it further enacted*, That the several duties imposed by this act shall continue to be collected and paid, until the debts and purposes for which they are pledged and appropriated shall be fully discharged and satisfied, and no longer: *Provided always*, That nothing herein contained shall be construed to prevent the Legislature of the United States, from substituting other duties or taxes of equal value to all or any of the said duties and imposts."

This law was approved by GEORGE WASHINGTON. on the third day of March, in the year 1791.

Now then, I ask, can we rightfully take off this tax without laying on an equivalent. before our debts are paid? I will not say that it is unconstitutional; though while we yet had a Constitution, I should have opposed it on that ground. I will not say you have not the power to do it. because, under the new doctrine of your Legislative omnipotence, I see not the bounds of your power. But I remember well. and let me now call back to the recollection of this Senate. what passed on a late important occasion. It was asked, when we have

made a grant, can we resume it? When we have contracted a debt, can we refuse to pay it? When we have made a promise, can we violate it? To these questions it was answered no! Here is a vested right in third persons. The Government is bound. In the case of a debt it has received a consideration, and the engagement taken with the public creditor cannot be broken. I ask, then, what words in our language, or in any language, can be more full, more solemn, or form a contract more sacred than those I have just read. The net amount of the duties is pledged to our creditors, and appropriated to the payment of our debt; and to the end that it may be inviolably applied in conformity to that appropriation, and may never be diverted to any other purpose, a separate account is to be kept, and it is again declared that the duties shall continue to be collected and paid till the debts for which they are pledged shall be fully discharged and satisfied. If these terms be not binding on the Legislature, let us hear the form, if any can be found, of a contract more obligatory. I ask those who mean to vote for this repeal, what they meant by the declaration that vested rights could not be resumed, and that engagements taken with public creditors could not be broken? If by a wild exertion of licentious force we tear asunder these bands, can we again ask of mankind any share of their confidence? Can we expect to enjoy credit when we show ourselves regardless of our plighted faith?

Sir, I consider this repeal as inconsistent with the true interest of the great body of our people. It appears to me dangerous both to our revenue and to our commerce. But above all, I consider it as a flagrant violation of the public faith.

PUBLIC ACTS OF CONGRESS;

PASSED AT THE FIRST SESSION OF THE SEVENTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, DECEMBER 7, 1801.

AN ACT for the apportionment of Representatives among the several States, according to the second enumeration.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the third day of March, one thousand eight hundred and three, the House of Representatives shall be composed of members elected agreeably to a ratio of one member for every thirty-three thousand persons in each State, computed according to the rule prescribed by the Constitution; that is to say: within the State of New Hampshire, five; within the State of Massachusetts, seventeen; within the State of Vermont, four; within the State of Rhode Island, two; within the State of Connecticut, seven; within the State of New York, seventeen; within the State of New Jersey, six; within the State of Pennsylvania, eighteen; within the State of Delaware, one; within the State of Maryland, nine; within the State of Virginia, twenty-two; within the State of North Carolina, twelve; within the State of South Carolina, eight; within the State of Georgia, four; within the State of Kentucky, six; and within the State of Tennessee, three members.

NATHANIEL MACON,
Speaker of the House of Representatives.
ABRAHAM BALDWIN,
President of the Senate, pro tempore.

Approved, January 14, 1802.

TH. JEFFERSON,
President of the United States.

An Act concerning the Library for the use of both Houses of Congress.

Be it enacted, &c., That the books and maps purchased by direction of the act of Congress, passed the twenty-fourth of April, one thousand eight hundred, together with the books or libraries which have heretofore been kept separately by each House, shall be placed in the Capitol, in the room which was occupied by the House of Representatives, during the last session of the sixth Congress.

SEC. 2. *And be it further enacted*, That the President of the Senate and Speaker of the House of Representatives, for the time being, be, and they hereby are, empowered to establish such regulations and restrictions in relation to the said library, as to them shall seem proper, and, from time to time, to alter or amend the same: *Provided*, That no regulation shall be made repugnant to any provision contained in this act.

SEC. 3. *And be it further enacted*, That a librarian, to be appointed by the President of the United States solely, shall take charge of the said library; who, previous to his entering upon the duties of his office, shall give bond, payable to the United States, in such a sum, and with such security, as the President of the Senate and Speaker of the House of Representatives, for the time being, may deem sufficient, for the safe keeping of such books, maps, and furniture as may be confided to his care, and the faithful discharge of his trust, according to such regulations as may be, from time to time, established for the government of the said library; which said bond shall be deposited in the office of the Secretary of the Senate.

SEC. 4. *And be it further enacted*, That no map shall be permitted to be taken out of the said library by any person; nor any book, except by the President and Vice President of the United States, and members of the Senate and House of Representatives, for the time being.

SEC. 5. *And be it further enacted*, That the keeper of the said library shall receive for his services, a sum not exceeding two dollars per diem for every day of necessary attendance; the amount whereof, together with the necessary expenses incident to the said library, after being ascertained by the President of the Senate and Speaker of the House of Representatives, for the time being, shall be paid out of the fund annually appropriated for the contingent expenses of both Houses of Congress.

SEC. 6. *And be it further enacted*, That the unexpended balance of the sum of five thousand dollars appropriated by the act of Congress aforesaid, for the purchase of books and maps for the use of the two Houses of Congress, together with such sums as may hereafter be appropriated to the same purpose, shall be laid out under the direction of a joint committee, to consist of three members of the Senate and three members of the House of Representatatives.

Approved, January 26, 1802.

An Act for the protection of the Commerce and Seamen of the United States, against the Tripolitan Cruisers.

Whereas the Regency of Tripoli, on the coast of Barbary, has commenced a predatory warfare against the United States:

Be it enacted, &c., That it shall be lawful fully to equip, officer, man, and employ such of the armed vessels of the United States, as may be judged requisite by the President of the United States, for protecting effectually the commerce and seamen thereof on the Atlantic Ocean, the Mediterranean and adjoining seas.

SEC. 2. *And be it further enacted*, That it shall be lawful for the President of the United States to instruct the commanders of the respective public vessels aforesaid, to subdue, seize, and make prize of all vessels, goods, and effects, belonging to the Bey of Tripoli, or to his subjects, and to bring or send the same into port, to be proceeded against, and distributed according to law; and also to cause to be done all such other acts of precaution or hostility as the state of war will justify, and may, in his opinion, require.

SEC. 3. *And be it further enacted*, That, on the application of the owners of the private armed vessels of the United States, the President of the United States may grant to them special commissions, in the form which he shall direct, under the seal of the United States; and such private armed vessels, when so commissioned, shall have the like authority for subduing, seizing, taking, and bringing into port, any Tripolitan vessel, goods or effects, as the beforementioned public armed vessels may by law have; and shall therein be subject to the instructions which may be given by the President of the United States for the regulation of their conduct; and their commissions shall be revocable at his pleasure: *Provided*, That before any commission shall be granted as aforesaid, the owner or owners of the vessel for which the same may be requested, and the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or, if such vessel be provided with more than one hundred and fifty men, in the penal sum of fourteen thousand dollars, with condition for observing the treaties and laws of the United States, and the instructions which may be given, as aforesaid; and also, for satisfying all damages and injuries which shall be done, contrary to the tenor thereof, by such commissioned vessel; and for delivering up the commission, when revoked by the President of the United States.

SEC. 4. *And be it further enacted*, That any Tripolitan vessel, goods, or effects, which shall be so captured and brought into port by any private armed vessel of the United States, duly commissioned, as aforesaid, may be adjudged good prize, and thereupon shall accrue to the owners, and officers, and men of the capturing vessel, and shall be distributed according to the agreement which shall have been made between them, or, in failure of such agreement, according to the discretion of the court having cognizance of the capture.

SEC. 5. *And be it further enacted*, That the seamen may be engaged to serve in the Navy of the United States for a period not exceeding two years; but the President may discharge the same sooner, if, in his judgment, their services may be dispensed with.

Approved, February 6, 1802.

An Act extending the privilege of franking and receiving letters, free of postage, to any person admitted, or to be admitted, to take a seat in Congress, as a delegate; and providing compensation for such delegate.

Be it enacted, &c., That any person admitted, or who may hereafter be admitted, to take a seat in Congress, as a delegate, shall enjoy the privilege of sending and receiving letters, free of postage, on the same terms, and under the same restrictions, as are provided for the members of the Senate and of the House of Representatives of the United States, by the act, entitled, "An act to establish the Post Office of the United States;" and that every such delegate so admitted to a seat, be, and is hereby, authorized to receive, free of postage, under the said restrictions, any letters directed to him, and which shall have arrived at the seat of Government prior to the passage of this act: and that every such delegate shall receive, for his travelling expenses and attendance in Congress, the same compensation as is or may be allowed, by law, to the members of the Senate and House of Representatives of the United States, to be certified and paid in the same manner.

Approved, February 18, 1802.

An Act making certain partial appropriations for the year one thousand eight hundred and two.

Be it enacted, &c., That the sum of sixty thousand dollars be, and the same hereby is, appropriated towards defraying the expenses of the pay of the Army, during the year one thousand eight hundred and two.

SEC. 2. *And be it further enacted*, That the following sums be, and the same hereby are, appropriated to the purpose herein recited, respectively, that is to say: for the contingent expenses of the Department of the Treasury, to make good the deficiency of the former appropriations for the same, the sum of sixteen hundred and thirteen dollars and fifty-seven cents.

For the printing of the public accounts, to make good the deficiency of former appropriations for the same, the sum of fourteen hundred dollars.

Towards the contingent expenses of the Department of the Treasury, during the year one thousand eight hundred and two, the sum of one thousand dollars.

Towards the contingent expenses of the House of Representatives, during the year one thousand eight hundred and two, the sum of three thousand dollars.

SEC. 3. *And be it further enacted*, That the accounting officers of the Treasury Department be, and they are hereby authorized, in the settlement of the accounts of the several officers hereinafter mentioned, to make the following allowances for clerk hire, during the year one thousand eight hundred and one, in addition to the allowances now established by law; that is to say:

To the Accountant of the Navy Department, one thousand nine hundred dollars, and thirty-one cents.

To the Purveyor of Public Supplies, seven hundred dollars.

To the Superintendant of Stamps, three hundred and seventy-seven dollars and seventy-eight cents.

To the Commissioner of Loans of Pennsylvania, one thousand five hundred dollars.

Provided, however, That the expense, thus allowed, shall have been actually incurred: *And provided also*, That the whole amount paid to each abovementioned officer, respectively, for his compensation, and that of his clerks and persons employed in his office, for the year aforesaid, shall not exceed the sums heretofore appropriated, by law, to those objects, respectively, during the said year.

SEC. 4. *And be it further enacted*, That the aforesaid sums shall be paid and discharged out of any moneys in the Treasury of the United States, not otherwise appropriated.

Approved, February 23, 1802.

An Act to repeal certain acts respecting the organization of the Courts of the United States; and for other purposes.

Be it enacted, &c., That the act of Congress passed on the thirteenth day of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States," from and after the first day of July next, shall be, and is hereby, repealed.

SEC. 2. *And be it further enacted*, That the act passed on the third day of March one thousand eight hundred and one, entitled "An act for altering the times and places of holding certain courts therein mentioned and for other purposes;" from and after the said first day of July next, shall be, and is hereby, repealed.

SEC. 3. *And be it further enacted*, That all the acts, and parts of acts, which were in force before the passage of the aforesaid two acts, and which by the same were either amended, explained, altered, or repealed, shall be, and hereby are, after the said first day of July next, revived, and in as full and complete force and operation, as if the said two acts had never been made.

SEC. 4. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, depending or existing in any of the circuit courts of the United States, or in any of the district courts of the United States, acting as circuit courts, or in any of the additional district courts, which were established by the aforesaid act of Congress, passed on the thirteenth day of February, one thousand eight hundred and one, shall be, and hereby are, from and after the said first day of July next, continued over to the circuit courts, and to the district courts, and to the district courts acting as circuit courts, respectively, which shall be first thereafter holden in, and for the respective circuits and districts, which are revived and established by this act, and to be proceeded in, in the same manner as they would have been had they originated prior to the passage of the said act, passed on the thirteenth day of February, one thousand eight hundred and one.

SEC. 5. *And be it further enacted*, That all writs and process, which have issued, or may issue before the said first day of July next, returnable to the circuit courts, or to any district court acting as a circuit court, or any additional district court established by the aforesaid act passed the thirteenth day of February, one thousand eight hundred and one, shall be returned to the next circuit court, or district court, or district court acting as a circuit court, re-established by this act; and shall be proceeded on therein, in the same manner, as they could, had they been originally returnable to the circuit courts, and district courts acting as circuit courts, hereby revived and established.

Approved, March 8, 1802.

An Act fixing the Military Peace Establishment of the United States.

Be it enacted, &c., That the Military Peace Establishment of the United States, from and after the first of June next, shall be composed of one regiment of artillerists and two regiments of infantry, with such officers, military agents, and engineers, as are hereinafter mentioned.

SEC. 2. *And be it further enacted*, That the regiment of artillerists shall consist of one colonel, one lieutenant colonel, four majors, one adjutant, and twenty companies; each company to consist of one captain, one first lieutenant, one second lieutenant, two cadets, four sergeants, four corporals, four musicians, eight artificers, and fifty-six privates; to be formed into five battalions: *Provided always*, That it shall be lawful for the President of the United States to retain, with their present grade, as many of the first lieutenants, now in service, as shall amount to the whole number of lieutenants required; but that in proportion as vacancies happen therein, new appointments be made to the grade of second lieutenants, until their number amount to twenty; and each regiment of infantry shall consist of one colonel, one lieutenant colonel, one major, one adjutant, one sergeant major, two teachers of music, and ten companies; each company to consist of one captain, one first and one second lieutenant, one ensign, four sergeants, four corporals, four musicians, and sixty-four privates.

SEC. 3. *And be it further enacted*, That there shall be one brigadier general, with one aid-de-camp, who shall be taken from the captains or subalterns of the line; one adjutant and inspector of the army, to be taken from the line of field officers; one paymaster of the army, seven pay-

masters, and two assistants, to be attached to such districts as the President of the United States shall direct, to be taken from the line of commissioned officers, who, in addition to their other duties, shall have charge of the clothing of the troops; three military agents, and such number of assistant military agents as the President of the United States shall deem expedient, not exceeding one to each military post; which assistants shall be taken from the line; two surgeons; twenty-five surgeon's mates, to be attached to garrisons or posts, and not to corps.

SEC. 4. *And be it further enacted*, That the monthly pay of the officers, non-commissioned officers, musicians, and privates, be as follows, to wit: to the brigadier general, two hundred and twenty-five dollars, which shall be his full and entire compensation, without a right to demand or receive any rations, forage, travelling expenses, or other perquisites or emoluments whatsoever, except such stationery as may be requisite for the use of his department; to the adjutant and inspector of the army, thirty-eight dollars in addition to his pay in the line, and such stationery as shall be requisite for his department; to the paymaster of the army, one hundred and twenty dollars, without any other emolument, except such stationery as may be requisite in his department and the use of the public office now occupied by him; to the aid-de-camp, in addition to his pay in the line, thirty dollars; to each paymaster attached to districts, thirty dollars, and each assistant to such paymaster, ten dollars, in addition to his pay in the line; to each military agent, seventy-six dollars, and no other emolument; to each assistant military agent, eight dollars, in addition to his pay in the line, except the assistant military agents at Pittsburg and Niagara, who shall receive sixteen dollars, each, in addition to their pay in the line; to each colonel, seventy-five dollars; to each lieutenant colonel, sixty dollars; to each major, fifty dollars; to each surgeon, forty-five dollars; to each surgeon's mate, thirty dollars; to each adjutant, ten dollars, in addition to his pay in the line; to each captain, forty dollars; to each first lieutenant, thirty dollars; to each second lieutenant, twenty-five dollars; to each ensign, twenty dollars; to each cadet, ten dollars; to each sergeant major, nine dollars; to each sergeant, eight dollars; to each corporal, seven dollars; to each teacher of music, eight dollars; to each musician, six dollars; to each artificer, ten dollars; and to each private, five dollars.

SEC. 5. *And be it further enacted*, That the commissioned officers aforesaid, shall be entitled to receive, for their daily subsistence, the following number of rations of provisions: a colonel, six rations; a lieutenant colonel, five rations; a major, four rations; a captain, three rations; a lieutenant, two rations; an ensign, two rations; a surgeon, three rations; a surgeon's mate, two rations; a cadet, two rations or money in lieu thereof, at the option of the said officers and cadets at the posts, respectively, where the rations shall become due; and if at such posts supplies are not furnished by contract, then such allowance as shall be deemed equitable, having reference to former contracts, and the position of the place in question: and each non-commissioned officer, musician, and private, one ration; to the commanding officers of each separate post, such additional number of rations as the President of the United States shall, from time to time, direct, having respect to the special circumstances of each post; to the women who may be allowed to any particular corps, not exceeding the proportion of four to a company, one ration each; to such matrons and nurses as may be necessarily employed in the hospital, one ration each; and to every commissioned officer who shall keep one servant, not a soldier of the line, one additional ration.

SEC. 6. *And be it further enacted*, That each ration shall consist of one pound and a quarter of beef, or three quarters of a pound of pork, eighteen ounces of bread or flour, one gill of rum, whiskey, or brandy, and at the rate of two quarts of salt, four quarts of vinegar, four pounds of soap, and one pound and a half of candles, to every hundred rations.

SEC. 7. *And be it further enacted*, That the following officers shall, whenever forage is not furnished by the public, receive at the rate of the following sums per month, in lieu thereof: each colonel, twelve dollars; each lieutenant colonel, eleven dollars; each major, ten dollars; each adjutant, six dollars; each surgeon, ten dollars; and each surgeon's mate, six dollars.

SEC. 8. *And be it further enacted*, That every non-commissioned officer, musician, and private, of the artillery and infantry, shall receive annually the following articles of uniform clothing, to wit: one hat, one coat, one vest, two pair of woollen and two pair of linen overalls, one coarse linen frock and trowsers for fatigue clothing, four pair of shoes, four shirts, two pair of socks, two pair of short stockings, one blanket, one stock and clasp, and one pair of half gaiters: and the Secretary of War is hereby authorized to cause to be furnished, to the paymasters of the respective districts, such surplus of clothing as he may deem expedient; which clothing shall, under his direction, be furnished to the soldiers, when necessary, at the contract prices, and accounted for by them out of their arrears of monthly pay.

SEC. 9. *And be it further enacted*, That the President of the United States cause to be arranged the officers, non-commissioned officers, musicians, and privates of the several corps of troops now in the service of the United States, in such manner as to form and complete, out of the same, the corps aforesaid; and cause the supernumerary officers, non-commissioned officers, musicians, and privates, to be discharged from the service of the United States, from and after the first day of April next, or as soon thereafter as circumstances may permit.

SEC. 10. *And be it further enacted*, That the officers, non-commissioned officers, musicians, and privates, of the said corps, shall be governed by the rules and articles of war, which have been established by the United States in Congress assembled, or by such rules and articles as may be hereafter, by law, established: *Provided, nevertheless*, That the sentence of general courts martial, extending

to the loss of life, the dismission of a commissioned officer, or which shall respect the general officer, shall, with the whole of the proceedings of such cases, respectively, be laid before the President of the United States, who is hereby authorized to direct the same to be carried into execution, or otherwise, as he shall judge proper.

SEC. 11. *And be it further enacted*, That the commissioned officers who shall be employed in the recruiting service, to keep up, by voluntary enlistment, the corps as aforesaid, shall be entitled to receive for every effective able-bodied citizen of the United States, who shall be duly enlisted by him for the term of five years, and mustered, of at least five feet six inches high, and between the ages of eighteen and thirty-five years, the sum of two dollars: *Provided, nevertheless*, That this regulation, so far as respects the height and age of the recruit, shall not extend to musicians or to those soldiers who may re-enlist into the service: *And provided, also*, That no person under the age of twenty-one years shall be enlisted by any officer, or held in the service of the United States, without the consent of his parent, guardian, or master, first had and obtained, if any he have; and if any officer shall enlist any person contrary to the true intent and meaning of this act, for every such offence he shall forfeit and pay the amount of the bounty and clothing which the person so recruited may have received from the public, to be deducted out of the pay and emoluments of such officer.

SEC. 12. *And be it further enacted*, That there shall be allowed and paid to each effective able-bodied citizen, recruited as aforesaid, to serve for the term of five years, a bounty of twelve dollars; but the payment of six dollars of the said bounty shall be deferred until he shall be mustered and have joined the corps in which he is to serve.

SEC. 13. *And be it further enacted*, That the said corps shall be paid in such manner, that the arrears shall, at no time, exceed two months, unless the circumstances of the case shall render it unavoidable.

SEC. 14. *And be it further enacted*, That if any officer non-commissioned officer, musician, or private, in the corps composing the peace establishment, shall be disabled by wounds or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as may be directed by the President of the United States for the time being: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed for the highest rate of disability half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half pay of a lieutenant colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

SEC. 15. *And be it further enacted*, That if any commissioned officer in the military peace establishment of the United States, shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children under sixteen years of age, such widow or, if no widow, such child or children shall be entitled to and receive half the monthly pay, to which the deceased was entitled at the time of his death, for and during the term of five years. But in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided, always*, That such half pay shall cease on the decease of such child or children.

SEC. 16. *And be it further enacted*, That the paymaster shall perform the duties of his office, agreeably to the direction of the President of the United States, for the time being; and before he enters on the duties of the same, shall give bonds, with good and sufficient sureties, in such sums as the President shall direct, for the faithful discharge of his said office, and shall take an oath to execute the duties thereof with fidelity: and it shall moreover, be his duty to appoint from the line, with the approbation of the President of the United States, the several paymasters to districts, and assistants, prescribed by this act; and he is hereby authorized to require the said paymasters to districts, and assistants, to enter into bond, with good and sufficient surety, for the faithful discharge of their respective duties.

SEC. 17. *And be it further enacted*, That it shall be the duty of the military agents, designated by this act, to purchase, receive, and forward to their proper destination, all military stores, and other articles, for the troops in their respective departments, and all goods and annuities for the Indians, which they may be directed to purchase, or which shall be ordered into their care by the Department of War. They shall account with the Department of War, annually, for all the public property which may pass through their hands, and all the moneys which they may expend in discharge of the duties of their offices, respectively: previous to their entering on the duties of their offices, they shall give bonds, with sufficient sureties, in such sums as the President of the United States shall direct, for the faithful discharge of the trust reposed in them, and shall take an oath faithfully to perform the duties of their respective offices.

SEC. 18. *And be it further enacted*, That if any non-commissioned officer, musician, or private, shall desert the service of the United States, he shall, in addition to the penalties mentioned in the rules and articles of war, be liable to serve, for and during such a period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall and may be tried by a court martial, and punished, although the term of his enlistment may have elapsed previous to his being apprehended or tried.

SEC. 19. *And be it further enacted*, That every

person who shall procure or entice a soldier in the service of the United States to desert, or who shall purchase from any soldier his arms, uniform clothing, or any part thereof; and every captain or commanding officer of any ship or vessel, who shall enter on board such ship or vessel, as one of his crew, knowing him to have deserted, or otherwise carry away any such soldier, or shall refuse to deliver him up to the orders of his commanding officer, shall, upon legal conviction, be fined at the discretion of any court having cognizance of the same, in any sum not exceeding three hundred dollars, or be imprisoned any term not exceeding one year.

SEC. 20. *And be it further enacted*, That every officer, non-commissioned officer, musician and private, shall take and subscribe the following oath or affirmation, to wit: "I, A. B., do solemnly swear, or affirm, (as the case may be,) that I will bear true faith and allegiance to the United States of America, and that I will serve them honestly and faithfully against their enemies or opposers, whomsoever; and that I will observe and obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war."

SEC. 21. *And be it further enacted*, That whenever a general court martial shall be ordered, the President of the United States may appoint some fit person to act as judge advocate, who shall be allowed, in addition to his other pay, one dollar and twenty-five cents for every day he shall be necessarily employed in the duties of the said court; and in cases where the President shall not have made such appointment, the brigadier general or the president of the court may make the same.

SEC. 22. *And be it further enacted*, That where any commissioned officer shall be obliged to incur any extra expense in travelling and sitting on general courts martial, he shall be allowed a reasonable compensation for such extra expense actually incurred, not exceeding one dollar and twenty-five cents per day, to officers who are not entitled to forage, and not exceeding one dollar per day to such as shall be entitled to forage.

SEC. 23. *And be it further enacted*, That no non-commissioned officer, musician or private shall be arrested, or subject to arrest, or to be taken in execution for any debt under the sum of twenty dollars, contracted before enlistment, nor for any debt contracted after enlistment.

SEC. 24. *And be it further enacted*, That whenever any officer or soldier shall be discharged from the service, except by way of punishment for any offence, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day.

SEC. 25. *And be it further enacted*, That to each commissioned officer, who shall be deranged by virtue of this act, there shall be allowed and paid, in addition to the pay and emoluments to which they will be entitled by law at the time of their discharge—to each officer whose term of service in any military corps of the United States shall not have exceeded three years, three months' pay; to all other officers, so deranged, one month's pay of their grades, respectively, for each year of past service in the army of the United States, or in any regiment or corps now or formerly in the service thereof.

SEC. 26. *And be it further enacted*, That the President of the United States is hereby authorized and empowered, when he shall deem it expedient, to organize and establish a corps of engineers, to consist of one engineer, with the pay, rank, and emoluments of a major; two assistant engineers, with the pay, rank, and emoluments of captains; two other assistant engineers, with the pay, rank, and emoluments of first lieutenants; two other assistant engineers, with the pay, rank, and emoluments of second lieutenants; and ten cadets, with the pay of sixteen dollars per month, and two rations per day; and the President of the United States is, in like manner, authorized, when he shall deem it proper, to make such promotions in the said corps, with a view to particular merit, and without regard to rank, so as not to exceed one colonel, one lieutenant colonel, two majors, four captains, four first lieutenants, four second lieutenants, and so as that the number of the whole corps shall, at no time, exceed twenty officers and cadets.

SEC. 27. *And be it further enacted*, That the said corps when so organized, shall be stationed at West Point, in the State of New York, and shall constitute a military academy; and the engineers, assistant engineers, and cadets of the said corps, shall be subject, at all times, to do duty in such places, and on such service, as the President of the United States shall direct.

SEC. 28. *And be it further enacted*, That the principal engineer, and in his absence the next in rank, shall have the superintendence of the said military academy, under the direction of the President of the United States; and the Secretary of War is hereby authorized, at the public expense, under such regulations as shall be directed by the President of the United States, to procure the necessary books, implements, and apparatus, for the use and benefit of the said institution.

SEC. 29. *And be it further enacted*, That so much of any act or acts, now in force, as comes within the purview of this act, shall be, and the same is hereby, repealed; saving, nevertheless, such parts thereof as relate to the enlistments or term or service of any of the troops, which, by this act, are continued on the present military establishment of the United States.

Approved, March 16, 1802.

An Act for the accommodation of persons concerned in certain fisheries therein mentioned.

Be it enacted, &c., That, from and after the passing of this act, it shall be lawful for the collector of the customs for the district of Edenton, to permit any vessel having on board salt only, after due report and entry, and security given for the duties, to proceed, under the inspection of an officer of the customs, to any fishery, or other landing place within the district, (to be designated in the permit,) and there discharge the same; subject, however, in all other respects, to the regulations, penalties, and provisions established by an act passed the second of March, in the year one thousand seven hundred and ninety-nine, entitled "An act to regulate the collection of duties on imports and tonnage."

SEC. 2. *And be it further enacted*, That every inspector, or other officer of the customs, while performing duty on board any such vessel, elsewhere than in the port to which such officer may properly belong, shall be entitled to receive from the master, or commander thereof, such provisions and other accommodations, (free from expense,) as are usually supplied to passengers, or as the state and condition of the vessel will admit.

SEC. 3. *And be it further enacted*, That if, by reason of the delivery of any cargo of salt, in manner aforesaid, more than fifteen working days, (computing from the date of entry,) shall, in the whole, be spent therein, the wages or compensation of such inspector, or other officer of the customs, who may be employed on board any vessel, in respect to which such term may be so exceeded, shall, for every day of such excess, be paid by the master or owner; and until paid, it shall not be lawful for the collector to grant a clearance, or to permit such vessel to depart from the district.

Approved, March 16, 1802.

An Act to amend an act, entitled "An act to lay and collect a direct tax within the United States."

Be it enacted, &c., That the collectors in each district shall prepare and transmit to their respective supervisors, correct lists of all lands within their respective collection districts, which by the act passed the fourteenth day of July, one thousand seven hundred and ninety-eight, entitled "An act to lay and collect a direct tax within the United States," they now are or hereafter shall be authorized to advertise for sale, specifying therein the persons in whose names the assessments were originally made, and the sums due thereon respectively; of which lists it shall be the duty of the supervisor, in all cases, to cause correct transcripts to be made out, and to cause to be inserted for five weeks successively, in one or more newspapers published within his district, one of which shall be the gazette in which are published, by authority, the laws of the State within whose limits the said district may be comprised, if there be any such gazette, a notification, that such transcripts are lodged at his office, and are open to the free inspection of all parties concerned; and also notifying, that the tax due upon the said lands may be paid to the collector within whose division the aforesaid lands are contained, or to the supervisor of the district, at any time within the space of six months from the date of such notification, and the time when, and places where sales will be made of all lands upon which any part of the direct tax shall remain due after the expiration of the time aforesaid.

SEC. 2. *And be it further enacted*, That in case of failure on the part of the owner or owners of the aforesaid lands to pay within the aforesaid time the full amount of tax due thereon, the collectors, under the direction, and with the approbation of their respective supervisors, shall immediately proceed to sell, at public sale, at the times and places mentioned in the advertisement of the supervisor, so much of the lands aforesaid as may be sufficient to satisfy the same, together with all the costs and charges of preparing lists, advertising, and notifying, as aforesaid, and of the sale.

SEC. 3. *And be it further enacted*, That the aforesaid tax, including all costs and charges as aforesaid, shall be and remain a lien upon all lands and other real estate on which the same has been assessed, until the tax due upon the same, including all costs and charges, shall have been collected, or until a sale shall have been effected, according to the provision of this act, or of the act to which this is a supplement.

SEC. 4. *And be it further enacted*, That in all cases wherein any tract of land may have been assessed in one assessment, which at the time when such assessment was made, was actually divided into two or more distinct parcels, each parcel having one or more distinct proprietor or proprietors, it shall be the duty of the collector to receive in manner aforesaid, from any proprietor or proprietors thus situated, his or their proportion of the tax due upon such tract; and thereupon, the land of the proprietor or proprietors, upon which the tax shall have been thus paid, shall be forever discharged from any part of the tax due under the original assessment.

SEC. 5. *And be it further enacted*, That in any case in which it may have happened that lands actually belonging to one person, may have been, or hereafter shall be, assessed in the name of another, and no sale of the same shall yet have been made, the same proceedings shall be had for the sale of the aforesaid lands, in order to raise the tax assessed in relation to the same, as is provided by the eleventh section of the act to which this is a supplement, in the case of lands assessed, the owner whereof is unknown; and such sale shall transfer and pass to the purchaser a good and effectual title.

SEC. 6. *And be it further enacted*, That the right of redemption reserved to the owners of lands and tenements sold under this act, or the act to which this is a supplement, shall in no wise be affected or impaired: *Provided always*, That the owners of lands which shall thus be sold after the passing of this act, in order to avail themselves of that right, shall make payment or tender of payment within two years from the time of sale, for the use of the purchaser, his heirs or assigns, of the amount of the said tax, costs, and charges, with interest for the same, at the rate of twenty-five per cent. per annum.

SEC. 7. *And be it further enacted*, That the Secretary of the Treasury shall be, and hereby is, authorized and empowered, under the direction of the President of the United States, to augment

the compensation fixed by law for the Commissioner or for the principal and assistant assessors, or either of them, in any division where it shall be found necessary for carrying into effect the act entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," so, however, as that the Commissioner shall in no case receive more than five dollars per day, nor the principal or assistant assessor in any case receive more than three dollars per day, which additional compensation shall be subject to the same rules of settlement as are established by the act last aforesaid.

Approved, March 16, 1802.

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Be it enacted, &c., That the following boundary line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: Beginning at the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort Lawrence; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westwardly course to Fort Recovery, which stands on a branch of the Wabash; thence southwestwardly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttawa river; thence down the said river Ohio to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clarke, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennessee rivers; thence southeastwardly on the said ridge, to a point, from whence a southwest line will strike the mouth of Duck river; thence, still eastwardly on the said ridge, to a point forty miles above Nashville; thence northeast to Cumberland river; thence up the said river to where the Kentucky road crosses the same; thence to the Cumberland mountain, at the point of Campbell's line; thence in a southwestwardly direction along the foot of the Cumberland mountain to Emory's river; thence down the same to its junction with the river Clinch; thence down the river Clinch to Hawkins's line; thence along the same to a white oak, marked one mile tree; thence south fifty-one degrees west, three hundred and twenty-eight chains, to a large ash tree on the bank of the river Tennessee, one mile below Southwest Point; thence up the northeast margin of the river Tennessee, (not including islands,) to the Wild Cat Rock, below Tellico block-house; thence in a direct line to the Militia Spring, near the Maryville road leading from Tellico; thence from the said spring to the Chilhowee mountain, by a line so to be run as will leave all the farms on Nine-mile creek to the northward and eastward of it, and to be continued along the Chilhowee mountain until it strikes Hawkins's line; thence along the said line to the great Iron mountain; and from the top of which a line to be continued in a southeastwardly course to where the most southern branch of Little river crosses the divisional line to Tugaloo river; thence along the South Carolina Indian boundary to and over the Ocunna mountain, in a southwest course to Tugaloo river; thence in a direct line to the top of Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Oakmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river St. Mary's: *Provided always*, That if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line so to be varied, in the same manner, as said provisions apply, by force of this act, to the boundary line hereinbefore recited.

Sec. 2. *And be it further enacted*, That if any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months.

Sec. 3. *And be it further enacted*, That if any such citizen, or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the Governor of some one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months.

Sec. 4. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement, or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit

robbery, larceny, trespass, or any other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any State, against a citizen of the United States; or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed; and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the Treasury of the United States: *Provided, nevertheless*, That no such Indian shall be entitled to any payment out of the Treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

Sec. 5. *And be it further enacted*, That if any such citizen, or other person, shall make a settlement on any lands belonging or secured, or granted by treaty with the United States, to any Indian tribe, or shall survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon.

Sec. 6. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement, or territory, belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians in amity with the United States, such offender, on being thereof convicted, shall suffer death.

Sec. 7. *And be it further enacted*, That no such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, of any of the Indian tribes as a trader, without a license, under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose; which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions as are, or shall be made for the government of trade and intercourse with the Indian tribes; and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken on the breach of any condition therein contained.

Sec. 8. *And be it further enacted*, That any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

Sec. 9. *And be it further enacted*, That if any such citizen, or other person, shall purchase, or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

Sec. 10. *And be it further enacted*, That no such citizen, or other person, shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions, and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him as aforesaid; describing such horses by their color, height, and other natural or artificial marks, under the penalty contained in their respective bonds; and every such person purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall, for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days; and every person who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse.

Sec. 11. *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to or from any Indian, excepting for and on account of the United States: and any person offending herein shall forfeit a sum not exceeding

one thousand dollars, and be imprisoned not exceeding twelve months.

Sec. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the Constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided, nevertheless*, That it shall be lawful for the agent or agents of any State, who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the Commissioner or Commissioners, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claims to lands within such State, which shall be extinguished by the treaty.

Sec. 13. *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, That the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

Sec. 14. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line into any State or territory inhabited by citizens of the United States, and there take, steal, or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence, or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken as shall be proper to obtain satisfaction for the injury: and, in the mean time, in respect to the property so taken, stolen, or destroyed, the United States guaranty to the party injured an eventual indemnification: *Provided always*, That if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided, also*, That nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any State or district, of any Indian having so offended: *And provided, further*, That it shall be lawful for the President of the United States to deduct such sum or sums as shall be paid for the property taken, stolen, or destroyed, by any such Indian, out of the annual stipend which the United States are bound to pay to the tribe to which such Indian shall belong.

Sec. 15. *And be it further enacted*, That the superior courts in each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for trial, shall have, and are hereby invested with full power and authority to hear and determine all crimes, offences, and misdemeanors, against this act; such courts proceeding therein in the same manner as if such crimes, offences, and misdemeanors had been committed within the bounds of their respective districts: and in all cases where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States, in their respective districts, shall have, and are hereby invested with, like power to hear and determine the same, any law to the contrary notwithstanding: And, in all cases where the punishment shall be death, it shall be lawful for the Governor of either of the territorial districts where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of oyer and terminer to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner as the superior courts of such districts have in their ordinary sessions; and when the offender shall be apprehended, or brought for trial into any of the United States, except Kentucky or Tennessee, it shall be lawful for the President of the United States to issue a like commission to any one or more judges of the Supreme Court of the United States, and the judge of the district, in which such offender may have been apprehended or shall have been brought for trial; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment in the same manner as such circuit court might or could do. And the district courts of Kentucky, Tennessee, and Maine, shall have jurisdiction of all crimes, offences, and misdemeanors committed against this act, and shall proceed to trial and judgment, in the same manner as the circuit courts of the United States.

Sec. 16. *And be it further enacted*, That it shall be lawful for the military force of the United States to apprehend every person who shall or may be found in the Indian country, over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining States or districts, to be proceeded against in due course of law: *Provided*, That no person, apprehended by military force as aforesaid, shall be detained longer than five days after the arrest, and before removal. And all officers and soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of maltreating any such person, while in custody, shall suffer such punishment as a court martial shall direct: *Provided*, That the officer having custody of such person or persons shall, if required by such person or persons, conduct him or them to the nearest judge of the supreme or superior court of any State, who, if the offence is bailable, shall take proper bail if offered, returnable to the district court next to be holden in said district, which bail the said judge is hereby authorized to take, and which shall be liable to be estreated as any other recognizance for bail in any court of the United States; and if said judge shall refuse to act, or the person or persons fail to procure satisfactory bail, then the said person or persons are to be proceeded with according to the directions of this act.

Sec. 17. *And be it further enacted*, That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial in the same manner as if such crime or offence had been committed within such State or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

Sec. 18. *And be it further enacted*, That the amount of fines and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court before whom the trial shall be had; and that all fines and forfeitures which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.

Sec. 19. *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual States; or the unmolested use of a road from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair the said road, under the direction or orders of the Governor of said State, and of the navigation of the Tennessee river, as reserved and secured by treaty; nor shall this act be construed to prevent any person or persons travelling from Knoxville to Price's settlement, or to the settlement on Obed's river, (so called,) provided they shall travel in the trace or path which is usually travelled, and provided the Indians make no objection; but if the Indians object, the President of the United States is hereby authorized to issue a proclamation, prohibiting all travelling on said traces, or either of them, as the case may be; after which the penalties of this act shall be incurred by every person travelling or being found on said traces, or either of them, to which the prohibition may apply, within the Indian boundary, without a passport.

Sec. 20. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to cause to be clearly ascertained and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the United States and any Indian tribe, which now are, or hereafter may be, established by treaty.

Sec. 21. *And be it further enacted*, That the President of the United States be authorized to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes, anything herein contained to the contrary thereof notwithstanding.

Sec. 22. *And be it further enacted*, That this act shall be in force from the passage thereof; and so far as respects the proceedings under this act, it is to be understood that the act, entitled "An act to amend an act, entitled 'An act giving effect to the laws of the United States within the district of Tennessee,'" is not to operate.

Approved, March 30, 1802.

An Act making a partial appropriation for the support of Government during the year one thousand eight hundred and two.

Be it enacted, &c., That the sum of one hundred thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated, shall be, and the same hereby is, appropriated towards defraying the expenditure of the civil list, including

the contingent expenses of the several departments, during the year one thousand eight hundred and two.

Approved. April 2, 1802.

An Act making appropriation for defraying the expense of a negotiation with the British Government, to ascertain the boundary line between the United States and Upper Canada.

Be it enacted, &c., That a sum not exceeding ten thousand dollars be, and the same is hereby, appropriated, payable out of any money in the Treasury not otherwise appropriated, to defray the expense which shall be incurred in negotiating with the Government of Great Britain, for ascertaining and establishing the boundary line between the United States and the British province of Upper Canada; when the President of the United States shall deem it expedient to commence such negotiation.

Approved, April 3, 1802.

An Act making an appropriation for defraying the expenses which may arise from carrying into effect the convention made between the United States and the French Republic.

Be it enacted, &c., That, for the payment of such demands as may be justly due for French vessels and property captured, and which must be restored or paid for, pursuant to the convention between the United States and the French Republic, there be appropriated a sum not exceeding three hundred and eighteen thousand dollars, to be paid, under the direction of the President of the United States, out of any public money in the Treasury not otherwise appropriated.

Approved, April 3, 1802.

An Act to repeal the Internal Taxes.

Be it enacted, &c., That, from and after the thirtieth day of June next, the internal duties on stills, and domestic distilled spirits, on refined sugars, licenses to retailers, sales at auction, carriages for the conveyance of persons, and stamped vellum, parchment, and paper, shall be discontinued, and all acts and parts of acts relative thereto, shall, from and after the said thirtieth day of June next, be repealed: *Provided*, That for the recovery and receipt of such duties as shall have accrued, and on the day aforesaid remain outstanding, and for the payment of drawbacks or allowances on the exportation of any of the said spirits or sugars, legally entitled thereto, and for the recovery and distribution of fines, penalties, and forfeitures, and the remission thereof, which shall have been incurred before and on the said day, the provisions of the aforesaid acts shall remain in full force and virtue.

Sec. 2. *And be it further enacted*, That the office of Superintendent of Stamps shall cease and be discontinued from and after the thirtieth day of April, one thousand eight hundred and two; after which day the Commissioner of the Revenue shall perform all the duties by law enjoined on the said Superintendent of Stamps, which may be required in pursuance of this act: that the office of collectors of the internal duties shall continue in each collection district respectively, until the collection of the duties above mentioned shall have been completed in such district, and no longer, unless sooner discontinued by the President of the United States, who shall be and hereby is empowered, whenever the collection of the said duties shall have been so far completed in any district as to render, in his opinion, that measure expedient, to discontinue any of the said collectors, and to unite into one collection district any two or more collection districts, lying and being in the same State: that the office of supervisor shall continue in each State or district, respectively, until the collection of the duties above mentioned, together with the collection of the direct tax, shall have been completed in each State or district, and no longer; unless sooner discontinued by the President of the United States, who shall be and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed in any State or district as, in his opinion, to render that measure expedient, to discontinue any of the said offices; in which case, the collectors thereafter employed in the collection of the said duties and tax in such State or district shall be appointed and removed by the President alone, and shall be immediately accountable to the officers of the Treasury Department, under such regulations as may be established by the Secretary of the Treasury: that for the promoting of the collection of any of the above mentioned duties or tax, which may be outstanding after the said thirtieth day of June next, the President of the United States shall be, and he hereby is empowered, at any time hereafter, to make such allowance as he may think proper, in addition to that now allowed by law to any of the collectors of the said duties and tax, and the same from time to time to vary: *Provided*, That such additional allowance shall in no instance exceed, in the aggregate, five per cent. of the gross amount of the duties and tax outstanding on that day: and the office of Commissioner of the Revenue shall cease and be discontinued, whenever the collection of the duties and tax above mentioned shall be completed, unless sooner discontinued by the President of the United States, who shall be, and hereby is empowered, whenever the collection of the said duties and tax shall have been so far completed as, in his opinion, to render that measure expedient, to discontinue the said office, in which case the immediate superintendence of the collection of such parts of the said duties and tax as may then remain outstanding, shall be placed in such officer of the Treasury Department, as the Secretary for the time being, may designate: *Provided, however*, That all bonds, notes, or other instruments, which have been charged with the payment of a duty, and which shall, at any time prior to the said thirtieth day of June, have been written or printed upon vellum, parchment, or paper, not stamped or marked according to law, or upon vellum, parchment, or paper stamped or marked at a lower rate of duty, than is, by law, required for such bond, note, or other instrument, may be presented to any collector of the customs within the State; and where there is no such collector, to the marshal of the district, whose duty it shall be, upon the payment of the duty with which such instrument was chargeable, together with the additional sum of ten dollars, for which duty and additional sum the said collector or marshal shall be accountable to the Treasury of the United States, to endorse upon some part of such instrument his receipt for the same; and thereupon the said bond, note, or other instrument shall be, to all intents and purposes, as valid and available to the person holding the same, as if it had been or were stamped, counterstamped, or marked as by law required; anything in any act to the contrary, notwithstanding.

Sec. 3. *And be it further enacted*, That owners of stills, whose licenses to distil shall not have expired on the thirtieth day of June next, shall at their option, pay either the whole duty which would have accrued on their stills on account of such licenses, or the duty which would have accrued on said stills, on the day aforesaid, if they had taken licenses ending on that day: the owners of snuff mills, whose licenses have not expired on the first day of June, one thousand seven hundred and ninety-six, shall be allowed a deduction from the duties incurred on the same, proportionate to the time thus remaining unexpired on such licenses: that the several banks, which may have agreed to pay the annual compensation of one per cent. on their dividends, in lieu of the stamp duty on the notes issued by them, shall pay only at the rate of one per cent. per annum on such dividends, to the thirtieth day of June next: that retailers of wines and spirits, who may take licenses, after the passing of this act, shall pay for such licenses only in proportion to the time which may intervene between the obtaining such licenses and the thirtieth day of June next: and that the owners of carriages for the conveyance of persons, who may enter the same after the passing of this act, and before the thirtieth day of June next, shall pay the duty for the same only to the said thirtieth day of June.

Sec. 4. *And be it further enacted*, That the supervisor of the Northwest district shall, in addition to the same commissions on the product of all the internal duties collected in his district, as heretofore have been allowed to the supervisor of Ohio, be allowed an annual salary of five hundred dollars, and at the rate of three hundred dollars per annum for clerk hire.

Sec. 5. *And be it further enacted*, That the following extra allowances for clerk hire, shall be made for one year, to the supervisors of the following districts, as a full compensation for the additional duties arising from the settlement of accounts of certain inspectors of the internal revenues, whose offices have been suppressed by the President of the United States; that is to say, to each of the supervisors of Massachusetts, Pennsylvania, Maryland, North Carolina, and South Carolina, the sum of eight hundred dollars, and to the supervisor of Virginia, the sum of five hundred dollars.

Sec. 6. *And be it further enacted*, That so much of any act as directs an annual entry of stills to be made, be, and the same hereby is, repealed.

Sec. 7. *And be it further enacted*, That the certificates accompanying foreign distilled spirits, wines, and teas, which are now furnished by the supervisors to the inspectors of the ports, shall, from and after the aforesaid thirtieth day of June, be furnished by such collectors of the customs, as may be designated by the Secretary of the Treasury. And it shall be the duty of the inspectors to account with such collectors, for the application of such certificates, in like manner, and under the same regulations as heretofore they have accounted with the supervisors.

Sec. 8. *And be it further enacted*, That, for preparing and issuing the certificates, the collectors performing that duty shall be entitled to, and receive, the same compensation as heretofore has been allowed to the supervisors, respectively.

Sec. 9. *And be it further enacted*, That all persons who shall, on or after the thirtieth day of June next, have any blank vellum, parchment, or paper, which has been stamped by the superintendent of stamps and counter-stamped by the commissioner of the revenue, and on which a duty has been paid to the use of Government, shall be entitled to receive from such collector or collectors of the customs, or other revenue officer in the respective States or districts as may be designated for that purpose by the Secretary of the Treasury, the value of the said stamps, after deducting, in all cases, seven and an half per cent., and the said officers are hereby authorized to pay the same: *Provided*, The said blank vellum, parchment, or paper, be presented within four months after the thirtieth day of June next.

Approved, April 6, 1802.

An Act authorizing the erection of certain light-houses, and for other purposes.

Be it enacted, &c., That, under the direction of the Secretary of the Treasury, there shall be purchased, for the use of the United States, the land whereon lately stood the light-house on Gurnet Point, and so much land adjoining thereto, as may be sufficient for vaults and any other purposes necessary for the better support of the said light-house.

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized, at his discretion, to procure a new lantern or lanterns, with suitable distinctions, and to cause convenient vaults to be erected; and the said light-house, on the Gurnet, at the entrance on Plymouth harbor, to be rebuilt.

Sec. 3. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized, to cause to be rebuilt, of such height as he may deem expedient, the light-house now situated on the Eastern end of Newcastle

Island, at the entrance of Piscataqua river, either on the land owned by the United States, or on Pollock Rock: *Provided*, That if built on Pollock Rock, the Legislature of New Hampshire shall vest the property of the said rock in the United States, and cede the jurisdiction of the same.

Sec. 4. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on Lynde's point, at the mouth of Connecticut river, in the State of Connecticut, and to appoint a keeper, and otherwise provide for such light-house, at the expense of the United States: *Provided*, That sufficient land for the accommodation of such light-house can be purchased at a reasonable price, and the Legislature of the State of Connecticut shall cede the jurisdiction over the same to the United States.

Sec. 5. *And be it further enacted*, That the Secretary of the Treasury be directed to cause proper light-houses to be built, and buoys to be placed, in the situations necessary for the navigation of the sound between Long Island and the main; and be, to that effect, authorized to cause, by proper and intelligent persons, a survey to be taken of the said sound, as far as may be requisite; and to appoint keepers, and otherwise provide for such light-houses, at the expense of the United States: *Provided*, That sufficient land for the accommodation of the respective light-houses can be purchased at a reasonable price; and that the Legislatures of Rhode Island, Connecticut, and New York, shall, respectively, cede the jurisdiction over the same to the United States.

Sec. 6. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and directed to cause a sufficient light-house to be erected on the south point of Cumberland island, at the entrance of St. Mary's river, within the State of Georgia; and that, under the direction of the said Secretary, there shall be purchased, if the same cannot otherwise be obtained, sufficient land for the erection of the said light-house, and accommodations for the better support thereof: *Provided*, That the Legislature of Georgia shall cede the jurisdiction over the same to the United States.

Sec. 7. *And be it further enacted*, That there shall be, and hereby are, appropriated, for the reimbursement of the merchants of Plymouth and Duxbury, for moneys expended by them in erecting a temporary light on the Gurnet, a sum not exceeding two hundred and seventy dollars; for the rebuilding the light-house on the said Gurnet, a sum not exceeding two thousand five hundred dollars; for rebuilding the light-house on the eastern end of Newcastle island, a sum not exceeding four thousand dollars; and for the erection of the said light-house on said Lynde's point, a sum not exceeding two thousand five hundred dollars; for the erection of a light-house on Cumberland South Point, a sum not exceeding four thousand dollars; and for taking the survey, and for erecting light-houses and placing buoys in the sound, a sum not exceeding eight thousand dollars to be paid out of any moneys which may be in the Treasury, not otherwise appropriated.

Sec. 8. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury, under the direction of the President of the United States, to cause to be expended, in repairing and erecting public piers in the river Delaware, a sum not exceeding thirty thousand dollars; and that the same be paid out of any moneys in the Treasury, not otherwise appropriated: *Provided*, That the jurisdiction of the site where any such piers may be erected, shall be first ceded to the United States, according to the conditions in such case by law provided.

Approved, April 6, 1802.

An Act for the relief of the Marshals of certain districts therein mentioned.

Be it enacted, &c., That the Secretary of the Treasury be, and he hereby is, authorized and directed to apportion to the several marshals of the districts of Virginia, Maryland, and Pennsylvania, respectively, who have been employed or concerned in taking the late census, the compensation allowed by the "Act providing for the second census or enumeration of the inhabitants of the United States," according to the service each may have performed.

Approved, April 6, 1802.

An Act declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned.

Be it enacted, &c., That the assent of Congress is hereby given, and declared, to an act of the General Assembly of Virginia, entitled "An act to amend, and reduce into one, the several acts of Assembly for improving the navigation of Appomattox river from Broadway to Pocahuntas bridge."

Approved, April 14, 1802.

An Act to revive and continue in force an act, entitled "An act to augment the salaries of the officers therein mentioned," passed the second day of March, one thousand seven hundred and ninety-nine.

Be it enacted, &c., That an act, entitled "An act to augment the salaries of the officers therein mentioned," be, and the same is hereby, revived and continued in force for and during the term of two years from the commencement of the present year.

Approved, April 14, 1802.

An act to amend an act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures."

Be it enacted, &c., That the second section of the act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures," shall not be deemed to operate upon unregistered ships or vessels owned

by the citizens of the United States at the time of passing the said act, in those cases where such ship or vessel at that time possessed a sea-letter or other regular document, issued from a custom-house of the United States, proving such ship or vessel to be American property.

Sec. 2. *And be it further enacted*, That, whenever satisfactory proof shall be made to the Secretary of the Treasury that any unregistered ship or vessel was in fact the property, in whole, of a citizen or citizens of the United States, on the thirteenth day of May, in the year one thousand eight hundred, that the Secretary of the Treasury be, and he is hereby, authorized and directed to cause to be issued to such ship or vessel a certificate, which shall entitle such unregistered ship or vessel to the same privileges which are hereinbefore granted to unregistered ships or vessels owned by citizens of the United States, and carrying a sea-letter or other regular document, issued from a custom-house of the United States before the passing of the said act, entitled "An act to retain a further sum on drawbacks, for the expenses incident to the allowance and payment thereof, and in lieu of stamp duties on debentures."

Approved, April 14, 1802.

An Act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject.

Be it enacted, &c., That any alien, being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise.

First. That he shall have declared, on oath or affirmation, before the supreme, superior, district, or circuit court of some one of the States, or of the Territorial districts of the United States, or a circuit or district court of the United States, three years at least before his admission, that it was *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty, whereof such alien may at the time be a citizen or subject.

Secondly. That he shall, at the time of the application to be admitted, declare on oath or affirmation, before some one of the courts aforesaid, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty, whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Thirdly. That the court admitting such alien shall be satisfied that he has resided within the United States five years, at least, and within the State or Territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall, in no case, be allowed to prove his residence.

Fourthly. That in case the alien applying to be admitted to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native citizen, denizen, or subject, of any country, state, or sovereign, with whom the United States shall be at war at the time of his application, shall be then admitted to be a citizen of the United States: *Provided, also*, That any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath, or affirmation, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, whereof he was before a citizen or subject; and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien applying for admission to citizenship shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: *And provided, also*, That any alien who has resided within the limits and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified.

Sec. 2. *Provided, also, and be it further enacted*, That, in addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry and obtain certificates in

the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master, or mistress, to the clerk of the district court of the district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the Territorial districts of the same, or of a particular State; and such report shall ascertain the name, birth-place, age, nation, and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement; and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate, under his hand and seal of office, of such report and registry; and for receiving and registering each report of any individual or family, he shall receive fifty cents; and for each certificate granted pursuant to this act, to an individual or family, fifty cents: and such certificate shall be exhibited to the court by every alien who may arrive in the United States after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States.

Sec. 3. *And whereas*, doubts have arisen whether certain courts of record in some of the States are included within the description of district or circuit courts: *Be it further enacted*, That every court of record in any individual State, having common law jurisdiction, and a seal, and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien who may have been naturalized in any such court, shall enjoy, from and after the passing of this act, the same rights and privileges as if he had been naturalized in a district or circuit court of the United States.

Sec. 4. *And be it further enacted*, That the children of persons duly naturalized under any of the laws of the United States, or who, previous to the passing of any law on that subject by the Government of the United States, may have become citizens of any one of the said States, under the laws thereof, being under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who now are or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the rights of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided, also*, That no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain, during the late war, shall be admitted a citizen, as aforesaid, without the consent of the Legislature of the State in which such person was proscribed.

Sec. 5. *And be it further enacted*, That all acts heretofore passed respecting naturalization, be, and the same are, hereby repealed.

Approved, April 14, 1802.

An Act in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Be it enacted, &c., That from and after the passing of this act, and until the first day of January next, it shall be lawful for the holders or proprietors of warrants heretofore granted in consideration of military services, or register's certificates of fifty acres, or more, granted, or hereafter to be granted, agreeable to the third section of an act, entitled "An act in addition to an act, entitled an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the first day of March, one thousand eight hundred, to register and locate the same, in the same manner, and under the same restrictions, as might have been done before the first day of January last: *Provided*, That persons holding register's certificates for a less quantity than one hundred acres, may locate the same on such parts of fractional townships, as shall, for that purpose, be divided by the Secretary of the Treasury into lots of fifty acres each.

Sec. 2. *And be it further enacted*, That it shall be the duty of the Secretary of War to receive claims to lands for military services, and claims for duplicates of warrants issued from his office, or from the land office of Virginia, or of plats and certificates of surveys founded on such warrants, suggested to have been lost or destroyed, until the first day of January next, and no longer; and, immediately thereafter, to report the same to Congress, designating the numbers of claims of each description, with his opinion thereon.

Approved, April 26, 1802.

An Act to amend the Judicial System of the United States.

Be it enacted, &c., That, from and after the passing of this act, the Supreme Court shall be holden by the justices thereof, or any four of them, at the city of Washington, and shall have one session in each and every year, to commence on the first Monday of February, annually, and that if four of the said justices shall not attend within ten days after the time hereby appointed for the commencement of the said session, the business of the said court shall be continued over till the next stated session thereof: *Provided, always*, That any one or more of the said justices, attending as aforesaid, shall have power to make all necessary orders touching any suit, action, writ of error, process, pleadings, or proceedings, returned to the said court or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings. And so much of the act, entitled "An act to establish the judicial courts of the United

States," passed the twenty-fourth day of September, seventeen hundred and eighty-nine, as provides for the holding a session of the Supreme Court of the United States on the first Monday of August, annually, is hereby repealed.

Sec. 2. *And be it further enacted*, That it shall be the duty of the associate justices resident in the fourth circuit formed by this act, to attend at the city of Washington on the first Monday of August next, and on the first Monday of August each and every year thereafter, who shall have power to make all necessary orders touching any suit, action, appeal, writ of error, process, pleadings, or proceedings, returned to the said court, or depending therein, preparatory to the hearing, trial, or decision of such action, suit, appeal, writ of error, process, pleadings, or proceedings; and that all writs and process may be returnable to the said court on the said first Monday in August, in the same manner as to the session of the said court hereinbefore directed to be holden on the first Monday of February, and may also bear teste on the said first Monday in August, as though a session of the said court was holden on that day; and it shall be the duty of the Clerk of the Supreme Court to attend the said justice on the said first Monday of August, in each and every year, who shall make due entry of all such matters and things as shall or may be ordered as aforesaid by the said justice; and at each and every such August session, all actions, pleas, and other proceedings relative to any cause, civil or criminal, shall be continued over to the ensuing February session.

Sec. 3. *And be it further enacted*, That all actions, suits, process, pleadings, and other proceedings, of what nature or kind soever, civil or criminal, which were continued from the Supreme Court of the United States, which was begun and holden on the first Monday of December last, to the next court to have been holden on the first Monday of June, under the act which passed on the thirteenth day of February, one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States;" and all writs, process, and proceedings, as aforesaid, which are or may be made returnable to the same June session, shall be continued, returned to, and have day, in the session to be holden by this act, on the first Monday of August next; and such proceedings shall be had thereon, as is hereinbefore provided.

Sec. 4. *And be it further enacted*, That the districts of the United States (excepting the districts of Maine, Kentucky, and Tennessee) shall be formed into six circuits, in manner following:

The districts of New Hampshire, Massachusetts, and Rhode Island, shall constitute the first circuit;

The districts of Connecticut, New York, and Vermont, shall constitute the second circuit;

The districts of New Jersey and Pennsylvania, shall constitute the the third circuit;

The districts of Maryland and Delaware, shall constitute the fourth circuit;

The districts of Virginia and North Carolina, shall constitute the fifth circuit;

And the districts of South Carolina and Georgia, shall constitute the sixth circuit.

And there shall be holden annually in each district of the said circuits two courts, which shall be called circuit courts. In the first circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit; and the district judge of the district where such court shall be holden. And the sessions of the said court, in the district of New Hampshire, shall commence on the nineteenth day of May, and the second day of November, annually; in the district of Massachusetts, on the first day of June, and the twentieth day of October, annually; in the district of Rhode Island, on the fifteenth day of June, and the fifteenth day of November, annually.

In the second circuit, the said circuit court shall consist of the senior associate justice of the Supreme Court residing within the fifth circuit, and the district judge of the district, where such court shall be holden.

And the sessions of the said court in the district of Connecticut, shall commence on the thirteenth nay of April, and the seventeenth day of September, annually: in the district of New York, on the first day of April, and the first day of September, annually: in the district of Vermont, on the first day of May, and the third day of October, annually.

In the third circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court, in the district of New Jersey, shall commence on the first day of April, and the first day of October, annually: in the district of Pennsylvania, on the eleventh day of April, and the eleventh day of October, annually.

In the fourth circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the said circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court in the district of Delaware, shall commence on the third day of June, and the twenty-seventh day of October, annually; in the district of Maryland, on the first day of May, and the seventh day of November, annually; to be holden hereafter at the city of Baltimore only.

In the fifth circuit, the circuit court shall consist of the present Chief Justice of the Supreme Court and the district judge of the district where such court shall be holden; and the sessions of the said court in the district of Virginia, shall commence on the twenty-second day of May, and the twenty-second day of November, annually; in the district of North Carolina, on the fifteenth day of June, and the twenty-ninth day of December, annually.

In the sixth circuit, the said circuit court shall consist of the junior associate justice of the Supreme Court in the fifth circuit, and the district judge of the district where such court shall be holden; and the sessions of the said court in the

district of South Carolina shall commence at Charleston on the twentieth day of May, and at Columbia on the twentieth day of November, annually; in the district of Georgia, on the sixth day of May at Savannah, and on the fourteenth day of December hereafter at Louisville, annually: *Provided*, That, when only one of the judges hereby directed to hold the circuit courts shall attend, such circuit court may be held by the judge so attending: and that when any of the said days shall happen on a Sunday, then the said court hereby directed to be holden on such day, shall be holden on the next day thereafter; and the circuit courts, constituted by this act, shall be held at the same place or places in each district of every circuit, as by law they were respectively required to be held previous to the thirteenth day of February, one thousand eight hundred and one, excepting as is hereinbefore directed. And none of the said courts shall be holden until after the first day of July next; and the clerk of each district court shall be also clerk of the circuit court in such district, except as is hereinafter excepted.

SEC. 5. *And be it further enacted*, That on every appointment which shall be hereafter made of a chief justice or associate justice, the said chief justice and associate justices shall allot themselves among the aforesaid circuits as they shall think fit, and shall enter such allotment on record. And in case no such allotment shall be made by them at their session next succeeding such appointment, and also after the appointment of any judge, as aforesaid, and before any allotment shall have been made, it shall and may be lawful for the President of the United States to make such allotment as he shall deem proper, which allotment, made in either case, shall be binding, until another allotment shall be made; and the circuit courts constituted by this act, shall have all the power, authority, and jurisdiction within the several districts of their respective circuits, that, before the thirteenth day of February, one thousand eight hundred and one, belonged to the circuit courts of the United States; and in all cases which, by appeal or writ of error, are, or shall be, removed from a district to a circuit court, judgment shall be rendered in conformity to the opinion of the judge of the Supreme Court presiding in such circuit court.

SEC. 6. *And be it further enacted*, That whenever any question shall occur before a circuit court upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen, shall, during the same term, upon the request of either party, or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the Supreme Court, at their next session to be held thereafter; and shall, by the said court, be finally decided. And the decision of the Supreme Court, and their order in the premises, shall be remitted to the circuit court, and be there entered of record, and shall have effect according to the nature of the said judgment and order: *Provided*, That nothing herein contained shall prevent the cause from proceeding, if, in the opinion of the court, further proceedings can be had, without prejudice to the merits: *And provided, also*, That imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment.

SEC. 7. *And be it further enacted*, That the district of North Carolina shall be divided into three districts, one to consist of all that part thereof which, by the laws of the State of North Carolina, now forms the districts of Edenton and Halifax, which district shall be called the district of Albemarle, and a district court in and for the same shall be holden at Edenton by the district judge of North Carolina, on the third Tuesday in April, on the third Tuesday in August, and on the third Tuesday in December, in each and every year; one other to be called the district of Pamptico, and to consist of all that part of North Carolina which, by the laws of the said State, now forms the districts of Newbern and Hillsborough, together with all that part of the district of Wilmington which lies to the northward and eastward of New river; for which district of Pamptico, a district court shall be holden at Newbern, by the district judge last aforesaid, on the second Tuesday in April, on the second Tuesday in August, and on the second Tuesday in December in each and every year; and one other, to consist of the remaining part of the said district of North Carolina, and to be called the district of Cape Fear, in and for which a district court shall be holden at Wilmington by the district judge last aforesaid, on the first Tuesday in April, on the first Tuesday in August, and on the first Tuesday in December, in each and every year; which said district courts, hereby directed to be holden, shall respectively have and exercise, within their several districts, the same powers, authority, and jurisdiction, which are vested, by law, in the district courts of the United States.

SEC. 8. *And be it further enated*, That the circuit court and district courts for the district of North Carolina shall appoint clerks for the said courts respectively, which clerks shall reside and keep the records of the said courts at the places of holding the courts whereto they shall respectively belong, and shall perform the same duties and be entitled to and receive the same emoluments and fees, respectively, which are by law established for the clerks of the circuit and district courts of the United States respectively.

SEC. 9. *And be it further enacted*, That all actions, causes, pleas, process, and other proceedings relative to any cause, civil or criminal, which shall be returnable to, or depending in the several circuit or district courts of the United States on the first day of July next, shall be, and are hereby declared to be, respectively transferred, returned and continued to the several circuit and district courts constituted by this act, at the times hereinbefore and hereinafter appointed for the holding of each of the said courts, and shall be heard, tried, and determined therein in the same manner and with the same effect, as if no change had been made in the said courts. And it shall be the duty of the clerk of each and every court hereby constituted, to receive and to take into his safe-keeping the writs, process, pleas, proceedings, and papers, of all those causes and actions which, by this act, shall be transferred, returned, or continued to such court, and also all the records and office papers of every kind respectively belonging to the courts abolished by the repeal of the act, entitled "An act to provide for the more convenient organization of the courts of the United States," and from which the said causes shall have been transferred as aforesaid.

SEC. 10. *And be it further enacted*, That all suits, process, pleadings, and other proceedings, of what nature or kind soever, depending in the circuit court in the district of Ohio, and which shall have been, or may hereafter be commenced within the Territory of the United States Northwest of the river Ohio, in the said court, shall, from and after the first day of July next, be continued over, returned, and made cognizable, in the superior court of the said Territory next thereafter to be holden, and all actions, suits, process, pleadings, and other proceedings, as aforesaid depending in the circuit court of the said district, and which shall have been or may hereafter be commenced within the Indiana Territory, in said court, shall, from and after the first day of July next, be continued over, returned and made cognizable in the superior court of the said Indiana Territory, next thereafter to be holden.

SEC. 11. *And be it further enacted*, That in all cases in which proceedings shall, on the said first day of July next, be pending under a commission of bankruptcy issued in pursuance of the aforesaid act, entitled "An act to provide for the more convenient organization of the courts of the United States," the cognizance of the same shall be, and hereby is, transferred to, and vested in, the district judge of the district within which such commission shall have issued, who is hereby empowered to proceed therein, in the same manner and to the same effect, as if such commission of bankruptcy had been issued by his order.

SEC. 12. *And be it further enacted*, That, from and after the first day of July next, the district judges of Kentucky and Tennessee shall be, and hereby are, severally entitled to a salary of fifteen hundred dollars annually, to be paid quarter yearly at the Treasury of the United States.

SEC. 13. *And be it further enacted*, That the marshals and attorneys of the United States, for the districts which were not divided, or within the limits of which new districts were not erected by the act entitled "An act to provide for the more convenient organization of the courts of the United States," passed the thirteenth day of February, one thousand eight hundred and one, shall continue to be marshals and attorneys for such districts respectively, unless removed by the President of the United States, and in all other districts which were divided or within the limits of which new districts were erected by the last recited act, the President of the United States be, and hereby is, empowered from and after the first day of July next to discontinue all such supernumerary marshals and district attorneys of the United States in such districts, respectively, as he shall deem expedient, so that there shall be but one marshal and district attorney to each district; and every marshal and district attorney who shall be continued in office, or appointed by the President of the United States in such districts, shall have and exercise the same powers, perform the same duties, give the same bond with sureties, take the same oath, be subject to the same penalties and regulations as are, or may be prescribed by law, in respect to the marshals and district attorneys of the United States. And every marshal and district attorney who shall be so discontinued as aforesaid shall be holden to deliver over all papers, matters, and things, in relation to their respective offices, to such marshals and district attorneys, respectively, who shall be so continued or appointed as aforesaid in such district, in the same manner as is required by law in cases of resignation or removal from office.

SEC. 14. *And be it further enacted*, That there shall be appointed by the President of the United States, from time to time, as many general commissioners of bankruptcy, in each district of the United States, as he may deem necessary; and upon petition to the judge of a district court for a commission of bankruptcy, he shall proceed as is provided in and by an act, entitled "An act to establish an uniform system of bankruptcy throughout the United States," and appoint, not exceeding three of the said general commissioners as commissioners of the particular bankrupt petitioned against; and the said commissioners, together with the clerk, shall each be allowed, as a full compensation for their services, when sitting and acting under their commissions, at the rate of six dollars per day for every day which they may be employed in the same business, to be apportioned among the several causes on which they may act on the same day, and to be paid out of the respective bankrupt's estates: *Provided*, That the commissioners, who may have been, or may be appointed in any district before notice shall be given of the appointment of commissioners for such district by the President in pursuance of this act, and who shall not then have completed their business, shall be authorized to proceed and finish the same upon the terms of their original appointment.

SEC. 15. *And be it further enacted*, That the stated session of the district court, for the district of Virginia, heretofore directed to be holden in the city of Williamsburg, shall be holden in the town of Norfolk, from and after the first day of July next; and the stated sessions of the district court for the district of Maryland, shall hereafter be holden in the city of Baltimore only; and in the district of Georgia, the stated sessions of the district court shall be held in the city of Savannah only.

SEC. 16. *And be it further enacted*, That for the better establishment of the courts of the United States within the State of Tennessee, the said State shall be divided in two districts, one to con-

sist of that part of said State, which lies on the east side of Cumberland mountain, and to be called the district of East Tennessee, the other to consist of the remaining part of said State, and to be called the district of West Tennessee.

Sec. 17. *And be it further enacted*, That the district judge of the United States, who shall hereafter perform the duties of district judge, within the State of Tennessee, shall annually hold four sessions, two at Knoxville, on the fourth Monday of April, and the fourth Monday of October, in and for the district of East Tennessee, and two at Nashville, on the fourth Monday of May, and the fourth Monday of November, in and for the district of West Tennessee.

Sec. 18. *And be it further enacted*, That there shall be a clerk for each of the said districts of East and West Tennessee, to be appointed by the judge thereof, who shall reside and keep the records of the said courts at the places of holding the courts, whereto they respectively shall belong, and shall perform the same duties, and be entitled to, and receive the same emoluments and fees which are established by law for the clerks of the district courts for the United States, respectively.

Sec. 19. *And be it further enacted*, That there shall be appointed, in and for each of the districts of East and West Tennessee, a marshal, whose duty it shall be to attend the district courts hereby established, and who shall have and exercise within such district, the same powers, perform the same duties, be subject to the same penalties, give the same bond with sureties, take the same oath, be entitled to the same allowance, as a full compensation for all extra services, as hath heretofore been allowed to the marshal of the district of Tennessee, by a law, passed the twenty-eighth day of February, one thousand seven hundred and ninety-nine, and shall receive the same compensation and emoluments, and in all respects be subject to the same regulations as are now prescribed by law, in respect to the marshals of the United States heretofore appointed: *Provided*, That the marshals of the districts of East and West Tennessee, now in office, shall, during the periods for which they have been appointed, unless sooner removed by the President of the United States, be and continue marshals for the several districts hereby established, within which they respectively reside.

Sec. 20. *And be it further enacted*, That there shall be appointed, for each of the districts of East and West Tennessee, a person learned in the law, to act as attorney for the United States within such district; which attorney shall take an oath or affirmation for the faithful performance of the duties of his office, and shall prosecute, in such district, all delinquencies, for crimes and offences, cognizable under the authority of the United States, and all civil actions or suits, in which the United States shall be concerned; and shall be entitled to the same allowance, as a full compensation for all extra services, as hath heretofore been allowed to attorneys of the district of Tennessee, by a law passed the twenty-eighth day of February, one thousand seven hundred and ninety-nine, and shall receive such compensation, emoluments, and fees, as by law are or shall be allowed to the district attorneys of the United States, respectively: *Provided*, That the district attorneys of East and West Tennessee, now in office, shall severally and respectively be attorneys for those districts, within which they reside, until removed by the President of the United States.

Sec. 21. *And be it further enacted*, That all actions, suits, process, pleadings, and proceedings, of what nature or kind soever, which shall be depending or existing in the sixth circuit of the United States, within the circuit courts of the districts of East and West Tennessee, shall be, and hereby are, continued over to the district courts established by this act, in manner following, that is to say: All such as shall on the first day of July next be depending and undetermined, or shall then have been commenced, and made returnable before the circuit court of East Tennessee, to the next district court hereby directed to be holden within and for the district of East Tennessee; all such as shall be depending and undetermined, or shall have been commenced and made returnable before the circuit court of West Tennessee, to the next district court hereby directed to be holden within and for the district of West Tennessee; and all the said suits shall be equally regular and effectual, and shall be proceeded in in the same manner as they could have been if the law authorizing the establishment of the sixth circuit of the United States had not been repealed.

Sec. 22. *And be it further enacted*, That the next session of the district court for the district of Maine shall be holden on the last Tuesday in May next; and that the session of the said court, heretofore holden on the third Tuesday of June, annually, shall hereafter be holden, annually, on the last Tuesday in May.

Sec. 23. *And be it further enacted*, That all writs and process which shall have been issued, and all recognizances returnable, and all suits and other proceedings which have been continued to the said district court on the third Tuesday in June next, shall be returned and held continued to the said last Tuesday of May next.

Sec. 24. *And be it further enacted*, That the chief judge of the district of Columbia shall hold a district court of the United States, in and for the said district, on the first Tuesday of April and on the first Tuesday of October in every year; which court shall have and exercise, within the said district, the same powers and jurisdiction which are by law vested in the district courts of the United States.

Sec. 25. *And be it further enacted*, That in all suits in equity, it shall be in the discretion of the court, upon the request of either party, to order the testimony of the witnesses therein to be taken by depositions; which depositions shall be taken in conformity to the regulations prescribed by law for courts of the highest original jurisdiction in equity, in cases of a similar nature, in that State in which the court of the United States may be holden: *Provided, however*, That nothing herein contained shall extend to the circuit courts which may be holden in those States in which testimony in chancery is not taken by deposition.

Sec. 26. *And be it further enacted*, That there shall be a clerk for the district court of Norfolk, to be appointed by the judge thereof, which clerk shall reside and keep the records of the said court at Norfolk, aforesaid, and shall perform the same duties, and be entitled to and receive the same fees and emoluments, which are established by law for the clerks of the district courts of the United States.

Sec. 27. *And be it further enacted*, That, from and after the first day of July next, there shall be holden, annually, in the district of Vermont, two stated sessions of the district court, which shall commence on the tenth day of October at Rutland, and on the seventh day of May at Windsor, in each year; and when either of the said days shall happen on a Sunday, the said court, hereby directed to be holden on such day, shall be holden on the day next thereafter.

Sec. 28. *And be it further enacted*, That the act, entitled "An act altering the time of holding the district court in Vermont," and so much of the second section of the act, entitled "An act giving effect to the laws of the United States within the State of Vermont," as provides for the holding four sessions, annually, of the said district court in said district, from and after the first day of July next, be, and hereby are, repealed.

Sec. 29. *And be it further enacted*, That the clerk of the said district court shall not issue a process to summon, or cause to be returned to any session of the said district court, a grand jury, unless by special order of the district judge, and at the request of the district attorney; nor shall he cause to be summoned or returned a petit jury to such sessions of the said district court, in which there shall appear to be no issue proper for the trial by jury, unless by special order of the judge, as aforesaid. And it shall be the duty of the circuit court in the district of Vermont, at their stated sessions, to give in charge to the grand juries all crimes, offences, and misdemeanors, as are cognizable, as well in the said district court as the said circuit court; and such bills of indictment as shall be found in the circuit court, and cognizable in the said district court, shall, at the discretion of the said circuit court, be transmitted by the clerk of the said court, pursuant to the order of the said circuit court, with all matters and things relating thereto, to the district court next thereafter to be holden in said district, and the same proceedings shall be had thereon in said district court as though said bill of indictment had originated and been found in the said district court. And all recognizances of witnesses, taken by any magistrate in said district, for their appearance to testify in any case cognizable in either of the said courts, shall be to the circuit court next thereafter to be holden in said district.

Sec. 30. *And be it further enacted*, That, from and after the passing of this act, no special juries shall be returned by the clerks of any of the said circuit courts; but that, in all cases in which it was the duty of the said clerks to return special juries before the passing of this act, it shall be the duty of the marshal for the district where such circuit court may be held to return special juries, in the same manner and form, as, by the laws of the respective States, the said clerks were required to return the same.

Approved, April 29, 1802.

An Act making provision for the redemption of the whole of the public debt of the United States.

Be it enacted, &c., That so much of the duties on merchandise and tonnage as, together with the moneys, other than surplusses of revenue, which now constitute the sinking fund, or shall accrue to it by virtue of any provisions heretofore made, and together with the sums annually required to discharge the annual interest and charges accruing on the present debt of the United States, including temporary loans heretofore obtained, and also future loans which may be made for reimbursing, or redeeming, any instalments, or parts of the principal of the said debts, will amount to an annual sum of seven millions three hundred thousand dollars, be, and the same hereby is, yearly appropriated to the said fund; and the said sums are hereby declared to be vested in the commissioners of the sinking fund, in the same manner as the moneys heretofore appropriated to the said fund, to be applied by the said commissioners to the payment of interest and charges, and to the reimbursement or redemption of the principal of the public debt, and shall be and continue appropriated until the whole of the present debt of the United States, and the loans which may be made for reimbursing or redeeming any parts or instalments of the principal of the said debt, shall be reimbursed and redeemed: *Provided*, That after the whole of the said debt, the old six per cent. stock, the deferred stock, the seventeen hundred and ninety-six six per cent. stock, and three per cent. stock, excepted, shall have been reimbursed or redeemed, any balance of the sums annually appropriated by this act, which may remain unexpended at the end of six months next succeeding the end of the calendar year to which such annual appropriation refers, shall be carried to the surplus fund, and cease to be vested by virtue of this act in the commissioners of the sinking fund, and the appropriation, so far as relates to such unexpended balance, shall cease and determine.

Sec. 2. *And be it further enacted*, That it shall be the duty of the Secretary of the Treasury annually, and in each year, to cause to be paid, to the commissioners of the sinking fund the said sum of seven millions three hundred thousand dollars, in such payments, and at such times, in each year, as the situation of the Treasury will permit: *Provided*, That all such payments as may be necessary to enable the said commissioners to discharge or reimburse any demands against the United States, on account of the principal or interest of the debt, which shall be actually due, in conformity to the engagements of the said States, shall be made at such time and times in each year, as will enable the said commissioners

faithfully and punctually to comply with such engagement.

Sec. 3. *And be it further enacted*, That all reimbursements of the capital or principal of the present debt of the United States, including future loans which may be made for reimbursing or redeeming any instalments, or parts of the same, and all payments on account of the interest and charges accruing upon the said debt, shall be made under the superintendence of the commissioners of the sinking fund. And it shall be the duty of the said commissioners to cause to be applied and paid out of the said fund, yearly and every year, at the Treasury of the United States, the several and respective sums following, to wit: first, such sum and sums as, by virtue of any act or acts, they have heretofore been directed to apply and to pay; secondly, such sum and sums as may be annually wanted to discharge the annual interest and charges accruing on any other part of the present debt of the United States, including the interest and charges which may accrue on future loans which may be made for reimbursing or redeeming any instalments or parts of the principal of the said debt; thirdly, such sum and sums as may annually be required to discharge any instalment or part of the principal of the present debt of the United States, and of any future loans which may be made for reimbursing or discharging the same, which shall be actually due and demandable, and which shall not, by virtue of this or any other act, be renewed or prolonged, or reimbursed, out of the proceeds of a new loan; and, also, it shall be the duty of the said commissioners to cause to be applied the surplus of such fund as may at any time exist, after satisfying the purposes aforesaid, towards the further and final redemption, by payment or purchase, of the present debt of the United States, including loans for the reimbursement thereof, temporary loans heretofore obtained from the Bank of the United States, and those demands against the United States, under any treaty or convention with a foreign Power, for the payment of which the faith of the United States has been, or may hereafter be, pledged by Congress: *Provided, however*, That the whole or any part of such demands, arising under a treaty or convention with a foreign Power, and of such temporary loans, may, at any time, be reimbursed, either out of the sinking fund, or, if the situation of the Treasury will permit, out of any other moneys which have been, or may hereafter be, appropriated to that purpose.

Sec. 4. *And be it further enacted*, That the commissioners of the sinking fund be, and they hereby are, empowered, with the approbation of the President of the United States, to borrow on the credit of the United States, either in America, or abroad, by obtaining a prolongation of former loans, or otherwise, the sums requisite for the payment of the instalments or parts of principal of the Dutch debt, which become due in the years one thousand eight hundred and three, one thousand eight hundred and four, one thousand eight hundred and five, and one thousand eight hundred and six; and that a sum equivalent to that to be thus borrowed, or reloaned, shall be laid out by the commissioners of the sinking fund, in the purchase or redemption of such parts of the present debt of the United States, and other demands against them, as the commissioners of the sinking fund may lawfully pay, agreeably to the provisions herein before made, and as the said commissioners shall, in their judgment, deem most expedient, so as to effect the payment, annually, of seven millions three hundred thousand dollars towards the final discharge of the whole debt, agreeably to such provision: *Provided*, That the United States shall have a right to reimburse any loan thus made within six years after the date of the same, and that the rate of interest thereupon shall not exceed five per centum per annum, nor the charges thereon the rate of five per centum on the capital borrowed: *And provided, always*, That the power herein given shall not be construed to repeal, diminish, or affect the power given to the said commissioners, by the tenth section of the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt, to borrow certain sums for the discharge of the instalments of the capital, or principal, of the public debt, in the manner and on the terms prescribed by the said section; nor the power given to them by an act, entitled "An act making provision for the payment of certain debts of the United States," to borrow certain sums and to sell the shares of the Bank of the United States, belonging to the United States, in the manner, on the terms, and for the purposes authorized by the said act: *And provided, further*, That nothing herein contained shall be construed to revive any act, or part of an act, authorizing the loan of money, and which hath heretofore expired.

Sec. 5. *And be it further enacted*, That, for the purpose of more effectually securing the reimbursement of the Dutch debt, the commissioners of the sinking fund may and they hereby are empowered, with the approbation of the President of the United States, to contract either with the Bank of the United States, or with any other public institution, or with individuals, for the payment, in Holland, of the whole, or any part, of the principal of the said Dutch debt, and of the interest and charges accruing on the same, as the said demands become due, on such terms as the said commissioners shall think most advantageous to the United States; or to employ either the said bank, or any other public institution, or any individual or individuals, as agent or agents, for the purpose of purchasing bills of exchange, or any other kind of remittances, for the purpose of discharging the interest and principal of said debt; and to allow to such agent or agents a compensation not exceeding one-fourth of one per cent., on the remittance thus purchased or procured by them under the direction of the said commissioners; and as much of the duties on tonnage and merchandise as may be necessary for that purpose is hereby appropriated towards paying the extra allowance or commission resulting from such transaction, or transactions, and also to pay any deficiency arising from any loss incurred upon any remittance purchased or procured under the direction of the said commissioners, for the purpose of discharging the principal and interest of the said debt.

Sec. 6. *And be it further enacted*, That the commissioners of the sinking fund be, and they hereby are, empowered, with the approbation of the President of the United States, to employ, if they shall deem it necessary, an agent in Europe for the purpose of transacting any business relative to the discharge of the Dutch debt, and to the loans authorized by this, or any other act, for the purpose of discharging the same, and also to allow him a compensation not exceeding three thousand dollars a year, to be paid out of any moneys in the Treasury not otherwise appropriated.

Sec. 7. *And be it further enacted*, That nothing in this act contained shall be construed to repeal, alter, or affect any of the provisions of any former act pledging the faith of the United States to the payment of the interest, or principal of the public debt; and that all such payments shall continue to be made at the time heretofore prescribed by law; and the surplus only of the appropriations made by this act, beyond the sums payable by virtue of the provisions of any former act, shall be applicable to the reimbursement, redemption, or purchase of the public debt in the manner provided by this act.

Sec. 8. *And be it further enacted*, That all the restrictions and regulations heretofore established by law, for regulating the execution of the duties enjoined upon the commissioners of the sinking fund, shall apply to and be in as full force for the execution of the analogous duties enjoined by this act, as if they were herein particularly repeated and re-enacted: *Provided, however*, That the particular annual account of all sales of stock, of loans, and of payments, by them made, shall, hereafter, be laid before Congress on the first week of February in each year; and so much of any former act as directed such account to be laid before Congress within fourteen days after their meeting, is hereby repealed.

Approved, April 29, 1802.

An Act for the relief of the widows and orphans of certain persons who have died in the Naval service of the United States.

Be it enacted, &c., That the widows, if any such there be, and, in case there be no widow, the child or children of the officers, seamen, and marines, who were in the service of the United States, and lost in the ship Insurgent and brigantine Pickering, shall be entitled to, and receive, out of any money in the Treasury not otherwise appropriated, a sum equal to four months' pay of their respective husbands or fathers, as aforesaid.

Approved, April 29, 1802.

An act to regulate and fix the compensation of the officers of the Senate and House of Representatives.

Be it enacted, &c., That the officers of the Senate and House of Representatives, hereinafter mentioned, shall be, and hereby are, entitled to receive, in lieu of their compensations as fixed by law, the following sums: that is to say: The Secretary of the Senate, and Clerk of the House of Representatives, two thousand dollars each; their principal clerks, one thousand three hundred dollars each; and each of their engrossing clerks, one thousand dollars per annum.

Sec. 2. *And be it further enacted*, That the Sergeant-at-Arms of the Senate, who also performs the duty of Doorkeeper, and the Sergeant-at-Arms of the House of Representatives shall, be, and hereby are, entitled to receive eight hundred dollars per annum, each.

Sec. 3. *And be it further enacted*, That the Doorkeeper of the House of Representatives shall be, and hereby is, entitled to receive five hundred dollars per annum, and two dollars per day, during each session of Congress; and the Assistant Doorkeeper of the Senate and House of Representatives, four hundred and fifty dollars per annum, each; and two dollars each, per day, during each session of Congress.

Sec. 4. *And be it further enacted*, That the compensations to the Secretary of the Senate and Clerk of the House of Representatives, and to their clerks, and to the other officers herein named, shall commence with the present year.

Approved, April 29, 1802.

An Act supplementary to an act, entitled "An act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," and extending the benefits thereof to the art of designing, engraving, and etching historical and other prints.

Be it enacted, &c., That every person who shall, from and after the first day of January next, claim to be the author or proprietor of any maps, charts, book or books, and shall thereafter seek to obtain a copyright of the same, agreeable to the rules prescribed by law, before he shall be entitled to the benefit of the act, entitled "An act for for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," he shall, in addition to the requisites enjoined in the third and fourth sections of said act, if a book or books, give information by causing the copy of the record, which, by said act, he is required to publish in one or more of the newspapers, to be inserted at full length in the title page or in the page immediately following the title of every such book or books; and if a map or chart, shall cause the following words to be impressed on the face thereof, viz: "Entered according to the act of Congress, the —— day of ——. 18—, [here insert the date when the same was deposited in the office.] by A. B. of the State of ——, [here insert the author's or proprietor's name, and the State in which he resides.]

Sec. 2. *And be it further enacted*, That, from and after the first day of January next, every person being a citizen of the United States, or resident within the same, who shall invent and design, en-

grave, etch or work, or, from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints, shall have the sole right and liberty of printing, reprinting, publishing, and vending such print or prints, for the term of fourteen years from the recording the title thereof in the clerk's office, as prescribed by law for maps, charts, book or books: *Provided*, he shall perform all the requisites in relation to such print or prints, as are directed in relation to maps, charts, book or books, in the third and fourth sections of the act to which this is a supplement, and shall moreover cause the same entry to be truly engraved on such plate, with the name of the proprietor, and printed on every such print or prints as is hereinbefore required to be made on maps or charts.

SEC. 3. *And be it further enacted*, That if any printseller or other person whatsoever, from and after the said first day of January next, within the time limited by this act, shall engrave, etch, or work, as aforesaid, or in any other manner copy or sell, or cause to be engraved, etched, copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, reprint, or import for sale, or cause to be printed, reprinted, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof, first had and obtained, in writing, signed by him or them respectively, in the presence of two or more credible witnesses; or, knowing the same to be so printed or reprinted, without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale or otherwise, or in any other manner dispose of any such print or prints, without such consent first had and obtained, as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of, or whereon, such print or prints are or shall be copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy the same; and further, that every such offender or offenders shall forfeit one dollar for every print which shall be found in his, her, or their custody; either printed, published, or exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act; the one moiety thereof to any person who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered in any court having competent jurisdiction thereof.

SEC. 4. *And be it further enacted*, That if any person or persons, from and after the passing of this act, shall print or publish any map, chart, book or books, print or prints, who have not legally acquired the copyright of such map, chart, book or books, print or prints, and shall, contrary to the true intent and meaning of this act, insert therein, or impress thereon that the same has been entered according to act of Congress, or words purporting the same, or purporting that the copyright thereof has been acquired; every person so offending, shall forfeit and pay the sum of one hundred dollars, one moiety thereof to the person who shall sue for the same, and the other moiety thereof to, and for the use of the United States, to be recovered by action of debt in any court of record in the United States having cognizance thereof. *Provided always*, That in every case for forfeitures hereinbefore given, the action be commenced within two years from the time the cause of action may have arisen.

Approved, April 29, 1802.

An Act to amend "An act to establish the compensation of the officers employed in the collection of the duties on imports and tonnage; and for other purposes."

Be it enacted, &c., That, from and after the thirtieth day of June, in the present year, there shall be paid, annually, to the collector of the customs for the district of Richmond, in addition to the fees and emoluments otherwise allowed by law, the sum of two hundred and fifty dollars.

SEC. 2. *And be it further enacted*, That, from from and after the said thirtieth day of June, the salary heretofore allowed by law to the collector of the customs for the district of Petersburg be, and the same hereby is, discontinued.

SEC. 3. *And be it further enacted*, That, from and after the said thirtieth day of June, whenever the annual emoluments of any collector of the customs, after deducting therefrom the expenditures incident to his office, shall amount to more than five thousand dollars; or those of a naval officer, after a like deduction, to more than three thousand five hundred dollars; or those of a surveyor, after a like deduction, to more than three thousand dollars, the surplus shall be accounted for, and be paid by them, respectively, to the Treasury of the United States. *Provided always*, That nothing in this act contained shall be construed to extend to fines, forfeitures, and penalties, under the revenue laws of the United States.

Approved, April 30, 1802.

An Act to suspend, in part, the act, entitled "An act regulating foreign coins; and for other purposes."

Be it enacted, &c., That so much of the act entitled, "An act for regulating foreign coins; and for other purposes," as is contained within the second section thereof, be, and the same is hereby suspended, for and during the space of three years, from and after the end of the present session of Congress.

Approved, April 30, 1802.

An Act to revive and continue in force an act, entitled "An Act for establishing trading-houses with the Indian tribes."

Be it enacted, &c., That the act, entitled "An act for establishing trading-houses with the Indian tribes," approved April 18, 1796, shall be, and the same is hereby, revived and continued in force, until the fourth day of March next, and no longer.

Approved, April 30, 1802.

An Act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States; and for other purposes.

Be it enacted, &c., That the inhabitants of the eastern division of the Territory Northwest of the river Ohio, be, and they are hereby, authorized to form for themselves a constitution and State government, and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union, upon the same footing with the original States, in all respects whatever.

SEC. 2. *And be it further enacted*, That the said State shall consist of all the territory included within the following boundaries, to wit: bounded on the east by the Pennsylvania line, on the south by the Ohio river, to the mouth of the Great Miami river, on the west by the line drawn due north from the mouth of the Great Miami, aforesaid, and on the north by an east and west line, drawn through the southerly extreme of Lake Michigan, running east after intersecting the due north line aforesaid, from the mouth of the Great Miami, until it shall intersect Lake Erie, or the territorial line, and thence with the same through Lake Erie to the Pennsylvania line, aforesaid: *Provided*, That Congress shall be at liberty at any time hereafter, either to attach all the territory lying east of the line to be drawn due north from the mouth of the Miami, aforesaid, to the territorial line, and north of an east and west line drawn through the southerly extreme of Lake Michigan, running east as aforesaid to Lake Erie, to the aforesaid State, or dispose of it otherwise, in conformity to the fifth article of compact between the original States, and the people and States to be formed in the Territory Northwest of the river Ohio.

SEC. 3. *And be it further enacted*, That all that part of the Territory of the United States Northwest of the river Ohio, heretofore included in the eastern division of said Territory, and not included within the boundary herein prescribed for the said State, is hereby attached to, and made a part of the Indiana Territory, from and after the formation of the said State, subject nevertheless to be hereafter disposed of by Congress, according to the right reserved in the fifth article of the ordinance aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations, in all respects whatever, with all other citizens residing within the Indiana Territory.

SEC. 4. *And be it further enacted*, That all male citizens of the United States, who shall have arrived at full age, and resided within the said Territory at least one year previous to the day of election, and shall have paid a Territorial or county tax, and all persons having in other respects, the legal qualifications to vote for representatives in the General Assembly of the Territory, be, and they are hereby, authorized to choose representatives to form a convention, who shall be apportioned amongst the several counties within the eastern division aforesaid, in a ratio of one representative to every twelve hundred inhabitants of each county, according to the enumeration taken under the authority of the United States, as near as may be, that is to say: from the county of Trumbull, two representatives; from the county of Jefferson, seven representatives, two of the seven to be elected within what is now known by the county of Belmont, taken from Jefferson and Washington, counties; from the county of Washington, four representatives; from the county of Ross, seven representatives, two of the seven to be elected in what is now known by Fairfield county, taken from Ross and Washington counties; from the county of Adams, three representatives; from the county of Hamilton, twelve representatives, two of the twelve to be elected in what is now known by Clermont county, taken entirely from Hamilton county; and the elections for the representatives aforesaid, shall take place on the second Tuesday of October next, the time fixed by a law of the Territory, entitled, "An act to ascertain the number of free male inhabitants of the age of twenty-one, in the Territory of the United States Northwest of the river Ohio, and to regulate the elections of representatives for the same," for electing representatives to the General Assembly, and shall be held and conducted in the same manner as is provided by the aforesaid act, except that the qualifications of electors shall be as herein specified.

SEC. 5. *And be it further enacted*, That the members of the convention, thus duly elected, be, and they are hereby, authorized to meet at Chilicothe on the first Monday in November next; which convention, when met, shall first determine, by a majority of the whole number elected, whether it be or be not expedient at that time to form a constitution and State government for the people, within the said Territory, and if it be determined to be expedient, the convention shall be, and hereby are, authorized to form a constitution and State government, or, if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution or frame of government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance; and shall form for the people of the said State a constitution and State government: *Provided*, The same shall be republican, and not repugnant to the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, between the original States and the people and States of the Territory Northwest of the river Ohio.

SEC. 6. *And be it further enacted*, That, until the next general census shall be taken, the said State shall be entitled to one representative in the House of Representatives of the United States.

SEC. 7. *And be it further enacted*, That the following propositions be, and the same are hereby, offered to the convention of the eastern State of the said Territory, when formed, for their free acceptance or rejection, which, if accepted by the

convention, shall be obligatory upon the United States:

First, That the section number sixteen, in every township, and where such section has been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.

Second, That the six miles reservation, including the salt springs, commonly called the Sciota salt springs, the salt springs near the Muskingum river, and in the military tract, with the sections of land which include the same, shall be granted to the said State for the use of the people thereof, the same to be used under such terms, and conditions, and regulations, as the Legislature of the said State shall direct: *Provided*, The said Legislature shall never sell nor lease the same for a longer period than ten years.

Third, That one-twentieth part of the net proceeds of the lands lying within the said State, sold by Congress, from and after the thirtieth day of June next, after deducting all expenses incident to the same, shall be applied to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio, to the said State, and through the same, such roads to be laid out under the authority of Congress, with the consent of the several States through which the road shall pass: *Provided always*, That the three foregoing propositions herein offered, are on the conditions that the convention of the said State shall provide, by an ordinance irrevocable, without the consent of the United States, that every and each tract of land sold by Congress, from and after the thirtieth day of June next, shall be and remain exempt from any tax laid by order or under authority of the State, whether for State, county, township, or any other purpose whatever, for the term of five years from and after the day of sale.

Approved, April 30, 1802.

An Act to abolish the Board of Commissioners in the City of Washington, and for other purposes.

Be it enacted, &c., That, from and after the first day of June next, the offices of the commissioners appointed in virtue of an act passed on the sixteenth day of July, in the year seventeen hundred and ninety, entitled "An act to establish the temporary and permanent seat of the Government of the United States," shall cease and determine; and the said commissioners shall deliver up unto such person as the President shall appoint, in virtue of this act, all plans, draughts, books, records, accounts, deeds, grants, contracts, bonds, obligations, securities, and other evidences of debt in their possession, which relate to the city of Washington, and the affairs heretofore under their superintendence or care.

Sec. 2. *And be it further enacted*, That the affairs of the city of Washington, which have heretofore been under the care and superintendence of the said commissioners, shall hereafter be under the direction of a superintendent, to be appointed by, and be under the control of, the President of the United States; and the said superintendent is hereby invested with all powers, and shall hereafter perform all duties which the said commissioners are now vested with, or are required to perform by, or in virtue of, any act of Congress, or any act of the General Assembly of Maryland, or any deed or deeds of trust from the original proprietors of the lots in the said city, or in any other manner whatsoever.

Sec. 3. *And be it further enacted*, That the said commissioners shall forthwith settle, with the accounting officers of the Treasury, their accounts for all moneys received and expended by them in their capacity as commissioners, and shall immediately thereafter pay to the said superintendent any balance which may be found against them upon such settlement.

Sec. 4. *And be it further enacted*, That the said superintendent shall pay all the debts heretofore contracted by the commissioners, in their capacity as such, the payments of which are not hereinafter specially provided for, out of any moneys received by him arising out of the city funds.

Sec. 5. *And be it further enacted*, That the said superintendent shall, under the direction of the President of the United States, sell so many of those lots in the city of Washington which are pledged for the repayment of a loan of two hundred thousand dollars, made by the State of Maryland, in the years one thousand seven hundred and ninety-six and one thousand seven hundred and ninety-seven, to the commissioners, for the use of the said city, as may be sufficient to pay the interest already accrued on the said loan, and the interest and instalments thereof, as they may respectively become due: *Provided*, That if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency is hereby appropriated, and shall be paid out of any money in the Treasury of the United States not otherwise appropriated.

Sec. 6. *And be it further enacted*, That the said superintendent shall, prior to the first day of November next, sell, under the directions of the President of the United States, all lots in the said city, which were sold antecedent to the sixth day of May, in the year one thousand seven hundred and ninety-six, and which the said commissioners are authorized by law to resell, in consequence of a failure on the part of the purchasers to comply with their contracts; and the moneys arising thereupon shall be applied, on or before the first day of November next, to the payment of the sum of fifty thousand dollars, and the interest thereon, to the State of Maryland, which said sum was formerly loaned by the said State to the commissioners for the use of the city of Washington: *Provided*, That, if a sufficient sum to meet the objects last aforesaid, shall not be produced by the sale of the whole of the lots aforesaid, then so much money as may be necessary to provide for the deficiency is hereby appropriated, and shall be paid out of any money in the Treasury of the United States, not otherwise appropriated.

Sec. 7. *And be it further enacted*, That, after the debts already contracted by the commissioners shall have been discharged, all moneys advanced out of the Treasury in pursuance of this act, shall be reimbursed by the superintendent, by paying into the Treasury all moneys arising from the city funds, until the whole sum advanced, with the interest thereon, shall be repaid.

Sec. 8. *And be it further enacted*, That so much of the act, entitled, "An act to establish the temporary and permanent seat of Government of the United States," passed on the sixteenth day of July, in the year seventeen hundred and ninety, as relates to the appointment of commissioners shall be, and the same is hereby, repealed.

Sec. 9. *And be it further enacted*, That it shall and may be lawful to open books in the city of Washington, for receiving and entering subscriptions for opening the canal to communicate from the Potomac river to the Eastern Branch thereof, through the city of Washington, under the management of Thomas Tingey, Daniel Carroll of Duddington, Thomas Law, and Daniel Carroll Brent, which subscriptions shall be made personally, or by power of attorney; the said books shall be opened for receiving subscriptions, and continue open, until the sum of eighty thousand dollars shall be filled up, in shares of one hundred dollars each; and that each person shall, at the time of subscribing, pay down ten dollars, being one-tenth of each share; and after fourteen days previous notice, by advertisement, there shall be a meeting of the subscribers, and they are hereby declared to be incorporated into a company, by the name of the "Washington Canal Company," and may sue and be sued, as such, and make all necessary by-laws and regulations for the proper management of the business thereof: And such of the subscribers as shall be present at the said meeting, or a majority of them, are hereby empowered and required to elect a president and four directors, for conducting the said undertaking, and managing the said company's business, for and during such time, not exceeding three years, as the said subscribers, or a majority of them, shall think fit. Each member shall be allowed one vote for every share, by him or her held at the time in the said company; and any proprietor, by a writing under his or her hand, executed in presence of two witnesses, may depute any other member or proprietor to vote and act as proxy for him or her, at any general meeting.

Sec. 10. *And be it further enacted*, That the shares in the said company shall be deemed personal, and not real property, and transferable in such manner as the company shall direct.

Sec. 11. *And be it further enacted*, That the president and directors so elected, and their successors, or a majority of them, shall have full power and authority to agree with any person or persons, on behalf of the said company, to cut such canals, erect such locks, and perform such other works as they shall judge necessary for opening the canal aforesaid, and the forks thereof; and out of the moneys arising from the subscriptions, wharfage, and tolls, to pay for the same, and to repair and improve the said canal, locks, and other works necessary thereto, and to defray all incidental charges, and also to appoint a treasurer, clerk, and such other officers, toll gatherers, managers and servants, as they shall judge requisite, and to settle their respective wages.

Sec. 12. *And be it further enacted*, That the treasurer of the company shall give bond, with such penalty and such security as the said president and directors, or a majority of them, shall direct.

Sec. 13. *And be it further enacted*, That the said president and directors, so elected, and their successors, or a majority of them assembled, shall have full power and authority to demand and receive of the proprietors, the remaining nine-tenths of the shares, from time to time, as they may be required by previous advertisement, at least one month in the Washington, Georgetown, and Alexandria gazettes; and if any of the said proprietors shall refuse or neglect to pay their proportions within one month after the same so ordered and advertised, as aforesaid, the said shares of defaulters shall be forfeited.

Sec. 14. *And be it further enacted*, That the said president and directors, so elected, and their successors, or a majority of them, shall not begin to collect wharfage or tolls, until the canal is made practicable for boats and scows to pass through the same, from the Potomac to the Eastern Branch.

Sec. 15. *And be it further enacted*, That every president and director, before he acts as such, shall take an oath or affirmation for the faithful discharge of his office.

Sec. 16. *And be it further enacted*, That there shall be a general meeting of the proprietors on the first Monday in June, and the first Monday in December, every year, in the city of Washington; to which meeting the president and directors shall make a report, and render distinct and just accounts of all their proceedings, and, on finding them fairly and justly stated, the proprietors, then present, or a majority of them, shall give a certificate thereof; and at such half yearly general meetings, after leaving in the hands of the treasurer such sum as shall be judged necessary for repairs, improvements, or contingent charges, an equal dividend of all the net profits arising from the wharfage and tolls hereby granted, shall be ordered and made, to and among all the proprietors of the said company, in proportion to their several shares.

Sec. 17. *And be it further enacted*, That for and in consideration of the expenses the said proprietors shall incur, not only in cutting canals, but in erecting locks, and in maintaining and keeping the same in repair, and temporary enlargement and improvement of the same, that, for the space of fifty years, when the act shall cease on repayment of the principal of the sums expended, the company is hereby authorized to collect the same rates of wharfage, on all articles and materials landed on each side of the canal, as are now legally received at the wharves at Georgetown.

And it shall and may be lawful for the said president and directors, for fifty years, and as much longer as their principal sums expended remain unpaid, to demand and to receive, at the most convenient place, for all commodities carried through a lock or locks of the canal, a toll not exceeding half a dollar on each loaded boat, and a quarter of a dollar on each loaded scow; but no toll to be charged returning. But when the wharfage shall produce the annual interest of eight per cent. on the sums expended by the president and directors, exclusive of the tolls, then the tolls shall cease, and the canal, and forks thereof, shall be entirely free for passage; and when the wharfage shall exceed the annual interest of twelve per cent., then the president and directors shall appropriate one-half of the surplus to such public purposes as Congress may direct, or reserve the same as a fund to pay off the principal: *Provided, always*, That all public property shall pass free of toll and wharfage.

Sec. 18. *Provided, nevertheless, and be it further enacted*, That in case the said Washington Canal Company, created by this act, shall not, within the term of five years, complete said canal in such manner as to admit boats drawing three feet of water to pass through the whole extent of said canal, that the said canal shall revert to the United States, and all right and authority hereby granted to the said company shall cease and determine.

Approved, May 1, 1802.

An Act to empower John James Dufour, and his associates, to purchase certain lands.

Be it enacted, &c., That, to encourage the introduction and to promote the culture of the vine within the Territory of the United States Northwest of the river Ohio, it shall be lawful for John James Dufour, and his associates, to purchase any quantity not exceeding four sections of the lands of the United States, lying between the Great Miami river and the Indian boundary line, at the rate of two dollars per acre, payable without interest, on or before the first day of January, one thousand eight hundred and fourteen.

Sec. 2. *And be it further enacted*, That it shall be the duty of the register of the land office, established at Cincinnati, to receive and to enter on his entry book, the applications of the said Dufour, and his associates, for any unappropriated sections with the adjoining fractions, if any, not to exceed in the whole four sections, and lying within the district aforesaid: stating in each entry the date of application and the number of the section or fraction, township, and range applied for; and it shall also be the duty of the said register to deliver to the said Dufour, and his associates, a copy of each entry thus made; also a copy of the description or field notes, and of the plat of each tract, with a certificate stating that the same has been purchased under the authority of this act, at the rate of two dollars per acre, payable, without interest, on or before the first day of January, one thousand eight hundred and fourteen.

Sec. 3. *And be it further enacted*, That payment for said land may be made at the Treasury of the United States, or to the receiver of the land office at Cincinnati, either in specie, or in the evidences of the public debt of the United States, at the rates prescribed by an act, entitled "An act to authorize the receipt of evidences of the public debt in payment for lands of the United States," and a discount at the rate of six per cent. a year shall be allowed on any payments which shall be made before the same shall become due.

Sec. 4. *And be it further enacted*, That on producing to the Secretary of the Treasury copies of the entries aforesaid, and of the plats of the tracts applied for, also the certificate of the register of the land office established at Cincinnati, that the same have been purchased in conformity to the provisions of this act, the President of the United States shall be, and he hereby is, authorized and empowered to issue letters patent in the usual form, unto the said Dufour, his associates, and their heirs, for the said lands; with condition expressed in the said letters patent, that, on failure to pay the purchase-money when the same shall become due, the lands therein described, with the improvements thereon, shall be deemed forfeited, and shall revest in the United States.

Approved, May 1, 1802.

An Act making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and two.

Be it enacted, &c., That the following sums, including any sum which may have been, and might be, expended during the present year, by virtue of any former appropriation, be, and the same are hereby, respectively appropriated, to defray the expenses of the Navy of the United States during the year one thousand eight hundred and two; that is to say:

For the pay and subsistence of the officers, the pay of the seamen, provisions and repairs, five hundred and eight thousand two hundred and twenty-six dollars.

For medicines, instruments, and hospital stores, ten thousand dollars.

For the purchase of ordnance and other military stores, twenty thousand dollars.

For salaries of superintendents of navy yards, storekeepers and clerks, store rent, hire of laborers, &c., twelve thousand dollars.

For the purchase and expense of transportation of timber, and other materials, including ordnance for the seventy-four gun ships, one hundred and ninety thousand five hundred and seventy-five dollars.

For the improvement of navy yards, docks, and wharves, fifty thousand dollars.

For contingencies, ten thousand dollars.

For the pay and subsistence, including provisions for those on shore, and forage for the staff of the marine corps, seventy-one thousand seven hundred and fifty-four dollars and forty cents.

For clothing for the same, fifteen thousand five hundred and nineteen dollars.

For military stores for the same, one thousand two hundred and twenty-four dollars and sixty cents.

For the quartermaster's department, comprising quarters for the officers, and barracks for the men at different stations, fuel, stationery, camp utensils, &c., seven thousand and sixty-one dollars.

For medicine, medical services, and hospital stores, one thousand dollars.

For officers' travelling expenses, armorer's and carpenter's bills, and other contingent expenses, two thousand five hundred and fifty dollars.

Sec. 2. *And be it further enacted*, That so much of the said several sums of money, hereinbefore specifically appropriated, and amounting together to the sum of nine hundred thousand dollars, as shall not have been expended by virtue of any former appropriation, shall be paid, first, out of any balance remaining unexpended of former appropriations for the support of the navy; and secondly, out of any moneys in the Treasury of the United States not otherwise appropriated by law.

Approved, May 1, 1802.

An Act to extend and continue in force the provisions of an act entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers, in the Territory Northwest of the Ohio; and for other purposes."

Be it enacted, &c., That the several provisions of an act entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers in the Territory Northwest of the Ohio" shall be, and the same are hereby, continued in force until the first day of March next, subject to the modifications contained in this act.

Sec. 2. *And be it further enacted*, That the provisions of the said act shall, and the same are, hereby extended to all persons claiming lands lying between the Miami rivers, and without the limits of Ludlow's survey, by purchase or contract made prior to the first day of January, one thousand eight hundred, with John Cleves Symmes, or his associates.

Sec. 3. *And be it further enacted*, That every person claiming lands as aforesaid, either within or without the limits of Ludlow's survey, and who have not obtained a certificate of the right of pre-emption therefor, shall, on or before the first day of November next, give notice of the nature and extent of his claim, in manner prescribed by the second section of the said act. And the receiver of public moneys, and commissioners appointed under the fourth section of the said act, shall meet at Cincinnati, on the second Monday of November next, they having giving four weeks previous notice of such meeting in a public newspaper printed at Cincinnati, and shall then and there proceed to hear and finally decide upon all claims, of which notice has been given as aforesaid, and shall, in all matters relative thereto, govern themselves by the provisions of the said act. Vacancies in the said board of commissioners may be filled by the President of the United States alone. And the duties, powers, and emoluments, of the said commissioners, receiver of public moneys, and register of the land office at Cincinnati, and surveyor general, as prescribed by the said act, shall be, and the same are hereby, continued.

Sec. 4. *And be it further enacted*, That every person who may have obtained, or who shall hereafter obtain, as aforesaid, a certificate of a right of pre-emption from the said commissioners, shall be allowed until the first day of January next, to make the first payment required for the lands described in such certificate, and shall, in all other respects relative thereto, conform to the several provisions of the said act.

Sec. 5. *And be it further enacted*, That it shall and may be lawful for the Secretary of the Treasury to cause to be viewed, marked, and opened, such roads within the Territory Northwest of the Ohio, as in his opinion will serve to promote the sales of the public lands in future: *Provided*, That the whole sum to be expended on such roads shall not exceed six thousand dollars, and that the same shall be paid out of the moneys paid by purchasers of public lands on account of surveying expenses.

Sec. 6. *And be it further enacted*, That all the lands around Vincennes, on the Wabash, in the Indiana Territory, the Indian title to which hath been extinguished, shall be surveyed and laid off in the manner prescribed by the third section of an act, entitled "An act to amend an act entitled "An act providing for the sales of lands of the United States in the Territory Northwest of the Ohio, and above the mouth of the Kentucky river," under directions from the Secretary of the Treasury, and by such person or persons as the President of the United States alone shall appoint for that purpose: *Provided*, That the whole expense of surveying and marking the lines shall not exceed four dollars for every mile that actually shall be run, surveyed, and marked. And two plats of lands aforesaid shall be prepared by the person or persons who may survey the same, who shall also designate thereon the bounds of the lands of individuals held under reservations of the State of Virginia, or under the laws of the United States: one of the said plats shall be returned to the office of the Secretary of the Treasury, and the other shall be deposited with the Secretary of the Indiana Territory.

Sec. 7. *And be it further enacted*, That in all cases where any section or fractional section of land lying within the seven ranges of townships has been sold prior to the tenth day of May, one thousand eight hundred, under the authority of the United States, the lines of such section or fractional section, shall be run under the direction of the Secretary of the Treasury, in the manner most consistent with the supposed boundaries of the same, at the time of the sale; anything in the act of the tenth of May, one thousand eight hundred, to the contrary notwithstanding. And it shall be lawful for the Secretary of the Treasury, whenever lines thus run shall interfere with the claim of a purchaser of public lands under the

last mentioned act, to permit such purchaser, if he shall desire it, at any time within six months, after such lines, thus interfering with his claim, shall have been run to withdraw his former application, and to apply in lieu thereof for any other vacant section.

Approved, May 1, 1802.

An act to provide for the establishment of certain districts, and therein to amend an act, entitled, "An act to regulate the collection of duties on imports and tonnage;" and for other purposes.

Be it enacted, &c., That, from and after the last day of June next, a district shall be formed from the district of Yorktown, in Virginia, to be called the district of East River, which shall comprehend the waters, shores, harbors, and inlets of North and East River, and Mobjack bay, and all other navigable waters, shores, harbors, and inlets, within the county of Matthews, in said State; and it shall be lawful for the President of the United States to designate a proper place to be the port of entry and delivery within the said district; and to appoint a collector and surveyor of the customs to reside and keep their offices thereat, who shall be entitled to receive, in addition to the fees and other emoluments established by law, the annual salary of two hundred dollars each.

Sec. 2. *And be it further enacted*, That, from and after the said last day of June next, Bennet's creek, within the district of Edenton, and State of North Carolina, shall cease to be a port of delivery, as heretofore established, and the office, authority, and emoluments of the surveyor of said port, shall also, from thenceforth, terminate and be discontinued; and a port of delivery, in lieu thereof, shall be established on Salmon creek, within the district aforesaid, at a place called Tombstone; and a surveyor of the customs shall be appointed to reside and keep an office thereat, who shall be entitled to receive for his services, in addition to the fees established by law, the annual salary heretofore allowed to the surveyor of Bennet's creek.

Sec. 3. *And be it further enacted*, That, from and after the said last day of June next, a port of delivery shall be established at the mouth of Slade's creek, on the north side thereof, within the district of Washington, and State of North Carolina, on a certain tract of land, intended and designated for a town, whereon William Parmley resides; and a surveyor of the customs shall be appointed to reside and keep an office thereat, who shall be entitled to receive for his services, in addition to the fees established by law, an annual salary of one hundred and fifty dollars.

Sec. 4. *And be it further enacted*, That, in the Territory of the United States Northwest of the river Ohio, there shall, from and after the passing of this act, be established a district, to be called the district of Marietta, which shall include all the waters, shores, and inlets of the river Ohio, on the northern side, and the rivers, waters, and shores connected therewith, above or to the eastward of, and including the river Scioto, from the mouth thereof, upwards, as far as the same may be navigable; and a collector of the customs shall be appointed to reside and keep an office at the town of Marietta, which shall be the sole port of entry and delivery for the said district; and the said collector shall be entitled to receive for his services, in addition to the fees and other emoluments established by law, an annual salary of one hundred and fifty dollars.

Sec. 5. *And be it further enacted*, That it shall be lawful for the President of the United States to establish, when it shall appear to him to be proper, in addition to the port of entry and delivery already established on the Mississippi, south of the State of Tennessee, one other port of entry and delivery on the said river; and to appoint a collecter of the customs to reside and keep an office thereat, and to appoint one or more surveyors to reside at such place or places as he may think proper to designate as ports of delivery only; and the surveyor or surveyors thus appointed shall be subject to the control and direction of the collector within whose district he or they shall reside.

Sec. 6. *And be it further enacted*, That, from and after the passing of this act, no duty shall be demanded or collected on merchandise, of the growth, produce, or manufacture, of the United States, or of any foreign country, transported coastwise between the Atlantic ports of the United States, and the districts of the United States on the river Mississippi, or any of its branches, although landed at the port of New Orleans, on its passage; provided the same would not be subject to duty, or liable to seizure, if transported from one district of the United States, on the seacoast, to another: *And provided, likewise*, That no debenture for a drawback shall have been issued upon the export of such merchandise from the Atlantic ports of the United States to any foreign port or place. And to the end as well that frauds on the revenue may be prevented, as that the coasting vessels of the United States may be permitted to participate in the said trade, the Secretary of the Treasury, with the approbation of the President, is hereby authorized to prescribe and establish such forms and regulations, and the same from time to time, with like approbation, to alter and amend, for the government of the officers of the customs in this respect, as he may think proper and necessary; on the observance of which, merchandise thus transported shall be exempted from duty; and it shall be lawful for the coasting vessels of the United States to be employed in the said trade, and not otherwise.

Sec. 7. *And whereas* it is provided, by the hundred and fourth section of the collection law, that merchandise belonging to British subjects may be brought (without regard to the character of the vessel importing the same) into the ports of the United States on the northern and northwestern frontiers, subject to no higher or other duties than are or shall be payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the United States; and it being just and reasonable that the same privilege should be extended to vessels and merchandise belonging to persons residing at New Orleans, and other ports of Louisiana and Florida, on the Mississippi, or any of its branches: *Be it further enacted*, That, from and after the last day of June next, all goods and merchandise, the importation of which into the United States shall not be wholly prohibited, shall and may freely, for the purposes of commerce, be brought into the ports of the United States on the Mississippi, or any of its branches, in vessels belonging to New Orleans, or any other port of Louisiana or Florida, on the Mississippi; and such goods or merchandise shall be subject to no higher or other duties than are payable by the citizens of the United States, on the importation of the same in American vessels into the Atlantic ports of the United States.

Sec. 8. *And be it further enacted*, That, from and after the last day of June next, no duty on the tonnage of any boat, flat, or raft, or other vessel, shall be demanded or collected on the arrival or entry of such boat, flat, or raft, or other vessel, in any district which is or may be established on the Mississippi, or any of its branches, and on the northern and northwestern boundaries of the United States: *Provided, nevertheless*, That this exemption shall not be construed to extend to any vessel above fifty tons burden, and which shall not be wholly employed in carrying on inland trade between the ports of the United States on the Mississippi, and its branches, and the ports of Louisiana and Florida, on the same, including New Orleans, and between the ports of the northern and northwestern boundaries of the United States and the British provinces of Upper and Lower Canada.

Sec. 9. *And be it further enacted*, That all that part of the act, entitled "An act to regulate the collection of duties on imports and tonnage," passed on the second day of March, one thousand seven hundred and ninety-nine, that directs that the collector of the district of Georgetown shall reside at Georgetown, be, and is hereby, repealed.

Approved, May 1, 1802.

An Act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and two.

Be it enacted, &c., That, for defraying the several expenses of the Military Establishment of the United States, for the year one thousand eight hundred and two, for the Indian department, for arsenals and armories, and for the erection of fortifications, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the Army of the United States, the sum of two hundred and ninety-two thousand two hundred and seventy-two dollars, including therein the sum of sixty thousand dollars, appropriated by an act of the present session.

For the subsistence of the army, the sum of two hundred and one thousand and twenty-seven dollars and forty cents.

For forage, three thousand eight hundred and four dollars.

For clothing, sixty-six thousand six hundred and thirty dollars.

For the medical and hospital department, ten thousand dollars.

For bounties and premiums, two thousand dollars.

For all expenses of transportation, tents, tools, and the contingent expenses of the War Department, sixty-four thousand dollars.

For the pay, subsistence, and clothing of the corps of engineers, seven thousand and ten dollars and eighty cents.

For the Indian department, seventy-one thousand seven hundred and fifty dollars.

For the expenses incident to the arsenals, magazines, and armories of the United States, sixty-six thousand seven hundred and sixty-six dollars and eighty-eight cents.

For erecting and completing fortifications and barracks, seventy thousand five hundred dollars.

For running certain boundary lines between the Indians and the white inhabitants of the United States, and for ascertaining the lines of sundry reserved tracts of land in the Indiana and Northwestern Territories, five thousand dollars.

Sec. 2. *And be it further enacted*, That, for defraying all expenses which will arise in consequence of discharging the officers, non commissioned officers, and privates, who are or shall be supernumerary by the act of the present session, entitled "An act fixing the Military Peace Establishment of the United States," and for carrying the said act into complete operation, the following sums be, and they hereby are, respectively appropriated, that is to say:

For pay of the officers, non-commissioned officers, and privates, to be discharged, thirty-nine thousand five hundred dollars.

For subsistence, eighteen thousand dollars.

For clothing, twelve thousand dollars.

For forage, one thousand five hundred dollars.

For medical department, two thousand dollars.

For the quartermaster's department, forty-five thousand dollars.

For bounties and premiums, one thousand five hundred dollars.

For allowance to officers and soldiers who are to be discharged, thirty thousand dollars.

For contingencies, nine thousand dollars.

Sec. 3. *And be it further enacted*, That a sum not exceeding forty thousand dollars, including any unexpended balance of the sum of fifteen thousand dollars, appropriated by the act approved on the thirteenth of May, one thousand eight hundred, entitled "An act to appropriate a certain sum of money to defray the expense of holding a treaty or treaties with the Indians," be, and the same hereby is, appropriated for defraying the expense of any treaty or treaties which may be held with the Indians south of the river Ohio: *Provided*, That the compensation to be allowed to any commissioner appointed, or who may be appointed, for negotiating such treaty or treaties, shall not exceed, exclusive of travelling expenses, the rate of eight dollars per day, during the actual service of such commissioner.

SEC. 4. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged, first, out of any balance remaining unexpended of former appropriations for the same objects respectively, and, secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved, May 1, 1802.

An Act making appropriations for the support of Government for the year one thousand eight hundred and two.

Be it enacted, &c., That for the expenditure of the civil list, including the contingent expenses of the several departments and officers; for the compensation of clerks in the several loan offices, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint establishment; for the expenses of intercourse with foreign nations; for the support of light-houses, beacons, buoys, and public piers, and for satisfying certain miscellaneous claims and expenses, the following sums, including therein the sum of one hundred thousand dollars already appropriated, by an act, entitled "An act making a partial appropriation for the support of Government during the year one thousand eight hundred and two," be, and are hereby, appropriated, that is to say:

For compensations granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of five months continuance, one hundred and sixty-four thousand five hundred and twenty-six dollars and sixty-six cents.

For the expense of fire-wood, stationery, printing, and all other contingent expenses of the two Houses of Congress, seventeen thousand dollars.

For extraordinary contingent expenses of the House of Representatives, by resolutions of the House during the present session, including also the expenses of the library of the two Houses of Congress, and for printing one thousand copies of the Census of the United States, seven thousand dollars.

For defraying the expense of new furniture, provided for the House of Representatives, one thousand two hundred and forty-four dollars and eighty-five cents.

For the compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks and persons employed in that department eleven thousand three hundred and sixty dollars.

For the incidental and contingent expenses in the said department, twelve thousand eight hundred and fifty dollars.

For compensation to the Secretary of the Treasury, clerks and persons employed in his office, eleven thousand two hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages, allowance to the person employed in receiving and transmitting passports and sea-letters, stationery and printing, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery and printing in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery and printing in the office of the Auditor, five hundred dollars.

For compensation to the Treasurer, clerks and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For expense of stationery and printing in the Treasurer's office, three hundred dollars.

For compensation to the Commissioner of the Revenue, clerks and persons employed in his office, (including the wages of two persons employed in counter-stamping paper in the said office,) six thousand six hundred and forty-three dollars and six cents.

For expense of stationery and printing in the office of the Commissioner of the Revenue, four hundred dollars.

For compensation to the Register of the Treasury, clerks and persons employed in his office, sixteen thousand and fifty-two dollars and one cent.

For expense of stationery and printing (including books for the public stocks and for the arrangement of the marine papers) in the Register's office, two thousand eight hundred dollars.

For compensation to the Superintendent of Stamps, clerks and persons employed in his office, one thousand six hundred and sixteen dollars and sixty-seven cents.

For expense of stationery and printing in the office of Superintendent of Stamps, two hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of clerks to be employed in the Treasury, in addition to those authorized by the act of the second of March, one thousand seven hundred and ninety-nine, for the purpose of making draughts of the several surveys of lands in the Territory of the United States Northwest of the river Ohio, and for keeping the books of the Treasury in relation to the sales of land at the several land offices, two thousand dollars.

For fuel and other contingent expenses of the Treasury Department, including therein the sum of one thousand dollars already appropriated, four thousand dollars.

For defraying the expense incident to the stating and printing the public accounts for the year one thousand eight hundred and two, one thousand two hundred dollars.

For defraying the expense of printing two large tables of imports, for one year, (ending the thirtieth of September, one thousand seven hundred and ninety-nine,) in American and foreign vessels, including paper furnished for the same, one hundred and sixty-four dollars.

For compensation to a Superintendent employed to secure the buildings and records in the Treasury Department, during the present year, and for nine months service in the year one thousand eight hundred and one, not heretofore appropriated, including the expense of two watchmen, and the repair of fire-engines, buckets, &c., one thousand four hundred dollars.

For compensation to the Secretary of War, clerks and persons employed in his office, eleven thousand two hundred and fifty dollars.

For expenses of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation of clerks employed in the Paymaster General's office, one thousand eight hundred dollars.

For fuel in the said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks and persons employed in his office, including a sum of seven hundred dollars for compensations to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for expense of stationery and fuel in the said office, three thousand eight hundred dollars.

For compensation to the Secretary of the Navy, clerks and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of the Navy, two thousand seven hundred dollars.

For compensation to the Accountant of the Navy, clerks and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand three hundred and fifty dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks and persons employed in the Postmaster General's office, and for making good a deficiency in the appropriation for clerk hire in the said office, in the year one thousand eight hundred and one, including a sum of two thousand three hundred dollars for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, eleven thousand seven hundred and five dollars.

For expense of fuel, candles, stationery, furniture, chests, &c., exclusive of expenses of suits, prosecutions, mail-locks, keys, portmanteaus, saddle bags, blanks for post offices, advertisements relative to the mail, and other expenses incident to the department at large, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks to the Commissioners of Loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans for the State of Pennsylvania, in addition to the permanent provision made by law, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General, and the clerks employed by him, and for expense of stationery and other contingent expenses in the Surveyor General's office, three thousand two hundred dollars.

For defraying the expense of publishing in the Sciota Gazette, the act providing for the sale of lands in the Territory Northwest of the river Ohio, and of paper for printing twelve hundred copies of the act providing for the sale of Western lands of the United States, eighty-four dollars.

For completing certain surveys authorized by acts of Congress, passed the tenth of May, one thousand eight hundred, the eighteenth of February and third of March, one thousand eight hundred and one, and for surveying and laying off, according to law, the lands around Vincennes, on the Wabash, in the Indiana Territory, thirty-nine thousand two hundred and ninety-six dollars and ninety cents.

For compensation to the following officers of the Mint:

The director, two thousand dollars.

The treasurer, one thousand two hundred dollars.

The assayer, one thousand five hundred dollars.

The chief coiner, one thousand five hundred dollars.

The melter and refiner, one thousand five hundred dollars.

The engraver, one thousand two hundred dollars.

One clerk, at seven hundred dollars;

And two, at five hundred dollars each.

For the wages of persons employed at the different branches of melting, refining, coining, carpenter, millwright, and smith's work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die-forger, who also oversees the execution of the iron work, seven thousand dollars.

For repairs of furnaces, cost of rollers and screws, bar-iron, lead, steel, office furniture, and

for all other contingencies of the establishment of the Mint, three thousand nine hundred dollars.

For compensation to the Governor and Judges, and Secretary of the Territory Northwest of the river Ohio, five thousand one hundred and fifty dollars.

For expenses of stationery, printing patents for land, and other contingent expenses for lands in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses, in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For additional compensation to the clerks of the several departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding for each department respectively, fifteen per centum in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For the compensation granted by law to the chief justice, associate judges, circuit judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, sixty-eight thousand six hundred and fifty dollars.

For the like compensations granted to the district attorneys, and for defraying the expenses of the supreme, circuit, and district courts of the United States, including the court for the District of Columbia, jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties; and likewise for defraying the expenses of prosecution for offences against the United States, and for safekeeping of prisoners, fifty-six thousand nine hundred dollars.

For compensation to the marshals of the district of Maine, New Hampshire, Vermont, Kentucky, East and West Tennessee, one thousand two hundred dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For carrying into effect the act of Congress, of the third of February, one thousand eight hundred and two, relative to the officers and crew of the United States schooner Enterprise, one thousand seven hundred and nineteen dollars.

For payment of the annuity granted to the children of the late Colonel John Harding and Major Alexander Trueman, by an act of Congress passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For payment of the annual allowance to the invalid pensioners of the United States, for their pensions from the fifth of March, one thousand eight hundred and two, to the fourth of March, one thousand eight hundred and three, ninety-three thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and for occasional improvement in the construction of lanterns and lamps, and materials used therein, and other contingent expenses, including commissions to the superintendents of the said light-houses, at two and a half per centum, forty-four thousand eight hundred and forty-one dollars, and forty-four cents.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For defraying the contingent expenses of Government, twenty thousand dollars.

For defraying the expenses of taking the second enumeration of the inhabitants of the United States, in addition to the appropriation heretofore made for that object, twenty thousand dollars.

For defraying the expenses incident to the purchase or erection of certain warehouses and stores for the reception of goods, wares, and merchandise, under the "Act respecting quarantine and health laws," passed the twenty-fifth of February, one thousand seven hundred and ninety-nine, sixty-nine thousand and twenty-six dollars, and twelve cents.

For the expenses of intercourse with foreign nations, sixty-four thousand and fifty dollars.

For the salaries of the Commissioners under the seventh article of the treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, including contingent expenses, twenty-four thousand and sixty-six dollars and sixty-seven cents.

For salaries of the agents of the United States in London and Paris, expenses of prosecuting claims and appeals in the courts of Great Britain, in relation to captures of American vessels, and defending causes elsewhere, twenty-nine thousand dollars.

For the salary of an agent in London for the relief and protection of American seamen, and contingent expenses to be incurred therein; and for relieving seamen elsewhere, fifteen thousand dollars.

Sec. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid and discharged out of the fund of six hundred thousand dollars reserved by the act "making provision for the debt of the United States," and out of any money which may be in the Treasury not otherwise appropriated.

Approved, May 1, 1802.

An Act further to alter and establish certain post roads; and for the more secure carriage of the mail of the United States.

Be it enacted, &c., That the following post roads be discontinued:

From Pelham, to Nottingham West, in New Hampshire.

From Hanover to Scituate, in Massachusetts.

From Bridgewater to Taunton.

From New York to Sagg Harbor, in the State of New York.

From Schenectady to Sandy Hill.

From Salem to Bridgetown, in New Jersey.

From Lumberton, by Elizabethtown, to Andersonville, in North Carolina.

From Rockford, by Scull Camp, to Grayson court-house.

From Amelia court-house, by Pridesville, to Paynesville, in Virginia.

From Washington to Cincinnati.

From Franklin court-house, to Jackson court-house, in Georgia.

From Golden's, by Geesbridge, St. Tammany's, Mecklenburg court-house, Marshall's store, Christian's store, Lunenburg court-house, and Edmund's store, to Goldson's.

Sec. 2. *And be it further enacted*, That the following post roads be established:

In Maine—From Dennysville to Eastport.

From Machias, by Dennysville, to Scodiac.

In New Hampshire—From Pelham, by Windham, to Londonderry.

From Haverhill, by Bath and Littleton, to Lancaster.

In Massachusetts—From Boston, by Easton, to Taunton.

From Hingham, by Cohasset, to Scituate.

From Springfield, by South Hadley, to Northampton.

From Salem, by Topsfield, to Haverhill.

In Vermont—From Middlebury, by New Haven, Moncton, Hinesburg, Williston, Jericho, Essex, Westford, Fairfax, and Sheldon, to Huntsburg; to return from Huntsburg, by Berkshire, Enosburg, Bakersfield, Cambridge, Underhill, Jericho, Richmond, Huntington, Starksborough, and Bristol, to Middlebury.

From Danville, by St. Johnsbury, through Barnet, to return to Ryegate.

In Connecticut—From Hartford, by Coventry, Windham, and Canterbury, to Plainfield.

From Middletown, by Haddam, to Saybrook.

From New Haven, by Woodbridge, Waterbury, and Watertown, to Litchfield.

From Norwich, by Lisbon, Canterbury, and Brooklyn, to Pomfret.

In New York—From New York, by Brooklyn, Jamaica, Hampstead, Merrick, Oysterbay South, Huntington South, Islip, Patchauge Fireplace, Moriches, West Hampton, Southampton, and Bridgehampton, to Sagg Harbor.

From Hampstead, by Huntington, Smithtown, Brookhaven, and Riverhead, to Southhold.

From Newtown, in the county of Tioga, by Catharinetown, to Geneva.

From Schenectady to Ballstown Springs, Milton, Saratoga Springs, Greenfield, Hadley, Galloway, Charleton, and again to Schenectady.

From Sandy Hill to Fort George, and through the towns of Thermon and Jay, to Plattsburg, and thence to the Northern line of said State.

In New Jersey—From Woodbury, by Bridgetown, Milville, Port Elizabeth, and Cape May court-house, to Cape Island.

From Somerset court-house, by Baskenridge, to Morristown.

From New Germantown, by David Miller's, in Washington township, and New Hampton, to Pittstown.

In Pennsylvania—From Lancaster, by Reading, Allenstown, Bethlehem, and Stroud's, to Milford.

From Lebanon to Jonestown.

From Jenkinstown, by the cross roads and New Hope, to Flemmington, New Jersey.

From Chambersburg, by Messersburg, to Bedford.

From Downingtown, by Westchester, Kennet's square, and New London cross roads, to the brick meeting-house, in Maryland.

In Maryland—From Reistertown, by McAlistertown, Abbotstown, and Berlin, to Carlisle, Pennsylvania.

From Elkton, by the brick meeting-house, to the Rising Sun, Black Horse, and Sorrel Horse taverns, to Lancaster, Pennsylvania.

From Westminster, in Maryland, by Union Mills, Petersburg, and Gettysburg, to Chambersburg, in Pennsylvania.

From Boonsborough, by Sharpsburg and Hagerstown, to Messersburg, Pennsylvania. The mail from Ellicott's Mills to Montgomery court-house, shall pass by Brookville.

In Delaware—From Georgetown, by Proadkiln landing, to Lewistown.

From Newport, by Chatham, Cochran's, and Strasburg, to Lancaster, in Pennsylvania.

From Whitelysburg to Frederica.

From Georgetown, by Bridge branch, and Northwest Forkbridge, to Huntington creek or Newmarket, Maryland, as the postmaster may direct.

In Virginia—From Leesburg to Centreville.

From New Dublin, by Tazewell court-house, and Lee court-house, to Robinson's mills, at the foot of Cumberland mountain.

From Cumberland court-house, to Ca Ira.

From Culpepper court-house, by Woodville and Mandell's store, to Newmarket, in Shenandoah county.

From Fauquier court-house, by Aquia, to King George court-house.

From Winchester, by Frontroyal, to Culpepper court-house.

From Brook court-house, to Steubenville, in the Northwestern Territory.

From Brooke court-house, to West Liberty.

From Brookington, by Newman's and Randolph's taverns, and Ennis's store, to Henderson and Fitzgerald's store.

From Amelia court-house, by Perkins's store, to Painesville.

From Wyllesville, in Charlotte county, by Speed and Wilson's store, Sterling Yancey's and Norman's store, to Person court-house in North Carolina.

From Harrisville, by Field's mill, Quarrelsville, McFarland's store, Lunenburg court-house, Christiansville, Marshalsville, Mecklenburg court-house, and St. Tammany's; and to return by Geesbridge, Edmund's store, Field's mill, to Harrisville.

From Richmond court-house to Tappahanock.

In North Carolina—From Plymouth to Robert Winn's, on Scuppernong river.

From Jonesburg to Pasquotank river bridge.

From Rutherfordstown, by John Gowen's store, to Greenville court-house, in South Carolina.

From Wilkes to Ash court-house.

The road from Mount Airy to Grayson court-house, in Virginia, shall pass by Scull Camp.

In Tennessee—From Jonesborough to Carter court-house.

From Nashville to Franklin.

From Knoxville to Burville.

In South Carolina—The road from Edgefield to Cambridge, shall pass by Amos Richardson's, and return by Northampton.

From Monk's corner, over Biggen Bridge, by Pineville, Murray's ferry, Santee, to Kingstree.

In Georgia—From Oglethorpe court-house, by Athens, through Clarksburg, to Jackson court-house.

In Kentucky—From Shelbyville to Louisville.

From Danville, by Pulaski court-house, to Wayne court-house.

In the Northwestern Territory—From Marietta, by Chilicothe and Williamsburg, to Cincinnati.

Sec. 3. *And be it further enacted*, That, for the better and more secure carrying of the mail of the United States on the main post road between Petersburg, in Virginia, and Louisville, in Georgia, the Postmaster General shall be, and hereby is, authorized and directed to engage and contract with private companies or adventurers, for carrying the mail of the United States, for a term of time not exceeding five years, in mail coaches or stages, calculated to convey passengers therein: *Provided*, That the expense thereof shall not exceed a sum equal to one-third more than the whole of the present expense incurred for carrying the mail on such road on horseback. And the said Postmaster General may hereafter, at his discretion require, as a stipulation in the contract for carrying the mail from Suffield, in Connecticut, by Windsor, in Vermont, to Dartmouth College, in New Hampshire; that the same shall be conveyed in a carriage or line of stages: *Provided*, The expense thereof shall not exceed more than one-third the sum heretofore given for carrying the mail on the last mentioned route by a post rider.

Sec. 4. *And be it further enacted*, That, from and after the first day of November next, no other than a free white person shall be employed in carrying the mail of the United States, on any of the post roads, either as a post rider or driver of a carriage carrying the mail; and every contractor or person who shall have stipulated, or may hereafter stipulate, to carry the mail, or whose duty it shall be to cause the same to be conveyed, on any of the post roads, as aforesaid, and who shall, contrary to this act, employ any other than a free white person as a post rider or driver, or in any other way, to carry the mail on the same, shall, for every such offence, forfeit and pay the sum of fifty dollars, one moiety thereof to the use of the United States, and the other moiety thereof to the person who shall sue for, and prosecute the same, before any court having competent jurisdiction thereof.

Sec. 5. *And be it further enacted*, That all letters, packets and newspapers, to and from the Attorney General of the United States, shall be conveyed by post free of postage: *Provided*, That all letters by him sent be franked in the manner required by the seventeenth section of the act to establish the Post Office.

Sec. 6. *And be it further enacted*, That the Postmaster General be authorized to allow the postmasters, at the several distributing offices, such compensation as shall be adequate to their several services in that respect: *Provided*, That the same shall not exceed in the whole five per cent. on the whole amount of postages on letters and newspapers received for distribution, and that the said allowance be made to commence on the first day of June, in the year one thousand eight hunded: *Provided, also*, That if the number of mails received at, and despatched from, any such office is not actually increased by the distributing system, then no additional allowance shall be made to the postmaster.

Sec. 7. *And be it further enacted*, That there shall be allowed to the deputy postmaster at the city of Washington, for his extraordinary expenses incurred in the discharge of the duties of his office, an additional compensation, at the rate of one thousand dollars per annum, to be computed from the first day of January last.

Sec. 8. *And be it further enacted*, That this act shall not be so construed as to affect any existing contracts for carrying the mail.

Approved, May 3, 1802.

An Act to amend an act, entitled "An act for the relief of sick and disabled seamen;" and for other purposes.

Be it enacted, &c., That the moneys heretofore collected in pursuance of the several acts, "for the relief of sick and disabled seamen," and at present unexpended, together with the moneys hereafter to be collected by authority of the beforementioned acts, shall constitute a general fund, which the President of the United States shall use and employ, as circumstances shall require, for the benefit and convenience of sick and disabled American seamen: *Provided*, That the sum of fifteen thousand dollars be, and the same is hereby, appropriated for the erection of an hospital in the district of Massachusetts.

Sec. 2. *And be it further enacted*, That it shall be lawful for the President of the United States to cause such measures to be taken as, in his opinion, may be expedient for providing convenient accommodations, medical assistance, necessary attendance, and supplies, for the relief of sick or disabled seamen of the United States, who may be at or near the port of New Orleans, in case the same can be done with the assent of the government having jurisdiction over the port; and for this purpose, to establish such regulations, and to authorize the employment of such persons as he may judge proper; and that, for defraying the expense thereof, a sum not exceeding three thousand dollars be paid out of any moneys arising from the said fund not otherwise appropriated.

Sec. 3. *And be it further enacted*, That, from and after the thirtieth day of June next, the master of every boat, raft, or flat, belonging to any citizen of the United States, which shall go down the Mississippi with intention to proceed to New Orleans, shall, on his arrival at Fort Adams, render to the collector or naval officer thereof, a true account of the number of persons employed on board such boat, raft, or flat, and the time that each person has been so employed, and shall pay to the said collector or naval officer at the rate of twenty cents per month, for every person so employed, which sum he is hereby authorized to retain out of the wages of such person: and the said collector or naval officer shall not give a clearance for such boat, raft, or flat, to proceed on her voyage to New Orleans, until an account be rendered to him of the number of persons employed on board such boat, raft, or flat, and the money paid to him by the master or owner thereof: And if any such master shall render a false account of the number of persons, and the length of time they have severally been employed, as is herein required, he shall forfeit and pay fifty dollars, which shall be applied to, and shall make a part of, the said general fund for the purposes of this act: *Provided*, That all persons employed in navigating any such boat, raft, or flat, shall be considered as seamen of the United States, and entitled to the relief extended by law to sick and disabled seamen.

Sec. 4. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to nominate and appoint for the port of New Orleans, a fit person to be director of the marine hospital of the United States, whose duties shall be in all instances the same as the directors of the marine hospital of the United States, as directed and required by the act, entitled "An act for the relief of sick and disabled seamen."

Sec. 5. *And be it further enacted*, That each and every director of the marine hospital within the United States, shall, if it can with convenience be done, admit into the hospital of which he is director, sick foreign seamen, on the application of the master or commander of any foreign vessel to which such sick seamen may belong; and each seaman so admitted shall be subject to a charge of seventy-five cents per day for each day he may remain in the hospital, the payment of which the master or commander of such foreign vessel shall make to the collector of the district in which such hospital is situated: and the collector shall not grant a clearance to any foreign vessel, until the money due from such master or commander, in manner and form aforesaid, shall be paid; and the director of each hospital is hereby directed, under the penalty of fifty dollars, to make out the accounts against each foreign seaman that may be placed in the hospital, under his direction, and render the same to the collector.

Sec. 6. *And be it further enacted*, That the collectors shall pay the money collected by virtue of this and the act to which this is an amendment, into the Treasury of the United States, and be accountable therefor, and receive the same commission thereon as for other moneys by them collected.

Sec. 7. *And be it further enacted*, That each and every director of the marine hospital shall be accountable at the Treasury of the United States for the money by them received, in the same manner as other receivers of public money, and, for the sums by them expended, shall be allowed a commission at the rate of one per cent.

Approved, May 3, 1802.

An Act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty.

Be it enacted, &c., That, for carrying into effect the convention of the eighth day of January, one thousand eight hundred and two, between the United States and His Britannic Majesty, the sum of two millions six hundred and sixty-four thousand dollars be, and the same hereby is, appropriated.

Sec. 2. *And be it further enacted*, That the aforesaid sum shall be paid in such instalments, and at such times, as are fixed by the said convention, out of any moneys in the Treasury, not otherwise appropriated.

Approved, May 3, 1802.

An Act additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia."

Be it enacted, &c., That the circuit court of the county of Washington, in the Territory of Columbia, shall have power to proceed in all common law and chancery causes, which now are or hereafter shall be instituted before it, in which either of the parties reside without the said Territory, in the same way that non-residents are proceeded against in the general court or in the supreme court of chancery in the State of Maryland.

Sec. 2. *And be it further enacted*, That the circuit court of the county of Alexandria, in the District of Columbia, shall have power to proceed in all common law and chancery causes, which now are or hereafter shall be instituted before it, in which either of the parties are non-residents of said District of Columbia, in the same way, and under the same regulations, observed by the district court or by the high court of chancery in Virginia, in proceeding against non-residents.

Sec. 3. *And be it further enacted*, That the courts for the counties of Alexandria and Wash-

ington shall hereafter be holden at the periods following, to wit: for the county of Alexandria, on the fourth Monday of June and November, and for the county of Washington, on the fourth Monday of July and December, in each year; and all process heretofore issued from the offices of the said courts and not yet returned, shall be returnable to the first day of the sessions of the said courts, respectively, and all causes now depending in the same shall stand adjourned and continued over to the next sessions of the said courts, as established by this act. And the said courts are hereby invested with the same power of holding adjourned sessions that are exercised by the courts of Maryland.

SEC. 4. *And be it further enacted*, That no *capias ad satisfaciendum* shall hereafter issue on any judgment rendered by a single magistrate, or in any case where the judgment, exclusive of costs, shall not exceed twenty dollars; but that in such cases execution shall be only on goods and chattels of the debtor, and shall issue by order of the justice who may have taken cognizance of the action, from the clerk's office, and shall be returnable thereto; that all such executions be returnable on the first Monday in every month, and that the same, and also the warrant to bring the property before the justice, be directed to one of the constables, whose duty it shall be to obey the same; that each of the said constables shall give bond, with one sufficient surety, to be approved of by any one of the district judges, for the faithful execution of the duties of his office, in the sum of five hundred dollars; that the clerk's fees for issuing and filing the return of every such execution, shall be twenty-five cents; the constable's fees for return and service, shall be fifty cents; and that a commission of eight per cent. be allowed the constable for every sum thereon by him levied.

SEC. 5. *And be it further enacted*, That so much of the original act to which this is a further supplement as confines the jurisdiction of the courts of this Territory to cases between parties who are inhabitants of, or residents within the same, shall not be construed to extend to any case where, by the laws of Maryland and Virginia, respectively, attachments may issue to affect the property of absconding debtors, or others having property within the district and whose persons are not answerable to the process of the court.

SEC. 6. *And be it further enacted*, That the taxes to be levied in the county of Alexandria shall hereafter be assessed by the justices of the peace of the said county, and the poor of the town and county parts of the said county of Alexandria shall be provided for, respectively, in like manner as the county and corporation courts were authorized to do by the laws of Virginia, as they stood in force within the said county on the first Monday of December, in the year one thousand eight hundred.

SEC. 7. *And be it further enacted*, That no part of the laws of Virginia or Maryland declared by an act of Congress, passed the twenty-seventh day of February, one thousand eight hundred and one, "concerning the District of Columbia," to be in force within the said District, shall ever be construed so as to prohibit the owners of slaves to hire them within, or remove them to, the District, in the same way as was practised prior to the passage of the above recited act.

SEC. 8. *And be it further enacted*, That so much of two acts of Congress, the one passed the twenty-seventh day of February, one thousand eight hundred and one, entitled "An act concerning the District of Columbia;" the other passed the third day of March, one thousand eight hundred and one, supplementary to the aforesaid act, as provides for the compensation to be made to certain justices of the peace thereby created, and for compensation to jurors attending the courts within said District, except so much thereof as relates to their travelling expenses attending the same, shall be, and is hereby, repealed; and the jurors, in future, shall serve in the said courts, and be summoned to attend the same in like manner as jurors serve and were summoned in the courts of Virginia, prior to the passage of the above recited act.

SEC. 9. *And be it further enacted*, That ordinary licenses, retailers' licenses, and hawkers and pedlars' licenses, shall be granted by the circuit court of the said District, in the respective counties, as the same were heretofore granted by the courts of Maryland and Virginia, respectively. And the several judges of the said circuit court shall have like authority to grant such licenses in vacation, as the justices of the courts of Maryland and Virginia heretofore possessed; and the money arising from such licenses shall be applied to the use and benefit of the said counties, respectively, in such manner, and to such purposes, as the justices of the levy courts in the same shall appoint and direct.

SEC. 10. *And be it further enacted*, That the marshal of the District of Columbia be, and he hereby is, authorized and directed, with the approbation of the President of the United States, to cause a good and sufficient jail to be built within the city of Washington, and that a sum not exceeding eight thousand dollars be, and the same hereby is, appropriated to that purpose, to be paid out of any unappropriated moneys in the Treasury.

SEC. 11. *And be it further enacted*, That the corporation of Georgetown, in the District of Columbia, shall have full power and authority to tax any particular part or district of the town for paving the streets, lanes, or alleys therein, or for sinking wells, or erecting pumps which may appear for the benefit of such particular part or district: *Provided*, That the rate of tax so to be levied shall not exceed two dollars per foot front, and that the same shall be enforced and collected in the same manner that the taxes which the said corporation had heretofore been authorized to lay and collect.

SEC. 12. *And be it further enacted*, That articles inspected at one port in the said District shall not be subject to a second inspection at any other port in the said District.

SEC. 13. *And be it further enacted*, That the President of the United States be authorized to cause the militia of the respective counties of Washington and Alexandria to be formed into regiments and other corps, conformably, as nearly as may be, to the laws of Maryland and Virginia as they stood in force in the said counties, respectively, on the first Monday in December, in the year one thousand eight hundred; and that he appoint and commission, during pleasure, all such officers of the militia of the said District as he may think proper; that he be authorized to call them into service in like manner as the Executives of Maryland and Virginia were authorized in the counties of Washington and Alexandria, respectively, on the first Monday of December, one thousand eight hundred; and that such militia, when in actual service, be entitled to the same pay and emoluments as the militia of the United States when called out by the President.

Approved, May 3, 1802.

An Act to incorporate the inhabitants of the City of Washington, in the District of Columbia.

Be it enacted, &c., That the inhabitants of the City of Washington be constituted a body politic and corporate, by the name of a Mayor and Council of the City of Washington, and by their corporate name, may sue and be sued, implead and be impleaded, grant, receive, and do all other acts as natural persons, and may purchase and hold real, personal, and mixed property, or dispose of the same for the benefit of the said city; and may have and use a city seal, which may be broken or altered at pleasure. The City of Washington shall be divided into three divisions or wards, as now divided by the levy court for the county, for the purpose of assessment; but the number may be increased hereafter, as in the wisdom of the City Council shall seem most conducive to the general interest and convenience.

SEC. 2. *And be it further enacted*, That the Council of the City of Washington shall consist of twelve members, residents of the city, and upwards of twenty-five years of age, to be divided into two chambers, the first chamber to consist of seven members, and the second chamber of five members; the second chamber to be chosen from the whole number of councillors elected, by their ballot. The City Council to be elected annually, by ballot, in a general ticket, by the free white male inhabitants of full age, who have resided twelve months in the city, and paid taxes therein the year preceding the election's being held: the justices of the county of Washington, resident in the city, or any three of them, to preside as judges of election, with such associates as the Council may, from time to time, appoint.

SEC. 3. *And be it further enacted*, That the first election of members for the City Council shall be held on the first Monday in June next, and in every year afterwards, at such place in each ward as the judges of the election may prescribe.

SEC. 4. *And be it further enacted*, That the polls shall be kept open from eight o'clock in the morning till seven o'clock in the evening, and no longer, for the reception of ballots. On the closing of the poll, the judges shall close and seal their ballot-boxes, and meet on the day following in the presence of the marshal of the district, on the first election, and the Council afterwards, when the seals shall be broken, and the votes counted: within three days after such election, they shall give notice to the persons having the greatest number of legal votes, that they are duly elected, and shall make their return to the Mayor of the city.

SEC. 5. *And be it further enacted*, That the Mayor of the city shall be appointed, annually, by the President of the United States: he must be a citizen of the United States, and a resident of the city, prior to his appointment.

SEC. 6. *And be it further enacted*, That the City Council shall hold their sessions in the City Hall, or, until such building is erected, in such place as the Mayor may provide for that purpose, on the second Monday in June, in every year; but the Mayor may convene them oftener, if the public good require their deliberations. Three-fourths of the members of each Council may be a quorum to do business, but a smaller number may adjourn from day to day: they may compel the attendance of absent members, in such manner, and under such penalties, as they may, by ordinance, provide: they shall appoint their respective Presidents, who shall preside during their sessions, and shall vote on all questions where there is an equal division; they shall settle their rules of proceedings, appoint their own officers, regulate their respective fees, and remove them at pleasure: they shall judge of the elections, returns, and qualifications of their own members, and may, with the concurrence of three-fourths of the whole, expel any member for disorderly behaviour, or mal-conduct in office, but not a second time for the same offence: they shall keep a journal of their proceedings and enter the yeas and nays on any question, resolve, or ordinance, at the request of any member, and their deliberations shall be public. The Mayor shall appoint to all offices under the corporation. All ordinances or acts passed by the City Council shall be sent to the Mayor, for his approbation, and when approved by him, shall then be obligatory as such. But if the said Mayor shall not approve of such ordinance or act, he shall return the same within five days, with his reasons in writing therefor; and if three-fourths of both branches of the City Council, on reconsideration thereof, approve of the same, it shall be in force in like manner as if he had approved it, unless the City Council, by their adjournment, prevent its return.

SEC. 7. *And be it further enacted*, That the Corporation aforesaid shall have full power and authority to pass all by-laws and ordinances; to prevent and remove nuisances; to prevent the introduction of contagious diseases within the city; to establish night-watches or patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for licensing and regulating auctions, retailers of liquors, hackney-

carriages, wagons, carts, and drays, and pawn-brokers within the city; to restrain or prohibit gambling, and to provide for licensing, regulating, or restraining, theatrical or other amusements within the city; to regulate and establish markets; to erect and repair bridges; to keep in repair all necessary streets, avenues, drains, and sewers, and to pass regulations necessary for the preservation of the same, agreeably to the plan of the said city; to provide for the safe-keeping of the standard of weights and measures fixed by Congress, and for the regulation of all weights and measures used in the city; to provide for the licensing and regulating the sweeping of chimneys and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks that are to be made and used in the city; to sink wells, and erect and repair pumps in the streets; to impose and appropriate fines, penalties, and forfeitures for breach of their ordinances; to lay and collect taxes; to enact by-laws for the prevention and extinguishment of fire; and to pass all ordinances necessary to give effect and operation to all the powers vested in the Corporation of the City of Washington: *Provided*, That the by-laws or ordinances of the said Corporation, shall be in no wise obligatory upon the persons of non-residents of the said city, unless in cases of intentional violation of by-laws or ordinances previously promulgated. All the fines, penalties, and forfeitures, imposed by the Corporation of the City of Washington, if not exceeding twenty dollars, shall be recovered before a single magistrate, as small debts are, by law, recoverable; and if such fines, penalties, and forfeitures, exceed the sum of twenty dollars, the same shall be recovered by action of debt in the District Court of Columbia, for the county of Washington, in the name of the Corporation, and for the use of the City of Washington.

SEC. 8. *And be it further enacted*, That the person or persons appointed to collect any tax imposed in virtue of the powers granted by this act, shall have authority to collect the same by distress and sale of the goods and chattels of the person chargeable therewith: no sale shall be made unless ten days' previous notice thereof be given; no law shall be passed by the City Council subjecting vacant or unimproved city lots, or parts of lots, to be sold for taxes.

SEC. 9. *And be it further enacted*, That the City Council shall provide for the support of the poor, infirm, and diseased of the city.

SEC. 10. *Provided always, and be it further enacted*, That no tax shall be imposed by the City Council on real property in the said city, at any higher rate than three quarters of one per centum on the assessment valuation of such property.

SEC. 11. *And be it further enacted*, That this act shall be in force for two years, from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, May 3, 1802.

Resolution authorizing the Secretary of State to furnish the members of both Houses with the laws of the Sixth Congress.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State be directed to cause to be furnished to each member of the two Houses of Congress, a copy of the laws of the Sixth Congress.

Approved, January 21, 1802.

Resolutions expressing the sense of Congress on the gallant conduct of Lieut. Sterret, the officers and crew of the United States schooner Enterprize.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That they entertain a high sense of the gallant conduct of Lieutenant Sterret, and the other officers, seamen, and marines, on board the schooner Enterprize, in the capture of a Tripolitan corsair, of fourteen guns and eighty men.

Resolved, That the President of the United States be requested to present to Lieutenant Sterret a sword, commemorative of the aforesaid heroic action; and that one month's pay be allowed to all the other officers, seamen, and marines, who were on board the Enterprize when the aforesaid action took place.

Approved, February 3, 1802.

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ANNALS

OF THE

CONGRESS OF THE UNITED STATES.

SEVENTH CONGRESS—SECOND SESSION.

UNITED STATES OF AMERICA
LIBRARY
OF
HOUSE
REPRESENTATIVES

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

SEVENTH CONGRESS—SECOND SESSION.

COMPRISING THE PERIOD FROM DECEMBER 6, 1802, TO MARCH 3, 1803, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

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1851.

PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE SECOND SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, DECEMBER 6, 1802.

MONDAY, December 6, 1802.

In pursuance of the law of last session, the second session of the seventh Congress commenced this day, at the city of Washington, and the Senate assembled, in their Chamber, at the Capitol.

PRESENT:

SIMEON OLCOTT, from New Hampshire;
URIAH TRACY, from Connecticut;
CHRISTOPHER ELLERY, from Rhode Island;
STEPHEN R. BRADLEY, from Vermont;
SAMUEL WHITE, from Delaware;
ROBERT WRIGHT, from Maryland;
ABRAHAM BALDWIN, from Georgia.

WILLIAM PLUMER, appointed a Senator by the State of New Hampshire, to supply the vacancy occasioned by the resignation of JAMES SHEAFE, produced his credentials, and took his seat in the Senate.

The number of members assembled not being sufficient to form a quorum, the Senate adjourned.

TUESDAY, December 7.

Mr. BRECKENRIDGE, from Kentucky; Mr. FOSTER, from Rhode Island; Mr. HOWARD, from Maryland; and Mr. LOGAN, from Pennsylvania, severally attended.

There being no quorum, the Senate adjourned.

WEDNESDAY, December 8.

The number of members assembled not being sufficient to constitute a quorum, the Senate adjourned.

THURSDAY, December 9.

The number of members assembled not being sufficient to constitute a quorum, the Senate adjourned.

FRIDAY, December 10.

Mr. S. T. MASON, from Virginia, attended.

The number of members assembled not being sufficient to constitute a quorum, the Senate adjourned.

SATURDAY, December 11.

Mr. FRANKLIN, from North Carolina, attended.

The number of members assembled not being sufficient to constitute a quorum, the Senate adjourned.

MONDAY, December 13.

Mr. J. MASON, from Massachusetts; Mr. DAYTON, and Mr. OGDEN, from New Jersey; and Mr. SUMTER, from South Carolina, severally attended.

The VICE PRESIDENT being absent, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 7, Mr. Tracy had 7, Mr. Baldwin 1, Mr. Dayton 1, Mr. Logan 1.

There was consequently no choice. Whereupon, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 8, Mr. Tracy 7, Mr. Dayton 1, Mr. Logan 1.

There was consequently no choice. Whereupon, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and the ballots being counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 8, Mr. Tracy 7, Mr. Dayton 1, Mr. Logan 1.

There was consequently no choice. Whereupon, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and the ballots being counted, the whole number of votes was 14, of which 8 make a majority.

Mr. Tracy had 7, Mr. Bradley 5, Mr. Dayton 1, Mr. Logan 1.

There was consequently no choice; and the Senate adjourned.

TUESDAY, December 14.

The VICE PRESIDENT being absent, the Senate proceeded to the choice of a President *pro tem-*

pore, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 17, of which 9 make a majority.

Mr. Bradley had 9, Mr. Tracy 7, Mr. Dayton 1.

Consequently, STEPHEN R. BRADLEY was elected President of the Senate *pro tempore*.

The credentials of Mr. PLUMER, appointed a Senator by the State of New Hampshire, to supply a vacancy occasioned by the resignation of JAMES SHEAFE, Esq., were read; and the oath prescribed by law was administered to him by the President.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the VICE PRESIDENT, they have elected STEPHEN R. BRADLEY President of the Senate *pro tempore*.

A similar notice was directed to be given to the House of Representatives, and also that the Senate are ready to proceed to business.

Resolved, That each Senator be supplied, during the present session, with three such newspapers, printed in any of the States, as he may choose; provided that the same be furnished at the rate usual for the annual charge for such papers.

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant and two horses, for the purpose of performing such services as are usually required of the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly, for the purpose, during the session, and for twenty days after.

A message from the House of Representatives informed the Senate that a quorum of the House has assembled, and is proceeding on the public business.

On motion, it was

Ordered, That Messrs. WRIGHT and T. FOSTER be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

A message from the House of Representatives informed the Senate that the House agree to the appointment of a joint committee to wait on the President of the United States, and have appointed a committee on their part.

Mr. WRIGHT reported, from the joint committee last mentioned, that they had accordingly waited on the President of the United States, and that the President of the United States informed the committee that he would make a communication to the two Houses, by Message, to-morrow.

A message from the House of Representatives informed the Senate that the House have resolved that two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

Resolved, That the Senate do concur in the resolution last mentioned.

On motion, it was agreed to proceed to the choice of a Chaplain on the part of the Senate, and the ballots having been collected and counted, the whole number was 17, of which 9 is the majority.

Doctor Gantt had 10, Mr. M'Cormick 4, Mr. Priestley 2, Mr. Balch 1.

So it was *Resolved*, That the Rev. Dr. GANTT be the Chaplain to Congress, on the part of the Senate, during the present session.

WEDNESDAY, December 15.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

When we assemble together, fellow-citizens, to consider the state of our beloved country, our just attentions are first drawn to those pleasing circumstances which mark the goodness of that Being from whose favor they flow, and the large measure of thankfulness we owe for his bounty. Another year has come around, and finds us still blessed with peace and friendship abroad; law, order, and religion, at home; good affection and harmony with our Indian neighbors; our burdens lightened, yet our income sufficient for the public wants, and the produce of the year great beyond example. These, fellow-citizens, are the circumstances under which we meet: and we remark, with special satisfaction, those which, under the smiles of Providence, result from the skill, industry, and order, of our citizens, managing their own affairs in their own way, and for their own use, unembarrassed by too much regulation, unoppressed by fiscal exactions.

On the restoration of peace in Europe, that portion of the general carrying trade which had fallen to our share during the war, was abridged by the returning competition of the belligerent Powers. This was to be expected, and was just. But, in addition, we find in some parts of Europe monopolizing discriminations, which, in the form of duties, tend effectually to prohibit the carrying thither our own produce in our own vessels. From existing amities, and a spirit of justice, it is hoped that friendly discussion will produce a fair and adequate reciprocity. But should false calculations of interest defeat our hope, it rests with the Legislature to decide whether they will meet inequalities abroad with countervailing inequalities at home, or provide for the evil in any other way.

It is with satisfaction I lay before you an act of the British Parliament anticipating this subject so far as to authorize a mutual abolition of the duties and countervailing duties, permitted under the treaty of 1794. It shows, on their part, a spirit of justice and friendly accommodation, which it is our duty and our interest to cultivate with all nations. Whether this would produce a due equality in the navigation between the two countries is a subject for your consideration.

Another circumstance which claims attention, as directly affecting the very source of our navigation, is the defect or the evasion of the law providing for the return of seamen, and particularly of those belonging to vessels sold abroad. Numbers of them, discharged in foreign ports, have been thrown on the hands of our Consuls, who, to rescue them from the dangers into which their distresses might plunge them, and save them to their country, have found it necessary, in some cases, to return them at the public charge.

The cession of the Spanish province of Louisiana to France, which took place in the course of the late war, will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations of the Legislature connected with that subject.

There was reason, not long since, to apprehend that the warfare in which we were engaged with Tripoli might be taken up by some other of the Barbary Powers. A reinforcement, therefore, was immediately ordered to the vessels already there. Subsequent information, however, has removed these apprehensions for the present. To secure our commerce in that sea with the smallest force competent, we have supposed it best to watch strictly the harbor of Tripoli. Still, however, the shallowness of their coast, and the want of smaller vessels on our part, has permitted some cruisers to escape unobserved; and to one of these an American vessel unfortunately fell a prey. The captain, one American seaman, and two others of color, remain prisoners with them; unless exchanged under an agreement formerly made with the Bashaw, to whom, on the faith of that, some of his captive subjects had been restored.

The convention with the State of Georgia has been ratified by their Legislature, and a repurchase from the Creeks has been consequently made of a part of the Talasscee country. In this purchase has been also comprehended a part of the lands within the fork of Oconee and Oakmulgee rivers. The particulars of the contract will be laid before Congress so soon as they shall be in a state for communication.

In order to remove every ground of difference possible with our Indian neighbors, I have proceeded in the work of settling with them and marking the boundaries between us. That with the Choctaw nation is fixed in one part, and will be through the whole within a short time. The country to which their title had been extinguished before the Revolution is sufficient to receive a very respectable population, which Congress will probably see the expediency of encouraging so soon as the limits shall be declared. We are to view this position as an outpost of the United States, surrounded by strong neighbors, and distant from its support. And how far that monopoly which prevents population should here be guarded against, and actual habitation made a condition of the continuance of title, will be for your consideration. A prompt settlement, too, of all existing rights and claims within this Territory presents itself as a preliminary operation.

In that part of the Indiana Territory which includes Vincennes, the lines settled with the neighboring tribes fix the extinction of their title at a breadth of twenty-four leagues from East to West, and about the same length, parallel with and including the Wabash. They have also ceded a tract of four miles square, including the salt springs, near the mouth of that river.

In the department of finance it is with pleasure I inform you that the receipts of external duties for the last twelve months have exceeded those of any former year, and that the ratio of increase has been also greater than usual. This has enabled us to answer all the regular exigencies of Government, to pay from the Treasury within one year upwards of eight millions of dollars, principal and interest, of the public debt, exclusive of upwards of one million paid by the sale of bank stock, and making in the whole a reduction of nearly five millions and a half of principal, and to have now in the Treasury four millions and a half of dollars, which are in a course of application to the further discharge of debt and current demands. Experience, too, so far, authorizes us to believe, if no extraordinary event supervenes, and the expenses which will be actually incurred shall not be greater than were contemplated by Congress at their last session, that we shall not be disappointed in the expectations then formed. But, nevertheless, as the effect of peace on the amount of duties is not yet fully ascertained, it is the more necessary to practise every useful economy, and to incur no expense which may be avoided without prejudice.

The collection of the internal taxes having been completed in some of the States, the officers employed in it are of course out of commission. In others they will be so shortly; but in a few, where the arrangements for the direct tax had been retarded, it will be some time before the system is closed. It has not yet been thought necessary to employ the agent authorized by an act of the last session, for transacting business in Europe relative to debts and loans. Nor have we used the power, confided by the same act, of prolonging the foreign debt by reloans, and of redeeming, instead thereof, an equal sum of the domestic debt. Should, however, the difficulties of remittance on so large a scale render it necessary at any time, the power shall be executed, and the money thus employed abroad shall, in conformity with that law, be faithfully applied here in an equivalent extinction of domestic debt. When effects so salutary result from the plans you have already sanctioned; when, merely by avoiding false objects of expense, we are able, without a direct tax, without internal taxes, and without borrowing, to make large and effectual payments towards the discharge of our public debt, and the emancipation of our posterity from that mortal canker; it is an encouragement, fellow-citizens, of the highest order, to proceed as we have begun, in substituting economy for taxation, and in pursuing what is useful for a nation placed as we are, rather than what is practised by others under different circumstances. And whensoever we are destined to meet events which shall call forth all the energies of our countrymen, we have the firmest reliance on those energies, and the comfort of leaving for calls like these the extraordinary resources of loans and internal taxes. In the meantime, by payments of the principal of our debt, we are liberating, annually, portions of the external taxes, and forming from them a growing fund, still further to lessen the necessity of recurring to extraordinary resources.

The usual account of receipts and expenditures for the last year, with an estimate of the expenses of the ensuing one, will be laid before you by the Secretary of the Treasury.

No change being deemed necessary in our Military Establishment, an estimate of its expenses for the ensuing year, on its present footing, as also of the sums to be employed in fortifications, and other objects within that department, has been prepared by the Secretary of War, and will make a part of the general estimates which will be presented to you.

Considering that our regular troops are employed for local purposes, and that the militia is our general reliance for great and sudden emergencies, you will doubtless think this institution worthy of a review, and give it those improvements of which you find it susceptible.

Estimates for the Naval Department, prepared by the Secretary of the Navy, for another year, will, in like manner, be communicated with the general estimates. A small force in the Mediterranean will still be neces-

sary to restrain the Tripoline cruisers; and the uncertain tenure of peace with some other of the Barbary Powers may eventually require that force to be augmented. The necessity of procuring some smaller vessels for that service will raise the estimate; but the difference in their maintenance will soon make it a measure of economy.

Presuming it will be deemed expedient to expend annually a convenient sum towards providing the Naval defence which our situation may require, I cannot but recommend that the first appropriations for that purpose may go to the saving what we already possess. No cares, no attentions, can preserve vessels from rapid decay, which lie in water and exposed to the sun. These decays require great and constant repairs, and will consume, if continued, a great portion of the moneys destined to Naval purposes. To avoid this waste of our resources, it is proposed to add to our navy yard here a dock, within which our present vessels may be laid up dry, and under cover from the sun. Under these circumstances, experience proves that works of wood will remain scarcely at all affected by time. The great abundance of running water which this situation possesses, at heights far above the level of the tide, if employed as is practised for lock navigation, furnishes the means for raising and laying up our vessels on a dry and sheltered bed. And should the measure be found useful here, similar depositories for laying up, as well as for building and repairing vessels, may hereafter be undertaken at other navy yards offering the same means. The plans and estimates of the work, prepared by a person of skill and experience, will be presented to you without delay; and from this it will be seen that scarcely more than has been the cost of one vessel is necessary to save the whole, and that the annual sum to be employed towards its completion may be adapted to the views of the Legislature as to Naval expenditure.

To cultivate peace, and maintain commerce and navigation in all their lawful enterprises; to foster our fisheries as nurseries of navigation and for the nurture of man, and protect the manufactures adapted to our circumstances; to preserve the faith of the nation by an exact discharge of its debts and contracts, expend the public money with the same care and economy we would practise with our own, and impose on our citizens no unnecessary burdens; to keep, in all things, within the pale of our Constitutional powers, and cherish the Federal Union as the only rock of safety; these, fellow-citizens, are the landmarks by which we are to guide ourselves in all our proceedings. By continuing to make these the rule of our action, we shall endear to our countrymen the true principles of their Constitution, and promote an union of sentiment and of action, equally auspicious to their happiness and safety. On my part you may count on a cordial concurrence in every measure for the public good; and on all the information I possess which may enable you to discharge to advantage the high functions with which you are invested by your country.

TH. JEFFERSON.

DECEMBER 15, 1802.

The Message and papers therein referred to were read; and

Ordered, That five hundred copies of the Message of the President of the United States, together with one hundred copies of each of the papers referred to in the Message, be printed for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have elected the Reverend WILLIAM PARKINSON a Chaplain to Congress, on their part.

THURSDAY, December 16.

The Senate assembled, but transacted no business.

FRIDAY, December 17.

The Senate assembled, but no business was transacted.

SATURDAY, December 18.

The Senate assembled, and adjourned to Monday morning.

MONDAY, December 20.

Mr. CLINTON, from the State of New York, and Mr. JACKSON, from the State of Georgia, attended.

The PRESIDENT communicated a letter from the Secretary for the Department of Treasury, together with a report, of the 16th instant, on the permanent revenues of the United States, referring to a statement of the sale of lands in the districts of Cincinnati, Steubenville, Chillicothe, and Marietta, and the moneys paid thereon, 1st November, 1802, marked A; to a statement (B) exhibiting the amount of revenue arising on importations for each quarter, from the 1st day of October, 1800, to the 30th September, 1802; also, to certain proceedings of the Commissioners of the Sinking Fund, in relation to the sale of the shares of the stock of the Bank of the United States, marked C; which were severally read.

Ordered, That they be printed for the use of the Senate.

Mr. J. MASON presented the petition of Sarah Fletcher and Jane Ingraham, widows, stating that they have unfortunately lost their husbands in the public service, on board the armed ship Insurgent, and armed brig Pickering; whereby they are reduced to indigent circumstances, and praying relief; and the petition was read.

Ordered, That it be referred to Messrs. J. MASON, DAYTON, and TRACY, to consider and report thereon.

Mr. TRACY notified the Senate that he would, to-morrow, ask leave to bring in a bill to carry into effect the resolution of Congress, passed on the 17th day of June, 1777, for erecting a monument to the memory of General Wooster.

TUESDAY, December 21.

Mr. S. T. MASON presented the memorial of the members of the first and second Chambers of the City Council of Washington, in the District of Columbia, praying that certain alterations in the law establishing their incorporation may be made; which memorial was read, and referred to Messrs. S. T. MASON, HOWARD, and BALDWIN, to consider and report thereon.

WEDNESDAY, December 22.

DWIGHT FOSTER, from the State of Massachusetts, attended.

Agreeably to notice given on the 20th instant, Mr. TRACY had leave to bring in a bill to carry into effect a resolution of Congress to erect a monument to the memory of the late David Wooster; which was read, and ordered to a second reading.

THURSDAY, December 23.

Mr. MORRIS, from the State of New York, attended.

The bill to carry into effect a resolution of Congress to erect a monument to the memory of the late General David Wooster, was read the second time.

Ordered, That it be referred to Messrs. TRACY, JACKSON, and FRANKLIN, to consider and report thereon.

FRIDAY, December 24.

The PRESIDENT communicated a letter and report from the Secretary for the Department of State, in pursuance of the "Act to revive and continue in force certain parts of the 'Act for the relief and protection of American seamen,' and to amend the same;" and they were read.

Ordered, That they be printed for the use of the Senate.

Mr. BRECKENRIDGE laid before the Senate sundry resolutions of the Legislature of the State of Kentucky, of the 1st instant, with a copy of their memorial to the President of the United States and to Congress, respecting the proclamation of the Intendant of the port of New Orleans, 18th October last, forbidding the American citizens to deposit their merchandises and effects in the said port; which were read, and ordered to lie for consideration.

MONDAY, December 27.

Mr. HILLHOUSE, from the State of Connecticut, attended.

The PRESIDENT laid before the Senate the general account of the Treasurer of the United States, from October 1, 1801, to October 1, 1802; as, also, the accounts for the War and Navy Departments, for the same period; which were read.

Mr. SUMTER presented a letter from the Governor of the State of South Carolina directed to the Senators of that State in the Congress of the United States, requesting their endeavors to procure a law for the remission of the impost duties on certain brass ordnance and military stores, purchased in England for the use of that State, in consequence of appropriations made by the Legislature for that purpose; and the letter was read, and ordered to lie for consideration.

Mr. SUMTER also presented to the Senate the petition of Adam Tunno, James Bulgin, and George Verree, assignees of the estate and effects of McFarland and Player, of Charleston, merchants, stating that the said McFarland and Player, before they became bankrupts, imported into Charleston certain quantities of sugar, which were accidentally destroyed by fire; and praying, in their behalf, the remission of the duties thereon: And the petition was read.

Ordered, That it lie for consideration.

Mr. MORRIS presented the petition of the inhabitants of the Mississippi Territory, holding lands under Spanish grants and occupancy, obtained prior to the ratification of the treaty between the United States and Spain, praying to be confirmed in their titles: And the petition was read.

Ordered, That it be referred to Messrs. MORRIS, JACKSON, and BALDWIN, to consider and report thereon; and that, in the meantime, it be printed for the use of the Senate.

TUESDAY, December 28.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

In my Message of the 15th instant, I mentioned that plans and estimates of a dry dock for the preservation of our ships of war, prepared by a person of skill and experience, should be laid before you without delay. These are now transmitted; the report and estimate by duplicates; but the plans being single only, I must request an intercommunication of them between the Houses, and their return when they shall be no longer wanting for their consideration.

DEC. 27, 1802. TH. JEFFERSON.

The Message and papers therein referred to were read.

Ordered, That they be printed for the use of the Senate.

Mr. BRECKENRIDGE presented the petition of sundry inhabitants of the Mississippi Territory, holding lands under Spanish grants and occupancy, obtained prior to the ratification of the treaty between the United States and Spain, and praying to be confirmed in their titles; and the petition was read.

Ordered, That it be referred to the committee appointed yesterday on the same subject, to consider and report thereon.

Mr. BRECKENRIDGE also presented the petition of Christian Vangundy, stating that he was an early settler in the Territory of the United States Northwest of the river Ohio, and praying a preemption right to the section on which he hath made a settlement, for reasons therein mentioned; and the petition was read.

Ordered, That it be referred to Messrs. BRECKENRIDGE, HILLHOUSE, and BALDWIN, to consider and report thereon.

On motion, it was

Ordered, That the resolutions and memorial of the Legislature of the State of Kentucky, communicated on the 24th instant, be printed for the use of the Senate.

WEDNESDAY, December 29.

The Senate assembled; no business transacted.

THURSDAY, December 30.

Mr. ANDERSON, and Mr. COCKE, from the State of Tennessee, severally attended.

Mr. TRACY, from the committee to whom was referred, on the 23d instant, the bill to carry into effect a resolution of Congress to erect a monument to the memory of the late General David Wooster, reported amendments; which were read.

Ordered, That they be printed for the use of the Senate.

FRIDAY, December 31.

Mr. MORRIS presented the petition of Nicholas Perkins, and others, practitioners of law in the Mississippi Territory, stating that a petition hath been circulated in the said Territory, praying, amongst other things, "that the office of the Territorial judges of that government be abolished," and showing cause why the prayer of the said petition should not be granted; and the petition was read, and ordered to lie for consideration.

Mr. OGDEN presented the petition of Cloe Strong, widow of David Strong, late Colonel of the first United States regiment, stating that her husband lost his life by a malignant fever at Wilkinsonville, and that she is left in indigent circumstances, and praying relief; and the petition was read.

Ordered, That it be referred to Messrs OGDEN, TRACY, and SUMTER, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill to carry into effect a resolution of Congress to erect a monument to the memory of the late General David Wooster; and, having amended the report,

Ordered, That the bill, together with the report, be recommitted to the committee who brought in the bill for further amendment; and that Messrs. CLINTON and HILLHOUSE be added to the said committee.

MONDAY, January 3, 1803.

Mr. NICHOLAS, from the State of Virginia, and Mr. WELLS, from the State of Delaware, attended.

TUESDAY, January 4.

A message from the House Representatives informed the Senate that the House of Representatives have passed a bill, entitled "An act for the relief of Charles Hyde," in which they desire the concurrence of the Senate.

The bill was read, and ordered to a second reading.

WEDNESDAY, January 5.

The bill, entitled "An act for the relief of Charles Hyde," was read the second time, and referred to Messrs. BALDWIN, CLINTON, and NICHOLAS, to consider and report thereon.

Mr. LOGAN presented the petition of George White and others, journeymen printers, of the city of Philadelphia, praying that such additional duties may be laid on imported books, as to the wisdom of Congress may seem meet and proper; and the petition was read, and ordered to lie for consideration.

Mr. WHITE presented the memorial of the Philadelphia Chamber of Commerce, signed Thomas Fitzsimons, in their behalf, praying that the acts of Congress, entitled "An act imposing duties on the tonnage of ships and vessels;" and "An act making further provision for the debts of the United States," as they are attended with the most beneficial consequences to the trade, may not be repealed; and the petition was read, and ordered to lie on the table.

Mr. TRACY, from the committee to whom were recommitted, on the 31st of December last, the bill to carry into effect a resolution of Congress to erect a monument to the memory of the late General David Wooster, together with the amendments thereto, reported further amendments; which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and three;" and a bill entitled "An act making a partial appropriation for the Naval service during the year one thousand eight hundred and three;" in which several bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

On motion, that it be resolved that a committee be appointed to bring in a bill for giving effect to the laws of the United States within the State of Ohio: it was agreed that the motion lie for consideration.

THURSDAY, January 6.

The bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and three," was read the second time, and referred to Messrs. JACKSON, J. MASON, and NICHOLAS, to consider and report thereon.

The bill, entitled "An act making a partial appropriation for the Naval service during the year one thousand eight hundred and three," was read the second time, and referred to Messrs TRACY, PLUMER, and CLINTON, to consider and report thereon.

The Senate took into consideration the amendments yesterday reported, by the committee, to the bill to carry into effect a resolution of Congress to erect a monument to the memory of the late General David Wooster; and having agreed thereto, and amended the bill accordingly,

Ordered, That it pass to a third reading as amended.

The motion made yesterday "that a committee be appointed to bring in a bill for giving effect to the laws of the United States within the State of Ohio," was resumed; and, on motion, to strike out after "to," in the first instance, and insert:

"Inquire whether the people of the eastern division of the Territory Northwest of the river Ohio have formed a constitution and State government agreeably to the Constitution and laws of the United States, and the ordiance of Congress for the government of the Territory of the United States Northwest of the river Ohio, and make report thereon:"

It was agreed that the motion and amendment should lie until to-morrow, and in the mean time be printed for the use of the Senate.

FRIDAY, January 7.

Mr. STONE, from North Carolina, attended.

The PRESIDENT communicated a letter signed T. Worthington, agent for the State of Ohio, enclosing a copy of the constitution of the said State, and requesting it might be laid before the Senate; and they were read, and ordered to lie for consideration.

The Senate resumed the consideration of the motion made on the 5th instant for extending the laws of the United States to the State of Ohio, together with the amendment proposed thereon; which amendment was withdrawn; and it was agreed to adopt the motion, amended as follows:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, Legislative measures may be necessary for admitting the State of Ohio into the Union, or for extending to that State the laws of the United States; and

Ordered, That Messrs. BRECKENRIDGE, MORRIS, and ANDERSON, be the committee, and that the letter signed T. Worthington, agent for the State of Ohio, laid before the Senate this morning, together with a copy of the constitution of said State, be referred to the same committee, to consider and report thereon.

The bill to carry into effect the several resolutions of Congress for erecting monuments to the memories of the late Generals Wooster, Herkimer, Davidson, and Scriven, was read the third time.

On motion to postpone the further consideration of this bill until the first Monday in December next, it passed in the negative—yeas 9, nays 17, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Cocke, Ellery, Nicholas, Sumter, and Wright.

NAYS—Messrs. Clinton, Dayton, T. Foster, D. Foster, Franklin, Hillhouse, Howard, Jackson, Logan, J. Mason, Morris, Olcott, Plumer, Stone, Tracy, Wells, and White.

On the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 18, nays 8, as follows:

YEAS—Messrs. Baldwin, Clinton, Dayton, T. Foster, D. Foster, Franklin, Hillhouse, Howard, Jackson, Logan, J. Mason, Morris, Olcott, Plumer, Stone, Tracy, Wells, and White.

NAYS—Messrs, Anderson, Bradley, Breckenridge, Cocke, Ellery, Nicholas, Sumter, and Wright.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act to carry into effect the several resolutions of Congress for erecting monuments to the memories of the late Generals Wooster, Herkimer, Davidson, and Scriven."

MONDAY, January 10.

Mr. BALDWIN, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act for the relief of Charles Hyde," reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. JACKSON, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three," reported amendments; which were read, and ordered to lie for consideration.

Resolved, That Mr. PLUMER be of the joint committee for enrolled bills on the part of the Senate.

Mr. TRACY, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act making a partial appropriation for the Naval service during the year one thousand eight hundred and three," reported it without amendment.

Ordered, That this bill pass to a third reading.

TUESDAY, January 11.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I transmit to you a report received from the Director of the Mint, on the subject of that institution.

JAN. 11, 1803. TH. JEFFERSON.

The Message and papers therein referred to were read, and ordered to lie for consideration.

The Senate took into consideration the amendments yesterday reported by the committee to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and three;" and, having agreed thereto,

Ordered, That the bill pass to a third reading as amended.

The bill, entitled "An act for the relief of Charles Hyde," was read the third time, and amended, by adding, line 8th, after the word "services," "in addition to his pay in the line."

Resolved, That this bill pass as amended.

The bill, entitled "An act making a partial appropriation for the Naval service during the year one thousand eight hundred and three," was read the third time and passed.

In Executive session, the following Messages were received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

The cession of the Spanish province of Louisiana to France, and perhaps of the Floridas, and the late suspension of our right of deposit at New Orleans, are events of primary interest to the United States. On both occasions, such measures were promptly taken as were thought most likely amicably to remove the present and to prevent future causes of inquietude. The objects of these measures were to obtain the territory on the left bank of the Mississippi, and eastward of that, if practicable, on conditions to which the proper authorities of our country would agree; or, at least, to prevent

any changes which might lessen the secure exercise of our rights. While my confidence in our Minister Plenipotentiary at Paris is entire and undiminished, I still think that these objects might be promoted by joining with him a person sent from hence directly, carrying with him the feelings and sentiments of the nation, excited on the late occurrence, impressed by full communications of all the views we entertain on this interesting subject; and thus prepared to meet and to improve, to an useful result, the counter-propositions of the other contracting party, whatsoever form their interests may give to them, and to secure to us the ultimate accomplishment of our object.

I therefore nominate Robert R. Livingston to be Minister Plenipotentiary, and James Monroe to be Minister Extraordinary and Plenipotentiary, with full powers to both, jointly, or to either, on the death of the other, to enter into a treaty or convention with the First Consul of France, for the purpose of enlarging, and more effectually securing, our rights and interests in the river Mississippi, and in the territories eastward thereof.

But as the possession of these provinces is still in Spain, and the course of events may retard or prevent the cession to France being carried into effect, to secure our object, it will be expedient to address equal powers to the Government of Spain also, to be used only in the event of its being necessary.

I therefore nominate Charles Pinckney to be Minister Plenipotentiary, and James Monroe, of Virginia, to be Minister Extraordinary and Plenipotentiary, with full powers to both, jointly, or to either, on the death of the other, to enter into a treaty or convention with His Catholic Majesty, for the purpose of enlarging, and more effectually securing, our rights and interests in the river Mississippi, and in the territories eastward thereof.

JAN. 11, 1803. TH. JEFFERSON.

Gentlemen of the Senate:

The spoliations and irregularities committed on our commerce during the late war, by subjects of Spain, or by others deemed within her responsibility, having called for attention, instructions were accordingly given to our Minister at Madrid to urge our right to just indemnifications, and to propose a convention for adjusting them. The Spanish Government listened to our proposition with an honorable readiness, and agreed to a convention, which I now submit for your advice and consent. It does not go to the satisfaction of all our claims; but the express reservation of our right to press the validity of the residue has been made the ground of further instructions to our Minister, on the subject of an additional article, which it is to be hoped will not be without effect. TH. JEFFERSON.

JANUARY 11, 1803.

The Messages and papers therein referred to were read, and ordered that they severally lie for consideration.

WEDNESDAY, January 12.

The bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and three," was read the third time.

Resolved, That this bill pass with amendments.

THURSDAY, January 13.

The Senate assembled, but transacted but little or no business of importance.

FRIDAY, January 14.

The Senate went into the consideration of Executive business, and afterwards adjourned to Monday morning.

MONDAY, January 17.

Mr. BROWN, from the State of Kentucky, attended.

After the consideration of Executive business, the Senate adjourned.

TUESDAY, January 18.

Two Messages were received from the PRESIDENT OF THE UNITED STATES, the first a confidential Message, which was read, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided me in the execution of that act, in order that you may decide on the policy of continuing it, in the present, or any other form, or discontinue it altogether, if that shall, on the whole, seem most for the public good.

The Indian tribes residing within the limits of the United States, have, for a considerable time, been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales; and the policy has long been gaining strength with them, of refusing absolutely all further sale, on any conditions; insomuch that, at this time, it hazards their friendship, and excites dangerous jealousies and perturbations in their minds to make any overture for the purchase of the smallest portions of their land. A very few tribes only are not yet obstinately in these dispositions. In order peaceably to counteract this policy of theirs, and to provide an extension of territory, which the rapid increase of our numbers will call for, two measures are deemed expedient. First, to encourage them to abandon hunting, to apply to the raising stock, to agriculture, and domestic manufacture; and thereby prove to themselves that less land and labor will maintain them in this, better than in their former mode of living. The extensive forests necessary in the hunting life, will then become useless; and they will see advantage in exchanging them for the means of improving their farms, and of increasing their domestic comforts. Secondly, to multiply trading houses among them, and place within their reach those things which will contribute more to their domestic comfort, than the possession of extensive, but uncultivated wilds. Experience and reflection will develope to them the wisdom of exchanging what they can spare and we want, for what we can spare, and they want. In leading them thus to agriculture, to manufactures, and civilization; in bringing together their and our settlements, and in preparing them ultimately to participate in the benefits of our Government, I trust and believe we are acting for their greatest good. At these trading-houses we have pursued the principles of the act of Congress, which directs that the commerce shall be carried on liberally, and requires only that the capital stock shall not be diminished. We, consequently, undersell private traders, foreign and domestic, drive them from the competition; and thus, with the good will of the Indians, rid ourselves of a description of men who are constantly endeavoring to excite in the Indian mind suspicions, fears, and irritations, towards us. A letter now enclosed, shows the effect of our competition on the operations of the traders, while the Indians, perceiving the advantage of purchasing from us, are soliciting, generally, our establishment of trading houses among them. In one quarter this is particularly interesting. The Legislature, reflecting on the late occurrences on the Mississippi, must be sensible how desirable it is to possess a respectable breadth of country on that river, from our Southern limit to the Illinois, at least; so that we may present as firm a front on that as on our Eastern border. We possess what is below the Yazoo, and can, probably, acquire a certain breadth from the Illinois and Wabash to the Ohio; but between the Ohio and Yazoo, the country all belongs to the Chickasaws, the most friendly tribe within our limits, but the most decided against the alienation of lands. The portion of our country most important for us, is exactly that which they do not inhabit. Their settlements are not on the Mississippi, but in the interior country. They have lately shown a desire to become agricultural; and this leads to the desire of buying implements and comforts. In the strengthening and gratifying of these wants, I see the only prospect of planting on the Mississippi itself, the means of its own safety. Duty has required me to submit these views to the judgment of the Legislature; but, as their disclosure might embarrass and defeat their effect, they are committed to the special confidence of the two Houses.

While the extension of the public commerce among the Indian tribes may deprive of that source of profit such of our citizens as are engaged in it, it might be worthy the attention of Congress, in their care of individual as well as of the general interest, to point, in another direction, the enterprise of these citizens, as profitably for themselves, and more usefully for the public. The river Missouri, and the Indians inhabiting it, are not as well known as is rendered desirable by their connexion with the Mississippi, and consequently with us. It is, however, understood, that the country on that river is inhabited by numerous tribes, who furnish great supplies of furs and peltry to the trade of another nation, carried on in a high latitude, through an infinite number of portages and lakes, shut up by ice through a long season. The commerce on that line could bear no competition with that of the Missouri, traversing a moderate climate, offering, according to the best accounts, a continued navigation from its source, and possibly with a single portage, from the Western ocean, and finding to the Atlantic a choice of channels through the Illinois, or Wabash, the lakes and Hudson, through the Ohio and Susquehanna, or Potomac or James rivers, and through the Tennessee and Savannah rivers. An intelligent officer, with ten or twelve chosen men, fit for the enterprise, and willing to undertake it, taken from our posts, where they may be spared without inconvenience, might explore the whole line, even to the Western ocean, have conferences with the natives on the subject of commercial intercourse, get admission among them for our traders, as others are admitted, agree on convenient deposits for an interchange of articles, and return with the information acquired, in the course of two summers. Their arms and accoutrements, some instruments of observation, and light and cheap presents for the Indians, would be all the apparatus they could carry, and with an expectation of a soldier's portion of land on their return, would constitute the whole expense. Their pay would be going on, whether here or there. While other civilized nations have encountered great expense to enlarge the boundaries of knowledge, by undertaking voyages of discovery, and for other literary purposes, in various parts and directions, our nation seems to owe to the same object, as well as to its own interests, to explore this, the only line of easy communication across the continent, and so directly traversing our own part of it. The interests of commerce place the principal object within the Constitutional powers and care of Congress, and that it should incidentally advance the geographical knowledge of our continent, cannot but be an additional gratification. The nation claiming the territory, regarding this as a literary pursuit, which it is in the habit of permitting within its dominions, would not be disposed to view it with jealousy, even if the expiring state of its interests there did not render it a matter of indifference. The appropriation of two thousand five hundred dollars, "for the purpose of extending the external commerce of the United States," while understood and considered by the Executive as giving the Legislative sanction, would cover the undertaking from notice, and prevent the obstructions which interested individuals might otherwise previously prepare in its way.

TH. JEFFERSON.

JANUARY 18, 1803.

The Message was read, and ordered to lie for consideration.

The other Message was read, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

I enclose a report of the Secretary of War, stating the trading houses established in the Indian territories, the progress which has been made, in the course of the last year, in settling and marking boundaries with the different tribes, the purchases of lands recently made from them, and the prospect of further progress in marking boundaries, in new extinguishments of title in the year to come; for which some appropriations of money will be wanting.

To this I have to add, that, when the Indians ceded to us the salt springs on the Wabash, they expressed a hope that we would so employ them as to enable them to procure there the necessary supplies of salt. Indeed, it would be the most proper and acceptable form in which the annuity could be paid which we propose to give them for the cession. These springs might, at the same time, be rendered eminently serviceable to our western inhabitants, by using them as the means of counteracting the monopolies of salt, and of reducing the price in that country to a just level. For these purposes a small appropriation would be necessary to meet the first expenses, after which they should support themselves, and repay those advances. These springs are said to possess the advantage of being accompanied with a bed of coal.

JAN. 18, 1803. THOS. JEFFERSON.

The report referred to was read.

Ordered, That the Message and report lie for consideration.

Mr. J. MASON, from the committee to whom was referred, on the twentieth of December last, the petition of Sarah Fletcher and Jane Ingraham, made report; which was read, and ordered to lie for consideration.

WEDNESDAY, January 19.

AARON BURR, Vice President of the United States, and President of the Senate, attended.

The Senate took into consideration the report of the committee on the petition of Sarah Fletcher and Jane Ingraham.

Ordered, That the report be committed to the original committee, with an instruction further to consider and report thereon, by bill or otherwise.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the seventh instant, the motion to inquire whether any, and, if any, what, Legislative measures may be necessary for admitting the State of Ohio into the Union, or for extending to that State the laws of the United States, made report: which was read, and ordered to lie for consideration.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate
and of the House of Representatives:

I now lay before Congress the annual account of the fund established for defraying the contingent charges of Government. A single article of one thousand four hundred and forty dollars, paid for bringing home seventy-two seamen, discharged in foreign ports from vessels sold abroad, is the only expenditure from that fund: leaving an unexpended balance of eighteen thousand five hundred and sixty dollars in the Treasury.

JAN. 19, 1803. TH. JEFFERSON.

The Message and paper therein referred to were read.

Ordered, That they be committed to Messrs. MORRIS, J. MASON, and DAYTON, to consider and report thereon.

THURSDAY, January 20.

The VICE PRESIDENT laid before the Senate a certificate of the election of SAMUEL M'CLAY, Esq. of Northumberland county, and State of Pennsylvania, to be a Senator of the United States from the fourth day of March next, inclusive; and it was read and ordered to lie on file.

The VICE PRESIDENT laid before the Senate a letter signed John Avery, Secretary of the State of Massachusetts, with a set of the maps of that State, for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill entitled "An act for the relief of Henry Messonnier;" a bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth;" and a bill, entitled "An act for the relief of insolvent debtors within the District of Columbia;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The Senate resumed the consideration of the confidential Message of the President of the United States, communicated on the eighteenth instant, and

Ordered, That it be referred to Messrs. NICHOLAS, JACKSON, and LOGAN, to consider and report thereon.

FRIDAY, January 21.

The bill, entitled "An act for the relief of Henry Messonnier," was read the second time, and referred to Messrs. BRADLEY, CLINTON, and ELLERY, to consider and report thereon.

The bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth, was read the second time, and referred to Messrs. PLUMER, OLCOTT, and DWIGHT FOSTER, to consider and report thereon.

The bill, entitled "An act for the relief of insolvent debtors in the District of Columbia," was read the second time, and referred to Messrs. WRIGHT, WELLS, and STONE, to consider and report thereon.

The Senate took into consideration the report of the committee of the 19th instant, on the motion to inquire whether any, and, if any, what, Legislative measures may be necessary for admitting the State of Ohio into the Union, or for extending to that State the laws of the United States; and

Ordered, That it be referred to a special committee, with an instruction to bring in a bill accordingly; and that Messrs. BRECKENRIDGE, MORRIS, and ANDERSON, be the committee.

MONDAY, January 24.

The VICE PRESIDENT communicated a letter from the Clerk of the House of Representatives of the State of Delaware, enclosing the credentials of SAMUEL WHITE, Esq., elected a Senator of the United States for the term of six years, commencing on the 4th day of March next; and they were read.

Ordered, That they lie on file.

Mr. J. MASON, from the committee to whom the report on their petition was recommitted the 19th instant, reported a bill for the relief of Sarah Fletcher and Jane Ingraham; which was read.

Ordered, That this bill pass to the second reading.

Mr. MORRIS laid before the Senate the memorial of the Chamber of Commerce of the city of New York, praying that a repeal of the acts making discrimination between American and foreign duties on imports and tonnage may not take place, for reasons therein stated; and the memorial was read.

A message from the House of Representatives informed the Senate that they have passed a bill, entitled "An act for incorporating an assurance company in the city of Washington;" and a bill, entitled "An act for the relief of Hugh Alexander and others;" in which they desire the concurrence of the Senate. They agree to the amendments of the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three," with an amendment, in which they desire the concurrence of the Senate.

The two bills first named in the message were read, and ordered to a second reading.

The amendment to the amendment of the bill last mentioned in the message was read; and it was agreed that the consideration thereof should be postponed until to-morrow.

TUESDAY, January 25.

The bill for the relief of Sarah Fletcher and Jane Ingraham was read the second time.

The bill, entitled "An act for the relief of Hugh Alexander, and others," was read the second time, and referred to Messrs. TRACY, BRADLEY, and BROWN, to consider and report thereon.

Ordered, That the memorial of the Chamber of Commerce of the city of Philadelphia, presented on the 5th instant, be printed for the use of the Senate.

The Senate took into consideration the amendment of the House of Representatives to their amendment to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year one thousand eight hundred and three;" and

Ordered, That the consideration thereof be postponed.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and
of the House of Representatives:

I transmit a report by the Superintendent of the City of Washington, on the affairs of the city committed to his care. By this you will perceive that the resales of lots prescribed by an act of the last session of Congress did not produce a sufficiency to pay the debt to Maryland to which they are appropriated; and as it was evident that the sums necessary for the interest and instalments due to that State could not be produced by a sale of the other public lots, without an unwarrantable sacrifice of the property, the deficiencies were of necessity drawn from the Treasury of the United States.

The office of the Surveyor of the city, created during the former establishment, being of indispensable necessity, it has been continued: and to that of the Superintendent, substituted instead of the Board of Commissioners at the last session of Congress, no salary was annexed by law. These offices being permanent, I have supposed it more agreeable to principle that their salaries should be fixed by the Legislature, and therefore have assigned them none. Their services to be compensated are from the first day of June last.

The Marshal of the District of Columbia has, as directed by law, caused a jail to be built in the City of Washington. I enclose his statements of the expenses already incurred, and of what remains to be finished. The portion actually completed has rendered the situation of the persons confined much more comfortable and secure than it has been heretofore.

JAN. 24, 1803. TH. JEFFERSON.

The Message and papers therein referred to were read and ordered to lie for consideration.

On motion, that it be

Resolved, That —— copies of a report made by the Secretary of State in 1793, to both Houses of Congress, respecting the nature and extent of the privileges and restrictions of the commercial intercourse of the United States with foreign nations, be printed for the use of the Senate.

Ordered, That this motion lie for consideration.

The bill, entitled "An act for incorporating an insurance company in the City of Washington," was read the second time, and referred to Messrs. NICHOLAS, J. MASON, and TRACY, to consider and report thereon.

On motion, it was

Resolved, That so much of the Message of the President of the United States of the 18th instant, as relates to the salt springs on the Wabash, be referred to a special committee, with leave to report by bill or otherwise, and that Messrs. FRANKLIN, BRECKENRIDGE, and ANDERSON, be the committee.

On motion, that it be

Resolved, That so much of the letter of the Secretary of War which accompanied the Message of the President of the United States of the 18th instant, as relates to the renewal of the act, entitled "An act for establishing trading-houses with the Indian tribes," be referred to a special committee, with leave to report by bill or otherwise:

It was agreed that this motion should lie for consideration.

WEDNESDAY, January 26.

JAMES ROSS, from Pennsylvania, attended.

The VICE PRESIDENT communicated the report of the Postmaster General, in conformity with the thirtieth section of the act to establish the Post Office; which was read.

Ordered, That it be printed for the use of the Senate.

The motion made yesterday that the report of the Secretary for the Department of State, made in 1793, on the privileges and restrictions of commerce, be printed, was resumed; and the blank filled with the words "two hundred," and the motion was agreed to as follows:

Resolved, That two hundred copies of a report made by the Secretary of State in 1793, to both Houses of Congress, respecting the nature and extent of the privileges and restrictions of the commercial intercourse of the United States with foreign nations, be printed for the use of the Senate.

The Senate resumed the second reading of the bill for the relief of Sarah Fletcher and Jane Ingraham; and, on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

THURSDAY, January 27.

Mr. Ross presented the several representations and memorials of Richard Basset, Egbert Benson, Benjamin Bourne, William Griffith, Samuel Hitchcock, B. P. Key, C. Magill, Jeremiah Smith, G. K. Taylor, William Tilghman, and Oliver Wolcott, judges of the circuit courts under the late act, entitled "An act to provide for the more convenient organization of the courts of the United States;" stating that, since the repeal of the said act, no law had been made for assigning to them the execution of any Judicial functions, nor

has any provision been made for the payment of their stipulated compensations; and most respectfully requesting Congress to review the existing laws with respect to the officers in question; and the memorials were read.

Ordered, That they be referred to Messrs. MORRIS, ROSS, and DAYTON, to consider and report thereon, and that the memorials be printed for the use of the Senate. The memorial is as follows:

To the Honorable the Senate and House of Representatives in Congress assembled:

The undersigned most respectfully submit the following resolution and memorial.

By an act of Congress passed on the thirteenth day of February, in the year of our Lord one thousand eight hundred and one, entitled "An act to provide for the more convenient organization of the courts of the United States," certain judicial offices were created, and courts established, called circuit courts of the United States.

In virtue of appointments made under the Constitution of the United States, the undersigned became vested with the offices so created, and received commissions authorizing them to hold the same, with the emoluments thereunto appertaining, during their good behaviour.

During the last session an act of Congress passed, by which the above mentioned law was declared to be repealed; since which no law has been made for assigning to your memorialists the execution of any judicial functions, nor has any provision been made for the payment of their stipulated compensations.

Under these circumstances, and finding it expressly declared in the Constitution of the United States, that "The judges both of the supreme and inferior courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office," the undersigned, after the most deliberate consideration, are compelled to represent it as their opinion, that the rights secured to them by the Constitution, as members of the Judicial department, have been impaired.

With this sincere conviction, and influenced by a sense of public duty, they most respectfully request of Congress to review the existing laws which respect the offices in question, and to define the duties to be performed by the undersigned, by such provisions as shall be consistent with the Constitution, and the convenient administration of justice.

The right of the undersigned to their compensations, they sincerely believe to be secured by the Constitution, notwithstanding any modification of the Judicial department, which, in the opinion of Congress, public convenience may recommend. This right, however, involving a personal interest, will be cheerfully submitted to judicial examination and decision, in such manner as the wisdom and impartiality of Congress may prescribe.

That judges should not be deprived of their offices or compensations without misbehaviour appears to the undersigned, to be among the first and best established principles in the American constitutions; and in the various reforms they have undergone, it has been preserved and guarded with increased solicitude.

On this basis the Constitution of the United States has laid the foundation of the Judicial department, and expressed its meaning in terms equally plain and peremptory.

This being the deliberate and solemn opinion of the undersigned, the duty of their stations requires that they should declare it to the Legislative body. They regret the necessity which compels them to make the representation, and they confide that it will be attributed to a conviction that they ought not voluntarily to surrender rights and authorities entrusted to their protection, not for their personal advantage, but for the benefit of the community.

Mr. NICHOLAS, from the committee to whom was referred, on the 20th instant, the Message of the President of the United States, of the 18th, reported, in part, that an act, entitled "An act for establishing trading-houses with the Indian tribes," ought to be revived and continued in force; and the report was agreed to; and

Ordered, That it be recommitted to the same committee, with leave to report by bill or otherwise.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 21st instant, the report of the committee on the motion to inquire whether any, and, if any, what, Legislative measures may be necessary for admitting the State of Ohio into the Union, or for extending to that State the laws of the United States, reported a bill on the subject; which was read, and ordered to the second reading.

FRIDAY, January 28.

The VICE PRESIDENT communicated a report of the Attorney General of the United States, on the contract with John Cleves Symmes, in pursuance of the resolution of the Senate of the 30th April last; which was read.

Ordered, That it lie for consideration, and that it be printed for the use of the Senate.

Mr. HOWARD presented the petition of William Marbury, Robert Townsend Hooe, and Dennis Ramsay, praying that the Secretary of the Senate may be directed to deliver them a certified copy of their nominations to be justices of the peace for the counties of Washington and Alexandria; and the petition was read, as follows:

To the Honorable the Senate of the United States of America, the petition of William Marbury, Robert Townsend Hooe, and Dennis Ramsay, most respectfully showeth:

That your petitioners have been informed and verily believe that John Adams, while President of the United States, nominated to the Senate of the United States, for their advice and consent, your petitioner William Marbury, to be a justice of the peace in the county of Washington, in the District of Columbia, and your petitioners Robert Townsend Hooe, and Dennis Ramsay, to be justices of the peace in the county of Alexandria, in the same District; that the said nominations were duly taken into consideration by the Senate, who, on or about the first day of March, in the year one thousand eight hundred and one, were pleased to give their advice and consent that your petitioners should be severally appointed to the offices aforesaid; that commissions were accordingly in due form signed by the said President, and directed to be sent to your petitioners by the Secretary of State, but that your petitioners, from some

cause have been deprived of their commissions, and are reduced to the necessity of asserting their rights to the same in a judicial course of proceeding, in which, as they are advised, it will be requisite to produce satisfactory evidence of the advice and consent of the Senate to the appointment of your petitioners to be justices of the peace as aforesaid in the District of Columbia. Application has been made to the Secretary of the Senate for his certificate that the advice and consent of the Senate was given in consequence of the nominations aforesaid, that your petitioners should be appointed to be justices of the peace in the District of Columbia aforesaid, which your Secretary has declined giving without the leave of the Senate. Your petitioners pray the premises may be taken into consideration, and that your Secretary may be permitted to give to your petitioners a certificate in usual form, setting forth that your petitioners having been nominated by the President of the United States to the aforesaid offices severally and respectively of justices of the peace in the District of Columbia, the Senate advised and consented to their appointment. And as in duty bound, &c.

Whereupon, a motion was made, that it be

Resolved, That the Secretary of the Senate be directed to give an attested copy of the proceedings of the Senate of the 2d and 3d of March, 1801, so far as they relate to the nomination and appointment of William Marbury, Robert Townsend Hooe, and Dennis Ramsay, as justices of the peace for the counties of Washington and Alexandria, in the Territory of Columbia, on the application of them or either of them.

And it was agreed that this motion should lie for consideration.

Mr. ROSS presented the memorial of the Chamber of Commerce of the city of Philadelphia, signed Thomas Fitzsimons, President, stating that damages had been sustained by the merchants of that city, from a too rigid construction, by the officers of the revenue, of the act, entitled "An act concerning the registering and recording of ships or vessels," and praying the interposition of Congress for their relief; and the memorial was read.

Ordered, That it lie for consideration.

Mr. PLUMER, from the committee to whom was referred, on the 21st instant, the bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth," reported amendments; which were read.

Ordered, That they lie for consideration.

The bill to provide for the due execution of the laws of the United States within the State of Ohio was read the second time.

The motion, made on the 25th instant, for the appointment of a committee on so much of the letter of the Secretary of War, which accompanied the Message of the President of the United States of the 18th instant, as relates to the establishment of trading-houses with the Indians, was withdrawn.

Mr. MORRIS, from the committee to whom was referred, on the 27th inst., the several memorials of the judges, under the late act to provide for the more convenient organization of the courts of the United States, made report; which was read, and it was agreed that this report be the order of the day for Wednesday next.

MONDAY, January 31.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth."

Ordered, That this bill be recommitted to the original committee, further to consider and report thereon.

The Senate resumed the second reading of the bill to provide for the due execution of the laws of the United States within the State of Ohio; and, on motion, that the bill be amended, it was agreed that the further consideration of the bill, together with the proposed amendment, should be the order of the day for Thursday, the 3d of February next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of William Ray and John Follawell;" a bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States;'" and a bill, entitled "An act authorizing the sale of a piece of land, parcel of the navy-yard, belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem turnpike road and Chelsea bridge corporation," in which bills they desire the concurrence of the Senate.

WILLIAM MARBURY AND OTHERS.

The Senate took into consideration the motion made on the 28th instant:

"That the Secretary of the Senate be directed to give an attested copy of the proceedings of the Senate of the 2d and 3d of March, 1801, so far as they relate to the nomination and appointment of William Marbury, Robert T. Hooe, and Dennis Ramsay, as justices of the peace for the counties of Washington and Alexandria, in the Territory of Columbia, on the application of them or either of them."

Mr. HOWARD said he should not trouble the Senate with any observations upon the question; the request was so reasonable, that he concluded it would pass without objection.

Mr. JACKSON wished to have some explanation of this business. It must, he said, be recollected that an attempt was made at the last session to effect the same thing, with this only difference, that the application was then made by counsel, which now came from the men themselves. The motion on that occasion was introduced by a member from Massachusetts, who, after hearing the objections offered against it, thought proper to withdraw it. He considered it now, as he then did, an attack upon the Executive Department of Government, and as such should be prepared to oppose it, as often, and in whatever shape it might present itself.

Mr. MASON observed it was true, as the honorable gentleman from Georgia had stated, a motion similar to the present resolution, he had himself made at the last session, and for the same purpose. It was in consequence of a verbal application at the door of the Senate Chamber, from one of the parties, or their counsel, to whom he was a stran-

ger. He gave to them his opinion at the time, that the application was proper and would be granted as a thing of course. He was afterwards surprised to hear objections offered—the principal ones however, were, that the record was a secret record, and that by a standing rule, no copy was allowed but by special order. It was time now to consider the propriety of granting it, when the parties themselves applied in writing, stating the purposes for which they wanted it, and upon this ground the motion was either withdrawn or rejected. In the present case they had applied in a respectful manner, in form of memorial, and had stated the reasons of their application, and the use they wished to make of the copy, to establish an existing right. They were citizens and parties to the Government and to its privileges. The principles upon which this Government was founded were freedom and equality of rights, and a protection to these rights. The petitioners now claim that protection, by a request that we would grant to them our knowledge of the existence of a fact necessary to establish one of their rights. Publicity of record was a Constitutional provision, and a check in favor of the people. It was a right belonging to the meanest citizen to inspect the records of the Government, unless the divulging of these records would be inconsistent with the public safety and interest. And when that was not the case it was our duty to grant the request—they had a right to demand it. It was upon the same ground that every citizen had a right to demand and compel the testimony of his fellow-citizens, upon peril of damages equal to the loss of his testimony; it is an implied promise, founded upon mutual protection and aid to each other in the support of their individual rights. It is one of the great reasons for which men associate. The same justice is due from public bodies, though compulsory process is not in both cases to be had.

This request is so accordant with a common sense of justice, that he had no doubt the mere exemplification of a record, or a certified copy, in itself not improper to be made public, would be granted by one enemy to another, in an enemy's country. Mr. M. was at a loss to know what possible injury could arise by giving a copy of a fact so notorious, and he hoped therefore the parties would be indulged.

Mr. BRECKENRIDGE thought it improper to grant the prayer of the petitioners. The Executive Journal is kept only for the private use of the Senate and there is an express rule that extracts should not be given without the order of the House. He knew of no instance in which they could with propriety be claimed or given, but if there were any such, he begged gentlemen to point them out. As to the case in question, to grant the prayer of the petition would, he said, administer to the means of assailing the Executive Department of the Government. He considered the President as in some measure a party to the Executive Journal, and therefore an extract of it ought not to be communicated without his consent. The Senate ought to protect the dignity of that branch in which they participate. The suit is now pending on a mandamus to the Secretary of State. The Senate ought not to aid the Judiciary in their invasion of the rights of the Executive. There could be no use in giving such extracts, and there might be mischief.

Mr. MORRIS was much in opinion with Mr. B. He thought that the rule respecting the Executive Journal was wise, and that extracts ought not to be given for trivial purposes: that it might be a means of embarrassing the Government, and lessening the respect due to those who administer it. That he had no apprehension of any such on the part of the Judiciary; he was persuaded they would treat with due respect the other parts of the Government. But such attempts might be made by others, and therefore it was not prudent to furnish the means, or to establish a rule of which designing men might avail themselves for bad purposes. For these reasons he was inclined to reject the proposed resolution. On the other hand he considered the application of a suitor for evidence to support his right, as of a very serious nature. A denial of that evidence might amount to a denial of justice. He was not prepared to go so far. If in possession of a deed making a link in the chain of a suitor's title, the courts might compel him to appear, and bring with him the deed; he did not feel himself justified in using the authority with which, as a Senator, he was invested, for the purpose of refusing that which another could rightfully demand, and oblige him by law, as a private citizen, to give. That in the present case, the merits of which were unknown to him, it was possible, as has been suggested, that other evidence might be produced, and though of inferior force, be validated by the refusal of the Senate. Perhaps, too, the court might issue process, compelling the Secretary to appear and bring with him the Journal. It was equally possible that they might not think it proper to issue such process, or that the Secretary might refuse to answer, alleging his duty to keep the secrets of the Senate. That if from these or any other causes, the Court should declare they could not do right because the Senate withheld the evidence, he should feel himself guilty of a denial of justice. That in effect the assent of the Senate being a pre-requisite to the appointment of an officer, it might be necessary to show that assent when his authority should be legally questioned. If the Senate refuse on the present occasion, where the evidence is said to be necessary to obtain the office, how could they grant it on another occasion where it would be necessary to preserve the office? On the whole, Mr. MORRIS declared he should reluctantly give his vote in favor of the resolution, because the greater weight of reason was in favor of it, and because he could not answer to the world, or to his own conscience, the delay or denial of justice.

Mr. WRIGHT said he was opposed to the resolution; he could not discover that the applicants had any right to the extract prayed for. The Senate had by a specific rule declared the Executive records a secret. But he could not conceive what benefit they (the petitioners) could derive

from an extract if they obtained it. They ask that the Secretary of the Senate may be allowed to certify facts from the Executive record; but the Supreme Court, nor no court, would admit such a certificate as testimony, because the Secretary had no seal. In order to get any benefit from this record, the court should allow the petitioners a subpœna to the Secretary of the Senate, with a *duces tecum*. He challenged all lawyers upon this subject, and all men of common sense; they must all agree with him that the thing prayed for could do the petitioners no good without a seal. But, Mr. W. said, he had further objections against passing the resolution. It was well known why this certificate was requested. It was to aid in an audacious attempt to pry into Executive secrets, by a tribunal which had no authority to do any such thing; and to enable the Supreme Court to assume an unheard of and unbounded power, if not despotism. It was to enable the Judiciary to exercise an authority over the President, which he could never consent to. It was well known that the persons applying were enemies to the President, and that the court were not friendly to him, and, under these circumstances, to interfere in the business would be making the Senate a party. No court on earth could control the Legislature, and yet it had been held here on this floor that they could, and this was a part of the same attempt to set the court above the President, and to cast a stigma upon him. The President had a right to withhold the commissions from these justices, because they did not hold their offices *de bene merito*, but *de bene placito*.

Mr. HILLHOUSE remarked that he did not discern anything in the resolution under consideration that had the smallest relation to the character and conduct of the President, nor was there anything in the application that could lead to such a conclusion. It is said there is a cause pending before the Supreme Court of the United States, in which it is important to ascertain the fact, that the Senate did advise and consent to the appointment of the individuals named in this application to be justices of the peace for this territory, and a copy of the journals of the Senate is requested for that purpose—the journals of the Senate being the only evidence of the fact, can that evidence with propriety be withheld? The opinion that such copy would not be admitted as evidence cannot be correct, for it is the only mode in which many important facts in relation to appointments to office, and the ratification of treaties, can be proved. For what purpose are the journals (which are the only record of the proceedings of the Senate) kept, if they are not to be resorted to as evidence of what is done in Senate?

Suppose a question to arise in a court of justice relative to the office of the marshal or judge, and it should be claimed that there had never been a Constitutional appointment to such office; for that the nomination had been rejected by the Senate, and their advice and consent had never been obtained—or in case of a treaty with a foreign nation the President should by proclamation declare the ratification, and promulge the same as the supreme law of the land, where the Senate had refused their advice and consent to such ratification—in neither case would the act of the President be valid without the previous advice and consent of the Senate, and how can it be proved that such advice and consent has been had but by a resort to the journals of the Senate? Surely the commission or proclamation of the President could not be conclusive, because the Senate are an independent body, on whom the Constitution has devolved certain Executive duties, of which the President can have no personal knowledge; the performance of which duties are by the Constitution made indispensable to the validity of certain acts of the President. In all these cases the President may be deceived; the Secretary of the Senate may by mistake or fraud certify that the advice and consent of the Senate has been had to an appointment to office, or the ratification of a treaty, when the fact is otherwise; and where, but to the journals of the Senate, can we resort to correct the error? It is a possible case that a President may assume the right, in opposition to the opinion of the Senate, to make appointments to office and ratify treaties, and shall it be said his commission or proclamation is to be admitted as conclusive evidence, which cannot be questioned, and in that way evade the Constitution? This would be giving to the President high prerogatives indeed; it would be investing him with the absolute power of appointment; and declaring that his proclamation shall be the supreme law of the land. The commission of the President is undoubtedly high evidence of the appointment to office and the proclamation of the ratification of a treaty, but cannot be conclusive, because the Constitution has made the advice and consent of the Senate a prerequisite, and indispensable to the validity of the appointment or ratification, and nothing can come in place of it. A rejection of this resolution will be a denial of right to an individual, and, under any Government, would be considered as an arbitrary, tyrannical act. Under these impressions, he should give his vote in favor of the resolution.

Mr. OGDEN observed, that there was no rule in society better established, than the one which denies to an individual the right of withholding his testimony, when required to give it, in a court of law, upon the prosecution of a legal suit. That this rule had no exceptions, if the honor or interest of the witness would not be compromitted thereby.

That the present was a decent application to the Senate, for the evidence of a fact, in their power to give, and upon which a suit at law had been predicated. That the petitioners, by applying for a copy of the Executive Journal, had pursued the only possible mode of obtaining this evidence. That parol evidence of the contents of this record could not be admitted, neither could a subpœna cause it to travel out of the office to which it belongs.

That although Executive business is done with closed doors, yet there is no rule that the Journal in question should be kept secret; that it was open

to inspection, and that there was nothing to prevent the Secretary from giving the copy, but the rule of the Senate, which requires that leave should be first obtained. That no reason had been given, which was satisfactory to his mind, why this leave should not be granted. That he would not delay the Senate, by answering such arguments, as had been adduced to prove that the evidence would not be admitted, and that, if admitted, would not support the suit; because the court, before whom the evidence might come, and not the witness, is alone competent to decide such points.

That it was not true, as had been stated, that no case would arise, where such copies as are now required, ought to be allowed; such cases had been put, and the most important rights of the citizen depend upon such testimony. That, upon a *quo warranto*, whereby the right to officiate as a judge, although acting under a commission, might be called in question, such testimony would be allowed to go forth, if it would prove that this Senate had never advised or consented to the appointment of such judge.

That a citizen might, in a court of law, deny the proclamation of a treaty to be the supreme law of the land, and prove its nullity by such testimony, if it would show that such treaty had been negatived by more than one-third of the Senate then present. That, if such copies might be allowed for evidence in any case whatever, it followed, that it would be proper to allow it in the present case. That no distinction existed between the present case and the one which had been admitted during the discussion, when it was said, that the House of Representatives, when parties to an impeachment, had a right to demand from the Senate, before whom the cause must be tried, the testimony of this Executive Journal. That in such case the Senate would sit as *a court*, and such testimony could not be obtained under the rule of the Senate, unless leave should be given by the Senate in their Executive capacity; and that all parties, whose rights were interested, whether individual citizens or House of Representatives, stood upon an equal floor, when in a court of justice.

That no danger, as had been apprehended, could arise in regard to the dignity of the President, or the honor of the Government. That our judges were an independent branch, and no possible presumption could be admitted, that they would do wrong, or transcend their jurisdiction; and that he should therefore, with great clearness, vote for the resolution on the table.

Mr. JACKSON said, the Executive Journal ought not to be given to any applicants, much less to these. He considered the whole as an attempt to injure the Executive. The applicants had a process before the Supreme Court, and let them get along with it as well as they could; if they could obtain a decision of court in their favor, let them make the most of it; he hoped the Senate would not interfere in it, and become a party to an accusation which might end in an impeachment, of which the Senate were the Constitutional judges. One case, he would agree, might occur, when the Senate must give up their Executive records, and everything else, if required by the House of Representatives, as evidence to support an impeachment; their call would be omnipotent, in his opinion. But he thought the commission of the President was the only evidence of an appointment, and in all cases conclusive. And he would never lend his aid to set the Judiciary above the Executive. Let the applicants inform the House of Representatives, if any officer of the Government had injured them, and procure an impeachment, if they could; this would be the proper remedy.

Mr. BRECKENRIDGE said, he had not supposed the question would have been so strongly contended. He thought sufficient reasons had been stated in the beginning, for rejecting the resolution. But arguments had been brought in support of it, which required some notice. It had been stated that extracts from the Executive Journal might be necessary to prove the right of an officer to his office. This was unfounded. The commission granted by the President was full and complete evidence of the authority granted to the officer. That it must always be presumed the commission had been granted in the manner prescribed by the Constitution. This was a confidence reposed in the President by the theory of our Constitution. That it must be presumed the President will do right. That a commission from him constitutes an officer, not only *de facto*, but *de jure:* and is in its nature so conclusive, that no court could inquire into the validity of it. That the contrary insinuation is derogatory to his dignity, which the Senate are bound to protect. That the Senate should not countenance the Judiciary in their attack on the Executive power, which is not constitutionally amenable to the judges. That the case which had been relied on as to treaties, was, in its nature similar. The full evidence was contained in the President's proclamation. It was to be presumed that he had not ratified a treaty without the consent of the Senate, and therefore full faith was to be given to his proclamation. That it was dangerous to countenance the pretensions set up by the judges to examine into the conduct of other branches of the Government; for that, if they had a right to examine, they must have, as a necessary incident, the right to control the other departments of Government. That such right was inconsistent with every idea of good government, and must necessarily degrade those branches which the Judiciary should thus undertake to direct. The present suit was therefore levelled at the dignity of the first Executive Magistrate, and as he thought the Senate bound to protect that dignity, he should vote against the resolution.

Mr. TRACY said he was not sorry for this discussion, and as there had never, to his knowledge, been a similar application, the decision on this would form an important precedent; he therefore thought it best that the subject should be examined in all its bearings. The first inquiry that occurred to his mind was, could there be a case which would render it proper to direct the Secretary to give an extract from the Executive records?

A case might be stated which had in fact happened; a gentleman who had been duly appointed a district judge, received, by mistake, a commission as circuit judge; there was a circuit judge already appointed, commissioned, and acting in that capacity, so that two commissions, exactly similar in point of form and substance, to two different men, were existing at the same time, authorizing both to act in a capacity where the law allowed but one to act. What can be done? Shall we resort to the President to rectify the mistake? He is out of office, or it may be he is dead; shall we resort to the Secretary of State? He is out of office, or dead. Besides, if both were living and disposed to rectify the mistake, they could neither of them compel obedience. Shall we resort to the Senate? A mandate from them would tend only to show their imbecility, as their Executive functions extend not to commissions, but solely to advice and consent on a nomination. An application then to a court of justice by *quo warranto*, or some other process, was the only proper efficient remedy to prevent the conflicting operations of the two judges. Could any gentleman point out another remedy?

What course would a court pursue in such an inquiry? Upon inspection of the commissions both are equally authentic. A resort must be had to the Executive Journal of the Senate; and there, it would appear, that one judge was nominated as a district judge, and as such only the appointment received the advice and consent of the Senate, and that his commission had issued, by mistake, as circuit judge instead of district judge. A judgment of court, that such a commission was void, would be an effectual remedy. But was not an extract of the Executive records of the Senate the best evidence which the nature of the case admitted? The records of the Executive, or Secretary of State, if any such were kept, would amount to no more than that the Secretary of the Senate made a report of certain transactions of the Senate; in which report, if the Secretary should mistake the fact, either by accident or corruption, the evil must remain without a remedy.

The highest evidence which could in such a case exist, he thought was to be derived from an extract of the record kept by the Senate, and under a solemn order officially given and attested by their Secretary. All other evidence which he could conceive of was of a subordinate kind. But in objection, it had been stated that the Executive Journal was a secret, to which the President is a party, and without his consent no extract should be given. Mr. T. said that however this observation might be just, in respect to confidential Messages, yet the Executive Journal was as completely under the control of the Senate, and of them only, as it would be if no President existed; as a House, and a substantive branch of Government, they had a Constitutional authority to keep Journals, and to make rules regulating their conduct in that and all other official transactions; and acting in that capacity, they had made a rule that no extracts should be taken from the Executive Journal without an order of Senate; plainly indicating, that if they please to give such order, neither the President nor any body else had a right to object. If the Senate chose, they might act upon all nominations of the President with open doors; but merely for their own convenience they had acted hitherto in a different manner; but no member had ever thought he violated any injunction of secrecy by informing that a nomination was made, and every circumstance attending it, after the Senate had acted upon it, nor even when it lay before them, undetermined.

He thought it was clearly proved that there was a possible case when an extract might be given. The next consideration would be, ought it to be given in this case?

The applicants say, that they are attempting to obtain before a court of justice remedy for a wrong done by the Secretary of State in withholding from them certain commissions as justices of peace, to which they claim a right. They say an extract from the Executive Journals, that the Senate advised and consented to their appointment is, as they are advised, indispensable in their cause. Now what answer can be given to this? Is it not a dictate of common sense that they should have it? Have they not a right to it, upon the plain principles of our social compact, unless some injury will arise by granting it? The grant can injure no person, and a refusal may injure the applicants. But it was said, by furnishing this extract, the President would be put in jeopardy. He could not possibly discover the reason of all the ferment and sensibility about the President. Was he in danger, or could he be in danger from it? If an improper attack was made upon the President, he would agree that so far from assisting in it the Senate should rally in his defence.

Let us see, said he, what the facts are. The request is for an extract from the Executive Journal of the Senate, as testimony in a court of justice, and claimed to be absolutely necessary to establish the rights of individuals. He knew nothing of the cause, except what he derived from the petition, and the declarations of gentlemen in debate, by which he learnt that a mandamus was prayed for against the Secretary of State for withholding certain commissions which had been completed by the President, and left with the Secretary for delivery. The court was authorized by statute of the Federal Legislature, among other things, to issue writs of mandamus, in cases warranted by the principles and usages of law, to any courts appointed, or persons holding offices under the authority of the United States.

A plain simple proceeding, before a court competent to hear and decide. What reasonable cause of alarm could this be to the friends of the President? He could see none. And the gratuitous observations of the gentleman from Maryland (Mr. WRIGHT) that the court were unfriendly to the President, and that the applicants had done this to injure him, were, in his opinion, out of order, improper, and totally irrelevant. But it was said that this extract could do no good to

those who request it; because it did not make out their case. Gentlemen, he thought, affected to know more about the case of these applicants than was requisite, for a just decision of the petitioner. What was it to the Senate, if the testimony is not complete? Suffice it to say, it is a part and a necessary part of their testimony. Suppose, said he, for the sake of argument, that the Secretary of State has been bribed to reserve these commissions; or, suppose the President had committed them to me to carry them to the petitioners, and I had destroyed them corruptly, and a claim was made before a court of justice for a remedy against the wrong so done? Could damages be obtained unless the plaintiff could show that every prerequisite was complied with to make these commissions valuable; and, among the rest, that the Senate had advised and consented to the appointments? Or, put the question the other way, could not I defend successfully against an action if I could show that no such advice and consent was had, and that therefore the commissions were of no value? He thought it clear that the testimony would be important, though perhaps not all which the case would require. But another, and, if possible, a more extraordinary objection had been made; that an impeachment was all the remedy which was applicable to the case stated. Let them obtain from the other House an impeachment, say the gentlemen, if they can, and then we will try it.

I am bound, said Mr. T., to believe this is the serious opinion of the luminaries of our nation, because it is solemnly declared in debate, otherwise he should have said that such an observation could not be serious. What will be the effect of a conviction on an impeachment? A removal from office and a disqualification from holding office. And is it not the express declaration of the Constitution, that the party thus convicted shall be liable to indictment, trial, and punishment, for the same offence; and is he not still liable to an action for private damages, in case any have been suffered, by an individual?

There could be no doubt but, in this very case, damages would be recoverable, if the commissions were withheld by the Secretary of State from any corrupt or sinister motives. It was likewise said that the commission was *prima facie* evidence of the holder's right to office; and not only so, but conclusive; and as the parties complaining had not commissions, they could have no conclusive evidence of their right. This, he said, was equally extraordinary with many other assertions. It seemed to be a position laid down by the gentlemen that this petition should be opposed, and any objection on earth was pertinent and sufficient. If, on a view of this subject, there was not at least a colorable right in the applicants, he was exceedingly mistaken. A right to what? to office? Yes, and a right to their commissions, which, they say, are withheld, as a proof of their right to office.

He would observe one word, upon the conclusive operation of a Presidential commission, and a proclamation promulging a treaty. The gentlemen say both are conclusive, and cannot be invalidated by any possible testimony. If so, he thought the Senate should go home, being useless at the seat of Government, for it would be only requisite for a President to issue a proclamation in case of treaty, and a commission in case of office, and the advice and consent of the Senate was always to be presumed; and the contrary could not possibly be shown. This was saying, most emphatically, that our President could do no wrong.

He was clear in the position that, in the case stated, the petitioners would stand in need of the extract requested, and that they had a right to it; that granting it would do no harm, and withholding it would be an arbitrary denial of justice. He therefore should vote for the resolution.

Mr. BALDWIN had not been in the House when the debate commenced. He thought, as it related to Executive business, it ought to have been conducted as such business usually is; that, as the question then stood, he should be against the resolution. He considered it as relating to a part of our Constitution, which the sages who framed, and certainly those who adopted, it, had always considered as peculiarly delicate. That it was one of those nice theories which, in varying from established practice, ought to be carried into effect with great discretion; that he had ever thought the unity of Executive power essential to the energy of action which ought to prevail. Everything therefore which tended to divide that *oneness*, so desirable, ought to be avoided. That it was true the assent of the Senate was required by the Constitution before an appointment of officers could take place; that, on the nomination of the President the business was inchoate; and although while it was *in transitu* the Senate kept a journal for their own satisfaction, yet he thought such (their private journal) ought not to be made public—more especially as it would destroy that desirable *oneness* so useful in all things which concern the Executive power; that he was, however, unwilling to establish a precedent of any sort. He thought no general rule should be made, either to grant or to withhold extracts from that journal. Every application should, he thought, be considered and decided under its particular circumstances. That the present case was an application for a *mandamus* to the Secretary of State, by persons conceiving or stating themselves to be justices of the peace; that, even if they could obtain the extract they ask for, it would not answer their purpose; for, although the Senate approved of an officer when nominated by the President, it did not follow that the President would make the appointment—circumstances might arise to alter his opinion. The applicant therefore for a *mandamus* must be defeated, if he could not produce the President's commission, and if he could, that was a sufficient evidence of his right, without the extract asked for. Mr. B. was therefore of opinion that the petitioners had asked for a thing which was useless; and he was convinced that the Senate, exercising a sound discretion, would not grant a thing which must be useless, and which might, perhaps, be productive of evil consequences.

Mr. MORRIS.—Mr. President, when I first rose,

in this debate, I felt and expressed much doubt; but the better reason appearing in favor of the resolution, had determined me to vote for it. At present, my opinion is clear and decided. The conviction has been produced by the arguments of those who opposed the resolution. These contain the most monstrous system of tyranny that ever, I believe, was brought before a national assembly. Permit me to notice a few of the strange positions which we have just heard.

It has been said by a gentleman from Georgia, on my right, (Mr. JACKSON,) that an extract from our Executive Journal should not be given to a suitor in one of our courts, because it may contain matter to support an impeachment against the President, which impeachment is to be tried before us; and therefore we, being judges, should not also become parties by furnishing evidence. And yet the same gentleman has told us that, upon the demand of the other House, (who, according to him, have a right to demand everything,) we are bound to furnish this very evidence, if they require it, for the purpose of bringing or maintaining an impeachment. Thus we must withhold from a fellow-citizen the evidence needed to support his right, because it may furnish ground for impeachment, although no ground for impeachment exist. This, too, it seems, is required by the impartiality which we should preserve as judges, before whom such possible impeachment may be tried. But when there is a question of impeachment, and when we are in effect the judges, then, on the demand of the other House, we are bound to furnish that evidence which we are now bound to withhold.

We have been told that the Executive officers are all dependent on the Chief, and act under his direction; that, therefore, his dignity is implicated in their acts; and, consequently, the conduct of these agents must not be questioned, lest his dignity be impaired. What broader shield can be interposed to shelter the agents of Executive authority? How can they be more completely guarded against all just investigation?

We are further told that a condemnation of these agents must affect the dignity of our First Magistrate. Must it, indeed! And is, therefore, no prosecution to be made, is no condemnation to take place? This is indeed the golden chain let down from Jove, to bind the earth in vassalage. And what becomes of our President's dignity under this strange doctrine? A subordinate agent abuses his trust—violates his duty—is guilty of mal-practice—he is arraigned; and because the culprit is convicted and condemned, is the dignity of Government, therefore, violated?

We have been told that a treaty when proclaimed by the President, is the supreme law, and that the previous assent of the Senate cannot be inquired into. Gracious God! and is it come to this, that the proclamation of our President shall be the supreme law of the land; that we must submit to it without inquiry? And how is this monstrous doctrine supported? Why we are told that because it is not proper in the case of a common statute to examine the journals of the two Houses, for the purpose of knowing whether the assent of each was given, therefore, we must not examine the Executive Journal of the Senate, to know whether two-thirds of the members present advised and consented to the ratification of a treaty. But are these cases at all similar? The law is signed by the President of the United States, the President of the Senate, and the Speaker of the House of Representatives. It contains, therefore, the best evidence in the nature of things, that the full assent required by the Constitution has been given. But is this the case with a treaty? No. The evidence of the consent of this Senate appears only by the extract from their minutes made out by their Secretary. And shall this preclude the inquiry, whether, in effect, that assent was given which your Secretary has certified?

We have been told by gentlemen, who seem to know all the merits of the case which is before the court, that the dignity of the President is involved in it. For my own part, I know nothing of the case, neither do I wish to know, for I have no authority to try it. But the gentlemen say the dignity of the President is involved, and that we are in duty bound to protect his dignity. But how? What have the petitioners asked? They have asked the evidence of a fact. And how are we to protect the President's dignity? By withholding that evidence. And are gentlemen then of opinion that the disclosure of facts will impair the dignity of our First Magistrate? Sir, I have no such apprehension. I trust that our President has acted properly, and that a full inquiry into facts must redound to his honor. Those who oppose this resolution seem to think otherwise. But I ask, are they prepared by their vote to declare that injurious opinion? Is there a gentleman in this Senate, who, when the yeas and nays are called, will record his opinion that the dignity of our President can only be preserved by withholding the evidence of facts?

We have been told, sir, by an honorable member from Kentucky (Mr. BRECKENRIDGE) that a right to examine, implies a right to correct and control. This proposition has been frequently advanced on different occasions. I never noticed it, because it appeared to carry within itself the sufficient evidence of its fallacy; but, since it is now again produced, it may be well to give it one moment's notice. A right to examine whether we agreed to a certain resolution, implies, it seems, a right to control our conduct. It may be a question in an insurance cause, whether damage was sustained by a violent wind at sea; does the examination into the fact imply a right to command the winds and the seas? Does the inquiry whether a ship has perished in a storm, imply the right to correct and control the Almighty raiser of storms?

We have been told by the member last up, from Georgia, that the evidence asked for by the petitioners, is useless; because, although the Senate may have approved of them as officers upon the President's nomination, yet it was in the discretion of the President to make or omit the appointment which alone could confer a right. That

gentleman seems to be perfectly acquainted with the cause which is depending. He knows precisely what proof is needful for the prosecutor; and deeming that which he asks for to be insufficient, thinks proper to refuse it. It appears to me, sir, that this Senate is not the proper tribunal, either to examine the merits of the cause, or the validity and weight of the evidence. These are the proper subjects of inquiry elsewhere. If we adopt the gentleman's reasoning, however, we prejudge the cause; and I shall be glad to know, if this practice be adopted, what case can exist in which a like refusal may not be made. A client is advised by his counsel to apply to us for evidence in our power, as needful to support his rights. We refuse, because, in our opinion, that evidence is not alone sufficient.

But the same gentleman has told us he would not establish any general precedent. He would always judge of the particular circumstances; and under the particular circumstances of this case, he would withhold the evidence asked for. But will not this establish a general precedent? How are precedents established? Is it usual for judges to make decisions for the special purpose of becoming precedents? No such thing. They give judgment in a case which comes before them, and that judgment becomes a precedent for subsequent cases turning upon the same principle. I shall be glad to know, then, how a distinction is hereafter to be made between this and other cases. Here is a suit pending in a court of justice; and one of the parties applies for a piece of evidence which he is advised is material to establiish his right. You refuse it. When in another cause, another party shall apply, on what ground will you grant that which you now refuse? Will you again prejudge the cause, and give them the proof beause you deem it sufficient to carry the cause?

Mr. President, one word more on that unity of the Executive, which the gentleman last up is so much attached to. Although I have already spoken longer than I intended, I must pray one moment's attention. That honorable gentleman thinks there should be a perfect unity in the Executive power. The division of it is inconsistent with his ideas of good government, and therefore, he would admit of no inquiry as to facts which may have happened in the course of Executive volition, but give full credit to the commissions and proclamations of the President. These ideas, sir, consist well with monarchic institutions. Our Sovereign Lord, the King, is indeed possessed of the fullness of Executive power, and may exercise it at his pleasure. But as to our Sovereign Lord the President, the case is widely different. The American Constitution has given to this Senate a wholesome check upon his sovereign will. But according to the doctrine which gentlemen now advance, this check is nugatory—neither the people nor the courts shall question his commissions nor his proclamations. His commissions, it seems, confer complete authority. His proclamations are the supreme law. He may form what leagues he pleases with foreign Powers, and when he shall proclaim them, we are held to implicit obedience. To these doctrines, sir, I take leave to enter my dissent. I hope that when the rights of American citizens are invaded, not only the Supreme Court of the United States, but the lowest county court of the most remote district will dare to examine, to judge, and to redress. I hope this Senate will never, by an admission of such base and slavish doctrines, surrender the authorities conferred on them by our Constitution. I hope they will ever be ready to aid the cause of freedom and justice. And in this hope I shall give my vote for the resolution on your table.

Mr. CLINTON said that everything which had been uttered in the debate confirmed the first impression of his mind against the propriety of granting the prayer of the petition. The Executive Journal from the very nature of it was always secret. This secrecy never ought to be violated, unless some useful purpose was thereby to be attained. In the present case it was very evident to him that the copy prayed for could be of no real use to the petitioners. Giving them a copy of the Journal would, however, be an expression of the Senate's opinion that the testimony would be proper and useful in the suit of the petitioners. By a side-wind the Senate would thus be drawn to give their weight to one side of the cause. He believed this was the design of the petition, and the whole proceeding was insidious and factious. He declared that he was far from imputing these or indeed any improper motives to any of the Senate who were in favor of authorizing the Secretary to give the copy as prayed for; he was persuaded that they were aware of the perfect propriety of the course they now advocated.

But we are told, said Mr. C., by my colleague, that perhaps the Supreme Court may send a subpœna for our Secretary, and compel him to produce the Journal, in spite of our order forbidding him. Such a step would certainly bring things to a crisis, and for his own part he thought it desirable that measures might be taken for ascertaining the real extent of the power of the court. He was sure if they possessed the power contended for, the rule of the Senate ought to be altered, so as to forbid our Secretary from divulging the secret journal unless by order of the Senate or of the Supreme Court.

A great Constitutional question is now agitated in that court, involving a right to control the Executive. The business may not stop there. High officers of the Government of the United States might in the end be impeached and brought before this House. He as a member might be called to try, and to decide upon that impeachment, he therefore wished to remain neuter; to express no opinion beforehand, even by implication. He felt this to be his duty, and was clearly of opinion that it was the duty of the whole body, and that therefore they ought to refuse the copy of their journals.

Mr. ROSS said that although the Senate decided upon all Executive business with closed doors, yet Executive proceedings were never considered secret, except in two cases: when the Senate imposes an injunction of secrecy upon the members,

and in cases of confidential messages from the President. In all other cases the Executive business of the body is no secret; it has never been so considered in practice, for it is communicated by Senators without reserve; and when nominations are of moment they get into the newspapers before the Senate has decided upon them. Entire lists of nominations have been published antecedent to the sanction of the Senate, and yet no complaint was ever made here that a rule of this body had been violated. It cannot therefore be pretended that there is any injunction of secrecy to forbid the copy prayed for by the petitioners. The whole difficulty arises from a rule directing our Secretary not to give certified extracts of the Journal without express permission of the Senate. This regulation is wise and very useful. It represses idle curiosity, which, for improper purposes, might publish the votes of the Senate respecting officers in nomination, or nominations made and withdrawn by the President, before the Senate acted upon them.

But when a citizen states that he has a suit in a high court of justice; that the acts of this body and copies of our journals will be material testimony in his cause; when that part of the Journal asked for is not under any injunction of secrecy, or in its nature confidential, what pretence can there be for withholding it? Will our giving leave to take a copy of it express an opinion of the House whether it be legal testimony? whether it will support or defeat the suit? Surely not. Much less will it by implication insinuate that one party is right and the other wrong. It is a public record, of which any person interested has a right to demand a copy.

If the gentleman from New York (Mr. CLINTON) were a recorder of deeds or of wills in the county where he resides, would he refuse a copy of a deed or a will to a suitor in court? Would he feel that by giving a copy he lessened his impartiality as a juror or a judge in that suitor's cause, although at the time of giving the copy he knew nothing of the merits of the case? How could he possibly prejudge a cause the merits of which he had never heard? And yet we, who are now in the same situation precisely, are told that we are about to give an opinion.

There would be infinitely more force in alleging that, by a refusal of the copy, we undertake to decide between the parties; for in that case the Senate must be supposed to have examined the petitioner's cause of action, and to have found it such that the testimony prayed for would not sustain. An arbitrary refusal certainly would not extinguish the petitioner's right. No court would determine that a right shall be defeated because those who are in possession of testimony to support it choose to withold that testimony, against all rules of justice. They will either admit inferior testimony to establish the fact, if material, or direct process to bring forward what is conceived to be legally attainable. Our refusal then will not defeat the suitor, and we shall be in the awkward situation of having interfered to stop a proceeding, without having the power of accomplishing our object.

Mr. R. said, that his observations would have ended here, had not new and highly dangerous doctrines been advanced by gentlemen on the other side, during this debate, against which he thought it his duty to enter his solemn protest. There was an end of all free and regular Government, if a commission from the President was conclusive evidence of a right to office against the journals of the Senate. There was an end to the Constitutional power of legislation, if the President's proclamation of treaties constituted the supreme law of the land, when the journals of the Senate showed that more than one-third of the Senate had voted against the acceptance and ratification of the treaty. The commission and the proclamation were good *prima facie* evidence, but might be encountered and defeated in the execution by the truth of the case as established by the journals; and courts in proper cases could not refuse to admit the inquiry when it became material. Those who have advanced this extraordinary doctrine will soon find, that if realized in practice, the transcendant powers of the President will leave little if any authority or security to the other departments of Government.

The question was then taken, will the Senate agree to this resolution; and it passed in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Plumer, Ross, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Franklin, Jackson, Logan, Stone, Sumter, and Wright.

Ordered, That William Marbury, Robert T. Hooe, and Dennis Ramsay, have leave to withdraw their petition.

TUESDAY, February 1.

The bill, entitled "An act for the relief of William Ray and John Follawell," was read, and ordered to the second reading.

The bill, entitled "An act authorizing the sale of a piece of land, parcel of the navy yard, belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem Turnpike Road and Chelsea Bridge Corporation," was read, and ordered to the second reading.

The bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States,'" was read, and ordered to the second reading.

WEDNESDAY, February 2.

The VICE PRESIDENT communicated a letter signed Edward Tiffin, enclosing an address of the Convention assembled at Chillicothe, November 27, 1802, for the purpose of forming a constitution and State government; and they were read, and ordered to lie on the table.

The bill, entitled "An act for the relief of William Ray and John Follawell," was read the second time, and referred to Messrs. TRACY, BALDWIN,

and DWIGHT FOSTER, to consider and report thereon.

The bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States,'" was read the second time, and referred to Messrs. JACKSON, SUMTER, and HOWARD, to consider and report thereon.

The bill, entitled "An act authorizing the sale of a piece of land, parcel of the navy yard, belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem Turnpike Road and Chelsea Bridge Corporation," was read the second time, and referred to Messrs. J. MASON, BRADLEY, and TRACY, to consider and report thereon.

Ordered, That the consideration of the report of the committee, on the several memorials of the judges, under the late act to provide for the more convenient organization of the courts of the United States, made the order of this day, be postponed until to-morrow.

Mr. LOGAN presented the petition of Stephen Sayre, stating that he was employed at a foreign Court in 1777, to procure arms, clothing, and other supplies, necessary for the common safety and defence, and praying compensation; and the petition was read.

Ordered, That it be referred to Messrs. TRACY, LOGAN, and BRECKENRIDGE, to consider and report thereon.

Mr. WRIGHT, from the committee to whom was referred, on the 21st of January last, the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," reported amendments; which were read, and ordered to lie for consideration.

THURSDAY, February 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen;" in which they desire the concurrence of the Senate.

The Senate took into consideration the report of the committee on the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia; and it was agreed that the consideration thereof be postponed until to-morrow.

MEMORIAL OF JUDGES.

Agreeably to the order of the day, the Senate took into consideration the report of the committee on the several memorials of the judges, under the late act to provide for the more convenient organization of the courts of the United States. The committee report as follows:

That the petitioners were judges of certain courts, inferior to the Supreme Court, constituted by an act of the 13th of February, 1801, and duly commissioned to hold their offices during good behaviour.

That, while holding and exercising their offices, an act was passed on the 8th of March last, to repeal the said act of the 13th February, 1801, and transfer the duties of the said judges from them to others.

That a question has arisen whether, by reason of the premises, the said petitioners be deprived of their offices.

That this question, depending on the construction of the laws and Constitution of the United States, is not properly cognizable by the Senate.

The committee, therefore, conceive it improper either to give reasons or express opinions; but they consider it as a question of high and serious import, and believe that a speedy investigation and final decision is of great moment to the commonwealth.

Wherefore, they submit the following resolution:

Resolved, That the President of the United States be requested to cause an information, in the nature of a *quo warranto*, to be filed by the Attorney General against Richard Basset, one of the said petitioners, for the purpose of deciding judicially on their claims.

Mr. MORRIS said, I rise, Mr. President, as chairman of the committee whose report you have just had the goodness to read, for the purpose of explaining their reasons. If this were a common or an ordinary occasion, if no heats had been excited, if there were no unpleasant, no tormenting recollections, a measure so plain, so easy, so simple, would require neither argument nor persuasion. It would be adopted for its own interior evidence, and from the general sense of propriety. Unhappily, sir, this is not the case. Serious differences of opinion have existed, and still exist on the subject with which it is connected. From these have arisen disputes, divisions, bickerings. There is not, I fear, in the minds of men, that calm impartiality which is needful to fair investigation. There remains much of prejudice, of irritability.

Before I proceed to an explanation, therefore, I find myself reduced to the painful necessity of praying gentlemen to perform a great duty to this Senate, to themselves. I must entreat them to hear with patience, coolly to consider, and then decide according to the dictates of reason and justice.

Your committee have pursued the course which appeared to be proper, not only in itself, but according to the existent circumstances. Gentlemen will easily see that they might have made an elaborate report, containing a long detail of reasons to establish a favorite conclusion; and a slight knowledge of the forms of business will show, that they might have placed that report at length on your journals. But would this have been right? Would it have tended to conciliate? Would it have been a proper return for the unanimity with which your committee was chosen? Surely it would not; and is it not the duty of every good citizen to heal, as far as possible, the wounds of society? To calm those irritations which disturb its repose? To remove all things which may alarm, torment, or exacerbate?

We have heard from those who are more in the confidence of our Cabinet than we are, for we have no such pretensions, that there is reason to believe that this country is on the eve of war. I hope not. I hope we shall not be visited by so great a calamity. But if this be our doom, let us prepare to meet it like men, with boldness, with unanimity. Let us banish, let us destroy every circumstance that can excite or keep alive a spirit of party. Let the proudest foe be informed that he will find us firm. Let us march hand in hand, like a band of brothers, in the plain road of duty, and whether it lead to victory or death, we know it is the path to glory.

Mr. President, your committee have no intention, no wish to revive a discussion of points already settled. While the act of last session was in agitation, we opposed it steadily, pertinaciously. But that act has become a law, and to the authority of the law we bow submissively. While in suspense, we thought it our duty, as Senators, to oppose it. But since it has been adopted, according to the forms of the Constitution, we know that as citizens we are bound to obey. With these deep impressions, then, of what is due to the supreme law of our land, I shall proceed to the report of your committee, and endeavor to explain its several parts.

Gentlemen will perceive that the question which the memorialists have submitted to our investigation is, whether the law of last session has deprived them of their office of judge. Your committee consider this question as not being cognizable by the Senate. It is not for the Senate, nor the Representatives, nor both combined, to interpret their own acts. We are a part of the Legislature. A part of the Executive power is also delegated to us. If the Judiciary be added, it will constitute a tyranny. It is, indeed, the very definition of tyranny which has been given by those best acquainted with the subject. This Senate can have no wish to arrogate power. It is too just, too wise. If a sense of propriety did not prevent, prudence alone would forbid the attempt. This body is too feeble for the exercise of so much authority. Its form, its constitution, the mode and manner of its creation and existence, the strength and structure of its members, render it incapable of sustaining a greater weight of power.

The other House, indeed, immediate Representatives of the people, may do much. Borne on the heady torrent of popular opinion, they may, and they will usurp all power. This will be the first step towards military despotism. But the Senate can have no such madness. If we can preserve what the Constitution has entrusted to our care, it is as much as can reasonably be expected. Nor can we preserve it but by our integrity, and by that respect which justice inspires; for "our cloud of dignity is held from falling by the weakest wind."

The second proposition of your committee is indeed a corollary from the first. They consider this question as cognizable by the Judiciary alone. It is gone from us forever; and is, from the nature of things, before the Judiciary, in common with all other laws. To agitate it again can produce no benefit, can tend to no useful object, can accomplish no desirable end. Our opinion, whether to affirm or to deny, can be of no avail. The other House, indeed, have given an opinion favorable to the claim. This may appear a strange assertion to gentlemen who have amused themselves with reading in newspapers what are said to be the speeches of the members; but it is not from such sources that we are to derive the opinions of a Legislative body, nor do they rest on such frail authority. By recurring to the journals of the House, I find, that on the —— day of ——, they took up a resolution reported by the Committee of the Whole, purporting that the memorialists, "late judges of the circuit courts," have leave to withdraw their petition: and on this it was moved to strike out the words "late judges," &c., which motion was carried by a small majority. Now, then, I say that, if not directly, yet by clear implication, by strong and necessary inference, the House have declared, that these gentlemen are still judges. That they were judges is a fact unquestionable, and of public notoriety. To say, then, that they are not late judges is to say that they still hold their office, that they are now judges. Such, then, is the opinion of the House; and they, in the plenitude of their power, may venture to express that opinion; but we may not. It does not become us to prejudge. It is neither wise to commit our authority, nor just to influence the tribunals of our country.

Your committee, sir, have ventured to express their belief, that the question should be speedily settled. I learned in early youth, from the volumes of professional science, that it is expedient for the Commonwealth that a speedy end should be put to litigation; and if it be important that litigation should cease between man and man, how much more important that a litigated point of public right, which interests and agitates the whole community, should be laid at rest? And if this be important in the general course of things, is it not, under present circumstances, indispensable? And how is it to be effected? By an exertion of Legislative might; by force. Remember, force will excite resistance. Such is the nature of the human heart. Free citizens revolt with disdain at the exercise of force. But judgment commands their prompt, their willing obedience. When the law is known, when it is declared by the proper tribunals, all will bow to its authority. You, then, may expect a full, and quiet, and general submission. But while it is litigated and uncertain what the law is, differences will exist, and discord will prevail.

Is it wise to embark in great national enterprises, on the wild ocean of war, with a divided people? Can you hope for success while discontent sits brooding in the heart of our country? These judges, indeed, are not numerous; but they do not stand alone. They have relatives, friends, adherents, from blood, affection, principle. Why will you wound a class of citizens numerous and respectable? Can you, while they are aggrieved, injured, insulted, expect their cordial aid, support, and assistance? But to this it may be said, that these judges are but a feeble band; we can crush them and their opposition—we have the power. Yes, we have gigantic power; but, therefore, shall we use it with the ferocious cruelty of a giant? We can crush them. Yes, with the vast weight

of Legislative force we can crush them. But is it honorable, is it magnanimous, does it become the brave? Will it give the people a confidence in their rulers? Will it give them a confidence in themselves, who have chosen such rulers? If by an exercise of power, we could even prevent an investigation of our conduct, what would be the impression on the public mind? Suspicion and discontent, deep and dangerous.

It is under these impressions, sir, that your committee have presumed to offer the resolution on your table; and as some of the technical terms may not be familiar to every gentleman, it may be proper to state the kind of proceeding which is recommended.

The attorney general, or, as he is denominated in French idiom, the public accuser, will institute, before the proper tribunal, an inquiry by what authority these men claim to hold and exercise the office of judge. It will then be incumbent upon them, either to disclaim the office, and then there is an end of the question; or else (claiming it) to establish their right. And to do this they must prove two things: first, that the office exists, and secondly, that of right it belongs to them. Failing of either, their claim is gone.

Now, sir, it may be well to consider the decisions which may be made, and their probable effect. I take it for granted, that these gentlemen, who have asked a Judicial decision, will not disclaim, and that whatever judgment may be given in the first instance, the cause will be brought up to the Supreme Court. If the judgment, in the last resort, should be (as it probably would be) against the claim, all complaint will be quieted, and all opposition will cease. Some then, indeed, might triumph. For my own part, I should find in it great consolation—the consolation of knowing that, however wrong may have been my own opinions, the supreme Legislature of my country have done right. The pride of opinion might, indeed, be wounded; but God forbid, that from motives of pride, or from any other motive, I should hear, without deep concern, that the Legislature of my country have violated that sacred charter from which they derive their authority!

But suppose an opinion different, contrarient, or the very reverse (for that also is possible.) Will the judges rudely declare that you have violated the Constitution, unmindful of your duty, and regardless of your oath? No. With that decency which becomes the judicial character; that decency which upholds national dignity and impresses obedience on the public will; that decency, the handmaid of the graces, which more adorns a magistrate than ermine, aye, than royal robes; with that decency which so peculiarly befits their state and condition, they will declare what the Legislature meant. They will never presume to believe, much less to declare, that you meant to violate the Constitution. There will be no dangerous and hateful clashing of public authorities. They will never question the exercise of that high discretion with which you are invested. They will not deny your full supremacy. They will not examine into your motives, nor assign improper views. They will respect you so long as they preserve a due respect for themselves. They will declare, that in assigning duties to one officer, and taking them from another, you have to consult only your own convictions of what the interest or convenience of the people may require.—They will modestly conclude, that you did not mean to abolish the offices which the Constitution had forbidden you to abolish; and, therefore, finding that it was not your intention to abolish, they will declare that the offices still exist. Such, sir, would be the language of your supreme Judiciary, from the high sense they entertain of their duty. And, if it were decent to suggest in this Senate, that they were lost to a sense of duty, can it be believed, that a few feeble judges will dare oppose themselves to the power of the Legislature!

Having thus stated, in as few words as I could, the consequences of adopting the proposed resolution, I will now take the liberty to inquire the probable result of rejecting it.

I pray gentlemen, most sincerely, to consider the necessary consequence. Will it not be said that we are afraid to meet this feeble band upon the ground of free inquiry? That we are afraid to contend with the weapons of reason and argument? Will you not be strongly questioned? as thus: Are you confident that the judges are wrong? that their claim is unfounded? Hear them; refute them. Are you convinced, or do you only fear they are right? Reject their request, and, with the tyrant, assign as a reason your sovereign will. Such must be the conclusion. From this dilemma it is not possible for you to escape. If you are right, you will court inquiry, and shun it if you are wrong. But what is still worse, you cannot shun it. These memorialists can be heard, whether you will or no. Spite of your reluctance they can bring on an investigation. You may hide yourselves beneath the heaps of your privileges and powers, but you will be traced to your lurking place, and the strong arm of justice will drag you forth to the day. Yes, those feeble judges can bring on the inquiry in the very face of your power—will or not will—consent or not consent—submit or not submit—the investigation which they ask can take place. Is it not better, then, to meet them freely, fairly? to come boldly forward like men?

Sir, I will detain you but a few minutes longer. It appears to me essential to the dignity of the Senate, that you adopt this resolution. It is more noble to meet than to avoid legal investigation; and it is not a novel practice. There was a time when the American Legislature submitted their acts to Judicial decision. At that time WASHINGTON presided. Will it be said that the Administration was then too humble? He, indeed, was modest and unassuming; but he had an inborn dignity of soul which taught him, intuitively, to avoid vile shame and offensive pride. He, alas! is gone. Yes, he is gone, and, oh heaven! viperous slander pursues him to the silent tomb, and preys upon his ashes. Pardon me. The name of WASHINGTON has excited recollections which fill my breast with anguish. Well, let him be forgotten; but let us not forget what he always remembered. Let us not forget what is due to ourselves, to our country, to posterity; that posterity to whose judgment we commit our fame, the jewel most dear to honorable minds.

Mr. NICHOLAS rose for information. He wished to inquire whether, if the resolution should be adopted, a concurrence of the other House would be necessary, or whether the adoption by the Senate would be final.

The VICE PRESIDENT stated that a concurrence of the other House would not be necessary. The resolution was merely a request that the President would take certain steps for ascertaining a certain fact.

Mr. COCKE.—I rise, Mr. President, to follow the gentleman from New York, and not to bring forward any arguments of my own upon the subject that is now before you. I shall endeavor to follow him step by step, and answer all the observations that he has made. I shall not attempt to imitate his eloquence, and I could not do it if I should try. He has talked about that great man, General WASHINGTON, and said a great many fine things about him which I cannot repeat. I hope that I respect that man as much as the gentleman from New York, but I shall endeavor to lay aside the feelings that I might otherwise have, and keep to the point before the House; and leave him in his grave without disturbing him. It has nothing to do with the question under consideration now. The gentleman has wandered over a great many subjects, and he tells us in one breath, if we do not adopt this resolution, we shall be skulking in some places, lurking holds, I believe he said; and, in another breath, that we shall be dragged before the almighty judges of the nation.

Sir, this honorable Senate is an integral part of the Executive, of which the President is the head. How, then, can an inferior subordinate part direct the conduct of the superior part? It is clear, therefore, that we have no right as a part of the Executive, to order or request the President to do this. Have we the right, then, as a part of the Legislature? Can the Legislature assume upon itself the right of directing the Executive? What is it that is intended by this resolution? It is, sir, that the Legislature shall interfere with the Executive, and direct the President to interfere with the Judiciary for the purpose of getting pay for these omnipotent judges. Sir, these judges must depend on the Legislative will for their continuance in office, because the Legislature can make laws and repeal them when they please, and when a law is repealed, and there is nothing for the judges to do, and no office for them to hold, they cannot exercise power or receive pay; and this is according to the Constitution. How, then, can this Senate, by adopting the resolution, aid in procuring pay for these judges when they have nothing to do? Judges they are called; they are not judges; I suppose they have been judges.

The gentleman tells us we are going to be engaged in a war—bloody, I suppose—yes, no doubt, very bloody; and, before we get into this dreadful situation, he would do away all opposition and party, and unite us like a band of brothers, as he so eloquently described it; and all this he would do by one great and manly exertion, to pay these omnipotent judges, and thus prevent them from dragging us forth to shame and punishment.

Sir, my mind has no accordancy with such opinions. We have a good right to say whether we want the services of these judges or not, and if we do not, we don't need to pay them. I remember sir, that, last year, the gentleman gave us a likeness of a boat, and said, though we would not throw the man out of the boat, we would take away the boat from under him, and so he would be drowned. Now, sir, suppose I hire a seaman to work a boat for me, and I tell him that I will give him so much during good behaviour, and after awhile the boat becomes rotten and useless to me; he knows that I hired him to work that boat and for nothing else; can he come forward and say, you shall pay me for working that boat, when there is none to work? So, these judges; we found that we had nothing for them to do; the law was useless to us, and we repealed it; and now shall these judges come and demand their pay?

We are also alarmed with a *picturation* that the other House are going to assume all the power, unless we let the judges come in and keep them back. Sir, I am not afraid of the other House assuming the power. Does the gentleman recollect that they are the immediate Representatives of the people, and that the people will judge whether they conduct well or not? The people don't want these judges as guardians to protect them from the other House, nor from this House, nor any body else, unless, as the gentleman said last year, from their worst enemies, themselves. I believe that the people do not stand in need of guardians: they can take care of themselves, and we need not hire these judges to take care of them.

One sentiment of the gentleman I highly accord with, and that is, that force tends to opposition. I believe that this is true. The force exercised, or attempted to be exercised, by Richard Bassett and the others, has highly exercised my opposition to this resolution. They have attempted to compass by force or fraud—I think it is force and fraud both together—the payment of their salaries, and the exercise of powers which have been taken from them and given to others.

Mr. President, I shall now make only a small remark on the resolution itself, and sit down. The committee say, in their report, that the Senate cannot decide upon the petition, but the judges must decide it. For this purpose we must go to the common law. Sir, we have heard a great deal about common law, and about *informations*. I wish to know where we are to stop if we begin to authorize our courts to proceed by information. Are there not other kinds of information known to this common law, besides information in the nature of a *quo warranto*? If we adopt one form of the common law may not the courts assume more? Has the gentleman never heard of persons being seized and put to death upon information?

I wish to know where we are to stop; and whether we are to follow this common law till it leads us to those ermined and royal robes which the gentleman has so finely described to us? Sir, I believe that we have power, without common law or informations, to decide upon this petition, as well as upon other petitions that are brought before us. The very petitioning of us—what does that import? Does it not import that we have the power and the right of deciding upon the petition? If the judges did not think that we had the power and the right, what did they petition us for? I conclude, then, that we have the power and the right to grant or deny their request, and therefore I am free to say, that it is inexpedient to pay them for rendering no services.

The VICE PRESIDENT rose, and said he must call the attention of the Senate to the point in discussion, which was, whether the Senate would request the President to cause a process to be instituted for the purpose of ascertaining whether the petitioners still hold the office of judge. On this question it could not be in order to go back to a law passed at the last session, and to discuss the merits of that law.

Mr. JACKSON said, it appeared by the memorial that the petitioners considered themselves as being still judges, notwithstanding the law of last session. He thought, therefore, it could not be out of order to show that that act deprived them of their offices.

Mr. WRIGHT premised, that he would endeavor to confine his remarks to the point before the Senate. He felt no disposition to travel again over the ground which had been traversed at the last session.

The petition was addressed to both Houses, and prayed for two things; first, that Congress, in their Legislative capacity, would assign to the petitioners some judicial duties; and secondly, that they would authorize a judicial investigation of their claim to compensation. The committee, therefore, ought to have confined their inquiries to these points, and to have reported accordingly. Instead of that, they had reported a resolution which, if adopted, would be neither a grant nor a denial of the prayer of the petition. In doing this the committee had exceeded their powers, and proposed a measure which the Senate itself was not authorized to adopt.

Mr. WRIGHT took a review of the Constitutional powers of the Senate, in its Legislative and Executive capacities, and inquired, Have we any Constitutional authority to make such a request of the President? In what part of the Constitution is such power delegated to this House? Are we to make the request as private gentlemen, or as a Constitutional organ of the Government? If as private gentlemen, the act would clearly be a nullity; the President would still be at liberty to comply with the request, or not, as he might think proper. If as a Constitutional organ of the Government, where is the power given to the Senate? And what would be the remedy if he should refuse to comply? The Senate is the Constitutional adviser of the President in the formation of treaties, and in the appointment of officers, &c. The Constitution expressly declares that the President shall exercise these powers by and with the advice and consent of the Senate. Here, then, it is their right and their duty to advise him. But the Constitution further says: "He shall take care that the laws be faithfully executed." Have the Senate any authority to advise him as to the faithful execution of the laws? They can go no further than they are expressly commissioned by the Constitution. The specification of particular Executive powers, by the Constitution, is a denial of all others. *Admissio unius est exclusio alterius;* and, as the Constitution has given no power to this effect, it follows that no such power can be exercised by the Senate. If the courts have power to try the validity of laws of Congress, they can exercise that power as well without the authority of this resolution as with it. If they have not the power, neither this House nor the Legislature can give it them. The duties and the powers of the Supreme Court are defined by the Constitution. Should the Senate, then, adopt the resolution, the Supreme Court would have no power to act under it unless that power is given by the Constitution. Let us, then, examine the authority of this court. The Constitution says: "In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction." Will the gentlemen say that these judges are Ambassadors, other public Ministers or Consuls, or that they are a State? If not, the Supreme Court can have no jurisdiction of the case, and the committee have imposed upon the Senate a resolution which they had no authority to submit. As to the law of the last session, by which these judges had been deprived of their offices, Mr. W. had no fear that the Supreme Court, or anybody else would attempt to set it aside. The whole nation has approved the measure, as many of those who opposed it have fatally experienced.

Mr. OGDEN.—Mr. President, upon an examination of this memorial, we shall find that it comprises two different subjects, first, a formal claim of office; second, a prayer that the legality of this claim may be submitted to a judicial decision.

In respect to the claim of office, Mr. President, it is stated in the memorial to have arisen out of the Constitution and a law made in pursuance thereof. This memorial refers to those words of the Constitution where it says: "That the judges 'both of the Supreme Court and inferior courts 'shall hold their offices during good behaviour, 'and shall receive for their services a compensation, which shall not be diminished during their 'continuance in office." It refers, also, to that act of Congress which, in connexion with the Constitution, gave existence to those judicial offices, to which the memorialists were appointed, and concerning whose continuance in office the question now is. This question is, whether, notwithstanding the repealing law of the last session, the memorialists have any color of claim to retain the character of judges and a capacity to officiate as such, so that existing duties may be defined or

new ones assigned by law, without any further appointment by the Executive.

I do not mean, Mr. President, to argue upon the constitutionality of this law of the last session. It has been properly stated from the Chair, that such an argument, at this time, would not be in order. I trust, however, sir, that it will not be considered as out of order, to say that a great variance of opinion has existed in regard to the operation of that law. This is proved by the memorial itself, signed by so many characters who have been thought worthy of the honorable appointment of judges of the United States. Witness, also, the arguments which have been used both in this and the other House, and the recorded negatives in the journals, on the passage of the law. Witness, moreover, the public prints and more private discussions. Witness the great sensibility which it excited in the public mind. All these completely prove what is fully sufficient for my present purpose, namely, that this claim is not merely a pretence, without any color of right. It cannot be said that this claim deserves no attention. It is proper, therefore, that it should be decided upon, and the controversy put at rest. It must be presumed that this Senate, as faithful guardians of the rights of the nation, will adopt some mode whereby these important objects may be effected.

In respect to a decision on this claim, Mr. President, the memorialists themselves have appealed to the highest imaginable authority—an authority to which all must bow—I mean the authority of the law. Perhaps, sir, from my education and habits in life, I may think more highly of this authority than others whose education and habits may have been different. For my own part I think the appeal to be a proper and a just one, in which we ought to join fully and fairly. That we ought not to shrink from meeting this question in that forum whose sole and peculiar province it is to pronounce the law upon all cases "arising under the Constitution and the laws made under its authority." I hope, sir, that the pride of the Senate will not be hurt by this proposition. Let us nobly bear in mind that no higher tyranny can exist than in such countries where the same corps which makes a statute can absolutely control its expositions. This would be, sir, to convert a Legislature into a national and revolutionary convention. I will now, Mr. President, inquire a little into the nature of a *quo warranto*, and endeavor to show, that the resolution on the table prescribes the proper mode for procuring the decision of the law on this question. To this end I shall beg leave to read a few lines from the third volume of *Blackstone's Commentaries*, page 262: "A writ of *quo warranto* is in the nature of a 'writ of right, for the King, against him who 'claims or usurps any office, franchise, or liberty, 'to inquire by what authority he supports his 'claim, in order to determine the right." Again, in page 263, where speaking of an *information in nature of a quo warranto*, the book says: "This 'is properly a criminal method of prosecution, as 'to punish the usurper by fine for the usurpation 'of the franchise, as to oust him, or seize it for 'the Crown, but hath long been applied to the 'mere purposes of trying the civil right, seizing 'the franchise, or ousting the wrongful owner—'the fine being nominal only." Again, sir, in the act of Congress entitled an act to establish the Judicial Courts of the United States, passed September 24, 1789, section fourteenth, there is the following provision: "That all the beforementioned courts of the United States shall have 'power to issue writs of *scire facias*, *habeas corpus*, and other writs not specially provided for 'by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." Now, sir, as a *quo warranto* is a writ well known in the usages of the law, it is perfectly clear, under the foregoing authorities, that this question can be tried in the mode contained in the resolution. Should this mode be pursued, the defendant will either deny his claim, which will put an end to the business at once, or he will avow his claim, which will bring it to legal issue. In such case, the defendant will be obliged, for the success of his cause, to establish two things—first, the existence of the office; second, a right to exercise the duties which, now or in any future time, may belong to it, without any further appointment from the President. In order to this, sir, he will be under the necessity of showing, that he had been invested, during good behaviour, with a judicial office, that had been established by the Constitution, and that it was not within the Constitutional power of the Legislature to deprive him of it.

I shall now, Mr. President, delay the Senate while I notice such of the observations, which have been made by the gentlemen from Tennessee and Maryland, (Mr. COCKE and Mr. WRIGHT,) as appear to me, to be of the most importance. Both the gentlemen have insisted that it is improper for the Senate to advise the President, in any case, excepting where required by the Constitution. I answer that the Senate, in this resolution, do not advise the President. He is only requested to procure for the Senate judicial information, and a legal decision upon a matter in controversy, from a forum which is competent to decide in a case where the discussion here would be improper and out of order. Such requests for analogous information from the several great departments of the Government, have been frequently made, and as often complied with. Two occurred at the very last sessions, one in a claim made by Judge Symmes for the benefit of a contract entered into between him and the Government in regard to lands in the Northwestern Territory; another, in relation to claims in the State of Tennessee. The Legislature need the information which the adoption of this resolution will obtain, before they can, with propriety, as I conceive, either reject the memorial, or proceed to legislate upon it. This resolution merely requests such legal information and nothing further.

The gentleman, sir, from Tennessee, has further observed that it would be improper for the Senate to aid in any measure which may tend to

procure compensation where no services have been performed. This resolution, Mr. President, contains no such proposition. Offices may exist without services, or even without compensations. There may be great force in the argument, that compensation can only follow services, but certainly the adoption of this resolution will not affect that question the one way or the other. It is not the question what duty or compensation is to be assigned, but whether the memorialists are still invested with judicial characters, to which any official duties may now or hereafter attach in virtue of their former appointment to office. I trust, therefore, that we shall not be told again, that we are making an attempt to gain compensation, where no services can be performed. The gentleman from Tennessee is of opinion, that the people do not need any protection against themselves. Were I permitted, sir, to express an opinion, it would be that the people do need a protection against Government, and that courts are their shields against oppression, as well as swords for the execution of the law. The hand of Government is large and broad, and heavy; courts are necessary to defend the people, against its violence: they stand between the people and the Government—through this medium only, can the rights of the citizen be assailed while even a semblance of the Constitution remains. But, sir, courts will cease to be this shield, whenever they shall cease to be independent. Whenever it is settled that judicial offices are holden at the will of the Government, courts must necessarily execute that *will*, or certainly expect to cease to be courts. It is time to know on what foundation our liberties stand, and whether the citizen can any longer rely upon the protection of independent courts.

Again, sir, this attempt to obtain a judicial decision has been called by the gentleman from Tennessee an act of force and fraud. Merciful heaven! This decent and respectful memorial—this well-timed and moderate resolution—acts of force and fraud. If we hear such language now, what may we expect hereafter?

The gentleman from Maryland has observed, that this memorial is addressed to the Legislature, and can only be acted upon jointly by both Houses. The answer to this has been already hinted at. No Legislative measure whatever can be adopted, until the question contemplated by the resolution shall be first disposed of; after that, only, can we undertake to legislate upon the subject of this memorial: to require information may be the act of either House separately, although to legislate must be their joint act.

Once more, sir, and I will have done. The gentleman from Maryland has argued that our courts have no jurisdiction over this question granted to them by the Constitution, and for this purpose has cited the clause in the Constitution which grants judicial jurisdiction. Permit me to observe, sir, that in making this citation, the gentleman has taken care, while he read every other part of the section, to omit that part which expressly grants this jurisdiction. The omitted part reads thus: "The judicial power shall extend 'to all cases in law or equity arising under this 'Constitution and the laws of the United States, 'which shall be made under its authority." And having read the residue of the section only, the gentleman triumphantly asks, whether these memorialists are Ambassadors or other public Ministers, or Consuls, or States, &c.

Let me now ask, Mr. President, with my honorable friend from New York, what have gentlemen to fear from the course which has been proposed in relation to this memorial? Why do they flinch from judicial inquiry? If reason and sound argument be on their side, they will certainly triumph. Let us not, therefore, I pray, usurp to ourselves the power both of enacting and exclusively expounding this law of the last session. When we passed the law, we did what belonged to us. We were then, in respect to it, *functi officis*. Its construction and exposition belong to the forum; to which the resolution on your table properly refers it.

Mr. JACKSON thought this subject was fully discussed at the last session, and that no new arguments could now be advanced. He considered the proceeding upon this subject as altogether novel. The petitioners have asked for one thing, and the committee have reported another. What end is to be answered by referring this question to the Judiciary? Do we doubt our own power, or our own justice? Ought we to go to the courts and ask them whether we have done our duty, or whether we have violated the Constitution? I shall not attempt, sir, to follow the gentleman from New York (Mr. MORRIS) in his attempt to raise the passions, but shall endeavor to confine myself to the question

I consider this report of the committee as contrary to the spirit of the Constitution and Government of the country, and contrary to our own dignity. The courts have no power to control the proceedings of the Legislature or the Executive. In what capacity do we sit here? Is it as legislators alone? No; but as a part of the Executive power. Shall we, then, as legislators, condemn ourselves by adopting this report? Or can we, as a constituent part of the Executive, call upon the head of the Executive power to do such an act? But, sir, I consider the proceeding proposed by the resolution to be unconstitutional. The writ of *quo warranto* is a criminal process, and is followed by fine and imprisonment. No person can be called upon in a criminal action except by indictment of a grand jury. But here you would proceed against these men, who have not been charged with any crime, by a *quo warranto*, and perhaps would fine and imprison them. Where does this writ of *quo warranto* come from? Do we find any such thing in the laws of Congress? No, sir, it is derived from the common law of England, and has come down from the days of that great and good King, Alfred, when, as the gentleman told us last year, a purse of gold might hang for months on the side of the highway, and nobody would touch a penny of it. God forbid that we should ever give countenance to cruel and vindictive Star Chamber informations. I remember, sir, a time when an attempt was made to amend the Constitution by giving the courts power to proceed by information, but I lifted up my voice against it. I had heard too much of the proceedings by information in the Star Chamber in that country from which this writ is derived. I have heard many gentlemen in this House and the other who claimed the common law for our courts. If we go back to feudal times we shall see what a situation we should be in with this common law. Until the reign of William and Mary, women in England were not allowed the benefit of clergy. Let them be ever so learned or elegant, if convicted of a felony, they must be hanged, while the men, if they could merely read, escaped. Very pretty law this, indeed! Under this law your M'Cauleys, your Williamses, and perhaps some in the bosom of our own country, would be liable to ignominious death, and their husbands, who perhaps can scarcely read, while they are capable of writing the most elegant essays and the most sublime sentiments, these husbands, I say, under this blessed common law, would merely be burnt in the hand, while those elegant females must be hanged.

But why shall we go across the Atlantic for common law to restore these judges to their offices? As well might you say that the Pretender, because he called himself King of England, was a King, as to say that because these men call themselves judges, they are judges. I contend that they are not judges. Their office was taken away and given to others, who are now in the exercise of it. You might as well say that Louis the Eighteenth, who at present calls himself King of France, is King. Everybody knows that Bonaparte is.

The gentleman from New York (Mr. MORRIS) says, if you think yourselves right and these judges wrong, meet them, and examine their claim. But if you suspect or know that you are wrong, shrink from the investigation and refuse to let them be heard. Sir, I am willing to meet them, and I would meet them on this floor. Here I would decide their claim as they have asked us to do. This is the only proper place to meet them. Here I would decide that they have no office, and therefore are entitled to no salary. We cannot go out of our proper place to meet them in the courts.

Sir, if these men think that they still hold their offices, I believe that they may be satisfied without our passing that resolution. Let them take their seat upon the bench and see if the Marshal will obey them. Let them attempt to send a man to the whipping-post, or to jail, and I believe that they will find out whether they are judges or not. But if they wish to have the question decided for them, there is no occasion to trouble the court with it. We have the power and the right of deciding it. The petition itself proves that we have this power and this right, otherwise it would not have been sent to us. I hope, therefore, that we shall use it, and not give it away. To say that it must go to the Supreme Court, and that we have not authority to decide it, is begging the question. But I contend further, sir, that if we should even adopt this resolution, and the President should instruct the Attorney General to file the information, the Supreme Court have no power to decide the controversy. By turning to that common law which the gentlemen think so highly of, it will be seen that, in England, the judges cannot control an act of Parliament.

[Here Mr. J. read from some book, the title of which was not heard, that a certain lawyer had declared that Parliament have no power to do an immoral act, or one manifestly unjust, such as to make a man a judge in his own cause; but the commentator held it to be law, that no bounds could be prescribed to the power of Parliament, and that should they, imitating the example of Herod, decree that all children under a certain age should be slain, it would be the duty of the judges to resign their commissions, but they could not declare the act void.]

Such, said Mr. J., appears to be the law of England, and there is so far an analogy between that Government and ours, that our judges cannot exercise a power over the acts of the Legislature which is denied even to the English judges. It is true that in England they have no written Constitution, and we have. We are so far superior to them in that respect. But still our judges have no power to control the acts of the Legislature. Though it may be true, as has been said, that this is not a resolution to pay money for nothing, still it is true that they petition for their compensations as well as duties to be assigned to them, and I believe, that if they had their salaries, they would be very quiet; and that, if we had last year made provision for paying them their compensations, we should never have heard of their coming to petition for duty to perform. I am against paying money to any person for doing nothing. I want no Irish pension list in this country, nor the *red book* of France, which I dare say the gentleman (Mr. MORRIS) has seen. In my view, office consists of duty, and compensation is given for the performance of duty. I cannot conceive of an office without service. The service of these men was taken away by the act of last session; and the office is therefore gone, and the compensation must go with it.

But suppose we adopt the resolution, and the President should refuse to comply, how can you get the question before the court? Can you compel the President to comply? Suppose, then, you command the Attorney General to file the information, will he comply? He is an Executive officer; he holds his commission at the will of the President. If he attempts to act contrary to the President's wishes, he will immediately be informed that there is no further occasion for his services. How can we command the Executive officers? Can the court, then, command the officers of the Executive? and by the way, I will take the liberty of remarking, that I believe the court are willing to go very great lengths. In like manner, if the court should send the Marshal

with a mandamus to the Secretary of State, and he should be told, the moment you touch him your office ceases, can it be expected that he will risk his office in such business? How, then, can this business be done? It cannot be done by any body unless the President will consent.

On the whole, Mr. J. thought it sufficiently evident that this was a proceeding unknown to our Constitution and laws, and was nothing more than an attempt to inflame the public mind, and bring the Government into disrepute and ruin.

Mr. STONE.—Mr. President, I must be permitted to remark, that I have not been able to perceive the relevancy of many of the arguments which gentlemen have thought proper to advance upon the present occasion. This application is not for a *quo warranto*. The petitioners pray for a review of the laws and for an assignment of duties. They ask for no inquiry into the existence of the office, but for a process to obtain their salary. The committee, instead of reporting upon the prayer of the petition, report a *quo warranto* to ascertain whether they have any office. A *quo warranto* is the proper process against one who usurps the exercise of an office, but is never used in a case where there is a mere claim without an attempt to exercise. But even if it were, I cannot see the necessity of resorting to it in the present instance. It appears to me sufficiently clear that there can be no office where there is no service to be performed. That there is no service to be performed by the memorialists is proved by the petition itself, the first prayer of which is that such service may be assigned. I am, therefore, opposed to the adoption of the resolution for two reasons; first, the petitioners do not ask for any decision as to the existence of the office; and secondly, the writ of *quo warranto* is not the proper process for ascertaining the existence of the office; it merely tries the right to exercise an office.

I congratulate this Senate, sir, and the gentleman from New York (Mr. MORRIS) in particular, on his belief that the law passed at the last session was right. Time, which sets more things right than argument, will probably convince every body, not only of the propriety of that law, but of the impropriety of adopting this resolution. I am unable to perceive how the gentleman's remarks respecting General WASHINGTON apply to the question, or how his character is connected with a *quo warranto*.

Mr. WRIGHT rose again to remark that what had been said by the gentleman from New Jersey (Mr. OGDEN) respecting the case of Judge Symmes did not apply to the question. That was a request that the President would procure certain information upon a subject on which it was necessary that the Senate should act. This resolution was in the nature of a command to the President that he should command the Attorney General to institute a process not to enable the Senate to act, but to enable certain persons to exercise power and receive salaries. He conceived that there was no authority in this country competent to authorize a proceeding by information. It is not a writ, but a complaint to the court in the nature of an indictment. Information is the original proceeding in England, but is unknown in the courts of the United States. Here all must be by bill.

Mr. BRECKENRIDGE.—It is my intention, sir, to trouble you but a very few minutes. It will be remarked that the memorial contains two claims; a claim to office and a claim to compensation. Both these are claims under the Constitution, and both in the teeth of a statute. The question now is, by what procedure they can be decided? The honorable gentleman from New Jersey (Mr. OGDEN) says, it can be done in no other way than a *quo warranto*, as recommended in the resolution. The gentleman from New York (Mr. MORRIS) says, it can be decided in spite of us, whether we adopt the resolution or whether we reject it. The question on the first of these claims is, whether the office has been destroyed or impaired by law? The proposition is, to submit this question to the Judiciary, to determine whether our law is good and valid. If the gentleman from New York (Mr. MORRIS) is correct in this doctrine, why should we trouble ourselves about it? The courts can decide the question as well without our interference as with it; and whether the doctrine is correct or not, I will never, by my vote, sanction such an inquiry. I think it would go to prostrate the Legislative power at the feet of the Judiciary.

Permit me now to say a few words as to the process, by information, in the nature of a *quo warranto*. This writ must lie, and only lie, against claims where there has been a *user* or *usurpation* of some franchise, and the judgment must be seizer, ouster, or extinguishment of franchise. To this point Mr. B. cited *Jacobs' Law Dictionary*, *Modern Reports*, and *Kid's Criminal Prosecutions*. How, then, can this question be brought before the court by a *quo warranto*? It is a simple claim without either user or usurpation; the very complaint of the petitioners is, that they are not in the use of the franchise, and they pray that duties may be assigned them. The proceeding is not, therefore, applicable to the case. Will you, then, for the sake of coming at a favorite case, presume a usurpation, and by a fiction of law, which is very common in England but which I hope never to see introduced into this country, especially in criminal proceedings, will you proceed against these judges and render them liable to punishment for a misdemeanor? But, even then, the judgment will be ineffectual. If the office exists, and these men are entitled to it, the court can neither abolish it nor take it away. What if judgment should be rendered for the defendant? Must costs be awarded against the United States, and paid out of the Treasury? The court cannot then put these men in possession of the office. If the court has authority to declare the act of the Legislature void, and to reinstate these men in their offices, they may also decree them their salaries and order them to be paid. The adoption of the resolution, therefore, would in every view be nugatory and ineffectual.

Mr. ROSS observed, that if gentlemen who had spoken against the resolution were disposed to afford any relief whatever, candor would have induced them to suggest amendments. If they disliked informations in the nature of *quo warranto*, some other process might be devised, which would produce a decision, or the Attorney General might be directed to take effectual measures for obtaining an adjudication of the Supreme Court upon the claim these judges have set forth in their memorial. So, also, it would be very easy to alter the shape of the resolution if it be thought proper, that both Houses should act concurrently in this business. But as no amendment had been offered, he had been led to conclude, that it was not to the form, but to the substance of the resolution, that they were opposed.

The gentleman from Kentucky (Mr. BRECKENRIDGE) had insisted strongly upon two objections to the report of the committee; and he would first notice that which had been last urged; namely, that the information would not lie, because there was not an actual user, or usurpation; that there could be no judgment of ouster without an user, and therefore the process would be ineffectual. In this position the gentleman was certainly mistaken, for the law authorities, already quoted in this discussion, prove expressly, that it will lie where there is a claim of office, or a colorable title set up. The process contemplated is not a *quo warranto*, but an information in the nature of that writ. At common law there would be no judgment of ouster upon such an information; after trial of the right, and decision against defendant, the court could only impose a fine, which, generally speaking, is merely nominal. We have no statute giving power to pronounce the judgment of ouster. The simple inquiry will be, whether these judges claim or exercise powers or offices unauthorized by law. Should they renounce all claim, there is an end of their present complaint; we should hear no more of it. If they persist, their right must be set forth, and it will be investigated and decided by the court in their judgment upon the information. This is exactly what the judges have desired, and there can be no doubt of the efficacy of the process proposed. But the gentleman has principally dwelt upon another objection which is of great magnitude. He is unwilling to authorize any proceeding in the Supreme Court which may draw into question the validity or constitutionality of an act of Congress. And he contends that the exercise of such a power by the Judiciary, is a prostration of the sovereignty of the Government now vested in the Legislature.

Mr. R. said that it was with infinite surprise and regret, that in the last session of Congress, he had heard this authority of the courts questioned and denied by men of high influence in the national councils. In his apprehension, this new doctrine was not only incorrect, but of the most dangerous tendency. How is the sovereignty of our Government affected by the exercise of this power? The sovereignty is vested in the people. For all Legislative purposes, this sovereignty is represented and exerted by Congress; for all Executive purposes, by the President; for all Judicial purposes, by the Judiciary. Each, when performing the functions of their respective departments, may be said to be clothed with sovereignty, but neither possesses it entire, nor exclusively, nor for any other purpose than that of executing the powers devolved upon it by the Constitution. All were created to manage a delegated power. They are co-ordinate, not subordinate. Congress is the people making laws. The President is a representative of the people carrying their laws into effect in an orderly manner. The Judiciary is the nation in its most august capacity, sitting in judgment to do justice. The full exercise of all its power by one of these departments, certainly does not derogate from or prostrate the sovereignty of the others, if they possess anything that may be called sovereignty.

It is manifest, from the Constitution, that its authors were aware of danger from attempts of the Legislature to abuse their great powers. Experience had admonished them on this subject in almost every State. Therefore, Congress was expressly restrained from passing laws imposing duties upon exports, *expost facto* laws, bills of attainder, laws affecting emigration, or certain rights of individual States. [Here Mr. R. read over all the prohibitory clauses of the Constitution.] Suppose such laws passed in direct violation of the Constitution, where is the remedy if the gentleman's doctrine of Legislative supremacy be right? Not in Congress, for they are the wrongdoers; not in the President, for he is the organ to execute, not to interpret, the laws; not in the States, for they might so differ that no two would exactly agree, and this would lead to the most furious and destructive disputes; not in the people, for there is no mode of collecting their opinions. The Judiciary, then, seems to be the only body to which we could look for protection from such laws; their agency becomes necessary to give the laws complete effect upon individuals. The Constitution is the supreme law: it is the duty of a judge to compare acts of the Legislature with this great charter, and pronounce whether the special delegated power has been exceeded or not. The Constitution expressly directs them to take cognizance of all cases arising under the Constitution and laws of the United States. If, then, a citizen be sued before a court of the United States for a tax imposed upon the produce of his farm when exported; if he be prosecuted under an *expost facto* law; or arrested under a bill of attainder, will any Senator rise and say, that a court sworn to support the Constitution, is nevertheless bound to give judgment for the prohibited tax, and to send the man to execution who has been attainted without a trial? Either the law or the Constitution is a nullity. If the new doctrine be true the law must prevail. If so, why provide any prohibitions or exceptions in a Constitution, and why ask any solemn pledge to support it? The court, when pressed for its judgment, must declare which shall prevail, and if they do their duty they will certainly say, that a

law at variance with the Constitution is utterly void; it is made without authority and cannot be executed. By doing so the court do not control or prostrate the just authority of Congress. It is the will of the people expressed in the Constitution which controls them.

Since the adoption of our Constitution this question has been more than once before our courts. The judges of the Supreme Court refused to execute the law relative to pensions claimed by invalids, and transmitted their reasons to the President, who laid them before Congress. The law was altered so as to assume an unexceptionable shape. Here the difficulty was ended. The carriage tax was thought by some to be unconstitutional, and by a refusal to pay it, suit was brought and the question was solemnly debated and decided in the Supreme Court. The tax was held to be a legal one. But had it been decided otherwise, what officer would have dared to collect it after such a decision?

The laws of different States have been questioned in the same court. An act of Assembly of Pennsylvania has been declared void, and although the decision affects an immense real property in that State, yet the opinion of the court seems to have been submitted to. Nay, so general has been the impression, that our courts possess this great power, now denied, that several honorable members of this House have censured the judges for not declaring that the Sedition act was unconstitutional. If they had power to do so respecting that act, why deny them the power to do other acts? Where does their power end? Let us know its limits, that we may be sensible when we can, and when we cannot draw this protecting power into activity.

The framers of our Constitution, sensible that in this, as in all other free Governments, there would be a tendency in the Legislature to overstep their authority and abuse their power, not only ordained the limitations which have been noticed, but, fearful that judges might become obnoxious if they dared to do their duty, they protected the Judiciary, by declaring them independent of the Executive as to the tenure of their offices; and of the Legislature as to their compensation. It was hoped that they would then look steadily at their duty; and that in turbulent times they might be able to restrain, and control the hand that might attempt oppression. But now it is discovered that office, "during good behaviour," means during the will and pleasure of a majority of Congress. The judges, your memorialists, complain, that they were once regularly appointed judges under your law of February, 1801. That by a law of last session, their duties are transferred to others. When that law was under consideration in this House, we were told that its friends did not undertake to remove judges from office, that the repealing law expressed no such sentiment; that its effects upon the judges might be examined and determined thereafter. Now, when these very judges ask us to define their duties, we are told, by the same gentlemen, that the judges are not in office; that they were actually removed by the late law. Then it eventually follows, that they were removed by Congress; that they were dependent upon the will of Congress, and not upon their good behaviour: and it also follows, by necessary implication, that Congress, by repealing the law under which the Supreme Court is organized, may remove the judges of that court, and transfer their duties to a designated number of judges of the district courts. The independence of your judges is then but an empty name. But suppose the repealing law to be now repealed. This repeal would remove the circuit courts of February, 1801. Who would be the judges of those courts? The former judges have not resigned. They have not been removed by impeachment. They still claim to be judges. Could the President appoint new judges when the old ones are ready to execute the duties of the office? It is certain that they were once judges, and held circuit courts. How, then, were they put out of office? Have they not a capacity and an official relation which other men have not? Why not ascertain and settle what this relation is? They request us to do so. Their request is not to decide ourselves but to define or authorize a mode in which a judicial decision may be had upon what they term *their right*. Our ideas of independence and fancied sovereignty ought never to carry us so far as to deny an investigation of right. We are not the legal tribunal for trying the rights of citizens. Send it then to the courts; if they decide against the right, we shall be under no obligation of assigning duties to these judges. If they give a contrary decision, we shall have full evidence that we ought to define their official duties and provide for their compensations. By refusing a fair trial at law, we assume the judicial power of interpreting our own laws, and to be both Legislature and Judiciary.

This power does not belong to us; it has been expressly delegated by the people to another department. It has been exclusively exercised by that department ever since the beginning of our Government. Until lately it has never been questioned. It has not been complained of by any of the States, although more than one State has been affected by it; and it seemed to be the only peaceable and fair way of terminating questions of this description, without burdening the Senate with undue responsibility. He hoped, therefore, that the report of the committee would be adopted, or, at all events, be so modelled as to produce the inquiry and decision prayed for by the memorialists.

Mr. NICHOLAS.—Mr. President, the question before us is, not whether the courts may exercise the power of declaring an act of Congress unconstitutional, and therefore void, nor whether we will now give them that power. The question is whether we will call upon the President in this way, and direct him to perform a certain Executive act. I contend, sir, that we have no power to do this, and that even if we had the power, it would be inexpedient, in the present instance, to exercise it.

This memorial, sir, is addressed to both Houses

of Congress in their Legislative capacity, and whatever is done upon it should be concurred in by both. The other House has already expressed one opinion, and declared that the prayer of it ought not to be granted. How would it appear for us to adopt this resolution, and thus express a contrary opinion? I am clearly of opinion that we have no right to make this call, and I am also clearly of opinion, that these judges have no claim to either office or salary. The office which they held has been abolished, and the right of compensation, which was but an appendage of the office, was extinguished with it. I am, therefore, prepared to meet the question in every shape in which it can appear, and to give it my decided negative.

I am astonished, sir, to hear it said, that we must wait till this question is decided before we can act upon the petition, and either grant or deny the prayer of it. If I thought as those gentlemen profess to think, that the office still exists, and that these men are still judges, instead of sending them to the courts, where they can get no relief, I would make an appropriation for the payment of their salaries. But I believe that they have no claim, and am therefore ready to vote against it.

I am astonished, sir, to hear this case likened to the case of Judge Symmes. There appears to me to be no analogy between them. One was a call for information upon a subject on which it was necessary for us to legislate. The other is a decree directing the President how to act in the execution of his office.

The gentleman from New York (Mr. MORRIS) had promised us that, if we adopt this resolution, we shall have peace and union; that all party asperities will be done away, and that we shall unite like a band of brothers. Would not peace and union have been better promoted by keeping this subject out of sight, and not, by the introduction of it, attempting to agitate the public mind, and irritate party animosities? Sir, the adoption of this principle would carry us to lengths which cannot be foreseen. The principle of proceeding by information would open a door to all kinds of tyranny and oppression, by suffering criminal proceedings to be instituted without the intervention of grand juries. I hope we shall prevent the evil by putting our negative upon the resolution.

Mr. MORRIS.—Mr. President, although the arguments which have been advanced against this resolution have been fully answered by my friends, I pray your patience and permission to take some slight notice of a few of them; not, indeed, to show their futility, (for that has been done already,) but to mark the relation which they bear to each other. We are told, in the first place, by the gentlemen on my right, (Mr. JACKSON,) that we are an integral part of the Executive authority, of which our President is the fountain and head; and thence it is inferred, that we ought not to apply for his kind assistance. Sir, this may be logical argument; it may, perhaps, be conclusive; but really I do not understand it.

We have heard much of the dangerous nature of an information. Gentlemen seemed afraid of information; they are afraid, too, of the common law. They will next, I suppose, be terrified at that other hideous spectre, common sense. They tell us that the writ of *quo warranto* is a criminal process; that the punishment is fine and imprisonment. They ask whether American citizens are to be subjected, without indictment, to these pains and perils. The proper distinction has already been taken by the friends near me, between the writ of *quo warranto*, and the information in the nature of a *quo warranto*. The argument of our adversaries goes to show, that the memorialists should not be subjected to such grievous persecution. A sufficient answer to all which has been said, or can be thought or said on this subject, is, that if they do not choose to risk the consequences, they have only to disclaim. On such disclaimer the suit must cease. If, then, it proceed to judgment, it must be by their choice, and to the willing there is no injury. But it seems that this resolution is an attempt to call in question your Legislative omnipotence. As well, says the gentleman, might you say that the late Pretender was King of England as that these men are judges. As well, says he, may you say that the unfortunate Louis the Eighteenth is King of France while Bonaparte fills the throne. Are we, then, to understand the gentlemen that power makes right? Or does he mean to say, that because we have the power, it is vain in the petitioners to pursue their right? The same gentleman made some allusion, I know not what, to a red book. But he read to us doctrines from a book which is indeed red. Likening your acts to British statutes, he tells you, that if your judges be commanded to slay the innocent, they are bound to obey.

[Mr. JACKSON rose to explain. The VICE PRESIDENT informed him he would have an opportunity to reply.]

I might, said Mr. M., have misunderstood the gentleman, but I believe not. It must be fresh in the recollection of this Senate, that he read to us the opinion of some commentator on the law of England as to the binding force of an act of Parliament. The declaration of a learned Judge, that Parliament could not do an act so immoral as to make a man judge in his own cause, is called in question, and the commentator declares their power to be unbounded, unless, indeed, by the physical limits which the Almighty has established in the order of his creation. To elucidate the doctrine, he goes so far as to say, that should the Parliament, in imitation of Herod, give orders to slay all children born within a certain period of time, the judges can avoid obedience only by resigning their commissions. Hence, then, it is to be inferred, that should you think proper to issue a mandate as cruel as that of Herod's, your judges must imbue their hands in the blood of innocence. Such, it seems, is your power, and such must be their obedience!

Not content with this broad claim of unlimited power, the gentleman has thought proper to descend into the details of this business, and to point out certain difficulties which the petitioners must

encounter, even if it be admitted that they have right, and that our courts will endeavor to do them justice. If, says he, you address the President, the President will not comply with your wishes. You cannot compel him. If you direct the Attorney General to file the information, he will not do it without the President's order. He holds his office during pleasure; and if, as you pretend, these petitioners should take some other course, without the order of the President, or the agency of the Attorney General, and even if the judges should decree in their favor, to whom will they issue process? The Marshal also holds his office during pleasure. He won't obey, or if he should, the President will tell both him and the Attorney General that he has no further need of their services. Will he, indeed? Will he interpose his authority to prevent the execution of law? Will he dare? No. He dare not. He *dare* not. The present incumbent of that high office has no such dangerous disposition; and no future President will dare. I am sure the gentleman has not been authorized to intimate that the President has any such intention or disposition. That honorable gentleman is so filled with apprehension on the present occasion; he has such horror of the common law, that he seems to fear, if this resolution be adopted, we may proceed to burn the palm of his female friends. He is alive to the danger of learned ladies. We, sir, wish to make no fiery impression on ladies, learned or unlearned. We wish but to promote justice and establish right, by the salutary influence of reason and law.

An honorable member from North Carolina, (Mr. STONE,) has told us that the resolution is not founded on the petition. They, says he, ask one thing, and we are about to give them another. In Scripture phrase, it might be said, they ask for bread, and we give them a stone; they ask for a salary, and we give them a *quo warranto*. But this observation is, I humbly conceive, unfounded. Look at this petition. They claim what they say is their office. They ask that duties be assigned to it. They declare a willingness to submit their right to legal investigation. This right is the point on which the merits of the petition turn, and the resolution goes directly to that essential point.

The same honorable member has told us that there can be no question on the subject, for that office implies duty: and, as the petitioners aver, they have no duties to perform, they, of course, acknowledge that they have no office. It is possible, sir, that in the Latin language, the word *officium* may be synonymous with duty. But inferences from etymology cannot be admitted as argument. In English office does not imply duty. If it did what would become of the long list of sinecure offices, about which there has been so much of patriotic complaint? The same honorable member has rejoiced that I should now acknowledge what I last session denied, namely, that the law then passed is Constitutional. I made no such acknowledgment. I declare again, that, sitting here as a Senator of the United States, I am not now competent to decide on that law. This is the province and the duty of the judge. I feel it my duty, as a citizen, to obey; and believe that all of us owe to our fellow-citizens an example of obedience, of respect, and submission. This is not, as has been intimated by the honorable member from Kentucky, (Mr. BRECKENRIDGE,) a question whether the judges are superior to the Senate; still less whether the judges are superior to the whole Legislature. No such question can arise while the departments of Government preserve a proper respect for themselves. The judges will never be so wild, so absurd, so mad as to pretend that they are superior to the Legislative power of America. The same sense of decency and self-respect will, I trust, prevent this Senate from claiming a superiority over the judges. Above all, I hope we shall not, by the vote of this day, declare that the Senate is superior to the law. But the honorable gentleman has asked, whether you will submit your acts to the question, the decision, the control of the Judiciary? I answer, by asking the gentleman how he will avoid it? When we have passed a law, how is it to be executed, unless by the aid of that Constitutional organ? Will the gentleman say, that having enacted a statute, we must join the other House, and arming ourselves with clubs and staves, sally forth to the world to compel obedience? He will not. Sir, we must rely on the tribunals for carrying our laws into effect, according to their conception of the true intent and meaning of those laws. We must, therefore, submit to the courts the interpretation of our acts. Yes, spite of your lofty pretensions, we must submit; and the only question that remains is, whether we shall do it reluctantly, and therefore ungracefully, or whether we shall do it frankly, fully, freely, in the manner consistent with our dignity? Yes, sir, we must submit. I have said, and here repeat, that these petitioners can force on a decision. They may take an affidavit, or deliver a person on bail in a feigned action, or in twenty other modes, which the acuteness of professional skill may indicate, they may bring this question before the proper tribunal. What, then, do we ask? We ask that you court an investigation which you cannot decline.

But, says the same honorable member, why apply to the courts at all? Their decision can do you no good. They can give to the petitioners neither duty nor salary. True. But until it be decided that the petitioners hold an office, can we assign duties, or can we provide salaries? It is the same train of argument that my honorable friend from Virginia (Mr. NICHOLAS) has pursued, in advising us, as the shorter course, to move an appropriation for the purpose of paying them. This, says he, would bring the question, whether they are in office, to a short decision. But, sir, this is precisely the question which we cannot rightfully decide, because it depends upon the construction of our own acts. The gentleman must pardon me also for saying, that I have not sufficient confidence in them to warrant such a procedure. If the appropriation were moved, they would rise and tell us we were about to give salary where there was no duty. That we are faithless guardians of the public treasure. That we would squander it to provide for favorites, without reason and almost without pretext. If, to avoid this charge, we attempt to assign duties, we shall be told that we have no right to appoint officers; that this is among the high prerogatives of our First Magistrate; and if, in reply, we assert that these are still officers, it will be claimed, and we shall be told, that such a question is proper for judicial inquiry; that it is one which we are not competent to determine. Will gentlemen say that these suppositions are disingenuous? Let them look at the conduct they have pursued, and which they now pursue. When it was deliberated last session, whether the law creating these judges should be repealed, we held up to them that article of the Constitution which prohibits the Legislature from taking away the office of a judge; and what was the answer? It was this: We do not mean to infringe that article. We do not touch the Constitutional right to office. We mean merely to repeal a law enacted by a preceding Legislature: and now they tell us that this same law has, in effect, taken away those offices, which were not, it seems, to be touched by the law, and which it was acknowledgedly unconstitutional to touch.

But it is asked, again and again, if the court have a right to decide without your interference, why will you interfere? Again and again I answer—because it more comports with our dignity to court than to fly from a decision. It would not, perhaps, have been proper to go out of our way in pursuit of it. Certainly we should never have taken on ourselves to bring the subject before this Senate. But the petitioners, using their right as citizens, have stated to you what they conceive to be a grievance, and ask of you to grant redress. The whole business being thus before you, it is no longer a matter of choice to leave it unnoticed: you may, perhaps you will reject this resolution. But I caution you once more to beware of the conclusion which must be drawn from that conduct. Men used to the possession and exercise of authority, know and acknowledge its just bounds. As they feel no desire to usurp power, so they feel no degradation in submitting to that which others may lawfully exercise. They know that true dignity consists in obedience to the dictates of duty. Not so with men hastily and highly elevated. I am much afraid, sir, that the people of this country will think, believe, and say that, new and raw in the exercise of power, we feel its insolence, and can brook neither restraint nor contradiction.

Mr. JACKSON rose in reply to Mr. MORRIS. He said it was not his intention to intimate that the judges could be compelled to slay innocent children. All that he meant was, that the judges have no power to control the acts and laws of the Legislature. The gentleman from New York had declared that the President would not dare to dismiss officers who might attempt to act contrary to his will. Mr. J. said he believed it would be the duty of the President to dismiss them, and he had no reason to think that he would be afraid to do his duty. As to the intimation that the President had directed him or any other person to express such a sentiment, he would reply that he believed that there had been no such thing as a Presidential caucus under the present Administration. For one, he could say that the President had never consulted him, and he believed the same was true of others.

The gentleman is mistaken, said Mr. J., when he supposes that I think that the ladies are in danger. I have no fear about the ladies. I only made that remark, as the gentleman appears to be very fond of common law, just to let him see what that blessed common law was. I am not a lady's man, sir, and I believe I make as few speeches for the purpose of being heard by the ladies, as any man in this House. Indeed, I don't know but the speech I made to-day was the first I ever made for the ladies in my life, if that was one.

The question on agreeing to the resolution was now taken, and determined in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Dayton, Dwight Foster, Hillhouse, Howard, J. Mason, Morris, Ogden, Olcott, Plumer, Ross, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, Nicholas, Stone, Sumter, and Wright.

Ordered, That the memorialists have leave to withdraw their memorial.

FRIDAY, February 4.

Mr. BRADLEY, from the committee to whom was referred the bill, entitled "An act for the relief of Henry Messonnier," reported it without amendment.

Ordered, That this bill pass to a third reading.

The bill brought yesterday from the House of Representatives for concurrence, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read.

Ordered, That this bill pass to the second reading.

The Senate resumed the consideration of the bill to provide for the due execution of the laws of the United States within the State of Ohio, and the motion made 31st of January last, for an amendment, having been withdrawn,

Ordered, That this bill pass to a third reading.

On motion, the consideration of the amendments to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," was postponed to Monday next.

Ordered, That Mr. BALDWIN be of the committee on the petition of Stephen Sayre, in place of Mr. TRACY, excused on account of the ill state of his health.

Mr. NICHOLAS, from the committee, reported amendments to the bill, entitled "An act for incorporating an insurance company in the City of Washington;" and the amendments were read and ordered to lie for consideration.

A motion was made that a committee be appointed to examine what amendments, if any, are necessary to be made to the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of the Kentucky river," and that they have leave to report by bill.

And it was agreed that this motion should lie for consideration.

MONDAY, February 7.

The VICE PRESIDENT communicated the report of the Commissioners of the Sinking Fund, stating that the measures which have been authorized by the Board subsequent to their report of the 16th of December, 1801, as far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the third day of the present month, and in the proceedings of the officers of the Treasury therein referred to, which are herewith referred to, and prayed to be received as a part of this report; and the communication was read.

Ordered, That it be printed, together with the documents therein mentioned, for the use of the Senate.

The bill, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read the second time, and referred to Messrs. NICHOLAS, J. MASON, and BRADLEY, to consider and report thereon.

Ordered, That the committee to whom was referred, on the 19th January last, the Message of the President of the United States of that date, together with the account therein referred to, be discharged.

Ordered, That Mr. ROSS be on the committee to whom was referred, on the 25th of January last, so much of the Message of the President of the United States, of the 18th, as relates to the salt springs on the Wabash, in place of Mr. FRANKLIN, absent by permission.

The bill, entitled "An act for the relief of Henry Messonnier," was read the third time and passed.

The bill, entitled "An act authorizing the sale of a piece of land, parcel of the navy yard, belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem Turnpike Road and Chelsea Bridge Corporation," was read the third time and passed.

The bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth," was read the third time.

Resolved, That this bill pass with amendments.

The bill to provide for the execution of the laws of the United States within the State of Ohio, was read the third time, and passed.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia;" and after progress.

Ordered, That they be recommitted to the original committee, further to consider and report thereon.

On motion, it was agreed that the consideration of the amendments of the committee to the bill, entitled, "An act for incorporating an insurance company in the City of Washington," should be postponed.

Mr. BRECKENRIDGE presented the petition of Robert Ross and others, inhabitants of the county of Fairfield, in the State of Ohio, purchasers of certain lands of the United States, praying remission of the interest on the purchase-money, or such other relief as Congress may deem just and equitable; and the petition was read.

Ordered, That it be referred to Messrs. BRECKENRIDGE, ROSS, and BRADLEY, to consider and report thereon.

TUESDAY, February 8.

Mr. TRACY, from the committee to whom was referred, on the 25th of January last, the bill, entitled "An act for the relief of Hugh Alexander and others," reported it without amendment; and it was agreed that this bill should lie for consideration until to-morrow.

The Senate resumed the consideration of the amendments reported by the committee to the bill, entitled "An act for incorporating an insurance company in the city of Washington;" and having adopted them in part, and agreed further to amend the bill, on the question, Shall this bill pass to the third reading as amended, it was determined in the negative. So the bill was lost.

The Senate took into consideration the motion made on the 4th instant—

"That a committee be appointed to examine what amendments, if any, are necessary to be made to the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river;"

And the motion having been amended was agreed to, as follows:

Resolved, That a committee be appointed to examine what amendments, if any, are necessary to be made to the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river," and that they do also examine into the expediency of opening a land office in the Indiana Territory during the present session; and that they have leave to report by bill or bills.

Ordered, That Messrs. BRECKENRIDGE, ROSS, and TRACY, be the committee.

WEDNESDAY, February 9.

On motion, by one of the majority, to reconsider the vote passed yesterday on the bill, entitled "An act for incorporating an insurance company in the City of Washington;" it was agreed that the motion should lie for consideration.

Mr. WRIGHT, from the committee to whom was

recommitted, on the 7th instant, the amendments to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," reported further amendments; which were read.

Ordered, That they lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide for the granting of clearances to ships or vessels of the United States lying in the river Mississippi south of the southern boundary of the United States, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage, and for other purposes;" in which they desire the concurrence of the Senate.

The bill last brought up from the House of Representatives for concurrence was read, and, by unanimous consent, the rule was dispensed with, and the bill was read the second time.

Ordered, That it be referred to Messrs. DAYTON, BRECKENRIDGE, and ANDERSON, to consider and report thereon.

THURSDAY, February 10.

Mr. TRACY presented the petition of Henry Glen, stating that he had rendered important public services during the Revolutionary war, personally, and by others under his direction, for which both he and they remain unpaid, and praying compensation; and the petition was read, and ordered to lie on the table.

Mr. NICHOLAS, from the committee instructed to that purpose, on the 27th January last, reported a bill to revive an act, entitled "An act for establishing trading-houses with the Indian tribes," and the bill was read, and ordered to the second reading.

FRIDAY, February 11.

Mr. DAYTON, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act to provide for the granting clearances to ships or vessels of the United States lying in the river Mississippi south of the southern boundary of the United States, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage, and for other purposes," reported amendments; which were read, and agreed to.

Ordered, That this bill pass to the third reading as amended.

The bill to revive an act, entitled "An act for establishing trading-houses with the Indian tribes," was read the second time, and ordered to the third reading.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Hugh Alexander and others;" and, on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide an additional armament for the protection of the seamen and commerce of the United States;" and a bill, entitled "An act for the relief of Moses White;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The Senate resumed the amendments, reported by the committee, to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia;" and, having in part adopted them, on motion further to amend the bill,

Ordered, That it be recommitted to Messrs. BRECKENRIDGE, ROSS, and WRIGHT, further to consider and report thereon.

On motion, it was

Ordered, That the petition of John C. Symmes, together with the report of the Attorney General, of the 28th of January last, made thereon, be referred to Messrs. BRADLEY, BALDWIN, and TRACY, to consider and report thereon to the Senate.

Mr. BRECKENRIDGE notified the Senate that he would, on Monday next, ask leave to bring in a bill to alter the time of holding the court of the United States for the Kentucky district.

On motion, it was agreed that the motion made on the 9th instant, for the reconsideration of the vote on the third reading of the bill, entitled "An act for incorporating an insurance company in the City of Washington," be the order of the day for Tuesday next.

MONDAY, February 14.

Mr. LOGAN presented the petition of Paul Coulon, praying indemnification for loss sustained by the detention of the prize ship Betty Cathcart, of which he was owner, in the port of Wilmington, North Carolina; and the petition was read, and ordered to lie on the table.

The bill, entitled "An act for the relief of Moses White," was read the second time, and referred to Messrs. TRACY, BALDWIN, and BRADLEY, to consider and report thereon.

The bill, entitled "An act to provide an additional armament for the protection of the seamen and commerce of the United States," was read the second time, and referred to Messrs. CLINTON, ANDERSON, and JACKSON, to consider and report thereon.

The bill, entitled "An act to provide for granting clearances to the ships or vessels of the United States lying in the river Mississippi, south of the southern boundary of the United States, and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage, and for other purposes," was read the third time, and passed with amendments.

On motion, it was agreed that the third reading of the bill to revive an act, entitled "An act for establishing trading-houses with the Indian tribes," should be postponed until to-morrow.

Agreeably to notice given on the 11th instant, Mr. BRECKENRIDGE had leave to bring in a bill to alter the time of holding the court of the United States for the Kentucky district; which was read, and ordered to the second reading.

A message from the House of Representatives

informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act providing passports for the ships and vessels of the United States;" in which they desire the concurrence of the Senate.

Mr. JACKSON, from the committee to whom was referred, on the 2d instant, the bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States," reported amendments; which were read.

Ordered, That they lie for consideration.

A Message was received from the President of the United States, by Mr. Lewis, his Secretary.

THE MISSISSIPPI QUESTION.

After the Senate had finished its deliberations upon the Legislative business before it—

Mr. ROSS rose and said, that although he came from a part of the country where the late events upon the Mississippi had excited great alarm and solicitude, he had hitherto forborne the expression of his sentiments, or to bring forward any measure relative to the unjustifiable, oppressive conduct of the officers of the Spanish Government at New Orleans. He had waited thus long in the hope that some person, more likely than himself to conciliate and unite the opinions of a majority of the Senate, would have offered efficacious measures for their consideration; but, seeing the session now drawing to a close, without any such proposition, he could not reconcile a longer silence either to his own sense of propriety or to the duty he owed to his constituents. He would not consent to go home without making one effort, however feeble or unsuccessful, to avert the calamity which threatened the Western country. Present appearances, he confessed, but little justified the hope that anything he might propose would be adopted, yet it would at least afford him some consolation, hereafter, that he had done his duty, when the storm was approaching, by warning those who had power in their hands of the means which ought to be employed to resist it.

He was fully aware that the Executive of the United States had acted; that he had sent an Envoy Extraordinary to Europe. This was the peculiar province, and, perhaps, the duty of the President. He would not say that it was unwise in this state of our affairs to prepare for remonstrance and negotiation, much less was he then about to propose any measure that would thwart negotiation, or embarrass the President. On the other hand, he was convinced that more than negotiation was absolutely necessary, that more power and more means ought to be given to the President, in order to render his negotiations efficacious. Could the President proceed further, even if he thought more vigorous measures proper and expedient? Was it in his power to repel and punish the indignity put upon the nation? Could he use the public force to redress our wrongs? Certainly not. This must be the act of Congress. They are now to judge of ulterior measures; they must give the power, and vote the means to vindicate, in a becoming manner, the wounded honor and the best interests of the country.

Mr. R. said, he held in his hands certain resolutions for that purpose, and, before he offered them to the Senate, he would fully explain his reasons for bringing them forward and pressing them with earnestness, as the best system the United States could now pursue.

It was certainly unnecessary to waste the time of that body in stating that we had a solemn explicit treaty with Spain; that this treaty had been wantonly and unprovokedly violated, not only in what related to the Mississippi, but by the most flagrant, destructive spoliations of our commerce, on every part of the ocean, where Spanish armed vessels met the American flag. These spoliations were of immense magnitude, and demanded the most serious notice of our Government. They had been followed by an indignity and a direct infraction of our treaty relative to the Mississippi, which bore an aspect not to be dissembled or mistaken.

To the free navigation of that river we had an undoubted right from nature, and from the position of our Western country. This right, and the right of deposit in the island of New Orleans, had been solemnly acknowledged and fixed by treaty in 1795. That treaty had been in actual operation and execution for many years; and now, without any pretence of abuse or violation on our part, the officers of the Spanish Government deny the right, refuse the place of deposit, and add the most offensive of all insults, by forbidding us from landing on any part of their territory, and shutting us out as a common nuisance.

By whom has this outrage been offered? By those who have constantly acknowledged our right, and now tell us that they are no longer owners of the country! They have given it away, and, because they have no longer a right themselves, therefore, they turn us out, who have an undoubted right! Such an insult, such unprovoked malignity of conduct, no nation but this would affect to mistake. And yet we not only hesitate as to the course which interest and honor call us to pursue, but we bear it with patience, tameness, and apparent unconcern.

Sir, said Mr. R., whom does this infraction of the treaty and the natural rights of this country most intimately affect? If the wound inflicted on national honor be not sensibly felt by the whole nation, is there not a large portion of your citizens exposed to immediate ruin by a continuance of this state of things? The calamity lights upon all those who live upon the Western waters. More than half a million of your citizens are by this cut off from a market. What would be the language, what would be the feelings of gentlemen in this House, were such an indignity offered on the Atlantic coast? What would they say if the Chesapeake, the Delaware, or the bay of New York were shut up, and all egress prohibited by a foreign Power? And yet none of these waters embrace the interests of so many as the Mississippi. The numbers and the property affected by shutting this river, is greater than anything that could follow by the blockade of a river

on the Atlantic coast. Every part of the Union was equally entitled to protection, and no good reason could be offered why one part should be less attended to than another.

In the last year, goods to more than the value of two millions of dollars had been carried into the Western country. These goods were purchased on credit. The consumption of that merchandise afforded a revenue to our Treasury of more than three hundred thousand dollars. The sale of Western public lands was counted upon as producing half a million of dollars annually. Large arrearages of internal taxes were due from that country. The people had just emerged from an Indian war. They had overcome the most frightful obstructions which ever presented themselves in the settlement of a new country, and, although yet in their infancy, we might promise ourselves an honorable and a vigorous manhood, if they were protected, as we had led them to expect; after a little while their strength and faculty of self-preservation would be complete. Certainly they yet needed the kind, fostering hand of their parent States. But if that be now withdrawn, where is the revenue on which to calculate? How can they pay for your lands? How can they discharge the arrearages of taxes? How can they pay your merchants in Baltimore or Philadelphia? They cannot go to market. They have no resources but the produce of their farms. You suffer the Spaniards to lock them up. You tell them that their crops may, nay, must rot on their hands, and yet they must pay their debts and taxes. Is this justice? Will it be submitted to? These men bought your lands in confidence that the Spanish Treaty would be maintained—all sales since the date of the treaty—now you suffer wanton violation of it without making an effort to remove the obstruction, and yet tell them they must pay you! This cannot be expected. It would not be the rule between honorable individuals, for the seller of an estate suffering an eviction of the purchaser, when he might and could prevent it, would not be permitted to recover the purchase money.

If it comports with your calculation of interest or convenience to submit tamely to this outrage, and to witness the ruin of one part of your country for the sake of peace in the residue, surely your ideas of peace will compel you to absolve the Western people from all obligation to repay what it would ruin them to advance. Will you prosecute them in your courts? Will you sell their little all by your public officers? Will you not be content with the loss of all the lively hopes that they had entertained of gaining a new fortune, and another name in the wild but auspicious new countries of the West? Is it not enough that their day is darkening and closing at noon? Surely it cannot be thought reasonable to exact an impossibility. It is undeniable that, in their ruin, many of your merchants on the Atlantic coast will be inevitably involved. Great as this evil may be, (and certainly it is of immense magnitude,) yet the loss of the affections of a people, the destruction of an enterprise of hope, and of industry, through all the Western world, is infinitely greater.

It may be said that this is an overcharged description of the evil side of our affairs, without offering any remedy. Mr. R. said, that was far from his intention, and he would now examine that subject, because to his mind the remedy was obvious.

The experience of all time has proved that with nations, as well as with individuals, submission to aggression and insult, uniformly invites a repetition and aggravation of the mischief. To repel at the onset is more easy, as well as more honorable to the injured party.

Fortunately for this country, there could be no doubt in the present case; our national right had been acknowledged, and solemnly secured by treaty. The treaty had been long in a state of execution. It was violated and denied without provocation or apology. The treaty then was no security. This evident right was one, the security of which ought not to be precarious: it was indispensable that the enjoyment of it should be placed beyond all doubt. He declared it therefore to be his firm and mature opinion, that so important a right would never be secure, while the mouth of the Mississippi was exclusively in the hands of the Spaniards. Caprice and enmity occasion constant interruption. From the very position of our country, from its geographical shape, from motives of complete independence, the command of the navigation of the river ought to be in our hands.

We are now wantonly provoked to take it. Hostility in its most offensive shape has been offered by those who disclaim all right to the soil and the sovereignty of that country—an hostility fatal to the happiness of the Western world. Why not seize then what is so essential to us as a nation? Why not expel the wrongdoers? Wrongdoers by their own confession, to whom by a seizure we are doing no injury. Paper contracts, or treaties, have proved too feeble. Plant yourselves on the river, fortify the banks, invite those who have an interest at stake to defend it; do justice to yourselves when your adversaries deny it; and leave the event to Him who controls the fate of nations.

Why submit to a tardy, uncertain negotiation, as the only means of regaining what you have lost: a negotiation with those who have wronged you; with those who declare they have no right, at the moment they deprive you of yours? When in possession, you will negotiate with more advantage. You will then be in the condition to keep others out. You will be in the actual exercise of jurisdiction over all your claims; your people will have the benefits of a lawful commerce. When your determination is known, you will make an easy and an honorable accommodation with any other claimant. The present possessors have no pretence to complain, for they have no right to the country by their own confession. The Western people will discover that you are making every effort they could desire for their protection. They will ardently support you in the contest, if a contest becomes necessary. Their all will be at stake, and neither their zeal nor their courage need be doubted.

Look at the memorial from the Legislature of the Mississippi Territory, now on your table: that speaks a language and displays a spirit not to be mistaken. Their lives and fortunes are pledged to support you. The same may with equal truth be asserted of Kentucky, Tennessee, and the western people of Virginia and Pennsylvania. Is this a spirit to be repressed or put asleep by negotiation? If you suffer it to be extinguished, can you recall it in the hour of distress, when you want it?

After negotiation shall have failed, after a powerful, ambitious nation shall have taken possession of the key of your western country, and fortified it; after the garrisons are filled by the veterans who have conquered the East, will you have it in your power to awake the generous spirit of that country and dispossess them? No; their confidence in such rulers will be gone; they will be disheartened, divided, and will place no further dependence upon you. They must abandon those who lost the precious moment of seizing, and forever securing their sole hope of subsistence and prosperity; they must then, from necessity, make the best bargain they can with the conquerer.

It may be added, that the possession of the country on the east bank of the Mississippi will give compactness and irresistible strength to the United States; and in all future European wars, we shall be more courted and respected, than we can ever hope to be without it; on that score, therefore, security will be increased by this measure.

Suppose that this course be not now pursued. Let me warn gentlemen how they trifle with the feelings, the hopes and the fears of such a body of men, who inhabit the western waters. Let every honorable man put the question to himself; how would half a million round him be affected by such a calamity, and no prompt measures taken by the Government to redress it? These men have arms in their hands; the same arms with which they proved victorious over their savage neighbors. They have a daring spirit; they have ample means of subsistence; and they have men disposed to lead them on to revenge their wrongs. Are you certain that they will wait the end of negotiation? When they hear that nothing has been done for their immediate relief, they will probably take their resolution and act. Indeed, from all we have heard, there is great reason to believe that they will, or that they may have already taken that resolution.

They know the nature of the obstruction, they know the weakness of the country; they are sure of present success, and they have a bold river to bear them forward to the place of action. They only want a leader to conduct them, and it would be strange, if with such means and such a spirit, a leader should not soon present himself.

Suppose they do go, and do chase away the present oppressors, and that in the end they are overpowered and defeated by a stronger foe than the present feeble possessors. They will never return to you, for you cannot protect them. They will make the best compromise they can with the Power commanding the mouth of the river, who, in effect, has thereby the command of their fortunes. Will such a bargain be of light or trivial moment to the Atlantic States. Bonaparte will then say to you, my French West India colonies, and those of my allies, can be supplied from my colony of Louisiana, with flour, pork, beef, lumber, and any other necessary. These articles can be carried by my own ships, navigated by my own sailors. If you, on the Atlantic coast, wish to trade with my colonies in those articles, you must pay fifteen or twenty per cent. of an impost. We want no further supplies from you, and revenue to France must be the condition of all future intercourse. What will you say to this? It will be vain to address your Western brethren, and complain your commerce is ruined, your revenue dwindles, and your condition is desperate. They will reply that you came not to their assistance in the only moment you could have saved them; that you balanced between national honor and sordid interest, and suffered them to be borne down and subdued, at a time when for a trifle you could have secured the Mississippi; that now their interest must be consulted, and it forbade any assistance to you, when following in the same train of ruin which overwhelmed them. If the evil does not immediately proceed the full length of disunion, yet the strength, the unity of exertion, the union of interest will be gone. We are no longer one people, and representatives from that part of the country in our public councils, will partake of the spirit and breathe the sentiments of a distinct nation; they will rob you of your public lands; they will not submit to taxes; they will form a girdle round the Southern States, which may be denominated a foreign yoke, and render the situation of that country very precarious as to its peace and past connexions. Indeed, every aspect of such a state of things is gloomy and alarming to men who take the trouble of reflecting upon it.

But, sir, said Mr. R., I have heard it suggested that another mode has been contemplated for getting rid of this crisis in our affairs. If we remain perfectly quiet and passive, show no symptoms of uneasiness or discontent; if we give no offence to the new and probable masters of the Mississippi; may be they will sell! To me it is utterly incredible that such an effect would flow from such a conduct. They might possibly sell if they found us armed—in possession, and resolved to maintain it. They would see that even conquest would be a hard bargain, of so distant a country; our possession would be evidence of a fixed resolution. But when we have no army, no military preparation, no semblance of resistance, what would induce them to sell? Sell, sir! for how much? Why sir, although there is no information before this House, of any terms, yet I have seen it stated in the newspapers, that those who now pretend to claim that country may be persuaded to sell, by giving two million of dollars to certain influential persons about the Court——

Here Mr. WRIGHT, of Maryland, called Mr. Ross to order, and said that he thought it improper to debate upon confidential information which, in his opinion, should be kept secret.*

Mr. R. denied that there was any confidential information in that House.

The VICE PRESIDENT said there was no confidential information before the Senate, that he recollected, and that he perceived nothing improper or out of order in what had been said.

Mr. NICHOLAS said he hoped the galleries would be cleared. It appeared to him that the gentleman was about to discuss points of a confidential nature.

Mr. ROSS hoped not; and would give his reasons.

Mr. NICHOLAS objected, that it would not be in order for the gentleman to give his reasons.

Mr. ROSS.—I will never speak upon this subject, sir, with closed doors. The moment you shut your doors I cease, and when they are opened I will proceed. There is nothing of a secret or confidential nature in what I have to say. Mr. R. concluded by calling for the yeas and nays, upon the question of closing the doors.

Mr. WRIGHT read one of the rules of the Senate, to show that a vote was not necessary for closing the doors.†

Mr. WELLS inquired whether it was in order to interrupt a gentleman while speaking, and to make a motion while he was in possession of the floor.

The VICE PRESIDENT thought that in such a case, where a Senator thought that the subject required secrecy, it might be done. The doors must be closed at the request of any Senator, and afterwards the Senate would determine by vote, whether or not the business should proceed with closed doors. He then ordered the galleries and lobby to be cleared. The doors remained closed for some time, when they were again opened, and the Senate adjourned.

TUESDAY, February 15.

Upon reading the minutes of the preceding day, the following entry was found to have been made by the Secretary:

"Mr. ROSS stated in his place, that he had several resolutions to submit to the consideration of the Senate, on the infraction of the treaty by the Government of Spain, in withholding the right from the citizens of the United States to deposit their produce in the Spanish territories; upon which, while he was proceeding in some introductory observations,—

"On motion made and seconded, the galleries were cleared, and the doors were shut."

The above entry on the minutes, Mr. CLINTON, of New York, moved to strike out, and the motion was carried.

A confidential message was brought from the House of Representatives by Mr. NICHOLSON and Mr. BAYARD, a committee of that House; which was read, as follows:

"*Gentlemen of the Senate:*

"We transmit you a bill, which has passed this House, entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations," and in which we request your concurrence. This bill has been passed by us in order to enable the President of the United States to commence, with more effect, a negotiation with the French and Spanish Governments, relative to the purchase of the island of New Orleans, and the provinces of East and West Florida. The nature and importance of the measures contemplated, have induced us to act upon the subject with closed doors. You will, of consequence, consider this communication as confidential."

The message and two bills accompanying it were read, and ordered to the second reading.

The Message yesterday received from the PRESIDENT OF THE UNITED STATES was read, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

In obedience to the ordinance for the government of the Territories of the United States, requiring that the laws adopted by the Governor and Judges thereof shall be reported to Congress from time to time, I now transmit those which have been adopted in the Indiana Territory, from January, 1801, to February, 1802, as forwarded to the office of the Secretary of State.

FEB. 14, 1803. TH. JEFFERSON.

Ordered, That the Message and laws therein referred to, be committed to Messrs. ANDERSON, BRECKENRIDGE, and CLINTON, to consider and report thereon.

The bill yesterday brought up from the House of Representatives for concurrence, entitled "An act supplementary to the act, entitled 'An act providing passports for the ships and vessels of the United States,'" was read, and ordered to the second reading.

Agreeably to the order of the day, the Senate resumed the motion for the reconsideration of the vote on the passage of the bill, entitled "An act for incorporating an insurance company in the City of Washington;" and on the question, Will the Senate agree to the reconsideration? it passed in the affirmative; and it was agreed that the consideration of this bill, as in its second reading, should be the order of the day for Friday next.

On motion made and seconded, the galleries were cleared, and the doors of the Senate Chamber closed.

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* Resolution of Senate, 22d of December, 1800.—*Resolved*, That all confidential communications made by the President of the United States to the Senate, shall be, by the members thereof, kept inviolably secret; and that all treaties, which may hereafter be laid before the Senate, shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.—*Journals of Senate*, 1800—*Jefferson's Manual, section* 52.

† Of right the House ought not to be shut, but to be kept by porters or sergeants-at-arms, assigned for that purpose.—*Mod. Ten. Parl.*

By the rules of the Senate, on motion made and seconded to shut the doors of the Senate on the discussion of any business, which may, in the opinion of the member require secrecy, the President shall direct the gallery to be cleared, and during the discussion of such motion the doors shall remain shut.—*Rule* 28—*Jefferson's Manual, section* 18.

Ordered, That the message and bills just received from the House of Representatives be considered as confidential, and that secrecy be observed by the members and officers of the Senate.

The bill to alter the time of holding the court of the United States for the Kentucky district was read the second time, and referred to Messrs. T. FOSTER, BRECKENRIDGE, and ELLERY, to consider and report thereon.

WEDNESDAY, February 16.

The bill, entitled "An act supplementary to the act, entitled 'An act providing passports for the ships and vessels of the United States,'" was read the second time, and referred to Messrs. T. FOSTER, CLINTON, and STONE, to consider and report thereon.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States,'" and, having agreed thereto,

Ordered, That the bill pass to the third reading as amended.

The bill to revive an act, entitled "An act for establishing trading-houses with the Indian tribes," was read the third time and amended; and it was agreed that the further consideration thereof should be postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," and a bill, entitled "An act in addition to an act, entitled 'An act more effectually to provide for the national defence by establishing an uniform militia throughout the United States,'" in which bills they desire the concurrence of the Senate.

The bills last mentioned were read, and ordered to the second reading.

Mr. NICHOLAS, from the committee to whom was referred, on the 7th instant, the bill, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," reported amendments, which were read, and agreed to; and

Ordered, That the bill pass to the third reading as amended.

The confidential bills brought yesterday from the House of Representatives were severally read the second time, and referred to Messrs. BRADLEY, BRECKENRIDGE, BALDWIN, NICHOLAS, and STONE to consider and report thereon.

Mr. BRECKENRIDGE, from the committee to whom was recommitted, on the 11th instant, the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," reported further amendments; which were read, and it was agreed that this bill should be the order of the day for Wednesday next.

MISSISSIPPI QUESTION.

Mr. Ross rose and said, that two days ago he had the honor of stating some of his opinions to the Senate, respecting the alarming condition of our affairs upon the Mississippi; that in a very interesting part of his inquiry he had been called to order; that the Vice President had expressly determined him to have been in order, and also declared that there was no confidential information before the Senate relating to the late aggressions upon our rights in Mississippi: yet, notwithstanding this declaration of the Vice President, as explicit as it was correct, Mr. R. said, the doors were actually closed and all further public discussions at that time prohibited. Yesterday the doors were again closed. He said it would be well recollected, that when this extraordinary measure was resorted to, he had given notice that he would not proceed further in the discussion, while the doors were shut, and that he would resume it whenever they should be opened. From that time to the present he had remained silent, but now, when a majority of the Senate had resolved that this discussion should be public, he would proceed to finish the remarks he had intended to make, and then offer his resolutions. He could not, however, avoid expressing his acknowledgments to the majority of that body, who had decided that this debate should be public, for although some gentlemen might be desirous to stifle, and smother in secrecy, an inquiry like the present, he firmly believed that there would always be firmness and independence enough in that House to meet in public the investigation of every subject proper for public deliberation.

Mr. R. said he would not return to a repetition of what he had formerly stated, it would be sufficient to mention, that he had urged the importance of our rights in the navigation of the Mississippi, founded in nature, and acknowledged by compact. This was the great and only highway of commerce from the western country to the ocean. That the Spaniards after a long execution of this treaty, have now flagrantly violated it, and shut us out from all intercourse, and from the right of deposit: that they have plundered our citizens upon the ocean; carried our vessels into their ports, and condemned them without the semblance of a trial. Our seamen have been cast into prison, and our merchants ruined. Thus assailed upon the ocean, and upon the land, by a long course of oppression and hostility, without provocation and without apology, he knew but one course we could take which promised complete redress of our wrongs. Experience had proved the compact was no security; the Spaniards either cannot or will not observe their treaty. If they are under the direction of a stronger Power, who will not permit them to adhere to their stipulations, or if they of their own accord inflict these indignities under a belief that we dare not resent them, it was equally incumbent upon us to act without farther delay. The aggressors are heaping indignity upon you at your own door, at the very borders of your territory, and tell you, at the same time, they have no right to the country from whence they exclude you.

If they act thus without right, why not enforce yours by taking possession? Will you submit to

be taken by the neck and kicked out without a struggle? Was there not spirit enough in the country to repel and punish such unheard-of insolence? Is not the magnitude of the interest at stake, such as to warrant the most vigorous and decisive course which can express public indignation? Go then, take the guardianship of your rights upon yourselves, trust it no longer to those who have so grossly abused the power they have had over it; reinstate yourselves in the possession of that which has been wrested from you and withheld by faithless men, who confess themselves no longer the owners of the country over which they are exercising these acts of injustice and outrage. Negotiation may, perhaps, be wise, but this is the effectual measure to support it; when it is seen that you have determined to support your just demands with force, that you have already taken into your hands an ample pledge for future security and good behaviour, your Ambassador will be respected and attended to. But what weight will his remonstrances have in any country of Europe, when they hear of no military preparations to vindicate your pretensions; when they learn that you have been chased out of a possession confessedly your right; that you have been insultingly told, Begone, you shall not buy, you shall not sell, you are such a nuisance we will have no intercourse with you!

Where is the nation, ancient or modern, that has borne such treatment without resentment or resistance? Where is the nation that will respect another that is passive under such humiliating degradation and disgrace? Your outlet to market closed, next they will trample you under foot upon your own territory which borders upon theirs! Yet you will not stir, you will not arm a single man; you will negotiate! Negotiation alone, under such circumstances, must be hopeless. No. Go forward, remove the aggressors, clear away the obstructions, restore your possession with your own hand, and use your sword if resistance be offered. Call upon those who are most injured, to redress themselves; you have only to give the call, you have men enough near to the scene, without sending a man from this side the mountains; force sufficient, and more than sufficient, for a prompt execution of your orders. If money be an object, one half of the money which would be consumed and lost by delay and negotiation, would put you in possession; then you may negotiate whether you shall abandon it and go out again.

You may also then negotiate as to compensation for the spoliations upon your trade. You will have ample funds in your own hands to pay your merchants, if the Spaniards continue their refusals to pay. You will have lands to give, which they will readily accept and assist in defending. In this way they may all be indemnified; by negotiation there is little hope that they ever will.

It may be said that the Executive is pursuing another and very different course. The Executive will certainly pursue the course designated by the Legislature. To the Congress has been confided the power of deciding what shall be done in all cases of hostility by foreign Powers. There can be no doubt that, by the law of nature and nations, we are clearly authorized to employ force for our redress in such a case as this; that we have a just right to take such measures as will prevent a repetition of the mischief, and afford ample security for the future quiet enjoyment of the violated right. If we leave it entirely to the Executive, he can only employ negotiation, as being the sole means in his power. If the right be not abandoned what is to be done? I know, said Mr. R., that some gentlemen think there is a mode of accomplishing our object, of which, by a most extraordinary proceeding, I am forbidden to speak on this occasion; I will not, therefore, touch it. But I will ask honorable gentlemen, especially those from the Western country, what they will say on their return home to a people pressed by the heavy hand of this calamity, when they inquire, What has been done? What are our hopes? How long will this obstruction continue? You answer: We have provided a remedy, but it is a secret! We are not allowed to speak of it there, much less here; it was only committed to confidential men in whispers, with closed doors; but, by and by, you will see it operate like enchantment; it is a sovereign balsam which will heal your wounded honor; it is a potent spell, or a kind of patent medicine which will extinguish and forever put at rest the devouring spirit which has desolated so many nations of Europe? You never can know exactly what it is; nor can we tell you precisely the time it will begin to operate; but operate it certainly will, and effectually too! You will see strange things by and by; wait patiently, and place full faith in us, for we cannot be mistaken!

This idle tale may amuse children. But the men of that country will not be satisfied. They will tell you that they expected better things of you, that their confidence has been misplaced, and will not wait the operation of your newly invented drugs; they will go and redress themselves.

I say, also, let us go and redress ourselves; you will have the whole nation with you. On no question since the Declaration of Independence, has the nation been so unanimous as upon this. We have at different times suffered great indignity and outrages from different European Powers; but none so palpable, so inexcusable, so provoking, or of such magnitude in their consequences, as this. Upon none has public opinion united so generally as this. It is true we have a lamentable division of political opinion among us, which has produced much mischief, and may produce much greater than any we have yet felt. On this question, party spirit ought to sink and disappear. My opinions are well known, and are not likely to change; but I candidly, and with all possible sincerity, declare my conviction to be clear, that there will not be a dissenting voice in the western country if this course be taken; that so far as my own abilities go, they shall be exerted to the utmost to support it; and I know that my friends on this floor with whom I have long thought and acted, have too high a regard for the

national honor, and the best interests of their country, to hesitate a moment giving the same pledge of their honest determination to support and render these measures effectual, if taken: call them ours, if you please, we take the responsibility, and leave the execution of them with you. For, as to myself or my friends, no agency is wished, except that of uniting with you in rousing the spirit, and calling out the resources of the country, to protect itself against serious aggression, and the total subjection and loss of the western country.

If you pursue this advice, and act promptly and boldly upon it; if you take possession, and prepare to maintain it; from the very unanimity displayed, you will have no war—you will meet with no resistance. Indeed, a war may be said to be already begun, for hostility of the worst kind, on one side, has been long in practice upon us, and our retaliation or resistance will be justified on every principle which has governed the conduct of nations. If the Spaniards resist you in taking possession of what by treaty they have acknowledged to be yours, and what they now confess does not belong to them, the war certainly begins with them. Under all these circumstances, with these offers of support, could gentlemen doubt, could they venture to cry peace, peace, when there was no peace, but a sword!

Mr. R. entreated gentlemen to view and consider his proposed resolutions with candor. He declared his intentions to be solely the attainment of an object, the loss of which would destroy the country where he resided, and hazard the Union itself. If gentlemen thought the proposed means inadequate, he would agree to enlarge them with cheerfulness; all that he wished was that effectual means be voted and employed in this golden moment, which, if lost, never would return.

He said he would delay the Senate no longer than to present his resolutions, and give notice that he would move to have them printed, and made the order of the day for some future day; for, as gentlemen had consented that this business should be no longer a secret, they would now become the subject of ample and able discussion.

Mr. R. then read his resolutions, which are as follows:

"*Resolved*, That the United States have an indisputable right to the free navigation of the river Mississippi, and to a convenient place of deposit for their produce and merchandise in the island of New Orleans.

"That the late infraction of such, their unquestionable right, is an aggression hostile to their honor and interest.

"That it does not consist with the dignity or safety of this Union to hold a right so important by a tenure so uncertain.

"That it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength, and prosperity of these States, that they obtain complete security for the full and peaceable enjoyment of such their absolute right.

"That the President be authorized to take immediate possession of such place or places, in the said island, or the adjacent territories, as he may deem fit and convenient for the purposes aforesaid; and to adopt such other measures for obtaining that complete security as to him in his wisdom shall seem meet.

"That he be authorized to call into actual service any number of the militia of the States of South Carolina, Georgia, Ohio, Kentucky, Tennessee, or of the Mississippi Territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the military and naval forces of the Union, for effecting the objects above mentioned.

"That the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions, and that the whole or any part of that sum be paid or applied, on warrants drawn in pursuance of such directions as the President may, from time to time, think proper to give to the Secretary of the Treasury."

After reading the resolutions, Mr. ROSS said, I will now move these resolutions, and if gentlemen on the other side shall be disposed to give to the President greater power, I will cheerfully join them in extending it as far as they may think necessary to the accomplishment of the object.

Mr. WELLS rose and seconded the motion.

Mr. ROSS moved that the consideration of the resolutions be the order of the day for Monday.

Mr. NICHOLAS rose and said he wished to make one or two observations in reply to ——

The VICE PRESIDENT interrupted him, and said if those observations were intended to apply to the question whether the resolutions should be the order for Monday, they would be proper, otherwise they would not be in order.

Mr. NICHOLAS said he did not wish to go into any discussion of the merits of the resolutions. He merely wished to remark, that the course pursued by the gentleman on this occasion was altogether new and extraordinary. I presume, said he, that the gentleman expects to derive some advantage from the adoption of this course. If so, he is quite welcome to any advantage which he can gain. I believe that the American people are too enlightened and too well informed to be deceived by anything that has been said, or by the novel course which has been pursued. It is usual when any business of such importance is about to be introduced, to give some previous notice, in order that gentlemen may be prepared to discuss the subject. Why the gentleman has thought proper to depart from it in the present instance I cannot pretend to say. However, all that I think important to say at present is in reply to the assertion, that we are not informed of the intention of ——

The VICE PRESIDENT again interrupted him, and said that the question before the Senate was, whether the resolution should be the order for Monday. Upon that question, no remarks in reply to the gentleman from Pennsylvania could be admitted. If gentlemen were disposed to discuss the resolution, or to reply to any arguments which had been advanced by the mover, the regular method would be to negative the motion, and then the whole subject would again be open.

Mr. ROSS said he did not wish to preclude any observations which any gentleman might be disposed to make; and if the gentleman from Virginia wished to reply to anything which he had said, he would withdraw the motion, and give him an opportunity.

Mr. NICHOLAS said he had no wish upon the subject, and would say nothing more.

Mr. WRIGHT said, he hoped it would not be the order for Monday, and as the gentleman had been indulged with an opportunity of advancing his sentiments at large upon the subject, he presumed it would be in order for him to notice some of the most extraordinary of ——

The VICE PRESIDENT said it would not be in order, unless the present motion was negatived.

The question was then taken, and carried in the affirmative.

ALIENS IN PENNSYLVANIA.

Mr. LOGAN presented to the Senate a memorial from certain aliens of the State of Pennsylvania. He remarked, at the time of presenting it, that it contained some expressions not so respectful and decorous as he could wish, considering the situation of the petitioners. He hoped the Senate would decide for themselves whether it should be received.

Mr. WELLS hoped, that in consequence of what had been stated by the gentleman, and which he considered as very frank and honorable, that the petition would not be received.

Mr. DAYTON said that he could not decide upon the course which had been usual in the Senate upon such occasions, but he knew what was the practice in the other House, and he knew that that practice was Parliamentary, and hoped that it would be adopted on the present occasion. This was, that when anything was offered which was suspected to be improper, the member offering it should read the paper, standing in his place, for the information of the House, and then it should be decided whether it should be received and read from the Clerk's table. He was unwilling to reject the petition without knowing more of it, and therefore hoped that this mode of proceeding would be adopted.

The VICE PRESIDENT stated that it was a rule of the Senate, that whenever a petition or memorial was presented, the member presenting it should state in his place the substance of the address, and that the Senate should then decide whether it should be received. This had been done by the gentleman from Pennsylvania, and the question would now be on receiving the petition.

Mr. CLINTON could see no necessity for this formality. He hoped the petition would be read, and the Senate would then be able to decide whether it contained anything improper.

Mr. JACKSON wished it to be read. He was not afraid of anything contained in the petition. He knew it had been usual to receive the petitions of citizens, and to hear what they had to say. It was not long since the other House had to sit and hear a long memorial from one of the late officers of the Government, (Mr. McHenry,) abusing, in the most pointed terms, a number of the members of that House.

Mr. WRIGHT thought it not in order to refer to anything which had taken place in the other House, but he knew that the memorial referred to was of a most abusive ——

[The VICE PRESIDENT interrupted him, by reminding him that he was quite correct when he remarked that it was not in order to refer to transactions which had taken place in the other House.]

Mr. MORRIS expressed his satisfaction at having an opportunity to express his sentiments upon the subject. He had not seen the petition, though he understood it had been published in the newspapers. But he would embrace the opportunity, as he had but a few days to remain in the Senate, and that in a minority, of cautioning gentlemen to beware of suffering improper and indecent representations to be made to them. He thought the suggestion of the gentleman from New Jersey, (Mr. DAYTON) to be quite correct, and as the gentleman from Pennsylvania had intimated that the address was wanting in decorum he hoped that mode would be adopted. If the example were set of receiving papers without investigating their contents, the Senate would be exposed to be pelted by every person who can write. He concluded by begging gentlemen to take proper care, in season, to put a shield before their own dignity.

Mr. LOGAN said, if there had been anything in the paper insulting to the Senate, he should not have presented it. There were some expressions respecting the Government of the country, particularly the last Administration, which he thought not so respectful as they ought to be. They were, however, far less indecent than what appeared every day in the public prints against every department of the Government. If we do not respect ourselves so much as to prevent these things in our own citizens, he did not see how it could be expected that foreigners would respect us.

The VICE PRESIDENT said that he knew of but one course to be pursued in cases of the kind, and that was the course prescribed by the rule, which was, that the substance of the petition should be stated by the Senator presenting it. If this statement were not sufficiently full, he might be called upon to explain further.

Mr. DAYTON said, if he had not a right to call up the gentleman to read it in his place, he would withdraw his opposition, and take it upon the word of the gentleman who offered it, in whom he had the most implicit confidence. He had before understood that the petition was indecent. It was now stated to be merely not sufficiently respectful.

Mr. MORRIS said the subject now appeared with a very different aspect. He had no objection to the reading.

Mr. NICHOLAS knew that it was the custom in the other House, in cases like the present, for the member offering the petition to read it in his place. He wished it had been the custom in the Senate. By what had been said by the gentleman from Pennsylvania, there must be something in the memorial not altogether proper. When a

gentleman would rise in his place, and frankly state that he had a petition containing indecent expressions, he then divested himself of all responsibility. If the Senate receive the petition they receive it at their own risk. For this reason he was not willing that this petition should be received and read without knowing something more of the contents.

Mr. ANDERSON wished the gentleman would read that part which he deemed exceptionable.

Mr. JACKSON said that would be receiving all the bad and rejecting the good.

Mr. WHITE wished that at least the exceptionable part might be explicitly stated, otherwise he could not determine in what manner to give his vote.

Mr. HILLHOUSE thought that no person was bound to receive insulting communications. Either an individual, a family, or a Legislative body, has a right to refuse to receive a letter or message couched in indecent terms. He would be glad to know, if he could come at the information, how far the present petition was of that description. If the language was indecent, he would not receive it, let there be ever so much good in the memorial. There would be no hardship to the petitioners, as they could take it back and couch it in proper terms, and then it would be received.

Mr. JACKSON did not know what right the gentleman last up had to assume to himself the whole care of the dignity of the Senate. He knew, that as Governor of Georgia, he had been obliged to submit to many insults. He had often received anonymous communications of an insulting kind, and supposed that other men in public stations had experienced the same. He believed it to be a custom daily practised upon, and no man could tell, till he read the communications, whether they were insulting or not. He was not afraid that any slander contained in the memorial would attach to the Senate. He believed it would wash itself off as fast as it could be poured on.

Mr. BALDWIN would rather see the petition in the hands of the gentleman who offered it before acting upon it. He, therefore, moved that the further consideration of the question be postponed until to-morrow, that the Senators might have an opportunity of judging for themselves.

Mr. COCKE.—Mr. President, I am against the postponement, and for this reason, that I am willing to hear the petition, and after hearing it, we can then judge about treating of it as it deserves, and I am against closing our ears against any citizens who have a desire of addressing us.

The question was taken, and the further consideration of the question was postponed until to-morrow.

THURSDAY, February 17.

The VICE PRESIDENT communicated the report of the Commissioners appointed in pursuance of the act, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory," and in obedience to the provisions of the act, supplemental to the last mentioned act, on the claims made by settlers, and other persons, to lands within the territory situate west of the river Chatahoochee, and south of the cession made to the United States by South Carolina; and the report was read.

Ordered, That it lie for consideration.

The bill, entitled, "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the second time, and referred to Messrs. BRADLEY, DAYTON, and SUMTER, to consider and report thereon.

The bill, entitled "An act in addition to an act, entitled 'An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States,'" was read the second time, and referred to Messrs. JACKSON, SUMTER and BRADLEY, to consider and report thereon.

The Senate resumed the third reading of the bill to revive an act entitled "An act for establishing trading-houses with the Indian tribes;" and having further amended the bill,

Resolved, That it pass, that it be engrossed, and that the title thereof be "An act to revive an act entitled 'An act for establishing trading-houses with the Indian tribes.'"

The bill entitled "An act in addition to the act, entitled 'An act fixing the Military Peace Establishment of the United States,' was read the third time.

Resolved, That this bill pass with amendments.

The bill entitled "An act supplementary to the 'Act concerning Consuls and Vice Consuls,' and for the further protection of American seamen," was read the third time.

Resolved, That this bill pass with amendments.

Mr. CLINTON, from the committee to whom was referred, on the 14th instant, the bill entitled "An act to provide an additional armament for the protection of the seamen and commerce of the United States," reported amendments; which being amended, were adopted.

Ordered, That this bill pass to the third reading, as amended.

Mr. BRECKENRIDGE notified the Senate, that he should, to-morrow, ask leave to bring in a bill to amend the act, entitled "An act concerning the District of Columbia;" and also, the act supplementary thereto, entitled "An act concerning the District of Columbia."

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act in addition to the act, entitled 'An act concerning the registering and recording of ships and vessels of the United States,' and to the act, entitled "An act to regulate the collection of duties on imports and tonnage;" a bill, entitled "An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited;" and a bill entitled "An act for the relief of Samuel Corp;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

FRIDAY, February 18.

Mr. TRACY, from the committee to whom was referred, on the 14th instant, the bill entitled "An act for the relief of Moses White," reported it without amendment.

Ordered, That the consideration thereof be postponed until Monday next.

The bill, entitled "An act for the relief of Samuel Corp," was read the second time, and referred to Messrs. WRIGHT, TRACY, and BRADLEY, to consider and report thereon.

The bill, entitled "An act to prevent the importation of certain persons into certain States, where by the laws thereof, their admission is prohibited," was read the second time, and referred to Messrs. STONE, JACKSON, and SUMTER, to consider and report thereon.

The bill, entitled "An act concerning the registering and recording of ships and vesssels of the United States," and to the act entitled 'An act to regulate the collection of duties on imports and tonnage, was read the second time, and referred to Messrs. ELLERY, CLINTON, and J. MASON, to consider and report thereon.

On motion, it was agreed, that the order of the day on the bill, entitled "An act for incorporating an insurance company in the City of Washington," be postponed until Wednesday next.

The bill, entitled "An act to provide an additional armament for the protection of the seamen and commerce of the United States," was read the third time.

Resolved, That this bill pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for continuing in force a law, entitled 'An act for establishing trading-houses with the Indian tribes;" in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

MONDAY, February 21.

The VICE PRESIDENT communicated the credentials of THEODORUS BAILEY, appointed a Senator by the State of New York, to take his seat after the third day of March next; which were read, and ordered to lie on file.

Mr. STONE, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited," reported the bill without amendment.

Ordered, That the committee appointed the 28th of January last, on the petition of Christian Vangundy, be discharged.

Ordered, That the committee to whom was referred on the 27th of December last, the petition of the inhabitants of the Mississippi Territory holding lands under Spanish grants and occupancy, obtained prior to the ratification of the treaty between the United States and Spain, be discharged.

Ordered, That the committee to whom was referred, on the 2d instant, the petition of Stephen Sayre, be discharged.

Mr. BRECKENRIDGE, from the committee appointed on the 8th instant on that subject, reported a bill to amend the acts providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio and above the mouth of Kentucky river, which was read, and ordered to the second reading.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 7th instant, the petition of Robert Ross and others, inhabitants of the county of Fairfield, in the State of Ohio, purchasers of certain lands of the United States, praying remission of the interest on the purchase-money, reported that, in the opinion of the committee, the prayer of the petition ought not to be granted; and the report was adopted.

The bill, entitled "An act for continuing in force a law, entitled 'An act for establishing trading-houses with the Indian tribes,'" was read the second time.

On motion, it was agreed that sundry resolutions on the right of the United States to the free navigation of the Mississippi (the order of this day) should be postponed until Wednesday next.*

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three;" and a bill, entitled "An act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia;" in which bills they desire the concurrence of the Senate.

The two bills were read, and ordered to the second reading.

Agreeably to notice given on the 17th instant, Mr. BRECKENRIDGE had leave to bring in a bill to amend the act, entitled "An act concerning the District of Columbia;" and also the act supplementary thereto, entitled "An act concerning the District of Columbia;" which was read, and ordered to the second reading.

In Executive session, Mr. BRADLEY, from the committee to whom was referred, on the 16th instant, the confidential bills sent up from the House of Representatives, reported that they severally pass without amendment.

The bill, entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations," was resumed.

On motion to amend the bill, and to strike out the words, "of defraying any extraordinary ex-

* The postponement took place in consequence of the indisposition of Mr. S. T. Mason, of Virginia. The preceding part of the debate is from the Washington Federalist. Mr. Ross's speech was furnished by himself.—*Editor*.

penses which may be incurred in the intercourse between the United States and foreign nations," and insert, "of making such payment for the cession of the island of New Orleans, or other territories, to the United States, as may be stipulated by the President of the United States, by treaty with foreign nations claiming the jurisdiction and sovereignty thereof." It passed in the negative—yeas 11, nays 15, as follows:

YEAS—Messrs. Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Plumer, Ross, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

On the question, Shall this bill pass to the third reading? it was determined in the affirmative—yeas 14, nays 11, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Plumer, Ross, Wells, and White.

Ordered, That the confidential bill, entitled "An act for extending the external commerce of the United States," pass to the third reading.

TUESDAY, February 22.

Mr. T. FOSTER, from the committee to whom was referred, on the 15th instant, the bill to alter the time for holding the court of the United States for the Kentucky district, reported an amendment; which was read and adopted.

Ordered, That this bill pass to the third reading as amended.

The bill, entitled "An act making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three," was read the second time, and referred to Messrs. BALDWIN, STONE, and WRIGHT, to consider and report thereon.

The bill, entitled "An act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia," was read the second time.

The bill to amend the act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river, was read the second time.

The Senate resumed the second reading of the bill, entitled "An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited."

Ordered, That it pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act for continuing in force a law, entitled 'An act for establishing trading-houses with the Indian tribes.'"

Ordered, That it pass to the third reading.

Mr. WRIGHT notified the Senate that he would, to-morrow, move for leave to bring in a bill to alter the time for the next meeting of Congress.

A message from the House of Representatives informed the Senate that they have passed a bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and three;" and a bill, entitled "An act in addition to, and in modification of, the propositions contained in the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States;" in which bills they desire the concurrence of the Senate.

The said bills were read, and ordered to the second reading.

The bill to amend the act, entitled "An act concerning the District of Columbia," and also the act supplementary thereto, entitled "An act concerning the District of Columbia," was read the second time.

In Executive session, the bill, entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations," was read the third time.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 14, nays 12, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Sumter, and Wright.

NAYS—Messrs. Dayton, D. Foster, Hillhouse, Howard, J. Mason, Morris, Olcott, Plumer, Ross, Stone, Wells, and White.

So it was *Resolved*, That this bill pass.

The bill, entitled "An act for extending the external commerce of the United States," was read the third time and passed.

Ordered, That Mr. WRIGHT be a committee to carry to the House of Representatives the following message:

Gentlemen of the House of Representatives:

We return you the bill which passed your House, entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations;" and the bill, entitled "An act for extending the external commerce of the United States;" both of which the Senate have passed without amendment.

WEDNESDAY, February 23.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen, and for other purposes," in which they desire the concurrence of the Senate.

A Message was also received from the President of the United States, by Mr. LEWIS his Secretary.

Mr. JACKSON, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act in addition to an act, entitled 'An act more

effectually to provide for the national defence, by establishing an uniform Militia throughout the United States," reported it without amendment.

Mr. T. FOSTER, from the committee to whom was referred, on the 16th instant, the bill, entitled "An act supplementary to the act, entitled 'An act providing passports for the ships and vessels of the United States," reported the same without amendment.

The bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and three," was read the second time, and referred to Messrs. ANDERSON, BALDWIN, and ELLERY, to consider and report thereon.

The bill, entitled "An act in addition to, and in modification of, the propositions contained in the act, entitled 'An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States,' and for other purposes," was read the second time, and referred to Messrs. BRECKENRIDGE, STONE, and BALDWIN, to consider and report thereon.

Agreeably to notice, yesterday given, Mr. WRIGHT had leave to bring in a bill to alter the time for the next meeting of Congress; which was read, and ordered to the second reading.

MISSISSIPPI QUESTION.

Agreeably to the order of the day, the Senate took into consideration the resolutions submitted on the 16th instant, respecting the indisputable right of the United States to the free navigation of the river Mississippi. Whereupon,

The VICE PRESIDENT rose, and stated that he conceived it to be his duty to point out to the Senate a contradiction which appeared in their rules. The Standing Rules of the House declare that, during the debate, "the doors shall be open;" by the 28th rule of the House it is declared that, "on motion made and seconded, the gallery shall be cleared, and the doors remain shut during the discussion." Between these two rules there was an embarrassing contradiction. He did not see the propriety of leaving it in the power of any two members to shut the doors, but as it lay in the discretion of the House to regulate its own proceedings, he would submit it to the House in the form of a specific proposition; and he hoped the House would decide upon it without debate. The following is the proposition:

"If during the debate, or any other time, a motion be made and seconded to shut the doors, should the galleries forthwith be cleared, and the doors shut without debate or question?"

Mr. COCKE said, if he understood the President right, he expected the Senate to decide upon this proposition without debate.

The Vice PRESIDENT replied in the affirmative.

Mr. COCKE said that he would not submit to give his vote, without the expression of his opinion, if he thought it proper, as well as the Vice President.

Mr. NICHOLAS.—The officer, whoever he may be, that is appointed to expound the laws of that House, ought not, he has no right to go into a discussion of the propriety or impropriety of any rules laid down in the Senate—it was not orderly to do so. There can be no question on a rule at this time or in this form, and it amounts to a questioning of a right established, whether any member has, or has not a right to do as is enjoined by the rules. It cannot be denied that any member, on motion made and seconded, may have the galleries cleared and the doors shut, if he thinks the occasion calls for it.

Mr. DAYTON.—Does the gentleman from Virginia mean to say that, that or any other rule can give a member the right of seating me in the midst of a discussion? If I act disorderly, the President has a right to call me to order, and he must decide whether I am in order or not. There is nothing in your rules which gives a member a right to seize upon the floor.

Mr. TRACY was of opinion, that the 28th rule carried the meaning which it expressed; it was clear, that if he had a question to propose which required closed doors, he had a right to call for the doors being shut; but certainly the rule never contemplated that in so doing the floor should be seized upon in the midst of a speech or a debate. By the 16th rule, when a member is called to order, he is obliged to sit down. According to parliamentary proceeding, no one can take possession of the floor to the interruption of another, no one can stop another while he is speaking. If disorderly, the President will call him to order, but if called by a member, the President must decide, and if in order, he must possess the floor. If any other course were pursued, the House would be constantly exposed to interruption by the petulance of any two of its members.

Mr. BALDWIN.—Gentlemen appear to mistake the principle of the rules in question, and the course of proceeding generally appears not to be kept perfectly in sight. Certainly the House subject to interruption by other causes than points of order; an incident occurs almost every day, in which members are obliged to be seated in the midst of debate, such as messages from the Executive, or from the other House. He had always entertained a very different opinion from that expressed by some gentlemen of the 28th rule. It was true it had the aspect of placing the House at the power of an individual. But if gentlemen would recur to the mode of proceeding which existed before, they would find that this was not an improper rule. For some time the proceedings of the Senate were altogether with closed doors, but this was not approved by the public, it was not wholesome, and after mature deliberation, it was determined that the doors should be opened *sub modo*, but that when there should appear to be reasonable occasion for shutting the doors, that it should be effected in the mode pointed out by the 28th rule. For it was considered that the mover and seconder of the motion, being of that body, would be sufficient pledges for a reasonable motive, and the Senate would afterwards have it

in their power to determine upon the propriety of the motion itself, or to remove any injunction of secrecy, if they should think it proper so to do.

Mr. TRACY said, that the case of a message was not analogous, as the member could rise after it, and continue his speech.

Mr. COCKE said, that the rule was certainly the most correct mode of proceeding; for example, if a member attempts to speak with open doors on confidential business, and a member calls him to order, the very calling to order discloses what the confidential business is. Besides, in the other House there is an appeal from the decision of the Chair; here it is arbitrary, and the President may decide as he pleases.

The VICE PRESIDENT had wished for a decision on this subject on various occasions, and looked to the House for it at this time.

Mr. ROSS, in order to close the discussion, would move a rule for the present occasion—and it will put an end to this delay, and not leave the House at the mercy of any two members—it is to this effect: Resolved, that the discussion of this day shall be public.

Mr. COCKE.—The object of gentlemen is plain enough, they wish to impose an opinion upon the public, that we are afraid or ashamed to let what we are doing be known to the people. Gentlemen would find themselves mistaken in their designs. He was always for the open and public discussion of all subjects, and for none more than the subject of the gentleman's resolutions; but he was opposed to the disclosure of anything which might prove injurious to the country, by retarding or throwing difficulties in the way of negotiations set on foot by the Executive. Gentlemen wished to treat the people like little children, to hold out a scarecrow or a bugbear to frighten them. But they would find that the people were not to be driven from their sober senses. He came from a part of the country which was greatly interested in this subject; and he knew the people were not such fools as the gentleman would make them; they will not believe that those who know them, and have taken the most effectual measures to procure safety and security for them, are plotting evil for them.

Mr. WRIGHT would move an amendment to the resolution, (of Mr. ROSS,) that no member, during debate, shall directly or indirectly disclose the secrets of the Senate.

The VICE PRESIDENT wished to have the precise question resolved—whether two gentlemen have a right, at their pleasure, to close the doors of the Senate?

Mr. ANDERSON.—Does the President mean, by again urging this question in this way, to suspend the resolution and the amendment just offered? He hoped not.

The resolution and amendment were then put, and carried in the affirmative.

The VICE PRESIDENT then read Mr. ROSS's original resolutions. (See *ante*, p. 95.) Whereupon,

Mr. WHITE, of Delaware, rose and addressed the Chair as follows: Mr. President, on this subject, which has on a former day been discussed with so much ability, and with so much eloquence, by my friend from Pennsylvania, the honorable mover of the resolutions, I shall submit the few observations that I may make, in as concise a manner as I am capable of; for it is very far from my wish to occupy the time or attention of the Senate unnecessarily. The resolutions on your table I approve of in their full extent; I believe they express the firm and manly tone that at this moment is especially becoming the dignity of the Government to assume; I believe they mark out a system of measures, which, if promptly pursued, will be honorable to the nation, and equal to the accomplishment of the important object which gentlemen on all sides seem to have in view. These alone, with me, would be sufficient inducements to yield them my feeble support; but in addition to these, and to the thorough conviction of my own mind as to the course I ought to pursue, I have the happiness of being supported in my opinions on this subject by the unequivocal expression of the sentiment of the State to which I have the honor to belong.

It was early seen, Mr. President, and required but little penetration to discover, that adventurers emigrating beyond the mountains, and settling on Western waters, must possess the free navigation of the Mississippi, it being their only outlet to the ocean. This important privilege it became necessary on the part of the Government of the United States to secure by treaty, and not leave to the capricious will of whatever nation who might in future hold the territory at the mouth of the river. Accordingly, in the 1th and 23d articles of our Treaty with Spain, I find on this subject the following stipulation:

"ART. 4. It is likewise agreed that the western boundary of the United States, which separates them from the Spanish colony of Louisiana, is in the middle of the channel or bed of the river Mississippi, from the northern boundary of the said States to the completion of the 31st degree of latitude north of the equator. And His Catholic Majesty has likewise agreed that the navigation of the said river, in its whole breadth from its source to the ocean, shall be free only to his subjects and the citizens of the United States, unless he should extend this privilege to the subjects of other Powers by special convention."

"ART. 22. The two high contracting parties, hoping that the good correspondence and friendship which happily reigns between them will be further increased by this treaty, and that it will contribute to augment their prosperity and opulence, will in future give to their mutual commerce all the extension and favor which the advantages of both countries may require.

"And in consequence of the stipulations contained in the 4th article, His Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores; and His Majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interests of Spain, or if he should not agree to continue it there, he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment."

This instrument, Mr. President, it is known, for a time, quieted the fears and jealousies of our Western brethren; they supposed it had removed forever the possibility of any future embarrassment to their commerce on those waters. And after it had been proclaimed as the law of the land—after it had been ratified by both nations, and become obligatory upon the faith and honor of each, who could have thought otherwise? Yet, sir, it has happened otherwise. This place of deposit at New Orleans, secured to our citizens by the article last read, has been recently wrested from their hands by the authority of the Spanish Government, and no other equivalent one assigned, where, after more than two thousand miles of boat navigation, they may disembark their produce in order to be shipped for sea; and without this advantage the navigation of the river is to them but an empty name.

I have said, by the authority of the Spanish Government, it has indeed been given out to the world, for reasons that every man may conjecture, and are unnecessary to be mentioned, that this was not the act of the Government, but the rash measure of a single officer—the Intendant General of the Spanish provinces; that the Spanish Minister had issued orders for the speedy adjustment of these difficulties; had kindly offered to throw himself into the breach to prevent this Intendant General from going to extremities with the Government of the United States. Sir, gentlemen may find, when too late, that this is a mere piece of diplomatic policy, intended only to amuse them; and to say nothing of the humiliating idea of resorting to such a plaster for the wound that has been inflicted upon our national honor, if they had taken the trouble, they might have been informed that the Spanish Minister near this Government has no control at New Orleans; that the Intendant General is, like himself, an immediate officer of the Crown, and responsible only to the Crown for his conduct. If the Spanish Minister has interfered, which I am not disposed to question, to make the best of it, it could only have been by the entreaties of men in power, as a mere mediator, to beg of the Intendant General of New Orleans justice and peace on behalf of the people of the United States. Are honorable gentlemen prepared to accept peace on such terms? They might do, sir, for a tribe of starving Indians; but is this the rank that we are to hold among the nations of the world? And it seems that even these supplicating advances are likely to avail us nothing. By accounts very lately received from New Orleans, by a private letter which I have seen since these resolutions were submitted to the Senate, the Intendant General has expressed much displeasure at the interference of the Spanish Minister, stating that it was not within his duty or his province, and that he, the Intendant, acted not under Spanish but French orders.

As to the closing of the port of New Orleans against our citizens, the man who can now doubt, after viewing all the accompanying circumstances, that it was the deliberate act of the Spanish or French Government, must have locked up his mind against truth and conviction, and be determined to discredit even the evidence of his own senses. But, sir, it is not only the depriving us of our right of deposit by which we have been aggrieved, it is by a system of measures pursued antecedent and subsequent to that event, equally hostile and even more insulting. I have in my hand a paper, signed by a Spanish officer, which, with the indulgence of the Chair, I will read to the Senate:

ADVERTISEMENT.—Under date of the 16th instant, (December,) the Intendant General of these provinces tells me that the citizens of the United States of America can have no commerce with His Majesty's subjects—they only having the free navigation of the river for the exportation of the fruits and produce of their establishments to foreign countries, and the importation of what they may want from them. As such I charge you, so far as respects you, to be zealous and vigilant, with particular care, that the inhabitants neither purchase or sell anything to the shipping, flat-bottomed boats, barges, or any other smaller vessels that may go along the river, destined for the American possessions, or proceeding from them, that they shall be informed of it, for their due compliance of the same.

CARLOS DE GRANDPREE.

BATON ROUGE, *Dec.* 22, 1802.

The foregoing is a translation from the original, directed to me by his Lordship, Carlos de Grandpree, Colonel of the Royal Armies, and Governor of Baton Rouge.

J. O. CONNER,
Cyndic of 4th District.

BATON ROUGE, *Dec.* 27, 1802.

These are the measures, Mr. President, that have been adopted; these are the orders that have been issued by the Intendant General to every district of the Spanish provinces, prohibiting the subjects of His Catholic Majesty from having any commerce, dealing, intercouse, or communion whatsoever with the citizens of the United States; excluding us from their shores for the distance of two hundred and seventy miles; treating us like a nation of pirates, or a banditti of robbers, who they feared to trust in their country. And this day, sir, if a vessel belonging to a citizen of the United States, engaged in a fair and legal trade, was upon the waters of the Mississippi, within the Spanish lines, and in a state of the most extreme distress, the Spaniard who should yield her aid or comfort would do it at the peril of his life.

But why do we confine ourselves to the Mississippi? Almost every part of the world furnishes us with causes of complaint against the Spaniards; scarcely a mail has arrived for a year past that has not brought us some account of their outrages upon our commerce. They insult our national flag upon every sea where they meet it; they seize our merchantmen; they plunder our merchants of their property; they abuse our seamen; shackle them with chains, and consign them to dungeons; and yet honorable gentlemen cry out peace, peace, when there is no peace. If this be peace, God give us war! And pray, Mr. President, what have we done to provoke all this? We have violated no treaty with His Catholic Majesty we have injured none of his subjects, we

have depredated no where upon his commerce; rather than offend him, when he has smitten us on one cheek, with Christian meekness we have turned the other; he has made no complaint against us; he has no cause of complaint; he does not even condescend to seek a justification for his conduct—none could be found; but it originates in a deliberately formed system of insult and abuse, and he is proceeding, step by step, to ascertain how long the people of the United States will suffer themselves to be trampled upon with impunity. We have seen him on our lines, wantonly infract his solemn treaty; and his subjects are at this moment, under our very eyes, acting in open violation of its best provisions, by withholding from our citizens the all-important right it guaranties to them of navigating freely the Mississippi—a right essential to their very existence as a people—a right that can never be abandoned by them but with their lives; nor yielded by us but with our national honor.

If it should be said, sir, that this important question will not long be an affair of controversy between the United States and Spain; that Louisiana, New Orleans, and this usurped claim of the Spanish Government to the exclusive navigation of the Mississippi, will soon be found in other hands; that whenever we may have to negotiate on this subject, either in the cabinet or the field, it will not be with His Catholic Majesty, but with the First Consul; not with a King, but with the King of Kings—I answer that in these insults to our national dignity, we at present know no Power but Spain. Whatever agency Bonaparte may have had in this business, he has been concealed from our view. It is Spain that has violated her plighted faith; it is Spain that has trampled upon the dearest interests of the United States, and insulted our Government to our faces without the semblance of a cause, and she alone is responsible to us for these outrages. And, under such circumstances, is it becoming, politic, or honorable in us to treat her as a friend and as a neighbor; to remonstrate with her on her acts of injustice, and wait till she shall add insult to insult, and heap injury upon injury; or what is perhaps even worse, if any thing worse than national degradation can befal an independent people, till this golden opportunity shall have passed away, and the facility of redress be wrested from our hands? No, sir, we should now view her as our open enemy, as having declared war against us, and do justice to ourselves. We can never have permanent peace on our Western waters, till we possess ourselves of New Orleans, and such other positions as may be necessary to give us the complete and absolute command of the navigation of the Mississippi. We have now such an opportunity of accomplishing this important object as may not be presented again in centuries, and every justification that could be wished for availing ourselves of the opportunity. Spain has dared us to the trial, and now bids us defiance: she is yet in possession of that country; it is at this moment within your reach and within your power; it offers a sure and easy conquest: we should have to encounter there now only a weak, inactive, and unenterprising people; but how may a few months vary this scene, and darken our prospects! Though not officially informed, we know that the Spanish provinces on the Mississippi have been ceded to the French, and that they will as soon as possible take possession of them. What may we then expect? When in the last extremity we shall be driven to arms in defence of our indisputable rights where now slumbers on his post with folded arms the sluggish Spaniard, we shall be hailed by the vigilant and alert French grenadier, and in the defenceless garrison that would now surrender at our approach, we shall see unfurled the standards that have waved triumphant in Italy, surrounded by impregnable ramparts, and defended by the disciplined veterans of Egypt.

I am willing, sir, to attribute to honorable gentlemen the best of motives; I am sure they do not wish to involve this country in a war, and God knows, I deprecate its horrors as much as any man; but this business can never be adjusted abroad; it will ultimately have to be settled upon the banks of the Mississppi: and the longer you delay, the more time you waste in tedious negotiations, the greater sacrifices you make to protract a temporary and hollow peace, the greater will be your embarrasments when the war comes on; and it is inevitable, unless honorable gentlemen, opposed to us, are prepared to yield up the best interest and honor of the nation. I believe the only question now in our power to decide, is whether it shall be the bloodless war of a few months, or the carnage of years.

These observations, Mr. President, are urged upon the supposition that it is in the power of the Government to restrain the impetuosity of the western people, and to prevent their doing justice to themselves, which, by the by, I beg to be understood as not believing, but expressly the contrary. They know their own strength; they know the feebleness of the enemy; they know the infinite importance of the stake, and they feel, permit me to say sir, with more than mere sensibility, the insults and injuries they have received; they are now all alive on this subject, and I believe will not submit even for the approaching season, to their present ruinous and humiliating situation. You had as well pretend to dam up the mouth of the Mississippi, and say to its restless waves, ye shall cease here, and never mingle with the ocean, as to expect they will be prevented from descending it. Without the free use of the river, and the necessary advantages of deposit below our line, their fertile country is not worth possession, their produce must be wasted in their fields or rot in their granaries: these are rights not only guarantied to them by treaty, but given to them by the God of nature, and they will enforce them, with or without the authority of the Government; and let me ask, whether it is most dignified for the Government to lead or follow in the path of honor? one it must do, or given up that western country.

But, sir, independent of these considerations, those people have other solid claims upon the

Government for immediate support. Under your auspices, and with the promise of your protection, at the hazard of their lives, they explored and settled a wilderness; the lonely desert they have transformed into cultivated fields, the haunt of the wild beast they have made the seat of science; and where but a few years since was heard only the savage yell, their industry and enterprise have reared towns and villages, and planted polished societies. They are our fellow-citizens, our friends, and our brothers, and we are bound by every obligation of good faith, and every sentiment of honor, not to abandon them for a moment. It is now in our power, without difficulty or danger, to redress their wrongs, and to remove forever the possibility of like indignities to the nation. But, Mr. President, let Bonaparte once take quiet possession of the mouth of the Mississippi, and we shall have a war indeed; nothing but the length of our swords, and the best blood of our citizens, will ever make it ours; his object is universal dominion: and the hero of Italy, the military despot of France, a man whose towering ambition bestrides the world, whose will is now the law of nations, with fifty millions of people, and the resources of Europe at his command, will be a foe not easily vanquished; and I repeat sir, let him only set his foot on that shore, let him but plant a single standard there, and he will never yield it but by inches, to superior force. He knows well the value of the position; he knows that it must become one of the first in the world, and that it now offers higher temptations to a powerful, ambitious, and intriguing people than any place on earth. It is the only key to the immense regions watered by the Mississippi and its tributary streams, to a country, larger in extent than all Europe, surpassed by no portion of the world in fertility of soil, and most of it, in climate, a paradise.

But, Mr. President, what is more than all to be dreaded, in such hands, it may be made the means of access and corruption to your national councils and a key to your Treasury. Your Western people will see in Bonaparte, at their very doors, a powerful friend or a dangerous enemy; and should he, after obtaining complete control over the navigation of the Mississippi, approach them, not in the menacing attitude of an enemy, but under the specious garb of a protector and a friend; should he, instead of embarrassing their commerce by any fiscal arrangements, invite them to the free navigation of the river, and give them privileges in trade not heretofore enjoyed; should he, instead of attempting to coerce them to his measures, contrary to their wishes, send missionaries into their country to court and intrigue with them, he may seduce their affections, and thus accomplish by address and cunning, what even his force might not be equal to. In this way, having operated upon their passions, having enlisted in his service their hopes and their fears, he may gain an undue ascendancy over them. Should these things be effected, which God forbid—but Bonaparte in a few years has done much more—what, let me ask honorable gentlemen will be the consequences? I fear even to look them in the face. The degraded countries of Europe, that have been enslaved by the divisions and distractions of their councils, produced by similar means, afford us melancholy examples. Foreign influence will gain admittance to your national councils; the First Consul, or his interests will be represented in the Congress of the United States; this floor may become the theatre of sedition and intrigue. You will have a French faction in the Government, and that faction will increase, with the rapidly increasing population of the western world. Whenever this period shall arrive, it will be the crisis of American glory, and must result, either in the political subjugation of the Atlantic States, or in their separation from the western country; and I am sure there is no American who does not view as one of the greatest evils that could befal us, the dismemberment of this Union. Honorable gentlemen may wrap themselves up in their present imaginary security, and say that these things are afar off, or that they can never happen; but let me beseech of them to look well to the measures they are now pursuing, for, on the wisdom, the promptness, and energy of those measures, will depend whether they shall happen or not. And let me tell them, sir, that the want of firmness or judgment in the cabinet, will be no apology for the disgrace and ruin of the nation.

A single moment more, Mr. President, till I call to the recollection of gentlemen the language of experience, and endeavor to impress upon their minds yet stronger, the importance of the resolutions on your table. One of the first statesmen of the age we live in, the celebrated Mr. Fox, in a most learned and eloquent speech lately delivered in the House of Commons, taking an extended view of the affairs of Europe, and of the particular situation of the British Empire, explicitly declares, that he considers the preservation of national honor to be almost the only legitimate cause of war; that he holds that doctrine upon the plain principle that honor is directly and inseparably connected with self-defence; and if, says he, it can be proved, that the national honor has been insulted, or the national dignity disgraced, it is a fair and legitimate cause of recommencing hostilities. These, sir, are the noble sentiments of a man, who, for more than thirty years past, has supported one of the most conspicuous characters on the great political theatre of nations; who has, during that time, been unceasingly the favorite of the people, and the zealous advocate of their rights and liberties. They are entitled to weight.

I hope I shall not be charged with a want of delicacy towards the feelings of honorable gentlemen on the other side of the House, when I say, that there was a time, even in the infancy of our Government, when a soldier and a statesman, the greatest and the best of men, was at the head of the Administration, that the most powerful nation of Europe would not have dared us with such an insult as we have received. I refer to the days of WASHINGTON, days of which he was the distinguished pride and ornament, but days that, alas! are now gone, and he, unhappily for his country, with them, never to return. In those

days we were indeed comparatively weak and poor, but a national sentiment and feeling were kept alive, that disdained to submit tamely to insult; and now, sir, when we have grown rich and strong, when our overflowing treasury, our increasing energies and population are the burden of every Executive message, and ministerial communication; when our wealth, our power, and our resources, are the boast of every American, shall we see at our very doors, with meek and philosophic forbearance, the dearest interests of our citizens trampled in the dust, and the dignity of our people insulted by an impotent and now degraded nation; and instead of the commanding tone and manner that becomes a nation of republicans, instead of taking justice in our own hands, and avenging these insults and injuries, shall we stoop to send a Minister abroad to supplicate—for what? For justice; for the restoration of our indisputable rights, of which we have been stripped by violence; there to whisper, at the foot of a throne, our national sensibilities, which we fear even to speak of but in secret at home, lest Castilian pride should be offended? I hope not, sir. I hope energetic measures will be promptly adopted, that this Senate will recommend them, and that we shall not lose an hour in preparing to exert the means which God has given us of enforcing the rights that belong to us by treaty and by nature.

Mr. BRECKENRIDGE observed, that he did not mean to wander in the field of declamation, nor, after the example of the honorable gentleman who had preceded him, endeavor to alarm or agitate the public mind; that he should endeavor to strip the subject of all improper coloring, and examine dispassionately the propriety of the measures which the Senate were called upon to sanction. He would be very brief.

What is the true and undisguised state of facts? Early in the session, the House of Representatives were informed, by a communication from the President, of the conduct of the Intendant at New Orleans. This communication stated, that he had taken measures to attempt a restoration of the right which had been violated; and that there were reasons to believe that the conduct of the Intendant was unauthorized by the Court of Spain. Accompanying this message were official papers, in which it appeared that the Governor of New Orleans had strongly opposed the conduct of the Intendant, declared that he was acting without authority in refusing the deposit, and indicated a disposition to oppose openly the proceeding. The Spanish Minister who resides here, also interposed on the occasion, and who stands deservedly high in the confidence of his Government, was clearly of opinion, that the Intendant was acting without authority, and that redress would be given so soon as the competent authority could interpose. From this state of things, and which is the actual state at this moment, what is the course any civilized nation who respects her character or rights, would pursue? There is but one course, which is admitted by writers on the laws of nations, as the proper one; and is thus described by *Vattel*, in his book, sec. 336, 338:

"A Sovereign ought to show, in all his quarrels, a sincere desire of rendering justice and preserving peace. He is obliged before he takes up arms, and after having taken them up also, to offer equitable conditions, and then alone his arms become just against an obstinate enemy, who refuses to listen to justice or to equity. His own advantage, and that of human society, oblige him to attempt, before he takes up arms, all the pacific methods of obtaining either the reparation of the injury, or a just satisfaction. This moderation, this circumspection, is so much the more proper, and commonly even indispensable, as the action we take for an injury does not always proceed from a design to offend us, and is sometimes a mistake rather than an act of malice: frequently it even happens, that the injury is done by inferior persons, without their sovereign having any share in it; and on these occasions, it is not natural to presume that he would refuse us a just satisfaction."

This is the course which the President has taken, and in which the House of Representatives have expressed, by their resolution, their confidence.

What are the reasons urged by the gentlemen to induce a different proceeding, an immediate appeal to arms? You prostrate, say the gentlemen, your national honor by negotiating, where there is a direct violation of a treaty! How happens it that our national honor has, at this particular crisis, become so delicate, and that the feelings of certain gentlemen are now so alive to it? Has it been the practice of this Government heretofore to break lances on the spot with any nation who injured or insulted her? Or has not the invariable course been to seek reparation in the first place by negotiation? I ask for an example to the contrary; even under the Administration of WASHINGTON, so much eulogized by the gentlemen last up? Were not the Detroit, and several other forts within our territory, held ten or a dozen years by Great Britain, in direct violation of a treaty? Were not wanton spoliations committed on your commerce by Great Britain, by France, and by Spain, to the amount of very many millions; and all adjusted through the medium of negotiations? Were not your merchants plundered, and your citizens doomed to slavery by Algiers, and still those in power, even WASHINGTON himself, submitted to negotiation, to ransom, and to tribute? Why then do gentlemen, who on those occasions approved of these measures, now despair of negotiation! America has been uniformly successful, at least in settling her differences by treaty.

But the gentleman is afraid that if we do not immediately seize the country, we shall lose the golden opportunity of doing it. Would your national honor be free from imputation by a conduct of such inconsistency and duplicity? A Minister is sent to the offending nation with an olive-branch, for the purpose of an amicable discussion and settlement of differences, and before he has scarcely turned his back, we invade the territories of that nation with an army of fifty thousand men! Would such conduct comport with the genius and principles of our Republic, whose true interest is peace, and who has hitherto professed

to cultivate it with all nations? Would not such a procedure subject us to the just censure of the world, and to the strongest jealousy of those who have possessions near to us? Would such a procedure meet the approbation of even our own citizens, whose lives and fortunes would be risked in the conflict? And would it not be policy inexcusably rash, to plunge this country into war, to effect that which the President not only thinks can be effected, but is now actually in a train of negotiation? If, on the other hand, negotiation should fail, how different will be the ground on which we stand! We stand acquitted by the world, and what is of more consequence, by our own citizens, and our own consciences. But one sentiment will then animate and pervade the whole, and from thenceforth we will take counsel only from our courage.

But to induce us to depart from this proper, this safe, and honorable course of proceeding, which is pursuing by the President, the gentleman from Pennsylvania first, and the gentleman from Delaware again told you, that by such pacific measures you will irritate the western people against you; that they will not be restrained by you, but will either invade the country themselves, or withdraw from the Union and unite with those who will give them what they want. Sir, said Mr. B., I did not expect to hear such language held on this floor. Sir, the gentleman from Pennsylvania best knows the temper and views of the western people he represents, but if he meant to extend the imputation to the State I have the honor to represent, I utterly disclaim it. The citizens of Kentucky value too highly their rights and character to endanger the one, or dishonor the other. They deal not, sir, in insurrections. They hold in too sacred regard their federal compact to sport with it. They were among the first to oppose violations of it, and will, I trust, be the last to attempt its dissolution. The time indeed was, when not only irritation but disgust prevailed in that country; when, instead of sending fifty thousand men to seize on Orleans, an attempt was meditated, and a solemn vote taken in Congress to barter away this right for twenty-five years. The time indeed was, when great dissatisfaction prevailed in that country, as to the measures of the General Government; but it never furnished there, whatever it might have done elsewhere, even the germs for treasons or insurrections. The people I have the honor to represent are not accustomed to procure redress in this way. Instead of trampling on the Constitution of their country, they rally round it as the rock of their safety. But, unhappily, these times have passed away. Distrust and dissatisfaction have given place to confidence in, and attachment to those in whom the concerns of the nation are confided. I ask no reliance on my opinion for this fact, but appeal to the memorial of the Legislature of Kentucky to the present Congress, for the truth of this assertion. In this disposition of mind therefore, and from the sound sense and correct views and discernment of their true interest, which the people of Kentucky possess, I have no hesitation in pledging myself, that no such precipitate and unwarranted measures will be taken by them, as predicted by the gentlemen in the opposition.

But he begged leave to ask gentlemen who hold such language, would the Western people, admitting they were to withdraw from the Union, be able to accomplish the object? Could they alone go to war with France and Spain? Could they hold Orleans, were they to take possession of it, without the aid of the United States? Admitting they could hold it, what security would they have for their commerce? A single ship-of-the-line would be able completely to blockade that port. See, also, the Havanna, one of the safest and strongest of the Spanish ports and so situated as to possess every advantage in annoying our commerce. Are the gentlemen, therefore, really serious when they endeavor to persuade us that the Western people are in such a state of fury and mad impatience that they will not wait even a few months to see the fate of a negotiation, and, if unsuccessful, receive the aid of the whole nation, but that they will madly run to the attack without a ship, without a single cannon, without magazines, without money, or preparation of any kind; and, what is worse, without union among themselves; and what is still worse, in face of the laws and Constitution of their country? It is impossible. Such a desperate project could not come to a successful issue; for should they even obtain the right by their own exertions alone, they could not expect long to enjoy it in peace, without descending from that exalted, that enviable rank of one of the independent States of United America, to the degraded, dependent condition of a colonial department of a foreign nation.

Although he thought it incumbent on us, for the reasons he had stated, to try the effect of negotiation, yet, should that fail, he thought it incumbent on us also to be prepared for another resort. He considered this right, and upon a different footing from what we ever enjoyed it, so all-important, so indispensable to the very existence of the Western States, that it was a waste of words and time to attempt to portray the evils which a privation of it would produce; and he rejoiced to find that gentlemen with whom he had not been in the habit of voting on most political subjects so perfectly accord with him, that our precarious tenure of it must be changed. He hoped they were sincere in their declarations. If they were, the only difference between us now is, what are the proper means to obtain this great end? The course pursued by the President was, in his opinion, the only true and dignified course. It is that, and that only, which will certainly attain the object; and is the only one which will tend to unite cordially all parts of the Union. But we ought to be prepared, in case of a failure, instantly to redress ourselves. This, instead of having an evil, would, in his opinion, have a good effect on the negotiation. It would show, that although we are willing amicably to adjust our differences, yet that we are not only resolved on, but prepared for that resort which cannot fail to

restore our violated rights. With that view, he would offer the following resolutions, as substitutes for those proposed by the gentleman from Pennsylvania.

He moved that the whole of the resolutions be struck out, excepting the word "*Resolved*," and the following be substituted in their place—after the word "*Resolved*."

"That the President of the United States be, and he is hereby authorized, whenever he shall judge it expedient, to require of the Executives of the several States to take effectual measures to organize, arm, and equip, according to law, and hold in readiness to march at a moment's warning, eighty thousand effective militia, officers included.

Resolved, "That the President may, if he judges it expedient, authorize the Executives of the several States to accept, as part of the detachment aforesaid, any corps of volunteers; who shall continue in service for such time, not exceeding —— months, and perform such services as shall be prescribed by law.

Resolved, "That —— dollars be appropriated for paying and subsisting such part of the troops aforesaid, whose actual service may be wanted, and for defraying such other expenses as, during the recess of Congress, the President may deem necessary for the security of the territory of the United States.

Resolved, "That —— dollars be appropriated for erecting, at such place or places on the western waters, as the President may judge most proper, one or more arsenals."

Mr. DAYTON wished to know whether it was in order to introduce the substance of a resolution, though in different words, under the name of an amendment.

Mr. CLINTON.—The extraordinary manner in which the subject now under consideration has been introduced, the extraordinary manner in which it has been treated, and the extraordinary nature of the proposition itself, would justify a latitude and severity of remark, which, however, I am not disposed to indulge upon this occasion. I know that I address myself to a very respectable portion of the collected wisdom and patriotism of my country. I will, therefore, leave the honorable members from Pennsylvania and Delaware (Mr. ROSS and Mr. WHITE) in the undisturbed possession of their inflammatory appeals and declamatory effusions, and will manifest a becoming respect for the high authority to which I have the honor to speak, by moving on the ground of argument and fact. To prevent losing myself in so spacious a field, I will consider the subject under three distinct heads:

1. The injuries alleged to have been committed on the part of Spain.

2. The nature, character, and tendency of the remedy proposed.

3. Its justice and policy.

The importance of a free navigation of the Mississippi has been duly appreciated by the Government, and a constant eye has been kept upon it in our negotiations with foreign Powers. An attempt was, indeed, made under the Old Confederation to barter it away for twenty-five years, which, however, was effectually controlled by the good sense and patriotism of the Government. By the Treaty of Peace with Great Britain in 1783, by the Treaty of Amity, Commerce, and Navigation with her in 1794, and by the Treaty of Friendship, Limits, and Navigation with Spain, in 1795, the right of a free navigation of the Mississippi is recognised and declared to exist from its source to the ocean, in the citizens of the United States. By the 22d article of the Treaty with Spain, it is declared that, "in consequence of the stipulations contained in the 4th article, His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandise and effects in the port of New Orleans, and to export them from thence without paying any other duty than a fair price for the hire of the stores. And His Majesty promises either to continue this permission, if he finds during that time that it is not prejudicial to the interests of Spain, or, if he should not agree to continue it there, he will assign to them, on another part of the lands of the Mississippi, an equivalent establishment." The 22d article granting the right of deposit, is, therefore, founded upon the 4th article recognising the right of free navigation, and is intended to give full and complete efficacy to it. By a proclamation of the Intendant of the Province of Louisiana, dated the 16th of October last, the right of deposit is prohibited. The reason assigned for this daring interdiction is, that the three years for which it was granted having expired, it cannot be continued without an express order from the King of Spain; and at the same time no equivalent establishment is assigned, according to the stipulations of the treaty.

There can be no doubt but that the suspension of the right of deposit at New Orleans, and the assignment of another place equally convenient, ought to have been contemporaneous and concurrent; that the conduct of the Intendant is an atrocious infraction of the treaty, and that it aims a deadly blow at the prosperity of the Western States; but it is extremely questionable whether it was authorized by the Government of Spain or not. On this subject I am free to declare that I entertain great doubts, which can only be cleared up by the course of events, or perhaps it will be enveloped in darkness. On the one hand, the terms of the proclamation, indicating a misunderstanding of the treaty, the remonstrances of the Governor of the Province, whose authority does not extend to commercial and fiscal affairs, over which the Intendant has an exclusive control, and the prompt and decided assurances of the Spanish Minister near the United States, would induce a belief, that the act of the Intendant was unauthorized. On the other hand, it cannot readily be believed that this officer would assume such an immense responsibility, and encounter an event so big with important consequences, not only to his country but to himself, without knowing explicitly the intentions of his Government. Such, then, is the true state of the Spanish aggression: an important right had been secured to our citizens by the solemnity of a treaty. This right had been withdrawn by an officer of the Spanish

Government, and whether this aggression was directed by it or not, is not as yet known. Other aggressions have indeed been stated by the honorable gentleman from Pennsylvania, (Mr. ROSS,) in order to darken the picture, and with the manifest design of exasperating our feelings, inflaming our passions, and prompting an immediate appeal to the sword. That gentleman had mentioned that great and unwarrantable spoliations have been committed upon our commerce by Spain, and that redress is refused. The depredations previous to the treaty of 1795, were satisfactorily provided for in it, and those subsequent are in a favorable train of negotiation and adjustment. If it were permitted to me to draw aside the veil which covers our Executive proceedings, I could establish to the satisfaction of every person present, that the honorable mover has wandered widely from candor and the convictions of his own knowledge, in his representations on this subject. I will at present content myself with giving an unqualified contradiction to his declarations, and do cheerfully appeal to the information within the power of every member of the Senate, for the accuracy of my assertion. I am fully satisfied that the Court of Madrid has not only entertained, but has manifested in her negotiations, every disposition to maintain inviolate the relations of amity with this country. When, therefore, the honorable mover proceeded to state that several of our citizens had been seized and imprisoned by the colonial authorities of Spain, I might ask, whether any Government in the world pretended to protect her citizens in the violation of the laws of other nations? Whether our citizens in the situation he has represented, had not been concerned in illicit trade, and in violating the laws of the Spanish colonies? Instances may have indeed occurred where innocent persons have been unjustly dealt with, and whenever representations to this effect shall be made to our Government, I have no doubt but that ample redress will be instantly demanded and insisted upon. Nothing has been laid before us which can authorize the assertions made on this subject. Whenever such conduct shall be brought home to Spain, and prompt and complete satisfaction denied, I shall then consider it the duty of the Government to vindicate the rights of our citizens at all hazards; and I cannot but congratulate the honorable mover, and the other side of the House, on the resurrection of that ardent zeal in favor of their oppressed countrymen, which has so long and so soundly slept over British and French enormities.

As to the nature, character, and tendency of the remedy proposed, there can be but one opinion. It proposes to enter the country of a foreign nation with a hostile force, and to seize a part of its territory. It is not preceded by a formal declaration, and cannot, therefore come under the denomination of a solemn war, but it partakes of the character of a war not solemn. It answers to the definition of war, by *Burlamaqui*, "a nation taking up arms with a view to decide a quarrel;" to that given by *Vattel*, who represents it to be "that state in which a nation prosecutes its right by force." A state of general hostilities would as necessarily follow as an effect would follow a cause; no nation would submit to the irruption of a hostile army without repelling it by force; the proud Castilian, as described by the gentleman from Delaware, would revolt at the insult; the door of negotiation would be effectually closed, and as the appeal would be to arms in the first instance, so the controversy must be finally decided by the preponderance of force. It would, therefore, not only have impressed me with a more favorable opinion of the honorable mover's candor, but also of his decision and energy as a statesman, if he had spoken out boldly, and declared his real object. War is unquestionably his design—his wish. Why, then, mask his proposition? Why combine it with considerations connected with negotiation? Why not furnish the American people at once with the real and the whole project of himself and his friends? If it is bottomed on patriotism, and dictated by wisdom, it need not shrink from the touch of investigation—it will receive their approving voice, and be supported by all their force. The resolution is then to be considered as a war resolution; in no other light can it be viewed; in no other light ought it to be viewed; and in no other light will it be viewed by the intelligence of the country. In this point of view, I will proceed, said Mr. C., to consider its justice and policy; its conformity with the laws and usage of nations, and the substantial interests of this country.

I shall not attempt to occupy your attention by threadbare declamation upon the evils of war, by painting the calamities it inflicts upon the happiness of individuals, and the prosperity of nations. This terrible scourge of mankind, worse than the famine or pestilence, ought not to be resorted to until every reasonable expedient has been adopted to avert it. When aggressions have been committed by the Sovereign or representatives of the will of a nation, negotiation ought in all cases to be first tried, unless the rights of self-defence demand a contrary course. This is the practice of nations, and is enjoined by the unerring monitor which the God of Nature has planted in every human bosom. What right have the rulers of nations to unsheath the sword of destruction, and to let loose the demon of desolation upon mankind, whenever caprice or pride, ambition or avarice, shall prescribe? And are there no fixed laws founded in the nature of things which ordain bounds to the fell spirit of revenge, the mad fury of domination, and the insatiable thirst of cupidity? Mankind have not only in their individual character, but in their collective capacity as nations, recognised and avowed in their opinions and actions, a system of laws calculated to produce the greatest happiness of the greatest number. And it may be safely asserted, that it is a fundamental article of this code, that a nation ought not to go to war, until it is evident that the injury committed is highly detrimental, and that it emanated from the will of the nation charged with the aggression, either by an express authori-

zation in the first instance, or by a recognition of it when called upon for redress, and a refusal in both cases to give it. A demand of satisfaction ought to precede an appeal to arms, even when the injury is manifestly the act of the Sovereign; and when it is the act of a private individual, it is not imputable to his nation, until its Government is called upon to explain and redress, and refuses; because the evils of war are too heavy and serious to be incurred, without the most urgent necessity; because remonstrance and negotiation have often recalled an offending nation to a sense of justice, and a performance of right; because nations, like individuals, have their paroxysms of passion, and when reflection and reason resume their dominion, will extend that redress to the olive-branch, which their pride will not permit them to grant to the sword; because a nation is a moral person, and as such, is not chargeable with an offence committed by others, or where its will has not been consulted, the unauthorized conduct of individuals being never considered a just ground of hostility, until their Sovereign refuses that reparation for which his right of controlling their actions, and of punishing their misconduct, necessarily renders him responsible. These opinions are sanctioned by the most approved elementary writers on the laws of nations. I shall quote the sentiments of some of them. *Vattel* says:

"Two things, therefore, are necessary to render it (an offensive war) just. First, a right to be asserted; that is, that a demand made on another nation be important and well grounded: Second, that this reasonable demand cannot be obtained otherwise than by force of arms. Necessity alone warrants the use of force. It is a dangerous and terrible resource. Nature, the common parent of mankind, allows of it only in extremity, and when all others fail. It is doing wrong to a nation to make use of violence against it, before we know whether it be disposed to do us justice, or to refuse it. They who, without trying pacific measures, on the least motive run to arms, sufficiently show that justificative reasons, in their mouths, are only pretences; they eagerly seize the opportunity of indulging their passions, and of gratifying their ambition, under some color of right."

It is subsequently stated by this admired writer, that "it is demonstrated in the foregoing chapter, 'that to take arms lawfully: 1. That we have a 'just cause of complaint; 2. That a reasonable 'satisfaction has been denied us, &c."

Burlamaqui says:

"However just reason we may have to make war, yet as it inevitably brings along with it an incredible number of calamities, and often injustices, it is certain that we ought not to proceed too easily to a dangerous extremity, which may perhaps prove fatal to the conqueror himself. The following are the measures which prudence directs Sovereigns to observe in these circumstances: 1. Supposing the reason of the war is just in itself, yet the dispute ought to be about something of great consequence to us, since it is better even to relinquish part of our right, when the thing is not considerable, than to have recourse to arms to defend it. 2. We ought to have at least some probable appearance of success; for it would be a criminal temerity, and a real folly, wantonly to expose ourselves to certain destruction, and to run into a greater, in order to avoid a lesser evil. 3. Lastly, there should be a real necessity for taking up arms; that is, we ought not to have recourse to force, but when we can employ no milder method of recovering our rights, or of defending ourselves from the evils with which we are menaced. These measures are agreeable not only to the principles of prudence, but also to the fundamental maxims of sociability, and the love of peace; maxims of no less force, with respect to nations, than individuals. By these a Sovereign must, therefore, be necessarily directed; even the justice of the Government obliges him to it, in consequence of the very nature and end of authority. For as he ought always to take particular care of the State, and of his subjects, consequently he should not expose them to all the evils with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms."

In addition to these great authorities, permit me to refer severally to the opinions of two more modern writers, *Martens* and *Paley*. The former says that all amicable means for redress must be tried in vain before an appeal to arms, unless it is evident that it would be useless to try such means; and the latter is of opinion that the only justifying causes of war are deliberate invasions of right, and maintaining the balance of power. It is not necessary to decide upon the justice of the last observation, because it does not apply to the case before us. But can any man lay his hand upon his heart, and declare that he believes the present case a deliberate invasion of right by the Spanish Government? Can any man say, that it would be fruitless to attempt amicable means of redress, and that the sword alone can restore us to our rights?

The opinions of these celebrated writers are corroborated by the general usage of nations. A demand of redress before the application of force has been almost uniformly practised by the most barbarous, as well as the most civilized nations. Instances indeed may be found to the contrary, but they are to be considered as departures from established usage. The ancient Romans, who were a military nation, and who marched to empire through an ocean of blood, always demanded satisfaction from the offending nation before they proceeded to war, and fixed upon a certain time in which the demand was to be complied with; at the expiration of which, if redress was still withheld, they then endeavored to obtain it by force. It has been the general practice of the civilized nations of Europe to promulge manifestos justificatory of their conduct, in resorting to arms. These manifestos contain a full statement of their wrongs, and almost always declare that they had previously endeavored by negotiation to obtain a friendly adjustment of their complaints. What is this, but a declaration, that the law and the sense of nations demand this course? What is it, but an appeal to the intuitive sense of right and wrong which exists in every human bosom? The reign of the present King of Great Britain has been emphatically a war reign. In 1760 he ascended the throne, and found the nation at war with France; besides his wars in the East and West Indies, about

half of his reign has been consumed in wars with this country and some of the nations of Europe. He has been three times at war with France, three times with Spain, twice with Holland, and once with the United States. The most strange events—events which have pleased and dazzled, astonished and terrified mankind—have passed upon the theatre of the world in his time. The ordinary maxims of policy, and the cardinal principles of action, have been reversed and prostrated. The world has seen the revival of the Crusades, all the great Powers of Europe in arms, and a destroying and desolating spirit go forth, unknown to past times. Portentous as this reign has been, when a deviation from the established laws of nations might naturally be expected, and degraded as the power and condition of Spain is represented to be, I am willing to stake the whole controversy upon the reciprocal conduct of these Governments to each other. Of all wars, one with Spain is the most popular in England, from the opportunities it affords for maritime spoliation, and lucrative enterprise—for the same reasons it is anxiously deprecated by Spain; and it has even grown into a Spanish proverb, "Peace with England, and war with the world." Notwithstanding the preponderating force of Great Britain, the allurements of popularity and cupidity, her great and extraordinary acquisition of maritime power, and the martial temper which has marked her character during the present reign, we find the very Power with which we are now called upon to measure swords, meeting her propositions for negotiation or arms on the ground of perfect equality; maintaining a steady posture, and an erect attitude, passing through her collision with unspotted reputation and unsullied dignity, and teaching us an instructive lesson, that while we ought never to bend into degrading compliances, we are not to expect that a nation which has not yielded improperly to the Power in the world most able to injure her, will tamely submit to the insulting and imperious measure recommended so earnestly to our adoption. Six controversies have occurred between Great Britain and Spain, during the reign of the present King; three have been terminated amicably by negotiation, and three have resulted in war. In 1761, when Great Britain was at war with France, a memorial was presented by the French Ambassador at London, to the English Minister, which implicated some demands of Spain upon Great Britain, and which gave great offence to her Ministry. A negotiation took place, which being attended with an insolent demand for a sight of a treaty concluded between France and Spain, and which being very properly refused, a war ensued. Notwithstanding the conduct of Great Britain in the course of this transaction was precipitate and unjust, negotiation was attempted before an appeal to arms. And the future disclosure of the real transaction furnished her with a salutary lesson; for it was afterwards found that the treaty did not refer to the existing state of the belligerent Powers, but that the guarantee it contained was not to operate until the termination of the war.

In the year 1770 the remarkable case of the Faulkland Islands occurred. Six years before, a settlement was made and a fort erected by the British Government on one of them, with a view to accommodate navigators in refitting their ships and furnishing them with necessaries previous to their passage through the Straits of Magellan, or the doubling of Cape Horn. This settlement gave great umbrage to Spain, not only upon account of its interference with her claim of sovereignty to almost the whole Southern Continent of America, and the adjacent islands, but also on account of the facility it would afford, in case of a future war, to an attack upon her South-Sea territories. Ineffectual remonstrances were made on the part of Spain, and, at last, notwithstanding the claim of Great Britain by discovery and occupancy, an armed force was sent—the fort was taken—the settlement was broken up, and the honor of the British flag violated by the taking off of the rudder of a King's ship, and detaining it on shore twenty days. What course did the British pursue on this occasion? In this case the insult was flagrant—the honor of their flag, the dignity of the Crown, and the commerce of the nation, were implicated. Was the sword immediately unsheathed, and the door to peace effectually closed? No. Negotiations ensued—a convention was formed—Spain disavowed the violence and engaged to restore the possessions, but with an express declaration that the restitution should not affect the question concerning the prior right of sovereignty. The islands were also evacuated three years afterwards by Great Britain, in consequence of a secret agreement.

In 1779 Spain declared war against Great Britain, alleging unredressed depredations on her commerce, and that she was insulted in an attempt to negotiate between France and Great Britain. It is evident that this step on the part of Spain was in pursuance of the family compact, and was not justifiable by the law of nations. It appears, however, that previous to taking this measure, she had attempted to attain her objects by negotiation.

In 1786 the long disputes respecting the English settlements on the Mosquito shore, and the coast of Honduras, were settled by negotiation. The English abandoned their Mosquito settlements, and many hundreds of families who had inhabited them under the protection and faith of the British Government, were peremptorily compelled to evacuate that country. The boundaries of the English Honduras settlements were enlarged, but in such a manner as to leave Spain in full possession of her territorial rights and exclusive dominion.

In 1790 the controversy about Nootka Sound arose—two years before, a settlement was made there by an association of British merchants, on land purchased from the natives, with a view to carry on the fur trade. This interfering with the chimerical rights of Spain, a Spanish frigate was despatched by the Viceroy of Mexico, which seized the fort, and captured the English vessels trading there; a negotiation took place, the vessels were restored, and the settlements agreed to be

yielded back—but there was an express reservation on the part of Spain, of the right of sovereignty, for ulterior discussion.

In 1796, Spain, in pursuance of a Treaty of Alliance offensive and defensive with France, declared war against Great Britain.

From this short narrative, it will appear that, in almost every case, negotiation was attempted, even when indignity and violence had been committed. That in many instances it was successful; that in two of the three cases where hostilities were commenced, Spain was unequivocally the aggressor; that, in most of her adjustments, she stood upon ground at least equal, and in some superior to Great Britain; that in all of them she maintained a high sense of character and independence; and that, in points affecting the most delicate considerations of national honor, interest, and right, and where occurrences of a very irritating nature had taken place, and more aggravated than the one of which we justly complain, the path of negotiation was deemed the path of honor, by two of the great nations of Europe.

The practice of our Government has been uniformly conformable with the principles I have endeavored to establish, and I trust I shall be excused for bestowing particular consideration on this subject. We have heard much of the policy of WASHINGTON; it has been sounded in our ears from all quarters, and an honorable gentleman from Delaware (Mr. WHITE) has triumphantly contrasted it with that adopted by the present Administration. I am not disposed to censure it in this case; on the contrary, I think it a high and respectable authority; but let it be properly understood in order to be rightly appreciated, and it will be found that the United States under his Administration, and that of his successor, have received injuries more deleterious, insults more atrocious, and indignities more pointed than the present, and that the pacific measure of negotiation was preferred. If our national honor has survived the severe wounds it then received, it may surely outlive the comparatively slight attack now made upon it; but if its ghost only now remains to haunt the consciences of the honorable gentlemen who were then in power, and who polluted their hands with the foul murder, let them not attempt to transfer the odium and the crime to those who had no hand in the guilty deed. The reins of Government were in their hands, and if the course they at that time pursued was diametrically opposite to that they now urge for our adoption, what shall we say of their consistency? What will they say of it themselves? What will their country say of it? Will it be believed that the tinkling sounds and professions of patriotism which have been so vehemently pressed upon us, are the emanations of sincerity, or will they be set down to the account of juggling imposture? Although but an infant nation, our career has been eventful and interesting. We have already had very serious collisions with three of the most powerful nations of Europe, who are connected with us by treaty, by neighborhood, and by commerce. Great Britain, France, and Spain, have successively committed very great aggressions upon our national rights. In stating these I have no intention of reviving feelings, which, I trust, have ceased with the causes which gave them birth, nor of aspersing the characters of nations who certainly hold the most important and respectable station in the civilized world. Our differences with Great Britain were coeval with the Treaty of Peace. The detention of the Western posts was a direct violation of that treaty; it diverted a considerable portion of the fur trade from the United States, and disabled us from bridling the hostile Indians, which was a source of immense injury. This evil continued for twelve years, under every circumstance of aggravation and insult. British soldiers issued from those forts into parts of our territory, where we exercised jurisdiction, and seized the persons of deserters without the aid or sanction of the authorities of the country; and these possessions served as asylums for the savages who were in hostile array against us, and as store-houses and magazines to supply them with arms, ammunition, and provisions. The seat of Government of Upper Canada was also held for a time at Niagara, in the State of New York, an indignity of the most marked character; many thousands of negroes were carried off in violation of the treaty, and a very serious injury was thereby inflicted on the agricultural pursuits of our Southern citizens. On the other hand, it was stated on the part of Great Britain that the treaty was violated by the United States, for that impediments had been interposed against the recovery of British debts by Legislative acts and Judicial decisions in several of the States. As there were mutual reclamations and reciprocal complaints, let us balance the account, and set off these grievances against each other; let us suppose that both parties acted right, and that no real cause of crimination existed, still I contend that the conduct of Great Britain, independent of the inexecution of the Treaty of Peace, was much more aggravated than the case before us.

It is well known that we were engaged in a bloody and expensive war with several of the Indian tribes; that two of our armies had been routed by them, and that we were finally compelled to make great efforts to turn the tide of victory. These Indians were encouraged and aided by the emissaries of Great Britain—British subjects were seen disguised fighting in their ranks, and British agents were known to furnish them with provisions and the implements of war. The Governor General of Canada, a highly confidential and distinguished officer, delivered a speech to the seven nations of Lower Canada, exciting them to enmity against this country; but in order to furnish the savages at war with sufficient aid, a detachment of British troops penetrated into our territory and erected a fort on the Miami river. Here the Indians, dispersed and defeated by Wayne, took refuge, and were protected under the muzzle of British cannon. A violation of territory is one of the most flagrant injuries which can be offered to a nation, and

would in most cases justify an immediate resort to arms, because in most cases essential to self-defence. Not content with exciting the savages of America against us, Great Britain extended her hostility to the Eastern hemisphere, and let loose the barbarians of Africa upon us. A war existed at that time between Portugal and Algiers; the former blocked up the mouth of the Straits, by her superior naval force, and prevented the pirates from a communication with the Atlantic. Portugal has been for a long time subservient to the views of Great Britain; a peace was effected through the mediation of the latter; our unprotected merchantmen were then exposed, without defence, to the piracies of Algiers. Thus, in three quarters of the globe we at one time felt the effects of British enmity. In the meantime our commerce in every sea was exposed to her rapacity. All France was declared in a state of siege, and the conveyance of provisions expressly interdicted to neutrals. Paper blockades were substituted for actual ones, and the staple commodities of our country lay perishing in our store-houses, or were captured on the ocean, and diverted from the lawful proprietors. Our seamen were pressed wherever found; our protections were a subject of derision, and opposition to the imperious mandates of their haughty tyrants, was punished by famine or by stripes, by imprisonment or by the gibbet. To complete the full measure of our wrongs, the November Orders of 1793 were issued; our ships were swept from the ocean, as if by the operation of enchantment; hundreds of them were captured; almost all our merchants were greatly injured, and many of them reduced to extreme poverty.

These proceedings, without even a pretext, without the forms of justice, without the semblance of equity, were calculated to inflame every American feeling, and to nerve every American arm. Negotiation was however pursued; an Envoy *Extraordinary*, in every sense of the word, was sent to demand redress; and a Treaty of Amity, Commerce, and Navigation, was formed and ratified. These events took place under the Administration of WASHINGTON. The Spanish Treaty, concluded on the 27th October, 1795, stipulated for a settlement of boundaries, and an adjustment of spoliations on commerce, and contained a declaration of the free navigation of the Mississippi, and a grant of the privilege of deposit at New Orleans. This treaty, for more than two years afterwards, was not executed on the part of Spain. In January, 1798, a report was made to Mr. ADAMS, by Mr. Secretary Pickering, and submitted to Congress, which charged Spain with retaining her troops and garrisons within the United States, with evading to run the boundary line, with stopping, controlling, and regulating the passage of our citizens on the Mississippi, and with sending emissaries among the Indians residing within our territories, in violation of the treaty and the relations of amity. Here then, a treaty, securing the important benefit of deposit, was in a state of inexecution for a long period. Our citizens were also interrupted in the free navigation of the Mississippi, and other aggressions, affecting our territorial rights, and our internal peace, were superadded. Was it at that time proposed by the honorable gentlemen who were then in power, as it now is, when they are deprived of it, to seize New Orleans with an armed force? Were they then so feelingly alive to the wrongs of our western brethren? Did they manifest that irritable sensibility for national honor which is now thundered in our ears with extraordinary emphasis? If it is right for us to act now in the way they propose, what will excuse them for not pursuing the same system then? Was their political vision darkened by the eminence on which they stood? And does it require the ordeal of adversity to open their eyes to a true sense of their country's honor and interest? Let them answer to their constituents, to their consciences, and their God.

An amicable explanation was had with Spain, and our wrongs were satisfactorily redressed. This took place in the Administration of Mr. ADAMS, and when most of the honorable gentlemen who support this war resolution, except such as were dangling in the Courts of Europe, held prominent stations in the councils of the country.

Our differences with France were of a more serious nature, and of a longer duration. They commenced in the Administration of WASHINGTON, and were adjusted in that of his successor. Great and enormous depredations were committed upon our commerce by France, and our merchants were fraudulently robbed of compensation for provisions supplied her in the hour of distress. The treaty and consular convention were violated. The right of embassy, a sacred right, respected even by the ferocious savage, was wantonly trampled upon; and the representative of our national sovereignty was refused a reception, and ignominiously ordered out of France. A fresh attempt at negotiation was made—three Ministers were sent, armed with all the powers, and clothed with all the honors of diplomacy; they were also refused a hearing, and were forced to leave the country without experiencing the forms of common civility. The treaty was then annulled, and reprisals directed; and when the honorable gentlemen and their friends, then in power, had worked up the passions of the nation to the highest pitch of exasperation; when war, bloody war, was expected from all quarters; when the war-worn soldiers of the Revolution were girding on their swords, and preparing to stand between their country and the danger that menaced her, the scene suddenly changed; the black cloud passed away; and we again beheld three Ministers at Paris, extending the olive-branch, burying all animosities, and returning with a treaty of "firm, inviolable, and universal peace, and true and sincere friendship." I shall not press this subject any further upon the feelings of the honorable gentlemen; I read in their countenances the emotions they experience.

I have thus shown that the course recommended for our adoption is not warranted by the laws and usage of nations, nor by the practice of our Government. I shall now examine whether it is not repugnant to the best interests of the country.

A vast augmentation of our national debt would

be the certain consequence of this measure. It is a moderate estimate to say that our annual expenditures, over and above our surplus revenue, would be twenty millions of dollars; and we cannot reasonably expect that the war would continue a shorter period than five years. Hence one hundred millions would be added to our debt, and the great experiment which we are now trying (that of extinguishing it in fourteen years) would certainly fail—an experiment which has been defeated in Europe by war and prodigality; and for the success of which, in this country, every friend of republican government looks up with the greatest anxiety. But this is not all: heavy and oppressive taxation would be necessary, in order to pay off the interest of the accumulating debt, and to meet the other exigencies of Government. We are now a happy nation in this respect. Neither the temper nor the habits of our citizens will patiently submit to severe burdens, and happily the posture of our financial arrangements does not require them. Give the rein, however, to chimerical notions of war—embrace the proposition now submitted to us—and the weight of our impositions will be felt in every nerve and artery of our political system. Excises—taxes on houses and lands—will be introduced, and the evils of former Administrations will be multiplied upon us. But the mischief will not stop here: with the increasing calls for money from the people, their means to satisfy them will be diminished. The superior naval force of the enemy would cripple our commerce in every quarter of the globe. Great Britain and Spain hold the keys of the Mediterranean; we should therefore be entirely shut out of that sea, unless we could persuade the former to unite her exertions with ours. With the decay of our commerce; with our exclusion from foreign markets, the labors of our farmers would be palsied; the skill of our manufacturers would be rendered useless; and with the fruits of their industry perishing on their hands, or greatly undersold, how would they be able to meet the augmented wants of Government? What in the meantime would become of the claim of our merchants upon Spain, for at least five millions of dollars, and to what perils would your commercial cities be exposed? These certain evils would be encountered without producing the least benefit to our Western brethren. The seizure of New Orleans would vest us with a place of deposit; but a place of deposit, without the free use of the Mississippi, would be entirely useless. As long as the enemy holds the country below New Orleans, and possesses a superior naval force, so long we will be excluded from the Mississippi. Suppose, however, this obstacle removed; suppose we are enabled to pass into the Gulf without molestation; is it not necessary for vessels to hug the island of Cuba on their passage to the Atlantic States? And will not this expose them to certain capture, as long as Spain retains that important possession? To secure the great object said to be aimed at by this resolution, and to establish, beyond the reach of annoyance, a free communication between the Atlantic and Western States, we must seize not only New Orleans, but the Floridas and Cuba; and we must immediately create a formidable Navy. It is needless to mention that the Atlantic States are, with a few exceptions, the carriers of the Western produce. Three-fourths of that trade is managed by the merchants of the State I have the honor to represent. I therefore view this measure as pregnant with great mischief to the commerce of Atlantic America, and as a certain exclusion of the Western States from market, as long as the war shall continue.

It is no slight objection in the minds of the sincere friends of Republicanism that this measure will have a tendency to disadjust the balance of our Government, by strengthening the hands of the Executive, furnishing him with extensive patronage, investing him with great discretionary powers, and placing under his direction a large standing army. It is the inevitable consequence of war, in free countries, that the power which wields the force will rise above the power that expresses the will of the people. The State Governments will also receive a severe shock. Those stately pillars which support the magnificent dome of our National Government will totter under the increased weight of the superincumbent pressure. Nor will the waste of morals, the spirit of cupidity, the thirst of blood, and the general profligacy of manners, which will follow the introduction of this measure, be viewed by the great body of our citizens without the most fearful anxiety, and the most heartfelt deprecation. And if there are any persons in this country (and I should regret if there are any such in this House) who think that a public debt is a public blessing, and that heavy taxation is expedient in order to produce industry; who believe that large standing armies are essential to maintain the energy, and that extensive patronage is indispensable to support the dignity, of Government; who suppose that frequent wars are necessary to animate the human character, and to call into action the dormant energies of our nature; who have been expelled from authority and power by the indignant voice of an offended country, and who repine and suffer at the great and unexampled prosperity which this country is rapidly attaining under other and better auspices: Such men—whoever they are, and wherever they be—will rally around the proposition now before us, and will extol it to the heavens as the model of the most profound policy, and as the offspring of the most exalted energy.

If I were called upon to prescribe a course of policy most important for this country to pursue, it would be to avoid European connexions and wars. The time must arrive when we will have to contend with some of the great Powers of Europe, but let that period be put off as long as possible. It is our interest and our duty to cultivate peace, with sincerity and good faith. As a young nation, pursuing industry in every channel, and adventuring commerce in every sea, it is highly important that we should not only have a pacific character, but that we should really deserve it. If we manifest an unwarrantable ambition, and a rage for conquest, we unite all the great Powers

of Europe against us. The security of all the European possessions in our vicinity will eternally depend, not upon their strength, but upon our moderation and justice. Look at the Canadas—at the Spanish territories to the South—at the British, Spanish, French, Danish, and Dutch, West India islands—at the vast countries to the West, as far as where the Pacific rolls its waves; consider well the eventful consequences that would result if we were possessed by a spirit of conquest; consider well the impression which a manifestation of that spirit will make upon those who would be affected by it. If we are to rush at once into the territory of a neighboring nation, with fire and sword, for the misconduct of a subordinate officer, will not our national character be greatly injured? Will we not be classed with the robbers and destroyers of mankind? Will not the nations of Europe perceive in this conduct the germ of a lofty spirit and an enterprising ambition which will level them to the earth, when age has matured our strength and expanded our powers of annoyance, unless they combine to cripple us in our infancy? May not the consequences be, that we must look out for a naval force to protect our commerce; that a close alliance will result; that we will be thrown at once into the ocean of European politics, where every wave that rolls, and every wind that blows, will agitate our bark? Is this a desirable state of things? Will the people of this country be seduced into it by all the colorings of rhetoric, and all the arts of sophistry—by vehement appeals to their pride, and artful addresses to their cupidity? No, sir. Three-fourths of the American people (I assert it boldly, and without fear of contradiction) are opposed to this measure. And would you take up arms with a millstone hanging around your neck? How would you bear up, not only against the force of the enemy, but against the irresistible current of public opinion? The thing, sir, is impossible; the measure is worse than madness; it is wicked beyond the powers of description.

It is in vain for the mover to oppose these weighty considerations by menacing us with an insurrection of the Western States, that may eventuate in their seizure of New Orleans without the authority of Government; their throwing themselves into the arms of a foreign Power; or in a dissolution of the Union. Such threats are doubly improper—improper as they respect the persons to whom they are addressed, because we are not to be deterred from the performance of our duty by menaces of any kind, from whatever quarter they may proceed; and it is no less improper to represent our Western brethren as a lawless, unprincipled banditti, who would at once release themselves from the wholesome restraints of law and order; forego the sweets of liberty, and either renounce the blessings of self-government, or, like the Goths and Vandals, pour down with the irresistible force of a torrent upon the countries below, and carry havoc and desolation in their train. A separation by a mountain, and a different outlet into the Atlantic, cannot create any natural collision between the Atlantic and Western States; on the contrary, they are bound together by a community of interests, and a similarity of language and manners—by the ties of consanguinity and friendship, and a sameness of principles. There is no reflecting and well principled man in this country who can view the severance of the States without horror, and who does not consider it as a Pandora's box, which will overwhelm us with every calamity; and it has struck me with not a little astonishment that, on the agitation of almost every great political question, we should be menaced with this evil. Last session, when a bill repealing a Judiciary act was under consideration, we were told that the Eastern States would withdraw themselves from the Union if it should obtain; and we are now informed that, if we do not accede to the proposition before us, the Western States will hoist the standard of revolt and dismember the empire. Sir, these threats are calculated to produce the evil they predict, and they may possibly approximate the spirit they pretend to warn us against. They are at all times unnecessary, at all times improper, at all times mischievous, and ought never to be mentioned within these walls.

If there be a portion of the United States *peculiarly* attached to republican government and the present Administration, I should select the Western States as that portion. Since the recent elections there is not a single Senator, or a single Representative in Congress, from that vast country, unfriendly to the present order of things, and, except in a part of the Mississippi Territory, and its whole population did not by the last census reach nine thousand souls, there is scarcely the appearance of opposition. To represent a people so republican, so enlightened, and so firm in their principles, as ready, without any adequate cause, (for no Government could watch over their interests with more paternal solicitude than the present, upon the present question,) to violate their plighted faith and political integrity—to detach themselves from the Government they love, and to throw themselves under the protection of nations whose political systems are entirely repugnant to their own, requires an extent of credulity rarely equalled—certainly never surpassed. If we examine the indications of public sentiment which have reached us, we see them breathing quite a contrary spirit. The Legislatures of Kentucky and the Mississippi Territory have expressed full confidence in the conduct of the Government, respecting the infraction of the treaty: Virginia, which embraces a respectable portion of western population, has done the same. The Legislature of Tennessee has not been in session, but, from the most recent and authentic accounts, we have every reason to believe that that State and the Indiana Territory are entirely satisfied with the position our Government has taken. The infant State of Ohio has presented us with an address couched in the warmest terms of affectionate attachment—equally honorable to her and to us; and her recent elections have manifested the same decided spirit: out of forty-five members returned to her first Legislature, there are only five to be found in the opposition. Pennsylvania is the only remaining

be the certain consequence of this measure. It is a moderate estimate to say that our annual expenditures, over and above our surplus revenue, would be twenty millions of dollars; and we cannot reasonably expect that the war would continue a shorter period than five years. Hence one hundred millions would be added to our debt, and the great experiment which we are now trying (that of extinguishing it in fourteen years) would certainly fail—an experiment which has been defeated in Europe by war and prodigality; and for the success of which, in this country, every friend of republican government looks up with the greatest anxiety. But this is not all: heavy and oppressive taxation would be necessary, in order to pay off the interest of the accumulating debt, and to meet the other exigencies of Government. We are now a happy nation in this respect. Neither the temper nor the habits of our citizens will patiently submit to severe burdens, and happily the posture of our financial arrangements does not require them. Give the rein, however, to chimerical notions of war—embrace the proposition now submitted to us—and the weight of our impositions will be felt in every nerve and artery of our political system. Excises—taxes on houses and lands—will be introduced, and the evils of former Administrations will be multiplied upon us. But the mischief will not stop here: with the increasing calls for money from the people, their means to satisfy them will be diminished. The superior naval force of the enemy would cripple our commerce in every quarter of the globe. Great Britain and Spain hold the keys of the Mediterranean; we should therefore be entirely shut out of that sea, unless we could persuade the former to unite leans, but the Floridas and Cuba; and we must immediately create a formidable Navy. It is needless to mention that the Atlantic States are, with a few exceptions, the carriers of the Western produce. Three-fourths of that trade is managed by the merchants of the State I have the honor to represent. I therefore view this measure as pregnant with great mischief to the commerce of Atlantic America, and as a certain exclusion of the Western States from market, as long as the war shall continue.

It is no slight objection in the minds of the sincere friends of Republicanism that this measure will have a tendency to disadjust the balance of our Government, by strengthening the hands of the Executive, furnishing him with extensive patronage, investing him with great discretionary powers, and placing under his direction a large standing army. It is the inevitable consequence of war, in free countries, that the power which wields the force will rise above the power that expresses the will of the people. The State Governments will also receive a severe shock. Those stately pillars which support the magnificent dome of our National Government will totter under the increased weight of the superincumbent pressure. Nor will the waste of morals, the spirit of cupidity, the thirst of blood, and the general profligacy of manners, which will follow the introduction of this measure, be viewed by the great body of our citizens without the most fearful anxiety, and the most heartfelt deprecation. And if there are any persons in this country (and I should regret if there are any such in this House) who think that a public debt is a public blessing, and that heavy taxation is expedient in order to produce industry;

State which possesses any western territory, and I need only refer you to her elections, to demonstrate the extraordinary attachment to the Government which prevails in that great and respectable State. In the next Congress there will not be a single member in opposition from Pennsylvania, and her State elections have been attended with nearly the same distinguished unanimity. Under the influence of such honorable principles, and under the auspices of the great character who so deservedly holds the reins of her Government, and so extensively possesses the confidence of his fellow-citizens, we have nothing to apprehend on her part from the evils with which we have been so liberally menaced. Delaware, who has no western country, who carries on little or no trade with the Western States, and who has no immediate interest in the present question, has indeed lifted up her voice against the measures of the General Administration, and has demanded a more energetic course. I shall be the last man to speak disrespectfully of any of the State governments; I mean not to disparage the conduct of Delaware, and I trust I do not, when I say that New York, which has a greater interest in the Spanish infraction than any of the Atlantic States, is entitled to equal attention; and she has, through her Legislature and Executive, declared her warmest approbation of the course pursued by the General Government on this interesting occasion.

It is equally in vain for the honorable mover to declare that the seizure of New Orleans will facilitate negotiation, and avert war; that we will lose our character if we do not; that delay will give Spain time to prepare; that our Executive has taken no course that we know of; and that the opposition will lend us their aid if we follow their advice. In opposition to these suggestions, we say that the seizure of New Orleans is war in fact, and will shut out negotiation; that character is to be lost, not by firm and honorable moderation, but by rash and boyish precipitation; that delay is an evil that cannot be avoided, if we pursue the path of negotiation, which is the course our Government has taken, and that if it gives our adversary time for preparation, it will also furnish us with the same advantage; that however desirable it may be to produce an union of sentiment and action among our fellow-citizens, we are certain that it will not result from the adoption of the present measure; that the great body of the people will consider it rash and unjust; that in gaining the transient and doubtful support of a small minority, we will alienate the affections, and lose the confidence of our best friends, who will certainly desert us when we desert the laudable principles which ought alone to entitle us to their esteem and attachment.

If negotiation shall prove successful, and of this I have no doubt, all the evils resulting from war will be averted; if on the contrary, it shall eventuate unfortunately, and we shall be compelled to face all consequences, and risk all dangers in the maintenance of our national honor and national rights, great and abundant advantages will still result from the pursuit of this course, and we will be enabled to appeal to the sword, with a full conviction of the justice of our conduct, with the unanimous suffrage of our country, and to the perfect satisfaction of the world. In the mean time, we can form some necessary preparations, and we can ascertain the feelings and bearings of foreign Governments. Every day of procrastination will find us better prepared, and will give us more people, more resources, more treasure, more force, with less debt. Our national character will stand high for moderation and justice; our own citizens, and foreign nations, will entertain but one opinion on the subject; and we can then confidently appeal to that great and good Being, who holds in his hands the destiny of nations, to smile upon our cause; but if, in the incrutable decrees of his providence, it is ordained that we must perish, we will at least fall with dignity, and maintain our character when we lose our existence.

Mr. DAYTON rose to answer the interrogatories which had been so vauntingly put by the honorable member from New York, (Mr. CLINTON.) He had asked, where were those gentlemen, who now advocate these strong resolutions, in that day when the British were committing their depredations upon our property, so lately as in 1794? For one, said Mr. D., I can answer. I was at my post in the other House, and the advocate of measures as strong, nay, stronger than those now proposed. I believe then, as I now do, that if the appointment of an Envoy Extraordinary could be followed by preparations for war in case of failure, it would contribute, not merely to the success of a negotiation, but also to the goodness of the terms. Why did not the gentleman from New York carry his inquiries back to the far more gloomy and trying times of 1776? Had he asked where we then were, said Mr. D., I could have told him that we, or some of us at least, were employed in his own State, upon the interior frontiers, defending the very people whom he now represents, from the irruptions of savages, and the devastation of an enemy. Where was then this honorable interrogator himself? Doubtless in some place of safety, perhaps dangling on the knee of the mother, or probably still in the egg-shell.

To what do all such questions tend? Certainly not to elucidate the subject, nor to conciliate parties. The long list of *extraordinaries*, with which the honorable gentleman from New York had introduced his argument, must have excited the expectation that his speech would partake of the same quality. Severe in his strictures upon declaimers, his own language was that of declamation; reprobating asperity in debate, on the part of others, he had indulged himself in a style little decorous or becoming, and exhausted against his opponents his full cup of bitterness. He had declared, with a boldness of assertion not unusual to him, that the resolutions under consideration contained declarations of war; but this was not the fact, they were merely intended as preparations for an event which some regard as inevitable, and all believe to be too probable. They went, indeed, to show, so far as declarations could

do it, that the Legislature of the country know our rights and will defend them, and that those of the most distant of our citizens are as dear to us as the nearest. For the people of the western country, said Mr. D., I have long entertained an affection. This affection has not been confined to professions only; for during the twelve successive years for which I have had the honor of a seat in the two branches of the National Legislature, my votes will show that I have been uniform in my exertions to promote the security, growth, and happiness of that people. I have indeed, regarded them among the most meritorious portions of our citizens, because to them, we who sat in ease and security were indebted for extending our settlements into the wilderness, protecting an exposed frontier, and for enhancing the value of our territorial possessions; and because, but for them, but for their enterprise, their courage, and their industry, the waters of one of the finest rivers in the world would still flow useless to the ocean, or at least, without use or profit to the Atlantic States represented on this floor. These facts acknowledged, I ask whether we are not bound by the strongest moral and political obligations to make with these people a common cause, to feel their injuries as our own, and to avenge insults offered to them, as if directed immediately against ourselves? What is their present situation?—or rather let me ask, what are their grievances and complaints, and what have we done to redress them? The state of that country has been depicted by the Senator from Pennsylvania, (Mr. Ross) in colors high indeed, and lively, but most true and just. Whilst he proved that he felt for his brethren and remembered them—whilst he described their wrongs and sufferings in language the most animated, glowing, and impressive, he did not forget the temper which became him as a Senator, nor the great line of policy which, as a representative of the whole Union, it behooved him to regard. He told you, sir, what indeed you hear with every western wind and western mail, that the great and only outlet for the productions of nearly half a million of people, was closed upon them, or placed under such prohibitions as to render the navigation of the river almost useless; and that unless immediate relief were afforded them, their property would waste and perish on their hands; their only resources for paying their obligations to the public, and their debts to individuals, would fail, and the little real property they had acquired, would be sacrificed to make good the deficiency. These, sir, are not imaginary evils, but real; they are not confined to the inhabitants of the western waters, but extend, in their effects, to every part of our country. Allow me here to give a faint idea of the importance of the trade of that country, by reading extracts from a communication made to me, from a source in which I confide, and which is in a great measure drawn from official documents.

[Here Mr. DAYTON read a paper to show that three articles only of American produce, entered at New Orleans in 1801, (as taken from the custom-house books,) amounted to one million six hundred thousand dollars. These were cotton, tobacco, and flour; and that the other nine or ten principal articles of export from thence, in that year, would have swelled the whole to nearly four millions, but now would certainly exceed it. It further appeared, officially, that from the first of February to the tenth of June, 1802, one hundred and fifty vessels, of from 100 to 300 tons, cleared at the custom-house of New Orleans, and that eighty vessels more of 200 to 300 tons were necessary to take off the produce then in store. That the State of Tennessee produced one-fourth, or one million of it.]

Thus, then, we see, said Mr. D., that property amounting to four millions, annually exported in the first six months of the year, is to be embargoed at the will of a foreign Government, or the caprice of a Spanish Intendant, or, if permitted to pass at all, permitted under such restrictions and impositions as to take away all the profit of transportation, and render it scarcely worth the raising.

What have we done to remove the obstruction, and redress the wrong? We have sent a Minister itinerant from Paris to Madrid, and from Madrid to Paris, to negotiate upon this subject. There may be precedent for this; there may be courtesy in the measure; but what are precedents? What are the forms of courtly politeness, to an injured, an outraged, a starving people?

I have thus far confined myself, said Mr. D., to the injury, as relating to the interests of the country; but is nothing due to the dignity and honor of the nation most grossly insulted by the act? Let them who will be the dupes of the artful, insidious insinuation, that it is an unauthorized act, an irregular proceeding of a subordinate officer of a Government, which can punish with banishment or instant death the smallest deviation from duty. I do not believe the tale; I never believed it; and a late official act must undeceive all whose minds are not shut to the impressions of truth. A late proclamation issued from Baton Rouge, a Spanish port, one hundred and fifty miles above New Orleans, prohibits all intercourse between Spaniards and Americans. Our people descending the river, in pursuit of lawful commerce, are forbidden to buy an egg, or a mess of salt, or any comfort of life, from the possessor of the banks, in the long, dreary distance of two hundred and seventy miles. This proclamation is issued from their highest post, that it might extend more certainly and rapidly into every settlement; and thus our brethren, without provocation on their part, are cut off from those comforts, which, in all countries, are granted to all but open enemies. Will gentlemen call this, also, an unauthorized act of a Spanish Intendant? The irregular proceeding of a commandant of a Spanish post, or petty lord of Grandprè? This act was more offensive and more insolent than the other, because it inflicted upon us a more serious injury, without the slightest pretext of benefit to themselves.

Sir, said Mr. D., there was a time when, if the poorest individual among us could say to his brethren and his Government, "I am an Ameri-

can citizen, and have been insulted as such." he would have been listened to with interest, and poor and humble as he might have been, the dignity of the country would have been considered in some measure represented and attacked in him, and its spirit roused to resent the insult. But there *is* a time when, I fear, we are about to turn a deaf ear, or at least to listen with apathy, to the injuries inflicted upon half a million of our citizens, and the insults offered to the whole nation. I will not say that we are about to act as if honor, rights, and dignity may be graduated by a scale of cents and dollars, and even our liberties and independence have their price; but I will freely say, that tame submission to a single insult, leads, imperceptibly, to such a result—inevitably to degradation, and necessarily to ruin.

It has been fashionable of late, Mr. President, with certain gentlemen, who make a boast of their own loyalty, to charge us, who compose what is called the minority, with hostility to the Administration, and a want of confidence in the Chief. Without deeming it necessary to deny or admit, in argument, such charges loosely made in the wantonness of debate, we are now prepared to submit ourselves, with them, to the touchstone of acts. If they believe that we distrust the management of our affairs, they will give us the more credit for sacrificing all personal or party considerations, when the good of our country requires unanimity. We are prepared to delegate the power and the means to defend, assert, and enforce our rights, to those hands which are pointed out by the Constitution, as the proper depository of so great a trust.

These resolutions are not absolutely imperative. The President may either use or forbear to use them, as he may think best for the public good. They amount to no declaration of war, but may save us from that calamity, by authorizing preparations for it. They cannot injure, but may aid your negotiation, and will show to our own countrymen, as well as to the world, that our reliance is placed, not on the soft glittering metals of Mexico and Peru, but on the harder metal of our own mountains.

Mr. COCKE.—Mr. President, the gentleman from New Jersey has said, that my friend from New York had furnished a dish for every palate; the gentleman should except his own, for it seems not to agree with him; his dish has been long filled with very different ingredients; he seems to have no relish but for war, havoc, and destruction; his constant food has been standing armies and strong naval establishments, with the offices and contracts attached to them. But how can the gentleman, as a lawyer, pretend to be so ignorant?

[Mr. DAYTON exclaimed that he was no lawyer, nor never was.]

The gentleman he had always understood to be a law character, but it was very certain he was no politician; his experience, however, could not have left him ignorant of the meaning of the resolution; for he must have known that the words *may* and *shall* are often considered in law as of the same force, particularly where they are used in defining authority to public officers; the resolutions, in this sense, would leave the Executive no choice, but would make it, as it were, his duty to go and take New Orleans.

The gentleman from Pennsylvania has paid very high compliments to that part of the country which he had the honor to represent. He tells us of our militia, of our spirit, and of our taming the wilderness; but with all this eagerness for invasion by our militia, he does not offer us a single man from his own State; he cannot take upon him to say the people of Pennsylvania approve so much of his opinions as to go a single step with him, though Pennsylvania is as much interested in this business as we are.

As to confidence in the Administration, he was one of those who was ready to repose all proper confidence in the Executive; not under pretences of this and that and the other kind, but from real respect and knowledge of the Executive for thirty years past, in the trying times of 1776, and in all the trying times that followed. The mover of these resolutions tells us, that our attempts at negotiation are chimerical, as the wildest project of the human imagination, and he adds, that the insults which we have suffered are such as no other nation ever submitted to. While the gentleman from New Jersey (Mr. DAYTON) advises to go and drive out the people from New Orleans, or we lose our advantage, the gentleman from Delaware, (Mr. WHITE,) he was sorry to hear indulge in unbecoming expressions towards Spain. Speaking of that country, he talks of the sluggish Spaniard, whom we may easily overcome. Were these modes of argument or debate consistent or decent in this Senate? For his part, he did not wish to assail the territory or the rights of any nation, nor to abuse their characters; but it is the more extraordinary when those gentlemen, at the same time, tell us that it is France that sets the Spaniards on, and that we are afraid to look the hero of Italy and France in the face. Perhaps those who accuse us thus of fear would be the first to hide their faces from real danger. It is not boasting that makes the patriot or the man of courage; it is coolness and resolution. We do not fear the hero of Italy or any other hero, but we fear the effects of war, of an unjust and rash war.

We are told that, within a few years, our Western country, from being the seat of wild beasts, is covered with populous towns and cities; that the country, redeemed from a state of nature, has become civilized and covered with cultivation, and a people enjoying peace, happiness, industry, and commerce; and that their industry is obstructed. All this is admitted, and the evil allowed to be a serious one; but do we countenance or approve of it? Do we encourage it? No, sir, we are as much opposed to this conduct of the Spanish Intendant as gentlemen can be; perhaps more seriously so. But suppose we were to agree to arm, would we be prepared, even if we were to begin now, before we can have advice from Europe, and the whole rectified without us? Suppose our militia march to New Orleans, what would they

find there? A grave for the majority of them. The precious boon of health is very scarce there; and our hardiest woodmen, from Kentucky and Tennessee, would soon find the climate too much for them.

It was somewhat surprising to him to find gentlemen opposed to the measures of the Executive now, who advocated similar measures on a former occasion. The gentleman from Pennsylvania was one of those who voted for the British Treaty, and he was a supporter in the Senate even for the treaty which granted a tribute to Algiers; and in both those treaties the principle is laid down, that no hostility shall be commenced without a previous complaint or declaration. Then if this conduct was wise and just towards the Barbary Powers, it must be so with Spain. Why should not inquiry take place here, when we have the best reason to think the act that of an individual alone? The gentleman undertakes to answer for the western people, and tells us that they are ready to assemble, sword in hand, and go down the river and take New Orleans. We were told on another occasion, that when they would go down, they must be defeated, and that the consequence would be, that they would make terms for themselves, join the French, and become our most inveterate enemies! This is the way my constituents are complimented by gentlemen who wish to be considered as their friends. It was surprising that those gentlemen who had never been in that part of the country, and who pretend to know so much about them, should know everything but what their representatives know to be the truth. But sir, these frightful spectres have been presented to us in so many shapes, and on so many occasions, that they are no longer calculated to frighten us; and whenever gentlemen are at a loss for arguments, we look for them with as much certainty as for rain from the clouds.

Sir, we do not wish for war in the western countries; we sincerely wish for peace and good neighborhood. The Spaniards, our neighbors, appear to be a friendly, candid, honest people; we do not seek a quarrel with them: but if their Government should do us wrong, we do not want the spirit to do ourselves right at all hazards; but, without that injury, there is no spirit to do them wrong. But whenever the gentleman (Mr. Ross) feels his blood warm, the nation must go with him to war, or the national honor is lost; and in this spirit he tells us that negotiation must fail. He thought that even if negotiation should fail, then the whole national spirit would be roused, and we should go to the assertion of our rights with the greatest effect.

But it is said that when we return home we shall be told that our conduct has been mysterious, that we have discussed the public affairs with closed doors, that we do not trust the people with their own affairs, and that they would trust us no longer. But, sir, we have no wish to keep anything secret from our constituents; he had their unanimous confidence, and the only fear he ever felt, was, lest he should not be able to discover what was their best interests. He knew that the people would speak in a manly tone to their representatives, as well as to their adversaries, and if their representatives conduct themselves improperly, they will dismiss them: nevertheless, if a question arose between his sense of duty and an apprehension of that kind, he would do his duty, because the people would in the end approve of his conduct. But why does the gentleman so much complain of closed doors; did he suppose any one in that House entertained apprehensions of his persuasive powers? He, for one, thought very little about it. It did not excite his sympathies any more than the metal of Mexico, or of our mountains; he was neither afraid of the thunder of his eloquence nor solicitous for the plunder of the Spanish mines. If real causes for war arose, he should not expect to see those now so eager for wanton attack in the front ranks. To those then who ask, will you preserve peace where there is no peace? he would reply, that is not the question; the true question is, will you have war where you may preserve peace? Gentlemen want to know, what is the Executive about? Why do they not go and ask him? He has no reserves, he will tell them, without disguise, that he is solicitous to preserve peace if possible, and if that is not to be done, then to defend the country and assert its rights with the energy and dignity becoming an independent Republic.

The gentlemen, in order to show us how very kind they will be to us, say, that if we will only go to war with Spain, they will be our pledges to the western people, and that their friends in the other House, and out of doors, would do the same. Why this is very generous of them, and is the more remarkable because it is an uncommon thing with them. But it is very certain that we do not stand in need of their pledges, nor of their assistance. On former occasions they did not display any of this liberality, and he could not help suspecting their sincerity now. He was against war on any terms but necessity or defence; if there is no alternative he would go into it as heartily as any one. But he had seen war, the war of our independence, and he was averse to a renewal of calamities such as were then suffered. Where were the Mars and Jupiter of the present day in those times that tried men's souls? Where were they when our wives and children were delivered up to massacre? The thunder of Jupiter was then never heard of, and Mars himself was most probably asleep with Bellona. He was averse to war from the example which we had very lately, of the oppressive consequences of a disposition to war; those oppressive taxes and heavy debts, and unpopular laws which we have been saddled with, which we have since repealed, and he hoped never again to see revived.

Mr. J. MASON, (of Massachusetts,) did not expect to throw much new light on a subject which had been so ably displayed by the mover of the resolutions; he had formed his opinion from mature reflection, and every argument he had heard offered against the resolutions, only tended to confirm the opinions he had formed in their favor. They had been dubbed war resolutions;

but he could not discover anything of war in them; on the contrary, he considered them as entirely of a pacific character. What do they purport?

Resolved, That the United States of America, have an indisputable right to the free navigation of the river Mississippi, and to a convenient deposit for their produce and merchandise in the island of New Orleans.

"That the late infraction of such their unquestionable right, is an aggression hostile to their honor and their interest.

"That it does not consist with the dignity or safety of this Union to hold a right so important by a tenure so uncertain.

"That it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength, and prosperity of these States, that they obtain complete security for the full and peaceable enjoyment of such, their absolute right.

"That the President be authorized to take immediate possession of some place or places, in the said island, or the adjacent territories, fit and convenient for the purposes aforesaid, and to adopt such measures for obtaining that complete security, as to him, in his wisdom, shall seem meet.

"That he be authorized to call into actual service any number of the militia of the States of South Carolina, Georgia, Tennessee, Kentucky, and Ohio, and the Mississippi Territory, which he may think proper, not exceeding fifty thousand, and to employ them, together with the naval and military force of the Union, for effecting the object above mentioned; and that the sum of five millions of dollars be appropriated to the carrying into effect the foregoing resolutions, and that the whole or any part of the sum be paid or applied on warrants drawn in pursuance of such directions as the President may from time to time think proper to give to the Secretary of the Treasury."

Is this not true; do we not agree in this unanimously; will any member of the Senate deny it? Is not our right to the navigation of that river a natural and inviolable right? It is not a favor granted to us, but is derived from nature itself; the treaty indeed describes the middle of the river as our boundary, but is it not perfectly free? What objection then can be made to this resolution? What does it further say? that we have an unquestionable right to the deposit at New Orleans; have we not that right? It does not say that we have a right to the territory, but no man can controvert our positive and absolute right to the deposit of our commodities in that Territory forever; it is a right unlimited for ages, and the written instrument under which it is established can never be done away while the two nations exist. It is further declared that this right is important; can this be denied? Nor can it be said to be exclusively important to the people in the immediate vicinity of the Mississippi, for it involves, directly or indirectly, the whole of the States; it involves their internal trade, and their credit on the Atlantic side of the Union; and it imposes on the people by diminishing the value of their produce. Upon every principle of right and safety the resolutions should be supported.

Some gentlemen, nevertheless, doubted that this infraction of the treaty was authorized. He did not enter into this spirit of doubt; he had no doubt that it was the authorized act of either France or Spain. It is now from twelve to eighteen months since the rumor of the cession of Louisiana has prevailed, and no authentic information on the subject has ever been furnished to the people of the United States; contradictory rumors had also gone abroad, but to this moment we are in a total state of uncertainty on the subject. How then are we to account for this secrecy? If Spain determined to deprive us of a right, would she inform us of it by a message? No, she would pursue exactly the conduct she has done. The Spanish Minister here, indeed says, that the act is not authorized, or he should have been informed of it. The plain meaning of this is, that he is not sufficiently informed. The period at which this infraction took place affords strong presumption of the motive and design. It took place at the moment when the French thought they had completely overcome the blacks, and restored the island of St. Domingo to obedience; they had determined that the subjugation of that island should precede the attempt upon Louisiana, and in the moment of their imaginary triumph, they commenced their operations at New Orleans, by the suspension of our right. As to the assertions that Louisiana will be ceded or is ceded, with a special regard to our limits, he did not regard them; they were evidently made only to lull us.

The next resolution authorized the President to take possession of New Orleans. This may at first sight have the appearance of war; but if gentlemen will only call to mind their own declarations, that our right is indisputable, then the aggression has been against us. This point is essential to a fair consideration of the case. If, then, they have committed an hostile act, if they have deprived us of a natural and conventional right, if they have broken a treaty, does there any question remain but as to the means that ought to be employed to recover it? On this point the Senate is divided, there are two opinions; one for negotiating to have the right restored; the other, to possess it without delay. In the choice of one or the other of these recourses, he had no hesitancy; for possession will be the best guarantee to negotiation. Without that possession, negotiation must be a work of time, and always at the mercy of diplomatic procrastination. What will be the situation of the country in the mean time? The importation ceases, and the export stops. The western people will say that the hand of Government, intended for their protection, is withheld from them, that we want zeal, and avoid justice in their cause. Spain and France know the western country as well as we do; they have an intimate knowledge of it; their able men have visited all parts of it. Instead, therefore, of supplicating them, they should be put in the situation of supplicants to us; the inhabitants of that vast tract confide more on the United States than they do on France or Spain. We are therefore taking the most safe and certain measures. It is the opposition, Mr. President, who are in favor of supporting the Executive, and not those who profess to be its friends.

What, sir, is the language that France will hold to you, if these resolutions are not carried? The First Consul will say, Why do you supplicate me, and what regard should I pay you? You are a divided people; parties are nearly balanced among you; what are your complaints to me? But gentlemen say, the step recommended would be an invasion of their territory; but surely this is not a greater wrong than the invasion of our rights. We do not go to make ourselves masters of the soil; our only object is, to hold them as a pledge for the security of our rights by treaty. Gentlemen had referred to the transactions at Nootka Sound, between England and Spain. If he were to quote any case in preference to another, in support of the resolutions, it would be that. The British landed at Nootka, they erected a fortification; and what did the Spaniards do? They did not wait the tardy course of negotiation; they went with a force, attacked the settlement, and broke it up; and when they had taken this precautionary measure, they agreed to negotiate, and the effect was favorable as it was honorable to the spirit of Spain. The best way to negotiate is with the alternative visible; if we should send by Mr. Monroe the account of our entering and holding the pledge of New Orleans, he might go to France or Spain with double confidence. If the whole province of Maine were invaded by an enemy, it would not be of so much importance as the stoppage of that river; if that was taken, or if the island of New York was in possession of an enemy, would we wait to negotiate? The aggression is on their part, and the consequences they alone ought to be accountable for.

The resolutions he did not consider as imperative on the Executive; but if gentlemen were desirous of so altering the phraseology, as to render them more explicitly optional, he was willing to accommodate them, and to leave it in the breast of the President to take possession or not, as the exigency may require; money and men are offered for his use, and he may use or not use them according to his own judgment. In the course taken, we are pursuing a shadow—we are in truth sleeping under injury. War was certainly a serious thing, but all nations have been obliged to resort to it; it produces an energy in the human character, which never exists without it. What was the effect on our own country, under a strong sense of injury, and at a time when we were so many degrees inferior in numbers and resources to what we are at present? At the commencement of our own Revolution, we had scarcely any resources, yet armies were raised, arms and arsenals provided, and we triumphed over the most powerful nation then in Europe. We suffered some evils, in the loss of many brave and valuable men; but even in that loss we had the consolation, as it produced an energy, a heroism, that will immortalize them to the latest posterity. It has been insinuated, that such a step would alarm foreign nations. But turn your attention to the immediate consequences. It would be impossible for us to be involved in a war with France or Spain without having the navy of Great Britain on our side; necessity and the wisest policy would unite us, and we should bid defiance to all the maritime Powers. But on the other hand, is not France as desirous of peace as any nation can be; is it not her interest to be at peace, seeing the immense conquests which she has made and secured? Do we not also know that Great Britain feels an eternal jealousy of her rival, and is she not this moment interfering, not to rescue her own territories, but to preserve the territories of others from being devoured. He was, upon the most mature examination of the subject, in favor of the resolutions, and against the amendments.

Mr. J. JACKSON, of Georgia.—Coming from a State, at the extreme of the Union in the South, and excepting the States immediately interested in the navigation of the Mississippi, the most concerned on the present occasion, of any in the Union, he hoped it would not be deemed improper in him to offer his sentiments on the resolution before the Senate; for, sir, no event can affect the settlers on the Mississippi, no change of masters can take place there, without the shock being felt on the frontiers of Georgia. The nation which holds New Orleans must eventually possess the Floridas, and Georgia cannot remain an indifferent spectator; in case of war, the blow struck on that river will be vibrated on the Saint Mary's, and the attack on the one will be seconded by an attack on the other.

The gentlemen from Kentucky and Tennessee have not those fears expressed by the gentleman from Pennsylvania; they have declared their citizens satisfied with negotiation in the first place, and the conduct pursued by the Executive. He could say the same, as respects the citizens of the State he represents, and begged leave to read a letter on the subject, from a respectable gentleman of Georgia, applauding the appointment of Mr. Monroe. [He here read a letter expressing the approbation generally expressed at the nomination.]

That there has been an indignity offered to the United States, by the Spanish Government of New Orleans, he should not deny; so far, he joined the gentlemen on the other side, as not only to declare that sense of it, but to assert that the withdrawing the right of deposit, given under the fourth article of our treaty with Spain, concluded at San Lorenzo el Real, prior to the pointing out another place for that purpose, is such a violation of our right, and such an insult to the dignity of the nation, as ought not to be put up with in silence. We ought, we are bound to demand a restoration of that right, and to secure it to our western citizens, let the risk be what it may, if it even extends to life and fortune. He cordially agreed with the gentleman who had preceded him, (Mr. MASON,) that it is a momentous subject; but could not consent to go at once to war, without trying, in the first place, every peaceable mode to obtain redress.

But the gentleman sees no war in the resolutions of the gentleman from Pennsylvania, (Mr. Ross.) He could not agree with him on that point; let us examine them, and it will not only be found that they contain war measures, but that

part of the premises on which we are called upon to go to war, are not founded. The first part of the resolutions declares, that the United States have an indisputable right to the free navigation of the river Mississippi, and to a convenient place of deposit for their produce and merchandise, in the island of New Orleans. Now, sir, the former part of this resolution is not affected by any proceedings of the Spanish Government. You are as perfectly in possession of the right as you ever were; your vessels are at this moment freely navigating that river; you have not heard of a single interruption; you have not learnt that the Spaniards, so far from interrupting that navigation, have ever doubted your right. Why then, sir, resolve on the assertion of rights which are not questioned, but of which you are completely in possession? He could compare it to no other case than that of a man in private life, in peaceable possession of his house, resolving on and publishing his own right to it, and thereby rousing the suspicions of his neighbors to doubt the title to it. Passing over the latter division of the first resolution, and which he acknowledged to be the fact, let us consider the second proposition. "That the late infraction of such their unquestionable right, is an aggression hostile to their honor and interest." Sir, after a declaration of this kind, can you retract? You cannot; it is in fact a declaration of war itself. Many of the Courts of Europe would consider it so and have engaged in war for less cause of offence than this resolution contains. You pronounce at once, without knowing whether the proceedings at New Orleans were sanctioned by the Court of Spain, that that nation is in a state of hostility against your honor and interest, which declaration, coupled with the following resolution, "That it does not consist with the dignity or safety of this Union to hold a right so important by a tenure so uncertain," is a direct insult to that nation. But if war is not to be found in those resolutions, is it not in the fifth resolution, "That the President be authorized "to take immediate possession of such place or 'places in the said island, or the adjacent territo-'ries, as he may deem fit or convenient." Is this not war? If it be not, he knew not what war was! And now let us inquire, if we should be justified in adopting those measures, on the grounds of public or private justice, or the laws of nations.

Sir, the going to war has always been considered, even among barbarous nations, a most serious thing; and it has not been undertaken without the most serious deliberation. It was a practice among the Romans, prior to undertaking a war, to consult the *faciales* on the justice of it; and, after it had been declared just, to refer it to the Senate, to judge of the policy of it; and unless the justice and the policy were both recorded in, the war was not undertaken. If this was the case then, among barbarous nations, shall we, who call ourselves a civilized nation, not well weigh the justice and the policy of going to war, before we undertake it? Two gentlemen, who preceded him, (Messrs. BRECKENRIDGE and CLINTON,) have read some passages on those points, from the law of nations, and he begged to be indulged in reading one or two more; they are from *Burlemaqui*, 2d vol. p. 264, ch. 4, of those things which ought to precede war:

"However just reason," says this author, "we may have to make war, yet as it inevitably brings along with it an innumerable number of calamities, and oftentimes acts of injustice, it is certain we ought not to proceed too easily to a dangerous extremity, which may perhaps prove fatal to the conqueror himself. Supposing the reason of war is just in itself, yet the dispute ought to be about something of great consequence, since it is better even to relinquish part of our right, when the thing is not considerable, than to have recourse to arms to defend it." Again: "We ought to have at least a probable appearance of success, for it would be a criminal temerity to expose ourselves to certain destruction, and to run into a greater in order to avoid a lesser evil." "Lastly," says this writer, "there should be a real necessity for taking up arms; that is, we ought not to have recourse to force, but when we can employ no milder method of recovering our right, or of defending ourselves from the evils with which we are menaced. For, as a Sovereign ought to take particular care of the State, and its subjects, he should not expose them to the evils with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms."

What is our course, then, to pursue? Is it to go immediately to war, without asking for redress? By the law of nations, and the doctrines of all writers on them, you are not justified until you have tried every possible method of obtaining redress in a peaceable manner: it is only in the last extremity, when you have no other expedient left, that a recourse to arms is lawful and just; and he hoped the United States would never forfeit her character for justice, by any hasty or rash steps, which she may, too late, have to repent of—when she can have recourse to another method which may procure a redress of the wrong complained of.

Let us now look to the policy of adopting those resolutions, which must inevitably involve the United States in war, and stir up the jealousy of European nations. They watch you already with a jaundiced eye, although the nation is in its infancy. Yes, sir, our nation is as it were, in comparison with other nations, an infant; but it is a Hercules in its cradle, and they know it! They will seek every means to check its growth; and they will seize on every occasion to curb it, if they perceive any serious evidences of its ambition. Your taking possession of New Orleans would afford such evidence; it would rouse them; they would be alarmed for their own possessions near you, and would combine to put a stop to your career. Would it be honorable then, sir, to retrace your steps after you have taken possession? Would it comport with the national honor and dignity we have heard so much about? He need not answer the question.

To induce us to seize the present moment in taking possession of the island, an honorable gentleman from Delaware (Mr. WHITE) has told us that, if we delay the present moment, we shall not meet a weak, an inanimate enemy—the sluggish Spaniard, the slave of France—but the bayonets of the invincible band of French grenadiers! Sir, in such a hostile proceeding, as we are called on to adopt, he believed that even the sluggish Spaniard would be roused from his slumber, and join in the cry against us.

An honorable gentleman, the mover of the resolutions, informed us the other day, that, by negotiation, you would not only take away every chance of payment of the spoliations on our commerce by Spain from the merchants, but you would also take away all ability from the Western people to pay those merchants what they owed them at home, whereby they would be double sufferers. Shall we reverse this picture, and see how the merchants would fare if the resolutions were adopted? Sir, they would be received as a measure of decided war, a perfect war manifesto; and the property of your merchants, their ships, their merchandise, that are scattered over the globe—they would be embargoed in every port of France and Spain, and captured in all directions. The capital of your merchants would be destroyed, and the hopes of redress for former spoliations be destroyed with it; and then we should be little nearer the main object of redress, as to a place of deposit, than we are at present; on the contrary, a negotiation will place your merchants on their guard, they will watch its result, and afford them an opportunity to secure their property.

As to national honor and dignity, he believed we have all a proper sense of it, and he would be one of the last on this floor to put up with insult and indignity from any nation; but, as much as we had heard of it, he did not think we ought, without negotiation, to resent every injury by war. In many cases, national honor is only a convertible term for national interest; and he begged leave to relate an anecdote of a celebrated soldier on this head. After the failure of the attempted storm of Savannah, in the year 1779, Count D'Estaing, who was wounded in the attack, and lay in that situation about five miles from Savannah, was visited by Governor Rutledge and other gentlemen of South Carolina and Georgia. The Governor having perceived some movements in camp indicative of a retrograde motion, told the Count that his own honor and the honor of France were concerned in his remaining and taking the city. The Count very mildly replied, "Gentlemen, if my honor is to be lost by 'not taking the city, it is lost already; but I deem 'my honor to consist in the honor of my country, 'and that honor is my country's interest!" The time of operation in the West Indies was arrived, and the Count re-embarked his troops.

Now, sir, is it not our duty to consult our country's interest, before we take this rash step, which we cannot recall? Peace is the interest of all Republics, and war their destruction; it loads and fetters them with debt, and entangles not only the present race, but posterity. Peace, sir, has been the ruling policy of the United States through all her career. If we show the citizens that we are not willing to go to war, and load them with taxes, they will all be with us, when a necessity for war arrives. What, sir, was the policy of America from the commencement of the Revolution? Was that day, did we hastily go to war? No, we tried every peaceable means to avoid it, and these means induced a unanimity in the people.

At the commencement many States were exceedingly divided, in some a majority were against us; yet, seeing the moderation and justice of our measures, and the rashness and tyranny of the British cabinet, they came over to our side, and became the most zealous among us. At the present moment, sir, the people are averse to war, they are satisfied with the steps of the Executive, they wish negotiation. If you adopt these resolutions, they will be still divided; if you negotiate, and fail in that negotiation—if you cannot obtain a redress of the injury which they feel as well as you, they will go all lengths with you, and be prepared for any event; you will have this advantage, you will be unanimous, and America united is a match for the world. In such case, sir, every man will be anxious to march, he would go himself if called on, and whether the sluggish Spaniard or the French grenadier commands New Orleans, it must fall; they will not be able to resist the brave and numerous hosts of our Western brethren, who are so much interested in the injury complained of. He was himself of opinion that New Orleans must belong to the United States; it must come to us in the course of human events, although not at the present day; for he did not wish to use force to obtain it, if we could get a redress of injury; yet it will naturally fall into our hands by gradual but inevitable causes, as sure and certain as manufactures arise from increased population and the plentiful products of agriculture and commerce. But let it be noticed, that if New Orleans by a refusal of justice falls into our hands by force, the Floridas, as sure as fate, fall with it. Good faith forbids encroachment on a pacific ally; but if hostility shows itself against us, interest demands it; Georgia in such case could not do without it. God and nature have destined New Orleans and the Floridas to belong to this great and rising empire. As natural bounds to the South, are the Atlantic, the Gulf of Mexico, and the Mississippi, and the world at some future day cannot hold them from us.

Sir, we have been told much by the gentleman from Delaware (Mr. WHITE) of Bonaparte; that he is the hero of France, the conqueror of Italy, and the tyrant of Germany; and of his invincible legions. Much as he respected the fame and exploits of that extraordinary man, he believed we should have little more to fear from him than from the sluggish Spaniard. Bonaparte, sir, in our Southern country, would be lost, with all his martial talents; his hollow squares and horse artillery would be of little service to him in the midst of our morasses and woods, where he would meet not with the champaign country of Italy, with the little rivulets commanded by his cannon, which he could pass at leisure; not fortified cities which command surrounding districts; but with rivers miles wide, and swamps, mortal or impenetrable to Europeans. With a body of only ten thousand

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of our expert riflemen around him, his laurels would be torn from his brow, and he would heartily wish himself once more safe on the plains of Italy.

What, sir, would be forty or fifty thousand French, in those impenetrable forests, to the hosts which would be poured down the Mississippi! But, sir, should Bonaparte send an army of forty thousand men here, and they should not be destroyed by our troops, within twenty years they would become Americans, and join our arms; they would form connexions with our females, intermarry with them, and insensibly change their habits, their manners, and their language. No other people can long exist in the vicinity of those of the United States, without intermixing and ultimately joining with them.

The sacred name of WASHINGTON has been unnecessarily appealed to, on this as on many other occasions, and we have been boastingly told that, in his time, no nation dared to insult us. Much, sir, as he revered his memory and acknowledged him among the fathers of his country—was this the fact? Was he not insulted—was not the nation insulted—under his Administration? How came the posts detained after the definitive treaty by Britain? What dictated that inhuman deed to stir up havoc and destruction among us? Lord Dorchester's insolent and savage speech to the hordes of Indians on our frontiers, to massacre our inhabitants without distinction. Were those not insults, or have we tamely forgotten them? Yet sir, did WASHINGTON go to war? He did not; he preferred negotiation, and sent an Envoy to Britain; peace was obtained by a treaty with that nation—he should not inquire at what price—but these were the steps taken by him. Shall we then not negotiate; shall we not follow the leading feature of national policy? He hoped we should, and by doing so we shall become unanimous. We are all actuated, he hoped, by one view, but differ on the means; let us do justice by requesting our neighbor to do justice to us, by a restoration of our rights; let us show the nations of the earth we are not anxious for war, that scourge of mankind; that we bear patiently our injuries, in hopes of redress, and that nothing but absolute denial of justice, which will be additional insult, shall induce us to it. But, sir, if forced to war, contrary to our policy and our wishes, let us unsheath the sword and fling away the scabbard, until our enemies be brought to a sense of justice, and our wrongs are redressed.

He apologized to the House, it was a late hour, and he would no longer detain them, although he had many more observations to offer on the remarks of gentlemen, which have been made on this floor. That we may be guided in our deliberations by prudence as our advanced guard, and determination as our rear, was his sincere prayer, and that the result of those deliberations may be for the advantage and happiness of our common country.

Mr. TRACY rose, and moved that the House now adjourn. Adjourned accordingly at half-past five o'clock.

THURSDAY, February 24.

The Message received yesterday from the PRESIDENT OF THE UNITED STATES was read, as follows:

Gentlemen of the Senate, and
of the House of Representatives:

I lay before you a report of the Secretary of State on the case of the Danish brigantine Henrick, taken by a French privateer in 1799, re-taken by an armed vessel of the United States, carried into a British island, and there adjudged to be neutral; but, under an allowance of such salvage and costs as absorbed nearly the whole amount of sales of the vessel and cargo. Indemnification for these losses, occasioned by our officers, is now claimed by the sufferers, supported by the representations of their Government. I have no doubt the Legislature will give to the subject that just attention and consideration which it is useful as well as honorable to practise in our transactions with other nations, and particularly with one which has observed towards us the most friendly treatment and regard.

FEB. 23, 1803. TH. JEFFERSON.

Ordered, That the Message and papers therein referred to lie for consideration.

The bill, yesterday brought up from the House of Representatives for concurrence, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen, and for other purposes,'" was read, and ordered to the second reading.

The bill to alter the time for the next meeting of Congress was read the second time, and referred to Messrs. WRIGHT, NICHOLAS, and DAYTON, to consider and report thereon.

The VICE PRESIDENT communicated to the Senate a report from the Secretary for the Department of Treasury, on the emoluments of the officers employed in the collection of the customs for the year 1802; which was read, and ordered to lie on file.

Mr. BALDWIN, from the committee to whom was referred, on the 22d instant, the bill, entitled "An act making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three," reported it without amendment.

Mr. ELLERY, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act in addition to an act, entitled 'An act concerning the registering and recording of ships and vessels of the United States,' and to the act, entitled, "An act to regulate the collection of duties on imports and tonnage," reported it without amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

MISSISSIPPI QUESTION.

Agreeably to the order of the day, the Senate resumed the consideration of the resolutions respecting the indisputable right of the United States to the free navigation of the Mississippi, together with the proposed amendments thereto.

Mr. WELLS, of Delaware, said he had listened yesterday, with great attention, to gentlemen who had opposed the resolutions moved by his honorable friend, (Mr. ROSS,) from Pennsylvania. I cannot say that I expected, but I did entertain at least a faint hope they would be able to satisfy us that our fears were groundless, that the honor of our country was unblemished, its interest not impaired, its safety not endangered. But had I a doubt before, it no longer remains; their arguments have convinced me more than ever that we have not a moment to lose. Yet, sir, almost the whole of the present session has passed away without a single measure of defence being adopted. Even now I foresee that the resolutions will be laid aside. I rejoice, however, to find that they are likely to produce one good effect; they have at last roused gentlemen from the false security in which they have so long reposed. If the resolutions now under discussion do not prevail, I will not refuse to vote for the amendment proposed by the honorable gentleman from Kentucky (Mr. BRECKENRIDGE.) I prefer the resolutions because they go no further and apply the remedy directly to the evil: the amendment contemplates the possibility of a failure of negotiation, and makes some provision for such an event.

These resolutions have been opposed upon two grounds; First, it is alleged that the conduct of the Intendant at New Orleans is not authorized by the Court of Spain. Second, it is said that we are bound by moral obligation to resort to negotiation before we attempt to redress ourselves.

Did I even believe, with gentlemen on the other side of the House, that the violation of our right of deposit was the act of the Intendant alone, I would vote in favor of these resolutions. I should still be for going down, and taking possession of New Orleans, and thereby putting in check the power of the Intendant, until we could hear from Europe. If we are to wait for the result of a negotiation just now commenced, consider the situation of the western country in the interim. Half a million of your citizens are cut off from all intercourse with the rest of the world; every kind of business there is at a stand; the farmer's produce is rotting on his hands; industry is paralyzed; emigration discouraged; the value of their lands diminished; all ability to comply with their engagements with each other, with the Government of the United States, or with their own State governments, is taken from them. This is an extremity to which I can never consent to reduce them. Let us, rather, remove the obstruction to the navigation of the Mississippi immediately; and if in the course of the negotiation it should be proven to our satisfaction that the violation complained of was not authorized by France or Spain, and that both nations were resolved to respect our rights, New Orleans might then be restored. No cause of umbrage would be given to either nation. They would both see the extent of the injury we were likely to sustain by the criminal conduct of their agents; and, if they were honest, they would sincerely rejoice that we had in time guarded against it.

Gentlemen have persuaded themselves that the conduct of the Intendant is not authorized by the Spanish or French Government; but what reason have they assigned us in support of this opinion? They tell us of the friendly assurances received from the Minister of His Catholic Majesty resident near our Government; and they place considerable stress upon the circumstance of the Governor of New Orleans disapproving of what the Intendant has done. I will not stop to speak of the imprudence of reposing themselves upon the assurances of a Minister, perhaps expressly instructed to mislead them. But why have they trusted to the imaginary collision of sentiment between the Governor and Intendant of New Orleans? Do not gentlemen know that our Government is in possession of testimony, demonstrating beyond all kind of doubt, that this is not the fact? Have they not seen the letter of the Governor of New Orleans to the Governor of the Mississippi Territory? In this letter I learn that the Governor comes out and acknowledges his co-operation with the Intendant, justifies the breach of the treaty, and declares that these instruments cease their binding force the moment it suits the interest of either party to break through them. Alas! the history of the world furnishes us too many evidences of this melancholy truth. But this is the first time that any nation has had the hardihood to avow it. No, sir, even Carthage herself, who became proverbial for her disregard of treaties, never attained to a point so profligate. If I am incorrect in my statement, honorable gentlemen, who have easier access to the sources of official information than is permitted to us, will set me right. Why has this document been so sedulously kept from the public eye? Why it should be even now so carefully locked up, is a mystery not for me to unravel.

We are told that there is a moral obligation imposed upon the nations, to try the effect of negotiation, before they attempt to redress themselves. I do not admit the force of this rule, where negotiation is not expected to succeed; where it cannot in its nature afford effectual relief. Believing as I do, that negotiation must fail, I am not for trusting to that alone. It has long been evident that the French have attached to these territories upon our frontier, an importance which of themselves they do not bear, and which can only be attributed to them on account of their connexion with our Southern and Western States. If you treat, therefore for an extension of your limits, you will be disappointed. If you negotiate respecting the right of deposit, and should succeed, you will obtain no better security than that which has already been found ineffectual. For my part, I am strongly impressed with an opinion that the French Consul has a project in view, deeply hostile to the prosperity of our country. One great object with the French is, to increase their maritime strength. The position which they are about to take in New Orleans, will soon put them, at our expense, into the possession of an immense carry-

ing trade, and reduce under their influence the fairest portion of our empire.

Perhaps I may be asked, does the French Consul imagine that the people of the United States will consent to see subjected to foreign domination any part of their territory? This is an inquiry which Bonaparte has not been much in the habit of making. He knows the extent of the means he possesses in this country. It is but a few years since violent jealousies prevailed between the Atlantic and Western States. Fortunately they have now subsided; these jealousies he will endeavour to rekindle. Possibly he may calculate upon detaching the people on the seaboard from the support of their brethren on the western waters. He has already succeeded in concealing the hand which guided the pen of the Intendant at New Orleans. His troops are probably now approaching our shores, and what means of precaution have you adopted? Let not gentlemen flatter themselves that Great Britain will interfere to arrest this scheme of French aggrandizement. That Government is already staggering under its own burdens. Their tottering situation has been acknowledged on the floor of the British Parliament. She is obliged to look on, and tamely submit to the extension of the Gallic power, in all quarters of the world; she knows that her rival is strengthening herself in every direction. Notwithstanding the cession of Louisiana, New Orleans, and, perhaps, the Floridas, was carefully concealed from her at the Treaty of Amiens, she is now acquainted with it, and yet she sees the armament destined for these countries preparing to depart, without daring to remonstrate. No, sir, every dependence that we place on any other than our own exertions, will be vain and illusory. Let us be but united and true to ourselves, and there is no enemy we need fear.

I see no other course for us to pursue than that pointed out by the resolutions. Our interests, our honor, and our safety, require it to be adopted. I am aware that the alarm of war will be rung though the country. I know full well the pains that will be taken to impress an opinion upon our fellow-citizens that we are the friends of war. This we cannot help: the danger with which our country is threatened, will not permit us to shrink from the discharge of our duty, let the consequences to ourselves be what they may. Let me ask you, with my honorable friend from New Jersey, (Mr. DAYTON,) what stronger evidence can we give you of the sincerity of our intentions than the resolutions themselves? So far from cramping, or diminishing, the power of gentlemen opposed to us, in a crisis like the present, we only offer to strengthen their own hands. Had the advice of an honorable gentleman near me (Mr. MORRIS) been listened to, when you were disbanding your army, this crisis would not have happened. Had you then posted at the Natchez, as he recommended, a thousand soldiers, the navigation of the Mississippi would not now have been interrupted. He foretold you what would happen, and his prediction has been literally fulfilled.

There is but one fault I find with these resolutions, which is, they do not go far enough. If I could obtain a second, I would move an amendment explicitly authorizing the taking possession of both the Floridas as well as the island of New Orleans. In one respect I entirely accord with the honorable gentleman from Georgia, (Mr. JACKSON,) and I admire the manly and decisive tone in which he has spoken upon this subject. We both agree that the Floridas must be attached to the United States; but we differ in point of time. The violent aggression committed upon our rights, and the extent of the danger with which we are threatened, in my humble opinion, would amply justify our taking possession of them immediately. Look at the relative situation of Georgia, the Mississippi Territory, and the Floridas, and it will require very little of the spirit of prophecy to foretell that we shall, ere long, be compelled to possess ourselves of them in our own defence. There is but an imaginary line running between them: let the French be but once settled along that line, and they will have the whole of your Southern States at their mercy. Unhappily, there is an inveterate enemy in the very bosom of those States. You might as well attempt to stop the course of the plague, as to arrest the subtle and dangerous spirit they would, the moment it suited their interests, let loose among the helots of that country. Then you would have lighted up there a domestic war, which could only be extinguished in the blood of your citizens. But I cannot agree with the same gentleman from Georgia, when he says, that the French, if they were landed even in hostile array upon our shores, would soon forget their enmity to us, and marrying with our females become our fellow-citizens. The French never forget to love their own country. How many instances did we see of this national character even among the royalists who were driven out of France during the revolutionary convulsion? Did their hearts ever refuse to palpitate with joy when the news of a brilliant victory obtained by their countrymen was announced to them, because it was achieved under the auspices of their persecutors? No, sir; they may act over again the rape of the Sabines, but they will form no other connexion with our fair country women.

We have received many and repeated assurances from honorable gentlemen on this floor, who represent those States most immediately affected, that their constituents are perfectly satisfied with what has been done by the Government in their behalf. They ought, it is true, to be better acquainted than we can be, with the wishes of the people among whom they live, and who have selected them as the guardians of their rights. But I think they will find themselves mistaken. Is it possible that half a million of people will contentedly submit to be cut off from all communication with the rest of the world during the progress of perhaps a tedious negotiation? No, sir. Such is the pressure of their wrongs; so ruinous is the aggression, they cannot submit; they must, they will—nay, I had almost said, they ought to redress themselves. The serpent which has coiled

itself at the very portal of their fair mansion must be destroyed. They will have neither France or Spain to guard the fruit of their delightful garden. They know full well the importance of New Orleans; they already consider that port as the Thermopylæ of their country. It is there they will and ought to make a stand in defence of their liberties, and I pray to God that their struggles may be crowned with victory.

Mr. WRIGHT.—When the gentleman from Pennsylvania (Mr. Ross) was about to introduce his resolutions, after making very voluminous prefatory remarks, he touched on ground that was conceived to be forbidden, and was, therefore, called to order; and that the subject of order might be decided, without the disclosure of that which we conceived ourselves bound to conceal, a motion was made and seconded to shut the doors, which by a rule of the Senate, was therefore a matter of course, and his resolutions were not then submitted. Afterwards, on the day he presented them, he introduced himself by remarking, that on his previous attempt to present his resolutions, he had been called to order, and stopped from proceeding by a new mode, that of shutting the doors, and insinuated that the Senate wished to avoid a public discussion of his resolutions, and to conceal from the people what they ought to know; that we were afraid of the influence of his arguments on the public mind, when he well knew we wished only to conceal what we felt ourselves in honor bound not to reveal. But if he himself did not wish to conceal the truth, why did he not inform the House, or rather the public, for whom his speech was intended, that while the doors were shut, it had been determined "so far as related to the subject on which he had been called to order, that it must not be touched on," and that a seal of secrecy had been fixed on his lips? Did he suppose we would suffer his unfounded insinuations to pass unanswered? Or did he feel himself justified in the suppression of this fact, because its relation would have exculpated himself? The solution of this question must rest with him; but thus, inauspiciously, he presents himself in the opening of this business; and as we pursue him, we shall find him incorrect in his premises, or illogical in his conclusions, and more impolitic than either. Instead of endeavoring to support the measures of the Administration, and to cultivate the arts of peace, he is attempting to excite the Western people to revolt against the Government, by a seditious appeal to their passions, and to sound the trumpet of war in their ears, by a speech highly inflated with immature wrath, and rash declamation against the Spanish Government.

1st. That they had captured our vessels, and imprisoned our seamen.

2d. That they had permitted the French to fit out privateers in their ports to cruise against our commerce.

3d. That they had permitted French Consuls in Spanish ports to condemn our vessels captured by French cruisers.

4th. That they had obstructed our navigation of the Mississippi, and denied us the right of deposit at New Orleans; and to crown the whole, had insultingly issued proclamation upon proclamation, interdicting the exercise of these rights.

The gentleman, however, not content with this philippic against the Spanish Government, rashly charges our own Government with a total neglect of and criminal apathy to, the interests of the Western people. That no nation, either ancient or modern, had ever suffered such indignities, and that our Executive had taken no steps to redress the injury—not a soldier to assert our rights—not a soldier to avenge our wrongs; that the Western people would not—that they ought not to submit to it, but ought immediately to take possession of the mouth of the Mississippi, and for that purpose he submitted his resolutions, now before us.

In considering this subject, he would endeavor to give such an answer to the several parts of the gentleman's observations as appears to him to deserve attention, as well as of those of the gentlemen who have followed him on the same side. He would take up the subject in the gentleman's own order.

1st. That the Spaniards had captured our vessels, and imprisoned our seamen. Of this there was no doubt.

2d. That they had permitted the French to fit out privateers in their ports to cruise against our commerce. This was also admitted.

3d. That they had permitted French Consuls in Spanish ports to condemn our vessels taken by French cruisers. This was not denied.

But he asked the honorable gentleman, if Spain has refused to make us compensation for the spoliations committed on our commerce, by her *own subjects*? He asked if Spain could avoid the acts committed by the citizens of France in her ports, when she herself had been constrained to sue for pence, and to accept it, on such terms as France inclined to impose? And he asked, if these aggressions did not happen during the late Administration, when the gentleman and his friends were in full power; and whether it was then proposed to redress them by the sword? These things are well known, and that our Minister at Madrid was then charged to sue for redress for these aggressions, and that they were all in train of adjustment, before the present Administration came into power; and he asked, if we have it not now entirely in our power to settle the spoliations on our commerce by the subjects of Spain, in the same manner that former Administrations have thought just and honorable, in like cases? And whether we have it not in our power to settle the aggressions of French citizens, in the ports of Spain, for fitting out privateers, and condemning our vessels by French Consuls, upon the principles of strict morality, if not on the more defined principles of the law of nations?

These complaints ought, therefore, to have been out of the question, and ought not now to have been brought forward to foment the difference between the two nations; but were no doubt purposely intended to sour the American mind against

Spain, and to prepare it to act intemperately on the present occasion.

4th. That they had obstructed our navigation of the Mississippi. This he denied. But that the Intendant at New Orleans has put in force the law of Spain, interdicting the commerce of all nations with the Spaniards at New Orleans, and that he had construed it to prohibit our right of deposit there, he admitted; but that his construction of that law is by the authority of Spain, he did not believe; and our right being secured by treaty, must be paramount to that law.

That all America would unite in asserting our right of deposit, secured to us by the solemnity of a treaty, he had no doubt, nor had he ever heard any gentleman of either House express one; on the contrary, they had unequivocally declared their opinion, that the right was all important, and ought to be secured at all hazard; but as to the means of doing this, gentlemen widely differed. He, for his part, felt it due to Spain; he felt it due to our national character to know, whether the act was authorized by the Spanish Government, or justified by them, before he could ascribe it to them; and in this he was governed by the letter and the spirit of the law of nations, and also by the spirit of our own Government.

But, sir, our own Government is charged with a want of sensibility to the sufferings, and a total neglect of the violated rights of the Western people, but how justly, the public will decide, on a candid review of their conduct. The moment the President obtained the information of this act of the Intendant at New Orleans, in arresting our right of deposit at that place, he applied to the Marquis de Casa Yrujo, the Minister of Spain, resident near the Government of the United States, who gave him the most positive assurances that he had no knowledge of the subject that would induce him to suppose that His Catholic Majesty had any intention to violate the treaty, by which that right had been secured; and gave every assurance of His Majesty's friendly disposition towards the United States: he at the same time sent despatches to his own Government on the subject; and in his honest zeal for peace between the two nations, immediately despatched a boat to the Intendant at New Orleans; and also sent despatches to the Governor at Havana. He also assured our Government that the Intendant, and the Governor at New Orleans, differed in the construction of the orders given to the Intendant by the Spanish Government, which were, "to put in force the law heretofore in operation in the Spanish territory, prohibiting all kind of commerce with all nations, with that province," which had been suspended during the late war, by virtue of which, the Intendant, (although not a word was said about prohibiting our deposit at New Orleans,) thought himself bound to prohibit the citizens of the United States from contracting with the Spanish merchants at New Orleans, for the storage of their goods at that place, which had been secured by treaty.

The President immediately gave it in charge to our Ministers at Madrid and at Paris, to inquire into the aggression, and whether it was done by the authority of either of those Courts. He also inquired of the Minister of France, Mr. Pichon, resident near the United States, whether he could give any information on that subject, as it became at least equivocal in whom the territorial right of New Orleans then was; and therefore questionable whether the Intendant might not be acting under the authority of France; and here also we received assurances of the most friendly disposition, and that the Intendant was not acting by the authority of France.

These were the natural, the legitimate, and indeed the only measures that the President could adopt, till the meeting of Congress. No sooner had Congress convened, than he officially informed us of this aggression on our rights, and was so much alive to the western interest, that he immediately after proposed sending James Monroe, Esq., a special Envoy, to be united with our Minister at Paris or at Madrid, as the case might require, to place our western interests on the most secure basis; who, going immediately from the United States, charged with our sensibilities on this recent violation of this invaluable right, would show that we were not only alive to the subject, but very much in earnest, and would furnish the best founded hopes of success. This Minister had been approved of, and was now on his way. This, sir, had been the conduct of the Executive.

But we are told that we have not a soldier to assert our rights, not a soldier to avenge our wrongs; and this also is a charge against the Executive. What, sir! has the gentleman forgot that the President has no right to raise a single soldier? Has he forgot that the power of declaring war is vested in Congress alone? No, sir; these things he well knew, and that the President had done everything he was authorized to do, and that both Houses of Congress had approved of every step he had taken. But, sir, it is not difficult to account for gentlemen's extraordinary sensibility to the violated rights of the western people, or their pretended warmth and zeal to avenge their wrongs; it is all to be found in the political history of the times. It is with a design to stir up the western people to a belief that the Government is insensible to their sufferings, and inattentive to their interests; it is with a view to a revolution in the political opinions of the western people, but which they will see too plainly, to be beguiled from their path of political rectitude; and the division in this case will show it to be a party question, particularly when it is known that every republican member of both Houses of Congress, even those from the western country, approve of the pacific measures that have been adopted.

We are told that no nation, either ancient or modern, had ever suffered such indignities, and we are now emphatically called on to avenge them by the sword, without asking for redress. Can this be right? No, sir; the honorable gentleman from New York (Mr. CLINTON) yesterday proved, by a train of arguments not to be resisted, that it had been the practice and usage of the nations of Europe, to endeavor to settle their differences, first, by negotiation, and not to appeal to arms till redress had been denied; and he would now show, by the law of nations, that the act of the Intendant is not to be ascribed to the Spanish Government, unless done by their authority or approbation, and that if the act had been done by authority, it would be violative of both the precepts and practice of our own nation to avenge it by the sword, till negotiation had been tried in vain. To the first point, he would show, by *Vattel*, 252, sec. 73. "That as it is impossible for the 'best regulated State, or for the most vigilant and 'absolute Sovereign, to model at his pleasure the 'actions of his subjects, or to confine them to an 'exact obedience, it would be unjust to impute 'to the Sovereign the faults of his subjects; we 'ought not to say we have received an injury 'from a nation, because we have received it from 'one of its members." Again, sec. 74: "But if 'a nation approves the act committed by a citizen, it makes the act its own, and the offence 'ought then to be attributed to the nation."

But the honorable gentleman from Delaware, (Mr. WELLS) tells us, that, to excuse Spain from the act of the Intendant, we ought to prove that the King of Spain did not authorize it. What, are we to prove a negative? He presumed not; but if we have recourse to the evidence in the case, which is all that time and circumstances will admit, we shall have no doubt on this subject.

The Spanish Minister tells us, it is not by the authority of Spain. The French Minister tells us, it is not by the authority of France. The Governor at New Orleans says, it is by no authority; but a misconception of the Intendant's order. And the order of the Intendant itself, shows, that it is to put in operation a law interdicting the right of all nations to trade, barter, or commerce with the Spaniards in that province, without mentioning our right of deposit, secured to us by treaty, posterior and paramount to the law, which must be satisfactory, (being the best, nay, the only evidence to be now expected,) that the act is without authority.

Yesterday we were told by the honorable gentleman from Delaware (Mr. WHITE) that there was a private letter in town from New Orleans, "that the act was by the authority of France." To-day he presumed that was given up, as his honorable colleague (Mr. WELLS) tells us that he understands the President has received a letter on this subject, "avowing the authority of Spain to do the act." This he conceived equally incorrect. Can it be believed, sir, that the Executive can be in possession of a document of such importance, and, while we are acting on the subject, *secrete* it from us? No, sir, it would be to make him an accessary; it is impossible—it cannot be true. There is then no evidence that it is the act of Spain, unless we substitute our inclinations for evidence, and thus violate the law of nations, by unjustly ascribing it to her. This, he trusted, would not be done. But, sir, if it had been done by her authority, still he should insist, that it would not only be contrary to the practice and usage of the nations of Europe, to draw the sword of vindictive justice, without a previous attempt at negotiation, as was yesterday proved by the honorable gentleman from New York, (Mr. CLINTON,) but highly repugnant to the milder precepts and principles of our own nation. And, as he did not wish to cross the Atlantic for authorities, having never been attached to the precepts or practices of kings or princes, or an admirer of the precedents of the Old World, he would leave them on the ground upon which they were placed by the gentleman from New York, (Mr. CLINTON,) and confine himself to the history of our own Government, and to the principles and practices of our own WASHINGTON. Disregarding the maxims of despots, he would recur to the archives of our own short, though very important political history; and to the salutary principles of our own free Government; from whence he would prove that we ought never to appeal to the sword—that scourge of nations—that "*ultima ratio regum*," but from dire necessity.

He would begin with our own political history, even before we had an independent existence, in order to correct the honorable gentleman from New Jersey, (Mr. DAYTON,) who yesterday told us that when we were colonies, no sooner had Great Britain violated our rights, than we appealed to the sword. Sir, he asked, if America did not then by petition humble herself at the foot of the throne? Did she not address petition upon petition to the British monarch? Nay, he asked, if she did not, by her repeated remonstrances, drain the cup of humiliation to its dregs, in her supplications but for justice? Nor did we draw the sword until every effort had been tried in vain; nor then till compelled to act on the defensive. Then, too, everything dear to us and to posterity was in issue—then were we called on to resist the treasonable claim of the British Parliament, to tax us, in all cases, without our consent, which they were about to enforce by the sword. This was not the partial invasion of a minor right; it was a vital stab at liberty itself. He asked, if by our temperate supplications our cause was injured, or if our confidence did not increase with our moderation, whereby we were enabled to secure by the sword what had been denied to our supplications; and whereby our virtuous struggle was crowned with independence?

Again. No sooner had Great Britain acknowledged us independent, whereby we had taken rank among the nations of the earth, than she violated the compact that gave us our political existence, even while we lay in swaddling clothes—in the cradle—in the infancy of our Government. Did she not take away our negroes? Did she not keep possession of our western posts? Did not Lord Dorchester excite the Indians with the tomahawk and scalping knife to massacre our peaceable frontier inhabitants, of all ages, sexes, and conditions? Did she not capture our vessels and impress our seamen? What then, I ask, was the conduct of the nation? Who then presided in her councils? Was it not WASHINGTON? Did he

appeal to arms? No, sir; he sent a Minister to sue for redress, as has been done upon the present occasion. Were not the aggressions then much greater than the present? and will it be said that WASHINGTON was not a faithful guardian of the national interest—of the national honor? and were not the injuries redressed by the treaty of 1794 to the satisfaction of the *councils* of the nation?

Again. Did not Spain commit spoliations on our commere and imprison our seamen? Did not WASHINGTON then preside? Did he appeal to arms? No, sir, he sent a Minister to sue for redress, as has been done upon the present occasion; and were not the injuries redressed by the treaty of 1795?

Again. Did not France capture our vessels and imprison our seamen? Did not WASHINGTON then preside? Did he appeal to arms? No, sir, he sent Ministers to sue for redress. Were not these Ministers rejected? and thus insult added to injury; did he then appeal to arms? No, sir, Mr. Adams then came into the Administration. Did he appeal to arms? No, sir, he sent a new set of Ministers, who were received, and who made the memorable treaty which was ratified by Mr. Adams, in February, 1801.

Again. Did not Spain capture our vessels and imprison our seamen? Did she not permit the French to fit out privateers in her ports to cruise against our commerce? Did she not permit French Consuls to condemn our vessels in her ports? Then Mr. Adams, who presided in our councils, sent a Minister to negotiate, and these aggressions are now in a happy train of adjustment, and there is little doubt will be settled on just and moral principles.

Thus, sir, you see what has been the practice and usage of the United States since they have been an independent nation, and that too under the imposing auspices of a WASHINGTON. He would now show that, so tenacious had been the Government to cultivate the arts of peace, she had guarded it in her Constitution, and ingrafted the principles in her treaties. By the Constitution, the power of declaring war is vested in Congress, and not in the President, lest the caprice of an individual might commit the peace of the nation.

By the treaty with Prussia, made under the auspices of the immortal FRANKLIN, in 1785, the great principle was first established, that in case of a war, neither captures nor reprisals shall be made. It is stipulated in the 23d article, "that, in case of 'a war between the two nations, all merchant ves-'sels employed in exchanging the products of dif-'ferent places, and thereby rendering the necessa-'ries, conveniences, and comforts of human life 'more easy to be obtained, and more general, shall 'be allowed to pass free and unmolested; and nei-'ther of the contracting Powers shall grant or issue 'any commission to any private armed vessel to 'take or destroy such trading vessels, or interrupt 'such commerce." By the treaty with Great Britain, in 1794, it is stipulated "that no reprisals shall 'be made for spoliations till an attested statement 'of the damages is presented, and justice demand-'ed and refused, or unreasonably delayed." By the treaty with the Creek nation of Indians, article eighth, and by the treaty with the Delaware nation of Indians, article fourth, it is expressly stipulated "that their nation shall not avenge the 'wrongs committed by the citizens of the con-'tracting parties, but that the offenders shall have 'an impartial trial, and the peace of the nations 'be preserved." So far is our peace secured by the stipulations in treaties; and he would next show that it had been established as a principle, to preserve the peace of the nation, and to regulate its equanimity; that where we had a treaty with one nation, we are bound to treat all nations in like manner, although we have no treaty to that purpose. (See the letter of General WASHINGTON, dated 5th September, 1793, to G. Hammond, Esq., in the 2d vol. laws of the United States, 493.) "We are bound by our treaties with three of the 'belligerent nations, by all means in our power, 'to protect and defend their vessels and effects in 'our ports or waters, or on the seas near our shores, 'and to recover and restore the same to the right 'owners when taken from them. If all the means 'in our power are used, and fail in their effect, we 'are not bound by our treaties with those nations 'to make compensation."

"Though we have no similar treaty with Great 'Britain, yet we should use towards that nation 'the same rule which, under this article, was to 'govern us with the other nations; and even to 'extend it to captures made on the high seas, and 'brought into our ports, if done by vessels that 'had been armed within them."

Thus, sir, had it been shown what had been the practice and usage of foreign nations; and thus had he shown what had been the practice and usage of our own nation in the cases that had occurred during our short history, and that all nations are entitled to equal justice; and all these cases have occurred under the venerated WASHINGTON, except the memorable French *Federal** treaty under Mr. Adams, in February, 1801. And yet we were yesterday told by the Hon. Mr. WHITE, "that WASHINGTON would have borne no such insults." No, sir; that he believed, not without seeking redress; but whether in a peaceable, legitimate manner, as has been pursued upon the present occasion, or by the sword, as is now proposed, from what has been already shown, there can be no question. But the same gentleman, (Mr. WHITE,) after charging France with this violation of our rights, in the fervor of his mind, exclaimed, "If this be peace, *God give us war!*—which God forbid, as every good man in the nation must deprecate war. WASHINGTON, however renowned in war, was certainly the friend of peace, and very much contributed to the establishment of our national character, "to prefer the pacific olive to the bloody laurel"—a character too dear to us to be now sullied by an unexampled departure from its Christian principles, or ever to be sacrificed on the altars of vengeance against any particular nation.

* *Federal*, it is presumed, because every republican Senator voted against it.

But some gentlemen speak of a war, on this occasion, with seeming pleasure, as necessarily leading to a connexion with Great Britain, and thereby drawing us into the vortex of European politics and perpetual war. The honorable gentleman from Pennsylvania, (Mr. ROSS,) and the honorable gentleman from Delaware, (Mr. WHITE,) have both declared that we ought to take immediate possession of the mouth of the Mississippi, predicating their arguments on the violation of our rights and the magnitude of the subject. The Hon. Mr. WELLS has gone further, and declared that he was for taking possession of New Orleans at all events, whether the act complained of was authorized or unauthorized; that the possession of that place was of such importance that we ought to possess it; and after telling us (but with a bad grace) that there is no reliance on the faith of treaties, and after reprobating what he called the profligate doctrine of the nations of Europe, "that treaties were no longer binding than it was their interest to respect them," advises *us* to adopt that infamous principle by taking immediate possession of New Orleans, supposed to be the property of France, who had not offended; that if France once gets foothold there, it will be too late. And although it is admitted that France has done us no injury, yet are we pressed to violate the faith of our treaty with that nation by taking possession of her territory; that nothing short of the possession of *terra firma* can secure us in the free navigation of the Mississippi. Thus are we invited, by the lure of interest, to commit the character of the nation, in violation of every moral principle, and contrary to the law of nations.

Vattel, 150, sec. 101, tells us "that the end of 'war must be lawful, to legitimate means; that 'the cause must be just; that one nation is not al-'lowed to attack another for the purpose of ag-'grandizement; this is the same as if a private 'person should endeavor to enrich himself by 'seizing the wealth of another." Again, *Vattel*, 349, sec. 220, says, "The faith of treaties is holy 'and sacred between the nations, whose safety 'and repose it secures; and if people would not 'be wanting to themselves, infamy would be the 'share of him who violates his faith." And if it be the practice of the nations of Europe to disregard their treaties, he hoped we should not copy their vices, but that it might be confined to them; it was so demoralizing an idea, that he hoped it would never again be advocated on that floor; sure he was it could not meet, as it did not merit, the approbation of the nation. He wished for peace with all nations, and should therefore always observe the most exact and inviolable fidelity in the execution of the treaties between us and them. He, for his part, had no foreign attachments, no national feelings but those of an American; no rule but the law of nations and the existing treaties; and, however bad the bargain, they should rule his conduct, as the only sure means to preserve the peace of the nation, so much the desire of every good man; war, he conceived, justifiable only in self defence.

But the honorable gentleman from Pennsylvania (Mr. ROSS) tells us, that a right so important ought not to be held by a tenure so precarious. What better security can a nation exact to secure the enjoyment of her rights with foreign nations? Does he expect she will give us hostages? He presumed not. Treaties are the legitimate compacts to bind nations to each other; they are such as are known to the law of nations, by which are secured, in our foreign relations, our most important rights; and, he trusted, would be always so respected by all honest men, as to afford the utmost security; and he hoped that all infractors of them might be brought to condign punishment.

The gentleman from Massachusetts (Mr. J. MASON) said he was not for war; that these resolutions did not propose war. Would the gentleman consider it as war if a foreign army should land at Boston? Would he believe the herald that should proclaim that fifty thousand men, with arms in their hands, and with military equipage, who had landed in the city, had come only on a friendly visit? He presumed not! Sir, these resolutions are more than a declaration of war, they carry the war into actual effect, whereas the declaration only authorizes it; to his mind they presented the question of peace or war. We have been told that the Western people would take up arms to possess themselves of the right, or would throw themselves into the arms of a foreign Power, as they could not subsist without it. No, sir; there is not a good citizen in that country that would abandon his invaluable rights of a freeman, or the title of an American citizen, to be the subject of any nation upon earth; nor did he think it possible to alienate their affections from their own Government, or to shake their confidence in the present Administration; and, although the Administration is charged with indifference to their interest, they will not believe it; they know that the steps that have been heretofore taken in all past cases of our violated rights, have, with promptness, been taken in this case; they know that a Minister has been sent; and they well know that eighty thousand militia have been put in requisition, and arsenals established in that country, and a number of gun-boats ordered to be built for the protection of their commerce in the Mississippi: with this they ought, and will be satisfied, as they expect but equal justice with the other parts of the Union; and this they may with certainty expect. It has been emphatically asked, what would be our conduct if the Chesapeake was blockaded? He said, the same as if the Mississippi was blockaded—but that was not the case. He, for his part, should never be influenced by geographical distinctions; every part of the Union was alike entitled to the protection of Government, and should alike have his support in all similar cases. He did not believe the insinuation, that there was a spirit of sedition in that country that could be fanned into a flame against the Government. They well knew the attention that has been used from the earliest period of our Government to secure the navigation of the river Mississippi, by the treaty that secured us our independence, and gave us existence as a nation; in the

eighth article of that treaty, the freedom of the navigation of the Mississippi was secured, even before the Western country was fairly explored, or had a name; that, afterwards, by the treaty of San Lorenzo el Real, in the twenty-second article thereof, the freedom of the navigation of the river, and also the right of deposit at New Orleans, for three years, was secured; and afterwards there, or at such equivalent place, on the banks of the Mississippi, as the King of Spain should assign. But it would seem, from the arguments of the gentlemen who press us to go to war, that these rights were now proposed to be abandoned, although every step that the nation could take, consistent with good faith, the law of nations, the practices of foreign nations, and of our own nation, in like cases, have been taken.

But the magnitude of this subject has been played off, with vast address, by honorable gentlemen on this occasion. One tells us it will take two hundred and fifty ships, of two hundred and fifty tons burden each, to export the products of the Western people that come down the Mississippi. Another tells us that their exports are upwards of four millions of dollars; and a third, that it will ruin five hundred thousand citizens, whose property is embargoed by the suspension of the right of deposit. And this they press as if they intended the magnitude of the object as an argument to influence the decision of the principle upon which we were to decide the question. He, for his part, admitted the importance of the right of deposit, and that it ought, at all hazard, to be secured. He saw, with great pleasure, the rising greatness of the Western country, which was to be ascribed to the long peace and prosperity of the nation; but he could not admit the gentlemen's statements, either as to the quantity of produce to be exported, or the consequent quantity of ships it would take to export them. He could not tell where the gentlemen had obtained the data from which they had made their estimates; but he was sure it was not from the official documents on the subject, to which he should take the liberty to refer, to correct them; the correctness of which could not be questioned. The whole exports, from the official report last year, were $71,957,144. The part that is foreign of that, is $35,774,971; that of the produce of the United States, is $36,182,141. The exports from the Mississippi, last year, were $1,095,412; and not four millions, as has been stated; so that, however important it was, it was far below the gentlemen's statement; who are so zealous for the interest of that country, as to have lost sight of every other part of the Union: and, indeed, to have overlooked the real interest of that part they affect to have so much at heart. They tell us that all their property is now embargoed. But, sir, he asked, would a war relieve it? and would it not embargo the other thirty-five millions of our productions, and greatly distress 5,500,000 citizens? And, instead of securing to the Western people the immediate use of the right of deposit, would most certainly deprive them altogether of the navigation of the Mississippi, and thus involve all in distress, without relieving that part, but more severely injuring it. He wished every member of that country was present; he was satisfied they would be opposed to it themselves. It is well known that the Spaniards have a number of gun-boats at New Orleans, and can entirely command the navigation of the river at that place. But, sir, it has been, and he thought cruelly, insinuated, that the Western people will throw themselves into the arms of a foreign Power; but this they would consider as a libel against their political integrity, and defeat the gentlemen's object. They well knew that the Atlantic States held the key of the Mississippi, that a single frigate could block it up and compel the Spaniards above to do them justice, by the influence of their own safety in the case. He would beg leave to refer to the official valedictory address of General WASHINGTON, which is highly authoritative on this subject, and leave it with the Western people to make the application. He tells us that—

"The unity of government, which constitutes you one people, is also now dear to you. It is justly so, for it is a main pillar in the edifice of your real independence, the support of your tranquillity at home, of your peace abroad, of your safety, of your prosperity, of that very liberty you so highly prize. But it is easy to foresee that, from different causes and from different quarters, much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth. As this is the point in your political fortress, against which the batteries of internal and external enemies will be most constantly and actively, though covertly and secretly directed, it is of infinite moment that you should properly estimate the immense value of your national union, to your collective and individual happiness; that you should cherish a cordial, habitual, and immoveable attachment to it; accustoming yourselves to think and speak of it as the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together its various parts." Again: "The East, in its intercourse with the West, already finds, and in the progressive improvement of interior communication, by land and water, will, more and more, find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The West derives from the East supplies for its growth and comfort; and, what is perhaps of still greater consequence, it must, of necessity, owe the secure enjoyment of indispensable outlets for its own productions, to the weight and influence of the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interests as one nation. Any other tenure by which the West can hold this essential advantage, whether derived from its own separate strength, or from an apostate and unnatural connexion with any foreign Power, must be intrinsically precarious." Again: "In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by geographical discriminations, Northern and Southern, Atlantic and Western; whence, designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart-burnings which spring from these misrepresentations; they tend to render alien to each other, those who ought to be bound together by fraternal affection. The inhabitants of our Western country have lately had a useful lesson on this head; they have seen in the negotiations by the Executive, and by the unanimous ratification by the Senate of the treaty with Spain, and in the universal satisfaction at that event, throughout the United States, a decisive proof how unfounded were the suspicions propagated among them, of a policy in the General Government, and in the Atlantic States, unfriendly to their interests, in regard to the Mississippi; they have been witnesses to the formation of two treaties; that with Great Britain, and that with Spain; which secure to them everything they could desire, in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely, for the preservation of these advantages, on the Union, by which they were procured! Will they not, henceforth, be deaf to those advisers, if such there are, who would sever them from their brethren, and connect them with aliens!"

These, sir, are the sentiments of the venerated WASHINGTON, whom the gentlemen are forever dragging from his tomb to degrade, as an authority for their evil measures, or as a cloak for their sinister designs; but whom they will not respect upon this topic. At the time of the formation of our Constitution, this patriot witnessed the difficulty of uniting in one common compact so different and so distant interests; and with a prophetic spirit has foretold what is now attempted. This advice appears to have been written by the pen of wisdom and the finger of love, and, he hoped, would be forever imprinted on the heart of every real American; that its practical utility on the present occasion, may more deeply impress it, and that it may be as lasting as the archives in which it is recorded. How different is this advice from that of the honorable gentleman from Pennsylvania, (Mr. ROSS.) WASHINGTON advises peace and concord; the other, war and insurrection. WASHINGTON advises us to preserve the Union, as the rock of our political salvation; the other says, the Western people ought to dissolve it, and act for themselves. WASHINGTON tells us that disunion is the rock on which the bark of the Republic will be shipwrecked; the other is the pilot that wishes to dash us on this rock. WASHINGTON tells us that the geographical distinction of the East, and of the West, of the Atlantic, and of the South, are the engines that our internal and external enemies will use to disunite us; the other, the internal enemy to put this engine in motion.

Last year we were told that if we repealed the Judiciary law, the Eastern States would separate from the Union; now we are told that if we do not go to war, the western people will separate from us and will throw themselves in the arms of a foreign Power. And what is the expedient the gentleman advises us to adopt, to remedy the evil? Nothing less than treason against the United States, and treason against our own political opinions! The honorable gentleman from Pennsylvania, (Mr. ROSS,) in the plentitude of his goodness, tells us, "that as we have neither inclination nor understanding to conduct the affairs of Government as we ought, that if we will but let him conduct it agreeably to his better judgment, that all his friends, in both Houses of Congress, and out of doors, should unite in supporting the measures of the Government." This, sir, is a wonderful species of friendship and condescension; it is in fact an humble proposition to exercise the functions of President of the United States; and is it possible he can expect we should revoke our confidence from the man the people had in their wisdom selected to execute these high and important functions, and repose it in him whom the people had dismissed from the execution of all political functions? This would be to prostrate the great elective principle, the palladium of our political rights, the very soul of our Constitution; and is such an evidence of his modesty, that he hoped it would become proverbial. Could we consent to this violation of our duty to the nation, what would be the consequence? War, the scourge, the curse of nations. And who is it, sir, that wishes it? Both the gentlemen from Delaware have told us, "that they feel themselves authorized by the opinion of the Legislature of their State, in advocating the present measures of war." He, for his part, was happy to act agreeably to the sense of his own, and many other States, who have expressed their entire confidence in the present Administration, and their full approbation of the pacific measures that had been adopted. Do the farmers wish a war?—No. Do the merchants wish a war?—No. Do any description of citizens wish a war?—No! And he asked the honorable gentlemen from Delaware, if the conscientious, the scrupulous Quaker, the pious, the pacific Methodist, the meek, the virtuous Nicholite (so many of whom reside in their State) wish for the effusion of human blood, or the destruction of the human race? He presumed not; and that they would give such evidence of it, as the Legislature of that State would not admire; and prove that the mild spirit of Christianity, which they professed, which breathes peace and good will among the sons of men, was more than a simple profession. He believed there were none who wished for war, but the few who sickened at the justly economic character of the present Administration, and who were desirous to create expenses, to drain the Treasury, interrupt the rapid discharge of our public debt, and to coerce new taxes, to jeopardize that character, and to take that chance, as their last forlorn hope, to revive the spark of their extinguished popularity; but he believed every real friend to the peace and prosperity of the nation would be pleased at their disappointment.

Having nearly exhausted himself, he feared he had trespassed too long on the patience of the House, he would therefore very briefly conclude, with a few remarks on the resolutions themselves.

1st. "That the United States have an indisputable right to the free navigation of the Mississip-

pi, and to a convenient place of deposit for their goods and merchandise in the island of New Orleans." This is not the fact, the right is at New Orleans for three years, which have passed; and then at that place, or at such other place as the King of Spain may assign on the banks of the Mississippi; therefore, that resolution was inadmissible.

2d. "That the infraction of such their unquestionable right, is an aggression hostile to their interest and their honor." This is no infraction of our treaty, unless done by the authority of Spain, of which we have no evidence.

3d. "That it does not comport with the dignity of the United States, to hold a right so important by a tenure so precarious." The right is secured by treaty, the most secure tenure that a nation can claim to have its rights secured by, in its foreign relations; as hostages cannot be demanded.

4th. "That it materially concerns such of the American citizens as dwell on the western waters, and is essential to the union, strength, and prosperity of these States, that they obtain complete security for the full and peaceable enjoyment of such their absolute right." This resolution stands explained by the following one, which directs the President to take immediate possession of the territory; as the complete security contemplated: and therefore could not be admitted. The other resolutions are predicated on the foregoing, and are, therefore, inadmissible; he should, therefore, give them his hearty negative, with a view to support the resolutions of the honorable gentleman from Kentucky, (Mr. BRECKENRIDGE,) which had been proposed by way of amendment, which he considered unexceptionable, and as much to be preferred as peace was preferable to war.

Mr. ROSS rose and said, that the propriety of introducing these resolutions became every day more apparent. Since they had been laid on the table, our national councils had taken a new direction, and had assumed a much more promising aspect. Until these resolutions were brought forward, there had been no military preparation; no proposal to detach militia; to build arsenals on the Western waters; to provide armed boats for the protection of our trade on the Mississippi. He was happy in seeing gentlemen on the opposite side pursuing a more vigorous course than they were at first inclined to adopt, and he hoped they would before long consent to take stronger and more effectual measures for the security of what was in hazard.

As he had on a late occasion stated at large his reasons for presenting the resolutions, he would not detain the Senate with a repetition of them, except where they had been misrepresented or distorted during the debate. He could not suppose that any gentleman would intentionally misstate what had been said; but it was certain that sentiments and assertions had been ascribed to him, in the course of this discussion, not warranted by anything he had advanced.

Every gentleman who has spoken in this debate, excepting the honorable gentleman from Maryland, (Mr. WRIGHT,) admits that the United States have an indisputable right to the free navigation of the river Mississippi, and to a place of deposit in the island of New Orleans. All agree that this right is of immense magnitude and importance to the Western country. All agree that it has been grossly and wantonly violated; and all agree that, unless the right be restored and secured, we must and will go to war. Upon what, then, do we really differ? Upon nothing but the time of acting; whether we shall take measures for immediate restoration and security, or whether we shall abstain from all military preparation, and wait the issue of negotiation. There is no disagreement upon this point; for if negotiation fails, every man who has spoken has pledged himself to declare war.

A number of the objections made against the adoption of measures we have proposed deserve to be noticed.

The honorable gentleman from New York (Mr. CLINTON) had displayed considerable talent and elaborate research into ancient and modern history, showing what had been the practice of nations. He had collected all the objections together, and classed them under three heads. Other gentlemen who had spoken in opposition had taken nearly the same ground, and made in substance the same objections. He would, therefore, follow the arrangement made by the honorable gentleman. (Mr. CLINTON.) and he was persuaded that it would be easy to show he had in many instances mistaken the most material features of the authorities he had adduced, and more than once misstated the positions which he undertook to refute. He has, however, admitted the magnitude of the right, that it has been violated, and that if negotiation should fail, we must go to war. He has made objections under three heads; this method had the merit of perspicuity, and he would follow it.

1. That it is doubtful whether the infraction is or is not authorized.

2. That negotiation ought, in justice, to precede the employment of force.

3. That reasons of policy dissuade from using force at present, even supposing we have just cause of immediate war.

The first objection had already been amply refuted by the gentleman from New Jersey, (Mr. DAYTON.) the gentleman from Massachusetts, (Mr. MASON.) and the gentleman from Delaware, (Mr. WHITE.) He would only further remark, that whether authorized or not, is not now very material. If authorized, the temper, the design must certainly be that of an enemy, and you should act accordingly. If unauthorized, seize the culprit and send him home to his master, who will punish him for a breach of duty; let him answer with his head for embroiling two friendly nations who wish to live in peace. Why wait till you can send three thousand miles and inquire whether he had orders or not? He is visibly a wrongdoer; remove him, and protect what he would wrest from you. No man when proceeding on the highway to market, and stopped by his neighbor's servant, would send out into the country to

inquire whether his master had authorized the outrage. No, he would punish and remove the aggressor, and proceed on his journey, leaving the circumstance of orders, or no orders, to be settled between himself and the master afterwards. Besides, in this instance, the person inflicting the injury declares he has no right to the country. If so, why make inquiry whether he has orders? No orders could give him authority to interfere with your unquestionable right, where his master pretends to no right himself.

Under this head of aggression and spoliation, the Senator from New York, (Mr. CLINTON,) in a tone and manner little decorous in debate, had declared it to be within his (Mr. Ross's) knowlege, that indemnity had been provided by Spain for the spoliations committed upon our trade, and yet the assertion had been made, that Spain had refused all redress for injuries of that kind; and the gentleman alluded to documents before the Senate, which were under the injunction of secrecy.

Sir, said Mr. Ross, I have seen those documents, and I now repeat and re-assert, that I know nothing to warrant the opinion or belief that Spain will make compensation for all spoliations of our merchants, or for the greater part or mass of them. I certainly never did say that Spain had refused all redress; for it will be recollected by all present, that I expressly stated the other day, the injury done to us by the Spaniards themselves in every place they had found our flag; and that our vessels were carried into their ports by French cruisers, condemned without the semblance of a trial, and our citizens thrown into prison. That, if we took possession of the country on the Mississippi, we should have an ample fund in our hands to compensate all our merchants who had suffered from the conduct of the Spaniards; that the merchants would willingly accept such an advantageous offer; and that otherwise there was no reason to hope that they would all be indemnified. And I now return to that gentleman his own words, that he does know, and must be sensible, from the very documents he has alluded to, that there is little, if any hope, that the great body of injuries and losses sustained by our merchants from the Spaniards in different quarters of the world, and the conduct of the French in Spanish ports, will ever be compensated or paid by Spain, unless in the mode that I had suggested.

The same gentleman had said, that we have no facts respecting Spanish spoliation authenticated and reported to us, and offers this as a further reason for delay and negotiation. The facts of spoliation, and vexatious oppressive conduct towards our merchants, and seamen, as well on the sea as within the jurisdiction of the Spanish Government, both in Europe and America, were so notorious, and of such extent and continuance, that no man could doubt, or deny the aggravated series of outrage and oppression which we had experienced. Although the Executive, or other officers of Government, may not have collected and reported these complaints to this House, yet this forms no excuse for the aggressors, much less a reason why we should abstain from giving attention to them, while considering indignities of another description. But, that the gentleman might never again be able to say that he had met with no authenticated case of spoliation by the Spaniards, he would now produce and read one to the Senate, which had been delivered to him for the purpose of obtaining the aid of our Government to get reparation. The men who had been robbed were industrious inhabitants of the western country, who lived near Pittsburg. They descended the Mississippi with a cargo of flour, and finding but a low market at New Orleans, shipped their flour on board of an American vessel, and after being two or three days at sea, were taken by Spanish vessels, carried into Campeachy, their flour sold, their captain cast into prison, themselves restrained of their liberty; several died in this captivity; and those who returned home had no allowance made to them by the Spaniards for their property thus unjustly captured; and of course they, only returned to witness the ruin of their families by a loss of property which they had not the means of paying for, having purchased on credit. There could be no excuse for the capture; these men lived in the interior country, they were cleared out from a Spanish port, in an American vessel: yet all these circumstances could not save them from the rapacity of the Spaniards.

[Here Mr. R. read the protest of several American citizens before Mr. Morton, the American consul at Havana, stating the capture of their vessel, their captivity at Campeachy, the loss of all their property, and that they lived in the western country, from which they had gone down the Ohio with this flour to New Orleans.]*

Mr. R. said here was a case of prodigious hardship and oppression, arising out of the very trade and intercourse which the Spaniards had at last undertaken to obstruct and destroy; and therefore he thought it proper to be brought forward during this discussion, to show the temper and the conduct of these people towards us before they had proceeded to the last extremities.

The second position taken by the gentleman from New York, (Mr. CLINTON,) and indeed by all who had spoken against the resolutions, amounted to this: That every nation was bound to demand satisfaction for an injury before it employed force for redress; and that a refusal of satisfaction must precede the use of force.

However humane or salutary the general principle might be, certainly it did not hold universally, or to the extent that gentleman contended. No book, no writer of authority, had ever contended that this principle should operate when the essential rights, the well-being, or the peace of the country were exposed to danger; and the rule had no application but to inferior or minor rights of the society, where delay and negotiation might be safely resorted to. No man could say, that this rule would hold where an army was marched to your frontier, or landed upon your territory; or

* This case proved to be of a very different character; the captain in question appears to have been engaged in transactions of a grossly illegal character.

a fleet blockaded your harbors, or demanded contributions from your seaports. Such cases admitted not of negotiation: the intention of the assailant was manifest, the danger imminent, and immediate use of force and hostility unavoidable by the most peaceable nation. It would be said that these were extreme cases, and formed exceptions to the general rule. They certainly demonstrated that the rule was not so general as gentlemen contended for; and when the case at present under consideration is carefully examined, it will be found among those essential and all important rights of the nation, which, when attacked, immediate force should be employed to repel the assailant. In cases of invasion, the mere possession of a small portion of your soil, is not the primary consideration; you are impressed with the approach of further and more serious injury. The hostile intention is manifest, the act such as to leave no doubt, and your right such as can never be abandoned. So here, though there be no actual aggression within the limits of your territory, yet you have a territorial right attached to your soil, constituting its only value, which is directly attacked and destroyed. Of what value is the territory when stripped of this right? Where is your independence? Where is your sovereignty in that country, without the unrestrained exercise of this right? Without it the mere soil is of no value. It is an attribute inseparable from the substance. To attack it, is to attack your very existence, for it is the great artery of the western country, the circulation through which, when stopped, endangers convulsion and political death. The destruction of this right is a greater calamity than a blockade of a seaport, or even a landing on the Atlantic coast. The mischief is incurable. Can it then be said when this vital part of the nation is assailed, you will wait for information of the intent? You will inquire into the motives? You will not employ force to resist the attack, although you may be undone before you can receive an answer? You will hazard convulsion and dissolution, because possibly the aggressor has reasons for the outrage, that you do not yet know? This cannot be wise, it cannot be the course which national honor or safety calls upon us to pursue; because you never can abandon the right now denied and wrested out of your hands; you can no more abandon it, than any other portion of country within your territorial limits, when invaded by an enemy.

But in whose favor is this delay asked? With whom are you going to negotiate for reparation of the injury? Why, with those, who, by their own confession, have no right in the country from which they exclude you. When you inquire of the Court of Spain what has led them to this outrage, they may reply, we know and care nothing about it; that country is no longer ours; we have abandoned all claim to it, and ordered our officers to withdraw. The title is now in another. Will this satisfy you? Will it redress the injury? Where will you go next? Or how long will you wait for an answer to the question of who turned us out of doors and keeps us out? You have the same reasons for a second as for the first delay; and in the meanwhile you are out of actual possession; the wrongdoer is in.

But, sir, we are triumphantly told, that it has been the practice of all civilized nations to negotiate before they go to war. Round assertions, like general rules, are to be received with exceptions and great allowance. I dispute the fact; although my argument does not need this kind of aid; for I am persuaded there is no precedent of an independent nation relying upon negotiation alone, in such circumstances. If you go to books, or to the example of other countries, you will find no dictum of a writer, nor instance of a State, that will justify the course now held by gentlemen on the other side. For whenever the nation has been invaded, its vital interests attacked, its existence drawn into hazard, its essential rights exposed to immediate destruction, every writer and every State will bear you out in resorting, without delay, to the strongest means in your power for repelling the aggressor.

The conduct of the Romans has been more than once mentioned. Their history is handed down to us by themselves, and even in that we shall too often find, that while their ministers of peace were affecting to demand reparation, the Consul had advanced with his eagles to the frontier, and was ready to enter the country where the negotiation was pending; we shall find that they negotiated often and long, when it did not suit them to commence an immediate attack; and the negotiations, especially when at a distance, were protracted, until their armies had been recruited, wars nearer home ended, and everything ready to strike a decisive blow. But you have no instance of negotiation without military preparation, where the Roman territory was invaded, or a Roman treaty violated.

Leaving antiquity, the honorable gentleman (Mr. CLINTON) has adduced and extolled the example of England in modern times, and traced her through many scenes both in negotiation and war. But he did not dwell on her conduct in the beginning of the war of 1756, when all the commerce of France was destroyed by a general sweep, without a previous declaration of war; and yet this was so certainly the case, that the gentleman must well remember it formed a subject of complaint, and was used to protract the negotiation for a general peace in 1763. He has also forgotten their conduct towards the Dutch, during our Revolutionary war; and their late armament against the Danes. His comments also upon the conduct of their Ministry in 1762, were peculiarly unfortunate, because we know that the nation was afterwards actually obliged to declare war against Spain, when she had full notice of their intention, and time to prepare for the attack; whereas, had war been waged when the hostility of Spain and her secret alliance with France were first ascertained, they would have possessed prodigious advantages, which were lost by ineffectual negotiation and delay.

I will not follow the gentleman to Nootka Sound, to the Bay of Honduras, or the Musquito

Shore; but I will at once admit, that in cases of minor rights, spoliation upon commerce in time of war; nay, in all cases that do not involve the well-being, or national independence, negotiation and amicable adjustment should be resorted to; and demand of reparation should precede actual hostility. I will even say, that were the Spaniards to cross the Mississippi at the Falls of St. Anthony, and build a fort on our side of the river, place a garrison in it, and thus actually invade our territory, in my opinion we ought to negotiate and demand explanations before we sent troops to demolish the fort. Although the act would justify the immediate use of force, yet the station is so remote, and of so little importance in the use of it, that friendly means might be safely and wisely resorted to in the first instance.

Quitting Europe, the gentleman exultingly appeals to the usages of our own country, in cases which he alleges were either similar to, or stronger than the present. The name of WASHINGTON is introduced to silence all further dispute on this question! Sir, I reverence the authority of that great man's official conduct. He was the father of his country, the terror of its enemies, and the ornament of human nature. He is now gone to mix with the heroes and sages of other times and nations, in a happier world; but it was easily foreseen that those who seldom agreed with him in his life, would be the first, after his death, to fly for shelter to his example, when overtaken by calamity or misfortune! That man led the armies of his country to victory—to independence. He knew better than any man the interests, the feelings, the dispositions of the people. He witnessed the origin and progress of complaints on both sides respecting the inexecution of the Treaty of Peace between us and Great Britain. We justly reproached them with detention of the western posts, and their refusal to deliver our slaves, as stipulated by treaty; they replied that we did not pay them our old debts. These disputes became the subject of negotiation, under the old Confederation, and we had a Minister in that country who attempted an amicable adjustment. When General WASHINGTON came to the head of our present Government, he sent another Minister to that country, and while he was endeavoring a peaceable accommodation, a storm broke out in France, which soon spread beyond its own boundaries, and involved the neighboring nations in war. The rulers of France, wishing to engage us in their quarrel, sent a Minister to this country with express instructions to embroil us, if possible, in this desolating war. Unfortunately that Minister possessed abilities and a disposition well adapted to such a mission. He landed in a part of our country remote from the seat of Government, and instantly began to issue his commissions to our citizens, not only to equip privateers and plunder the commerce of nations with whom we were at peace, but to enlist men and raise a military force within the United States, for the purpose of attacking the possessions of Spain in Florida. He travelled onward from Charleston towards the seat of Government, making proselytes as he advanced, and gaining new adherents at every step of his journey. He was received with acclamations of the liveliest joy in the capital city of this country, and after employing all the soothing arts of fraternization, civic feasts, and public spectacle, he proceeded, as before, with his commissions, and actually insisted upon, and exercised the right of bringing into our ports and selling prizes taken from nations with whom we were at peace. This Minister had the address to seduce many of our citizens to enlist under his banner; and but too many, even of our respectable men in high employment, applauded his conduct and gave his measures a countenance they did not deserve. All ranks seemed pleased with the zeal and the boldness of the Minister's mind, and an union of this country with France in the war seemed inevitable, as no effectual steps had been taken to restrain this wild extravagant condition of things among us. I mention not these events with a wish to hurt the sensibility of any one, for I know that this country was then without experience; we had never before been in the relation of neutrality towards Powers at war, and we entertained a lively affection for France, because she had aided us in the Revolutionary war, and was then as we thought, contending for liberty herself. The respectable men who, led away by their feelings, joined in in the frenzy of that time, would not now display such opinions, or enter upon any public act to commit or endanger the peace and honest neutrality of their country.

Very unfortunately, however, we had then here a Minister from Great Britain who was but little inclined to promote good understanding, and who probably transmitted discolored accounts of all that passed from day to day. Things were sufficiently wrong without any exaggeration of their enormity. When these accounts reached England, was it wonderful that they considered war as begun? Was it strange that they should count upon hostility, when the acts of the people assumed but one complexion; when the Government had not taken means to do justice and prevent such injustice; when their ships were sold by their enemies, and every indignity put upon their subjects? Hence, we may trace the orders for spoliations; hence, the talk of Lord Dorchester to the Indians, and the other aggressions on the western frontier, which, however unjustifiable, were not altogether without provocation.

In the meanwhile, the French Minister increased in his activity and boldness of enterprise, under the very eye of our Government; he multiplied his complaints against the Executive, and his caresses and professions upon the people, until, at last, confident in his numbers and support, he set the President at defiance, and threatened an appeal to the people. At that awful crisis of delusion, WASHINGTON came forward, Moses-like, and put himself in the gap between the pestilence and the people. He demanded the Minister's recall; he was recalled; he arrested the hands of our citizens who were armed to plunder in time of peace; he enforced the observation of the rules of justice and neutrality. When these things be-

came known in England, they produced a revocation of the orders to plunder our merchants. But the havoc and destruction had been dreadful; we were highly and justly incensed; the blood of both nations was up; it had scarcely cooled, and was easily roused to be ready for war. If the British had not recalled their orders of November, 1793, we undoubtedly should instantly have gone to war. It would have been unavoidable, nay, absolutely necessary. But when the revocation of those orders was known here, our President considered that our own conduct had not been perfectly regular; there was some cause of complaint against us, in the midst of all the just complaints we had against the British cruisers; there were also old differences, which had created great uneasiness between the two countries. In the recent causes of quarrel, we had been the first in suffering improper acts to be done by a foreign agent within our own territory, which we ought to have prevented as neutrals. Under all these circumstances, being already engaged in an Indian war, he resolved to try negotiation—an Envoy Extraordinary was accordingly sent.

How does all this apply to the present case? There had been old, unsettled differences with England; ours with Spain were settled by the treaty of 1795. There were horrible spoliations upon our trade by Britain, but we had permitted acts towards them with which we were obliged to reproach ourselves. Spain has also spoiled our commerce, and to an immense extent, without provocation. For that, the case of England would say negotiate, and we have actually been negotiating. But had England blockaded your harbors; had she shut out half a million of your people from access to the ocean; had she closed up the Chesapeake or the Delaware, would there have been negotiation? No. You would, you must have had immediate war. Such an invasion of the sovereignty and independence of the country would have left no hesitation in the mind of any man; but, fortunately, as our affairs then stood, we were not obliged to resort to hostilities. The man of high talents who undertook to negotiate, succeeded in forming a treaty between the two countries. Such, however, were the passions of the times, that the negotiator was grossly calumniated. The treaty was opposed by the formidable array of all the artillery of popular opinion, organized in town meetings, played off along the coast from Boston to Charleston, under the direction of the ablest engineer in this country. Public opinion was again shaken, but finally peace was preserved, the treaty went fairly into execution, and even the negotiator was elected their Governor, by the people of his own State, where he presided for a long time, with honor to himself, and infinite advantage to the interests and peace of the society; until at length he retired from public life, leaving an example which will always be useful for imitation, and serve, at the same time, as a severe reproof to those who may materially depart from it.

Our differences and negotiations with England, then, furnished an interesting and serious view of the course we have taken in troublesome times, but certainly do not present anything like the present case. For, although they actually held our western posts, and built a new fort at the foot of the rapids of Miami, yet, we had never been in possession of those posts; we had not purchased the country from the Indians; we had no settlements near it; no great portion of our citizens were obstructed or cut off from the free exercise of their rights; and there were mutual complaints, perhaps mutual injuries, between the parties, which seemed to require negotiation, as the only mode in which they could ever be terminated.

Next comes our difference with Spain. To this it may be answered, briefly, that we made a treaty with that Power; difficulties arose respecting the execution of that treaty; we had not then been in the possession or exercise of the rights claimed under the treaty. The Spaniards delayed and evaded the execution, in a very unjustifiable manner. But the Administration of that day did not rely upon negotiation alone; they ordered troops to the Ohio, and had the Spaniards persisted in their refusal, those troops would have acted decisively, without any new application to the Court of Spain. They saw the approaching storm; they entered upon the execution of the treaty, by running the line, and giving up the posts; and, if the War Office be examined, gentlemen will find that our troops were then so disposed as to fall down the river Mississippi, and act with effect at any moment. It was well known to us that Spain did not act in that business from the mere impulse of her own interests or wishes. She was then, and is still, under the irresistible influence of a powerful neighbor, with whom we at that time had serious differences—she was urged and pushed forward by France; for Spain, until she became thus dependant upon France, has ranked high for her good faith, and, in my opinion, deservedly higher than any other Court in Europe. Slow to promise, she has always fulfilled her engagements with honor, according to the spirit, without cavilling about the words of her treaties. When we were aware of all these things, when there was no absolute refusal, but only delay and evasive excuses about the execution, not about the right, it would not have been wise to precipitate an absolute rupture between the two countries.

The proceedings with France are next adduced. These are fresh in the memory of every one, and need not be repeated. There was no blockade, no denial of egress to the ocean, no invasion, no territorial dismemberment, no attack upon the country which required the immediate use of force. True, they captured your ships, they heaped indignities upon you; but they also alleged that you had first broken the Treaty of Alliance. You negotiated; what else could you do? You had no navy. You could not go in quest of them, and they did not attempt to land on your shores. When their aggressions rose to such a height as to be tolerated no longer, and defensive war was resolved on, what was the conduct of the minority then? Did they come forward and

offer their support like the minority now? No, sir, they declared the Administration was blameable; that the French had been provoked; that peace was still attainable by negotiation, and war at all events to be avoided. Look at the debates of that day, and you will discover that many leading men contended that our own Government was altogether in the wrong, and France in the right. Such was the impression abroad, that Talleyrand insultingly boasted of a party in our own country, and threatened us with the fate of Venice; and when the sacred right of embassy was trampled upon, as stated by the honorable gentleman from New York, still the cry at home was negotiate, negotiate! Surely there is very little, if any, resemblance between that case and this. However justifiable a war would have been then, we must have gone abroad to seek our enemy; now he has come to our doors, and stripped us of what is most precious and dear to us as an independent nation.

We are next told, under the third head of objections, that our national debt will be increased by war; that war will be the necessary consequence of the resolutions; that our object is war. Sir, our object is not war, but the attainment of security for a right, without which our Union, our political existence, cannot continue. In seeking this security should war arise, it will be a less evil than insecure and delusive hopes of tranquillity. No doubt war will increase your public debt, but no more nor so much as vain attempts to secure this right another way; and, after failing, you must have a war.

But your merchants will not obtain indemnities for spoliations. Their chance is but precarious now, and would be altogether as great in the way we propose to take.

Seaports will be blockaded, and the Mississippi shut. The first is not probable, and as to the last, all the Western people must be satisfied when they see their country maintaining and asserting their right. The very effort to maintain it will consume a great portion of the resources and afford an extensive market to the aggrieved people, by supplying your military force. The river may as well be shut up completely as be in its present condition.

An honorable gentleman (Mr. WRIGHT) has said, that we may have a place of deposit in our own territory, and navigate the river from thence. The gentleman has not certainly well considered this subject. The nearest point upon our territory is three hundred miles from the sea; the river crooked, the current rapid, the anchorage bad. A favorable wind in one direction of the river, would be adverse at the next bend. Ships could never ascend in any reasonable time, nor could they gain any point on our own territory, when they are forbidden to touch the shore, even to fasten a cable or tow-line. Without the privilege of the shore, the navigation would be impracticable.

The honorable gentleman from New York had advanced a most extraordinary position: that if our adversaries have time to prepare, we also have time to prepare. Yet he resists the resolutions, and proposes no effectual military preparations. While they are busy, we are to be idle—when they make the stroke, we are in our present defenceless state. Next year, we shall be as weak and exposed as now; our commerce equally scattered over the ocean; our seaports as defenceless; our army and navy as weak; and they have then possession of the disputed spot, with an armament to annoy us, and maintain their possession.

The honorable gentleman from Kentucky (Mr. BRECKENRIDGE) disclaims all apprehension of disgust, or disaffection among his constituents, or any of the Western people. They were not always in this mild, forbearing temper upon the subject of the Mississippi. It must be in the recollection of that gentleman, that Mr. Genet sent emissaries into Kentucky, distributed commissions there for enlisting men, and raising an army to take New Orleans, and open the navigation of the Mississippi to the Western people. A very gallant and able officer accepted the commission of General on this expedition, and would undoubtedly have executed it, had not the recall of the French Minister, and the failure of the expected resources, defeated the enterprise. What reason was there to suppose they would be more forbearing now? That officer was still alive, and if he was to erect his standard, the consequences could not be very doubtful.

The honorable gentleman from Georgia (Mr. JACKSON) agrees with us in everything except as to the time of acting. He wishes to make an experiment at negotiation, but admits the magnitude of the dispute, and that it involves the very existence of Georgia and the Southern States. If the late events had happened upon St. Mary's, or if the Savannah had been shut up by the Spaniards, there would have been little doubt of the course that gentleman would have pursued. The news of the aggression and of the aggressors' graves would have reached the seat of Government by the same mail. He would not have waited to inquire by whose orders they came there, or whether they could be negotiated out of Georgia. Although the gentleman disagrees with us as to the time of acting, yet he has very honorably pledged himself for the ultimate result, should negotiation fail; and while it is impossible to agree with what he has said respecting the ordinary force of the country driving the new occupants from their fastnesses and forts in the marshes of Florida or New Orleans, yet, sir, there can be no doubt that the spirit which disdains to think of the hazard of such an enterprise, is of the utmost value to our country. For my own part, I have a pleasure in declaring my wish, that the gentleman now lived on the Mississippi, and that he had authority from this Government to act: I should have no doubt of the result, nor of the confidence and universal consent with which he would be supported. But he is certainly too much a soldier not to discern, that previous possession by a powerful enemy will require the labors and blood of a disciplined army, and the delay and skill requisite for the attack of a fortified country.

We come now to consider the resolution offered

as a substitute. It is highly gratifying to find that gentlemen are at last inclined to act—to do something like defending the rights of our country. Is there any new shape given to this business by the proposed substitute? We propose fifty thousand militia; they substitute eighty thousand. To do what? Will gentlemen tell us the difference? It is said ours are absolutely imperative; if so, alter them, and give an unqualified discretion. We will agree to it. My own opinion is, that they should be immediately acted upon. If the majority wish for a bare discretionary power, I assent to it. There is no difference except that one set of resolutions puts greater power in the hands of the President than the other. Are gentlemen on the other side afraid to trust the President? Do they think he will abuse this power? Will it hurt the negotiation? Instead of hurting it, our Minister ought to carry this act to Europe with him. He is not yet gone, and it may be sent with him. He would then have more means, and more forcible arguments to urge in his negotiation.

This whole subject was known at the meeting of Congress; yet no step was taken, till our resolutions were proposed. Now gentlemen are willing to do something! They seem willing to give means to a certain extent. Why not amend our resolutions, when their own are but a qualification of ours. We have but seven days to the end of this session. Why dispute about a substitute, when amendments may be made to meet gentlemen's wishes? They agree to go a certain length; then say so, and strike out the rest. Certainly we will go with you as far as you propose, for we have offered to go farther.

But gentlemen say they have full confidence in the negotiation. Be it so. I cannot doubt the assertion of the gentlemen, although I draw a different conclusion from the same facts. But let me present the question in a new shape, not yet offered in this House. We are not deliberating about the right of deposit in New Orleans merely, nor about the island of New Orleans; we are told that we are to look for new and powerful neighbors in Louisiana. What right has Spain to give us these neighbors without consulting us? To change our present security into hazard and uncertainty? I do not believe that Spain has any right to do so. What are the limits of Louisiana? It extends three thousand miles upon your frontier. New Orleans is ceded with it. Then the province of Louisiana and New Orleans lie between the Floridas, and the other Spanish dominions on this continent. It is not difficult to determine who will command and own the Floridas. They must belong to the master of Louisiana and New Orleans. Then the owners possess the lock and key of the whole Western country. There is no entrance or egress but by their leave. They have not only three thousand miles on your frontier in the interior country, but they have the command of your outlet to the ocean, and seven hundred miles of seacoast embracing the finest harbors in North America. This makes them, in fact, masters of the Western world. What will you give them for this enviable dominion? Not territory, for you have none to spare, and they want none. Not commercial privileges—they will not want them, for they will then have enough and to spare. What equivalent have you? What can you offer to men who know the value of such a country? What would this Senate take for the surrender of such an establishment were it ours? Let every Senator ask himself the question, and declare by what rule of estimation his answer would be dictated.

But I know it has been said, and will be said again, that the new French owners will confirm or permit our right of deposit and free navigation of the Mississippi—they will open a free port and give us all we desire. Yes, sir, this would be the unkindest cut of all. I fear much less the enmity of the present possessors, than such neighbors. We shall hold by their courtesy, not by the protection of our own Government. They will permit, but you cannot enforce. They will give us all the advantages we now have and more. But will it be for nothing? Will they ask no return? Have they no ulterior views? No! During this insidious interval, they will be driving rivet after rivet into the iron yoke, which is to gall us and our children. We must go to market through a line of batteries manned by veterans; and return home with our money through a fortified camp. This privilege will be held at their will, and may be withheld whenever their Intendant forbids its further continuance.

No doubt my earnestness may have betrayed me into expressions which were not intended. Every honorable gentleman will therefore consider me as addressing his reason and judgment merely, without meaning to give cause of offence. But I cannot conclude without addressing myself particularly to those Senators who represent the Western States. I entreat them to remember that these resolutions are intended to vest a power which may, or may not be used, as events arise. If events should show, in the recess, that negotiation must fail, what is the President to do? He must call Congress. This will consume time, and the enemy gain immense advantages. Why not put a force at his disposal with which he can strike, with which he can have a pledge for your future well-being? When the Atlantic coast is willing, shall this security be lost by your votes? Are you sure that you will ever again find the same disposition? Can you recall the decisive moment that may happen in a month after our adjournment? Certainly the country may be in such a state that at the next session you will have no such offer as at the present moment. There may be a pressure which would forbid it. Heretofore you have distrusted the Atlantic States; now, when they offer to pledge themselves, meet them and close with the proposal. If the resolutions are too strong, new-model them. If the means are not adequate, propose other and more effectual measures. But as you value the best interests of the Western country, and the union with the Atlantic coast, seize the present occasion of securing it forever. For the present is only a

question of how much power the Executive shall have for the attainment of this great end, and no man desirous of the end ought to refuse the necessary means for attaining it. Your voice decides the direction this Senate will take, and I devoutly wish it may be one we shall never repent.

Mr. GOUVERNEUR MORRIS.—Mr. President, I rise with reluctance on the present occasion. The lateness of the hour forbids me to hope for your patient attention. The subject is of great importance, as it relates to other countries, and still greater to our own; yet we must decide on grounds uncertain, because they depend on circumstances not yet arrived. And when we attempt to penetrate into futurity, after exerting the utmost powers of reason, aided by all the lights which experience could acquire, our clearest conceptions are involved in doubt. A thousand things may happen which it is impossible to conjecture, and which will influence the course of events. The wise Governor of all things hath hidden the future from the ken of our feeble understanding. In committing ourselves, therefore, to the examination of what may hereafter arrive, we hazard reputation on contingencies we cannot command. And when events shall be past, we shall be judged by them, and not by the reasons which we may now advance.

There are many subjects which it is not easy to understand, but it is always easy to misrepresent, and when arguments cannot be controverted, it is not difficult to calumniate motives. That which cannot be confuted, may be misstated. The purest intentions may be blackened by malice; and envy will ever foster the foulest imputations. This calumny is among the sore evils of our country. It began with our earliest success in 1778, and has gone on with accelerated velocity and increasing force to the present hour. It is no longer to be checked, nor will it terminate but in that sweep of general destruction, to which it tends with a step as sure as time, and fatal as death. I know that what I utter will be misunderstood, misrepresented, deformed, and distorted; but we must do our duty. This, I believe, is the last scene of my public life; and it shall, like those which preceded it, be performed with candor and truth. Yes, my noble friends, [addressing himself to the Federal Senators near him,] we shall soon part to meet no more. But however separated, and wherever dispersed, we know that we are united by just principle and true sentiment. A sentiment, my country, ever devoted to you; which will expire only with expiring life, and beat in the last pulsation of our hearts.

Mr. President, my object is peace. I could assign many reasons to show that this declaration is sincere. But can it be necessary to give this Senate any other assurance than my word? Notwithstanding the acerbity of temper which results from party strife, gentlemen will believe me on my word. I will not pretend, like my honorable colleague, (Mr. CLINTON,) to describe to you the waste, the ravages, and the horrors of war. I have not the same harmonious periods, nor the same musical tones; neither shall I boast of Christian charity, nor attempt to display that ingenuous glow of benevolence so decorous to the cheek of youth, which gave a vivid tint to every sentence he uttered; and was, if possible, as impressive even as his eloquence. But, though we possess not the same pomp of words, our hearts are not insensible to the woes of humanity. We can feel for the misery of plundered towns, the conflagration of defenceless villages, and the devastation of cultured fields. Turning from these features of general distress, we can enter the abodes of private affliction, and behold the widow weeping, as she traces, in the pledges of connubial affection, the resemblance of him whom she has lost forever. We see the aged matron bending over the ashes of her son. He was her darling; for he was generous and brave, and therefore his spirit led him to the field in defence of his country. We can observe another oppressed with unutterable anguish: condemned to conceal her affection; forced to hide that passion which is at once the torment and delight of life; she learns that those eyes which beamed with sentiment, are closed in death; and his lip, the ruby harbinger of joy, lies pale and cold, the miserable appendage of a mangled corse. Hard, hard indeed, must be that heart which can be insensible to scenes like these, and bold the man who dare present to the Almighty Father a conscience crimsoned with the blood of his children.

Yes, sir, we wish for peace; but how is that blessing to be preserved? I shall here repeat a sentiment I have often had occasion to express. In my opinion, there is nothing worth fighting for, but national honor; for in the national honor is involved the national independence. I know that a State may find itself in such unpropitious circumstances, that prudence may force a wise Government to conceal the sense of indignity. But the insult should be engraven on tablets of brass, with a pencil of steel. And when that time and chance, which happen to all, shall bring forward the favorable moment, then let the avenging arm strike him. It is by avowing and maintaining this stern principle of honor, that peace can be preserved. But let it not be supposed that anything I say has the slightest allusion to the injuries sustained from France, while suffering in the pangs of her Revolution. As soon should I upbraid a sick man for what he might have done in the paroxysms of disease. Nor is this a new sentiment; it was felt and avowed at the time when these wrongs were heaped on us, and I appeal for the proof to the files of your Secretary of State. The destinies of France were then in the hands of monsters. By the decree of Heaven she was broken on the wheel, in the face of the world, to warn mankind of her folly and madness. But these scenes have passed away. On the throne of the Bourbons is now seated the first of the Gallic Cæsars. At the head of that gallant nation is the great—the greatest—man of the present age. It becomes us well to consider his situation. The things he has achieved, compel him to the achievement of things more great. In

his vast career, we must soon become objects to command attention. We too, in our turn, must contend or submit. By submission we may indeed have peace, alike precarious and ignominious. But is this the peace which we ought to seek? Will this satisfy the just expectation of our country? No. Let us have peace permanent, secure, and, if I may use the term, independent. Peace which depends, not on the pity of others, but on our own force. Let us have the only peace worth having, a peace consistent with honor.

A gentleman near me (Mr. JACKSON) has told us the anecdote of an old courtier, who said, that the interest of his nation was the honor of his nation. I was surprised to hear that idea from that gentleman. But it was not his own. Such is that gentleman's high sense of his personal honor, that no interest would induce him to sacrifice it. He would not permit the proudest prince on earth to blot or soil it. Millions would not purchase his honor, and will he feel less for the honor of his country? No; he will defend it with his best blood. He will feel with me, that our national honor is the best security for our peace and our prosperity. That it involves at once our wealth and our power. And in this view of the subject I must contradict a sentiment which fell from my honorable colleague, (Mr. CLINTON.) He tells us that the principle of this country is peace and commerce. Sir, the avowal of such principle will leave us neither commerce nor peace. It invites others to prey on that commerce which we will not protect, and share the wealth we dare not defend. But let it be known that you stand ready to sacrifice the last man, and the last shilling in defence of your national honor, and those who would have assailed will beware of you.

Before I go into a minute consideration of this subject, I will notice what the gentlemen opposed to me have said on the law of nations. But I must observe that, in a conjuncture like the present, there is more sound sense, and more sound policy in the firm and manly sentiments which warm the hearts of my friends from Delaware, than in all the volumes upon all the shelves of the civilians. Let us, however, attend to the results of those logical deductions which have been made by writers on the law of nations. The honorable member from Kentucky, (Mr. BRECKENRIDGE) has told us that Sovereigns ought to show a sincere desire of peace, and should not hastily take offence, because it may be that the offensive act was the result of mistake. My honorable colleague has told us, that among the justifiable causes of war, are the deliberate invasions of right, and the necessity of maintaining the balance of power. He has told us further, that attempts should always be made to obtain redress by treaty, unless it be evident that redress cannot be so obtained. The honorable member from Georgia near me, informs us, that the thing we would obtain by war should be important, and the success probable, and that war should be avoided until it be inevitable. The honorable member from Maryland, (Mr. WRIGHT,) has explained to us the case cited by the gentleman from Kentucky, as being that of a wrong done by a private citizen. Under the weight of all this authority, and concurring with gentlemen in these their positions, I shall take leave to examine the great question we are called on to decide. I shall moreover fully and entirely agree with the honorable member near me in another point. He has, with the usual rapidity of his mind, seized the whole object. He tells us, and he tells us truly, that the island of New Orleans and the two Floridas, are essential to this country. They are joined, says he, by God, and sooner or later we must and will have them. In this clear and energetic statement I fully agree; and the greater part of what I have to say will be but a commentary on the doctrines they have advanced, an elucidation of their positions, and the confirmation of that strong conclusion.

In order to bring this extensive subject within such bounds as may enable us to take a distinct view of its several parts, I shall consider first, the existing state of things; secondly, the consequence to the United States of the possession of that country by France; thirdly, the consequence to other nations; fourthly, the importance of it to France herself; fifthly, its importance to the United States if possessed by them: and having thus examined the thing itself in its various relations, the way will be open to consider, sixthly, the effect of negotiation; and then, seventhly, the consequences to be expected from taking immediate possession.

Before I consider the existing state of things, let me notice what gentlemen have said in relation to it. The honorable member from Kentucky has told us, that indeed there is a right arrested, but whether by authority or not is equivocal. He says the representative of Spain verily believes it to be an unauthorized act. My honorable colleague informs us there has been a clashing between the Governor and Intendant. He says we are told by the Spanish Minister it was unauthorized. Notwithstanding these assurances, however, my honorable colleague has, it seems, some doubts; but nevertheless he presumes innocence, for my colleague is charitable. The honorable member from Maryland goes further. He tells us the Minister of Spain says, the Intendant had no such authority, and the Minister of France, too, says there is no such authority. Sir, I have all possible respect for those gentlemen, and every proper confidence in what they may think proper to communicate. I believe the Spanish Minister has the best imaginable disposition to preserve peace; being indeed the express purpose for which he was sent among us. I believe it to be an object near to his heart, and which has a strong hold upon his affections. I respect the warmth and benevolence of his feelings, but he must pardon me that I am deficient in courtly compliment; I am a republican, and cannot commit the interests of my country to the goodness of his heart.

What is the state of things? There has been

a cession of the island of New Orleans and of Louisiana to France. Whether the Floridas have also been ceded is not yet certain. It has been said, as from authority, and I think it probable. Now, sir, let us note the time and the manner of this cession. It was at or immediately after the treaty of Lunenville, at the first moment when France could take up a distant object of attention. But had Spain a right to make this cession without our consent? Gentlemen have taken it for granted that she had. But I deny the position. No nation has a right to give to another a dangerous neighbor without her consent. This is not like the case of private citizens, for there, when a man is injured, he can resort to the tribunals for redress; and yet, even there, to dispose of property to one who is a bad neighbor is always considered as an act of unkindness. But as between nations, who can redress themselves only by war, such transfer is in itself an aggression. He who renders me insecure; he who hazards my peace, and exposes me to imminent danger, commits an act of hostility against me, and gives me the rights consequent on that act. Suppose Great Britain should give to Algiers one of the Bahamas, and contribute thereby to establish a nest of pirates near your coasts, would you not consider it as an aggression? Suppose, during the late war, you had conveyed to France a tract of land along Hudson's river, and the northern route by the Lakes into Canada, would not Britain have considered and treated it as an act of direct hostility? It is among the first limitations to the exercise of the rights of property, that we must so use our own as not to injure another; and it is under the immediate sense of this restriction that nations are bound to act toward each other.

But it is not this transfer alone. There are circumstances both in the time and in the manner of it which deserve attention. A gentleman from Maryland (Mr. WRIGHT) has told you, that all treaties ought to be published and proclaimed for the information of other nations. I ask, was this a public treaty? No. Was official notice of it given to the Government of this country? Was it announced to the President of the United States, in the usual forms of civility between nations who duly respect each other? It was not. Let gentlemen contradict me if they can. They will say perhaps that it was the omission only of a vain and idle ceremony. Ignorance may indeed pretend that such communication is an empty compliment, which, established without use, may be omitted without offence. But this is not so. If these be ceremonies they are not vain, but of serious import, and are founded on strong reason. He who means me well, acts without disguise. Had this transaction been intended fairly, it would have been told frankly. But it was secret because it was hostile. The First Consul, in the moment of terminating his differences with you, sought the means of future influence and control. He found and secured a pivot for that immense lever, by which, with potent arm, he means to subvert your civil and political institutions. Thus, the beginning was made in deep hostility. Conceived in such principles, it presaged no good. Its bodings were evil, and evil have been its fruits. We heard of it during the last session of Congress, but to this hour we have not heard of any formal and regular communication from those by whom it was made. Has the King of Spain, has the First Consul of France, no means of making such communication to the President of the United States? Yes, sir, we have a Minister in Spain; we have a Minister in France. Nothing was easier, and yet nothing has been done. Our First Magistrate has been treated with contempt; and through him our country has been insulted.

With that meek and peaceful spirit now so strongly recommended, we submitted to this insult, and what followed? That which might have been expected; a violation of our treaty. An open and direct violation by a public officer of the Spanish Government. This is not the case cited from one of the books. It is not a wrong done by a private citizen, which might, for that reason, be of doubtful nature. No; it is by a public officer,—that officer, in whose particular department it was to cause the faithful observance of the treaty which he has violated. We are told indeed that there was a clashing of opinion between the Governor and the Intendant. But what have we to do with their domestic broils? The injury is done, we feel it. Let the fault be whose it may, the suffering is ours. But, say gentlemen, the Spanish Minister has interfered to correct this irregular procedure. Sir, if the Intendant was amenable to the Minister, why did he not inform him of the step he was about to take, that the President of the United States might seasonably have been apprized of his intention, and given the proper notice to our fellow-citizens? Why has he first learnt this offensive act from those who suffer by it? Why is he thus held up to contempt and derision? If the Intendant is to be controlled by the Minister, would he have taken a step so important without his advice? Common sense will say no. But, the bitter cup of humiliation was not yet full. Smarting under the lash of the Intendant, the Minister soothes you with assurances, and sends advice-boats to announce your forbearance. But while they are on their way, new injury and new insult are added. The Intendant, as if determined to try the extent of your meekness, forbids to your citizens all communication with those who inhabit the shores of the Mississippi. Though they should be starving, the Spaniard is made criminal who should give them food. Fortunately, the waters of the river are potable, or else we should be precluded from the common benefits of nature, the common bounty of heaven. What then, I ask, is the amount of this savage conduct? Sir, it is war. Open and direct war. And yet gentlemen recommend peace, and forbid us to take up the gauntlet of defiance. Will gentlemen sit here and shut their eyes to the state and condition of their country? I shall not reply to what has been said respecting depredations on commerce, but confine myself to objects of which there can be no shadow of doubt. Here is a vast country given away, and not without danger to us.

Has a nation a right to put these States in a dangerous situation? No, sir. And yet it has been done not only without our consent previous to the grant, but without observing the common forms of civility after it was made. Is that wonderful man who presides over the destinies of France, ignorant or unmindful of these forms? See what was done the other day. He directed his Minister to communicate to the Elector of Bavaria, his intended movements in Switzerland, and their object. He knew the Elector had a right to expect that information, although the greater part of Swabia lies between his dominions and Switzerland. And this right is founded on the broad principles already mentioned.

As to the depredations on our commerce, they are numerous, and of great importance; but my honorable colleague has told us, our merchants are in a fair way of getting redress. I own, sir, I am surprised at this information, which is, I presume, a State secret, communicated from the Executive department. My honorable colleague, who is the pattern of discretion, who was the monitor, and threatened to be the castigator of those who, from treachery or weakness, might betray or divulge the secrets of the Senate, cannot possibly allude to anything on our files. He has, therefore, received this information from some other quarter; and I feel myself much obliged by his kind communication. But he must pardon me, sir, that until it comes forward in some body, shape, or condition, which I can grasp, I am compelled to withold my faith.

Having thus examined the existing state of things, I proceed to consider the consequence to the United States, resulting from the possession of that country by France. To this effect I shall suppose the Floridas to be included in her newly acquired dominion, and shall state what I conceive to be the conduct which she will pursue. She will, I presume, consider herself as not bound by our treaty with Spain. Declaring this to the inhabitants of the western country, and repelling the claim of right, she will (as matter of favor) give them unlimited freedom of trade to and from New Orleans. At that place, she will eventually raise a considerable duty on exports, to pay the expense of her garrisons, and of the civil administration. But to compensate this, she will probably give an exclusive privilege of commerce to her colonies, and obtain from Spain and Holland similar privileges. Under these circumstances, let us examine the general and particular consequences to this our country.

The general consequences are those which affect our commerce, our revenue, our defence, and what is of more importance even than these, our Union. Your commerce will suffer, because you will no longer hold the means of supplying the West India islands subject to our single control, and because all the export from New Orleans being, of course, in French bottoms, your navigation will be proportionably diminished. Your revenue will suffer as much as your commerce. The extensive boundary, of more than two thousand miles, will be stocked with goods for the purpose of contraband trade. The inhabitants will naturally take their supplies in that way. You must therefore multiply your revenue officers and their assistants, and while your receipt diminishes, the expense of collection will be increased. As to what regards your defence, it is evident that the decrease of your navigation and revenue must narrow your means of defence; you cannot provide the same force either by land or by sea. But the evil does not stop there. With this country in your possession, you have means of defence more ample, more important, more easy, than any nation on earth. In a short time all the West India islands, fed from your granaries, must depend on your will; and, in consequence, all the Powers of Europe who have colonies there, must court your friendship. Those rich sources of commercial importance will be as it were in your hands. They will be pledges for the amity of others in seas and dominions far remote. It is a defence which, though it costs you nothing, is superior to fleets and armies. But let the resources of America be divided, (which must happen when the French are masters of New Orleans,) and all this power and influence are gone. One half your resources will be in their hands, and they will laugh at your feeble attempts with the other half. It is the interest of this country that the possessions of European Powers in the West Indies should be secured to them. And in this view of the subject it is important that the island of St. Domingo should be subjected by France; it would therefore have been wise to have aided in that subjugation. There is indeed a special reason for it beyond the considerations of external policy. That event will give to your slaves the conviction that it is impossible for them to become free. Men in their unhappy condition must be impelled by fear, and discouraged by despair. Yes—the impulsion of fear must be strengthened by the hand of despair! Consider, moreever, your condition in the wars which are most likely to happen. These must be either with France or England. If with France, your interior is ruined; if with England, the commerce of the Atlantic States will be distressed, and that of the western country too, though not perhaps in so great a degree. Thus, let the war be with whichsoever of those nations it may, one half of the United States must be peculiarly injured; and in all cases it will be difficult for them to assist each other. The interior has no seamen for naval defence, the seaboard can send few if any troops beyond the mountains. This powerful influence of one nation on one great division of our country, and of another nation on the remainder, will tend to disunite us. The ridge of mountains will mark the line of distinct interests. The effect of those differing interests will be felt in your councils. It will find its way to this floor. This must be the case so long as man is man. Look, I pray, at those nations. The enmity of France and England can terminate only by the subjection of one to the dominion of the other. It must be by the complete exertion of force, and the utter impossibility of resistance. They are the Rome and

Carthage of modern times. Their implacable spirit will stimulate them to attempt a division of this country by sentiments of hatred, deadly as their own. These efforts will, I hope, be vain: but with such powerful engines to operate on the interest and the will, is there not danger to that union so essential to our prosperity? There will be a constant struggle in Congress as to the kind of public force which ought to be maintained. The one part will desire an army, the other a navy. The unyielding spirit of party will, perhaps, prevent the support of either; leaving the nation completely defenceless, and thereby increasing the power of those who may influence or command our destinies. For, let it be remembered, that a nation without public force, is not an independent nation. In a greater or smaller degree, she will receive the law from others.

Having thus considered the effect of this cession upon the United States, in a general point of view, let us now examine it more particularly, as it regards the greater divisions of our country, the Western, the Southern, the Middle, and the Eastern States. I fear, sir, I shall detain you longer than I intended, certainly longer than the light of day will last, notwithstanding my effort to comprise what I have to say in the smallest compass. As to the Western States, the effects will be remote and immediate. Those more remote may be examined under the twofold aspect of peace and war. In peace they will suffer the diminution of price for their produce. The advantage of supplying the French, Dutch, and Spanish colonies, may at first sight lead to a different opinion; but when the port of New Orleans is shut to all but French ships, there will no longer be that competition which now exists, and which always results in the highest price that commodities can bear. The French merchants have neither the large capital, nor have they the steady temper and persevering industry which foster commerce. Their invariable object in trade, is to acquire sudden wealth by large profit; and if that cannot be done, they abandon the pursuit for some new project. Certain of the market, and certain of the increasing supply, they will prescribe the price, both to those who cultivate, and to those who consume. Such will be the effect in peace.

In a war with Great Britain, the attention of her fleets to cut off supplies from her enemies, must necessarily affect the price of produce in a still greater degree; and in a war with France it will bear no price at all, until New Orleans shall be wrested from their grasp. Add to this the danger and the devastation from the troops of that country, aided by innumerable hosts of savages from the western wilds. Such being the evident effects to be produced in times not far remote, the present evil follows from the anticipation of them. The price of land must be reduced, from the certainty that its produce will become less valuable. The flood of emigration to those fertile regions must cease to flow. The debts incurred in the hope of advantageous sales, must remain unpaid. The distress of the debtor must then recoil on his creditor, and, from the common relations of society, become general.

What will be the effect on the Southern States? Georgia, Carolina, and the Mississippi Territory are exposed to invasion from the Floridas and New Orleans. There are circumstances in that portion of America which render the invasion easy, and the defence difficult. Pensacola, though the climate be warm, is among the healthiest spots on earth. Not only a large garrison, but an army may remain there without hazard. At Pensacola and St. Augustine, forces may be assembled to operate in that season of the year, when the morasses which separate them from our southern frontier no longer breathe pestilence. By what are those armies to be opposed? Will you call the militia from the North to assist their Southern brethren? They are too remote. Will you secure their seasonable aid, bring them early to the fields they are ordered to defend? They must perish. The climate, more fatal than the sword, will destroy them before they see their foe. The country adjoining to our Southern frontier is now in possession of the most numerous tribes of savages we are acquainted with. The access to it from New Orleans and the Floridas is easy and immediate. The toys and gewgaws manufactured in France, will be scattered in abundance, to win their affections, and seduce them from their present connexion. The talents of the French to gain the good will of the savages is well known, and the disposition of those uncultured men for war, is equally notorious. Here then is a powerful instrument of destruction, which may be used against you with ruinous effect. Besides, what is the population of the Southern States? Do you not tremble when you look at it? Have we not within these few days passed a law to prevent the importation of certain dangerous characters? What will hinder them from arriving in the Floridas, and what can guard the approach from thence to our Southern frontier? These pernicious emissaries may stimulate with a prospect of freedom the miserable men who now toil without hope. They may excite them to imitate a fatal example, and to act over those scenes which fill our minds with horror. When the train shall be laid; when the conspiracy shall be ripe; when the armies of France shall reach your frontier, the firing of the first musket will be a signal for general carnage and conflagration. If you will not see your danger now, the time must soon arrive when you shall feel it. The Southern States being exposed to such imminent danger, their Representatives may be made to know, that a vote given in Congress shall realize the worst apprehensions. You will then feel their danger even on this floor.

Such being the probable result as to the Southern, what will it be to the Middle States? Their trade to the West India islands is gone the moment that country is in possession of the French. England, to whose dominion alone they can have recourse for the vent of their produce and the purchase of their supplies, will confine that commerce to her own ships. I say the moment the

French are in possession of New Orleans your West India trade is gone. I do not mean that this effect will be as sudden as a flash of lightning, but it will be gone in a few years, which may be considered as a moment when compared with national existence. You will then be dependant for that trade on the good will of England, and as your navigation decreases, your dependence will be still still greater, because you will rely on her navy for your protection. I again repeat, that when it shall be a question in your councils whether you will have a navy, the increasing weight of the western country will be thrown into the scale of opposition. They will insist on an army for their protection. My honorable colleague has expressed his fears from a standing army. Sir, your present negligence will put you under the necessity of having such an army, and expose you to all the consequences to be apprehended from it. You may indeed remain united in a body as one nation, but with such contrarient interests and opinions, with sentiments and views so different, it will be a large and languishing body without a soul.

To the Eastern States, when separately considered, this may appear a matter of less moment than to the other great divisions of our country. But they will perceive in it the loss of their navigation; they will see the theatre of their industrious exertions contracted; they will feel the loss of the productions of that western world in the mass of their commercial operations; and above all, they will feel the loss of an ample resource for their children. These western regions are peculiarly their heritage. It is the property of the fathers of America, which they hold in trust for their children. The exuberant population of the Eastern States flows in a steady stream to the western world, and if that be rendered useless, or pass under the dominion of a foreign Power, the fairest hope of posterity is destroyed. The time may come, and I fear it will come, when those who cross the mountains will cross the line of jurisdiction. Whether we consider, therefore, this object in its relations to our general policy, or examine its bearings on the greater divisions of our country, we find ample reason to agree with the gentleman near me, that New Orleans and the Floridas must not be separated from the United States.

Let us now consider the consequence of the cession we complain of, to other nations, and this we may do generally, and then more especially as to those who have a direct and immediate interest in the transaction. In a general view, the first prominent feature is the colossal power of France. Dangerous to Europe and to the world, what will be the effect of a great increase of that power? Look at Europe! One half of it is blotted from the list of empire. Austria, Russia, Prussia, and Britain, are the only Powers remaining, except Sweden and Denmark, and they are paralyzed. Where is Italy, Switzerland, Flanders, and all Germany west of the Rhine? Gone; swallowed up in the empire of the Gauls. Holland, Spain, Portugal, reduced to a state of submission and dependence. What is the situation of the Powers that remain? Austria is cut off from Italy, the great object of her ambition for more than three centuries; long the rival of France, long balancing with the Bourbons the fate of Europe, she must now submit, and tacitly acknowledge to the world the superiority of her foe, and her own humiliation. Prussia, under the auspices of the Great Frederick, was at the head of a Germanic league to balance the imperial power. Though united with Austria for a moment in the hollow league of the coalition, she has, like Austria, been actuated by a blind jealousy, and favoring the operations of France for the ruin of her rival, expected to share largely in the general spoil. In this fond hope she is disappointed; she now sees the power of France at her door. There is not a fortress from the Rhine to the Baltic, except Magdeburgh, which the First Consul may leave on his left. The fertile plains near Leipsic contain the magazines for his armies when he shall think proper to march to Berlin. Westphalia and Lower Saxony are open on the side of Flanders and Holland. The Maine presents him a military road to the borders of Bohemia. By the Necker he approaches Ulm, and establishes himself on the Danube. These rivers enable him to take the vast resources of his wide domain to the point where he may wish to employ them. Menacing at pleasure his neighbors, he is himself secured by a line of fortresses along his whole frontier. Switzerland, which was the only feeble point of his defence, and which separated his Gallic and Italian dominions, has lately been subjected. The voice you now hear, warned the Swiss of their fate more than eight years ago. The idea seemed then extravagant; but realized, it appears but as a necessary incident. Russia is deprived of her influence in Germany, and thereby of a principal instrument by which her policy might operate on the great Powers of the south. The Germanic body is indeed in the hand of the First Consul. Three new Electors along the Rhine are under the mouths of his cannon. They dare not speak. Speak! None dare speak. They dare not *think* anything inconsistent with his wishes. Even at their courtly feasts they sit like Damocles, destruction suspended over their heads by a single hair. Would you know the sentiment of England? Look at the debates. In the two Houses of Parliament they speak their fears. Such being the general sentiment of Europe, can it be supposed that they will view without anxiety a new extension of that power and dominion, the object of their hatred and apprehension?

Will it be said that there is a security to the freedom of mankind from the moderation with which this enormous power is to be exercised? Vain delusion! This power is not the result of accident. At the moment when France dethroned her Sovereign, it was easy to foresee that a contest must ensue in which her existence would be staked against the empire of the world. If not conquered by surrounding princes, (and the hope of such conquest, unless by the aid of her own citizens, was idle,) her numerous armies acquiring

discipline must eventually conquer. She had the advantages of situation, and those which result from union, opposed to councils uncertain and selfish. It was easy also to foresee that, in the same progress of events, some fortunate soldier would seat himself on the vacant throne; for the idea of a French Republic was always a ridiculous chimera. Bonaparte has placed himself at the head of that nation by deeds which cast a lustre on his name. In his splendid career he must proceed. When he ceases to act he will cease to reign. Whenever in any plan he fails, that moment he falls. He is condemned to magnificence. To him are forbidden the harmonies and the charities of social life. He commands a noble and gallant nation, passionately fond of glory. That nation stimulates him to glorious enterprise, and, because they are generous and brave, they insure his success. Thus the same principle presents at once the object and the means. Impelled by imperious circumstances, he rules in Europe, and he will rule here also, unless by vigorous exertion you set a bound to his power.

Having cast thus a rapid glance at the general state of Europe, it remains to look particularly at the condition of England and Spain, so far as they may be affected by the cession of those provinces to France. England will see in it an increase of commerce and naval force for her rival. She will see imminent danger to her islands, and particularly to Jamaica. The climate of Pensacola has already been noticed. The position is of incalculable moment. During the sickly and hurricane season, fleets and armies may wait there in safety till their enemy shall be enfeebled and unprotected. Where will the British fleets and armies be stationed with equal advantage? If they ask an asylum in your ports, you must refuse; for, should you listen to any such proposition, your kindness would be considered as a hostile aggression. The influence of France on the United States (which has already been noticed) will give double weight to her representations. And this very influence is among the effects which Britain must deprecate. I have not time to dwell on this subject, nor many others, as fully as I ought. The condition of Spain is not less worthy of notice. No two nations on earth have more deep-rooted hatred for each other than France and Spain: there are none more different in essential points of character. United, however, under Sovereigns of the same family, these antipathies were wearing away. But the fatal stroke which destroyed the French monarch has severed that band. Force has since produced submission, but not union. It is not natural that the Spanish King should foster kindly sentiments for him who has decked himself in the spoil of his house. The proud, the brave, and the loyal Castilian groans under the yoke which galls him, but which he cannot break, and sickens at the recollection of his ancient glory. His deep resentments are known, and it is to prevent their effects that he has been compelled to make the cession of those provinces. France will then hold, at her discretion, the Spanish treasures and the rich provinces of the New World. At the first symptom of hostile sentiment she arrests the means of aggression. Thus the dependence of Spain is rendered absolute, and her chains are riveted forever. Does Spain behold this state of things with calm indifference? No; she feels all the pangs of wounded pride, driven to the necessity of perpetuating its own humiliation.

A few words, after what has already been said, will suffice to show the importance of those provinces to France. This results from the influence on her rival, on Spain, and on the United States; by means of the position, the resources, and the means of aggression which those provinces afford. Enough has been said of the position. The resources are great and increasing. Not only cotton and indigo will be furnished for her manufactures, but supplies and subsistence for her colonies and her troops. These resources, too, will be at the very point most important both for defence and aggressions. The same force will be ready to operate either against England, Spain, or America. Thus that force will be tripled in its moral effect, and influence alike the conduct of all against whom it may be directed. To what has been said on the facility with which we may be assailed, I might add much, but it is unnecessary. It behooves us, however, to consider well the spirit of the French Government, which, in all its changes, has never lost sight of this object. The French Minister, M. De la Luzerne, when Congress were deliberating on the ultimata for peace, obtained a resolution that our Ministers should, as to our western boundary, treat under the dictation of France. Our Ministers disdained the condition, and refused to obey. Their manly conduct obtained for you the countries whose fate is now suspended on your deliberations. Never, no never, has France lost sight of Louisiana. Never for a moment has she been blind to its importance. Those who, driven from her bosom into exile, wandered about among us, have gathered and communicated the fullest information. While they enjoyed your hospitality, they probed your weakness, and meditated the means of controlling your conduct. Whatever may be the fair appearances, rely on it that every Frenchman bears with him everywhere a French heart, and so he ought. I honor him for it. Oh, that Americans had always an American heart!

It remains to notice the advantage of this country to the United States, as it may relate to our power, our peace, our commerce, and above all, our freedom. As to our power something has already been said on the peaceful influence which results from the dependence of colonies belonging to the great nations of Europe; add to this, that the product of those colonies must pass by our doors and be exposed to our cruisers. A further advantage is to be found in the ready means of invasion (in concert with the troops of others) if driven to the necessity of war. The possession of power will give us not only security, but peace. Peace indeed can never be safe but by the aid of power. Our disposition is pacific. It is our interest to be at peace, and the form of our Government, while it secures us the enjoyment of as

much liberty as is possible, renders it particularly imprudent to risk in war, any change of the Constitution. Grant us these provinces, and we can dictate the conditions of our commerce with the island. Possessed of them, it will be doubly lucrative, and without them, wholly uncertain. There is another stream of profitable trade which will then flow in our channels. The risk and difficulty which Spain experiences in bringing home her treasures when she is at war, will naturally suggest the advantage of remitting them through this country. The produce of the Mexican mines may then be shipped directly to Asia. It will be paid for to Spain by the bills on the commercial nations, and thus furnish to her the easy means of obtaining the supplies she may stand in need of. The bullion will be so much the more valuable, as the danger and expense of transportation are diminished. This, therefore, would have a beneficial result upon the whole commercial world. It would more especially emancipate Spain from her present thraldom. It would give a happy change to all her interior administration, and increase both her absolute and relative force. Let me say here, that it is our interest to preserve the authority of Spain over her American territory. We have enough of our own. We can have no wish to extend our dominion. We want men, not land. We are therefore the natural, and the safe guardians of Spain. On us she may rely with perfect confidence. We can derive from that commerce, which it is her interest to permit, all the advantage we ought to ask for.

But great as are the benefits which will result from the possession of the Floridas and New Orleans, great as is their tendency to advance our power, secure our peace, and extend our commerce, there is a consideration, in comparison with which, commerce, peace, and power, are of but slight avail. These provinces will fortify the defences of our freedom. My honorable colleague has stated to you his apprehensions of standing armies; and yet, sir, if we be not possessed of this territory, standing armies become necessary. Without an imposing military force, the inhabitants of the Western country will be in such immediate danger, that they must league with a neighbor who will have everything to offer, and from whom they will have everything to fear. This will lead to the worst of all wars—to civil war; and when that shall happen, liberty will soon be lost. The army which has defeated one-half the nation, will easily lend itself to enslave the other. Such is the history, and such will ever be the fate of man. In this view, then, above all others, is that possession most precious. When it is in our hands, we need no standing army. We can turn our whole attention to naval defence, which gives complete security both at home and abroad. When we have twenty ships-of-the-line at sea, and there is no good reason why we should not have them, we shall be respected by all Europe. The sense of security resulting from such force, must give a new spring to industry and increase the stock of national wealth. The expense, compared with the benefit, is moderate, nay, trifling. And let me here say one word as to national expense. Sir, whatever sums are necessary to secure the national independence must be paid. They will not amount to one-half of what it must cost us to be subdued. If we will not pay to be defended, we must pay for being conquered. There is no medium, and but the single alternative. In the proper expenditure for defence, therefore, is true economy, and every pitiful saving, inconsistent with that object, is the worst, the most profligate profusion.

Having now considered, in its various relations, the importance of these provinces, the way is open to estimate our chance of obtaining them by negotiation. Let me ask on what ground you mean to treat? Do you expect to persuade? Do you hope to intimidate? If to persuade, what are your means of persuasion? Every gentleman admits the importance of this country. Think you the First Consul, whose capacious mind embraces the globe, is alone ignorant of its value? Is he a child whom you may win by a rattle to comply with your wishes? Will you, like a nurse, sing to him a lullaby? If you have no hope from fondling attentions and soothing sounds, what have you to offer in exchange? Have you anything to give which he will take? He wants power. You have no power. He wants dominion. You have no dominion. At least none that you can grant. He wants influence in Europe. And have you any influence in Europe? What, in the name of Heaven, are the means by which you would render this negotiation successful? Is it by some secret spell? Have you any magic power? Will you draw a circle, and conjure up devils to assist you? Or do you rely on the charms of those beautiful girls with whom the gentleman near me says, the French grenadiers are to incorporate? If so, why do you not send an embassy of women? Gentlemen talk of the principles of our Government, as if they could obtain for us the desired boon. But what will these principles avail? When you inquire as to the force of France, Austria, or Russia, do you ask whether they have a *habeas corpus* act, or a trial by jury? Do you estimate their power, discuss their interior police? No. The question is, how many battalions have they? What train of artillery can they bring into the field? How many ships can they send to sea? These are the important circumstances which command respect and facilitate negotiation. Can you display these powerful motives? Alas! alas! To all these questions you answer by one poor word—confidence—confidence—confidence. Yea, verily, we have confidence. We have faith and hope; ay, and we have charity too. Well, go to market with these Christian virtues, and what will you get for them? Just nothing. Yet in the face of reason and experience, you have confidence; but in whom? Why, in our worthy President. But he cannot make the treaty alone. There must be two parties to a bargain. I ask if you have confidence also in the First Consul? But whither, in the name of Heaven, does this confidence lead

and to what does it tend? The time is precious. We waste, and we have already wasted moments which will never return. You have already tried negotiation. I say you have tried it, because I know you have a Minister in France, and I am sure the First Magistrate of our country cannot have been so negligent as not to pay attention to a subject which is confessedly of such magnitude. You have then negotiated. And with what success? Why, instead of defeating the cession, you, have closed the river; instead of obtaining any advantage by a new treaty, you have the lost the benefit of an old one. Such are the results of your negotiation in Europe. In this country you have negotiated to get back the privilege you are robbed of; and what follows? A prohibition to touch their shores. Instead of restoring the rights of treaty, they cut you off from the rights of humanity. Such is your splendid success from negotiation; and yet gentlemen tell us we must continue to negotiate. The honorable member from Kentucky says, that great lengths are gone in inquiring into, and rectifying the irregular procedure. He tells us a Minister is just appointed, and it would, therefore, be inconsistent to fight just now; that moreover it would degrade the President's authority, and defeat his measures. The gentleman from Georgia says we have no right to go to war till there shall be a refusal on the part of Spain; and my honorable colleague assures us, that if our wrongs are redressed by negotiation we can have no complaint. As to the lengths which are gone, it is for those gentlemen to appreciate their value, who know what they are. I profess my ignorance, and judging by effects, must withhold my confidence. If we must wait for a pointed refusal before we do ourselves right, I venture to predict a delay fatal to the peace of this country. But, sir, what is it we are to ask, the refusal of which will justify war? Is it (as my honorable colleague supposes) a mere restitution of a privilege wrongfully taken away? Sir, I answer in the words of the resolutions moved by my friend. "It does not consist with the dignity of this country to hold a right so important by a tenure so uncertain." But the honorable member from Maryland has told us that we need not cross the Atlantic to seek for precedents, that we have enough on our own archives, and he has had the goodness to mention our humble petitions presented to the King of Great Britain in 1775. We sent, says he, petition after petition. I am sure that honorable member has no wish that a Minister should be sent to bear our humble petitions to the footstool of the First Consul's throne. But, sir, whether we treat or pray, it will end as it did in 1775, by war, unless we are determined to give up that independence which we then fought to establish. Let us consider a moment the natural course of this negotiation. It is the interest of France to foster in us a hope from treaty, until she has put herself in a condition to frustrate all other hope. There can be no question, therefore, that she has avoided, and will avoid a direct refusal. And as long as we are content to accept of smooth speeches, general assurances, vague assertions, and loose evasions, we shall have no want of that court currency. But why (it may be said) has she not already taken possession? Because her original plans have been greatly deranged. St. Domingo presented obstacles unexpected, and that enterprise must not be abandoned, for though the island may not in itself be of much consequence; though it must be ruined before it can be conquered, yet conquered it must be, for the world must continue to believe that the First Consul cannot fail in what he has undertaken. Much of his power rests on that opinion, and it must, therefore, be maintained. But there are other incidents besides those of St. Domingo which have had the same tendency. There followed on the general peace a serious discussion of the German indemnities; then the affairs of Italy; lately of Switzerland; and during the whole momentous period it was doubtful how far England would bear a continued invasion of the liberties of Europe. And it was evident that, should the war recommence with England, the force sent to this country would be totally lost. It was important, therefore, to gain time; and for that very reason we should have insisted on an immediate decision. Such, then, is the state of this treaty so fondly desired. A treaty by which we are to ask much and offer nothing. A negotiation in which we have no means to persuade. Have we any to intimidate? Where is your public force? You have none; and seem resolved not to have or use any. My honorable colleague tells us that war will increase our debt one hundred millions, and that our people are not fond of taxes. He says we are trying a new experiment to pay our debts in a given period, which war would derange. It would injure, moreover, our pacific character, and might draw down the jealousy of all nations who have colonies. He believes that three-fourths of our people are opposed to war; but yet he thinks that nine months hence we shall be in a better condition. What is the effect of this language? Is it not to convince the adverse party that he has nothing to fear from a refusal? As to this experiment for the payment of our debts, whether it has the merit of novelty I shall not inquire; but I am bold to assert that the merit, be it what it may, is due to one of my worthy friends who formerly administered our finances. The same plan also has been adopted by another great statesman, (Mr. Pitt,) who has for many years past provided regularly a fund to liquidate in a given period each debt which his nation has incurred. But does England trust her safety to the protection of her sinking fund? No. She has fifty thousand seamen employed, and a hundred thousand soldiers; these form the shield of her defence. A gentleman near me has told us, that in case of war our mercantile capital is exposed in every part of the world. To this I answer, first, that the same objection will apply with equal weight upon any and every occasion. But further, I say, the argument is directly and completely against him. How does it stand? He admits that if negotiation fails he will draw the sword

He goes further, and says he will throw away the scabbard. Now, sir, it is clear that if we operate at once, notice may be given to our merchants. Advices may be sent in season to every sea; and here let me say, that it is a duty of the Government to apprize both our insurers and shippers of their dangerous situation. It is unwise as well as unjust to lull them into a fatal security. But suppose the treaty shall fail, and remember that the success or failure depends on Bonaparte: he will weigh the present declarations and act accordingly. He will commence a war on your commerce long before you know that war exists. I say, therefore, the argument is directly against the gentleman who used it. And here let me say one word on the comparative merits of the resolutions on your table. Those moved by my honorable friend give the President command not only of the militia, but of the naval and military force. They place money at his disposal, and what is more important, they put it in his power to use these efficient means. The resolutions moved as an amendment, authorize indeed a call for a greater number of militia, but when called they can do nothing but consume their rations. There is no power to bring them into action, and of course the expense is useless, even for the purpose of influence.

Having endeavored to show that we have no hope from treaty, it only remains to consider the natural effect of taking an immediate possession. Against this measure it has been said, that war, instead of giving relief, will absolutely shut up the Mississippi. That a single seventy-four in the mouth of that river would stop it effectually. I believe, sir, it would not only stop but turn it; for a seventy-four would run aground and obstruct the channel. But what is the amount of these observations? The gentlemen all agree that if they cannot obtain their object without war, they will fight for it. The mischief they deprecate must, therefore, arrive, unless there be a well-grounded hope from treaty; and the only difference is, that they are willing to take a longer term of sufferance, because they have a stronger expectation of relief without the exertion of force. I have no such expectation. I shall, therefore, proceed to consider what will follow if we take possession without a previous alliance with Britain, or with such an alliance. I have heard it urged in conversation, that such alliance should first be made, and, therefore, I think it proper to take up the subject in debate. I cannot, however, but remark on the different language now held from that which we heard a year ago. Then, it was the fashion to say we had nothing to do with other nations. And when a man of plain sense observed that this disposition was of little avail, because other nations would have something to do with us; and when the danger we now see was pointed out, oh! then, to be sure, there was nothing to apprehend from our dear sister Republic! I censure no man for adopting other and wiser principles. I have no question but that, as gentlemen proceed in the business of government, they will see the folly of many other fanciful notions, but I must entreat them not to fly from one extreme to the other. I hesitate not to give my opinion, that we ought to take possession without consulting Great Britain. And having done so, let us declare to France that we mean to live with her in perfect amity. Let us offer every assistance in our power to conquer and preserve St. Domingo. Let us show her that we have done an act of mere defence. Let us prove our pacific disposition, by declaring that we are under the tie of no obligation to her rival. To Spain, let us hold a similar language. Let us point out her present danger, and demonstrate the utility of our possession. To both, let us offer to relinquish our claims for spoliations on our commerce, and pay our own merchants. We can well afford to purchase with that price—a price paid to ourselves. Finally, if our representations do not produce the desired effect, let us tell them that we will ally ourselves to England, and aid in the conquest of all their American dominions. Sir, this language will be listened to. Rely on it that, under such circumstances, neither France nor Spain dare send hither a single regiment or a single ship. The existence of the British naval force will alone produce all the effect you could ask from its operation. But what are we to hope from a delay until an alliance shall be made? What will be the stipulations of the treaty of alliance? These may be more or less onerous or pernicious. Certainly the British Minister will not hazard the fate of his nation without the hope of some correspondent advantage. One stipulation is certain—we must agree to continue the war until a peace can be obtained by common consent—and this is precisely the stipulation which we ought not to make, if it can be avoided, because we shall then be no longer masters of our exterior relations. To this it may be objected, that we cannot expect aid from Britain without a previous treaty. I ask, what reliance you have for aid with treaty? The answer is, that it will be her interest. And, sir, it is her interest to give that aid without a treaty.

I have now gone through this tedious discussion. I have trespassed on your patience more than I wished, although, from the lateness of the hour, much has been omitted of what I ought to have said. I have endeavored to show that, under the existing circumstances, we are now actually at war, and have no choice but manly resistance or vile submission. That the possession of this country by France is dangerous to other nations, but fatal to us. That it forms a natural and necessary part of our empire; that, to use the strong language of the gentleman near me, it is joined to us by the hand of the Almighty, and that we have no hope of obtaining it by treaty. If, indeed, there be any such hope, it must be by adopting the resolutions offered by my honorable friend. Sir, I wish for peace—I wish the negotiation may succeed, and therefore I strongly urge you to adopt those resolutions. But though you should adopt them, they alone will not insure success. I have no hesitation in saying that you ought to have taken possession of New Orleans and the Floridas the instant your treaty was violated. You ought

to do it now. Your rights are invaded—confidence in negotiation is vain; there is therefore no alternative but force. You are exposed to imminent present danger. You have the prospect of great future advantage. You are justified by the clearest principles of right. You are urged by the strongest motives of policy. You are commanded by every sentiment of national dignity. Look at the conduct of America in her infant years, when there was no actual invasion of right, but only a claim to invade. She resisted the claim; she spurned the insult. Did we then hesitate? Did we then wait for foreign alliance? No; animated with the spirit, warmed with the soul of freedom, we threw our oaths of allegiance in the face of our Sovereign, and committed our fortunes and our fate to the God of battles. We then were subjects. We had not then attained to the dignity of an independent Republic. We then had no rank among the nations of the earth. But we had the spirit which deserved that elevated station. And now that we have gained it, shall we fall from our honor?

Sir, I repeat to you that I wish for peace—real, lasting, honorable peace. To obtain and secure this blessing, let us by a bold and decisive conduct convince the Powers of Europe that we are determined to defend our rights; that we will not submit to insult; that we will not bear degradation. This is the conduct which becomes a generous people. This conduct will command the respect of the world. Nay, sir, it may rouse all Europe to a proper sense of their situation. They see that the balance of power on which their liberties depend, is, if not destroyed, in extreme danger. They know that the dominion of France has been extended by the sword over millions who groan in the servitude of their new masters. These unwilling subjects are ripe for revolt. The empire of the Gauls is not like that of Rome, secured by political institutions. It may yet be broken. But whatever may be the conduct of others, let us act as becomes ourselves. I cannot believe with my honorable colleague, that three-fourths of America are opposed to vigorous measures. I cannot believe that they will meanly refuse to pay the sums needful to vindicate their honor and support their independence. Sir, this is a libel on the people of America. They will disdain submission to the proudest Sovereign on earth. They have not lost the spirit of seventy-six. But, sir, if they are so base as to barter their rights for gold, if they are so vile that they will not defend their honor, they are unworthy of the rank they enjoy, and it is no matter how soon they are parcelled out among better masters.

My honorable friend from Pennsylvania, in opening this debate, pledged himself and his friends to support the Executive Government if they would adopt a manly conduct. I have no hesitation to renew that pledge. Act as becomes America, and all America will be united in your support. What is our conduct? Do we endeavor to fetter and trammel the Executive authority? Do we oppose obstacles? Do we raise difficulties? No. We are willing to commit into the hands of the Chief Magistrate the treasure, the power, and the energies of the country. We ask for ourselves nothing. We expect nothing. All we ask is for our country. And although we do not believe in the success of treaty, yet the resolutions we move, and the language we hold, are calculated to promote it.

I have now performed, to the best of my power, the great duty which I owed to my country. I have given that advice which in my soul I believe to be the best. But I have little hope that it will be adopted. I fear that by feeble councils we shall be exposed to a long and bloody war. This fear is, perhaps, ill founded, and if so I shall thank God that I was mistaken. I know that in the order of his Providence, the wisest ends frequently result from the most foolish measures. It is our duty to submit ourselves to his high dispensations. I know that war, with all its misery, is not wholly without advantage. It calls forth the energies of character, it favors the manly virtues, it gives elevation to sentiment, it produces national union, generates patriotic love, and infuses a just sense of national honor. If, then, we are doomed to war, let us meet it as we ought; and when the hour of trial comes, let it find us a band of brothers.

Sir, I have done; and I pray to Almighty God that this day's debate may eventuate in the prosperity, the freedom, the peace, the power, and the glory of our country.

Mr. WRIGHT (in explanation) said, the gentleman who spoke last had misstated his expressions and sentiments; he had stated that he (Mr. W.) had held forth the idea that we should petition France for a redress of grievances, as we had in our colonial state petitioned Great Britain.

Mr. MORRIS said he had not expressed himself so—it was not his intention to convey any such meaning.

Mr. WRIGHT.—The gentleman has retracted and I am satisfied; though he did certainly so couch his language as to leave an impression of that abject kind.

Mr. TRACY moved a division of the question.

Mr. WRIGHT said the question was incapable of division, as it was on striking out all that follows the word resolved.

Mr. S. T. MASON said as the gentleman appeared disposed to create a debate on a subject of no importance, at that hour of the day, (half past seven p. m.,) he would move for an adjournment.

A division was then called for, and, upon counting, the VICE PRESIDENT declared the numbers twelve and twelve; that the House was equally divided, and that he was against an adjournment.

Mr. ANDERSON asked if the President of the Senate meant to say there were only twelve for an adjournment? He was answered in the affirmative. Mr. A. demanded a division, and upon counting, it appeared there were thirteen for adjourning and twelve against it. Adjourned.

FRIDAY, February 25.

It having been announced that the VICE PRESIDENT was unable to attend on account of the ill

state of his health, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the ballots being collected and counted, the whole number were found to be 21, of which 11 make a majority:

Mr. BRADLEY had 18; Mr. MORRIS 2; Mr. LOGAN 1.

Consequently the honorable STEPHEN R. BRADLEY was elected President of the Senate *pro tempore*.

Ordered, That the Secretary wait on the President of the United States and acquaint him that, on account of the indisposition of the Vice President, the Senate have elected the honorable STEPHEN R. BRADLEY President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

Mr. T. FOSTER presented the petition of Aaron Man, praying the remission of the impost duties on certain damaged articles therein mentioned; and the petition was read, and ordered to lie on the table.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act in addition to, and in modification of, the propositions contained in the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," reported it without amendment.

The bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office," was read the second time, and referred to Messrs. ANDERSON, LOGAN, and COCKE, to consider and report thereon.

The bill, entitled "An act to revive and continue in force 'An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,' and for other purposes," was read the second time, and referred to Messrs. BALDWIN, CLINTON, and COCKE, to consider and report thereon.

The bill, entitled "An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited," was read the third time, and passed.

The bill to alter the time for holding the court of the United States in Kentucky district, was read the third time, and passed.

The bill, entitled "An act for continuing in force a law, entitled 'An act for establishing trading-houses with the Indian tribes," was read the third time, and passed.

Mr. WRIGHT, from the committee to whom was referred, on the 24th instant, the bill to alter the time for the next meeting of Congress, reported it without amendment.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of St. Mary's; to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a surveyor at Nanjemoy;" a bill, entitled "An act for erecting a light-house at the entrance of Penobscot bay, or any other place in its vicinity that may be deemed preferable by the Secretary of the Treasury;" a bill, entitled "An act in addition to the act, entitled 'An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia;" a bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" a bill, entitled "An act in addition to an act, entitled 'An act to amend the Judicial system of the United States;" and a bill, entitled "An act concerning the salt springs on the waters of the Wabash river;" in which bills they desire the concurrence of the Senate.

The bills were read, and severally passed to the second reading.

MISSISSIPPI QUESTION.

The Senate resumed the consideration of the resolutions respecting the indisputable right of the United States to the free navigation of the Mississippi, together with the proposed amendment thereto.

Mr. ANDERSON (of Tennessee) said he rose with much diffidence, after the very able discussion which the subject had already undergone; after so many men distinguished among the first in our country had treated it with so much ability he could not expect to furnish many new facts or observations on the subject. But coming from that part of the country which is particularly interested in the discussion, he felt himself particularly bound to offer a few remarks, which some erroneous statements that had fallen in debate, from the gentleman from Delaware, (Mr. WHITE,) particularly called for. He would, while he was up, endeavor to add a few observations on the resolutions.

The first of the resolutions appeared to him to be introduced merely with a view to involve the members who were opposed to hostile measures in a dilemma. It was the assertion of a truth which no one would deny, but it was connected with other resolutions or assertions, which must from propriety bring the whole under a negative vote. Taking the naked proposition that we have a right to the place of deposit, we all agree; that it has been suspended, we are equally agreed; but there we stop; by prefacing their resolutions with these truths, they expect either to induce us to vote for other things repugnant to our judgment, or afford room for the imputation of wrong motives and clamor abroad. But we are not to be led astray in this way, nor are the people of this country to be so deceived. On the first organization of the Government, the most earnest attention was directed to that river; and it is now as much an object of the care of Government as at

any period since we have been an independent people. Gentlemen have not, therefore, represented the matter with that candor which the seriousness of the subject demanded. The navigation of the Mississippi has not been infringed, on the present occasion, though the arguments of all, and the assertions of some, went to the extreme on that point. The river, he repeated, was and continues to be open, and he could not discover the utility of our declaring our right to the free navigation when we are in full unmolested possession of the right. He could indeed discover something beside utility; he could see a design no wise founded. The gentlemen expected with them the votes of the Western members; they expected to play upon our passions, and to place us between the danger of unpopularity and the sense of personal feeling, in a case of a critical nature. But gentlemen would find themselves mistaken to the utmost: though he felt himself in common with other Western members, responsible to his constituents, yet he would on all occasions where the sense of right impressed itself strongly on him, risk popularity to do right. On this occasion he saw no danger of his popularity, because, although he was aware that the people whom he represented were dissatisfied, they respected their Government and themselves too much to countenance any means that were not honorable and just, to obtain the deposit right.

The resolutions call upon us to declare the deprivation of the right of deposit to be hostile to our honor and interests. On this there were a variety of opinions; and it appears to be agreed (for it was not contradicted by any) that the act of an individual unauthorized cannot be either a cause of war, or the act of the Government of which he is an officer. No gentleman has positively declared the act to be authorized by Spain. We have the best evidence that the case will admit of, that it has not been authorized. As the act of an individual, therefore, it cannot affect the honor of this country. That her interests are affected is agreed on all hands; but then the due course of proceeding has been adopted, and redress is to be expected. If it should be denied us, we have our remedy, and it is then that it will become a point of honor. But now, as had been well said by his friend from Georgia, (Mr. JACKSON,) if we were to rashly declare the act of the individual contrary to our national honor, we could not retrograde; and if Spain should not do us justice, he trusted that we should then take our strong ground, and not give way a step. This would be the effect. Gentlemen do not know the American character—they underrate it: there is not that levity in it which gentlemen suppose, capable of being lightly led astray. The character of America is fixed, and when real necessity calls for their exertions, the people will require no artificial excitement.

It is said that the tenure we hold by is uncertain, and it was not consistent with our dignity. This was the ground upon which all the art and ingenuity of the gentleman who framed the resolutions, and for which he is so much distinguished, is founded; it is calculated to seize upon the passions of Western men by a show of solicitude for the security of their rights and prosperity. But, however ingenious the contrivance, the deception upon which it is founded must destroy all its intended effect; for the facts upon which it rests for support must first be acknowledged before the conclusions can follow. And the notion of dignity with which the idea is connected must lead to a suspicion that something more is meant than bare right or justice, because in them alone true dignity rests.

The next point is, that we must be secured in this our absolute right. He would ask, was hostility and invasion of a neighbor's territory compatible with dignity, or the means calculated to give us this security? We all agree upon the necessity of the right, and of its permanent security. We differ very widely upon the mode by which we are to establish this security. This point had been dwelt on with very great labor by the gentleman from Pennsylvania, and discussed with particular splendor of language, and in a variety of views, by the gentleman from New York, (Mr. MORRIS;) but, upon testing the eloquence and ingenuity of the gentlemen by simple facts, and comparing their erroneous conceptions of the Western people with the labor they have employed to force arguments from extraneous sources, the only result that remains, is, that the gentlemen are very ingenious and very eloquent, but not at all convincing. For, with all the pains they have taken to enlighten us, they have not produced a single reason why we should depart, on this occasion, from the course which had been ever pursued as the wisest policy by our Government. They had not given us the remotest ground of justifiable hope that, even if we were to adopt their views, we should be more likely to obtain our object in that shape. The gentlemen had invoked us to descend the river, but they had not told us what we should gain, nor even counted on the difficulties of the very first part of their project. They had kept out of sight (what no wise man in public affairs will ever neglect the consideration of) the chances of adversity or disappointment, from natural or accidental causes. They had not calculated even the consequences of a war which must be the inevitable result—which would deprive us in the first place of our treaty right, and which, even after war had taken place, and lives and money wasted, would leave us under the necessity of treating at last.

Having so far stated his exceptions to the leading features of the resolutions, he would not undertake to follow the gentlemen on the other side through all those mazes in which they had endeavored to perplex the subject and bewilder the House, but he would offer a few observations on some detached points. A gentleman from Delaware had, he conceived, thrown out an unwarrantable and indecorous insinuation that there was a disposition in some of the members of that House to throw themselves at the footstool of the First Consul. That gentleman should know that such a disposition could not be countenanced if it were conceived; and it would be doing injus-

tice to his understanding to suppose that he had misunderstood the sentiments uttered by any gentleman. The uniform sentiment entertained and expressed countenanced no such mean or dishonorable purpose; our object is to demand justice and redress for violated rights, and the security of those rights held under a treaty which had its existence prior to the treaty of cession from Spain to France. This was the usual course. What the motive of the gentleman was who had made an insinuation so improper he would not in that place express, but he had an opinion of that motive. We are told, as a reason why we should seize upon New Orleans, that it belongs to France. This he conceived to be rather a sound reason why we should not attack it; for the suspension of our right is the act of a Spanish officer. The gentleman says, the Spaniards mean to usurp the exclusive navigation of the Mississippi. This is no doubt an artful mode of addressing the passions of the Western people; but facts here overturn the most artful insinuations. The navigation of the Mississippi is not even brought into question. No obstruction has been so much as attempted to the navigation of that river. The sum of the injury and the dispute is the infringement of a right of deposit, and that granted only for a limited time, at the place where it is suspended.

He says the western people will not wait for negotiation. He could not conceive upon what kind of instinct or intelligence gentlemen could pretend to know the sentiments and character of the western people better than those who lived among them, and who immediately represented them. When did that part of the country manifest a disregard to the Union, or the peace of their country? Did they not suffer their country to be cut in twain by the Treaty of Holstein, and one half ceded to the Indians, and did they not suffer all the attendant evils patiently? For what end? Because the public good required it.

From time to time, he had heard in that House and in other places, the most wanton and cruel aspersions cast upon the people of the western country. He knew not how gentlemen could reconcile their pretensions of regard for the western people, with the odious imputations which were constantly cast upon their attachment. The whole of the opposition appeared to concur in their illiberality towards the western people, at the very moment they were professing so much zeal for their good. The late President of the United States had in a most unwarrantable manner told him, that the western people were ready to hold out their hands to the first foreigner that should offer them an alliance; the same sentiment is echoed here, only in different terms. But such vile imputations attach not to the western people, but to those who employed them. The western people are Americans, who wasted the spring-tide and summer of their days in the cause of their country; men who, having spent their patrimony in establishing their country's independence, travelled to the wilderness, to seek a homestead for themselves and children. Was it honorable, was it consistent with those labored efforts for their good, which we are told actuate gentlemen, to calumniate them in so unworthy a fashion? Gentlemen appear by their gestures to deny that they have been guilty of this calumny. But my charge against them is not of that evasive or double character which they deal in; the words they have used I have taken down—they are, "The French would draw the western people into an alliance." "The western people would be influenced by the insidious emissaries of France." "Corruption would find its way among them, and be transferred even to that floor." Is this not calumny of the darkest hue? Is this the way in which six hundred thousand men are to be stigmatized? Men, a greater proportion of whom are soldiers who fought for the independence of America, than ever was to be found in the whole State (Delaware) to which the gentleman belongs.

Another gentleman from that State (Mr. WELLS) had said yesterday, that the arguments from this side of the House had only tended to confirm him in the opinion which he had originally conceived. It was not the first time that he had heard this little species of argument employed; the gentlemen who are now in the minority, have been often obliged to their opponents for supplying them with this kind of conviction; it was too poor a species of consolation to them for him to entertain the least desire of depriving them of it.

Yet, with all this disrespect for the western people, they tell us that they are their only friends; that after we have convinced them of the correctness of their opinions, we ought to confide in those whom we have convinced without intending it; that though we are ourselves convinced of the propriety of negotiation, although a majority of that Senate, and the Executive, had already determined upon it, we should listen to those gentlemen who say that corrupt influence will find its way to this floor from the western country, and undo all we have done to adopt what they call measures of energy. Gentlemen have mistaken both their own powers of conversion, and the mode of argument which they have adopted to convert us, or to inspire confidence in their professions among the western people. We are always ready to defend our country when occasion calls, with something better than words; but we know, that if there is honor in defending our country in battle, there is both honor and virtue in defending it by prudence, without dishonor.

This mode of defence he found contemplated in the resolutions offered as substitutes. The gentleman, (Mr. Ross,) had indeed, as is usual with him, upon the most desperate subject, made a very ingenious speech; but it was so much perplexed by subtlety, that like the Gordian knot it appeared incapable of being untied but by the sword. He hoped, however, it would not require an Alexander to achieve it.

During twelve years, eight of which one of the first men the world ever saw, or perhaps ever will see, presided over our affairs, the policy of pacific negotiation prevailed in our councils; a policy somewhat more hostile in its aspect was attempted by his successor, but still negotiation succeeded

negotiation, and success attended perseverance. In the early stages of our existence, before we were yet a nation, it is indeed true that we drank of the cup of humiliation, even to the dregs; it was the natural effect of our dependent situation; of the prejudices that bound us, and from which great violence was necessary, and was employed to detach us. Such humiliation would not befit us now; no motives exist to demand or justify it: we were then a part of another nation, and connected with another Government; we began by petition in the terms of abjectness and humility, which are incidental to subjects of monarchs; which are always necessary, in order to conceal the spirit and the presumption, of which monarchs are always jealous in their subjects; but abject as we appeared, the very temper and phrase of humility deceived our oppressor into a belief that we were too lowly to entertain the manly temper of resistance against oppression. Yet our precursory and reiterated humility did not unnerve our arms nor subdue our minds, when it became necessary to fling off the trammels of oppression. The result, we now enjoy. When that very Power from which we had detached ourselves, refused to carry her treaty into execution, did we then go to war? She held several of our fortresses; we were entitled by every right of nature, and the usage of nations, to seize upon them; not like the right of deposit, a privilege enjoyed on the territory of another, but fortresses held, and in military array on our own territory. Did we then make war? No, we negotiated; and when another Power subsequently attacked us, we pursued the same course with the like success. The gentleman (Mr. Ross) has told us that when President WASHINGTON came into office, he would not have negotiated for the Mississippi, had he not found the negotiation already begun. The gentleman has not told us upon what authority he states this, or how he came to possess the knowledge of a fact of which all others are ignorant; a fact, too, contradictory of his practice through life, and of the principles of that legacy which he left to his country.

It was not expected that he should, coming from the interior of America, be competent to discuss the policy and the balance of power in Europe. Indeed, if it were not from an apprehension of too much presumption, he would venture to say it was the height of absurdity to introduce their policy on a question like the present. We had been told also of the Romans, that they never negotiated but on the line. This would of course lead us, if anything, to imitate the insolent and dominating spirit of Roman conquest, the part of the Roman policy above all others most to be deprecated and avoided. He would rather prefer the policy of the ancient Republics of Greece, whose practice was negotiation in preference to war. The policy of all Republics, is in their nature pacific. The contrary is the character of other forms of government. In monarchies and aristocracies, the rulers never suffer, and the people, who suffer, have no influence or control. In Republics, the people, who likewise suffer, have their due weight, and happiness being their interest, they are ever averse to war.

If European lessons can be of use, those of Britain and Spain, in the time of Sir Robert Walpole, should instruct us: that Minister had been repeatedly called upon to declare war, in consequence of aggressions, or alleged aggressions, of Spain; after two years he was forced into it reluctantly, but not until after several embassies had been sent and failed. Britain has had few Ministers equal to him as a politician. But history will tell you, that at the peace which followed, no notice was taken of the spoliations for which the war commenced. If Great Britain then failed, what are we to expect from a war? If we were to believe all that gentlemen insinuated yesterday, it would seem to be our intention to humble ourselves in dust and ashes, at the feet of the Emperor of the Gauls; and to encourage this idea of our humiliation, the gentlemen tell us, that he has conquered all Europe, and that his mandate is the law. To insinuations of this unbecoming kind, he would tell the gentlemen in the words of his friend from Georgia, (Mr. JACKSON,) that in defence of our country and its rights, we will, when we draw the sword, throw away the scabbard. Gentlemen thus menace us only to make us the cowards which they fictitiously describe us. But he would call their recollection to our Revolution, where a people unarmed, undisciplined, half part disaffected, asserted their own liberties; without money or visible resources, attacked by the then first nation of Europe, aided by auxiliaries from Germany, and with the first naval force on the ocean. Need the gentlemen be told we beat that great nation? The gentleman, none of the gentlemen on that side, know the people of whom they talk. I have walked more in the common walks of life, than those who look down with disdain on the hardy husbandman, and who consider all bliss, as well as all power, the peculiar right of an imaginary superiority, or an accidental capacity for luxurious extravagance. I saw the army which achieved our liberties, and often have I traced their naked footsteps through the snow by the blood which gushed from their lacerated but untired feet. Men who endure, and are capable of enduring such hardships, possess spirits which men accustomed to slight and degrade them cannot conceive. It is upon such men, and not on the disciples of luxury and frivolity, that America must depend for her liberties; it is of such men the ranks of her armies will be composed, and such are the men who compose the population of the western country. He knew this people, and that they wished for peace, though if justice required it, they would be in the ranks of battle, while those who asperse them would perhaps be at their toilettes. The resolutions substituted would accord with the wishes of his constituents, he would therefore support them. If negotiation fails, and we are compelled to the dernier resort, we should then see if those who are for resistance would unite, and make a common cause with us.

Mr. WHITE, (in explanation) said, that gentlemen had in the evaporation of passion distorted

and misrepresented him; he owed it to the public and the Senate, to show that he would go as far as any one in his respect for the western country—he would go as far as the gentleman, or farther. What he alluded to, with regard to French influence over the western people, was, that they would by means of their commerce, obtain an influence over them.

Mr. ANDERSON said it gave him much pain to be obliged to show the gentleman that passion must have occasioned a total absence of memory or reflection, a conviction of error, which it would have been more generous in him to acknowledge than to aggravate. But since the gentleman did affect to Herod it, he must again tell him that it was not of commercial influence he first spoke; he did say "that corruption would find its way to the floor of that House." What! commercial corruption in that House? No! How then? It must find its way by the corruption of the members which the Western country sends to Congress. If he had told the gentleman, that Delaware was under the influence of Great Britain, and that corruption had made its way from thence to the floor of that House, what indignation ought not the gentleman and his colleague have a right to feel!

Mr. S. T. MASON said, that if he were to consult the state of his health, he should not trouble the Senate with any remarks on the resolutions before them. But he had heard in the course of debate, certain observations, such strange and paradoxical arguments; insinuations and assertions of such a nature as ought not to be passed unnoticed. Doubtful whether his strength would sustain him through the whole scope which in better health he should take, he would endeavor to limit his arguments to a few of the most prominent particulars, which excited his attention, and to the delivery of his reasons for preferring the substitute propositions of his friend from Kentucky, (Mr. BRECKENRIDGE,) to the original resolutions of the gentleman from Pennsylvania.

In presenting himself to the attention of the Senate, his voice, feeble at the best of times, would, after the boisterous declamation and crackling of eloquence with which they had been yesterday stunned, demand particular indulgence. Feeble as he was, however, he was not daunted; objects and sounds often present themselves to the senses which surprise without exciting curiosity, and confound without being comprehensible; mountains of sophistry, like mountains of vapor, fade before the simple and inoffensive rays of reason and truth.

The amendment on your table is to be preferred to the resolutions first proposed, because they breathe a spirit more consistent with the practice of civilized nations, and more congenial with the character of the American people; they propose to effect what is reasonable, without tending to injustice or impolicy; they are the substitutes for propositions novel, unnecessary, and extraordinary; such as this body has no power to adopt. The amendments go to obtain all that is required by the most prudent considerations; they provide a Constitutional force adequate for any exigency within, and a force for exterior service, should it be found necessary to call it forth; we shall have a body of eighty thousand militia, for home service, and a corps of volunteers for a legal period, and which might be marched out of our limits; arsenals on the spot, provided with all the stores requisite for actual service, should they be required. Resolved on peace, unless forced from our rights: then prepared for war.

The resolutions first offered are of a very different character, they seek a very different end; they tell us directly, you must go and make war, but they do not furnish the means. Does the gentleman not know that the militia cannot be sent on the service of invasion into the territory of their neighbors? Does he not know that we are destitute of any authority whatever to send them? The Constitution gives Congress the power over the militia to "suppress insurrections, and repel invasions," but nothing farther.

The amendments provide for the exigency, if it should ever arise, and in an adequate manner. It is proposed to enrol volunteer corps, for such a length of time as may be expedient or necessary for the service, and to march on any service which may be required.

He had heard in the debate, many professions of confidence in the Executive. He was very glad to hear such unusual expressions from that quarter. However, it was entitled to its due weight—what that was he would not inquire; but this he would say, that this unexpected ebullition of confidence went very much farther than he should be disposed to carry his confidence in any man or any President whatever. Gentlemen tell us that they are willing to entrust to the Executive the power of going to war, or not, at his discretion. Wonderful indeed is this sudden disposition to confidence! Why do not gentlemen give away that which they have some authority or right to bestow? Who gave them the power to vest in any other authority than in Congress the right of declaring war? The framers of this Constitution had too much experience to entrust such a power to any individual; they early and wisely foresaw, that though there might be men too virtuous to abuse such a power, that it ought not to be entrusted to any; and nugatory would be the authority of the Senate, if we could assume the right of transferring our Constitutional functions to any man or set of men. It was a stretch of confidence which he would not trust to any President that ever lived, or that will live. He could not as one, without treason to the Constitution, consent ever to relinquish the right of declaring war to any man, or men, beside Congress.

We are told that negotiation is not the course which is proper for us to pursue. But to this he should reply, that such was the usage of all civilized nations; and, however gentlemen might attempt to whittle away the strong ground taken by his friend from New York, he had shown, in a manner not to be shaken, that negotiation before a resort to the last scourge of nations, is the course most consistent with good policy, as well as with

universal practice. The gentleman from Pennsylvania had indeed told us that Great Britain had departed from that practice; unfortunately for Great Britain and the gentleman's argument, he told us, at the same time, that she had sustained a most serious injury by her injustice and precipitation. She went to war to seek retribution, and after fighting a while, she left off, and forgot to ask the retribution for which she went to war! And this is the example held up for our imitation; because Great Britain violated the law of nations, we are called upon to do so too! We are told also, that Great Britain commenced war during our Revolution, against the Dutch, without any previous notification; that she did the same in the late war with France, and in both cases seized on the ships in her harbors; that is, like a professional bully, she struck first, and then told them she would fight them—and this is the gracious example held up to us.

The merits of the different propositions consisted in this, that by the amendments we propose to seek the recourse of pacific nations—to follow up our own uniform practice; we pursue, in fact, the ordinary and rational course. The first resolutions go at once to the point of war. This was openly and fairly acknowledged by the gentleman from New York. (Mr. G. MORRIS.) The gentleman from Pennsylvania, (Mr. ROSS) indeed, told us that it is not war—it was only going and taking peaceable possession of New Orleans! He did not before think the gentleman felt so little respect for the Senate, or estimated their understandings so much inferior to his own, as to call such a measure an act of peace! How did the gentleman mean to go, and how take peaceable possession? Would he march at the head of the *posse comitatus?* No! he would march at the head of fifty thousand militia, and he would send forth the whole naval and regular force, armed and provided with military stores. He would enter their island, set fire to their warehouses, and bombard their city, desolate their farms and plantations, and having swept all their habitations away, after wading through streams of blood, he would tell those who had escaped destruction, we do not come here to make war on you—we are a very moderate, tender-hearted kind of neighbors, and are come here barely to take peaceable possession of your territory! Why, sir, this is too naked not to be an insult to the understanding of a child!

But the gentleman from New York (Mr. MORRIS) did not trifle with the Senate in such a style; he threw off the mask at once, and in a downright, manly way, fairly told us that he liked war—that it was his favorite mode of negotiating between nations; that war gave dignity to the species—that it drew forth the most noble energies of humanity! That gentleman scorned to tell us that he wished to take peaceable possession. No! He could not snivel; his vast genius spurned huckstering; his mighty soul would not bear to be locked up in a petty warehouse at New Orleans; he was for war, terrible, glorious havoc! He tells you plainly, that you are not only to recover your rights, but you must remove your neighbors from their possessions, and repel those to whom they may transfer the soil; that Bonaparte's ambition is insatiable; that he will throw in colonies of Frenchmen, who will settle on your frontier for thousands of miles round about, (when he comes there;) and he does not forget to tell you of the imminent dangers which threaten our good old friends the English. He tells you that New Orleans is the lock, and you must seize upon the key, and shut the door against this terrible Bonaparte, or he will come with his legions, and, as Gulliver served the Lilliputians, wash you off the map. Not content, in his great care for your honor and glory, as a statesman and a warrior, he turns prophet to oblige you—your safety in the present year or the next, does not satisfy him—his vast mind, untrammelled by the ordinary progressions of chronology, looks over ages to come, with a faculty bordering on omniscience, and conjures us to come forward and regulate the decrees of Providence at ten thousand years distance.

That gentleman, Mr. President, is a surprising genius—an amazingly great man—he could never have been intended for this plain, unpowdered republican era, in which we live satisfied, but which must be a perpetual source of discontent to him. But it is not for us to arraign Providence! We are told that, in the immensity of the universe, so unbounded is the space it occupies, that even this little ball of earth which we inhabit, is so comparatively insignificant and minute, that it would not be missed from the great galaxy; and yet we are told that, in this little speck in the creation, Omnipotence tired in six days and rested the seventh. In the construction of so immense a system, it would not then seem surprising if, in the general confusion, souls had been shuffled into bodies never designed for them, or thrown by chance into ages for which their stupendous faculties were not fitted; who can say that the soul of that gentleman was not intended for some ancient sage or hero, or for some sage of future ages immensely remote, when America may have gone through a long career of greatness and degeneracy, after the manner of other nations! Such a soul, so heroic, and so hot for blood, would do honor to the Crusades; who can say that he was not intended for that age, and that the fall of Jerusalem was not owing to the unhappy accident of his being born out of his time, and in the wrong country!

The gentleman has, with great emphasis, repeated, that Florida must be ours. That this may be the case, at some remote period, is not in the order of human events improbable. The natural progression of population would seem to indicate such an event. The geographical situation of that country has long rendered such a theory familiar to speculative minds. But the gentleman says it must be ours now. Hence it appears that the deposit at New Orleans is really not the object which the gentleman's great mind contemplated. But how is Florida to be obtained? What injury have we sustained in Florida? Presently we shall be told we must have Louisiana; then the

gold mines of Mexico—these would be very good things, if come by honestly—then Potosi—then St. Domingo, with their sugar, coffee, and all the rest. These likewise are all very good and comfortable things in their way, honorably and justly obtained. But what have we to do with the territories of other people? Have we not enough of our own? Have we not more than we can cultivate or sell?

If we suffer this rapacious spirit to prevail, Mr. President, what is to be our character? Our fate is not difficult to foresee. The nations of the Old World will become jealous of our unjustifiable ambition—they will combine against us—they will humble and curb us. The British belt, that binds us to the North, will be drawn tight upon us. Should it appear that we seek to elbow out every European nation who possesses colonies on this side of the Atlantic, then would the sanguinary passions which pant for havoc and disorder, find ample scope for war and desolation; we should see those Powers of Europe, lately armed against each other, combined against us.

But it is not with our European neighbors only that the fervid impatience of the gentleman would embroil us; not satisfied with Florida, and the lock and key of Louisiana, he launches us into the turbulent sea of European politics, and sets us to tilting for that phantom, the balance of power! Switzerland, Holland, Italy, Germany, Portugal, and Spain, are severally described as swallowed up by all-devouring France; and not only are we to join in the crusade for restoring the lost balance of power, but we are invited to do more—we are invoked to come forth and tell the nations of Europe, that America is a young and manly nation, that we are eager to restore that balance of power; and that we will do ourselves the honor of leading the van in a new coalition!

Is any member of this House prepared for this? Is this the wish or will of the people of America? It requires no answer. We find the gentleman beginning with the deposit at New Orleans, and erecting an immense foundation for mischief on the rash act of a Spanish officer, in refusing us the right to deposit our produce in their territory. We are then carried back to anterior transactions, the capture of ships and the detention of seamen in the South American colonies of Spain; we are then alarmed about the dangers on our frontiers from a French colony: but at length the secret comes out—we are told that we must go to war to restrain the overgrown power of France! The gentlemen pant for war, and care not for what or with whom; they pursue war with a deplorable infatuation, and the most charitable construction that can be put upon their conduct is, that they know not what they do.

But we are not to be seduced from the sober policy which our situation and our experience commands. Under that illustrious character so often alluded to, we are told no aggression was ever submitted to with impunity; that there was no blockade of the North river, Savannah, or the Delaware. He would tell the gentleman that there was a blockade more serious and extensive than the blockade of any or all of those rivers: the ocean was put in a state of blockade to us; our ships were captured and confiscated; our citizens taken from on board our ships and put in irons; they were put on board British ships-of-war, and compelled to fight the battles of despotism against men who were engaged in the defence of their country, against men fighting in the cause of liberty, and for whom a lively sympathy was felt on account of the services rendered to America by them in our Revolution. Was this no injury? Yet the gentleman from New Jersey (Mr. DAYTON) tells us the time was, when, had a single American citizen been oppressed or injured, the national honor would have been roused and asserted in his defence! What a wonderful discovery. It is to be lamented that it is all a fiction—that it has no existence but in the gentleman's unconscious imagination. Was it when the commander of a British frigate, the British captain, Pigot, stopped the American citizen, Captain Jessup, at sea, and because he complained of having his men impressed, tied him up and flogged him at his gangway, that the sense of national dignity was displayed? or when else? If the gentleman could tell, he ought, and he should be glad to hear the news. He insisted that the wrongs done to us since the peace of 1783, by the British, were more deep, dishonorable, and afflicting than any other, or than has happened, or can happen, in consequence of the affair at New Orleans. Yet war was not advocated when Britain insulted and wronged us; recourse was had to measures of a pacific, and of a more certain and efficacious nature. Certain commercial propositions were brought forward to counteract and coerce, by her commercial nerves, the nation that had wronged us; a procedure very different from the military peace-march to New Orleans. In the midst of the discussion of these resolutions, President WASHINGTON appointed Mr. Jay to proceed upon a negotiation; and the propositions were given up to await the issue of negotiation. In all negotiations which we have undertaken with sincerity, we have succeeded. WASHINGTON did all that the most pacific policy required to prevent war; he did so with sincerity; and notwithstanding the adverse counsels by which he was sometimes deceived, it was his favorite principle to avoid foreign alliances, and to study the arts of peace with diligence and constancy. It must be recollected by many persons in that House, that in a correspondence which took place during the discussions on the British Treaty, speaking of those who opposed that Treaty, he called them the "friends of war and confusion." How far the title was proper is not here to be inquired; but it is put to their consideration, whether gentlemen who oppose negotiation and advocate taking peaceable possession of a foreign territory by force of arms, are or not entitled to the epithets. But whether the gentlemen agree on this point, whether they profess a peaceable inclination in the invasion of foreign territory with arms in their hands, or openly avow their design to be actual hostility, is very immaterial

to the public, who will appreciate the consistency of their pretensions and their propositions.

It had been correctly stated, that the true course of our policy always has been, and always ought to be, to pursue negotiation, in preference to any species of menace or hostility. It was more consistent with a confidence in our own resolution, for moderation in difficulty is always the true criterion of courage. The course now proposed by the amendments of his friend from Kentucky was the same that had been formerly adopted. When the proceedings of the Legislature were arrested by Jay's mission, this was the course. Eighty thousand militia were voted, and the country was placed in its true position for defence, a reliance upon the patriotism and courage of freemen. The same course was adopted with regard to France on a later occasion—and in both the effect was answerable to the intention—we obtained peace by negotiation. Those who advocate war measures now recommended very different measures in the case of British aggression. One gentleman, from New Jersey, indeed, disclaims any merit on this score; he washes his hands of all the sin which attaches to a love of peace; he disavows and rejects such a grovelling system; born a soldier, the language of war is to him the harmony of the spheres; war is never mentioned without stirring up his proud recollection of those wonderful achievements in which he partook his share of glory in the blood-stained field; his sympathies are aroused, like the sympathies of an old coach-horse at the crack of a whip! It is a kind of instinct—no one can account for it—but that it is a natural propensity—it bears an analogy to love—it is an indescribable something, and great warriors have been ever great lovers—indeed, all the ancient knights were in love as a matter of course. The passion for war lasts as long as life, but that of love (from a natural cause) is not always as durable: the former seems already predominant with the gentleman from New Jersey, and has betrayed him into an unguarded concession; while vaunting of his military achievements, he has told us that he was defending the State of New York, when my friend, who now represents that State with so much benefit to his country and honor to himself, (Mr. CLINTON,) was on his mother's lap, or in the egg-shell; this is making out the gentleman rather older than I expected he was, and is acknowledging a weight of years, that I should hardly have thought a man of his gallantry would have been willing to own before so numerous and elegant a collection of ladies as at this time honor us with their company. But we are told by another redoubtable knight, that we must have New Orleans whether the Spaniards will or not—no ceremony in his opinion is necessary—he says we want it, and therefore must have it. Thus, if a buck of high metal were to see a fine horse, he might tell the rider: Sir, that is a very excellent horse indeed; I want it, and you must alight; I do not mean to rob you, sir, but really you must dismount, and let me have the horse. A lady may like a fine transparent muslin, or a shawl, or brocade, or something else that is very fine and fashionable, she vows to heaven she must and will have it; they belong to the shopkeeper to be sure, but what does that signify, the lady wants them, and all she has to do is to knock the shopkeeper down and then gratify her wishes. Exactly parallel is the conduct recommended to us. If, indeed, we can obtain New Orleans in an honest way, if the man will sell his horse, or the shopkeeper his goods, why then we may have it; but we cannot become so insensible to justice, or to our true policy, as to invade and take the property of an ally before we have complained and demanded our rights, violated by an officer of that ally. If negotiation fails, it will then be justifiable in us to redress ourselves, and insist on our right; if our right is resisted, and further injury done, the laws and usages of nations will justify us in retaliating; and in such an event, which he did not expect, we might be justified in going farther and taking more. But this we could never do, or attempt, unless forced into a war. But as we are now called upon to act, nothing could be more unjust. We have heard of a right of ours under treaty being suspended, we know not by whom; all that we know is, that a Spanish officer has undertaken to do this. But without telling your wrongs to his Government, you are told to enter on the territory and spread fire, havoc, and desolation, among the unoffending and friendly inhabitants! Would the savage tribes of our wilderness do the like? They would not. You have just sent an Ambassador upon this very subject, and you are told he must carry with him in his hand an account of this invasion and ravage as his introduction to negotiate on friendly and pacific terms! We empower him to demand redress of what we have undertaken to redress ourselves. We ask for justice, and our recommendation is injustice. We ask the Spanish Government, Will you please to restore us our deposit? when we have not only taken it but the whole island. What would be the reception of our Minister under such circumstances? He would be sent back; and we should be told that they would try to take from us, by force, what we had usurped beyond our just claim. Such is the policy which gentlemen recommend.

Some gentlemen read us the newspapers; some private letters from God knows who; another tells us of the Prince of Parma, and the King of Eutruria, and the Duke of Modena; that Spain is the actual aggressor—then that France is the real mover. Further, from the same source we learn that Lord Whitworth has arrived at Paris, and that the expedition of the French is suspended, because Great Britain wishes to purchase Louisiana. Thus it is demonstrated, by the gentlemen themselves, that they know not, or care not, what they are doing, and that they are desirous of acting in the dark; for, if we raise the sword, we know not whether it is to fall on the head of Spain, France, or England. If it should happen to be on the last, some gentlemen would certainly deplore their present impetuosity.

We have been told that Spain had no right to cede Louisiana to France; that she had ceded to

us the privilege of deposit, and had therefore no right to cede her territory without our consent! Are gentlemen disposed to wage war in support of this principle? Because she has given us a little privilege—a mere indulgence on her territory—is she thereby constrained from doing anything forever with her immense possessions? No doubt, if the gentleman, (Mr. MORRIS.) were to be the negotiator on this occasion, he would say: "You mean to cede New Orleans; no, gentlemen, I beg your pardon, you cannot cede that, for we want it ourselves; and as to the Floridas, it would be very indiscreet to cede that, as, in all human probability, we shall want that also in less than five hundred years from this day; and then, as to Louisiana, you surely could not think of that, for in something less than a thousand years, in the natural order of things, our population will progress towards that place also."

If Spain has ceded those countries to France, the cession has been made with all the incumbrances and obligations to which it is subject by previous compact with us. Whether Bonaparte will execute these obligations with good faith, he could not say; but to say that Spain has no right to cede, is a bold assertion indeed. The people of America will not go along with such doctrines, for they lead to ruin alone. We are also told, that the power of the Chief Consul is so great, that he puts up and pulls down all the nations of the Old World at discretion, and that he can do so with us. Yet we are told by the wonderful statesman, who gives us this awful information, that we must go to war with this maker and destroyer of Governments. If, after the unceasing pursuit of empire and conquest, which is thus presented to us, we take possession of his territory, from the gentleman's own declarations, what are we to expect, only that this wonderful man, who never abandons an object—who thinks his own and the nation's honor pledged to go through whatever he undertakes—will next attack us? Does the gentleman think that this terrible picture, which his warm imagination has drawn, is a conclusive argument for proceeding to that war which he recommends?

The Senate, Mr. President, at this moment, presents a very extraordinary aspect; and by those not acquainted with our political affairs, it would appear a political phenomenon. Here we see a number of people from the Eastern States and the seaboard, filled with the most extreme solicitude for the interest and rights of the western and inland States; while the representatives of the Western people themselves appear to know nothing of this great danger, and to feel a full confidence in their Government. The former declaring that the Western people are all ready for revolt and open to seduction; the latter ignorant of any such disposition, and indignant at the disgrace which is thrown on their character. In their great loving kindness for the Western people, those new friends of theirs tell them that they are a simple people, who do not know what is good for them, and that they will kindly undertake to do this for them. From the contiguous States of South Carolina, Georgia, Tennessee, and Kentucky, (those States from which the gentleman from Pennsylvania, by his resolutions, proposes to draw the militia,) every member of this House is opposed to war; but from the East, (and one can scarcely refrain from laughing, to hear of the all-important representatives of the State of Delaware in particular,) such is the passion for the wonderful, or the absurd, there prevails the liveliest sensibility for the Western country!

Soon after the peace of 1783, our frontiers were in a situation where national feeling had much occasion for irritation. The British had not only retained their old garrisons on our territory, contrary to treaty, but they actually advanced upon us, and erected new. Yet such was the extreme sensibility of the Eastern States then, that they went to sleep in perfect composure; and their sensibility and their war rage was never roused until the British began to interfere with our commerce at sea; then indeed they began to rub their eyes, and to discover that there was some danger. But they continued still to feel very little for the Western people—perhaps they did not know them so well—they had not yet travelled over the Western lands!

These contradictions must be resolved by other than State interests; by other causes than any sufferings of particular States. They must be explained by events in times past, and by causes which do not belong to the interests or the happiness of the people. There are men in this country who entertain an incurable passion for war; there are some men who see no means by which their ambition can be gratified, but through the evils and distractions, the miseries and the discontents, inseparable from a state of war. There are, said he, such men. War leads to expense, and to discontent with the Government which creates it; war strengthens the hands of Executive power, and weakens the authority and the voice of the people; war multiplies the means of profusion and waste of the public treasures in contracts and jobs—it gives a preponderance to one branch of the Government over the rest. From the beginning of this Government, this struggle has been visible, where ambition has leagued with avarice against the interests of the people; and where there has been more pain and trouble occasioned by the incessant efforts of this combination, than all the other duties, cares, and incumbrances of Government. Perhaps some gentlemen do not act from a consciousness of such motives; perhaps some few may act from opinion, and without personal or ambitious views; some perhaps conscientiously think that it would be preferable to lodge all authority in the Executive, and to dispense with popular representation, or even ordinary legislation. Whatever might be the motives or the impressions of this few, this Government was not made for them; it was made for the many, and must be so administered.

He could have enlarged much more on what had fallen in debate, but his strength would not enable him to pursue the examination much further; he would, therefore, content himself with stating his reasons for preferring the substitute to the original resolutions.

This he considered to be a most favorable time for negotiation. We are told that Bonaparte never gives up an enterprise. He will not then give up St. Domingo; he has attacked it, he has been disconcerted, and is pledged to accomplish it at any sacrifice. Great as that colony is, and perhaps he does not think so much of it as in a commercial view it merits, but if, as has been said, he wishes to preserve it as a necessary means for the reduction of the West Indies, this must be the most favorable opportunity for pressing a negotiation. What may be attempted or expected from that negotiation he would not say, because it was not proper, in the present stage of proceedings.

He stated, that the original resolutions, by delegating to the President of the United States the power to invade the neighboring territory of an ally, with fifty thousand militia, and all our regular military force; whilst they betray the most outrageous spirit of hostility, they are evidently calculated to defeat all attempts at friendly negotiation, and, in two instances, most palpably violate the Constitution. To Congress the power of making war is confided by the Constitution—a power which they cannot transfer to the President or any other authority. Secondly, the militia can only be used by Congress "to suppress insurrections and repel invasions;" they have no power to send them without the limits of the United States upon any object of conquest, or to avenge any national wrongs or indignities, that we may be supposed to have suffered. The militia force, therefore, if collected, could not be used for the purposes expressed in those resolutions.

But, by the substitute offered by the gentleman from Kentucky, a greater force is to be held in a state of preparation; a part of these to be enlisted, or rather enrolled as volunteers, for a longer time of service than militia are liable to, and by the terms of their engagement may be marched anywhere that may be required of them by an act of Congress. Arsenals are to be built, and the arms and ammunition deposited in suitable situations, so that should war be unavoidable, everything is placed in a state of perfect preparation for such an event. And when Congress, with whom the power of war is lodged, may think proper to declare it, the declaration of war may be followed by an immediate and effectual movement. Thus, the resolutions proposed as an amendment, whilst they show more temper, moderation, and justice, will be more effectual, should we find it necessary to resort to the last means of settling national disputes; they are such as the powers of Congress are competent to, and by not attempting more, argue at sincerity of intention, which the others (from their very different character in this respect) may be suspected of wanting. Though the ostensible pretext of those resolutions was to secure the deposit at New Orleans, yet it was evident that their object was war at all events. These gentlemen seem to be all equally anxious for war, though they differ about the causes and inducements which should lead us to undertake it, and the means of pursuing it seems to have been very crudely digested indeed. War is all they want—is all they wish; set it once going, and it will work afterwards to suit their purpose; give them but war, they care not with whom, or for what.

Mr. COCKE.—The doctrines held by the gentleman from New York (Mr. MORRIS) are curious. He tells us, Mr. President, that we must go to war for fear we may be compelled to go to war; that we must attack the Spaniards because they are weak; and we must attack the French because they are powerful; we must force our Western fellow-citizens into a war, from an apprehension that if we do not, they will go to war themselves, and become our most formidable enemies! This he supposed was what some people called oratory, but for which an honest man is at a loss to find a proper name. The love of peace he has declared to be a good reason for going to war; and this is more oratory. There was something said about a Duke of Parma and Hercules, but this he supposed was oratory also; it was hardly possible to be serious upon this kind of doings. The gentleman in the same speech told us that he did not know what the President was doing in this business; he has a bad memory for an orator, for it is but a few days since he was present at the nomination of James Monroe to proceed to Europe as Ambassador to negotiate on the subject; this was at least something, and more was expressed in the Message from the Executive on the nomination. Why, sir, oratory appears to me a heap of contradictions; fine words may, to be sure, be very diverting, but they are not half so well calculated for a republican people as matter of fact. The gentlemen, indeed, appeared to think very differently, for we have been accused of wishing to keep their arguments and speeches from going abroad, and to keep to ourselves, with closed doors, all their fine doings about the Prince of Parma and the Emperor of the Gauls, and about the prophecies of the gentleman to the Swiss so many years ago. He could assure gentlemen, that, for his own part, he entertained as little apprehension about their fine speeches as he did of the Prince of Parma, or the hero of Italy; and he believed his constituents generally thought about as much of them, if they thought of them at all.

But gentlemen tell us our rights are invaded, and that we must go down and attack the sluggish Spaniard; and that we should do this in time, before Bonaparte comes, and builds a chain of fortifications along your frontiers. How are the public to understand all these things? We must not negotiate, because the Spaniards are sluggards, and we must fight because Bonaparte, by the aid of that conjuring devil, which the gentleman talked of, is to build up a whole line of fortresses, all in one night, he supposed. These are the speeches which, we are told, we were afraid of letting go out to the public—in which everything is contradictory.

But how are we to account for this zeal for war, in those gentlemen now, who, not many

years ago, were as violently bent on peace? They tell us, indeed, that there was a day when the character of America stood high, and when the poorest American individual could not be insulted with impunity; and that those were the days of WASHINGTON. Gentlemen have very bad memories, or they perhaps choose to forget. Do those gentlemen forget Dorchester's speech to the Indians; do they forget the possession of our forts on the lakes, contrary to treaty, when the savage Indians were daily murdering our citizens on the frontier, instigated by the British, when neither age nor sex was spared? What was the conduct of gentlemen then? Those things happened in the days of WASHINGTON, and where was the redress found? In war? Did we march an army to Montreal or Quebec? Did we even seize upon our own forts, in our own States, which they held? No. What then did WASHINGTON do, Mr. President? Why, sir, he did no more than we mean to do now; with a thousandth part of the provocation or injury, he negotiated. If any circumstances justified war, it was those. But even my friends did not then propose to resort to arms—they proposed a commercial war, in which no blood was to be shed. But what did those gentlemen who now bellow forth war? They opposed even a commercial retaliation; they deprecated the dangers of a war, and proposed negotiation, and sent an Ambassador.

The British Treaty was concluded—the gentlemen who now roar out war! war! then cried out peace! and eulogized that treaty. Yet, in the twenty-second article of that treaty, we find the gentlemen have furnished another contradiction; for that article says, that neither of the contracting parties shall order or authorize any acts of reprisal against the other, on complaint of injury, until a statement thereof shall be presented to the injuring party by the injured, verified by competent proof, and demand satisfaction, and not then unless redress is refused, or unreasonably delayed. This treaty was concluded under WASHINGTON, but it was also a part of a former treaty with Prussia, and of a subsequent treaty with the Dey of Algiers; the twenty-second article of the treaty with whom was to the same effect. And this also was a treaty concluded by WASHINGTON, and all this was supported by the gentlemen who now drive at war. Where were Jupiter and Mars in that day? they were napping in the arms of some fuddled Bellona; while a grave Judge was sent from the Bench to the Court of St. James to kneel before her Majesty of England, to kiss her sacred hand, and to pray her most gracious intercession with her magnanimous husband to spare our frontiers from the scalping knife, and have pity on us. This was called asserting our dignity in those boasted days; we never heard of the poorest individual meeting protection; and the representative of our Republic was seen taking shelter under the royal robe, and aping the pomp and vanity of a vicious court and corrupt nobility.

The people of America, Mr. President, have had too much experience to be any longer deceived. Their eyes have been opened to the deceits which have been put upon them, and are now attempted again. They have on every occasion marked one prevailing feature of conduct in the party which now wish to stir up war; against every aggression of Great Britain they shut their eyes; in their sight the most flagrant acts of injustice from that quarter are either justified or palliated; in whatever situation we are placed, with respect to other Powers, the first consideration of this war party is, what is the interest of Great Britain on the subject? Every act of any Power not allied to Great Britain, or in any manner opposed to her, is magnified and aggravated; and in all their speeches we are sure to hear, either in the form of a direct proposal, or an hearsay insinuation, of an alliance offensive and defensive with England; we are menaced and flattered alternately with accounts of her Navy; we are taught to believe her Navy can destroy us, if we maintain our own rights, or if we prefer treating with others; while, if we have difference with Powers to which England is opposed, we are invited to embark in a new crusade with her, and to lead the van of her battles. The people see all these things, they have felt them, and can no longer be deceived.

Sir, while they guard against internal foes, the people are not indifferent to their rights, nor unwilling to maintain them at every hazard. The business of New Orleans is in the hands of the Executive, and the people confide in their own choice. If his efforts fail by negotiation, the people will not fail to unite with one voice and one arm at the call of the Government of their country.

Mr. NICHOLAS said, if this was an ordinary question, his indisposition would prevent his taking any part in the discussion; but as the Representative of a State, more than one-third of whose territory lies on the Western waters, and which has upon all occasions manifested the most anxious solicitude to preserve our right to the navigation of the river Mississippi, he felt himself bound to state to the Senate the reasons upon which he considered the propositions of his friend from Kentucky entitled to a preference to the resolutions offered by the gentleman from Pennsylvania. However irksome it may be to him, he will never shrink from the discharge of a public duty from personal considerations. Upon the present occasion, he would endeavor, as much as possible, to avoid a repetition of what had been said by others in favor of the amendment, and in opposition to the original resolutions. To make this the more certain, his observations should be more in the form of a reply to what had been said in support of the resolutions first offered, than a regular argument in favor of one proposition, or in opposition to the other. Had the gentleman who introduced this discussion dealt frankly with the Senate, or understood the views of his own friends, and at once informed us what nations he meant to go to war with, what the objects of the war were to be, and the extent of the proposed conquests, much time and trouble would have been saved.

When the gentleman from Pennsylvania (Mr. Ross) opened his war project, his resentment appeared to be confined wholly to Spain; his sole object the securing the navigation of the Mississippi, and our right to a convenient place of deposit on that river. We were told by that gentleman, that we are bound to go to war for this right, which God and nature had given the Western people. What are we to understand by this right, given by God and nature? Surely not the right of deposit, for that was given by treaty; and as to the right of navigation, that has been neither suspended nor brought into question. But we are told by the same gentleman, that the possession of New Orleans is necessary to our complete security. Leaving to the gentleman's own conscience to settle the question as to the morality of taking that place, because it would be convenient, he would inform him that the possession of it will not give us complete security. The island of Cuba, from its position, and the excellence of its harbors, commands the Gulf of Mexico as completely as New Orleans does the river Mississippi, and to give that complete security that he requires of the President, the island of Cuba must likewise be taken possession of. It has been shown that the measures proposed by the gentleman from Pennsylvania, and he would again demonstrate it, if it was necessary, are calculated to bring upon the Western country all the mischiefs that gentleman has depicted as resulting to them from a loss of the navigation of the river Mississippi. If we are driven to war to assert our rights, the Western people must make up their minds to bear that loss during the war; for without a naval superiority, which we have not and cannot obtain, or the possession of Cuba, we shall not be able to avail ourselves of the navigation to any useful purpose. Although we may take possession of the Floridas and New Orleans, it is from a conviction of its pernicious effects upon the Western country, as well as other reasons, that he was averse to appealing to arms as long as there is a prospect of attaining our object in another way. It has been said in this debate, that war cannot take place without the interference of Great Britain, which he presumed is relied upon to give us a naval superiority. This, Mr. President, would be opening to us a new scene. At some period or other we may find ourselves forced to seek alliances with some Power that has a considerable naval force; he could conceive a state of things that would make it prudent; but it certainly is not our interest or policy to precipitate ourselves into a situation that would make that a necessary measure. We have been warned by the experience of other nations, and by the admonitions of our most enlightened citizens, to avoid entangling alliances, to keep ourselves clear of such a connexion with other nations as would probably make us a party to all their wars; and he trusted that when a necessity did exist, if it ever should, there will be found wisdom enough in that department of our Government in whom the power of negotiation is vested to anticipate such a state of things.

It seemed to him that to begin a war upon such an expectation, and to depend upon future negotiation for forming connexions to carry us through it with success, would be a system of policy too weak and childish ever to be pursued by an American Congress. It would be to submit the interest, and perhaps the honor of this country to a nation who would extort from us sacrifices as injurious as a disadvantageous peace would impose. And it must be obvious, that without the most discreet use of the power vested in Congress to make war, and a perfect co-operation between the treaty-making power and the Legislature, we shall subject our country to the greatest difficulties in this way. He would say nothing of the present state of Europe, to show that there may be an indisposition in any nation to go to war, nor of the rival and conflicting interests of any nation with those of the United States. Every gentleman has full information upon these subjects, and will appreciate them as they merit.

The gentleman from Pennsylvania, probably distrusting the success of his measures, if they depended exclusively upon the act of the Intendant of New Orleans, has brought into view aggressions committed upon our commerce during the late war, and which that gentleman knows are in a train of adjustment, and could only have been mentioned by him with a view to produce the greatest possible degree of irritation against Spain. Upon this part of his argument he would make some further observations hereafter. As the discussion advanced, new objects and new adversaries were successively developed, until, from the recovery of a commercial privilege, we were gradually led on to the emancipation, and indirectly to be the arbiters of the old and new worlds.

The gentleman from New York, finding the weight of argument against him, and that a resort to arms would not be justifiable upon the ground taken by his friends, with a boldness and promptitude that characterizes veteran politicians, has not only assigned new and different causes for war, but new objects, and a new and more powerful enemy to cope with. He no doubt felt the force of the arguments that have been used to show the improbability that Spain would authorize an act that would produce a rupture with this country, at the moment that she was parting with Louisiana, and when she could not possibly derive any advantage from the wrong that she could do us by that act; and at a time when we know from unquestionable evidence that it is the desire of Spain to cultivate a good understanding with this country. He could give no credit to the suggestion, that the First Consul had required Spain to take that step. He knew that character too well to believe that he would attempt to throw a responsibility upon others, for his measures, nor indeed could it be shown that the First Consul would be in any way benefited by it; he knows the American character too well to believe that any of the reasons that have been assigned by his friends who have preceded him in this argument, would form a justification for a declaration of war, without a previous demand for a redress of the wrongs that we have sustained. He knows that our country-

men, with a courage and perseverance that does promise success in any war, are at all times ready when it is necessary to assert their rights with arms, but that they will not be employed in wars of ambition or conquest; and above all, he sees the folly of going to war with Spain, and taking from her a country that we should be obliged in honor and justice to give up to the French, perhaps the instant after we had taken possession of it; for if France would reinstate us in the rights and privileges that we hold under our new treaty with Spain, I demand of the gentleman from New York, if he would wish this country to hold possession against France; and if he would, upon what ground he would justify it?

The cession was made to France before the injury done us by the Spanish officer; knowing this, we take the country; upon France demanding it of us, we should be bound by every principle of honor and justice to give her possession, upon her engaging to respect properly our rights. Spain, having injured us, surely will not justify our committing an outrage of the most injurious and insulting nature upon France. Would conduct like this comport with the gentleman's ideas of national honor, about which we have heard so much in the course of this debate? Can it be, that an act, which, if perpetrated by an individual, would be robbery, can be justifiable in a nation? And can it be justifiable in the eyes of men, who believe there is nothing so precious or important as national honor? Can the usefulness or convenience of any acquisition justify us in taking from another by force what we have no sort of right to? If these things come within the pale of his (Mr. MORRIS's) laws of honor, for my country I disclaim all obedience to them! The gentleman (Mr. MORRIS) has said, that the ceding of a country by the possessor to another country, is a good cause for war to a nation in the neighborhood of the country ceded. In this doctrine, he believed, the gentleman would find himself unsupported by any authority, or by the practice of nations; he would, on the contrary, find example constantly against him. Did Great Britain make war on Spain or France when Louisiana was ceded by the latter to the former? No. How is such a war to terminate? Should we be authorized to conquer, and hold it for ourselves? Or must we make war with Spain and France, until we can oblige the former to resume the possession and government of the country? The cession to France cannot give us a right; and to make war for the restoration of the country to Spain, would be a madness unrivalled by anything that has happened since the crusades for the recovery of the Holy Land. In this dilemma, the gentleman from New York (Mr. MORRIS) abandons the ground taken by his friends, and, instead of joining the gentleman from Pennsylvania in charging the Spanish Government with the blackest and most wanton perfidy towards this country, he speaks of that nation as disposed to do everything that honor and good faith can require of her, but that she is humbled to the lowest state of degradation by the force of a superior Power; in short, what he has said of that country is more likely to excite our commiseration than our vengeance; accordingly, the gentleman from New York (Mr. MORRIS) disdains a conflict with a nation that has been made the unwilling instrument of doing us wrong.

He puts out of view all the considerations that influenced his friend from Pennsylvania; by the sound of his voice he dispels the whole force that his friend had brought up in martial array against us—throws away the mask—and declares that France, not Spain, is the nation we are go to war with. He would, as concisely as he could, recapitulate to the House the principal reasons given by the gentleman for going to war with France. The cession of Louisiana is a sufficient cause for war; upon that subject he had said enough to show its absurdity. We are told, and even by the gentleman from Pennsylvania, (Mr. ROSS,) that it is necessary to prevent the French from taking possession of that country, or they will seduce the people in the western parts of these States. This is the most extraordinary argument that ever was used, connected with what was the professed object of the resolutions under consideration. The object of the resolutions was said to be, to secure to those people the free navigation of that river, and a convenient place of deposit for their produce. This measure can alone be justified by a belief that we shall not be permitted to enjoy these important rights. This was at first said, but now it is openly avowed, that there is no fear of that sort; and the gentleman from New York, (Mr. MORRIS,) not satisfied with insinuating this, has told us, in plain terms, that France will not only permit the free navigation of the river, and the right of deposit, but that they will give such great and exclusive advantages to the people in our western country, as will put them at the disposal of France; so that it is not to secure to our western brethren their rights that we are to go to war, but to prevent their having an extension of those rights. As a representative of a great number of western people, he felt himself alarmed for their interests, when he connected this with what fell from the gentleman, (Mr. MORRIS,) when speaking of the effects upon the Middle States of a cession of Louisiana to France; he said that France would give such a monopoly of the supply of their own islands, and the Dutch and Spanish islands, to the western people, as would ruin the trade of the Middle States. Is it consistent, with a regard to the western people, or to the union of the States, to attempt to show that the prosperity of one part of the Union, is to cause the ruin of another? Are not these observations calculated to excite the jealousy of the Atlantic States against the Western? Fortunately, however, the gentleman (Mr. MORRIS) has used arguments so contradictory, that it is impossible they should produce an effect anywhere. In another part of his speech he did say, if the French gained possession of Louisiana, that the western people would never obtain the value of their produce—that, in time of peace, there would be no purchasers but French merchants, who had no capital; and that, in time of war, there would be no price, as their trade would be cut off. Surely that gentleman can entertain very little respect for the Senate, when he ventures to use arguments so contradictory and inconsistent with each other. As to the danger of the western people deserting and betraying their country, the suggestion deserved the severest reprehension.

There were not in America, men more attached or more faithful to the Government of the United States than they were; and I will venture to predict, from my knowledge of them, that they will be the last to submit to the yoke of despotism, let it be attempted to be imposed upon them by whom it may. If there is one part of America more interested than any other in preserving the union of these States, and the present Government, it is the western. Important as the Mississippi is to them, their free intercourse with the Atlantic States is more important—all their imports are received through that channel, and their most valuable exports are sold, and will continue to be so, in the Atlantic States. The same gentleman (Mr. MORRIS) says, we must line our frontier with custom-house officers, to prevent smuggling. If there is any force in what he says upon this subject, we ought not only to take New Orleans and the Floridas, but Louisiana, and all the British possessions on the continent. Another reason urged with great earnestness by the gentleman from New York (Mr. MORRIS) is, that France, without this acquisition, is too powerful for the peace and security of the rest of the world—that half the nations that lately existed are gone—that those that are left are afraid to act, and nation after nation falling at her nod—that, if France acquires the Floridas and New Orleans, it will put England and Spain completely in her power, giving to those places an importance that they do not merit; and yet that gentleman and his friends have repeatedly asserted that war would not result from our taking immediate possession of those places; indeed, they say, it is the only way to avoid war. At one moment the country is represented as so important as to make the First Consul the sovereign of the world; at the next, we are told that we may take it without any sort of risk, and without a probability that either France or Spain will go to war with us for the recovery of a country so all-important to them. In the language of the gentleman from Pennsylvania, I say, this idle tale may amuse children, but will not satisfy men.

Mr. President, we have nothing to fear from the colony of any European nation on this continent; they ought rather to be considered as a pledge of the good conduct of the mother country towards us; for such possessions must be held only during our pleasure.

Can France, in fifty years, or in a century, establish a colony in any part of the territories now possessed by Spain, that could resist the power of the United States, even at this day, for a single campaign? What has been our progress since the year 1763, in settling our western country? In forty years, under the most favorable circumstances that a new country could be settled, we have only a population of between five and six hundred thousand souls, and this country is settled by men who knew it perfectly—by men who either carried all their friends with them, or who knew that change of residence would not prevent their frequently seeing and hearing from their nearest relatives. Can it be expected that any country will be peopled as fast, from a nation at the distance of three thousand miles, as our western country has been? And yet we are taught to be apprehensive of a colony to be landed tomorrow or next day from Europe. Sir, if we are wise and true to ourselves, we have nothing to fear from any nation, or combination of nations, against us. We are too far removed from the theatre of European politics, to be embroiled in them, if we act with common discretion. Friendship with us, is the interest of every commercial and manufacturing nation. Our interest is not to encourage partialities or prejudices towards any, but to treat them all with justice and liberality. He should be sorry to reproach any nation—he would rather suffer former causes of reproach to be buried in oblivion; and he was happy to perceive that prejudices which were incidental to the war that we had been forced into in defence of our liberties, with a nation from which we are principally sprung, were fast wearing off. Those prejudices had been very powerfully revived, soon after our Revolution had established our independence, by the aggressions of that nation, in various ways, more flagrant and atrocious than anything we have to complain of at this day.

The gentleman from Pennsylvania said that this is not an apposite case; that at that time there was no blockade. It is true there was not a blockade of one of our ports, nor is there now, (the river Mississippi is open for the passage of our boats and vessels,) but we were injured, in a commercial point of view, in a more material manner than we should have been by the blockade of the Delaware or the Chesapeake; for all the countries (except Great Britain) to which it was desirable for us to trade were declared to be in a state of blockade, and all our vessels going to those countries were subject to seizure. Let gentlemen call to mind what was the conduct of our Government at that time. The House of Representatives had the subject under consideration, when the then President appointed an Envoy Extraordinary to demand satisfaction of Great Britain. What was the conduct of the members of the House of Representatives, who were acting upon the subject, before it was known to them that the Executive had taken any measures to obtain satisfaction for the injury sustained? Did they attempt to counteract the Executive? No; they suspended all Legislative discussions and Legislative measures. And even the injuries done us by the actual invasion of our territory, the erection of fortifications within our limits, the withholding the posts that belonged to us by treaty, and the robbery and abuse of our citizens on the high seas, did not provoke us to declare war, nor even to dispossess the inva-

ders of our territory of us. The Executive proposed to negotiate, and it was thought improper to obstruct it. How gentlemen, who approved of the interference of the Executive upon that occasion, can justify their attempt to defeat the efforts of the present Administration to obtain redress for the injury that we now complain of, they must answer to their consciences and their country. Fortunately for the United States, not only the President, but a majority of both Houses of Congress, upon the present occasion, have put themselves in the gap between the pestilence and the people.

It has been asked, in a triumphant tone, (and it would seem as if gentlemen believed it could not be answered,) what have you to give for the restoration of those rights on the Mississippi which you seek to recover and secure? For our rights, sir, we disdain to barter; they are not to be the subject of negotiation. The business of our Envoy, I presume, will be to demand their complete restoration, and indemnity for the privation; and if in this he should fail, we have a sure resort in the bravery and patriotism of our countrymen, and the resources of our country. Have the gentlemen to learn at this day that the American people are at all times ready to risk their lives and fortunes to assert their rights, and to preserve their real honor; that they can readily distinguish between the real calls of honor and the factitious appeals that will be so frequently addressed to them to answer particular purposes? For our rights, sir, I answer, we have nothing to give, but that we will risk everything to secure them. As to an extension of our territory, or acquiring commercial advantages that do not of right belong to us, if any nation should be disposed to make us an offer of such, the gentlemen who have asked the question know that we have the means of payment, in several different modes, if we choose to resort to them.

Having answered the question that has been asked of us, the gentleman from New York (Mr. MORRIS) will be so civil as to state to the Senate what we should have to give to the First Consul to induce him to let us hold New Orleans, and to Spain to prevail upon her to permit us to hold the Floridas, after taking these places. Or, does the gentleman believe that the First Consul would be more disposed to accommodate us after our committing, as to him, an unprovoked insult and outrage, than he would if we had given him no just cause of complaint? Does the gentleman believe that the way to conciliate a man whom he has represented as magnanimous in some things, who he describes as having conquered one-half the world, and as contemplating the subjugation of the rest; I say, sir, does the gentleman believe that the way to propitiate such a man is to insult and injure him? If, as the gentleman thinks, it is all-important to this country to obtain the Floridas and New Orleans, there can be no doubt (if the thing is practicable) that we should be more likely to succeed by negotiation, before any act of hostility on our part, than afterwards.

If the gentleman from New York had exerted his ingenuity as much to state the grounds upon which an expectation of the complete success of our Envoy might be founded, he would have been at least as usefully employed for his country as he has been in his attempt to show that it will not succeed, and he would have avoided the palpable contradictions of his own arguments that he has run into. The gentleman himself, without intending it, has assigned sufficient reasons why we might expect entire satisfaction. He has said, truly, that America, united, holds the command of the West Indies in her hands. This must be known to all the nations that have colonies there; it must likewise be known to the proprietors of Louisiana and the Floridas, that, circumstanced as we at present are, there will be perpetual sources of contention between them and us. Everything that has happened as to the Mississippi will be reacted as to the great rivers that head in what is now the Mississippi Territory, and empty themselves into the Gulf of Mexico, after passing through West Florida. In the infancy of the colonies that may be settled in Florida or Louisiana, the mother country can count upon nothing but expense, particularly if they are to be the causes of perpetual quarrels with this country. In twenty years the population of the United States will be nine or ten millions of people; one-third of that population will probably be on the Western waters. This will give a force in that quarter of the Union equal to that with which we contended with Great Britain; and our united force will be such, that no nation at the distance of three thousand miles will be able to contend with us for any object in our neighborhood. These considerations, with a belief that, if we are treated with justice and liberality, we shall never violate the rights of other nations, or suffer ourselves to be involved in the wars that may take place among the great European nations, are arguments that cannot be withstood, if the Governments of France and Spain are in the hands of wise men; for they must see that they have nothing to hope from a contest with us, and that a union of our force with a rival nation would be productive of very serious danger and inconvenience to them.

Much has been said about confidence in the Executive. We have been challenged by the gentlemen on the other side of the House to run the race of confidence with them. His confidence was as great in the present Executive as it could or ought to be; but, much as he respected the Chief Magistrate, and those whom he has associated with himself in the Administration, he could not go to the lengths of confidence to which some gentlemen had suddenly found themselves disposed to proceed. He did not choose to confide the power of making war to the discretion of any man whatever. That power, perhaps the most important of all powers, belonged to Congress, and to them alone. It would be treason against the Constitution to transfer it to other hands. If we have a right to do it for a month or a year, we have a right to do it for twenty years. Shall we have to combat this despotic disposition with gentlemen forever? Is there to be no end to these attempts

upon the Constitution, and the weight of the people in public measures? Are we to be reproached, then, for not confiding to the Executive powers that belong to the Legislature? Are we to be reproached because we will not entrust powers in the hands of our friends which we refused to our adversaries? He gloried in such reproach—he considered it as eulogium.

But gentlemen ought not to persuade themselves that this mode of proceeding can impose upon the House or the public an opinion of their sincerity. If gentlemen were really sincere, their conduct would be of a very different character. If they wished to show their confidence in the Executive they would not patronise the calumnies which are daily heaped upon him, in papers which derive their support from their liberality, or that of their friends. They would, if sincere, repress that calumny, or withdraw their countenance from the papers which utter it. They would discountenance those infamous lies, many of which, from having lived in the neighborhood of the President, he was enabled to say were groundless and infamous calumnies. There is another way, sir, in which those gentlemen may manifest their confidence in the President, and which the public good requires of them: it is, that they acquiesce in the effort that he is making to obtain our rights, and security for those rights, by negotiation, and thereby add to its chance of success. In this way their confidence could have been shown in a manner useful to our country; and it may not yet be too late. We have been told of other acts of hostility on the part of Spain, prior to the restriction of our right of deposit. This was evidently intended to irritate the public mind, but his friend from New York (Mr. CLINTON) had very properly and justly repelled that artifice; he had shown that this was a separate and distinct subject; that it had nothing to do with the New Orleans transactions. Though not at liberty to declare the source of his information, yet he would assert that Spain has given indisputable evidence of a sincere disposition to do us justice for the injuries we sustained in our commerce during the late war. From the course of this discussion, it is evident that it was intended, not to enforce conviction on the minds of this House, but to produce an effect out of doors. It was therefore important that no erroneous statement of an important fact should go abroad uncontradicted. A member from Delaware (Mr. WELLS) had said that our Government had received information from the Governor of New Orleans that the right of deposit had been taken away, in consequence of orders from the competent authority—meaning the Government of France or Spain. [Mr. WELLS rose to explain.] The gentleman says he was not understood by me. A proof that I did so understand him, is, I made inquiries that enabled me to contradict, in the most positive manner, the information that I thought that gentleman had given to the Senate.

Mr. DAYTON said, he lamented exceedingly the indisposition of the honorable member from Virginia, (Mr. NICHOLAS,) not only because it had compelled him to abridge his arguments, which always entertained, even when they failed to convince, but because to that distraction of mind which sickness often produces, could alone be ascribed the doubts expressed by that member, respecting the views of the advocates of the original resolutions. The difficulty of the opposers of the resolutions, would, he said, have been less, if the gentlemen who supported them had settled among themselves what was their object, and had ascertained with whom we were to make war. To both these points, Mr. D. said, the fullest and clearest answers had been given. Our object, says he, is to obtain a prompt redress of injuries immediately affecting our western brethren, who look to us for decisive and effectual measures, and have told us that a delay of remedy will be ruinous to them; and our views and wishes are to take possession of the place of deposit guarantied by treaty, whether it be in the hands of the one nation or the other, and to hold it as a security that the trade of so important a river should not be liable to similar interruptions in future. We are not, as the gentleman from Virginia would insinuate, for rushing into a war, but we are for repelling insults, and insisting upon our rights, even at the risk of one. It was easy to foresee that the opposers of the resolutions offered by the honorable gentleman from Pennsylvania, must resort to other means than fair argument, to justify them in the course which they were about to pursue. Our most precious rights flagrantly violated, treaties perfidiously broken, the outlet or road to market of half a million of our fellow-citizens obstructed, our trade shackled, our country grossly insulted, were facts too notorious, and too outrageous to allow them the least plausible ground of reasoning. Deprived of every other means of attack, they have resorted to that of alarm. They charge us with a thirst for war, and enter into a description of its horrors, as if they supposed that it was in our power to produce, or in theirs to prevent it. That which requires the concurrence of two parties, viz: contract or negotiation, they consider most easy; and war, which may always be produced by one party only, they consider as most difficult. Nay, sir, they do what is more extraordinary and unpardonable, they shut their eyes to the fact that hostility has already been commenced against us. Attacked and insulted as we had been, do we now, asked Mr. D., call for war? Let the resolutions give the answer. They begin with a declaration of certain rights, indisputable in their nature, indispensable in their possession, to the safety, peace, and union of this country. Not a member opposed to us has controverted them, except the honorable gentleman from Maryland, (Mr. WRIGHT.) He denied the truth of all except one of them, and even of a part of that one. His honorable friends from the western country, who are in the habit of acting with him, cannot thank him for such defence. The formerly well applied words, "*Non tali auxilio nec defensoribus istis egent*," must be applicable on this occasion, and it may be as well to leave them with each other to settle the question of their rights. But there is one article of the Mary-

land member's creed which ought not to escape comment, because, if adopted, it would be fatal to the Union. I understood him, said Mr. D., as stating that inasmuch as the produce which descends the Mississippi bears a proportion of about a twentieth only to the exports of the whole Union, it was not reasonable to expect that the other portion should be endangered to protect that minor part. If maxims like this were to actuate our councils, short indeed would be the duration of our independence. Our enemies would have only to attack us by piecemeal, State by State, to make us an easy prey. The honorable member from Maryland could not hope for even that gloomy consolation which we heard of on a former melancholy occasion. He could not flatter himself that he and his State would be left to be the *last victim*.

But, Mr. President, every other gentleman appears to admit the truth of the prefatory declaration of rights; they admit, too, that if we cannot be possessed of them otherwise, we must seize on them by force; but they refuse to give the means and the power to the President, in whom they have told us, over and over again, they repose implicit confidence. Is any one of the resolutions too imperative on the President, we will agree so to alter as to make it discretionary, if desired by any gentleman on the other side; for without their leave, we cannot now amend our own resolutions.

It is my consolation, Mr. President, said Mr. D., and it ought to be matter of triumph to my honorable friend, the mover of these resolutions, that, whatever may be their fate, the introduction and discussion of them will have produced no little benefit. They have brought forward gentlemen to pledge themselves, in their speeches, to employ force on failure of negotiation; which, though late, is better than never. They must be allowed the merit, too, of producing the resolutions which they offer as a substitute. These milk-and-water propositions of Mr. BRECKENRIDGE will at least serve to show that something should be done, some preparation made; and therefore even to these, feeble as they are, I will agree, if more cannot be carried. But let the relative merits of the two be compared. *Ours* authorize to call out of those militia nearest to the scene, and most interested in the event, a number not exceeding fifty thousand, and to give them orders to act, when the occasion requires it, in conjunction with the army and navy; *theirs* authorize an enrolment of eighty thousand, dispersed over the whole Continent, without any authority to act with them, however pressing the danger, nor even to march them out of their own State. *Ours* authorize the President to take immediate possession of some convenient place of deposit, as guarantied by treaty, in order to afford immediate vent for the Western produce, and relief to our suffering fellow-citizens, and thereby put it out of the power of a Spanish Intendant, whether acting from caprice, or orders from his Court, to obstruct so important an outlet; *theirs* give no such authority, but leave to the slow progress and uncertainty of negotiation that remedy, which, to delay, is almost as fatal as to refuse.

Mr. WRIGHT had not intended again to have spoken in the present debate, but had been constrained to it by the misrepresentation of the gentleman from New Jersey, (Mr. DAYTON,) who had ventured to declare, that "he had said that the commerce of the Mississippi was too insignificant for us to risk a war in its defence." Was it possible that gentleman could have misconceived what he had said on that subject? He presumed not; his observations had been so far from equivocal, that they had been pointed, "that the right of deposit "was all important, and ought to be secured at all hazard." He feared there was a design to misrepresent; but that fact, the House for themselves would decide.

It was well known that he had strenuously advocated the rights of foreign nations, secured to them by the law of nations, and by their existing treaties; that he had reprobated, as disgraceful, their violation; that he had endeavored to stamp the infamous practice with merited obloquy, and to drag to condign punishment their infractors; and should it be said that he had a design to sacrifice the best interest of the Western people, (a member of our Government,) secured to them by the Constitution he had sworn to support; and that only because he had preferred the pacific measures that had been adopted, to a war! He feared the gentleman had been governed by the unworthy spirit of recrimination, because he had detected his misstatement of the amount of exports from the Mississippi; and had, by the production of the official documents on that subject, corrected his misrepresentations, which he considered to be his duty to correct, so that the House might not act on false premises; and in this opinion he was in some measure confirmed, by the gentleman's extraordinary attack yesterday on the gentleman from New York, (Mr. CLINTON,) for his firm opposition to the gentleman's war measures; when, with great acrimony, he asked, where was that gentleman (Mr. CLINTON) in 1776, when *he* was fighting the battles of his country? "He was," said he, "in the *egg-shell*, or in his mother's lap." Was it a ground of reproof that a gentleman was not born before his time? No; it was a perfect excuse; he could not, in that state, be expected to take a part in the glorious contest: but, I ask, where was his father? Did he not hold a conspicuous rank in the armies of America? or have we forgotten that General Clinton was one of the saviours of his country; and have we not full proof that the son inherits his father's virtues? He, for his own part, had more than once unsheathed his sword in support of American independence; but he thought that the gentleman from New Jersey and himself, would both make a good bargain, could they exchange their revolutionary laurels with the gentleman from New York, (Mr. CLINTON,) for his bloom of youth, and the fifteen or twenty years' advantage he had, by being an infant at the commencement of the American war. How different was the treatment that the gentleman from New York

and himself had experienced, from what had been practised towards others during that debate! Yesterday, the honorable gentleman from Delaware (Mr. WHITE) made Bonaparte the King of Kings; and the gentleman from Tennessee (Mr. COCKE) gave the gentleman from New Jersey, and his friends, a rank among the gods. I wish he had prevailed on that gentleman, while exercising his godlike attributes, like Jupiter of old, to have rained gold into our Treasury, and not by endeavoring to foment unnecessary war, to drain it of its treasure. This would have given him a rank among patriots, greatly to be preferred to *his* rank among the gods.

Mr. OLCOTT declared, that though he should vote for the original resolutions, he was as firmly and decidedly opposed to war as any gentleman in that House. He should have remained silent, had it not been so frequently asserted that war was the object of those who supported the original resolutions; and he rose to contradict that assertion, lest, by his silence, it might be supposed he acquiesced in the charge of a desire for war—against which he protested.

Mr. J. JACKSON, of Georgia, was surprised to hear gentlemen still contend that war is not implicated in the resolutions of the gentleman from Pennsylvania. Although he was well aware that, after so full a discussion, little could be said that was important, yet he hoped to be indulged in a very few observations, and he should be short in making them.

The best mode of examining the conduct of one nation towards another, where an injury has taken place, and satisfaction is required, is to resort to private life; for nations are sometimes neighbors, as well as persons. The arguments of gentlemen and the tenor of the resolutions, lead to taking possession of the island of New Orleans prior to negotiations, or peaceable steps to obtain redress. Nations are bound by moral ties, and those of justice, as well as individuals; let us take a case then from private life. The gentleman from New Hampshire (Mr. OLCOTT) and himself both lay claim to a house; the servants of that gentleman possess it: instead of seeking legal and proper means to establish the right claim, he enters the house, beats out that gentleman's servants, takes possession of his furniture, and then tells him, "I am ready to come to an amicable settlement," or leaves him to seek legal redress! Would justice, would moral obligation permit this? Would our laws permit it? No, sir; the law would turn the aggressor out, and place the original and right possessor in his former state, and then leave them to their proper course of redress. Should we not stand, in taking possession of New Orleans, in the eyes of the world, precisely in the situation of the aggressor in private life? We should, sir, and as perfectly unjustifiable. We should rouse the jealousy of Europe, and involve ourselves, in all probability, in a war, the evils of which, or its extent, cannot be calculated. What, sir, was the consequence of the King of Prussia's taking possession of Silesia under a dormant claim, in the seven years war, without negotiation? It involved Austria, Russia, France, England, and almost all the other nations of Europe in a bloody and expensive contest, from the evils of which some of those Powers have never extricated themselves—it loaded and fettered them with debt; and if we take the step proposed, we may, by rousing the jealousy of Europe, produce the same effect and the same consequences on ourselves.

An honorable gentleman near me, (Mr. MORRIS,) was pleased to say, he was surprised to hear the anecdote quoted from Count D'Estaing, that national honor was national interest. Yet, sir, after all the observations of the gentleman, he has admitted it, and contradicted himself. For he, after painting Bonaparte in a variety of horrible shapes, as well as the nation he presides over, has declared the nation a noble one, whose interest is Bonaparte's honor, and his honor their glory. It makes no difference, sir, what this interest consists of. Bonaparte's glory weighs as interestedly with him as any other object possibly could, and the gentleman has said his glory must shine—he must conquer, or he is lost; is this, then, not his interest, and a most powerful interest? A corroboration of the assertion in the anecdote, that national honor is national interest, has been fully admitted and proved, by another gentleman from Delaware, (Mr. WELLS)—he has expressly declared that the nations of Europe are only so long bound by treaty as they find it their interest!

What then, sir, is our interest? Is it to go to war? To copy the old systems of Europe; to involve ourselves in broils; to fetter our country with debt; to mortgage our posterity, and their funds? Take a view of England, and the consequence of her continued wars; a national debt of between five and six hundred millions, which she can never shake off but by the same means her neighbor, France, has adopted; a total downfall to the existing Goverument; a revolution of principles; and, perhaps, in the general wreck, the rise of a usurper. The time was, when he felt himself the zealous advocate of the French Revolution, and the noble sentiments of that nation; but that day had passed. He much doubted the benefit France will ever receive from her Revolution; and much more, any advantage the nations of the earth will derive from it. That nation, sir, worked itself up, or was worked up, by the attempts of other nations, to divide her territory and enslave her, to such a pitch, as to overleap the mark, and plunged the people into a situation much worse, in his opinion, than under the guidance of the Bourbons. Shall we proceed in this way; involve ourselves in debt, and make it necessary to upset our Government and Constitution, to get rid of it? He hoped and trusted not. We have the happiest—the best—would he be permitted to say, the only Constitution that secures national liberty, on earth! France has, it is true, what is called, a written constitution; but, sir, is it binding? It is changing daily: and we may venture to affirm, that the will of Bonaparte is the constitution of France. He did not wish to cast reflections on this or that nation, or this or that character. Every nation has a right

to seek its own happiness in her government, as she pleases; but he hoped we should not copy them in their vices. He believed that no democratic Republic but our own exists, or can exist; and no other form of government than ours can secure such a Republic. We have guards and securities, which no other Government possesses, or ever possessed. Our General and State governments are checks on, and balance each other, and render innovation on our constitutions and happy form of government, very difficult; and, under them, durable influence, usurpation, or tyranny, are impossible. Let us beware, then, how we take any steps which may tend to impair our Constitution, and thereby destroy our rights. We are now the happiest people on earth, and, if united, the force of Europe cannot injure us.

He must be permitted here to declare, that he understood the gentleman from Delaware (Mr. WHITE) as his friend from Tennessee. (Mr. ANDERSON) did, in his argument of that morning, as asserting that in case France got New Orleans, the Southern and Western people would be influenced by them. He was justified in noticing this circumstance, if not by the observations of the gentleman from Delaware, by those which fell from the gentleman on his left. (Mr. MORRIS.) He has positively asserted, that if the French gained the Floridas, the affections of the Georgians towards the United States would be weakened; that they would be influenced by the French principles, and that it would be found dictating the speeches on this floor. He spurned such an unworthy idea from him. His countrymen have too much attachment to this happy Government; they know that their independence, their rights, their properties, depend on it—depend on union with their sister States, and no consideration on earth would induce them to attach themselves to any other Power. The idea is absurd, therefore, that any gentleman representing Georgia will ever show, by his speeches on this floor, any French or other foreign influence.

His friend from Tennessee had spoken the truth respecting the western inhabitants. Those suspicions ought not to prevail; it is not politic, nor are they grounded. He could venture to go farther; he believed that the Western States, at this day, contain more of the soldiers of the Revolution, than all the Atlantic States together—they are peopled by them, and their descendants; they cannot be torn from the Union—they will not be colonized by any nation on earth; they are the same men, now, they were during the Revolution; notwithstanding, after bearing the toils of the day of trial, and losing their all, they were compelled to quit their native States, and seek new lands beyond the mountains. Sir, they are attached to your happy Constitution; they fought to obtain your independence; they are of the same habits, the same manners, they have the same love of liberty with their fellow-citizens in the Atlantic States; and never will, unless driven from you, desert you.

What inducement have they to join any other nation? Will they fling themselves into the arms of France, in the state in which the nation now is, as he had before observed, with no other constitution, no other security, than the will of a Bonaparte for their liberties, and leave their own happy constitutions and independence? No. Will they join what the gentleman from Delaware has termed the sluggish, inanimate Spaniard, and the slave of France—a nation, I acknowledge, however revered in the fifteenth century, in the reign of Charles V., now governed by superstition and bigotry, without a solitary spark of liberty within herself, and trammelled by another nation without? They will not. Will they return to Britain, which, to do her justice, is the only nation of the Old World where there is a vestige of freedom, even in appearance, remaining; but where, from her situation, loaded and fettered with debt, her posterity disposed of at market, and their rights and future revenues mortgaged—security of property or rights hang on the brink of revolution, and which must not long hence take place, as it already has in France, if the debt is not wiped off, at the risk of everything—every article, every necessary of life almost, being already taxed to carry on her Government, and on trying occasions, added to this, an income tax of ten per cent. on the whole profits of their estates? Will the people of Georgia, or the West, go to her, sir, in this predicament, and leave their own happy Government, with, in comparison, little or no public debt, and that daily paying off; without those odious taxes—the whole being not much above seventy millions of dollars, whilst that of Britain is between five and six hundreds of millions of pounds sterling, and which, at the best, their colonies must sooner or later pay part of? They will not go there, sir, they know the value of their own happy situation too well. Where then, will they go? To any of the other nations of Europe? No; they are incapable of protecting them. Russia is the only Power which could make a show of protection; and are our Western citizens prepared for the knout, or the wilds of Siberia? Sir, those fears are imaginary, they are groundless, they ought not to exist—the idea ought not to be started, the thing ought not to be mentioned. The citizens either of Georgia or the Western States, cannot be torn from the Union by the exertions, the intrigues, or the force of any power in existence.

But while we are told so much of Genet, and his insidious practices in our Southern States, at this great distance from the Executive, has no other Power attempted to intrigue and draw the affections of your citizens from you, but France? Yes, sir, if masters are to be accountable for their servants. Britain has. He was, himself, notwithstanding all his predilection for the French nation, and the French Revolution—which he now almost regretted, for it has injured the cause they embarked in—he said, he was himself impressed with the impropriety of Mr. Genet's conduct, justified as it was by the precedent of our own Ambassadors, during the Revolutionary war, stirring up the people of Holland, and intriguing with all the Governments of Europe, to induce a confederacy against Britain. This, sir, was thought right and

justifiable by us, at that day; and we have therefore no right to censure the French Ambassador, for following our steps; and no doubt he, and his nation, deemed his proceedings as proper, as we thought ours.

Yes, sir, Britain did the same. Mr. Liston was concerned with Chisholm and others, in stirring up the South and Southwestern citizens in the same manner. He alluded to Blount's conspiracy. A British frigate entered the ports of Georgia; her commander had his pocket full of commissions—they were offered to citizens of that State, now alive to testify it. The object, sir, was to make a stroke at Spain, and through her, the United States; there was an intimate connexion between that plan and the recent speculation,* which, thank God, has happily failed; the territory, the object of that speculation, was to have been seized at that moment, and the United States involved in war; it was happily evaded. But how the leaders, Blount and others, escaped punishment, is best known to the Senate of the United States at that time in existence; no doubt satisfactory reasons appeared to them, which might not be deemed so by the citizens at large, who had no opportunity of judging correctly of them. As to the persons concerned in that speculation, it is but justice to say, some Republicans were among them, but the majority, and a large one, were Federalists. Why then are we told so much of Genet's intrigues, and nothing of Mr. Liston's? Their plans were the same; neither of them succeeded; and it is not in the power of the world to corrupt the citizens of the States for whom so much apprehension is expressed.

He must advance that the resolutions of the gentleman from Pennsylvania have in them the seeds of war, which it is our interest to avoid. Justice ought to mark our steps, as well to ourselves as to foreign nations. We have, he agreed with the gentlemen on the other side, a right to call for justice; we have been injured. He insisted again, that Spain had no power to withdraw the right of deposit at New Orleans. She was as much bound to perform her part of the compact in the treaty between us as a nation, as an individual is in private life to perform his. Nations ought to be influenced by the same moral ties; for although he admitted that national honor in many shapes consists in national interest, he did not carry his ideas so far as the gentleman from Delaware, as to say, that treaties ought only to be binding so long as our interest led us to support them; this would destroy all faith among the nations of the earth. Let us first negotiate; the people will be unanimous with us; they will be pleased to see us try every peaceable method before a resort to arms; we shall be justified to the world, and avoid the jealousies of Europe. Having tried this without effect, if we shall be forced to war, whenever this shall happen, let the nation be which it may, we shall be actuated by one heart, one soul, one arm; and, he repeated it, that nation will find the American people will draw the sword and fling away the scabbard, until their rights are restored to them and redress is given for their wrongs.

The gentleman near him (Mr. DAYTON) had triumphantly claimed the merits of both the resolutions of the gentleman from Pennsylvania, and those of his friend from Kentucky. (Mr. BRECKENRIDGE.) as belonging to his side of the House—the latter having been produced, as he says, in consequence of the former, without which they would not have been thought of; and he has told us that he and his friends will vote for our resolutions, if they cannot carry their own. He was not anxious as to which quarter of the House the merit of the resolutions shall be attached. He had no objection to the gentleman and his friends taking all the merit, provided they will do as he says, vote for those produced by his friend from Kentucky, if they lose their own. Unanimity is all we want; and unanimity, he flattered himself, nay, was certain, from what has fallen from the gentleman, will take place on this occasion. This, sir, has been an auspicious discussion—it ought to be marked in the annals of united America—it ought to be handed down to posterity, that the Senate of the United States, with the same views, but different means of obtaining them, having received an injury from a neighboring nation, unanimously determined to try every peaceable method to obtain satisfaction, and in case of failure of negotiation for redress, to be prepared to assert the rights of the nation, and to resort to the last argument of politics, the *ultima ratio*. Our bond of union has been styled by the politicians of Europe, a rope of sand; let them continue to deceive themselves—when such unanimity prevails, the deception is harmless. Our form of government and individual ties prove the deception; and we never ought to lose sight of an old Revolutionary motto, on our *rattlesnake money*. "UNITED WE STAND, DIVIDED WE FALL." We ought not only to be impressed with the truth of this ourselves, but we should imprint it on the minds of our youth, and thus hand it down to posterity. My life for the event, as long as this impression is made, and this unanimity as to foreign aggression prevails, there is no nation, no power, no tyrant, no despot, on earth, who will dare to violate your rights with impunity.

Mr. CLINTON.—I should not presume at this late hour to trespass upon the exhausted patience of the Senate, were it not that a serious difference as to fact exists between the gentleman from Pennsylvania and myself—I call it serious, because it involves character—and I beg that what I now say may be distinctly remembered, on some future day, when time shall enable all who hear me to determine between us. In introducing the resolutions, the gentleman expressly stated that Spain had refused *to redress* her spoliations on our commerce. Astonished at the hardihood of the assertion, I took the words down as they came from his lips. I thought it my duty to contradict them in the most pointed terms. Yesterday the gentleman came forward in another shape, and said that Spain *has made no provision* for the injuries sustained by our merchants, and that there

* The Yazoo speculation.

is *no reason to believe* that provision in any respect adequate will be made. In this change of the terms of his former allegation, my colleague, in a mode quite variant from his general politeness, has backed him with the authority of *his* name. My much respected friend from Virginia (Mr. NICHOLAS) has this day stated the essential circumstances of the affair, with perfect accuracy, and in conformity to my representation; and in opposition to the assertions and insinuations of the members from Pennsylvania and New York, I again declare that Spain has not refused to redress the spoliations committed on our commerce; that, for those committed by her own subjects, she is now willing to give us the most ample satisfaction; and that we have every reason to believe, that cases of a different description will receive a friendly and equitable adjustment. With regard to outrages said to have been committed upon the persons of our citizens, I stated that no official information was laid before us; that we could not act in the case without having the facts, which were to serve as a ground of action, authenticated; and that many of our citizens had justly exposed themselves to punishment, by pursuing an illicit trade. The gentleman has now brought forward a protest, taken before the American Consul at Havana. If my memory does not deceive me, this case was a subject of considerable discussion last Summer in the newspapers of Philadelphia and New York. Mr. Duplex, the captain of the vessel, sailed, I believe, from the port of New York, and was charged with being engaged in unlawful commerce. Whether this charge is true, whether this is the same case, and whether the outrages alleged were really committed, I cannot undertake to decide; but I would advise the gentleman, instead of keeping this document any longer in his desk, to send it to the Executive. An inquiry will be immediately instituted; and if our citizens have been really injured, Spain will make, and must make redress.

Since I am up, I will answer some of the principal arguments brought forward by the gentleman from Pennsylvania. This gentleman has certainly exhibited his cause in the strongest and fairest light of which it is susceptible. In paying him more than ordinary attention, I render him a tribute due to his ability; but in making this assertion, I do not mean to depreciate the acknowledged talents of the other gentlemen who have spoken on the same side. The gentleman has honored me with peculiar notice, and has selected my observations as the objects of his most formidable attacks. I feel it, therefore, a duty due to civility, to return the compliment; and I also esteem it a duty due to myself, to repel some observations which he has endeavored to fasten upon me, and to defend those which I really brought forward, and which I still think have not been materially impaired by anything said in opposition, during the course of this debate.

The case put by the honorable gentleman, of an invading enemy, shows that he has artfully confounded two things together, which are radically distinct—I mean an offensive and defensive war. All the observations which go to prove the necessity of previous negotiation, apply only to offensive war. The paramount law of self-preservation, demands that we should resist and repel an invading enemy. It is not necessary to pursue this remark any farther. A little attention to the distinction will show that the honorable gentleman has not been able to weaken my argument in the least. While he has thus confounded distinct subjects together, he has the merit of another invention, which he has actively used to help himself and his friends out of a labyrinth of contradiction—I allude to his application of a distinction between major and minor rights. It is to be wished that he had been more explicit on this subject; and had defined, with precision, what he meant by major rights. Are they rights essential to the existence of a nation; or do they extend further, and include those cases which relate to its prosperity? If to the latter, are not national honor, free commerce, and unviolated territory, essential ingredients of national prosperity? and have they not all been grossly trampled upon under former Administrations, without an immediate resort to force? To prove this distinction of any importance, applied in either shape, it ought to be established, that a privation of the right of deposit, for nine months, if until the result of negotiation can be known, will destroy our national existence, or essentially affect our national prosperity. I admit that a continued privation may have this effect, and am therefore willing, if it cannot be restored by negotiation, to re-establish it by the sword. If there are any rights which can, with propriety, be denominated major, I should suppose that rights of territory, rights of embassy, and rights of commerce, will come under this description; and they have all been violated, again and again, in the proud times, as they are called, of WASHINGTON and ADAMS. The whole Atlantic, as has been justly observed by my friend from Virginia, (General MASON,) has been blocked up against us. To issue from one of our ports or rivers, was almost certain capture. It was not a case affecting the Hudson, the Delaware, the Chesapeake, the Potomac, the Mississippi, or any one of the great outlets; but it applies to them all, and to the ocean, with which they communicated. Negotiation was then the order of the day.

The gentleman from Pennsylvania differs from me respecting the conduct of the Romans, in going to war. I shall leave this question to be determined by those who have turned their attention to the historical inquiries; and will only add, that to their religious attention to previous negotiation, has been attributed, in no inconsiderable degree, the greatness at which they arrived. Every Roman who fought, knew that he was fighting for an injured country; and he fought accordingly. The gentleman has not attempted to attack, directly, the forcible examples I produced from English history, but has endeavored, indirectly, to impair their weight, by indicating cases wherein Great Britain had immediate recourse to violence. The instances which he has adduced, prove only that injustice and robbery have sometimes the sanction of Governments. The case of the French vessels in 1756, which were carrying on innocent commerce under the faith of treaties, and under the protection of the law of nations, and which were seized without any declaration of war, was an act of highway robbery, that would have condemned a private individual to infamy or a gibbet, and that will fix a blot on the character of Lord Chatham, which no time can wash away. The French, in their negotiations for peace, made a compensation for those vessels for a long time a *sine qua non*, and the refusal of Great Britain certainly protracted the war. The fortune of arms finally compelled France to give way; but this has not altered the character of the transaction. The voice of impartial posterity will class it among the depredations of brigands and pirates.

The gentleman has endeavored to extenuate the enormities of Great Britain, by a representation of the conduct of the French Minister in this country, and the general sensibility excited in favor of the French Revolution. With the conduct of any foreign Minister here, Great Britain had nothing to do, unless that conduct was hostile to her interests, and sanctioned by our Government. The sensibility in favor of France, at the commencement of the Revolution, was not peculiar to this country—it existed in every enlightened part of the world, and flourished luxuriantly in England. It is true that the events of the Revolution were sanguinary and disgraceful; but its principles, being in favor of the establishment of a free government, were calculated to gain respect and approbation. With regard to the French Minister, (Genet,) his conduct was doubtless disagreeable to the President, and his recall was solicited. Our Minister in France (Mr. G. MORRIS) was equally disagreeable to the constituted authorities of that country, and his recall was also solicited. The former was charged with associating with democrats and disorganisers; the other with royalists and aristocrats. The one was said to aim at the overthrow of our Administration; the other was charged with opposing the principles of the Revolution. The one was blamed for visiting the halls of democratic societies; the other for loitering in the regal chambers of the Tuilleries. The one was inculpated as the minister and agent of anarchy and confusion; the other as the patron and advocate of monarchy and privileged orders. A composition was made, and it was agreed that both should be withdrawn. But what effect could this possibly have on the temper, or policy, or interest of the British Court? The Minister at Paris was perhaps as beneficial to their cause, as the Minister at Philadelphia was injurious; and certainly they gained nothing by the nominal recall. The tone of Great Britain to this country was lowered, not by incidents of this kind, but by the events of Europe; by the total frustration of the projects of the crowned heads, leagued together to destroy the sovereignty of the people; and Jay's treaty, bad and disgraceful as it was, would never have been agreed to, or rather no treaty would have been made, with this country, had it not been for the defeat of the Duke of York, before Dunkirk, and the subsequent disasters which befel the British arms. The gentleman indeed went out of his way, to tell us that a man of high talents was sent to Great Britain to negotiate; that a treaty was formed; that it was opposed with great virulence, but finally adopted; and the gentleman continued to go out of his way, and to inform us, that the negotiator was elected Governor of New York, where he presided for a long time with great honor and advantage, and left behind him an example worthy of imitation! I shall not, sir, speak of the negotiator, or of his negotiations, in the terms I would do if he were present to defend himself; but since I am compelled in vindication of the State I represent, to say something, I may surely be permitted to observe, that the British Treaty was neither honorable nor advantageous to this country; that the negotiator was ignorant of the growth of cotton in the United States, which is one of our most valuable exports; that the list of contraband articles was most improperly extended; that it was put in the power of Great Britain to say when provisions should be deemed contraband; that the great and important principle to neutral commerce, free ships and free goods, was abandoned; and, generally, that reciprocity was in a great measure overlooked. Notwithstanding it was deemed good policy to ratify this pernicious instrument, it was not done without expunging one of its most degrading provisions. The councils of the country hesitated for a long time. Although time has purged the visual ray of the gentleman, (Mr. Ross,) and discovered to him great beauties, in the treaty, yet at that period, I recollect, for he was then first bursting into general notice, it was supposed that he was unfriendly to it; and that expediency alone exacted his assent. We know that General WASHINGTON was prevailed upon by the circumstances of the times, to sign it, and that he elected it only as a lesser evil than war. The negotiator was indeed elected Governor of New York, but it was before the contents of the treaty were promulged—if they had been known, his chance of success would have been forlorn; at the subsequent election he was withdrawn! The odium attached to his conduct as a negotiator, had been softened down by time, and it was in the year 1798, during the memorable Reign of Terror, when the minds of men were worked up to a state of frenzy, and reason was ejected from her throne. My excellent friend Chancellor Livingston, as much superior to him as Hyperion to a Satyr, was the candidate on the Republican side. On the brink of our election the gossiping report of the famous triple ambassadors, who held conferences, not with the regular authorities of the country to which they were sent, but with the valets and understrappers of Talleyrand, reached this country. The wonderful discoveries they made were magnified by the political necromancy which at that time deluded the public mind; and it was industriously reported at our polls, that treasonable correspondence had been detected; that the leading characters of the opposition were engaged in an attempt to yield up this country

to the domination of France; that their own letters were sent over to the United States, and that Mr. Livingston was amongst the most conspicuous of these traitors! Judge of the effects which these hell-born calumnies were likely to have on a people jealous of their country's honor! Mr. Jay prevailed in his election; but when the intelligence and patriotism of the State were permitted to have a free and fair operation, his incompetency became notorious; he was found unqualified to hold the reins of State; the men of observation of his own party knew it, and lamented it; and he fell like Lucifer, never to rise again. He declined another election, because he had sagacity to perceive the working of the waters; he wisely retired from the contest, and avoided the fate which candidates of greater temerity in some of the neighboring States justly experienced.

In order to show that the Spanish aggressions were different from the present, and that our Government pursued a different course, the gentleman has told us, that the treaty had not been executed, and that the Government had directed a body of troops to fall down the Mississippi. I know that Lieutenant Pope went down to the Natchez, with a detachment, certainly not large enough to take possession of that place, and to guard our Commissioner, Mr. Elliot, in running the boundary line; but he certainly never went out of our territory, nor was he ever directed to strike at New Orleans. The obligations of the treaty demanded and enforced its execution as strongly as they required the observance of all its provisions after it had been carried into operation. The breach of faith is the same—the injury the same—the dishonor the same. Two years and upwards, by the gentleman's own admission, we were deprived of the right of deposit, in contravention of the treaty; and what did our Government then do? Did the honorable gentleman carry fire and sword into the territories of Spain? Did they then cry havoc, and let loose the dogs of war? No, no; they sent Lieutenant Pope, and a lieutenant's command, down the Mississippi, with their swords sheathed, and their bayonets unfixed; all was then modest stillness and humility; the blast of war was not blown in our ears, nor did they stiffen the sinews, and summon up the blood.

Nor will it form any solid excuse for the then Administration, as it respects France, to say with the honorable gentleman, that no essential right was invaded by that nation. Are not the rights of commerce and the rights of embassy, essential rights? and were they not vitally attacked and wounded? And if there was a strong party at that time opposed to war with France, there is a vast majority of the American people opposed to a rupture with Spain now. The Administration, indeed, evinced at last some disposition to retaliate the injuries which were heaped upon us; but they acted "as if willing to wound and yet afraid to strike." In the midst of their feeble attacks, warlike preparations, and vaunting rhodomontade, "the rock on which the storm might beat," gave way; a new triple embassy was sent, and the consequences are known to all who hear me. Away then with your empty declamation—with your hyperbolical rant about national honor and national rights! You then drank the cup of humiliation to its very dregs. You then suffered real wounds upon the honor of the country; and you bore it patiently. When you were smitten on one cheek you turned the other—and now, when a subordinate officer, distant from his country three thousand miles, and probably acting from his own impulse, interdicts a right to be enjoyed without our territories, you come forward and give us lectures upon national honor, and vaunt about taking up arms!

I now turn to my honorable colleague, and cannot refrain from congratulating my country for giving birth to so sublime an intellect. Scorning the restraint of common rules, he has started from them with brave disorder, and giving the wing to a lofty fancy, has ascended into the regions of conjecture, far beyond the ken of human observation. He tells us all the world is under the dominion or the fear of Bonaparte; that the States of Russia, Austria, Prussia, and Great Britain are the only ones which have not entirely lost an independent character; but that even they have retired from the contest worsted and faint-hearted; that the First Consul is conducted to the gratification of an insatiable ambition by a more than common capacity; that Louisiana will enable him to establish that ascendency in the Western, which he has already acquired in the Eastern hemisphere; and that unless the United States imitate the conduct ascribed by the gentleman from Pennsylvania to WASHINGTON, and place themselves between the nations of the earth and the destroyer, as he is said to have placed himself between the people and the pestilence, the balance of the great communities of mankind will be deranged, and the world will be enthralled in the vortex of an all-devouring, all-destroying despotism.

Sublime, sir, as these speculations may appear to the eyes of some, and high-sounding as they may strike the ears of many, they do not affect me with any force. In the first place, I do not perceive how they bear upon the question before us; it merely refers to the seizure of New Orleans, not to the maintenance of the balance of power. Again: Of all characters, I think, that of a conquering nation least becomes the American people. What, sir, shall America go forth like another Don Quixotte to relieve distressed nations, and to rescue from the fangs of tyranny the powerful States of Britain, Spain, Austria, Italy, the Netherlands? Shall she, like another Phæton, madly ascend the chariot of empire and spread desolation and horror over the world? Shall she attempt to restrain the career of a nation which my honorable colleague represents to have been irresistible, and which he declares has appalled the British lion and the imperial eagle of the house of Austria? Shall she wantonly court destruction, and violate all the maxims of policy which ought to govern an infant and free Republic? Let us, sir, never carry our arms into the territories of other nations, unless we are compelled to take them up in self-defence. A pacific character is

of all others most important for us to establish and maintain. With a seacoast of two thousand miles, indented with harbors, and lined with cities, with an extended commerce, and with a population of six millions only, how are we to set up for the avengers of nations? Can gravity itself restrain from laughter at the figure which my honorable colleague would wish us to make on the theatre of the world? He would put a fool's cap on our head and dress us up in the parti-colored robes of a harlequin, for the nations of the earth to laugh at; and after all the puissant knights of the times have been worsted in the tournament, by the *Orlando Furioso* of France, we must then, forsooth, come forward and console them for their defeat by an exhibition of our follies. I look, sir, upon all the dangers we have heard about the French possessions of Louisiana, as visionary and idle. Twenty years must roll over our heads before France can establish in that country a population of two hundred thousand souls. What in the mean time will become of your Southern and Western States? Are they not advancing to greatness with a giant's stride? The western waters will then contain on their borders millions of free and hardy republicans, able to crush every daring invader of their rights. A formidable navy will spring from the bosom of the Atlantic States, ready to meet the maritime force of any nation. With such means, what will we have to fear from the arts or the arms of any Power, however formidable? I cannot, sir, but admire the difference between the honorable gentleman from Pennsylvania and my honorable colleague, and how much the latter outstrips the former in the magnitude of his conceptions. The one advocates the resolutions to chastise an infraction of treaty; the other to maintain the balance of power. The one proposes to seize New Orleans; the other, New Orleans, the Floridas, and Louisiana. The one wishes to obtain and fortify the right of deposit; the other, to acquire an immense territory. The one is for vindicating the injuries of our western brethren; the other, rising on his muse of fire, is for avenging the wrongs of all mankind! However the honorable gentlemen may differ in other respects, they agree in professions of the warmest support of the Executive, if the Executive will follow their advice and pursue their plan. The honorable mover, carried away by the ardor of his feelings, has promised us, that he will play the orator—he will go among the people and stir up men's blood. "Then he will talk, good gods how he will talk!"—and after the minds of men are excited to a proper pitch by his eloquence, he will then play the soldier—he will march with his countrymen to the tented field! Like another Cincinnatus, he will relinquish the sweets of domestic life; and like another Curtius, leap into the gulf to save his country! My honorable colleague will not, indeed, proceed so far; but he has kindly promised us the aid of his oratory and the benefit of his counsels, although he cannot afford us the strength of his arm. And they pledge not only their own services, but the co-operation of all their political friends in the glorious crusade! The well-disciplined and well-marshalled myrmidons, will follow their illustrious chief to victory or death. All will be united in support of the Administration; the disagreeable collisions that we now experience will be done away; and if we only admit their wooden horse within our walls, they will retire from the siege, and leave us in quiet possession of the Government! We thank the gentlemen for their kind proffers. We assure them that we will vindicate the honor of our country, but we will take our own time, and do it in our own way. We cannot consent to receive the dictation of the minority; and highly as we respect the wisdom of their sages, and the prowess of their warriors, we must dispense with them, if we cannot obtain them without the surrender of independence.

It is far from my disposition, sir, to insult over fallen men. Adversity is with me ever sacred, and I consider a great man struggling in the storms of fate, as a sight upon which the gods may look down with admiration. The two honorable gentlemen are soon to leave this House, and to retire into private life. One of them, my honorable colleague, has told us so more than once, or I should never have mentioned it. I sincerely wish them, in their retirement, all the happiness they can wish themselves. I hope that they will enjoy *otium cum dignitate;* but let me, sir, ask them, is it proper in them, at the time of their departure, to prescribe a course of action for those who are to follow them? Is it generous? Is it candid? Is it magnanimous in them to strew thorns and briers in the paths of their successors? To plant spring-guns and man-traps in their walks? To scuttle the ship they are about quitting, and to leave behind a dreadful legacy of death and destruction? I appeal to their own feelings, and to the feelings of every man who hears me, for an answer.

Mr. ROSS thought he had given a very precise definition of major and minor rights; he considered the deprivation of the ordinary means of a country's subsistence, to be the deprivation of a major right; it was an essential right, and the definition was in point. This right has been cut off, and it was as much an aggression as if the whole means of subsistence of the Union, instead of the Western country, was involved. If, then, it was of this character, was it unreasonable; was it unjust; would it not rather be both just and reasonable, to employ force to seize upon and repossess ourselves of a right of which we were unjustly deprived? Ought we not to seize and to hold, until our security was established against danger of all further encroachment. The gentleman from New York (Mr. CLINTON) certainly misunderstood him on what related to the British Treaty. He did say that, when Genet was recalled, the British recalled their November orders, and the President then agreed to treat. He had been misconceived, also, in what regarded the troops; for Government did certainly direct a large body of troops to fall down the Mississippi; not Lieut. Pope's detachment, for he was long before on the Ohio; but troops were ordered from

Tennessee to move downward; and had not the treaty been in consequence executed, and the line run, they would have executed it with the sword.

Mr. MORRIS said that it appeared to be discovered that he had contemplated engaging the United States in the restoration of the balance of power in Europe. Wonderful discovery! He had barely read an extract from the law of nations, which states, that the invasion of the rights of one nation, has a tendency to destroy the balance of power; his desire extended no farther than the undertaking of a bold measure, which may save us from the danger of internal war. He had been charged with a want of politeness; he conceived that he had shown both benevolence and politeness.

Mr. ROSS.—Gentlemen question what I assert as to the disposition of Spain to do our citizens justice. I did before say, and I do now say, that no man ever did, nor do I think that any man ever will obtain justice for the injuries done by Spain.

Mr. CLINTON.—As to the gentleman's opinions, he may possess internal evidence, to him more convincing than even a knowledge of facts to the contrary; what he had first asserted, was, that Spain had shown a disposition to do justice, nay, that so she had promised. The gentleman wishes to impress an opinion on the Senate, that Spain has refused to do us justice. Now, whatever internal evidence the gentleman may rely on, and however positive he may have been, or now be, I say that Spain has not refused.

The question being at length called for, on the motion of Mr. BRECKENRIDGE, for striking out the first section of the resolutions proposed by Mr. ROSS, the yeas and nays were required, and stood, 15 to 11, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Dayton, Hillhouse, Howard, J. Mason, Morris, Olcott, Plumer, Ross, Tracy, Wells, and White.

On the question for striking out the remaining parts of the resolutions, the question was also taken, and carried by the same votes on each side.

The question being then called for on the adoption of the amendments proposed by Mr. BRECKENRIDGE, the yeas and nays were called for, and the votes were as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Dayton, Ellery, T. Foster, Hillhouse, Howard, Jackson, Logan, S. T. Mason, J. Mason, Morris, Nicholas, Olcott, Plumer, Ross, Stone, Sumter, Tracy, Wells, and Wright.

NAYS—None.

So it was unanimously

Resolved, That the President of the United States be, and he is hereby, authorized, whenever he shall judge it expedient, to require of the Executives of the several States to take effectual measures to arm, and equip, according to law, and hold in readiness to march, at a moment's warning, eighty thousand effective militia, officers included.

Resolved, That the President may, if he judges it expedient, authorize the Executives of the several States to accept, as part of the detachment aforesaid, any corps of volunteers, who shall continue in service for such time not exceeding —— months, and perform such services as shall be prescribed by law.

Resolved, That —— dollars be appropriated for paying and subsisting such part of the troops aforesaid, whose actual service may be wanted, and for defraying such other expenses as, during the recess of Congress, the President may deem necessary for the security of the territory of the United States.

Resolved, That —— dollars be appropriated for erecting, at such place or places on the Western waters as the President may judge most proper, one or more arsenals.

After the question was taken.

Mr. HILLHOUSE said he was opposed to the resolutions on a ground that he thought proper now to mention; the calling out the militia of the Eastern States, would be a very serious injury to them; he wished, as they were always well officered and disciplined, that they should not be called out—they were too distant. He hoped that, in reporting the bill, some amendment would be made, so as to limit the portion of militia to be called out; he did not care whether the line was the Potomac or the North river.

Mr. WRIGHT.—The gentleman from Connecticut was very liberal, so were all the gentlemen, of profession and zeal for the Western people. We now see how far it extends—it extends exactly to professions, and no more; for the gentleman tells you he does not care whether the Potomac or the North river is to be the boundary, which means, in other words, do not call upon us people of Connecticut for anything but our professions, you shall have them in abundance, and our prayers too; but as to our militia, they are so well officered and disciplined, that it would be cruel to call upon them to march south of the North river, or, at farthest, the Potomac.

The resolutions were referred to Messrs. BRECKENRIDGE, JACKSON, and SUMTER, to bring in a bill or bills accordingly.

The Senate then adjourned.

SATURDAY, February 26.

The bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the second time, and referred to Messrs. JACKSON, CLINTON, and STONE, to consider and report thereon.

The bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of St. Mary's; to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a surveyor at Nanjemoy," was read the second time, and referred to Messrs. WRIGHT, T. FOSTER, and S. T. MASON, to consider and report thereon.

The bill, entitled "An act for erecting a light-house at the entrance of Penobscot bay, or any other place in its vicinity that may be deemed preferable by the Secretary of the Treasury," was read the second time and referred to Messrs. T. FOSTER, ELLERY, and OLCOTT, to consider and report thereon.

The bill, entitled "An act in addition to an act, entitled 'An act to amend the Judicial system of the United States,'" was read the second time, and referred to Messrs. NICHOLAS, BRADLEY, and DAYTON, to consider and report thereon.

The bill, entitled "An act in addition to an act, entitled 'An act to regulate the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia,'" was read the second time.

The bill, entitled "An act concerning the salt springs on the waters of Wabash river," was read the second time, and referred to the committee appointed, on the 25th of January last, on that part of the President's Message of the 18th of January which relates to the salt springs, to consider and report thereon.

Mr. WRIGHT, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act for the relief of Samuel Corp," reported it without amendment.

Ordered, That it lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act for incorporating an insurance company in the City of Washington;" and it having been further amended,

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the consideration of the amendments reported on the 16th instant to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia;" and having agreed thereto, and further amended the bill,

Ordered, That it pass to the third reading as amended.

Ordered, That the bill, entitled "An act for the relief of Moses White," pass to the third reading.

Ordered, That the bill, entitled "An act in addition to an act, entitled 'An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States,'" pass to the third reading.

Ordered, That the bill, entitled "An act supplementary to the act entitled An act providing passports for the ships and vessels of the United States," pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act in addition to an act, entitled 'An act concerning the registering and recording of ships and vessels of the United States;'" and to the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and having amended the bill,

Ordered, That it pass to the third reading as amended.

Ordered, That the bill, entitled "An act making appropriations for the support of the Navy of the United States for the year one thousand eight hundred and three," pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia;" and

Ordered, That it be referred to Messrs. WRIGHT, BRADLEY, and LOGAN, to consider and report thereon.

The Senate resumed the second reading of the bill to amend the act, entitled "An act concerning the District of Columbia;" and, also, the act supplementary thereto, entitled "An act concerning the District of Columbia;" and

Ordered, That it be referred to Messrs. BRECKENRIDGE, MORRIS, and NICHOLAS, to consider and report thereon.

The Senate resumed the second reading of the bill, entitled "An act in addition to, and in modification of, the propositions contained in the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State, into the Union, on an equal footing with the original States, and for other purposes;'" and

Ordered, That it pass to the third reading.

Ordered, That the bill to alter the time for the next meeting of Congress pass to the third reading.

Mr. ANDERSON, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and three," reported it without amendment; but on motion, sundry amendments were adopted.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill to amend the acts providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio and above the mouth of Kentucky river; and

Ordered, That it pass to the third reading.

DETACHMENT OF MILITIA, &c.

Mr. BRECKENRIDGE, from the committee to whom the resolutions of yesterday were referred, reported a bill directing a detachment from the militia of the United States, and for erecting certain arsenals; which was read; and, by unanimous consent, the rule was dispensed with, and the bill was read the second time.

Mr. HILLHOUSE moved that the bill be amended, by inserting a clause to limit the discretion of the President to a certain portion of the United States, in order to exclude Connecticut.

Mr. WRIGHT objected, and said he hoped the amendment would not obtain. He insisted that every portion of the Union ought to contribute its proportion in blood and treasure for the general defence, and had a right to expect an equal chance for the laurels of national glory. He had just received a letter from a veteran, whose brow was already decorated with Revolutionary laurels, expressing his unqualified approbation of the measures of negotiation adopted by our Government; but that if they failed, whereby our national honor

should be committed, cripple as he was, he would crawl to the standard of liberty to assert our rights, and avenge our wrongs. That, as it was not expected that eighty thousand men would be necessary at any one point, therefore he did not incline to limit the discretion of the President as proposed by the amendment, but to leave him at large to exercise it as the current of events might direct. The eighty thousand volunteers would be nothing to the United States, but burdensome to a part, and those were the kind of troops relied on, in case of necessity, which he deprecated; he therefore should vote against it.

Mr. HILLHOUSE said he was sorrry that the learned gentleman from Maryland did not understand his own bill, which he had for several days been advocating with so much ardor; that the amendment did not respect the volunteer corps, but only the militia; that the militia in his State would, instead of being organized, be disorganized thereby; that they were already well officered and disciplined, and he should be sorry to see them therefore disturbed; that he hoped the learned gentleman would read and understand it before he troubled the House again with his undignified remarks: and that he hoped the State of Maryland might be permitted to furnish what part she wished of the troops required.

Mr. NICHOLAS said that the gentleman from Maryland was certainly correct; that as he himself understood the bill, it authorized the President to make his requisition of the Governors of States, as he in his discretion might think fit to apportion them among the States, and that volunteer corps might be received in lieu of said militia; and he apprehended that the volunteer corps would of course be in the respective States, instead of the militia so required of their States.

Mr. DAYTON said he hoped the amendment would obtain; that it would certainly be better so qualified, by limiting the requisition to particular States, otherwise the President might feel himself cramped, and limited by the law to make his requisitions of the States in proportion to the militia of said several States respectively, which he did not incline to do; therefore, he hoped the amendment might obtain.

Mr. WRIGHT said, that he understood the bill as correctly as the gentleman introducing it did, seems now to be ascertained, by the observations of the honorable gentleman from Virginia. (Mr. NICHOLAS.) and that the sagacious gentleman from Connecticut, (Mr. HILLHOUSE.) was himself mistaken; who wishes Maryland to be gratified by furnishing such portion of the requisition as she chooses. Sir, Maryland wishes no distinction in the distribution, nor, sir, will she ever ask to be be excused from contributing her quota of blood or treasure in the defence of her violated rights; nor will she ever shrink from duty. But the honorable gentleman from Connecticut wishes to excuse his State; and says that taking any part of the requisition from Connecticut will, instead of organizing, disorganize their militia. He presumed if that would be the effect on Connecticut, it would have the like effect on other States, and he did not know why that State should be excused; he, for his part, should not excuse her. The gentleman, sir, has several times indulged himself with carping at observations with a degree of pointed asperity which I cannot submit to. To be knocked down by the thunder of Jupiter or the arm of Mars I should not regard, but against being hacked down with a dull tomahawk, even by a son of Alknomak, every manly feeling of my heart revolts at.

The amendment obtained, and the bill was ordered to a third reading, as amended.

MONDAY, February 28.

Mr. TRACY, from the committee to whom was referred, on the 2d instant, the bill, entitled "An act for the relief of William Ray and John Follawell," reported it without amendment.

Mr. BALDWIN, from the committee to whom was referred, on the 25th instant, the bill, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for militia services, and for the Society of the United Brethren for propagating the Gospel among the Heathen, and for other purposes," reported amendments; which were read.

Mr. WRIGHT, from the committee to whom was referred, on the 26th instant, the bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of St. Mary's; to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a Surveyor at Nanjemoy," reported amendments, which were read.

Mr. WRIGHT, from the committee to whom was referred, on the 26th instant, the bill, entitled "An act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia," reported it without amendment.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 26th instant, the bill, entitled "An act concerning the salt springs on the waters of the Wabash," reported amendments; which were read.

Mr. BRADLEY, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary War," reported an amendment; which was not adopted.

Ordered, That this bill do pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act in addition to the act, entitled 'An act regulating the grants of land appropriated for the refugess from the British provinces of Canada and Nova Scotia;" and

Ordered, That it be referred to Messrs. TRACY, BALDWIN, and ROSS, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia;" a bill, entitled "An act for the relief of Joshua Harvey and others;" a bill, entitled "An act for the relief of Paul Coulon;" and a bill, entitled "An act for reducing the marine corps of the United States;" in which they desire the concurrence of the Senate.

The four bills last mentioned were read, and ordered to the second reading.

On motion, it was agreed, by unanimous consent, to dispense with the rule, and that the bill, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia," be now read the second time.

Ordered, That it be referred to Messrs. WRIGHT, BRADLEY, and SUMTER, to consider and report thereon.

Mr. JACKSON, from the committee to whom was referred, on the 26th instant, the bill, entitled "An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee," reported amendments; which were read, and ordered to lie for consideration.

The bill directing a detachment from the militia of the United States and for erecting certain arsenals, was read the third time, and having been further amended, and the blanks filled.

Resolved, That it pass, that it be engrossed, and that the title thereof be "An act directing a detachment from the militia of the United States, and for erecting certain arsenals."

The bill, entitled "An act in addition to the act, entitled 'An act concerning the registering and recording of ships and vessels of the United States;" and to the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time.

Resolved, That this bill pass with an amendment.

The bill, entitled "An act supplementary to the act, entitled 'An act providing passports for the ships and vessels of the United States;" was read the third time and passed.

The bill, entitled "An act making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three," was read the third time and passed.

The bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and three," was read the third time and further amended.

Resolved, That this bill pass with amendments.

The bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," was read the third time, and further amended.

Resolved, That this bill pass with amendments.

The bill, entitled "An act in addition to, and in modification of, the propositions contained in the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," was read the third time.

Ordered, That it lie until to-morrow.

The bill, entitled "An act for incorporating an insurance company in the City of Washington," was read the third time; and, on the question, Will the Senate concur in the final passage of this bill, as amended? it was determined in the negative—yeas 10, nays 12, as follows:

YEAS—Messrs. Anderson, T. Foster, Howard, Morris, Nicholas, Ross, Tracy, Wells, White, and Wright.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Cocke, Ellery, Jackson, Logan, S. T. Mason, Olcott, Plumer, Stone, and Sumter.

So the bill was lost.

The bill, entitled "An act for the relief of Moses White," was read the third time and passed.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Samuel Corp;" and, on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

The Senate resumed the second reading of the bill, entitled "An act for the relief of William Ray and John Follawell;" and, on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

Mr. ANDERSON, from the committee to whom was referred, on the 25th instant, the bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office," reported it without amendment.

The bill, entitled "An act, in addition to an act, entitled 'An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States," was read the third time and passed.

TUESDAY, March 1.

Mr. TRACY, from the committee to whom was yesterday referred the bill, entitled "An act in addition to the act, entitled 'An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia," reported it without amendment.

Ordered, That it pass to a third reading.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 26th of February last, the bill to amend the act, entitled "An act concerning the District of Columbia;' and also the act supplementary thereto, entitled 'An act concerning the District of Columbia," reported it without amendment.

Ordered, That it pass to a third reading.

Mr. WRIGHT, from the committee to whom was yesterday referred the bill, entitled "An act more effectually to provide for the organization of the Militia of the District of Columbia," reported it without amendment.

Ordered, That it pass to a third reading.

A message from the House of Representatives informed the Senate that they have passed a bill,

entitled "An act concerning the City of Washington;" and a bill, entitled "An act for settling sundry claims to public lands of the United States south of the State of Tennessee;" in which bills they desire the concurrence of the Senate.

The two bills last brought up for concurrence were read, and ordered to the second reading.

The VICE PRESIDENT laid before the Senate the credentials of ISRAEL SMITH, elected a Senator of the United States for the State of Vermont, for six years, commencing on the fourth day of March, 1803; and they were read and ordered to lie on file.

The bill, entitled "An act to reduce the Marine Corps of the United States," was read the second time, and referred to Messrs. BRADLEY, TRACY, and LOGAN, to consider and report thereon.

The bill entitled "An act for the relief of Paul Coulon," was read the second time, and referred to Messrs. TRACY, ANDERSON, and OLCOTT, to consider and report thereon.

The bill, entitled "An act for the relief of Joshua Harvey and others," was read the second time, and referred to Messrs. WRIGHT, BRADLEY, and ANDERSON, to consider and report thereon.

Mr. NICHOLAS, from the committee to whom was referred "An act in addition to an act, entitled 'An act to amend the Judicial system of the United States," reported it without amendment.

Ordered, That it pass to a third reading.

Mr. T. FOSTER, from the committee to whom was referred the bill, entitled "An act for erecting a light-house at the entrance of Penobscot bay, or any other place, in its vicinity, that may be deemed preferable by the Secretary of the Treasury," reported the same without amendment.

Ordered, That it pass to a third reading.

Ordered, That the committee on the petition of Cloe Strong be discharged.

The bill, entitled "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read a third time and passed as amended.

The bill, entitled "An act in addition to, and in modification of, the proposition contained in the act, entitled "An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," was read the third time, and passed.

The bill, entitled "An act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia," was considered, and passed to a third reading.

The consideration of the bill, entitled "An act to amend the acts providing for the sale of the lands of the United States in the Territory Northwest of the river Ohio, and above the mouth of Kentucky river," was resumed. And on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

The amendments to the bill, entitled "An act in addition to an act, entitled 'An addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,' and for other purposes," were considered; and it was agreed that the bill pass to a third reading.

The bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office," was considered, and passed to a third reading.

The amendments to the bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of St. Mary's; to authorize the establishment of a new collection district on Lake Ontario; and the appointment of a surveyor at Nanjemoy, were considered and adopted; and the bill passed to a third reading as amended.

The amendments to the bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," were considered and agreed to.

Ordered, That this bill pass to a third reading as amended.

The amendments to the bill, entitled "An act concerning the salt springs on the waters of the Wabash river," were considered and agreed to.

Ordered, That this bill pass to a third reading as amended.

Ordered, That the bill, entitled "An act more effectually to provide for the organization of the Militia of the District of Columbia," pass to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick;" in which they desire the concurrence of the Senate. The bill last mentioned was read, and ordered to a second reading.

Ordered, That the petition of Aaron Man be referred to the Secretary for the Department of Treasury, to consider and report thereon at the next session of Congress.

WEDNESDAY, March 2.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be 18, of which 10 make a majority:

Mr. Bradley had 13, Mr. Morris 3, Mr. Hillhouse 1, and Mr. Logan 1.

Consequently, the Hon. STEPHEN R. BRADLEY was elected President of the Senate *pro tempore*.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, in the absence of the Vice President, they have elected the Hon. STEPHEN R. BRADLEY President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

The PRESIDENT communicated the credentials of JAMES HILLHOUSE, elected by the State of Connecticut a Senator of the United States for six years, commencing with the fourth day of March current; and they were read and ordered to lie on file.

Mr. TRACY, to whom was referred, on the first instant, the bill, entitled "An act for reducing the Marine Corps of the United States," reported it without amendment.

Ordered, That the committee to whom was referred the bill, entitled "An act for the relief of Paul Coulon," be discharged; and that the bill be postponed to the fourth day of March next.

The bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick," was read the second time, and referred to Messrs. TRACY, JACKSON, and MORRIS, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to allow a drawback of duty on sugar refined within the United States;" also, a bill, entitled "An act to prolong the continuation of the Mint at Philadelphia;" in which bills they desire the concurrence of the Senate.

The bills last mentioned were read, and ordered to a second reading.

On motion, it was agreed, by unanimous consent, to dispense with the rule, and that the bill, entitled "An act to prolong the continuation of the Mint at Philadelphia," be now read a second time.

Ordered, That it pass to a third reading.

The bill, entitled "An act concerning the City of Washington," was read the second time, and referred to Messrs. TRACY, LOGAN, and CLINTON, to consider and report thereon.

The bill, entitled "An act in addition to the act, entitled "An act to amend the Judicial system of the United States," was read the third time, and amended.

Resolved, That this bill pass as amended.

The bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of Saint Mary's; to authorize the establishment of a new collection district on Lake Ontario; and the appointment of a surveyor at Nanjemoy;" was read the third time.

Resolved, That this bill pass as amended.

The bill to amend the act, entitled "An act concerning the District of Columbia;" and, also, the act supplementary thereto, entitled 'An act concerning the District of Columbia," was read the third time.

Ordered, That the further consideration thereof be postponed until the fourth day of March next.

The Senate resumed the second reading of the bill, entitled "An act for reducing the Marine Corps of the United States;" and, on motion to postpone this bill to the fourth day of March next, it was determined in the affirmative—yeas 14, nays 10, as follows:

YEAS—Messrs. Anderson, Bradley, Hillhouse, Howard, Jackson, Logan, Morris, Olcott, Plumer, Ross, Stone, Tracy, Wells, and White.

NAYS—Messrs. Baldwin, Breckenridge, Clinton, Cocke, Ellery, T. Foster, S. T. Mason, Nicholas, Sumter and Wright.

The bill, entitled "An act, in addition to the act, entitled 'An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia," was read the third time, and passed.

Mr. WRIGHT, from the committee to whom was referred the bill, entitled "An act for the relief of Joshua Harvey, and others," reported it without amendment.

Ordered, That it pass to a third reading.

The bill, entitled "An act concerning the insurance on buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia," was read the third time, and passed.

The bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the third time and further amended.

Resolved, That this bill pass with amendments.

The bill, entitled "An act concerning the salt springs on the waters of the Wabash river," was read the third time.

Resolved, That this bill pass with amendments.

The bill, entitled "An act to revive and continue in force an act, in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,' and for other purposes," was read the third time.

Resolved, That this bill pass with amendments.

The bill, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia," was read the third time.

On motion that the further consideration thereof be postponed, it passed in the negative—yeas 8, nays 13, as follows:

YEAS—Messrs. Hillhouse, Howard, Morris, Olcott, Plumer, Stone, Tracy, and Wells.

NAYS—Messrs. Anderson, Bradley, Breckenridge, Clinton, Cocke, Ellery, Jackson, Logan, S. T. Mason, Nicholas, Sumter, White, and Wright.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 16, nays 7, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, Ellery, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, White, and Wright.

NAYS—Messrs. Hillhouse, Howard, Olcott, Plumer, Ross, Tracy, and Wells.

So it was resolved that this bill pass.

The bill, entitled "An act for erecting a light-house at the entrance of Penobscot bay or any other place in its vicinity that may be deemed

preferable by the Secretary of the Treasury," was read the third time and passed.

The bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office," was read the third time.

Ordered, That it lie for consideration.

THURSDAY, March 3.

The PRESIDENT communicated a letter from the Attorney General, stating that, in obedience to the order of April 15th, 1802, he had applied for the documents necessary to enable him to report; which, although not yet obtained, his attention and inquiries for the accomplishment of the object should be continued with such means as he was possessed of, or should be placed within his reach.

The bill, entitled "An act to prolong the continuation of the Mint at Philadelphia," was read the third time and passed.

The Senate resumed the consideration of the amendment of the House of Representatives to their amendment to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three:" whereupon,

Resolved, That the Senate do insist on their said amendment, desire a conference thereon, and that Messrs. JACKSON and ROSS be the managers on their part.

A message from the House of Representatives informed the Senate that they disagree to the amendments of the Senate to the bill, entitled "An act making provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war."

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act making provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war."

Resolved, That they do recede from their said amendment.

A message was received from the House of Representatives by Mr. NICHOLSON and Mr. RANDOLPH, two of the members of said House, in the words following:

"*Mr. President:* We are commanded, in the name of the House of Representatives and of all the people of the United States, to impeach John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors, and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same. We are further commanded to demand that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment."

The bill, entitled "An act for the relief of Joshua Harvey and others," was read the third time; and on the question, Shall this bill pass? it was determined in the affirmative—yeas 12, nays 6, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, T. Foster, Hillhouse, Howard, Olcott, Plumer, Ross, Tracy, Wells, and White.

NAYS—Messrs. Baldwin, Bradley, Clinton, Logan, Nicholas, and Stone.

Whereupon *Resolved*, That this bill pass.

The bill, entitled "An act to allow a drawback of the duty on sugar refined within the United States," was read the second time, and referred to Messrs. HOWARD, WELLS, and ROSS, to consider and report thereon.

Mr. TRACY, from the committee to whom was referred, on the 2d instant, the bill, entitled "An act concerning the city of Washington," reported amendments, which were read and agreed to.

By unanimous consent, the bill was then read the third time and passed.

The Senate resumed the third reading of the bill, entitled "An act authorizing the transfer of the duties of supervisor to any other office;" and

Resolved, That this bill pass.

Mr. TRACY, from the committee to whom was referred, on the 2d instant, the bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine Henrick," reported it without amendment.

Ordered, That the further consideration of this bill be postponed until the 4th of March.

The Senate took into consideration the bill, entitled "An act for settling sundry claims to public lands of the United States south of the State of Tennessee." And, on the question, Shall this bill be now read the second time? it passed in the negative. So the bill was lost.

Ordered, That the message received this day from the House of Representatives, respecting the impeachment of John Pickering, judge of the district court, be referred to Messrs. TRACY, CLINTON, and NICHOLAS, to consider and report thereon.

On motion, the Senate adjourned to six o'clock this evening.

THURSDAY EVENING, SIX O'CLOCK.

Mr. TRACY, from the committee appointed on the subject, made the following report, which was adopted, and the House of Representatives notified accordingly:

"Whereas the House of Representatives have this day, by two of their members, Messrs. Nicholson and Randolph, at the bar of the Senate, impeached John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors, and have acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same: and have likewise demanded that the Senate take order for the appearance of the said John Pickering to answer to the said impeachment: Therefore,

"*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives."

Resolved, That the Secretary of the Senate notify the House of Representatives of this resolution.

Mr. HOWARD, from the committee to whom was referred the bill, entitled "An act to allow a drawback of duty on sugar refined within the United States," reported it without amendment.

On the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

A motion was made that it be

Resolved, That the Senate proceed to the election of a Secretary, and the other officers of the Senate, at the commencement of the next session.

On which a motion was made to postpone this resolution until the 4th day of March next; and the question of postponement was determined in the affirmative—yeas 15, nays 7, as follows:

YEAS—Messrs. Baldwin, Bradley, Cocke, T. Foster, Hillhouse, Howard, Jackson, Morris, Olcott, Plumer, Stone, Sumter, Tracy, Wells, and White.

NAYS—Messrs. Breckenridge, Clinton, Ellery, Logan, S. T. Mason, Nicholas, and Wright.

Ordered, That Messrs. WRIGHT and COCKE be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

A message from the House of Representatives informed the Senate that the House of Representatives concur in the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States, and notify him of the proposed adjournment of the two Houses of Congress, and have appointed a committee on their part.

Ordered, That the Secretary of the Senate pay to Doctor GANTT, one of the Chaplains to Congress, for the present session, one hundred dollars, out of the contingent fund, in addition to the allowance to which he is by law entitled.

Mr. WRIGHT reported, from the joint committee, that they had waited on the President of the United States, and that he informed the committee that he had no further communications to make to the two Houses of Congress.

In Executive session, the Senate resumed the consideration of the Convention between the United States and His Catholic Majesty, concluded at Madrid, August 11, 1802.

And, on the question, Will the Senate consent and advise to the ratification thereof? it was determined in the negative—yeas 13, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Stone, and Sumter.

NAYS—Messrs. Hillhouse, Howard, Morris, Olcott, Plumer, Tracy, Wells, White, and Wright.

So the question was lost, two-thirds of the Senators present not consenting thereto.

On motion, it was agreed to reconsider the last vote; and on the question, Shall the consideration of this convention be postponed? it passed in the affirmative—yeas 14, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Clinton, Cocke, T. Foster, Jackson, Logan, S. T. Mason, Nicholas, Stone, Sumter, and Wright.

NAYS—Messrs. Hillhouse, Howard, Morris, Olcott, Plumer, Tracy, Wells, and White.

So it was *Resolved*, That the consideration of this convention be postponed.

Ordered, That the Secretary lay this resolution before the President of the United States.

On motion, the Senate adjourned to the first Monday in November next.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE SECOND SESSION OF THE SEVENTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, DECEMBER 6, 1802.

MONDAY, December 6, 1802.

This being the day appointed by the Constitution for the annual meeting of Congress, the following members of the House of Representatives appeared and took their seats, to wit:

From New Hampshire—Abiel Foster and Samuel Tenney.

From Massachusetts—John Bacon, Seth Hastings, Nathan Read, Josiah Smith, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

From Rhode Island—Joseph Stanton, jr., and Thomas Tillinghast.

From Connecticut—John Davenport, Calvin Goddard, Elias Perkins, John Cotton Smith, and Benjamin Tallmadge.

From New York—Samuel L. Mitchill, John Smith, David Thomas, John P. Van Ness, and Killian K. Van Rensselaer.

From New Jersey—John Condit, Ebenezer Elmer, James Mott, and Henry Southard.

From Pennsylvania—Robert Brown, Andrew Gregg, Joseph Heister, Joseph Hemphill, William Hoge, Michael Leib, John Smilie, John Stewart, Isaac Van Horn, and Henry Woods.

From Maryland—John Dennis, Joseph H. Nicholson, Thomas Plater, and Samuel Smith.

From Virginia—Thomas Claiborne, John Clopton, John Dawson, David Holmes, George Jackson, Anthony New, John Smith, and Philip R. Thompson.

From North Carolina—Nathaniel Macon, *Speaker*, Richard Stanford, and John Stanley.

From Tennessee—William Dickson.

From the Northwestern Territory—Paul Fearing.

Several new members, to wit: SAMUEL HUNT, from New Hampshire, returned to serve as a member of this House, in the room of Joseph Peirce, who has resigned his seat; SAMUEL THATCHER, from Massachusetts, returned to serve as a member of this House, in the room of Silas Lee, who has resigned; and DAVID MERIWETHER, from Georgia, returned to serve as a member of this House, in the room of Benjamin Taliaferro, who has also resigned; appeared, produced their credentials, and took their seats in the House.

A new delegate, from the Mississippi Territory, to wit: THOMAS M. GREEN, returned to serve in this House, in the room of Narsworthy Hunter, deceased, appeared, produced his credentials, and took his seat in the House.

But a quorum of the whole number of qualified members not being present, the House adjourned until to-morrow morning, eleven o'clock.

TUESDAY, December 7.

Another new member, to wit: THOMAS WYNN, from North Carolina, returned to serve as a member of this House, for the said State, in the room of Charles Johnson, deceased, appeared, produced his credentials, and took his seat in the House.

Several other members, viz: from New Hampshire, GEORGE B. UPHAM; from Massachusetts, PHANUEL BISHOP, MANASSEH CUTLER, and WILLIAM SHEPARD; from Connecticut, SAMUEL W. DANA and ROGER GRISWOLD; from Pennsylvania, THOMAS BOUDE; from Virginia, THOMAS NEWTON, jr., and JOHN TRIGG; from North Carolina, JAMES HOLLAND; and from South Carolina, THOMAS MOORE; appeared, and took their seats in the House.

And a quorum, consisting of a majority of the whole number of qualified members, being present, the oath to support the Constitution of the United States, as prescribed by the act, entitled "An act to regulate the time and manner of administering certain oaths," was administered by Mr. SPEAKER to the new members.

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and are ready to proceed to business, and that the Clerk of this House do go with the said message.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members respectively shall choose, to be delivered at their lodgings.

WEDNESDAY, December 8.

Two other members, to wit: from New Jersey, WILLIAM HELMS, and from North Carolina, WILLIS ALSTON, appeared and took their seats in the House.

The petitions of Richard Willson, and of Nathaniel Seager, of the city and county of Washington, in the District of Columbia, now confined for debt in the jail of the said county, were presented to the House and read, respectively praying that a special act of Congress may be passed to liberate the petitioners from their confinement; or that such other relief may be afforded them as to the wisdom of Congress shall seem meet.

Ordered, That the said petitions be referred to Mr. NICHOLSON, Mr. GRISWOLD, Mr. THOMPSON, Mr. HEMPHILL, Mr. THOMAS, Mr. TENNEY, and Mr. CONDIT, with instruction that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House; and also to inquire, and report by bill or otherwise, into the expediency of making a general provision for the relief of insolvent debtors within the District of Columbia.

The following committees were appointed, in pursuance of the standing rules and orders of the House, viz:

Committee of Elections—Mr. BACON, Mr. TENNEY, Mr. CONDIT, Mr. DENNIS, Mr. ELMER, Mr. STANLEY, and Mr. NEW.

Committee of Revisal and Unfinished Business—Mr. DAVENPORT, Mr. ALSTON, and Mr. DAWSON.

Committee of Claims—Mr. JOHN COTTON SMITH, Mr. GREGG, Mr. HOLMES, Mr. PLATER, Mr. JOHN SMITH, of New York, Mr. MOORE, and Mr. CUTLER.

Committee of Commerce and Manufactures—Mr. SAMUEL SMITH, Mr. DANA, Mr. MITCHILL, Mr. NEWTON, Mr. WYNN, Mr. HUNT, and Mr. LEIB.

Mr. S. SMITH moved that a Committee of Ways and Means, consisting of *nine* members, should be appointed; but as the number of *nine* involved a departure from a rule confining that committee to *seven*, the motion was ordered to remain for consideration until to-morrow.

THURSDAY, December 9.

Two other members, to wit: WALTER BOWIE, from Maryland, and THOMAS T. DAVIS, from Kentucky, appeared and took their seats in the House.

On a motion made and seconded that the House do come to the following resolution:

"*Resolved*, That two Chaplains, of different denominations, be appointed to Congress, for the present session, one by each House, to interchange weekly:"

Ordered, That the consideration of the said resolution be postponed until Monday next.

FRIDAY, December 10.

Two other members, to wit: WILLIAM EUSTIS, from Massachusetts, and JOHN A. HANNA, from Pennsylvania, appeared and took their seats in the House.

A representation and memorial of Gilbert Combs, of the State of Virginia, was presented to the House and read, stating that he has discovered a scheme or theory for ascertaining the longitude, which he is desirous of confirming by astronomical observations in different and distant quarters of the globe; and praying as well the patronage of Congress therein as the pecuniary aid of the Government of the United States, under such restrictions as the President of the United States may be authorized to impose.

Ordered, That the said representation and memorial be referred to Mr. THOMPSON, Mr. MITCHILL, and Mr. TALLMADGE; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Resolved, That the resolution of this House of the tenth of December, one thousand eight hundred and one, authorizing Thomas Claxton to employ one additional assistant, two servants, and two horses, be, and the same is hereby, continued in force during the present session.

SATURDAY, December 11.

Another member, to wit: ARCHIBALD HENDERSON, from North Carolina, appeared and took his seat in the House.

A petition of James Dohertie and others, citizens of the Mississippi Territory, was presented to the House and read, praying that a certain tract of vacant land in the said Territory may be granted to Amos Hubbard and Ebenezer Smith, as tenants in common, for the reasons therein specified.

Ordered, That the said petition be referred to Mr. DAVIS, Mr. GREEN, and Mr. DENNIS; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

After the reception and reference of several petitions, the House adjourned.

MONDAY, December 13.

Several other members, to wit: from Massachusetts, RICHARD CUTTS; from New York, THOMAS MORRIS; from Virginia, ABRAM TRIGG; and from South Carolina, THOMAS LOWNDES; appeared and took their seats in the House.

Mr. DAVENPORT, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a report, in part; which was read, and ordered to lie on the table.

TUESDAY, December 14.

Several other members, to wit: from Massachusetts, EBENEZER MATTOON; from New York, THEODORUS BAILEY; from Virginia, JOHN RANDOLPH, Jr. and JOHN TALIAFERRO, Jr.; and from South Carolina, WILLIAM BUTLER; appeared and took their seats in the House.

A petition of William Murray and others, practitioners of law in the Mississippi Territory, was presented to the House and read, stating that extraordinary pains have been taken to circulate a petition in the said Territory expressive of a number of requests, and among others "that the offices of Territorial judges of that government be abolished;" and praying that the said offices may not be discontinued, and that the present judges may hold the same during good behaviour.

Also, the petitions of sundry citizens of the Mississippi Territory were presented to the House and read, respectively praying that the land office to be opened for the said Territory may be held within the bounds of the same, and that the actual settlers on the vacant lands of the United States may have a pre-emption right secured to them; that the right of suffrage may be extended to every male person of full age, being a citizen of the United States, and who has had his residence within the said Territory for the last six months preceding the election; that all officers of the Territorial government be appointed by the Governor of the Territory, by and with the advice and consent of the Council; that the offices of the Territorial judges be abolished; and that the appointment of all judicial officers of the said Territory be made by the Governor, by and with the advice and consent of the Council; and that they shall be removable only by impeachment; and also, that the members of the Legislative Council be henceforth chosen at the same time, in the same manner, and for the same term, as the members of the House of Representatives of the said Territory.

Ordered, That the said petitions be referred to the committee appointed on the eleventh instant, to whom was referred the petition of James Dohertie and others, citizens of the Mississippi Territory; that they do examine the matter thereof and report the same, with their opinion thereupon, to the House; and that Messrs. LOWNDES and DICKSON be added to the said committee.

Ordered, That a bill for the relief of Henry Messonier, the memorial of the said Henry Messonier, with the vouchers accompanying the same, presented the third day of February, and a report of the Committee of Commerce and Manufactures thereon, made the eighth of March last, be referred to the Committee of Commerce and Manufactures.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business; and that, in the absence of the VICE PRESIDENT of the United States, the Senate have elected the honorable STEPHEN R. BRADLEY their President *pro tempore*.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the PRESIDENT of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

The House proceeded to consider the said message of the Senate: Whereupon,

Resolved, That this House do agree to the same; and that Messrs. DAWSON, LOWNDES, and VAN NESS, be appointed a committee, on the part of this House, for the purpose expressed therein.

The House proceeded to consider the motion of the ninth instant, for the appointment of Chaplains; and the motion was again read, in the words following, to wit:

Resolved, That two Chaplains of different denominations, be appointed to Congress, for the present session, one by each House, to interchange weekly.

The question was taken that the House do agree to the same, and resolved in the affirmative.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have power to report by bill, or otherwise.

Ordered, That Messrs. SOUTHARD, CLOPTON, BOUDE, FOSTER, HASTINGS, MERIWETHER, and HENDERSON, be appointed a committee pursuant to the said resolution.

Resolved, That the committee appointed on the subject of post offices and post roads, be instructed to inquire into the expediency of making provision by law to prevent postmasters becoming contractors for carrying the mail.

Mr. DAWSON, from the committee appointed on the part of this House, jointly, with the committee on the part of the Senate, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them, reported that the committee had performed that service; and that the President signified to them, that he would make a communication to this House to-morrow, by way of message.

Ordered, That a committee of Ways and Means be appointed, pursuant to the standing rules and orders of the House.

And a committee was appointed, of Messrs. RANDOLPH, GRISWOLD, SMILIE, READ, NICHOLSON, VAN RENSSELAER, and HOLLAND.

WEDNESDAY, December 15.

Another member, to wit: EDWIN GRAY, from Virginia, appeared, and took his seat in the House.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House for the appointment of Chaplains to Congress for the present session; and have appointed the Rev. Dr. GANTT, on their part.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend WILLIAM PARKINSON.

A Message was received from the President of the United States, by Mr. Lewis, his Secretary, as follows:

Mr. Speaker: I am directed by the President of the United States to hand you a communication, in writing, from the President to the two Houses of Congress.

And he delivered in the same, together with the accompanying documents. The said communication was read. [For which, see proceedings in the Senate of this date.]

Ordered, That the said communication, with the accompanying documents, be referred to the Committee of the whole House on the state of the Union.

Thursday, December 16.

Two other members, to wit: Lucas Elmendorf, from New York, and Daniel Heister, from Maryland, appeared, and took their seats in the House.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, accompanied with estimates of the sums necessary to be appropriated for the service of the year one thousand eight hundred and three; also, a statement of the receipts and expenditures at the Treasury of the United States, for one year, preceding the first day of October, one thousand eight hundred and two; which were read, and ordered to be referred to the Committee of Ways and Means.

Ordered, That the petition of Memucan Hunt, and others, addressed to the General Assembly of the State of North Carolina; also, sundry resolutions of the said Assembly, respecting a claim of the petitioners for the value of certain lands in the State of Tennessee, held under grants from the State of North Carolina, prior to the cession of the said lands to the United States, presented to the House on the nineteenth of January; together with the report of a select committee thereon, made the twenty-fourth of March last; be referred to a Committee of the whole House on the first Monday of January next.

Friday, December 17.

Two other members, to wit: from South Carolina, Benjamin Huger, and John Rutledge, appeared, and took their seats in the House.

The House resolved itself into a Committee of the whole House on the state of the Union; and, after some time spent therein, the Committee rose and reported several resolutions thereupon, which were read, as follows:

1. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States as relates to the discriminating and countervailing duties, and the act of the British Parliament on that subject, ought to be referred to the Committee of Commerce and Manufactures.

2. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States as relates to our finances, ought to be referred to the Committee of Ways and Means.

3. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States, as relates to our concerns with the Indian tribes, and the establishment of a new settlement, ought to be referred to a Select Committee.

4. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States, as relates to our Navy Yards, and the building of docks, ought to be referred to a Select Commitee.

5. *Resolved*, as the opinion of this committee, That so much of the President's Message as relates to providing for the return of American seamen discharged in foreign ports, and left abroad, be referred to a Select Committee.

6. *Resolved*, as the opinion of this committee, That so much of the President's Message as refers to the warfare with Tripoli, and to the relation with the other Barbary Powers, be referred to a Select Committee.

7. *Resolved*, That so much of the President's Message as relates to the Militia Institution of the United States, be referred to a Select Committee.

8. *Resolved*, as the opinion of this committee, That so much of the President's Message as relates to the fostering of the fisheries of the United States, be referred to a Select Committee.

The House proceeded to consider the said resolutions at the Clerk's table; and the same being again read, were agreed to by the House.

Ordered, That Mr. Dawson, Mr. Thomas Morris, Mr. Hoge, Mr. Hastings, and Mr. Meriwether, be appointed a committee, pursuant to the third resolution.

Ordered, That Mr. Mitchill, Mr. Rutledge, Mr. Hanna, Mr. Wadsworth, and Mr. Mott, be appointed a committee, pursuant to the fourth resolution.

Ordered, That Mr. Samuel Smith, Mr. Goddard, Mr. Josiah Smith, Mr. Woods, and Mr. Gray, be appointed a committee, pursuant to the fifth resolution.

Ordered, That Mr. Eustis, Mr. Perkins, Mr. Elmendorf, Mr. Tillinghast, and Mr. Taliaferro, be appointed a committee, pursuant to the sixth resolution.

Ordered, That Mr. Varnum, Mr. Upham, Mr. John Smith, of Virginia, Mr. Helms, Mr. Brown, Mr. Butler, Mr. Daniel Heister, Mr. Stanton, and Mr. Stanford, be appointed a committee, pursuant to the seventh resolution.

Ordered, That Mr. Huger, Mr. Bishop, Mr. Joseph Heister, Mr. John Trigg, and Mr. Van Ness, be appointed a committee, pursuant to the eighth resolution.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States;" the other entitled "An act supplementary to the "Act establishing a Mint, and regulating the coins of the United States," as relates to the establishment of a Mint, ought to be repealed.

Ordered, That the said motion be referred to a Committee of the Whole on Monday next.

Mr. Randolph observed that there had been a recent occurrence, in which every member of the House was interested, though every member might not, perhaps, possess competent information respecting it. He said it would be useless in him to impress the magnitude of a subject that related to the free navigation of the Mississippi, which materially affected a district of country growing every day in wealth and importance, and which it behooved the whole United States to cherish and protect. He moved, therefore, the following resolution:

"*Resolved*, That the President of the United States be requested to cause to be laid before this House such papers as are in the possession of the Department of State, as relate to the violation on the part of Spain, of the Treaty of Friendship, Limits, and Navigation, between the United States of America and the King of Spain."

This resolution was agreed to unanimously, and Messrs. Randolph and Huger appointed the committee.

Mr. Randolph moved the following resolution:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire whether any and what alterations are necessary in the laws imposing duties on tonnage, and on goods, wares, and merchandise, imported into the United States.

Ordered to lie on the table.

Monday, December 20.

Several other members to wit: from Vermont, Israel Smith; and from Virginia, Richard Brent, and Matthew Clay; appeared, and took their seats in the House.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report, and sundry documents, marked A, B, and C, prepared in obedience to the directions of "An act supplementary to the act, entitled 'An act to establish the Treasury Department;" which were read, and ordered to be referred to the Committee of Ways and Means.

The Speaker laid before the House a letter from the Secretary of the Navy, enclosing a report of the Commissioners of the Fund of Navy Pensions; which were read, and ordered to lie on the table.

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the propriety of providing by law for the payment of debentures which have been issued for drawback of duties on goods, wares, and merchandise, exported to New Orleans; and to report by bill, or otherwise.

Mr. Nicholson, from the committee to whom were referred, on the eighth instant, the petition of Richard Wilson and of Nathaniel Seager, reported a bill for the relief of insolvent debtors within the District of Columbia; which was read twice, and committed to a Committee of the Whole House on Thursday next.

Ordered, That a bill supplementary to an act, entitled 'An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States," passed the second day of March, one thousand seven hundred and ninety-nine, which was presented to this House at the last session, be referred to the committee appointed on so much of the President's Message, of the fifteenth instant, as relates to the militia institution of the United States.

Resolved, That the President of the United States be requested to direct the proper officer to lay before this House a statement of the militia, according to the returns last received from the respective States.

Ordered, That Mr. Mattoon and Mr. Jackson be appointed a committee to present the foregoing resolution to the President of the United States.

PETITION OF SAMUEL CORP.

The House resolved itself into a Committee of the Whole, Mr. Varnum in the Chair, on the report on the petition of Samuel Corp.

The following is the report of the Committee of Commerce and Manufactures:

"That it appears to the committee that the petitioner was interested in a ship which sailed for London, early in the year 1799, for the purpose of purchasing a cargo proper for the New Orleans market. That the ship arrived in the month of August following at New York, having on board a cargo agreeably to order, none of which was intended to be landed within the United States. That the captain's manifest which he presented to the collector, declared his cargo for exportation; but not having made the same declaration on the copy of the manifest which he had delivered to the first boarding officer, the owners were compelled to enter the cargo, and give bond for the duties on the same. That no part of the cargo was landed except some bird shot. It appears also, that the collector granted a clearance for New Orleans, and issued debentures of drawback on the cargo; but on application for payment, the petitioner was informed that the law of March 2d, 1799, precluded him from being paid: The petitioner, therefore, prays relief from Congress.

"This case having been fully understood at the last session, the committee consider it unnecessary to go into any reasoning thereon. They submit the following resolution:

"*Resolved*, That the prayer of the petitioner ought to be granted, and that the Committee of Commerce and Manufactures be directed to bring in a bill conformably thereto."

Mr. S. Smith advocated the report.

Mr. Griswold, though inclined to allow the prayer of the petition, thought a general provision ought to be made for all similar cases. With this view, it was moved that the Committee rise.

Carried; when the Committee was discharged, and the petition of Samuel Corp, and the report thereon, were recommitted to the Committee of Commerce and Manufactures, with instructions to inquire into the propriety of providing by law for the payment of debentures that have been issued for drawback of duty on goods, wares, and merchandise, exported to New Orleans.

Tuesday, December 21.

Another member, to wit: John Campbell, from Maryland, appeared, and took his seat in the House.

The Speaker laid before the House a letter from John Beckley, Clerk of this House, stating "that he has been applied to by several of the

members, under the order of the House for supplying them with newspapers, to direct that a number of any weekly papers for which they may subscribe, equivalent to the value and supply of a daily paper, may be furnished to them, in lieu of such daily paper; that he does not know that any such construction of the order of the House has ever been acted upon; and, as it will necessarily involve some additional expense to the public, he has not thought himself at liberty to incur it, without the express authority of the House."

Mr. CLAIBORNE, after passing an eulogium on the character and conduct of John Beckley, Esq., moved that the order of the House relative to newspapers be read. Agreed to.

Mr. GRISWOLD wished to know what had been the practice; whatever that was, it should be uniform; he had been informed, that it was the practice of last session, and he believed it had been that of former ones, to receive an equivalent number of copies, to the price of a daily paper.

The SPEAKER said that it had been usual, at all former sessions, within his recollection, to receive an equivalent to the price of a daily paper. He had given that construction to the rule.

The said letter was read, and ordered to lie on the table.

A memorial of the members of the First and Second Branches of the City Council of Washington, in the District of Columbia, was presented to the House and read, stating various matters relative to the police and government of the said city and its inhabitants; and praying that the propositions submitted by the memorialists may be adopted by Congress, in addition to, or modification of, the several regulations prescribed by the acts heretofore passed on that subject.

Ordered, That the said memorial be referred to Mr. VAN NESS, Mr. THOMPSON, Mr. PLATER, Mr CAMPBELL, and Mr. JACKSON; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A petition of sundry inhabitants of the County of Alexandria, in the District of Columbia, was presented to the House and read, praying that Congress will be pleased to pass a law, placing such persons, within the said County of Alexandria, as may choose to join a society heretofore incorporated by an act of the Legislature of the State of Virginia, by the name of "The Mutual Assurance Society against Fire on Buildings, of the State of Virginia," as well as those who are now members, on the same footing with citizens of the said State, that the benefits of the Society may be extended to such of the petitioners whose buildings are now exposed to destruction by fire, without hope of restitution.

Ordered, That the said petition be referred to Mr. BRENT, Mr. VAN HORN, and Mr. TALLMADGE; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, presented a bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. RANDOLPH moved that the House resolve itself into a Committee of the Whole on the subject of the Mint.

Mr. GRISWOLD said the House had not yet received the report of the Director of the Mint. He thought it better to wait till it was received, as they would then better understand the state of the Mint, and the expenses attending it. The report might be sent in within the course of a week.

Motion of Mr. RANDOLPH lost—ayes 25.

IMPORTATION OF FIRE-ARMS.

Mr. RUTLEDGE observed that the State of South Carolina had lately taken measures for a supply of arms for her militia. He thought that an object so great and desirable ought to be encouraged by the General Government, by exempting arms imported under such circumstances from duty. He therefore offered a resolution purporting that any State, importing pieces of ordnance, fire or side arms for their militia, should be exempted from the payment of duties.

Mr. RANDOLPH said the resolution proposed contained some important principles. Its adoption would affect the revenue in some degree; and would, in a still greater degree, affect home manufactures, especially those the most essential to the good of the community. It did appear to him, that if any manufacture required the aid of protecting duties, it was the manufacture of arms, in preference to all others. The resolution embraced not only ordnance, but fire-arms also. He was not prepared to say that a distinction ought not to be made between these two descriptions of arms. For these reasons he wished the resolution to lie on the table.

Mr. RUTLEDGE said he had no objection to its resting for a day or two; when, on motion of Mr. RANDOLPH, it was referred to a Committee of the Whole, and made the order of the day for Monday.

NEWSPAPERS FOR MEMBERS.

Mr. MITCHILL revived the subject of Mr. Beckley's letter by introducing the following resolution:

Resolved, That if any member of this House shall choose to take any newspaper published once, twice, or thrice a week, instead of a daily paper, he shall be furnished with as many of such papers as shall not exceed the price of a daily paper.

Mr. SMILIE did not know why so many papers were necessary—they were taken for their own use; why have five or six of the same kind? He did not think it right for the public to pay for papers to send away; he could form no construction of the rule that would warrant it.

Mr. DANA had always received an equivalent to three daily papers; it was the construction he had put upon the rule of the House, and he knew that other gentlemen had acted upon the same principle.

Mr. STANLEY opposed the motion of the gentleman from New York. (Mr. MITCHILL.) He should not have thought such an expression of the will of the House necessary, had it not been called for by the letter of the Clerk. Mr. S. said he was one of those alluded to by the gentleman from Connecticut, (Mr. GRISWOLD,) who having at the last and present sessions selected, on public account, papers not published daily, received a number equivalent to a daily paper. He believed this had been the case with every member of the House. If a different rule had been observed by any gentleman, he doubted not it would be declared. He was compelled to believe the printers' accounts had been settled, and their charges at the rate of daily papers allowed. He could not but express the surprise he felt at this application from the Clerk, who now called on the House to express their sense of a resolution, to which he (the Clerk) had so long and uniformly given his own construction.

Mr. RUTLEDGE had hoped that, after the explanation from the Speaker, the House would have been saved the trouble of this resolution offered by the gentleman from New York. (Mr. MITCHILL.) He considered the resolution, to furnish papers, not made for the sole use of the members; they were to be sent to their constituents, in order that those who live at a distance from presses may be informed of the proceedings in the National Councils. I cannot agree with the gentleman on my left, (Mr. SMILIE.) I think he must be mistaken in the object of that resolution. It has been the practice in Philadelphia, with respect to the Universal Gazette, to take as many of the weekly as were an equivalent to a daily paper. I cannot conceive the necessity of the Clerk's troubling the House, especially as the practice now in use has been sanctioned by himself. He could wish the gentleman from New York would withdraw his motion, as he thought it unnecessary; but if he would not, he should vote for it.

Mr. ELMER was opposed to the motion.

The question was taken on Mr. MITCHILL's resolution, and carried, 50 voting in the affirmative.

WEDNESDAY, December 22.

Another member, to wit: JOHN ARCHER, from Maryland, appeared, and took his seat.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

I now transmit a report from the Secretary of State, with the information requested in your resolutions of the seventeenth instant.

In making this communication, I deem it proper to observe, that I was led by the regard due to the rights and interests of the United States, and to the just sensibility of the portion of our fellow-citizens more immediately affected by the irregular proceeding at New Orleans, to lose not a moment in causing every step to be taken which the occasion claimed from me; being equally aware of the obligation to maintain, in all cases, the rights of the nation, and to employ, for that purpose, those just and honorable means which belong to the character of the United States.

DEC. 22, 1802. TH. JEFFERSON.

The said Message, and the papers referred to therein, were read, and ordered to lie on the table.

On motion, it was,

Resolved, That the Committee of Ways and Means be instructed to inquire whether any, and, if any, what, alterations or amendments are necessary to be made to the act, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States."

Mr. T. MORRIS submitted a resolution, instructing the Committee of Ways and Means to inquire whether any and what alterations are necessary in the act supplementary to the act laying a direct tax. He stated his object to be the postponement of the time of selling lands for the non-payment of taxes; the necessity of which arose from the confused manner in which the assessment had been made in a part of the State (New York) which he represented. Agreed to.

THE MINT.

Mr. RANDOLPH rose, in order to renew a motion which he had made yesterday, and on which—being called to the door when some objections were urged against it—he was surprised to find himself in a small minority. Understanding that the refusal to resolve itself into a Committee of the Whole on his motion for abolishing the Mint, was the effect of a desire on the part of the House to receive the report of the Director of that institution, for the past year, he would endeavor to show that the House were already in possession of competent information, and that it could not be affected by any communication which the head of that department might make. If this were a subject novel to the House, and of an undigested nature, he should readily acknowledge his motion to have been premature; nor would it, under those circumstances, have been submitted to the House. But, on examination, it would appear that the subject had been matured during the last session; that information of the most satisfactory nature had been received from the Director; and a bill actually passed the House. That information, if it were not in the recollection of every member of the House, was accessible to all of them. It stated explicitly that the machinery would not last, without repair, longer than another year—this, he presumed, had not renewed itself; that the horses were so old that it would be necessary, at the end of the year, to replace them by others—these had not, he supposed, grown younger; that the lot was too circumscribed, and this, he imagined, had not enlarged its limits; that the expense of the institution could not, by any new arrangements, be reduced below twenty thousand dollars. The Director had not only recommended a change of the site, but of the *modus operandi* of the machinery of the Mint, by supplying the labor of horses by steam. Upon this information the House had acted last session. No general election having intervened, he must presume that no change of sentiment had taken place. He, therefore, thought he had a right to consider this subject as perfectly matured, and there being no other business before the House, hoped it would

be taken up; although the reluctance of those the institution as one eignty, to act upon it. could not, however, be the detailed operations fore, moved that the House, of the day, resolve itself Whole on the resolution laws on the subject of establishing of a Mint.

Mr. GREGG considered the motion to go into the discussion of the subject at this time premature. He was among those members who were not present at the late period of the last session when the repealing act passed, having previously retired from the House. It would be recollected that the appointed time for the Director of the Mint to make his annual report was the first Monday of January. That period is so near that he thought it most advisable not to proceed to act on the subject until possessed of the information that document might furnish. Though the institution had not been considered as having operated much to the public good, yet the operation of it during the last year may perhaps change their opinions respecting it. He, therefore, moved to postpone the consideration of the motion to the second Monday in January.

Mr. SMILIE said he did not concur in opinion with his colleague. If members were absent when this subject was acted upon, it was their own fault; and that circumstance was certainly no argument for delay. Did he, however, believe that any new information could rationally be expected from the report of the Director of the Mint, he should not be for taking up the subject now. But of this he had no expectation. At present, there was no business before the House. The committees appointed would soon make their reports, and then the House would be engaged with other subjects, to the neglect of this. Let us then take up this subject now, enter upon its discussion, and if, in the progress of our inquiries we want information, it will be then time enough to postpone it.

Mr. SOUTHARD was in favor of the postponement. There were now present a number of gentlemen not members at the period of discussion during the last session. They have no documents, and cannot be correctly informed. He saw no advantage in entering upon the discussion at this time, as new and additional information may be received from the report of the Director. It had been said there was no business before the House; but there was business; there was a bill upon their table, why not take that up and act upon it?

Mr. RANDOLPH called for the reading of a document that would throw clear and full light upon the subject; not light of that fleeting kind that may be derived from an annual report. From this document sufficient information could be had to convince any member that we might act as well now as at any other time.

[The Clerk read a report from the Director of the Mint, received during the last session, stating the real and personal property attached to the Mint; that the machinery might last for one year; that the horses may last a year; that to conduct the operations of the Mint to advantage, steam should be used instead of horses; that the lot on which the Mint is erected was too small; and that a less annual sum than seventeen or eighteen thousand dollars would not provide for the establishment.]

Mr. GRISWOLD observed that he was informed yesterday by a gentleman from Massachusetts, not now in his place, that the coins issued the current year would exceed in value five hundred thousand dollars. He did not state this from his own knowledge. But if it should appear from the report of the Director to be the fact, he thought it would satisfy every member, that though the establishment was an expense to the Treasury, yet it was no expense to the nation; for the exportation of bullion to that amount, to be coined, and the importation of it thereafter, would cost at least five per cent.

Mr. RANDOLPH said he would state a fact, which was, that notwithstanding all the issues from the Mint, no member sees a coin. For himself he had not seen a piece of gold coined in the Mint for two years. This he considered a sufficient answer to the remarks of the gentleman last up.

Mr. LOWNDES said the remark of the gentleman from Virginia (Mr. RANDOLPH) was not correct, as he had seen many pieces of American coin. But he could assign a satisfactory reason for the appearance of so little gold in ordinary circulation. It was the practice of the banks to count over once a month the specie in their vaults. This trouble was considerably lessened by depositing gold instead of silver. He had been credibly assured that there was now in the vaults of the banks of the United States gold, in eagles and half eagles, to the amount of two millions of dollars.

Mr. DENNIS was not for precipitating measures. He was one of those who were in favor of a serious and candid inquiry into the merits of the institution. He was not in favor of retaining it merely as an emblem of sovereignty. He believed that the sun rising would set, and he believed also that the independence and sovereignty of the nation could be as well preserved without as with the Mint. But he believed it proper to receive information that would enable them to decide whether the institution, so far from being useless, may not be useful and profitable. They were not prepared to say whether the copper coinage at least should not be retained. From some information received the last session, that department of the establishment appeared to be profitable.

Mr. D. said that, if, on full inquiry, the establishment appeared to be a drain on the Treasury, he should be for abolishing it; but he should not, on immature information, be for abolishing an institution, coeval with the Government, and founded on good reasons. The reasons adduced by the gentleman from Virginia (Mr. RANDOLPH) were insufficient. So far as related to the horses, he believed there were only four employed, and

the purchase of four fresh ones would be a very unimportant consideration. Another argument was drawn from the smallness of the lot on which the Mint stands. Though it might be better conducted on a more extensive lot, yet he was not satisfied, notwithstanding present disadvantages, that it might not be profitably conducted, at least so far as regarded a copper coinage. For these reasons he thought it proper to wait a few days, in order to receive information that would enable them to understand the points on which their decision may ultimately turn.

Mr. HUGER assigned his reasons for being in favor of a postponement, coincident with those already given. He considered it proper to wait until the Director's report was received. They could then avail themselves of the experience of another year, under auspices more favorable, perhaps, than those of preceding years. He thought it proper to wait, that they might see whether there had not been more economy than usual in the expenses of the last year.

The question was then taken on Mr. GREGG's motion to postpone the subject till the second Monday in January, and carried—ayes 47, noes 28.

DRAWBACKS.

On motion of Mr. S. SMITH, the House resolved itself into a Committee of the Whole, Mr. VARNUM in the Chair, on the bill to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act entitled, "An act to regulate the collection of duties on imports and tonnage:" The bill is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the debentures for drawbacks of duties on goods, wares, and merchandise, which have been exported from the United States, previous to the sixth day of February, one thousand eight hundred, for the port of New Orleans, on the river Mississippi, may be paid at the respective offices of the customs, on the terms and conditions prescribed by law in cases of exportation, for the benefit of drawback, to any foreign port or place, other than the dominions of a foreign State immediately adjoining the United States."

Mr. S. SMITH spoke in favor of the bill, and explained the grounds on which it had been brought in, and its operation.

Mr. ELMENDORF opposed it, and moved the rising of the Committee, that it might be recommitted to the Committee of Commerce and Manufactures, with instructions to extend its provision to cases wherein debentures of drawback had not been issued—not pledging himself, however, to support it, even if so amended.

Messrs. S. SMITH, MITCHILL, and DANA, spoke against the Committee rising, and in favor of the bill.

The motion for the Committee to rise was lost without a division.

Mr. MACON then spoke against the bill, and Mr. S. SMITH replied; when the Committee rose and reported the bill without amendment.

The House immediately took up the report, and on the question of engrossing the bill for a third reading, the House divided—ayes 34, noes 34.

The SPEAKER declaring himself in the negative the bill was lost.

THURSDAY, December 23.

Another member, to wit: LEWIS R. MORRIS, from Vermont, appeared and took his seat in the House.

A Message, was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

In pursuance of the resolution of the House of Representatives, of the third of May last, desiring a statement of expenditures from January first, one thousand seven hundred and ninety-seven, by the Quartermaster General and the Navy Agents, for the contingencies of naval and military establishments, and the navy contracts for timber and stores, I now transmit such statements from the offices of the Secretaries of the Treasury, War, and Navy, where alone these expenditures are entered.

DEC. 23, 1802. TH. JEFFERSON.

The said Message was read, and, together with the documents accompanying it, ordered to lie on the table.

The SPEAKER laid before the House a letter from Edward Tiffin, President of the Convention of the State of Ohio enclosing an address to this House from the said Convention, approving "the prompt and decisive measures taken by Congress at their last session, to enable the people of the Northwestern Territory to emerge from their colonial government, and to assume a rank among the sister States;" also, expressing "their unequivocal approbation of the measures pursued by the present administration of the General Government, and of both Houses of Congress, in diminishing the public burdens, cultivating peace with all nations, and promoting the happiness and prosperity of our country."

The SPEAKER also laid before the House a letter from Thomas Worthington, an agent appointed by the Convention of the said State of Ohio, enclosing a copy of the Constitution of said State, and an ordinance passed by the Convention, containing certain propositions for the consideration of Congress; which were read, and, together with the address of said Convention to this House, and the letter accompanying it, ordered to be referred to Mr. RANDOLPH, Mr. ELMENDORF, Mr. GODDARD, Mr. HENDERSON, and Mr. ARCHER; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The House resolved itself into a Committee of the Whole, Mr. VARNUM in the Chair, on the report of the Committee of Commerce and Manufactures on the petition of John Holland, jr.

The report is in favor of granting the prayer of the petitioner for a remission of duties, in proportion to the damage sustained by his vessel taking fire on the night of entering the goods imported in her, and before they were landed.

The report was supported by Messrs. S. SMITH,

DANA, and EUSTIS, and opposed by Messrs. MASON, and GREGG.

Mr. GRISWOLD, though from present impressions in favor of the report, thought it did not comprehend all the facts necessary to form a full judgment respecting it. He therefore moved the rising of the Committee.

Mr. JOHN C. SMITH supported the motion, which was carried; when, on motion of Mr. GRISWOLD, the report was recommitted to the Committee of Commerce and Manufactures.

FRIDAY, December 25.

Another member, to wit: WILLIAM H. HILL, from North Carolina, appeared, and took his seat in the House.

The SPEAKER laid before the House a letter from the Secretary of State, transmitting abstracts of the returns made by the Collectors of the Customs within the United States, of registered and impressed American seamen; also, a report exhibiting an abstract of communications received from agents of the United States, for the relief and protection of the said seamen; which were read and ordered to lie on the table.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of making provision, by law, that Natchez be a port of delivery.

Mr. THOMAS called the attention of the House to a part of the unfinished business of the last session. A bill to extinguish the claims of the United States for balances reported against certain States, &c., was postponed during the last session to the 4th Monday in November. He moved the reference of so much of the report of the Committee of Revisal and Unfinished Business as related to this subject to a select committee. Ayes 26.—Lost.

Mr. MORRIS observed, that, if in order, he would move the reference of so much of the report of Revisal and Unfinished Business as related to the petition of C. L'Enfant to the Secretary of State.

The SPEAKER said this would be irregular, as it would involve the reference of a report of the Committee of Claims to the Secretary, which was contrary to the practice of the House.

Mr. MORRIS afterwards moved the reference of the report of the Committee of Claims on the petition of Mr. L'Enfant to a Committee of the Whole on Monday week. Carried.

Mr. M. then moved that the Secretary of State be directed to furnish this House with such documents as are in his possession, relating to the claim of C. L'Enfant for services rendered in laying out the City of Washington under the direction of the President of the United States. Agreed to.

MONDAY, December 27.

Ordered, That five hundred copies, in addition to the number already printed, of the letter and report of the Secretary of the Treasury, and sundry accompanying documents, prepared in obedience to the directions of "An act supplementary to the act, entitled 'An act to establish the Treasury Department," which were laid before the House on the twentieth instant, be printed for the use of the members of this House.

CASE OF J. P. VAN NESS.

Mr. DAVIS observed that he was of opinion that a member of the House retained his seat contrary to the spirit and sense of the Constitution. It therefore became his duty to offer a resolution for instituting an inquiry into the subject, in doing which he disclaimed all personal view. He then made the following motion:

Resolved, That the Committee of Elections be, and they are hereby, instructed to inquire whether John P. Van Ness, one of the members of this House from the State of New York, returned by said State to serve as one of its members in the seventh Congress of the United States, has not, since his election as a member of this House, and since he occupied a seat as a member, accepted of, and exercised the office of a major of militia, under the authority of the United States, within the Territory of Columbia, and thereby forfeited his right to a seat as a member of this House.

Mr. MITCHILL considered the point as interesting in two relations; that which involved the decision of a principle, and that which went to deprive the State, (New York,) one of whose representatives he was, of a member. For these reasons he hoped the business would not be immediately pressed. He acknowledged this was not the first intimation he had received of the contemplation of such a motion; but he had entertained a hope that the gentleman with whom it originated, had, on reflection, considered it not inconsistent with his duty to abandon it.

Mr. DAVIS replied, that he felt no disposition to press a decision. He had communicated, the first day he took his seat, his ideas on the subject to certain members, the friends of the gentleman implicated by the resolution, in hopes that he would resign. He now entertained no wish to push the business. He supposed, however, that the resolution would, of course, go to the Committee of Elections. He repeated that he was governed by no personal prejudice, but entirely by a sense of duty. He concluded with saying he was in favor of the question of reference being immediately taken.

But on Mr. MITCHILL repeating his desire for some delay, Mr. DAVIS agreed to let the resolution lie till to-morrow.

TUESDAY, December 28.

Two other members, to wit: from Virginia, JOHN STRATTON; and from North Carolina, WILLIAM BARRY GROVE, appeared and took their seats in the House.

A Message was received from the President of the United States, transmitting a plan and estimates for a dry dock. The Message and the reports and estimates referred therein, were read, and, together with the plans accompanying the same, ordered to be referred to the committee appointed on so much of the President's Message of

the fifteenth instant, as relates to our navy yards, and the building of docks.

LETTER OF JAMES McHENRY.

The SPEAKER laid before the House a letter addressed to him from James McHenry, late Secretary for the War Department, containing a variety of observations on the subject-matter of a report presented to the House, on the twenty ninth day of April last, from the committee appointed to inquire and report, whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons entrusted with the public money," together with an appendix, comprising sundry explanatory statements in defence of the official conduct of the said James McHenry, whilst acting in the capacity aforesaid: the House proceeded in the reading of the said letter, and having made some progress therein,

Mr. ALSTON said that the paper which the Clerk was reading appeared to him to be a very voluminous one, and that he did not think the House were bound to listen to the reading of it. He conceived them only bound to attend to such documents as might be received from public officers, or to petitions for a redress of grievances. He did not believe the paper now before the House to be one of that description, or that the House ought to take any notice of it. If the House were bound to take notice of every letter any individual might think proper to write and address to the Speaker, very little time might be left to do any other business. He concluded by saying he thought they ought to take no more notice of it than they should of any paragraph in a newspaper which might be enclosed to the Speaker. He therefore moved that the paper should not be read.

Mr. STANLEY observed that he did not perceive the difference stated by his colleague; nor did he know how the gentleman could anticipate the contents of a communication before read. We shall be enabled to judge better of it when we hear it. By what inspiration could the gentleman form a judgment now? The communication appeared to him of the utmost importance. He hoped, therefore, it would be read.

Mr. MORRIS could not omit making a remark or two. From the communication, so far as read, it appeared that it was charged that the character of a former public officer had been aspersed. The House ought, therefore, not only to read the communication, but also to inquire into the complaint. There was not an indecent expression in it. The writer complains that his character has been attacked; he thinks unjustly attacked. It will be the height of injustice to refuse him an opportunity of being heard.

The SPEAKER said that it was a rule of the House that when the reading of a paper is called for, it shall be read, unless dispensed with by general consent.

Mr. RANDOLPH said he wished only to observe, that there was but one principle (and that had been stated by the Speaker) on which these papers ought to be read. Any member had a right to call for the reading of papers. To him, however, it appeared that there was no occasion for inspiration to perceive that the papers, so far as read, were in a high degree indecent, unworthy of any man who had held, or ought to hold, an office under Government, and derogatory from the dignity the House. Members were cited by name; insults were offered to individual members; a committee was divided into different sects; on one class illiberal calumnies were thrown, while the other class was shielded from reflection. Was this decent or indecent? He congratulated himself that he differed as widely on this subject as he did on others from gentlemen.

Mr. MORRIS said, however widely he might differ on this as well as other subjects from the gentleman from Virginia, he believed his own ideas of what was decent or indecent as correct as those of that gentleman. The letter states that a report had been made during the last session implicating the character of the writer. It further states that certain gentlemen on the committee did not concur in the report. This the writer knew from the debates upon the report. He therefore, thought it his duty, in vindicating himself, to exonerate those members from censure. Was this indecent? He conceived not.

Mr. M. said that when he had observed that there was not an indecent expression in the letter, he meant that there was no such expression applied to the House collectively. He did not mean to say there were no charges against individual members. But if there were charges against individual members, that was no reason for the House refusing to hear it. That could only be done when charges were made against the House in its collective character.

The SPEAKER read the rules of the House that applied to the case before them.

Mr. ALSTON said he only rose to notice the observation of his colleague, (Mr. STANLEY,) who supposed he saw the inside of the communication before it was presented. This he denied. He had grounded his motion exclusively on what he had heard read.

Mr. BACON was at a loss to decide on the propriety of reading or not reading these papers. He perceived that they contained not only a complaint, but a high charge against a committee of the House, stating that the major part assumed to act exclusively upon the business assigned to the whole committee, without consulting the other members. This was a high charge. Whether proper, or regularly made, he did not know. It was rather his opinion that the House ought to proceed in reading the papers, and afterwards to pass proper order on them.

The SPEAKER declared the rule for reading imperative, and Mr. ALSTON withdrew his motion; on which the Clerk proceeded in the reading, which was continued for more than an hour; when

Mr. DAVIS renewed the motion for suspending the further reading. He asked what reason there was in consuming the time of the House in having long papers read, on which, when read, the House could not act? He read a rule of the House enjoining upon every member or the Speaker, before presenting any paper, briefly to state its contents; and asked of what avail this rule could be, unless it were in the power of the House to refuse the reading?

The SPEAKER again declared his opinion that the reading was imperative, unless dispensed with by unanimous consent.

Mr. MITCHILL was proceeding to make some remarks, when Mr. GRISWOLD called him to order; as the decision of the SPEAKER had settled the point, unless an appeal was made therefrom.

Mr. DAVIS said he was so tired with the papers, and thought the precedent so bad a one, that he appealed from the decision of the Chair.

Mr. DANA called for the yeas and nays.

The question was taken, according to a rule, without debate, on the question "Is the decision of the Chair in order?"

Carried in the affirmative—yeas 62, nays 16, as follows:

YEAS—John Archer, John Bacon, Phanuel Bishop, Thomas Boude, Richard Brent, Robert Brown, William Butler, John Clopton, John Condit, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, William Helms, Archibald Henderson, William H. Hill, William Hoge, David Holmes, Samuel Hunt, George Jackson, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Thomas Morris, James Mott, Anthony New, Elias Perkins, Thomas Plater, Nathan Read, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Henry Southard, John Stanley, Joseph Stanton, jr., John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, Abram Trigg, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Henry Woods, and Thos. Wynns.

NAYS—Theodorus Bailey, Thomas Claiborne, Matthew Clay, Thomas T. Davis, Lucas Elmendorf, James Holland, Michael Leib, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jr., John Randolph, jr., John Smith of Virginia, Josiah Smith, Richard Stanford, John Taliaferro, jr., and John P. Van Ness.

The House then proceeded in the further reading of the said letter; and, having gone through the same, it was ordered that the said letter, with the appendix accompanying it, do lie on the table.

WEDNESDAY, December 29.

Resolved, That a committee be appointed to inquire into the propriety of granting further time to proprietors or holders of military land warrants to obtain and locate the same; and that the committee have leave to report by bill or otherwise.

Ordered, That Mr. SOUTHARD, Mr. CLAY, Mr. THATCHER, Mr. STEWART, and Mr. ISRAEL SMITH be appointed a committee pursuant to the said resolution.

Mr. GRAY addressed the House in the following words:

Mr. SPEAKER: I rise to offer to the consideration of this honorable House a subject of an uncommon nature. In order that the crime of murder may no longer be deemed honorable, and with a view to mark with disgrace a wicked and pernicious practice, which has lately destroyed the social harmony of some of our fairest cities, and brought some of our most valuable citizens to an untimely end, I move the following resolution:

Mr. G. then offered a resolution for the appointment of a committee, with instructions to inquire into the expediency of disqualifying any person from holding an office under the Government of the United States, who shall hereafter be concerned in a duel, or in sending or carrying a challenge. Ordered to lie on the table.

CASE OF JOHN P. VAN NESS.

Mr. DAVIS called up his resolution instructing the Committee of Elections to inquire whether Mr. VAN NESS had not forfeited his seat, by accepting the appointment of Major in the Militia of the Territory of Columbia.

Mr. VAN NESS said that, so far as the decision of the House might affect him personally, he felt little concern; but, so far as it affected him as a representative of an important State, he was not so indifferent. He had no objection whatever to the proposed inquiry being made. As it involved the decision of an important principle, it deserved great attention. He had no doubt of the inquiry being made with that candor and fairness which, in most cases, characterized the proceedings of the House. He was far from imputing any impure motives to the mover or seconder of the resolution. It would be as derogatory in him to impute, as in them to entertain, any views dishonorable or base. He had risen barely to state his wish that an inquiry might be made.

Mr. ELMENDORF proposed a verbal amendment, which was not agreed to.

The resolution was then adopted without a division.

Mr. DAVIS said, that while on the subject of seats improperly held, he hoped another member would, by resigning, relieve the House from the necessity of deciding on his case. He questioned whether a Territorial delegate could represent a State. He alluded to the State of Ohio. It appeared to him that a State must be represented in a full manner, by representatives entitled as well to vote as to debate. The gentleman, therefore, who held his seat as the Representative of the Territory could not remain in that character after the Territory had become a State, inasmuch as he had been appointed under the Territorial Government. Mr. D. concluded by giving notice that, unless the gentleman resigned, he should offer a motion to vacate his seat.

AMENDMENT TO RULES.

Mr. RANDOLPH said that, on examining the rules of the House, he found two to which he

wished to draw their attention. One in the following words: "When the reading of a paper is 'called for, and the same is objected to by any 'member, it shall be determined by a vote of the 'House." This rule had yesterday been decided (and in his opinion correctly) to apply to papers already in the possession of the House, and not to those which had never before been heard. But, sir, said Mr. R., I find another rule directing that all petitions, memorials, and other papers addressed to the House, shall be presented by the Speaker, or by a member in his place, and a brief statement of the contents thereof shall be verbally made by the introducers, &c. And wherefore? That the House may not be betrayed into the reading of that which it might be indecorous in them to hear. Conceiving, then, that they should be guided in the interpretation of their rules by the same principle which governed courts of justice in the construction of a law—"the adopting of such an interpretation as would give meaning and efficacy (if practicable) to every part of the instrument"—he had yesterday been compelled, however reluctantly, to differ from an authority eminently entitled to his respect. Since, whilst he concurred in the construction given to the rule which he had first read, he could not perceive that the right of the House to be put into possession of improper matter, was, thereby, at all affected. Otherwise, the provision contained in the second rule was rendered altogether nugatory.

But since it had been adjudged that any communication, however voluminous; any petition, however frivolous; any memorial, however foreign to their jurisdiction; any paper, however it might insult the dignity, however it might derogate from the honor of the House, must, of necessity, be read; he conceived it his duty to endeavor to relieve the House from the embarrassment of being compelled to listen to a libel upon itself—to refuse which was, as he conceived, a right inherent in every deliberative assembly. He had drawn his proposed amendment in such terms as to leave untouched the sacred right of petition. A right which no one prized more dearly, and no one was more dispossd to cherish and defend, than himself. This important privilege he believed would not be affected by the resolution which he was about to offer. Since, where redress of grievances was really sought, the petitioners had always the choice of inoffensive terms in which to express themselves, and nothing was more easily discernable than a petition whose object was the benefit of those preferring it, and one which was made a cover to insult those to whom it was preferred. He concluded with moving the following amendment to the rules of the House, to be inserted after that he had last read:

"That if any petition, memorial, or other paper, so presented, shall, in the opinion of any member, contain matter insulting to the dignity or derogatory from the honor of the House, the reading of such paper shall, if objected to, be determined by a vote of the House."

Mr. EUSTIS observed that, by the decision yesterday, it appeared that every paper presented to the House must be read. If that decision was correct, the House had tied itself down by its own rules and subjected itself to the necessity of hearing every paper offered, however long, or however improper.

Mr. E said it appeared to him necessary that this evil should be remedied. But he should not think it necessary to confine the power of exclusion to matter derogatory to the dignity of the House. There were other good causes for exclusion; the length of a paper; the manner of it being offensive, or the matter. It appeared to him a first principle that every paper offered was in the possession of the House, and might be read, or not. He had, therefore, wished the resolution of the gentleman from Virginia had been predicated upon a broader principle, viz: that if the reading of any paper should be objected to, the sense of the House should be taken. Suppose, said Mr. E., I present a petition containing one hundred and fifty pages. According to the rule, the reading of it cannot be dispensed with but by general consent; not even for other business of the greatest importance. Mr. E. then moved the following amendment of Mr. RANDOLPH'S resolution:

"But if any petition, memorial, or other paper so presented, shall, in the reading, be objected to by any member, the further reading of the same shall be determined by a vote of the House."

A member inquired, whether, as the resolution and amendment went to rescind a standing rule of the House, it was in order to decide upon them the day on which they were offered.

The SPEAKER declared it was in order, as they did not go to rescind, but only to amend the standing rules.

The resolution and amendment were then taken up for consideration, when, on motion of Mr. VARNUM, they were referred to a select committee, consisting of Messrs. RANDOLPH, EUSTIS, and L. R. MORRIS.

THURSDAY, December 30.

Mr. MITCHILL moved a resolution for the appointment of a committee for inquiring into the expediency of amending and revising the several acts respecting patents and copyrights, to report thereon by bill or otherwise.

Before offering the resolution, Mr. MITCHILL observed that his object was to simplify the existing statutes respecting patents, by comprising them in one act.

Resolution agreed to without a division.

FRIDAY, December 31.

Mr. BACON, from the Committee of Elections, to whom were referred the certificates or other credentials of several new members, and of the delegate from the Mississippi Territory, returned to serve in this House, made a report, in part, thereupon, which was read, and ordered to lie on the table.

A petition of sundry inhabitants of the City of

Washington, and of Georgetown, in the District of Columbia, was presented to the House, and read, praying that Congress will pass an act for incorporating an insurance company in the City of Washington, to be styled "The Columbia General Insurance Company," to be established on such plan as shall suit the present circumstances and future prospects of the seat of Government of the United States.

Ordered, That the said petition be referred to Mr. DENNIS, Mr. VAN NESS, and Mr. TALIAFERRO, that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. GRAY called up his resolution, laid some time since on the table, as follows:

Resolved, That a committee be appointed to inquire into the expediency of passing a law rendering all persons forever incapable of holding any office under the Government of the United States, who shall, at any time hereafter, be concerned in any duel, either in sending, carrying, or accepting any written or verbal challenge; and that they report by bill or otherwise.

Mr. DAVIS opposed the resolution. He said if the House could be made sensible that the resolution embraced a subject on which it could not constitutionally act, they would reject it. To him it was plain that if the House pursued the object of the resolution it led them on forbidden ground. In the first place it took from the citizens a right which, by their Constitution, they had secured to themselves, to wit: the right of free elections. Do what the resolution contemplates, and no man can hold a seat here who ever fought a duel, or gave or carried a challenge, although he may be the choice of the people. No such thing is said in the Constitution. The people in that instrument have already defined the disqualification to office—that charter of their rights declares that no person who has been impeached and found guilty "shall hold an office;" and I contend that Congress cannot impeach a person for any offence done by him as an individual; two things are requisite to ground an impeachment. First, the person must be an officer of the United States. Secondly, he must have been guilty of some malfeasance in the discharge of the duties imposed on him by that office. If an individual who does not hold an office under the United States commits murder, I deny the right of Congress to impeach him—he is made amenable to the State laws; while we were busy in impeaching the laws of the States. Let it not be understood that I advocate this practice. My observations disclaim the right we have to act on it.

The resolution was negatived.

TREATY WITH SPAIN.

A confidential Message, as also a letter addressed to the SPEAKER, were received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

In addition to the information accompanying my message of the twenty-second instant, I now transmit the copy of the letter on the same subject, recently received.

DEC. 30, 1802. TH. JEFFERSON.

WASHINGTON, *December* 30, 1802.

SIR: Although an informal communication to the public, of the substance of the enclosed letter, may be proper for quieting the public mind, yet I refer to the consideration of the House of Representatives, whether a publication of it, in form, might not give dissatisfaction to the writer, and tend to discourage the freedom and confidence of communications between the agents of the two Governments. Accept assurances of my high consideration and respect.

TH. JEFFERSON.

The SPEAKER *of the House of Reps.*

The said Message and letter, and the papers transmitted therewith, were read: Whereupon, a motion was made and seconded that the same, together with the Message of the President of the United States, of the twenty-second instant, relative to "a violation on the part of Spain, of the twenty-second article of the Treaty of Friendship, Limits, and Navigation, between the United States and the King of Spain," and the accompanying documents, be referred to a select committee, to consider and report thereon to the House:

And the question being taken thereupon, it passed in the negative—yeas 40, nays 42, as follows:

YEAS—Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Joseph Hemphill, Archibald Henderson, William Hoge, Samuel Hunt, George Jackson, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, Josiah Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, Abram Trigg, George B. Upham, Killian K. Van Rensselaer, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thos. Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Lucas Elmendorf, Ebenezer Elmer, Edwin Gray, Joseph Heister, William Helms, James Holland, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

Another motion was then made and seconded that the Message and letter this day received from the President of the United States, with the papers accompanying the same, be printed for the use of the members. And on the question thereupon, it passed in the negative—yeas 33, nays 49, as follows:

YEAS—Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

Another motion was then made and seconded that the said Message and letter from the President of the United States, this day received, and the papers referred to therein, together with the President's Message of the twenty-second instant, relative to a violation on the part of Spain, of the twenty-second article of the treaty of friendship, limits, and navigation, between the United States and the King of Spain," be committed to a Committee of the whole House on the state of the Union:

And the question being taken thereupon, it was resolved in the affirmative—yeas 65, nays 16, as follows:

YEAS—Willis Alston, John Archer, Theodorus Bailey, Thomas Boude, Robert Brown, William Butler, Matthew Clay, John Clopton, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Joseph Heister, Joseph Hemphill, Archibald Henderson, William Hoge, James Holland, David Holmes, Samuel Hunt, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Newton, jr., Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, John Cotton Smith, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, John Stratton, John Taliaferro, jr., Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Henry Woods, and Thomas Wynns.

NAYS—John Bacon, Richard Brent, John Condit, Thomas T. Davis, Edwin Gray, William Helms, George Jackson, James Mott, Anthony New, John Smilie, John Smith, of New York, John Smith, of Virginia, Joseph Stanton, John Stewart, Joseph B. Varnum, and Isaac Van Horne.

MONDAY, January 3, 1803.

Another member, to wit; PHILIP VAN CORTLANDT, from New York, appeared, and took his seat in the House.

A petition of the Washington Building Company, signed by Daniel Brent, the chairman, was presented to the House and read, praying that Congress will pass a law to incorporate the said company under certain rules and regulations, intended by the petitioners for the improvement and ornament of the metropolis of the Union; and, also, that they may be enabled to extend the application of the funds of the said company to the insurance of buildings from fire.

Ordered, That the said petition be referred to Mr. VAN NESS, Mr. GROVE, and Mr. CLAIBORNE; that they do examine the matter thereof, and report the same, with their opinion thereon, to the House.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making a partial appropriation for the naval service during the year one thousand eight hundred and three; which was read twice, and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims of the twenty-ninth ultimo, on the petition of Charles Hyde, presented the second of February, one thousand eight hundred and one; and, after some time spent therein, the Committee rose, and reported their agreement to the resolution contained therein with amendments; which were severally read and agreed to.

The said resolution as amended, being then twice read, was, on the question put thereupon, agreed to by the House as follows:

Resolved, That the proper accounting officers liquidate and settle the account of Charles Hyde, for his services as judge advocate to the army, from the second day of December, Anno Domini one thousand seven hundred and ninety-two, to the fifteenth day of July, Anno Domini one thousand seven hundred and ninety-four, both inclusive; and that he be allowed such pay and emoluments for said services, as were at that time allowed by law, to the officers acting in that capacity.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making appopriations for the Military Establishment of the United States, in the year one thousand eight hundred and three, which was read twice and committed to a Committee of the whole House to-morrow.

A petition of Samuel Blodget was presented to the House, and read, praying relief, in the case of a judgment recovered against him in the Supreme Court of Pennsylvania, for property in the City of Washington, at the suit of the possessors of a prize ticket in a lottery authorized to be drawn for the improvement of the said city, in the year one thousand seven hundred and ninety-three, and of which the petitioner was appointed an acting manager and superintendent.

Ordered, That the said petition be referred to the committee appointed on the thirty-first ultimo, on the petition of sundry inhabitants of the City of Washington and of Georgetown, relative to

the incorporation of an insurance company in the said City of Washington; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The SPEAKER laid before the House a letter from the Secretary of State, transmitting sundry documents respecting the claim of Peter Charles L'Enfant, for planning and laying out the City of Washington, in pursuance of a resolution of this House of the twenty fourth ultimo; which were read and ordered to be referred to the Committee of the whole House to whom is committed a report of the Committee of Claims on the petition of the said Peter Charles L'Enfant.

Mr. JOHN COTTON SMITH, from the Committee of Claims, presented a bill for the relief of Charles Hyde, which was read twice and committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said committee; and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

A memorial of Daniel Lewis, of the county of West Chester, in the State of New York, was presented to the House and read, stating that the memorialist is, and for a long time has been, possessed of a medicine, which, in no case in which it has been administered, has failed of curing the bite of a mad dog, and totally removing the melancholy effects thereof; and praying that Congress will, in their wisdom, direct such inquiry into the repeated and successful trials made of the said medicine, as may fully convince them of the efficacy thereof; and, also, that on a discovery of the same, for the benefit of the people of the United States, the memorialist may be allowed such pecuniary compensation therefor, as may be deemed equitable and proper.

Ordered, That the said memorial be referred to Mr. VAN CORTLANDT, Mr. ELMER, Mr. TENNEY, Mr. DICKSON, and Mr. ARCHER; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On motion, it was

Resolved, That the Secretary of the Navy be directed to report to this House the situation of the timber deposited in the navy yards of the United States, for the purpose of building ships-of-war; and whether, in order to preserve the same, it should be covered with sheds.

A petition of Josiah Fox, and others, inhabitants of the towns of Norfolk and Portsmouth, in the State of Virginia, was presented to the House and read, stating that the petitioners consider the act of Congress, (commonly called the Bankrupt law,) passed on the fourth day of April, one thousand eight hundred, as requiring Legislative correction; the same being, as they conceive, partial and injurious in its operation; and praying that Congress will take the premises into consideration, and provide such remedies for the evils complained of, as to their wisdom may seem most proper.

Ordered, That the said petition be referred to Mr. NEWTON, Mr. TALLMADGE, Mr. NICHOLSON, Mr. HUNT, Mr. MITCHILL, Mr. LOWNDES, and Mr. VARNUM; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Resolved, That the committee to whom was this day referred a petition of sundry inhabitants of the towns of Norfolk and Portsmouth, in the State of Virginia, be instructed to consider the expediency of repealing an act, entitled "An act to establish an uniform system of Bankruptcy throughout the United States," and report their opinion thereon to the House.

Mr. LEIB observed that, during the last session, a proposition had been made, and had passed this House, to amend the Constitution respecting the election of President and Vice President, but which had been rejected in the Senate. Mr. L. said that the citizens he represented were extremely anxious on this subject. He therefore considered it his duty to submit a similar proposition, in order to determine whether it would not share a better fate. He then proposed an amendment, substantially, that in all future elections of President and Vice President, the persons voted for shall be particularly designated by declaring which are voted for as President, and which as Vice President.

Referred to the Committee of the Whole on the state of the Union.

INSOLVENT DEBTORS.

On motion of Mr. NICHOLSON, the House resolved itself into a Committee of the Whole, on the bill "for the relief of insolvent debtors in the District of Columbia."

The blank in the fourth line of the first section fixes the period of residence in the District required to entitle a debtor to the benefit of the act. This, on motion of Mr. NICHOLSON, was filled with "one year."

Several other amendments were made in the different sections, on the motion of Mr. NICHOLSON. The most material of which provided for the liberation of a confined debtor, during the vacation of the court, by two or more justices.

The Committee proceeded to the third section, which is as follows:

"SEC. 3. *And be it enacted*, That, upon the petitioning debtor's executing a deed to the said trustee, conveying all his property, real, personal, and mixed, and all his claims, rights, and credits, agreeably to the oath or affirmation of the said debtor, and on the delivery of all his said property which he shall have in his possession, and his books, papers, and evidence of debts of every kind to the said trustee; and, upon the said trustee's certifying the same to the court, in writing, it shall be lawful for the court to order that the said petitioning debtor shall be discharged from all debts, covenants, promises, and agreements, due from or owing or contracted by him prior to the date of the said deed, and by virtue of such order the said debtor shall be discharged as aforesaid: *Provided*, That no person who has been guilty of a breach of the laws, and who has been fined or imprisoned for such breach shall be discharged from the payment of such fine, or from his imprisonment: *And provided, likewise*, That any property which the debtor may afterwards acquire by gift, descent, or in his own right, by bequest, devise,

or in any course of distribution, shall be liable to the payment of the said debts, anything herein to the contrary notwithstanding."

Mr. RANDOLPH observed that, by the provisions of this section, the bankrupt system was put in force not only as to the merchants, but as to every description of citizens. It extended to all persons who might migrate to this sanctuary. It operated in the nature of a repealing law to the laws of all the States. It would also have the operation of an *ex post facto* law. If these objections should not be answered, he would be compelled to give his vote against the bill.

Mr. DAVIS thought the third section liable to the objections of the gentleman from Virginia. It extended the benefit of the bankrupt system to the people of this Territory in a manner different from that which was extended to the citizens of the States. As, however, the subject did not appear to have been much reflected on, he moved that the Committee should rise, and ask leave to sit again.

Mr. NICHOLSON said he should make at that time but little comment on the remarks of gentlemen opposed to the provisions of the third section. The principle involved in the third section was certainly a very important one. It would be well, he thought, for the Committee to express their sense of it before they rose; to decide whether it should be retained or not. If not retained, the bill would require considerable modification. He would, therefore, make a few observations on the principle of the section, in the hope that the gentleman from Kentucky would vary his motion, and move, in lieu thereof, to strike out the third section, in order to try the sense of the House.

Gentlemen were mistaken, when they considered this section as extending to the citizens of this Territory the benefits of the bankrupt system. If they had been so extended, he could not see any solid objection to it. But the provisions were very different. By the bankrupt law, when the certificate is granted, the bankrupt is discharged from all his debts. By this section he is not discharged, because it is provided that any property afterward acquired "by gift, descent, devise, or in any course of distribution," shall be liable for his debts. Under the insolvent laws of Virginia and Kentucky, an insolvent debtor's property is answerable after his liberation. In other States, a different principle prevails.

Mr. N. said, the principle of the bill was an equitable principle. For if, after an insolvent debtor shall be liberated from confinement, and shall assign over all his existing property, property afterwards acquired by his own personal industry shall be answerable for his debts, you destroy all stimulus to exertion and labor. The evil, too, is not merely personal to him, but is felt by society at large, because his industry not only contributes to his own personal benefit, but to that also of society. You lose, therefore, a valuable member of society. This is not the only loss. You likewise inflict an essential injury on his family, that are under his special protection.

[Mr. NICHOLSON here instanced the unhappy effects of this rigor on two descriptions of citizens in this place; those who kept boarding-houses and store-keepers.]

He concluded by observing that, in his opinion, the bankrupt law went too far, while the laws of Virginia and Kentucky did not go far enough. While property acquired by the personal labor of a debtor ought not to be answerable for his previous debts, he was of opinion that property, otherwise acquired, should be answerable.

Mr. DAVIS withdrew his motion for the rising of the Committee, and moved to strike out the words "all debts, covenants, promises, and agreements, due for or owing, or contracted by him prior to the date of the said deed," and to insert in lieu thereof "imprisonment."

Mr. D. begged leave to offer a few remarks on what had fallen from the gentleman from Maryland. That gentleman had remarked that, to make property afterward acquired by the personal exertion of the debtor answerable, would destroy a great stimulus to industry, while he considered it perfectly right that property acquired by descent or gift should be made answerable. Now, is anything more easy than to evade this provision? If an individual is known to be bankrupt, he presumed none of his friends would give him anything, because it would be applied to the payment of his debts. They will be sure to vest it in some friends for his use, and thus preclude the ability of the creditor to touch it. The argument of the gentleman, therefore, was not correct. Mr. D. said, if this section should be struck out, the same provisions would apply to this District as applied to the States.

Mr. RANDOLPH was against the section. He was not, however, surprised at the support it received from his friend (Mr. NICHOLSON) from his known humanity, and from the partiality which it was natural he should entertain for the municipal regulations of his own State. But he would, on further reflection, find that, by extending thus far the measure of his humanity to the debtor, he will essentially injure the creditor. Mr. R. knew how easy it was to work on the passions of a deliberative body by portraying the miseries of the unfortunate. For himself, he abhorred the incarceration of the body for debt. But he was for taking a middle course between the extreme rigor of our ancestors, and the unjust clemency to the debtor proposed by this section. He would ask, by what description of persons the greatest injury had been inflicted on society in this country; whether by debtors, under the iron grasp of their creditors, or by debtors whom the mistaken clemency of the law had permitted to ruin their creditors? He believed that a more extensive scene of injury had been inflicted on the country by the villany, (he could call it by no other name,) of men who had sported with the property of others, than had been inflicted by the most merciless rigor of creditors.

By denying to the creditor the power of incarcerating the body of his debtor, you proceed as far as justice will warrant. Farther you cannot go; because the obligation to comply with contracts is eternal, and not subject to your regulations. He

would say that, if the debter were an honest man he would make good his engagements, whatever the law might say to the contrary. With regard to a want of stimulus to industry, which the gentleman from Maryland had assigned as a reason for retaining the section, he would ask if there was no danger to be apprehended from a law which put it in the power of any man, by twelve months' residence here, to elude all claims against him? Which most conduced to the public benefit, the exertions of an honest and laborious man, or those you may expect from an insolvent debtor? It is right to respect the miseries of the unfortunate. But these distresses are, in more instances, the effects of crime than of misfortune.

Mr. RANDOLPH considered the ideas of the gentleman from Kentucky as going as far as they should go. They say, you shall not torture the person of a debtor; but you shall not absolve him, on his simple oath, from his obligations. Can you dispense a man from his just engagement? They are about to apply that dispensing power, which, in religious cases, has proved so injurious, and, like the Pope of old, free individuals from engagements as strong as the matrimonial bond, and other obligations. Have they not the same right to do the one as the other? Is it not as cruel to take away the money of the creditor as that of the debtor? Is it not known that creditors, to an immense amount, are starving? Mr. R. believed their sufferings were greater than those of debtors. What had become of the millions spunged by the bankrupt system? They had gone, with the wild systems and projects to which they had given rise. As to the debtor, having performed a complete revolution, he stands where he stood before. He began with nothing, and with nothing has ended.

Suppose there should be a collision between your act and that of the States, under each of which there shall be an assignment; which is to give way? Mr. R. concluded by saying that the least important consideration to him, though it might be important to others, was that, in case the section was agreed to, this place would become the resort of debtors of all descriptions. It would become the temple of Mecca.

Mr. NICHOLSON said he might be partial to this provision, inasmuch as it had existed in the State he represented, ever since the year 1774. He did not know, notwithstanding, that the State of Maryland had been turned into a temple of Mecca, nor were people in the habit of flocking to it. Why then flock here rather than to Maryland? The section requires twelve months residence before a debtor shall be entitled to the benefits of the provision. If that term is insufficient, increase it. Say, that it shall extend to two or three years, or a greater period. To this he might have no objection. But he cherished the principle, because he deemed it valuable.

What are the objections urged against it? It is said that its intention may be evaded. This is true. It may be evaded. But he would ask if it could be so changed as to prevent this evil? Suppose all the property of the debtor shall be answerable for his debts. Will not a fraudulent debtor say to the person disposed to leave him anything, vest it in my children, my wife, or friends; and will not that be as complete a fraud upon the creditors as that which gentlemen have described? This can be prevented by no law whatever.

Mr. NICHOLSON said he would ask what would be the effect upon a man who has a family of children dependent upon him? Would he exert himself to acquire property when he did not know that he could retain it an hour after the acquisition? He asked if this was in the nature of man? As far as his observation extended it was not. Although there were some lenient creditors, there were others that were relentless, and who would lay their talons on the first fruits of his labors. Will not this destroy industry? But gentlemen say this provision will effect a moral injury to the creditor. True; but what do they say to the effects of the contrary provision on the debtor? They will liberate him from jail, that he may become a vagrant, without any inducement to industry, or to employ with effect the powers of his mind. He would ask if this last moral injury was not the greater? For his part he believed this provision would have a great and good effect. It would prevent the injurious extension of credit. It would, in this place, repress speculation in lots, by reducing property to its real value, which would contribute to the improvement of the city, and enable persons, by obtaining ground on moderate terms, to come here to build.

A similar provision has existed in Maryland for twenty-six years. The law there extends to all debtors who do not owe more than two hundred pounds sterling. In other cases it is usual for the Legislature to pass an annual law on the petition of debtors. If they pursue a similar course, all their time would be occupied to the neglect of business of infinitely greater importance. It became, therefore, necessary to pass a general law on the subject, in doing which no essential injury could be done the creditor, while an essential service would be conferred on the debtor.

Mr. GODDARD was opposed to the section, for reasons additional to those offered by the gentlemen from Virginia and Kentucky. This provision appeared to him to extend much further than those of the bankrupt law. By this bill the debtor is to present to the court a list of his creditors, who are to choose a trustee to whom all his property is to be assigned, and he is to be liberated, on doing this, without their consent. This was not the principle of the bankrupt act, under which a bankrupt could not be discharged but by the concurrence of two-thirds of the creditors both in value and number. How easy it would be under this bill for a debtor to render a list of his friends only, and by getting them to appoint an assignee according to his wishes, fraudulently to rob his creditors! The bill was of such a nature as to operate not alone in the District of Columbia, but upon creditors dispersed throughout the Union. The bankrupt law, notwithstanding all its checks, had given rise to many frauds. How much more extensive, therefore, would the frauds be under this bill, where all these checks were removed?

Mr. NICHOLSON replied to the observations of Mr. GODDARD, by remarking that it was entirely left to the discretion of the court to give such notice to the creditors as they saw fit, who might come in at the time, or within two years, and on showing fraud, deny all the benefit of the act to the debtor, who might be punished for perjury. He agreed with the gentleman that under the bankrupt law many frauds had been committed. This was inevitable. He had been no advocate for that law, nor one of those who passed it. But as most of the States have some provisions on this subject, he thought this district, viewing it as a State, ought to have similar provisions extended to it.

Mr. MITCHILL said he could not agree to the amendment, as he did not view the original principle of the bill with that abhorrence that had been expressed by some gentlemen. He had always considered it as a paradox that in countries, comparatively free, the love of property should predominate over that of freedom. Having seen this principle once resorted to, it afterwards appeared to be acted upon as a matter of course. He could not, however, but reflect on the time of our Saxon ancestors, considering us as having derived our origin from England, when no deprivation of personal liberty was allowed for debt. By them it was provided that the freedom of the person should never be infringed but in cases which concerned the breaking of the peace or for offences against the organization of the realm. These rights had been confirmed under Edward the Confessor, and again adopted as part of *Magna Charta*. [the words of which Mr. MITCHILL here quoted.] And yet the Legislature of that country had acted in direct violation of this stipulation. This, however, was, he believed, easily to be traced to a spirit of commerce; that *auræ sacræ fames*, which made them ready, with one accord, to commute money for liberty. Tracing the subject from its first stage, the Legislature of that country, and we in imitation, had soon proceeded from the process of arresting the person to the period of ultimate confinement, in a series of violations of the great principles of Magna Charta, until it became necessary for the Legislature to interfere to remove the evils consequent upon their measures, first to emancipate the person of the debtor from a species of slavery, and secondly to emancipate him from his debts.

Mr. MITCHILL said he had been thus particular in his reference to England, because what had been adopted there applied *mutatis mutandis* to this country.

[He then went into a detailed specification of his reasons for the original principle of the bill, which we regret our inability to report from the occasional lowness of his voice breaking the chain of his ideas as communicated to us, concluding with an expression of the opinion, that one year's residence was too short, and that if it should be determined to retain the section, he would propose a longer period.]

Mr. MACON (Speaker) was in favor of the committee rising, as he did not think they were prepared for a decision. Notwithstanding all that had been said, Congress ought not lightly to violate contracts between individuals. Most of the States had insolvent laws; and their various ideas on this subject might perhaps be taken from the systems of the different States in which they lived. As to himself, he believed that no government ought to let any man keep property that belonged of right to another. Suppose a man, an insolvent debtor, should ride in his carriage, while his creditors should be begging bread in the streets. Did not this show the necessity of caution? All that could be justly asked was to liberate the person of the debtor. There was no great danger of the rigor of the creditor. It was not the practice of Americans to seize from a man what was necessary for his family.

Mr. M. entertained doubts whether Congress in legislating for this District could affect property that lay in the several States. Suppose, for instance, that a debtor execute a deed for property in an extreme State; while in that State the same property is sold under execution on a suit instituted there. Which would be valid?

This provision appeared to him to place the people of this Territory in a very different situation from the citizens in the several States. In other cases Congress legislate generally; here, exclusively. One State cannot pass a law that shall affect the property in another State. If Congress undertake to pass a law that shall affect all property, there may be endless confusion and clashing of jurisdiction. He concluded by moving that the Committee should rise, and ask leave to sit again.

Carried without a division; and leave granted.

Mr. NEWTON presented a petition from sundry inhabitants of Norfolk and Portsmouth, praying that the bankrupt law may be amended. Referred to a select committee of seven.

Mr. VARNUM moved that the same committee should be instructed to inquire into the expediency of repealing the bankrupt law.

Mr. NEWTON considered the committee already raised as competent to the inquiry, without any express instruction.

Mr. GRISWOLD thought this motion incompatible with the prayer of the petition from Norfolk and Portsmouth—the one being in favor of an amendment, and the other in favor of a repeal of the bankrupt act. After it shall appear that it is not susceptible of amendment, it may be proper to agitate the question of repeal.

Mr. VARNUM thought there was no impropriety in submitting both propositions to the same Committee, who will inquire into the merits of the law, and the propriety of continuing it. It appeared to him that it was not calculated to protect the happiness of the citizens of the United States. It opened the door to the greatest frauds and inequalities imaginable. He hoped the subject would be taken up seriously, and expressed his opinion that the law was considered by both political sides as injurious

Mr. GRISWOLD replied, and insisted that the arguments of the gentleman proved the impropriety of referring both points to the same committee. If the gentleman is against a continuance of the law, let it be referred to a Committee of the Whole, who will be the most proper organ for expressing the sense of the House on that principle.

The question was then taken on Mr. VARNUM'S motion; which was carried—ayes 45, noes 25.

TUESDAY, January 4.

An engrossed bill for the relief of Charles Hyde was read the third time, and passed.

On motion, it was

Resolved, That a committee be appointed to prepare and bring in a bill for erecting a monument to the memory of General Herkemer, pursuant to a resolution of Congress, passed the fourth day of October, one thousand seven hundred and seventy-seven.

Ordered, That Mr. VAN RENSSELAER, Mr. BUTLER, and Mr. STRATTON, be appointed a committee pursuant to the said resolution.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting a statement exhibiting the amount of duties and drawbacks on goods, wares, and merchandise, imported into the United States, and exported therefrom, during the years one thousand seven hundred and ninety nine, one thousand eight hundred, and one thousand eight hundred and one; which were read, and ordered to lie on the table.

The House resolved itself into a Committee of the whole House on the bill making a partial appropriation for the naval service, during the year one thousand eight hundred and three; and, after some time spent therein, the bill was reported to the House without amendment.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the whole House on the bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three; and, after some time spent therein, the bill was reported, with several amendments thereto, which were twice read, and, on the question severally put thereupon, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

On a motion made and seconded, that the House do come to the following resolutions:

Resolved, That provision ought to be made, by law, for the establishment of post roads throughout the United States.

Resolved, That whatever money shall be received in the Treasury of the United States from the Post Office, shall, after defraying the expenses of that establishment, be appropriated to fixing and improving the post roads.

Ordered, That the said motion be referred to a Committee of the whole House on Monday next.

A petition of Matthew Patterson and others, inhabitants and settlers on French Broad river, and within the original chartered boundaries of South Carolina, was presented to the House and read, stating certain inconveniences to which the petitioners are, and will be, subjected, in consequence of that portion of territory in which they reside, being considered as a part of the State of Georgia, and praying that the said portion of territory may be annexed to, and comprehended within the State of South Carolina, for the reasons therein specified.

Ordered, That the said petition be referred to Mr. MOORE, Mr. DICKSON, and Mr. PERKINS, that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The House resolved itself into a Committee of the Whole, Mr. JOHN C. SMITH in the Chair, on the bill for the relief of insolvent debtors within the District of Columbia.

Mr. NICHOLSON said that, when this section was under consideration yesterday, a number of gentlemen had declared themselves decidedly against the principle of it. He therefore moved to strike out the section, though he should vote against it.

On this motion the question was immediately taken, and carried in the affirmative by a large majority—ayes 50.

When, on motion of Mr. NICHOLSON, the Committee rose, the House refused their permission to sit again, and recommitted the bill to the committee who introduced it.

CESSION OF LOUISIANA.

Mr. GRISWOLD observed, that there was one subject noticed in the President's Message, on which the House had taken no order. It was very important that the Legislature should possess all the information that it was in the power of the Heads of Departments to furnish. He then read that part of the Message that relates to the cession of Louisiana to the French; and said that, for the purpose of obtaining all the information proper at that time to be given, he made the following motion:

"*Resolved*, That the President of the United States be requested to direct the proper officer to lay before this House copies of such official documents as have been received by this Government, announcing the cession of Louisiana to France, together with a report explaining the stipulations, circumstances, and conditions, under which that Province is to be delivered up; unless such documents and report will, in the opinion of the President, divulge to the House particular transactions not proper at this time to be communicated."

Mr. GRISWOLD considered it respectful to save the President from a request to furnish papers that may be improper at this time. The subject, however, was vastly important, and the cession of the Province might require from the Legislature some further protection of that frontier.

Mr. SMILIE hoped the resolution would lie on the table at least till to-morrow.

Mr. S. SMITH asked the gentleman from Connecticut to explain the difference between his resolution, and that offered at the beginning of the session by the gentleman from Virginia, (Mr. RANDOLPH.)

Mr. GRISWOLD replied that, if the gentleman from Maryland would give himself the trouble of reading the resolution offered by the gentleman from Virginia, he would perceive the difference. That related to the shutting of the port of New Orleans by Spain; and the other to the cession of the Province to France. If the gentleman thought there were any delicate subjects connected with the resolution, he had no objection to its resting until to-morrow.

WEDNESDAY, January 5.

A Message was received from the PRESIDENT OF THE UNITED STATES, as follows:

Gentlemen of the House of Representatives:

Agreeably to the request of the House of Representatives, I now transmit a statement of the militia of those States from which any returns have been made to the War Office. They are, as you will perceive, but a small proportion of the whole. I send you, also, the copy of a circular letter, written some time since, for the purpose of obtaining returns from all the States: should any others, in consequence of this, be made during the session of Congress, they shall be immediately communicated. TH. JEFFERSON.

JANUARY 5, 1803.

The said Message was read, and, together with the papers referred to therein, ordered to be referred to the committee appointed on the seventeenth ultimo, to whom was referred "so much of the President's Message as relates to the militia institution of the United States."

An engrossed bill making a partial appropriation for the Naval service during the year one thousand eight hundred and three, was read the third time, and passed.

An engrossed bill making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three, was read the third time, and passed.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred, on the fourteenth ultimo, a bill for the relief of Henry Messonnier, together with the memorial of the said Henry Messonnier, with the vouchers accompanying the same, presented the third day of February, and a report of the Committee of Commerce and Manufactures thereon, of the 8th of March last, made a report; which was read.

Mr. S. SMITH, from the same committee, also reported a bill for the relief of Henry Messonnier; which was read the first time.

A motion was made, that the said bill be now read the second time; which being objected to, on the ground that the Committee of Commerce and Manufactures were not authorized by any resolution or order of the House, during the present session, to report by way of bill or bills, or otherwise: and debate arising thereon, another motion was made and seconded, that the House do come to the following resolution:

Resolved, That the Committee of Commerce and Manufactures be authorized to report by bill or bills, or otherwise, on all such matters as shall, from time to time, be referred to them by the House.

And the question being taken thereupon it passed in the negative.

Ordered, That the said committee have leave to withdraw from the Clerk's table their report and the other papers relative to the claim of Henry Messonier.

A petition of sundry inhabitants of the city and county of Washington, in the District of Columbia, was presented to the House, and read, praying that Congress will pass a law authorizing a new road to be opened, at the expense of the said county, connecting the Northern end of West Fourteenth street, in the city of Washington, with the public road leading from Rock Creek church to Georgetown, for the convenience and benefit of the petitioners and other inhabitants within the said District.

Ordered, That the said petition be referred to the Committee appointed on the twenty-first ultimo, on a memorial of the first and second branches of the City Council of Washington.

CESSION OF LOUISIANA.

Mr. GRISWOLD called up his resolution respecting Louisiana, laid on the table yesterday, as follows:

Resolved, That the President of the United States be requested to direct the proper officer to lay before this House copies of such official documents as have been received by this Government, announcing the cession of Louisiana to France, together with a report explaining the stipulations, circumstances, and conditions, under which that province is to be delivered up; unless such documents and report will, in the opinion of the President, divulge to the House particular transactions not proper at this time to be communicated.

The question was put on taking it into consideration, and carried—yeas 35, nays 32.

Mr. RANDOLPH observed that the discussion on this motion might embrace points nearly connected with the subject referred to a Committee of the Whole on the state of the Union, and which had been discussed with closed doors. He therefore thought it would be expedient to commit this motion also to the Committee of the Whole on the state of the Union, to whom had been committed the Message of the President respecting New Orleans.

Mr. RANDOLPH accordingly made such motion.

Mr. GRISWOLD only rose to make a question of order, viz: whether the gentleman could move the reference of the resolution to a Committee of the Whole on a subject whose discussion required closed doors.

Mr. SPEAKER said the motion was to refer the resolution to a Committee on the Union generally; there was no special Committee on the state of the Union.

Mr. GRISWOLD said he made no question of order of that. He had no doubt it was in order.

The SPEAKER decided the motion to be in order.

Mr. GRISWOLD hoped the motion would not

prevail. He did not see what argument could be urged in favor of it. The resolution related to a public transaction stated on their Journal. He did not think that anything which ought to be kept secret could be involved in the discussion of it. What is its purport? It only requests the President to furnish documents respecting "the cession of the Spanish province of Louisiana to France, which took place in the course of the late war," and which the President says "will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations of the Legislature connected with this subject."

Are not, said Mr. G., these papers important to the House? Does not the President refer to them as important to enlighten us? He speaks of the cession as a fact. He took it for granted the President would not make the declaration unless he had official information of its truth. Ought not the House to be possessed of all the important information in the power of the Executive to give? It certainly ought. Every gentleman would agree that the House ought to have all the information. If the information is confidential, it will be received with closed doors. But the question, whether the House shall obtain this information is a public question; and there was not a man within those walls, or in the United States, who would not say that the Legislature ought to possess every information on a subject so deeply interesting. Why, then, refer this resolution calling for information to a committee? Why postpone it? They had but a short time to sit. More than half the session was already elapsed. Is it not time to gain information? Mr. G. said, he would venture to declare that no subject so important could be brought before the Legislature this session. Ought we not, therefore, on such a subject, to take immediate means to gain information? He hoped the House would not agree to the reference, which could have no effect but to put the resolution asleep, and deprive the Legislature of information they ought to possess.

Mr. Randolph said, as he had expressed his disinclination to discuss a proposition with open doors which would trench on the decision of the House to discuss a subject to which it intimately related with closed doors, it could scarcely be expected that he should indulge the gentleman in entering into arguments calculated to carry him from his purpose. But he denied that the adoption of his motion would be a refusal to give information. He well knew that there was nothing easier than to declare the subject vastly important, and to make an eloquent harangue upon it, and to infer that those who did not immediately agree to the resolution were averse to giving information, and to going into a discussion of the merits of the main subject. It would, however, not be expected that he should enter upon these on a preliminary resolution. But he would assure the gentleman who had submitted this resolution, that, so far from indulging any disposition to be dilatory in his attention to this important subject, he came yesterday prepared to make a motion that the House should go into a Committee of the Whole on the subject, which motion he should have then made but for that offered by the gentleman from Connecticut.

Mr. Rutledge said that, did he consider that the giving publicity to any information on this subject would in the least interfere with the Constitutional functions of the President, he would be the last man to support the resolution of his friend from Connecticut. But he could not conceive that this could be its effect. What were they about to ask? They were about to ask, in respectful terms, the President for information relative to what he states as a fact; so much information as he may think it expedient to give. Surely there would be no impropriety in this. The cession of Louisiana had been stated in all the public prints of Europe and this country, and on the floor of the British Parliament. This cession had been made a year ago, and, notwithstanding the elapse of this time, we have received no official information on this subject. Is it not natural for the people to ask why Congress do not call for this information? Will they not say the President has done his duty in stating the fact? Upon this subject, so very important, are they to be kept in the dark? Mr. R. could not conceive any turn of the debate on this resolution that could produce a discussion of the merits of the Message referred to the Committee of the Whole. If the President shall say the information he gives us ought not to be made public, he would answer for himself, and he believed he could answer for his friends, that they would not seek a public discussion. And if the information is imparted without confidence, the House, if it see fit, can itself control a public discussion. Mr. R. concluded with saying that, in the present case, he was for deciding on the resolution with open doors.

Mr. S. Smith thought this point ought in a great measure to be determined by the custom of the House in similar cases. He did not assert it as a fact, but, from recollection, he believed it was so, that when a call was made for papers in the case of the British Treaty, the question was referred to a Committee of the Whole, and there fully discussed. According to his recollection, one side of the House called for papers on the principle that, after negotiations were terminated, the House had a right to information before they made a grant of money under a treaty, but acknowledging that a call for such information might be improper during a pending negotiation. He was one of those who thought it proper, on that occasion, that the House should have the papers; but he also thought it improper, and had then so declared, to call for papers during a pending negotiation. Whether in the present instance a negotiation was pending or was not, he did not know. He was, therefore, for postponing the resolution till this was known to the House.

Mr. Dana said that he did not know, nor had he heard from any quarter, that there was any negotiation depending respecting the cession of Louisiana. The President has informed us of the fact. All that the resolution asks are official documents

respecting the cession, with the stipulations, circumstances, and conditions, under which it is to be delivered up. He could not see the impropriety of such a request. But if the President deem it improper to furnish the information, we do not assert our right to demand it. There are two views in which this information may be important; that which may throw light on the boundaries of the province as ceded; and another, whether the province is to be ceded to the French in the condition it shall be in when actually delivered up, or whether subject to the conditions in which it was held according to treaty by Spain. This is important information to guide our deliberations; information not depending upon an existing negotiation, but upon a negotiation decided.

Mr. Griswold called for the taking of the yeas and nays.

Mr. Smilie was in favor of the widest publicity in every case where it would not prove injurious; and there were, in his opinion, very few cases in which it ought not to take place. He could not, however, withhold one remark; that gentlemen should object to the mode now proposed, a mode similar to that adopted in like cases, greatly surprised him. [He here quoted the proceedings of the House on a call for papers in the case of the British Treaty.] That case furnished a precedent, by which it appeared that a motion for information was referred to a Committee of the Whole for a more full discussion.

Mr. Davis observed that, as he lived in that district of county most materially affected by the subject before the House, he thought it proper to express his opinion on the motion. He said he did not know what reason could be assigned for the motion, but that expressed by the gentleman from Virginia, to go into a Committee of the Whole in private, to propose certain resolutions that required secrecy.

Mr. D. said it had been his purpose yesterday to have submitted certain resolutions, which he should have done, but for the motion of the gentleman from Connecticut calling for information; after it was made he was willing to wait until all information was obtained that could be furnished. Suppose we go into a Committee of the Whole, what light can we expect from their deliberation? We can gain nothing. But let the call for information prevail; let us draw from the President such information as he may think it proper to give; and let us then refer that information to a Committee of the Whole, and they will be able to deliberate wisely. What use can it be to take a step from which no benefit can be derived? As to the call on the President, he will not give us anything that is improper. How does the gentleman from Virginia know what light this information may throw on the subject? Is he prepared to say it will throw no light on this subject? If he is, Mr. D. said he himself was not. He might have ways of acquiring the secrets of the Cabinet; but for himself he had no such opportunities. Mr. D. concluded by declaring himself against the motion.

Mr. Randolph was compelled again reluctantly to trespass on the indulgence of the House, to assure them, and the gentleman from Kentucky, that his motion did not comprehend a refusal to agree to the call for information made by the gentleman from Connecticut. After going into committee, they might, perhaps, either by a unanimous vote, or by that of a majority, agree to the resolution. Benefit might arise, and no mischief possibly could, from going into a Committee of the Whole.

Mr. Huger must acknowledge that he could not understand the object of those who were for refusing this information. If they had any objection to asking the information, let them inform us what it is. And if they have no objection, why go into a Committee of the Whole; which if gone into, must be with closed doors? The question alluded to in the British Treaty was very different from this. In that case, one part of the House thought they had a right to demand the information of the Executive, and that he was bound to deliver it; while the other part of the House neither acknowledged the right to demand, nor the obligation to obey. The present case was entirely different. We ask nothing but what the Executive shall think proper to furnish, we are as cautious as we can possibly be; we even go so far as to put words in the President's mouth, if he shall think there is any impropriety in giving the information. Gentlemen certainly have confidence in the Executive, that he will tell us if the information is improper to be furnished.

Mr. H. could not but express his surprise that the House had received no official documents on this important subject. He could not comprehend why Congress should not know the contents of the convention. If proper, we ought to have these documents; and if not proper, we ought to have a reason for it. The country was in a state of serious alarm; and it might have a bad effect if something was not immediately done, and a disposition exhibited to act, in case it should prove necessary.

Mr. Smilie said the gentleman from South Carolina (Mr. Huger) was incorrect, when he stated that, in the case of the British Treaty, one set of gentlemen had contended for the right of the House to demand papers. If this had been so, the resolution then proposed would have been peremptory; whereas the fact was that it was qualified by an exception of such papers as the President might consider it improper to furnish. [Mr. Smilie here quoted the Journals, which confirmed his remark.]

Mr. Gregg, said it would be allowed that this was an important resolution, which related to an important subject. This was, he believed, the first instance in which a resolution allowed to be important, had been refused a reference to a Committee of the Whole. On this principle his vote would be decided. If the motion did not prevail he should then move that the resolution should be printed before it was acted upon.

Mr. Griswold would not object to the reference if the object were to obtain a more full discussion of the resolution. He was generally in favor of such references, as the discussion was conducted in a Committee of the Whole on a freer scale than

in the House. On this principle it was, that the call for papers respecting the British Treaty was referred to a Committee of the Whole. But it had not been referred to a Committee of the Whole on the state of the Union.

He, however, understood the object of gentlemen to be to refer the resolution to a Committee of the Whole, for the purpose of discussing it with closed doors. If that were the object, he should oppose it. For, he would say, nothing of secrecy could arise out of the discussion of this resolution. He did not wish that a resolution so important should be referred to a secret committee. If gentlemen mean to deny us this information, let them deny it in public. Let them not do it in a secret committee. Surely they can have no such unworthy motives.

As to the case of 1796, under the British Treaty, the ground of opposition was this: It was claimed that the House had a right to decide upon a treaty, and to establish this point papers were called for. And on the decision of the question, on the granting or refusing the application, depended the establishment of the right of the House to participate in the treaty-making power. This right was denied by those who voted against the call. But in this case there was no difference as to the power of the House. The President in his Message had expressly stated that the cession would have weight in the deliberations of the Legislature. This, then, being a case in which it is proper to legislate, shall we go to work blindfold, without having all the information possessed by the Executive, that it is proper we should possess? What do we know respecting the cession? Though made for more than one year, we have no information, except that contained in the Message, which barely mentions the fact. For these reasons Mr. G. hoped the motion would not prevail, as its avowed object was not for a more full discussion, but for the purpose of going into a secret committee. If gentlemen mean to deny us the information we ask, let the denial be public; and if they grant it, there is no reason against their doing it publicly.

Mr. RANDOLPH.—The gentleman from Connecticut tells us that this subject is referred to in the Message of the President, and that on it we are called by him to legislate. That subject has been referred to a Committee of the Whole; and yet, he says, it is improper to refer this resolution to the same committee. This may be logic; but I confess, if it is, I do not understand it. He says if the object of reference be for a more ample discussion, he will be in favor of it; but not so, if it be to send it to a secret committee. Does the gentlemen mean to insinuate that the debates of this body are for the entertainment of the ladies who honor us with their presence; or that as soon as our doors are shut, our ears also are shut to all useful and necessary information? If the doors shall be closed, cannot we still agree to the resolution? However gentlemen may persist in the course they have taken, I shall not permit the warmth of their remarks, or that of my own feelings, to betray me into a debate on points which the House have determined shall be discussed with closed doors. For my own part, I am ready to declare that I have arguments to advance, that it is not my wish to advance with open doors.

Mr. BACON said the resolution simply called for information respecting the cession of the province of Louisiana to the French. He did not see the end to be answered by committing it. Is there any doubt that we shall not stand in need of information when we come to discuss points connected with this subject? It appeared to him they would. He was therefore against the reference.

Mr. S. SMITH.—The gentleman from Connecticut has candidly admitted that it is customary in such cases to make a reference; that he is not in favor of the reference being made to a committee with shut doors; but if the object were to obtain a free discussion, he would not object to it. He is told that a full and free discussion cannot be had without such a reference, and yet he persists in his hostility to the motion. He had been told so by the mover, and common sense would have told him so at first; yet he is for taking advantage of the mover, and for shutting out the arguments he has to urge. The gentleman is mistaken in his statement of the motives of the different sides of the House in the discussion on a call for papers, in 1796, when he represents one side as claiming a right to participate in the treaty-making power. He recollected it had been charged upon them; but they had denied it. We contended, said Mr. S., that when a treaty was formed, appropriating a large sum of money, we had a right to appropriate or not to appropriate the money; but we never assumed the right to say whether the treaty was concluded or not. Afterwards, gentlemen themselves, if he recollected right, moved a resolution that it was expedient to carry the treaty into effect, by which they did admit the right of the House. Mr. S. said he had no previous knowledge of what the gentleman from Virginia meant by his motion; he might perhaps wish to amend the resolution; but when he says he has arguments that he cannot urge without shut doors, he trusted that indulgence would be allowed him, or there would be a denial of justice.

Mr. DANA said, there was a magic of language, to those unaccustomed to parliamentary language, in the House resolving itself into a committee, and that committee returning itself back into the House, both composed of the same members, that made the proceedings of public bodies appear ridiculous. But there were substantial benefits derived from the observance of these forms. There was a fuller and freer discussion; every member spoke as often as he chose, and they enjoyed the Speaker's advice. There were, besides, two discussions and decisions, instead of one. He admitted, therefore, the propriety of such procedure in all cases where there was an important principle involved. But in this instance there was no important principle to discuss. There was an important principle involved in the famous question of 1796. It was therefore right to refer it to a Committee of the Whole. He did not know what principle was to be discussed on this reference, unless it was the

want of information. This he most sensibly felt; and those gentlemen who also felt it, might, he thought, be indulged by those who possess all information on the subject. If any gentleman, however, will say that any important principle is involved in the resolution, he was ready to go into Committee of the Whole, though not with closed doors.

The question was then taken by yeas and nays on Mr. RANDOLPH's motion, to refer the resolution of Mr. GRISWOLD to a Committee of the Whole on the state of the Union, and carried—yeas 49, nays 39, as follows:

YEAS—Willis Alston, John Archer, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A Hanna, Joseph Heister, William Hoge, James Holland, David Holmes, George Jackson, Michael Lieb, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abraham Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

NAYS—John Bacon, Phanuel Bishop, Thos. Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, Wm. Dickson, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thos. Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

On motion of Mr. GRISWOLD, the House immediately went into Committee of the Whole on the state of the Union.

Mr. RANDOLPH rose, and observed that he held in his hands certain resolutions connected with the Message of the PRESIDENT, relative to the late proceedings at New Orleans, the discussion of which had been ordered to be carried on with closed doors. He asked the decision of the question, whether, previously to offering his resolutions, the doors ought not to be closed? The resolutions he meant to submit grew out of the Message. If the House, however, insisted upon their being then read, he had no indisposition to read them.

The CHAIRMAN considered the Committee as incompetent to clearing the galleries. He thought it must be the act of the House.

Mr. DAWSON inquired if the same rules that applied to the House, did not also apply to Committees of the Whole?

Mr. RANDOLPH called for the reading of the President's Message respecting New Orleans.

Mr. GRISWOLD said there was other business, not requiring secrecy, referred to the Committee.

Mr. RANDOLPH repeated his call for the reading of the President's Message.

The CHAIRMAN asked what Message?

Mr. RANDOLPH replied the confidential Message.

Mr. GRISWOLD said that could not be read with open doors.

The CHAIRMAN said the doors could not be closed without an order of the House.

Mr. S. SMITH observed that it had been customary to clear the galleries before the House went into Committee. To save time, he would move that the Committee should rise, in order to obtain an order of the House to that effect.

Mr. GRISWOLD hoped the Committee would not rise. The business he had proposed was of a public, not a secret nature. It was also of a pressing nature, and ought not to be postponed for any other business.

Mr. DANA hoped, indeed, for the honor of the House, they would not exhibit the spectacle of wasting time in going into Committee and then coming out of it without doing anything, but would proceed to the public business.

Mr. RUTLEDGE.—The gentleman from Virginia holds in his hands resolutions that require secrecy. After deciding on the motion of the gentleman from Connecticut, he will not be precluded from offering these resolutions.

Mr. EUSTIS said if the House had resolved itself into a Committee for the express purpose of taking into consideration the resolution of the gentleman from Connecticut, it would be proper to give it the preference over any other business; and in that case he should have been as ready at this moment as at any other to offer his objections to it. But if it were understood that the House had resolved itself generally into a Committee on the state of the Union, one gentleman from Virginia having made a motion, and another gentleman from Connecticut having afterwards made another motion, that made by the last gentleman being junior in point of time ought to be last attended to. The other gentleman's motion was first in course; and if the gentleman who offered it desired the galleries to be cleared, he had an undoubted right to an order to that effect.

Mr. MACON (Speaker) remarked that a Committee of the whole House was one committee, and a Committee of the whole House on the state of the Union another committee. They were distinct committees. The last was never formed for special purposes. He did not recollect that this had ever been done. Whereas the other committee was always formed for a special purpose. The difficulty in this case had arisen from referring the confidential Message to a Committee of the Whole on the state of the Union. He believed it would be well to rise, and separate the two subjects that had been referred to the Committee on the state of the Union.

Mr. GRISWOLD did not understand what the gentleman from Massachusetts meant by priority of motion. The Chairman had determined that the motion of the gentleman from Virginia was not

in order, as it could not be submitted to a public committee. After this disposition of that motion, none remained before the Committee other than his own. In point of priority, he rose, therefore, to have his resolution then decided upon. With regard to the proposition of the honorable Speaker, he did not see any reason for it. Was it not as well to decide on this resolution in this Committee as in any other committee? Why, then, rise for the purpose of referring it to a secret committee?

Mr. S. Smith said, the gentleman from Massachusetts meant by his remarks that the Message of the President had precedence. The gentleman from Connecticut was only now urging what had been decided against him in the House. He thinks he has now an advantage, and presses it.

Mr. S. said, he had not a doubt that the gentleman from South Carolina (Mr. Rutledge) is very sincere in his opinion, that, if we will agree to submit all power to them, they will indulge us by agreeing to certain subordinate points. But gentlemen will excuse us. We have already taken great pains to divest them of power, and we are not yet disposed to return it into their hands.

We are of opinion that the Message ought to be discussed with closed doors; that is the intention of the motion; let us not take advantage of those who have arguments to offer which they wish not to submit with open doors; let the Committee rise, and the galleries be cleared.

Mr. Dana, in one point, fully agreed with the gentleman from Maryland. They had taken great pains to get power. But he regretted that any political party allusion whatever had been made on this subject. He had supposed it so important, so deeply interesting to all America, that he had hoped all spirit of party would have slept during our deliberations on it; and that we should have shown that we entertained but one sentiment, and were ready, if necessary, to extend one arm in defence of our invaded rights.

Mr. L. R. Morris expressed his disagreement with the Speaker on a point of order—

When the question was taken on the rising of the Committee, and carried in the affirmative—ayes 49, noes 37.

The Committee accordingly rose, and the Chairman reported that they had come to no resolution.

A motion was made to adjourn, on which Mr. Griswold called the yeas and nays; which were—yeas 38, nays 51, as follow:

Yeas—Theodorus Bailey, Richard Brent, Robert Brown, William Butler, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, David Thomas, Philip R. Thompson, Abraham Trigg, Philip Van Cortlandt, Isaac Van Horne, and Thomas Wynns.

Nays—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Thomas Boude, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Ebenezer Elmer, William Eustis, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Sam'l Hunt, Thos. Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, James Mott, Joseph H. Nicholson, Elias Perkins, Thomas Plater, John Randolph, jun., Nathan Read, John Rutledge, William Shepard, John Smilie, John Cotton Smith, John Stanley, John Stratton, John Taliaferro, jun., Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, John Trigg, George B. Upham, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAVIGATION OF THE MISSISSIPPI.

The House was then cleared of all persons, except the members and the Clerk: Whereupon the House resumed the consideration of a confidential communication from the President of the United States, received the thirty-first ultimo.

Ordered, That the Committee of the whole House on the state of the Union, to whom were referred the Message of the President of the United States of the twenty-second and thirtieth ultimo, be discharged from the consideration thereof; and that the said Message, together with the documents transmitted therewith, be committed to a Committee of the whole House to-morrow.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That this House receive, with great sensibility, the information of a disposition in certain officers of the Spanish Government at New Orleans, to obstruct the navigation of the river Mississippi, as secured to the United States by the most solemn stipulations.

That, adhering to the humane and wise policy which ought ever to characterize a free people, and by which the United States have always professed to be governed, willing, at the same time, to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty, and relying, with perfect confidence on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the Government shall have pursued for asserting the rights and vindicating the injuries of the United States: holding it to be their duty, at the same time, to express their unalterable determination to maintain the boundaries, and the rights of navigation and commerce through the river Mississippi, as established by existing treaties.

Ordered, That the said motion be referred to the Committee of the whole House last appointed.

Thursday, January 6.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting two statements, marked A and B, relating to the internal revenues of the United States: as also an explanatory letter thereon, from the Commissioner of the Revenue; which were read and ordered to lie on the table.

Mr. S. Smith, from the Committee of Commerce and Manufactures, to whom was referred, on the fourteenth ultimo, the memorial of Henry Messonier, made a report thereon; which was read, and ordered to be committed to a Committee of the Whole on Monday next.

Ordered, That the Committee of the whole House, to whom were referred, on the twenty-fourth ultimo and third instant, a report of the Committee of Claims on the petition of Peter Charles L'Enfant; also, a letter from the Secretary of State, enclosing sundry documents relative to the claim of Peter Charles L'Enfant, for planning and laying out the City of Washington, be discharged from the consideration thereof; and that the said report, letter, and documents be recommitted to the Committee of Claims.

CESSION OF LOUISIANA.

Mr. Griswold moved that the House should resolve itself into a Committee of the Whole on his resolution respecting Louisiana.

Mr. Dawson was opposed to the motion, for reasons before assigned.

Mr. Griswold said the gentleman did not understand what he had proposed. It had been the wish of gentlemen to separate the consideration of his resolution from other subjects referred to the Committee of the Whole on the state of the Union. For which purpose he had been willing to refer it to a Committee of the Whole. But he was averse to referring it to a secret committee; as he did not perceive its connexion with any subject that required secrecy. The discussion on it ought, in his opinion, to be public. It was not necessary for him to repeat that it was of a pressing nature. It respected the obtaining information on a subject, he would say, of greater importance than any which could come before Congress that session. One third of the session was gone, and yet the Legislature had no information before them. He hoped there was no disposition entertained by gentlemen to embarrass this proposition with points unconnected with it. The proposition was extremely simple. Called upon by the President to legislate on the subject of the cession of Louisiana, we do not know the precise state of that cession. To legislate correctly, we want to be informed of all the circumstances. If gentlemen are disposed to deny us this information, let the denial be public. Do not let them refer this motion to a secret committee, where they may deny us the information we ask on reasons which we cannot divulge. Mr. G. concluded by calling for the yeas and nays.

Mr. S. Smith asked if this were not the precise motion decided yesterday by the House? He thought it had been referred to a Committee of the Whole. He had considered it as having taken that course. When we go into Committee the gentlemen will see whether we shall refuse them the information. Perhaps we shall see that it is of such a nature as we ought to possess. He did not himself know how that was; nor did he mean to commit himself by any remarks which he had made. He trusted gentlemen would remember their vote yesterday, and not suffer themselves to be put out of their course by this extraordinary mode of conducting business.

Mr. Lowndes demanded whether, even if the motion were the same, there was any impropriety in putting it again to day; and whether it were not perfectly consistent with the rules of order to go into a Committee, and take up the resolution? If there ever was a resolution offered to that House which ought to obtain an unanimous vote, it was that of his honorable friend from Connecticut; which proposes simply the calling for such information as the President might see fit to give on a most important subject that had excited the sensibility of the whole nation. The President himself, in his Message, alludes to the subject as one which may require Legislative interposition, and gentlemen persist in refusing us this information. It was a most extraordinary circumstance in the annals of the United States, that, notwithstanding the magnitude of the cession of Louisiana, the length of time since it was made, and the necessary consequence of having a new and powerful neighbor on our frontier, we had yet no official information on the subject. The President in his Message really tells us nothing. He says "the 'cession of the Spanish province of Louisiana to 'France, which took place in the course of the late 'war."—this we had been told long before by the public prints, and in a discussion before the British Parliament—but he goes on and says—"will, 'if carried into effect, make a change in the aspect 'of our foreign relations, which will doubtless have 'just weight in any deliberations of the Legislature 'connected with that subject." To this the understanding of every schoolboy is competent. It was really surprising that gentlemen should wish to reject such a call as this. It was not probable that the President had been so unmindful of his duty as not to have demanded an explanation through our Ministers at the Court of Spain, or at Paris. If he has this information, and it is of a nature proper to be known to us, we ought immediately to obtain it, that we may not be slumbering at our posts on an infraction of our rights.

Mr. L. suspected gentlemen had not correctly attended to the resolution. It only requests the President to lay such information before the House as he may think proper. Are gentlemen then afraid to trust to the discretion of the President? Are they apprehensive lest he should communicate that which is improper? He hoped they had more confidence in the Executive. He thought this call should precede any resolutions. He could not disconnect the shutting of the port of New Orleans from the cession of Louisiana. There appeared to be a natural connexion between these two events. He was afraid that the shutting the port was ominous of the disposition of Spain to cede the province to France, independently of any incumbrances she may have imposed upon herself. He was afraid France in this transaction would consult her interests and convenience, and not our rights. We well knew the grounds on which that nation interpreted treaties, and we had no reason from that knowledge to repress our fears. An observation of the gentleman from Virginia had given him great uneasiness. That gentleman had told us, if Spain had ceded Louisiana to France

she had a right to cede it. This Mr. L. was not prepared to say. He did not think Spain had a right to give to America what she pleased; much less give her a new neighbor, under circumstances different from those by which she held the province. He was not, however, then disposed to discuss the abstract question involved in this subject. He trusted the resolution calling for information would be agreed to. The House need not fear that, in asking this information, they would not speak the sense of the people; and, if other measures were necessary, they would also, in adopting them, speak the sense of the nation.

Mr. Bacon said it was not uncommon to hear of extraordinary occurrences in that House. One mode of reasoning yesterday had great weight, that asserted a connexion between the resolution and the subject of New Orleans, which had been taken up and referred to a committee with closed doors. One subject appeared to him to be not only nearly connected, but to form an essential part of the other. For what purpose this resolution should be separated from the general subject, he could not conceive. Why do we want information, but that we may have a more clear view of the general subject? He could not see any detached purpose for which it was required. Why then divide it into little detached parts? Until he could hear reasons for such a division, he should be against the reference.

Mr. Hemphill observed that the gentleman was mistaken in what passed yesterday. The gentleman from Maryland had first stated the subjects as similar; that ground was afterwards abandoned, and they were considered as distinct. There were only two points connected with the subject before the House in which documents could be required or secrecy necessary. The one related to the cession of Louisiana; the other to the shutting the port of New Orleans. The former, though not referred to a committee, was as important at the latter, which had been referred. In the last case we deemed it important to have and request papers. The resolution before them related to the first point; it had been deemed of sufficient importance to refer it to a committee, and this afforded good reasons for calling for papers respecting the cession. He begged leave to refer to the Message, which says the cession "will, if 'carried into effect, make a change in the aspect 'of our foreign relations, which will doubtless have 'just weight in any deliberations of the Legislature 'connected with that subject." The House will perceive that the language of the Message is hypothetical—the words are, "if carried into effect." How then can we deliberate on this subject, unless we know the degree of probability there is, that it will be carried into effect? A knowledge of the circumstances necessary to ascertain this, appeared to be absolutely indispensable.

If likely to be carried into effect, the next question is, as to the time when it will be carried into effect. When these two inquiries were solved, another naturally offered itself: Is France to take the province subject to existing treaties, or as she shall receive it at the time of delivery? All these circumstances it was necessary for Congress to know, before they could act correctly.

What necessity there was for secrecy in the discussion of this resolution, Mr. Hemphill could not conceive. All the information we have on the subject is contained in the President's Message, which every person in the United States knows as well as we do. It appeared to him that when their deliberations turned on facts which everybody knew, they ought to be public. His ideas of secrecy were these: that policy might require certain facts to be kept secret for a time; but, when made known, their arguments on them ought not to be secret. In this opinion he was strengthened by the rule of the House. [Mr. H. here read the rule on that point, which prescribes that the galleries shall be cleared whenever a confidential communication shall be received from the President, or whenever the Speaker or any other member shall inform the House that he has communications to make which he conceives ought to be kept secret.] Mr. H. asked on which branch of this rule, could the arguments of gentlemen be predicated? The President had not sent them a confidential communication, nor had any member said he had communications to make which he conceived ought to be kept secret. The information referred to in the rule meant facts, and not arguments drawn from facts. He concluded by saying he saw no occasion whatever for discussing this proposition with closed doors.

Mr. Dawson.—The gentleman from South Carolina (Mr. Lowndes) says there is a material connexion between the shutting the port of New Orleans and the cession of Louisiana. After, then, that part of the discussion which related to New Orleans had been ordered to be conducted with shut doors, how proper was it in him to introduce into debate a subject intimately connected with it? His opposition to the present motion did not arise from an indisposition fully to discuss the subject to which it referred; but from an indisposition to delay the discussion of the motion offered by his colleague. Against the present motion he should vote, because it promised nothing useful, and might be mischievous. We have been told that this subject is important and pressing. That it was important he felt; but he did not believe it was pressing. He could say, if the time should ever arrive when it became that House to act, this was not the time. When the time did arrive, he was prepared to act. Gentlemen were very anxious on this subject. He rejoiced to witness their anxiety. But he and his friends were not now to hear who were the friends of the Western country. The people of that country doubted not the protection of the Government. They were warmly attached to the Government, and knew that everything would be done, that ought to be done, to protect and defend their rights.

Mr. Bacon, said if he understood the gentleman from Pennsylvania, (Mr. Hemphill,) he perfectly agreed with him in opinion, that this resolution was connected with the subject of New Orleans. He agreed with him as to their inseparable connexion. But the only difference was that they inferred opposite consequences from the same premises. He, Mr. B., contended that the resolution made a part of the same general subject, and ought not to be divided from it. They say it ought to be divided.

Mr. Hemphill, replied that he had spoken as plainly as he could. He had said the subjects were distinct.

Mr Goddard.—The gentleman from Massachusetts yesterday told us the call for information ought to be public, though the information itself should be secret. This reasoning had been satisfactory to him then; he had hoped it would have also proved so to day. But it appears that he is now for sending us to a secret committee. Mr. G. said in his opinion, the call ought to be public, whatever the nature of the information might be. This information gentlemen will either deny or grant. They say it is not to be denied. Why then go into a committee? And if granted, why not grant it without assigning reasons, as well as with assigning them? Are we to be told by the gentleman from Virginia, there is no occasion for this call; that we have information enough? How does that honorable gentleman get his information? If from the Cabinet, are we, the representatives of the people, to obtain it from him? Surely this will be degrading to our characters. We may believe it is true as coming from him, but, as representatives, we should spurn at receiving it in such a channel. We want official information, but gentlemen say they want to go into secret committee on this resolution. What will be the good of this? Though he could not say what was done in secret yesterday, he might say what had not been done. They had done nothing; and if they went into secret session again, the consequence would be the same.

Mr. Randolph felt extremely reluctant to rise in this stage of the discussion, but he deemed it time to repel insinuations so frequently thrown out as perhaps to gain some credit, if they were permitted to pass entirely unnoticed. We are averse to take up the motion of the gentleman from Connecticut, and wherefore? Because, as our opponents would fain have it believed, we are insensible to the vast interest affected by the obstruction of the Mississippi? No, sir, because we are alive to this delicate and momentous subject; because we wish to act upon it; because we wish to go into committee on the confidential Message of the Executive; because the information required by the motion before you is not necessary to determine us in the course which we ought, and, I trust, will pursue; and because these preliminary questions, whatever be their object, are, in effect, only calculated to retard and to embarrass the decision of this House on this great question. Sir, I am content that gentlemen should repeat after each other the trite observations which have been so often reiterated of the magnitude of the object in question. I am content that they should make the best possible display of their ardor on this occasion. But wherefore this exhibition of a zeal so inordinate as to arrogate to itself all sensibility to the national welfare? Since gentlemen insist upon it, since they provoke the discussion, I must request to be indulged in some remarks on the history of this subject. And in reply to the gentleman from Connecticut, (Mr. Goddard,) I must be permitted to observe that such of my information as may have been derived from the Executive is equally accessible to every member of this House, and I believe to every reputable citizen in the Union, who chooses to apply for it. That, however, which I am about to present, is derived from a source accessible to the whole world. It is to be found in a document of inestimable value, (the debates of the Virginia Convention in 1788,) and might truly be said to be official. It is an account given in his official character of member of Congress, and under the Old Confederation, by that able and eminent man, that faithful and illustrious public servant, the late Governor of Virginia, to the Convention of that State, at their requisition. At his own suggestion the Legislature of the State had declined to insist upon it. To the Convention it was given, (however reluctantly,) as to a paramount authority. [Here Mr. R. read Mr. Monroe's speech.]

"After some desultory conversation, Mr. Monroe spoke as follows: Mr. Chairman—My conduct respecting the transactions of Congress upon this interesting subject, since my return to the State, has been well known to many worthy gentlemen here. I have been often called upon before this, in a public line, and particularly in the last Assembly, whilst I was present, for information in regard to these transactions; but have heretofore declined it, and for reasons that were held satisfactory. Being amenable, upon the principles of the Federal compact, to the Legislature, for my conduct in Congress, it cannot be doubted, if required, it was my duty to obey their directions; but that honorable body thought it best to dispense with such demand. The right in this Assembly is unquestionably more complete, having power paramount to that; but even here I could wish it had not been exerted as I understand it to be, by going into committee for that purpose. Before, however, I enter into this subject, I cannot but observe, it has given me pain to hear it treated by honorable gentlemen in a manner that has appeared not altogether free from exception. For they have not gone into it fully, and given a proper view of the transaction in every part, but of those only which preceded, and were subsequent to that, which had been the particular object of inquiry; a conduct that has seemed too much calculated to make an impression favorable to their wishes in the present instance. But, in making this observation, I owe it to those gentlemen to declare, that it is my opinion such omission has proceeded, not from intention, but their having forgotten facts, or to some cause not obvious to me, and which I make no doubt they will readily explain.

"The policy of this State, respecting this river, has always been the same. It has contemplated but one object, the opening it for the use of the inhabitants, whose interest depended on it; and in this she has, in my opinion, shown her wisdom and magnanimity. I may, I believe, with propriety say, that all the measures that have at any time been taken by Congress for that purpose, were adopted at the instance of this State. There was a time it is true, sir, when even this State, in some measure, abandoned the object, by authorizing

its cession to the Court of Spain. But let us take all circumstances into view, as they were at that time, and I am persuaded it will by no means show a departure from this liberal and enlightened system of policy, although it may manifest an accommodation to the exigencies which pressed on us at the time. The Southern States were overrun, and in possession of the enemy. The governments of South Carolina and Georgia were prostrate, and opposition there at an end. North Carolina made but a feeble resistance; and Virginia herself was greatly harassed by the enemy in force at that time in the heart of the country, and by impressments for her own and the defence of the Southern States. In addition to this, the finances of the United States were in a deplorable condition, if not totally exhausted; and France, our ally, seemed anxious for peace; and as the means of bringing the war to a more happy and speedy conclusion, the object of this cession was the hopes of uniting Spain in it with all her forces. If I recollect aright, too, at this moment, the Minister of the United States, at the Court of Madrid, informed Congress of the difficulty he found in prevailing upon that Court to acknowledge our independence, or take any measure in our favor, suggested the jealousy with which it viewed our settlements in the Western country, and the probability of better success, provided we would cede the navigation of this river, as the consideration. The latter circumstances were made known to the Legislature, and they had their weight. All inferior objects must yield to the safety of the society itself. A resolution passed to that effect. An act of Congress likewise passed; and the Minister of the United States had full authority to relinquish this valuable right to that Court, upon the condition above stated. But what was the issue of this proposition? Was any treaty made with Spain that obtained an acknowledgment of our independence, although at war with Great Britain; and such acknowledgment would have cost her nothing? Was a loan of money accomplished? In short, does it appear that even Spain herself thought it an object of any importance? So soon as the war ended, this resolution was rescinded. The power to make such a treaty was revoked. So that this system of policy was departed from, only for a short time, for the most important object that can be conceived, and resumed again as soon as it possibly could be.

"After the peace, it became the business of Congress to investigate the relation of these States to the different Powers of the earth, in a more extensive view than they had hitherto done, and particularly in the commercial line; and to make arrangements for entering into treaties with them on such terms as might be mutually beneficial for each party. As the result of the deliberations of that day, it was resolved, 'That commercial treaties be formed, if possible, with said Powers, those of Europe in particular, Spain included, upon similar principles; and three Commissioners, Mr. Adams, Mr. Franklin, and Mr. Jefferson, be appointed for that purpose.' So that an arrangement for a treaty of commerce with Spain had already been taken. Whilst these powers were in force, a representative from Spain arrived, authorized to treat with the United States on the interfering claims of the two nations, respecting the Mississippi, and the boundaries, and other concerns, wherein they were respectively interested. A similar commission was given to the honorable the Secretary of Foreign Affairs, on the part of the United States, with these ultimata. 'That he enter into no treaty, compact, or convention whatever, with the said representative of Spain, which did not stipulate our right to the navigation of the Mississippi, and the boundaries as established in our treaty with Great Britain.' And thus the late negotiation commenced, under auspices, as I supposed, very favorable to the wishes of the United States; for Spain had become sensible of the propriety of cultivating the friendship of these States. Knowing our claim to the navigation of the river, she had sent a Minister hither principally to treat on that point; and the time would not be remote when, under the increasing population of the country, the inhabitants would be able to open it without our assistance or her consent. These circumstances being considered, was it not presumable she intended to make a merit of her concession to our wishes, and to agree to an accommodation upon that subject, that would not only be satisfactory, but highly pleasing to the United States? But what was the issue of this negotiation? How was it terminated? Has it forwarded the particular object in view, or otherwise promoted the interests and the harmony of the States, or any of them? Eight or ten months elapsed without any communications of its progress to Congress. At length a letter was received from the Secretary, stating that difficulties had arisen in his negotiation with the representative of Spain, which, in his opinion, should be so managed as that even their existence should remain a secret for the present; and proposing that a committee be appointed with full power to direct and instruct him in every case relative to the proposed treaty. As the only ultimata in his instructions respected the Mississippi and the boundaries, it readily occurred that these occasioned the difficulties alluded to, and were those he wished to remove. And, for many reasons, this appeared, at least to me, an extraordinary proposition. By the Articles of Confederation nine States are necessary to enter into treaties. The instruction is the foundation of the treaty; for if it is formed agreeable thereto, good faith requires that it be ratified. The practice of Congress has also been always, I believe, in conformity to this idea. The instructions under which our commercial treaties have been made, were carried by nine States. Those under which the Secretary now acted were passed by nine States. The proposition, then, would be, that the powers which, under the Constitution, nine States only were competent to, should be transferred to a committee, and the object thereby to disengage himself from the ultimata already mentioned in his existing instructions. In this light the subject was taken up, and on these principles discussed. The Secretary, Mr. Jay, being called before Congress to explain the difficulties mentioned in his letter, presented to their view the project of a treaty of commerce, containing, as he supposed, advantageous stipulations in our favor, in that line; in consideration for which we were to contract to forbear the use of the navigation of the river Mississippi for the term of twenty-five or thirty years, and earnestly advised our adopting it. The subject now took a decided form; there was no further ambiguity in it, and we were surprised, for reasons that have been already given, that he had taken up the subject of commerce at all. We were greatly surprised it should form the principal object of the project, and that a partial or temporary sacrifice of that interest, for the advancement of which the negotiation was set on foot, should be the consideration proposed to be given for it. But the honorable Secretary urged, that it was necessary to stand well with Spain; that the commercial project was a beneficial one, and should not be neglected; that a stipulation to forbear the use contained an acknowledgment, on her part, of the right in the United States; that we were in no condition to take the river, and therefore gave nothing for it; with other reasons which, perhaps, I have forgotten; for the subject in detail has nearly escaped my memory. We differed with the honorable Secretary, almost in every respect. We admitted, indeed, the propriety of standing well with Spain, but supposed we might accomplish that end, at least, on equal terms. We considered the stipulation to forbear the use, as a species of barter, that should never be countenanced in the councils of the American States, since it might tend to the destruction of the society itself; for a forbearance of the use of one river might lead to more extensive consequences; to that of the Chesapeake, the Potomac, or any other of the rivers that emptied into it. In short, that the councils of the Confederacy should be conducted with more magnanimity and candor, should contemplate the benefit of all parts upon common principles, and not the sacrifice of one part for that of another. There appeared to us a material difference between stipulating by treaty to forbear the use, and not being able to open the river. The former would be considered by the inhabitants of the Western country as an act of hostility; the latter might be justified by our inability. And, with respect to the commercial part of the project, we really thought it an ill-advised one on its own merits solely.

"Thus was this project brought before Congress, and, so far as I recollect, in this form, and upon these principles. It was the subject of tedious and lengthy discussion in that honorable body. Every distinct measure that was taken I do not now remember, nor do I suppose it of consequence. I have shown the outlines of the transaction, which is, if I apprehend rightly, all that the committee wish to possess. The communications of the Secretary were referred to a Committee of the whole House. The Delegates of the seven Easternmost States voted that the ultimata in the Secretary's instructions, be repealed; which was reported to the House, and entered on the Journal by the Secretary of Congress, that the question was carried. Upon this entry, a Constitutional question arose to this effect: 'Nine States being necessary, by the Federal Constitution, to give an instruction; and seven having repealed a part of an instruction so given, for the formation of a treaty with a foreign Power, so as to alter its import, and authorize, under the remaining part thereof, the formation of a treaty, on principles altogether different from what the said instruction originally contemplated, can such remaining part be considered as in force, and Constitutionally obligatory?' We pressed on Congress for a decision on this point often, but without effect. Notwithstanding this, I understood it was the intention of the Secretary to proceed and conclude a treaty, in conformity to his project, with the Minister of Spain. In this situation I left Congress. What I have since heard, belongs not to me to discover. Other gentlemen have more ample information of this business, in the course it has taken, than I can possibly have been able to obtain; for, having done my duty whilst there, I left it for others who succeeded me to perform theirs, and I have made but little further inquiry respecting it. The animated pursuit that was made of this object, required, and, I believe, received, as firm an opposition. The Southern States were on their guard, and warmly opposed it. For my part, I thought it my duty to use every effort in Congress for the interest of the Southern States. But so far as it depended on me, with my official character, it ceased. With many of those gentlemen, to whom I always considered it as my particular misfortune to be opposed, I am now in habits of correspondence and friendship; and I am concerned for the necessity which has given birth to this relation.

"Whether the Delegates of those States spoke the language of their constituents; whether it may be considered as the permanent interest of such States to depress the growth and increasing population of the Western country, are points which I cannot pretend to determine. I must observe, however, that I always supposed it would, for a variety of reasons, prove injurious to every part of the Confederacy. These are well understood, and need not be dilated on here. If, however, such should be the interest of seven States, let gentlemen contemplate the consequences in the operation of the Government, as it applies to this subject. I have always been of opinion, sir, that the American States, to all national objects, had, in every respect, a common interest. Few persons would be willing to bind them together by a stronger or more indissoluble bond, or give the National Government more power than myself. I only wish to prevent it from doing harm, either to States or individuals; and the rights and interests of both, in a variety of instances, in which they are now left unprotected, might, in my opinion, be better guarded. If I have mistaken any facts, honorable gentlemen will correct me. If I omitted any, and it has not been intentional, so I shall be happy with their assistance to supply the defect.

"Mr. Monroe added several other observations, the purport of which was, that the interest of the Western country would not be as secure under the proposed Constitution as under the Confederation; because, under the latter system, the Mississippi could not be relinquished without the consent of nine States, whereas by the former, he said, a majority of seven States could yield it. His own opinion was, that it would be given up by a majority of the Senators present in the Senate, with the President, which would put it in the power of less than seven States to surrender it. That the Northern States were inclined to yield it. That it was their interest to prevent an augmentation of the Southern influence and power; and that as mankind in general, and States in particular, were governed by interest, the Northern States would not fail of availing themselves of the opportunity given them by the Constitution of relinquishing that river, in order to depress the Western country, and prevent the Southern interest from preponderating.

"Mr. Henry then rose and requested that the honorable gentleman (Mr. Monroe) would discover the rest of the project, and what Spain was to do on her part, as an equivalent for the cession of the Mississippi.

"Mr. Monroe.—Mr. Chairman, I do not thoroughly recollect every circumstance relative to this project. But there was to be a commercial intercourse between the United States and Spain. We were to be allowed to carry our produce to the ports of Spain, and the Spaniards to have an equal right of trading hither. It was stipulated that there should be a reciprocity of commercial intercourse and benefits between the subjects of Spain and the citizens of the United States. The manufactures of Spain were to be freely imported and vended in this country, and our manufactures to be carried to Spain, &c., without obstruction, and both parties were to have mutual privileges in point of com-

mercial intercourse and connexion. This, sir, is the amount of the project of Spain, which was looked upon as advantageous to us. I thought myself that it was not. I considered Spain as being without manufactures, as the most slow in the progress of arts, and the most unwise, with respect to commerce, of all nations under the sun, (in which respect I thought Great Britain the wisest.) Their gentlemen and nobles look on commerce with contempt. No man of character among them will undertake it. They make little discrimination with any nation. Their character is to shut out all nations, and exclude every intercourse with them, and this would be the case with respect to us. Nothing is given to us by this project, but what is given to all other nations. It is bad policy, and unjustifiable on such terms to yield that valuable right. Their merchants have great stocks in trade. It is not so with our merchants. Our people require encouragement. Mariners must be encouraged. On a review of these circumstances, I thought the project unwise and impolitic."

Having completed the reading, Mr. R. resumed his remarks. I have, said he, to ask pardon of the House for detaining them with the reading of so lengthy a document. That it contains perhaps the only correct historical detail extant of this truly curious transaction, must constitute my apology.

I will now ask, Mr. Speaker, who ever have been, and still are, the unshaken friends of the navigation of the Mississippi, and of the Western interests of this Union? It is not my wish, sir, on this occasion, to cast gentlemen opposed to us into the shade—to throw them into the background. All we ask is an equal share of confidence in our zeal to assert this great right, until we shall have proved ourselves unworthy of it. What is there then exhibited from the earliest period of our history? What fact has transpired, which renders us undeserving of that confidence, or which entitles gentlemen on the other side of the House exclusively to it? Shall we then silently submit to the intolerant assumption on their part of all feeling for this important right, involving the vital interests of our country? Shall we sit down contented under the imputation of lukewarmness in this cause? or, shall we tell those gentlemen that under every circumstance, and in all situations, with closed doors, as well as with open doors, we have been, are, and ever will be, the unalterable supporters of the free navigation of the Mississippi?

The sentiments which have been displayed in the course of this proceeding, presents a phenomenon in the history of what are termed regular Governments. When an Administration have formed the design of subverting the public liberties—of enriching themselves or their adherents out of the public purse, or of crushing all opposition beneath the strong hand of power—war has ever been the favorite ministerial specific. Hence have we seen men in power too generally inclined to hostile measures, and hence the opposition have been, as uniformly, the champions of peace—not choosing to nerve with new vigor (the natural consequence of war) hands, on whose hearts or heads they were unwilling to bestow their confidence. But how shall we account for the exception which is now exhibited to this hitherto received maxim? On the one part the solution is easy. An Administration under which our country flourishes beyond all former example—with no sinister views—seeking to pay off the public encumbrances, to lessen the public burdens, and to leave to each man the enjoyment of the fruits of his own labor are, therefore, desirous of peace, so long as it can be preserved consistently with the interests and honor of the country. On the other hand, what do you see? Shall I say an opposition sickening at the sight of the public prosperity, seeking through war, confusion, and a consequent derangement of our finances, that aggrandizement which the public felicity must forever forbid? No, sir, my respect for this House and for those gentlemen forbids this declaration, whilst, at the same time, I am unable to account on any other principle for their conduct. Mr. R. concluded by saying, that he had forborne these observations until they were extorted from him. He had hoped that gentlemen would have let the business take its course, after the decision of yesterday, and that the House would have gone into committee on the confidential Message; but gentlemen had insisted on discussing the merits of the navigation on a preliminary question. The business having taken that turn, he thought it due to himself and friends to repel the odium which it was endeavored to attach to them.

Mr. DANA thought it was not necessary on this subject to enter into a history of political parties in this country. And when the gentleman from Virginia undertook to give a history, he had no idea that he was about giving details of secret history. He had supposed he was about offering a general view of the subject. He did not know that it was to be stated who were friendly or unfriendly to the rights of our Western citizens, much less that there was an established hereditary hostility to them. He had supposed that all the gentlemen on that floor had expressed the wishes of the people; he had supposed there was but one opinion; he had heard of no insinuation of difference. The only difference which he had thought existed was as to the means to be used, and the time when those means should be carried into effect. But as to the natural right, and the ultimate enjoyment of the nation to the free navigation of the Mississippi, he asked what gentleman had charged another with any doubts on that? And when we all agree in this, whence the necessity of calling up the animosities of party? May not gentlemen express their opinions in favor of decided measures, when the voice of the nation had been so audibly expressed, without such expression being construed into a censure upon others? When, too, the opinions of other gentlemen on fundamental points coincided with our own? Is it necessary, when the whole nation is alive, to be moderate in the expression of our ideas? If we do not come from that part of the Union more immediately affected by the late measures at New Orleans, are we therefore to be indifferent and unconcerned spectators of events? If, standing here as Representatives of the United States, we are not at liberty to attend to anything not confined to the trifling district of country we may each of us represent, miserable is the ground on which we stand, and humble indeed our condition! But let me say, even on this ground, the ship owners and the merchants on the Atlantic are deeply interested. Our Western citizens are certainly more deeply interested in the freedom of the Mississippi; but it goes to the great interests of navigation generally. They feel it most; but we feel it much.

This is all I deem it necessary, said Mr. D., to observe on the remarks of the gentleman from Virginia on his historical detail. Sir, this ought not to be made a party question. With respect to the motion before the House, my colleague has drawn it in terms the most respectful. Gentlemen propose to refer it to a Committee of the Whole. To this we object, because we want the information promptly. But the votes of gentlemen prevail, and it is referred. Our next step is to refer it immediately, to avoid delay. To obtain information, full and prompt, is the end of our endeavors. Why are we told of the inconsistency of our means? The course we pursue is plain and direct; that which carries us steadily to our obtaining information; and if the House will not give it to us in the way we wish, we are for taking it in the best way we can. Let it be remarked, that, if no obstacles had taken place at New Orleans, the subject of the cession of Louisiana is referred to in the Message of the President. Is not the information, we ask, important, in the general view, of who are to be our neighbors; where, from the dispersed population of our citizens, the Union is most vulnerable? And in this light it would have been proper to get the information, even if the measures at New Orleans had not occurred. It makes no difference whether those measures are the measures of Spain or of France. The two points were not necessarily connected, though I admit that the proceedings at New Orleans have a bearing on the general subject. With regard to the measures at New Orleans, we have information, and have obtained it. That information has been referred to a Committee of the Whole. We now ask information respecting the cession; and having got it let us refer that also, and deliberate on the measures proper to be taken. Cannot the logical talents of the gentleman from Massachusetts (Mr. BACON) distinguish between information and measures? Will he say that premises and conclusions are the same thing? This information is that on which we are to deliberate. I had supposed facts necessary to legislate on. I had thought there was, to be sure, a connexion between one step and another which follows. But will the gentleman say, that whenever we ask information, we conclude upon measures?

The yeas and nays were then taken on the call of Mr. GRISWOLD, on going into a Committee of the Whole on the state of the Union, which was lost—yeas 38, nays 48, as follows:

YEAS—Phanuel Bishop, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Dickson, William Eustis, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Samuel L. Mitchill, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jun., John Stewart, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

Mr. GRISWOLD said, that notwithstanding the unfortunate situation they were placed in by the refusal of the House, he still deemed it his duty to move other resolutions, which he would read, and move to be referred to a Committee of the Whole.

Mr. G. then moved the following resolutions:

Resolved, That the people of the United States are entitled to the free navigation of the river Mississippi.

Resolved, That the navigation of the river Mississippi has been obstructed by the regulations recently carried into effect at New Orleans.

Resolved, That the right of freely navigating the river Mississippi ought never to be abandoned by the United States.

Resolved, That a committee be appointed to inquire whether any, and, if any, what, Legislative measures are necessary to secure to the people of the United States the free navigation of the river Mississippi.

Mr. DAWSON asked if these resolutions were not necessarily connected with a subject which the House had determined should be discussed in private? If, by this arrangement, other gentlemen had been precluded from offering resolutions, he would ask if it were right in the gentleman from Connecticut to violate a general injunction laid upon all the members?

Mr. GRISWOLD.—There is a Message from the President, of the 22d of December, on this subject that is publicly entered on the Journals. It is on this Message that these resolutions are predicated. I trust I understand the rules of the House well enough to know that I am not to bring forward what it has been enjoined shall be secret.

The question was then taken without further debate, on taking up the above resolutions for consideration, and lost—yeas 32, nays 50.

Mr. RANDOLPH then called for the considera-

tion of the President's confidential Message, when the galleries were cleared.

FRIDAY, January 7.

Mr. DAVENPORT, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine and report such laws of the United States as have expired, or are near expiring, made a report, in part, thereon; which was read, and ordered to be committed to a Committee of the whole House on Monday next.

On motion, it was,

Resolved, That a committee be appointed to consider whether any, and, if any, what, alterations are necessary in the Military Establishment of the United States.

Ordered, That Mr. VARNUM, Mr. CAMPBELL, Mr. BUTLER, Mr. LEWIS R. MORRIS, and Mr. CLAY, be appointed a committee pursuant to the said resolution.

NAVIGATION OF THE MISSISSIPPI.

On a motion made and seconded, the House was cleared of all persons present, except the members and the Clerk: Whereupon,

The House again resolved itself into a Committee of the Whole House on the Messages from the President of the United States, of the twenty-second and thirtieth ultimo, and the documents transmitted therewith; and, after some time spent therein, Mr. SPEAKER resumed the Chair, and Mr. VARNUM reported that the Committee had again had the said Messages and documents under consideration, and come to a resolution thereupon; which he delivered in at the Clerk's table, where the same was read as follows:

"*Resolved*, That this House receive with great sensibility the information of a disposition in certain officers of the Spanish Government, at New Orleans, to obstruct the navigation of the river Mississippi, as secured to the United States by the most solemn stipulations.

"That, adhering to that humane and wise policy which ought ever to characterize a free people, and by which the United States have always professed to be governed; willing, at the same time, to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty; and relying, with perfect confidence, on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the Government shall have pursued for asserting the rights and vindicating the injuries of the United States; holding it to be their duty, at the same time, to express their unalterable determination to maintain the boundaries and the rights of navigation and commerce through the river Mississippi, as established by existing treaties."

The House proceeded to consider the said resolution at the Clerk's table: Whereupon, so much as is contained in the first clause thereof, being again read, in the words following, to wit:

"*Resolved*, That this House receive with great sensibility the information of a disposition in certain officers of the Spanish Government, at New Orleans, to obstruct the navigation of the river Mississippi, as secured to the United States by the most solemn stipulations."

The question was taken that the House do concur with the Committee of the Whole House in their agreement to the same; and resolved in the affirmative.

The last clause of the said resolution being again read, in the words following, to wit:

"That, adhering to that humane and wise policy which ought ever to characterize a free people, and by which the United States have always professed to be governed; willing, at the same time, to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty; and relying, with perfect confidence, on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the Government shall have pursued for asserting the rights and vindicating the injuries of the United States; holding it to be their duty, at the same time, to express their unalterable determination to maintain the boundaries and the rights of navigation and commerce through the river Mississippi, as established by existing treaties."

A motion was made, and the question being put to amend the said last clause of the resolution, by striking out therefrom the words following, to wit:

"And relying, with perfect confidence, on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the Government shall have pursued for asserting the rights, and vindicating the injuries of the United States."

It passed in the negative—yeas 30, nays 53, as follows:

YEAS—Thos. Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley, John Stratton, Samuel Tenney, Samuel Thatcher, George B. Upham, Killian K. Van Rensselaer, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

Another motion was then made, and the question being put, to amend the said last clause of the resolution, by striking out therefrom the word "vindicating," next before the words "the injuries of the United States," and inserting the word "redressing," in lieu thereof, it passed in the negative.

The question was then taken that the House do concur with the Committee of the whole House in their agreement to the said last clause of the resolution, and resolved in the affirmative.

A motion was then made and seconded that the House reconsider their decision on the said last clause of the resolution; and the question being put thereupon, it was resolved in the affirmative.

A division of the question was then called for: whereupon, the first member of the said last clause of the resolution being again read, in the words following, to wit:

"That, adhering to that humane and wise policy which ought ever to characterize a free people, and by which the United States have always professed to be governed; willing, at the same time, to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty:"

The said division of the question was objected to, as not being in order, and the SPEAKER having decided that the same was in order, an appeal was made to the House from the decision of the Chair; and on the question, "Is the decision of the Chair in order?" it was resolved in the affirmative.

On the question that the House do agree to the said first member of the last clause of the resolution, it was unanimously resolved in the affirmative, by yeas and nays, every member present voting in the affirmative, to wit:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Thomas Boude, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, George Jackson, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, John Smilie, John Cotton Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, and Thomas Wynns.

The third member of the said last clause of the resolution being again read, in the words following, to wit:

"Holding it to be their duty, at the same time, to express their unalterable determination to maintain the boundaries, and the rights of navigation and commerce through the river Mississippi, as established by existing treaties:"

A motion was made, and the question being put, to amend the same by striking therefrom the words "existing treaties," and inserting the word "treaty" in lieu thereof, it passed in the negative.

On the question, that the House do agree to the said third member of the last clause of the resolution, it was unanimously resolved in the affirmative, by yeas and nays, every member present voting in the affirmative, to wit:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Thomas Boude, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, George Jackson, Michael Leib, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, John Cotton Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, jr., John Stratton, John Taliaferro, jr., Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Killian K. Van Rensselaer, and Thomas Wynns.

And then the main question being taken, that the House do agree to the said resolution, as reported from the Committee of the whole House, it was resolved in the affirmative—yeas 50, nays 25, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

NAYS—Thomas Boude, Samuel W. Dana, John Davenport, John Dennis, Calvin Goddard, Roger Griswold, Seth Hastings, Joseph Hemphill, Archibald Henderson, Benjamin Huger, Samuel Hunt, Thos. Lowndes, Ebenezer Mattoon, Lewis R. Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, John Stanley John Stratton, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, and Lemuel Williams.

Resolved, That the injunction of secrecy upon the members of this House, so far as relates to the

resolution last recited, and the proceedings of the House on the Messages from the President of the United States, of the twenty-second and thirtieth ultimo, be taken off.

The Speaker laid before the House a letter from the Secretary of the Navy, enclosing information relative to the timber deposited in the navy yards of the United States, for the purposes of building ships of war, in pursuance of a resolution of this House, of the third instant; which was read, and ordered to lie on the table.

Monday, January 10.

Another member, to wit: James A. Bayard, from Delaware, appeared, and took his seat in the House.

A new member, to wit: Peter Early, returned to serve in this House, as a member from the State of Georgia, in the room of John Milledge, who hath resigned, appeared, was qualified, and took his seat in the House.

Mr. Mitchill, from the committee appointed on the seventeenth ultimo, to whom was referred so much of the Message of the President of the United States as relates to navy yards, and the building of docks, made a report thereon; which was read and ordered to be committed to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to carry into effect several resolutions of Congress, for erecting monuments to the memories of the late Generals Wooster, Harkemer, Davidson, and Scriven," to which they desire the concurrence of this House.

The said bill was read twice, and committed to the committee appointed the fourth instant, to prepare and bring in a bill for erecting a monument to the memory of General Harkemer, pursuant to a resolution of Congress, passed the fourth day of October, one thousand seven hundred and seventy-seven.

Sundry motions being made and seconded, that the House do come to the following resolutions, respectively, to wit:

Resolved, That a monument be erected to the memory of Major General Joseph Warren, who was slain on Bunker's Hill, on the seventeenth day of June, one thousand seven hundred and seventy-five; and that the sum of —— be appropriated therefor.

Resolved, That a monument be erected to the memory of General Hugh Mercer, who was slain at Princeton, on the third day of January, one thousand seven hundred and seventy-seven; and that the sum of —— dollars be appropriated for that purpose.

Resolved, That a monument be erected to the memory of General Francis Nash, who was slain at the battle of Germantown; and that the sum of —— dollars be appropriated for that purpose.

Resolved, That a monument be erected to the memory of General Richard Butler, who was killed gallantly fighting in an action with the Indians, on the fourth day of November, one thousand seven hundred and ninety-one; and that —— dollars be appropriated for that purpose.

Resolved, That a monument be erected to the memory of General Nathaniel Woodhull, who commanded the militia on Long Island, in the year one thousand seven hundred and seventy-six, and was then taken prisoner, and most cruelly put to death by the enemy; and that —— dollars be appropriated for that purpose.

Resolved, That a monument be erected to commemorate the virtuous and patriotic conduct of John Paulding, David Williams, and Isaac Van Wert, who, on the twenty-third day of September, one thousand seven hundred and eighty, intercepted Major John Andre, Adjutant General of the British Army, returning from the American lines in the character of a spy; and that the sum of —— dollars be appropriated for that purpose.

Ordered, That the said motions, severally, be referred to the committee to whom was this day committed the bill sent from the Senate, entitled "An act to carry into effect several resolutions of Congress, for erecting monuments to the memories of the late Generals Wooster, Harkemer, Davidson, and Scriven."

The House resolved itself into a Committee of the Whole, on the report of the committee to whom was referred, on the fourteenth ultimo, the memorial of Thomas Herty; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the same.

The House proceeded to consider the said report: Whereupon, the resolution submitted by the select committee, to which the Committee of the whole House reported their disagreement, being twice read, in the words following, to wit:

Resolved, That the Secretary for the Department of State shall be, and he is hereby, authorized and directed to purchase, for the use of the United States, —— copies of Herty's Digest of the Laws of the United States, to be distributed in the same manner as the laws of the United States were directed to be distributed by the second section of the act, entitled "An act for the more general promulgation of the laws of the United States."

The question was taken, that the House do concur with the Committee of the whole House in their disagreement to the same, and resolved in the affirmative.

A motion was then made and seconded, that the House do come to the following resolution:

Resolved, That the Clerk of the House of Representatives be, and he is hereby, directed to purchase, for the use of this House, out of the contingent fund, twelve copies of Herty's Digest of the Laws of the United States.

And, the question being put thereupon, it was resolved in the affirmative.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of erecting a port of entry at or near the mouth of the Black river, on Lake Ontario.

THE MINT.

Mr. Gregg said he wished to submit a resolution to the consideration of the House, on a subject that must be acted on during the present session. The act establishing a Mint will expire on the fourth day of March next. A resolution now lies on the table for abolishing that institution entirely.

He was not prepared to vote in favor of that resolution, neither did he feel himself at perfect liberty, on the information he now possessed, to vote for a longer continuance of the law. The establishment, it was true, had been expensive, but he expected that, under proper management, it might be rendered useful. The Director, in his annual report made to Congress at the last session, stated that the lots on which the Mint now stands were not sufficiently extensive, and that the machinery was nearly worn out. He said he knew these lots, and he believed that, on account of the convenience of their situation, they might be disposed of to good advantage; perhaps for a sum sufficient to purchase as much ground as would be necessary in another situation, and also to erect suitable buildings for the purpose. If this could be done, there would be but little additional expense incurred in continuing the establishment. He thought it highly important to obtain every possible information on this subject before we are called to act on it, and therefore for the purpose of obtaining that information he would submit a resolution.

Mr. G. then offered a resolution instructing the Committee of Revisal and Unfinished Business to inquire into the amount for which the whole property of the Mint, including the ground and buildings would sell; and the probable expense of more suitable buildings, and of the machinery necessary for conducting the operations on the principle of steam.—Carried.

NATIONAL UNIVERSITY.

Mr. Van Ness presented a representation from Samuel Blodget, on the subject of a National University, as follows:

"The memorial of Samuel Blodget, late Supervisor of the City of Washington, represents that, owing his appointment chiefly to his zeal in forming several probationary plans for a National University, he conceived it an indispensable duty, after the death of Washington, to follow the commanding advice and noble example of the common Father of his Country, so irresistibly portrayed in his Farewell Address, and in the clause of his will annexed to his liberal donation therefor. In thus calling, most respectfully, the attention of your honorable body to this part of the will of Washington, he fulfils a promise made in behalf of more than one thousand subscribers to the same object, whose respectable names accompany this memorial, with a request that a committee may be appointed to consider what portion of the public lots and lands in the Western Territory of the United States, shall be appropriated by Congress to this important institution, in addition to the contents of either of the sites already contemplated therefor within the City of Washington, by Washington himself, and by the Commissioners thereof. And further to consider the expediency (should it comport with the monumental plan to be adopted) of erecting the statue of 1783, or in lieu thereof an appropriate and characteristic equestrian statue of the original founder of the National University, as a beautiful centre piece for the entire plan, to be surrounded by halls and colleges as they may be built in succession, by the fund to which the whole people of America are now so liberally and so honorably contributing by voluntary subscriptions from Maine to Georgia inclusive; thus virtually following the ancient custom of the original Americans, who, men, women, and children, carried a stone to the monumental pile of a beloved chief.

"It is humbly conceived that no other aid will be necessary for your honorable body to give, till in your wisdom it may be deemed proper to follow the sublime and prophetic advice of Washington, and to assume the entire direction of the most important object ever contemplated in the united efforts of all parties, persuasions, and classes of the American people; under a firm belief that, provided the Governmental plan and synopsis thereof be maturely considered and wisely adapted, it will promote the views of the sage and provident Washington, namely: 'To do away local attachments and State prejudices, as far as the nature of things would or indeed ought to admit, from our National Councils,' and, in short, to promote a true *amor patriæ*, as well as the advancement of new arts and universal science in all useful knowledge; while 'our youth by associating with each other for these purposes, and forming friendships in their juvenile years, will free themselves from those narrow local prejudices which, when carried to excess, are never-failing sources of disquiet to the public mind, and pregnant of the most mischievous consequences to this country.'

"Such are the principles under which this sublime institution, founded by Washington, and indubitably the best monument to his eternal fame, is now rapidly progressing, to the immortal honor of the American name. Nor does it require uncommon inspiration to foretell, that so long as it shall continue true that parents are naturally attached to the most amiable of their offspring, so long will the patriotic founders throughout the Union, themselves and their posterity, delight to preserve a noble fabric, which, in itself, will unite the most sublime points that can with reason interest a generous, industrious, and an enlightened people, and equally endear them to their country and to each other. And so long as the divine principles that gave birth and strength to the infancy of the University may continue, so long, by turning the tide of emigration in search of learning, shall the American character be the pride and boast of the liberal and learned of all nations, and the dread of every foe to human excellence.

"A synopsis for the University, uniting with it a plan for a free College, adopting and combining therewith the interests of the existing seminaries throughout the Union, accompany this memorial, together with a description or duplicates of several monumental plans, which will remain before the present committee of subscribers, till Congress may think proper to assume the entire direction of this object, in conformity with the ardent wishes and earnest advice so irresistibly enforced by Washington."

The memorial was accompanied by a plan of the Equestrian Statue of Washington, surrounded by halls and colleges regularly arranged, the whole to be styled the Monument to Washington. Referred to a select committee—ayes 42, nays 27.

The following members constitute the committee: Mr. Van Ness, Mr. Taliaferro, Mr. Hill, Mr. Elmendorf, and Mr. Cutler.

DISCRIMINATING DUTIES.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the seventeenth ultimo, so much of the Message of the President of the United States as relates to discriminating and countervailing duties, and the act of the British Parliament on that subject, made a report; which was read, and ordered to be referred to a Committee of the whole House on Friday next. The report is as follows:

The Committee of Commerce and Manufactures, to whom was referred that part of the President's Message which relates to discriminating and countervailing duties, and to the act of the British Parliament on that subject, report—

That a duty of six cents per ton is by law imposed on all American ships entering any of the ports of the United States from a foreign port, and on any ship or vessel, not of the United States, fifty cents per ton; and that an additional duty of ten per cent on the duties payable on goods, wares, or merchandise, imported in American bottoms, has invariably been imposed on such goods, wares, and merchandise, when imported in foreign ships or vessels.

That those discriminating duties have tended greatly to increase the navigation of the United States, have given to the ship owners an advantage over foreigners in the carriage to the United States of salt, wine, brandy, sugar, coffee, blankets, and other coarse woollens, coarse linens, hemp, earthenware, and other bulky articles, and have enabled them to be almost exclusively the carriers of all the fine articles of importation necessary to the consumption of the country. This policy, combined with the advantages resulting from the late war in Europe, had increased the American tonnage to an amount, it is believed, not inferior to that of any nation in Europe, except Great Britain.

The effects of these discriminating duties did not escape the observation of those foreign nations with whom we have had the greatest commercial intercourse.

By the fifteenth article of the Treaty of Amity, Commerce, and Navigation, dated London, November 19, 1794, the British Government has reserved the right of countervailing those discriminating duties; and the United States bound themselves not to impose any new or additional duty on the tonnage of British ships or vessels, or to increase the then subsisting difference between the duties payable on the importation of any article in British or American ships.

It is believed by your committee, that the Parliament of Great Britain, by a statute passed the 4th of July, 1797, (in the exercise of that reserved right) have exceeded the fair intent and meaning of the Treaty of Amity, &c., and thereby have secured to the ship owners of that nation the exclusive carriage to Great Britain (in time of peace) of some of our most important objects of exportation.

They have selected fish-oil and tobacco (articles of great bulk) as objects on which the highest countervailing duties have been imposed. The countervailing duty on fish-oil being 30*s.* 3-12 20*d.* sterling per ton or 252 gallons, and upon tobacco 1*s.* 6*d.* per 100 lbs.

In consequence of which a British ship of 250 tons, carrying 250 tons of oil to Great Britain from the United States, will pay £453 15*s.* sterling less duty thereon than the same oil would pay if imported into Great Britain in an American ship; the whole freight on such quantity of oil would have been, prior to the late war, only £625 sterling; the net freight to an American ship (after deducting the countervailing duty of £453 15*s.*) would of course be only £171 5*s.* sterling.

By the same operation, a British ship of 250 tons, carrying 400 hhds. of tobacco, of 1200 lbs. each, to Great Britain from the United States, would pay £360 sterling less duty than would be payable on the same quantity of tobacco imported in an American ship; the whole freight at 35*s.* sterling per hhd. would only amount to £700 sterling, which (after deducting the countervailing duty of £360) would leave to the American a net freight of only £344 1*s.* sterling.

Rice, when imported into Great Britain in an American ship, is charged with a duty of 8 pence—8-10*d.* sterling per hundred weight more than when imported in a British ship; this extra duty amounts on a tierce of rice to about 3*s.* 9*d.* sterling; the freight of a tierce of rice may be estimated at 12*s.* sterling. No person will give 15*s.* 9*d.* freight in an American, when he can have the same carried for 12*s.* in a Briship ship.

Pot and pearl ashes pay a countervailing duty of 2-14—15*s.* the hundred weight. A cask of ashes contains about 300 weight; the extra duty on that by an American ship will be 9*d.* per barrel; the freight of such barrel is presumed to be 5*s.* or 5*s.* 6*d.* sterling in times of peace; a difference of 9*d.* sterling per barrel will effectually give the carriage to British ships of all the ashes exported from the United States to Great Britain.

The committee take leave to refer the House to a table of duties imposed by Great Britain on goods imported in American and British ships, which was printed the last session of Congress, and is herewith exhibited, (No. 3.) On recurring thereto, an important countervail in the articles of wood of all kinds, a small one in tar, turpentine, pitch, and other articles, will be discovered.

The committee take leave to state, that the Parliament of Great Britain, by a statute, bearing date the 7th of May, 1802, has imposed the following new and additional duties on articles the produce and manufactures of the United States, to wit:

Ashes, pot and pearl, 1*s.* 6*d.* the cwt.; ginseng, 6*s.* the 100 lbs.; indigo, (American,) 12*s.* the 100 lbs.; bar iron, 13*s.* the ton; pig iron, 4*s.* 6*d.* the ton; pitch, 3*s.* 8*d.*, tar 2*s.* 11*d.*, the last of 12 barrels; rosin, 4*d.* the cwt.; rice, 8*d.* the cwt.; tobacco, 3*s.* the 100 lbs.; turpentine, 2*s.* the ton; beeswax, 5*s.* 9*d.* the cwt.; cotton, (American,) 7*s.* 10*d.* the 100 lbs.

The countervailing duty of ten per cent. being also levied on all those new duties, (except that on tobacco,) adds further to the injury already sustained by American ships carrying such articles, and secures to British ships the exclusive carriage of the following articles, in addition to the articles already mentioned, to wit: Indigo, iron, ginseng, beeswax, and the important and bulky article of cotton. Prior to the passing of the British statute of May last, American cotton and indigo were free of duty on importation into Great Britain; the countervailing duty on indigo will (in consequence of the duty above stated) be 1*s.* 2-4 10*d.* per 100 lbs.; that on cotton, nine pence 4-10 the 100 lbs. The freight of 100 lbs. of cotton may be estimated, in times of peace, at about 8*s.* 4*d.* sterling; the difference of nine pence on 8*s.* 4*d.* will give a decided preference to British over American ships.

Thus, then, it appears that Great Britain, by her countervailing act, has secured effectually the carrying

(for her own wants and her foreign commerce) of our fish-oil, tobacco, pot and pearl ashes, rice, indigo, and cotton, and having carriage of those bulky articles, the minor objects (except naval stores) not being sufficiently important to form entire cargoes, will also be carried in British ships.

The committee take leave further to state, that by the same statute of Great Britain, of the seventh of May last, a duty of half per cent. is imposed on all goods, wares, and merchandise (of the growth or manufacture of Great Britain) on their exportation to any port in Europe, or within the Straits of Gibraltar, and of one per cent. on similar goods, when exported to any place, not being in Europe, or within the Straits of Gibraltar, thus subjecting the United States to a duty on exports double that which is paid by the nations of Europe. This discrimination your committee believe to be in contradiction to the spirit of the treaties existing between the United States and Great Britain.

By the statute of Great Britain, passed the fourth of July, 1797, a duty of tonnage was imposed on American ships entering her ports of 2*s.* sterling per ton, which is admitted as a fair countervail of the discriminating duty of forty-four cents per ton on their ships entering the ports of the United States.

From the preceding view of the subject, it appears to your committee, that American vessels will be preferred to British for the carrying of all the fine manufactures of Great Britain; but that the decided advantages that British ships now have over American, in the carriage of all bulky and important articles of the growth or manufacture of the United States, necessary for the consumption or foreign commerce of Great Britain, will enable their owners to enter into an advantageous competition with the Americans in the carrying from Great Britain to the United States, of British salt, and of all the coarse and bulky articles of the produce or manufacture of Great Britain—for instance:

Salt is charged with only two cents per bushel more when imported in a foreign ship, than when imported in American; this small extra duty has never prevented its importation in British ships.

Earthenware—a crate thereof will cost about £5 sterling. The usual peace freight of such a crate is presumed to be about 20*s.* or 25*s.* sterling; the extra duty thereon, being only 1*s.* 6*d.* sterling, would be paid by the owner of a British ship rather than not obtain the freight.

Blankets—a bale of ten pieces will cost about £40 sterling, the usual peace freight about 35*s.* sterling; the extra duty payable, if imported in a British ship, will be 10*s.* sterling.

Wool hats, oznaburgs, sail canvass, kerseys, negro cottons, flannel, baize, half-thicks, and, in truth, all woollen cloths under 2*s.* sterling per yard, beer, porter, and a variety of other bulky articles, pay an extra duty so small, when compared with the freight of such goods, that the owners of British ships, when assured of a full return freight from the United States to Great Britain, will find it their interest to agree to pay the extra duty payable on such goods when imported into the United States in foreign ships or vessels.

France also has taken measures to meet the operation of our discriminating duties. In the second year of the French Republic, a decree (relative to the act of navigation of that nation) was passed, by which a duty of tonnage of fifty sols per ton was imposed on foreign vessels entering the ports of France, and of six sols per ton on French vessels.

In the third year of the French Republic, a law was passed imposing a duty of eighteen livres 15 sols per quintal on tobacco imported in French vessels, and of twenty-five livres on tobacco imported into the ports of France in foreign vessels; which duty has since been increased to thirty livres per quintal, when imported in foreign ships, and twenty livres when in French ships; making a difference of one hundred and twenty livres or twenty-two dollars and ninety cents per hogshead of twelve hundred pounds against the importation of tobacco into France in American vessels. This discriminating duty amounts, in fact, to the prohibiting of the importation of tobacco in American vessels into France.

Your committee further state that, by a late law, France has imposed a discriminating duty of fifty per cent. on the duties payable on sugar, coffee, cocoa, and other West India goods, when imported in French ships, on similar goods when imported in foreign ships into her ports.

The committee take leave to exhibit herewith (No. 1) statements of exports, imports, and tonnage, as they relate to France, Great Britain, and the United States. And a statement (No. 2) showing the exports from the United States to the European ports of Great Britain and France, of the following articles, to wit:

Pot and pearl ashes, ginseng, iron, pitch, rosin, rice, tobacco, tar, fish-oil, turpentine, beeswax, and cotton, and the total value of exports to those nations for the year 1802.

Sweden and Denmark have laws imposing discriminating duties highly favorable to their carrying trade. Spain, also, by her navigation laws, gives important advantages to her own shipping over those of foreign nations trading to her ports. Holland, also, has her discriminating duties, which, in their consequences, are injurious to the commercial interest of the United States.

Two modes have presented themselves to your committee, to obviate the disadvantages resulting to the carrying trade of the United States, from the countervailing and discriminating duties already recited. The one to increase our discriminating duties, so as to meet the injuries now experienced from the operation of those and the countervailing duties of other nations. The other to relinquish our discriminating duties, (so far as they relate to goods, wares, and merchandise, the growth, produce, or manufacture of the nation to which the ship by whom the same are imported may belong,) in favor of such foreign nation as will agree to abolish such of their discriminating and countervailing duties, as are, in their operation, injurious to the interest of the United States,

The first mode would, in its consequences, lead to a commercial warfare between the United States and foreign nations. Admit, for instance, that the United States should increase her discriminating duties, will not foreign nations also increase theirs in every instance, and at every time the United States shall pursue their plan of increase? If so, your committee are at a loss to perceive what benefit could arise to the interest of the United States from such a system.

The second mode appears to your committee more consistent with the true interest, as well as with the peaceful disposition of the United States. They, therefore, submit the following resolution:

"*Resolved*, That so much of the several acts imposing duties on the tonnage of ships and vessels, and on goods, wares, and merchandise, imported into the United States, as imposes a discriminating duty of tonnage

between foreign vessels and vessels of the United States, and between goods imported into the United States in foreign vessels and vessels of the United States, ought to be repealed; so far as the same respects the produce or manufacture of the nation to which such foreign ship or vessel may belong; such repeal to take effect in favor of any foreign nation, whenever the President shall be satisfied that the discriminating and countervailing duties of such foreign nation, so far as they operate to the disadvantage of the United States, have been abolished."

TUESDAY, January 11.

A Message was received from the President of the United States, transmitting a report from the Director of the Mint. The Message was read, and, together with the report, referred to the Committee of the Whole House to whom was committed, on the seventeenth ultimo, a motion for a repeal of so much of the acts, the one entitled "An act establishing a Mint, and regulating the coins of the United States;" the other entitled "An act, supplementary to the 'Act establishing a Mint, and regulating the coins of the United States,'" as relates to the establishment of a Mint.

Mr. BACON, from the Committee of Elections, who were instructed by a resolution of the House of the twenty-ninth ultimo, "to inquire whether JOHN P. VAN NESS, one of the members of this House from the State of New York, returned by the said State to serve as one of its members in the seventh Congress of the United States, has not, since his election as a member of this House, and since he occupied a seat as a member, accepted of, and exercised the office of a Major of Militia under the authority of the United States, within the Territory of Columbia, and thereby forfeited his right to a seat as a member of this House," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

Mr. NICHOLSON, from the committee to whom was recommitted, on the fourth instant, the bill for the relief of insolvent debtors within the District of Columbia, reported an amendatory bill; which was read twice, and committed to a Committee of the whole House on Thursday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Charles Hyde," with an amendment, to which they desire the concurrence of this House.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was referred, on the fifth instant, the petition of Hugh Alexander and others, inhabitants of the State of Kentucky, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House tomorrow.

On motion, it was

Ordered, That the committee appointed on the thirty-first ultimo, to whom was referred a petition of sundry inhabitants of the City of Washington, and of Georgetown, in the District of Columbia, have leave to report thereon, by way of bill or bills, or otherwise.

The House proceeded to consider the amendment proposed by the Senate to the bill entitled "An act for the relief of Charles Hyde;" Whereupon,

Resolved, That this House do agree to the said amendment.

CESSION OF LOUISIANA.

Mr. GRISWOLD moved that the House resolve itself into a Committee of the Whole on the state of the Union, intending, should he succeed, to call up his resolution presented on the 5th instant, viz:

"*Resolved*, That the President of the United States be requested to direct the proper officer to lay before this House, copies of such official documents as have been received by this Government, announcing the cession of Louisiana to France, together with a report, explaining the stipulations, circumstances, and conditions, under which that province is to be delivered up, unless such documents and reports will, in the opinion of the President, divulge to the House particular transactions not proper at this time to be communicated."

I recollect, said Mr. G., when I proposed on a former day that the House should go into Committee of the Whole for the purpose of considering this resolution, the principal arguments in opposition were drawn from its supposed connexion with a subject which had been referred to a secret committee, and, therefore improper for previous or public discussion. Those arguments have now lost their weight. The House have decided on those confidential subjects, and their resolution was published, and I believe it will appear that I was not incorrect in my opinion, that this resolution has no concern with any confidential communications. When before under consideration, the inquiry contemplated was considered important. The information requested must be in possession of the Executive; it cannot be supposed that such documents as would be useful to the House, do not exist in the Executive cabinet. We cannot legislate with a proper understanding, unless we are informed of all the circumstances, conditions, and stipulations, under which that territory is ceded to France. I will not believe that the Executive has neglected to demand such explanations as the honor and interest of the United States require. It is this official information which we want. As we are unembarrassed by other subjects, either of a public or secret nature, I hope the House will now come to a decision; I shall call for the yeas and nays.

Mr. DAWSON moved a postponement of the resolution to a future day.

Mr. MOTT said he was opposed to the resolution, but was for going into Committee of the Whole, and deciding upon it, rather than to be troubled with it from day to day.

Mr. DANA.—I consider the refusal to go into a Committee of the Whole on the state of the Union as a negative upon the resolution. We have been told before, by the gentleman from Virginia, (Mr. RANDOLPH,) that it does not amount to a refusal of the resolution. True, it may not be so harsh a mode of putting it aside, but the

effect is virtually the same. Will it be made a question whether it is proper to ask for information? The President has recommended the subject to our attention in his message. It is not only proper, but of course becomes our duty, to deliberate, and to request such information from the President, as will assist and enlighten us in our proceedings. It is his Constitutional province to do this, and it would be a reflection on him to suppose that he would withhold any information from the House, on a subject which he had thought so important, as to form part of an official message. It could not have been inserted merely for the sake of rounding off a period. No, sir, the President has undoubtedly sufficient reasons for mentioning this, as a subject worthy of our deliberations; he is designated by the Constitution as the proper person from whom information on subjects of this nature is to be derived; he is supposed to combine the whole; it is not proper to receive it but from an official source. The general subject is mentioned in the following terms:

"The cession of the Spanish province of Louisiana to France, which took place in the course of the late war, will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations connected with that subject."

Are we to suppose the Executive has not been vigilant in ascertaining the circumstances attending this event? No. Are we to suppose he is unwilling to inform us what they are? No. He must be supposed willing to give the information. Therefore, why should gentlemen prevent us from obtaining that intelligence, which is presumed to exist, and which the Executive must be willing to give?

Mr. RANDOLPH was averse to going into a Committee of the Whole House on the state of the Union, if it were understood that the resolution of the gentleman from Connecticut was to be taken up. It was not very material to him in what way the House signified their dissent to the measure; but, preferring that which was least circuitous, he hoped they would refuse to take it up in committee. Much pains having been taken to impress a belief that the President had communicated to the House a fact of which he possessed no official information, Mr. R. begged the House to recollect that the tortured ingenuity of gentlemen had been unable fairly to infer the fact from the Executive communications; nor could it be implied from a refusal to concur in the proposed resolution. His opposition to it grew out of the resolution itself. It conveys the suspicion that Spain has ceded Louisiana to France indefinitely, thereby giving to France some color of claim to the countries formerly comprised under that appellation; or that she has made the cession by limits incompatible with her engagements to us; and that in either case our right to the navigation of the Mississippi may have been impaired. For, if you suppose in this transfer of her property that Spain has paid due regard to her stipulations with us, the resolution ceases to have an object. Now, sir, wherefore cast this imputation on Spain?—especially at this crisis, when, as I am informed from a respectable source, one of the first characters in the Union is recently nominated Minister to that Court, for the purpose of adjusting all differences on this subject?

I should have supposed another reason would have deterred the gentleman from persisting in this call. That gentleman and his friends had recorded on the journals of this House their solemn determination, however sensibly they might feel the injuries inflicted on the rights and interests of these States, to refuse all co-operation in the support of those rights and interests so long as the direction of the Government should be retained by those who now possess it. For, after having expressed their disapprobation of that clause in a resolution lately adopted by the House to affect our rights of limits and of navigation through the Mississippi, objecting to no other part of it, they had, nevertheless, refused to give their assent to it because of this objectionable passage. There was a time, sir, when such conduct would have been denounced by a portion of this House as the essence of Jacobinism and disorganization. Mr. R. concluded by saying that he thought it unwise at this time, in the very cradle of the negotiation, to throw out insinuations which would have a tendency to irritate or disgust the Spanish Court.

Mr. GRISWOLD.—I did not expect that the gentleman from Virginia, (Mr. RANDOLPH,) would, in the face of the Journal now on the table, in contradiction to the knowledge of every gentleman in this House, have made the declaration we have just heard. Have we given our vote that we would not defend the free navigation of the Mississippi? Have we not been ready to unite in adopting those measures which the infraction of treaties and our violated rights demand? I appeal to our journals. What has been done, there appears, and will contradict the assertions of that gentleman. When the resolution was under consideration in the secret committee, which the gentleman (Mr. RANDOLPH) emphatically called HIS OFFSPRING, there were two votes taken on certain parts or members of it, previous to the main question. A motion was made to strike out the following clause:

"And relying with perfect confidence on the vigilance and wisdom of the Executive, they will wait the issue of such measures as that department of the Government shall have pursued for asserting the rights and vindicating the injuries of the United States."

I voted against this part of the resolution for two reasons: first, because I could not express a confidence which I did not feel; and secondly, because I was not satisfied with a resolution to do nothing. I thought we ought to do something; that it was not proper for the Legislature to sit as idle spectators of an important political transaction, which required legislative interference. I thought we ought to prepare for the worst. These were the reasons, Mr. Speaker, which influenced my conduct upon the motion for striking out. But how did we vote on the motion for agreeing to the following clause?

"Holding it to be their duty at the same time to express their unalterable determination to maintain the boundaries, and the rights of navigation and commerce, through the river Mississippi, as established by existing treaties."

Did we refuse our assent? Did we object to a syllable contained in this part of the resolution? No, sir, the vote was unanimous. Every member of the House stands pledged to support the sentiments therein expressed. On this point there was no difference of opinion. I appeal to your journals, sir, and to the recollection of every gentleman who was on that secret committee, whether I am not correct. It is true that there was a difference of opinion in the secret committee upon the other part of the resolution; on one side of the House it appeared proper to express great confidence in the present Executive, and, leaving everything to that department, to do nothing ourselves; whilst on the other side, as we did not feel that confidence, we could not express it, and, believing the occasion demanded legislative interference, we thought it necessary to prepare for the worst. How, then, can we be charged by the gentleman from Virginia (Mr. Randolph) with having recorded our determination not to protect the rights and interests of these States, when our votes, appearing on your Journal, not only prove our unalterable determination to defend those rights, but likewise prove that we were willing to leave the vindicating of those rights entirely to the Executive, and were earnestly desirous of adding thereto all the aid which the Legislature could contribute, and that we have been prevented from pursuing this course by the gentleman from Virginia, (Mr. Randolph,) and his friends? I must be permitted again to express my astonishment that the gentleman can with any face make these charges, and again to appeal to your Journal, and the recollection of every gentleman, for a contradiction of these unmerited aspersions.

When the main question was taken, we refused our assent. Not because we were unwilling to adopt such measures as circumstances might require; but because we could not sanction those expressions of unbounded confidence in the Executive, and that determination to do nothing, which the resolution contained.

As another argument against this resolution, we are told it is calculated to irritate and impede a negotiation, which the gentleman from Virginia (Mr. Randolph) has informed us is about to commence, and, I must say, about to commence at a very late period; after an expiration of one year since the cession of that territory to France. Let us recur to the resolution:

"*Resolved*, That the President of the United States be requested to direct the proper officer to lay before this House copies of such official documents as have been received by this Government, announcing the cession of Louisiana to France, together with a report explaining the stipulations, circumstances, and conditions, under which that province is to be delivered up; unless such documents and reports will, in the opinion of the President, divulge to the House particular transactions, not proper at this time to be communicated."

Is this the language of irritation? Is there an offensive sentence either to the Court of Spain or the Republic of France? Not one. So far from impeding negotiation, it might lead to measures which would accelerate the agency, and insure terms more advantageous. To be ready for any and every event, would evince on our part a disposition to demand, and the power to enforce reparation if refused. Inactivity and silence in the Legislative department will indeed retard successful negotiation, by depriving a Minister of powerful and unanswerable arguments.

Mr. S. Smith said, it would be recollected, that on the first day the resolution of the gentleman from Connecticut was offered, it struck him as improper, and that it was at his instance it had been ordered to lie on the table. The more he had considered the nature of that resolution, the more averse to it had he become. So far from his original dislike to it having been removed by the arguments advanced, it had been confirmed, and particularly by what had fallen from the gentleman from Virginia. The gentleman from Connecticut does not perceive, or is unwilling to acknowledge that there is anything in his resolution that implies unfairness on the part of Spain, or that derogates from the honor of her character; but let him read the resolution. Mr. S. then read as follows:

"That the President of the United States be requested to direct the proper officer to lay before this House copies of such official documents as have been received by this Government, announcing the cession of Louisiana to France, together with a report explaining the stipulations, circumstances, and conditions, under which the province is to be delivered up."

Does not the gentleman who drew this resolution seem to believe, from the express words of it, that the conduct of Spain has been unfair, and that she may have adopted measures derogatory to her character and honor? Shall we send a Minister hampered by such a resolution?

Let the gentleman recollect the conduct of this House on a similar occasion. When an order of the British Court issued to seize all American vessels, wherever found, certain spirited resolutions were proposed in that House to show the dissatisfaction of the Government at this unjust measure, and its disposition, if necessary to resist it. The gentleman will recollect, that at that crisis, and pending those very resolutions, a Minister was appointed. Did not the gentleman's friends immediately state the impropriety of passing those resolutions? The fact was, that gentlemen on both sides felt the force of the suggestion, and the resolutions were withdrawn. Mr. S. thought it wise, prudent, and proper, to pursue on this occasion the same course. He could conceive of no good end which could be answered by the resolution. Is the gentleman really in earnest in his inquiries at this time? and if the effect of his resolution should be to show that the stipulations are injurious to our rights, would he know how to act? He would be for acting spiritedly, no doubt; and yet, at this very moment, when he professed such a declaration, he declares to the

world, that he has no confidence in the Executive, who is now pursuing the proper measures! I cannot, therefore, conceive that the gentleman is in earnest, after the vote which he and his friends have given of a want of confidence in the Executive. I cannot consider their conduct as intended to promote the real interests of their country; but as calculated to bring the country into a situation from which it cannot withdraw, without pursuing measures attended with expense and blood.

Mr. Randolph.—I trust neither this House, nor the American people, can be deceived as to this transaction. What I have stated the Journals confirm, and I should call for the reading of them, if I were not informed by the Clerk that they were at the printer's. A resolution passed this House, expressing its disposition to assert the rights of the United States, in relation to their established limits, and to the navigation of the Mississippi. That resolution contained an expression of confidence in the Executive. Gentlemen moved to strike it out and failed. In every other part they concurred, separately and distinctly. But to the whole they gave their negative. What is the inference? That they will not assert our rights because they have no confidence in the Executive. Liken this to a bill: A clause is moved to be stricken out; it is retained. Those who object to that clause vote against the final passage of the bill. It is nevertheless carried; it becomes law. Are not those who voted against it fairly to be considered as enemies to the law? So have I a right to enumerate that gentleman and his friends, opponents to the measure which I submitted to the House; and yet, sir, although I stated every fact mentioned by the gentleman himself, (Mr. Griswold,) except the final vote, which he took care to keep out of sight; although I mentioned expressly their concurrence in every other part of the resolution, it is asked with what face I can make such a statement in the teeth of your Journals? Sir, let me tell that gentleman, not with the face of a prevaricator, but with the face of a man of honor and a gentleman; not with the face of one using terms intended to convey more than meets the ear, with a view of explaining them away when convenient; not with a design of simulating what I do not believe, or of dissembling my real purpose. The House will recollect, sir, that in the committee, the objection of the gentleman from Connecticut was confined solely to the expression of confidence in the Executive, there was then no reason to believe that there was any other. After protesting against this expression, and suffering it even to prevent his concurrence in any measures for the common good, he comes forward with another resolution, whether to benefit that cause which he has refused to espouse, or to diminish that confidence which appears so much to have disturbed him, I leave the House to determine. But Louisiana is ceded to France. It is so. Of this fact, we have official information. But let it be remembered that it is yet in the hands of Spain. The injury which we have received is from officers of that Crown. The reparation is to be demanded from the same quarter. Now what has the information desired by gentlemen to do with any such negotiation? When France shall have taken possession of this province; when we shall have made pretensions inconsistent with our honor, or with our rights in that quarter, then will it be time enough to take up this subject. This is a transaction, which if it ever does take place, must pass under the immediate cognizance and control of this House. Let gentlemen recollect that the treaty of cession is of an old date, and Louisiana is, notwithstanding, still in the possession of Spain. Shall we then suggest to France our expectation that she will set up a claim inconsistent with our rights; that she may have received a colorable pretence for violating them? Shall we thereby invite her aggressions? In whatever hands this country may be eventually placed, or by whomsoever our rights may be invaded, I doubt not a disposition will always be found to defend them. But it is with the actual possessors that we must negotiate; it is from them we must demand redress, and not from any nation who may possess a reversionary right to the province of Louisiana.

Mr. Bacon said that there was was one question before the House, and they were debating upon another, in an animated manner and on an extensive scale, before they come to it. It would be recollected, he hoped, that this question was not then before the House. To what point, therefore, could these discussions lead? He was for going into a Committee of the Whole, and meeting the resolution face to face.

Mr. Dana said that the observations of the gentleman from Massachusetts would be correct, were it not for the objections made to the resolution. That question is, therefore, fairly before the House; and the real point is, whether the House will, or will not, adopt the resolution requesting information. To adopting this resolution, one objection is urged by the gentleman from Virginia, and enforced by the gentleman from Maryland. This resolution, say they, may irritate the Court of Spain, and this will be improper. One gentleman has said that the language of propriety is uniform and consistent. Let gentlemen look then at the resolution, long since offered by the gentleman from Virginia, requesting papers in relation to a violation of compact on the part of Spain in the late proceedings at New Orleans. Let me ask, is there anything in this calculated to gratify the courtly delicacy of a Castilian? Here Spain is explicitly charged with a violation of her engagement with us. Look at the resolution that took its birth in secret committee, and which might be termed the offspring of the intellectual energies of the gentleman from Virginia. It is willing to ascribe this breach of compact to the unauthorized misconduct of certain individuals, rather than to a want of good faith on the part of His Catholic Majesty. If this were not the style of direct complaint, it was, at least, harsh, and in no wise courtly. Look now at the resolution proposed by my colleague. Compare them, and if there is not a revolution in the force of language as well as in other things, say

if the language of my colleague's resolution is not that of civility, moderation, and even flattery, compared with the language of the other two?

[Mr. DANA having read Mr. GRISWOLD's resolution proceeded.]

What is there here that implicates the character of Spain? If there is any fault in mentioning the cession, if that is calculated to irritate Spain, the fault lies with the President; for he first mentioned it. This argument, then, must be abandoned. There is nothing in this resolution that can impede negotiations; it is not my intention that this House should take any measures to impede, but that we should take measures to give additional force to negotiation. If I understand what will give most efficacy to Executive negotions, it is when the world are assured that this House will support the President in all proper and necessary measures for vindicating our rights. But, say the gentlemen, is it possible that we can be for vindicating the rights of the citizens when we have withdrawn our confidence from the Executive? It is true we could not agree with gentlemen in their terms when they avowed "a perfect confidence in the vigilance and wisdom of the Executive." The gentleman from Virginia represented this as the theory of the Government. We could not agree with him. We voted for striking this out. It is unnecessary to mention our motives for this in detail. This might be to imitate. What! "relying with perfect confidence in the Executive"—is this the language of the Constitution, as it respects any man? The resolution does not limit the confidence reposed to any degree, but ascribes a perfection of wisdom and vigor, which ought not to be reposed in any being subject to the ordinary frailties of human nature. Besides, there is an expression of confidence resulting from the Constitutional powers of the Executive, which may be correct. But it will be recollected that the powers of the Executive are not competent to ulterior measures. He has only the power of negotiation; he has no other. Though he may prevent an aggression by employing force, he cannot enforce compensation for injuries received. It was, therefore, improper to agree to a resolution that pledged ourselves to abstain from doing anything.

The allusion to the case with Great Britain was not correct. Will it be said that less success attended the measures of our negotiation then, because the House manifested a disposition to adopt spirited measures? Or, that there were in that case no measures adopted? Measures were adopted. But here, not a single measure had been.

Mr. RANDOLPH said it was extremely painful to him to be obliged so often to explain what appeared to him almost self-evident. The journals have been quoted, sir, to show that I have cast an imputation on the Spanish Court more injurious than that contained in the resolution of the gentleman from Connecticut. I am perfectly willing that the decision of the question before us should depend upon that fact. The resolution, sir, which I had the honor to submit to you, spoke of a fact notorious to the whole world, of a breach of compact, of a violation of treaty, on the part of Spain, which could be neither denied nor justified. It contained an inquiry into this circumstance, and, information having been received respecting it, was followed by a declaration of our willingness to ascribe it to the unauthorized misconduct of their agents rather than to the Court of Spain. The resolution of the gentleman from Connecticut implies a fact highly dishonorable to the Spanish nation—that the Government, and not subordinate, unauthorized persons, has secretly entered into stipulations repugnant to its engagements with us. Put the case between two individuals; suppose a gentleman of this House to receive an injury from either of the gentlemen from Connecticut. In an open and manly manner he speaks of this injury, and in undignified terms of resentment. He inquires into it; having found that it was the act of a subordinate agent, and, no proof being exhibited that it was at the instigation of the principal, he frankly says: There is a violation on your part of your engagements with me, but I am willing to ascribe it to the unauthorized misconduct of your agent. On the contrary, suppose him to insinuate strongly that his opponent has covertly taken steps to injure him by treacherously entering into engagements incompatible with those previously made with him. Sir, that honor which would feel itself wounded by the first of these proceedings, while it was insensible to the other, is very little allied to the Castilian.

But, sir, it seems that this unfortunate resolution betrays so entire an ignorance of the distribution of the powers of our Government as to clothe the Executive with an authority not only not devolved upon it by the Constitution, but which is the peculiar province of this and the other branch of the Legislature. The gentleman (Mr. DANA) denies the power of the Executive to redress injuries received from foreign nations. The resolution, however, speaks only of a disposition to redress those injuries. But let us examine into the fact. Have I, indeed, so far mistaken, and, contrary to my own avowed principles, am so disposed to augment the Executive powers at the expense of the other departments of the Government? Suppose, on the representations of the Executive to the Court of Spain, that Court, which is more than probable, should restore the rights of navigation and deposit, disavow the conduct of their officers in violating those rights, and moreover, punish them for it? Would any person deny that, through the agency of the Executive, constitutionally exercised, the injury was redressed? There were other criticisms of the gentlemen which I well remember, and to which he seems willing to call the recollection of the House. They were chiefly of a verbal nature. The gentleman objected to the expression "vindicating the injuries," which he contended implied the justifying, and not the redressing, of them. I could only reply, that I had been in the habit of hearing that word used in the sense in which I applied it as well as in that contended for by

the gentleman. That the meaning of terms in our copious and flexible language should not be settled by provincial acceptation; and that by the only authority then accessible to us (knowing the disposition of the gentleman to bow to authority) it was decided that the word "vindicate" extended as well to the avenging of an injury as to the assertion of a right. I am, however, willing to confess that I have never attended to the technical structure of language with a precision so minute as that of the gentleman from Connecticut; and if the House are again to go to school to become acquainted with it, if again we are to be subjected to the lash of the pedagogue, no man shall have my vote for that high office so soon as the gentleman from Connecticut.

When the resolution which I submitted to you was under consideration, I did defend the expression contained in it, of confidence in the Executive, on the theory of our Government. I am still ready to defend it on the same principle. By the Constitution of the United States, the Executive is the representative of the United States to foreign nations. It is furnished with organs by which to receive their propositions, and to communicate our own. The Constitution, therefore, presumes that to this department may be entirely confided our negotiations with foreign States. To this House is given the sole power to originate money bills, and the Constitution supposes that a perfect reliance may be had upon it for executing this all important trust. On the Senate, in like manner, is devolved the right of trying impeachments, and perfect confidence is placed in the wisdom and justice of their decision. The same confidence is reposed in the Executive with respect to exterior relations. Without adverting, therefore, to the character of the individual, we had the same right to presume that the constituted authority would take the proper steps in relation to his department, that he has to presume that we will raise the necessary revenue and pass the proper laws. Until, then, it could be shown that some specific act of the Executive had rendered that department unworthy of our confidence, we might consistently express it: and, even if proof of such misconduct could be established, it would not alter the tenor of the Constitution, however the individual might be affected by it. For your Constitution, sir, is not of that precarious nature which depends on the fluctuating characters of particular men. Mr. R. concluded by declaring his reluctance, then increased by indisposition, to be so frequently called upon the floor, but he felt himself in honor bound to defend a motion made by himself, and which had called forth such repeated animadversions from the other side of the House.

Mr. GODDARD.—The gentleman from Virginia (Mr. RANDOLPH) has complained so much of the objections to which his *secret* resolution was exposed, that I feel myself called upon to sustain a part of that complaint which he has seen fit to place to the account of my colleague. The motion, sir, to strike out the word "vindicating," which gave the gentleman the trouble of producing his pocket dictionary, came from me. He attempted to show, by the authority of his dictionary, that the word is sometimes used to signify *revenge*. Admitting it, I asked then, and I ask now, with what propriety it could be used, even in that sense, in the resolution referred to? We were then speaking of measures which had before that time been taken by the President, regarding the subject to which the resolution referred. Were we to suppose that the President had already taken measures to *revenge* the injuries of the United States? I had heard of no such intimation. Besides, has he the power to do so, in the manner then suggested by the gentleman from Virginia, by taking possession of New Orleans? I believe not, without the concurrence of Congress. It was therefore absurd, in the highest degree, to use the expression in that resolution; and we had more than one reason for striking out that part of the resolution which contained it.

But this, as well as every other word and letter of this favorite resolution, was pertinaciously adhered to. The gentleman who framed the resolution seemed determined to compel us to eulogize the President—to extort from us a little praise of *the man*—or reduce us to the necessity of voting against the principle of the resolution, which asserted our right to the free navigation of the Mississippi. This part of the resolution could have been introduced for no other purpose. It also called upon us to pledge ourselves to wait the issue of such measures as the President might have taken, without any knowledge of the nature of those measures, if any had been taken. And this, the gentleman (Mr. RANDOLPH) now tells us, we might well enough have done, on the ground of the *theory of our Government*. I did not know, sir, that it belonged to the theory of Government to eulogize the President on all occasions, or express a confidence we do not feel. Nor does it make a part of the theory of our Government, that the President, without the concurrence of Congress, should avenge the injuries of the country. But, sir, we determined not to express a confidence we did not feel, or vote against the principle of a resolution which was agreeable to us; and the rules of the House, notwithstanding all the efforts to the contrary, protected us in carrying that determination into effect. We recorded our votes in favor of such parts of the resolution as we liked, and against that which we deemed exceptionable; and the final vote which was given upon the whole resolution was sufficiently explained by those upon its different parts. But, sir, because we did not vote that we had "perfect confidence" in the Executive, are we now to be told that we are not entitled to the information called for by the resolution on your table? Are those who do not express entire approbation of all the measures of the Administration to be refused all information respecting the most important interests of the country?

Another objection is raised to agreeing to this resolution. Gentlemen say it will offend foreign nations. What does the resolution call for? It calls for information of a *fact* which we are told in the President's Message exists. Louisiana, says

the President, has been ceded by Spain to France. We ask for such documents as he may possess in evidence of that fact. We wish to know the terms and conditions upon which that province is to be delivered up. When this is asked, by the resolution on your table, the right is at the same time reserved to the President to withhold such parts of it (if any such there be) as, *in his opinion*, ought not to be communicated. And the passage of this resolution is to offend France or Spain! For fear of *offending* foreign nations we are not to ask or know what is our relative situation with such nations! If, sir, we hold this language, we may indeed avoid the *anger* of foreign nations, but we shall merit their *contempt*. But when, in answer to the suggestion that we may offend Spain, the gentleman from Virginia is reminded of his resolution, which charges Spain directly with a violation of treaty, he replies that this language is palliated by our saying that we are "willing to ascribe this violation to the unauthorized conduct of certain individuals, rather than to the want of good faith on the part of His Catholic Majesty." But, in making out this apology, the gentleman has blended two resolutions together. The one to which my colleague referred passed early in the session. In that, Spain was charged directly with a violation of treaty. Nothing was then said about unauthorized conduct of individuals. This reluctance at charging Spain with this violation of treaty was not expressed until a long time after, and is found in the resolution which passed in secret. Indeed, this, as well as all the objections which have been offered to the passage of the resolution on your table, appear to me equally fallacious.

Mr. HUGER said, that having, on a former occasion, had an opportunity of delivering his sentiments in favor of the present resolution, "requesting the Executive to direct the proper officer to lay before the House such official documents, as were in possession of the Government, relative to the cession of Louisiana to France," he felt no disposition to enter at this time into a further discussion of the merits of that resolution, nor should he have again troubled the House on the subject, but for the assertion repeated more than once by the gentleman from Virginia, (Mr. RANDOLPH,) that those gentlemen who thought and voted with himself in the secret committee, had recorded, on the journals of the House, their solemn determination (however sensibly they might feel the injuries inflicted on the rights and interests of these States) to refuse all co-operation in support of those rights and interests, so long as the direction of the Government should remain in the hands of the present Chief Magistrate. This imputation had already, it was true, been very properly repelled by his friend from Connecticut, and it had been triumphantly shown from the journals themselves, with how little justice the insinuation had been made against those who agreed and voted with him on the different parts of the resolution lately adopted in the secret committee. The gentleman from Virginia had, nevertheless, thought proper again to make the assertion; Mr. H. must, therefore, beg leave again to meet it, and to declare that it was neither authorized by a fair construction of the different votes given on the occasion by yeas and nays, nor to be inferred from anything which had fallen in debate either from himself or any of his political friends. The very contrary, continued Mr. H., is in truth the fact; and had the resolution in question been debated with open doors, it would have been very evident to every one, that the utmost pains had been taken by the other side of the House to place us in this very predicament, and by availing themselves of a point of order, to oblige us, by our votes, not only to declare an implicit and entire confidence in the present Chief Magistrate, but to tie up our hands and bind ourselves not to take a single step in this important business until the Executive was graciously pleased to authorize us to do so. If the doors had been allowed, I say, to remain open during the debate, it would have been evident to every one how much pains were taken to oblige us to commit ourselves on these two points, or to submit to be presented to the world as unwilling to co-operate in any way in the support of the just rights of the nation, and be deprived of an opportunity of showing, as we were anxious to do, our approbation of, and concurrence in, other parts of the resolution; the last sentence in particular, which holds forth our unalterable determination to maintain, in every event, the boundaries and right of commerce and navigation through the river Mississippi, as established by existing treaties. Fortunately, however, the point of order was determined in our favor, and we have had an opportunity to show, and did actually show, by our votes, in the most unequivocal manner, that we were, as well as our political opponents, decidedly in favor of every other part of the resolution, save only that which called on us so unnecessarily to declare ourselves the blind and passive tools of the Executive. Nay, more, he recollected to have declared himself again and again, in the course of the debate, that, although he was not willing at the present moment unnecessarily to express an entire and implicit confidence in the political infallibility of the Executive, yet he certainly had not the smallest hesitation in saying, that he was as ready as any gentleman on the other side, to devote his life and fortune, even under the auspices of the present Chief Magistrate, to the defence of our common country against any and every foreign aggression whatever. He was not, it was true, one of the warm and enthusiastic devotees of the present Administration, and he must honestly acknowledge that he should greatly prefer seeing the reins of Government, at this critical juncture, in the hands of a WASHINGTON! He, nevertheless, recollected that the present Chief Magistrate was placed at the head of affairs by the Constitutional voice of the majority of the American people. He acquiesced, therefore, in their decision, and hoped he might be permitted to avail himself of the advantage of having the doors now open, to repeat again, in the most unequivocal language, that he was as ready as any of the most devoted

friends of the Administration, to risk his life and his all (even under its auspices) in asserting the rights and vindicating the injuries of the United States.

He was the more anxious to make a public and open avowal of his sentiments on this subject, because, although it might suit the party purposes for the moment to hold up one side of the House, as so forgetful of their duty, and so hurried away by their political zeal, as to pledge themselves in the face of the world, to give up the most important rights of the nation without a struggle, rather than co-operate with those now at the head of affairs in support of them, yet he thought it all-important that foreign nations at least should be convinced the fact was not so; and that whatever difference of opinion may exist amongst us with respect to our local politics, when called upon to meet and repel the encroachments of any foreign Power, we would have but one sentiment on the subject. To bring about, indeed, an unanimous vote and present to the American people the agreeable and consoling spectacle of the National Legislature acting with one mind and with mutual confidence in each other on this great national question, big with such important consequences, had been his sincere wish, as well as that, he was confident, of every member on his side of the House. They had, consequently, left no stone unturned to effect the desirable end; they had called upon and conjured the majority to waive for the moment all party questions; to meet them on such fair and honorable grounds as might enable them to act with perfect unanimity in support of such measures, as it might be found expedient to adopt. Nor could gentlemen have forgotten the eloquent and conciliating speech of the member from Connecticut, and the ardent desire he had evinced, in common with all his friends, to bury the hatchet and lay aside every other consideration but the public good. It was scarcely necessary, however, to remind the House of the manner in which these proffers of conciliation and the anxiety on our part to obtain an unanimous vote on this important occasion were received. It is in the memory of every one, that they were treated with the most sovereign contempt, hooted and spurned at, and the gentleman from Virginia, (Mr. RANDOLPH,) in particular, went so far as to declare, that he neither wanted nor wished anything like unanimity to appear in support of the measures which might be adopted; nay, that unanimity, however attainable, was not desirable. Mr. H. said he would make no comment on these sentiments and this conduct on the part of the majority; and as he did not rise for the purpose of entering into a further discussion of the main question, he should no longer encroach on the time or patience of the House, but leave them and the world to determine whether he or his political friends had, by their votes or conduct, in the course of the transaction alluded to, afforded any just ground for the imputation of the gentleman from Virginia, whatever plausibility he had ingeniously endeavored to give it.

The question was then taken, on the requisition of Mr. GRISWOLD, by yeas and nays, and carried in the negative—yeas 38, nays 52, as follows:

YEAS—John Archer, John Bacon, James A. Bayard, Phanuel Bishop, John Campbell, Thomas Claiborne, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John C. Smith, John Stanley, John Stratton, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Isaac Van Horne, and Thomas Wynns.

Mr. S. SMITH said he had a communication to make, which in his opinion, required secrecy; whereupon the galleries was cleared.

After a short time they were opened; when the House resumed the consideration of Mr. GRISWOLD's resolution, which lay on the table.

Ordered, That the Committee of the whole House, on the state of the Union, to whom was referred, on the fifth instant, a motion respecting official information of the cession of Louisiana to France, be discharged from the consideration thereof; and that the said motion do lie on the table.

Mr. BAYARD said he lamented much, that unavoidable occurrences had prevented his attending in his place when the resolution was under consideration upon the motion to go into a Committee of the whole House. Having no knowledge of the arguments then employed to induce the adoption of the resolution, he should abstain from many remarks which obviously presented themselves on the subject, lest he should fall into repetitions of what was familiar to the minds of the House from the observations of other gentlemen. He must, however, be allowed to state that it was a practice little known heretofore, but one which had alarmingly increased of late, to resist a call for information from any branch of the Executive Government. It cannot be on the ground of secrecy, required by the state of affairs, for we have been often told that a Government like ours ought to have no secrets. Though the present times have assumed the character of *economical*, yet an honorable member of great weight in the House, and whom he did not then observe in his place,

had remarked at the last session, with great emphasis and effect, that no disposition to economy should ever induce him to economise information. A stronger case than the present could not exist. The House had been called on to act upon a question touching our foreign relations. On such subjects, it was among the chief duties of the Executive to acquire information. It was for this purpose that Ministers were sent abroad, and their communications were made to the Cabinet, to which we had a right to look upon all occasions for information respecting the proceedings of foreign Governments which implicated the national interest.

It is stated in the Presidential Message, that Louisiana is ceded by Spain to France. This is an important fact. The statement in the Message shows that the President has obtained information relative to the cession, after the fact is disclosed, which is the extent of any indiscretion which can be committed on the subject; why conceal from us the circumstances? The naked fact did not furnish sufficient light to enable us to judge of the steps which it would be proper for us to pursue. Though the country had been ceded, yet the possession remained with the Spaniards. This created a presumption that it was not a simple, absolute cession. If the cession be conditional or qualified, or to take effect upon some future contingency, it is extremely material that the House should be informed of the existence of the circumstances.

Mr. B. repeated his regret that he was not present at the discussion of the subject which had taken place, as it was beyond his powers to imagine a ground upon which the information requested by the resolution could be denied. But after the resolution had been in effect negatived on the motion to go into a Committee of the Whole, and as he understood, by a large majority, he should not have risen to trouble the House but for an occurrence which had taken place since the House had made their determination upon the resolution. An honorable member from Maryland, (Mr. S. SMITH) has just laid upon our table a resolution calling upon the House to place two millions of dollars at the discretion of the Executive. [The SPEAKER here remarked to Mr. BAYARD, that as the doors were no longer closed, it was not in order to refer to what had been done when the doors were closed.] Mr. B. said he had no disposition to transgress the rules of the House; but it was an awkward situation, when, arguing in support of a measure, he was not at liberty to state the strongest reason in favor of it. He would not repeat what had escaped him; but alluding to what was in the knowledge of every member, he considered himself allowed to urge the probability that the House would be called upon for a grant of money. Now, sir, can gentlemen expect that either we or the nation will in any case be satisfied to make a large grant of money, while no information is given of the grounds upon which the grant is required? When money is asked for, information ought never to be denied: and, for his part, he never would consent to give a cent, while information, which ought to be communicated, was withheld.

Mr. B. concluded by observing, that he hoped he might still flatter himself with the expectation, that what had recently occurred, would induce the House to vary from the determination they had made, and adopt the resolution.

The question was taken, that the House do agree to the resolution of Mr. GRISWOLD, and passed in the negative—yeas 35, nays 51, as follows:

YEAS—James A. Bayard, Phanuel Bishop, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thos. Lowndes, Ebenezer Mattoon, Lewis R. Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John C. Smith, John Stanley, John Stratton, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, Daniel Heister, Joseph Heister, Wm. Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, Joseph B. Varnum, Isaac Van Horne, and Thomas Wynns.

WEDNESDAY, January 12.

Mr. MOORE, from the committee to whom was referred, on the fourth instant, the petition of Matthew Patterson and others, inhabitants and settlers on French Broad river, made a report thereon; which was read, and considered: Whereupon,

Resolved, That the prayer of the petition ought not to be granted.

A petition of Joseph Pannell and others, inhabitants of the Mississippi Territory of the United States, was presented to the House and read, praying that the tracts or portions of land which they have located, and made actual settlements thereon, subsequent to the twenty-seventh day of October, one thousand seven hundred and ninety-five, may be confirmed to the petitioners, in as full and ample manner as grants have been made by the Government of the United States, to actual settlers of lands in the said Territory, prior to the period aforesaid.—Referred.

Mr. DAVIS presented a petition from Abraham Stout, praying relief.

On the reference of this petition, a conversation took place, on the propriety and justice of making provision for persons wounded during the Revolutionary war, notwithstanding the interference of the statute of limitations; this provision was

warmly urged by Messrs. HELMS and CLAIBORNE. It was finally agreed that the petition should be referred to the Committee of Claims.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three," with several amendments, to which they desire the concurrence of this House.

On motion of Mr. HELMS, it was

Resolved, That a committee be appointed to inquire whether any, and what, provisions ought to be made, by law, for allowing pensions to persons who do, at this time, labor under disabilities in consequence of known wounds received in the actual service of the United States, and who have not heretofore been provided for; and that the committee report by bill or otherwise.

Ordered, That Messrs. HELMS, LEWIS R. MORRIS, CLAIBORNE, MATTOON, BAILEY, GROVE, and HANNA, be appointed a committee, pursuant to the said resolution.

Mr. GREENE moved the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of altering so much of the ordinance of the thirteenth of July, one thousand seven hundred and eighty-seven, (made for the government of the Territory Northwest of the river Ohio, and by an act of Congress, passed on the seventh day of April, one thousand seven hundred and ninety-eight, extended to the Mississippi Territory,) as provides for the establishment of a court of justice, and the appointment of judges by the Government of the United States, within the Mississippi Territory.

Ordered, That the said motion be referred to a Committee of the whole House to-morrow.

Mr. VARNUM, one of the members from the State of Massachusetts, presented a letter enclosed to him, and addressed to the Speaker, from John Avery, Secretary of the said State, accompanying a set of maps, transmitted by direction of the Legislature of Massachusetts, for the use of this House; which was read, and ordered to lie on the table.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three;" Whereupon,

Ordered, That the said amendments be committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the whole House on the report of the Committee of Ways and Means, to whom was referred, on the fifth instant, the petition of Hugh Alexander, and others, inhabitants of the State of Kentucky; and, after some time spent therein, the Committee rose, and reported their agreement to the same.

The House proceeded to consider the said report at the Clerk's table; Whereupon the resolution submitted by the Committee of Ways and Means, to which the Committee of the whole House reported their agreement, being twice read, in the words following, to wit:

Resolved, That the prayer of the petition of Hugh Alexander, and others, presented to this House on the fifth instant, is reasonable, and ought to be granted.

The question was taken, that the House do concur with the Committee of the whole House in their agreement to the same, and resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Ways and Means do prepare and bring in the same.

The House resolved itself into a Committee of the whole House, on the report of the Committee of Commerce and Manufactures, of the sixth instant, to whom was referred the memorial of Henry Messonnier, presented the third of February last; and, after some time spent therein, the Committee rose, and reported to the House their agreement to the same.

The House proceeded to consider the said report at the Clerk's table; Whereupon the resolution submitted by the Committee of Commerce and Manufactures, to which the Committee of the whole House reported their agreement, being twice read, in the words following, to wit:

Resolved, That there be paid to Henry Messonnier, from any money in the Treasury not otherwise appropriated by law, the sum of six hundred and fifty dollars and ninety cents, being the amount of duties paid by him on fourteen hogsheads of coffee, imported in the ship Pacareau, Captain Latour, and entered at the port of Baltimore, on the eighteenth day of February, one thousand seven hundred and ninety-four, which sum had also been paid on the same fourteen hogsheads of coffee, by Champaign and Deyme.

The question was taken, that the House do concur with the Committee of the whole House in their agreement to the same, and resolved in the affirmative.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Resolved, That the Speaker be requested to acknowledge the acceptance of a set of maps of the Commonwealth of Massachusetts, which the Secretary of that Commonwealth, by direction of the Legislature thereof, has transmitted for the use of this House.

PURCHASE OF LOUISIANA.

[The injunction of secrecy having been removed from the following proceedings, had in secret session, they are here inserted under the proper date.]

Ordered, That the Committee of the whole House, to whom was yesterday committed a motion in the words following, to wit:

"*Resolved*, That a sum of two millions of dollars, in addition to the provision heretofore made, be appropriated to defray any expenses which may be incurred in relation to the intercourse between the United States and foreign nations, to be paid out of any money that may be in the Treasury, not otherwise appropriated,

and to be applied under the direction of the President of the United States, who, if necessary, is hereby authorized to borrow the whole or any part thereof; an account whereof, as soon as may be, shall be laid before Congress:"

be discharged from the consideration thereof, and that the motion be referred to Mr. Nicholson, Mr. Eustis, Mr. Bayard, Mr. Dickson, Mr. Lowndes, Mr. Thompson, and Mr. Gregg; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The Committee to whom was referred a resolution proposing an appropriation of two millions of dollars, in addition to the sum usually appropriated for the purposes of intercourse between the United States and foreign nations, submit the following report:

The object of this resolution is to enable the Executive to commence, with more effect, a negotiation with the French and Spanish Governments relative to the purchase from them of the island of New Orleans, and the provinces of East and West Florida. This object is deemed highly important and has received the attentive consideration of the Committee. The free and unmolested navigation of the river Mississippi is a point to which the attention of the General Government has been directed, ever since the peace of 1783, by which our independence as a nation was finally acknowledged. The immense tract of country owned by the United States, which lies immediately on the Mississippi, or communicates with it by means of large navigable rivers rising within our boundaries, renders its free navigation an object, not only of inestimable advantage, but of the very first necessity. The Mississippi forms the western boundary of the United States, from its source to the 31st degree of north latitude, and empties itself into the Gulf of Mexico, about the 29th degree of north latitude. It furnishes the only outlet through which the produce of the Indiana Territory, of the States of Ohio, Kentucky, and Tennessee, and of the western parts of Pennsylvania and Virginia, and a portion of the Mississippi Territory, can be transported to a foreign market, or to the ports of the Atlantic States. From the 31st degree of north latitude, which is the southern boundary of the United States, to the mouth of the river, the territory on each side has heretofore been in possession of the Spanish Government; the province of Louisiana lying to the West, and those of East Florida, with the island of New Orleans, to the East. Although the United States have insisted on an uncontrollable right to pass up and down the river, from its source to the sea, yet this right, if admitted in its most ample latitude, will not secure to them the full advantages of navigation. The strength and rapidity of the current of the Mississippi are known to render its ascent so extremely difficult, that few vessels of burden have attempted to go as far as our boundary. This circumstance obliges the citizens of the Western country to carry their produce down the river in boats, from which it is put on board of ships capable of sustaining a sea voyage. It follows, therefore, that to enjoy the full benefits of navigation, some place should be fixed which sea vessels can approach without great inconvenience, where the American produce may be deposited until it is again shipped to be carried abroad. This great point was secured to us in the year 1795, by the Spanish Government, who agreed, in the treaty of San Lorenzo el Real, that Americans should have the right to deposit at New Orleans. This right has been used from that time till a late period; but the conduct of the Intendant at that place shows how liable the advantageous navigation of the river is to interruption, and strongly points out the impolicy of relying on a foreign nation for benefits, which our citizens have a right to expect should be secured to them by their own Government. It is hoped that the port of New Orleans may again be opened before any very material injuries arise; but should this be the case, or if, as the treaty provides, a new place of deposit should be assigned, the late occurrence shows the uncertainty of its continuance. Experience proves that the caprice or the interested views of a single officer may perpetually subject us to the alternative of submitting to injury, or of resorting to war.

The late violation of our treaty with Spain necessarily leads to the inquiry, how far the Western country may be affected in other points, not connected with New Orleans! The Mississippi Territory extends from the confines of Georgia to the river Mississippi, and from the 31st to the 35th degree of north latitude. It is estimated to contain more than fifty millions of acres, and, from its numerous advantages, must one day or other possess an immense population. The variety, richness, and abundance of its productions, hold out to settlers the strongest inducements to resort thither, and the United States may safely calculate on drawing a considerable revenue from the sale of lands in this, as well as in other quarters of the Western country. The value of these, however, may be diminished or increased, and the sale impeded or advanced by the impression made on the public mind, by shutting the port of New Orleans, and by eventual measures which may be adopted to guard against similar injuries.

West Florida is bounded on the north by the Mississippi Territory, from which it is separated by no natural boundary; on the east by the river Apalachicola, which divides it from East Florida; on the west by the river Mississippi, and on the south by the Gulf of Mexico. The Mississippi Territory is intersected by many large and valuable rivers, which rise within its own boundaries, and meander through it in a general direction from north to south, but empty themselves into the Gulf of Mexico through the province of West Florida. In fact, with the exception of that part of the Territory which lies immediately on the Mississippi, the whole must depend on the Mobile and the Apalachicola, with their numerous branches, and on some other rivers of inferior note, for the means of sending its produce to market, and of returning to itself such foreign supplies as the necessities or convenience of its inhabitants may require. In these rivers, too, the eastern parts of the State of Tennessee are deeply interested, as some of the great branches of the Mobile approach very near to some of those branches of the Tennessee river, which lie above the great Muscle shoals. Even if it should prove difficult to connect them, yet the land carriage will be shorter, and the route to the sea more direct than the river Tennessee furnishes. These rivers possess, likewise, an advantage which is denied to the Mississippi. As their sources are not in the mountains, and their course is through a level country, their currents are gentle, and the tide flows considerably above our boundary. This circumstance, together with the depth of water, which many of them afford, render them accessible to sea vessels, and ships of two hundred tons burden may ascend for several hundred miles into the heart of the Mississippi Territory. These rivers,

however, which run almost exclusively within our own limits, and which it would seem as if nature had intended for our own benefit, we must be indebted to others for the beneficial use of, so long as the province of West Florida shall continue in the possession of a foreign nation. If the province of West Florida were of itself an independent empire, it would be the interest of its Government to promote the freedom of trade, by laying open the mouths of the rivers to all nations; this having been the policy of those Powers who possess the mouths of the Rhine, the Danube, the Po, and the Tagus, with some others. But the system of colonization which has always heretofore prevailed, proves that the mother country is ever anxious to engross to itself the trade of its colonies, and affords us every reason to apprehend that Spain will not readily admit us to pass through her territory to carry on a trade either with each other or with foreign nations. This right we may insist on, and perhaps it may be conceded to us; but it is possible that it may be denied. At all events it may prove the source of endless disagreement and perpetual hostility.

In this respect East Florida may not perhaps be so important, but its acquisition is nevertheless deemed desirable. From its junction with the State of Georgia, at the river St. Mary's, it stretches nearly four hundred miles into the sea, forming a large peninsula, and has some very fine harbors. The southern point, Cape Florida, is not more than one hundred miles distant from the Havana, and the possession of it may be beneficial to us in relation to our trade with the West Indies. It would likewise make our whole territory compact, would add considerably to our seacoast, and by giving us the Gulf of Mexico for our southern boundary, would render us less liable to attack, in what is now deemed the most vulnerable part of the Union.

From the aforegoing view of facts, it must be seen that the possession of New Orleans and the Floridas will not only be required for the convenience of the United States, but will be demanded by their most imperious necessities. The Mississippi and its branches, with those other rivers above referred to, drain an extent of country, not less, perhaps, than one-half of our whole territory, containing at this time one-eighth of our population and progressing with a rapidity beyond the experience of any former time, or of any other nation. The Floridas and New Orleans command the only outlets to the sea, and our best interests require that we should get possession of them. This requisition, however, arises not from a disposition to increase our territory; for neither the Floridas nor New Orleans offer any other inducements than their mere geographical relation to the United States. But if we look forward to the free use of the Mississippi, the Mobile, the Apalachicola, and the other rivers of the West, by ourselves and our posterity, New Orleans and the Floridas must become a part of the United States, either by purchase or by conquest.

The great question, then, which presents itself is, shall we at this time lay the foundation for future peace by offering a fair and equivalent consideration; or shall we hereafter incur the hazards and the horrors of war? The Government of the United States is differently organized from any other in the world. Its object is the happiness of man; its policy and its interest, to pursue right by right means. War is the great scourge of the human race, and should never be resorted to but in cases of the most imperious necessity. A wise government will avoid it, when its views can be attained by peaceful measures. Princes fight for glory, and the blood and treasure of their subjects is the price they pay. In all nations the people bear the burden of war, and in the United States the people rule. Their Representatives are the guardians of their rights, and it is the duty of those Representatives to provide against any event which may, even at a distant day, involve the interests and the happiness of the nation. We may, indeed, have our rights restored to us by treaty, but there is a want of fortitude in applying temporary remedies to permanent evils; thereby imposing on our posterity a burden which we ourselves ought to bear. If the purchase can be made, we ought not to hesitate. If the attempt should fail, we shall have discharged an important duty.

War may be the result, but the American nation, satisfied with our conduct, will be animated by one soul, and will unite all its energies in the contest. Foreign Powers will be convinced that it is not a war of aggrandizement on our part, and will feel no unreasonable jealousies towards us. We shall have proved that our object was justice; it will be seen that our propositions were fair; and it will be acknowledged that our cause is honorable. Should alliances be necessary they may be advantageously formed. We shall have merited, and shall therefore possess, general confidence. Our measures will stand justified not only to ourselves and our country, but to the world.

In another point of view, perhaps, it would be preferable to make the purchase, as it is believed that a smaller sum would be required for this subject, than would necessarily be expended, if we should attempt to take possession by force; the expenses of a war being, indeed, almost incalculable. The Committee have no information before them, to ascertain the amount for which the purchase can be made, but it is hoped that, with the assistance of two millions of dollars in hand, this will not be unreasonable. A similar course was pursued for the purpose of settling our differences with the Regency of Algiers, by an appropriation of one million of dollars, prior to the commencement of the negotiation, and we have since experienced its beneficial effects.

Under these impressions, therefore, the Committee recommend the adoption of the resolution referred to them in the following words, viz:

Resolved, That a sum of two millions of dollars, in addition to the provision heretofore made, be appropriated to defray the expenses which may be incurred in relation to the intercourse between the United States and foreign nations; to be paid out of any money that may be in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States; who, if necessary, is hereby authorized to borrow the same, or any part thereof, an account whereof, as soon as may be, shall be laid before Congress.

Thursday, January 13.

Another member, to wit: William Jones, from Pennsylvania, appeared, and took his seat in the House.

Mr. S. Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of Henry Messonnier; which was read twice and committed to a Committee of the Whole to-morrow.

Ordered, That the committee to whom was re-

ferred, on the seventeenth ultimo, so much of the President's Message as relates "to providing for the return of American seamen discharged in foreign ports, and left abroad," have leave to report thereon, by bill or bills, or otherwise.

Mr. S. Smith offered a resolution instructing the Committee of Ways and Means to inquire into the expediency of prolonging the period of payment of bonds given for duties by merchants of Portsmouth who may have been sufferers by the late fire at that place.

Mr. S. submitted a letter from the Secretary of the Treasury to him, as chairman of the Committee of Commerce and Manufactures, stating that, if the prolongation depended upon him, he should be inclined to grant it—also enclosing a letter from the Collector of the port of Portsmouth.

The resolution was immediately taken up and agreed to.

Mr. Dennis, from the committee appointed on the thirty-first ultimo, to whom was referred a petition of sundry inhabitants of the City of Washington, and of Georgetown, in the District of Columbia, presented a bill for incorporating an Insurance Company in the City of Washington; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. Randolph, from the Committee of Ways and Means, presented a bill for the relief of Hugh Alexander, and others; which was read twice and committed to a Committee of the Whole to-morrow.

FRANKING PRIVILEGE.

Mr. Randolph moved that the House resolve itself into a Committe of the Whole, on the amendments offered by the Senate to the bill making appropriations for the Military Establishment for the year 1803.

The first amendment, applying an addition of two thousand dollars for the purchase of books, maps, and instruments, for the use of the War Department, was agreed to.

On the second, adding $1,500 for the payment of postage on letters to and from the inspector, paymaster, &c., a lengthy debate ensued.

The appropriation was opposed by Mr. Nicholson and others; in the first place as being unnecessary; for it had been discovered in the course of their examinations at the last session, that a considerable amount appeared on the books of the accountant for the Department of War, as having been expended for the payment of postage on military letters, &c., from the contingent fund—that the same practice could be pursued. By making the grant, twenty per cent., equal to $900, would go into the pocket of the deputy postmaster in this place; which would be that sum drawn from the public Treasury.

It was opposed on another ground—as being the duty of the Secretary of War to frank all letters going from the offices attached to the War Department, and, therefore, an appropriation was unnecessary.

In answer, it was observed, that the Government must, and ought in some way, to support the expense of transporting returns, orders, and letters, relating to the military service; and, if they would not make an appropriation, it was proposed to extend the privilege of franking to the paymaster and inspector, through whom most of the details for the Army passed. That it was not the duty of the Secretary to frank letters and packages going from other offices—it was making a clerk of him—obliging him to do that which neither the law nor the Constitution contemplated as being attached to his office; that it would encroach upon the time which must necessarily be devoted to more important concerns. Besides, were he able and willing to perform the drudgery of that service, it was doubtful whether he had any legal or Constitutional right to frank any packages, except those going immediately and directly from his own particular office, and that he might be liable to a penalty, though he should frank letters on public business, relating to the Army and War Department generally.

The extension of the privilege of franking was opposed by the Speaker, (Mr. Macon,) and others. They considered all franking as wrong, and liable to abuse—they would rather restrict than extend this privilege.

In reply it was said that, if confidence could not be placed in those officers, as to the privilege of franking, the imposition could not be prevented by referring their packets to the Secretary of War, or by paying their account current with the postmasters. It was evident the Government must pay those expenses; that it could make no difference as to the revenue, whether the Postmaster General's Department received and paid to the Treasury the money which was drawn from the contingent fund of the War Department, or from a special appropriation to defray the expenses of postage on military letters and packets, or whether they extended the privilege of franking to those officers from and through whom the military details must pass. In the former case, it was but taking from one pocket and putting in the other—in the latter much trouble was saved; and, if the characters employed in those departments were worthy of a confidence which should entitle them to the places they hold, it could never be supposed that they would abuse the privilege of franking.

On motion of Mr. Griswold, seconded by Mr. Eustis, the Committee rose, and the amendments from the Senate were recommitted to the Committee of Ways and Means.

BANKRUPT LAW.

Mr. Newton, from the committee appointed on the petition of sundry merchants of Norfolk and Portsmouth, Virginia, praying "that amendments might be made to the bankrupt law;" also, instructed by a resolution, offered by Mr. Varnum, "to inquire into the expediency of repealing an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,'" made the following report: "That it was not expedient to repeal the bankrupt law."

Mr. Smilie said, if the report was final, he should move that the House now take it into consideration.

Mr. Bayard doubted whether it could be final. He supposed, when a subject was referred to a committee, it was proper for them to select a part for their consideration, and make a *report* in part. If the chairman of that committee thought himself authorized to report in part, he should be satisfied to consider it as such. But as a petition had been presented praying amendments to the bankrupt law, he should have been better pleased if the examination of the committee had extended to that inquiry. He knew that the bankrupt law was not complete, and could not be made unexceptionable in the first attempt: experience alone could mature the subject. He hoped the report would be recommitted; that the same committee might examine the present system, point out the inconveniences, and report their opinion.

Mr. Newton said he had made a report in conformity to the positive directions of the select committee. They deemed it improper, when the opinion of the House were divided, that they should go extensively into the examination. When the question of repeal had been decided, then they had contemplated a report relative to amendments. He did not think himself authorized to report in part, without consulting the committee.

Mr. Dawson moved to erase the word "not." Motion not in order.

A motion was made for the committee to take back the report for the purpose of making another, which should embrace the subject of amendments as well as repeal. Having stated that it was not expedient to repeal, the amendments of which it was capable should have been submitted.

Another argument was offered in favor of a recommitment, viz: that the present was but a report in part; they had not noticed the petition from the merchants of Norfolk and Portsmouth, on which they were first appointed, but had acted upon the resolution of the gentleman from Massachusetts, (Mr. Varnum,) which was a point of secondary consideration.

A motion was made that the House now consider the report.—Carried.

Mr. Randolph hoped the act would not be amended, but repealed. When it passed, he was one of those who entered his protest against it. He considered it in the nature of an *ex post facto* law—an allurement to fraud—tending to corrupt the morals of the community—to change the nature of contracts—to discharge men, not only from their obligations and their solemn promises, but to violate their oaths. And, because Congress had a right to enact such a law, would gentlemen say it was for the benefit of trade? Its operations had been the reverse. He had been waiting, ever since its establishment, for the merchants themselves to come forward and urge the repeal. A portion of them had petitioned for amendments, which, in fact, amounted to a request for a repeal.

Mr. S. Smith thought any arguments on the merits of the question were premature. It was a subject of too much importance to be hurried in that manner. He hoped it would be recommitted.

Mr. Nicholson.—Many gentlemen appeared to wish a repeal, because there were some injurious provisions in the law; others wished it might be amended, believing it was capable of such alterations as would remove their objections. He thought it in some respects defective, and in others beneficial. If the evils to which it was subjected could be remedied, he should be for retaining, if not, for repealing the law.

Mr. Smilie.—Considering the situation of the United States, he thought there never should have been a bankrupt law; but he doubted whether it would be expedient to repeal it at this time, but let it expire of itself. He believed much mischief had been produced by it, and if it was repealed now, he apprehended much more would ensue. Its natural life was but five years, and he thought it had better exist for that period than be repealed. He was for recommitment.

Mr. Bayard agreed with the gentleman from Maryland, (Mr. Nicholson,) and thought the committee should have inquired what amendments were expedient. He was also forcibly impressed with the remarks of the gentleman from Pennsylvania, (Mr. Smilie,) that it was better to suffer the law to expire of itself than repeal it now. He did not think that the House were prepared to go into a discussion. The argument of the gentleman from Virginia, (Mr. Randolph,) that the bankrupt law was *ex post facto*, would not apply; but an act to repeal would in reality be an *ex post facto* law. Many merchants had entered into contracts, having an eye to the bankrupt law; many had embarked in perilous enterprises, knowing, that if they had made unfortunate calculations, that by a surrender of their effects they might again engage in commercial pursuits. And though a man might be discharged from his contracts, the sense of moral obligation was not impaired—in *foro conscientiæ* he was still answerable. He would not deny that frauds were committed, but for this should the honest debtor be eternally fettered with his debts? Should he, from unavoidable accidents, be cast into prison, and his family reduced to misery and distress? He was sure that the gentleman would revolt at the idea. Were the bankrupt law repealed, they must substitute the insolvent laws of the different States. Did not the insolvent laws of the Southern States hold out the same allurements to fraud as the general bankrupt law? By a repeal, they would increase the evils, and destroy the benefits of the general system. We were, said Mr. B., a great commercial Republic; the connexion between merchants of the different States was increasing; therefore, the merchant of Georgia and the merchant of New Hampshire should be subjected to general regulations. Now, the merchant of Pennsylvania trusting the merchant of Virginia knew that his whole estate, real and personal, was liable for the payment of his debts; whereas, by the insolvent laws of that State, (Virginia,) the former might give an extensive credit; the latter might vest it all in land, which was untangible for the payment of his demand. The bankrupt act was a commercial law, extending equal benefits throughout the Union. If it was suffered to go back to the select committee, they would be able to give a clearer

view of its advantages and defects. It was a subject of incalculable importance, both as it respected the debtor and creditor, and he hoped it would meet a candid and deliberate investigation.

Mr. Randolph said that the affairs of the world had been found to suffer more from being put in the hands of those who were superior to the management of them, than from those who were inadequate to the execution of those objects entrusted to them. It had been allowed a sound rule of construction, that all general powers must be confined to particular exceptions. The Constitution gave Congress the right of making a bankrupt law, but it did not give the power of impairing contracts. He would exonerate the person, but never the property. It was the case in Virginia, when a man had surrendered all his property, his person was liberated, but his property never. And, though we were a commercial Republic, was it not necessary to take care of the agricultural interest? How did the bankrupt law operate upon the planter? He knew by experience that it had been in many instances ruinous; that many planters had been *choused* out of their property by the operations of this very law. He had known from experience that many men had been buoyed up and supported by their friends till those friends were made good, and then suffered to fail, to the great injury of the former.

Mr. Bacon was in favor of a reference to a Committee of the whole House.

Mr. S. Smith said, gentlemen seemed to consider the bankrupt law as made entirely for the benefit of the debtor. That was an erroneous opinion. It was made also for the creditor: as such he advocated it. It enabled the creditor to secure his property, if he found the debtor was disposed to be fraudulent: he could apply for a commission of bankruptcy, and make the debtor account for the property in his possession. Besides, it reduced the creditors to an equality—a debtor could not secure his friends, and leave the rest of his creditors without a dollar. An instance of that kind had lately came within his knowledge. To the agricultural interest it held out still greater advantages. The farmer who brought his produce to market could always get *cash*, if he would sell for *cash*; if he chose to sell on a credit, he received a higher price in proportion; that increase of price was his insurance for selling on credit. He was for examining the subject, and endeavoring to remedy defects, rather than repealing.

Mr. Holland moved that it be referred to a Committee of the whole House. Carried.

A motion was made that it be referred to Monday next; another for Monday week.

Mr. Mitchill moved for Monday, the 31st inst.

Mr. Thatcher hoped the longest period proposed would be adopted.

The House divided, when the motion of Mr. Mitchill prevailed—ayes 30, nays 29.

Friday, January 14.

Mr. Van Ness, from the committee appointed, presented, according to order, a bill additional to, and amendatory of, an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," passed the third day of May, one thousand eight hundred and two; which was read twice and committed to a Committee of the Whole on Tuesday next.

Mr. Van Ness, from the committee appointed, presented a bill to lay out and open a new public road in the county of Washington, in the District of Columbia; which was read twice and committed to a Committee of the Whole on Tuesday next.

Mr. Van Ness moved the following resolution:

Resolved, That a monument be erected in commemoration of the patriotism, valor, and good conduct of Major General Horatio Gates, who, in the late Revolutionary War, commanded the American forces that captured General Burgoyne and the British army under his command, at Saratoga, in the State of New York.

Ordered, That the said motion be referred to the committee to whom was committed, on the tenth instant, the bill sent from the Senate, entitled "An act to carry into effect several resolutions of Congress for erecting monuments to the memories of the late Generals Wooster, Harkemer, Davidson, and Scriven."

On motion, it was

Resolved, That the committee appointed to inquire into the expediency of making provision, by law, for the relief of persons who are disabled by wounds received in the service of the United States, be also instructed to inquire into the expediency of extending the time for the settlement of claims for services rendered, and supplies furnished during the Revolutionary War.

Mr. Randolph, from the Committee of Ways and Means, who were directed by a resolution of this House of the thirteenth instant, "to inquire into the expediency of prolonging the terms of payment on bonds due by such merchants who may have been sufferers in the late fire at Portsmouth, in New Hampshire;" made a report thereon, which was read, and considered: Whereupon,

Resolved, That the Committee of Ways and Means be directed to prepare and report a bill to authorize the Secretary of the Treasury to suspend, for a limited time, the collection of bonds due to the United States by merchants of Portsmouth, New Hampshire, who have suffered by the late conflagration of that town.

Mr. Randolph, from the committee last mentioned, presented a bill for the relief of the sufferers by fire in the town of Portsmouth, which was read twice and committed to a Committee of the whole House, on Monday next.

IMPORTATION OF ARMS.

The House resolved itself into a Committee of the Whole, on Mr. Rutledge's resolution to exempt States importing arms for the use of their militia, from the payment of duties thereon.

On this resolution an interesting debate ensued, which continued till near four o'clock.

Those who advocated the resolution were Messrs. Rutledge, Macon, Lowndes, Bayard, Nicholson, Dennis, Huger, Butler, and Griswold.

Those who opposed it, were Messrs. Dawson, Randolph, Bacon, Eustis, Mattoon, Holland, and Mitchill.

The friends of the resolution supported it principally upon general principles; notwithstanding its origination in the peculiar circumstances in which South Carolina was placed by the purchase of arms abroad, and which she was about importing. They declared the arming of the militia of the United States an object of the utmost importance; an object not only recommended by the ordinary situation of the country, but likewise enforced by the peculiar crisis of affairs. The militia had been correctly denominated the natural defence of the nation, and alone could render a standing army unnecessary. A celebrated writer had truly pronounced an armed nation invincible; and when arms should be put universally into the hands of our militia, the United States would be an armed nation. As these sentiments were indisputable, and as a state of affairs existed not of the most pleasant nature, as there was no knowing the moment when our most vulnerable points might be attacked, inducements to the adoption of the resolution, of a temporary were superadded to those of a permanent complexion.

Two objections only were urged against the adoption of the resolution; the first, that thereby a diminution of revenue might be experienced; the second, that it withdrew a legitimate and necessary protection from the domestic manufacture of arms. With regard to the first objection, it was alleged to have but very little weight. The quantum of revenue derived from the importation of arms was insignificant; and it appeared by documents on the table that in the years 1799, 1800, and 1801, not a dollar had been received from this source. So trifling a sacrifice, therefore, as this consideration involved, was unworthy the regard of the Legislature in competition with the immense object of arming our militia. A good militia system had always been considered as a great desideratum, and had accordingly engaged, every session, the attention of the Legislature. But it was believed that until arms were exclusively put into the hands of our citizens, no effectual provision could be accomplished; whereas, with arms in their hands, they would be competent, under State regulations, to the complete defence of the country.

Under the Constitution of the United States, it did not appear to be the duty of the States to arm the militia; that duty was at best equivocal; as the object was national, it might perhaps, most correctly, be considered as the duty of the General Government. It was certainly the interest of that Government that the militia should be armed; and it would also be the evidence of a wise and magnanimous policy to grant the reasonable requests of the States; particularly when a gratification of such requests would promote not only the general harmony, but also the national strength. The removal of the duty, it was observed, would, in the proportion of fifteen to a hundred, increase the ability of the States to purchase arms; for which this was a season the most auspicious, and which ought therefore immediately to be seized. An immense mass of arms had been employed during the late European war; and on the restoration of peace, which now pervaded Europe, a large portion of them becoming unnecessary, were carried into the market; the consequence of which was the reduction of their price much below the war price. This, then, was the season for purchase, which ought to be improved without delay, as there was no foreseeing the hour at which new hostilities might burst out in that quarter, and as it was ascertained from experience, that during a state of war, the exportation of arms was prohibited; which might be that period when they would be most wanted by this country.

The militia were, it was remarked, in most of the States but miserably supplied with arms; and this was most particularly the case in the Southern States. Should the nation, contrary to their wishes, be engaged in war, it was these States that would experience the first attack of an invading enemy; and in such event, as the ultimate defence must rest upon the national Government, it would then be perceived that even the revenue would in effect be aided, in case the facility thereby given the States to procure arms should have, by the removal of this duty, rendered unnecessary the interposition of the Federal Government. By limiting it to two years, a stimulus would be given to the States, as well as an intimation of the sense of the General Government of the importance of immediately attending to this interesting object.

It was asked, whether it was proper to tax the militia that the revenue might be aided? It would be better even to tax the bread of life, than the arms of the militia, because those arms were necessary to enable our citizens to eat that bread in peace.

With regard to the second objection made to the resolution, that it would depress, if not destroy, the domestic manufacture of arms, it was replied, that even if such should be the effect, in a case of such infinite importance the lesser evil should be submitted to, rather than lose the greater benefit. It was acknowledged that the protection of domestic manufactures was a great object, and especially the manufacture of arms; but it was declared to be the result of all experience in Europe, that the private manufacture of arms must be abandoned in times of peace. Governments, mindful of this necessary effect, had established national armories. Such ought to be the policy of the United States, as well as the giving a bounty in time of peace, on the domestic manufacture, even if that bounty exceeded the market price one hundred per cent. The effect, however, ascribed to the renewal of this duty, was denied; and it was alleged that the present price of imported arms was so low, notwithstanding the existing duty, that the domestic manufacturer could not enter into competition with the importer.

With regard to protecting duties, they had, in many cases, been laid, and correctly laid, on articles, such as hats, boots, and shoes, where the abil

ity of the manufacturers was equal to the demand; but in the article of arms this was manifestly not the fact; nor was it believed, considering our increasing population, that it would be the case for twenty years.

On the other hand, the opponents of the resolution remarked that it presented simply a question of money. Notwithstanding the eloquence with which it had been urged, it was extrinsic from the great points introduced to buoy it up. It had really nothing to do with the important object of arming the militia. Every member on the floor knew and felt the infinite magnitude of that object; but the difference of opinion entertained, respected not the end, but the means of accomplishing it. In two views the resolution was exceptionable; first, as it would affect the revenue; and secondly, as it would affect the domestic manufacture of arms. The first consideration was entitled to some weight, though it was allowed that, if any great good could be proved as likely to result from the removal of the duty, the force of the objection would be weakened; nor would this argument in such event be adhered to. But the second effect calculated to be produced by the adoption of the resolution, was conclusive against it. At a time when the domestic manufacture of arms required the fostering hand of Government, it was proposed, contrary to every principle of justice, and subversive of every suggestion of policy, to remove an existing duty on imported arms, and thereby effectually to prostrate the domestic manufacture of them. The duty had been imposed long since, and effects eminently beneficial had resulted from it. The manufacture of arms among ourselves had been cherished and extended.

Our dependence for this important article no longer rested upon foreign supply. Many respectable manufactories had been established, and our citizens been enabled to enter into competition with importers of arms. This effect had been produced during the late European war, when the price of arms, from the great demand, was high. Now, when that price was reduced, and when the domestic manufacturer could scarcely compete with the European price superadded to the duty, it is proposed still further to aggravate his situation, and to withdraw his only protection; that protection which had allured him into the manufacture, and the unjust removal of which might issue in his ruin and the destruction of the whole domestic manufacture. It was proposed to suspend the exaction of the duty for two years. This would effectually prostrate the domestic fabric of arms, and after that period we might in vain seek the manufacturer elsewhere than in the records of the bankrupt law. Thus at the very moment when our domestic manufacture of arms required the most protection, it was attempted to remove all protection whatever. Who, it was asked, would, under such harsh circumstances, ever hereafter undertake this vital fabric? But it was alleged that an allowance of the importation of arms, duty free, would be attended with a great present benefit. Even allowing this might be the case, which however was questionable, was it the policy of the Government to sacrifice a great ultimate advantage to a temporary good?

Every nation ought to have those resources on which her existence depended within herself. Of this nature was the manufacture of arms. Regard ought not exclusively to be paid to the present period. Periods of equal, of greater danger might hereafter arrive, when it would not be in our power to import arms; and when, consequently, our reliance must be on ourselves. Was it therefore politic, now, to take a step that would crush our infant manufactures? The fabrication of arms, too, was not to be learned in a day. Was it then wise to give up all the experience we had gained?

It was further contended that the abrogation of duty at this late day would operate injuriously, if not unjustly, to those States who, under greater difficulties than at present existed, had made patriotic purchases of arms. Many of these purchases had been at prices three-fold the existing price. Would not the removal of the duty, therefore, operate as an indirect tax upon the citizens of those States who had manifested the greatest exertions to obtain arms, while it operated as a bounty upon those who had displayed the least? These exertions had been most vigorously made in the Eastern States. Would it be said that they were richer or more able to defray the expense than the Southern States? The fact was that the respectable State of South Carolina, and the other Southern States, were fully able to pay the duty, and if they entertained a zealous disposition to arm their militia the duty would be no obstacle. In the Eastern States the militia were armed. There individuals had purchased arms at an enormous expense. In a state of real or apprehended danger, what had there been the conduct of the people? They had bought arms, and turned out, and submitted to heavy burdens. In another part of the Union, it might not be just to say the people were asleep; but the fact was they had not armed or turned out. Is it fair, then, or just, to tax those who have been so vigilant, and have borne such heavy burdens, to relieve those who have been supine and have borne but little burden? Is not this in effect a tax upon the necessaries of life, upon the bread of the poor? This would indeed be a dreadful discouragement to those who have most exerted themselves in a period of danger.

An argument in favor of the abrogation of the duty had been drawn from the suspension of i some time since. But that argument was entitled to little weight; then the price abroad was so high, that, even abating the duty, our manufacturers could keep up a competition with the importer; whereas the reverse was now the case.

It was added, that if this resolution were meant to secure the internal defence of the country, and it were calculated to have that effect, it did not extend far enough; but ought to embrace lead, ammunition, gunpowder, and flints. The circumstances under which the motion was made were extraordinary. The United States had removed the land tax, and all other direct taxes, by which the States and their citizens were liberated from heavy burdens previously existing; and yet at this

time an attempt is made to diminish the only remaining source of taxation—external duties. The question was, merely, whether the United States or South Carolina should pay this duty. South Carolina being better able to pay it, the answer was ready. Besides, if the duty should be remitted in this instance, justice required that it should also be remitted in all other cases in which it had been paid; and this was a measure which the advocates of the resolution would not probably favor. As to cannon, they could be made cheaper at home than abroad. The State of New York had established a foundry in Connecticut. South Carolina might do the same.

The question was then taken on the amendment, limiting the suspension of the duty to two years, and carried—yeas 38, nays 33.

Mr. S. Smith moved to insert "brass" before "ordnance." Agreed to.

Mr. S. then moved to strike out the word "fire;" from which it would result that all arms except muskets would be exempt from duty. Mr. S. said he would not detain the House at that late hour. He only rose to enter his protest against the ideas of some gentlemen, who had expressed the opinion that there should be no protecting duties. He believed if all protecting duties were taken off, the effect would be a destruction of our manufactures. He hoped, before the House rose, that subject would be brought forward, and seriously attended to.

Mr. Nicholson had heard no gentleman say, there ought to be no protecting duties. He had himself said they ought not to be laid on articles of the first necessity, when the manufacturers of the country were not competent to supply the demand.

A motion was made that the Committee should rise, and ask leave to sit again. Carried—yeas 48.

The Committee accordingly rose, and on granting leave to sit again, the House divided—yeas 34, nays 25.

Monday, January 17.

Two other members, to wit: from Virginia Samuel J. Cabell, and from North Carolina Robert Williams, appeared and took their seats in the House.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a statement of goods, wares, and merchandise, exported from the United States during one year, prior to the first day of October, one thousand eight hundred and two; which were read, and ordered to lie on the table.

A memorial of sundry inhabitants of the town of Wilmington, in the State of North Carolinia, was presented to the House and read, stating that a certain number of negroes or mulattoes, to whom emancipation has been granted by the Executive of the French Government in the Island of Guadaloupe, had been recently landed at the said town of Wilmington; that, in the opinion of the memorialists, much danger to the peace and safety of the people of the Southern States of the Union in particular, is justly to be apprehended from the admission of persons of that description into the United States, from the West India Islands; and praying that Congress will be pleased to take the premises into consideration, and adopt such effectual measures for prevention thereof, as they in their wisdom may deem proper.

Ordered, That the said memorial be referred to Mr. Hill, Mr. Early, Mr. Huger, Mr. Randolph, and Mr. Campbell, to report their opinion thereupon, to the House.

Mr. Varnum, from the committee appointed on the seventh instant, "to consider whether any, and, if any, what, alterations are necessary in the Military Establishment of the United States, made a report thereon; which was read, and ordered to be referred to a committee of the Whole House on Thursday next.

Mr. Eustis made some remarks on the impropriety of vesting the President of the United States with the revocation, at pleasure, of the commissions of militia officers in the District of Columbia; and moved the appointment of a committee to revise the act by which that system is authorized. Ordered to lie on the table.

IMPORTATION OF ARMS.

Mr. Rutledge's resolution, that any State importing arms for the use of their militia should receive the same free of duty, was resumed in Committee of the Whole.

Mr. Leib called the attention of the Committee to a petition which he had presented from sundry manufacturers of arms in the city of Philadelphia which was then referred to the same committee. The petition was read.

Mr. Bacon.—Gentlemen seemed to believe that the duty on arms amounted to a prohibition of imports. A gentleman from South Carolina had told them that their militia were badly armed; that they would be obliged to purchase; at all events, that they were desirous of being armed. What was the reason of their remaining so long in that situation, when at the same time they do not want money, and when arms are so plenty in Europe that they can be purchased at a lower rate, and pay the duty, than they can be manufactured at home? That was unintelligible to him, though it might be explained away to his satisfaction.

Some gentlemen, he perceived, thought it good policy to encourage manufactures, particularly that of money, and would support a mint at the expense of many thousand dollars, but were very unwilling to encourage the manufacture of arms, though it should bring money into the country. He did not consider the manufacture of money of so much advantage, as that of arms, for we could at all times import money, even in war, but we could not always get arms. Should there be a deficiency of money we could always substitute a credit. But a credit would be a poor substitute for arms.

He was very unwilling to infringe on the impost, that great source of revenue. When they once began, they would not know where to stop. He was the more averse to that step, when he re-

collected the strong attempt to weaken it at the last session. He considered the resolution a dangerous one—it was calculated to reduce the treasury; if adopted it might serve as an entering wedge to go further. Gentlemen might then come forward again, and paint in glowing colors the necessity of relieving the lower classes of people, by taking off the duty on salt, bohea tea, and brown sugar, from which we received an immense revenue. We had never heard any complaint of the duty on arms before; therefore, why should we break in upon our system of revenue?

Mr. Nicholson could not see what connexion the present subject had with the Mint. If he understood the gentleman, he would not have us preserve the Mint, because money might always be procured, and yet he would not have us import arms, though they could not always be obtained. [Here Mr. Bacon explained. He did not mean to be understood in that way; but that there was a prospect of our being able at all times to command money.] Mr. N. believed he understood the gentleman's meaning. This, he said, was the moment in which arms could be imported with advantage, and we ought to embrace it. Nor could he see the connexion between the importation of arms, and the duty on salt, coffee, and bohea tea. Those observations might have been intended for other gentlemen, but he felt them. He was in favor of the resolution; he thought we ought to import arms; there was a necessity for them. By taking the duty from salt, &c., we deduct an immense sum from our revenues; but, for the last three years, not one dollar has been derived from the importation of arms. A law was passed in 1797 for taking off the duty on arms, which was to continue one year, and on examining the journals he could not find one dissenting voice. Then there was supposed to be danger. There was always danger existing, said Mr. N., as strong as at that time, in the Southern States. They were always exposed to an internal enemy: and it was of the highest importance that their militia should be armed: not to meet a foreign enemy, not to meet an invading foe; but that they might be able to defend themselves against every description of enemies, and to prevent the necessity of a standing army; for without the militia were rendered capable of defence, an army must be supported. He believed the question was to strike out the word "fire" before "arms." He should oppose the amendment, but was in favor of the resolution.

Mr. Bacon said, the gentleman had a good faculty of answering arguments which were never made for him; they were intended to apply as they were expressed.

Mr. Rutledge hoped the motion made by the gentleman from Maryland, (Mr. S. Smith,) to strike out the word "fire" before the word "arms," would not prevail. By the motion, the main object of the resolution would be frustrated. It was known that they were more in want of fire-arms than any other. In the course of the debate, much had been said of the benefit which would result to South Carolina from the passage of the resolution. It contemplated a privilege to all the States of importing arms free of duty; besides, if it were to continue but two years it would hold out an inducement to do it shortly. The fact is, that the State of South Carolina would not be much injured, were fire-arms excluded from the privilege. But that was taking a limited view. He wished New Hampshire, Vermont, and all the States, North and South, to be supplied. The militia of Massachusetts were good; and why were they superior to the militia of other States? Because they were well armed. But that was not the case generally. It was not so in Virginia, and the States south of it. Some gentlemen said there was no danger now; whenever it did arrive, measures would be taken. Let the attention of those gentlemen be called to the year 1797, when danger was apprehended—Congress passed a law prohibiting exportations of arms, and exempted from duty those imported.

Those encouragements would always be given when there was a necessity for them, but it should be recollected that in time of danger they could not always be imported, being contraband of war. From the peace in Europe, and the disbandment of large armies, warlike implements of every description must be plenty and cheap. He had been told that muskets were lately imported for five dollars each. But a few years ago, they could not have been had for ten. It therefore seems to present a fortunate period for arming and equipping our militia. But, on the broad ground of policy, we should speedily accomplish this object. Our foreign relations were not in the most eligible situation; it was well to let the nations of Europe see that we were prepared for any event—that, although, we were willing to accommodate differences by the milder mode of negotiation, we had the power to protect our rights, and the spirit to revenge unmerited injuries.

The question was taken to strike out the word "fire," and lost—25 only in the affirmative.

Mr. Varnum did not know whether the resolution would admit of an amendment which he would offer. He thought if the States were permitted to import free from duty, that companies and individual merchants should have the same privilege. Many States at the Eastward were not well armed, and he believed they would not be as a State; but that individuals might import, and the citizens would purchase from them.

Mr. Rutledge had no objection to that amendment of the resolution; but he would submit to the gentleman from Massachusetts, (Mr. Varnum,) whether it might not now be passed in its present shape, and the amendment inserted in the bill when it was brought in.

Mr. Smilie said, if the only effect of such a law would be its operation on the funds, he should favor its adoption; he considered the trifling loss of revenue which would result from it as mere matter of moonshine, but he believed it would not only injure, but destroy our own manufactures. The State of Pennsylvania had been obliged to purchase at the rate of ten dollars for a musket and bayonet; the American manufacturers now

offer the same, or better, for nine dollars and a half. He should oppose the resolution.

The yeas and nays were called for by Mr. Huger, and the question lost—yeas 41, nays 43.

On motion, the Committee rose, and reported their disagreement to the resolution.

Moved that the House now consider the report of the Committee of the Whole; when,

Mr. Davis said he was surprised that gentlemen had any objections to the resolution. Little or no revenue arose from importations; the manufacturers could not supply sufficient quantities, and all were anxious to arm the militia. He had listened with great attention, but had not heard one sound argument offered against it. Perhaps gentlemen had reasons which they choose to keep behind the curtain, if so, he could not bring them to light. The Constitution obliges Congress to provide for arming the militia, and for general defence. If it is the duty of the United States to arm the militia, and an individual State will do it herself, we ought not to prevent, but encourage the undertaking. Sir, said Mr. D., the gentleman from Virginia (Mr. Randolph) has not told us whether the manufactory in Virginia is sufficient to arm his own State much more that of others. If our armories cannot supply the country, and the States will furnish themselves, let them do it. The gentleman from Maryland (Mr. S. Smith) gave us a speech a few days since quite in military style. Since the gentleman has gone so far out of his usual course, benefits might result if he would pursue a little further. He had been surprised at the opposition of the gentleman from Virginia, (Mr. Randolph;) unless his authority was to be doubted, the Executive is now about sending an Envoy Extraordinary to a foreign nation to negotiate a settlement of existing differences; and in this situation the Southern and Western States are without the means of defence. What had been done since the commencement of the session? It was all contained in a trifling piece of paper, in the shape and under the title of a resolution. [Mr. Randolph's resolution in secret committee.] Perhaps gentlemen depended on that, as the Children of Israel did upon the law of Moses, for protecting their country! What the gentleman from Pennsylvania (Mr. Smilie) had said amounted to nothing, except that the State of Pennsylvania had made a hard bargain—that she had purchased when arms were high. It must, however, be an agreeable reflection to him to know that they had arms in possession, and if more were wanted they were now to be obtained cheaper. Gentlemen would tell us all was not well, and yet deny the means of defence! He had been about to ask for arms for the States of Tennessee and Kentucky, but the fate of that resolution had discouraged him. And what, he asked, are the people of the Western country to fight with? Were they to fight with clubs and bludgeons, or were they to assume the antediluvian mode of fighting, with bows, arrows, javelins, and spears? Or were they to put up with insults and injuries against which they could make no resistance?

Mr. Claiborne was in favor of the resolution. Though Virginia had made her contracts, and established her manufactories, they were full handed. If she was likely to be armed, he wished the other States to be furnished also. He was sorry he could not agree with his colleague, (Mr. Randolph,) but in that case he could not think with him, and therefore must vote against him.

Mr. Hill said arguments had been drawn from a variety of sources; from the revenue, from the manufactures, and from the importance of arming the militia. He was a friend to manufactures, but he thought the present question related to the encouragement of importations of arms, for the important purpose of equipping our militia. In addition to the cloud which had appeared from the westward, he had presented a petition that morning which gave reason for unpleasant apprehension from another quarter. He believed the same principle, which would not encourage the importation of arms for those States now destitute, would encourage those who had arms to sell them.

Mr. Southard was not a little surprised that gentlemen considered the duties as amounting to a prohibition of importations. It is now known that arms can be imported, duties included, as cheap, if not under the rate for which they can be purchased at home. By encouraging importations, we introduced an evil not merely of a temporary nature. While we were not certain that the States would import—indeed we were told that some would not—by taking off the duty we should discourage the manufactures in those States where they had been established, for the express purpose of arming themselves, and individual establishments would be entirely destroyed. The effect on manufactures was important, but on the revenue it was nothing. It was desirable to procure arms, but rather than throw obstacles in the way of our own manufactures, we ought to give a bounty to encourage them. There was every probability that we should be supplied by the manufactures of our country. A large manufactory was now established at Harper's Ferry; there were also many in the arsenals. It discovered an instability in the Government; it was calculated to destroy that confidence which our citizens had a right to repose in them. He would rather discourage importations, and support our own manufactures. He should, therefore, oppose the resolution.

Mr. Meriwether thought the great question was, whether it was necessary to arm the militia? If necessary, could they be armed within a reasonable time from our own manufactures? He believed they could not in the course of five, six, or seven years. In the four Southern States, there was a deficiency of one hundred and forty thousand, and even in Massachusetts five thousand five hundred. He did not imagine that the manufactures of our country would furnish the number necessary for the United States, within seven years from that period. In the year 1797, a law was passed in Georgia, and money appropriated, for the purchase of arms; the Governor reported

that he had applied to every manufacturer in the United States and could obtain none. It was now important to the Southern States to be armed; they were always exposed. Besides the infringement on the free navigation of the Mississippi, they were exposed from other causes. It was of the first importance to arm the militia, and as the importation of arms free of duty must be one inducement, he should vote for the resolution.

Mr. RANDOLPH made a few remarks, that the question was not for arming the militia, or whether the States should be encouraged to arm them. It was for taking off the duty. As he understood, a State (South Carolina) had made an order for arms, and wished to receive them, duty free; by passing the resolution not a single arm more would be brought into the United States. He was not opposed to arming the militia, but in favor of it, and for encouraging manufactures.

Mr. THATCHER.—So extensive a range has been taken in discussing this question, that it cannot be necessary to follow the advocates of the resolution through the various subjects which have been introduced in the course of debate. The arguments in favor of this resolution are predicated upon the idea that we are at the eve of a war; that the country is in imminent danger. The honorable gentleman from Kentucky (Mr. DAVIS) draws a conclusion to this effect, from recent measures of the Executive. Sir, I would resort to the same high authority to support an opinion directly opposite. The measures of the Executive have certainly been pacific in the highest degree. Judging from the communications of the President to this House, I should apprehend no immediate danger. We are told, in the Message of the 15th of December, that "we are still blessed with peace and friendship abroad," and there is not the most distant information of approaching hostility. The same gentleman seems dissatisfied that the House has confined itself to a short and ineffectual resolution respecting New Orleans and the Mississippi; with respect to that resolution, I am by no means inclined to differ from him in opinion; but when, sir, it is said that there is an immediate prospect of war, I confess I do not see the evidence. On the contrary, it is understood that we are about to commence a negotiation which, perhaps, years may not terminate.

Gentlemen in favor of this resolution have dwelt at great length, and with great emphasis, upon the necessity of arming the militia. To arm and equip the militia is certainly an object of the greatest importance. On this opinion the House appears unanimous. But, sir, this subject I consider totally unconnected with the question before us, for the militia will be armed if the impost should be continued. The gentleman from Virginia has so fully expressed my ideas upon this point that I shall not trouble the House with a repetition.

The question before the House is simply whether we will permit the individual States to import arms free from the duty of 15 per cent. imposed by law. Sir, the effect which this resolution must have upon the manufacture of arms in the United States, I think an unanswerable objection. I consider this manufacture essential to our safety. It is said that arms can be imported cheaper than we can make them. Taking that statement as correct, are we to be guided in that instance by a strict exactness of pecuniary calculation? To import these articles, which can be had from abroad much cheaper than they can be made at home, may be a good general principle; but the articles enumerated in this resolution are certainly to be excepted. In the Revolution, the independence of this country was hazarded for want of the manufacture of arms. It is possible that we may again be exposed to similar difficulty. An emergency may occur when we cannot resort to Europe for arms; it may exist at a time when their exportation from Europe is prohibited. Surely, then, it is unsafe; it is disgraceful to a great nation, possessing within itself every article necessary for the manufacture of arms in the greatest abundance, to depend on distant countries for a supply. Sir, the resolution tends directly to destroy all our establishments of this kind. The duty no doubt was imposed with a view to their encouragement. If Government should extend its fostering hand to any class of citizens in particular, the manufacturers of arms should be among the first objects of its care. This manufacture already declines; to encourage the importation of arms will be to decree its destruction.

But, sir, it is said that we do not possess the means of making the quantity of arms necessary for the present demand. The gentleman from Georgia (Mr. MERIWETHER) has insisted upon this objection. Sir, I see no great demand for arms. Gentlemen have told us that none have been imported for several years. But if the demand were great, we know there are several factories of this kind in the United States where they may be made in almost any quantity, equal in every respect to the best which are made in Europe. They certainly can be made before, in all probability, we shall have any pressing occasion for their use. But, sir, if the laws respecting the impost upon these articles are fluctuating, if we impose high duties upon imported arms, when few are wanted, and suspend or repeal those duties as soon as they are in demand, it will soon be true that none can be made in the country. But, admitting that a certain quantity must at this time be imported, where is the necessity of suspending the duties? Have we such a surplus of revenue that we can afford to diminish our impost? If, sir, we are soon to be involved in war, policy would seem to require, that we should not diminish the ordinary revenue. But, say gentlemen, this will not affect the revenue, because no arms have been imported for a long time. Surely argument is not necessary to prove that this application would not have been made unless arms are to be imported, and if they are imported free of duty it must occasion a great loss of revenue.

Mr. Speaker, the resolution under consideration originates in an application from South Carolina to be exempt from the duties imposed by law upon certain arms which that State is about to import.

Sir, this exemption would operate with extreme inequality. Some of the States are well armed, while others are almost destitute of arms. Those States which have been most prompt to arm their militia, have paid the duty; while those which have neglected to the present time to arm, will derive great advantage from that neglect. Besides, sir, why should we grant indulgence to States, which we deny to individuals? In some of the States arms are not imported by the State governments. In Massachusetts, the soldier is obliged to arm himself; and, although we find that the militia of that State are better armed than any other in the Union, those arms have been bought at a much higher price than these which are to be imported into South Carolina will cost, with the addition of impost. The gentleman from that State informs us that muskets can be purchased at seven dollars in Europe; by adding the duty to that sum, we find that they would cost very little more than eight dollars, which is much less than the price at which arms have been purchased by the soldiers in other States. Can it then be supposed that the 15 per cent. duty will deter the State of South Carolina, or any other State, from importing arms, which they consider so necessary at the moment?

But, sir, I think it demonstrable, that it will be ultimately cheaper to purchase arms made in this country. The muskets and other arms for sale in Europe, at the close of a war, especially those of low price, are generally unfit for service. It is stated by an honorable member of this House, that muskets have lately been imported into Rhode Island, and there sold at four or five dollars, duty included. Sir, of what description must those muskets be? They must be refuse arms; dear at any price. Suppose we encourage the militia to import these arms from different parts of Europe, what will be the consequence? Out of thousands we should scarcely find hundreds fit for regular troops, or for any operations of an army; we should find them defective in every respect, and so unequal in calibre that it would cause infinite trouble to fit them with cartridges. On the contrary, those made in this country are allowed to be superior in every respect to any manufactured in Europe. We are told, sir, by the petition on the table, that they can be afforded at nine dollars and fifty cents. I presume if these manufacturers were employed to make them in large quantities, they could be offered for less, for the price must bear some proportion to the quantity in demand. For these reasons, Mr. Speaker, I am opposed to the resolution.

Mr. VARNUM had a wish to encourage manufactures; but did gentlemen think it possible that they could supply the deficiency of arms? In Virginia, the enrolled militia amounted to 60,000, and they returned but 6,530 arms. [Mr. RANDOLPH said the return was incorrect, both as to men and arms.] If they have more, said Mr. V., he was glad of it. But the return ought to have been correct; it was transmitted by the Adjutant General of the State to the Secretary of War. It had been said that there was a deficiency in Massachusetts of 5,000; in that estimate the non-commissioned officers had not been included, which would make a deficiency of 9,000, and they had little short of 60,000 militia. If the resolution was partial, take off the duty from importations, and give a bounty to your manufacturers. He would not throw any obstacle in the way of their prosperity.

Mr. S. SMITH was unwilling to enter into the debate, which had been extended to a great length already; but a few remarks seemed necessary. The gentleman from Kentucky (Mr. DAVIS) had not heard any reasons against the resolution; although many had been offered which seemed to have some effect on the House, they did not affect him. He had asked in what manner they were to fight in the Southern States? were they to fight with clubs, or should they adopt the ante-diluvian mode of fighting? Mr. S. did not know what was the ante-diluvian mode of fighting. The gentleman had shown his knowledge of the Bible, too. He believed the gentleman had read that Holy Book oftener than himself. In 1797, the duty was taken off; but few arms were imported, and he could not conceive the great benefit that would arise from an exemption now, for, if what had been said was true, arms could be imported cheaper than they could be made here, beside paying duty. He was not surprised that the gentleman from Kentucky (Mr. DAVIS) would not encourage manufactures; he had never known him to favor them. M. S. was willing that such articles should be imported free, as we could not manufacture, but no other. There could be no want of arms; let the States contract with manufacturers; there were many establishments which made a number daily. Besides, the President, by a law of 1798, was authorized to distribute 30,000 stand of arms, to different parts of the Union, agreeable to their returns, whenever they were wanted.

It was good policy to encourage the manufacturers of arms in time of peace; for then they never would be wanted in time of war. But the moment that resolution passed, the manufacturers of arms must become manufacturers of horse shoes. It was preferable to give more for arms made in our own country; for, in addition to their being better, there was a satisfaction in encouraging our own manufacturers, in giving bread to our own laborers, and the money was expended among our own citizens.

Mr. EUSTIS made a few observations against the resolution; that there was no necessity of encouraging importations, either for arms or ordnance. There were foundries in the Eastern States, which had produced brass pieces for the field equal to any in the world. These manufactures should be protected; they were established at a great expense; the proprietors had taken boys into the foundries, who, in a few years, would become artists; by encouraging these establishments, manufacturers were growing up with their country. Another evil would arise from importation—the arms were not all of the same description, of equal calibre; perhaps there were gentle-

men in the House who could recollect many disasters arising from that circumstance in the Revolutionary war. He was one who could bear witness. He saw no benefit but many evils would result from the passage of the resolution.

Mr. GRISWOLD moved an amendment to extend the time to two years, and to the end of the next session of Congress.—Carried.

Mr. G. also moved to insert the word "brass" before the word "ordnance."—Carried.

Mr. VARNUM said he should vote against the resolution unless the exemption from duty was extended to individuals.

Mr. RUTLEDGE said he had before stated that he had no objections to the amendment, but supposed it might as well be inserted in the bill.

Mr. NICHOLSON.—If they extended the exemption from duty to individuals, they should restrict the importations, as they would become an article of exportation; that however might be the subject of amendment to the bill.

The question was then taken by yeas and nays, at the request of Mr. STANLEY—yeas 45, nays 45. The Speaker gave the casting vote in the affirmative:

YEAS—James A. Bayard, Richard Brent, William Butler, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Peter Early, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, David Meriwether, Thomas Moore, Lewis R. Morris, Thomas Morris, Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, Richard Stanford, John Stanley, Samuel Tenney, David Thomas, Thomas Tillinghast, Abram Trigg, John Trigg, George B. Upham, John P. Van Ness, Killian K. Van Rensselaer, Lemuel Williams, Henry Woods, and Thomas Wynns.

NAYS—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Robert Brown, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, Ebenezer Mattoon, Samuel L. Mitchill, James Mott, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Joseph Stanton, jr., John Stewart, John Stratton, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, and Peleg Wadsworth.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. RUTLEDGE, Mr. MERIWETHER, and Mr. HOLMES, do prepare and bring in the same.

CASE OF JOHN P. VAN NESS.

Mr. DAVIS called up the report of the Committee of Elections on the case of John P. Van Ness.

The House went into Committee of the Whole on the report, as follows:

"That, from the free concessions and agreement of the said member, it appears to your committee that he has accepted and exercised the office of a major of the militia, under the authority of the United States, within the Territory of Columbia; and that a paragraph in the sixth section of the first article of the Constitution, which expressly provides, that 'No person holding any office under the United States, shall be a member of either House during his continuance in office,' does, in the opinion of your committee, render the acceptance and exercise of the office aforesaid incompatible with the holding, at the same time, of a seat in the House.

"Your committee, therefore, ask leave to submit to the House the following resolution, to wit:

"*Resolved*, That John P. Van Ness, one of the members of this House, having accepted and exercised the office of major of militia, under the authority of the United States, within the Territory of Columbia, has thereby forfeited his right to a seat as a member of this House."

Mr. VAN NESS said he would make a remark or two that would, perhaps, remove any impressions of indelicacy on his part in retaining his seat under the circumstances in which he was placed. He considered himself as standing on that floor, not as a private individual, but as a Representative of New York; and as holding a trust which he was not authorized to abandon before a Constitutional decision should be made. His constituents had placed him there as the guardian of their rights; and that trust he could not desert without a Constitutional decision being made. If that decision should be adverse to his retaining his seat, in retiring from the House he should feel no regret but at leaving his constituents unrepresented during the remainder of the session, at not having discharged all the business assigned him by the Chair, and at ceasing to associate with gentlemen whom, for the most part, he respected. In a pecuniary view, the relinquishing his seat could not in the least affect him; nor should he consider it disreputable to leave a body without any imputation of dishonor or impropriety.

The reasons he should offer to the Committee for retaining his seat, were few and simple. He thought the fair, liberal, and sound construction of the Constitution did not affect his case; that the incapacitating provision only applied to civil offices. The Constitution was only a digest of the most approved principles of the constitutions of the several States, in which the spirit of those constitutions was combined. Not one of those constitutions excluded from office those who had accepted military appointments, except in the regular service. He, therefore, felt a full conviction that it was never the intention of the framers of the Constitution of the United States to exclude militia officers from holding a seat in Congress. And however important it might be to adhere to the letter of the Constitution, yet, when the spirit of it was so clear as it appeared to him, it ought to have weight in the decision of the question before the Committee, which might affect objects of great importance. The right of every portion of the Union to a representation in that House was very important, and ought to be respected in all cases which may either directly or indirectly affect it. Gentlemen, therefore, ought to reflect before they deprive a part of the Union of this important right.

Mr. V. N. here read the second paragraph of the sixth section of the first article of the Constitution, as follows:

"No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either House during his continuance in office."

From the language of the first part of this paragraph, Mr. V. N. inferred that it was the intention of the framers of the Constitution that the restriction should apply to civil officers only. Gentlemen may ask, shall we, by our construction, countenance an introduction into this House of regular military officers? But to this, it may be replied, that full confidence may be placed on the good sense of the people to prevent this effect. The framers of the Constitution, therefore, thought this a power that might be safely left to the discretion of the people.

The Constitution only applied to two alternative cases. An individual holding a seat in this body could not be appointed to a civil office: and an individual holding a civil office could not hold a seat here. This was all that it was necessary to provide for.

There was another ground. He could not conceive that such an office as he held was comprehended in the Constitution. He was not an officer of the United States, but of a District; which, locally considered, might be looked upon as an island placed in the sea. He could not think that the Constitution meant to exclude officers of dependent colonial districts. It had never been contended that such colonial possessions should be represented on this floor. Why, therefore, apply the exclusion to them?

One great reason for this provision of the Constitution was to prevent corruption. Where could be the danger of this from an office without the least emolument? The inconvenience of exclusion in such cases too would be glaring. Its necessary effect would be an inability to get those to accept commissions in the militia who were proper for the stations.

There was another idea entitled to weight. If it be determined that the militia officers of this District shall be excluded, the same rule will apply to all militia officers appointed by the Governors of the Territories of the United States. Do you not also exclude the militia officers of the States, who, though appointed in the States, are subject to the command of the United States? A construction of the Constitution, productive of such effects, he considered unsound, and contrary to the intention of its framers.

Had he supposed that the acceptance of an office in the militia would have interfered with his seat in that House, he would never have accepted it. He had never entertained a doubt on this point until broached in the House. Since then, he had heard various opinions. By what he had heard, his own opinion was not changed, as he believed that a true construction of the Constitution would exclude his case. Should, however, a decision against his holding his seat be made, he should retire without any other regret than that which he had expressed. He had not risen to argue the case as an advocate, but merely to assign the grounds on which he had acted.

Mr. BACON observed, that the Committee of Elections had not thought themselves at liberty to be influenced by the propriety or impropriety of this part of the Constitution, otherwise they might have determined differently; but they felt themselves bound by the Constitution itself. Though the first part of the section of the Constitution referred to civil offices; yet the latter part used the expression *any office*, which was more comprehensive, and appeared to them to have been intended to have an universal effect.

Mr. THOMAS.—Mr. Chairman: Ever since this question was first agitated, I have felt no small degree of solicitude respecting it. On the one hand, I view the seat of a member of this House, from the State which I have the honor to represent, important; not only as it respects the interest of that State in the deliberations of the National Legislature, but as it respects the feelings of my friend and colleague; and on the other hand, I view the Constitution of my country, which I consider the palladium of our liberties—the rock of our national salvation. But, sir, however important I may consider my colleague's holding his seat on this floor, either as it respects himself or the State of New York, if it comes in competition with that Constitution, it is my duty to, and I shall, readily yield to it. The clause of the Constitution, said Mr. T., which has been quoted by the committee, and which is in point, declares, that "no person holding any office under the United States shall be a member of either House during his continuance in office." It appears, said Mr. T., that my colleague did, some time in the recess of Congress, accept and exercise the office of a major in the militia of the District of Columbia, under an act of Congress, and the exclusive Government of the United States; this office, although trivial in itself, without emolument, and to which very little or no influence can attach, nor can it, in my opinion, have a tendency to bias his vote improperly on any question in this House; yet, as I do believe it comes within the province of that clause of the Constitution, and permitting him to retain his seat may establish a precedent which may hereafter be attended with pernicious consequences, I conceive myself bound in justice to myself, as well as to my country, to give my vote to concur with the committee in their report.

The question was then taken on the report of the Committee of Elections, which was agreed to without a division.

The Committee rose, and the House immediately took up their report.

Mr. RANDOLPH observed that, on a precedent

so important as was about to be established by the vote of the House, it was unnecessary to say a word. He wished, however, that the disposition of the House to exclude, by an unanimous vote, even the shadow of Executive influence, should be recorded on their journals; for which purpose he called the yeas and nays; which were taken, and were unanimously in favor of the resolution.

Tuesday, January 18.

Resolved, That the Committee of Commerce and Manufactures be directed to inquire whether any, and what, alterations are necessary in the acts for recording and registering of ships and vessels of the United States, and to report by bill or otherwise.

The House resolved itself into a Committee of the Whole on the bill for the relief of Henry Messonnier; and no amendment being made, the bill was ordered to be engrossed and read the third time to-morrow.

A Message was received from the President of the United States, transmitting a report of the Secretary of War, stating the trading-houses established in the Indian territories; the progress which has been made in the course of the last year, in settling and marking boundaries with the different tribes; the purchases of lands recently made from them, and the prospect of further progress in marking boundaries, and in new extinguishments of title, in the year to come.

The Message and report were read, and referred to the committee appointed the seventeenth ultimo, on so much of the President's Message as relates to our concerns with Indian tribes, and the establishment of a new settlement.

The House, resolved itself into a Committee of the Whole on the bill for the relief of the sufferers by fire in the town of Portsmouth; and, after some time spent therein, the Committee rose and reported an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

Ordered, That Mr. Israel Smith be appointed of the committee to whom was referred, on the third instant, the petition of the Washington Building Company, in the room of Mr. Van Ness, whose seat in this House has become vacant; and that Mr. Plater and Mr. Butler be added to the said committee.

On motion of Mr. S. Smith the House adopted a resolution for the appointment of a committee to report whether any and what alterations are necessary in the act for recording and registering American vessels.

The House went into Committee of the Whole on the bill for the relief of Henry Messonnier.

The Committee rose, and reported the bill without amendment.

The House immediately took up the report of the Committee, agreed to it, and ordered the bill to be engrossed for a third reading to-morrow.

INSOLVENT DEBTORS

On motion of Mr. Nicholson, the House resolved itself into a Committee of the Whole on the bill for the relief of insolvent debtors within the District of Columbia.

Sundry amendments were made, and referred to the House, who immediately took them up, and agreed to them with other amendments.

Mr. Bayard moved an additional amendment, providing that no discharge of an insolvent debtor under this act should have a greater effect in any particular State, to discharge the debtor, than could have been the effect under the insolvent law of such State.

The section was supported by Messrs. Bayard, Hemphill, Randolph, Hastings, and Bacon; who observed that Congress possessed two descriptions of power: the one applicable to and absolute over the ten miles square; the other universal in its operation, but limited by the federative powers conferred by the Constitution. In exercising the first power, Congress stood precisely, in respect to the District of Columbia, in the relation of a State Legislature to a section of a State. They could not pass any law operating upon the District, in virtue of the first description of power, that could, in its effects, apply to other portions of the United States, without mingling with it power derived from the federative character of the Government. The bill, as it stood without this section, was calculated to give a general discharge to debtors, by freeing them from future arrest in any of the States. The constitutionality of such a provision was denied, and it was questioned whether the State courts would consider themselves bound by it. All that could be rationally asked in this District was, that the situation of the debtor should be the same as though he were the citizen of a State; and this would be the effect of adopting the section. Should the section not be adopted, this District would become the asylum of fraudulent debtors, who would flock hither to obtain a release from their debts, so far as the liberation of their persons throughout the United States could effect it.

Mr. Nicholson, on the other hand, opposed the section. He thought that the passage of a law that should be uniform in its operation in all the States, would be preferable to an act partial and of various effect in different States. Should the section be adopted, the debtor, after giving up his all, would only have to go into a State, where his person might be again seized by a vindictive creditor. He did not think this right. There was a peculiar hardship in committing a man to a narrow district of ten miles square, where, instead of changing his situation, improving his circumstances, and comfortably supporting his family, he might be obliged to pine and die at last. Under such circumstances an insolvent law would be almost useless.

The Committee rose, and the House agreed to the amendment.

Mr. Elmendorf moved a new section, declaring that the provisions of the act should not apply to

persons imprisoned at the suit of the United States. Agreed to.

The bill was then ordered to be engrossed for a third reading to-morrow.

Wednesday, January 19.

An engrossed bill for the relief of Henry Messonnier was read the third time and passed.

An engrossed bill for the relief of the sufferers by fire, in the town of Portsmouth, was read the third time and passed.

An engrossed bill for the relief of insolvent debtors within the District of Columbia was read the third time and passed.

A Message was received from the President of the United States, transmitting the annual account of the fund established for defraying the contingent charges of Government. The Message was read, and, together with the documents accompanying it, ordered to lie on the table.

Mr. Rutledge, from the committee appointed on the seventeenth instant, presented a bill for the importation of ordnance, arms, &c.; which was read twice and committed to a Committee of the Whole House on Monday next.

On a motion made and seconded, that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States for certain balances reported to be due from several of the States, to the United States, by the commissioners appointed to settle the accounts of the individual States with the United States; and that the said committee have power to report by bill, or otherwise:

The question was taken, that the House do now proceed to take the said motion into consideration, and passed in the negative.

Mr. Mitchill, from the committee appointed on the thirtieth ultimo, presented a bill for the encouragement of learning, and for the promotion of useful arts; which was read twice, and committed to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee of the Whole, on the bill for incorporating an insurance company in the City of Washington; and, after some time spent therein, the Committee rose and reported several amendments thereto.

Ordered, That the said bill, with the amendments, do lie on the table.

NAVY YARDS AND DOCKS.

Mr. Mitchill moved that the House do now resolve itself into a Committee of the Whole, to consider the report of the select committee, to whom had been referred that part of the President's Message which relates to improvements in navy yards, and the construction of a dry dock at the City of Washington.

The motion, after a short conversation, was agreed to.

The first resolution was read, in the following words:

Resolved, That, for securing from waste and loss the timber and other public property in the different navy yards, and towards improving the same for the greater despatch of business, the Secretary of the Navy, under the direction of the President of the United States, shall cause the requisite buildings and sheds to be erected, and other needful repairs and improvements to be made; and that, for accomplishing the same, —— dollars are hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated.

Mr. M. observed, that there would be no need of much argument to convince the Committee of the propriety of adopting the proposition before them. There were six navy yards belonging to the nation. There was a quantity of timber and materials for naval preparations in each of them. These had been purchased at great expense, and deposited for future use. By virtue of existing contracts, more timber, particularly that for building the six 74's, was expected. When collected and delivered at the several places of destination, it ought to be preserved with the greatest care. This timber was of the most precious kind. Much of it was live oak from the Southern States. The quantity and value of it in the yards at New York, Portsmouth, Norfolk, Charlestown, Philadelphia, and Washington, could be seen in the reports of the Secretary of the Navy. Many of the pieces for keels, sterns, and stern-posts, were very select and difficult to be procured. That invaluable timber was growing scarce. In the progress of cultivation and the arts, a large number of them had been extirpated, and, according to present prospects, a time would, before long, arrive, when such materials as we now possess, and which are bought and paid for, could not be got for money. Some of these naval articles had already been damaged for want of a seasonable appropriation for their better protection from the weather. The shining of the sun and the beating of the storms were both injurious to it, and unless their influence was precluded, they would soon render it unfit for the construction of ships. To preserve this timber from the unavoidable decay which awaited it, he hoped a moderate sum of money might be spared from the Treasury. The erection of some sheds, covers, and buildings, fit to shelter these perishable things, would not require a large amount. This was one of the cases in which the expenditure of a small number of dollars would be productive of great and lasting good. To refuse it, would resemble the mistaken economy of the man who, after having built a magnificent house, could not persuade himself to buy a lock for the street door.

Mr. M. said, he would call the attention of the Committee to another subject connected with the one he had just mentioned. Besides the buildings contemplated, he thought there ought to be an allowance of some money towards repairs and improvements on such of the navy yards, as the officer at the head of that department should find it most convenient to employ. A small sum, to be expended in levelling ground, in docking out, in erecting cranes, and the like, will greatly contribute to the despatch of the public business. He could mention a case to evince the good economy of such an appropriation as he asked for. On the

navy yard at New York, one of the finest and most select spots on the coast of the Atlantic, some store-houses had been begun and were unfinished, and consequently useless. The agent, deprived of the means of finishing them, was obliged to pay a considerable sum yearly for storage in the city of New York. He believed that an expenditure there, equal to one or two years' rent, which the nation must unavoidably pay, would finish these magazines and naval depositories, and save the further necessity of paying an extravagant rent. The receiving, overhauling, repairing, and equipping of ships, ordered to that great naval rendezvous, would be promoted, and the public service singularly aided by it. Mr. M. concluded by moving that the blank in the resolution should be filled with the words "fifty thousand dollars."

Carried, without a division.

The second resolution was then read, in the following words:

Resolved, That, for preventing rottenness and decay in the ships of the Navy, the President of the United States be, and hereby is, authorized to cause a dry dock, with convenient canals, locks, machinery, and water courses, to be constructed at or near the public navy yard in the City of Washington; which dock shall be capable of containing twelve frigates, or ships-of-war, and of preserving them dry, and safely sheltered from sunshine and rain; and that, for carrying the same into effect, —— dollars be, and the same hereby are, appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated.

Mr. MITCHILL rose, and, after observing that the blank in the resolution required filling up with the words "half a million of dollars," a sum larger perhaps than could be spared at this time from the Treasury, charged with the redemption of the public debt, moved that the Committee rise.

Mr. RUTLEDGE expressed a desire that the Committee, previous to rising, should progress in the consideration of the report, that gentlemen, who were prepared, might offer their sentiments.

Mr. MITCHILL again rose, and informed the Committee that his motion for the Committee to rise, did not proceed from any disinclination to discuss the merits of the proposition now before them. And, to convince the gentleman of his sincerity in this, he withdrew the motion for rising. The history of this project was already very well understood; and the documents printed, and exhibited for the information of Congress, had been, almost ever since the session commenced, before the eyes of the members. The contemplated public work was predicated on a paragraph of the President's Message, at the opening of the session. To elucidate the matters, beautiful and appropriate drawings of the dock and its locks had been laid before the House. Surveys and estimates had been made by the engineers and geometricians, and these had been forwarded for Congressional instruction. Coming before the select committee, who reported the resolution, the recommendation was so highly respectable, and the project so plausible, that there was a unanimous vote in its favor. For his own part, Mr. M. said, he was willing to admit the project a feasible one, and for the present he should not dispute it. The warfare with Tripoli was now upon our hands; and we might have other wars. The preservation of the ships of the Navy was a great public object. The common mode adopted by nations, he believed, was to expend a considerable sum of money, annually, in repairs. Ships could be hove down, or taken into dry docks, and undergo all manner of searching, caulking, coppering, and repairs. In the ordinary mode of taking ships in successively, one dock, capable of containing one ship, would answer for a great number; and each vessel, after being dried, cleaned, and overhauled, could be launched again into her element. The present project was somewhat different. It meditated a dry dock, or receptacle, in which twelve large ships could be laid up at once. He did not know how far experience had warranted such an experiment. But he had been told of something of the same kind done in Sweden; and it had been said that Venice had an establishment of a like nature. But the details of information concerning them were far from being so ample and correct as would render them precedents in the present instance. If the object could be accomplished, the advance of the sum required for the work, would put the navy in such a state of preservation that ships, sheltered within the dry dock, would remain a great length of time uninjured by common accidents. With regard to new ships, not launched nor wetted in service, there could be no doubt they might be so covered and protected as to keep as well as furniture in a house. While dry and shaded, there is no question of their ability to remain sound and unchanged. But it was different with ships that had grown foul and water-soaken in the ocean. It was very questionable whether the dampness acquired could ever be so thoroughly dried out as to prevent putrefaction. The water imbibed would not easily quit the planks and timbers, covered as they were with sheathings, copper, and ballast. Enough moisture would, he feared, remain there to continue the process of corruption and decay in the wooden work. Such a mass of timber, soaked through and through, would perhaps fall to pieces the faster for being kept a long time out of water. The receptacle would probably be damp, and ventilation imperfect. Septic vapors, with moisture, would exert their disorganizing powers. The atmospheric heat being greater than the temperature of river water would accelerate the rotting in Summer. And the expansive power of ice, formed from the imbibed and confined water, might be expected to do no small mischief in Winter. When a ship was under water her temperature was more equal, neither so hot in Summer, nor cold in Winter, as bodies above water; and consequently less exposed to the causes of decay. He should not, however, proceed any further at present on this copious subject; but suspend further remarks until he should hear from the gentlemen who had turned their attention to the project, how this novel and economical proposition presented itself to their understandings, and whether they felt any doubts like those which occupied his own.

Mr. EUSTIS.—Whether the motion for the Committee's rising, be persisted in or withdrawn, we find the result to be the same. Gentlemen will go into the consideration of the merits of the resolution; and, as the whole subject is before us, an interchange of ideas may be useful in forming our judgment and leading to a decision.

Every proposal which has for its object the protection or preservation of the Navy was interesting to the Atlantic States, and peculiarly so to the district he had the honor to represent. To that which was under consideration several objections had occurred to his mind, some of which, instead of being removed, were confirmed by the observations of the Chairman of the Committee, who had inserted the resolution. A fact stated by the engineer was within the knowledge of perhaps every gentleman; that the bed of the river, called the Eastern Branch, (where it is proposed to erect the works,) consists of a loose and shifting earth, which renders it uncertain to what depth it will be necessary to go for a foundation for the stone wall which is to form the front of the first lock; the elevation and breadth or thickness of the wall cannot therefore be ascertained, nor the expense which will be incurred in its structure. But, admitting that a foundation can be had at a reasonable depth, and that there is no danger that this loose soil will be washed into and impede the operations of the first lock; let us imagine the locks and dock completed, according to the plan, and at the estimated expense, the ships hauled into the dry dock, and the water of the Tyber sufficient, at all seasons of the year, to fill the dry dock and to float them back into the river. We then meet the question, whether the great object of the work, the preservation of the ships, will be effected? It is proposed to support them by blocks or props. Is there not danger that ships resting for a long time on comparatively small resting points, will be racked and injured in their frames? And will they be preserved from decay? As part of the dock will probably be sunk beneath the surface of the ground, and as the walls are to be constructed of solid masonry and made water-proof, he was very much inclined to the opinion of the gentleman from New York, that it would be extremely difficult to ventilate it effectually; that there must be a moisture unfavorable to the preservation of wood, iron, and copper. On the other hand should it be found practicable to ventilate perfectly, and to render the air within the arsenal as dry as the external atmosphere, was there not reason to apprehend the same consequences which we have observed in boats and small vessels, which are hauled out of the water, and placed under cover from the sun? By the shrinking of the wood will not the copper fall off, and the expense of new coppering be incurred when they are taken out for use? The success of the experiment was uncertain. It was not known to him that any of the European nations had adopted this plan. They had incurred immense expense in building, and it was to be presumed they had fallen on the best means of preserving their ships. In works of such magnitude he thought it more prudent to follow, than to lead the practice of older and more experienced nations. It was stated, in the report, on the authority of a very respectable naval officer, that an experiment of this kind was making in Sweden, by the recommendation of one of their admirals; but it was worthy of observation that they were making the experiment in deep water, and on the side of a rock; and that the first, if not all their docks, were to be tide docks. The advantages of making locks in places where the tide was eight or ten feet, in preference to those where it rose only four or five, (as in this river,) must be obvious. The present state of our navy required, he apprehended, the construction of tide docks in one or two of the navy yards where the water was deep, and the situation otherwise eligible. One of the frigates requires coppering at this time; others will require repairs; which cannot well be effected without such a provision. He further doubted the expediency of erecting at this time so large an arsenal in this place; he should prefer that the ships should be moored not all in one place, but nearer to the ocean, and to the populous towns, which abounded with seamen and artisans of different kinds.

The engineer had further stated that the dry dock might also be used as a building place; and there could be no doubt it would afford a most commodious one. But he doubted whether it was justifiable to provide an arsenal for building on so extensive a plan at this time and with the present population of this city.

Whether ships were to be built, or repaired, he believed the work would be carried on with greater advantages and despatch in the neighborhood of large seaport towns, which afforded a choice and a competition of workmen.

In the present state of the Navy, and, considering the great extent of our coast, he could not think it advisable to construct an arsenal on so large a scale at any one place, and especially at a distance of nearly three hundred miles from the ocean. He should prefer a distribution of them in some of the navy yards nearer the seaboard, and in the vicinity of populous towns, containing materials and artisans for building and repairing. At some of these places tide docks might be constructed without a very great expense. He had been informed that, at one of the yards, a dock might be made for ten thousand dollars; but he could not be answerable for the correctness of the statement. A provision of this kind was called for. The service actually required it. Ships returning from long voyages needed repairs. One of the ships, which has been repaired at a great expense, ought to be coppered immediately. And it is said it will be cheaper to send her to Europe, than to have it done in this country. The want of suitable docks and wharves is among the reasons. Whether it be owing to some error in the mode of construction, or to whatever other cause, our ships-of-war have decayed in less than half the time than those of other nations. Some of them were, he was apprehensive, in such a state that no cover could preserve them.

These were the observations which had occur-

red to him on the subject. He would wait for those of other gentlemen, after adding, that it was with reluctance he stated some of the objections, which applied particularly to this place, as the expression of similar ideas had been construed into a disposition unfriendly to it. With every inclination to foster the interests of the city, he was apprehensive this was not a measure calculated to produce that effect. Should the work be completed at the expense of —— dollars, and fail, from any of the causes which had been glanced at, to answer the public expectation, or the useful objects on which it is founded, will not the necessary consequence be a discouragement to future enterprises, and to retard instead of promoting its growth and population?

Mr. S. Smith said, he would not object to the Committee rising, as he was not himself fully prepared to decide on the subject. He would, however, make a few remarks on what had been observed by the gentleman from Massachusetts (Mr. Eustis.) It is true that the bottom of the Eastern Branch is generally a deep mud. But the engineer had reported a spot adjoining the navy yard, as the place most proper for the docks; where, fortunately, there was a gravel bottom, sufficiently solid for the construction of the first lock; the second would be on the solid ground, as designated on the drawing. He had no doubt but that the lock could be made. The second would form a good dock for building or repairing ships-of-war. Respecting the arsenal, he confessed himself at a loss to form a correct opinion. He did not, however, believe that there would be any more danger of the ships' hogging, when lowered down, by drawing off the water, on their blocks, than when on the stocks. Experience has shown that ships repaired in dry docks are subjected to a similar risk, and yet few accidents happen in those docks. Whether ships put into such an arsenal could be so completely ventilated as to dry the floor timbers of those that had been any time in the water, was an experiment yet to be made. He knew of no experience from which a judgment could be formed. He had seen, at Venice, above twenty ships-of-war in the arsenal, completely under cover, each laying afloat in its own dock, with stores on each side, in which their materials were deposited. He was told that the whole number could be put to sea in twenty or thirty days' notice. He did not believe that a dock one foot above the tide, on dry, gravelly ground, and of a size to contain twelve ships, when covered over, would be a place so damp that nothing would dry. He believed that if the gunboard streaks of each ship were taken off, and streaks taken off their ceiling, at proper intervals, that a current of dry air would be introduced sufficient to keep the ships sweet; experience only could show whether there would be enough to dry the timbers completely; for himself he doubted. As to the quantity of water in the Tiber being insufficient, that objection was done away by the reservoirs contemplated. He had so great a respect for the engineer, that he did not believe he would commence a plan of this importance, unless he was certain of success. He would not commit his character without every probability of succeeding.

Mr. S. said, he knew the spot, and believed that nature had seldom pointed out one more proper than that contemplated. The Eastern Branch was central, the water deep, and being so fresh as to furnish ships for their voyage, could never be effected by the worm; the distance from the sea makes it safe against any immediate or sudden stroke of an enemy; of course peculiarly proper for building ships-of-war. The Potomac and other waters of the Chesapeake, offer great supplies of the best of oak, walnut, locust, and mulberry. The masts got in the neighborhood of Norfolk, are inferior to none. Susquehanna offers an inexhaustible store of pine for masts and spars. There, and there only, could be procured the masts for Algiers. North Carolina is in its vicinity to supply naval stores, and on the Potomac mines of the best iron ore are known, and worked. He believed it a fact admitted, that the oak of the Chesapeake, and particularly of East and North rivers of Virginia, lasted, in ships, nearly double the time that the oak of the Eastern ships did. He believed that the industry of our Eastern brethren had nearly exhausted their best timber; for, if he had been rightly informed, the keel of the Constitution, built in Boston, was brought from Jersey. The gentleman will admit all this, but he asks where are the men? They are to be had on an exigency nowhere but in large towns. Wherever, said Mr. S., there is plenty of work, and plenty of money to pay, there men will go: they will be brought from the Eastern States, and from the rivers of the Chesapeake; commence building, give employment, and men will not be wanting. The question is, whether it is the cheaper to bring the men to the spot where all the materials are, or to carry the materials to the men? But the water of the Potomac is not sufficiently deep for ships-of-war. It was deeper, he believed, than the Delaware, and as deep as the entrance to New York; he was informed that the ship Constellation touched going out of that port. It was true that it was deemed prudent to lighten the large frigates when they came up the Potomac, but it is believed that those of twenty-two feet draught would have been in no danger, had they come up without. It is true that the navigation of the river is sometimes tedious, but never dangerous; that of the Chesapeake is inferior to no inland navigation that he knew. The intention of erecting dry docks was not confined to this place alone; he had understood that, at the navy yard near Boston, a convenient spot offered itself, and that docks built there might be filled from the Middlesex canal. It was contemplated to make the experiment under the eye of Government, and, if successful here, to extend it to Boston. For his part, Mr. S. said, that he would willingly give his consent to building docks at Boston when brought forward at a proper time.

Mr. S. agreed that more convenience for building and repairing of ships, offered in large and populous cities, yet some of our best ships, for merchant service, are built in small towns; he alluded to the ship-builders in East and North rivers in Virginia, and excellent builders on the Eastern shore of the Chesapeake. Expedition will always be good under the eye of a master, even when the means appear fewer. Some experience has been had by Government. Had any of the ships, he asked, ordered for the Mediterranean from Boston, New York, Philadelphia, or Norfolk, been put to sea in the time that the ships New York and John Adams were despatched from this city? He believed the former was ready in fifteen days, the latter in twenty-one days: and he might say that, not one of those from large ports, were despatched in less than six or eight weeks. The truth was, that men could be brought from the large towns in the Union to man them, while the ships were rigging.

Mr. S. said he had made these few hasty observations, in answer to the gentleman (Mr Eustis,) but he believed it would be improper to press gentlemen at this session into a decision on a subject of so much importance; he believed, also, that it would be prudent at this time to make no appropriation of money that could be avoided. A peaceful object, such as the arsenal, for the preservation of our ships, might be postponed until another session, when more information may probably be had, and when we shall better know whether we can spare the money from objects that may be more important.

The question was then taken on the rising of the Committee, and carried.

The Committee rose, reported progress, and asked leave to sit again; which was granted.

Thursday, January 20.

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary in the law, entitled "An act to amend the judicial system of the United States," and to report thereon by bill, or otherwise.

Ordered, That Mr. Brent, Mr. Perkins, and Mr. Jones, be appointed a committee, pursuant to the said resolution.

The House proceeded to consider the amendments reported, yesterday, from the Committee of the Whole to the bill for incorporating an insurance company in the City of Washington; and the said amendments being, severally, twice read at the Clerk's table, were, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. Brent, from the committee to whom was referred, on the twenty-first ultimo, a petition of sundry inhabitants of the county of Alexandria, in the Territory of Columbia, made a report thereon; which was read and considered: Whereupon,

Resolved, That, whensoever the Legislature of Virginia shall pass a law authorizing the incorporated society of that State, known by the name of the "Mutual Insurance Society, on buildings in Virginia, against accidents by fire," to extend their insurances on buildings in the county of Alexandria, agreeably to the same laws, rules, and regulations, by which the said society is governed in their insurances in that State, from thenceforth, it shall be lawful for the said society to have the same right and mode of recovering in the courts of the county of Alexandria against any inhabitant thereof, so insuring with the said society his building in the said county against accidents by fire, which might be had against him, if the person so insuring was a citizen, and the buildings so insured situated in the State of Virginia.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Brent, Mr. Van Horne, and Mr. Tallmadge, do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill for the relief of Hugh Alexander, and others; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

Mr. Randolph, from the Committee of Ways and Means, to whom were recommitted, on the thirteenth instant, the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three," made a report thereon; which was read and considered: Whereupon,

Resolved, That this House doth concur with the Committee of Ways and Means in so much of their report as relates to an agreement to the amendments of the Senate, with an amendment to the second amendment.

Ordered, That the residue of the said report be referred to a Committee of the whole House immediately.

The House accordingly resolved itself into a Committee of the Whole thereon; and after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That it is expedient to authorize the Adjutant and Inspector, and Paymaster of the Army, to frank, and to receive, free of postage, all letters and packages on public service, to and from their respective offices.

Ordered, That the resolution be referred to the committee appointed on the fourteenth ultimo, "to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States."

NAVY YARDS AND DOCKS.

On motion of Mr. S. Smith, the House resolved itself into a Committee of the Whole, on the report of the committee appointed on that part of the President's Message relating to navy yards and docks.

Mr. S. Smith moved that the Committee should rise and report their agreement to the first resolution.

Mr. Griswold had no objection to the Committee rising, in order to report on the first resolution.

As for the second, contemplating the erection of a dry dock upon the plan presented by the President, he believed there were other gentlemen beside himself who wished for further information before the subject was dismissed. He must confess, he said, that the project appeared to him as a visionary scheme, originating in the philosophy of the present day; yet he was of opinion they should not entirely lose sight of the object; that something should be done for preserving, and repairing the ships of which our present navy was composed; that a dock, constructed upon the plan suggested yesterday by the gentleman from Massachusetts, (Mr. Eustis,) which might cost from ten to twenty thousand dollars, would produce all the advantages, which had been calculated would result from the expensive establishment of half a million. He considered it more necessary to make provision for building and repairing vessels of war, than to erect a dock, in which to lay up twelve frigates. He hoped, if the committee did rise, that they would report their agreement to the first resolution, and ask leave to sit again on the second.

Mr. Bacon thought the subjects of the resolution were distinct and separate. The first related to the repairing of ships of war, and the latter to taking care of ships after they were built. To take them up together, would create confusion. He said, they should consider whether it was proper to plunge themselves into an expense of a million of dollars upon experiments and chimerical projects. It might be the decided opinion of the President that it was best to erect a dry dock at the City of Washington; but the President's opinion was not to govern him. They should also recollect that they had diminished taxes, and although the revenue had been productive, it might not continue so. In his opinion it was best to wait the events of another year, to see whether our differences with foreign nations were likely to be settled, and whether we should not have use for our money, before they expended a million of dollars upon a project, they know not what.

The Committee rose and reported the first resolution, which was agreed to by the House. Leave was not obtained to sit again. After a lengthy conversation, the following resolution was adopted, viz:

Resolved, That a committee be appointed to inquire into the usefulness and propriety of constructing a dock or docks, at either of the public navy yards, or elsewhere, within the United States, for the building and repair of ships of war.

Messrs. Mitchill, Rutledge, Hanna, Wadsworth, and Mott, were appointed the committee.

Friday, January 21.

An engrossed bill for incorporating an insurance company in the City of Washington was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill additional to, and amendatory of, an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;" and, after some time spent therein, the Committee rose and reported several amendments thereto.

Ordered, That the consideration of the said amendments be postponed until Monday next.

An engrossed bill for the relief of Hugh Alexander and others was read the third time and passed.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of continuing the Mint establishment at Philadelphia; and whether any, and what, alterations or improvements may be made in the said institution.

Ordered, That Mr. Dennis, Mr. Davenport, Mr. Dawson, Mr. Alston, and Mr. Bacon, be appointed a committee pursuant to the said resolution.

MILITARY ESTABLISHMENT.

The House resolved itself into a Committee of the Whole on the report of the committee appointed on the 7th instant, to consider whether any, and what, alterations are necessary in the Military Establishment of the United States, as follows:

Resolved, That there be added to the regiment of artillerists two teachers of music, whose pay, rations, and clothing shall be the same as is by law allowed to the teachers of music of the regiment of infantry.

Resolved, That the President of the United States be authorized to appoint one teacher of the French language and one teacher of drawing, to be attached to the corps of engineers, whose compensation shall not exceed the pay and emoluments of a captain.

Resolved, That the commanding officer of the corps of engineers be authorized to enlist, for a term not less than three years, one artificer and eighteen men, to aid in making practical experiments, and for other purposes, to receive the same pay, rations, and clothing, as are allowed to the artificers and privates in the Army of the United States, and the same bounty, when enlisted for five years, and to be subject to the rules and articles of war.

Resolved, That the President of the United States be authorized to allow to the Paymaster of the Army, the Adjutant and Inspector of the Army, and the Military Agent at Philadelphia, such sums each for clerk hire as their respective duties may, in his opinion, reasonably require.

The first resolution was agreed to—yeas 36, nays 21.

The second resolution was agreed to—yeas 42, nays 17.

The third resolution was agreed to without a division.

The fourth resolution was opposed by Mr. Gregg, on the ground that the discretion thereby vested in the President of the United States was improper; and that if an application for the clerk hire of the officers therein named was necessary, it ought to be made and defined by law.

On the question being put, the resolution was disagreed to—yeas 25.

The Committee rose and reported the resolutions agreed to.

The House immediately took up the report,

when Mr. Randolph remarked that, notwithstanding the importance of the business before the House, there was scarcely a quorum within the bar, in consequence, probably, of the intense cold. As he was averse to interesting business being thus conducted, he moved that the House adjourn. Carried—yeas 42, nays 35.

Monday, January 24.

A new member, to wit: Richard Winn, returned to serve in this House as a member from South Carolina, in the room of Thomas Sumter, appointed a Senator of the United States, appeared, produced his credentials, and took his seat in the House.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire whether any, and, if any, what, alterations are necessary to be made by Congress in the existing regulations for granting clearances, certificates, and other documents, to American vessels sailing from the Mississippi, with the produce of the United States, in order to identify the growth and insure the admission of any such produce and vessels into foreign ports, on the same terms as those sailing from the Atlantic ports of the United States with the produce thereof; and that they report by bill or otherwise.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That, inasmuch as the late Territory of the United States Northwest of the river Ohio have, by virtue of an act of Congress passed on the first day of May, one thousand eight hundred and two, formed a Constitution and State Government, and have thereby, and by virtue of an act of Congress aforesaid, become a separate and independent State, by the name of "Ohio," that Paul Fearing, a member of this House, who was elected by the late Territorial Government of the Territory Northwest of the river Ohio, is no longer entitled to a seat in this House:

Ordered, That the said motion be referred to the Committee of Elections; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A memorial of the Chamber of Commerce of the city of New York was presented to the House and read, praying that such acts or parts of acts heretofore passed by Congress as make a discrimination between American and foreign duties on imports and tonnage, may not be repealed, for the reasons therein specified.

Ordered, That the said memorial be referred to the Committee of the Whole House to whom was committed, on the 10th instant, a report of the Committee of Commerce and Manufactures, on so much of the Message from the President of the United States, of the 15th ultimo, as relates to discriminating and countervailing duties, and the act of the British Parliament on that subject.

Mr. Van Rensselaer, from the committee to whom was committed, on the 10th instant, the bill sent from the Senate, entitled "An act to carry into effect several resolutions of Congress for erecting monuments to the memories of the Generals Wooster, Harkemer, Davidson, and Scriven," reported several amendments thereto; which were read, and, together with the said bill, ordered to be referred to a Committee of the Whole House on Thursday next.

On motion, it was

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to lay before this House a statement of the direct tax, together with the reasons, if known, why the collection thereof hath not been completed.

Mr. Randolph, from the Committee of Ways and Means, who were instructed, on the 22d ultimo, to inquire whether any, and, if any, what, alterations or amendments are necessary to be made to the act, entitled "An act to amend an act, entitled 'An act to lay and collect a direct tax within the United States,'" made a report thereon; which was read, and ordered to be referred to a Committee of the Whole House on Monday next.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill supplementary to the "Act concerning Consuls and Vice Consuls," and for the further protection of American seamen; which was read twice and committed to a Committee of the whole House on Thursday next.

On motion, it was

Resolved, That the Secretary of the Treasury be directed to lay before the House a statement of the quantities of fish, foreign or domestic, annually imported into, or exported from the United States, since the present Government first went into operation, and the duties and bounties annually paid thereon; and that he be further directed to lay before the House a statement of the quantity of tonnage annually and respectively employed in the cod and whale fisheries, and the number of seamen employed therein, together with the amount of duty annually and respectively paid on the tonnage of the ships or vessels employed in the said fisheries.

The House proceeded to consider the amendments reported from the Committee of the whole House on Friday last, to the report of the committee appointed to consider whether any, and, if any, what, alterations are necessary in the Military Establishment of the United States; and the said amendment being twice read, was, on the question put thereupon, disagreed to by the House.

The said report being then amended at the Clerk's table, the House, thereupon, came to the following resolutions, to wit:

Resolved, That there be added to the regiment of artillerists, two teachers of music, whose pay, rations, and clothing, shall be the same as is by law allowed to the teachers of music in the regiment of infantry.

Resolved, That the President of the United States be authorized to appoint one teacher of the French language, and one teacher of drawing, to be attached to the corps of engineers, whose compensation shall not exceed the pay and emoluments of a captain.

Resolved, That the President of the United States be authorized to allow the Paymaster of the Army,

the Adjutant and Inspector of the Army, and the Military Agent at Philadelphia, such sums, not exceeding in the whole two thousand dollars, for clerk hire, as their respective duties may, in his opinion, reasonably require.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. VARNUM, Mr. CAMPBELL, Mr. BUTLER, Mr. LEWIS R. MORRIS, and Mr. CLAY, do prepare and bring in the same.

The House proceeded to consider the amendments reported on the twenty-first instant, from the Committee of the whole House, to the bill additional to, and amendatory of an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;" and the said amendments, being severally twice read, were, on the question put thereupon, agreed to by the House.

The said bill was further amended at the Clerk's table, and, together with the amendments, ordered to be recommitted to Mr. THOMPSON, Mr. PLATER, and Mr. CAMPBELL.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the 20th instant, on the petition of William Ray and John Follawell, presented the tenth of January, one thousand eight hundred and one; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of William Ray, and John Follawell, is reasonable, and ought to be granted.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. DAVIS said he held a resolution in his hand, which embraced a measure of considerable importance, and which he had long contemplated. He had suggested it last session; but, owing to the press of other business, he had not then urged it. He then offered the following resolution:

"*Resolved*, That a committee be appointed to inquire into the expediency of concentrating the several public offices, and other public buildings, belonging to the United States, in the City of Washington."

Mr. D. gave notice that, in case the resolution should be agreed to, he should move the appointment of a committee by ballot, instead of the ordinary way, by the Speaker.

DISCRIMINATING DUTIES.

Mr. S. SMITH, according to notice, called for the order of the day on the report on discriminating duties.

Mr. EUSTIS hoped the gentleman would suspend the call for it, at least this and the ensuing week. He observed, that the commercial towns were now attending to the subject. It appeared to him highly important that the opinions of the merchants of the United States should be known. When known, the House would be enabled to act, if not with better understanding, at least with greater satisfaction. For himself, he was not only not prepared to vote, but even to give an opinion. He thought the opinions of the merchants who, from their great interest, had probably formed the most correct views, ought to be known, before they formed theirs.

Mr. S. SMITH said, this was not a new subject. It had been proposed early in the last session. It had not then been called up, because it had received an unexpected opposition. The mover had thought proper to postpone it, until gentlemen should have an opportunity of going home and consulting their constituents. Early in this session, the President had attracted the attention of the House to it in his Message. The House referred the subject to a select committee, who had reported. To that report two memorials had been opposed, which would have their due weight. In consequence of the proposition made last session, the British Parliament had passed an act whose operation would expire either on the 5th or 25th of March. If this subject were postponed until a member from Georgia had time to get information from his constituents, what time would remain to pass the measure, or if passed, to get it to England in sufficient time? He had really hoped that gentlemen would at this late period have been prepared for the discussion. It was not probable the question would be decided in a day; the discussion, if now commenced, would probably continue until gentlemen obtained information from their constituents. It was unpleasant in the chairman of the committee who had reported on the subject to press its discussion, but he thought it best to enter upon it now: particularly as he had always found deliberations within those walls more calculated to inform his mind, than out-of door or newspaper information. Perhaps, too, on going into a Committee, some amendment might be offered that would give the subject a new aspect, and prepare gentlemen, at present hostile, to come into it.

Mr. SOUTHARD thought one consideration might induce the gentleman from Maryland to postpone the subject for a few days. The memorial from New York, just read, contained facts, and reasoning from those facts the House had determined to print it. He therefore thought it best to postpone it, at any rate, until that was printed.

Mr. MITCHILL had no objection to going into a Committee of the Whole in order to discuss the merits of the subject. He observed that it was not only important to have the opinions of the merchants on the proposition, but also of a large body of mechanics whose interests were materially involved. He expected a memorial from his constituents of that description, probably this very night. However opposed their convictions were to the proposed measure, they were honest convictions, and arose from a belief that it would be prejudicial to their interests. For himself, he was ready for discussion; but he believed nothing would be lost by a short delay.

Mr. LOWNDES said, he was very much in the situation of the gentleman from Massachusetts, (Mr. EUSTIS,) unprepared on the subject. He

was, however, ready to go into a Committee of the Whole. The Chairman of that Committee could, doubtless, furnish a great deal of valuable information; and he thought they would be sooner prepared for decision in that way than in any other. He was, therefore, in favor of going into Committee for the purpose of discussion, though not of decision.

Mr. BAYARD differed from his friend from South Carolina. The resolutions urged by the gentleman from Massachusetts have great force. It was said, however, that we may now enter upon the discussion, and may hereafter receive light from the memorials that shall be presented, and derive then the same benefit from the information they may furnish as if they were before us now. But we all know that, as soon as we engage in the discussion of any subject, we immediately form opinions respecting it; and we also know the pride of previous opinion, and the difficulty of retracing steps once taken. These were strong considerations. Our minds ought to be a *carte blanche* when we go into the discussion, and we ought to be possessed of every information before it is commenced.

But it is said, the act of the British Parliament will expire on the 25th of March, at the furthest. If this were a fact, it was even now too late to enter on the discussion in order to meet the provisions of that act. But if the British Government were sincere, they will delegate a continuance of power. If this measure shall be agreed to here, it could not be carried into full effect without negotiation and some delay. What is done abroad will have to return here and be ratified, before it shall be binding. There is, therefore, not time for this before the 25th of March. But there was no reason to apprehend that the British Parliament would withhold the passage of a similar act to that lately passed.

He was strongly in favor of a postponement, as the House did not possess the information which it ought to have, nor were they acquainted with the disposition of their constituents. For, though the measure had been mentioned at the last session, and though the present resolution had been on the table for some time, yet it was evident that, before the present time, the public mind had not been excited to the subject.

Mr. JONES hoped, as no material inconvenience could arise from a short delay, the gentleman from Maryland would agree to waive his call. His present impression was in favor of the measure; but he felt, notwithstanding, desirous of obtaining information from his constituents. That night's mail might furnish the information he wished. He, therefore, moved a postponement of the subject until Monday next.

Mr. S. SMITH said, he wished at that time to go into Committee, if it were only to receive an amendment, which the gentleman from Pennsylvania (Mr. JONES) had shown him, in order that the amendment, as well as the original resolution, should go to the people. He thought the amendment would be salutary. The memorials received had assumed as a fact what was not correct, and argued from it as though it were correct. They had assumed it as a fact, that it was contemplated to give permission to foreign vessels to bring into the United States goods not of the growth or manufacture of their country free from any discriminating duty. Whereas, the resolution proposed by the Committee was directly the reverse. For instance; a British ship will not be permitted to bring into the United States the wines or brandies of France, without paying a discriminating duty. The very contrary impression appears to have existed on the minds of the Chambers of Commerce of Philadelphia and New York; and they argued at large upon it.

This was not a new subject; it was contemplated in the Message of the President. Immediately after the receipt of the Message, the Chamber of Commerce of Philadelphia had sent a circular letter to the merchants of the United States. One of those letters was received by the merchants of Baltimore. They thought they understood the subject; and they had no impression that the measure would be prejudicial to their interest. He believed a similar circular had been sent to other merchants in the United States. Some of the merchants thought it would be injurious; but he believed they were mistaken. On the contrary, he believed that a great good, instead of an injury, would result from it. His only wish, then, was, that they might go into a Committee, and there receive the amendment of the gentleman from Pennsylvania, that the whole subject might go forth in its true colors.

Mr. BACON thought the question of postponement lay in a very narrow compass. The House had received a petition; and had sustained it by ordering it to be printed for the use of the members. Will they, then, anticipate the subject, and before they have derived that benefit which they have recognised from the publication of the memorial, prematurely enter on a discussion? Such proceedings would evidence an inconsistency with themselves.

The question was then taken on a postponement until Monday next, and carried by a large majority.

FRENCH SPOLIATIONS.

Mr. MITCHILL rose to address the House on a subject of a commercial nature. He alluded to the depredations committed upon the commerce of the United States, by French armed vessels, during the late war in Europe. The gentlemen of the House would, he hoped, turn their attention, for a few minutes, to the numerous memorials received from our merchants during the last session, praying compensation for those losses. These papers were numerous and respectful, and came from a most valuable portion of our fellow-citizens. Their grievances had not hitherto been redressed, nor even inquired into with the minuteness which, it appeared to him, to deserve. It was true a committee, numerous and intelligent, had been appointed during the last session, to examine the matter of these applications. A report had been made to the House. This report was full of

information concerning the political and commercial connexion between the United States and France. It comprised a concise and correct history of what had been done on both sides, since the mutual misunderstandings arose. It was a valuable document, as far as it went; but it did not conclude with any recommendation of a mode of relief, or even of investigation. It stopped short with the historical narrative, without proposing even a mode of further inquiry. During the present session, nothing further had been done or attempted. Early after the Congress assembled, he had himself given notice of an intention to revive the subject. It was confessedly of magnitude enough to merit investigation. This notice, he remembered, was given previous to the receipt of the message from the Executive. But the multitude of public business that had grown out of that communication, added to other subjects, had so completely occupied his mind, that he had hitherto suffered it to pass on without bestowing on it the consideration which he owned that it deserved. He was now ready to make amends for this inadvertent or necessary, certainly not intentional, delay. He had heard, with satisfaction, the call of the gentleman from South Carolina (Mr. LOWNDES) for his (Mr. MITCHILL's) promised motion. He acknowledged the hint of that gentleman to be seasonable, and felt himself obliged to him for acting the part of a good prompter. To show that gentleman that he had profited by the suggestion made on Friday last, he had now risen with an intention to lay a resolve upon the table. The object of the resolve was to cause an inquiry to be entered upon, by a special committee of the House, as to what amount of property, or its value in current money, had been taken from the Americans during the late war by the cruisers of France. The committee could devise some mode of ascertaining the magnitude of the sufferings complained of. This he considered as the first step that ought to be taken, towards the procuring of redress for the petitioners. And, until this was taken, he believed nothing was likely to be done. Another object of the resolve he was about to offer, was to instruct the same committee to inquire into the different classes of captures and claims. He did not suppose that all the petitioners were entitled to compensation. Some of them, he knew, were not; but it was equally clear that some of them were. This complicated mass of applications could be examined by a committee, who could draw some distinctions that would be useful. They could tell, for instance, that one sort were lawful captures for and on account of contraband, others for want of a *rôle d'equipage*, others were taken wrongfully, without any cause whatever, and the like. Some judgment might be formed in this way of the probable amount that might be contemplated as bona fide claims. He suspected this amount would be but an inconsiderable part of the gross amount of captures. But whether it was large or small, he hoped an examination would be attempted; and, for that purpose, he moved the following resolution:

Resolved, That a committee be appointed to inquire by what means the value or amount of property taken from citizens of the United States by the French, during the late war in Europe, can be best ascertained, and the several sorts of captures distinguished and classed, and report their opinion thereon to this House, to the end that indemnification may be made.

Mr. MITCHILL then said, that he did not press an instant decision upon it; but wished it to lie a day or two on the table for consideration.

TUESDAY, January 25.

A Message was received from the President of the United States, transmitting a report by the Superintendent of the City of Washington, on the affairs of the city committed to his care.

The Message was read, and, together with the documents accompanying the same, referred to the Committee of Ways and Means.

Mr. DAVENPORT, from the Committee of Revisal and Unfinished Business, who were instructed, by a resolution of the tenth instant, "to inquire and report to this House the probable amount for which the houses and lots at present occupied by the Mint, in the city of Philadelphia, together with the personal property of that establishment, could be sold; and also the probable expense of procuring more suitable ground; erecting the necessary buildings; and constructing the machinery for the establishment, on the principle of having it worked by steam," made a report thereon; which was read, and, together with the documents accompanying the same, ordered to be referred to the committee appointed on the twenty-first instant, "to inquire into the expediency of continuing the Mint Establishment at Philadelphia, and whether any, and what, alterations or improvements may be made in the said institution."

Ordered, That Mr. DENNIS be excused from serving on the committee last mentioned, and that Mr. MITCHILL be appointed of the said committee in his stead.

Mr. EUSTIS, from the committee appointed on so much of the Message from the President of the United States, of the fifteenth ultimo, "as refers to the warfare with Tripoli, and to the relation with the other Barbary Powers," made a report thereon; which was read, and ordered to be committed to a Committee of the whole House tomorrow.

Mr. MITCHILL, from the committee appointed, presented a bill making an appropriation for the preservation of timber in the public navy yards, and for the improvement of the same; which was read twice, and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a report from the Postmaster General, accompanying two statements, marked A and B, exhibiting a list of post roads which have not produced one-third of the expense of carrying the mail on the same, after having been established two years; also, the number of post offices, the length of post roads, the weekly and yearly transportation of the mails, and the mode of transporting the same, at the several periods therein set forth; which were read,

and ordered to be referred to the committee appointed on the fourteenth ultimo, "to inquire whether any, and what, amendments are necessary to be made to the acts establishing a post office and post roads within the United States."

Mr. HELMS, from the committee appointed on the twelfth instant, presented a bill to make provision for persons that have been disabled by known wounds received in the service of the United States, during the Revolutionary war; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. DAVIS called up his motion laid on the table yesterday, as follows:

Resolved, That a committee be appointed to inquire into the expediency of concentring the several public offices, and other public buildings, belonging to the United States in the City of Washington.

Which was agreed to without debate—ayes fifty-five; when a motion was made to appoint the committee, consisting of seven members, by ballot, and carried—ayes fifty-three.

The ballots being taken, the SPEAKER appointed Messrs. T. MORRIS and WOODS, tellers.

On declaring the ballots, it appeared that but one member of the committee was elected, viz: Mr. DAVIS; he only having a majority of all the votes given.

The House then proceeded to a second ballot. [According to a standing rule of the House, only a plurality of votes is required on a second ballot.]

The ballots being declared, the following additional members of the committee appeared to be appointed, viz:

Messrs. GRISWOLD, MITCHILL, GREGG, CONDIT, BAYARD, and R. WILLIAMS.

MISSISSIPPI TERRITORY.

The SPEAKER laid before the House a copy of the proceedings of a number of the citizens of Washington county, in the Mississippi Territory of the United States, containing an address to this House, stating certain grievances to which the citizens of the said county have been, and are now subjected; which was read, in the words following, to wit:

1st. That the landed claims within the limits of Washington district are in a more precarious situation than those on the Mississippi.

2dly. That a petition from the citizens of this county, whilst under the jurisdiction of the Spanish Government, was forwarded to the Commandant at Mobile, and by him transmitted to the Governor of New Orleans, praying that a Surveyor might be allowed them, to run out their lands; but none ever came forward, by reason of which, their lands remain unsurveyed; notwithstanding which, these citizens request that their claims may be placed on an equal footing with those on the Mississippi.

3dly. That the citizens of this county be allowed to hold their possessions by occupancy.

4thly. That a great extension of boundary might easily be obtained from the neighboring Indians, by sending forward Commissioners for that purpose, which would add much to our interest and convenience.

5thly. That we are in possession of a treaty, entered into between the Alabama Indians and the Spanish Government, in the year one thousand seven hundred and eighty-two, conveying to that Government the lands lying between the confluence of the Alabama and Tombigbee rivers; by virtue, and under which treaty, a part of the lands thus conveyed was granted to the citizens of this county, and in their present occupancy.

6thly. That the district of Washington lies under great inconveniences, for want of a post office established, and labors under many and grievous disadvantages for want of a free port at Mobile.

7thly, and lastly. That there are two federal garrisons almost in the heart of the settlements; and, from the austere and abrupt behaviour of the officers commanding, towards the citizens, they are kept in a perpetual confusion: it is hoped this grievance will be remedied by their removal on the boundary line.

Ordered, That the first, second, third, fourth, and fifth clauses of the said address, be referred to the Commissioners appointed under the act, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," with instruction to examine the same, and report their opinion thereupon to the House.

Ordered, That the sixth clause of the said address be referred to the committee appointed on the fourteenth ultimo, "to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States."

Ordered, That the seventh and last clause of the said address be referred to the Secretary of War, with instruction to examine the same, and report his opinion thereupon to the House.

WEDNESDAY, January 26.

Ordered, That the committee appointed, on the fourteenth ultimo, "to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States," be discharged from the consideration of so much of the sixth clause of an address to this House, from the citizens of Washington county, in the Mississippi Territory, referred to them on the twenty-fifth instant, as relates to the inconvenience complained of by the said citizens, for "the want of a port at Mobile;" and that the same be referred to the Committee of Commerce and Manufactures.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the seventeenth ultimo, the memorial of William R. Miller and William H. Boardman, of Boston, in the State of Massachusetts, made a report thereon; which was read, and considered; Whereupon.

Resolved, That the Committee of Commerce and Manufactures be directed to report a bill making it necessary for unregistered ships of the United States to take the Mediterranean passports, in the same manner that registered ships of the United States are now compelled to take them.

Mr. BACON, from the Committee of Elections,

to whom it was referred to examine the certificates or other credentials of the members returned to serve in this House, made a farther report thereon, which was read, and ordered to lie on the table.

Mr. JOHN COTTON SMITH, from the Committee of Claims, presented a bill for the relief of William Ray and John Follawell; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. VARNUM, from the committee appointed, presented a bill in addition to an act, entitled "An act fixing the Military Peace Establishment of the United States;" which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. JONES submitted the following resolution:

"*Resolved*, That the repeal of the discriminating duties on foreign tonnage and merchandise imported in foreign vessels, recommended by the Committee of Commerce and Manufactures, in their report on that subject, made on the tenth instant, shall not extend to foreign ships or vessels, or the articles imported therein from the colonies or dependencies of any foreign nation, unless the ships and vessels of the United States shall enjoy the same privileges in the navigation and trade between the United States and such colonies or dependencies, as are, or may be, allowed to the ships and vessels of the nation to which such colonies or dependencies may belong."

Ordered, That the said motion be referred to the Committee of the whole House to whom was committed, on the tenth instant, a report of the Committee of Commerce and Manufactures on so much of the Message from the President of the United States, of the fifteenth ultimo, "as relates to discriminating and countervailing duties, and the act of the British Parliament on that subject."

Mr. EUSTIS, from the committee appointed, presented a bill for the relief of the proprietors of the Salem turnpike road, in Massachusetts; which was read twice, and committed to a Committee of the whole House on Friday next.

The House resolved itself into a Committee of the Whole on the report of the committee, of the twenty-fifth instant, on so much of the Message from the President of the United States, of the fifteenth ultimo, "as refers to the warfare with Tripoli, and to the relation with the other Barbary Powers;" and after some time spent therein, the Committee rose, and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That provision ought to be made, by law, for building or purchasing four vessels of war, to carry not exceeding sixteen guns each.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. EUSTIS, Mr. PERKINS, and Mr. ELMENDORF, do prepare and bring in the same.

Mr. HILL, from the committee to whom was referred, on the seventeenth instant, the memorial of sundry inhabitants of the town of Wilmington, in the State of North Carolina, made a report thereon; which was twice read, and agreed to by the House, as follows:

"That the system of policy stated in the said memorial to exist, and to be now pursued in the French colonial governments of the West Indies, is fraught with danger to the peace and safety of the United States. That the fact stated to have occurred in the prosecution of that system of policy, demands the prompt interference of the Government of the United States, as well Legislative as Executive.

"The committee, therefore, recommend that the said memorial be referred to the Secretary of State, to be laid before the President; and, in pursuance of the authority granted to them, herewith report a bill, which is submitted."

Mr. HILL, from the committee, presented a bill to prevent the importation of certain persons, whose admission is prohibited by certain laws of the State governments; which was read twice, and committed to a Committee of the whole House, on Monday next.

Ordered, That the petition of sundry citizens of Georgetown and its vicinity, in the District of Columbia, presented the fifth of April last, be referred to Mr. GREGG, Mr. EARLY, and Mr. FOSTER; that they do examine the matter thereof, and report the same with their opinion thereupon.

Ordered, That the memorial of Charles Pettit, surviving partner of Major General Greene and John Cox, in the late office of Quartermaster General of the United States, presented the first day of January, one thousand seven hundred and ninety-six, and sundry documents accompanying the same, marked A. B. and C. together with the reports of the Secretary of the Treasury and the Committee of Claims thereon, of the twenty-seventh of March and twenty-ninth of April, one thousand eight hundred, be referred to the Secretary of the Treasury, with instruction to examine the same, and report his opinion thereupon to the House.

On motion of Mr. MITCHILL, the House went into a Committee of the Whole on the bill for the encouragement of learning and the promotion of the useful arts.

Mr. BAYARD moved to amend the section so as to extend the privilege of obtaining patents to aliens as well as citizens.

Messrs. BAYARD, S. SMITH, and EARLY, supported, and Messrs. RANDOLPH, GRISWOLD, and MITCHILL, opposed the motion.

On the question being put, the motion was lost—ayes 19, noes 44.

The House went into Committee of the Whole on the bill for laying out a new road in the county of Washington.

Mr. VARNUM moved to strike out the first section. He thought that, if any, a general provision should be made.

Mr. GRISWOLD objected to other parts of the bill, coinciding with Mr. VARNUM as to the first section.

Mr. DENNIS moved that the Committee should rise, in which case he would move for a recommitment of the bill to a select committee, with instructions to report a bill making general provisions on the subject of roads within the Territory of Columbia.

This motion was carried without a division; the Committee rose, and were refused leave to sit again; when Mr. DENNIS's motion was agreed to.

On motion, it was *Resolved* That the committee appointed on the twenty-ninth ultimo, "to inquire into the propriety of granting further time to proprietors or holders of military land warrants to obtain and locate the same," be instructed to inquire into the expediency of authorizing the proprietors or holders of military land warrants to locate their respective claims on a less quantity than four thousand acres; and report their opinion thereon to the House.

IMPORTATION OF ARMS.

The House resolved itself into a Committee of the Whole on the bill for the importation of ordnance, arms, &c.

Mr. RUTLEDGE proposed an amendment for extending the right of importation, duty free, to individuals as well as States.

Messrs. BACON and S. SMITH said a few words against, and Messrs. MACON and RUTLEDGE in favor of the amendment; when, on the question being taken, it was lost—ayes 36, noes 45.

The Committee then rose and reported the bill without amendment.

On taking the question on ordering the bill to be engrossed for a third reading, the yeas and nays were required, and were—yeas 46, nays 40, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, Walter Bowie, William Butler, John Campbell, Thomas Claiborne, Manasseh Cutler, John Davenport, Thomas T. Davis, John Dennis, Wm. Dickson, Peter Early, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, David Meriwether, Thomas Moore, Lewis R. Morris, Thomas Morris, Joseph H. Nicholson, Thomas Plater, Nathan Read, John Rutledge, John Cotton Smith, Richard Stanford, John Stanley, Samuel Tenney, David Thomas, Thomas Tillinghast, Abram Trigg, George B. Upham, Killian K. Van Rensselaer, Lemuel Williams, Richard Winn, Henry Woods, and Thomas Wynns.

NAYS—John Archer, John Bacon, Phanuel Bishop, Robert Brown, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmendorf, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, Wm. Hoge, James Holland, David Holmes, William Jones, Michael Leib, Ebenezer Mattoon, Samuel L. Mitchill, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., William Shepard, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Joseph Stanton, John Stewart, John Stratton, John Taliaferro, jr., Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, and Robert Williams.

And so the said bill was rejected.

THURSDAY, January 27.

Mr. BRENT, from the committee appointed, presented a bill to amend an act, entitled "An act to amend the Judicial system of the United States;" which was read twice and committed to a Committee of the whole House to-morrow.

On motion of Mr. NICHOLSON, it was

Resolved, That a committee be appointed to inquire whether any, and if any, what, alterations are necessary in the several acts relative to the establishment of a Marine Corps, and in an act fixing the rank and pay of the commanding officer of the corps of Marines; and that the committee be authorized to report by bill, or otherwise.

Ordered, That Mr. NICHOLSON, Mr. GRISWOLD, and Mr. GREGG, be appointed a committee pursuant to the said resolution.

A memorial of sundry mechanics of the City and State of New York was presented to the House and read, praying that such acts or parts of acts heretofore passed by Congress, as relate to discriminating duties of imports and tonnage between the ships or vessels of the United States and those belonging to Great Britain, and other foreign nations, may not be repealed, for the reasons therein specified. Referred.

Ordered, That Mr. BACON be appointed of the committee to whom was referred, on the tenth instant, a memorial of Samuel Blodget, relative to the establishment "of a National University within and for the United States," and to the "erecting of an appropriate and characteristic equestrian statue of the late General GEORGE WASHINGTON," in the room of Mr. VAN NESS, whose seat in this House hath become vacant.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented to the House an abstract of the exportation to the European ports of Great Britain and France, in the years one thousand eight hundred, and one thousand eight hundred and one, of sundry articles, therein enumerated; which was read, and ordered to be referred to the Committee of the whole House to whom was committed, on the tenth instant, a report of the Committee of Commerce and Manufactures on so much of the Message from the President of the United States, of the fifteenth ultimo, "as relates to discriminating and countervailing duties, and the act of the British Parliament on that subject."

Mr. BACON laid the following motions on the table:

Resolved, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Virginia, by an act passed the third day of December, in the year 1789, entitled "An act for the cession of ten miles square," or any lesser quantity of "territory within this State, to the United States, in Congress assembled," for the permanent seat of the General Government: *Provided*, That the said State of Virginia shall consent and agree thereto.

Resolved, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Maryland, by an act passed the nineteenth day of December, in the year 1791, entitled "An act concerning the Territory of Columbia and the City of Washington:" *Provided*,

That the said State of Maryland shall consent and agree thereto.

UNITED STATES JUDGES.

The several petitions of William Tilghman, Oliver Wolcott, Richard Bassett, Charles Magill, Samuel Hitchcock, Benjamin Bourne, Egbert Benson, Philip B. Key, William Griffith, Jeremiah Smith, and George K. Taylor, were presented to the House and read, respectively representing, that, by an act of Congress, passed on the thirteenth day of February, one thousand eight hundred and one, entitled "An act for the more convenient organization of the courts of the United States," certain judicial offices were created, and courts established, called Circuit Courts of the United States: That, in virtue of appointments made under the Constitution of the United States, the petitioners became vested with the offices so created, and received commissions, authorizing them to hold the same, with the emoluments thereunto appertaining, during their good behaviour: That, during the last session, an act of Congress passed, by which the abovementioned law was declared to be repealed; since which no law has been made for assigning to the petitioners the execution of any judicial function, nor has any provision been made for the payment of their stipulated compensations: That, under these circumstances, and finding it expressly declared in the Constitution of the United States that "the Judges both of the Supreme and Inferior Courts shall hold their offices during good behaviour, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office," the petitioners are compelled to represent it as their opinion, that the rights secured to them by the Constitution, as members of the Judicial department, have been impaired: That, "with this sincere conviction, and influenced by a sense of public duty, they most respectfully request of Congress to review the existing laws, which respect the offices in question, and to define the duties to be performed by the petitioners, by such provisions as shall be consistent with the Constitution, and the convenient administration of justice:" That "the right of the petitioners to their compensations, they sincerely believe to be secured by the Constitution, notwithstanding any modification of the Judicial department, which, in the opinion of Congress, public convenience may recommend. This right, however, involving a personal interest, will cheerfully be submitted to Judicial examination and decision, in such manner as the wisdom and impartiality of Congress may prescribe: That judges should not be deprived of their offices or compensations, without misbehaviour, appears, to the petitioners, to be among the first and best established principles of the American constitutions; and, in the various reforms they have undergone, it has been preserved and guarded with increased solicitude: That, on this basis, the Constitution of the United States has laid the foundation of the Judicial department, and expressed its meaning in terms equally plain and peremptory:" That, "this being the deliberate and solemn opinion of the petitioners, the duty of their stations requires that they should express it to the Legislative body. They regret the necessity which compels them to make the representation; and they confide, that it will be attributed to a conviction that they ought not, voluntarily, to surrender rights and authorities entrusted to their protection, not for their personal advantage, but for the benefit of the community."

Mr. GRISWOLD moved a reference of the foregoing memorial to a select committee.

Mr. GREGG observed that, according to the usual mode of transacting business, it ought to go to the Committee of Claims. He, therefore, made that motion.

Mr. GRISWOLD said he entertained a high respect for the Committee of Claims, and was always in favor of referring to them petitions that merely involved demands for money. But he thought this memorial stood upon very different ground. It proposes a revision of the laws, in order to assign the judges duties proper to be trusted to them; and it also proposes the submission of the question of compensation to judicial decision. These points are of a very distinct nature from those referred to the Committee of Claims; for which reasons he thought such reference improper.

Mr. RANDOLPH did not think a select committee, or the Committee of Claims, a proper committee to whom to refer this memorial. What is its nature? Does it embrace any point of fact on which a committee is to make inquiry? No. It is a broad Constitutional question. He was, therefore, in favor of having it examined, where it must eventually be settled, in the House. If, therefore, the memorial had any reference, it ought to be referred to a Committee of the whole House; to which effect he made a motion.

Mr. BACON hoped this last motion would not obtain. He did not know what there was in this petition to distinguish it from any other petition from any citizens of the United States. It was suggested that it involved a great Constitutional question. He did not know that this was the case. Anything might be made a Constitutional question. But he thought this question had been already determined by the whole Legislature on the most mature deliberation. He saw nothing to distinguish this petition from other petitions. He would not say that it would be doing it too much honor, but it would be making too wide a difference between similar applications to adopt this course. He was, therefore, for pursuing the common course.

Mr. GRISWOLD had no objection to a reference of the memorial to a Committee of the Whole. Perhaps that would be the better mode. It was true, as the gentleman from Virginia had stated, that a very important Constitutional question may arise on this memorial. Nor did he know, as represented by the gentleman from Massachusetts, (Mr. BACON,) that all the Constitutional questions involved in the subject had been settled by the decision of the last session. He had understood the gentleman himself, in his speech during the last session, to have said that the question of compensation was a very different question from that then under discussion. He was not absolutely certain that that gentleman expressed such an opinion, but he was certain that some gentlemen of the majority did. As the memorial was couched in terms of great respect, he trusted there would be no objection on the part of the House to give it a proper attention.

Mr. RANDOLPH would concisely answer the gentleman from Massachusetts. Does this question involve an inquiry either into matter of expediency or of fact? With respect to fact, they were all agreed. The judges make the question turn on a construction given to the Constitution; it was, therefore, indubitably a Constitutional question, on which a committee could not decide. The House, then, must decide. It appeared to him to be the plainest case on earth. No doubt Constitutional questions may arise on many points. He hoped, therefore, the House would itself decide it. For his part, he considered the decision as already made. He hoped the memorial would be taken up that day.

Mr. JOHN C. SMITH was decidedly against a reference to the Committee of the whole House.

Mr. SMILIE was against referring the memorial to a Committee of the Whole. If the subject had not been already maturely considered and discussed at the greatest length, he should be in favor of such a reference. But it had been most fully discussed. If they meant to sit there to the neglect of the important business, they ought to go into Committee of the Whole; but if they meant to do the public business, they ought not. Gentlemen should recollect the time spent in this discussion the last session.

Mr. DANA thought the gentleman from Pennsylvania did not calculate correctly. The same object, as to debate, would be attained in the House as in a Committee of the Whole. For he would recollect, that notwithstanding the length of the debate of the last session, and though the House were in Committee, no gentleman had spoken more than once; and, according to the rules of the House, every member had a right to speak twice.

Mr. DANA said that he agreed with the gentleman from Virginia in the ideas he had expressed.

Mr. GREGG said he hoped the motion of reference to the Committee of the Whole would not prevail, but that these memorials, like all others of a similar nature, would be referred to the Committee of Claims. He would beg leave to read to the House one of the rules by which the duty of the Committee of Claims was designated. The rule was in these words:

"It shall be the duty of the said Committee of Claims to take into consideration all such petitions and matters or things touching claims and demands on the United States, as shall be presented, or shall or may come in question, and be referred to them by the House."

Now, said Mr. G., can any person, after hearing the memorials, and the rule just read, undertake to say, that they are not completely within the province of that committee? Are they not a claim? Are they not a demand for money? Most assuredly they are. He considered the demand of their salaries the primary object of the memorialists, and not an incidental circumstance, as had been stated. If the salaries had been paid, most probably we should have heard nothing of the memorial.

The question was then taken on Mr. RANDOLPH's motion to refer the memorial to a Committee of the whole House, and carried—ayes 53.

The SPEAKER inquired for what day it should be made the order.

Mr. RANDOLPH said, to-day.

Mr. GRISWOLD, to-morrow.

The question was taken on Mr. GRISWOLD's motion, and lost—ayes 38, noes 51.

Mr. HUGER moved that it should be the order for Monday. It must be evident, that the members had not yet sufficiently attended to the subject to be prepared for a decision. It was a very different question from that decided the last session. It certainly required some little time to enable gentlemen to revolve it in their minds. It was not usual to force decisions in that way. If it was the object of gentlemen merely to vote it out, a majority must do as they please; but if they were disposed to pay it ordinary respect, they certainly could not urge so precipitate a discussion.

Mr. RANDOLPH asked if it were in order, after the question had been taken, to name another day. He said he would not have urged an immediate consideration of the memorial, but for the conviction that the subject, in all its bearings, had undergone the maturest investigation, not only of every member on that floor, but of every thinking man in the United States.

The SPEAKER decided that the moving another day was not in order.

The question on going into a Committee of the Whole this day, was then carried without a division. Whereupon,

Mr. RANDOLPH moved that the House should go into Committee immediately.

The SPEAKER said the unfinished business of yesterday would be the first acted upon, unless postponed.

Mr. RANDOLPH moved the postponement of the unfinished business till to-morrow. Carried.

The House then resolved itself into a Committee of the Whole on the memorial—Mr. DAWSON in the Chair.

The memorial of William Tilghman was read; which was accompanied by ten other *verbatim* memorials, signed by Oliver Wolcott, Jeremiah Smith, Richard Bassett, Philip B. Key, George K. Taylor, Charles Magill, Samuel Hitchcock, Benjamin Bourne, Egbert Benson, and William Griffiths.

Mr. GRISWOLD said, he did not think it proper to enter into an extensive discussion of the memorial. The haste with which the consideration of it was urged, appeared to him indicative of a disposition to reject it altogether. Under such circumstances discussion would be useless. At the

same time, he would remark, that it involved a question very different from that decided at the last session. It had, then, been decided that the Legislature had the Constitutional right to deprive the judges of all judicial power; but the question never was settled, that, notwithstanding the judges should be deprived of all their judicial powers, they were not entitled to the compensation guarantied by the Constitution. This involved a distinct point, which ought not to be hastily acted upon. The judges had never been heard before Congress on this question. They had a right by the Constitution to be heard, and to be heard by counsel, he presumed, if they desired it. He had thought the House would have given time for them to be heard. But they had determined to proceed immediately. He should, therefore, be content with moving two resolutions.

Mr. Griswold here read his resolutions as follows:

Resolved, That provision ought to be made by law to define the powers to be exercised by the judges of the circuit courts of the United States, who were appointed under an act, entitled "An act to provide for the more convenient organization of the courts of the United States."

Resolved, That provision ought to be made by law for submitting to judicial decision the right of the judges of the circuit court to their compensations.

Mr. Griswold said, he would himself have preferred a resolution to make the judges compensation; but as they had thought it better to pursue a different course, he would follow their plan. He knew there were many respectable law characters, who thought the Legislature were competent to deprive the judges of their powers, but not of their compensation.

The resolutions were read from the Chair.

Mr. Nicholson did not mean to enter into a discussion of the merits of the memorial, for two reasons; the one because he was very much indisposed, and the other, because, in his opinion, the subject had already been sufficiently discussed. But as the gentleman from Connecticut who had moved the resolutions, in the first, recommended defining the duties of the judges, he supposed he had laid down some plan to that effect. As a member of the House, he would be much obliged to him for pointing out the plan he had formed.

Mr. Griswold said, he had not expected to have been called upon to define the plan that would be most agreeable to him; as he apprehended that such a plan would lead to that discussion which gentlemen seemed desirous of avoiding. But he would mention one plan—to restore the law which the Legislature had, at the last session, attempted to repeal. The definition of powers, according to that plan, the judges might exercise with perfect certainty. If this were not conformable to the ideas of the gentleman from Maryland, it was in his power to define some other plan.

Mr. Nicholson said that this was just what he had expected; and he had put the question to draw from the gentleman such an answer. On the plan proposed, he was prepared to act, and he had no doubt every other member was also prepared.

Mr. Randolph said, the provision desired by the gentleman from Connecticut already exists. The Legislature has defined the powers of the late circuit judges, and has decided that they shall not execute any powers. Those powers are transferred to other courts. Unless the House had changed their opinion, it was not necessary to go into any discussion on this point. The readiest and fairest course for gentlemen would be to propose to repeal the law of the last session, and restore the judges.

The question was then taken on the first resolution, and lost—ayes 34, noes 56.

The Chairman then read the second resolution, as follows:

Resolved, That provision ought to be made by law for submitting to judicial decision the right of the judges of the circuit court to their compensations.

Mr. Randolph said he was not ready for the question. He had one or two remarks to offer, which had suggested themselves during the reading of the resolution. It had been repeatedly decided that the United States would not permit themselves to be brought into their own courts. Wherefore grant to a particular class of persons, in a single case, that which had ever been refused to the war-worn soldier of the Revolution; especially when it should be recollected that this case, involving the interests of judges, as a *caste*, could not be decided by any judicial tribunal free from bias?

A doctrine is advanced new to this House, which I have been told originated with an eminent character on the bench of the United States; I did not hear the gentleman from Connecticut distinctly, but I understand him as subscribing to it: that Congress may, constitutionally, deprive a judge of all authority, and transfer to another his powers and duties, but that the office nevertheless remains, and the judge, of course, entitled to his compensation. The Constitution says that "the judges shall hold their offices during good behaviour, and shall, for their services, receive a compensation." Without entering into a question which has already been so fully discussed, he would barely remark, that if the position just advanced be correct, the words "compensation" and "office," which the Constitution supposes, and every one believes, to have distinct and different meanings, must be convertible terms. For when the powers and duties are taken away, what, let me ask, is left but a salary? The word office must be rendered by the word salary.

The petitioners state that they are not actuated by a sense of their own interest, but that the public good is their sole object. I mean not to doubt their sincerity, but it is plain they are mistaken. This business involves only personal consideration—it has not a shadow of connexion with the public welfare. The Constitution renders the judges independent in a pecuniary point of view, in order that they may give independent judgments. In conceding that they may be Constitutionally deprived of the power of acting as judges,

everything connected with the public weal is given up. If Congress can transfer their authority to other courts, it is a matter of private concern whether they continue to receive their salary. The public is no further interested than as to the amount which they are to pay. How strange, then, is it to hear men of the first standing on the bench say, and to hear it repeated here: As to the conduct of the judge, in which alone the public are interested, Congress may take it away—may transfer it to whom they please; but as to the salary, in which the public cease to have an interest so soon as the judge is divested of judicial power; as to the salary, in which the man alone is interested, it is sacred—it cannot be touched. That is, on every political revolution the existing courts may be to all intents and purposes annihilated, and their authority transferred to others, provided you pension the judges. When they cease to be judges, to have the power of deciding on our property, reputation, and lives, what, in the name of Heaven, is their salary, or their office, if you will have it so, to us? What concern have we in their pecuniary independence when they no longer possess judicial authority?

Mr. R. said he was every way indisposed to enter upon a long discussion of this question. That he had barely made a few observations on an opinion the most incomprehensible which he had ever heard. That his own mind had long been made up on this subject, and he supposed other gentlemen to be equally decided.

Mr. Dana was of opinion that every subject should be brought fairly and directly to a decision; and after it had been fully discussed and fairly decided, it ought to be considered as settled. So far as this subject had been completely decided, he had no disposition now to enter into the discussion. He fully agreed, too, with the gentleman from Virginia that to admit that Congress had the Constitutional right to take away the powers of the judges, was virtually to give up their claim for compensation, which only resulted from their right to office. Other gentlemen, however, were of a different opinion; and such an opinion may have been, and, he believed, was taken by some of the gentlemen who passed the repealing law. Such opinions, he knew, had been expressed by some gentlemen in public and in private.

The question of compensation to the judges involved considerations very distinct from those ordinarily decided upon in that House. Most of the individual cases brought here were made in pursuance of some particular law, and did not call in question the authority of Congress. If the case of the judges were to be referred to any tribunal, the right to refer was founded on the principle of controlling the decisions of the Legislature in case those decisions should appear to the tribunal to be unconstitutional. It was, therefore, in this view not proper to refer the question to a tribunal dependant on the body to be controlled. This was the only course that would probably be deemed impartial by all the parties concerned.

Mr. Bacon said the true question was on the constitutionality of the repealing law. One Congress had passed a law constituting certain courts, which at the last session had been repealed. Now of what do courts consist? Of judges, who are officers of the court. The question is, whether by abolishing the courts, these officers are abolished. He supposed they were. He considered the terms as synonymous. Now the question is whether, if the offices are abolished, those who filled them before they were abolished are entitled to salaries? That is the only question that remains undetermined. What does the Constitution say? Admitting the offices abolished, it says: "The judges, both of the supreme and inferior courts, shall hold their offices during good 'behaviour, and shall, at stated times, receive for 'their services a compensation which shall not be 'diminished during their continuance in office."

Does it not follow that if they continue in office they are entitled to a salary for the services they perform. If they do not continue in office they are entitled to nothing, and the Constitution has no reference to them. This is the true question.

Mr. B. said he had been reminded of some observations made by him the last Winter. But he supposed that having determined the question that the offices were abolished, the other question of compensation was determined of course.

Mr. Griswold.—Last Winter the gentleman from Massachusetts informed us that the right of judges to salaries was not involved in a decision on their powers. Now, he says by a decision of that question the present was decided of course. I conceive that this question never has been settled by the Legislature. Opinions entertained by different gentlemen have varied. It is the opinion of some very respectable legal characters that though Congress may deprive the judges of all their powers, yet they cannot deprive them of their offices, and their characters of judges, and that they are still entitled to their salaries. Such an opinion is entertained by high and respectable law characters. I am not of this opinion, as hinted by the gentleman from Virginia. I thought that when we passed a law essentially impairing the power of a judge, we essentially impaired his office, and when we deprived him of all his powers, we also deprived him entirely of his office. But gentlemen of a very high and respectable character were of a different opinion. They may, perhaps, be correct; and so long as such opinions are entertained, an impartial tribunal ought to be established to decide the question. I cannot see any objection to such a tribunal. I have never felt an objection to transfer to the courts of law the decision of claims resting upon legal grounds. I always thought such a mode of decision proper, as I thought that whatever an individual conceived himself as having a right to by law, should be settled in a court of law. I have no objection to the reference of this question to the Supreme Court. I have, therefore, moved the resolution, and I hope it will prevail. As to the opinion of the gentleman from Virginia, (Mr. Randolph,) that this claim exclusively relates to the personal interest of the judges, I conceive that is not cor-

rect. The judges consider the repealing law as unconstitutional; they, therefore, consider themselves as still judges of the United States. It is a principle guarantied by the Constitution that they shall not be removed but for misbehaviour. They believe it to be their duty to pursue every legal means in their power to vindicate that principle as violated in the repealing act. Believing that principle to be just; believing it to be sacred in the opinion of the people of the United States, how could they relinquish their claim to compensations—a necessary consequence of it—without relinquishing the principle itself? They could not do it. I do not, however, wish to go into an extensive discussion of the question, which I consider unnecessary, believing, as I said before, that by the course taken by the House it is settled that the resolution shall be rejected.

Mr. T. Morris said if he understood the gentleman from Massachusetts (Mr. Bacon) right, who had spoken on this subject during the last Winter, he had said that not only every judge, but every justice of the peace had a right to decide on the constitutionality of a law. If that opinion was correct, and he still entertain the same opinion, he knew no reason why he should now object to the institution of an impartial tribunal. The judges thought one way, and Congress the other. The repealing law may be Constitutional or not. Why, then, refuse to refer the decision to an impartial tribunal? Believing this the most correct mode, he thought the application proper. But the gentleman from Virginia says if you allow a tribunal to the judges, why not also allow one to settle the claims of our Revolutionary soldiers? To this Mr. M. said he had no objection; though he did not think that in those cases they were so fully called upon as in this case. The former were principally appeals to the liberality of the House; whereas this involved a great Constitutional question. He understood, indeed, that such a provision existed in the State which that gentleman (Mr. Randolph) represented, by which any individual, considering himself aggrieved, could apply to a court of justice, in consequence of the decision of which money could be drawn from the Treasury.

Mr. John C. Smith said he did not propose to discuss, much less decide the question, whether the petitioners were entitled to their salaries, because he perceived a strong disposition in the House not to consider the petition on its merits, and because this was a question which the judges themselves did not desire should be settled by Congress, but referred to a determination of a disinterested and impartial tribunal. The honorable gentleman from Virginia (Mr. Randolph) had observed that this course would be unexampled, and that the Government might with equal propriety erect a forum to decide the numerous applications to this House for invalid pensions. Mr. S. said the very allusion made by the honorable gentleman had brought to his recollection a precedent which he thought not inapplicable to the present case.

He said it would be remembered that, at a certain period the judges of the Supreme Court were directed by an act of Congress to receive on their circuits the evidence of claims to invalid pensions, and report their evidence to the Secretary of War for his ultimate determination. Some one or more of the judges considered the act unconstitutional, as requiring them to perform a service not within the sphere of their official duties, and refused to execute it; the others discharged the duty enjoined, but under the title of commissioners. A question arose whether the proceedings of these commissioners were valid so as to entitle the claimants to the provision contemplated by the act. How was this question disposed of? Instead of putting an end at once to all doubts on the subject by a legislative decision, Congress directed the Secretary of War, in conjunction with the Attorney General, to take such measures as might be necessary to obtain an adjudication of the Supreme Court of the United States on the validity of any such rights as were claimed under that act. Here, said Mr. S., is a precedent for the measure now proposed, produced by an occasion of infinitely less importance, in his opinion, than the present. He considered the judges as standing on at least as high ground as ordinary claimants. They had been elevated to office not by their own acts, but by the Government itself; their salaries had been secured to them not for their personal benefit, but for the public good.

Mr. S. said he had risen merely to make these remarks, but being up he must be permitted to say, that during the time he had had the honor of a seat in that House he had never known any business precipitated in that manner. When the report of a select committee upon a petition of the most trifling nature was referred to a Committee of the Whole, on motion of any gentleman a distant day would be assigned; an order would be made for printing it, and in short the most solemn deliberation would mark every step of its progress. What had been now done? One hour had scarcely passed away since these petitions were ushered into the House, and we are now discussing them in Committee of the Whole. They were not permitted to be printed, and members of the House were uninformed of their contents except from the cursory reading at the Clerk's table. Mr. S. said he hoped gentlemen would be able to justify that procedure to themselves, but he did believe in a moment of calm reflection they would find it a fruitful source of pungent regret.

Mr. Smilie would ask whether the Supreme Court in such a case as this could be denominated an impartial tribunal? He asked if they had not seen the time when, during the disputes between the clergy and laity, no wise man, not of the clerical order, would have trusted himself in the hands of the clergy? The same remark applied to the military, and also, with equal force, to the judges of the Supreme Court. He really, however, thought that the judges would not receive the salaries, even if they were offered to them, as it would be contrary to every idea of patriotism. He, therefore, considered the application as a mere matter of form.

Mr. Nicholson said if this question had never before been argued, there might be some degree of propriety in the remarks of gentlemen, and the House perhaps might be chargeable with precipitation. But he begged it might be remembered that the very question embraced by the resolution now on the table had, at the last session, undergone the most ample discussion that ever took place in Congress. It had not only been argued here for a considerable length of time, but he believed it had attracted the attention of every reflecting man in the nation. A strange distinction, however, is attempted to be set up. At one moment gentlemen declare it is not the same question, and immediately after concede by their arguments that it is the same. They say that men of high legal character in the United States have granted that Congress have a right to take from the judges all power of acting as such, but deny the right to destroy the office. They may divest him of power, but the office must remain, and he is still a judge. To him this was a perfect absurdity. He could not possibly conceive the idea of a judge who had nothing to do; who had no duties to perform—no power to decide. These high legal characters supposed that he might remain a judge for the purpose of receiving his salary, but not for the purpose of performing any duty. This was not his idea, and both the gentlemen from Connecticut (Messrs. Griswold and Dana) appeared to agree with him in opinion. In fact it was the great ground of dispute last session, whether you could repeal a law under which a judge was appointed, and thereby deprive him of his office by taking from him all the powers and duties of a judge. Whatever the opinions of high legal characters might be on this question, Congress had last year, after full and ample discussion, solemnly decided, that they had a right by repealing the law to divest the judges of their judicial powers, and thereby destroy their offices.

Another gentleman from Connecticut (Mr. J. C. Smith) had alluded to a law passed some years ago, which assigned certain duties to the judges of the Supreme Court in relation to the claims of persons who alleged that they ought to be placed on the pension list. It would, no doubt, be recollected that the judges refused to carry this law into execution, and he might be permitted to ask what security there was that they would not now refuse to carry into effect any law which we might pass embracing the object of the resolution? Was it to be imagined that they would refuse to decide on the claims of those who fought our Revolutionary battles, and yet kindly attend to the claims of their brethren? The resolution contemplated giving the power to try the right of the judges to their claims: but the great object in reality was to authorize the judges of the Supreme Court to decide upon the constitutionality of the repealing act. Let this object, then, be avowed; let it be so declared openly, and not introduced in this incidental manner. From the remarks made last year by gentlemen on the other side of the House, it was a little surprising that this application should be made, for it was then strenuously contended that the Supreme Court had the right to decide upon the constitutionality of all laws. Why, then, ask for it? If they have this right we need not confer it; if they have it not, we cannot give it them. If the petitioning judges can bring their case before the Supreme Court, let them do so; my consent shall never authorize it. If the Supreme Court shall arrogate this power to themselves, and declare our law to be unconstitutional, it will then behoove us to act. Our duty is defined.

In his opinion, Mr. N. said the best method of trying the right of Congress to repeal the judiciary act had been for some time, and was yet in operation. The people constituted the great tribunal before whom the constitutionality of all laws of Congress should be brought, and by them this question will be decided. Some of them have decided, and the remainder will decide by their elections. It is an impartial tribunal, to whom we may all appeal, and their judgment will bind us. To their decision it is already referred, and with them he was willing to leave it rather than to any court of justice.

Mr. Eustis said when the office of judge was abolished, all his duties ceased. The salary allowed was a compensation for services. Now when there were no services to be performed, what salary could there be allowed, or what retribution demanded? On what did this claim rest? On the opinion of the judges. But by the decision of the last Winter their offices were abolished; it followed, therefore, of consequence, that their salaries ceased too. This was a plain and simple question. He considered the memorial as the protest of the judges against this decision. As such, he was willing that it should rest on the files of the House, and instead of being offended at this treatment the judges ought to be thankful. When he observed yesterday a memorial presented by an individual for a greater amount than the claim of all the judges, and observed how lightly it was treated, and particularly by the chairman of the Committee of Claims, (Mr. John C. Smith,) who moved the reference, he was surprised that he, above all men, should complain of the treatment of this memorial, which had been respectfully referred to a Committee of the Whole. Mr. E. concluded by observing that he forebore going into the merits of the memorial.

Mr. Dana said the ideas of the gentleman from Massachusetts were in one respect correct. The memorial of the judges was a protest against the law passed by Congress. It was proper they should make it, so far as they confined themselves to language not indecorous or disrespectful. He would admit likewise that the question of powers decided the question of salary; others, however, entertained a different opinion. Why object, then, in a case where there was a difference of opinion, to refer the decision to an impartial tribunal? The only question is, whether in a contest for power, you, the Legislature, will claim the exclusive exercise of power, and whether, even if you shall exceed the Constitutional limits you will assert the entire right of saying so, or

whether you will refer it to a tribunal which shall be an umpire between those who hold different opinions?

Mr. Nicholson moved to amend the resolution. He observed that the judges of the circuit court were the judges of the Supreme Court and district court united. He therefore moved to insert before the word "judges," the word "former."

Mr. Griswold, wishing to have the question directly taken, moved to add after "judges of the circuit court," these words, "appointed under an act entitled 'An act to provide for the more convenient organization of the courts of the United States, passed on the thirteenth day of February, 1801.'"

Mr. Nicholson agreed to the insertion of those words, with the addition of the following; which he moved, "which said act was repealed at the last session of Congress."

The amendment was carried—ayes 56.

Mr. Alston said the resolution required another amendment. As it now stood, it would appear that all the late judges of the circuit court claimed a compensation for services not rendered. He believed this was not the case. There were some of those judges who had made no such request. He, therefore, moved to insert the name of those who had presented memorials; also to insert the word "late" before the word "judges."

Carried without a division.

The resolution as amended stood thus:

Resolved, That provision ought to be made by law for submitting to judicial decision the right of William Tilghman, Oliver Wolcott, Jeremiah Smith, Richard Bassett, Philip B. Key, George K. Taylor, Charles Magill, Samuel Hitchcock, Benjamin Bourne, Egbert Benson, and William Griffiths, late judges of the circuit court appointed under an act entitled "An act to provide for the more convenient organization of the courts of the United States passed on the thirteenth day of February, 1801;" which said act was repealed at the last session of Congress, to their compensations.

On which the question being put, it was lost—ayes 35, noes 57.

Mr. Varnum observed that the memorial contained two principles, both of which had been negatived. To draw the attention to a final decision he would move another resolution, to wit:

Resolved, That the prayer of the petition of William Tilghman, and others, (naming them) late judges of the circuit courts of the United States, ought not to be granted, and that the petitioners have leave to withdraw their petitions.

Mr. T. Morris moved that the Committee should rise and report progress, that the petition might be printed. Negatived without a division.

The resolution was then carried without a division, when the Committee rose and reported it.

The House immediately took it into consideration; when

Mr. Randolph moved to strike out the words, "late judges of the circuit courts of the United States."

Mr. Griswold said he presumed it was not the object to expunge all evidence of these gentlemen being judges, or late judges of the circuit courts of the United States, and yet that would appear to be the effect of the motion. He must, therefore, call for the yeas and nays, which would make that fact be recorded on the journals.

Mr. Randolph said he had made the motion that the resolution might conform to the prayer of the petition. Had the memorialists called themselves late judges, he should have had no objection to their being so designated in the resolution. His wish was to style them in the resolution as they had styled themselves.

Mr. Griswold said, though they had not expressly styled themselves circuit judges, yet they had stated that they had been appointed circuit judges under a law of the United States. They had therefore virtually so styled themselves.

A few words were added by Mr. Eustis against it, and by Messrs. Randolph and Nicholson in favor of striking out the words, when the question was taken by yeas and nays and carried—yeas 50, nays 47, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Walter Bowie, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Richard Winn, and Thomas Wynns.

Nays—Thomas Boude, Richard Brent, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Peter Early, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, Israel Smith, John Cotton Smith, John Smith, of New York, Samuel Smith, Henry Southard, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Robert Williams, and Henry Woods.

And then the main question being taken, that the House do agree to the resolution reported from the Committee of the whole House, amended to read as follows:

Resolved, That the prayer of the petitions of William Tilghman, Oliver Wolcott, Richard Bassett, Charles Magill, Samuel Hitchcock, Benjamin Bourne, Egbert Benson, Philip B. Key, William Griffith, Jeremiah Smith, and George K. Taylor, ought not to be granted; and that the petitioners have leave to withdraw their petitions:

It was resolved in the affirmative—yeas 61, nays 37, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

Nays—Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Stanley, John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Friday, January 28.

Mr. Dawson moved the following resolution:

Resolved, That, during the present, and at the commencement of every session of Congress, two additional clerks shall be elected, to be denominated "Committee Clerks," whose duty it shall be to attend to the business referred to the several committees, and to keep records thereof; and who shall receive for their services an adequate compensation.

The question was taken, that the House do now proceed to take the said motion into consideration, and passed in the negative.

A memorial of the citizens of Washington, in the Territory of Columbia, signed by order, and in behalf of a meeting of the said citizens, by Robert Brent, their chairman, was presented to the House and read, submitting to the consideration of Congress a statement of grievances, which, in the opinion of the memorialists, now exist in the said territory, and require immediate remedy; and praying that they may be authorized, in common with their fellow-citizens, to elect delegates to a convention to establish a system of government for themselves, if such shall appear their sense, expressed through the organ of their representatives so assembled; or, if such shall not appear to be the sense of the territory, they be empowered to recommend to the adoption of Congress such other measures as shall, in their opinion, best promote the general welfare of their constituents.

Ordered, That the said memorial, together with the memorial and remonstrance of the inhabitants of the town of Alexandria, in the District of Columbia, presented yesterday, and ordered to lie on the table, be referred to the committee to whom was recommitted, on the twenty-fourth instant, the bill additional to, and amendatory of, an act, entitled, "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," passed the third day of May, one thousand eight hundred and two; and that Mr. Taliaferro and Mr. Early be added to the said committee.

Mr. Eustis, from the committee appointed, presented a bill to provide an additional armament for the protection of the seamen and commerce of the United States; which was read twice, and committed to a Committee of the Whole House on Monday next.

The House resolved itself into a Committee of the Whole on the bill for the relief of William Ray and John Follawell, which was reported without amendment, and ordered to be engrossed and read the third time to-day.

Mr. Davis, one of the members from the State of Kentucky, presented to the House certain resolutions of the Legislature of the said State, together with a memorial annexed thereto from the said Legislature, addressed to the President of the United States, and the Senate and House of Representatives of Congress, representing, that, in consequence of a violation, on the part of Spain, of an article of the Treaty of Friendship, Limits and Navigation, between the United States and the King of Spain, the citizens of the said State are deprived of a place of deposit in the Spanish territory, in conformity with the stipulation contained in the said treaty, by the proceedings of the Intendant at the port of New Orleans, who has, by a proclamation, dated the eighteenth day of October last, forbidden American citizens to deposit their merchandises and effects in the said port of New Orleans, without having assigned to the United States an equivalent establishment on another part of the banks of the river Mississippi; that they rely on the wisdom and justice of the Government of the United States to redress the grievance of which they complain, and pledge themselves to support, at the expense of their lives and fortunes, such measures as the honor and interest of the United States may require, in defence thereof.

The said resolutions and memorial were read, and ordered to be referred to the Committee of the Whole House on the state of the Union.

The House resolved itself into a Committee of the whole House on the bill for the relief of the proprietors of the Salem Turnpike road, in Massachusetts; which was reported without amendment, and ordered to be engrossed, and read the third time to-day.

Mr. Speaker laid before the House a letter from Col. Humphreys, late Minister at the Court of Madrid, stating that, when he was about to leave that Court, the Minister of State urged his acceptance of the customary present from His Majesty. Col. Humphreys informed him that he could not, consistently with the Constitution

of his Government, accept the present. The Minister continued to press the acceptance, and urged that as he was no longer an officer of the United States, there could be no impropriety in his receiving it. Col. H. replied, that, though he was then out of office, there would still, in his opinion, be an indelicacy in the acceptance, and that if he should receive the present designed for him, he should consider it as his duty to deliver it into the hands of the President of the United States, to be disposed of at the pleasure of the Government.

Under these circumstances he left the Court of Madrid; and upon his arrival in the United States, he found a casket of valuable female ornaments addressed to Mrs. Humphreys, which, though unaccompanied by any letter, he presumed to be a present from the Queen of Spain. Doubting the propriety of accepting it under such circumstances, Mrs. Humphreys presented the casket to the President of the United States, who put into the hands of the Secretary of State. The Secretary of State declining to decide the Constitutional question, whether Mr. Humphreys could with propriety retain it, ordered it to be returned to him for the purpose of being sent back to Spain, or otherwise disposed of, as he might think proper. Mr. H. refused to receive it back upon such terms: it consequently remains with the chief clerk in the Department of State, and Mr. H. now requests Congress to give orders for sending it back to Spain, or for disposing of it in such other way as they may think proper. He makes the same request respecting a sword presented him by the Dey of Algiers, which is also in the hands of the chief clerk of the Department of State, under similar circumstances.

The subject after considerable conversation in the House, was referred to a select committee to report their opinion thereon.

Mr. J. C. SMITH, from the Committee of Claims, made a report on the petition of George Mason, a Revolutionary soldier. The report states that no provision appears to have heretofore been made for the allowance of pensions to soldiers of the South Carolina line, of which the petitioner was one; and concludes with a resolution that it is expedient to make provision by law for invalid pensioners of that line.—Referred to a Committee of the Whole on Tuesday.

Mr. MITCHILL made a report from the committee appointed on the subject of docks, that, under a law of the United States, fifty thousand dollars had been appropriated for docks, to be expended under the direction of the President; which sum, however, not being expended, had reverted to the Treasury. The report concludes with a resolution declaring that it is expedient to appropriate the same sum for the same object, to be placed under the direction of the President.—Referred to a Committee of the Whole on Monday.

The House went into a Committee of the Whole on a bill, in addition to an act fixing the Military Peace Establishment.

Mr. RANDOLPH moved to strike out the third section, which allows in the whole to the Paymaster, Adjutant, and Inspector of the Army, two thousand dollars for clerk hire. Motion lost—ayes 29, noes 40.

The Committee rose and reported the bill without amendment, which was ordered to a third reading on Monday next—ayes 33, noes 26.

MILITARY LAND WARRANTS.

Mr. DAVIS said the War Department had pursued a method of granting military land warrants, in his opinion, not conformable to the resolves of Congress, granting a bounty in lands to officers and soldiers who served in the late Revolutionary war. He would not say that the practice was uniform, but as it related to his own personal application it was, and he expected it was so in all cases. He would be explicit. The War Department does not grant warrants to the representatives of any person slain in the service of the United States, unless such person was enlisted for during, or served to the end of, the war. It was his opinion, that the representatives of any person killed in the service of the United States were entitled to bounty land, whether they had enlisted for the whole of the war or for a shorter time. In this opinion he was not singular. He had spoken to two gentlemen from Maryland who appeared to accord with him in opinion.

Mr. D. said he did not expect the War Department would depart from their usual practice without some Legislative interference. He therefore proposed the following resolution, to wit:

"*Resolved*, That the committee appointed on the 29th ultimo, to inquire into the expediency of giving further time to the holders and owners of military land warrants to locate the same, be, and they are hereby, directed to inquire whether any, and, if any, what, Legislative provision is necessary to carry fully into effect the resolutions of Congress of the 16th of September, 1776, and the 12th of August, 1780, which give a bounty in land to officers and soldiers who served in the late Revolutionary war."

This resolution was immediately taken up and agreed to.

Mr. DAVIS said there was another subject he was desirous of bringing before the House; it was the ascertaining how much land, belonging to the Virginia troops on State and Continental Establishment, was ceded to the Cherokee Indians by the treaty of Holstein, of the 23d July, 1791. If gentlemen will take the trouble to examine the fourth article of that treaty, they will find a line is to be run, from a point on Cumberland river, a southwest course until it strikes the range that divides the waters of Cumberland from those of Duck river, forty miles above Nashville. This line, he said, went through the lands of the officers and soldiers of Virginia, a considerable portion of which fell in the Indian territory. By the same treaty, a very considerable part of the Holstein district of Tennessee was also ceded to the Indians—a part, too, that had been settled for years—such was the ignorance of the men who made the treaty of the geography of the country.

The Legislature of Tennessee and the suffering people remonstrated to Congress, and President Adams ordered a treaty to be held, by which the

Indian title was extinguished, and the people quieted in their possessions. No representation has ever been made to Congress in relation to the military lands ceded away by this treaty. The United States, he considered, were bound to extinguish the Indian title to the lands before-mentioned. It was easy to ascertain the number of acres thus ceded away. Major William Croghan was the surveyor for the Virginia State troops. From his office a report could be procured, with little expense, which would show how much land belonging to the Virginia State troops was ceded by the Holstein treaty. Colonel R. Anderson was agent and Surveyor General for the Virginia troops on Continental Establishment. From him a report could be easily procured, which would show how much of that land was ceded to the Indians. He therefore presented the following resolution, viz:

"*Resolved*, That the committee appointed on the 27th ultimo be, and they are hereby, instructed to digest some plan by which it can be ascertained how much surveyed and patented land, belonging to the officers and soldiers of Virginia, on State and Continental Establishment, is ceded to the Cherokee Indians by the treaty of Holstein held on the 2d of July, 1791."

This resolution was immediately taken up and agreed to.

DEBTS DUE THE UNITED STATES.

Mr. DAVIS offered a resolution for instructing the Committee of Ways and Means to inquire into the expediency of suspending, for a limited time, the collection of all debts or duties due the United States from the citizens of Tennessee, Ohio, Kentucky, and the Indiana and Mississippi Territories.

Mr. D. said, as the Government had lately passed a law suspending the payment of duties due by the citizens of Portsmouth, in consequence of a fire at that place, he thought the citizens of the Western country, from the peculiar situation in which they were placed, had an equal claim on the indulgence of Congress. The produce on hand was the means with which they had expected to pay debts due the United States. Many citizens in that country were indebted to the United States. If they were pushed by the Government while the port of New Orleans remained shut, and prosecuted for debts which they were unable to pay, from an inability to sell their produce, great embarrassment and uneasiness would be produced. On the other hand, if an indulgence should be extended until their ports were opened, the existing debts could be secured by counter-securities, under the direction of the Supervisor, or such other officer as Congress may authorize, by which the ultimate payment will be effected. He concluded by saying he was persuaded the United States could better afford to lay out of these moneys, than the citizens of that country could afford, under their present circumstances, to pay them.

The House immediately took up the resolution referred to, and agreed to it—ayes 58.

THE MINT.

Mr. MITCHILL, who had been appointed chairman of the committee on the Mint Establishment, in the place of Mr. DENNIS, (who had requested to be excused,) made an application to the House to report by *bill*. As he knew a diversity of opinion existed on the subject, and there had been some discussion already about it, he had brought the proposition before the House in such a form as to take their sense upon it. If there was a majority against the existence of the Mint, they would now have it in their power to show it by voting against the present motion. If there was, on the other hand, a majority in favor of the domestic coinage, it must be shown by granting leave to report a bill. That the House might the better comprehend his meaning, he would be a little more particular. The act concerning the Mint, providing for its continuance at Philadelphia, passed in March, 1801, would expire on the 4th of March, 1803. That day would soon arrive and it was desirable to have something done speedily. Unless provision was made by law, the Mint could not continue at Philadelphia—it must be moved to Washington. Money would be necessary for that removal. The Government now owned both real and personal estate in Philadelphia. If not occupied and employed there, legal regulation must be made for the sale of it. On the other hand, if it should be permitted to the committee to report, he was instructed to present a bill for continuing in operation the Mint Establishment in Philadelphia. By this means, the inconvenience and expense of breaking up this manufactory of money and moving it to Washington would be avoided, and the Mint would be continued at work at very little more than the ordinary appropriations. He wished this question had been settled by the House. The committee had been equally divided, and his casting vote had decided in favor of making the present application. In the present want of copper coin and small silver for change, he did not choose to take the responsibility upon himself of suffering the Mint to stop for the want of Legislative consideration and aid. The House ought to decide upon the propriety of the general question of discontinuance. He would however mention that, if leave was granted, it was his intention to report a further continuance of the existing law, and an appropriation of five hundred dollars, which the Director had declared to be necessary for purchasing horses and making repairs to the machinery.

Mr. DAWSON spoke against giving leave to the committee to report by bill; on which the House divided—ayes 45, noes 32.

FRENCH SPOLIATIONS.

Mr. MITCHILL called up his resolution respecting French depredations, as follows:

"*Resolved*, That a committee be appointed to inquire by what means the value or amount of property taken from citizens of the United States by the French during the late war in Europe can be best ascertained, and the several sorts of captures distinguished and classed, and report thereon to this House, to the end that indemnification be made."

Mr. BAYARD offered an amendment, which was agreed to, striking out the latter part of the resolution, and instructing the committee to report

their opinion whether indemnification shall be made.

After a very desultory debate on referring the resolution to a Committee of the Whole, or to a select committee, and the rejection of a motion of reference to a Committee of the Whole, the question was taken on the resolution as amended, which was determined in the negative—ayes 34, noes 39.

The House adjourned.

MONDAY, January 31.

Another member, to wit: JOHN FOWLER, from Kentucky, appeared, and took his seat in the House.

An engrossed bill for the relief of William Ray and John Follawell was read the third time, and passed.

An engrossed bill in addition to an act, entitled "An act fixing the Military Peace Establishment of the United States," was read the third time and passed.

An engrossed bill for the relief of the proprietors of the Salem turnpike road, in Massachusetts, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act authorizing the sale of a piece of land, parcel of the navy yard belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem Turnpike Road and Chelsea Bridge Corporation."

The SPEAKER laid before the House a letter from the Secretary of the Navy, respecting the petition of Thomas Shubrick, of the State of South Carolina, referred to him by order of the House, on the twenty-fourth ultimo, stating that he has carefully examined all the papers in the Department which have any relation to the subject, but has not been able to find any documents that would enable him to form a correct opinion; and that to obtain such documents would necessarily require an extensive correspondence, of considerable duration, with the agents at Charleston and others.

The said letter was read, and ordered to lie on the table.

The SPEAKER laid before the House a report from the Secretary of War, on the subject-matter of the seventh and last clause of an address to this House from the citizens of Washington county, in the Mississippi Territory, referred to him by order of the House, on the twenty-fifth instant; which was read, and ordered to be referred to the committee appointed on so much of the Message from the President of the United States, of the fifteenth ultimo, "as relates to our concerns with the Indian tribes, and the establishment of a new settlement;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. BACON, from the Committee of Elections, to whom was referred, on the twenty-fourth instant, a motion respecting the right of PAUL FEARING, the Delegate from the Territory Northwest of the river Ohio, to retain his seat in this House, made a report thereon as follows:

That the committee have, according to order, examined the matter thereof, and report the following resolution as their opinion thereon:

"*Resolved*, That Paul Fearing, the Delegate from the Territory Northwest of the river Ohio, is still entitled to a seat in this House."

[*Note.*—Mr. FEARING had taken his seat at the commencement of the session, and the above report was never further acted on.]

Mr. DAWSON, from the committee on so much of the President's Message, as relates to Indian concerns, made a report containing four resolutions, viz:

1. For the continuance of the act for the establishment of Indian trading houses.

2. For the appropriation of ten thousand dollars to obtain further cessions of land from the Indians.

3. For the appropriation of two thousand dollars to purchase articles necessary for conducting salt works on the Wabash.

4. For opening an office for the sale of lands in the Mississippi Territory, to which the Indian title has been, or shall be, extinguished.

Referred to a Committee of the Whole, and made the order for Wednesday.

The SPEAKER laid before the House a letter addressed to him from John Hargrove, Minister of the New Jerusalem Church, in the city of Baltimore, and State of Maryland, accompanied with a certain number of copies of a sermon, which he delivered in the Representatives' Chamber, at the City of Washington, on Sunday, the twenty-sixth ultimo, and now transmitted by him, for the use of the members of both Houses of Congress.

The said letter was read: Whereupon,

Ordered, That the copies of the sermon transmitted therewith be distributed among the members, and that the Speaker be requested to acknowledge the receipt of the same.

The House went into a Committee of the Whole on the bill for the encouragement of learning, and the promotion of useful arts. After a discussion of several hours duration, on various amendments offered, the Committee rose, and the House recommitted the bill to a select committee.

FRENCH SPOLIATIONS.

Mr. BAYARD observed that a resolution offered some days since by a gentleman from New York, (Mr. MITCHILL,) of considerable national, and of great individual importance to a large description of citizens, appeared to him to have been disagreed to more from considerations of form than substance; as the merits of the subject were not, on that occasion, brought into discussion. In order to meet the ideas of gentlemen who desired, in the first instance, to decide the principle whether indemnity ought to be made to our merchants, he submitted the following resolution:

Resolved, That provision ought to be made by law, to indemnify the citizens of the United States who, in carrying on a lawful trade to foreign parts, suffered losses by the seizure of their property made by unauthorized French cruisers, or by any French cruiser, without sufficient cause, in violation of the rights of American commerce, during the late war between Great Britain and the French Republic, and whose claims for indemnity against the said Republic were renounced by the United States, by their acceptance of the ratification of the treaty lately made with France.

Mr BAYARD moved the taking up the resolution for consideration; on which the House divided—yeas 39 nays 45. Resolution ordered to lie on the table.

About 3 o'clock the galleries were cleared, and the House remained with closed doors till 4 o'clock, when they adjourned

TUESDAY, February 1.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire whether any, and what, alterations ought to be made in the laws establishing the compensations of the officers of the customs; and to report by bill or otherwise.

Mr. HUGER moved that the House do come to the following resolution:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States; which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the Constitution, to wit:

That the State Legislatures shall, from time to time, divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President and Vice President in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature, and that the districts so to be constituted shall consist, as nearly as may be, of contiguous territory and of equal proportion of population, except where there may be any detached portion of the territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unalterable until a new census of the United States shall be taken.

Ordered, That the said motion be referred to the Committee of the Whole House on the state of the Union.

Mr. NEWTON, one of the members from the State of Virginia, presented to the House the report of a committee of the Norfolk Chamber of Commerce, in the said State, as agreed to by the said Chamber of Commerce, on the 24th ultimo, stating that, in their opinion, "the remission of all discriminating duties on imports and tonnage towards the vessels of such European nations as conform to similar regulations, is calculated to unshackle commerce, leave industry to its proper impulse, and afford to this country that equal participation in navigation which may profit by its own enterprise;" that it will be proper to deny to the vessels of European nations holding or claiming the possession of any of the West India islands, the importation or exportation to and from the United States, of all such articles as are in those islands prohibited from being imported in American bottoms; in any other event, they consider a remission of the discriminating duties, as it respects those islands, highly objectionable.

The said report was read, and ordered to be referred to the Committee of the Whole House to whom was committed, on the 10th ultimo, a report of the Committee of Commerce and Manufactures on so much of the Message from the President of the United States, of the 15th of December last, "as relates to discriminating and countervailing duties, and the act of the British Parliament on that subject."

Mr. MITCHILL, from the committee appointed, presented a bill to prolong the continuance of the Mint at Philadelphia; which was read twice and committed to a Committee of the whole House to-morrow.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting a statement of the quantity of fish exported from the United States; the amount of bounties and allowances paid; also, the tonnage of vessels employed in the cod and whale fisheries, and the duties accruing thereon, for the years one thousand seven hundred and ninety-one to one thousand eight hundred, inclusive, in pursuance of a resolution of this House, of the 24th ultimo; which were read, and ordered to be referred to the committee appointed on so much of the Message from the President of the United States, of the 15th of December last, "as relates to the fostering of the fisheries of the United States."

The House went into Committee of the Whole on the report of the Committee of Claims on the petition of Moses White.

The report is favorable to the prayer of the petition, which prays compensation as aid-de-camp to a brigadier general, by brevet, during the Revolutionary war.

After a debate of considerable length, the report was agreed to—yeas 69.

The Committee rose, and the House immediately concurred with them, and ordered a bill to be brought in.

The House went into Committee of the Whole on the bill supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen. After making several amendments to the bill, the Committee reported the bill with sundry amendments; which were ordered to lie on the table.

Mr. S. SMITH observed that, in order to allow the fullest time to obtain information of the public sentiment, he should not call up the report of the Committee of Commerce and Manufactures on discriminating duties until the second Monday in February.

JOHN HOLLAND.

The House went into a Committee of the Whole on the report of the Committee of Commerce and Manufactures on the petition of John Holland, jun.

The report is favorable to the prayer of the petition, and allows a reduction of duties on goods

damaged by fire while in the hands of the custom-house officers, proportioned to the injury sustained.

An agreement to the report was supported by Messrs. S. Smith, Griswold, Eustis, John C. Smith, Bacon, and Jones, and opposed by Mr. Randolph.

On agreeing to the report, the Committee divided—yeas 62. Carried.

The Committee rose and reported their agreement to the report of the Committee of Manufactures.

The House immediately took up the report, concurred therewith, and directed a bill to be brought in.

Wednesday, February 2.

Mr. J. C. Smith, from the Committee of Claims, presented a bill for the relief of Moses White; which was read twice and committed to a Committee of the Whole House to-morrow.

Mr. S. Smith, from the Committee of Commerce and Manufactures, presented a bill for the relief of John Holland, jun.; which was read twice and committed to a Committee of the Whole House to-morrow.

Resolved, That the committee to whom were referred the memorial of sundry citizens of the city of Washington, and the memorial and remonstrance of the inhabitants of the town of Alexandria, in the District of Columbia, on the 28th day of January, be directed to inquire whether any, and, if any what, alterations or amendments may be necessary in the existing government and laws of the District of Columbia; and that they be authorized to report by bill, or otherwise.

The House proceeded to consider the amendments reported, yesterday, from the Committee of the Whole, to the bill supplementary to the "act concerning Consuls and Vice Consuls," and for the further protection of American seamen, which lay on the table; and the same being twice read, were severally agreed to, except the third amendment, which was, on the question put thereupon, disagreed to by the House.

The said bill being then further amended at the Clerk's table, was, together with the amendments, agreed to, ordered to be engrossed, and read the third time to-morrow.

On motion, it was

Ordered, That the report of the committee on the memorials and petitions of sundry citizens of the United States, and resident merchants therein, praying relief in the case of depredations committed on their vessels and cargoes, while in pursuit of lawful commerce, by the cruisers of the French Republic, during the late European war, made to this House on the twenty-second of April last, be referred to the Committee of the whole House last appointed.

Mr. Randolph, from the committee to whom was referred, on the twenty-third of December last, a letter from Edward Tiffin, President of the Convention of Ohio, and a letter from Thomas Worthington, Special Agent of the said State, enclosing a copy of the constitution thereof, together with sundry propositions in addition to, and in modification of, those contained in the act of Congress, passed on the thirtieth day of April last, entitled "An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio, to form a Constitution and a State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," made a report thereon: which was read, and ordered to be referred to a Committee of the whole House to-morrow.

The House went into Committee of the Whole on the bill making provision for persons who have received known wounds in the Revolutionary war.

A conversation took place between Messrs. Griswold, Helms, Eustis, Macon, and Elmer, on the adequacy of the provisions of the bill to the cases for which it was provided; when, on motion of Mr. Eustis, the Committee rose and reported progress; the House refused them leave to sit again, and recommitted the bill to the select committee that introduced it.

FRENCH SPOLIATIONS.

Mr. Hill called for the order of the day on the bill to prohibit the importation of certain persons, whose admission is prohibited by laws of the States.

Mr. Bayard requested the gentleman to waive his call for one moment, to enable the House to take his resolution respecting French spoliations, laid some days since on the table, into consideration, for the sole purpose of giving it a proper disposition. His object, some days since, when he called it up, was to have it referred to a Committee of the Whole House, not to urge its discussion on that day. His object was now the same, and his sole wish was that it should be referred, and a day named for its consideration. As, however, said Mr. B., it may be voted down now, as it then was, without any reasons being assigned, gentlemen will excuse me for calling the yeas and nays. I hope gentlemen will so far at least comply with the forms of justice as to suffer the case to be considered, whatever may be their ultimate decision upon it.

Mr. Randolph said he would ask the gentleman from Delaware, whether he had seen any indisposition in that House to discuss the subject? For his part he had seen none, either in the House or in any individual member. He felt no objection to take up the subject at any time, and to discuss, or rather to hear the gentleman from Delaware discuss it. He hoped, therefore, the gentleman would not persist in taking up the time of the House by calling the yeas and nays.

Mr. Bayard said he had seen an indisposition in the House to discuss the subject; and the reason why the gentleman from Virginia had not seen it was, that he was not in his place on the day he had before moved that the resolution should be taken up. Had he been in his place, he would have seen that a motion to take it into consideration had been rejected without a single reason being assigned. But under the assurance of the gentleman, that there was no aversion to consider the subject, he would waive his call for the yeas and nays.

Mr. Randolph said he spoke only for himself.

Mr. Bayard replied that he then persisted in the call.

The yeas and nays were then taken on taking up the resolution; and were—yeas 65, nays 26, as follows:

Yeas—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, Walter Bowie, Richard Brent, Robert Brown, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Daniel Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, David Holmes, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jr., Elias Perkins, Thomas Plater, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, Henry Southard, John Stanley, John Stewart, John Stratton, John Taliaferro, jun., Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, Thomas Tillinghast, Philip R. Thompson, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

Nays—John Archer, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, Michael Leib, David Meriwether, James Mott, John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Richard Stanford, Joseph Stanton, Abram Trigg, Philip Van Cortlandt, Robert Williams, and Richard Winn.

The resolution was referred to the Committee of the Whole without opposition.

When Mr. Bayard moved that it be made the order for Monday next.

Mr. R. Williams moved the 3d of March.

Mr. Gregg thought it was best to take the resolution up fairly and decide it at once.

Mr. R. Williams said he was willing to meet it fairly, but he thought one day sufficient for the investigation.

Mr. Huger had no hesitation in saying this was a question of great moment, and one well worthy of the deliberate attention of the House. To be sure, if there was a great press of important business, we would acquiesce in its postponement. But this was not the case. There was no business before the House of pressing importance. He was in favor of a fair and full investigation of the subject. The motion to make it the order of the day for the last day of the session, when the press of other business would absolutely preclude any attention to it, was tantamount to a refusal of all investigation whatever. Unless the motion was withdrawn, he would, therefore, call for the yeas and nays.

Mr. Bacon said his mind preponderated against the claim. But to him it appeared that a postponement to such a day, would be the same as declaring the claim should not be attended to. If the claim should be sustained by the vote of the House, it would surely require more than one day to make the necessary arrangements for carrying it into the shape of a law.

Mr. Bayard.—No doubt the observation of the gentleman from Massachusetts is correct, that a postponement to the last day of the session is, in effect, precisely the same as to reject the claim altogether. Gentlemen ought to consider that our sole object is to bring into discussion the claims of our citizens. I do not undertake to express any opinion of the validity of the claims. No member on the floor is less personally or locally interested than I am. But I do think that no claim whatever, of the meanest nature, should be decided upon until the party is heard. Many of our citizens, who have incurred losses, suppose they have an equitable claim on the Government. The claims have been announced in the public papers, and in petitions on the files of this House. Is it then for this House to say they will not attend to the petitions of our citizens? For what do we ask? Simply for a discussion, and that a decision shall not be made until those who consider themselves aggrieved shall be heard. Are gentlemen unwilling to trust themselves, lest their own consciences should compel them to an act of justice? But I will abstain from going into the merits of the subject. I will only repeat that there is no petition, however worthless, but the House pays it a decent respect, by referring it, and allowing time for its examination. Will they then, in a case of such magnitude as this, where there are so many claims, so variously characterized, will they refuse this ordinary measure of respect? I will expect a different decision from the justice and candor of the House.

Mr. R. Williams said he would withdraw his motion, and move that the subject be made the order of the day, for the first day of March, which would allow sufficient time for a full and fair investigation.

Mr. Smilie did not know what the gentleman from Delaware meant, when he said we were not willing to trust our consciences. He hoped every gentleman had as good a conscience as the gentleman himself. For his own part, if there was time to discuss this subject, he would be willing to hear it discussed, and it would then appear who brought the merchants into their misfortunes, and who occasioned their losses. But, as he believed there was not now time, he thought it best to postpone the consideration of the subject until the next session, when it would fully appear who had been the friends, and who the enemies of our merchants. In the mean time he would only add that he would never be one of those who would consent to tax the agricultural interests of the country to pay the merchants.

Mr. Rutledge observed that it was important that our merchants should be extricated from their present embarrasments. They wish to know the disposition of Congress on their claims. This cannot be done if the present motion obtain; for

the subject, in that event, will be disposed of this session precisely as it was the last. It was then referred, at an early period, to a committee with whom it slept until near the close of the session, when a report, merely of facts, was made. The report was then made at a late day of the session, and the House never took it up. It is now proposed to be postponed until a very late day of this session, and it will then not be taken up.

Whatever the opinions of some gentlemen may be, it is a fact that many honorable and unfortunate merchants are now struggling with their misfortunes, produced by French spoliations, whom the hope of relief from Government has saved from ruin. They wish to know their fate, and no longer to be kept in suspense. Let their claims then be decided at once; and if gentlemen are ready to say they shall not be indemnified for losses, which, but for the renunciation of the treaty, they would have been indemnified for by France, let them say so. It is known that France would have indemnified for these losses, but for the treaty. The most respectable letters have been received from France to this effect; and Mr. R. said the fact was within his own personal knowledge. Under these circumstances the claims ought to be taken up and decided upon speedily. If the gentleman was serious in naming so late a day, the House must be troubled with the calling of the yeas and nays; as it was impossible to expect that anything that would be effectual could be done after the first of March, as all the measures adopted by the House required the concurrence of the Senate and the details of a law.

Mr. R. Williams said he never permitted himself to propose anything to that House in which he was not serious. He was serious in his belief that if his motion should be adopted there would be full time allowed for an investigation of the subject. He was in favor of the distant day he had named, inasmuch as he was convinced that it would protect the House from the unnecessary consumption of a great deal of time, and which, if taken up now, would interfere with the transaction of much important business. Full time would still be allowed to decide the question of indemnity. He did not know that more was required this session by anybody. He had not heard any member say that a law would be necessary this session. All that was required was a decision preparatory to a law. In his opinion this was an improper time to discuss the merits of the subject; he should, therefore, make no reply to observations of this nature, which, he thought, had been improperly offered at this stage of the business.

Mr. Bayard said he had not fallen into the same mistake with his honorable friend from South Carolina, in considering the gentleman from North Carolina in earnest in the motion he had made. He had not thought him serious, as the day named by him was so late as not to allow time sufficient for a fair discussion. The gentleman was not a new member, and his experience could tell him how imperiously the House were occupied, during the last two or three days of its sitting, in detail indispensably necessary to complete business already begun. He had seldom known the close of a session, when it had not been necessary to set on Sunday or till midnight. How then could it be expected that, at such a period, even the semblance of justice could be done to the subject? Whereas, if it were earlier attended to, they might consult their own convenience. If it happened, as had heretofore been the case, that they had more time than they knew what to do with, a much earlier day could be fixed on. But should the subject be postponed till the first day of March, it might be said, if the House should not then go into Committee on it, that a day so late had been named with a view of deferring the subject to the next session. While, if the House, actuated by magnanimity and justice, shall go into its consideration, it would put it in the power of a minority, or even a few members, to prevent the transaction of other important business. Mr. B. said he would not pledge himself; but he rather thought the subject could be discussed in the course of one day.

The gentleman from Pennsylvania had mistaken him on the point of conscience. This was not astonishing, as that gentleman often made mistakes. He had said nothing about the conscience of that gentleman, as he knew nothing about it. He was asked whether gentlemen were unwilling to trust themselves, lest their own consciences should compel them to do an act of justice. This was all he had said, and it had not been said with any view to impeach the conscience of any gentleman on the subject.

Mr. Bacon hoped this business would be so conducted as to show a disposition on the part of the House to meet these claims on honorable and fair principles, and so as to manifest no indisposition to a fair and full discussion. It was undoubtedly a serious question. There were a number of respectable characters interested in the decision—respectable, because citizens of the United States. He hoped their claims would be treated with all the candor and liberality they had a right to expect. He apprehended that two or three days were not sufficient, amidst the crowd of other business at the end of a session, for a fair and full examination. He should, therefore, vote against the motion.

Mr. Dawson hoped the motion would prevail. A resolution in a great measure similar to that now proposed by the gentleman from Delaware had been offered some time since by a gentleman from New York. It was moved to refer that motion to a Committee of the Whole and negatived; afterwards a motion was made to refer it to a select committee, which was also negatived. He did conclude, from these decisions, that a majority of the House were not disposed to discuss the merits of the question this session. He believed this was still the sentiment of the majority, who considered the subject as not yet ripe for decision. He, therefore, thought the taking it up at an early day would only serve to waste time.

Mr. Gregg said, that so far as his mind was made up, he was against the claim; but he was, notwithstanding, in favor of a full discussion of it. The subject had been attended to. The committee appointed last session had gone into a laborious investigation of it; and had made a report containing very important statements and facts. He wished the consideration to be so far delayed, as to allow time for the printing of this report. He was against a postponement to the first day of March; but thought the second Monday in February would answer.

Mr. Thatcher said he felt gratified at the House manifesting more liberality in giving an opportunity now to discuss the subject than had been manifested before. Attempts made during the last session to discuss the subject had ended in nothing. This session, when the gentleman from New York (Mr. Mitchill) had offered a resolution, it had been negatived. The motion of the gentleman from Delaware (Mr. Bayard) to take up the present resolution had also been negatived. But now a considerable majority were for taking it into consideration. He was, however, surprised at the motions for making the consideration of the subject the order of the day for the first and third of March, as they would in effect frustrate all discussion, from the press of other business. The subject was of infinite importance; millions depend upon the decision. The merchants were anxious to know the result. A state of suspense was, of all states, most painful to them. Why then put off the decision of a claim in his opinion just, and to which the House ought not to shut their ears?

Mr. Eustis said, whatever may have been the intention of the mover to postpone to the first of March, and of the intentions of gentlemen on this or any other occasion, he had no disposition to inquire—the tendency of the postponement will be to preclude a deliberate discussion. Those more conversant with the course of business knew, better than he did, the pressure of business which necessarily crowded the last days of a session; and he was more averse to the motion from the avowal of an honorable gentleman from Virginia. (Mr. Dawson.) who had risen to support the motion, and avowed his principal reason to be a conviction that the present Congress ought not to take any decisive measures on the subject of the claims. He differed widely from that gentleman. Independently of the magnitude and extent of these claims, and of the situation of those concerned, the House were called upon by a sense of public duty to bestow upon them a cool and deliberate consideration, which on ordinary occasions was extended to applications of an individual and inferior nature. The common course of business brings this subject to view. It will be recollected that, at the last session of Congress, the memorials of the claimants were referred to the consideration of a select committee. That committee reported a state of facts, and closed their report with the following words:

"Upon the whole view of the case, the committee submit it to the House, to determine whether the Government of the United States are in any respect bound to indemnify the memorialists; and whether there be any ground for discrimination between the cases of losses sustained before the acts of the 28th of May, 1798, the 7th of July, 1798, and the 9th of July, 1798; and cases of losses sustained after those periods."

From the late day of the session in which this report was made, no order was taken on it, no discussion was had. By this part of the report facts are offered for consideration; data are furnished; a discrimination, in point of time, and of course in point of merit, is made; and the final determination is submitted to the House.

A sense of justice to the memorialists and a strong sense of public duty require that we meet the question and come to a decision. Those who appear already to have judged the question may possibly see in the statements which have been made and the arguments by which the claim will be supported, reasons to alter their opinions. In any event, and especially after a discussion, in case of an adherence to those opinions they appear already to have formed, if they fail to produce conviction on others, the reasons on which they ground those opinions may be useful to the House, and will accompany and justify the vote they shall finally give. When the question shall be decided (and I hope it will be in favor of an earlier day than that moved for) I shall move that the report of the committee of the last Winter shall be referred to the Committee of the Whole, together with the resolution under consideration. It will be also proper at that time to give a second reading to the memorials which have been presented—the grounds on which they rest their claim will be brought again into view, and by giving them a free discussion and consideration we shall be better enabled to come to a just decision. These claims, like conscience, are of no party; the misfortune has been indiscriminate, and it is to be expected the final determination will be just.

Mr. Holland advocated a full discussion, and the assignment of an early day.

When the yeas and nays were taken, on making it the order of the day for the first of March, and it was decided in the negative—yeas 18, nays 74, as follows:

Yeas—William Butler, Matthew Clay, John Clopton, John Condit, John Dawson, Edwin Gray, John A. Hanna, Joseph Heister, William Helms, Michael Leib, David Meriwether, John Smilie, Israel Smith, John Smith, of New York, Richard Stanford, Joseph Stanton, Philip Van Cortlandt, and Robert Williams.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Thomas A. Bayard, Phanuel Bishop, Thomas Boude, Richard Brent, Robert Brown, Samuel J. Cabell, John Campbell, Thomas Claiborne, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, Daniel Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Thomas Moore, Lewis R. Morris, Thomas Morris, James Mott, Anthony New, Thomas Newton, jun., Elias Perkins, Thomas Plater, John Randolph, jun., Nathan Read, John Rutledge, William Shepard, John Cotton Smith,

John Smith, of Virginia, Josiah Smith, John Stanley, John Stewart, John Stratton, John Taliaferro, jun., Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, Richard Winn, Henry Woods, and Thomas Wynns.

On motion of Mr. BAYARD it was made the order for the second Monday in February.

IMPORTATION OF CERTAIN PERSONS.

The House went into a Committee of the Whole on the bill to prevent the importation of certain persons prohibited by the States.

The bill originated in a petition from the citizens of Wilmington, North Carolina, and is contemplated to guard, by the imposition of heavy penalties, &c., against the introduction into the United States of brigands from the French West India islands.

The Committee progressed in the consideration of the bill, reported progress, and obtained leave to sit again.

THURSDAY, February 3.

The remonstrances and the petitions of sundry inhabitants of the States of Pennsylvania and Virginia, west of the Alleghany Mountain, were presented to the House and read, respectively praying that Congress will adopt such measures as in their wisdom may appear proper and effectual, to secure to the petitioners and other citizens of the United States, the free navigation of the river Mississippi, of which they have been lately deprived by the shutting of the port of New Orleans, in virtue of a proclamation issued by the Spanish Intendant of the said port, without having an equivalent establishment assigned to them on the said river.

Ordered, That the said remonstrances and petitions be referred to the Committee of the whole House on the state of the Union.

A petition of Amey Dardin, of the county of Mecklenburg, in the State of Virginia, widow and relict of David Dardin, deceased, was presented to the House and read, praying compensation for the value of a stud horse, called Romulus, the property of the deceased, which was impressed into the service of the Southern army under the command of Major General Greene, by order of James Gunn, captain in a regiment of Continental cavalry, some time in the month of July, one thousand seven hundred and eighty-one.—Referred to the Committee of Claims.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill to provide for the granting of clearances to ships or vessels of the United States, lying in the river Mississippi, south of the Southern boundary of the United States, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes; which was read twice and committed to a Committee of the whole House on Saturday next.

Mr. SAMUEL SMITH, from the same committee, presented a bill supplementary to the act, entitled "An act providing passports for the ships and vessels of the United States;" which was read twice and committed to a Committee of the whole House on Saturday next.

An engrossed bill supplementary to the "Act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read the third time, and passed.

A Message was received from the President of the United States, by Mr. LEWIS, his Secretary.

The House again resolved itself into a Committee of the Whole on the bill to prevent the importation of certain persons, whose admission is prohibited by certain laws of the State governments; and, after some time spent therein, the Committee rose and reported several amendments thereto.

The House then proceeded to consider the said amendments at the Clerk's table; and having made some progress therein, adjourned.

FRIDAY, February 4.

A Message yesterday received from the PRESIDENT OF THE UNITED STATES, was read, as follows:

Gentlemen of the House of Representatives:

The enclosed letter and affidavits exhibiting matter of complaint against John Pickering, district judge of New Hampshire, which is not within Executive cognizance, I transmit them to the House of Representatives, to whom the Constitution has confided a power of instituting proceedings of redress, if they shall be of opinion that the case calls for them.

FEB. 3, 1803. TH. JEFFERSON.

The said Message was read, and, together with the papers transmitted therewith, referred to Mr. NICHOLSON, Mr. BAYARD, Mr. RANDOLPH, Mr. TENNEY, and Mr. ELMENDORF; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The SPEAKER laid before the House a letter from the Secretary of War, accompanying his report on the claims to lands for military services; also, on claims for duplicates of warrants issued from the Land Office of Virginia, and plats and certificates of surveys founded on such warrants, suggested to have been lost or destroyed, made agreeably to the second section of an act of Congress, passed the twenty-sixth day of April, one thousand eight hundred and two, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brothren for propagating the Gospel among the Heathen;" which were read, and ordered to be be referred to the committee appointed, on the twenty-ninth of December last, "to inquire into the propriety of granting further time to proprietors or holders of military land warrants to obtain and locate the same."

IMPORTATION OF CERTAIN PERSONS.

The House took up the amendments of the Committee of the Whole to the bill to prevent the importation of certain persons, &c.

Mr. HILL, in order to accommodate the bill to

some gentlemen who had expressed their opinions, moved an amendment withholding its operation until the first day of May next.

Mr. LOWNDES spoke against this amendment.

Mr. HILL withdrew it.

Mr. WADSWORTH renewed it.

The amendment was supported by Messrs. THATCHER, DENNIS, S. SMITH, ELMENDORF, HASTINGS, R. WILLIAMS and BACON, and opposed by Messrs. RUTLEDGE, LOWNDES, CLAIBORNE, HOLLAND and RANDOLPH; and on the question being taken, was lost—yeas 36, nays 40.

Mr. R. WILLIAMS then moved to limit its operation from the first day of April. Carried—yeas 40, nays 37.

After a short debate, the bill was ordered to be engrossed for a third reading on Monday—yeas 62, nays 20, as follows:

NAYS—Willis Alston, John Archer, James A. Bayard, Thomas Boude, Walter Bowie, William Butler, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, Thomas T. Davis, John Dawson, John Dennis, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, John Fowler, Edwin Gray, Daniel Heister, Joseph Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, William Hoge, James Holland, David Holmes, Benjamin Huger, George Jackson, William Jones, Michael Leib, Thomas Lowndes, David Meriwether, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Randolph, jun., John Rutledge, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, John Stanley John Stewart, John Stratton, John Taliaferro, jun., Samuel Tenney, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

NAYS—John Bacon, Phanuel Bishop, Robert Brown, John Condit, Richard Cutts, John Davenport, Calvin Goddard, Andrew Gregg, Roger Griswold, Seth Hastings, Ebenezer Mattoon, James Mott, Elias Perkins, Nathan Read, Israel Smith, Josiah Smith, Henry Southard, Joseph Stanton, David Thomas, and Philip Van Cortlandt.

Ordered, That the said bill be read the third time on Monday next.

CLAIMS OF GEORGIA.

The Speaker laid before the House a letter from the Secretary of War, accompanied with his report and sundry documents respecting claims against the United States for services of the militia of the State of Georgia, in pursuance of a resolution of this House, of the third of April last.

he report is as follows:

The Secretary of War respectfully reports to the House of Representatives of the United States, that, in obedience to their resolution of the 3d of April, 1802, relative to the claims of the State of Georgia, for militia services, the Secretary has taken measures to obtain all such documents as relate to the subject, some of which were not received until the month of January past.

In the course of an examination of the various documents, the following facts appear, which, with the circumstances attending them, are considered as affording the best view of the subject, of which it is susceptible at this distant period of time. The muster and pay-rolls received from Lieut. Colonel Constant Freeman, who acted as agent of the War Department, in Georgia, at the time the services were principally performed, are offered as evidence of services actually performed by the militia of that State, for which compensation is claimed, amounting in the whole to the sum of one hundred and forty-two thousand five hundred and thirty-five dollars and twenty-nine cents; of which sum thirteen thousand one hundred and fifty-nine dollars and sixty-three cents appear, by the rolls, to be due to such corps as were specially authorized by the Executive of the United States, for services subsequent to 1793; the remaining sum of one hundred and twenty-nine thousand three hundred and seventy-five dollars and sixty-six cents, is for services which were not considered by the Executive of the United States, nor by the agent of the War Department, as fully authorized by the General Government, and for which no payments have been made.

Sundry letters from the Secretary of War are offered as the principal grounds on which a decision may be made relative to the latter claims. On the 27th of October, 1792, the Secretary of War wrote to the Governor of Georgia, and gave him discretionary power as to the force he should think proper to employ, in case sufficient evidence appeared of the hostile intentions of the Creeks against the frontiers of the State.

On the 30th of May, 1793, the Secretary wrote to the Governor and authorized him to raise and organize one hundred horse and one hundred militia foot, to be armed and paid by the United States; which force, in addition to the regular troops then stationed in Georgia, and a suitable number of spies and small scouts, was considered as competent to the defence of the frontiers; and directed that whatever force might be employed, should be regularly mustered.

On the 10th of June, 1793, the Secretary wrote again to the Governor, and informed him that if the State was invaded, or in imminent danger of being invaded, the measures which he (the Governor) had taken, might be considered as indispensable; that he was the judge of the degree and duration of the danger, and would proportion the defence to exigencies; that the President had the fullest confidence that, when the danger which had induced the Governor to call out such large bodies of militia should subside, he would reduce the troops to the existing state of things. A letter, of the same date as the last, was written to the Governor of South Carolina, informing him that the President of the United States having received authentic information of the unprovoked and cruel outrages of the Creeks on the frontiers of Georgia, requested that he would, in case of a serious invasion by the Indians, and on the request of the Governor of Georgia, direct such parties of the militia of South Carolina to march to the assistance of Georgia, as the case might require, for the expense of which the United States would be responsible.

On the 19th of July, 1793, another letter from the Secretary of War to the Governor of Georgia, states, as no information had been received at the seat of Government of any late depredations of the Indians, and as there was reason to hope that they would be brought to a sense of their crimes and induced to give up some of the authors thereof, the directions given in the letter of the 30th of May, still ought to operate. Captain Constant Freeman is mentioned as having been appointed

agent for the War Department, who would regulate the issues of public property to the troops which might be in service.

On the 5th of September, 1793, a letter was written by the Secretary of War to Captain Constant Freeman, by which he was directed not to concur in any measures, at the expense of the United States, for invading the Creek country. And, on the 22d of February, 1794, another letter was written by the Secretary of War to the Governor of Georgia, from which it appears that the President of the United States had been induced to believe that a greater number of troops had been employed than was necessary; and the Governor was informed that the General Government would not, except in case of an actual invasion, be pledged for the expenses, if in future any number of troops should be employed, which exceeded the force that the President had previously authorized, viz: one hundred horse and one hundred foot. He is also informed that, if it was expected that the militia were to be paid by the United States, it would be necessary that returns, muster, and pay-rolls should be made and delivered to Capt. Freeman, the agent of the War Department, in order that the whole case might be submitted to Congress, as the only authority competent for deciding on what proportion of the expenses should be defrayed by the United States.

By a letter, of the date of the aforegoing, addressed by the Secretary of War to Mr. Habersham, Collector of the Customs in Georgia, who also had acted as an agent of the War Department, he is informed that the number of militia, which had been supplied in the State of Georgia at the expense of the United States, appeared by his representations to the War Department, to have greatly exceeded the number contemplated, and that one hundred horse and one hundred foot, in addition to the Continental troops, were considered as adequate to the protection of the frontiers against small parties of Indians, and that orders had been given for that number to the late Governor, dated the 30th of May, 1793, which number the President of the United States consented might be kept, upon certain conditions mentioned to the Governor. Mr. Habersham was then directed not to furnish supplies without particular orders from the proper department, to any greater number than one hundred horse and one hundred foot.

Copies of many other letters and extracts of letters are among the documents, which are not considered by the Secretary of sufficient importance to require particular notice.

From the preceding exhibition of facts, and from the other less important documents, and the circumstances connected with the subject, it appears that the actual services performed by the militia of the State of Georgia, in the course of the several years to which this inquiry is directed, for which payments had not been made, amount, in the whole, according to the rolls delivered to the agent of the War Department, and by him transmitted to that department, to one hundred and forty-two thousand five hundred and thirty-five dollars and twenty-nine cents. That such part of said services, as were performed under the immediate direction of the Executive of the United States, amounts to thirteen thousand one hundred and fifty-nine dollars and sixty-three cents; that from October, 1792, to May, 1793, the Governor was, by direction from the Executive of the United States, to employ such force as, in his opinion, should be necessary; that from the 30th of May to the 10th of June, there was a suspension of his discretionary authority, and on receiving the letter of the 10th of June, he was again authorized to act altogether at his own discretion, as to the number of troops he should employ; and, until he received the letter of the 19th of July, 1793, he was authorized by the Executive of the General Government to employ such force as he should judge necessary for defensive protection, and that, from the general tenor of the direction of the Executive of the United States, he probably considered the United States responsible for the expense. Whether the Governor exercised the power confided to him by the Executive of the General Government with sufficient caution, or not, must depend on mere opinion. When the situation of the State of Georgia at that period is considered, having a thinly inhabited frontier, of about four hundred miles in extent, bordering on numerous hostile and warlike Indian nations, and threatened with a general invasion from one of the most powerful, which was actually committing frequent depredations on the frontier inhabitants, it is not improbable but that the Governor might have been induced to believe that a greater number of men were necessary for the protection of the frontiers than would have been considered needful by persons remote from the scene of action. At the time when these services were performed, a hostile disposition pervaded the greater part of the Indian nations within the United States; a serious war then existed between the United States and the numerous tribes of Indians, in the country Northwest of the Ohio, and a predatory war was carried on between the Territory Southeast of the Ohio, near the State of Tennessee, and the Cherokees, the expenses of which were principally defrayed by the United States; troops were also kept in pay, at the expense of the United States, on the frontiers of South Carolina.

As it would be impracticable at this time to ascertain with precision what number of troops was really necessary to have been kept in service at different periods in the State of Georgia, and as the opinion of the Executive of the United States appears to have varied on the subject, in respect to the degree of danger with which that State was threatened, and as the suspension of the Governor's discretionary power between the 27th of October, 1792, and the receipt of the Secretary's letter of the 19th of July, 1793, was but of ten days' duration, it is considered, by the Secretary, that the services of the whole of the militia, called out by the Governor of Georgia, in the year 1793, do constitute a just claim upon the United States, for pay up to the time in which the said troops could have been disbanded, after the receipt of the said letter, of the 19th of July; which probably could not have been effected earlier than the last of September; and when it is considered that they were spread over an extensive country, it may be doubtful whether the necessary arrangement could have been made and carried into execution at so early a period.

Under a full view of all the circumstances relating to the subject, the Secretary respectfully submits to the consideration of Congress, whether justice would not require an admission of the claims for all services performed for defensive protection, in the year 1793, up to the first of October of the same year, for which regular pay and muster rolls have been received; and whether the admission of the claim for like services, for which muster and pay-rolls have been received, for the other three months of the year 1793, would not, under all

circumstances, do less injustice than would result from a rejection of that part of the claim? The services for which pay and muster rolls have been received up to the end of the year 1793, amount to ninety-five thousand nine hundred and seventy-one dollars and twenty-three cents, exclusive of the sum of thirteen thousand one hundred and fifty-nine dollars and sixty-three cents, due to the particular corps and spies, specially authorized subsequent to the year 1793.

What weight should, in this instance, be given to the provision in the Constitution "that no State shall make war unless in case of invasion, or of such imminent danger as will not admit of delay!" which is referred by the Secretary of War in his statement to the President of the United States, (as per document marked letter K,) and which the State of Georgia may consider as authorizing her claims, is submitted to the determination of Congress.

H. DEARBORN.

WAR DEPARTMENT, *Feb.* 3, 1803.

The report and documents were referred to Mr. EARLY, Mr. MATTOON, Mr. JONES, Mr. DENNIS, and Mr. TALIAFERRO, to consider and report thereon.

MONDAY, February 7.

A petition of sundry inhabitants of the county of Fairfield, in the State of Ohio, was presented to the House and read, praying revision and amendment of such acts or parts of acts heretofore passed by Congress, as relate to the terms of sale of lands, the property of the United States, within the said State; and that the petitioners and others who have purchased, or may hereafter purchase, the said lands, may not be liable to the payment of interest on the instalments due, or to become due thereon.

Ordered, That the said petition be referred to the committee appointed, on the third instant, on the petition of sundry inhabitants and settlers on Mad river, in the said State of Ohio; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of the sufferers by fire in the town of Portsmouth," with an amendment, to which they desire the concurrence of this House. The Senate have also passed a bill, entitled "An act to provide for the due execution of the laws of the United States, within the State of Ohio;" to which they desire the concurrence of this House.

ALIENS IN PENNSYLVANIA.

Mr. SMILIE presented a petition from a number of aliens residing in Chester county, in the State of Pennsylvania, praying a more easy admission to the rights of citizenship.

Mr. S. moved a reference of the petition to a select committee.

Mr. DAVIS observed, that this description of persons had of late become extremely troublesome to the House. He was tired of their never-ending petitions. He had thought, that during the last session they had obtained what they wanted. As he was persuaded their admission to citizenship was now as easy as it ought to be, he hoped the House would turn a deaf ear to their requests, and in this way protect themselves from being further troubled. He was, therefore, opposed to referring the petition; and the more so, as it was impossible from the press of other business, and the late period of the session, to pay it any effectual attention.

Mr. SMILIE did not know whether there would be time conclusively to attend to the petition presented; but he considered it as of sufficient importance to refer it to a select committee. He believed this was only the beginning of many petitions that would be presented from the States of Pennsylvania and New York.

Mr. GRISWOLD called for the reading of the first part of the petition, which, if he heard correctly, contained expressions extremely disrespectful.

[The first part of the petition was read, which comments with severity on the principles and the measures of the late Administration.]

Mr. BAYARD perfectly agreed with the gentleman from Kentucky (Mr. DAVIS) that it would be treating the petition with sufficient attention during the present session to suffer it to lie on the table. He did not know that referring it to a select committee would be treating it with respect; if it were, he did not know that he would be disposed to vote for it. It was allowed that it was impossible to attend to it this session. During the last session the alien law had been revised by the friends of the petitioners, or by those, at least, who called themselves their friends. Their admission to citizenship had been facilitated by requiring a residence of only five years. What more do they wish? Do they wish to enjoy full political rights before they can even read the Constitution? By going too far in making them citizens, we should take care lest we uncitizenize ourselves. Already they enjoy the rights of property and every personal security, and the only and ulterior right remaining is the right of election. Mr. B. said he had no objection to extending this right after a certain period. But it was certainly false policy before they knew the principles of our Government and laws to amalgamate them to the mass of society. To do this would be to introduce principles unfriendly to true republicanism. He hoped, therefore, the petition would be suffered to rest on the table.

Mr. SMILIE said there was one part of the prayer of the petition, which he trusted would be granted. The other probably would not be granted. He alluded to the prayer of those aliens who were obliged to signify their intention of becoming citizens, two years beforehand. He thought these ought to be relieved. He hoped, therefore, the petition would be referred. And if there should not be time to act upon it this session, it might lay before the committee. Mr. S. did not think this a proper stage of the business to go into a discussion of the merits of the petition, or into the policy of complying with their request. The gentleman from Delaware appeared to have serious apprehensions respecting aliens. For his

part he had none. He believed that in the State in which he resided there was as great a proportion of aliens, as any other; and yet no inconvenience or evil had been experienced. The gentleman may, perhaps, think the politics of his own State not sound from the admission of aliens.

Mr. S. concluded by observing that though he thought it probable the Legislature would not shorten the probationary period for citizenship, yet he though it would be best to refer the petition.

The question was then taken on referring it to a select committee, and lost—yeas 32, nays 49.

IMPORTATION OF CERTAIN PERSONS.

An engrossed bill to prevent the importation of certain persons whose admission is prohibited into certain States, was read a third time; as follows:

"*Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, from and after the first day of April next, no master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any negro, mulatto, or other person of color, into any port or place of the United States, which port or place shall be situated in any State which by law has prohibited or shall prohibit the admission or importation of such negro, mulatto, or other person of color, under the penalty of one thousand dollars for each and every negro, mulatto, or other person of color aforesaid, imported or brought into the United States as aforesaid, to be sued for and recovered by action of debt in any court of the United States, one half thereof to the use of the United States, and the other half to the use of any person prosecuting for the same; and in any action brought for the penalty aforesaid, the person or persons sued shall be held to special bail.

SEC. 2. *And be it further enacted*, That no ship or vessel arriving in any of the said ports of the United States situated as aforesaid, and having on board any negro, mulatto, or other person of color, contrary to the meaning and intention of this act, or of the laws of the respective States prohibiting the admission or importation of such negro, mulatto, or other person of color, shall be admitted to an entry. And if any such negro, mulatto, or other person of color, shall be landed from on board of any such ship or vessel in any of the ports aforesaid, on the coasts of any State prohibiting the admission or importation as aforesaid, the said ship or vessel, together with the tackle, apparel, and furniture, shall be forfeited to the United States; one half of the net proceeds of the sales, on such forfeiture, to accrue and be paid over to such person or persons on whose information the seizure shall be made.

SEC. 3. *And be it further enacted*, That it shall be the duty of the collectors and other officers of the customs, and all other officers of the revenue of the United States in the several ports situated as aforesaid, to notice and be governed by the provisions of the laws of the several States now existing, prohibiting the admission or importation of any negro, mulatto, or other person of color, and they are hereby required and enjoined vigilantly to carry into effect the said laws of the said States, conformably to the provisions of this act, any law of the United States to the contrary notwithstanding."

Mr. BACON.—I am still dissatisfied with the principles of this bill. My mind will not be convinced; nor am I intimidated by any personal reflections or affected sneers; nor yet by any inhuman threats that can be uttered to supply the place of rational and manly discussion. Arguments of this kind, emanating from a source which generally commands my esteem, will have no greater influence on my mind than if they should proceed from a different, or even from an opposite quarter.

It is the principle of the bill that excites my disgust more than the immediate effects that will inevitably result from it; although these are worthy of serious consideration.

The bill in its principles is exceptionable in a variety of respects.

1. It makes a discrimination between the citizens of the United States, which is not only unknown, but repugnant to the radical principles and general tenor of the Constitution, which secures an equality of rights to our citizens at large. A number of the persons described in the bill are citizens of the United States; they were such previous to the time of forming the Constitution, and actually had a voice in the adoption of that solemn compact. These persons, by the provisions of the bill, are to be deprived of the common rights of citizens; they may not, in a peaceable manner, either for the purpose of commerce, or in case of distress, enter the ports, or sail along the coast of particular States, without subjecting themselves to severe penalties.

Admitting that but few, if any, of this description of citizens will ever be the actual owners of vessels, still they may have an interest, which to them is important, in being employed in navigating the vessels of others—their fellow-citizens. Be this as it may, they have Constitutional rights, of which Congress have not a right to deprive them. "The citizens of each State," says the Constitution, "shall be entitled to all privileges and immunities of citizens in the several States."

2. It makes the same discrimination between citizens of particular States which it makes between citizens of the United States. While it admits of one description of citizens in each particular State, roaming at large by land or water through all the States, it prohibits another description of citizens of the same State even to enter the ports of some of those States for any purpose whatever. If one class of citizens in a particular State may be thus restrained, another may on the same principles; and thus all the citizens of particular States may be restrained in the same manner. This would be no other than to sacrifice the rights, liberties, and the property, of particular States, to gratify the wishes of others possessed of greater power and influence.

3. In another point of view the bill is exceptionable. It divests the citizens at large of a natural right, of which neither by their solemn compact, nor otherwise, have they ever divested themselves. It is that of applying their own personal labor to such lawful purposes as they choose, and of employing in their service such other persons possessed of equal rights with themselves as they may see fit, whether mechanics, seamen, or common laborers. And Congress, as I conceive, have the same right, and no other, to prohibit me from employing a citizen of this description to shoe my horse, or to labor on my farm, that they have to prohibit my employing him to navigate my vessel to any part of the world where I myself have a right to go.

4. With a view, as it is said, to prevent a particular crime, which is not even named in the bill, it prescribes a severe penalty to be actually inflicted previous to the commission of it—unless, indeed, it is made to be a crime for the citizens of one of the United States peaceably to sail along the coast and enter the ports of a sister State. It is difficult, however, to conceive the propriety of giving that endearing appellation to States—the interests of whose citizens are so hostile to each other.

In another view of the subject, it appears to me to be highly impolitic to pass a bill at this time. Without the spirit of prophecy, I can easily conceive the use that will be made of the measure, should the bill be passed into a law. Should that sacrifice be made of the interests and the Constitutional rights of the citizens, of a certain description, in some of the States, to gratify the wishes of the citizens of some other States, which the bill prescribes, this conduct of the Legislature would be represented by some, and believed by too many, to furnish ample proof of the sovereign and despotic sway of the "Ancient Dominion" over most of the other States in the Union. In this case such a representation might be made with greater plausibility than many others, which have obtained too much credit in various parts of the country. I am sensible that nothing can be more unfounded than an allegation of this kind. I am also sensible that the subject of this bill does not originate from Virginia. Yet such is the complexion, and such the real principles of the bill, that should it be suffered to pass into a law, it would, in many instances at least, be difficult, if not impossible, to convince, even the most unbiassed and discerning mind, that no undue influence from any quarter had made its entrance within the walls of Congress. It is easy to see that nothing can have a more direct and powerful tendency to a dissolution of the Union, than the prevalence of a sentiment like this among our citizens.

Mr. MOTT opposed the bill on the ground of unconstitutionality.

Mr. MITCHILL moved that the bill be recommitted in order to receive certain amendments, of which he thought it stood in need, and without which he declared he could not vote in its favor. It was true, that, a few days ago, he did vote for the engrossment of the bill, but he did not consider himself bound thereby to vote for the passing of it. He did it that the gentlemen who were particularly anxious for its success might meet with no obstruction from him. But now the question was about to be put for the passing of the bill, he must either vote against, or propose several amendments. He did not wish to vote against this or any other bill, providing for the security of the Union. He was very desirous of guarding the States of the nation from the introduction of the negroes, mulattoes, and persons of color, comprised in the bill; he would add his wish to guard the country from all other mischievous and evil-disposed people. But while we were thus providing against one evil, he thought the bill, as it now was presented to the House, precipitated us into another.

Mr. M. then particularly commented upon the first section of the bill, which inflicts a heavy punishment upon any captain, or master of a vessel, that shall bring any negro, mulatto, or person of color, into any port of the United States, lying within a State which has prohibited the same. As far as this respected the trade in human beings, carried on to the rivers Senegal or Gambia, or other parts of the slave coast of Africa, it met with his most hearty approbation. He was desirous of putting an end to this detestable traffic, and of punishing in an exemplary manner such citizens of the United States as could be convicted of the crime of being engaged in it. A person undertaking this unlawful commerce, went into it voluntarily, forewarned, and in defiance of the laws, and was properly the subject of harsh punishment. Toward such he would exercise Legislative coercion and rigor in their severest operation. If the section stopped here, he believed he should be willing to give it his vote. But he observed that it went a great deal further, and included a case very different from the African slave trade, in its origin, motives, and accompaniments. This was the importation of persons of color from the French West Indies, who had been forcibly put on board an American vessel. Such a case had happened at Boston; something of the like kind had rendered New York uneasy during the last Summer, as he had stated at large in a former part of the debate a few days ago. In these instances the master of a United States ship, engaged in lawful trade, is compelled to receive on board some of the banditti or brigands of the islands. They are crowded upon him contrary to his inclination. He receives them at his peril, and brings them, perhaps at the hazard of his own safety, and that of his crew, into the harbor of his destination. On arriving there, after all this ill usage and peril, this innocent man is made the object of prosecution. He is sued, held to bail, found guilty, fined, and probably imprisoned. His ruin is almost inevitable. What remedy has he? If he puts these outcasts of society to death, our own laws will hang him for the crime. It would be easy for him to suffocate or strangle them in pestilential air. There would be no difficulty in throwing them overboard. There are many other methods of getting rid of them. But the captain, if convicted of disposing of them in either of these ways, would be adjudged a felon in our courts of admiralty, and suffer death accordingly. Thus, by the operation of the first section of the bill, a master of a vessel, after being treated at a most unneighborly and ungracious rate, in having a parcel of the most flagitious of mortal creatures forced on board him, must either put the wretches to death, and be destroyed himself by a criminal prosecution, or bring them

into port and be ruined by the execution of civil process. In such an instance he could not perceive guilt; and where he did not discover guilt in the captain, he could not reconcile it to his duty and feelings to denounce punishment.

Mr. M. concluded this part of his speech by expressing his desire to recommit the bill, that he might move a proviso at the end of it to this effect: "That on the trial of the issue in any such 'suit, it should be lawful for the defendant to give 'in evidence that he received such negroes, mu-'lattoes, or persons of color, on board by duress 'and compulsion, and brought them into port con-'trary to his will and intention." This he thought would draw the line of distinction between the captain, who went to Africa in quest of slaves, and him that had free persons, or slaves of color, thrust forcibly upon his deck in the West Indies. He said he should not recapitulate his remarks on the practice of nations to send their turbulent and seditious citizens or subjects into banishment, as delivered on a former day of the debate.

Mr. M. said further, that he wished to propose an amendment to the second section of the bill. This section was intended to prevent the landing of persons of color brought into port, and declared a forfeiture of the vessel and cargo from which such new comers should be disembarked. This was a heavy penalty upon the master and the owners. They might all be innocent, and yet be the sufferers by such a provision as this. This, however, he could consent to if the public welfare required it. But it appeared to him that a new clause ought to be added to the section, or a new section to the bill, to make the remedy intended by the bill complete. As it now stood, the penalty was inflicted upon one party in the transaction only—the sellers or importers. He thought the buyers or purchasers on shore ought to be included also. Where there were no buyers there could be no sellers. The persons, therefore, who encouraged this iniquitous trade in slaves, by paying a price for them on or before landing, should not be passed over. By enacting a penal clause for them, the whole of the parties in the transaction would be included, and the temptation to the offence, and the likelihood of its occurrence, be greatly lessened. He therefore wished to propose an amendment to the second section to this effect: "That every purchaser of 'a negro, mulatto, or other person of color, so 'landed, should, for each offence, forfeit five hun-'dred dollars, with costs of suit, to be recovered 'by an action of debt, the one-half to the use of 'the prosecutor, and the other half to the United 'States."

Unless these or similar amendments were made, Mr. M. declared he could not give the bill his vote. He was desirous for a recommitment, that it might undergo some such modification. He should not repeat what had just been said against the bill on the ground of expediency by a gentleman from Massachusetts, (Mr. BACON.) and on the score of constitutionality by a gentleman from New Jersey, (Mr. MOTT.) Being anxious that the country should be protected against these outlaws and exiles, by every means consistent with our Constitution and principles, he hoped the gentlemen who were equally solicitous with himself would vote with him in a motion which he then made "to commit the bill to a select committee."

This motion was supported by Messrs. NICHOLSON, ELMER, SMILIE, GREGG, and S. SMITH; and opposed by Messrs. DAVIS, HILL, EARLY, and RANDOLPH.

Those who supported the motion to recommit, urged it upon different grounds; some on the ground that the bill was unconstitutional in destroying and abridging the rights of free negroes and persons of color, who were citizens of one State, by prohibiting under the severe penalty of one thousand dollars, and the forfeiture of the vessel carrying them, their importation into certain States; others, on the ground that though this and other provisions of the bill were not unconstitutional, yet they would operate upon particular descriptions of persons with great and unjust severity. All allowed the propriety of the General Government exerting every legitimate authority it possessed to enforce the State laws, and to avert the evil apprehended from the introduction of brigands from the West India Islands.

The opponents of the commitment insisted on the passage of the bill as it stood. They acknowledged that its penalties were rigorous; but they were only such as the imminent danger of the Southern States called for. They vindicated the constitutionality of the law, by observing that it only prevented the importation of negroes and persons of color into those States which had already prohibited their admission.

When the question was taken on recommitting the bill to a Committee of the Whole, and lost—yeas 42, nays 46.

Mr. NICHOLSON moved to recommit it to a select committee. Carried—yeas 47, nays 42.

AMENDMENT TO THE CONSTITUTION, &c.

Mr. S. SMITH moved that the House should resolve itself into a Committee of the Whole on the bill for the granting of clearances to the ships or vessels of the United States, lying in the river Mississippi, south of the Southern boundaries of the United States, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage, and for other purposes."

Mr. BAYARD said he would make a motion that would supersede that of Mr. S. SMITH, viz: that the House should resolve itself into a Committee of the Whole on the state of the Union, in order to take up the proposition of amendment to the Constitution respecting the election of a President and Vice President, laid some time since on the table.

Messrs. LEIB and HUGER supported, and Messrs. JONES and DAVIS opposed this motion, which was lost—yeas 34, nays 54.

Mr. BAYARD gave notice that he would renew his motion to-morrow.

The House then resolved itself into a Committee of the Whole on the bill above stated.

Sundry amendments being made, the Committee rose and reported the bill. The House concurred in the amendments, and ordered the bill to be engrossed for a third reading to-morrow.

Mr. VARNUM, from the committee appointed on so much of the President's Message as relates to the Militia, made a report with an accompanying bill.

The report states the system adopted by the act of 1792, to be, in the opinion of the committee, founded on a correct construction of the Constitution, and well adapted to the circumstances of the United States; and concludes with a resolution requesting the President of the United States to address a letter to the Executives of the several States urging a more vigorous execution of the law.

The accompanying bill provides for some deficient details in the law of 1792.—Referred to the Committee of the Whole to-morrow.

TUESDAY, February 8.

A petition of sundry inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, stating the inconveniences to which they have been and are now subjected, in case of the fees allowed by law to the marshal, clerks, and attorneys, of the courts in the said district; and praying that the same may be reduced, for the reasons therein specified; also, that an additional session of the Circuit Court for the county of Alexandria, may be directed, by law, to be holden on the fourth Monday of March, in each year.

Ordered, That the said petition be referred to the committee to whom were referred, on the twenty-eighth ultimo, the memorials of the citizens and inhabitants of the City of Washington, and of the said town of Alexandria.

Mr. SOUTHARD, from the committee appointed on the fourteenth of December last, presented a bill further to alter and establish certain post roads, and for other purposes; which was read twice and committed to a Committee of the whole House on Friday next.

The SPEAKER laid before the House a letter from William Henry Harrison, President of the Convention held in and for the Indiana Territory of the United States, at Vincennes, in the month of December last, transmitting a copy of the proceedings of the said Convention relative to the suspension for ten years, on the part of the said Territory, of the sixth article of the ordinance of Congress under the former Government, of the thirteenth of July, one thousand seven hundred and eighty-seven; which were read, and referred to Messrs. RANDOLPH, GRISWOLD, R. WILLIAMS, L. R. MORRIS, and HOGE; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

A memorial and petition of the inhabitants of the said Indiana Territory, signed by order, and in behalf of a convention of the said inhabitants, by William Henry Harrison, the President thereof, was presented to the House and read, stating various matters therein specified and recited, which, in the opinion of the memorialists, deserve the consideration of Congress; and praying that the propositions submitted by the memorialists may be adopted, for the convenience and benefit of the people of the said Territory.

Ordered, That the said memorial and petition be referred to the select committee last appointed.

An engrossed bill to provide for the granting of clearances to ships or vessels of the United States, lying in the river Mississippi, south of the Southern boundary of the United States, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes, was read the third time, and passed.

The bill sent from the Senate, entitled "An act to provide for the due execution of the laws of the United States within the State of Ohio," was read twice, and committed to Mr. ISRAEL SMITH, Mr. THOMAS MORRIS, Mr. ELMER, Mr. JACKSON, and Mr. HEMPHILL.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of the sufferers by fire, in the town of Portsmouth;" Whereupon,

Ordered, That the said amendment be referred to a Committee of the whole House to-morrow.

ALIENS IN PENNSYLVANIA.

The following memorial was presented by Mr. LEIB:

To the Senate and House of Representatives of the United States: The memorial of the alien inhabitants of Chester county, Pennsylvania, respectfully showeth:

That your memorialists, during the last session of Congress, took the liberty of addressing you, entreating a repeal of the naturalization law.

That, whilst your memorialists feel the deepest and most grateful sense of your wisdom and goodness in repealing the most oppressive of the disabilities of that severe act, they cannot, in justice to themselves, refrain from deferentially expressing their regret that the present law should, to so high a degree, tend to prevent them from enjoying the benefits of the Constitution.

That your memorialists submit the circumstances under which those of them residing here from the Summer of 1798 until the Spring of 1801 were placed. Every alien distinguished for his attachment to the principles of liberty was incessantly abused in the papers countenanced by the Administration then in power. The American Minister at St. James's notified, in the name of his Government, that the Irish state prisoners would not be permitted to reside in this country. And the British Government made this the pretext for detaining them in dungeons for the space of four years, in open violation of a solemn compact. The Presidency was at that time in the hands of a man notoriously hostile to aliens or republican principles. And the President was authorized by law to banish any alien at his pleasure, without trial or without appeal. Under these circumstances, your candor will allow that an alien resident could have little inducement to declare his intention of being a citizen. For, by so doing,

he placed his name on a list of proscription, and subjected himself to banishment, at the arbitrary will of an individual.

That your memorialists do most respectfully presume to suggest to the wisdom and justice of Congress that the poorest emigrant who arrives here has a property in his life, in his liberty, and in his labor, and is as liable to the laws as the richest citizen. That to tax him, imprison him, or put him to death by laws, in the framing of which he was not represented, is to exercise against him an act of tyranny. Though this doctrine, viewed in the abstract is sound, and though the venerated example of America, who justified her resistance to Britain on this precise footing, gives it sanction, yet your memorialists are aware that, in the internal regulations of States, it may, nay, ought to be subject to some modification.

That your memorialists, with all due submission, conceive that society would be sufficiently secured and right sufficiently preserved, by admitting such aliens to immediate enfranchisement as adduced satisfactory proofs of pure moral character; evidence of having paid taxes towards the support of Government, and of attachment to its form, with a renunciation of his allegiance to any other, and a declaration of his intention of permanently residing in this country.

That, whilst your memorialists glory in the privilege of speaking to the great council of the nation of their rights as men, they would not, merely on these rights, however sacred, rest their cause or their claims. They would appeal to your justice and to your policy as well as to their rights.

Your memorialists believe that a considerable majority of their number might, without regard to abstract right, lay their claim on plighted faith. This majority are the natives of Ireland—an ill-starred country, to whose inhabitants slavery was more intolerable, after seven hundred years of diversified cruelties and oppressions, because they still retained a love for, and still could appreciate the value of, freedom. Congress, struggling for independence, condoled with them; warmly acknowledged the services of Irish patriots to the cause of "Humanity and America;" eagerly invited them to partake of their country and of their success; and the countrymen of Montgomery have never, by their conduct in war or their votes in peace, proved unworthy of the blessing.

That your memorialists, respectfully appealing to the policy of the measure, request leave to observe, that those who have sacrificed their country and all the charities which render country dear to man, for the principles on which your Constitution is founded, are not to be undeserving of the trust and of the functions of citizenship.

Your memorialists farther beg leave to adduce the example of the enlightened State in which they have the happiness to live, as well as of the others which were the mildest in their laws, and most liberal in their institutions respecting foreigners. It is believed that they are not inferior in attachment to the American Union, in morals, in freedom, in arts, industry, or prosperity, to any of their sister States. In the rapid increase of population, which affords strength and security to your young and enviable form of Government, they are the foremost. For, by their Constitutions, the stranger of good conduct, after two years residence, was to be a citizen, and in these he then hoped to find a home.

Spain sunk by the expulsion of the Moors; France expelled the Huguenots, and England and Ireland established their staple manufactures. Encourage your aliens, you will have the arts and manufactures of Europe; neglect us, we suffer, but you are not served.

Your memorialists, therefore, pray that you may, in your wisdom and goodness, admit to citizenship those who are now excluded by default, on account of not having made a declaration three years previously of their intention, and that you may restore the time of two years residence specified by the law originally enacted to establish an uniform rule of naturalization.

FRANCIS ALISON,
JOHN McCONNEL,
and others.

Mr. DAVIS said that petition was similar to one offered yesterday by another gentleman from Pennsylvania. (Mr. SMILIE.) and he was suprised that any gentleman would bring forward another of the same nature, after the treatment that one had received. He had no idea of encouraging those restless people to intrude on the House. They were not well disposed people who could send a petition to Congress which derogated from our national character. He begged that the reading of it might cease, and that the House should go to business of more importance.

Mr. LEIB moved that it should be referred to a select committee.

Mr. VARNAM hoped it would not be referred to a select committee. Whatever might have been the difference of political opinion in this country, it did not become aliens who were asking favors, and on whom many benefits had been already conferred, to make such remarks as were contained in those memorials presented to the House yesterday and this morning. He hoped the House would immediately decide against them.

Mr. THATCHER thought the petition ought not to be referred to a select committee; it would reflect disgrace upon the House to refer to a committee a petition couched in very indecent terms, and whose principal object appeared to be to criminate the late Administration. As it was precisely like the one offered yesterday, and the House had been told that many others were expected, it was time to give their decided disapprobation of the sentiments, as well as the disrespectful manner, in which the petition was expressed. He thought these people paid a very ill compliment to the majority of the House in attempting to obtain their favor by abuse of the late Administration.

It would be recollected that, early in the session, the House had manifested great uneasiness even at the reading of a memorial from a late officer o the Government, (Mr. McHenry.) though expressed in very respectful terms. Certainly those gentlemen who, upon that occasion, discovered so much sensibility for the honor of the House, would not feel less when these restless aliens importuned them in language extremely abusive. He did not object to the commitment merely on account of the abuse of the former Administration. He should have objected had the same language been used with respect to the present. There was a dignity attached to the Government and the

Representatives of the nation, which those aliens should be taught to respect, and which rendered such language inadmissible.

Mr. S. SMITH said, it had been usual to refer petitions which had been presented to Congress to a committee, who would report in whole or in part, as their discretion should direct. He had observed, that some parts of the memorial were not so agreeable; and that there were others which deserved attention. The gentleman from Massachusetts, last up. (Mr. THATCHER.) had adverted to a memorial from a late officer of Government. (Mr. McHenry.) He was not present when that memorial was read, but he could never see the drift of it, unless it was to have it printed, in order that it might go forth to the world, and, perhaps, create a prejudice against the present Administration. The gentleman had said, that his opposition to the petition would be the same, had it made a similar reference to the present as it had to the former Administration. How that could be his sentiment, when he had, on a certain occasion, during the present session, declared, by his solemn vote, that he had no confidence in the Executive, he was at a loss to determine.

Mr. THATCHER did not know what had led the gentleman (Mr. S. SMITH) to conclude that the late Secretary's object in presenting his memorial to the House, was to have it printed. If he had been present he would have known that there was no attempt, in the House, to print, nor even a motion to commit it. Although he considered the gentleman from Maryland (Mr. S. SMITH) out of order in recurring to the votes respecting the affairs of New Orleans, he would take the liberty to observe, that the vote which he alluded to was forced upon the minority. That gentleman, with whom he had the honor to vote on that occasion, stated to the House several very important objections to that clause of the resolution presented by the gentleman from Virginia, (Mr. RANDOLPH.) one of which was, that it pledged the House of Representatives to wait the issue of such measures as the Executive should have adopted, without knowing what they were. He believed that many gentlemen in the majority had since found reason to doubt the policy of their vote upon that occasion.

Mr. SMILIE said, the gentleman from Massachusetts (Mr. THATCHER) had stated strong objections to some of the expressions of the petition. He acknowledged there were some things which he wished had not been inserted; but if some parts of it were wrong, why should they reject the commitment of those parts which were unexceptionable? He would just mention the situation of those people in the year 1798, and 1799, when the alien law was in operation. When he considered the feelings those people must have experienced from their situation at that time, he thought there was some excuse for them. He believed every fact stated in the petition was true. Their situation, under the alien law, was truly dreadful. They were at the mercy of the President, and liable to be banished from the country upon the complaint of a single individual. Whatever the gentleman from Massachusetts (Mr. THATCHER) might think, he thought, for himself, that his declaration, by a solemn vote, that he had no confidence in the Executive, was quite as insulting as anything contained in that petition.

Mr. ELMER hoped it would not be referred to a committee. He thought the gentleman (Mr. LEIB) who presented it, was wrong, after what had taken place yesterday. That petition, he said, was not of the nature which ought to have come from aliens. He would do everything for that class of people which humanity and policy would justify; but they were not to insult that House nor the nation. When they thus reflected on the Government, they should have recollected that every Government claimed, or ought to claim, the right of regulating its own concerns. He had no idea that such language should be addressed to American Representatives.

Mr. NICHOLSON said, he never recollected an instance of his voting against the reference of any petition to a committee, until yesterday. He thought that every man in this country, whether owing a temporary or a permanent allegiance to the Government, had a right to petition the Legislature for redress of grievances, and to state such remedies as, in his opinion, would remove the evils complained of. When, however, he admitted this right, he considered that it ought to be exercised with decency, and that the petitions should be couched in respectful and unoffensive language. The petition now proposed to be referred, was similar in every respect to that offered yesterday, and in both of them he found an intemperance of language which this House ought not to countenance. He thought it highly disrespectful to the House to address them by impeaching the principles of any former Administration. The petition declared that the gentleman who formerly presided over the councils of this nation, was notoriously hostile to all aliens of republican principles. This was a language which individuals, to be sure, had a right to use out of doors, but it was highly direspectful to the House to make it a part of a petition, and it was a respect which the House owed to themselves, to show their disapprobation. Foreigners, as well as citizens, had a right to petition: but the petitions of both ought to respect the feelings of every part of the House. He should, therefore, vote against referring the petition.

Mr. CLAIBORNE wished the Clerk might proceed with the reading; he could then judge of its merits.

The petition was read through.

Mr. LEIB called for the yeas and nays on the question.

Mr. RANDOLPH said, as the yeas and nays had been called for, it was necessary that he should give a reason why he should vote differently on that petition from the one presented yesterday, which he was told was of the same description, but he had not heard it, being out of his seat when it was read. He thought it was enough to

receive petitions from their own citizens—their tables were crowded with memorials from them. Besides, the House should consult their own dignity; language of the nature contained in the petition first read should never meet his approbation.

Mr. DENNIS.—Unless the House were disposed to constitute itself into an organ, through the medium of which every factious, discontented alien might, in the most diffusive manner, propagate his lectures on republicanism, and his slanders relative to the administration of our Government, he presumed the House would not refer the petition. He had given the petition a very cursory reading, and from that he found that the petitioners seemed to have it in view, rather to recommend themselves to their supposed advocates here, for other purposes, than with a view to obtain the apparent object of the memorial. The gentleman from Pennsylvania (Mr. SMILIE) had attempted to vindicate the petition, because he says the facts stated are all true. He knew not what particular facts the gentleman alluded to, but, Mr. D. said, there is one fact which he had not known, but which is stated by the petitioners to be true, and which he, therefore, should accredit; and that is, that these petitioners are all convicts of the British dominions. They state that, during the existence of the alien law, our Minister at the Court of St. James was requested by Mr. Adams, who was hostile to republicans, to notify the British Ministry that it was not desirable to us to be burdened with their state prisoners; and that, in consequence of this notification, they were not shipped to this country, but were confined for several years in England. This, I suppose, is one of the truths alluded to by the gentleman from Pennsylvania; and admitting it to be true, he did not perceive how this would give a license to these people to insult us, by giving us lectures on our Constitution, and by reviling the anti-republican tendencies of a past Administration.

Mr. D. said, the gentleman from Pennsylvania had, in his conception, not been very respectful to the House in comparing the language of these persons with observations that have fallen from members on this floor, in regard to the Executive, and he might say he thought he had been very disrespectful. It had been said, it may be proper to decide this petition, and refer the parts of it which were not exceptionable; but he very much doubted whether there was to be found, in the parliamentary annals of any nation, an instance of the kind. In practice, it will be found that this discrimination amounts to nothing, since the committee, to whom it is proposed to refer it, will be obliged to read the obnoxious part as well as the rest of it; for, although stated as an amendment to another object, the principal object seems to have been to villify the former Administration. But there is no reason for referring the several parts of it; if there be such, we know all the facts on which the petition is founded, and if relief be proper, it ought to be general, and any gentleman may bring the subject before the House by a resolution.

Mr. BACON said, it would be time enough to attend to the situation of those aliens when they came forward in a decent manner. He thought there could be no great difficulty in settling the question; he believed the House were ready to give their disapprobation to the memorial.

Mr. SMILIE said, he did not know what the gentleman from Maryland (Mr. DENNIS) meant by convicts. The abuse they had received from the former Administration was, in his opinion, sufficient to show that it had been hostile to the principles of republicanism.

Mr. CLAIBORNE was sorry that he had called for the reading of the petition; had he believed that its contents were such as he now discovered them to be, he should not have desired it. He should vote against a reference.

The question was taken on the reference to a committee, and lost—yeas 23, nays 61, as follows:

YEAS—John Archer, Robert Brown, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, John Dawson, Andrew Gregg, John A. Hanna, Joseph Heister, David Holmes, George Jackson, William Jones, Michael Leib, Anthony New, John Smilie, Samuel Smith, Joseph Stanton, Abram Trigg, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Thomas Boude, William Butler, Thomas Claiborne, Manasseh Cutler, Richard Cutts, John Davenport, Thomas T. Davis, John Dennis, William Dickson, Lucas Elmendorf, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Daniel Heister, William Helms, Joseph Hemphill, Archibald Henderson, William Hoge, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Thomas Moore, Lewis R. Morris, Thomas Morris, James Mott, Joseph H. Nicholson, Elias Perkins, John Randolph, jr., Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Smith, of New York, Josiah Smith, Henry Southard, Richard Stanford, John Stanley, John Stewart, John Stratton, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

INDIAN AFFAIRS, &c.

Mr. DAWSON observed that some time since the committee to whom our Indian affairs had been referred, had reported certain resolutions, which it was important to take up, as the arrangements necessary to be made, in case they should be agreed to, would require some time. He, therefore, called for the order of the day on them.

Mr. BACON hoped the gentleman from Virginia would suspend his call, till his (Mr. B's) resolutions respecting the retrocession of the District of Columbia should be disposed of by a reference to a committee, which he proposed to make, and which could only occupy a few minutes.

Mr. NICHOLSON wished these resolutions to be taken up at once, and that the House would immediately, by rejecting them, signify their determination not to recede the District. He was himself decidedly opposed to a retrocession; and he believed a great majority of the House was opposed to it. He hoped, therefore, the House would take up the resolutions and reject them.

Mr. DAWSON withdrew his motion; when the motion of Mr. BACON was before the House.

AMENDMENT TO THE CONSTITUTION.

Mr. BAYARD said he would make a motion which would supersede that before the House. He would move that the House should resolve itself into a Committee of the Whole on the state of the Union, to take up the proposition of amendment to the Constitution that related to the mode of electing a President and Vice President, of which motion he had given notice yesterday. The proposition of amendment had laid on the table since the third of January, and there was not probably a member of the House that was not prepared to vote upon it. He hoped, therefore, it would be taken up at this time, and not postponed till the end of the session. He recollected the hurry and confusion of the end of the last session, when a resolution was acted upon; and he feared the same effect would follow this session from a postponement. It could not be the wish of any gentleman to let this resolution sleep till certain members had left their seats. It was a great question, as every question was that involved an amendment of the Constitution. He hoped, therefore, that his urgently calling for the taking up of this resolution would not be considered as indicative of a disposition improperly to press the subject on the House, but of a desire to have the fairest decision which could be made, when the House was full.

Mr. S. SMITH said he had early in the day risen to call for the order of the day on the report respecting discriminating and countervailing duties. If the motion of the gentleman from Delaware did not succeed, he hoped the House would recollect that his motion was made before that of the gentleman from Massachusetts.

Mr. BAYARD said there was no subject before the House less pressing than that which related to the repeal of the discriminating duties. Whatever our proceedings may be, they can be attended with no effect this session. The power given to the King of England by the British Parliament ceased on the fourth of March, and any power we may give to the Executive can have no effect before that time. He hoped, therefore, that subject would not now be taken up. We are every day getting important information respecting it from our merchants, who were the most intelligent and enlightened part of the community, and the best acquainted with the operation of whatever respected their interests. From them we shall receive, what we most want, practical information. However apparently correct theories formed by gentlemen on this floor may be, they may be falsified by facts. He, therefore, thought that this point should remain undecided upon until the latest period of the session, that full and correct information might be obtained. Mr. B. concluded by requiring the yeas and nays.

Mr. GREGG said there was a great deal of business before committees and the House respecting the Territory of Columbia. There appeared to be a disposition to withhold an attention to this business until a decision should be made on the resolutions for a retrocession. It was therefore of immediate necessity to decide this question, that if the resolutions shall be rejected, the business respecting the territory may be attended to.

Mr. NICHOLSON said he was happy to see the anxiety of the gentleman from Delaware on the amendment to the Constitution, as he flattered himself when the subject should come before the House, they would have his assistance to carry it into effect. But he was opposed to taking up that subject at this time. The gentleman from Pennsylvania (Mr. GREGG) had assigned substantial reasons for immediately taking up the resolutions offered by the gentleman from Massachusetts (Mr. BACON.) There was a great mass of business before the House respecting the territory, on which they must act if the District was not receded, and for which there would be no necessity if the territory was receded. This, therefore, was a pressing subject. As to the amendment, though important, it was not pressing; for if it was passed at any time before the close of the session it would be in time for the State Legislatures to act upon at their meetings in the Fall. If gentlemen will leave their seats and neglect the public business, is that a reason for hurrying us, and putting us out of the regular course of procedure? The fault is their own, not ours.

Mr HUGER thought this a subject of the first importance. It proposed to alter the Constitution of the United States on an important point. This was of much greater importance than the cession of a small district of territory. It appeared to him most extraordinary that so much pains were taken to postpone the consideration of it to a late period of the session. This had been done the last session. It was in vain to say members ought to keep their seats. It was well known that private pursuits would take them away. He trusted, therefore, that at the present time, while the House was full, a decision would be made.

Mr. SMILIE thought, if gentlemen would suffer the question to be taken without unnecessarily consuming the time of the House, they would progress in a much more orderly manner with the public business.

Mr. BACON said there was no doubt about the importance of the proposed amendment of the Constitution. But did it necessarily follow that it was proper to take up that subject to-day? On the contrary, he thought it most proper to take first into consideration the propositions respecting Columbia, for the reasons assigned by several gentlemen.

Mr. GRISWOLD hoped the House would adhere to their own rules. A reference to a Committee of the Whole on the state of Union was, according to these rules, the order for every day. Certainly whatever relates to an amendment of the Constitution is important. It is agreed on all hands that this amendment is of great importance. It was not absolutely necessary that this subject, or that which related to the District of Columbia,

should be acted upon to-day. Neither of the objects were so pressing. But where they were equally pressing, was it not proper to take up that first which was acknowledgedly of the greatest importance? He admitted that it was the duty of gentlemen to remain in their seats; but he did not know what reason the House had to find fault with their absence, as they had by formal vote sanctioned it.

Gentlemen will admit that a question of such importance as went to change the national compact under which they held their seats ought not to be decided upon but by the votes of every person entitled to vote upon it. Shall we then delay its decision until a third of the members are gone? A decision under such circumstances would not be doing justice to the spirit of the Constitution, which required the concurrence of two thirds of the members of both Houses.

Mr. Davis could not account for the change produced in the minds of some gentlemen on this subject. Last session, when this subject was before Congress, the gentleman from Delaware was opposed to deciding upon it; to-day he is earnestly for deciding upon it. He is from time to time calling it up, contrary to the established usage of the House, which, when a gentleman lays a motion on the table, permits it as a matter of compliment to lie until he calls it up. Now the gentleman from Delaware unceasingly calls for it. Last session, when taken up, he voted against it. The gentleman from Connecticut also, (Mr. Griswold,) while he charges us with inconsistency, exposes his own. Mr. D. declared he could only account for this strange conduct on the part of gentlemen by their knowledge, that, owing to the particular state of the Senate, as to the attendance of members, though the proposed amendment might be carried here, it would at present fail there.

Mr. Bayard said, if the gentleman from Kentucky had attended to what he had said, he would not have been at a loss to account for his conduct. He was glad to find consistency recommended from that quarter, as he might hope in future to find a reformation. But as the remarks of the gentleman applied to him, (Mr. B.,) he should show by his vote his consistency. He voted then against the amendment, and should do so again. What then? Did that betray any inconsistency? Did his now calling up the subject mark any inconsistency? He had avowed his motive. The numbers of the House were wasting every day, and they may soon vary in such a degree as to affect the result, and make it different from that which would appear were the vote now taken. Last session such an effect was produced by delaying the decision until the close of the session. To avoid a similar effect was the subject of his call. His desire was that the decision should be fairly made by the whole votes in the House.

The gentleman from Maryland, (Mr. S. Smith,) had said the House ought not to be hurried. He did not know what to understand by this expression. The resolution had laid on the table for more than one month. Notice had been given a week ago by the honorable mover that it would be called up; and yesterday it had been voted down by the majority. Notice had been then given that it would be called up to-day; and yet the gentleman talks of hurry. When is this hurry to cease? If it shall be delayed until the last day of the session, the same ground of objection will exist. Why not now decide it? When it was called up yesterday, gentlemen professed their solicitude to take up another subject, and said this question might be taken up to-day. Now it is called, and the old song is sung. If gentlemen are serious in their wish to frugalize time, they will go into a Committee of the Whole on this subject immediately, and decide it; and no longer waste time in discussing it. Mr. B. did not believe the discussion of it could occupy more than half an hour. As it had last session been fully discussed, it would be a work of supererogation to go over the same ground again.

Mr. S. Smith observed that this was rather a novel attempt. According to the established usage of the House, when a gentleman lays a resolution on the table, he takes his own time to call it up. He understood it was the intention of the gentleman from Pennsylvania, who had offered the resolution, (Mr. Leib,) to notify the House that he would at a certain day call it up. And now the gentleman from Delaware takes it out of his hands, and is pressing for an instantaneous decision. And for what? Not for our convenience—not for the convenience of a majority of this House who are friendly to the proposition—but for his own convenience, and that of his friends who are hostile to it. This was a novel lesson to give a majority. No sir, we are to study our own convenience; and to adopt that course which we deem best, for the transaction of the public business. If certain gentlemen, from private reasons, leave their seats, they are not to expect that business will be delayed or precipitated on their account. The arguments that have been urged are against the gentleman. This business is before the House, does not require the passage of a law, and may be decided upon at any moment; whereas the resolutions respecting the retrocession of the District of Columbia require first to be acted upon, to enable the House to determine what business in relation to this Territory it will be necessary to take up.

Messrs. Lowndes and T. Morris spoke in favor of going into a Committee of the Whole on the amendment to the Constitution.

Mr. Leib said he was yesterday in favor of taking up the proposition of amendment. As, however, he was satisfied that the other business was of a more pressing nature, he was willing that it should give place to that.

Mr. Bayard.—We are told by the gentleman from Maryland that it is the duty of the majority to study their own convenience. He is for studying his own convenience. What he means by their convenience, or his convenience, I am at a loss to understand. I suppose, however, he means that their convenience will consist in delaying this decision, until the members on one side of the House may dwindle down so low that a majority

of two-thirds may remain on the other side; so that a fair expression of the will of the whole House shall not prevail. For this declaration, I feel obliged to the gentleman. He has often before made many a precious confession, and this was one to be added to their number. He told us the other day that he and his friends had taken great pains to get the power of the country into their hands. I suppose the same pains are now to be taken, by creating a majority by artificial means.

I only rose, however, to say one word, as to this being considered as the resolution of the gentleman from Pennsylvania. The gentleman from Kentucky has told us that it is an affair of compliment to suffer a resolution offered by a particular member to rest until called up by him. I confess, that however disposed I may be in personal intercourse to observe such rules, I am not here disposed to observe compliment at the expense of duty. In this case there was a peculiar reason for the call. The gentleman who originally offered the resolution, gave notice of his intention to call it up on a fixed day. That day has gone over without any call. We see the House daily wasting in numbers. We wish a fair decision; one made by the whole votes of all the members. Gentlemen, therefore, cannot complain of our doing what they recommend; that is, to study our own convenience. They seldom study ours, and if we did not study our own, it is probable that it would be but little regarded. But what am I to understand when the gentleman from Maryland (Mr. S. Smith) talks of his majority? Does he mean that the gentlemen on my left [the greater number of the Republican members sit on that side,] will vote for it barely because he means to vote for it? I must believe those gentlemen in voting on this question will exercise the independent powers of their own minds, will follow the dictates of their own judgments, and be actuated by patriotism as honorable, and motives as pure as those of the gentleman himself.

Mr. S. Smith.—However the gentleman from Delaware may not have understood our convenience, he has shown that he understands his own, by putting words in my mouth which I never uttered. I never said the majority of this House was my majority. The reason why I said a majority was in favor of the amendment, appears from the journals of the last session, on which the fact appears by the votes of two-thirds of the members in favor of it. It would ill become me to talk of any majority. It would be presumption in me to hold any such language. Gentlemen with whom I generally act, know me better, and themselves. I did, however, say, that it suited the convenience of this House to make the business they had to transact progress in their own way, and not according to the convenience of the gentleman from Delaware. I considered that a sufficient explanation; and if these remarks were those for which the gentleman obtained leave to speak a third time, he might have saved himself the trouble. I am not averse to taking up this subject at the proper time; but I must object to forcing it into the place of other business that, according to the usual course of proceeding, ought to take precedence.

The question was then taken on Mr. Griswold's motion, by yeas and nays, and lost—yeas 37, nays 61, as follows:

Yeas—James A. Bayard, Thos. Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, Wm. Jones, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Jas. Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of New York, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

Mr. Griswold said he hoped it would suit the convenience of the majority to take up the subject to-morrow. He gave notice that he would call it for them.

DISTRICT OF COLUMBIA.

The House went into a Committee of the Whole on the following resolutions, offered by Mr. Bacon:

"*Resolved*, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia, which was ceded to the United States by the said State of Virginia, by an act passed the third day of December in the year 1789, entitled, 'An act for the cession of ten miles square, or any lesser quantity of territory, within this State, to the United States in Congress assembled, for the permanent seat of the General Government.' *Provided*, the said State of Virginia shall consent and agree thereto.

"*Resolved*, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of Columbia which was ceded to the United States by the said State of Maryland, by an act passed the 19th day of December, in the year 1791, entitled 'An act concerning the Territory of Columbia and the City of Washington:' *Provided*, The said State of Maryland shall consent and agree thereto."

The first resolution being read,

Mr. Smilie said it was not his wish to take up the time of the House, but barely to assign, in a

few words, his reasons for the vote he should give. In the last Congress he had voted against the assumption, and he had heard no reasons since to change his opinion on the propriety of that vote. He should, therefore, vote now for a retrocession. He never could understand the reason for giving Congress an exclusive jurisdiction over ten miles square. He believed there was but one reason: It had been thought good policy to introduce this article into the Constitution to facilitate its adoption, as it was known that all parts of the Union were anxious to have the seat of Government. It did not appear to him, in any proper point of view, necessary that Congress should possess such exclusive jurisdiction. There was no doubt that, let Congress sit where they would, they would always have sufficient power to protect themselves. Unfortunately, however, there was on this subject an association of ideas in the minds of many persons, not in the least connected, which was, that the residence of Congress in this place, and their possessing exclusive jurisdiction, was the same thing. If the exercise of exclusive jurisdiction could have any effect on his mind, as to the other point, it would be directly opposite, as he would much rather sit here without than with exclusive jurisdiction, as we cannot possess this authority without depriving the citizens of rights which were the most dear to them. When he looked around him, and saw no man, unless a stranger, who was not a political slave, he felt the most painful sensations. Under our exercise of exclusive jurisdiction the citizens here are deprived of all political rights, nor can we confer them. If Congress can derive no solid benefit from the exercise of this power, why keep the people in this degraded situation? It is true, this place may be settled by foreigners; but can we suppose that any native citizen, who values his political rights, will come here? For the honor of the country, he must suppose there would be none. Why not then restore the people to their former condition? Mr. S. concluded by declaring that the act of retrocession would have no effect upon his mind as to staying here.

Mr. BACON said he would state, in a few words, the reasons that influenced him in submitting these resolutions. In the first place, he knew of no advantage which the United States derived from retaining the exclusive jurisdiction of this District. Therefore, if the States to which it originally belonged were disposed to take it back, there could be no objection derived from this consideration. In the second place, it appeared, from their short experience, that the exercise of exclusive legislation would take up a great deal of time, and produce a great expense to the nation; and it was probable that, in the course of events, the trouble and expense would increase with the increasing number of the inhabitants. Should justice be done to the exercise of this power, it was likely that as much time would be spent in legislating for this District as for the whole United States. It was certain that very considerable time would be consumed. They would likewise be subjected to other expenses than those attendant on legislation. In the next place, the Government would be very diverse from that in the other parts of the Union. He would rather see the Government in the United States uniform. Here the citizens would be governed by laws, in the making of which they have no voice—by laws not made with their own consent, but by the United States for them—by men who have not the interest in the laws made that legislators ought always to possess—by men also not acquainted with the minute and local interests of the place, coming, as they did, from distances of 500 to 1,000 miles. From these considerations, he inferred their incompetency to legislate for this District, whatever their disposition might be. These were the principal reasons that influenced his mind. They might however, perhaps, be easily obviated by the reasons of other gentlemen, which he would be glad to hear.

Mr. HUGER was opposed to the resolutions, first, because he was not inclined hastily to make alterations in the great national compact that held us together. It appeared to him that, though they might not always understand the reasons on which a part of it was founded, yet it was prudent not to change it until experience had clearly proved its inconvenience. It must be obvious that it was easier to perceive its present inconvenience than to foresee the effects that may ensue from a change. The Constitution contemplates the exercise by Congress of exclusive legislation over ten miles square. It must impress itself upon the mind of every gentleman that the wise men who framed the Constitution deemed it proper. Congress also had thought it proper, as well as two of the most respectable States in the Union—the one by receiving and the other by granting the territory. All these considerations impressed his mind with a disinclination hastily to alter the course that had been pursued.

Another reason which weighed with him was that, though they had been here three winters, they had no reason to believe that a majority or any considerable portion of the people wished to be receded.

Great force has been attached to an agreement derived from the present situation of the people of the Territory—from their deprivation of rights. He felt for them. But, because they are now disfranchised of their rights, it does not follow that they are always to remain so. He hoped they would not recede them on this account. He looked forward to the period when the inhabitants, from their numbers and riches, would be entitled to a representation on this floor. And, with respect to their local concerns, when they grow more numerous and wealthy, there would be no difficulty in giving them a Territorial Legislature.

The gentleman from Massachusetts (Mr. BACON) founded one of his arguments on the idea that the Government of the United States could derive no advantage from the ten miles square. While, however, he (Mr. H.) felt a great respect for the States, he must think that the Government of the United States should be placed where it might find its own convenience. Though under the States it might in most cases proceed without

material inconvenience, yet he could suppose some circumstances that might expose the Government to great inconvenience. This was one reason on which the article of the Constitution was grounded. Such an occurrence had taken place at Philadelphia, where Congress had been surrounded by the soldiery, and had not been able to get aid to relieve them.

Another argument against the retrocession was his belief that it would affect property injuriously. Citizens in various parts of the Union, and foreigners, had made purchases in consequence of the cession. Without pretending to say that property would be less safe under State Governments, he could conceive that foreigners might consider it more safe under the protection of the National Government.

It is said that much time is taken up, and great expense incurred, in attending to the affairs of the Territory. When a day or two is taken up in any discussion, we are always told of the expense. But, to prove that the expense would be diminished if we had not these objects to attend to, it was necessary to show that the session would be shortened. He believed if there was not one-third of the usual business before Congress, the session would not be terminated before the 3d of March. Besides, much of the inconvenience we now experience arises from the novelty of the business. A sufficient attention has not been yet paid to the organization of the Territory, which, when properly arranged, will remove a great share of our trouble. He had no doubt that, when the Government became acquainted with the wants and the wishes of the people, the government of them by the United States would be rendered as agreeable to them as that of the States.

Gentlemen, in looking at the inconvenience attached to the people of the Territory, do not sufficiently regard the superior convenience they possess. Though the citizens may not possess full political rights, they have a greater influence upon the measures of the Government than any equal number of citizens in any other part of the Union.

Mr. H. concluded by observing that he felt no disposition to go at large into the discussion. He had barely made these remarks to show that the propriety of a retrocession was not so plain a case as might be inferred from the arguments of gentlemen who had preceded him.

Mr. DENNIS regretted that he had been called out of the House when this subject was taken up, as, in the remarks which he considered it his duty to make, he could not avail himself of the ideas suggested by other gentlemen, and as he might repeat what had been perhaps already said. He would undertake, however, to show that the proposed resolutions were objectionable in every point of view that could be taken of them. They presented two aspects. Admitting, in the first place, that they could be carried into effect, so far as to restore the people of the Territory to the situation in which they were placed before the cession, yet it appeared to him a strong objection that all the advantages of exclusive jurisdiction would be thereby lost. He had always thought that part of the Constitution which gave Congress exclusive jurisdiction over a district of ten miles square wise and proper, and that a government whose laws were to pervade the whole United States ought not to be subjected to the whim or caprice of any part of the United States.

It was extraordinary to assert (and the whole system of our legislation went to prove it) that the possessing exclusive jurisdiction should be made the *sine qua non* of accepting a trifling spot for a light-house or a fortification, and yet, in an affair of so much importance as the present, that jurisdiction should be abandoned. If in the former cases sole jurisdiction was insisted upon, it was infinitely more important to have a control over that district in which the Government itself exercised its powers. But, in the second place, it is evident that these resolutions, if agreed to, cannot have the effect of restoring the people to the situation in which they were placed before the cession. The provision in the Constitution is imperative; and it is impossible by any act of ours to divest ourselves of the ultimate jurisdiction over the Territory. For the Constitution declares "that 'Congress shall have power to exercise exclusive 'legislation, in all cases whatsoever, over such 'District (not exceeding ten miles square) as may, 'by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States."

By exclusive legislation, he understood the exclusion to the States of all participation in legislation. He admitted that it was competent to Congress to sanction the acts of Maryland and Virginia; but he believed that no one would contend that Congress could divest themselves of an ultimate control. They might admit the Legislatures of Maryland and Virginia to legislate for the Territory, but Congress possessed the power of controlling or modifying their acts. He would wish to know what advantage there could be in giving this legislative agency to those States? If given, no doubt could be entertained of many acts passed by them being disagreeable to the people of the Territory, who would apply to Congress to repeal them. The next Congress, too, would have the power of resuming the jurisdiction, or, more properly speaking, the jurisdiction would still remain in Congress. Under such a qualified cession, he presumed the Legislatures of Virginia and Maryland would refuse to act; for, why should they legislate for people not within their limits? The power of legislation might as well be vested in the Legislature of Massachusetts. The truth is, that our jurisdiction would be paramount, and the acts of Maryland and Virginia would go into operation merely by our permission, and Congress might repeal and amend them whenever and howsoever they pleased. We should, therefore, be then relieved from no trouble that we now experience. There would then be as many applications to pass laws as there are now.

In another point of view he was astonished at these propositions, and at the quarter from which they came. The gentleman from Massachusetts (Mr. BACON) has told us that his resolutions are

bottomed on the broad basis of the rights of man; but he would ask how this could be, when the resolutions went to transfer twenty thousand men, without their consent, to a Government different from that under which they now live? Gentlemen are going to imitate some of the extraordinary scenes that have lately occurred in Europe, and propose to transfer this District with the same facility that in that quarter of the globe they have transferred an Italian dukedom or a German principality.

Mr. D. thought the situation of Congress in relation to the people of this Territory was not sufficiently understood. He knew that it was always troublesome to legislate for any people: he foresaw these inconveniences when they removed to this place. He had thought then, as he thought now, that some legislative government must be provided for the District. In this opinion he had never varied, but had, from successive events, become more confirmed in its accuracy. But, if gentlemen object to vesting the people with the power of government, he thought he could suggest a plan better than that of retrocession, to wit: to vest the President with the power to revise the laws of Maryland and Virginia, and make a report to the next session of Congress. The laws of Maryland and Virginia were generally agreeable to the people, but they experienced many inconveniences from local and peculiar circumstances.

Mr. D. concluded by observing that he had risen without methodising his thoughts; but he conceived the resolutions of so mischievous a tendency, so infractive of the Constitution, and (if adopted) so nugatory, that he conceived it his duty to raise his voice against them.

The Committee rose, and obtained leave to sit again.

WEDNESDAY, February 9.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting two statements of the importations in American and foreign vessels, commencing the first of October, one thousand eight hundred, and ending on the thirtieth of September, one thousand eight hundred and one, in pursuance of a resolution of this House of the twenty-ninth of May, one thousand seven hundred and ninety-eight; which were read, and ordered to lie on the table.

Mr. EUSTIS moved to postpone for one hour the unfinished business of yesterday, in order to take up a bill to provide an additional armament for the protection of the seamen and commerce of the United States. Carried.

The House accordingly went into a Committee of the Whole on that bill. The Committee reported the bill without amendment. The House concurred in the report, and ordered the bill to be engrossed for a third reading to-morrow.

Mr. GREGG moved the order of the day on the report of the Committee of Claims on the petition of George Mason.

The House then went into a Committee of the Whole, on the report of the Committee of Claims on the petition of George Mason. The Committee rose, and reported their agreement to the report of the Committee of Claims, which provides for the allowance of pensions to soldiers of the South Carolina line unprovided for. The House took up the report, concurred, and directed the Committee of Claims to bring in a bill.

Mr. BAYARD offered a resolution for the appointment of three legal characters by the President, to revise the laws of Maryland and Virginia, and form therefrom a uniform system for the District of Columbia; and to report the same to Congress.

Mr. MITCHILL moved the appointment of a joint committee of both Houses to inquire into the state of the public buildings, what repairs are required, and the expense attending the same.

Mr. EUSTIS offered two resolutions—the one for making provision by law for making such alterations in the Capitol, as are required for the future accommodation of Congress; the other appropriating the sum of —— dollars.

The above resolutions were ordered to lie on the table.

AMENDMENT TO THE CONSTITUTION.

Mr. GRISWOLD moved that the House should resolve itself into a Committee of the Whole on the state of the Union, in order to take up the proposed amendment to the Constitution respecting the election of President and Vice President.

After some conversation, the question was taken on Mr. GRISWOLD's motion by yeas and nays, and lost—yeas 28, nays 54, as follows:

YEAS—James A. Bayard, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Archibald Henderson, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, Lewis R. Morris, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, Josiah Smith, John Stanley, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Bacon, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, Peter Early, Lucas Elmendorf, William Eustis, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, George Jackson, William Jones, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

Mr. DAWSON moved that the Committee of the Whole on the state of the Union should be discharged from the consideration of two propositions of amendment to the Constitution, the one prescribing the designation of the persons voted for as President and Vice President, the other prescribing that representatives and electors shall be chosen in districts.

Mr. DAVIS said he would second the motion to relieve gentlemen from the apprehensions entertained of these amendments being taken up at a late period of the session when the House might be thin. And if the motion prevailed, he would move a postponement of the consideration of the amendments till the first Monday of November.

Both motions were carried without a division.

DISTRICT OF COLUMBIA.

The House then resolved itself into a Committee of the Whole on the resolutions of Mr. BACON to recede to the States of Maryland and Virginia the District of Columbia.

Mr. BAYARD hoped the Committee would not agree to the resolutions. He did not believe that a Constitutional power existed enabling the Government of the United States to recede the Territory. The Territory had been acquired by the direction and under the permission of the Constitution. The Constitution also allows the cession by particular States. When, therefore, gentlemen say Congress has the power to recede, he was at liberty to call upon them to exhibit that part of the Constitution that conferred the power. He had looked over the Constitution with a vigilant eye, and he could see nothing to this effect. Can it be done without power? Do gentlemen recollect that the Government of the United States is federative, and of course possessed of limited powers; and what is not delegated does not exist; and that there is an express provision that powers not expressly given shall not be assumed by implication? It was difficult to point out a nonentity. If gentlemen contend for an entity, they should distinguish it. If Congress have the power to recede this Territory, they have also the power to recede the others, the Indiana and Mississippi Territories. It is an extremely different thing to receive a cession and to recede it after it is received. Congress has the power to do the one, but not the other. How can the retrocession be made? Gentlemen say, by law. That law may be repealed. If receded, what would be the situation of the Territory? It could be no affair of contract. For a contract cannot exist without a consideration. Though, on the cession, there was a consideration, in receding there would be none. Would there be a power in Virginia and Maryland, if receded, to prevent a resumption? Such a measure showed but little respect for the people of the Territory. As far as he knew the sentiments of the people, it was not their wish to be receded. They were willing to live under the protection of Congress. The gentleman from Pennsylvania has called them slaves. They may not thank him for the appellation. If they were slaves, there must be some corollary; and if so, we must be their tyrants. But they are not slaves; they are children, over whom it is not our wish to tyrannise, but whom we would foster and nurture. Are we, in the character of Representatives of the United States, to be considered as their tyrants, because they are not immediately represented here? We ought not to decide this question until the people express their desire to return to the States.

But there is a more serious consideration relative to the people of the Territory. It is proposed to recede the District to Maryland and Virginia. Once take that step, and what obligation was there in Congress to remain here? He felt there was none. The obligation to remain arises, in a great measure, from the cession, and by destroying that, you extingnish the sense of the obligation to stay. This may be the object of gentlemen. A number of the measures lately proposed appeared to have that tendency. One motion had been made to concentrate the public buildings. Violate one stipulation of the Government, or disappoint a reasonable expectation that had been excited by the measures of the Government, and the ruin of hundreds follows. Now, a motion is made to recede. Combine these two operations. Unfix the Capitol, and recede the District, and, believe me, Congress will soon take wings and fly to some other place. It had been truly remarked, on a similar occasion, by those interested, though these things may be sport to you, they are death to us. Not a motion of this kind had been made, or could be made, that did not depreciate the interests of the place, and frustrate the object professed. By such means, our accommodations will be impaired, all enterprise be subdued, and industry languish. He hoped, therefore, that the House, by a decided vote, would reject these resolutions, and put all similar ones to sleep.

Mr. GREGG said he had expected that this question would have been decided by a silent vote. He, for his part, had no intention of having troubled the Committee with any observations of his on the subject, but as other gentlemen had seen proper to enter into a discussion of it, he would beg the indulgence of the Committee while he assigned, as concisely as possible, the reasons that would influence his vote. Having been a member of the Legislature at the time the act was passed for assuming the jurisdiction of the Territory, he foresaw pretty clearly most of the difficulties in which we are now involved by that act, and therefore had given it his opposition in every stage of its passage. A majority of the Legislature, however, at that time, entertained a different opinion, and made the assumption. From that moment he had considered a contract to be fully complete and ratified between the States of Maryland, Virginia, the people of the Territory of Columbia, and the Government of the United States. That contract he considered as of permanent obligation, not to be done away, but by the unanimous consent of all the parties.

Among the specific powers of Congress enumerated in the eighth section of the first article of the Constitution, there is this one, "Congress 'shall have power to exercise exclusive legislation, 'in all cases whatsoever, over such district (not 'exceeding ten miles square) as may, by the cession 'of particular States and the acceptance of Congress, become the seat of Government of the

'United States." Now, the States of Maryland and Virginia have made this cession, with the consent and approbation of the people in the ceded Territory, and Congress has accepted the cession, and assumed the jurisdiction. Are they then at liberty, or can they relinquish it without the consent of the other parties? It is presumed they cannot. In his opinion, they were constitutionally and morally bound to proceed in the exercise of that power regularly assumed, either immediately, by themselves, or by the intervention of a Territorial Legislature, chosen, and acting under a special act of Congress for that purpose. To relinquish the jurisdiction at this time, and recede the Territory, would, in his view, exhibit a surprising inconsistency of conduct in the Legislature. It would discover such a versatility, such a disposition to change, as could not fail to unsettle the minds of the people, and shake their confidence in the Government. All the arguments that had been drawn from expense and inconvenience, he thought admitted of an easy answer. A Territorial Legislature would remove every difficulty arising from those sources. It would transact all the business, now crowded on us, respecting the internal concerns of the place. The people of the Territory had heretofore been averse from that measure; and no doubt that aversion had considerable influence in preventing Congress from adopting such a provision. He believed, however, that the people were fast changing their opinions on that subject; they were beginning to see the necessity of a Legislature of their own and he expected that the period was not very remote when there would be a universal concurrence of sentiment in favor of it. He said he considered, as highly improper, every proposition which might be considered as pointing, either directly or indirectly, at a removal of the seat of Government from this place. The evident, the inevitable tendency of such motions, was to discourage adventurers, to check improvement, and greatly to impede the prosperity of the place. Instead of doing this, he thought Government ought to protect and encourage it as far as encouragement could be given, without resorting to taxes on the other citizens of the United States. He never would agree to let his constituents be taxed one single cent, to be laid out on improvements in the city, farther than what might be necessary to erect, and keep in repair suitable buildings for the accommodation of Government. But he would allow it every advantage, every encouragement, to be derived from an explicit, unequivocal and decided assurance, that it should for ever remain the seat of the Government of the United States. With this view of the subject, and under these impressions, he should give his decided negative to the propositions now on the table, and to all others of a similar nature and tendency.

Mr. Smilie could not agree either with the gentleman from Delaware or with his colleague (Mr. Gregg) on the Constitutional question. We had a power to accept the cession, or not to accept it; from which necessarily resulted the power of recession. Instead of arguing as the gentleman from Delaware, he would call on him to point out in the Constitution the prohibition. His colleague talked of a moral obligation to keep the Territory. This might exist, if it were proposed to force this Territory on the States without their consent. The gentleman seems to have taken offence at the expression which had fallen from him of slaves. For his part, he had never been accustomed to courtly language, but to the expression of his ideas plainly and openly as he conceived them. He certainly had not used the expression with any intention to treat the people of this Territory with disrespect; but to express his regret at the degraded situation of those who were formerly in possession of the full rights of citizenship. The gentleman seems also offended at the epithet of tyrants applied to us.

Mr. S. would ask the gentleman from Delaware, if ever he knew a Government possessed of unlimited power, who had not abused it. This was the condition of this Government, which he hoped, however, if continued, would be moderate. He had expected that gentlemen opposed to the retrocession would have shown the benefit derived to the United States from retaining the jurisdiction. If there were none, it was useless and dangerous, inasmuch as it could only be done at the expense of the rights of the people. He was surprised yesterday at the remarks of the gentleman from Maryland, (Mr. Dennis,) that this measure would deprive twenty thousand people of their rights. How could this be, when they had no right to be deprived of? You may give them a charter. But of what avail will this be, when Congress may take it away at any moment? They would continue forever to be ultimately governed by a body over whom they had no control. Mr. S. concluded by again observing that he had always thought the assumption wrong; but that he had no idea of connecting that consideration with the removal of the Government. It could have no influence on his mind. He would go further, and say that he had no idea of removing; nor did he believe they could remove.

Mr. Bacon said, he was the more confirmed in the propriety of bringing forward his resolutions by the remarks which had been made by gentlemen opposed to them. The question to-day has turned on the Constitutional power of Congress to recede. Gentlemen say that there is no power given to Congress to recede. He would allow that there were no express words in the Constitution; but he considered the general powers given as fully competent, without any such particular expressions. The words in the Constitution are: "The Congress shall have power to exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful

'buildings." Now, he took it that the power of Congress extended equally and alike to all these places accepted in consequence of the cession of particular States, and it was equally absolute upon Congress to retain all, the one as well as the other. He was apprehensive that the argument of gentlemen, if it proved anything, proved too much. He doubted whether gentlemen would contend, that when Congress once accept a piece of ground for an arsenal or a dock yard, they thereby oblige themselves to retain the exclusive jurisdiction forever. The practise of the House this very session disproved it; for they had very lately passed an act giving away the corner of a navy yard. But the words of the Constitution are not imperative; they do not say that Congress shall exercise exclusive jurisdiction over the places thus ceded by the States. What is the situation of the territory at present? The laws of the States from which it was ceded, are still in force in some instances.

It is said to-day that this District was ceded to Congress under a contract. But this contract was not made by the individual citizens, but by the States. If, then, by this contract between Congress and the States, Congress have obtained their jurisdiction by the common consent of the parties, it may be done away; and this is all that is proposed by the resolutions.

Gentlemen have observed that this and every other similar motion have the effect of depreciating property in this place. This Mr. B. doubted very much. If he were a citizen, he would consider his property more valuable under the jurisdiction of laws, in the formation of which he participated, than when he had no participation. He thought, therefore, that the adoption of his resolutions would rather appreciate property, by placing those who held it on the same broad basis as to the possession of political rights with the other citizens of the United States.

The gentleman from Pennsylvania (Mr. Gregg) conceives that the decision of this question will affect the permanent seat of Government. But it could have no such effect. The continuance of this place as the seat of Government was connected with a contract made with individuals, which was binding on the Government to remain. The Government had received from the individuals a valuable consideration, and had, in return, given the individuals the consideration attached to their remaining here, and the Government could not remove without a violation of this contract. This was his idea. The Government could not remove without the consent of these individuals.

The gentleman from Maryland (Mr. Dennis) has observed that all the advantages contemplated by Congress from an exclusive jurisdiction, would be frustrated by the adoption of these resolutions. But he has not named a single one of these contemplated advantages. Though called upon to name them, he had not named one. He must, therefore, conclude that no one had occurred to him; and, until they were named, he must doubt whether the United States derived any benefit from the exclusive jurisdiction.

The same gentleman has expressed his astonishment that these resolutions should come from this quarter of the House. He has intimated that he (Mr. Bacon) predicated his ideas on the broad basis of the rights of man. Mr. B. believed that this would be the effect of his resolutions. One view he had was to revest the citizens of this District with the rights of suffrage, and how they would be made slaves by a restoration to the rights of suffrage, and the common rights of their fellow-citizens, he could not conceive.

Mr. B. terminated his remarks by observing, that as he had heard of no advantages derived to the United States from retaining exclusive jurisdiction, as there was nothing in the Constitution repugnant to a retrocession, as it was clearly authorized, with the consent of the contracting parties, as it would not in the least affect the question of removal, as the citizens of the Territory would be benefited by it, and as a great expense of time and treasure would be saved, he considered it expedient to make the retrocession, provided it received the consent of the contracting parties.

Mr. Randolph said that, whatever reasons might be advanced on the ground of expediency against the adoption of the resolutions, he wished to say a few words on the Constitutional objections which had been offered to them. The gentleman from Delaware (Mr. Bayard) told us, on a very late occasion, that the power to create involved the power to destroy; and although I may not be willing to adopt this maxim in all the latitude in which it was urged by that gentleman, I have no hesitation in averring my belief that Congress possess the right, with the assent of these States, respectively, to cede the several portions of this territory to Maryland and Virginia. Nor, in my opinion, does this doctrine militate against that construction of the Constitution, which regards that instrument in the light of a limited grant of power. In this construction I heartily concur with the gentleman from Delaware, or rather, if he will permit me to say so, I am glad to find he agrees with me, as I have retained my opinion, whilst he seems to have changed his. I readily admit that Congress possesses no power but that which is devolved on them by the Constitution, explicitly, or which is evidently included in, or deducible from its plain provisions. The Constitution no where gives Congress the express power of repealing laws; but the repeal of laws is essentially connected with the power of passing them, as in this case, the right to recede is involved in the right to accept the cession. The parties to this compact are the United States, of the one part, and the States of Maryland and Virginia, of the other. We speak the voice of the United States, and, among others, of Maryland and Virginia, in their confederate capacity. The Legislatures of those States answer for them in their individual capacity. If all these parties are agreed to revoke their act, I wish to know who is to dissent to it, or what obstacle can prevent its being rescinded?

Mr. R. said, that he was of the number of those

who voted against assuming the jurisdiction of this territory. He did it from a predilection for those principles in which the American Revolution originated. From the firm belief that men ought not to be bound by laws in whose formation they had no influence. It was the violation of that principle, and not the extent to which it was carried, which laid the foundation of our independence. For, let it be remembered that the demand of Great Britain went only to a peppercorn; but that we disdained the admission of so odious a doctrine, and commenced a determined and successful resistance. But it is denied that this territory is in a state of slavery, because, says the gentleman, it implies that we are tyrants. The term slavery, sir, excites in the mind of man an odious idea. There are, however, various species of this wretched condition. Domestic slavery, of all others, the most oppressive; and political slavery, which has been well defined, to be that state in which any community is divested of the power of self-government, and regulated by laws to which its assent is not required, and may not be given. Nor have I ever before understood that slavery, particularly of the last description, necessarily implied tyranny, although it too frequently is productive of it. But, so far from being slaves, the people within this territory are, it seems, our children, who are to experience every indulgence at our hands. Sir, the form of government, such as has been described, however mild and beneficent it may be in its administration, places those subjected to it in a state of political slavery, and they are as completely divested of self-control as the infant who is dandled on the knee of its parent. As to the existence, then, of this species of slavery, it mattered not whether the people within the limits of this District were regarded as the favorite son, and feasted on the fatted calf, or were exposed to the cruel rigor of a stepmother.

An idea had been held out from a very respectable quarter that this District might, in time, become a State. As to Congress, what difference will they find between being under the jurisdiction of the State of Columbia, or the State of Maryland. But, if this objection were removed, it is impossible that this territory can become a State. The other States can never be brought to consent that two Senators and, at least, three electors of President, shall be chosen out of this small spot, and by a handful of men.

The Constitution seems to have intended, by its provision on this subject, to guard the General Government against the undue influence of any particular States wherein it might sit. An insurrection in Philadelphia is mentioned by some gentleman as having given rise to this clause in the Constitution. The Constitution, no doubt, had a wise end in view, but it has failed in the means of attaining it. No man has a higher respect than myself for the talents of the framers of that instrument. But let it be remembered, that they were making a great experiment, and to have failed in but a single object, is the highest proof of their wisdom. The physical force of this small District would prove but a poor defence against the aggression of large and powerful States. Happily, our security is more amply provided for; it results from the command which has been given us over the sword and the purse of the Union. Our protection is not in a mathematical line—which would oppose but a feeble resistance to an invading foe. But let gentlemen ask themselves, why the inhabitants of this District should be less formidable if disposed to insurrection, because under our own jurisdiction? Look at Paris! was the insurrection of the fourteenth of July, which humbled into the dust the ancient monarchy of France, the effect of a want of jurisdiction; of a want of power in the Government over the lives and fortunes of the people? Did the city afford the Government a defence? No, it was in insurrection. Did the military send its aid? On the contrary, it joined the insurgents. What was the fact at Philadelphia? That Congress was insulted by its own troops. Would the civil jurisdiction of the town have repelled the bayonet? No, it was not in parchment to afford this defence. It has left us an awful lesson against standing armies; and if we shall ever be so infatuated as to multiply armies about us, we may rely in vain on the lines of circumvallation which the limits of our exclusive jurisdiction form. The Constitution, therefore, has failed in its endeavor to give to Congress any other security than that which public opinion and the command of the national resources afford.

But, whilst I have no doubt on the subject of our Constitutional right, I am opposed to the resolution on the ground of expediency. It appears to have disseminated a great alarm among the people of our immediate neighborhood. At a proper time, when great unanimity can be obtained, it may be carried into effect. If now passed, it is irrevocable; and I have no indisposition to give the question the most mature deliberation, and to give it a fair operation on the public mind. I could wish, indeed, to see the people within this District restored to their rights. Men in such a situation are, as it had been wisely and eloquently said, fit instruments to enslave their fellow-men. This species of Government is an experiment how far freemen can be reconciled to live without rights; an experiment dangerous to the liberties of these States. But, inasmuch as it has been already made, inasmuch as I was not accessary to it, and as, at some future time, its deleterious effects may be arrested, I am disposed to vote against the resolutions. I view them as a fatal present to this House, although I respect the motives in which I believe them to have originated; as tending to disunite those who ought ever to act in concert; and I have no hesitation on a question of expediency to declare my disposition to concede something to the wishes and fears of those around me. In their present shape, at least, I shall therefore vote against the resolutions.

Mr. Eustis was opposed to the resolutions, for the reasons which had been stated, and for other reasons not mentioned, though they might have occurred to the minds of gentlemen. He thought it right to express a difference of opinion with the

gentleman from Virginia, (Mr. Randolph,) on an important question, the exclusive jurisdiction of Congress to the ten miles square. He was not prepared to pronounce the provision of the Constitution on this subject deficient or unwise. It rather appeared to him to be founded in the nature of the Government. A Government on parchment, and without force, was no Government at all. It had been stated this provision grew out of a transaction at Philadelphia, and asked what dependence was to be placed on a military force when that force was itself the aggressor? But that transaction suggested a different result. Had the militia been well equipped and ready for service, and under the immediate control of Congress, would the military force have been suffered to overawe them? This very case furnished an argument for investing Congress with the complete command of the militia force of the territory, to screen them from insult, and to protect them from the application of force that might destroy deliberation. They had already taken a course calculated to prove the soundness of this mode of protection. Their laws had recognised the militia of the territory; and some measures had been taken to organize them. The militia was the physical force Congress must rely on. Suppose that militia were under the command of Maryland, and Congress was about to pass a law obnoxious to that State. Suppose the militia of Maryland to be mutinous, and to surround these walls. Must you resort to Maryland for protection, and wait on her measures? No; the situation of the territory and your immediate power over the militia must furnish you with the means of protection. He therefore thought it one of the best provisions of the Constitution, to submit the physical force near the Government to its direction. The same reasons that give a command over the militia to the States apply to the Federal Government more strongly, and dictate the propriety of the measure by a more imperious necessity. What has happened may happen again. Congress may chance to pass laws obnoxious to the States, or the territory. He would ask if, to-day, they were about to pass such an obnoxious law, and there was no organized militia, where would be their protection? He hoped the Government would give support to the system for organizing the militia of the District, so that they may be an efficient and respectable protection. The principle on which the militia was founded, was, as far as practicable, a sound one; it was a democratic principle, which put arms into the hands of every citizen, and placed him under the command of the Federal Government.

He acknowledged the difficulties of legislating for the territory. But it was a duty which they could not forego, until the government of the people was provided for in some other way; and that, he thought, should be by an internal Legislature. As to the retrocession of the territory, it was impolitic, in point of time. He hoped that Congress would, before they rose, by some act, show that they were impressed with an obligation to make this the permanent seat of Government. After this question was disposed of, he would lay some such resolution on the table.

Mr. Thatcher said, he was not prepared to go fully into the subject, but he wished to add a few ideas to those which had been already expressed. He considered these resolutions as having a tendency to distract and obstruct the operations of business in the territory. Congress had experienced considerable inconveniences in this place; but they had been calculated upon when the Government was removed; and he believed, if similar questions had not been so frequently agitated, the accommodations of Congress would, before this time, have been much better. He hoped this would be the last time such resolutions would be offered. His colleague (Mr. Bacon) had suggested the expense and trouble of legislating for the District. As to the expense, he did not see any; and as to the trouble, the business was not managed in the best way. He understood that it was contemplated to give the citizens a local Legislature to manage their own concerns.

But gentlemen say, the people of the territory are now deprived of their rights. But this remark was extraordinary from a gentleman who had offered a resolution for transferring them, like so many Polish or Russian surfs, without their consent.

Mr. T. went at some length into the discussion, and coincided in opinion with the gentlemen who had preceded him in their opposition to the resolutions; and concluded, with saying, that he was clearly of opinion, that Congress ought not to retrocede the territory. He felt as great personal inconvenience, as well as his constituents, from the distance of their residence, as any member on the floor, or his constituents could feel. But he pledged himself and his constituents, that, however great these inconveniences, they would submit to them, in order that they might have a common Capital, and afford security to the Government.

Mr. Claiborne spoke in favor of the said resolutions.

Mr. Southard rose only to make one observation, which had been touched on but lightly in the course of the debate. It appeared to him that when Congress assumed the exclusive jurisdiction of the ten miles square, they had, in the first instance, entered into a contract with the Legislatures of Virginia and Maryland. He had no doubt that, if the contract had ended here, they might, with their consent, make a retrocession. The second step, however, taken, was a contract between the agents of Government and the proprietors, in order to obtain the soil. This contract appeared to him to be solemn and binding. In entering into the contract, the proprietors gave the General Government sites for the public buildings, and half the residue of the land within the city plot. He conceived that this was a contract founded on express stipulations that Congress should exercise exclusive jurisdiction. The proprietors had no idea, at the time they made the contract, that their property would be retroceded; and the Government had since received more

than one million's worth of real property which they now enjoyed. He would ask, whether a retrocession, under such circumstances, would not have a retrospective effect, and impair those obligations which the United States were bound to observe? For this reason, he thought a retrocession improper, as it would be a violation of contract with the people of the territory. It appeared to him that, while they were satisfied, the General Government ought to be satisfied.

Various inconveniences had been stated, to which the Government was exposed; and the people of the territory had been represented as in a state of slavery. But he looked forward to the time, as not distant when they would have the right of governing themselves through a territorial legislature; in which event there would be no time lost to the councils of the nation.

The gentleman from Massachusetts (Mr. Bacon) has compared the proposed transfer to that of a little piece of soil for a turnpike road. But the cases were not parallel; as, in the last instance, there were no individuals to be transferred.

Mr. S. had but one more observation to make. Such resolutions tended to destroy the confidence of the people in the Government. When their proceedings fluctuated and became unstable, the Government became unhinged, and the liberties of the nation ceased to be secure. From the tendency of these resolutions he did expect that, before this time, another resolution would have been brought forward, to remove the Government. But he hoped these resolutions would be rejected by so decided a majority, as to prevent the proposition of any similar ones.

Mr. Varnum called for the reading of the document alluded to, as he had never seen it.

Mr. Southard said, he did not know that there was any such official document; but he had seen such a statement, of the authenticity of which he entertained no doubt; and he presumed the gentleman was as well possessed of the facts as himself.

Mr. Varnum doubted the reality of the observation of the gentleman from New Jersey. He suspected there was no such contract in existence. It was not the interest of the Government of the United States to do anything that would injure this District. He therefore supposed that every gentleman who voted on this occasion, would act for the interest of his country. If he thought it possible for Congress to legislate for the territory, he should have no objection to retaining the jurisdiction. But, when he considered that Congress were appointed to legislate on great objects, and not on minute local concerns, he did not think them competent to legislate for the persons situated in the Territory of Columbia. He did not know whether, if the jurisdiction was retained, it would not be proper to indulge the citizens with a territorial legislature. But to this, the people themselves object. Virginia objects to a union with Maryland. There were, manifestly, hostile interests which could not easily be united. And if there shall be a territorial legislature, still Congress has a right over their acts. Whether this was the fit time to retrocede the territory he did not know; but he believed the time would come when the citizens of the territory will be in favor of it.

It appeared to him that the ideas of his colleague (Mr. Eustis) respecting the militia, ought to be repelled. He has said that, unprotected by physical force, Maryland or Virginia may bring a force against the Government, and overawe it. Every man, however, knows that the whole militia of the United States are under the control of the United States, and the President has now as full a command over the militia of Maryland or Virginia, as over the militia of Columbia. There was no difference between them, unless the militia of Columbia were to be used by the Executive in cases where there was neither invasion nor insurrection. How far they would be a proper instrument to carry particular plans of the Executive into effect, gentlemen must determine for themselves.

Mr. V. did not know how true it was, that the United States had received one, two, or three millions of dollars. But if it were so, it was so applied as not to render any use to the Government. It was certain there were great piles of buildings erected; but every gentleman who looked through them will be of opinion that they would be more valuable if the materials of which they were composed were thrown down, than to remain as they now do. It was true that these buildings were, in great part, erected with money derived from the sale of lots; but it was also true that large sums had been granted from the Treasury.

Look at the situation of the territory—there were three incorporate bodies. But what was the situation of the other parts of the territory? Are they under any government at all? Do we not see, too, that the citizens of the incorporations are directly opposed to each other, from their peculiar situation. From these inconveniences, Mr. V. said, he wished to relieve them; and he perceived no way so effectual as by a retrocession. He had no doubt of the Constitutional power of Congress. But still, as the people are not willing to enjoy the benefits, in his opinion, to be derived from a retrocession, he was willing to wait until they were prepared for it.

Messrs. Bayard and Randolph spoke a second time against the resolution.

Mr. Smilie stated the circumstances of the case at Philadelphia, which had been so often alluded to by gentlemen. At the close of the late war there had been a mutiny among the troops, who had surrounded Congress. Not a drop of blood had, however, been spilt. This was the mighty incident of which so liberal a use had been made. He would ask whether, in countries over which the Government had complete jurisdiction, worse things had not happened? He would ask, whether this menace of Congress were to be compared with the mob of Lord Gordon in a country over which the Government had an entire jurisdiction?

The question was then taken on the first resolution, for receding to Virginia the territory originally attached to that State, and lost—ayes 22.

When the question was taken on the second resolution, and lost, without a division.

The Committee rose, and reported their disagreement to the resolutions.

The House immediately took up their report.

Mr. Nicholson called for the yeas and nays.

Mr. Claiborne spoke in favor of the resolutions.

It was proposed to take the question upon both resolutions together.

Mr. Dawson moved to divide the question. He said he should vote for the first resolution that retroceded to Virginia that portion of territory originally attached to her; and for the second, with the exception of the City of Washington, which, he thought, ought to be reserved.

Mr. Elmendorf observed, that of the Constitutional power of Congress to retrocede the territory, he had entertained no doubt. He therefore viewed the present question as a question of expediency; and, in this view, he could not conceive how a single gentleman could conceive it expedient to continue to legislate for a people who were not represented.

Mr. Randolph said, as he believed the House incompetent to legislate for the people of Columbia; as he believed the interests of the several parts of the territory were as hostile as any in the Union, as it was manifest there was an Alexandria, a Georgetown, and a city interest; and even, within the city, a Capitol-hill interest, and a President's-house interest—which were irreconcileable; he should vote for the amendment of his colleague. (Mr. Dawson.) To attempt to legislate for the District was, in effect, to constitute the chairman of the committee, or, at any rate, the committee itself on the affairs of the territory, the Solon or Lycurgus of the place. It was well known that the indolence of the other members, or their indifference, inseparable from the situation in which they were placed, would prevent Congress from legislating with a full understanding of the objects before them. He, therefore, thought it expedient to retrocede all the territory, excepting the City of Washington. This disposition of the territory would leave entirely untouched the question which arose from the interest of individuals who had made purchases of property under the faith of Congress retaining the jurisdiction. It was probable that, in such event, a corporation might be established in the city that would answer the ends of Government, without two-thirds of the time of the National Legislature being consumed.

Mr. S. Smith said, he had listened with great attention to the arguments of different gentlemen during the debate. The gentleman from Virginia (Mr. Randolph) had told the House, in that debate, that Congress were not competent to legislate for the territory; and yet he is now about to legislate for them in a concern of the utmost importance by giving them away, without their consent, to the States.

Mr. Holland spoke in favor of a retrocession.

Mr. Randolph, in reply to the gentleman from Maryland, (Mr. S. Smith,) would ask whether the people of the territory were ceded by Maryland and Virginia with their consent?

Mr. Bayard asked, what the gentleman from Virginia meant by consent? The people had been ceded, with the consent of their Representatives in the Legislatures of Maryland and Virginia. He was opposed to the proposition of the gentleman as it could not relieve Congress from any of their present difficulties. But, to relieve Congress from the trouble they experienced, he had drawn a resolution, which, at a convenient time, he would propose—to authorize the President to appoint three persons, learned in the law, to report to Congress a uniform system of legislation for the territory.

Mr. S. Smith.—The gentleman from Virginia says, if the people of the territory were ceded without their consent, they may be retroceded without their consent. I do not know that the gentleman can carry his recollection back to the period of the cession. But other gentlemen would recollect that the people of Alexandria were very anxious to be admitted into the ten-miles-square; and they were admitted. If he recollected right, there had been many petitions to that effect from different portions of the District. He believed, therefore, that the people had been ceded with their consent. Before he could vote for the proposed measure, he must be first certain that the people wish to be ceded; when, if the States likewise agreed, he would not withhold his consent to a retrocession with the reservation of the city. But he would object to any such measure, until these things were shown.

Mr. Randolph.—We are told the people of this territory were ceded with their consent; and wherefore? Because the Government, of which they formed a part, agreed to the cession. And what follows? That we, who represent the whole people of the United States, in their confederate capacity, and the States who represent them in their individual capacity, have an an equal right to retrocede. With respect to the remark of the gentleman from Maryland, (Mr. S. Smith,) I reply that I consult the interests of the people of the whole United States; and I believe, also, that I consult the true interests of the people residing here.

Mr. Bayard.—The gentleman from Virginia first told us the people of this territory were slaves. Now, it seems we are their representatives. If so, they are not slaves. The people, in the act of cession, were represented in the only way that they can be represented in this country.

The question was then taken by yeas and nays, on concurring with the Committee of the Whole, in their disagreement to the first resolution, and carried—yeas 66, nays 26, as follows:

Yeas—Theodorus Bailey, James A. Bayard, Thomas Boude, Richard Brent, Robert Brown, John Campbell, John Clopton, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Dickson, Peter Early, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, Ar-

chibald Henderson, William H. Hill, David Holmes, Benjamin Huger, Samuel Hunt, George Jackson, William Jones, Ebenezer Mattoon, David Meriwether, Samuel L. Mitchill, Thomas Moore, Lewis R. Morris, Thomas Morris, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, Israel Smith, John Cotton Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, John Stanley, John Stewart, John Taliaferro, jr., Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, Richard Wynn, and Thomas Wynns.

NAYS—Willis Alston, John Archer, John Bacon, Phanuel Bishop, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, Richard Cutts, John Dawson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, William Hoge, James Holland, Michael Leib, James Mott, John Randolph, jr., John Smilie, John Smith, of New York, Josiah Smith, Richard Stanford, David Thomas, Joseph B. Varnum, Isaac Van Horne, and Robert Williams.

The second and last resolution to which the Committee of the Whole reported their disagreement, being twice read, in the words following, to wit:

Resolved, That it is expedient for Congress to recede to the State of Maryland, the jurisdiction of that part of the Territory of Columbia, which was ceded to the United States by the said State of Maryland, by an act passed the nineteenth day of December, in the year one thousand seven hundred and ninety-one, entitled "An act concerning the Territory of Columbia and the City of Washington:" provided the said State of Maryland shall consent and agree thereto:

The question was taken that the House do concur with the Committee of the Whole in their disagreement to the same, and resolved in the affirmative.

THURSDAY, February 10.

An engrossed bill to provide an additional armament for the protection of the seamen and commerce of the United States was read the third time, and passed.

Mr. GREEN, the Delegate in this House from the Mississippi Territory of the United States, presented to the House certain resolutions of the General Assembly of the said Territory, and a memorial thereto annexed, from the said Assembly, addressed to the President, Senate, and House of Representatives of the United States, representing the inconveniences to which they have been and are now subjected, in consequence of shutting the port of New Orleans, in virtue of a proclamation of the Spanish Intendant of the said port, without having a place of deposit on the Mississippi river assigned to them in lieu thereof.

The said resolutions and memorial were read, and ordered to be referred to the Committee of the Whole on the state of the Union.

A memorial of sundry citizens of the United States, and inhabitants of the city and State of New York, was presented to the House and read, praying that a monument may be erected to perpetuate the memory of a number of American citizens who perished on board of the British prison ships, or who were slain in defence of their country, during the Revolutionary war; the bones and other remains of whom have been, and still are, daily seen at and near the site of the present navy yard of the United States, in the vicinity of the said city, scarce earthed in the falling banks, or exposed on the naked shores.

Ordered, That the said memorial be referred to the Committee of the whole House to whom was committed, on the twenty-fourth ultimo, the bill sent from the Senate, entitled "An act to carry into effect several resolutions of Congress for erecting monuments to the memories of Generals Wooster, Harkemer, Davidson, and Scriven," together with the report of a select committee, proposing amendments thereto.

On motion it was

Resolved That the Commissioners, appointed under "An act for the amicable settlement of limits with the State of Georgia, and authorizing the establishment of a Government in the Mississippi Territory," be, and they are hereby, authorized to cause to be printed their report respecting the claims of settlers, or other persons, together with such documents as may accompany the same; and that the expense thereof be defrayed out of the contingent fund of this House.

On motion, it was

Ordered, That so much of a letter, dated the thirteenth ultimo, from the Secretary of the Treasury to the Chairman of the Committee to whom were referred the letters of Edward Tiffin, President of the Convention of Ohio, and Thomas Worthington, special agent of the said State, together with a copy of the constitution thereof, and sundry propositions in addition to, and in modification of, those contained in an act passed at the last session of Congress, as relates to the sale of lands, the property of the United States, within the said State of Ohio, be referred to the committee appointed the seventeenth of December last, on that part of the Message from the President of the United States, of the fifteenth of the same month, which "relates to our concerns with the Indian tribes, and the establishment of a new settlement."

The House resolved itself into a Committee of the Whole on the bill for the relief of Moses White; and, after some time spent therein the bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

Mr. EARLY, from the committee to whom were referred, on the fourth instant, a letter and report from the Secretary of War, accompanied with sundry documents, respecting claims against the United States, for services of the militia of the State of Georgia, made a report thereon; which was read, and ordered to be committed to a Committee of the Whole House on Monday next.

Mr. HILL, from the committee to whom was recommitted, on the seventh instant, an engrossed bill to prevent the importation of certain persons, whose admission is prohibited by certain laws of the State Governments, reported an amendatory

bill to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited; which was read twice and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Secretary of State, of the twenty-fifth ultimo, on the memorial of Tobias Lear; and, after some time spent therein, the Committee rose and were refused leave to sit again.

Ordered, That the Committee of the whole House be discharged from the farther consideration thereof; and that the said report and memorial, together with the documents accompanying the same, be recommitted to a Committee of Claims.

Mr. THOMPSON, from the committee appointed, on the memorial of the City of Washington, and Alexandria, reported a bill for establishing the Government of Columbia.

This bill establishes a Legislature, composed of a House of Representatives to be chosen annually, and a Senate to be chosen biennially, by the freemen who have resided in the Territory twelve months and paid taxes. No person to be eligible as a member of the House of Representatives unless resident in the Territory for three years, and possessed of a freehold for the same time; and no person to be eligible as a member of the Senate unless possessed of property in value amounting to five hundred dollars.—Referred to a Committee of the Whole on Monday next.

OHIO SCHOOL FUND.

The House resolved itself into a Committee of the Whole on the report of the committee of the second instant, to whom were referred, on the twenty-third of December last, a letter from Edward Tiffin, President of the Convention of Ohio, and a letter from Thomas Worthington, special agent of the said State, enclosing a copy of the constitution thereof, together with sundry propositions in addition to, and in modification of, those contained in an act passed at the last session of Congress; and after some time spent therein, the Committee rose and reported to the House their agreement to the resolutions contained therein, with two amendments, which being severally read, the first amendment was, on the question put thereupon, agreed to, and the other disagreed to by the House.

The said resolutions, as amended, were again severally read, at the Clerk's table, and agreed to by the House, as follows:

1. *Resolved*, That a donation, equal to one thirty-sixth part of the amount of the lands in the United States' Military Tract, within the State of Ohio, be made, for the support of schools within that tract.

2. *Resolved*, That a donation equal to one thirty-sixth part of the County of Trumbull, be made, out of the lands within the United States' Military Tract, for the support of schools within the said County of Trumbull.

3. *Resolved*, That a donation equal to one thirty-sixth part of the Virginia reservation, so far as the unlocated lands, within that reservation, (after the warrants issued by that State shall have been first satisfied,) will supply the same, be made, for the support of schools in the district contained between the Scioto and Little Miami rivers.

4. *Resolved*, That a like provision, for the use of schools, be made, out of of any lands which may hereafter be acquired from the Indian tribes.

5. *Resolved*, That the lands which now are, or hereafter may be, appropriated to the use of schools within the State of Ohio, be vested in the Legislature thereof, in trust for that object.

6. *Resolved*, That not less than three-fifths of the sum offered to be appropriated by Congress, for the opening of roads, from the Western to the Atlantic waters, shall be appropriated, under the direction of the State of Ohio, for the laying out of roads within that State.

7. *Resolved*, That, in lieu of the township proposed to be granted for the use of an academy, by the act passed the fifth day of May, one thousand seven hundred and ninety-two, there be granted to the State of Ohio, for the purposes described in that act, one other entire township, within the district of Cincinnati; provided that the State of Ohio shall relinquish to the United States, all their claims, under the act aforesaid, against the said John C. Symmes.

8. *Resolved*, That these propositions shall depend on the compliance, by the State of Ohio, with the provisions of the third proposition, and second section of the aforesaid act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," passed the thirtieth day of April, one thousand eight hundred and two.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. RANDOLPH, Mr. ELMENDORF, Mr. GODDARD, Mr. HENDERSON, and Mr. ARCHER, do prepare and bring in the same.

INDIAN TRIBES.

The House resolved itself into a Committee of the Whole on the report of the committee of the thirty-first ultimo, on so much of the Message from the President of the United States, of the fifteenth ultimo, "as relates to our concerns with the Indian tribes, and the establishment of a new settlement;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the resolutions contained therein; which were severally twice read, and agreed to by the House, as follows:

1. *Resolved*, That the law passed on the eighteenth day of April, one thousand seven hundred and ninety-six, entitled "An act for establishing trading-houses with the Indian tribes, and which was revived and continued by another law, passed on the thirtieth day of April, one thousand eight hundred and two, ought to be farther continued, with the appropriations therefor, for the term of two years, from the fourth day of March next; and from thence until the end of the next session of Congress.

2. *Resolved*, That an additional sum of ten thousand dollars ought to be appropriated, to enable the Executive to embrace any favorable opportunity of obtaining farther cessions of land from the Indians.

3. *Resolved*, That the sum of two thousand dollars ought to be appropriated, for the purpose of procuring

articles necessary to the establishment of salt-works on the Wabash river; and that the Executive ought to be authorized to lease the same for a term not exceeding —— years, to one or more persons, as shall appear most advantageous to the public, and on conditions which shall insure the working of them.

4. *Resolved*, That an office ought to be opened for the sale of land, within the Mississippi Territory, to which the Indian title has been, or shall be extinguished, on conditions which shall guard against monopoly, and encourage the actual settlement of the same; and that prompt measures ought to be taken for the adjustment of all existing rights and claims within the said Territory.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. DAWSON, Mr. THOMAS MORRIS, Mr. HASTINGS, and Mr. MERIWETHER, do prepare and bring in the same.

PRESERVATION OF TIMBER.

On the call of Mr. NEWTON, the House went into a Committee of the Whole on the bill making an appropriation of $50,000, for the preservation of timber on navy yards and for the improvement thereof.

Mr. RANDOLPH considered this bill entirely unnecessary, as it made a partial appropriation that would be fully embraced in the general naval appropriations.

Mr. S. SMITH moved an amendment desiring the appropriation of $50,000, by prescribing that $10,000 should be appropriated to each of the yards of Charlestown, New York, Philadelphia, and Norfolk, and $5,000 to Washington, and a like sum to Portsmouth.

A debate ensued, in which Messrs. S. SMITH, GRISWOLD, MITCHILL, NEWTON, and MOTT, supported, and Messrs. RANDOLPH, MACON, SMILIE, and EUSTIS, opposed the bill; when Mr. SMILIE observed that as the only difference of opinion related to the sum, he should move that the Committee should rise; when risen, he should move a postponement of the bill until the general appropriation bill should be taken up.

The question on the rising of the Committee, was carried—yeas 46, nays 33. The Committee rose, when leave was refused them to sit again, and the bill referred to the Committee of Ways and Means.

FRIDAY, February 11.

An engrossed bill for the relief of Moses White was read the time and passed.

The SPEAKER laid before the House a report from the Secretary of State on the petition of William Wilson, John Potts, and David Easton, referred to him by order of the House on the seventeenth ultimo; which was read, and, together with the said petition and the documents accompanying the same, ordered to be committed to the Committee of Claims.

The House resolved itself into the Committee of the Whole on the supplementary report of the Committee of Commerce and Manufactures, of the twenty-sixth ultimo, to whom was recommitted their report on the petition of Samuel Corp; and, after some time spent therein, the Committee rose and reported to the House their agreement to the resolution contained therein; which was twice read, and agreed to by the House, as follows:

Resolved, That the Collector of the port of New York be, and he is hereby, authorized to pay Samuel Corp the amount of three debentures, payable in April, June, and August, one thousand eight hundred, which were issued to him on account of goods exported by him to New Orleans on board the ship Chesapeake, Captain Tombs, in the month of August, one thousand seven hundred and ninety nine; provided that every requisite, agreeably to law, for the obtaining such drawbacks, shall have been complied with.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

A petition, in the French language, of sundry inhabitants of Post Saint Vincennes, in the Indiana Territory of the United States, whose names are thereunto subscribed, was presented to the House and read, complaining of intrusion of the citizens of the United States, on lands which the petitioners claim, under a title from certain Indian tribes, and of other grievances therein specified, to which they have been, and now are, subjected; and praying the interposition of Congress to redress the same; also, that a small portion of wood-land on each side of the Oubache river, adjoining the lands which they now possess, may be granted for the common use and benefit of the petitioners.

Ordered, That the said petition be referred to the committee appointed the eighth instant, on a letter from William Henry Harrison, President of the Convention, and a memorial of the inhabitants of the Indiana Territory of the United States.

Mr JONES, from the committee to whom was referred, on the 28th ultimo, a letter from David Humphreys, relative to the disposition of certain presents which he received from the Dey of Algiers and the King of Spain, whilst in the capacities of Minister Resident of the United States, at the Court of Lisbon, and Minister Plenipotentiary at the Court of Madrid, made a report thereon; which was read, and ordered to lie on the table.

REVOLUTIONARY PENSIONERS.

On motion of Mr. HELMS, the House went into Committee of the Whole, Mr. J. C. SMITH in the Chair, on the following bill:

A Bill to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war.

Be it enacted, &c., by the Senate and House of Representatives of the United States of America in Congress assembled, That any commissioned officer, non-commissioned officer, soldier, or seaman, disabled in the actual service of the United States, by wounds received during the Revolutionary war, and who did not desert the said service, shall be entitled to be placed on the pension list of the United States during life: *Provided*, That in substantiating the claims thereto, the rules and regulations following, shall be complied with.

First. All evidence shall be taken on oath or affirmation, before the judge of the district in which such invalid resides, or before some person specially authorized by commission from the said judge.

Secondly. The evidence relative to any claimant must prove decisive disability to have been the effect of known wounds received while in the actual line of his duty, in the service of the United States, during the Revolutionary war; that this evidence must be the affidavits of the commanding officer or surgeon of the ship, regiment, corps, or company, in which such claimant served, or two other credible witnesses to the same effect, setting forth the time and place of such known wound.

Thirdly. Every claimant shall be examined on oath or affirmation, by some respectable physician or surgeon, to be authorized by commission from the said judge, who shall report in writing his opinion, upon oath or affirmation, of the nature of said disability, and in what degree it prevents the claimant from obtaining his livelihood.

Fourthly. Every claimant must produce evidence of his having continued in the service of the United States, to the conclusion of the war in seventeen hundred and eighty-three, or being left out of the service in consequence of his disability, or in consequence of derangement of the army, and of the mode of life or employment he has since followed, and of the original existence and continuance of his disability.

Fifthly. Every claimant must show satisfactory cause to the said judge of the district, why he did not apply for a pension, in conformity to laws heretofore passed, before the expiration of the limitation thereof.

Sixthly. No evidence of any claimant shall be admitted whose claim has heretofore been legally examined and rejected.

SEC. 2. *And be it further enacted*, That the said judge of the district shall give to each claimant a transcript of the evidence and proceedings had respecting his claim; and shall also transmit a list of such claims, accompanied by the evidence herein directed, to the Secretary of the Department of War, in order that the same may be compared with the muster rolls and other documents in his office, and if found to accord therewith, the applicants are thenceforth to be placed on the pension list of the United States: *Provided*, That in no case a pension shall commence before the first day of January, eighteen hundred and three, except so far as to offset the commutation of half pay received by such officers, in which case the proper officer is to calculate the pension from the first day of January, seventeen hundred and eighty-four.

SEC. 3. *And be it further enacted*, That the pensions allowed by this act shall be estimated in the manner following, that is to say: a pension to a commissioned officer shall be considered the one half of his monthly pay, as by law established, and the proportions less than a full pension, shall be the like proportion of half pay. And a full pension to a non-commissioned officer, private, soldier, or seaman, shall be five dollars per month, and the proportion less than a full pension shall be the like proportions of five dollars per month.

SEC. 4. *And be it further enacted*, That the pensions becoming due in virtue of this act, shall be paid in the same manner as invalid pensions are paid, who have heretofore been placed on the pension list of the United States, under such restrictions and regulations, in all respects, as are prescribed by the laws of the United States, in such cases provided.

Mr. ELMER moved to strike out the sixth rule in the first section.

Mr. GRISWOLD said the effect of this motion being adopted would be to open the door to all claims whatever, though they had been fully examined and rejected. He was therefore against it.

Mr. ELMER replied that almost all the claims rejected, had been rejected because sufficient testimony had not been produced before the expiration of the last law, and not from an inability in the applicants to produce satisfactory testimony in case they had been indulged with time.

The amendment was lost—yeas 20.

The second section being under consideration,

Mr. EUSTIS observed that it was extremely disagreeable to object to a bill whose object was so beneficent, but he was persuaded that it was impossible for the judges to execute the duties assigned them. Against the exercise of like duties they had already protested. The number of persons having just claims on the Government was extremely small; and this provision will encourage a great mass of fruitless applications; whereby great expense would be incurred by the applicants without any remuneration. He hoped, therefore, the Secretary of War would be suffered to receive the applications; and be authorized to institute a proper tribunal for the decision of claims; or to make report to Congress. His objection to imposing the duties on the judges was insurmountable. They could not coolly investigate in one court the merits of each particular case. When an applicant appeared before them, whose very appearance indicated his wretchedness, there would be too powerful an address to their sensibilities as men to resist his demand; and they would generously and magnanimously allow him, without rigid inquiry, what he claimed.

Mr. S. SMITH said he liked the bill as it stood, better than he should if it were altered conformably to the wishes of the gentleman from Massachusetts. He was inclined to think military men would be more liberal than the judges. If he were in such a situation, he knew he should. And what was the danger to be apprehended from such a fellow feeling?

The greatest danger was that some unfortunate wretch, who had too much pride to apply for relief until his distresses forced him, should obtain the relief which his country had awarded him for risking his life and his all in defence of his country's freedom. Suppose that one, two, or three, or that even one, two or three hundred, of these unfortunate men should get on the pension list, and that in most of the cases in which relief was furnished Government were deceived? He would give his consent to the provision, if but twenty worthy men of the number, that were now excluded, were brought on the list.

The Committee rose, and reported the bill with amendments.

SATURDAY, February 12.

Ordered, That the bill sent from the Senate, entitled "An act to provide for the due execution

of the laws of the United States within the State of Ohio," be recommitted to a Committee of the whole House to-day.

The House resolved itself into a Committee of the Whole on the amendment proposed by the Senate to the bill, entitled "An act for the relief of the sufferers by fire, in the town of Portsmouth;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said amendment at the Clerk's table; and the same being twice read, the question was taken, that the House do concur with the Committee of the whole House in their agreement to the said amendment, and resolved in the affirmative.

The House, resolved into a Committee of the Whole on the bill sent from the Senate, entitled "An act to provide for the due execution of the laws of the United States, within the State of Ohio;" and, after some time spent therein, the bill was reported to the House without amendment.

The said bill was then read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act providing passports for the ships and vessels of the United States;" and, after some time spent therein, the bill was reported to the House with amendments, and ordered to be engrossed, and read the third time on Monday next.

Mr. Davis, from the committee appointed, on the 25th ultimo, "to inquire into the expediency of concentring the several public offices and other public buildings belonging to the United States, in the City of Washington," made a report thereon; which he delivered in at the Clerk's table, where the same was read, in the words following, to wit:

"That, in their opinion, no alteration ought to be made in the sites of the public offices or other public buildings belonging to the United States, in the City of Washington."

The House proceeded to consider the said report at the Clerk's table; and the same being again read, was, on the question put thereupon, agreed to by the House.

Mr. Huger, from the committee to whom was referred so much of the President's Message as relates to the fostering the fisheries of the United States, made a report. It concluded with the following resolutions:

1st. Ships and vessels actually employed in the cod and whale fisheries shall not in future be subject to the payment of duty on their tonnage.

2d. Fishermen and other persons actually employed in navigating the said vessels, shall not in future be liable to the payment of hospital money.

3d. The owners of, and persons navigating vessels actually employed in the codfisheries, which may be shipwrecked or otherwise lost, whilst so employed, shall nevertheless receive such bounty, as they would otherwise have been entitled to under the different acts of Congress, heretofore passed on the subject of the fisheries.

The report was ordered to be printed, and referred to a Committee of the whole House for Tuesday next.

Mr. Eustis moved the following resolutions:

"*Resolved*, That provision ought to made, by law, for making such alterations in the Capitol, as may be necessary for the future accommodation of Congress.

"*Resolved*, That the sum of —— dollars be appropriated for the same."

Resolved, That the said motion be referred to a Committee of the whole House on Wednesday next.

Mr. Southard, from the committee appointed, on the twenty-ninth of December last, "to inquire into the propriety of granting further time to proprietors or holders of military land warrants to obtain and locate the same;" who were instructed by a resolution of this House, of the twenty-sixth ultimo, "to inquire into the expediency of authorizing the proprietors or holders of military land warrants to locate their respective claims on a less quantity than four thousand acres;" and to whom were referred, on the fourth instant, two reports of the Secretary of War: one on the claims to lands for military services; the other, on claims for duplicates of warrants issued from the land office of Virginia, and plats and certificates of surveys founded on such warrants, suggested to have been lost or destroyed; made a report thereon; which was read and considered: Whereupon,

"*Resolved*, That further time ought to be given to the holders or proprietors of military land warrants to obtain and locate the same.

"*Resolved*, That provision ought to be made, by law, to enable persons holding military land warrants, by transfer or assignment, to locate them on a less quantity than four thousand acres.

"*Resolved*, That provision ought to be made, by law, authorizing the Secretary of War to receive from the twenty separate claimants for military bounty lands, as mentioned in his report, duplicates or certified copies from the proper offices, of any warrants, plats, or surveys, in lieu of the original, upon satisfactory proof that the same have been lost or destroyed; and upon the receipt of copies, as aforesaid, to issue patents to the said twenty claimants, upon proof that every other requisite of the law has been complied with; and also, to issue warrants to the two hundred and fifty-four persons whose claims, in the opinion of the Secretary, have been substantiated."

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Mr. Southard, Mr. Clay, Mr. Thatcher, Mr. Stewart, and Mr. Israel Smith, do prepare and bring in the same.

Mr. Mitchill moved the following resolution:

"*Resolved* That a joint committee of both Houses be appointed to inquire into the state of the public buildings in the City of Washington, and to report what repairs are necessary for their preservation, with the probable expense of such repairs."

Ordered, That the said motion be committed to a Committee of the Whole House, to whom was this day referred a motion relative to a provision for making such alterations in the Capitol

as may be necessary for the future accommodation of Congress.

DISCRIMINATING DUTIES.

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill to allow a drawback of duty on sugar refined within the United States; which was read twice, and committed to the Committee of the Whole House last appointed.

Mr. Dana inquired whether it was intended to take up the report of the Committee of Commerce and Manufactures on the repeal of discriminating and countervailing duties.

Mr. S. Smith replied that he considered the subject of great importance, and had been extremely anxious to have it discussed and decided upon during the present session. But as the consideration of it had been protracted to so late a period as to render it impracticable to carry into effect the necessary provisions in case the report should be adopted, he was willing to discharge the Committee of the Whole from a further consideration of it.

Mr. Mitchill observed that he was considerably disappointed at hearing the motion to discharge the Committee. He had hoped that the projected repeal of the discriminating and countervailing duties between the United States and Great Britain, would have been the subject of a public discussion. Much benefit might be expected from a debate in this House, and he therefore had hoped that the merits of the resolution contemplated would have been debated. Much light had been shed on this complicated inquiry already. Ever since the first motion made during the last session by the gentleman from Maryland, (Mr. S. Smith,) great attention had been given to the subject by almost all classes of people. Merchants and legislators had particularly studied its details, and he thought it was much better understood now by all parties than it was a year ago; and, by a further examination in the Committee of the Whole, he hoped much greater advances would still be made. He, however, was inclined to think that public opinion was not yet ripe for an ultimate decision in favor of the repeal. There was no probability of adopting it, even if it should be argued. The discussion would merely end in a postponement, indefinitely, to some future day. There being, then, no chance of carrying it into operation, and the House being much pressed with more urgent business that ought to be acted upon with all despatch, he felt willing to let the project drop in this way. However speculative men might think on the point, the great body of practical men bore strong testimony against it. He, therefore, on considering the circumstances, should favor the motion, though it met him unexpectedly, and vote for discharging the Committee of the Whole from all further consideration of the meditated repeal of the discriminating and countervailing duties.

The discharge of the Committee of the Whole was carried without a division.

And the House adjourned.

Monday, February 14.

Mr. Brent, from the committee appointed, presented a bill concerning the assurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia; which was read twice and committed to a Committee of the Whole House to-morrow.

Ordered, That the report of the Commissioners of the Sinking Fund, accompanied with sundry statements exhibiting the proceedings which have been authorized by the Board, since their report of the sixteenth of December, one thousand eight hundred and one, which were read, and ordered to lie on the table, on the seventh instant, be referred to the Committee of Ways and Means.

An engrossed bill supplementary to the act, entitled "An act providing passports for the ships and vessels of the United States," was read the third time and passed.

Mr. Thompson, from the committee appointed, presented a bill more effectually to provide for the organization of the militia of the District of Columbia; which was read twice and committed to a Committee of the Whole House on Thursday next.

A Message was received from the President of the United States, transmitting the laws which have been adopted in the Indiana Territory, from January, 1801, to February, 1802, as forwarded to the office of the Secretary of State. The Message was read, and, together with the laws therein referred to, ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to provide for the granting of clearances to ships or vessels of the United States, lying in the river Mississippi, south of the Southern boundary of the United States; and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,' and for other purposes," with several amendments; to which they desire the concurrence of this House. The Senate have disagreed to the bill, entitled "An act for the relief of Hugh Alexander, and others."

Mr. Samuel Smith, from the Committee of Commerce and Manufactures, presented a bill in addition to the act, entitled "An act concerning the registering and recording of ships and vessels of the United States," and to the bill, entitled "An act to regulate the collection of imports and tonnage; which was read twice, and committed to a Committee of the whole House on Wednesday next.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to provide for granting of clearances to ships or vessels of the United States, lying in the river Mississippi, south of the Southern boundary of the United States; and therein to amend an act, entitled 'An act to regulate the collection of duties on imports and tonnage,' and for other purposes:" Whereupon,

Resolved, That this House doth agree to said amendments.

REVOLUTIONARY PENSIONERS.

The House resolved itself into a Committee of the Whole on the bill to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war.

The Committee rose and reported the bill, after adopting several amendments, which were taken up in the House.

Mr. VAN RENSSELAER moved an amendment, which should make provision for those who had been disabled in the service, since the Revolution, in the Indian war; he had observed, in his examations at the War Office, that several of Wayne's army, would have been entitled to a place on the pension list, had they applied in season.

The amendment was lost.

The SPEAKER said, if no further amendments were offered, the question would then recur upon the engrossment of the bill for a third reading.

Mr. GRISWOLD was opposed to the bill, and should vote against the engrossment. It would open too wide a door. It opened a door for every one who had received the least wound in the Revolutionary war to enter a claim; the whole community would be called upon to prove facts and circumstances; and in every case where a wound had been, or was declared to have been received, if the situation of the person was disagreeable, if he was not wealthy, his neighbors would feel for him, and would recommend him to the Government, in order to be freed from the trouble of providing for him themselves. Under these circumstances the Government would be frequently subjected to fraud. What had the Government done? Everything which was reasonable and proper for them to do. Commissioners had been appointed in every part of the United States. And the period for receiving claims, and hearing evidence, had been extended from one time to another. Was it not to be supposed, that those who had neglected to produce their claims, were not entitled to the relief which the bill provided? There were undoubtedly some individuals, who, from pride, or some other cause, had not made their situation public; but was it reasonable and proper, for this cause, to open a door at which the poor of every State, county, town, and parish, in the Union might enter? It would induce exertion on the part of those corporations, to bring them forward, in order to relieve themselves from the expense of supporting them. There might be a few cases, as gentlemen had stated, to which the General Government should extend their relief. But however powerful benevolence might plead in their favor, justice did not demand this excess of generosity.

Mr. RANDOLPH could not see why a longer time should not be given to those who had claims on the bounty of the Government, as well as for the extension of the time for locating land warrants. He could not conceive that there was a distinction between the man who was entitled to compensation for services, and the man who held a land warrant, which had been issued as a compensation for similar services. A law, he said, was about to be passed, giving further time to the holders of military land warrants to locate the same. If they were not barred by an act of limitation, why should the disabled pensioner be limited? They had been told that every pauper of the United States, who was then a parochial charge, would be thrown upon the Government of the Union. And he would ask why not? Where was there a stronger obligation on the Government, than to relieve the men who had fought our battles during the Revolutionary war? The bill in question was a law to enforce a moral obligation on the Government. There were many persons who would not, or had not applied under the former law, who would apply now. He said he should vote for the bill.

Mr. S. SMITH said that in many of the States, particularly the one to which the gentleman (Mr. GRISWOLD) belonged, the situations of these people were known. The State being divided into small towns, the inhabitants were known to each other, and those who were entitled to pensions were advised as to the proper mode of obtaining them. He believed it would be found that every man in that State (Connecticut) was on the pension list who ought to be placed there; while Maryland had but five on the list, although she furnished as many soldiers as Connecticut. He would not say, however, that those of the latter were improperly recorded. If the gentleman (Mr. G.) would cast his eye over the records, he would be convinced that something ought to be done. Suppose the Government should pay two or three thousand dollars a year to fraudulent applicants, it would be better than to deprive even twenty of a claim to which their services justly entitled them.

Mr. VARNUM agreed with the gentleman from Connecticut. (Mr. GRISWOLD.) He was willing to make provision which should include all who had the same claim on public justice. When people talked of moral obligation, he wished to know why they would exclude so large a portion of those who were equally entitled to relief; all those who were engaged in the commencement of the war, and who received wounds that were felt at this day—all those who were enlisted in the first year of the war; he knew fifty instances of those who had received wounds at that time. If that was moral justice, he had not before known what it was. He would go all lengths, and give equal justice, but to that partial mode of proceeding he would never give his assent.

The question for engrossment was taken and carried in the affirmative—yeas 51.

ALIENS IN PENNSYLVANIA.

Mr. LEIB presented sundry memorials from aliens of Pennsylvania, praying a modification of the naturalization act.

The Clerk began the reading of the memorials, when

Mr. SMILIE doubted the necessity of reading the memorials; which he believed were the same, *verbatim*, with those already presented, and which the House had refused to refer.

Mr. LEIB replied that the exceptionable expressions contained in those memorials were not in these.

The reading of the memorials was finished.

Mr. GODDARD thought, as these memorials were of a similar nature with those presented the last session, on which the House had acted, it would be unnecessary to take any order on them.

Mr. LEIB said this was not the case. The prayer of the memorials and their contents were very different from those offered the last session. He trusted, therefore, they would be treated in the same manner with other petitions, and be referred.

Mr. BACON hoped they would be referred, especially as the reference of these petitions, which were respectfully drawn, would be the strongest indication of the displeasure of the House as to the other petitions, couched in different terms.

Mr. GODDARD withdrew his opposition, when the reference obtained.

MILITIA SYSTEM.

Mr. VARNUM called up the report of a select committee, to whom was referred so much of the Message of the President as relates to the militia.

The report of the committee was agreed to, with sundry amendments; when the Committee rose, and the House took up the report of the committee.

The House concurred in the resolution, which, in connexion with the report of the select committee, is as follows:

"That, after a full investigation of the subject, they are of opinion, that a law which passed the eighth day of May, 1792, entitled "An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States," embraces all the objects of a militia institution, delegated to Congress; the principles of that law lay the foundation of a militia system, on the broad basis prescribed by the Constitution, and are well calculated to insure a complete national defence, if carried into effect by the State governments, agreeably to the power reserved to the States, respectively, by the Constitution, and therefore ought not to be altered. But, although the committee are of opinion that the principles of the system established on the part of the United States ought to be adhered to, yet they believe that some small alterations in the details of these principles would render that system still more efficacious, and have reported a bill for that purpose.

"In those States which have taken energetic measures for carrying into effect the system adopted by Congress, agreeably to the power constitutionally vested in them, the militia are making great proficiency in military discipline, and in the knowledge of tactics, which shows that the deficiency in organization, arming, and discipline of the militia, which is too apparent in some of the States, does not arise from any defect in that part of the system which is under the control of Congress; but from omission on the part of the State governments.

"In order, therefore, to impress the State Governments with the importance of the subject, and the indispensable necessity of their vigorous co-operation with the General Government, to complete the militia institution, so as to insure, from that source, a permanent national defence, they submit the following resolution:

"*Resolved*, That the President of the United States be requested to write to the Executive of each State, urging the importance and indispensable necessity of vigorous exertions, on the part of the State governments, to carry into effect the militia system adopted by the National Legislature, agreeably to the powers reserved to the States, respectively, by the Constitution of the United States, and in a manner the best calculated to insure such a degree of military discipline and knowledge of tactics, as will, under the auspices of a benign Providence, render the militia a sure and permanent bulwark of national defence."

Messrs. VARNUM and BUTLER were appointed a committee to wait on the President with the resolution.

Several amendments made in the bill above alluded to were agreed to, and others made; when the bill was ordered to be engrossed for a third reading to-morrow.

TUESDAY, February 15.

An engrossed bill to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary War, was read the third time, and passed.

An engrossed bill in addition to an act, entitled "An act more effectually to provide for the national defence, by establishing an uniform militia throughout the United States," was read the third time and passed.

Mr. HELMS, from the committee appointed, on the twelfth of January last, "to inquire whether any and what provision ought to be made, by law, for allowing pensions to persons who do, at this time, labor under disabilities in consequence of known wounds received in the actual service of the United States, and who have not heretofore been provided for," who were instructed by a resolution of this House, of the fourteenth of the same month, "to inquire into the expediency of extending the time for settlement of claims for services rendered, and supplies furnished, during the Revolutionary war," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House to-morrow.

Mr. RANDOLPH, from the Committee of Ways and Means, presented a bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three; which was read twice, and committed to a Committee of the whole House on Friday next.

Mr. DAWSON, from the committee appointed, presented a bill for continuing in force a law, entitled "An act for establishing trading-houses with the Indian tribes; which was read twice, and committed to a Committee of the whole House on Thurday next.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the tenth ultimo, a petition of Hezekiah Prince, and others, owners and masters of vessels within the

United States, reported a bill for erecting a light-house at the entrance of Penobscot bay, or any other place, in its vicinity, that may be deemed preferable by the Secretary of the Treasury; which was read twice, and committed to a Committee of the Whole House on Thursday next.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the twenty-seventh ultimo, to whom was referred a petition of the Mayor and Commonalty of the town of Alexandria, in the District of Columbia; and, after some time spent therein, the Committee rose and reported to the House their agreement to the resolutions contained therein; which were severally twice read, and agreed to by the House, as follow:

Resolved, That provision ought to be made, by law, for the regulation of quarantine within the District of Columbia.

Resolved, That so much of the memorial of the Mayor and Commonalty of the town of Alexandria, as prays for a reimbursement of money by them expended in executing the quarantine law of Virginia, is unreasonable, and ought not to be granted.

Ordered, That a bill or bills be brought in, pursuant to the first resolution; and that Mr. MITCHILL, Mr. EUSTIS, and Mr. ELMER, do prepare and bring in the same.

CLAIMS OF GEORGIA

On motion of Mr. EARLY, the House resolved itself into a Committee of the Whole on the report of the Secretary of War, respecting claims against the United States for services of the militia of the State of Georgia.

Mr. EARLY, with great clearness and precision, gave a statement of facts and circumstances relating to this transaction, and adduced many strong arguments in favor of the claim. [See *post*, p. 535.]

He was followed by Mr. RANDOLPH, in opposition; upon the principle that the debt had been cancelled by the late negotiation between the joint commissioners of the State of Georgia, and the commissioners of the United States.

Mr. GREGG was not seriously inclined to oppose the claim, though he was not prepared to give a final vote. He wished the Committee to rise.

Mr. MACON wished the Committee to rise.

Mr. RANDOLPH opposed their rising.

Mr. NICHOLSON made a few remarks on the question, whether this claim was included in the contract between the Commissioners of the State of Georgia and the United States. He wished for some information on that point.

Mr. S. SMITH was opposed to the Committee's rising; and was in favor of the claim.

Mr. MATTOON was opposed altogether to the claim.

Mr. MERIWETHER spoke in favor.

Mr. BAYARD moved for the Committee to rise. He stated his desire to be informed, and said that more intelligence was acquired the further the subject was investigated.

Mr. S. SMITH again opposed the rising of the Committee.

The question was taken and carried in the affirmative. Yeas 59.

The Committee rose, reported progress, and obtained leave to sit again.

WEDNESDAY, February 16.

A memorial and petition of Joshua Harvey, and others, citizens of Baltimore, in the State of Maryland, was presented to the House and read, stating that they have been declared bankrupts, in conformity with the provisions contained in the law passed on the subject of bankruptcy: that, previous to the passage of the said law, the memorialists had become bound to the United States, in bonds, partly as principals, and partly as securities, for certain sums to their names severally annexed, which bonds were given to secure the payment of duties on goods imported into the port of Baltimore, and are still unpaid; and praying that an act may be passed to discharge from all debts due to the United States, such persons as have obtained, or may obtain certificates of discharge under the aforesaid act on the subject of bankruptcy; or that such other relief may be afforded to the memorialists, in the premises, as to the wisdom of Congress shall seem meet.

Ordered, That the said memorial and petition be referred to Messrs. BAYARD, NICHOLSON, and BRENT; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred, on the eleventh instant, the petition of the inhabitants of the island and town of Nantucket, in the State of Massachusetts, made a report thereon; which was read and considered: Whereupon,

Resolved, That the Secretary of the Treasury be authorized to employ proper and intelligent persons to take a survey of the harbor in the island of Nantucket, and the bar and shoals near the same, as far as may be requisite, and to report their opinion as to the measures necessary to secure a sufficient channel for loaded ships destined for that port, with an estimate of the probable expenses.

Mr. I. SMITH, from the committee appointed, presented a bill to establish a building and fire insurance company in the City of Washington; which was read twice, and committed to a Committee of the whole House on Friday next.

Mr. SOUTHARD, from the committee appointed, presented a bill to revive, and continue in force, an act, in addition to an act, entitled "An act in addition to 'An act regulating the grants of lands appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;'" which was read twice, and committed to a Committee of the whole House to-morrow.

The SPEAKER laid before the House a report of the Commissioners appointed in pursuance of the act entitled, "An act for the amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government for the

Mississippi Territory," on the claims made by settlers, and other persons, to lands within the Territory situate west of the river Chatahoochee, and south of the cession made to the United States by South Carolina, in obedience to the provisions of the act supplemental to the said recited act; which was read, and ordered to be referred to Messrs. NICHOLSON, TENNEY, GREGG, VAN RENSSELAER, and ROBERT WILLIAMS; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Ordered, That the Committee of Ways and Means have leave to bring in a bill or bills, making appropriations for the support of Government for the year one thousand eight hundred and three.

Mr. RANDOLPH, from the Committee of Ways and Means, reported a bill with the title and to the effect recited in, and prescribed by, the foregoing order of the House; which was read twice and committed to a Committee of the whole House on Saturday next.

The House, according to the order of the day, resolved itself into a Committee of the Whole on the bill for the relief of Samuel Corp, which was reported to the House, without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill in addition to the act, entitled "An act concerning the registering and recording of ships and vessels of the United States;" and to the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the Committee rose and reported two amendments thereto; which were, severally, twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited.

Mr. HASTINGS moved to amend the bill so as to prohibit the importation only of *French* negroes and persons of color.

This motion was opposed by Messrs. HILL and BACON, and lost, without a division.

Mr. S. SMITH moved to except from the operations of the bill, seamen, natives of countries beyond the Cape of Good Hope.

The motion was supported by Mr. HILL, and opposed by Messrs. NEWTON, LOWNDES, and MOTT, and lost.

Mr. HASTINGS moved to strike out the sum of one thousand dollars, the penalty annexed to the importation of each person, and to insert ten dollars. Lost, without a division.

The bill, after undergoing some slight amendments, was reported to the House, and ordered to be engrossed for a third reading.

JUDICIAL SYSTEM.

The House went into a Committee of the Whole, on the bill to amend an act, entitled "An act to amend the Judicial System of the United States." The bill is as follows:

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the circuit court of the second circuit shall consist of the justice of the Supreme Court residing within the third circuit, and the district judge of the district where such court shall be holden.

In the third circuit, the said circuit court shall consist of the justice of the Supreme Court residing within the fourth circuit, and the district judge of the district where such court shall be holden.

In the fourth circuit, the said circuit court shall consist of the senior associate justice of the Supreme Court residing within the fifth circuit, and the district judge of the district where such court shall be holden.

SEC. 2. *And be it further enacted*, That the senior associate justice, resident in the fifth circuit, shall attend at the City of Washington, on the first Monday of August, in each and every year, who shall possess the same powers, and is required to perform the same duties as are prescribed in the second section of the act, entitled "An act to amend the Judicial System of the United States."

Mr. ELMER moved to strike out the first section. He thought greater inconveniences would arise from the change proposed in this bill than from the present arrangements.

Mr. BAYARD said the principal object of the bill was to accommodate Judge Washington, by altering the allotment of the judges of the Supreme Court, which would be effected without disaccommodating the other judges, and with their entire approbation.

Mr. LEIB said he had seconded the motion to strike out the first section, and he hoped it would prevail. He was not of opinion that the convenience of the judges should alone be consulted. The public convenience should also be regarded. He hoped the present distribution of the judges would continue; because one of the judges (Judge Chase) was so precious in the estimation of Maryland, where he now acted, he was in favor of continuing him there, in preference to translating him to Pennsylvania, where he might not perhaps be held in so precious a point of view.

Mr. SMILIE was in favor of striking out the first section. The convenience of the judges ought to be attended to; but if, by the arrangement of this bill, a greater inconvenience will attach to the people, the judges ought to endure their present inconvenience rather than expose the nation to one that would be greater. He considered the convenience of the people the more important. It would not give satisfaction to the people of the State he represented (Pennsylvania) to make this alteration. They were satisfied with their present judge, (Mr. Paterson.) They would not be satisfied with the judge proposed to be given them. He hoped, therefore, the House would not impose upon them what they would deem an evil.

Mr. MOTT was for striking out the first section to kill the bill altogether. He did not think the accommodation of one judge was a sufficient ground for the bill. The State he represented (New Jersey) would be displeased with the change

proposed by the bill, as there was not in the Union a man more obnoxious in that State than the judge contemplated to be given them.

Mr. EUSTIS was against the motion to strike out the first section, as it was calculated to remove a great inconvenience attached to the duties of a particular judge, and as there was no reason offered in favor of it which ought, in his opinion, to influence the House. In the assignation of duties, the Congress ought not to know any of the judges, but ought to presume that they were all equally learned and agreeable to the people.

Mr. RUTLEDGE observed, that the duties assigned to Judge Washington were extremely inconvenient. He was obliged to ride from Virginia to Vermont. The judges, he presumed, were all learned and upright. If any of them failed to discharge their duty, the regular course of proceeding was known to the House. He had never understood the cause of the arrangement which submitted Judge Washington to this inconvenience, until he learned that that gentleman had, some time since, contemplated a residence in Connecticut; under which impression the present arrangement had been made.

Mr. ELMENDORF viewed the subject differently from any gentleman who had spoken on the subject. It appeared to him that a judge, by being permanently assigned to a particular circuit, would become better acquainted with the laws of the States embraced within his circuit. He therefore thought Congress should legislate but once in making a proper distribution of the judges.

Mr. BAYARD said it must be apparent that the whole discussion consisted in what might be termed *argumentum ad hominem*.

After making some remarks on the propriety of the change contemplated in the bill, he said that he believed an upright judge would always be inimical to traitors, insurgents, and libellers. He believed that Judge Chase had been considered in some measure harsh in his treatment of this description of persons. But in civil cases, he never heard the least imputation thrown upon his conduct, even by his enemies. The laws under which those prosecutions were conducted were now expired, and considering the mildness of the present Administration, he did not conceive that there was any danger of falling under the lash of the learned judge. It was extremely evident this was a matter with which the people had nothing to do, as the only question was, whether they should have for their judge A or B? It had been well observed by a gentleman from Massachusetts, (Mr. EUSTIS,) that the House ought to consider every judge equally learned and upright. It was, therefore, not regular or delicate to make such remarks. The boon prayed was very small, as in the event of the death of any one judge, the judges would themselves have the right of allotting themselves. He could not believe that any gentleman entertained such hostility to the judges as to wish to defeat a measure barely because it would promote their convenience, and on which they were all agreed.

Mr. HOLLAND observed, that he would be in favor of this law, inasmuch as it promoted the convenience of Judge Washington, were it not that it interfered with the convenience of two respectable States.

Mr. SMILIE was sorry that he was obliged to assign the reasons for the opinions he had advanced. But this became necessary from the remarks of the gentleman from Delaware, (Mr. BAYARD.) That gentleman has said the judge alluded to may have been harsh in his treatment of traitors, insurgents, and libellers. In the remarks he had to make, Mr. S. said, he should pass over whatever related to libels and sedition, and confine himself to the observations of the gentleman that related to treason. He hoped he should never see the time when the character of any judge should be considered too sacred to be noticed on fit occasions in that House. It was not that he had on this occasion anything to say because the judge (Chase) had been too severe upon traitors, insurgents, or libellers, but because he had construed an act of insurgency into treason. This was essentially a different thing. There was an insurrection in Pennsylvania, in the county of Northampton——

Mr. VARNUM asked if there was any propriety, in the discussion of the question before the Committee, in commenting on the character of a judge?

Mr. RANDOLPH hoped the gentleman would proceed.

Mr. SMILIE proceeded.—There was an insurrection in Pennsylvania, in the county of Northampton. A person of the name of Fries, concerned in that insurrection, was tried for treason. When the trial came on, and the counsel of Fries appeared, the judge (Chase) said the court would not hear an argument as to what was or was not treason. We have, said he, already decided this point; our opinion is drawn out in writing, and you must be governed by it. Fries had employed two of the most eminent counsel of the Pennsylvania bar, who, it might be proper to remark, were of different political sentiments. But, notwithstanding their political difference, when the judge behaved in this manner, they unitedly told him we will not degrade our professional characters, or commit the rights of our client, in whose service we have volunteered, by taking any further part in these proceedings. There are rights of the bar as well as the rights of the bench; and while we respect the latter, we will maintain the former. The effect was that this man (Fries) was tried without counsel, convicted of treason, and sentenced to death. After the trial the Attorney General requested the notes of several gentlemen of the bar present during the trial, which were given, in which they cited a number of the most approved authorities from the books to show that the crime committed by Fries was not an act of treason, but that it was particularly designated in the Sedition act. The opinions and authorities went to the President, and Fries was pardoned.

Of the abilities of this judge, Mr. S. entertained no doubt, as little as he entertained of the abilities of Jeffries.

These circumstances having happened in Pennsylvania was the reason why he was opposed to the assignment of Judge Chase to the State he represented. Whenever justice was administered, the citizens ought to have confidence in those who administered it; and it would be wrong in the House to force upon the State he represented a man as a judge that would be considered as an evil.

Mr. BACON said the mention of the circumstances stated by the gentleman from Pennsylvania was rather disagreeable. It might, perhaps, be necessary. But he did not think the trial of the judges was then before the House. The only solid objection to the bill is this: that there are strong and peculiar prejudices in some parts of the Union against a certain judge. Whether these were reasonable or not, it was a query whether the laws could be administered as well under a person against whom there exists a fixed prejudice, however unfounded that prejudice may be, as under persons against whom such prejudice does not exist. In this view of the subject, the objection was not entirely without weight. It was certainly of great importance that all our officers, but particularly our judicial officers, should be treated with respect; and if, in New Jersey and Pennsylvania, a certain judge is not duly respected, that might furnish an argument against the bill.

Mr. BAYARD said he believed the gentleman from Pennsylvania (Mr. SMILIE) was correct in saying that a man of the name of Fries had been tried and convicted of treason. He believed, also, there were many other men guilty of insurgency and treason who had neither been tried nor convicted of treason. He further believed that any man guilty of the crime of insurgency or treason would look upon the judge as a Jeffries. But he did not know what the character of Judge Chase had to do with the provisions of the bill on the table. No man had impeached that judge; and that was the only regular or Constitutional mode of criminating a judge in that House. If the judge had construed an opposition to a particular law into treason, and by a false, and, he presumed, what gentleman meant to insinuate a corrupt decision, jeopardized the life of a citizen, only ultimately saved by the clemency of the President, was it not the duty of those who thought so to impeach him? Was not this the duty of the gentleman from Pennsylvania? This would be fair, honorable, and open. The charges would be regularly made, and the judge would be heard in his defence. If the gentleman believed the judge guilty of the charges he had made, it was a duty to himself and to the American people to bring them forward in the shape of an impeachment. But the gentleman has assumed the character of a reporter of law cases without the capacity. No doctrine had been laid down in the case of Fries that had not been acceded to by the whole bench; and he believed if any judge whatever had been on the bench he would have made the same decision. It was extremely possible for cases to arise in which the court shall decide after the fullest argument and the most mature deliberation, and which it will not be necessary to examine again. The court may say we have fully considered the case, and do not require any further arguments. This was not the doctrine of a Jeffries, but of a Hale and a Camden, those luminaries of law, and ornaments of the English bench.

Mr. BAYARD concluded by saying he regretted that such an extrinsic discussion should have been introduced into the debate; but he hoped the majority of the House would grant the request of the judges.

The question was then taken on striking out the first section, and carried—yeas 42, nays 36.

The second section was agreed to; when the Committee rose and reported the bill, and the House immediately took up the report, when, on motion of Mr. MOTT, the yeas and nays were taken on concurring with the Committee of the Whole, in their disagreement to the first section of the bill, and carried—yeas 48, nays 40, as follows:

YEAS—John Bacon, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, Israel Smith, John Smith of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

NAYS—Willis Alston, John Archer, James A. Bayard, Thomas Boude, John Campbell, Samuel W. Dana, John Davenport, Peter Early, William Eustis, Abiel Foster, Calvin Goddard, Roger Griswold, William B. Grove, Seth Hastings, Daniel Heister, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Ebenezer Mattoon, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Smith, of New York, John Stanley, Samuel Tenney, Samuel Thatcher, David Thomas, Thomas Tillinghast, George B. Upham, Philip Van Cortlandt, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Ordered, That the further consideration of the said bill be postponed until Saturday next.

BANKRUPTCY.

The order of the day for the House to resolve itself into a Committee of the Whole on the report of the committee, of the thirteenth of January last, to whom was referred the petition of Josiah Fox, and others, inhabitants of the towns of Norfolk and Portsmouth, in the State of Virginia; and who were also instructed, by a resolution of this House, of the third of the same month, "to consider and report on the expediency of repealing an act, entitled 'An act to establish an uniform system of bankruptcy thoughout the United States"—being called for:

Mr. S. Smith said the subject was important, and there was not time at this late period of the session to give it a full and fair consideration. Impressed with the necessity of attending to other public business that must be transacted, he had been induced to give up the consideration, during the present session, of a subject of great importance, (alluding to the repeal of the discriminating and countervailing duties,) and which he had been extremely anxious to have discussed. If the House purposed to go through business then before them, absolutely necessary for the public service, they must forego a discussion that would inevitably consume much time. He therefore moved a postponement of the consideration of the report to the first Tuesday in November.

Mr. Mitchill hoped the consideration of the report would be postponed. Being opposed to the repeal of the system of bankruptcy, he had, on a former day, moved a postponement to a day which had passed over without the subject being taken up. From its not having been called up on that day, he had supposed that gentlemen did not mean to urge a decision this session. The bankrupt system he considered as a great experiment in the commercial and political world, which Congress had determined to try for five years, when the law will expire by its own limitation. He hoped, as three years had elapsed, it would be suffered to continue till the period of its limitation, when, from an experience of its effects, they would be better enabled to decide on the propriety of perpetuating it. Should the subject, however, be taken up, he was prepared, while he voted against a repeal of the law, to offer certain amendments, which, after a mature consideration of the subject, he considered necessary. He concluded by observing that this discussion would unavoidably take much time, and more he apprehended than the public good would admit, as he was persuaded that even if a majority were in favor of a repeal, it could not be effected without a warm struggle with its friends.

Mr. Eustis hoped the motion of postponement would not prevail. The bankrupt law was extremely defective and required amendment. A committee had been appointed to amend it. Their proceedings had been paralyzed by a motion to repeal; and they had abandoned all idea of reporting until a decision was had on this motion. He hoped therefore that question would be taken up and decided; and if the consideration required even three days the House could not spend their time to more advantage.

Mr. Bayard.—If the postponement take place, there will be an end of the report; and it will rest with the next Congress to exercise their discretion in either repealing or amending the system. The postponement will have the same effect this session as a determination not to repeal; and, if the postponement is carried, the select committee will immediately go to work, and can, in a short time, report amendments.

Mr. Newton said it was not his wish to take up much of the time of the House. He was in favor of a repeal of the bankrupt law; and he wished the House to go into a Committee of the Whole, as there must be decided the goodness or badness of the law. The gentleman from Delaware alleges the importance of the system to the commercial world. Granted; and therefore the necessity of investigating that system in a Committee of the Whole, where the greater latitude of debate is allowed. But the commercial world is not very anxious on the subject. On the 14th of January he had made a report on the memorial from the merchants of Norfolk; the report had then been postponed for three weeks; and had remained unacted upon ever since, and yet not a single petition had been received in favor of a continuance of the law. We must, therefore, infer that the merchants are willing to leave to us the decision whether it shall or shall not be repealed. Should the House, contrary to his hopes, determine not to repeal the law, he was prepared to offer amendments; one of which would bte hat no person declared a bankrupt should be entitled to his commission for twelve months thereafter. Mr. N. concluded by calling for the yeas and nays.

Mr. Varnum hoped the motion would not prevail. Gentlemen would recollect that all the benefits conferred by the bankrupt system on the commercial world were so many injuries inflicted on the other parts of the community. Whether the law were repealed or not, there was no doubt that there ought to be amendments to it.

Mr. Hastings was against the postponement. He doubted whether the majority of the merchants were in favor of this law. He believed no class of our citizens were more attentive to their interests than the merchants. He believed they considered themselves injured by this law, and, therefore, they did not come forward with petitions against a repeal. He believed there had never been a law which had produced more iniquity and fraud, and he knew of no business before the House more important than a repeal or amendment of it.

Mr. Griswold was in favor of a postponement, which would lay aside the question of repeal, and clear the way for amendments.

Mr. Thatcher said the people were not in the habit of coming forward and dictating to Congress. Their silence, therefore, on this occasion, was no argument of their indifference. He believed the bankrupt law required amendments, which would be made in case the question of repeal, for the fair discussion of which there was not time, were laid aside. He therefore hoped the motion to postpone would prevail.

The yeas and nays were taken on the postponement, and were—yeas 39, nays 39; the Speaker declaring himself in the negative, the question of postponement was lost, as follows:

Yeas—Willis Alston, James A. Bayard, Thomas Boude, William Butler, John Campbell, Thomas Claiborne, John Condit, Samuel W. Dana, Peter Early, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, Calvin Goddard, Roger Griswold, William B. Grove, John A. Hanna, Daniel Heister, William Helms, Joseph Hemphill, Archibald Henderson, William H. Hill, Benjamin Huger, Thomas Lowndes, Samuel L. Mitchill, Thomas Morris, James Mott, Joseph H. Nicholson, Nathan Read, John Rutledge, John Smith of New York, Samuel Smith, Henry Southard, John Stanley, Samuel Tenney, Samuel Thatcher, Philip Van Cortlandt, Killian K. Van Rensselaer, and Lemuel Williams.

Nays—John Archer, John Bacon, Robert Brown, Samuel J. Cabell, Matthew Clay, John Clopton, Richard Cutts, John Davenport, John Dawson, William Dickson, Lucas Elmendorf, Edwin Gray, Andrew Gregg, Seth Hastings, Joseph Heister, William Hoge, James Holland, David Holmes, Michael Leib, Ebenezer Mattoon, David Meriwether, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, John Cotton Smith, Josiah Smith, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Abram Trigg, John Trigg, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, Thomas Wynns.

And the House adjourned.

Thursday, February 17.

Ordered, That the committee to whom were referred, on the fourteenth and sixteenth instant, the memorials of sundry aliens, residing in Montgomery county, in the borough and county of Lancaster, and in the city and county of Philadelphia, and State of Pennsylvania, have leave to report thereon by bill or bills, or otherwise.

Mr. Leib, from the same committee, reported a bill in addition to an act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" which was read twice and committed to a Committee of the Whole House to-morrow.

A memorial of sundry aliens, residing in the city of Baltimore, and State of Maryland, whose names are thereunto subscribed, was presented to the House and read, praying a revision and amendment of an act of Congress, passed at the last session, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Ordered, That the said memorial be referred to the Committee of the whole House last appointed.

An engrossed bill in addition to the act, entitled "An act concerning the registering and recording of ships and vessels of the United States," and to the act, entitled "An act to regulate the collection of duties on imports and tonnage," was read the third time and passed.

Mr. John Cotton Smith, from the Committee of Claims, to whom was recommitted, on the sixth ultimo, a report of the Committee of Claims on the petition of Peter Charles L'Enfant, and a letter from the Secretary of State, enclosing sundry documents relative to the claim of the said Peter Charles L'Enfant, for planning and laying out the City of Washington, in the District of Columbia, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill to revive and continue in force an act in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen;" and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill do lie on the table.

The House resolved itself into a Committee of the whole House on the bill for continuing in force a law, entitled "An act for establishing trading-houses with the Indian tribes." The bill was reported to the House with an amendment, which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States,' with several amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act supplementary to the 'Act concerning Consuls and Vice Consuls,' and for the further protection of American seamen," with several amendments; to which they desire the concurrence of this House. The Senate have also passed a bill, entitled "An act to revive an act, entitled 'An act for establishing trading-houses with the Indian tribes;" to which they desire the concurrence of this House.

IMPORTATION OF CERTAIN PERSONS.

An engrossed bill to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited, was read the third time.

And, on the question that the same do pass, it was resolved in the affirmative—yeas 48, nays 15, as follows:

Yeas—Willis Alston, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Thomas Boude, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Clopton, John Dawson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, Calvin Goddard, Edwin Gray, Daniel Heister, Joseph Heister, William Helms, Archibald Henderson, William H. Hill, William Hoge, James Holland, George Jackson, Michael Leib, David Meriwether, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Thomas Plater, John Rutledge, William Shepard, John Smilie, Samuel Smith, Richard Stanford, John Stewart, John Taliaferro, jr., Samuel Tenney, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Henry Woods, and Thomas Wynns.

Nays—Robert Brown, John Condit, Richard Cutts, John Davenport, Abiel Foster, John A. Hanna, Seth Hastings, Samuel L. Mitchill, James Mott, Israel Smith, Josiah Smith, Henry Southard, Joseph Stanton, David Thomas, and Peleg Wadsworth.

Resolved, That the title be, "An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited," and that the Clerk of this House do carry the said bill to the Senate, and desire their concurrence.

SAMUEL CORP.

An engrossed bill for the relief of Samuel Corp was read the third time; and on the question that the same do pass, it was resolved in the affirmative—yeas 42, nays 38, as follows:

Yeas—Willis Alston, John Archer, James A. Bayard, John Campbell, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, Ebenezer Elmer, Abiel Foster, Calvin Goddard, Roger Griswold, Seth Hastings, Daniel Heister, Joseph Heister, Archibald Henderson, William H. Hill, Benjamin Huger, Samuel Hunt, Michael Leib, Samuel L. Mitchill, Thomas Morris, Thomas Newton, jun., Thomas Plater, Nathan Read, John Rutledge, William Shepard, Samuel Smith, Henry Southard, Richard Stanford, John Stanley, Joseph Stanton, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—John Bacon, Theodorus Bailey, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Lucas Elmendorf, Edwin Gray, Andrew Gregg, John A. Hanna, William Hoge, James Holland, David Holmes, George Jackson, Ebenezer Mattoon, David Meriwether, James Mott, Anthony New, Joseph H. Nicholson, John Randolph jr., John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Josiah Smith, John Stewart, John Taliaferro, jr., David Thomas, Thomas Tillinghast, Abram Trigg, John Trigg, Robert Williams, Richard Winn, and Thomas Wynns.

GEORGIA CLAIMS.

The House resolved itself into a Committee of the Whole on the following report of a select committee on the Georgia militia claims:

"The Committee to whom was referred the report of the Secretary of War, together with sundry documents respecting claims against the United States to compensation for services performed by certain militia within the State of Georgia, during the years 1793 and 1794, respectfully report:

"That it appears to your committee that the said services were performed under circumstances which render them a just claim to compensation from the Government of the United States, and that said Government hath already gone far in recognising their validity, by settling with and making payment to the contractor who furnished supplies to the said militia, whilst engaged in performing the same services for which they now claim compensation. Your committee, therefore, beg leave to submit the following resolution:

"*Resolved*, That provision ought to be made by law for the payment of certain militia employed within the State of Georgia, during the years 1793 and 1794, for the defence of said State."

Mr. Early.—Mr. Chairman, believing that the claim, which is now the subject of consideration, depends upon facts little understood by the Committee, I must beg their indulgence, while I endeavor, by a recurrence to a train of documents, to explain and establish its justness. It is a claim for services of the most meritorious kind, performed in defence of an exposed part of the Union. They were performed under circumstances which called for the interposition and aid of the Government itself, and in the exercise of an almost unlimited discretion delegated by the Executive of the United States to the Governor of Georgia.

It will be recollected that, at the period during which these services were performed, the whole frontier of the United States was in a state of alarm. A general confederacy existed between the Indian tribes residing within our territory, the object of which was an union of hostility against the white inhabitants. A regular warfare was carried on in the Territory Northwest of the Ohio, by an army under the immediate orders of the Federal Executive. An irregular warfare prevailed between the inhabitants residing in the now State of Tennessee and the Southern tribes; and the people in the State of Georgia were roused to action by the irresistible principles of self-preservation. This State was lined by a frontier nearly four hundred miles in extent, thinly settled, and immediately in the neighborhood of two of the most numerous and warlike nations, whose settlements were strung along its whole length. Actual hostility quickly roused the people of that country to a sense of their situation. The whole frontier was subjected to inroad, thefts, and massacres; and the innocent inhabitant laid himself down to rest at night, under an awful apprehension that, before his eye could meet the morrow's sun, his ears would be assailed by the war-whoop, or the fire of the savage foe.

In this situation of affairs, communication was made by the Governor of Georgia to the Department of War, stating the existing exigencies, and requesting instruction as to the mode of meeting the impending evils. In the month of October, 1792, the Secretary of War writes to the Governor an answer in the following terms:

"If the information which you may receive, shall substantiate clearly any hostile designs of the Creeks against the frontiers of Georgia, you will be pleased to take the most effectual measures for the defence thereof, as may be in your power, and which the occasion may require."

Here, Mr. Chairman, it will be perceived there was given to the Governor of Georgia a complete discretionary power to call into the field such a number of troops as the occasion might render necessary for the defence of the frontiers. He was constituted judge of the occasion, and judge of the extent of the force which that occasion might render expedient. In conformity with the ample powers thus possessed, he called out and employed in defensive protection the militia, whose claims are now under investigation.

The danger to which our settlements were exposed, did not cease. Such was the spirit of hostility which at that period governed the Indian tribes, that, wherever our frontier was left unprotected, there the unfortunate inhabitants became a subject of slaughter. The troops, of course, were retained in service. But, on the 30th of May, 1793, the Secretary of War writes to the Governor of Georgia, directing the force which

should in future be destined for the defence of the frontiers, to be reduced to one hundred horse and one hundred foot, in addition to the regular establishment already in that country; prohibiting, at the same time, any offensive operation, and recognising the power of the State authority to call out any adequate force in cases of an actual invasion, or such imminent danger thereof as would not admit of delay. This letter is considered by the present Secretary of War, in his report to Congress, to have counteracted the orders given on the 27th of October, in the preceding year, and to have suspended the exercise of the discretionary power given to the Governor by that letter. So early, however, as the 10th of June following, including a space only of ten days, another letter is written by the Secretary of War, from which it appears that, before the date of his last of the 30th of May, a communication had been made by the Governor of Georgia, but which had arrived at the War Office after the despatch of the 30th of May. This communication from the Governor had given information of new attacks of the Indians, and a continuation of their hostile disposition. And, in the answer from the War Department of the 10th of June the Governor of Georgia is told, that "The State of Georgia being invaded, or in imminent danger thereof, the measures taken by your Excellency may be considered as indispensable. You are the judge of the degree of danger, and of its duration, and will undoubtedly proportion the defence to exigencies." It is important to remark here, that this letter was written, under full knowledge, on the part of the War Department, of what had been done by the Governor of Georgia, in relation to the force which had been called into the field, and under a further knowledge of the exigency which had given rise to the measure. This knowledge was derived from the communication of the Governor of Georgia, just then received. On the 19th day of July, however, a letter was written from the War Department, which is considered by the present Secretary as putting an end to any further discretion on the part of the Governor. The present claim, therefore, so far as favorably reported for, is for services performed by troops called into the field by the Governor of Georgia, in the exercise of that discretionary power given him by the letter of the 27th of October, and taken from him by that of the 19th of July following, allowing a reasonable time for disbanding the troops after the receipt of the same.

Mr. Chairman, there is a leading feature which marks these claims, and to which it is important to direct the attention of the Committee as to a polar star. It is, that they are for services confined exclusively to defensive protection. The discretionary powers vested in the Governor of Georgia were restricted alone by this object. To this object were they all directed. I will not at this time enter into an inquiry as to the soundness or humanity of that policy on the part of the General Government which, with respect to all the Southern frontier, has kept up a steady opposition against offensive operations. But I will observe that the experience of all America has proven that such operations produce, as against Indians, the only effective tranquillity; and that the inhabitants of the Southern frontier have never yet received a satisfactory explanation why this description of operations was so sedulously pursued by the General Government, and at enormous expense, too, in relation to the Northwestern country, but strictly and sternly interdicted as to themselves. We, Mr. Chairman, were tied down to defensive measures. A frontier, four hundred miles in extent, was in all its points exposed to hostile inroad and to the depredations consequent upon savage warfare. It is vain to judge of this by the rules applying to civilized nations. If any gentleman in this Committee shall undertake to do so, he will involve himself in an act of signal injustice. Savages are not in the habit of collecting themselves into one army and uniting their force against any particular point. No, sir. They divide themselves into small parties; they extend themselves along the whole line of frontier; each party watches for its time and its particular place of attack. You never know which point is most in danger, or at what time there is most reason to expect an attack. The whole line of frontier, therefore, is in that imminent danger of invasion, which does not admit of delay, in all Indian warfare; an imminent danger, too, which never ceases to exist so long as a spirit of hostility prevails.

This, Mr. Chairman, was our situation; a situation, the exigencies of which were to be provided for and to be met. To effect this, ample powers were delegated to the Governor of Georgia. He was constituted the judge of the occasion; of the degree of the danger; of the quantum of force; and of the duration of the necessity. He was authorized—nay, directed, to call out any number which the situation of things might require. This authority and this direction he pursued. Four hundred miles of exposed frontier were to be defended. Could this be effected by one hundred horse and one hundred foot? I appeal to the understanding of every gentleman upon this floor, and urge the question, whether such a force was adequate to the exigence? I feel confident of receiving an answer in the negative. What, then, was to be done? Was the Governor of Georgia to stand an idle spectator of the murder of his fellow-citizens, and of the ruin of his country? Suppose, Mr. Chairman, that, notwithstanding the wide discretionary powers with which he was possessed, had he not chosen to take upon himself the responsibility of calling into the field an adequate force, and the Indians had ravaged the country, and laid our towns in ashes, how would he have stood acquitted to his country? How would he have answered for the ruin of our settlements and the carnage of our inhabitants? Give me leave to say, sir, that he would have received the execration of mankind, and would have deserved the death of the scaffold.

All Governments are bound to defend their inhabitants. If it be inconvenient to do so, it is right to compensate those who can yield the wanted protection. In the present case that protection

was afforded, not immediately by the Government itself, but by individuals called upon for that purpose by one who, as to that occasion, was the agent of the Government. Is there any proof that he abused the discretion given him? On the contrary, does it not appear that the occasion for his exercise thereof existed in necessity? But, admit he did abuse it; are the soldiers who performed the service, and who were bound to yield obedience, under all the penalties of military law, are they to suffer? Suppose the individual, when ordered out, had refused obedience, would he have escaped punishment? It is known he would not. Is there, then, a principle to be established which will deprive a man of his right to compensation for services which he is not at liberty to refuse to perform? We are told, that the State of Georgia ought to pay them. I answer, no, sir. The obligation to obedience was not to State authority. The penalties to disobedience would not have been inflicted under State authority. All the ties in which the soldier was bound were to the Federal Government. It had constituted an agent in Georgia with full powers. That agent had exercised his powers, and incurred an expenditure. This expenditure must fall upon the principal.

The manner of wording the discretionary powers given to the Governor of Georgia could leave no doubt on the minds of those who engaged in the service, that they would be paid. There is upon the face of the correspondence between the War Department and the Governor of Georgia an implied promise of payment. It is a safe principle to construe the acts of Government in matters of contract by the same rules by which you would construe the acts of individuals. Put, then, the case of an individual, who, at a distance from home, receives information that his house needs repairs; he writes to some one, in whom he reposes confidence, authorizing and requesting him to cause such repairs to be made as, in his opinion, may be necessary; the work is done, and the owner, when informed of the extent and price, refuses payment, under a pretext that the repairs done were greater than necessary; would any tribunal hesitate to compel a payment to the full amount? And shall the magnanimity of the Government refuse to direct itself by the most obvious principles of justice, because it possesses the power of refusal? If the discretion given by the War Department was too great, the blame rests with that department. If the agent of the Government abused the trust reposed with him, the fault is there. In any event, and in every view, the soldier is innocent. Many of the officers who commanded the militia, relying upon the faith of the Government, and confiding in its justice, became responsible for large sums of money for necessary arms and clothing furnished the troops. Distress and embarrassment have been their lot.

There is another view of this subject which is considered by the claimants as being conclusive against the Government. It appears from a recurrence to the documents before the Committee that the agent for supplying the troops in Georgia, (John Habersham,) upon inspecting the letter of October, 1792, was impressed with a belief that the troops called into the field by the Governor were authorized by that letter, and that it became his duty to order the contractors to furnish them with the necessary supplies. That he accordingly did. And it is important in the inquiry to direct the attention of the Committee to the conduct of the Government in relation to that part of the transaction. Two years afterwards, when the Government of the United States had become possessed of complete knowledge as to all the circumstances attendant upon the occasion—had become informed of the number of troops which had been in service, the length of time during which they had served, the degree of necessity which had given rise to the draught—the contractor was paid for all the supplies which had been furnished. I will not say, Mr. Chairman, that the opinion of the agent, when he directed the supplies, is conclusive against the Government. But I will say, sir, that these troops were either in the service of the United States, or they were not in that service. If they were not, the General Government had no right to supply them, or, what is the same thing, pay those who did. What nation ever supplied an army in the service of another Power without a special contract for that purpose? The very act of settling with the contractor was then a complete acknowledgment on the part of the General Government that the troops were in her service. But, it has been alleged by a former Secretary of War, Mr. McHenry, in a report made by him, upon this subject, that the unauthorized act of an agent cannot bind the principal. I grant the position, but say that the subsequent conduct of the principal in the case now under consideration, was an acknowledgment on the part of that principal, that the act of the agent was not unauthorized. For if unauthorized the Government was bound, and, in justice to the community, ought not to have defrayed the expenditure incurred by the agent's order. The doctrine of the honorable Secretary goes in its consequence to impeach the General Government of a high breach of trust, in appropriating a portion of the public fund to improper objects. And as some influence has been created against the claim now before the Committee, by the opinion of that officer, it is fair to observe that a preceding Secretary, at least equal in talents, and considerably superior in knowledge upon military subjects, has given an opinion that these claims ought to be paid. I mean Mr. Pickering. [Here Mr. E. read a document containing Col. Pickering's opinion.]

But, Mr. Chairman, I understand that it has always weighed much in this House in matters of claims to show precedent. Fortunately for those who are now appealing to the justice of the Government, there are precedents strongly in their favor. I allude to the case which arose from services performed by militia in the State of Tennessee. They are distinguished in the documents of this House by the names of White's, Ore's, and Johnson's case. These were services performed, too, in the same year with our own. These, sir,

were the services of offensive operation, carried on in the face of a positive order to the contrary, previously received from the Department of War. I beg the attention of the Committee to this fact. [Here Mr. E. read a statement of the case from the documents of the House, proving that they were cases of offensive operation, and strictly forbidden by the War Department.] And yet, Mr. Chairman, these services have all been paid for, years since, under a conviction, on the part of the Government, that they were rendered necessary by the existing state of things. Will not equal justice be extended to the militia of Georgia? Shall the Councils of America incur the foul charge of partiality? Shall the distant and exposed Southern frontier settlements continue to supplicate the protection of their parent, and continue to meet with a cold repulse? Why, Mr. Chairman, wherefore is it that favor is to be perpetually extended to some and not to others? The people of my country have hoped, sir, that the age of favor had passed by. They have, in time past, been compelled to look on in bitter regret at that policy which led to the expenditure of more than four millions of dollars for the protection of a particular territory; when they were themselves bleeding at every pore, undefended by the Government. But they hope the hour of equal justice has arrived.

It is of the first importance to attach to the Government the militia of the country; they are its bulwark, its natural defence. But this can never be effected unless you possess their confidence. The uncertain situation of the American affairs in relation to foreign nations renders this an object of the first magnitude at the present moment. If hostility is meditated from abroad, let gentlemen recollect at what point the first blow must be made. The very first soldiers who must take the field, will be the men who are now suing for justice for past services. They have once before left their home; they have fought your battles; they have given peace to the country, but they are not paid. They are attached to the Government; but refuse them justice, and I will not pledge myself that they will remain so.

Mr. ELMER spoke in opposition to the claim.

Mr. ELMENDORF was against the report; he called for the reading of the report of the former Secretary of War, which he said was a more complete statement of facts than could be given by any gentleman in the House.

Mr. GREGG did not think it necessary that those lengthy documents should be read. The question must turn upon the point, whether the service was performed under orders from the Executive of the United States.

The question was taken for reading the document and carried—48 in the affirmative.

Mr. MERIWETHER then called for the reading of the report made by the present Secretary of War since the commencement of this session.

After the several reports and documents were read, Mr. THATCHER renewed the debate. He was opposed to the claim.

Mr. EUSTIS went into an examination of the Secretary's report. He thought a part of the claim should be allowed.

Mr. GREGG said that when the subject was before the House on a former day, he was strongly impressed against the claim. Since that time he had paid more attention to it, and was of opinion that a part, if not the whole, was a just claim on the United States.

Mr. ELMENDORF, after investigating the several documents and reports on the subject at some length concluded by observing that he did not think the House would be justified in allowing the claim.

Mr. BACON said he confessed his mind was somewhat bewildered on that subject, and that it was not strange for him to be bewildered. He thought two questions should be settled before this House could ultimately decide. The first question, whether it was a claim from the State of Georgia; the second, whether it was a claim from individuals of the State of Georgia. These questions being determined, the business would be fairly before them. He referred to the observations of some other gentlemen, and to some parts of the report of the Secretary of War. He sat down without expressing his determination as to the validity of the claim.

Mr. S. SMITH examined the report of the Secretary of War, from whence he deduced arguments to prove that the claim was just. He concluded by expressing his decided approbation of it.

Mr. MACON was in favor of the report and claim.

Mr. ELMENDORF again opposed the claim on the ground that the Governor of the State of Georgia was acting contrary to the orders of the General Government.

Mr. RUTLEDGE said he did not know whether from the dormancy in which that subject had remained, or some other cause, he had formerly been against the claim in question. But from an examination of the subject, his mind had been changed; he was convinced that a more just demand on the United States could not be presented.

Mr. MERIWETHER said that some gentlemen had objected to the claim, because the State of Georgia had not been invaded. He knew that it had been invaded; that the inhabitants of the frontiers were driven from their homes, and many others killed; he thought these were strong symptoms of invasion.

Mr. T. MORRIS had but one objection to the claim, and that was, that it had been included in the settlement made by the Commissioners, jointly appointed by the United States and the State of Georgia; he was himself satisfied that the Commissioners themselves considered it as included in the one million two hundred thousand dollars.

The debate was continued by Messrs. NICHOLSON, HOLLAND, VARNUM, HASTINGS, and S. SMITH.

Mr. T. MORRIS moved that the Committee should rise. He said he had been informed that Mr. Gallatin (one of the Commissioners) had himself declared that the claim in question was

included in the before-mentioned 1,200,000 dollars which was to be paid to the State of Georgia. The gentleman from Maryland (Mr. S. SMITH) had just made a contrary assertion. Perhaps the information he had received was not correct; if so, he was very desirous to ascertain it. He had no other objection than that, which, if removed, he should vote in favor of the claim. He believed there were other gentlemen in the same situation. He, therefore, wished the Committee to rise, and obtain leave to sit again, in order that the truth might be ascertained.

The motion was lost.

Mr. EUSTIS moved that all the words of the resolution after "1793" be struck out.

Not carried.

The Committee rose and reported the resolution to the House.

A motion was made for an adjournment—not carried.

On motion of Mr. RANDOLPH the House took up the report of the Committee of the Whole.

Mr. R. said as the subject was of importance to the United States, and of still more importance to the claimants; and as the House were not ripe for a decision, and different views of the subject presented themselves, at every stage of the debate, he would move to postpone the further consideration till the third Monday in November next, or to any future day of the next session of Congress, that would be in order; wishing at the same time that the object should not be lost, but that it might be introduced at a future session under every advantage, and that a fair and candid investigation might take place. The question was taken, and carried in the affirmative—yeas 33, nays 31.

[The debate on the report above stated was long and desultory. The ground of support and opposition changing with the variety of speakers. The most correct view of the subject is to be obtained from the report of the Secretary of War.]

FRIDAY, February 18.

Mr. SAMUEL SMITH, from the Committee of Commerce and Manufactures, presented a bill to make Beaufort and Passamaquoddy ports of entry and delivery, to make Easton, Nanjemoy, and Tiverton, ports of delivery, to change the name of the district of Nanjemoy to that of Saint Mary's, to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a surveyor at Nanjemoy; which was read twice and committed to a Committee of the whole House to-morrow.

An engrossed bill for continuing in force a law, entitled "An act for establishing trading-houses with the Indian tribes," was read the third time and passed.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting the annual statement of the district tonnage of the United States, on the thirty-first of December, one thousand eight hundred and one, together with an explanatory letter of the Register of the Treasury thereon; which were read, and ordered to lie on the table.

Mr. JOHN COTTON SMITH, from the Committee of Claims, to whom were referred, on the tenth instant the memorial of Tobias Lear, on the 12th of January last, and a letter, and report thereon, from the Secretary of State, of the twenty-fifth of the same month, made a report; which was read, and ordered to be committed to a Committee of the whole House to-morrow.

Mr. RANDOLPH, from the committee appointed, presented, according to order, a bill in addition to, and in modification of, the propositions contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes;" which was read twice, and committed to a Committee of the whole House to-morrow.

The bill sent from the Senate, entitled "An act to revive an act, entitled "An act for establishing trading-houses with the Indian tribes," was read twice, and, on motion, committed to a Committee of the whole House to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Establishment of the United States:" Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. VARNUM, Mr. CAMPBELL, and Mr. BUTLER.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act supplementary to the 'Act concerning Consuls and Vice Consuls,' and for the further protection of American seamen:" Whereupon,

Resolved, That this House doth agree to the said amendments.

Mr. NICHOLSON, from the committee to whom were referred on the fourth instant, a Message from the President of the United States, and a letter and sundry affidavits transmitted therewith, relative to the official conduct of John Pickering, Judge of the district court of the United States for the district of New Hampshire, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Wednesday next.

Ordered, That the committee to whom was referred, on the twenty-sixth ultimo, a petition of sundry citizens of Georgetown, and its vicinity, in the District of Columbia, have leave to report thereon by bill or bills, or otherwise.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to provide an additional armament for the protection of the seamen and commerce of the United States," with an amendment; to which they desire the concurrence of this House.

Mr. NICHOLSON, from the committee appointed on the twenty-seventh ultimo, presented, according to order, a bill to reduce the marine corps of

the United States; which was twice read, and committed to a Committee of the whole House on Monday next.

Mr. VARNUM, from the committee to whom was this day committed the amendments proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act fixing the Military Peace Establishment of the United States," reported that the committee had directed him to report to the House their agreement to the same.

Mr. GRISWOLD moved instructions to the committee on the bankrupt act to report, by bill or otherwise, such amendments, if any, as they may deem necessary to that act.

Mr. ALSTON moved a postponement of the motion till the first Tuesday of November. He thought they had heard enough about the bankrupt act this session, and he hoped they should for the remainder of the session hear no more about it.

Mr. GRISWOLD said, whether the House did or did not act upon the amendments reported, it would be better to have them reported, that the minds of members, who held seats in the next House, might take them into consideration, and be prepared to act upon them at the ensuing session.

The motion to postpone was carried—yeas 40, nays 39.

Mr. R. WILLIAMS offered the following as an additional rule to the standing rules of the House:

"*Resolved*, That all motions respecting the priority of business shall be decided without debate."

Ordered to lie on the table.

A petition of Alexander Moultrie, of the State of South Carolina, for himself and others, was presented to the House and read, stating that the petitioners, some time in the year one thousand seven hundred and eighty-nine, made a purchase of a large tract of territory on the Mississippi river, from the State of Georgia, in fee simple, for which the said State received part payment; that the balance of the purchase money was afterwards, pursuant to the terms of the contract, tendered to the said State of Georgia, which has been refused, and which the purchasers were always willing to pay; that the petitioners instituted a suit in the Supreme Court of the United States, by a bill in equity, for a specific execution of the said contract on the part of Georgia, which has abated in consequence of an amendment to the Constitution of the United States, "concerning the suability of States;" and praying that Congress will take the premises into consideration, and grant such relief to the petitioners therein as may be deemed equitable and proper.

Ordered, That the said petition be referred to the committee to whom was committed, on the 16th instant, the report of the Commissioners appointed in pursuance of the act, entitled "An act for the amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. BAYARD, from the same committee, reported a bill for the relief of Joshua Harvey and others; which was read twice, and committed to a Committee of the Whole House on Monday next.

BANKRUPT LAW.

Mr. NEWTON called for the order of the day, on the report of the select committee to whom was referred the memorial from sundry merchants of Norfolk. The report declares that it is inexpedient to repeal the bankrupt law.

Mr. SOUTHARD hoped that a bill respecting the location of military land warrants would be first taken up.

Mr. NEWTON trusted the report would be taken up. He should consider a refusal to take it up now, as a denial to take it up during the session.

Mr. BACON was for taking up business in its regular course, without debate.

Mr. VARNUM was in favor of taking into consideration the bankrupt law.

Mr. GRISWOLD moved a postponement till the first Tuesday in November.

Mr. HASTINGS was against a postponement. The evils under the bankrupt law were very great; and if amendments could be made, they ought to be made immediately.

Mr. S. SMITH was in favor of the motion to postpone, as a discussion of the bankrupt law would consume more time than could be spared.

Mr. GRISWOLD said it was not his intention to put aside all amendments to the present system of bankruptcy. His view, on the contrary, was to put the question of repeal out of the way, that the proper amendments might be made. If the House agreed to his motion, he should then move instructions to the select committee to report such, if any, amendments as they might deem advisable. He thought the principle of the bankrupt law correct; that there were at this time defects under that law, he also believed. He therefore wished it amended.

Mr. NEWTON observed that the select committee had considered it inexpedient to report any amendments before the question of repeal had been decided; as the proposition of amendments would be entirely nugatory in case the House determined to repeal the law. He remarked that notwithstanding the long period for which the bankrupt law had existed in England, still, great doubts existed among the ablest legal characters in that country, whether it was not productive of more evil than good. The evils in this country were undoubtedly very great. But he was averse at that time, on a preliminary question, to go into a debate on the effect of the law. He concluded by calling for the yeas and nays.

Mr. GODDARD said it was not because he was very friendly to the bankrupt law that he was in favor of the motion of postponement. Unless the law could be so amended as to obviate the existing evils, he should vote for its repeal. But he was for postponing the question of repeal, that they might immediately take up the necessary amendments.

Mr. HASTINGS would be in favor of a repeal

unless two amendments were made. The one to extend the benefits under the law to all classes of citizens who were indebted beyond a certain sum; the other, that the property of the bankrupt, or a certain part of it, should be liable to satisfy his debts. As the act now stands, it gives a monopoly of benefit to one class of citizens, and is a kind of usurpation of property. He was against the motion to postpone.

Mr. Thatcher said, as the House at this late period of the session was thin, they ought to be cautious in repealing an act of great importance, when the people were not fully represented. He was in favor of the motion to postpone.

Mr. Bayard was in favor of the motion. Such a law ought not to be repealed at so late a period of the session. It would be impossible to say the decision was the result of mature deliberation. He had heard a great deal of declamation against this law, from some gentlemen well acquainted with its provisions, and from others who had scarcely read the title of the act. My opinion, said Mr. B., is that the commercial world cannot exist without such an act. Its necessity arises from the nature of trade, and does not belong to other classes of citizens. It is founded on the principle that commerce is built on great credits; and great credits produce great debts. Owing to the risks arising from these and other circumstances, the most diligent and honorable merchant may be ruined without committing any fault. Not so as to the other classes of citizens; either the cultivators of the soil, the mechanics, or those who follow a liberal profession. They live on the profits of their labor, not on profits derived from credit. It was, therefore, not necessary for other descriptions of persons to contract extensive debts, or to depend on third persons who may ruin them. If a man, who lives by his personal exertions becomes deeply indebted beyond his ability to pay, it must be owing to fraud, or gross neglect; owing to fraud, if he contracts debts knowing his inability to pay; or gross neglect, arising from personal indolence, which prevents him from making those exertions of labor and exercising that industry which would extricate him from embarrassment. In neither of which cases is he entitled to relief. I will ask if this is the case with the merchant. I will ask if either in Europe or in this country, a merchant can carry on extensive business without incurring great debts? and his property is always at the mercy of the winds and waves, and the fraud or negligence of third persons. It follows, therefore, that however industrious or faithful he may be, he is liable to be ruined. Behold, what a large description of persons are merchants, and how much public wealth and national revenue depend upon their pursuits, and let me then ask whether it is not good policy to accord to them a law that belongs to the nature of the profession they follow? If gentlemen show us that this law ought to be accorded to other descriptions of persons, I have no objection to extending it to them. But give me leave to say they have their law—the insolvent law. Gentlemen say the person, but not the property, ought to be liberated under the bankrupt law. I believe, however, in some of the States, both person and property are liberated under their insolvent laws. Be this right or wrong, the property of the merchant ought to be liberated, because it is otherwise utterly impossible for him ever to rise from the pressure of great debts; and without great debts there cannot be great credits. Therefore, as a merchant, you annihilate him without such a law, and you rob society of the benefit derived from his labors. A lawyer may owe ten thousand pounds, and be not the less eloquent; a mechanic may be in debt without his labors being obstructed—nay, this may be a stimulus to him to exert himself to pay off his debts, which cannot in most cases be considerable, and he may afterwards accumulate property—But a merchant deeply in debt, can never entertain the hope of discharging them. All other classes of citizens not living on credit, and incurring debts of great magnitude, may entertain a reasonable expectation of paying them off; but no such hope can come to the merchant, both from the magnitude of his debts, and the difficulty, under the pressure of those debts, of making any exertions to relieve himself. These circumstances make a bankrupt law necessary to the merchants. The insolvent law is an ample provision for others.

But there are numerous other advantages of a system of bankruptcy; some of which I will state, although it is not to be expected that on a question of this incidental kind, I can be prepared to go fully into the subject.

It is necessary that a control should be lodged with the creditor over a debtor whose property is in a state of dilapidation, both to save himself and others from ruin. I know that many gentlemen are in the habit of considering this law as exclusively in favor of debtors; but this is not correct—for it arms the creditor with a salutary power over the debtor to rescue himself from ruin. Insolvent laws are exclusively for the benefit of the debtor. You may see the debtor under those laws squandering his property, and sinking into an abyss of ruin, without permitting the creditor to interpose. Not so under the bankrupt law. In a variety of cases it is in the power of the creditor to compel the debtor to surrender his property, and partition it among his creditors. The practical benefit of this has been experienced in many cases. There has been one case in Philadelphia, in which, I am credibly informed, $500,000 has been saved. A merchant failed for a million of dollars. Not one farthing was got till a commission of bankruptcy was taken out; under which ten shillings in the pound had been divided. There was another case, I am informed, in Baltimore, in which $300,000 have been saved. Under the bankrupt law, it is no uncommon thing to have dividends. I will ask if any such thing has ever happened under an insolvent law?

The law appears to be obnoxious to some persons because the property of the bankrupt is liberated; but why keep it in thraldom under the bankrupt law, when it is acknowledged that no

benefit is derived from the opposite course under the insolvent laws?

I call on gentlemen to show that the situation of society was better under the insolvent, than it now is under the bankrupt law. We must have one or the other. We on our side show the benefits of the bankrupt law—let gentlemen, if they can, show those of the insolvent law. We show that under the bankrupt law, it is in the power of the creditor to save the property of the debtor, which is not the case under the insolvent laws. We show that the bankrupt law is productive of an equitable impartiality, and that it prevents those improper preferences which take place under the insolvent laws, and those frauds to which the creditor is actually exposed. Let gentlemen recollect, that, under the bankrupt law, a debtor cannot get his commission without the consent of two-thirds of his creditors; which restriction prevents him from favoring his creditors. Are any such benefits derived from the insolvent laws? There are States in which, under those laws, the person of the debtor, without an incarceration of his person, on a nominal assessment of his debts, is liberated. In cases of this kind, where is the benefit of the creditor? The debtor never comes forward until he is a ruined man; until the schedule of his property will scarcely pay the expenses attending his insolvency. So desperate are these cases, that I do not remember ever to have heard of a dividend. Thus you forfeit all the advantages, and expose yourself to all the evils of the bankrupt law. In no view which I can take of the subject, can I ever consent to repeal this law. I have heard much of the evils attending its execution, but I have never seen them.

I believe as the United States are one great commercial Republic, it behooves us to have one uniform rule co-extensive with the Union, that the merchant in New Hampshire may know the laws of Georgia. I believe that one great use of the bankrupt system is its exposing landed property to sale for the payment of debts, as it is my conviction that no country can be commercial where land is not answerable for the payment of debts. The exemption of lands from a liability to be sold for the payment of debts, is a remnant of feudal policy, and ought to be consigned to the same tomb with its other trappings. I believe also, that States where lands cannot now be sold, will be benefited by the liability. This exemption is to be found only in countries where the possession of power being hereditary, great inducements exist to lock up the property of the country; and even in some of those countries the lands of merchants are liable to be sold for the payment of their debts. Even in England, where there is so much reason, from the nature of the Government, to fetter property, entailed lands are liable to be sold for the payment of debts. For it has been found that a merchant could obtain an extensive credit, invest his property in land, and set his creditor at defiance, enriching himself and his family at the expense of his creditors. This besame an encouragement to contract large debts for the express purpose of investing his money in lands, and thus shutting it up from the reach of his creditor. And, no doubt, the same evil has been felt in all the States where the like cause exists; for this circumstance is well known to merchants who have dealings in such States, and to indemnify themselves for their risk they will require a premium on the sale of their goods.

The gentleman from Virginia has informed us that the bankrupt law has long existed in England, and that to this day it is considered in that country as doubtful whether it has not produced greater injury than benefit. I believe the first bankrupt law in that country was passed in the year 1544, since which it has been uninterruptedly in existence. The commercial world and the British Parliament are satisfied with it. What, then, does it amount to, that a few speculative men in their closets are against it? No nation would have so long suffered its continuance, without experiencing benefit from it. Now, their system, thus matured by the experience of ages, we have adopted with numerous emendations, rendering it more correctly applicable to our own circumstances; and our merchants are satisfied.

But it is said there are defects in the law. No doubt of it. It is impossible for the human mind, where the relations are so infinite, to form a perfect system. The law was originally designed as an experiment; as such it was passed for five years. Now, after having run but for two years, we are about to repeal it. How are its benefits to be ascertained, until the operation of the law is fairly tried? Repeal it now, and you will be soon called upon again to pass it in a crude state. Whereas, if, as the defects of the law appear, you apply the knife or caustic, the probability is that in a few years you will so amend it as to make it universally acceptable. There is great force in the observation that the question of repeal is very different from that involved in the original passage—between the giving it existence at all, and the continuing it after it has gone into effect. I hope at this late period of the session the system will not be abolished. The next Congress will be a more numerous body, and will represent more fully the people, and if it shall then appear to be the sense of the nation to repeal, it can be done.

Mr. Bacon said, the gentleman from Delaware appeared to be better acquainted with the interests of professional men and of merchants than with the interest of the cultivators of the soil; he seemed to consider the cultivators of the soil as capable of calculating their income and expenditures to a cent. This was not so. The gentleman was mistaken. Suppose a cultivator sells his farm or his produce to a trader; suppose the trader fails and takes the benefit of the bankrupt law, is not the husbandman left without remedy? It is no uncommon thing for a man to abandon the culture of his land, to get a few goods, open a shop, and live in high style; to incur large debts, from which he is relieved by the bankrupt law; while the husbandman, who trusted him, is ruined, without being permitted to avail himself of such relief. I have known many such instances; and I believe these little ostensible merchants very generally

avail themselves of the benefits of the act. It is generally, I believe, these pedlars and shopkeepers that have taken its benefit. If the gentleman were as well acquainted with the landed interest as with that of professional men and merchants, I believe we should have been spared the necessity of listening to much of the learned gentleman's speech. The gentleman asks if the country is in a worse situation now than before the passage of the act? In return, I will call on him to show whether it is in a better situation now than it was then. For these reasons I hope the motion of postponement will not obtain.

Mr. Hastings.—The gentleman from Delaware has called upon gentlemen to point out the evils of the bankrupt law. I will point out its effects in Massachusetts, compared with those of the insolvent laws. Under the insolvent laws of that State, if a debtor make oath that he has not property sufficient to pay his debts and prison charges, he is liberated from confinement. But any property which he may afterwards acquire, is liable to be taken to discharge his just debts. Is it so with respect to the bankrupt law? Under the bankrupt law he is discharged from all his debts. Not only so, but he receives a part of his property wherewith to recommence business. Under the insolvent laws, his property remains entire and untouched. Here then is a violation of contract between the creditor and the debtor. A mechanic may fail in consequence of a debt due to him by a merchant who becomes bankrupt. The merchant's property is immediately liberated; but not so with the mechanic. The law is an *ex post facto* law. Before its passage, the mechanic gave credit to the merchant on the faith of the insolvent law. Is not the contract then dissolved by the bankrupt law? And does not this go to impair the obligation of contracts? Such a law may, perhaps, be necessary and useful in England; but there is a wide difference between the people of America and England. A large proportion of the people of that country is engaged in commercial pursuits; here the great occupation is agriculture. Therefore, the situation of the two countries is not analogous. But I believe that, even in England, the bankrupt law was obtained by commercial influence, and is continued by commercial influence. There the merchant exclusively enjoys the benefit of the act; while the mechanic, the farmer, the lawyer, and the clergyman, must lie in prison unless Parliament pass a general act of liberation.

Our bankrupt law is a transcript of the English law, with certain alterations. Here, in case of fraud, the bankrupt is liable to fine and imprisonment; there, he is punished with death. There, if he is guilty of gross neglect, he is not only refused a commission, but is put into the pillory, and if he is declared a bankrupt a second time, and does not divide fifteen shillings in the pound, his person is liable to arrest. Here, the case is essentially different. Here the expenses are enormous. I have known instances where the property surrendered has not been sufficient to pay them. Six dollars a day are allowed to the commissioners, and if engaged but for a quarter of an hour, each commissioner is entitled to six dollars. The law was meant as an experiment; and the gentleman says, though in operation three years, we have not had experience of its good effects. We certainly have experienced that it is destitute of justice; and I believe, if it is continued longer, it will be to give a legislative sanction to fraud. I have always considered the business well managed under the insolvent laws of the several States; nor have I ever heard of any complaints under that law in Massachusetts. I, therefore, believe it best that the business be left to the regulation of the States. I believe the bankrupt law to be entirely for the benefit of the debtor. I ask, is it for the benefit of the creditor to have his contract dissolved, and the liability of the property of the debtor affected? If it shall be continued, I hope the title will be changed, and that, instead of an act for establishing an uniform system of bankruptcy, it will be called an act for establishing an uniform system of fraud throughout the United States.

Mr. Eustis.—If the proposition to repeal be postponed, the committee will be permitted to introduce amendments. I hope, therefore, that the postponement will prevail. The objections to the law are so contradictory, that I am at a loss to decide upon them. The gentleman from Massachusetts has stated a number of objections, and yet, he wishes to embrace, within the system, farmers and mechanics, or, in other words, to extend what he considers an evil. It is, in my opinion, unnecessary to decide the propriety of the principle of dividing the property of a bankrupt among his creditors, and liberating that which he may subsequently acquire from seizure. This principle has already been carried into effect, and, I am bold to say, has been attended with good effects in Massachusetts. What were the previous effects under the insolvent laws of that State? The creditor, who was the most vigilant, or who had the most acute lawyer, attached the whole property of the debtor, which is now divided among the creditors. Then there was a conveyance of all property before the debtor availed himself of the act of insolvency—now such a conveyance is nugatory.

I can name a number of respectable merchants of large capitals, who have been unfortunate, in consequence of the situation of the country, by French and English depredations, who, by availing themselves of the provisions of the bankrupt act, have divided their property, and have afterwards brought into activity their facilities as merchants. Is not this a substantial benefit? The operation of the law is also more just and equal than the insolvent laws.

As to the expenses alluded to, they are reduced one-half by the law of the last session. The wisdom of those who have gone before us, has decided on the benefit of the act, and it has been borne out by events. What the effects of the European peace will be, we have not had time to see; in two years we shall be better able to decide on the utility of the system. The capital of our merchants has not yet found its level. There

have been great and precarious voyages adventured upon during the war, and I believe this law will put down easily from their difficulties those who have suffered. It is, therefore, most prudent to let the law expire, if it is to cease by its own limitation.

The evils of this system are less numerous than under the old system; though I know the opinions of the commercial world differ. The penalties of this act are milder than those under the English act; so are all our penalties under other acts, and wisely so. I am sensible there have been abuses under this act, but its having produced more salutary effects, I am in favor of its continuance.

Mr. S. Smith.—The discussion of this day ought to convince gentlemen that those were in the right who prayed them not to go into it, as it has actually destroyed the doing of any business for this day. Another reason in favor of postponement, is to give legal gentlemen time to turn over their books, and to understand what the bankrupt law really is, and to ascertain whether the objectionable parts to which they refer are in the law or not. For I believe the gentleman from Massachusetts, (Mr. Hastings,) who has pointed out the exceptionable provisions in the law, will not, on examination, find them.

As already observed, the law is an experiment, intended to be tried for five years. Gentlemen are now for cutting off two years. Is this giving the experiment a fair trial?

I understand this to be the distinction between the bankrupt law and the insolvent law: The insolvent law is made to relieve the debtor from thraldom, and for his benefit alone. The bankrupt law is made for the benefit of the creditor against fraudulent debtors. For this purpose it was passed; and as far as I am acquainted with its effects, they have operated favorably.

What were the effects of the insolvent laws on the creditor? Merchants of large dealings, in the habit of giving their names and receiving that of a friend to endorse their paper, obtained discounts on what were termed accommodation notes; when in tottering circumstances, considering themselves bound to secure those who had lent them their names in preference to their real bona fide creditors, they became false to the latter: that is, they secured those who had lent them their names and nothing else; the whole property went to them, while not a dollar remained for the man who had sold his wheat or his tobacco, or any other article. Against these the door was shut. What was the consequence? A petition came forward from the man thus insolvent, who, in Maryland, is released from his debts, without either a lien on his person or property. In Massachusetts, we are informed, the person, but not the property, is released. And what is the effect of holding any property he may thereafter acquire answerable for his previous debts? You will banish him from the State where such laws exist, to those where they do not exist. While he remains subject to such laws he will be idle. Pardon me for the expression, he will be as a dead horse, that will not work. But he will go where he can again act for himself, with some prospect of rising in the world.

Now, what are the effects, in similar circumstances, under the bankrupt law? Merchants know generally very well when a man is on the totter; especially, when they hear that a man in trade is about to secure his securities, they bring him immediately under the provisions of the bankrupt law; and, thereby, secure the farmer, as well as themselves—for the farmer is at home, and does not know the situation of the merchant indebted to him. But merchant watches merchant, and as soon as a commission is taken a fair dividend of the effects of the bankrupt is made among all his creditors.

In Philadelphia, not long since, a merchant failed for a great sum; the necessary oaths were taken, and he was likely to get off with two or three hundred thousand dollars, which was, however, ultimately secured to his creditors under the bankrupt law. In Maryland, a merchant in great trade failed for a large sum. It is true, the eye of jealousy was for some time fixed upon him. But money to the amount of two hundred and forty thousand dollars, that would otherwise have been lost, was seized hold of by the bankrupt act, and, but for which, the fair creditor's claims would have been defeated. Here, then, is the distinction between the insolvent and the bankrupt law. In the last, there is a fair and honest dividend among the creditors; in the first, all such division is defeated, and the effects of the debtor are secured to his friends before he is declared an insolvent.

But, it is said, the bankrupt law has defects. This is a reason for postponing it until the next session, when the aid of gentlemen, who perceive its defects, can be obtained to remove them. But how remove them? By applying its provisions still further than they now extend? The great objection in England is, that it is extended too far. I will ask gentlemen, who hold this language, whether they wish to extend it to the whole farming interest? If they do so extend it, I will tell them that the farmer will owe them but little obligation. What will be the consequence? That his landed estate, owing to his misfortunes, will be brought before the commissioners and swept away; whereas, as at present, by working his estate, he may, in a few years, liberate it from the liens upon it.

It is asked, if the community has been benefited by this act? I will answer, that the commercial part of the community has been benefited; and this is proved by our not having received a single petition for its repeal from any quarter.

Mr. S. repeated his conviction that the law was made for the benefit of the creditor, and not the debtor. It was time that the debtor might feel obliged by the liberation of his person and property; but the creditor, if he had any feeling of justice, would also be satisfied with this effect. No man of feeling would refuse to give up his debts when his debtor gave up all his property. This, indeed, was the universal practice of mer-

chants. He never knew an instance of the reverse; and they generally went further, and relinquished to the debtor his furniture.

But it seems our law is different from the English law. Gentlemen say our law differs from that, inasmuch as, under the English system, on a second bankruptcy, the person of the bankrupt only is liberated, unless he divide fifteen shillings in the pound; and they affirm this is not the case under our law. If he could prove that this was the case under our law, he hoped he should be able to induce gentlemen to postpone the bill until the next session, that they might, by that time, acquire a better understanding of it. The fifty-seventh section of our law is in the following words: [Here Mr. S. quoted the fifty-seventh section.] Now this is *verbatim et literatim* the same with the British law. I can, said Mr. S., give no stronger argument for the postponement.

Mr. Newton said, I rise with an intention to perform a duty assigned to me. I shall at all times obey with promptitude and with pleasure the call of those whom I have the honor to represent, and my strenuous efforts shall never be wanting to promote their happiness and prosperity.

It is well known to the House that the bankrupt law, the subject now before us, has been submitted to our consideration by a petition from the respectable towns of Norfolk and Portsmouth, in Virginia, complaining of its partial operation and injurious tendency. This law has attracted public notice, and has in no small degree awakened the fears of all reflecting men. It is supposed to produce effects the reverse of those which were intended. The objections to this law are solid and just.

The mischief it produces is extensive; it is not susceptible of amendments; the only antidote to the poison, is a repeal. This opinion is the result of mature consideration.

Having premised thus much, I hope the House will, at this late hour, excuse me for trespassing on its patience. I have no inclination to go into a tedious discussion of the goodness or badness of the bankrupt law, on a question of postponement. It appears to me to be irregular and unfair to deprive us of that freedom of discussion which can be had only in a Committee of the whole House, on a subject so interesting and so intricate. It is a privilege that will not be denied us.

From the course which the debate has already taken, I am compelled not only to answer the arguments urged by gentlemen in favor of a postponement, but also to offer some arguments to justify a repeal of that law. It has been urged by the gentleman from Maryland (Mr. S. Smith) that it is improper for us to attempt a repeal of that law, until the mercantile cities and towns shall have given intimation to us that a repeal is wished for. He has also said that time has not been given for the expression of an opinion.

That gentleman, I am apprehensive, has forgot that, about the 13th of January, I presented a petition complaining, in strong and forcible language, of the partiality of that law; and, also, that, on the same day, a gentleman from Massachusetts (Mr. Varnum) moved a resolution, which passed the House, directing the select committee to whom the petition was referred to inquire into the expediency of repealing that law. It cannot be forgotten, either by that gentleman or the House, that the committee, with the utmost despatch, made a report, which was committed to a Committee of the Whole, and made the order for the thirty-first of January. Business of importance having occupied the attention of the House from the thirty-first, till the day before yesterday, prevented my calling up the report of the select committee before that day.

Permit me, sir, to ask that gentleman whether notoriety of an intended repeal of that law had not been given, and whether sufficient time had not been afforded to obtain, before the present day, an expression of the public sentiment from the most distant parts of the Union, from New Hampshire to Georgia, and from the shores of the Atlantic to those of the Mississippi? I am led to deduce from the premises of the gentleman inferences quite opposite. The silence of the merchants on the subject of the bankrupt law, impresses me with a firm belief that they are anxious to have it struck from our statute book.

If this law had fastened itself on their affections, and was peculiarly endowed with properties and energies successfully to guard against and protect the merchant from the misfortunes and calamities to which that profession is liable, would not the merchants, when they behold the Legislative arm covered with power, and uplifted to strike the fatal blow, supplicate you to stay the meditated stroke, and to spare "this stupendous fabric of human wisdom?"

That class of citizens have a quick sense of injuries, penetration to discern and steadiness to pursue their true and solid interest. When the Legislature expressed an intention of conditionally repealing our laws laying discriminating duties, &c., remonstrance on remonstrance was presented to the House against that measure. The prompt expression of their opinion on the latter subject and their silence on the former, I repeat, is to me confirmation strong of their execration of the bankrupt law.

A further reason in favor of a postponement, urged by gentlemen, is not more solid. It is, that the representation in the next Congress will be the fullest of any we have had, and, of consequence, better qualified to decide on this subject; this is an argument more specious than just. Let me ask gentlemen why they were so rash as to form a bankrupt system? Why did they not look forward with the same confidence to the eighth Congress, and leave to that body the consideration of the question whether it would not be enlightened policy to establish an uniform system of bankruptcy throughout the United States? As the gentlemen themselves have had the courage to act on this subject, I trust this House, equal in numbers and talents, will not shrink from it. The object of gentlemen must be manifest to all; it is to defeat the repeal of the law.

I remain confident that the House will, on this occasion, as it did on a former, decide against a postponement, and in favor of going into Committee of the whole House, on the report of the select committee.

I have endeavored to answer with clearness and precision the reasons urged for a postponement, whether successfully or not, the House must determine. I am now compelled to perform an arduous and difficult task, which will be to show that the operation of the bankrupt law, in defiance of any amendments we can frame, will continue to be partial and immoral; and that it is a system which can never enjoy the affections of the citizens of the United States. The task is certainly difficult, on account of the extent of the subject, and our success doubtful from the partiality which it fostered for the jurisprudence of that country from which it is taken. The petition which I had the honor to present, and which is the groundwork of all our proceedings, in general terms, complains of the partiality of the law, and how incapable its provisions are of preventing the practice of fraud.

The partiality complained of can, in my apprehension, have no other meaning than this, viz: that the provisions of that law are not made to extend to every class and description of citizens. This partiality cannot be remedied. This, sir, is not a mere assertion, nor is it a visionary speculation. This assertion is the result of an attentive and dispassionate examination of the Constitution of the United States. The Constitution gives to Congress power to make "uniform laws on the subject of bankruptcies throughout the United States." The word "bankruptcies" was borrowed from the British statutes, and, as a legal phrase, its meaning is precise and definite. It is well understood and defined by the English jurists. The term "bankrupt" means a trader, one who obtains his livelihood by buying and selling articles of merchandise, or depends for that livelihood, to a certain degree, on buying and selling articles of merchandise. If this definition of the word is a right one, and I aver it to be so, the words "bankrupt, trader, and merchant," are synonymous; they are convertible terms, meaning one and the same thing. As such the Constitution forbids us, nay, stays our hands from extending the provisions of a bankrupt law, to either the farmer, planter, mechanic, or any class of citizens other than a trader or merchant.

I am conscious that I am addressing myself to an enlightened assembly; to its better judgment I will submit, with all that deference and respect, which worth, talents, and virtue, can inspire. If I am wrong, I solicit them to correct my errors. I likewise behold here professional gentlemen, whose skill in jurisprudence is great and undisputed. I pray those gentlemen, if I have deviated from legal ground, to point out the path by which I shall regain it, and I will retrace my steps.

The silence of gentlemen imboldens me to say, that the ground I have taken is firm and solid. Should gentlemen tell me that the British bankrupt system is extended to a description of persons other than traders or merchants, I will grant it. What will be gained by this concession? Nothing, that I apprehend. It is to be remembered, that the Parliament of Great Britain is omnipotent, according to the learned Blackstone. Its power to legislate is coextensive with all and every description of actions which are susceptible of Legislative control, on which the Legislative will can be brought to act. But, even there, if it is the will of Parliament to extend the benefits of the bankrupt laws to other persons, besides merchants, the law must specially describe them. In this country we are so peculiarly happy as to have a Constitution, which is a grant of certain powers; in other words, a code of laws to the governors. All our acts, not authorized and warranted by that instrument, are not binding.

This doctrine is so universally known and understood, that I am relieved from the necessity of adducing instances. The power given by the Constitution to Congress, to make uniform laws on the subject of bankruptcies throughout the United States, is a limited power, as I have fully shown, in the former part of my argument.

Congress can by no Constitutional law place the farmer, planter, or mechanic, on the same footing with the trader or merchant. The bankrupt law, according to the terms of the petition, is of consequence partial; and, I will add, impolitic and immoral.

I am not disposed, sir, to depreciate the laws and institutions of other nations, nor to detract from their merits; if in their jurisprudence anything valuable is discoverable, and by the adoption of which advantage is to be gained, I shall be ready to render my homage to truth, and to profit by the lessons of experience. Knowledge and wisdom are not the precious and invaluable gifts of Heaven to any favorite clime, or to any chosen people; they are not confined within certain geographical limits, ideal boundaries; they possess the attribute of ubiquity; there is no portion of the globe in which monuments of them are not preserved; and, happy for mankind, they are the splendid and solid acquisitions of study and reflection. Sir, impressions such as these cannot induce me to believe that it is the true policy of any nation to adopt the laws of another without mature consideration, and a firm conviction that the genius and spirit of the laws are in harmony with the genius and spirit of the people, to whom they are to be rules of action. Different states of society require different laws; our political institutions differ essentially from those of the European world.

The European and American think differently on political subjects; to ascertain this, I pray gentlemen to take in one hand the political institutions of Europe, and in the other those of the States and United States of America, and dispassionately compare them with each other. If I mistake not, the stature and features (if I may be allowed the expression) of the human mind will be found, as there delineated and depicted, to preserve no striking likeness. Our Constitution and laws are laid on the solid foundations of equality of rights, and equality of condition. Laws

which make and countenance distinctions between citizen and citizen, are hostile to the nature and well-being of our Governments. If we are desirous of perpetuating the existence, and I trust we all are, of the Constitution of the United States, and those of the respective States; our laws, emanating from these different sources, should act in unison and concert, or as nearly so as the nature of things will admit; uniformity will give to them strength; and, erected as they would be, on the stable foundation of equal and immutable justice, they would forever possess the affections of the people. Should a contrary course be pursued, our political institutions, the admiration of the world, the first-born of Wisdom, would receive a shock that would make us all tremble for their preservation. Prior to the formation of the present Constitution, the State governments had, within their respective jurisdictions, the regulation of all matters relative to property, contracts, &c.; in a word, all civil and criminal jurisdiction. All transactions, even to this day, between citizen and citizen, except in certain specified cases, are under the immediate control of State laws. It has ever been the policy of most of the States, and with confidence I speak of the State of Virginia, not to impair the obligation of contracts, nor to absolve a man from his debts. The only releasement from a debt or contract is to pay the one and perform the other. To protect the debtor from the oppression of the creditor—to which, in some countries, the creditor can at will subject the debtor—insolvent laws are in force, by the provisions of which the debtor can liberate his body from imprisonment, by assigning over his estate, both real and personal, for the benefit of the creditor. A debtor who has taken the benefit of the insolvent law cannot be imprisoned again by the creditor for the same debt, though the property given up by him is insufficient to pay the debt of the creditor. The subsequent acquisitions of the debtor are made liable to pay the balance. The laws are uniform, consistent, and just; they bear with equal authority upon all and every description of citizen—high and low, rich and poor. This evident impartiality has endeared the State laws to their affections. Our common standard of justice is established; the result is obedience, without murmur, to the laws, and a perfect acquiescence in their commands.

The bankrupt law, which is now under consideration, is of a different complexion. It is partial in the extreme, it operates exclusively in favor of the merchant and trader, and in contradiction to the genius and spirit of the laws of the States, absolves the trader from the fulfilment of his contract and from the payment of his debts. Is this moral? It is, however, the evident tendency of the bankrupt law. If a merchant or trader is indebted to the farmer, planter, or mechanic, and become a bankrupt, and obtains his certificate of discharge, though his property will not yield a shilling in the pound, he is everlastingly absolved from paying the balance. If, after this, he becomes as rich as Crœsus, the laws cannot coerce a payment; the debtor may enjoy all the luxuries of life, while the unfortunate creditor, poor indeed for the want of this balance—Lazarus like—may be denied a crumb from his table. Reverse the case, suppose the farmer, planter, or mechanic, to be indebted to the merchant, that his person is imprisoned for the debt; that he obtains his discharge, by the insolvent law, from confinement by giving up his property, but which is insufficient to pay the debt. Is he compellable in law to pay the balance? Yes, the obligation to pay it remains in force. His future acquisitions, obtained by the sweat of his brow, are mortgaged to pay up the last shilling. Is this discrimination just? Our minds, accustomed and familiarized to contemplate with pleasure the equal justice of the State laws, revolt at and abhor the partiality and wickedness of this bankrupt law. To reconcile us to this law, gentlemen (Messrs. Bayard and Smith) tell us that merchants are at the sport of winds and waves, and that they are more liable to accidents, misfortunes, and casualties, than other men.

Sir, we are all, whatever may be our professions, but passengers through life; the tempest beats on us all with equal fury; and the iron rod of adversity makes no exceptions of persons, from the palace to the cottage. The storm that strands a bark or sinks it into the fathomless deep, may in its sweep prostrate and destroy the fairest prospects of the farmer. If it is our object to be successfully guarded and protected against the hazards and perils to which we are daily exposed, the armor of prudence should never be taken off. In that, and that only, have we any security; it is the ægis, without which we perish. This brings me to a very interesting part of my subject.

I shall be brief. I hold it, sir, to be a truth that cannot be denied, that that law which weakens the control of prudence over human actions and concerns, stabs in its vitals a cardinal virtue, and leaves society exposed to the incursions and ravages of every vice. I am fully persuaded that merchants suffer greater losses from the imprudence of those with whom they have extensive dealings than from all the perils and dangers of the sea, or the precariousness of foreign or domestic markets.

When a man discovers that he can rid himself of the importunity and demand of his creditors by a bankrupt law, he is too apt to enter into engagements without regard to the means which will enable him to comply with them, and he will likewise be too prone to extend his speculations and projects incautiously beyond his capital. I make these remarks because I think they delineate with force the evils of the bankrupt law, and from a solicitude I shall ever feel to protect the circumspect and prudent merchant from the wild and visionary projects of the imprudent and incautious trader. Should we be told that a certificate of discharge is obtained with difficulty, and that the bankrupt must produce the clearest evidence that his failure was the consequence of unavoidable accidents, of real and not frivolous misfortunes—the answer is plain and concise. In that country in which bankrupt laws are best understood,

and have undergone revision after revision, they have disappointed in practice the sanguine expectations of their greatest admirers. Every expedient has been tried to prevent the practice of frauds. Streaked, if I may be permitted the expression, as the British statutes are, with blood, and, if I mistake not, those of France and Spain are not less severe in their penalties, yet frauds are practised successfully.

Can gentlemen imagine we shall succeed better in this country? Vain, indeed, will be their calculations. The little experience we have gives us nothing to hope, but much to fear. It is a maxim of the common law, and which has long been adopted by the respective States, that no man can be made to accuse himself. Yet this law compels an examination of the bankrupt on oath as to the amount of property, and whatever relates to his mercantile transactions.

If, sir, the bankrupt has committed fraud, he is forced to confess it, and to submit to the punishment of the law, or to deny it, and escape, if possible, the punishment by the commission of perjury. To what a dilemma may the innocent but unfortunate bankrupt be reduced. Misfortunes unnerve the mind, his recollection fails him, his faculties are disordered and disturbed, and ruin and wretchedness stare him in the face. In such a situation, he is put upon interrogatories; if his answers are contradictory, and no wonder they should be so, for it is the peculiar felicity of but few, in time of difficulty and danger, to be self-collected, composed, and serene, when suspicions of fraud are entertained; and should a further examination into his affairs, discover that he had not fully disposed of all his property, nor given an accurate history of all his transactions, he is deemed guilty of fraud; facts and circumstances are against him, his innocence avails him nothing, and he is doomed to feel the vengeance of the law. Injuries and insults are added to misfortunes. I call upon the gentleman from Delaware, (Mr. Bayard,) the champion of the common law, to tell us how he can reconcile to himself this departure from the mild and humane principles of his favorite system? How he can justify, in contradiction to that law, to make the wife a witness against her husband?

This law, sir, outrages every feeling of humanity, and tramples down every principle and maxim of jurisprudence which time and reason have approved and consecrated. This law violates and profanes the sanctuary of love and friendship, and tears the disconsolate wife from the bosom of her husband to bear testimony against him; her feelings, affections, and duties, relatively to herself and to her husband, are at the shock and mercy of a law that would disgrace an inquisition. If her husband, goaded by the stings of adversity, should deviate from moral principles, to what a situation do you reduce the innocent companion of his misfortunes? If she testifies to the fact, her husband is condemned to ten years imprisonment, is consigned to the damp, fœtid, and unwholesome cell of a jail, shut up from the world, and perhaps from her! I tremble at the alternative; I tremble in beholding her in a crisis that would humble and dismay the boldest among us.

Shall I go on? The recording angel as he wrote it down, would drop a tear, and blot it out forever! I will conclude, with remarking, that I am not only in favor of a repeal, for the reasons already assigned, but other reasons, which, for want of time, I shall barely mention: 1st. Because the insolvent laws of the States are better calculated to attain the end proposed by this law, and because they are equal in their operation. 2d. Because the law, in my opinion, is in principle anti-Republican; distinctions being made between citizen and citizen in the dispensation of justice. 3d. Because I believe it to be policy not to carry all our Constitutional powers into operation, and because I entertain an opinion that were those virtuous patriots, and enlightened statesmen who framed the Constitution to pass it at this day in review, their practical knowledge of the innate viciousness of bankrupt laws would cause them to strike from the list of Congressional powers, that which authorizes the making of bankrupt laws. 4th. Because we have all along prospered without such laws.

I fear, sir, my remarks, as I have been unexpectedly forced from the course which business of importance usually takes, have been desultory. I trust the House is now fully convinced of the necessity of resolving itself into a Committee of the Whole, on the report of the select committee. I therefore hope the postponement will not be agreed to.

Mr. Dana said he had but a few arguments to advance, as the subject had already been discussed with learning and ability. He acknowledged that, in the course of the debate, he had been instructed by information of which he was not previously aware. Most of the objections urged against the bankrupt system affected more the principle on which it was founded than its details. A distinction has been drawn between the authority under which this law is passed, and that of other laws in relation to persons insolvent. Taking the distinction laid down by the gentleman from Virginia as correct, and it follows that the Constitution has decided the soundness of the principle of the bankrupt law, by not giving us the power of creating an insolvent law, except where individuals are in confinement under laws of the United States. The Constitution, therefore, having decided this point, has superseded the necessity of all discussion of it here. As to the particular objections made to the law, amendments may remove them. If the district judge shall be empowered to revise and disallow, in case he sees fit, the proceedings of the commissioners; that is, possess the ultimate right of deciding on the whole business, many of the existing objections will be removed. He wished it so amended, believing the general principle, on which it was founded, sound.

Mr. Bayard said there was not time, nor would the House have sufficient patience to enable him to comply fully with the call of the gentleman from Massachusetts, (Mr. Hastings.) But

as he had received a call from the gentleman from Virginia, (Mr. Newton,) to answer which will not require so much time, he could not resist the civility of a reply. That honorable gentleman has called upon me, as the champion of the common law, to reconcile what to him appear as inconsistencies, with that system certain parts of the bankrupt act. I ought, (said Mr. B.,) to return thanks to that gentleman for calling me the champion of the common law. If I believe anything, I believe that that law is the source of all the rights and liberties of my country. I believe that it is owing to that law that we now hold so proud a superiority to England, France, and other nations. Give me leave to say there is not a State in the Union that has not adopted it; and where it does not form a part of the code of laws under which criminal and civil jurisprudence is administered.

The honorable gentleman has told us that, under the common law, a wife cannot be examined in cases where her husband is concerned; and he contends that, under the bankrupt law a contrary practice is authorized. It is true that, under the common law, a wife cannot be examined either to condemn or acquit her husband. But if the gentleman had gone further, he would have found nothing anomalous in the provisions of the common law, and those of the bankrupt law. He would have found that the latter does not allow a house to be divided against itself; one half to be examined, and the other not. The common law does not allow a man to be examined against himself; but the bankrupt act does, and also allows a wife to be examined. It follows, therefore, that the indivisibility of man and wife is not affected.

I am astonished that gentlemen should oppose this law on principles so opposite and contradictory that they destroy each other. Some gentlemen complain of its rigor, while others condemn it for its laxity. How are both these descriptions of gentlemen to be pleased? I believe a proper medium between these extremes is best. With regard to the objection urged against the severity with which the law punishes fraud, and which has so strongly excited the sensibility of the gentleman from Virginia, (Mr. Newton,) it is incorrect. On this subject the gentleman is mistaken. He has told us that a perturbated merchant, if involved in mere mistake, is liable to lose his life, or be imprisoned for ten years. But he is radically mistaken. In England, France, and Holland, there is no punishment inflicted without intentional fraud. It is not so here, and, indeed, I am confident, nowhere else. Yet we are told that an unfortunate debtor who unfortunately attempts to defraud his creditors, may have the misfortune to be punished. Gentlemen might as well say that, owing to the unfortunate cupidity of the midnight thief who broke into a house and despoiled its tenant of his property, or, owing to the frailty of the still more unfortunate man who ravished his neighbor's daughter, he ought not to be punished. How is the fact under this law? Deliberate fraud, and that only, is punished.

The gentleman from Virginia says this law is anti-republican in its nature and tendency. If so, I am as ready to repeal it as himself; as I believe I am as much attached to republicanism as he is. But how is it anti-republican? Because, it is said, it operates more upon one class of citizens than upon another. If this circumstance makes it anti-republican, there is not a law in existence that is not anti-republican; there is not a law which we have passed, or can pass, that does not at one time operate more upon one class than another. What was the operation of the tax upon stills, stamps, and a thousand other articles? Yet among all the objections to those laws, I never heard this raised as an objection. If any man consider it anti-republican and unequal, he has only to make himself a trader, and it at once becomes to him republican and equal. But so far was this objection from arising in my mind as possible, that I was about to urge the opposite argument, and to recommend the law to the approbation of one side of the House on the principle of its being republican in its nature and operation, and which I sincerely think ought to recommend it to both sides. It is republican, because it is equal in its effects; it divides the property of the debtor equally among his creditors; and republicanism is founded upon equality. It is not only republican, but, moreover, it is equitable.

I have already gone further than I intended. Gentlemen who have spoken having gone very wide from the question before the House, I found it necessary, in some measure, to follow them. If the subject is postponed, further remarks will be unnecessary; and, if another decision shall prevail, it will then be in order to make them.

The question was then taken by yeas and nays, on Mr. Griswold's motion, to postpone the subject until the next session, and carried—yeas 50, nays 39, as follows:

Yeas—Willis Alston, James A. Bayard, Thomas Boude, Richard Brent, John Campbell, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Peter Early, Ebenezer Elmer, William Eustis, Abiel Foster, John Fowler, Calvin Goddard, Andrew Gregg, Roger Griswold, William Barry Grove, John A. Hanna, Daniel Heister, William Helms, Archibald Henderson, William H. Hill, William Hoge, Benjamin Huger, Samuel Hunt, Thomas Lowndes, Ebenezer Mattoon, David Meriwether, Samuel L. Mitchill, Thomas Morris, James Mott, Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, John Rutledge, William Shepard, John Cotton Smith, John Smith, of New York, Samuel Smith, Henry Southard, John Stanley, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, Philip Van Cortlandt, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Nays—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, Richard Cutts, John Dawson, William Dickson, Lucas Elmendorf, Edwin Gray, Seth Hastings, Joseph Heister, James Holland, David Holmes, George Jackson, Michael Leib, Anthony New, Thomas Newton, jun., John Randolph, jun., John Smilie, Israel Smith, John Smith, of Virginia, Josiah Smith, Richard Stanford, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

Saturday, February 19.

Mr. Dawson, from the committee appointed, presented a bill concerning the salt springs on the waters of Wabash river; which was read twice, and committed to a Committee of the whole House on Monday next.

Ordered, That the committee to whom was referred, on the 11th of December last, the petition of James Dohertie and others, be discharged from the consideration thereof; and that the said petition be referred to the committee appointed the 16th instant, on the report of the Commissioners under the "Act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Remonstrances and petitions of sundry inhabitants of the State of Pennsylvania, west of the Alleghany Mountain, were presented to the House and read, respectfully stating the inconveniences to which they have been and are now subjected, in consequence of the shutting of the port of New Orleans, in virtue of a proclamation of the Spanish Intendant of the said port, without having a place of deposit assigned to them on the Mississippi river; and praying that Congress will take the premises into consideration, and adopt such measures for redress therein as, in their wisdom, may be deemed most effectual and proper.

Ordered, That the said remonstrances and petitions be referred to the Committee of the whole House on the state of the Union.

Ordered, That the committee to whom was referred, on the 16th instant, the report of the Commissioners appointed in pursuance of an act, entitled "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory," have leave to report thereon by bill or otherwise.

Mr. Nicholson, from the committee last mentioned, reported a bill regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee; which was read twice and committed to a Committee of the whole House on Tuesday next.

Mr. Nicholson, from the same committee, also reported a bill for settling sundry claims to public lands of the United States south of the State of Tennessee; which was read twice and committed to a Committee of the whole House on Tuesday next.

The House resolved itself into a Committee of the Whole on the bill concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia; and, after some time spent therein, the Committee reported the bill with two amendments, which were, severally, twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and three; and, after some time spent therein, the Committee reported the bill with several amendments thereto; which were, severally, twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed and read the third time on Monday next.

Mr. Gregg, from the committee appointed, presented a bill to incorporate the Directors of the Columbian Library Company; which was ordered to lie on the table.

Mr. Leib called for the bill to amend the naturalization act; on which the House went into Committee of the Whole.

The bill exempts those aliens who came into the United States between June, 1798, and April, 1802, from the obligation of declaring their intention to become citizens.

Mr. Bayard spoke against and Mr. S. Smith in favor of the bill.

Mr. Goddard, being adverse to the bill, moved that the Committee should rise, in order to dismiss them from any further consideration of it.

This motion was supported by Messrs. Bayard and Thatcher, and opposed by Messrs. S. Smith, Leib, and Smilie; and was lost—ayes 30, noes 43.

The Committee then reported the bill, and the House ordered it to a third reading on Monday.

TENNESSEE LAND CLAIMS.

Mr. Nicholson moved the following resolution:

"*Resolved*, That the claimants to lands of the United States lying south of the river Ohio, State of Tennessee, under an Act of the State of Georgia, passed on the 7th day of January, in the year 1795, be heard by counsel at the bar of this House on Tuesday next."

Mr. Nicholson observed that he believed any man had a right to be heard upon any subject on which he thought himself aggrieved. He imagined it would save time if they were admitted to the bar of the House. If that measure was not adopted, they must be heard before the select committee, who would have to report, whereas by the method then proposed, the subject would come immediately before the House. The claimants were not satisfied with the report of the Commissioners. The reasons on which that disagreement was founded they desired to state to the House, believing that such facts might be produced as would have weight in their decisions.

Mr. Bayard thought the request so reasonable, that any remark was unnecessary to induce a compliance with it on the part of the House. It was an ancient maxim, he believed having the authority of Seneca, "that the judge who decided, having heard only one party, judged iniquitously, though he happened to judge rightly." As the representatives of the nation, they were bound in honor to hear them. There was a wide difference

between the claimants and the Commissioners, he believed, because the latter considered the conveyance not an equitable grant. Whether it was or was not an equitable grant, in order to prevent further trouble in settling this land, and as it was a matter of great expectation to the claimants, who constituted a respectable portion of the citizens of the United States, he was of opinion that the House should not refuse this request.

Mr. BACON was in favor of the resolution.

Mr. RANDOLPH expressed his embarrassment on the occasion; he did not wish to oppose the resolution, nor did he think the House had time to hear them the present session. If the House should refuse to hear them, it would not decide their case—they could then resort to a court of justice. They would not accept the offer of the Commissioners, because they thought their chance greater at a law suit. He thought they were no more bound to those people (the claimants) than any others who had a law suit. He should be glad to hear them if they had leisure. But they (the House) were not to be the judges; if a compromise was not to be effected they would finally resort to a court of justice.

Mr. GRISWOLD said the object of the law appointing Commissioners to act on that subject was, to make a compromise if possible. What was the situation of these people? They had, by passing that act, brought the claimants from all parts of the Union, at a great expense, the Commissioners had reported, and now could they with any propriety refuse to go any further? He thought they were bound, by principles of justice, to hear them. He hoped the question would be immediately decided. He believed, also, with the gentleman from Maryland, (Mr. NICHOLSON,) that it would be a saving of time.

Mr. RANDOLPH was sorry to come under the censure of the gentleman from Connecticut. He was not opposed to hearing them, but was in doubt whether they could hear them at any time, without omitting other business which was absolutely necessary to be done at this session. If counsel were admitted, they might speak till 12 o'clock at night on the 3d day of March, to the neglect of business on which the safety of the United States depended. Besides, there was no violation of justice—they still had their resort to a court of justice.

Mr. BACON said, the conclusion of the gentleman from Virginia (Mr. RANDOLPH) not to hear these claimants, was not conducting business in a manner becoming the dignity of that House. He was not afraid of their trespassing on the patience of the House; we wanted no better security against that than their own interest. He hoped the resolution would obtain, and that it would be decided immediately.

The question on the resolution was carried in the affirmative—45 voting in favor of it.

MONDAY, February 21.

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred, during the present session, the several memorials and petitions of the "Franklin Association," and of other journeymen printers, of sundry combmakers, gunsmiths, corkcutters, calico-printers, cordwainers, papermakers and letter founders; of sundry manufacturers of umbrellas, brushes, stoneware, gunpowder, hats, and starch, within the United States; praying for protecting duties to be laid on the importation of articles used in their respective manufactures, made a report thereon; which was read and considered: Whereupon,

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to prepare and lay before Congress, early in their next session, a plan for the levying new and more specific duties on goods, wares, and merchandise, imported into the United States, so as that the same shall, as near as may be, neither increase nor diminish the present revenue arising to the United States from imports.

The bill to incorporate the Directors of the Columbian Library Company, which was received and ordered to lie on the table, on the nineteenth instant, was read twice and committed to a Committee of the Whole on Thursday next.

An engrossed bill making an appropriation for the support of the Navy of the United States for the year one thousand eight hundred and three, was read the third time and passed.

An engrossed bill concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia, was read the third time and passed.

Mr. ROBERT WILLIAMS called up his resolution, making it a standing rule of the House that all questions, respecting priority of business, should be decided without debate.—Carried without a division.

The House went into a Committee of the Whole, on the amendments of the Senate to the bill providing an additional armament for the protection of commerce and seamen of the United States.

The Senate propose a new section, authorizing the President to build a number of gunboats, not exceeding fifteen, and appropriating fifty thousand dollars therefor.

Mr. GRISWOLD moved the recommitment of the bill to a select committee.—Lost, ayes 17.

The amendment of the Senate was then agreed to.

The House went into a Committee of the Whole, on the bill making an appropriation for the support of Government for the year 1803. The several blanks were filled and the bill reported agreed to in the House, and ordered to a third reading to-morrow. Among the appropriations of the bill is one of between three and four thousand dollars for completing the jail in the City of Washington.

The House went into a Committee of the Whole, on a bill in addition to, and modification of, the propositions contained in an act admitting the Northwestern Territory into the Union.

The Committee rose, and reported the bill without amendment.

The House took up the report of the Committee, concurred, and ordered the bill to a third reading to-morrow.

MILITARY LAND WARRANTS.

The House took into consideration the bill extending the time for the location of military land warrants, &c.

Mr. DAWSON.—Some days ago I moved a postponement of the consideration of that report. This did not arise from any disposition unfriendly to it, or objections to its provisions. In my judgment they ought to be extended; for I hold it to be our duty, and it ought to be our pride to render justice by every means in our power to those who rendered service to us during our Revolutionary war; and, I am happy to observe, that this appears to be the general sentiment of this Legislature. It is known to you, sir, and to every gentleman of this Committee, and I may add, to every citizen of these States, that General Lafayette rendered to us essential services during that period. At the commencement of that war, he entered into the service of the United States, and continued in it until the close, at his own expense and expenditure of his private fortune. Since then, sir, various have been his fortunes. At one time he has been at the head of a great nation; at another buried in the dungeons of a despot. At that moment, Congress, feeling for his misfortunes, and remembering his services, passed a law granting him, in specie, the amount of his certificates. This act, sir, relieved his distresses, and was nothing more than justice on our part.

Having entered into our service as a Major General, never having been attached to any particular line, he never has received any land as other officers did. His fortunes are now much reduced, and I am persuaded that I do an act beneficial to him, and honorable to my country, by offering to you the following amendment, which, I trust, the wishes of every gentlemen of the Committee have anticipated.

[Here Mr. D. read a new section, allowing General Lafayette a quantity of land equal to that allowed to officers of a similar rank.]

I will only observe that I have placed General Lafayette on the Virginia Establishment because the quantity of land will be greater, because in that State he rendered most of his services, and was generally attached to that line.

Mr. T. MORRIS hoped a decision would not then be pressed, as there was scarcely a quorum in the House. He did not know whether he should finally vote for or against it; or whether he should not move to extend the provision to other officers. He, therefore, moved an adjournment; which was carried—ayes 30.

NATURALIZATION.

The bill in addition to an act, entitled "An act to establish an uniform rule of naturalization," &c., was read a third time.

The bill is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, or any of them, without a compliance with the first condition specified in the first section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

The question was put on the passage of the bill.

Mr. GODDARD observed that, at this late period of the session, when almost every gentleman who spoke complained of the want of time to complete the public business, he was not a little surprised to find this bill, from day to day, pressed upon the House. He thought there were no persons less entitled to occupy the time of the House at this period than these petitioners. He therefore moved to postpone the further consideration of the bill until the first Monday in November next. He was induced to make this motion not only because the time of the House was wanted for other and more important business, but from the circumstances under which the petitions upon which the bill was founded had been introduced into the House. They were at first expressed in language so indecent that the House refused to act upon them, or even to commit them. Only two days after, they were presented again with the same signatures and in the same words, with the exception of one passage, which was thought most improper. It was impossible that the petitions should have been sent back to the subscribers, at a distance of several hundred miles, and again returned to the House. He presumed, therefore, that some person had taken the liberty of new modelling the memorial and of presenting it in the names of persons who had never seen it in its present form. If there were no other argument against passing the bill, this would be sufficient with him. He thought the petition ought to be sent back to the subscribers, and they ought to be informed that the House had refused to act upon it on account of the improper form in which it appeared. But if the bill should now be passed, the greater part of them would never know that any objection had been made to the liberties which they took with the Government and the House. They would merely know that their request had been promptly complied with.

Mr. DANA took a review of what had been done for the petitioners at the last session of Congress. He mentioned various important subjects which had lately been postponed for want of time to act upon them. These petitions, he remarked, had been introduced since the subject of discriminating duties—a subject recommended to the consideration of the Legislature by the President of the United States himself—had been postponed professedly for want of time. The subject of amending the bankrupt law, which was considered as very important to the United States, had been postponed for the same reason. A number of pressing petitions from our own citizens had

been disposed of in the same way and on the same grounds. He thought, therefore, that unless these aliens were entitled to more attention than any description of our own citizens, and even than the President of the United States himself, the House could not consistently act upon those petitions at the present session.

Mr. SMILIE.—This bill is objected to on two grounds: first, that there is not time to consider it, and, secondly, from the phraseology of the petitions. But the remarks of gentlemen cannot apply to the language contained in the first petitions, as they were not committed, and as the present bill is founded on other petitions, in which the exceptionable language is not to be found. I therefore know no reason for mentioning the first petitions, on which no order has been taken. I hope, however, since they have been brought up, that I may be indulged in a few remarks, to examine whether they are so objectionable as has been contended.

Mr. NICHOLSON inquired whether such remarks were in order.

Mr. SMILIE said those petitions had been alluded to in debate, and he was only replying to the remarks made. He then read the following part of the petitions:

"That your memorialists submit the circumstances under which those of them residing here from the Summer of 1798 until the Spring of 1801 were placed. Every *alien*, distinguished for his attachment to the principles of liberty, was incessantly abused in the papers coutenanced by the Administration then in power. The American Minister at St. James notified, in the name of Government, that the Irish state prisoners would not be permitted to reside in this country; and the British Government made this the pretext for detaining them in dungeons, for the space of four years, in open violation of solemn compact. The Presidency was then in the hands of a man notoriously hostile to aliens of republican principles; and the President was authorized by law to banish any alien at his pleasure, without trial, and without appeal. Under these circumstances your candor will allow that an *alien resident* could have no inducement to declare his intention of becoming a citizen; for, by so doing, he placed his name on a list of proscription, and subjected himself to the arbitrary will of an individual."

This, said Mr. S., is the obnoxious paragraph. I have said before, and now repeat it, every word is true. I allow that telling the truth is sometimes disagreeable, and this may be one of those cases, but I could never despise the man who speaks the truth. The petitioners first say, "that every 'alien, distinguished for his attachment to the prin-'ciples of liberty, was incessantly abused in the 'papers countenanced by the Administration then 'in power." On this point, I need say nothing, as every gentleman here must be sensible of its truth. In the second place, they say the President was not friendly to aliens. This is true, or he would not have signed the bill, in the face of the Constitution, to put into his power every alien in the United States. In the third place, it is stated that the American Minister interfered and prevented them from coming to this country. A passage which I shall read from the letter of the Minister will show whether this is true or not. [Mr. S. here read the following extract from a letter of Mr. King to one of the Irish State prisoners:]

"You must be sensible that I possess no sufficient means of forming an opinion respecting your sentiments; but the motives which lead me to interfere with your Government, to retain the emigration of the persons above alluded to, oblige me to observe a due caution on the present occasion."

After hearing this language, I think the House will not be disposed to think the language of the petitioners too plain. I do not believe the President or the Minister was authorized to interfere in such cases. I know of no law authorizing such conduct. I do know of a law which authorized the President to banish aliens, but I do not know of any law which authorized him to prevent emigration. The alien law authorizes the President "to order all such aliens as he shall judge danger-'ous to the peace and safety of the United States, 'or shall have reasonable grounds to suspect are 'concerned in any treasonable or secret machina-'tions against the Government thereof, to depart 'out of the territory of the United States." This is a memorable law! Now, what does the Constitution say of the rights of all men in this country? Hear:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein such crime shall have been committed; which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Compare this Constitutional declaration with the character of the alien law. Remember that the Constitutional provision is not confined to *citizens;* the words are, "In all criminal prosecutions, the accused," &c. By the alien law, all aliens are placed at the mercy of the President; they are not convicted on an impartial jury trial; they are not even tried by the President himself; but, on mere *suspicion*, are banished from the country! This is the state in which all aliens were placed by this law. When under these circumstances, I say, it is not extraordinary that they should come forward and express their opinions. Is this an offence? Be this as it may, the present bill does not originate in these petitions, but in others, whose language is unexceptionable. And where is the danger of admitting this description of aliens of five years' residence, when all others are admitted on the same terms, barely because they did not signify their intention to become citizens, when a period of fourteen years' residence was required? A person, before he signifies his intention, must be of age: could, therefore, the age be expected?

I mentioned the other day what I considered it, a duty which we owe to these people: I will now mention a duty that we owe ourselves. Is not our wealth increased by emigrations? He who brings with him nothing but his person, brings his labor and that, in a country that only requires improve-

ment to be productive, is considerable. But there are many emigrants who bring positive wealth into the country. But gentlemen are apprehensive lest those foreigners, by interfering in our present political system, will injure or destroy it. This idea has always appeared to me ridiculous. Foreigners, in my opinion, will be soon merged with ourselves, and instead of introducing among us their sentiments, will soon take up ours. This objection has appeared to me, too, the more extraordinary, inasmuch as it is raised against foreigners, not because they are the subjects of monarchs and tyrants, but because they have too high ideas of liberty. Where, then, can be the danger of their coming among us, and, after a reasonable residence, participating in our Government? If I excepted any from exercising this right, it would be from the instruments of tyranny in other countries, and not those who, by their republicanism, have rendered themselves obnoxious to tyrants. But when it is remembered that this bill only applies to a particular class of men, to whom three years are saved, and without which a residence of eight years will be necessary, I do hope that the House will so far indulge us as to pass the bill for the relief of this class of persons; for, however unimportant it may be to the Eastern and Southern States, in the Middle States the mere consideration of labor is of the last importance in improving the value of their land; and I trust that gentlemen, whose constituents cannot be injured by it, will suffer it to go into existence, for the benefit of those States which will derive a great advantage from it.

Mr. BACON observed that the subject had been ably discussed, both in public and private, as well by those who were learned as by those who were unlearned. As every member must be ready to vote upon it, he hoped much time would not be spent in debate.

Mr. DAVIS wished the gentleman from Massachusetts would give them example instead of precept. Had he done so, he would have saved that time the loss of which he deplored. Indisposition having prevented him from attending the House for eight or ten days, he had not had an opportunity of opposing the progress of this bill. He was surprised at the sentiments of the gentleman from Pennsylvania, (Mr. SMILIE,) and at the turn which this business had taken. A petition had been presented, and after examination, on account of its insolent language, had been refused to be committed.

Afterwards similar petitions had been presented, which the House were about to treat in the same way; when they were informed that the exceptionable language was not in them. How persons, so distant as the petitioners, could, in a few days, have corrected their petitions and sent on others was most astonishing. Pardon me for saying that the new petitions must have gone to press here, and the names of the petitioners have been transcribed. If so, we are now acting upon forged petitions; and immediate steps ought to be taken to protect us from so gross an imposition, by which the petitioners are represented to hold a different language from that which they meant to express.

The gentleman from Pennsylvania has told us that the facts stated in these petitions are true and that the President had authority, under the alien law, to banish all aliens. Will he say why he had this authority? It was given in consequence of their unceasing interference in the affairs of the Government, and in consequence of their restless and rigorous behaviour, that Government thought it necessary to protect themselves from their impertinent interference. The law grew out of these circumstances. The gentleman is now for opening the door still wider to this description of persons who have manifested themselves to be of the most turbulent and factious tempers, and who are constantly employed in disseminating their poison among the people. I verily believe, that, in less than five years from this time, we shall be obliged to re-enact the law for requiring fourteen years residence before citizenship is conferred. I shall not, indeed, be surprised at our soon having a petition from those men to amend the Constitution, and to admit an alien to be President of the United States.

At the request of these petitioners, we are about to infract the Constitution. The Constitution says that Congress shall have power "to establish an uniform rule of naturalization." At the last session we passed a law on this subject containing four rules. The first rule prescribes that every applicant for admission to citizenship, shall have declared on oath, or affirmation, three years at least before his admission, that it was his intention to become a citizen. The bill on our table is to exempt a certain class of aliens from the operation of this rule. Is this right, equitable, or Constitutional? To one description of aliens you apply four rules, while to another description you apply but three. You thereby infract the Constitution; and if this is not the meaning of it, I do not understand it. But on the sole ground of the pressure of other more important business, if other reasons were wanting, I should vote against the passage of the bill.

Mr. DANA called for the yeas and nays.

Mr. GODDARD was not disposed to consume the time of the House; but, in answer to the gentleman from Massachusetts, (Mr. BACON,) he must be permitted to say, if it was the sincere object of gentlemen on that side to save time, they would evince their sincerity by not pressing on the House business against which there were reasonable objections. The gentleman from Pennsylvania tells us that this bill is not introduced on the petitions so often referred to in this debate. All that I know is derived from the gentleman himself, who informed us lately that the petitions which he last offered were precisely similar to those which he had previously presented. Such, too, was the statement of another gentleman from Pennsylvania, (Mr. LEIB,) who stated that the last petitions were precisely like the first, excepting the paragraph deemed exceptionable, which had been stricken out; and that both petitions were signed by the same persons. Now, the objection

made to the first petition again recurs. The House did refuse to commit the first petitions on account of the indecent expressions they contained. The House pronounced the language indecent and insolent. Gentlemen on both sides expressed the same sentiment, and he rejoiced to hear it. The first petitions were not committed; the last were committed, as had been expressed by the gentleman from Massachusetts, to show the more marked disapprobation of the first. But no sooner are they referred than a bill is ushered into the House. If it were proper to pass such a law it ought to be on petitions couched with more decency. I believe, with the gentleman from Kentucky, that these petitions have not traversed four or five hundred miles and got back again. I believe they do not express the sense of the petitioners whose names are signed to them. For this reason I would not sanction them by passing this bill. But there are reasons of greater force against the passage. This is the same Congress that has already acted upon these very petitions. Why depart from our ordinary and established course of proceeding in this case? At the last session, similar petitions were acted upon, and no new evidence to change our minds is now alleged. The gentleman, however, from Pennsylvania, says, we are not averse to the prayer of these petitions, because those who offer them have lived under a monarchy, but because they are republican too much. They are, Mr. Speaker, republican too much! If to be the enemies of all regular government be republican, then I have no hesitation to say, I disclaim the title.

Mr. G. concluded by saying, that in every point of view in which he could consider the subject, as well on its own merits as from a want of time, he thought the House would be justified in postponing it.

Mr. DANA hoped that he should not be thought wanting in due respect to the age and logical talents of the gentleman from Massachusetts, (Mr. BACON,) even though he should refuse to relinquish his opinion, and his right of debate, in consequence of that honorable gentleman's friendly admonition, an admonition which was probably intended to operate as a command. He thought if that gentleman was really disposed to economise the time of the House, he might do it more effectually by omitting to bring forward measures which were known to be disagreeable—measures that were not in themselves necessary, and that were not expected to be acted upon, rather than by attempting to prevent gentlemen from expressing their objections to measures introduced as the bill had been.

Mr. D. was not surprised to find the gentleman from Pennsylvania, (Mr. SMILIE,) warmly attached to the interest of the emigrants from Ireland. He understood that the gentleman himself was from that country, and thought it extremely natural that he should feel an attachment to his countrymen; but he thought also that the very circumstance ought to caution the House against too suddenly admitting persons, who feel similar attachments, to a participation in the direction of our public affairs. He considered that partiality which the gentleman had manifested for the country of his birth as one of the strongest and most amiable of the propensities of the human mind, yet upon that floor he could wish to see those partialities circumscribed within the limits of the United States.

Mr. LEIB said that the gentleman from Delaware had completely answered and refuted his own arguments; for if there were no aliens in the situation to be relieved by the bill, and no application had been made by them for the relief contemplated by it, his apprehensions can have no foundation of course, and the bill was no more than a dead letter. According to this gentleman's conception, then, the fears of the gentleman from Connecticut must likewise be groundless, and all his anticipations of perjuries which would be committed by the aliens, should the bill pass, must prove as visionary as his argument; for where there existed no temptation for perjury, none certainly would be committed.

But there were many in this situation, and they had applied for relief. He had presented memorials from a great number, praying for the amendment to the naturalization law contemplated by the bill. The gentleman from Maryland had likewise presented a memorial from the aliens in Baltimore to the same effect. It was therefore apparent that many were aggrieved, and the bill provided a remedy.

The gentleman from Connecticut had been very liberal in his denunciations of aliens; he seemed to derive peculiar gratification from this indulgence of his feelings; but for his part, said Mr. L., he could not enter into that gentleman's sensations, nor subscribe to his opinions. It was true, that, in the State which he had the honor to represent, there was a lawless banditti to whom the remarks of the gentleman from Connecticut would apply, who seemed to regard neither laws nor morals, and who had occasioned much trouble, vexation, and expense, to the State, but they were not aliens, but *Connecticut intruders*.

The gentleman from Delaware had said much in favor of the declaration called for by the existing law. What was it? Was there a magic in it—a kind of legerdemain—which, by hocus pocus, converted aliens suddenly into a fitness for citizenship? What was its slight-of-hand process, that it gave to the alien an impromptu knowledge of our Constitution and our laws? Did it possess an alchymical power, capable of an instantaneous transmutation of a base into a pure being? For his part, he believed that the residence required by law occasioned the safest and surest transmutation. It was this which gave the knowledge and feeling, and gave the opportunity, for the intercourse that amalgamated the aliens with us, and gave them a common interest. It was the surest standard by which to test the desire for citizenship; it was action, and not declaration; it was fact and not theory. He therefore felt more disposed to rely upon it than upon the empty sound of declaration, which to the gentleman from Delaware appeared so emphatic.

As to the inequality which gentlemen complained of, it had its existence in the present law, and not in the proposed modification. The existing law made a residence of five years necessary for the alien who arrived here after its passage, and eight years for him who came among us after the enactment of the law of 1798. So far, therefore, from an inequality being introduced by this bill, it was thereby removed; and all aliens who arrived here since 1798 were placed upon a like footing. The law of 1798 made a residence of fourteen years necessary to citizenship, and a declaration by the alien of his intention to become a citizen *five* years before his admission. It cannot then be imputed to the alien as a neglect, that he had not declared his intention before the law of the last session passed, as only *four* years out of the fourteen years probation had elapsed, and *nine* were given him by the law to prepare himself for his mystical and regenerative process. Besides, a declaration before the period required by the law was an affair of hazard; it was a proscription which the alien made of himself, inasmuch as it announced his alienage to the Executive, and thereby exposed him to transportation under the alien law.

The spirit, nay the letter, of the law of the last session, was in favor of the present bill; for five years only was the probationary term; its first condition was more a matter of form than of substance. In every point of view, therefore, he thought the bill ought to pass.

The question of postponement was then taken by yeas and nays, and decided in the negative—yeas 40, nays 42, as follows:

YEAS—Willis Alston, James A. Bayard, Thomas Boude, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, Ebenezer Elmer, William Eustis, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Archibald Henderson, William Hoge, Benjamin Huger, Samuel Hunt, Ebenezer Mattoon, Thos. Morris, James Mott, Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Smith, of New York, Josiah Smith, John Stanley, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of Virginia, Samuel Smith, Henry Southard, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

Mr. GRISWOLD said he moved to recommit the bill to a select committee for two reasons; the first was, because the bill repealed the fourth provision of the naturalization law, that required that every applicant should renounce his allegiance to all foreign Governments, and declare his determination to become a citizen. One great object of that provision was, that after the alien law shall have made this solemn declaration, it should be recorded in court. Thus he places himself under the eye of every citizen, as to his good behaviour; thus he calls upon the people to bear testimony to his good character, and that he is shortly to become a citizen of the United States. In this hasty manner this provision ought not to be repealed. If it is thought proper to repeal some of the other provisions, the declaration ought to be made for at least a month or a year preceding the admission to citizenship; but at the third reading of a bill it is impossible to amend it.

I have another view in this motion. In consequence of the suggestion of the gentleman from Kentucky, it is questionable whether there has not been some imposition on the House—whether the petitions laid on the table have not been forged. It is certainly very extraordinary that the same petition, with that first presented, (with the exclusion of the exceptionable paragraph,) should come forward, with so little delay, from a distance of three or four hundred miles. I wish the select committee, to whom the bill may be referred, to inquire whether this imposition will not warrant the House in not proceeding further, until they know the petitions are genuine. I therefore move that the bill be referred to a select committee, instructed to inquire whether the petitions were in fact subscribed by the persons therein named.

Mr. RANDOLPH hoped the question would be divided.

The SPEAKER, according to a rule of the House, first put the question on the committing the bill to a select committee, which was lost—ayes 38, noes 42.

The question was then taken by yeas and nays, on the passage of the bill, and decided in the negative—yeas 37, nays 42, as follows:

YEAS—John Archer, Theodorus Bailey, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, John A. Hanna, Daniel Heister, Joseph Heister, James Holland, David Holmes, Geo. Jackson, Michael Leib, David Meriwether, Thomas Moore, Thomas Newton, jr., John Smilie, Israel Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, jr., John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

NAYS—Willis Alston, John Bacon, James A. Bayard, Thomas Boude, Manasseh Cutler, Sam'l W. Dana, John Davenport, Thomas T. Davis, Ebenezer Elmer, William Eustis, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Archibald Henderson, William Hoge, Benjamin Huger, Samuel Hunt, Ebenezer Mattoon, Thos. Morris, James Mott, Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, John Cotton Smith, John Smith, of New York, John Smith, of Virginia, Josiah Smith, John Stanley, Samuel Tenney, Samuel Thatcher, Thomas Tillinghast, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

Mr. GRISWOLD wished to submit a motion which had grown out of the debate. He thought it proper that an inquiry should be instituted respecting the alteration of the petitions from certain aliens. He therefore moved the appointment of a committee to inquire whether the petitions from sundry aliens were in fact subscribed by the persons therein named.

Mr. JACKSON hoped the House would not agree to take up this motion. As gentlemen appeared to have a wish to procrastinate, in order to frustrate a great deal of important business, necessary to be transacted, he hoped they would not be indulged.

Mr. GRISWOLD called for the yeas and nays.

Mr. NICHOLSON said the motion was extremely useless. He did not believe that a committee could make the inquiry in twelve months. How is it to be done? Is the committee to go to each individual named, or are they to call witnesses before them to prove his hand-writing? He believed this the wildest scheme that had ever been imagined. For his own part, he had examined the petitions: they appear to have been cut into two parts; the offensive parts have been cut out, and the names remain as at first. Whether the person who had done this was guilty of an offence, he could not say; but he would say the offence was pardonable, as he had done nothing more than strike out what was offensive to the House. As it was impossible for any committee to make the inquiry, he hoped the resolution would not be taken up.

Mr. S. SMITH said, if he were called before the committee, he might find it a very difficult task to satisfy their inquiries. A certain petition had been presented to the House, which, on account of its language, they had refused to commit. About a week after, a similar memorial was brought to him, from Baltimore, with the offensive part cut out; and I, said Mr. S., presented it as I received it. I supposed the memorialists had themselves cut it out. I received another memorial containing the offensive language. I did not think it my duty to present this memorial. I wrote to Baltimore, and received authority from the memorialists to strike out the offensive language. I did so. Now, what do gentlemen want? Do they want to perplex the House in the transaction of the public business? If they do, I hope their views will be frustrated.

Mr. GRISWOLD.—The course pursued by the gentleman from Maryland was correct. If he was instructed by the petitioners to vary their petitions, he was undoubtedly authorized to do so. But I do not think the practice ought to be countenanced for members to vary petitions without special instruction, in order to make that palatable to the House which was not so when presented. Such a variation materially changes the petition, and though the same names may be preserved, they never can be considered as having been subscribed to the new petition. The taking a name from a letter, and annexing it to a promissory note would not make the note legal—it would be a forgery. So, taking a name from an old and annexing it to a new petition, is also a forgery. My object is to inquire whether any such thing has been done in this case. I repeat it, that if all the petitions presented have been altered in the same way that has been stated by the gentleman from Maryland, the procedure is correct. But if a different course has been pursued—if the petitions have been changed without authority, it is a course of proceeding which this House ought not to countenance. I do not know that the facts can be had. It is probable, however, that what has been done has been done in this city; and, so far, facts will be within our reach. At any rate, no injury can arise from appointing a select committee.

The SPEAKER said he had not till this moment attended to the new rule of the House that precluded all debate respecting the determining the priority of business.

Mr. SMILIE.—Is it not proper, when gentlemen are implicated in the remarks already made, that they should have an opportunity to explain? Mr. S. was about to proceed, when

The SPEAKER called to order, and said there could be no debate on deciding whether the resolution should then be taken up.

On which, the question was taken without further debate, on taking up Mr. GRISWOLD's resolution, and decided in the negative—yeas 33, nays 49, as follows:

YEAS—James A. Bayard, Thomas Boude, Manasseh Cutler, John Davenport, Calvin Goddard, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, Archibald Henderson, Benjamin Huger, Samuel Hunt, Michael Leib, Ebenezer Mattoon, Thomas Morris, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, John Smilie, John Cotton Smith, John Smith, of Virginia, Josiah Smith, Richard Stanford, John Stanley, Samuel Tenney, Samuel Thatcher, David Thomas, Thomas Tillinghast, George B. Upham, Peleg Wadsworth, Lemuel Williams, and Henry Woods.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, Thomas T. Davis, John Dawson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, John A. Hanna, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, George Jackson, David Meriwether, Samuel L. Mitchill, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., Israel Smith, John Smith, of New York, Samuel Smith, Henry Southard, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

[It is here proper to add the remarks which fell from Messrs. SMILIE and LEIB on this subject on the 2d of March following.

Mr. SMILIE.—The manner in which I have conducted myself as a member of this House is known to every gentleman. But if they should judge of my conduct by a paragraph which appeared on Monday last in a paper published in this District, they would certainly conceive that I ought not to have a seat in this House. In order that the thing may be understood, I will read the paragraph to which I allude. [Here he read a paragraph which appeared in the Washington Federalist.]

As to all the speeches about my not being an American, I care nothing about it. I have never known that it was a crime not to be born in America. But after having been forty years in the country, I think it is too much to be called a foreigner. But, sir, to be charged with direct forgery—a crime so disgraceful—is more than I deserve. It is founded on the supposed circumstance of my having endeavored to introduce certain petitions to the House which had been refused, on account of some offensive expressions, and that I had been concerned in taking out those offensive parts. A little recollection will convince gentlemen that I had no concern with them. The first petitions that I presented from Chester county the House refused to act upon. When I presented the second petitions I said, expressly, that they were similar to those presented before, and that I should move no order upon them. But, in order to put the matter beyond all doubt, here are the petitions themselves. I shall lay them on the table, and if any gentleman has doubts, he can satisfy himself that they have nothing to do with those which were altered. The gentleman from Maryland (Mr. S. SMITH) explained the matter to the satisfaction of the gentleman from Connecticut (Mr. GRISWOLD.)

I do not make this as a complaint to the House, but I mention it as an explanation of my own conduct.

Mr. LEIB.—The facts relating to the petition which I presented from Carlisle county are well known. The House refused to act upon them. Some time afterwards, I presented a number more, with the exceptionable passages taken out. The fact was this, sir: the petitions were sent to two gentlemen, then in the city of Washington, who had been appointed as a committee to act in behalf of these aliens. One was Mr. Clay, who has been elected as a representative to serve in the next Congress from Pennsylvania, the other was Mr. Duane. They took such order upon them as they thought proper. They were altered, and in this form I presented them to the House; and I felt myself authorized to do it. If any gentleman chooses to make an alteration in a petition which does not alter the prayer of it, to whom is he responsible? Is he responsible to the House or the person who has entrusted him as an agent to present it? In this case, would he be responsible to the House or the aliens who were concerned? But I did not take it on myself to do it myself, but took it to the authorized committee, who made the alterations.]

TUESDAY, February 22.

The SPEAKER laid before the House a report from the Secretaries of the Treasury and of War, and the Comptroller of the Treasury, respecting claims of Nova Scotia refugees. Referred to a select committee of three.

An engrossed bill in addition to, and modification of certain propositions contained in an act for admitting the people of the Eastern division of the Northwestern Territory as a State into the Union, was read a third time, and passed—yeas 62.

Mr. RANDOLPH defended the bill.

A bill making appropriations for the support of Government for the year 1803 was read a third time, and passed.

A letter was received from the claimants, and their agents, of lands ceded by Georgia to the United States, declining to appear by counsel at the bar of the House; and offering certain new propositions of compromise with the United States. Referred to a Committee of the Whole to whom was referred a bill for settling claims to lands north of Tennessee, and ordered to be printed.

Mr. BAYARD offered a resolution altering the period of the sitting of the Supreme Court from the first Monday in February to the first Monday of August. Carried—yeas 38, nays 33. Referred to a select committee.

On motion of Mr. HUGER, leave was given to a description of claimants, other than those who had previously applied, to be heard in person or by counsel at the bar of the House this day.

When Mr. Moultrie appeared, as counsel of the said claimants, at the bar, about half-past one o'clock. After speaking about one hour and a quarter, Mr. Moultrie retired.

Mr. NICHOLSON moved the reference of the petition of Alexander Moultrie to the Committee of the Whole on the above subject.

MILITARY LAND WARRANTS.

The House took up the bill respecting military land warrants.

Mr. DAVIS hoped it would not be adopted without inquiring whether the land proposed to be given to General Lafayette was the same as was given to other Major Generals. It was true he had rendered services to the United States, for which they had made him an allowance. There were other claims, in his opinion of greater force, made day after day, without being attended to. If this provision were annexed to the bill he should vote against its passage; though, otherwise, he would be glad to vote for it. If General Lafayette was entitled to this land, he wished to see the business regularly conducted. We are now making provision for persons who have legal claims. It is right, therefore, to separate these subjects. Let us attend to one, first, and afterwards consider the other.

Mr. DAWSON.—When, on yesterday, I had the honor to submit this amendment, I indulged the pleasing hope that it would have received not only the vote of this House, but would have met with the patronage of all—of all the friends of justice, and of those who remember past services; and that it would have been adopted without delay and without debate.

In this I have been wofully disappointed. My fond anticipation was immediately damped by a gentleman from New York, on whose friendship I did count, and do now expect; and the amend-

ment, instead of finding sympathizing advocates, has met with an unexpected opposition; instead of finding friends proud to reward past services, it has met with enemies, seeking for reasons to withhold justice.

Mr. Chairman, the search has been in vain; the grateful, the patriot mind will remember those services, while the reflection on a wish to withhold justice will be left as consolation to those who have made the search.

Sir, it was my wish, and it is my determination to support this amendment solely on the grounds of services rendered to us. Whatever may have been the conduct and the situation of General Lafayette since our Revolution, humanity may lament; but, sir, it belongs to us to pay this tribute to justice, if not to gratitude.

Sir, on yesterday, I stated what was known to every gentleman of this House, that this gentleman at an early period of life, animated by the love of liberty, left the pleasures of an enticing Court, encountered the danger of winds and waves, and entered into the service of a country known to him only by name, and endeared to him only by its devotion to that flame which he felt himself. In this service he continued until the end of our war, submitting to all the hardships and fatigues of the field; leading our armies to victory, and exposing himself to every danger; and this without any compensation, and at the sacrifice of the greater part of his private fortune.

I stated more—that that fortune is now much reduced; and this is what I do know. Yes, sir, I have spent two days with this adopted child of America on his little farm. I saw him surrounded by an amiable family, but not with wealth. I heard him pouring forth his best wishes for the prosperity and happiness of this country; and I witnessed his constant exertions to promote its interests. It may not be improper here to remember what I do know. Some short time before I went to France, the First Consul applied to Mr. Lafayette to come to this country as Minister. He replied, "I am by birth a French citizen, by 'adoption a citizen of the United States. I have 'served in that country, and am so attached to its 'interest that I doubt, if a case of difficulty should 'arise, whether I should do justice to my own; if 'I did, I am sure I should be suspected, and there-'fore I will not place myself in that delicate situa-'tion."

And now, sir, what is it that it is proposed to do for this gentleman; for him who rendered you services without emolument, and risked his life without hesitation; to this citizen of the United States; and not a foreigner, as the gentleman from Kentucky has been pleased to call him? It is to give to him what we give to others; and what he never would have received had it not been for the reverse of his fortunes. And shall we hesitate? I trust not.

Sir, this is not only a question of justice, but it is of feeling; every soldier, every officer must feel for a fellow-soldier and a fellow-officer, and every citizen for a fellow citizen; and such is Mr. Lafayette.

Whatever may be the fate of that amendment, if it shall be adopted I shall feel proud for my country. If it shall be negatived, I shall have the pleasing reflection of having discharged a duty to my country and to my own feelings.

Mr. T. Morris said that the opposition he had made was more to the manner than to the matter of the motion. He thought it improper to decide upon it at so late an hour, and when there was scarcely a quorum of members within the walls. I have, said Mr. M., no objection to the grant. On the contrary I think it ought to be made in consideration of the circumstances of General Lafayette. I should indeed have wished that it had been the subject of a distinct bill. The value of gifts of this nature depends as much on the manner in which they are made, as on the gifts themselves; and I think the donation would, in this case, have been deemed more honorable, if a special bill had been passed, instead of inserting a clause in another bill. If there were time to bring in a distinct bill, I should now vote against the amendment; but as I am unwilling to hazard the object altogether, I shall vote for it: expressing my regret, at the same time, that the gentleman who has viewed the distressed situation of General Lafayette had not sooner brought the business forward.

A debate of short duration ensued, between Messrs. S. Smith, Shepard, Dawson, and Bacon, in favor of the amendment, and Mr. Davis against it, when it was carried without a division.

On engrossing the bill for a third reading, Messrs. Southard, and Shepard spoke in favor of, and Mr. Varnum against it—carried, and ordered to a third reading to-morrow.

OHIO SCHOOL FUND.

An engrossed bill in addition to, and in modification of, the act entitled "An act to enable the people of the Eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," was read the third time.

Mr. Gregg said, that when the resolutions on which this bill is predicated were before the House, he had very briefly stated some objections which he had against adopting them. A gentleman from Virginia (Mr. Randolph) had offered some arguments to obviate his objections, but they had not produced that effect in his mind: on the contrary, by reflecting on the subject since that time, he was now more fully convinced that the opinion which he then expressed was correct.

At this late period of the session he had no wish to bring on a lengthy discussion, nor had he any expectation that, by anything he could say, he would be able to prevent the passage of the bill. The strong disposition which the House had discovered in its favor, and the unprecedented rapidity with which it had been hurried on the preceding day, left him no room to hope, that any efforts of his could check its progress. He would however remark, that it was very unusual for a

bill of such importance to be acted on the same day on which it was printed and laid on our table, and of course before members could have read it over, and made themselves acquainted with its provisions. It would be vain for him to propose amendments, because the bill was not susceptible of such amendments as would induce him to vote for it. He thought it wrong in principle, and he did not believe it would be found expedient in its effects.

He had always been accustomed to consider the lands of the United States a common property, in which every citizen of the Government was equally interested, and to which they all had an equal right. These lands were generally considered as a fund out of which the public debt, contracted during the Revolutionary war, was to be discharged. The cession of the lands, made by the States which claimed them, was for the common benefit, and as such they have always been considered. He had before him the act of cession made by the State of Virginia of the very land in question, the preamble of which he would beg leave to read, and to the particular expression of which he hoped gentlemen would attend:

"Whereas, the Congress of the United States did, by their act of the sixth day of September, 1780, recommend to the several States in the Union, having claims to waste and unappropriated lands in the western country, a liberal cession to the United States of a portion of their respective claims, for the common benefit of the Union;

"And whereas this Commonwealth did, on the second day of January, 1781, yield to the Congress of the United States, for the benefit of the said States, all right, title, and claim, which the said Commonwealth had to the Territory Northwest of the river Ohio," &c.

Let us attend to the expressions here used. Congress asks the land for the "common benefit of the Union:" Virginia reiterates the sentiment, and says she yields it for the "benefit of the said States."

Farther, the Indian title to these lands has been extinguished by money taken out of the Treasury of the United States. Every person in the country has contributed his proportion of tax to effect that object. The citizens of Maine, or any other district, are therefore, in this respect, also equally entitled with those of Ohio, to all the benefits resulting from the sale of these lands. With what face of justice can we then put our hands into this common fund, or lay hold of any portion of these lands, and apply them to the use and benefit of the people in one part of the country, to the entire exclusion of all the rest, as is contemplated by this bill? What authority have we to give the people of Ohio land equal to a thirty-sixth part of their whole State; or to expend on the improvement of their roads, three per cent. of all the money arising from the sale of public lands in that country? It appeared to him an assumption of power which did not of right belong to them. It was an act of usurpation which he had not been able to discover any principle whatever to warrant or justify.

The conditions expressed in the act passed at the last session of Congress, authorizing the people of the Northwestern Territory to frame a constitution and State government themselves, he thought very exceptionable. The terms prescribed in this bill, were, in his view, much more so. The manner in which they were brought forward, rendered them so. They were dictated by a small portion of people who had assumed the power of imposing terms on the Government, and of telling it how the public property must be disposed of. If Government has not the power of managing its property its own way, if it must thus submit to such terms as any particular portion of the people may from time to time see proper to prescribe—what is it? Nothing but an empty name. The exemption of the public lands from taxes for five years, that was spoken of as an equivalent, he considered as nothing, or at least as very inadequate. Upon the whole, although he had no prospect of preventing the passage of the bill, he thought himself in duty bound to protest against the principles and provisions which it contained.

Mr. Randolph was happy to hear these sentiments expressed by the gentleman from Pennsylvania. He concurred with him completely in his premises, although he differed from him, in some degree, in his conclusions. It is true that the grant of land made by Virginia was for the common benefit of the whole Union. It was considered when made, and is still considered, as a common fund, for purposes in which the general benefit is concerned. It was with that view that as a member of the committee which brought in the bill, he was favorable to it. But before he proceeded to consider its merits, he must be indulged with a few words on its progress to a passage. The bill had been reported on Friday, and then ordered to be printed; the original draught had been mislaid; a new copy had been required for the press, and it had consequently not been laid on their tables till yesterday; though any member anxious to have procured a copy, might have obtained it on Saturday. The gentleman informs us that it passed to a third reading on the same day, (Monday.) True, because no gentleman protested against it. Did the gentleman expect that the friends of the bill would have risen and objected to it. They, on the contrary, inferred that as no objection was offered, none existed. And why did they draw this inference that there was no objection? Because the report, on which every syllable is predicated, passed with but one dissenting voice, that of the member from Pennsylvania.

Now let us examine the merits of the bill. According to the doctrine of the gentleman from Pennsylvania, the broad principle he has assumed would vitiate the original principle of appropriation for schools under the ordinance. Mr. R. believed that the appropriation while it protected the interests of literature, would enhance the value of property. Can we suppose that emigration will not be promoted by it, and that the value of lands will not be enhanced by the emigrant obtaining the fullest education for his children; and is it not better to receive two dollars an acre with an appropriation for schools, than seventy-five cents

an acre without such appropriation? Indubitably it is. The same reasoning will hold good for giving the people of Ohio the salt springs, and for appropriating a portion of the proceeds of the lands to laying out roads as an equivalent for the exemption of the lands of the United States from taxation. Gentlemen who are not operated upon by this principle, and a desire to establish a liberal provision for schools, will vote against the bill. These reasons were entirely satisfactory to the committee.

Mr. R. said he was at a loss to reconcile the practice of gentlemen with their theory. When a proposition was made in Philadelphia to accept the jurisdiction in Connecticut, which, though pompously called an act, (Mr. R. here quoted the title,) was in fact a cession of the soil; the gentleman from Pennsylvania (Mr. GREGG) voted in the affirmative, while I, said Mr. R., was in the negative. I am at a loss to reconcile his vote then with his present arguments. The gentleman, who thinks all the lands of the United States a general fund for public purposes, was for giving up three millions of acres, to the value of six millions of dollars, without receiving any valuable consideration; and now he is averse to an appropriation which gives up nothing, but which will necessarily enhance the value of public property. By the law passed the last session, we made certain propositions to the State of Ohio, subject to the right of that State to accept or reject them. These propositions that State has agreed to, with certain modifications. To make them binding on Ohio, it is necessary for us to accept them in toto, as modified. If there is but a partial acceptance, that State is not bound to exempt the public land from taxation. But if they are agreed to in toto, the compact is final and binding. I have only to add that this is a desirable object, as the exemption will be more than an equivalent for that which is surrendered on our part, and to observe that however plain and easy it may be to settle the abstract principles, in cases where States are litigants, there must be some immediate umpire.

Mr. GREGG wished to say one word in reply to the gentleman from Virginia who had just sat down. The gentleman had charged him with inconsistency, because he opposed the present bill, although he had voted for the act assuming the jurisdiction of the Connecticut Reserve. The cases were by no means analogous. Connecticut had a claim. She herself, at least, considered it such, and in virtue thereof had issued grants, and taken possession of the land. In the present instance there is no claim. None is pretended. It is an absolute grant of a common property to the exclusive benefit of a few. Such grants he should always consider it his duty to oppose.

After a few words from Mr. BACON, in favor of the bill, it passed in the affirmative.

WEDNESDAY, February 23.

An engrossed bill to revive and continue in force an act in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," was read the third time: Whereupon,

A motion was made and seconded that the House do, by unanimous consent, amend the first section of the said bill, by striking out therefrom the words "and from thence to the end of the next session of Congress thereafter:"

And the question being taken thereupon, it was unanimously resolved in the affirmative.

The said bill, being so amended at the Clerk's table, was then brought in engrossed, and again read; and on the question thereupon,

Resolved, That the said bill do pass, and that the title be, "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren, for propagating the Gospel among the Heathen; and for other purposes."

[This bill contains an honorable donation of land, equal to the quantity allowed to an officer of the same grade, to General Lafayette.]

A memorial of James Strawbridge, in behalf of himself, and as trustee for the Tennessee Company, was presented to the House and read, stating his claim as an original proprietor and trustee, as aforesaid, to a certain quantity of land situate in the territory lately ceded to the United States by the State of Georgia: and submitting to the consideration of Congress certain terms and conditions, therein specified, upon which the memorialist on his part, and in behalf of the said Tennessee Company, is willing to relinquish to the United States the title to the said land, in fee simple.

Ordered, That the said memorial be referred to the Committee of the Whole House to whom was committed, on the nineteenth instant, the bill for settling sundry claims to public lands of the United States south of the State of Tennessee.

Mr. NICHOLSON called for the order of the day on the bill to regulate the grants of land south of Tennessee.

Mr. BAYARD called for a resolution on making an indemnification for French spoliations.

Mr. THOMPSON called for the bill for the government of Columbia.

The House agreed to Mr. NICHOLSON's motion, and went into a Committee of the Whole on the bill for regulating the grants of land south of Tennessee.

The bill corresponds in its leading features, with the report of the commissioners.

Mr. ISRAEL SMITH moved an amendment to the first section, reinstating the claimants under the company of military adventurers in lands held by them under Great Britain.

This motion was supported by Messrs. ISRAEL SMITH, GRISWOLD, DANA, and BACON; and opposed by Messrs. NICHOLSON, R. WILLIAMS, MERIWETHER, and S. SMITH.

The amendment was lost—yeas 14.

Several amendments were then made in the details of the bill.

SUPERVISORS.

Mr. RANDOLPH, from the Committee of Ways and Means, reported a bill authorizing the transfer of the duties of the supervisor to any other office. Referred to a Committee of the Whole to day.

The House went immediately into a Committee of the Whole on the bill.

Mr. R. explained the object of the bill, by stating that it had been introduced in consequence of an application from the Treasury Department. It was considered, that in those districts where the collection of the internal taxes was nearly completed, and where the supervisor may, from the smallness of the commission, be unwilling to discharge the duties of the office, they might be transferred to some other officer of the United States who might be willing to undertake to discharge them. In cases where the compensation will be extremely small, it is proposed to allow a salary not exceeding two hundred and fifty dollars.

Mr. DANA suggested the propriety of limiting the transfer of duties to officers employed in the collection of the customs.

Mr. GRISWOLD moved to limit the power of the President to the appointment of revenue officers.

On this motion a short conversation ensued.

Those in favor of the motion thought it proper for the Legislature to designate as closely as practicable the description of officers from which the President should be empowered to nominate those to whom the duties of supervisor should be transferred; while those against the motion remarked that authority to appoint any officer would be safely vested in the President in a business of so trifling a nature, and that convenience would result from not abridging the field of choice.

The amendment was lost without a division.

The committee rose, and reported the bill; and the House immediately took it into consideration.

The SPEAKER put the question on engrossing the bill.

Mr. GRISWOLD observed that in all instances where moneys of the United States were received, bonds had been required. In this bill there was no such provision. He was against such an innovation, and must therefore vote against the bill.

Mr. RANDOLPH replied that marshals, and other officers, on whom those duties might be devolved, did give security for the faithful performance of duty. The duties of supervisor, when transferred to them, would be their duties.

This was contested by Messrs. GRISWOLD, and HENDERSON.

Mr. NICHOLSON moved an amendment requiring bonds to be given, which was carried without a division; when the bill was ordered to be engrossed for a third reading to-morrow.

THURSDAY, February 24.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting a letter to him from the Comptroller of the Treasury, dated the twenty-third instant; also a statement of the emoluments of the officers of the customs, for the year one thousand eight hundred and two; which were read, and ordered to lie on the table.

The Message, received yesterday from the President of the United States, transmitting a report of the Secretary of State on the case of the Danish brigantine Hendrick, was read and, together with the documents transmitted therewith, referred to a Committee of the Whole House to-morrow.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting an account of the receipts and expenditures of the United States for the year one thousand eight hundred and one; also, a letter to him from the Register of the Treasury, in relation thereto; which were read, and ordered to lie on the table.

An engrossed bill authorizing the transfer of the duties of Supervisor to any other office was read the third time and passed.

A memorial of Thomas Young, in behalf of himself and others, was presented to the House and read, stating his claim as a proprietor in a company, entitled, by purchase, to a quantity of land situated in the territory lately ceded to the United States by the State of Georgia, to which the Indian title has not been extinguished, and submitting to the consideration of Congress, certain terms and conditions therein specified, upon which the memorialist, on his part, and in behalf of those whom he represents, will agree to relinquish to the United States a right to the said land, in fee simple.

Ordered, That the said memorial be referred to the Committee of the whole House to whom was committed, on the nineteenth instant, the bill for settling sundry claims to public lands of the United States south of the State of Tennessee.

The House resolved itself into a Committee of the Whole on the bill to make Beaufort and Passamaquoddy ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of Saint Mary's; to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a surveyor at Nanjemoy; and, after some time spent therein, the bill was reported to the House with two amendments thereto; which were severally twice read, and, on the question put thereupon, agreed to by the House.

The said bill then being further amended at the Clerk's table, was, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resumed the consideration of the bill in addition to an act, entitled "An act to amend the judicial system of the United States," to which the Committee of the whole House reported an amendment on the sixteenth instant: Whereupon, a motion was made, and the question being put, that the farther consideration thereof be postponed until the first Monday in November next, it passed in the negative.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill concerning the salt springs on the waters of the Wabash river; and, after some time spent therein, the Committee rose and reported two amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into Committee of the Whole on the bill for erecting a light-house at the entrance of Penobscot bay, or any other place in its vicinity that may be deemed preferable by the Secretary of the Treasury; and, after some time spent therein, the Committee rose and reported two amendments thereto; which were severally twice read, and, on the question put thereupon, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A letter was received from the Secretary of the Treasury, enclosing a report of the emoluments of the officers employed in the customs.

Also from the same department, an account of the receipts and expenditures of the United States for 1801.

The House took up the amendments of the Senate to the bill amending the act for the Military Establishment.

The amendments are, a new section authorizing the employment of one officer and eighteen men to make practical experiments; and allowing three thousand dollars, instead of two thousand dollars, for clerk hire in certain offices.

Amendments agreed to—yeas 33, nays 23.

Mr. THOMPSON said there was a long bill for the organization of the militia of Columbia, which had been referred to a Committee of the Whole. From its great length he was apprehensive, unless some other disposition were made, there would not be time to pass it through both Houses. As it was indispensable that something should be done, he hoped it would be referred to a select committee other than that which had reported it, on whose report it might be engrossed for a third reading.

Agreed to, and referred to a committee of seven.

The House took up the amendments reported by the Committee of the Whole on the bill regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee; and agreed to them.

CANADIAN REFUGEES.

Mr. GREGG, from the committee appointed on the twenty-third instant, presented a bill in addition to the act, entitled "An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia;" which was read twice and engrossed, and ordered to be read the third time to-morrow.

Mr. I. SMITH renewed his amendment, rejected yesterday, to insert after the word "who," in the third line of the second section, the words "not being enemies of the American Revolution, and;" also, by inserting after the word "did," in the fourth line of the same section, the words following, to wit:

"With the consent of the British Government of West Florida, on or before the day when the British possessions of West Florida were conquered of Spain, actually inhabit and cultivate a tract of land in the Mississippi Territory, not claimed by virtue of the preceding section, or of any British grant, or of the articles of agreement and cession between the United States and the State of Georgia, and was driven therefrom by the events of the war between the United States and Great Britain; and to every person, or the legal representative of every person, who, being either the head of a family, or of twenty-one years of age, did"

And the question being taken thereupon, it passed in the negative—yeas 17, nays 44, as follows:

YEAS—James A. Bayard, John Condit, John Davenport, Ebenezer Elmer, Calvin Goddard, John A. Hanna, Daniel Heister, Benjamin Huger, James Mott, Thomas Plater, William Shepard, Israel Smith, John Cotton Smith, Samuel Thatcher, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

NAYS—John Archer, John Bacon, Thomas Boude, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Dawson, Lucas Elmendorf, John Fowler, Edwin Gray, Andrew Gregg, William Barry Grove, Joseph Heister, William Helms, William Hoge, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Richard Stanford, John Stanley, John Stewart, John Taliaferro, jr., Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Robert Williams, Richard Winn, Thomas Wynns.

Ordered, That the said bill, with the amendments agreed to, be engrossed, and read the third time to-morrow.

FRIDAY, February 25.

An engrossed bill in addition to an act, entitled "An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia," was read the third time, and passed.

An engrossed bill in addition to an act, entitled "An act to amend the Judiciary system of the United States," was read the third time and passed.

An engrossed bill to make Beaufort and Passamaquoddy ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of Saint Mary's; to authorize the establishment of a new collection district on Lake Ontario; and the appointment of a Surveyor at Nanjemoy; was read the third time, and passed.

An engrossed bill concerning the salt springs on the waters of the Wabash river was read the third time and passed.

Mr. SAMUEL SMITH, from the committee to whom was recommitted, on the twenty-fourth instant, the bill more effectually to provide for the organization of the militia of the District of Columbia, reported an amendatory bill; which was read twice and committed to a Committee of the whole House to-morrow.

An engrossed bill for erecting a light-house at the entrance of Penobscot bay, or any other place in its vicinity, that may be deemed preferable by the Secretary of the Treasury, was read the third time and passed.

An engrossed bill regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee, was read the third time and passed.

On motion

Resolved, That the Secretary of War be, and he is hereby, directed to procure and lay before Congress, at the commencement of their next session, an authentic list of the individuals who, agreeably to the former resolves of Congress, were placed on the list of invalid pensioners in the State of South Carolina, and, by the regulations of that State, were entitled to pensions at the commencement of the present Government of the United States, but who have not since been paid the same.

A message from the Senate, informed the House that the Senate have passed a bill, entitled "An act to alter the time of holding the Court of the United States in Kentucky;" to which they desire the concurrence of this House.

Mr. MITCHILL, from the committee appointed, on the fifteenth instant, on "the provision which ought to be made by law for the regulation of quarantine within the District of Columbia," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House to-morrow.

Mr. MITCHILL, from the same committee, also reported a bill to regulate the quarantine of ships and vessels in the port of Alexandria; which was read twice and committed to the Committee of the whole House last appointed.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill for establishing the Government of the Territory of Columbia, being called for, a motion was made and seconded that the said order of the day be postponed until the first Monday in November next. And the question being taken thereupon, it passed in the negative.

PRINTING PUBLIC DOCUMENTS.

Mr. ROBERT WILLIAMS rose and expressed a hope that gentlemen who had called for other business would give way to him for a moment, as he wished only to move for the printing of a document. The floor was conceded to him, and he then stated that an order of this House had passed, at the last session of Congress, calling upon the President for certain detailed accounts of the expenditure of public money, to which order he referred from the Journals of the last session of Congress, and which is in the words following, viz:

"*Resolved*, That the President of the United States be requested to cause the proper officers to prepare and lay before the House, during the first week of the ensuing session of Congress, the following statements:

"A detailed account of the expenditures and application of all public moneys which have passed through the Quartermaster General's department from the first day of January, one thousand seven hundred and ninety-seven, to the thirty-first day of December, one thousand eight hundred and one.

"A similar account of the expenditure of all public moneys which have passed through the Navy agents.

"A similar account of the expenditure and application of all moneys drawn out of the Treasury for the contingencies of the Military and Naval Establishments.

"Copies of the contracts made by the Navy Department for the purchase of timber and stores, and the accounts of moneys paid under such contracts."

Mr. WILLIAMS stated, that, conformable to this order, those accounts had been prepared and transmitted to the House by Message from the President on the 23d of December last. He therefore moved that the Message of the President, together with the documents accompanying it, be printed.

After a few words of desultory conversation, the motion was agreed to by the House.

Mr. NICHOLSON then rose and said, that he wished to make another motion respecting those documents. He said that he had seen estimates of the expense of printing them, and as business of that kind was usually done, the expense would amount to a sum from eight to ten thousand dollars; but he had seen proposals from two printers on the subject, both of whom had stated that they would print the documents for a much less sum than they would ordinarily cost, as they could be printed during the recess of Congress, and they had journeymen now employed who would not be much engaged during the recess. One of the printers, Mr. William Duane, had offered to print them for five thousand five hundred dollars; the other, Mr. Smith, had offered to do the work for five thousand two hundred dollars. He therefore moved a resolution, that the sum of five thousand two hundred dollars be appropriated to this object, and that it should be paid out of the contingent funds of this House, provided the expense of printing does not exceed that sum.

While the House were waiting for Mr. N.'s motion to be reduced to writing,

Mr. VAN CORTLAND rose and said, that as he had voted for the printing of the document, without knowing the expense, he would now move to reconsider that question.

The SPEAKER observed, that this motion could not be received until the one before the House was disposed of.

Mr. NICHOLSON's motion being reduced to writing, was read.

Mr. GRISWOLD rose and remarked, that he believed the object which the gentleman from Maryland (Mr. NICHOLSON) had in view would not be accomplished by this resolution. The House had made a positive order to print the documents—it would become the duty of the Clerk of this House to procure it to be done, whatever might be the expense attending it. The expense, of course, like that of any other printing done by order of the House, would be paid out of the con-

tingent fund, and an appropriation of money could not be made by a resolution of this House. Moneys could be drawn from the Treasury only in consequence of appropriations made by law. The resolution, therefore, was both useless and improper. If the gentleman wished to limit the expense of printing these documents it should have been done by way of proviso to the order for printing, which had just been passed.

Mr. NICHOLSON withdrew his resolution, when the motion for reconsideration was renewed.

Mr. GODDARD said he hoped the motion to reconsider would prevail; not that he wished to prevent the documents from being printed, but because he wished that the gentleman from Maryland (Mr. NICHOLSON) might have an opportunity to try the sense of the House upon his proposition to limit the expense, which could not be done unless the vote was reconsidered, so as to bring the subject again before the House. He thought there was another reason for reconsidering the vote. He observed that the vote that had passed in pursuance of the motion of the gentleman from North Carolina, (Mr. R. WILLIAMS,) was simply to print the documents, without designating to what use they were to be applied when printed; nor was any direction given as to the number of copies to be printed. It was usual in such orders to express the use to which the document directed to be printed is to be applied.

Mr. R. WILLIAMS said he hoped the motion would not prevail. He did not wish to have the expense limited by a proviso, which might prevent the printing, if the expense should exceed the limited sum. He wished to have the documents printed if it should cost ten thousand dollars.

Mr. ELMENDORF was against reconsidering the vote. He said that at the time when the documents were transmitted to the House he was the only member of the committee of investigation who was present. He thought it better, therefore, to delay the motion for printing until the arrival of the other members; but he wished the documents printed, let it cost what it would. It would be recollected that this embraced the accounts of the expenditure from the contingent funds of the departments for several years; therefore the expense was great. But such an account ought every year to be published.

Mr. NICHOLSON expressed the same sentiment.

Mr. GODDARD called for the reading of the resolution of last session. He said he believed the documents went much farther than the expenditure of moneys from the contingent fund; they appeared to him to be a mere transcript of almost all the books of the Departments of War and the Navy for several years.

Mr. MITCHILL was in favor of having the documents printed. He said that if the President had thought proper to communicate these documents to us, and direct them to be extracted from the books of the departments, it must be for some valuable purpose, and he thought we could do no less than pay a respectful attention to the President's communication, and order them to be printed. It might, for aught he knew, be necessary hereafter to act upon them further. He would pursue the same course as was pursued respecting the census last year. That was a work very difficult of execution, and cost considerable money, and yet the House ordered it printed.

Here the SPEAKER read the resolution of last session called for by Mr. GRISWOLD. After which,

Mr. BAYARD rose and said, that if the gentleman from New York (Mr. MITCHILL) had attended to the subject, he would have found that it was not necessary to incur the expense of printing these documents out of respect to the President. The call for the papers proceeded from this House. The President knew nothing of what they contained, but had acted only in obedience to the resolution of the House. It was therefore entirely an affair of our own. Mr. B. said he wished the gentleman from North Carolina, (Mr. WILLIAMS,) when he moved for printing these documents, had been good enough to assign one solitary reason for so doing. For his part he could perceive no good purpose to be answered by it. No gentleman had examined the documents, or knew what they contained, and yet we are to incur a large expense for printing this mass of papers without knowing what they contained.

Mr. S. SMITH expressed himself against the printing of the documents. He said no one good purpose could be answered by it. Those documents had already cost the United States more than five thousand dollars in transcribing them from the books of the departments—three additional clerks having been constantly employed during the whole recess of Congress for this purpose.

The motion to reconsider was carried.

Mr. NICHOLSON then offered a resolution on this subject, which, in consequence of a suggestion from Mr. GRISWOLD, he consented to vary, and which is in the words following, viz:

"*Resolved*, That the Message of the President of the 23d of December last, together with the documents accompanying the same, be printed for the use of the members, provided the expense shall not exceed the sum of five thousand two hundred dollars."

Mr. R. WILLIAMS called for a division of the question, observing that he wished to vote for printing the documents, but not for limiting the expense.

The SPEAKER declared the question to be divisible.

Mr. BACON hoped the documents would be printed. It would be recollected that the report of the investigating committee, so called, called forth the talents of a gentleman who had been lately high in office, in an address to the public, in which the conduct of the committee had been strongly condemned, and through that committee the conduct of this House. Another gentleman, lately high in office, had transmitted a long representation to this House, during the present session, upon which no order had been taken. He wished the documents published, that they might, if they would do so, justify the conduct of that committee and this House.

Mr. ELMER declared himself to be against the

printing. No good purpose would be answered by it, and he should consider it as expending a large sum of money uselessly.

Mr. BAYARD said he would move to refer the resolution to a select committee. His object, he said, was that the documents referred to might be examined, and such parts of them selected and published as would, in the opinion of the committee, be useful. No gentleman pretended to have read or examined these documents at all. The gentleman from North Carolina (Mr. R. WILLIAMS) did not pretend that he had read, or knew what the documents contained, and yet he was willing to incur an expense of ten thousand dollars to print them.

Mr. R. WILLIAMS said that he had been called upon to assign his motives for having these documents printed. He was willing to do so. They related to the expenditure of public money, and he thought we ought always to be informed of the manner in which that is done. These documents had been transcribed for the use of this House, and would be useless unless printed. But, sir, I have another reason: these officers, who know very little respecting their duty, excepting how to draw warrants on the Treasury for money, have passed through their hands large sums of public money. I do not know that we can get any of it back again; but I would at least hold them up to public detestation.

But why do gentlemen feel alarmed? The gentleman from Delaware seems afraid that these accounts should be made public, and therefore opposes the printing of the documents.

Mr. NICHOLSON said that one part of the documents moved to be printed were connected with the report of the investigating committee, so called; the other was not. As to that report, he wanted no explanation of his conduct on that subject. The report was printed, and must speak for itself. He would not consent to publish the documents by way of answer to gentlemen who were inculpated by that report. It was true that large balances appeared upon the books unsettled; that those balances were due, he did not pretend to say; nor did the report so state it. Upon the late Quartermaster General's account there appeared to be a balance of $800,000. Those accounts had not been settled by that officer. I do not mean to charge him with having improperly expended money. I am not in the habit of making such charges unless possessed of proof to support them. But those accounts, I believe, have not been settled to this day.

There were also sundry contracts which had been entered into by the Navy Department, respecting which some complaint had been made. He said that he was not, perhaps, technically correct in saying that these documents related only to the expenditure from the contingent funds of the departments, but he believed he was substantially correct.

Mr. T. MORRIS made some remarks which were not distinctly heard.

Mr. GODDARD rose and said, that he could not but express his surprise and astonishment at a remark which fell from a gentleman from North Carolina (Mr. WILLIAMS.) Is it possible, sir, that I understood the gentleman correctly? If I did, the gentleman is pleased to remark of the late heads of the departments, and that in a general and unqualified manner, that they knew very little respecting the duties of their offices, but to draw warrants on the Treasury for money! Of these officers the gentleman does not profess to entertain any expectation that one cent will be recovered; and yet the gentleman says, that he wishes the documents to be printed, in order to hold them up to public detestation, even if the expense should be ten or twenty thousand dollars! What, sir! are we to expend ten or twenty thousand dollars to purchase public detestation? And for whom? For officers whom gentlemen do not pretend have embezzled one cent of public treasure. For, in the same moment in which the gentleman expresses his willingness to expend this large sum, to excite public indignation against these officers, he acknowledged that no money is to be recovered from them. If any has been embezzled, it surely can be recovered. That gentleman was himself a member of the investigating committee, so called. Of course, he has examined the accounts of the officers under the late Administration. If any moneys have been embezzled, why has not that gentleman, in his place, brought forward some proposition to have them called to account for those moneys? This would give them an opportunity to justify themselves, or be condemned. But this is not done. Many gentlemen, and particularly the chairman of the investigating committee, (Mr. NICHOLSON,) had the candor, last session, publicly to state, that he did not believe that one dollar of public money, had, by these officers, been applied to their own private use; and, indeed, the whole charge which now lies against any of them, is applying money to objects to which it had not been specially appropriated; and this charge seems to be much diminished by the manner in which the present Administration have found it necessary to consider specific appropriations. The result of all this is, according to the doctrine of the gentleman from North Carolina, (Mr. WILLIAMS,) that men have been employed in public stations, public money has gone through their hands; they have faithfully applied it to public uses, and done their duty; we refuse to commence any suit against them, or give them any opportunity to be heard, and yet it is publicly stated, on the floor of this House, by a member of the investigating committee, that they know very little about their duty, excepting how to draw warrants on the Treasury for money! Let me ask gentlemen if this is fair? Is it candid? Is it doing by those men, as, under like circumstances, we would be willing to be done by ourselves? I have no partiality, sir, to the men. I was not in the Government until all went out of office, and am scarcely personally known to any of them. But, sir, I think the characters of all men, and more especially faithful public servants, ought to be held too sacred to be thus sported with.

But, sir, while I am upon this subject, let me ask, what has become of the zeal which was displayed at the last session respecting the business of this investigating committee? That report was then said to be but in part. Some gentlemen proposed giving the committee power to sit during the recess of Congress. The partial report was made at the close of the last session. The subject has been permitted quietly to rest until the last days of this session. Not a word has been said on this subject. No further progress made in reporting, and we are, at this late hour, called on to expend thousands of dollars, not to look up public treasures which have been squandered, but to purchase public detestation for faithful officers. But, Mr. Speaker, I mean not, by the remarks which I have made, to oppose the printing of the documents. I am aware, sir, what construction would be put upon such an opposition from such a quarter.

The gentleman from North Carolina has already seized, with avidity, upon the remarks which have been made against printing them by the gentleman from Delaware. (Mr. Bayard.) He says that we are afraid to have them published, and this is the language which others will hold on the subject. We have gone too far, sir, to recede. It is stated, by the gentleman from Maryland, (Mr. Smith,) that the documents have already cost us more than five thousand dollars, and although that gentleman is probably correct, when he says that they will be useless if printed, yet that ought to have been considered before they were called for. Having called for them, unless they are printed, they are certainly useless. I wish not to screen public defaulters, if any there are, from justice; I know little respecting these men.

If they have embezzled public money, we owe it to ourselves, and to our constituents, to inquire into it. If, on the other hand, they have been faithful and honest, we owe it to them, after proceeding thus far, to publish those documents, that they may, as I fully believe that they will, wholly exculpate them from these unjust and ungenerous insinuations.

Mr. Griswold rose and was beginning to comment on the remarks of Mr. R. Williams, when Mr. W. rose and requested liberty to explain.

Mr. Williams remarked, that one gentleman from Connecticut had commented upon what he said, and he had not interrupted him; but when another gentleman was proceeding in the same manner, he wished to say that he had not made the observations attributed to him respecting all the officers who had, under the former Administration, been entrusted with public money. He said some of them, &c.

Mr. Griswold proceeded and said, that unless the gentleman saw fit to point out to whom his remarks applied, he did not see that he had very much qualified them. Mr. G. said that he was also a member of the investigating committee, and although he did not concur in the report, or know what it contained until it was ready to be presented to the House, yet he was frequently at the public offices, and heard the answers to the inquiries which were made, and examined the accounts. That of the Quartermaster General had been mentioned, and a balance of $800,000 stated as unsettled against him. Mr. G. said, with respect to that, no one pretended it was due. That officer had presented for settlement accounts to balance it, and perhaps more than enough; but, as he understood, the settlement was impeded on account of some boats which were sold and not accounted for to the satisfaction of the accountant of the War Department. When this difficulty was done away, nothing would prevent a settlement of his accounts.

Mr. Nicholson explained. He said he did not undertake to state the nature of the difficulties respecting the settlement of the accounts of the late Quartermaster General; but he must say, that he did not understand that they were of the nature stated by the gentleman from Connecticut, (Mr. Griswold,) but of a different kind.

Mr. S. Smith said, that two reasons had been stated for printing these documents; one was, that certain officers might be held up to public detestation; but will this answer the purpose of gentlemen? He believed not. One party might believe their statements; the other might disbelieve them. But can you criminate any of those officers? If not, all public detestation would be taken away and subside, and perhaps a contrary effect be produced. Another reason which had been stated was to place before us certain contracts made by the Navy Department, under the former Administration, respecting the purchase of timber, and respecting which, complaint had been made. With respect to that subject, he was able to state to the House, that those contracts were highly injurious to the individuals who had made them; so much so, that, in every instance, excepting one, application had been made to the Navy Department by those individuals, to be released from their contract. In one instance a man had made two contracts, one of which he deemed advantageous, the other not so. He was offered to have both contracts given up, but refused. In all others, they had been injurious to the individuals, and, in some instances, persons had been almost wholly ruined by these contracts with the Navy Department.

But why should we expend this money in printing this mass of papers. Gentlemen say, to give them publicity. Printing will not do it. Nobody will read them when printed. They are mere transcripts from the books of the departments, and are very voluminous. No one had examined them, or could state what they contained. If there are any parts of them which would implicate the late officers of Government, or any of them, he doubted not but that the gentleman from North Carolina, (Mr. Williams,) knowing his duty, would, in his place, bring forward an inquiry, which should be calculated to recover back money. But will you get any? No, not even the expense of printing the documents. Mr. S. concluded by expressing his decided disapprobation of printing the documents.

Mr. Bayard repelled the insinuation which had been made by Mr. W. at some length. He stated his recollection of the account of the Quartermaster General to be similar to that of Mr. Griswold, and also stated that the Committee were informed last year by the accountant of the Navy Department that the sum which would be finally lost upon the settlement of all the accounts in that department, would be very inconsiderable; and expressed his wish that the documents should be examined by a select committee, and such parts only printed as would be useful.

When, after a few remarks from Mr. Holland, the question on the resolution was taken and carried—yeas 38, nays 28, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Thomas Boude, Robert Brown, Samuel J. Cabell, John Campbell, Thomas Claiborne, William Dickson, Lucas Elmendorf, Calvin Goddard, Roger Griswold, William Barry Grove, Joseph Heister, David Holmes, George Jackson, Michael Leib, Samuel L. Mitchill, Thomas Morris, James Mott, Anthony New, Joseph H. Nicholson, Thomas Plater, John Randolph, jr., Nathan Read, John Smilie, John Smith, of Virginia, Henry Southard, John Stanley, Joseph Stanton, John Stewart, John Taliaferro, jr., Samuel Tenney, Samuel Thatcher, Lemuel Williams, Robert Williams, Richard Winn, and Thomas Wynns.

Nays—Theodorus Bailey, James A. Bayard, Phanuel Bishop, Richard Brent, William Butler, John Davenport, John Dawson, Ebenezer Elmer, William Eustis, John Fowler, John A. Hanna, William Helms, William Hoge James Holland, Benjamin Huger, Thomas Moore, Israel Smith, John Cotton Smith, Josiah Smith, Samuel Smith, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Peleg Wadsworth.

A motion was then made and seconded, that the House do now adjourn; and the question being taken thereupon, there appeared—yeas 28, nays 24, as follows:

Yeas—Willis Alston, Theodorus Bailey, Phanuel Bishop, Richard Brent, John Campbell, Thomas Claiborne, John Condit, Samuel W. Dana, William Dickson Peter Early, Ebenezer Elmer, William Eustis, Andrew Gregg, Roger Griswold, Daniel Heister, Joseph Heister, William Helms, David Holmes, Thomas Moore, James Mott, Joseph H. Nicholson, Nathan Read, John Smilie, John Smith, of Virginia, Richard Stanford, Samuel Tenney, Isaac Van Horne, and Thomas Wynns.

Nays—John Archer, John Bacon, Robert Brown, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, Richard Cutts, John Dawson, Lucas Elmendorf, John Fowler, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Newton, jr., John Randolph, jr., Samuel Smith, John Stanley, Joseph Stanton, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, and Joseph B. Varnum.

Whereupon, the House adjourned.

Saturday, February 26.

On motion, the House was cleared of all persons, except the members and the Clerk: Whereupon, a motion was made and seconded that the injunction of secrecy upon the members, so far as relates to all future proceedings to be had on two bills, which have passed this House and the Senate, one entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations," and another, entitled "An act for extending the external commerce of the United States," be taken off. And the question being taken thereupon, it was resolved in the affirmative.

Mr. John C. Smith, from the Committee of Claims, to whom was referred, on the eleventh instant, the petition of Oliver Pollock, presented the tenth of February, one thousand eight hundred and two, made a report thereon; which was read, and ordered to be referred to the Committee of the whole House to whom was committed, on the fifteenth instant, the report of a select committee "on the expediency of extending the time for the settlement of claims for services rendered, and supplies furnished, during the Revolutionary war."

Resolved, That there be a call of the House today at four o'clock, post meridian.

Resolved, That when this House adjourns, it will adjourn until Monday morning next, ten o'clock.

The House resolved itself into a Committee of the Whole on the bill for the relief of Joshua Harvey and others; and after some time spent therein, the bill was reported with several amendments thereto: which were read, and, together with the said bill, ordered to be recommitted to Mr. Bayard, Mr. Nicholson, and Mr. Brent.

The House resolved itself into a Committee of the Whole on the amendatory bill more effectually to provide for the organization of the Militia of the District of Columbia; and, after some time spent therein, the bill was reported with an amendment which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, of the eleventh instant, to whom was referred a memorial of sundry sugar refiners of the city of Baltimore, in the State of Maryland; and, after some time spent therein, the committee rose and reported to the House their agreement to the resolution contained therein, with an amendment; which was twice read, and agreed to by the House.

The said resolution, as amended, being twice read at the Clerk's table, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That no internal duty shall be collected on sugars removed from the refinery since the thirtieth day of June, eighteen hundred and two; any law to the contrary notwithstanding.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Ways and Means do prepare and bring in the same.

Mr. Randolph, from the Committee of Ways and Means, presented, according to order, a bill

for the relief of the sugar refiners within the United States; which was read twice and committed to a Committee of the whole House on Monday next.

The House proceeded to consider the amendments reported yesterday from the Committee of the Whole to the bill to reduce the Marine Corps of the United States; and, the said amendments being severally twice read, were, on the question put thereupon, agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

Resolved, That the call of the House, directed to be on this day, at four o'clock, post meridian, be postponed for half an hour.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the sixteenth instant, on the memorial of Paul Coulon; and, after some time spent therein, the Committee rose and reported their agreement to the resolution contained therein; which was twice read, and agreed to by the House, as follows:

Resolved That there be paid to Paul Coulon, as agent for the captors of the ship Betty Cathcart, and brig Aaron, prizes to the French privateer La Bellone, out of any moneys in the Treasury, not otherwise appropriated, the sum of six thousand two hundred and forty-one dollars and forty-four cents, being the amount retained by the Treasury Department from the sales of the ship Betty Cathcart, for duties on the cargo of the brig Aaron.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

The bill sent from the Senate, entitled "An act to alter the time of holding the court of the United States in Kentucky district, was read three times and passed.

The House resolved itself into a Committee of the Whole on the bill to alter and discontinue certain post roads, and for other purposes; and, after some time spent therein, the Committee rose and reported progress.

Resolved, That the call of the House, directed to be on this day, at half past four o'clock, in the afternoon, be postponed until eleven o'clock in the morning on Monday next.

Mr. BAYARD, from the committee to whom was, this day, recommitted the bill for the relief of Josiah Harvey, and others, reported an amendatory bill; which was read twice, and ordered to be engrossed, and read the third time on Monday next.

Mr JOHN COTTON SMITH, from the Committee of Claims, presented a bill for the relief of Paul Coulon; which was read twice, and committed to a Committee of the whole House immediately.

The House, accordingly, resolved itself into the said committee; and, after some time spent therein, the bill was reported to the House, without amendment.

Ordered, That the said bill be engrossed, and read the third time on Monday next.

Mr. SOUTHARD, from the committee who were instructed, by a resolution of this House of the twenty-eighth ultimo, "to digest some plan by which it can be ascertained what quantity of surveyed or patented land belonging to the officers and soldiers of Virginia, on State and Continental establishments, was ceded to the Cherokee Indians, by the treaty of Holstein, of the second of July, one thousand seven hundred and ninety-one," made a report thereon; which was read: Whereupon,

Ordered, That the consideration of the said report be postponed until Monday next.

On motion, it was

Resolved, That the Secretary of State be directed to transmit, under his frank, to each member of the Senate and of the House of Representatives of the United States of the present Congress, a copy of the laws of the present session of Congress, as soon as the same may be printed.

A memorial of sundry citizens of the Territory of Columbia was presented to the House and read, stating their approbation of the provisions contained in a bill now depending before this House, for the government of the said Territory; and praying that the same may be passed into a law during the present session of Congress.—Referred

FRENCH SPOLIATIONS.

Mr. BAYARD moved that the House do now resolve itself into a Committee of the whole House on a motion of the thirty-first ultimo, "for indemnifying the citizens of the United States, who, in carrying on a lawful trade to foreign parts, have suffered losses by the seizure of their property, made by unauthorized French cruisers, or by any French cruiser, without sufficient cause," to which Committee of the whole House was also referred, on the second instant, the report of a select committee, made the twenty-second of April last, on "the memorials and petitions of sundry citizens of the United States, and resident merchants therein, praying relief, in the case of depredations committed on their vessels and cargoes, while in pursuit of lawful commerce, by the cruisers of the French Republic, during the late European war;"

It passed in the negative—yeas 21, nays 48, as follows:

YEAS—John Bacon, James A. Bayard, John Campbell, Samuel W. Dana, William Eustis, Calvin Goddard, Roger Griswold, Seth Hastings, William H. Hill, Benjamin Huger, Samuel Hunt, Samuel L. Mitchill, Thomas Morris, Thomas Plater, Nathan Read, John Cotton Smith, Samuel Tenney, Samuel Thatcher, George B. Upham, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, John Clopton, John Condit, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, Andrew Gregg, Daniel Heister, Joseph Heister, William Helms, William Hoge, James Holland, George Jackson, Michael Leib, David Meriwether, Thomas Moore, James Mott, Anthony New, Thomas Newton, jr., John Randolph, jr., John Smilie, Israel Smith, John Smith, of New York, John Smith, of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Robert Williams, Richard Winn, and Thomas Wynns.

MONDAY, February 28.

An engrossed bill for the relief of Joshua Harvey, and others, was read the third time, and passed.

An engrossed bill for the relief of Paul Coulon was read the third time, and passed.

An engrossed bill more effectually to provide for the organization of the militia of the District of Columbia was read the third time, and passed.

Resolved, That the call of the House directed by a vote of Saturday last, to be on this day, at eleven o' clock in the morning, be postponed until four o' clock, post meridian.

Ordered, That the Committee of Claims, to whom were recommitted, on the twenty-sixth instant, a Message from the President of the United States, and sundry accompanying documents, in the case of the Danish brigantine called the Henrick, have leave to report thereon by bill, or bills, or otherwise.

Mr. J. C. SMITH, from the same committee, reported a bill to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick; which was read twice and committed to a Committee of the whole House to-day.

Mr. RANDOLPH from the Committee of Ways and Means, who were instructed by a resolution of this House of the twenty-eighth ultimo, "to inquire into the expediency of suspending, for a limited time, the collection of all debts or duties due to the United States from the citizens of the States of Tennessee, Ohio, and Kentucky, and the citizens of the Indiana and Mississippi Territory, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to the act, entitled 'An act concerning the registering and recording of ships and vessels of the United States,'" and to the act, entitled "An act to regulate the collection of duties on imports and tonnage," with an amendment; to which they desire the concurrence of this House. The Senate have also passed a bill, entitled "An act to alter the time for the next meeting of Congress;" to which they desire the concurrence of this House.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and three," with several amendments; to which they desire the concurrence of this House.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

An engrossed bill for settling sundry claims to the public lands of the United States south of the State of Tennessee was read the third time: Whereupon, a motion was made, and the question being put, that the farther consideration thereof be postponed until to-morrow, it was resolved in the affirmative.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act in addition to the act, entitled 'An act concerning the registering and recording of ships and vessels of the United States,' and to the act, entitled 'An act to regulate the collection of duties on imports and tonnage:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and three:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The bill sent from the Senate, entitled "An act to alter the time for the next meeting of Congress," was read twice and committed to a Committee of the whole House to-morrow.

An engrossed bill for reducing the marine corps was read a third time, and, on the question of its passage, Mr. HUGER moved its postponement to the first Monday in November; which motion was lost—ayes 32, noes 40.

Mr. THATCHER then spoke against the passage of the bill.

The question was then taken, and decided in the affirmative—ayes 45, noes 35.

Mr. J. C. SMITH, from the Committee of Claims, reported a bill enabling the President to make such restitution as he may deem proper to the owners of the Danish brig Hendrick, and appropriating $40,000 for that purpose.

The House went into a Committee on the bill.

Mr. BAYARD declared himself, from the want of information, unprepared to vote on the bill.

Messrs. J. C. SMITH and RANDOLPH replied, and defended the bill.

The Committee rose, and reported the bill without amendment.

The House immediately took up the report.

Mr. BAYARD moved to postpone it till the first Monday in November.

This motion was supported by Messrs. BAYARD, DAVIS, GRISWOLD, DANA, and EUSTIS; and opposed by Messrs. J. C. SMITH, S. SMITH, and RANDOLPH.

The motion was lost—ayes 24, noes 35.

The bill was ordered to be engrossed for a third reading to-morrow—ayes 38.

PERSONAL EXPLANATION.

Mr. HOLLAND said he wished to state to the House some circumstances which were important to himself, however unimportant they might be to the public. It would be recollected that he had some days since obtained leave of absence after this day for the remainder of the session. On Saturday evening he was informed that it had been insinuated that he had been guilty of an improper disclosure. Under this imputation he was not willing to leave the House. If any gentle-

man thought that he had committed such an act, he invited him then to bring forward the charge. He had been told that the manner in which the affair had been stated was this: that the disclosure was made in a letter which he had written to one of his constituents in North Carolina; and that the imputation rested on a letter in the hands of his colleague (Mr. HENDERSON.) That letter could be produced; and if any gentleman gave credit to the charge, he wished it to be produced immediately, that he might not go home under any such imputation. He had not indeed expected that any such imputation, founded on a disposition to disclose the confidential proceedings of the House, would have been laid to one of the majority. He did suppose if there should be any disclosure, it would come from another quarter. He however, solicited any gentleman to bring forward the charge who professed to believe it. This was a debt of justice due to him and to the House: and if were not done, he would not consider the gentleman who had made it as believing it himself.

Mr. GRISWOLD said it ought to be known to the House, that the colleague of the gentleman (Mr. HENDERSON) had been and still was confined by sickness. He regretted under those circumstances that the gentleman had not waited until his colleague attended in his place.

Mr. HOLLAND said he meant not to cast any imputation on his colleague; he had not subjected himself to the least obloquy. If he was in possession of the letter it was in the power of gentlemen to obtain it.

CITY OF WASHINGTON.

Mr. RANDOLPH, from the Committee of Ways and Means, reported a bill concerning the City of Washington, which was referred to a Committee of the Whole.

The bill allows an annual salary of $1,200 to the superintendent, three dollars per day to the surveyor, and provides for clerk-hire and contingent expenses in these offices.

Mr. RANDOLPH suggested to the gentleman from New York the propriety of introducing into this bill such provisions as he thought proper, and had some time since alluded to, respecting the necessary repairs to the public buildings.

Mr. MITCHILL made a few remarks on the necessity of making provision for the accommodation of the next Congress, in consequence of its augmented numbers, and for repairing several parts of the buildings now in a state of ruin and dilapidation; and concluded by saying he would prepare a new section to that effect.

Mr. DAWSON said he had prepared a new section of this nature, which he offered to the Chair, appropriating —— dollars, to be applied under the direction of the President to the repair of the Capitol, for the future accommodation of Congress.

On the suggestion of Mr. ALSTON, the motion was varied so as to embrace the public buildings generally.

Mr. MERIWETHER thought the Committee were acting without proper information.

Mr. DAWSON observed that an estimate had been made.

Mr. BACON inquired what sum it was contemplated to appropriate.

Mr. BRENT said an estimate had been made by an eminent architect of the sum that would be required for putting the part of the Capitol, in which the House sat, in such a situation as to accommodate them. The estimate, he understood, was $40,000.

Mr. MORRIS asked if it was not intended to repair the other parts of the Capitol and the President's House, the roofs of which were, he understood, so leaky as to threaten both edifices with ruin?

Mr. DAWSON's motion was then agreed to—ayes 42.

Mr. BRENT moved to fill the blank with $50,000. Carried—ayes 40.

On motion of Mr. EUSTIS the above appropriation was made to embrace the keeping in repair of the highway between the Capitol and the President's House.

The Committee then rose and reported the bill with amendments; to which the House agreed, and ordered the bill to be engrossed for a third reading today.

TENNESSEE LANDS.

The House went into a Committee of the Whole on the bill for settling sundry claims to public lands of the United States south of the State of Tennessee.

The bill consists of eleven sections; the first three of which follow:

"*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That every grant, deed, conveyance, or other written evidence of any claim or claims to any of the lands lying to the north of the thirty-first degree of north latitude, south of the State of Tennessee, east of the river Mississippi, and west of the western boundary of the State of Georgia, as the said boundary is described by the articles of agreement and cession between the United States and that State, derived, or pretended to be derived, from an act of the State of Georgia, passed on the seventh day of January, 1795, entitled "An act supplementary to an act for appropriating a part of the unlocated territory of this State, for the payment of the State troops, and for other purposes therein mentioned, and declaring the right of this State to the unappropriated territory thereof, for the protection and support of the frontiers of this State, and for other purposes therein mentioned," shall be exhibited to the Secretary of State within twelve months after the passing of this act, and there recorded in a book or books to be kept for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve and a half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim derived, or pretended to be derived, from the said act of the State of Georgia, unless it shall have been exhibited and recorded in the manner and within the time above specified, ever after be admitted or considered as evidence in any of the courts of the

United States, against any other grant from the State of Georgia, or from the United States.

SEC. 2. *And be it further enacted*, That so much of the five millions of acres reserved by the articles of agreement and cession between the United States and the State of Georgia, as shall not, during the present session of Congress, have been appropriated for satisfying claims other than those described in the preceding section, to any of the lands above mentioned, or so much of the net proceedings thereof as may be necessary for that purpose, shall be, and the same is hereby, appropriated for the purpose of indemnifying for, and extinguishing the claims or pretended claims to any of the lands above mentioned, which are derived, or pretended to be derived, from the above mentioned act of the State of Georgia.

SEC. 3. *And be it further enacted*, That the several companies, or persons claiming under them, designated in the said act of the State of Georgia, by the names of "Georgia Company," "Georgia Mississippi Company," "Tennessee Company," and "Upper Mississippi Company," shall, upon making such a release of the whole of their respective claim or claims, in favor of the United States, as shall be approved of by the Attorney General for the time being, be entitled to receive grants for the amount of land appropriated by the next preceding section of this act: *Provided, however*, That the same grant shall be located with the approbation of the Secretary of the Treasury for the time being, on lands to which the Indian title has not yet been extinguished, in no more than six tracts; that is to say, three tracts for the persons claiming under the Georgia Company, and one tract for each of the other companies, or the persons claiming under them respectively, each of which tracts shall extend the whole length or breadth of the territory claimed by the respective companies, and shall not have a greater proportionate tract on the rivers than the territory thus claimed.

Mr. HUGER moved an amendment, the object of which was to place the South Carolina Yazoo Company on the same footing with the other claimants.

This motion was supported by Messrs. HUGER and BAYARD, and opposed by Messrs. NICHOLSON and MERIWETHER; and was lost—ayes 18.

Mr. MERIWETHER then moved a new section in lieu of the third section; directing the Secretary of State, the Secretary of the Treasury, and the Attorney General, to receive such propositions as may be made by the claimants, and to make report at the next session of Congress.

Mr. NICHOLSON supported this motion.

Mr. EUSTIS moved an amendment authorizing the commissioners to make a final settlement of the claims.

Mr. NICHOLSON opposed the amendment.

Mr. GREGG was opposed not only to the amendment but to the bill itself.

Mr. MERIWETHER spoke against the amendment.

Mr. EUSTIS's amendment was lost without a division.

The new section offered by Mr. MERIWETHER was then adopted—ayes 42.

Mr. MERIWETHER moved to strike out all the remaining sections, except the eleventh, which is as follows:

SEC. 11. *And be it further enacted*, That nothing in this act contained shall be construed to recognise, impair, or affect the claims of any person or persons to any of the lands above mentioned.

Carried without a division.

The Committee rose, and the House immediately concurred in their amendments.

Mr. HUGER renewed the motion which he had made in Committee, on which a debate ensued in which Messrs. HUGER and BAYARD supported, and Messrs. NICHOLSON and MERIWETHER opposed it.

Mr. DAVIS moved the recommitment of the bill to the Committee of the Whole.

Mr. NICHOLSON opposed the motion; which was lost—ayes 15.

The question was then taken on Mr. HUGER's amendment, and decided in the affirmative—ayes 36—noes 21.

The bill was then ordered to be engrossed for a third reading to-day—ayes 49.

TUESDAY, March 1.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals;" to which they desire the concurrence of this House. The Senate have also passsd the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia," with several amendments; to which they desire the concurrence of this House.

An engrossed bill concerning the City of Washington was read the third time and passed.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for the relief of insolvent debtors within the District of Columbia:" Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. NICHOLSON, Mr. TALIAFERRO, and Mr. HUNT.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the House of Representatives:

According to the request stated in your resolution of December 20th, I communicated to you such returns of the militia of the different States as had then been received. Since that date, returns have been received from New Hampshire, Massachusetts, Connecticut, New York, North Carolina, Georgia, and Kentucky, which are now transmitted to you.

MARCH 1, 1803. THOS. JEFFERSON.

The said Message was read, and, together with the statement transmitted therewith, ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying his report on the state of the direct tax, together with a letter to him, from the Commissioner of the Revenue, relative thereto, in pursuance of a resolution of this House of the 24th of January last; which were read, and ordered to lie on the table.

The House resolved itself into a Committee of the whole House on the bill to allow a drawback of duty on sugar refined within the United States;

and, after some time spent therein, the Committee reported the bill with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House proceeded to the farther consideration of an engrossed bill for settling sundry claims to public lands of the United States south of the State of Tennessee, which was yesterday read the third time: Whereupon, the question being taken that the said bill do pass, it was resolved in the affirmative—yeas 58, nays 12, as follows:

Yeas—Willis Alston, John Archer, John Bacon, Theodorus Bailey, James A. Bayard, Phanuel Bishop, Walter Bowie, Richard Brent, Robert Brown, William Butler, Thomas Claiborne, John Clopton, John Condit, Manasseh Cutler, John Davenport, John Dawson, William Dickson, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Calvin Goddard, Edwin Gray, John A. Hanna, Seth Hastings, William Helms, Benjamin Huger, Samuel Hunt, David Meriwether, Samuel Mitchill, Thomas Morris, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Joseph Stanton, John Stewart, Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, John Trigg, George B. Upham, Philip Van Cortlandt, Isaac Van Horne, Peleg Wadsworth, Richard Winn, Henry Woods, and Thomas Wynns.

Nays—Thomas Boude, Samuel J. Cabell, Andrew Gregg, William Barry Grove, Joseph Heister, William Hoge, David Holmes, Michael Leib, John Randolph, jr., John Smith, of Virginia, Richard Stanford, and John Taliaferro, jun.

THE MINT.

The House went into a Committee of the Whole on the bill to prolong the continuance of the Mint at Philadelphia.

The bill provides for the continuance of the Mint for five years, and appropriates $500 beyond the usual appropriation for the establishment.

The appropriation was, on motion of Mr. Varnum, struck out, without a division. The Committee then reported the bill.

The House concurred in the report.

Mr. Alston observed that if it were not so late in the session he would move to strike out the first section, by which the Mint would be abolished; but as it was too late to take this step, with any probability of success, he should content himself with moving to strike out *fire*, and insert *one*, by which the institution would be continued for one year only.

Lost—ayes 25, nays 31.

The bill was then ordered to be engrossed for a third reading.

DANISH BRIG HENRICK.

An engrossed bill to enable the President to make restitution to the owners of the Danish brig Henrick, was read a third time.

Messrs. Dawson, J. C. Smith, Gregg, and S. Smith, spoke in favor of, and Messrs. Bayard, Hastings, Griswold, Bacon, Dana, and Goddard, against the bill.

Mr. Leib moved a postponement of the bill to the first Monday in December.

On which motion the yeas and nays were taken, and were—yeas 39, nays 39. The Speaker declared himself against the postponement.

The question was then taken by yeas and nays on the passage of the bill, and carried—yeas 41, nays 38, as follows:

Yeas—Willis Alston, John Archer, Theodorus Bailey, Walter Bowie, Richard Brent, Samuel J. Cabell, John Campbell, Thomas Claiborne, Matthew Clay, John Clopton, Richard Cutts, John Dawson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, Andrew Gregg, John A. Hanna, Daniel Heister, David Holmes, George Jackson, David Meriwether, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jun., John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Samuel Smith, Richard Stanford, John Taliaferro, jun., David Thomas, Philip R. Thompson, Abram Trigg, George B. Upham Philip Van Cortlandt, Isaac Van Horne, Henry Woods, and Thomas Wynns.

Nays—John Bacon, James A. Bayard, Phanuel Bishop, Thomas Boude, Robert Brown, William Butler, John Condit, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas T. Davis, William Dickson, William Eustis, Calvin Goddard, Edwin Gray, Roger Griswold, William Barry Grove, Seth Hastings, Joseph Heister, William Hoge, Benjamin Huger, Michael Leib, Thomas Morris, James Mott, Thomas Plater, Nathan Read, William Shepard, John Smith, of Virginia, Josiah Smith, Henry Southard, Joseph Stanton, John Stewart, Samuel Tenney, Thomas Tillinghast, John Trigg, Joseph B. Varnum, Peleg Wadsworth, and Richard Winn.

The House adjourned until five o'clock, post meridian.

Five o'clock, P. M.

An engrossed bill to prolong the continuance of the Mint at Philadelphia was read the third time, and passed.

The bill sent from the Senate, entitled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," was read twice, and committed to a Committee of the whole House to-morrow.

A message from the Senate, informed the House that the Senate have passed the bill, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," with several amendments; to which they desire the concurrence of this House."

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to alter the time for the next meeting of Congress." The Committee reported the bill without amendment.

A motion was then made, and the question being put, that the farther consideration thereof be postponed until to-morrow, it passed in the negative. And then the main question being taken that said bill do pass, it was resolved in the affirmative—yeas 42, nays 30, as follows:

Yeas—John Archer, Theodorus Bailey, Walter Bowie, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Thomas T. Davis, John Dawson, William Dickson, Peter Early, Lucas Elmendorf, John A. Hanna, Joseph Heister, David Holmes, George Jackson, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Samuel Smith, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jun., David Thomas, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Peleg Wadsworth, and Thomas Wynns.

Nays—Willis Alston, John Bacon, James A. Bayard, Phanuel Bishop, Thomas Boude, John Campbell, John Condit, Samuel W. Dana, John Davenport, Ebenezer Elmer, William Eustis, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, William Barry Grove, Seth Hastings, William Helms, William Hoge, Benjamin Huger, Samuel Hunt, Thos. Morris, James Mott, Thomas Plater, Nathan Read, John Cotton Smith, Josiah Smith, Samuel Tenney, Samuel Thatcher, and Joseph B. Varnum.

Wednesday, March 2.

An engrossed bill to allow a drawback of duty on sugar refined within the United States was read a third time and passed—yeas 36, nays 29.

The bill was supported by Messrs. Mitchill, and S. Smith; and opposed by Mr. Mott.

Mr. Randolph, from the committee to whom was referred a letter from William Henry Harrison, President of the Convention held at Vincennes, in the Indiana Territory, relative to the suspension of the sixth article of compact between the United States and the people of that Territory, (which prohibits slavery); also, a memorial and petition of the inhabitants of the Territory; made a report, which was referred to a Committee of the Whole, and ordered to be printed.

Mr. Nicholson, from the committee to whom were referred the amendments of the Senate to an act for the relief of insolvent debtors within the District of Columbia, reported their agreement thereto; in which report the House concurred.

The House took into consideration the amendments of the Senate to the act to make provision for persons that have been disabled by known wounds received in the late service of the United States, during the Revolutionary war.

A motion was made to postpone the consideration of the bill to the first Monday of November, which was supported by Mr. John C. Smith, and opposed by Mr. Helms. Lost—yeas 24, nays 38.

Mr. Griswold moved the reference of the amendments to a select committee. Carried—yeas 35, nays 23; and referred to Messrs. Helms, Griswold, and Eustis.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to an act, entitled 'An act to amend the Judicial System of the United States,'" with an amendment; to which they desire the concurrence of this House.

SINKING FUND.

Mr. Griswold rose, and addressed the Chair as follows:

Mr. Speaker: I hold in my hand a resolution which I attempted yesterday to submit to the consideration of the House, but was then prevented by a preference which it was thought proper to give to other business. To this resolution I beg leave, at this time, to call your attention, and I trust the importance of the subject which it involves, will induce gentlemen to give it a consideration. As I mentioned yesterday, the resolution proposes an investigation of the report of the Commissioners of the Sinking Fund, who received, in the course of the last year, more than ten millions of the public money to be applied to the discharge of the principal and interest of the public debt, but whose accounts have been rendered with so much uncertainty as to leave it doubtful whether the money has been applied or the law regarded. For the purpose of ascertaining whether this has been done, I propose to instruct the Committee of Ways and Means to examine the report of the Commissioners, and to report to the House; and although I regret that so short a time will be allowed for examination, yet, when it is recollected that the report has already been several weeks before that committee, and no apparent progress has been made by them, I trust it will not be thought extraordinary, that I should endeavor, even at this late period of the session, to stimulate their investigation by new instructions.

It may be proper further to observe, that the chairman of the Committee of Ways and Means (Mr. Randolph) has been long apprized of the objections which have been made to the report of the Commissioners, and, probably, has long since consulted with the acting officer of the board, and will be prepared to make a report. The Journals of the House will show that the Commissioners made their report on the seventh day of February, and it will be recollected that as soon as it was printed and laid on our tables, upon a motion which I had the honor, at that time, of submitting, the House referred the report to the Committee of Ways and Means; and the chairman of that committee will recollect that, on the same or the succeeding day, I stated to him the objections which appeared against the report. Under these circumstances, we may expect a report from the committee before the close of the session; but, even if this should not take place, it may be useful to call the particular attention of the members of the House to a subject which can be fully elucidated by calculations in the closet, and gentlemen will then be induced, at their leisure, to make the investigation for themselves. But, before I read the resolution in my place or offer it to the House, I will take the liberty of explaining the objects to which I think the attention of the committee ought to be particularly directed, and will point out some of the objections which arise, to the proceedings of the Commissioners and to their accounts.

The provisions of the law of the last session,

entitled "An act to provide for the redemption of the whole public debt," cannot, I presume, be forgotten by the House. On this law it is necessary only to observe, that the Commissioners of the Sinking Fund were authorized to receive, in each year, from the revenue from impost and tonnage, a sum which, when added to the receipts from certain branches of the Sinking Fund, should form an aggregate of $7,300,000; and it was made the duty of the Commissioners to apply this sum "yearly and every year," to the payment of the principal and interest of the public debt. The duty of the Commissioners has not only been thus clearly defined, but it is fresh in the recollection of every member of the House, that, in the discussion which took place on this floor upon the passage of the law in question, it was confidently asserted that the Commissioners would faithfully and literally execute the law, and that we might be assured that they would apply, in each year, the fund of $7,300,000 to the principal and interest of the debt. An examination of the report of the Commissioners will show how far these promises have been executed.

By the report, it appears that the Commissioners received, in the year 1802, the appropriation for that year, amounting, as already observed, to - - - - - - - -		$7,300,000 00
But they have applied to the payment of the debt, from the foregoing fund, the following sums only; that is to say:		
For interest on the whole debt for the year 1802 - -	$4,065,738 47	
For account of a debt due to the bank -	2,400 00	
For instalments of the Dutch debt, for the year 1802 - -	1,344,000 00	
For reimbursements of six per cent., and deferred stock, estimated at - - - -	1,117,869 37	
		6,530,207 84
Leaving a balance in their hands unapplied and unaccounted for, of - -		769,992 16

I must be permitted again to repeat, that it was made expressly the duty of the Commissioners to apply, within the year, this fund of seven millions three hundred thousand dollars to the interest and principal of the debt, and to observe that it has not been done, if credit is to be given to their own report; and I hope the committee will, in their report, inform the House why the law has not been executed.

If it should be imagined by any gentleman present, that the payment made to the bank, from the sales of bank shares, may be considered as a payment from the fund of seven millions three hundred thousand dollars, it will only be necessary for those gentlemen, if any such there be, to turn to the law, and to the report of the Commissioners; and they will be satisfied that the law could not warrant the Commissioners, nor have they claimed that the proceeds of those sales composed any part of the fund of seven millions three hundred thousand dollars, but, on the contrary, have not only sold the bank shares and applied the proceeds to pay the bank, but have, in addition, claimed and received from the Treasury the whole sum of seven millions three hundred thousand dollars, under the law of the last session, and without applying it, as has been already stated.

It can scarcely be necessary to observe, that the remittances which may have been made to Holland to meet the instalments of the Dutch debt for the current year, cannot be considered as a payment of debt in the year 1802, or as a legal application of any part of the fund of seven millions three hundred thousand dollars, for the year 1802. For, as the law requires that the payment of seven millions three hundred thousand dollars shall be made in each year, a provision to meet an instalment falling due in a subsequent year, can be no payment within the year; and, as the fund of seven millions three hundred thousand dollars was actually received for the year 1802, it was clearly their duty to apply it within the year.

There are other parts of the report which require investigation, and to some of which I request the attention of the House. It will be found in page six of the report, that the Commissioners have charged $4,065,738 47, as a payment for the interest which accrued on the whole debt, for the year 1802. This charge may be correct, but it does not agree with the Treasury accounts, and there must be an error somewhere.

In the last annual report of the Secretary of the Treasury, the interest of the domestic debt, is stated to be - - - - - - - -	$3,470,250 75
In the report of the Secretary of last year, the interest of the Dutch debt, for the year 1802, is - - - -	476,931 00
Forming an aggregate of - - -	3,940,190 75

By comparing this aggregate with the charge of the Commissioners, it will be found, that their account of interest exceeds the Treasury account $148,547 79. It appeared to me probable, that the Secretary had made the mistake in stating the interest upon the domestic debt, and had, perhaps, omitted to charge the interest upon the debt due to the bank, which, as appears by the report of the Commissioners, amounted to $162,025. But when this sum is added to the aggregate of the Treasury account of interest, it will be found that the result exceeds the Commissioners' account by $13,477 28, so that this conjecture cannot explain the difficulty. The confusion and uncertainty which appears in the different accounts which relate to the interest of the debt is the more unfortunate, because we are not only prevented from knowing what the true amount of interest on each description of debt is, but are left in a state of uncertainty in relation to the aggregate of interest; and, of course, cannot say whether the Commissioners have charged too much or too little. The importance of receiving correct

and detailed accounts of these large payments by the public agents, is too apparent to require any remark from me to impress its necessity on the House; and it is a circumstance which has surprised me as much as any other in this report, that, in a case which is attended with so little difficulty, the Commissioners, instead of stating in detail the interest upon each description of debt, as it was their duty to do; and in that way furnishing us with the means of pursuing their calculations, have only sent us a gross amount, disagreeing with the Treasury account, without furnishing a single datum from which we can ascertain the truth or falsehood of the charge. Before I close my remarks upon this part of the account, it may not be improper to notice, that the accounts of last year, in regard to the Dutch debt, did not agree with each other. In one part of the report of the Secretary, in the table marked P, the interest on the Dutch debt for the year 1802, is stated to be $476,931; and in the same report, in table R, the interest for the same period, is stated to be only 1,145,259 guilders, equal to $458,100. Nor will this disagreement be reconciled, by adding to the amount of interest in table R, the premium and commissions for 1802 upon the Dutch debt, and considering those charges as interest. Those commissions, &c., amounted to 59,577 guilders 10 stivers, equal to $23,831, and, if added to the interest, will produce an aggregate which exceeds the interest in table P, by $6,000. In short, it is impossible to examine this account of interest in any direction, without finding ourselves perplexed either by errors or uncertainties.

The general account of the Commissioners is liable to objections of a nature equally, if not more serious and important. It appears by the report that, in the year 1802, the Commissioners received, in cash, from the Treasury, the sum of - -		$9,372,752 28
Likewise an unexpended balance in Holland, at the close of the year 1801, and which came to their hands in 1802, two millions three hundred and thirteen thousand eight hundred and forty-six guilders nine stivers, equal to - - - - - - - -		925,538 60
Forming an aggregate for which the Commissioners were bound to account, of - - - - -		10,293,290 88
By their own account, they have made the following payments; that is to say:		
For interest on the public debt - - -	$4,065,738 47	
For instalment of the foreign debt, and a debt due to the bank	2,634,000 00	
For reimbursement of the six per cent. and deferred stock, estimated at - - -	1,117,869 37	
		7,817,607 84
Which, deducted from the amount received, leaves a balance, for which no certain account has been rendered, of - - - - - - - -		$2,480,683 04

This statement has been made on the principle that the payments charged by the Commissioners were correct, but it remains uncertain whether they have been correct in any particular. The uncertainty in the interest account I have already noticed, and I will now observe that the report of the Secretary of the Treasury of the last year, does not agree with the present account in regard to the instalment of the foreign debt for the year 1802. It was stated by the Secretary last year, that this instalment amounted to 3,550,000 guilders. In this report, the same instalment is stated to be only 3,360,000 guilders. Which is right and which is wrong I know not—the two accounts differ 190,000 guilders. The reimbursement of the six per cent. and deferred stock has not been, I am inclined to think, stated correctly; but this the Secretary gives only as an estimate; and I shall pass it by without further remark.

But I proceed to make some further remarks on the balance of $2,480,683 04, for which no certain account has been rendered.

It is true that the Commissioners say, that they purchased, and paid for, certain remittances to Holland before the 1st of January, 1803, and which remittances were to meet the instalments of the Dutch debt falling due in 1803, a sum, which they estimate at 5,914,606 guilders 10 stivers, equal to $2,365,842 60; but it will be remarked, that this is only an estimate, and it is left to the House to decide whether the disbursement of these millions of the public money is only to be accounted for on estimate. If the House is satisfied with this mode of accounting, I feel it my duty, as an individual, to enter my protest against such a procedure. Sir, upon such an account, it remains still uncertain whether one-half of the money has ever been remitted. The Commissioners estimate that they have remitted five millions of guilders; they might, with as much propriety, estimate that they had remitted ten millions; there is no certainty in the term, and we are left as much in the dark, in respect to the true state of the account, as if they had said nothing on the subject.

But why is this part of the account sent in on estimate? Can there be any necessity for this? Do not the accounts of the Commissioners show every cent which has been paid for these remittances? Do not these accounts show every cent which remains in the hands of agents for the purchase of bills? Why, then, are we put off with an estimate? Was it not an easy thing to have stated the amount of every bill which had been purchased, with the price paid, and the amount of every contract for placing money in Holland, and the periods of payment? Sir, all this might have been done, and we might then calculate for ourselves, whether these remittances amounted to five or six millions of guilders. We might then see the precise terms on which these remittances were procured. We might see who the individuals were with whom contracts were made, or from whom bills were purchased; and we might see how long these individuals were to use the public money before they are bound to place it in Holland. I ask again, why has not this been

done? Gentlemen who are in the secrets of the Cabinet, I hope, will be prepared with an answer.

I do not undertake to say that any improper contracts have been made. Of these contracts I know nothing: but of this I am perfectly certain, that an individual who has the control of ten millions of public money may, without much danger of detection, oblige his confidential friends with large sums; and that the facility with which this may be done, is increased, by rendering an account finally upon estimate. Sir, from this mode of procedure, there may result a system of favoritism, highly prejudicial to the interest of the Treasury. Contracts may be made for placing money in Holland ten or twelve months hence, the money may be advanced at the time, and the favorite may have the use of it under the contracts for a year, without interest. Bills may be purchased, payable at a very distant day, and a contract entered into, that the bills shall not be presented for acceptance for three or four months after they have been drawn, or until the drawers are accommodated with funds derived from some mercantile adventure fitted out from the same advance. Sir, in this way, favorites may be supplied with a capital to trade upon, and Government will not only lose the interest of the money, but run the hazard of sinking the whole by the unfortunate result of a mercantile speculation. I do not know that anything of this kind has taken place, and I am far from making any charge of this nature against the Commissioners of the Sinking fund, or against the Secretary of the Treasury, who is the agent of the board, and personally accountable for the fairness of the transactions, and correctness of the accounts. But it is highly important that some better mode than that of estimate should be devised for rendering accounts of the expenditure of public money. It is important to the country, and it is important to the Commissioners themselves, against whom no suspicions ought to be entertained, if their conduct has been correct.

But, admitting this mode of accounting by estimate to be correct, and that we give the Commissioners credit for these guilders estimated to have been remitted to Holland, there will still remain in their hands the sum of $114,839 44, wholly unaccounted for. Sir, as the report stands, there is no way of accounting for this balance, but by conjecture; and this mode is, in my judgment, as correct as that by estimate. We may conjecture that the money remains with public agents, or in protested bills, as some allusions appear to be made in the report to agents and protested bills; but we are still compelled to conjecture that the amount in protested bills, if any, is extremely small, as the Treasury account has deducted the protested bills from the money advanced to the Sinking Fund, up to October, 1802, and charged the balance only. Sir, it would be improper for me to conjecture that this balance had been misapplied, for I certainly have no grounds on which to form such a conjecture, unless, indeed, the strange situation of these accounts should be considered as sufficient grounds for suspicion to rest upon. An investigation may, probably, clear up these difficulties, and the money may certainly be traced through all the channels through which it has passed.

I have considered it particularly the duty of every member of this House to examine, with vigilance, the accounts of the expenditure of public money, and more particularly to attend to those expenditures which take place under the control of the Secretary of the Treasury. Although the objects of these expenditures are designated by law, yet the magnitude of the sums and the small number of individuals who are admitted, from the nature of the business, to examine the particular contracts under which the money is advanced, necessarily leaves the expenditure, in many particulars, under fewer checks than any other branch of the service.

But I will detain you no longer with explanatory remarks, hoping that those which I have already made will induce the House to consider and to agree to the resolution which I now take the liberty of submitting, in the following words:

Resolved, That the Committee of Ways and Means be directed to inquire whether the Commissioners of the Sinking Fund have, agreeably to the directions of the act, entitled "An act making provision for the redemption of the whole of the public debt of the United States," applied the sum of seven millions three hundred thousand dollars, provided by the same, to the payment of the principal and interest of the public debt; and to inquire generally into the accounts and proceedings of the Sinking Fund, and to report to the House.

Mr. Randolph said he rose to second the motion. The House would recollect that not longer since than yesterday, gentlemen, even those who generally acted together, persisted in differing (in the case of the brig Henrick, condemned in a West India court) whether the captor was plaintiff or defendant in the action; and this, after mutual explanation, and notwithstanding the copy of the record was before them. He mentioned this circumstance only to show how easy it was, in an assembly so large, to confound and perplex any matter of fact which had not been previously inquired into and settled by a select committee. How much more easy, then, to take exceptions to an account, and to puzzle the House with long and intricate calculations prepared for the occasion. It is not to be expected that he should accompany the gentleman from Connecticut through such a series of figures, nor could it be done with any benefit to the House. The professed object of the gentleman is inquiry. He has declared that he had no design to cast any imputation of misconduct on the Commissioners of the Sinking Fund; that he hoped they would be able to give a satisfactory explanation of those points on which he felt dissatisfied; and yet, said Mr. R., the observations of the gentleman would seem to be the effect of an unsatisfactory inquiry. If investigation alone were the object, wherefore delay it until now? Would not the regular and natural course of a substantial inquiry have been, to move a resolution to that effect—to have instructed the Committee of Ways and Means as to certain specific objects of investigation—and to have reserved observations which, whatever be their motive, do tend to impeach the conduct of the Administration, until the report of the committee could be made, in case it should prove unsatisfactory? The course which has been pursued, so far from leading to inquiry, seems eminently calculated to preclude or to stifle it. A motion is brought forward, on the eve of our dissolution, prefaced with observations calculated to excite much discussion, and to exhaust the little time that was left; and this inquiry, instead of being confined to one or two facts, embraced a great variety of intricate details.

Mr. R. said, that he would examine into some of the statements made respecting the application of the sum appropriated by the act of last session to the reduction of the debt. And here he could not but remark the coincidence of the unaccounted balance of one hundred and fourteen thousand some hundred dollars, stated by the gentleman, with the representations contained in a printed circular (of which he obtained a casual sight yesterday,) addressed by a gentleman from North Carolina to his constituents: although the writer of the letter did, and the gentleman from Connecticut did not, give credit for the proceeds of the sale of the bank shares.

[Here Mr. Griswold said he was misunderstood—that, in making out the balance of one hundred and fourteen thousand dollars, he had given credit for the bank stock.]

Mr. R. proceeded. He said that the gentlemen then agreed, as indeed he supposed at first they would, not only in the result, but in all the intermediate steps which led to it. Whether the gentleman from Connecticut had availed himself of the labors of his friend, or had lent his assistance to him, he could not undertake to determine, but from the tenor of that letter, and of the objections which had just been offered, it was evident that the same master-hand had prompted both. It was, nevertheless, contended that the proceeds of the bank shares could not be estimated as a part of the appropriation of seven millions three hundred thousand dollars to the public debt. Mr. R. said, that the report of the Sinking Fund did not indeed include these proceeds in that sum, because the Commissioners construed the law so as to have the utmost efficiency to the appropriation, and to pay, of course, a larger sum towards the reduction of the debt. But it was perfectly clear that these shares were included in that appropriation. [Here Mr. R. read the first section of the law.] This appropriation is made out of so much of the duties on imports and tonnage as, together with the moneys which now constitute the Sinking Fund (surpluses of revenue excepted) will amount to seven millions three hundred thousand dollars; and by the act of the 31st May, 1796, the power to sell those shares is expressly given to the Commissioners of the Sinking Fund—and they have been, accordingly, sold and applied to the purposes directed by that act. Those shares then did, when the appropriation was made, constitute a part of the Sinking Fund, and were what remained of five thousand shares, two thousand seven hundred and eighty having been sold under the act of May, 1796, by the Commissioners of the Sinking Fund. It is evident, then, that the Sinking Fund might take credit for the sum produced by the sale of that stock, as a part of the sum of seven millions three hundred thousand dollars. But exclusively of it, Mr. R. said, it could easily be proved that more than the amount appropriated had been disbursed on account of the debt. The items consisted, if gentlemen would turn to the report, 1st, Of disbursements on account of the interest of the whole debt; 2d, On account of the principal, viz., the Bank and Dutch debts, and the 8th and 2d instalments of the old and deferred six per cent., respectively, payable first of January, 1803; 3d, The excess of guilders on hand, applicable to the payment of the Dutch debt falling due in the year 1803, after deducting the guilders on hand at the close of the year 1800, which were applicable to the payment of that debt falling due in the year 1802. This excess, amounting to more than three millions six hundred thousand guilders, for which the Commissioners of the Sinking Fund must have credit, having debited themselves for the amount on hand at the commencement of the year, will, after deducting the million two hundred and eighty-seven thousand six hundred dollars produced by the sale of the Bank shares, amount to somewhat more than eight millions of dollars, or seven hundred thousand dollars (exclusive of the proceeds of the Bank stock) more than the Commissioners were bound to pay.*

But the gentleman from Connecticut has said, that no credit should be given in the year 1802, for any payments made in the year 1803. He would strike out, therefore, the three millions six hundred thousand guilders, from which credit is taken; since, according to him, credit may be as well taken for moneys to be paid six years hence as during the next year; and yet he gives credit for the reimbursement of the six per cent. and deferred stock payable on the first of January, 1803. Let not the House ascribe this to the generosity of the gentleman; he knew that if credit was not given for the eighth and second instalments of those stocks payable on the first of January, 1803, credit must be

*1. Disbursements on account of the interest of the whole debt - - $4,065,733 47
2. Principal—Bank debt, one million two hundred and ninety-nine thousand, and Dutch debt, one million three hundred and forty-four thousand dollars - - - 2,634,000 00
8th and 2d instalments old 6 per cent. and deferred stocks, respectively, payable first Janury, 1803 - - 1,117,869 37
3. Excess of guilders on hand at the end of the year 1802, beyond those on hand at the end of 1801, equal, if rated at 41 cents per guilder, to - 1,476,311 62
9,293,119 46
Deduct Bank shares sold - - 1,287,600 00
Remainder - - - 8,005,519 46

taken for the payment of the seventh and first instalments of the subscription loan due the bank, paid the first January, 1802, amounting to one hundred and sixty thousand dollars more than the sum which he has admitted. He knew that one or the other of those payments must be credited, and he has taken the smallest, although upon his own principle, being payable in 1803, it ought not to be admitted in advance. An objection is, however, made to allowing credit for the guilders in advance for paying the Dutch debt falling due in the course of the present year. The gentleman seems to rely upon a construction which he gives to the law of the last session, and contends that it was the duty of the Commissioners to pay, for interest and principal of the debt, the whole amount of seven millions three hundred thousand dollars within the year 1802. Out of what fund did he suppose the necessary advances were to be made for the Dutch debt falling due this year, if they were bound to pay the whole appropriation within the year 1802, and the purchase of bills to meet the debt in Holland in 1803, was not considered as a payment under the provision of the law? The gentleman knows, as does every member of the House, that provision must be made at least six months beforehand to meet that debt. All our estimates tell us so; all the calculations of the Treasury are bottomed upon it; those to which he has referred expressly say so; at this time we are nine months in advance, and yet he would construe the law so as to prevent the Commissioners from making the provision. The law explicitly directs them to make good the engagements of the public, in the first place, out of the appropriation, and the surplus, after having done so, is applicable at their discretion. But, upon his construction, the public engagements would be broken. The Commissioners would fail to perform a duty where no discretion is left them, and where the law allows a discretionary exercise of their power, there, it seems, they would have none. Mr. R. said, that it appeared to him the Commissioners of the Sinking Fund had given a tolerable liberal construction to the law which was passed in April, by paying nine millions three hundred thousand dollars in the course of that year, if the bank stock were included, and eight millions if it were not. Previous provision being necessary for the Dutch debt, the Commissioners had taken credit for the last six months of 1802 and the first six months of 1803, instead of twelve months in the year 1802. But if the construction given to the law shall exclude the last period, credit must be given for the payments made in the first six months of 1802. For, if it be said that this payment was made out of the bills purchased in 1801, and those bills are charged in the year 1801, although provided for 1802, certainly the bills provided in 1802, for the payment due in 1803, must also be credited in the year during which they were purchased. If this credit is to be given when the bills are purchased, then this sum of three millions six hundred thousand guilders must be allowed. But if credit is, on the other hand, to be given, not at the time of purchase, but when the bills are paid in Holland, then gentlemen must give credit for the payments made in the first six months of 1802. And wherefore should not these guilders, purchased in 1802, be applicable in 1803, and credited to the year 1802, as well as the reimbursement of the six per cent. and deferred stocks, payable on the first of January, 1803, be credited, as admitted by the gentleman from Connecticut, to the year 1802?

Mr. R. said, he would notice the objection that the sum of nine millions nine hundred and fourteen thousand six hundred and six guilders, mentioned in the seventh page of the report, was upon estimate. The report was dated on the third of February, 1803, purchases had been made from Savannah to Portland, and could it be expected that all the accounts of the agents for making those purchases were even received, much less settled, between the first of January, 1803, to which period the estimate refers, and the third of the next month?

These bills, moreover, being applicable to the debt falling due in Holland during the present year, until an account is received of the sum actually applied, specifying the amount of protested bills and this amount shall have been settled at the Treasury, the exact sum cannot be stated; but, although an estimate, it cannot properly be called a loose estimate, as it has been termed.

With respect to the one hundred and fourteen thousand and some hundred dollars said to be unaccounted for, this must be the sundry protested bills and unexpended balances in the hands of agents, specified in the report. So far from finding cause of surprise and suspicion at such an unaccounted balance, he was astonished that, including protested bills and advances to agents yet to be recovered or accounted for, so small a sum should appear unaccounted for, on the payment of nine millions three hundred thousand dollars, the sum disbursed, inclusive of the bank stock. The purchasers of bills for Government are the cashiers of the several banks. Some of these institutions are precluded by their charters—the Bank of the United States, for example—from making any advance beyond a small amount to Government, unless expressly authorized by a positive law. Advances must be made, therefore, to their cashiers, and, although the money may remain in bank, which is effectively the public treasury, although, substantially, not a dollar has been removed, yet, lying at the order of the cashiers to enable them to make purchasers from time to time, it is considered as advances to them. Gentlemen have complained of the unfairness of considering any department as debtor to the amount of advance made to it, because the accounts have not been settled, although every shilling may have been fairly paid for the public service; yet this is what they are now doing.

Mr. R. said, that he had no doubt that the money stated to have been paid, had been actually disbursed, because he had all the evidence which the case admitted. When he read a law he could not undertake to answer that the printed copy corresponded, *verbatim*, with that passed by Congress. The Committee of Enrolment, and those who collated the printed laws, must be relied upon for that. But wishing to give every attainable satisfaction to the House and the public, he hoped the resolution would pass, and he gave notice that, in case it did meet the approbation of the House, he should immediately move for leave for the Committee of Ways and Means to sit during the sitting of the House, and, if granted, would convoke them immediately, that the chairman might put his hand to any letter which the mover of the resolution should devise, and that the Secretary of the Treasury might be enabled to furnish all the information attainable at this period.

Mr. NICHOLSON said, he would beg the indulgence of the House while he offered a few remarks. These he would have thought totally unnecessary, if the observations of the gentleman from Connecticut (Mr. GRISWOLD) had not been of a nature calculated to make an improper impression abroad. Whether it was the object of the gentleman, by postponing his motion to so late a period of the session, to preclude inquiry altogether, and thereby to induce a belief that he had given a fair statement of the report of the Commissioners of the Sinking Fund, he should not now undertake to determine; but he would say that there was strong ground to believe that this was his object. If inquiry, and inquiry alone was his object, why not lay the resolution on the table, and suffer it immediately to be referred to the Committee of Ways and Means, in order that inquiry might be made? Why accompany it with observations calculated only to excite a belief that the Commissioners of the Sinking Fund have been guilty of the grossest misconduct?

Through the various calculations which the gentleman had gone, in order to show an erroneous statement of the interest on the debt, it was impossible to follow him; nor was there time to make statements in the House, to meet those which the gentleman had prepared at his leisure in his closet. He should leave this, therefore, for the Committee of Ways and Means when the resolution came before them, and he ventured, without hesitation, to predict, that the error would be found on the side of the member from Connecticut. This part of the subject, therefore, he would leave to future investigation, and proceed directly to the two great points which seemed to be the gentleman's favorites, and upon which he appeared to expect to make the strongest impression.

These were, first, that the Commissioners of the Sinking Fund had not applied the whole sum of $7,300,000, agreeably to the law of the last session; and, secondly, that there was a deficiency of one hundred and fourteen thousand dollars against the Commissioners, which they had not accounted for. On the first point he would endeavor to show that much more than the sum of $7,300,000 had been applied agreeably to law. In the sixth page of the report of the Commissioners, they state their disbursements to have been applied:

1. To the payments of the interest, which, during 1802, accrued on the whole of the public debt, amounting to - - - $4,065,738 47
2. To the payment of the principal of the Dutch debt - - 1,344,000 00
3. Advanced to Commissioners of Loans, for the reimbursement of the eighth instalment of the six per cent. stock, the second instalment of the deferred stock, due January 1, 1803 - - 1,117,869 37
4. To pay temporary loans from the bank, (exclusive of the proceeds of the Bank shares) - 2,400 00
5. Debts due to foreign officers - 7,994 92
6. On account of certain parts of the domestic debt - - 14,966 84
7. Advanced to purchase bills in Holland, to meet that part of the Dutch debt which falls due in the first of the year 1803, to the amount of 3,600,760 guilders, at 41 cents to the guilder - - 1,476,311 60

Making in the whole paid on account of the debt - - 8,029,281 20

Or $729,000 more than was actually required.

The four first items in this statement the gentleman from Connecticut admits as having been applied agreeably to law, and they amount to $7,530,000 84; the fifth and sixth he took no notice of; but the seventh, he combated with all his energy, in order to show that it was not a proper charge upon the fund of $7,300,000. Let us, then, examine this question, and see whether the gentleman's position is correct, that the whole sum of $7,300,000 is to be applied to the discharge of debt due in any one year. The first section of the act of the last session provides "that the sum of $7,300,000 shall be appropriated to the Sinking Fund yearly, to be applied to the payment of interest and charges, and to the reimbursement and redemption of the principal of the public debt," and, in the same section, there is a proviso, "that after the whole of the said debt (except the six per cent. stock, the deferred stock, the 1796 six per cent. stock, and the three per cent. stock) shall have been reimbursed or redeemed, any balance of the sums annually appropriated by this act remaining unexpended at the expiration of six months next succeeding the end of the calendar year to which such annual appropriation refers, shall be carried to the surplus fund." Now, sir, I beg leave to ask if this proviso contemplates that the whole sum of seven million three hundred thousand dollars shall be applied to the discharge of debts actually due (though not payable) in any one calendar year; or, in other words, between the first day of January and the 31st of December? Does it not suppose that a balance of the seven million three hundred thousand dollars may remain in the hands of the Commissioners of the Sinking Fund, at the expiration of the year; and does it not provide, that after certain species of debts are extinguished, that such balance shall go to the surplus fund at the expiration of six months after the end of the year? If the construction of

the gentleman is correct, the proviso is absurd; it is a perfect nullity in itself. The proviso, in fact, does suppose that a balance of the $7,300,000 may remain after discharging all the demands which can be made against the United States in any one year, and does leave that balance in the hands of the Commissioners, to be applied in such manner as they think proper, until the whole debt is extinguished, except those kinds which have just been mentioned. What then, sir, has been the conduct of the Commissioners of the Sinking Fund? They have reimbursed all the principal both of the foreign and domestic debt, which was payable in the year 1802; they have paid all the interest which was due in that year, the two amounting to $6,552,970 60; and finding a balance in their hands after discharging all the demands against the Government, which could be made for that year, they have applied that balance, amounting to $749,019 40, together with the further sum of $729,282 20, to the purchase of bills of exchange on Holland, in order to meet the debt of the next year. In order further to show that this was the intention of the law, it may be well to refer to the documents of the last year, upon which the law was passed. It has been already seen that the legal demands against the Government for 1802 could not exceed the sum of $6,552,970 60, yet it was deemed expedient to appropriate the sum of $7,300,000, or $747,019 40 more than the amount of the demand. Will any gentleman now be so obliging as to inform me why this excess of appropriation was made? Sir, the reason is plain and obvious. It was, that the Commissioners of the Sinking Fund might, in each year, have in their hands such a sum, after discharging all legal demands against the Government for that year, as would enable them to make the necessary advances to meet the Dutch debt in the next year, in case the state of the Treasury should not authorize the disbursement of more money under the second section of the act. To prove that this was the idea at the time, I beg gentlemen to refer to the statement (R) accompanying the report of the Secretary of the Treasury last year; upon which it will be acknowledged that this law was passed.

This statement (R) shows, in the sixth column, "the total amounts in dollars to be provided each year in America, in order to meet the payments in Holland." It states that, in 1801, the sum of $950,965 50 had been remitted to Holland to meet the debt due there in 1802, and it likewise states that the sum of $2,271,692 would be required for the year 1802. These two sums added together make an aggregate of three million two hundred and twenty-two thousand three hundred and eighty-seven dollars and fifty cents, or about one million three hundred thousand dollars more than the United States were bound to pay in Holland in the year 1802. This sixth column of the statement (R) is transferred to the statement (S) where it forms the second column, and clearly proves that the excess of appropriation was intended to enable the Commissioners of the Sinking Fund to apply the balance of the 7,300,000 dollars to the purchase of bills of exchange in the antecedent year, to meet the demands for the subsequent year. Further to prove that this was the intention of the law, it may not be amiss to state that the report of the Secretary of the Treasury of the last year, before alluded to, calculates upon an amount of revenue equal to about $10,000,000.

Deduct from the expenses of Government equal to - - - - -	$2,660,000
And the annual appropriation of -	7,300,000
	9,960,000
Which sum of nine million nine hundred and sixty thousand deducted from the ten millions of dollars, the annual revenue, would leave only to be paid in bills to meet the debt in Holland in each succeeding year -	40,000
	$10,000,000

How far it would have been prudent to have placed the affairs of Government in this situation, I leave it for gentlemen to determine. This last calculation is not made to prove the necessity of the Commissioners of the Sinking Fund having applied this balance in this way at this particular period, but to show the real intention in passing the law. It is possible that this balance might have been expended in purchasing the stock of the United States, and a sufficient sum might have been drawn out of the Treasury to meet the debt in Holland for 1803; but this was a matter of discretion with the Commissioners, and they have thought it more advantageous to employ the money in purchasing bills than in purchasing stock. The whole sum of seven million three hundred thousand dollars, and considerably more, has been applied to the payment of the debt; and after paying all we were obliged to pay, the Commissioners used their discretion in applying the balance to such particular kinds of debt, as they thought it would be best to provide for at that time.

I come now, Mr. Speaker, to the second point of the gentleman from Connecticut, and on which he has dwelt with great force, viz: that there is in the hands of the Commissioners of the Sinking Fund an unaccounted balance of more than one hundred and fourteen thousand dollars. The gentleman has taken up this idea from the circumstance of his not being able to make the first and second statement on the sixth page of the report of the Commissioners quadrate with each other. I must beg leave to premise that it appears from the face of the report, that the Commissioners themselves did not intend that these two statements should quadrate: for it will be found, by recurring to them, that the second statement is not added up; that nearly six millions of guilders, mentioned in the last paragraph of the report, are not carried to the statement, and that they refer to sundry protested bills of exchange, and unexpended balances in the hands of agents, which are all to be carried to their credit against the first statement. I will show that the gentleman from

Connecticut, in his calculations, has not given the Commissioners the credit that they are entitled to; that he has given them no credit for sums appearing from the face of the report itself to have been paid; that he has given them no credit for the advanced prices of bills of exchange—he calculating at forty cents the guilder, instead of forty-one, which is the average price at which purchases have been made, as appears from the report; that he has given them no credit for protested bills of exchange, which indeed he supposes can amount to little or nothing; and that he has given them no credit for unexpended balances in the hands of agents, although they expressly state that such balances do exist. They exist, sir, from this cause: In order to purchase such bills of exchange as are required for the use of the Government, the Commissioners of the Sinking Fund find it necessary to authorize the cashiers of the several banks to make the purchase for them. Some of these contract for the bills, and wait until they get a check for the amount upon their respective banks, where the money of the United States is lodged; but this is not the case with all; for there are some who will not make the purchases unless the money is previously deposited to their credit in the bank. Of course, it is necessary to make advances at different periods, which are usually made to the amount of fifty thousand dollars at a time. It follows that there is an account current between the Commissioners and the cashiers, which perhaps is settled once or twice a year. When the report was made on the fifth of February, these accounts were not settled, nor is it to be expected that they can always be in such a state as to enable the Treasury officers to say, at any moment, how much there is in the hands of a particular agent unexpended.

Mr. N. said he would now offer a statement to meet that of the gentleman from Connecticut, from which he flattered himself he should be enabled to show, that the Commissioners of the Sinking Fund were entitled, not only to a credit equal to the $114,000 mentioned by the gentleman, but to a credit which would considerably exceed it in amount.

The Commissioners of the Sinking Fund, in their report, state the disbursements from the Treasury, in the year 1802, to have amounted to the sum of - - - -	$9,372,752 28
To which is to be added a balance of 2,313,846 guilders, remaining unexpended Jan. 1, 1802, equal to	928,539 40
Making an aggregate chargeable to them for 1802, of -	$10,298,290 68

They are to be credited as follows:

1. For the payment of interest, which, in the year 1802, accrued on the whole of the public debt, in the report, not denied -	$1,065,738 47
2. For the payment of the bank debt, including the proceeds of the 2,220 bank shares, $2,400, paid from impost duties, together	1,290,000 00
3. For payment of the principal of the Dutch debt, not denied	1,344,000 00
4. For the provision necessary for the reimbursement of the 8th instalment of the six per cent. stock, and the second instalment of the deferred stock, becoming payable January 1, 1803, not denied - - -	1,117,869 37
5. For the money laid out in the purchase of bills of exchange to the amount of 5,914,606 guilders, calculated by Mr. Griswold at forty cents to the guilder, equal to - - -	2,365,842 40
Which several sums, added together, give the amount of credits admitted by the gentleman from Connecticut - -	$10,183,450 24

Leaving the balance of $114,840 44 cents yet to be accounted for, and which the gentleman from Connecticut declares that he cannot account for. Mr. N. said he would endeavor to assist him, and he believed he could show that the Commissioners of the Sinking Fund were entitled to a credit even for a greater sum. In the first place, the gentleman from Connecticut has not given credit for two items, stated in the report to have been paid, and which were paid, as follows, viz:

On account of debts due to foreign officers - - - - -	$7,994 92
On account of certain parts of the domestic debt - - - -	14,996 84
On account of the difference in the price of exchange, Mr. Griswold calculating 5,914,606 guilders at forty cents each, whereas they really cost, at the least, forty-one cents the guilder, making a difference of one cent the guilder, equal to - -	59,146 00
One bill of exchange drawn by a house in Baltimore, which, Mr. N. said he knew had come back protested, and for which the endorsers had not repaid the money to the United States, amounting to one hundred and twenty thousand guilders, which, even at par, were equal to forty-eight thousand dollars - - - -	48,000 00
An unexpended balance in the hands of the cashiers of the banks at Philadelphia and Boston, which, considering the large advances made, might be fairly estimated at not less than - - - - -	10,000 00
Making, altogether, the sum of	$140,107 82

Which the Commissioners of the Sinking Fund are entitled to a credit for, more than the gentleman from Connecticut is willing to allow them, and $25,267 38 more than the supposed deficiency of $114,840 44, which has been dwelt on so triumphantly to-day.

From this view, which I have taken of the subject as briefly as I could, I venture to indulge a hope, that it will be seen that the Commissioners of the Sinking Fund have applied, not only the seven million three hundred thousand dollars, agreeably to law, but a considerably larger sum; and that no impression will be made, even upon their greatest enemies, that they hold a single dollar unaccounted for. As the time of the House is, particularly at this period, extremely precious, I will not venture to trespass on it further, but shall most cheerfully give my assent to the resolution, under the fullest conviction that every objection can be fully answered, even during the present session of Congress, although it can continue but one day longer.

Mr. S. Smith said, there was nothing in which gentlemen would be more frequently or grossly mistaken than in taking up accounts of the nature of those before the House, and attempting hastily to judge on them. It is to be regretted that this inquiry was not earlier brought forward, when it might have resulted in a fair decision, drawn from a full view of the subject. But when, at so late an hour, the gentleman has seen fit to bring forward his motion, and the documents on which we are to decide are packed up in our trunks, it will not be extraordinary that I am unable to follow. But for one or two remarks of the gentleman, I should not have thought it necessary to make the least reply. My only astonishment is that the gentleman from Virginia (Mr. Randolph) and my colleague (Mr. Nicholson) have been able off-hand to answer so effectually the objections that have been raised.

The gentleman says, the Commissioners ought not to have given us an estimate, when they could have stated the precise sums disbursed. So far as they could furnish a statement of precise sums they have done it. But in some cases they could not, as the thing was impossible. The Commissioners say, "that, besides the above-mentioned reimbursements and payments, there remained, at the close of the year 1802, exclusively of the amount of sundry protested bills still outstanding and of unexpended balances in the hands of agents, an unapplied balance, estimated at 5 914.-600 guilders, applicable," &c. If they had said estimated at dollars, the objection might hold, but they say guilders. These are purchased in bills of exchange on Amsterdam; and, so far, they are explicit; or bills are bought on London in sterling money, and the proceeds of those bills are to be laid out in the purchase of bills on Amsterdam, which are in guilders, and which can only be stated by estimate. This part of the business, then, can only be ascertained by calculation; and where is the injury? At the next session, what is now an estimate will be a precise statement. So much for this objection. The Commissioners were not competent to furnish any other than estimate.

The gentleman further observes that the names of those to whom the bills have been sold ought to have been brought forward, to enable gentlemen to determine whether, in these transactions, there has not been some favoritism. But, at this time, this would be highly improper. The fit time will come at the next session of Congress.

The gentleman has taken a retrospective view of the payments made by the Commissioners of the Sinking Fund respecting the foreign debt. To remit the instalments, as they became due, has always been attended with great difficulty. Mr. Wolcott, a former Secretary of the Treasury, found it, in his time, extremely difficult to remit to Amsterdam. He did me the honor to converse with me on the subject. I pointed out a mode, which he adopted. He was able to buy bills on London, but not on Amsterdam; but to have done this would have been a losing game. The merchants brought to him a cargo, which, it was estimated, would in Amsterdam produce a certain sum. He agreed to advance two-thirds of this sum on the merchants' consigning the property to our agent at Amsterdam; and to pay the remaining third on receiving advice that the amount of debt, contracted to be paid, was discharged. Could the Secretary have spent the amount of this money in Amsterdam? Nobody ever doubted that the transaction was a proper one. There was then a confidence in the Government, and there must still be a confidence in the Government.

Subsequent to that period, the trade to Amsterdam has increased, in consequence of the war, by which our merchants, who have debts there to pay, are enabled to buy bills. But, on the cessation of hostilities, this facility, in a great measure, ceased. Another mode, therefore, was to be pursued, to make the necessary remittance for the payment of the public debt. In the year 1802 the Secretary found it difficult to remit; he was asked forty-two cents per guilder; for the merchants, and my house, among the rest, held out; they thought they had the Secretary in their power, knowing that he must, at all events, remit to a large amount, and they would have got the better of him, but for his judicious sale of the bank shares. He thereby compelled us to sell out, and saved to the United States $58,000, and compelled the merchants to sell for forty-one cents the guilder. If he had not done so, I should have got forty-two cents a guilder for my bills; for that was the proportion that bills on Amsterdam then bore to bills on London. But by taking the demand from the market, he reduced their value.

Since the beginning of the year 1802, one million nine hundred thousand dollars have been required to be remitted to Holland. The Secretary again found difficulty from the high exchange required. I understand that he has made a judicious contract, and with gentlemen, too, who are not favorites; a contract which I should not have been willing to make, by which means he has been enabled to obtain exchange at 41 cents the guilder. It is true, the merchant gets the money now, and makes the payment in September. He appears, at first view, to gain the interest for the intervening period, but this is not the fact, as he sells the bills proportionably lower; and Government loses nothing, as the money, if remitted, would be useless in Holland. In all this there is

no favoritism. For the Secretary places his terms in the banks, and every merchant of credit may buy; all who have the means may participate; it is an affair of public notoriety.

Mr. S. concluded by observing that, though this subject had never before come to his view, he thought it best to throw out those few remarks in answer to the gentleman from Connecticut.

Mr. Griswold said, that he should not have troubled the House with any further remarks on the resolution which he had offered, as there appeared to be a disposition in gentlemen to adopt it, had it not been for some allusions which had been made by the three gentlemen who had been up, to the time of bringing the resolution into the House. He had been accused by those gentlemen of introducing his motion at the heel of the session, when sufficient time did not remain for a full investigation. These remarks, he thought, required an answer.

I did expect, said Mr. G., that the gentleman from Virginia (Mr. Randolph) would, in justice to me, have stated the circumstances which preceded the bringing forward the resolution; but, since that gentleman has not thought proper to do it, I will state those circumstances myself, and, as the gentleman is present, he will correct me if I commit an error.

The Journals of the House show that the report of the Commissioners of the Sinking Fund was transmitted to the Legislature on the seventh of February. The report was not read in this House, but ordered to be printed, and, in two or three days, appeared in a printed form on our tables. From a cursory view of the report, he found (to say no more of it) that it contained many errors, and required much explanation; and he then moved the reference to the Committee of Ways and Means, (of which committee the gentleman from Virginia, Mr. Randolph, is chairman,) and he communicated verbally, on the same morning, the objections which he had discovered to the report. On the same or the following day he committed the objections which he then made, to writing, and delivered them to the gentleman from Virginia, with a request that he would confer with the Secretary of the Treasury (who was the acting and responsible officer of the Board of Commissioners) and, if possible, obtain from him a satisfactory explanation of the report. The gentleman from Virginia did accordingly, as he understood, confer with the Secretary, and, in a short time afterwards, gave to him certain explanations which were not satisfactory. He therefore informed the gentleman from Virginia, at that time, that he should move a resolution in the House for instructions to the Committee of Ways and Means on the subject. And, having drawn up a resolution, which was substantially the same with that on the table, he presented it to the gentleman from Virginia, for his information and approbation; and that gentleman made no objection to any part of the resolution, except to two words, which, at his request, he expunged.

[Mr. Randolph inquired what words had been expunged at his request?]

Mr. Griswold replied, that the resolution originally directed the Committee to inquire whether the Commissioners of the Sinking Fund had, "in fact," applied the fund of $7,300,000 to the payment of the debt? &c. The gentleman from Virginia thought the words "in fact" sounded harsh, and implied more than was intended, and proposed that they should be expunged. And, said Mr. G., I accordingly expunged them from the resolution. The reason why the motion has not been brought into the House before this day must, said Mr. G., be well understood to have resulted from the press of other business. Many gentlemen who sit near me, can witness the frequent attempts which I have made, for more than one week, to introduce it, and it is no longer ago than yesterday that I proposed it to the House, but was voted down. With how much propriety, then, I have been charged with an improper delay of the resolution, until the heel of the session, the House will decide.

Mr. G. further said, that he presumed the gentleman from Virginia had, several weeks ago, communicated to his friends and the Secretary of the Treasury the objections to the report, and that those gentlemen were, or ought to be, prepared to give every explanation of which the report was susceptible.

But, since I am up, said Mr. G., I will proceed to consider some of the observations which have been made, in answer to those which I had the honor of submitting upon this subject. The gentleman from Virginia (Mr. Randolph) supposes that the Commissioners of the Sinking Fund have a right to claim that the payment of $1.287.600, made to the bank from the proceeds of the sale of the bank shares, was a payment from the fund of $7.300,000, and that the remittances made to Holland in 1802, to meet the instalment of the Dutch debt falling due in 1803, may also be considered as payments of the debt from the same fund for the year 1802; and that if either of these sums be added to the other payments, which are confessed to have been applied to the debt in 1802, it will be found that the whole fund of $7,300.000 was duly applied to the debt in that year. To these two claims, said Mr. G., I shall endeavor to give concise, but I trust satisfactory answers.

And, in the first place, I admit that, if the payment to the bank from the sales of the bank shares, is to be considered as a payment from the fund of $7,300,000, or if the remittances to Holland to meet the instalments of 1803, are to be considered as payments of the debt in 1802, then will it appear (supposing the estimate of remittances to be correct) that the Commissioners have applied the whole fund of $7.300,000 for 1802 to the debt in that year. But a slight attention to the documents and the law will prove that these claims are unfounded. The fund of $7,300,000 has been correctly stated by the Commissioners to have been drawn from the following sources, that is to say:

From the interest arising on the domestic debt transferred to the Commissioners - - - - -	$326,449 92

From the payment of debts originating under the late Government -	888 79
From one dividend on the bank stock of December 31, 1801 -	33,960 00
From the sales of public lands -	179,575 52
From impost and tonnage - -	6,759,125 77
	7,300,000 00

"Making in the whole," (to use the Commissioners words.) "the annual appropriation by law for the year 1802, under the act aforementioned." The act aforementioned, in the report, was the act to provide for the redemption of the whole public debt. By this statement it will appear that the Commissioners received the whole fund of $3,700,000 for the year 1802, exclusive of the bank shares, and of course were bound by law to apply, in that year, this fund to the payment of the principal and interest of the debt. The fund arising from the sale of the bank shares is not only altogether distinct from the fund in question, but is so considered by the Commissioners, in their report, as will be seen on page six of the report. It will likewise be seen on the same page, and on pages fourteen and fifteen of the report of the Secretary of the Treasury of December last, that the bank shares were sold under pretence of a law of the 31st May, 1796, and that the proceeds of the sale, agreeably to the provisions of that law, were applied to pay a debt due to the bank, in the same year. So that the sale of the bank shares, and the application of the money, has nothing to do, either with the law of the last session for the redemption of the debt, or the fund of $7,300,000 which was received by the Commissioners under that law, as already observed. Indeed the Commissioners have not pretended that any such connexion exists; they have acknowledged that they received the $3,700,000 as a distinct fund; and I ask, why they have not applied it within the year, as the law requires, to the payment of the public debt?

The claim that the remittances to Holland to meet the instalments of the foreign debt falling due in 1803 are to be considered as payments of debt in 1802, is equally extraordinary. The law of the last session declares, that, "it shall be the duty of the Commissioners, to cause to be applied and paid, yearly and every year, this fund of $7,300,000 to the debt." The Commissioners in their report declared that they have received the fund for the year 1802, and their advocates on this floor say that they have applied the fund to the payment of the debt yearly, and in the year 1802, because they have made provision for paying a debt which falls due in 1803. Or, in other words, the Commissioners have drawn the money from the Treasury and now keep it in the hands of their agents, or in their own pockets, and honestly intend to apply it to the payment of the public debt at some future period, and this has been a payment and application of the money to the debt in the year 1802. This, said Mr. Griswold, is a mere evasion of the law, and it is absurd to expect that such expositions will go down, either in this House or in the country. The law, said Mr. G., cannot be mistaken, and I did not believe that it would be misrepresented. The object of the law was to secure with certainty, the application of this fund of $7,300,000 in each year to the debt; and the law is so expressed as to define with perfect certainty the duty of the Commissioners. Now if it is a good execution of this law to provide only for the payment of debts in future years, your law is only made for the benefit of the acting officer of the Board of Commissioners; for, if a provision to meet a payment in the next year, is to be considered as a payment in the present year, a provision to meet a payment falling due ten years hence, on the same principle, is a good payment within the year; and the only effect of the law is, to place millions of the public money under the control of the Commissioners of the Sinking Fund, without interest, who, when called upon to know whether they have applied it to the debt within the year, have only to answer, that "the money has been well applied, for that it remains in their hands, or in the hands of their friends, to be delivered ten years hence to the public creditors, whose demands will then become due."

But gentlemen have said that the application of the $7,300,000 within the year was impossible, because the remittances to Holland must be made in advance, and the Commissioners were authorized to draw annually from the Treasury the sum of $7,300,000 only, and out of this sum they were bound to make seasonable provision for discharging the foreign debt of next year.

Mr. Nicholson said, if the gentleman alluded to him, he was incorrect. He had not said that the Commissioners could draw no more than $7,300,000; he said it was discretionary with the Secretary to permit a greater sum to be drawn or not. He was to judge whether the state of the Treasury would justify a larger draft.

Mr. Griswold said he was willing to consider the case under the gentleman's explanation, as the result would be precisely the same. By the law so often referred to, respecting the public debt, in the second section of the law, it was made the duty of the Secretary of the Treasury to advance to the Commissioners of the Sinking Fund, all such payments as might be necessary to discharge any demands against the United States as should become due at such time and times as would enable the Commissioners punctually to comply with the public engagements. Admitting then a discretion is given to the Secretary, as extensive as contended by the gentleman from Maryland, (but which, by-the-by, is not the case in the point under consideration.) yet, as it is admitted that there remained more than $4,000,000 in the Treasury on the first day of October, 1802, I ask, why was not the sum which was wanted for the payments in Holland in 1803, advanced by the Secretary, under authority of that section of the law to which I have referred? If the Commissioners had demanded this advance, would the Secretary, in his discretion, with $4,000,000 lying dead, have dared to refuse it? The plea, therefore, of imperious necessity, cannot prevail. The law, in commanding terms, required that the whole fund should be applied within the year to the debt, and there was no necessity for breaking in upon it.

But gentlemen have also said that the Commissioners were not bound to apply the whole sum within the calendar year. It was sufficient if they applied it within twelve months from the passage of the law, and that might still be done. But, said Mr. G., the Commissioners have already given the true construction to the law in their report, and the excuse now offered is at war with the report. The Commissioners say, in express terms, that they have received the fund of $7,300,000 for the year 1802—not for one year or twelve months from the passage of the law. The law required that the fund should be received in each year, and that it should be applied yearly and every year. Now, said Mr. G., what is to be understood by this? If the gentleman who offered this excuse does not understand the meaning, the Commissioners do, and they have declared in their report, that, although the law passed in May, they were authorized to receive the fund for the year 1802, and having received it, it is for the House to declare whether they were not bound to apply it in the same year.

Some remarks, said Mr. G., have been made by a gentleman from Maryland, (Mr. Nicholson,) to prove that the balance of $114,839 44, which appeared to be entirely unaccounted for in the Commissioners' report, might hereafter be explained, and a satisfactory account rendered for the same. What will appear hereafter, said Mr. G., I cannot say, I speak only of what appears at this time. But the gentleman from Maryland has said, that money remains in the hands of agents, and to his knowledge there is a sum still remaining in protested bills. This may be the case, or the gentleman may be mistaken; but if it is the case, why in the name of common sense and common honesty has it not been stated in the report? If this had been done, we might determine for ourselves how far the deficiency was covered. The gentleman from Maryland, however, has said that $7,994 92 has been paid to foreign officers, and $14,966 84 for certain parts of the domestic debt, which were not included in the statements which I submitted to the House; and that these payments appear in the first statement, on page six of the Commissioners' report. If, said Mr. G., the gentleman from Maryland will re-examine the statement to which he refers, he will find that he has taken the debtor side of the account, and carried it to the credit of the Commissioners. The gentleman will find that the two sums of $7,994 92 and $14,966 84, are only disbursements from the Treasury to the Commissioners, to enable them to discharge a debt due to foreign officers, and to discharge certain portions of the domestic debt, which, said Mr. G., I suppose to be the registered debt, on which interest has for several years been stopped, and the principal ordered to be paid; and of course, that the Commissioners are at this time to be charged with these sums, and are not entitled to credit until they actually pay the same to the creditors. To convince the gentleman that I am right, I beg that he will look again at page six of the report. He will there find, at the top of the page, the account of all the disbursements from the Treasury in 1802, to the Commissioners, including the two sums which he has mentioned, and forming the aggregate of $9,372,752 28, for this aggregate, together with the unexpended balance of guilders in Holland at the close of the year 1801. The Commissioners are accountable, and ought to be charged; and if the gentleman will then look down to the bottom of the page, he will find all the payments which the Commissioners claim to have made to the creditors. The words used by the Commissioners are: "That the above mentioned disbursements, made during the year 1802, and amounting to $9,372,752 28, together with the above mentioned balance of 2,313,846 9 guilders sterling, which remained unexpended on the first day of January, 1802, have been applied as follows: that is to say—" After which words follow the particular items which he had enumerated when he was first up, and which constituted the applications of the money to the debt, together with the estimated remittances to Holland, and when deducted from the aggregate of disbursements from the Treasury, as he had already mentioned, left the balance of $114,839 44 for which no account has been rendered.

It may perhaps, said Mr. G. be pretended hereafter, that something has been paid to foreign officers, and on account of the registered debt; but he hoped the gentleman from Maryland was now satisfied that nothing of that kind appeared in the present report. Indeed, said Mr. G., if these Treasury disbursements at the top of page six of the report, are to be considered as charges of the actual payment of those various sums to the creditors, he should then be compelled to make a much more formidable charge against the Commissioners, because it would be more certain and direct. The charge would then be, that the Commissioners had charged the public with $65,620 94, on account of payments to the domestic creditors, beyond the sums which were due to them, or ever actually paid, and that this sum was retained by the Commissioners by rendering a false account. To convince gentlemen, said Mr. G., that I was perfectly correct in this statement, I referred them to the Treasury report of last year, for the particular sums which were due to the domestic creditors in the year 1802. They were as follows:

For reimbursement and interest on the six per cent. and deferred stock - - - -	$3,350,362 01
For interest on the three per cent. stock - - - - -	572,391 15
For interest on all other descriptions of domestic debt - -	828,350 50
Amount due in 1802 -	$4,751,103 66

The sums received by the Commissioners for account of this domestic debt, in 1802, as appears by the present report, were:

For account of interest and reimbursement of domestic debt -	$1.654.699 61
For account of interest on domestic loans - - -	162.025 00
Amount received by the Commissioners in 1802 - -	$1.816.724 61

And if this amount is compared with the amount due, it will be found that the Commissioners have received from the Treasury, as has already been observed, $66,620 94 more than was due or could be paid to the creditors. But, said Mr. G., although I can see no necessity for the advance of so large a sum beyond what was due, yet as I presume that it is necessary to keep in advance a certain sum to the loan officers, beyond that which is payable—for the purpose of preventing any possible disappointment in the regular quarterly payments to the creditors—I shall make no further objection to this advance, so long as the Commissioners do not actually charge to the public more than is actually due to the creditors. And as this sum is to be considered as an advance from the Treasury, and not a charge of the Commissioners, I omitted to notice it when I was first up.

It had been said in reply to my remarks on the impropriety of rendering an account on estimate, that the Commissioners could do no more than estimate the remittances to Holland until they received the account of the bankers at Amsterdam. But, said Mr. G., the slightest attention will convince gentlemen that the remittances to Holland have nothing to do with the accounts of the bankers. The Commissioners undertake only to state what remittances they have purchased and paid for in this country, before the first day of January, 1803; and it was surely in their power to state the precise sum purchased and paid for; and the objection is, that, instead of doing this, they had only sent in an estimate which, for aught he knew, might be half a million wide of the truth.

Mr. Randolph explained, and said, that it could not be supposed that at the time the report was made, the Commissioners had received returns from all the agents employed in purchasing remittances. He knew it had nothing to do with bankers in Holland.

Mr. Griswold said that the explanation did not in the least mend the report; for that the Commissioners had declared in their report, that these remittances were exclusive of moneys in the hands of agents, and of course contained only those purchases of remittances, of which the Commissioners had received regular accounts; and the objection, as had been before explained, was not only that they had not stated precisely the amount of remittances, but they had not stated the moneys remaining in the hands of agents.

One gentleman from Maryland, (Mr. Smith,) has mentioned the sale of the bank shares, and expressed his approbation of that extraordinary measure. That transaction had nothing to do, said Mr. G., with the resolution under consideration. He hoped, however, as the subject had been mentioned as late as it was, that it would be brought under discussion. He should, however, content himself with saying, that, from a careful examination of the law of 1796, and the circumstances of the sale, he was persuaded that the sale was unauthorized by law, and that this large amount of property was sacrificed by a sale much below its value, and that he differed altogether from the gentleman from Maryland in respect to the necessity and the prudence of the measure.

Mr. G. said that he would conclude the remarks which he had to submit upon the resolution, as no opposition had been made to it, by saying that although he did not charge the Commissioners with any absolute misapplication of the public money, yet he knew that in the management of ten millions, favorites might easily be accommodated with the use of large sums, and those who controlled this enormous sum might in a variety of ways avail themselves of its use, without leaving much room for detection, even after a detailed account had been rendered.

The question was then taken by yeas and nays on agreeing to the resolutions of Mr. Griswold, and unanimously carried in the affirmative.

Ordered, That the Committee of Ways and Means have leave to sit during the sitting of the House, and that Mr. Dickson be appointed of the said Committee, in the room of Mr. Holland, who has obtained leave of absence for the remainder of the session.

And then the House adjourned until six o'clock, post meridian.

Six o'clock, P. M.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning the salt springs on the waters of the Wabash river," with sundry amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of Saint Mary's; to authorize the establishment of a new collection district on Lake Ontario; and the appointment of a Surveyor at Nanjemoy;" with sundry amendments; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act to revive and continue in force an act in addition to an act, entitled "An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen; and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act concerning the salt springs on the waters of the Wabash river:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to make Beaufort, the City of Washington, and Passamaquoddy, ports of entry and delivery; to make Easton, Nanjemoy, and Tiverton, ports of delivery; to change the name of the district of Nanjemoy to that of Saint Mary's; to authorize the establishment of a new collection district on Lake Ontario, and the appointment of a Surveyor at Nanjemoy:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House took up the amendments of the Senate to the act to revive and continue in force an act in addition to an act entitled an act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen.

Mr. Dawson observed that one of the amendments proposed by the Senate, allowed General Lafayette 11,500 acres of land, instead of 15,000, which was the quantity an officer of his rank was entitled to.

The amendment was referred to a select committee, consisting of Messrs. Southard, Goddard, and Dawson.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act to amend the Judicial system of the United States;" Whereupon.

Ordered, That the further consideration of the said amendment be postponed until to-morrow.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," with several amendments; to which they desire the concurrence of this House.

Ordered, That Mr. Nicholson and Mr. Randolph be appointed a committee, to go to the Senate, and, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach John Pickering, Judge of the District Court of the district of New Hampshire, of high crimes and misdemeanors; and acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

Ordered, That the committee do demand that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment.

Mr. Helms, from the committee to whom was this day committed the amendment proposed by the Senate to the bill, entitled "An act to make provision for persons that have been disabled by known wounds, received in actual service of the United States, during the Revolutionary war," made a report; which was ordered to lie on the table.

JUDGE PICKERING.

On motion of Mr. Nicholson the House, according to the order of the day, resolved itself into a Committee of the Whole on the report of the select committee, on the Message of the President of the United States, with the accompanying documents, relative to the official conduct of John Pickering, Judge of the District Court of the United States for the district of New Hampshire.

The report of the committee recommends the adoption of the following resolution:

Resolved, That John Pickering, Judge of the District Court of the district of New Hampshire, be impeached of high crimes and misdemeanors.

Mr. Huger objected to acting in this case at so late a period of the session.

Mr. Goddard moved the rising of the Committee, in order to postpone the resolution to the next session.

Messrs. Mitchill, Dana, and Mott, supported; and Messrs. Nicholson, Bacon, Hastings, Elmer, Randolph, and Eustis, opposed the motion. Motion lost—yeas 9, nays 43.

The Committee rose, and reported their agreement to the resolution.

The House immediately took up the report, and concurred with the Committee in the above resolution—yeas 45, nays 8, as follows:

Yeas—John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Robert Brown, William Butler, Samuel J. Cabell, Thomas Claiborne, Matthew Clay, John Clopton, John Condit, Thomas T. Davis, William Dickson, Peter Early, Lucas Elmendorf, Ebenezer Elmer, William Eustis, Edwin Gray, John A. Hanna, Seth Hastings, Daniel Heister, Joseph Heister, William Helms, William Hoge, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, and Thomas Wynns.

Nays—John Campbell, Samuel W. Dana, John Davenport, Calvin Goddard, Samuel Hunt, John Cotton Smith, Samuel Tenney, and Peleg Wadsworth.

Thursday, March 3.

Mr. Southard, from the committee to whom were yesterday referred the amendments proposed by the Senate to the bill, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen, and for other purposes," reported to the House their agreement to the same.

The House then proceeded to consider the said amendments of the Senate, at the Clerk's table: Whereupon, the question being taken that the House do concur with the committee in their agreement to the same, it was resolved in the affirmative.

The House proceeded to consider the report of the committee to whom was yesterday referred the amendment proposed by the Senate to the bill, entitled "An act to make provision for persons that have been disabled by known wounds, receiv-

ed in the actual service of the United States, during the Revolutionary War." which lay on the table: Whereupon,

Resolved, That this House doth disagree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals;" and, after some time spent therein, the bill was reported to the House, without amendment.

The said bill was then read the third time and passed.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act in addition to an act, entitled an act to amend the Judicial system of the United States:" Whereupon,

Resolved, That this House doth agree to the said amendment.

Ordered, That the Committee of the whole House to whom were recommitted, on the twenty-fourth of January last, the bill sent from the Senate, entitled "An act to carry into effect several resolutions of Congress, for erecting monuments to the memories of the Generals Wooster, Harkemer, Davidson, and Scriven," and sundry amendments to the said bill, reported by a select committee, be discharged therefrom; and that the farther consideration of the said bill and amendments be postponed until the first Monday in November next.

Mr. Southard, from the committee who were instructed by a resolution of this House, of the twenty-eighth of January last, "to digest some plan by which it can be ascertained what quantity of surveyed or patented land belonging to the officers and soldiers of Virginia, on State and Continental Establishments, was ceded to the Cherokee Indians, by the Treaty of Holstein, of the second of July, one thousand seven hundred and ninety-one," made a farther report thereon; which was read, and ordered to lie on the table.

The House again resolved itself into a Committee of the Whole on the bill further to alter and discontinue certain post roads, and for other purposes; and, after some time spent therein, the Committee rose and reported farther progress therein.

On the question that the Committee of the whole House have leave to sit again on the said bill, it passed in the negative.

A message from the Senate informed the House that the Senate disagree to the amendment proposed by this House, on the twentieth of January last, to the second amendment of the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three," and do insist on their second amendment: they desire a conference with this House, on the subject-matter of the said amendment, to which conference the Senate have appointed managers on their part.

The House proceeded to reconsider their amendment to their second amendment of the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three:" Whereupon,

Resolved, That this House doth recede from said amendment to the amendment.

Mr. Nicholson, from the committee appointed on the second instant, reported,

That, in obedience to the order of the House, the committee had been to the Senate, and, in the name of the House of Representatives, and of all the people of the United States, had impeached John Pickering, Judge of the District Court, of the district of New Hampshire, of high crimes and misdemeanors; and had acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles against him, and make good the same.

And further, That the committee had demanded that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment.

On motion, it was

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to lay before this House, early in the next session of Congress, a digest of the laws to regulate the collection of duties on imports and tonnage, with such alterations as may be deemed necessary thereto; and a digest of the laws for recording and registering of ships and vessels of the United States, with such amendments thereto, as he may deem useful and proper.

On motion, it was

Resolved, That the Clerk of this House be authorized to employ an additional clerk in his office, until the first day of the next session of Congress, at the same rate of compensation allowed to engrossing clerks, and to be paid out of the contingent fund of the House.

On motion, it was

Resolved, That the Secretary of State be, and he is hereby, directed to lay before this House, early in the next session of Congress, a view of the light money payable by vessels of the United States, entering the different ports of the nations entering their own ports.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting a letter to him from the Comptroller of the Treasury, and sundry statements, marked A, B, C, and D, prepared in obedience to the act, entitled "An act establishing a Mint, and regulating the coins of the United States," passed the second day of April, one thousand seven hundred and ninety-two; which were read, and ordered to lie on the table.

Resolved, That the Clerk of the House be authorized to pay to the Sergeant-at-Arms, the Doorkeeper and Assistant Doorkeeper, two hundred dollars each, in addition to their present allowance; and, also, fifty dollars to Alexander Claxton, out of the contingent fund of the House.

A message from the Senate communicated to the House certain proceedings of the Senate, relative to the impeachment of John Pickering, Judge of the District Court for the district of New Hampshire.

The said proceedings of the Senate were read, and are as follows:

"In Senate of the United States,

"*March* 3, 1803.

"Whereas the House of Representatives have this day, by two of their members, Mr. Nicholson, and Mr. Randolph, at the bar of the Senate, impeached John Pickering, Judge of the District Court for the district of New Hampshire, of high crimes and misdemeanors, and have acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same: and have likewise demanded that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment: Therefore,

"*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

"*Resolved*, That the Secretary of the Senate notify the House of Representatives of this resolution.

"Attest: SAM. A. OTIS, Secretary."

Ordered That the said proceedings of the Senate do lie on the table.

Resolved, That Mr. Samuel Smith and Mr. John Cotton Smith be appointed a committee, on the part of this House, jointly, with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed on the part of this House, to wait on the President of the United States, and notify him of the proposed recess of Congress.

Mr. S. Smith, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

On motion, it was

Resolved, That the Clerk of this House be authorized and directed to pay out of the moneys appropriated to defray the contingent expenses of the House, to the principal and engrossing clerks in the office of the Clerk of the House, respectively, two hundred dollars each, for their extra services during the present session.

SALE OF BANK STOCK.

Mr. Bayard.—I hold in my hand, Mr. Speaker, a resolution which I propose to submit to the House, the object of which is to institute an inquiry relative to the sale made by the Commissioners of the Sinking Fund of the bank stock which belonged to the United States. I regret exceedingly that it has not been in my power to bring forward this measure at an earlier period of the session, but the want of documents which it was necessary to procure at a distance has rendered the delay unavoidable. The pressure of business for some days past has allowed no interval in which the motion could be made, and the election only has been left to me to seize this late moment, or wholly abandon the object.

Before I lay the resolution on the table, I feel it incumbent upon me to explain the ground upon which I introduce it, being sensible that after it is once laid upon the table, the practice under a late rule of the House which prohibits debate upon the question of taking up business, would preclude any exposition of the principles or facts upon which the resolution is predicated.

This experience I derive from the conduct of the House upon the resolution I offered relative to the indemnification of our merchants, on the ground of the French spoliations, for which the claim of satisfaction upon the French Government had been renounced by our late treaty with that Power. The resolution I repeatedly endeavored to call up, and, without being suffered to enter into a discussion of the subject, was uniformly put down by a silent vote.

The resolution which I now propose to offer would be equally unattended with information as effect, without a development of the grounds, which, according to the view I have taken of the subject, ought to recommend it to the adoption of the House.

From a full consideration of the law under which we are informed the sale of the bank stock was made, I am persuaded the Commissioners had not an authority to make the sale; and I am also convinced, from documents I possess, that, admitting a power existed to sell the stock, the measure was inexpedient, and the bargain much worse for the interests of the United States than could have been obtained, and in fact was offered, at the time.

Having this impression with regard to the business, I consider it as the duty of this House to make it an object of inquiry, and I feel it but as a small objection that the inquiry cannot be completed during the session.

The first point to which I shall beg the attention of the House is the authority under which the stock was sold.

I do not mean to deny that a power once existed to sell the whole stock which belonged to the United States, but I think it will not be difficult to show that that power expired when the circumstances ceased to exist which had given birth to it.

It is material to the just understanding of the subject to refer directly to the loans made by the Bank of the United States to the Government, and from which was derived the balance due to the bank, and for the payment of which balance a power was delegated to the Commissioners of the Sinking Fund, by the act of Congress of the 31st May, 1796, to sell the bank stock. There was then due to the bank on account of the subscription loan - - - - - - $1,400,000

Under a loan authorized by an act to raise a further sum for the protection of the frontiers, &c.—

Payable 1795. November,	$100,000	
" " December,	100,000	
" 1796. January.	100,000	
		300,000
Loan under the act authorizing the loan of $2,000,000, payable 1st January, 1796		1,000,000
I include in the statement a loan from the Bank of New York, (because it is subject to the law of 1796,) under the act of 1794, and payable the 8th of June, 1796		2,000,000
Loan under the act authorizing the loan of $2,000,000, payable April, 1796		1,000,000
Loan under the act for the reimbursement of a loan authorized by the 2d session of the 3d Congress—		
Payable 1796, December 31,	$200,000	
" 1797, 1798	600,000	
		800,000
Loan under the act of March, 1795—		
Payable 1796, March	$500,000	
" " October	500,000	
		1,000,000
		5,700,000

Of this debt of $5,700,000, $4,400,000 fell due in the year 1796, including in the last mentioned sum $500,000, which the Secretary of the Treasury reported would be necessary to raise by loan on the 1st January, 1795.

The act of 1796 extending its provisions to the instalments of foreign debt which fell due in the year 1796, it is necessary to include in the statement an instalment of the foreign debt which fell due in that year, amounting to the sum of $963,641

Aggregate due to the bank in the same year - - - - - - - 1,400,000

5,363,641

This was the debt accruing, and composed in the manner stated, for which provision was designed to be made by the act of 1796. It had not been supposed till the beginning of 1796 that the wants or interest of the bank would require an early payment of the debt due to them from the United States. But in the commencement of that year an intimation was given to the Government that the affairs of the bank rendered it expedient that provision should be made for the discharge of the debt due to them. On the 16th of March, the Committee of Ways and Means were directed by the House of Representatives to ascertain from the President and Directors of the bank whether the loans to the United States could not be continued to more remote periods.

The committee having conferred with the President and Directors, afterwards received the following answer, which I find among the printed reports of the year upon the table, and which I shall beg leave to read:

"The Committee of Ways and Means have, pursuant to the order of the House of the 16th ult., made the inquiry therein directed, and have received from the President and Directors of the bank the answer and information herewith submitted:

"The committee appointed to confer with the Committee of Ways and Means on the subject of continuing to a more remote period the loans made to the United States having reported, the board took into consideration the most essential points that had relation to the present subject, viz: the great increase in the price of all alienable property, which requires a corresponding addition of circulating medium to represent it; the necessity of placing this institution in a more respectable situation in point of available funds, which will enable it to promote more generally the interest of commerce and manufactures, and afford the means of facilitating the financial operations of the Government by temporary loans, whenever the fiscal administration may require such a resource, as well as the more immediate advantage of the stockholders and customers of the bank, as both intimately connected with the active employment of a larger specie capital; whereupon,

"*Resolved*, That the United States be requested to extinguish the loans that are already due to the bank, as well as to make provision for those which may become payable in the course of the present year."

This requisition upon the part of the bank left no alternative to the Government but to make immediate provision to comply with their engagements.

The resources of the Treasury were not then as ample as a flourishing and increased commerce has since rendered them. It had moreover been drained by numerous miscellaneous claims which arose out of the war, and which had remained unsatisfied under the former Confederation, by the Indian war, by the Western insurrection, and by an expensive treaty with Algiers. In the actual state of things, the Government had no means to raise the money required, and preserve the faith of the United States, but by making a loan or disposing of the property which belonged to them. Under the pressure of this necessity the act of May, 1796, was passed. The power of the Commissioners to sell the bank stock is derived from this act, and the true question upon the point we are considering is, whether the authority delegated was simple, absolute, and permanent, or occasional and dependent upon circumstances. This question is to be determined by the design intended to be accomplished by the Legislature who passed the law. In my opinion, the intention of the Legislature is veiled in obscurity. It never was the design of Congress to make the bank stock a principal and direct fund for the payment of the debts stated, but only an auxiliary and contingent resource upon failure of the ordinary funds to satisfy the engagements of the Government. It is my wish to avoid unnecessary detail, but the subject is of that nature as to require a minute examination. The House will suffer me to bring to their view such parts of the act of 1796 as most materially concern the question which we are considering. The first section of

the act empowers the Commissioners of the Sinking Fund to borrow on the credit of the United States a sum not exceeding $5,000,000, to be applied to the payment of the principal of any part of the debt of the United States then due or to become due in the course of that year to the Bank of the United States, to the bank of New York, or for any instalment of foreign debt; and certificates for six per cent. stock irredeemable till 1819 were to be issued for any sums borrowed. The third section of the act provided that it should be deemed a good execution of the power to borrow, for the Commissioners of the Sinking Fund to cause to be constituted certificates of stock of the description before mentioned, and to cause the same to be sold in the United States or elsewhere, provided that not more than one moiety of the stock should be sold under par. We then find a clause in the following words from which the Commissioners infer their power to sell the bank stock:

"And it shall be lawful for the Commissioners of the Sinking Fund, if they shall find the same to be most advantageous, to sell such and so many of the shares of the stock of the Bank of the United States belonging to the United States as they may think proper; and that they apply the proceeds thereof to the payment of the said debts, instead of selling certificates of stock in the manner prescribed in this act."

The act of Congress provided three ways of raising the money required:

1st. By an ordinary loan; 2d, by the sale of six per cent. stock below par; 3d, by the sale of the bank stock.

The money at that time was not to be borrowed. The bank had been the common lender, but it was the bank which was now to be paid. The Commissioners then had recourse to the constitution of six per cent. stock, and sent for experiment $80,000 to New York to be sold. The stock was sold, but at a discount of twenty per cent. The loss was too enormous to suffer this course to be further pursued. The only fund which remained, and to which the Commissioners were driven by necessity, was the bank stock. They accordingly sold 2,780 shares, which produced the sum of $1,354,260, which was applied pursuant to the directions of the act of Congress.

My design in distinguishing the several loans which formed the aggregate of the debt intended to be provided for by the act of 1796, was in order to refer those disposed to make the inquiry to the direct and special provision of a fund in each law authorizing a loan, eventually to answer the debt to be contracted. This fund was the surplus of duties on imports and tonnage. The surplus of the ordinary revenue was made by law the immediate, and, in itself, was the natural fund to meet the debts in question. While such surplus existed, it was clearly not the intention of the act of 1796 to suffer six per cent. stock to be constituted and sold under par, or to allow any of the active and productive funds of the United States to be disposed of. The power to sell the six per cents and the bank stock, was evidently predicated upon the failure of the original funds provided, in consequence of the ordinary revenue being absorbed by prior encumbrances.

Can any gentleman affirm that it was the intention of the law to suffer six per cents to be sold under par, or the bank stock to be aliened, when there was idle money lying in the Treasury, wanted for no exigency, and bound by no appropriation? Now, sir, what are the circumstances under which the stock has been sold? It appears from the Message of the President, and the report of the Secretary of the Treasury, that there was a surplus of money, beyond expenditures, in the Treasury, during the last year, of $1,500,000. At the commencement of the last year, the debt due to the bank was $2,740,000. It does not appear that the bank had even requested the payment of this balance. But if it was the interest of the Government to discharge it, why was it not paid out of the inactive, unproductive money in the Treasury, without destroying a fruitful and profitable fund? I affirm that it was not simply an abuse, but an assumption of power to sell the bank stock, while there was an unappropriated surplus in the Treasury more than competent to answer the purposes for which the stock was sold. It cannot be doubted that if such a surplus had existed at the date of the act of 1796, that the power to sell the stock created by that law would not have been delegated. The creation of the power was a measure of necessity, and its existence depended upon the continuance of the same necessity. The bank stock was not a direct and immediate fund; it was simply auxiliary, and therefore contingent. The laws under which the debts were contracted, and the funds provided for their payment, considered collectively, plainly speak this language to the Commissioners of the Sinking Fund, "in the event that the surplus of ordinary revenue does not enable you to pay the instalment of foreign debt, and the debts due to the bank, you shall have power to sell the bank stock." A power depending on a certain event has no existence without the occurrence of the event. In the present instance the event did not exist which was the ground of the power given to the Commissioners, and their act therefore in the sale of the stock was not warranted by law. To discharge the debt due to the bank was the ostensible motive, but not the real object, to the sale of the stock. After a sum equal to the amount of the proceeds of the sale of the stock was applied to the payment of the debt due to the bank, there still remained due to them the sum of $1,452,400. And although the United States had an unproductive capital in their Treasury of $4,500,000, and the balance due to the bank was bearing interest, yet the money was suffered to lie useless in the Treasury, though capable of extinguishing an increasing debt.

The true object in selling the stock was to facilitate the remittance to Holland of an instalment of Dutch debt. I shall not, however, trouble the House with any remarks upon this Treasury operation, because it can be of no importance to inquire into the true pretence of selling the stock, for in fact there was no power existing to

make the sale. But it is connected with the subject to remark that this supposed power had been dormant for six years. During this long period the bank had not required, nor the Commissioners considered themselves either bound or at liberty to execute it. The law was designed for an occasional emergency. It gave an authority to sell the whole stock, or such part of it, as the demands on the Government at that time required. The Commissioners sold a part, and as much as was necessary to accomplish the design of the law. This was a complete execution of the authority, and the act since that time has been considered to be *functus officio*. Upon this point I shall request the liberty of making but one further observation.

The sale was permitted to be made only in case the Commissioners found it most advantageous to the United States. Now, sir, can it be said that it was most advantageous to the United States, or advantageous to them in any degree, to sell stock producing a profit of eight per cent. on the nominal capital, in order to pay a debt which might have been discharged by money in the Treasury, not wanted, and which produced no profit at all? In every view in which the subject presents itself to my mind, I consider myself warranted in saying that the act of the Commissioners in selling the bank stock was unauthorized by any law.

I shall now, Mr. Speaker, proceed to the consideration of the terms upon which the sale was made, and I have the means of showing that those terms were not as advantageous to the United States as it was the duty and in the power of the Government to obtain. I confess, sir, that this point in a great degree depends upon matters of fact, with respect to which gentlemen will form their opinions according to the information which they possess or may receive from the floor. We have taken pains to be accurately informed as to the facts which I shall undertake to state, and I am happy in being sensible that if I have been wrongly informed, the public, who are quite capable of discovering my errors, cannot be imposed upon. Upon this head there are two questions:

1st. Whether the stock was sold for the best price the market afforded?

2d. If not, whether the loss was compensated by any advantage which the Government derived from undertakings upon the part of the purchaser?

I am furnished with a price-current, which I believe to be accurate, of the bank stock at Boston, New York, Philadelphia, and London, about the time when the sale was made by the Commissioners.

The House will permit me to state the prices.

Boston, 1802: July 12, United States bank stock, 150; dividend off.

New York, 1802: April 14, and 21, and May 1—150. May 22—149; May 25—150. June 8—150; June 18—153½; June 19—154. July 9—151; July 16—151.

Philadelphia, 1802: July 1—151; July 3—150; July 7—151; July 10—151½; July 15—153½; July 21—154; July 23, 24, 26, 27—153½.

London, 1802: February 9—153½; April 7—155½; April 27—158, advice received 4th of June. June 10—155. July 4—151.

These prices were taken from actual sales. I shall assume the value of the stock at 150, though the average of the prices stated would warrant a higher rate.

The sale made by the Commissioners was in June, 1802, and the payments were to be made at the following periods in Amsterdam:

January 1, 1803—605,000 guilders; February 1, 1803—685,000 guilders; March 1, 1803—425,000 guilders; June 1, 1803—1,425,487 16½ guilders.

In consequence of this arrangement, the purchaser received two dividends upon the bank stock before any payment was made on his part, which, of course composes a part of the profit of his bargain.

The shares sold, 2,220, at 150, were worth	$1,332,000
The two dividends, at $32 upon a share, amounted to	75,480
The value, therefore, the United States parted with was	1,407,480
The sale was in fact made at 145, and yielded only	1,287,600
The United States plainly, therefore, lost	119,880

When recurrence is had to the times of payment allowed to the purchaser, he may fairly be considered as deriving the benefit of two dividends and a half upon the stock instead of two, as the payments are protracted by successive instalments, and the last instalment exceeding 1,460,000 guilders, not payable till June, 1803. But on an estimate undeniable, and as low as any gentleman can contend for, the United States incur a certain loss of $119,880.

We are now to inquire what benefit afforded by the contract will compensate this loss.

It is stated by the Commissioners that Mr. Baring, the purchaser, in consideration of the sale of the stock at 45 per cent. advance, undertook to pay in Amsterdam 3,140,487.10½ guilders, at the rate of 41 cents the guilder. The result of this engagement, on the part of Mr. Baring, depends upon the course of exchange at the time between the United States and Amsterdam, or between the United States and London, and London and Amsterdam.

The Commissioners state the rate of exchange between this country and Holland at 41 cents the guilder, and the exchange between England and Holland to have been ten guilders, eight stivers per pound sterling, which is 12 stivers below par. This information they say was collected by the Secretary of the Treasury, in an excursion to Philadelphia and New York. I do not know that the information is incorrect, but it is not complete. It does not state the exchange between the United States and London, according to communications which I have received, and in which I confide; the following were the rates of exchange:

Course of exchange in New York and Philadelphia on London: March, 1802, 96 to 97; April, 98; May, 99; June and July, from par to two per cent. advance.

In Boston and Salem, on London: June 10, 1802, 98 per cent.

In London upon Amsterdam: April 30, 1802, 10 guilders and 16 stivers per pound sterling; May, 10 guilders and 15 stivers per pound sterling; June 11, 10 guilders and 17 stivers per pound sterling; June 25, 10 guilders and 18 stivers per pound sterling; July 9, 10 guilders and 17 stivers per pound sterling; July 20, 10 guilders and 17½ stivers per pound sterling.

It will be recollected that 11 guilders to the pound sterling is the par of exchange.

Now, sir, if the statements which I have made be correct as to the course of exchange, the Commissioners, so far from having gained anything for the United States by the purchase of bills on Holland at 41 cents the guilder, have added to our loss, and to the profit of the purchaser of the stock.

In March, April, and May, bills on London might have been bought under par; during and subsequent to the same period, bills in London on Amsterdam might have been purchased also under par. The Government, therefore, might have remitted the instalment of the Dutch debt to Amsterdam, by the way of London, have allowed a commission of one per cent. for the operation, and yet made the remittance at par, and probably below it. This certainly was practicable, when during the period referred to the average of exchange between the United States and London was two per cent. below par, and the exchange between London and Amsterdam more than a half per cent. below par. Let me now ask what have the Commissioners saved by their contract to compensate the sacrifice of twenty dollars upon each of the 2,220 shares of stock which they sold?

They have sold our stock considerably below the market price, and have taken bills on Holland in order to indemnify the United States, at a rate nearly two and a half per cent. above par, when the remittance might have been made at par. And it will be remembered at the same time that a fund producing eight per cent. to the United States was sacrificed to make this remittance when there was a dead, unproductive capital in the Treasury, which might have been more beneficially employed to accomplish the same purpose.

Will gentlemen say that this strange transaction ought not to be investigated, and the motives and design of it understood? It is undeniable that a sacrifice was made of twenty dollars on each share, amounting upon the whole sale to $44,000. That two dividends were also sacrificed, amounting to $75,450, and making an aggregate loss to the United States of $119,880. And the compensation for this loss is an agreement to remit $1,287,600 to Amsterdam for a premium of two and a half per cent., amounting to the sum of $32,190, when even this premium might have been saved by due attention and proper management.

This premium paid for the remittance ought to be added to the loss of the United States in the transaction, and will increase it to the sum of $152,070. The excuse for this sacrifice is a speculative suggestion of the Commissioners, that if the Government had come into the market in order to purchase bills to the amount of the instalment to be paid in Holland, their demand must have raised the price of bills greatly above par.

But, sir, why was not the experiment made, and made at that period of the year when bills were low, and extended to the different commercial towns of the United States? By the report of the Commissioners, it would seem that applications were made only to the Bank of the United States, and to the Manhattan Bank. A contract of this description was not properly the business of any bank, and, therefore, it could not be expected that any bank would enter into the contract without a certain prospect of extraordinary profit. The Bank of the United States would have nothing to do with the business, and the Manhattan Bank offered to make the remittance at 43 cents the guilder. This offer I will show presently was more advantageous to the Government than the one accepted. But, sir, what I consider a just ground of complaint against the conduct of the Commissioners, is, that more industry was not employed to purchase bills with the idle money in the Treasury, in our different trading towns. Considering the large remittances annually made to England, the demand of the Government could not have materially affected the market if a competition had been excited. But it would seem as if a veil of secrecy had been thrown over the transaction, and I believe I am warranted in saying that scarcely a merchant in the United States was informed of the treaty with Mr. Baring until it was completed.

I shall claim the attention of the House but a few moments longer, and it is in order to show that the terms offered by the Manhattan Bank were more beneficial than those acceded to by the Government. A very short statement demonstrates the position. The profit allowed to Mr. Baring was twenty dollars on each bank share, and two dividends, amounting to the sum of $119,880 dollars. In consideration of this allowance, Mr. Baring undertook to pay in Amsterdam $1,287,600, at 41 cents the guilder. The Manhattan Bank, without any other profit, offered to pay the same sum in Amsterdam at 43 cents the guilder. The difference is two cents the guilder, which is less than five per cent. But calculating the difference at five per cent. it amounts only to the sum of $64,380. The profit allowed to Mr. Baring was $119,380. As the Manhattan Bank offered to take the contract at $64,380, their terms were of consequence $55,500 lower than those accepted. Why, sir, was this sum of money thrown away? The solidity of the bank, or their competency to perform the operation, was not doubted, and yet the Government have preferred to give $55,500 more than the bank de-

manded to an individual to undertake to make the remittance.

I shall trouble the House no longer; it is extremely possible that I have been wrongly informed as to material facts upon which my calculations are built, or my view of the subject may be fallacious. I will not, therefore, rashly condemn the conduct of the Commissioners. But, sir, strongly impressed as I am that the conduct of the Commissioners was not only unauthorized by law, but inexpedient and extremely improvident, I have considered it as my duty to submit to the House the following resolution:

Resolved, That inquiry ought to be made relative to the authority of the Commissioners of the Sinking Fund to make sale of the shares of the stock of the Bank of the United States, belonging to the United States; and also as to the expediency of the said sale, and the profit or loss resulting therefrom to the United States.

Mr. Randolph expressed his surprise that such a motion should be made at such a time. The sale of the bank shares owned by the United States had, for many months previous to the meeting of Congress, been the theme of much public as well as private discussion; and now, sir, as if it were an event of yesterday, on the very last day of their political existence, a resolution was offered demanding an inquiry into the legality and expediency of the measure; and, that nothing might be wanting to complete the singularity of the business, this motion is brought forward by a gentleman who quotes the law under which the transaction took place, and who confesses himself satisfied as to the most material point of the proposed inquiry—the legality of the sale. [Mr. Bayard said he had not confessed that the law authorized the sale.] Mr. R. continued. The gentleman will very soon perceive that his expressions have not been changed nor his meaning misunderstood. He did not, indeed, in so many words, affirm the sale to have been authorized by law, since his object was to prove its illegality; but he declared (he will recollect it, for the words were taken down) that the Commissioners would have been authorized to sell those shares in a case of extreme necessity. [Mr. Bayard bowed, in assent.] And what is this, said Mr. R., but to acknowledge that a discretionary power on the subject was vested by law in the Commissioners of the Sinking Fund? Who were to judge of the necessity of which the gentleman speaks but the Commissioners? And what necessity would give them the power, if not transferred to them by law? Could the necessity create a law? And are the Commissioners to do any act not authorized by law, under the plea of a necessity of which they are to judge? Certainly not. The gentleman, therefore, by conceding that this sale would have been legal in a case of necessity, has abandoned altogether the question of its legality—the main branch of his inquiry. Mr. R. said that the interruption of the mover of the resolution had compelled him to anticipate some of the observations which he had to offer.

It is not a little curious that the gentleman, in imitation of his friend from Connecticut, should preface his motion by a long speech, tending to criminate the conduct into which he wished to inquire, because, as he had stated, he could not be permitted by the rules of the House to make any observations on his motion, if it had been submitted in the first instance, until the House should have agreed to take it into consideration. How the question of order was affected by this ingenious device, Mr. R. said, he would leave the House to determine. He had called neither of the gentlemen to order, because he was aware of the imputation which might be thrown out, (he would not say that the opportunity for making it had been courted) that the House shrunk from investigation.

Mr. R. said that the objection to the sale of the bank shares divided itself into two questions—the legality and the expediency of the measure. By the act of the 31st May, 1796, which had been quoted, the Commissioners of the Sinking Fund were empowered to borrow a sum, not exceeding five millions of dollars, to be applied to the discharge of the debt due to the several banks before or during the year 1796. It moreover declared that it should be a good execution of the power to borrow, either to create a six per cent. stock, irredeemable until the close of the year 1819, or to sell the bank shares—the property of the United States; provided that not more than one-half of the stock to be created should be sold below par—a provision which barely secured something more than 50 per cent. for the stock, since, by selling a certain amount at par, the Commissioners of the Sinking Fund might dispose of an equal amount to the same purchaser at 99 per cent. below it. The stock created by virtue of this law, and known in all our financial statements by the name of the 1796 six per cent. stock, (because issued in that year,) was accordingly sold to the bank itself, (the creditor,) at a loss of 20 per cent.; the United States, in fact, renewing their obligation to the bank, with that additional encumbrance. Unwilling, however, to persist in so ruinous a measure, the Commissioners of the Sinking Fund issued only eighty thousand dollars of that stock, and resorted to the other alternative, the bank shares, 2,780 of which they sold to meet the more pressing demands of the banks, leaving still undischarged a considerable debt to them. Mr. R. said that the act in question contained no limitation clause as to the time of its duration, and that it had never been repealed. It was likewise worthy of remark, that it was entirely silent as to the necessity, of which so much had been said. The meaning of the law, like that of all others, must therefore be inferred from its own provisions, and not from the impressions of individual members who were present on its passage. Under these circumstances, the law must remain in full force until carried into complete execution. Its only limitations were the amount which the Commissioners were authorized to raise, and the objects to which the money, thus raised, was to be applied. It was not alleged that the proceeds of the last sale of bank stock did, together with the sale made in 1796, and the eighty thousand dollars six per cent. stock then

created, exceed the sum which the Commissioners were authorized to raise by the act of the 31st of May, 1796. In fact they fell far short of it; and as to the object to which they had been applied, let gentlemen consult the annual report of the Secretary of the Treasury, which was laid before the House early in the session. Mr. R. then read an extract from that report:

"Of the 5,000 shares of stock of the Bank of the United States, 2,780 had been sold in 1796, by virtue of the act, entitled 'An act making provision for the payment of certain debts of the United States, and for the purpose of discharging a part of the debt due to the bank.' The remaining 2,220 shares were now, under the same authority, sold at 45 per cent. advance. The $1,287,600 which they produced, were, in conformity with the provisions of that act, applied towards discharging an equal amount of that part of the *debt due* to the *bank before* or *during* the *year* 1796; and the purchaser of the stock sold, at the same time, to the Treasury, an equal amount in bills on Holland."

The sum to which they were limited, by the law in question, not having been exceeded, and the money having been applied to the very purpose specified in the act, what doubt could exist of the legality of the transaction? And if any doubt did exist, the law being designated by the Commissioners themselves, under which they had acted, were not the House competent to decide whether the construction given to it was or was not correct? It was no matter of fact, which a select committee alone could investigate, but the true intent and meaning of a short act of Congress which was to be determined. It is conceded that, in a case of extreme necessity, the sale would have been authorized by law, because the first sale was made under those circumstances. At that time, we are told, the Treasury was empty, our credit 20 per cent. below par, and the bank urgent and clamorous for a debt which we had no other means to pay. But now, so far from being pressing for their money, the bank would be glad to let it remain in our hands: our credit was high, and the Treasury overflowing. Mr. R. thanked the gentleman for the high encomium which he had passed upon the present order of men and things, and for the picture which he had drawn of our prosperity, when contrasted with our necessitous condition in 1796. This eulogium was perhaps undesigned, but it was not therefore the less valuable or sincere. To have legalized this procedure of the Commissioners of the Sinking Fund, and to have obtained the support of the gentleman from Delaware, it was only necessary to have beggared the Exchequer, and to have impaired the public credit. Then, indeed, we should have found favor in his sight, and the sale of the stock, at whatever loss, would have been altogether legal and expedient. But to have millions in the Treasury is what the gentleman cannot brook, and to sell 2,220 bank shares for (within less than an hundred thousand dollars) as much as was obtained for 2,780 in 1796, is the offence which has excited his animadversion. And if the Commissioners of the Sinking Fund were to purchase the 1796 six per cents., the Administration might be reproached with having raised the credit of that stock to 100 cents in the dollar which had been issued at 80.

In respect to the expediency of the measure, Mr. R. said that this must be decided, not by the mere price at which the stock was sold, but by both the contracts with Mr. Baring, taken together; and if (which he believed to be the case) as much was gained on the contract for bills as was lost on the sale of the stock, (supposing a loss to have been sustained,) the sale could not be condemned on the ground of expediency. The House would recollect that a gentleman from Maryland, of undoubted commercial information, had, on a late occasion, informed them that, but for this negotiation, the merchants would have been able to dictate to the Treasury their own terms of exchange. Would the House put such information as this, and the extensive and accurate knowledge which the official character of the Secretary of the Treasury enabled him to obtain, in competition with the anonymous allegations which had been produced, coming perhaps from mere stockjobbers? For the gentleman from Delaware did not inform the House of the quarter from whence his information was derived. Mr. R. said that his habits did not lead him to an accurate and detailed knowledge of the course of exchange between the United States and Europe, and the different States of Europe with each other; but he believed it would be difficult to establish the fact that the exchange had been in our favor with England, or generally in favor of London with Amsterdam. The Treasury had been accused of not taking a sufficiently extensive range, and purchasing bills in Salem and Boston, where the exchange was more favorable. He had it from the head of that department, in conversation with him, that an attempt to purchase a few hundred thousand guilders in Salem or Boston, (he did not recollect which,) gave an immediate spring to the price of exchange there; and, on inquiry, he found that remittance to the desired amount could not be obtained on better terms, in those towns, than in the other commercial cities of the United States.

It had been remarked that the dividends on the bank stock sold had been given in to the purchaser; but was not the money immediately paid in discharge of the bank debt? And, moreover, was not the stock retained until information should be received of the payment of the bills drawn on Holland?

Mr. R. observed that, in this transaction, the House would not consider the rate of exchange merely, (favorable as the contract was,) but the secure footing on which the business was placed. Heretofore we had had bills returned upon our hands, but, in this transaction, a valuable consideration was retained in our hands until we should be assured that they were paid.

Mr. R. concluded by congratulating the House on the variance between the charges brought against the present and the former Administration. Formerly, the ground of complaint was, that the public treasure was wasted, and debts to a large amount incurred. Now, the theme of animadversion is, that the Treasury is overflowing

with money, and that these debts are paid. Under an unshaken conviction of the legality of the conduct of the Commissioners of the Sinking Fund, and a firm persuasion that the sale was beneficial to the United States; persuaded, also, that this was neither the proper time nor manner for examining into the facts mentioned by the gentleman from Delaware, he should give his dissent to the resolution.

Mr. S. Smith.—I will not regret that the gentleman from Delaware has thought proper to introduce his resolution by a lengthy speech at two o'clock of the day on which the present Congress ceases to exist; nor will I presume that the gentleman had any other object in view than that which a sense of duty compelled him to; nor do I mean to make this late period an objection to the discussing of the subject; for although unprepared by any previous notice of the gentleman's intention, I will take leave to notice some of his estimates and views.

The gentleman has taken two views of the subject; the one as to the legality of the late sale of the bank stock, the other as to its expediency. He acknowledges that, under the act of 1796, making provision for the payment of certain debts of the United States, two thousand seven hundred and eighty shares of bank stock had been sold during that year, and that such sale was legal; and yet, although the very same law still continues to exist, the gentleman insists that the late sale of two thousand two hundred and twenty shares, made by the Commissioners of the Sinking Fund, was not legal. He has given reasons which, no doubt, operate on his mind in favor of that opinion; but he has given one reason which would have convinced me, if I had not been already satisfied, that the sale was legal; for he has said, that, had the necessity of the case demanded the sale, then the sale would have been legal. If, then, a necessity would have made the sale legal, I would ask the gentleman, who was to be the judge of such necessity? Was it that gentleman and his friends, or was it the Commissioners of the Sinking Fund? The gentleman will agree with me that the Commissioners alone could judge, could act; the Secretary of the Treasury, it appears by the documents, submitted to them a report, on the seventh day of June, 1802, and they resolved "that the 'Secretary of the Treasury be authorized to sell 'the shares of the stock of the Bank of the United States, belonging to the United States, and 'to apply the proceeds to the payment of the prin-'cipal of the debt due by the United States to the 'Bank of the United States, before or during the 'year 1796."

Now, Mr. Speaker, had I doubted my own construction of the law, that doubt would have been removed when I see the decision on its legality given by the Secretary of State, and the Attorney General, the great law-officer of the Government; those gentlemen have given their opinions, not hastily as the gentleman from Delaware has done, but officially and after mature consideration. The gentleman apologizes for the first sale by saying that the Bank of the United States pressed for payment at a time that was very inconvenient for the United States to pay; and compelled the Secretary of the Treasury, in 1796, to sell at great disadvantage. He admits that, if the bank had, prior to the late sale, pressed for payment, and there had been no other money in the Treasury, that in such case the sale would not only have been legal but expedient. Could the gentleman have given a stronger reason in favor of the expediency and propriety of the late sale of the remaining bank stock than the conduct of the bank in 1796! Knowing, as the bank did, the wants of the United States at that period, payment was demanded, and so insisted upon, the gentleman tells us, that the Commissioners of the Sinking Fund were compelled to sell two thousand seven hundred and eighty shares of bank stock, at less than five hundred dollars each share, to comply, as the gentleman says, with the urgency of the moment. Now, sir, if there had been no other reason, the paying off the bank when convenient to ourselves would have been sufficient, thereby liberating ourselves from a debt to an institution that, judging from their former conduct, (as related by the gentleman,) we had reason to fear, might seize on some other moment of urgency and compel us to sacrifice the remaining stock to disadvantage. The Commissioners have, therefore, done well, sir; they have seized a favorable opportunity and have sold the two thousand two hundred and twenty shares of bank stock belonging to the United States at five hundred and eighty dollars each share; amounting nearly to the same sum as was obtained by a former board for two thousand seven hundred and eighty shares, and have paid therewith an equal amount of debt due the bank. But the gentleman says that the stock was worth six hundred dollars each share; and that, of course, twenty dollars each share less was received, than ought to have been obtained.

I will admit, sir, that bank stock was worth six hundred dollars each share, at the time of the late sale—nay, sir, I will do more—I will inform the gentleman that Mr. Baring, the very person who purchased the stock, did offer the Secretary six hundred dollars each share, payable in money, into the Treasury, or five hundred and eighty dollars, payable in Holland, at the rate of 41 cents the guilder. I think the Secretary was right in preferring the last terms. Indeed such was the opinion of many merchants at the time the sale was made. I will now endeavor to show that the sale was expedient, judicious, and advantageous. To do this, I really know no language stronger than that in the Secretary's report of the 7th of June last, to the Commissioners of the Sinking Fund, in which he says:

"That, from the great diminution of trade between this country and Holland, it is impracticable to obtain bills on Holland, to the amount necessary for the year 1803; that exchange was already forty-one cents the guilder, and that an attempt to purchase the large amount now wanted, say $2,347,000 would raise exchange; that exchange on London was then 168 per cent., which, when remitted to London, and vested there in bills on Holland, (the exchange there being ten guilders eight stivers the pound sterling,) would, with commission and other charges, make the guilder cost forty-three and a half cents."

He also states that the only considerable offer he had received was that by Mr. Baring, and one from the Manhattan Bank, which bank offered to remit the whole at the rate of forty-three cents the guilder; the other banks, I believe, declined undertaking to furnish bills or payment in Holland on any terms. The Secretary, then, had to choose either to take the offer of the Manhattan Company, of forty-three cents the guilder, or to remit through London, which, he states, would have cost forty-three cents and a half the guilder, or to take Mr. Baring's offer of forty-one cents the guilder, payable in bank stock, at five hundred and eighty dollars each share, of four hundred dollars original cost. The Commissioners of the Sinking Fund preferred the latter. The gentleman says, they ought to have preferred the six hundred dollars each share, and to have purchased bills therewith. But, to what purpose, sir? We had money enough in the Treasury, we wanted not money at home; we wanted to place money in Holland. Had we sold the stock at six hundred dollars, still we should have been exactly as when we began. Bills to the required amount were not procurable; the debt in Holland would not have been paid, and our credit would have suffered. Would that have given the gentleman and his friends pleasure? I know not, Mr. Speaker; but I well recollect that the gentleman and his friends when the bill (making provision for the payment of the whole of the public debt) was under consideration, objected—nay, warmly objected, to that provision which authorized a new loan in Holland intended only to be resorted to, in case bills to meet our payments in Holland could not be procured. Those gentlemen then reprobated the idea of borrowing in Holland, and now complain, because a loan there was not resorted to, in preference to the sale of bank stock. Had it been resorted to, those very gentlemen would have told us, that it was easy to pay off old debts by creating new. But the bank stock, the gentleman says, was an active stock, giving an interest or dividend of eight per cent., and has been sold to pay a debt, bearing an interest of six per cent. The gentleman has been unfortunate. He presumes too much on the late hour he has chosen to introduce his resolution and his speech. What is the fact? A share of bank stock which gives, he says, eight per cent., he ought to have told us that the eight per cent. was on the original cost of the stock, say on four hundred dollars, giving an annual dividend of thirty-two dollars the share, has been sold for five hundred and eighty dollars, and stops therewith an interest of six per cent. per annum, of thirty-four dollars and eighty cents, which gives an annual gain of interest to the United States of two dollars and eighty cents on each bank share; besides, it lessens the principal of the debt of the United States the difference between four hundred dollars and [five hundred and eighty dollars, or nearly fifty per cent. on that transaction; for, let it be remembered that we owed to the bank, and applied an equal amount of money, then in the Treasury, to pay off the bank; that is, we received for the two thousand two hundred and twenty bank shares, the sum of $1,287,600, and paid of the principal of the debt due the bank $1,290,000. Thus liberating us from a debt due to an institution that has been indulged with immense advantages—I mean that of having all the deposits of the United States exclusively within its vaults—an advantage which, according to the gentleman's account, it has not merited, and which, I trust, will, ere long, be extended in due proportion to banks which have been equally useful, and which will be at least equally as friendly to our Government as that bank has been.

The gentleman, Mr. Speaker, has been mistaken in his calculations; he states that the difference or loss on the sales between five hundred and eighty dollars, at which the two thousand two hundred and twenty shares of bank stock were sold, and the six hundred dollars at which they might have been sold, was $119,000.

[Here Mr. Bayard arose and said, he meant including the two dividends, amounting to $75,000, which Mr. Baring received before he had to pay the money in Holland.]

Mr. Smith continued. I admit the gentleman has a right to correct his statement. I presume the figures have been furnished him; but, sir, he is mistaken; the United States lost nothing thereby, for, immediately after the Secretary closed the bargain with Mr. Baring, he caused payment to be made to the bank of an equal sum (as I have shown) and thus stopped an interest, equal, at least, to the dividend which Mr. Baring would receive. It follows, then, that the gentleman should have stated the loss at forty-four thousand dollars, being twenty dollars the share on the 2,220 shares sold.

Mr. Baring made the purchase after the 7th of June, and had to put our bankers in Holland in cash, in the month of January, February, and March, and part in June following. But, sir, there was an advantage by the sale of Mr. Baring to the United States, which the gentleman has not mentioned. I mean the security of the payment in Holland; for, sir, if I am rightly informed, he does not obtain a transfer of the stock until the money is paid in Holland, and he has given good security for the contract; so that the payment being secured without possible loss, may and ought to be considered as equal to two or two and a half per cent. on the whole sum. We have already suffered so severely by bills being protested, as to enable us to form some estimate of the risk.

Merchants' commission for endorsing bills is generally 2½ per cent. The real difference, then, between the $580 the share and $600 makes a sum, on 2,220 shares, of $44,400, which the gentleman calls a loss. This apparent loss is more than made up by the forty-one cents per guilder at which the remittance was made, and the forty-three cents asked by the Manhattan Bank; for the sake of calculation we will call it five per cent.; five per cent. saved on the amount of sales—say $1,287,000 is $64,380—making a gain of nearly

$20.000 in favor of the sale made by the Commissioners. But, sir, the Commissioners have a just right to claim credit of five per cent. on the whole sum due in Holland in 1803—say on $2,347,000; for, sir, it is a well known fact that the merchants who hold money in Holland, declined selling, and held back their bills; they knew well the immense sum wanted by Government, and were certain that the Secretary would be compelled to give a high exchange. Nor did they sell in any large amounts until the transaction with Mr. Baring was known; they then knew that Government were no longer in their power, and they came forward and supplied all the exchange that was wanting at the same price allowed Mr. Baring—say 41 cents the guilder. Again, I repeat, that the sale to Mr. Baring enabled the Secretary to purchase the residue of the bills required, at less than he otherwise would, and therefore that the Commissioners ought to have the five per cent. credit on the $2,347,000, being a gain to the United States of - - - - - - - - $117,350 00
Deduct the difference of $20 per share on 2,220 shares - - - 44,400 00
72,950 00

Being a gain, by the judicious management of the Commissioners of the Sinking Fund, of seventy-two thousand nine hundred and fifty dollars, between the sum actually paid for the discharge of the Dutch debt in 1803, and the offer made by the Manhattan Company. But the gentleman says, that due pains were not taken to purchase; that the desire to purchase was not made public. Sir, the gentleman is mistaken; I believe the Bank of the United States was employed in the purchase, and all its branches; I presume they made it public, because it was their duty. I know that the cashier of the Branch Bank of Baltimore gave it every possible publicity, for he advertised for bills in the public newspapers. No favoritism, as has been hinted, was given; the price was fixed, and the cashier could neither give more nor less; all shared alike who had bills to sell, as will be seen when the accounts are rendered at the next session. But the gentleman says, if bills on Holland were not procurable, the payment might have been made through London. The Secretary states, and I believe him correct, that it could not been done at less than forty-two and a half cents the guilder, calculating exchange on London at 168 per cent., and from London on Amsterdam at ten guilders, eight stivers the pound sterling. The gentleman denies that those were the exchanges at the time; he quotes his information from persons he declines to name; and this anonymous authority he wishes the House to admit in preference to the authority of the Secretary of the Treasury. The gentleman quotes the exchange in March, April, and May last, as being under par; which I doubt; but what had the gentleman to do with those months? The Secretary made the report on the 7th of June, on which the Commissioners were to act. He quotes the exchange then on London, to be 168 per cent., or nearly one per cent. above par.

Now, sir, suppose the Commissioners had directed payment to be made there; London, at 168 per cent. the guilder, would have cost, at that exchange, forty-three and a half per cent. the guilder. But what would have been their mortification when they would have found, as was the fact, that exchange rose rapidly to 170 per cent., and best bills actually sold in Baltimore at 172½ per cent.? Had Government entered into the purchase of bills to the amount they required, I have no hesitation in believing that exchange would have risen to 175 per cent.

The gentleman states, also, from his anonymous authority, that the exchange on Holland was not fairly quoted by the Secretary in his report. Sir, the Secretary's information was from the Messrs. Willink, the known bankers of the United States at Amsterdam. Those gentlemen being the correspondents of my house, I can practically say, that the Secretary's information was substantially correct. But exchange fluctuates continually, and no person ought to be accountable for changes therein.

Permit me here to say, that I am pleased with the sale of the bank stock, on another account. I think it folly for Government to hold that kind of property, while they are in debt; that it was ridiculous to be receiving dividends from the bank with one hand, and paying the same bank an interest on a debt due, with the other. Being now released from a concern in the Bank of the United States, we may, and I hope will, at the next session, authorize a distribution of the deposits among the several banks, agreeably to their merits, and in proportion to their capitals.

The Secretary deserves praise for his judicious attention to the commercial interest of the Union. He was well aware that his entering into competition with the merchants in the purchase of exchange on London, for so large an amount, could not fail to raise the price, so as greatly to injure them. That consideration, I know, had great weight in determining him to comply with the terms offered by Mr. Baring.

But, sir, I will ask, what does the gentleman mean? To find fault, is it? His resolution, in truth, means nothing. We are told, ten hours before a dissolution, that an inquiry ought to be made into the legality of the sale of the stock of the United States in the Bank of the United States, &c.

But the gentleman does not deign to tell us by whom the inquiry is to be made. Does he mean that the next Congress should make this inquiry? We have not the power to bind them. Does he mean to appoint a committee of this House to make the inquiry? They would not have time to do so, and to make a report.

Does the gentleman mean to send the question to the Supreme Court of the United States? Or does he mean that this House shall immediately judge of the legality? If he does, I have, for myself, made the inquiry, and am ready to declare the sale to have been legal; I am also ready to declare that the sale was expedient, judicious, and highly beneficial to the interest of the United States, and am ready to give my vote to that effect.*

Mr. BACON expressed his regret at this resolution being offered at so late an hour, when it was impossible to make a fair inquiry. He had expected greater candor, and he was sorry to find his expectation had been disappointed.

Mr. BAYARD said it was entirely owing to accident that this resolution had been deferred to so late a period, as the documents on which it was founded had not before been obtained. Not, however, meaning to take the least advantage, he had more than two weeks ago informed the gentleman from Virginia (Mr. RANDOLPH) that he meant to lay such a resolution on the table, and had stated the points to which he intended to direct the inquiry. He had also intimated this intention to the gentleman from Maryland two days since.

Mr. RANDOLPH said that this subject had been the theme of so much public and private discussion, that he had expected it would be made an object of attack for some time after the session commenced. That during the discussion of the act making provision for the whole of the public debt, he differed from the gentleman from Delaware as to the construction of the act of the 31st May, 1796, on the ground that the bank stock was applicable, as contended for by him, (Mr. R.,) to the payment of "any instalment of foreign debt," as stated in that law, but that he did not then understand the gentleman to have denied that it was applicable to the bank debt due before, or falling due during the year 1796. That he had no recollection of having received any notice of a specific motion to be made on this subject; but he must do the gentleman the justice to declare, that he had frequently expressed his disapprobation of the measure, in conversation with him. The House, however, knew of no notice but what was announced to it, nor would such a motion have prolonged the time left for investigation. Mr. R. said, that when the gentleman from Connecticut was up yesterday, he then expected some strictures on the sale of the bank stock. He was not apprized that the *finale* of this entertainment was to be wound up to-day by the gentleman from Delaware.

Mr. BAYARD said the gentleman's recollection varied widely from his own. He had mentioned to him two points of inquiry. It had been stated in a hurry, and the gentleman may have been occupied at that time with other thoughts.

Mr. NICHOLSON said he would do the gentleman from Delaware the justice to say, that he had, two days ago, stated to him his intention of laying such a resolution on the table.

Mr. BACON said he was not disposed to go into the arguments in favor of this resolution. In one respect he regretted this resolution; in other respects he rejoiced at it. If he had entertained a mistake in expecting from gentlemen more candor, he was happy in being delivered from it. Since there was a different disposition entertained from that which he had expected, he was happy in being apprized of it. He was happy to find the real situation in which they were. If we are not all seeking one and the same object, it is proper that our fellow-citizens should know who and what we are; that they may see whether or not we are all harmonizing; and see, also, who are and who are not aiming at the great object of all government, the public good. The people will judge from our proceedings, and will see, if such there are, who are endeavoring to destroy their confidence in those who administer their concerns. Our fellow-citizens will act understandingly. More system and more harmony will follow. I have no doubt but that in this way a public advantage will result from this measure, though I can see no advantage from making the inquiry at this hour.

Mr. GRISWOLD said the House were indebted to the gentleman for his sermon. He expressed his pleasure at the discussion which had arisen, as a correct understanding of the subject might be expected from a comparison of ideas.

The authority to make sale of the bank shares is supposed to be derived from the law of the 31st of May, 1796; and by a true construction of that law is to be tested. As I, said Mr. G., understand that law, it gives authority to do three things: first, in the first section, to borrow a sum not exceeding five millions of dollars at six per cent. The second section provides the manner in which the evidences of debt shall be issued. The third section gives two other authorities, the one to create six per cent. stock, and the other to make sale of the bank shares, if they find the same to be most advantageous. Here, then, are three distinct objects. If it was more for the benefit of the United States to sell the bank shares than to create stock, they may sell them. The Commissioners have, therefore, only a discretion in this respect. If they could not create stock and sell it without incurring a certain loss, they had authority to sell the bank stock; but if they could create stock, they were not authorized to sell the bank shares. The fact is conceded that they could have made a loan at six per cent. in the market, and of consequence they were not authorized to sell the bank shares.

There is another ground on which I think that sale unauthorized: that taken by the gentleman from Delaware. If gentlemen will pursue the several loans made, they will find that in every case of a loan, there was an appropriation, in the

*The following statement of exchange has been sent to the editor, in confirmation of what General Smith had stated from memory, taken from the books of one of the first commercial houses in Baltimore, being sales actually made.

"General Smith will thank Mr. ——— to give him the course of exchange, for cash, from the first of March, 1802, to the end of the year, say for each month."

"*On London*—March, 66⅔ per cent.; April, do.; May, from 66⅔ to 67½ per cent.; June, 70; July, 72½; August, 70 a 72½; September, say same; October, 69 a 70; November, 70; December, cash 70, at 72½ a credit of 60 days."

first instance, of the current revenue, to repay it; each of the loans was only an anticipation of the revenue. What follows? This: that if there was a sufficiency of money in the Treasury last appropriated, and lying dead, it was not right to take the money from a fund subsequently appropriated, before the first appropriation was exhausted. On similar ground, in my private affairs, I give authority to my agent to sell a farm to pay a particular debt, in case a ship of mine expected from the East Indies does not arrive in time. Has he authority to sell the farm in case the ship does arrive? Clearly not. The authority was only ulterior and contingent. It is agreed that the current revenue was sufficient to satisfy the debts of the bank, and it is therefore conceded that there was no right to sell the shares.

But if on the legal principle it should be granted that they had authority to make the sale, still, what necessity was there for it? It is admitted that the bank stock was productive, and that it produced eight per cent. on the original sum. It is also admitted that four and a half millions lie dead in the Treasury. Whence, then, the necessity of selling the bank stock, the keeping of which was so beneficial, and of suffering four millions and a half to lie in the very bank to which we are indebted? I can see no necessity for suffering it to remain. There can be no necessity for it. Gentlemen are, therefore, driven to this excuse: that it was necessary to sell the bank stock to enable them to make remittances to Holland. But will this be admitted? The Commissioners were not authorized to sell to meet the instalments of Dutch debt due in 1802, but only those due in 1796. Let us examine the case. They pretend to the authority merely to enable them to pay the debt due to the bank; for paying the bank they show no necessity. It is only a pretence, therefore, and might be called by a harsher name—a subterfuge. But is it true that this sale has not been made on terms which have subjected the United States to a loss? The facts of the gentleman from Delaware have been admitted to be correct—that Mr. Baring offered fifty per cent. advance for the bank stock, and the Secretary refused; and gentlemen now attempt to prove that the Government gain more by forty-five than fifty advance.

But their calculations are not correct. If the bank stock, 2,200 shares, had sold at the market price, at 150, it would have produced beyond what was produced, at 145, at which they were sold - - - - - - - - $44,000
To which are to be added two dividends 75,000

Making an aggregate loss on the sale of 119,000

So much for the loss. Gentlemen say there has been gained by the favorable terms of remittance seven and a half per cent.

Mr. S. Smith said he had not so stated. He had stated that the difference between 41 and 43 cents a guilder amounted to $95,000 in favor of the Treasury.

Mr. Griswold replied that the gentleman had miscalculated. He has estimated the gain at seven and a half per cent., whereas it is but five, and only produces a gain of $64,000.

Mr. S. Smith.—My calculation was not made on the amount of Mr. Baring's purchase; but was the result drawn from the whole sum to be remitted, amounting to $1,900,000, for which, but for that contract, the Secretary would have been obliged to give at the rate of forty-three cents a guilder. Now the gentleman understands me.

Mr. Griswold.—I understand the gentleman, and that he calculates upon a mere matter of speculation, and not on an actual transaction, on which there was only a gain of $64,000. But even allowing the gain to be $90,000; still the loss on the whole transaction will be about thirty thousand dollars. For the House will observe that the Manhattan Bank offered to remit the whole at forty-three cents the guilder. Therefore, on their own statement, a loss has been incurred of about thirty thousand dollars. I wish to know why the Commissioners of the Sinking Fund did not accept the offer of the Manhattan Bank, and thereby save the bank shares?

The gentleman from Maryland finds fault with the gentleman from Delaware for going back so far as April and May, and asks what the Commissioners were then to do? Undoubtedly, they were to purchase bills, if offered at a fair price. If so offered in April or May, it was their duty to purchase them; and if he has proved that they could be purchased in April and May upon good terms, and the Commissioners did not purchase them, he has shown that the Commissioners did not do their duty. The gentleman says that he and his partner demanded forty-two cents.

Mr. S. Smith.—I said no such thing. I said the merchants of Baltimore demanded.

Mr. Griswold.—He said, then, the merchants offered to sell at forty-two cents a guilder. I ask, why bills were not purchased at this price, which is one cent lower than the offer of the Manhattan Bank?

Upon the whole, upon every view I can take of the subject, I consider the Commissioners as having made a very bad bargain; and that they sold the drafts without authority is, in my judgment, clear. I may possibly err. Gentlemen of legal talents may, perhaps, hold different opinions. But still I wish a decision by this House; and though an investigation shall not be now made, that we shall, by agreeing to this resolution, show our sense that it ought hereafter to be made; in which case the subject will be recommended to the early attention of the next Congress.

Mr. S. Smith said, to meet the views of gentlemen, he had prepared an amendment, which, instead of referring the subject to a committee, who could not possibly attend to it, would bring it directly before the House, and enable them to decide upon it. He therefore moved an amendment, so as to declare that the Commissioners were authorized to make the sale, and that the sale was highly expedient.

The Speaker declaring this motion not in order, it was not received.

Mr. Nicholson was extremely sorry to be under

the necessity of detaining the House, at a time when he was fearful their patience was nearly exhausted; but he ventured to throw himself on their usual indulgence for a time, which, he assured them, he would make extremely short. He could not help expressing a very high gratification at the introduction of the resolution, as it afforded to the friends of the Administration an opportunity of giving some explanation to a transaction which had, for many months past, proved an ample source of discussion in the public papers. In these it was clear, that the subject was either totally misunderstood, or most grossly and shamefully misrepresented. When it came to be fully examined, he did not entertain a single doubt but that every unprejudiced mind would consider the sale of the bank stock, as a wise and prudent measure.

The gentleman from Delaware (Mr. Bayard) had, two days before, notified him of his intention to lay a resolution on the table, similar to that now under debate; and he did imagine that no other inquiry was expected, than than that which would be produced by this discussion. Since the information was given him, he had bestowed some little attention on the subject; but neither time nor attendant circumstances had allowed him to give it such an examination as he could have wished; for the gentleman from Connecticut had, on the same day, mentioned to the House, that he wished to make an inquiry into the report of the Commissioners of the Sinking Fund. This, more extensive in its nature than the other, had likewise occupied him; and the few hours he had been enabled to dedicate to the two, were insufficient to go fully into the detail. The general principles, however, he professed to be acquainted with, and upon these he met both the gentlemen with the utmost cheerfulness.

He should pursue the same course which the gentleman from Delaware took at first, and in which he was followed by the member from Connecticut, (Mr. Griswold.) He would endeavor to show, in the first place, that the sale was authorized by law; and, in the second place, that it was expedient to sell at the time when it was made.

Mr. N. said, he readily agreed with these gentlemen, that, if any authority to sell did exist, this authority was derived from the act of 1796. As this has been so often read, he would not go through it again in detail; but should beg leave to state, in general terms, that it authorized the Commissioners of the Sinking Fund to borrow five millions of dollars, for the purpose of paying such debts to the Bank of the United States, to the Bank of New York, and such instalments of the foreign debt, as were then due, or should become due, in the year 1796. The law provided that this authority to borrow, might be exercised in three different ways. First, they might accept the money from individuals, and give them credit on the Treasury books in the same manner as for the present domestic fund debt; secondly, they might issue certificates of debt to the amount of the five millions, and sell them in the market at whatever they would bring, provided that not more than two millions and a half were sold under par; and thirdly, they were authorized, if they deemed it most advantageous, to sell such and so many of the shares in the Bank of the United States, belonging to the United States, as they might think proper, and apply the proceeds thereof to the abovementioned debts, which were due before the year 1796, or which became due in that year. The first inquiry we are to make is, what was the amount of the debts of these three descriptions, which were due prior to the year 1796, and which became due in that year? I shall acknowledge, sir, said Mr. N., without hesitation, that this is a part of the subject into which I have not had time to look. The gentleman from Delaware, however, who, I suppose, has bestowed much labor upon it, as he acknowledges that he has been preparing for this discussion through the whole of the session, has made a statement of these debts; and it is upon this statement that I shall build my argument. I think he stated that the debts which were due to the Bank of the United States and the Bank of New York, at the close of the year 1796, together with the instalment of the foreign debt, which fell due that year, amounted to rather more than $4,500,000. The debt due to the Bank of New York was paid, the instalment of foreign debt was paid, and part of the debt due to the Bank of the United States was paid. Of this last, however, he admits that, on the first day of January, in the year 1802, the sum of two millions seven hundred and forty thousand dollars was due, and was part of the debt due in the year 1796.

Let us now examine in what manner the then Commissioners of the Sinking Fund executed this law. Under the first of the three authorities given them, nothing was done, for they could borrow no money. This was a period when the credit of the United States was low, indeed. Under the second authority, they issued certificates; and, instead of selling the five millions, they could only sell eighty thousand dollars' worth; and this is admitted to have sold at *twenty per cent. below par.* This small sum, however, could make no impression upon the debt; they were obliged, therefore, to resort to the third expedient, that of selling a part of the bank shares. The United States, at that time, held five thousand shares of stock in the Bank of the United States. Of these the *then* Commissioners sold two thousand seven hundred and eighty, which produced the sum of $1,384,260. And this sum, together with that raised by selling the eighty thousand dollars' worth of certificates, paid the Bank of New York, and satisfied the Bank of the United States for the time. Other reductions we afterwards made from other sources, but still the debt, intended to be provided for by that law, remained unextinguished; for, on the 1st of January, 1802, the Government were still indebted to the bank in the sum of $2,740,000, part of the debt due in 1796, as the gentleman from Delaware himself has shown. Now, sir, let us draw this point of the argument to a conclusion. The act of 1796 gave the Commissioners of the

Sinking Fund (a permanent body always in existence) an authority to sell the bank shares, to pay a debt then due to the Bank of the United States. The then Commissioners of the Sinking Fund did sell a part of the bank shares, and did pay a part of the debt due to the bank, leaving two thousand two hundred and twenty shares unsold, and leaving $2,740,000, a part of the same debt, still due on the 1st of January, 1802. The present Commissioners of the Sinking Fund finding that debt still due, and finding the fund provided for its extinguishment still remaining, did apply the fund towards paying the debt; did sell the shares under the law, and did pay, with the proceeds, to the bank $287,600, part of the debt which was due in 1796, and which might have been paid at any time from the year 1796 to the present hour.

But, sir, the gentlemen tell us that the authority to sell did not exist. Let me ask them if the act of 1796 has been repealed, or if it has expired? If it is repealed, when did the repeal take place? If it has expired, on what day and in what year did it expire? Let gentlemen point to the repealing act; let them name the time of its expiration. This, however, they cannot do; the law is still in existence, and the authority to sell exists, of course. The gentlemen, however, assume a strange and, to me, a most absurd position. They say the authority to sell depends upon the necessity of selling; they deny the necessity, and, of course, deny the authority. Sir, the law declares that the Commissioners may sell, if they shall think it more advantageous for the United States. Here, as discretionary power is given to them, they are to determine whether it is advantageous or not; their own judgment is to guide them. If they act improvidently, if they sacrifice the interests of the nation, they are responsible for it; but this cannot affect the right to sell. Are gentlemen aware how far their doctrine would lead them? If they had no authority to sell, the sale is void, and Mr. Baring has no right to the shares which have been sold. Are the gentlemen prepared to say, as lawyers, that this is the state of things? Are they ready to give it as their opinion, that Mr. Baring is not the true owner of the shares which have been assigned to him. Even admitting that the sale was an improvident one, which I will presently show was not the case; and that the Commissioners have abused their authority, is it contended that the abuse of the authority takes away the authority itself? If you empower an agent to sell an estate on what he may deem advantageous terms, and you afterwards think the price for which he sold too low, can you, by your disapprobation, revoke his authority and render the sale void? Mr. N. said, this, he believed, would not be contended for? You give a discretionary power, and the discretion is abused, your agent is responsible to you, but you cannot undo what he has done.

Mr. N. said, he was surprised that the gentleman from Delaware had not endeavored to build an argument upon an amendment which the gentleman himself had proposed to the act of last year, making provision for the redemption of the whole of the public debt. It would be remembered that the gentleman, last year, had expressed an opinion that the law of 1796 was no longer in force, and had moved an amendment, which was adopted, and which would be found at the latter part of the fourth section, in these words: "And 'provided further, that nothing herein contained 'shall be construed to revive any act authorizing 'the loan of money, and which hath heretofore 'expired." If the law of 1796 had expired before that time, this proviso would prevent its revival; but the gentleman, neglecting his own amendment, draws no argument from it, and does not attempt to show when the law expired, or that it ever did expire. Indeed, from the clause immediately preceding that just read, it would be seen that the law of last session fully recognised this power of selling under the act of 1796; for it provides that the power given by the fourth section to reloan certain instalments of the Dutch debt, "shall not be construed to repeal, diminish, or affect the power given to the Commissioners by an 'act making provision for the payment of certain 'debts of the United States, (the very act in question, passed in 1796,) to borrow certain sums of 'money, and to sell the shares in the Bank of the 'United States, belonging to the United States, 'in the manner, on the terms, and for the purposes provided by the said act." Here is a recognition of the power to sell, and yet the power is denied, without any attempt to show that the law is either repealed or expired.

Having proved, as he believed, that the Commissioners had a clear, undoubted authority to sell, he would now proceed to the second objection offered by the gentleman from Delaware, and would endeavor to convince the House that the sale was a good one, and that the United States had made more money by it, than they would have done, if a different course had been pursued. In this he would be very brief.

The two thousand two hundred and twenty shares sold at forty-five per cent. advance, or for five hundred and eighty dollars each, and produced the sum of $1,287,600. By selling to Baring, the Commissioners of the Sinking Fund were enabled to make an advantageous contract with him for the payment of the debt in Holland. The Bank of the United States had refused to contract to make the remittance; the Manhattan Bank, in New York, offered to contract, but the lowest rate offered was at forty-three cents a guilder. Mr. Baring offered to contract at forty-one cents the guilder, provided the Commissioners would sell him their shares in the Bank of the United States.

This proposition they acceded to, and sold the 2,220 shares, for - - - -	$1,287,600
Gained on the purchase of bills of exchange for 3,140,487 guilders, at 41 cents each, instead of forty-three cents; the difference of two cents per guilder, equal to $62,809 -	62,809
	1,350,409

This sum makes the real proceeds of the bank shares, and shows the true amount received by the United States for them - - - -	1,350,409
But the gentleman from Delaware says, the sale might have been made at fifty per cent. advance, and we might likewise have received a half yearly dividend; and this, he thinks, would have been a better bargain. Let this be tried. Suppose the 2,220 shares, sold at fifty per cent. advance, or for six hundred dollars each - - - - - -	1,332,000
Add the half yearly dividend at four per cent., which it is said we might have received likewise, besides getting the fifty per cent. advance, the dividend of four per cent., or sixteen dollars per share, equal to - -	35,520
This would have given us for our shares, the sum of - - - -	1,367,520
In this case, however, we should have been obliged to pay at the rate of forty-three cents the guilder, instead of forty-one cents, and the difference of two cents per guilder on 3,140,487 guilders would have been against us, instead of in our favor. This, therefore, is to be deducted, and is equal to $62,809 - - - -	62,809
Making the true proceeds of our shares, agreeably to this operation, only -	1,304,711
Or less than the Commissioners of the Sinking Fund actually received, by	$45,698

But the gentleman from Delaware supposes that we might have retained our bank shares, and might have advanced money from the Treasury to buy the bills in Holland; in which case, if we had kept them another year, we might then have sold them at fifty per cent. advance, and should have received two half-yearly dividends upon them, equal to eight per cent., or thirty-two dollars the share. If this calculation is made, it will be found that we have still made money by the contract.

Suppose the two thousand two hundred and twenty shares sold at fifty per cent. advance, they would have yielded, as before stated	$1,332,000
Add the two half-yearly dividends, at four per cent each, or thirty-two dollars for each share - - - -	71,040
This, then, would have been the amount received by the United States -	1,403,040
We must, however, have given forty-three cents the guilder for 3,140,487 guilders, instead of forty-one cents, which the purchase was made from Baring at; or $62,809 more, which must, therefore, be deducted, and is	62,809
And it shows that we should only, in that case, have received for our two thousand two hundred and twenty shares, the sum of - - - -	1,340,231
Or less than the Commissioners received, by - - - - -	$10,178
And if to this sum of $10,178, be added the year's interest, which we must have paid to the bank for the amount of the debt paid by the proceeds of the shares, which interest, calculated at six per cent., on $1,287,000, is equal to - -	$77,220
To which add the former sum, of - -	10,178
And it shows that we should have lost, by this operation, the sum of - -	$87,398

Thus, in every point of view, it appears that the sale made by the Commissioners was highly advantageous.

The statement which he had offered, Mr. N. said, was plain and simple. It was such as must speak to the mind of every man, and such as every man could readily make for himself. The principles he had assumed, were those adopted by the gentleman from Delaware; and he thought it was fully proved, that the Commissioners, instead of censure, merited approbation. As the law was neither repealed nor expired, it followed that it was still in force; the law being in existence, the authority under it existed too.

Relative to the various prices of exchange at the several periods of the year, he was not disposed to say anything, for it was a subject with which he was not at all conversant. But he must be permitted to declare, that he felt more confidence in the information given on this point, by his colleague, (Mr. S. SMITH,) than in that offered by the gentleman from Delaware. His colleague he knew—his knowledge was such as depended on himself. The gentleman from Delaware declared his information to be derived from a respectable source, but would not say what that source was. The gentleman, no doubt, was satisfied with it; but, until he informed the House from whom his knowledge was derived, he must expect them to rely more confidently on that of his colleague, whose acquaintance with commercial affairs he believed to be accurate and extensive.

Mr. N. said, he should not vote for the resolution, because it was impossible to make any other inquiry, than that which had already been produced by discussion. He considered this as a sufficient inquiry. The facts were all before them, and the House could decide the principles. By adopting the resolution, it would seem as if the House entertained doubts both as to the legality and the expediency of the sale, and this he did not believe. His mind had never doubted. He was clearly and unequivocally of opinion that the sale was both lawful and expedient.

Mr. BAYARD.—Before the question is taken upon the resolution which I had the honor this morning to lay upon the table, the House will indulge me in a

short reply to the observations of gentlemen who are opposed to the resolution. The late hour of the evening forbids my trespassing long on the patience of the House, and I should certainly not have risen a second time on the subject, had I not found myself greatly misunderstood or misrepresented in the arguments of my adversaries. It is not a little surprising, after the explanations which have been given, that an impression should remain on the mind of a single gentleman that any design was entertained in calling up the subject at a late period of the session to preclude a full discussion of it, or to secure any advantage from the circumstance of the friends of the Administration being surprised by unexpected objections to a measure, which sufficient time would have enabled them satisfactorily to have answered. The design of proposing the resolution was no secret. It was disclosed to gentlemen who it was known would resist it, and it was reasonable to suppose would communicate it to their friends. I understand full well why the time is complained of at which the subject is brought up. It supplies the defects of inconclusive arguments in support of a measure which no preparation would have enabled its friends better to have defended.

I consider it as no very favorable symptom that some gentlemen have discovered so much irritation in the debate. Do they mean to tell us that there is any measure of the Administration which at any time in this House ought to be exempt from scrutiny? Sir, in my opinion, instead of complaining of our conduct, they ought to thank us for the step we have taken. The sale of the bank stock has been strongly impeached in the public prints, and has excited much jealousy in the minds of many people. We now afford the Administration a fair opportunity of showing the authority under which they made the sale, and of explaining the expediency of the measure. It is not to be presumed that they acted unadvisedly, and they have only to state the grounds upon which they proceeded. I hope it will be remembered that the resolution simply proposes an inquiry. It imputes nothing to the transaction; and it would seem to me that those gentlemen who have most faith in the correctness of the measure, should be most fond of having it deliberately investigated.

The act of the Commissioners in the course of the argument has been impeached upon two grounds: First, that they had no authority to sell the stock. Second, that there was no occasion for the sale, and that it was made upon terms injudicious and prejudical to the interest of the United States. I have no intention of going through the whole subject, or of repeating the remarks submitted in opening the discussion. I shall confine myself to a reply to what has been urged upon the other side of the House. I do not know that I should have imposed the trouble even of this task upon myself, had not admissions been attributed to me which I pointedly deny, and which comprehend positions which I have considered as wholly untenable. It was stated that I admitted that the power given to sell the bank stock by the act of 1796, was in existence at the date of the late sale, and that the only question on the subject was as to the necessity of making the sale.

I may have admitted that the law of 1796 was repealed, and therefore *sub modo* in existence. The power given by law was not absolute, but contingent. The power was delegated by the Legislature in contemplation of a certain state of things. If the state of affairs had been different it would not have been granted. To exercise the power, therefore, when events had removed the whole ground upon which it was given, can never be justified as long as it plainly appears that the exercise was not conformable to the view of the Legislature. The measure was originally adopted as the sole alternative, to preserve the credit of the Government. Necessity gave it birth, and its existence was made to depend upon the same necessity. The Government was called upon to discharge the loans which had been made by the bank, which had been prolonged by courtesy beyond the original terms of the loan, but remained payable on demand. There was no money in the Treasury—none to be borrowed, none to be raised without an enormous sacrifice by the sale of six per cent. stock. Under these circumstances the law authorized the sale of bank stock.

We are now told, when none of these circumstances exist, when the Government had money enough in its hands to pay the whole debt due to the bank, that still it was warranted to suffer the public money to remain unemployed in the Treasury, and to sell the bank stock, which was a productive fund. I have nothing to say as to the motives of the bank in pressing their call for the money, nor as to the character of the transaction; as it respects the subject under consideration, it is enough that they insisted upon the payment, and the Government were obliged to comply.

I have no objections to joining in the congratulations of the gentleman from Virginia, that the Treasury is fuller to-day than it was in the year 1796—not that I mean to allow that the gentleman or his friends deserve any credit for the prosperous state of our finances. They are now reaping the fruits of the wisdom and industry of others; and beside the retrenchments which they have made—the principal part of which any Administration under the same circumstances would have rejoiced in the opportunity of making—the Treasury owes not a dollar to any fiscal improvement they have introduced. The public wealth is attributable solely to our commercial prosperity. For there remains no source of revenue worth naming, but the duties on imports and tonnage.

But, Mr. Speaker, it is of no importance in this argument through whose means the money came into the Treasury. It is sufficient that it was there. We contend that there was no power to sell the bank stock while the Government had money at its disposal equal to the demands against it. The mistake of the gentlemen upon the other side is in considering the power given by the act of 1796, to sell the stock as absolute, when it is plainly conditional. They lay hold of the power and discard every circumstance connected with the grant of it. They treat a power to exist only

on a contingency in the same manner as if there were no contingency at all. The Legislature grant an authority to the Commissioners of the Sinking Fund to sell the stock in case the payment of a certain debt be exacted, and there be no money in the Treasury to satisfy it; this is construed as a power to sell the stock, though the debt be not demanded, and although there is more money in the Treasury than sufficient to discharge the debt.

If such a construction be justifiable, there is an end of our argument, and there can exist hereafter no such thing as an eventual power. A similar construction would have given the President a power to raise an army under the law authorizing the raising of a provisional army, without the occurrence of the events by which the power was limited. Give me leave to tell gentlemen, that the public mind will hardly be satisfied unless their ingenuity supplies a better defence of the power which has been exercised.

We have been congratulated by the gentleman from Virginia (Mr. Randolph) upon that state of our affairs, which, instead of raising questions and exciting declamation in this House as to the mode of borrowing, produces controversy only as to the mode of paying our debts.

I rejoice that the gentleman is warranted in making this statement. I pray to God that the same condition of our affairs may long continue, though much I fear, without an extraordinary act of Providence, the prospect will soon be changed. The prosperity of the country was not produced by a system of measures like that at present pursued. The operations of a Government require time to produce their effect. The result of the positive measures of the present Administration has not yet been felt by the nation, and is discernable only in a distant and dark prospective.

I am not one of those who will ever quarrel with the Administration for paying off the public debt. I feel the same interest for myself and my posterity that any other gentleman can do in liberating the community from the burden. I rejoice that we have the means to do it, and that the Government have manifested a disposition to do it. But, sir, all this will not justify the doing of a good thing in an improper manner. I do not complain that the debt to the bank was in part discharged, but I complain that the bank stock, a fruitful and valuable source of revenue, was sacrificed to make a payment of $1,287,600, when there were $1,500,000 lying idle and unprofitable in the Treasury. Why was not the whole debt paid to the bank? Why are we still left in arrears more than $1,000,000, when we have money to pay them? Is not the Administration afraid that they will again take advantage of our necessities, and again embarrass us with their claims when any emergency occurs? It is plain that this payment to the bank was a mere pretence, and a secondary object. The true motives were its facilitating the discharge of the instalment of the Dutch debt, payable in Holland, and the advantage it gave to the Administration of boasting of the debt which they had paid off, and of the moneys, notwithstanding which, they had on hand.

A gentleman from Maryland, (Mr. Nicholson,) to show that the power given to sell the stock by the law of 1796, still exists, has referred to two provisoes in a law of the last session, and, at the same time, has expressed his surprise that I have not had recourse to them in support of my argument. Sir, I had not forgot the discussion upon the principles of those provisoes, one of which was introduced upon my own motion. The first provided that nothing in the act of the 29th of April, 1802, should be construed to repeal the powers given by the tenth section of the act of 1796. The second provided that the same act should not be construed to revive powers upon the same subject, which, being granted under any former act, had expired. These provisoes were considered at the time as neutralizing each other, and leaving the act of 1796 to a construction upon its own principles.

I confess, sir, that I consider the first proviso as designed indirectly to revive powers which had expired, and failing in a motion to strike it out, I contented myself with introducing the second, which I apprehended would destroy its effect. That end, I believe, was accomplished, and, therefore, I consider the law of 1802 as furnishing no support to either side of the present argument.

We are told by the gentleman from Maryland, to whom I last referred, that if the law of 1796 has expired, and there was no authority to sell the bank shares, then the sale is void, and the property still remains in the United States. I feel no difficulty in comprehending the extent of this position, but I am at a loss to discover how it is to be employed in opposition to the resolution on the table. If, because there was no authority to sell the stock, the sale was void, and the property still belongs to the United States, it seems to me that a better reason could not be urged for the immediate institution of the inquiry, as, in consequence of the sale, the United States have lost the possession and profits of the stock. As things now rest, it is of little consequence that the property belongs to us, if the fruits of it are always hereafter to belong to others. I beg, however, not to be understood as adopting this position of the gentleman from Maryland. The stock has been transferred, under the sanction of the Executive; the contract has been in part performed by the purchasers; and, however irregular the procedure, it would but little comport with the credit of the nation, to attempt to violate a contract attended with all the solemnities with which the powers of a Government could clothe it. But, though the property cannot be recalled, yet the conduct of those through whose management it has been lost, ought to be inquired into, and if the measure be found justifiable, they ought to be made to answer for it. I have but one more observation to make relative to the power to sell the stock. It has already been stated that a power was given by the act of 1796, to raise the money which the exigency of the moment required, in three different ways—by the constitution of six

per cent., by borrowing, and by the sale of the bank stock. If one of those powers survived the occasion they were created to answer, they all now remain in existence; and, yet, would it be possible to contend that the design of the law would warrant the Commissioners to borrow a sum of money equal to the amount due to the bank, while a greater sum remained unappropriated to any other object, in the Treasury? An honorable gentleman from Maryland, (Mr. S. Smith,) upon this point, has, perhaps, adopted the wisest course. Without troubling himself with an inquiry into the authority of the Commissioners to sell the stock, he reposes with implicit faith on the conduct of men whom he supposes incapable of error. In this course he probably will be followed by many others. It is the shortest, and avoids every difficulty. I know sir, that the Attorney General, the great law officer of the Government, and the Secretary of State, are members of the Board of Commissioners. I am not deficient in respect for those high officers; but if we are to be imposed upon by the names of men or of officers, you renounce one of the most valuable and important privileges of this House; that of general superintendence and inquiry relative to the conduct of every department of the Government. If I knew nothing about the subject I might have the same faith with the gentleman from Maryland; but, being convinced from an investigation of it that the Commissioners have done wrong, I can discover nothing in their names or their offices to induce a belief that they are infallible.

Before I sit down, the House will suffer me to make a few remarks, in reply to the observations of gentlemen upon the other side, as to the terms upon which the sale of the stock was made.

Supposing the Commissioners had a power to sell the stock, it was certainly their duty to dispose of it to the greatest advantage for the United States. The question whether they have done so, depends in a great degree upon facts which are not easily settled by any evidence we have at present before us, and therefore ought to be made the subject of inquiry. The current price of bank stock in the United States and London, and the rate of exchange between the United States and London and Amsterdam, are facts necessary to be ascertained before a judgment can be formed as to the profit or loss resulting from the sale. The statements of the gentleman from Maryland (Mr. S. Smith) are entitled to much respect. He is an intelligent merchant, and must have been conversant with the facts alluded to. But his information is limited. The price of stocks and the sale of exchange may not have been the same in other parts of the United States, as in Baltimore. I have great reason to believe they were not. My information differs from that of the gentleman. It is drawn from sources on which I rely. It cannot be expected, that in my place I should mention private names. The gentleman from Virginia (Mr. Randolph) has characterized the information I have communicated in a manner entitling it to the confidence of the House. He has described it as the knowledge of a stock-broker. On the subject before us the knowledge of stock-brokers is precisely what we want. I pretend to no knowledge upon the subject, of my own. But on this and upon all other subjects, on which I have knowledge of my own, but want information, I have recourse to those people whose business in life gives them the knowledge which is required. This conduct is prescribed by a wise old proverb, that every one is to be believed in their own art. If I wished to be instructed as to the manner of making a pair of shoes, I should certainly prefer the instructions of a shoemaker, to any knowledge on the subject which I could gain from the gentleman from Virginia.

The same principle has governed me on this occasion. Recourse has been had at several different places to those persons whose business called them constantly into the commercial markets, and who of consequence acquired an accurate knowledge of the current prices of bills and stocks. But, sir, if we differ as to these facts, can there be a stronger reason for inquiry? If our information be incorrect the inquiry will terminate in the justification of the Commissioners. But if, through negligence or from any other cause, the public interest has been sacrificed, can gentlemen wish to cover the transaction with the veil of secrecy and oblivion? That the interest of the United States has not been understood or not attended to, we have at present reason not only to think is probable, but to believe is certain.

The Commissioners have sold 2,220 shares of stock at 45 per cent. advance, when it is admitted they might have got 50; this is a loss of $44,400. They have allowed the purchaser to receive two dividends on the stock, before he was obliged to pay a cent; this is an additional loss of $75,480, and makes an aggregate loss of $119,880.

A gentleman from Maryland (Mr. Nicholson) contends, that the second dividend upon the stock ought not to be taken into the account of loss, because part of the debt being paid to the bank, the United States were exonerated from an interest upon the debt equal to the amount of the dividend.

But, sir, it is to be remembered that the debt due to the bank was paid out of money in the Treasury, and had no other connexion with the contract relative to the stock, than to furnish a pretence for the sale. The proceeds of the stock were applied to the debt in Holland, and the two dividends were received before a dollar was to be applied to the payment of that debt. In estimating the profit or loss of this contract, we are only to consider what the Government parted with, and what they received in return. The saving of interest on the bank debt was not a consequence of this sale. Without the sale there was money enough in the Treasury to extinguish the debt, and in fact it was so extinguished without any aid from the sale. It is clear then that the Commissioners gave to the purchaser a certain profit of $119,880, and the only question which remains is, what advantage was stipulated for the United States to compensate this loss. It is said that the purchaser has undertaken to pay in Holland

$1,287,600, at 41 cents the guilder; in consequence of which the Government saves two cents upon every guilder, as the remittance could not otherwise have been made for less than 43 cents the guilder.

Now sir, this is a fact which I do not believe, and I have reason to think that the remittance could have been made at par, allowing the usual commission to agents in London for doing the business. If this were the case, the pretended benefit of the contract vanishes and an additional loss appears in its place of a cent upon 3,140,487 guilders, amounting to the sum of $31,404 87. But why was not the offer of the Manhattan Bank accepted? They proposed remitting the whole instalment of the Dutch debt at 43 cents the guilder. The two cents they asked more than Mr. Baring, amount only to the sum of $64,380, and yet the Government gave to Mr. Baring, in the sale of the stock, a certain profit of $119,880, and of consequence made a plain sacrifice of $55,500.

Some gentlemen have been driven to strange shifts in order to show the benefits of this contract. A gentleman from Maryland (Mr. S. Smith) includes in his amount of profit, a saving in a probable advance of exchange in the remittance of that part of the Dutch instalment, which was remitted by the purchase of bills in the market. This item is founded upon the mere supposition, that if the Government had been obliged to purchase additional bills to the amount of Mr Baring's payment, the rate of exchange must have arisen, according to the gentleman's estimate. It is not pretended that the calculation is founded upon fact, but merely upon conjecture.

From the report of the Commissioners, I think it is evident that pains were not taken to explore the markets of the United States in which bills were selling, and in obtaining the information necessary to enable the Commissioners to distinguish the terms most to the interest of the United States. Scarcely an attempt was made to excite a competition for the contract.

The Bank of the United States and the Manhattan Bank alone were applied to, and the final arrangement made with Mr. Baring, while his proposals were a secret to all our merchants.

The banks were not the proper instruments for such an operation, and it cannot be affirmed, considering the great annual remittances made from this country to England, and as the experiment was not tried, that a sum equal to the Dutch instalment could not have been purchased in our markets without materially affecting the rate of exchange. I have only farther to remark that the object of the resolution is simply to institute an inquiry into the transaction. Even gentlemen who are persuaded that it is not liable to the objections which have been made to it, ought to be in favor of an investigation. To refuse an inquiry, is to betray distrust; for if it can be shown that the measure was warranted by law, and beneficial in its result, an inquiry must terminate to the credit of the Administration.

I therefore trust that the members of this House will consider it due to their own characters, and to the character of the Government, to suffer the inquiry to take place, and that they will not by their votes draw a veil over a transaction, the legality and fairness of which has been questioned upon this floor.

Mr. Nicholson.—The gentleman from Delaware has asked, if the Commissioners of the Sinking Fund had executed the authority given under the act of 1796, and had made a loan of five millions, or had issued certificates to that amount, whether that would have been deemed a wise measure on their part. I have no hesitation in declaring, that if the Commissioners had done so, when they had either four millions and a half in the Treasury, or bank stock enough in their hands subject to disposition, it would have been an unwise step. But I have no hesitation in saying, at the same time, that Congress would have been pledged to redeem such a loan to the last cent; as the law gave authority to borrow, which the necessity of paying the public debt created.

The resolution of the gentleman proposes an inquiry. I think that inquiry has already been ample; we have already consumed the greater part of the day and night in making it. For my own part I consider the subject so clear, that I think no inquiry necessary, though I am highly gratified at its having been made. I shall therefore vote against the resolution.

Mr. N. concluded by requiring the yeas and nays.

Mr. Randolph hoped the House would pardon his rising at that late period of the night; which he should not do but for a belief that he did not trench upon any public business then before them. This law of 1796 authorizes the borrowing of five millions. For what purpose? To pay any instalments of bank debt due before or during the year 1796. The gentleman from Delaware talks of the expiration of this law; but it has only two limitations, one when a sum shall have been borrowed, to the extent of the authority to borrow five millions, and the other to the discharge of bank debts due either before or during the year 1796. The whole question of legality, therefore, turns upon these two points; whether the Commissioners have exceeded the power to borrow five millions, or have applied the proceeds of the bank shares to any object not authorized. What is the fact? The power to sell, being vested in the Commissioners, and the sale being a legal execution of that power, the Commissioners have appropriated the proceeds of the bank shares to the object specifically named in the law. Where then is the illegality? If there ever was a plain case, this is the plainest of all possible plain cases. Gentlemen, however, speak of a limitation not contained in the law; of a public necessity. But the law does not say the Commissioners are empowered to borrow, only in case the credit of the Government is bad, or the bank importunate, or when the Government is reduced to the last peril, and the country to the most calamitous situation. The law on the contrary, gives the power without any such limitation.

But of what consequence is it, if by the sale of

the bank stock, a benefit is conferred on the United States equal to a certain number of dollars, whether that benefit flow from the payment here or in Holland? Suppose the payment did not here produce a specific benefit but produced a benefit abroad growing out of the transaction, will gentlemen say the United States are not benefited by it? If the Commissioners were authorized to sell, it is perfectly immaterial whether the benefit was from payment being made to the bank, or in Holland.

Mr. Randolph said it was no part of his business to enter into the details of the gentleman from Delaware, further than to observe that all his information was anonymous. Is it possible that such information can weigh either with this House, or with the nation, in opposition to that derived through the Secretary of the Treasury, from the purest and most correct sources?

One thing, Mr. R. said, he must be permitted to observe, that no advantageous purchase of bills here could be put into competition with such a contract as that made by Mr. Baring; because he is not to receive the bank shares until he shall have made the payments in Holland. The transaction was divested of all risk

Mr. Huger rose barely to make an observation relative to the conviction entertained by gentlemen. He felt a different impression—totally different from those who have expressed so great a triumph at the removal of all doubts as to the legality and the expediency of the sale. His doubts, on the contrary, had been increased by the discussion; and he only regretted that the session was so far advanced as not to allow a full investigation. He concluded by saying he should vote for the resolution.

The question was then taken by yeas and nays on Mr. Bayard's resolution, and decided in the negative—yeas 25, nays 40, as follows:

Yeas—John Bacon, James A. Bayard, Walter Bowie, Richard Brent, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, Ebenezer Elmer, Seth Hastings, William Hoge, Benjamin Huger, Samuel Hunt, Thomas Morris, Nathan Read, John Cotton Smith, Samuel Smith, Henry Southard, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, Peleg Wadsworth, and Henry Woods.

Nays—Willis Alston, John Archer, Theodorus Bailey, Phanuel Bishop, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, William Dickson, Peter Early, William Eustis, Edwin Gray, Andrew Gregg, Joseph Heister, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Richard Wynn, and Thomas Wynns.

Mr. Gregg observed, that though the practice was not usual, he thought it ought to be inserted that the question was taken on this resolution at nine o' clock at night.

Mr. G. waived making such a motion.

Mr. S. Smith said, though the hour was late, he would propose a resolution to the following effect:

"*Resolved*, That the Commissioners of the Sinking Fund were authorized by law to make sale of the stock of the Bank of the United States: and the sales made by them, agreeably to their resolution of the seventh day of June last, were expedient, and the result highly beneficial to the United States."

On this resolution, Mr. Smith said he should make no observations. He could only say, in reply to the gentleman from Delaware, that the purchase had been of public notoriety. The cashiers of the banks had advertised it; and it had even been in the Baltimore newspapers.

Mr. T. Morris moved a postponement of this resolution until the next session of Congress. It was utterly impossible for the conduct of the Commissioners to be sufficiently inquired into at the present session. He believed the resolution of the gentleman from Delaware did not contemplate an investigation this session.

Mr. S. Smith said he would withdraw his motion.

Mr. Taliaferro moved to reconsider the last decision of the House on the motion of the gentleman from Delaware, that they might, after agreeing to reconsider, proceed to inquire and decide.

Mr. Nicholson hoped the House would not reconsider their vote. I voted against it under the impression that voting for it would have been to express a doubt of the legality or expediency of the sale. If the resolution shall be reconsidered and adopted, what will be the consequence? The resolution says an inquiry ought to be made. When? In one instant? Are we to institute an inquiry, and take a question on it in five minutes after? If so, of what nature will that inquiry be? No, sir. The inquiry is already made. Mr. N. was proceeding; when,

Mr. Taliaferro withdrew his motion to reconsider.

Mr. S. Smith renewed his motion as stated above.

Mr. Bayard said he was astonished at this resolution, which was made in the face of the argument urged against the resolution which he had submitted. When that resolution was laid on the table, which neither approved or condemned, but simply had for its object inquiry, we were told that it was so late in the session that it was impossible to develope the subject; and we heard much complaint that it was not offered at an earlier period. For himself he had thought it expedient to make the motion this session, and to appoint a committee. But knowing that there was not time to make the investigation, he had meant this simply as a recommendation to the next Congress to take up the subject, when there would be full time. Those gentlemen, who then said there was not time to inquire, now, at a later hour say, there is time to approve. It will be truly astonishing, if, under those circumstances, their resolution be adopted—if, after voting that they will not inquire, they shall, without inquiry, approve. Gentlemen talk of discussing the subject to-night. But how

are we to ascertain facts, on the most material of which we have differed? Will they then adopt this resolution without inquiry? This is a step perfectly novel, going to approve the conduct of high Executive officers. Have not gentlemen already gone far enough?. By doing what they have done, they have declared themselves so satisfied that they will not look into the conduct of the Commissioners. Is not this enough? Are gentlemen, not content with this, disposed to confer applause? If we adopt such a precedent, where are we to stop? If in this case we say the Commissioners have acted right, will it not follow that in all cases in which we do not affirm the same thing as to Executive officers, that they have acted wrong? I have always taken it for granted that Executive measures are right, if they are not disapproved. It always belongs to the vigilance of a minority to urge an inquiry in all doubtful cases. But we are not going to establish the precedent that the Executive is entitled to no confidence until clothed with our approbation.

Mr. Varnum said he had voted against the resolution of the gentleman from Delaware, not because there was not time to investigate, but because that investigation had been fully made in the newspapers long before Congress assembled; and he was persuaded every gentleman was satisfied. If the gentleman from Delaware was not satisfied, it did not follow that others were not. He acknowledged that it would not have been proper to bring forward this last resolution, but for that previously offered. If the House was disposed to acquit, he trusted they would acquit with honor, and that the postponement would not obtain.

Mr. T. Morris said, members ought not to make up their minds from the information of newspapers; it was, therefore, not to be supposed that they were sufficiently informed. But I call upon gentlemen, who are disposed to pass an encomium on the Commissioners of the Sinking Fund, to say in what situation they stand? We ask an inquiry; a majority determines not to inquire, and are immediately for pronouncing an eulogium without inquiry. What is this but saying we have a majority, and can pronounce what we please without examination? What is it but saying, though we have not time ourselves to inquire, we will prevent a future Congress, who will have time, from inquiry? He considered such procedure perfectly inconsistent and improper.

Mr. Bacon said, they were in an awkward situation. He gave full credit to the declaration of the gentleman from Delaware, that he had no view of having this subject investigated during the present session. But, contrary to his view, we have had the substantial part of an investigation; and we should have been pleased if he had seen fit to give the discussion the external form. He hoped the House would not agree to postpone. It was true, they had refused to inquire, and still proceeded to acquit. This was awkward in form, but solid and regular in substance. An ample inquiry has been made. As they had proceeded so far, and as they had in fact secured the substance, however deficient the form, he should vote in favor of the resolution.

Mr. Goddard was in favor of a postponement. What is the amount of the resolution? That the Commissioners have made sale of the bank stock conformably to law. Do we, thereby, alter the nature of the law or of the fact? Cannot the United States investigate this subject as well afterwards as before? Suppose the resolution calls the Commissioners wise men, does it follow that they are wise? And if it calls them foolish, it certainly does not follow that they are so. The resolution cannot have an influence either one way or the other. It would be improper at any time, but peculiarly so at this time. If the resolution is agreed to at this time, he would ask whether it was not on confidence in men instead of on inquiry? He would ask if this was not a dangerous precedent? Was this confidence proper in moneyed transactions? And was it proper to carry it so far as to attempt to preclude future investigation? Will such a measure alter the opinion entertained previously of the report of the Commissioners? No. It has been insinuated that the resolution offered by the gentleman from Delaware contained an implication of character. No such thing. But will not such an implication follow from this extraordinary procedure? The thing will carry suspicion on the face of it. It is well known, that if a man is always declaring that he is not guilty, he feels some consciousness of guilt. And such will be the effect of this resolution.

Mr. Mott said, he was against the original resolution yesterday, from the lateness of the hour at which it was offered; and he was still more against the present resolution, because the hour was later. He was disgusted with the first, but still more disgusted with this. He should, therefore, vote for the postponement.

The question was then taken on postponement by yeas and nays, and lost—yeas 19, nays 46, as follows:

Nays—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, Seth Hastings, Benjamin Huger, Thomas Morris, James Mott, Nathan Read, John Cotton Smith, Samuel Tenney, Thomas Tillinghast, George B. Upham, Killian K. Van Rensselaer, and Peleg Wadsworth.

Nays—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Richard Brent, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Peter Early, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, Joseph Heister, William Hoge, David Holmes, Michael Leib, David Meriwether, Samuel L. Mitchill, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, jun., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Taliaferro, jun., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Isaac Van Horne, Richard Winn, and Thomas Wynns.

Mr. Bayard then moved to refer the resolu-

tion to a select committee. If it were not suffered to remain until the next session, he hoped it would be permitted to take the usual course. The resolution goes to give a vote of thanks on facts which gentlemen themselves have stated. This was a strong case, in which there ought to be inquiry before it was adopted.

This motion was lost without a division.

Mr. HUGER said, as the majority had determined to act, and to approve the conduct of the Commissioners, he felt a disposition to express this sense as strong as possible. He, therefore, moved to add to the end of the resolution the following words: "and, therefore, deserve the thanks of this country."

Mr. HUGER called for the yeas and nays on this amendment; but only seven members rising to support the call, they were not taken.

The question was then taken on the amendment, and lost—yeas 4.

The following amendment then obtained, viz: to strike out the word "law," next after the words "authorized by," and insert in lieu thereof the words "the act making provision for the payment of certain debts of the United States," passed the 31st day of May, 1795.

The question recurring on Mr. SMITH's motion,

Mr. GRISWOLD hoped it would not be agreed to. It presupposes the conduct of the Commissioners to be of a very doubtful character, and its object is to prop up that character by a vote of thanks. It was not proper on the last day of the session, and almost in their last moments, to make this attempt. Nor would it produce the effect contemplated. If their conduct is correct, it will be vindicated by opinions deliberately formed; and if doubtful, as the resolution supposes, it would not be established by a vote of the House at this period. If the approbation of the House of Representatives be proper, it ought to be given after the fullest examination; any thing short of this will be an injury to the character of the individuals themselves.

Mr. HUGER spoke at great length against the resolution.

Mr. BAYARD said he felt no disposition to interfere with the vote of the House about to be passed. Though he should not vote for it, he was desirous of putting it in a less exceptionable shape than it at present stood. He hoped he should succeed in a motion which he rose to propose to strike out the words, "and the result highly beneficial to the United States." This was either not a fact, or, at any rate, a fact not known. It was imprudent at this time to make a declaration which experience may demonstrate to be untrue. Mr. Baring has received the dividends; and we do not know that he has complied with his part of the contract. He may prove insolvent; there is no telling the result. If, therefore, we undertake to say that the result has proved highly beneficial to the United States, we assume the character of prophets, and make a declaration founded on powers not human.

Mr. RANDOLPH.—The result of which we speak is at this time. Human prudence cannot divine the ultimate effect of any measure. The credit of the United States has been supported in Holland by a remittance made on the most advantageous terms. We have in our own hands ample security against all loss. The result of a measure for meeting the engagements of the Government abroad, without any possibility of loss, may truly be said to be beneficial.

Mr. GRISWOLD wished to know what the result actually was. In order to enable us to declare that it is beneficial we ought to know it. Is any gentleman prepared to say what the result has been? Certain moneys were to have been placed in Holland in the months of January, February, and March. But does anybody know the fact that they have been so placed? He had heard no gentleman state it. How, then, can it be said that this transaction is highly beneficial? Agreeing to the resolution in this shape looks indeed like the transaction of a midnight hour. [laugh in the House.] when gentlemen are not prepared to ascertain the meaning of their own words. This declaration is so absurd, said Mr. G., that when gentlemen shall revise the transactions of this night, they will laugh at themselves and be ashamed of their own conduct.

The yeas and nays were then taken on Mr. BAYARD's motion to strike out, "and the result highly beneficial to the United States," and lost—yeas 15, nays 40, as follows:

YEAS—James A. Bayard, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Peter Early, Calvin Goddard, Roger Griswold, Benjamin Huger, Thomas Morris, Nathan Read, John Cotton Smith, George B. Upham, Killian K. Van Rensselaer, and Thomas Wynns.

NAYS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Richard Brent, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, John Dawson, William Dickson, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, David Holmes, David Meriwether, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, and Isaac Van Horne.

Mr. BAYARD rose only to mention a fact. It was important to attend to names. The name of the Vice President (Mr. BURR) was affixed to the report. He could say that as to the sale of the bank stock, the President had not been consulted and had not approved it. Neither had the Chief Justice, he believed, been ever consulted. Thus it appeared that two important members of the board had not been consulted.

Mr. NICHOLSON desired an explanation of the observation of the gentleman respecting the Vice President.

Mr. BAYARD replied that he had said that the Vice President had not been consulted as to the sale, and had not approved it. He did not mean to say that he had disapproved it.

The question was then taken by yeas and nays on Mr. S. SMITH's motion, viz:

Resolved, That the Commissioners of the Sinking Fund were authorized by the "Act making provision for the payment of certain debts of the United States," passed the thirty-first day of May, 1796, to make sale of the stock of the Bank of the United States; and the sales made by them, agreeably to their resolution of the seventh day of June last, were expedient, and the result highly beneficial to the United States:

And carried—yeas 42, nays 12, as follows:

YEAS—Willis Alston, John Archer, John Bacon, Theodorus Bailey, Walter Bowie, Richard Brent, William Butler, Samuel J. Cabell, Matthew Clay, John Clopton, John Condit, Richard Cutts, John Dawson, William Dickson, Peter Early, Ebenezer Elmer, William Eustis, Edwin Gray, Andrew Gregg, David Holmes, David Meriwether, Samuel L. Mitchill, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, jr., John Smilie, John Smith, of New York, John Smith, of Virginia, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, John P. Van Ness, and Isaac Van Horne.

NAYS—James A. Bayard, Thomas Boude, John Campbell, Manasseh Cutler, Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, Nathan Read, John C. Smith, George B. Upham, and Killian K. Van Rensselaer.

PUBLIC DEBT.

Mr. RANDOLPH, from the Committee of Ways and Means, to whom it was yesterday referred, by a resolution of this House, to inquire and report, "whether the Commissioners of the Sinking Fund have, agreeably to the act 'making provision for the redemption of the whole of the public debt of the United States,' applied the sum of seven million three hundred thousand dollars to the payment of the principal and interest of the public debt; and, also, generally to inquire into the accounts and proceedings of the Commissioners of the Sinking Fund;" presented the following report:

That, pursuant to the directions of the committee, a letter was written, and addressed by the chairman of the committee, to the Secretary of the Treasury, covering a copy of the resolution of the House; and, also, a statement of queries thereon, to which the answer of the Secretary was required; and that, to his answer, which together with sundry explanatory documents, is annexed to this report, the committee beg leave to refer, and request that it may be considered as part of their report:

MARCH 2, 1803.

SIR: The enclosed resolution this day passed the House of Representatives. The annexed paper, marked (A 1.) contains the objections stated by the mover of the resolution, to which you are requested, if practicable, to return an answer previous to the dissolution of Congress. It may be necessary to remark, that the objections to the report of the Commissioners of the Sinking Fund, consisted principally of a supposed variance between the statements contained in that report, and those submitted by the Secretary of the Treasury at the last session of Congress, and a denial that the sum appropriated by the law of the last session, (seven million three hundred thousand dollars) had been applied agreeably to the provisions of the act, and that the sum disbursed by the Treasury on account of the public debt, has not been fully accounted for; an unaccounted balance remaining of $114,829 44: moreover, that the sum of 4,914,000 guilders is upon the estimate.

With perfect esteem I have the honor to be, yours,

JOHN RANDOLPH.

ALBERT GALLATIN, *Secretary of the Treasury.*

(A 1.)

1. Have the Commissioners of the Sinking Fund applied the sum of $7,300,000 to the payment of the public debt, in the year 1803? If they have not applied it, why has it not been done?

2. What was the true amount of interest on the public debt for the year 1802? And is the sum of $4,065,738 47 that true amount? A detailed account is requested.

3. What have been the actual remittances to Holland during the year 1802? A detailed account of all the bills, contracts, &c., is requested, with the names of the persons with whom contracts have been made, and from whom bills have been purchased, with the price paid?

4. If the contracts and bills do not cover all the balance in the hands of the Commissioners, an account of the remainder is requested, with the names of the persons in whose hands the same remains, with the particular sums held by each person.

5. What were the sums disbursed from the Treasury on account of the domestic debt, between the first of October, 1801, and the first of January, 1802; and what were the sums disbursed for the same account, between October 1, 1802, and January 1, 1803?

6. In the Treasury report of December, 1801, in table P, the interest of foreign debts for 1802, is said to be $476,931. In table R, the interest is said to be 1,145,250 guilders; from whence arises the difference? How is the interest stated in table P made up?

7. An account of the remittance forwarded to Holland, or purchased in 1803, is requested, if convenient, the account to be in detail; and, likewise, such other information as the Secretary of the Treasury may think will elucidate the transactions of the Commissioners.

TREASURY DEPARTMENT, *March* 3, 1803.

SIR: I had the honor to receive last night, at seven o'clock, your letter of the same day, enclosing a resolution of the House, in relation to the accounts of the Sinking Fund, and certain inquiries proposed on that subject by the mover of the resolution.

Although I may give information sufficient to come within the meaning of the resolution, and to elucidate the transactions of the Commissioners, time will not perhaps permit, to procure all the detailed accounts specified in the inquiries; all that can be examined and transcribed, in the course of the day, shall be transmitted.

I must premise, that I had received yesterday, from the Register of the Treasury, a letter hereunto annexed, (A 2.) accompanying an official statement, (B,) of all the warrants drawn on the Treasurer, during the year 1802, on account of the public debt, and amounting (after deducting $119,592 78, repayments on account of the Dutch debt) to $9,333,407 40. This sum is $39,344 88 less than the sum of $9,372,752 23,

which is stated in the report of the Secretary of the Treasury, to the Commissioners of the Sinking Fund, to have been disbursed on that account during that year. This error arose, as stated by the Register, from the necessity of making the report of all the transactions of the year 1802, in the first week of February, 1803, and before the books of the Treasury for the last quarter of that year could be posted up.

The difference resulting from the correction consists in that, the disbursements out of the Treasury during the year 1802, were, on account of the reimbursement and interest of the domestic debt, $4,618,021 39, and on account of the Dutch debt, $3,240,399 25, instead of being $4,654,699 61, and $3,243,965 91, as stated in the report; and in that, the payment in advance, and on account of the annual appropriations of 1803, was only $745,807 40, instead of $785,152 28, as stated in the report.

The objects of the present inquiry seem to be,

I.—An elucidation of certain variations between the report to the Commissioners of the Sinking Fund, and that made on the 18th December, 1801, to Congress; to which it is presumed that the second and sixth inquiries of the mover of the resolution refer.

In the statement (P) annexed to the report of the 18th December, 1801, the interest on the public debt, including the annual reimbursement of the six per cent. and deferred stocks, is stated at $5,228,034 67.

In the report to the Commissioners of the Sinking Fund, the interest is stated at	$4,065,738 57
And the reimbursement of six per cent. and deferred stocks	1,117,869 37
Making altogether	$5,183,607 94
The difference between the two statements is	44,426 73

Which arises from the three following items, viz:

1. The annual interest on the temporary loans obtained from the Bank of the United States, is stated in the former report at $152,900, but one million two hundred and ninety thousand dollars of the principal of that debt, having been paid to the bank on the 30th June last, the interest on that sum ceased after that day; which makes the annual interest on those loans $35,451 less for that year, and reduces that item in the last report to $117,450, as will appear by the annexed statement (C.) which, in conformity to the wishes of the mover of the resolution as expressed in his second inquiry, gives the several items of the gross amount of $4,064,733 57, stated in the report of the Commissioners of the Sinking Fund, as the amount of interest for 1802.

2. The interest due for 1802, on the foreign debt, is stated in the report of the 18th December at $476,931

And in the report to the Commissioners of the Sinking Fund, as per statement (C.) hereunto annexed, at	467,731
Making a difference of	$9,200

In both statements, the interest, properly so called, is the same, viz: 1,145,250 guilders, equal, at forty cents per guilder, to $458,100; but the difference arises from the items of commissions and gratifications.

In the statement of December, 1801, to the sum of $458,100 are added the following commissions, viz:

One per cent. on the interest, equal to	$4,581
One per cent. on 12,500 guilders, gratifications on the Dutch loans, payable that year, 125 guilders, equal to	50 00
One per cent. on 3,550,000 guilders, the then supposed amount of the instalments, falling due during 1802, in Holland and Antwerp, 35,5000 guilders, equal to	14,200
Making, as above stated	$476,391
In the report of the Commissioners of the Sinking Fund, to the said sum of	$458,100
Add only the two first mentioned commissions of	4,631
But, on the other hand, the gratification of 12,500 guilders, which, in the report of December, 1801, is considered as part of the principal of the debt, and not included in the interest, is, in this last report, considered as part of the interest; it never having been the practice in former reports of the board to include the payments of those gratifications in the account of principal. This item is equal to	5,000
Making altogether, as above stated,	467,731

The reason why the last mentioned commission of one per cent. on the payment of instalments of the principal, and stated in the report of 18th December, 1801, as above mentioned, at 35,000 guilders, has been omitted in the report of the Commissioners of the Sinking Fund, remains to be explained.

It had been heretofore supposed at the Treasury that a commission of one per cent. was charged in Holland, by the bankers of the United States, on the payment of the instalments of the Dutch debt, and it is so stated in every official report of the Department on that subject, from that of the late Secretary of the Treasury, presented to the House on the 4th of January, 1796, to that of the Secretary, of the 18th December, 1801. An inspection of the accounts of the bankers, and the knowledge that such charges were not usual in relation to loans obtained in Holland, have since shown that that opinion was erroneous, and the item is therefore omitted in the last report.

It is also proper here to observe, though noticed neither in your letter, nor in the enclosed queries, that the instalments payable in 1802 had, heretofore, been erroneously supposed to amount to 3,550,000 guilders, as stated in the report of 4th of January, 1796, and in that of 18th December, 1801, (statement R) instead of 3,360,000 guilders, as stated in the last report to the Commissioners of the Sinking Fund; an error which arose from a supposition that the Antwerp loan, instead of being payable, as is the case, in five instalments of 410,000 guilders each, was payable in four instalments the first three of 600,000 guilders each, and the last of 250,000 guilders.

These two items, viz:

Difference of interest on domestic loans	$35,450 00
And difference of interest on foreign debt	9,200 00
Making an aggregate of	44,650 00

3d. From which must be deducted a difference between the two statements, in relation to the interest due on account of the domestic debt, and explained by

the Register, in the note annexed to statement C, amounting to	$223 27
Leaving for the whole difference, as above stated	44,426 73

II.—It is asked why the sum disbursed by the Treasury has not been fully accounted for? Why the sum of 5,914,000 guilders remitted to Holland beyond the amount due in 1802, is upon estimate? And it is asked why there remains a supposed unaccounted balance of one hundred and fourteen thousand one hundred and thirty-nine dollars and forty-four cents! As tending to elucidate that part of the inquiry, the third and fourth queries of the mover of the resolution apply for statements of the remittances to Holland, and of the balances which may remain unexpended in the hands of agents, &c.

From these objections to the report, it is presumable that some misconception has taken place in relation to the mode of conducting the business of the Sinking Fund.

The Commissioners never receive any public moneys, nor are they accountable for the sums paid out of the Treasury, on account of the public debt; the persons who, upon the warrants of the Secretary of the Treasury, receive such sums, are immediately charged for the amount, and become then accountable to the Treasury, in the same manner as all other receivers of public moneys.

It results from thence, that the disbursements out of the Treasury, show, themselves, in what manner the money has been applied by the Commissioners of the Sinking Fund; and accordingly the annexed statement, (B,) exhibits the advances or payments made by them, or rather by the Secretary of the Treasury as their agent, during the year 1802, and shows the sums paid or advanced, the days when, the persons to whom, and the object for which the payment or advances have been made. There is not, and cannot be, in that respect, any unaccounted balance.

As to the ultimate application of the money by the persons to whom it has been advanced, it cannot be ascertained with precision until their accounts shall have been rendered and settled at the Treasury; and it is evident that neither on the first week of February, 1803, nor on this day, can the accounts of persons who received public moneys in the course of the year 1802, be settled, or even rendered.

It was not therefore attempted, in the report of the Commissioners of the Sinking Fund, to state with precision an account of the ultimate application of the moneys paid out of the Treasury during the year 1802, which should balance the aggregate of the disbursements. An attempt of that kind was impracticable for want of materials. That it was not intended, is evident on the face of the report itself; for the items which relate to that ultimate application are not added together; two of them are explicitly stated to be on estimate; it is as explicitly stated that some protested bills, and balances in the hands of agents, are not included; and there are two prominent items among the disbursements, viz: "to foreign officers, and in payments of certain parts of the public debt," which are not repeated amongst the items relating to the ultimate application of the money, although credit would have been taken for them, had it been intended to balance the account of disbursements, by an account of their ultimate application.

The report exhibits all that could be expected, by designating in the first place, the several general objects to which the disbursements were applicable during the year 1802, and by giving in the next place, the estimated amount of remittances to Holland, which had been purchased on account of that part of the Dutch debt which falls due during the present year. If this last amount is stated only as an estimate, it is because, as has already been mentioned, the accounts in relation thereto being only rendered in part, and not being yet settled by the accounting officers of the Treasury; and calculations taken from the auxiliary books or registers of the bills purchased, are liable to errors, and ought not to be reported to Congress as an ascertained amount.

It so happens, however, that if an attempt shall be made to strike an approximated balance, between the account of disbursements and that of the application of the money, what is called an unaccounted balance will disappear, and instead of it, the amount paid out of the Treasury will be found to be less than the amount applied, including balances in the hands of agents, and the estimated unexpended balance of bills on Holland; which shows only that the balance has been estimated in the report something above, and not below its real amount.

1. The disbursements out of the Treasury on account of the interest and reimbursement of the domestic debt, were stated in the report, at	$4,654,699 61
But on account of the warrant twice included, as per Register's letter, (A 2)	36,678 22
Leaves for the true amount disbursed,	$4,618,021 39

The objects for which that sum was advanced were:

1. On account of the interest on the domestic debt growing due in 1803, as per statement (C)	$3,480,557 57
2. On account of the reimbursement of the six per cent. and deferred stock, estimated per do.	1,117,869 35
	4,598,426 92
Leaving a balance advanced during the year 1802, beyond the amount payable during the same, and for which some of the banks or Commissioners of Loans are accountable	19,594 47
	4,618,021 39

2. The disbursement account of the interest on the domestic loans were		$162,025
The interest actually accrued during 1802, and which makes part of the amount stated in the report of the Commissioners of the Sinking Fund, as per statement, (C,) was only	$117,450	
The difference, which amounts to	45,575	
		162,025

results from the circumstance of the interest due to the bank on domestic loans being always paid after it has become due; thus the sum of $162,025 disbursed in 1802, was applied to the payment of the interest which accrued on domestic loans from the 1st July, 1801, to the 30th June, 1802, and not to the payment of the interest which accrued from 1st January to 31st December, 1802.

3d. The payments to foreign officers and for certain parts of the domestic debt, being charged in the amount of disbursements, ought to be credited in the account of the application of those disbursements.

Those two items amount to $22,961 76.

If, therefore, there is an apparent unaccounted balance in the report to the Commissioners of the Sinking Fund of - - - - - - $114,839 44
As stated in your letter, the error stated by the Register - - - - 39,344 88

must in the first place be deducted, which will leave - - - - - - 75,494 56
for the amount of that supposed balance, and the above stated items are fair off sets against it, viz:

1st. Advanced on account of domestic debt beyond the interest and reimbursement of the year 1802 - - - - -	$19,594 47	
2d. Paid on account of the interest on domestic loans beyond the amount which accrued during 1802 -	44,575 00	
3d. Paid to foreign officers and for certain parts of the domestic debt - -	22,961 76	
Making, altogether - -	87,131 23	
An aggregate which exceeds by - -		11,636 67
		87,131 23

The above stated supposed unaccounted balance shows that such balance does not exist, but that, on the contrary, the estimate of unapplied bills on Holland is in having made that amount too large. Whether that error consists in having blended amongst the bills purchased in 1802 some which were actually purchased in 1801, or from some mistake of the clerk in entering the amount of bills purchased, bills which are, by contract, to be paid for only when they shall have been honored, or from any other cause, cannot, I apprehend, be ascertained until the accounts of the purchases shall have been regularly settled, by which means alone can every error be checked and discovered. It was because it was known that an account given at present was liable to be affected by all those several sources of error, that it was presented as an estimate. If it shall be found practicable to form and transcribe, in the course of the day, a more correct detailed account from the documents in this office, it shall be forwarded; but it is doubted whether it can be done, and, if done, I must beg leave to repeat, that it must still be considered as an estimate and a sketch, and not as an ascertained account. In the mean while, it is proper to state that no alteration in that estimate can change any general result, that every person who has received money on that account from the Treasury has been charged and is held accountable for it, and that the error in the estimate consists in nothing more than in exhibiting a larger amount of bills than has been paid for by the United States.

Leaving those uninteresting and immaterial details, I proceed to what seems to be the principal object of the resolution of the House.

III.—It is asked whether the Commissioners of the Sinking Fund have applied the sum of $7,300,000 to the payment of the public debt in 1802, in conformity to the act making provision for the redemption of the whole of the public debt of the United States?

Although it be difficult to understand precisely the supposed objections to the proceedings of the Commissioners of the Sinking Fund, which has given rise to this inquiry, yet as the report to the Commissioners exhibits, after deducting the amount lately corrected by the Register, an application of $9,333,407 40, of which sum $1,287,600 were paid out of the proceeds of the sale of bank stock, and the remaining $8,045,807 40, out of the other funds vested in the Sinking Fund; it is presumed that the objection goes to the mode of application and not to the sum applied, and I cannot find what that can be, unless by the words "payment of the public debt in the year 1802," it be meant that the Commissioners of the Sinking Fund were bound by law to extinguish, during the year 1802, so much of the principal of the public debt *due that year* as, together with the interest accruing during that year, would amount to $7,300,000, and that an application of a part of the $7,300,000 to the making provision for the payment of a debt falling due after the 31st December, 1802, was not to be considered as a part of the said legal payment of $7,300,000.

The objection does not apply to the actual payments made by the Commissioners, nor is it supported by any part of the law.

It does not apply to the payments made by the Commissioners in 1802; for, supposing the assumed construction of the law to be correct, it is nevertheless true that the Commissioners of the Sinking Fund have, during the year 1802, paid more than $7,300,000, falling due during that year.

Those payments consisted of the following items, viz:

1. Interest accrued during the year 1802	$4,065,738 47
2. Instalments of the Dutch debt which fell due that year - - - - -	1,344,000 00
3. Reimbursement of six per cent. and deferred stock - - - - -	1,116,859 37
4. Payment to foreign officers and for certain parts of the domestic debt -	22,961 76
5. Payment on account of the principal of the temporary loans due to the bank - - - - - -	1,290,000 00
Amounting, altogether, to - - -	7,840,569 60

Perhaps it may, in the spirit of the objection, be insisted that the payment of $1,117,689 37, being the reimbursement of the six per cent. and deferred stock which fell due on the first day of January, 1803, cannot be considered as the extinguishment of a debt actually due in 1802. But on that supposition, credit must be given for the payment of a similar reimbursement, which took place on the first day of January, 1802, and which, in the report of the Secretary to the Commissioners of the Sinking Fund, is credited to the account of the year 1801, because it was paid out of funds accrued during 1801. In the same manner as he has credited the payment of first January, 1803, to the year 1802; because it was paid out of funds accrued during the year 1802. But whether he was correct or not in that arrangement is immaterial in the present question; and as one payment was made on the first January, 1802, and another on the first January, 1803, either the one or the other must be credited to the account of the year 1802.

Perhaps it may also be said that $1,287,600 of the

temporary loans discharged in 1802, having been paid for out of the proceeds of the sales of the bank shares, (which, in the report of the Secretary to the Commissioners, are stated as a distinct fund from the annual appropriation of $7,300,000,) cannot properly be stated as a payment in part of that appropriation. But it is not less true that if there is anything in the law which binds the Commissioners to pay annually $7,300,000 in the manner contended for, there is certainly nothing which compels them to make that payment out of the annual appropriation of $7,300,000, or out of any other. They may be bound to make payments to a certain amount, but they may make them out of any funds in their hands. To this may be added, that the first section of the law, which makes the appropriation, includes in the annual appropriated sum of $7,300,000, the moneys, other than surplusses of the revenue, which constitutes the first Sinking Fund, or shall accrue to it by virtue of any provisions theretofore made. The proceeds of the bank shares accrued to the Sinking Fund by virtue of the provisions of the act of the 31st day of May, 1796, and might, therefore, by the Secretary of the Treasury, have been contemplated and stated as a part of the annual appropriation of $7,300,000. But considering it optional with him either to state those proceeds in that way, or under the proviso of the 3d section of the act, to state them as a distinct fund, he chose to do it in the last mentioned manner, in order to give the greatest possible efficacy to the Sinking Fund. From which it results, that if he had stated those proceeds as a part of the annual appropriation of $7,300,000, although he would have by that mode actually diminished the payment on account of the public debt by a sum of $2,287,600, yet he would, upon the construction assumed by the objection, have paid $1,287,600 *more* on account of the public debt of 1803 than has been done according to the mode of stating the accounts which he has adopted.

But supposing that the facts supported the objection—supposing that the sales of bank stock had not taken place, and that the payment of the debt due to the bank had not been made, yet nothing appears in the law which can support the principle assumed by that objection.

The construction which is insisted upon against the proceedings of the Commissioners, is, that they are bound by the law to apply annually $7,300,000, and that the application must, in the very year in which it is made, extinguish a debt or pay an interest due that year, excluding from what is thus considered as a legal payment, any payment on account of a debt falling due that year. Neither of these positions appear to me to be in any degree supported by any part of the law.

The first section of the law makes an annual appropriation of $7,300,000.

The second section enjoins it as a positive duty on the Secretary of the Treasury, to cause to be paid annually, to the Commissioners of the Sinking Fund, the said sum of $7,300,000, thus appropriated.

The third section directs the Commissioners to pay every year the interest accruing, and the instalments, or parts of principal falling due during that year; and then proceeds in the following words:

"And also, it shall be the duty of the said Commissioners to cause to be applied, the surplus of such funds as may at any time exist, after satisfying the purposes aforesaid, towards the further and final redemption by payment or purchase, of the present debt of the United States," &c.

There is nothing there which binds the Commissioners, after they have satisfied the purposes aforesaid, that is to say, after they have paid the interest and principal falling due in any one year, to apply the remainder or surplus of the $7,300,000 dollars, if any, during the course of the same year. Provided, that the Secretary had placed at their disposition in due time, the funds necessary to meet the instalments and interest due in the year, it would be a good execution of the law if he paid to them the remainder of the appropriation on the last day of the year; in which case it would be impossible for them to apply that remainder till the ensuing year.

That act, in fact, as well as all the preceding laws on that subject, places a discretionary power in the Commissioners, both as to the time and manner, for any payment other than those which fall due in the year, and which must at all events be made; and the proviso of the first section actually contemplates the case of the money remaining unexpended for six months after the end of the calendar year, to which the annual appropriation refers; and provides, that under certain circumstances, such surplus shall cease to be at the disposition of the Commissioners.

In the present instance, however, it is on the part of the Secretary of the Treasury contended, that more than $7,300,000 have, exclusively of the payment to the bank, been applied during the year 1802, towards the redemption, by payment, of the debt of the United States, and that after having paid the interest and instalments which fell due during that year, the purchase of about three millions and a half of guilders remitted to Holland, towards the payment of the Dutch debt falling due next year, was a faithful, legal and proper execution of the law.

It is difficult to prove a negative. In this case the law is silent as to the species of debt, and the time or manner of applying the surplus moneys; there is nothing which excludes from the meaning of the law, an application in the year which will produce a payment in the ensuing year. The words, by "payment or purchase," are, according to the strict sense of the sentence, connected with the word "redemption;" the further and final redemption is to be effected by payment or purchase; the application of moneys which the Commissioners may legally effect is towards the "further redemption." The subtlety of the objection seems to consist in making the words "by payment," depend immediately on the words "to cause to be applied;" from which it would result, that the application, instead of being, as expressed by the law, "towards a redemption," which redemption must, when effected, be effected "by payment or purchase," would be confined to an immediate payment; and as the purchase of bills is not an immediate payment, but a provision towards a future payment, such purchases would be excluded from that authorization in the law.

Not only that construction is not justified by the strict sense of the words as connected in the sentence, but, if it was adopted, it must follow that there did not exist, nor ever had existed, (for the phraseology of this sentence is transcribed from preceding laws) any authority whatever in the Commissioners of the Sinking Fund to provide in time for the payment of the Dutch debt. They must, according to that new construction, be bound in the application of the surplus of the fund to an immediate payment, and not be permitted to purchase remittances for the purpose of making a payment the ensuing year. For this is the only clause which au-

thorizes the Commissioners to make any payment, other than for the payment of the interest and principal falling due that year; and if it forbids them to make the purchase of bills under the appropriation of $7,300,000, it forbids them altogether, there being no words in the clause, limiting its effect to that appropriation.

It is hardly necessary to dwell any longer on the manifold absurdities which must flow from this assumed construction, and indeed I have no time left for any further observations. Yet I would remark that when the act passed such an application was contemplated, and that it was stated explicitly that it was necessary to provide for the payments due in Holland, at least six months before they became due. The statement (S.) annexed to the report of the 18th December, 1801, which exhibited the effect of an annual appropriation of $7,300,000 on the debt, was actually predicated on that supposition.

Permit me to add that the demands in Holland were so considerable, and the difficulties apprehended in procuring the sufficient remittances so alarming, that it is confidently believed that no application of the surplus moneys of the Sinking Fund could have been more beneficial to the true interests of the United States than the purchases of remittances which have been made. The whole of which was payable in 1803, which was the heaviest year, has been remitted without reloan, and without the employment of an agent abroad, and being now so much before-hand, I apprehend no longer any difficulties in procuring at a reasonable rate the remittances which shall be wanted for meeting the payments of the following years.

It has been impossible to transcribe the detailed accounts which were required; but I enclose an account (B) of the purchases made in 1801 and 1802, on account of the Dutch debt, showing the prices paid in 1802, and the amount of remittances purchased before the 1st of January, 1803, applicable to the payment of this year. This must still be considered as an estimate, though more correct than that of the report to the Commissioners of the Sinking Fund.

I regret the late hour at which the resolution was introduced, for no other reason than because it prevents my furnishing the more detailed account which the mover was desirous of obtaining. But I trust that all the information which was substantially necessary to meet the object of the resolution has been given; and I must rely on the indulgence of the committee for the many imperfections which must be attached to this hasty communication.

I have the honor to be, respectfully, sir, your obedient servant,

ALBERT GALLATIN.

Hon. JOHN RANDOLPH, *Chairman, &c.*

Ordered. That two thousand copies of the said report, and the documents accompanying the same, be printed for the use of the members of both Houses of Congress, and that the said copies be transmitted to the members, under frank, by the Secretary of the Treasury.

THANKS TO THE SPEAKER.

On a motion made and seconded,

"That the thanks of this House be presented to NATHANIEL MACON, the Speaker, in testimony of their approbation for his conduct in discharging the arduous and important duties assigned him, while in the Chair:"

It was unanimously resolved in the affirmative, by yeas and nays, every member present voting in the affirmative, to wit:

YEAS—John Archer, John Bacon, Theodorus Bailey, Phanuel Bishop, Thomas Boude, Walter Bowie, Richard Brent, Robert Brown, William Butler, Samuel J. Cabell, John Campbell, Matthew Clay, John Condit, Samuel W. Dana, John Davenport, William Dickson, Peter Early, Lucas Elmendorf, William Eustis, Abiel Foster, Calvin Goddard, Edwin Gray, Andrew Gregg, Roger Griswold, Seth Hastings, Daniel Heister, William Helms, William Hoge, David Holmes, Benjamin Huger, George Jackson, David Meriwether, Samuel L. Mitchill, Thomas Morris, James Mott, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Elias Perkins, Thomas Plater, Nathan Read, William Shepard, John Smilie, Israel Smith, John Cotton Smith, John Smith, of New York, Josiah Smith, Samuel Smith, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, John Taliaferro, jr., Samuel Tenney, David Thomas, Thomas Tillinghast, Philip R. Thompson, Abram Trigg, John Trigg, George B. Upham, Philip Van Cortlandt, Joseph B. Varnum, Peleg Wadsworth, Richard Winn, Henry Woods, and Thomas Wynns.

Whereupon, Mr. SPEAKER made his acknowledgments to the House, in manner following:

"*Gentlemen*: Accept my sincere thanks for the vote which you have been pleased to pass, expressive of your approbation of my conduct in the Chair; they are also due to each of you, for the liberal support which I have uniformly received.

"Permit me to wish you a safe return home, and happy meeting with your friends."

A message from the Senate informed the House that the Senate, having completed the Legislative business before them, are now ready to adjourn.

Whereupon, Mr. SPEAKER adjourned the House, *sine die*.

APPENDIX

TO THE HISTORY OF THE SEVENTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

BARBARY POWERS.

Communicated Dec. 8 and 22, 1801.—The following documents accompanied the Message of December 8, 1801, at the opening of the session, and were transmitted by the Message of December 22:

Extract of a letter from the Secretary of State to William Eaton, Esq., Consul of the United States at Tunis, dated

DEPARTMENT OF STATE.
Washington, May 20, 1801.

"The proofs which have been given by the Bashaw of Tripoli, of hostile designs against the United States, have, as you will learn from Commodore Dale, determined the President to send into the Mediterranean a squadron of three frigates and a sloop of war, under the command of that officer. Should war have been declared, or hostilities commenced, this force will be immediately employed in the defence and protection of our commerce against the piracies of that Regency. It is hoped that the contagion will not have spread either to Tunis or Algiers; but should one or both of them have followed the perfidious example, their corsairs will be equally repelled and punished.

"The policy of exhibiting a naval force on the coast of Barbary, has long been urged by yourself and the other Consuls. The present moment is peculiarly favorable for the experiment, not only as it is a provision against an immediate danger, but as we are now at peace and amity with all the rest of the world, and as the force employed would, if at home, be at nearly the same expense, with less advantage to our mariners. The President has, therefore, every reason to expect the utmost exertions of your prudence and address, in giving the measure an impression most advantageous to the character and interest of the United States. In effecting this object, the means must be left, in a great degree, to your knowledge of the local and other circumstances, which cannot be understood at this distance. You will, of course, take due pains to satisfy the Bey, that the United States are desirous of maintaining peace with all nations who are willing to live in peace; that they have given abundant evidence of their disposition to cultivate the friendship of the Barbary Regencies, and of himself in particular; and that, if the flag of the United States should be engaged in war with either of them, it will be a war of defence and necessity, not of choice or provocation. You will also give every friendly explanation and assurance, on this occasion, which may be requisite for the Consuls and agents of other Powers residing at Tunis.

"You are authorized to inform the Bey of Tunis that a vessel is now preparing to take in the cargo which will complete the regalia due to him, and that no time will be lost in getting her on her voyage."

Note.—The same was written to Mr. O'Brien, except the last paragraph, with the following addition:

"You will, of course, take due pains to satisfy the Dey that the United States are desirous of maintaining peace with all nations who are willing to live in peace; that they have given abundant evidence of their disposition to cultivate the friendship of the Barbary Regencies, and of himself in particular; that they expect from his good faith an efficacious interposition, according to our treaty with him, for guarantying the treaty with the Bashaw of Tripoli.

"The United States, it appears, will, before you receive this, be three years in arrears to the Dey. Towards making up the deficiency, the "George Washington" is under active preparation to carry timber and other stores, for at least one annuity. Commodore Dale is charged with thirty thousand dollars, which the President hopes the Dey may have been induced to accept as a commutation for the stores due for another. He has also in charge four hundred yards of cloth, and thirty pieces of linen for the biennial present. Should you not have prevailed on the Dey, and should find it still impossible to prevail on him to accept the thirty thousand dollars in lieu of the stores, without the application of four, five, or six thousand dollars, you will be supplied with that sum; and the sum of thirty thousand dollars will then be made up out of other moneys in the Commodore's hands. Should there be no possibility of inducing the Dey to the measure, even with this aid, the whole sum of thirty thousand dollars is to be retained by the Commodore. The balance for the remaining, or third year, will be sent as soon as it can be done, either in stores or money,

as may be agreed. You are already aware how much both the convenience and interest of the United States will be promoted by substituting money for stores, rating the latter at thirty thousand dollars, as a permanent regulation, and will take due pains to bring about such a change. You may find it, perhaps, an argument of some weight with the Dey, for preferring money to stores, that the former can always be remitted with more punctuality, and that, in times of war, such of the latter as are held to be contraband by the European law of nations, may be exposed to captures, by which he must be affected as well as the United States. In case you should succeed in the pecuniary commutation proposed, it will be proper, in defining the sum of thirty thousand dollars, to refer to some standard of weight and fineness in the metal, that will secure the United States against arbitrary regulations of the Dey, and quiet his jealousy, if he should have any, of imposition on the part of the United States. The Spanish dollars now in circulation may, for example, answer this purpose.

"The pretensions set up against the United States, in the case of the ship Fortune, for indemnifications to the owners of the merchandise with which she was laden, show the disadvantage of employing our vessels in the freight of Algerine property. You will, therefore, as far as you can, discourage that branch of trade; and, as far as it cannot be done, will take care to repress all expectation or claim whatsoever, to throw on the United States the losses by capture under their flags.

"One subject of equal importance and delicacy still remains. The sending to Constantinople the national ship of war the "George Washington," by force, under the Algerine flag, and for such a purpose, has deeply affected the sensibility, not only of the President, but of the people of the United States. Whatever temporary effects it may have had favorable to our interests, the indignity is of so serious a nature, that it is not impossible that it may be deemed necessary, on a fit occasion, to revive the subject. Viewing it in this light, the President wishes that nothing may be said or done by you that may unnecessarily preclude the competent authority from animadverting on that transaction in any way that a vindication of the national honor may be thought to prescribe."

Extract of a letter from the Secretary of State to James L. Cathcart, Esq., Consul at Tripoli, dated

DEPARTMENT OF STATE,
Washington, May 21, 1801.

"The threat of hostilities against the trade of the United States by the Bashaw, certified in your communications as issuing immediately from the Bashaw himself, in a translation of his letter of 25th May last, certified by his interpreter, Farfara, has determined the President to send into the Mediterranean a squadron of three frigates and a sloop of war, under Commodore Dale, by whom this is written. You will also receive from him a letter to the Bashaw from the President.

"Should war have been declared, or hostilities commenced, before the arrival of this squadron, it will be immediately employed in the defence and protection of our commerce against the piratical attacks of the Bashaw's corsairs. Should war have been neither declared nor commenced, it is expected by the President that you will exert all your prudence and address in rendering the appearance of the squadron and the letter from the President subservient to the preservation of peace, and to such impressions on the Bashaw as will be most favorable to the dignity and interests of the United States. The President relies the more on the zeal and success of these exertions, as the policy of exhibiting a naval force on the coast of Barbary, has long been urged by you and the other Consuls. To aid your exertions on this occasion, you will be supplied by Commodore Dale with a sum, if necessary, which will be communicated by him. In a letter which I have written, by the present opportunity, to Mr. O'Brien, he is instructed to cultivate the good will of the Dey of Algiers, and to call on him for his stipulated interposition as guarantee of the treaty between the United States and the Bashaw. You will not fail to make the best use you can of the interposition, if it be afforded."

Thomas Jefferson, President of the United States of America, to the illustrious and honored Bey of Tripoli of Barbary, whom God preserve:

GREAT AND RESPECTED FRIEND: The assurances of friendship which our Consul has given you, and of our sincere desire to cultivate peace and commerce with your subjects, are faithful expressions of our dispositions; and you will continue to find proofs of them in all those acts of respect and friendly intercourse which are due between nations standing, as we do, in the relations of peace and amity with each other.

At the conclusion of our treaty with you, we endeavored to prove our respect for yourself, and satisfaction at that event, by such demonstrations as gave you then entire content: and we are disposed to believe that, in rendering into another language those expressions in your letter of the 26th of May last, which seem to imply purposes inconsistent with the faith of that transaction, your intentions have been misconstrued. On this supposition, we renew to you sincerely assurances of our constant friendship, and that our desire to cultivate peace and commerce with you remains firm and unabated.

We have found it expedient to detach a squadron of observation into the Mediterranean sea, to superintend the safety of our commerce there, and to exercise our seamen in nautical duties. We recommend them to your hospitality and good offices, should occasion require their resorting to your harbors. We hope their appearance will give umbrage to no Power: for, while we mean to rest the safety of our commerce on the resources of our own strength and bravery in every sea, we have yet given to this squadron in strict command to conduct themselves towards all friendly Powers with the most perfect respect and good order; it being the first object of our solicitude to cherish peace and friendship with all nations with whom it can be held on terms of equality and reciprocity.

I pray God, very great and respected friend, to have you always in His holy keeping.

Written at the City of Washington, the twenty-first day of May, in the year of our Lord one thousand eight hundred and one.

THOS. JEFFERSON.

By the President:
JAMES MADISON, *Secretary of State.*

Form of a letter which Commodore Dale was directed to write to the Dey of Algiers and the Bey of Tunis.

May it please your Excellency: Having the honor to command a squadron of observation, despatched by the President of the United States into the Mediterranean sea, to support the safety of their commerce threatened with attacks by the Bashaw of Tripoli, and to exercise our seamen in nautical duty, the instructions that I have received from the President require that, in approaching your harbors, I should tender the profound respect that is due to your Excellency's dignity and character, and should recommend the squadron under my command to your hospitality and good offices. I leave to the Consul of the United States the task of explaining more particularly the friendly dispositions of the United States towards your Excellency, the proofs with which he is charged of their desire to maintain the treaty between the two Powers, and the reliance of the President on similar dispositions on your part; for myself, I only make use of the occasion to assure your Excellency of the sensibility with which I shall experience your friendly countenance and accommodations, and of the sentiments of reverence and exalted esteem with which I have the honor to be, your Excellency's obedient servant.

DEPARTMENT OF STATE,
Washington, May 21, 1802.

SIR: For a considerable time past suspicions have prevailed that a rupture with the United States was intended by the Bashaw of Tripoli. Of late, the alarms and proofs have been such as to impose on the President the obligation of making immediately the most effectual provision within his authority for the defence and protection of our Mediterranean commerce, in case it should be attacked from that quarter. At the last session of Congress six frigates were directed by law to be kept as a peace establishment. Out of this force, three frigates and also a sloop of war have been equipped, and will sail for the Mediterranean in a few days, under the command of Commodore Dale. Should war have been declared, or hostilities actually been commenced against our trade, this force will be employed in the most effectual manner for its safety. Should the means which have been or may be employed to obviate the necessity of such an application of the force be successful, the squadron, after cruising a sufficient time in the Mediterranean, perhaps, if circumstances should not render it unadvisable, as far as the Levant, and towards Constantinople, will return to the United States.

The expedition will, by this means, be not without its use, whatever may be the state of things on its arrival. It will have the effect, from which so much advantage has been promised by our Consuls and others, of exhibiting to the Barbary Powers a respectable specimen of the naval facilities of the United States. It will exercise our mariners and instruct our officers in the line of their service, and in a sea which it may be particularly useful for them to understand. And as they form a part of the Peace Establishment, the measure will add but inconsiderably to the expense otherwise to be incurred. The United States being now also happily at peace and amity with all the European Powers, the moment is the more favorable in that view of the subject.

The President has thought proper that this early information and explanation should be given to you, that, being fully possessed of the causes and object of the expedition, you may guard it against any misconception or misrepresentation that may by possibility be attached to it; and, moreover, prepare the Government where you are to lend to this squadron such hospitalities and accommodations in its ports, or elsewhere, as opportunities may claim, and as it would be incumbent on the United States to reciprocate.

The friendly disposition felt by the United States towards ——— justifies them in their confidence that no convenient proof of a like disposition will be withheld, and of this friendly disposition you are authorized and instructed by the President, on all proper occasions, to give the most explicit and cordial assurances. I have the honor to be, sir, with great consideration, your most obedient servant.

To Rufus King, London; David Humphreys, Madrid; William Smith, Lisbon; W. V. Murray, Hague.

DEPARTMENT OF STATE.
Washington, May 21, 1802.

SIR: The proofs which have been received of the hostile purposes of the Bashaw of Tripoli having imposed on the President the obligation of providing immediately for the safety of our Mediterranean commerce, he has judged proper to send to the coast of Barbary a squadron of three frigates and a sloop-of-war, under the command of Commodore Dale. The squadron will sail in a very few days from this date. Should war have been declared, or hostilities commenced, Commodore Dale is instructed to make the most effectual use of his force for the object to which it is destined. Should the means employed by our Consuls, and those which accompany this expedition, for obviating such an event, be successful, the squadron, then, after cruising for some time in the Mediterranean, perhaps, if circumstances should not forbid, into the Levant, and towards Constantinople, will return to the United States. The expedition will, by this means, be not without its

use, whatever may be the state of things on its arrival. It will have the effect, from which so much advantage has been promised by our Consuls and others, of exhibiting to the Barbary Powers a naval force from the United States. It will exercise our mariners, and instruct our officers in the line of their service, and in a sea where, more than any other, their services may be wanted; and as they form a part of the Peace Establishment fixed by law, the measure will add but inconsiderably to the expense that would otherwise be incurred. The United States being also happily at peace with all the Powers of Europe, the moment is the more favorable in every view that can be taken of it.

The President has thought proper that you should be furnished with the information here given, in order, first, that you may be ready to afford every friendly and useful accommodation that occasions may admit, to the squadron, or any part of it: secondly, that, being possessed of the objects of the expedition and the considerations which led to it, you may be able, by proper explanations, to prevent its being misunderstood. The United States persist steadfastly in their desire of living in peace and friendship with all nations who will permit them; and on all occasions where assurances to that effect can be proper, you are authorized to make them in the most satisfactory manner. I am, with great consideration, sir, your most obedient servant.

JAMES MADISON.

A copy forwarded to each of the following named Consuls: Thomas Bulkeley, Consul, Lisbon; John Gavino, Gibraltar; Anthony Terry, (acting,) Cadiz; James Simpson, Tangier; William Kirkpatrick, Malaga; William Willis, Barcelona; Robert Montgomery, Alicant; John Mathieu, Naples; Frederick H. Walloston, Genoa; Thomas Appleton, Leghorn; John Lamson, Trieste; Etienne Cathalan, agent, Marseilles.

Extract of a letter from James Leander Cathcart to the Secretary of State.

TRIPOLI, *April* 18, 1800.

"I had the honor of receiving yours of the 15th of January on the 13th instant, and am happy my conduct has been approved of by the President. Yours to Dr. M'Donogh I delivered to the British Consul to forward to him, or to keep until his arrival. I have already informed you that he departed hence with Commodore Campbell last January, in order to solicit the Court of Portugal for the Consulate of this Regency, he having the Commodore's promise of recommendations.

"In consequence of the decease of our political father, I sent my dragoman to inform the Bashaw that the next day I should hoist the banners of the United States half-mast, the only token of respect which I had in my power to pay to the manes of our much beloved patriot, intending to wait a proper opportunity to communicate to him your intimation. The Bashaw sent me a very polite message, expressing his concern for our loss, and requesting to know if the President had received his letter, which was forwarded by the Sophia. I answered in the affirmative, and ordered the dragoman to inform his Excellency that I would wait on him when he was at leisure.

"In the evening he sent Farfara to inform me that he was indisposed, or would be glad to see me; and requested, if I had anything to impart, that I would communicate it to Farfara. I accordingly requested him to express to the Bashaw his Excellency the President's satisfaction with the arrangements that took place last year, and to assure him that he had never considered him as dependent upon either of the other Regencies; that he had always treated him as an independent Prince, and the Government of the United States would always consider him with as much respect and treat him with the same friendship, that they did the heads of the other Regencies. Farfara returned with the following answer: 'His Excellency the Bashaw has desired me to request you to acquaint the President of the United States that he is exceedingly pleased with his proffers of friendship; that the respect which he has shown to his communication is really flattering; that, had his protestations been accompanied with a frigate or brig-of-war, such as we had given the Algerines, he would be still more inclined to believe them genuine; that compliments, although acceptable, were of little value, and that the heads of the Barbary States knew their friends by the value of the presents that they received from them.'

"It being too late for an answer that evening, I made such comments on the Bashaw's message as might serve to eradicate from the mind of the Jew the most distant expectation that the President would ever make so great a sacrifice, which I informed him was entirely incompatible with the interests of the United States.

"Considering it highly improper to delay giving a direct, explicit, and categorical answer to the Bashaw's insinuation, I sent my dragoman to the castle to request an audience; I having previously formed a resolution never to employ a third person whenever the honor or the interest of my country was concerned. The dragoman informed me that his Excellency had seen Farfara, and if I had any further communication to make, to employ him, as he was very much indisposed. Thus was I disappointed.

"Farfara waited upon me in the afternoon, when I requested him to inform the Bashaw, that, if he supposed that the cruisers which were sent by our Government to Algiers were given gratuitously, he had been misinformed; that, during our negotiation last year, I had acquainted him that the frigate was given to that Regency in lieu of cash, for the ransom of our citizens, which had been redeemed on credit more than a year before her arrival; that the cruisers were built on commission, and paid for in cash out of the public Treasury, and were not the property of the Dey, as he supposed; that I had copies of their accounts by me which he should peruse, if he thought proper, whereby he would be informed of the magnitude of his expectation, and the improbability of

the United States having given them gratuitously; that I was sensible how disagreeable it would be to disappoint expectations when once formed; I therefore found it my duty to prevent any taking place, in order to avoid the chagrin attending a positive refusal, which, from the nature of the request, must naturally be expected from the President of the United States.

"The Bashaw returned, in answer, that he had concluded peace with the United States for much less than he had received from other nations, and that he knew his friends by what he received from them.

"I shall by no means broach this subject to the Bashaw again, as I have hindered him from having any ground for expectation, and shall continue to act in the same manner should he ever make it a topic of conversation, as he can have no pretext to make a demand, and only insinuates that he expects some mark of the President's friendship more substantial than compliments. I imagine it will be best to take no further notice of it. The appearance of our frigates in the Mediterranean will, I hope, eradicate any expectation that he may have flattered himself with, if any really exists; and, until that period, believe me, sir, our commerce will never be upon a respectable footing in these seas."

Extract of a letter from the same to the same, dated

MAY 12, 1800.

"Give me leave to inform you, in addition to mine of the 18th of April, a copy of which is enclosed with this despatch, that on the 21st of said month a Board of Consuls were called by the Bashaw, relative to the affairs of Sweden, in order to facilitate, as much as possible, his depredations and unjust demands upon that nation. As I have already forwarded to you the particulars of their last arrangement, I at present refer you to the copy of the certificate herewith enclosed for the result. During the course of conversation, the Bashaw observed, 'that he never made reprisals on any nation, or declared war, but in consequence of their promises not being fulfilled, or for a want of due respect being shown him; that he conceived himself entitled to the same respect that was shown to the Bashaws of Algiers and Tunis, but that some nations gave more to the officers in each of those Regencies than they had given to him for their peace.' The last remark was evidenly pointed at the United States, but as it was made in general terms, I thought proper not to seem to understand it, especially as I could say very little more on the subject than what I had already communicated to him through the agency of Signior Farfara.

"On the 2d of May a courier arrived from Tunis, which brought me the copies of your letters of the 15th of January, which arrived in the ship Hero. Before I had time to read them, Farfara came and informed me that the Bashaw wanted to see me immediately. I asked him if he knew what his Excellency wanted; he said he did not: that he had received letters from Tunis, and seemed very much irritated. It being late in the evening, I waited on him in dishabille, when the following conversation took place, which I have endeavored to render verbatim:

"'You have received letters from America: how were they brought to Tunis?'

"'In a vessel direct from America.'

"'What is her business at Tunis?'

"'She has brought the stores stipulated by treaty with that Regency.'

"'What do they consist of?'

"'I do not know the particular articles which compose her cargo, but it chiefly consists of lumber and articles, such as were promised to your Excellency when our peace took place.'

"'What do your letters from your Government contain?'

"'They are merely copies of what I had already received, the contents of which your Excellency was informed by Farfara.'

"This being a favorable opportunity to know whether our broker had acted with candor, I repeated what was contained in mine of the 18th of April, and found by the Bashaw's answers (which were exactly what Farfara had before informed me) that he had acted honestly.

"The Bashaw observed that the United States had made liberal presents to Algiers and Tunis; that he was informed of the particulars of all our negotiations; that he even had a list of the cargo which had arrived at Tunis; that it is worth a treasure. 'Why do not the United States send me a voluntary present? They have acted with me as if they had done everything against their will. First, they solicited the interference of the Dey of Algiers, in consequence of which I concluded a peace with them for almost nothing in comparison to what I had received from other nations, I having received many favors from Hassan Bashaw during the continuance of the revolution in this kingdom. They next made me wait more than two years before they sent their Consul, and then he came without the stipulated stores. Nevertheless, in order to convince them of my good and friendly intentions, I accepted of the small sum of eighteen thousand dollars in lieu thereof, not doubting but they would be grateful enough to make me some return for my civility; but I have the mortification to be informed that they have now sent a ship load of stores to Tunis, besides promising a present of jewels, and to me they have sent compliments. But I have cruisers as well as Tunis, and as good raizes and sailors. I am an independent Prince as well as the Bashaw of Tunis, and I can hurt the commerce of any nation as much as the Tunisians. Why, then, should so great a difference be made?'

"From the tenor of the Bashaw's harangue, I perceived that his aim was to intimidate me to say something that might hereafter be interpreted into a promise of a present, the value of which he would probably dictate himself. I therefore answered him as follows:

"Whatever information your Excellency has received relative to the value of the presents or stores which have been given to Tunis, it has been

amazingly exaggerated. We have never made any but what were stipulated by treaty, nor can we ever make voluntary presents, it being incompatible with our form of Government, the funds of the United States not being at the disposal of the President until an appropriation is made by an act of the Legislature. The funds for carrying our treaty with Tripoli into effect are exhausted; and last year your Excellency wrote to the President of the United States that you were contended with what you had already received. You, therefore, in justice, could not expect anything at present from the United States, but a reciprocal tender of friendship. Had your Excellency preferred the stores to cash, and waited with patience until they were forwarded, as the Bey of Tunis has done, I am convinced they would have arrived long ere now. But, at present, as the United States have fulfilled the stipulations of the treaty, they are not in arrears to this Regency, and any demands upon them must naturally be very unexpected.' The Bashaw observed it was late, had coffee served, and said he would converse with me upon the subject at some other opportunity. I wished him a very good evening.

"May 4. The Siddi Mahomed Daguize and Signior Farfara came to the American house and informed me that the Bashaw had ordered them to ask me if I had taken any resolution in consequence of the conversation which I had with him on the 2d instant. I informed them that had I taken none whatever, and that it seemed unaccountable to me that his Excellency should expect any other answer after what I had informed him in their presence. They staid about an hour, during which time their conversation tended to persuade me that considering the Bashaw's character, it was certainly the interest of the United States to make a sacrifice; that, otherwise, it would be impossible to remain long on good terms with him. I made use of the same arguments which I had done before. I, therefore, will not tire with a repetition.

"At six, P. M., they returned, and informed me that the Bashaw was very much displeased, and had ordered them to acquaint me that he was informed that the Sahibtappa at Tunis had received more than forty thousand dollars from the United States, in cash, besides presents; that he had received very little more, and that he had never imagined the United States meant to put him on an equality with one of the Bey of Tunis's Ministers.

"I observed that the Bashaw was misinformed by his correspondent, who, in order to ingratiate himself in his favor, had informed him of things which had never taken place; that he was giving himself, as well as them and me, a great deal of trouble, without any hopes of reaping the least benefit therefrom; that I requested them to inform his Excellency that I had not power to offer him a dollar; and that there were no funds in the United States appropriated for maintaining our peace with Tripoli, as we had carried our treaty into effect already; that he had written to the President of the United States, the Dey of Algiers, and Bey of Tunis, that he had settled with the agent of the United States, and had received a cash payment in lieu and in full of all demands, and that he was content; that only three years and a half had elapsed since our treaty commenced; that the first year he had received forty thousand dollars, in cash, and the value of eight thousand in presents; that the second he had received twelve thousand dollars; and that last year he had received eighteen thousand, and presents to the value of four thousand more; that, on the circumcision of his son, Siddi Aly, I made him a present superior to the presents which were made him by the Consuls of other nations on the same occasion; that, consequently, the Government of the United States were not deficient either in their respect to him, or tokens of friendship, as he had received in the short period of three years and a half cash and presents to the amount of eighty-three thousand dollars, exclusive of ten thousand measures of grain, which Hassan Bashaw had made him a present of, in consequence of his having concluded a treaty with the United States, which was worth at Tripoli near twenty thousand dollars more; that I was persuaded that, if his Excellency would give himself the trouble to reflect on the circumstances which had taken place since the commencement of the treaty between the United States and this Regency, he would not hesitate a moment in acknowledging the justice and propriety of my observations.

"In the evening, the Bashaw's emissaries returned, and informed me that they had encountered great difficulty in persuading the Bashaw to believe that the Consul had not the power to make him a present without an express order from his Government. His Excellency said that he had received many presents from the Consuls of other nations, and that their conduct had afterwards been approved. They observed that the form of Government of the United States was vastly different from the Government of every other nation with whom his Excellency was at peace; that he had a recent example that the powers of a Consul were limited, in the result of the Swedish Consul's negotiation, he having arranged the affairs of his nation without receiving orders from his Court; that he knew the consequence; his bills were protested, he had received a severe reprimand from the King of Sweden, and was immediately suspended; and that his Excellency might depend that the American Consul would take care never to be reduced to a similar predicament, whatever might be the consequence of his non-compliance with his Excellency's demand.

"They further informed me that the Bashaw had ordered them to request me to write to my Government to inform them that, when he had written to the President of the United States, he was contented with what he had received; that he really was so, on the supposition that the presents to him bore some proportion to those that had been promised to Tunis; that, at present, he was informed to the contrary, and that he felt himself amazingly hurt when he considered that he had been treated with indifference; and that he never would be convinced that the friendship of the United States was sincere until there was greater equality observed in their donations between the two nations; or, in other words, until he received some further marks of the President's esteem more substantial than mere compliments. They said that, although the Bashaw was inclined to credit the impossibility of the Consul's making him a present without orders from his Court, he likewise was sensible how much depended on the manner of his representation; that he believed he had treated him with every respect since his arrival at Tripoli, and he requested I would write in such terms as would insure him from the mortification of being disappointed; adding, 'This I expect from the Consul, as he values my future favor and a happy result to the objects of his mission." I replied, that the object contemplated by the United States, in sending an agent the vast distance of near six thousand miles, was to endeavor to maintain a friendly intercourse between the two nations on honorable and equitable terms; that, as it had pleased God to employ me as the instrument to promote so desired an effect, he might rest assured I should take pleasure in representing facts for the consideration of Government, in as favorable a manner as the dignity annexed to my office would admit; that, as it would be the height of presumption in me to dictate to the President of the United States what he ought to do in the present case, so, on the other hand, I by no means considered it to be a part of my official duty in any means to oppose the liberal intentions of Government, should they be found disposed to make him a present; but, on the contrary, should I receive orders to that effect, I would take pleasure in executing them; but must again beg leave to repeat that the issue depended on them only. They retired, promised to make a faithful report to his Excellency, protested they would use their influence in favor of the United States, and requested me not to close my letter until I heard further from the Bashaw, either direct or through their agency.

"May the 6th. I waited on the Bashaw to pay my compliments to him, in consequence of the festival. He treated me with great politeness, but I could easily discern that it was against his inclination. There was something in his countenance that indicated his smiles were not sincere, and ought not to be depended on.

"May the 10th. Farfara came to the American house, and informed me that the Bashaw had concluded to write to the President of the United States himself, as he entertained some suspicion that I would not write to Government with sufficient energy; that the Bashaw would send me his letter the first opportunity that should present, to forward it, which he hoped I had no objection to do. I replied, none in the least; and requested Farfara to procure me a copy, if possible; which he promised to do. Having waited until the date of this despatch without having heard anything more on the subject, I hastened to get my despatches in readiness to forward by the first conveyance. Should anything intervene worthy of notice before I receive the Bashaw's letter, it shall be the subject of another despatch."

Extract of a letter from James Leander Cathcart to the Secretary of State, dated

TRIPOLI, *October 18th*, 1801.

"On the 16th I waited upon the Bashaw, in company with Captain Carpenter, to demand satisfaction for the insult our flag had suffered, in having one of our vessels brought in here without any visible cause, her papers and passport being in perfect order; and likewise, to demand restitution of property plundered from the brig.

"The Bashaw answered, that he had not given orders to the Raiz to bring in American vessels; that he had broke him, and dismissed him from his service, and then gave orders to the Minister of Marine to have every article that was plundered from the brig returned.

"The Bashaw then commenced thus: 'Consul, there is no nation I wish more to be at peace with than yours; but all nations pay me, and so must the Americans.' I answered, 'We have already paid you all that we owe you, and are nothing in arrears.' He answered, 'That for the peace we had paid him, it was true; but to maintain the peace we had given him nothing.' I observed, that the terms of our treaty were to pay him the stipulated cash, stores, &c., in full of all demands, forever; and then repeated nearly to the same effect as is contained in my despatch of the 12th of May, which, to avoid repetition, I forbear inserting. The Bashaw then observed, 'that we had given a great deal to Algiers and Tunis, and that the Portuguese captain informed him that, when he passed by Algiers, about the middle of last month, he had seen an American frigate in the bay, which he supposed had brought more presents to the Dey. Why do they neglect me in their donations? Let them give me a stipulated sum annually, and I will be reasonable as to the amount.'

"In answer to the first, I replied, that it was true that one of our frigates was at Algiers, being one of a squadron of three forty-four gun ships and some smaller vessels which were appointed to protect our commerce in the Mediterranean; but whether they had presents on board for the Regency of Algiers, or not, I could not inform him; that some of them would have been at Tripoli before now, had I not informed them that they had better stay away until the Spring, upon account of the badness of this road, which renders it very unsafe at this season. And in answer to his proposal of an annuity, I replied with some warmth, exactly what I had requested Daguize to inform him of in my name yesterday evening. 'Well, then,' replied the Bashaw, 'let your Government give me a sum of money, and I will be content; but paid I will be, one way or the other. I now desire you to inform your Government that I will wait six months for an answer to my letter to the President: that if it does not arrive in that period, and if it be not satisfactory, if it does arrive, that I will declare war in form against the United States. Inform your Government,' said he, 'how I have served the Swedes, who concluded their treaty since yours. Let them know that the French, English, and Spaniards, have al-

ways sent me presents from time to time, to preserve their peace; and if they do not do the same, I will order my cruisers to bring their vessels in whenever they can find them.' He then turned to Daguize, and told him to explain to Captain Carpenter what he had informed me, (they both speaking French,) and added that he did not wish to make it a private affair between the Consul and him, and desired him to make it public, as he wished the whole world to know it. He then told Daguize to tell the captain that he hoped the United States would not neglect him, as six or eight vessels of the value of his would amount to a much larger sum than he ever expected to get from the United States for remaining at peace. 'Besides,' said he,' I have a great desire to have some captains like you here to teach me to speak English.'

"I answered that it was absolutely impossible to receive answers to letters which he desired me to write by Captain Carpenter in six months, as it would be nearly that time before he would get home, upon account of the winter season; that I expected his Excellency would wait until the answer arrived, let that be long or short; and observed, that none but those who held a correspondence with the devil could determine whether he would be content with the President's answer or not, as neither the President nor myself knew what would content him. I therefore requested him to inform me explicitly what were his expectations. To the first he answered, "I will not only wait for answers from your President, but I will now detain the brig, and write to him again; but I expect when he sends his answers that they will be such as will empower you to conclude with me immediately; if they are not, I will capture your vessels; and as you have frequently informed me that your instructions do not authorize you to give me a dollar, I will therefore not inform you what I expect until you are empowered to negotiate with me; but you may inform your President that, if he is disposed to pay me for my friendship, I will be moderate in my demands." The Bashaw then rose from his seat, and went out of the room, leaving me to make what comment I thought proper upon his extraordinary conduct."

Extract of a letter from the same to the same, dated

MAY 27, 1800.

"Since the date of the enclosed despatch, I heard nothing from the Bashaw until the evening of the 25th instant, when Siddi Mahomed Daguize sent me the original in Arabic, of which the enclosed is a literal translation. The only conclusion which can be drawn from the Bashaw's proceedings is, that he wants a present; and if he does not get one, he will forge pretences to commit depredations on the property of our fellow-citizens. His letter to the President will be the means of keeping him quiet until he receives an answer, provided no unnecessary delay is made, as he will expect to reap a benefit therefrom. Should Government think proper to make him a present, it will have the desired effect probably for one year, but not longer. I, therefore, can see no alternative but to station some of the frigates in the Mediterranean; otherwise, we shall be continually subject to the same insults which the Imperials, Danes, Swedes, and Ragusans, have already suffered, and will still continue to suffer."

Translated extract from a letter of the Bashaw of Tripoli to the President of the United States.

MAY 25, 1800.

"After having cultivated the branches of our good will, and paved the way for a good understanding and perfect friendship which we wish may continue forever, we make known that the object and contents of this, our present letter, is, that whereas your Consul, who resides at our Court in your service, has communicated to us, in your name, that you have written to him, informing him that you regarded the Regency of Tripoli in the same point of view as the other Regencies of Barbary, and to be upon the same footing of friendship and importance. In order to further strengthen the bonds of a good understanding, blessed be God, may he complete and grant to you his high protection! But our sincere friend, we could wish that these your expressions were followed by deeds and not by empty words. You will, therefore, endeavor to satisfy us by a good manner of proceeding. We, on our part, will correspond with you, with equal friendship, as well in words as in deeds. But if only flattering words are meant, without performance, every one will act as he finds convenient. We beg a speedy answer, without neglect of time, as a delay on your part cannot but be prejudicial to your interests. In the mean time, we wish you happiness.

"Given in Tripoli, in Barbary, the 29th of the moon Hegia, in the year of the Hegira 1214, which corresponds with the 25th May, 1800."

Copy of a letter from Mr. O'Brien to Captain Bainbridge.

SIR: Your letter to me of this date I have received, and seriously considered its contents, and shall observe, sir, that, from the day the United States ship, under your command, arrived in this port, and to this day, it has been generally supposed that the Regency would insist that the United States ship should proceed to the Levant on the business or mission of this Regency. On the 18th ultimo, when you went with me to pay your respects to the Dey, after a little Algerine ceremony, the Dey said he would want this ship as a favor from the United States, to carry his Ambassador and presents to Constantinople, and return on the business to Algiers. I observed to the Dey that the Captain nor Consul had no orders or power which, in any respects, could justify us in acquiescing in his demand; that, without the orders of the United States, we could not do any such thing; that we, having no orders, we could make no responsibility; that the Captain could not protect his property against the Portuguese or Neapolitans; that your orders were to

return to the United States, and by orders you could only defend your ship against French corsairs. The Dey did not seem satisfied with these explanations; that, shortly after, I repeated nearly the same objections on this business to the Algerine Prime Minister.

On the 26th ultimo the Dey sent for me and the British Consul, and asked me if I was still determined not to acquiesce in making responsibility, and carrying his Ambassador and presents. I again repeated all the arguments which I made use of on the 18th ultimo, and added, as the vessel belonged to the Government of the United States, and we having no fixed peace or treaty with the Italian States or with the Grand Signior, that this ship and crew would be in a very singular predicament in going to Constantinople on the business of the Regency, we having no Ambassador or Consul at these places. The Dey answered, passionately, that these were all excuses; that other nations had rendered Algiers the like favors; but that, if the British Consul would promise faithfully that a British ship of war would come here and go to the Levant on this mission, under this consideration he would let the American ship return to her country. The British Consul, John Falcon, Esq., promised and assured the Dey (in my presence) that, as Lord Keith had promised to send a ship of war on this business, said ship might be daily expected. The Dey observed he would wait a few days, before he would fully determine, to see if the British ship would arrive.

The Dey remained undetermined until the 3d instant, when arrived at Algiers, from Mahon, a British ship of war of twenty-four guns, sent by the orders of Lord Keith, intentionally, to carry the Ambassador and presents of Algiers to Constantinople. This business seemed finished and settled, in order that the British ship of war would proceed on this business. But, from the 4th instant to this date, the Dey and Ministry, and sundry persons of influence, started may difficulties relative to the mission of the Regency going in the British ship, and, finally, objected to go. When, this morning, the Dey came to town from his country seat, and at 10, A. M., sent for me, and told me, without any alternative, the United States ship should do him the favor to carry his Ambassador and presents to Constantinople; that, if this favor or demand was not complied with, he no longer holds to his friendship with the United States.

On my declaring that I nor the Captain of the United States ship had no orders, and could not justify ourselves to our Government to acquiesce, the Dey got very angry, and declared that he considered everything we did say, or could say, to be excuses not to do him the favor he required; and if this favor was not acquiesced to, he knew what to do; that other nations frequently did it, and he could see no reason or motive which should prevent me, on the part of the United States, acquiescing to the request.

I again repeated to the Dey that I nor the Captain could make no responsibility on the part of the United States; that we could not think his property safe under the American flag from the capture of his enemies; that the ship sailed dull or heavy; that, as it was war time, a thousand difficulties might happen. The Dey hastily observed that God was great; that all was on his head; that all difficulties would be surmounted.

I again declared that I nor the Captain had no orders which would, in any respect, justify ourselves to acquiesce. The Dey said he would justify us, and that the ship should go *per force*, and that we had no alternative but to do him this favor; that his mind and his Minister's were soured against the British, and that, on this account, he rejected the British ship, and would insist his request should be complied with.

The Dey said he would send his flag to the Marine to be hoisted at the mast head of the American ship. I answered, I was very sorry on account of his determination, and withdrew; went and explained to the Prime Minister all that had passed or was said on this business between the Dey and me.

The Prime Minister observed that the Dey's mind was so positively fixed and determined on this affair, that there would be no alternative but to comply, to prevent greater evils, reminding me of several overt acts of this Regency to the Consuls of other nations and their affairs; that he had tried to prevent the Dey from sending the American ship, but that it had no effect.

At meridian, I and Captain Bainbridge were sent for by the General of Marine, when we made use of all those arguments which are heretofore detailed. The General of Marine declared that there was no alternative but to comply. After our retiring from the Marine half an hour, the General of Marine sent to the Consular house of the United States, to acquaint us that it was the orders of the Dey of Algiers that the flag of Algiers should be hoisted to the main-topgallant-mast-head of the American ship. That, we answered, all was *per force;* that we were in their power, and the Regency, of course, might do as they had a mind. Shortly after, we determined to see the Dey, and sent the American dragoman to acquaint the Dey that the Consul of the United States and Commandant of the United States ship, demanded an audience

At two, P. M., we were in the presence of the Dey, and stated all those difficulties, and all our former objections; that we had no orders, could not justify ourselves, and could make no responsibility. The Dey observed, that there was no alternative but to comply; that, in doing him this favor, he never would forget it on the part of the United States, and that, when he did, God would forget him; that he would write to the Government of the United States on this business of his making this demand; and assured Captain Bainbridge and me that the United States would be highly pleased at the conduct of the Consul and Commandant in obliging the Dey and Regency, agreeably to the request he made to us, as a favor from the United States. We observed to the Dey that this was a forced business; that, under this

idea, and for the safety of his presents, it would be better that his flag should be hoisted at the fore-topgallant-mast-head than the main. The Dey declared he did not well know this business, but those of the Marine knew the custom; he believed it was at the main.

On this, we went to the Marine, told the General of the Marine that, if this United States ship should haul down her pennant and hoist the Algerine flag at the main, that said ship, agreeably to our laws, was out of commission, and would not be considered as a public ship of the United States; that the Algerine flag would be the same thing at the fore as the main, but to us it made a great difference; that, by Christian laws, the ship would be considered as Algerine property, and not as a ship of the United States; that we made this remonstrance and observation to prevent difficulties. On this explanation the General of Marine got into a great passion; swore that the proposition and idea was made as an evasive pretence; that the ships of war of Spain and France, and other nations, had acquiesced to hoist the Algerine flag at the main; that it was by the flag being hoisted there, that the mission was known and announced at Algiers and Constantinople. I explained to you, sir, that it was the custom, as I have seen and known, that the French and Spanish ships of war going on the like mission, hoisted, at Algiers and Constantinople, the Algerine flag at the main; that at sea he wore his pennant, and was more his own master. On this, you observed, it being a forced business, that, if there was a right to acquiesce to one point, there was no alternative but by the same rule to acquiesce to the other relative to the flag.

The General of Marine, and officers of the same, said, if there was not a compliance on this business, agreeably to the customs of all nations heretofore, that there no longer existed friendship between this Regency and the United States. I observed, that I was sorry that the United States had so much reason to know Algiers, and that Algiers had no reason to know the United States.

We went on board; the Turkish flag was hoisted at the main of the United States ship, and was saluted with seven guns, as customary.

Painful is the detail, but it contains a narrative of facts. To the truth thereof, witness my hand and seal of office, at Algiers, this 9th day of October, 1800. I am, sir, very respectfully, your most obedient servant.

RICHARD O'BRIEN.

Extract of a letter from Richard O'Brien to the Secretary of State.

"ALGIERS, *October* 22, 1800.

"As the United States ship Washington, Captain Bainbridge, has proceeded, *per force*, in fact, to save the peace of the United States with Algiers; to prevent captivity and detention to the ship, officers, and crew, and prevent the pretence of a sudden war, and pillage and slavery to the citizens of the United States; I calculate that, if said ship goes and comes safe in five months, it will cost the United States forty thousand dollars. This, in comparison to what our losses might be if *war*, left me no time to hesitate in the choice of the evils and difficulties which presented fully in view; in surveying both sides of the coast, and how we should stand on both tacks, I found there was no alternative but to proceed.

"I have made no responsibility, as is customary with all nations, with the Dey and Regency. I am convinced that, if an accident should happen to the Washington, in being captured by any nation, or by being driven on shore, as soon as this news would reach Algiers, they would immediately send out their corsairs, and send in all American vessels they should meet with, in order to repay themselves for the amount of Algerine property on board the Washington. We submitted to it in the affair of the ship Fortune; and, if the amount in reality was six hundred thousand dollars, the Regency would take the amount of one million of dollars. It is their custom. Is not it a hard case for us to risk the ship and crew of the United States, and Algiers to force said ship, and, if any accident, to be liable to difficulties and calamities I have described?"

Extract of a letter from Mr. Cathcart to the Secretary of State.

"TRIPOLI, *January* 4, 1801.

"On the 2d instant, in the evening, the banners of Sweden, by the Bashaw's request, were hoisted upon the Danish house, and a temporary flagstaff was prepared, in order that the customary salute should be fired the next day. When a peace takes place with any nation, it is customary for the different Consuls to congratulate the Bashaw on the event. You may judge with what a grace I performed a ceremony so repugnant to my feelings; but it was necessary. I accordingly waited upon his Excellency, in company with the Danish Consul, Swedish ex-Consul, Mr. Bohrstrom, the present Consul, and several others. After congratuation, perfumation, fumigation, and drinking of coffee and sherbet were over, commenced the following litigation: 'I have concluded a peace with the Swedes,' commenced the Bashaw, 'and I am certain that the King of Sweden is sensible that I was forced to declare war against his nation contrary to my inclination; for, had my demands been satisfied in the first instance, I should not have captured their ships and enslaved their people. Some nations,' added he, (meaning the United States,) 'have used me very ill; they look upon me as nothing; they have recourse to Algiers for all things. I should be glad to know which is thought the most of at Constantinople?' I could easily have solved that doubt, by saying, that the Dey of Algiers had lately sent presents to the Grand Signior to the amount of a million of dollars, which were powerful arguments in his favor. But, as the conversation was general, I did not conceive it more incumbent on me to answer his prologue than any of the rest of the company; and, in fact, I could say nothing but what I have communicated already. The Bashaw, observing

my silence, directed his discourse to me, and asked me if I understood the Arabic and Turkish languages. I answered that I had a trifling knowledge of them, but spoke them so miserably that I never used any of them, especially as his Excellency and Ministers all spoke Italian. 'Pray,' says the Bashaw, 'what was the present Dey of Algiers in the reign of Mahomed Bashaw?' I answered, that he was a person very much respected, in consequence of his being the cousin of Hassan Bashaw, but had no post whatever. 'And pray, what was Hassan Bashaw at that time?' First, he was Bik-ilharche of the Marine, and afterwards was made Prime Minister and Treasurer in Algiers, called the Hasnagi. The Bashaw turned up his nose with visible signs of contempt, and was going to proceed, when a person informed him that a piece of timber was not to be found in the whole Regency large enough to make a flag-staff for the Swedes, unless they took one of the cruiser's spars. 'It is a difficult thing,' says the son of Ali Bashaw, 'to get a flag-staff put up when it once comes down. When the American flag-staff comes down, it will take a great deal of grease (meaning money) to get it up again. The Danish flag-staff is broke, I hear, and wants mending with a new one.' He smiled a ghastly *grin*, and said, 'After all, what is twenty thousand dollars a year for a Christian nation to pay that has such vast resources? Had I enough to live on, I would not trouble myself with cruisers, although my subjects always wish war, because it is to their advantage. How many raizes,' added he, 'have I that know the way to the great sea?' Admiral Morad answered, about twenty. There not being, I believe, one capable but himself, without his accompanying them, shows that the Bashaw and his officers pay no great regard to truth. 'Well,' replied his Excellency, 'I will find them vessels. In Tripoli, Consul, we are all hungry, and, if we are not provided for, we soon get sick and peevish.' As the Bashaw spoke in metaphors, I answered him in the same manner, by saying, that when the chief physician prescribed the medicine, I should have no objection to administer the dose; but, until then, I could say nothing on the subject. 'Take care,' answered the Bashaw, 'that the medicine does not come too late; and, if it comes in time, that it will be strong enough."

Extract of a letter from Richard O'Brien to the Secretary of State.

"ALGIERS, *January* 27, 1801.

"On the 21st instant arrived at Algiers, in twenty-three days from Constantinople, the United States ship the George Washington, William Bainbridge, Esq., Commander. The Grand Signior has detained the Algerine Ambassador sent, and presents, until the Regency of Algiers complies with all his demands, and will have full submission to his orders.

"The presents and funds which were sent by the Washington, certainly amounted to one and a half million of dollars. A Swede, with the Dey's nephew, arrived at Smyrna with five hundred thousand. This was, by the orders of the Captain Bashaw, deposited in the treasury of the Grand Signior, at Smyrna. Another Swede, with the Algerine Prime Minister's nephew, with at least four hundred thousand dollars, ran on shore at the Island of Candia. This money also has fallen into the possession of the Grand Signior. Add to this, that the hundred Turks who went in the Washington, and are detained at Constantinople, were chiefly the richest and first men of this Regency. These considerations will certainly induce this Regency to acquiesce in the demands of the Grand Signior.

"The Dey will make a haul to repay him for his present losses; I hope we shall not be the victims; we are nearly two and a half years in arrear; no funds; we have a valuable unguarded commerce in these seas; we are threatened by all Barbary; therefore, we should act with energy make our stipulations and annuities, have consular friends, (not to be depending on mercenary Jews,) and show force in these seas."

Extracts of a letter from Mr. O'Brien to Mr. Smith, Minister Plenipotentiary of the United States, at Lisbon.

ALGIERS, *February* 7, 1801.

"Even at this moment I shudder for fear of our valuable vessels and citizens in this sea; so much in arrears, no funds, no corsairs, and threatened by all the dogs of prey.

"Algiers, a pirate State, wants employment for the refractory and for their corsairs. The troubles of the Baltic will scare the Swedes and Danes into port; and we, in arrears, *no* oil in our lamps, no anchors and cables, no corsairs in this sea, we will be the victims: such, sir, are my present fears."

Extract of a letter from Mr. Cathcart to the Secretary of State.

TRIPOLI, IN BARBARY, *May* 16, 1801.

"This evening (10th May,) at six, P. M., Hadgi Mahomude la Sore, the same that went to Algiers in the Hamdullah, came to the American house, and told me not to be alarmed, for the Bashaw had sent him to inform me that he declared war against the United States, and would take down our flag-staff on Thursday, the 14th instant; that, if I pleased to remain at Tripoli, I should be treated with respect, but, if I pleased, I might go away. I sent my compliments to the Bashaw, and informed him that it was my positive instructions not to remain an instant after a declaration of war took place, and that I should charter a vessel tomorrow, if possible.

"Thursday, 14th, at one, P. M., Hadgi Mahomude la Sore came to inform me that the chavux were coming to take our flag-staff down. I waited until the Seraskier arrived, and then sent said La Sore to offer him ten thousand dollars, in addition to what I had already offered, which was rejected by the Bashaw, and orders given to cut away the flag-staff.

"At a quarter past two they effected the grand achievement, and our flag-staff was chopped down six feet from the ground, and left reclining on the terrace. Thus ends the first act of this tragedy. I hope the catastrophe may be happy."

Extract of a letter from William Eaton, Esq., Consul of the United States at Tunis, to the Secretary of State.

TUNIS, *December* 8, 1800.

"On the 25th ultimo, after having despatched duplicates of my letter from the 1st to the 16th, it was intimated to me that there was an American ship in the road of Porto Farino. I instantly sent off an express to inquire for facts. On the 27th, I received a note from Captain Coffin, of the Anna Maria, informing me that he had been ten days in the road, without being able to communicate with the shore, by reason of the weather, which was extremely bad. On the 28th, I asked a boat of the Bey to board her, which he said should be ready on the 30th. Accordingly, on the 30th, I embarked at Tunis in an open boat, and arrived on board, ten leagues, at eight in the evening of the same day. On the morning following, the 1st December, I had the honor of receiving your letter of the 30th August, covering an invoice and bills of the ship's lading. Yesterday I returned to Tunis. Such part of the cargo as was between decks was chiefly discharged before I left the ship. The *quality* of the articles is acknowledged to be good, but it is objected that the plank and the oars are *too short*, and the Government affects to be dissatisfied that the keels, guns, and powder are not come forward. I believe the fact to be, the Government is dissatisfied that anything is come forward. If this opinion requires evidence, I consider it sufficient to state that the United States are the only nation which have, at this moment, a rich unguarded commerce in the Mediterranean, and that the Barbary Regencies are *pirates*. I take to myself the merit of having once more at least suspended an expedition which was prepared for us; but we are yet deficient, and I am not without apprehension that this deficiency will be resorted to as a pretext for surprising our merchantmen: in which case they might do us incalculable mischief. These are considerations which, it is supposed, should compel exertions to fulfil our obligations with this Regency.

"The immense concessions he has received, the summer past, from Spain, Denmark, Sicily, and Sweden, have so diminished the condition of our peace in his eye, that he says, 'it is a trifle for so great a commercial nation, in consideration for the advantages of a free trade in this sea.'"

To all whom it doth or may concern:

Know ye, by these presents, that I, James Leander Cathcart, Agent and Consul for the United States of America, in and for the city and Regency of Tripoli, in Barbary, finding just cause to complain of Jusef Bashaw, Supreme Commandant of said city and Regency of Tripoli, and his Ministers, towards the Government and citizens of the United States of America, and conceiving it my duty to protest against such conduct: now know ye, that I do hereby protest against the said Jusef Bashaw, Supreme Commandant of said city and Regency, and against his Ministers and Counsellors, in behalf of the Government of the United States of America, myself, and fellow-citizens, for the following reasons, viz:

First. Be it known, that, on the 17th of August, 1799, said Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, at the instigation of Morad Raiz, Admiral of the cruisers of this Regency, refused to receive the printed passports, issued by the Consul of the United States of America in this Regency, in obedience to his orders from Government, thereby claiming a superiority or preference to the Regencies of Algiers and Tunis, he being duly informed that the said passports were accepted in the same form by the chiefs of said Regencies, and in order, as is my firm belief, to have a pretext to send the merchant vessels, belonging to the citizens of the United States, into this port for examination, said Admiral Morad having publicly declared that he would go to sea, with the vessels under his command, without any passport from this office, if they were not modified to his liking, and worded similar to the passports of the British; and the said Jusef Bashaw, on application being made by the said Consul of the United States, refusing to exert his authority, is a clear and sufficient evidence that he was accessory to the insolent demand of said Morad, or, more properly speaking, that said Morad acted, if not by his orders, at least with his tacit consent, thereby forcing the said Consul of the United States to deviate from his instructions, and to submit, from imperious necessity, to a humiliation incompatible with the honor and dignity of the nation he has the honor to represent.

Second. Be it known, that, in the month of October, 1799, James Leander Cathcart, Consul for the United States of America, in this Regency, having received several bales of cloth to dispose of, said Jusef Bashaw sent the broker, Leon Farfara, to the Consular house, requesting said Consul to give him the preference in the sale of said cloth, promising to pay for the same like any other individual, and as cloths were sold of the same quality. I, knowing how he had served the late Venetian and Swedish Consuls on a similar occasion, sent said Leon Farfaro to inform him that the cloth was not mine, and that I expected to be paid immediately, in order to be enabled to make a remittance to my correspondent, which he, the said Bashaw, promised to do. I, therefore, confiding in his promise, which I was taught to believe was sacred to all true Mussulmen, and more especially to a Prince of the august family of Caramanly, did deliver unto him sundry pieces of cloth, to the value of five thousand seven hundred and eighty-seven yuslicks, current coin of this Regency; which, at that time, was worth in Spanish dollars two thousand three hundred and fourteen and eighty cents, two yuslicks and one-half being then equal to one dollar silver; but, at present, the coin of this Regency having depreciated, owing to the great quantity of alloy mixed

in the coinage, a dollar passes for three yuslicks, which makes a difference of one-fifth part, or twenty per cent.; that I have repeatedly demanded the above sum, and have always been put off, from time to time, with promises, until the 22d day of September, 1800, when, some oil belonging to said Bashaw being selling at public vendue, I sent my dragoman to purchase a barrel for the use of my house, value about eighteen dollars, which the hasnader refused to give unto him, unless I sent the money to pay for it first. I sent the dragoman immediately to the Bashaw to know the reason, who repeated the same words, saying the oil was not his, but belonged to the crew of the cruisers; that, if I wanted oil, I must first send the cash. I immediately sent for Farfara, who had acted as broker in the sale of the cloth, and desired him to demand a positive answer from the Bashaw, whether he intended to pay me or not; that I was resolved to be kept no longer in suspense; and offered to take the money at the present value, which is only one thousand nine hundred and twenty-nine dollars, in full of all demands. The Bashaw sent the same answer which he had sent above fifty times before, that he would pay me, but at present it was not convenient; and desired Leon Farfara to inform me, that, if I had a mind, I might take one of the Swedish prizes for my money, which I declined; knowing that he, having a quantity of prizes and other goods on hand for exportation, would probably force me to take a cargo of said goods to Leghorn, or elsewhere, thereby exposing the United States to become responsible for said goods, or their value, should any accident happen to said vessel, in the same manner as the claim originated upon Sweden, which was the first and principal cause of the present war. I therefore have deemed it more expedient to entirely lose the aforementioned sum than to run a risk which might involve my country in a war.

And as it appears from the above detail that the said Bashaw never intends to pay me the above sum in cash, according to agreement, notwithstanding I have his receipt or promissory note, under the great seal of this Regency, and I having waited above one year for the payment of the said sum, without effect, I therefore debit the United States the said sum in my account current, leaving the Government of the said United States to make the said claim a national claim; no individual being bound to be responsible for the arbitrary acts of the chiefs of the Barbary States; at the same time making myself responsible to the United States for said sum, or any part thereof, which may be recovered from the said Jusef Bashaw hereafter.

Third. Be it known, that, in the months of May, September, and October, 1800, the said Jusef Bashaw, Supreme Commandant of the said Regency of Tripoli, having made certain demands upon the United States, in direct violation of the tenth article of the treaty existing between the United States of America and the Regency of Tripoli, which the Consul of the United States resident here found incompatible with the honor and interest of the nation he represents to comply with; that said Jusef Bashaw, in direct violation of the twelfth article of the said existing treaty, did publicly declare that he would only wait until he receives answers from the President of the United States of America, which, if not satisfactory, that he would then declare war against the said United States, as is more fully explained in my despatches to Government, copies of which were forwarded to our Consuls at Algiers and Tunis. And whereas it is particularly specified in the tenth article of said treaty that the money and presents demanded by the Bey or Bashaw of Tripoli is a full and satisfactory consideration on his part, and on the part of his subjects, for said treaty of perpetual peace and friendship, and that no pretence of any periodical tribute or further payment is ever to be made by either party; and said Bashaw of Tripoli having acknowledged the receipt of the money presents stipulated by said treaty, I find myself justifiable, both to God and my country, in having refused to comply with the said Bashaw's unjust demands upon the said United States of America.

And whereas it is stipulated in the twelfth article of the aforesaid treaty, that, in case any disputes arise from a violation of any of the articles of said treaty, no appeal shall be made to arms, nor shall war be declared on any pretence whatever; but if the Consul residing at the place where the dispute shall happen shall not be able to settle the same, an amicable reference shall be made to the mutual friend of both parties, the Dey of Algiers; the parties thereby engaging to abide by his decision: and he, by virtue of his signature to the said treaty, having engaged, for himself and his successors, to declare the justice of the case according to the true interpretation of the said treaty, and use all the means in his power to enforce the observance of the same:

Now know all men by these presents, that I, James Leander Cathcart, Consul for the United States of America, in said Regency of Tripoli, do protest and declare, that the demands made by the Bashaw of Tripoli upon the United States of America are of such a nature that I cannot settle the dispute arising therefrom: and that I conceive that I should not only be deviating from my official duty, but likewise acting as an accomplice, and in conjunction with the said Bashaw of Tripoli, to treat our good friends, the Dey and Divan of Algiers, with indignity and disrespect, were I to refrain from making the aforesaid amicable reference, transmitting the whole to the Consul General of the United States of America at Algiers, who is possessed of every information relative to the state of our affairs in this Regency, having received duplicates of my despatches for the Government of the United States; at the same time, leaving it at the discretion of the Consul General of the United States at Algiers, for the time being, to take such measures as he, in his judgment, may think most likely to promote the interests of the United States, and to maintain the peace of our country with this Regency upon honorable and equitable terms.

Fourth. Be it known, that, on the 25th of September, 1800, Raiz Amor Shelli, commander of a Tripolitan cruiser of eighteen guns, captured the American brig Catharine, James Carpenter, master, of and from New York, and bound to Leghorn, valued at fifty thousand dollars, or thereabouts; that said vessel was kept in possession of the subjects of Tripoli until the 15th of October, in the evening, and was delivered up to the Consul of the United States, in consequence of the Bashaw of Tripoli having written a letter to the President of the United States, the purport of which, being already known, needs no repetition; and that said vessel was exposed to much loss and peril, as appears by the master of said brig his protest, already forwarded to our Consul General at Algiers; and that said brig was plundered of effects, valued by said master, James Carpenter, at three hundred and ninety-seven hard dollars, whereof was recovered to the value of one hundred and eighty dollars, the value of two hundred and seventeen dollars being irrecoverably lost; notwithstanding he the Bashaw had given positive orders to Hamet Raiz, or Minister of Marine, to cause every article that could be found to be restored to their lawful owner; yet said Raiz of the Marine did not comply with the Bashaw's orders; and, being the Bashaw's brother-in-law, it was out of my power to compel him; but, on the contrary, prevaricated, from day to day, from the 16th to the 21st of October, with an intent no doubt, to share the spoils with the aforesaid Raiz Amor Shelli; and, on the night of the 21st instant, sent Ibram Farfara to inform me that, if the brig did not sail by daylight in the morning, the port would be embargoed; and gave me to understand that if I did not promise to pay him anchorage for said brig, she would be detained until the embargo should be taken of. This demand I absolutely refused to comply with. On the 22d, at daylight, I ordered the brig to get under way, and could not get the pilot to go on board until said Ibram Farfara paid the Raiz of Marine five dollars and seventy-five cents anchorage, which, notwithstanding it being an unjust demand, I complied with sooner than have the brig detained one day longer.

I therefore, for foresaid reasons, and for each of the aforementioned arbitary acts, do protest against the aforesaid Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, in Barbary, and against his Ministers and Counsellors; but more especially against said Morad Raiz, Admiral of the cruisers of this Regency, for being the cause of my altering the national passports of the United States of America, and against said Hamet Raiz, or Minister of Marine, for the reasons before meationed, as well as for falsely, insidiously, and slanderously asserting in my presence, and in the presence of Captain Carpenter, that the Consul General of the United States, Richard O'Brien, and the broker or banker of said United States, Micaiah Cohen Bacri, had informed him, when he was last at Algiers, that the Government of the United States had alone paid to the house of Bacri & Co. one hundred thousand dollars for their influence, thereby irritating the said Jusef Bashaw against the Government and citizens of the United States of America, as the said Jusef Bashaw seemingly gave credit to the falsehood of said Hamet Raiz, and emphatically said that the Government of the United States had treated an Algerine Jew better, and with more liberality, than they had the said Bashaw of Tripoli, notwithstanding I gave the direct lie without ceremony or hesitation to the said Hamet, and told the Bashaw that I wondered how he could give credit to so barefaced a falsehood; for even had the United States given the abovementioned sum, the party concerned would be the last people in the world to divulge the same, it not comporting with their honor or interest, especially to Hamet Raiz, who was not only an enemy to the United States, but likewise to his Excellency the Bashaw of Tripoli, he having by his false insinuations endeavored to persuade the Bashaw to annul the treaty of peace and amity at present subsisting between the said United States and this Regency, to the prejudice of his character, honor, and dignity, whose word and signature I had always supposed to have been inviolably sacred; and that said Jusef Bashaw, in answer to the above said, "You said that Hamet Raiz *lies*, and I say he tells truth;" thereby discrediting all I had said, and giving full credit to the imposition of said Hamet Raiz;" or Minister of Marine.

Now know all men, that, for the reasons above assigned, I, James Leander Cathcart, Agent and Consul for the United States of America, in the Regency of Tripoli, having shown sufficient cause to enter this protest against the said Jusef Bashaw, Supreme Commandant of the Regency of Tripoli, his aforementioned Ministers and Counsellors, I do, by these presents, most solemnly protest against the conduct of said Jusef Bashaw, his Ministers and Counsellors, as being unjust and in direct violation of the 10th and 12th articles of the existing treaty between the United States and the said Regency of Tripoli; and I, James Leander Cathcart, do further declare that the dispute arising from the violation of said treaty is of such a nature, that I cannot adjust the same before I receive express instructions from the President of the United States of America, or until our good friends the Dey and Divan of Algiers shall decide upon the justice of the cause, according to the true interpretation of the existing treaty between the United States of America and this Regency; and that I do hereby make an amicable reference to our good friends the Dey and Divan of the Regency of Algiers, promising, in the name of the United States of America, to abide by their decision agreeable to the true meaning of the stipulation contained in the 12th article of the Treaty of Peace and Amity concluded between the United States of America and the Regency of Tripoli, by the intervention of the late Hassan Bashaw, Dey of Algiers, and under the immediate guaranty of said Regency; the said treaty having been duly ratified by the reigning Dey of Algiers, Mustapha Bashaw, whom God preserve.

Now I, James Leander Cathcart, Agent and Consul of the United States of America, conceiving it my duty so to do, do now transmit this said protest to the chancery of the United States at Tunis, in order that it may be there duly registered, and from thence forwarded to the Consul General of the United States of America at Algiers, in order to prevent, as much as depends upon me, any appeal being made to arms, leaving the conducting of the whole affair entirely at the discretion of the Consul General of the United States of America for the time being, as before mentioned, not doubting but he will take such measures as he in his judgment may think most likely to promote the interests of the United States of America, and maintain the peace of our country with this Regency upon honorable and equitable terms.

In testimony of the above, I have hereunto subscribed my name, and affixed the seal of my office, at the chancery of the United States of America, in the city of Tripoli, in Barbary, this 29th day of October, in the year of our Lord one thousand eight hundred, and in the twenty-fifth year of the independence of the United States of America.

JAMES L. CATHCART.

Mr. Cathcart having desired a *procès verbal* of what passed at the audience, which, at his request, in conjunction with that of the Consul of His Danish Majesty, and of the Chargé des Affaires of His Catholic Majesty, was given on the 11th of this month, as well as of the reasons which occasioned their request:

The undersigned Nicholai Christian Nisen, Consul of His Danish Majesty, and Don Pedro Ortiz de Zugasti, Chargé des Affaires of His Catholic Majesty, attest and declare as follows:

Since a long time there existed the greatest irregularity in the distribution of letters which arrived here for the Consuls. This irregularity was considerably increased, when, by reason of the plague which appeared at Tunis, and the precautions relative to health taken by his Excellency the Bashaw, in consequence, the couriers were subjected to quarantine, and the letters fumigated before they were distributed. But the abuses had now reached their last extreme. On the 27th October, arrived a small vessel from the coast of Tunis; the vessel and passengers were both subjected to quarantine. Only one letter was delivered on the day of her arrival; and on our earnestly endeavoring to learn whether there were any for us, we received negative answers. Nevertheless, on the 9th of this month a packet was given to the Chargé des Affaires of His Catholic Majesty, and another to the Consul of the United States of America; the latter having had the politeness to communicate some news from it to us, complained of the considerable delay he had experienced of a letter he had just received from Algiers, dated on the 25th of July, contained in another from Tunis of the 1st of October. This letter was of the greatest consequence to him in his consular concerns, and he requested us to attest the day of its arrival, which we did, as we now do by these presents.

The next day (Nov. 10) arrived a courier from Tunis. He arrived in the morning, but all the day passed without receiving the letters. On the 11th, in the morning, they were landed open, and thrown together promiscuously, and, instead of fumigating them, they were burnt in such a manner as to consume a part and render the rest illegible, and thus they were sent to us by handfulls. Seeing these unworthy proceedings, finding many of our letters lost, and that our residence here at Tripoli would be absolutely useless to our Governments, if their orders did not reach us, we thought it our duty to make a complaint, supported by all, and in the strongest manner, to his Excellency the Bashaw. An audience being granted, we showed him our letters in pieces and burnt, among which there was one for the Bashaw himself. His Excellency immediately promised to cause this abuse to be redressed. He gave his orders, in consequence, and declared himself ready to punish the guilty.

After having thus terminated the principal object of the audience requested, each of us communicated to his Excellency the news we had received; and the Consul of the United States of America, having equally communicated to the Bashaw, that the Ministers of his Government at Paris had just concluded a treaty with the French Republic, which was to terminate their differences, his Excellency complimented him on the occasion, but nevertheless added, that an arrangement ought also to be made with him, and to take care that he did not give orders to his cruisers to bring in the merchant vessels of the United States; and his Excellency the Bashaw further explained himself in such manner as to cause the fear of a rupture not far off. The Consul of the United States of America, Mr. Cathcart, answered, that he was sure that would never take place; that the word of his Excellency was sacred; that he, the Consul, could do nothing without the orders of his Government, and that his Excellency had promised to wait, not only six months, computing from the 2d of October last, but until the arrival of an answer from the American Government. But the Bashaw did not seem to accede to it; on the contrary, he refused, and said that he had the greatest reason to complain of the Americans; that lately he had received a letter from one of his corsairs, which acquainted him that, being on the coast of Naples, he had met an American polacre richly laden; that he visited and treated it in a friendly manner; that, nevertheless, the polacre, after entering the port, gave intelligence that the corsair was there, in order that a superior force might be sent out to capture him; but the corsair being advised of it by a Ragusan vessel, which had just come out of the same port, he had time to save himself.

Mr. Cathcart answered his Excellency that it was evidently a false report, dictated by malice; that, among the whole marine of the United States, there was no polacre; and that he prayed his Excellency not to give credit to such lies,

which his Raiz might report; nevertheless, the said Consul of the United States had no reason to be tranquillized; it appeared, on the contrary, that his Excellency the Bashaw of Tripoli intended shortly to give orders for bringing in the merchant vessels of the United States, and thus to commence hostilities.

The audience being finished, we retired, and Mr. Cathcart, Consul of the United States of America, having communicated his wish to us, to have a *procès verbal* of all that passed at the audience, as well as of what gave occasion for asking it, we have drawn up these presents; and in faith thereof, we have signed them, and thereto affixed the royal seals of our Consulates.

Done at Tripoli, in Barbary, this 13th November, 1801. N. C. NISEN.

Consul of H. D. M., at Tripoli.

In absence of the Consul General:

PEDRO ORTIZ DE ZUGASTI.

Gentlemen of the Senate, and of the House of Representatives:

I now enclose sundry documents supplementary to those communicated to you with my Message at the commencement of the session. Two others of considerable importance, the one relating to our transactions with the Barbary Powers, the other presenting a view of the offices of the Government, shall be communicated as soon as they can be completed. TH. JEFFERSON.

DECEMBER 22, 1801.

The Bashaw of Tunis to Mr. John Adams, President of the United States of America.

Mr. PRESIDENT: Although I have charged the worthy and zealous Consul of your nation, the Sieur William Eaton, to acquaint you with a proposition, which I have found myself under the absolute necessity of making to him, I have nevertheless determined to apply directly to you about it by these presents, in order that I might, at the same time, procure for myself the pleasure of reiterating to you the assurance of the continuance of my esteem and my friendship.

After the request I formerly made for forty cannon of different calibers, the present circumstances in which I find myself require that I should procure twenty-four pounders, of which I have the most pressing need. I should therefore wish that you would cause them to be sent to me as soon as possible; in case you should not, on the receipt of the present, have sent the first to me, if finally they should have been already sent away, I expect, Mr. President, as a real proof of your friendship, for which I shall be infinitely obliged to you, that you will furnish and convey to me forty other pieces, all of the caliber abovementioned.

This request will not appear in the least extraordinary to you, when you consider the very moderate and friendly manner in which, differently from others, I have conducted myself towards the United States and their flag, notwithstanding that the douceurs and presents, stipulated four years ago for making peace with the United States, have not all arrived, and that not the smallest part of those, which were intended for me individually, have been sent. I make no doubt on this subject, that your Consul will have forwarded the letter I addressed to you about two years past relative to it, and that you will thereby have seen that I consented to wait the space of a year, in consequence of the representation which the same Consul made to me, that several of the articles composing the present due to me, and which I constantly expect, could neither be had nor manufactured in the United States, and that they were to be procured from foreign countries.

Wishing, on my part, to return you a reciprocity (whenever an occasion of urgency in your nation happens) in my country, and hoping to see that good harmony which happily subsists between us continued and remain undisturbed, I pray Almighty God to preserve you, and I assure you, Mr. President, of my esteem and my most distinguished consideration.

[Signature and seal of Hamouda Bashaw, Bey of Tunis.]

At Bardo, of Tunis, the 2d of the moon Haggia, of the year Hegira 1215, and the 15th April, 1801.

Thomas Jefferson, President of the United States of America, to Hamouda Bashaw, Bey of Tunis.

GREAT AND GOOD FRIEND: The letter which you addressed to the President of the United States of America, on the 15th of April, has been received, and has conveyed us the assurances, always welcome, that your friendly dispositions towards these States still continue firm and unimpaired. We feel deep regret that the regalia, and other tokens of our esteem for you, had not, at that date, reached their destination. These delays proceed from the distance of our situation, and from the circumstance that some of the articles acceptable to you are not fabricated here, but are to be sought for in foreign countries, where, also, they require time to be prepared. We trust they will all have been received before this reaches you. We are a nation not practising the difficult arts, but employed in agriculture, and transportation of its produce, for commercial exchange with others. Peace, therefore, with all nations is essentially our pursuit, so long as it can be obtained on just and equal grounds. Of this desire, on our part, we have given to the States bordering on the Mediterranean the same manifestations of which Europe had set the example. Like them, we consented to give a price for friendship, which would have been properly requited by our own. So long as we have been met with moderation and good faith, we have preferred these means of peace, rather than to seek it through our own strength. At length, however, the inadmissible demands of the Bashaw of Tripoli, and our determination to owe to our own enegies, and not to dishonorable condescensions, the protection of our right to navigate the ocean freely, have induced us to send a squadron into the Mediterranean sea, for the protection of our commerce

against the Bashaw of Tripoli. We gave, illustrious friend, in strict charge to our officer, chief in command, to respect and treat with particular friendship your flags, your vessels, and your subjects, and to take an early occasion, after his arrival in those seas, to testify his respect to you, to assure you, of our adherence to the peace and friendship established with you, and of our orders to him to cultivate them with assiduity: and we trusted you would yield him that hospitable reception, and those accommodations in the ports of your dominions which his necessities require. We did this with the greater confidence, as knowing the liberality of your mind, and being ourselves in the habit of rendering similar good offices to all nations in friendship with us.

Trusting, good friend, that our Consul will have received and delivered those evidences of our good will, which circumstances permit us to offer for your acceptance, we ask the continuance of your friendship in return for that which we sincerely bear to you: and pray to God that he may long preserve your life, and have you under the safeguard of his holy keeping.

Done in the United States of America, this 9th day of September, 1801.

TH. JEFFERSON.

TUNIS, *June* 28, 1801.

SIR: On the night of the 18th instant a fire broke out in the Bey's palace, which, in its progress, consumed fifty thousand stands of arms. The second day following, I received a message to wait on the Bey, but was at that moment confined to my bed with a bilious fever, so that it was not till this morning I have been able to go in my carriage to the palace. The Bey's object in calling on me was to demand of the United States *ten thousand stands of arms*. I refused to state his demand. "I have proportioned my loss," said he, "among my friends, and this falls to you to furnish. Tell your Government to send them without delay." It is impossible, said I, to state this claim to my Government. We have no magazines of small arms; the organization of our national strength is different from that of any other nation on earth. Each citizen carries his own arms, always ready for battle. When threatened with an invasion, or actually invaded, detachments from the whole national body are sent, by rotation, to serve in the field; so that we have no need of standing armies. It would be an affront to my Government, and an imposition on the Bey, to state to them this demand, or to flatter him with a prospect of receiving it. "Send for them to France or England," said the Minister. You are in a much more eligible position to make this commission to Europe than we are, said I. "If the Bey had any intention of purchasing the arms from Europe," said the Minister, "he could do it without your agency. He did not send for you to ask your advice, but to order you to communicate his demands to your Government." And I came here, said I, to assure you that I will make no such communication to my Government.—"The Bey will write himself," said he. If so, it will become my duty to forward his letter; but, at the same time, it is equally obligatory on me to let the Bey be aforehand apprized that he never will receive a single musket from the United States. I should suppose a sense of decency, if not of gratitude, would dissuade the Bey from this new extravagant claim. Has he not, within eighteen months, received two large ship cargoes in regalia? have we not now another ship laden for him on its passage? and has he not, within sixty days, demanded cannon extraordinary of the United States? At this rate, when are our payments to have an end? "Never," said the Minister; "as to the ships you talk of, they are but the part payment of regalia you have long since owed us, as the condition of peace; the other claims we make are such as we receive from all friendly nations once every two or three years; it is an established custom, and you, like others, will be, obliged to conform to it." When we shall have completed the payment of our peace stipulations, you may never calculate on further donations. It is by treaty considered as the conditions of a perpetual peace, and any new claims on your part will be at least an infraction of the treaty, and will be so considered by us. You may, therefore, at once, and forever, abandon the idea of future claims: for I again assure you, in the name of my Government and country, that the discharge of our treaty obligations will put an end to our contributions here. "Your contributions, as you think proper to call them," said the Minister, "will never have an end. If this be the language you think of holding at this Court, you may prepare yourself to leave the country, and that very soon." If change of style, on my part, said I, be the condition of residence here, I will leave the Bey's kingdom to-morrow morning. "We will give you a month," said the Minister. I ask but six hours, I replied. "But you will write?" No. "But it is your duty to write." For deficiency in duty this is not the place where I am to be questioned. "I tell you again," continued he, "your peace depends on your compliance with this demand of my master." If so, said I, on me be the responsibility of breaking the peace. I wish you a good morning. Leaving the place, I heard the Minister say to one of his colleagues, "By God, that man is mad! but we shall bring him to terms; never fear." I do not know how this affair will end. I will not change my position.

I have the honor to be, sir, with perfect respect, your most obedient servant.

WILLIAM EATON.

HON. SECRETARY OF THE U. S.

Extract of a letter from the Secretary of the Navy to Commodore Dale.

MAY 20, 1801.

"Recent accounts received from the Consul of the United States, employed near the Regencies of Algiers, Tunis, and Tripoli, give cause to fear

that they will attack our commerce, if unprotected, within the Mediterranean; but, particularly, such apprehension is justified by absolute threats on the part of the Bey of Tripoli.

"Under such circumstances, it is thought probable that a small squadron of well appointed frigates appearing before their ports will have a tendency to prevent their breaking the peace which has been made, and which has subsisted for some years, between them and the United States. It is also thought that such a squadron, commanded by some of our most gallant officers, known to be stationed in the Mediterranean, will give confidence to our merchants, and tend greatly to increase the commerce of the country within those seas.

"I am, therefore, instructed by the President to direct that you proceed, with all possible expedition, with the squadron under your command, to the Mediterranean. It will be proper for you to stop at Gibraltar, and obtain permission from the Governor for depositing provisions there, for the use of your squadron. It is not presumed that there will be any refusal; but should he deem it improper, you will then leave a letter with Mr. Gavino, the American Consul, for the captain of the provision vessel that will be sent hereafter, directing him where to proceed.

"On your arrival at Gibraltar, you will be able to ascertain whether all, or any of the Barbary Powers shall have declared war against the United States. In case all are tranquil, you will water your ships, proceed off the port of Algiers, and send to the Consul, Mr. O'Brien, whom you will inform that you have arrived; that the views of your Government are perfectly friendly; that you have a letter for him and the Dey; and that you request to see him, or that he send some person in whom he can confide for the letters; or that he send a permission for one of your officers to go to the city. You will have on board certain goods, which you will deliver on his requisition. They are for the biennial presents to the Regency. The George Washington is preparing to carry timber and other stores for at least one year's annuity, and you have on board the President thirty thousand dollars, which it is hoped and expected Mr. O'Brien will be able to induce the Regency to receive for another year. The balance may go some time hence. But if Mr. O'Brien cannot induce the Dey to receive money instead of stores, you will retain the thirty thousand dollars, excepting four or five thousand dollars, which, on Mr. O'Brien's requisition, may (if he should think it useful to commence with) be given him on your arrival, and which amount may be replaced, if the Dey shall afterwards agree to receive the thirty thousand dollars in full for one year's annuity, out of the ten thousand dollars hereafter mentioned as being intended for the Bey of Tripoli, and the stores will be sent as soon as possible.

"When your business is arranged at Algiers to your satisfaction, you will proceed to Tunis, and there cause the letters you carry to be delivered to Mr. Eaton, the Consul. A ship is preparing, and will sail as soon as possible, with stores, agreeably to treaty with that Regency.

"From thence you will proceed to Tripoli; on your arrival there, send for Mr. Cathcart, American Consul for that port, to whom deliver his letters, and either by him or one of your officers (whoever may be deemed most proper,) send the President's letter to the Bey. You have on board ten thousand dollars, as a present from the President; the whole, or such part thereof as you may have on your arrival at Tripoli, and which Mr. Cathcart may conceive useful, will be given the Bey, provided he has conducted himself peaceably towards the United States.

"You will be careful not to solicit the honor of a salute from any of those Powers; if you do, they will exact a barrel of powder for every gun they fire.

"You will enjoin upon your officers and men the propriety and utility of a proper conduct towards the subjects of all those Powers; a good understanding with them being extremely desirable.

"Should you find the conduct of the Bey of Tripoli such as you may confide in, you will then coast with your squadron the Egyptian and Syrian shores, as far as Smyrna, and return by the mouth of the Adriatic; thence pay the Bey of Tripoli another visit; finding him tranquil, proceed to Tunis, and again show your ships; and thence coast the Italian shore to Leghorn, where you may stay some days, and then proceed along the Genoese to Toulon, which port it will be instructive to your young men to visit. From thence proceed again to Algiers. If there should be no hostile appearance on the part of those Powers, and you should be well assured that no danger is to be apprehended from either of them, you may, on the 15th October, commence your return homeward; but if there should be any cause for apprehension from either of those Powers, you must place your ships in a situation to chastise them, in case of their declaring war or committing hostilities, and not commence your return to the United States until the first day of December.

"On your return you will go into Hampton Road, and repair yourself to this place as soon as you can. Order the Philadelphia to Philadelphia, if the season will permit; if not, let her go with the Essex to New York; the Enterprize send to Baltimore.

"But should you find, on your arrival at Gibraltar, that all the Barbary Powers have declared war against the United States, you will then distribute your force in such a manner as your judgment shall direct, so as best to protect our commerce and chastise their insolence; by sinking, burning, or destroying their ships and vessels wherever you shall find them. The better to enable you to form a just determination, you are herewith furnished with a correct state of the strength and situation of each of the Barbary Powers. The principal strength, you will see, is that of Algiers. The force of Tunis and Tripoli is contemptible, and might be crushed with any one of the frigates under your command.

"Should Algiers alone have declared war against the United States, you will cruise off that port so as effectually to prevent anything from going in or coming out, and you will sink, burn, or otherwise destroy their ships and vessels wheresoever you find them.

"Should the Bey of Tripoli have declared war (as he has threatened) against the United States, you will then proceed direct to that port, where you will lay your ship in such a position as effectually to prevent any of their vessels from going in or out. The Essex and Enterprize, by cruising well on towards Tunis, will have it in their power to intercept any vessels which they may have captured. By disguising your ships, it will be some weeks before they will know that the squadron is cruising in the Mediterranean, and give you a fair chance of punishing them.

"If Tunis alone, or in concert with Tripoli, should have declared war against the United States, you will chastise them in like manner. By cruising with the squadron, from the small island of Maratimo, near the island of Sicily, to Cape Blanco, on the Barbary shore, you may effectually prevent the corsairs of either from intercepting our commerce in the material part of the Mediterranean sea, and may intercept any prizes they may have made.

"Any prisoners you may take you will treat with humanity and attention, and land them on any part of the Barbary shore most convenient to you. This mode will be humane, and will show that we have no sort of fear what such men can do. It will also tend to bring those Powers back to a sense of justice which they owe to us. But you will be careful to select from them such Christians as may be on board, whom you will treat kindly, and land, when convenient, on some Christian shore. Should you have occasion, you may accept their services."

Extract of a letter from Commodore Dale, commanding the United States squadron in the Mediterranean, to the Secretary of the Navy.

GIBRALTAR BAY, *July* 2, 1801.

"On my arrival here, I found lying at anchor the high admiral of Tripoli, in a ship mounting twenty-six guns, nine and six pounders, two hundred and sixty men, and a brig of sixteen guns, one hundred and sixty men. He has been out thirty-six days, says he is not at war with America, nor has he taken anything. He came in here for water, and is under quarantine at present. From every information I can get here, Tripoli is at war with America."

Extract of a letter from Commodore Dale to the Secretary of the Navy, dated

"TUNIS BAY, *July* 19, 1801.

"Mr. O'Brien informed me 'that the Dey of Algiers had been complaining very much of the United States not making their annual payments good, and had gone so far as to say that he would not put up with it much longer. He was now confident, he said, that the Dey would not speak so big, and had no doubt that the arrival of the President at Algiers had much more weight with the Dey than if the Washington had arrived with stores.' He did not think it a proper time to mention to the Dey about receiving thirty thousand dollars instead of stores.' Mr. O'Brien took the cloth and linen on shore with him.

"I arrived in Tunis Bay on the 17th instant, and sent a letter on shore to Mr. Eaton; the 18th he came on board. The Essex and the ship Grand Turk arrived the same day. From Mr. Eaton's information, this Regency has been much in the same way as Algiers, and the appearance of our ships will have the same effect on the great and mighty Bey of Tunis."

Extract of a letter from Commodore Dale to the Secretary of the Navy, dated

"MALTA HARBOR, *Aug.* 18, 1801.

"I arrived off Tripoli the 24th ultimo; the 25th I received a letter from Mr. Nissen, Consul for Denmark, at Tripoli. He was requested by Mr. Cathcart to act for him in his absence, should there be a necessity for it. The letter was written at the request of the Bey, to know if my intentions in coming off Tripoli were to make peace or war. I wrote him that my intentions in the first instance were friendly, but the act of his Excellency in declaring war against the United States had put that disposition out of my power, and that I was determined to take his vessels of every description, and his subjects, wherever I could find them; but, at the same time, I should be glad to know his reasons for declaring war, and on what principles he expected to make peace. That, on those points, I wished information as soon as possible, that I might inform the President of the United States, and ascertain his determination respecting the business. The next day the Bey sent off a Jew to negotiate for a peace or truce. I informed him that his Excellency had not answered my letter; that I was not empowered to make a new treaty; but if the Bey would answer my letter, and send off one of his officers, and was serious in the business, I would then treat with him about a truce. The Jew went on shore. I have not heard from him since. The Bey wrote me previous to this, that he had good reasons for declaring war against the United States, but if I would come on shore, he was very certain we should be able to make a peace. He said he did not like the first and twelfth articles in the old treaty, and did not wish to have any thing to do with the Dey of Algiers.

"I am happy to inform you that the Enterprize, on the 1st instant, on her passage to this place, fell in with a polacre ship, mounting fourteen guns and eighty men, a corsair, belonging to Tripoli. The enclosed is a copy of Mr. Sterrett's letter to me, which will give you an account of the action and the result of it. Mr. Sterrett is a very good officer, and deserves well of his country. After being eighteen days off Tripoli, and seeing nothing in that time but two small vessels, Tunisians, one bound in and the other out, and

receiving information that the Bey had boats stationed along the coast, both to the eastward and westward, on the 11th instant I determined to run along the coast to the westward as far as the island of Pidussa; from Pidussa to this place for water. I arrived here the 16th instant; saw nothing on my passage."

Copy of a letter from Lieutenant Andrew Sterrett to Commodore Dale, dated on board the United States schooner Enterprize.

AT SEA, *August* 6, 1801.

SIR: I have the honor to inform you, that on the 1st August, I fell in with a Tripolitan ship of war, called the Tripoli, mounting fourteen guns, commanded by Raiz Mahomet Sous. An action immediately commenced within pistol shot, which continued three hours, incessant firing. She then struck her colors. The carnage on board was dreadful, she having twenty men killed and thirty wounded; among the latter was the captain and first lieutenant. Her mizenmast went over the side. Agreeably to your orders, I dismantled her of everything but an old sail and spar. With heartfelt pleasure I add, that the officers and men throughout the vessel behaved in the most spirited and determined manner, obeying every command with promptitude and alertness. We had not a man wounded, and sustained no material damage in our hull or rigging.

I remain,

Your most obedient servant,

ANDREW STERRETT.

Extract of a letter from Commodore Dale to the Secretary of the Navy.

"GIBRALTAR BAY, *Oct.* 4, 1801.

"Having completed my water on the 21st of August, I sailed again. On the 30th I brought to a Greek ship, from Constantinople and Smyrna, bound into Tripoli, loaded with beans and merchandise, and having on board one Tripolitan officer, twenty soldiers, fourteen merchants, five women, four of them black, and one white child, all Tripolitans. I took them all on board. I thought this a favorable opportunity to try to bring about and settle an exchange of prisoners with the Bey, should his corsairs take any Americans. (I say God forbid!) I accordingly sent three of the Tripolitans on shore in a small boat, with a letter to Mr. Nissen, the Danish Consul, requesting him to make known the contents of it to the Bey. The next day Mr. Nissen came off, at the Bey's request, to know if I would make a truce. Mr. N. informed me that he told the Bey, before he came off, that he could not say anything to me on that subject until he had answered my letters on that point. The Bey told him to go off and try, and, if I would, he would then talk to me about the exchange of prisoners, and a peace. My mind was made up on that subject. Knowing I had no orders to make a truce, little was said on that subject. Mr. Nissen told me that the Bey said that he would not give one American for all the soldiers, and that only eight of the merchants were his subjects. He cared very little about any of them. At length the Bey agreed to give three Americans for twenty-one soldiers, and three for the eight merchants. Circumstanced as I was, I was under the necessity to act as I did, namely, to put them all on board the Greek ship again, and permit them to go into port. I wrote to Mr. Nissen to inform the Bey that I agreed to the exchange of three Americans for the soldiers, but I did not consider the merchants as prisoners, nor could I fix on anything respecting them, until I knew the determination of my Government, and that the present transaction was not to be a precedent in any future negotiation. This transaction took place on the 3d of September, the ship's company then very sickly, ninety-four men on the doctor's list, and a number more complaining. Not knowing to what extent the sickness might go, and not having more than one month's provision on board, at eight p. m., I was under the necessity of coming to a determination to give up the blockade of Tripoli, and proceed for Gibraltar.

"Mr. Gavino informed me, about a month ago, that the Tripolitan Admiral had laid up his two corsairs here, and took his passage, with eight of his officers, on board of an English ship bound to Malta, leaving the captain of the brig and twenty men to take care of the two vessels, and bring the ship home, if he had an opportunity; sent the remainder of his men over to Tetuan in boats.

"I think it necessary that two frigates should remain in those seas all the winter, under the present circumstances. The Philadelphia to rendezvous at Saragossa, the southeast end of the island of Sicily. I shall give Captain Barron orders to show himself off Tripoli and Tunis, every now and then, to let those fellows know and see that we are on the watch for them. The Essex to rendezvous at Gibraltar and Algeziras, as may be most convenient, to keep a good look out, and know what is going on in this quarter."

Extract of a letter from David Humphreys, Esq., to the Secretary of State.

"MADRID, *October* 20, 1801.

"In a postscript to the duplicate of the same, dated the 16th instant, I informed you I had received a letter that day from Consul O'Brien at Algiers, in which he mentioned that a revolt had existed for a few hours, while the Dey was at the mosque, but that it was soon quelled, and tranquillity restored.

"I am since in receipt of a second copy of that letter, which is continued to the 28th ultimo, wherein he advises me that the Dey had received letters from Tripoli, with the information of the blockade of that port by the American armament; stating that one Tripolitan corsair had been taken and released; that some vessels had been permitted to enter the port, and others refused; that the Bashaw had been in want of grain, and that he had offered to make a truce with the American commodore, but the latter had rejected the offer. The Bashaw, therefore, solicits his (the Dey's) succor, to relieve him from his embarrasments, and to clear from their detention his two armed vessels which are blockaded at Gibraltar. Consul O'Brien had already declined complying with the Dey's desire to give passports for two hundred and fifty men, being part of the crews of those two armed vessels, to return to Tripoli.

"The same Consul further reports, that the Regencies of both Tripoli and Tunis solicit the Dey that he will not admit the custom of blockade, as being a novel system as applied to them, alike prejudicial to all their common interests.

"This appears to me strongly to recommend the policy of persisting in the system on our part, and perhaps of augmenting our present naval force in the Mediterranean."

FRANCE.

[Communicated to the House of Reps., Jan 25, 1802.]

DEPARTMENT OF STATE, *Jan.* 25, 1802.

SIR: In obedience to the order of the House of the 22d instant, I have the honor to lay before them a copy of the instructions, as issued by the Department of State, under the direction of the President of the United States, in virtue of the act of Congress entitled "An act further to protect the commerce of the United States," and passed on the 9th of July, 1798. These instuctions were issued only to private armed vessels.

I have the honor to be,

Sir, with great respect,

Your most obedient servent,

JAMES MADISON.

Hon. SPEAKER *of the*
House of Representatives, U. S.

Instructions for the private armed vessels of the United States.

1st. In exercising the powers granted by the act of Congress, entitled "An act further to protect the commerce of the United States," passed the 9th day of July, 1798, and which is hereto annexed, the regulations therein prescribed are to be strictly attended to and observed.

2d. The powers of capturing and recapturing, granted by the said act, being pointed solely and exclusively against French armed vessels, and those vessels, goods, and effects of citizens of the United States, or of persons resident therein, which shall have been captured by the French, the rights of all other nations are to be duly respected; and they are not to be molested in their persons or property; consequently, American vessels and property captured by the commissioned vessels of such of those other nations as are at war, are not to be recaptured by the armed vessels of the United States. Nevertheless, any vessels found on the high seas may be examined in such manner as shall be necessary to ascertain whether they are or are not armed French vessels, or "vessels the property of, or employed by, any citizen of the United States, or person resident therein, or having on board any goods or effects belonging to any such citizen or resident," that have been captured by the French. But if they are of neither of these descriptions, they are to be dismissed with as little delay as possible. And in making such examination, care is to be taken that no injury be done to the vessel or the property on board her. It peculiarly becomes a nation like the American, contending for her just rights, and defending herself against insults and injuries, to respect the rights of others, and studiously avoid, not only the outrage and the inhumanity, but even the incivility of which itself complains. It is hoped that Americans will be as distinguished for their justice and humanity as for their bravery and love of true liberty. If, on the contrary, any of the officers or crews of American armed vessels shall practise any cruelty or inhumanity, contrary to the usage of civilized nations, the offenders will be severely punished.

3d. For the purposes of the act aforesaid, you will consider the "high seas" to extend to low water mark on all the coasts of France, and her dominions, and of all places subject to her power, in any part of the world; and exercise accordingly the powers of capturing and recapturing, granted by the act aforesaid. By the same rule, seeing a war exists between Great Britain and France, you may capture and recapture as aforesaid, on all the coasts of British dominions, and of all places subject to the British power: but we are to refrain from exercising the aforesaid powers of capturing and recapturing, in waters which are under the protection of any other nations, that their peace and sovereignty may remain unviolated. If, however, any armed French vessel, regardless of the rights of these other nations, shall, within their jurisdictional limits, attack or capture any vessel, goods, or effects, the property of citizens of or residents in the United States, and you are able to attack and take such armed French vessel, or to retake her prize, within the jurisdictional limits of such nations, you are to do it; provided their Governments, respectively, or the Commanders or Governors in chief in such places, give their permission.

4th. The master or pilot, and one or more of the principal persons of the company of every armed French vessel, captured as aforesaid, are to be sent, as soon after the capture as may be, to the judge or judges of the proper court in the United States, to be examined upon oath, touching the interest or property of the captured vessel and her lading; and at the same time to be delivered to the judge or judges, all passes, charter-parties, bills of lading, invoices, letters, and other documents and writings found on board; the said papers to be proved by the affidavit of the commander of the capturing vessel, or some other person present at the capture, to be produced as they were received, without fraud, addition, subduction, or embezzlement.

5th. The commanders of American private armed ships are, by all convenient opportunities, to send to the Secretary of the Navy written ac-

counts of the captures they shall make, with the number and names of the captives, and intelligence of what may occur, or be discovered, concerning the designs of the French, and the destinations, motions, and operations, of their fleets, cruisers, and armies.

6th. Where it can be done without injury or great inconvenience, the armed French vessels, captured as aforesaid, are to be sent to some port in the United States, to be tried according to law. But such captures may happen in places remote from the United States, or under circumstances which would render the sending of the captured vessels thither extremely inconvenient: while, from the vicinity of the ports of the British dominions, or those of any other Power in friendship with the United States, but at war with France, or from other circumstances, it would be easy to send such captured vessels into those friendly ports. In such cases, it will be lawful to send such prizes into those friendly ports where they will find an asylum; and if the laws of those countries admit of it, and it can be done to the satisfaction of the captors, there will be no objection on the part of the American Government to the libelling and trying such armed French vessels by the proper courts of those countries; where, also, may be delivered to the proper officers all French persons and others who shall be found acting on board of any French armed vessel which shall be captured, or on board of any vessel of the United States which shall be recaptured as aforesaid.

7th. With respect to American vessels, goods, and effects, recaptured, it seems not necessary to bring them immediately into a port of the United States. If brought in, they are to be restored to the owners, on the payment of salvage. But such recaptured vessels, goods, and effects, may, at the time of recapture, be so remote from the United States, and so near a market, or the goods, and effects, may be of a nature so perishable, that to send such vessels, goods, and effects, back to the United States may prove extremely injurious to the owners and recaptors: whereas, if permitted to proceed to their destined ports, or other places, to a market, greater advantages may result to all concerned therein: and, as either the master, mate, or supercargo, of any such recaptured vessel is usually left on board, and with the aid of the prize-master and hands of the recaptors, which would be necessary to bring her home, might proceed and complete their original or other beneficial voyage; the commanders of the private armed vessels will, in such case, consider maturely the course most proper to be pursued, as well for the benefit of their fellow-citizens, whose property they shall thus recapture, as of themselves, in respect to the salvage to which they and their crews and owners will be entitled. Nothing on this subject is enjoined; the commanders of the private armed vessels are to use their sound discretion.

8th. If any vessel of the United States, public or private, shall be found in distress, by being attacked or taken by the French, the commanders, officers, and company of the private armed vessels aforesaid are to use their utmost endeavors to aid, succor, relieve, and free every such vessel in distress.

To Captain ——, Commander of the private armed —— called the ——.

An Act further to protect the Commerce of the United States

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That the President of the United States shall be, and he is hereby, authorized to instruct the commanders of the public armed vessels which are, or which shall be, employed in the service of the United States, to subdue, seize, and take any armed French vessel which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against and condemned as forfeited, and shall accrue and be distributed as by law is or shall be provided respecting the captures which shall be made by the public armed vessels of the United States.

Sec. 2. *And be it further enacted,* That the President of the United States shall be, and he is hereby, authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions, in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned as aforesaid, shall have the same license and authority for the subduing, seizing, and capturing any armed French vessel, and for the recapture of the vessels, goods, and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instruction as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions, which shall be granted as aforesaid, shall be revocable at the pleasure of the President of the United States.

Sec. 3. *Provided, and be it further enacted,* That every person intending to set forth and employ an armed vessel, and applying for a commission, as aforesaid, shall produce, in writing, the name and a suitable description of the tonnage and force of the vessel, and the name and place of residence of each owner concerned therein, the number of the crew and the name of the commander, and the two officers next in rank, appointed for such vessel; which writing shall be signed by the person or persons making such application, and filed with the Secretary of State, or shall be delivered to any other officer or person who shall be employed to deliver out such commissions, to be by him transmitted to the Secretary of State.

Sec 4. *And provided, and be it further enacted,* That, before any commission, as aforesaid, shall be issued, the owner or owners of the ship or vessel for which the same shall be requested, and

the commander thereof, for the time being, shall give bond to the United States, with at least two responsible sureties, not interested in such vessel, in the penal sum of seven thousand dollars; or, if such vessel be provided with more than one hundred and fifty men, then in the penal sum of fourteen thousand dollars, with condition that the owners, and officers, and crews, who shall be employed on board of such commissioned vessel, shall and will observe the treaties and laws of the United States, and the instructions which shall be given them for the regulation of their conduct; and will satisfy all damages and injuries which shall be done or committed contrary to the tenor thereof, by such vessel, during her commission, and to deliver up the same when revoked by the President of the United States.

Sec. 5. *And be it further enacted,* That all armed French vessels, together with their apparel, guns, and appurtenances, and any goods or effects which shall be found on board the same, being French property, and which shall be captured by any private armed vessel or vessels of the United States, duly commissioned as aforesaid, shall be forfeited, and shall accrue to the owners thereof, and the officers and crews by whom such captures shall be made; and, on due condemnation had, shall be distributed according to any agreement which shall be between them; or, in failure of such agreement, then by the discretion of the court before whom such condemnation shall be.

Sec. 6. *And be it further enacted,* That all vessels, goods, and effects, the property of any citizen of the United States, or person resident therein, which shall be recaptured, as aforesaid, shall be restored to the lawful owners, upon payment by them, respectively, of a just and reasonable salvage, to be determined by the mutual agreement of the parties concerned, or by the decree of any court of the United States, having maritime jurisdiction, according to the nature of each case: *Provided,* That such allowance shall not be less than one-eighth, or exceeding one-half of the full value of such recapture, without any deduction. And such salvage shall be distributed to and among the owners, officers, and crews of the private armed vessel or vessels entitled thereto, according to any agreement which shall be between them; or, in case of no agreement, then by the decree of the court, who shall determine upon such salvage.

Sec 7. *And be it further enacted,* That, before breaking bulk of any vessel which shall be captured, as aforesaid, or other disposal or conversion thereof, or of any articles which shall be found on board the same, such capture shall be brought into some port of the United States, and shall be libelled and proceeded against before the district court of the same district; and if, after a due course of proceeding, such capture shall be decreed as forfeited, in the district court, or in the circuit court of the same district, in the case of any appeal duly allowed, the same shall be delivered to the owners and captors concerned therein, or shall be publicly sold by the marshal of the same court, as shall be finally decreed and ordered by the court: And the same court, who shall have final jurisdiction of any libel or complaint of any capture, as aforesaid, shall and may decree restitution, in whole or in part, when the capture and restraint shall have been made without just cause, as aforesaid; and, if made without probable cause, or otherwise unreasonably, may order and decree damages and costs to the party injured, and for which the owners, officers, and crew of the private armed vessel or vessels by which such unjust capture shall have been made, and also such vessel or vessels shall be answerable and liable.

Sec. 8. *And be it further enacted,* That all French persons, and others, who shall be found acting on board any French armed vessel, which shall be captured, or on board of any vessel of the United States, which shall be recaptured as aforesaid, shall be reported to the collector of the port in which they shall first arrive, and shall be delivered to the custody of the marshal, or of some civil or military officer of the United States, or of any State, in or near such port, who shall take charge for their safe keeping and support, at the expense of the United States.

Enacted into a law, July 9, 1798.

By command of the President of the United States of America:

——————, *Secretary of State.*

Navy Department, *Jan.* 23, 1802.

Sir: Agreeably to a resolution of the House of Representatives, I have the honor to enclose copies of the instructions heretofore given by this Department to the commanders of vessels in the public service, authorizing the capture of vessels belonging to the French Republic.

I have the honor to be, with great respect, sir, your most obedient servant,

RT. SMITH.

Hon. Speaker *of the House of Reps.*

John Adams, President of the United States of America.

Instructions to the commanders of armed vessels belonging to the United States, given at Philadelphia, this 28th day of May, in the year of our Lord 1798, and in the twenty-second year of the independence of the said States.

Whereas, it is declared by an act of Congress, passed the 28th day of May, 1798, that armed vessels, sailing under authority, or pretence of authority, from the French Republic, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations and treaties between the United States and the French nation:

Therefore, and in pursuance of the said act, you are instructed and directed to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any armed vessel sailing under authority, or pretence of authority, from the French Republic,

which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing depredations on the vessels belonging to citizens thereof; and also to retake any ship or vessel of any citizen or citizens of the United States, which may have been captured by any such armed vessel.

By command:

JAMES M'HENRY,
Secretary of War.

John Adams, President of the United States.

Instructions to commanders of armed vessels belonging to the United States, given at Philadelphia, the 10th day of July, in the year of our Lord 1798, and in the twenty-third year of our independence.

In pursuance of the acts of Congress, passed the 27th day of May, the 20th day of June, and the 9th day of July:

You are hereby authorized, instructed, and directed to subdue, seize, and take any armed French vessel or vessels, sailing under authority, or pretence of authority, from the French Republic, which shall be found within the jurisdictional limits of the United States, or elsewhere on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods and effects which shall be found on board of the same, to bring within some port of the United States; and also retake any vessel, goods, and effects of the United States, or persons resident therein, which may have been captured by any French vessel, in order that proceedings may be had concerning such capture or recapture, in due form of law, and as to right shall appertain.

By command of the President of the United States of America:

BEN. STODDERT.

Circular instructions to the Captains and Commanders of vessels in the service of the United States.

NAVY DEPARTMENT,
12th March, 1799.

SIR: Herewith you will receive an act of Congress "further to suspend the commercial intercourse between the United States and France, and the dependencies thereof," the whole of which requires your attention. But it is the command of the President that you consider particularly the fifth section as part of your instructions, and govern yourself accordingly.

A proper discharge of the important duties arising out of this act will require the exercise of a sound and an impartial judgment. You are not only to do all that in you lies, to prevent all intercourse, whether direct or circuitous, between the ports of the United States and those of France, or her dependencies, in cases where the vessels or cargoes are apparently, as well as really, American, and protected by American papers only; but you are to be vigilant that vessels or cargoes really American, but covered by Danish or other foreign papers, and bound to or from French ports, do not escape you. Whenever, on just suspicion, you send a vessel into port, to be dealt with according to the aforementioned law, besides sending with her all her papers, send all the evidence you can obtain, to support your suspicions and effect her condemnation. At the same time that you are thus attentive to fulfil the objects of the law, you are to be extremely careful not to harass or injure the trade of foreign nations with whom we are at peace, nor the fair trade of our own citizens.

A misconstruction of his authority by Captain Nicholson, in relation to vessels of friendly nations, captured by the French, renders it necessary that I should make some explanatory observations on that subject. Our laws direct the capture of all armed vessels sailing under authority, or pretence of authority, from the French Republic. A vessel captured by the citizens of France must be considered as sailing under the authority of France; and it is scarcely to be supposed that, in times like the present, when few vessels sail without arms, a captured vessel in possession of the captors will be so circumstanced as not to come under the description of an armed vessel within the meaning of our laws. To justify a recapture, nothing is necessary but that the vessel be provided with such means of annoyance as will render her dangerous to an unarmed American vessel in pursuit of lawful commerce. If, however, the vessel cannot be considered an armed vessel, within the meaning of our laws, you are not to recapture her, unless you should have probable cause to suspect that the citizens of the United States, or persons resident therein, have some interest in the vessel or cargo.

It is always your duty to recapture American property, and property of persons resident within the United States, whenever found in possession of the French on the high seas.

I have the honor to be, sir, your most obedient servant,

BEN. STODDERT.

Circular to the Captains in the Navy of the United States.

NAVY DEPARTMENT.
Nov. 29, 1800.

SIR: I understand that there is money in your hands arising from the sales of French armed vessels captured by our vessels of war, and sold in the West Indies, because they were not in a condition to proceed to the United States for regular trial and condemnation. You will be pleased to pay over to the Treasurer of the United States such portion of the prize money as would have belonged to the United States, had the vessels been regularly condemned, and distribute the residue as the law directs in cases of regular condemnation; for doing which, this letter shall be your authority. You will transmit to the Accountant of the Navy an account of the sales of the vessels, &c. in this predicament.

I have the honor, &c.

B. STODDERT,
Secretary of the Navy.

GREAT BRITAIN.

[Communicated to the Senate, March 29, 1802.]

Gentlemen of the Senate:

The Commissioners who were appointed to carry into execution the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty, having differed in opinion as to the objects of that article, and discontinued their proceedings, the Executive of the United States took early measures, by instructions to our Minister at the British Court, to negotiate explanations of that article. This mode of resolving the difficulty, however, proved unacceptable to the British Government, which chose rather to avoid all further discussion and expense under that article, by fixing at a given sum the amount for which the United States should be held responsible under it. Mr King was consequently authorized to meet this proposition; and a settlement in this way has been effected, by a convention entered into with the British Government, and now communicated for your advice and consent, together with the instructions and correspondence relating to it. The greater part of these papers being originals, the return of them is requested at the convenience of the Senate.

TH. JEFFERSON.

MARCH 29, 1802.

Convention between the United States and Great Britain.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London, on the 4th day of November, 1794, between His Britannic Majesty and the United States of America, and, in consequence thereof, the proceedings of the Commissioners under the seventh article of the same treaty having been suspended; the parties to the said treaty being equally desirous, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same, that is to say: His Britannic Majesty has named for his Plenipotentiary the right honorable Robert Banks Jenkinson, commonly called Lord Hawkesbury, one of His Majesty's most honorable Privy Council and his Principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the advice and consent of the Senate thereof, has named for their Plenipotentiary Rufus King, Esquire, Minister Plenipotentiary of the said United States to His Britannic Majesty; who have agreed to and concluded the following articles:

ART. 1. In satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the sixth article, which is hereby declared to be cancelled and annulled, except so far as the same may relate to the execution of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the people described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the time and places, and in the manner following, that is to say: the said sum of six hundred thousand pounds sterling shall be paid at the city of Washington, in three annual instalments of two hundred thousand pounds sterling each, and to such person or persons as shall be authorized by His Britannic Majesty to receive the same; the first of the said instalments to be paid at the expiration of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention. And, to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

ART. 2. Whereas it is agreed by the fourth article of the definitive Treaty of Peace, concluded at Paris on the 3d day of September, 1783, between His Britannic Majesty and the United States, that creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts theretofore contracted, it is hereby declared that the said fourth article, so far as respects its future operation, is hereby recognised, confirmed, and declared, to be binding and obligatory on His Britannic Majesty and the said United States, and the same shall be accordingly observed with punctuality and good faith, and so as that the said creditors shall hereafter meet with no lawful impediment to the recovery of the full value, in sterling money, of their *bona fide* debts.

ART. 3. It is furthermore agreed and concluded that the Commissioners appointed in pursuance of the seventh article of the said Treaty of Amity, Commerce, and Navigation, and whose proceedings have been suspended, as aforesaid, shall, immediately after the signature of this convention, re-assemble and proceed in the execution of their duties, according to the provisions of the said seventh article; except, only, that instead of the sums awarded by the said Commissioners being made payable at the time or times by them appointed, all sums of money by them awarded to be paid to American or British claimants, according to the provisions of the said seventh article, shall be made payable in three equal instalments; the first whereof to be paid at the expiration of one year, the second at the expiration of two years, and the third and last at the expiration of three years, next after the exchange of the ratification of this convention.

ART. 4. This convention, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged, shall be binding and obligatory upon His Majesty and the said United States.

In faith whereof, we, the undersigned Plenipotentiaries of His Britannic Majesty, and of the United States of America, by virtue of our respective full powers, have signed the present conven-

tion, and have caused the seals of our arms to be affixed thereto.

Done at London, the 8th day of January, 1802.

HAWKESBURY, [L. S.]
RUFUS KING, [L. S.]

Correspondence and Negotiations relating to the Convention.

The Secretary of State to Rufus King, Minister Plenipotentiary of the United States.

DEPARTMENT OF STATE, *Feb.* 5, 1799.

The differences of opinion among the Commissioners here, under the sixth article of the British Treaty, will doubtless suspend their proceedings. The claims not only surpass immensely in amount whatever was contemplated by us, but are advocated on principles which appear quite inadmissible. They go the length to make the United States the debtor for all the *outstanding* debts of British subjects contracted before the peace of 1783, and, in effect, reduce the board to a company of clerks, whose chief business would be to examine and see that the accounts were rightly cast. The amount of the claims presented exceeds nineteen millions of dollars. I expect a statement will be made of the claims and arguments on one side, and the reasons with which they are combated on the other; which, with the requisite documents, will be transmitted to you. They will, in that case, be the subject of instructions from the President.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, *Sept.* 4, 1799.

SIR: A letter received last evening from Mr. Fitzsimmons informed me that Mr. Macdonald and Mr. Rich, Commissioners appointed by Great Britain, under the sixth article of the Treaty of Amity and Commerce, were going to embark for England, in the packet to sail this week from New-York. It appears, from Mr. Fitzsimmons's letter, to have been to him a sudden and unexpected movement. But I do not kow that this step, if it could be prevented, should be objected to, because I see no probability that the business of the board can ever be executed by the present members. Independently of the opinions strongly expressed, which it would not be easy to retract, there appears to me *an incompatibility of temper*. If I am rightly informed, it would be difficult for any set of American Commissioners to act harmoniously with Mr. Macdonald, unless they possessed such meek and yielding dispositions as to submit implicitly to his dogmas. Such meekness is in his colleagues, (Mr. Rich and Mr. Guillemard,) who, though they appear (as I verily believe them to be) worthy men, have not in a single instance dissented from Mr. Macdonald, or started an objection to anything he has advanced: so that it would be perfectly equal, as to the final issue of their proceedings, whether they continued members of the board, or that Mr. Macdonald were authorized on every question to give three votes. It has even appeared, as I have been informed, that Mr. Guillemard (who as an *umpire* should have kept himself aloof, and formed his opinions upon discussions before the *board*) has been so little aware of what propriety and dignity imposed on him as a duty, that he has entered into the *private* deliberations of the two British Commissioners, and come to the board with all the decisive prepossessions which such *private, partial* consultations were calculated to produce. If I am rightly informed, Mr. Macdonald is not only thus predominant, but that, towards the American Commissioners, he has been in the highest degree overbearing and arrogant, and not very delicate towards our *country*.

I think it fortunate that you are acquainted with the individual characters of the American Commissioners. You know also all the members of the Executive Government, except the Secretary of the Navy; and you know the members of the two Houses of Congress, of leading influence in the measures of the United States; and you know that all these, besides detesting every species of fraud and evasion, (and that, above all things, they are ambitious of maintaining the character of unblemished integrity and good faith,) are particularly desirous of completely executing (what they so indefatigably labored to establish) the Treaty of Amity and Commerce between the United States and Great Britain. Here is a pledge on which Great Britain may rely. But the Commissioners differ essentially in the construction of the treaty. The points of difference must then become the subjects of further negotiation between the two Governments. These points have been laid before the President by the Attorney General: the American Commissioners will do it more fully, and the result will undoubtedly be an instruction to you to confer with the British Minister, and agree on an explanatory article, which may be satisfactory to both countries. In the meantime, I send for your information a copy of the Attorney General's letter, and the copy of a more concise summary drawn up by Mr. Sitgreaves, and of a long letter which I received from the American Commissioners in March last.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, *Oct.* 4, 1799.

I was misinformed respecting the British Commissioners when I last wrote you. Mr. Rich *only* embarked for England; but Mr. Macdonald might as well have taken his departure, for there exists "an incompatibility of temper" which will necessarily prevent any further harmony between him and the Commissioners on the part of the United States. Indeed, the other two British Commissioners have been so absolutely under the influence of Mr. Macdonald, and have committed themselves so far in his spirit and temper, that I conceive it impossible that the business of the board can hereafter be conducted with them with the requisite harmony and mutual confidence to insure a satisfactory result. The President will be here before the expiration of this month, and, as soon as practicable, a full state of this business will be prepared and transmitted for your information. But Mr. Sitgreaves (who is a perfect master of the subject) has engaged to make such a digest of the claims, and such an ample statement of the points in controversy, as will vastly facilitate the ultimate adjustment of the principles and constructions which must govern the future proceedings of the board. This, however, he informs me, will take up much time—so much that it cannot probably be accomplished earlier than the usual time of the departure of the December packet.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE,
Philadelphia, Dec. 31, 1799.

SIR: The proceedings contemplated by the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded between the United States and His Britannic Majesty, having been interrupted, in consequence of an essential diversity of opinion between the Commissioners named on the part of the United States, and the other members of the board, the President has determined to propose that the true interpretation of that article should be settled by such a mutual and friendly explanation as will give full effect to the just engagements which were thereby formed on the part of the United States.

That you may be fully informed of the points in dispute, you will receive herewith a collection of documents comprising a variety of claims, the arguments of the agents on both sides, upon those claims, the reasons and opinions of the members of the board, and the decisions adopted by a majority of the Commissioners. It is believed that these papers contain everything essential to be known. The same documents will doubtless be transmitted by the British Agents or Commissioners to the Minister of His Britannic Majesty, to whom the cognizance of the business may belong; but, otherwise, those sent to you may be communicated to him. To these documents (exhibiting the proceedings before the board) are added the correspondence between the Commissioners named on the part of the United States, after their secession from the board, and the other members thereof; and a letter from the Attorney General, dated the 1st of last August, to the President, presenting a general view of the subject; the nature of the claims of the British creditors, or persons assuming that character; the leading principles relative to those claims, as maintained by three of the Commissioners; and the sweeping effects of those principles, were they to be carried into execution, according to the ideas entertained of them by the Attorney General.

Although an examination of these documents will satisfy you that the Commissioners named on the part of the United States had just cause for their secession, yet it has not been found an easy matter to define, on every subject of difference, the limits of *concession* and *demand* on the part of the United States: and hence the necessity of postponing full and final instructions. It is however important that, with the voluminous documents now transmitted, you should receive information of the view which the President has taken of the subject at this time: and he considers the following to be—

Principles proper to form the basis of an article or articles explanatory of the sixth article of the Treaty of Amity, and for facilitating its due execution.

First. The description by which claimants are designated in said sixth article of the Treaty of Amity shall be deemed to include all persons, whether resident in Europe or America, who were on the side of His Britannic Majesty at the commencement of the late war, and so continued throughout the war, and until the exhibition of claim. But no person shall be deemed to be a British creditor within the meaning of the said article, who shall, at any time before the peace, have been openly on the American side, or actually subject to the laws of the States, respectively, or who shall since the peace have become a citizen of the United States, or have declared his intention to become a citizen, agreeably to the provisions of the act of Congress.

Second. A claimant possessing the character before defined shall be held to prove, to the satisfaction of the Board of Commissioners—

1. That the debt was *bona fide* contracted before the peace, and due and unpaid to the creditor at the exhibition of claim. Accounts shall be stated, with the date and amount of each item; and the claimant shall in every instance make oath or affirmation that all the credits are disclosed to which the debtor is believed to be entitled.

2. That the debtor was solvent at the peace, and for such a reasonable time afterwards, within which the debt might have been recovered by judicial process, if lawful impediments had not been interposed.

3. That the creditor used reasonable diligence to obtain payment from his debtor, although the prosecuting of suits is not to be deemed a necessary evidence of such diligence.

4. That some lawful impediment affecting the claimant's demand did exist to prevent or delay his recovery, or to impair or diminish his security.

5. That, by the operation of such lawful impediments, he has sustained a loss or damage which cannot, at the time of the exhibition of claim, be repaired in the ordinary course of judicial proceedings. And to this end he shall prove, either that the debtor became insolvent during such operation of lawful impediment, or during such reasonable time thereafter, within which the debt might otherwise have been recovered, and is yet insolvent; or that the creditor is barred, in whole or in part, by judicial decision had against him, in the particular case, during such operation of lawful impediment, and on the principles thereof.

Third. Lawful impediments shall be deemed to include Legislative acts, passed during the war, and judicially determined by the superior courts of the respective States to remain in force after the peace; Legislative acts passed after the peace, and also judicial decisions of the superior courts of the respective States; by the operation whereof creditors of the description in the first section were

prevented or delayed from recovering the full value, in sterling money, of debts *bona fide* contracted before the peace. But the act, consent, acquittance, or release, of the creditor or his authorized agent or lawful representative, shall in all cases be held to be conclusive upon him, and no lawful impediment shall be deemed to have continued after the 24th day of September, 1789: *Provided, always*, That the consent of the creditor shall not be implied to any judgment rendered against him in an adversary suit. *And provided also*, That all claims for interest, or balances of interest, shall be left to the decision of the Commissioners, except in cases adjusted between the debtor and creditor, or their lawful agents or representatives, respectively.

Fourth. The various modes of execution for the satisfaction of judgments which were in use before the war, in the States, respectively; and all proceedings in the established courts, whether of law or equity, for the discovery of fraud, and the recovery of the property of debtors, real or personal, in the hands or possession of fraudulent assignees, shall be deemed and held to be, in the ordinary course of judicial proceedings, within the meaning of the said sixth article of the Treaty of Amity.

Fifth. The United States shall be deemed bound by the said article to make compensation only for the loss or damage occasioned by lawful impediments, and actually sustained by the creditor; and, therefore, in cases where a part of the debt, whether of principal or interest, might have been or may yet be recovered, compensation may not be awarded for such part.

Sixth. And for the purpose of facilitating the due execution of the said sixth article of the Treaty of Amity, according to the true intent and meaning thereof, as herein explained, it is further agreed, that the present Board of Commissioners for carrying into effect the said sixth article of the Treaty of Amity, &c., shall be dissolved from the date of the final ratification of these presents, and, instead thereof, another board shall be constituted, to consist of five Commissioners, two of whom shall be appointed by His Britannic Majesty and two by the President of the United States, by and with the advice and consent of the Senate thereof; and the fifth Commissioner (who shall be so named and designated) shall be appointed by His Britannic Majesty. And the said five Commissioners shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other, which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz: "I, A. B, one of the Commissioners appointed in pursuance of the explanatory articles of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear (or affirm) that I will honestly, diligently, impartially, and carefully examine, and, to the best of my judgment, according to justice and equity, decide all such complaints as have been preferred to the Commissioners heretofore appointed under the said sixth article of the said Treaty of Amity, Commerce, and Navigation; and that I will forbear to act as a Commissioner in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the commission: *Provided*, That one of the Commissioners named on each side, and the fifth Commissioner, shall be present; and all decision shall be made by a majority of the voices of the Commissioners then present.

The said Commissioners shall first meet at Philadelphia; but they shall have power to adjourn from place to place, as they shall see cause. All claims preferred to the board hereafter appointed, and not dismissed by the said board, shall be considered as depending before the Commissioners to be appointed in virtue hereof. But the Commissioners appointed in virtue of this article shall not be bound by any acts or resolutions passed or proposed to be passed in the former board, in any cases not dismissed by the said former board.

The said Commissioners, in examining the complaints, as aforesaid preferred, are empowered and required, according to the true intent and meaning of the said sixth article of the Treaty of Amity, &c., and of these explanatory articles, to take into their consideration all claims, whether of principal or interest, or balances of principal and interest, and to determine the same, respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require; and shall have the same powers in regard to the examination of parties and witnesses, and the reception of evidence, as by the said sixth article of the Treaty of Amity, &c., were given to the Commissioners heretofore appointed in pursuance thereof. And the awards of the said Commissioners shall be final and conclusive in like manner, and shall in like manner be paid and satisfied, and on the like conditions, in all respects, as by the said sixth article of the Treaty of Amity, &c., has been directed and agreed.

The said Commissioners shall be respectively paid in such manner as has been agreed between the two parties, conformably to the eighth article of the said Treaty of Amity, &c. And all other expenses of the said Commissioners shall be in like manner borne and defrayed.

In case of the death, sickness, or necessary absence of the fifth Commissioner, his place shall be supplied in the manner directed by the sixth article of the said Treaty of Amity, &c., for the appointment of the fifth Commissioner. And in case of the death, sickness, or necessary absence of either of the other four Commissioners, the place of every such Commissioner shall be respectively supplied in the same manner as such Commissioner was first appointed; and the new Commissioner shall take the same oath or affirmation, and do the same duties.

Seventh. The evidence in support of the claims which have been preferred, as aforesaid, shall be exhibited by the claimants, respectively, within —— from the meeting of the said board; and public notification thereof, in such manner as the said Commissioners shall direct; and no evidence shall be received on the part of the claimants after the said term, except in special cases, wherein the board shall deem it just, or cause shown to prolong the said term. And the Commissioners shall also have power to limit, in each case, a time within which the evidence shall in like manner be exhibited on the part of the United States: *Provided*, That such term shall not be less than —— from the expiration of the time limited for the exhibition of evidence on the part of the claimant.

Of these articles, the following should be ultimately insisted upon:

The first.

The second, except the third point of proof.

The third, unless an exception should be deemed proper in the case of judgments since 1789, on the statute of limitations.

The fifth, except the words "might have been or."

And the sixth, requiring the appointment of a new set of Commissioners.

I have further to inform you that Mr. Sitgreaves having, as one of the Commissioners, assiduously and thoroughly investigated the subject, and thereby acquired an accurate knowledge of every question to be discussed between you and the British Government, the President has thought it expedient that he should go to London to facilitate your researches, and render you every assistance which his intimate acquaintance with the business will enable him to give. It is also apprehended that you may derive much useful information from Mr. Sitgreaves relative to transactions in the board, which the written documents either do not contain or will not suggest; and, finally, that by this measure the conclusion of the negotiation may be *expedited*. For, although Mr. Macdonald, Mr. Rich, and Mr. Guillemarde, in their letter of the 14th of August to Mr. Fitzsimmons and Mr. Sitgreaves, as plainly as indecorously insinuate that the two latter seceded from the board for the purpose of delaying payments by the United States, you well know that nothing can be more unfounded than this imputation. The President is anxious to have the expected explanations speedily agreed on, that the business of the boards in London and Philadelphia may be resumed. There is not any branch of the Government, nor, within my knowledge, an individual officer, who would not view with disdain the insinuations above mentioned. But the disposition and opinions predominating with the Commissioners from Great Britain are utterly incompatible with harmony in the proceedings, and, as we conceive, with justice and equity, in the adjustment of British claims. Besides, the personalities which have taken place between the members, rendering any further cordiality between them hopeless, show the dissolution of the present board to be indispensable. Mr. Liston has been informed that Mr. Sitgreaves was to go to London because it was supposed that he would think it proper that Mr. Macdonald should repair thither also; and doubtless he will speedily embark.

To the documents before enumerated are added *draughts* of an explanatory article, and a letter referring to it, prepared by the Attorney General, which, though not prescribed by way of instruction, yet, containing ideas proper to be known by you, the President has thought it expedient to have forwarded. Definitive instructions will be committed to the care of Mr. Sitgreaves, who proposes also to take with him copies of the laws of different States, referred to as legal impediments, or the causes of them, reports of cases adjudged in American courts, and some other documents which he thinks will be useful in the course of your negotiation. Your full powers to conclude an explanatory article are enclosed, and a list of all the papers hereinbefore referred to.

It is expected that Mr. Sitgreaves may be ready to embark in two or three weeks, if a convenient passage can within that time be obtained.

With perfect respect and esteem, I am, dear sir, &c., TIMOTHY PICKERING.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE. *Feb.* 7, 1800.

DEAR SIR: My letter of the 31st of December expressed to you the ideas and conclusions of the President on the several subjects of negotiation relative to the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain. It was then expected that a further consideration of the matter would have suggested and required additional instructions; but the President is satisfied to leave it on the basis at that time proposed. The additional documents, which Mr. Sitgreaves takes with him, will give you a more perfect knowledge of the extent and nature of the claims, the equitable adjustment of which is the object of the proposed negotiation; and, with views mutually upright, the President trusts it may soon be brought to an honorable conclusion.

But this letter cannot be closed without expressing to you the President's sense of the injury done to the American Commissioners and Government, by the suspicion which appears to have been suggested to, if not entertained by, the British administration, that the final secession of the American Commissioners from the board was caused or influenced by any considerations of interest, either to individuals or the States, to arise by delaying awards and payments. Such a suspicion should be repelled with earnestness, and even with disdain. I have the honor to be, &c.

TIMOTHY PICKERING

The Secretary of State to Mr. King.

DEPARTMENT OF STATE. *Aug.* 23, 1800.

SIR: Your letters stating your negotiations with Lord Grenville respecting the differences which have arisen in executing the sixth article of our Treaty of Amity, Commerce, and Navigation with Great Britain, have been laid before, and considered by, the President.

He still retains the opinion that an amicable

explanation of that article is greatly to be desired; and, therefore, receives with much regret the information that the British Cabinet is indisposed to enter on the discussion of this interesting subject.

He perceives with concern, not entirely unmixed with other sensations, that the secession of the two Commissioners from the board lately sitting in Philadelphia, has been attributed, not to its real cause, but to motives which in no instance have ever influenced the American Government.

That Government is, as it has ever been, sincerely desirous of executing, with perfect and scrupulous good faith, all its engagements with foreign nations. This desire has contributed, not inconsiderably, to the solicitude it now manifests for the explanatory articles you have been instructed to propose. The efforts of the American Commissioners to proceed and decide on particular cases, instead of laying down abstract principles, believed to be untrue in themselves, ought to have rescued their Government from suspicions so very unworthy, and so little merited by the general tenor of its conduct. The resolutions, maintained by a majority of the late Board of Commissioners, are such as the Government of the United States can never submit to. They are considered not as constructive of an existing treaty, but as imposing new and injurious burdens, unwarranted by compact, and to which, if in the first instance plainly and intelligibly stated, this Government never could and never would have assented.

This opinion is not lightly taken up; it is a deep and solemn conviction, produced by the most mature and temperate consideration we are capable of bestowing on the subject.

This being the fixed judgment of the United States, it is impossible not seriously to apprehend, unless we could forget the past, that no attempt by arbitration to adjust the claims of individuals under the sixth article of the treaty, previous to an explanation of it by the two Governments, can be successful. A second effort at this adjustment, by the proposed modification of the board, while the principles heretofore contended for receive the countenance of the British Government, would most probably, unless indeed, the board should again be dissolved, subject us to the painful alternative of paying money which, in our best judgment, the Commissioners had no power to award, or of submitting the public faith to imputations from which it could only be freed by a correct and laborious investigation of the subject. In such a situation, presenting to us only such an alternative, we are extremely unwilling to be placed.

It is, then, very seriously desired that the explanations required by this Government should be made. They are believed to be so reasonable in themselves, and to be so unquestionably in the spirit, and to the full extent of the existing treaty, that it is hoped the difficulties, on the part of the British Cabinet, may yet be removed.

The President, therefore, requests that you will take any proper occasion, should one in your judgment present itself, to renew your application to Lord Grenville on this subject. Perhaps a change of temper may be produced by a change of circumstances; and there may be a state of things in which you may perceive a disposition favorable to the accomplishment of an object which ought to be desired by both nations, because it is just in itself, and because it will remove a subject of controversy which may, in the course of events, have a very unhappy influence on that good understanding and friendly intercourse, which it is the interest of both to preserve.

The note of the 18th of April, addressed to you by Lord Grenville, stating the determination of the British Cabinet not to modify, but reject, without discussion, the explanatory articles proposed by you on the part of the United States, assumes, as the base of its decision, a principle not only so different from those admitted by this Government, but so different from those recognised by both nations in the Treaty of Amity negotiated between them, and which ought, therefore, to be adhered to in all explanations of that treaty, as to warrant a hope that the determination announced in that note may not be unalterable.

His Lordship assumes as a fact that "the fourth article of the Treaty of Peace not having been duly executed on the part of the United States the British Government withheld the delivery of the forts on the frontier of Canada, in order that these might serve as a pledge for the interests and rights secured to the British creditors under that article."

But this is a fact which the American Government has ever controverted, and which has never yet been established.

Without entering into the always unavailing and now improper discussion of the question, which nation committed the first fault, it ought never to be forgotten that the treaty in which the claim of the British creditors, on the United States, originated, was avowedly entered into for the purpose of terminating the differences between the two nations "in such a manner as, without reference to the merits of their respective complaints and pretensions, may be the best calculated to produce mutual satisfaction and good understanding."

In questions growing out of such a treaty, neither nation can be permitted to refer to and decide the merits of those respective complaints and pretensions, by asserting that the other, and not itself, has committed the first fault.

Lord Grenville then proceeds on the idea that the Commissioners appointed by the American Government have withdrawn from the board, merely because awards were rendered against their opinion, and on claims which they believed to be unjust.

But this idea is neither warranted by the conduct or declarations of the American Commissioners, nor of the Government which appointed them. It has been, and still is, expressly disavowed. The Commissioners and their Government acquiesced under opinions which they conscientiously believed to be formed on erroneous principles, but on principles submitted by the

treaty to their decision. Awards conforming to such opinions, unless by mutual consent the subject shall assume some other form, will be paid by the United States. It was not until a majority of the board had proceeded to establish a system of rules for the government of their future decisions, which, in the opinion of this Government, clearly comprehended a vast mass of cases never submitted to their consideration, that it was deemed necessary to terminate proceedings believed to be totally unauthorized, and which were conducted in terms and in a spirit only calculated to destroy all harmony between the two nations.

We understand the treaty differently from what Lord Grenville would seem to understand it, when he says the decision of the board, constituted according to the provisions of that instrument, "was expressly declared to be in all cases final and conclusive."

These terms have never been understood by us as authorizing the arbiters to go out of the special cases described in the instrument creating and limiting their powers. The words "all cases" can only mean those cases which the two nations have submitted to reference. These are described in the preceding part of the article, and this description is relied on, by the United States, as constituting a boundary, within which alone the powers of the Commissioners can be exercised. This boundary has, in our judgment, been so totally prostrated, that scarcely a trace of it remains. The reasoning on which we have formed this judgment it would be unnecessary to detail to you, because you are in perfect possession of it.

Believing the British Cabinet disposed to act justly and honorably in a case in which we conceive their reputation, as well as ours, to be concerned, we have been confident in the opinion, that to obtain their serious attention to the subjects of difference between the two nations, was to secure the establishment of that reasonable and liberal construction of the article for which America has contended. We shall abandon this opinion with reluctance and regret.

Although the President decidedly prefers the amicable explanations which have been suggested to any other mode of adjusting the differences which have arisen in executing the sixth article of our treaty with Great Britain, yet it is by no means the only mode to which he is willing to resort. He does not even require that you shall press this proposition in a manner which, in your judgment, may lessen the probability of settling existing differences, or further than may comport with the interests of the United States. Your situation, your full and near view of all the circumstances which can influence the negotiation, enable you to decide more certainly than can be done on this side of the Atlantic, on the precise course which it may be most advantageous to pursue. To your discretion, therefore, the President entirely submits this part of the subject.

If the explanatory articles so much desired by the United States be unattainable, the substitution of a gross sum, in full compensation of all claims, made or to be made on this Government, under the sixth article of our Treaty of Amity, Commerce, and Navigation, with His Britannic Majesty, is deemed the most eligible remaining mode of accommodating those differences which have impeded the execution of that article.

It is apparent that much difficulty will arise in agreeing on the sum which shall be received as compensation. The ideas of the two Governments, on this subject, appear so different, that, without reciprocal sacrifices of opinion, it is probable they will be as far from agreeing on the sum which ought to be received, as on the merits of the claims for which it will be paid. This difficulty is, perhaps, increased by the extravagant claims which the British creditors have been induced to file. Among them are cases believed to be so notoriously unfounded, that no Commissioners, retaining the slightest degree of self-respect, can establish them. There are many others where the debtors are as competent to pay as any inhabitants of the United States; and there are others where the debt has been fairly and voluntarily compromised by agreement between creditor and debtor. There are even cases where the money has been paid in specie, and receipts in full given. I do not mention these distinct classes as comprehending all the classes of claims filed which can never be allowed; but as examples of the materials which compose that enormous mass of imagined debt, which may, by its unexamined bulk, obstruct a just and equitable settlement of the well-founded claims which really exist.

The creditors are now proceeding, and, had they not been seduced into the opinion that the trouble and expense inseparable from the pursuit of old debts, might be avoided by one general resort to the United States, it is believed they would have been still more rapidly proceeding in the collection of the very claims, so far as they are just, which have been filed with the Commissioners. They meet with no obstructions, either of law or fact, which are not common to every description of creditors, in every country, unless the difficulty, with respect to interest during the war, may be so denominated. Our judges are even liberal in their construction of the fourth article of the Treaty of Peace, and are believed, in questions growing out of that treaty, to have manifested no sort of partiality for the debtors. Indeed, it is believed that, with the exception of the contested article of war, interest, and, possibly, of claims barred by the act of limitations during the war, the United States are justly chargeable with the debts of only such of their citizens as have become insolvent subsequent to the peace, and previous to the establishment of the Federal courts. This opinion is founded on a conviction that our judges give to the fourth article of the Treaty of Peace, a construction as extensive as ought to be given to it by Commissioners appointed under the sixth article of the Treaty of Amity, Commerce, and Navigation.

Those who have attended most to this subject, are of opinion that the sum which might properly be awarded against the United States would fall

short of any estimate which has probably been made of it in England, or by the British creditors or agents in this country. We are, however, sensible that Commissioners, acting within their powers, may extend the sum further than justice or a fair construction of the article would extend it; and we have been taught to apprehend a construction, of which, at the ratification of the treaty, no fear was entertained. From this persuasion, and from a solicitude to perform what even rigid and unfavorable judges may suppose to be enjoined by good faith, the interests of the United States may require, and the President is, therefore, willing, that the agreement should not be strictly limited by the sum for which, in our opinion, we ought to be liable. He will be satisfied with four millions of dollars. He will not consent to exceed one million sterling.

If a gross sum, in satisfaction of all other claims, be accepted, you will, of course, stipulate for the lowest possible sum, and for the most favorable instalments which may be attainable.

Should it be found impossible to negotiate reasonable explanatory articles, or to agree on a sum to be received as compensation for the claims of the creditors, much doubt is entertained concerning the proposition for new-modelling the board, as proposed by the British Minister. While the Government itself professes to approve the conduct of the late Commissioners, much fear is entertained that their successors may bring with them those extravagant and totally inadmissible opinions which have dissolved the past, and will most probably dissolve any future board. Before the United States proceed to take a new step in a case where experience has done so much to teach them caution, some assurances of the temper in which the Commissioners to be appointed will meet ought to be received. And yet we are not satisfied that good faith does not require that, notwithstanding the past, we should consent to make a second effort for the execution of the sixth article of the treaty, in the forms it has prescribed.

On this part of the subject, however, the President has come to no determination; so soon as his decision shall have been made, it shall be communicated to you. With very much respect, &c.

J. MARSHALL.

No. 87.

Mr. King to the Secretary of State.

LONDON, *March* 25, 1803.

SIR: It is now nearly a fortnight since Lord Hawkesbury informed me that he had lately ascertained that the American Commissioners, under the seventh article of the Treaty of Amity and Commerce, with the concurrence of the fifth Commissioner, conceived themselves authorized to allow interest upon the claims before them for the time during which the proceedings of the board had been suspended. That, as this suspension had taken place, in consequence of the suspension of the commission in America, it did not appear to him that the board here had authority to allow interest for this portion of time. That he made me this communication in hopes that we might agree in the just interpretation of the powers of the Commissioners, as it would be disagreeable, particularly at the juncture of affairs when he was speaking, again to arrest the proceedings of the Commissioners. I replied that the subject was both unexpected and new, that it should receive my immediate consideration, and that I would take the earliest opportunity in my power of conversing with him respecting it.

After maturely reflecting upon the objection which originated with and was entertained by Doctor Swabey before the conclusion of the convention, in virtue of which the board has resumed its proceedings, I informed Lord Hawkesbury that I was ready to meet him; but, owing to the discussions going on with France, he has not yet appointed a day to receive me. In the meantime, the commission proceeds in examining and deciding the cases before it, leaving open the ascertainment of the amount of the respective claims. As the first instalment of the six hundred thousand pounds sterling, to be received by Great Britain, is payable in July, and as, from the nature of the negotiations with France, I may not be able to meet Lord Hawkesbury soon, it has appeared to me proper to apprize you of this objection to the powers of the Commissioners, which may be followed up by a suspension of their proceedings.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *April* 23, 1803.

SIR: In my No. 87, I mentioned the difficulty which had arisen respecting the proceedings of the Commissionors under the seventh article of the treaty of 1794. Several conferences have since taken place between me and Lord Hawkesbury, but the impediment is not yet removed. At my first meeting with Lord Hawkesbury, after the communication he had made to me on this subject, I stated to him the arguments that, in my opinion, ought to remove the objection which had been raised; and I was in hopes that, on a further conversation between his Lordship and Dr. Swabey, the objection would have been given up.

Some days afterwards, the under Secretary, Mr. Hammond, on the part of his Lordship, proposed to me, as a compromise, that three per cent. instead of six per cent. interest should be allowed upon the whole of the claims during the suspension of the commission. In my last conference, I informed Lord Hawkesbury that I could not consent to the proposed compromise, seeing no just principle upon which I could do so. He desired me, however, to confer with the Lord Chancellor upon the subject; which I shall do to-morrow, or the day after. If the objection be persisted in, the British Commissioners will be instructed not to sign the awards unless the interest, in whole or

in part, during the suspension of the commission, be omitted. In this case, the Commissioners will enter their protest against this instruction: and, from a conversation I have had with the fifth Commissioner, I perceive it to be his opinion that the awards should then be made, although lessened in their amount, by a total or partial deduction of the interest during the suspension of the commission. This course, in his opinion, will avoid the delay and uncertainty of a negotiation between the two Governments respecting the instruction that may be given to the British Commissioners, and, moreover, secure to the claimants their compensation, except so much thereof as may be withheld by instruction of the British Government, which may become the subject of future demand and negotiation.

As I understand the objection, on the side of the British Commissioners, it is founded on the allegation that the treaty of 1794 did not foresee the suspension of the commission that has taken place; that the convention has not provided for it, and therefore, it is to be regarded as *casus omissus*. Our answer is, the treaty of 1794 sufficiently described the cases, or, in other words, creates the competence or jurisdiction of the board; and, moreover, lays down the rule by which they are to ascertain the full and complete compensation to be given to the claimants. The convention, subsequent to the suspension of the Commissioners, reassembles them, and authorizes them to proceed in all respects, (except one, which is irrelative to the point in discussion,) as is provided by the treaty: it therefore authorizes them, posterior to and including the time of their suspension, to examine and decide, and to grant full and complete compensation in all cases submitted to their decision by the treaty of 1794.

This reply has appeared to me so solid, that I have been willing to believe the Cabinet would feel its force: and, therefore, although a moderate interest is better than none, I have thought it my duty to reject the overture for a compromise, in confidence that the British Commissioners would either be instructed to waive the objection, and consent to the entire interest; or, at worst, that they would be authorized to proceed on condition that a moiety only of the interest should be allowed. With perfect respect and esteem, I have the honor to be, sir, &c.,

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

"LONDON, *April* 30, 1803.

"SIR: The objection of the British Commissioners, under the seventh article of our treaty of 1794, has been given up: and the board having to-day completed a number of awards, including interest, during its late suspension, there is reason to believe that no further difficulty is likely to occur in the satisfactory conclusion of the business of this commission. With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING."

J. Marshall, Secretary of State, to Samuel Sitgreaves, Esquire, London, dated

DEPARTMENT OF STATE, *Dec.* 2, 1800.

DEAR SIR: I have had the pleasure of receiving your letters of the 29th of September, and among them that of the 23d, enclosing a copy of your letter of the 22d of April, the original of which had unfortunately miscarried.

It is probable that, before this can reach you, the negotiation respecting the sixth article of our Treaty of Amity, Commerce, and Navigation with Great Britain will have terminated, and that Mr. King will have come to some agreement with Lord Grenville, or will be able to state precisely the ultimata of the British Cabinet on this subject. Should it, contrary to our expectation, remain open, the President is of opinion that informal explanations may be received in lieu of articles required, provided sufficient assurances accompany them that the Commissioners, on the part of His Britannic Majesty, will, in the truespirit of conciliation conform to those explanations.

The idea suggested to Lord Grenville by Mr. King, of sending over confidential characters to the United States, with power to make arrangements for facilitating the just and impartial execution of the treaty, and with an eventual appointment as Commissioners, is a valuable one. If no positive agreement can be made which will enable us to enter again on the execution of the sixth article without submitting to injurious and disgraceful imposition, this idea may, perhaps, be so improved as to become the foundation of a reasonable accommodation. It is certainly recommended by the probabilities you have suggested.

If the system of informal explanation should be adopted, and a new board be constituted, in the mode intimated by Lord Grenville, there will undoubtedly be considerable difficulty in agreeing on rules which shall guide its proceedings, and in obtaining security that these rules will not be departed from. The explanatory articles which, before your departure, were digested by this Government, and committed to you, are believed to be a liberal as well as just construction, and would be, therefore, with reluctance receded from; indeed, there are among them some from which we never ought to recede. Such, for example, as that, to charge the United States, the British creditor must bring his case completely within the treaty, and not require that the United States should furnish evidence to discharge themselves from every claim which may be at present, or, on the signature of the Treaty of Amity, may have been unpaid. Such a construction appears to us so totally unreasonable, that we should never have deemed it necessary to guard against it, had not the principle been already asserted, and it is of course a construction to which we never can and never ought to submit. Other principles were insisted on which seem to us not less objectionable. But if it shall be found that a new board is to be resorted to, it will become necessary to revise the instructions which have been given, and to modify them so far as a proper respect for justice and our own character will permit.

The President allows your return to the United States as soon as the negotiation shall have taken a turn which, in your opinion, may render your longer continuance in England unnecessary, or so soon as you shall have communicated fully to Mr. King all the ideas on the interesting subject of your mission, which your intimate acquaintance with it has enabled you to acquire.

With very much respect and esteem, I am, sir, &c. J. MARSHALL.

SAMUEL SITGREAVES, Esq., *London.*

J. Marshall, Secretary of State, to Rufus King, Esq., dated

DEPARTMENT OF STATE.
December 4, 1800.

DEAR SIR: Your letters to No. 85, inclusive, have been received.

In my No. 2, I stated to you the opinion of the President that an adjustment, by explanatory articles of the differences which arose on executing the treaty with Great Britain, was preferred to the stipulation of a sum in gross, to be paid in lieu of the compensation to creditors demandable from the United States.

This opinion is still retained. But it has been suggested that, however unreasonable the principles asserted by the British Commissioners may be, it will be difficult, perhaps impossible, to induce the British Cabinet formally to abandon them. That the same thing may probably be obtained in an informal way, which would be withheld if required in the shape of a solemn public stipulation.

Under the impression that this may be the fact, the President directs me to inform you that an informal agreement, provided it be perfectly understood, will be satisfactory to this Government.

If, however, on any such agreement, a new board should be constituted, it is of the last importance that the persons appointed to act as Commissioners should possess dispositions inclined to conciliation, and characters which impress you with a favorable opinion of the impartiality to be expected in their decisions. These are requisites, the materiality of which we have been taught by experience, and on them must greatly depend our assent to another board.

If you have brought the negotiation to a conclusion respecting the sum in gross mentioned in a former letter, or if it is in such a train that no change can, without embarrassment, be made, it is not intended to derange or unsettle the business. But if no agreement has been concluded, or has progressed so far as to pledge the United States, it is decidedly the judgment of the President that it will be most advisable to execute the treaty in the manner originally agreed on, provided satisfactory informal assurances can be obtained, that we shall not be subjected, by a majority of the board, to an enormous burden not imposed by the original contract.

If persons could be deputed to make arrangements here, for facilitating the execution of the treaty, with an eventual appointment as Commissioners, some difficulties might, perhaps, be surmounted, which, at present, appear very considerable, and the business might be greatly expedited.

As we cannot know the precise state of the negotiation, it is impossible to do more than to communicate, in general terms, the course which the President most wishes to take. Having done this, to your judgment it must be submitted.

The most desirable plan of accommodation is by public explanatory articles, placing the treaty on its true principles, in terms not easily to be misunderstood.

Second to this is the system of informal explanation, by which we may be enabled, without great injustice, to execute the treaty in the mode originally designed. If, in neither the one way nor the other, a new board can be so constituted as to comply with the engagements we have made according to their real import, without exposing the United States to the immense losses threatened by that which has been dissolved, then the stipulation for a sum in gross will be deemed more eligible than to permit things to remain in their present unsettled situation.

We are surprised that, at the date of your No. 85, no letter on this subject had been received from this Department. With the most respectful esteem, &c., J. MARSHALL.

RUFUS KING, Esq.

Extracts of a letter from Levi Lincoln, acting Secretary of State, to Rufus King, Esq., dated

"DEPARTMENT OF STATE.
"*Washington, April* 25, 1801.

"DEAR SIR: From various sources you will have learned, probably, before this reaches you, the situation of the new Administration, and the circumstances generally on which the new Government commenced. It is not yet fully organized. Mr. Madison, whose duties I am appointed to perform, will enter the office the beginning of the next month. * * * * The Administration will then have its attention particularly called to its foreign concerns."

"It is proper, however that I should acknowledge the reception of yours, from No. 91 in your second, to No. 5 in your third series, (with the exception of No. 95 only,) which have reached the office since I have been acting in it. Having no special instructions from the President on subjects as the objects for the particular attention of foreign Ministers, I can only state to you his great solicitude of convincing all nations with which this country is connected, and especially the united nation of Great Britain and Ireland, of the continued friendly disposition of the United States towards it. That he will, on all occasions, and by every means in his power, endeavor to cultivate harmony and a good understanding; that, adhering strictly to the principles and laws of neutrality, he will, on a just and liberal policy, encourage that correspondence and commercial intercourse which is so essential to the interest and prosperity of both countries.

"The United States are deeply interested in your securing the objects about which you have been treating with Lord Grenville; and especially of closing the business of the 6th article, if it can be effected on the principles and for the sum you have mentioned. I have the honor to be, &c.,

"LEVI LINCOLN."

"RUFUS KING, Esq."

James Madison, Secretary of State, to Rufus King, Esq., dated

DEPARTMENT OF STATE,
Washington, June 15, 1801.

SIR: Your communications by Mr. Sitgreaves, on the subject of the proposed conversion of the claims against the United States, under the sixth article of the Treaty of 1794, into a definite sum, have been duly received and taken into consideration by the President. Although there may be good ground to contest the real justice of the amount of debt which will be assumed by such a stipulation; yet, considering all the actual circumstances which are now to be taken into view, allowing particularly due weight to the advantage of substituting an amicable and final adjustment of the controversy, in place of the apparent improbability of obtaining any proper amendment of the sixth article, and of all the demands, embarrassments, and uncertainties, incident to its present form, before a tribunal composed as is the Board of Commissioners under it, the President has determined on the expediency of your pursuing into effect the negotiation in which you are engaged. It is his express instruction, however, that no encouragement be given to pretensions on the British side, by carrying into the negotiation a sum higher than that of six hundred thousand pounds, as mentioned in your No. 6, of the 7th of March last, and that no sum beyond that be finally admitted into the commutation.

It is taken for granted that, in case the claims against the United States be liquidated into a net sum, there will be no difficulty in so arranging it as to be applicable to the payment of the indemnification awarded from time to time under the seventh article of the treaty in favor of our citizens, whose claims, according to an estimate of Mr. Samuel Cabot, of May 9, 1798, amount to £1,250,000. Such an arrangement must be the less objectionable, as a discharge of the debt by instalments would, no doubt, be the alternative mode; and it will have the advantage of putting aside all possible inducement to delay the award of indemnifications, with a view to avoid the immediate advances of money necessary to satisfy them.

The President considers it as a matter of course, also, that an adjustment of the controversies under the sixth article will be followed by an instant renewal of the proceedings under the seventh article, and by every reasonable exertion for hastening them to a just conclusion.

A number of your letters hitherto received remain to be acknowledged. But the subject of the despatches by Mr. Sitgreaves has appeared to claim an answer distinct, and without delay. I cannot but briefly add, however, that we have the mortification to find that, notwithstanding all the forbearances and endeavors of the United States for the establishment of just and friendly relations with Great Britain, accounts continue to arrive from different quarters of accumulating trespasses on our commerce and neutral rights. This is particularly the case, not only with respect to the Bahama islands, but to Jamaica. Mr. Savage, under date of 11th April last, states that, "since the 15th of January, thirty vessels, which appear to be American property, have been detained, and brought into this port, and, from the best information I have been able to obtain from the several masters, their value has been computed by me at the enormous sum of seven hundred and sixteen thousand dollars. Some few have been acquitted, after being decreed to pay both relators' and defendants' costs, which, upon the smallest calculation, is never less than fifteen hundred dollars, and, in some instances, three times the sum."

It will be an agreeable circumstance if the result of your correspondence with the British Ministry shall be found to mitigate these outrages; it being the sincere desire of the United States and of their Government to see every obstacle removed to that entire confidence, harmony, and good will between the two countries, which can be firmly established on no other foundations than those of reciprocal justice and respect. With very great respect, &c., JAMES MADISON.

RUFUS KING, Esq.

Extract of a letter from James Madison, Secretary of State, to Rufus King, Esq., dated

"DEPARTMENT OF STATE,
"*Washington, July* 24, 1801.

"SIR: Having already communicated to you the decision of the President with regard to the proposed commutation of the claims against the United States, under the sixth article of the Treaty of 1794, into a net sum of six hundred thousand pounds sterling, I have nothing now to add on that subject beyond my wishes that the negotiation may be brought to a speedy, as well as a final issue. Your letter of May 30, (the last one received,) countenances such an expectation more than the preceding appearances. There is, notwithstanding, much room to remark that, with due allowances for other pressures on the attention of the British Government, a due share of it has not been given to a subject which they profess to consider of so much importance to that good understanding between the two countries, which they also profess to have so sincerely at heart."

Despatches, &c., of Mr. King to the Department of State.

Extract of a letter from Mr. King to the Secretary of State.

"SIR: With the exception of your No. 43, I have received your letters to No. 47, inclusive.

Although you are silent upon the subject, I am sorry to learn that embarrassments of so serious a character have occurred in the commission under the sixth article of the English Treaty. Lord Grenville sent me, a few days since, a printed copy of the proceedings in the case of Bishop Inglis, which he received from Mr. Liston by the last packet; and, at the same time, inquired of me whether I could give him any further information upon the subject. In a conference that we have since had, his Lordship intimated to me, that they should find it difficult to allow their Commissioners, under the 7th article, to assist in any further awards, so long as the business of the American Commission remained suspended. We went a little way into the proceedings in Bishop Inglis's case; and I endeavored to show his Lordship, which, indeed, is satisfactorily done by Messrs. Fitzsimmons and Sitgreaves, that the ground taken by their Commissioners could not be defended. As Mr. Liston's despatch, which was intended to have been sent with the printed proceedings, was not sent, and as I had received no information from you upon the subject, it was thought best to postpone a further discussion of the business, with an understanding that the commission here, which happens to be adjourned for a few weeks, should continue adjourned until we receive more precise information from Philadelphia: but whether we are right, or otherwise, it appears to me extremely probable that the commission here will be suspended until that at Philadelphia is again put in motion. Lord Grenville observed, and I think with justice, that we have found, by the discussions relative to the powers of the Commissioners under the seventh article, that constructions, in either extreme, might be given up; and I think he felt the full effect of my observation, that, whatever may be the importance of the claims before the Commissioners at Philadelphia, it was very subordinate to the harmony and good understanding that happily subsists between the two countries."

Mr. King to the Secretary of State.

LONDON, *June* 14, 1799.

SIR: I last evening received a note from Lord Grenville, requesting to see me this morning. I waited upon his Lordship, in Cleveland Row, who said that he had read with care the proceedings of the Commissioners, under the sixth article of our treaty, in the case of Bishop Inglis, and that he was sorry that the difficulties that had arisen at Philadelphia, had not been removed in some such way as we had found successful here; that he thought construction had been pushed too far, and doubtful points more pertinaciously insisted on by both sides at Philadelphia, than was consistent with the real object of the commission, the attainment of justice to the British creditors, and, in a manner, as far as practicable, compatible with the ordinary course of our Judiciary. He was, moreover, ready to confess that, on one side, there did not appear to him sufficient evidence to warrant the conclusion that Bishop Inglis could not have recovered his debt in the ordinary course of Judicial proceedings; and, on the other side, it must be evident, if the construction of our Commissioners was insisted upon, that it would, in a great measure, perhaps wholly, defeat the end of the article. Under these circumstances, he said he had concluded to write Mr. Liston, by the next packet, to open a new negotiation with our Government, with the view of making some such agreement, respecting the provisions of the sixth article, as had taken place between him and me relative to those of the seventh. A time might be agreed on, as was the case here, within which our courts should decide the cases brought before them. This must be a convenient time, having regard to the nature of the business; and, being mutually understood, would require no formality. A number of cases in each class might in this way be decided by our courts. He presumed that we should not insist that each case should go through the courts. Assignments might then be made, and the money paid, as had been agreed to be done here.

They had given up the posts, and hitherto done whatever depended on them to carry into full effect the stipulations of the seventh article. This they had done from a confidence that, on our side, correspondent exertions would be made to give full effect to the provisions of the sixth article. Though Mr. Liston had given them but little information respecting the commission at Philadelphia, what he had given was important. In his last despatch, which informed them of the secession of our Commissioners, he expressed his opinion that the Commissioners would not agree in any awards, and that nothing would be recovered under the commission. In this situation of that commission, they could not consent that the commission here should proceed. He had no idea of breaking it up; but it must be suspended until that at Philadelphia was again put in motion.

From the tenor of this communication, as well as from some expressions made use of by Lord Grenville, I plainly saw that the measure had been considered and settled in the Cabinet, and, consequently, that it was very little likely that any observations of mine would effect a change in what had been so agreed on; still, I judged it suitable to observe, that I received with much concern, the communication that his Lordship had just made; that true it was, that the proceedings in the case of Inglis bore strong marks of a temper ill suited to the occasion; but that we could not consent to take any portion of blame on this account, as, most clearly, the construction asserted by their Commissioners, and from which we only exhibited the reasons of our dissent, was extravagant, and not to be acquiesced in or defended: we had promised compensation for loss and damage of British creditors, where the same could not be recovered in our courts: there was no evidence, in Bishop Inglis's case, that compensation could not there be recovered; and, consequently, no case was made out for the interference of the Commissioners. So important did the questions appear to me, and especially in respect to our national

faith, that I did not see how we could acquiesce in the reproach that would be fixed upon our character by consenting to the inferences attempted to be established by their Commissioners, and that I had entertained the hope that the conduct of their Commissioners would have appeared to them in such a light as to have produced an instruction calculated to have removed the embarrassment that had arrested the progress of the commission.

That if, from considerations of expediency, it should be thought advisable to suspend, for the present, awards upon their treasury by the commission here, I hoped there would be no objection to the Commissioners proceeding in such preliminary examinations as would bring the business to a state to be soon finished after the satisfactory removal of the embarrassments which at present stop the Commissioners at Philadelphia. Lord G. made some further remarks, and we entered into a fruitless conversation respecting the construction given by their and our Commissioners to the provision of the sixth article, and concluded by saying, that it would be most satisfactory that the two Commissioners should proceed *pari passu;* and therefore the stopping of one should be the signal for the stopping of the other. If, during the suspension of the commission at Philadelphia, that at London should be employed in carrying on its business to its last stage, nothing would remain to be done here, when the present suspension at Philadelphia should cease, but to sign awards, which might be completed in a week, and the commission here brought to an end before any real progress had been made at Philadelphia, where new difficulties and further suspension might occur.

With perfect respect and esteem, I have, &c.

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *October* 11, 1799.

SIR: In a late conference with Lord Grenville, he asked me if I had received any account of the interruption of the commission at Philadelphia; and, upon my answer in the negative, he said that he had, by the last packet, received information that the American Commissioners had withdrawn from the board; that such withdrawing might be considered as a resignation; and that he proposed instructing Mr. Liston to apply to our Government to appoint other persons to succeed them, according to the provisions of the treaty. I observed that, though I was not authorized to say anything, officially, respecting the suspension of the commission, I had reason to expect by the next packet, full information and instructions respecting it; and, without pretending to judge of the expediency of the measure proposed by his Lordship, I would take the liberty of saying, that it did not appear to me likely to hasten a satisfactory termination of the misunderstanding that had taken place, and especially if, as I conjectured to be the case, the conduct of the American Commissioners was not disapproved by their Government.

Lord Grenville replied, certainly, the approbation of their conduct by their Government would very much alter the case; and, after a conversation at some length, which, without an intention on either side, entered into the discussion of several of the controverted points, Lord Grenville said he would defer writing to Mr. Liston upon the subject, until I should receive my instructions respecting it. From the tenor of this conference, we may anticipate the difficulties to be expected in a further negotiation, and which the course of events may increase rather than lessen.

With great respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *October* 11, 1799.

SIR: On the first of this month I received a note from Lord Grenville, requesting, in the usual form, to see me at 11 o'clock the next day at Cleveland Row. I was punctual in my attendance.

Lord Grenville began the conference by intimating his intention to instruct Mr. Liston to require of our Government to appoint other Commissioners in the place of Fitzsimmons and Sitgreaves; and upon my suggestion that, though I had no such official information, it was not improbable that the conduct of the American Commissioners was approved by the Government, and, therefore, that the proposed instructions would not be likely to remove the difficulties and disagreements that had arisen in the construction of the treaty, his Lordship observed, with less moderation than usual: "If you are authorized, sir, to say that the secession of your Commissioners was by order of your Government, certainly the subject presents itself in quite a different light." I have no doubt of the fact, my Lord; but, as I have already said, I have no regular information upon the subject; and can, therefore, say nothing officially respecting it, except that I am informed that the American Commissioners, in consequence of a disagreement in the interpretation of the sixth article of the treaty, have withdrawn; in like manner as the English Commissioners, last year, seceded, in consequence of a disagreement in the construction of the seventh article of the same treaty; and, that, by the next packet, I expect exact information and instructions respecting this affair, which may, perhaps, become the subject of further negotiation. Ever since Mr. Jay's arrival here, we have pursued (said Lord G.) measures of conciliation towards the United States, and have cherished a disposition to overlook every unpleasant occurrence we have met with; but I must say that we have not seen a like temper and disposition on the part of the United States; and it is easy to see that this spirit of conciliation must exhaust itself. I am told, continued his Lordship, that Mr. Jay has declared that he had no notion of such a construction as has been given to the sixth article of the treaty; and so I, upon oath, could declare that the seventh article had been construed in a way that I had never supposed it

could be; but, notwithstanding, I advised His Majesty's Government to acquiesce in the award, and to pay the money. Mr. Jay and I endeavored to agree: we found it impracticable. I believe we honestly disagreed. At length, however, we concluded the sixth and seventh articles, by which the subject of our disagreements are submitted to arbitrators. A question arose whether their decision should be final, or subject to the confirmation of the respective Governments; and we thought it would be most prudent to make their decisions conclusive. How, under these circumstances, can it be expected that we shall consent to begin a new negotiation? However just, there would be no advantage in recrimination; but I have no reserve in assuring your Lordship, whatever may have been the disposition of Great Britain, that one of equal sincerity has existed in the United States, to maintain the most perfect harmony and good understanding between the two countries; and I am wholly at a loss to conjecture to what facts your Lordship can refer in evidence of a different temper. In respect to the interruption of the commission at Philadelphia, I must content myself with observing that, if England found sufficient reasons to justify an instruction to her Commissioners to secede, she cannot think it extraordinary that the United States, from the same or similar reasons, have given the like instructions to their commission at Philadelphia. But, exclusive of this observation, what passes in respect to ordinary arbitrations between individuals, which differ nothing in principle from those between nations, teaches us that matters not submitted, or submitted with limitations, are sometimes attempted to be drawn within the arbitration, or to be decided absolutely, and without regard to the conditions; and, as in such cases, individuals are not bound by these irregular proceedings, so, in similar circumstances, nations must be free in like manner to refuse their acquiescence.

I think, said Lord G., I could show a distinction between what passed here, respecting the commission under the seventh article, and what has taken place at Philadelphia. It is, doubtless, true, that arbitrators may exceed their powers; but I cannot conceal from you, on this occasion, that an opinion exists, and prevails very generally among the creditors, that it is the amount of the debts, and not any error in the interpretation of the articles, that is the real cause of the embarrassment.

I am convinced, my Lord, that no opinion can be more erroneous or more unjust. I know the integrity of my own Government too well to suffer the smallest doubt on this point. No sum, however much it might exceed our expectations, that could be awarded upon any just interpretation of the treaty, would have the least influence upon our Government to elude its payment at the expense of the public faith. The interruption of the commission, as I learn through various and disinterested channels, has proceeded from the extravagant and injurious construction put upon the treaty by your Commissioners; a construction in which we cannot acquiesce without humiliation, nor without opening a discussion respecting our Revolution that was unalterably settled at the Treaty of Peace. I do not suggest, said Lord G., that your Government is unfriendly or unjust, but the clamor of the debtors, and the dissatisfaction produced in consequence of the law for granting protections to your seamen, (which being without the requisite provisions for the security of our rights, the protections granted under it have not been respected,) may have had some influence upon your Government: this law has excited great irritation against England.

I must confess, my Lord, that I never expected that the law alluded to would be cited as evidence of the want of a friendly disposition towards Great Britain, because I have considered it as a singular proof of an opposite temper. When and why was this law passed? Not until we had, without success, endeavored to conclude some agreement with England for the security of our seamen, nor then, but with the sole and just view of exempting our citizens from an injury and oppression practised upon them by the people of no other country.

Here a servant entered and announced Monsieur, late Count d'Artois. Lord G. immediately rose from his chair, and, observing that it would not be civil to keep Monsieur waiting, asked me if I could call upon him the next morning. I should readily have acquiesced had I not thought it incorrect that a conference asked by his Lordship, and the only one that had existed for several months, should be terminated in this manner. I therefore replied I was going in the evening to my house in the country, but that I would return in the morning, in case the Tuesday or Wednesday following would not be equally convenient to his Lordship. He answered that Tuesday would be the same as to-morrow.

I attended in Cleveland Row, Tuesday at 11 o'clock. It was two before I was received by Lord Grenville. During the time passed in the antechamber, Mr. Pitt and Mr. Dundas arrived, and had conferences with his Lordship, as had likewise the under secretary, Hammond. We had that morning a Gazette extra, with the account of the Duke of York's success in Holland on the 2d; but there was a gloom on the faces of all these gentlemen that excited the suspicion that bad news had been received from some quarter that more than balanced the success in Holland. The arrival of the French papers a day or two afterwards brought us the account of the victories of Massena in Switzerland.

Upon being admitted, I began by making his Lordship my compliments upon the news from Holland, and a short conversation ensued concerning the situation of that country. I waited for his Lordship to recommence the conference, which he did by saying, with less stateliness and more good humor than were shown in the conference of the second, that, as the September packet was not yet arrived, we had no further accounts from Philadelphia; and, until we had, he could not see that anything could be done concerning the commission.

I observed that, on recurring to my last advices from Philadelphia, I found that I had no official account of the interruption of the commission; and that my letters only gave me reason to expect such information by the September packet. I then added that, since I had seen his Lordship, I had considered with great attention the import of certain observations that he had delivered in our last conference; and the result of my reflections had been a thorough conviction, not only of the error, but of the injustice of their observations. It was to two precise points that I alluded: one, that the American Government, from weakness or want of inclination, did not manifest towards England the same friendly disposition that, since the arrival of Mr. Jay, England had shown to the United States; and the other, that it was the amount of the debts, and not any well-founded objection to the principles or manner of the proceedings of the Commissioners, that had occasioned their suspension. I proceeded, by saying that I could not but regret that these sentiments should be entertained by any one, and much more so by his Lordship. On an impartial review of the avowed principles and conduct of the American Government, since the epoch referred to by his Lordship, I was constrained to say, if they were not thought to be a satisfactory evidence of a disposition to live in harmony and friendship with England, I should not only despair of seeing such evidence, but I felt myself, in candor, obliged to avow that I could not wish to see it; and that it could only surprise me, that any one who possessed the means of understanding the political situation of the United States, should entertain a moment's doubt on this point. I then added that I could not avoid feeling the injury of his Lordship's observation concerning the interruption of the commission at Philadelphia, as it imputed to our Government a want of sincerity and integrity that was alike refuted by the great efforts it had made to conclude the treaty with England, and by the good faith that invariably, and on all occasions, had guided its decisions. The sum, at its greatest estimate, and under the most abusive interpretation of the treaty, was nothing when weighed against the character of our nation. We know the value of reputation; and were we not restrained, as every moral society ought to be, to do right from duty, we were sufficiently enlightened to do so from interest. Besides, we were not a nation surrounded by more powerful neighbors, and to protect ourselves against whom the devices of the feeble were necessary; on the contrary, though not as numerous, we were as unassailable and secure as any nation of Europe; and, knowing our real independence, we were also awake to the destinies of our country, and influenced by the just notions of national honor, that so properly belonged to our situation and prospects.

What were the chief points of disagreement between the Commissioners? The Treaty of Peace provides that creditors, on either side, shall meet with no lawful impediments in the recovery of their debts. Such recovery could be had only through the agency of the courts. Complaints were made on one side, though denied on the other, that, notwithstanding the treaty, debts could not be recovered, by reason of the existence of lawful impediments; and, without reference to the merits of these complaints, the United States engaged, in the last treaty, to compensate all loss and damage that had arisen by reason of lawful impediments, and which could not, at the conclusion of the treaty, be recovered by the agency of the courts. The engagement is conditional: and the United States are not bound for any debt that, at the conclusion of the treaty, could, through their courts, be recovered of the debtor. The course of proceeding, in the execution of this engagement, could scarcely be misunderstood. Each creditor, in preferring his case to the Commissioners, is required to show that he is of the class in whose favor the fourth article of the Treaty of Peace was made; that, with due diligence, he had not been able, previous to the last treaty, to recover his debt, by reason of the operation of lawful impediments; and, moreover, that the same could not be recovered posterior to that treaty. Instead of this course, a majority of the Commissioners had adopted certain resolves enlarging the class of persons included within the provisions of the treaty, releasing the creditors from the obligation of applying to the courts of law, for the recovery of their debts, and, in effect, giving to them an absolute, in the place of a conditional, remedy against the United States: a construction of the treaty, not only incompatible with the guards and cautions that should attend the examination of the claims, but that impeaches the independence and purity of our tribunals. We, as well as others, desire to preserve the reputation of our judiciary. What was your Lordship's language in a case by no means as strong, but that was attended by circumstances which bore an analogy to the present question? Our courts, said your Lordship, on the occasion, cannot be presumed to be incompetent or unwilling to do justice. We cannot consent to see them set aside or discredited; and I am really at a loss, added your Lordship, how any honest man upon his oath can say, when the experiment has not been made, that justice cannot be obtained in our tribunals.

I added, that I knew the integrity of the Government I served: I had been the witness of its sincere disposition and earnest efforts to live in harmony with England; I had long believed that harmony and friendship would be mutually advantageous; and that I had come to England with the desire of being, in this respect, useful to my country: but, if the sentiments that I had been controverting were really entertained by the English Government, I could not expect to see much good will, or good humor between the two countries: and we should, I fear, differ so essentially upon the cause of the interruption of the commission at Philadelphia, that there would be but little prospect of a satisfactory negotiation on the subject.

Lord Grenville, whom I carefully attended to while I delivered these observations, and who, it was pretty plain, was not prepared to receive them,

after making some attempts to discriminate between the commission here and that at Philadelphia, and to show, against all reason, that the courts here should be resorted to, but that such a course was not necessary at Philadelphia, added that every letter he had seen agreed in the opinion that it was the amount of the debts, and not the construction of the treaty, that constituted the embarrassment.

I replied that the claimants would, doubtless, send over exaggerated reports and false opinions, and those of them who had the least pretensions to complain would probably complain the loudest; that, if my Government had formed its opinion of the Court of Appeal from the letters sent from this country, respecting the American claims depending for these six years before that court, it would not be much in favor of its competency or justice.

Lord Grenville said, a new negotiation would be extremely difficult, as the creditors thought they had tried their cases, and obtained a decision in their favor; that, if the Commissioners were changed, still the new ones would have before them the decisions of their predecessors. I answered that this was a consequence of an erroneous mode of proceeding. Lord Grenville said he certainly wished the business had been done in another manner.

The conversation being at a stand, I observed that I must say something to you by the packet that was soon to sail, but that I could write nothing decisive upon the subject of our conference. His Lordship said that he should defer writing to Mr. Liston until the arrival of the next packet, in expectation that she would bring my instructions. If nothing could be agreed between me and him, he should then instruct Mr. Liston to make such representation to our Government as the occasion called for. They had given up the pledge they held for the fulfilment of the Treaty of Peace, and they must consider the non-performance of the last treaty, on our part, as a breach of faith.

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *January* 22, 1802.

SIR: A disposition has appeared to couple the delay that has occurred in the transmission of the instructions, concerning the disagreement between the Commissioners at Philadelphia with the mission to France. The influence of this suspicion upon the present relation between the United States and England need not be suggested. It has been my aim to do away this impression, by ascribing the delay to the derangement, in consequence of the fever, and to other causes equally foreign from those which have been imagined; and I believe I am not mistaken in supposing that the subject will not be brought before the Cabinet, as was intended, before the arrival of the next packet; though I have taken care not to state positively, or with confidence, that the instructions will be sent by the December packet. I shall deeply regret, and may be much embarrassed, in case they should not be; for, with the temper I have for some time perceived, and after the evidence of its character that I have sent you, I should not be disappointed if it manifests itself to our disadvantage on the first occasion that may be deemed convenient. I receive no answers to the notes, copies of which I have transmitted to you, nor shall I receive any until the injurious suspicions of our views are removed. I omit no means proper to be employed to keep things in a condition favorable to a candid and satisfactory explanation and adjustment: in doing so, you may be assured that I maintain with firmness the rectitude of our Government, preserving always a due respect for those to whom I address myself. My language is, that we are, and shall continue to be, just to every nation; that we desire to avoid misunderstandings with any; having entered into no engagements which oblige us to depart from this system, our efforts to remain at peace with all nations cannot be the occasion of dissatisfaction to any.

We have no account that our Envoys have reached France, though they sailed from Lisbon on the 21st of December. It is mere conjecture, but I am inclined to believe that they will be received with marks of respect and esteem, and that they will conclude a treaty. Should this be the case, I hope we may not be precipitate in relinquishing our naval and military preparations. If France is insincere, or incapable to perform what she promises, we shall again want them: if the contrary should happen, we may not have less occasion for them.

With perfect respect and esteem, I have the honor to be, sir, your obedient and humble servant,

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

"LONDON, *February* 3, 1800.

"SIR: The Grantham packet, which arrived after a short passage, brought me your despatch concerning the sixth article of the British Treaty, and I have this day sent a note to Lord Grenville upon this subject, that will probably lead to the commencement of the negotiation. At present, therefore, I cannot give you any opinion respecting it: no exertion on my part will be wanting to bring it to a satisfactory conclusion, and I can be answerable for nothing further."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, *February* 25, 1800.

"In a conference with Lord Grenville on the 18th instant, I delivered to him a verbal note containing such explanations as, on our part, are deemed requisite to the satisfactory execution of the sixth article of the Treaty of Amity: these additional articles were accompanied by such short observations as appeared to me calculated to explain and recommend them. As it was the first interview upon this subject, I was not disappointed in his reserve, who only remarked that it would be best to waive any observation upon the subject until he should have had an opportunity of giving it a full consideration. I have not since heard from him."

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *April* 7, 1800.

"SIR: As I may not be able to see Lord Grenville again for some days, he having gone to his country house, where he will probably remain through the Easter holidays, I think it proper to acquaint you that, in a conference I had with his Lordship the day before yesterday, he distinctly informed me that it was the unanimous opinion of himself and colleagues not to enter into the former discussion of the explanatory articles which I had proposed to him on the 18th of February, as they saw no probability that the two Governments would be able to agree in any explanations upon that subject; but that they would consent to the dissolution of the present board, and to the appointment of a new set of Commissioners, who should be governed by the stipulations already concluded, without regarding the constructive resolutions of the former Commissioners; the fifth Commissioner to be named by the King, and, instead of two Americans being appointed by the President, and two British subjects by the King, that the President should appoint one American, and name a British subject, to whose appointment the King's consent should be requisite; and that the King should appoint one British subject, to whose appointment the President's consent should be requisite. This modification of the choice of the Commissioners, it was suggested, might diminish the influence of national prejudice on both sides; but I conclude that it is not thought of sufficient importance to be insisted upon, if the former mode of choice should be preferred. I cannot now send you a detail of the reasons upon which his Lordship placed the refusal to agree to or to discuss the explanatory articles that we had proposed. After hearing a few words in which he communicated the decision, I only replied that I would consider of what he had informed me, and take the earliest opportunity of communicating to him the result of my reflections. I accordingly called to-day at his Lordship's house, but he had left town early in the morning. It was my intention to have presented to him the reasons why, upon the appointment of a new Board of Commissioners, it would be necessary that certain explanatory rules should be settled for the government of their proceedings, and to inform him that I was authorized to agree to a new commission without such rules."

Mr. King to the Secretary of State, dated

LONDON, *April* 22, 1800.

DEAR SIR: So much impatience had appeared, in respect to the delay that happened in the transmission of my instructions concerning the separation of the commission at Philadelphia, that I judged it expedient to lose no time after their arrival in beginning the negotiation. I accordingly informed Lord Grenville, the day after the receipt of your No. 71, that I was ready to proceed, and would either write him an official note, as the commencement of the negotiation, or prepare and deliver to him an informal paper containing the propositions we had to offer, and which might become the subject of free discussion in future conferences; his Lordship intimated a preference of the latter course; and I accordingly delivered to him the paper, mentioned in my No. 65, a copy of which is annexed. In my No. 66, I gave you an account of what passed between Lord Grenville and me in our next conference; in addition to which, I might have added that his Lordship asked if I was authorized to offer any specific sum of money, on the payment of which Great Britain should engage to satisfy the claims of the whole of the British creditors? Having no such power, my answer was of course in the negative.

On the 19th instant, I received his Lordship's written answer to the proposals I had delivered to him on the 18th of February, corresponding, as you will perceive by the subjoined copy, with the verbal answer that had before been given to me. As this answer precludes all discussion of the articles we had proposed, on the plea that the whole subject had been finally settled by the Treaty of Amity, and that the United States are bound by the decision of the majority of the Commissioners, whether the matter decided is within or above their powers, my first thought was to prepare and send to his Lordship a note, exposing the error of a principle that confounds the distinction between a limited and an unlimited delegation of authority, and which should, at the same time, support, by further arguments, the justice and expediency of the explanatory articles that we had offered.

But, as the language of Lord Grenville in our conference was equally explicit and decided as that of the paper delivered in answer to our proposals, I, on reflection, changed my first opinion, from the persuasion that nothing would be gained by that course in favor of the future execution of the article; and, as the answer had placed the negotiation in a situation that had not been foreseen, that it was my duty to refer it, in its present stage, to the further consideration of the President.

The written answer of Lord Grenville having intimated a disposition to accede to certain regulations, which, it was supposed, might faciliate the execution of the treaty, I yesterday asked a conference with his Lordship, for the purpose of obtaining a precise idea of the nature and extent of these regulations: this was immediately granted, and afforded an opportunity for a free conversation upon the general topic, as well as respecting the particular subject that brought us together. Many things were said on both sides that it would be useless to repeat: these, therefore, are omitted in this report.

His Lordship observed, that the object of the delay that took place at London was to allow time to the Court of Appeals to decide the several prize cases before their examination by the

Commissioners, and that a like arrangement might be made in respect to the cases before the Commissioners at Philadelphia. With regard to the questions of impediment, solvency, insolvency, and some others of equal importance, Lord Grenville said, their decision must be left to the provisions of the treaty, to the particular circumstances of each case, and to the sound discretion of the Commissioners; adding that, upon a full investigation of the subject, he was convinced that no new and general rule upon these points could be made, without affecting cases and claims that ought not to be affected; and that, even with respect to an agreement to delay the cases before the Commissioners at Philadelphia, in order that the claimant should have an opportunity first to obtain the decision of our courts, it would be difficult, not to say impossible, for him to form any satisfactory idea of what would be a convenient time, unless he had a more adequate knowledge of our judiciary proceedings, and a particular instead of a general acquaintance with the claims. Upon this point, as on most others, there seemed to be wanting a discretionary power, always present, and ready to act as occasions arose, and according to the nature and circumstances of the particular question; that the persons whom he had thought of, as two of the Commissioners to be appointed by the King, were men of prudence and discretion, and with whom, he thought, we should be satisfied: that Mr. Liston, having repeatedly asked, and lately received, leave of absence on account of his health, might not be at Philadelphia; and he saw no preferable course, in case we acceded to the suggestion, to that of sending these two persons to Philadelphia, to concert with us such analogous regulations, in respect to the commission there, as were agreed to with regard to the commission here. We should, by this means, have an opportunity of knowing the character and dispositions of the persons sent to prepare and agree to these regulations, and who would afterwards be appointed to assist in the execution of the treaty.

Lord Grenville asked me in what time I supposed the courts would be able to go through the whole of the cases? I answered that this must chiefly depend upon the diligence of the creditors, and that I could not form any satisfactory estimate of the time that might be necessary: on the one hand, it should not be so short as, with a disposition in the courts to avoid delay, would defeat the object of the regulation; and, on the other, it should not be so long as to afford any ground, from the delay, to infer that there was a denial of justice. No precise time was settled here, and, perhaps, none should be at Philadelphia. His Lordship asked if there could be no means found to accelerate the trials? I repeated the observation, that more would depend on the diligence of the creditors than upon the courts, of whose disposition to give the greatest despatch, there could be no doubt; that a law requiring extraordinary sessions of the courts, or prescribing a more summary proceeding, would not only interfere with the established course of our judiciary, but give birth to other and still more difficult questions, which it would be unwise to agitate.

His Lordship asked whether the cases before the board are, any of them, in a state for the new Commissioners to take up, suggesting that it would be desirable that the new board should, at their commencement, have something to do? I replied that, though I could not then answer the question with any degree of accuracy, I was inclined to believe that many cases were in a situation that, without recourse to the courts, might soon be prepared for the Commissioners to decide, and that the progress of the trials would be constantly furnishing additional cases. Lord Grenville expressed his opinion that the new board ought to proceed in a different manner from their predecessors, by deciding cases singly, one after another, instead of attempting to decide them by general resolves, and in classes.

I observed that it was possible that new difficulties might arise in the course of future proceedings; and, should Mr. Liston be absent, there would be no one with whom we could confer for the purpose of removing them. Lord Grenville replied, that, in this case, he must endeavor to find out a proper character to supply Mr. Liston's place.

I then asked Lord Grenville if he had formed any idea of the gross sum, on the payment of which they would engage to compensate the claims of the British creditors. His Lordship replied that he had not; adding, that he thought the creditors had not been wise in swelling, as they had done, their claim to four or five millions sterling; though it might have no influence upon our Government, it would be likely to have some upon the people; that he himself did not like the idea of the payment of a gross sum, and that he had mentioned it to me in compliance with the opinion of his colleagues; but that, on the supposition that the debt due to British creditors did not exceed two millions, they might be willing to accept a gross sum of between one and two millions.

I shall, as opportunities offer, endeavor to acquire further information on this subject, as it may possibly lead to the satisfactory conclusion of a most difficult business.

If it is probable that we shall ultimately be required to pay, upon the award of the Commissioners, a sum equal to, or not far short of, one for which the business could be at once settled, would it not be the part of a wise policy to engage to pay such sum by instalments, or in some other convenient manner? All further expense to individuals, as well as to the public, would, in this mode of settlement, be saved; we should, moreover, escape the embarrassment of any future disagrement among the Commissioners, and consequent misunderstanding between the two countries; the trouble and vexation of numberless law suits would be prevented; and, instead of the dissatisfaction and ill will towards the Government that they would unavoidably excite, a general release to the debtors would be a boon that could not fail to produce opposite sentiments.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to Lord Grenville.

Without discussing the disagreement, which ended in the suspension of the Board of Commissioners acting under the sixth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, it not being perceived that any advantage, in reference to the future and satisfactory execution of that article, would be likely to arise from such discussion, it is proposed, on the part of the United States, that the Plenipotentiaries of the two countries should endeavor to agree in such explanations respecting the said article as shall secure to the creditors on the side of Great Britain, the full benefit of the rights to which they are entitled, whether in virtue of their respective contracts, or from the provisions of the treaties between the two countries; and, at the same time, mark more clearly the limits of the engagements of the United States.

From the extensive commercial dealings between Great Britain and America, debts to a considerable amount were due to British creditors at the commencement of the American war: these debts, exclusive of the irrecoverable losses occasioned by the insolvency of debtors in the course of that war, were affected by various laws passed in several of the States, as well as by the apprehension lest the creditors might, after the peace, be obliged to receive payment in a depreciated paper money. To guard against this apprehension, as well as to remove every obstruction proceeding from the laws of any of the States, the fourth article of the Treaty of Peace provided: "That creditors on either side shall meet with no lawful impediments to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted." Complaints were afterwards made by divers British creditors, that lawful impediments had been suffered to exist within the United States, contrary to the aforesaid provision of the Treaty of Peace, and that, by the operation thereof, they had sustained losses and damages, which could not be repaired in the ordinary course of justice; in consequence of which complaints, it was agreed, by the sixth article of the Treaty of Amity, that in all such cases, where full compensation for such losses and damages could not be obtained in the ordinary course of justice, the same should be made by the United States: it being, at the same time, understood, and further agreed, that this provision should include such losses only as were occasioned by the said lawful impediments, and not losses occasioned by such insolvency of the debtors, or other causes, as would equally have operated to have produced the same if the said impediments had not existed, nor to losses and damages occasioned by the delay, negligence, or wilful omission of the claimant. From hence it appears that the aim of the Treaty of Peace was in this respect to do away every impediment in law to the recovery of all *bona fide* debts therein described, and to leave to the creditors the free legal remedy, to which they were respectively entitled at the time when the debts were created; and that the object of the Treaty of Amity, so far as it respects this subject, was not the removal of lawful impediments, for none existed at its conclusion; nor pledge the United States to pay the debts due to British creditors, but to secure to the creditors, under certain limitations, compensation from the United States, for all such losses as had been occasioned by the operation of lawful impediments since the Treaty of Peace, and which could not, at the conclusion of the Treaty of Amity, &c., be recovered from the debtors in the ordinary course of justice.

To establish a claim, then, against the United States, in virtue of the Treaty of Amity, it is conceived that the creditor should give satisfactory proof to the Commissioners:

1. That the debt was *bona fide* contracted before, and remained unpaid at the peace.

2. That lawful impediments prevented his recovery of payment; and that, during their operation, the debtor became insolvent, and continued to be so at the conclusion of the Treaty of Amity, &c.

To avoid misapprehension, it is thought advisable informally to present, in the shape of separate articles, such principles as, according to the spirit and object of the sixth article of the Treaty of Amity, are deemed, on the part of the United States, proper to constitute the basis of the desired explanation. These are also accompanied by a few observations, suggesting some of the reasons on which they severally depend for support.

REMARKS.

1. The description contained in the fourth article of the Treaty of Peace has a manifest reference to the state of war, and not to the epoch of peace. By "creditors on either side," cannot be meant those who were of both sides. If the words are made to include more than those who were uniformly on one side, will not such construction involve the absurdity of giving to the same person a right to claim in a double character, and of both sides?

ARTICLES.

1. The description by which claimants are designated in the said sixth article of the Treaty of Amity, shall be deemed to include all persons, whether resident in Europe or America, who were on the side of His Britannic Majesty at the commencement of the late war, and so continued throughout the war, and until the exhibition of claim. But no person shall be deemed to be a British creditor, within the meaning of the said article, who shall, at any time before the peace, have been openly on the American side, or volun-

2. Sec. 1 The equity of this provision renders any observation in its support unnecessary.

Sec. 2. The creation or continuance of a lawful impediment may be considered as evidence that some of the debtors residing within its operation were solvent; but it would be not only illogical, but contrary to notorious facts, to consider it as *prima facie* evidence even that every such debtor was solvent. From the purport of the engagement of the United States, the creditor should therefore be held to prove, in every case, that the debtor was solvent at the conclusion of the peace, inasmuch as he cannot have sustained a loss by reason of the operation of a lawful impediment, unless the debtor was solvent at the peace, and became insolvent during the operation of such impediment.

Sec. 3. It seems due to equity, and is moreover required, in the ordinary administration of justice, that the creditor, to charge the provisional guarantee of his debtor, should prove that reasonable diligence had been used to obtain payment of the debtor; the omission whereof, in legal estimation, amounts to wilful negligence: and common and daily practice on this subject shows that the creditor must prove that he endeavored to recover of his debtor before he can resort to his guarantee.

Sec. 4. Unless a lawful impediment existed, no loss can have proceeded from it, and, consequently, no claim can be sustained against the United States. The impediment must, therefore, in every case, be proved by the creditor.

Sec. 5. The creditor must also prove that he sustained a loss by the operation of a lawful impediment, for which he could not, at the conclusion of the Treaty of Amity, obtain compensation in the ordinary course of judicial proceedings; and this can only be done by proving that the debtor became insolvent during the operation of the lawful impediment, and that he remained so at the conclusion of the treaty: for, if he became insolvent after the lawful impediment ceased, the loss cannot have proceeded from the impediment; and if he was solvent at the conclusion of the treaty, the debt might have been recovered in the ordinary course of judicial proceedings.

3. It does not occur that any other acts can be considered as lawful impediments. The law of nations requires that foreigners proceed to the tribunal in the last resort before they complain of a denial of justice; and no nation considers a complaint against the justice of its Judiciary as regular, or entitled to examination, unless the complainant has obtained the sentence of the highest tribunal established for the decision of his case.

It is for losses arising from the operation of lawful impediments that the sixth article provides. Losses proceeding from the acts of the parties are distinct from those which have arisen from the operation of law, and cannot, therefore, be deemed to be within the provisions of the article. If lawful impediments existed in some parts of the United States, they existed in opposition to the repeated efforts of Congress to remove them, and their continuance must be ascribed to the imperfection of our first system of national Government and Union. This remark is not made with a view to infer, from this defect of our first Constitution, an exemption from a full and complete compensation for all losses that may have been sustained in consequence of even an unavoidable delay in the performance of our engagements. It is the inclination of the United States, exclusive of the stipulations of the Treaty of Amity, to compensate all such losses, according to the spirit of those stipulations. But we perceive no obligation that requires of us to allow (on the contrary, the most weighty considerations forbid us to admit) that any delay in the execution of the Treaty of Peace continued a single moment after the period when, by a reform, and, so far as respects this point, a complete correction of our Constitution, we put an end to and entirely removed the impediments which are alleged to have stood in the way of the full and complete execution of our previous stipulations. The Judiciary of the United States was established on the 24th of September, 1789, since when, whatever may have been the case before, no lawful impediment has existed in any part of the United States to the recovery of debts due before the peace to creditors of the side of Great Britain.

4. The creditor may reasonably expect the assistance of the same laws and process that existed when his debt was contracted. He ought to be contented with the remedy on which he depended when he gave the credit, and he has no claim in this respect for anything further.

5. If the creditor receives his whole debt, he is satisfied; and whether it is paid by the debtor or by the United States, or partly by one, and partly by the other, must be indifferent to him. The courts may, in particular instances, give the principal, and, on the circumstances of the case, refuse interest; the Commissioners may think both are due; in such instances, the principal should be received of the debtor, and the interest of the United States, and so in other supposable cases. This course agrees with the unanimous interpretation of, and practice under, the seventh article of the treaty. The simple restitution of property captured under the orders of November, 1793, is decreed by the court of appeals in prize cases, without interest, damages, or costs, and the amount of such simple restitution is received from the captor, the difference between which sum and the just demand of the claimant is awarded by the Commissioners, and paid out of the British treasury.

6. After what has passed, no reasonable expectation can be entertained of a satisfactory exe-

4. The various modes of execution for the satisfaction of judgments which were in use before the war, in the States respectively, and all proceedings in the established courts, whether of law or equity, for the discovery of fraud, and the recovery of the property of debtors, real or personal, in the hands or possession of fraudulent assignees, shall be deemed and held to be in the ordinary course of judicial proceedings within the meaning of the said sixth article of the Treaty of Amity.

5. The United States shall be deemed bound by the said article to make compensation only for the loss or damage occasioned by the lawful impediments, and actually sustained by the creditor; and, therefore, in cases where a part of the debt, whether of principal or interest, [might have been or] may yet be recovered, compensation may not be awarded for such part.

6. And, for the purpose of facilitating the due execution of the said sixth article of the Treaty

1. The equity of this provision renders any observation in its support unnecessary.

2. The creation or continuance of a lawful impediment may be considered as evidence that some of the debtors residing within its operation were solvent; but it would be not only illogical, but contrary to notorious facts, to consider it as *prima facie* evidence even that every such debtor was solvent. From the purport of the engagement of the United States, the creditor should therefore be held to prove, in every case, that the debtor was solvent at the conclusion of the peace, inasmuch as he cannot have sustained a loss by reason of the operation of a lawful impediment, unless the debtor was solvent at the peace, and became insolvent during the operation of such impediment.

3. It seems due to equity, and is moreover required, in the ordinary administration of justice, that the creditor, to charge the provisional guarantee of his debtor, should prove that reasonable diligence had been used to obtain payment of the debtor; the omission whereof, in legal estimation, amounts to wilful negligence: and common and daily practice on this subject shows that the creditor must prove that he endeavored to recover of his debtor before he can resort to his guarantee.

4. Unless a lawful impediment existed, no loss can have proceeded from it, and, consequently, no claim can be sustained against the United States. The impediment must, therefore, in every case, be proved by the creditor.

5. The creditor must also prove that he sustained a loss by the operation of a lawful impediment, for which he could not, at the conclusion of the Treaty of Amity, obtain compensation in the ordinary course of judicial proceedings; and this can only be done by proving that the debtor became insolvent during the operation of the lawful impediment, and that he remained so at the conclusion of the treaty: for, if he became insolvent after the lawful impediment ceased, the loss cannot have proceeded from the impediment; and if he was solvent at the conclusion of the treaty, the debt might have been recovered in the ordinary course of judicial proceedings.

6. It does not occur that any other acts can be considered as lawful impediments. The law of nations requires that foreigners proceed to the tribunal in the last resort before they complain of a denial of justice; and no nation considers a complaint against the justice of its Judiciary as regular, or entitled to examination, unless the complainant has obtained the sentence of the highest tribunal established for the decision of his case.

It is for losses arising from the operation of lawful impediments that the sixth article provides. Losses proceeding from the acts of the parties are distinct from those which have arisen from the operation of law, and cannot, therefore,

3. Lawful impediments shall be deemed to include Legislative acts passed during the war, and judicially determined by the superior courts of the respective States to remain in force after the peace. Legislative acts, passed after the peace, and also judicial decisions of the superior courts of the respective States, by the operation whereof creditors of the description in the first section, were prevented or delayed from recovering the full value, in sterling money, of debts *bona fide* contracted before the peace. But the act, consent, acquittance, or release of the creditor, or his authorized agent, or lawful representative, shall, in all cases, be held to be conclusive upon him, and

1. A claimant, possessing the character before defined, shall be held to prove to the satisfaction of the Board of Commissioners:

1st. That the debt was *bona fide* contracted before the peace, and due and unpaid to the creditor at the exhibition of claim. Accounts shall be stated, with the date and amount of each item, and the claimant shall, in every instance, make oath, or affirmation, that all the credits are disclosed to which the debtor is believed to be entitled.

2d. That the debtor was solvent at the peace, and for such a reasonable time afterwards, within which the debt might have been recovered by judicial process, if lawful impediments had not been interposed.

3d. That the creditor used reasonable diligence to obtain payment from his debtor, although the prosecuting of suits is not to be deemed necessary evidence of such diligence.

4th. That some lawful impediments, affecting the claimant's demand, did exist to delay or prevent his recovery, or to impair or diminish his security.

5th. That, by the operation of such lawful impediments, he has sustained a loss or damage which cannot, at the time of the exhibition of the claim, be repaired in the ordinary course of judicial proceedings; and to this end he shall prove, either that the debtor became insolvent during such operation of lawful impediment, or during such reasonable time thereafter, within which the debt might otherwise have been recovered, and is yet insolvent; or that the creditor is barred, in whole or in part, by a judicial decision had against him, in the particular case, during such operation of lawful impediment, and on the principles thereof.

cution of the sixth article of the Treaty of Amity by the present Commissioners.

Whoever reads their correspondence, or the minutes of their proceedings, whatever may be his opinion of their respective merits, must agree in this conclusion. The appointment of other Commissioners appears, therefore, to be indispensable; and that they may not succeed to the controversy, in succeeding to the duties of their predecessors, the proposed provision, with respect to the decision of the present Board of Commissioners, seems equally necessary.

of Amity, according to the true intent and meaning thereof, as herein explained, it is further agreed, that the present Board of Commissioners for carrying into effect the said sixth article of the Treaty of Amity, &c., shall be dissolved, from the date of the final ratification of these presents, and, instead thereof, another board shall be constituted, to consist of five Commissioners, two of whom shall be appointed by His Britannic Majesty, and two by the President of the United States, by and with the advice and consent of the Senate thereof; and the fifth Commissioner (who shall be so named and designated) shall be appointed by His Britannic Majesty. And the said five Commissioners shall, before they proceed to act, respectively take the following oath or affirmation, in the presence of each other, which oath or affirmation, being so taken and duly attested, shall be entered on the record of their proceedings, viz: "I, A B, one of the Commissioners appointed in pursuance of the explanatory articles of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, do solemnly swear, (or affirm,) that I will honestly, diligently, impartially, and carefully examine, and, to the best of my judgment, according to justice and equity, decide all such complaints as have been preferred to the Commissioners heretofore appointed under the said sixth article of the said Treaty of Amity, Commerce, and Navigation; and that I will forbear to act as a Commissioner in any case in which I may be personally interested."

Three of the said Commissioners shall constitute a board, and shall have power to do any act appertaining to the commission: *Provided*, That one of the Commissioners named on each side, and the fifth Commissioner, shall be present; and all decisions shall be made by a majority of the voices of the Commissioners then present.

The said Commissioners shall first meet at Philadelphia; but they shall have power to adjourn from place to place, as they shall see cause. All claims preferred to the board heretofore appointed, and not dismissed by the said board, shall be considered as depending before the Commissioners to be appointed in virtue hereof. But the Commissioners appointed in virtue of this article shall not be bound by any acts or resolutions passed, or proposed to be passed, in the former board, in any cases not dismissed by the said former board.

The said Commissioners, in examining the complaints so as aforesaid preferred, are empowered and required, according to the true intent and meaning of the said sixth article of the Treaty of Amity, &c., and of these explanatory articles, to take into their consideration all claims, whether of principal or interest, and to determine the same respectively, according to the merits of the several cases, due regard being had to all the circumstances thereof, and as equity and justice shall appear to them to require; and shall have the same powers in regard to the examination of parties and witnesses, and the reception of evidence, as by the said sixth article of the treaty were given to the Commissioners heretofore appointed in pursuance thereof; and the awards of the said

Commissioners shall be final and conclusive in like manner, and shall in like manner be paid and satisfied, and on the like considerations, in all respects, as by the said sixth article of the Treaty of Amity, &c., has been directed and agreed.

The said Commissioners shall be respectively paid in such manner as has been agreed between the two parties, conformably to the eighth article of the said Treaty of Amity, &c.; and all other expenses of the said Commissioners shall be in like manner borne and defrayed.

In case of death, sickness, or necessary absence of the fifth Commissioner, his place shall be supplied in the manner directed by the sixth article of the said Treaty of Amity, &c., for the appointment of the fifth Commissioner; and in case of the death, sickness, or necessary absence of either of the other four Commissioners, the place of every such Commissioner shall be respectively supplied in the same manner as such Commissioner was first appointed; and the new Commissioners shall take the same oath or affirmation, and do the same duties.

7. The evidence in support of the claims which have been preferred as aforesaid, shall be exhibited by the claimants, respectively, within —— from the first meeting of the said board, and public notification thereof, in such manner as the said Commissioners shall direct; and no evidence shall be received on the part of the claimants, after the said term, except in special cases wherein the board shall deem it just, on cause shown, to prolong the said term. And the Commissioners shall also have power to limit, in each case, a time within which the evidence shall, in like manner, be exhibited, on the part of the United States: *Provided*, That such term shall not be less than —— from the expiration of the time limited for the exhibition of evidence on the part of the claimant.

7. It is proper that there should be a convenient limitation of the time within which each side should produce their proofs. The article leaves the Commissioners a discretion to prolong the time in particular cases.

LONDON, *Feb.* 18, 1800.

Lord Grenville to Mr. King.

DOWNING STREET, *April* 19, 1800.

The fourth article of the Treaty of Peace not having been duly executed on the part of the United States, the British Government withheld the delivery of the forts on the frontier of Canada, in order that these might serve as a pledge for the interests and rights secured to the British creditors under that article.

Matters were in this situation when Mr. Jay arrived in England, charged with a mission of a conciliatory tendency; and authorized finally to settle these, as well as all other grounds of dissension between the two Governments.

Desirous of meeting, by a corresponding conduct, the disposition which Mr. Jay's mission announced, and satisfied with the spirit in which he executed that commission, the British Government, in the course of negotiation, consented to an article for the immediate surrender of the forts, and agreed to consider the good faith of the United States, and the express stipulations of a new treaty, as affording that security which had before been looked to from the possession of a valuable pledge.

Those new stipulations, in so far as they regarded the matter of the debts, were formed with the view of meeting and providing for the difficulty which arose from the great difference of opinion between the two Governments on some of the leading principles affecting the execution of the fourth article of the Treaty of Peace. For the final settlement of the claims of the British creditors under that article, as well as of other claims respecting which similar differences of opinion subsisted, and which could not, therefore, satisfactorily be adjusted by any detailed agreement between the two parties, it was stipulated that two Commissioners should be appointed, with full power to examine and to decide; and their decision, upon oath, or that of any three of them, forming a board, according to the provisions of the treaty, was expressly declared to be, in all cases, final and conclusive, both as to the justice of the claim and as to the amount to be paid to

the claimant; which payment the respective Governments undertook to make in consequence of such award.

Two Commissioners being named to each commission by the respective Governments, the choice of a fifth Commissioner to each was decided by lot, and it happened that, in constituting the commission for losses by capture or condemnation, the lot fell on a citizen of the United States, while in that by which the claims of the British creditors were to be decided, the lot fell on a subject of His Majesty. In the course of their proceedings, the majorities of both commissions formed their decisions on principles adverse to the opinions of the Government against which the claims were preferred. The awards of the commission under the seventh article have, nevertheless, been faithfully executed by the British Government. The temporary difficulties which arose in the execution of that commission led immediately to amicable explanation between His Majesty's Government and the Minister of the United States, in pursuance of which some regulations adapted to one class of cases were proposed to the Commissioners with a view to conciliation. In consequence of this proposal, a variation took place in the order and time of proceeding on those cases, but no change was made in the principles adopted by the majority as the ground of their awards; and considerable sums have actually been paid to American claimants in cases where the award of the Commissioners has rested on doctrines which are decidedly held to be erroneous, and which would not, therefore, have been recognised in any transaction with a foreign State.

In America, a contrary course has been pursued. The two Commissioners nominated on the part of the United States to the commission under the sixth article, have finally claimed the right to invalidate, by their dissent, both the principles and the effect of the decisions of the majority, and have at length, by completely withdrawing from the board, endeavored, as far as in them lay, to arrest all its proceedings.

In this state of things, the question of good faith and reciprocal execution of treaty can admit of no doubt.

Under the commission for losses by capture, a majority, consisting of three American Commissioners, acting upon their oaths, has admitted American claims, and has rejected British, in contradiction to the opinions of the two British Commissioners, and of the British Government. In all these decisions, the British Government has acquiesced. Under the commission for debts, a majority, consisting of three British Commissioners, acting also upon their oaths, has sanctioned British claims, and rejected American defences, in contradiction to the opinions both of the two American Commissioners and of the Government of the United States. On what ground of justice or good faith can the United States hesitate to abide by the arbitration to which they have agreed; or deny to the British subject the benefit of the same principle, the benefits of which have been already received by their own citizens?

It was neither required, nor even imagined, that the opinions of either commission could be unanimous on points on which the two Governments had found it impossible to agree. In both of them possible differences of opinion were foreseen, and they were provided for in both by the stipulation which gave full force and validity to the acts of the majority.

The secession of the two American Commissioners can afford no ground to their Government for declining to execute its solemn engagements. If those gentlemen have chosen to relinquish the duty which they undertook, this case is also provided for by the stipulation of the treaty, the eighth article of which contains a stipulation directly applicable to these very circumstances, and expressly points out in what manner the places of Commissioners absenting themselves are to be supplied.

Nothing, therefore, can of right remain to be done on this subject, but that the Government of the United States should supply the means of executing its own engagements by nominating (as the treaty prescribes) two fresh Commissioners to act with the remaining three, and by instructing them to repair by their diligence the injurious loss which the British creditors have already sustained by the long delay which the conduct of their predecessors has occasioned.

To attempt, instead of this, to enter into a new discussion on the merits of the particular decisions of either commission, would be to abrogate the present treaty, and to transfer the questions back again to negotiation between the same parties, who, from their past experience of the impossibility of coming to a satisfactory conclusion upon them, have long since mutually agreed to submit to an arbitration.

This objection applies not only to all retrospective examination of the particular cases already decided, but also with equal force to any such prospective explanations as may tend to prejudice, by a positive stipulation, the judgment of the sworn Commissioners respecting any of the points on which the claimants and defendants are at issue.

The injustice of such a revision might, perhaps, be thought more palpable and striking in those cases where, by the award of the sworn arbitrators, a new ground of right has actually accrued to the claimant. But it would be no less unjust in principle to deprive the other creditors, whose cases are yet undecided, of their share in the benefit of the treaty, to take from them, by an *ex post facto* agreement, the advantages of that full discretion which the treaty has already vested in the Commissioners.

This view of the case must preclude any detailed discussion of the principles adopted by either commission; or of such explanatory rules as might be proposed on either side, to limit their future discretion, or to revise their past judgments.

Nor is there any ground to hope that such discussions, even if they were not liable to the strong objections already stated, would lead to any satisfactory conclusion between the two Governments. The points in question are for the most part those

on which they have already and uniformly differed, and, from the difficulty of deciding which, they agreed to abide by the judgment of arbitrators. The articles contained in the paper delivered by Mr. King, so far from diminishing, tend to increase that difficulty: for they bring forward pretensions, some of which had not before been advanced in discussion between the two Governments, and were not expected to be so advanced: they limit, beyond all reasonable construction, the description of the persons entitled to benefit by the treaty: they impose conditions of proof, not only unreasonable, but in some cases manifestly impossible to be complied with, and they prejudge (uniformly to the injury of the British creditors) the most important questions concerning the nature, effect, and duration of those impediments by which, contrary to treaty, the recovery of their just debts has been prevented.

No reason is assigned why these particular questions should be selected from among the great number which must arise out of the causes brought before the Commissioners, and should be specially exempted from their jurisdiction by an extraordinary interposition of the two Governments. Nor is any expectation held out that such interposition, had it been possible to have admitted it with respect to these questions, could be confined to these alone. Fresh differences of opinion must naturally arise in the execution of so complicated and detailed a business. The minority on either side, encouraged by this proceeding, would again secede; fresh interpositions would be required from the Governments, till, at length, nothing would be concluded without their intervention, except in those cases only where the five Commissioners should be unanimous.

Nor would these inconveniences be confined to the commission under the sixth article alone. The principle of reciprocity, and the evident parity which, by the whole tenor of the treaty, is established between the two commissions, would require that the same course of proceeding should be applied to the commission for captures as to that for debts.

All the past decisions made by the majority in that commission, contrary to the opinions of their colleagues and of the British Government, must, therefore, undergo a like revision. The compensations actually paid to Americans must be refunded; the British claims rejected (in the opinion of the British Government) without sufficient reason, must be examined; the principles adopted by the majority must become matter of fresh negotiation between the two Governments; and explanatory rules must be proposed and treated of, limiting, according to the opinions of the parties, those awards which the treaty has referred to the judgment of arbitrators.

From such a course as this nothing can arise but endless dissension between the two countries.

Had the proposals delivered by Mr. King been confined, after the example of what was done here, to such rules of practical convenience and arrangement of business as might have smoothed and facilitated the execution of the treaty, without interfering with its principles, the same disposition which was shown in the former instance would in this case also have induced His Majesty's Government cheerfully to depart from the strict ground of right with a view to good understanding and conciliation, whenever such a conduct was not incompatible with the claims of justice. But it is impossible not to perceive that the explanatory articles are of a totally different nature; that they are not only not warranted by the proceeding here, but are in direct contradiction to it; and that they affect the very essence of the treaty itself, by prejudging the most important questions which the commissions are appointed and sworn to decide.

The last of those articles, that which proposes a change in the persons constituting the board, is therefore the only one which affords to His Majesty's Government any opportunity of manifesting a conciliatory disposition, without injury to the manifest rights of the King's subjects.

His Majesty is very far from seeing ground to entertain any other sentiment than that of approbation, respecting the conduct of the British Commissioners in America, who have, with great ability, diligence, and integrity, discharged a most laborious and difficult duty, under circumstances of peculiar and unexpected embarrassment.

But His Majesty perceives that the disagreements between the persons composing the present board have proceeded so far, to render it less likely that the business should satisfactorily proceed in their hands than in those of persons to be newly appointed. His Majesty, therefore, always wishing to contribute to conciliation and harmony, does not object to the proposal of withdrawing the present Commissioners, and of forming, under the conditions proposed, a new board, to execute the same duty, and to be invested with the same discretion, which the treaty has given to the present commission.

To that board, either constituted as the present is, or with the alteration which might be made by allowing each Government to nominate one only of its subjects, and reciprocally, one person taken from the other country, His Majesty would consent to refer all the questions now brought forward by the Government of the United States, as well as every other point respecting the execution of the sixth article; preserving always, in order to avoid needless delays and expenses, the evidence which has been given before the present board, but agreeing that the new Commissioners should be no further bound by the resolutions of the present board than as it might concur in them, with the exception only of ultimate decisions finally made in any particular case, which, as with respect to such case, could not, as His Majesty thinks, be reversed without manifest injustice.

Mr. King to the Secretary of State, dated

LONDON, *December* 13, 1800.

DEAR SIR: Parliament is still in session, and chiefly employed in devising means to economize and increase the food of the country, whose em-

the claimant; which payment the respective Governments undertook to make in consequence of such award.

Two Commissioners being named to each commission by the respective Governments, the choice of a fifth Commissioner to each was decided by lot, and it happened that, in constituting the commission for losses by capture or condemnation, the lot fell on a citizen of the United States, while in that by which the claims of the British creditors were to be decided, the lot fell on a subject of His Majesty. In the course of their proceedings, the majorities of both commissions formed their decisions on principles adverse to the opinions of the Government against which the claims were preferred. The awards of the commission under the seventh article have, nevertheless, been faithfully executed by the British Government. The temporary difficulties which arose in the execution of that commission led immediately to amicable explanation between His Majesty's Government and the Minister of the United States, in pursuance of which some regulations adapted to one class of cases were proposed to the Commissioners with a view to conciliation. In consequence of this proposal, a variation took place in the order and time of proceeding on those cases, but no change was made in the principles adopted by the majority as the ground of their awards; and considerable sums have actually been paid to American claimants in cases where the award of the Commissioners has rested on doctrines which are decidedly held to be erroneous, and which would not, therefore, have been recognised in any transaction with a foreign State.

In America, a contrary course has been pursued. The two Commissioners nominated on the part of the United States to the commission under the sixth article, have finally claimed the right to invalidate, by their dissent, both the principles and the effect of the decisions of the majority, and have at length, by completely withdrawing from the board, endeavored, as far as in them lay, to arrest all its proceedings.

In this state of things, the question of good faith and reciprocal execution of treaty can admit of no doubt.

Under the commission for losses by capture, a majority, consisting of three American Commissioners, acting upon their oaths, has admitted American claims, and has rejected British, in contradiction to the opinions of the two British Commissioners, and of the British Government. In all these decisions, the British Government has acquiesced. Under the commission for debts, a majority, consisting of three British Commissioners, acting also upon their oaths, has sanctioned British claims, and rejected American defences, in contradiction to the opinions both of the two American Commissioners and of the Government of the United States. On what ground of justice or good faith can the United States hesitate to abide by the arbitration to which they have agreed; or deny to the British subject the benefit of the same principle, the benefits of which have been already received by their own citizens?

It was neither required, nor even imagined, that the opinions of either commission could be unanimous on points on which the two Governments had found it impossible to agree. In both of them possible differences of opinion were foreseen, and they were provided for in both by the stipulation which gave full force and validity to the acts of the majority.

The secession of the two American Commissioners can afford no ground to their Government for declining to execute its solemn engagements. If those gentlemen have chosen to relinquish the duty which they undertook, this case is also provided for by the stipulation of the treaty, the eighth article of which contains a stipulation directly applicable to these very circumstances, and expressly points out in what manner the places of Commissioners absenting themselves are to be supplied.

Nothing, therefore, can of right remain to be done on this subject, but that the Government of the United States should supply the means of executing its own engagements by nominating (as the treaty prescribes) two fresh Commissioners to act with the remaining three, and by instructing them to repair by their diligence the injurious loss which the British creditors have already sustained by the long delay which the conduct of their predecessors has occasioned.

To attempt, instead of this, to enter into a new discussion on the merits of the particular decisions of either commission, would be to abrogate the present treaty, and to transfer the questions back again to negotiation between the same parties, who, from their past experience of the impossibility of coming to a satisfactory conclusion upon them, have long since mutually agreed to submit to an arbitration.

This objection applies not only to all retrospective examination of the particular cases already decided, but also with equal force to any such prospective explanations as may tend to prejudice, by a positive stipulation, the judgment of the sworn Commissioners respecting any of the points on which the claimants and defendants are at issue.

The injustice of such a revision might, perhaps, be thought more palpable and striking in those cases where, by the award of the sworn arbitrators, a new ground of right has actually accrued to the claimant. But it would be no less unjust in principle to deprive the other creditors, whose cases are yet undecided, of their share in the benefit of the treaty, to take from them, by an *ex post facto* agreement, the advantages of that full discretion which the treaty has already vested in the Commissioners.

This view of the case must preclude any detailed discussion of the principles adopted by either commission; or of such explanatory rules as might be proposed on either side, to limit their future discretion, or to revise their past judgments.

Nor is there any ground to hope that such discussions, even if they were not liable to the strong objections already stated, would lead to any satisfactory conclusion between the two Governments. The points in question are for the most part those

on which they have already and uniformly differed, and, from the difficulty of deciding which, they agreed to abide by the judgment of arbitrators. The articles contained in the paper delivered by Mr. King, so far from diminishing, tend to increase that difficulty: for they bring forward pretensions, some of which had not before been advanced in discussion between the two Governments, and were not expected to be so advanced: they limit, beyond all reasonable construction, the description of the persons entitled to benefit by the treaty: they impose conditions of proof, not only unreasonable, but in some cases manifestly impossible to be complied with, and they prejudge (uniformly to the injury of the British creditors) the most important questions concerning the nature, effect, and duration of those impediments by which, contrary to treaty, the recovery of their just debts has been prevented.

No reason is assigned why these particular questions should be selected from among the great number which must arise out of the causes brought before the Commissioners, and should be specially exempted from their jurisdiction by an extraordinary interposition of the two Governments. Nor is any expectation held out that such interposition, had it been possible to have admitted it with respect to these questions, could be confined to these alone. Fresh differences of opinion must naturally arise in the execution of so complicated and detailed a business. The minority on either side, encouraged by this proceeding, would again secede; fresh interpositions would be required from the Governments, till, at length, nothing would be concluded without their intervention, except in those cases only where the five Commissioners should be unanimous.

Nor would these inconveniences be confined to the commission under the sixth article alone. The principle of reciprocity, and the evident parity which, by the whole tenor of the treaty, is established between the two commissions, would require that the same course of proceeding should be applied to the commission for captures as to that for debts.

All the past decisions made by the majority in that commission, contrary to the opinions of their colleagues and of the British Government, must, therefore, undergo a like revision. The compensations actually paid to Americans must be refunded; the British claims rejected (in the opinion of the British Government) without sufficient reason, must be examined; the principles adopted by the majority must become matter of fresh negotiation between the two Governments; and explanatory rules must be proposed and treated of, limiting, according to the opinions of the parties, those awards which the treaty has referred to the judgment of arbitrators.

From such a course as this nothing can arise but endless dissension between the two countries.

Had the proposals delivered by Mr. King been confined, after the example of what was done here, to such rules of practical convenience and arrangement of business as might have smoothed and facilitated the execution of the treaty, without interfering with its principles, the same disposition which was shown in the former instance would in this case also have induced His Majesty's Government cheerfully to depart from the strict ground of right with a view to good understanding and conciliation, whenever such a conduct was not incompatible with the claims of justice. But it is impossible not to perceive that the explanatory articles are of a totally different nature; that they are not only not warranted by the proceeding here, but are in direct contradiction to it; and that they affect the very essence of the treaty itself, by prejudging the most important questions which the commissions are appointed and sworn to decide.

The last of those articles, that which proposes a change in the persons constituting the board, is therefore the only one which affords to His Majesty's Government any opportunity of manifesting a conciliatory disposition, without injury to the manifest rights of the King's subjects.

His Majesty is very far from seeing ground to entertain any other sentiment than that of approbation, respecting the conduct of the British Commissioners in America, who have, with great ability, diligence, and integrity, discharged a most laborious and difficult duty, under circumstances of peculiar and unexpected embarrassment.

But His Majesty perceives that the disagreements between the persons composing the present board have proceeded so far, to render it less likely that the business should satisfactorily proceed in their hands than in those of persons to be newly appointed. His Majesty, therefore, always wishing to contribute to conciliation and harmony, does not object to the proposal of withdrawing the present Commissioners, and of forming, under the conditions proposed, a new board, to execute the same duty, and to be invested with the same discretion, which the treaty has given to the present commission.

To that board, either constituted as the present is, or with the alteration which might be made by allowing each Government to nominate one only of its subjects, and reciprocally, one person taken from the other country, His Majesty would consent to refer all the questions now brought forward by the Government of the United States, as well as every other point respecting the execution of the sixth article; preserving always, in order to avoid needless delays and expenses, the evidence which has been given before the present board, but agreeing that the new Commissioners should be no further bound by the resolutions of the present board than as it might concur in them, with the exception only of ultimate decisions finally made in any particular case, which, as with respect to such case, could not, as His Majesty thinks, be reversed without manifest injustice.

Mr. King to the Secretary of State, dated

LONDON, *December* 13, 1800.

DEAR SIR: Parliament is still in session, and chiefly employed in devising means to economize and increase the food of the country, whose em-

barrassments are increased by the various impediments which will materially diminish the supplies expected from the north of Europe. America is the only country from which a considerable and certain importation is looked for; and such is the deficiency of corn, that all we can spare, and of every species, will find here a high and certain market.

I am not unmindful that the present is a favorable moment for the discussion of the questions of disagreement between us and this Government: and, in one or two conferences with Lord Grenville, I have thought I perceived a temper which promises rather more than I have of late been accustomed to expect; but owing to his constant engagements between the business of Parliament, and the duties of his office, I have not yet been able to make any positive progress in the negotiation. Having long believed that Governments which have distinctly expressed an opinion upon a controverted point are rarely induced to change it by reasons which are subsequently presented, I have preferred to begin with the proposal to get rid of the sixth article, instead of renewing the attempt to explain and amend it. This has been done in a way that will not prejudice our demand of an explanatory article, should we fail to agree upon terms which will wholly supersede it. Having mentioned to Lord Grenville that I was authorized to consent to the payment of a precise sum, in lieu of whatever might, pursuant to the sixth article, be awarded against the United States, and he having consented to discuss any proposition to that effect which I might offer, I prepared and sent to him the annexed paper. He has since informed me that measures have been taken on his part, with a view to ascertain how far my estimates are correct, adding, that as soon as he is able to proceed, he will give me notice, in order that we may resume our conferences. In the meantime, some other points are brought forward, and put in a train for discussion. But I am bound to add, that so little progress has yet been made, and all that has passed has been of so general a nature, that nothing with certainty can be inferred in respect to the issue of the negotiation.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

It seems impracticable to ascertain, with any degree of precision, the amount of debt due at any one time from American debtors to British creditors, and every estimate must, therefore, be liable to considerable uncertainty. As the debt arose from the supply of goods furnished by British merchants, the list of British exports seems to offer the best materials for forming an estimate. So far as the American merchants and planters purchased their goods in England with cash, which, to a limited extent, they are understood to have done, the list of exports will require correction; as the value of the goods paid for before they were exported, should be taken from the aggregate amount of the exports, in order to ascertain the value of goods annually supplied on credit. It is reasonable to infer from a long series of annual credits, a correspondent series of annual payments; but although the payments may be supposed to have nearly kept pace with and balanced the new debt annually contracted, since otherwise the trade would have been discontinued, it is, nevertheless, probable that there was, at all times, an average arrearage of old and doubtful debts, upon the recovery of which there was little reliance, and against the loss whereof the creditors indemnified themselves in the prices at which their goods were charged. It may, however, seem proper to make some allowance on account of these doubtful debts, in forming an estimate of the amount of American debt at the breaking out of the war. As it is wholly uncertain at what sum this arrearage should be estimated, it seems to be a fair manner of disposing of it, to place its uncertain amount against the equally uncertain amount of the goods paid for by American merchants and planters before their exportation, and which should be deducted from the value of the annual exports, if the amount thereof be taken as the amount of new debt annually contracted. Assuming, then, which may be done without much risk of error, the average amount of the annual exports of Great Britain to the United States, for a certain number of years before the war, as the best evidence of the amount of the debt due from American debtors to British creditors when the war commenced, it remains only to ascertain the average amount of the exports, in order to fix the amount of the debt.

Mr. Chalmers, in his Estimate of the Comparative Strength of Great Britain, states the average exports of *British manufactures* to the United States, for six years ending with 1774, (the period immediately preceding the war,) at £2,216,324

If this sum be increased by one fifth, (which is a large proportion) on account of goods not of British manufacture - - - - - - 443,264

The result will stand at - - 2,659,588

Lord Sheffield states the average exports of England to the United States for ten years, ending with 1770, at - 1,763,409

If this sum be increased by adding one-fourth of the amount of the whole exports of Scotland, estimated at eight hundred thousand pounds - 200,000

The result is - - - - - 1,963,409

The average of the two estimates gives an annual export of - - - £2,311,498

A sum that probably approaches pretty near the true amount of the American debt at the period before mentioned.

If the condition of the debtors, the influence of the war, and, above all, the operation of the paper money, be understood and considered, it will be thought a moderate estimate that the British creditors suffered a loss of fifty per cent. upon the whole of their debt, by the insolvency of the debtors, between the commencement and conclusion of the war. To judge from the proportion recovered by the creditors in those parts of the United States, in which it is not pretended that any legal impediments have stood in their way, the loss by insolvency, during the war, would come nearer to two-thirds than to one-half of the original debt. Estimating it at one-half, the debt, on the return of peace, would be one million one hundred and fifty-five thousand seven and forty-nine pounds.

The amount of the claims exhibited at Philadelphia will not serve to invalidate the foregoing observations, when it is understood, besides their general and acknowledged inaccuracy, some of them presenting only the debtor side of the account, and others no account at all, that these claims include the debts due from persons insolvent before the war, as well as from those who became so during its continuance; so that, without the trouble of a particular examination, it will be found that they will rather corroborate than weaken the preceding estimates.

If it could be ascertained how much of this sum can be recovered of the debtors, the difference would show the amount for which the creditors have a claim upon the United States.

Notwithstanding the complaints of the creditors, it is certain that such of them as have taken the requisite pains have been gradually recovering their debts; and it is probable that their success would at this time have been much more complete, had they not, in many instances, been seduced from the pursuit of their judicial remedies, by the expectation they believed themselves authorized to entertain, from the proceedings of the Board of Commissioners at Philadelphia. At present, no legal impediments obstruct their suits; and, from the general prosperity of every part of the United States during the last ten years, there is reason to conclude that the circumstances of British debtors have improved in common with those of their neighbors.

The debt still outstanding is chiefly due in those States which produce the principal staple articles of American commerce; the aggregate value of which articles, exported from the five Southern States, from the year 1700 to 1770, exceeded, according to Lord Sheffield's tables, by ten millions sterling, the aggregate value of the goods imported into those States from Great Britain during the same period. Another circumstance, in respect to the ability of the debtors, deserves consideration. In most of the States the British debtors were American merchants, who resided in the large towns, and sold their goods on credit to the traders and shopkeepers dispersed throughout the country. When the paper money had depreciated, the country traders and shopkeepers paid their debts to the American merchants, who having no way of making remittances to their British creditors, lost, by further depreciation, the payments received from their debtors, and the chief means of paying their own debts. In some of the States, including those from whence the largest portion of the remaining debts is supposed to be due, it was the usual practice, that a partner or agent of the British house came with the goods to America, where he retailed them on credit among the planters, and, being on the spot, received his payment in the productions of the country. On the breaking out of the war, these partners and agents returned to Great Britain, and thereby avoided the payment of their debts in a medium which finally suffered a ruinous depreciation: their debtors were numerous, and in general owed but moderate sums, and, though sufferers in the course of the war, by the loss of slaves, and the dilapidation of their estates, their property was not diminished in an equal degree with that of the American merchants, who received, in a depreciated paper, the debts upon which they depended to pay their British creditors.

The tendency of these reflections is to prove that, in the present unobstructed course of justice, the creditors may be able, with the care and diligence which it is their duty to employ, to recover a great proportion of their outstanding debts: if this proportion should be equal, as it is believed it would be, to two-thirds of the whole, the claim against the United States would not exceed four hundred thousand pounds.

LONDON, *November*, 1800.

Extracts of a letter from Mr. King to the Secretary of State, dated

"LONDON, *Nov.* 22, 1800.

"I have duly received your letters to No. 5, inclusive. Soon after the receipt of No. 2, which was not before the sixth instant, I sent a note to Lord Grenville, informing him that I was ready, in consequence of the answers I had received to my despatches transmitting to America what had passed between him and me concerning the sixth article, to resume our conferences upon that subject. His Lordship appointed an early day for this purpose, but no meeting has yet taken place, owing to his having been wholly engaged in the negotiation for peace begun by Austria."

"Not a moment shall be lost, on my part, in the endeavor to concert a satisfactory arrangement respecting the sixth article of the Treaty of Amity and Commerce; but, as the subject is of inferior consideration it will be obliged to give place to the business which, at present, engrosses the attention of the Cabinet."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, *Jan.* 17, 1801.

"SIR: I wish I could send you a satisfactory account of the negotiation with this Government with which I am charged. Some time ago, Lord Grenville informed me that, on account of his numerous and pressing engagements, he should be obliged to employ some person to discuss with me the arrangement respecting the sixth article which I had proposed; and, after mentioning Mr. An-

stey, one of the Commissioners under the seventh article, asked me if I had any objection to confer with him; adding that, although it had occurred to him that any definitive article might better be concluded between himself and me, if I had any scruple in holding the preliminary discussions with Mr. Anstey, he would give him a commission, not only to treat, but to sign. As I preferred that the final decision of the business should remain with Lord Grenville, I signified my acquiescence in the course he had suggested, and several papers have been exchanged between Mr. Anstey and me. Though I cannot yet determine what may be the issue of our discussions, I think I shall be able, in a short time, to ascertain the expectations of this Government. Should a satisfactory conclusion become unattainable in the course in which we are now engaged, it will be my duty to terminate the conferences upon the proposition I have made, and insist upon the justness and propriety of the explanatory articles which we have before demanded."

Extracts of a letter from Mr. King to the Secretary of State, dated

"LONDON. *Feb.* 25, 1801.

"The progress which had been made in our negotiation with this Government was such as must have brought it to a speedy conclusion, had not a change taken place in the Department of Foreign Affairs. That the result would, in the main, have been satisfactory is more than I am authorized to say, though I flattered myself with the hope that it would be so."

"I yesterday received the duplicate of your No. 9. Such is the situation of the negotiation, that we cannot, with propriety, relinquish the attempt to adjust the disagreement respecting the sixth article, upon the principle of paying a sum in lieu of what might be awarded under its provisions."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON. *March* 7, 1801.

"I am assured that our affairs shall be taken into consideration as soon as the new Cabinet is settled; and I am not without hopes that they may be satisfactorily adjusted. Having caused it to be understood that we should not consent to pay more than ten hundred thousand pounds in lieu of what might be awarded under the sixth article, I shall await a decision upon this offer."

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON. *March* 26, 1801.

"In respect to our own affairs, I can do no more than repeat, what I am weary of having repeated to me, that the King's illness, the change of Ministers, and the attention to more urgent and indispensable business, have, against the inclination of the Government, hitherto prevented it from coming to a decision concerning them. I have been very lately assured that the business shall be soon taken up; and, as the several points have been fully discussed, a little time only will be requisite to decide them. I have not thought it necessary to send you copies of my correspondence, preferring to transmit it entire, together with the result, whatever it may be, of the negotiation. It will then be seen that I have not been insensible to the disadvantages arising from this delay, which, as far as prudence and decorum would permit, I have endeavored to prevent."

Mr. King to the Secretary of State, dated

LONDON, *April* 20, 1801.

DEAR SIR: Annexed, I have the honor to send you a copy of my correspondence with Mr. Anstey upon the subject of the British debts. Although I might, by an analysis of the claims exhibited at Philadelphia, have been able to add much support to the estimate which I had formed of these debts, I thought it advisable to bring the discussion to a close; as well on account of the little probability that any further arguments which could be offered would be likely to induce Mr. Anstey to acquiesce in an estimate of the debts which should not correspond with a sum that had been named to him, as proper to demand of us, as because it did not appear to me certain that his opinion, upon this subject, would have the same weight with the new Ministry as it might have had with their predecessors. With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant.

RUFUS KING.

List of papers.

No. 1. Note from Mr. Anstey to Mr. King, asking a conference, dated 28th December, 1800.

No. 2. Letter from Mr. Anstey to Mr. King, dated January 2, 1801.

No. 3. Paper from Mr. Anstey, of the same date.

No. 4. Note from Mr. King to Mr. Anstey, in reply, dated January 3.

No. 5. Note from Mr. Anstey to Mr. King, dated January 6.

6. Paper from Mr. Anstey, accompanying certified statement of exports, of the same date.

No. 7. Statement of exports, from the office of the Inspector General.

No. 8. Note from Mr. King to Mr. Anstey, asking a conference, of the same date.

No. 9. Note from Mr. King to Mr. Anstey, requesting further accounts of exports and imports, dated January 8.

No. 10. Note from Mr. Anstey, to Mr. King, in answer, same date.

No. 11. Paper from Mr. King to Mr. Anstey, (observations on No. 6.) dated January 10.

No. 12. Note from Mr. Anstey, with further statements from the custom-house, in compliance with No. 9, dated 16th January.

No. 13. Letter from George Hammond, Esq., to Mr. Anstey, enclosing the above statements, of same date.

Nos. 14 and 15. Note and paper from Mr. Anstey, in reply to Mr. King's remarks. (No. 11.) dated January 17.

No. 16. Note from Mr. King to Mr. Anstey, acknowledgment of statements of exports, &c., dated 18th January.

No. 17. Note from Mr. Anstey to Mr. King, fixing the 23d for a conference, dated 21st January.

No. 18. Paper from Mr. Anstey, being continuation of his remarks. (No. 15.) of same date.

No. 19. Note from Mr. King to Mr. Anstey, 23d January, with

No. 20. Extract of a letter from Mr. King to Colonel Pickering.

No. 21. Note from Mr. Anstey to Mr. King, of same date.

No. 22. Paper from Mr. King, in reply to Mr. Anstey's observations of 17th and 21st January. (Nos. 15 and 18.) dated 29th January.

No. 23. Note from Mr. King to Mr. Anstey, in answer to No. 21, dated 30th January.

No. 24. Note from Mr. Anstey to Mr. King, acknowledging Nos. 22 and 23, and propounding certain questions, dated 31st January.

No. 25. Mr. King to Mr. Anstey, in answer, dated 2d February.

No. 26. Mr. Anstey to Mr. King, dated 18th March, enclosing

No. 27. Paper from Mr. Anstey, dated 14th February, in answer to Mr. King's of 29th Jan'y.

No. 28. Note from Mr. King to Mr. Anstey, in reply, 20th March.

Correspondence between Rufus King, Esq., and John Anstey, Esquire, relative to the sixth article of the Treaty of Amity and Commerce, &c.

No. 1.

GLOUCESTER PLACE, *Dec.* 28, 1800.

Mr. J. Anstey presents his compliments to Mr. King. Should he come to town in the early part of this week, Mr. J. A. will be obliged to him to appoint an hour when he may have the honor of waiting upon him.

Endorsement on the original: "Received 29th, and returned an answer desiring him to meet in Cumberland Place, at 12 o'clock, of the 30th."

No. 2.

GLOUCESTER PLACE. *Jan.* 2, 1800.

DEAR SIR: I beg leave to accompany this note with a paper for your consideration, agreeably to the plan of proceeding in this business agreed upon between us at our last interview. I have the honor to be, with great respect, &c.,

J. ANSTEY.

RUFUS KING, Esq., &c.

No. 3. (1.)

47, GLOUCESTER PLACE,
PORTMAN SQUARE. *Jan.* 2, 1801.

There seems to be no objection to adopting (as far as it will reach) the principle suggested by Mr. King, of taking "a valuation of British exports" as the groundwork of a calculation to be made of the American debt, due to British creditors, at the commencement of the American war; such augmentations being made to any estimate formed on that principle as may be found wanting and necessary to complete the calculation proposed.

Of course it will be an object desirable on both sides, "that the valuation of British exports" should be derived from the very best possible source of information which the subject-matter is capable of.

It is therefore proposed to substitute, in lieu of the estimate suggested by Mr. King, (in his letter to Lord Grenville of the 23d November last,) a statement of the actual amount of British exports for *three* years immediately preceding the war, certified from the office of the Inspector General of His Majesty's customs, subject to such explanations as may be necessary, and at the same time to state such general heads of augmentation as it is conceived will be found indispensably necessary to perfect the estimate, and render it effectual to the object.

From the amount of the debt thus ascertained, or agreed to be due at the commencement of the war, it will come in course to consider the several deductions which it may be necessary to make, with a view to the present state of the debt, on the grounds suggested by Mr. King, and with reference to all circumstances connected with the execution of the fourth article of the Treaty of Peace, and the predicament of the British creditor under the provisions of the sixth article of the Treaty of Amity, &c.

RUFUS KING, Esq., &c.

No. 4.

MILL HILL, MIDDLESEX, *Jan.* 3, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to acknowledge the receipt of his letter of yesterday. With the view of abridging discussion, Mr. King having, in the paper delivered to Lord Grenville, connected the several estimates with each other, as well as with the result to which they seemed to lead, was in hopes that Mr. Anstey would have been inclined to pursue the same course, in preference to that of bringing forward the several points one after another, for the purpose of separate and successive discussion; a mode of proceeding which it is apprehended will inspire mutual caution, and which may, moreover, give birth to disquisitions more minute than can be made to correspond with the principle upon which it is believed the business may be adjusted. If, however, Mr. Anstey shall continue to be of the opinion that this mode of conducting the negotiation is, under all the circumstances, preferable to that of which Mr. King has given the example, Mr. King consents to receive, for the purpose specified in the paper delivered to Lord Grenville, and subject to such correction as the same may, on examination, be found to require, the estimate of the American

debt, which Mr. Anstey proposes to derive from the average valuation of British exports to the United States for a number of years before the American war.

JOHN ANSTEY, Esq.

No. 5.

GLOUCESTER PLACE, *Jan.* 6, 1801.

Mr. J. Anstey has the honor to acknowledge the receipt of Mr. King's note of Saturday's date, and takes an early opportunity of expressing an equal desire, on his part, to agree on any mode of conducting the negotiation which may be most likely to answer the object proposed, and at the same time shorten the discussion. It was with this view that he thought it might be more expedient, and perhaps more agreeable to Mr. King, to propose for his consideration, in the first instance, a mode of estimating the debt which might lead to a result more corresponding with Mr. Anstey's ideas of the amount, than to begin with observations in detail upon Mr. King's statement, which, from the different point of light in which Mr. Anstey inclines to view the subject, might ultimately lead him to the very ground upon which he conceives it may be desirable to commence the business.

The amount of debt at the period of the war being ascertained or agreed, Mr. Anstey has no desire to draw into discussion more of the circumstances connected with the subject than may appear absolutely necessary, but will confine himself chiefly to the consideration of the several heads of deduction proposed by Mr. King. At the same time he does not hesitate to remark that he by no means inclines to think that any valuation of British exports, calculated upon a *credit of one year only*, upon an average of a given number of years, will furnish anything like an adequate criterion of the debt, as it stood at the commencement of the war.

In his paper, No. 1, Mr. Anstey proposed, "as a groundwork of the estimate, a statement of the actual amount of British exports for the three years immediately preceding the war, *subject to explanation*." Accordingly, he has the honor to present at this time the accompanying paper, (No. 2,) together with the statement of British exports, therein alluded to, certified from the office of the Inspector General of His Majesty's customs.

P. S. All the names of the Glasgow committee of merchants which have come to Mr. Anstey's knowledge, in addition to those mentioned by Mr. King, are Messrs. Gilbert Hamilton, Robert Findlay, and Alexander Oswald.

RUFUS KING, Esq., &c.

No. 6. (2.)

Paper accompanying statement of exports, certified from the customs.

Mr. King will observe that the statement, certified from His Majesty's customs comprehends the term of *ten* years, prior to the 5th of January, 1776. The term, however, of three years, immediately preceding the war, is, perhaps, as much as it may be necessary to implicate in the question.

It will be seen that the amount of each of these *three* years is made up to the time above-mentioned, with reference to two distinct and established modes of valuation—the one entitled the *official value*, and the other the *real value*. The former purports to be the custom-house valuation of the individual articles actually exported, according to a standard established at a remote period, (above a century ago,) viz: in 1669, and is, of course, infinitely below the selling price of the same articles in Great Britain at the time they were actually exported. The real value, as stated, is made up (as is mentioned at the foot of the certificate) with relation "to the proportions which the custom-house valuation of the same quantities of similar articles has been found to bear to the real value as ascertained by reference to the declaration of the merchants under the *convoy act*." Upon which it is obvious to remark, that the *convoy act* was passed since the credit was given for the debt in question; and that, what is entitled the *real value* of the same articles at this time must, in general, have been considerably enhanced, in the course of twenty-five years, above the price at which they were shipped for exportation—the natural effect of the alteration in the value of money compared with the selling prices of the articles—an observation equally applicable to both statements.

It is therefore proposed to balance the amount of the *official value* against the amount of the real value, as stated, in order to arrive at a middle proportion which may approach, as nearly as possible, to the actual value of the exports from Great Britain for the three years previous to the war.

It is understood that the course of the trade to the American colonies was to allow of three years' credit upon articles of British export. It is proposed, however, to assume, only for the present, (as the groundwork of the calculation,) the actual amount of the two years' valuation of exports; of which the credits of the first year, immediately preceding the war, (dated with reference to the custom-house year, ending the 5th January, 1775,) may be considered as the *unquestionable debt fixed by the war;* which having suddenly broken in upon the credits, immediately after they were given, suspended the course of the payments altogether.

The credits given on the exports of the next preceding year may be taken as the *ordinary annual arrear of good debt*, due and payable according to the course of the trade, and the credits which arose on the exports of the third or remaining year may be reserved to be taken into *consideration*, with reference to the head of deductions suggested by Mr. King, on the score of the doubtful debt of each year, insolvency during the war, and of the old arrearages of desperate debts for any antecedent period.

To the amount of actual exports, for the two last years before the war, it is proposed that such augmentations shall be made as may be necessary to perfect the estimate of the whole amount of debt due to British merchants and others, His Majesty's subjects, at that period, under the following heads of augmentation, viz:

1. On account of debts due such of His Majesty's subjects, loyalists, and others, who were not traders, and whose debts cannot be comprehended in any estimate of British exports.

2. Augmentation on the score of credits given for importations of West India produce from the British West India islands, into the colonies, before the war, also not included in any estimate of British exports.

3. Augmentation on the score of incidental charges, inseparable from the nature of export traffic, namely, the expenses of freighting, landing, and delivery, and warehousing goods, insurance, commission, &c.

4. Augmentation on the score of mercantile profit, also not included in the statement of British exports.

5. Augmentation on the score of interest, to the extent proposed by Mr. King, in his letter of the 23d November last.

RUFUS KING, Esq., &c.

No. 7.

A statement of the value, estimated at the Custom House, of all the exports from Great Britain to the Provinces now composing the United States, in each year, for the last ten years antecedent to July 4, 1776. Also, of the real value of the articles so exported, as far as the same can be ascertained by any possible ground of calculation.

Years.	OFFICIAL VALUE.			REAL VALUE.		
	British manufactures.	Foreign merchandise.	Total.	British manufactures.	Foreign merchandise.	Total.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
1766 -	1,559,080 17 10	422,422 5 1	1,981,503 2 11	2,627,090 12 7	402,574 10 9	3,029,665 3 4
1767 -	1,763,693 19 9	404,419 10 0	2,168,113 9 9	2,971,868 17 10	385,418 8 7	3,357,287 6 5
1768 -	1,878,388 6 7	511,933 12 8	2,390,321 19 3	3,165,132 9 9	487,881 2 3	3,653,013 12 0
1769 -	1,267,613 4 6	337,362 7 5	1,604,975 11 11	2,135,961 2 8	321,511 17 6	2,457,473 0 2
1770 -	1,796,336 18 3	465,202 12 1	2,261,593 10 4	3,026,873 4 1	443,315 14 0	3,470,218 18
1771 -	3,345,125 6 5	722,891 0 5	4,068,016 6 10	5,636,623 4 7	688,927 1 0	6,325,550 5 7
1772 -	2,778,887 17 6	531,848 13 5	3,310,736 10 11	4,682,497 1 10	506,860 13 3	5,189,357 15 1
1773 -	1,778,238 19 6	535,388 0 0	2,313,626 19 6	2,996,377 12 0	510,234 3 11	3,506,611 15 11
1774 -	2,336,536 3 4	506,911 6 6	2,843,447 9 10	3,937,121 7 0	483,095 2 3	4,420,219 9 3
1775 -	170,593 12 7	44,318 13 9	214,912 6 4	287,505 6 2	42,235 16 8	329,741 2 10

INSPECTOR GENERAL'S OFFICE, CUSTOM HOUSE, LONDON, *December* 13, 1800.

WILLIAM IRVING, *Insp. Gen. Imports and Exports, G. Britain.*

NOTE.—The above account has been prepared for ten years antecedent to the 5th January, 1776. As the books of this office are made up annually to the 5th of January of each succeeding year, it is therefore impossible to make an annual return, in terms of the order, from the middle of the year. The real value of the respective articles exported in each year, during the period above-mentioned, has been estimated by the proportion which the custom-house valuation of the same quantities of similar articles has been found to bear to the real value, as ascertained by the declarations of the merchants under the convoy act.

No. 8.

MILL HILL, MIDDLESEX, *Jan.* 6, 1801.

Mr. King has the honor to acknowledge the receipt of Mr Anstey's note of this date, and as he may possibly misconceive its import, takes the liberty of proposing to Mr. Anstey a conference, in order to ascertain its precise meaning. For this purpose, Mr. King will be glad to see Mr. Anstey at half after eleven o'clock to-morrow, in Cumberland Place.†

JOHN ANSTEY, Esq.,

No. 9.

GREAT CUMBERLAND PLACE, *Jan.* 8, 1801.

Mr. King presents his compliments to Mr. Anstey, and for the purpose of assisting the discussion in which they are engaged, requests Mr. Anstey to furnish him with an annual account of the imports into Great Britain from the colonies, now forming the United States of America, from the 5th of January, 1766, to the 5th of January, 1777, distinguishing the imports from Georgia, South Carolina, North Carolina, Virginia, and Maryland, from those of the other colonies, as well as the imports of each of the said five colonies separately.

If the quantity of rice, indigo, and tobacco, could be specified, in addition to the value of the whole imports, the statement would be deemed more perfect; if the value only be given, it is requested that the rule of valuation be explained.

If the Inspector General of the imports and exports have the means of making out an account for the above period of ten years, of the exports from the said colonies, with the like distinctions as are above stated in respect to Georgia, South

† Conference held the next day.

Carolina, North Carolina, Virginia, and Maryland. such account would be useful.

Mr. King will likewise be obliged to Mr. Anstey to furnish him, from the office of the Inspector General, with a dissection of the account of exports from Great Britain to the colonies now forming the United States, which he sent to Mr. King in his note of the 6th instant, distinguishing the amount, according to the official value as well as the convoy value of the exports to Georgia, South Carolina, North Carolina, Virginia, and Maryland, from those to the other colonies, as well as the amount of the exports to each of the said five colonies separately.

Gloucester Place, *Jan.* 8, 1801.

Mr. J. Anstey presents his compliments to Mr. King, has received his note of this morning, and has forwarded an application for the papers, Mr. King has deemed necessary to the better ascertaining the immediate object of the present discussion, which Mr. Anstey conceives to be simply to establish, in the first instance, on the best possible ground, the amount in value of the British exports to the American colonies, for a given number of years preceding the war, conformably to the principle of estimating the American debt proposed by Mr. King in his letter of the 23d November, last, and adopted in Mr. Anstey's paper of the 6th instant.

Though Mr. Anstey does not directly foresee in what manner the details of British imports prior to the war, requested by Mr. King, will apply to the subject immediately in question, he has lost no time in forwarding Mr. King's request, that the answer he expects the honor of receiving from Mr. King, to his paper of the 6th instant, may (as far as regards himself,) experience as little delay as possible; he is fearful, however, that the specifications required may occupy some considerable time in preparing at the custom-house.

R. King, Esq., &c.

Mill Hill, *Jan.* 10, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to send him the following observations, arising from the consideration of his note of the 6th instant. Mr. Anstey, in this communication, aims at the establishment of two points: first, the substitution of a more authentic statement of the annual exports of Great Britain to America, before the year 1776, in lieu of one derived from the accounts of Lord Sheffield and Mr. Chalmers; and secondly, a more correct estimate of the debt due from American debtors to British creditors, in the place of the estimate drawn up by Mr. King. The principles upon which Lord Sheffield and Mr. Chalmers prepared their accounts of the exports to America were probably such as, in their opinion, gave to those accounts a title to public confidence. Lord Sheffield says, his tables were made up from official documents; and the statements of both possess the advantage of having been composed before the present war, in the course of which the price of almost every article has experienced a sudden and irregular advance.

Mr. Anstey proposes to ascertain the value of the exports of the years 1773 and 1774, by taking the mean of what the Inspector General calls the official and the real value of the articles exported in those years; the official valuation being stated to be the true value of the goods about the beginning of the last century, and the real valuation their true value at the present time.

Upon the supposition that the advance in the price of commodities has been uniformly progressive from the beginning to the end of the century, the application of the mean difference to the exports of 1773 and 1774 would not have the effect of augmenting their true value: but so far from the increase in prices having been uniformly progressive throughout the century, the advance has been greater in the course of the last thirty years than during the seventy years which preceded; and for the purpose of ascertaining the true value of commodities at the commencement of the American war, it is believed that the addition of a third of whatever increase they may have experienced in the course of the century, would be more correct than the addition of one-half. This opinion rests for its support, first, upon the extraordinary depreciation of money within the last thirty years, owing to the increase of specie or of its representative; and, secondly, upon the increased demand for British manufactures, arising from the derangement, during present war, of the manufactures of the continent. Notwithstanding the estimates, drawn from the accounts of the Inspector General, vary so much from those which have been deduced from the accounts of Lord Sheffield and Mr. Chalmers, and the reason there is to suppose that this variation proceeds in a considerable degree from the present high price of commodities and low value of money, the former possess an official character, which gives them a preference over the latter; and if what in the Inspector General's statement is called the official value be corrected according to the above suggestion, his account may be admitted as the groundwork of future discussion.

In respect to the second point, the substitution of a more correct estimate of the American debt at the breaking out of the American war, it will, in the first place, be necessary, according to the principle by which it is agreed that the estimate shall be formed, to ascertain the term of credit which was given by the British to the American merchants. Mr. Anstey suggests, that it is understood to have been a credit of three years; a supposition which refutes itself by the excessive amount to which an estimate formed upon this principle would carry the debt. Fortunately, this point, which is of primary importance, admits of the most satisfactory proof; and the result of an extensive inquiry upon this head, among the British merchants formerly engaged in this trade, has been an uniform opinion that the credits in some cases were for nine months, but in none for more than twelve months. Although the credits were for a year, yet it should be recollected that the

exports were made, not all at once, but half yearly; or, in other words, the goods exported within a year were divided into two parts, one of which arrived in America in the spring, and the other in the fall. The effect of this division was to reduce the aggregate credit to an average of only nine months; for when the spring goods arrived, half the term of credit upon those of the preceding fall had expired; and, in like manner, when the fall goods arrived, half the term of credit upon those of the preceding spring had expired. A year was the term of credit assumed by Mr. King, in his note of the 23d November, and he has not discovered, from subsequent investigation, that this term requires enlargement.

Admitting that the credits did not exceed a year, still an habitual course prevailed, by which, in effect, the credit operated for a longer term, the inference proposed to be drawn from the limitation of a year will in some degree be unsupported. It becomes necessary, therefore, to pursue the inquiry a little further for the purpose of ascertaining how far the payments were, in fact, made within the term of the credit. Not only the limitation of the credit, but the nature and course of the trade, must be received as evidence of periodical payments, which, though not precisely punctual or complete, must, in a long succession of years, have nearly kept pace with the new debt annually contracted. This observation will be found to apply with peculiar force to the Southern States, from which the principal part of the remaining debt is supposed to be due. These States produce the chief staple commodities exported from the United States. By the English navigation act, their trade was essentially confined to the parent country, and nearly the whole of their produce was sent to Great Britain, in like manner as the produce of the British West Indies continues to be sent. In reference to the point under consideration, it is certainly pertinent to remark that this restraint upon the planters and provincial merchants, to send the colonial productions to foreign markets, had the effect to secure the payment of debts due in Great Britain, inasmuch as the prohibition operated in the nature of a mortgage upon the annual crops in favor of the British creditors, whose agents took care to collect and send them to their principals: to conclude upon this point, if the annual credits did not exceed the value of the annual crops, which, in respect to the Southern States, the account of exports will prove to have been the fact; and if the crops were sent to Great Britain, and the navigation act prohibited their going to a foreign market, the conclusion seems unavoidable that the payment, in effect, kept pace with the credits.

Supposing it to be ascertained that the credits and payments were annual, still, the following objections against the assumption of the value of the annual exports, as the standard of the contemporary debt, require to be considered.

First. The whole of the exports were not upon credit, part of them being paid in cash, which part should be deducted, if the value of the entire exports be assumed as the standard of the debt annually contracted.

Second. Besides the debt annually contracted, there at all times existed a given sum, of old or outstanding debt, which should be added to the value of the annual exports, if the same be taken as the standard of the contemporary debt.

In respect to the first of these objections, it has never been doubted that a portion of the annual exports to America was purchased with cash: the proportion which such purchases bore to the whole has been the subject of a variety of opinions. Lord Sheffield estimates it at one-fifth; others may decide in favor of a greater proportion. Exclusive of men of good estates, and who had no occasion for credit, the merchants of America, like those of other countries, had, without doubt, acquired riches; and whether we regard the number and tonnage of the American ships, or other visible tokens of property in their possession, before the American war, we must be persuaded that, to a certain degree, they had the means, and, if so, they employed them to purchase their supplies with cash instead of credit. In this view of the objection, it is presumed that the estimate of Lord Sheffield will not be thought extravagant.

With regard to the second objection, it will not be alleged that the crops were always the same, or that the annual debt was regularly discharged, according to the term of the credit; notwithstanding the general course of the trade, a given arrearage of old debt was, without doubt, always outstanding: its amount, which must have varied in different States, and in the same State at different times, cannot be satisfactorily ascertained. The reasoning which has been offered in favor of the adoption of the value of the annual exports as the standard of the contemporary debt, may satisfy us that this arrearage could not have been very considerable. Should it be estimated, at the commencement of the American war, at a fifth, or even at a fourth of the new or annual debt, it may be balanced against the proportion of annual exports purchased with cash; and thus the value of a year's exports will continue to be the standard by which to estimate the debt at the breaking out of the war.

It remains only to consider the augmentations suggested by Mr. Anstey, under the following heads: 1. The debt due to the loyalists. 2. The debt for goods imported from the British West Indies. 3. The debt for freight, commissions, &c. 4. The debt for mercantile profit; and 5. The debt for interest.

A few observations will suffice upon these topics.

First head. Something may be added on account of debts due to loyalists. The claims, in general, divide themselves into two classes: those which are desperate on these merits, as the claim of Mr. Penn, and of the heirs of Lord Baltimore, which, relating to real estates, have been decided not to be included within the provisions of the Treaty of Peace; and, secondly, those which are allowed to be well founded, and against the recovery of which, in the ordinary course of justice, no impediments are supposed to exist.

Second head. Instead of anything due for goods imported from the British West Indies, in course

of that trade yielded a cash balance; and, for several years before the war, according to Lord Sheffield's tables, this balance amounted to three hundred and fifty thousand pounds annually. It probably exceeded that sum, and formed an important remittance to Great Britain in payment of the annual debt.

Third head. The Americans were their own freighters: the goods, as soon as shipped, became their property, and were at their risk. Commissions are never charged on goods sold: nothing can, therefore, be added under this head.

Fourth head. Mercantile profit upon goods sold in Great Britain is included in the price, or, what is the same thing, in the custom-house valuation: nothing, therefore, can be added on this account.

Fifth head. An addition on account of interest is certainly to be made.

Should Mr. Anstey agree in the justness of the foregoing observations, upon a subject which claims the liberal consideration of all parties, and which can only be decided upon general principles, the discussion will be closed upon the rule, by which the amount of the American debt, at the breaking out of the war, is to be ascertained. It will then be in course to consider of the deductions to be made from this sum, on account of insolvencies during the war, and payment since; as well as of the addition to be made on account of interest, and of the debts due to loyalists.

No. 12.

Gloucester Place, *Jan.* 16, 1801.

Mr. Anstey presents his compliments to Mr. King. Has the honor to enclose him the documents he requested, which he has this instant received from the Secretary of State's office.

No. 13.

Downing Street, *Jan.* 16, 1801.

My Dear Sir: I send you enclosed the accounts* which I have received from Mr. Irving, and which I have every reason to believe to be accurate. The great labor which was required to prepare them prevented me from receiving them before last night. Be assured that I am ever, my dear sir, most faithfully yours.

GEO. HAMMOND.

John Anstey, Esq.

No. 14.

Gloucester Place,
Portman Square, *Jan.* 17, 1801.

Mr. Anstey presents his compliments to Mr. King. Has the honor to accompany this note with a paper of observations, in reply to Mr. King's communication of the 10th instant.

In the course of a day or two, Mr. Anstey will beg leave to trouble Mr. King with an additional paper of remarks upon the remaining topics, and will close the discussion on the subject of the estimate, upon which, should it be approved of, the deductions proposed by Mr. King will be allowed to operate upon such a liberal scale as, it is hoped, will admit of a satisfactory adjustment of the business.

No. 15. (3.)

Gloucester Place,
Portman Square, *Jan.* 17, 1801.

Mr. Anstey has the honor to acknowledge the receipt of Mr. King's communication under date of the 10th instant, and to submit the following observations upon it.

The fact mutually regarded as of the first importance to be ascertained, is the amount of the American debt as it stood at the commencement of the war; the truth, as near as it can be approached, must be an object equally desirable on both sides: the fact will, therefore, be sought for rather than contested upon the present occasion.

Mr. King has candidly acknowledged that a preference is due to a statement from the office of the Inspector General, on account of the official character it bears; it is not, however, upon any ground that affects the public confidence to which Lord Sheffield's and Mr. Chalmers's statements may be justly entitled, that Mr. Anstey conceives the statements from the office of the Inspector General of His Majesty's customs may be more safely relied on, with a view to the information immediately applicable to the point in question.

The fact sought for from the statements in Lord Sheffield's tables (which refer to a distinct term of ten years, prior to the year 1770,) can only be approached by inference and analogy to the supposed amount of exports at a subsequent period, or supplied with reference to Chalmers's statement, for ten years prior to the war, calculating (as proposed by Mr. King) an average upon an average, by blending both periods together; by which process, half the term of the last average is unnecessarily twice calculated upon; and from the whole, a result is concluded, varying, as Mr. King justly observes, very materially from the accounts of the Inspector General, but which, Mr. Anstey conceives, is liable to a greater risk of uncertainty than the estimate proposed to be substituted in their stead.

In the Inspector General's account, the fact itself, which is to form the groundwork of the estimate of the American debt, is officially found, and certified as the amount of the actual exports for three years immediately preceding the war. Upon this groundwork the estimate of the American debt is agreed to be raised. But Mr. King proposes a correction of the method suggested by Mr. Anstey (of estimating the value of the exports, by taking a middle proportion, between what is termed the official and the real value in the Inspector General's certificate,) by adding one-third only of the balance of the two valuations to the official statement, in lieu of a moiety as proposed by Mr. Anstey; for which correction of the plan proposed, are assigned all the general reasons already considered, and stated by Mr. Anstey, which, in his view of the subject, justified the addition of a moiety, upon a liberal principle of an equal division of the excess; and also a conjecture that the advance in the price of the articles, during the last century, has been greater in respect of the last thirty years than for the seventy years preceding. It is believed that the fact, could it be mathematically proved, would justify the principle of adding even more than a moiety, in preference to confining the official estimate to the addition only of one-third of the balance.

But Mr. Anstey, not being aware of the ground upon which it is proposed to adopt the principle of a third, in preference to any other given proportion, will beg leave to suggest, in support of his proposal of confining it to a moiety, that although (as already admitted in his paper, No. 2.) what is entitled the real value "must, in general, have been considerably enhanced in the course of the last twenty-five years, above the price at which the same articles were shipped for exportation in the years 1773 and 1774," the fact is not universally true, and in every instance. Some articles of British manufacture, it is presumed, have by no means increased in value in the proportion imagined by Mr. King. Cotton, in particular, it is believed, bore as great a price in the year 1774 as it would be estimated at this day, with reference to the declaration of the merchants under the convoy act. At any rate, it is not considered that "the sudden and irregular advance in the price," which, to a certain extent, is admitted, has been for the last thirty years in any degree equal to two parts out of three of the progressive and accumulative increase of the whole century.

And it must be observed, that, in the proportions assumed of seventy to thirty years, there is a term of five years connected with the latter period more than strictly belongs to it, with reference to the commencement of the war; which term should be added to the seventy years, for the purpose of founding a corrected statement.

Assuming, however, the principle of Mr. King's reasoning, and calculating upon his theory, though in the proportion of twenty-five to seventy-five years, instead of thirty to seventy, (for twenty-five years will include the whole of the American war, the present war, and the influence of both on the value of money,) it is conceived that the result would be precisely the same upon the following process: a coincidence which marks the caution and consideration with which the adoption of the moiety has been proposed. For example:

The official value in the certificate is stated at - - - - - -	£2,843,447
The real value at - - - - -	4,420,219
The balance is - - - - - -	£1,576,772
The moiety of the balance, as proposed by Mr. Anstey, is - - - - -	£788,386
The third of that balance, as proposed by Mr. King, is - - - - -	525,590
The difference of calculating upon the proportion seventy-five years to twenty-five years, instead of seventy to thirty, will be found in the proportion that five years bears to thirty, or one sixth:	
The one sixth of the balance above stated, (viz: of £1,576,772,) will be	262,795
To be added to the official amount in respect to the five years:	
To which is to be added the one-third of the balance, according to Mr. King's proposal, as above, viz:	525,590
The amount of the two sums, added together, equal the moiety of the original balance, or middle proportion assumed by Mr. Anstey, to a fraction - - - - - -	£788,385

Hence it follows, that if, as Mr. King imagines, the advance upon the price of the articles for the last thirty years, is more than equal to the gradual advance upon the price for the seventy years preceding, the term of five years, excepted out of the thirty, must be allowed its due weight in the reckoning; and, being taken out of one scale, and thrown into the other, will operate in a double ratio, leaving the scales perfectly even, and establishing the moiety, according to Mr. Anstey's proposal, upon Mr. King's own principles.

With respect to the credit understood to have been allowed in the course of the trade, (as supposed by Mr. Anstey,) it is open to him to remark that he by no means meant to infer as if he supposed that no payments whatever were made in the course of the three years from the time of the credit given, or as if it had been understood that the custom of the trade had established a law which justified the debtor in withholding, and precluded the creditor from exacting, payments during that period. Had such meaning been intended by Mr. Anstey, he should have felt it incumbent upon him to have calculated upon it as an established fact; but, on the contrary, the amount of the exports of the third year is expressly reserved, in the succeeding sentence, to be taken into consideration, with reference to a class of deductions proposed by Mr. King, on the score of old arrearages of doubtful and desperate debt, insolvency, &c. In the mean time, without questioning, but, on the contrary, agreeing to the fact, Mr. King states to have ascertained, by recent and extensive inquiry, viz: that it was universally the custom for the British merchant in no instance to allow of more than twelve months' credit; it is conceived, nevertheless, to have been the practice of the American trade to *take it* for three years, and, in some instances, even for a much longer term. Debts have been suffered to remain outstanding for three or four

* It is deemed unnecessary to insert these diffused accounts, which are made up agreeably to Mr. King's directions contained in No. 9, with the omission of a return of the exports from the colonies during the same period, the amount whereof the Inspector General had no means of ascertaining. The essential information afforded by the accounts, as applicable to the points under discussion, is stated, by way of illustration, in Mr. King's paper of the 29th January. Vide No. 22.

years, without destroying the credit of the debtor singly on that ground; such continued credit, though not strictly *allowed* of in the terms of the invoice, was admitted in usage; it was taken in fact, and, of course, to a certain extent beyond what was allowed of, and acquiesced in by the British merchant, as unavoidable, considering the nature of the trade, especially where partial and periodical payments, however inadequate, had been regularly made. It may not be deemed improper to remark in this place, that Lord Sheffield, whose authority is relied on, states "that some of the Provinces never paid more than was sufficient to keep up their credit." No ground, however, is taken in the estimate on the supposed credit of three years, whether allowed or acquiesced in by the British merchants, or taken, according to the ordinary custom of payments as practised by the American merchants. Credit is, nevertheless, taken by Mr. Anstey for the value of two years' exports, distinguishing the amount of the first year, as the ordinary annual arrear of good debt, and that of the last year, as the unquestionable debt fixed by the war; and it appears to him that he is fully justified in so doing, by the following reasons, in addition to those above stated.

It was the custom of the British merchants to strike balances upon their accounts current once in every year, and to carry them onward to the succeeding year, frequently taking bonds for the amount: but, at all events, whether bonded or not, these balances were uniformly carried to the account current of the ensuing year, with interest, in most of the Provinces at six, and in some, it is said, as high as seven, and eight per cent. This practice of striking balances upon accounts current once in every year, and carrying them on with interest to the succeeding year, is conformable to the practice of consignees of West India produce at this day; the balances, of course, fluctuate according to the crops, and sales, and outgoings of the estate, and the bills drawn by the owners. The accumulation of these floating balances form a considerable arrear which constituted a good debt; for it was never considered that these balances, carrying interest, whether bonded or not, were less a part of the debt than the last item in the annual account current: every balance thus fixed, or bonded with interest, gave a new character and credit to the debt every year, and was in the nature of a fresh undertaking on the part of the American trade to discharge it. The old and doubtful debt must still be taken up as a distinct consideration; it seems to go to the merits of particular claims rather than to form a ground of deduction from a general estimate; for so long as the confidence subsisted between debtor and creditor on repeated and continued credits, no debt between such debtor and creditor could be considered as doubtful, much less desperate, and in no sense an old debt, singly on the ground of its being of two years standing only. Circumstances, of course, might vary the credit due to an American debtor, within one month after the delivery of the goods, and exclude him from a share of the next invoice; and, indeed, the very idea of old and doubtful debts must be conceived of, and have relation to, particular persons, in doubtful and desperate circumstances, to whom credit, once indulged and abused, had ceased to be given altogether; but the estimate, upon the principle of calculating on the amount of exports, proceeds upon general grounds, and, as it regards the value of the exports of the year 1773, necessarily supposes a credit for the invoices of that year lodged somewhere in the American colonies; and thence, upon the whole, the balances of good debt annually accredited, (if it may be so expressed,) frequently bonded, but always carrying interest, together with the unsatisfied part of the credit of that year, constituted an arrear of good debt annually brought to account, equivalent, at the least, to the value of the exports of that year.

Undoubtedly the staple produce of the Southern States may be regarded as a part of the capital upon which their credit was given; and the navigation act, by confining the trade of some of the Southern States entirely to Great Britain, might be considered, to a certain extent, in the nature of a security to the British trader for the application of it to the general account of the invoices, in a series of successive payments, according to the course of the trade. The crops of tobacco were clearly confined to Great Britain; but the staple produce of Pennsylvania, South Carolina, and Georgia, were not wholly so. Grain and flour, in particular, were exported to Lisbon; and rice, the principal staple of South Carolina and Georgia, to any port to the southward of Cape Finisterre; but supposing the crops to have been always equally productive, and, what is by no means conceded, that the annual credits did not exceed the value of the annual crops, still the produce of the year 1774, of rice, for instance, which requires to be pounded and prepared, and warehoused, and packed, and transported to Great Britain, would hardly arrive, in that year, in time to balance the arrear of debt of the preceding year. It should be recollected that the question is as to the *actual* debt, as it stood at the commencement of the war year. If the whole of the crop of 1774 was not shipped, landed, and brought to account in that year, no argument can be drawn from the supposed circumstance of the crop being in the nature of a mortgage for the payment of the contemporary debt; for, as it has been before observed, the war, by breaking in upon the credits, fixed the debt, and suspended the payments altogether.

Mr. King states that the whole of the exports were not upon credit, but part upon cash, equal, according to Lord Sheffield's account, as alluded to by Mr. King, to one-fifth of the whole, which he proposes "to deduct from the amount of the exports." Mr. Anstey has no reason to doubt the accuracy of Lord Sheffield's statement; and most unquestionably there were "in the Colonies, exclusive of the men of good estates, who had no occasion for credit, merchants who had acquired wealth, and employed it in ready money purchases of British exports." But it must be allowed that

these men were of a totally distinct class and description of people from those who purchased on credit; for cash payments from debtors would not have been considered as ready money payments, but have been credited *per contra*, and gone in extinguishment of so much of their debt. These, therefore, were persons who traded on their own capital, paid for their goods on the spot, carried them home, and retailed them to their countrymen at advanced prices; and, by multiplying their credits extensively throughout the Provinces, placed themselves precisely in the same situation as the London merchants stood with respect to those for whom *they* shipped their goods upon credit; and, in fact, as all men were, at that time, indifferently British subjects, they stood, with respect to their interests in the contest, and every other circumstance and consideration which might be supposed to influence the conduct of men who had a property to lose, exactly, and in all respects, (the intervention of the sea excepted,) on the same ground as if they had actually resided on the Exchange of London. They became, in fact, by the operation of the alien laws, and other causes conspiring to the same effect, British creditors, in the sense of the fourth article of the Treaty of Peace, and, to a certain amount, according to the scale of their dealing, upon a ground distinct from that of the London merchant; for their debtors were indebted to them, and not only the whole of the invoice price of the articles, but, what will constitute a considerable debt of itself, a great addition of mercantile profit, in which, of course, were included the expenses of freight and insurance, &c., as specified under the head of augmentations. If the ready money payments, by this distinct class of traders, amounted to one-fifth, as Mr. King assumes, upon Lord Sheffield's statement, the necessary result will be that, instead of forming a ground of deduction to set off a supposed arrearage of *old debt*, the cash payments would justify an increase in the estimate, proportioned to the expenses above alluded to, together with a fair mercantile profit in repect of the fifth part of the exports.

This addition will apply to the third and fourth heads of augmentations proposed by Mr. Anstey, which come now to be considered in the order in which they were stated.

No. 16.

GREAT CUMBERLAND PLACE,
January 18, 1801.

Mr. King presents his compliments to Mr. Anstey, and begs him to accept his thanks for the additional accounts furnished by the Inspector General. Mr. King has had the honor to receive Mr. Anstey's note of yesterday, but, as Mr. Anstey proposes, in a day or two, to complete his reply to Mr. King's note of the 10th instant, by sending him some further observations respecting it, Mr. King thinks it proper to wait until the whole of Mr. Anstey's observations are received, before he either forms or expresses any opinion concerning the chief point to which those already sent to him seem to relate.

Should Mr. Anstey pass through Cumberland Place in the course of the morning, Mr. King would be glad to see him; he would call in Gloucester Place, were he not unfortunately confined to his house.

Mr. ANSTEY.

No. 17.

GLOUCESTER PLACE,
January 21, 1801.

Mr. Anstey presents his compliments to Mr. King; has the honor to send him, enclosed, a paper, containing remarks on the subject of the augmentations he had conceived to be necessary, in order to perfect the estimate under consideration, to which Mr. Anstey is of opinion, (and, perhaps, Mr. King will agree with him,) it will be more regular to confine the present communication. Mr. Anstey will, however, do himself the honor of waiting upon Mr. King, for the purpose of conferring with him upon the subjects connected with it on Friday next, between two and three o'clock, if that hour will be convenient.

No. 18.—*Paper No.* 4.

47, GLOUCESTER PLACE,
January 21, 1801.

Mr. Anstey has the honor to send Mr. King the following remarks, in support of the augmentations proposed to be made to his estimate of the American debt.

First head of augmentation is on the score of the debt due such of the loyalists as were not traders. This distinction is made, because, as the gross amount of the export has been already calculated upon, the debts of such of the American loyalists, who were traders, can only be contemplated with reference to the third and fourth heads of augmentation, on the score of freight and mercantile profit. The loyalists intended in the class now under consideration are those who, not being immediately concerned in the export trade, were still creditors to their own countrymen upon the bonds, or otherwise, in their ordinary intercourse, either as it regarded their internal trade, or speculations of various kinds, in land, ship-building, &c., who, from being men of wealth, some of them men of influence, and in public stations, and almost all, in a general sense, obnoxious to the new Government, ranged themselves on the side of Great Britain, and became creditors, in the sense of the fourth article of the Treaty of Peace.

It would be difficult, at this day, to distinguish those of that description who were traders from those who were not; though, by reference to the several acts of confiscation, the names of many of them might be seen, and distinguished by recollection, were it expedient to go into a detail of this kind; and the amount of their claims, on the score of debts, could be ascertained by Mr. Anstey, if necessary, with great precision. It might be also

ascertained, to an extent safely within the truth of the fact, how many persons presented claims, and to what amount, in each case, "on the score of debts," under the acts for granting compensation to the loyalists who suffered losses of property under the general and sweeping clauses of those acts; but all that is here intended is to state general facts, directly applicable to the subject, from which general conclusions may be formed.

The claims for debts by the American loyalists were reported to Government, by the Commissioners of American claims, at two millions three hundred and fifty-four thousand one hundred and thirty-five pounds twelve shillings and four-pence, with regard to which the following fact is peculiarly worthy of attention: these claims were exhibited in schedules, attached to a general claim for confiscated property, in each case, (a very few, and those comparatively to a very small amount, only excepted;) from whence it should seem that the debt so claimed belonged to the inhabitants of the Colonies, who took part with Great Britain in the contest, and not to the British merchants who resided in Great Britain, and, consequently, cannot be comprehended in any estimate of British exports. The losses in confiscated property were finally liquidated at less than one-third of the amount of the claims. If, therefore, as it has been suggested by Mr. King, the American traders were not in general loyalists, something short of one-third of the loyalist debt may be added under the first head of augmentation, on the score of the loyalists who were not traders; and, if they were, then, as loyalists, and also traders, a proportion equal to the mercantile profit upon the British exports which they freighted at their own risk and expense, and the gross amount of which has been already calculated upon in the general estimate.

Second head.—Mr. King observes that, instead of the West India trade having admitted of a balance, chargeable as an augmentation of the estimate, it yielded, according to Lord Sheffield's statement, a cash balance *per contra*, equal to three-hundred and fifty thousand pounds, which afforded an important remittance to Great Britain; on which Mr. Anstey must be allowed to remark, that Lord Sheffield makes his calculation with an eye to the advantage derived from the carrying trade between the Colonies and the islands. He states the amount of exports from the Colonies to the islands at five hundred thousand pounds, and that of the islands to the Colonies at four hundred thousand pounds; leaving a balance only of one hundred thousand pounds. The three hundred and forty-five thousand pounds are made up of this one hundred thousand pounds balance, and the further sum of two hundred and forty-five thousand pounds, calculated as a profit, in effect equal to that sum, arising from the benefit of *double* freight to and from the West Indies, interest for the time on the value of the vessel, tear and wear, seamen's wages, provisions, &c., the profit is stated to be *thus* worth about the sum of three hundred and forty-five thousand pounds a year." But Mr. Anstey does not understand Lord Sheffield as speaking of a cash balance, or, indeed, of any balance, capable of forming a remittance to Great Britain. If, indeed, there were any cash balance upon a trade, which, upon further inquiry appears to have been carried on chiefly by barter, at a very short credit, it was most natural to suppose it would go in the purchase of negroes; a trade which Lord Sheffield mentions, in another place, was carried on to the Colonies upon a British capital to the amount of three hundred thousand pounds. No augmentation, however, will be contended for on this ground; nor would Mr. Anstey have troubled Mr. King with any further observation on this head, but that, from the whole, an inference arises which, to his mind, perfectly justifies the propriety of an additional charge, on the score of freight and mercantile profit, which Mr. Anstey will beg leave now to consider under the third and fourth heads of augmentation.

Third and fourth head. Upon the subject of freight, Mr. King observes that the Americans "were their own freighters; and, therefore, that nothing is chargeable on this head."

Mr. Anstey agrees that this statement is perfectly correct, as far as regards the London merchants, who traded on commission; but with respect to the Glasgow merchants, it cannot be conceded that freight did not make an article of expense, though perhaps no article of *charge eo nomine*. It was included in the mercantile profit: the nature of the trade will explain this. It was carried on by the appointment of factors, and the establishment of partnership houses in America, the expenses of the establishments, of factors, warehouses, horses and servants, in addition to all the expenses of freight (in which are contemplated the several charges more particularly specified and enumerated under the last head) justified, and in point of fact constituted, an increase in the price of the article in the hands of the consumer, beyond the selling price in the port of Glasgow; which selling price (and not the invoice price, for that might have been calculated with a view to these charges) is all that is covered by the valuation of exports, in the general estimate submitted.

Is it imaginable in trade that the Glasgow merchants, who must have shipped these articles, at their own risk and expense, to their own stores, and consigned them to their own agents, should not at least have indemnified themselves in the retail of those articles in America?

As to the amount of augmentation chargeable on this ground, on so much of the trade as was carried on between Glasgow and the Provinces, nothing will be hazarded by Mr. Anstey at this time. Between the Colonies and the islands Lord Sheffield states it at forty-five per cent. for the single freight: one-third of that sum might be considered a very moderate augmentation: taking the mercantile profit alone (without expenses of freight) at ten per cent. upon the export price, it would be less than has been adopted, as the proper allowance of mercantile profit, by the board established under the seventh article of the treaty.

Upon the *fifth head* of augmentation, Mr. King and Mr. Anstey are agreed.

No. 19.

GREAT CUMBERLAND PLACE,
January 23, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to send him an extract of the report which he showed him this morning of a conference with Lord Grenville on the 21st of April, 1800. This report was first submitted to Lord Grenville, in order that it might be accurate, and then sent by Mr. King to his Government, which, instead of agreeing in the proposal of paying a sum of between one and two millions in satisfaction of the whole debt due to British creditors, has authorized Mr. King to treat for the payment of a sum in lieu of that which might, under the sixth article of the Treaty of Amity and Commerce, be awarded to be paid by the United States; leaving the creditors to their remedies against the debtors, according to the provisions of the Treaty of Peace; who, as the courts are now open, and the debtors in better circumstances that at the conclusion of the war, would, without doubt, be able to recover the greatest part of their just debts.

No. 20.

Extract of a letter from Mr. King to Colonel Pickering, dated London, April 22, 1800, containing the report of a conference with Lord Grenville, respecting the payment of a gross sum in satisfaction of the whole debt due to British creditors before the American war.

"I then asked Lord Grenville if he had formed any idea of the gross sum on the payment of which they would engage to compensate the claims of the British creditors? His Lordship replied that he had not; adding, that he thought the creditors had not been wise in swelling, as they had done, their claim to four or five millions sterling: though it might have no influence upon our Government, it would be likely to have some on the people. That, on the supposition that the debt due to British creditors did not exceed two millions, they might be willing to accept a gross sum of between one and two millions."

No. 21.

GLOUCESTER PLACE, *Jan.* 23, 1801.

Mr. Anstey having been requested to consider the four hundred thousand pounds mentioned in Mr. King's note to the right honorable Lord Grenville of the 23d November last, as the sum approaching, in his opinion, the nearest to the sum required of any other which, upon his principle of calculation, ought to be made the subject of the convention intended between the two countries, and to consider the same as a specific offer to that amount, on the part of the United States; and Mr. Anstey being further and earnestly requested, in this stage of the discussion, to meet Mr. King's proposition with some overture on the part of His Majesty's Government, which may bring the discussion to bear immediately, and at once, as nearly as possible, on the principal point in question; Mr. Anstey has no difficulty in declaring that the sum of four hundred thousand pounds is, in his opinion, a sum much too inconsiderable in itself, and, as regards the object, altogether inadequate.

Looking at the treaty, and at the estimate he has formed upon Mr. King's principle of calculating upon the exports, and also at the grounds and principles of the augmentations Mr. Anstey has assigned to be necessary in order to perfect that estimate; and having also generally in view (but without any particular examination) the several heads of deduction suggested by Mr. King; Mr. Anstey (for the purpose of meeting Mr. King's wishes in shortening the discussion) proposes to rest upon the general estimate he has had the honor to present to him as the basis of the demand, and to commence the first overtures to a mutual accommodation by a waiver, on his part, of the benefit of all the augmentations to which his estimate may be fairly entitled, not even excepting the interest which, in Mr. King's note of the 23d November last, above mentioned, is conceded to the extent of doubling the debt as it stood at the close of the war, and to place to the account of Mr. King's deductions no less a sum than four millions five hundred and forty-one thousand nine hundred and fifty-two pounds, leaving a balance only of two millions of pounds to be applied to the purposes contemplated by the present negotiation.

This offer to be taken as an entire proposal, and without prejudice to any right of demand to which the subject-matter of concession now is, or shall hereafter, upon a future discussion, appear to be justly entitled.

RUFUS KING, Esq., &c.

No. 22.

GREAT CUMBERLAND PLACE.
January 29, 1801.

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 21st instant, and is sorry to perceive that so wide a difference still prevails in their opinions respecting the amount of the American debt at the commencement of the American war. Although the subject is one which, in all its material circumstances, does not admit of precise or rigorous proof, there are, nevertheless, two facts having an important influence upon the point in discussion, which can be established with a degree of certainty precluding all doubt of their authenticity.

The first is the value of the annual exports, which may be satisfactorily ascertained. The second is the term of credit given by the British to the American merchants; a fact, respecting which no disagreement in opinion any longer exists.

In reference to the first point, so far as respects the value of the exports for the years 1772, 1773, and 1774, Mr. King will make but one or two remarks, in addition to those before submitted to Mr. Anstey's consideration. The average excess of the real above the official value of the exports of those years is one million five hundred and forty-nine thousand four hundred and twenty-six

pounds, which does not materially vary from the difference between the official and real value of the last of those years which Mr. Anstey has taken as the basis of his calculation. Supposing, for the sake of round numbers, that the goods exported in any one of the three years above mentioned have, in the course of a century, advanced in their price one million and a half sterling, the question to be resolved is, what proportion of that advance accrued in the first seventy years, and what in the last thirty? As the goods of 1772 were ordered and prepared in 1771, which is twenty-nine years before the close of the century, (for the sake of even numbers, Mr. King has taken thirty years instead of twenty-nine) and, for the purpose of this calculation, the difference is unimportant. Upon revision of the problem, Mr. King sees no reason to doubt the opinion before expressed, that the advance of price has been much greater in the latter than in the former term of years. Were it deemed requisite to run this branch of the discussion into a minute inquiry, recourse might be had to sources of information which, it is believed, would afford pretty satisfactory evidence in favor of Mr. King's estimate, that two parts in three of such advance have taken place within the last thirty years.

Should this appear probable, the fact would justify the addition of a third instead of a moiety of the advance which has taken place in the course of the century.

If Mr. Anstey adverts to the years when the goods were ordered and exported, he will perceive that they preceded one, two, and three years, the epoch of the breaking out of the American war; and that the error which he imputes to Mr. King, in this respect, is not precisely such as he had supposed.

But were it such, if Mr. Anstey will take the trouble to revise the computation he has made upon this subject, he will perceive that it requires correction. Upon the supposition that the advance of price, during the last thirty years, was two fold greater than during the seventy years preceding, and that the advance in the price of the goods exported in any of the three years above mentioned has, in the course of a century, been equal to one million five hundred and seventy-six thousand seven hundred and seventy-two pounds, it follows that five hundred and twenty-five thousand five hundred and ninety pounds thereof accrued within the seventy years, and double that sum, or one million and fifty-one thousand one hundred and eighty-two pounds within the thirty years. But, if the goods were exported only twenty-five years ago, as erroneously supposed by Mr. Anstey, in order to ascertain their value when exported, the five hundred and twenty-five thousand five hundred and ninety pounds advance of the seventy years, must be increased by the advance of five additional years, or one-sixth part of the advance of the thirty years: that is to say, by one hundred and seventy-five thousand one hundred and ninety-seven pounds, or the sixth of one million and fifty-one thousand one hundred and eighty-two pounds; instead of which, Mr. Anstey increases it by two hundred and sixty-two thousand seven hundred and ninety-five pounds, or one sixth of the advance of the whole century. This double error, first, in withdrawing the five years, and, secondly, in overrating their proportionate value, necessarily disturbs the accuracy of Mr. Anstey's conclusion upon this point.

If it shall be thought equitable to increase the official value of the exports by the addition of a third instead of a moiety of the difference between it and the real value, to complete the estimate, in order that it may be received as the standard of the debt annually contracted, the various heads of deduction and augmentation must be settled.

Mr. Anstey has manifestly misapprehended the whole scope of Mr. King's observations in respect to the goods annually purchased with cash by the American merchants, and on account of which he claimed a correspondent deduction from the amount of the annual exports.

Mr. Anstey supposes that all the American merchants took the side of Great Britain; and, upon that hypothesis, demands an augmentation of the amount of exports under the head of mercantile profit, instead of assenting to the deduction claimed by Mr. King. By American merchants it was by no means intended to comprehend merchants who resided in Great Britain, and traded to America, or the partners, factors, or servants of such merchants, but the native and permanently resident merchants of the country, whose estates and home were in the commercial cities of the United States, and who took the side of America so universally, that the exceptions, which were really few and unimportant, cannot materially affect the fair allowance to be made under this head.

The character and claims of British commercial houses, whose partners and agents resided in America, and who as universally adhered to the side of Great Britain, as the real American merchants did to that of their country, will come to be considered hereafter.

Mr. King is ready to avow that the amount of these cash purchases, or the proportion which they bore to that of the whole annual exports, is a point of great uncertainty, and he cannot, therefore, be at all confident that the proportion did not considerably exceed that which he has specified. A given sum must be allowed; and he continues to believe that the proportion which has been mentioned is a moderate one.

Pursuing the subject of deductions and augmentations, it will simplify the discussion to go on with the consideration of the claims of augmentation in the order proposed by Mr. Anstey, instead of stopping to examine the grounds upon which he asumes the value of two entire years' exports as the standard of the debt at the breaking out of the war. This examination will follow, in course, after that of the several heads of augmentation.

Augmentations claimed by Mr. Anstey.

First head.—Mr. King altogether approves the separation, for the purpose of this discussion, of "the commercial claims" from the claims of the loyalists. By adhering to this distinction, the remarks on both sides will be more easily understood.

No person is better acquainted with the character and circumstances of the American loyalists than Mr. Anstey; no one has had fuller means of estimating the real merits of their various pretensions; and, extravagant as the sum is which is stated in Mr. Anstey's last note to have been claimed by the loyalists on account of debts due to them in America, Mr. Anstey's experience in analogous cases must suggest to him the immense deduction to which this claim also is liable. The best founded and most meritorious claim of the loyalists was for the loss of real estates. Mr. Anstey is well acquainted how extensively these estates were found to be encumbered: a circumstance inconsistent with the pretension that these persons were creditors to any considerable amount, since those who have money due to them collect it, instead of themselves becoming debtors by borrowing. The loyalists were, in general, persons holding and expecting, or intimately connected with, and influenced by those who held and expected, offices under the Crown, and were not generally persons of much property. The liquidation of their claims exhibited to the British Government appears to have had a salutary influence in moderating their recent demands on account of American debts: for, instead of a sum exceeding two millions sterling, which Mr. Anstey states to have been the former claim presented to the British Government, their whole claim lately exhibited at Philadelphia does not much exceed one-sixth part of that sum; and if it be divided into two classess, the first including the claims strictly commercial, and, as such, falling under the third and fourth heads of augmentation; and the second the claims of persons not concerned in trade; it will be found that the amount of the latter claim bears but a very small proportion to the former, and, when liquidated according to its merits, would not form a serious obstacle, on either side, to a satisfactory conclusion of the business under consideration.

Second head.—As nothing is claimed under this head, it is unnecessary to add any further observations respecting the course of trade to which it relates.

Third and fourth heads.—These two heads reduce themselves to the consideration of the allowance which may be claimed on account of that portion of the trade to America which was carried on within the country by partners and agents of the Brish houses. In the general views which serve as grounds of estimate and computation in the course of this discussion, Mr. King has thought it advisable to omit every unimportant branch into which the subject might divide itself; and, from this consideration, the item now under examination was passed over.

So far as the trade was carried on by partners and agents of British houses, who went to America for this purpose, something may be allowed on the score of mercantile profit. This course prevailed, in a greater or less extent, in the trade between Scotland, Maryland, Virginia, South Carolina, and Georgia; but what proportion of the whole trade between these Colonies and Great Britain was of this description, and how much of it was upon the footing of the trade with the other Colonies, is a point upon which Mr. King confesses his want of exact information. If Mr. Anstey have any means by which he is able to ascertain this proportion, and the point shall be thought of sufficient importance, in reference to the nature and object of this discussion, to merit a further examination, Mr. King will give to Mr. Anstey's observations all the consideration which their merits may appear to demand. He cannot, however, avoid remarking to Mr. Anstey, that no inference, with regard to the freight upon a cargo of English manufactures, can be deduced from the *ad valorem* freight received upon a cargo of provisions and lumber carried from America to the West Indies: the former are valuable articles comprised within a small compass; the latter are cheap ones, and of great bulk. Forty, or even fifty per cent., upon the first cost of the latter might not be equal to one and a half or two per cent. upon the value of the former.

According to the import of the foregoing observations, the official value of the exports should be increased by one-third of the difference between it and the convoy value, in order to ascertain the true value of the exports in any of the three years preceding the American war. If the value of the annual exports be assumed as the standard of the debt annually contracted, the estimate, as has before been observed, will require further correction: it must, for this purpose, be diminished a sum equal to the amount of the goods purchased by the American merchants for cash, and increased a sum equal to a fair profit upon such proportion of the goods as were carried to America at the risk, and sold there on the account of the British merchants. Provided the question turned upon the exports of a single year, an estimate corrected according to the foregoing rules, would, with a suitable addition on account of the loyalists' claims, furnish the standard which is sought for; or, in other words, would disclose the amount of the American debt at the commencement of the year 1775.

In Mr. King's note of the 23d of November, the chief reasons are explained upon which he founds the opinion that the debt due to British creditors, at the breaking out of the American war, did not exceed the value of one year's export. These reasons are concisely as follows: the credit given was for the term of one year, and never exceeded it. So far as respects the Southern Colonies, the annual crops were the fund looked to for reimbursement, and these were effectually secured to the creditors by the operation of the navigation act. It is not pretended that the payments were, in every instance, made within the limits of the credit. From various causes, individuals might occasionally fail in punctuality; their numbers might be greater in some quarters than in others; and their failures more considerable at one time than at another: and hence, a fluctuating arrear-

age of debt, concerning whose amount opinions might vary, may be supposed to have generally existed. This arrearage Mr. King disposed of against the proportion of the annual exports purchased by the American merchants with cash. The position relied upon is, that in such a trade annual credits supposed annual payments, subject only to such particular exceptions as the condition and circumstances of the creditors made unavoidable.

Without contesting the facts, from which the foregoing deduction is drawn, Mr. Anstey meets it by the observation that, though it was universally the custom of the British merchant, in no instance, to allow more than one year's credit, it was, nevertheless, the practice of the American trade to take it for three years, and, in some instances, even for a much longer term; and from hence, he concludes, that the debt, at the breaking out of the war, must have been equal to upwards of six millions sterling, or the joint amount of two entire years' exports.

The importance and influence of this conclusion, in reference to the end aimed at in this discussion, certainly requires the disclosure of such evidence in its support, as would dispose an impartial mind to acquiesce in its justness; the inference, it will be remarked, applies to the whole body of traders, and not to a part of them. If individuals, and even a considerable number of them, from whatever causes it might happen, failed in punctual remittances, this circumstance would not warrant a general conclusion, applying such failure to the whole body of debtors. Neither can such conclusion be deduced from the custom of bringing forward and annually incorporating the arrearage, in particular cases, of the debt of a former year, with the new debt annually contracted. In further support of this conclusion, Mr. Anstey supposes that the natural consequence of hostilities was an immediate refusal on one side of new credits, and on the other, of further payments on account of old debts. Though the breaking out of the war could not have any effect upon past transactions, and afford no assistance in determining the question whether the debt then, or at any former time, equalled, exceeded, or fell short of the amount of one or two years' exports, it nevertheless, produced and was followed by by a most important alteration of the debt, whatever may have been its amount, which existed at that period; for the commencement of hostilities, which operated almost entirely to put an end to fresh credits, inspired the creditors and their agents with uncommon activity in collecting and securing their outstanding debts. Hostilities began in April, 1775; but the commercial intercourse between the two countries was not suspended before December following, when the act of Parliament for that purpose was passed, and the political union was not dissolved until the succeeding year. It was for the purpose of elucidating the transactions of this period that Mr. King requested Mr. Anstey to furnish him, from the office of the Inspector General, with an account of the imports from the Colonies forming the United States for ten years preceding the fifth of January, 1776. By this account, it appears that the official value of the imports from the said Colonies, in the year 1775, amounted to two millions four hundred and fifty-seven thousand pounds, and exceeded, by more than half a million sterling, the imports of any former year; while the official value of the exports of that year from Great Britain to the same Colonies was only two hundred and fourteen thousand pounds, or about one-tenth part of the usual amount. Not only the quantity of the staple articles of indigo, rice, and tobacco was greater than in former years, but the quantity of miscellaneous articles, ordinarily of comparatively small amount, was in this year double what it had been in any former year; a circumstance not otherwise worthy of notice, than as it shows the diligence and success of the creditors during the year 1775 in the collection of their debts. If to the remittances which were made in the productions of the Southern Colonies, be joined those which the same causes, without doubt, extracted from the Northern Colonies, the channels in which their payments were usually made, it may be safely concluded that the payments of the year 1775, in which little or no new debt was contracted, not only exceeded those of any former year, but went far towards liquidating the debt due to British creditors. This fact, at the same time so important and so well established, and which has been excluded from all consideration in the forming of Mr. Anstey's estimate of the debt, will, without doubt, be allowed its full and proper influence in a revision of the subject.

Although the preceding analysis might suffice to justify Mr. King's dissent from Mr. Anstey's estimate, as well as to support his own, he is solicitous to place the subject in such other points of view as appear to him likely to satisfy Mr. Anstey that he has not demanded his assent to an opinion incapable of defence, or founded upon a partial consideration of the subject. It is, on this account, that he has thought it advisable to endeavor to render the discussion more simple, by stripping it of every unimportant circumstance, and confining it to as narrow a field as possible. The Inspector General's accounts of exports and imports for ten years preceding the year 1776, together with the claims of the British creditors, as lately exhibited at Philadelphia, enable him to effect this purpose. The total amount of these claims, including interest, from the date of the several debts, up to the first of January, 1798, is somewhat above four millions sterling; of which sum* two hundred and eighteen thousand only are claimed of the inhabitants of the States north of Maryland; the residue, three millions eight hundred thousand pounds, are claimed of the inhabitants of Maryland, Virginia, North Carolina, South Carolina, and Georgia. The proportion of the former is so inconsiderable, that, for the purpose of this illustration, it may proceed upon the idea

* Of this sum nearly £200,000 are claimed by loyalists, leaving a commercial claim of only £20,000.

that the whole four millions is claimed of the inhabitants of the five Southern States. Adhering to the basis upon which the negotiation commenced, that of seeking for the amount of the debt, by ascertaining the value of the exports, the comparison of the exports and imports to and from the five Southern States, for the three years preceding the suspension of their commercial intercourse with Great Britain, cannot fail to cast new light upon the question under consideration.

It may be proper to remark, that these are the States which produce the staple articles of American exports, and it is in this quarter, of which it may be emphatically said, that the annual credits were given in the expectation of payment in the annual crops, which, (with the exception of a portion of the rice sold for the benefit, and usually on account of the British creditors in the south of Europe,) according to the provisions of the navigation law, were sent to Great Britain, and received by the creditors, who alone were the correspondents of the American merchants and planters.

The Inspector General's accounts are as follows:

Extract of the Inspector General's account of the exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia, and of the imports from the same into Great Britain in the following years, viz:

Exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Year.	Official value in 1697.	Real value in 1800.
1773 - - - -	£1,037,691	£1,559,997
1774 - - - -	1,161,556	1,820,469
1775 - - - -	126,963	205,721
Total - - -	£2,326,210	£3,586,187

Imports into Great Britain from Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Year.	Official value in 1697.	Real value in 1800.
1773 - - - -	£1,639,965	£1,843,781
1774 - - - -	1,570,029	1,816,372
1775 - - - -	1,955,947	2,233,873
Total - - -	£5,165,881	£5,894,026

These accounts, so far as regards the real value of the small and miscellaneous articles of imports, are deficient—the Inspector General not having the means of correcting their official value, which is here taken in lieu of the real value. The difference is altogether unimportant, and, whatever it may be, operates against the imports in the above comparison.

If the official value of the exports and imports be corrected by a common rule, and, in order to ascertain their true value in the years referred to, the official value be increased by the addition of one-third of the excess of the real above the official value, the result appears to be, that the aggregate value of the exports from Great Britain to Maryland, Virginia, North Carolina, South Carolina, and Georgia, in the years 1773, 1774, and 1775, amounted to two millions seven hundred and fifty-nine thousand five hundred and thirty-six pounds, and the aggregate value of the imports from the same into Great Britain, during the same years, to five millions four hundred and eight thousand five hundred and ninety-six pounds; yielding a balance, in favor of these five Colonies, of two millions six hundred and forty-nine thousand and sixty pounds.

Deducting from this balance a full allowance on account of freight, which may have been earned by the ships of the Northern Colonies, as well as a further sum upon the supposition that a portion of the productions may have been purchased and imported on account of the ship owners, still there will remain a balance in favor of these five Colonies, so considerable, and that, too, at the moment when the commercial intercourse between them and Great Britain ceased, as to produce much hesitation in the admission of the proffered claim of the British creditors; a claim which, in this view of the trade, seems more likely to be the drossy mass of old and hopeless balances, accumulated in the course of a diffusive retail trade, and swelled by the addition of interest through a series of years, than the sound aggregate of undisputed debts due from insolvent debtors.

If it be recollected that the claim of the British creditors is essentially confined to the inhabitants of the five Southern States, those of the other States having settled their debts, the above comparison of the exports and imports must not only affect the credit of the estimate, which carries the debt at the breaking out of the war, to a sum equal to two years' exports, or upwards of six millions sterling; but will, moreover, inspire a rational doubt whether the value of a single year's exports did not exceed the amount of the debt at that period.

Recurring to the mode before proposed, of ascertaining the debt from the amount of one year's exports, to the whole of the Colonies composing the United States, and adopting, for this purpose, the Inspector General's accounts, it appears that—

The average real value of the whole exports of 1773 and 1774, according to the valuation of 1800, is - -	£3,963,415
Their average official value, according to the valuation of 1697 - -	2,578,536
The excess of the former above the latter - - - - - - -	1,384,879

By adding one-third of this excess to the average official value of the exports of those years, (the reasons in support of which proportion have been given,) the result discloses the average value of the exports to the whole of the Colonies forming the United States, in each of those years, thus:

Average official value, as above -	£2,577,536

One-third of the difference between the real and official value - - -	461.626
Result, or average value of the exports of the years 1773 and 1774 - -	3.040.162

If the different heads of deduction and augmentation, which have been suggested with the view of correcting the estimate of the annual exports, be each allowed its proper influence, or, what will be nearly the same, entirely laid out of the question, the sum of three millions and forty thousand one hundred and sixty-two pounds, will, according to the principle which has been adopted, represent the amount of the debt when the war broke off the annual intercourse between the two countries.

As the greater part of the year 1775, during which little or no new credits were given, was employed, with great success, in liquidating and collecting the debts before contracted, it may be concluded that a considerable portion of the debt which could neither be collected nor secured, was due from persons insolvent at the commencement of the war; and, if to this portion be added the debts of those who became insolvent in the course of the war, whoever is acquainted with the nature and circumstances of the trade, the waste and destruction of the war, or the proportion of the debt recovered by the creditors at the return of peace; and that, too, in scenes where the whole property of the debtor was given up to the creditor, will be disposed to agree that more than one-half the sum due at the beginning of the war could have been recovered by a complete cession of the debtor's goods at its conclusion.

The debts recovered since the war, have been considerable throughout the United States, though the proportion has been much greater in some of them than in others; in those where the creditors have had the least success, they have not labored in vain. In the States to the northward of Maryland, which received nearly three-fifths of the exports of the whole of the States, the debts have been so generally settled, that only a few small and disputed commercial claims remain. An inference has been drawn from those facts, that at least one-half of the debt due from persons solvent at the close of the war has been paid. By these deductions, the principal would be reduced to seven hundred and sixty thousand and forty pounds; and, if this sum be doubled on account of interest, the debt now due, will amount to one million five hundred and twenty thousand and eighty pounds, instead of one million five hundred and fifty-five thousand seven hundred and forty-nine; at which Mr. King, in his note of the 23d of November, had estimated it.

The United States being liable to pay only such proportion of the outstanding debt as, had there been no legal impediments, might have been recovered of the debtors, at the close of the war, and which cannot now be recovered, it remains to ascertain this proportion.

Mr. King stated it at a third, founding his opinion that at least two-thirds might still be recovered of the debtors, upon the incontestable facts that the courts of justice are now completely open, and the ability of the debtors to pay their debts in general greater than it was at the close of the war. Much detail might be given in proof of the latter point; the whole of which is, however, comprised in the simple comparison of the condition of the industrious inhabitants of any country, which had been the theatre of a seven years' war, at the conclusion of such war, with their condition after the enjoyment of double that number of years of peace.

In respect to the tribunals, it is alleged that the State courts are not as impartial as the Federal courts; that the prejudices ascribed to the juries are under less control in the former than the latter; and as the Federal courts have no jurisdiction under five hundred dollars, or one hundred and twelve pounds ten shillings sterling, that a considerable portion of the claims cannot receive a decision in the most impartial tribunals.

Without entering into an examination of these opinions, in respect to the relative impartiality of the American tribunals, it should be recollected that the State tribunals, and their rules of proceeding, are the same now as they were when the credits were given. In the Colonial system, the Provincial courts had original jurisdiction in all cases, and final jurisdiction in cases under three hundred pounds sterling; in causes above that amount only an appeal might be prosecuted before the King in Council, a tribunal having no original jurisdiction. Instead of this remedy, the Federal courts have a revisionary jurisdiction in every case, without reference to its amount, in which the demand is affected by a national treaty, or a law of the United States, and original jurisdiction in all cases under five hundred dollars, or one hundred and ten pounds ten shillings sterling. As the claims of all British creditors fall within these predicaments, the objection to the State courts, were it well founded, is done away by the recourse which may be had to the courts of the United States.

To conclude; the following results may be derived from the foregoing observations:

The debt due to British creditors, at the breaking out of the war, was -	£3,040,160
Losses, on account of insolvencies, before and during that war, was -	1,520,080
Leaving a debt, at the return of peace, of - - - - - - -	1,520,080
Of which have been since received by the creditors - - - - -	760,040
Leaving a balance of principal now due, of - - - - - - -	760,040
Which, having doubled itself by the addition, on account of interest -	760,040
Makes the debt now due - - -	1,520,080
Two-thirds of which being now recoverable of the debtors - - -	1,013,386
Leaves the remaining third to be paid by the United States in commutation of the sixth article of the Treaty of Amity and Commerce - -	£506,694

No. 23.

GREAT CUMBERLAND PLACE, *January* 30, 1801.

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 23d instant; and it is with equal regret and disappointment that he perceives that the sum which Mr. Anstey has mentioned as, in his opinion, proper to be required of the American Government, in lieu of what it might be liable to pay under the sixth article of the Treaty of Amity and Commerce, so much exceeds what, upon any view which Mr. King has taken of the subject, can be thought a just equivalent for the relinquishment of that article, and is so far above the demand which he had any reason to believe would have been made, even for the relinquishment of the entire claim of the British creditors, that he will not conceal from Mr. Anstey his concern lest the estimates and opinions, which he seems to have formed, should ultimately disappoint an agreement, which the true interest of all parties so manifestly requires.

Mr. King having, in his note of yesterday, explained himself very fully in respect to the merits and amount of the debt, as well as with regard to the sum which, in his opinion, would be a full equivalent to what, upon a just interpretation of the sixth article of the Treaty of Amity and Commerce, might be awarded against the American Government, will not, at present, trouble Mr. Anstey with any further observations upon either of these subjects.

No. 24.

GLOUCESTER PLACE. PORTMAN SQUARE, *Jan.* 31, 1801.

Mr. Anstey has the honor to acknowledge the receipt of Mr. King's communication of the 29th, in answer to his of the 17th and 21st instant.

Mr. Anstey begs leave to request that Mr. King will have the goodness to inform him whether he is to understand that his answer comprehends a statement of all the grounds upon which the deductions proposed by him, in his note of the 23d of November last, rest for their support.

And whether Mr. King has any particular data, by which he can calculate upon the deduction of a moiety from the amount of the American debt on the score of insolvency during the war, in preference to any other given proportion? And also, whether Mr. King has any certain data to justify the deduction of a moiety of the remaining moiety, on the score of actual recovery since the peace?

And, in particular, whether he can adduce any specific facts of a recent date, to demonstrate the existence of new facilities afforded to British creditors in the recovery of their debts in the different States, which shall have removed the grounds and causes of complaint alleged in the sixth article of the Treaty of Amity, so as to justify a further deduction from the amount of the debt, in the proportion of two-thirds of what remains upon the balance of the other deductions, in consideration of the certain prospect of a speedy and eventual recovery to that extent.

Mr. Anstey has the honor of Mr. King's answer to his proposal of the 23d instant, and acknowledges the receipt of the minutes of the conference of the same date: he will be obliged to Mr. King for a sight of the three documents certified from the office of the Inspector General.

GREAT CUMBERLAND PLACE, *February* 2, 1801.

Mr. King presents his compliments to Mr. Anstey, and has the honor to acknowledge the receipt of his note of the 31st ultimo.

The reasons assigned in Mr. King's note of the 29th ultimo, in justification of the proposed deductions from the estimated amount of the debt due to British creditors at the beginning of the American war, might have been given in greater detail than Mr. King judged it necessary to go into; inasmuch as it was presumed that such details would naturally suggest themselves upon the consideration of the general reasons which were given, and which, it was expected, would be understood, not only to comprise, but to supersede the enumeration of a variety of particular ones.

Mr. King's note includes the objections to which Mr. Anstey's estimate appeared to him liable, together with such further arguments in support of an estimate derived from the materials received from the Inspector General's office, as he was in hopes would engage Mr. Anstey's approbation. In this stage of the discussion, it is quite in course that Mr. King should wait for Mr. Anstey's reply to his note of the 29th ultimo, instead of repeating the answers which he flatters himself will be satisfactorily found in that note to the interrogatories which Mr. Anstey has deemed it suitable to propound in his note of the 31st. Mr. King, therefore, does not think it necessary, at present, to trouble Mr. Anstey with any further observations upon the several points discussed in his note to Mr. Anstey of the 29th ultimo.

Mr. King has the honor to send, enclosed, the accounts received from the office of the Inspector General, which Mr. Anstey is desirous of seeing.

No. 26.

GLOUCESTER PLACE, *March* 18, 1801.

Mr. J. Anstey presents his compliments to Mr. King; has the honor to acquaint him that he has seen Lord Hawkesbury (for the first time) this morning, and takes the first opportunity of troubling him with the enclosed answer to his note of the 29th January. The answer is dated the 14th February, the day on which it was intended to have presented Mr. King with it; but owing to the chances or changes, which have since hap-

pened, Mr. Anstey did not think himself authorized to present it till he had seen His Majesty's principal Secretary of State for Foreign Affairs.

No. 27. (8.)

GLOUCESTER PLACE,
PORTMAN SQUARE, *Feb.* 14, 1801.

Mr. Anstey, in presenting a reply to the paper he last had the honor to receive from Mr. King, must be permitted to add one observation with reference to Mr. King's note, declining his proposal of the 23d ultimo.

Mr. Anstey, by that proposal, accompanied by all the allowances and concessions with which it was submitted, was in hopes to have marked the character of the present negotiation with peculiar candor and liberality on the part of His Majesty's Government: he still flatters himself the discussion may lead to some practicable result; but, in any event, he feels it incumbent upon him to answer what has been objected to, so far at least as to prevent misapprehension, and to show still further, by the following remarks, that the estimate and opinions he has formed have not been inconsiderately surmised, and not deficient in that sort of proof which must be mutually regarded as fully adequate to their support.

In order to reduce the estimate of the value of British exports in the year 1774, below a moiety of the excess between the convoy price of the same articles at this day, and the standard valuation established in the year 1697, Mr. King supposes two-thirds of the increase, in the price of the whole century, to have accrued in the last thirty years; but it appearing to Mr. Anstey an incorrectness in the mode of stating the argument, to draw an inference from the supposed circumstance of the price of British exports being greater for the last thirty years, (in the proportion contended for,) in order to found a conclusion that, in the year 1774, being a part of those thirty years, the price of the same articles was in reality less: Mr. Anstey, in order to give effect to Mr. King's hypothesis, proposed to withdraw the first five years, (forming a part of the thirty, ending with the year 1775,) into the opposite scale, which will justify the addition of a considerable increase in the estimate of the price, above the third part of the excess, as proposed to be adopted by Mr. King; and therefrom, by way of argument, Mr. Anstey stated a process of calculation, which forms a coincidence of result in numbers favorable, as he conceives, to the establishment of the moiety; to which Mr. King imputes an error of a nature somewhat similar to that which he has taken the liberty of imputing to Mr. King's statement; the correction of it, as suggested by Mr. King, will of course disturb the argument drawn from such a coincidence of result in numbers, but will not affect the accuracy of the general conclusion on this head. It shows, indeed, that the argument in question cannot be mathematically proved; but it is submitted that enough is shown, upon the corrected statement, to prove that, even admitting Mr. King's conjecture to be fact, and stating the hypothesis in the only way in which it can be framed, in order to bear on the point, it will uphold the addition of a considerable increase in the third proportion, so as abundantly to justify the general conclusions in favor of the moiety. But, divested of numerical problems, what is the true state of the argument? It stands thus: for the third proportion assumed by Mr. King, in preference to the moiety, no fact, but a conjecture, is adopted, that the advance in the price of the articles for the last thirty years is in the proportion of two-thirds more than in the seventy years preceding. It will be seen that the same might as well have been said of twenty or twenty-five years, or any other conjectural term of years. In support of this conjecture, the following reasons are assigned by Mr. King, which, with submission, if conceded, will have no weight in a comparison, as between a moiety and a third.

1st. "The extraordinary depreciation in the price of money, owing to the increase of specie or its representative."

2d. "The increased demand for British manufactures, arising from the derangement, during the present war, of the manufactures on the continent."

The first reason was anticipated by Mr. Anstey, as a ground for conceding the moiety; and, according to the weight and credit due to the fact, may be argued so as to coincide with any given proportion, but, independent of the fact, which is out of sight, can decide nothing upon a comparison between a third proportion and a moiety.

Neither will the second reason have much weight: for if the unexpected demand for articles of British manufacture, arising from a derangement of the manufactures on the continent, during the present war of eight years, would enhance the price, it must be allowed that the glut of the same articles in the market during the war in America, for the like period of eight years, would lessen the value of the same articles in the like proportion: from whence it will follow, as of course, that the supposed increase of price could not attach till the return of peace, in the year 1783, and that Mr. King's hypothesis in favor of the third proportion is confined to seventeen years; or, in effect, to this simple proposition, that the increase of the price of articles of British export has been greater within the last seventeen years than the accumulated increase of the eighty-three years preceding.

For the moiety, as proposed by Mr. Anstey, the argument stands thus: upon the fair and liberal principle of an equal division of the excess, in a case of much uncertainty, a fact (not an hypothesis) is stated, "that it is not universally true that all articles of British export are, without exception, dearer than they were in the year 1773 or 1774; but, on the contrary, some are "cheaper." Those of cotton manufacture have been specified, some of which are dearer, it is true, but in the proportion of twenty-five per cent. or one-fourth instead of above sixty-six pounds six shillings and eight pence, or two-thirds, as supposed. And some articles of wrought cotton, so far from being

dearer at this time, are actually in a very considerable degree cheaper than they were before the American war.

Mr. King states that Mr. Anstey has manifestly misapprehended the whole scope of his observations in respect to the goods, annually purchased with cash by the American merchants; and adds, "that Mr. Anstey supposes all the American merchants took the side of Great Britain." Mr. Anstey asks the favor of Mr. King to recur to his observations upon this head: he is confident that, upon a revision of the passage alluded to, Mr. King, with his usual candor, will allow that Mr. Anstey has by no means misapprehended his meaning. Mr. Anstey's observations will be found distinctly applicable to the ready money purchasers, and not to the native American merchants in general; and that he does by no means suppose all the American merchants took the side of Great Britain. On the contrary, Mr. Anstey expressly, by way of answer to Mr. King's claim of deduction, on account of cash payments, says, "If the ready money payments, by this distinct class of traders, amounted to one-fifth, (as Mr. King assumes,) that circumstance of itself, (for the reasons there assigned,) instead of a deduction will justify an augmentation of the estimate in respect of the freight, insurance, and mercantile profit upon a fifth part of the exports," viz: the fifth part, supposed to have been purchased by the dealers for cash.

Mr. King allows that some of the American merchants did take the side of Great Britain. Mr. Anstey supposes only that they were most likely to be of that class who were creditors to their countrymen, rather than debtors to Great Britain.

Upon this head, the argument stands thus: Mr. King claims a deduction of the debt, equal to one-fifth of the exports, in respect of ready money payments for British exports by American merchants, and contends, "that all the American merchants were their own freighters." If so, and these merchants became loyalists, (as it has been shown it was their interest to be,) Mr. Anstey contends, (as stated in his paper No. 4,) that they became creditors on the side of Great Britain, upon a ground, as he expresses it, "distinct from that of the London merchants; for their debtors were indebted to them, not only the whole of the invoice price of the articles, but what will constitute a considerable debt of itself, a great addition of mercantile profit; in which, of course, would be included the expense of freight and insurance, &c.;" and this inference must be conceded by Mr. King, if the fact be true, and it is in part acknowledged by Mr. King, for he says, "the native merchants who took the side of Great Britain were really few and unimportant." No augmentation, however, will be contended for on this ground; but no deduction, Mr. Anstey conceives, equal to one-fifth of the exports, can in reason be allowed in consideration of ready money purchasers.

Upon the several heads of augmentation, Mr. Anstey has little to remark in addition to his former observations.

Upon the first head, respecting the loyalists who were not traders, and their debt as it stood at the commencement of the war, Mr. Anstey has assigned their original claim at two millions three hundred and fifty-four thousand one hundred and thirty-five pounds twelve shillings and four pence, which, by analogy to the liquidation of their claims on the score of confiscated property, he estimates at one-third of the claim at the breaking out of the war. Mr. Anstey conceives that it would be difficult to find more certain data to go upon, or a more candid statement. The analogy relied on is liable to less exception, because the claims for property, to which the claim for debt was attached, were liquidated by the commissioners, under the acts for granting compensation to the loyalists, with reference to the pretensions of the claimants on the score of loyalty and attachment to His Majesty's Government: whereas, the fourth article of the treaty of peace guaranties the payment of debts, without requiring of the claimants to entitle themselves as loyalists in the sense of the acts of Parliment, upon the sound construction of which many claims for supposed losses of property were shipwrecked, upon various accounts. To take the debts, therefore, attached to these claims for property at a third, for the purpose of perfecting the estimate of the American debt, seems a very moderate computation, when considered subject, as the whole is, to the principles of deduction proposed by Mr. King. The amount of loyalist debt claimed before the Commissioners at Philadelphia, sixteen years afterwards, being, as Mr. King states, but a sixth part of that sum, does not affect the calculation of the debt as it stood at the commencement of the war; and, as it remains to be considered, subject to the deductions above alluded to, one-third will be seven hundred and eighty-four thousand seven hundred and thirty-one pounds. Admitting, therefore, Mr. King's deductions on the score of supposed insolvency during the war, as also on the score of actual recovery since the peace, to operate on the scale he contends for, and the balance doubled on the score of interest, as conceded by him, the amount will then be three hundred and ninety-two thousand three hundred and sixty-five pounds. Mr. King states the sum now claimed by the loyalists at two hundred and twenty thousand pounds. Their debt, therefore, at the commencement of the war, in order to be calculated with reference to the above deductions, shall be taken only at five hundred thousand pounds.

With respect to the third head of augmentation on the score of freight and insurance, mercantile profit, &c., Mr. King observes "that in the general views which serve as grounds of estimate and computation in the course of this discussion, he thought it advisable to omit every unimportant branch into which the subject might divide itself;" and, from this consideration, the items now under examination were passed over.

Mr. King, in the first paper Mr. Anstey had the honor to receive from him, resisted the idea of the possibility of anything being due and chargeable on the score of freight, sea risk, mercantile profit, &c., and assigned his reasons.

Mr. Anstey has replied to those reasons; and

Mr. King very candidly allows that, so far as the trade was carried on by partners and agents for British houses, something may be allowed on the score of mercantile profit. It remains for Mr. Anstey to prove that the allowance is not unimportant to be demanded, and to show, as nearly as he can, what it really is. Mr. Anstey has made an extensive inquiry upon the subject, and has authority to state, that at least one-third, and more probably a greater proportion, of the debt claimed as due in the year 1791, had been contracted in a course of trade, distinct from the London trade, on commission, and which, being carried on at the risk and expense of the British merchant, justified an augmentation in the price of the articles exported in the proportions ad valorem, as follows:

Freight, *ad valorem* - - -	£2 10*s.*
Shipping charges, including porterage, wharfage, and lighterage, -	1
Insurance, varying from £2 2*s.* to £2 10*s.*, in winter, say - -	2 2
Mercantile profit, the difference between currency* and sterling, two-fifths, or - - - -	40 per cent.

Making, upon the whole, above 45 per cent. addition to the prices of the articles exported in this branch of the trade.†

Mr. King observes that Mr. Anstey has not contested the facts from which he has drawn the following deductions, namely, "that the annual credits suppose annual payments, subject only to such particular exceptions as the condition and circumstances of the creditors made unavoidable;" but meets it by the *observation that though it was the custom* of the British merchants, in no instance, to allow of more than one year's credit, it was, nevertheless, the practice of the American trader to take it for *three* years, and, *in many instances*, for a much longer term. Mr. King will pardon Mr. Anstey for observing that he is at a loss to discover any *fact* to be contested on this ground. Mr. King's supposition as to the probability of the annual payments and credits being co-extensive, (with an exception only of some unavoidable instances,) is indeed *opposed by a fact* bearing directly on the point, viz: "that it was the custom" (as Mr. Anstey asserts,) "with the London merchants," (a custom which he since understands to have extended to the whole trade, without exception,) "to strike balances on their accounts once in every year, and to carry them forward, in account current, to the succeeding year, from the date of those balances, with interest." And, with respect to Mr. Anstey's assertion, that it was the practice of the American trader to take credit for three years, and, in some instances, for a much longer term, he has only to request to be correctly understood, as by no means speaking of a fact applicable to the whole body of American merchants. It will be seen, by a revision of the paper alluded to, that he does not state an abstract proposition in *general* terms, but with reference to what he had before, in the sentence immediately preceding, admitted, with respect to the term of credit usually given, viz: "that, although it did not exceed one year, it was taken" not unfrequently, (which words have been accidentally omitted,) "for three years, and, in some instances, for a much longer term;" the whole pasage must be viewed as expectant on what follows and precedes it, and the object to which it is pointed, viz: *a credit equal to the value of two years' exports;* the first year of which Mr. Anstey has assumed to be made up partly of the unsatisfied credits of that year, and partly of the arrearages of former years; to the establishment of which fact the whole of the argument is confined: for it should be remembered that, in a former paper, Mr. Anstey has explicitly stated that, had he conceived the custom of the trade to have allowed of three years' credit in the terms of the invoice, he should have thought it incumbent on him to have taken ground upon that in the estimate.

It is not, however, material for him to prove that the plain context of the whole passage, as it stands, will bear out his meaning thus explained; as Mr. King, in conversation, since he had the honor of presenting this note, has very candidly admitted that the several sentences, collectively taken, and considered as dependant upon each other, justify the construction insisted on; and that, accordingly, all his objections to the universality of the position are thereby effectually obviated.

Mr. Anstey, in thus stating the facts on which he relies, can very safely declare that he is considerably within the scope of the information he has derived upon this point.

Mr. Anstey understands the sum of Mr. King's objections to his position "that the war, by breaking in upon the credits, fixed the debt and suspended the payments from that period," to be confined to a distinction as to the time when the war may be said to have commenced: that, although hostilities began in April, 1775, the commercial intercourse was not suspended till the December following; and, therefore, Mr. King takes a new view of the subject, and the tenor of his reasoning is to show that Mr. Anstey's estimate should have been formed with reference to the exports and imports of the first year of the war, and not to the exports only of the years preceding the commencement of hostilities. Upon which, Mr. Anstey has only to observe, that he assumed the date of the custom-house year, ending the 5th of January, 1775, in order to apply (in the only way in which it could be applied) the principle of calculation upon the exports only, for a given number of years prior to the war—a principle proposed by Mr. King, and adopted by Mr. Anstey, in conformity to his proposal, in order to which it was necessary to date the calculation from some point of time. The

* Dollars valued at 4*s.* 6*d.* sterling; currency, 7*s.* 6*d.*

† Mr. Anstey understands the practice of merchants using this branch of the trade to have been to charge in this proportion, and with reference to this distinction, in their retail dealings. This proportion, however is not insisted on as an augmentation to this estimate of the American debt, but is stated in this place to show that the mercantile profit did not form an immaterial and unimportant part of the debt.

period presented itself as most eligible which stood clearest of the war, and, at the same time, the nearest to it: the non-importation agreements had passed in 1774, and had the effect of law in the Colonies early in the year 1775, and, being rigidly exacted, must have had an influence on the exports of the following spring. A middle time, therefore, namely, the time of making up the annual accounts of the customs, on the 5th of January 1775, offered itself, with peculiar propriety, with a view to the estimate of the exports for a given number of years prior to the war: for the effect of the war on the export trade was complete in the spring of the year, which was the time of the first commencement of hostilities. But Mr. Anstey agrees that it would have applied closer to the principle now, for the first time, adopted by Mr. King, of balancing the exports against the imports of the first year of the war, to have dated the reckoning retrospectively from December, 1775, rather than from the 5th of January preceding; but, in either view of the subject, it is plain that the natural consequences of the non-importation agreements, and of the commencement of hostilities in the April following, must have been an immediate default of new credits; and that the influence of the war, at the time when the interruption of the commercial intercourse became reciprocal and complete, in the December following, had the effect of suspending the payments from that period. The amount of the exports, in the mean time, was too inconsiderable in the comparison to make any distinction as to time necessary: for, from whatever time it is agreed to date the commencement of the war retrospectively, for the purpose of forming this estimate, (and it has been seen why the period assumed has been preferred,) it must proceed upon the principle that the payments were stopped from that moment; and, if, after adopting the principle of calculating upon the exports of the first year of the war is brought forward, with reference to the time when they were only one-tenth of the usual amount, and these are to be considered in contrast with the imports of that year, which exceeded, by half a million, those of any former year, different premises, and a total different process of calculation, must be assumed, in order to make it appear that there was, in fact, any debt due from the Colonies at the commencement of the war. The conclusion, indeed, if any can be drawn from such a statement, might almost seem to warrant a belief that the claimants had mistaken their character, and, instead of being creditors, they were, in fact, bona fide debtors, to their old friends and customers.

But the general question of the American debt comes now to be considered (as proposed by Mr. King) upon new ground; and with reference to the general state of the trade, under the first impression, and during the immediate influence of the war, Mr. King thinks it may be safely concluded that the "payments (which he infers from the remittances in produce) of the year 1775, in which little or no new debt was contracted, not only exceeded those of any former year, but went far towards liquidating the debt due to British creditors." The excess of the imports of that year is demonstrated. But it does not, therefore, follow that these remittances in the staple produce of the Colonies were exclusively from American debtors to British creditors. Doubtless, a considerable proportion of the importations of that year went in payment of British debt. This is acknowledged. But remittances under the influence of the war may be otherwise accounted for, by analogy to the effect of the same causes, in other countries, and in all ages, operating upon the apprehensions, and the interests, and local condition of men in general, as well merchants as others, who, in the prospect of an impending storm, and under the terror of it, must ever be anxious to remit and realize their property. The non-importation laws and agreements were in full force, and rigidly exacted; similar restrictions, with respect to the export trade, were then expected throughout America; prohibitory bills, cutting off all commercial connexions with the Colonies threatened in Parliament; hostilities not only commenced, but advanced. From such a combination of causes, a serious and solid ground of belief may be reasonably entertained that the influence of the war must have swelled the list of imports of the year 1775 beyond all former example.

It must therefore, be allowed not to have been absolutely necessary that every American should have been a debtor, in order to have made it his interest to remit the staple produce of the country to Great Britain.

Without meaning to detract from the zeal and alacrity of creditors and their agents, who were busied in collecting their outstanding debts, numbers not concerned in the regular trade of the country were solicitous, in that early stage of the contest, to improve the opportunity of exporting the produce of their estates while it lasted. They shipped their cargoes, and drew bills on the credit of the invoices. Bills also to a greater amount, in the *first year* of the war, were honored and placed to the debit of the American traders in account current than in any former year. The hopes still entertained by the British merchants, that their petitions, then pending in Parliament, or in contemplation, would prove unsuccessful; their anxiety to retain and fix their customers by acts of courtesy and forbearance, and, by obliging them to encourage the continuance of their efforts, to make further remittances; all contributed to the same effect. The amount of bills thus honored and paid, during that year, is supposed to have exceeded five hundred thousand pounds. Mr. Anstey has authority to state that sum; and it is somewhat singular that it should equal the excess of the imports of that year.

Mr. King proposes another mode of estimating the debt, namely, by reference to the claims presented under the commission at Philadelphia in 1798, and a comparison between the exports and imports of the five Southern States during the first year of the American war, and the two years immediately preceding, upon the principle that the debt claimed under the commission, as due at this time, is confined to those States, with the exception only of the sum of two hundred and

eighteen thousand pounds due from the inhabitants of the *eight* States north of Maryland; the rest of the debt claimed from those States having been paid off since the conclusion of the American war; and that the document from the customs, with the application of the rule of measuring the true value (as proposed by Mr. King,) will demonstrate a balance in favor of the five Southern States, equal to two millions six hundred and forty-nine thousand and sixty pounds; from which fact Mr. King concludes, in substance, as follows:

First. "That the preferred claim of the British creditors is more likely to be a drossy mass of old and hopeless balances, swelled up by the addition of interest, than the sound aggregate of undisputed debts due from solvent debtors:" and,

Secondly. "That so far from the debt due at the breaking out of the war being equal to two years' exports, or upwards of six millions, a rational doubt may be entertained whether the value of a single year's exports did not exceed the amount of the debt at that period."

The first of these conclusions it is more the province of commissioners to determine, on the merits of the respective claims. The last merits a more particular examination.

It has been seen in what manner the extraordinary remittances in produce from the thirteen Provinces, during the first year of the war, may be accounted for, without the necessary conclusion that the whole went in payment of British debts; and it will follow, from the partial view of the subject, now confined to the consideration of the imports, from five only out of the thirteen Colonies, that nothing can be certainly or safely concluded with reference to the amount of the whole debt actually due at the present or any former period. For the influence of the war upon the trade was general, and the zeal and alacrity ascribed to British creditors and their agents in collecting their debts was not confined to the five Southern Colonies, but must have prevailed with equal success in the Colonies to the northward of Maryland; but it is conceived that, not only in the year 1775, but in the two preceding years, extraordinary remittances were made from other parts of the continent, through the channel of the Southern Colonies; and it must have been the practice at all times to have remitted more from those Colonies than was actually applied in payment of their own peculiar debt.

It is a fact, appearing on the face of the document from which Mr. King's statement is extracted, that at no time, for the period of ten years prior to the war, did the amount of exports from Great Britain equal the imports from those Provinces; on the contrary, it appears that the imports into Great Britain yielded a balance in favor of the five Southern Colonies, as follows: for the nine years prior to the first year of the war, the sum of one million eight hundred and sixty-five thousand four hundred and seventy-three pounds; and, including the first year of the war, was three millions four hundred and ninety-four thousand four hundred and fifty-seven. By what means, therefore, can it be accounted for, consistently with the object for which this partial view of the debt is compared with the amount of the claims at Philadelphia, that, instead of a debt appearing to be due to the extent of four millions, as claimed against the inhabitants of the five Southern States, a balance appears against the trade from the Southern Colonies, upon the face of this certificate, equal to three millions and a half—a balance against the creditors almost equal to their present demand against their debtors? Such is the fact: and it requires only to be stated, in order to render all observation and argument against such a partial view of the subject superfluous and unnecessary. From Mr. King's proposition, one or other of two conclusions is unavoidable; either that remittances were made through the five Southern Colonies, in satisfaction of British debts due from the other eight, or that such remittances at no time were specifically and exclusively appropriated in payment of their own debts contracted on the credit of the annual exports into those Colonies from Great Britain.

On whose account, or in what manner, these remittances were made, or how applied, is not material to the point for which these observations are submitted; it is sufficient that enough is here demonstrated to prove, beyond a doubt, that the *examen* proposed is imperfect, and affords no certain criterion to be relied on; and in fact, that from any partial consideration of the subject, no argument can be drawn as to the amount of the whole debt due from those Colonies before the war, or as to the claim of creditors under the commission at Philadelphia three and twenty years afterwards.

Mr. Anstey conceives that, if the imports are to be balanced with the exports, for any purpose of estimating the debt, it is a safer mode of proceeding and liable to much less risk of error and uncertainty, to calculate them independent of the circumstances of the war, from all the Colonies on the continent for nine or ten years successively, instead of confining the calculation to the five Southern Colonies on the continent for the first year of the war. The account will render, upon this equal mode of computation, a balance in favor of Great Britain, upon the credit given for the exports for nine years above, seven millions eight hundred and seventy-five thousand and four hundred and forty-one pounds; if for ten years, including the first year of the war, five millions six hundred and thirty-three thousand two hundred and eighty-nine pounds, upon the official value alone, which for this purpose is sufficient, as it will show the proportion, which is all that is necessary for the purpose of this illustration. But if taken at a medium of the excess between the convoy price and the official standard of 1697, as proposed by Mr. Anstey, or even at a third, as contended for by Mr. King, will swell the balance far beyond what is required to prove that the sum of four millions may still, for anything that appears to the contrary from Mr. King's statement, be fairly and substantially due from the inhabitants of the five Southern States.

To conclude.—Upon a review of the present state of the discussion, it will appear that the principle of calculating upon the exports only, as originally proposed by Mr. King, has been adopted by Mr. Anstey, and pursued.

The preference, as argued by Mr. Anstey, to be due to the criterion suggested by him, by which the amount of the debt was to be calculated upon that principle, has been conceded by Mr. King. An equal division of the excess, upon the balance between the convoy price of the exports and the official price, according to the custom-house standard of the year 1697, in preference to the proportion of a third only, has been proposed and supported upon fact, opposed to inference drawn from hypothesis and conjecture.

The amount of debt has been inferred, from the course of the trade, to have been equal to the amount of two year's exports at the breaking out of the war; and it has been so inferred from the facts relied on relative to the degree and extent of credit acquiesced in, and the uniform practice of balancing the annual debts and credits, and carrying on the balances to the next yearly account, with interest at six and seven, and, in some instances, at eight per cent.; which facts are understood not to be resisted by Mr. King, though the general conclusion is denied.

An augmentation to this estimate is shown to be due on the score of the loyalists who were not traders, which is conceded by Mr. King to a limited extent. A further augmentation, though at first denied to be due, is also conceded on the score of freight, insurance, and mercantile profit.

And against the general result of the argument, as concluded by Mr. Anstey, Mr. King has opposed a new and distinct mode of estimating the debt, by contrasting the exports and imports, with reference to the claims presented at Philadelphia, and a partial view of the balance of the trade from the Southern Colonies; a principle of computation which leads, as Mr. Anstey has shown, to a most extravagant conclusion, and serves only to prove that, as a criterion, it is altogether inadequate to the purpose for which it is relied on. And, lastly, it has been shown that, by applying the same principle of balancing the exports into the Colonies from Great Britain, against the imports from them, of the whole trade, instead of a part, the result will be a sum demonstrable on the face of the document from the customs in favor of the former, approaching nearly to the sum which the principle first chosen by Mr. King, of calculating upon the exports only, yields upon Mr. Anstey's process of calculation, proved, as he conceives it to be, (as fully as the nature of such estimate would admit of,) by the facts, arguments, and inferences above submitted.

It is upon these grounds that Mr. Anstey considers himself entitled to estimate the debt as it stood at the commencement of the war, as follows:

1st. A sum equal to two year's credit of exports, valued with respect to the Inspector General's certificate, and an equal division of the excess between the convoy price and the official standard of valuation of the year 1697, at - - -	£6,541,952
2d. A sum equal to one-third of the sum originally claimed on the score of debts by the loyalists who were not traders, but only taken, at -	500,000
3d. A sum chargeable on one-third of the trade carried on by factors, agents, and partnership houses, on the score of freight, shipping charges, insurance, and mercantile profit, at forty-five per cent.; but considering the nature of the retail trade in America, taken only at twenty-five per cent. - -	545,162
Making, upon the whole debt at the breaking out of the American war	£7,587,114

A sum nearly corresponding with the balance between the exports and imports to and from the Colonies for nine years prior to, and independent of, the influence of the war.

If the principle of deduction assumed by Mr. King, in his letter to Lord Grenville, of the 23d of November last, be allowed to operate on the above estimate, in the proportion therein supposed to be just and reasonable, the statement will be as follows:

Debt due at the commencement of the war, according to Mr. Anstey's estimate, as above - -	£7,587,114
Deduct amount of one-half of the above, (as proposed by Mr. King,) on the score of supposed insolvency during the war, the balance will be	3,793,557
Deduct (as supposed by Mr. King) amount of actual recovery since the peace, one-half of the above balance. - - - - -	1,896,778
Double the amount, as proposed or conceded by Mr. King, on the score of interest, the sum will be as before - - - - -	3,793,557

From the above sum, Mr. King proposes to deduct no less than two-thirds, on the score of probable and eventual recovery, for the reasons assigned in his paper last delivered, in addition to those in his first statement to Lord Grenville, in his letter of the 23d November last; which deduction leaves a balance of one million two hundred and sixty-four thousand five hundred and nineteen pounds, to be paid by the United States, as a commutation for the sixth article of the treaty.

But the principles of deduction assumed by Mr. King, though allowable to a certain extent, are by no means conceded by Mr. Anstey, in the proportion contended for.

It is not, however, proposed in this place to enter into a detail of all the objections which have occurred to him in consideration of these topics; inasmuch as the above sum of one million two hundred and sixty-four thousand five hundred and nineteen pounds, which, by his statement, appears to be due on the balance against Mr. King's deductions, already so far exceeds what Mr. King has authority to offer in commutation of the arti-

cle in question: he will, however, take the liberty of stating, generally, with respect to the first head of deduction, in the proportion of a moiety on the score of supposed insolvency during the war, that his objection rests chiefly on a fact which, in his judgment, has considerable weight against Mr. King's hypothesis, viz:

That, although the ruin and impoverishment of individuals in particular cases, during the first struggles and distractions of the country, consequent upon the Revolution, may be supposed to have been in a degree unavoidable, especially in those States which became the theatre of the war, it is well known that the inhabitants in general were enriched by the great influx of wealth brought from the West Indies, and particularly from the Havanna, towards the close of the war, and the quantity of specie which the French and British armies left behind them on the return of peace: witness the continual remittances from the United States to Great Britain by the packets of every month, during the years 1784, '5, '6 and '7, in satisfaction of new debts, contracted on the immense cargoes of British merchandise, exported upon speculation immediately subsequent to that period.

As to the deduction of a moiety of the balance, on the score of actual recovery since the peace, it is not material to contest it in an estimate of this nature, proceeding upon general principles; though, doubtless, the hypothesis would apply more closely to the fact, if the calculations were to be made with reference to the moiety in number of States which have discharged their debts, rather than with reference to the aggregate debt due at any one time from all the States, made without any distinction as to the quota of debt actually paid by each.

But the main objection, as it strikes Mr. Anstey, is to the deduction proposed in the proportion of two-thirds of the remainder, on the score of probable and eventual recovery.

But upon this topic also, at this time, Mr. Anstey will observe, generally, that it does not appear to him, upon inquiry, or upon the statements made by Mr. King, that any new facilities have been lately afforded to British creditors in the recovery of their debts, which have removed the grounds and causes of complaint alleged in the sixth article of the Treaty of Amity, &c., so as to justify a deduction in the proportion of two-thirds; a deduction of one-half of the remainder is surely, at all events, as much as, under all circumstances, can be allowed to have any foundation in the experience of facts: for the fact calculated upon by Mr. King, in order to found his second head of deduction, is, that one-half, and not two-thirds of the debt remaining due at the peace, has been since recovered; that is, recovered within the last seventeen years. If, therefore, only a moiety has been recovered during so long a period of years, where is the sanction for the recovery of a still greater proportion in a less time? If there be a material difference (which is highly probable) in the present circumstances of the debtors, compared with their former situation, it must indeed have the effect of shortening the period within which so much of the solvable debt may be recovered, as shall not be impeded by the causes of complaint assigned in the article; but if no new facilities, operating to the removal of those causes of complaint, have been afforded since the treaty, an amelioration of the debtor's circumstances will not, in Mr. Anstey's opinion, better the condition of the creditors in the proportion imagined by Mr. King.

The law and the constitution of the judiciary of the United States remaining the same, the ability of the debtor to pay cannot be supposed to influence the recovery of that part of the debt which, confessedly, at the time of framing the article, stood obstructed by the operation of lawful impediments since the peace.

RUFUS KING, Esq., &c.

No. 28.

GREAT CUMBERLAND PLACE,
March 20, 1801.

Mr. King has the honor to acknowledge the receipt of Mr. Anstey's note of the 18th instant together with his reply of the 14th ultimo to Mr. King's note of the 29th January.

To whatever remarks a considerable portion of this reply may be liable, it is not perceived that any advantage can be expected from the further discussion of the subordinate questions which have arisen in the course of this correspondence, while so material a difference of opinions shall continue in respect to the chief point to which they relate. The following facts have been repeatedly stated, and are believed to be incontestable:

1st. The credits given to American debtors in no instance exceed the term of twelve months.

2d. The course of payments, subject to casual and particular exceptions, was annual.

3d. During the last year of the mutual dealings of the parties, the new debt will not exceed a tenth part of its usual amount, while the payments were at least equal to those of any former year.

From these facts, Mr. King has inferred that the debt, when the war put an end to new credits on one side, and further payments on the other, did not exceed the average value of the goods exported in a single year from Great Britain to the Colonies forming the United States. From the same facts, Mr. Anstey continues to estimate the debt at double that sum. This essential difference of opinions, derived from facts which have been fully explained and understood, naturally brings the negotiation to a point; and as the adjustment of other concerns of equal importance, and the delay which is attended with great disadvantage to the United States, is connected with, and may be affected by the conclusion of this discussion, Mr. King is unwilling, by any further observations on his part, to protract a negotiation which, from various causes, has already attained an unexpected and inconvenient duration.

Extract of a letter from Mr. King to the Secretary of State, dated

"LONDON, *April* 21, 1801.

"SIR: Although the negotiation respecting the debt is not yet concluded, I am unable to give you any positive assurance how, or even when, it will be, I have thought it proper that I should avail of the opportunity of Mr. Sitgreaves's return, to send you a copy of my correspondence upon this subject."

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE, *Mar.* 10, 1801.

MY LORD: I have thought it would be saving your Lordship both time and trouble, in respect to the several points which have been for some time in discussion with your predecessor, if they were presented in a connected form, and accompanied by such references and observations as should, in a concise manner, expose the motives in favor of their adoption.

The enclosed paper, marked A, contains these points, in the shape of distinct propositions, to which the requisite form may be given, should they be adopted as additional articles to our Treaty of Amity and Commerce.

My correspondence with Lord Grenville and Mr. Anstey, relative to the first proposition, has been so full, that it does not seem necessary to add anything further upon that head.

The second proposition was fully examined and settled in the Summer of 1799, and its formal adoption was deferred until an agreement could be made respecting the subject of the first. My correspondence with Lord Grenville, and between his Lordship and the Lords Commissioners of the Admiralty, contain what passed on that occasion.

In the enclosed papers, marked B, C, and D, I have suggested the considerations which we have to offer in favor of the third, fourth, and fifth articles.

I am aware that other questions of importance continue to engage the attention of His Majesty's Ministers; but our affairs having so long and almost habitually given way to others which have been thought more urgent, I cannot refrain from observing, what indeed the tenor of my instructions, as well as my observation of the irritation and difficulty proceeding from their unsettled state, requires me to do, that a further delay in bringing them to a decision, from whatever cause it may arise, and in spite of any representation which I could make, will unavoidably tend to impair that mutual good will and confidence, which is the best security against any measure that in its operation might weaken the harmony and good understanding between our respective countries. With the highest consideration and respect, &c., RUFUS KING.

[ENCLOSURE.]—A.

Articles to be added to the Treaty of Amity and Commerce.

ART. 1. The sixth article of the Treaty of Amity and commerce to be suppressed, and the United States to engage to pay a sum of money in lieu of what may be awarded under it.

ART. 2. Nails, iron in bars, osnaburgs, ticklenburgs, Russia sheeting, and other cloths made of hemp or flax, and not chiefly and generally used for the sails of ships, to be deemed innocent merchandise, and not included within the provisions of the eighteenth article of the Treaty of Amity and Commerce.

ART. 3. No American vessel bound to New Orleans, or returning from thence to any port of the United States, to be stopped or detained under pretence that any part of the cargo is contraband of war.

ART. 4. Neither party to impress upon the high seas seamen out of the vessels of the other.

ART. 5. His Britannic Majesty to relinquish all claim to the Maryland bank stock, and immediate measures to be taken to transfer the same to the American Minister, for the use of that State.

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE,
April 1, 1801.

MY LORD: I take the liberty to recall to your Lordship's recollection the letter which I had the honor to write to you on the 10th ultimo.

The unsettled situation of the business to which that letter relates is productive of great and increasing disadvantage to the United States; and, although its adjustment may be matter of secondary consideration, and for this reason may continue to be postponed to other and more pressing concerns on the part of His Majesty's Government, it is nevertheless a subject, not only of great importance, but of the most urgent nature on the part of the United States. Having had reason to expect that a final adjustment of the mutual claims of the two countries would have been effected before the close of the last year, I sent to my Government information to this effect, and, from time to time, have likewise explained what I have conceived to be the causes of the delays which have since arisen. The negotiation having been reduced to precise points, which have been fully discussed, it has become my duty to transmit to my Government more authentic information respecting the delay which still prevents its conclusion; and, to enable me to do so, I take the liberty to request your Lordship to inform me whether His Majesty's Government has, or is likely soon to come to any decision respecting the several propositions referred to in my letter to your Lordship of the 10th ultimo. With high consideration and respect, I have the honor to be, &c. RUFUS KING.

Mr. King to Lord Hawkesbury, dated

GREAT CUMBERLAND PLACE,
April 15, 1801.

MY LORD: Mr. Sitgreaves, one of the Commissioners under the sixth article of the Treaty of Amity, Commerce, and Navigation, between the

United States, and Great Britain, and who came to this country for the sole purpose of assisting me in a negotiation for the adjustment of the disagreement which had arisen in the execution of that article, after having remained here for more than a year, has lately received the President's permission to return home; and it being my intention to transmit by him, for the President's information, copies of the correspondence upon this subject, which I have had with His Majesty's Government, I am solicitous to accompany the same with the most authentic information in my power to obtain, in respect to the probable issue of the negotiation. Mr. Sitgreaves will leave London on the 21st instant, and I take the liberty to renew the inquiry, whether His Majesty's Government has yet so far considered the subject of the letters which I have had the honor to address to your Lordship, that it will be in your Lordship's power, before Mr. Sitgreaves's departure, to give me any answer to the same?

With perfect consideration and respect, I have the honor to be, &c.

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *May* 1, 1801.

From Lord St. Vincent's I went to Lord Hawkesbury, agreeably to his appointment; and upon the subject which, notwithstanding my unremitted attention, bestowed in every quarter likely to promote its progress, has been so long delayed his Lordship, after expressing his regret that the business had not been settled before Lord Grenville went out of the office, and excusing the delay which on several accounts, had since taken place, told me, that so far as regarded himself, he had, in respect to the settlement of the affair of the debts, come to a decision; that he must, however, confer with his colleagues, and particularly with the Lord Chancellor Eldon; but that he was himself disposed to close with the offer which I had made, and which is mentioned in more than one of my letters. On my suggesting the great disadvantage of further delay, arising from a minute examination of the subject by the Chancellor, he replied that he would have a conversation with him, and that he presumed that his opinion might be formed from a general view of the question; and, therefore, that no considerable delay would be likely to happen.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *May* 30, 1801.

DEAR SIR: Since the date of my letter communicating Lord Hawkesbury's sentiments respecting the debts, I have seen and conversed with Mr. Addington, who told me that he had called up the subject in the Cabinet, as he had before assured me he would do, and that he had expressed his solicitude that it should be brought to a decision; adding that, as the question, from its nature and circumstances, was not susceptible of exact proof, it was not extraordinary that it should appear in various lights to different persons; but, as the mutual harmony of the two countries, in a certain degree, depended upon its being settled, it was, in his opinion, desirable that a measure in its consequences of so much importance should be no longer deferred. Our conversation extended itself to other subjects, affecting the intercourse and friendship between the two nations; upon all of which he expressed himself with liberality: concerning the depredations upon our trade, committed by their cruising ships, he said that orders had been despatched immediately after he came into office to their naval commanders, in every quarter of the world, requiring them to respect the rights of neutrals, and to exercise those of belligerents with the greatest moderation; and, as measures were in train to reform the Vice Admiralty courts, he was determined, likewise, to adopt such means as should prevent the delay heretofore complained of in the proceedings of the Court of Appeals.

Yesterday I met, by appointment, the Lord Chancellor, who informed me that he had fully examined, and made up his opinion concerning the subject of the debts, but that it was proper, before he mentioned it to me, that he should communicate it to his colleagues, which he engaged to do without delay. I asked him if he had looked into the papers respecting the Maryland bank stock? He replied, that he had sent to his predecessor for them, and as they had already been before him, the looking of them over again would require but little time and attention.

From these communications, joined to what Lord Hawkesbury had before said to me, we may, I think, infer that the business will now be decided in a short time; whether the decision will close the negotiation upon the terms I have proposed is more than I know, though I am inclined to hope that this will be the case.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *July* 10, 1801.

I complained in strong terms of the delay which still continues in concluding our discussions respecting the sixth article, and was explicitly assured that the Cabinet would come to a decision upon that subject in the course of a fortnight.

Mr. King to the Secretary of State, dated

LONDON, *August* 24, 1801.

DEAR SIR: Although I considered myself authorized, by Mr. Lincoln's letter of the 25th of April, to press the negotiation respecting the sixth article of the Treaty of 1794 to a conclusion, upon the terms mentioned in my No. 6, it has nevertheless been no small satisfaction to me to receive your letter of the 15th of June, containing the President's explicit sanction of my intentions upon this subject.

The day after receiving it, Lord Hawkesbury having previously requested me to meet him in Downing street, informed me that the Cabinet, after maturely considering the subject, was unanimously of the opinion that not less than a million and a half sterling could be deemed a full equivalent for the abolition of the sixth article; but that, from a strong and sincere desire to attain an amicable and final settlement of the business, it had consented to accept the sum we had offered, if the terms of payment could be satisfactorily adjusted, and provision made that the American courts should be open in future.

A conversation of some length and difficulty ensued upon these two points. Among other plans, that of applying the money in payment of the awards which should be made in favor of our citizens under the seventh article, was suggested by me, and decidedly objected to by Lord Hawkesbury, on the ground that it would produce confusion, and was moreover an unnecessary departure from the first agreement. His Lordship proposed that we should engage to enact a law providing that our courts should in future be open to the British creditors, and that the federal courts should have original jurisdiction in cases under ten pounds sterling. To this proposition, after explaining what I conceived to be the present satisfactory footing of our courts, I explicitly answered, that, having experienced so much difficulty from the stipulations heretofore made concerning the old debts, we could not consent to enter into any new ones respecting them; that the Treaty of Peace was still in force, and that its provisions were well understood, and sufficient to protect the rights of the creditors on both sides; that the sum to be paid, in lieu of the sixth article of the Treaty of 1794, must be understood to be in full satisfaction of all claims recoverable at the close of the war, but which cannot now be recovered in the ordinary course of judicial proceedings; and in respect to such claims as can now be so recovered, nothing more can fairly be required of us than to recognise the future operation of the fourth article of the Treaty of Peace, which we were willing to do. The conference, so far as respects these points, was here closed by Lord Hawkesbury requesting me to draw up and send him the project of a convention conformable to the tenor of this conversation. This I lost no time in doing.

The project, which has been several days in his Lordship's hands, provides that the sixth article of the Treaty of 1794 shall be cancelled and annulled, and, in lieu thereof, that the United States will pay at the city of Washington, to such person as shall be authorized on the part of His Britannic Majesty to receive the same, the sum of six hundred thousand pounds sterling, in three equal annual instalments, without interest; the first instalment to be paid in one year after the exchange of the ratifications of the convention, and four dollars and forty-four cents to be reckoned equal to a pound sterling. The project likewise declares that nothing in the convention shall be construed to abolish or suspend the future operation of the fourth article of the Treaty of Peace, which, so far as regards such future operation, is recognised and confirmed.

It was Lord Hawkesbury's choice to give to this settlement the form of a separate convention rather than of additional articles relative to contraband, the Maryland bank stock, the impressment of seamen, and the port of New Orleans. Lord Hawkesbury told me that he foresaw no material objection to any of them, except that which regards New Orleans: that they were truly desirous to avoid the interruption of the trade of our people though the Mississippi; but that, having reason to be satisfied that Spain has ceded the Floridas, including New Orleans, to France, they could not, without disregarding their own security, consent to the proposed article concerning our trade to that island.

I expressed my hope and expectation that there would be no further delay in the conclusion of the other additional articles: he replied that he must take the final decision of his colleagues, especially of Lord St. Vincent, concerning them, as well as upon the project of the convention: that this however, would require but a few days.

I then observed that the settlement concerning the sixth article would remove the suspension of the commission under the seventh; and as the commissioners under this article were dispersed, it would be proper to take immediate measures to reassemble them. Lord Hawkesbury assented; and I charged myself with this service. I thought it prudent to avoid the appearance of solicitude upon this head, as the commutation of the sixth article, with an understanding that the seventh is to be executed according to its provision, instead of being likewise commuted, which has been again and again urged, has been one of the most delicate parts of the negotiation. I have prepared and sent to Lord Hawkesbury a draught of the additional articles, and Lord St. Vincent has since informed me that they shall receive his approbation.

With perfect respect, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to the Secretary of State, dated

LONDON, *October*, 4, 1801.

SIR: I have expected, during the last fortnight, that I should be able to close the negotiation respecting the sixth article of the Treaty of 1794, in season to send the result by Mr. Dawson; but as he is on the point of embarking, and the business still remains open, I can only transmit the annexed report of what has passed since the date of my No. 32. Be the consequence what it may, I shall decline entering into any new engagement, which may vary from or enlarge the stipulations of the Treaty of Peace, being fully satisfied that a departure from this decision would lay the foundation of a future controversy. After waiting a reasonable time, I propose, in case I do not hear further from Lord Hawkesbury, to send him a note demanding a decisive answer.

With perfect respect and esteem, I have the honor to be, sir, your obedient servant.

RUFUS KING.

Note of conferences, &c., with Lord Hawkesbury and others, concerning the convention relative to the sixth article of the Treaty of 1794.

AUGUST 19, 1801.

Lord Hawkesbury communicated to me the Cabinet's decision to accept the sum of six hundred thousand pounds, if the payment could be satisfactorily arranged, and provision made that our courts should be open in future. Upon these points, a free conversation ensued: the first of them was soon settled; the other proved more difficult. On one side, new stipulations were required in favor of the creditors; on the other, it was contended that nothing more could be asked or granted, than a recognition of the future operation of the fourth article of the Treaty of Peace. The observations, in support of this opinion, so far prevailed, that, at the close of the conference, Lord Hawkesbury requested me to prepare and send him a draught of a convention conformable to the tenor of our conference, in order that he might submit it to the consideration of his colleagues.

AUGUST 20.

Sent the following letter to Lord Hawkesbury:

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE, *Aug.* 20, 1801.

MY LORD: I have the honor to send your Lordship herewith the project of a convention concerning the sixth article of the Treaty of 1794, drawn up according to the tenor of our conference of yesterday. I am not aware that any part of it requires explanation, except the clause in the first article declarative of the relative value of the money of the United States and that of Great Britain: from the fluctuation of the exchange between America and England, bills at one time commanding a premium of five or seven per cent., and at another time being at a discount of eight, and even ten per cent., I have thought it would be advisable to provide that the instalments should be paid at par, having regard to the relative value of the pure and standard silver contained in our respective coins. Four dollars and forty-four cents, or hundredths, for one pound sterling is that par.

I take the liberty of suggesting the expediency of our executing three originals, to guard against the accidents which might attend the transmission of a single copy to America.

As the claim of the State of Maryland is so analogous to the claims provided for by this convention, I rely upon it that no further delay or difficulty will attend the completion of the proposed articles upon that and the other subjects, concerning which no difference of opinion appeared in our last conference.

With perfect consideration and respect, I have the honor to be your Lordship's obedient and most humble servant. RUFUS KING.

PROJECT.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London on the 4th day of November, 1794, between his Britannic Majesty and the United States of America: and the parties to the said treaties being equally desirous, by friendly explanations, to secure the object of the said article in a manner which may prove mutually satisfactory, have respectively named Plenipotentiaries for this purpose; that is to say, his Britannic Majesty has named for his Plenipotentiary the right hon. —— ——, one of his Majesty's Privy Council, and His Majesty's Principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the advice and consent of their Senate, has named Rufus King, Esq., Minister Plenipotentiary of the said United States to his said Majesty, who have agreed to and concluded the following articles:

ARTICLE 1st. The aforesaid sixth article of the Treaty of Amity, Commerce, and Navigation, shall, and hereby is, declared to be cancelled and annulled, except so far as the same may relate to the execution of the seventh article of the same treaty; and in lieu and satisfaction of the money which the United States might have been liable to pay in pursuance of the provisions of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of —— sterling, payable at the times, and place, and in the manner following, that is to say: the said sum of —— sterling shall be paid at the city of Washington, within the said United States, in three annual instalments of —— each, and to such person or persons as shall be authorized on the part of His Britannic Majesty to receive the same. The first of the said instalments shall be paid at the expiration of one year; the second instalment at the expiration of two years; and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention. And to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

ART. 2d. Nothing contained in this convention shall be construed or taken to abolish or suspend the future operation of the fourth article of the definitive Treaty of Peace, concluded at Paris on the 3d day of September, in the year 1783, between His Britannic Majesty and the said United States; but the same, so far as respects its future operation, is hereby recognised and confirmed.

ART. 3d. This convention, when the same shall have been ratified by His Majesty, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged shall be binding and obligatory upon His Majesty and the said United States. In faith whereof, we the said Plenipotentiaries of His Britannic Majesty, and of the United States of America, have signed this convention, and caused to be affixed thereto our respective seals.

Done at London this —— day of ——, one thousand eight hundred and one.

LONDON, *August* 20, 1801.

AUGUST 22.

Mr. Hammond, the Under Secretary, having suggested some objections which had been made to the draught of the convention, I consented to new-model the second article, for the purpose of reciting in it the fourth article of the Treaty of Peace.

SEPTEMBER 10.

Wrote the following letter to Lord Hawkesbury.

Mr. King to Lord Hawkesbury.—(Private.)

MILL HILL, MIDDLESEX,
September 10, 1801.

MY LORD: Unless our business be expeditiously finished, another year will elapse before it can be finally closed. Congress alone can make provision for the stipulated payments: this body meets but once a year, and will soon assemble, and the season is at hand when passages to America are rare, long, and precarious. I, therefore, take the liberty of pressing upon your Lordship the necessity of this business being completed without further delay, in order that I may be enabled to forward it to America in time to be ratified during the approaching session of Congress. I will do myself the honor to wait upon your Lordship on Saturday, or any other day which may be convenient to you, for the purpose of explaining to you the very peculiar and disagreeable condition of our ships which have been detained in their voyages to Havre de Grace, for which port I have reason to believe that several other vessels are now on their passages from America. I flatter myself that, being fully understood, our difficulties on this head will immediately cease. With perfect respect and consideration, I have the honor to be your Lordship's obedient and most humble servant.

RUFUS KING.

In a conference with Lord Hawkesbury, he informed me that the project of a convention was in the hands of the Lord Chancellor, who wished to see me for the purpose of settling the words to be made use of in respect to the future operation of the Treaty of Peace; that the sum and instalments being agreed upon, as soon as the Chancellor and I could settle the article respecting future impediments, he would conclude the convention with me. On my return home, sent a note to the Chancellor, stating that Lord Hawkesbury had communicated to me, and desiring to meet him, in order that the article in question might be agreed upon.

SEPTEMBER 23.

The Lord Chancellor called upon me, and, after alluding to the complaints to which, he said, they should be exposed, on account of the six hundred thousand pounds being less than the creditors expected, resumed (what I thought had been settled with Mr. Hammond) the discussion of the second article of the project, in which he proposed several alterations, and delivered to me the following draught containing them, together with a new article relative to the right of creditors.

Draught of the Chancellor.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London, on the 4th day of November, 1794, between His Britannic Majesty and the United States of America; and the parties to the said treaty being equally desirous to promote mutual friendship, and, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same; that is to say, His Britannic Majesty has named for his Plenipotentiary —— ——, and the President of the United States, by and with the advice and consent of their Senate, has named—— ——, who have agreed to and concluded the following articles:

1. In satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the said sixth article, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the times and place and in the manner following, that is to say: the said sum of six hundred thousand pounds sterling shall be paid at the City of Washington, within the said United States, in three annual instalments of two hundred thousand pounds each, and to such person or persons as shall be authorized, on the part of His Britannic Majesty, to receive the same; the first of the said instalments to be paid at the end of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years, next following the exchange of the ratifications of this convention. And, to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

2. Whereas, it is agreed by the fourth article of the definitive Treaty of Peace concluded at Paris, on the third day of September in the year 1783, between His Britannic Majesty and the United States, that the creditors on either side should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts therefore contracted, it is hereby understood and declared that nothing contained in this convention shall be construed or taken to abolish, suspend, or in any manner affect, the operation in future of the said fourth article of the definitive treaty; but that the same, so far as respects its operation in future, is hereby recognised and confirmed, and declared to be binding and obligatory upon His Britannic Majesty and the said United States; and the same shall be observed with punctuality and the most sincere regard to good faith.

3. (new article.) It is hereby further agreed that neither the payment of the aforesaid sum of six hundred thousand pounds, nor anything contained in this convention, shall be deemed or taken in any manner to abolish, suspend, or affect the right of any creditor to recover against his

debtor, according to the course of judicial proceedings in the courts of the respective countries, the full payment and satisfaction of what is or may be due to him.

4. This convention, when the same shall have been ratified by His Majesty and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications duly exchanged, shall be binding and obligatory upon His Majesty and the said United States. In faith, &c.

I pointed out one or two amendments in the second article of his draught, and, in particular, the insertion of a clause abolishing the sixth article of the Treaty of 1794, and the restoration of the expression "future operation," instead of "operation in future," which might be construed to relate to the claims of the creditors, as they existed at the date of the Treaty of Peace; the six hundred thousand pounds will satisfy all losses up to this time, from whatever cause they may have arisen; and these losses, as well as the payments which have been received, must have diminished the claims. The Chancellor assented; adding, that he considered the convention to be a final settlement between the two Governments. In respect to the new article, I desired a little time to consider it, observing, however, that I wanted none to state that I could enter into no stipulation defining the rights of the creditors, or engaging in their favor anything more than had been promised in the Treaty of Peace.

SEPTEMBER 24.

The Chancellor called upon me again, and began by saying he felt the force of my objection to any definition of the rights of the creditors, and had, therefore, recast the article so as to avoid it. The new draught, which he left for my consideration, is in the following words:

[Clause to be substituted in lieu of the third article.]

"It is further declared and agreed, that neither the payment of the said sum of six hundred thousand pounds, nor anything herein contained, shall be deemed or taken to prevent any creditor from proceeding, for the recovery and satisfaction of what is or may be due to him, in the courts of the respective countries, according to the course of judicial proceedings therein, and according to the true intent and meaning of the second article herein contained."

In the evening I sent the Lord Chancellor the following letter:

Mr. King to Lord Eldon.—(Private.)

GREAT CUMBERLAND PLACE.
September 24, 1801.

MY LORD: I return enclosed to your Lordship the project which we have been discussing, and consent to the substitute for the third article which you have delivered to me this morning.

The addition of the clause abolishing the sixth article of the Treaty of 1794, and which may be introduced at the top of the second page, with the transposition of a word or two in the second article, which I have made, are the only alterations desired.

I pray your Lordship to send the project, as now settled, to Lord Hawkesbury, in order that it may be engrossed, so as to be executed immediately. As I have, in relation to this business, manifested a disposition to fall in with what has been deemed requisite to meet complaints which may arise on one side, I must beg of your Lordship, in return, to enable me, by an arrangement respecting the Maryland bank stock, to bear up against the dissatisfaction which may occur on the other.

With perfect respect, I have the honor to be your Lordship's most obedient and humble servant,

RUFUS KING.

SEPTEMBER 26.

Received the following letter from the Chancellor:

Lord Eldon to Mr. King.

DOWNING STREET.
Saturday, September 26, 1801.

DEAR SIR: I have taken all the means in my power to avoid postponing the visit I promised you from this day till Monday, but I find myself obliged so to do, and shall call upon you on Monday about one o'clock.

I am, dear sir, very faithfully, and with much respect, your obedient servant.

ELDON.

SEPTEMBER 28.

Received the following note, with its enclosure, from Lord Hawkesbury:

Lord Hawkesbury to Mr. King.

DOWNING STREET,
Monday, September 28, 1801.

Lord Hawkesbury presents his compliments to Mr. King, and encloses him a copy of the American Treaty, as it has been altered. Lord Hawkesbury will thank Mr. King to meet the Lord Chancellor in Downing-street, on Wednesday, at half past twelve o'clock.

NEW PROJECT.

Difficulties having arisen in the execution of the sixth article of the Treaty of Amity, Commerce, and Navigation, concluded at London on the 4th day of November, one thousand seven hundred and ninety-four, between His Britannic Majesty and the United States of America; and the parties to the said treaty being equally desirous to promote mutual friendship, and, as far as may be, to obviate such difficulties, have respectively named Plenipotentiaries to treat and agree respecting the same: that is to say, His Britannic Majesty has named for his Plenipotentiary, ——, and the President of the United States, by and with the advice of the Senate, has named —— ——, who have agreed to and concluded the following articles:

I. In satisfaction and discharge of the money which the United States might have been liable

to pay, in pursuance of the provisions of the said sixth article, which is hereby declared to be cancelled and annulled, except so far as the same may relate to the execution of the seventh article of the same treaty, the United States of America hereby engage to pay, and His Britannic Majesty consents to accept, for the use of the persons described in the said sixth article, the sum of six hundred thousand pounds sterling, payable at the times and place, and in the manner following: that is to say, the said sum of six hundred thousand pounds sterling, shall be paid at the city of Washington, within the said United States, in three annual instalments of two hundred thousand pounds sterling each, and to such person or persons as shall be authorized by His Britannic Majesty to receive the same; the first of the said instalments to be paid at the end of one year, the second instalment at the expiration of two years, and the third and last instalment at the expiration of three years next following the exchange of the ratifications of this convention; and to prevent any disagreement concerning the rate of exchanges, the said payments shall be made in the money of the said United States, reckoning four dollars and forty-four cents to be equal to one pound sterling.

II. Whereas, it is agreed by the fourth article of the definitive Treaty of Peace, concluded at Paris on the third day of September, 1783, between His Britannic Majesty and the United States, that creditors, on either side, should meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts, theretofore contracted, it is hereby declared, that the said fourth article, so far as respects its future operation, is hereby recognised and confirmed, and the same is hereby declared to be binding and obligatory upon His Britannic Majesty and the said United States, and the same shall be accordingly observed with punctuality and good faith, and so as that no creditor, on either side, shall hereafter meet with any lawful impediment to such recovery as aforesaid.

III. It is further declared and agreed, that neither the payment of the said sum of six hundred thousand pounds, nor anything herein contained, shall be deemed or taken to prevent any creditor from proceeding for the recovery and satisfaction of what is or may be due to him, in the courts of the respective countries, according to the course of judicial proceedings therein, and according to the true intent and meaning of the second article herein contained.

IV. This convention, when the same shall have been ratified by His Majesty, and by the President of the United States, by and with the advice and consent of the Senate thereof, and the respective ratifications, duly exchanged, shall be binding and obligatory upon His Majesty and the said United States. For faith, &c.

SEPTEMBER 30.

On going to Downing street, Mr. Hammond informed me, that, owing to unexpected and pressing business, Lord Hawkesbury would not be able to meet the Chancellor and me till Friday, October 2d. The Chancellor arriving just as I was leaving Lord Hawkesbury's office, we entered into a short conversation respecting the two following papers, which I delivered to him, and which he promised to examine before our meeting on Friday.

Observations upon the following clause, proposed to be added to the second article of the convention, viz:

"And so as that no creditor, on either side, shall hereafter meet with any lawful impediment to such recovery as aforesaid."

Had the sixth article of the Treaty of 1794 been duly executed, no new or further provision would have been proposed, or necessary, to secure the rights of the creditors on the side of Great Britain. If the claims under that article be converted into a definite sum by a convention for this purpose, the legal effect must, in every respect, be the same as though the article had been duly executed; and hence it could not have been foreseen or expected that any stipulations concerning the rights of the creditors would be proposed to be added to such convention.

With a view to popular misconceptions, rather than from any doubt respecting the legal effect upon the rights of creditors, of the commutation of the claims under the sixth article of the Treaty of 1794, it has been agreed to insert an article confirmatory of the future operations of the fourth article of the Treaty of Peace; and from the same motive, another article has been proposed and added, by which it is declared, that neither the payment of the six hundred thousand pounds, nor anything contained in the convention, shall operate to prevent the said creditors from recovering any debts which may be due to them in the ordinary course of judicial proceedings, and according to the true intent and meaning of the fourth article of the definitive Treaty of Peace.

These articles, as it is conceived, leave the creditors to the merit of their respective claims, the recovery whereof is protected by the fourth article of the Treaty of Peace. What are the losses which have arisen from legal impediments, and which are to be compensated by the six hundred thousand pounds, and which are the debts that may be still recovered in the ordinary course of judicial proceedings, are questions left to be decided upon the particular circumstances belonging to the several cases.

The clause proposed to be added to the second article will materially affect this just and necessary mode of proceeding, inasmuch as creditors are thereby to recover, not according to their rights at this time, but according to their rights at the conclusion of the Treaty of Peace. A stipulation of this extent cannot be admitted, because losses have been sustained for which compensation to a great amount is about to be made: this will affect the rights of creditors; and a stipulation applicable to them, in their primitive state, will be inapplicable to their present circumstances.

To avoid misconstructions, arising from the cumulative stipulations of the second and third articles, it is proper to add the following article

declaratory of the true effect of the six hundred thousand pounds, engaged by the proposed convention, viz:

ART. 4. "It is further declared and agreed that the payment of the said six hundred thousand pounds shall operate and be received in full satisfaction and discharge of all such *bona fide* debts due to, and recoverable by, creditors on the side of His Britannic Majesty, at the date of the said definitive Treaty of Peace, and according to the provisions thereof, as cannot now be had and received according to the true intent and meaning of the fourth article of the said definitive Treaty of Peace, and in the ordinary course of judicial proceedings."

OCTOBER 2.

Went to Downing street, agreeably to Lord Hawkesbury's appointment. His Lordship was prepared to receive my compliments upon the preliminaries of peace with France, which were signed last night, but wholly unprepared to say anything more respecting my business than that he had seen the Chancellor, and that it would be requisite for him to bring the subject again before the Cabinet. I asked when this would be done, and expressed pretty strongly my impatience at the delays which had taken place. He replied that he could not name a day, but that it should be soon.

It is now evident that little attention has been bestowed upon our affairs; the negotiation with France having excluded the consideration of all other subjects.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *November* 30, 1801.

"Nothing decisive has yet taken place respecting the sixth and seventh articles of our treaty with this country. I shall, however, be able to send you more explicit, and, I am willing to hope, more satisfactory information upon this subject, in the course of the next month."

Mr. King to the Secretary of State.

LONDON, *January* 9, 1802.

SIR: At length I am enabled to send you a convention, which I yesterday signed with Lord Hawkesbury, respecting the sixth and seventh articles of our Treaty of 1794. The commutation of the sixth article of the Treaty of 1794, and the confirmation, so far as respects its future operation, of the fourth article of the Treaty of Peace, remain as they were settled in October last; and I have nothing to add to my former reports upon these points. The claim upon us, to consent to a commutation of the seventh article, has been given up; and it is agreed that the Commissioners shall immediately re-assemble, and proceed in the execution of their duties, according to the provisions of the article; except only that, instead of their awards being made payable at such times as they should appoint, the same shall be payable in three equal instalments, corresponding with those to be paid in America.

As our claims are to be ascertained by the Board of Commissioners, which has heretofore added interest up to the day on which its awards were made payable, and which is at liberty to do so, in respect to their future awards, the payment by instalments may not be thought a material disadvantage: the main point, that of ascertaining the amount of our claims, being satisfactorily secured. Having already burdened my correspondence with pieces and reports upon these subjects, which, I fear, have been thought both tedious and uninteresting, I do not add, by way of supplement, a particular account of what has passed since the date of my No. 40, especially as the discussion has related solely to the commission in London; the agreement respecting which is too explicit to stand in need of explanations.

Two copies of the convention have been executed; one of which will be enclosed with the original of this letter; two more copies are preparing, and will, in like manner, be executed as originals, and enclosed with the duplicate and triplicate hereof. I shall likewise send you copies of Lord Hawkesbury's full powers, as soon as they can be prepared; those which I made use of are dated June 10, 1796. Lord Hawkesbury has agreed to send a copy of the third article of the convention to the British Commissioners; in like manner, I shall send a copy of it to the American Commissioners; and, as they are all upon the spot, they will be at liberty to resume their business without further delay. It will, perhaps, be thought most convenient that the ratifications should be exchanged here.

The Lord Chancellor has assured me that the Maryland claim shall speedily be decided in his court: a measure, it seems, deemed necessary to enable the Crown to signify its pleasure respecting the bank stock. Although the disappointments we have met with, upon this subject, must weaken our confidence in the course we have been pursuing, I think it would be impolitic, at present, to change it: the claim, which, in my conviction, is most just, shall continue to receive my unremitted attention.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *January* 11, 1802.

SIR: Although, for the reason suggested, I have omitted to send you an account of what passed respecting the sixth and seventh articles of the Treaty of 1794, subsequent to Mr. Dawson's departure, I have, on reflection, thought it might be satisfactory, and perhaps useful, that I should, in this way, supply the omission.

Lord Grenville, on being consulted by Lord Hawkesbury, having given an explicit opinion that he had, in no respect, pledged the Government concerning the settlement of the sixth and seventh articles of the Treaty of 1794; and that

the execution of the latter article, according to its provisions, would be a measure which ought to have a material influence in the ascertainment of the sum to be accepted for the abolition of the former, I prepared, and sent to Mr. Addington, a concise view of the origin, progress, and present situation of the negotiation, corresponding with a more detailed statement, which I likewise sent to the Lord Chancellor, and a copy of which is annexed. Special considerations induced me to prefer this manner of making the representation to one that would have been more regular, and which I remained at liberty to make, should circumstances require it. In subsequent conversations with Mr. Addington, I had reason to be satisfied with the steps I had taken: for he told me that he saw the subject in its true light, and was ready to admit that, to those who were ignorant of personal characters, the objection, if persisted in, would unavoidably have the appearance of a mere expedient. To him, as well as Lord Hawkesbury, I took pains to explain the mutual advantages of a friendly settlement, and the impossibility that I could consent to change the footing upon which the question was now placed.

The business remained in this situation until the middle of December, when Lord Hawkesbury informed me that, having again been considered by the Cabinet, it had been decided to close the affair of the sixth article upon the terms which had already been settled; and to agree that the Commissioners under the seventh article should proceed, provided their awards, instead of being payable as they should appoint, should be payable by instalments, corresponding with those to be paid in America; and the money deposited in the Bank of England, to be applied on account of the American instalments; which, to an equal amount, should be converted into a fund to satisfy the awards in favor of American claimants. After taking time to consider this communication, it appeared to me to offer the means of bringing the business to a conclusion. Taken together, it amounted to this proposition: that they would accept six thousand pounds, payable by instalments, in lieu of the sixth article, in the execution of which they had a majority of voices, and consent to the execution of the seventh article, according to its provisions, in which we have a majority of voices; provided, the payments to be made by them should be at the same times as those to be made by us. The two commissions having been considered as reciprocal checks upon each other, in the hands of the respective Governments, the converse of this arrangement will test its merits, and determine whether we ought to have rejected it. I thought not: but I disliked the mode in which the end aimed at was to be attained; and, therefore, prepared an article which, by making the awards payable by instalments to the claimants, should attain the same end in a more convenient manner. The sum of the awards would be greater or less than six hundred thousand pounds, for it was not likely to be precisely that sum; if less, a balance must still be remitted from America; if more, in every instalment of every award, the American claimant would have to receive part of his instalment in America, and the balance in England. Besides the trouble of the accounts which must be kept upon this plan, it would create considerable inconvenience, and perhaps injustice; for all the American claimants had been called upon to execute powers of attorney, and appoint agents to conduct their claims in England; and with much trouble, and some expense, had complied with this demand. These claimants, in some cases had deceased: in others, become insolvent; and, in not a few instances, (including, perhaps, cases of insolvency) having anticipated the awards in their favor, had authorized their attorneys to reimburse their advances out of the moneys which might come into their hands from the awards; besides, the plan contained no provision in respect to awards in favor of British subjects.

Upon stating these objections to the Lord Chancellor, he expressed his prefergence of the article which I had prepared, and which was finally adopted. Another objection, which it was not necessary for me to mention to the Chancellor, had its influence upon my mind: I mean the appearance which this arrangement would have produced, that the two countries had mutually released each other, and agreed to pay their own sufferers: an appearance that might have encouraged the sufferers by French depredations to call upon Congress to indemnify their losses. What Congress would be inclined to do, upon such application, it is, in every respect, unfit for me to conjecture; though, in forming a contract in behalf of the public, it is my duty to take care that its deliberations should not be embarrassed by even the appearance of a precedent, should the supposed case arise.

I take the liberty of adding a word or two to my former communications concerning the second article. What is to be deemed a *bona fide* debt in the last clause of that article will not depend upon a reference to what was once so, but is a judicial question within the competency of our tribunals to determine, and which must consequently be decided by those general and acknowledged principles by which their decisions are, in similar cases, uniformly governed. If I be not mistaken, it is here understood and expected that the affair of the old debts is finally settled as between the two Governments; and with that share of prudence which it behooves the tribunals of every country to observe in questions affected by national stipulations, I am persuaded that we shall hear no more of them.

Having for many years thought the settlement now accomplished to be a measure of national importance, and one that had, in some degree, become indispensable to do away prejudices which interested and disappointed men had raised against our public faith, I may, I hope, be permitted to observe, that I have pursued the negotiation with zeal and perseverance, notwithstanding the mass of misrepresentation, prejudice, and error, with which it has been encumbered. I have done so in circumstances often discouraging, and, some-

times, apparently desperate; cheering myself always with the reflection, which I have somewhere met with, that it is the duty of every one interested with what concerns the welfare of his country, in the midst of despair to perform all the offices of hope. How far what is done has been well done, remains to be determined. If the President and Senate approve, I shall have nothing to regret.

With sincere regard and esteem, I have the honor to be, sir, your most obedient and faithful servant,

RUFUS KING.

Mr. King to the Lord Chancellor.

[Referred to in Mr. King's despatch of 11th Jan. 1802.]

GREAT CUMBERLAND PLACE.
November 22, 1801.

MY LORD: With the view of explaining the origin and progress of the discussion in which I have now for upwards of two years been engaged, on the subject of the sixth article of our Treaty of 1794, I have drawn up the enclosed paper, which I ask the favor of your Lordship to peruse.

I wished to have made it shorter, but could not, without omitting what appeared to be material to the elucidation aimed at. If I be not altogether mistaken, the point upon which the business continues to be delayed will appear to your Lordship, from the perusal of this paper, in a light somewhat different from that in which you have before seen it; and I am willing to hope that it may have some influence in bringing the affair to a satisfactory conclusion.

With perfect consideration and respect, I have the honor to be,

RUFUS KING.

LORD ELDON, &c.

[Memoir enclosed in the note to the Lord Chancellor.]

It seems unnecessary to repeat, in a particular manner, what has been so fully stated in the discussion that has taken place, concerning the suspension of the two Commissioners charged with the execution of the sixth and seventh articles of the Treaty of 1794, between the United States and Great Britain. It may, nevertheless, be expedient, concisely to recapitulate the purport of what has passed upon this subject; and, in doing so, to take notice of the origin, the progress, and the present situation of this discussion. This recapitulation will serve the two-fold purpose of explaining the past conduct of the two Governments, and of justifying the opinion that the execution of the seventh article must, as a matter of course, follow the signature of the convention respecting the sixth article.

The Commissioners under the sixth article were to receive and decide British claims upon the American Government; and,

The Commissioners under the seventh article were, in like manner, to receive and decide American claims upon the British Government: the former met in Philadelphia, the latter in London.

The claims on the side of Great Britain, arose out of debts due from American citizens to British subjects antecedent to the American war, and the recovery whereof had been prevented, as was alleged, by lawful impediments in the course of judicial proceedings.

The claims, on the side of America, arose out of the illegal capture and condemnation of American ships and cargoes, between the years 1792 and 1796, and for which the claimants, from various causes, were unable to obtain compensation in the ordinary course of justice.

The British claims were founded upon the ancient commercial dealings between America and Great Britain when united, and involved questions arising out of partnerships, insolvencies, and marriage settlements: questions with executors and administrators on both sides; questions upon the sequestration and confiscation laws of the several American States, as well as upon the attainders and criminal process of those States; together with others growing out of the separation which took place between the two countries.

The American claims were few in number, supported by exact proof, and involving few, if any, contested principles of law.

Soon after the commission in Philadelphia assembled, it was apprehended, from the difference in opinion which manifested itself in regard to the matters submitted to its decision, that this difference might increase, and become so considerable, as to disturb the harmony of its proceedings, if not defeat the object of its appointment.

Difficulties of less importance, but which were, nevertheless, viewed with mutual concern, early manifested themselves in the proceedings of the commission assembled in London. By prudence and moderation on all sides, the difficulties were happily surmounted; and this commission, after deciding almost every contested point, was in a train of bringing the business with which it was charged to a satisfactory conclusion, when the disagreements among the Commissioners in America rose to a height that made it necessary that their meetings should be suspended.

As soon as the American Government received information of the interruption of the proceedings of the commission at Philadelphia, it sent instructions to its Minister in London to enter into immediate and amicable explanations upon the subject with the British Government; and, pursuant to the express provision of the Treaty of 1794, to propose an additional article to that treaty, which should secure the rights of the subjects of Great Britain, and, at the same time, protect the American Government from claims not within the purview of the treaty, and which were entitled to and might be satisfied in a different manner.

On the other hand, the British Government, on being apprized of the situation of the commission in Philadelphia, represented to the American Minister that it would be expedient to suspend the commission in London, until a settlement should be made concerning that in Philadelphia, and a letter, for this purpose, was written by Lord Grenville to the British members of the commission in London, by which they were instructed to decline assisting in the meetings of their board until they should receive further orders.

In February, 1800, the American Minister communicated to the British Government the instructions which he had received, and delivered the project of an explanatory article drawn up in conformity with them.

In April following, the British Government delivered to the American Minister a note, in which it rejected the proposed explanatory article, and declined entering into any negotiation upon the subject: referring itself to what had already been stipulated, in the Treaty of 1794, upon this subject, and claiming the execution of the sixth article of that treaty according to its provisions. In a subsequent conference, however, between Lord Grenville and the American Minister, the former proposed (stating that he did so by the advice of his colleagues,) the abolition of the commission in Philadelphia; provided the United States would pay to Great Britain a definite sum of money, in satisfaction of the whole claim of British subjects, as well upon the American Government as upon individual American citizens; and, estimating this claim at two millions sterling, his Lordship offered to accept a sum of between one and two millions, or a million and a half.

As the American Minister had no power to accept this offer, he explicitly said so; adding, that he would, as he immediately did, transmit the offer to his Government, together with the refusal of the British Government to accept the explanatory article he had been ordered to propose.

In November following, the American Minister received fresh instructions, by which he was ordered to represent to the British Government the earnest desire of the American Government to do whatever depended upon it to carry into full and complete effect the engagements contained in the Treaty of 1794; and, in a more particular manner, scrupulously to execute the sixth article of that treaty; and, to call upon the British Government to revise their former decision, and to agree in such explanatory regulations, touching the execution of that article, as had become indispensably necessary to carry it into effect; and, in case the British Government should persist in its refusal upon this head, that he should then propose a modification of the proposition made by the British Government, and offer, on the part of the United States, to pay to the British Government a definite sum of money in satisfaction and discharge of the claims of British subjects upon the American Government, under the sixth article of the Treaty of 1794; it being understood that this article should be abolished, and that the British creditors should be free to pursue the recovery of their debts according to the provisions of the fourth article of the definitive Treaty of Peace concluded in 1783. The purport of this instruction was, without delay, communicated to the British Government; which still adhered to its former decision respecting an explanatory article, but entered into a conference with the American Minister, for the purpose of fully comprehending the modification of its own proposition for converting the British claims into a definite sum of money. After the fullest and most exact explanations upon this head, Lord Grenville inquired of the American Minister whether he had authority, in like manner, to agree to convert the American claims into a definite sum of money, and abolish the seventh article of the Treaty of 1794? To this inquiry the American Minister answered that no proposal for this purpose had been made when the British Government first offered to accept a sum of money in satisfaction of the British claims and abolish the sixth article; that, it not having been proposed, the American Government had given him neither instructions nor power concerning such commutation; and, had it even done so, such was the nature of the American claims, that the commutation would be inexpedient and unnecessary.

After taking time to consider this proposal, the British Government admitted it as a basis of a negotiation which it commenced with the American Minister, for the purpose of converting the British claims under the sixth article into a definite sum, and abolishing the article, leaving the seventh article to be executed according to its provisions.

A long and full discussion ensued upon this subject; and, in August of the present year, the British Government informed the American Minister that it had agreed to accept the sum of six hundred thousand pounds sterling, which he had been authorized to offer in satisfaction and discharge of the British claims under the sixth article; and to abolish that article, provided the terms of payment could be satisfactorily settled, and provision made that the British creditors should, in future, meet with no lawful impediment to the recovery of their debts. On this occasion, the American Minister explicitly stated his expectation that a settlement of the claims under the sixth article would be followed by the removal of the impediment which stood in the way of the execution of the seventh article; and, no objection being made, he added that he would charge himself with recalling to London the Commissioners under the seventh article, who were at that time dispersed. Various conferences afterwards took place in order to settle the instalments, and agree upon the provision respecting the judicial remedy of the British creditors; and, after exchanging projects and altering articles upon these points, the draught of a convention was finally settled and mutually approved, and the American Minister was invited to attend on the following day for the purpose of signing it. On this occasion, he repeated what had been before stated, and what, not only the basis and tenor of the negotiation, but the terms of the convention which had been agreed upon, authorized that it was his expectation that every impediment to the execution of the seventh article would be removed upon the signature of the convention concerning the sixth article.

It is not necessary to explain the objection which most unexpectedly prevented the conclusion of this business, especially as it is believed to have proceeded from the want of a full acquaintance with what had before passed upon the subject.

But it is impossible not to remark that, while the business remains open, not only individuals will continue to suffer inconveniences, but the respective Governments will, ere long, participate of their impatience; and this, too, at a time in many respects critical, and when, moreover, the Commercial Treaty between them is about to expire, and new and temperate discussions will be necessary to revise and re-establish it. A treaty, not merely nominal, or applying to inconsiderable interests, but which may regulate and confirm commercial dealings more extensive and valuable than are carried on between any other two nations, and the advantages of which, if undisturbed, will annually exceed any conjectural difference that may be supposed to exist with regard to the settlement so steadily and earnestly desired by America.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *January* 15, 1802.

SIR: As the object and words of the second article of the convention will be sought for, and examined with care and attention, it occurs to me, upon the revision of my former communications, to suggest a single observation to those heretofore made. If the second article of the convention had been entirely omitted, the fourth article of the Treaty of Peace would have remained in full force and operation; the adoption of the second article of the convention limits its force and operation to subjects upon which it legally can, and ought hereafter to operate; thereby excluding all those upon which it once might have so operated, but upon which, from various causes, it can and ought not in future to operate. This reflection, pursued in its detail, will place the article in its true light.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING.

[The following Messages, with the documents therein referred to, are further explanatory of the preceding convention and correspondence.]

APRIL 8, 1802.

Gentlemen of the Senate:

In order to satisfy, as far as in my power, the desire expressed in your resolution of the sixth instant,* I now transmit you a letter from John Read, agent for the United States, before the Board of Commissioners under the sixth article of the Treaty with Great Britain, to the Attorney General, bearing date the 25th of April, 1801, in which he gives a summary view of the proceedings of those Commissioners, and of the principles established or insisted on by a majority of them.

Supposing it might be practicable for us to settle, by negotiation with Great Britain, the principles which ought to govern the decisions under the treaty, I caused instructions to be given to Mr. Read to analyze the claims before the Board of Commissioners, to class them under the principles on which they respectively depended, and to state the sum depending on each principle, or the amount of each description of debt. The object of this was, that we might know what principles were most important for us to contend for, and what others might be conceded without much injury. He performed this duty, and gave in such a statement during the last summer; but the chief clerk of the Secretary of State's office being absent on account of sickness, and the only person acquainted with the arrangement of the papers of the office, this particular document cannot at this time be found. Having, however, been myself in possession of it a few days after its receipt, I then transcribed from it, for my own use, the recapitulation of the amount of each description of debt. A copy of this transcript I shall subjoin hereto, with assurances that it is substantially correct, and with the hope that it will give a view of the subject sufficiently precise to fulfil the wishes of the Senate, to save them the delay of waiting till a copy of the agent's letter could be made. I send the original, with the request that it may be returned at the convenience of the Senate.

TH. JEFFERSON.

British claims under the sixth article, distinguished into classes, including interest, to different dates within the year 1798.

	£	s.	d.
For interest, during the war alone	120,645	11	1¼
For payments into the treasuries, loan offices, &c.	171.795	0	6½
On account of impediments under the instalment laws of South Carolina	337.868	2	0
For alleged unlawful decisions of courts	24.658	4	3¾
By firms, in part citizens of the United States	162 483	12	4¾
Debts due from States, late Provinces	4.839	14	0
All description of refugees, except North Carolina	753.182	4	2¾
On account of debts discharged in the depreciated paper money	205.795	15	5½
Proprietary debts	296.775	13	8
Legal impediments generally	3.560.585	10	4½
	$24.809.969 37 = £5.638.629	8	1

APRIL 17, 1802.

Gentlemen of the Senate:

I now transmit you a report of the Secretary of State, with the document accompanying it, on the subject of your resolution of the 12th instant, concerning the seventh article of the Treaty between the United States and Great Britain.

TH. JEFFERSON.

DEPARTMENT OF STATE,
April 16, 1802.

The Secretary of State, to whom has been referred, by the President of the United States, a resolution of the Senate, passed on the twelfth day of this month, requesting the President to cause to be laid before the Senate the amount of claims preferred under the seventh article of the Treaty of Amity, Commerce, and Navigation with Great Britain, and of the sums awarded by the Commissioners, and paid by the British Government, and a statement of the principles adopted by the said Commissioners in their proceedings under the said article, thereupon respectfully submits the following report to the President:

That, agreeably to an estimate made on the 9th of May, 1798, by Samuel Cabot, Esq., at that time an agent of the United States, under the seventh article of the said treaty, the claims preferred under that article amounted to the sum of one million two hundred and fifty thousand pounds sterling. The document herewith submitted to the President, containing a general statement of moneys received on awards of the Commissioners, will show the sums awarded by them, and paid by the British Government, under the article in question of the said treaty.

It does not appear, from any researches which the Secretary has been able to make, that the precise principles on which the Commissioners have proceeded, can be otherwise deduced than from the awards made in the several cases which have been decided. Any statement of them in detail is presumed not to be within the intention of the resolution.

All which is respectfully submitted:

JAMES MADISON.

Statement of moneys received by awards of the Commissioners acting under the seventh article of the British Treaty.

	£	s.	d.	£	s.	d.
Received by Samuel Bayard, on eleven cases				21,744	13	5¼
Of this sum, was taken to repay the advances, which appear to have been made only in these three cases, viz:						
Farmer, Osborn	243	4	9			
Sally, Choate	395	10	6			
Rising Sun, Roister	4	9	6			
				643	4	9
Net sum received by claimants				£21,101	8	8¼
Received by Samuel Williams, on seventeen awards				£36,857	0	11½
From this deducted for public advances, which appear to have been paid only in these cases, viz:						
Fair Lady, Lillibridge	25	0	0			
Lydia, Rinkers	20	0	0			
Bethia, Lothrop	201	1	0			
	46	19	0			
	25	0	0			
Sally, Burchmore	243	19	6			
Two Brothers, Calley	251	17	5			
				813	16	11
Net sum received by claimants				£36,043	4	0½
Received by claimants from Mr. Bayard				£21,101	8	8¼
From Mr. Williams				36,043	4	0½
Twelve awards, amount received by private agents				36,610	8	11

These are all that have been paid to agents, so far as I can discover from documents in my possession, nor does Mr. Williams know of any more.

Total received by claimants, on the awards of the Commissioners.—Forty cases	$93,755	1	7¾
Amount of public advances	1,457	1	8
And in one case, viz: Eliza, Borrowdaile, where proceeds were received by private agent	25	0	0
	£1,482	1	8

It would appear that, of the whole forty cases, decided as above, public advances have been made only in nine; upon each of those cases it is probable there were also several expenses paid by the claimants: these, as well as what was paid in the remaining thirty-one cases, as also in seventeen which were dismissed by the board, it is impossible to ascertain

GEORGE W. EWING, *Agent.*

LONDON, *December* 1, 1801.

It appeared, by the statement of my predecessor, that only seventeen cases were dismissed by the board; but, by a particular examination of documents furnished me by the clerk of the board, I find that there were, in fact, thirty-one cases dismissed.

DECEMBER 1. G. W. E.

SPAIN.

[Communicated to the House, April 20, 1802.]

Gentlemen of the House of Representatives:

I transmit you a report from the Secretary of State, with the information desired by a resolution of the House of Representatives of the 8th of January, relative to certain spoliations, and other proceedings therein referred to.

THOS. JEFFERSON.

APRIL 20, 1802.

• This resolution is in these words: "*Resolved*, That the President of the United States be requested to lay before the Senate the amount and description of claims preferred under the sixth article of the British Treaty, and which would have been chargeable to the United States if the principles contended for by the British Commissioners had been established as the rules of decision by which those claims should be determined."

DEPARTMENT OF STATE. *April* 18, 1802.

The Secretary of State respectfully reports to the President the information requested by the resolution of the House of Representatives, of the 8th of January last, relative to spoliations committed on the commerce of the United States, under Spanish authority; and also relative to the imprisonment of the American Consul at Saint Jago de Cuba.

This report has been delayed longer than was wished; but the delay has been made unavoidable, by the sickness and absence of the chief clerk in this Department, who had partially gone through the necessary researches, and could most readily have completed them.

JAMES MADISON.

PHILADELPHIA. *October* 10, 1801.

SIR: The situation in which I am placed, as President of an incorporated insurance company, affords me a pretence for addressing the Secretary of State on a subject in which I conceive the honor and interest of the United States are in a considerable degree involved. But as you will probably receive more formal applications on the same subject from other quarters, I shall be the less formal in my communication, considering it merely as an auxiliary which may or may not be brought into action, as occasion may require. The Chamber of Commerce of this city have been collecting materials on which to form an address to the Government, concerning the depredations lately made by the Spaniards on our commerce, in full confidence that proper measures will be taken to obtain from the Spanish Government compensation for the injuries sustained, and security from further depredations.

The sufferings and apprehensions of sufferings from such depredations are far from being confined to this city: they extend to every sea-port in the Union, and though the merchants and insurers feel them most pointedly in the first instance, they are more or less affecting to every individual in the United States. I have lately received a letter of request from the three incorporated insurance companies in Baltimore, to join in devising a mode of laying the matter before our Government. The Chamber of Commerce having previously taken up the business, I communicated this letter to them, presuming it will be properly regarded.

Since the measures lately taken by the British Government respecting their colonial admiralty jurisdictions, we have perceived a sensible abatement of their unjustifiable treatment of the American commerce; and it is but justice to the French to admit, that, since the last convention, they have generally desisted from capturing our vessels, and have treated them in a friendly manner. It seems improbable, therefore, that they either authorized or countenanced these captures by the Spaniards; nor can I conceive any ground for them more plausible than the idle pretence of holding Gibraltar in a state of blockade by a few paltry privateers. This, one would suppose, could not afford a tolerable pretence for capturing our vessels bound to their own ports, or others in amity with them, within the Mediterranean.

Vessels bound thither must necessarily pass near Gibraltar, and frequently find occasion to call there for information, or to obtain convoy. I therefore conclude that these depredations have been committed by marauders without the assent or knowledge of the Spanish Government, and that they will be suppressed, and restitution awarded, on application from the United States.

I have the honor to be, with due deference and respect, sir, your most obedient servant,

CHARLES PETTIT.

JAMES MADISON, Esq. *Secretary of State.*

PHILADELPHIA. *Oct.* 10, 1801.

SIR: I have the honor to send herewith a memorial from the Chamber of Commerce of this city, on the subject of Spanish captures, together with four letters, received by the owners of the captured vessels, which I pray the favor of you to lay before the President of the United States.

The business to which they relate has occasioned a very strong sensation in the minds of the merchants of this city. The property they have at risk is very great, and their information respecting its insecurity alarming. If Gibraltar is to be considered in a state of blockade, and American vessels directed to call there, are, on that account, subject to capture and condemnation, there is reason to fear that most of those which were intended for the Mediterranean are in that predicament. They have generally been directed to call at that port, either to benefit of convoy, or to learn the state of the markets in the ports to which they were destined; and as Algeziras is so situated that few vessels can go in or out of Gibraltar without being seen from thence, it is hardly possible to escape the vigilance of their cruisers.

What the conduct of the Spanish tribunals (with respect to captures of this kind) may be, can only be conjectured, as no ultimate decisions had taken place in the cases immediately referred to. If we are to judge from the information received, and their conduct on former occasions, the prospect is sufficiently discouraging. Where the property has been of small value, it has sometimes been released, after long detention and considerable expense; but as yet we know of no instance of restitution where the value was great, nor for what has been plundered by the captors.

The alarm created by these captures is not confined to Philadelphia. A letter from the Insurance Company of Baltimore to the President of the Insurance Company of North America has already been received, proposing a joint representation to the President of the United States on this subject: and there is no doubt but like measures will be pursued by the other trading towns.

It is hoped that the representation now made will be thought of sufficient weight to engage the immediate attention of the President, and that such measures will be adopted as the nature and circumstances of the case require. As other information on this subject is received, it will be communicated to the Government; and when any measures are determined on by the President proper for the merchants to know, a communication of them will be thankfully received. In the meantime, I am, with great respect, sir, your most humble servant,

THOS. FITZIMMONS.
President Chamber of Commerce.

Hon. JAMES MADISON, Esq.

To Thomas Jefferson, President of the United States, the Philadelphia Chamber of Commerce respectfully represent:

That the commerce between the United States and the ports of the Mediterranean has become very important, and, from its extent, had furnished to the merchants the pleasing expectation that it might be so extended as to compensate, in some measure, for the restrictions they have experienced in other quarters; but, that it has latterly met with obstructions from vessels cruising under Spanish colors, which threaten its extinction.

By recent advices from thence, it appears that a number of American vessels have been captured and carried into the Spanish port of Algeziras; among which are three belonging to this port, and one to Baltimore, the value of which, together, exceeds four hundred thousand dollars.

That although the decision of the courts had not (at the dates of the advices) been made, and although it is possible some part of this property may be liberated, yet it is perfectly ascertained that the vessels were plundered of goods to a considerable amount by the captors, and that the passengers and crews were grossly abused and ill-treated, for which no compensation or retribution was expected.

That the pretence for capturing these vessels is, that they were intended for Gibraltar; and it was publicly declared that all vessels which should touch at that port, would, if met with, be subject to like consequences.

That Gibraltar is little resorted to by American vessels for the purposes of trade, but, from its situation in relation to the Mediterranean, they are often obliged to put into that port; and, of late, have generally been directed to do so, for the purpose of obtaining convoy from some of the national ships against the Barbary corsairs.

Whether, under present circumstances, Gibraltar ought to be considered as in a state of blockade by the Spaniards, or not, we by no means undertake to determine; but we can assert, with confidence, that the merchants of this city have not had such notice thereof as is usually given by nations acting with good faith to each other; although the United States have had a Minister and Consuls in that country, and the Spanish Government have constantly had like functionaries residing in this. This Government having given information that the American squadron would rendezvous at that place, and the commander be instructed to give convoy to their vessels when applied for, and he could do it with propriety, their owners were led to conclude that, in endeavoring to benefit of that protection, they were not liable to be molested by any friendly Power.

As it is extremely important to the American merchants to be informed whether, under the existing circumstances, they ought to consider the port of Gibraltar as blockaded, one object of their application to the President is, to obtain that information. Should it be so determined, they trust, till legal notice thereof shall have been given, they ought not to be subject to the losses and detention which they have experienced, and that retribution will be obtained therefor.

They flatter themselves, too, that vessels which do not call there, or which may be obliged to put in by stress of weather, or for convoy, and not for the purposes of trade, may not be carried into the Spanish ports, and undergo the losses attendant on such detention; but that, where their papers are fair and clear, they may be permitted to pursue their voyages without molestation.

In full confidence that the President will take this, their respectful representation, into consideration, they console themselves with the hope that he will take such measures thereon as the nature and importance of the case may, in his opinion, require.

In behalf of the Chamber of Commerce of Philadelphia:

THOMAS FITZSIMMONS.

PHILADELPHIA, *Oct.* 10, 1801.

ALGEZIRAS, *Aug.* 5, 1801.

GENTLEMEN: I wrote you last in a hurry, acquainting you with the unfortunate capture of the ship Molly, after an action of two hours. You will please to observe, gentlemen, we were attacked under the red flag and French colors, although it appears, and indeed is actually the case, they were under Spanish commissions; and undoubtedly we have a plea and defence against the proceedings of those pirates. Mr. Gibson's communicating to you fully respecting the capture of the ship, and the situation she is in, if there are any hopes of her release, &c., it is unnecessary for me to mention anything further on that head, With attention to your interest, I remain, gentlemen, your most obedient servant.

RICHARD FLIMM.

Messrs. NICKLIN and GRIFFITH.

ALGEZIRAS, *July* 26, 1801.

GENTLEMEN: It is with sincere regret that I have to acquaint you of the capture of your brig Sophia, and of her arrival here on the 24th inst.; and, last evening, to increase the misfortune, the armed gunship, the Molly, towed in by seven Spanish privateers, with whom she had warmly fought for upwards of two hours; but I have the pleasure to say that Mr. Gibson, the captain, and officers, are well: several were wounded. The crew, without exception, have shared a similar fate to that which we experienced on board the

Amelia, being plundered of every article of clothing, and otherwise treated with the greatest inhumanity. I made two attempts to get alongside, but so rigid are the privateers-men, that I was reluctantly compelled to sheer off; however, I shall use the greatest exertions to afford them relief, and you may be assured of my utmost endeavors to make myself serviceable; and I feel it more particularly my duty where you are so deeply interested. I have offered a trifling gratification to get the Sophia liberated from quarantine, and I am in hopes that to-morrow Mr. Dugan will be on shore. I have received your favors by that gentleman, and have taken the means to get the business in a train, the result of which I shall not fail communicating. In great haste, gentlemen, believe me, very respectfully, your most obedient servant,

CLEMENT HUMPHREYS.

P. S. American vessels that have "Gibraltar" written on their papers, and met with by Spanish privateers, will be brought in and condemned. The following American vessels, in addition to what I have mentioned, have been sent in since the 24th instant:

Brigs Maria, Captain Hardie, from Philadelphia, and Milford. ——, from Baltimore, in quarantine.

Messrs. WILLING and FRANCIS.

John Gibson, Esquire, to Messrs. Willing and Francis, Nicklin and Griffith, and Henry Nixon, Philadelphia.

ALGEZIRAS, *July* 31, 1801.

GENTLEMEN: It is with sincere pain I inform you of our unfortunate capture by the French and Spanish boats, after an action of two hours. It still bears more hard upon us when we reflect we had every reason to suppose we could have made good our passage to Gibraltar, had our guns been sufficiently heavy for their weight of shot. Our crew went to their quarters with alacrity, and did not offer to desert them.

I have not before this had it in my power to write a line, all communication being with us cut off, until we had given in our declaration to the commander at San Roque, from whence I returned yesterday.

The principal plea for our condemnation is our being bound to Gibraltar. Our firing on the gunboats will be no injury to our cause, as we were attacked by the flag of Tripoli, (a red flag,) and no right to regard any colors afterwards hoisted. By continuing the action until we were come up with by a gunboat in the King's service, we fall directly under the cognizance of Government, and I understand our cause will go direct to Madrid; no notice being taken of it here, which is not the case with those ships that have struck to private armed vessels. In consequence of which, I hope, gentlemen, I shall get more redress, but fear it will be a long time. Those who have to apply here are detained a considerable time, and have their decision ultimately from Madrid.

The ship is stripped, the sails unbent, and a guard of Spanish soldiers put on board by the orders of the Commandant, which now puts a stop to any further pillage, which was carried on with so much diligence while under the direction of the privateers-men, that ten thousand dollars will not replace what they have stolen.

By this conveyance I have written to Messrs. Turnbull & Co., of Gibraltar, requesting all the information they can give, as also a credit on Cadiz or Madrid, (could it be obtained without much expense,) by which I might be enabled to give security for a certain amount, and obtain the release of the ship.

This plan appears to be the most eligible, as we were taken by a Government vessel, who are responsible for all damages in case of acquittance; they may, perhaps, be more inclined to accept the obligations of some safe house in Cadiz, than detain the ship until the final decision. I shall anxiously wait an answer from Messrs. Turnbull & Co., (under cover to whom I send this letter,) from whom I expect much information, which is not to be obtained here; Mr. Clement Humphreys being gone to Cadiz, and the American Consul, Mr. Molony, a superanuated gentleman, either not having it in his power, or being unwilling to render any assistance to Americans brought in here. On Mr. Turnbull's opinion I shall principally rely in the prosecution of my business.

It is a pity some vessels are not kept constantly cruising in the mouth of the Straits. One or two frigates would entirely prevent the depredations of the boats, who are no better in their treatment than the brigand barges in the West Indies. Were our Government to make a spirited representation, I have no doubt but redress might be obtained for the depredations committed on our flag, as they tremble for their possessions in the West Indies and South America. The French Commissary has great influence here, and has the power of removing all causes of capture to Paris, where possession has been taken by the French flag, which makes me think ourselves fortunate in not submitting early. All armed French vessels can obtain the privilege of wearing a Spanish flag by paying two thousand dollars, so that there are none but what carry the standard of both nations.

I shall write you by every conveyance, and hope to hear from you, either by the way of Gibraltar, Cadiz, Malaga, or Alicant, under cover to Mr. Molony, American Consul here. You will please to be very guarded in your expressions, for fear of your letters falling into the hands of our opponents. Our situation is very delicate; the smallest trifle will condemn the ship and cargo.

Our treatment has been infinitely more harsh than I experienced at Porto Rico, and think we stand as little chance of being liberated as there, unless I can interest our Minister, when I go to Madrid, to act strongly in our behalf.

You will please inform me, whether it is necessary for me to stay after the first decision and appeal, if you abandon the property to the underwriter. I consider myself released after the papers are in such a train that their agents can carry

on the appeal. As long as the property remains yours, I shall remain by it, and shall, to the utmost of my power, endeavor to protect it. Remaining, gentlemen, your most obedient servant.

JOHN GIBSON.

John Gibson, Esq., to Messrs. Willing and Francis, Nicklin and Griffith, and Henry Nixon.

ALGEZIRAS, *Aug.* 7, 1801.

GENTLEMEN: Enclosed you receive a copy of my last to you, under date of the 31st ultimo, forwarded via Gibraltar; since when, nothing has been done in our case. I was in hopes, then, from the information received, of the cause being carried immediately to Madrid, but have been deceived. The point in dispute at present is, who shall have the right of trial, the Government of San Roque or Algeziras, both strenuously contending, and fear we shall have to remain until an order is sent down from that Court.

Since my last, I have received a letter from Messrs. Turnbull & Co., in reply to the queries asked; they are of opinion we shall certainly be condemned, unless a sum of money is properly applied, which corresponds with my sentiment. Every officer under this corrupt Government is open to bribery, and have no doubt but a few thousand dollars would be the most solid argument we could advance in our defence. Upon the subject of bribery, I beg leave to state my ideas. Whatever sum is applied must be done before a condemnation takes place; otherwise, the cargo will be landed; and, if prevented from being sold, (which is not always the case, particularly if valuable,) upon an appeal, it will be pillaged at least 50 per cent., if any time in store, and no vigilance will protect it. As underwriters have hitherto refused paying, unless condemnation takes place, will they not refuse in this instance? Their conduct in this respect has already cost them dear, and, if they pursue, will prevent many from coming forward. Several vessels might have been liberated, by advancing the judge two or three thousand dollars; but the agents, not considering themselves at liberty to do it, have refused, and afterwards compromised for a much larger sum, on carrying on the appeal. In a conversation with Mr. Francis, previous to my departure, I mentioned the subject of ransom, should we unfortunately be captured by the Tripolines, not at that time apprehending anything from the gunboats; but he was of opinion I could not ransom the vessel for anything short of her real value, and would, therefore, decline mentioning the subject in my instructions. It is by no means certain we shall be released, even by offering a sum of money, so many being concerned in our capture; but Messrs. Turnbull and Co. have guarantied the payment of any sum I may choose to advance, and recommend the coming forward immediately. Mr. Clement Humphreys, at present at Cadiz, has mentioned my case to the house of Bernard Lacoste, the particular correspondent of Mr. Leamy; they have offered their services here, and a nephew is now with me, with whom I communicate. Mr. Humphreys, from his long stay, has had an opportunity of becoming acquainted with them, and strongly recommends them as a house of honor, on whom I may place the utmost reliance; they have had the principal American business under their protection, and, from the loans they have made to Government, have considerable influence. The young gentleman, who has come down from Cadiz since my arrival, appears to be pretty well acquainted with the forms and corruptions of the courts, having managed many similar causes, and being personally acquainted with the principal officers here. I have written to Messrs. Grevignee & Co., of Malaga, forwarding them a recommendatory letter from Messrs. Turnbull & Co. Messrs. Grevignee & Co. are known to you gentlemen; their influence in many places in Spain is not doubted, and I believe in this province they have great power. I expect much from their reply, and believe they will be willing to render you every assistance.

Considering the subject maturely, I am determined to go as far as ten to twelve thousand dollars, provided the ship is placed in security, say at Gibraltar, and hope you will be able to arrange matters with the underwriters, should any such advances take place. Convinced that you will think I am acting from motives purely for your interest, and not wantonly and without hesitation running you to expense, induces me to form my determination. Convinced, also, that the prosecution of an appeal will be attended with more expense, and that every prospect of benefit from proceeding on the voyage, if ultimately released, will be destroyed by delay.

I am sorry Captain Flimm incautiously delivered to an American captain, while I was in San Roque, a hasty account of our action. It was meant entirely for your eye, dictated by him, and to be by him enclosed to you. It was a true statement, but was never intended to be made public, and am apprehensive the underwriters may hesitate on finding the guns were not adequate. The conveyance of letters from this place is always attended with danger, the privateers-men being constantly on the watch, endeavoring to intercept all they can; you will not, therefore, be surprised should you not often hear from me: for, in my situation, one letter intercepted would ruin all our plans.

Enclosed you receive copy of our protest in the Consulate here; if it is not regular, you must attribute it to the ignorance of the forms, for I am obliged to draw out all writings, our Consul not rendering any assistance. Hoping soon to have it in my power to give you better news, I remain, gentlemen, your most obedient servant,

JOHN GIBSON.

To Thomas Jefferson, President of the United States:

NEWPORT, RHODE ISLAND,
November 10, 1801.

SIR: The Newport Insurance Company, in Rhode Island, think it a duty they owe to themselves, and those of their fellow-citizens who are

immediately concerned in trade, respectfully to represent to the Chief Magistrate of the Union that great spoliations have been, during the present year, committed upon their lawful commerce by vessels acting under authority from the Government of Spain.

As underwriters, we have been unexpectedly injured by these spoliations, and are apprehensive of sustaining further and great losses by a continuance of them; we therefore beg to remonstrate against them.

The differences between the United States and France having been terminated by their late treaty, and the treaty subsisting between this country and Spain expressly allowing our citizens the liberty of trading to and from the ports of the enemies of the latter, it was presumed that vessels of the United States destined to ports in the Mediterranean sea, would not be, by being cleared for, or ordered to touch at, a British port, rendered liable to be captured and condemned by the French or Spaniards.

War with several of the Barbary States having been apprehended for some months previous to the declaration of it by the Government of Tripoli, the merchants of the United States had deemed it prudent, for nearly a year past, to have their vessels, when bound to any port in the Mediterranean sea, cleared for, or ordered to touch at, Gibraltar, to obtain information that might lead them to avoid, or to procure convoy to protect them against, the Barbary corsairs. And it has not been unusual for American vessels, in times of the greatest security, to touch at Gibraltar, merely for the purpose of gaining commercial intelligence, always useful, and sometimes absolutely necessary, for the success of their Mediterranean voyages. But, since the existence of the danger alluded to, it has been considered essential to the safety of our merchant vessels, bound as before mentioned, that they should touch at Gibraltar; and, when cleared for, or ordered to touch at, that port, they have been insured at a lower rate than they otherwise would have been. It now appears, however, that clearances and orders of this kind have exposed them to new dangers. They have been, avowedly in consequence of them, taken near Gibraltar, and carried into the port of Algeziras, in Spain, by gunboats and other armed vessels, sailing under the flag and authority of Spain, but in company, as we are informed, with French privateers, and have there been condemned by a Spanish tribunal. We have to regret the capture and condemnation, under the circumstances and in the manner above recited, of two vessels, with valuable cargoes, owned wholly by citizens of the United States, and not laden with any goods contraband of war; in which, as underwriters, we were interested to the amount of thirty thousand dollars; that sum, however, comprising only a small part of the whole value of them. The papers relating to, and proving the capture and condemnation of, one of these ships, called the Hercules, Courtenay, of Newport, we are assured, were transmitted by the owners of her to the Secretary of State, some months since; and the facts respecting the case of the other, called the Molly, of Philadelphia, have, we doubt not, been fully stated to the Secretary by the owners of her, who are merchants of that city. It is, therefore, unnecessary for us, and we shall not presume, to lay before the President all the circumstances attending these two captures. We, nevertheless, think it proper to mention that it was alleged, on the part of the captors, that Gibraltar had been declared in a state of blockade by the Government of Spain. This declaration was, however, not known here at the time of the sailing from the United States of the two vessels referred to, and many other vessels that have experienced a similar fate. It can, indeed, be considered only as a pretext for capturing defenceless neutral vessels, when it is known that Gibraltar has not been actually blockaded, for at least several years past, by any Spanish naval force capable of preventing a single British sloop of war from going into or coming out of that port.

The hostile disposition manifested by the Spaniards towards our commerce in the Mediterranean sea and elsewhere, excites in our minds serious apprehensions for its safety, when we consider the reduction that has lately taken place in our Navy, and the present unarmed state of our merchant vessels. But, relying upon your assurances to the Legislature of this State, that "commerce will be cherished by you, both from principle and duty," we confidently hope that the powers vested in the President by the Constitution and laws of the United States will be exerted to obtain indemnification for the losses, and to prevent a repetition of the injuries, of which we complain.

By order and in behalf of the Newport Insurance Company. Attest.

SAMUEL ELAM, *President.*
J. DENNISON, *Secretary.*

The subsequent remarks concerning Spanish depredations on American commerce are extracted from Col. Humphrey's letters to the Secretary of State, written at different periods, as will appear below.

"Schooner Active, of Penobscot, Captain Holbrook, from Liverpool, bound to the United States, was captured by a French privateer, recaptured by the English, who restored her to the Americans on board. On her arrival at Gijon, she was seized, and the Americans imprisoned; but both the vessel and crew were afterwards released.—*June* 13, 1800."

"Ship Swansbury Jonathan Bunting, supercargo, was lately taken by a French privateer and Spanish gunboat, and carried to Cadiz. She was seized because of her destination to Gibraltar. [She was afterwards finally condemned in the Supreme Council of War.]—*August* 19, 1800."

"Ship Catharine, of Baltimore, James Mills, master, was seized at Barcelona in September, 1800, on pretence that lights were hoisted on board her as a signal, when, on the 4th of that month, the boats of a British man-of-war cut two armed vessels out of that harbor.—*September* 30, 1800."

"I still continue to receive frequent reports of vessels, belonging to citizens of the United States, carried into Algeziras by privateers fitted out in the ports of Spain; and that, in some instances where they have been captured by French and Spanish armed vessels or boats, jointly, they have been delivered by the agents of the former to the agents of the latter, under a conviction that they would not, at present, be condemned as legal prizes by French tribunals, of which I have complained in the most explicit terms to the Secretary of State.—*January* 13, 1801."

"Several of our merchant vessels which had been captured and carried into Algeziras, by Spanish armed boats or vessels, have been set at liberty, but no compensation has been allowed for the great losses and damages occasioned by their unjust detention. In all those cases which have been reported to me, I have taken due measures for maintaining the claims for indemnification.—*November* 5, 1801."

Extract of a letter from Josiah Blakely, American Consul at St. Jago de Cuba, to the Secretary of State.

"NOVEMBER 1, 1801.

"More than a month ago, by an order from the Intendant at Havana, my person was arrested, books and papers all seized, and stores locked up, and guards placed over them. I was conducted to prison, from which I now write. I have not yet been informed why this took place. At the time, nine vessels were here under my charge. The cash found in my house was taken away. The detention, disappointment, loss, and vexation, to the captains of those vessels, and my corespondents, is immense. Some of the goods belonging to others have been given up; some are yet detained.

"My total ignorance of the cause of such very extraordinary treatment has prevented my writing you before, to inform you of my situation; by the questions which have been put me, only can I conjecture.

"In March or April last, the ship Prudence, of Boston, Captain Rogers, last from another island, at which she had sold her cargo, came to this port for a cargo of molasses. No molasses could be had. She then left this for a port near Havana, in search of molasses. When arrived near Havana, the ship was boarded by the officers, who demanded where from? She answered from St. Jago de Cuba. Not having entered or cleared at this port, she could show no such papers, and was instantly seized; all her papers taken possession of, among which, it is said was found the sales of goods landed from the ship at this place. No such goods had been entered. This sale, it is said, was made by one Peter Lay, who, as he spoke three languages, did much business for me: he also did business for himself, and many others. But it is said he signed this sale as done by me. If any goods were landed or sold from said ship, I knew nothing of, nor had I anything to do with, the business. Mr. Lay having long since left this island, I can get no information from him on the subject.

"My books and papers have been critically examined by the officers here, who have reported that they can find no such sales in my books or papers, nor even the name of such a ship. They declare that, by all the evidence they can get, I am wholly innocent, not only of that charge, but of ever attempting, in the least degree, to defraud the customs. Thus the custom-house officers have declared.

"With the Governor here, and all the first people of the city, I have lived, not only in habits of friendship, but of intimacy. They all appear distressed at my situation, and say they will at all times certify to the strict propriety of my conduct, both as a merchant and a resident. Not a single inhabitant here has ever made the least complaint of my conduct since among them.

"If Captain Rogers landed or sold goods from his ship Prudence, at this place, (as in fact I knew nothing of it,) how far I can be implicated by a signature said to be done for me, (particularly when such act was illegal,) I should think must depend upon circumstances which cannot apply in this case.

"As I have been presented with no charge whatever, the whole of what I have written may be foreign to the real cause of my being thus situated. It is probable the mail which is to arrive from Havana fifteen days hence will bring despatches concerning me. Being impatient to inform my Government of my situation, I have troubled you with the foregoing, which is all I know of the subject. I have forwarded to Havana my protest against the usage I have received. The Americans being permitted free access to my apartment, and I permitted by the Governor here to continue the functions of my office, I continue to execute the duties of it.

"The damages to me and my correspondents being immense, the best informed lawyers here say, large damages can be recovered of the Intendant; but, situated as I shall be with him, it is not probable I can obtain relief, but through the demands of my Government. Soon as I can obtain any official charges or legal statement of this business, I will forward to you copies of the same. From the officers of Government and the inhabitants of this place, and part of the island, I have experienced politeness and friendship, for which I render the homage due. But from the nation do not we receive many insults? In these seas our flag is constantly insulted by their privateers. When I mention the treaty, their officers affect to treat it with the greatest contempt, saying it does not extend to the colonies, &c. Possibly the Intendant at Havana is highly displeased at some of the protests I have made against the cruel treatment some of our vessels have experienced. In them I only declared the truth, and the rights of our nation."

Extract of a letter from Josiah Blakely, American Consul at St. Jago de Cuba, to the Secretary of State.

"DECEMBER 26, 1801.

"On the first of November last, I wrote you on the unpleasant subject of the cruel treatment I had experienced in this place by an officer from the

Intendant at Havana. In that letter I informed you that on the 18th of September last my person was arrested and conducted to the common prison in this city. My account books and the keys of my cabinets, trunks, &c., all taken from me; stores all locked up; guards placed around my house and stores.

"My account books, receipt books, &c., were most critically examined from the moment I commenced business in this place to that day. Each article of goods in my stores was also examined, to know if properly entered, the duty paid, &c. After many days' examination, the King's officers were forced to report that they could not find the least cause of complaint. I was not informed why this took place, yet I was still confined, and the embargo continued upon my stores and property.

"At the time of this arrest, I protested, in the most solemn manner, against such proceedings; demanding to know the cause of such disgrace to myself, total ruin to my business, disappointment and loss to my correspondents, and insult to my Government and nation. The only answer I could obtain, was, 'It was the order of the Intendant at Havana; that I would soon be informed why this had taken place, my person be liberated, and the embargo be taken from my property.'

"Though in such extreme distress, I felt unwilling to be troubling my Government with complaints so very awkward and unintelligible. Thus situated, I have waited the arrival of one post after another from Havana; but, since the tremendous order for my arrest, and the embargo upon all my property, I am informed by the Governor here not a line has come to him respecting me or the property so embargoed, though much of it was in provisions of perishable articles.

"Insulted, ruined in my business, distressed, and wholly in the power of those, perhaps, whose official existence will depend on my ruin and apparent guilt, I shall be under the necessity of humbly praying permission, as a native citizen, merchant, and Consul, of the United States, to approach the high Executive of my nation, there to pray that my tale of woe may be heard; that the unpleasant application I am under the necessity of making to the Court of Spain for compensation for the great injury done me and my correspondents, the unlawful insult offered to my commission and nation, may be supported and enforced.

"When this arrest and embargo first took place, the whole port appeared lost in astonishment. It seems the order of the Intendant at Havana was dreadfully severe and positive. I was writing in my office when the King's officers entered to execute the awful mandate; it is said they brought with them a guard of fifteen soldiers. The whole city stood silent in wonder and expectation. The high charge given to the guards; the number of sentinels; my person conducted to prison; all my stores instantly shut; an instant stop put to all my mercantile proceedings; the rigorous solemnity with which the whole was conducted; deterred the good people here almost from looking at me. Few of them had sufficient courage to visit me. Many of my friends feared even to send their domestics to inquire how I was. Many supposed the order must have come from the King himself, by the awful severity with which it was executed. I then thought that my crimes had been so great, (like that of *Cain*,) a mark of infamy had been set upon me by God Almighty.

"My fast declining state of health, when in prison, induced the Governor here, on the 25th of November, humanely to permit me to leave the prison, on giving bail for my person. I hoped my statement of damages, and certificate from the civil officers and principal inhabitants of this city respecting my peaceable, proper conduct since residing here, would have accompanied this; but, since I have been out of prison, all the principal inhabitants of this city have been at a neighboring village, celebrating to the Virgin an annual feast. The holidays (in which no business can be done) will now continue for some time. Soon as possible, I shall forward to your office the said papers. I pray you to inform the President of the United States of the contents of this letter."

[The remainder of the documents embrace—1. A list of vessels seized or detained by the Spaniards in the ports of Spain; 2. Cargoes belonging to citizens of the United States, seized or embargoed by the Spaniards on board of American vessels; 3. Cargoes, the property of the United States, taken or seized by the Spaniards on board foreign vessels; 4. Cases of violation of the Spanish territory by the French, not included in either of the general reports, the vessels having been sent into the ports of France; 5. General report of such vessels of the United States as have been taken and brought into the ports of His Catholic Majesty, in Europe and Africa, by the French, since the 1st day of October, 1796; 6. General report of such vessels of the United States as have been taken and brought into the ports of His Catholic Majesty, in Europe and Africa, by the Spaniards, since the 1st day of October, 1796; 7. Abstract of the cases of capture of American vessels by Spanish cruisers, and others under Spanish authority, subsequent to the late treaty with that Government, of which complaint has been made to the Government of the United States.]

FRANCE.

[Reported to the House of Reps., April 22, 1802.]

Mr. Giles, from the committee appointed the 5th of February last, on the subject of spoliations committed by the cruisers of the French Republic, during the late European war, made the following report:

On the 6th day of February, 1778, a Treaty of Amity and Commerce was concluded between the United States and France, containing a variety of reciprocal commercial stipulations and regulations between the two countries, which were deemed by both nations to be in force at the time of the commencement of the late European war, and to continue so for some time thereafter. On the 9th of May, 1793, after Great Britain had become a party in the war, and whilst the treaty between the United States and France was considered to be in force by both nations, the National Convention passed a decree relative to the commerce of neutrals, the first article of which is in the following words: "The French ships of war and privateers may stop and bring into the ports of the Republic such neutral vessels as are loaded, in whole, or in part, either with provisions belonging to neutrals, and destined for enemy ports, or with merchandise belonging to enemies." This decree, after being several times repealed and re-enacted, was finally repealed on the 27th of July, following. On the 2d of July, 1796, the Executive Directory made the following decree: "That all neutral or allied Powers shall, without delay, be notified that the flag of the French Republic will treat neutral vessels, either as to confiscation, as to searches, or capture, in the same manner as they shall suffer the English to treat them." On the 1st of August, 1796, the special agents of the Executive Directory to the Windward Islands made a decree to the following effect: "That all vessels laden with contraband should be seized and confiscated for the benefit of the captors." On the 27th of November, 1796, the commission delegated by the French Republic to the Windward Islands, made a resolve to the following effect: "That the captains of French national vessels and privateers are authorized to stop and bring into the ports of the colony American vessels bound to English ports, or coming from the said ports." On the 1st of February, 1797, the special agents of the French Directory to the Windward Islands made a decree to the following effect: "Subjecting to capture and confiscation neutral vessels destined for the Windward and Leeward islands of America, delivered up to the English, and occupied and defended by the emigrants. These ports are said to be Martinico, St. Lucie, Tobago, Demerara, Berbice, Essequibo, Port au Prince, St. Marks, L'Archaye, and Jeremie. The decree also subjects to capture all vessels which have cleared out for the West Indies, *generally*." On the 2d of March, 1797, the Executive Directory made the following decree: "After the seventeenth article of the Treaty of London, of the 19th of November, 1794, all merchandises of the enemy's, or merchandise not sufficiently ascertained to be neutral, conveyed under American flags, shall be confiscated; but the ship, on board of which such merchandise shall be found, shall be released and given to the proprietor. The commissaries of the Directory are enjoined to accelerate, by all the means in their power, the decision of the contests which shall arise, either upon the validity of the captures of the cargoes, or upon freights and insurances."

"According to the eighteenth article of the Treaty of London, dated the 19th of November, 1794, relative to articles declared contraband by the twenty-fourth article of the treaty, dated February 6, 1778, are added the following: ship timber; oakum, pitch, and rosin; copper for sheathing vessels; sails, hemp, and cordage; and every thing which serves directly or indirectly to the arming and equipping of vessels, excepting bar iron and fir in planks. These articles shall be confiscated as often as they shall be destined, or attempted to be carried to the enemy.

"According to the twenty-first article of the Treaty of London, of the above date, every American who shall hold a commission from the enemies of France, as well as every seaman of that nation, composing the crew of the ships and vessels, shall, by this fact alone, be declared piratical, and treated as such, without suffering the party to establish that the act was the consequence of threats of violence.

"In pursuance of the law of the 4th of February, 1793, the regulations of the 21st of October, 1794, and of the 26th of July, shall be complied with, according to their form and tenor.

"Every American ship shall therefore be deemed a lawful prize which shall not have on board a bill of lading in due form, according to the plan annexed to the treaty of the 6th of February, 1778, the execution of which is enjoined by the twenty-fifth and twenty-seventh articles of that treaty.

"The Commissioners of the Executive Directory are required to carry into effect the penalties that attach on all clandestine attempts that may be made by American, or vessels belonging to any other nation, to pass as neutral, on board the vessel where the fraud is attempted to be practised, in the manner that these penalties have been repeatedly carried into effect during the present war. The penalty shall attach where the blanks in the consignments and invoices are not filled up, though signed and sealed; where the papers are in the form of letters, containing fictitious signatures; where are double passports or policies, specifying different destinations; where consignment is made to two or more factors; and where there are different receipts, or papers of any kind, which consign the whole or part of the same goods to different owners or different destinations.

"By this article, provisions of the treaty of the 9th Frimaire last, relative to freight and insurance, are repealed, as far as they apply to insurance.

"The present treaty shall be published in the bulletin of the laws. The Ministers of the Marine, and of the Colonies, of Justice, and of Foreign Affairs, are charged with the execution of it in their respective Departments."

The American commerce must have suffered considerable spoliations in consequence of these various regulations of the French Government and its dependencies.

On the 5th and 22d of June, 1797, the President of the United States appointed three Envoys Extraordinary for the purpose of adjusting the differences which then existed between the two nations, and on the 15th, July, 1797, gave instructions to the Envoys, which, so far as they respect the depredations on the commerce of the United States, are in the following words:

"In respect to the depredations on our commerce, the principal objects will be to agree on an equitable mode of examining and deciding the claims of our citizens, and the manner and periods of making them compensation. As to the first, the seventh article of the British, and the twenty-first of the Spanish Treaty, present approved pre-

cedents to be adopted with France. The proposed mode of adjusting those claims, by Commissioners appointed on each side, is so perfectly fair, that we cannot imagine it will be refused. But when the claims are adjusted, if payment in specie cannot be obtained, it may be found necessary to agree, in behalf of our citizens, that they shall accept public securities, payable with interest at such periods as the state of the French finances shall render practicable. These periods you will endeavor, as far as possible, to shorten.

"Not only the recent depredations under color of the decrees of the Directory of the 2d of July, 1796, and the 2d March, 1797, or under the decrees of their agents, or the illegal sentences of their tribunals, but all prior ones, not already satisfactorily adjusted, should be put in this equitable train of settlement.

"To cancel many, or all, of the last mentioned claims, might be the effect of the decree of the Executive Directory of the 2d of March last, reviving the decree of the 9th of May, 1793: but this being an *ex post facto* regulation, as well as a violation of the Treaty between the United States and France cannot be obligatory on the former. Indeed the greater part, probably nearly all the captures and confiscations in question have been committed in direct violation of that treaty, or of the law of nations. But the injuries arising from the capture of enemies' property in vessels of the United States may not be very extensive; and if for such captured property the French Government will, agreeably to the law of nations, pay the freight and reasonable demurrage, we shall not, on this account, any further contend. But of ship timber and naval stores taken and confiscated by the French, they ought to pay the full value, because our citizens continued their traffic in those articles under the faith of the Treaty with France. On these two points we ought to expect that the French Government will not refuse to do us justice; and the more, because it has not, at any period of the war, expressed its desire that the Commercial Treaty should, in these respects, be altered.

"Besides the claims of our citizens for depredations on their property, there are many arising from express contracts made with the French Government, or its agents, or founded on the seizure of their property in French ports. Other claims have arisen from the long detention of a multitude of our vessels in the ports of France. The wrong hereby done to our citizens was acknowledged by the French Government, and in some, perhaps in most of the cases, small payments towards indemnifications have been made; the residue still remains to be claimed.

"All these just demands of our citizens will merit your attention. The best possible means of compensation must be attempted. These will depend on what you shall discover to be practicable, in relation to the French finances. But an exception must be made in respect to debts due to our citizens by the contracts of the French Government, and its agents, if they are comprehended in any stipulation; and an option reserved to them, jointly or individually, either to accept the means of payment which you shall stipulate, or to resort to the French Government directly for the fulfilment of its contracts.

"Although the reparation for losses sustained by the citizens of the United States, in consequence of irregular or illegal captures or condemnations, or forcible seizures or detentions, is of very high importance, and is to be pressed with the greatest earnestness, yet it is not to be insisted on as an indispensable condition of the proposed treaty. You are not, however to renounce these claims of our citizens, nor to stipulate that they be assumed by the United States as a loan to the French Government."

Whilst these Envoys were in Paris, endeavoring to effect the objects of their mission, the French Government, on the 18th of January, 1798, passed the following law:

"The character of vessels, relative to their quality of neuter or enemy, shall be determined by their cargo; in consequence, every vessel found at sea, loaded in whole or in part with merchandise, the production of England or of her possessions, shall be declared good prize, whoever the owner of these goods or merchandise may be.

"Every foreign vessel which, in the course of her voyage, shall have entered into an English port shall not be admitted into a port of the French Republic, except in case of necessity; in which case, she shall be bound to depart from the said port as soon as the causes of her entry shall have ceased."

The Envoys not having been received by the Directory, and not having effected the object of their mission, on the 28th day of May, 1798, the Government of the United States passed the following law:

An act more effectually to protect the commerce and coasts of the United States.

Whereas, armed vessels sailing under authority, or pretence of authority, from the Republic of France, have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof, on or near the coasts, in violation of the law of nations and treaties between the United States and the French nation; therefore,

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be lawful for the President of the United States, and he is hereby authorized, to instruct and direct the commanders of the armed vessels belonging to the United States to seize, take, and bring into any port of the United States, to be proceeded against according to the law of nations, any such armed vessel which shall have committed, or which shall be found hovering on the coasts of the United States, for the purpose of committing depredations on the vessels belonging to citizens thereof; and, also, to retake any ship or vessel of any citizen or citizens of the United States, which may have been captured by any such armed vessel."

On the 7th of July, 1798, the Government of the United States passed the following law:

An act to declare the treaties heretofore concluded with France no longer obligatory on the United States.

Whereas, the treaties concluded between the United States and France have been repeatedly violated on the part of the French Government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity: *And whereas*, under authority of the French Government, there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the United States are, of right, freed and exonerated from the stipulations of the treaties, and of the Consular Convention heretofore concluded between the United States and France; and that the same shall not henceforth be regarded as legally obligatory on the Government or citizens of the United States.

On the 9th July, 1798, the Government of the United States passed a law further to protect the commerce of the United States, the two first sections of which relate to this subject, and are in the following words:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States shall be, and he is hereby, authorized to instruct the commanders of the public armed vessels which are, or which shall be, employed in the service of the United States, to subdue, seize, and take any armed French vessel which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods or effects which shall be found on board the same, being French property, shall be brought within some port of the United States, and shall be duly proceeded against, and condemned as forfeited, and be distributed, as by law is or shall be provided, respecting the captures which shall be made by public vessels of the United States.

And be it further enacted, That the President of the United shall be, and he is hereby authorized to grant to the owners of private armed ships and vessels of the United States, who shall make application therefor, special commissions in the form which he shall direct, and under the seal of the United States; and such private armed vessels, when duly commissioned, as aforesaid, shall have the same license and authority for the subduing, seizing, and capturing any armed French vessel, and for the recapture of vessels, goods, and effects of the people of the United States, as the public armed vessels of the United States may by law have; and shall be, in like manner, subject to such instructions as shall be ordered by the President of the United States, for the regulation of their conduct. And the commissions which shall be granted, as aforesaid, shall be revocable at the pleasure of the President of the United States.

On the 28th day of May, 1798, instructions were given to the commanders of armed vessels, belonging to the United States, in the following words:

"Whereas, it is declared by the act of Congress, passed the 28th day of May, 1798, that armed vessels sailing under authority, or pretence of authority, from the French Republic, have committed depredations on the commerce of the United States and have recently captured the vessels and property of citizens thereof, on and near the coasts, in violation of the law of nations and treaties between the United States and the French nation;

"Therefore, and in pursuance of the said act, you are instructed and directed to seize, take, and bring into any port of the United States, to be proceeded against according to the laws of nations, any armed vessels sailing under authority, or pretence of authority, from the French Republic, which shall have committed, or which shall be found hovering on the coasts of the United States for the purpose of committing, depredations on the vessels belonging to citizens thereof; and, also, to retake any ship or vessel of any citizen or citizens of the United States which may have been captured by any such armed vessels.

On the 10th day of July, 1798, further instructions were given to the commanders of armed vessels of the United States, in the words following:

"In pursuance of the acts of Congress, passed the 28th day of May, the 20th day of June, and the 9th day of July,

"You are hereby authorized, instructed, and directed to subdue, seize, and take, any armed French vessel or vessels, sailing under authority, or pretence of authority, from the French Republic, which shall be found within the jurisdictional limits of the United States, or elsewhere, on the high seas; and such captured vessel, with her apparel, guns, and appurtenances, and the goods and effects which shall be found on board of the same, to bring within some port of the United States; and, also, retake any vessel, goods, and effects, of the United States, or persons, resident therein, which may have been captured by any French vessel, in order that proceedings may be had concerning such capture or recapture, in due form of law, and as to right shall appertain."

Instructions were also given, after the passage of the aforesaid laws, to the captains of private armed vessels of the United States, to the same effect with the instructions given to the public armed vessels of the United States.

In consequence of these measures, the treaty of the 6th of February, 1778, between the United States and France, in virtue of which most of the reclamations were made, became no longer obligatory; a partial state of hostility took place between the United States and the French Republic; several hostile actions occurred between the armed vessels of the two nations, and several captures were made of French vessels, both by pub-

lic and private armed vessels of the United States, which have been condemned and sold as lawful prizes.

On the 25th of February, the President of the United States nominated three other Envoys Extraordinary, for the purpose of adjusting the differences between the United States and the French Republic; and, on the 30th day of November, 1800, a convention for terminating certain differences which had arisen between the United States and the French Republic, was concluded at Paris. On the 3d day of February, 1801, the Senate passed a resolution in the constitutional mode, advising the ratification of the said convention, provided the second article be expunged, &c. The second article is in the following words:

"The Minister Plenipotentiary of the two parties not being able to agree, at the present, respecting the Treaty of Alliance, of the 6th of February, 1778, the Treaty of Amity and Commerce of the same date, and the convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects, at a convenient time; and, until they may have agreed upon these points, the said treaties and convention have no operation, and the relations of the two countries shall be regulated as follows:" This article was introduced into the convention at the intimation of the American Envoys, being, it is to be presumed, the best stipulation it was in their power, at that time, to make for negotiating hereafter upon the indemnities mutually due, or claimed by the citizens of the two countries. On the 8th of February, 1801, the President of the United States, in conformity with the advice of the Senate, did ratify the said convention, excluding therefrom the aforesaid second article. The Senate not having accompanied their advice for expunging the said second article with any explanation of their motive for the measure, it was understood, both by the Chief Consul and the American Envoys then at Paris, that the object of expunging the said second article was, "the retrenchment of the respective pretensions of the two Governments, which were the objects of the said second article;" and, with an explanation to that effect, on the 31st of July, 1801, the Chief Consul ratified the said convention. The convention thus ratified, was laid before the Senate, by the President of the United States, on its return from Paris; and, on the 9th day of December, 1801, the Senate resolved, "that they considered the said convention as fully ratified;" and in pursuance thereof, on the 21st of the same month, the President caused the said convention to be promulgated as it was originally ratified.

From these circumstances, and a recurrence to the fifth article of said convention, in the following words: "The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid; or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two States. But this clause shall not extend to indemnities claimed on account of captures or confiscations." It appears that the exclusion of the second article of the convention was considered as a renunciation of the indemnities claimed by the citizens of the United States for spoliations and depredations upon their commerce, so far as the Government might otherwise have been instrumental in obtaining such indemnities.

Upon the whole view of the case, the committee submit it to the House to determine whether the Government of the United States be, in any respect, bound to indemnify the memorialists; and whether there be any ground for discrimination between the cases of losses sustained before the acts of the 28th of May, 1798, the 7th of July, 1798, and the 9th of July, 1798, and cases of losses sustained after those periods.

BARBARY POWERS.

[Communicated to Congress, December, 15th, 1802.]

Extract from the President's Message of that date.

"A small force in the Mediterranean will still be necessary to restrain the Tripoline cruisers, and the uncertain tenure of peace, with some other of the Barbary Powers, may eventually require that force to be augmented."

Extracts of letters from James Leander Cathcart, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated at

"LEGHORN, *July* 2, 1801.

"SIR: The King of Sweden has protested the bills drawn by Mr. Tornquist, to the amount of two hundred and forty thousand dollars, the sum promised by him to the Bashaw of Tripoli as the price of peace, and he has resolved to repel the demand for an annuity of twenty thousand dollars, by force of arms, and will send a squadron against Tripoli as soon as he has settled his affairs with Great Britain."

"Many of our merchants and captains dispute the Consul's authority to detain their vessels in port, notwithstanding the national consequences of their capture being fully explained to them. I, therefore, presume that this point merits the immediate determination of Government, and that positive instructions ought to be given to all Consuls in the Mediterranean, in order that they may know whether they have power to retain the vessels of their nation in port, as the Consuls of all other nations have, or whether they are to permit them to sail after being informed of war being declared against us by any of the Barbary States.

Extracts from Mr. —— letters to Mr. Cathcart, dated at Tripoli, from March 12, to April 30.

"TRIPOLI, *March* 12, 1802.

"The Bashaw expects the frigate formerly commanded by Murad Raiz, and blockaded by the ships of the United States at Gibraltar, from Tangier, with a cargo of corn; having sent an ambassador to solicit the favor from the Emperor of Morocco."

"28th do. was launched a xebeck of fourteen guns, which is to be fitted out as a cruiser."

"I have been disputing with the Jews, but have only recovered one thousand three hundred dollars from them yet."

"The Bashaw had taken the opinion of his counsellors, in writing, relative to the American war; only three were opposed to it. Sidi Mahomet Daguize, the Grand Kaya, and another whom I do not know.

"On the arrival of the American frigates before Tripoli, the Bashaw began to reflect on the advice he had received: now the scene is changed. Murad Raiz, the chief promoter of the war, is in very low estimation; his companion Raiz Squsy has literally drank himself into the other world about a month ago, and Murad was in a fair way to follow him, when a little recollection made him abstain from liquor, some days."

"April 22d. It is currently reported that the Bashaw intends to fit out five cruisers, three quarter galleys, a guerlingwich, or polacre, that returned from a cruise with a prize a few days ago, and a xebeck."

"April 30. I have to inform you that two quarter galleys of twenty-eight oars, and four carriage guns, and four swivels, manned with from fifty to sixty men each, one commanded by Raiz Hafifa, and the other by Raiz Osman Candiotto, are ready to sail upon a cruise."

Extracts of letters from Mr. —— to Mr. Cathcart, dated at

"TRIPOLI, *May* 10, 1802.

"On the evening of the 1st instant, the Consuls were summoned to the castle, when the Bashaw, in the presence of the Swedish officers, stated the treatment he had received from Sweden since the conclusion of Tornquist's treaty, and compared his treatment to them since that period, and ended his observations by asking, if he had not sufficient reason to declare war against that nation; and then solemnly declared that he never intended to enter into another treaty with Sweden. War was to be declared the next day; nevertheless, it was postponed to the 5th instant, in hopes that, by continuing the negotiation, an accommodation would take place; but the Admiral would not listen to any terms but those he proposed, which were as follows: "The Swedish prisoners to be liberated without ransom; peace to be established without paying any consideration whatever for it, as presents, or otherwise, upon the same terms as it was before the declaration of war in 1800." The Admiral alleged that the Bashaw, having captured Swedish property to a considerable amount, could not possibly have any claim against Sweden.

"I know the Bashaw of Tripoli has made an effort to conclude a treaty with the United States of America through the mediation of Algiers, and I am very much mistaken if there are not at this moment other plans under consideration, as several of the Bashaw's adherents endeavor to gain his confidence by suggesting them."

"On the night of the 19th instant, departed two galliots (quarter galleys) to cruise along shore; it is said they are in quest of some American vessels that are at Susa."

Extracts of letters from James Leander Cathcart, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated at

"LEGHORN, *July* 4, 1802.

"You will please to observe that the cruisers of Tripoli have been frequently at sea since the war commenced, and thence conceive the danger our merchant ships have been exposed to. From the returns of our Consuls, you will be informed of the extent of our commerce in this sea, which never was so valuable as it was at the period, and since the Bashaw of Tripoli commenced hostilities. I have seen twenty-four sail of American vessels in this port at once last year, two-thirds of whom were unarmed. Can the wisdom of Government devise no means either to prevent the cruisers of Tripoli from putting to sea, or our merchant ships from passing up the Mediterranean, unarmed and without convoy? Is it not possible to prohibit them (for their own sakes) from coming past Gibraltar unless armed sufficiently to defend themselves, when three or four are together, or under convoy of some of our ships of war?"

"The Bashaw of Tripoli seems disposed to enter into a treaty with us, but upon what terms he has not yet declared. Mr. Eaton informs me that a proposition of peace on the part of the Bashaw of Tripoli came though the Bey of Tunis, when it was proposed that the latter should be mediator and guarantee. Mr. Eaton answered that we prefer peace to war when we can obtain it upon honorable terms, but not otherwise."

From No. 9, dated

"LEGHORN, *July* 15, 1802.

"On the 10th instant, Mr. Appleton and myself endeavored to dissuade the masters of vessels, now in port, from sailing, until some of our frigates, or those of Sweden, arrive to take them under convoy, but without effect; they seem, at present, as they ever have seemed, intent upon gain only, without properly appreciating the risk."

CIRCULAR.

ALGIERS, *June* 26, 1802.

This morning arrived a Tripoline corsair, and with her a prize; the Philadelphia brig Franklin, Captain Morris, who sailed from Marseilles the 8th instant, was captured the 15th instant adjacent to Carthagena, and another American brig, which was in company, got off.

On the morning of the 21st instant, I saw, three leagues east of Algiers, another Tripoline cruiser, with a brig in her possession, standing to the eastward, which I take to be an American vessel. I am trying on what terms I can obtain the ran-

som of Captain Morris and crew, in all, nine; and if possible, afterwards shall see on what conditions I can get the brig and cargo.

It is a fact that there is at sea, at present, six sail of Tripoline cruisers; and it is asserted that the frigates of the United States and those of Sweden are blockading Tripoli.

Sir, I am, &c. RICH. O'BRIEN.

By comparing this with Mr. Nordeling's letter, it would appear that more cruisers than the two galleys are out; but I can hardly believe it possible that they could evade the diligence of two squadrons, or that they have enterprise to attempt it in anything but row-boats, such as the galleys.

Cathcart, it is reported, heard, but not authenticated by official authority, that Lieutenant Sterrett, in the Enterprise, has recaptured a Swede. God send it may be true.

Extracts of a letter from Andrew Morris, Captain of the brig Franklin, to James Leander Cathcart, Esq., Consul of the United States, &c., dated

TRIPOLI, *July* 22, 1802.

"I take this early opportunity to inform you of my capture. I sailed with the brig Franklin, belonging to Messrs. Summer and Brown, of Philadelphia, from Marseilles, with an assorted cargo for the West Indies, on the 8th ultimo, and, on the night of the 17th following, then off Cape Gallos, was boarded by one of three Tripoline corsairs, mounting four carriage and four swivel guns, that sailed from this place on or about the 20th of May. I shall pass over the occurrences of that night, as you are well acquainted with the conduct of these barbarians towards the unfortunate that fall into their hands. They proceeded with the prize to Algiers, where we arrived the 26th; and, as I conjecture, by the representations of Mr. O'Brien, they were obliged to make a hasty retreat on the 27th following, but not without giving me an additional load of chains; what with calms and contrary winds, we did not reach Biserta, in the neighborhood of Tunis, until the 7th instant; where, after a tarry of five days, we departed, leaving the brig in charge of their agent, and arrived here on the 19th inst. Through the interference of Mr. Nissen, His Danish Majesty's Consul here, I have the liberty of the town; and, by a lucky event, a Mr. Benjamin McDonough has claimed my two officers and one seaman, and has obtained their release as British subjects; two more that were foreigners, which I reported as passengers, have likewise been liberated, so that they have only myself and three seamen captives. You will readily agree with me that this will lessen the value of the capture to the Bey. But I cannot pass over the disappointment I experienced in not falling in with some of our vessels of war, during one month's captivity on board the corsair, especially off Cape Bon, a place that the necessity of strictly guarding must appear to every naval commander at war with Tripoli. But more on this subject if time will permit. The most provoking circumstance was off this place: when we had arrived within about five leagues of the port, the corsair, with our flag reversed, began, according to their custom, to salute, and so continued at intervals, for more than five hours, until we anchored in the harbor."

"The three galliots are now all in port; they are to sail immediately; it is said Murad Raiz, alias Lisle, is to go in one of them, or in a small Italian polacre of twelve guns."

Extract of a letter from William Eaton, Esq., Consul of the United States of America, at Tunis, to the Secretary of State, dated

"TUNIS, *December* 13, 1801.

"On the 28th arrived the Danish Commodore Koefred, and a Consul Holch, five days from Leghorn. The evening of the 2d ultimo they passed at the American house. As the Commodore had lately been at Tripoli, on a negotiation, it was very natural to inquire of him what seemed to him to be the general sentiment of the Tripolines, respecting the American war. He said it was very unpopular, and that the subjects of the Bashaw, chiefly on this account, were ripe for a revolt; they waited for nothing but succor. They clamor against the madness and oppression of their chiefs; say he makes war on his friends to the destruction of their little commerce; takes all the plunder to himself; and, in the issue, reduces them to starvation and the loss of their friends, without allowing them the wretched consolation to mourn for those friends when slain. He forbade the surviving relations to mourn for Sterrett's dead.

"They almost unanimously desire the restoration of their rightful sovereign, who is a mild man, of peaceable dispositions."

Extract of a letter from Richard O'Brien, Esq., Consul of the United States of America at Algiers, to the Secretary of State, dated

"ALGIERS, *February* 1, 1802.

"The Algerine Ministry, on the 20th of January, proposed to me, that now, as the Tripoline Ambassador was here, to settle or arrange with Tripoli. At the same time alluded that a little money would be required. I answered, I had no orders on this subject; and that I was convinced that the United States would never give any; that we had sufficient of the bad faith of Tripoli. I considered this hint, or proposition, in order to feel my pulse to know if I had orders or latitudes."

Extract of a letter from William Eaton, Esq., Consul of the United States of America at Tunis, to the Secretary of State, dated

LEGHORN, *February* 3, 1802.

"It may not be improper to mention here, that Thursday, 17th December, latitude 39 deg. 45 min., spoke Snow Fox, of Boston, from Naples, bound to Messina, with very few men and no guns. The Mediterranean is covered with this kind of adventurers. If individuals will neither have regard to their own safety, nor the general interests of the United States, should not the Government interdict this loose manner of hazarding both by legal prohibitions to commerce here without convoy? One single merchantman's crew, in chains at Tripoli, would be of incalculable prejudice to the affairs of the United States in that Regency."

Extract of a letter from Richard O'Brien, Esq., Consul of the United States at Algiers, to the Secretary of State, dated at

"ALGIERS, *June* 14, 1802.

"On the evening of the 10th instant arrived here two Tripoline corsairs, and this morning they sailed for the coast of Spain, in search of Americans and Swedes. These two corsairs are row galleys, with three lattine sails, each having four guns; one a crew of forty men, the other thirty-five. They are well calculated for rowing, and boarding vessels in calms or light winds. They say they are about twenty days from Tripoli; sailed with three others; and those two have coasted it down the Barbary shore to Algiers."

JUNE 26.

"This morning, at 6 a. m., entered the port of Algiers a Tripoline corsair, and with her the American brig, Captain Morris, of Philadelphia, with his crew, nine persons, in chains, on board the Tripoline corsair. The Tripoline corsair had her colors flying at each mast head, and kept firing guns; at the same time, under her prow was hoisted the American flag reversed. All this I have seen with my own eyes. On this, I went to the Marine, to the General and Minister for Foreign Affairs; told him, as the treaty of the United States with Tripoli was under the guaranty of this Regency, that, if the Dey had not power or influence over the Government, or Bashaw of Tripoli, the Dey had it now in his power, and in his port, and under the eyes of the city, to do me the justice that he had pledged the faith and honor of the Regency to do; that I demanded, in the name of the United States, the American brig and cargo, and crew, of this Government: that all was in their port, with the Tripoline corsair; that she had been supplied here, from the 10th to the 14th of June, with all her wants, which enabled her to proceed to sea, and capture Americans.

"To this he answered, that the Regency's guaranty was intended to be as a mediator, but not to use force; that now the guaranty could not much be talked of; that the United States had sent frigates to blockade Tripoli; had taken last year a Tripoline corsair and crew, and let them go; if we had brought them to Algiers, and given them up to the Dey, that he would again settle our affairs with Tripoli, with a little money or expense. To this I answered, that the Regency had been repeatedly solicited to use their influence before that hostilities had commenced; that, when Algiers had any business of their own, it was respected by Tripoli; but when any affairs of the United States, I was told that Algiers had not power to command the Government of Tripoli to act contrary to its interests; that timid, indeed, would the United States be, knowing, for eight months before it had happened, that Tripoli intended a war of plunder on our commerce, that we depended on this Regency's guaranty; but to give a greater security, we sent three frigates; to show our moderation, we let go the Tripoline corsair and crew; that this circumstance the Regency well knew of. Finally, he told me he could do nothing without first receiving the Dey's orders; that he would remain in my favor all in his power. I had known that this said Marine Minister had encouraged the Tripolines from the 10th to the 14th of June; that, if they took any prizes, they might bring them into the ports of this Regency and dispose of them.

"I declared publicly that the Regency's conduct this day was a breach of faith, and of the treaty which they had made and guarantied to the United States. I next went to the Prime Minister; and stated to him everything, as I had to the Marine Minister. He observed that, if the American frigates were not blockading Tripoli, that Algiers would give up the American brig, cargo, and crew, and send the corsairs of Tripoli out of their ports; that, two years past, the Portuguese took an Algerine corsair; that the Bashaw of Tripoli had got from the Portuguese the corsair and crew, and sent both as a present to the Dey; that this great favor to Algiers would be badly repaid by Algiers taking from the Tripolines the American cargo, brig, and crew; that our colors being reversed was a custom of war; that our corsairs could do the same by Tripoli, when we took any of their vessels. I told him the favor rendered by Tripoli to Algiers had nothing to do with their guaranty of the Treaty of the United States; that I demanded what was in the power of the Regency to perform, and would not forget any service he would render me on this occasion.

"On the morning of the 27th June, I went again to the Minister of the Marine, who informed me that he had stated to the Dey the chief of what I had said to him the day before; that the Dey said Tripoli and the United States were at war; that this finished his guaranty; that the Dey did not think it to be right to take prisoners or prizes from the Tripolines to give to the Americans, who were blockading Tripoli; that this was the Dey's answer; that I might take it to my Government: at the same time, that the Dey would admit American corsairs to the same favors in his ports as he did the Tripolines. I observed, to this definitive answer of the Dey, I had not much more to say at present than what I had repeatedly stated; that I would fully communicate the same to the Government of the United States, and was sorry to observe that our treaty was only adhered to in such parts as were favorable to this Regency, and in no respects, in any manner, to the advantage of the United States. He cautioned

me to be prudent; that it was well known to me that a little thing would irritate the Dey, and the consequence would be serious; that I well knew the terms the Dey had lately obliged the Spaniards to acquiesce to; and that both the British and French would soon share the same fate. I thanked him for his advice, and observed that it made no difference to the United States in what Spain acquiesced to, or what the Dey would do against the British or French; that I was convinced the Government of the United States would, with regret, learn from facts, that Algiers was not the friend of the United States, but an evident friend of Tripoli. He observed that he did not believe that we, or any Christian nation, would keep the peace with Algiers, if we found it more our interest to be at war. I told him that we knew our interest, and, at the same time, would not sacrifice the honor of our nation under any consideration whatever; that the present time admitted of a favorable opportunity for him, the Dey, &c., to do me the just favor I required.

"The Prime Minister, and Bvrach, the Dey's Jew broker, and in fact his principal director, went to the Dey at 2 p. m., on the day of the 27th June, and stated all my arguments to the Dey. The same, I sent my dragoman to the Dey, to request the favor to befriend me on the present occasion; that nine of my countrymen were in chained captivity in his port, on board a Tripoline, with a prize, an American brig; and that the corsair of Tripoli had the American flag reversed at the prow of said corsair; that, at the same time, the Dey was the guarantee of the treaty of the United States with Tripoli; that, if the Dey was not occupied, I should be happy to see him on this occasion.

"The Dey answered that I need not come; that he had the whole of the business in his mind, and that I would shortly hear the result.

"On this, the Dey sends a messenger down to the Marine, to the Vickelhadge, or General of the Marine, for him to call the Tripoline captain; that the Dey will purchase the nine Americans, brig, and cargo; that the Dey will give for these the sum of five thousand dollars; and that he would write to the Bashaw of Tripoli that this he did, and would remit him the money. After the Dey sent this message to the Marine, the Dey went to his garden. The Minister of the Marine declared this message to the Tripoline captain, who said he could only part with the American prisoners by force, having the Bashaw of Tripoli's orders, above all things, if he should take any Americans, to take care and land them at some of the outports; that it was by having possession of them that his master, the Bashaw, would find thereby means to bring the Americans to a peace on Tripoli terms.

"At mid-day, on the 28th of June, being informed that several Moorish merchants were offering to purchase the brig Franklin and cargo from the captain of the Tripoline; on this information I went to the Prime Minister, and told him what I heard; he was very angry; said that the business should have been carried yesterday, agreeable to the Dey's orders, but that the business was in the hands of a lion, (the Dey,) and that the foxes were looking on—alluding to the Moorish merchants. Shortly after this, I heard that the agent of Tripoli went to the Dey, and also the Swedish dragoman; that the Dey got very angry, and ordered both the Tripoline corsairs and their prize, the American brig, to depart the port of Algiers directly. As they were getting under way, I went to the Minister of the Marine, and told him that this conduct of Algiers was as a friend to Tripoli, and not to the United States; that it was in his power to have done me justice, and that he neglected it. He said he was to obey the Dey's orders; that we should have kept a better look out, and not let the corsairs of Tripoli get out. I observed to this, that I was trying to remedy the evil, &c.: had I had his sincere assistance, the business would have been finished yesterday; that, at present, I had only to detail the whole affair to my Government; the result he would be informed of; and that, as Tripoli corsairs thus entered with American prizes into the ports of this Regency, that certainly American frigates would frequent this coast, and difficulties would ensue.

"The Tripoline corsairs, and brig Franklin, and Captain Morris and crew, left Algiers on the 28th of June, at half past 2, p. m., with a light westerly wind, destined to the eastward. I suppose for Bona or Tunis, where, I hope, they will meet one of our frigates. It seems now to be reduced to a certainty that there are but those two Tripoline corsairs at sea."

Extract of a letter from James Simpson, Consul of the United States for the Kingdom of Morocco, to the Secretary of State, dated

TANGIER, *January* 8, 1802.

"At this time, Muley Solyman has not a single vessel of war afloat. At Sallee, two frigates, of about twenty guns, are building, and may probably be launched next Spring; but he is in want of many stores for them ere they can be sent to sea. At Tetuan, they have lately patched up an old half galley to carry two bow guns and fifty men; but, if I am to judge from her appearance last May, she is scarce fit to go to sea. This is all the navy.

"When Muley Solyman requested I would procure for his use the mentioned one hundred gun carriages, he particularly mentioned they would be paid for on delivery at this port, as advised in No. 33. I was in hopes Mr. Bulkley might have been able to contract for them, payable in that way; but he acquainted me they must be paid for in Lisbon; and that he judged they might cost about three hundred and twenty millreas each. Highly desirous of gratifying His Majesty, and having no other means of providing for payment of these carriages, I proposed drawing for the sum that might be required on account of my salary. This, I trust, on your side, will be admitted as a proof that nothing in my power to do, on this occasion, has been wanting, notwithstanding

what the Emperor and his Ministers may suppose. Should Government think well of making the Emperor of Morocco a present, at this time, as a fresh proof of the friendship of the United States, (in the event of his continuing the peace uninterrupted, as I trust will be the case,) these carriages, in my opinion, would be more acceptable to him than anything else. In that case, it will be necessary to give Mr. Bulkley directions respecting the payment of them. Should this measure be determined on, I would, with due submission, beg leave to recommend a letter being sent by the President to the Emperor on the occasion; especially as, since the recognition of the treaty, in 1795, and his letter of the 18th August, that year, no direct communication whatever has been made to His Majesty on the part of the United States.

"The Tripoline Ambassador or Messenger, come from thence so long ago, was permitted, on Saturday last, to proceed for Fez, to meet the Emperor. This man's business, in this country, is not precisely known, but will soon be, after he may have an interview with Muley Solyman.

"On Monday, the 14th ultimo, the Bashaw sent for me; and, after making his secretary and other attendants retire, he told me Muley Solyman was much displeased at my not having obtained for him the gun carriages he had commissioned; adding, that the reasons I had alleged, in my last letter to the Emperor on the subject, were by no means satisfactory, as they appeared to him to be mere excuses. Conscious that I had said nothing but what Mr. Bulkley had written me, on the part of the carpenter at Lisbon, who had offered to contract to make these carriages, I felt perfectly easy on the occasion, and endeavored to convince the Bashaw that the motive alleged for His Majesty's displeasure was groundless, of which he, at least, seemed to be satisfied. He then said he was also instructed by His Majesty to demand whether I was authorized to make him presents of moment, from time to time. I answered that, in the treaty made between Sidi Mahomet and the United States of America, and confirmed by Muley Solyman, no stipulation whatever was made for my Government making presents at any stated periods; of consequence, that I was without any instructions on that subject. The Bashaw then told me Muley Solyman looked upon the Americans as no better friends to him than the Dutch; and that I must consider myself in the same situation as their Consul was at that day. Fully satisfied that the Government of the United States had given the most ample and unequivocal proofs of friendship to Muley Solyman, I readily saw that this intimation must proceed either from error, or that it was a prelude to His Majesty's making another attempt to get quit of the treaty of 1786, and obtain presents at stipulated periods. On this occasion, I beg to refer you to the several letters I had the honor of addressing the Department of State, from Rhabat, between the 15th of July and the 18th of August, 1795, and to No. 55 of my Gibraltar correspondence, dated 24th September, same year. By these, you will see a strong attempt to effect this was at that time made, but that I had the happiness to overcome it, and obtain a recognition of that treaty, under well-founded motives, in appearance, for believing that Muley Solyman granted it from a full conviction of its being incumbent on him to do so. Bashaw Hackanaway having stated the American and Batavian Governments as standing in the same predicament in relation to this country, I did not allow him to quit that ground until I had given him an ample detail of the very early attention the United States paid Muley Solyman, urging that, in the choice of the articles which chiefly composed their first present, they had given the strongest proof possible of the part they took in His Majesty's concerns at that interesting moment, and of their desire that he should overcome the opposition then actually making against his succession. It does not appear necessary to trouble you with all the other arguments at this interview, only to say that, having desired another, the Bashaw appointed the 16th, in the evening. We accordingly met; and I laid before him an Arabic translation of the treaty of 1786, with a copy of the Emperor's letter of the 18th of August, 1795, to the President, confirming it; also lists of the first and second presents I delivered, in the name of the United States, to Muley Solyman, at Rhabat, in 1795, and of that I had also the honor of delivering at Mequinez, 1798, on the occasion of showing His Majesty my commission as Consul. He perused all these papers with attention, and assured me as, in holding these conferences in private, he had given me a proof of his friendship, so I might depend upon experiencing a continuance thereof, and that he would report to His Majesty on the occasion. At this second interview, not a syllable was said on my retiring from the country; neither have I, to this hour, heard any more on that subject."

Extracts from the same to the same, dated

"TANGIER, *Feb.* 20, 1802.

"I am happy in saying that, up to the present hour, I have not heard a syllable further relative to Bashaw Hackanaway's communications, of the 14th December, from which I draw a very favorable conclusion."

"The Tripoline who went to the Emperor, as Ambassador, solicited some cargoes of wheat, and is gone to Rhabat with permission to load; but he certainly will not find vessels to charter whilst Tripoli continues blockaded. The Emperor having also been solicited to give his assistance towards getting the Tripoline brig, which lies at Gibraltar, sent home, consented to give a crew and provisions for that purpose. A few days ago, the Governor solicited from the Swedish Consul and myself, in His Majesty's name, passports for her; which, having convinced him it was not in our power to grant, under the actual situation of Tripoli, it was agreed we should write Admiral Cederstrom and Commodore Dale on the subject, which has been done."

From the same to the same, dated

MARCH 19, 1802.

"I confirm that Muley Solyman has agreed to allow wheat to be sent from his country to Tripoli; but I should think it to be next to an impossibility for them to find vessels to charter for that voyage, whilst that port is so notoriously known to be blockaded. Whatever may be done in this particular, at any of the Emperor's ports, I shall take care to advise the commanders of the frigates on this station of."

Extracts from the same to the same, dated

"MAY 13, 1802.

"Yesterday I had certain intelligence of the Governor of Rhabat having received His Majesty's orders on the 6th instant for sending a schooner to Darelbeyda, immediately to load wheat for Tripoli."

"On the second instant, the two frigates were launched at Rhabat. I am assured they are pierced for twenty-six guns each, on the main deck. If so, they must be much crowded; for no ship, of a suitable length and draught of water and that force can enter any of the ports of this Empire. Nothing that I yet know of has been done towards obtaining the small cruisers it was said His Majesty intended to station at this port."

From the same to the same, dated

"JUNE 5, 1802.

"I have the honor to transmit herewith the copy of No. 39, also translation of the Minister's answer to the letter written him on the 25th of April, by the Swedish Consul and myself, on the subject of His Majesty's desire of sending wheat to Tripoli, by which you will see he submits the propriety of that measure to the letter of the treaties of Sweden and the United States with this country. Unfortunately, neither make any provision for such a case, nor are blockaded ports mentioned in them. Hitherto none of the shipments have taken place.

"Sunday last the Governor sent for Mr. Wyk and me, to show us a letter from His Majesty desiring to know if we were yet authorized to grant passports for that wheat and the Tripoline ship lying at Gibraltar, which, of course, was answered in the negative.

"It did not appear he had been instructed to treat with us upon the subject, in the precise terms of the Minister's letter. We, however, did not fail to repeat to him, that all sort of intercourse by sea with blockaded ports was pointedly opposite to the law of nations and common usage at this day. This conference was held in the presence of the Commodore of the Tripoline ship and one of the Ambassador's Secretaries, who brought the letter from His Majesty."

Translation of a letter from Sidi Mahomet Ben Absalem Selaway.

"Praise is due to God alone. There is no power or strength but in God. To the Consuls, Peter Wyk and Simpson—health.

"Your letter reached the high presence of our master, (whom God preserve!) and I read it to him; also what you say on the subject of a passport for the Tripoline Ambassador.

"This wheat to be sent belongs to my master. If you allow it to pass, when the Ambassador goes, as the property of His Majesty, it will be very well. If not, you will do what is regular, and as is established by the treaties of peace between us and you.

"The Governor, Hodge Abdarhaman Hasash, will confer with you on this matter. Let what is in the treaties of peace be done.

"Written to you on the 7th day of Muharram, 1217, (corresponding to the 10th May, 1802.)

"MAHOMET B. A. SELAWAY."

Extract from James Simpson to the Secretary of State, dated

"JUNE 14, 1802.

"No. 40, concluded 10th instant, and forwarded to Gibraltar, I presume is still there, and that this will go from thence with it.

"I have now the honor to acquaint you that, yesterday, the Governor sent for me, to say he had just received a letter from the Emperor, with orders to acquaint me that, since passports could not be granted for the two cargoes of wheat he wished to send to Tripoli, His Majesty had directed the vessels should go to Tunis; which I was happy to hear, as by that means we get rid of what threatened to be a very unpleasant piece of business.

"In the evening, at the request of the Governor, I wrote His Majesty to explain again the powerful motives why I could not sanction vessels going to Tripoli, but that I was ready to grant the usual certificates for those His Majesty might direct to be laden with cargoes, his property, for Tunis."

Extract from the same to the same, dated

"JUNE 17, 1802.

"It is with great concern I am under the necessity of acquainting you that, either the information given the Swedish Consul and myself on Sunday last, respecting His Imperial Majesty having consented to allow his wheat vessels to go to Tunis, was extremely faliacious on the part of the Governor of Tangier, or the Emperor must speedily have repented of having taken that resolution.

"This morning the Governor sent for me again, to say he had received fresh instructions from His Majesty, with orders to demand from me passports for those vessels to go direct to Tripoli, and, in case of refusal, that I was to quit the country; adding, that the letter was written in such strong terms as must prevent his consenting to any mitigation. After a very long conference, he at last, however, allowed me time to write to Commodore Morris, at Gibraltar, which I am now about to do fully."

Extracts from the same to the same, dated

"GIBRALTAR, *June* 26, 1802.

"Within this, I beg leave to enclose copy No. 42, and am extremely sorry to add the intelligence of my having been compelled, by the Governor of Tangier, to retire from thence, on Thursday evening, in consequence of positive orders from His Imperial Majesty to that effect, received on the evening of the 22d, accompanied with advice of his having declared war against the United States."

"I had another interview with the Governor of Tangier, when I succeeded in obtaining his promise to suspend again the execution of His Majesty's orders, received on the 16th, for my expulsion, until he could represent to His Majesty the impossibility he was then satisfied had always existed to my granting the required passports, since the Commodore could not sanction them."

Extract from the same to the same, dated at

"GIBRALTAR, *July* 3, 1802.

"I have now to acquaint you that, yesterday, I received a letter from the Governor of Tangier, dated 30th June, advising that His Imperial Majesty, in answer to the letter he wrote on the 22d, had directed that I might be permitted to remain there six months; adding, that I was, in consequence, at liberty to return to my house in Tangier, or not, as I should see fit."

Extracts of a letter from the same to the same, dated at

"GIBRALTAR, *July* 16, 1802.

"I have the honor of transmitting with this duplicate of No. 44, also a copy of the letter I wrote the Governor of Tangier, in answer to that I mentioned to have received from him. On the same sheet is an extract of a letter from the Danish Consul at Tangier, to me, containing the substance of what the Governor encharged him to communicate, by way of reply to my letter to him; all which I beg leave to submit to your perusal.

"In constant hope of seeing the Adams, upon mature consideration, I thought, as I had been expelled the country, and the alarm given of danger to the American flag, it was best to wait her arrival, and receipt of the instructions I fully depend on receiving by that ship, before I closed with the Governor's proposal of returning to Tangier, or entirely reject it. By this I was guided in the answer I gave to his letter, and it is satisfactory to see the determination meets his entire approbation."

"My friend at Rhabat writes me, under 25th July, that the equipment of the two frigates there goes on but slowly. At Tetuan I find they make all despatch with the two galleys, and that this day week, guns, anchors, and cables were sent from Tangier by a Moor's boat for them."

Copy of a letter from James Simpson, Esq., Consul of the United States, &c., for the Kingdom of Morocco, to the Governor of Tangier, dated at

GIBRALTAR, *July* 5, 1802.

SIR: I have received your Excellency's letter of the 29th last moon, advising me His Imperial Majesty Muley Solyman had been pleased to direct that I might remain in Tangier six months. Had that order reached you previous to my being compelled to retire from His Majesty's dominions, I should certainly have availed of it. The frigate we expected from America has not yet reached this place. The moment she arrives, I will do myself the honor of writing His Imperial Majesty; and, in the meantime, I beg you will be fully assured my best endeavors will continue to be exerted for a renewal of peace and good friendship between His Imperial Majesty and America.

Extract of a letter from Mr. Shausbor, Danish Consul General, to James Simpson, Esq., the American Consul, dated

"TANGIER, *July* 9, 1802.

"Your esteemed favor of the 5th instant is duly come to hand, with the enclosed letter for the Governor of this place. I delivered it in his own hand, and, according to your request, explained to him the contents of it. In answer, he desires me to tell you that he found you were in the right, and that he would not neglect, by the first opportunity, to inform His Majesty that he had written to you a very good letter, and that he has got still a better answer."

Extracts from James Simpson to the Secretary of State, dated at

"TANGIER, *July* 27, 1802.

"I had the honor to receive, by Captain Campbell, of the Adams, the letter you wrote me on the 30th April, to which I must pray you will excuse my replying at length this morning. It was considered by Commodore Morris and myself proper that I should pass over to this place, for the purpose of more speedily and effectually making the communications you encharged me with for His Imperial Majesty, on part of the President."

"In the meantime I have to acquaint you that the frigate at Larach lies quite ready for sea, and that her commander left this place on Sunday, fully authorized to capture American vessels."

From the same to the same, dated at

"TANGIER, *August* 3, 1802.

"The 27th last month I had the honor of addressing No. 46 to you, with advice of my return to this country; original was sent Commodore Morris, and duplicate via Lisbon. Last night I returned from Tetuan, after having had an interview with Hodge Abdarhaman Hasash, who confirmed to me that the ship mentioned to be ready at Larach was destined to detain American vessels as well as others, and showed me His Majesty's original letter, written by himself, authorizing Hasash to give directions to the captain for that effect; the ship to be placed entirely under his direction."

"Hasash did not long hesitate ere he proposed to withdraw the authority he had given for the Larach ship taking Americans, provided I would

grant the captain the usual certificates given by Consuls to the Emperor's cruisers, that he might put to sea; but that I positively refused, or to sanction any vessel whatever belonging to the Emperor going to sea in any degree armed, until such time as His Majesty should see proper to give the most positive declaration of his being at peace as heretofore with the United States. After many arguments on both sides, Hasash promised me he would recommend to His Majesty to desist from his hostile intentions against the United States."

"Accordingly it was agreed both he and I should immediately write His Majesty; and, enclosed with this, I have the honor of transmitting a copy of my letter, which I beg you will be good enough to lay before the President, together with this despatch, for his information on what has been done. At this moment I have the highest gratification in saying I enjoy great hopes of a speedy accommodation; but, at the same time, although I have the conscious satisfaction of knowing that every exertion possible in my power has been made by paving the way for it, even during the time I was at Gibraltar, by endeavoring to gain my friends near the Emperor over to our interest; yet, I must candidly say, had there not been a naval force at hand to keep their cruisers in port, I very much doubt if all I could have done would have been attended with that success I now so much hope for."

"TETUAN, *July* 31, 1802.

"MAY IT PLEASE YOUR MAJESTY: With all due respect and deference, I beg leave to write your Imperial Majesty this letter, and to express my sincere wish it may meet your Majesty in the enjoyment of perfect health, which I pray God long to continue.

"After having retired from your Majesty's dominions, in consequence of your orders communicated to me for that effect, by your servant Hodge Abdarhaman Hasash, it is with the highest satisfaction I have returned for the purpose of laying before your Majesty the contents of a letter received from the Secretary of State of the United States of America, replete with expressions of the respect and particular regard the President of the said United States entertains towards your Majesty.

"That letter was written on the 30th day of April, corresponding with the 28th Dulhajja of last year. I have it in particular charge thereby to assure your Imperial Majesty, in the name of the President, how very highly he regards your Majesty's faithful observance of the peace established between your royal father (who is in glory) and the United States. The interruption that has happened since that letter was written, I trust I may be allowed to hope will speedily be done away.

"I further beg leave to represent to your Majesty, that, having found it impossible to obtain from Europe the one hundred gun carriages your Majesty was pleased last year to desire I would endeavor to provide for you, (as I had the honor of advising your Majesty at that time,) it became my duty to represent that disappointment to the Government I serve. The President, desirous of giving your Majesty a proof of his friendship, immediately directed that one hundred gun carriages, such as your Majesty desired me to procure, should be made, and sent by a vessel to Tangier, for your Majesty's use, so soon as they could be finished. Although the great distance of America from this country necessarily occasions considerable delay to answers on any subject submitted from hence, and, of consequence, that this determination of the President has been long in reaching your Majesty, yet I fully persuade myself your Majesty will see, in his ready attention to send to your Majesty what appeared would be acceptable, a strong proof of the sincere intention of the Government of the United States faithfully to maintain, not only peace, but the strictest friendship and good harmony with your Majesty.

"I purpose waiting at Tangier to receive such answer as your Majesty shall be pleased to order to be written to this letter, in full reliance your Majesty will now be pleased to show equally friendly sentiments towards the United States, and issue orders for annulling the declaration of war made against them, that peace may be restored, and their ships of war stationed in these seas again respect, in all cases, your Majesty's flag.

"In fulfilling my duty, by making these friendly communications on the part of the Government of the United States, I beg your Majesty will be persuaded I have sincere satisfaction, since it has ever been, and shall ever be, my constant endeavor to promote peace, harmony, and good friendship between this country and America.

"I pray the Almighty God to preserve your Majesty many years in health and prosperity, and beg leave to subscribe myself, with the highest respect and veneration, may it please your Majesty, your Majesty's most obedient and devoted humble servant. JAMES SIMPSON.

"His Imperial Majesty MULEY SOLYMAN BEN MAHOMET BEN ABDALLAH BEN ISMAEL, *Sheriff, Emperor of Fez, &c.*"

Extract of a letter from Mr. Simpson to the Secretary of State, dated at

"TANGIER, *August* 12, 1802.

"Original of No. 47 was forwarded by way of Lisbon, duplicate and triplicate under cover of Mr. Gavino at Gibraltar, each accompanied by a copy of the letter I wrote the Emperor from Tetuan.

"I have now the honor of enclosing, with this translation of the answer I received last night to that letter, by which I am concerned to find new ground taken, likely to be productive of some trouble with His Imperial Majesty. A great consolation is, that the pretension of frequent embassies is totally founded in error; for no such arrangement, as was pretended, was made by me with the late Minister, Sidi Mahomet Ben Ottoman; nor has anything of that nature ever been moved or hinted at, since the period alluded to, namely, 1795."

TANGIER, *August* 12, 1802.

In the name of the merciful God: there is no power or force but that proceeding from the Great and Most High God.

To JAMES SIMPSON, *Consul of America.*

Your letter reached the high presence of our master (whom God preserve!) and he was thereby informed of the orders you had received from the American nation.

Our master's pleasure is, that you return to your house; and he has given his orders accordingly, that you may remain, as you have hitherto been, in the exercise of your office, and herewith goes the order for that effect to Alcayde Abdarhaman Hasash; so return to your house. His Majesty also orders me to acquaint you that he still adheres to what you stipulated with Sidi Mahomet Ottoman, (to whom God be merciful!) which is, that your nation shall send each year one of your people to the high presence of our master with your present; but if it be difficult for you to come every year, by reason of the distance of your country, you will come once every two years.

Upon this the convention with your nation was made and the treaties signed. If you abide by this agreement and fulfil it, you will be as you were, and your attentions will increase our friendship; and if you do not fulfil it, you will see how you will have to settle your matters. What has happened to you now has been occasioned by your own tardiness and neglect in this particular; but our master (whom God preserve!) now forgives all that, and do you on your part as justice directs, and God will assist you.

Written by order of our master (whom the Almighty God has exalted!) on the seventh of Rabii 4 Tany, 1217, (corresponding with the 6th August, 1802,) by his servant Mahomed Ben Absalem Selaway, encharged with the affairs of foreign nations, whom God purify of his sins. Amen.

Translated from Arabic to Spanish by Don Manuel Bacca, professor of the former language, and from Spanish by JAMES SIMPSON.

From No. 49 to the Secretary of State, dated

"TANGIER, *Sept.* 3, 1802.

"With this I have the honor of transmitting a copy of the letter I wrote the Minister on the first instant. It will afford me much satisfaction to know what I have said on the subject of the Emperor's pretension meets the approbation of his Excellency the President. I have stated only facts, and thought best to reserve copies of my letter of the 18th July, 1795, to the then Minister, and that of Muley Solyman's to the President, on the 18th of August, following, as vouchers, more proper to be exhibited in support of my arguments, and in opposition to what further may be alleged on the part of this Government, on the subject of what they thought fit to advance rather than now.

"The business of bringing the Tripoline ship from Gibraltar, under the Emperor's flag, has been again agitated, and a general application made by Alcayde Hasash, to the Consuls here, for passports for her as belonging to His Majesty, to sail from hence for Tripoli. I positively refused mine in these terms, nor do I find any has been granted; but it is certain men have been ordered from Tetuan for her, and that she is to hoist colors at Gibraltar so soon as the weather will allow these people to get over.

"I have acquainted Captain Campbell, of the Adams frigate, that, in my private opinion, the whole is a colorable business; but if the Emperor announces to the body of the Consuls that the ship is his, and demands passports accordingly, merely to go to sea and navigate as his, I really do not see how I dare return to contest the matter; or, from circumstances, to express doubts on what is stated by the sovereign of the country as a fact, without running a great risk of drawing serious resentment on the commerce of the United States."

Extract of a letter from James Simpson, Esq., Consul of the United States, to his Excellency Sidi Mahomed Ben Absalem Selaway, Secretary of State, &c.

SIR: I have received the letter you wrote me, in answer to that I had the honor of addressing His Imperial Majesty from Tetuan. In that letter you acquainted me it was His Majesty's pleasure I should remain in this place, and exercise the functions of my office as heretofore, as that the necessary orders had been given for that effect to the Governor Alcayde Abdarhaman Hasash. Very much desirous of seeing perfect harmony subsist between this empire and the United States of America, and, at all times, ready to contribute thereto, as far as is in my power, I did not hesitate at again hoisting their flag on my residence in Tangier, in testimony of the return of peace, and notified to his Excellency the President His Majesty's friendly dispositions in this particular.

I also gave the necessary information on the subject to the commanding officer of the American ships of war stationed in their seas, and granted passports for His Majesty's frigate Mirboha and schooner Miribha, that they might put to sea, and navigate in safety.

I beg you will have the goodness to represent these matters to His Imperial Majesty, with an assurance from me, that he will always experience from the Government of the United States and their agents an equal readiness to correspond with every disposition His Majesty may be pleased to show for maintaining an uninterrupted peace between the two nations. At the same time, speaking with that sincerity which ought to guide the representatives of nations, I cannot help expressing to you with what surprise and concern I observe the further communication you make me by order of His Imperial Majesty, stating his expectation of annual embassies, accompanied with presents from the United States of America. You are pleased to say it was so stipulated with the

late Sidi Mahomet Ben Ottoman. I beg you will tell me where, and by whom, such engagement was made, for I am a perfect stranger to it.

What I know of the matter is, that, in the year 1795, when I had the honor of being sent by the Government of the United States to His Imperial Majesty Muley Solyman at Rhabat, for the purpose of congratulating him on his happy accession to the throne of his ancestors, and for obtaining a recognition of the treaty made at Morocco, between His Majesty's father, Sidi Mahomet Ben Abdallah, and the United States of America, His Majesty was pleased to ratify that treaty, without any addition or alteration, in fulfilment of his father's engagement, made in the name of the Almighty, that it should continue in full force for fifty years from the first day of Rhamaden, in the year 1300, on which it was signed.

His Majesty's letter on that occasion to the President of the United States, bearing date the 2d of Fafar, 1310, was delivered by me to Sidi Mahomet Ben Ottoman, and declared that His Majesty was at peace, tranquillity, and friendship with America, in the same manner as his father (who is with God) was, to which the Government of the United States have ever faithfully corresponded.

By that treaty there is no stipulation whatever for embassies being sent, or presents made, by either the one Government or the other, as you will see by the copy of it in Arabic, I delivered to Sidi Mahomet Ben Ottoman, on the 12th July, 1795, at Rhabat. I have seen it my duty to transmit to the Government I have the honor to represent in this country, three several copies of your letter on this important subject, by different conveyances, to guard against miscarriage: and I wait to receive such orders as his Excellency the President shall see fit to give me on this occasion.

I have lately received information that two seamen part of the crew of the American ship stranded three years ago near Cape Nun, have escaped from the Arabs, and are now with the Governor of Tawdaunt. I have to request you will have the goodness to transmit me a letter to that gentleman directing him to allow these unfortunate people to proceed to Mogadore, in order that my agent there, Mr. Peter Guyer, may send them to their own country. Alcayde Hasash having signified to me His Majesty's wish to be provided with some more American rice, I have given the necessary directions to the Consul at Gibraltar to send me a supply, as soon as he can get any of a quality proper for His Majesty's use.

It will at all times afford me particular pleasure to obey such commands from His Majesty.

I avail of this opportunity of renewing my assurances of respect, and beg you will be persuaded I am, &c.

Extract of a letter from Consul Simpson to Consul Gavino, dated

TANGIER, *27th September*, 1802.

"I am happy to tell you that some matters in discussion with this country have already been so far explained, and misconceptions on the part of this Government done away, as leaves me no room to apprehend longer a necessity of having recourse to America for instructions, as every matter is in the fairest train of perfect accommodation, and I hope the gun carriages will come just in time to settle everything, at least for some years, until they think of something else to ask for."

SPAIN.

[Communicated to the House of Reps. Dec. 22, 1802.]

Gentlemen of the House of Representatives:

I now transmit a report from the Secretary of State, with the information requested in your resolution of the 17th instant.

In making this communication, I deem it proper to observe that I was led by the regard due to the rights and interests of the United States, and to the just sensibility of the portion of our fellow-citizens more immediately affected by the irregular proceeding at New Orleans, to lose not a moment in causing every step to be taken which the occasion claimed from me; being equally aware of the obligation to maintain, in all cases, the rights of the nation, and to employ, for that purpose, those just and honorable means which belong to the character of the United States.

DEC. 22, 1802. TH. JEFFERSON.

Report of the Secretary of State to the President of the United States.

DEPARTMENT OF STATE, *Dec.* 21, 1801.

The Secretary of State, to whom the resolution of the House of Representatives of the United States of the 17th instant was referred by the President, has the honor to enclose to him the letters and communications annexed, from the Governor of the Mississippi Territory, the Governor of Kentucky, and from William E. Hulings, formerly appointed Vice Consul of the United States at New Orleans. In addition to this information on the subject of the resolution, it is stated, from other sources, that, on the 29th of October, American vessels from sea remained under the prohibition to land their cargoes; and that the American produce carried down the Mississippi could be landed only on paying a duty of six per cent.; with an intimation that this was a temporary permission. Whether, in these violations of treaty, the officer of Spain at New Orleans has proceeded with or without orders from his Government, cannot as yet be decided by direct and positive testimony; but it ought not to be omitted in the statement here made, that other circumstances concur with the good faith and friendship otherwise observed by His Catholic Majesty, in favoring a belief that no such orders have been given.

JAMES MADISON.

NEW ORLEANS, *October* 18, 1802.

SIR: I have the honor to enclose you an extract from a decree this day published by the Intendant of the Province of Louisiana, by which you will see that the Americans are no longer permitted to deposit their merchandise in this city. No information of any other place being appropriated for an American deposit is yet given; nor have we any reason to hope that the Government has such place in view. The season for the cotton from the Natchez, and other produce from the settlements higher up, to come down, approaches. The difficulties and risks of property that will fall on the citizens of the United States, if deprived of their deposit, are incalculable; their boats being so frail, and so subject to be sunk by storms, that they cannot be converted into floating stores, to wait the arrival of sea vessels to carry away their cargoes.

The port is also this day shut against foreign commerce, which can only be carried on by Spanish subjects, in Spanish bottoms.

I am, sir, with the greatest respect.

WM. E. HULINGS.

HON. JAMES MADISON, *Secretary of State.*

Extract from a publication made October 16, 1802, by Juan Ventura Morales, Intendant of the Province of Louisiana, &c.

N. B.—The preceding part of the publication relates only to the ratification of peace, and the shutting of the port against foreign trade.

"As long as it was necessary to tolerate the commerce of neutrals which is now abolished, it would have been prejudicial to the province, had the Intendant, in compliance with his duty, prevented the deposit in this city, of the property of the Americans, granted to them by the twenty-second article of the Treaty of Friendship, Limits, and Navigation, of the 27th October, 1795, during the limited term of three years.

"With the publication of the ratification of the Treaty of Amiens, and the re-establishment of the communication between the English and Spanish subjects, that inconvenience has ceased. Considering that the twenty-second article of the said treaty takes from me the power of continuing the toleration which necessity required; since, after the fulfilment of the said term, this Ministry can no longer consent to it without an express order of the King: therefore, and without prejudice to the exportation of what has been admitted in proper time, I order, that from this date, the privilege which the Americans had of importing and depositing their merchandise and effects in this capital, shall be interdicted: and, that the foregoing may be publicly known, and that nobody may allege ignorance, I order it to be published in the usual places, copies to be posted up in the public *sitioes;* and that the necessary notice be given of it to the officers of finance, the administrator of rents, and otherwise, as may be necessary.

"The present being given under my hand, and countersigned by the underwritten notary of finance *pro tempore*, in the office of Intendancy of New Orleans, October 16, 1802.

"JUAN VENTURA MORALES.

"By order of the Intendant:

"PEDRO PEDESCLAUX.

NEAR NATCHEZ, *October* 29, 1802.

SIR: I have the honor to enclose you a letter which I last evening received from Mr. Wm. E. Hulings, together with a translation of an extract from a publication made by Juan Ventura Morales, Intendant of the Province of Louisiana, &c., dated October 16, 1802. These despatches announce that the port of New Orleans is shut against foreign commerce, and also the American deposit.

Not understanding from the Intendant's proclamation, whether or not another place on the banks of the Mississippi had been assigned by His Catholic Majesty, (in conformity to our treaty with Spain,) for "an equivalent establishment," I have, by letter, (a copy of which is enclosed,) requested information upon this point, from the Governor General of the Province of Louisiana: when his answer is received it shall be forwarded to you.

The late act of the Spanish Government at New Orleans has excited considerable agitation at Natchez and its vicinity. It has inflicted a severe wound on the agricultural and commercial interests of this Territory, and will prove no less injurious to all the Western country.

There being at present an interruption in the post between this Territory and Tennessee, and supposing it of importance that the Government should be early apprized of the late event at Orleans, I have forwarded this letter by express to Nashville, where it will be deposited in the mail.

I am, sir, with sentiments of esteem and respect, your humble servant.

WM. C. C. CLAIBORNE.

HON. SECRETARY OF STATE, U. S.

NEW ORLEANS, *October* 18, 1802.

SIR: I have to announce to you that this day the port is shut against foreign commerce, and not against foreign commerce only, but against the American deposit in this city. In the decree posted up in the public places, no mention is made of any other place appointed for a deposit. You will use this information as you may think proper.

I am, with great respect, your most obedient humble servant,

WILLIAM E. HULINGS.

WM. C. C. CLAIBORNE.
Governor Mississippi Territory.

NATCHEZ *Oct.* 28, 1802.

SIR: I was this day informed that, in a proclamation issued on the 16th instant by the Intendant of the province of Louisiana, it was announced, "That the citizens of the United States should no longer be permitted to deposit their merchandises and effects in the port of New Orleans."

Information of an event so immediately interesting to the citizens of the United States led me to peruse attentively "the Treaty of Friendship, Limits, and Navigation, between the United States of America and the King of Spain," and, upon adverting to the twenty-second article, I found it ex-

pressly declared, that "His Catholic Majesty will permit the citizens of the United States, for the space of three years from this time, to deposit their merchandises and effects in the port of New Orleans, and to export them from thence, without paying any other duty than a fair price for the hire of the stores; and His Majesty promises either to continue this permission, if he finds, during that time, that it is not prejudicial to the interest of Spain, or, if he should not agree to continue it, then he will assign to them, on another part of the banks of the Mississippi, an equivalent establishment." I have here quoted the words of the treaty, and find them too explicit to require comment, or to admit of a doubtful construction.

If, therefore, His Catholic Majesty has discontinued his permission to the citizens of the United States to deposit their merchandises and effects at the port of New Orleans, will your Excellency be good enough to inform me whether any, and what, other place on the banks of the Mississippi has been assigned (in conformity to the treaty) for "an equivalent establishment." The subject of this inquiry is so interesting to the commerce of the United States and to the welfare of her citizens, that I must request your Excellency to favor me with an early answer.

Accept assurances of my great respect and high consideration. W. C. C. CLAIBORNE.

His Excellency MANUEL DE SALVADO.
Governor General of Louisiana.

The Governor of Kentucky to the President of the United States.

STATE OF KENTUCKY.
Frankfort, Nov. 30, 1802.

SIR: Two days ago, I received the enclosed letters from Dr. James Speed, and Meeker & Co., from New Orleans, together with a copy of a proclamation issued by Juan Ventura Morales, Intendant of the Spanish Government of Louisiana, and which I do myself the honor to enclose, for your information. The citizens of this State are very much alarmed and agitated, as this measure of the Spanish Government will, if not altered, at one blow, cut up the present and future prosperity of their best interests by the roots. To you, sir, they naturally turn their eyes, and on your attention to this important subject their best hopes are fixed. Permit me to request you will give me information on this business as soon as you can say, with certainty, what we may rely on; and let my solicitude on this occasion be my apology for this request.

With sentiments of respect, &c.
JAMES GARRARD.

IMPRESSED AMERICAN SEAMEN.

[Communicated to Congress, December 24, 1802.]

DEPARTMENT OF STATE, *Dec.* 22, 1802.

SIR: In pursuance of the "Act to revive and continue in force certain parts of the 'Act for the relief and protection of American seamen,' and to amend the same." I have the honor to lay before the Senate abstracts of the returns made to me by the collectors of the customs within the United States, of registered* and of impressed American seamen; to which is added a report, exhibiting an abstract of communications received from agents of the United States, for the relief and protection of their seamen.

With high respect, I have the honor to be, sir, your obedient, humble servant.
JAMES MADISON.

The Hon. PRESIDENT *of the Senate.*

Abstract of the communications from the Agents employed for the relief and protection of American seamen.

David Lenox, Esq., Agent in Great Britain.

Abstract of applications made by David Lenox, for the discharge of seamen, representing themselves to be citizens of the United States of America, and detained on board His Britannic Majesty's fleets, from the first day of October, 1801, to the first day of May, 1802.

Cases unanswered per last abstract -	51	
Applications since - - - - -	133	
Applications renewed - - - - -	24	
		208
Discharged - - - - - - -	31	
Ordered to be discharged, and are supposed to be so - - - - -	54	
		85
Detained having no documents to prove their citizenship - - - - -	69	
Entered, and have received the bounty -	10	
Detained as British subjects - - - -	5	
Not on board ships represented - -	13	
Not answering description in certificate	1	
Made their escape - - - - - -	7	
On board ships on foreign stations - -	1	
Dead. (Samuel Huff.) - - - -	1	
Invalided - - - - - - -	1	
On board the Utile, (supposed to have foundered.) Robert Hewitt, and E. C. Parker - - - - - -	2	
Cases unanswered - - - - -	7	
		208

D. LENOX, *Agent, &c.*

Extract of a letter from David Lenox, Esq., Agent, &c., to the Secretary of State, dated

"MARCH 10, 1802.

"I have the honor to acknowledge the receipt of your letter of the first of January, in answer to mine of the 12th of October last, requesting the President's permission to return to America. I had, with you, anticipated the discharge of all seamen claiming protection as American citizens, on peace taking place, although not possessed of certificates in the usual form, under the idea that, as men would not be wanted for the navy, this Government would prefer discharging those who might be supposed most dissatisfied with the service; but in this I have been disappointed, as you will perceive by the correspondence which I have had with the Admiralty on the subject, copies of which I do myself the honor to send you enclosed. The impressment of our seamen ceased immediately on the preliminary treaty, but applications continue to be made from men on board ships arriving from foreign stations, and, since my last return to the 1st instant, they amount to ninety-five."

* The abstract of registered seamen is omitted.

BLANDFORD STREET,
October 17, 1801.

SIR: Peace being established between Great Britain and France, I am extremely anxious to close my official business as soon as possible; and, for this purpose, it appears to me that the most eligible mode will be, to furnish a list of all seamen who have claimed protection as American citizens since my arrival in this country, and are detained on the ground of their having no documents to prove their citizenship. Should no objection arise on the part of this Government, I shall proceed to furnish such list on receiving the decision of the Lords Commissioners of the Admiralty. I beg leave to state that Americans are frequently discharged without any evidence of the wages due to them, which not only subjects them to great inconvenience, but is productive of considerable expense to the United States of America. As I conceive that this is not justified by the general practice in the navy, I have to request that orders may be given, that when men are discharged, they may be furnished with some document stating the sum that may be due to them.

With great respect, I am, sir, your obedient servant. D. LENOX.

EVAN NEPEAN, Esq.,
Admiralty Office.

ADMIRALTY OFFICE,
October 20, 1801.

SIR: Having laid before my Lords Commissioners of the Admiralty your letter of the 17th instant, proposing, for the reasons therein mentioned, to furnish a list of all seamen who have claimed protections as citizens of America, since your arrival in this country, and are detained on board His Majesty's ships on the ground of their having no documents to prove their citizenship, I have their Lordships' commands to acquaint you that they can have no objection to your delivering the list above mentioned, and that they will, in all future discharges of American seamen, direct the commanders of the ships in which they served, to certify the time of service of each man, and the amount of charges which are to be deducted from the wages due to him.

I am, sir, your most humble servant.
EVAN NEPEAN.

DAVID LENOX, Esq.

BLANDFORD STREET.
October 23, 1801.

SIR: I do myself the honor to send you enclosed a list of five hundred and fifty-eight seamen, representing themselves to be citizens of the United States of America, and detained on board His Britannic Majesty's fleets, for whose discharge I made application at the dates annexed to their names, and to which answers were returned stating that, having no documents to prove their citizenship, the Lords Commissioners of the Admiralty could not consent to their discharge. You will readily perceive, sir, that my object in furnishing this list is with a view to the discharge of these men, to which I flatter myself their Lordships will not object; and my hopes arise from the idea that, as peace has taken place, men are not now wanted for the navy. I will freely confess that I believe many of them are British subjects; but I presume that all of them were impressed from American vessels, and by far the greater proportion are American citizens, who, from various causes, have been deprived of their certificates of protection, and who, from their peculiar situation, have been unable to obtain proof from America. Under this impression, I hope their Lordships will grant my request, rather than keep in the navy a number of men who will always be dissatisfied with their situation. Should I be so fortunate as to succeed in this application, I shall close my official business in a way perfectly to my satisfaction, and shall not deem it necessary to remain here much longer; but, at any rate, I shall soon return to America, having already requested permission from the American Government for that purpose.

I am, sir, your most obedient servant,
D. LENOX.

EVAN NEPEAN, Esq.
Admiralty Office.

ADMIRALTY OFFICE,
October 26, 1801.

SIR: I have received and communicated to my Lords Commissioners of the Admiralty, your letter to Mr. Nepean of the 23d instant, enclosing a list of five hundred and fifty-eight seamen, representing themselves to be citizens of the United States of America, detained on board His Majesty's ships, whose discharge has been refused, in consequence of their having no documents to prove their citizenship, and requesting, on the ground of their services being no longer wanted, that they may, notwithstanding, be discharged; and I have their Lordships' commands to acquaint you that, as the several cases of these men were duly inquired into at the periods of your making application for them, when no sufficient reasons appeared to induce their Lordships to believe that they were other than British subjects, (all who could furnish proof to the contrary having been discharged from time to time, as the reports were received,) and, as the admission of the principle that a man declaring himself to belong to a foreign State should, upon that assertion merely, and

without direct or very strong circumstantial proof, be suffered to leave the service, would be productive of the most dangerous consequences to His Majesty's navy, or that of any other Power, they cannot comply with your request for the discharge of the men specified in the said list, nor admit even the presumption of their being American citizens, although they shall be disposed, at all times, to pay the most candid attention to such fair claims and well authenticated documents as may hereafter be brought forward in their behalf.

It is with much pleasure that, in further obedience to their Lordships' commands, I express to you the sense they entertain of the able and satisfactory manner in which the business of your Department has been uniformly conducted.

I am, sir, your most
Obedient humble servant,
WILLIAM MARSDEN.

DAVID LENOX, Esq.

Extract of a letter from D. Lenox, Esq. Agent, &c., to the Secretary of State, dated

"LONDON, *May* 20, 1802.

"My letter of the 10th of March would advise you that I was preparing to return to the United States, and that I expected to embark some time in this month. I conceived that the best mode of closing my official business was to fix a day to pass to my successor the detail of it, as some time would necessarily be required for answers to be returned from the Admiralty. I accordingly delivered to Mr. Ewing, on the 1st instant, a list of five hundred and ninety-seven seamen, where answers have been returned to me, stating that, having no documents to prove their citizenship, the Lords Commissioners of the Admiralty could not consent to their discharge. My object in furnishing this list was to prevent a repetition of applications to the Admiralty, which would not only have proved fruitless, but been attended with considerable trouble and embarrassment to Mr. Ewing. I have, however, little doubt but that most of these men have already been discharged. By the abstract which I have now the honor to send you enclosed, you will perceive that only seven cases of seamen remain unanswered, and those I am promised, as soon as circumstances will admit; but if they should not be received before I embark, I shall deliver a list of them to Mr. Ewing."

Henry Craig, Esq., agent of the United States at Martinique.

No communication has been received from him since last report to Congress.

William Savage, Esq., agent of the United States at Jamaica.

Since the last report to Congress, Mr. Savage has transmitted lists of persons calling themselves Americans, to the number of sixty-eight.

SPAIN.

[Communicated to the Senate, January 11, 1803.]

Gentlemen of the Senate:

The spoliations and irregularities committed on our commerce during the late war, by subjects of Spain, or by others deemed within her responsibility, having called for attention, instructions were accordingly given to our Minister at Madrid to urge our right to just indemnifications, and to propose a convention for adjusting them. The Spanish Government listened to our proposition with an honorable readiness, and agreed to a convention, which I now submit for your advice and consent. It does not go to the satisfaction of all our claims; but the express reservation of our right to press the validity of the residue has been made the ground of further instructions to our Minister, on the subject of an additional article, which it is to be hoped will not be without its effect.

TH. JEFFERSON.

JANUARY 11, 1803.

A Convention between His Catholic Majesty and the United States of America, for the indemnification of those who have sustained losses, damages, or injuries, in consequence of the excesses of individuals of either nation, during the late war, contrary to the existing treaty, or the law of nations.

His Catholic Majesty and the Government of the United States of America, wishing amicably to adjust the claims which have arisen from excesses committed during the late war, by individuals of either nation, contrary to the laws of nations, or the treaty existing between the two countries: His Catholic Majesty has given, for this purpose, full powers to his Excellency Don Pedro Cevallos, Counsellor of State, Gentleman of the Bedchamber in employment, First Secretary of State and Universal Despatch, and Superintendant General of the Posts and Post Offices in Spain and the Indies; and the Government of the United States of America to Charles Pinckney, a citizen of the said States, and their Minister Plenipotentiary near His Catholic Majesty; who have agreed as follows:

1. A Board of Commissioners shall be formed, composed of five Commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the Government of the United States, and the fifth by common consent; and in case they should not be able to agree on a person for the fifth Commissioner, each party shall name one, and leave the decision to lot: and hereafter, in case of the death, sickness, or necessary absence, of any of those already appointed, they shall proceed, in the same manner, to the appointment of persons to replace them.

2. The appointment of the Commissioners being thus made, each one of them shall take an oath to examine, discuss, and decide, on the claims, which they are to judge, according to the law of nations, and the existing treaty, and with the impartiality justice may dictate.

3. The Commissioners shall meet and hold

their sessions in Madrid, where, within the term of eighteen months, (to be reckoned from the day on which they may assemble,) they shall receive all claims which, in consequence of this convention, may be made, as well by the subjects of His Catholic Majesty, as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them, in consequence of the excesses committed by Spanish subjects or American citizens.

4. The Commissioners are authorized, by the said contracting parties, to hear and examine, on oath, every question relative to the said demands, and to receive, as worthy of credit, all testimony, the authenticity of which cannot reasonably be doubted.

5. From the decisions of the Commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims, as to the amount of the indemnification which may be adjudged to the claimants; the said contracting parties obliging themselves to satisfy the said awards in specie, without deduction, at the times and places pointed out, and under the conditions which may be expressed by the Board of Commissioners.

6. It not having been possible for the said Plenipotentiaries to agree upon a mode by which the above-mentioned Board of Commissioners should arbitrate the claims originating from the excesses of foreign cruisers, agents, Consuls, or tribunals, in their respective territories, which might be imputable to their two Governments, they have expressly agreed that each Government shall reserve (as it does by this convention) to itself, its subjects, or citizens, respectively, all the rights which they now have and under which they may hereafter bring forward their claims at such times as may be most convenient to them.

7. The present convention shall have no force or effect until it is ratified by the contracting parties, and the ratification shall be exchanged as soon as possible.

In faith whereof, we, the underwritten Plenipotentiaries, have signed this convention, and have affixed thereto our respective seals.

Done at Madrid, this 11th day of August, 1802.

PEDRO CEVALLOS.
CHARLES PINCKNEY.

Extract of a letter from the Secretary of State to Charles Pinckney, Esquire, dated

"JUNE 8, 1801.

"The documents and letters belonging to the Legation, which you will receive from Colonel Humphreys, will put you in possession of the several subjects remaining unfinished in his hands. These you will pursue into their proper result. You will find that he has been instructed to urge particularly on the Spanish Government redress for such of our citizens as have suffered from captures made by privateers unlawfully cruising out of Spanish ports, and from wrongful condemnations, both by Spanish tribunals, and by decisions of French Consuls, within Spanish jurisdiction. In all these cases, it will be your duty to carry on the proper measures in train for obtaining justice. Colonel Humphreys, you will find, thinks that the Spanish Government means to turn us over for redress to the French Republic, in all cases where the prizes have been under French commissions, or been condemned by French Consuls. You will be at no loss to combat such an idea, by proper arguments drawn from sources in your possession, or within your reach, and by suitable appeals to the principles and motives which ought to direct the conduct of a wise and just Government, more especially towards a nation entertaining the sentiments and observing the conduct which have been experienced by Spain from the United States.

"The spoliations committed on our trade, for which Spain is held responsible, are known to be already of very great amount, and it is to be apprehended that they may not have yet ceased. The documents and information to be obtained from Colonel Humphreys and the Consul at Madrid will assist you essentially in forming an idea of the value and extent of them. Hitherto, redress has been sought, sometimes in tribunals of justice, sometimes by applications to the Government, and sometimes in both of these modes. Experience has sufficiently shown that neither the one nor the other, nor both, can be relied on for obtaining full justice to our injured citizens. Some other effort, therefore, is due to the sufferers, and, let me add, to the dignity of the United States, which must always feel the insults offered to the rights of individual citizens. The only pacific effort that seems to remain is, that of proposing a joint tribunal, with full powers to investigate and decide all claims for indemnification, which may be presented to it within a reasonable time. The Treaty of —— with Spain, as well as that of 1794 with Great Britain, will furnish at once the motives and a model for such an institution. In general, it must be the most equitable and satisfactory provision for adjusting controversies of such a kind between independent nations, and it may be urged, more particularly, that there is no less reason for extending it to cases subsequent to the Spanish Treaty, than there was for applying it to cases of antecedent date. You will be sensible of the great importance of this subject, both as to the great interest which it involves, and the manner in which a just provision for it is to be pursued. The President commits it to your hands, with expectations which it will require all your zeal, your patriotism, and your delicate management to fulfil."

DEPARTMENT OF STATE,
Washington, Oct. 25, 1801.

SIR: In the instructions accompanying your commission, it was not forgotten that the trespasses of Spain on our commerce had laid the foundation for strong complaints and reclamations on the part of the United States; and it was accord-

ingly made your duty to press them in a proper manner on the Spanish Government. As this violation of our neutral rights prevailed most during the misunderstanding between the United States and the French Republic, and was generally masked under, or confounded with, the commission and flag of the latter, it was hoped that, with the termination of that misunderstanding, would have terminated also the abuses which Spain had permitted her subjects to connect with it. By the documents hereto annexed, consisting of a letter from the President of the Insurance Company of North America, a memorial from the Chamber of Commerce of Philadelphia, a letter from Thomas Fitzsimmons, Esquire, and several private letters from the captains and supercargoes of the captured vessels, you will find that, instead of fulfilling this reasonable hope, the predatory cruisers from the port of Algeziras have assumed a recent activity peculiarly alarming to our merchants. American property, to a very heavy amount, has already been a prey to the Spanish gun-boats issuing from that asylum, and it is justly apprehended, from the extent of our commerce flowing through the same channel, that a still greater portion of it will be exposed to the same fate. This apprehension is the greater, as the general disarming of our merchantmen, produced by the reconciliation with France, removes the check heretofore given to the predatory boats by the means of resisting their enterprises.

The pretext for the seizure of our vessels seems at present to be, that Gibraltar has been proclaimed in a state of blockade, and that the vessels are bound to that port. Should the proceeding be avowed by the Spanish Government, and defended on that ground, you will be able to reply—

1st. That the proclamation was made as far back as the 15th February, 1800, and has not since been renewed; that it was immediately protested against by the American and other Ministers at Madrid, as not warranted by the real state of Gibraltar, and that no violations of neutral commerce having followed the proclamation, it was reasonably concluded to have been rather a menace against the enemies of Spain, than a measure to be carried into execution against her friends.

2d. That the state of Gibraltar is not and never can be admitted by the United States to be that of a real blockade. In this doctrine they are supported by the law of nations as laid down in the most approved commentators, by every treaty which has undertaken to define a blockade, particularly those, of latest date among the maritime nations of Europe, and by the sanction of Spain herself, as a party to the armed neutrality in the year 1791. The spirit of articles fifteen and sixteen of the treaty between the United States and Spain may also be appealed to, as favoring a liberal construction of the rights of the parties in such cases. In fact, the idea of an investment, a siege, or a blockade, as collected from the authorities referred to, necessarily results from the force of those terms; and though it has been sometimes grossly violated or evaded by powerful nations in pursuit of favorite objects, it has invariably kept its place in the code of public law, and cannot be shown to have been expressly renounced in a single stipulation between particular nations.

3d. That the situation of the naval force at Algeziras, in relation to Gibraltar, has not the shadow of likeness to a blockade, as truly and legally defined. This force can neither be said to invest, besiege, or blockade the garrison, nor to guard the entrance into the port. On the contrary, the gunboats infesting our commerce have their station in another harbor, separated from that of Gibraltar by a considerable bay, and are so far from beleaguering their enemy at that place and rendering the entrance into it dangerous to others, that they are, and ever since the proclamation of a blockade have been, for the most part, kept at a distance by a superior naval force, which makes it dangerous to themselves to approach the spot.

4th. That the principle on which the blockade of Gibraltar is asserted, is the more inadmissible, as it may be extended to every other place, in passing to which, vessels must sail within the view and reach of the armed boats belonging to Algeziras. If because a neutral vessel bound to Gibraltar can be annoyed and put in danger by way-laying cruisers, which neither occupy the entrance into the harbor, nor dare approach it, and by reason of that danger is liable to capture, every part of the Mediterranean coasts and islands, to which neutral vessels must pass through the same danger, may, with equal reason, be proclaimed in a state of blockade, and the neutral vessels bound thereunto made equally liable to capture. Or if the armed vessels from Algeziras alone should be insufficient to create this danger in passing into the Mediterranean, other Spanish vessels co-operating from other stations, might produce the effect, and thereby not only blockade any particular port, or the ports of any particular nation, but blockade at once a whole sea surrounded by many nations. Like blockades might be proclaimed by any particular nation enabled by its naval superiority to distribute its ships at the mouth of the same, or any similar sea, or across channels or arms of the sea, so as to make it dangerous for the commerce of other nations to pass to its destination. These monstrous consequences condemn the principle from which they flow, and ought to unite against it every nation, Spain among the rest, which has an interest in the rights of the sea. Of this Spain herself appears to have been sensible in the year 1780, when she yielded to Russia ample satisfaction for seizures of her vessels made under the pretext of a general blockade of the Mediterranean, and followed it with her accession to the definition of a blockade contained in the Armed Neutrality.

5th. That the United States have the stronger ground for remonstrating against the annoyance of their vessels, on their way to Gibraltar; inasmuch as, with very few exceptions, their object is not to trade there for the accommodation of the garrison, but merely to seek advice or convoy for their own accommodation, in the ulterior objects of their voyage. In disturbing their course to Gibraltar, therefore, no real detriment results to

the enemy of Spain, whilst a heavy one is committed on her friends. To this consideration, it may be added that the real object of a blockade is to subject the enemy to privations, which may co-operate with external force in compelling them to surrender; an object which cannot be alleged in a case where it is well known that Great Britain can, and does at all times, by her command of the sea, secure to the garrison of Gibraltar every supply which it wants.

6th. It is observable, that the blockade of Gibraltar is rested by the proclamation on two considerations: one, that it is necessary to prevent illicit traffic, by means of neutral vessels, between Spanish subjects and the garrison there; the other, that it is a just reprisal on Great Britain, for the proceedings of her naval armaments against Cadiz and St. Lucar. The first can surely have no weight with neutrals, but on a supposition never to be allowed, that the resort to Gibraltar, under actual circumstances, is an indulgence from Spain, not a right of their own; the other consideration, without examining the analogy between the cases referred to and that of Gibraltar, is equally without weight with the United States, against whom no right can accrue to Spain, from its complaints against Great Britain, unless it could be shown that the United States were in an unlawful collusion with the latter, a charge which they well know that Spain is too just and too candid to insinuate. It cannot even be said that the United States have acquiesced in the depredations committed by Great Britain, under whatever pretext, on their lawful commerce. Had this, indeed, been the case, acquiescence ought to be regarded as a sacrifice made by prudence to a love of peace, of which all nations furnish occasional examples; and as involving a question between the United States and Great Britain, of which no other nation could take advantage against the former. But it may be truly affirmed, that no such acquiescence has taken place. The United States have sought redress for injuries from Great Britain as well as from other nations. They have sought it by means which appeared to themselves, the only rightful judges, to be best suited to their object; and it is equally certain that redress has, in some measure, been obtained, and that the pursuit of complete redress is by no means abandoned.

7th. Were it admitted that the circumstances of Gibraltar, in February, 1800, the date of the Spanish proclamation, amounted to a real blockade, and that the proclamation was, therefore, obligatory on neutrals; and were it also admitted that the present circumstances of that place amount to a real blockade, (neither of which can be admitted;) still the conduct of the Algeziras cruisers is altogether illegal and unwarrantable. It is illegal and unwarrantable, because the force of the proclamation must have expired whenever the blockade was actually raised, as must have been unquestionably the case, since the date of the proclamation, particularly and notoriously, when the port of Algeziras itself was lately entered and attacked by a British fleet; and because, on a renewal of the blockade, either a new proclamation ought to have been issued, or the vessels making for Gibraltar ought to have been premonished of their danger, and permitted to change their course as they might think proper. Among the abuses committed under pretext of war, none seem to have been carried to greater extravagance, or to threaten greater mischief to neutral commerce, than the attempts to substitute fictitious blockades by proclamation, for real blockades, formed according to the law of nations; and subsequently, none against which it is more necessary for neutral nations to remonstrate effectually, before the innovations acquire maturity and authority, from repetitions on one side, and silent acquiescence on the other.

In these observations, you will find a sufficient guide to the representations which it may be proper for you to make to the Spanish Government, in case justice should not have been yielded by it to the interpositions which will no doubt have been previously tried by Colonel Humphreys or yourself, or both. Letters from the former, of the 21st and 29th of August, show that several cases of seizure had been made known to him, and that he had it in view to carry them before the Spanish Government. Considering the amicable disposition manifested, in general, by that Government towards the United States, and the mutual interest it has in maintaining perfect harmony with them, the President indulges the strongest hopes that the earliest opportunity will have been seized for repairing the wrongs which have been committed, and for preventing a repetition of them. Should this hope prove fallacious, it will be your duty to press these objects, by fair and frank representations, aided by the communications now made to you, and by an appeal to the express instructions from the President included in them; mingling always with your requisitions assurances of the cordial sentiments cherished by the United States towards Spain, and their entire confidence in her disposition to evince that justice and respect for our rights, which is not less congenial with her own high character than it is necessary for our satisfaction. I have the honor to be, with the highest respect and esteem, sir, your most obedient servant.

CHARLES PINCKNEY, Esq.,
Minister Plenipotentiary, &c., Madrid.

Extract of a letter from the Secretary of State to Charles Pinckney, Esq., dated

"FEBRUARY 5, 1802.

"Though you have been referred to the twenty-first article of the Spanish Treaty as a model for the provision you are instructed to urge the Government of Spain to accede to, for indemnifying our commercial citizens, whose claims have originated since, it is found to be incommensurate, in some respects, with the relief expected by them. The words are, 'In order to terminate all differences on account of the losses sustained by the citizens of the United States in consequence of their vessels and cargoes having been taken [apresado] by the subjects of His Catholic Ma-

jesty, during the late war between France and Spain,' &c. Thus, the twenty-first article is limited to captures, but some of our citizens have complained of injuries received from the officers of Spain in attaching their property, for supposed breaches of its fiscal regulations; and examples are not wanting of unjust and ruinous prosecutions against our citizens upon criminal allegations. Two examples are, at least, recollected of the latter description. It might possibly be questioned, whether a seizure in port, on suspicion of enemy's property, as in the case of Captain Eldridge's brigantine Sally, would be fairly embraced within the terms of that article. Complaints have also been made of the tender laws, whereby our citizens have been paid in a depreciated medium for specie contracts. Some of these cases are marked with arbitrary circumstances, derived from the direct interposition of the Government or its agents; others have arisen in the colonies, and, though conducted under judicial forms, have issued in the ruin of innocent individuals, who have been borne down by the weight of official influence opposed to them.

It is, perhaps, difficult to define, by a general article, which shall appear unexceptionable, the principle under which relief, in some of these cases, is expected; and, on the other hand, to attempt a detail, would hazard the attainment of what might not, under a general description, be combated. If, indeed, the latter mode should be preferred, much of the benefit to be derived from the agreement would depend upon the intelligence and character of the referees. Should a majority of them feel an undue attachment to Spanish interest, or to the artificial maxims of law, some of our claims founded in substantial justice might fail.

The following is supposed to be a form of words which would be preferable to the twenty-first article of the treaty:

"In order to terminate all differences on account of losses sustained, since the —— day of April, 1796, (the day on which the ratifications were exchanged) by merchants and others, citizens of the United States, trading to the Spanish dominions, from the unjust seizure or detention of their persons, vessels and effects, or otherwise, under color of authority from His Catholic Majesty, it is agreed," &c.; to which may be annexed any clearly defined exceptions, which it may appear reasonable to make at the instance of the Spanish Government.

Another expedient may be resorted to, should that Government oppose a general provision.—After securing a reference to commissioners, mutually chosen, of as many of the cardinal subjects of claims as may be found practicable, the remainder may be submitted to two or three of the officers of the Spanish Government, to be named in the agreement, for their award; which shall not be final, unless the claimant signify his assent in a given time; and if he dissents, the claim to remain open. In this way was settled a considerable number of our smaller claims on Great Britain, for illegal captures; the King's advocate general and doctor of the civil law making the awards, which were generally satisfactory, and, it is believed, always accepted."

DEPARTMENT OF STATE,
October 25, 1802.

SIR: I have received your two letters of July 1st and 6th, enclosing your draught of a convention, with the objection and alteration brought forward by the Spanish Minister.

It is regretted that any difficulty should have occurred in bringing to an equitable and amicable settlement claims of our citizens, which are not likely to receive so fair a decision in any mode as through a joint Board of Commissioners. From the disposition, or rather assent, manifested at first by the Spanish Government, a more favorable, as well as more speedy, issue to your negotiation was expected; and it is still hoped that modifications may have been, or will be devised, that will make the contested article satisfactory to Spain, without being unjust to the United States.

The true object is to give to the board a power that will reach every description of cases. According to information received, from time to time, it appears that losses have been sustained by citizens of the United States: First on the high seas: Secondly, within the territorial jurisdiction of Spain herself: Thirdly, within the jurisdiction of her colonies: that they have proceeded, first, from Spanish subjects; secondly, from others within Spanish jurisdiction: that they have been contrary either, first to the Treaty of 1795; or, secondly, to the law of nations; or, thirdly, to substantial justice. It is desirable, therefore, that a stipulated provision, for repairing these injuries, should be so expressed as to be commensurate with this view of the cases; or, if this extent cannot be explicitly given to the provision, that it should be as little narrowed as possible.

The objection made to giving the board cognizance of the wrongs committed by aliens, within the jurisdiction, and, consequently within the temporary allegiance of the King of Spain, is clearly open to the reply you made to it. The authority which every sovereign has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reason, as he is responsible for the conduct of permanent citizens or subjects.

This is a doctrine too well established, both by reason and by public law, to be questioned. The United States have pursued it in practice as well as in discussion; and may, therefore, with the more energy claim the benefit of it. The remark of the Spanish Minister, that the stipulation on this subject in our Treaty of 1794, with Great Britain, implies that without such a stipulation, the law of nations would not have imposed on the United States the responsibility assumed, admits of a double answer. The United States acquiesced in the doctrine before the treaty was made; and the stipulation in the treaty, like numerous stipulations in other treaties, was not meant to

supersede the rule of public law, but to acknowledge and explain it.

It is not denied that there are certain exceptions to the authority over those within a temporary, which do not apply to the authority over those within a permanent, allegiance; and, so far, there may be exceptions to the responsibility of the sovereign also. But none of these exceptions belong to the cases in question. In the equipment of privateers and the condemnation of prizes in Spanish ports, the King of Spain had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and failing in this duty, he made himself answerable to those injured by the failure.

This reasoning admits of no reply, unless it be that the Spanish sovereignty was under some foreign duress within its own territories; and being not a free agent, it ceased to be a responsible one. This plea, though little consistent with the respect due from Spain to her own dignity, seems to have been resorted to. But before such a plea can be admitted at all, it ought to be shown that the force or danger which destroyed the free agency really existed, and that all reasonable means were employed to prevent or remedy the evil resulting to nations in amity with Spain.

The losses sustained by Americans, and for which Spain is held answerable, have proceeded, first, from condemnations within her jurisdiction; secondly, from equipments within her jurisdiction, known to be against the American trade; thirdly, from equipments ostensibly made against the enemies of Spain, but turned against the United States; fourthly, from captures only within the limits of Spanish jurisdiction.

With respect to the first two cases, it is clear that the Spanish Government had not only the right but the power to interpose effectually, and is consequently bound to repair the consequences of her omission. With respect to the fourth case, the violation of her territory might be less under her control where the prizes were not carried into her ports; still, however with the right accruing to her against the aggressors, accrues at the same time the right against her to the sufferers. With respect to the third case, there may be room for equitable considerations in favor of Spain. Perhaps these distinctions, in the several cases, may lead to an admission of the clearest and strongest of them to the same footing with similar ones, where Spanish subjects were the wrong-doers, reserving to the others the benefit of the moral principle of responsibility contended for by the Spanish Minister. Should the Spanish Government, however, persist in requiring, in all cases where aliens were the wrong-doers, a preliminary decision by the board, how far special circumstances absolve Spain from the usual responsibility, it becomes a question whether it may not be better to refer this preliminary decision to the board, than to leave out of the treaty a provision for so important a class of cases, and trust to further negotiations for justice. The reflections of the President on this subject have led him to conclude it the better course, on the whole, that the treaty should provide for these cases, even in such a form as that proposed by the Spanish Minister, than that they be left to the delays and uncertainties of further negotiation; in which it is not likely that Spain will be more flexible than she is at present, and which must, on that supposition, end, at best, in a return to arbitration on the point in controversy. You will be guided by this idea, therefore, in the arrangements which may be finally made.

The President thinks, at the same time, that whilst you admit so vague a rule as that of the morality of actions into questions where Spain claims it as an advantage, you may very reasonably urge an extension of it to other cases where it would be favorable to the United States, by obliging Spain to repair wrongs, not only against treaty and the law of nations, but against mere equity and moral obligation.

The application of this comprehensive principle of redress would be particularly favorable to claims founded on proceedings in the Spanish colonies. In a vaaiety of cases it would give relief where neither the treaty nor the law of nations would, in strictness, prescribe it. In whatever turn the negotiation may take, it will be proper for you to keep this branch of claims in view, and to include them, if possible, within the terms of the proposed convention. I do not find that my letter of February 5th on this subject had reached you, which I am surprised at; but you will have been reminded of the importance of these claims by the information given you by the parties interested, as well as that furnished from time to time by this Department. It is probable you will soon receive an extensive application from merchants in Boston and Philadelphia, who have complaints against the colonial subjects and governments of Spain. I have recommended to them to discriminate the cases in such a manner as to show the precise principle on which they severally turn, that it may regulate the interpretation proper for you to use with the Spanish Government. They propose to send an agent to Madrid, and to solicit the indulgence of sending attorneys or agents into the colonies to pursue their just claims there. This appears to be so reasonable, that it may be expected from the justice and fairness of the Spanish Government; and the application for it will accordingly claim your patronage, as far as that mode of redress may not be rendered unnecessary by conventional arrangements.

This letter is written on a supposition that the convention may be still depending. Should it have been closed, and without comprehending all the provisions wished for, the President relies on your further efforts to complete the work, either by a supplemental article, or by a distinct compact.

With sentiments of great respect,

I am, dear sir,

Your most obedient.

CHARLES PINCKNEY, Esq.,
Minister Plenipotentiary of the U. S.

Extract from Mr. Pinckney's general representation to the Minister of State of His Catholic Majesty, dated

"MADRID, *March* 24, 1802.

"It is with much pleasure, when the undersigned arrived at this Court, for the purpose of making such representations as the interest of his country required, he has found all Europe in peace. He sincerely hopes it may continue, and that its blessings will soon repair the evils of a war almost unexampled in its extent and consequences. He is aware that, during such a period, it was impossible for the best Government to prevent the commanders of private ships of war committing frequently acts contrary to the laws of nations, and not authorized by their Sovereign's orders.

"In all countries, particularly in one so extensive as that of Spain, unprincipled men will not only infringe the laws of nations, but frequently the most honorable and liberal instructions. We are sure that, as it is the true interest, so will it always be the policy, of Spain to maintain equitable and honorable opinions on the subject of neutral commerce; and that it is with much displeasure she has heard of the violations of treaties and of the laws of nations by her subjects and officers, and of the injuries they have occasioned to innocent American merchants and others.

"As peace is now happily restored, and no excuse remains for further spoliations; and, as it ought always to be the desire of Governments so friendly, and united by interests the most important, not to leave room for recollecting circumstances, which, however disagreeable, were perhaps inevitable, but to adopt all the measures most probable to impress a strong conviction of the justice and friendship of the two countries; the undersigned has the honor to request of His Majesty to consent to the proposition already made by his predecessor, Mr. Humphreys, for the naming of a Commissioner, who may be authorized by His Catholic Majesty to meet another on the part of the American Government; and that both be empowered to draw lots for a third: and that the three be finally authorized to decide on all claims now depending, which have all of them been presented to your Excellency, under their different descriptions, by his predecessor, and to which descriptions he requests to refer, as they are in your Excellency's possession.

"The undersigned wishes to renew this proposition for the naming of Commissioners, as, in all the suits of the important and delicate nature of the violations of territory by the French, which our Government contends are decided contrary to the laws of nations and our treaty with Spain, and, likewise, in those that proceed from the supposed blockade of Gibraltar, we are certain that the King cannot object to the decision of men, chosen by each Government, of the most eminent characters for knowledge and honor, or in situations of life to place them out of the reach or danger of being influenced by improper motives. With respect to the blockade of Gibraltar, he is particularly charged by his Government to represent:

"1. That the proclamation for the blockade of Gibraltar was made on the 15th February, 1800, and has not been renewed since; that the American Minister and all the other neutral Ministers in Madrid immediately protested against it, as not warranted by the existing state of Gibraltar; and as no violations ensued of neutral property in consequence of the proclamation, it was naturally concluded to have been rather intended as a menace against the enemies of Spain, than as a measure that was to be executed against her friends.

"2. That the state of Gibraltar never was, nor never could have been, admitted as a true blockade. In this doctrine the United States are supported by the laws of nations, as explained by the best authors or writers; by all the treaties that have undertaken to define a blockade, and particularly by the late treaties between Russia and Sweden, and Russia and Great Britain; by the most recent code of the maritime and commercial nations of Europe; and by the sanction of Spain herself, as one of the Armed Neutrality, in the year 1781.

"The spirit of the articles fifteen and sixteen of the Treaty of Spain with the United States, is likewise fully and expressly in our favor. In short, the opinion we have formed of the blockade of Gibraltar being not a true one, necessarily results from the strength of the terms used in the definition of a blockade; and, though these have been sometimes broken or avoided by powerful nations, to obtain favorite objects, it has incessantly preserved and held its place in the code of the public law, and it cannot be shown to have been renounced in a single stipulation among particular nations.

"3. That the situation and condition of the naval force in Algeziras, with regard to Gibraltar, had not the shadow of resemblance to a blockade as truly and legally defined. It cannot be said that this force blockaded the garrison, or guarded the entrance of the port; on the contrary, the armed boats had their stations in another port, separated from that of Gibraltar by a bay, and, being so far from doing an injury to the enemy in Gibraltar, that they generally made them keep at such a distance from that fortress, by an armed force so superior, as to render it dangerous for them to appear.

"4. That the principle on which the blockade of Gibraltar is supported is less admissible, as it can be made to extend to every other port to which vessels are obliged to approach. *If because* a neutral vessel in going into Gibraltar can be attacked or put in danger by privateers that are secretly waiting for them, but which, on account of their weakness, cannot occupy the entrance into the harbor, such neutrals are, notwithstanding, to be liable to be taken; every port of the Mediterranean, and the islands where vessels are obliged to go, can be said with the same truth to be in a state of blockade, and the vessels that go there liable to be taken; or, if the armed boats there are not sufficient of themselves to cause this danger at the going into the Mediterranean, other Spanish armed vessels of other ports co-operating may produce the same effect, and, therefore, not only blockade some particular port, but blockade a whole sea, surrounded by many nations. These dangerous consequences ought to unite, in future, all nations against this principle, and particularly Spain, who has the highest interests in the rights of the sea. Of this, Spain appears to have been sensible in the year 1781, when she gave Russia full satisfaction for the captures of her vessels made in the Mediterranean, under the pretext of a general blockade of this sea, and followed it with her consent to the definition of a blockade as contained in the Armed Neutrality.

"5. That the United States have the greatest interest in remonstrating against the capture of their vessels bound to Gibraltar, because, with a few exceptions, their object was not to trade with the garrison, but only to ask advice or convoy for the ulterior objects of their voyages; so that, to hinder their voyages, is not to injure the enemies of Spain, but distress her friends. To this consideration it may be added, that the true object of a blockade is the subjecting the enemy to privations that may (co-operating with external force) oblige them to surrender—an object which cannot be said to exist with respect to Gibraltar; because it is well known that Great Britain can at all times supply, and actually did supply, the garrison with all it wanted.

"6. It is to be observed that the blockade of Gibraltar is founded, by the proclamation, on two considerations: one, that it is necessary to prevent as well an illegal commerce by neutral vessels as by Spanish subjects and the garrison there; the other, that it is a retaliation on Great Britain, for her manner of proceeding with her naval armaments against Cadiz and St. Lucar.

"The first can never be considered as admissible by the neutrals, except under the supposition, that going into Gibraltar, under the existing circumstance, is an indulgence of Spain, and not a right of the neutrals. The other, without examing the analogy between the cases stated and that of Gibraltar, is equally without foundation or weight with the United States: against them no right can accrue to Spain for her complaints against Great Britain, unless it can be shown that the United States were in an unlawful collusion with Great Britain; a charge they well know Spain is too just and candid to make. No one can say, and they are certain that Spain will never suppose, that the United States will submit to the depredations made on their lawful commerce by any Power, or on any account whatever. The United States have demanded satisfaction from Great Britain, and other nations, and they have sought it by those honorable means which have always distinguished their love of peace and justice; and it is with great pleasure they see, in the last acts of Great Britain, of which the undersigned received official intelligence from their Minister in London, that he had signed a treaty in the last month of January, by which Great Britain agrees to proceed honorably to settle by arbitration all our demands of losses and prizes.

"The United States see, likewise, in the Councils of France the same disposition; and are certain that their good friend, the King, who has always been so distinguished for the justice and honor of his Government, will show the same disposition to the innocent merchants and mariners of the United States.

"The undersigned requests permission to add on this subject, that if it was admitted only for one moment that the circumstances of Gibraltar in February, 1800, would amount to a blockade, (and this is totally inadmissible;) yet certainly the conduct of the armed boats and vessels of Algeziras is illegal and unwarrantable, because the force of a blockade ought to have been over when the blockade was raised, which certainly was the case when the British fleet lately entered and attacked the port of Algeziras; and because, on renewing of the blockade, a new proclamation ought to have been published, and the vessels that wished to go to Gibraltar ought also to have been advised of their danger, and permitted to alter their course, as they thought fit.

"Among the abuses committed under the pretext of war, none appear to have been carried to greater extravagance, or threaten greater danger to neutral commerce, than the attempt to substitute pretended or fictitious blockades for true ones, formed according to the laws of nations, and consequently none against which it is more necessary for the neutral nations to remonstrate effectually before these innovations may acquire the maturity and authority that repetitions on one side, and silent acquiescence on the other, never fail to give them.

"The great benefits that must result to active and enterprising nations, depending entirely on their industry, agriculture, and a free commerce for unambitious public and private happiness, cannot be unknown to the enlightened mind of your Excellency. It is particularly the interest of all nations to have their commerce free, and the rights of neutrality well secured: it will make them tranquil and content, and instead of viewing war as the best means of obtaining power and opulence, they will soon be convinced that the arts of peace are not only always the most legitimate, but at the same time the most certain as well as honorable.

"To no nation can the rights of neutrality be more valuable than to Spain. She is once more in peace, and the time may yet arrive when the United States being unfortunately involved in war with other nations, and Spain in peace, the latter may receive the same just and honorable attention to her neutral rights, which the United States now so earnestly solicit for her citizens."

Mr. Pinckney to the Secretary of State of the United States.

MADRID, *July* 1, 1802.

In my last I enclosed you all the correspondence I had then had with Mr. Cevallos, the first Secretary of State here, on the several subjects committed to me. At that time I had considered the subject of our claims for spoliations, as agreed to be submitted to arbitration by Commissioners, upon those general principles which would in-

clude every description; and, so supposing, I draughted the enclosed convention, agreeing to insert two instead of one Commissioner, as the Spanish Government wished it; to which draught no objection being made, (except as to the place of their sitting,) for the reasons given in my last I consented that Madrid should be inserted; had two fair copies of it made out, and prepared for signing, and transmitted them to the Secretary. To my surprise, however, instead of naming a time when I should call to sign the convention, as I had requested, I received from him the enclosed letter, marked No. 1, requesting an explanation of my meaning of the words, "*y otros en sus dominios*," previously to the signing. Immediately upon the receipt of this letter, I furnished him with the explanation he desired, (enclosed and marked No. 2,) and requested a conference with him. He appointed the Wednesday following, at the palace in Aranjuez, at which day I attended him, and entered fully into an explanation of the nature of our claims, as well for spoliations made by the subjects of Spain as by the subjects or citizens of other Powers who had been permitted to arm and equip their privateers in Spanish ports, and condemn and sell the vessels they had taken, under the authority of French Consulates exercising the powers of Courts of Admiralty; that this permission to arm and equip, and to condemn and sell, had, for reasons I stated to him, rendered the Spanish Government responsible to our citizens for all the losses accruing thereby to innocent and legal traders. That precisely the same thing had occurred at the commencement of the war between England and France in some of the American ports; that our Government, as soon as they were informed of it, had interfered and prevented it, and agreed to pay for such as had been previously taken and brought in and condemned; and that, having done so themselves, they had a right to expect it from others, particularly from a Government whose justice and honor they had always held in the highest respect. He replied, that certainly it was very honorable and generous in the American Government to do this; but he did not conceive they were bound to do it by the laws of nations, or agreeably to the dictates of justice; that His Majesty had fully considered the subject, and was ready to submit all the captures, detentions, or other acts committed by Spanish subjects to arbitration, but that he could not consent to do so, with respect to the captures by French privateers; and that he was ready to sign a convention with the exclusion of the words *y otros en sus dominios*.

I answered, I was extremely sorry to find His Majesty had thus determined, because our Government held a very different opinion on the subject of the captures and condemnations by the French privateers equipped in Spanish ports; and where opposite and different opinions of such importance were held by nations having equally a right to think and judge for themselves, I saw no amicable mode of determining the dispute but by arbitration; that, as my powers did not extend to the surrendering of our claims for the captures made by the French, and he said His Majesty was determined not to include them, I wished to know if His Majesty would consent to a convention for the appointment of commissioners to arbitrate the Spanish spoliations, and insert an article expressly reserving to the American Government the right to demand and negotiate hereafter, on the subject of the French spoliations. He said he would mention it to His Majesty and send me his answer: upon my return, however, to my house, I thought it advisable to make another attempt to procure the admission of such words as might enable the commissioner to arbitrate all our claims, and I wrote him the letter, a copy of which is enclosed, (No. 3.*) and thus this affair stood at the end of the conference.

From the same to the same, dated

"JULY 8, 1802.

"I have just received a visit from one of the foreign *encargados de negotios* here; and, from his conversation with me, I find that the Swedes and Danes, and many other nations, have numerous claims on this Goverament, similar to our own, for captures by the French equipped in Spanish ports, and vessels condemned therein, and that they are merely waiting to see the issue of our negotiations. This I told you before was one of the causes which increased the difficulty of our negotiation for this class of our claims, but I did not know before that the claims of other nations were to the extent I now find they are. The moment I make any arrangement with the Government here, the others will produce their claims. Mr. Cevallos knows this, and it is one of the reasons which makes the adjustment of the French spoliations a question of such magnitude, that Spain, with all her resources, would find it very difficult to meet them, for the greatest part of the claims of other nations are for violations of the Spanish territory by the French privateers equipped in Spanish ports. I sent yesterday to Mr. Cevallos the draught of another convention for his signature, and a request to him, to know his ultimate determination.

"This is the third I have sent him."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

"JULY 6, 1802.

"In my last I acquainted you with the state of our negotiations respecting the claims of our citizens up to that time. I have now the honor to enclose you Mr. Cevallos' letter, of the 26th ultimo, marked No. 1, in reply to mine of the same month. In consequence of this, I draughted the letter No. 2, and requested another conference with him on that subject; he appointed yesterday, and I attended him. I begun the conference by apologizing for troubling him so soon after his return to Madrid, but that, as our affairs were important and pressing, and I had the opportunity

* Not received at the Department of State.

of a gentleman returning to America, I wished very much to transmit to my Government the ultimate determination of His Majesty on the subject of our claims; that, as he had agreed, so far as his own subjects were concerned, to refer them to arbitration, I wished if in my power, to endeavor to convince his Excellency that the honor and justice of Spain required that our claims for French spoliations should also be included; that, in the latter part of his letter, he had agreed to include the words "de otros," [of others] which was all we wished, but had clogged them with an explanation totally unusual and inadmissible. This was the insertion of the words, "Segun los principios que constituyen la moralidad de las acciones y su responsibilidad," [according to the principles which constitute the morality of actions and responsibility on her part;] that I had no objection to insert the words, "segun los principios que constituyen su responsibilidad," [according to the principles which constitute a responsibility on her part,] but that those of "la moralidad de las acciones" [the morality of actions] would lead to discussions and explanations, which would embarrass and probably defeat the whole arbitration; that we all knew what the words, the laws of nations, and the stipulations of our treaty, and the principles which made Spain responsible for the acts of others, meant; but that the morality of actions was a field so extensive, and the meaning so difficult to define, when applied to these cases, that I could wish his Excellency would leave the whole business to the commissioners to determine, upon the principles of justice and equity, the laws of nations, and the stipulations of our treaty; that it would be easily in my power to convince him that, upon these stipulations and principles, Spain was liable for those captures by the French, which had been made by privateers equipped and manned in Spanish ports, and for those American vessels and cargoes which had been brought in and sold in the same. I then went into a train of reasoning to show that, "as strangers can do nothing in a country against a Sovereign's will," that, therefore, the equipping and manning these privateers, bringing in and selling the prizes, to the amount of more than one hundred sail, was not a thing to be done in a moment, or concealed from the eye or knowledge of the Government; that, being thus known, it was fair to conclude it was permitted and countenanced, and that being so, if unlawful, Spain was bound to compensate; that the arming and equipping of vessels in the ports of Spain, to cruise against the United States, with which Spain was at peace, was certainly a violation of the territorial sovereignty of Spain; and that, if she had not prevented it, when it was in her power to do so, but winked at it to the injury of the United States, she is bound to repair; that, by the law of nations, it is not permitted to a stranger, nor can any foreign Power or person levy men within the territory of an independent Government, without its consent; that he who does it may be rightfully and severely punished; that, as Spain had the right to refuse the permission to arm vessels, and raise men to man them, within their ports and territories, they were bound, by the laws of nations, to exercise that right, and prohibit such armaments and enlistments, and the condemnation and sale of our vessels; and that, not having done so, she was liable to compensate and make reparation.

I then stated the reasoning of Vattel and Wolf on this subject, and those excellent ones of the President, when Secretary of State, in his letters to Mr. Genet and Mr. Morris: I also informed him that I had written a letter, in answer to his of the 26th ultimo, and had therein mentioned the only explanation I thought myself authorized to enter into, with respect to the French spoliations; that I would read it to his Excellency, and hoped he would still consent to sign the convention in the manner it was drawn and sent to him. After reading the letter to him, he replied he was sorry I considered the words "la moralidad de las acciones" [the morality of actions] so inadmissible; that, however certain he was that Spain was not bound by the laws of nations to make reparation in these cases, yet to show she was willing to submit the whole of her conduct to arbitration, he would consent to sign the convention with the insertion of these words; that he did not suppose, without them, the whole business would be properly before the board; that, when thus called upon to pay, or to risk the being liable to pay large sums, by not one shilling of which the Spanish Government had ever been benefited, Spain had the right to the insertion of such clauses as would authorize the full investigation of her then situation, conduct, and motives, as it would only be upon a thorough examination of the whole, that the commissioners would be enabled to judge whether, according to justice, equity, and the faith of treaties, or, what he considered ought to be as fairly before the board as any of them, the principles which constitute the morality of actions, or her responsibility, she ought to be really responsible for the acts of foreigners in her dominions, under the circumstances of these cases; that he had fully considered the subject, and could only sign that part of the convention with the insertion of these words. Finding him not to be brought to a change of his opinion, I told him the claims were so important, and my instructions so clear and positive, that I did not conceive myself authorized to depart from the proposition I had made, or to insert words unusual and difficult to define, and which might tend to embarrass and defeat the arbitration; that I preferred closing with him on the ground of the Spanish spoliations, inserting a clause, reserving to us a right to reclaim and demand for the French, in the same manner as if this convention had not have been made, and referring the whole business, as it now stands respecting the French spoliations, to my Government, for their decision; that if they viewed it in the same light I did, they would probably direct some other mode to be proposed for adjusting these claims, or, at any rate, instruct me what was further to be done; that, for the present, I would draught and send him another convention, confined to the Spanish spoliations, which is now doing, and will be transmitted to him as soon as finished.

"My own opinion is, that Mr. Cevallos has heard of the Senate's striking out that article of the convention with France which respected our claims for spoliations, and that he thinks it hard Spain should be obliged to pay for violations of her territorial sovereignty, which it might not have been prudent for her, or was not, perhaps, then in her power to prevent, and for claims arising from acts committed within her dominions by the French, which, if they had been committed in their own, would have been relinquished. He never mentioned this to me, nor did I think it prudent to do so to him, because it was possible he might not be fully possessed of the facts: and being extraneous to our discussions, I took care to avoid it."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

"AUGUST 15, 1802.

"Mr. Codman going to the United States, I avail myself of so safe an opportunity to write you. My last, by Mr. Gibson, will inform you of the difficulties I have met with in my endeavors to persuade the Spanish Government to consent to an arbitration which should include all our claims, as well for Spanish as French spoliations.

"Notwithstanding all my efforts, you will find that Mr. Cevallos, the first Secretary of State, and appointed as the Plenipotentiary on this occasion, has continually refused the insertion of any clause worded as I felt authorized to agree to, which would include the arbitration of the prizes made under French commissions, or condemned by French Consuls. For these he thinks we ought to go to the French Government. In his letter to me, while I was with the Court at Aranjuez, of the 26th June, he has repeated, in writing, what he frequently told me in conversations. A copy of this I sent by Mr. Gibson, and a duplicate accompanies this. In one of my former, I detailed to you the arguments I had used with Mr. Cevallos to induce him to consent to the insertion of a clause including the French captures, but all that I could, after many efforts, bring him to consent to, was the arbitration of the excesses committed by foreign vessels within the respective territories of Spain and the United States; to this I told him I would consent, if he would add, after the words "corsarios estrangeros" the following: "o agentes, consuls, o tribunals," [or agents, consuls, or tribunals.] You will find by his letter of the 7th instant he expressly refuses this addition, and as the excesses committed within their respective territories by privateers would include but a few cases, and exclude the most numerous and important classes, I informed him I was not authorized to consent to any convention which might, in the remotest degree, weaken or abridge the right of the United States and their citizens to urge these claims as they should hereafter think proper; that, the honor and character of our country were deeply involved in the event, it being as much their duty to feel the insults offered to the right of their citizens, as it was to assert and defend them; that, on this question, I had made the only offer in my power; that, if he continued to decline it on the ground that Spain was not liable, under the laws of nations, or the treaty, to make reparation, that I would communicate his answer to our Government, and it would remain for them to determine what was best to be done; that, His Majesty had said he would consent to a convention for the purpose of arbitrating all the excesses committed during the late war by the citizens, and subjects of the United States and Spain; that, knowing the friendly disposition of my Government towards Spain, and their confidence in the justice and honor of the King ultimately to arrange and adjust their claims upon honorable and equitable principles, I would consent to a convention, which should be so worded as to include the arbitration of every claim arising from the excesses of the subjects or citizens of either party, contrary to the laws of nations or the existing treaty; and which should, also, by a clause to be therein inserted, reserve to the United States and Spain all the rights they now have to claim reparation for the excesses committed within their respective territories, by the corsairs, agents, consuls, or tribunals of foreign Powers. This convention we signed on the 11th instant, and I have delivered it to Mr Codman of Massachusetts, to give you.

"My reasons for signing it were as follows, and I trust they will meet the approbation of the President and Senate: that, upon examining the returns in the Consular office here, I find the number of vessels taken or detained by Spaniards, up to the 7th October last, with their cargoes, were one hundred and one, to which are to be added twelve taken jointly by the French and Spaniards, and twelve cargoes seized or embargoed by Spain, making, in the whole, one hundred and twenty-five sail of vessels and cargoes. A few of them have been acquitted; but on all of them will arise claims for damages. To these considerable claims for captures are to be added all our other claims arising from the excesses of individuals contrary to the law of nations or the treaty, which I am informed are to an amazing amount, particularly from South America. On the latter subject, it was impossible for me to obtain exact accounts; but from every information I have received, and particularly from a gentleman who brought me a letter from you, and who has lately been in that country, I learn that the claims which our citizens have, are so great as to amount to a sum of not less than five millions of dollars, and he believes probably eight millions; most of which he thinks, from a knowledge of their peculiar circumstances, may be arbitrated under this convention, the wording of which I showed him in confidence, in order that I might determine how far it was sufficiently general to include every case, within his knowledge, which might be said to be contrary to the laws of nations and the existing treaty. These, added to the one hundred and twenty-five sail of vessels and their cargoes, and all the other claims arising in the Spanish, European, and West India dominions, amount, in the whole, to so considerable a sum, that, finding Spain inclined to agree to the immediate arbitration of them, I did not feel myself authorized to withhold from such of our citizens as were interested the only mode of repairing their losses which at this time is practicable. I was urged to this from a conviction that it is not our wish to go to war, and that there can be little doubt of Spain hereafter agreeing to an arbitration of the French spoliations. At present, out of the whole number of vessels captured by the French, seventy-one only have been condemned, and it will require very able and minute investigation to decide how many of these have been legally or otherwise condemned; so that it is not unlikely, when the true amount is ascertained for which the citizens of the United States may have a right to compensation, the claims arising from French spoliations will be far short of our claims for compensation on account of the excesses of Spanish subjects; if this should prove to be the case, Spain, after having agreed to arbitrate the larger sum, will not hesitate to add the other rather than proceed to extremities.

"I shall continue to urge her to consent to some agreement to this effect, authorizing the Commissioners to be named to arbitrate the French spoliations at the same time; and should I not be able to effect it before I can hear from you, I will thank you for your instructions, or any plan or modification you may think proper. It appears to me to be wise in us to prevent, as much as possible, the accumulation of our claims against Spain, for the more she is in arrear, or the more extensive our claims are against her, the more unwilling and unable will she be to adjust them. Take, however, from the present aggregate all our claims for Spanish spoliations and excesses, and the residue will be such as she can meet without difficulty; at least with much less difficulty than a war with the United States."

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States in Madrid, to the Secretary of State, dated

AUGUST 30, 1802.

"By Mr. Gibson and Mr. Codman, you will receive full accounts of everything up to this time. I still entertain hopes of being able to bring this Court to agree to an arbitration by the same Commissioners of the French spoliations: it will be with great reluctance, but I still think it will be the case. They complain of it as one of the hardest cases that can possibly occur; that their situation was well known; just emerging from a war with France, in which they were pressed to the last extremities; obliged to suffer the French Government and Consuls to do as they pleased in their ports, for fear of renewing the war, by refusing and irritating them; to be thus mortified by these violations of their territorial sovereignty by a Power they could not resist, and to be obliged after all, to pay for those prizes, not one shilling of which ever went into the pockets of the King or his subjects, appears to them to be, as they have often said, one of the hardest cases that could occur. Mr. Cevallos or the Government here do no not confess this to be the motive; their pride would not suffer them to avow it; they say the laws of nations or the treaty do not oblige them; but the true reason, I believe, I have stated above. You will do me the favor to let me hear from you on it as soon as possible. In the interim, I will go on here endeavoring to arrange it as well as I can.

"Upon investigating all the claims you have forwarded me, and particularly Mr. Higginson's, I find they will all come under the convention; indeed, from a review of many other cases, which were supposed to go entirely under the head of French spoliations, there can be little doubt that many of them also may be arbitrated by the Commissioners; in every case where it can be proved that it was in any manner owing to the illegal interference of the Spanish Government, or officers acting under its authority, that the French were enabled to bring in or condemn the prize, or that they interfered, there can be no doubt of the authority of the Commissioners to arbitrate them. If we can get the fifth Commissioner, it will enable us very conscientiously and honorably to include a great number of the cases now considered as French spoliations."

GREAT BRITAIN.

[The following papers, relating to the subjects in negotiation with Great Britain previous to the appointment of James Monroe, as American Minister, in 1803, are inserted for the purpose of exhibiting the relations then existing with that Power. They relate to commerce, seizures, blockades, impressments, and Maryland bank stock.]

J. Marshall, Secretary of State, to Mr. King.

DEPARTMENT OF STATE,
Washington, Sept. 20, 1800.

SIR: It is the hope and expectation of the President, that your negotiation with Lord Grenville concerning contraband of war, and the impressment of our seamen, which had progressed considerably, and been broken off in consequence, as is here understood, of the differences between the two nations respecting the construction of the sixth article of the Treaty of Amity, Commerce, and Navigation, has been or will now be renewed.

Should it have been intended to proceed *pari passu* with these subjects, yet our instructions respecting the claims of British creditors on the United States having, as we hope, enabled you to place that business in a train for adjustment, we are sanguine in our expectations concerning the other objects of the negotiation.

Should you be unable to obtain what is most desired, because most just, explanatory articles, placing the original treaty on its true ground, or even to settle this difference on the terms stated in my No. 2, terms of the liberality of which I am more and more convinced, yet we perceive no rea-

son growing out of this misunderstanding, which should obstruct the progress of an agreement on subjects the present practice on which so seriously threatens the peace of the two nations.

The seventh article of the Treaty of Amity, Commerce, and Navigation, corresponds with the sixth, and proceedings under both have been suspended. It is not my purpose to show that these two measures, viewed together, are injurious to the United States, because we do not complain, for the present, of the suspension which has taken place of the proceedings of the board lately sitting in London. But certainly as the one measure completely balances the other, this misunderstanding can furnish to the British Government no plausible pretext for taking other steps unfriendly in themselves, or for refusing to take such as justice and friendship indispensably require.

We trust, then, that whatever may be the fate of the propositions respectively made concerning the differences under the sixth and seventh articles of our late treaty, the negotiations relative to contraband and impressments will now progress, without interruption, to a happy conclusion.

Should this hope be disappointed, the practice of depredating on our commerce, and impressing our seamen, demands, and must receive, the most serious attention of the United States

The unfeigned solicitude of this Government to preserve peace with all, and to obtain justice by friendly representations to the party committing injuries, rather than by a resort to other means, induces it now to wish that any misjudgment respecting its views and intentions, which may have been formed in the British Cabinet, and which may have promoted dispositions unfavorable to that perfect harmony which it is the interest of both nations to cherish, may be completely corrected. For this the President has great and just reliance on you. If impressions of any sort have been made, impairing that conciliatory temper which enables one nation to view with candor the proceedings of another, the President hopes that your perfect knowledge of the principles which influence the Government you represent will enable you to meet and to remove them.

That such impressions have been made by connecting two measures entirely independent of each other, is greatly suspected.

The secession of the American Commissioners from the board lately sitting at Philadelphia, and the recommencement of negotiations with France, may have been united together as parts of one system, and been considered as evidencing a temper less friendly to Great Britain than had heretofore guided our councils.

You have been assured that the suspension of further proceedings on the claims of British creditors against the United States is attributable exclusively to the wild, extensive, and unreasonable construction put by the Commissioners of that nation on the article they were appointed to execute—a construction which, as we think, at once prostrated the words and spirit of the article, and overleaped all those bounds within which, by common consent, their powers were limited. You know too well the integrity of this Government to doubt the sincerity with which this opinion is avowed; and you possess too perfectly the reasoning on which it had been formed, to feel any difficulty in supporting it. In fact we believe that the points of difference need only be considered to produce in every intelligent mind the conviction that the American Government is, at least, sincere in the opinion it has maintained.

Being entirely persuaded of the vast injury and injustice which would result from executing the sixth article, according to the strange system devised by a majority of the Commissioners, a sense of duty and national honor, as well as a wish to preserve a solid and lasting peace between the two countries, rendered indispensable the step which has been taken. Had the United States been at open and declared war with France, without a prospect of speedy pacification, the same causes must have induced the same measure.

The suspension, then, of the commission at Philadelphia was not influenced by the probability of negotiating with France, nor have these two measures any tendency to explain each other. It is equally true that neither of them proceeds from a temper in the United States hostile to, or even indifferent about a good understanding with the British Government.

The one has been shown to be a necessary measure of defence against what was believed to be an unauthorized attack on the interests of the United States, which, it was conceived, the British Government would not have sanctioned. The other is a necessary consequence of the well digested political system which this Government adopted early in the present war, and has uniformly sought to maintain.

The United States do not hold themselves in any degree responsible to France or to Britain for their negotiations with the one or the other of these Powers; but they are ready to make amicable and reasonable explanations with either.

In this spirit their political system may be viewed.

It has been the object of the American Government, from the commencement of the present war, to preserve between the belligerent Powers an exact neutrality. Separated far from Europe, we mean not to mingle in their quarrels. This determination was early declared, and has never been changed. In pursuance of it, we have avoided, and we shall continue to avoid, any political connexions which might engage us further than is compatible with the neutrality we profess, and we have sought, by a conduct just and friendly to all, to be permitted to maintain a position which, without offence to any, we had a right to take.

The aggressions, sometimes of one and sometimes of another belligerent Power, have forced us to contemplate and prepare for war as a probable event. We have repelled, and we will continue to repel, injuries, not doubtful in their nature, and hostilities, not to be misunderstood. But this is a situation of necessity, not of choice. It is one in which we are placed, not by our own

acts, but by the acts of others, and which we change so soon as the conduct of others will permit us to change it.

The regularly accumulating injuries sustained from France had, in 1798, progressed to such a point as to leave to the United States no reasonable ground of doubt that war was to be expected, and that force, and force only, could be relied on for the maintenance of our rights as a sovereign and independent nation. Force, therefore, was resorted to; but, in the very act of resorting to it, our preference for peace was manifest, and it was apparent that we should return to our natural situation so soon as the wrongs which forced us from it should cease, and security against their repetition be offered. A reasonable hope that this state of things may be attained, has been furnished by the recent conduct and overtures of the French Government. America meets these overtures, and, in doing so, only adheres to her pacific system.

To impress more forcibly on the British Cabinet the principles on which this Government acts, it may not, perhaps, be improper to point their attention to our conduct during the most critical periods of the present war.

In 1793, when the combination against France was most formidable, when, if ever, it was dangerous to acknowledge her new Government, and to preserve with it the relations of amity which, in a different state of things, had been formed with the nation, the American Government openly declared its determination to adhere to that state of impartial neutrality which it has ever since sought to maintain; nor did the clouds which, for a time, lowered over the fortunes of the Republic, in any degree shake this resolution.

When victory had changed sides, and France, in turn, threatened those who did not arrange themselves under her banners, America, pursuing with undeviating step the same steady course, negotiated with His Britannic Majesty a Treaty of Amity, Commerce, and Navigation, nor could either threats or artifices prevent its ratification.

At no period of the war has France occupied such elevated ground, as at the very point of time when America armed to resist her: triumphant and victorious everywhere, she had dictated a peace to her enemies on the Continent, and had refused one to Britain.

In the reverse of her fortune, when defeated both in Italy and on the Rhine, in danger of losing Holland, before the victory of Massena had changed the face of the last campaign, and before Russia had receded from the coalition against her, the present negotiation was resolved on. During its pendency, the state of war has changed, but the conduct of the United States sustains no alteration. Our terms remain the same: we still pursue peace. We still embrace it, if it can be obtained without violating our national honor or our national faith; but we will reject, without hesitation, all propositions which may compromit the one or the other.

I have thought it not entirely useless to note thus briefly the relative situation of the belligerent Powers at the several eras when important measures had been adopted by the American Government, because the review will mark unequivocally the character of that Government, and shows how steadily it pursues its system, without regarding the dangers, from the one side or the other, to which the pursuit may be exposed.

The present negotiation with France is a part of this system, and ought therefore, to excite in Great Britain no feelings unfriendly to the United States.

Perhaps an apprehension that an erroneous estimate may have been made in the British Cabinet of the views and intentions of this Government, may be unfounded. If so, it will, of course, be unnecessary to attack prejudices which do not exist. If, however, such prejudices do exist, you will, by a plain and candid representation, endeavor to remove them.

The way being thus smoothed for the reception of our complaints, the peace and interest of the nation require that they should be temperately but very seriously enforced.

These complaints are occasioned by the conduct of the British Government, through its agents, towards our commerce and seamen.

The depredations on our commerce have, of late, been so considerable, as even to give some countenance to the opinion that orders have been received to capture every American vessel bound to an enemy's port. It cannot be difficult for you to conjecture the effects of such a system.

In your correspondence with my predecessor, I perceive that these subjects have been repeatedly taken up, and that, in your several representations to the Ministers of His Britannic Majesty, you have done ample justice to your country.

I am directed by the President to express to you his wish that, unless this business be in train for satisfactory adjustment, you once more call the very serious attention of the British Government to the irritating and injurious vexations we sustain, and make one more solemn appeal to the justice, the honor, and the real interest of the nation.

Our complaints respecting the depredations on our commercce may be classed under the following heads:

1. The construction given to the article of our treaty relative to contraband of war.

2. The extent given to the rule concerning blockaded ports.

3. The unjust decisions of their Courts of Vice Admiralty, and the impunity which attends captures totally vexatious and without probable cause of seizure.

We will consider:

1. The interpretation given to the eighteenth article of our treaty. Under the expression "and generally whatever may serve distinctly for the equipment of vessels," which closes the enumeration of prohibited articles, our merchant vessels have been seized and condemned, because a part of their cargoes consisted of such articles, as may, by possibility, serve for the equipment of vessels, although they are not generally so applied, but are

most commonly used for the purposes of husbandry; such are ticklenburgs, osnaburgs, and small nails, which, in the Court of Vice Admiralty, have been adjudged contraband of war.

This vexatious construction is believed to be as unjustifiable as it is unfriendly.

As the law of nations on this subject can only establish general principles, particular treaties supply this defect by defining precisely between the parties the relative rights of each as a belligerent or neutral Power.

Thus the law of nations is clearly understood to declare that articles exclusively used in war are contraband, and that all articles not used in war are the objects of lawful commerce. But articles of promiscuous use, proper either for peace or war, may be, it has been contended, contraband or not, according to circumstances.

Admitting this opinion to be correct, it would seem to be a reasonable construction of the law, that the character of the articles thus doubtful in themselves should be determined by those circumstances which may ascertain the use to which they are to be applied. If the circumstances, and the cargo and its destination, show unequivocally that its application must be to military purposes, materials fit for both peace and war may assume the character of contraband; but if those circumstances afford solid ground for the opinion that the suspected materials are designed only for the ordinary purposes of the nation, then there can be no just motive for interrupting a commerce which ought to be pronounced lawful.

This principle would seem to mark the boundaries of the conflicting rights of neutral and belligerent Powers. For neutrals have a right to carry on their usual commerce, and belligerents have a right to prevent them from supplying the enemy with instruments of war.

But, in the application of the principle, considerable difficulty exists. The two nations judge differently on the circumstances attending each case; and, to prevent the quarrels which may grow out of this difference of judgment, a precise list of contraband is usually agreed on between them.

If, however, there be in the enumeration an ambiguous expression, it ought to be expounded with a reference to those general principles intended to have been rendered definite by the particular agreement, and the inquiry ought always to be made, whether the article was really designed for a prohibited object, or was transported for the ordinary purposes of commerce.

In the catalogue of contraband, agreed on between the United States and Great Britain, there is one description which leaves to construction what specific articles it may comprehend. It is in the following words: "and generally whatever may serve directly to the equipment of vessels."

In construing this expression, the British Courts of Admiralty appear to consider it as including whatever might by any possibility be applied to the equipment of vessels. Although the article be in itself unfit and improper for that use, and therefore be not in common so applied, yet, if it might, by possibility, from a want of other proper materials, admit of such application, the courts adjudge, although such other materials be not wanting at the port of destination, that it is contraband of war.

This construction we deem alike unfriendly and unjust. We conceive that the expression which has been cited, comprehends only such articles as in themselves are proper for, and their ordinary use are applied to, the equipment of vessels.

Under the British constitution, no operation is referred to the word "*directly*." Expunge it from the sentence, and, according to them, the sense will remain the same. But plain reason, and the soundest and universally admitted rules of construction, forbid us to interpret by garbling a compact. The word "*directly*" is an important word, which forms a necessary and essential part of the description, and must have been inserted for the purpose of having its due weight in ascertaining the sense of the article. We can discover no effect which is allowed to it, unless it be admitted to limit the description to materials which, in their ordinary and common application, are in considerable quantities proper for, and "serve directly to the equipment of vessels." To exclude it, or to construe it as if it was excluded, is to substitute another agreement for that of the parties.

We do not admit the expression we are considering to be itself doubtful. But if it was so, rules of construction, prescribed by reason, and adopted by consent, seem to us to reject the interpretation of the British courts.

As this contract is formed between a belligerent and neutral nation, it must have been designed to secure the rights of each, and consequently to protect the commerce which neutrals may lawfully carry on, as well as to authorize the seizure of articles which they may not lawfully carry to the enemy. But, under the interpretation complained of, not only articles of doubtful use, with respect to the equipment of vessels, but such as are not proper for that purpose, if proper only in very small quantities, and which therefore are not in common so applied, are, because they may by mere possibility admit of that application, classed with articles prohibited, on the principle that they are for the purposes of war.

This construction ought to be rejected, because it would swell the list of contraband to an extent which the laws and usages of nations do not authorize: it would prohibit, as being for the equipment of vessels, articles plainly not destined for that purpose but fitted and necessary for the ordinary occupations of men in peace; and it would consequently presuppose a surrender, on the part of the United States, of rights in themselves unquestionable, and the exercise of which is essential to themselves, and not injurious to Britain in the prosecution of the war in which she is engaged.

A construction so absurd and so odious ought to be rejected.

In addition to the injury of condemning as contraband goods which cannot properly be so denominated, seizures and confiscations have been made

in cases where the condemnation, even if contraband, could not have been justified. Articles of that description are only by the treaty declared to be just objects of confiscation, whenever they are attempted to be carried to an enemy.

We conceive it certain that vessels bound to New Orleans, and laden with cargoes proper for the ordinary use of the citizens of the United States who inhabit the Mississippi and its waters, cannot, merely on account of the port to which they are bound, be justly said to carry those cargoes to an enemy.

By our treaty with Spain, New Orleans is made for the present a place of deposit for the merchandise and effects of our citizens. Merchandise designed for the consumption of those citizens who reside on the Mississippi or its waters, and which is to be transported up that river, will, in the present state of its commerce, be almost universally shipped to New Orleans: this port being by stipulation and of necessity, common to the subjects of Spain, and to the citizens of the United States, the destination of the cargo can be no evidence of its being designed for an enemy, and therefore liable to confiscation when composed of articles that might be used in war. In justice, other testimony to this point ought always to be received.

But the destination to New Orleans ought rather to exempt from confiscation articles of ordinary use, but which may also serve to the equipment of vessels. It is well known not to be a port usually resorted to for that object. The Spaniards do not there build or equip vessels, nor has it ever been a deposit for naval stores. When, then, a vessel bound for New Orleans, containing a cargo proper for the ordinary use of those citizens of the United States who are supplied through that port, and evidently designed for them, shall be captured, such cargo is not a just object of confiscation, although a part of it should also be deemed proper for the equipment of vessels.

Blockades. 2dly. The right to confiscate vessels bound to a blockaded port, has been unreasonably extended to cases not coming within the rule heretofore adopted.

On principle, it might well be questioned whether this rule can be applied to a place not competely invested by land as well as by sea. If we examine the reasoning on which is founded the right to intercept and confiscate the supplies designed for a blockaded town, it will be difficult to resist the conviction that its extension to towns invested by sea, only, is an unjustifiable encroachment on the rights of neutrals. But it is not of this departure from principle, a departure which has received some sanction from practice, that we mean to complain. It is, that ports not effectually blockaded by a force capable of completely investing them, have yet been declared in a state of blockade, and vessels attempting to enter therein have been seized, and on that account confiscated.

This is a vexation proceeding directly from the Government, and which may be carried, if not resisted, to a very injurious extent. Our merchants have greatly complained of it, with respect to Cadiz and the ports of Holland.

If the effectiveness of the blockade be dispensed with, then every port of the belligerent Powers may at all times be declared in that state, and the commerce of neutrals be thereby subjected to universal capture. But, if this principle be strictly adhered to, the capacity to blockade will be limited by the naval force of the belligerent, and, of consequence, the mischief to neutral commerce cannot be very extensive. It is therefore, of the last importance to neutrals that this principle be maintained unimpaired.

I observe that you have pressed this reasoning on the British Minister, who replies that an occasional absence of a fleet from a blockaded port ought not to change the state of the place.

Whatever force this observation may be entitled to, where that occasional absence has been produced by accident, as a storm, which for a moment blows off a fleet and forces it from its station, which station it immediately resumes, I am persuaded, that where a part of the fleet is applied, though only for a time, to other objects, or comes into port, the very principle requiring an effective blockade, which is, that the mischief can only be coextensive with the naval force of the belligerent, requires that, during such temporary absence, the commerce to the neutrals to the place should be free.

The next object of complaint is, 3dly—The unjust decisions of their Courts of Admiralty, and the impunity which attends captures, totally vexatious, and without any probable cause.

It is not to be expected that all commanders of national ships, much less the commanders of privateers, should be men of correct conduct and habits. The temptation which a rich neutral commerce offers to unprincipled avarice, at all times powerful, becomes irresistible, unless strong and efficient restraints be imposed by the Government which employs it. It is the duty of the Government to impose such restraints. Foreign friendly nations, who do not exercise against such cruisers their means of self-protection, have a right to expect and to demand it. The failure to impose them exposes the belligerent Government to the just reproach of causing the injuries it tolerates.

The most effectual restraint is an upright Judiciary, which will decide impartially between the parties, and uniformly condemn the captor in costs and damages where the seizure has been made without probable cause. If this practice be not honestly and rigidly observed, there will exist no restraint on the captors. Their greediness of gain will be checked by no fear of loss, and indiscriminate captures will consequently be made. If the vessel be adjudged a good prize, of which before an unjust judge, there is, in all cases, considerable probability, the profit is theirs; if the vessel be acquitted, the loss falls entirely on the captured. The numerous depredations consequent on such a state of things is inevitable. The loss to the neutral merchant is immense. His voyage becomes not only unprofitable but injurious to him.

This is the state of things in the British possessions in America, &c.

It is only by infusing a spirit of justice and respect for law into the Courts of Vice Admiralty, that their excessive and irritating vexations can be restrained.

This is the state of things in the British possessions in America. Their Courts of Vice Admiralty, whatever may be the case, seldom acquit, and, when they do, costs and damages for detention are never awarded.

We know well that judges are appointed, whose duty it is to award costs and damages for detention instead of confiscation, in cases of vexatious seizure; but we know, too, the tenure by which they hold their offices, and the source from which they derive their profits, and we know their practice. We can only attribute this practice to their Government, for it has been notorious, has been of long continuance, and has never been checked. It is not to be supposed that judges circumstanced as are those of the Courts of Vice Admiralty, would dare to pursue openly and invariably this vicious system, if it was known to be offensive to their Government.

The existence of an appellate court does not remove the evil. The distance of that event, the expenses and delays attendant on an appeal, the loss inseparable from a first condemnation, though it be afterwards reversed, render it a very inadequate remedy even in cases of unjust condemnation, and absolutely forbid any resort to it on a mere question of costs.

It is only by infusing a spirit of justice and respect for law into the Courts of Vice Admiralty, that their excessive and irritating vexations can be restrained, and the imputations to which they subject the British Government wiped away.

This spirit can only be infused by uniformly discountenancing and punishing those who tarnish alike the seat of justice, and the honor of their country, by converting themselves from judges into the mere instruments of plunder.

Until some such reform be made, the practices complained of will continue, and must be considered by foreign nations as authorized by and proceeding from the Government which permits them.

The impressment of our seamen is an injury of very serious magnitude, which deeply affects the feelings and honor of the nation.

This valuable class of men is composed of natives and foreigners, who engage voluntarily in our service.

No right has been asserted to impress the natives of America. Yet they are impressed, they are dragged on board British ships of war with the evidence of citizenship in their hands, and forced by violence there to serve until conclusive testimonials of their birth can be obtained. These must most generally be sought for on this side of the Atlantic. In the meantime, acknowledged violence is practised on a free citizen of the United States, by compelling him to engage and to continue in foreign service. Although the Lords of the Admiralty uniformly direct their discharge on the production of this testimony, yet many must perish unrelieved, and all are detained a considerable time in lawless and injurious confinement.

It is the duty as well as the right of a friendly nation, to require that measures be taken by the British Government to prevent the continued repetition of such violence by its agents. This can only be done by punishing and frowning on those who perpetrate it. The mere release of the injured, after a long course of service and of suffering, is no compensation for the past, and no security for the future. It is impossible not to believe that the decisive interference of the Government in this respect would prevent a practice, the continuance of which must inevitably produce discord between two nations which ought to be the friends of each other.

Those seamen, who, born in a foreign country, have been adopted by this, were either the subjects of Britain or some other Power.

The right to impress those who were British subjects has been asserted; and the right to impress those of every other nation has not been disclaimed. Neither the one practice nor the other can be justified.

With the naturalization of foreigners, no other nation can interfere, further than the rights of that other are affected. The rights of Britain are certainly not affected by the naturalization of other than British subjects. Consequently, those persons, who, according to our laws, are citizens, must be so considered by Britain, and by every other Power not having a conflicting claim to the person.

The United States therefore require positively that their seamen who are not British subjects, whether born in America or elsewhere, shall be exempt from impressments.

The case of British subjects, whether naturalized or not, is more questionable; but the right even to impress them is denied. The practice of the British Government itself may certainly, in a controversy with that Government be relied on. The privileges it claims and exercises ought to be ceded to others. To deny this, would be to deny the equality of nations, and to make it a question of power and not of right.

If the practice of the British Government may be quoted, that practice is to maintain and defend in their sea service all those of any nation who have voluntarily engaged in it, or who, according to their laws, have become British subjects.

Alien seamen, not British subjects, engaged in our merchant service, ought to be equally exempt with citizens from impressments: we have a right to engage them, and have a right to, and interest in, their persons, to the extent of the service contracted to be performed. Britain has no pretext of right to their persons or to their service. To tear them, then, from our possession, is at the same time an insult and an injury. It is an act of violence for which there exists no palliative.

We know well that the difficulty of distinguishing between native Americans and British subjects, has been used, with respect to natives, as an apology for the injuries complained of. It is not pretended that this apology can be extended to the

case of foreigners; and, even with respect to natives, we doubt the existence of the difficulty alleged. We know well that, among that class of people who are seamen, we can readily distinguish between a native American and a person raised to manhood in Great Britain or Ireland; and we do not perceive any reason why the capacity of making this distinction should not be possessed in the same degree by one nation as by the other.

If, therefore, no regulation can be formed, which shall effectually secure all seamen on board American merchantmen, we have a right to expect from the justice of the British Government, from its regard for the friendship of the United States, and its own honor, that it will manifest the sincerity of its wishes to repress this offence, by punishing those who commit it.

We hope, however, that an agreement may be entered into, satisfactory and beneficial to both parties. The article which appears to have been transmitted by my predecessor, while it satisfies this country, will probably restore to the naval service of Britain a greater number of seamen than will be lost by it. Should we even be mistaken in this calculation, yet the difference cannot be put in competition with the mischief which may result from the irritation justly excited by this practice throughout the United States. The extent and the justice of the resentments it produces, may be estimated in Britain, by inquiring what impression would be made on them by similar conduct on the part of this Government.

Should we impress from the merchant service of Britain not only Americans but foreigners, and even British subjects, how long would such a course of injury, unredressed, be permitted to pass unrevenged? How long would the Government be content with unsuccessful remonstrance and unavailing memorials? I believe, sir, that only the most prompt correction of compensation for the above abuse would be admitted as satisfaction in such a case.

If the principles of this Government forbid it to retaliate by impressments, there is yet another mode which might be resorted to. We might authorize our ships of war, though not to impress, yet to recruit sailors on board British merchantmen. Such are the inducements to enter into our naval service, that we believe even this practice would very seriously affect the navigation of Britain. How, sir, would it be received by the British nation?

Is it not more advisable to desist from, and to take effectual measures to prevent an acknowledged wrong, than, by perseverance in that wrong, to excite against themselves the well-founded resentments of America, and force our Government into measures which may possibly terminate in an open rupture?

As we are unacquainted with the present actual state of things in Europe, and the President has the most entire confidence in you, it is not his wish to enjoin on you a representation to the Ministers of His Britannic Majesty in the terms of this letter. It is only intended to convey to you the feelings and sentiments of the Government and people of America, and to instruct you from the President himself to call the very serious attention of the British Government, in such terms of respect and earnestness as to yourself shall seem advisable, to the weighty subjects of complaint which have been stated. With great and sincere respect and esteem, I am, sir, &c.

J. MARSHALL.

Extract of a letter from Mr. King to the Secretary of State, dated

LONDON, *April* 12, 1801.

DEAR SIR: I lose no time in sending you the annexed copies of a letter which I lately wrote to Lord Hawkesbury and his answer respecting the seizure of our vessels carrying from the United States to the Spanish Colonies, articles of the growth and manufacture of Spain.

Although I had seen in the American newspapers repeated accounts of these depredations upon our trade, the decree of the Vice Admiralty Court of Nassau, in the case of the Leopard, Ropes, master, was the first document which I met with, that possessed sufficient precision to enable me to make it the grounds of a remonstrance.

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
March 13, 1801.

MY LORD: The decree of the Vice Admiralty Court of Nassau, a copy of which is annexed,* containing the cargo of an American vessel going from the United States to a port in the Spanish Colonies, upon the ground that the articles of innocent merchandise comprising the same, though *bona fide* neutral property, were of the growth of Spain, having been sanctioned, and the principle extended, by the prize courts of other British islands, and particularly by the court of Jamaica, has been deemed sufficient authority to the commanders of the ships of war and privateers cruising in those seas, to fall upon, and capture, all American vessels bound to an enemy's colony, and having on board any article of the growth or manufacture of a nation at war with Great Britain.

These captures, which are vindicated by what is termed the belligerent's right to distress his enemy, by interrupting the supplies which his habits or convenience may require, have produced the strongest and most serious complaints among the American merchants, who have seen, with indignation, a reason assigned for the capture and confiscation of their property, which is totally disregarded in the open trade carried on between the British and Spanish Colonies by British and

* In the case of the American brigantine Leopard, Ropes, master, laden in part with Malaga wines. The cargo, so far as it consisted of wines, though regularly imported into the United States, was condemned by Judge Kensall, 20th October, 1800; "the same being productions of the Spanish territory in Europe, and bound to the transatlantic parts of that empire."

Spanish subjects, in the very articles the supply of which, by neutral merchants, is unjustly interrupted.

The law of nations, acknowledged in the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, allows the goods of an enemy to be lawful prize, and pronounces those of a friend to be free.

While the United States take no measures to abridge the rights of Great Britain as a belligerent, they are bound to resist with firmness every attempt to extend them, at the expense of the equally incontestable rights of nations which find their interest and duty in living in peace with the rest of the world.

So long as the ancient law of nations is observed, which protects the innocent merchandise of neutrals while it abandons to the belligerent the goods of his enemy, a plain rule exists, and may be appealed to, to decide the rights of peace and war; the belligerent has no better authority to curtail the rights of the neutral, than the neutral has to do the like in regard to the rights of the belligerent; and it is only by an adherence to the ancient code, and the rejection of modern glosses, that fixed and precise rules can be found, defining the rights and regulating the duties, of independent States.

This subject is of such importance, and the essential interests of the United States, whose policy is that of peace, are so deeply affected by the doctrines which, during the present war, have been set up in order to enlarge the rights of the belligerents at the expense of those of the neutrals, that I shall, without loss of time, submit to your Lordship's consideration such further reflections respecting the same, as its great importance appears to demand.

In the meantime, as the decisions referred to cannot, from the unavoidable delay which attends the prosecution of appeals, be speedily reversed; and as the effect of those decrees will continue to be the unjust and ruinous interruption of the American commerce in the West India seas; it is my duty to require that precise instructions shall, without delay, be despatched to the proper officers in the West Indies and Nova Scotia, to correct the abuses which have arisen out of these illegal decrees, and put an end to the depredations which are wasting the lawful commerce of a peaceable and friendly nation. With great consideration, I have the honor to be your Lordship's most obedient and most humble servant.

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *April* 11, 1801.

SIR: I have the honor to acknowledge the receipt of your letter of the 13th of last month, and to inform you that, in consequence of the representation contained in it, a letter has been written, by His Majesty's command, by his Grace the Duke of Portland, to the Lords Commissioners of the Admiralty; a copy of which letter I herewith enclose to you, for the information of the Government of the United States.

I have the honor to be, with great truth, sir, your most obedient, humble servant.

HAWKESBURY.

The Duke of Portland to the Lords Commissioners of the Admiralty,

WHITEHALL, *March* 30, 1801.

MY LORDS: I transmit to your Lordships, herewith, a decree of the Vice Admiralty Court of Nassau, condemning the cargo of an American vessel going from the United States to a port in the Spanish Colonies; and the said decree having been referred to the consideration of the King's Advocate General, your Lordships will perceive, from his report, an extract of which I enclose, that it is his opinion that the sentence of the Vice Admiralty Court is erroneous, and founded in a misapprehension or misapplication of the principles laid down in the decision of the High Court of Admiralty referred to, without attending to the limitations therein contained.

In order, therefore, to put a stop to the inconveniences arising from these erroneous sentences of the Vice Admiralty Courts, I have the honor to signify to your Lordships the King's pleasure that a communication of the doctrine laid down in the said report, should be immediately made by your Lordships to the several judges presiding in them, setting forth what is held to be the law upon the subject by the superior tribunals, for their future guidance and direction.

I am, &c. PORTLAND.

Extract of the Advocate General's report, dated

MARCH 16, 1801.

I have the honor to report, that the sentence of the Vice Admiralty Court appears to me to be erroneous, and to be founded in a misapprehension or misapplication of the principles laid down in the decision of the Court of Admiralty referred to, without attending to the limitations therein contained.

The general principle respecting the Colonial trade has, in the course of the present war, been, to a certain degree, relaxed, in consideration of the present state of commerce. It is now distinctly understood, and it has been repeatedly so decided by the High Court of Admiralty and the Court of Appeal, that the produce of the Colonies of the enemy may be imported by a neutral into his own country, and may be re-exported from thence, even to the mother country of such Colony; and, in like manner, the produce and manufactures of the mother country may, in this circuitous mode, legally find their way to the Colonies. The direct trade, however, between the mother country and its Colonies has not, I apprehend, been recognised as legal, either by His Majesty's Government or by his tribunals.

What is a direct trade, or what amounts to an intermediate importation into the neutral country, may sometimes be a question of some difficulty;

a general definition of either, applicable to all cases, cannot well be laid down. The question must depend upon the particular circumstances of each case. Perhaps the mere touching in the neutral country, to take fresh clearances, may properly be considered as a fraudulent evasion, and as, in effect, the direct trade; but the High Court of Admiralty has expressly decided (and I see no reason to expect that the Court of Appeal will vary the rule) that, landing the goods and paying the duty in a neutral country, breaks the continuity of the voyage, and is such an importation as legalizes the trade; although the goods may be re-shipped in the same vessel, and on account of the same neutral proprietor, and be forwarded for sale to the mother country or the colony.

Mr. King to the Secretary of State, dated

LONDON, *April* 22, 1801.

SIR: Although the negotiation respecting the debts is not yet concluded, and I am unable to give you any positive assurance how, or even when, it will be, I have thought it proper that I should avail myself of the opportunity of Mr. Sitgreaves's return, to send you a copy of my correspondence upon this subject, as well as of that which relates to some other points that are still under consideration. I am inclined to believe that we should, before now, have come to a satisfactory conclusion upon the subject of the debts, had the old Ministry remained in office; their successors profess sentiments respecting our concerns, with which we can find little fault; and, though they have not given me any official assurance concerning the adjustment of the several points now before them, I might, did not experience teach me that foreign circumstances have their influence in deciding the business of this as well as of other cabinets, infer, with some degree of confidence, from their language, that our affairs will ultimately be settled upon reasonable principles.

You will, I think, perceive, from the tenor of the correspondence, that I have not been insensible, on the one hand, to the great disadvantage of the delay which has already taken place, nor, on the other, to the risk to which a reasonable settlement of our affairs may be exposed by any such material changes as would be likely to alter what appears to be the present views of this Government.

Lord Hawkesbury has more than once informed me that he would attend to our concerns the first moment after he had extricated himself from the very pressing and critical state of their foreign and domestic affairs; and the under Secretary Mr. Hammond, who is almost the only person who has any acquaintance with our affairs, has lately told me that he wished the question of the debts to be settled upon the terms I had offered, and which are mentioned in my No. 6, and, if asked, that he should so express himself to his superior.

Mr. Addington, as well while Speaker of the House of Commons as since his late appointment, has uniformly expressed himself to me, as well as others, in a favorable manner, not only in respect to the propriety and justice of the conduct of America during the present war, but of the importance of our friendship to Great Britain, and the policy of removing whatever stood in the way of its continuance; and, in a conference upon this subject, which I lately asked of him, he told me that he would act upon those principles which he had often avowed to me in respect to America, and as soon as they could get rid of the weight of urgent business which at present bears upon them, and which he said would be in a short time, the questions respecting America should be taken up and decided.

Lord St. Vincent, too, whose opinion concerning impressment of our seamen I had reason to believe would be of great authority for or against the proposed article, upon that subject has explicitly told me that he thought the article a reasonable one; adding, at the same time, that the general subject both to England and America, was full of difficulties, which were becoming more and more important as America advanced in commerce.

You must not, however, from all this, infer that our business will be settled immediately, or in a way which a wise policy requires that it should be. I think, however, that a decision cannot be much longer deferred; and I certainly do give such a degree of credit to the temper which has of late shown itself, and the language that is held respecting America, that I am disposed rather to hope for than to despair of such a settlement.

The committee of the creditors, if consulted, as they probably will be, upon the terms, will be clamorous against them. But the Government may, notwithstanding, be sufficiently wise and firm to decide this subject upon principles not only more just, as they regard its merits, than those which the committee would recommend, but with views sufficiently comprehensive to render their decisions subservient to the promotion of good will and harmony with their best, and, in all respects, their most important customers.

It will not, I hope, be thought improper that I take this opportunity to express to you how much I have been obliged to Mr. Sitgreaves for the assistance he has given me upon the subject of the debts, and my full persuasion, had the negotiation taken the turn which it was expected it would have done, that his information and talents would have enabled us completely to have established the justice of the explanatory article which we demanded, and which had become necessary to protect us from the injurious effects of the erroneous construction of the treaty which had been attempted at Philadelphia.

I shall keep this letter open, in order that I may send you a copy of Lord Hawkesbury's answer to my last letter, should it arrive before Mr. Sitgreaves's departure.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant.

RUFUS KING.

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,

March 10, 1801.

MY LORD: I have thought it would be saving your Lordship both time and trouble, in respect to the several points which have been some time in discussion with your predecessor, if they were presented in a connected form, and accompanied by such references and observations as should in a concise manner expose the motives in favor of their adoption.

The enclosed paper, marked A, contains these points, in the shape of distinct propositions, to which the requisite form may be given, should they be adopted as additional articles to our Treaty of Amity and Commerce.

My correspondence with Lord Grenville and Mr. Anstey, relative to the first proposition, has been so full that it does not seem necessary to add anything further upon that head.

The second proposition was fully examined and settled in the summer of 1799; and its formal adoption was deferred until an agreement could be made respecting the subject of the first: my correspondence with Lord Grenville, and between his Lordship and the Lords Commissioners of the Admiralty, contain what passed on that occasion. In the enclosed papers, marked B. C. and D, I have suggested the considerations which we have to offer in favor of the third, fourth, and fifth articles.

I am aware that other questions of importance continue to engage the attention of His Majesty's Ministers; but our affairs having so long, and almost habitually, given way to others which have been thought more urgent, I cannot refrain from observing, what indeed the tenor of my instructions, as well as my observation of the irritation and difficulty proceeding from their unsettled state, requires me to do, that a further delay in bringing them to a decision, from whatever cause it may arise, and in spite of any representation which I could make, will unavoidably tend to impair that mutual good will, and confidence which is the best security against any measure that, in its operation, might weaken the harmony and good understanding between our respective countries. With the highest consideration and respect, &c.

RUFUS KING.

[Enclosures]

A.

Articles to be added to the Treaty of Amity and Commerce.

ART. 1. The sixth article of the Treaty of Amity and Commerce to be suppressed, and the United States to engage to pay a sum of money in lieu of what might be awarded under it.

ART. 2. Nails, iron in bars, osnaburgs, ticklenburgs, Russia sheeting, and other cloths made of hemp, or flax, and not chiefly and generally used for the sails of ships, to be deemed innocent merchandise, and not included within the provisions of the eighteenth article of the Treaty of Amity and Commerce.

ART. 3. No American vessel, bound to New Orleans, or returning from thence to any port of the United States, to be stopped or detained under pretence that any part of her cargo is contraband of war.

ART. 4. Neither party to impress upon the high seas seamen out of the vessels of the other.

ART. 5. His British Majesty to relinquish all claim to the Maryland Bank stock, and immediate measures to be taken to transfer the same to the American Minister for the use of that State.

B.

NEW ORLEANS.

The inhabitants of the United States, settled upon the western side of the Appalachian mountains, exceed half a million; and, from the excellency of the climate, and the fertility of the soil, the number is daily increasing. The exchanges of their productions for the various supplies which they receive from the commercial towns of the United States upon the Atlantic ocean, they carried on through the Mississippi. No trading town having been yet established upon the eastern bank of this river, within the limits of the United States; to obviate the inconvenience arising from this circumstance, Spain consented, in her late treaty, that New Orleans should become the depository of the American merchandise and productions arriving as well from the ocean as from the interior country: and it is at this place that the Americans meet, and that the flour, tobacco, and similar productions, of those living upon the banks of the Ohio, and of other waters falling into the Mississippi, are exchanged for such other articles as they stand in need of, and which are sent from New York, Philadelphia, and other commercial cities.

Among these supplies are nails, spikes, and iron, in different forms and stages of manufacture, coarse linen, light duck, and small cordage, used for the construction of houses as well as the building and equipment of the vessels employed in transporting upon the lakes and rivers the productions and supplies of the inhabitants. The trade between New Orleans and the commercial towns of the United States has, of late, been frequently and injuriously interrupted, under pretence that it supplied the enemy with articles contraband of war: the peculiar circumstances of New Orleans, situated in the middle of the river Mississippi, which is the boundary between the United States and Spain, and in fact an American as well as a Spanish port, have been disregarded in the courts of Vice Admiralty; and, although it is notorious that it is in no sense an arsenal port, as neither ships of war nor privateers are equipped there, the law has been applied with uncommon rigor in every instance in which articles, that, by a forced construction, could be treated as contraband, have been found on board American vessels carrying the same not to the enemy, or to a place where armed ships were built or repaired, but to their fellow-citizens, who want them for necessary and innocent purposes, and who can obtain them in no other manner.

While the United States acquiesce with cheerfulness in the rights of the belligerent Powers, they are not insensible to those of peaceable nations, and are bound to pay particular attention to such as affect the welfare of their own people. So long as they continue scrupulously to fulfil the duties of neutrality, and to discourage every act of partiality, as they have done, they feel assured that they shall not call upon the justice of Great Britain in vain to accede to such regulations as, without affecting injuriously her own rights, are necessary to secure the enjoyment of those of a Power with which she lives in amity.

It is not thought necessary to give greater extension to these reflections; the object aimed to be secured is the unquestionable right of the people of the United States to an uninterrupted commercial intercourse with each other, whether the same is carried on by the ocean which washes their shores, or by the interior communications of the country: and, to avoid in future the interruptions of this right, it is proposed that it be stipulated, "that no American ship or vessel passing or repassing between any port of the United States, and the Island of New Orleans, situated in the Mississippi river, should be stopped or detained, upon the pretence that any part of her cargo is contraband of war."

MARCH 9, 1801.

C.

IMPRESSMENT OF SEAMEN.

In addition to the occasions of complaint, common to all the neutral Powers, against the interruptions to which their commerce is subjected by the irregular conduct of the cruising ships and privateers of the belligerents, the United States have one peculiar to themselves, arising from the practice of impressing seamen to man the British navy.

It may be confidently asserted that the United States take no measure to engage in their service the seamen of other countries; that their ships are navigated, in as great a proportion as those of any other nation, by their own people; and that peculiar pains have been taken to discriminate American from British seamen, in order to avoid, if possible, the inconveniences and misunderstanding of the interfering claims of the two countries.

The subject having been very fully explained in a letter to Lord Grenville of the 7th of October, 1799, requires no further development on the present occasion. It is hoped that measures will be devised, upon the return of peace, which, by securing to both parties, as far as practicable, the services of their respective seamen, shall moreover protect them from the inconveniences and injury to which each may be exposed by the continuance and extension of the practice of impressing seamen out of the vessels of the other. A limited and temporary regulation is necessary for the safety of the American navigation, which of late, and especially in the American seas, has been exposed to the greatest risks, by the loss of seamen taken out of American ships by the ships of war of Great Britain.

Admitting that each, within its territorial limits and jurisdiction, may detain its own seamen found in the service of the other, in order that they may be employed in its own, it by no means follows that this can be done upon the open seas, where the jurisdiction of all nations is equal.

The belligerent right to examine, in time of war, neutral ships sailing upon the ocean, gives no countenance to the practice of stopping them for the purpose of searching for and seizing such of their crews as may be claimed as subjects of the belligerent nation.

If this practice be justifiable, it is as much so in peace as in war; and, as it may be resorted to by one nation as well as another, the consequence of its becoming general would be the universal interruption, in peace as well as war, of the beneficial intercourse and commerce of nations. The advantages to Great Britain derived from this practice are inconsiderable, could they be justified; while the injury to the United States is not only destructive of the security of friendly property, but sometimes a violation of the laws of humanity. Instances have recently occurred in which every able seaman has been taken out of an American ship met by a British cruiser in the American seas, and replaced by boys and invalids, leaving not only the ship and cargo, but the lives of the people, exposed to the perils of the ocean.

To restrain this abuse in future, and until more comprehensive and precise regulations can be devised to secure the respective rights of the two countries, it is proposed that it be agreed "that neither party shall upon the high seas impress or take any seamen, or other persons, out of the vessels of the other."

MARCH 9, 1801.

D.

MARYLAND BANK STOCK.

Several years before the American war, the Colony of Maryland, by a tax collected from its inhabitants, raised a sum of money, which was remitted to three London merchants of the name of Hanbury, Grove, and Russell, to be invested in bank stock. The object of the investment was the creation of an annuity applicable to certain public purposes in the colony. This stock, the dividends having been invested in new capital, must amount at this time to about one hundred thousand pounds.

In the course of the American war, the real estates of British subjects were confiscated by the State of Maryland, and property belonging to both Hanbury and Russell was included in the confiscation. On the return of peace, Maryland called upon the trustees, Hanbury, Grove, and Russell, to account. Grove lost nothing in Maryland, and did not object to account. Hanbury consented to account, in consequence of an agreement made with the agent of Maryland, by which his loss is to be compensated as soon as the stock is transferred to the State. Russell refused to account, and set up a claim to indemnify himself out of the stock for his property confiscated in Maryland, taking care, notwithstanding, to prefer his claim, with those of the American loyalists, for compensation from the British Government. At this stage of the business, the agent of Maryland filed a bill in

Chancery against the trustees, to oblige them to account. Grove was indifferent which side prevailed; Hanbury united with the agent of Maryland, as his compensation depended upon the transfer being made to the State; Russell still opposed, and preferred his claim for compensation out of the stock which was ordered to be transferred to the Accountant General of the Court of Chancery, in whose name it now stands. The suit has been upwards of fifteen years depending. After hearing one or two arguments, the Chancellor informally gave an opinion that the stock had belonged to the Colony of Maryland, a corporation created by the Crown; that this corporation had been dissolved, and that the property in question had accrued to the King; that the suit before him was brought by an independent State, over which he had no jurisdiction, and, for this reason, that he must dismiss the bill; suggesting at the same time, that he would suspend doing so, as perhaps His Majesty might signify his pleasure that the stock should be transferred to the State of Maryland. As soon as this opinion was pronounced, Russell communicated it to the commissioners charged with the claims of the American loyalists, who thereupon granted their certificate of the amount of Russell's loss, which was immediately presented and paid at the Treasury. This payment put an end to the only impediment, on the part of the trustees, to the transfer of the stock.

Lord Baltimore and some others, having no connexion with this trust, but alleging that their property had been confiscated in America, preferred claims for indemnity out of this fund. If their losses arose from the confiscation of real estates, which the United States were not bound to restore, Great Britain not only consented to compensate them, but in fact has done so, and in the most liberal manner: if they proceeded from the confiscation of debts, the Treaty of Peace, as well as that of Amity and Commerce, provides for their recovery, notwithstanding such confiscation; and, in either case, the claimants have no demand upon the stock in question.

The Legislature of Maryland, not feeling the force of the fiction by which the property in question is supposed to have accrued to the Crown, in consequence of the dissolution of the colonial corporation, (a dissolution to which the King gave his consent in the Treaty of Peace which is understood to have secured to the State all the property belonging to the Colony,) is annually engaged in an inquiry respecting this property, the delays and impediments in the recovery of which excite and disseminate dissatisfaction, and every year do more and more injury to that harmony and good will which it is so much to be desired may long subsist between the two countries.

It is understood that the King has always been willing to relinquish all claim to this property; and the Lord Chancellor, from time to time, has given assurances that measures should be devised to effect its transfer. To bring this business to a close, it is proposed to add an article to the Treaty of Amity, &c., by which it shall be stipulated "that His Majesty consents to release all claims that he may have to the stock in question, and that immediate measures shall be taken to transfer the same to the American Minister, for the use of the State of Maryland."

March 9, 1801.

Correspondence respecting Contraband of War.

Mr. King to Lord Grenville.

Great Cumberland Place,
March 25, 1799.

My Lord: With a view to greater precision, it might be advantageous to recast the whole of the eighteenth article of the Treaty of Amity, Commerce, and Navigation; but this would require more time and attention than could, perhaps, at this moment be spared from other and more urgent engagements, or than would consist with the speedy attainment of the particular object of the conference that I lately had with your Lordship on this subject.

Referring, therefore, to some future period the general subject, I submit to your Lordship's consideration the proposal that I am ordered to make in respect to the more exact definition of the articles of naval stores, which according to the intention of the parties, and the law of nations, ought to be esteemed as contraband of war.

Our treaty, after enumerating certain articles, as arms and implements, serving for the purpose of war, adds, "and also timber for ship building, tar, or rosin, copper in sheets, sails, hemp, and cordage, and generally whatever may serve directly to the equipment of vessels, unwrought iron and fir plank only excepted."

It is in consequence of the great comprehension of the last clause of this paragraph, that the ships of the United States trading to the Dutch and Spanish Colonies are subjected to great loss and damage, by seizure and detention, for having on board either iron nails of various sizes, which serve directly and chiefly for the construction of houses and other buildings in the said colonies, and for the making of sugar casks, boxes, and other packages, or osnaburgs, an inferior sort of thin coarse linen, and used chiefly for negro clothing. Nails of this description are of a size that cannot supply the place of spikes which serve directly for ship building; and osnaburgs are wholly unfit for the sails of vessels even of the lowest tonnage that frequent the ocean. Notwithstanding this difference between sail-cloth and osnaburgs, and between spikes and house nails, as well as between their respective uses, the one is confounded with the other by the British cruisers in the West Indian seas.

In order to avoid the interruption and loss arising from this error, we propose, by way of an additional article, to agree upon the enumeration of those articles which alone shall be deemed to serve directly for the equipment of vessels, or upon an enumeration of such as shall not be so considered; or, if it shall be preferred, to exchange declarations, to be followed by correspondent instructions to your ships of war, cruisers, and Courts of Admiralty, excepting the articles above mentioned from the catalogue of articles deemed to be contraband of war.

In any of these modes, the object at which we aim may be attained: the choice is submitted to your Lordship, in the persuasion that the end is one that must receive your Lordship's approbation.

With perfect consideration, &c. R. K.

Lord Grenville to Mr. King,

Downing Street, *April* 22, 1799.

Lord Grenville presents his compliments to Mr. King, and has the honor to send him enclosed a specification of the nails which it is understood may be excepted, without inconvenience, from the provisions of the eighteenth article of the Treaty of Amity, Commerce and Navigation, between His Majesty and the United States.

Specification.—Nails, clasp headed; ditto, fine; spikes; brads, batten; ditto, flooring—of sizes for house building.

Nails, flat headed; ditto, trunk—of sizes for sugar casks and boxes.

Mr. King to Lord Grenville.

Great Cumberland Place,
April 30, 1799.

Mr. King presents his compliments to Lord Grenville, and has the honor to acknowledge the receipt of his Lordship's note of the 22d instant, enclosing a specification of such nails as are understood not to be included in the catalogue of articles deemed contraband of war. Mr. King is not certain that the proposed specification includes the different sorts of nails used for house building in Great Britain, as the rose-headed nail, perhaps others, are omitted; and he is the more apprehensive that any description by mere names will be insufficient, as different names are given to nails of the same sizes in the United States and in England; the American names being generally taken from the uses to which the nail is applied, or from the price per hundred or per thousand. Other names, differing from those of England and the United States, may be given to the same nails in the British Colonies, and the article intended to be explanatory may itself require explanation.

To avoid this want of precision, Mr. King takes the liberty to suggest, instead of the enumeration, or a specification, as has been proposed, that it should be agreed that all iron nails under the size of spikes or deck-nails should be excepted from, and not included within, the provisions of the eighteenth article of the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain.

Lord Grenville to Mr. King.

Downing Street, *May* 27, 1799.

Lord Grenville presents his compliments to Mr. King, and has the honor to transmit to him the copy of a letter from Mr. Nepean to Mr. Hammond, conveying the opinion of the Commissioners of His Majesty's Navy, as to the description of nails which they conceive may be excepted from the provisions of the eighteenth article of the Treaty of Amity, Commerce, and Navigation, between His Majesty and the United States.

Evan Nepean to George Hammond.

Admiralty Office, *May* 24, 1799.

Sir: My Lords Commissioners of the Admiralty having referred to the Navy Board your letter to me, of the 6th instant, respecting such sort of nails as are understood not to be considered as amongst the articles deemed contraband of war, and they having reported it to be their opinion that nails under four inches in length, without any other description, may be excepted from the provision of the eighteenth article of the Treaty of Amity, I have their Lordships' commands to acquaint you therewith, for the information of Lord Grenville; and am, &c. E. N.

Mr. King to Lord Grenville.

Great Cumberland Place,
June 5, 1799.

My Lord: I have had the honor to receive your Lordship's note of the 27th ultimo, enclosing a copy of Mr. Nepean's letter to Mr. Hammond, respecting the description of nails not included in the provisions of the eighteenth article of our Treaty of Amity, Commerce, and Navigation. The description appears to me to be satisfactory; and nothing now remains to attain the object of my note of the 25th of March, but to agree in a like satisfactory description of such cloth as, upon the allegation of its being sail-cloth, is erroneously supposed to be contraband of war, and so included within the provisions of the above-mentioned article.

On this head, I take the liberty to propose to your Lordship that it shall be agreed "that osnaburgs, ticklenburgs, Russia sheeting, and all other cloth made of hemp or flax, and not generally and chiefly made use of for the sails of ships, shall be excepted from the provisions of the aforesaid article of our treaty."

It seems hardly necessary to remark that the comprehensive provisions of the treaty in question, in respect to the articles deemed contraband of war, secure all the material or important rights and interests of the belligerent; and that it cannot be desirable to enlarge the construction of these provisions, so as to embarrass the neutral in a trade little or not at all capable of being any way prejudicial to the belligerent. With the most perfect reliance upon your Lordship's liberality and moderation on this as on other and more important occasions.

I have the honor, &c. R. K.

Same to the same.

Great Cumberland Place,
August 1, 1799.

My Lord: The number of complaints that I continue to receive of the interruption of the

American trade in the West India seas by His Majesty's cruisers, occasioned by a mistaken interpretation of our treaty in respect to the articles of contraband, will be my apology for recalling your Lordships attention to my former representations upon this subject.

As I understand the import of our past correspondence, the explanations concerning nails and sail-cloth are settled, and nothing remains but to agree that "iron in square or flat bars" is not contraband in war—a proposition so plain and reasonable that I flatter myself no difference of opinion respecting it can exist between us. A short article to this effect, and including the other two points, would at once put an end to the greatest portion of the complaints that have so frequently occurred in the course of the last ten months.

With very great respect, &c. R. K.

Mr. King to Mr. Hammond.

GREAT CUMBERLAND PLACE.
September 14, 1799.

Mr. King presents his compliments to Mr. Hammond, and, according to his request, takes the liberty to send him enclosed the draught of the proposed additional article to the Treaty of Amity, Commerce, and Navigation, between the United States and Great Britain, which Mr. King is more and more anxious, on account of the continued interruptions of the American trade, should be concluded with the least possible delay.

Explanatory article to be added to the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

Whereas, by the twenty-eighth article of the treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, signed at London, on the 19th day of November, 1794, it was agreed that the contracting parties, from time to time, would readily treat of and concerning such further articles as might be proposed; and that such articles, after having been duly ratified, should be added to, and make a part of, that treaty: And whereas doubts have existed whether, according to the just interpretation of the eighteenth article of the said treaty, the goods and merchandise hereinafter mentioned might not be considered as included within its provisions, and treated as contraband of war: And as it is expedient that the doubts aforesaid should, without delay, be removed, the undersigned, being respectively named by his Britanic Majesty and the United States of America their Plenipotentiaries for the purpose of treating of, and concluding, such articles as may be proper to be added to the said treaty, in pursuance of the above-mentioned stipulation, and having communicated to each other their respective full powers, have agreed and concluded, and do hereby declare, that iron in flat or square bars, iron nails of less than four inches in length, osnaburgs, Russia sheeting, and all other cloth made of hemp or flax, and not generally and chiefly used for the sails of ships, are excepted from, and not included within, the provisions of the said eighteenth article, and that none of the said goods and merchandise shall be considered or treated as contraband of war.

This explanatory article, when the same shall have been ratified by His Britannic Majesty, and by the President of the United States, by and with the advice and consent of their Senate, and the respective ratifications mutually exchanged, shall be added to, and make a part of, the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, signed at London, on the 19th day of November, 1794, and shall be permanently binding upon His Majesty and the United States, and upon their respective subjects and citizens.

In witness whereof, we, the said undersigned, Plenipotentiaries of His Britannic Majesty and the United States of America, have signed this present article, and have caused to be affixed thereto the seal of our arms. Done at London, this —— day of ——, 1799.

Mr. King to Lord Grenville.

GREAT CUMBERLAND PLACE,
November 18, 1799.

MY LORD: I have heretofore represented to your Lordship the frequent interruption received by our navigation in the American seas, under the pretext that bar-iron, nails, Russia sheeting, and some other articles of innocent merchandise, might be considered and treated as contraband of war. The conference that I have had with your Lordship upon this subject gave me reason to expect that these embarrassments, so detrimental to us and so little beneficial to others, would, in future, be checked by an explanatory article to our treaty that should distinctly exclude these articles from the catalogue of contraband.

But these interruptions, instead of ceasing, as we hoped would have been the case, have of late been increased and extended; for not only the private armed ships in those seas, but the squadron under Sir H. Parker, have, together, fallen upon our navigation, and a large portion of our ships engaged in the trade between the United States and the Spanish Colonies have been seized, and their cargoes condemned, as we are informed, upon the extraordinary and erroneous pretence that Spain had interdicted the trade of foreigners with her Colonies; and this at the same time that numerous adventures to the Spanish Colonies, composed, in some instances, of the very cargoes taken from the Americans, were undertaken by and on account of British subjects residing in the islands to which the American ships were sent for adjudication.

We are ignorant whether orders have been given that can, in any degree, countenance these ruinous depredations, or whether they proceed from less excusable motives on the part of the captors. It is our inclination to believe that no such orders have been given; but the effect is nearly the same on either hypothesis, as the great loss by the disadvantageous sale of our cargoes, under the decrees of the Provincial Courts of Admiralty, joined to the time and expense requisite to bring to an issue our claims before the Court of Appeals, produce a result that, in a plurality of cases, makes it a measure of prudence to abandon our property, instead of pursuing the remedy that is held forth to us.

It is my duty to complain to your Lordship of the injury that, under color of His Majesty's authority, is thus committed upon the citizens of a country that has given, and continues to give, unequivocal proofs of a sincere desire to live in friendship with Great Britain; and, in doing so, I am anxious to press upon your Lordship's consideration the uneasines and dissatisfaction so unfavorable to the intercourse and harmony between our respective countries, that must, and especially at the present moment of commercial embarrassment, proceed from losses so unexpected and considerable.

Your Lordship will, I persuade myself, order this complaint to be investigated without delay; and so unjustifiable has been the conduct of the captors, that I flatter myself that not only a prompt and adequate remedy will be afforded to the sufferers, but, moreover, that such precise instructions will be given as shall secure us against the like injuries hereafter.

With the most perfect consideration, &c.
R. K.

Mr. King to the Secretary of State, dated

LONDON, *June* 1, 1801.

DEAR SIR: Annexed I send you the copy of a letter which I have just received from Lord Hawkesbury, on the subject of the depredations upon our trade in the West Indies. As there can be no objection to its publication, you will, perhaps, think it advisable to have the letter and its enclosures printed in our newspapers, by which means it will reach the West Indies, and be seen by those whose abuses it seems intended to restrain.

Two days ago, by Lord Hawkesbury's request, I waited upon him in Downing street, when he informed me that, having understood that we were about to send a small squadron of frigates into the Mediterranean for the protection of our trade against the Barbary Powers, he had received the King's commands to state to me, for the information of the President, that His Majesty had given orders that the ports of Gibraltar, Minorca, and Malta, should be open to our ships of war, and that they should, moreover, be supplied from His Majesty's magazines in those ports with whatever their necessities might, from time to time, require. I, of course, made my acknowledgments for this friendly communication, and added, that I would immediately transmit it to you, for the President's information.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *May* 30, 1801.

SIR: I have the honor to transmit to you, for your information, the copy of a letter, with its enclosures, from Mr. King to Mr. Hammond, in answer to a representation which I had directed to be made to the Duke of Portland, on the subject of the capture of American vessels trading to the Spanish Colonies in the West Indies; and I trust that you will consider this communication as furnishing an additional proof of the disposition of His Majesty's Government to repress any practices on the part of His Majesty's subjects, which may tend to molest or impede the legal commerce of the citizens of the United States.

I have the honor to be, with great consideration, sir, your most obedient humble servant.

HAWKESBURY.

Mr. John King to Mr. Hammond.

WHITEHALL, *May* 27, 1801.

SIR: Having laid before the Duke of Portland your letter of the 18th instant, with its enclosures, relative to the capture of American vessels trading to the Spanish Colonies in the West Indies, his Grace lost no time in referring them to the consideration of His Majesty's Advocate General; and I am now directed to transmit to you, for Lord Hawkesbury's information, a copy of his report thereupon, together with a copy of a letter which the Duke has written upon the subject to the Lords Commissioners of the Admiralty.

I am, &c. J. KING.

Letter from the Duke of Portland to the Lords Commissioners of the Admiralty.

WHITEHALL, *May* 27, 1801.

MY LORDS: I transmit to your Lordships, herewith, for your information, an extract of a letter from Mr. Thornton, His Majesty's Chargé d'Affaires to America, to Lord Grenville, with copies of its enclosures, relative to the capture of American vessels trading to the Spanish ports, together with a copy of the report of His Majesty's Advocate General, to whom, by the King's command, the papers in question have been referred.

I have, at the same time, the honor to signify to your Lordships His Majesty's pleasure that you should direct the Judges of our Colonial Vice Admiralty Courts to follow and be guided in their decisions in cases relating to the trade carried on between a neutral and belligerent nation, by the rules and principles established in the High Court of Admiralty, and laid down in the enclosed report of His Majesty's Advocate General. And the better to enforce a uniform and strict adherence to those principles, I am further to signify to you the King's commands that directions should be given to withdraw letters of marque and reprisal in cases where the owners thereof shall appear wilfully and knowingly to have captured and brought in for adjudication, contrary to His Majesty's existing instructions, vessels trading

between a neutral country and the enemy's Colonies.

I have the honor to be, &c.

PORTLAND.

Report of the King's Advocate.

LINCOLN'S INN FIELDS, *May* 23, 1801.

MY LORD DUKE: I am honored with your Grace's letter of the 19th instant, transmitting to me several papers which have been communicated to your Grace by Lord Hawkesbury, from His Majesty's Chargé d'Affaires in America, with a direction to take them into consideration, and to report to your Grace, for his Majesty's information, my opinion, whether, in consequence of what is contained in the extract of Mr. Thornton's letter to Lord Grenville, especially that part of it which states "a principle to have been lately adopted in the Courts of Vice Admiralty at Jamaica and Providence, that no commerce would be permitted between a belligerent and neutral nation, in the vessels of the latter, but such as had been authorized previously to the commencement of hostilities," it would be advisable to make any or what communications to the Vice Admiralty Courts at Jamaica and the Bahamas for their guidance and direction.

In obedience to your Grace's command, I have considered the papers referred to me, and I have the honor to report that the principle stated to have been lately adopted in the Courts of Vice Admiralty at Jamaica and Providence, is directly in opposition to the decisions daily passing in the High Court of Admiralty and the Court of Appeal. It has been held by the tribunals of this country that neutrals cannot be admitted by the enemy, under the pressure of war, to carry on his colonial trade, from which, in time of peace, they were wholly excluded. But this principle may be, and has been, on account of special circumstances during the present hostilities, to a certain degree relaxed. His Majesty's instructions of January, 1798, only order that vessels shall be brought in for legal adjudication, which are coming directly from the enemy's Colonies to Europe, and not being bound to England, or a port of their own country. A trade between the neutral country and the enemy's Colonies is now clearly permitted.

Colonial produce actually imported into the neutral country may also be re-exported from thence to any other place, even to the mother country of that colony of which it is the produce. His Majesty's existing instructions are, therefore, the rule by which at present the judges of the Vice Admiralty courts ought to govern themselves; and I humbly apprehend that it would be advisable to convey to the courts referred to a direction to that effect, as the application of the more extended principle upon which they are represented to act may be productive, not only of much injustice, but of great public inconvenience.

I have the honor to be, &c.

J. NICHOLL.

Mr. Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, *Dec* 10, 1801.

The accounts of peace have, with some interested exceptions, given the most sincere pleasure throughout the United States. Its effects have not yet very fully unfolded themselves, but are appearing in the fall in prices of some of our productions, particularly flour and grain. It is thought probable, however, that, as often happens, the first effect will in this case exceed the more durable one. It is certain that the quantity of these particular articles, promised to foreign markets by the exuberance of our Summer harvests, will be materially abridged by the scanty crops of Indian corn which, in the Middle and Southern States, have failed more generally than has for many years happened.

Among the effects of the peace in this country, none will be more important than the shock which will be felt by our navigation. Besides the loss of the extra carrying trade derived from the war, the countervailing act of Great Britain, founded on the Treaty of 1794, must inevitably banish American vessels from all share in the direct trade with any part of the British dominions, as fast as British vessels can enter into competition. I have already heard of one instance in which an American owner of eight or ten ships has chartered a British ship for a cargo of cotton, as preferable to the use of his own. Instances, I am told, have occurred, even during the war, in which merchants, inattentive to the British statute, or ignorant of it, have found, to their regret, that, by shipping tobacco in American bottoms, when British bottoms could have been had, they were considerable losers by it.

This subject can scarcely fail to produce much sensation in some classes of our citizens. Three remedies occur for consideration. The first is that of imposing light duties on foreign vessels. This may fairly be done; but, if carried to an amount materially relieving our navigation, would probably be construed into an indirect violation of the compact. The second remedy might be to repeal here the discrimination between American and foreign ships, with respect to the impost on their cargoes, and to call on Great Britain to repeal her countervailing law. An objection to this expedient is, that it would either give an unnecessary advantage to other foreign nations, or involve disputes or complaints from them. Another difficulty is, that before these concurrent repeals could be brought about, a great part of the evil will have taken place. The third remedy is that of an immediate amendment of the British act adjusting the countervailing duties to a real equality with those of the United States. This, it is conceived, may be justly claimed on the ground that the known object, the true spirit, and the obvious import of the terms of the treaty, require that the relative advantages and disadvantages of the vessels of the two countries, in the trade between them, should become such as to put them on a fair equality. Before the treaty

took place, it was complained by Great Britain that her vessels were placed under an inequality and disadvantage by the difference of tonnage duty, and a difference of one-tenth in the impost on merchandise laid by the United States in favor of their own vessels. In the treaty, the United States agreed that Great Britain might countervail these differences; in other words, might lay an equal tonnage duty on American vessels, and a duty on their cargoes equivalent to the additional duty laid in the United States on the cargoes of British vessels. By calculating this additional duty of ten per cent., not according to its real or estimated amount in the United States, but according to British rates, which are more than ten times as high, and in many articles near ten times ten, every idea of equalization is abandoned, and the alleged difference in favor of one side, which was to be remedied by the treaty, is, by the construction of the treaty, made infinitely greater in favor of the other side. No sound rules of interpretation can authorize such a consequence, nor, I will add, can any wise policy adhere to it.

What course may be preferred by Congress, on this occasion, is not known. It is not improbable that one or other of the expedients within their powers may be taken into consideration. The expedient, which belongs to the Executive Department, may, in the meantime, be a subject of negotiation, and being the most eligible, will, if likely to succeed, preclude a resort to any other. It is accordingly the wish of the President that no time may be lost in stating it to the British Government. The sudden and unexpected peace which has taken place varies the case, and calls for an immediate interposition in behalf of our citizens.

France, also, has a discrimination in force, which must exclude American vessels from any share in the carriage of the important article of tobacco to her ports. But as no stipulation can be pretended to restrain us from countervailing the inequality, the remedy is in our hands if she should not see the propriety of applying it herself.

Mr. King to the Secretary of State.

LONDON, *February* 5, 1802.

SIR: Having carefully examined what would be the footing of our navigation with the British dominions, upon the return of peace, I was quite prepared for, and, indeed, by several conversations with Mr. Addington and other members of the Administration, had already brought under consideration the subject of your letter of the 10th December, which I received a few days ago.

Immediately after its receipt, I intimated to Lord Hawkesbury my desire to confer with him respecting the points to which it relates; and, upon his naming a day for this purpose, I prepared and sent him the paper, a copy of which is annexed. Yesterday, I received the duplicate of your letter, of December 22d, which has enabled me to be more explicit than I otherwise should have been in my conference of this morning with Lord Hawkesbury. I began it by observing that, during the continuance of the war, which had the effect to procure to our vessels some preference over theirs, we had not called their attention to the inequality of their laws, in respect to the commercial intercourse between the two countries; but as the war was now at an end, we could not delay calling upon them to reverse these commercial regulations, in order that they may be made conformable to the respective rights of the two countries. The revision of certain branches of these regulations being more urgent than that of others, and the countervailing duties upon articles imported into Great Britain, in American vessels, appearing to be the most urgent, I confined my observations chiefly to this point, explaining to Lord Hawkesbury my motives for doing so; and, after suggesting some further reflections, in addition to those contained in the paper I sent to him, I proposed that they should agree, either

To discontinue the countervailing duties on articles imported from the United States, in American vessels, as soon as the difference of duties on articles imported into the United States in American and British vessels, shall be abolished: or

To repeal the countervailing duties on imports, and impose duties upon all articles exported from Great Britain to the United States in American vessels, corresponding with the difference of duties payable upon the importation of the like articles into the United States in American and British vessels.

Lord Hawkesbury admitted that the only legitimate purpose of the countervailing right, reserved to Great Britain, was to equalize the advantages and disadvantages of the vessels of the two countries in their commercial intercourse. He said not a single word in vindication of the manner in which this right had been exercised; and, after intimating a preference of the first of the two propositions which I had made, he said he would submit the subject immediately to the Cabinet, and apprize me of its decision with as little delay as possible.

The American mail was to have been despatched to-morrow; but, upon my expressing to Lord Hawkesbury my hope that a few days only would be requisite to enable him to give me an answer upon the subject of our conference, and my solicitude to transmit it to you by the packet he said he would order the packet to be detained.

The few words which I said concerning the tonnage duty, was, in every respect, conformable to the observations upon that subject in the paper sent to Lord Hawkesbury; and the more I consider it the more am I satisfied that we shall find the advantage of establishing light-house duties so as to be distinct from the public revenue.

Lord Hawkesbury assured me that the subject of the West India trade should be immediately put in a train for examination.

I have but one observation to add: It is, that the return of peace will not establish cordial harmony and good humor between this country and the maritime nations of Europe, among which a

general opinion prevails, whether correctly, is another point, that the commercial and financial prosperity of England is, in too great a degree, at the expense of her neighbors.

These sentiments may lead to restrictions and embarrassments upon the European commerce of this country, which will not fail to make its trade with us an object of still greater value and importance than it is already known and confessed to be. Difficulties of this sort are anticipated, and the Government consoles itself with the expectation of a progressive increase of the sale of its manufactures in America.

The inference from these remarks is, that the present time is a favorable one to press for the consideration and admission of our just claims to a fair and equal share of the advantages to be derived from the navigation and trade between the two countries. The regulations upon this subject should, in the first instance, be temporary and *ex parte*. In this way they may be adjusted to the reciprocal rights of the parties, and then become matter of national stipulation.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE.

February 3, 1802.

MY LORD: With the view of assisting our conference on Friday next, I have prepared, and take the liberty to send your Lordship the enclosed paper, concerning the present footing of the navigation and trade of the United States with the dominions of Great Britain; and which likewise suggests the grounds of our claim to an equal participation in the navigation employed between the United States and the British West Indies, as well as the objections which we have against the act of Parliament for carrying into execution the Treaty of 1794.

I have the honor to be, your Lordship's most obedient and very humble servant,

RUFUS KING.

Right Hon. Lord HAWKESBURY.

Observations respecting the Navigation and Trade of the United States of America with the dominions of Great Britain.

NAVIGATION BETWEEN THE UNITED STATES AND THE BRITISH COLONIES.

The Treaty of 1794, between the United States and Great Britain, provides for and regulates the commercial intercourse between the territories of the former, and almost all parts of the British dominions, except those in the West Indies. The provisions concerning this branch of their navigation and trade, originally inserted in the treaty, having, on account of their inequality, been excluded, at the instance of the United States, the intercourse is open to the regulations of the respective parties.

Hitherto the United States have made no regulations upon this subject, because the regulations on the part of Great Britain, contained in the statute of the twenty-eighth of George III, ch. 6, having been suspended on account of the war, the trade has been opened to, and carried on by, American as well as British ships. But, as the war is now at an end, and the suspension of the British statute may be discontinued, it becomes expedient to examine the regulations which it contains.

These regulations divide themselves into two distinct heads: the first regards the articles which may be exported from the British West Indies to the United States, and those which may be exported from thence to the British West Indies: the second regards the carriage of those articles between the United States and the British West Indies.

In respect to the first head, the United States, which offer so extensive a market to all sorts of British manufactures and productions, may reasonably expect to find, in return, a market in the British West Indies for certain articles in their power to supply with advantage, but which have hitherto been prohibited.

In respect to the second head, it may be observed that these regulations exclude the American ships from any share in the carriage of the articles referred to, by confining the same exclusively to British ships, including as well the exports of the United States to the British West Indies, as the exports from thence to the United States. The mere statement of this regulation shows its inequality; and whether it be referred to the principles of commercial reciprocity, or to those even of the navigation act of Great Britain, the inference is the same, and in favor of its revision.

"If the Colonies be considered as parts of the common empire, the trade between one part and another, as between London and Kingston, in Jamaica, may be considered equally internal, as with the coasting trade between London and Liverpool, and if deemed expedient, might be restrained to domestic bottoms. But when a trade is opened between a Colony and a foreign country, the case is changed; the foreign country becomes a party, and has a reciprocal claim to the use of its bottoms in the trade with the Colony, as with any other part of the empire to which the Colony belongs. In support of this principle, the practice of other nations in Europe may be appealed to, not one of which has refused, whenever a trade was permitted at all between the Colonies and a foreign country, to make the carriage common to the vessels of both." This observation is equally applicable to the trade between the United States and the other British Colonies in America, as to that between the United States and the British West Indies.

COUNTERVAILING DUTIES.

The Treaty of 1794 likewise provides that the ships and merchandise of the parties shall not pay higher duties in their respective ports than the like ships and merchandise of other nations; and as the United States had imposed a higher tonnage duty upon all foreign ships than upon American ships, as well as higher imposts upon all goods imported in such foreign ships, than upon the like goods imported in American ships, the treaty reserves to Great Britain the right to impose upon American vessels, entering the British ports in Europe, a tonnage duty equal to that payable by British ships in the ports of America, and such duty as shall be adequate to countervail the difference of duties payable on the importation of European and Asiatic goods into the United States, in British and American vessels. The manifest object of this reservation is to give a fair and equal competition to the vessels of both countries in their mutual intercourse.

The act of Parliament, passed in 1797, for carrying into execution this treaty, notwithstanding, contains regulations which, in some very important instances, defeat this object of the treaty, by establishing such duties upon American ships and cargoes as must altogether exclude the former from the carriage of their own most bulky and valuable productions to Great Britain.

TONNAGE AND LIGHT-HOUSE DUTIES.

The tonnage duty payable by all foreign ships on their entry in the ports of America, is forty-four cents, or two shillings sterling per ton more than is payable by American ships. This duty is collected and paid into the public Treasury, which is charged to nearly the same amount for the support of light-houses, beacons, and buoys, upon the coasts, and in the bays, rivers, and harbors of the United States; and being analogous to the light money paid by American ships in the ports of Great Britain, is not a duty which can, consistently with the spirit of the treaty, be countervailed: this, however, has been done; so that an American vessel entering a port in Great Britain now pays not only two shillings per ton countervailing duty, but a further sum for light money, varying in different ports, but in almost all of them double the sum paid by British ships. The remedy in this particular is, however, not difficult; as, by imposing an adequate light duty upon all ships, distinct from the present tonnage duty, the United States may not only equalize the present difference of duties, but assimilate their system to that of other nations which do not confound their light duties with the public revenue.

DUTIES ON THE CARGOES OF AMERICAN SHIPS.

The manner of countervailing the difference of duties payable upon goods imported into the United States in American and foreign vessels, has, in consequence of the conclusion of the war, become a subject of urgency and importance, and requires particular and immediate consideration.

The United States might repeal the duties liable to be countervailed, and call upon Great Britain to repeal the countervailing duties; but, as they equally affect all foreign ships, and not solely the ships of Great Britain, the repeal would be a gratuitous benefit to other nations at the expense of the American navigation.

As the articles usually exported from Great Britain to the United States are not raw materials, but finished manufactures of great value in small bulk, the American duties cannot in any considerable degree affect the navigation of either country, inasmuch as the British exports are carried to the United States in a small number of vessels, compared with those employed in the carriage of the exports of the United States: the chief competition between American and British vessels will take place, not in the carriage of the manufactures of Great Britain, but in the carriage of the bulky and raw materials exported from the United States; and this competition will not be materially affected by the duty upon the imports of the United States.

Perhaps the only just and practicable mode of exercising this countervailing right would be to impose upon the articles exported from Great Britain to the United States in American vessels precisely the same difference of duties to which they are liable upon their importation into the United States in British and American vessels. This would put the ships of the two countries exactly upon the same footing. Without, however, stopping to discuss this point at present, it will suffice to show that the mode in which the right is exercised, by the act for carrying into execution the treaty between the United States and Great Britain, will be productive of greater inequality than the measure was intended to correct; for, by referring to the act, it will be seen that, instead of imposing on American vessels only such disadvantages as would be adequate to balance the disadvantages imposed on British vessels, in the carriage of American and British exports, different countervailing duties are imposed upon different American articles, imported into Great Britain in American vessels, according to the importance of such articles in the internal economy of Great Britain, and the quantity of shipping employed in their transportation; and in pursuance of these principles, that the American oil and tobacco (the carriage of the last of which articles alone requires many times double the quantity of tonnage requisite for the carriage of the whole of the exports of Great Britain to the United States) have been selected as objects upon which the highest countervailing duties are imposed; the countervailing duties being upon fish oil 36*s.* 3*d.* sterling per ton of two hundred and fifty-two gallons, and upon tobacco 1*s.* 6*d.* sterling per hundred.

The unequal and injurious effect of these duties, in respect to the American navigation, will be most completely exposed by a comparison of the freights of an American and British ship of the same tonnage, for performing the same service.

DUTY UPON AMERICAN FISH OIL.

Before the late war the freight of a ton of two hundred and fifty-two gallons of oil from America to Great Britain, varied from 40*s.* to 50*s.* sterling; the average freight being 45*s.* sterling; and a vessel of two hundred and fifty tons burden carried about two hundred and fifty tons of oil.

Supposing upon the return of peace that freights fall to their former rates:

A British ship of two hundred and fifty tons arriving in Great Britain from the United States, with two

hundred and fifty tons earn - - - -	of oil, at 45*s.* per ton, will	£625 0 0
An American ship of two hundred and fifty tons, also arriving in Great Britain, from the United States, with two hundred and fifty tons oil, at 45*s.* per ton, will receive -		£625 0 0
From which must be deducted the countervailing duty of 36*s* 3*d.* per ton, paid by the American, but not by the British ship - -		453 15 0
Leaving the freight earned by the American ship -		171 5 0
And making a difference of more than two hundred and sixty per cent. upon the freight of the American ship, in favor of the British ship, or - -		453 15 0

DUTY UPON AMERICAN TOBACCO.

The tobacco exported from the United States is estimated at about one hundred thousand hogsheads annually, each hogshead containing, on an average, twelve hundred pounds. A ship of two hundred and fifty tons burden will carry about three hundred and seventy-five hogsheads, consequently, upwards of sixty-six thousand tons of shipping are requisite to export the annual crops of American tobacco. Before the late war, this average freight, from the United States to Great Britain, was 35*s.* sterling per hogshead; the countervailing duty now imposed upon tobacco imported in American ships, and from which the same is free, when imported in British ships, is 1*s.* 6*d.* per hundred, or 18*s.* per hogshead.

The earnings of an American and British ship for the same tonnage, and for the same service, will, upon these data, stand thus:

A British ship of two hundred and fifty tons, arriving from the United States with three hundred and seventy-five hogsheads of tobacco, at 35*s.* per hogshead freight, will earn - - -		£656 5 0
An American ship of two hundred and fifty tons, arriving in Great Britain, from the United States, with three hundred and seventy-five hogsheads of tobacco, at 35*s.* per hogshead freight, will receive - -	£656 5 0	
From which must be deducted the countervailing duty of 18*s.* per hogshead, paid by the American, but not by the British ship -	337 10 0	
Leaving the freight earned by the American ship -		318 15 0
And making a difference of more than a hundred per cent. upon the freight of the American ship in favor of the British ship, or - - - -		337 10 0

It seems hardly necessary to add that a law thus inconsistent with the scope and spirit of the treaty which it professes to carry into execution, calls for immediate revision.

Mr. King to the Secretary of State.

LONDON, *Feb.* 13, 1802.

SIR: I am authorized to inform you that the British Government will, without hesitation, accede to a proposal for the abolition of all discrimination of duties affecting the navigation and commercial intercouse between our and their territories; and, in consequence of what has passed upon this subject, a motion has already been made in the House of Commons by Mr. Vansittart, of the Treasury, to bring in a bill authorizing His Majesty, at any time after the passing of the act, by an Order in Council, or by proclamation, to cause the countervailing duties upon American vessels, and upon articles imported in American vessels, or either of them, or any part of the same or of either of them, wholly to cease or to be suspended, for such period or periods as may be deemed expedient. We may count with certainty upon the passage of the bill to a law, and that the extent of repeal will be made to depend upon our own choice. I have suggested the equity and importance of an immediate suspension of the countervailing duty upon tobacco; and the bill is so drawn up as leaves the Government at liberty at any time to take it off in particular cases, by an Order in Council, or to suspend it generally by proclamation. I have, however, received no assurance that this will be done, and we consequently must not be disappointed if it should be refused. I will resume the subject should a favorable occasion offer to do so; in the meantime, individuals may, upon the circumstances of their cases, ask for a remission of this duty.

Perhaps a future day will be named in our law, or in the proclamation, which the law may authorize, upon which our discriminating duties shall cease: due notice of such a measure would become the grounds for a correspondent abolition of the duties here.

I annex the copy of a letter sent by Lord Hawkesbury to the British Commissioners, under the 7th article of the Treaty of 1794; a copy of the convention, which I lately signed with his Lordship, has, in like manner, been communicated by me to our Commissioners. In consequence of these communications, the board will immediately reassemble and proceed to business.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

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DOWNING STREET, *Feb.* 11, 1802.

GENTLEMEN: I herewith transmit to you the copy of a convention concluded by me and Mr. King, on the 8th of January last, explanatory of the 6th and 7th articles of the Treaty of Amity, Commerce, and Navigation, with the United States; and I have to signify to you His Majesty's pleasure that you propose to the Commissioners, on the part of the United States, of the board of which you are members, to reassemble, and proceed with you in the execution of the duties imposed upon you by the provisions of the 7th article of the said treaty, and by the third article of this convention. I am, &c.,

HAWKESBURY.

To MAURICE SWABEY, LL.D., and
JOHN ANSTEY, Esq.

Mr. King to the Secretary of State.

LONDON, *May* 5, 1802.

SIR: The bill imposing duties upon exports and imports, and the tonnage of vessels, has passed the House of Commons, and will doubtless go through the House of Lords, and receive the royal assent without alteration. If it be yet printed, I will enclose a copy thereof with this letter.

In respect to the duties on imports, the bill in effect revives the correspondent provisions of the convoy act, with the addition, in most cases, of a fifth to the duties imposed by that act. The tonnage duties, as well as the duties upon goods exported to any part of Europe, are the same as under the convoy act; the duties upon goods exported to America, and other places out of Europe, are reduced to half the rates imposed by the convoy act; and, with regard to articles excepted from the payment of duties inwards and outwards, as well as to the regulations for warehousing certain goods, and allowing drawbacks in case of re-exportation, the like provisions are contained in the present bill as were inserted in the convoy act.

In consequence of the large quantity of cotton lately imported from the United States, and the superior quality of a portion of the Georgia, it was proposed to put a higher duty upon our cotton than upon that of Turkey, which is of an inferior quality. But, on conferring with the officers charged with the settlement of these duties, the discrimination has been given up; and without distinguishing between Sea Island, and other cotton of the United States, as had at first been proposed, the duty is reduced to the lowest rate, or to that imposed upon the cotton of Turkey; and as all other cotton will pay higher duties than that of the United States and Turkey, ours will stand upon a comparatively good footing in this market. As the proposed tonnage duty upon our vessels is as low as upon the vessels of any other country, and applies to British equally with foreign vessels, so far as respects discrimination, there is nothing to complain of.

With regard to the proposed export duty, after several conferences with Mr. Vansittart, of the Treasury, to whom I was referred by Lord Hawkesbury to discuss the subject, and in which I urged, but without success, the abolition of all discrimination between the purchasers of British manufactures, I thought it my duty to write him a letter upon the subject, a copy of which is annexed. If his answer should be received in time, a copy of it shall also be subjoined.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to Nicholas Vansittart, Esq.

GREAT CUMBERLAND PLACE,
April 29, 1802.

SIR: As several points upon which we have touched in our conversations respecting the bill before Parliament, imposing certain duties on exports and imports, and the tonnage of vessels, were the subjects of discussion when the convoy duties were imposed, I take the liberty to send you the copy of the report* which I made to my Government of the conference which on that occasion I had with Mr. Pitt, thinking this as satisfactory a mode as any I could adopt, of communicating to you the objections then made against certain of the provisions of the convoy duty, and which so far as respects the principle of the export duties now proposed to be laid, are equally applicable to the present as to the former bill

Without repeating what has been already said, I will beg of you to give all the weight which it deserves, to the obvious and just inference to be deduced from the spirit and tenor of our Treaty of Amity, &c.; and, according to which, as we think, we are not liable to pay a higher duty for permission to export your manufactures than is paid by your other customers. Agreeably to the proposed tariff, the consumers of British manufactures living in Europe will pay only half per cent. for permission to export the same, while we, who live further off, and who, consequently, pay higher freight and insurance, are required to pay double that rate, or one per cent., for the like permission.

It is true that the difference will not be as considerable as under the convoy law; but it is not against the greater or less degree, but against discrimination altogether, that we contend. When this objection was formerly pressed, it was replied, as you will perceive by the enclosed report, that the duty taken in reference to convoys, which would cost more in long than short voyages, was, for this reason, not inequitable. Whatever force there might have been in this reply, it must be admitted to have no influence whatever, in respect to the discrimination now proposed; the effect of which, in regard to American and European purchasers of British manufactures, is, that each having purchased goods upon the same terms, and of the same amount, the former is called upon before he leaves the warehouse to pay, for the Government permission to carry away his purchase, double the sum demanded of the latter for the like permission. And if the Americans be supposed to purchase British manufactures of the value of six millions annually, and it be likewise admitted that the Europeans purchase to the same amount, the former will annually pay, according to the proposed discrimination, £30,000 sterling more than the latter, or, in other words, for permission to export the same quantity of goods, the British Government will require the European

* Vide my No. 74, (1st series,) dated 1st June, 1798, to Col. Pickering, with the omission of a very few words respecting the dissatisfaction likely to be produced in America by the opposition of the convoy duty, &c.

purchaser to pay only £30,000, at the same time that it obliges the American purchaser to pay sixty thousand.

This discrimination, is, at the same time, too plain to leave any doubt of the sentiments which it must unavoidably excite; and I cannot but flatter myself that, upon a reconsideration of the subject, it will be thought both just and prudent that every sort of discrimination and preference should be abolished. With great consideration and respect, I have the honor to be, &c.

RUFUS KING.

Mr. King to Lord Hawkesbury.

RANDALL'S, SURRY, *July* 30, 1802.

MY LORD: Having received the leave of my Government to pass two or three months on the continent, I am desirous of conferring with your Lordship before my departure, (which will take place in the course of a fortnight,) upon one or two subjects which have for some time been under your Lordship's consideration. I allude to the settlement of a plan for carrying on the trade between the United States and the British colonies in the West Indies, and to the long expected transfer of the Maryland bank stock. Upon each of these subjects I am in hopes your Lordship will enable me to make some explicit communication to my Government before I avail myself of the leave I have received of a temporary absence; and, for this purpose, I ask the favor of you to receive me on Wednesday, or any other day of next week which may be more convenient.

With perfect consideration, &c.

RUFUS KING.

Right Hon. Lord HAWKESBURY.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *Aug.* 2, 1802.

Lord Hawkesbury presents his compliments to Mr. King, and will be happy to have the honor of receiving him here on Wednesday next, at one o'clock, should that hour be convenient to him.

Mr. King to the Secretary of State.

LONDON, *Aug.* 10, 1802.

SIR: As I am about to avail myself of the President's permission to pass a few weeks upon the continent, I have thought it expedient to endeavor previously to ascertain the sentiments of this Government concerning the trade and navigation between the United States and the British colonies in the West Indies, as well as to press for a final decision respecting the Maryland bank stock. For these purposes, I asked a conference of Lord Hawkesbury in a note, the copy whereof is annexed. His Lordship received me at the time I had proposed, but I regret that I am not able to send you a more satisfactory report of what passed on this occasion.

In respect to the bank stock, Lord Hawkesbury said he had lately received a communication from the Chancellor concerning it, and that measures should be taken to effect a transfer of the stock to the Crown, when it would be in a situation that would enable him to receive the King's pleasure respecting it. He intimated that he had understood there were other claims besides that of the State of Maryland; but, so far as he expressed an opinion, it seemed to be, that there would be no difficulty of importance in the way of a satisfactory settlement, after the stock had been transferred to the Crown. I repeated to his Lordship arguments which had been urged upon his predecessor, and tried, though without success, to obtain from him an explicit engagement that the stock should be transferred to me after its transfer to the Crown.

Respecting the West India trade, his Lordship said, after a short conversation explanatory of our expectations, that he could give me no explicit information whether or how far they should be able to accede to our claims; the fact being, as he observed, that not only on account of the constant succession of more pressing concerns which His Majesty's Ministers had been called upon to decide, but from the unsettled as well as uncertain condition of the West India Colonies, they had not been able to go into the consideration of the regulations which it might be deemed expedient to adopt; that they were yet also to learn the real situation of St. Domingo, as well as of some other important colonies; and that, as any change in their former system would, in some sort, depend upon the probable condition not only of their own but of other colonies, they must wait a little longer before they could form a safe opinion upon this important subject.

I remarked to Lord Hawkesbury, that, on account of our just claim to an equal participation in a trade as necessary to them as to us, as well as from the tenor of the article agreed to by England but refused by America, in the Treaty of 1794, we had not expected that a recurrence would be had, at the end of the war, to the exclusive system which had prevailed before; that any considerable delay in the decision of this point would operate in the same way as a decision in favor of the old system, which, as his Lordship must know, we considered as unequal and injurious; that my apprehension, therefore, was, in case of such delay, that we should think ourselves obliged to meet the disadvantages to which our navigation is liable under the former system, by regulations which would impose the like disadvantages upon the British navigation; these countervailing regulations would prove mutually, though I could not but admit they would be equally, inconvenient, and might, moreover, have the effect to disturb the harmonious and beneficial intercourse it was the common interest of the two countries to promote.

His Lordship made no distinct answer to these remarks; contenting himself to repeat, in substance what he had before observed concerning the pressure of affairs of the greater interest, and the uncertain situation of the West India Colonies.

As I found that I had not obtained any precise assurance upon this subject, which probably has not yet been discussed in the Cabinet, I observed

that notwithstanding the question might not appear to be of equal importance with others which continue to engage the attention of the English Ministry, it nevertheless had excited, and might again excite, a lively interest in the United States; that the subject had employed much of my attention, and I had sometimes flattered myself with the hope that I should, during my residence here, be enabled to assist in the equitable and satisfactory settlement of it; that I expected to terminate my mission, and return to America early in the next spring; and that it would afford me some satisfaction to be authorized to inform you that both this business, and the other regarding the Maryland Bank stock, should be decided before my departure,

Lord Hawksbury replied that he could not officially assure me that this should be done; but that, according to his personal view of the subject, he foresaw no reason likely to delay the decision of them beyond the time I had mentioned. This vague reply, and which binds to nothing, ended our conference upon these topics.

Lord Hawkesbury then inquired of me if I had received any late intelligence concerning the expedition to Louisiana. On my answering in the negative, he said, according to their advices, the French expedition was in preparation, and that it would certainly proceed. I, in turn, asked his Lordship, how far he gave credit to the rumor which has of late been circulated, that France was preparing a formidable expedition against Algiers. He answered, that the project existed; that the army would be marched into Spain, and embarked in the Spanish ports; and that Spain, though it was understood she had recently concluded peace with Algiers, would, nevertheless, be expected to aid the French with provisions, ships, and perhaps money. I did not ask whether England was likely also to be embroiled with Algiers, in consequence of the late capture of one or two English vessels by the cruisers of this Regency, having understood that it is here admitted that the passes of these vessels were irregular, and that the demand of England would be confined to the liberation of the crews, leaving the vessels as forfeited to the captors.

Before leaving Lord Hawkesbury, I took occasion to observe, that although my absence would be only for a short time, to guard against any inconvenience which might possibly occasion, I would take the liberty, before my departure, of introducing to him Mr. Gore, one of the commissioners under the seventh article of our treaty, who would act as our Chargé des Affaires during my absence. His Lordship replied that he should be happy to receive Mr. Gore; and I shall accordingly present him in that character to Lord Hawkesbury before I leave town. My plan is to embark at Harwich about the 15th instant, for Holland, from thence to go to Brussels, and then, either directly to Paris, or, turning to my left, and travelling a few days on the borders of the Rhine, to proceed to Paris through some of the more eastern provinces of France. As it is the invaluable specimens of the fine arts, more than the men and manners of Paris, which I am desirous to see, a few weeks' residence there will satisfy my curiosity. I do not, therefore, think of prolonging my absence beyond the middle of November, when the new Parliament will meet, and my return hither may be a fortnight sooner.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *Nov.* 26, 1802.

SIR: Mr. Gore has acknowledged the receipt of such letters from the Department of State as have been received during my absence; and his correspondence will have given you exact information of all that has hitherto been done towards the accomplishment of the several objects of the President's instructions. I shall immediately resume the business that has been so well commenced; and, as well from the nature of the subject, as from the temper and disposition that are understood to prevail in respect to America, I am inclined to hope that we shall experience no material difficulty in effecting a final and satisfactory adjustment of our boundaries.

Mr. King to Mr. Vansittart.

RANDAL'S, SURRY, *Jan.* 8, 1803.

SIR: After the conversation we lately had upon the subject, I will not trouble you at much length respecting the proposed augmentation of duty upon foreign spermaceti oil. Under the old system of duties, our whale fishery has not increased, while yours has extended itself so as to be able to supply more than your own consumption, which our united fisheries, a few years back, were unable to do. In these circumstances, it is proposed to raise the duty on foreign spermaceti oil from £22 3*s* 1*d*. to £31 10*s*. the ton: the obvious effect of this measure will be to depress our whale fishery, by the entire exclusion of our spermaceti oil from your market, where it sometimes finds in small quantities a precarious sale: the proceeds of these sales are laid out in the purchase of British manufactures. "Live and let live," is a maxim of trade, and, in the present case, may mean a little more than it usually does; for I cannot persuade myself, with the connexion that naturally subsists between us, and seeing, as we must, the efforts that France is making to acquire a control over the maritime strength of the North of Europe, as she already has done over that of the South, that the decrease of American seamen can be indifferent to Great Britain; and, if it be not, I should hope, for the sake of a common interest, that you would not, for light motives, be willing to sanction any measure that would produce this effect.

I will not recall to your recollection, by way of complaint, the various modes of encouraging your whale fishery, which, with whatever views adopted, have had the effect to withdraw from our service numbers of our most intelligent and useful adventurers.

As we have no laws prohibiting the transfer of their skill and persons to a foreign State, they were free to accept your invitation, and we could only regret their preference.

But it would be a matter of greater concern should these measures be followed up by a regulation which would still further depress our whale fishery, which cannot be beneficial to your revenue, and which is not wanted as a protection to a branch of industry, that has already not only established itself, but continues to thrive under an encouragement that has brought it to maturity.

With sentiments of respect and esteem, I remain, sir, your obedient servant. R. K.

Extract of a letter from Mr. King to the Secretary of State.

LONDON, *January* 28, 1803.

No further progress has yet been made in the discussion of the boundaries. From one or two conversations that I have had with Col. Barclay, who has returned to town, I perceive that his opinion, whatever influence it may have, will be favorable to such a settlement of the Eastern boundary as would be satisfactory to us. The chief difficulty in this settlement, that I foresee at present, respects the island of Campo Bello, which, to avoid questions of interfering jurisdiction, arising from its being to the westward of a suitable boundary line, should belong to Massachusetts: if it should be ceded, I shall have no hesitation to agree to a confirmation of the titles of the settlers derived from Nova Scotia. But the Minister may hesitate about a cession.

In my last conversation with Lord Hawkesbury, respecting the intercourse between the United States and the British Colonies in the West Indies, he desired me to write him a letter upon that subject, in order that he might submit it to the consideration of the Cabinet; and I accordingly sent him a letter, a copy of which is subjoined.

Extract of a letter from Mr. King to Lord Hawkesbury.

GREAT CUMBERLAND PLACE.
January 18, 1803.

MY LORD: Referring to the observations transmitted to your Lordship in my letter of the 3d of February past, explanatory of the principle upon which we claim an equal participation of the trade between the United States and the British West Indies, I take the liberty to recall the subject to your Lordship's recollection, as one that has been long under consideration, and upon which I have received orders to require the decision of His Majesty's Government.

If, contrary to the maxims by which the trade of the Colonies was formerly regulated, new circumstances have rendered it expedient to open an intercourse between them and a foreign State, it is this measure, and not the admission of such foreign State to a share in the trade, which breaks in upon a system that could no longer be maintained with advantage.

Such intercourse being opened, each party is alike competent to make laws for its regulation; and, as neither can claim or expect to do so exclusively of the other, such regulation becomes fit matter for mutual explanation and agreement.

In conformity with this principle, an article respecting this trade was prepared, and inserted in the Treaty of 1794; although afterward excluded at the instance of the United States, by reason of its inequality.

Should the United States (in imitation of the example set them by Great Britain) pass a law applying the same rule to British vessels which the law of Great Britain applies to those of the United States, the effect would be, that neither the British nor the American vessels could carry on the trade. But as flour, corn, timber, staves, and other articles of first necessity to the Colonies, must be received from the United States, the American vessels would carry them to some port or island in the West Indies, belonging to a third Power, whither the British vessels would go to receive the same, carrying thither to purchase them such articles of colonial produce as are allowed to be exported to the United States. In this way an entrepôt would be formed in the West Indies for the mutual sale and purchase of these commodities; and, as the question principally regards the navigation of the two countries, it is evident that the effect of these exclusive regulations would be more beneficial to the United States than to Great Britain, inasmuch as the voyage from the United States to the place of deposit in the West Indies would be longer, and consequently would afford more employment than between such place of deposit and the British West Indies.

Notwithstanding the equity of such a law, on the part of the United States, and the probable advantage it might secure to their navigation, we have no hesitation in preferring an amicable and equal participation of the trade to the certainty even of acquiring an unequal share of it by a measure of retaliation, which, being resorted to in one branch of trade, may, by one or both sides, be extended to others, and in the end might have the effect to disturb the harmony as well as the extensive and mutually beneficial intercourse between the two countries.

Whether it may be deemed more convenient to alter the existing law, on the part of Great Britain, so as to allow the trade in question to be carried on equally by American and British vessels, or to enter into a compact for this purpose, as was intended by the Treaty of 1794, is not a point of material difficulty though, in the nature of the subject, a preference seems due to an adjustment by mutual stipulation: in either mode, as a security against the extension of this trade beyond the limits which it may be desired to give it, it might be provided that the return cargoes of American vessels should be carried directly to the United States, and that they should moreover be purchased, as well as limited, by the proceeds of cargoes imported in American vessels.

With distinguished consideration, I have the honor to be your Lordship's obedient and most humble servant. RUFUS KING.

Mr. King to the Secretary of State.

NEW YORK, *July*, 1803.

SIR: I take the liberty to add a few miscellaneous articles by way of supplement to my last despatch.

AMERICAN SEAMEN.

As soon as the war appeared to me unavoidable, I thought it advisable to renew the attempt to form an arrangement with the British Government for the protection of our seamen: with this view, I had several conferences both with Lord Hawkesbury and Mr. Addington, who avowed a sincere disposition to do whatever might be in their power to prevent the dissatisfaction on this subject that had so frequently manifested itself during the late war. With very candid professions, I, however, found several objections in discussing the subject with the first Lord of the Admiralty. Lord Hawkesbury having promised to sign any agreement upon the subject that I should conclude with Lord St. Vincent, I endeavored to qualify and remove the objections he offered to our project: and finally, the day before I left London, Lord St. Vincent consented to the following regulations:

1. No seaman nor seafaring person shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any vessel belonging to the citizens or subjects of one of the parties, by the public or private armed vessels or men of war belonging to, or in the navy of the other party; and strict orders shall be given for the due observance of this engagement.

2. Each party will prohibit its citizens or subjects from clandestinely concealing or carrying away from the territories or colonial possessions of the other, any seamen belonging to such other ports.

3. These regulations shall be in force for five years, and no longer.

On parting with his Lordship, I engaged to draw up, in the form of a convention, and send him, these articles in the course of the evening, who promised to forward them, with his approbation, to Lord Hawkesbury. I accordingly prepared and sent the draught to his Lordship, who sent me a letter in the course of the night, stating that on further reflection he was of opinion that the narrow seas ought to be excepted, they having been, as his Lordship remarked, immemorially considered to be within the dominions of Great Britain; that with this correction he had sent the proposed convention to Lord Hawkesbury, who, his Lordship presumed, would not sign it before he should have consulted the Judge of the High Court of Admiralty, Sir William Scott.

As I had supposed, from the tenor of my conferences with Lord St. Vincent, that the doctrine of *mare clausum* would not be revived against us on this occasion, but that England would be content with the limited jurisdiction or dominion over the seas adjacent to her territories, which is assigned by the law of nations to other States, I was not a little disappointed on receiving this communication; and, after weighing well the nature of the principle, and the disadvantage of its admission, I concluded to abandon the negotiation, rather than to acquiesce in the doctrine it proposed to establish.

I regret not to have been able to put this business on a satisfactory footing, knowing as I do its very great importance to both parties; but I flatter myself that I have not misjudged the interests of our own country, in refusing to sanction a principle that might be productive of more extensive evils than those it was our aim to prevent.

NEUTRAL FLAG.

As it is possible that another attempt will be made during the present war to establish the rule that free bottoms make free goods, I ought not to omit the communication of the following anecdote:

Soon after the British armament in March past, Bonaparte sent his aid-de-camp-du-roi to Berlin, to announce his determination to occupy Hanover, and to close the Elbe against England, in the event of war. The Prussian Cabinet, a thing very rarely done, immediately despatched a courier with orders to Baron Jacobi, the Prussian Ambassador at London, to apprize the English Government of the views of France, to impress the dissatisfaction with which Prussia had learned them, and to offer to protect Hanover and the North of Germany, provided England would give her consent to the principle that free ships should make free goods. The English Cabinet immediately replied, that the German Empire is bound to protect the rights of its several members; that Hanover must therefore look to Germany, and not to England, for supports; and, in respect to the proposed rule that free ships should make free goods, that no advantage nor service which could be named, would be sufficient to engage England to give it her sanction. In any circumstances, this would be the opinion of England; in the present instance, if I mistake not, the proposition was believed to have come, indirectly, from Paris.

COLONY TRADE.

In a very late conversation with Mr. Addington respecting the colony trade, he insinuated the probability that events might happen in the course of the present war, alluding, as I understood, to South America, that would enable England to form with us such commercial arrangements as would be satisfactory. As Mr. Addington meant to be obscure, I could only conjecture his meaning; and my inference was, in case of the independence of South America, that the colony system must everywhere be abandoned—an opinion not peculiar to Mr. Addington, but one that is entertained by the principal members of the late English Ministry.

SOUTH AMERICA.

When the preliminaries of the late peace were signed, an expedition, fully prepared, was in readiness to set sail for the purpose of assisting the inhabitants of the province of Carracas in throwing off their obedience to Spain. Trinidad was retained by England, chiefly with the view of furthering this revolt; and if Spain be drawn into the war, which she will be unable to avoid, the

expedition to the Carracas will be revived. No probable change of the Ministry of England will change this intention, for it is known to be the opinion of the first men of the nation that the secondary object of the present war, and one that must give England courage as well as resources to go on with the struggle, is the entire independence of South America.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Maryland Bank Stock.

Mr. King to the Secretary of State.

LONDON, *May* 1, 1803.

SIR: According to the certificate of the Accountant General of the Court of Chancery, the fund now standing in his name, and claimed by the State of Maryland, is composed of—

98.518 2 9 Bank stock, worth at the present price of 170 -	167.480	12 0
15.290 17 9 5 per cent. stock at par	15.290	17 9
4.796 2 3 Cash in the Bank of England - - -	4.796	2 3
Sterling.	£187.567	12 0

It will be recollected that suits in Chancery were instituted many years back against Russell and other trustees of this fund—

By Chase, agent of Maryland.

By Barclay and others, executors of Hanbury, for the two sums of eleven thousand pounds and four hundred and forty pounds bank stock, and the accruing dividends granted to them by Maryland in 1786.

By Harford, devisee of Lord Baltimore, claiming as Lord Proprietor of the Province of Maryland, and, as such, entitled to all forfeitures.

Besides these persons, the Ewers, and the assignee of Buchanan, have likewise respectively claimed an indemnity for losses of real estate in Maryland.

The title of Maryland has been more than once argued in the case of Barclay and others; and it has appeared to be the opinion, both of the late and present Lord Chancellor, that the Crown is legally entitled to this property. My correspondence with the Department of State has explained the means that have been employed to effect a transfer of it to Maryland, as well as the series of disappointments which has defeated them.

I have now the satisfaction to send you the copy of a letter that I have received from Lord Hawkesbury, in which the King engages, in the event of its being decided that the title to this stock has accrued and belongs to the Crown, that the same shall be transferred to the State of Maryland, together with the accumulations proceeding from the re-investment of the dividends. I likewise enclose for your information copies of the instruction given to the Attorney General relative to this stock; of the decree of the Court of Chancery, in the suit of Barclay and others, against Russell and others; and of the motion of the Attorney General, founded on the presumption that after the decree in Barclay's suit, the regular course of an information, for the purpose of vesting the stock in the Crown, would have been dispensed with by the parties consenting to receive their costs, and withdraw all opposition to the funds being disposed of as the Crown should direct.

Contrary, however, to this expectation, the solicitors of Mr. Chase and Mr. Harford refused their consent: the motion was therefore postponed to a future day, before which I sent the two subjoined letters to Messrs. Lyons and Collyer, the solicitors of Mr. Chase, who, in consequence thereof, withdrew their opposition. Mr. Harford continued to oppose; and when the motion of the Attorney General was resumed, on the 27th past, his solicitor again refused his consent: previous, however, to his doing so, he came to me with an offer to withdraw his opposition, and consent to the motion of the Attorney General, provided I would engage to transfer to Mr. Harford ten thousand pounds bank stock. This I declined doing, with the observation that, as both the late and present Chancellor had given an opinion that, upon the dissolution of the Corporation or Colony of Maryland, the stock accrued as *bona vacantia* to the Crown; and as I held the engagement of the King to transfer the same to the State of Maryland, upon its being decided that the title to the same had accrued to the Crown, there was sufficient certainty that Maryland must ultimately, and in spite of all opposition, obtain possession of the entire fund; and although it might be some time before this could be accomplished, owing to delays which might be created, still, as the dividends would, from time to time, be reinvested, the property would, in the end, be received, together with compensation for its detention.

Could I have been certain that the representatives of Buchanan and of the Ewers, or that the holders of a considerable sum of the Colony bills of credit, said to have been issued upon the credit of this fund, and who have petitioned the King to apply the same according to its original destination, might not have been encouraged by the settlement with Harford to pursue their opposition, unless they also were bought off, I might, for the sake of finishing a tedious business, have agreed with the Hanburys to give to Mr. Harford, according to the respective interests of the proprietors, a sum of money, or bank stock, to induce him to withdraw his opposition. But, after mature consideration of the subject, I have preferred the course which is now to be adopted.

The suit of Barclay, and others, having been dismissed upon the principle that the fund must, by law, accrue to the Crown, and the King having given his solemn engagement to transfer the same to Maryland as soon as it shall have been decided that it has so accrued, it remains only that an information be filed against all the parties hitherto in opposition, in order to obtain a decision vesting the fund in the Crown; and for this purpose it may be expedient that the solicitors of Mr. Chase be instructed to assist those of the Treasury, and the family of Hanbury, in pressing the process to a conclusion. Owing to the dispersed situation of the parties, and of the angry perseverance which influences the conduct of Mr. Harford, it may require some time to complete the business; but it is a satisfaction that we hitherto have not enjoyed, that no future change in the Court of Chancery, or in the Ministry, can alter the decision of the one or the precise engagement of the other.

It would have given me great pleasure to have seen the close of a business that is of importance to the State of Maryland, and which has so constantly as well as zealously engaged my attention; but the entanglements of an intricate suit in Chancery, early and unfortunately thrown into an embarrassing situation, are reached with difficulty by diplomatic means: there have, moreover, been some difficulties in our way, which neither patience nor industry has hitherto been able to surmount. We may, I think, now put our opponents at defiance, as we at length stand on secure ground, and with a little more patience may reckon with confidence upon the attainment of our object. I shall leave with the papers of the Legation such a view of the subject as I hope may enable my successor with little trouble to hasten the conclusion of this long protracted business. With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *April* 25, 1803.

SIR: I have the honor to send you herewith enclosed a copy of the instruction that has been given to His Majesty's Attorney General, relative to the stock claimed by the State of Maryland; and I have the satisfaction, by His Majesty's commands, to state to you, for the information of your Government, that in the event of its being decided that the title to this stock has accrued, and belongs to His Majesty, His Majesty will cause the same to be transferred to the State of Maryland, together with the accumulations which shall have accrued from the reinvestment of the dividends; and measures to enable His Majesty to fulfil his intention to this purpose, shall be adopted with as little delay as shall be consistent with a due observance of the forms with which it may be requisite to comply.

I flatter myself, sir, that this communication will be regarded by your Government as a new proof of His Majesty's disposition to consult and promote the interests of the United States; and I avail myself of this occasion to renew to you the assurances of the high consideration with which I have the honor to be, sir, your most obedient, humble servant,

HAWKESBURY.

Lord Hawkesbury to Mr. Perceval.

DOWNING STREET, *Dec.* 15, 1802.

SIR: As I understand that a cause has long been depending in the Court of Chancery, relative to a sum of money which is claimed by the State of Maryland, I have to desire that you will take such measures as may appear to you most advisable for putting the Crown in possession of this property, in order that His Majesty may be enabled to dispose of it in such manner as he may think proper. I am, &c., HAWKESBURY.

His Majesty's ATTORNEY GENERAL.

Minutes of Decree, 1st April, 1803. } Lord Chancellor.

FRIDAY, *April* 1, 1803.

Barclay and Russell, p. quer. opens the bill.

P. defts. opens their answer.

Cause and petition.

P. petitioners.

Mr. Attorney General for the Solicitor of the Treasury Hollist, p.

The petition read.

The Accountant General's certificate read.

CUR:—Dismiss the bill, with liberty for the parties to apply to the court on this or any other cause for a transfer of the funds standing in the name of the Accountant General, in trust in this cause, as they shall be advised; and no order on the petition.

Motion in Hanbury's cause, 26th April, 1803. } In Chancery.

Between Samuel Chase, Esq., plaintiff, and James Russell and others, defendants; between David Barclay and others, plaintiffs, the said James Russell and others, defendants; and between Henry Harford, Esq., plaintiff, and His Majesty's Attorney General and others, defendants.

Take notice that this honorable court will be moved by the Attorney General, on behalf of His Majesty, on Wednesday, the twentieth day of April instant, being the first seal before next Easter term, that all parties be paid their costs of these suits, to be taxed by one of the masters of this court, out of the sum of four thousand seven hundred and ninety-six pounds two shillings and three pence cash, in the bank, in the name of the Accountant General of this court, in trust in the cause, Chase against Russell; and that, after the payment of such costs, the Accountant General of this court may transfer the several sums of ninety-eight thousand five hundred and eighteen pounds two shillings and nine pence bank stock, the sum of eight thousand three hundred and fourteen pounds, sixteen shillings and one penny five per cent. annuities, 1797, and the sum of six thousand nine hundred and seventy-six pounds one shilling and eight pence, bank navy five per cent. annuities, also standing in his name in trust in the same cause, and may pay the residue of the said sum of four thousand seven hundred and ninety-six pounds two shillings and three pence, cash in the bank; and, also, such future dividends on the said several stocks, as shall accrue thereon respectively, until such transfer thereof unto such person or persons as His Majesty shall, by warrant, under his Royal sign manual, nominate and appoint. Dated 18th April, 1803.

JOS. WHITE,
Solicitor for the Attorney General.

To Messrs. WADESON, BARLOW, & GROSVENOR.

Mr. King to Messrs. Lyon and Collyer.

GREAT CUMBERLAND PLACE.

April 22, 1803.

GENTLEMEN: Having reason to be satisfied, in the event of its being decided that the title to the stock of the Bank of England, claimed by the State of Maryland, has accrued and belongs to the Crown, that the same will be transferred to the State of Maryland, (in which case I am authorized to transfer to Mr. Chase the portion thereof to which he may be entitled,) I am of opinion that you will promote the interests of the State of Maryland and of Mr. Chase by giving no opposition concerning this stock, proposed by the Attorney General.

I am, gentlemen, your obedient servant.

RUFUS KING.

Mr. King to Messrs. Lyon and Collyer.

GREAT CUMBERLAND PLACE.

April 26, 1803.

GENTLEMEN: Since the appointment of Mr. Chase as agent of Maryland for the recovery of the bank stock claimed by that State, the business has been committed by the State of Maryland to me, as the Minister of the United States in this country; and, in virtue of this authority, I took the liberty to send you my letter of the 22d inst. Perceiving that you have some hesitation in complying with the tenor of that communication, on the score that it is not sufficiently explicit and directory; in behalf of the State of Maryland and Mr. Chase, I hereby request and direct you to give your consent to the motion made in the Court of Chancery by the Attorney General, or to any other motion or process having for its object a transfer of the stock in question, to such person as the King, under his sign manual, may nominate and appoint.

With great respect, I remain gentlemen, your obedient servant,

RUFUS KING.

FRANCE AND SPAIN—LOUISIANA.

[Communicated to the Senate, October 17, 1803, and to the Senate and House of Representatives, October 21, 1803.]

Gentlemen of the Senate:

In my Message of this day to both Houses of Congress, I explained the circumstances which had led to the conclusion of conventions with France for the cession of the Province of Louisiana to the United States. Those conventions are now laid before you, with such communications* relating to them, as may assist in deciding whether you will advise and consent to their ratification.

The ratification of the First Consul of France is in the hands of his Chargé des Affaires here, to be exchanged for that of the United States, whensoever, before the 30th instant, it shall be in readiness.

TH. JEFFERSON.

OCTOBER 17, 1803.

To the Senate and House of Representatives of the United States:

In my communication to you of the 17th instant, I informed you that conventions had been entered into with the Government of France, for the cession of Louisiana to the United States; these, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France in due form, they are communicated to you for consideration in your Legislative capacity. You will observe, that some important conditions cannot be carried into execution but with the aid of the Legislature; and that time presses a decision on them without delay.

The ulterior provisions, also suggested in the communication, for the occupation and government of the country, will call for early attention. Such information relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days; but as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the mean while, of order and tranquility in the county, as the case may require.

THOMAS JEFFERSON.

OCTOBER 21, 1803.

Treaty between the United States of America and the French Republic.

The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, desiring to remove all source of misunderstanding, relative to objects

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* The communications transmitted to the Senate, are—

The instructions of March 2, 1803.

The instructions of April 18, 1803.

Extract from Mr. King to the Secretary of State, April 28, 1803; and to Messrs. Livingston and Monroe, 7th May, 1803.

Extract from Mr. Cevallos to Mr. Pinckney, May 4, 1803.

Letter from Messrs. Livingston and Monroe, of May 13 and May 16, 1803.

Letter from Messrs. Livingston and Monroe, June 7, 1803.

Extract of a letter from Secretary of State, of July 2, 1803.

Extract from Mr. Monroe, at London, August 15, 1803.

Extract from Mr. D'Yrujo to the Secretary of State, September 4, 1803, and September 27, 1803.

Extract from Mr. Madison to Mr. Livingston, October 6, 1803.

Letter from the Secretary of State to M. D'Yrujo, October 4, 1803.

Letter from M. D'Yrujo to the Secretary of State, October 12, 1803.

Letter from the Secretary of State to D'Yrujo, October 12, 1803.

Mr. Pichon to the Secretary of State, October 14, 1803.

of discussion mentioned in the second and fifth articles of the Convention of (the 8th Vendemiaire, an 9.) September 30, 1800, relative to the rights claimed by the United States, in virtue of the Treaty concluded at Madrid, the 27th October, 1795, between His Catholic Majesty and the said United States, and willing to strengthen the union and friendship, which at the time of the said Convention was happily re-established between the two nations, have respectively named their Plenipotentiaries, to wit: The President of the United States of America, by and with the advice and consent of the Senate of the said States, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic; and the First Consul, in the name of the French people, the French citizen Barbe Marbois, Minister of the Public Treasury, who, after having respectively exchanged their full powers, have agreed to the following articles:

ART. 1. Whereas, by the article the third of the Treaty concluded at St. Ildefonso, (the 9th Vendemiaire, an 9.) October 1, 1800, between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows: His Catholic Majesty promises and engages on his part to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein, relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States: And whereas, in pursuance of the Treaty, particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory, the First Consul of the French Republic, desiring to give to the United States a strong proof of friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they might have been acquired by the French Republic, in value of the above-mentioned treaty, concluded with His Catholic Majesty.

ART. 2. In the cession made by the preceding article, are included the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices, which are not private property. The archives, papers, and documents, relative to the domain and sovereignty of Louisiana and its dependencies, will be left in the possession of the Commissaries of the United States, and copies will be afterwards given in due form to the magistrates and municipal officers, of such of the said papers and documents as may be necessary to them.

ART. 3. The inhabitants of the ceded territory shall be incorporated in the Union of the United State, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States; and, in the mean time, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

ART. 4. There shall be sent by the Government of France a Commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies in the name of the French Republic, if it has not been already done, as to transmit it, in the name of the French Republic, to the Commissary or agent of the United States.

ART. 5. Immediately after the ratification of the present treaty by the President of the United States, and in case that of the First Consul shall have been previously obtained, the Commissary of the French Republic shall remit all the military posts of New Orleans, and other parts of the ceded territory, to the Commissary or Commissaries named by the President to take possession; the troops, whether of France or Spain, who may be there, shall cease to occupy any military post from the time of taking possession, and shall be embarked as soon as possible in the course of three months after the ratification of this treaty.

ART. 6. The United States promise to execute such treaties and articles as may have been agreed between Spain and the tribes and nations of Indians, until, by mutual consent of the United States and the said tribes or nations, other suitable articles shall have been agreed upon.

ART. 7. As it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France or any of her Colonies, loaded only with the produce or manufactures of France or her said Colonies, and the ships of Spain coming directly from Spain or any of her Colonies, loaded only with the produce or manufactures of Spain or her Colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their Colonies, without being subject to any other or greater duty on the merchandise, or other or greater tonnage than those paid by the citizens of the United States.

During the space of time above-mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States; it is, however, well understood, that the object of the above

article is to favor the manufactures, commerce, freight, and navigation of France and Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations.

ART. 8. In future and forever, after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above-mentioned.

ART. 9. The particular convention signed this day by the respective Ministers, having for its object to provide the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th of September, 1800. (8th Vendemiaire, an 9.) is approved, and to have its execution in the same manner as if it had been inserted in the present treaty; and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other. Another particular convention, signed at the same date as the present treaty, relative to a definitive rule between the contracting parties is, in the like manner, approved, and will be ratified in the same form and in the same time, and jointly.

ART. 10. The present treaty shall be ratified in good and due form, and the ratification shall be exchanged in the space of six months after the date of the signature by the Ministers Plenipotentiary, or sooner if possible.

In faith whereof, the respective Plenipotentiaries have signed these articles in the French and English languages, declaring, nevertheless, that the present treaty was originally agreed to in the French language, and have thereunto put their seals.

Done at Paris, the 10th day of Floreal, in the 11th year of the French Republic, and the 30th April, 1803.

R. R. LIVINGSTON,
JAMES MONROE.
BARBE MARBOIS.

A Convention between the United States of America and the French Republic.

The President of the United States of America, and the First Consul of the French Republic, in the name of the French people, in consequence of the Treaty of Cession of Louisiana, which has been signed this day, wishing to regulate definitively everything which has relation to the said cession, have authorized, to this effect, the Plenipotentiaries, that is to say: the President of the United States has, by and with the advice and consent of the Senate of the said States, nominated for their Plenipotentiaries, Robert R. Livingston, Minister Plenipotentiary of the United States, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said United States, near the Government of the French Republic; and the First Consul of the French Republic, in the name of the French people, has named, as Plenipotentiary of the said Republic, the French citizen Barbe Marbois, who, in virtue of their full powers, which have been exchanged this day, have agreed to the following articles.

ART. 1. The Government of the United States engages to pay to the French Government, in the manner specified in the following articles, the sum of sixty millions of francs, independent of the sum which shall be fixed by any other convention for the payment of the debts due by France to citizens of the United States.

ART. 2. For the payment of the sum of sixty millions of francs, mentioned in the preceding article, the United States shall create a stock of eleven million two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, payable, half-yearly, in London, Amsterdam, or Paris, amounting, by the half-year to three hundred and thirty-seven thousand five hundred dollars, according to the proportions which shall be determined by the French Government, to be paid at either place: the principal of the said stock to be reimbursed at the Treasury of the United States, in annual payments of not less than three millions of dollars each; of which the first payment shall commence fifteen years after the date of the exchange of ratifications: this stock shall be transferred to the Government of France, or to such person or persons as shall be authorized to receive it, in three months, at most, after the exchange of the ratifications of this treaty, and after Louisiana shall be taken possession of in the name of the Government of the United States.

It is further agreed that, if the French Government should be desirous of disposing of the said stock, to receive the capital in Europe at shorter terms, that its measures, for that purpose, shall be taken so as to favor, in the greatest degree possible, the credit of the United States, and to raise to the highest price the said stock.

ART. 3. It is agreed that the dollar of the United States, specified in the present convention, shall be fixed at five francs 3333-10000ths or five livres eight sous tournoise.

The present convention shall be ratified in good and true form, and the ratifications shall be exchanged in the space of six months, to date from this day, or sooner if possible.

In faith of which, the respective Plenipotentiaries have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the tenth day of Floreal, eleventh year of the French Republic. (30th April, 1803.)

ROBERT R. LIVINGSTON,
JAMES MONROE,
BARBE MARBOIS.

Convention between the French Republic and the United States of America.

The President of the United States of America, and the First Consul of the French Republic, in

the name of the French people, having, by a treaty of this date, terminated all difficulties relative to Louisiana, and established on a solid foundation the friendship which unites the two nations, and being desirous, in compliance with the second and fifth articles of the convention of the 8th Vendemiaire, 9th year of the French Republic, (30th Sept. 1800,) to secure the payment of the sum due by France to the citizens of the United States, have respectively nominated as Plenipotentiaries, that is to say: the President of the United States of America, by and with the advice and consent of their Senate, Robert R. Livingston, Minister Plenipotentiary, and James Monroe, Minister Plenipotentiary and Envoy Extraordinary of the said States, near the Government of the French Republic, and the First Consul, in the name of the French people, the French citizen Barbe Marbois, Minister of the Public Treasury, who, after having exchanged their full powers, have agreed to the following articles:

ART. 1. The debts due by France to citizens of the United States, contracted before the 8th of Vendemiaire, 9th year of the French Republic, (30th September, 1800,) shall be paid according to the following regulations, with interest at six per cent., to commence from the periods when the accounts and vouchers were presented to the French Government.

ART. 2. The debts provided for by the preceding article are those whose result is comprised in the conjectural note annexed to the present convention, and which, with the interest, cannot exceed the sum of twenty millions of francs. The claims comprised in the said note, which fall within the exceptions of the following articles, shall not be admitted to the benefit of this provision.

ART. 3. The principal and interest of the said debts shall be discharged by the United States by orders drawn by their Ministers Plenipotentiary on their Treasury; these orders shall be payable sixty days after the exchange of ratifications of the treaty and the conventions signed this day, and after possession shall be given of Louisiana by the Commissaries of France to those of the United States.

ART. 4. It is expressly agreed that the preceding articles shall comprehend no debts but such as are due to citizens of the United States who have been, and are yet, creditors of France for supplies, for embargoes, and prizes made at sea, in which the appeal has been properly lodged, within the time mentioned in the said convention of the 8th Vendemiaire, 9th year. (30th September, 1800.)

ART. 5. The preceding articles shall apply only, first, to capture of which the council of prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States, otherwise than he might have had to the Government of the French Republic, and only in case of the insufficiency of the captors; secondly, the debts mentioned in the said fifth article of the convention contracted before the 8th Vendemiaire, an 9, (30th September, 1800,) the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed. It is the express intention of the contracting parties not to extend the benefit of the present convention to reclamations of American citizens, who shall have established houses of commerce in France, England, or other countries than the United States, in partnership with foreigners, and who, by that reason, and the nature of their commerce, ought to be regarded as domiciliated in the places where such houses exist. All agreements and bargains concerning merchandise, which shall not be the property of American citizens, are equally excepted from the benefit of the said convention; saving, however, to such persons their claims in like manner as if this treaty had not been made.

ART. 6. And that the different questions which may arise under the preceding article may be fairly investigated, the Ministers Plenipotentiary of the United States shall name three persons, who shall act from the present, and provisionally, and who shall have full power to examine, without removing the documents, all the accounts of the different claims already liquidated by the bureau established for this purpose by the French Republic, and to ascertain whether they belong to the classes designated by the present convention, and the principles established in it; or if they are not in one of its exceptions, and on their certificate declaring that the debt is due to an American citizen, or his representative, and that it existed before the 8th Vendemiaire, ninth year, (30th September, 1800,) the debtor shall be entitled to an order on the Treasury of the United States, in the manner prescribed by the third article.

ART. 7. The same agents shall likewise have power, without removing the documents, to examine the claims which are prepared for verification, and to certify those which ought to be admitted by uniting the necessary qualifications, and not being comprised in the exceptions contained in the present convention.

ART. 8. The same agents shall likewise examine the claims which are not prepared for liquidation, and certify in writing those which, in their judgments, ought to be admitted to liquidation.

ART. 9. In proportion as the debts mentioned in these articles shall be admitted, they shall be discharged with interest at six per cent. by the Treasury of the United States.

ART. 10. And that no debt, which shall not have the qualifications above-mentioned, and that no unjust or exorbitant demand may be admitted, the commercial agent of the United States at Paris, or such other agent as the Minister Plenipotentiary of the United States shall think proper to nominate, shall assist at the operations of the bureau, and co-operate in the examination of the claims; and if this agent shall be of opinion that any debt is not completely proved, or if he shall judge that it is not comprised in the principles of the fifth article above-mentioned, and if, notwithstanding his opinion, the bureau established by

the French Government should think that it ought to be liquidated, he shall transmit his observations to the board established by the United States, who, without removing documents, shall make a complete examination of the debt, and vouchers which support it, and report the result to the Minister of the United States. The Minister of the United States shall transmit his observations, in all such cases, to the Minister of the Treasury of the French Republic, on whose report the French Government shall decide definitively in every case.

The rejection of any claim shall have no other effect than to exempt the United States from the payment of it; the French Government reserving to itself the right to decide definitively on such claims, so far as it concerns itself.

ART. 11. Every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards.

ART. 12. In case of claims for debts contracted by the Government of France with citizens of the United States since the 8th Vendemiaire, 9th year, (September 30, 1800,) not being comprised in this convention, may be pursued, and the payment demanded in the same manner as if it had not been made.

ART. 13. The present convention shall be ratified in good and due form, and the ratifications shall be exchanged in six months from the date of the signature of the Ministers Plenipotentiary, or sooner, if possible.

In faith of which, the respective Ministers Plenipotentiary have signed the above articles, both in the French and English languages, declaring, nevertheless, that the present treaty has been originally agreed on and written in the French language, to which they have hereunto affixed their seals.

Done at Paris, the 10th day of Floreal, the 11th year of the French Republic, (30th of April, 1803.)

ROBT. R. LIVINGSTON,
JAMES MONROE,
BARBÉ MARBOIS.

Mr. King to the Secretary of State, dated

LONDON, *March* 29, 1801.

DEAR SIR: In confirmation of the rumors of the day, Carnot's answer to Bailleul, published during the exile of the former, states the project which had been discussed in the Directory, to obtain from Spain a cession of Louisiana and the Floridas. A reference to that performance, copies of which I at the time sent to the Department of State, will show the manner in which it was expected to obtain the consent of Spain, as well as afford a clue to the views of France in seeking this establishment. What was then meditated, has, in all probability, since been executed. The cession of Tuscany to the Infant, Duke of Parma, by the treaty between France and Austria, forms a more compact and valuable compensation to this branch of the House of Spain than was formerly thought of; and adds very great credit to the opinion which, at this time, prevails both at Paris and London, that Spain has in return actually ceded Louisiana and the Floridas to France. There is reason to know that it is the opinion of certain influential persons in France, that nature has marked a line of separation between the people of the United States living upon the two sides of the range of mountains which divides their territory. Without discussing the considerations which are suggested in support of this opinion, or the false consequences, as I wish to believe them, deduced from it, I am apprehensive that this cession is intended to have, and may actually produce, effects injurious to the Union and consequent happiness of the people of the United States. Louisiana and the Floridas may be given to the French emigrants, as England once thought of giving them to the American tories; or, they may constitute the reward of some of the armies which can be spared at the end of the war.

I learn that General Collot, who was a few years ago in America, and a traveller in the Western country, and who, for some time, has been in disgrace and confinement in France, has been lately set at liberty; and that he, with a considerable number of disaffected and exiled Englishmen, Scotchmen, and Irishmen, is soon to proceed from France to the United States. Whether their voyage has any relation to the cession of Louisiana, is a matter of mere conjecture; but having heard of it in connexion with that project, I think proper to mention it to you.

What effect a plain and judicious representation upon this subject, made to the French Government by a Minister of talents and entitled to confidence, would be likely to have, is quite beyond any means of judging which I possess; but on this account, as well as others of importance, it is a subject of regret that we have not such a character at this time at Paris.

With perfect respect and esteem, I have the honor to be, dear sir, your obedient and faithful servant, RUFUS KING.

Extract.—Mr. King to the Secretary of State, dated

LONDON, *June* 1, 1801.

On this occasion, among other topics of conversation, his Lordship (Hawkesbury) introduced the subject of Louisiana. He had, from different quarters, received information of its cession to France, and very unreservedly expressed the reluctance with which they should be led to acquiesce in a measure that might be followed by the most important consequences. The acquisition might enable France to extend her influence, and perhaps her dominion up the Mississippi; and through the Lakes even to Canada. This would be realizing the plan, to prevent the accomplishment of which, the seven years' war took place; besides, the vicinity of the Floridas to the West Indies, and the facility with which the trade of the latter might be interrupted, and the islands even invaded, should the transfer be made, were strong reasons why England must be unwilling

that the territory should pass under the dominion of France. As I could not mistake his Lordship's object in speaking to me on this subject, I had no difficulty or reserve in expressing my private sentiments respecting it; taking, for my text, the observation of Montesquieu, "that it is happy for trading Powers, that God has permitted Turks and Spaniards to be in the world, since of all nations they are the most proper to possess a great empire with insignificance." The purport of what I said was, that we are contented that the Floridas remain in the hands of Spain, but should not be willing to see them transferred, except to ourselves.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant, RUFUS KING.

Extract.—Mr. Madison, Secretary of State, to Charles Pinckney, dated

DEPARTMENT OF STATE,
Washington, June 9, 1801.

On different occasions since the commencement of the French Revolution, opinions and reports have prevailed that some part of the Spanish possessions, including New Orleans and the mouth of the Mississippi, had been or was to be transferred to France. Of late, information has been received through several channels, making it probable that some arrangement for that purpose has been concerted. Neither the extent of the cession, however, nor the consideration on which it is made, is yet reduced to certainty and precision. The whole subject will deserve and engage your early and vigilant inquiries, and may require a very delicate and circumspect management. What the motives of Spain in this transaction may be, is not so obvious. The policy of France in it, so far, at least, as relates to the United States, cannot be mistaken. Whilst she remained on the footing of confidence and affection with the United States, which originated during our Revolution, and was strengthened during the early stages of her own, it may be presumed that she adhered to the policy which, in the Treaty of 1778, renounced the acquisition of continental territory in North America; and was more disposed to shun the collisions threatened by possessions in that quarter, coterminous with ours, than to pursue objects to which the commanding position at the mouth of the Mississippi might be made subservient. Circumstances are not now the same. Although the two countries are again brought together by stipulations of amity and commerce, the confidence and cordiality which formerly subsisted have had a deep wound from the occurrences of late years. Jealousies probably still remain, that the Atlantic States have a partiality for Great Britain, which may, in future, throw their weight into the scale of that rival. It is more than possible, also, that, under the influence of those jealousies, and of the alarms which have at times prevailed, of a projected operation for wresting the mouth of the Mississippi into the hands of Great Britain, she may have concluded a preoccupancy of it by herself to be a necessary safeguard against an event from which that nation would derive the double advantage of strengthening her hold on the United States, and of adding to her commerce a monopoly of the immense and fertile region communicating with the sea through a single outlet. This view of the subject, which suggests the difficulty which may be found in diverting France from the object, points, at the same time, to the means that may most tend to induce a voluntary relinquishment of it. She must infer, from our conduct and our communications, that the Atlantic States are not disposed to enter, nor are in danger of being drawn, into partialities towards Great Britain unjust or injurious to France; that our political and commercial interests afford a sufficient guaranty against such a state of things; that without the co-operation of the United States, Great Britain is not likely to acquire any part of the Spanish possessions on the Mississippi; and that the United States never have favored nor, so long as they are guided by the clearest policy, ever can favor, such a project. She must be led to see again, and with a desire to shun, the danger of collisions between the two Republics, from the contact of their territories; and from the conflicts in their regulations of a commerce involving the peculiarities which distinguish that of the Mississippi. Such are the general observations which the President has thought it proper should be communicated to you; that, knowing the light in which the subject is viewed by him, you may be less in danger of presenting it in any other. It is not expected that you will have occasion to make any positive use of them in relation to the councils of the French Republic, the Minister to which will be charged with that task. In relation to the Spanish Government, although the chief difficulty is not supposed to lie there, the President wishes you to cultivate a favorable disposition by every proper demonstration of the preference given by the United States to the neighborhood of that of every other nation. This may be the more important, as it is not improbable that her councils also may have been affected by rumors of proceedings in this country, connected with schemes of Great Britain for getting possession of New Orleans.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, Minister to France, dated

DEPARTMENT of STATE, *Sept.* 28, 1801.

You have been already informed of the intention of the President that your departure from France should be hastened, and that you would be furnished with a passage in the Boston frigate, which, after landing you at Bordeaux, is to proceed to the Mediterranean.

From different sources information has been received that, by some transaction concluded, or contemplated between France and Spain, the mouth of the Mississippi, with certain portions of adjacent territory, is to pass from the hands of the latter to the former nation. Such a change of our neighbors in that quarter is of too momentous

concern not to have engaged the most serious attention of the Executive. It was, accordingly, made one of the subjects of instruction to Mr. Charles Pinckney, our Minister Plenipotentiary to the Court of Spain. You will find an extract of the passage hereto annexed, No. 1. A paragraph connected with the same subject, in a letter to Mr. King, is also extracted and annexed, No. 2. In these extracts you will see the ideas entertained by the Executive, and the general considerations which, it is presumed, will have most tendency to dissuade the parties from adhering to their object. As soon as you shall have prepared the way by the necessary inquiries at Paris, it will be proper for you to break the subject to the French Government, and to make the use of these considerations most likely to give them their full weight. You will probably find it advantageous to press, in a particular manner, the anxiety of the United States to maintain harmony and confidence with the French Republic, the danger to which these will be exposed by collisions, more or less inseparable from a neighborhood under such circumstances, and the security which France ought to feel that it cannot be the interest of this country to favor any voluntary or compulsive transfer of the possessions in question from Spain to France.

Among other topics to be employed on the occasion, you may, perhaps, find it eligible to remark on the frequent recurrence of war between France and Great Britain, the danger to which the Western settlements of the United States would be subject, of being embroiled by military expeditions between Canada and Louisiana, the inquietudes which would be excited in the Southern States, whose numerous slaves have been taught to regard the French as the patrons of their cause, and the tendency of a French neighborhood, on this and other accounts, to inspire jealousies and apprehensions which may turn the thoughts of our citizens towards a closer connexion with her rival, and possibly produce a crisis in which a very valuable part of her dominions would be exposed to the joint operation of a naval and territorial power. Suggestions of these kinds must be managed with much delicacy; or rather the expediency of hazarding them at all, as well as the manner of doing it, must be left to your own information and discretion.

Should it be found that the cession from Spain to France has irrevocably taken place, or certainly will take place, sound policy will require, in that state of things, that nothing be said or done which will unnecessarily irritate our future neighbors, or check the liberality which they may be disposed to exercise in relation to the trade and navigation through the mouth of the Mississippi; everything being equally avoided, at the same time, which may compromit the rights of the United States beyond those stipulated in the treaty between them and Spain. It will be proper, on the contrary, to patronize the interests of our Western fellow-citizens, by cherishing in France every just and liberal disposition towards their commerce. In the next place, it will deserve to be tried whether France cannot be induced to make over to the United States the Floridas, if included in the cession to her from Spain, or at least West Florida, through which several of our rivers (particularly the important river Mobile) empty themselves into the sea. Such a proof, on the part of France, of good will toward the United States, would contribute to reconcile the latter to an arrangement in itself much disrelished by them, and to strengthen the returning friendship between the two countries; and by affording a fund for indemnifying and soothing our fellow-citizens who have suffered from her wrongs, would, in that view also, be a measure founded not less in an enlarged policy than in solid justice. The great importance of West Florida to the United States recommends to your patriotism the prudent use of every fair consideration which may favor the attainment of the object.

These ideas suppose that the cession to the United States is to be obtained from the single will of France. But it may happen that the Floridas are so far suspended, on unfinished negotiations between her and Spain, as to admit or require the concurrence of both in gratifying the wishes of the United States. In this state of things, France may yield to the considerations suggested with less of concession and reluctance; and as Spain, too, must feel an interest in the good will of the United States, and is responsible, in justice, for very considerable depredations on their commerce, there may be the greater possibility of her joining in the measure.

Should the Floridas neither have been ceded to France, nor be an acquisition contemplated by her, still it will be material, considering her intimate and influential relations to Spain, to dispose her to favor experiments on the part of the United States, for obtaining from Spain the cession in view. The interest which the latter has in cultivating our friendly dispositions, and the obligation she is under to satisfy our claims for spoliations, for doing which no other mode may be so convenient to her, are motives to which an appeal may be made with no inconsiderable force. Mr. Pinckney is accordingly to avail himself of the most auspicious occasions for sounding and exciting the dispositions of the Spanish Government on this subject; and your efforts at Paris cannot be too attentively combined with his at Madrid, as well on the last supposition that Spain alone is to make the cession, as on the former, that France is to have a direct share in the transaction. Mr. Pinckney's instructions will relate to each alternative, and you will be sensible of the advantages of such a correspondence between you as will give the proper concert to your operations.

Mr. King to the Secretary of State, dated

LONDON, *November* 20, 1801

SIR: If the annexed copy of the treaty between France and Spain, respecting the establishment of the Prince of Parma in Tuscany, be genuine, of which I have no reason to doubt, you will perceive the value which these Powers seem to have placed upon Louisiana; the cession whereof to France is confirmed by the seventh article of this treaty.

I am in hopes that I shall be able to obtain and send you a copy of the treaty ceding Louisiana to France: this would enable us to determine whether it includes New Orleans and the Floridas.

There is, doubtless, an understanding between England and France in respect to the expedition now nearly ready to proceed to Saint Domingo; and I think I am not mistaken in the belief, whatever may be the intentions of France in respect to the occupation of Louisiana, that no part of the forces now collecting, and which are going to Saint Domingo, will be employed for this purpose.

It is not a little extraordinary that during the whole negotiation between France and England not a word was mentioned on either side respecting Louisiana, though this Government was not ignorant of the views of France in this quarter.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING.

A Treaty signed at Madrid, the 21st of March, 1801, by the Prince of Peace and Lucien Bonaparte.

The First Consul of the French Republic and His Catholic Majesty, desiring to make a final determination of the estates which are to be given to the son of the Infant the Duke of Parma, and brother of the Queen of Spain, having duly empowered citizen Bonaparte and the Prince of Peace, have agreed upon the following articles:

ART. 1. The reigning Duke of Parma, for himself and his heirs, renounces forever the Duchy of Parma, with all its dependencies, in favor of the French Republic, and His Most Catholic Majesty gauranties this reconciliation. The Grand Duchy of Tuscany (renounced by the Grand Duke, and his reconciliation being guarantied by the Emperor of Germany) shall be possessed by the son of the Duke of Parma, in compensation for the estates ceded by the Infant, his father, in virtue of a treaty previously concluded between His Most Catholic Majesty and the First Consul of the French Republic.

ART. 2. The Prince of Parma shall proceed to Florence, where he will be acknowledged as the sovereign of all the domains appertaining to the Grand Duchy, and shall receive, in the most formal manner, from the constituted authorities of the country, the keys of the fortresses, and the oath of fealty, which will be due to him as sovereign. The First Consul will contribute all in his power to the pacific consummation of this act.

ART. 3. The Prince of Parma shall be recognised as the King of Tuscany, and shall be entitled to the honors due to royalty; and the First Consul shall cause him to be acknowledged and treated as King by other Powers; and this shall be done before taking possession.

ART. 4. That part of the Isle of Elba which appertains to Tuscany, shall be ceded to the French Republic; and, as an equivalent, the First Consul shall give to the King of Tuscany the principality of Piambin, which belonged to the King of Naples.

ART. 5. This treaty being in consequence of that already concluded between the First Consul and His Most Catholic Majesty, by which the King cedes to France the possession of Louisiana, the contracting parties agree to carry the said treaty into execution, and to arrange it in conformity to their respective rights.

ART. 6. The House which is about to be established in Tuscany being of the family of Spain, these States shall be considered as the property of Spain, and one of the infants of that family shall always reign there; and in case the succession of the King who takes possession shall fail, it shall be supplied by one of the sons of the reigning House of Spain.

ART. 7. The First Consul and His Most Catholic Majesty, in consideration of the reigning Duke of Parma, will concert in favor of his son a suitable indemnity in possession or in rents.

ART. 8. This treaty shall be ratified within the term of three weeks, or, in the case of failure, shall no longer be in force.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *Dec.* 10, 1801.

I found, from a variety of sources here, and some I think I can depend on, the business of Louisiana had been concluded, and it was understood it had been given in exchange for the Spanish port of St. Domingo, to be restored to its old master. Several circumstances concurred to induce me to believe this report was not void of truth. I, therefore, took the earliest opportunity to touch upon that subject with the Minister, and to hint at the reason of policy (as it respected the French Government, as well as ourselves) that made the object interesting to us. He seemed at first inclined to waive the subject; but when he found I pressed more closely, he admitted that it had been a subject of conservation, but nothing had been concluded, or even resolved on, in that affair. I left him with a hint that perhaps both France and Spain might find a mutual interest in ceding the Floridas to the United States.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *December* 12, 1801.

In addition to what I wrote yesterday, I have only to mention, that I am more and more confirmed, notwithstanding what I there say of the Minister's assurance, that Louisiana is a favorite object, and that they will be unwilling to part with it on the condition I mentioned. Speaking of the means of paying their debts to one of their Ministers, yesterday, I hinted at this. His answer was, "none but spendthrifts satisfy their debts by selling their lands;" adding, however, after a short pause, "but it is not ours to give."

Extract.—Mr. Livingston to Mr. King Minister to England.

PARIS, *Dec.* 30, 1801.

Among the objects that would most naturally engage my attention on my arrival, was the state of the negotiation between France and Spain, regarding Louisiana; with a view, if it had not been concluded on, to throw obstacles in the way, so far as it could be advantageously done; or, if it had been effected, to make some such arrangements as would lessen the inconveniences which might result from it to our Western territory. I have, however, reason to think the whole business had been settled before my arrival. I took occasion, on my first private audience of the Minister of Exterior Relations, to press him directly upon the subject, taking the common reports as a foundation for my inquiry. He explicitly denied that anything had been concluded, but admitted that it had been a subject of conversation. I know, however, from a variety of channels, that it is not a mere matter of conversation, but that the exchange has actually been agreed upon; that the armament destined, in the first instance, for Hispaniola, is to proceed to Louisiana, provided Toussaint makes no opposition. General Collot, whom you may have seen in America, was originally intended for Governor of the province, but he is, at present, out of favor. I think it probable the Minister will justify his concealment to me, by its not having been definitively closed with Spain, as this, though determined between the two Governments, may form an article in the general treaty. His absence (being at Lyons) prevents my coming to something more explicit with him. That Spain has made this cession, (which contravenes all her former maxims of policy,) cannot be doubted; but she is no longer a free agent.

I wish to know from you in what light this is seen by England. It will certainly, in its consequences, be extremely dangerous to her, as it will give an almost unbounded power to her rival.

It puts Spain in a perpetual state of pupilage, since she must always tremble for the safety of her colonies, in case of rupture. To avoid this evil, she must grant every commercial and political advantage to France. Her manufactures will find their way, through this channel, into every part of the Spanish territory, to the exclusion of those of Britain. Our Western territory may be rendered so dependent upon them as to promote their political views, while the interest they have always nurtured with the Indians, and the national character of the peasantry of Canada, may render the possessions of Britain very precarious, to say nothing of the danger which must threaten her islands in case a respectable establishment should be made by France in Louisiana, which will not fail to be the case, as the territory is uncommonly fine, and produces sugar, and every article now cultivated in the islands.

I suggest these hints, that they, with many others which may occur to you, may be made use of with the British Ministry, to induce them to throw all the obstacles in their power in the way of a final settlement of this business, if it is not already too late. You know, however, the importance of not appearing yourself, or permitting me to appear much opposed to it, if you find the thing concluded, since it might be made use of to embroil us with France, and Britain will have sufficient address to endeavor to keep up a mutual jealousy, if possible, between us.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *December* 31, 1801.

The business of Louisiana is very disagreeable to Spain, as far as I can learn. If it should be equally so to Britain, perhaps it may meet with some obstacles. It is a very favorite measure here. Marbois told me yesterday it was considered important to have an outlet for their turbulent spirits; yet would not explicitly acknowledge that the business had been concluded.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *Jan.* 13, 1802.

My former letters left you little doubt on the subject of the cession of Louisiana. By the enclosed copy of the late treaty between France and Spain, you will find that it is a transaction of pretty long standing.*

The absence of the Minister prevents my applying to him for the former treaty, which he will hardly know how to give me after absolutely denying that any had been formed on the subject. By the secrecy and duplicity practised relative to this object, it is clear to me that they apprehend some opposition, on the part of America, to their plans. I have, however, upon all occasions, declared that, as long as France conforms to the existing treaty between us and Spain, the Government of the United States does not consider herself as having any interest in opposing the exchange. The evil our country has suffered by their rupture with France is not to be calculated. We have become an object of jealousy both to the Government and people.

The reluctance we have shown to a renewal of the Treaty of 1778, has created many suspicions. Among other absurd ones, they believe seriously that we have an eye to the conquest of their islands. The business of Louisiana also originated in that; and they say expressly, that they could have no pretence, so far as related to the Floridas, to make this exchange, had the treaty been renewed, since by the sixth article they were expressly prohibited from touching the Floridas. I own I have always considered this article and the guaranty of our independence as more important to us than the guaranty of the islands was to France; and the sacrifices we have made, of an immense claim to get rid of it as a dead loss. We must calculate upon every effort from every maritime Power in Europe to diminish our commerce. France has already excluded us from her African colonies. Her premiums will exclude our oil; and her heavy duties upon tobacco in foreign bottoms will prevent our

* For this treaty see Mr. King's despatch of November 10, 1801, *ante*.

carrying that article for ourselves. She refuses to naturalize our ships; so that a large capital in that article will sink in our hands. The American Government have it in their power to counteract these measures; but they must do it instantly and decidedly, so as to show that measures of hostility to her commerce will not produce the effect contemplated by the nations of Europe. Let the United States impose a duty upon special articles, of her own produce, exported in foreign bottoms, equivalent to the difference of duty paid in Europe on such articles when imported in American or national vessels. This will secure to us the carriage of our own articles; first, because we can carry cheaper; and, second, because this duty being paid in advance imposes a greater burden than one that is paid out of the sale of the produce.

Extract.—Mr. King to the Secretary of State.

LONDON, *Jan.* 15, 1802.

SIR: I have before mentioned to you that the cession of Louisiana (of which it seems to me we can have no doubt, notwithstanding what may be said to amuse us) was not once a topic of inquiry or discussion in the negotiation of the preliminaries: and, for the same reason that it was not heard of on that occasion, Lord Hawkesbury has recently informed me that it had not been, and would not be, mentioned at Amiens. It is impossible for me to suspect collusion in this affair, and my persuasion, after the most careful attention, is, that England abstains from mixing herself in it, precisely from those considerations which have led her to acquiesce in others of great importance to the balance of Europe, as well as her own repose, and upon which she has been altogether silent.

RUFUS KING.

Extract.—Mr. King to the Secretary of State.

LONDON, *February* 5, 1802.

SIR: I have seen a letter, dated Paris, February 26, which says, it is definitively settled to send a colony to Louisiana and Florida. General Bernadotte is to have the direction and command of it: preparations are making for the first expedition, whose departure will perhaps depend upon the accounts expected from St. Domingo. It is asserted that the Indian nations, adjoining to Florida, have agents, now here, for the purpose of making treaties with this country to unite themselves with the troops and settlers that may be sent hence. The establishment of this colony is a darling object, and will be pursued with ardor and upon a great scale, unless the affairs of St Domingo shall, for the moment, derange the plan. Louisiana, Guiana, and the desert island of Tristan de Cunha, are each spoken of as places to which the rebellious and untractable negroes and people of color may be sent from St. Domingo and the other French colonies.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *February* 26, 1802.

On the subject of Louisiana, I have nothing new. The establishment is disapproved by every statesman here as one that will occasion a great waste of men and money, excite enmities with us, and produce no possible advantage to the nation. But it is a scheme to which the First Consul is extremely attached; and it must, of course, be supported. You will find, by the enclosed note, that I have pressed an explanation on the subject, but I have received no answer. I have it, however, through a friend, from the First Consul, that it is by no means their intention to obstruct the navigation of the Mississippi, or violate our Treaty with Spain. General Bernadotte is understood to be designed for the command, and to have asked ten thousand troops.

Mr. Livingston to the Minister of Exterior Relations, dated

PARIS, *Feb.* 20, 1802.

The undersigned, Minister Plenipotentiary of the United States, has seen, with some concern, the reserve of the French Government, with respect to the cession they have received from Spain of Louisiana.

He had hoped that they would have found a propriety in making such frank and open communications to him as would have enabled him to satisfy the Government of the United States that neither their boundary, nor the navigation of the Mississippi, secured by their treaties with Spain, would be, in any way, affected by the measure. It would also have been very satisfactory to him to have taken such arrangements with the Minister of Exterior Relations as would have had a tendency to dissipate the alarms the people of the Western territory of the United States will not fail to feel on the arrival of a large body of French troops in their vicinity; alarms which will probably be increased by the exertions of those Powers that are interested in keeping the two Republics from cementing their connexion. The policy of the former Government of France led it to avoid all ground of controversy with the United States, not only by declining to possess any territory in their neighborhood, but by stipulating never to hold any. The undersigned does not, by this reference to the sixth article of the Treaty of 1778, mean to reclaim any rights under it, since, by the convention of Paris, 30th September, 1800, it is understood to be revoked; but merely to lead the French Government to reflect how far a regard to the same policy might render it conducive to the mutual interest of both nations to cover, by a natural barrier, their possessions in America, as France has invariably sought to do in Europe.

The undersigned prays the Minister of Exterior Relations (if the request is not inconsistent with the views of the Government) to inform him whether East and West Florida, or either of them, are included in the treaty made between France and Spain; and to afford him such assurances, with respect to the limits of their territory and the naviga-

tion of the Mississippi, heretofore agreed on between Spain and the United States, as may prove satisfactory to the latter.

If the territories of East and West Florida should be included within the limits of the cession obtained by France, the undersigned desires to be informed how far it would be practicable to make such arrangements between their respective Governments as would, at the same time, aid the financial operations of France, and remove, by a strong natural boundary, all future causes of discontent between her and the United States. The undersigned embraces this opportunity of renewing to the Minister of Exterior Relations his, &c., &c.

Extract.—Mr. King to the Secretary of State.

LONDON, *Feb.* 27, 1802.

SIR: From all I can gather upon the subject, we may consider the cession of Louisiana and the Floridas as an affair decided. Without doubt, you are fully aware of its various and extensive consequences. Has it occurred to you that the French Government will probably send thither a large body of people from France, and that it may add to them all the refractory and discontented blacks and persons of color of their West India colonies? With perfect respect and esteem, &c.

RUFUS KING.

Mr. Livingston to the Secretary of State.

PARIS, *March* 15, 1802.

SIR: After closing my packet, I received the note of which the within is a copy. It amounts to nothing, but must serve to keep me quiet a few days longer, till they see what turn the business takes at Amiens, which becomes more and more doubtful. The bad news from St. Domingo also renders it necessary to keep us in suspense. I have already expressed my fear that American property in the island will not be very safe; and the passage in Le Clerc's letter relative to the powder and arms may serve as an apology,

I am, sir, &c. R. R. L.

PARIS, *March* 13, *year* 10.

SIR: I have received the different notes which you have done me the honor to address to me, relating to the debts, and to the American captures; and I have made them the subject of a report to the First Consul. As soon as his decision shall be made, I shall hasten to inform you of the result.

Do you doubt, sir, that the questions which concern the United States, the determination of which may affect their relations with France, will be examined with equal interest and attention?

Accept, sir, the assurances of my high consideration. CH. MAU. TALLEYRAND.

Extract.—James Madison, Secretary of State, to R. R. Livingston, Minister to France, dated.

DEPARTMENT OF STATE, *March*, 16, 1802.

The subject of your letter to Mr. King, of the 30th of December, is regarded by the President as not less delicate than you have supposed. Considering the particular views which Great Britain may mingle with ours, and the danger that a confidential resort to her may be abused, for the purpose of sowing jealousies in France, and thereby thwart our object, you and Mr. King will both be sensible that too much circumspection cannot be employed.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *March* 24, 1802.

On the business of Louisiana they have, as yet, not thought it proper to give me any explanations, though I have omitted no opportunity to press the subject in conversation, and ultimately, by the note sent you on the 25th of February, (a duplicate of which was forwarded on the 28th) with the copy of another note enforcing the above, to which I have, as yet, received no answer.

The fact is, they believe us to be certainly hostile to this measure, and they mean to take possession of it as early as possible, and with as little notice to us as they can.

They are made to believe this is one of the most fertile and important countries in the world; that they have a much greater interest with the Indians than any other people; that New Orleans must command the trade of our whole Western country; and, of course, that they will have a leading interest in its politics. It is a darling object with the First Consul, who sees in it a mean to gratify his friends, and to dispose of his armies. There is a man here, who calls himself a Frenchman, by the name of Francis Tatergem, who pretends to have great interest with the Creek nations. He has been advanced to the rank of a General of Division. He persuades them that the Indians are extremely attached to France, and hate the Americans; that they can raise twenty thousand warriors; that the country is a paradise, &c. I believe him to be a mere adventurer; but he is listened to, and was first taken up by the old Directors.

I cannot help thinking that it would be advisable for the present Congress to take measures for establishing the Natchez, or some other port, and giving it such advantages as would bring our vessels to it, without touching at Orleans. On this subject, however, you will form a better judgment than I can. I have but one hope left as to defeating this cession: it consists in alarming Spain and England. The Spanish Minister is now absent; but I have not failed to show, in the strongest light, to the Minister of Britain, the danger that will result to them from the extension of the French possessions into Mexico, and the probable loss of Canada, if they are suffered to possess it.

I have requested Mr. King to press this subject, also, as opportunity offers. I enclose a copy of my last letter to him. If the treaty does not close soon, I think it would be advisable for us to meet at Amiens, and have accordingly proposed it to him.

I believe, such is the state of things here, and such the desire for peace, that Britain may force them to relinquish Louisiana; particularly as the people here are far from desiring the establishment of any foreign colony which they consider as a weak point, and drain for the population and wealth.

Extract.—Mr. Livingston to Mr. King, Minister at London.

PARIS, *March* 10, 1802.

If Louisiana goes into the hands of France, without any explanations on the part of her Government to us, (and this I have not yet been able to bring it to, though I have pointedly pressed it, both verbally and by note,) on the subject either of her boundary or the navigation of the Mississippi, it is impossible to see the extent of the power she will have in and over America. As part of the territory of Spain, Louisiana has no precise boundary; so that it is easy to foresee the fate of Mexico, especially when it is considered that General Bernadotte, who is marked for this expedition, has demanded, it is said, a large body of men. Britain will judge how far she is able to contend with France, enriched by the treasures of Spain. The boundary between Canada and Louisiana is alike unsettled. The dispositions of a great part of the natives of that country are friendly to France; her influence over the Indian tribes has always been, and will again be, much greater than that of the British, both from the disposition and manners of her people, and from the whole body of carriers in the Indian trade being native Canadians, and much the greater part of them mongrel French. It is impossible to say what their influence may be upon our Western country, in case of a controversy with Great Britain, particularly if they keep the keys of it by possessing the mouth of the Mississippi, or invite their aid in the plunder of Mexico. That the possession of that country, aided by the power of France in Europe, will draw after it that of all the islands, is easily foreseen. I mention these circumstances to you (though I know they could hardly escape you) as hints that you may use with advantage to introduce this business at Amiens. You well know how to give them additional weight. Nor is the right of Britain to interfere unfounded. By the sixth article of the treaty with us, of 1778, they absolutely renounce all right to take, under any circumstances, any part of the country possessed then or before by Great Britain on that continent. Though we have relinquished all advantages deducible from that treaty, yet, so far as other nations were interested in it, at the close of the last war, they have a right to enforce it. And surely it was a very important guaranty to Britain of her colonies; and it might, for aught we know, have had great influence upon the terms of the then peace.

Extract.—James Madison, Secretary of State to Mr. Pinckney, dated

DEPARTMENT OF STATE, *March* 30, 1802.

We are anxious to hear from you on the several subjects with which you have been charged; particularly on that of Louisiana. By a treaty entered into between Spain and France, in March 1801, and lately published in the Paris newspapers, it appears that in an antecedent treaty the cession of that country had been stipulated by Spain. Still it is possible that the cession may have been since annulled; and that such was, or was to be the case, has been stated in verbal accounts from Madrid. At Paris, Mr. Livingston has been given to understand, by the French Government, that the cession had never been more than a subject of conversation between the two Governments. No information, however, has been received from him subsequent to the publication of the Treaty of March, 1801, which must have led to some more decisive explanations.

The copies herewith enclosed of a memorial of sundry inhabitants living on waters running from the United States through Florida into the Gulf of Mexico, and of a letter from the late Mr. Hunter, representative in Congress of the Mississippi Territory, will present to your attention a subject of some importance at this time, and of very great importance in a future view. The Treaty with Spain having, as these documents observe, omitted to provide for the use of the Mobile, Chatahoochee, and other rivers running from our territory through that of Spain, by the citizens of the United States, in like manner with the use of the Mississippi, it will be proper to make early efforts to supply the defect. Should a cession, indeed, including the Spanish territory eastward of the Mississippi, have finally taken place, it can answer no purpose to seek from the Spanish Government this supplemental arrangement. On a contrary supposition, you will avail yourself of the most favorable moment and manner of calling its attention to the object. In support of our claim you will be able to use the arguments which enforced that to the navigation of the Mississippi. If it should be observed that a greater proportion of these rivers than of the Mississippi run through the exclusive territory of Spain, it may be a set-off that the upper parts of the rivers run, exclusively, through the territory of the United States, and do not merely divide it, like the Mississippi, from that of Spain. But neither the one nor the other circumstance can essentially affect our natural rights. Should the Spanish Government be favorably disposed, it will be proper for you to pave the way for a formal convention on the subject, endeavoring to obtain, in the mean time, such regulations from its authority, and such instructions to its officers, as will answer the purposes of our citizens. Among other hardships, of which they now complain, and for which a regulation is particulary wanted, one I understand, is, that the article, cotton, which is acquiring rapid importance in that quarter, must, after it has been conveyed to Mobile, be shipped to New Orleans, and pay a duty of about twelve and a half per cent. before it can be exported.

Extracts.—Mr. Livingston to the Secretary of State.

PARIS, *April* 24, 1802.

The business most interesting to us, that of Louisiana, still remains in the state it was. The

Minister will give no answer to any inquiries I make on that subject. He will not say what their boundaries are, what are their intentions, and when they are to take possession. And what appears very extraordinary to me, is, that by a letter I have just received from Mr. Pinckney, I find that he still supposes that the Floridas are not included in the cession: and he writes me that he has made a proposition to purchase them, which lies before the Minister, with whom he is to have a conference on the subject. You may, however, be fully assured that the Floridas are given to France; that they are, at this moment, fitting out an armament from here to take possession. This will be commanded by General Bernadotte. The number of troops designed for this object is between five and seven thousand. They will shortly sail for New Orleans, unless the state of affairs in St. Domingo should change their destination. You may act upon this information with absolute certainty, since I have no doubts of the channel through which I have received it. It would be wise immediately to take measures to enable the Natchez to rival Orleans. I have suggested the means: and I hope they will not be neglected by the Congress now sitting. That you may judge of the light in which this country is viewed by some here, I send you the extract of a paper that now lies before the Minister. If Congress make the Natchez a free port, and if the state of affairs in St. Domingo should employ the troops designed for Louisiana, time will still be left for gold to operate here. But it must be plentifully and liberally bestowed, not barely in the assumption of debts, but in active capital, afforded in supplies, to aid their armaments in the islands. Give me your instructions as to the utmost amount, if, as you will be better able to judge than I can, the affairs of St. Domingo are likely to be protracted.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, dated

DEPARTMENT OF STATE.
Washington, May 1, 1802.

The conduct of the French Government, in paying so little attention to its obligations under the treaty; in neglecting its debts to our citizens; in giving no answers to your complaints and expostulations, which you say is the case with those of other foreign Ministers also; and particularly in its reserve as to Louisiana, which tacitly contradicts the language first held to you by the Minister of Foreign Relations—gives tokens as little auspicious to the true interests of France herself, as to the rights and just objects of the United States.

The cession of Louisiana to France becomes daily more and more a source of painful apprehensions. Notwithstanding the Treaty of March, 1801, and notwithstanding the general belief in France on the subject, and the accounts from St. Domingo that part of the armament sent to that island was eventually destined for Louisiana, a hope was still drawn, from your early conversations with M. Talleyrand, that the French Government did not mean to pursue the object. Since the receipt of your last communications, no hope remains, but, from the accumulating difficulties of going through with the undertaking, and from the conviction you may be able to impress, that it must have an instant and powerful effect in changing the relations between France and the United States. The change is obvious: and the more it can be developed in candid and friendly appeals to the reflections of the French Government, the more it will urge it to revise and abandon the project. A mere *neighborhood* could not be friendly to the harmony which both countries have so much an interest in cherishing; but if a possession of the mouth of the Mississippi is to be added to other causes of discord, the worst events are to be apprehended. You will consequently spare no efforts, that will consist with prudence and dignity, to lead the councils of France to proper views of this subject, and to an abandonment of her present purpose. You will also pursue, by prudent means, the inquiry into the extent of the cession—particularly whether it includes the Floridas as well as New Orleans—and endeavor to ascertain the price at which these, if included in the cession, would be yielded to the United States. I cannot, in the present state of things, be more particular on this head than to observe that, in every view, it would be a most precious acquisition, and that, as far as the terms could be satisfied by charging on the acquisition itself the restitutions and other debts to American citizens, great liberality would doubtless be indulged by this Government. The President wishes you to devote every attention to this object, and to be frequent and particular in your communications relating to it.

Extract.—James Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, *May* 1, 1802.

We are fully aware of the tendency of the reported cession of Louisiana to plant in our neighborhood troubles of different kinds, and to prepare the way for very serious events. It has accordingly been a primary object with the President to obviate such an event.

Mr. King to the Secretary of State.

LONDON, *May* 7, 1802.

SIR: Among the few great principles of national policy worthy of fixing the attention of our statesmen, I am willing to hope there is not one concerning which there is greater unanimity, in opinion, than in that which enjoins upon us all to do our utmost in every way, and upon all occasions, to maintain and perpetuate the union of our country.

With this persuasion, though the subject may not be thought to be included among the duties of my mission, I have not been able to remain inattentive or indifferent to the cession of Louisiana and the Floridas to France, because I have viewed it as a measure calculated and possibly intended to weaken and divide us. I have already communicated to you what passed between me and the Ministers of this country in relation to this cession, during the negotiation of peace: but, as these communications were merely verbal, and as it appeared to me to be of some importance that they should be distinctly and formally confirmed, as well as that we should be ascertained of the sentiments of this Government in respect to this cession, I prepared and sent to Lord Hawkesbury a confidential letter upon the subject, a copy whereof, together with a copy of his answer, is annexed. I will only add that I have reason to be satisfied that the cession of Louisiana and the Floridas is considered by all the late Ministry, as well as by all other men of influence in this country, as a measure of the greatest consequence, and which must have an unavoidable influence upon the duration of peace.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Mr. King to Lord Hawkesbury.

LONDON, *April* 21, 1802.

MY LORD: By the Treaty of Alliance concluded at Paris, in 1778, between the United States of America and France, the latter renounced forever the possession of every part of the continent of America, lying to the east of the course of the river Mississippi. This renunciation, confirming that which had been previously made in the Treaty of 1763, between Great Britain and France, authorized the expectation that France, content with her widely-spread dominions, would abstain from seeking an extension of them in this part of the American continent; an expectation that appeared the more reasonable, inasmuch as the motives to such extension could not be satisfactorily reconciled with a just regard to the rights and security of those Powers between which this portion of America is divided, and by which the same is at present possessed.

Contrary, nevertheless, to expectations which have been entertained on this subject, if credit be due to uniform and uncontradicted reports, the Government of France has prevailed upon His Catholic Majesty to cede to France both the provinces of Louisiana and the Floridas, and, having thus acquired a station at the mouth, and on the sides of the Mississippi, may be inclined to interfere with and interrupt the open navigation of the same.

By the Treaty of Peace concluded at Paris, in 1783, between the United States of America and Great Britain, it is mutually stipulated, that "the navigation of the river Mississippi, from its source to the ocean, shall forever remain free and open to the subjects of Great Britain and the citizens of the United States." Without enlarging upon the great and peculiar importance of this navigation to the United States, a large and increasing proportion of whose people can conveniently communicate with each other, and with foreign countries, by no other route, I take the liberty, through your Lordship, to request that the British Government will, in confidence, explain itself upon this subject, and especially that it will explicitly declare whether any communication has been received by it from the Government of France or Spain respecting the said cession; or whether His Britannic Majesty has, in any manner, acquiesced in or sanctioned the same, so as to impair or affect the stipulation above referred to, concerning the free navigation of the Mississippi; in a word, I entreat your Lordship to open yourself on this occasion with that freedom which, in matters of weighty concern, is due from one friendly nation to another, and which, in the present instance, will have the effect to do away all those misconceptions that may otherwise prevail in respect to the privity of Great Britain to the cession in question.

With the highest consideration, I have the honor to be,

RUFUS KING.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *May* 7, 1802.

SIR: I have the honor to acknowledge the receipt of your letter of the 21st ultimo.

It is impossible that so important an event as the cession of Louisiana by Spain to France should be regarded by the King in any other light than as highly interesting to His Majesty, and to the United States; and should render it more necessary than ever that there should subsist between the two Governments that spirit of confidence which is become so essential to the security of their respective territories and possessions.

With regard to the free navigation of the Mississippi, I conceive that it is perfectly clear, according to the law of nations, that, in the event of the District of Louisiana being ceded to France, that country would come into possession of it subject to all the engagements which appertained to it at the time of cession; and that the French Government could, consequently, allege no colorable pretext for excluding His Majesty's subjects, or the citizens of the United States, from the navigation of the river Mississippi.

With regard to the second question in your letter, I can have no difficulty in informing you that no communication whatever has been received by His Majesty from the Government of France or Spain, relative to any convention or treaty for the cession of Louisiana or the Floridas; and I can, at the same time, most truly assure you that His Majesty has not in any manner, directly or indirectly, acquiesced in or sanctioned this cession.

In making this communication to you, for the information of the Government of the United States, I think it right to acquaint you that His Majesty will be anxious to learn their sentiments on every part of this subject, and the line of policy which they will be inclined to adopt in the event of this arrangement being carried into effect.

I have the honor to be,
With great respect, sir,
Your most obedient, humble servant,

HAWKESBURY.

James Madison, Secretary of State, to Charles Pinckney, Minister of Spain, dated

DEPARTMENT OF STATE.
May 11, 1802.

We are still without a line from you since your arrival at Madrid, and feel an increasing solicitude to hear from you on the subject of Louisiana. The latest information from Paris has confirmed the fact that it was ceded by a treaty prior to that of March, 1801; and, notwithstanding the virtual denial of the cession in the early conversations between Mr. Livingston and the Minister of Foreign Relations, a refusal of any explanations at present seems to admit that the cession has taken place. Still there are chances of obtaining a reversal of the transaction. The repugnance of the United States to it is, and will be, pressed in a manner that cannot be without some effect: it is known that most of the French statesmen best informed on the subject, disapproved of it; the pecuniary difficulties of the French Government must, also, be felt as a check; whilst the prospect of a protracted and expensive war in St. Domingo, must form a very powerful obstacle to the execution of the project. The councils of England appear to have been torpid on this occasion. Whether it proceeded from an unwillingness to risk a fresh altercation with France, or from a hope that such a neighborhood between France and the United States would lead to collisions which might be turned to her advantage, is more than I can decide. The latter consideration might justly have great weight with her; but as her eyes may be more readily turned to the immediate and certain purposes to be answered to her rival, it is to be presumed that the policy of England will contribute to thwart the acquisition. What the intentions of Spain may be, we wait to learn from you. Verbal information from inofficial sources, has led us to infer that she disowns the instrument of cession, and will rigorously oppose it. Should the cession actually fail from this, or any other cause, and Spain retain New Orleans and the Floridas, I repeat to you the wish of the President, that every effort and address be employed to obtain the arrangement by which the territory on the east side of the Mississippi, including New Orleans, may be ceded to the United States, and the Mississippi made a common boundary, with a common use of its navigation for them and Spain. The inducements to be held out to Spain were intimated in your original instructions on this point. I am charged by the President now to add, that you may not only receive and transmit a proposition of guaranty of her territory beyond the Mississippi, as a condition of her ceding to the United States the territory, including New Orleans, on this side, but, in case it be necessary, may make the proposition yourself, in the forms required by our Constitution. You will infer from this enlargement of your authority, how much importance is attached to the object in question, as securing a precious acquisition to the United States, as well as a natural and quiet boundary with Spain; and will derive from this consideration additional motives to discharge, with a prudent zeal, the task committed to you.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *May* 20, 1802.

The same conduct was held [by the Minister of Exterior Relations] with respect to Louisiana. He would not acknowledge that the Government had yet formed any specific plan with respect to it, or that any troops were going out; but assured me, in general terms, that nothing should be done that should give us any just ground of complaint; on the contrary, their vicinity would promote our friendship.

I will not trouble you with the answers that obviously presented to this reasoning. It terminated, however, as all my conversations on this subject have done, in nothing.

I shall wait a few days in hopes of hearing from you, after having received a copy of my first note, when I shall act agreeably to your instructions, or, if you afford me none, send in a second, in which I shall press for a communication of the treaty with Spain, which, however, I am in hopes you may receive through Mr. Pinckney.

I believe that, for the present, the armament designed for Louisiana will be sent to Hispaniola, about which, I find, that much anxiety is entertained here.

Mr. Livingston to the Secretary of State.

PARIS, *May* 28, 1802.

SIR: Since my last I have acquired information which I can depend on, relative to the intentions of this Government with respect to Louisiana. Bernadotte is, as I told you, to command: Collot, second in command. Adet is to be Prefect: but the expedition is delayed till about September, on account (as Talleyrand expressed himself to Bernadotte) of some difficulty which he did not explain; but which, I have no doubt, has arisen from the different apprehensions of France and Spain relative to the meaning of the term Louisiana, which has been understood by France to include the Floridas, but probably by Spain to have been confined to the strict meaning of the term. This explains why I could never get an answer to my questions relative to the extent of the cessions; and upon which the French Government had probably no doubt till we started it. Believing, if this conjecture as to the cause of the delay of the expedition was right, that no time should be lost in throwing obstructions in the way of its conclusion, I wrote the note of which the enclosed is a copy, with the double purpose of alarming Spain, and furnishing with arguments, arising from the good faith they owed us, against giving their cession the construction France would wish. I consider this as the more important, because I believe that every negotiation for this object will be carried on here. I shall, however, give the earliest and fullest information I can on this subject to Mr. Pinckney, who will enforce at Madrid the arguments I may use here to excite the alarm of the Court of Spain.

I wait impatiently some further instructions from you; those I have, in some sort prohibiting such measures as may show any dissatisfaction on the subject, of which, however, I doubt the policy. The subject is so interesting as to induce us to risk something to defeat it.

If I do not hear from you soon, I shall present a pointed memorial to this Government, stating fully and candidly our objections to their taking possession of the Floridas, and demanding security for the rights we had originally, and by treaty with Spain.

I am, sir, &c. R. R. L.

Mr. Livingston, Minister Plenipotentiary of the United States, to his Excellency Chevalier d'Azara, Ambassador of His Catholic Majesty.

PARIS, *May* 28, 1802.

SIR: The powerful interests that our respective Governments have, that the sincerest friendship and harmony should subsist between their territories in America, naturally leads to mutual confidence between their Ministers, and a full exposition of their sentiments upon subjects which may have a tendency to interrupt that union. I think it my duty, therefore, to open myself to you with freedom on one which is very important as it regards the good faith which, I trust, both your Government and mine will consider as the first of obligations, as it respects the great territorial interests of both Spain and the United States; and I flatter myself, sir, that with these objects in view, I shall meet with equal frankness and confidence on your part. It is generally understood that Spain has made a cession of Louisiana to France; and it might have been expected, considering the situation of this territory, and the friendly connexion between both countries and the United States, that a communication would have been made of this treaty to their Government. Passing over this circumstance, probably owing rather to inattention than to a want of confidence, I proceed to make some observations on the treaty now in force between the Court of Madrid and the United States, and to inquire how far Spain has provided for the stipulations contained in that treaty, and secured thereby to the United States. The boundary between our respective Governments having been established, it is not to be doubted that the cession has confined itself to the same limits. But, sir, by the fourth article of that treaty, it is agreed that the mid-channel of the Mississippi, where it divides the territories of Spain from those of the United States, shall be the boundary, and that the navigation of this river shall be confined to the subjects of Spain and the citizens of the United States, unless it shall be extended to others by special convention. I am solicitous to know, sir, in what manner the rights of the citizens of the United States in this river are preserved by the terms of the cession. Where the river runs wholly within the territory of Spain, the United States have, by the treaty, a qualified right of navigation of which they cannot be divested. They have also the assurance of Spain that no other nation shall share this right unless by convention; by which I understand that Spain binds herself not to grant this right without some previous agreement on the subject with the United States: and this is rendered more evident from the words of the article not being confined to the river below the thirty-first degree of north latitude, but extending to the whole of the Mississippi, as well above as below: whereas, half the river above that boundary belonging to the United States, it could not have been intended that either of the contracting parties should have a right to grant, without the consent of the other, a right that was held in common. The word convention must, therefore, be intended to mean a convention between Spain and the United States; nor can any cession of the territory carry with it a right to admit other Powers to a participation of the advantages of the navigation of the Mississippi, unless by convention previously entered into between His Catholic Majesty and the United States. It is to be presumed that, in the cession which Spain has made, the Floridas are not included, because of the evident interest that she has in retaining them as a security for her territories in South America, if unfortunate events should hereafter produce a rupture between France and Spain. In this case, the Floridas, by lying in the rear of the French colonies, would serve as an effectual check as well to them as to those turbulent spirits in the adjoining States who might, in spite of the efforts of their Government, incline to associate in the enterprises of France. Upon this subject, sir, however, I pray to have more explicit information, because you will observe that, by the existing treaty between our respective nations, there are special stipulations mutually agreed upon, and which the United States have a right to expect some security for, in any cession that Spain may make of that country. By the fifth article it is agreed that Spain will restrain by force all hostilities on the part of the Indian nations living within their boundary, either on the citizens of the United States, or the Indians within their territory, &c. You will easily see, sir, that as this is a national obligation, it may be doubtful whether it will pass with the territory, and yet is of such a nature as to entitle the United States to look for its performance from the good faith of Spain, who cannot, without the consent of the United States, place herself in a situation to render it of no effect. By the twenty-second article of the same treaty, Spain stipulates to permit the citizens of the United States to deposit their goods at New Orleans, and to export from thence free of duty; or, in case of withdrawing this permission, to assign them an establishment for this purpose on another part of the banks of the Mississippi. I take the liberty to ask, sir, (if the Floridas are included in the cession to France,) what stipulations the cession contains insuring to the United States this important privilege, which they considered themselves entitled to by the best of all guaranties, the good faith of His Catholic Majesty? You will easily see, sir, that if a naked cession has been made to France, without attention to these

articles, how much reason the United States will have to complain of the measure: and I trust, sir, that you will see the propriety of their forming one of the parties to any treaty in which their rights may be so materially affected. I know, sir, that observations might, and I doubt not will be made officially to your Court by the Minister of the United States at Madrid: but, in the mean time, sir, as it is my intention to address myself upon this subject to the Government of France, I wish to receive from you every information which might throw light upon the subject, and the rather as knowing the confidence that His Catholic Majesty reposed in your talents and patriotism; and seeing, at the same time, that in everything that related to this object our respective nations had a joint interest. I have believed that you will receive with pleasure this unofficial note as a mark of my confidence, and afford me your aid in giving efficacy to a treaty which has served as the basis of friendship between our respective nations.

R. R. L.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *June* 8, 1802.

Enclosed is the answer of the Spanish Ambassador to my letter, a copy of which was forwarded on the 28th ult. It accords with the conclusions I drew from the delay of the expedition, and the conduct of the Minister for Exterior Relations. I have had a conversation with Collot and Adet, separately. I find, that though they both consider their going in official characters to Louisiana as settled, yet that they have neither seen the treaty, nor know precisely the boundary of the territory acquired. Pensacola and Mobile, they say, are expressly given: as to the rest, or whether it includes West Florida, they cannot say. That France intended that it should, I have no doubt; and I still think it probable that she will make it yield to her intentions: for in Europe she does what she will, and it will require firmness and exertion to prevent her doing so in America.

The Chevalier d'Azara, Ambassador of His Catholic Majesty, near the French Republic, to Mr. Livingston, Minister Plenipotentiary of the United States.

PARIS, *June* 2, 1802.

SIR: I pray you to excuse my not having been able to see you when you were so good as to call at my dwelling; the ill state of my health for the last ten days has deprived me of that honor.

I return you thanks for the frankness disclosed in your unofficial note of the 28th May; and, in adopting the same friendship and equal frankness, I have the honor to inform you that the affair concerning which you have addressed me, not having passed through my hands, I am unable to give you all the information which you have desired. It appears certain, however, that a treaty ceding Louisiana has been concluded; but I am of opinion that the Floridas are not comprised in the cession.

As the Minister of the United States at Madrid will be required, (agreeably to what you have had the goodness to inform me,) to demand explanation of my Court concerning the treaty in question, your Government will receive, through him, all the information which may be proper. Nevertheless, I will write to my Court, and will not fail to communicate all that I may learn, for the purpose, as far as depends on me, of removing your doubts and dispelling your inquietude.

J. NICOLAY D'AZARA.

Extract.—James Madison, Secretary of State, to Rufus King, Minister to England, dated

DEPARTMENT OF STATE, *July* 23, 1802.

The subject of your letter of May 7th, namely, your correspondence with Lord Hawkesbury on the cession of Louisiana and the Floridas to France will receive from the President all the consideration which its great importance demands; and as soon as an answer can be founded on the result of his reflections, no time will be lost in transmitting it.

Extract.—James Madison, Secretary of State, to C. Pinckney, Minister to Spain, dated

DEPARTMENT OF STATE, *July* 26, 1802.

The last information from Paris renders it certain that the cession of Louisiana to France has actually been concluded, and that the cession comprehends the two Floridas. In this state of the business, it seems unnecessary to decide on the price which Spain might be led to expect for a cession of the Floridas, including New Orleans, to the United States; and the more so, as it would be of use for us previously to know the value she places on the guaranty proposed in my letter to you of the 25th of September last. For the present, the cession wished by the United States must be an object of negotiation with the French Government. It will, notwithstanding, continue to be proper for you to cultivate the good dispositions of Spain in relation to it, both as they may not be entirely disregarded by France, and as, in the turn of events, Spain may possibly be extricated from her engagements to France, and again have the disposal of the territories in question.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *July* 30, 1802.

I have received your despatches and the President's by M. Dupont de Nemours. I shall reply more particularly to them at the next opportunity, as I am now very much engaged in preparing a lengthy memoir on the subject of the mutual interest of France and the United States, relative to Louisiana, by which I hope to convince them that, both in a commercial and political view, the possession of it would be disadvantageous to France. In my last, I hinted to you my suspicions that France and Spain did not understand each other on the subject of Louisiana, and communicated to you my letters to the Spanish Ambassador, calculated to sound this business, and

interpose some difficulties to its execution. His answer confirmed my opinion. I have since received, verbally, his explicit assurance that the Floridas are not included in the cession; and I have been applied to, by one of the Ministers here, to know what we understand, in America, by Louisiana. You can easily conceive my answer. I have just received a letter from Mr. Graham, in which he communicates the Spanish Minister's answer to Mr. Pinckney's application upon the same subject, in these words: "If the King should think proper to cede Louisiana, he will take care that the interest of the United States shall not be affected by it." It appears, also, by the fifth article of the Treaty of Madrid, March 21st, 1801, that the cession had been made of Louisiana generally. The French, you know, have always extended it to South Carolina and all the country on the Ohio. Since the possession of the Floridas by Britain, and the Treaty of 1763, I think there can be no doubt as to the precise meaning of the terms.

I find a certain degree of *raideur* in the Spanish Ambassador, on that subject, which it will be our interest to cherish at the Court of Spain, unless we should have a prospect of purchasing the Floridas. In the present state of things, until the point is settled, I think it probable the expedition to Louisiana will be postponed. In the meantime, all that can be done here will be to endeavor to obtain a cession of New Orleans, either by purchase, or by offering to make it a port of entry to France, on such terms as shall promise advantages to her commerce, and give her hopes of introducing her manufactures and wines into our Western country. An arrangement of this sort, if they listen to it, would certainly be beneficial to both countries, and only hurtful to Britain. If to this we could add a stipulation that she shall never possess the Floridas, but, on the contrary, in case of a rupture with Spain, and a conquest of them, cede them to us, our affairs in that quarter would stand as well as I would wish; and the colonies that France might attempt to establish on the west side of the Mississippi would be too feeble to injure us.

I find them very anxious to have the ports of Pensacola and St. Augustine, as they dread our having the command of the Gulf. I confess this appears to me no very important object; and if they would be content with these, and give us West Florida and New Orleans, even at a large price, we should not hesitate. I am sorry that you have not communicated to me what are precisely the utmost limits of the sum I may venture to offer in cash, or in our own demands. As the Minister has been absent some time, and has but just returned, I cannot state precisely to you what we may hope on this subject; but be persuaded that I am fully impressed with the importance of the subject, and that nothing will be left undone which I can do to effectuate your wishes. I saw him last night, and was very cordially received. His health is so much mended by the waters, that I hope he will be able to go through business more speedily than he has done.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *August* 10, 1802.

Our own affairs have advanced but little, since the whole attention of those in power are turned to objects nearer home. I have had several conferences on the subject of Louisiana, but can get nothing more from them than I have already communicated. I have thought it best, by conversation and by writing, to pave the way, prior to any direct application, till I know better to what object to point. For this purpose, I have written the enclosed essay, which I have had translated, and struck off twenty copies; I have just got them finished; I have placed some of them in such hands as I think will best serve our purposes. Talleyrand has promised me to give it an attentive perusal; after which, when I find how it works, I will come forward with some proposition. I am very much, however, at a loss, as to what terms you would consider it as allowable to offer, if they can be brought to a sale of the Floridas, either with or without New Orleans: which last place will be of little consequence, if we possess the Floridas, because a much better passage may be formed on the east side of the river. I may, perhaps, carry my estimate of them too high; but when I consider, first, the expense it will save us in guards and garrisons, the risk of war, the value of duties, and what may be raised by the sale of lands, I should think them a cheap purchase. I trust, however, that you will give me some directions on this head, and not leave the responsibility of offering too much or too little, entirely at my door. I speak, in all this business, as if the affair of the Floridas was arranged with Spain; which, I believe, is not yet the case. But I took occasion to touch on the subject, three days ago, with the Spanish Ambassador, with whom I was dining, and think he appeared to have somewhat relaxed on that ground, but would say nothing decisive; nor were the time and place proper to press him.

[Memoir, referred to in the preceding despatch.]

Whether it will be advantageous to France to take possession of Louisiana?

This question presents itself in two points of view:

First, as it affects the commerce and manufactures of France.

Second, as it affects her positive or relative strength.

Colonies are never cherished for themselves, but on account of the influence they may have upon the general prosperity of the nation. And as one man, at home, contributes more to this than two at a distance, no wise nation colonizes but when it has a superfluous population, or when it has a superfluous capital that cannot otherwise be rendered productive.

The population of France, though very considerable, has by no means attained the point which renders it necessary to colonize. The soil, climate, and local situation, give it advantages as a commercial, and more particularly as a manufac-

turing, nation, over every other part of Europe. The ingenuity, taste, and industry of the inhabitants have placed them in the highest rank; but these advantages are very much restricted by the want of a sufficient capital to bring them into operation. A rival nation, inferior in all the circumstances I have mentioned, by the single effect of a large capital, has attained a superiority both in commerce and manufactures which, in return, those circumstances enable it to maintain by continually adding to that national wealth. Capital increases manufactures by the introduction of machines, by the regular payment of workmen, by reducing the interest of money, and, above all, by forcing new markets. The wealthy mechanic alone can afford those expensive and slow operations, which, in many cases, give perfection to a fabric. And the rich merchant, alone, can afford to make long voyages, from which he has slow returns; or give such extensive credits as will tempt those of foreign countries to purchase his commodities in preference to such as are offered by nations who expect more speedy payment. Such is the want of capital in France, that no manufacturer has any quantity of goods on hand to answer an immediate demand; and, of course, no foreign merchant can rely upon the certainty of obtaining such an assortment of goods from the French consignee of his cargo, as will answer his purpose, without either detaining his vessel, or being compelled to take a considerable proportion in articles of very inferior value, picked up from different manufactories; so that if frauds are committed, no one can be charged with them; a circumstance that renders character of little importance to the French mechanic.

To this cause is owing that when a foreign ship, particularly one from a distant nation, disposes of her cargo in France, she has orders to take wines and brandies in return, because these are the only articles that the owner can depend upon having, in time, of the quantity he orders. On the contrary, any species of goods is obtained in England at an hour's warning from a single manufacturer, whose character is at stake if they should not prove equal to the sample. This circumstance will always induce a foreign merchant to prefer dealing for goods of the same nature with a British, rather than with a French factor: and accordingly we find cargoes sold in France, and the money remitted to England to purchase articles that France might furnish, were her manufacturers sufficiently rich to supply them, at a short notice, without compelling the buyer to seek them at different deposits. This evil can only be remedied by an increase of capital in the hands of manufacturers. To show how this capital might be obtained, would lead me too far out of my present subject. But it must be obviously diminished either where a navy is raised at the expense of the manufacturer, or where the capital of the nation is employed in distant countries. The operation of capital in opening new markets is obvious; for nothing is more evident than that merchants of foreign countries, not possessing large capitals, are content to be the agents of those who can furnish them goods upon credit. And it is by this means that Britain has found no loss of market in America, in consequence of their having become independent; their immense capital having created a moneyed dependence which has supplied, in a commercial point of view, that which they before derived from the supremacy of her Government. The increase of American capital is now freeing her, in some sort, from that dependence, and enabling her to extend her commercial operations, and even to afford a capital to other nations, who shall know how to estimate the value of the market she affords to the manufactures and luxuries of Europe. It will readily be admitted that transmarine colonies add nothing to the strength of a nation. They are, on the contrary, weak points, that are guarded at great expense of men and money; more particularly where they are placed in warm and unhealthy climates. The simple question, then, is—Has France such a superfluity of capital or people as will justify the establishment of new colonies?

Those that France already possesses in the West Indies and at Cayenne are more than sufficient to supply all the demands of France, and indeed, the demands of all Europe, were they fully cultivated, for those commodities that constitute their staples. But how are they to be cultivated? Experience has proved that the inhabitants of warm climates are never led by their necessities to labor. Force alone can supply those taskmasters (cold and hunger) which nature has placed under northern skies. Hence the necessity of slaves in rendering the West Indies productive. These are only to be procured at a very considerable expense. The Spanish port of St. Domingo was almost uncultivated for want of slaves. It is now in the hands of France; and to render it productive, an immense capital in slaves, in buildings, and in improvements of uncultivated lands, will be necessary. Great capital will also be required to supply the losses that the French part of the island has sustained, to say nothing of the other islands. From whence is this capital to be drawn? Persons that settle in remote and unhealthy climates seldom possess much. It must, then, be drawn either from France, or some other country that possesses superfluous capital. If drawn from France, it must, to a certain degree, injure the manufactures of France at home. It may, however, where the territory is so extremely productive as the French islands are, where the lands are already in a state of cultivation, and the capital advanced will produce an *immediate* interest, be found advantageous, in a national point of view, to encourage the application of French capital to this object. But while the interest of money is high in France, while the interior of the Republic affords a variety of profitable speculations to the capitalist, and while few persons are found possessed of superfluous wealth, it will be difficult to induce many to vest their capital in a distant country, subject to risk from the dishonesty of their agents, and those others which recent transactions will teach them to dread. Foreign capital was once drawn from the United Provinces. The

state, however, of the Batavian colonies, and the losses sustained by the war, preclude all hope that much of this will now be applied to ameliorate the French islands. The United States possess an extensive capital in money, and in products necessary for the re-establishment of the islands. Money will not be lent, in large quantities, upon the credit of the planters; but, with proper encouragement, there is little doubt that products for which money must otherwise be paid, might be obtained. And the mercantile speculations of the United States will embrace the French islands, when the private and public credit of France shall be re-established, and experience shall have taught her the futility of attempting to raise a revenue upon foreign commerce, while in fact she is throwing it upon her own citizens.

In St. Domingo twenty per cent. is paid on articles introduced by foreigners. This is, indeed, collected from the foreigners; and, owing to the mismanagement and frauds which generally prevail in custom-houses at a distance, is a source of very considerable vexation to the trader. But the money is paid by the planter: for it is always added to the price, and even an interest or profit charged upon the duty itself, and a compensation for all the vexations the merchant suffers. What, then, is the effect of this operation but to deduct, at least, one-quarter from the money which the planter has, with difficulty, drawn from France or elsewhere, and so far to impede the re-establishment of the capital that can alone render the island ultimately productive to France? I say ultimately, for it will be idle to expect that they should compensate the actual expenses of the French Government till years have elapsed. Nay, I will venture to say, that, unless the ports of St. Domingo are thrown open to all vessels bringing necessaries, unless the inhabitants are permitted to buy cheap and to sell dear, by encouraging a competition among buyers and sellers, unless every species of vexation is removed, and every possible assurance given that foreign capitals entrusted to the islands will be perfectly safe, ages will elapse before St. Domingo will cease to drain the wealth and strength of France without offering an equivalent return. It is obvious, then, that if France possessed no other transmarine property than her islands in the West Indies, she would find room to place all the capital she can now, or probably will be able to spare in a long course of years. But, if, in connexion with this, we look to her immense territory in the Brazils, to its productions, and the capital it will require to give it the value it is susceptible of; if we add to this the establishments it may be necessary to make in the East Indies, in order to enable the French ports to possess all that variety of commodities which invite exchanges and give activity to commerce; we shall find a century, at least, will elapse before France needs such new establishments. But as she, like every other country, possesses a limited capital, the sole object of inquiry should be, where can this capital be best placed? At home? In the Islands? At Cayenne? In the East Indies? Or in Louisiana? For it is obvious, that whatever is placed in one is taken from the other. It is equally obvious that the national expense must be increased by the increase of its establishments, and the points of attack and defence be multiplied in the same proportion in case of war.

Many able statesmen have doubted whether, to a country situated as France, any colonies were of use; but it is not my design to enter into those theories. France possesses colonies. She has urged her citizens to remove themselves, and invest their property therein, and she is bound in good faith to retain and protect them. But she is not bound to create new colonies, to multiply her points of defence, and to waste a capital which she needs both at home and abroad. In what view would the possession of Louisiana be useful to France? First, like every other warm climate, it must be cultivated by slaves. The capital employed in purchasing these slaves, or the slaves themselves, would be carried to the islands, if a new market was not open for them. The competition will enhance the price to the planters in the islands, and so far obstruct their speedy re-establishment. When the slaves arrive in Louisiana, they must be employed in the unproductive labor of clearing the immense forests with which that country is covered; a labor ill calculated for slaves, since it requires long habit in the use of the axe, and a strength and activity seldom found in slaves. At all events, they must be maintained, clothed, and fed for years, before any profit will result from their labor: how long, may be determined, in some sort, from this fact. When new lands are put out to lease in the Northern or Middle States of America, the usual terms are ten years free of rent, and, after that, twelve bushels of wheat per hundred acres forever. It is obvious, then, that the first ten years are considered as years of expense, during which the landlord asks nothing; but, in the Southern States, land cannot even be put out on these terms, because there the white inhabitants place a higher value upon their labor, and the clearing lands by slaves involves too great an expense for any man who is not absolute owner of the soil. Who, then, will cultivate Louisiana with slaves? Who among the French citizens, will vest a large capital in so precarious a property, with the hope of a distant return? There, are also, circumstances in the situation of Louisiana, which render it more difficult.

Louisiana is bounded by an immense wilderness. Slaves, employed in the clearing of forests, will form acquaintances with the natives; and they will, upon every occasion, escape from labor to the indolence of a savage life. It may be asked, why does this not happen in the Southern States of America? First, because none are so far south as to be free from the rigors of winter, which make it difficult for the inhabitants of a warm climate to endure a savage life; and, next, because the Southern States are, in a great measure, surrounded by the sea, and by the mountains which only know a white population, and intercept the communication of the slaves with the waste forests in their rear. But supposing all these difficulties sur-

mounted, what advantage would result to France, in a commercial point of view, from the establishment of this colony; so far as its productions are similar to those of their islands, nothing would be gained, because the islands, well cultivated, are equal to every demand of France, and, indeed, of Europe. The introduction of those from Louisiana would only reduce the price, without adding to the value; and France would find herself compelled, in order to prevent the ruin of those who had vested their capital in the colonies, to imitate the Dutch, who destroy their spices and teas when they find that the quantity debases the value. Commodities, not raised in the islands, and which might be found in Louisiana, are only wood, and, perhaps, rice; but it is certain that these productions, when attended with the expense of procuring them in a warm and unhealthy climate, will not compensate the expense, or, at least, furnish the same profit to labor that might be obtained, were it employed, as in the islands, in raising more valuable commodities; a proof of which will be found in the United States. It is not from Georgia or South Carolina that the West India islands are supplied with wood, but principally from the Northern States, though wood-lands are much scarcer and more valuable with them than to the Southward. The reason is, that the furnishing, lumber, the preparing it for the market, the mills necessary for that purpose, all require the labor of free hands content to work for a small profit

Though it may seem paradoxical, I will venture to say that it is not the interest of France to supply herself with wood, even if she could do it from Louisiana: and that, for two reasons. The lumber supplied to her islands by the Northern States is paid for in molasses, and a small quantity of taffia. The first costs nothing to the planter, being an otherwise useless product of his sugar; and the second a trifling expense in the distillation. If these were not consumed in America, the molasses would absolutely be thrown away, (as it was when the United States were British Colonies,) because the commerce of France offers no other market for it. The islands may then be truly said to have their lumber from the United States for nothing. If, on the contrary, an establishment was made in Louisiana for the purpose of furnishing lumber, all the expense of such an establishment to the nation, together with all the labor employed in cutting the wood, preparing and sending it to market, would be actual loss to the nation, even supposing the wood-cutter content to be paid in molasses and rum, because his labor produces nothing to the nation. But it is certain that Louisiana would afford no market for either molasses or rum. The consumption of those is found only in the Northern States of America: the Southern prefer spirits made from grain, apples, and peaches, to that distilled from molasses. The planters, then, supposing their supply of lumber to be exclusively furnished by a French colony in Louisiana, would be compelled to pay for it in money, or in some article of real value. If it was not exclusively furnished, it would not be furnished at all; because the wood-cutter in a southern climate could never work so cheap as to compete with the hardy sons of the North. It may be thought that the molasses would find a market in the Northern States, even if not given in return for lumber: but this is not the fact. The only inducement with them to take it, is, that they get it in return for another commodity for which they have little other market. Let the islands refuse to take the wood of the Northern States, and they will instantly substitute spirits distilled from grains and apples, for that drawn from molasses: (because, in this case, the price of rum must necessarily rise,) and all commerce between the islands will stop, except for articles of provision, in return for which they will only take money, or what will produce money at a foreign market. The second reason why France should not, were it even in her power, seek her supply of lumber from a colony in Louisiana, is, that, in case of a war, supposing Britain to maintain her naval superiority, those supplies would be rendered extremely precarious. Nor would the want of them be easily supplied from the United States; for having, during peace, given up that branch of commerce, (and the persons employed in it having turned their attention to other objects, and the mills created for sawing the lumber having gone to decay,) it would not be easily re established on the breaking out of a war; the calamities of which would by this means fall doubly hard upon the islands.

In a commercial point of view, then, it is obvious that the colonization of Louisiana would be injurious to France; because it would divert a capital that might be more usefully employed in her other colonies; because that capital would be unproductive for many years; and because, when it became productive to the individual, it would add nothing to the mass of national wealth, but merely lower the price of commodities supplied by the West Indies, and lessen the profits of labor. It may, however, be supposed that the possession of Louisiana would afford an additional market to French manufactures, and so far compensate the nation for the expense of the establishment. This question is worthy of examination; and the supply or consumption of French fabrics must have a reference either to the free population, or to that of the slaves. If the free population is to be supplied by emigration from France, it will consist of that class of people who could not only maintain themselves in France, but add something to its wealth by their labor; for France is not overstocked with inhabitants; and, of course, none can emigrate without leaving a void somewhere, or some useful labor unperformed. The actual emigrant, then, takes something from the general stock of productive labor in the parent State. He also carries with him a part of the capital, (for he cannot go empty-handed,) and he must remain, as I have stated, ten years before he renders his new establishment more than sufficient to support himself. In the mean time, he must live with the utmost economy; for having nothing to give in exchange, he can furnish little from the parent country; and, indeed, the nature of a Southern climate exacts very few of those articles which

are necessaries in Europe. There can be no question, then, that, so far as relates to the actual emigrant, the few articles he will require from French looms will not compensate the nation for the loss of his labor: nay, that he will consume so much less in America than he would have done in France, that, beside his labor, the manufacturer that supplied in both countries will be an actual loser by his removal. Black population will contribute still less to aid the manufactures of France, because their consumption is extremely small in the article of clothing. Even in South Carolina it does not amount to more than forty francs a year for each black. In Louisiana, as the winter is less severe, it will be proportionably less. It will consist of cotton, much of it made at home, and much more obtained from the United States by an illicit commerce. But if even the whole were brought from France, after deducting the value of the raw material which France must purchase, the whole profit of the French manufacturer and merchant would not exceed thirty livres a head for each slave. Now, every slave sent to Louisiana will cost the nation one thousand francs; and as this capital should produce at least ten per cent. employed in any species of commerce or manufacture, the whole difference between one hundred francs, the product in France, and thirty francs, drawn from the advantage of clothing him, will be an actual loss to France, for the first ten years, at least, in which they can, (as I have before proved,) at the utmost, do no more than support themselves. As numbers will die in the seasoning, and many will elope, the actual loss to France on every slave imported and employed in Louisiana will be one hundred and sixty francs per annum. But if the profit resulting from the labor of the same slave, who might have been carried to one of the islands, instead of Louisiana, is added to the account, (and certain it is that all carried to Louisiana are taken from the islands,) it will be found that the actual loss to the nation, in the mis-employment of his labor, will amount to upwards of six hundred francs a year, so that the first loss to the nation, on the introduction of one thousand slaves into Louisiana, beyond the first cost of the slaves, will be six hundred thousand francs. It is true, that if peace continues, and the colony, contrary to every reasonable expectation, should flourish, the wealthy planters would consume more French fabrics, but the consumption of the slaves will always be trifling, and their labor absolutely unprofitable; because, as I have before observed, being employed in raising articles that can be better raised in quantities equal to the demand in the islands, and for which the market is limited, they will only, by adding to the quantity, lower the price of those commodities which it is the interest of France, who possesses such productive islands, to keep up. I know an idea prevails that the commodities of France can, by means of the Mississippi, find their way into the western part of the United States. Nothing could give birth to this idea but the most perfect ignorance of the navigation of that river; and of the wants of the inhabitants.

It is certain that the wines of France are ill calculated for so warm a climate as they must pass through to arrive in the Western States, and worse suited to the palates or purses of the inhabitants; both of which are better adapted to their own liquors, cider, beer, whiskey, and peach brandy; the last of which, with age, is superior to the best brandy of France. Instead, then, of receiving these articles from France, through Louisiana, they will more probably supply the colony with them. Glass, or earthenware, as they have all the materials on hand, they make for themselves, in all the back countries of America. The consumption of china is exceedingly small, and, were it greater, the French china is too dear to enter into competition with that of the East Indies. Bulky articles in iron are also made among themselves; and the hardware of England has such an acknowledged superiority over that of France, that none of the latter could be vended, were the market open to both. The only articles, then, that could be possibly introduced, would be silks, cambries, and other light articles of luxury. These, however, will never pass by the way of the Mississippi. The dangerous navigation of the Gulf, the slow and expensive passage up the river against the current, the large capital of the American and British merchants at Philadelphia, and the great improvements that are daily making in the inland canals and roads, will always carry these by land to the Ohio and other rivers, from which they can be transported to every other settlement on cheap and easy terms. It is a well known fact that dry goods have been carried from Philadelphia to New Orleans by this route, in preference to going thither directly by water. It is chimerical, therefore, to expect to vend the commodities of France, through that channel, when even England, with all her enterprise, her right to the navigation of the Mississippi, and the prejudice of Americans in favor of her fabrics, has never ventured to send her commodities by that channel, well knowing that through Baltimore and Philadelphia they will find an easier entrance. But should France wish to introduce more bulky articles by this channel, and habituate the inhabitants of the Western States to her wines and to her fabrics, it can only be done by putting New Orleans into their hands, stipulating, at the same time, that it shall ever remain a free port of entry to French ships and French fabrics, subject to no greater duties than those paid by American ships. This will, at once, interest the American merchants settled in New Orleans, in their commerce, turn their capital from England to France, and give the latter all the advantages of the island, without the expense of maintaining it; and the money acquired by the activity of America from the Spanish Government would centre in France, because England, not having the same facilities, and paying higher duties, could not supply them upon the same terms. Should France, on the other hand, determine to keep the island, a great part of the commercial capital now in Orleans (which is principally American and British) will, in that case, be moved to such other place as the

United States shall fix upon, and this being naturally placed in a state of rivalry to New Orleans, and freed from the vexations that never fail to attend a military Government at a distance from the eye of the sovereign, will, notwithstanding any disadvantage in point of situation, draw after it the commerce that now centres there. The limits settled between Spain and the United States, and lately between the latter and Britain, preclude the inhabitants of Louisiana from any share of the fur trade, which, indeed, never could have been considerable, as the southern furs are of little value; the few deer skins they receive are an object of no moment in a commercial view, as will be found from a view of the exports of New Orleans, even now that the United States Mississippi territory transport through that channel.

In these reflections I have not taken into account the hardships, expenses, and loss of lives, that result from the establishment of new colonies in a marshy country and warm climate, the inroads of savages, the insurrection of slaves, the insubordination of troops, and the abuses of officers when far removed from the superintending eye of the Sovereign; any or all of which may defeat the object, and ruin the establishment. There is, however, one consideration, and that a very important one, that ought to have some weight. Many who carry their families and their capital into Louisiana, finding that land is equally cheap on the American side of the line, will, sometimes from a preference to their form of Government, sometimes from caprice, sometimes from pique, or to get rid of the oppression of a military government, (for such that of Louisiana must necessarily be,) remove to the territory of the United States, even in time of peace. In case of a war between France and Spain, this desire will be general; because, supposing Britain to maintain her naval superiority, (which I have upon a former occasion shown that she will, unless the commercial system of France shall be much more liberal than it now is,) the mouth of the Mississippi will be blocked up, and the planters of the French Colony be reduced to the utmost distress, while those of the United States will acquire advantages from the war. In this case, a great proportion of the capital that France shall place in Louisiana will be transferred to the United States, where farms ready cleared may be purchased at half the price at which a French planter can clear his, owing to the dexterity of American woodsmen, who have been educated to the use of the axe, and acquired that strength in the muscles of the arm, which is unattainable by men who have been brought up to other employments. Past experience has evinced the truth of these observations. Louisiana, though settled near a century, has flourished neither in the hands of Spain nor of France; and, at this moment, at least half the trade of Orleans is carried on upon the capital of citizens of the United States, under the faith of their treaty with Spain. When France shall establish a rival colony there, this will be removed to such other place on the Mississippi as it shall be the policy of the United States to encourage.

If, in a commercial view, the settlement of Louisiana shall not be advantageous to France, but, on the contrary, really injurious, by diverting her capital from more important objects; in a political one, it will be found still more inconsistent with her interests. To France, considered either as a maritime or a commercial nation, the United States are of the last importance. On the first subject, I have, upon a former occasion, expressed my sentiments fully. On the latter, there can be no doubt that an agricultural nation, whose industry enables them to purchase with the product of their raw materials the luxuries and fabrics of Europe, and whose habits and pursuits prevent them from manufacturing for themselves, must offer an important market to the inhabitants of the Old World. In this view the trade of the United States is considered as extremely valuable to Britain. But France, when her manufactures shall attain the perfection of which they are susceptible, and her trade be placed upon the proper foundation, presents a much greater variety of subjects for the support of this commerce than Britain. From the last, America receives only the product of her looms and her forges. From the first, she will not only take these, but aid her agriculture by the purchase of her wines, her oils, and her brandies; while, on the other hand, France affords a better market than Britain to many of the products of the United States. These circumstances, and the relative position of France, which precludes all idea of danger or rivalship, either by sea or by land, between her and the United States, has made them view her as a natural ally, and consider the measure of her power as an additional pledge for the safety of their commerce and their future tranquillity. They have done homage to the wisdom of those statesmen who, at the end of a successful war, conceived it more advantageous to France to insure the lasting friendship of the United States, than to acquire a territory which might excite their jealousy, and throw them back into the hands of the nation from whom they had but just aided to liberate them.

I am aware of the delicacy of touching upon the political evils that may result to France and to the United States from the former possessing itself of New Orleans and the Floridas, lest, on the one hand, I should leave unsaid what truth requires to be spoken, and, on the other, give umbrage by a freedom which haughty spirits may construe into menace. Feeling myself, however, a citizen of one of these States, and warmly attached to the other, I trust that those into whose hands this shall be placed, will duly appreciate my motives in endeavoring to remove all ground of controversy between nations formed to aid each other; and, while they believe me sufficiently acquainted with the resources of my own country, not to dread the power of any European nation, they will think me equally incapable of so ridiculous an idea as that of menacing a Government before whose power united Europe has bowed. I have observed that France and the United States are so happily placed with respect to each other, as to have no point of collision. They can mutually aid, without having the smallest temptation to injure, each other. And as there is no nation at present on the globe whose consumption offers such encouragement to foreign manufactures as that of the United States; as this consumption is rapidly increasing; as they have the means of establishing a navy whenever their situation shall render it necessary, how strong, how powerful, should the inducement be that compels France to lose these advantages, and convert a natural and warm ally into a jealous and suspicious neighbor, and, perhaps, in the progress of events, into an open enemy!

Experience has evinced that no two nations can border upon each other, without having the spirit of rivalry excited; and if this is true with respect to neighboring nations, it will be found to apply more forcibly to the Colony of a great and powerful nation placed at a distance from home, and a Sovereign adjoining such nation. The reason is obvious. Where two nations join each other, everything passes under the eye of the Sovereign; and differences may be accommodated as soon as they arise; but when the Governor of a Colony, relying for protection from home, is guilty of an act of hostility, the wound festers before the physician can be called in. The offended Sovereign, too, will presume that the officer will meet with support, the greater as his nation is more powerful; will endeavor to anticipate the hostilities it dreads; it will recriminate; and the nations will be plunged into a war before explanations can take place. If there is a situation in the world that would lead to these melancholy consequences, it would be that of France in possession of New Orleans. It blocks up the great outlet to a great number of the American States, and to a very extensive and growing population. On this island a military government will be established. The commander and his troops, justly elated with the glory of their nation, will look down upon surrounding people. Commerce will be despised, and those who practise it be subjected to the despotism of men who will seek a compensation for their privations in being sent to a distant country and unhealty climate, in the acquisition of wealth. The Colony itself affords no legitimate sources for this, but those which arise gradually from commerce and agriculture, equally ill-suited to the military character. No vigilance on the part of the parent country can control the oppressions that will be practised by men at such a distance; nor will the ardent spirits of the new settlers in States that border on the Mississippi, in many cases, be sufficiently controlled, (even by their own Government,) to prevent their endeavors to avenge themselves, rather than to wait the tardy justice that they may hope for from diplomatic representations. The resentments of the people will be sharpened against each other; the ties of friendship will be broken, and the Government of the United States, which always partakes of the feelings of the people, will find itself unavoidably placed in such a situation as to change its connexion, and to guard against the supposed hostility of its old ally, by forming cautionary connexions with Britain, who will court their alliance and stimulate their resentments against France; because by this connexion she will hope to retain the commerce of America, which she almost exclusively possesses, give security to her Colonies, and, in case of a war, facilitate her attempts to conquer the French islands; and, above all, prevent that commercial and maritime union between France and the United States, on which alone France can hope to engraft a naval superiority. It may be asked why these jealousies, that I appear so greatly to apprehend with respect to France, do not prevail with respect to Britain in possession of Canada.

First, because Britain has, very prudently, separated her territory by a natural boundary, which keeps the inhabitants of the respective nations from coming into contact. While she held posts on the south side of the lakes, the United States viewed her with jealousy, and there is no sort of doubt that hostilities and national hatred would have been the consequences of her retaining them, when the American population in their neighborhood had increased; symptoms of which had frequently been exhibited before they were relinquished. Second, because the natural export of the United States being by their own rivers, there is no communication of any moment between them and Canada; but, thirdly, because Upper Canada is principally settled by emigrants from the United States, who, in case of a rupture, would probably join them if the spirit of the American Government did not prohibit an extension of their limits.

And, after all, what advantages, political or commercial, can France obtain by the possession of New Orleans and the east side of the Mississippi, that can compensate for the losses she will sustain in both respects, by placing herself in a state of rivalry with the United States? The Floridas are a narrow slip of very barren lands, absolutely indefensible in case of a rupture, and which will require more than they are worth in guards, garrisons, and Indian subsidies; and however valuable New Orleans may be to the United States, it will be of little value to France, when the foreign capital shall be withdrawn from it, or a rival city established by the United States. I find, upon the most careful inquiry, that one-third of the mercantile houses now employed in New Orleans belongs to the citizens of the United States. No sooner shall a military government be established there, than these houses, with all the capital that gives activity to the commerce of New Orleans, will be removed either to such other place as the United States shall receive agreeably to the terms of their treaty with Spain, or to the Natchez, to which any vessel that may enter at New Orleans can be received. Large vessels have already gone from France, and unloaded their cargoes there without any difficulty. As the market is always the better the further you advance, there is little doubt that this will become a rival city to that of New Orleans; and when the American capital shall be withdrawn from the latter, when the Government of the United

States shall declare it a port free of duties, New Orleans will become of little consequence as a commercial city, and only remain a useless expense to France, and a source of endless jealousies between them and the United States.

The cession of Louisiana is, however, very important to France if she avails herself of it in the only way that sound policy would dictate. I speak of Louisiana proper; in which I do not include the Floridas, presuming that they make no part of the cession. Since, by this cession, she may acquire a right to navigate the Mississippi, and a free trade; and if she knows how to avail herself of this circumstance by a perfect understanding with the United States, she will find a vent through it for a vast variety of her commodities when she has given the people of the Western States the habit of consuming them, in preference to those they receive from Britain. This can only be done by affording them cheaper. She can only afford them cheaper by interesting the American merchant in their sale, and having the use of his capital, and by engaging the Government of the United States to give them a preference. These objects can only be obtained by a cession of New Orleans to the United States, with a reservation of a right of entry, at all times, free of any other duties than such as are exacted from the vessels of the United States; together with a right to navigate the Mississippi. This will give her ships an advantage over those of every other nation, will retain and increase the capital of New Orleans, from which her supplies for her islands will be purchased on the easiest terms, will carry the fabrics of France into all the Western territory, which the United States will have no interest in checking, as all rivalry between the two nations would then be removed. France will then command the respect, without exciting the fear of the two nations whose friendship is most important to her commerce, and to the preservation of her islands; and all this without the expense of establishments that would drain the National Treasury, and divert the national capital from its proper objects; while, on the other hand, should France retain New Orleans, and endeavor to colonize Louisiana, she will render herself an object of jealousy to Spain, the United States and Britain, who will not only discourage her commerce, but compel her to make expensive establishments for the security of her rights.

In reasoning upon this subject, I have confined myself to such observations as obviously presented themselves, without seeking any of those subtleties which might serve to mislead the judgment. I have candidly exposed the plainest facts, in the simplest language. If ever they are opposed, it will be by a contrary course. Eloquence and sophistry may reply to and may obscure them; but time and experience will evince their truth.

Extract.—Mr. Livingston to the Secretary of State.

PARIS, *August* 16, 1802.

I informed you in my last letter that I found some relaxation on the subject of the Floridas in my last conversation with the Spanish Minister. I have reason to think that within these few days they have come to a settlement with France on that subject. What it is I cannot precisely say; but I presume it is whatever France wishes it to be. I find all the old French maps mark the river Perdido as the boundary between Florida and Louisiana. It is possible that this may have been insisted upon. If so, the remainder was hardly worth the keeping. Whatever it is, the project of taking possession has resumed a certain degree of activity. General Victor is appointed. He is to have under him a General of Division, two Generals of Brigade, and three thousand men only. No more than two millions of francs are allowed to this service; so that they must starve or find resources in the country. Saturday the General was all day with the Minister of Marine, arranging the inferior appointments to be submitted to the First Consul. I have been pressing, for sometime past, with everybody that I thought could have any influence in this business. And, as I have been happy enough to convince most of them, I do not absolutely despair, though I am much discouraged from this last arrangement. The same silence is observed by the Minister. I can get him to tell me nothing. I shall see him this morning again, and if I cannot induce him to speak on the subject more plainly than he has done, I will put in a note insisting on our claims under the Spanish Treaty, and demanding an explicit recognition of them. On this I believe there will be little difficulty, as they have always agreed that the cession must be subject to the restrictions under which Spain held the territory. There are obvious symptoms of ill humor between this country and Britain, and I think it will not be long before they assume a serious aspect. Good may arise out of this evil, if it should happen.

Mr. Livingston to the Secretary of State.

PARIS, *August* 19, 1802.

SIR: I write in haste, in hopes that this may overtake Mr. Lyle, and correct an error in my last. Notwithstanding the appointment of General Victor, and several other officers for Louisiana, among others a comptroller of the forests, no prefect is yet appointed. Nor is the difference relative to the Floridas settled. Spain insists that they are not ceded; and I have certain information that, two days ago, the Minister of Marine wrote to the Minister of Foreign Affairs that without the Floridas there could be no Louisiana. Nothing shall be neglected on my part to keep up this difference; for, while it lasts, there will, I believe, be no expedition; and time and change may work in our favor. I am, sir, &c., &c.,

R. R. L.

Mr. Livingston to the Secretary of State.

PARIS, *Sept.* 1, 1802.

SIR: I yesterday made several propositions to the Minister on the subject of Louisiana. He told me frankly, that every offer was premature; that the French Government had determined to take possession first; so that you must consider the business as absolutely determined on. The armament is what I have already mentioned, and will be ready in about six weeks. I have every reason to believe the Floridas are not included. They will, for the present, at least, remain in the hands of Spain. There never was a Government in which less could be done by negotiation than here. There is no people, no Legislature, no counsellors. One man is everything. He seldom asks advice, and never hears it unasked. His Ministers are mere clerks; and his Legislature and counsellors parade officers. Though the sense of every reflecting man about him is against this wild expedition, no one dares to tell him so. Were it not for the uneasiness it excites at home, it would give me none: for I am persuaded that the whole will end in a relinquishment of the country, and transfer of the capital to the United States. Their islands call for much more than France can ever furnish. The extreme hauteur of this Government to all around them will not suffer peace to be of long continuance. The French Minister at Lisbon, it is said, is coming home without taking leave. England is very sour; the debts due the Northern Powers unpaid, as well as ours, though their justice is admitted. Helvetia is still in arms; the little Cantons not acceding to the new form of Government.

I propose to make an excursion of about fifteen days into the Low Countries, as I find nothing pressing at this moment here that I can forward by my stay. I am, sir, &c. R. R. L.

Extract.—James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *Oct.* 15, 1802.

The suspense which has taken place in relation to Louisiana and the Floridas is favorable to the efforts for diverting the French Government from its unwise project. Whether we regard the sentiments prevailing in this country on the subject, or the striking tendencies of the project itself, no pains ought to be spared for putting an end to it. If the occasion can be so improved as to obtain for the United States, on convenient terms, New Orleans and Florida, the happiest of issues will be given to one of the most perplexing of occurrences. I postpone more particular remarks on this subject until the President shall know the impressions on the French Councils, resulting from the views of it to which you will be led by the despatches, of which Mr. Dupont was the bearer.

Mr. Livingston to the President of the United States.

PARIS, *Oct.* 28, 1802.

DEAR SIR: Nothing very important having occurred for some time past, I have not thought it necessary to trouble you, particularly as I concluded that you would, for a time, have quitted the seat of Government, and sought repose from the fatigues of politics.

While the union between France and Russia subsists, the discontents which almost every nation in Europe feels at the extreme loftiness of the first will be suppressed. But as fear and not affection occasions the suppression, they are ready to break out on the first favorable moment. Many think that moment not very distant. Great changes have taken place in the Administration: Wormzoff is known to be inclined to Britain; and I find that the change occasions considerable sensation here, not only among the foreign Ministers, but among those of France. One effect of it has been to send off Andriotte, who has hitherto been retained till Lord Whitworth arrived, even though formal notice had long since been given that he was to go in eight days. Britain is seriously dissatisfied; and, indeed, has some reason to complain; several of her vessels which put in here, (as is said by stress of weather,) having been detained, and Mr. Murray's representations treated with neglect.

The affairs of Helvetia have also excited great uneasiness in England, where all parties seem to concur in wishing to oppose some barriers to the power of France. The British republicans are disgusted with the changes which have taken place here; while the royalists dread the stability that the Government has assumed in the hands of the First Consul. The mercantile and manufacturing interests, who looked to peace for the renewal of the Treaty of Commerce, from which they derived such advantages, are sore at the severity with which their commerce is interdicted here. You will accordingly find, by the British papers, that both those of the majority and minority teem with abuse on France, and blow aloud the trumpet of discord.

By the Treaty of Madrid, you recollect that the reigning Duke of Parma and Placentia was to renounce them in favor of France; in consideration of which, his heir was to have the kingdom of Etruria. This he has constantly refused to do, and has lately died without making any renunciation. The Spanish Ambassador here has been called upon to complete the treaty. He replied that he had no powers. And General Bournonville has gone express to Spain to effect this object—the King of Etruria being now Duke of Parma. Whether he will prefer the Crown he now holds to his hereditary dominions I know not; but I think he must submit to what is dictated here, or risk the loss of both.

The Mississippi business, though all the officers are appointed, and the army under orders, has met with a check. The army under orders is obstructed for the moment. Events may possibly arise, of which we may avail ourselves.

I had, two days ago, a very interesting conversation with Joseph Bonaparte, having put into his hands a copy of the Memoir on Louisiana, which I sent the Secretary of State. I took occasion to tell him that the interest he had taken in settling the differences between our respective countries had entitled him to our confidence, and that I should take the liberty to ask his advice in matters that were likely to disturb the harmony that subsisted between our respective Republics.

He seemed pleased at the compliment, and told me that he would receive with pleasure any communication I could make; but as he would not wish to appear to interfere with the Minister, he begged my communication might be informal and unsigned—exactly what I wished, because I should act with less danger of committing myself, and of course with more freedom. He added, you must not, however, suppose my power to serve you greater than it actually is; my brother is his own counsellor; but we are good brothers, he hears me with pleasure, and as I have access to him at all times, I have an opportunity of turning his attention to a particular subject that might otherwise be passed over. I then asked him whether he had read my notes on Louisiana. He told me that he had, and that he had conversed upon the subject with the First Consul, who, he found, had read them with attention; that his brother had told him that he had nothing more at heart than to be upon the best terms with the United States. I expressed to him my apprehensions of the jealousies that would naturally be excited from their vicinity, and the impossibility of preventing abuses in a military government established at so great a distance from home.

Wishing to know with certainty whether the Floridas were included, (which, however, I had pretty well ascertained before,) I told him that the only cause of difference that might arise between us, being the debt and Louisiana, I conceived that both might be happily and easily removed by making an exchange with Spain, returning them Louisiana, retaining New Orleans, and giving the latter and the Floridas for our debt.

He asked me whether we should prefer the Floridas to Louisiana? I told him that there was no comparison in their value, but that we had no wish to extend our boundary across the Mississippi, or give color to the doubts that had been entertained of the moderation of our views; that all we sought was security, and not extension of territory. He replied, that he believed any new cession on the part of Spain would be extremely difficult; that Spain had parted with Trinidad and Louisiana with great reluctance. I have, however, reason to think that Bournonville is instructed to effect this object, not, however, with a view to my project, but with intention to procure for France some port in the Gulf, from which they think they may secure their own and annoy the British commerce; so that, if we should, contrary, to our hopes, make any bargain with them, I fear that East Florida will not be included. However, everything is yet in air; and I doubt much, considering the present state of things in Europe, whether Spain will make any exchange that will give France a command of the Gulf. Though this is a favorite object with France, she may not, in the present state of things in Europe, think it prudent to press too hard. It is time that she should acquire some character for moderation.

The First Consul is gone to Rouen, and is to be back by the 18th Brumaire. The British fear he means to examine the coasts. The prospect of a rupture grows more serious. I can tell you, with certainty, that a remonstrance, in pretty strong terms, has been presented by her Minister, on the subject of the Consul's interference in the affairs of Helvetia. How it will be received I know not; but I think it would not have been made if it had not been the intention of Britain to seek a quarrel.

I refer you to the Secretary of State for information on our particular affairs.

Lafayette's situation demands the aid of our country. * * * * He was ready to sacrifice everything for us, and we owe him something effectual, I must pray you to get Mr. Randolph, or some other leading member of Congress, to patronise him. Our gratitude will do us honor abroad, and not be unpopular at home.

I have the honor to be, &c.,

R. R. LIVINGSTON.

TH. JEFFERSON, Esq., President of the United States.

Extract.—Robert R. Livingston, Minister to France, to James Madison, Secretary of State, dated

PARIS, *Nov.* 2, 1802.

My letter to the President, sent by the way of England, will show you that the business of Louisiana has met with a check, though I fear it will soon be resumed; and that troops will go out this Autumn, as everything was arranged, and they were under marching orders. Florida is not, as I before told you, included in the cession. You will see in the President's letter my conversation with Joseph Bonaparte; this I shall have a convenient opportunity to renew, as he has promised to give me a shooting party at his country house in a few days. Time may afford circumstances of which we may avail ourselves. I therefore pray you to be explicit in your instructions, and in your replies to some questions that I have asked you relative to this subject in my former letters, since I am at present wholly unauthorized as to any offers that it would be proper to make; and we certainly do not expect to receive this country, or any interest in it, as a free gift.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State, dated

PARIS, *Nov.* 11, 1802.

France has then cut the knot. The difficulty relative to Parma and Placentia, that stopped the expedition to Louisiana, has ended by their taking possession of the first, as you see by the enclosed paper. Orders are given for the immediate embarkation of troops (two demi-brigades) for Louisiana; they will sail in about twenty days from Holland. The Government here will give no answer to my notes on the subject. They will say nothing on that of our limits, or of our right under the Spanish Treaty. Clarke has been presented to General Victor as a merchant from Louisiana. The General did not probably conceal his views, which are nothing short of taking exactly what they find convenient. When asked

what they meant to do as to our right of *entrepot*, he spoke of the treaty as waste paper; and the prefect did not know that we had such right, though it had been the subject of many conversations with the Minister, and of three different notes. The sum voted for this service is two millions and a half; as to the rest, they expect to compel the people to support the expenses of the Government, which will be very heavy, as the number of the officers, civil and military, with their suite, is great; and they are empowered to draw: so that the first act of the new Government will be the oppression of their people and our commerce. I believe you may add to this an early attempt to corrupt our people, and, if I may judge by the temper that the General will carry with him, an early attempt upon the Natchez, which they consider as the rival of New Orleans. If you look back to some of my letters on this subject, you will see my opinion of the necessity of strengthening ourselves by force and ships at home, and by alliance abroad. No prudence will, I fear, prevent hostilities ere long; and perhaps the sooner their plans develop themselves the better. In a letter to the President, sent by the way of England, I mention a conversation with Joseph Bonaparte, from which I derive some small hopes; but they are of no avail now that the expedition is determined upon. I had yesterday written you a long letter upon the general state of our affairs, but, having no one to copy it, and being anxious to give you this intelligence as early as possible, I confine myself to this single object, lest I should miss the ship which is about to sail from Havre.

I am, dear sir, with the most respectful consideration, your most obedient servant.

R. R. LIVINGSTON.

JAMES MADISON, *Secretary of State.*

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, *Nov.* 11, 1802.

SIR: After writing mine of this date, I called on the Minister and insisted on some positive answer to my notes. He told me that he was expressly instructed by the First Consul to give me the most positive assurances that the treaties we had entered into with Spain or them, relative to Louisiana, should be strictly observed. When I expressed my surprise that their officers should not be informed on that head, though on the eve of departing, he assured me that they would be furnished with copies of the treaties, and directed to conform strictly to them. I asked why these assurances were not given to me in the usual form, by replying to my notes? He said that he hoped that there would be no difficulty on that head, when the Consul should arrive, (he is now absent.) I have stated this that you might, by comparing this conversation with the contents of the letter, and the information derived from Clarke's conversation with the General, draw your own inferences. I shall endeavor to-day to see J. Bonaparte, though he has all along assured me that it was the Consul's intention to cultivate our friendship, and by no means to do anything that would endanger it. It will, however, be well to be on our guard, and, above all, to reinforce the Natchez, and to give it every possible commercial advantage. If we can put ourselves in a situation to prevent the danger of hostility, I think we may hope that the dissatisfaction of inhabitants, the disappointment of officers, and the drain of money which the establishment will occasion, will facilitate our views after a very short time.

I am, dear sir, with the most respectful consideration, your most obedient servant,

ROBT. R. LIVINGSTON.

Hon. JAMES MADISON, *Secretary of State.*

P. S. In my letter to the President, I informed him that General Bournonville had gone post to Spain, and that I had reason to think he had it in charge to obtain the Floridas. I know that he went with the greatest speed; accordingly, on his very first conference, he proposed to Spain to relinquish Parma and Placentia for the Floridas. * * * * But Spain may be forced to give them, though she should not like the exchange. You see by this how much it is a favorite object with the First Consul, and judge from thence of our prospects.

What effect the news from St. Domingo may have I know not. The army there is reduced to one thousand two hundred effectives. Other particulars you will have more correctly than we have here.

The Consul is still absent, but daily expected. Lord Whitworth is on his way from Calais, and will be here to-morrow.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, *November* 14, 1802.

In addition to my last, (duplicates enclosed,) I have obtained accurate information of the offer to Spain. It is either to sell them Parma for forty-eight millions of livres, or to exchange it for Florida. You see by this the value they put on Florida. I fear Spain will accede to their proposition. Lord Whitworth has arrived. The affairs of Switzerland are in a train to be settled as France thinks proper; the Diet being dissolved, and deputies appointed to come to Paris. Sweden has made a peace with Tripoli, for which she pays one hundred and fifty thousand dollars. The Emperor is not yet satisfied with the indemnities, and there are many symptoms of change in the politics of Russia.

Mr. Madison, Secretary of State, to Charles Pinckney, Minister to Spain, dated

DEPARTMENT OF STATE, *Nov.* 27, 1802.

A letter from a confidential citizen at New Orleans, a copy of which is enclosed, has just informed us, that the Intendant, at that place, by a proclamation, from which an extract is also enclosed, had prohibited the deposit of American effects stipulated by the Treaty of 1795; and, as the letter is interpreted, that the river was also

shut against the external commerce of the United States from that port. Whether it be the fact or not that this latter prohibition has also taken place, it is evident that the useful navigation of the Mississippi so essentially depends on a suitable depository for the articles of commerce, that a privation of the latter is equivalent to a privation of both.

This proceeding is so direct and palpable a violation of the Treaty of 1795, that, in candor, it is to be imputed rather to the Intendant solely than to instructions of his Government. The Spanish Minister takes pains to impress this belief, and it is favored by private accounts from New Orleans, mentioning that the Governor did not concur with the Intendant. But, from whatever source the measure may have proceeded, the President expects that the Spanish Government will neither lose a moment in countermanding it, nor hesitate to repair every damage which may result from it. You are aware of the sensibility of our Western citizens to such an occurrence. This sensibility is justified by the interest they have at stake. The Mississippi is to them everything. It is the Hudson, the Delaware, the Potomac, and all the navigable rivers of the Atlantic States, formed into one stream. The produce exported through that channel last year amounted to one million six hundred and twenty-two thousand six hundred and seventy-two dollars from the districts of Kentucky and Mississippi only, and will probably be fifty per cent. more this year, (from the whole Western country. Kentucky alone has exported, for the first half of this year, five hundred and ninety-one thousand four hundred and thirty-two dollars in value,) a great part of which is now, or shortly will be, afloat for New Orleans, and consequently exposed to the effects of this extraordinary exercise of power. Whilst you presume, therefore, in your representations to the Spanish Government that the conduct of its officer is no less contrary to its intentions than it is to its good faith, you will take care to express the strongest confidence that the breach of the treaty will be repaired in every way which justice and a regard for a friendly neighborhood may require

I have communicated the information received from New Orleans to the Chevalier d'Yrujo, with a view to obtain his immediate interposition, as you will find by the enclosed copy of a letter to him. He readily undertakes to use it with all the effect he can give it by writing immediately on the subject to the local authority at New Orleans. I shall write at the same time to Mr. Hulings, who will enforce, as far as he may have an opportunity, the motives for recalling the unwarrantable prohibitions. It is to be hoped that the Intendant will be led to see the error which he has committed, and to correct it before a very great share of its mischief will have happened. Should he prove as obstinate as he has been ignorant or wicked, nothing can temper the irritation and indignation of the Western country, but a persuasion that the energy of their own Government will obtain from the justice of that of Spain the most ample redress.

It has long been manifest that, whilst the injuries to the United States, so frequently occurring, from the colonial officers scattered over our hemisphere, and in our neighborhood, can only be repaired by a resort to their respective Sovereigns in Europe, that it will be impossible to guard against most serious inconveniences. The instance before us strikes with peculiar force, and presents an occasion on which you may advantageously suggest to the Spanish Government the expediency of placing in their Minister on the spot, an authority to control or correct the mischievous proceedings of their colonial officers towards our citizens; without which any one of fifteen or twenty individuals, not always among either the wisest or best of men, may, at any time, threaten the good understanding of the two countries. The distance between the United States and the old continent, and the mortifying delays of explanations and negotiations across the Atlantic on emergencies in our neighborhood, render such a provision indispensable, and it cannot be long before all the Governments of Europe, having American colonies, must see the policy of making it.

Extract from the Message of the President of the United States to Congress, dated

DECEMBER 15, 1802.

The cession of the Spanish province of Louisiana to France, which took place in the course of the late war, will, if carried into effect, make a change in the aspect of our foreign relations, which will doubtless have just weight in any deliberations of the Legislature connected with that subject.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, *December* 20, 1802.

SIR: I have received your favor by Mde. Broniau, and had, as you will find, anticipated your wishes in finding another manual to the First Consul. The consequence of which is, that I have, at this moment, a very strong memorial under his eye, and some projects which appear to be well received. But the subject is too delicate to treat here; when a safe conveyance offers I shall write to you more at large. The Minister has changed his conduct much for the better, either because of our late difference, or because he suspects that I have another passage to the First Consul. France has not yet got Florida; but there is not much doubt that her negotiations on this subject will succeed, as Parma is a favorite object with Spain. Pray be explicit in the amount of what I may offer, and consider the value of the country—its importance to peace—the expensive establishment it will save, and its intrinsic worth, from the price of the land and actual revenue. I do not, however, mean that you should infer from this that my prospects of obtaining the object are great, because I find, as Mr. Talleyrand told me yesterday, the First Consul *entété* with this project. But I have made so

many converts, that I would wish, in case favorable circumstances should arise, to know how to act. If left to myself I may go beyond the mark. General politics you will collect from the papers I send. I have mentioned that the storm in England will blow over for the present; and the peace will not be lasting. The armanent for Louisiana has not yet sailed; the civil officers are yet here, if I am rightly informed by the Minister from whom I had it yesterday.

The necessity of my sending this immediately prevents my adding anything but the assurance of the highest esteem.

I have the honor to be, sir, your most obedient and humble servant,

ROBT. R. LIVINGSTON.

P. S. December 23d.—The armament has not yet sailed; Florida not ceded; more hesitation and doubt on the subject than I have yet observed. I have, in a private memoir under the Consul's eye, touched a string that has alarmed them. I cannot now explain. The Minister knows nothing of this. Set on foot negotiation fixing our bound with Britain, but by no means conclude until you hear from me that all hope here is lost. It is an important card in my hands, and must, for the present, at least, be somewhat under my control. Do not absolutely despair, though you may have no great reason to hope should New Orleans be possessed by a small force.

This letter goes by the way of England by Mr. Murray, who has not allowed me time to give it you in any better dress. I must wait for some more direct conveyance to write fully to you.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *Dec.* 23, 1802.

SIR: In the latter end of last month we received information from New Orleans of the interdiction of the deposit there for our merchandise, stipulated by the treaty with Spain, without an equivalent establishment being assigned. A copy of the Intendant's proclamation to that effect is enclosed. Private accounts render it probable that the Governor of the province openly dissented from that act; but private letters, of so late a date as the 29th of October, inform us that it is still enforced. The Legislature of Kentucky have voted a memorial to Congress complaining of it, and they will, probably, be followed by other portions of the Western people. Should it not be revoked before the time for the descent of the boats in the Spring, both the injury and irritation proceeding from it will be greatly increased. The House of Representatives passed a resolution on the 17th of this month, calling for information upon this subject, a copy of which, if it should be printed early enough, will be enclosed. The result of their deliberations cannot be anticipated: but I may hazard the remark that, whilst we have no clear foundation on which to impute this infraction to orders from the Spanish Government, it would be contrary to the duty, policy, and character of our own to resort for redress in the first instance to the use of force.

JANUARY 3, 1803.

The delay in the sailing of the British packet, by which this is forwarded, gives an opportunity of adding that, since the date of the above, a letter has been received from Governor Claiborne, of the Mississippi Territory, enclosing one from the Governor of Louisiana, which says that the suspension of the deposit by the Intendant was without orders from the Spanish Government, and that the measure did not accord with his judgment. He observes, also, that he had communicated the proceeding to the Governor of the Havana, who has some kind of superintendence over the authorities at New Orleans. This information strengthens the hope that the irregularity may be corrected before it can have wrought extensive injury to our Mississippi commerce. The occurrence has drawn forth the clearest indications, not only of the sensibility of the Western country with respect to the navigation of the Mississippi, but of the sympathy of their Atlantic fellow-citizens on the subject.

I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE, *Jan.* 10, 1803.

SIR: Since my letter of November 27th, on the subject of what had taken place at New Orleans, a letter has been received from the Governor of Louisiana to Governor Claiborne, in which it is stated that the measure of the Intendant was without instructions from his Government, and admitted that his own judgment did not concur with that of the Intendant. You will find, by the printed documents herewith transmitted, that the subject engaged the early and earnest attention of the House of Representatives; and that all the information relating to it, possessed by the Executive prior to the receipt of that letter, was reported, in consequence of a call for it. The letter itself has been added to that report; but being confidentially communicated, it does not appear in print; a translation of it, however, is herewith enclosed. You will find, also, that the House has passed a resolution explicitly declaring that the stipulated rights of the United States on the Mississippi will be inviolably maintained. The disposition of many members was to give to the resolution a tone and complexion still stronger. To these proofs of the sensation which has been produced, it is to be added, that representations, expressing the peculiar sensibility of the Western country, are on the way from every quarter of it to the Government. There is, in fact, but one sentiment throughout the Union with respect to the duty of maintaining our rights of navigation and boundary. The only existing difference relates to the degree of patience which ought to be exercised during the appeal to friendly modes of redress. In this state of things, it is

to be presumed, that the Spanish Government will accelerate, by every possible means, its interposition for that purpose; and the President charges you to urge the necessity of so doing with as much amicable decision as you can employ. We are not without hopes that the Intendant will yield to the demands which have been made on him: and to the advice which he will have received from the Spanish Minister here. But it will be expected from the justice and good faith of the Spanish Government, that its precise orders to that effect will be forwarded by the quickest conveyance possible. The President wishes, also, that the expedient suggested in the letter above referred to, for preventing similar occurrences and delays, may also be duly pressed on that Government. I have the honor to be, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE.
January 18, 1803.

SIR: My letters of December 23d and January 3d, communicated the information which had been received at those dates, relating to the violation, at New Orleans, of our treaty with Spain; together with what had then passed between the House of Representatives and the Executive on the subject. I now enclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it as took place with open doors will be seen in the newspapers; which it is expected will be forwarded by the Collector at New York by the present opportunity. In these debates, as well as in indications from the press, you will perceive, as you would readily suppose, that the cession of Louisiana to France has been associated as a ground of much solicitude with the affair at New Orleans. Such, indeed, has been the impulse given to the public mind by these events, that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged, and more effectually secured. In deliberating on this subject, it has appeared to the President that the importance of the crisis called for the experiment of an extraordinary mission; carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government, and the sensibility of the people, than could be otherwise conveyed. He has, accordingly, selected for this service, with the approbation of the Senate, Mr. Monroe, formerly our Minister Plenipotentiary at Paris, and lately Governor of the State of Virginia; who will be joined with yourself in commission extraordinary to treat with the French Republic; and with Mr. Pinckney in a like commission to treat, if necessary, with the Spanish Government. The President has been careful, on this occasion, to guard effectually against any possible misconstructions in relation to yourself, by expressing, in his Message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional mission to considerations perfectly consistent therewith.

Mr. Monroe will be the bearer of the instructions under which you are jointly to negotiate. The object of them will be to procure a cession of New Orleans and the Floridas to the United States; and consequently the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will mark part of our propositions; to which will be added, such regulations of the commerce of that river, and of the others entering the Gulf of Mexico, as ought to be satisfactory to France. From a letter, received by the President from the respectable person alluded to in my last, it is inferred, with probability, that the French Government is not averse to treat on those grounds. And such a disposition must be strengthened by the circumstances of the present moment.

I have thought it proper to communicate thus much to you, without waiting for the departure of Mr. Monroe, who will not be able to sail for two weeks, or perhaps more. I need not suggest to you that, in disclosing this diplomatic arrangement to the French Government, and preparing the way for the object of it, the utmost care is to be used in repressing extravagant anticipations of the terms to be offered by the United States, particularly the sum of money to be thrown into the transaction. The ultimatum on this point will be settled before the departure of Mr. Monroe, and will be communicated by him. The sum hinted at in the letter to the President above referred to, is —— livres. If less will not do, we are prepared to meet it; but it is hoped that less will do, and the prospect of accommodation will concur with other motives in postponing the expedition to Louisiana. For the present I barely remark, that a proposition made to Congress with closed doors is under consideration, which, if agreed to, will authorize the payment of about ten millions of livres, under arrangement of time and place that may be so convenient to the French Government as to invite a prompt as well as favorable decision of the case. The sum to which the proposition is limited, and which will probably not be effectually concealed, may, at the same time, assist in keeping down the pecuniary expectations of the French Cabinet.

I have the honor to be, &c.

JAMES MADISON.

Extract.—Mr. Madison, Secretary of State, to Mr. C. Pinckney, American Minister at Madrid.

DEPARTMENT OF STATE,
January 18, 1803.

[After informing Mr. Pinckney, as well as Mr. Livingston, of the reasons which had induced the mission of Mr. Monroe, this letter proceeds as follows:]

The President has been careful, on this occasion, to guard effectually against any misconstruction, in relation to yourself, by expressing, in his Message to the Senate, his undiminished confidence in the ordinary representation of the United States, and by referring the advantages of the additional mission to considerations perfectly consistent therewith.

Mr. Monroe will be the bearer of instructions under which you are to negotiate. The object of them will be, to procure a cession of New Orleans and the Floridas to the United States, and, consequently, the establishment of the Mississippi as the boundary between the United States and Louisiana. In order to draw the French Government into the measure, a sum of money will make part of our propositions; to which will be added such regulations of the commerce of that river, and of the others entering the Gulf of Mexico, as ought to be satisfactory to France. From a letter received by the President from a respectable person, it is inferred, with probability, that the French Government is not averse to treat on those grounds; and such a disposition must be strengthened by circumstances of the present moment.

Though it is probable that this mission will be completed at Paris, if its objects are at all attainable, yet it was necessary to apprize you thus far of what is contemplated, both for your own satisfaction, and that you may be prepared to co-operate on the occasion, as circumstances may demand. Mr. Monroe will not be able to sail for two weeks.

Robert R. Livingston, Minister to France, to James Madison, Secretary of State.

PARIS, *January* 24, 1803.

SIR: I have just now heard of an opportunity from Havre. I am doubtful whether my letter will arrive in time for it. I therefore confine myself to inform you that General Bernadotte is named Minister to the United States, in the place of Otto, who will be employed here. General Bernadotte is brother-in-law to Joseph Bonaparte, is a very respectable man, and has the character of a decided republican. I have endeavored to impress upon him the necessity of making some arrangements relative to the debt previous to his departure, which he has much at heart. But neither he nor anybody else can influence the councils of the First Consul. You can hardly conceive anything more timid than all about him are; they dare not be known to have a sentiment of their own, or to have expressed one to anybody. But I must defer writing to you more at large on this subject, as well as a full communication of a very delicate step that I have hazarded, which promised success for some time, but from which I, at present, hope for no important result. The Minister informs me that the expedition to Louisiana will sail shortly. General Bernadotte will go in about three weeks. He will have full powers to settle everything. I asked the Minister, what confidence you can have in any new offer to treat, when the last treaty is unexecuted; and if he had not better send out General Bernadotte with a treaty in his hand, than only with powers that will be suspected; and how he can make arrangements upon the debts, which must depend upon the Legislature? He answers this by saying, they want information as to right of deposit, &c. As to the debt, I have no hope that they have any intention to pay it, or even to fund it. From the disposition which I know to be entertained by some that go out with Victor, I have no doubt that they will provoke an Indian war, by paying them nothing; and that, in their solicitude to acquire wealth, they will act over again the tyranny of St. Domingo. It will be necessary, therefore, to take the position that will best guard you against the effects of these evils. As to myself, I am left wholly without any precise instruction how to act, or what to offer. Enclosed are two memoirs lately sent in, with as little effect as those that have gone before them; though I have reason to think that the Minister wishes well to my project for Louisiana, but the First Consul is immoveable. I confess to you I see very little use for a Minister here, where there is but one will; and that will governed by no object but personal security and personal ambition: were it left to my discretion, I should bring matters to some positive issue, or leave them, which would be the only means of bringing them to an issue.

I am, &c.

ROBERT R. LIVINGSTON.

Hon. JAMES MADISON, &c.

No. 4.

Mr. Livingston to —— ——.

DECEMBER 24, 1802.*

Sir: I cannot but feel the utmost anxiety to know whether my project, which you had the goodness to submit to the inspection of the First Consul, is likely to meet with his concurrence. Upon ordinary occasions I should consider the delay of a few weeks as of little moment; but there are circumstances which render every day important in what relates to the United States and France. In the twelve months that I have been here, I have not been so happy as to receive a conclusive answer to any one business that I have had to transact with the Minister. Congress are now in session; they will infer from every paper submitted to them by the President, that the French Government are disposed to show them but little attention. The obscurity that covers the designs of France in Louisiana (for not the least light can I, officially, obtain on the subject) will double their apprehensions; this, added to the clamors of ruined creditors, and the extreme severity with which some of their citizens have been treated in St. Domingo, and the extraordinary decisions of the Council of Prizes, &c., will leave a fair field for the intrigues of the enemies of France, and even enlist the best patriots of America on their side. At this moment Britain comes forward and pays, with the most scrupu-

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* It does not appear with certainty by what despatch this memoir was communicated.

lous attention, every demand, and proposes to settle her Southwestern line with the United States. In doing this, she is anxious to come down to a navigable part of the Mississippi, so as to communicate with Canada by that channel. It is obvious that she can have no interest in this, but such as looks to the future possession of the mouth of that river; a project that she would naturally form the moment she saw Louisiana pass into the hands of her rival. I am sorry to say it is one that she will find no difficulty in executing, unless prevented by the United States; for France is too far to protect a young Colony from an established one, and the numerous savages, provincial troops, and others, that Canada will afford. While the conduct of France speaks a language so painful to the feelings of the American Government, there is too much reason to believe that there will be little solicitude in so forming their limits as to cover her possessions. I am anxious, sir, to know our prospects. If they should be such as I flatter myself the mutual interests of France and the United States would lead to, I would wish to have it in my power to arrest in Mr. King's hands any conclusion on the subject of our Western bounds. In case my project should be honored with the approbation of the First Consul, it will be essential to the security of the possessions of France and the peace of that country, to remove the British boundary as high up the river as possible, so as to prevent any communication with Canada, by the rivers that fall on the one side into the lakes, and, on the other, into the Mississippi. If this business is obstructed only by the non-conclusion of the treaty with Spain for the Floridas, one may still go between us for New Orleans and the territory above the Arkansas river, with a condition annexed, in case the treaty with the Floridas should succeed agreeably to the wishes of France. Should the treaty with Spain fall through, every reason of policy should induce France, either to relinquish her designs on Louisiana altogether, or to cover her frontier by a cession to the United States; since, without a single port in the Gulf, it will be impossible to protect their Colony; and all the expense incurred by the attempt will ultimately redound to the advantage of Britain, who will not fail to attack them with advantage both by sea and land.

The treaty I propose might also form a basis for the immediate discharge of the debts due to our citizens; in the doing of which, advantageous arrangements may be made, and, at the same time, the funds of France be considerably raised: provided such secrecy is observed in the whole of this transaction as will prevent the debts being the object of speculation. I know, sir, a distinction has been taken between debts due from the former Government and that which now happily prevails in France. But, sir, if this distinction is just, it does not apply to the demands of the United States. They are specifically assumed by the new Government, when they made the object of the treaty, and an equivalent has already been paid the present Government by that of the United States; so that they stand upon a different ground from that of the debts of other nations having demands on France; and they not only have to plead their justice, and the circumstances under which they were contracted, but the pledged faith of the existing Government.

I cannot, sir, but be solicitous to know that what I have hitherto taken the liberty to write to you has passed into no hands but those of the First Consul, or some other member of your own family, as I fear my communications out of the ordinary channel might be ill taken where I am solicitous to stand well.

I have the honor to be, sir, with the most profound consideration, your most obedient servant,

R. R. LIVINGSTON.

Mr. Livingston to the Minister of Exterior Relations.

SIR: I have so often had occasion to mention to you the claims of American citizens upon the French Government, and, with so little effect, that I feel pain whenever I am compelled to touch upon that subject. But, sir, I never had reason to doubt, both from the tenor of your note, and conversations, that it would become a question whether these debts, just in themselves, and solemnly confirmed by a treaty, should become the subject of liquidation. The Board of Accounts accordingly proceeded to liquidate and give certificates for about one-quarter of the whole amount. Upon the debt so liquidated the American merchant was enabled to raise the small sums necessary for his support, till arrangements were made (which they never permitted themselves to doubt would be finally done) for their discharge. But, sir, even of this support they are now deprived; for though the board has proceeded to liquidate more of their claims, the gentleman at the head of the Department refuses to give the usual certificates; under what pretence I am at a loss to conceive. I am told he considers the treaty as applying to debts contracted during the present Government, when, in fact, no such debts existed at the time of the treaty, nor is there a word in the treaty which authorizes such construction; the whole treaty referring to matters that had passed, not only under the Government that had preceded the present, but under that which preceded the Revolution. Upon what other principle has the United States, with the strictest good faith, paid the debt contracted under Louis XVI. and those which the existing Government demanded under the late Convention for injuries sustained under the late Directors?

It is time, sir, that matters should be brought to some issue; that the citizens of the United States and their Government should know how far the treaty is binding upon France, and what construction ought to be given to it; for hitherto, it has only served as a means to surprise their good faith, and to involve both the Government and the people of the United States in fresh expenses.

I have the honor to renew to your excellency the assurances of my high consideration.

R. R. LIVINGSTON.

Robert R. Livingston, Minister Plenipotentiary of the United States of America, to the Minister of Exterior Relations.

PARIS, *Jan.* 10, 1803.

SIR: I have just learned through a channel, which, though not official, is such as leaves me no doubt of its authenticity, that the Governor of New Orleans has denied the citizens of the United States a right of depot there, under the pretence that the provision for that purpose in the treaty has expired. You are not ignorant, sir, of the value that the Western inhabitants of the United States place upon that right, nor of the spirit with which they will defend it; a spirit to which the Government must yield, even if they could themselves be indifferent to the object. It is peculiarly unhappy, sir, that this circumstance should have happened at the very moment that France is about to possess that country; since, taken in connexion with the silence of the French Government, as to its intention, it will (I very much fear) give room to jealous and suspicious persons to suppose that the Court of Spain has, in this instance, acted in concurrence with that of France; though, sir, I do too much justice to the integrity of France to believe that she would approve of a breach of treaty and render their first entrance into our vicinity an act of hostility; yet it certainly is of a nature to call the immediate attention of France to the several matters which I had the honor to mention to you, the neglect of which has excited the liveliest sensation in the United States. I therefore avail myself of this opportunity and the permission you gave me to offer you the outline of a treaty that I presume will afford the most obvious benefits to France, and strengthen the connexion which every enlightened American wishes to subsist between her and the United States.

Presuming that the Floridas are in the hands of France, and unless they are Louisiana can never be worth her possessing, because it affords no ports for its own protection, I shall predicate what I have to offer upon that presumption.

France can have but three objects in the possession of Louisiana and Florida: the first is the command of the Gulf; second, the supply of her islands; third, an outlet for her people, if (which however appears to me a very distant expectation) her European population should be too great for her territory. The first of these will be effectually secured by the possession of West Florida which includes the bay of St. Esprit and Pensacola, together with the town and harbor of St. Augustine. There are no other ports of the smallest importance east of the Mississippi. The second will be better effected by confining their establishment to some reasonable limits on the seacoast, or within a moderate distance from it, than by scattering their capital and inhabitants over an extensive territory, which will have a tendency to render them savage and independent, and compel France to keep up a very expensive establishment to protect them from the incursions of savages.

This country must either be settled by foreigners, or by emigrants from France. In the first case, no nation in Europe can retain them in a state of dependence; because they will, when settled some hundred miles from the sea, be absolutely inaccessible to their power. In the second, the emigration will be such a drain to the wealth and population of France as will inflict as deep a wound to her agriculture and manufactures as that felt by her on the revocation of the Edict of Nantz, or by Spain, on the expulsion of the Moors; and, after all, the day on which they will be independent will arrive whenever they shall have sufficient wealth and strength no longer to need her aid.

Having treated this subject more at large in a paper which you have had the goodness to read, I will not dwell upon it here, but propose what it appears to be the true policy of France to adopt, as affecting all her objects, and at the same time conciliating the affections of the United States, giving a permanency to her establishments, which she can in no other way hope for. First, let France cede to the United States so much of Louisiana as lays above the mouth of the river Arkansas. By this, a barrier will be placed between the colony of France and Canada, from which she may otherwise be attacked with the greatest facility, and driven out before she can derive any aid from Europe. Let her retain the country lying on the west of the Mississippi and below the Arkansas river—a country capable of supporting fifteen millions of inhabitants. By this, she will place a barrier between the United States and Mexico, if (which I hope will never be the case) they should have the wild idea of carrying their arms into that country, and at the same time be at hand to protect the Spanish establishments against the ambitious views of any European Power. Let her possess East Florida as far as the river Perdido, with all the ports on the Gulf, and cede West Florida, New Orleans, and the territory on the west bank of the Mississippi, to the United States. This cession will be only valuable to the latter from its giving them the mouths of the river Mobile and other small rivers which penetrate their territory, and in calming their apprehensions relative to the Mississippi. The land ceded (if we except a narrow strip on the bank of the river) will, for the most part, consist of barren sands and sunken marshes; while that retained by France, on the west side of the Mississippi, includes the great bulk of the settlements and a rich and fertile country. It may be supposed that New Orleans is a place of some moment; it will be so to the United States, but not to France, because Fort Leon, on the opposite bank, affords a much more advantageous station; has equal advantages as a harbor; is higher, healthier, and more defensible; and, as the great bulk of the settlements must necessarily be on that side, the capital must be transplanted there, even if France continued in possession of New Orleans, which is a small town, built of wood, and upon which all the expenses that France should make in public buildings, &c., would ultimately be thrown away when the capital was removed.

The right of depot which the United States claim, and will never relinquish, must be the source

of continual disputes and animosities between the two nations, and ultimately lead the United States to aid any foreign Power in the expulsion of France from that colony. Independent of this, as the present commercial capital of New Orleans is mostly American, it will be instantly removed to Natchez, to which the United States can give such advantages as to render New Orleans of little importance.

Upon any other plan, sir, it needs but little foresight to predict that the whole of this establishment must pass into the hands of Great Britain, who has, at the same time, the command of the sea, and a martial colony containing every means of attack. While the fleets block up the seaports, she can, without the smallest difficulty, attack New Orleans from Canada with fifteen or twenty thousand men, and a host of savages.

France, by grasping at a desert and an insignificant town, and thereby throwing the weight of the United States into the scale of Britain, will render her mistress of the New World. By the possession of Louisiana and Trinidad, the colonies of Spain will lie at her mercy. By expelling France from Florida, and possessing the ports on the Gulf, she will command the islands. The East and the West Indies will pour their commodities into her ports; and the precious metals of Mexico, combined with the treasures of Hindostan, enable her to purchase nations whose aid she may require in confirming her power.

Though it would comport with the true policy, and the magnanimity of France, gratuitously to offer these terms to the United States, yet they are not unwilling to purchase them at a price suited to their value, and to their own circumstances; in the hope that France will at the same time satisfy her distressed citizens the debts which they have a right by so many titles to demand.

These short hints, I flatter myself, will serve to draw your attention to the subject; in which case I am satisfied that many other reasons for the adoption of this plan will suggest themselves to your reflection; reasons on which I do not, from a respect to your time, think it necessary to enlarge. I would only observe that Congress are now in session; that if no treaty is concluded before they rise, or if a Minister should go only with powers to treat, without being the bearer of anything conclusive, he will have to encounter unnumbered suspicious and jealousies; and when he opens the negotiation, he will have to contend with all the intrigues of the Court that is most interested in preventing the completion of objects so hostile to its views. Many things are ratified when a treaty is formed, that would be obstacles to the formation of one in a popular Government.

Accept, sir, the assurances of my high consideration. R. R. LIVINGSTON.

James Madison, Secretary of State, to Rufus King, Minister to England.

DEPARTMENT OF STATE, *Jan.* 29, 1803.

SIR: My letter of the 23d ult., with a postscript of the 3d of this month, communicated the information which had been received at those dates relating to the violation at New Orleans of our treaty with Spain, together with what had then passed between the House of Representatives and the Executive on the subject. I now enclose a subsequent resolution of that branch of the Legislature. Such of the debates connected with it as took place with open doors will be seen in the newspapers. In those debates, as well as in indications from the press, you will preceive, as you would readly suppose, that the cession of Louisiana to France has been associated as a ground of much solicitude with the affair at New Orleans. Such, indeed, has been the impulse given to the public mind by these events that every branch of the Government has felt the obligation of taking the measures most likely, not only to re-establish our present rights, but to promote arrangements by which they may be enlarged and more effectually secured. In deliberating on this subject, it has appeared to the President that the importance of the crisis called for the experiment of an extraordinary mission, carrying with it the weight attached to such a measure, as well as the advantage of a more thorough knowledge of the views of the Government and of the sensibility of the public, than could be otherwise conveyed. He has accordingly selected for this service, with the approbation of the Senate, Mr. Monroe, formerly our Minister Plenipotentiary at Paris, and lately Governor of Virginia, who will be joined with Mr. Livingston in a commission extraordinary to treat with the French Republic; and with Mr. Pinckney in a like commission to treat, if necessary, with the Spanish Government.

Mr. Monroe is expected here to-morrow, and he will probably sail shortly afterwards to New York.

These communications will enable you to meet the British Minister in conversation on the subject stated in your letter of May 7th, 1802. The United States are disposed to live in amity with their neighbors, whoever they may be, as long as their neighbors shall duly respect their rights; but it is equally their determination to maintain their rights against those who may not respect them; premising, where the occasion may require, the peaceable modes of obtaining satisfaction for wrongs, and endeavoring, by friendly arrangements and provident stipulations, to guard against the controversies most likely to occur.

Whatever may be the result of the present mission extraordinary, nothing certainly will be admitted into it not consistent with our prior engagements. The United States and Great Britain have agreed, each for itself, to the free and common navigation by the other of the river Mississippi—each being left, at the same time, to a separate adjustment with other nations of questions between them relative to the same subject. This being the necessary meaning of our treaties with Great Britain, and the course pursued under them, a difference of opinion seems to be precluded. Any such difference would be matter of real regret; for it is not only our purpose to maintain the best faith with that nation, but our desire to cherish a mutual confidence and cordiality, which events may render highly important to both nations.

Your successor has not yet been named, and it is now possible that the time you may have fixed for leaving England will arrive before any arrangements for the vacancy can have their effect. Should this be the case, the President, sensible of the inconvenience to which you might be subjected by an unexpected detention, thinks it would not be reasonable to claim it of you. It may be hoped that the endeavors to prevent an interval in the legation be successful; and as it cannot be more than a very short one, no great evil can well happen from it. I have the honor, &c.

JAMES MADISON.

R. R. Livingston to James Madison.

PARIS, *February* 5, 1803.

DEAR SIR: Not knowing where to direct the enclosed, I submit it to your care. The bearer of this to Nantz waits, so that I can write you nothing but that the Louisiana armament is still ice-bound. The Floridas are not yet ceded, owing, I believe, to some difficulty about Parma, and the solicitude of the Emperor of Russia to provide for the King of Sardinia. Spain is however prepared to make the cession, and I presume it will be done. I have precise answers from you to none of my inquiries, and am much at a loss how to act.

I have much to say, but am not allowed to enlarge. You shall hear from me by the first safe conveyance.

I am, dear sir, with the highest esteem and respect, your most obedient humble servant.

R. R. LIVINGSTON.

Hon. JAMES MADISON, *Secretary of State.*

James Madison, Secretary of State, to Charles Pinckney and James Monroe.

DEPARTMENT OF STATE, *Feb.* 17, 1803.

SIR: You will be herewith furnished with a joint commission to treat with His Catholic Majesty, and with a letter of credence to him. For the object of the commission, and as a guide to your negotiations, I refer you to the instructions given in relation to the French Government. Whatever portion of the arrangements contemplated may be found to depend not on the French, but on the Spanish Government, is to be sought from the latter, on the like terms as if they had depended on the former.

The scale of value applied to the distinct territories in question will deserve particular attention; so will the provision for paying our citizens who have claims on Spain out of the sums stipulated as the price of her territorial possessions. Among these claims it will be important to include, not only those within the description contained in the convention signed by Mr. Pinckney in August last, but such as may be founded on unlawful acts committed within Spanish responsibility by other than Spanish subjects, and on acts committed by Spanish subjects, within the Spanish colonies, inconsistent with true equity, though not with the forms of law.

Your particular attention will also be due, in case a cession should not be obtained, to an enlargement of our right of deposit at New Orleans, to the establishment of suitable deposits at the mouths of the rivers, passing from the United States through the Floridas, as well as to the free navigation of those rivers by citizens of the United States. Useful hints on these subjects may be found in the letter of which a copy is annexed from the Consul of the United States at New Orleans.

I refer for another object which will deserve your attention, to the letter from the Department of State of the 27th of November, to the Minister Plenipotentiary of the United States, which urges the necessity of some provision by the Governments of Europe having American Colonies, by which the irregular and injurious proceedings of colonial officers towards the United States may be more effectually controlled, or more expeditiously corrected, than by crossing the Atlantic with representations on such occasions. Such a provision is not more due to our just expectations than to the interests which those Governments have in maintaining the amicable relations which subsist with the United States. In the same letter, notice was given that the Spanish Government would be held responsible for whatever damages might be sustained by our citizens in consequence of the violation of the treaty by the Intendant at New Orleans. It will be proper to obtain from that Government a stipulation that will provide for such contingent damages. In case the convention, already on foot, should be open for such an article, it may be therein inserted. Should that opportunity not exist, it will be necessary to authorize, by a supplemental article, the Commissioners appointed under that convention to award the indemnifications.

I have the honor, &c.

JAMES MADISON.

JAMES MONROE, &c.

R. R. Livingston to the Secretary of State.

PARIS, *February* 18, 1803.

DEAR SIR: I have been honored by yours of the —— November. I am pleased to find that you are satisfied with my applications to the Government on the subject of the debt; I am only sorry that those applications have hitherto been unsuccessful, and, as far as appears, will continue to be, unless some motive more efficacious than that of justice, or national faith or credit, is held out. To enter into the financial arrangements of people in power here would lead me into a very delicate discussion, which would not tend to any advantage proportioned to the risk it might subject me to. I still think that if anything is done to satisfy our citizens, it must be by some advantageous offer on the part of our Government. You will find some of my ideas on that subject sketched in my former letters.

As you have intimated the propriety of opening some other channel of communication with the First Consul than through the Minister, this I have effectually done, so as to have got several

unofficial communications under his eye, and to have learnt his sentiments thereon. I can have a personal conference with him when I choose, having made arrangements for the purpose; but I defer it for two reasons: first, I have never yet had any specific instructions from you how to act or what to offer. To meet him merely to talk of the justice of our claims, and of our rights on the Mississippi, would be only to say ungracious truths, and excite prejudices which may render a future conference more difficult; and, second, because it is one of the traits of his character when he has once fully avowed a sentiment not easily to change it. I have, therefore, thought it best to address myself officially to the Minister, and unofficially to the only man supposed to have any sort of influence over him. I have accordingly put into his hands some notes containing plain truth mixed with that species of personal attention which I know to be most pleasing. The delicate subject of these notes makes me unwilling to send them unless I can find time to put them in cipher, which I fear will not be the case by this conveyance; you will, however, have them in the first letter I write to the President, which will be by this or the next conveyance. I do not mention the channel I allude to, because I wish it only to be known to yourself and the President, and my last letter to him has sufficiently explained it. The only basis on which I think it possible to do anything here is to connect our claims with our offers to purchase the Floridas. Upon this subject my notes turn. I have first endeavored to show how little advantage France is likely to make from these Colonies; the temptation they offer to Britain to attack them by sea and from Canada; the effect the conquest of them by Britain would have upon the islands; and the monopoly which that conquest would give to a rival Power of the trade of the West as well as of the East Indies. I have dwelt upon the importance of a friendly intercourse between them and us, both as it respects their commerce and the security of their islands; and I have proposed to them the relinquishment of New Orleans and West Florida, as far as the river Perdido, together with all the territory lying to the north of the Arkansas, under an idea that it was necessary to interpose us between them and Canada, as the only means of preventing an attack from that quarter. I did not speak of East Florida because I found they consider the navigation of the Gulf as very important; for this I proposed an indefinite sum, not wishing to mention any till I should receive your instructions, that it should be a condition of this treaty that the American debt should be inscribed on their five per cent. stock. I knew it would be vain to render them our creditors by deducting this out of our payment, because actual money would alone have any effect in carrying the plan through; and even that must be managed with some circumspection, or no plan will succeed. These propositions, with certain accompaniments, were well received, and were some days under the First Consul's consideration; when it was thought a better bargain might be made on the spot; and I was told that General Bernadotte would have full power to treat on this subject in America on the basis on which I had placed it. My answer to this information you will find in the enclosed note. I am now lying on my oars in hopes of something explicit from you. I consider the object of immense importance; and this, perhaps, the favorable moment to press it, because the affairs of the islands are yet very doubtful, and the armament is still blocked up by the ice in Holland; though as we now have a thaw here I fear they will not be so much longer. My plan is much relished by the person through whom it was proposed. General Bernadotte sees the awkward situation in which he will be placed if he goes out while our demands remain unsatisfied. But nobody dares to offer an opinion when that of the First Consul has been expressed. And, at present, a very unexpected difficulty has arisen. I told you that Parma would be offered for the Floridas, and that General Bournonville was sent to negotiate the business. It was never doubted a moment here that it would be effected; this I learned from Talleyrand and the Spanish Ambassador. They intimated that the treaty would be signed the day the King returned from Barcelona; and their information accorded with that which Lord Whitworth had received. I learn now from the Spanish Ambassador that the thing has met with some difficulty, as he says, not because of any aversion in the Court to make the cession, but of some difference between the Prince of Peace and General Bournonville. I believe, however, that this is not the sole cause; but that Spain begins to see that, in receiving Parma, she will receive nothing; as it will be rendered subservient to another arrangement, as I hinted in my last. You will consider this rather as a conjecture than as anything I am perfectly founded in relating. The essential fact for us is that the Floridas are not yet ceded. Mr. Dazara, yesterday, told me that he began to have his doubts whether they would be; but France is fully impressed with the nullity of her possession in Louisiana unless she has some port in the Gulf. Indeed, the Minister told me yesterday that there were no difficulties of any moment. I presume that she will, ultimately, find some way to cut the gordian knot; and I cannot but sincerely wish that you may have availed yourselves of the pretence Spain has given you to take possession. It will be best to treat with the subject in our hands; but, at all events, tell me what to do if they should go into the hands of France; and fix the sum you are willing to give in case they should listen anew to my proposition; for as to Bernadotte doing anything with you I have no great faith. I pray you again to give me some instructions, for I may be acting contrary to your intentions; and I should be very sorry to do anything that you may find it proper to disavow. I am not satisfied, from examining my instructions and commission, that I am empowered to do anything but the common routine of business. As I did not receive this till I was going off I had no opportunity of objecting to them. I find that I have no precise diplomatic

character, not even an envoy ordinary or extraordinary, though it had been usual for the United States to grant this latter grade to gentlemen of less standing than myself. But this by the by, which I should not have mentioned if I did not find that it is not quite so agreeable here, as Bernadotte is a man of high rank, and would have wished, like his brother Generals, to have gone out with a more elevated rank, but which they cannot give while the United States only retain a Minister Plenipotentiary here. It is proper that I should say a few words on General Bernadotte; he is one of the old Jacobin party, and has been much looked up to by them; but being brother-in-law to Joseph Bonaparte, he is favorably connected; but has not ceased to be an object of some jealousy. And I believe you may consider his present mission as an honorable banishment. He proposes only to stay a few months in America. I have had many conversations with him. His dispositions are just such as I would wish with respect to us; but his temper is warm and fiery, and you will have to flatter his pride and that of his nation, if you would stand well with him.

In several conversations that I have had with Lord Whitworth I find that Britain is very averse to the projected exchange for the Floridas; and he thinks that, if effected, it will be taken up very warmly by the nation. Mr. King, however, in an answer this day received to some questions I have put on that subject, thinks differently. I find that the sentiments of the two nations, with respect to each other, have totally changed from what they were a year ago; they at present mortally hate each other; and nothing but the want of allies keeps Britain from breaking out. You will find in one of the *Moniteurs* I have sent you, a curious journal of Sebastiani, which has been evidently published to prepare this nation for some new operation in Egypt; it is extremely offensive to the British. I have a letter from Mr. Graham, who is far from being satisfied with the conduct of the Spanish Court; who act like this in saying nothing on the subject of their treaty with France, and who have passed a law prohibiting any American vessel to enter their ports till they have performed a quarantine in some foreign port.

I mentioned to you my wish to be empowered to recognise the Italian Republic; to be accredited to the Consul, as has been done by most of those Powers who wish to please him; and as this is a compliment without expense, it might not be amiss to pay it, particularly as we shall have some commercial connexion with the Italian States.

From the best accounts I can receive from Holland the armament will be detained there till about the last of March, so that you will not have them in New Orleans till June; a precious interval, of which you may think it prudent to avail yourselves.

I broke off here that I might have an explicit conversation with the Minister, founded upon the newspaper intelligence from our country; for I have had no other since the date of your letter of —— November. I endeavored to impress him strongly with the idea of our determination never to suffer our rights on the Mississippi to be impeded; and of the little value that that country would be to them in the production of a revenue; of the almost certainty of war between them and the savages in case their stipends were withheld; the pain it must give the First Consul to be the means of the destruction of the white inhabitants, whom it would be impossible to defend; and upon the benefits that would result to the commerce and manufactures of France from a friendly connexion with us. These seemed to make an impression upon him; and he promised to represent them strongly to the First Consul to-morrow; but added, that however my other plans might be received, I must consider the purchase of the country as out of the question; intimating that a sale was below their dignity; so that I fear my hopes, founded on their necessities, are frustrated.

I am, dear sir, with the most respectful consideration, your obedient humble servant,

ROBERT R. LIVINGSTON.

The Hon. JAMES MADISON,
Secretary of State.

[The following, Nos. 2 and 3, are supposed to be the memoirs referred to in Mr. Livingston's despatch of the 18th February.]

No. 2.

To ——

I am sensible, sir, that I have already taxed your patience in the memoirs that I have submitted to your attention; but, sir, (pardon the frankness with which I speak,) the critical moment is arrived which rivets the connexion of the United States to France, or binds a young and growing people for ages hereafter to her mortal and inveterate enemy.

How highly I estimate the alliance of France, and how much I believe the happiness of both nations may be promoted by it, not only appears from the whole of my political conduct, but has been stated in an essay upon the relative maritime power of France and Britain, which, as I have learned, has been honored by the First Consul's attention.

The United States have at present but two possible causes of difference with France—the debt due to her citizens, and the possession of Louisiana. The first of these France is not only bound to pay by the laws of justice, but by the solemn stipulations of a treaty which has been observed with the utmost good faith by the United States, who have advanced large sums in consequence, without suffering themselves to doubt that it would meet with equal attention on the part of France. Give me leave to add, sir, that your signature was considered as a guarantee of that treaty by the people of the United States, who had long since learned to estimate the candor and integrity of your character.

My present object, sir, is to show, in a very few words, that Louisiana affords France not only the means of discharging their debt, and promoting the other object which I took the liberty to hint at before, but even of placing her colony of Louis-

iana in a better situation, should it be her wish to retain that colony, than she would do by listening to no compromise with the United States.

The object of France in forming this colony is to supply her islands; to afford an outlet for such of her population as she thinks she can spare from home. But not to scatter her people over an immense wilderness, where they will be lost for her and to the world; or to fill her territory with inhabitants that would withdraw their allegiance the moment they found themselves in a situation so to do; which will certainly be the case if these, or if any but the natives of France are permitted to settle it.

It is, then, the interest of France to limit her territory, and to render it as compact as possible, without placing it at such a distance from the sea as to put it totally out of her control. While, with the remainder of the territory, she fulfils other important objects, and, above all, builds her future connexion with the United States upon mutual interests, and that strict and solemn regard for treaties which can alone lull the apprehensions that her power excites, and to which, more than to the force of her arms, Rome was indebted for the dominion of the world.

The produce of Louisiana must be conveyed by the Mississippi, and there are no ports for her marine to the west of Pensacola. If, therefore, France should possess Pensacola, and all the ports to the east of it, she will have the complete command of the Gulf. And if she possesses the free navigation of the Mississippi, and all Louisiana lying to the west of that river, and south of the river Arkansas, comprehending a tract nearly as large as the ancient Government of France, she will have more territory than will suffice to supply all the wants of her marine, and West India colonies, with such articles as that country can produce.

Louisiana, within these limits, can support a population of fifteen millions of people. You will judge, sir, whether it would be possible for France to retain more than that number in subjection; or whether it would be good policy to extend her population beyond the number she can govern.

The settlers to the north of the river Arkansas would be too far from the sea to fear any force from France. A distant colony must be of moderate size, compactly settled, and not remote from the sea, or the parent State will soon lose all control over it. The interest of France, then, requires that her colony in Louisiana should not exceed the limits I mention, and the separation of this territory from that lying to the east of the river Perdido would afford an additional security to France for the possession of both, not only as it would break the connexion of the colonies, but as their interest would be totally different, the last possessing little valuable land, (for both East and West Florida are barren tracts,) would be military posts and commercial entrepots; from which the trade would be carried on to and from the Mississippi in small vessels; while that with France would, on account of her safe and commodious harbors, centre in East Florida.

The inhabitants of this country would be deeply interested in a continuance of their connexion with the mother country. While the interposition of West Florida, in the hands of the United States, would prevent any coercion on the part of the inhabitants of Louisiana, if they should at any time be disposed to revolt; East Florida, on the contrary, while loyal to France, would, by means of her navy, have a powerful control on the colony of Louisiana.

The example of England should have some weight. The Dutch possessed New York; England, for the sake of uniting her colonies, purchased it from Holland. Had it been left in the hands of the Dutch, that union, which has lost the whole to Britain, would have been prevented.

The Colonies of Louisiana and East Florida, within the limits proposed, being thus secured, the remainder of the Spanish cession is only valuable as it enables France to pursue other great objects, to wit: the payment of the debt in conformity to her treaty; and the conciliation of an ally which may on so many important occasions be useful to her; and the one of no less magnitude to which I have in my last the honor to allude.

The United States possess the east side of the Mississippi, from its source to the thirty-first degree of north latitude. It would be very interesting to them to acquire the possession of the remainder of the east bank of that river to its mouth, and that narrow strip of land which lies between the thirty-first degree of latitude and the sea, as far as the river Perdido; not on account of the value of the land, for, except a small quantity on the banks of the river, it is for the most part a sandy barren, or a sunken marsh; but because it would give them the mouths of those rivers which run through their territory, and afford an outlet to the sea.

To the cession of this country but one possible objection can be raised on the part of France; it may attach a value to New Orleans which it by no means merits. The fact is, that to France, who has the choice of fixing her capital on either side of the river, New Orleans has no circumstance to recommend it. It is placed on the naked bank; it has no port, basin, or quay, for shipping; has no fortification of any strength; and is incapable of being rendered a good military position; and the houses are only of wood, subject to continual accidents. The situation was fixed first by France on account of its being on the Florida side of the river where the settlements commenced: but as it was soon found that the lands of the west side of the river were much richer, the principal part of the population is now there. The bank opposite to New Orleans is higher and better calculated for a town: it already has a strong post in Fort Leon, the most commanding position in that country; and the harbor, or rather the road, is in all things equal to that of New Orleans. As a Government house and barracks, stores, &c., must be built either at New Orleans or at Fort Leon, there can be no doubt, even if France retains both, that the latter ought to have the preference, since a regular and handsome capital could be laid out there, and in a healthier and stronger situation than at New Orleans.

It is highly probable that, in this case, the superiority it would have in point of health, the advantages of the Government, and, above all, the free trade with France and her islands, would render it in three years more populous than New Orleans now is. The French merchants would sell their houses in the one to the Americans, and establish themselves in the other. Should France retain the whole of the Spanish cession on both sides of the river, she will find it absolutely necessary to remove her capital to the west side. The river for three months is impassable from the violence of the inundation, and the trees that it brings down with it. As the bulk of the colony is on the west side of the river, it must necessarily draw its capital after it, or submit to be cut off from it during this period. A town will, therefore, rise at Fort Leon, where the richest establishments are already formed, which must increase with the population of the country.

The difficulty of removing the capital from New Orleans will increase as its buildings become more numerous, and its population greater. It is, therefore, in every event the true interest of France to commence the establishment of a capital on a regular plan on the west side of the river, where it must ultimately be, rather than expend money upon the old town of New Orleans, which they will find too much insulated for the capital of Louisiana.

Permit me, sir, to examine the subject in a point of view which I conceive is important not only to France and the United States, but to every maritime Power. It cannot be doubted that the peace between France and Britain has been too disadvantageous to the latter to be of long duration. Strong symptoms of an approaching rupture have already appeared; and the statesmen of both countries will begin to examine the points of attack and defence, and the acquisitions that afford the most permanent advantages. The Cape, Malta, and Egypt, have already awakened the cupidity of Great Britain. Should she extend her views across the Atlantic, (and what is to limit them?) the cession of Louisiana to France offers her the fairest pretence to invade that country, either from Canada or by the Atlantic.

She felt no reluctance in leaving them to Spain; but she will not quietly see them in the hands of France. She will strain every nerve to acquire them. By uniting them with Canada and Nova Scotia she encircles the United States; and, having the same manners, the same religion, the same language, and a number of partisans among the commercial inhabitants of the United States; having carefully removed every conflicting question, and even conciliated, by the liberality of her restitutions, those whom her conduct during the war had irritated; it will be difficult to say what will be the extent of her influence. But, independently of this circumstance, if Britain should unite Louisiana and West Florida to her other American possessions, no power in Europe will be able to oppose her force. The bay of St. Esprit will become another Gibraltar, from which she will ravage every island and continental possession of France, Spain, and Holland; she will monopolize the commodities of the West as she has already done those of the East Indies. Not a moment, sir, should be lost for placing a barrier between the settlements that France may wish to retain in Louisiana and Canada, by ceding to the United States the portion I have proposed above the Arkansas; and by the cession of New Orleans and West Florida, to take from them the first inducement to attack that country. France should exert all her resources and all her strength in the immediate fortification of Pensacola and the bay of St. Esprit; or, if she has not the means of doing it, she should leave them in the hands of Spain (if she can consent to leave her at peace) or to some other neutral nation. For I will venture to say that the acquisition of that country, by a nation who possesses Newfoundland, Nova Scotia, and Canada, with a powerful maritime force, will annihilate the external trade of every other nation in Europe; and that it would be the true interest even of Spain herself, rather to see her ports in Florida in the hands of the United States, who alone can defend them, than to keep them in her own, at the risk of having them wrested from her by Britain. Perhaps, in the present state of things, considering the superiority of the British Navy at this moment, the great capital that it will require to reinstate the French islands, and her continental possessions in the East Indies and in America, the wisest measure would be, not only to make the cession I have asked, but to hypothecate the whole of East Florida for a term of years, for such part of the American debt as may remain unsatisfied.

But as this is a mere hasty, undigested idea, rather intended to turn your attention to this subject, than as matter sufficiently matured to take the form of a proposition. I cannot, sir, conclude this note, without turning your attention to the present feelings of the people of all parties in the United States with respect to France. The total silence of the French Government on the subject of their intention as to the navigation of the Mississippi, and their rights of *entrepot* at New Orleans, secured to them by the most solemn treaty with Spain; the mystery with which all the arrangements of France for taking possession of that country are concealed from the Minister of the United States, notwithstanding his repeated notes to the Minister of Exterior Relations on the subject; have excited the most lively apprehensions of designs unfriendly to their commerce and their rights. The total neglect of every measure that leads to a security for their debt, notwithstanding the provisions of the treaty, and the ruin of numbers of their citizens by this; and the very extraordinary decisions which have, in several instances, taken place in the Council of Prizes, for which I have been able to receive not merely no redress but even no answer; contrasted with the good faith, displayed by their own Government with respect to France, with the scrupulous attention that Great Britain has paid to repair, by the most liberal conduct, the abuses she has permitted herself to commit during the war, leads to a belief

that France limits her rights by her power; and insensibly disposes them to alliances, both offensive and defensive, which it has heretofore been her policy to avoid. Can it possibly be the interest of France, sir, to drive the United States into these alliances, while she forms colonies, and retains islands in their neighborhood? Can she look with contempt upon an enterprising and hardy nation who possesses means of defence at home, and for a maritime force which will render her respectable abroad? The immense power of France has rendered her an object of jealousy to the Old World; while the inhabitants of the New felt no other sensations than those of admiration and respect.

In Europe, France only knows secret enemies and hollow friends. In America, she has grateful allies. Let her not, sir, for the bubble of the day, cast them off; but let her avail herself of the advantages she has acquired, to bind them to her. Should she, relying on her own strength, never need their aid, she still will find a consolation in reflecting that the sacrifices (if such they may be called) she makes, are sacrifices at the altar of justice and national faith. She will cheaply purchase the esteem of men and the favor of Heaven by the surrender of a distant wilderness, which can neither add to her wealth nor to her strength.

R. R. L.

No. 3.

JANUARY 7, 1802.*

To ——.

In a conversation which I yesterday had with General Bernadotte, I find that some idea is at present entertained by the First Consul of treating at Washington of the several matters I had the honor to mention to you. I should be extremely pleased at this arrangement, because I should see in it those advantages to my country which are always derived from carrying on a negotiation at home, where the views of the Government are clearly known, where they can avail themselves of every light and information, while the Minister with whom they treat is isolated, and must rely on his own resources and those he draws from suspicious channels. But, sir, there are circumstances which, in the present instance, appear to me to counterbalance those advantages, and which render it peculiarly the interest of France and the United States to come to a more immediate arrangement of several matters that interest them in this negotiation.

I cannot conceal from you, sir, that both the Government and the people of the United States are at present in such a state of mind as to be filled with doubts and jealousies with respect to the views and dispositions of France. Many among her firmest friends are ruined by the inexecution of that article of the treaty which provides for the payment of their debts; many by hasty measures at St. Domingo, and the disregard, in some instances, of the common principles of the law of nations in the decisions of the Council of Prizes. The silence of the French and Spanish Governments on the subject of their intentions relative to the navigation of the Mississippi and the right of *entrepot* at New Orleans, has given just grounds of alarm. But, sir, a circumstance has just come to my knowledge, though not officially, yet in such a way as leaves me little room to doubt of its authenticity, which cannot fail to drive the United States into some violent measure. "On the 20th of October, the Governor of New Orleans issued a proclamation, in which, speaking of the Americans, he says they will not in future be permitted to make a deposit of their cargo in New Orleans, in conformity to the twenty-second article of their Treaty of 27th October, 1795, which has expired." I have examined the treaty: there is no pretence for this construction of it; and, as the right has been regularly exercised till now, it will be generally believed in the United States that this construction could only have been suggested by a wish on the part of France to get rid of the provisions of the treaty before she took possession. Now, sir, I will frankly confess to you that the United States will rather hazard their very existence than suffer the Mississippi to be shut against them. Of this you will easily be convinced when you learn that, when their numbers were but half of what they now are, and their means of defence infinitely less, their instructions to their Ministers that made the first treaty with Great Britain were, by no means to sign a treaty without securing the free navigation of that river. You will not, therefore, be surprised if this step of Spain should wind up the American people and Government to so high a pitch of resentment as shall lead them to a close and intimate connexion with Britain, and perhaps to an immediate rupture with Spain.

If, under these circumstances, an Ambassador should arrive in America, without being the bearer of a treaty which terminates their differences, and should propose to enter upon a treaty with the American Government, they will naturally ask, why has our Minister been able to effect nothing in fourteen months? Why have our debts remained unpaid? Why has he received no sort of satisfaction on any subject on which he has addressed himself to the Government? And why does France now, at this late day, prefer making a treaty in America to concluding one at home? While, at the same time, she is sending out large armies to the islands, and possessing herself of Louisiana and the Floridas? Is it not to paralyze those measures of security that common prudence would suggest to the United States? Is it not to stop the treaty which we are about to make relative to our Western boundary with Great Britain? Is it not to give France time to arrange her affairs in the islands, to strengthen her ports in America? Some months will elapse before the treaty is made, and many before it is ratified. What security have we that this treaty, when made, will meet the approbation of the First Consul, when time has made a change in circumstances? These, sir, and a thousand other doubts,

*This date should, no doubt, be 1803.

will arise in the minds of the citizens of the United States, and they will be blown into certainties by the agents of Britain, who are to be found in all our commercial towns.

There is no doubt that the Government of the United States will receive with attention the French Ambassador; that they will listen to his propositions; and will treat with him with pleasure upon the basis I have mentioned. But they will not, on that account, cease to consider the conclusion as very distant, or relinquish any measure that they may deem it wise to pursue, in case no treaty was proposed. Treating under these circumstances, I fear there will be much less ground to hope a cordial and friendly intercourse than if the earliest moment was embraced, and the Ambassador of France was the bearer of a treaty already completed.

There are other considerations, sir, which I believe will have some weight with the First Consul, if suggested to him. The terms I have proposed as the basis of a treaty, are precisely those which would be most repugnant to the interests of Britain. By interposing the United States between Canada and the French establishments on the Mississippi, her views upon a communication with the sea by that channel are completely cut off. By giving France the ports on the Gulf of Mexico, the British islands are held in check. By interposing the establishments of France between the United States and Mexico, by the only practicable route, the jealousies of Spain, with respect to the United States, will be calmed, and she will have in France an ally at hand to protect her from the ambitious views of Britain. At present, Britain feels little uneasiness about the possessions of France in Louisiana, because, believing that they will operate to render the United States enemies of France, they count upon their aid in dispossessing them, and in reaping the fruits of their labor. It will be extremely difficult, if a negotiation is set on foot in the United States, to conduct it with such secresy as to escape the vigilance of Britain. In a popular Government, where she has many friends, it may not be difficult to prevent success. Nor will she hesitate to make important sacrifices to defeat this object.

There are other matters which, though less important, deserve consideration. France apprehends that the rebels in the islands are supplied with arms, &c., from the United States. I trust that apprehension has hitherto been unfounded. She may wish for laws pointed to this object. The party hostile to France, the persons jealous and suspicious of her views in their present state of irritation, may consider her islands as the point in which she is most vulnerable; and, while they decline any active part in support of the revolters, they may be unwilling to see them reduced to submission. The British influence will have room to operate on this subject. Laws pass very slowly, and there are many means of obstructing their passage. But a treaty is, in the United States, the most solemn of all laws. Any provision that we agree upon here must be binding. If, then, a treaty is formed here, the Minister, instead of having a law to solicit, in the face of a thousand intrigues and jealousies, will carry the law out with him, and will have only to watch over its execution.

All these, and many other reasons, which I will spare you the trouble of reading, suggest the propriety of finishing the treaty here, and that as speedily as possible. It is certain that more light can be acquired relative to that country at Paris, (if doubt should be entertained as to my assertions,) than any foreign Minister could obtain at Washington.

I speak, sir, perhaps, with too much freedom on the views of your country and my own. But I speak with freedom, from a conviction of the integrity of my own intentions, and the absolute certainty that the measures I suggest are not less the interest of the one than of the other. As no chicanery, no crooked policy, will mingle itself in our treaty, one may be concluded in a week, if the Consul shall be pleased to name yourself or General Bernadotte, in whose candor and information I have great confidence. It would certainly be very grateful to him to be the bearer of a treaty which insures him the cordial and friendly reception in the United States that his mission and his merits entitle him to. I am, sir, &c.

ROBERT R. LIVINGSTON.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *Feb.* 23, 1803.

SIR: Since my last, which was of the 18th of January, I have received your several letters of the 11th and 14th of November 1802.

As you will receive this from the hands of Mr. Monroe, I refer to him for full information relative to our internal affairs generally, and, in particular, to the violation of our right of deposit at New Orleans, with the impressions and proceedings which have resulted from it.

In his hands also, are the commission and instructions in which he is joined with yourself, to treat with the French Government for an enlargement of our rights and our security in the southwestern neighborhood of the United States. These documents, with the communications and explanations which Mr. Monroe will be able to add, will put you in full possession of the subject.

The negotiation to be opened will bring the disposition and views of the French Government to a test. If it should meet the negotiation in a proper spirit, and with a just estimate of the real interests of France, not only a favorable issue may be expected, but it will be proper for you to avail yourself of the occasion, to insist on a prompt and complete fulfilment of the convention, so long delayed on that side, but which was so readily and so liberally executed on ours; and on a fair discharge of the pecuniary engagements of every description, to the citizens of the United States.

The occasion may be proper, also, for obtaining satisfaction to Captains Rodgers and Davidson for the outrages committed on them in St. Domingo. The death of General Le Clerc will have lessened the influence of his connexion with the subject, in obstructing a just consideration of it.

A return to your representations on the subject of the French navigation laws, may be equally recommended by the occasion. Although the present session of Congress, like the last, will pass over without any countervailing regulations here, it cannot be doubted that the discriminations made by France, with a view to exclude our shipping from a fair share in the freight of our own productions, will, and can be effectually counteracted by the United States, if not corrected by herself. Should a disposition appear to take up the whole subject of commerce between the two countries, with a view to conventional regulations on just principles, the President authorizes you to express a like disposition in the Government of the United States. But he prefers for the discussions, this place to Paris, for the double reason that the requisite commerical information could be more readily gained here than there, and that a French negotiator might here be more easily and fully impressed with the importance of our commerce to France, than could be done at Paris. Mr. Otto, it is presumed, would not be an unfavorable Minister for such a business; and may, if the French Government incline, bring with him the necessary authorities and instructions for entering upon it.

If, instead of these friendly sentiments and purposes, which may be improved into a solid and satisfactory adjustment of the mutual interests of the two nations, the French Government should betray a settled repugnance to just arrangements with the United States; and, above all, if it should manifest or betray a hostile spirit towards them, or be found to meditate projects inconsistent with their rights, and, consequently, leading to a rupture, not a moment is to be lost in forwarding the information, in order that the measures, both external and internal, adapted to such a state of things, may be seasonably taken.

I have the honor, &c.

JAMES MADISON.

R. R. LIVINGSTON, Esq., &c.

Extract.—Mr. Madison, Secretary of State, to James Monroe.

DEPARTMENT OF STATE, *March* 2, 1803.

SIR: You will herewith receive two commissions with the correspondent instructions, in which you are associated as Minister Plenipotentiary and Extraordinary to the French Republic and to His Catholic Majesty; together with the respective letters of credence to those Governments.

Your mission to Madrid will depend on the event of that to Paris, and on the information there to be acquired. Should the entire cession in view be obtained from the French Republic, as the assignees of Spain, it will not be necessary to resort to the Spanish Government. Should the whole or any part of the cession be found to depend, not on the French but on the Spanish Government, you will proceed to join Mr. Pinckney in the requisite negotiations with the latter. Although the United States are deeply interested in the complete success of your mission, the Floridas, or even either of them, without the island of New Orleans, on proportionate terms, will be a valuable acquisition. I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq., &c.

Mr. Livingston to Mr. Madison.

PARIS, *March* 3, 1803.

DEAR SIR: You will receive, with this, duplicates of two letters which contain a general statement of our affairs here. This is merely to inform you that I have received your letter of the 18th of January, in which you notify me of Mr. Monroe's appointment. I shall do everything in my power to pave the way for him; and sincerely wish his mission may be attended with the desired effect. It will, however, cut off one resource on which I greatly relied; because I had established a confidence which it will take Mr. Monroe some time to inspire. Enclosed is a letter addressed to the First Consul himself, and sent him before I heard of Mr. Monroe's appointment. The Minister told me yesterday that I should have an answer to it in few days. What that answer will be I know not: but I have been indefatigable in my applications to everybody who will probably be consulted on this subject. When I arrived here I found Louisiana a very favorite object. Some books were published representing it as a paradise. I think I have greatly aided in dispelling this mania; and, had the Floridas been granted, and the necessary powers given to me, I believe that something might have been effected; because at this moment there is not a man about the Court but inclines to our ideas upon the subject. The Floridas are still in the hands of Spain. I have explained the cause in my last: and not knowing how far we might succeed in our negotiations, or what sacrifices you would make, I have thought it best to use every exertion with the Spanish Ambassador and the British Minister to obstruct that negotiation.

The person of whom you speak may be able to give you information as to the expedition; because he had passed as an important inhabitant of the island, and the General, &c. relied upon his aid in their money-making plans. I am much surprised, however, that he should talk of the designs of this Court, the price, &c.; because these he must have derived from his imagination only; as he had no means of seeing anybody here that could give him the least information on those subjects. I mention this that the President may not place any sort of reliance upon what he receives through that channel, except as it respects General Victor personally; who, I will venture to say, knows himself less about what passes here than you do: and even this information he must receive with some grains of allowance, as the gentleman has a pretty warm imagination, and is liable to be deceived.

The armament is still ice-bound in Holland.

I am, sir, &c.

ROBERT R. LIVINGSTON.

HON. JAMES MADISON, *Secretary of State.*

Mr. Livingston to Citizen Bonaparte, First Consul of France and President of the Italian Republic.

PARIS, *February* 27, 1803.

CITIZEN FIRST CONSUL AND PRESIDENT: Though I am satisfied that my notes to the Minister of Exterior Relations have been truly represented to you, yet as, in the immense variety of important objects that occupy your time and attention, they may have escaped your memory, I cannot justify myself to my Government without making every effort to bring them under your view; since I consider the object of them as too closely connected with that harmony which cannot be indifferent to two countries whose physical and political relations enable them to be mutually serviceable to each other. And I find that it has not been unusual, upon great occasions, for the Ministers of foreign Powers to address themselves directly to you. This I prefer to do by letter, rather than by personal conference; as well because I considered it as more saving of your time, as because I feared that my imperfect knowledge of the French language would have prevented me from expressing myself with the clearness I might wish.

I pass over, citizen First Consul, a variety of circumstances of minor importance, and, which, without being useful to France, serve to distress the commerce and the mercantile citizens of the United States, which have, at different times, been represented to the Minister for Foreign Affairs, and others of your Ministers, without having hitherto met with the attention they merited. I presume, when a negotiation shall be set on foot for the arrangements on great points, smaller ones will meet with little difficulty.

The claims of the American citizens against the Government of France, are so well founded that no administration that ever prevailed in France has refused to recognise them; and even after the debts of the citizens of France were reduced by the law of 24 Frimaire, year 6, the Government declared that those due to foreigners were not comprised in the regulation; for this obvious reason, doubtless, that they were not to be benefited by the revolution, and that those only would be justly charged with the expenses to whom the advantages were to result; and they accordingly reported, that a large sum should be applied to the discharge of the demands of foreigners; who were only deprived of the benefit of the report by the change that was afterwards effected in the constitution. In this report France pursued the example of good faith set by the United States of America, who, in the fiscal arrangements, which necessity compelled them to adopt, respected the rights of foreigners, and paid their contracts, with the most scrupulous exactitude, in specie, while their own citizens were compelled to acquiesce in those arrangements which the general interest of their country (in whose prosperity they were benefited) rendered necessary.

If, sir, the validity of claims could be tested either by the advantages received by the debtor, or the loss sustained by the creditor, none can stand upon stronger ground than those of American citizens against France. They are chiefly founded upon contracts, for articles of the first necessity, furnished when they were most needed, and when the want of them would have plunged France in the utmost distress. They were furnished, too, at the greatest risk to the proprietor, and to so little comparative advantage to the furnisher, that those who either from political motives, or from juster combination, carried similar commodities to Britain or neutral ports, have been enriched, while those whose enthusiasm in the cause of France led them to seek her harbors will, if strictly paid their capital and interest, be barely snatched from ruin. It was this predilection, too, in favor of France, that furnished Britain with a pretence to commit those depredations on our commerce, by which it so materially suffered, but which, indeed, ever attentive to the preservation of her interests in the United States, she is, of late, very amply compensating by full payment of principal, interest, and damages, for any illegal capture made during the war; while compensation for those which fell under that description in France have, in a great measure, been given up by the late convention; and that due for the remaining few, which ought to have been satisfied by that treaty, have been eluded by some very extraordinary decisions of the Council of Prizes, or by that delay which all the claims of American citizens have hitherto met with.

But, citizen First Consul, it is not now necessary to state the justice of American claims: this has been solemnly recognised by a treaty which expressly stipulates for their payment, and distinguishes the claims of American citizens from those of every other nation. This treaty had been carried into effect in the United States, the Government of which, not allowing themselves to doubt the good faith of France, paid into the hands of the agent of France, and upon his application, a very considerable sum of money, even before it could be strictly claimed under the treaty, and at the moment when her own citizens were entitled to a considerable balance to France; listening, in this transaction, only to those sentiments of good will which influence the conduct of the present Government of the United States towards France, and to her wish to aid her military operations.

There may be cases, citizen First Consul, in which the necessities of a nation may compel her to leave the obligations of a treaty unfulfilled; but, after the flattering picture which is daily exhibited of the prosperity of France, I trust that no such necessity exists here; but, were it otherwise, I am persuaded that you will think that the nation who pleads her necessities for the breach of her treaties cannot, with honor, avail herself of advantages to be drawn from those treaties.

France would never have permitted her Minister to claim a payment under the treaty, if she had not determined also, on her part, to pay all that was due from her in virtue of it.

Your signature, citizen First Consul, the attention you manifested to remove ambiguities, by the form under which you were pleased to ratify it, gave a peculiar weight to the treaty, because

they show that it was naturally examined by you, and not passed over in the hurry of other business. But, sir, the receiving money under it is such a consummation of the act, as would make it criminal in me to doubt your ultimate intention to fulfil it.

If, sir, justice, if good faith, and those considerations of magnanimity which influence great nations, urge the immediate fulfilment of the treaty, the wisdom of the provision which stipulates for the discharge of the debt is evinced by its being more consistent even with the pecuniary interest of France to make the fullest payment under it, than it would have been to have cancelled the debt by the treaty. How early, and how happily soever the war may terminate in the islands, it will take many years before this capital is restored, and the waste of war repaired.

During the whole of this period considerable supplies must be obtained from the United States. Let them stand at the moderate sum of twenty millions annually. This must be paid either in specie shipped from France, or by credits obtained in the United States. The interest of money, as applied to any improvement in agriculture or manufactures in France, is at least worth eight per cent.; the loss upon the French coin shipped to the United States, is not less than two and one-half per cent., the risk or insurance two and one-half, the time the money must be unemployed before it is shipped in its transit and in America, will average about six months; which makes, at the rate of eight per cent. interest, four per cent.: these different sums make the loss upon the shipment of money to America not less than nine per cent. This, upon twenty millions, is one million eight hundred thousand, whereas, the American debt, principal and interest, computing it at twenty millions, if funded, would only require one million to discharge the interest; and in case this debt was funded, it would be unnecessary to ship any money: for, in that case, the credit of France would be so firmly established, that money might be obtained in any part of America for Government bills, at the current rate of exchange, which is generally in favor of the commercial nations of Europe, but would, in no event, amount to more than three per cent.; upon which, supposing the bills were drawn at sixty days, France would receive an actual profit to more than this amount in the use of money in America, many months before it became payable in France.

But this consideration, citizen First Consul, is trifling when compared to the advantage France would derive from keeping her money at home, where it is so much needed to invigorate her commerce and manufactures, and from the facilities that payments made here to American merchants would afford, in the extension of their commerce with France; notwithstanding the loss that the American creditor would sustain by receiving stock instead of money, after so many years of delay, yet, accommodating themselves to the circumstances of the nation, they would readily acquiesce in accepting that species of payment, if none more advantageous can be conveniently offered by the Government. Nor can I, citizen First Consul, see but one possible objection to placing the American debt upon the five per cent stock; the trifling interest can certainly be no consideration, unless the Government should apprehend a depression of the stock by the quantity of American debt that their necessities may induce them to throw into the market. But, sir, this may be easily guarded against, if some plan should be adopted, which, having a reference to Louisiana, may render the United States debtor to France for a greater amount than what is due to their citizens; in which case, I am prepared to enter into stipulations for such provisions as will prevent any possible depression of the French funds. Or if, citizen First Consul, you should not think it proper to treat upon the affairs of Louisiana, as having any reference to this object, still it will be easy (by compelling the American creditors to subscribe, in the name of some trustee that shall be appointed by their Minister,) to prevent any sale of the stock they hold, under a limited price, or within a limited time.

The next object that has awakened the sensibilities of the United States is, the change that is about to take place in the situation of Louisiana, heightened, as they are, by the silence which the Governments of France and Spain have observed, and still observe, with respect to their treaty, and the rights that the United States claim, and have long exercised, at New Orleans. I have pressed the Minister to some pointed declaration on the subject of our right of depot at New Orleans, on the limits as settled with Spain, and on the navigation of the Mississippi; for though it necessarily follows that those rights cannot be injured by a change of jurisdiction, yet it would have been highly satisfactory to the United States to have received some such assurances upon these subjects as would have shown that the treaty between them and Spain was clearly understood, and served to overawe such of the officers of Government, as, imboldened by their distance from the Sovereign, might act from their own impressions. A recent event, citizen First Consul, has demonstrated the extreme sensibility of the United States on this subject. The Intendant of New Orleans having thought it proper to withdraw the right of depot, secured to the citizens of the United States by the Treaty of Madrid, a spirit of resentment has been manifested from one end of the Union to the other, and nothing but the interposition of the Spanish Minister, the disavowal of the act by the Governor of New Orleans, and the extreme solicitude of the American Government to avoid everything which might have a tendency to interrupt the harmony which at present so happily subsists between the United States and every Power in Europe, could have prevented an immediate recurrence to arms; nor am I now without apprehensions that, if nothing is done to calm their anxiety before the season for bringing down the produce of the country occurs, the Government will be compelled to follow the impulse of the people. Under these circumstances, citizen First Consul, it cannot appear improper, prizing, as I do, the connexion between our respective countries, to press for some such explicit and early declaration on the subject of our rights as will serve to calm the anxiety of the United States. Should the agents of France, who are to take possession of the Colony, continue the regulations in the face of the treaty which they may find established by the Spanish Intendant, a fatal blow will be struck at the future peace and harmony of both countries. That I may not intrude too far upon your patience, I will merely take the liberty to transport such loose hints as you may possibly think might be improved into some arrangements, alike useful to France and the United States, should you deem it proper to appoint some person to treat with me on this subject. But, in the meantime, as the moments are precious, and the United States will suffer extremely in their commerce, if the officers of France, who are directed to take possession, should not be explicitly instructed to respect the right of navigation and depot claimed by the United States, I must earnestly solicit some treaty, explanatory of the terms on which France has received the cession of Louisiana from Spain, and recognising the rights of the United States. Should you, citizen First Consul, voluntarily add, as an expression of your good will, provisionally, in case the cession of the Floridas should be completed, a grant to the United States of the free passage through the rivers Mobile and Pensacola, together with a right of depot at their mouths, you would, while you were serving the commerce of France, confer an obligation on the United States that would greatly tend to strengthen the bands of friendship between the allied nations. For though the commerce of these rivers is, at present, very insignificant, yet, at some future period, when the country settles, it may become more important; and, in the meantime, the cession would derive considerable value from the evidence it would afford to the United States of your friendly disposition.

That France will never derive any advantage from the colonization of New Orleans and the Floridas, is fairly to be presumed, from their having been possessed, for more than a century past, by three different nations. While the other colonies of these nations were increasing rapidly, these have always remained weak and languid and an expensive burden to the possessor. Even at this moment, with all the advantages that New Orleans has derived from foreign capital, and an accession of inhabitants from the United States, which has brought its free population to about seven thousand souls, the whole of the inhabitants east of the Mississippi does not more than double that number; and those, too, are, for the most part, poor and miserable; and there are physical reasons that must for ever render them inadequate to their own support, in the hands of any European nation. They are, however, important to the United States, because they contain the mouths of some of their rivers, which must make them the source of continual disputes. The interest that the United States attach, citizen First Consul, to your friendship, and the alliance of France, is the principal cause of their anxiety to procure your consent to their accession of that country, and of the sacrifices that they are willing to make to attain it. They consider it as the only possible ground of collision between nations whom so many other interests unite. I cannot, then, citizen First Consul, but express my doubt of any advantage to be derived to France from the retaining of that country in its whole extent; and I think I could show that her true interest would lead her to make such cessions out of them to the United States as would at once afford supplies to her islands, without draining the money of France, and rivet the friendship of the United States, by removing all ground of jealousy relative to a country of little value in itself, and which will be perpetually exposed to the attacks of her natural enemy, as well from Canada as by sea.

Should this idea not be so fortunate as to meet your approbation, there are still a variety of views in which, by a partial cession, permanent commercial advantages may be acquired; but it would be to intrude too much upon your time to detail them here, deeming them more proper subjects for discussion, if you should think it proper to render them the objects of a treaty.

Permit me, citizen First Consul, before I conclude, to mention a circumstance which embraces the interest both of France and the United States, and of humanity. The savages on the east side of the Mississippi are numerous and brave; considerable sums of money are annually expended by Spain in purchasing their friendship. Should these supplies be withheld, through neglect or misapplication, a universal massacre of all the planters will ensue. Their detached situation renders it impossible to protect them. I am the more imboldened in making this observation, from the interest the United States have in turning your attention to this object, since, should this melancholy event take place, malignity, or those whose negligence or infidelity may have occasioned it, will not fail to impute it to the intrigues of the United States.

I pray you, citizen First Consul, to pardon the length of this letter, which you will have the goodness to attribute to my extreme anxiety to remove all causes of dispute between France and the country I represent, and to my conviction that some early and effectual arrangements are necessary to prevent those that already exist from growing to an alarming height. No evil can possibly arise from empowering the Minister, or such other person as you shall please, to treat with me on the subject of New Orleans; since even the appointment itself will have a conciliatory appearance, and you, citizen First Consul, will govern the negotiation, in which, I trust, nothing will be proposed on my part, that will not be equally beneficial to both France and the United States.

I have the honor, citizen First Consul, to remain, with the most profound respect and the highest consideration, your most obedient, humble servant.

ROBERT R. LIVINGSTON.

The Secretary of State to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,
March 2, 1803.

GENTLEMEN: You will herewith receive a commission and letters of credence, one of you as Minister Plenipotentiary, the other as Minister Extraordinary and Plenipotentiary, to treat with the Government of the French Republic on the subject of the Mississippi, and the territories eastward thereof, and without the limits of the United States. The object in view is to procure, by just and satisfactory arrangements, a cession to the United States of New Orleans, and of West and East Florida, or as much thereof as the actual proprietor can be prevailed on to part with.

The French Republic is understood to have become the proprietor, by a cession from Spain, in the year ——, of New Orleans, as part of Louisiana, if not of the Floridas also. If the Floridas should not have been then included in the cession, it is not improbable that they will have been since added to it.

It is foreseen that you may have considerable difficulty in overcoming the repugnance and the prejudices of the French Government against a transfer to the United States of so important a part of the acquisition. The apparent solicitude and exertions, amidst many embarrassing circumstances, to carry into effect the cession made to the French Republic; the reserve so long used on this subject by the French Government, in its communications with the Minister of the United States at Paris, and the declaration finally made by the French Minister of Foreign Relations, that it was meant to take possession before any overtures from the United States would be discussed, show the importance which is attached to the territories in question. On the other hand, as the United States have the strongest motives of interest, and of a pacific policy, to seek by just means the establishment of the Mississippi, down to its mouth, as their boundary, so there are considerations which urge on France a concurrence in so natural and so convenient an arrangement.

Notwithstanding the circumstances which have been thought to indicate, in the French Government, designs of unjust encroachment, and even direct hostility, on the United States, it is scarcely possible to reconcile a policy of that sort with any motives which can be presumed to sway either the Government or the nation. To say nothing of the assurances given both by the French Minister at Paris, and by the Spanish Minister at Madrid, that the cession by Spain to France was understood to carry with it all the conditions stipulated by the former to the United States, the manifest tendency of hostile measures against the United States to connect their councils and their colossal growth with the great and formidable rival of France, can neither escape her discernment, nor be disregarded by her prudence, and might alone be expected to produce very different views in the Government.

On the supposition that the French Government does not mean to force or to court war with the United States, but, on the contrary, that it sees the interest which France has in cultivating their neutrality and amity, the dangers to so desirable a relation between the two countries which lurk under a neighborhood modified as is that of Spain at present, must have great weight in recommending the change which you will have to propose. These dangers have been always sufficiently evident; and have, moreover, been repeatedly suggested by collisions between the stipulated rights or reasonable expectations of the United States and the Spanish jurisdiction at New Orleans. But they have been brought more strikingly into view by the late proceeding of the Intendant at that place. The sensibility and unanimity in our nation, which have appeared on this occasion, must convince France that friendship and peace with us must be precarious until the Mississippi shall be made the boundary between the United States and Louisiana; and consequently render the present moment favorable to the object with which you are charged.

The time chosen for the experiment is pointed out also by other important considerations. The instability of the peace of Europe, the attitude taken by Great Britain, the languishing state of the French finances, and the absolute necessity of either abandoning the West India islands, or of sending thither large armaments at great expense, all contribute at the present crisis to prepare in the French Government a disposition to listen to an arrangement which will at once dry up one source of foreign controversy, and furnish some aid in struggling with internal embarrassments. It is to be added, that the overtures committed to you coincide in great measure with the ideas of the person through whom the letter of the President of April 30, 1802, was conveyed to Mr. Livingston, and who is presumed to have gained some insight into the present sentiments of the French Cabinet.

Among the considerations which have led the French Government into the project of regaining from Spain the province of Louisiana, and which you may find it necessary to meet in your discussions the following suggest themselves as highly probable:

1st. A jealousy of the Atlantic States, as leaning to a coalition with Great Britain not consistent with neutrality and amity towards France, and a belief that, by holding the key to the commerce of the Mississippi, she will be able to command the interests and attachments of the Western portion of the United States, and thereby either control the Atlantic portion also, or, if that cannot be done, to seduce the former into a separate Government, and a close alliance with herself.

In each of these particulars the calculation is founded in error.

It is not true that the Atlantic States lean towards any connexion with Great Britain inconsistent with their amicable relations to France. Their dispositions and their interests equally prescribe to them amity and impartiality to both of those nations. If a departure from this simple

and salutary line of policy should take place, the causes of it will be found in the unjust or unfriendly conduct experienced from one or other of them. In general, it may be remarked, that there are many points on which the interests and views of the United States and of Great Britain may not be thought to coincide, as can be discovered in relation to France. If less harmony and confidence should, therefore, prevail between France and the United States than may be maintained between Great Britain and the United States, the difference will lie, not in the want of motives, drawn from the mutual advantage of the two nations, but in the want of favorable dispositions in the Government of one or other of them. That the blame, in this respect, will not justly fall on the Government of the United States, is sufficiently demonstrated by the mission, and the objects with which you are now charged.

The French Government is not less mistaken, if it supposes that the Western part of the United States can be withdrawn from their present union with the Atlantic part into a separate Government, closely allied with France.

Our Western fellow-citizens are bound to the Union, not only by the ties of kindred and affection, which for a long time will derive strength from the stream of emigration peopling that region, but by two considerations which flow from clear and essential interests.

One of these considerations is, the passage though the Atlantic ports of the foreign merchandise consumed by the Western inhabitants, and the payment thence made to a treasury, in which they would lose their participation by erecting a separate Government. The bulky productions of the Western country may continue to pass down the Mississippi; but the difficulties of the ascending navigation of that river, however free it may be made, will cause the imports for consumption to pass though the Atlantic States. This is the course through which they are now received; nor will the impost to which they will be subject change the course, even if the passage up the Mississippi should be duty free. It will not equal the difference in the freight through the latter channels. It is true that mechanical and other improvements in the navigation of the Mississippi may lessen the labor and expense of ascending the stream; but it is not the least probable, that savings of this sort will keep pace with the improvements in canals and roads, by which the present course of impost will be favored. Let it be added, that the loss of the contributions thus made to a foreign treasury would be accompanied with the necessity of providing, by less convenient revenues, for the expense of a separate Government, and of the defensive precautions required by the change of situation.

The other of these considerations results from the insecurity to which the trade from the Mississippi would be exposed by such a revolution in the western part of the United States. A connexion of the Western people, as a separate State, with France, implies a connexion between the Atlantic States and Great Britain. It is found, from long experience, that France and Great Britain are nearly half their time at war. The case would be the same with their allies. During nearly one-half the time, therefore, the trade of the Western country from the Mississippi would have no protection but that of France, and would suffer all the interruptions which nations having the command of the sea could inflict on it.

It will be the more impossible for France to draw the Western country under her influence, by conciliatory regulations of the trade through the Mississippi; because regulations which would be regarded by her as liberal, and claiming returns of gratitude, would be viewed on the other side as falling short of justice. If this should not be at first the case, it soon would be so. The Western people believe, as do their Atlantic brethren, that they have a natural and indefeasible right to trade freely though the Mississippi. They are conscious of their power to enforce this right against any nation whatever. With these ideas in their minds, it is evident that France will not be able to excite either a sense of favor, or of fear, that would establish an ascendancy over them. On the contrary, it is more than probable, that the different views of their respective rights would quickly lead to disappointments and disgusts on both sides, and thence to collisions and controversies fatal to the harmony of the two nations. To guard against these consequences is a primary motive with the United States in wishing the arrangement proposed. As France has equal reasons to guard against them, she ought to feel an equal motive to concur in the arrangement.

Secondly. The advancement of the commerce of France, by an establishment on the Mississippi, has, doubtless, great weight with the Government in espousing this project.

The commerce through the Mississippi will consist, first, of that of the United States; second, of that of the adjacent territories to be acquired by France.

The first is now, and must for ages continue, the principal commerce. As far as the faculties of France will enable her to share in it, the article to be proposed to her, on the part of the United States, on that subject, promises every advantage she can desire. It is a fair calculation that, under the proposed arrangement, her commercial opportunities would be extended rather than diminished; inasmuch as our present right of deposit gives her the same competitiors as she would then have, and the effect of the more rapid settlement of the Western country, consequent on that arrangement, would proportionally augment the mass of commerce to be shared by her.

The other portion of commerce, with the exception of the island of New Orleans, and the contiguous ports of West Florida, depends on the territory westward of the Mississippi. With respect to this portion, it will be little affected by the cession desired by the United States. The footing proposed for her commerce, on the shore to be ceded, gives it every advantage she could reasonably wish, during a period within which she will be able to provide every requisite establishment

on the right shore, which, according to the best information, possesses the same facilities for such establishments as are found on the island of New Orleans itself. These circumstances essentially distinguish the situation of the French commerce in the Mississippi, after a cession of New Orleans to the United States, from the situation of the commerce of the United States, without such a cession; their right of deposit being so much more circumscribed, and their territory on the Mississippi not reaching low enough for a commercial establishment on the shore, within their present limits.

There remains to be considered the commerce of the ports in the Floridas. With respect to this branch the advantages which will be secured to France by the proposed arrangement ought to be satisfactory. She will here also derive a greater share from the increase which will be given, by a more rapid settlement of a fertile territory, to the exports and imports through those ports, than she would obtain from any restrictive use she could make of those ports as her own property. But this is not all. The United States have a just claim to the use of the rivers which pass from their territories through the Floridas. They found their claim on like principles with those which supported their claim to the use of the Mississippi. If the length of these rivers be not in the same proportion with that of the Mississippi, the difference is balanced by the circumstance that both banks, in the former case, belong to the United States.

With a view to permanent harmony between the two nations, a cession of the Floridas is particularly to be desired, as obviating serious controversies that might otherwise grow even out of the regulations, however liberal in the opinion of France, which she may establish at the mouths of those rivers. One of the rivers, the Mobile, is said to be at present navigable for four hundred miles above the thirty-first degree of north latitude, and the navigation may no doubt be opened still further. On all of them, the country within the boundary of the United States, though otherwise between that and the sea, is fertile. Settlements on it are beginning; and the people have already called on the Government to procure the proper outlets to foreign markets. The President, accordingly, gave, some time ago, the proper instructions to the Minister of the United States at Madrid. In fact, our free communication with the sea through these channels is so natural, so reasonable, and so essential, that, eventually, it must take place: and in prudence, therefore, ought to be amicably and effectually adjusted without delay.

Third. A further object with France may be to form a colonial establishment having a convenient relation to her West India islands, and forming an independent source of supplies for them.

This object ought to weigh but little against the cession we wish to obtain, for two reasons: first, because the country which the cession will leave in her hands on the right side of the Mississippi is capable of employing more than all the faculties she can spare for such an object, and of yielding all the supplies which she could expect or wish from such an establishment: second, because in times of general peace she will be sure of receiving whatever supplies her islands may want, from the United States, and even through the Mississippi, if more convenient to her; because in time of peace with the United States, though of war with Great Britain, the same sources will be open to her, whilst her own would be interrupted; and because in case of a war with the United States, which is not likely to happen without a concurrent war with Great Britain, (the only case in which she could need a distinct fund of supplies,) the entire command of the sea, and of the trade through the Mississippi, would be against her, and would cut off the source in question. She would consequently never need the aid of her new colony, but when she could make little or no use of it.

There may be other objects with France in the projected acquisition; but they are probably such as would be either satisfied by a reservation to herself of the country on the right side of the Mississippi, or are of too subordinate a character to prevail against the plan of adjustment we have in view, in case other difficulties in the way of it can be overcome. The principles and outlines of this plan are as follows, viz:

Article 1. France cedes to the United States forever the territory east of the river Mississippi, comprehending the two Floridas, the island of New Orleans, and the islands lying to the north and east of that channel of the said river, which is commonly called the South Pass, together with all such other islands as appertain to either West or East Florida; France reserving to herself all her territory on the west side of the Mississippi.

Art. 2. The boundary between the territory ceded and reserved by France, shall be a continuation of that already defined above the thirty-first degree of north latitude, viz: the middle of the channel or bed of the river through the said South Pass to the sea. The navigation of the river Mississippi in its whole breadth from its source to the ocean, and in all its passages to and from the same shall be equally free and common of the United States and of the French Republic.

Art. 3. The vessels and citizens of the French Republic may exercise commerce to and at such places on their respective shores below the said thirty-first degree of north latitude as may be allowed for that use by the parties to their respective citizens and vessels. And it is agreed that no other nation shall be allowed to exercise commerce to or at the same or any other place on either shore, below the said thirty-first degree of latitude. For the term of ten years, to be computed from the exchange of ratifications hereof, the citizens, vessels, and merchandises of the United States, and of France, shall be subject to no other duties on their respective shores, below the said thirty-first degree of latitude, than are imposed on their own citizens, vessels, and merchandises. No duty whatever shall, after the expiration of ten years, be laid on articles the growth or manufacture of the United States, or of the ceded territory, exported though the Mississippi in French vessels; so long as such articles so exported in vessels of the United States shall be exempt from duty: nor shall French vessels exporting such articles ever afterwards be subject to pay a higher duty than vessels of the United States.

Art. 4. The citizens of France may, for the term of ten years, deposit their effects at New Orleans, and at such other places on the ceded shore of the Mississippi, as are allowed for the commerce of the United States, without paying any other duty than a fair price for the hire of stores.

Art. 5. In ports and commerce of West and East Florida, France shall never be on a worse footing than the most favored nation; and for the term of ten years her vessels and merchandise shall be subject therein to no higher duties than are paid by those of the United States. Articles of the growth or manufacture of the United States, and of the ceded territory, exported in French vessels from any port in West or East Florida, shall be exempt from duty as long as vessels of the United States shall enjoy this exemption.

Art. 6 The United States, in consideration of the cession of territory made by this treaty, shall pay to France —— millions of livres tournois, in the manner following, viz: They shall pay —— millions of livres tournois immediately on the change of the ratifications hereof; they shall assume, in such order of priority as the Government of the United States may approve, the payment of claims which have been or may be acknowledged by the French Republic to be due to American citizens, or so much thereof as, with the payment to be made on the exchange of ratifications, will not exceed the sum of ——; and in case a balance should remain due after such payment and assumption, the same shall be paid at the end of one year from the final liquidation of the claim hereby assumed, which shall be payable in three equal annual payments, the first of which is to take place one year after the exchange of ratifications, or they shall bear interest, at the rate of six per cent. per annum, from the dates of such intended payments, until they shall be discharged. All the above-mentioned payments shall be made at the Treasury of the United States, and at the rate of one dollar and ten cents for every six livres tournois.

Art. 7. To incorporate the inhabitants of the hereby ceded territory with the citizens of the United States on an equal footing, being a provision which cannot now be made, it is to be expected, from the character and policy of the United States, that such incorporation will take place without unnecessary delay. In the mean time they shall be secure in their persons and property, and in the free enjoyment of their religion.

Observations on the plan.

1st. As the cession to be made by France in this case must rest on the cession made to her by Spain, it might be proper that Spain should be a party to the transaction. The objections, however, to delay, require that nothing more be asked on our part than either an exhibition and recital of the treaty between France and Spain, or an engagement on the part of France, that the accession of Spain will be given. Nor will it be advisable to insist even on this much, if attended with difficulty or delay, unless there be ground to suppose that Spain will contest the validity of the transaction.

2d. The plan takes for granted, also, that the Treaty of 1795, between the United States and Spain, is to lose none of its force in behalf of the former, by any transactions whatever between the latter and France. No change, it is evident, will be, or can be admitted to be produced in that treaty, or in the arrangements carried into effect under it, further than it may be superseded by stipulations between the United States and France, who will stand in the place of Spain. It will not be amiss to insist on an express recognition of this by France as an effectual bar against pretexts of any sort, not compatible with the stipulations of Spain.

3d. The first of the articles proposed, in defining the cession, refers to the south pass of the Mississippi, and to the islands north and east of that channel. As this is the most navigable of the several channels, as well as the most direct course to the sea, it is expected that it will not be objected to. It is of the greater importance to make it the boundary, because several islands will be thereby acquired, one of which is said to command this channel, and to be already fortified. The article expressly includes also the islands appertaining to the Floridas. To this there can be no objection. The islands within six leagues of the shore are the subject of a British proclamation in the year 1763, subsequent to the cession of the Floridas to Great Britain by France, which is not known to have ever been called in question by either France or Spain.

The second article requires no particular observations.

Article three is one whose import may be expected to undergo the severest scrutiny. The modification to be desired is that which, whilst it provides for the interests of the United States, will be acceptable to France, and will give no just ground of complaint and the least of discontent to Great Britain.

The present form of the article ought, and probably will be, satisfactory to France: first, because it secures to her all the commercial advantages in the river which she can well desire; secondly, because it leaves her free to contest the mere navigation of the river by Great Britain, without the consent of France.

The article, also, in its present form, violates no right of Great Britain, nor can she reasonably expect of the United States that they will contend, beyond their obligation, for her interest, at the expense of their own. As far as Great Britain can claim the use of the river under her treaties with us, or by virtue of contiguous territory, the silence of the article on that subject leaves the claim unaffected. As far again as she is entitled under the treaty of 1794, to the use of our bank of the Mississippi above the thirty-first degree of

north latitude, her title will be equally entire. The article stipulates against her only in its exclusion of her commerce from the bank to be ceded below our present limits. To this she cannot of right object. First, because, the territory not belonging to the United States at the date of our treaty with her, is not included in its stipulations. Secondly, because the privileges to be enjoyed by France are for a consideration which Great Britain has not given and cannot give. Thirdly, because the exclusion in this case being a condition on which the territory will be ceded and accepted, the right to communicate the privilege to Great Britain will never have been vested in the United States. But although these reasons fully justify the article in its relation to Great Britain, it will be advisable, before it be proposed, to feel the pulse of the French Government with respect to a stipulation, that each of the parties may, without the consent of the other, admit whomsoever it pleases to navigate the river and trade with their respective shores, on the same terms as in other parts of France and the United States, and as far as the disposition of that Government will concur, to vary the proposition accordingly. It is not probable that this concurrence will be given; but the trial to obtain it will not only manifest a friendly regard to the wishes of Great Britain, and, if successful, furnish a future price for privileges within her grant, but is a just attention to the interests of our Western fellow-citizens, whose commerce will not otherwise be on an equal footing with that of the Atlantic States.

Should France not only refuse any such change in the article, but insist on a recognition of her right to exclude all nations other than the United States from navigating the Mississippi, it may be observed to her that a positive stipulation to that effect might subject us to the charge of intermeddling with and prejudging questions merely existing between her and Great Britain; that the silence of the article is sufficient; that, as Great Britain never asserted a claim on this subject against Spain, it is not to be presumed that she will assert it against France, on her taking the place of Spain; that, if the claim should be asserted, the treaties between the United States and Great Britain will have no connexion with it, the United States having, in those treaties, given their separate consent only to the use of the river by Great Britain, leaving her to seek whatever other consent may be necessary.

If, notwithstanding such expostulations as these, France shall inflexibly insist on an express recognition to the above effect, it will be better to acquiesce in it, than to lose the opportunity of fixing an arrangement in other respects satisfactory; taking care to put the recognition into a form not inconsistent with our treaties with Great Britain, or with an explanatory article that may not improbably be desired by her.

In truth, it must be admitted, that France, holding one bank, may exclude from the use of the river any nation not more connected with it by territory than Great Britain is understood to be. As a river where both its banks are owned by one nation belongs exclusively to that nation, it is clear that, when the territory on one side is owned by one nation, and on the other side by another nation, the river belongs equally to both, in exclusion of all others. There are two modes by which an equal right may be exercised; the one by a negative in each on the use of the river by any other nation, except the joint proprietor: the other by allowing each to grant the use of the river to other nations, with the consent of the joint proprietor. The latter mode would be preferable to the United States. But if it be found absolutely inadmissible to France, the former must, in point of expediency, since it may in point of right, be admitted by the United States. Great Britain will have less reason to be dissatisfied on this account, as she has never asserted against Spain a right of entering and navigating the Mississippi, nor has either she or the United States ever founded on the treaties between them a claim to the interposition of the other party in any respect, although the river has been constantly shut against Great Britain from the year 1783 to the present moment, and was not opened to the United States until 1795, the year of their treaty with Spain.

It is possible, also, that France may refuse to the United States the same commercial use of her shores, as she will require for herself on those ceded to the United States. In this case, it will be better to relinquish a reciprocity than to frustrate the negotiation. If the United States held in their own right the shore to be ceded to them, the commercial use of it allowed to France would render a reciprocal use of her shore by the United States an indispensable condition. But as France may, if she chooses, reserve to herself the commercial use of the ceded shore as a condition of the cession, the claim of the United States to the like use of her shore would not be supported by the principle of reciprocity, and may, therefore, without violating that principle, be waived in the transaction.

The article limits to ten years the equality of French citizens, vessels, and merchandises, with those of the United States: should a longer period be insisted on, it may be yielded. The limitation may even be struck out, if made essential by France; but a limitation in this case is so desirable, that it is to be particularly pressed, and the shorter the period the better.

ART. 4. The right of deposit, provided for in this article, will accommodate the commerce of France to and from her own side of the river, until an emporium shall be established on that side, which it is well known will admit of a convenient one. The right is limited to ten years, because such an establishment may within that period be formed by her; should a longer period be required, it may be allowed, especially as the use of such a deposit would probably fall within the general regulations of our commerce there. At the same time, as it will be better that it should rest on our own regulations than on a stipulation, it will be proper to insert a limitation of time, if France can be induced to acquiesce in it.

ART. 5. This article makes a reasonable provision for the commerce of France in the ports of

West and East Florida. If the limitation to ten years of its being on the same footing with that of the United States should form an insuperable objection, the term may be enlarged; but it is much to be wished that the privilege may not in this case be made perpetual.

ART. 6. The pecuniary consideration to be offered for the territories in question is stated in the sixth article: you will of course favor the United States as much as possible, both in the amount and modifications of the payments. There is some reason to believe that the gross sum expressed in the article has occurred to the French Government, and is as much as will be finally insisted on: it is possible that less may be accepted, and the negotiation ought to be adapted to that supposition. Should a greater sum be made an ultimatum on the part of France, the President has made up his mind to go as far as fifty millions of livres tournois, rather than lose the main object. Every struggle, however, is to be made against such an augmentation of the price, that will consist with ultimate acquiescence in it.

The payment to be made immediately on the exchange of ratifications is left blank; because it cannot be foreseen either what the gross sum or the assumed debts will be, or how far a reduction of the gross sum may be influenced by the anticipated payments provided for by the act of Congress herewith communicated, and by the authorization of the President and Secretary of the Treasury endorsed thereon. This provision has been made with a view to enable you to take advantage of the urgency of the French Government for money, which may be such as to overcome their repugnance to part with what we want, and to induce them to part with it on lower terms, in case a payment can be made before the exchange of ratifications. The letter from the Secretary of the Treasury to the Secretary of State, of which a copy is herewith enclosed, will explain the manner in which this advance of the ten millions of livres, or so much thereof as may be necessary, will be raised most conveniently for the United States. It only remains here to point out the condition or event on which the advance may be made. It will be essential that the convention be ratified by the French Government before any such advance be made; and it may be further required, in addition to the stipulation to transfer possession of the ceded territory as soon as possible, that the orders for the purpose, from the competent source, may be actually and immediately put into your hands. It will be proper, also, to provide for the payment of the advances, in the event of a refusal of the United States to ratify the convention.

It is apprehended that the French Government will feel no repugnance to our designating the classes of claims and debts, which, embracing more equitable considerations than the rest, we may believe entitled to a priority of payment. It is probable, therefore, that the clause of the sixth article, referring it to our discretion, may be safely insisted upon. We think the following classification such as ought to be adopted by ourselves:

First. Claims under the fourth article of the Convention of September, 1800.

Secondly. Forced contracts or sales imposed upon our citizens by French authorities; and,

Thirdly. Voluntary contracts which have been suffered to remain unfulfilled by them.

Where our citizens have become creditors of the French Government in consequence of agencies or appointments derived from it, the United States are under no particular obligation to patronize their claims, and, therefore, no sacrifice of any sort, in their behalf, ought to be made in the arrangement. As far as this class of claimants can be embraced without embarrassing the negotiation, or influencing in any respect the demands or expectations of the French Government, it will not be improper to admit them into the provision. It is not probable, however, that such a deduction, from the sum ultimately to be received by the French Government, will be permitted, without some equivalent accommodation to its interests, at the expense of the United States.

The claim of Mr. Beaumarchais, and several other French individuals, on our Government, founded upon antiquated or irrelevant grounds, although they may be attempted to be included in this negotiation, have no connexion with it. The American Government is distinguished for its just regard to the rights of foreigners, and does not require those of individuals to become subjects of treaty in order to be admitted. Besides, their discussion involves a variety of minute topics, with which you may fairly declare yourselves to be unacquainted. Should it appear, however, in the course of the negotiation, that so much stress is laid on this point, that, without some accommodation, your success will be endangered, it will be allowed to bind the United States for the payment of one million of livres tournois to the representatives of Beaumarchais, heretofore deducted from his accounts against them; the French Government declaring the same never to have been advanced to him on account of the United States.

Article 7 is suggested by the respect due to the rights of the people inhabiting the ceded territory, and by the delay which may be found in constituting them a regular and integral portion of the Union. A full respect for their rights might require their consent to the act of cession; and if the French Government should be disposed to concur in any proper mode of obtaining it, the provision would be honorable to both nations. There is no doubt that the inhabitants would readily agree to the proposed transfer of their allegiance.

It is hoped that the idea of a guaranty of the country reserved to France may not be brought into the negotiation. Should France propose such a stipulation, it will be expedient to evade it, if possible, as more likely to be a source of disagreeable questions between the parties, concerning the actual *casus fœderis*, than of real advantage to France. It is not in the least probable that Louisiana, in the hands of that nation, will be attacked by any other, whilst it is in the relations to the United States on which the guaranty would be

founded; whereas, nothing is more probable than some difference of opinion as to the circumstances and the degree of danger necessary to put the stipulations in force. There will be less reason in the demand of such an article, as the United States would set little value on a guaranty of any part of this territory; and, consequently, there would be no just reciprocity in it. Should France, notwithstanding these considerations, make a guaranty an essential point, it will be better to accede to it than to abandon the object of the negotiation; mitigating the evil as much as possible, by requiring, for the *casus fœderis*, a great and manifest danger threatened to the territory guarantied, and by substituting for an indefinite succor, or even a definite succor, in military force, a fixed sum of money payable at the Treasury of the United States. It is difficult to name the proper sum which is in no posture of the business to be exceeded, but it can scarcely be presumed that more than about —— dollars, to be paid annually during the existence of the danger, will be insisted on. Should it be unavoidable to stipulate troops in place of money, it will be prudent to settle the details with as much precision as possible, that there may be no room for controversy, either with France or with her enemy, on the fulfilment of the stipulation.

The instructions, thus far given, suppose that France may be willing to cede to the United States the whole of the island of New Orleans, and both the Floridas. As she may be inclined to dispose of a part or parts, and of such only, it is proper for you to know that the Floridas, together, are estimated at one-fourth the value of the whole island of New Orleans, and East Florida at one-half that of West Florida. In case of a partial cession, it is expected that the regulations of every other kind, so far as they are onerous to the United States, will be more favorably modified.

Should France refuse to cede the whole of the island, as large a portion as she can be prevailed on to part with may be accepted; should no considerable portion of it be attainable, it will still be of vast importance to get a jurisdiction over space enough for a large commercial town, and its appurtenances, on the back of the river, and as little remote from the mouth of the river as may be. A right to choose the place would be better than a designation of it in the treaty. Should it be impossible to procure a complete jurisdiction over any convenient spot whatever, it will only remain to explain and improve the present right of deposit, by adding thereto the express privilege of holding real estate for commercial purposes, of providing hospitals, of having consuls residing there, and other agents who may be authorized to authenticate and deliver all documents requisite for vessels belonging to, and engaged in, the trade of the United States, to and from the place of deposit. The United States cannot remain satisfied, nor the Western people be kept patient, under the restrictions which the existing treaty with Spain authorizes.

Should a cession of the Floridas not be attainable, your attention will also be due to the establishment of suitable deposits at the mouth of the rivers passing from the United States through the Floridas, as well as of the free navigation of those rivers by citizens of the United States. What has been above suggested in relation to the Mississippi, and the deposits on its banks, is applicable to the other rivers; and additional hints relative to them all may be derived from the letter, of which a copy is enclosed, from the Consul at New Orleans.

It has been long manifest that, whilst the injuries to the United States, so frequently occurring from the colonial officers scattered over our hemisphere and in our neighborhood, can only be repaired by a resort to their respective Governments in Europe, it will be impossible to guard against the most serious inconveniences. The late events at New Orleans strongly manifest the necessity of placing a power somewhere nearer to us capable of correcting and controlling the mischievous proceedings of such officers towards our citizens; without which, a few individuals, not always among the wisest or best of men, may at any time threaten the good understanding of the two nations. The distance between the United States and the old continent, and the mortifying delays of explanations and negotiations across the Atlantic on emergencies in our neigborhood, render such a provision indispensable; and it cannot be long before all the Governments of Europe, having American Colonies, must see the necessity of making it. This object, will likewise claim your special attention.

It only remains to suggest, that, considering the possibility of some intermediate violences between citizens of the United States and the French or Spaniards, in consequence of the interruption of our right of deposit, and the probability that considerable damages will have been occasioned by that measure to citizens of the United States, it will be proper that indemnification in the latter case be provided for, and that in the former it shall not be taken on either sides as a ground or pretext for hostilities.

These instructions, though as full as they could be conveniently made, will necessarily leave much to your discretion. For the proper exercise of it, the President relies on your information, your judgment, and your fidelity to the interest of your country. JAMES MADISON.

Extract.—James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE. *March* 8, 1803.

SIR: My last letter was of January 18. Yours since received are of the 6th and 28th of November.

Our latest authentic information from New Orleans is of January 20. At that date the edict of the Intendant against our right of deposit had not been revoked, although the letters to him and the Governor from the Spanish Minister here had been previously received. And it appears that the first outrage had been followed by orders of the most rigid tenor against every hospitable intercourse betweeen our citizens navigating the river and the Spanish inhabitants.

This continuation of the obstruction to our trade, and the approach of the season for carrying down the Mississippi the exports of the Western country, have had the natural effect of increasing the Western irritation, and imboldening the advocates for immediate redress by arms. Among the papers enclosed, you will find the propositions moved in the Senate by Mr. Ross, of Pennsylvania. They were debated at considerable length, and with much ardor, and, on the question, had eleven votes in their favor against fourteen. The resolutions moved by Mr. Breckenridge, and which have passed into a law, will, with the law itself, be also found among the enclosed papers.

These proceedings ought more and more to convince the Spanish Government that it must not only maintain good faith with the United States, but must add, to this pledge of peace, some provident and effectual arrangement, as heretofore urged, for controlling or correcting the wrongs of Spanish officers in America, without the necessity of crossing the Atlantic for the purpose. The same proceedings will show, at the same time, that, with proper dispositions and arrangements on the part of Spain, she may reckon with confidence on harmony and friendship with this country. Notwithstanding the deep stroke made at our rights and our interests, and the opportunity given for self-redress, in a summary manner, a love of peace, a respect for the just usages of nations, and a reliance on the voluntary justice of the Spanish Government, have given a preference to remonstrance, as the first appeal on the occasion, and to negotiation as a source of adequate provisions for perpetuating the good understanding between the two nations; the measures taken on the proposition of Mr. Breckenridge being merely those of ordinary precaution, and precisely similar to those which accompanied the mission of Mr. Jay to Great Britain in 1794. Should the deposit, however, not be restored in time for the arrival of the Spring craft, a new crisis will occur, which it is presumed that the Spanish Government will have been stimulated to prevent, by the very heavy claims of indemnification to which it would be otherwise fairly subjected. The Marquis de Casa Yrujo does not yet despair of receiving from New Orleans favorable answers to his letters; but the remedy seems now to be no more reasonably expected from Madrid. If the attention of the Spanish Government should not have been sufficiently quickened by the first notice of the proceeding, from its own officers, we hope that the energy of your interpositions will have overcome its tardy habits, and have produced an instant despatch of the necessary orders.

Mr. Monroe was to sail from New York to Havre de Grace yesterday. He carries with him the instructions in which you are joined with him, as well as those which include Mr. Livingston.

The convention signed with Spain in August, though laid before the Senate at an early day, had no question taken on it till the close of the session. It was then postponed till the next session, which is to commence in November. More than a majority, but less than two-thirds, which the Constitution requires, would have acquiesced in the instrument in its present form; trusting to the success of further negotiations for supplying its defects, particularly the omission of the claims founded on French irregularities. But it is understood that it would have been a mere acquiescence; no doubt being entertained that Spain is bound to satisfy the omitted as well as the included claims. In explaining, therefore, the course taken by the Senate, which mingles respect for the Spanish Government with a cautious regard to our own rights, you will avail yourself of the opportunity of pressing the reasonableness and the sound policy of remodelling the convention in such a manner as to do full justice. I need not repeat the observations heretofore made on the Spanish responsibility for the conduct of French citizens within Spanish jurisdiction; but it may be of use to refer you to the enclosed copy of a royal order, issued by the Spanish Government, in 1799, which will enable you to remind them of their own view of the subject at that time. In this document it is expressly declared that the French consular jurisdiction was not admitted, and that French Consuls, in Spanish ports, were in the same condition as those of every other nation. After such a declaration against the authority of French Consuls, the Spanish Government would be chargeable with no less disrespect to the French Republic than to itself, in saying that Spain was not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. With sentiments, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

R. R. Livingston to James Madison, Secretary of State.

PARIS, *March* 11, 1803.

DEAR SIR: I have a few days since written to you, transmitting a letter addressed to the First Consul: for though I had numerous notes and observations under his eye, in an informal way, yet I have reason to fear that what I wrote to the Minister, particularly on the subject of the debt, had not reached him; besides that, I believed that he could not pass over a more direct address to him personally. I found, upon conversing with some of the Ministers here, that they considered my direct address as improper, and likely to offend the Minister, if not the Consul. But our situation was such as to require something decisive; and as I daily found the dispositions of M. Talleyrand were friendly to our views, I promised the Minister to write, and offered to submit my letter to him before I sent it. He was pleased with this mark of confidence, and promised not only to deliver it, but to support my application. When I showed him the letter he seemed to think that all relating to the debt was hopeless. I, however, could not abandon this important object, but immediately upon sending it, took care to have that part of it supported by Consul Le Brun, who has the principal direction of the affairs of finances, with whom I am upon a very friendly footing, and between whom and

my friend Marbois, there is a family connexion, strengthened by the marriage of their children. I have the pleasure to enclose you an answer to that letter; you will find in it such strong and such satisfactory assurances on the subject of the debt, as I think gives us the firmest prospects of its speedy payment. I have thought it necessary to communicate this to the Americans here, in order to prevent their parting with their claims at an insignificant price. I have, also, as I know that this account would reach America by private conveyances, before you could communicate it, thought it proper to mention it generally to one of my friends, with directions to speak of it publicly, in order to prevent the creditors from suffering by the speculations of those who were in the secret.

I told you that M. Talleyrand had assured me that no sale would be heard of. You will find a passage in the note which was doubtless intended to convey that idea in very strong terms. As I know it to be the fixed determination of this Goverment to treat only in America, I have nothing more to do on this subject than to endeavor to get the right of depot left upon the footing it was till your negotiations are concluded. This I shall endeavor to effect. If, upon the arrival of Mr. Monroe, he can suggest anything better, I shall heartily concur with him. In treating with General Bernadotte, you will have every possible advantage. The nearer he views the object, the less he will value it. His dispositions are as friendly as possible to our Government and country; and his ideas relative to our connexion, and the little importance of Louisiana, exactly such as I would wish. My conversations with him on that subject were frequent and interesting; as well as with Mr. Adet, who is much in his confidence, and who thinks exactly as I do. The great object that he will be instructed to keep in view will be, I think, from what I learn here, to keep the British out of the river, and to secure as much as possible of the carrying trade to France. Dupont de Nemours has shown me a plan that he gave to Consul Le Brun, of which I send you a copy. I have endeavored to convince those who may be consulted of its impracticability. The reasons are too obvious to make it necessary for me to state them to you. I have hinted at making the island of New Orleans an independent State, under the Government of Spain, France, and the United States, with a right of depot to each, subject to a duty on imports of one and a half per cent. in lieu of storage, wharfage, &c., suggesting the advantages that France would derive from being the only manufacturing nation of the three. The advantages of this to our carrying trade (while it left our revenue untouched) are obvious. And in such a treaty, arrangements might be made extremely advantageous to the Western people. The new nation must always feel its dependence upon us, and, of course, respect our rights. I should not have thought it worth while to mention this, had it not been that I gave an unsigned and informal sketch of it to Joseph Bonaparte: it may possibly be given to General Bernadotte. If, as I begin to believe, they do not get the Floridas, they will put the less value on New Orleans.

Things every day look more towards a rupture between this country and Britain; and though the politicians think otherwise, I believe a war not very distant. The stocks here have been sixty-five; they are now sixty-one. This, however, is an artificial operation; money being employed by the Government to keep them up. Their real price would be about fifty-seven.

I am, dear sir, with the highest consideration, your most obedient humble servant.

ROBERT R. LIVINGSTON.

JAMES MADISON, *Secretary of State.*

Mr. Talleyrand to Mr. Livingston.

PARIS, *Ventose, an* 11,
(*February* 19.) 1803.

SIR: The First Consul, in placing in my hands the memoir which you have presented to him, has ordered me to assure you that he has taken into serious consideration the objects you have had in view, and the various demands which you have presented.

He has, at the same time, caused a report to be made on all the subjects which may arise in consequence of these demands, and on the clauses of the convention between France and the United States, to which you refer. It is the intention of the First Consul (and he has charged me to make it known to you) that this convention shall be executed, in every particular, with scrupulous exactness.

The reflections contained in your memoir, in relation to the difficulties which, on the part of France, may attend its execution, do not apply, with the least foundation, either to the dispositions of the Government of the French Republic, or to the state of her finances. The First Consul is persuaded that the impressions by which you have on this point been misled, have been occasioned by your friendly solicitude; but these impressions are not supported by facts. No embarrassment exists in the finances of France. The French Government has the means, as well as the inclination, to be just; and if it should be placed in a position in which the discharge of its obligations would be attended with difficulties, it will know how to surmount those obstacles, and satisfy every claim that can be justly demanded.

As to the American debts, of which you have given an estimate, in the memoir addressed to the First Consul, I ought to apprize you that it is entirely new to us that they can be raised, by any valuation whatever, to the sum of twenty millions. The first Consul charges me to request of you an exact, full, certain, and verified statement of these debts. The perfect confidence with which you have inspired him will not permit him to doubt that in the examination of the particulars, which will form this statement, you will exercise your accustomed acuteness of mind and frankness of character. You may rest assured, sir, that, upon being furnished with such a statement, every claim will be promptly and fully discharged.

As to the second question in your memoir, which relates to Louisiana, the First Consul would have preferred its having been the subject of a separate note. Affairs so different in their nature ought to be kept as much as possible apart, and should certainly not be united. It is entirely opposed to the maxims of Government, adopted by the Republic, to mingle important and delicate political relations with calculations of account and mere pecuniary interests.

The First Consul, always appreciating the motives which have induced you to insist on an explanation of the new relations which ought to exist between the two Republics, has charged me to inform you, that, aware of the solicitude, perhaps premature, but, in reality, natural and plausible, which the United States have manifested in this discussion, has come to the determination to send immediately to the United States a Minister Plenipotentiary, who, will communicate on every point the information necessary to a final decision.

Under these circumstances, as well as in all others presenting topics for discussion between the two Governments, the First Consul desires that you shall give, on the subject of his dispositions towards the United States, the most positive and formal assurances, that attachment for your Republic, and esteem and personal consideration for its present Chief Magistrate, are national sentiments which, as a Frenchman, and as the chief of a people, the ancient and uniform friend of the American nation, he loves to profess, and of which he will always be under the pleasing obligation to furnish unequivocal proofs.

While I felicitate myself upon being, at this time, the medium by which these sentiments of the First Consul are expressed, allow me, sir, to renew the assurance of my high consideration.

CH. MAU. TALLEYRAND.

His Excellency R. R. LIVINGSTON,
Minister Plenipotentiary, &c.

Extract of a note from Mr. Dupont de Nemours to the Consul Le Brun.

"I see many ways of terminating this contest, and I desire that, whatever it may be, while favoring our commerce, it may exclude as much as possible the commerce of the five States of the West which are most interested in this question. The first, and most simple, appears to be this: to declare New Orleans a free port for the two nations, France and Spain, whose commerce shall enter and depart through the delta of the Mississippi; and that the United States shall only enter from above, and depart by the same embouchure of the river. The navigation remaining free to the three nations throughout its whole course, on the express condition that the United States shall exempt from every species of duty French or Spanish merchandise entering their territory by the Mississippi or Ohio.

"In this manner we shall have conquered, for the benefit of our manufactures, our silks, ironmongery, and glass of every description, and for the consumption of our wines, vinegar, oil, and dried fruits, all the commerce of the five States of the West, as well as of the new States, which, in this country, multiply so rapidly.

"The products of the English manufactories not being admitted, except by land, and then burdened with a duty of twelve or fifteen per cent., will, in reality, be excluded from competition with those of France. Thus will our enemies be struck in the part most susceptible of injury, while the good will of our friends will be advantageously confirmed. This will give us the assurance that the interior of America, from the Alleghany on the one side, to the elevated mountains beyond the Lakes on the other, will only be populated and supplied by means of the manufacturing industry, the agricultural prosperity, and the commercial riches of France."

Extract.—Robert R. Livingston to the President of the United States.

PARIS, *March* 12, 1803.

DEAR SIR: I have delayed replying to your friendly letter by Madame Brougniart, in the hope of having something important to communicate; but, in the meantime, have been so full in my letter to the Secretary of State, that I have left myself little to say on the subject of my public affairs. I can only tell you, generally, that we have been gaining ground here for some time past; and although some propositions which I had an opportunity to make to Joseph Bonaparte to be submitted to the Consul's inspection were not agreed to, yet the matter and the manner left a favorable impression, and I meant to renew the subject on the same grounds.

My letter to the First Consul, which you will find couched in pretty strong terms, and such as are not usual here, and, so far as it related to the claims, repugnant to the Minister's sentiments, has been attended with happy effects, as you will find by the answer transmitted herewith to the Secretary of State. I think it impossible, after this, for him to go back; and I have accordingly given information to the American creditors of the state of their affairs, that they may not be speculated upon.

With respect to a negotiation for Louisiana, I think nothing will be effected here. I have done everything I can, through the Spanish Ambassador, to obstruct the bargain for the Floridas, and I have great hope that it will not be soon concluded. The Ambassador tells me that the Consul often complains to him of the delay that business meets with: and, while Spain keeps the Floridas, Louisiana will be considered here as an object of little moment, as they are absolutely without ports in the Gulf, and so far facilitate your negotiations with General Bernadotte. I have had many interesting conversations with him, and have nothing to complain of. Remember, however, neither to wound his pride nor that of his nation; both being extremely irritable.

Mr. Madison has never told me whether he has received two little essays, calculated, the one to

raise our importance in the views of this Government as a naval Power; and the other to disgust them with Louisiana, preparatory to our future negotiations. They were both read with considerable attention by the First Consul, having had them translated for that purpose.

I broke off this part of my letter to attend Madame Bonaparte's drawing-room, where a circumstance happened of sufficient importance to merit your attention. * * * * After the First Consul had gone the circuit of one room, he turned to me, and made some of the common inquiries usual on these occasions. He afterwards returned, and entered into a further conversation. When he quitted me, he passed most of the other Ministers merely with a bow, went up to Lord Whitworth, and, after the first civilities, said: "I find, my Lord, your nation wants war again." L. W. "No, sir we are very desirous of peace." First Consul. "You have just finished a war of fifteen years." L. W. "It is true, sir, and that was fifteen years too long." Consul. "But you want another war of fifteen years." L. W. "Pardon, me, sir, we are very desirous of peace." Consul. "I must either have Malta or war." L. W. "I am not prepared, sir, to speak on that subject; and I can only assure you, citizen First Consul, that we wish for peace."

The prefect of the palace, at this time, came up to the Consul, and informed him that there were ladies in the next room, and asked him to go in. He made no reply, but, bowing hastily to the company, retired immediately to his cabinet, without entering the other room. Lord Whitworth came up to me, and repeated the conversation as I now give it to you. I asked Lord Whitworth whether there were any pending negotiations relative to Malta. He told me that there were; that the conduct of France having convinced them that they still had views upon Egypt, and the guaranties to which they were entitled, with respect to Malta, not having been executed, they thought they could not surrender it with safety. But what brought on the business to-day was, a message from the King of Great Britain to the Parliament on the 1st, which has just been received here, speaking with distrust of the armaments in the French ports, and, in fact, preparing them for war.

This you will have sooner by the way of England than this letter. It is, then, highly probable that a new rupture will take place, since it is hardly possible that the First Consul would commit himself so publicly, unless his determination had been taken. I am fearful that this may again throw some impediment in the way of our claims, which I believed in so prosperous a train. In other views it may serve us, and I shall give all my attention to avail myself of circumstances as they arise; in which I hope shortly to receive the assistance of Mr. Monroe.

I must pray you, sir, to furnish Mr. Madison with such an extract from this letter as ought to be on his file of correspondence with me; since the fear of losing the opportunity, and the necessity of the greater activity at this interesting moment, will deprive me of the pleasure of writing further to him by this conveyance. I am, &c.

ROBERT R. LIVINGSTON.

Mr. King to the Secretary of State.

LONDON, *March* 17, 1803.

SIR: War seems more and more probable; indeed, it appears to me inevitable. Holland will be involved, and Spain and Portugal must obey the commands of France. The day after the King's message to Parliament was communicated to the French Government, Bonaparte delivered to Lord Whitworth a paper (a copy of which I have seen) stating:

1. That the expedition preparing in the Dutch ports was, as all the world knew, destined for America; but, in consequence of the message, that it had been recalled and would not proceed.

2. That if the armament announced in the message be not satisfactorily explained, or, if it take place, France would march twenty thousand men into Holland.

3. That the forces debarked in the ports of Holland would be reinforced, and assembled on the coast of Flanders.

4. That the French Army will be immediately put on a war establishment.

5. That camps would be formed on the coast between Dunkirk and Boulogne.

6. That an army would enter Switzerland.

7. That an army would march into Italy, and occupy Tarento. And,

8. That England must not expect, under the cover of an armament, to avoid the execution of the Treaty of Amiens.

The greatest activity continues to prevail in the military and naval departments. It is understood that the squadrons in the West and East Indies, and in the Mediterranean, will not immediately require reinforcement, and that a respectable fleet will soon appear in the Channel and on the coast of Ireland. The regular army on foot in Great Britain (exclusive of the forces in Ireland, Egypt, Malta, Gibraltar, and the Colonies,) consists of twenty-seven thousand infantry, and twelve thousand cavalry; and will be reinforced immediately by thirty-seven thousand of the militia, which have been called out.

I do not hear of Mr. Monroe's arrival, though I learn from Mr. Livingston that he is daily expected in France. Mr. Merry is preparing to embark for the United States, and is pressed by his Government to be ready to leave England in the first week of April.

With perfect respect and esteem, I have the honor to be, sir, your obedient and humble servant.

RUFUS KING.

Mr. Livingston to Mr. Madison.

PARIS, *March* 18, 1803.

SIR: I sent despatches a few days ago to Havre, in expectation of their going by a vessel which left that place for Philadelphia, but they arrived too late. Duplicates were sent to go by a vessel bound to New York. You will, therefore, I fear, have originals and duplicates by the same vessel. This compels me to send triplicates by this conveyance. You will see that, on the subject of New Orleans, the answer to my letter is very unsatisfactory. I, at first, intended to let the matter rest till Mr. Monroe arrived; but, on reflection, I dreaded the consequences of delay, if France should take possession, and continue the policy of Spain; and, as the moment was critical, and the time of Mr. Monroe's arrival uncertain, I sent in the enclosed note, and am doing all that I can to get a speedy and favorable answer.

On the subject of the debts, I have already met with a great deal of trouble in procuring the necessary information, and this is not to be wondered at. I hope to get through with it, strengthened as I am by the First Consul's engagement.

I cannot but wish, sir, that my fellow-citizens should not be led to believe, from Mr. Monroe's appointment, that I had been negligent of their interests, or too delicate on any of the great points entrusted to my care. I trust that a communication of my notes to some of them would show that I had gone as far as it was possible for me to go, and perhaps further than my instructions would justify.

We are here all in a bustle, not knowing whether we are to have war or peace. In England, they expect war certainly. Here they are very anxious to avoid it; and I, who have hitherto believed that a rupture would happen, begin, from some circumstances I heard last night, at Consul Le Brun's, to believe the storm will pass over. But this is by no means certain; because it is possible that England will rise in her terms as France recedes. Peace will, in no event, last long. I frankly confess, that, though I believe a war would be extremely dangerous for Great Britain, yet I think her ruin inevitable if France continues ten years at peace.

MARCH 19.

Nothing decisive, as yet, on the subject of war or peace. The idea of peace seems to gain ground; and, in fact, war is so much dreaded by all the neighbors of France, that they will make every effort to maintain peace, lest they should be drawn into the vortex. I shall call this morning on the Minister, in order to enforce upon him the subject of my note.

I have the honor to be, &c.

ROBT. R. LIVINGSTON.

Mr. Livingston, Minister Plenipotentiary of the United States of America, to His Excellency the Minister for Exterior Relations of the French Republic.

PARIS, *March* 16, 1803.

SIR: I have received, with great sensibility, your note containing the First Consul's reply to that which I had the honor to present to him on the subject of the American claims. The sentiments are such as would naturally be entertained by an enlightened statesman, who, after advancing his country to the highest pinnacle of military glory and national prospects, had determined to give permanency to that prosperity, by establishing it upon the firm basis of religion, good faith, justice, and national credit. On this subject, sir, I have no doubts; and I am satisfied that, when the claims are brought forward, they will, as you have the goodness to declare, be promptly and fully satisfied. But, sir, as this will form the subject of a future note, I shall beg leave to proceed to the consideration of a question in the highest degree interesting to the harmony of France and the United States, and which, I am sorry to say, is of a nature too pressing to admit of any delay.

The First Consul has done me the honor, through you, to inform me that he proposes to send a Minister to the United States, to acquire such information as he may deem necessary previous to his taking any measures relative to the situation in which the acquisition of Louisiana will place France with respect to the United States. If, sir, the question related to the formation of a new treaty, I should find no objection to this measure. On the contrary, I should readily acquiesce in it, as that which would be best calculated to render the treaty mutually advantageous. But, sir, it is not a new treaty for which we now press, (though one mutually advantageous might be made,) but the recognition of an old one, by which the United States have acquired rights, that no change in the circumstances of the country obliges them to relinquish, and which they never will relinquish but with their political existence. By their treaty with Spain, their right to the navigation of the Mississippi is recognised, and a right of depot granted, with a provision, on the part of the King of Spain, to revoke this right, if, within three years, he found it prejudicial to his interests; in which case, he is to assign another equivalent establishment. The King of Spain has never revoked that right; but, after having made the experiment of its effects upon his interests for three years, he has continued it. The United States have, by this continuance, acquired a permanent and irrevocable right to a depot at New Orleans; nor can that right now be called in question, either by Spain or by any other nation to whom she may transfer her title. Even the assignment of another equivalent establishment cannot, at this day, be forced upon the United States without their consent. The time allowed to Spain has passed, and she has preferred to have the depot at New Orleans to placing it elsewhere; and I will venture to say, that, in so doing, she has acted wisely. For New Orleans derives its whole value from its being the market for American produce, and their principal port of entry; and, if this consideration was important to Spain, it is infinitely more so to France, the produce of whose agriculture and manufactures will then find a ready exchange for the raw materials of the United States. Under these circumstances, at the very moment that Spain is about to relinquish the possession of that country to France, she violates her treaty without any apparent interest, and leaves the country with a stain upon her character.

In what situation, sir, are we now placed? An

armament is on the point of sailing for New Orleans; the port has been shut by the order of Spain; the French commandant will find it shut. Will he think himself authorized to open it? If not, it must remain shut till the Envoy of France shall have arrived in America, and made the necessary inquiries, and transmitted the result of those inquiries to the First Consul. In the meanwhile, all the produce of five States is left to rot upon their hands. There is only one season in which the navigation of the Mississippi is practicable. This season must necessarily pass before the Envoy of France can arrive and make his report. Is it supposable, sir, that the people of the United States will tranquilly wait the progress of negotiations when the ruin of themselves and their families will be attendant on the delay? Be assured, sir, that, even were it possible that the Government of the United States could be insensible to their sufferings, they would find it as easy to prevent the Mississippi from rolling its waters into the ocean, as to control the impulse of the people to do themselves justice. If, sir, in pursuance of the treaties that France has made with the Porte, she had established valuable *comptoirs* upon the Black Sea, and, subsequent to this, the Dardanelles were ceded to the Emperor, would France suffer him to shut up the passage, and ruin their merchants, till a new treaty had been negotiated for an object that she already possessed? Sir, I will venture to say, that, were a fleet to shut up the mouths of the Chesapeake, Delaware, and Hudson, it would create less sensation in the United States than the denial of the right of depot at New Orleans has done. The people of the Western country were emigrants from the different States, in which they have left connexions deeply interested in their prosperity. This circumstance, combining with the just sense of national independence and national dignity, makes them extremely sensible to the injustice they have suffered. Nor is it without the utmost difficulty that they have been restrained from breaking out into acts of immediate hostility against Spain, by the prudent measures of Government, and by the hope that the mission of a Minister, who will bring with him a conviction of their feelings on this subject, will procure them the most immediate and express recognition of their rights by France, in whose justice and good faith they hope to find a resource against the breach of faith by the officers of Spain.

I cannot but flatter myself, sir, that the answer which the First Consul has been pleased to honor me with, has a reference only to such new treaties as it may be for the mutual interest of both countries early to negotiate. But that relative to the rights the United States already possess, in virtue of existing treaties with Spain, he is ready to afford me those explicit and formal assurances which are necessary to calm the emotions which have been so unwisely excited in the United States. I can never bring myself to believe, sir, that the First Consul will, by deferring for a moment the recognition of a right that admits of no discussion, break all those ties which bind the United States to France, obliterate the sense of past obligations, change every political relation that it has been, and still is, the earnest wish of the United States to preserve, and force them to connect their interests with those of a rival Power; and this, too, for an object of no real moment in itself. Louisiana is, and ever must be, from physical causes, a miserable country in the hands of a European Power. Nor can any principle of sound policy dictate to France (even if bound by no treaty) a change in the circumstances of New Orleans, that should exclude the citizens of the United States from that right of depot to which alone it must be indebted for its prosperity. I feel a pleasure in declaring, sir, that the people and Government of the United States will receive the highest satisfaction from the assurances that the First Consul has empowered you to make to me of his attachment to them; and will reflect with pleasure on his having called to mind, that, amidst the changes that both nations have undergone, they have been mutually forward in tendering their alliance to each other. Nor will it be less flattering to the President to have acquired, as a magistrate and as a man, the esteem of a chief who has merited and obtained that of the world. But these occurrences add to my pain when I reflect on occurrences that may lay the foundation for future enmities; and I trust, sir, that they will serve as an apology for anything that may appear harsh in this note. For, if ever there was a moment in which it becomes a Minister to speak with freedom, it is when he feels that the dearest interests of his country are at stake, and has reason to hope that a knowledge of the truth may prevent the breach of relations between nations that esteem and respect each other, and the calamities that humanity may feel in such breach.

I pray your Excellency to receive my thanks for the interesting manner in which you have made the communications of the First Consul, and my assurances of the highest consideration.

ROBERT R. LIVINGSTON.

Mr. Livingston to the Secretary of State.

PARIS. *March* 24, 1803.

DEAR SIR: The question of war yet remains undetermined. My letters from Mr. King of the 18th leave me to believe, as well as my persuasion of the present system of politics in England, that war will come soon. Here there is an earnest and sincere desire to avoid it, as well in the Government as the people. I enclosed, in my last, a note to the Minister. Some days after, I called on him. He told me that an answer was prepared, and that everything should be arranged; and I have no doubt the answer contained all those assurances which I have been so long soliciting. Unfortunately, despatches arrived at that moment from Mr. Pichon, informing them that the appointment of Mr. Monroe had tranquilized everything. Conceiving, then, that they might safely wait his arrival, they determined to see whether the storm would not blow over; in which case, they will treat to more advantage. They accordingly substituted, for the first note, which, as the Minister told me, arranged everything, the enclosed No. 1, which contains nothing. To this I put in the note No. 2, which I suppose will produce no effect if the war does not happen. Last night I received another note, No. 3, complaining of our supplying the blacks at St. Domingo: to this I returned the answer No. 4.

I have had a great deal of conversation with General Bernadotte, and communicated my two notes to him. I gave them to him to show to the gentleman I have mentioned, and endeavored to convince him that he was personally interested; that the specific declarations I require should be given before he goes out, which will be in a few days. Upon the whole, I think everything is prepared for Mr. Monroe. I cannot but hope that something may be effected, though I fear Dupont de Nemours has given them, with the best intentions, ideas that we shall find it hard to eradicate, and impossible to yield to.

Florida is not yet ceded, nor, as I hope, very likely to be so. The armament in Holland, designed for Louisiana is stopped for the present, in consequence of the state of things here.

I am, dear sir, with the highest consideration, your most obedient, humble servant.

ROBERT R. LIVINGSTON.

Hon. JAMES MADISON, *Secretary of State.*

Mr. Talleyrand to Mr. Livingston.

PARIS. *March* 21, 1803.

SIR: I see with pleasure, by the last letters from the French legation in the United States, that the excitement which had been raised on the subject of Louisiana has been allayed by the wisdom of your Government, and the just confidence which it inspires, to that state of tranquillity which is alone proper for discussion, and which, in the existing relations between the two nations, cannot fail to lead to suitable explanations on difficulties arising from contingent circumstances, and draw still closer the bands by which they are mutually united. I ought to acknowledge, sir, that, in the publicity recently given to the proceedings respecting Louisiana, it is difficult to recognise the ancient sentiments of attachment and confidence with which France has always been desirous to inspire the people of the United States, and by which, from the first moment of their existence as an independent and sovereign nation, she has been induced to consider her concerns with the United States as among the most important of her political relations.

On what account, then, either political or commercial, can the American nation view the proximity of France with so unfriendly an eye? Has the French Republic ever evinced a desire to arrest the prosperity of the United States, assume an influence to which she had no right, weaken her means of safety or annoyance, or place an obstacle in the way of their expanding commerce? Your Government, sir, ought to be persuaded that the First Consul entertains for the American nation the same affection with which France has been at all times animated; and that, among the advantages which he expects to derive from the possession of Louisiana, he estimate the additional means which will be at his command, to convince the Government and people of the United States of his uniformly liberal and friendly sentiments.

I ought, sir, at the present time, to confine myself to this declaration, which alone should be sufficient to quiet the apprehensions expressed in your last letters. The subject itself does not rest on that accurate and extensive information which alone could authorize a more detailed explanation. In announcing to me, moreover, the speedy departure of Mr. Monroe, who has been appointed a Minister Extraordinary to discuss this matter, you give me reason to conclude that your Government desires that this Minister should be received and heard; because every point susceptible of contradiction should be completely and definitively discussed. In the meantime, the First Consul charges me to assure your Government, that, although he does not think that his new position in relation to Louisiana ought to be the subject of just inquietude, or can occasion the least injury to the United States, he will yet receive with the greatest pleasure the Minister Extraordinary whom the President is about to send, and that he hopes his mission will terminate in a way to give mutual satisfaction to both nations.

At the same time, sir, I avail myself of this occasion to renew the assurance of my high consideration.

CH. MAU. TALLEYRAND.

No. 2.

R. R. Livingston to the Minister of Exterior Relations.

PARIS, 20 *Ventose, an* 11,
(*March* 11, 1803.*)

SIR: I acknowledge that I feel some mortification in finding that the note with which you honored me yesterday contains nothing more decisive upon the interesting subject that I have submitted to your consideration; and still more, that you should think the sensibility that the inhabitants of the United States have manifested upon the change in the situation of Louisiana repugnant to the sentiments of friendship which the former conduct of France ought to inspire. I should be deficient, sir, in that frankness which has always formed the basis of my communications with you, if I should conceal that the vicinity of a nation, whose political situation puts it out of her power to injure the United States, was less alarming than that of an active, powerful, and enterprising people, whom a variety of circumstances might lead, in the common course of events, to painful discussions; and you will, sir, readily admit that the profound secrecy that the Government of France has always observed in whatever related to Louisiana was ill calculated to allay those alarms. To

* There seems to be some mistake, either in the date of this letter, (March 11,) or in that of the preceding letter, (March 21,) to which this is an answer. The originals have been followed.

this moment, the treaty to which they might have expected to be parties is concealed from them; and while explications are given to another Power upon the destination of the armament, in which the United States were most interested, not the most distant hint is afforded to the Minister of the United States, nor is he informed, except through the medium of another Court, of the present arrangement with respect to that armament.

Under these circumstances, sir, how painful soever it may be to manifest a distrust of a nation to whom they have formerly been indebted, and to whom, in return, they have manifested their gratitude, it would be to discover an ignorance of the change that was about to take place in their situation, and a blameable indifference to their most important interest, if they did not demand those securities to which they are entitled for the performance of engagements that France has assumed by putting herself in the place of Spain. I would earnestly hope, sir, that the information you have received from the legation of France in the United States, was more correct than that which induces me to fear that, seeing in your note a determination to postpone to the latest moment those arrangements which they will conceive need only to have been mentioned to have been taken, they will resort to those precautionary remedies which prudence justifies, and which their situation in the present state of Europe most peculiarly demands.

The United States, sir, have vested me with full powers to receive and make those arrangements; and, in the appointment of Mr. Monroe, jointly with me, as Minister Extraordinary to the First Consul, it was by no means their intention, considering the variety of accidents which may postpone or prevent his arrival, to defer receiving from the Government of France those explicit confirmations of the Treaty of Madrid which must precede every arrangement which it might be thought proper hereafter to enter into.

A treaty, sir, is the work of time; and it can hardly be presumed that an ardent and intelligent people should wait the slow progress of negotiations for the attainment of objects that admit of no dispute, and see with indifference France strengthen herself in their vicinity, while she declines to acknowledge the validity of a treaty which, in their opinion, she has virtually adopted. It is not, sir, to negotiate for this acknowledgment that an additional Minister is sent; for this, as I have before had the honor to inform your Excellency, is not considered in the United States as susceptible of controversy: but it was with a view to such further arrangements as might be rendered necessary, in case (as was generally presumed) the Floridas should be added to the acquisitions of France. It was that he might be the bearer of the strong sentiments of the people upon the late measures of Spain, and show to France the inutility of these acquisitions, and the sentiments of distrust that they would naturally excite between her and the United States.

Having thus, sir, frankly stated the evils that may result to both countries from the indecision of France on a question that admits of no dispute, I can only lament the inefficacy of my representation, and hasten to submit your note to the inspection of my Government. From which, taken in connexion with the general politics of Europe and America, they will naturally draw their own conclusions. And I merely wish that the measures, which it is at their option to adopt, may be such as will tend less to their future harmony with France than to their own security.

The President will receive great pleasure from your assurances of the attachment of the First Consul to the Government and people of the United States; and will felicitate himself upon having fixed upon one so perfectly acceptable to the First Consul in the person of his additional Minister, as to insure him the agreeable reception which you so politely promise him.

I avail myself, sir, of this occasion to renew to you the assurances of my high consideration,

R. R. LIVINGSTON.

Mr. King to the Secretary of State.

LONDON, *April* 2, 1803.

SIR: Nothing further has occurred since the date of my last: no answer has yet been given to the note of the French Ambassador, which declines all discussion respecting Malta. Lord Hawkesbury's answer will probably be delivered to-day; it will, without doubt, persist in the determination communicated in his first note, and may disclose new and additional reasons in its support. If, as is said to be the case, the First Consul has lately made an overture to Russia for a partition of the Turkish empire, the fact may be urged on this occasion, notwithstanding the refusal of Russia to listen to the proposal.

I shall continue to believe the war unavoidable, in which England can have no expectation of a single ally. The system of Russia is pacific, with less attachment, however, to France than to England; Austria is not yet recovered from the blows by which she was driven from the contest; and Prussia will be inclined to adhere to her past policy. Although Denmark and Sweden have been much dissatisfied with England, France, contrary to her usual policy, has done nothing to secure their confidence; while England has been endeavoring to re-establish her ancient friendship with these States. For this purpose, she has given assurances that what is called the two Swedish convoys shall be restored or paid for: the first, which consisted of seventeen vessels, was condemned, and the Envoy of Sweden has given in his claim of compensation, which amounts to sixty thousand pounds sterling; the claim for the second, consisting of twenty-one vessels, and which, I think, is not yet condemned, will be about ninety thousand pounds sterling. By cultivating the friendship of these Powers, England expects, with the good will of Russia, to keep the Baltic open against the efforts that France will again make to close it. Portugal will be compelled to exclude the English trade; and Spain, with all Italy, must obey the orders that shall be given them.

I have sought occasions both with Ministers and other leading men since the discussions with France, to inculcate the disadvantage which England has heretofore brought upon herself by the system of warfare she has been accustomed to pursue, and which has been chiefly directed against the colonies of her enemy, which, after being acquired at the expense of much blood and treasure, in addition to the vexation of the commerce of neutral nations, have been commonly restored, enriched by English capital, at the conclusion of peace. Instead of a warfare liable to these objections, and which has moreover furnished an opportunity to France to appear as the friend and protector of neutral States, a system might be suggested that would not only avoid these disadvantages, but which would materially contribute to the future prosperity of Great Britain. No neutral commerce would be interrupted by it; on the contrary, it would serve to increase and extend it; and, when the object was once attained, no Treaty of Peace could restore things to their former state.

This conversation has been everywhere understood and well received; and it is my firm belief, if the war breaks out, that Great Britain will immediately attempt the emancipation and independence of South America.

In a late conversation with Mr. Addington, he observed to me, if the war happen, it would, perhaps, be one of their first steps to occupy New Orleans. I interrupted him by saying, I hoped the measure would be well weighed before it should be attempted; that, true it was, we could not see with indifference that country in the hands of France; but it was equally true, that it would be contrary to our views, and with much concern, that we should see it in the possession of England; we had no objection to Spain continuing to possess it; they were quiet neighbors, and we looked forward without impatience to events which, in the ordinary course of things, must, at no distant day, annex this country to the United States. Mr. Addington desired me to be assured that England would not accept the country, were all agreed to give it to her; that, were she to occupy it, it would not be to keep it, but to prevent another Power from obtaining it; and, in his opinion, this end would be best effected by its belonging to the United States. I expressed my acquiescence in the last part of his remark, but observed, that, if the country should be occupied by England it would be suspected to be in concert with the United States, and might involve us in misunderstandings with another Power, with which we desired to live in peace. He said, if you can obtain it, well, but if not, we ought to prevent its going into the hands of France; though, you may rest assured, continued Mr. Addington, that nothing shall be done injurious to the interests of the United States. Here the conversation ended.

I have lately received your letter of January 29th; and as soon as Lord Hawkesbury shall have named a time to receive me, which I have requested him to do, I will explain to him, in conversation, the President's views relative to the Mississippi.

Considering the critical state of affairs, it is much to be wished that my successor may arrive before my departure. I shall delay taking my leave to the last moment; and should the posture of affairs, in my opinion, require it, I will risk the expense of detaining my vessel even beyond the time in which I have engaged to embark: in any event, I shall not leave London before the last week of the present month.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant,

RUFUS KING.

Robert R. Livingston to the Hon. James Madison, Secretary of State.

PARIS, *April*, 11, 1803.

DEAR SIR: My notes will tell you how far I have officially pressed the Government on the subject of Louisiana. I have omitted no means, in conversation, of eradicating their prejudices in its favor; and I informed you that I had reason to think that I had been successful with all, unless it was the First Consul, to whom I addressed myself in the letter and essays that you have seen, and which were attentively read by him, as well as several informal notes to his brother. I had reason to think that he began to waver; but we had nothing to offer but money, and commercial advantages: of the latter, I did not think myself entitled to be liberal; and of the first, I found in them a certain degree of reluctance to treat, as derogatory to the dignity of the Government. The affair of New Orleans gave me two very important strings to touch: I endeavored to convince the Government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; that Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made; that without the Floridas, Louisiana would be indefensible, as it possesses not one port even for frigates; and I showed the effect of suffering that important country to fall into the hands of the British, both as it affected our country, and the naval force of all Europe.

These reasons, with the probability of war, have had, I trust, the desired effect. M. Talleyrand asked me this day, when pressing the subject, whether we wished to have the whole of Louisiana. I told him no; that our wishes extended only to New Orleans and the Floridas; that the policy of France should dictate (as I had shown in an official note) to give us the country above the river Arkansas, in order to place a barrier between them and Canada. He said, that if they gave New Orleans the rest would be of little value; and that he would wish to know "what we would give for the whole." I told him it was a subject I had not thought of; but that I supposed we should not object to twenty millions, provided our citizens were paid. He told me that this was too low an offer; and that he would be glad if I would reflect upon it, and tell him to-morrow. I told him that, as Mr. Monroe would be in town in two

days, I would delay my further offer until I had the pleasure of introducing him. He added, that he did not speak from authority, but that the idea had struck him. I have reason, however, to think that this resolution was taken in Council on Saturday. On Friday, I received Mr. Ross's motion: I immediately sent it to M. Talleyrand, with an informal note expressive of my fears that it would be carried into effect; and requesting that General Bernadotte might not go till something effectual was done. I also translated it, and gave it to General Bernadotte, and pressed upon him the necessity of asking express instructions, in case he should find the island in possession of the Americans. He went immediately to Joseph Bonaparte. These, I believe, were exciting causes to the train we are now in, and which I flatter myself we shall be able, on the arrival of Mr. Monroe, to pursue to effect. I think, from every appearance, that war is very near at hand; and, under these circumstances, I have endeavored to impress the Government that not a moment should be lost, lest Britain should anticipate us. I have used every exertion with the Spanish Ambassador and Lord Whitworth, to prevent the transfer of the Floridas; and wrote to Mr. Graham, in Mr. Pinckney's absence, to give every attention to that object, and to avail himself of the coolness which subsisted between the French Ambassador and the Prince of Peace. This has retarded the negotiation; and, unless they get Florida, I have convinced them Louisiana is worth little. I would rather have confined our views to smaller objects; and I think that, if we succeed, it would be good policy to exchange the west bank of the Mississippi with Spain for the Floridas, reserving New Orleans. Perhaps, however, I am too sanguine in my expectations: we will not, therefore, dispose of the skin till we have killed the bear.

I have written to Mr. King, pressing him to stay until a successor is appointed. The moment is so critical that we cannot justify being without a Minister in England, and he is a very useful one.

I believe you may calculate that Britain will not give up Malta, and that France will not leave it in her hands by consent; and, of course, hostilities must commence, or Britain be kept, at immense expense, in her present warlike attitude, while France expends nothing. This she cannot submit to, and must, therefore, strike the first stroke, which this country wishes, in order to render the war more popular here. France has marched troops into Holland, and those of Victor are embarking, but I think will not sail, or, if they do, will be intercepted by England, who will probably think they are designed for the islands, which is very probable.

Mr. Monroe arrived on the first at Havre. I expect him here in two days at furthest from this date. His passage was twenty-nine days.

I shall see the Minister again to-morrow, in order to sound him more fully before we offer anything formal on Mr. Monroe's arrival.

I wished and proposed that General Bernadotte should wait until something was done, having formally notified the Minister that Mr. Monroe had arrived. But I could not prevail upon him to make any alteration. He said that Mr. Bernadotte, having received his despatches, was to be considered by him as gone.

You will receive this by Mr. Petrie, his secretary, who waits here until to-morrow.

I am, dear sir, with the most respectful consideration, your most obedient humble servant,

R. R. LIVINGSTON.

P. S. 12th. Orders are gone this day to stop the sailing of vessels from the French ports; war is inevitable; my conjecture as to their determination to sell is well founded; Mr. Monroe is just arrived here.

Hon. JAMES MADISON, *Secretary of State.*

Mr. Livingston to Mr. Madison, Secretary of State of the United States.

PARIS, *April* 13, 1803, *midnight.*

DEAR SIR: I have just come from the Minister of the Treasury. Our conversation was so important, that I think it necessary to write it, while the impressions are strong upon my mind; and the rather, as I fear that I shall not have time to copy and send this letter, if I defer it till morning.

By my letter of yesterday, you learned that the Minister had asked me whether I would agree to purchase Louisiana, &c.; on the 12th, I called upon him to press this matter further. He then thought proper to declare that his proposition was only personal, but still requested me to make an offer; and, upon my declining to do so, as I expected Mr. Monroe the next day, he shrugged up his shoulders, and changed the conversation. Not willing, however, to lose sight of it, I told him I had been long endeavoring to bring him to some point; but, unfortunately, without effect: that I wished merely to have the negotiation opened by any proposition on his part; and, with that view, had written him a note which contained that request, grounded upon my apprehension of the consequence of sending General Bernadotte without enabling him to say a treaty was begun. He told me he would answer my note, but that he must do it evasively, because Louisiana was not theirs. I smiled at this assertion, and told him that I had seen the treaty recognising it; that I knew the Consul had appointed officers to govern the country; and that he had himself told me that General Victor was to take possession; that, in a note written by the express order of the First Consul, he had told me that General Bernadotte was to treat relative to it in the United States, &c. He still persisted that they had it in contemplation to obtain it, but had it not. I told him that I was very well pleased to understand this from him, because, if so, we should not commit ourselves with them in taking it from Spain, to whom, by his account, it still belonged; and that, as we had just cause of complaint against her, if Mr. Monroe concurred in opinion with me, we should negotiate no further on the subject, but advise our Government to take possession. He

seemed alarmed at the boldness of the measure, and told me he would answer my note, but that it would be evasively. I told him I should receive with pleasure any communication from him, but that we were not disposed to trifle; that the times were critical, and though I did not know what instructions Mr. Monroe might bring, I was perfectly satisfied that they would require a precise and prompt notice; that I was very fearful, from the little progress I had made, that my Government would consider me as a very indolent negotiator. He laughed, and told me that he would give me a certificate that I was the most importunate he had met with.

There was something so extraordinary in all this, that I did not detail it to you till I found some clue to the labyrinth, which I have done, as you will find before I finish this letter; and the rather, as I was almost certain that I could rely upon the intelligence I had received of the resolution to dispose of this country.

This day Mr. Monroe passed with me in examining my papers; and while he and several other gentlemen were at dinner with me, I observed the Minister of the Treasury walking in my garden. I sent out Colonel Livingston to him; he told him he would return when we had dined. While we were taking coffee he came in; and, after being some time in the room, we strolled into the next room, when he told me he heard that I had been at his house two days before, when he was at St. Cloud; that he thought I might have something particular to say to him, and had taken the first opportunity to call on me. I saw this was meant as an opening to one of those free conversations which I had frequently had with him. I accordingly began on the subject of the debt, and related to him the extraordinary conduct of the Minister, &c. He told me that this led to something important, that had been cursorily mentioned to him at St. Cloud; but as my house was full of company, he thought I had better call on him any time before eleven that night. He went away, and, a little after, when Mr. Monroe took leave, I followed him. He told me that he wished me to repeat what I had said relative to M. Talleyrand's requesting a proposition from me as to the purchase of Louisiana. I did so; and concluded with the extreme absurdity of his evasions of that day, and stated the consequence of any delay on this subject, as it would enable Britain to take possession, who would readily relinquish it to us. He said that this proceeded upon a supposition of her making so successful a war as to be enabled to retain her conquests. I told him that it was probable that the same idea might suggest itself to the United States; in which case, it would be their interest to contribute to render her successful; and I asked whether it was prudent to throw us into her scale? This led to long discussions of no moment to repeat. We returned to the point: he said, that what I had told him led him to think that what the Consul had said to him on Sunday, at St. Cloud, (the day on which, as I told you, the determination had been taken to sell,) had more of earnest than he thought at the time; that the Consul had asked him what news from England? As he knew he read the papers attentively, he told him that he had seen in the London papers the proposition for raising fifty thousand men to take New Orleans. The Consul said he had seen it too, and had also seen that something was said about two millions of dollars being disposed among the people about him, to bribe them, &c.; and then left him. That afterwards, when walking in the garden, the Consul came again to him, and spoke to him about the troubles that were excited in America, and inquired how far I was satisfied with his last note.

Here some civil things were introduced, for which I presume I am more indebted to the Minister's politeness than to his veracity; so let them sleep. He (Marbois) then took occasion to mention his sorrow that any cause of difference should exist between our countries. The Consul told him, in reply, "Well, you have the charge of the treasury; let them give you one hundred millions of francs, and pay their own claims, and take the whole country." Seeing, by my looks, that I was surprised at so extravagant a demand, he added that he considered the demand as exorbitant, and had told the First Consul that the thing was impossible; that we had not the means of raising that. The Consul told him we might borrow it. I now plainly saw the whole business: first, the Consul was disposed to sell; next, he distrusted Talleyrand, on account of the business of the supposed intention to bribe, and meant to put the negotiation into the hands of Marbois, whose character for integrity is established. I told him that the United States were anxious to preserve peace with France; that, for that reason, they wished to remove them to the west side of the Mississippi; that we would be perfectly satisfied with New Orleans and the Floridas, and had no disposition to extend across the river; that, of course, we would not give any great sum for the purchase; that he was right in his idea of the extreme exorbitancy of the demand, which would not fall short of one hundred and twenty-five millions; that, however, we would be ready to purchase, provided the sum was reduced to reasonable limits. He then pressed me to name the sum. I told him that this was not worth while, because, as he only treated the inquiry as a matter of curiosity, any declarations of mine would have no effect. If a negotiation was to be opened, we should (Mr. Monroe and myself) make the offer after mature reflection. This compelled him to declare, that, though he was not authorized expressly to make the inquiry from me, yet, that, if I could mention any sum that came near the mark, that could be accepted, he would communicate it to the First Consul. I told him that we had no sort of authority to go to a sum that bore any proportion to what he mentioned; but that, as he himself considered the demand as too high, he would oblige me by telling me what he thought would be reasonable. He replied that, if we would name sixty millions, and take upon us the American claims, to the amount of twenty more, he would try how far this would be accepted. I told him

that it was vain to ask anything that was so greatly beyond our means; that true policy would dictate to the First Consul not to press such a demand; that he must know that it would render the present Government unpopular, and have a tendency, at the next election, to throw the power into the hands of men who were most hostile to a connexion with France; and that this would probaby happen in the midst of a war. I asked him whether the few millions acquired at this expense would not be too dearly bought?

He frankly confessed that he was of my sentiments; but that he feared the Consul would not relax. I asked him to press this argument upon him, together with the danger of seeing the country passed into the hands of Britain. I told him that he had seen the ardor of the Americans to take it by force, and the difficulty with which they were restrained by the prudence of the President; that he must easily see how much the hands of the war party would be strengthened, when they learned that France was upon the eve of a rupture with England. He admitted the weight of all this: "But," says he, "you know the temper of a youthful conqueror; everything he does is rapid as lightning; we have only to speak to him as an opportunity presents itself, perhaps in a crowd, when he bears no contradiction. When I am alone with him, I can speak more freely, and he attends; but this opportunity seldom happens, and is always accidental. Try, then, if you cannnot come up to my mark. Consider the extent of the country, the exclusive navigation of the river, and the importance of having no neighbors to dispute you, no war to dread." I told him that I considered all these as important considerations, but there was a point beyond which we could not go, and and that fell far short of the sum he mentioned.

I asked him, in case of a purchase, whether they would stipulate that France would never possess the Floridas, and that she would aid us to procure them, and relinquish all right that she might have to them. He told me that she would go thus far. I added, that I would now say nothing on the subject, but that I would converse with Mr. Monroe; and that I was sure to find him disposed to do everything that was reasonable, or could be expected, to remove every cause of difference between the two countries. That, however, if any negotiation should go on, I would wish that the First Consul would depute somebody to treat with us, who had more leisure than the Minister for Foreign Affairs. I said this to see whether my conjectures relative to him were well founded. He told me that as the First Consul knew our personal friendship, he having several times had occasion to speak of me and my family, and the principles that we held, he believed that there would be no difficulty, when this negotiation was somewhat advanced, to have the management of it put into his hands. He earnestly pressed me to make some proposition that was so near the First Consul's as to admit his mentioning it to him. I told him that I would consult Mr. Monroe, but that neither he nor I could accede to his ideas on the subject. Thus, sir, you see a negotiation is fairly opened, and upon grounds which I confess I prefer to all other commercial privileges; and always to some a simple money transaction is infinitely preferable. As to the quantum, I have yet made up no opinion. The field opened to us is infinitely larger than our instructions contemplated; the revenue increasing, and the land more than adequate to sink the capital, should we even go the sum proposed by Marbois; nay, I persuade myself, that the whole sum may be raised by the sale of the territory West of the Mississippi, with the right of sovereignty, to some Power in Europe, whose vicinity we should not fear. I speak now without reflection, and without having seen Mr. Monroe, as it was midnight when I left the Treasury Office, and is now near three o'clock. It is so very important that you should be apprized that a negotiation is actually opened, even before Mr. Monroe has been presented, in order to calm the tumult which the news of war will renew, that I have lost no time in communicating it. We shall do all we can to cheapen the purchase; but my present sentiment is that we shall buy. Mr. Monroe will be presented to the Minister tomorrow, when we shall press for as early an audience as possible from the First Consul. I think it will be necessary to put in some proposition tomorrow: the Consul goes in a few days to Brussels, and every moment is precious.

I am, dear sir, with the most respectful consideration, your most obedient, humble servant.

ROBERT R. LIVINGSTON.

Mr. Livingston to Mr. Madison.

PARIS, *April* 17, 1803.

SIR: Mr. Petrie having been detained, I have an opportunity to give you a relation of what has passed since my letter of the 13th. On the 14th I called upon Mr. Monroe, to present him to the Minister, who had, upon my application, fixed three o'clock that day for his reception. Before we went we examined our commission, in which there are two circumstances with which I am not quite satisfied; one, indeed, of little moment, because it only respects me personally; and the other very important, as it may, if things should take a turn favorable to France, defeat all we may do, even at the moment of signing. The first is, that I have not the same rank in the commission with Mr. Monroe. It is important that I should be thought to stand as well with our Government as any other person. If so, my age, and the stations I have held, entitled me not to have had any other person placed above me in the line I have filled. The second is, that the commission contains power only to treat for lands on the east side of the Mississippi. You will recollect that I have been long preparing this Government to yield us the country above the Arkansas, because I saw the effect of their holding and giving encouragement to settle it would draw off a prodigious population from our side of the river, and from such a connexton between the inhabitants of the Western country and these new settlers,

who would be their relations and friends, as would be extremely dangerous. In my private negotiations with Joseph Bonaparte, I had urged every reason that I could think of to induce them to give us the country: and those reasons have had their effect. I am, therefore, surprised that our commission should have entirely lost sight of that object. Mr. Monroe, however, agrees with me that we will proceed as well as we can; and, as we left no copy of the commission, it may possibly escape unnoticed, though it will operate to our prejudice if our negotiation should not please at home. It is absolutely necessary, my dear sir, to repose confidence in Ministers who are placed so far from the seat of Government. You will recollect that I have been absolutely without powers to the present moment; and that though I have hazarded many things upon a presumption that I should have them, none have been received till now, and now they are unfortunarely too limited.

But to proceed. On waiting upon the Minister we found M. Marbois there, who told me that he had come to communicate to the Minister what had passed between us, and that he greatly regretted the not being able to bring us to such an offer as he might mention to the First Consul. I told him that it was unnecessary to repeat what would compel us to limit our offers to a much more moderate sum, as I had already detailed them at large; and he knew they exceeded our means. We were very graciously received by the Minister, whom I pressed to obtain as early a day as possible for the reception of Mr. Monroe, as time pressed, and we were anxious to conclude our business, for reasons arising out of the present disturbed state of America. He told me he would speak to the First Consul that night on the subject; and that he hoped some person would be appointed to treat with us, even before Mr. Monroe was presented. After a little general conversation, he took leave, in expectation that Mr. Monroe would be presented this day, (Sunday,) being a day of reception for the civil officers of the Government. The next day, Mr. Monroe and myself, after spending some time in consultation, determined to offer fifty millions, including our debts; we presumed it would be best only to mention forty in the first instance. This I accordingly did, in a conference I had on the 15th with M. Marbois. He expressed great sorrow that we could not go beyond that sum, because he was sure that it would not be accepted, and that perhaps the whole business would be defeated, which he the more feared, as he had just received a note from the Minister, indicative of the Consul's not being quite pleased that he had so greatly lowered his original proposition. He said that he saw our situation, and he knew that there was a point beyond which we could not go safely to ourselves or the President; but he wished us to advance to that point. He said that he would, if I wished, go that very day to St. Cloud, and let me know the result. I reminded him of the Consul's promise to pay the debt. I placed in the strongest light his personal obligation on this subject; and desired him to urge it as an additional reason to conclude an agreement which would facilitate the means of doing it. The next morning, which was yesterday, I again called to see him. He told me that he had been to St. Cloud; that the Consul received his proposition very cooly; and that I might consider the business as no longer in his hands, since he had given him no further powers; that he had urged the Consul's promise relative to the debt, which he admitted; but said, at the same time, he did not think it had exceeded three millions, though my letter expressly mentioned twenty. He expressed great sorrow upon the occasion; and advised me to press M. Talleyrand to present Mr. Monroe the next day, (that is, this day;) that he hoped that, if the Consul saw me, as he had a very particular esteem for me, he would renew the subject with me himself.

I went to Mr Monroe, and carried him to the Minister, who had not returned from St. Cloud; and afterwards went again, but could not see him. I dined with the Second Consul yesterday; and in the evening M. Marbois came in. I took him aside, and asked him if anything further had passed: he said not; but, that as he was to go to St. Cloud the next day, it was possible that the Consul might touch upon the subject again; and that, if he did not, I might consider the plan as relinquished; and that, if I had any further proposition to make, it would be well to state it. I then told him, that on further conversation with Mr. Monroe, we had resolved to go to the greatest possible length, and that we would give fifty millions. He said he had very little hopes that anything short of his propositions would succeed; but that he would make the best use of the arguments I had furnished him with, if an opportunity was offered; and if nothing was done the next day, I might conclude that the Consul had changed his sentiments; that, having given the kingdom of Etruria, whose revenues were twenty-five millions, in exchange for this country, it was natural that the First Consul should estimate it beyond its real value.

Thus we stand at present, resolving to rest a few days upon our oars; in the meantime, I shall press the payment of the debt, as an excitement to forward the other business.

No notice has been given of Mr. Monroe's reception; and I am not without my fears that he will not be received before the usual diplomatic day, which will not be till the 15th, and, before that time, the Consul will probably go upon his tour to Flanders. Mr. Monroe having been compelled, when here, to be well with the party then uppermost, and who are now detested by the present ruler, it will be some time before they know how to estimate his worth; and Talleyrand has, I find, imbibed personal prejudice against him, that will induce him to throw every possible obstruction in his way, that he can do consistently with their own views.

I shall attend to the other subjects of your letter at the first moment of leisure. At present, I think it would be improper to touch upon less important matter, which may either divert the attention or irritate.

I am sorry you have not thought it proper to

attend to my request as to the Italian Republic. It has, I believe, been acknowledged by all the Powers of Europe except Great Britain. Compliments that cost nothing should, I think, always be paid, where you have points to carry.

Be so obliging, in answering my letters, as to notice any project I throw out; because it is not enough to have them passed over in silence, as that leaves me in doubt; whereas, the approbation or rejection of them precisely would inform me of your sentiments, and enable me to act accordingly.

I am, dear sir, with much esteem and respect, your most obedient, humble servant.

R. R. LIVINGSTON.

Mr. Madison to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE.
April 18, 1803.

GENTLEMEN: A month having elapsed since the departure of Mr. Monroe, it may be presumed that, by the time this reaches you, communications will have passed with the French Government, sufficiently explaining its views towards the United States, and preparing the way for the ulterior instructions which the President thinks proper should now be given.

In case a convention and arrangement with France should have resulted from the negotiations with which you are charged; or, in case such should not have been the result—but no doubt should be left that the French Government means to respect duly our rights, and to cultivate sincerely peace and friendship with the United States—it will be expedient for you to make such communications to the British Government, as will assure it that nothing has been done inconsistent with our good faith, and as will prevent a diminution of the good understanding which subsists between the two countries.

If the French Government, instead of friendly arrangements or views, should be found to meditate hostilities, or to have formed projects which will constrain the United States to resort to hostilities, such communications are then to be held with the British Government, as will sound its dispositions, and invite its concurrence in the war. Your own prudence will suggest that the communications be so made, as, on one hand, not to precipitate France into hostile operations; and on the other, not to lead Great Britain from the supposition that war depends on the choice of the United States, and that their choice of war will depend on her participation in it. If war is to be the result, it is manifestly desirable that it be delayed until the certainty of this result can be known, and the Legislative and other provisions can be made here; and also of great importance, that the certainty should not be known to Great Britain, who might take advantage of the posture of things to press on the United States disagreeable conditions of her entering into the war.

It will probably be most convenient, in exchanging ideas with the British Government, to make use of its public Minister at Paris, as less likely to alarm and stimulate the French Government, and to raise the pretensions of the British Government, than the repairing of either of you to London, which might be viewed by both as a signal of rupture. The latter course, however, may possibly be rendered most eligible by the pressure of the crisis.

Notwithstanding the just repugnance of this country to a coalition of any sort with the belligerent politics of Europe, the advantages to be derived from the co operation of Great Britain in a war of the United States, at this period, against France and her allies, are too obvious and too important to be renounced. And notwithstanding the apparent disinclination of the British councils to a renewal of hostilities with France, it will probably yield to the various motives which will be felt to have the United States in the scale of Britain against France, and particularly for the immediate purpose of defeating a project of the latter, which has evidently created much solicitude in the British Government.

The price which she may attach to her co-operation cannot be foreseen, and, therefore, cannot be the subject of full and precise instructions. It may be expected that she will insist at least on a stipulation that neither of the parties shall make peace or truce without the consent of the other; and as such an article cannot be deemed unreasonable, and will secure us against the possibility of her being detached, in the course of the war, by seducing overtures from France, it will not be proper to raise difficulties on that account. It may be useful, however, to draw from her a definition, as far as the case will admit, of the objects contemplated by her, that whenever, with ours, they may be attainable by peace, she may be duly pressed to listen to it. Such an explanation will be the more reasonable, as the objects of the United States will be so fair and so well known.

It is equally probable, that a stipulation of commercial advantages in the Mississippi, beyond those secured by existing treaties, will be required. On this point, it may be answered at once, that Great Britain shall enjoy a free trade with all the ports to be acquired by the United States, on the terms allowed to the most favored nations in the ports, generally, of the United States. If made an essential condition, you may admit, that in the ports to be acquired within the Mississippi, the trade of her subjects shall be on the same footing for a term of about ten years with that of our own citizens. But the United States are not to be bound to the exclusion of the trade of any particular nation or nations.

Should a mutual guaranty of the existing possessions, or of the conquests to be made by the parties, be proposed, it must be explicitly rejected, as of no value to the United States, and as entangling them in the frequent wars of that nation with other Powers, and very possibly in disputes with that nation itself.

The anxiety which Great Britain has shown to extend her domain to the Mississippi, the uncertain extent of her claims from North to South, beyond the Western limits of the United States,

and the attention she has paid to the Northwest coast of America, make it probable that she will connect with a war on this occasion, a pretension to the acquisition of the country on the west side of the Mississippi, understood to be ceded by Spain to France, or at least of that portion of it lying between that river and the Missouri. The evils involved in such an extension of her possessions in our neighborhood, and in such a hold on the Mississippi, are obvious. The acquisition is the more objectionable, as it would be extremely displeasing to our Western citizens, and as its evident bearing on South America, might be expected to arouse all the jealousies of France and Spain, and to prolong the war, on which the event would depend. Should this pretension, therefore, be pressed, it must be resisted as altogether repugnant to the sentiments and to the sound policy of the United States. But it may be agreed, in alleviation of any disappointment of Great Britain, that France shall not be allowed to retain or acquire any part of the territory, from which she herself would be precluded.

The moment the prospect of war shall require the precaution, you will not omit to give confidential notice to our public Ministers and Consuls, and to our naval commanders in the Mediterranean, that our commerce and public ships may be as little exposed to danger as possible. It may, under certain circumstances, be proper to notify the danger immediately to the collectors in the principal ports of the United States.

A separate letter to you is enclosed, authorizing you to enter into such communications and conferences with British Ministers as may possibly be required by the conduct of France. The letter is made a separate one, that it may be used with effect, but without the formality, of a commission. It is hoped that sound calculations of interest, as well as a sense of right, in the French Government, will prevent the necessity of using the authority expressed in this letter. In a contrary state of things, the President relies on your own information, to be gained on the spot, and on your best discretion, to open with advantage the communications with the British Government, and to proportion the degree of an understanding with it to the indications of an approaching war with France. Of these indications, also, you will be best able to judge. It will only be observed to you that, if France should avow or evince a determination to deny to the United States the free navigation of the Mississippi, your consultations with Great Britain may be held on the ground that war is inevitable. Should the navigation not be disputed, and the deposit alone be denied, it will be prudent to adapt your consultations to the possibility that Congress may distinguish between the two cases, and make a question how far the latter right may call for an instant resort to arms, or how far a procrastination of that remedy may be suggested and justified by the prospect of a more favorable conjuncture.

These instructions have thus far supposed that Great Britain and France are at peace; and that neither of them intend at present to interrupt it. Should war have actually commenced, or its approach be certain, France will, no doubt, be the more apt to concur in friendly accommodations with us, and Great Britain the more desirous of engaging us on her side. You will, of course, avail yourselves of this posture of things, for avoiding the necessity of recurring to Great Britain, or, if the necessity cannot be avoided, for fashioning her disposition to arrangements formed with Great Britain in reference to war, the policy of the United States requires that it be as little entangling as the case will permit.

Our latest authentic information from New Orleans is of the 25th February. At that date the port had been opened for provisions carried down the Mississippi, subject to a duty of six per cent., if consumed in the Province, and an additional duty, if exported; with a restriction, in the latter case, to Spanish bottoms, and to the external ports permitted by Spain to her Colonial trade. A second letter, written by the Spanish Minister here, has been received by the Intendant, but without effect. On the 10th of March his interposition was repeated in a form which you will find, by his translated communication to the Department of State, in one of the enclosed papers, was meant to be absolutely effectual. You will find in the same paper the translation of a letter from the French Chargé d'Affaires here to the Governor of Louisiana, written with a co-operating view. A provisional letter to any French agents who might have arrived, had been previously written by him, in consequence of a note from this Department, founded on a document published at New Orleans, showing that orders had been given by the Spanish Government for the surrender of the Province to France; and he has of late addressed a third letter on the subject of the Prefect said to have arrived at New Orleans. It does not appear, however, from any accounts received, that Louisiana has yet changed hands.

What the result of the several measures taken for restoring the right of deposit will be, remains to be seen. A representation on the subject was made by Mr. Graham, in the absence of Mr. Pinckney, to the Spanish Government, on the 3d of February. No answer had been received on the 8th; but Mr. Graham was led by circumstances to make no particular inference from the delay. The silence of the French Government to Mr. Livingston's representation, as stated in his letter of the —— day of ——, is a very unfavorable indication. It might have been expected, from the assurances given, of an intention to observe the treaty between Spain and the United States, and to cultivate the friendship of the latter, that the occasion would have been seized for evincing the sincerity of the French Government; and it may still be expected that no interposition that may be required by the actual state of things will be withheld, if peace and friendship with the United States be really the objects of that Government. Of this, the mission of Mr. Monroe, and the steps taken by you on his arrival, will doubtless have impressed the proper convictions.

During this suspense of the rightful commerce of our Western citizens, their conduct has been, and continues to be, highly exemplary. With the just sensibility produced by the wrongs done them, they have united a patient confidence in the measures and views of their Government. The justice of this observation will be confirmed to you by manifestations contained in the Western newspapers, herewith enclosed; and, if duly appreciated, will not lessen the force of prudential as well as other motives, for correcting past, and avoiding future trespasses on American rights.

April 20.—The letter from the Marquis d'Yrujo, of which you will find a translated copy in the enclosed newspaper of this date, was yesterday received. The letters to which it refers, as containing orders for the re-establishment of our deposit at New Orleans, were immediatly forwarded. They will arrive in time, we hope, to mitigate considerably the losses from the misconduct of the Spanish Intendant; and they are the more acceptable, as they are an evidence of the respect, in the Government of Spain, for our rights and our friendship.

From the allusion in this communication from the Spanish Minister to a future agreement between the two Governments, on the subject of an equivalent deposit, it would seem that the Spanish Government regards the cession to France as either no longer in force, or not soon to be carried into execution. However this may be, it will not be allowed, any more than the result of our remonstrance to Spain on the violation of our rights, to slacken the negotiations for the greater security and the enlargement of these rights. Whether the French or the Spaniards, or both, are to be our neighbors, the considerations which led to the measures, taken with respect to these important objects, still require that they should be pursued into all the success that may be attainable.

With sentiments of great respect, &c.

JAMES MADISON.

R. R. Livingston and
James Monroe, Esqrs.

The Secretary of State to Messrs. Livingston and Monroe.

Department of State.
April 18, 1803.

Gentlemen: The reasonable and friendly views with which you have been instructed by the President to enter into negotiations with the French Government, justify him in expecting from them an issue favorable to the tranquillity and to the useful relations between the two countries. It is not forgotten, however, that these views, instead of being reciprocal, may find, on the part of France, a temper adverse to harmony, and schemes of ambition, requiring, on the part of the United States, as well as of others, the arrangements suggested by a provident regard to events. Among these arrangements, the President conceives that a common interest may recommend a candid understanding, and a closer connexion with Great Britain: and he presumes that the occasion may present itself to the British Government in the same light. He, accordingly, authorizes you, or either of you, in case the prospect of your discussion with the French Government should make it expedient, to open a confidential communication with Ministers of the British Government, and to confer freely and fully on the precautions and provisions best adapted to the crisis, and in which that Government may be disposed to concur; transmitting to your own, without delay, the result of these consultations.

With sentiments of high respect, &c.

JAMES MADISON.

R. R. Livingston and
James Monroe, Esqrs.

Extract.—Mr. King to the Secretary of State.

April 19, 1803.

In Lord Whitworth's last despatch, he says: "Two days ago, General Bernadotte left Paris, on his mission to the United States, with assurances of the First Consul's sincere desire to cultivate the friendship of that country; and yesterday Mr. Monroe, the American Envoy, arrived here." The United States, says his Lordship, are likely to reap the first fruits of our disagreement with France; the settlement of their affairs being already so nearly finished that little remains to be done by Mr. Monroe, who is said to be destined to relieve Mr. King at London.

Extract of a letter from Mr. King, Minister Plenipotentiary of the United States in London, to the Secretary of State.

London. *April* 28, 1803.

"In a conference with Lord Hawkesbury on the 6th instant, I explained to him the object of the extraordinary mission of Mr. Monroe, pursuant to the tenor of your letter of the 29th of January, and I have the pleasure to inform you that his Lordship received the communication in good part, suggested no doubt of our right to pursue separately and alone the objects we aim at, and appeared to be satisfied with the President's views on this important subject."

Extract of a letter from Mr. Cevallos, Minister of His Catholic Majesty, to Charles Pinckney, Esq.

Aranjuez. *May* 4, 1803.

The system adopted by His Majesty not to dispossess himself of any portion of his States, deprives him of the pleasure of assenting to the cessions which the United States wish to obtain by purchase, as I have intimated for their information to the Marquis of Casa Yrujo.

By the retrocession made to France of Louisiana, this Power regains the said province with the limits it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territories which may suit their interest.

Mr. King to Messrs. Livingston and Monroe, Ministers of the United States at Paris.

London *May* 7, 1803.

Gentlemen: War seems to be quite inevitable, though it is possible that the offer of France to leave Malta in the hands of Russia, Austria, or Prussia, may create some hesitation, and, had it been early made, would perhaps have prevented the present crisis. In case of war, it is the purpose of this Government to send an expedition to occupy New Orleans. If it be ceded to us, would it not be expedient openly or confidentially to communicate the fact here? I have reason to be satisfied that it would prevent the projected expedition. I shall remain here till the fourteenth, in hopes that I may receive your answer, which might be expedited by a courier, should the communication be deemed prudent.

Messrs. Livingston and Monroe to Mr. King.

Paris. *May* —, 1803.

Sir: We have the honor to inform you that a treaty (the 30th April) has been signed between the Minister Plenipotentiary of the French Government and ourselves, by which the United States have obtained the full right to and sovereignty in and over New Orleans, and the whole of Louisiana, as Spain possessed the same. If sir, you should find it necessary to make any communication to the British Government on this subject, you may likewise inform them that care has been taken so to frame the treaty as not to infringe upon any of the rights that Great Britain might claim in the navigation of the Mississippi.

Mr. Livingston to the Secretary of State.

Paris. *May* 12, 1803.

Sir: You have seen in my late letter the direct commencement of the negotiation previous to the arrival of Mr. Monroe, and, in our joint letter, its consummation. It will be matter of curiosity, at least to you, to be more intimately acquainted with the exciting causes which have been long operating, and which I have hinted at in my letters to the President, but which, from their extreme delicacy, I have not thought it proper to detail. As this goes with the treaty by a special and safe messenger, I will send you the papers I referred to in my letters to the President.

On my arrival, I found the credit and character of our nation very low. They were considered as interested speculators, whose god was money. The features of our statesmen, drawn from the caricatures in our newspapers, were viewed as real likenesses; and the democracy of America was believed to be the mad Jacobinism of France. The President was considered as among the most mad, because the head of the party; and it was not doubted that his Minister to France partook of his phrenzy. Some of my former friends were sent artfully to sound me on the subject of the existing Government here. As I had seen and heard enough to be satisfied that nothing short of the change that had taken place could have lessened the calamities of France, I answered them sincerely in such manner as to satisfy them that I meant to have no intrigues with its enemies; I carefully avoided all connexion with them; and, in consequence of this, began to acquire a degree of favor at Court. As the attention to Great Britain began to diminish, for reasons which it will take me too much time to explain, and was gradually converted into aversion by the freedom with which the election of the First Consul to that dignity for life, and his other great measures, were treated in England, we of course grew more in favor; and if, in any instance, they relaxed from the extreme hauteur with which they treated all the foreign Powers, it was more particularly with us. They answered my notes politely, though not satisfactorily; while they left those of many other Ministers, who had demands upon them, unanswered. Among the most favorite projects of the First Consul, was the colonization of Louisiana. He saw in it a new Egypt; he saw in it a Colony that was to counterbalance the Eastern establishment of Britain; he saw in it a provision for his Generals; and, what was more important in the then state of things, he saw in it a pretence for the ostracism of suspected enemies. To render the acquisition still more agreeable to the people, exaggerated accounts of its fertility, &c., were sold in every print shop. My first endeavor was to remove these impressions from the minds of the people most likely to be consulted, in which I was, generally speaking, very successful. But they all told me that it was a favorite project with the First Consul; nor would any of them hear of disposing of it by sale; yet so ignorant were they of the nature of their acquisition, that they never once suspected the Floridas were not included in their treaty, till they were convinced of the contrary by the inquiries they set on foot in consequence of my information. The Floridas, as you know, they endeavored to give in exchange for Parma; and in that negotiation set the price for which they would buy one, or sell the other, at forty millions of francs.

I endeavored, as far as possible, to obstruct that negotiation, and, at the same time, urged the absurdity of attempting to colonize Louisiana without ports in the Gulf. When I found impressions were made by these measures, I wrote the treatise I have sent you, entitled *Mémoire sur cette question: Est il avantageux à la France de prendre possession de la Louisiane?* As the first Consul had before read, with considerable attention, my notes on the relative naval force and commerce of France and England and the United States, (which I have also sent you,) and paid me some compliments upon it, I got this essay under his eyes through the same channel. It was read with attention; and, though I have reason to think it weakened his belief in the importance of Louisiana, yet, as he does not easily relinquish his plans, he still prosecuted them, though with much less ardor than he had before done. As I knew that his Ministers seldom dared to interpose their opinions, it was necessary to apply directly to

him, through the only person who was supposed to have any influence with him; and who that was, you have seen in my private letters to the President. I will not hazard the repetition here. After breaking the subject in a conversation with this gentleman, I sent him the note No. 1. He received it very graciously. Reading it in my presence, he told me that, if I would permit him, he would show it to the First Consul. I made some hesitation on account of the delicacy of the subject. He assured me that he would take care that I should not be committed by it. Some days after, he told me that the First Consul had read it with attention; that so far as it referred to personal objects, he could not listen to it; but that the general and public motives I had mentioned merited particular attention; that he approved my proposition, in part, but not to the extent I had proposed. I am satisfied that from this period they had determined to let us have New Orleans, and the territory above the Arkansas, in exchange for certain commercial advantages; and that, if they could have concluded with Spain, we should also have had West Florida; but that nothing could be done until that business was terminated. This note had the effect of removing, in the fullest degree, every doubt that could possibly have remained relative to my sentiments of the present Government; and certain circumstances in it led to a kind of personal consideration which I have ever since enjoyed here. Not willing, however, to let the impressions I have made wear off, I wrote the note No. 2, which was also read with attention by the First Consul; and I believe produced a determination to enter upon the subject as soon as matters were arranged with Spain. As I believed, from the First Consul having spoken on this subject to the Minister of Foreign Affairs, that the channel through which I submitted my observations was known to the latter, and of course could not be very pleasing to him; and as this was intimated to me by ——, who, in answer to my note No. 3, requested me to break the subject to the Minister; you will have seen in my several notes, that I did not neglect to do so: But two causes suspended any absolute determination. First, the state of the negotiation with Spain relative to the Floridas; and next, my total want of power or instructions, which reduced me to the necessity of bringing forward nothing more specific; while I endeavored to pave the way for something conclusive when I should, as I had long hoped, receive them. The First Consul, too, had conceived an idea that, by taking possession of the country, he could more advantageously treat with our Government; and Mr. Talleyrand accordingly told me several times, in general terms, that everything would be arranged; but that they must first take possession. After General Bernadotte was appointed, he assured me that he should have powers for this purpose; but as I had then received the newspaper account of the conduct of the Governor of New Orleans, I thought it would be a good ground for pressing something decisive, both with the Minister and through ——; with a view then to bring them to make some proposition here, or at least to give such discretionary powers as would facilitate your treaty with General Bernadotte. My notes to the Minister you have. No. 4 is a copy of my letter to ——, which was also submitted to the First Consul, and produced nothing more than a verbal promise that all would be arranged when proper information could be received through General Bernadotte.

I have no doubt that it has long been their intention to make the arrangements I proposed, in exchange for commercial advantages. A sale has always been disrelished, as I was constantly told by Marbois and Talleyrand; and, as is clearly to be inferred, from the Consul's note in answer to my letter. What, however, I believe, principally drove him to this measure, was the promise which the First Consul had hastily made me to pay our debt fully and promptly; and which he found himself in no situation to fulfil, and yet knew not how to elude, as I pressed it at every turn, and spoke of it to Talleyrand and all the Consul's friends, assured them that I had communicated it not only to the Government but to the creditors, with the declaration that they might firmly rely on it, as no one could believe that a man of the Consul's character, a sovereign and a soldier, could break his word. I told the Minister of the Treasury that, as I owed it to myself to justify what I had said, I thought myself bound to publish my letter to the First Consul, with his answer, and the execution of his solemn engagements. I asked what his enemies would say to such a publication? He replied—Or his friends?

The resolutions proposed in Congress, in consequence of the business of New Orleans, coming to hand, I sent a translation of them by General Bernadotte to ——, and also enclosed them to the Minister. They proved we would not be trifled with; and the probability of a rupture with England, and the effects of which upon the country, as you have observed in my notes, have been very strongly stated to them, hastened their determination; and they saw, as Mr. Talleyrand told me, that if they gave what I asked, the rest was not worth keeping. This, and the impossibility of otherwise keeping faith with us, produced a determination to sell; which was communicated to the Council, as I informed you on the 8th of April. There was a moment, even after Talleyrand called on me to set a price, that I thought the whole might drop through. It was then, as I informed you, he pretended he spoke without authority, and that Louisiana was not theirs, &c. But, as I have since written to you, that mystery was cleared up the next day.

The subsequent measures you have in my letters and notes, and in those of Mr. Monroe and myself have jointly written to you. As I believe that, next to the negotiation that secured our independence, this is the most important the United States have ever entered into, I thought everything that led to it might interest you and the President. I wished you to be minutely acquainted with every step I had taken; my verbal communications with everybody to whom I had access, whose interest I conceived might be useful, it would be impossible to detail. Nothing, however, was neglected on my part; and I sincerely hope the issue may be acceptable to our country.

Lord Whitworth retired last night, after the arrival of a messenger from Russia. The Emperor undertakes the mediation, but England will certainly decline, as it would be to continue her present ruinous expense, and derange her commerce probably for an unlimited time.

I have yet no time, nor indeed thought it proper, to interpose any business of less importance, while the arrangements relative to, and in consequence of, the treaty were going on. The moment our messengers are despatched, I shall give it all my attention.

I have the honor to be, &c.

R. R. LIVINGSTON.

Messrs. Livingston and Monroe to Mr. Madison.

PARIS, *May* 13, 1803.

SIR: We have the pleasure to transmit to you by M. Dirieux a treaty which we have concluded with the French Republic for the purchase and cession of Louisiana. The negotiation of this important object was committed, on the part of France, to M. Marbois, Minister of the Treasury, whose conduct therein has already received the sanction of his Government, as appears by the ratification of the First Consul, which we have also the pleasure to forward to you.

An acquisition of so great an extent was, we well know, not contemplated by our appointment; but we are persuaded that the circumstances and considerations which induced us to make it, will justify us in the measure to our Government and country.

Before the negotiation commenced, we were apprized that the First Consul had decided to offer to the United States, by sale, the whole of Louisiana, and not a part of it. We found, in the outset, that this information was correct, so that we had to decide, as a previous question, whether we would treat for the whole, or jeopardize, if not abandon the hope of acquiring any part. On that point we did not long hesitate, but proceeded to treat for the whole. We were persuaded that, by so doing, it might be possible, if more desirable, to conclude eventually a treaty for a part, since, being thus possessed of the subject, it might be easy, in discussion, at least, to lead from a view of the whole to that of a part, and with some advantages peculiar to a negotiation on so great a scale. By treating for the whole, whereby we should be enabled to ascertain the idea which was entertained by this Government of its value, we should also be able to form some estimate of that which was affixed to the value of its parts. It was, too, probable that a less sum would be asked for the whole, if sold entire to a single purchaser, a friendly Power, who was able to pay for it, and whom it might be disposed to accommodrate at the present juncture, than if it should be sold in parcels either to several Powers or companies of individuals; it was equally so, if this Government should be finally prevailed on to sell us a part, that some regard would be paid in the price asked for it to that which was demanded for the whole; lastly, by treating for the whole, whereby the attention of this Government would be drawn to the United States, as the sole purchasers, we might prevent the interference of other Powers, as also that of individuals, who might prove equally injurious in regard to the price asked for it, whether we acquired the whole or any part of the territory. We found, however, as we advanced in the negotiation, that M. Marbois was absolutely restricted to the disposition of the whole; that he would treat for no less portion, and, of course, that it was useless to urge it. On mature consideration, therefore, we finally concluded a treaty on the best terms we could obtain for the whole.

By this measure, we have sought to carry into effect, to the utmost of our power, the wise and benevolent policy of our Government, on the principles laid down in our instructions. The possession of the left bank of the river, had it been attainable alone, would, it is true, have accomplished much in that respect; but it is equally true that it would have left much still to accomplish. By it our people would have had an outlet to the ocean in which no Power would have a right to disturb them; but while the other bank remained in the possession of a foreign Power, circumstances might occur to make the neighborhood of such Power highly injurious to us in many of our most important concerns. A divided jurisdiction over the river might beget jealousies, discontents, and dissensions, which the wisest policy on our part could not prevent or control. With a train of colonial governments established along the western bank, from the entrance of the river far into the interior, under the command of military men, it would be difficult to preserve that state of things which would be necessary to the peace and tranquillity of our country. A single act of a capricious, unfriendly, or unprincipled subaltern might wound our best interests, violate our most unquestionable rights, and involve us in war. But by this acquisition, which comprises within our limits this great river, and all the streams that empty into it, from their sources to the ocean, the apprehensions of these disasters is banished for ages from the United States. We adjust by it the only remaining known cause of variance with this very powerful nation; we anticipate the discontent of the great rival of France, who would probably have been wounded at any stipulation of a permanent nature which favored the latter, and which it would have been difficult to avoid, had she retained the right bank. We cease to have a motive of urgency, at least, for inclining to one Power, to avert the unjust pressure of another. We separate ourselves in a great measure from the European world and its concerns, especially its wars and intrigues. We make, in fine, a great stride to real and substantial independence, the good effect whereof will, we trust, be felt essentially and extensively in all our foreign and domestic relations. Without exciting the apprehension

of any Power, we take a more imposing attitude with respect to all. The bond of our Union will be strengthened, and its movements become more harmonious by the increased parity of interests which it will communicate to the several parts which compose it.

In deliberating on this subject in a financial view, we were strongly impressed with the idea that while we had only right of deposit, or, indeed, while the right bank remained in the possession of a foreign Power, it was always to be expected that we should, at some time or other, be involved in war on questions resulting from that cause. We were well satisfied that any war would cost us more than is hereby stipulated to be given for this territory; that none could produce a more favorable result; while it might, especially in the present disturbed state of the world, prove the ruin of our affairs.

There were other considerations which, though of minor importance, had, nevertheless, their due weight in our decision of this great question. If France, or any other Power holding the right bank of the river, imposed lighter duties than comported with the revenue system of the United States, supposing even that we had acquired the left bank, all the supplies destined for our extensive and populous settlements on the other side would be smuggled in through that channel, and our revenue thereby considerably diminished. Should such Power open offices for the sale of lands on the western bank, our population might be drained to the advantage of such Power, the price of our lands be diminished, and their sale prevented. But, by the possession of both banks, these evils are averted.

The terms on which we have made this acquisition, when compared with the objects obtained by it, will, we flatter ourselves, be deemed advantageous to our country. We have stipulated, as you will see by the treaty and convention, that the United States shall pay to the French Government sixty millions of francs, in stock, bearing an interest of six per cent., and a sum not exceeding twenty more to our citizens, in discharge of the debts due to them by France, under the convention of 1800; and also to exempt the manufactures, productions, and vessels, of France and Spain, in the direct trade from those countries respectively, in the ports of the ceded territory, from foreign duties for the term of twelve years. The stock is to be created irredeemable for fifteen years, and discharged afterwards in three equal annual instalments. The interest on it is to be paid in Europe, and the principal, in case this Government thinks proper to sell it, disposed of in such manner as will be most conducive to the credit of the American funds. The debts due to our citizens are to be discharged by drafts on the Treasury. We omit a more minute view of the stipulations of these instruments, since, as you will possess them, it is unnecessary.

Louisiana was acquired of Spain by France, in exchange for Tuscany, which latter is settled by treaty on the son-in-law of the King of Spain, with the title of King of Etruria, and was estimated in the exchange, in consideration of its revenue, at one hundred millions of francs. The First Consul thought he had made an advantageous bargain in that exchange, as appears by the high idea which he entertained of its value, as shown on many occasions. Louisiana was the territory which he promised, in his proclamation at the peace, as an asylum to those who had become unfortunate by the Revolution, and which he spoke of as vast and fertile. When he made up his mind to offer the cession of it to the United States, it was contemplated to ask for it one hundred millions, exclusive of the debts they owed to our citizens, which they proposed we should also pay, with a perpetual exemption from foreign duties on the manufactures, productions, and vessels of France and Spain in the ports of the ceded territory. From that demand however (in respect to the sum) he receded, under the deliberations of his own cabinet; for the first proposition which M. Marbois made to us was that we should pay eighty millions—sixty of which in cash, the balance to our citizens, the whole in one year in Paris, with a perpetual exemption from foreign duties as above. The modification in the mode of payment, (that is by stock, for from the quantum he never would depart,) and the limitation of the term of the duties to twelve years, with the proviso annexed to it, which was introduced into the treaty, with every other change from his project, was the effect of negotiation and accommodation, in which we experienced, on his part, and that of his Government, a promptitude and candor which were highly grateful to us.

In estimating the real value of this country to the United States, a variety of considerations occur, all of which merit due attention. Of these, we have already noticed many of a general nature, to which, however, it may be difficult to fix a precise value. Others present themselves of a nature more definite, to which it will be more practicable to fix some standard. By possessing both banks, the whole revenue or duty on imports will accrue to the United States, which must be considerable. The value of the exports, we have understood, was last year four millions of dollars. If a portion only of the imports pass through that channel, (as under our Government we presume they will,) the amount of the revenue will be considerable. This will annually increase in proportion as the population and productions in that quarter do. The value of the lands in the province of Louisiana (amounting to some hundred millions of acres, of the best quality, and in the best climate) is perhaps incalculable. From either of these sources, it is not doubted that the sum stipulated may be raised in time to discharge the debt.

We hope to be able to forward you herewith the order of this Government for the delivery of the possession of the ceded territory to the United States, or to communicate its arrangements for that purpose, as also its views relative to the sale of the stock, since it is understood that their intention is to sell it. It has been intimated to us that the house of Baring, in London, connected with that of Hope, in Holland, will take the whole at their risk, at the current price in England, on a commission to be agreed on, paying to France a stipulated sum by the month. Their object is said to be, exclusive of that of making profit by it, to keep up the credit of our stock, they being much interested in it. Considering the great capital of these houses, it is presumable that they would be able to comply with any engagement they might make to that effect. And it cannot be doubted that it would be more advantageous to us that the whole should be thus disposed of, than remain in the hands of France, who, under the pressure of difficulties, might have it less in her power to preserve or regard our credit in the disposition of it. We shall communicate with M. Marbois fully on this subject, and apprize you of the result.

We received some days past a letter from Mr. King, in which he says, that, in case of war, which he deemed inevitable, the British Government contemplated taking possession of the island of New Orleans. He desired information to be communicated to that Government, whether it had been ceded to the United States, as he presumed a knowledge thereof would prevent the measure. We gave an immediate reply to his letter, in which we informed him that the whole of Louisiana had been ceded to the United States, which he was at liberty to communicate to the British Government. We likewise made the same communication to Lord Whitworth, the British Ambassador here, who expressed himself to be well satisfied with the event.

These countries, France and England, have been on the point of a rupture for some time past. At present, the prospect of an accommodation is more remote, as the English Ambassador left Paris at ten o'clock last night: still some hope of it is entertained by some persons in power here. This nation is desirous of peace, and it is believed that its Government is similarly disposed.

Permit us to express an earnest wish that the President and Senate may decide with the least possible delay on the treaty and conventions which we have concluded, and have the pleasure to transmit you. If it is the sense of our Government to ratify them, the sooner that fact is known to this Government the better its effect will be.

The list of the debts due by France to American citizens not being yet prepared, owing to M. Marbois's absence to-day from Paris, and the previous delays of the offices in which the evidences were, cannot be sent by this conveyance. In consequence, we retain the original of the convention to which it should be annexed, and send a copy of it: we shall forward in a day or two the original. By the list, it may be inferred that the debts amount to a greater sum than they really do: they will be subject, according to the convention, to the revision of our board, by whom it is expected they will be reduced considerably. We have full confidence that, including the interest, they will not exceed the sum of twenty millions of francs, which is much to be desired, as in that case all our citizens, whose claims are entitled to the support of our Government, will be provided for and paid by it. You will observe that, in the mode adopted, considerable indulgence is given to our treasury. The whole sum is to be paid there, and under delays which will free it from embarrassment. We have the honor to be, sir, your obedient servants,

R. R. LIVINGSTON,
JAMES MONROE.

P. S. It was intended to have forwarded this by M. Derieux; but he being forced to leave Paris some days since on his way to Bordeaux, from whence he sails, we commit it to Mr. Hughes, who will embark at Havre. We shall forward to-morrow or next day an exemplification of it by Bordeaux, under the care of M. Derieux.

Mr. King to Lord Hawkesbury.

LONDON, *May* 15, 1803.

MY LORD: In the present critical posture of affairs, I lose no time in communicating to your Lordship, for His Majesty's information, that a treaty was signed at Paris on the 30th April, past, by the Plenipotentiaries of America and France, by which the complete sovereignty of the town and territory of New Orleans, as well as of all Louisiana, as the same was heretofore possessed by Spain, has been acquired by the United States of America.

In drawing up this treaty, care has been taken so to frame the same as not to infringe any right of Great Britain in the navigation of the river Mississippi.

I flatter myself that this communication will be received with satisfaction, and regarded as a new proof of the disposition of the United States to observe towards His Majesty a spirit of amity and confidence, important at all times, and more especially so in present circumstances, to the harmony and mutual prosperity of the two countries.

Lord Hawkesbury to Mr. King.

DOWNING STREET, *May* 19, 1803.

SIR: Having laid before the King your letter of the 15th of this month, in which you inform me that a treaty was signed at Paris on the 30th of last month, by the Plenipotentiaries of America and France, by which the complete sovereignty of the town and territory of New Orleans, as well as of all Louisiana, has been acquired by the United States, I have received His Majesty's commands to express to you the pleasure with which His Majesty has received this intelligence, and to add that His Majesty regards the care which has been taken so to frame this treaty as not to infringe any right of Great Britain in the navigation of the Mississippi as the most satisfactory evidence of a disposition on the part of the Government of the United States (correspondent to that which His Majesty entertains) to promote and improve that harmony and good understanding which so happily subsists between the two countries, and which are so conducive to their mutual benefit. I have it also in command to assure you, sir, that the sentiments which you have expressed, in making this communication, are considered by His Majesty's Government as an additional proof of that cordiality and confidence which you have uniformly mani-

fested in the whole course of your public mission, and which have so justly entitled you to the esteem and regard of His Majesty's Government.

Messrs. Livingston and Monroe to the Secretary of State.

PARIS, *May* 16, 1803.

SIR: We have the honor to enclose the account which should be annexed to the convention transmitted to you. The Bordeaux embargo is in *assignats*, and two-thirds will be deducted. From many of the others, we have reason to think, from a particular account now in our hands, there will be such considerable deductions as will reduce the whole charge to less than twenty millions of livres, including the interest. The Consul has agreed to ratify immediately, and we hope to have the honor of transmitting you the ratified treaty, with an order to deliver the territory, in a few days. Such arrangements will also, we trust, be made relative to the stock as will prevent its coming on the market to any loss, or any part of it from being sold in America. We have the honor to be, &c.

R. R. LIVINGSTON.
JAMES MONROE.

HON. JAMES MADISON, *Secretary of State.*

Mr. Livingston to the Secretary of State.

PARIS, *May* 20, 1803.

DEAR SIR: The subject of this letter is too important to admit of delay, in case the treaties should have been any time in your hands; but, as it has not yet been fully considered by Mr. Monroe, he thinks he cannot make it that of a joint letter till we have more fully discussed it, which we propose to do to-morrow or the next day. But as that will be too late for this conveyance, I throw out these hasty thoughts for your consideration. In the meantime you will consider this rather as a private than as a public letter; since it may or may not be made use of to promote such measures as, upon mature deliberation, the President shall think proper to adopt. I do not, however, doubt that Mr. Monroe will concur with me in opinion, after we have discussed the subject; and that we shall, by the next opportunity, write to you officially thereon.

I informed you long since, that, on inquiring whether the Floridas were within the cession of Spain, I was told by M. Marbois he was sure that Mobile was, but could not answer further. I believed his information incorrect, because I understood that Louisiana, as it then was, made the object of the cession; and that since the possession of the Floridas by Britain, they had changed their names. But the moment I saw the words of the Treaty of Madrid, I had no doubt but it included all the country that France possessed by the name of Louisiana, previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted, with M. Marbois, at the time we negotiated, that this would be considered as within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right, is fairly to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish Minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana as it formerly belonged to her, saving the rights of other Powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana, as possessed by France, was bounded by the river Perdido, and that Mobile was the metropolis. For the facts relative to this, I refer you to Raynal and to his maps. I have also seen maps here which put the matter out of dispute.

I called this morning upon M. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but that he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to the prefect, who was to take possession, or what orders had been given by Spain, as to the boundary, in ceding it? He assured me that he did not know; but that he would make the inquiry, and let me know. At four o'clock I called for Mr. Monroe to take him to the Minister of Foreign Affairs; but he was prevented from accompanying me. I asked the Minister what were the east bounds of the territory ceded to us? He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said, according to the words of the treaty. But what did you mean to take? I do not know. Then you mean that we shall construe it our own way? I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it.

Now, sir, the sum of this business is, to recommend to you, in the strongest terms, after having obtained the possession, that the French Commissary will give you, to insist upon this as a part of your right; and to take possession, at all events, to the river Perdido. I pledge myself that your right is good; and, after the explanations that have been given here, you need apprehend nothing from a decisive measure. Your Minister here, and at Madrid, can support your claim; and the time is peculiarly favorable to enable you to do it without the smallest risk at home. It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it, and the war terminate favorably for her, she will not readily relinquish it. With this in your hand, East Florida will be of little moment, and may be yours whenever you please. At all events, proclaim your right and take possession. I am, sir, &c.

ROBT. R. LIVINGSTON.

HON. JAMES MADISON.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *May* 25, 1803.

SIR: Your several letters of March 3, 11, 18, and 24, with their enclosures, have been duly received, as has been that of March 12, to the President. According to the request in this last, I now acknowledge, also, or perhaps repeat the acknowledgment, of the two papers enclosed, the one in your letter of February 26, the other in that of August 10, 1802.

The assurances given by the Chief Consul, on the subject of our claims, cannot but be acceptable, although they amount to less than justice; because no more than justice would have been done if the claims had been satisfied without the delay which has intervened, and according to the example of good faith and punctuality in executing the treaty given by the United States. It is to be hoped that the sincerity of these assurances will be verified by the success of the measures you are taking for a final and favorable settlement in behalf of our citizens, who have never doubted, as far as I know, your solicitude or your exertions to obtain justice for them.

The assurances given, at the same time, by the Chief Consul, of his regard for the United States, and of his personal esteem for their Chief Magistrate, are entitled also to favorable attention, as an indication that a juster value begins to be placed on our friendly relations to the French Republic. Whether this language of the French Government be the effect of the political crisis in which it finds itself, or of a growing conviction of the important destinies and honorable policy of the United States, or, as is probable, of both these considerations, you will, in return, communicate the assurances, with which you are charged by the President, of his disposition to cherish a reciprocity of these sentiments, and that sincere amity between the two nations, which is prescribed to both by such weighty advantages.

The persevering evasion of your demands on the subject of the deposit at New Orleans, and generally of the rights of the United States, as fixed by their treaty with Spain, is not a little astonishing. It is as difficult to be reconciled with the sincerity of the late professions of the French Government, and with the policy which the moment dictates to it, as with any other rational motives. It is the more extraordinary, too, as it appears, by a late communication from the Spanish Government to Mr. Pinckney, (of which, he says, he forwarded a copy to Paris, and of which another is herewith enclosed,) that the treaty of cession expressly saves all rights previously stipulated to other nations. A conduct so inexplicable is little fitted to inspire confidence, or to strengthen friendship; and rendered proper the peremptory declaration contained in your note of the 16th of March. The negotiations succeeding the arrival of Mr. Monroe cannot fail to draw out the views of France on this important subject.

You were informed, in my letters of the 18th and 20th of April, that orders had been transmitted by the Spanish Government for restoring the deposit. The answers from New Orleans to the Spanish and French Ministers here show that their successive interpositions, including the peremptory one from the Marquis d'Yrujo, of the 11th of March, were all unavailing. The orders of the King of Spain will, no doubt, be obeyed, if they arrive before possession be given to the French authority; nor is it presumable that, in that event, they would be disregarded. Still it is possible that the French agents may choose to wait for the French construction of the treaty before they relinquish the ground taken by the Intendant; and the more possible, as the orders to the Intendant may contain no disavowal of his construction of it. Under these circumstances, it will be incumbent on the French Government to hasten the orders necessary to guard against a prolongation of the evil, and the very serious consequences incident to it. It cannot be too much pressed, that the justice and friendship of France, in relation to our rights and interests on the Mississippi, will be the principal rules by which we shall measure her views respecting the United States, and by which the United States will shape the course of their future policy towards her.

We are still ignorant of the result of the armed negotiations between Great Britain and France. Should it be war, or should the uncertainty of the result be spun out, the crisis may be favorable to our just rights and our just objects; and the President assures himself that the proper use will be made of it. Mr. Monroe's arrival has not yet been mentioned in any accounts which have not been contradicted.

I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

Mr. Madison to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE, *May* 28, 1803.

GENTLEMEN: Since my last, which was of April 18th, the tenor of our information from France and Great Britain renders a war between those Powers in the highest degree probable. It may be inferred, at the same time, from the information given by Mr. Livingston and Mr. King, that the importance of the United States is rising fast in the estimation both of the French and the British Cabinets; and that Louisiana is as much a subject of solicitude with the latter, as it has been an object of acquisition with the former. The crisis presented by this jealous and hostile attitude of those rival Powers has, doubtless, been seen in its bearings on the arrangements contemplated in your commissions and instructions; and it is hoped, though we have not yet heard, that the arrival of Mr. Monroe will have taken place in time to give full advantage to the means of turning the actual state of things to the just benefit of the United States.

The solicitude of England with respect to Louisiana is sufficiently evinced by her controlling the French expedition from Holland to that country. But her views have been particularly unfolded to Mr. King by Mr. Addington, who frankly told him, that, in case a war should happen, it would, perhaps, be one of their first steps to occupy New Orleans; adding, that it would not be to keep it, for that England would not accept the country were all agreed to give it to her,

but to prevent another Power from obtaining it, which, in his opinion, would be best effected by its belonging to the United States; and concluding with assurances that nothing should be done injurious to their interests. If the councils of France should be guided by half the wisdom which is here displayed on the part of her rival, your negotiations will be made very easy, and the result of them very satisfactory.

Although the immediate object of Great Britain in occupying New Orleans may be that of excluding France, and although her prudence may renounce the fallacious advantage of retaining it for herself, it is not to be presumed that she will yield it to the United States without endeavoring to make it the ground of some arrangement that will directly or indirectly draw them into her war, or of some important concessions in favor of her commerce, at the expense of our own. This consideration necessarily connects itself with the explanation and friendly assurances of Mr. Addington, and so far leaves in force the inducement to accomplish our object by an immediate bargain with France.

In forming this bargain, however, the prospect held out by the British Minister, with the nature of the crisis itself, authorizes us to expect better terms than your original instructions allow.

The President thinks it will be ineligible, under such circumstances, that any convention whatever on the subject should be entered into, that will not secure to the United States the jurisdiction of a reasonable district on some convenient part of the bank of the Mississippi.

He is made the more anxious, also, by the manner in which the British Government has opened itself to our Minister, as well as by other considerations, that as little concession as possible should be made in the terms with France, on points disagreeable to Great Britain, and particularly that the acknowledgment of the right of France as holding one shore of the Mississippi, to shut it against British vessels, should be avoided, if not essential to the attainment of the great objects we have in view, on terms otherwise highly expedident. It is desirable that such an acknowledgment should not even be admitted into the discussion.

The guaranty of the country beyond the Mississippi is another condition which it will be well to avoid if possible, not only for the reasons you already possess, but because it seems not improbable, from the communications of Mr. King, that Great Britain is meditating plans for the emancipation and independence of the whole of the American continent south of the United States, and consequently, that such a guaranty would not only be disagreeable to her, but embarrassing to the United States. Should war, indeed, precede your conventional arrangements with France, the guaranty, if admitted at all, must necessarily be suspended and limited in such a manner as to be applicable only to the state of things which may be fixed by a peace.

The proposed occupancy of New Orleans by Great Britain suggests a further precaution. Should possession be taken by her, and the preliminary sum of two millions, or any part of it, be paid to France, risks and disputes might ensue, which make it advisable to postpone the payment till possession shall be given to the United States, or, if this cannot be done, to obtain every possible security against eventual loss.

As the question may arise, how far, in a state of war, one of the parties can, of right, convey territory to a neutral Power, and thereby deprive its enemy of the chance of conquest incident to war, especially when the conquest may have been actually projected, it is thought proper to observe to you, 1st, That, in the present case, the project of peaceable acquisition by the United States originated prior to the war, and consequently, before a project of conquest could have existed; 2d, That the right of a neutral to procure for itself, by a *bona fide* transaction, property of any sort, from a belligerent Power, ought not to be frustrated by the chance that a rightful conquest thereof might thereby be precluded. A contrary doctrine would sacrifice the just interests of peace to the unreasonable pretensions of war, and the positive rights of one nation to the possible rights of another. A restraint on the alienation of territory from a nation at war to a nation at peace, is imposed only in cases where the proceeding might have a collusive reference to the existence of the war, and might be calculated to save the property from danger, by placing it in secret trust, to be reconveyed on the return of peace. No objection of this sort can be made to the acquisitions we have in view. The measures on this subject were taken before the existence or the appearance of war, and they will be pursued as they were planned, with the *bona fide* purpose of vesting the acquisition forever in the United States.

With these observations you will be left to do the best you can under all circumstances, for the interests of your country, keeping in mind that the rights we assert are clear; that the objects we pursue are just; and that you will be warranted in providing for both, by taking every fair advantage of emergencies.

For the course of information relating to the deposit at New Orleans, I refer you to my letter of the 25th instant to Mr. Livingston.

I have the honor to be, &c.

JAMES MADISON.

The Minister of Exterior Relations to Mr. Livingston.

PARIS, 11*th Prairial, an* 11,
(*May* 30, 1803.)

SIR: The declaration published the 17th of May by the English Government; the embargo laid in the ports of England on the commerce of the French, and of the Batavians, and of other allies of the Republic; the letters of marque distributed to privateers, authorizing them to cruise against the commerce of France; the capture, in fine, of two vessels, made some leagues from Brest, by two English frigates; permit a doubt to exist no longer concerning the intentions of the Government of Great Britain.

The First Consul is persuaded that nothing can be wanting to convince all the Governments of Europe of the hostile dispositions of His Britannic Majesty. To manifest his own, it is only this day he publishes the resolution which honor extorts, to repulse an unjust aggression.

In informing your Government of this determination, you will find it, I have no doubt, already apprized of the justice of our claims by the publication, made in France, of the papers which this discussion has elicited.

The history of diplomatic relations has never presented, on the one side, more constant efforts to preserve peace; and, on the other, a more persevering desire, by any means and every pretext, to rekindle the war.

The English Government, even in the publication which has been ordered for the purpose of defending her conduct, has only made her injustice the more apparent. The declaration of war is in palpable contradiction of the official correspondence which follows it. This declaration assigns as a motive for the war, demands of which the French Government has been always ignorant, and complaints of which it was only apprized by the hostilities and Manifesto of England.

I have the honor to transmit to you an exact copy of one of the letters of Lord Whitworth, the original of which has been communicated to your Excellency. This note contains a false allegation, which it has thought proper to expunge from the copy submitted to the Britith Parliament. By comparing this falsified copy with the original text, your Excellency will be convinced that the British Ministry could find no other means to escape the condemnatien of Europe than that of concealing an official untruth under a Parliamentary imposture.

The First Consul flatters himself with the belief that the Governments of Europe will not hesitate to pronounce that France has been uniformly loyal in a just cause; and that, amidst the unjust pretensions of England, she has involuntarily imposed upon herself the necessity of adopting measures destitute of propriety, and making declarations in violation of good faith.

Accept, sir, the assurance of my high consideration.

CH. MAU. TALLEYRAND.

Mr. Livingston to the Minister of Exterior Relations

PARIS, *June* 2, 1803.

SIR: I have received the letter you did me the honor to write to me on the 11th Prairial, announcing the measures that have unfortunately led to a rupture between France and Britain. I shall transmit the same, together with the papers that accompany it, to the Government of the United States, who will doubtless learn with much pain the circumstances that have rekindled the flame of war in Europe; and while they sincerely regret that the measures pursued by the First Consul for the preservation of the peace which Europe owes to his humanity have failed of success, they will still hope that some expedient may be found for stopping the effusion of blood, and restoring that repose to Europe for which she so ardently sighs.

I pray your Excellency to accept the assurances of my high consideration.

R. R. LIVINGSTON.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, *June* 3, 1803.

SIR: Mr. Monroe having undertaken to write our joint letter, I shall confine this to objects that do not relate to the treaty. I would only observe to you that, since the ratification, we have had a great deal of trouble with it, an opinion prevailing that we have made too favorable a bargain. My letter to the President and our joint letter will so fully explain this extraordinary business as to make any further observations unnecessary. I must, however, earnestly press you, if you think the object important, to get the ratification as soon as possible, and to do all that on our part remains to be done.

During this transaction, I have thought it improper to press any other business that might excite the smallest irritation.

How happy, my dear sir, are we to have concluded a treaty which will forever exclude us from the politics of this stormy quarter of the globe. I hope that you will not let it totally pass through your hands. My letter to the President will fully explain this. Some commercial arrangements might be advantageously proposed here in the present state of things, had I your instructions thereon and the necessary powers. This, too, is the moment to arrange the affair of extra duty with Batavia; and it might, I believe, be done here advantageously.

General Bernadotte, after waiting for weeks at Rochefort, has returned here, and I think it probable will not go out now, as his services may be required at home. Who will be appointed in his place I know not. Otto is still without office, but does not wish to be sent across the Atlantic.

I am, &c. R. R. LIVINGSTON.

HON. JAMES MADISON.

Messrs. Livingston and Monroe to Mr. Madison.

PARIS, *June* 7, 1803.

SIR: We had the pleasure to forward to you by Mr. Jay, the ratification by the First Consul of the treaty and conventions which we concluded on the 30th of April with this Republic. We have heretofore forwarded to you the original instruments, and two copies by different ways, the original by Havre, under the care of Mr. Hughes, who sailed about two weeks since, expressly charged with that object, and instructed to proceed with the greatest possible despatch after his arrival in the United States, to the City of Washington, to deliver the same in person; the second by the way of England, under the care of Mr. Reed, son of the late President of Pennsylvania, who was instructed to forward it immediately on his arrival in England, by the most prompt and safe opportunity that offered; the third by Mr.

Derieux, who sailed from Bordeaux. We flatter ourselves that you will receive those several communications in the course of the present month, and this by Mr. Jay early in July, as it is highly important that our Government should receive and act on the subject of them as soon as possible. The command of the sum stipulated for the cession to be paid to this Government being an object with them, is a motive for despatch, but it is not the only one: a late occurrence, which is suggested by the enclosed letter from M. Marbois, and our reply to it, has excited an anxiety on that point, which it was hoped and believed would not have grown out of the transaction. Several circumstances of late, especially the delay in granting us a passport for Mr. Jay to carry the ratifications to the United States, surprised us. We thought we could discern some symptoms of discontent in the Government with the bargain it had made. The letter from M. Marbois left no doubt on that head. We are convinced that if the transaction was not complete, or was within the reach of the Government, that it would not take place even on terms very different from those stipulated. There is much reason to believe that this letter was not written solely for the purpose of manifesting a sentiment of regret at what had been done, but to create difficulties and embarrass the transaction in the execution of it. On receiving this letter, we found ourselves placed in a situation of peculiar embarrassment, from personal as well as public considerations, which was much increased by a conference with the Minister of Foreign Affairs. We learned from him that the Consul considered the ratification as under his control till the exchange took place, and that he might annex to it such conditions as appeared to him to be proper; that he claimed every act stipulated on the part of the United States, to be performed strictly within the terms specified, or, on failure, that the parties be restored to the state they were in if the treaties were never made. We asked him what had created any doubt on that point: he said that the clause in the article of the convention respecting the payment of sixty millions of francs to France, which was made dependent on the delivery of possession of the country to our Commissary, might, by accident or other causes, become nugatory; the Spaniards might not surrender it at once, the British might take it, &c. We told him that these things were contemplated by the parties when the treaties were made, and provided for; that we could not add a new article to the treaty, or explain any one in it, since it must be explained by itself only; that delays which proceeded from bad faith were those only for which our Government was responsible; that such as were unavoidable attached to them no blame, and could not affect the treaty: he replied that, after the example of our Government in the last treaty, the Consul might nevertheless annex a condition to the ratification explanatory of his sense of it, which he would do if we did not satisfy him either with respect to the prompt manner in which the treaty would be executed by our Government, or agree to expunge the terms in that convention which respected taking possession of the territory. We did not fail to remark that the treaty must stand as it was to be adopted, rejected, or modified, by the parties having a right to do the same, not by us. Thus the affair was at a stand for a day or two, and it remained for us to decide what course we had better take to put it in motion. After viewing it in all the lights in which it presented itself to our minds, we thought it best to reply to M. Marbois's letter in the terms of that which is enclosed, which you will perceive, even had we had the power to modify the instruments which were passed and beyond our reach, has in truth not affected them at all: the principles applied or insisted on in M. Marbois's letter are not admitted. We state that the Government is bound to execute the treaty and conventions in the terms specified, which is no more than those instruments state, that our Government is answerable for neglect, and by strong and obvious implication for it only, which is the doctrine of the law of nations; and even in that case, that the right which arises from it of declaring how far the party injured will be bound by the treaty, is reciprocal, since, if our Government is willing to make compensation for the injury resulting from the delay, it may equally insist on it. The remaining sentence in the letter states that we confine ourselves to the letter of the treaty, by which it is intended to exclude the construction of either party as the rule of interpretation for the other: this letter was accepted as satisfactory, and will, we presume, remove every difficulty to the execution of the treaty. We expect the order for the surrender of the country to be addressed to M. Pichon, in Washington, to be executed by him or by some person to be appointed by him, will be delivered to us to-morrow, and that Mr. Jay will take it with him with the ratification the day after to-morrow: had we pursued any other course, it is not easy to decide what the effect might have been. The First Consul in the moment of chagrin at what he may consider a bad bargain, (but which we think a good one for him, since he had better have given it away than held it with the expense attending the establishment by troops, which might occasion variance and wars with us,) might have so compromitted himself in opposition to the measure, as to have made the transaction, if not finally defeat the treaties, a cause of future discontent between the two nations, instead of what was contemplated by it, the establishment of perpetual peace, by the removal of every existing cause of variance which could possibly disturb it. The most favorable result that we could have expected was, that the ratification would have been forwarded to M. Pichon, with advice of the dissatisfaction of the First Consul with the treaties, and his desire to extricate himself from them, and with instructions not to exchange the ratifications, if any circumstance on our part, under the most rigid construction, would justify it. It is possible this may be still done: nevertheless, we think it important to put the engagements in a train of execution, without exciting ill-temper, in the belief that every stipulation

may be executed in time, and that should the contrary occur by any accident or misfortune, it was the surest mode to prevent discussion and disagreement in the sequel. It is our earnest wish and advice, if the treaties are approved by the President, that he convene Congress to provide the funds for an immediate compliance with them. It is best to leave nothing to hazard. The surrender of the posts ought to precede the creation of the fund; but as there will be no doubt on that point after taking the necessary measures, we would consider it as done, and act accordingly. If we execute our part strictly within the terms specified, the transaction is at an end; there will be no obstacle from this quarter.

We shall send you a copy of Mr. Baring's contract for the stock with this Government, which will show in what manner the payment is to be made. A third of the whole debt is to be advanced to him in Washington; the remaining two-thirds to be sent here immediately. It was contended lately that these two-thirds must be received here in three months after the exchange of ratifications, but that seems to be given up at present, since the term transfer being technical, and applicable to an act to be performed in our Treasury, and no where else, it is admitted that it must have been used by us in that sense only Still it is much to be wished that the certificates might be sent here within the three months, if possible, and which it is presumed may be done if the Congress is immediately convened.

After the funds are created and transferred in our Treasury, it is, by the spirit of the treaty, the duty of the French Minister to forward them here. But it is much to be desired that our Government would undertake that service, and forward them by a public vessel, to guard against accidents which might create delay. Should it happen, unfortunately, that the ratification or creation of the public stock should be protracted beyond the terms specified, we think the cause should be made known by a public vessel, with the assurance of the President that every injury resulting from it should be repaired, and ample compensation made for it. We cannot too strongly impress an idea, if our conduct is approved, of the most prompt execution of the stipulations to be formed on our part, and of a course of proceeding which leaves nothing to chance, by giving any cause of complaint to this Government.

We are happy to have it in our power to assure you, that, on a thorough examination of the subject, we consider it incontrovertible that West Florida is comprised in the cession of Louisiana. West Florida was a part of Louisiana when it was in the hands of France, and it was not in her hands in any other situation. The transfer of the whole was on the same day, the 3d of November, 1762, that being the day of the secret convention between France and Spain, and of the preliminary articles of the Treaty of the 10th February, 1763, between those Powers and Great Britain. The Treaty of 1783 between Britain and Spain, by which the Floridas were ceded to the latter, put Louisiana in her hands in the same state it was in the hands of France; and the remaining or third member of the article in the Treaty of St. Ildefonso between France and Spain, under which we claim, by referring to that of 1783, (as to that between Spain and the United States of 1795,) and of course in the above character, only tends to confirm this doctrine. We consider ourselves so strongly founded in this conclusion, that we are of opinion the United States should act on it in all the measures relative to Louisiana, in the same manner as if West Florida was comprised within the island of New Orleans; or, lay to the west of the river Iberville, and to the Lakes through which its waters pass to the ocean. Hence the acquisition becomes of proportionably greater value to the United States.

In compliance with the convention, which provides for the payment of the debts due by France to the citizens of the United States, we have organized a board of three Commissioners, whose duty it is to revise the claims that are or may be liquidated by the suitable department of the French Government, according to the principles of that convention. We have appointed to this office Colonel John Mercer, Isaac C. Barnet, and William McClure, three of our citizens, who are not interested in any of the claims; and who, for ability, probity, and industry, we think very deserving of the trust. Their appointment is, of course, provisional only, subject to the approbation of the President, whose disposition on the subject you will be pleased to communicate. We shall advance them a sum, by a draft on our bankers in Holland, necessary for defraying their current expenses; leaving it to our Government to fix the rate of compensation.

We consider it important that the stock to be created should not be brought on the American market, nor, indeed, strictly speaking, on the European market; lest it might occasion a decline in the price, to the injury of our credit, and the injury of the holders of it here and there, as well as of France, with whom we have a joint interest in that respect. On that principle we promoted the disposal of it to the company of Baring and Hope, which took place according to a contract which is here enclosed. We consider the arrangement as accomplishing the object referred to, and, in that light, as being advantageous to the United States. We were not competent judges of the price at which the stock ought to have sold, on which account, as well as that that was a question which belonged more peculiarly to the Government of France to attend to, we did not interfere further in the transaction than to communicate to the latter the best information that we possessed. We believe the contract is such as, while it gives to the company an adequate profit, and may prevent sales by compulsion, will prove more beneficial to France than any other disposition she could have made of it. It is a justice due to this house to remark, that the assurances which we received from it through its agent here, of the advances of money on the credit of the United States, in case we should require them in the execution of the trust reposed in us,

inspired us with greater confidence than we might otherwise have felt, to make the engagements we have entered into.

We are, with great respect and esteem, your most obedient servants,

R. R. LIVINGSTON,
JAS. MONROE.

P. S. Since writing the above, this Government has, of its own accord, restored our letter and retaken its own. It has also shown to us the instructions given to M. Pichon, which is substituted for the other measure, and amounts to this: that, on exchanging the ratifications, he is to declare they are void if the funds, &c., are not created by our Government in the term stipulated. It is possible that this Government is fearful that the British may take the territory, and we, in consequence, delay the payment; though we rather think that the hesitation and procedure arose from some sentiment relative to the contract. It is known that the Consul has said lately, that he thought the territory worth three or four hundred millions of livres. The above change is the effect of further reflection on the subject. It will be well that some of these circumstances be known, and that nothing appear under the sanction of the Government or otherwise, if to be avoided, to excite an unpleasant sensation here: since a belief they stand well with us, which is their political motive in the transaction, will contribute greatly to reconcile the Government and nation to the cession, and promote its harmonious execution.

We have thought it advisable to employ Mr. Jay to bear the ratifications of the First Consul to our Government; to whom we have advanced fifty louis, and undertaken that his expenses shall be borne. The above sum to that object are credited in his account. The ratifications are addressed to M. Pichon, as is the order for the surrender of the territory. The whole, however, is under our —— to be delivered by Mr. Jay to you, and by you handed over to M. Pichon. The exchange of ratifications in the United States has been very favorable to us.

R. R. LIVINGSTON,
JAS. MONROE.

M. Marbois, Minister of the Public Treasury, to Messrs. Livingston and Monroe.

PARIS, 20*th Floreal, 11th year*,
(*9th April*, 1803.)

GENTLEMEN: The article of the convention relative to the payment which the United States have to make to France, in three months at most after the ratification of the treaties, and after the taking possession of Louisiana in the name of the United States, determines, in a precise manner, the longest terms agreed upon for the consummation of this affair. They are three months after the ratification and the taking of possession. It is proper to foresee, also, the case in which this business shall not be consummated within the interval above expressed, and as they are precise, it is well understood that every extraordinary delay beyond the terms fixed places the contracting parties in the same situation as if they had never treated. These consequences of the stipulations agreed upon are just and necessary. It has, nevertheless, appeared useful to recall them to view, in consideration of the great distance which separates the parties who contract, and that no doubt may be raised upon this subject. I have, nevertheless, gentlemen, a sure guarantee that delays will be abridged, as far as circumstances will permit, in the good faith which has presided in this negotiation during its whole continuance; and I know by my own and old experience, that it will be consummated by the Government of the United States according to these same principles.

I pray you to accept the assurance of my distinguished consideration.

BARBE MARBOIS.

Messrs. Livingston and Monroe to M. Marbois, Minister of the Public Treasury.

PARIS, *June* 2, 1803.

SIR: We have received the letter with which you have honored us, dated the 20th Floreal. Without entering into the principles it lays down, we are ready to admit, in order to remove, as far as depends on us, all difficulties, that it is the duty of the Government of the United States to carry into effect the provisions of the treaty and conventions in the times therein specified; and that any neglect on their part so to do, puts it in the power of the Government of France to declare how far it will, or it will not, be bound thereby, or entitle it to a compensation for the damage it may sustain. We will observe, sir, that, in making these concessions, we mean to confine ourselves to the letter of the treaty.

With the highest respect, &c.,

R. R. LIVINGSTON,
JAS. MONROE.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, *June* 25, 1803.

SIR: I have received your letter of the —— with the commissions, &c. Before this reaches you, you will have learned that they were unnecessary, as they respected our negotiations. You will find, by looking back to my letters, that I had long anticipated something of this kind, and I was greatly surprised when Mr. Monroe came without it. I, however, in all my conversations, held out the idea very strongly, and you will see it hinted at in my notes and in my letters to J. B.; so that it doubtless has had a considerable operation in bringing this Government to the resolution they took, before the arrival of Mr. Monroe, to part with Louisiana. You will remember that in one of my letters I request you to set on foot a negotiation with Britain for ascertaining your Northwestern boundary, but not to come to a conclusion. Indeed, as I was at that time endeavoring to excite an alarm here that should put us in possession of the country above the Arkansas, I own I have felt very much distressed that I never found any of these suggestions noticed or encouraged by our Government. But presuming

always that they ultimately would be, I have carefully concealed my want of powers, and acted as decidedly as if I had possessed them; and to this, as well as to the firm attitude that our Government took, you may attribute the success of our negotiations. I hope that nothing will prevent your immediate ratification, without altering a syllable of the terms. If you wish anything changed, ratify unconditionally and set on foot a new negotiation. Be persuaded that France is sick of the bargain; that Spain is much dissatisfied; and that the slightest pretence will lose you the treaty. Nothing has raised the reputation of our country in Europe so high as the conduct of our Government upon this occasion both at home and abroad. In pursuance of the wish expressed in your letter, Mr. Monroe proceeds, in a few days, as your resident Minister Plenipotentiary to England; for though it was doubtful whether this was or was not intended to depend upon the contingency mentioned therein, yet, as you were unrepresented there, and the war rendered some representation necessary, we thought it most conformable to the President's intentions that he should go. I am, &c.,

R. R. LIVINGSTON.

Hon. JAMES MADISON,
Secretary of State.

Mr. Madison to Mr. Livingston.

DEPARTMENT OF STATE,
July 29, 1803.

SIR: Since the date of my last, which was May 24, I have received your several letters of April 11, 13, 17, and May 12th. As they relate almost wholly to the subject which was happily terminated on the 30th of April, a particular answer is rendered unnecessary by that event, and by the answer which goes by this conveyance to the joint letter from yourself and Mr. Monroe of the 13th of May. It will only be observed, first, that the difference in the diplomatic titles given to Mr. Monroe from that given to you, and which you understood to have ranked him above you, was the result merely of an error in the clerk, who copied the document, and which escaped attention when they were signed. It was not the intention of the President that any distinction of grade should be made between you. Indeed, according to the authority of Vattel, the characters of Minister Plenipotentiary and Envoy Extraordinary are precisely of the same grade; although it is said that the usage in France, particularly, does not correspond with this idea. Secondly, that the relation of the First Consul to the Italian Republic received the compliment deemed sufficient in the answer to a note of M. Pichon, communicating the flag of that nation. A copy of the communication and of the answer are now enclosed.

The boundaries of Louisiana seem to be so imperfectly understood, and are of so much importance, that the President wishes them to be investigated whenever information is likely to be obtained. You will be pleased to attend particularly to this object as it relates to the Spanish possessions both on the west and on the east side of the Mississippi. The proofs countenancing our claim to a part of West Florida may be of immediate use in the negotiations which are to take place at Madrid. Should Mr. Monroe proceed thither, as is probable, and any such proofs should, after his departure, have come to your knowledge, you will of course have transmited them to him.

You will find by our gazettes that your memorial, drawn up about a year ago on the subject of Louisiana, has found its way into public circulation. The passages in it which strike at Great Britain have undergone some comment; and will probably be conveyed to the attention of that Government. The document appears to have been sent from Paris, where you will be able no doubt to trace the indiscretion to its author.

No answer has yet been received either from you or Mr. Monroe to the diplomatic arrangement for London and Paris. The importance of shortening the interval at the former, and preventing one at the latter, makes us anxious on this point. As your late letters have not repeated your intention of returning home this fall, it is hoped that the interesting scenes which have since supervened may reconcile you to a longer stay in Europe. I have the honor to be, &c.,

JAMES MADISON.

The Secretary of State to Messrs. Livingston and Monroe.

DEPARTMENT OF STATE,
July 29, 1803.

GENTLEMEN: Your despatches, including the treaty and two conventions signed with a French Plenipotentiary, on the 30th of April, were safely delivered on the 14th instant by Mr. Hughes, to whose care you had committed them.

In concurring with the disposition of the French Government to treat for the whole of Louisiana, although the western part of it was not embraced by your powers, you were justified by the solid reasons which you give for it; and I am charged by the President to express to you his entire approbation of your so doing.

This approbation is in no respect precluded by the silence of your commission and instructions. When these were made out, the object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not presumed, that more could be sought by the United States, either with a chance of success, or perhaps without being suspected of a greedy ambition, than the island of New Orleans and the two Floridas; it being little doubted that the latter was, or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas, the provision was, therefore, accommodated. Nor was it to be supposed that in case the French Government should be willing to part with more than the territory on our side of the Mississippi, an arrangement with Spain for restoring to her the territory on the other side,

would not be preferred to a sale of it to the United States. It might be added, that the ample views of the subject carried with him by Mr. Monroe, and the confidence felt that your judicious management would make the most favorable occurrences, lessened the necessity of multiplying provisions for every turn which your negotiations might possibly take.

The effect of such considerations was diminished by no information, or just presumptions whatever. The note of Mr. Livingston, in particular, stating to the French Government the idea of ceding the Western country above the Arkansas, and communicated to this department in his letter of the 29th January, was not received here till April 5, more than a month after the commission and instructions had been forwarded. And, besides, that this project not only left with France the possession and jurisdiction of one bank of the Mississippi from its mouth to the Arkansas, but a part of West Florida, the whole of East Florida, and the harbors for ships of war in the Gulf of Mexico. The letter enclosing the note, intimated that it had been treated by the French Government with a decided neglect. In truth, the communications in general between Mr. Livingston and the French Government, both of prior and subsequent date, manifested a repugnance to our views of purchase, which left no expectation of any arrangement with France, by which an extensive acquisition was to be made, unless in a favorable crisis, of which advantage should be taken. Such was thought to be the crisis which gave birth to the extraordinary commission in which you are joined. It consisted of the state of things produced by the breach of our deposit at New Orleans; the situation of the French islands, particularly the important island of St. Domingo; the distress of the French finances; the unsettled posture of Europe; the increasing jealousy between Great Britain and France; and the known aversion of the former to see the mouth of the Mississippi in the hands of the latter. These considerations, it was hoped, might so far open the eyes of France to her real interest, and her ears to the monitory truths which were conveyed to her through different channels, as to reconcile her to the establishment of the Mississippi as a natural boundary to the United States; or, at least, to some concessions which would justify our patiently waiting for a fuller accomplishment of our wishes, under auspicious events. The crisis relied on has derived peculiar force from the rapidity with which the complaints and questions between France and Great Britain ripened towards a rupture; and it is just ground for mutual and general felicitation that it has issued under your zealous exertions in the extensive acquisition beyond the Mississippi.

With respect to the terms on which the acquisition is made, there can be no doubt that the bargain will be regarded as on the whole highly advantageous. The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed; and particularly if the two millions of dollars in cash, intended to reduce the price to hasten the delivery of possession, had been so applied, and the assumed payments to American claimants placed on a footing specified in the instructions. The unexpected weight of the draught now to be made on the Treasury will be sensibly felt by it, and may possibly be inconvenient in relation to other important objects.

The President has issued his proclamation convening Congress on the 17th of October, in order that the exchange of the ratifications may be made within the time limited. It is obvious that the exchange, to be within the time, must be made here, and not at Paris; and we infer from your letter of —— that the ratifications of the Chief Consul are to be transmitted hither with that view.

I only add the wish of the President, to know from you the understanding which prevailed in the negotiation with respect to the boundaries of Louisiana; and particularly the pretensions and proofs for carrying it to the river Perdido, or for including any lesser portion of West Florida.

With high respect and consideration, &c.

JAMES MADISON.

Extract.—Mr. Livingston to Mr. Madison.

PARIS, *July* 30, 1803.

SIR: The house of Hope and Baring will to-morrow lodge with me the amount in bills of the stock they have purchased from the French Government, to be delivered by me according to the terms of their contract. If the treaty is ratified, I believe that this meets with no delay. Be assured that were the business to do again it would never be done. They think we have obtained an immense advantage over them. Though the appearance of war had some influence, it had much less than is ascribed to it. Whenever I mentioned its falling into the hands of England, they admitted the possibility, but insisted that, as it must abide the event of the war, they had no doubt of ultimate success; they would get it back with the British improvements. Mr. Skipwith still thinks that the American debt will fall much within the twenty millions for which we have engaged, and all the fair creditors be fully satisfied; the supposed debt being extremely exaggerated in America. Other nations, creditors of France, have, at present, no prospect of being paid.

I this day got a sight of a letter from the Minister to M. Laussat, containing directions for giving up the country, and assigning the reasons for the cession. I was much flattered to find their reasons wholly drawn from the memoirs I had presented; and that the order for the cession was full, and contained no other description of the country than that which had been designated in the Treaty of St. Ildefonso: so that I hope you have not failed to insist on West Florida.

I have also this day been favored with a duplicate of yours of the 26th [25th] of May. You observe that the promise I had obtained for payment was still short of justice. This may be true; but, sir, were you here, or indeed in any Court in Europe, you would admit that obtaining of anything that approaches to justice, required some skill and much good fortune. At present, I believe you may purchase millions of just debt of Denmark, Sweden, &c. here at fifty-seven in the pound, and purchase it dear enough; and I think that I may, without vanity, ascribe my obtaining the promise to what are here considered as very delicate measures; and to that promise, a ruling influence in procuring a treaty that I trust will be considered in America (as in Europe) among the most important and advantageous the United States ever made. I have the honor, &c.

R. R. LIVINGSTON.

HON. JAMES MADISON.

Extract of a letter from James Monroe, Esq., Minister Plenipotentiary, London, to the Secretary of State.

AUGUST 15, 1803.

The enclosed, which I received last night from Paris by an American gentleman, containing important information, is, therefore, transmitted to you.

Extract of a letter from Mr. Fenwick to Mr. Monroe.

PARIS, *August* 5, 1803.

Since you left this city nothing very material has transpired. I know, however, from a faithful source, that the Spanish Government has made the most serious remonstrances against the cession of Louisiana, and their instructions here are to prevent its being carried into execution, if yet possible: and, if pecuniary arguments could succeed, the hands of their Ministers are not tied on that score. This might be a useful hint, if our Senate should not disregard federal examples in modifying treaties, as it is now well understood, that, if any conditional clause of ratification should be introduced by the United States, this Government would profit of the circumstance to annul the whole work.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *Oct.* 6, 1803.

SIR: My last was of July 29, written a few days before my departure from Virginia, whence I returned, as did the President, ten or twelve days ago. Your letters received since that date are of May 20, June 3, and 25, July 11, 12, and 30th.

In the reply to the communication made by the French Government on the subject of the war, you are charged by the President to express the deep regret felt by the United States at an event so afflicting to humanity. Deploring all the calamities with which it is pregnant, they devoutly wish that the benevolent considerations which pleaded in vain for a continuance of peace, may have a due effect in speedily restoring its blessings. Until this happy change shall take place, the French Government may be assured that the United States will forget none of the obligations which the laws of neutrality impose on them. Faithful to their character, they will pay to every belligerent right the respect which is due to it; but this duty will be performed in the confidence that the rights of the United States will be equally respected. The French Government will do justice to the frankness of this declaration, which is rendered the more proper by the irregularities of which too many examples have been heretofore experienced. The President does not permit himself to doubt that the French Government, consulting equally its own honor and the true interests of France, will guard, by effectual regulations, against every abuse under color of its authority, whether on the high seas or within French or foreign jurisdiction, which might disturb the commerce, or endanger the friendly relations so happily subsisting, and which the United States are so much disposed to cherish, between the two nations.

Your interposition against the arrêt of the 1st Messidor, an 11, was due to the just interests of your fellow-citizens. It is to be hoped, that the strong views which you have presented of the subject, will lead the French Government to retract, or remodify, a measure not less unjust to foreigners, than injurious to the interests of France: regulations which, by their suddenness, ensnare those who could not possibly know them, and who meant to observe those naturally supposed to be in force, are, to all intents, retrospective—having the same effect, and violating the same privileges, as laws enacted subsequent to the cases to which they are applied. The necessity of leaving between the date and the operation of commercial regulations an interval sufficient to prevent surprise on distant adventurers, is, in general, too little regarded, and so far there may be room for common complaint; but when great and sudden changes are made, and above all, when legal forfeitures, as well as mercantile losses, are sustained, redress may fairly be claimed by the innocent sufferers. Admitting the public safety, which rarely happens, to require regulations of this sort, and the right of every Government to judge for itself of the occasions, it is still more reasonable that the losses should be repaired than that they should fall on the individuals innocently ensnared.

Your suggestion as to commercial arrangements of a general nature with France, at the present juncture, has received the attention of the President, but he has not decided that any instructions should be given you to institute negotiations for that purpose; especially as it is not known on what particular points, sufficiently advantageous to the United States, the French Government would be likely to enter into stipulations. Some obscurity still hangs on the extra duty exacted by the Batavian Government. The state of our information leaves it doubtful, whether the interests of the United States would be promoted by the change authorized by our treaty with that Republic.

Mr. Pinckney will doubtless have communicated to you his conversation with Mr. Cevallos, in which the latter denied the right of France to alienate Louisiana to the United States, alleging a secret stipulation by France not to alienate. Two notes on the same subject have lately been presented here by the Marquis d'Yrujo. In the first, dated September 4, he enters a caveat against the right of France to alienate Louisiana, founding it on a

declaration of the French Ambassador at Madrid, in July, 1803, that France would never part with that territory; and affirming that on no other condition Spain would have ceded it to France. In the second note, dated September 27, it is urged, as an additional objection to the treaty between the United States and France, that the French Government had never completed the title of France, having failed to procure the stipulated recognition of the King of Etruria from Russia and Great Britain, which was a condition on which Spain agreed to cede the country to France.—Copies of these notes of the Spanish Minister here, with my answer, as also extracts from Mr. Pinckney's letter to me, and from a note of the Spanish Minister at Madrid to him, are also enclosed.

From this proceeding on the part of Spain, as well as by accounts from Paris, it is not doubted, that whatever her views may be, in opposing our acquisition of Louisiana, she is soliciting the concurrence of the French Government. The interest alone which France manifestly has in giving effect to her engagement with the United States, seems to forbid apprehensions that she will listen to any entreaties or temptations which Spain may employ. As to Spain, it can hardly be conceived that she will, unsupported by France, persist in her remonstrances, much less that she will resist the cession to the United States by force.

The objections to the cession, advanced by Spain, are in fact too futile to weigh either with others or with herself. The promise made by the French Ambassador, that no alienation should be made, formed no part of the treaty of retrocession to France; and, if it had, could have no effect on the purchase by the United States, which was made in good faith, without notice from Spain of any such condition, and even with sufficient evidence that no such condition existed. The objection drawn from the failure of the French Government to procure from other Powers an acknowledgment of the King of Etruria, is equally groundless. This stipulation was never communicated either to the public or to the United States, and could, therefore, be no bar to the contract made by them. It might be added, that, as the acknowledgment stipulated was, according to the words of the article, to precede possession by the King of Etruria, the overt possession by him was notice to the world that the conditions on which it depended had either been fulfilled or had been waived. Finally, no particular Powers, whose acknowledgment was to be procured, are named in the article; and the existence of war between Great Britain and France, at the time of the stipulation, is a proof that the British acknowledgment, the want of which is now alleged as a breach of the treaty, could never have been in its contemplation.

But the conduct of the Spanish Government, both towards the United States and France, is a complete answer to every possible objection to the treaty between them. That Government well knew the wish of the United States to acquire certain territories which it had ceded to France, and that they were in negotiation with France on the subject; yet the slightest hint was never given that France had no right to alienate, or even that an alienation to the United States would be disagreeable to Spain. On the contrary, the Minister of His Catholic Majesty, in an official note, bearing date May 4th last, gave information to the Minister of the United States at Madrid, that "the entire province of Louisiana, with the limits it had when held by France, was retroceded to that Power, and that the United States might address themselves to the French Government in order to negotiate the acquisition of the territories which would suit their interest." Here is at once a formal and irrevocable recognition of the right as well of France to convey, as of the United States to receive, the territory which is the subject of the treaty between them. More than this cannot be required to silence, forever, the cavils of Spain at the titles of France, now vested in the United States: yet, for more than this, she may be referred to her own measures at New Orleans, preparatory to the delivery of possession to France; to the promulgation, under Spanish authority at that place, that Louisiana was retroceded, and to be delivered to France; and to the orders signed by His Catholic Majesty's own hand, now ready to be presented to the Government of Louisiana, for the delivery of the province to the person duly authorized by France to receive it.

In a word, the Spanish Government has interposed two objections only to the title conveyed to the United States by France. It is said, first, that the title in the United States is not good, because France was bound not to alienate. To this it is answered, that the Spanish Government itself referred the United States to France, as the Power capable, and the only Power capable, of conveying the territory in question. It is said, next, that the title in France herself was not good. To this, if the same answer were less decisive, the orders of the King of Spain for putting France into possession are an answer which admits of no reply.

The President has thought proper that this view of the subject should be transmitted to you; not doubting that you will make the proper use of it with the French Government, nor that that Government will feel the full force of its stipulated obligations to remove whatever difficulties Spain may interpose towards embarrassing a transaction, the complete fulfilment of which is as essential to the honor of France as it is important to the interests of both nations. In the mean time, we shall proceed in the arrangements for taking possession of the country ceded, as soon as possession shall be authorized; and it may be presumed, that the provisions depending on Congress will be sufficient to meet the discontents of Spain, in whatever form they may assume.

The United States have obtained, by just and honorable means, a clear title to a territory too valuable, in itself, and too important to their tranquillity and security, not to be effectually maintained. And they count on every positive concurrence, on the part of the French Government, which the occasion may demand from their friendship and their good faith.

The rightful limits of Louisiana are under investigation. It seems undeniable, from the present state of the evidence, that it extends eastwardly as far, at least, as the river Perdido; and there is little doubt that we shall make good both a western and northern extent highly satisfactory to us.

The considerations which led Mr Monroe to decline his trip to Madrid, having the same weight with the President, the mission is suspended until other instructions shall be given, or until circumstances shall strongly invite negotiations at Madrid for completing the acquisition desired by the United States. With great respect.

JAMES MADISON.

Robert R. Livingston, &c.

P. S. *October* 14.—Since the above was written, I have received a third note from the Marquis d'Yrujo, in reply to my answer to his two preceding. A copy of it is herewith added. It requires no comment beyond what may be applicable in the above observations on his two first notes; being probably intended for little more than a proof of fidelity to his trust, and of a zeal recommending him to the favor of his Sovereign.

It having been thought proper to communicate to M. Pichon, the French Chargé d'Affairs here, the tenor of the notes from the Marquis d'Yrujo, he has presented in a note, just received, a vindication of his Government, and its treaty with the United States, against the objections proceeding from the Spanish Government. A copy of this note is herewith enclosed.

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The Marquis de Yrujo to the Secretary of State, dated

Philadelphia, *September* 4, 1803.

Through the medium of the Ambassador of the King my master, in Paris, it has come to His Royal knowledge, that that Government has sold to that of the United States the Province of Louisiana which His Majesty had retroceded to the French Republic. This information has occasioned to the King my master no small surprise, seeing that the French Government had contracted with His Majesty the most solemn engagements never to alienate the said province. In order to convince the Government of the United States of the nature of these engagements, I take the liberty here to insert a paragraph of a note presented on the 22d July, 1802, by M. de St. Cyr, Ambassador of the French Republic, at Madrid, to the Secretary of State of His Majesty, as follows:

"His Catholic Majesty has appeared to wish that France should engage not to sell nor alienate, in any manner, the property and the enjoyment of Louisiana. Its wish in this respect is perfectly conformable with the intentions of the Spanish Government; and its sole motive for entering therein was because it respected a possession which had constituted a part of the French territory. I am authorized to declare to you in the name of the First Consul that France will never alienate it."

The mere reading of the paragraph which precedes will convince you, as well as the President of the United States, that the sale of Louisiana which France has lately made is a manifest violation of the obligations contracted by her with His Catholic Majesty, and that France wants the powers to alienate the said province without the approbation of Spain, as is seen incontestably in the above recited note of the Ambassador St. Cyr, authorized by his Government.

The King my master charges me to inform this Government as soon as possible of this important circumstance; and, in compliance with His Royal will, I hasten to acquaint you therewith, in order that it may as soon as possible come to the knowledge of the President of the United States. God preserve you many years.

M. DE CASA YRUJO.

James Madison, Esq.

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From the Marquis de Yrujo, Minister Plenipotentiary of His Catholic Majesty, to the Secretary of State of the United States.

Vicinity of Philadelphia,
September 27, 1803.

Sir: On the 4th current I had the honor to intimate to you the extraordinary surprise with which the King my master had heard of the sale of Louisiana, made to the United States in contravention of the most solemn assurances given in writing to His Majesty by the Ambassador of the French Republic near his person, and with the consent and approbation of the First Consul. The King my master charges me again to remind the American Government, that the said French Ambassador entered, in the name of his Republic, into the positive engagement that France never would alienate Louisiana, and to observe to it that the sale of this province to the United States is founded in the violation of a promise so absolute that it ought to be respected; a promise, without which the King my master would, in no manner, have dispossessed himself of Louisiana. His Catholic Majesty entertains too good an opinion of the character of probity and good faith which the Government of the United States has known how to obtain so justly for itself, not to hope that it will suspend the ratification and effect of a treaty which rests on such a basis. There are other reasons no less powerful which come to the support of the decorum and respect which nations mutually owe each other. France acquired from the King my master the retrocession of Louisiana under obligations, whose entire fulfilment was absolutely necessary to give her the complete right over the said province; such was that of causing the King of Tuscany to be acknowledged by the Powers of Europe; but, until now, the French Government has not procured this acknowledgment promised and stipulated, either from the Court of London or from that of St. Petersburg. Under such circumstances it is evident that the treaty of sale entered into between France and the United States does not give to the latter any right to acquire and claim Louisiana, and that the principles of justice as well as sound policy ought to recommend it to their Government not to meddle with engagements as contrary in reality

to her true interests as they would be to good faith, and to their good correspondence with Spain.

Such are the sentiments which the King my master has ordered me to communicate to the President of the United States; and, having done it through you, I conclude, assuring you of my respect and consideration towards your person, and of my wishes that our Lord may preserve your life, &c. M. DE CASA YRUJO.

JAMES MADISON, Esq.

From the Secretary of State to the Marquis of Casa Yrujo, Minister Plenipotentiary of His Catholic Majesty, dated

OCTOBER 4, 1803.

SIR: I have duly received your two letters of the 4th and 27th ultimo, and have laid them before the President.

The repugnance manifested in these communications, on the part of His Catholic Majesty, to the cession of Louisiana lately made by the French Republic to the United States, was as little expected as the objections to the transaction can avail against its solidity.

The United States have given unquestionable proofs to the Spanish Government and nation of their justice, their friendship, and their desire to maintain the best neighborhood; and the President confides too much in the reciprocity of these sentiments, so repeatedly and so recently declared on the part of His Catholic Majesty, to have supposed that he would see with dissatisfaction a convenient acquisition by the United States of territories which were no longer to remain with Spain. With respect to the transaction itself, by which the United States have acquired Louisiana, it would be superfluous to say more in justification of its perfect validity than to refer to the official communication made by Mr. Cevallos to the Minister Plenipotentiary of the United States at Madrid, in a note dated on the 4th of May last. His words are: *"Por la retrocesion hecha á la Francia de la Luisiana, recobró esta Potencia dicha provincia con los limites con que la tubo, y salvos los derechos adquiridos por otras Potencias. *La de los Estados Unidos podra dirigirse al Gobierno Frances para negociar la adquisicion de territorios que convengan á su interes.*" Here is an explicit and positive recognition of the right of the United States and France to enter into the transaction which has taken place.

To these observations, which I have been charged by the President to make to you, I have only to add, sir, that his high respect for His Catholic Majesty, and his desire to cherish and strengthen the friendly sentiments happily subsisting between the two nations, will induce him to cause such explanations and representations to be made through the Minister Plenipotentiary of the United States at Madrid as cannot fail to reconcile His Catholic Majesty to an event so essentially connected with the respect which the United States owe to their character and their interest.

Be pleased, sir, to accept assurances of the high respect and consideration with which I have the honor to be, your most obedient, humble servant,

JAMES MADISON.

Marquis d'Yrujo to the Secretary of State.

BALTIMORE, *October* 12, 1803.

SIR: I have received your letter of the 4th current in reply to those which I had the honor to write you on the 4th and 27th of last month; and as, without entering into the examination of the powerful reasons which, in the name of the King my master, I unfolded therein, against the sale of Louisiana, you refer generally to the explanations which, as you inform me, the Minister of the United States near His Majesty is to make at Madrid. I shall at present confine my observations to that which you are pleased to make to me, founded upon certain expressions which you cite to me from an official letter of the Secretary of State, of the King my master, to the above mentioned American Minister in Spain. The expressions are the following:

"By the retrocession made to France of Louisiana, this Power has recovered the said province, with the limits which it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territory which may suit their interests."

These expressions, which you consider as an explicit and positive acknowledgment of the right of the United States and France to enter into the engagements which they afterward did, do not, in my opinion, weaken in any manner the foundation and the force of the representations which I have had the honor to make to you against the sale of Louisiana.

There is an expression, among those you cite, which will suffice to refute the inference you draw from them, and it is that of saving the rights acquired by other Powers. Although the general form of this expression gives, in other respects, much latitude to its true meaning, it is indubitable that Spain having made the retrocession of Louisiana, to France, under certain conditions and modifications, Spain has the indubitable right to claim their execution. Of this nature was the stipulation, that France should not sell nor alienate Louisiana in any manner whatever, and likewise the solemn and positive accession and declaration of the French Government adhering to the wishes of Spain; consequently this expression destroys the possibility that, according to existing circumstances, the French Government should possess the right of selling the said province, or that of the United States of buying it.

There is another consideration still stronger, and which is not at all subject to the interpretation of equivocal expressions. It is evident that

* TRANSLATION.—"By the retrocession made to France of Louisiana, this Power has recovered the said province with the limits which it had, and saving the rights acquired by other Powers. The United States can address themselves to the French Government to negotiate the acquisition of territories which may suit their interest."

the engagement entered into by France with Spain not to alienate Louisiana in any manner, is much older in date than the official letter of Mr. Cevallos, whose expressions you are pleased to cite to me. In that letter those which you have scored, *that the United States can address themselves to the French Government to negotiate the acquisition of the territory which may suit their interests*, neither signify nor can signify anything but a deference towards France, whose Government alone is now concerned to give a decisive answer to the requests of the United States, an answer analogous and conformable to the nature of the previous engagements which had been entered into with Spain. The repugnance of the Spanish Government may likewise be recognised to give to that of the United States a necessary negative at a time when it found itself united with them by bands of the most sincere friendship.

Other interpretations of equal force may be derived from the obvious meaning of the expressions of the official letter of the Secretary of State of His Majesty mentioned by you; but as those which I have just made are, in my opinion, conclusive, I abstain from entering upon others in detail, and I take the liberty to call to them the attention, as well of yourself as of the President of the United States, in order that you may be more and more convinced of the reason and justice with which the King my master objects to the ratification of a treaty founded upon a manifest violation of the most solemn engagements entered into by France.

I avail myself, with pleasure, of this occasion to reiterate to you my wishes to serve you, and that our Lord would preserve your life, &c.

M. DE CASA YRUJO.

JAMES MADISON, Esq.

James Madison, Secretary of State, to Charles Pinckney, Minister to Spain.

DEPARTMENT OF STATE, *Oct.* 12, 1803.

Since my last, of July 29th, I have received your several letters of April 12th and 20th, May 2d, and 4th, June 12th, and July 18th.

Mr. Monroe has already informed you of his having proceeded to London, and of his intention not to repair to Madrid for the present. He will have since received instructions, given on a contrary supposition; but it is probable he will wait where he is for the determination of the President, on the reasons which kept him from proceeding to Madrid. I have just informed him that the President approves the course he has taken, so that he is not to be expected to join you at Madrid, until he shall be so instructed, or until a change of circumstances shall, in his view, clearly invite him to do so. My last letter to you, having provided for the case of Mr. Monroe's postponing this trip, I need not repeat the instructions and observations then made to you. I shall only add that it is more proper now than ever that you should not be in haste, without the concurrence of your colleague, to revive the negotiation jointly committed to you.

Among the reasons which weighed with the President, as well as with Mr. Monroe, against attempting, at present, to procure from the Spanish Government the residuum of territory desired by the United States, is the ill-humor shown by that Government at the acquisition already made by them from France; and of which the language held to you by Mr. Cevallos, as communicated in your letter of ——, is a sufficient proof. A still fuller proof of the same fact is contained in three letters lately received from the Spanish Minister here; copies of which, with the answer to my two first, are herewith enclosed. I enclose also a copy of a letter written on the occasion to Mr. Livingston, which was rendered more proper by the probability, as well as by information from Paris, that efforts would be used by Spain to draw the French Government into her views of frustrating the cession of Louisiana to the United States.

In these documents you will find the remarks by which the objections made by the Spanish Government to the Treaty of Cession between the United States and France are to be combated. The President thinks it proper, that they should, without delay, be conveyed to the Spanish Government, either by a note from you or in conversation, as you may deem most expedient; and in a form and style best uniting the advantages of making that Government sensible of the absolute determination of the United States to maintain their right, with the propriety of avoiding undignified menace and unnecessary irritation.

The conduct of Spain, on this occasion, is such as was, in several views, little to be expected, and as is not readily explained. If her object be to extort Louisiana from France, as well as to prevent its transfer to the United States, it would seem that she must be imboldened by an understanding with some other very powerful quarter of Europe. If she hopes to prevail on France to break her engagement to the United States, and voluntarily restore Louisiana to herself, why has she so absurdly blended with the project the offensive communication of the perfidy which she charges on the First Consul? If it be her aim to prevent the execution of the treaty between the United States and France, in order to have for her neighbor the latter instead of the United States, it is not difficult to show that she mistakes the lesser for the greater danger against which she wishes to provide. Admitting, as she may possibly suppose, that Louisiana, as a French Colony, would be less able, as well as less disposed, than the United States, to encroach on her southern possessions, and that it would be too much occupied with its own safety against the United States to turn its force on the other side against her possessions, still it is obvious, in the first place, that in proportion to the want of power in the French the colony would be safe for Spain; compared with the power of the United States, the colony would be insufficient as a barrier against the United States; and, in the next place, that the very security which she provides would itself be a source of the greatest of all the dangers she has to appre-

hend. The collisions between the United States and the French would lead to a contest, in which Great Britain would naturally join the former, and in which Spain would, of course, be on the side of the latter; and what becomes of Louisiana and the Spanish possessions beyond it, in a contest between the Powers so marshalled? An easy and certain victim to the fleets of Great Britain and the land armies of this country. A combination of these forces was always, and justly, dreaded by both Spain and France. It was the danger which led both into our Revolutionary war, and much inconsistency and weakness is chargeable on the projects of either which tend to re-unite, for the purposes of war, the power which has been divided. France, returning to her original policy, has wisely, by her late treaty with the United States, obviated a danger which could not have been very remote. Spain will be equally wise in following the example; and, by acquiescing in an arrangement which guards against an early danger of controversy between the United States, first with France, and then with herself, and removes to a distant day the approximation of the American and Spanish settlements, provides in the best possible manner for the security of the latter, and for a lasting harmony with the United States. What is it that Spain dreads? She dreads, it is presumed, the growing power of this country, and the direction of it against her possessions within its reach. Can she annihilate this power? No. Can she sensibly retard its growth? No. Does not common prudence then, advise her to conciliate, by every proof of friendship and confidence, the good will of a nation whose power is formidable to her; instead of yielding to the impulses of jealousy, and adopting obnoxious precautions which can have no other effect than to bring on, prematurely, the whole weight of the calamity which she fears? Reflections such as these may, perhaps, enter with some advantage into your communications with the Spanish Government; and, as far as they may be invited by favorable occasions, you will make that use of them.

Perhaps, after all this interposition of Spain, it may be intended merely to embarrass a measure which she does not hope to defeat, in order to obtain from France, or the United States, or both, concessions of some sort or other as the price of her acquiescence. As yet no indication is given that a resistance, by force, to the execution of the treaty is prepared or meditated. And if it should, the provisions depending on Congress, whose session will commence in two days, will, it may be presumed, be effectually adapted to such an event.

With sentiments, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

Mr. Pichon to the Secretary of State, dated

GEORGETOWN, 21 *Vendemiaire. 12th year*, (*Oct.* 14, 1803.)

The undersigned, to whom the Secretary of State has been pleased to communicate the proceedings of the Minister of His Catholic Majesty to the United States, in relation to the treaty by which the French Republic has ceded Louisiana to the United States, thinks that he owes it to his own Government as well as to the American Government, to present to Mr. Madison the observations of which those proceedings, as far as they attack the rights and even the dignity of the French Government, have appeared to him susceptible.

The Court of Madrid, according to the notes of its Minister, considers the cession made by France to the United States as irregular and invalid: 1st. Because France had renounced the right of alienating the territories in question: 2d. Because the Treaty of St. Ildefonso, by which Spain retroceded those territories to France, has not been fully executed with respect to the acknowledgment of the King of Etruria, an acknowledgment which was one of the conditions of the retrocession to be fulfilled by France.

On the first point, the undersigned will observe that the Treaty of St. Ildefonso retrocedes Louisiana in full sovereignty, and without any limitation as to the future domain of France. To operate a limitation so essential as is that to which the Court of Madrid appeals, nothing less would have been necessary, according to the nature of contracts in general and of treaties in particular, than a stipulation to this effect inserted in the treaty itself. A promise made fifteen months after the signature of this pact, and which might, on one side, have been yielded to the solicitations of one of the contracting parties, and, on the other, dictated by dispositions which might then exist in the other party, but which ulterior circumstances might have changed; such a promise cannot create in favor of Spain a right sufficient to enable her to charge with invalidity the transactions which have contravened it. The contrary pretension would certainly confound all the principles relative to the nature of obligations, and would destroy the solemnity of treaties. These general reasonings would receive a new force from the circumstances which are peculiar to different nations in relation to the subject of pacts; but the undersigned will not enter into the examination of these circumstances, under the persuasion that general principles sufficiently repel the pretensions of the Court of Madrid.

On the second point, the objections of that Court do not appear to the undersigned to be better founded. It is known that the King of Etruria was placed on the throne since the Treaty of St. Ildefonso. We have a right to suppose that His Catholic Majesty was satisfied from that period with the measures and efforts employed by France, to cause the title of this Prince to be acknowledged by the other nations. It is at least what might be concluded from facts within the knowledge of all the world. In the Treaty of Amiens, concluded on the 27th of March, 1802, Great Britain did not acknowledge the King of Etruria. Notwithstanding the silence of the Court of London, on so solemn an occasion, that of Madrid ordered, in the month of October following,

the delivery of the Colony to France, as is proved by the Royal cedula, which the undersigned has received and exhibited to Mr. Madison; a cedula, which, as all the world knows, was long ago forwarded to the Captain General of Louisiana, who sent the Marquis of Casa Calvo to New Orleans to superintend its execution.

To these conclusive observations, the undersigned will add, that the Court of Madrid might have been informed in the course of the month of February last, by its Minister to the United States, that the American Government was sending to Paris a Minister Extraordinary, in order to negotiate with the French Government the acquisition of New Orleans. If the Court of Madrid had seen, in the object of this mission, an injury offered to its rights, what prevented it, after being thus early apprized, from informing thereof the Minister of the United States at Paris, and the French Government, and from interposing, before the conclusion of the treaty, its intervention in a form adapted to suspend it? It does not appear that that Court has taken, at Paris, any steps of this nature. To suppose it, would be inconsistent with the instructions which the undersigned has received from his Government, to accelerate as much as is in his power the execution of the treaty concluded on the 30th of April last, between the French Republic and the United States.

The undersigned therefore hopes, that the American Government will not see in the proceedings of the Court of Madrid, in order to obstruct the execution of this treaty, anything but specious reasonings, and will proceed to its execution with the same earnestness which the French Government has employed on its part. The undersigned has received the necessary orders to exchange the ratifications, and to effect the taking of possession of Louisiana by France, and its transfer to the United States. He does not presume that the Court of Madrid would wish to oppose the execution of the first orders. This supposition would be as contrary to its loyalty as to the dignity of the French Government. In any event, as soon as the ratifications are exchanged, the undersigned will proceed without delay, in concert with the Commissary appointed for that purpose by the First Consul, to the delivery of the colony to the persons whom the President of the United States shall appoint to take possession of it.

The undersigned has the honor to request Mr. Madison to submit to the President of the United States the contents of this note, which is intended to prevent the imputations cast by the Minister of Spain against the French Government, from remaining without reply. The undersigned prays, at the same time, Mr. Madison to receive the assurance of his respect and of his high consideration.

L. A. PICHON.

Extract.—James Madison, Secretary of State, to James Monroe.

DEPARTMENT OF STATE, *Oct.* 24, 1803.

SIR: I have received from you letters of the following dates, written after your arrival in London, viz: the 19th, 20th, and 26th of July, and the 11th and 15th of August.

I have the pleasure to inform you that the treaty for Louisiana has been ratified in form, and is now before both Houses for the legislative provisions necessary with respect to the stock, to taking possession, and to governing the country. There is no doubt that they will be made by very large majorities.

It will be agreeable to you to know that the ratifications were exchanged by M. Pichon and myself, unshackled by any condition or modification whatever. The note from me to him, with his reply, of which copies are enclosed, will show the turn and issue of our consultations on that point.

The information from Paris, enclosed in your letter of the 15th of August, had been previously received here from the same source, and was followed by full proof of the discontent of Spain at the transfer of Louisiana to the United States, in a formal protest against it from the Spanish Minister here, in pursuance of orders from his Government. You will find herewith copies of his correspondence with this Department, and of my letters to Mr. Livingston and Mr. Pinckney, and of M. Pichon's to me on this subject; all of which were included in the communications to the Senate. These documents will put you in possession of all that has passed, as well as of the present posture of the business. It remains to be seen how far Spain will persist in her remonstrances, and how far she will add to them resistance by force. Should the latter course be taken, it can lead to nothing but a substitution of a forcible for a peaceable possession. Having now a clear and honest title, acquired in a mode pointed out by Spain herself, it will, without doubt, be maintained with a decision becoming our national character, and required by the importance of the object.

I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq., &c., &c.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *November* 9, 1803.

SIR: In my letter of the 22d ultimo, I mentioned to you that the exchange of the ratifications of the treaty and conventions with France, had taken place here, unclogged with any condition or reserve. Congress has since passed an act to enable the President to take possession of the ceded territory, and to establish a temporary Government therein. Other acts have been passed for complying with the pecuniary stipulations of those instruments. The newspapers enclosed will inform you of these proceedings.

By the post which left this city for Natchez on Monday last, a joint and several commission was forwarded to Governor Claiborne and General Wilkinson, authorizing them to receive possession of and occupy those territories, and a separate commission to the former as temporary Governor.

The possibility suggested by recent circumstances, that delivery may be refused at New Orleans on the part of Spain, required that provision should be made as well for taking as receiving possession. Should force be necessary, Governor Claiborne and General Wilkinson will have to decide on the practicability of a *coup de main* without waiting for the reinforcements, which will require time on our part, and admit of preparations on the other. The force provided for this object is to consist of the regular troops near at hand, as many of the militia as may be requisite, and can be drawn from the Mississippi Territory, and as many volunteers from any quarter as can be picked up. To them will be added five hundred mounted militia from Tennessee, who, it is expected, will proceed to Natchez with the least possible delay.

M. Pichon has, in the strongest manner, pressed on M. Laussat, the French Commissary appointed to deliver possession, the necessity of co-operating in these measures of compulsion, should they prove necessary by the refusal of the Spanish officers to comply without them.

On the 8th of October it was not known, and no indications have been exhibited at New Orleans, of a design, on the part of Spain, to refuse or oppose the surrender of the province to France, and thereby to us.

With high respect and consideration, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

P. S. The President approves of the individuals appointed as commissioners to liquidate the claims payable under the convention of the 30th of April last. But as it now appears that difficulties have arisen, and are likely to increase, respecting the true construction of that instrument, and especially as it seems more than possible that the twenty millions allotted for the payments to be made under it, may be insufficient to cover all which, in equity, and by a sound interpretation, ought to be included, it is the desire of the President you apply to the French Government for its consent to suspend the issuing of any drafts upon the awards which may be given, until it is ascertained whether the twenty millions be sufficient or not, and with a view to give time for such mutual explanations and arrangements as may tend to effectuate the true spirit and object of the convention. In taking this step, you will refer yourself to the further communications you are to expect from your Government upon the subject; the application you may make upon it to that of France being intended only as a preliminary to a further development.

Mr. Livingston to Mr. Madison.

PARIS, *November* 15, 1803.

SIR: I have only within these few days been honored by your letter to me of the 29th July, by way of Hamburg, together with one of the same date to Mr. Monroe, which I have sent to him by Mr. ——, an American gentleman, by the way of Holland; none more direct offering here, as the intercourse is very strictly forbidden. I shall make the communication you direct, of Mr. Pichon's note, and your reply, relative to the flag of the Italian Republic. It appears to me, however, that this notice rather recommends than supersedes the propriety of a direct recognition of the First Consul, and the compliment of a commission, upon the principle I have mentioned; but of this, the President is the best judge. The letters you have received since the date of yours, you will find have anticipated your direction relative to information on the subject of West Florida, since they refer to documents and historic facts that it will be easy to adduce. As I presume you will have no trouble on this ground, I do not think it necessary to put you to the expense of procuring original papers. Should it happen otherwise, I shall obey your orders; and if any negotiation is necessary at Madrid, I shall transmit to Mr. Pinckney all the proofs I can collect; and I think they will be too numerous to admit of doubt, especially taken in connexion with the letter of the Spanish Minister to Mr. Pinckney, of which a copy has been transmitted to you. The moment is so favorable for taking possession of that country, that I hope it has not been neglected even though a little force should be necessary to effect it. Your Minister must find the means to justify it.

I have seen, as you mention, a publication of my memoir on the subject of Louisiana. But, as it is not an official paper, as it is not signed or delivered in my public character, I do not see that it can ever be noticed on this side of the water as such; besides that, there is nothing in it relative to Britain that has not been told them officially by our Government and by almost every maritime Power in Europe, on the subject of their vexations at sea. Nor can they blame any endeavor of mine to effect the objects of my country, by such arguments as I thought would have weight here. It could hardly be expected that this paper could be secret; since, as I informed you at the time, I had delivered printed copies of it, not only to the First and other Consuls, and to the French Ministers, but to most of those persons who I believed would be consulted upon the occasion. A few were also sent to America, with injunctions, however, not to publish them. I am very sorry a bad translation of it has found its way into the papers, though it may serve, in some measure, to justify the President's appointment of me, by showing that I had not been inattentive to the great interests of my country. The zeal of our friends often carries them too far. Some of them, finding that Mr. Monroe was appointed (through circumstances which you have done me the honor to explain, but which they could not know) with a higher grade than myself; seeing him only mentioned in the newspapers, as the acting Minister; and finding some endeavor here to impress a belief that he was the principal agent in treating with France; it was natural that they should feel some mortification, and endeavor to do me the justice they know I was entitled to. This may apologise for, I mean not by it to justify, their imprudence. There is another, on the part of

Mr. Monroe's friends, which I should not mention, but that it carries with it a circumstance for which I may be under the necessity of apologising to the President, should my private letter to Mr. Monroe have reached the United States; since it argues a difference of sentiment upon an important point, which I fear will be laid hold of by our common enemies. I have, in my former letter, informed you of M. Talleyrand's calling upon me previous to the arrival of Mr. Monroe, for a proposition for the whole of Louisiana; of his afterwards trifling with me, and telling me that what he had said was unauthorized. This circumstance, for which I have accounted to you in one of my letters, led me to think, though it afterwards appeared without reason, that some change had taken place in the determination which I knew the Consul had before taken to sell. I had just then received a line from Mr. Monroe, informing me of his arrival. I wrote to him a hasty answer, under the influence of ideas, excited by these prevarications of the Minister, expressing the hope that he had brought information that New Orleans was in our possession; that I hoped our negotiation might be successful; but that, while I feared nothing but war would avail us anything, I had paved the way for him. This letter is very imprudently shown and spoken of by Mr. Monroe's particular friends, as a proof that he had been the principal agent in the negotiation. So far, indeed, as it may tend to this object, it is of little moment; because facts and dates are too well known to be contradicted. For instance, it is known to everybody here that the Consul had taken his resolution to sell previous to Mr. Monroe's arrival. It is a fact well known that M. Marbois was authorized, informally, by the First Consul, to treat with me before Mr. Monroe reached Paris; that he actually made me the very proposition we ultimately agreed to, before Mr. Monroe had seen a Minister, except M. Marbois, for a moment, at my house, where he came to make the proposition: Mr. Monroe not having been presented to M. Talleyrand, to whom I introduced him the afternoon of the next day. All, then, that remained to negotiate, after his arrival, was a diminution of the price; and in this our joint mission was unfortunate; for we came up, as soon as Mr. Monroe's illness would suffer him to do business, after a few days' delay, to the Minister's offers. There is no doubt that Mr. Monroe's talents and address would have enabled him, had he been placed in my circumstances, to have effected what I have done. But he unfortunately came too late to do more than assent to the propositions that were made us, and to aid in reducing them to form. I think he has too much candor not to be displeased that his friends should publicly endeavor to depreciate me by speaking of a private letter, hastily written, under circumstances of irritation, with which Mr. Monroe is fully acquainted; a letter, too, which may contribute in two ways to advance the views of the enemies of the Administration. It is in this light only that it gives me pain. First, it shows that it was my sentiment, founded upon the knowledge I must have been supposed to possess of the temper of this Court, and the state of things here, that we should have availed ourselves of the circumstance of the denial of the right of depot to possess New Orleans. That this was my sentiment, I confess; and you have found, by my notes, that I labored to impress this Government with a belief that it would be done. And I have every reason to think that the treaty would have been concluded in March, had not M. Pichon's letter, at the moment, contradicted my suggestion on this subject. As the President's views have been happily more correct than mine; as he has effected, without this harsh measure, his great object; it certainly is not advisable to publish that we differed in sentiment; and introduce discussions on the comparative advantages that might be derived from the one or the other mode of proceeding. The next point in which the letter may do harm, is in authorizing an opinion, which the enemies of the Administration are most zealous in promoting, viz: that no credit is due either to the President or his Ministers, since the war only produced the measure. The war, doubtless, had its effect upon the First Consul; but it is equally true that every person he consulted had long before been convinced, and even the Consul's opinion shaken, and I will venture to say by my means, of the little advantage France would derive from the possession of that country; and he had even, as I have before informed you, through Joseph Bonaparte, given me assurances that such arrangements should be made as we should approve. The not selling was a sort of personal point of honor, particularly as he was bound by the express stipulation of his treaty with Spain not to do so. Nor, until he found himself hampered by another personal consideration, to wit, his promise to pay the American claims, which I had purposely published, could he bring himself to take the step which the prospect of war and the spirited measures of our Government, among which I number the special mission of Mr. Monroe, gave him the strongest apology for doing; particularly as, in case of war, he had no other means of keeping his word with us. Thus, sir, you see that it is very difficult for the most prudent man to restrain the ill-judged zeal of his friends; and I dare say that Mr. Monroe will as sincerely lament that of his friends, who, indeed, ought not to have seen a mere private letter, as I do that of the gentleman that I suspect to have occasioned the publication which you so justly blame.

Having had the goodness, sir, to correct one of the errors of the clerk that gave me some cause of complaint, I must notice another which added to my doubts of success at the moment I wrote to Mr. Monroe. In the copy of our joint instructions which you had forwarded to me, the ultimatum that we were limited to was thirty millions, out of which the American claims were to be paid. Now, I was satisfied that, if Mr. Monroe, on his arrival, should adhere to this, our prospect of success was not very great; since ten millions in cash to the Government was an object of but little moment. More might have been got from

Spain by a transfer. On looking over, however, the original instructions, of which Mr. Monroe was the bearer, I found that we were authorized to give fifty millions for New Orleans and the Floridas; so that we could, without, too, an extraordinary assumption of powers, go to the price they expected for Louisiana.

I have applied to M. Talleyrand on the subject of East Florida, thinking the moment favorable for making the acquisition. I have endeavored to alarm him and Spain about the danger that will result to Spain and France if England takes possession of the ports on the Gulf; and I have obtained from him a positive promise that this Government shall aid any negotiation that may be set on foot for its purchase. I have written on this subject to Mr. Pinckney, and advised him to open his negotiation by reiterating this argument, and by making some offer of payment in American stocks. I shall inform Mr. Monroe of these circumstances, and will forward for him any instructions he may choose to send to Mr. Pinckney. I am, &c.

ROBT. R. LIVINGSTON.

The Hon. JAMES MADISON,
Secretary of State.

Extract—James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE, *Jan.* 31, 1804.

SIR: The two last letters received from you bear date on the —— and 30th September; so that we have been now four months without hearing from you. The last from me to you was dated on the 16th day of January, giving you information of the transfer of Louisiana, on the 20th December, by the French Commissioner, M. Laussat, to Governor Claiborne and General Wilkinson, the Commissioners appointed on the part of the United States to receive it. The letters subsequent to that date from Governor Claiborne, who is charged with the present administration of the ceded territory, show that the occupancy by our troops of the military posts on the island of New Orleans, and on the western side of the Mississippi, was in progression; and that the state of things, in other respects, was such as was to be expected from the predisposition of the bulk of the inhabitants, and the manifest advantages to which they have become entitled as citizens of the United States. A bill providing for the government of the territory has been some time under the deliberation of the Senate, but has not yet passed to the other branch of the Legislature. The enclosed copy shows the form in which it was introduced. Some alterations have already been made, and others may be presumed. The precise form in which it will pass cannot, therefore, be foreknown; and the less so as the peculiarities and difficulties of the case give rise to more than the ordinary differences of opinion. It is pretty certain that the provisions generally contemplated will leave the people of that district, for a while, without the organization of power dictated by the republican theory; but it is evident that a sudden transition to a condition so much in contrast with that in which their ideas and habits have been formed, would be as unacceptable and as little beneficial to them as it would be difficult for the Government of the United States. It may fairly be expected that every blessing of liberty will be extended to them as fast as they shall be prepared and disposed to receive it. In the meantime, the mild spirit in which the powers derived from the Government of the United States will, under its superintendence, be administered, the parental interest which it takes in the happiness of those adopted into the general family, and a scrupulous regard to the tenor and spirit of the treaty of cession, promise a continuance of that satisfaction among the people of Louisiana which has thus far shown itself. These observations are made that you may be the better enabled to give to the French Government the explanations and assurances due to its solicitude in behalf of a people whose destiny it has committed to the justice, the honor, and the policy of the United States.

It does not appear that, in the delivery of the Province by the Spanish authorities to M. Laussat, anything passed denoting its limits, either to the east, the west, or the north; nor was any step taken by M. Laussat, either whilst the Province was in his hands, or at the time of his transferring it to ours, calculated to dispossess Spain of any part of the territory east of the Mississippi. On the contrary, in a private conference, he stated positively that no part of the Floridas was included in the eastern boundary; France having strenuously insisted to have it extended to the Mobile, which was peremptorily refused by Spain.

We learn, from Mr. Pinckney, that the Spanish Government holds the same language to him. To the declaration of M. Laussat, however, we can oppose that of the French Minister, made to you, that Louisiana extended to the river Perdido: and to the Spanish Government, as well as to that of France, we can oppose the Treaty of St. Ildefonso, and of September 30, 1803, interpreted by facts and fair inferences. The question with Spain will enter into the proceedings of Mr. Monroe, on his arrival at Madrid, whither he will be instructed to repair as soon as he shall have executed at London the instructions lately transmitted to him in relation to the impressment of seamen from American vessels, and several other points which call for just and stipulated arrangements between the two countries. As the question relates to the French Government, the President relies on your prudence and attention for availing yourself of the admission, by M. Marbois, that Louisiana extended to the river Perdido, and for keeping the weight of that Government in our scale against that of Spain. With respect to the western extent of Louisiana, M. Laussat held a language more satisfactory. He considered the Rio Bravo or Del Norte, as far as the 30th degree of north latitude, as its true boundary on that side. The northern boundary, we have reason to believe, was settled between France and Great Britain by Commissioners appointed under the Treaty of Utretcht, who separated the British and French territories west of the Lake of the Woods by the 49th degree of latitude. In support of our just claims in all these cases, it is proper that no time should be lost in collecting the best proofs which can be obtained. This important object has already been recommended generally to your attention. It is particularly desirable that you should procure an authenticated copy of the commercial charter granted by Louis XIV. to Crozat, in 1712, which gives an outline to Louisiana favorable to our claims, at the same time that it is an evidence of the highest and most unexceptionable authority. A copy of this charter is annexed to the English translation of Joutel's Journal of La Salle's voyage, the French original not containing it. A record of the charter doubtless exists in the archives of the French Government; and it may be expected that an attested copy will not be refused to you. It is not improbable that the charter, or other documents relating to the Mississippi project, a few years after, may afford some light, and be attainable from the same source. The proceedings of the Commissioners under the Treaty of Utrecht will merit particular research, as they promise not only a favorable northern boundary, but as they will decide an important question involved in a convention of limits now depending betwen the United States and Great Britain. To these may be added whatever other documents may occur to your recollection or research, including maps, &c. If the secret treaty of Paris, in 1762–'3, between France and Spain, and an entire copy of that of St. Ildefonso, in 1800, can be obtained, they may also be useful. An authentication of the precise date, at least, of the former is very important. You will be sensible of the propriety of putting Mr. Monroe in possession of all the proofs and information which you may obtain. Should he take Paris in his way to Madrid, you will have the best of opportunities for the purpose.

In my letter of the 9th of November last I communicated the ideas entertained by the President, with respect to the pecuniary provision in the last convention with France in behalf of our citizens. It is presumed that you will have found no difficulty in obtaining the concurrence of the French Government in suspending drafts in favor of any until the claims of all shall have been ascertained. Should the sum of three million seven hundred and fifty thousand dollars be insufficient for the payment of all, as becomes daily more probable, the least that ought to be attempted will be an apportionment of it among them. Perhaps more than this may now be attended with great difficulty; although it is clear that the patronage of the Government of the United States is due, on prior considerations, more to some classes of the claimants than to others; to those, for example, whose property was wrongfully taken on the high seas by force, than to those who, by voluntary contracts, placed a confidence in the French Government, which was disappointed. It seems requisite, nevertheless, that some effort should be made in behalf of those whose claims were embraced by the convention of September 30th, 1800, and not provided for by that of April 30th, 1803.

With this view, the President thinks it proper that you should adjust with the French Government a provision for comprehending in the convention of 1803 the claims still remaining under the convention of 1800; and for apportioning the money payable at the Treasury of the United States among the claimants under both; as the object next to be pursued, a provision for apportioning among the whole, the money so payable, and also the balance chargeable on France, according to the tenor of the last convention. Or, as the object next in order, a provision for apportioning, among the whole, the money payable at the Treasury of the United States, leaving to the claimants under the last convention the balance from France to which it entitles them; or, lastly, a provison for apportioning among the claimants under the last convention the money so payable, instead of paying it in the order of settlement, or according to any other rule of preference.

The first arrangement takes for granted that France considers herself bound, notwithstanding the last convention, to satisfy all the claims provided for by the first convention, permitted by the last. The supposition is founded on several expressions and implications of its text, as the head of the fifth article, "all agreements," &c., and particularly in the closing words of article tenth; and with respect to debts, the provision is express in article twelve. This construction is the more reasonable also, inasmuch as the reciprocal stipulation of the convention of 1800, in this particular, were carried into immediate and full effect on the part of the United States; and as a contrary construction would imply the relinquishment, without equivalent, of vested rights never formally contested by France.

Should France, however, be unlikely to admit her responsibility for the pretermitted claims, and there be danger that, by urging her responsibility at this time, an equitable modification of any sort may be rendered more difficult, it will be best to pass over the question for the present, taking care that no waiver be made which may either still further weaken the claims against France, or give color for turning them over against the United States.

Neither of the succeeding alternatives will increase the balance payable by France, nor is it contemplated that in these or any other modifications whatever, the Treasury of the United States is to be made chargeable with more than three million seven hundred and fifty thousand dollars; or rather, with more than so much of that sum as would satisfy the debts to which it is subjected by the last convention.

The object of each of the proposed modifications is to distribute whatever is to be paid by the United States and by France among all the claimants, as well those omitted as those included in the last convention; and in such a manner that every claimant of both descriptions shall receive a fair proportion from the Treasury of the Unit-

ed States, as well of the balance to be paid by France.

The claimants who were provided for in the last convention cannot justly complain of any arrangement that will replace on the same footing with themselves their fellow-claimants left by the last, under the first convention, as being a retrospective measure working a disadvantage to them. The retrospective proceeding will be found to lie in the last convention, so far as it is disadvantageous in its operation, to those claiming under the first only. An act superseding a retrospective act is not itself retrospective. The effect of it is to restore and enforce the original rule of justice.

Should the French Government refuse to concur in any proposition that will restore the latitude given to claims as defined by the first convention, and which is narrowed and obscured by the text of the last, it will be proper to settle with the Government, if it can be done, such a construction of this text as will be most favorable to all just claims, particularly those for freights, indemnities, property put in requisition, and the separate property of individuals who are concerned in the disqualifying partnerships mentioned in the convention, which are said to be threatened with rejection by the Board at Paris. It is to be kept in view, however, that in case the whole sum of three million seven hundred and fifty thousand dollars should not be absorbed by the construction of the board, the construction settled with the French Government is not to enlarge the sum to be paid by the Treasury of the United States beyond that to which the Treasury would be made liable by the construction of the board.

It will occur to you that, in case the field of claims should be enlarged, the time for presenting and settling them ought to be lengthened. You can yourself best decide how far a prolongation of the time necessary for the claims now admissible before the board may be necessary, and ought to be attempted.

There is reason to believe that not a few of this description are yet to be forwarded from this side the Atlantic. I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

James Madison, Secretary of State, to Robert R. Livingston, Minister to France.

DEPARTMENT OF STATE,
March 31, 1804.

SIR: Since my acknowledgment of yours of October 20 and 31, I have received those of 2d, 15th, and 23d, November, and 11th December.

In mine of January 31, I informed you that Louisiana had been transferred by the French Commissioner to our Commissioners on the 20th of December; that nothing had officially passed on the occasion concerning the boundaries of the ceded territory; but that M. Laussat had confidentially signified that it did not comprehend any part of West Florida; adding, at the same time, that it extended westwardly to the Rio Bravo, otherwise called Rio del Norte. Orders were accordingly obtained from the Spanish authority for the delivery of all the posts on the west side of the Mississippi, as well as on the island of New Orleans. With respect to the posts in West Florida, orders for the delivery were neither offered to, nor demanded, by our Commissioners. No instructions have, in fact, been ever given them to make the demand. This silence on the part of the Executive was deemed eligible; first, because it was foreseen that the demand would not only be rejected by the Spanish authority at New Orleans, which had, in an official publication, limited the cession westwardly by the Mississippi and the island of New Orleans, but it was apprehended, as has turned out, that the French Commissioner might not be ready to support the demand, and might even be disposed to second the Spanish opposition to it; secondly, because, in the latter of these cases, a serious check would be given to our title; and, in either of them, a premature dilemma would result between an overt submission to the refusal, and a resort to force; thirdly, because mere silence would be no bar to a plea at any time that a delivery of a part, particularly of the seat of Government, was a virtual delivery of the whole; whilst, in the meantime, we could ascertain the views, and claim the interposition of the French Government, and avail ourselves of that and any other favorable circumstances for effecting an amicable adjustment of the question with the Government of Spain. In this state of things, it was deemed proper by Congress, in making the regulations necessary for the collection of revenue in the ceded territory, and guarding against the new danger of smuggling into the United States, through the channels opened by it, to include a provision for the case of West Florida, by vesting in the President a power which his discretion might accommodate to events. This provision is contained in the eleventh, taken in connexion with the fourth section of the act herewith enclosed. The act had been many weeks depending in Congress, with these sections, word for word, in it; the bill had been printed as soon as reported by the committee, for the use of the members, and as two copies are, by a usage of politeness, always allotted for each foreign Minister here, it must in all probability have been known to the Marquis d'Yrujo in an early stage of its progress. If it was not, it marks much less of that zealous vigilance over the concerns of his Sovereign than he now makes the plea for his intemperate conduct. For some days even after the act was published in the gazette of this city, he was silent. At length, however, he called at the Office of State, with the gazette in his hand, and entered into a very angry comment on the eleventh section, which was answered by remarks (some of which it would seem from his written allusion to them were not well understood) calculated to assuage his dissatisfaction with the law, as far as was consistent with a candid declaration to him that we considered all of West Florida, westward of the Perdido, as clearly ours by the treaty of April 30, 1803, and that of St. Ildefonso. The conversation ended, as might be inferred from his letters

which followed it on the 7th and 17th instant, of which copies are herewith enclosed, as are also copies of my answer of ——, and of his reply of ——. You will see by this correspondence the footing on which a rudeness, which no Government can tolerate, has placed him with this Government, and the view of it which must be unavoidably conveyed to our Minister at Madrid. It may be of some importance, also, that it be not misconceived where you are. But the correspondence is chiefly of importance as it suggests the earnestness with which Spain is likely to contest our construction of the treaties of cession, and the Spanish reasoning which will be employed against it; and, consequently, as it urges the expediency of cultivating the disposition of the French Government to take our side of the question. To this she is bound no less by sound policy than by regard to right.

She is bound by the former, because the interest she has in our friendship interests her in the friendship between us and Spain, which cannot be maintained with full effect, if at all, without removing the sources of collision lurking under a neighborhood marked by such circumstances; and which, considering the relation between France and Spain, cannot be interrupted without endangering the friendly relations between the United States and France. A transfer from Spain to the United States of the territory claimed by the latter, or rather of the whole of both the Floridas, on reasonable conditions, is, in fact, nothing more than a sequel and completion of the policy which led France into her own treaty of cession; and her discernment and her consistency are both pledges that she will view the subject in this light. Another pledge lies in the manifest interest which France has in the peaceable transfer of these Spanish possessions to the United States, as the only effectual security against their falling into the hands of Great Britain. Such an event would be certain in case of a rupture between Great Britain and Spain, and would be particularly disagreeable to France, whether Great Britain should retain the acquisition for the sake of the important harbors and other advantages belonging to it, or should make it the basis of some transaction with the United States, which, notwithstanding the good faith and fairness towards France, (which would doubtless be observed on our part,) might involve conditions too desirable to her enemy not to be disagreeable to herself. It even deserves consideration that the use which Great Britain could make of the territory in question, and the facility in seizing it, may become a casting motive with her to force Spain into war, contrary to the wishes and the policy of France.

The territory ceded to the United States is described in the words following: "The colony or province of Louisiana, with the same extent that it now has in the hands of Spain, that it had when France possessed it, and such as it ought to be, according to the treaties subsequently passed between Spain and other States."

In expounding this three-fold description, the different forms used must be so understood as to give a meaning to each description, and to make the meaning of each coincide with the others.

The first form of description is a reference to the extent which Louisiana now has in the hands of Spain. What is that extent, as determined by its eastern limits? It is not denied that the Perdido was once the eastern limit of Louisiana. It is not denied that the territory now possessed by Spain extends to the river Perdido. The river Perdido, we say, then, is the limit to the eastern extent of Louisiana ceded to the United States.

This construction gives an obvious and pertinent meaning to the term "now," and to the expression "in the hands of Spain," which can be found in no other construction. For a considerable time previous to the Treaty of Peace in 1783, between Great Britain and Spain, Louisiana, as in the hands of Spain, was limited eastwardly by the Mississippi, the Iberville, &c. The term "now" fixes the extent, as enlarged by that treaty, in contradistinction to the more limited extent in which Spain held it prior to that treaty. Again: the expression "in the hands or in the possession of Spain," fixes the same extent; because, the expression cannot relate to the extent which Spain, by her internal regulations, may have given to a particular district under the name of Louisiana, but evidently to the extent in which it was known to other nations, particularly to the nation in treaty with her, and in which it was relatively to other nations in her hands, and not in the hands of any other nation. It would be absurd to consider the expression "in the hands of Spain," as relating not to others, but to herself and her own regulations; for the territory of Louisiana in her hands must be equally so, and be the same, whether formed into one or twenty districts, or by whatever name or names it may be called by herself.

What may now be the extent of a provincial district under the name of Louisiana, according to the municipal arrangements of the Spanish Government, is not perfectly known. It is at least questionable, even whether these arrangements have not incorporated the portion of Louisiana acquired from Great Britain with the western portion before belonging to Spain, under the same provincial Government. But, whether such be the fact or not, the construction of the treaty will be the same.

The next form of description refers to the extent which Louisiana had when possessed by France. What is this extent? It will be admitted, that for the whole period prior to the division of Louisiana between Spain and Great Britain in 1762-3, or at least from the adjustment of boundary between France and Spain in 1719, to that event, Louisiana extended, in the possession of France, to the river Perdido. Had the meaning, then, of the first description been less determinate, and had France been in possession of Louisiana at any time with less extent than to the Perdido, a reference to this primitive and long continued extent would be more natural and probable than to any other. But it happens that France never possessed Louisiana with less extent than to the Perdido;

because, on the same day that she ceded a part to Spain, the residue was ceded to Great Britain; and, consequently, as long as she possessed Louisiana at all, she possessed it entire, that is, in its extent to the Perdido. It is true, that after the cession of Western Louisiana to Spain in the year 1762-3, the actual delivery of the territory by France was delayed for several years: but it can never be supposed, that a reference could be intended to this short period of delay, during which France held that portion in the right of Spain only, not in her own right, when, in other words, she held it as the trustee of Spain; and, that a reference to such a possession for such a period should be intended, rather than a reference to the long possession of the whole territory in her own acknowledged right, prior to that period.

In the order of the French King in 1764, to Monsieur d'Abbadie, for the delivery of Western Louisiana to Spain, it is stated that the cession by France was on the 3d of November, and the acceptance by Spain, on the 13th of that month, leaving an interval of ten days. An anxiety to find a period, during which Louisiana, as limited by the Mississippi and the Iberville, as held by France in her own right, may possibly lead the Spanish Government to seize the pretext into which this momentary interval may be converted. But it will be a mere pretext. In the first place, it is probable that the treaty of cession to Spain, which is dated on the same day with that to Great Britain, was, like the latter, a preliminary treaty, consummated and confirmed by a definitive treaty bearing the same date with the definitive treaty, including the cession to Great Britain; in which case, the time and effect of each cession would be the same, whether recurrence be had to the date of the preliminary or definitive treaties. In the next place, the cession by France to Spain was essentially made on the 3d of November, 1762, on which day, the same with that of the cession to Great Britain, the right passed away from France. The acceptance by Spain, ten days after, if necessary at all to perfect the deed, had relation to the date of the cession by France, and must have the same effect, and no other, as if Spain had signed the deed on the same day with France. This explanation, which rests on the soundest principles, nullifies the interval of ten days, so as to make the cession to Great Britain and Spain simultaneous, on the supposition that recurrence be had to the preliminary treaty, and not to the definitive treaty; and, consequently, establishes the fact that France, at no time, possessed Louisiana with less extent than to the Perdido; the alienation and partition of the territory admitting no distinction of time. In the last place, conceding even that during an interval of ten days the right of Spain was incomplete, and was in transitu only from France; or in another form of expression, that the right remained in France, subject to the eventual acceptance of Spain, is it possible to believe that a description, which must be presumed to aim at clearness and certainty, should refer for its purposes to so fugitive and equivocal state of things, in preference to a state of things where the right and the possession of France were of long continuance, and susceptible of neither doubt nor controversy? It is impossible. And, consequently, the only possible construction which can be put on the second form of description coincides with the only rational construction that can be put on the first: making Louisiana of the same extent, that is to the river Perdido, both "as in the hands of Spain" and "as France possessed it."

The third and last description of Louisiana is in these words: "Such as it ought to be, according to the treaties subsequently passed between Spain and other States."

This description may be considered as auxiliary to the two others, and is conclusive as an argument for comprehending within the cession of Spain territory eastward of the Mississippi and the Iberville, and for extending the cession to the river Perdido.

The only treaties between Spain and other nations that affect the extent of Louisiana, as being subsequent to the possession of it by France, are, first, the treaty of 1783 between Spain and Great Britain; and, secondly, the treaty of 1795 between Spain and the United States.

The last of these treaties affects the extent of Louisiana, as in the hands of Spain, by defining the northern boundary of that part of it which lies east of the Mississippi and the Iberville; and the first affects the extent of Louisiana, by including in the cession from Great Britain to Spain the territory between that river and the Perdido; and by giving to Louisiana, in consequence of that reunion of the eastern and western part, the same extent eastwardly in the hands of Spain as it had when France possessed it. Louisiana, then, as it ought to be, according to treaties of Spain subsequently to the possession by France, is limited by the line of demarcation settled with the United States, and forming a northern boundary, and is extended to the river Perdido as its eastern boundary.

This is not only the plain and necessary construction of the words, but is the only construction that can give a meaning to them. For they are without meaning, on the supposition that Louisiana, as in the hands of Spain, is limited by the Mississippi and the Iberville, since neither the one nor the other of those treaties have any relation to Louisiana that can affect its extent, but through their relation to the limits of that part of it which lies eastward of the Mississippi and the Iberville. Including this part, therefore, as we contend, within the extent of Louisiana, and a meaning is given to both as pertinent as it is important. Exclude this part, as Spain contends, from Louisiana, and no treaties exist to which the reference is applicable.

This deduction cannot be evaded by pretending that the reference to subsequent treaties of Spain was meant to save the right of deposit, and other rights stipulated to the commerce of the United States by the treaty of 1795; first, because, although that may be an incidental object of the reference to that treaty, as was signified by His Catholic Majesty to the Government of the United States,

yet the principal object of the reference is evidently the territorial *extent* of Louisiana; secondly, because the reference is to more than one treaty—to the treaty of 1783, as well as to that of 1795; and the treaty 1783 can have no modifying effect whatever, rendering it applicable, but on the supposition that Louisiana was considered as extending eastward of the Mississippi and the Iberville, into the territory ceded by that treaty to Spain.

In fine, the construction which we maintain gives to every part of the description of the territory ceded to the United States a meaning clear in itself, and in harmony with every other part, and is no less conformable to facts than it is founded on the ordinary use and analogy of the expressions. The construction urged by Spain gives, on the contrary, a meaning to the first description which is inconsistent with the very terms of it; it prefers, in the second, a meaning that is impossible or absurd; and it takes from the last all meaning whatever.

In confirmation of the meaning which extends Louisiana to the river Perdido, it may be regarded as most consistent with the object of the First Consul in the cession obtained by him from Spain. Every appearance, and every circumstance, pronounces this to have been to give lustre to his Administration, and to gratify a natural pride in his nation, by re-annexing to its domain possessions which had, without any sufficient considerations, been severed from it; and which, being in the hands of Spain, it was in the power of Spain to restore. Spain, on the other side, might be the less reluctant against the cession in this extent, as she would be only replaced by it within the original limits of her possessions; the territory east of the Perdido having been regained by her from Great Britain in the peace of 1783, and not included in the late cession.

It only remains to take notice of the argument derived from a criticism on the term "retrocede," by which the cession from Spain to France is expressed. The literal meaning of this term is said to be that Spain gives back to France what she received from France; and that as she received from France no more than the Territory west of the Mississippi and the Iberville, that, and no more, could be given back by Spain.

Without denying that such a meaning, if uncontrolled by other terms, would have been properly expressed by the term "retrocede," it is sufficient, and more than sufficient, to observe, first, that with respect to France, the literal meaning is satisfied; France receiving back what she had before alienated; secondly, that with respect to Spain, not only the greater part of Louisiana had been confessedly received by her from France, and, consequently, was literally ceded back by Spain, as well as ceded back to France; but, with respect to the part in question, Spain might not unfairly be considered as ceding back to France what France had ceded to her; inasmuch as the cession of it to Great Britain was made for the benefit of Spain, to whom, on that account, Cuba was restored. The effect was precisely the same as if France had, in form, made the cession to Spain, and Spain had assigned it over to Great Britain; and the cession may the more aptly be considered as passing through Spain, as Spain herself was a party to the treaty by which it was conveyed to Great Britain. In this point of view, not only France received back what she had ceded, but Spain ceded back what she had received, and the etymology even of the term "retrocede" is satisfied. This view of the case is the more substantially just, as the territory in question passed from France to Great Britain, for the account of Spain, but passed from Great Britain into the hands of Spain in 1783, in consequence of a war to which Spain had contributed but little compared with France, and in terminating which so favorably in this article for Spain, France had doubtless a preponderating influence. Thirdly, that if a course of proceeding might have existed to which the term "retrocede" would be more literally applicable, it may be equally said that there is no other particular term which would be more applicable to the whole proceeding, as it did exist. Fourthly, Lastly, that if this were not the case, a nice criticism on the etymology of a single term can be allowed no weight against a conclusion drawn from the clear meaning of every other term, and from the whole context.

In aid of these observations, I enclose herewith two papers, which have been drawn up with a view to trace and support our title to Louisiana in its extent to the Perdido. You will find in them, also, the grounds on which its western extent is maintainable against Spain, and its northern in relation to Great Britain.

On the whole, we reckon with much confidence on the obligations and dispositions of the French Government, to favor our object with Spain, and on your prudent exertions to strengthen our hold on both; not only in reference to the true construction of the treaty, but to our acquisition of the Spanish territory eastward of the Perdido, on convenient and equitable conditions.

You wll find herewith enclosed copies of another correspondence, sufficiently explaining itself, with the Marquis d'Yrujo, on the commerce from our ports to St. Domingo; to which is added a letter on that subject from M. Pichon. The ideas of the President, as well to the part which the true interest of France recommends to her, as to the part prescribed both to her and to the United States by the law of nations, were communicated in my letter of the 31st of January last. It is much to be desired that the French Government may enter into proper views on this subject.

With respect to the trade in articles not for war, there cannot be a doubt that the interest of France concurs with that of the United States. With respect to articles for war, it is, probably, the interest of all nations that they should be kept out of hands likely to make so bad a use of them. It is clear, at the same time, that the United States are bound by the law of nations to nothing further than to leave their offending citizens to the consequences of an illicit trade; and it deserves serious consideration, how far their undertaking,

at the instance of one Power, to enforce the law of nations, by prohibitory regulations to which they are bound, may become an embarrassing precedent, and stimulate pretensions and complaints of other Powers. The French Government must be sensible, also, that prohibitions by one nation would have little effect, if others, including Great Britain, should not follow the example. It may be added, that the most which the United States could do in the case, short of prohibiting the export of contraband articles altogether, a measure doubtless beyond the expectations of France, would be to annex to the shipment of these articles a condition, that they should be delivered elsewhere than in St. Domingo, and that a regulation of this kind would readily be frustrated by a reshipment of the articles after delivery elsewhere, in the same or other vessels, in order to accomplish the forbidden destination. If, indeed, the prohibitory regulations, on the part of the United States, were the result of a stipulation, and recommended by an equivalent concession, the objection to it as an inconvenient precedent would be avoided. If, for example, France would agree to permit the trade with St. Domingo in all other articles, on condition that we would agree to prohibit contraband articles, no objection of that sort would lie against the arrangement; and the arrangement would, in itself, be so reasonable, on both sides, and so favorable, even to the people of St. Domingo, that the President authorizes you not only to make it, if you find it not improper, the subject of a frank conference with the French Government, but to put it into the form of a conventional regulation; or, should this be objectionable, the object may be attained, perhaps, by a tacit understanding between the two Governments, which may lead to the regulations on each side respectively necessary. Although a legal regulation, on our part, cannot be absolutely promised, otherwise than by a positive and mutual stipulation, yet, with a candid explanation of this constitutional circumstance, there can be little risk in inspiring the requisite confidence that the legislative authority here would interpose its sanction.

It is the more important that something should be done in ths case, and done soon, as the pretext, founded upon the supposed illegality of any trade whatever with the negroes in St. Domingo, is multiplying depredations on our commerce, not only with that island, but with the West Indies generally, to a degree highly irritating, and which is laying the foundation for the extensive claims and complaints on our part. You will not fail to state this fact to the French Government in its just importance; as an agreement for some such arrangement as is above suggested, or if that be disliked, as requiring such other interposition of that Government as will put an end to the evil.

It is represented that a part of the depredations are committed by French armed vessels without commissions, or with commissions from incompetent authorities. It appears, also, that these lawless proceedings are connected with Spanish ports and subjects, probably Spanish officers, also, in the West Indies, particularly in the island of Cuba. So far as the responsibility of Spain may be involved, we shall not lose sight of it. An appeal, at the same time, to that of France, is as pressing as it is just; and you will please to make it in the manner best calculated to make it effectual.

In one of your letters you apprehended that the interest accruing from the delay of the Commissioners at Paris may be disallowed by the French Government, and wish for instructions on the subject. I am glad to find, by later communications from Mr. Skipwith, that the apparent discontent at the delay had subsided. But whatever solicitude that Government might feel for despatch in liquidating the claims, it would be a palpable wrong to make a disappointment in that particular a pretext for refusing any stipulated part of the claims. In a legal point of view, the treaty could not be in force until mutually ratified; and every preparatory step taken for carrying it into effect, however apposite or useful, must be connected with legal questions arising under the treaty.

In other parts of your correspondence, you seem to have inferred, from some passage in mine, that I thought the ten millions of livres in cash, over which a discretion was given, ought to have been paid rather to France than to our creditor citizens. If the inference be just, my expressions must have been the more unfortunate as they so little accord with the original plan, communicated in the instructions to yourself and Mr. Monroe; the more unfortunate still, as they not only decide a question wrong, but a question which could never occur. The cash fund of ten millions was provided on the supposition, that, in a critical moment, and in a balance of considerations, the immediate payment of that sum, as a part of the bargain, might either tempt the French Government to enter into it, or to reduce the terms of it. If wanted for either of these purposes, it was to be paid to the French Government; if not wanted for either, it was made applicable to no other. The provision contemplated for the creditors had no reference to the fund of ten millions of livres; nor was it even contemplated that any other cash fund would be made applicable to their claims. It was supposed not unreasonable, that the ease of our Treasury and the chance and means of purchasing the territory remaining to Spain eastward of the Mississippi, might be so far justly consulted as to put the indemnification of the claims against France on a like footing with that on which the indemnification of like claims against Great Britain had been put. And it was inferred, that such a modification of the payments would not only have fully satisfied the expectations of the creditors, but would have encountered no objections on the part of the French Government, who had no interest in the question, and who were precluded by all that had passed from urging objections of any other sort.

Congress adjourned on Tuesday, the 27th of March to the first Monday in November next. Copies of their laws will be forwarded to you as soon as they issue from the press. For the present, I enclose herewith a list of all their acts, and copies of a few of them, particularly of the acts providing for the Government of Louisiana, and for the war in the Mediterranean. The former, it is hoped, will satisfy the French Government of the prudent and faithful regard of the Government of the United States to the interest and happiness of the people transferred into the American family. I have the honor to be, &c.

JAMES MADISON.

ROBERT R. LIVINGSTON, Esq.

The following is one of the memoirs, or essays, referred to in the preceding letter from Mr. Livingston to the President, dated March 12, and in Mr. Madison's letter to Mr. Livingston of May 25, 1803.

Thoughts on the relative situation of France, Britain, and America, as commercial and maritime nations.

The power of France having reached a height that leaves her nothing to wish or to fear from the continental sovereignties of Europe, she might be considered as invulnerable if she could either divide the empire of the sea, or place it in so many hands as to command, by her influence, or the advantages of her commerce, such a portion of it as would, with her own maritime exertion, reduce her rival to terms of equality.

It is certain that, for the last century, she has not been able to effect this; although she has generally had the aid of Spain, and sometimes that of Holland. Spain and Holland are diminishing in naval importance. Holland, by the shallowness of her harbors, which do not, without great difficulty, admit ships of the great size which are every day found more necessary in battle; by the ruin of her colonies; by the cession of the island of Ceylon; by the derangement of the affairs of her commercial companies; and, above all, by the great comparative advantages enjoyed by Britain in the East Indies: add to these circumstances the loss of seamen which she has sustained by the war, and the disaffection which has led many of them into foreign service, together with the accumulated debt of the nation, and it will appear that little aid can be expected from her in case of a maritime war. It must, at least, be doubtful, if she quits that system of neutrality so congenial to her own situation, whether she will take part with Britain or France. The neighborhood and force of France must, indeed, make her tremble for her possessions in Europe; but still she may find resources against them in the aid of the neighboring nations. But where is she to look for support against the power of Britain, who, in the very commencement of a war, will strip her of every foreign possession, and cut off all her resources?

Spain is much in the same situation; her wealth and credit depend upon her colonies. One of the most valuable of these (part of Hispaniola) has been ceded to France; and the possession of Trinidad, which the great capital of England will soon render very important, will afford her such a point of support, in America, as must render the situation of the remaining islands very precarious, and always keep Spain in pain for her colonies; this will lead her to seek for safety, as far as possible, in neutrality. But, at all events, the maritime power of Spain must diminish by the circumstances I have mentioned, and by the illicit trade which the possession of the Mosquito shore, the bay of Honduras, and the island of Trinidad, will enable the British to carry on in spite of the vigilance of Spain—a vigilance, too, which will be, in some sort, relaxed from the apprehension of provoking a war by too much rigor.

The naval power of Britain has, on the other hand, acquired an immense accession, during the last war, by that maritime superiority which gave protection to her commerce in every part of the world; by her conquests in the East Indies; and by the cession of Trinidad. But, besides the extent of her colonies; she has, in her peculiar position, an advantage unattainable by France. The fuel for all the great cities of England and Scotland is coal. Not less than three thousand and six hundred ships enter the port of London yearly, charged with this article alone. This, together with similar exports to other cities, and the situation of the capitals of England and Ireland, is a great nursery for seamen, which France wants; and makes a coasting trade, which is more than four-fold of all the coasting trade of France taken together, and is not less than the whole colonial trade of Britain, including the East Indies. It also has this peculiar advantage, that, in time of war, all the seamen employed in this commerce may be engaged in the navy with very little inconvenience, only by permitting (which is not done in peace) the coal to be brought to London by inland navigation.

It becomes, then, a serious question with France, how she is to counterbalance the advantages enjoyed by her rival? Shall she establish foreign colonies?

Unless she has a naval force capable of protecting them, these colonies must soon change their masters; and the whole expense employed in their support redound to the benefit of her rival But admit that they could be secured by land forces. How trifling will all the seamen afforded by the commerce of those colonies be, compared to the number produced by the colonies of Britain in the East and West Indies, America, Africa, and the Southern Ocean. But supposing them equal, still the seamen Britain derives from her coasting trade alone more than equal those drawn from all these sources.

Will France create a marine by becoming the carrier of other nations? This is impossible. Except Britain, there is no nation in Europe which cannot navigate their ships as cheap as France. The materials for ship building, and more especially naval stores and provisions, are dearer in France than in the Northern States, and labor is equally high.

Will she be her own carrier? If she will it must be by restrictions on the trade of other nations, who will certainly not submit to them without imposing similar restrictions on France. Sup-

pose, for instance, she has said) that tobacco should say (as indeed she brought to France in foreign vessels shall pay an extra duty. How easy will it be for the country which grows tobacco to say that that article, exported in a French ship, shall pay a similar duty? And what will be the end of this commercial warfare, but that every nation shall carry its own produce, and let their ships return home empty, if the partial duties are high? Thus, if France imposes a high duty on tobacco, and America a high duty on wines and other articles of France in foreign bottoms, the tobacco must be brought in French ships, and charged with a double expense of freight, because they can carry out no cargo to pay the expense and insurance of the ships on their outward-bound voyage. Of course, this expense must fall on the consumer of tobacco; and for what? Why, in order that ten French seamen may be employed rather than ten foreigners. A ship of three hundred tons must make, in order to clear herself, seventy thousand francs a year. The whole of this, with insurance out and home, must be charged on the tobacco imported, in the case I mention; whereas only the one-half would be paid if she could take out a cargo. Thus, then, the consumer of tobacco in France, pays, annually, to the maintenance of ten seamen, thirty-five thousand francs, or three thousand five hundred for every seaman; and this, too, without being of the smallest advantage to that class of the people whose wages are not thereby at all increased. This is purchasing sailors at such a rate as I believe no nation in the world would ever long submit to. But should the same reasoning be applied to the manufactures and wines of France, and she, by attempting to be her own carrier, charge them with a double freight, it must necessarily follow that, with respect to every article which other nations can supply, she would soon lose the carriage by losing the sale; for if a foreign ship can carry out a cargo to Lisbon, and take back one from thence, charged with no extra duty, the wine and oil of Lisbon will be preferred, though of inferior quality, to those of France. Thus, whatever she gives to her seamen by discouraging a free trade, she takes from her agriculture and manufactures: and yet her agriculture and manufactures can alone form the basis of her commerce. In time of war, unless this operation can really create a naval power, sufficient to protect her commerce, (of which there is not the smallest prospect,) foreigners having been driven from her ports by this operation, she must cease to trade altogether. Thus, the sources of her wealth will be cut off at the moment she most needs them.

What, then, is to be done? Is France to abandon her colonies as weak points in her system, which she cannot maintain? Is she to suffer a tyrranny to be established upon the ocean, which shall forever hold her in check? Is she to allow such an accumulation of wealth as will forever enable her rival to interfere in the affairs of the Continent and provoke new combinations against her? I answer these questions by returning to my first position.

She must place the empire of the sea in more hands, without attempting to grasp it alone. She must make it the interest of those who aid her in the attainment of a considerable portion of it to maintain her superiority. Spain and Holland are not to be neglected; though, as I have stated, they will, in the situation in which their colonies are now placed, incline to neutrality; and if otherwise, their aid would be insufficient during a war. The United States have physical advantages which, like those of Britain, must necessarily lead them to be a considerable maritime nation. The mass of their population lies upon the ocean, and upon large rivers that are navigable for sea vessels to the interior of the country, which is generally rough and hilly between the rivers. Hence it happens that there is little land carriage in America. If merchandises are to be transported from one State to another, it is by water; and that not solely by rivers or canals, but by descending one river, passing out into the ocean, and ascending another. This circumstance, together with the variance between the productions of the Southern and Northern States, which promotes much intercourse, must give to them a nursery of seamen in their coasting trade, equal to that which Britain enjoys in her coal trade: to which a growing coal trade, from mines found in the banks of the James river, and in other places, will be added, when wood diminishes, or when the policy of the country shall charge the importation of British coal with heavier duties. Our large cities consume, even now, very considerable quantities of this article. The advantage also that the United States enjoy in the cheapness of the articles for building, and, above all, for victualling their ships, more than counterbalances the high price given to their seamen. Their situation relative to the cod and whale fisheries also calls numbers to a maritime life.

The islands, to whomsoever they may belong, from the various incidents to which they are liable, and the difficulty of supplying them from Europe, must receive their provision and timber from the United States; and, if they choose, they can compel them to receive only in American bottoms. Were the Powers of Europe, therefore, to lay the severest restrictions on her commerce, the United States would still be a very important commercial nation.

But who is interested in preventing their rapid rise to the height to which their position and their destinies lead them? No nation upon earth; unless Britain should one day fear them more as rivals than she will value them as customers. While they confine themselves to the production of raw materials, they must prove the best market for such nations as can afford them manufactures, wine, oil, and fruit, in return. Weak, indeed, would that nation be who should treat them with neglect, or drive them, by ill-judged laws, from their harbors. Britain is so sensible of this, that she has never attempted to prevent, by partial duties, the American vessels from carrying their own produce to them, or their fabrics back in return. She well knows that every such measure

would have a tendency to drive them from her harbors, to which she so much wishes to invite them, that she even grants them a right, by treaty, to enter all her ports in the East Indies.

While Britain refuses to naturalize American ships she never will be able to navigate (because she cannot build, fit, or victual) her ships so cheap as those of America. It must follow, therefore, that the trade of Britain to and from the United States will be chiefly carried on by American ships; and, as her articles are very bulky, a great number will be employed. There exists, indeed, at this moment a circumstance which will give them considerable advantages, unless France should instantly step in and prevent its operation.

The advanced price of living in Britain, owing to the debt contracted by the war, has naturally raised the price of labor; while the peace, which gives more activity to her commerce, will make this operate upon seamen's wages, and thus give some check to her carrying trade. On the other hand, this diminution of the trade of the United States will throw at least twenty-five thousand seamen out of employ. These will, from their habits and manners, naturally pass into the service of Britain, and thus enable her to keep down wages and maintain her advantages.

It is obvious that it is much the interest of France to prevent this; and more particularly when it is considered that all these men are skillful mariners, and many of them experienced fishermen; who may transplant the whale fishery to Britain, and thus add a new source to her naval power. The efforts of France to establish a fishery will be of little avail against this; nor will it ever be found practicable to render this a flourishing branch of business, except by the aid of American fishermen; and even then by a charge upon a material useful in their manufactures more than equivalent to the value of the fishery.

I shall be asked how long it will take to make the United States a naval Power equal to Great Britain? I answer, that a country which possesses timber, naval stores, provisions, and men accustomed, by an active commerce, to a sea life; a country whose credit is unblemished, and who has no debt but what she can instantly discharge; is certainly so far equal as her numbers are equal to one who has no advantages over her in any of these circumstances, and is inferior in others. It will be allowed, too, that, according to every rational probability, their numbers will be equal to those of the British isles in twenty years, and their wealth not inferior. But it is by no means necessary to carry the navy of America to the extent of that of Britain, in order to render her a useful ally, or a respectable enemy. The trade of Britain with her islands, and the Indies, must approach the coast of America. Her privateers could, even without protection from a navy, destroy a great proportion of this. With a navy of thirty ships-of-the-line, and a proportionate number of frigates, which need never be more than one week's sail from their own shores, such protection would be given to smaller vessels as would enable them to capture a great part of their trade, unless protected by large fleets. For this purpose one-half of the British navy must be kept at a vast expense, at a great distance from home, and in an unhealthy climate; while all the expenditures of the American navy would be made in their own ports. It will certainly admit of little doubt, that a nation who has no frontier to defend, who has six hundred thousand armed men at home, and who has no debts, need only will it to have a fleet of the size I mention. And it is very certain that such a fleet by acting always together, would compel any European nation greatly to weaken her naval force in her own seas. No convoy could be less than the whole of the American fleet; nor could a smaller force be left in the islands; so that thirty ships in America, would demand for convoys, out and in, and the stations in the islands, not less than ninety ships of equal force. What power could Britain oppose to this force, combined with an equal number of French ships, with the advantage of all the harbors of the United States? What refuge would she have, against storms and accidental separation when on the coast of America? And how, under these disadvantages, would she maintain her superiority in Europe? I infer, from this reasoning, that it is the true interest of France to promote the commerce and maritime force of America; and, at the same time, to interest her in the extension of the commerce of France? I do not mean to say that this force will always operate directly in favor of France. This will depend upon a variety of political circumstances that cannot be foreseen or controlled. The first interest of America will doubtless lead her to a state of neutrality. But such has always been the overbearing spirit of Britain at sea, that it is highly probable occurrences will arise, which may compel America, when she feels her strength, to enter into a war to preserve her commercial rights from violation. But should she maintain her neutrality, she will indirectly serve France, if the plan I suggest is adopted: 1st. by carrying on her commerce for her during a war; 2d. By employing a great number of seamen who would otherwise go into the service of Britain; 3d. By seizing upon many branches of trade from which Britain derives her wealth, and which, when once diverted, may never return. But my plan embraces not only an extension of the American maritime force, but that of France, by an easy and natural operation, without imposing a burden upon, but in fact giving the highest encouragement to, her manufactures and agriculture. It consists in a treaty of commerce which shall put the trade and shipping of both countries on the most perfect equality. That is to say, the ships of France shall be admitted into the ports of America, paying a duty of six per cent. ad valorem only on all articles, and the same tonnage duty as the American ships pay. The American ships shall be admitted into all the ports of France and her colonies upon the same terms, provided that they should never carry to the colonies anything but the produce of their own country or of France; that the colonial products in American ships should be subject to every regulation as to their being

landed in France, as they are in French ships. The first advantage of this treaty would be, if immediately entered into, the saving to America twenty five thousand seamen, who will, without this encouragement go into the British service; and thus increase not only her relative but her actual force: 2d. The sale of a number of her ships to France, which will now become a dead capital in her hands: 3d. The preserving to the United States their fisheries, which may be otherwise greatly affected by the removal of their seamen to Britain. In these objects France has a mutual advantage; and I will venture to say, that she never acts more inconsistently with her own interest, or more conformably with that of Britain, than when, under the idea of raising a fishery at home, while she has not seamen or shipping for her other branches of commerce, she endeavors to discourage the fisheries of America, which, from a variety of physical causes, can alone keep them from falling into the hands of the English. France should bear in mind, that, were her colonies as extensive as those of Britain; were her trade in Europe and America equal to hers; yet, for the reasons I have mentioned, arising from the geographical and physical situation of England and Ireland, she would not possess more than two-thirds of the number of seamen, these circumstances alone producing nearly as many as all the other trade of Britain. France can only increase her relative strength by diminishing that of her rival; and keeping her from drawing from other sources new means of power.

France may injure, and perhaps ruin, the whale fishery in America; but England only will profit by it. The first war will break up her establishments; and the Americans in her service will return with their wealth into their own country.

The interest that France will have in this treaty will be much more extensive: 1st. The raising up a new marine Power; 2d. Giving that Power such an interest in her prosperity, as must not only keep it from being inimical to, but, on the contrary, frequently connected with her in hostile operations; 3d. The transfer of ships to France; 4th. The increase of French seamen: for, as the wages of seamen are lower in France than in America, and must continue to be so, on account of the demand for men in a new country, while, on the other hand, ships, and the provisions for their outfit, are cheaper in America, French merchants, by fitting many of these vessels, and navigating them with French seamen, will be able to sail cheaper than the Americans themselves, and thus increase the number of their seamen. These seamen in case, of a war, will be drawn into the navy; while their places will be supplied, during the war, at somewhat more expense, by Americans, without injuring their commerce. In the cod fishery, France will derive clear and obvious advantages from the American ports for her outfits, &c.

But even these advantages will be inferior to that derived from the increase of the commerce of exchange, by that removal of restrictions; an operation which, I will venture to say, will at least double the whole commerce and number of seamen employed by France, and quadruple it with respect to her navigation with America. It should also be considered that this works doubly in favor of France, 1st, So far as it is a direct advantage to her maritime power; 2nd. So far as it subtracts from the navigation of England.

The benefits that will result to the manufactures of France from this operation are incalculable: 1st. The raw materials will be purchased on easy terms to the manufacturer; 2nd. The intercourse that this system will establish between the two nations will make their fabrics known, and render them fashionable in America; will draw off their custom from England, whose fabrics will continue to be charged with a heavy duty, unless receding from her navigation act, she purchases an exemption.

Useful as this act may have been in its commencement, when the Dutch were the general carriers and rivals of Britain, and while the nations of Europe were ignorant of commercial principles, very enlightened statesmen now see many inconveniences in it to the general commerce of England; nor is there anything necessary to its entire overthrow, but for other nations to pass similar laws, so far as respect Britain, while their trade is put upon a liberal footing with regard to other nations. This, by promoting their own commerce of exchange, while that of Britain is restricted, will place her flag under such disadvantages, that her own merchants will seek a foreign bottom when they have an operation that requires a circuitous voyage. This must ultimately, in spite of all her prejudices, compel her to repeal this selfish law, after having some time suffered under it. But while the navigation act exists in Britain, it will, under the circumstances of the treaty I suggest, operate as a bounty on the navigation and fabrics of France; because it is obvious that the freight and charge on any specific article carried in a ship that may make a circuitous voyage, is much less than they would be if part of the voyage was made in ballast. Thus, a French ship carrying a cargo of wine to America, taking in a load of tobacco, and returning from thence to Bordeaux, could take the wine on a much smaller freight than if the duties imposed in America on the importation of wine in a French ship should be equivalent to the duties upon tobacco imported in an American ship into France; because, in that case, the French ship would go out empty for the tobacco, and the American ship empty for the wine; and the double freight and insurance must be charged on each of these articles. It should always be remembered, that whatever is saved in freight is a bounty upon agriculture and manufactures. But even this is a small advantage compared to that derived from the increase of adventures that will be occasioned by the very circumstance of freight for the whole outward and homeward voyage, and the consequent consumption of the commodities of the country that encourages it.

In this plan, Spain, (under some restrictions with regard to South America,) the Italian States, and any others who should incline to engage it it, should be associated; without, however, delaying the project between France and the United States, lest they should lose, and Britain acquire, at this critical moment, that great body of seamen, who will, by the peace, be thrown out of employment.

Were France to declare her determination to support this liberal system, such is her advantage in point of product and manufactures, that she could not fail to command the greatest foreign commerce of any nation in the world.

The wealth arising from this source would be unbounded. But while her great capital is in the centre of the Republic, she never can have an extensive coasting trade; and she can only make up this deficiency, in a contest with Britain, by the increase of her wealth and credit; by nursing up new maritime nations; by which, if she adds little to her positive power, she adds much to her relative strength, in diminishing that of her rival.

To cite a single instance: America can build and victual her whaling vessels much cheaper than either France or England, and of course afford oil cheaper; but if France excludes American oil from her market, she throws such a discouragement upon this fishery as will compel the whalers to seek another place of residence. In this case, though a few may be invited to France, the great bulk of them will go to England: First, because of their language, religion, and habits; and next, because they know that a war will ruin their establishments in France, and thus it will encourage those of Britain. The very companies established in France, at great national expense, will receive their oil at sea from English fishermen. Thus fifteen thousand men will be thrown into the scale of Britain, to support one thousand in the vain attempt to establish a fishery in France. This, however, is a small part of the loss. By the encouragement which France might give to the fisheries of the United States, she could destroy those of Britain; and, as the French ships that brought oil, or the American that brought French goods, would not go or return empty, a greater market would be created for French wines, brandies, &c. Let the loss upon this be calculated. The additional expense upon the first price to the inhabitants of France, and the countries given, they will find that they purchase their oil at a ruinous rate.

Let the difference between fifteen thousand men, added to those employed in the British fishery, and eight thousand taken from them by the encouragement given to the American fishery by France, making together the loss or gain of twenty-three thousand to Britain, be put in the scale with the comparatively few fishermen France can make, and she will form a fair estimate of the attempt, considering her as a rival power to Britain.

Great as are the advantages proposed by this system to the commerce and navigation of France, they are small compared to those which she will derive from having opened a way to the establishment of free and liberal principles, that cannot fail to give room for the exertion of those talents and that industry for which her citizens are distinguished. Every nation, except one, will eagerly embrace them; and their mutual interest will lead them to protect them against the power of any maratime despot. The advantage that the vessels of this association would have over all others, could not fail to produce such a revolution in the principles and practice of commerce and navigation as would be highly interesting to humanity, honorable to the nations who should first adopt the system, and not unworthy of the enlarged views of that distinguished statesman to whom Europe is already so much indebted, and who, alone, has sufficient power to carry it into effect.

SINKING FUND.

[Communicated to the Senate, Dec. 17, 1801.]

CITY OF WASHINGTON, *Dec.* 16, 1801.

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the board, subsequent to their report, of the 28th of November, 1800, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this board, dated the 14th of the present month, and in the proceedings of the officers of the Treasury, therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

A. BALDWIN, *Pres't Senate, pro tem.*
J. MARSHALL, *Chief Justice U. S.*
JAMES MADISON, *Secretary of State.*
A. GALLATIN, *Secretary Treasury.*
LEVI LINCOLN, *U. States Attorney.*

TREASURY DEPARTMENT, *Dec.* 14, 1801.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund: That no purchases of the debt of the United States have been made, since the date of the last report to Congress, of the 28th day of November, 1800; and that the sums of capital stock heretofore purchased and transferred, prior to the present year, in trust for the United States, the interest whereon is appropriated by law, towards the reduction of the public debt, amount to four millions seven hundred and thirty-eight thousand three hundred and sixty-seven dollars and eighty-three cents, as will more particularly appear from the document hereto annexed, (marked A.)

That the following sums have been applied towards the discharge of the principal debt of the United States, since the date of the last report to Congress, of the 28th of November, 1800:

1st. To the sixth instalment of the six per cent stock, bearing a present interest, which, pursuant to the act, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," passed on the 3d day of March, 1795, and the act in addition thereto, passed on the 28th day of April, 1796, became payable on the first day of January, 1801, the sum of - - $760,650 13

State of the Finances.

2d. To the payment of the ninth instalment of the subscription loan for bank stock, due on the last day of December, 1800 - - - 200,000 00

3d. To the payment of the first instalment of a loan of two million of guilders, obtained in Holland, and which fell due the present year, pursuant to a contract, dated the 9th of March, 1784, estimated at 40 cents per guilder - - 100,000 00

4th. To the payment of the fourth instalment of a loan of one million guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated the 1st of June, 1787, estimated at 40 cents per guilder - - - 80,000 00

5th. To the payment of the third instalment of a loan of one million of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated 13th March, 1788, estimated at 40 cents per guilder - 80,000 00

6th. To the payment of the second instalment of a loan of three millions of guilders, obtained in Holland, and which fell due in the present year, pursuant to a contract, dated first of January, 1790, estimated at forty cents per guilder - - - - - - - 240,000 00

Amounting in the whole, to 1,460,650 13

The payments before enumerated have been made out of the following funds:

1st. The interest on the sums which accrued upon the stock purchased, and transferred to the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, (marked B) - - - - $192,568 52

2d. The fund arising from the payment of debts, which originated prior to the present Constitution of the United States, as particularly stated in the document hereunto annexed, (marked C) - - 7,704 79

2d. The funds arising from a dividend on the capital stock belonging to the United States, in the bank of said States, from 1st of July, to 31st December, 1799, after deducting the interest on the subscription loan for the same period, as particularly stated in the document hereunto annexed, (marked D) - - - - 17,520 00

4th. The proceeds of the duties on goods, wares and merchandise, imported, on the tonnage of ships or vessels, and on spirits distilled within the United States, and stills, appropriated by the 8th section of the act of March 3d, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt," being for the period and in reference to the objects mentioned in this report - - 1,242,856 82

1,460,650 13

Making, in the whole, an equal amount to the reimbursements before mentioned.

There remained in the hands of the Treasurer of the United States, as agent of the Board of Commissioners, on the twelfth day of the present month, four hundred and forty-nine thousand and sixty-nine dollars and thirty-one cents, which, with the growing produce of other appropriated funds, will be sufficient for the reimbursement, at the close of the year, of the seventh instalment of the heretofore deferred stock, now bearing an interest of six per cent. and the tenth instalment of the subscription loan for stock of the Bank of the United States, which reimbursements are required to be made by the 11th section of the act of Congress, passed on the 3d of March, 1795, herein before mentioned.

All which is most respectfully submitted, by

ALBERT GALLATIN,
Secretary of the Treasury.

[The tables are omitted.]

STATE OF THE FINANCES.

[Communicated to the Senate, Dec. 18th, 1801.]

TREASURY DEPARTMENT.
December 18, 1801.

SIR: I have the honor to enclose a report prepared in obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department.

I have the honor to be, very respectfully, your obedient servant,

ALBERT GALLATIN.

HON. PRESIDENT OF THE SENATE.

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury submits the following report and estimates:

The permanent revenues of the United States, according to the laws now in force, consist of, 1st, duties on merchandise and tonnage; 2d, internal duties on stills and domestic distilled spirits, refined sugar, licenses to retailers, sales at auction, and pleasurable carriages; 3d, proceeds of the sales of public lands; 4th, duties on postage; 5th, dividends on shares in the Bank of the United States; 6th, incidental, arising from fees, fines, and penalties, repayments in the Treasury, and sales of public property other than lands.

State of the Finances.

1. *Duties on merchandise and tonnage.*—The receipts in the Treasury, arising from that source, have amounted, for the year ending on the 30th September, 1801, to $10,126,213 92. If to this sum be added the drawbacks paid by collectors on the exportation of domestic distilled spirits and refined sugar, which are a charge on the internal revenues; and that part of the additional duties, laid in the year 1800, which did not operate during the year to which those receipts refer, the sum which would have been received at the present rate of duties, cannot be estimated at less than $10,500,000. The amount of duties secured on the 30th September last, and falling due in the course of the year 1802, compared with that of preceding years, justifies an opinion, that, had the importations and exportations continued in the same proportion, those duties would have brought in the Treasury, during the year 1802, near $11,000,000.

How far this branch of the revenue may be affected by the restoration of peace in Europe, is rather a subject of speculative conjecture than of calculation. That it will be liable to sudden and considerable fluctuations, cannot be doubted; and, for that reason, a greater degree of correctness may be obtained, by forming an estimate for a number of years, than for any one year. The period for which an estimate should be made, being arbitrary, so far as relates to the revenue, that of the eight years, 1802 to 1809, is selected, principally in reference to the payments to be made on account of the public debt—the whole of the foreign debt being actually due within that term of years, and the eight per cent. stock becoming redeemable the last year of the period. The best data on which the estimate may be predicated, seem to be the actual consumption of imported articles during former years, and the ratio of increase of population as ascertained by the census.

With a view to the first object, the statements A to H have been abstracted from the records in the Treasury. They exhibit the value or quantities of imported articles on which duties have been actually paid, for each calendar year, from 1790 to 1800, deducting from the gross amount imported, each year, the value or quantities of articles re-exported during the same year, which were entitled to drawback.

Those statements do not, however, show correctly, principally for the last years, the actual annual amount of consumption; because, 1st, exportations to a considerable, but not precisely ascertained amount, have taken place, under such circumstances as did not entitle the articles exported to a drawback; and 2d, the amount of foreign articles remaining on hand at the close of the year 1800, was much greater, in proportion to the respective population, than that on hand at the commencement of the year 1790. Those causes, which affect, to an inconsiderable degree, the years 1790 and 1792, and but partially those immediately succeeding, would, however, render any deduction drawn from those documents, in relation to the years 1799 and 1800, altogether fallacious. The preceding nine years may be divided into two distinct periods; the first, from the 1st day of January, 1790, to the 31st day of December, 1792, includes the three years which immediately preceded the European maritime war; the second includes the six first years of that war, viz: from the commencement of 1793 to the close of 1798.

In order to obtain a distinct view, for each of those two periods, of the annual average consumption of foreign articles, and of the annual average revenue which, at the rate of the present duties, would have accrued thereon, the table L has been prepared, which shows that the net annual revenue which would, at the present rate of duties, have accrued during each of those two periods, amounts, on an average, for the years 1790 to 1792, to $6,163,000; and for the years 1793 to 1798, to $8,350,000. These sums constitute not the receipts in the Treasury, but the revenue which would have accrued during the respective years to which they refer. The first may be considered as the revenue accruing during the year 1791; the last, as that accruing during the year ending 30th June, 1796; and as, on account of the credit given for the payment of duties, the revenue accruing during one year constitutes nearly the receipts of the year ending nine months later, those two sums, and the receipts of the year ending on the 30th of September, 1801, as above stated, may, without material error, be considered as the receipts of three distinct years, four years and a half distant from the other, viz:

For the year ending 30th September,
1792 - - - - - - - $6,163,000
For the year ending 30th March, 1797 8,350,000
For the year ending Sept. 30, 1801 - 10,500,000

The ratio of increase, during the whole period of nine years, exceeds seventy per cent., whilst that of population during the same time, was hardly more than thirty per cent. The ratio of increase, during the first period of four years and a half, is near 35½ per cent., and, during the last, more than 25½ per cent., whilst that of population, for each period, was only at the rate of fourteen per cent.

The greater ratio of increase, during the first, than during the last period of four years and a half, is owing to the comparison in the first, being between a period of European peace and a period of European war; and, in the last, between the two periods of European war.

The ratio of increase of population being ascertained, by the census, to be at the rate of 34 per cent. for ten years; if the increase of consumption shall be supposed to be, hereafter, precisely the same as that of population, the annual receipts of the eight years, 1802 to 1809, may be estimated at nearly fifty per cent. greater than those of the years 1790 to 1792, or at a sum of near $9,250,000, if that period be assumed as the basis on which to predicate the estimate. But if the calculation shall be grounded on the revenue of the years 1793 to 1798, the annual receipts of the years 1802 to 1809 should be estimated at about 30½ per cent. greater than those of that period, or at about $10,900,000.

It seems that those two respective sums may reasonably be considered as the two extremes, which the average annual receipts of the eight ensuing years will not exceed. The first calculation, of $9,250,000, appears to be below the probable result; since, being predicated on the consumption of the three years preceding the European maritime war, without any other addition than that resulting from the ascertained increase of population, it rests on the supposition that the permanent wealth of the United States has not, during that war, increased in any greater proportion than their population; and that the whole of the external commerce acquired during the same period, must necessarily be lost by the return of peace amongst foreign nations.

Although, therefore, it be presumable, that the receipts of some of those years will, from temporary causes, fall below that sum, it is believed that, taking the whole period of eight years, the duties on merchandise and tonnage may safely be averaged at a sum not less than $9,500,000.

As a minute investigation of the several rates of duty, now paid by the several species of foreign merchandise, may perhaps suggest some advantageous modifications, a table of those rates is annexed to this report.

Without any view to an increase of revenue, but in order to guard, as far as possible, against the value of goods being underrated in the invoices, it would be eligible to lay specific duties on all such articles now paying duties ad valorem, as may be susceptible of that alteration. Amongst such, the following have been suggested: fruits and spices, pickled and dried fish, oil, glue, several species of drugs, watches, gunpowder, and cigars.

Legislative provisions seem necessary, in order better to define the restrictions under which the intercourse with the adjacent British and Spanish possessions shall be carried on, in conformity with treaties; under which the articles of the growth or manufacture of the United States may be imported free of duty, by the way of New Orleans, from the western parts of the Union, to the ports of the Atlantic States, and from these to the interior districts of collection on the Western waters, and under which drawbacks shall be allowed on the exportation of foreign articles.

2. *Permanent internal duties.*—The annual statement, prepared by the Commissioner of the Revenue, and which will be completed in a few days, precludes the necessity of exhibiting here all the details pertaining to this branch of revenue. The statement M is an abstract of its amount, for the year 1800; during which, the duties on spirits and stills, refined sugars, licenses to retailers, sales at auction, and pleasurable carriages, produced a net sum of $576,888 80. The duties on stamps, which, as, under the existing laws they will cease after the 4th day of March, 1803, are not included amongst the permanent revenues, amounted, for the same year, to $209,853 32. Both together constitute an item of $786,742 12. The receipts in the Treasury from all the internal revenues, have amounted, for the year ending on the 30th September, 1801, to $919,719 16. Deducting from this sum $65,000, being the estimated amount of drawbacks paid during that year, out of the proceeds of the external revenue, on the exportation of domestic distilled spirits and refined sugar, leaves a net sum of about $854,000, and an increase of near $70,000 beyond the revenue of 1800.

The accounts of the last nine months being yet but partially rendered, it is not practicable to ascertain to what class of duties the increase belongs, nor particularly to discriminate between the increase of the revenue arising from stamps, and that of the permanent internal revenues. Yet it is believed that these, exclusively of the stamp duties, may safely be estimated, for the average of the years 1802—1809, at an annual sum not less than $650,000.

In order, however, to secure that amount, a revision of the system, so far as it relates to country stills, is essentially necessary. Whilst the owners of small distilleries, in some parts of the Union, complain of the operation of a tax raised on the capacity of their stills, that same regulation has enabled those whose capitals are larger, and local situation more advantageous, especially in the Middle States, to reduce the actual duty on the quantity of spirits distilled from grain to about three cents per gallon. But improvements have lately been introduced, which, by accelerating the process of distillation, will, according to the estimate of the Commissioner of the Revenue, reduce the duty on stills to about three-fifths of a cent per gallon of spirits distilled. The effect of these, on the revenue, has already been sensibly felt, in one of the most productive districts of the United States; and, unless it shall be counteracted, either by restricting laws, or by an increase of the duty on the capacity of the stills, or by a change of the subject of taxation, a considerable defalcation must be expected.

Whatever mode may be adopted, it is respectfully submitted whether the revenue may not be benefited, and just grounds of complaint removed, by a repeal or modification of the clause which compels a yearly entry of stills, in the month of June, under a penalty of $250, by a permission to persons who take short licenses, to continue distilling beyond the time limited in their licenses, on paying a proportionate duty; and by reducing into one act all the laws in relation to duties on stills and domestic distilled spirits.

It will appear, by the same statement M, that, whilst the expenses of collection on merchandise and tonnage, which are defrayed out of the revenue, do not exceed 4 per cent., those on the permanent internal duties amount to almost 20 per cent. This, however, is an inconvenience, which on account of the greater number of individuals on whom the duties are raised, and of their dispersed situation throughout the whole extent of the United States, must, more or less, attach to the system of internal taxation, so long as the wants of Government shall not require any considerable extension, and the total amount of revenue shall remain inconsiderable.

3. *Sales of public lands.*—The only data on which to calculate the annual revenue, which may probably be derived, for the ensuing eight years, from those sales, are the quantity of land at the disposal of Government, compared with the probable annual demand, and the actual sales which have taken place since the several land offices have been opened.

The precise quantity cannot be ascertained, all the surveys not being yet completed, and the western boundary line of the Virginia reservation, from the head spring of the Little Miami northward, being neither surveyed, nor even the principle on which its course must depend, determined by the terms of cession accepted by Congress.

The estimate N may, however, be considered so far correct, as to render it certain that the quantity of public lands Northwest of the Ohio, within the Indian boundary line, and not yet disposed of, amounts to very near nine millions of acres. A general map of those lands, including the Virginia reservation and the grants to the Ohio Company and to John C. Symmes, which has been compiled from the survey of the Indian boundary line and from the draughts returned to the Treasury Department, will be transmitted to Congress, and will more clearly explain their relative situation than could be done by any written description.

The statement O shows the actual sales which have taken place in the several land offices, to the 31st day of October last. By this it appears that 398,646 acres have been sold, for $834,887; of which sum, $248,461 have been paid, and $586,426 remain due, being payable under the law in instalments, bearing interest from the date of sales, and which will become due in the years 1802 and 1805, in the proportions exhibited in the statement.

The quantity of land sold, either at the public sales of the three land offices of Marietta, Chillicothe and Cincinnati, or at private sale at Steubenville, when the land office was first opened, cannot afford any just data, on which to predicate an estimate of the probable annual sales; as they may be supposed to have been greater when the lands were first offered for sale than at subsequent periods.

Rejecting, therefore, the result of the whole of the public sales, and that of the first two months private sales, at Steubenville, it appears that there have been sold, at private sale, 122,673 acres, at Steubenville, during a period of fourteen months, ending the 31st day of October last—64,205 acres at Chilicothe, during a period of five months, ending on the same day—42,656 acres at Cincinnati, during a period of six months, ending on the same day; and 1,544 acres at Marietta, during a period of sixteen months, ending on the same day—which gives, in the whole, a result of 245,000 acres, annual sales, in all the land offices.

The reservations in the grants to the Ohio company and to John C. Symmes, and in the township formerly sold at New York; the surplus of the tract appropriated for military bounties, after the same shall have been satisfied; and a tract of near one million of acres, lying north of Symmes's patent, and contained between the Great Miami and the Virginia reservation, are not embraced in this general result. The reservations and the military tract are not yet disposable by any existing law; and the tract lying between the Great Miami and the Virginia lands has been only partially offered for sale, under the act of Congress giving a right of pre-emption to certain purchasers under J. C. Symmes. The result of the operation of this act has not yet been ascertained. It is, however, known that under it a number of tracts have been sold, and some payments already made. The remainder of the tract will afterwards, according to law, be surveyed and offered for sale on the same terms as other lands.

Taking in consideration the probable sales in those several tracts, the total amount of annual sales might fairly be estimated at 400,000 acres, if the periods during which the land offices have been opened had been sufficiently long to form a safe basis for calculation. To estimate them at 250,000 acres a year, for the ensuing eight years, is equally justifiable, by the actual sales, by the known usual demand, and by the quality and superior safety of title of the public lands.

The nominal price of those lands is two dollars per acre; but, on account of the provision which relate to interest and discount, they may be obtained, within a fraction, at the rate of one dollar and eighty-four cents, if the whole purchase money is paid at the time of sale, and may bring in the Treasury two dollars and twenty-seven cents per acre, if the purchaser shall avail himself of the terms of credit given by law.

If the proceeds of the whole sales shall be estimated only at the rate of $1 84 per acre, it will allow 24 per cent. for losses on account of non-payments on the three last instalments; and, after the year 1805, give, on an annual sale of 250,000 acres, an annual income of $460,000. But as, on account of the credit given by law, the whole of this sum will not, till after the year 1805, be annually receivable in payment of lands sold after the 1st of January next, whilst, on the other hand, the sums due for lands sold before the end of this year will become payable during the four next ensuing years; it will be found that, making the same deduction of 24 per cent. for losses on the sums already due, the whole sum receivable for lands already sold, or to be sold, during the eight years 1802–1809, will, for those eight years, on an average, amount annually to $400,000.

Some legislative provisions seem necessary to ascertain the western boundary of the Virginia lands: to define in what manner the seven first ranges of townships shall be subdivided into sections, without interfering with the claims of former purchasers; and, perhaps, in relation to the lands claimed by purchasers under John C. Symmes. But the most important object, in order to secure and improve this valuable branch of revenue, is to provide against the progress of intrusions on the public lands, and especially to devise some efficient and prompt mode of giving quiet possession to every person purchasing under the law.

4. *Postage, dividends on bank shares, incidental.*—The annual proceeds of the duties on

postage may not be estimated at less than $50,000. The dividends on bank shares, at the rate of eight per cent. dividend, amount to $70,040. But, as the shares themselves may eventually be wanted as a resource to meet certain contingent demands against the United States, those dividends, although constituting a part of the revenue, unless it shall be found necessary to sell the stock and the incidental or temporary revenues, shall be omitted in the estimate of the permanent revenues.

These, therefore, are estimated in the whole at $10,000,000, viz:

Duties on merchandise and tonnage -	$9,500,000
Internal duties (stamps excepted) -	650,000
Proceeds of the sales of public lands -	400,000
Duties on postage - - - - -	50,000

The other temporary resources of the United States are—

1st. The proceeds of stamp duties for fourteen months from the 1st of January, 1802, to the 4th March, 1803, which, under the existing law, limits their continuance, $260,000.

2d. The balance due on the direct tax. The amount paid in the Treasury to the 1st instant, so far as the same can be ascertained, was $1,245,000, leaving an outstanding sum of $755,000; but, as this last sum is chargeable with all the expenses of collection, estimated at the rate of seven per cent., at $140,000, the real balance is only about $615,000, and as delays and perhaps an eventual loss may be expected on the last part of the collection, it would not be safe to estimate the amount which will probably be paid into the Treasury at more than $450,000.

3d. The proceeds of sales of public vessels. Fifteen vessels have been sold under the act of last session of Congress, for $275,767 73; of which sum, $86,412 83 had been paid on the 30th of September last, leaving an outstanding balance of $189,354 90.

4th. The excess of specie in the Treasury beyond the sum which it is prudent to keep there, may be estimated at about one million of dollars.

5th. The shares of the Bank of the United States, owned by the United States, are, at 33⅓ per cent. advance, worth $1,184,000.

Those several items, exclusively of several balances due by individuals, and a part which will eventually be received in the Treasury, constitute a sum exceeding three millions of dollars; and may, for the present, be considered as resources, sufficient to meet the demands against the United States, which may be eventually payable on account of the sixth article of the Treaty with Great Britain, and of the —— article of the Convention with France.

The permanent expenditures of the United States relate either to the current expenses of Government, domestic or foreign, civil and military, or to the payment of the interest and principal of the public debt.

The estimate of appropriations for the ensuing year, amounting to $3,448,147 18, include all the expenses of Government, other than those in relation to the public debt, with the exception of those incident to the intercourse with the Barbary Powers—estimated, after the ensuing year, by the Secretary of State, at $70,000; of those which may be incurred for the purchase of arms—estimated, by the Secretary of War, at $55,000; and of a part of the Indian annuities, amounting to $11,000: these items having been omitted in the estimates of the ensuing year, because the balances of unexpended appropriations have been considered as sufficient for those objects, by the Secretaries of State and War, respectively. On the other hand, a sum of about $70,000, in relation to the census and quarantine laws, which is included in those estimates, is a temporary expense.

The particular sums, which, under existing laws, seem necessary to defray each particular authorized expense, being detailed in the annual estimates, will not be repeated here; and it appears sufficient to recapitulate the gross amount of the general heads of expenditure, viz.

For all domestic expenses of a civil nature, including the civil department, and all the miscellaneous items of the light-houses and mint establishments, of the survey department, of pensions, claims and contingencies -	$780,000
For all the expenses of intercourse with foreign nations, including those of the diplomatic department, those incident to the prosecution of claims, and to the protection of seamen in foreign countries, and those in relation to the Barbary Powers - - - - - -	200,000
For the Military Establishment, including all the expenses in relation to the army, to arsenals and magazines, to the fabrication and purchase of arms and military stores, to fortifications, and to the Indian Department - -	1,420,000
For the Navy Department, including all the expenses in relation to the ships kept in commission, or laid up in ordinary, to the building of new ships, and to dock-yards - - - - -	1,100,000
Making altogether - - -	3,500,000

Which sum, deducted from the estimated revenue of ten millions and six hundred thousand dollars, leaves a sum of seven millions and one hundred thousand dollars, annually applicable to the payment of interest and redemption of the principal of the public debt.

It must be further observed, that the sums assigned to each head of expenditure being deducted from the estimates of appropriations necessary for the ensuing year, and these having been calculated before the re-establishment of peace in Europe was known, they are predicated, for every item which relates to supplies, on the then existing prices, a considerable reduction will take place in every item, which depends on the price of provisions, freight, transportation, and even wages. Although the saving thence arising cannot yet be correctly ascertained, it may not be estimated at less than $200,000 annually. It is therefore believed that, after defraying every expense necessary to support every civil, military, or naval establishment to the extent now authorized by law, the annual surplus applicable to the debt may be confidently estimated at seven millions and three hundred thousand dollars.

The statement P exhibits the amount of the unredeemed principal of the public debt as it will be on the 1st of January next, and of the annual interest and charges payable thereon, including the annual reimbursement on the six per cent. and deferred stocks.

By the printed statements of receipts and expenditures for the year 1800, transmitted to Congress the first week of the present session, it appears that the unredeemed principal of the public debt (exclusively of the sums passed to the credit of the Commissioners of the Sinking Fund, which are only a nominal debt due by the United States to themselves; and after deducting the reimbursement of the principal of the six per cent. stock, operated by the annual payment of eight per cent. on the nominal amount of that stock) amounted, on the 1st of January, 1801, to $80,161,207 60. By the statement P, it appears that the unredeemed principal will, on the 1st of January, 1802, amount to $77,881,890 29; the difference of $2,279,317 31 being the amount of principal paid during the year 1801; during the same year 1801, more than eight hundred thousand dollars shall have been remitted to Holland in part of the interest and instalments on the Dutch debt falling due next year, which sum is not included in the amount of principal thus stated to have been paid during the present year. The sums which, on the 1st of January, 1801, had been remitted to Holland, in part of the interest and instalments due in the course of this year, and which were not deducted from the amount of public debt on the 1st of January, 1801, did not exceed five hundred thousand dollars. The amount of debt actually paid, or for the payment of which provision shall have been made during the present year, will not, therefore, be less than two millions five hundred thousand dollars. And it is believed, though it cannot at present be precisely ascertained, that the balance of specie in the Treasury, which, on the 1st of January, 1801, was $2,557,395 38, will not be diminished on the 1st of January, 1802.

The Treasury accounts being settled to the 30th day of September last, the amount of public debt paid during the half year commencing on the 1st of April, and ending on the 30th September, 1801, as well as the comparative view of the Treasury at the commencement and end of that period, may be precisely stated. The payments in part of the principal of the debt made during those six months, exclusively of certain parts of the unfunded debt which have been reimbursed, have been—

1st. To the Commissioners of the Sinking Fund, and to be by them applied, on the 1st of January next, to the reimbursement of the six per cent. stock - - - - - - -	$129,048 83	
2d. To the Bank of the United States, on account of the principal of sundry temporary loans, formerly obtained from that institution -	500,000 00	
3d. For remittances to Holland, on account of the Dutch debt, $782,665 79; from which, deducting $245 980 50, being the interest and commissions for one-half of the year 1801, on that debt, leaves paid on account of the principal -	536,685 29	
4th. Evidences of public debt paid for lands - - - - - -	21,282 66	
Amounting, altogether, to one million one hundred and eighty-seven thousand and sixteen dollars and seventy-eight cents - - -		1,187,016 78

The balance of specie in the Treasury amounted, on the 1st of April, 1801, to $1,794,044 85, and on the 1st of October, 1801, to $2,946,038 73; making a difference in favor of the Treasury of $1,151,993 88; which last sum, added to the above stated payments on account of the principal of the debt, makes an actual difference in favor of the United States of $2,339,010 66 cents, during those six months.

The principal of the public debt, unredeemed on the 1st January, 1802, is, in the statement P, arranged under four heads, viz:

1st. The six per cent. and deferred stocks. The nominal amount of this debt is $41,879,525 23, and the eight per cent. annuity, applicable to its interest and reimbursement of principal, amounts to $3,350,362 1. As, by the effect of this annuity, $5,027,740 57 of the principal shall have been reimbursed on the 1st of January, 1802, the unredeemed principal of that debt will, on that day, be only $36,851,784 66. The interest, at the rate of six per cent., on which sum, is $2,211,107 08. The part of the eight per cent. annuity, at present applicable to the redemption of the principal, is, therefore, $1,139,254 03, and increasing each year, at compound interest, shall, without any further provision, have discharged the whole of the six per cent. in the year 1818, and the whole of the deferred debt in the year 1824.

2d. Three per cent. stock, amounts to - - - - - - -		$19,079,705 63
And the interest on the same, to -		$572,391 16
No provision has been made for its redemption, occasional payments for lands excepted.		
3d. All the other domestic debts created, under the present Government of the Union, in order either to discharge other debts, or to meet certain extraordinary expenses. These include the five and a half, four and half, navy six, 1796 six, and eight per cent. stocks, and the temporary loans obtained from the bank; and amount, altogether, to - -		$12,035,400 00
The interest on all these constitutes an item of - - -		$828,350 50

4th. The foreign debt due in Holland and Antwerp amounts, including premiums and gratifications, to - - - - $9.915.000 00

The interest on which, commissions and charges included, is, for the year 1802 - - - $476.931 00

This last debt being payable in instalments, at certain fixed dates, and it being necessary to purchase remittances in America, near six months before the payments are made in Holland, the statement R has been added to show the payments, both on account of principal and interest, which become annually due in Holland, until the final redemption of the debts in 1809, and the sums which it will be necessary, every year, to provide in America, in order to meet those payments.

The greater part of this debt becomes due in the course of the five next ensuing years; and the annual payments on account of principal and interest for that period, exceed, on an average, two millions of dollars. The inconvenience and difficulty of procuring remittances to that amount, and the real injury arising from such heavy disbursements abroad, render an extension of the terms of payment, by re-loans, a desirable object; and measures have been taken to ascertain its practicability. All that seems wanted, is, that the gross amount of payments, which are to take place during the eight next years, should be more equally apportioned amongst those years; and any greater surplus of revenue which might be freed by that operation, would be applicable to the redemption of those species of the domestic debt which it may be thought most eligible to reimburse.

Whether this operation shall be effected or not, no difficulty is apprehended, from want of resources, to discharge every instalment as it shall become due; the sum payable in 1803, in which year the largest payment must be made in Holland, amounting, including both those and all other actually due, on account of the interest and reimbursement of the domestic debt, to only seven millions one hundred thousand dollars, or to two hundred thousand dollars less than the annuity of seven millions three hundred thousand dollars, which has been estimated as the surplus of revenue applicable to that object.

If that surplus does exist, and it will be sufficient to meet the engagements of the United States, as they become due, the only remaining objects of inquiry seem to be: What impression will, during the next eight years, to which these estimates refer, be made on the public debt, by the annual application of that surplus? In what time would the same annuity discharge the whole of the public debt?

The statement S exhibits the effect produced at the end of the year 1809 on the debt, by the annual application of that sum, (7.300,000,) to the payment of both principal and interest, and shows that, at the end of those eight years, it shall have paid the whole of the Dutch debt; of the temporary loans due to the bank; of the navy six per cent.; and of the five and a half per cent. stocks; $5.525.300 38 of the eight per cent stock; $150.387 26 of the four and a half per cent. stock; and $11.399.263 06 of the principal of the six per cent. and deferred stocks; amounting, altogether, to thirty-two millions two hundred and eighty-nine thousand one hundred and fifty dollars and seventy cents.

The public debt would, therefore, on the 1st of January, 1810, be reduced to $45.592.739 59, viz: $954.899 62 of the eight per cent. stock; $25.612 74 of the four and a half per cent. stock; (both of which would be discharged during the four first months of the year 1810; ($80.000 of the 1796, six per cent. stock: $25.452.521 60 of the six per cent. and deferred stocks; and the $19,079,705 63 three per cent. stock.

It is true that this statement is predicated on the supposition, that the whole of the remittances to Holland may be purchased at par, which is not probable; but, on the other hand, it is calculated on the principle of a yearly, instead of a quarterly annuity; or as if all the payments made in one year, on account of the principal of the debt, took place only at the end of the year, instead of being made, as will be the case, in the course of the year, and stopping the interest from the end of the quarter in which they may be made. The supposed extra cost of bills on Holland is at least partly covered by that difference, and cannot materially affect the general result.

It may, in the same manner, be shown, that the same annual sum of $7.300,000, applied to the payment of the principal and interest of the public debt, would, on the supposition that the whole of the six per cent. and deferred stocks may be redeemed at par, and that the whole of the three per cent. stock should be reimbursed at its nominal value, discharge the whole of the public debt in seven years and a half, after the year 1809, or within the year 1817.

The only part of the preceding estimates which is liable to any material error, is what relates to the probable annual revenue derived from the impost and from the sales of land. Should these prove to have been correct, it will result that the present revenues of the Union are sufficient to defray all the expenses, civil and military, of Government, to the extent authorized by existing laws: to meet the engagements of the United States; and to discharge, within eight years, thirty-two millions of dollars of the principal, and, within fifteen years and a half, the whole of the public debt; that any increase of expense will, probably, either render an increase of taxes necessary, or retard the ultimate payment of the debt; and that any reduction in the present rate of expenditure may permit a reduction of the present taxes, or be the means of accelerating the redemption of the public debt.

All of which is most respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

To the PRESIDENT, *U. S.*

Table of duties paid on merchandise, imported in American vessels, in the United States.

Goods, wares, and merchandise, imported in the United States, unless free of duty, pay either duties according to their value, or specific duties according to their quantity.

I. Articles free of duty, are—

All articles of American growth, produce, or manufacture, spirits excepted.

Bullion, copper, old pewter, tin, teutenauge, wire, plaster of paris, saltpetre, sulphur, lapis caliminaris, dying drugs and woods, woad, furs, raw hides, sea stores, wearing apparel, personal baggage, and implements of trade belonging to emigrants; philosophical apparatus, imported for the use of seminaries of learning.

II. Articles paying duties ad valorem, pay either twenty, fifteen, or twelve and a half per cent., on their respective value, which value is calculated by adding to their prime cost, all charges included, ten per cent., if imported from countries this side, and twenty per cent., if imported from countries beyond the Cape of Good Hope.

Articles paying twenty per cent. ad valorem, are—

Carriages, and parts of same.

Manufactures of glass, other than window glass, and black quart bottles.

Articles paying fifteen per cent. ad valorem, are—

1st. All manufactures of metal,* earth and stone,† and leather;‡ all fruits and spices; all painters' colors and medical drugs,§ not otherwise enumerated.

2d. Cabinet wares, hair powder, starch, and wafers; oil, anniseed, glue, essences, washes, perfumes, dentifrice, and cosmetics; paperhanging, cartridge and sheathing paper; carpets, carpeting, floor-cloths, and mats; bonnets, hats, caps, gloves and mittens, and stockings; fringes and tassels for saddles, upholsters, and coachmakers; buttons, millinery, artificial flowers, feathers, ornament dresses, dolls, and fans.

Articles paying twelve and a half per cent. ad valorem.

1st. The following manufactures of metal, viz: anchors, locks, hinges, hoes, anvils, vises, and printing types.

2d. Gunpowder, black quart bottles, saddles and parts of same, whips and canes, toys, lampblack, parchment and vellum, clothing ready made.

3d. All wares, goods, and merchandise, not otherwise enumerated, consisting principally of manufactures of wool, cotton, silk, hemp and flax, and wood.

III. Articles paying specific duties.

SPIRITS.

Per gallon.	FOREIGN		DOMESTIC.	
	From grain.	From other materials.	From domestic materials.	From foreign materials.
1st proof -	28 cts.	25 cts.	7 cts.	15 cts.
2d proof -	29 cts.	25 cts.	8 cts.	16 cts.
3d proof -	31 cts.	28 cts.	9 cts.	17 cts.
4th proof -	34 cts.	32 cts.	11 cts.	19 cts.
5th proof -	40 cts.	38 cts.	13 cts.	23 cts.
6th proof -	50 cts.	46 cts.	18 cts.	30 cts.

WINES—*per gallon.*

Madeira, London Particular, and Malmsey, 58 cents.

Madeira, all other, 50 cents.

Burgundy, Champaign, Rhenish, Tokay, 45 cents.

Sherry and St. Lucar, 40 cents.

Lisbon, Oporto, and other Portugal, 30 cents.

Teneriffe, Fayal, Malaga, St. George, and Western Islands, 28 cents.

All other, in bottles, 35 cents.

All other, 23 cents.

Ale, Beer, and Porter, per gallon, 8 cents.

Molasses, per gallon 5 cents.

SUGAR—*per pound.*

Loaf, 9 cents.

Lump, and other refined, 6½ cents.

Candy, 11½ cents.

White, powdered, 3½ cents.

Brown, 2½ cents.

TEAS—*imported.*

Per pound.	From China or East Indies.	From Europe.	From all other places.
Hyson, Imperial, Gunpowder, and Gomee -	12 cts.	14 cts.	17 cts.
Other green - - -	18 cts.	21 cts.	27 cts.
Bohea - - - -	32 cts.	40 cts.	50 cts.
Other black - - -	20 cts.	24 cts.	30 cts.

Coffee, per pound, 5 cents.

Salt per 56 pounds, 20 cents.

For other articles paying specific duties, see statement H. All articles imported in foreign vessels pay an extra duty of ten per cent. on the duty paid if imported in American vessels.

[The Tabular Statements being very voluminous, are necessarily omitted.]

* Including arms, cannon, plated ware and jewelry, buckles and buttons, clocks and watches, gold and silver lace. Excepting the articles free of duty; those enumerated as paying 12½ per cent.; and lead, nails, spikes, steel, wool and cotton cards, which pay specific duties.

† Including China, queen's and earthen ware, window glass, bricks and tiles, marble and slate, pastework, and jewelry. Excepting articles free of duty, and hollow glass ware.

‡ Excepting saddles and saddlery, which pay only 12½ per cent.; boots and shoes, which pay specific duties.

§ Excepting lampblack, which pays 12½ per cent.; and colors of lead, which pay a specific duty of one per cent. per pound.

REMISSION OF DUTIES.

[Communicated to the House of Reps., Jan. 25, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred the petition of Lyon Lehman, made the following report:

That it appears to your committee, that the said Lyon Lehman, being a citizen of the United States, residing in the city of New York, did, in the month of October, 1799, import into the United States, 3,500 rifles and carabines, without bayonets, and 287 pair of pistols.

That, at the time of the said importation, there existed in force an act of Congress, entitled "An act prohibiting, for a limited time, the exportation of arms and ammunition, and for encouraging the importation thereof," passed on the 14th of June, 1797, which was continued by a subsequent act, passed the 7th of April, 1798. That, by one of the provisions of the said act, "all muskets and firelocks, with bayonets suited to the same," imported into the United States, during the continuance of the said act, were to be admitted duty free. And that, by provision of the same act, it is declared "not to be lawful to export from the United States any cannon, muskets, pistols, bayonets, swords," &c., but the exportation of all the aforesaid articles is, thereby, expressly prohibited.

It further appears to your committee that, by the construction given to the said act by the Collector of the port of New York, the petitioner was compelled to pay the full duties on the importation of the said 3,500 rifles and carabines to any port of the United States.

It further appears to your committee, that the petitioner, in the first instance, offered the said rifles and carabines to the Government at first cost and charges of importation, which, as appears from the letter of the then Secretary of War, was refused; that the petitioner afterwards made several attempts to dispose of his said rifles and carabines at private sale; and in one of the said attempts incurred a loss of the whole expense of freight and insurance from New York to Charleston, and back again, amounting to one thousand and forty dollars; and that, finally, being distressed, and otherwise unable to make good the heavy expenses of the duties, freight, insurance, and storage of the said rifles and carabines, he was compelled to expose them to sale, at public vendue, in the city of New York, and thereby incurred an actual loss of fifty per cent. on the first cost of the said rifles and carabines, additional to his other losses thereupon.

Under a full view of all the circumstances, and considering the great loss and injury sustained by the petitioner, together with the doubtful construction of the term, muskets, by which, under the act of Congress aforesaid, he was refused permission to export the said rifles and carabines, your committee are of opinion that the prayer of the petitioner to be refunded the amount of duties which he paid on the importation of the said rifles and carabines ught be granted.

Wherefore, your committee recommend to the House the following resolution:

Resolved, That the prayer of the petition of the said Lyon Lehman is reasonable, and that the said petitioner ought to be refunded the sum of one thousand six hundred and eighty-four dollars, being the amount of the duties he paid on the importation of 3,500 rifles and carabines, and 287 pair of pistols, into the United States, in the year 1799.

DUTY ON COAL.

[Communicated to the House of Reps., Feb. 4, 1802.]

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was referred the petition of John Graham, and others, praying that an additional duty may be laid on foreign coal imported into the United States, made the following report:

That the object of the petitioners, as set forth in their petition, is not to enhance the price, but to increase the consumption of native coal, thereby enabling the petitioners, who are interested in the coal pits of Virginia, by enlarging their capital in trade, and by substituting machinery for manual labor, to afford an adequate, and, eventually, cheaper supply to the increasing demand, within the United States, for the article in question.

The committee are of opinion that a compliance with the prayer of the petition, granting that it should not have the effect of enhancing the price of coal at the shipping yards at Richmond, would, by discouraging the importation from Europe, and the difficulty and price of freight coastwise, tend exorbitantly to increase the price of this necessary article, in the more distant parts of the United States, and, perhaps, entirely to deprive some portions of the Union of their accustomed supply.

The committee are likewise of an opinion, that it is not consonant with the principles of a wise policy to lay duties, (not for the purpose of raising revenue to the Government,) but to operate as a bounty on any particular species of labor, at the expense of the community in general, on whom the tax is levied. They, therefore, submit the following resolution:

Resolved, That the prayer of the petition ought not to be granted.

PROTECTION TO MANUFACTURES.

[Communicated to the House of Reps., Feb. 10, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the petitions of the manufacturers of gunpowder, of hats, of types, of brushes, and of stoneware, made the following report:

That, in the opinion of your committee, such manufactures as are obviously capable of affording to the United States an adequate supply of their several and respective objects, ought to be promoted by the aid of Government. Two modes of administering this aid have presented themselves to your committee: The one, to permit, free of duty, the importation of such gross articles as are essential to those manufactures. The other, to impose higher duties on such articles (on importation) as can be supplied by our own citizens to advantage. That, at the present juncture, our infant manufactures peculiarly demand and merit the protection of Government. Exempt as the foreign manufactures will now be, from the charges of war freight and war insurance, the manufacturing interest of the United States will not be capable of entering into a competition with them on equal terms, without the friendly interposition of Government. The committee, therefore, recommend the following resolutions:

Resolved, That the following articles (in addition to those already free) be admitted free of duty, on importation, viz: burr stones, unwrought, bristles, regulus of antimony, saltpetre, sulphur, and rags.

Resolved, That it is expedient to impose a duty, in future, of twenty per cent. ad valorem on fur hats, brushes, stoneware, printing types, saddles, cannon, ball, glass bottles and glassware of all kinds; on gunpowder, five cents per pound; on glue, three cents per pound; on tarred cordage, two cents per pound; on untarred cordage, or yarns, two and a half cents per pound; on soap, three cents per pound; on candles of tallow, three cents per pound; on window glass, ten by twelve, or under, two dollars per hundred feet; on all above that size, three dollars per hundred feet; on anchors, two cents per pound; on spikes and bolts of iron, two cents per pound; on cut, slit, or rolled iron, one cent per pound.

Resolved, That in future there be imposed a duty, on importation from any foreign nation, of one dollar per barrel on all pickled fish, and one dollar per quintal on all dried fish.

REMISSION OF FORFEITURE.

[Communicated to the House of Reps., Feb. 12, 1802.]

Mr. S. SMITH, from the Committee on Commerce and Manufactures, to whom was referred the petition of Ebenezer Stevens, made the following report:

That your committee have carefully examined the papers submitted by the petitioner, and others, furnished from the Treasury Department, and find that the petitioner became possessed of an American ship called the Bellona, by a purchase made by his agent at Saint Jago de Cuba; that, on her arrival at New York, she was known to have belonged to certain merchants of that city; that the officers of the customs had just grounds to suspect that the said ship had been employed, by her former owner, in contravening the "Act to suspend the commercial intercourse between the United States and France, and the dependencies thereof;" that they had commenced their inquiry, and were fully satisfied of the fact, when the petitioner offered his aid and assistance in procuring the necessary proof.

That the said ship was libelled and condemned in the district court of New York; that she was sold by the marshal of the said district, for the sum of five thousand dollars, and that the half, due to the officers, had been distributed, and the other half paid into the Treasury. The petitioner states that he was in nowise concerned in the act which contravened the law; that he was an innocent purchaser of a ship that had been fraudulently employed, and of which fraud his agent could have had no knowledge; that he had given every assistance in his power to prove the fraud had been committed; and, therefore, prays that the half of the proceeds paid into the Treasury may be refunded to him.

The committee are of opinion, that a sale abroad, of a vessel abroad, which had incurred a forfeiture, ought not to release her from the penalty; and, therefore, recommend that the prayer of the petitioner ought not to be granted; and that he have leave to withdraw his papers.

THE MINT.

[Communicated to Congress Feb. 18, 1802.]

MINT OF THE U. S., *Jan* 1, 1802.

SIR: I have the honor of enclosing the annual report upon the present state of the Mint, for the information of Government; and am, very respectfully, your obedient humble servant,

ELIAS BOUDINOT,

The PRESIDENT *of the United States.*

MINT OF THE U. S., *Jan.* 1, 1802.

Statement of the amount and description of Coin issued from the Mint of the United States, from the 31st day of December, 1800, to the 31st day of December, 1801, inclusive.

GOLD COINS—1801.

Time of coinage.	Eagles.	Half eag.	In dolls.
Quarter ending Mar. 31	3,558	8,522	78,190
Quarter ending June 30	2,931	10,725	82,935
Quarter ending Sept. 30	11,110	–	111,100
Quarter ending Dec. 31	11,655	6,759	150,345
Totals - - -	29,254	26,006	422,570

SILVER COINS—1801.

Quarter ending	Dolls.	½ dolls.	Dimes.	½ dimes	In dols.
March 31 - -	34,406	–	9,260	16,100	36,137
June 30 - -	8,500	–	–	–	8,500
Sept. 30 - -	10,786	8,160	8,120	3,950	15,876
Dec. 31 - -	762	22,129	17,260	13,850	14,245
Totals - -	54,454	30,289	34,640	33,910	74,758

COPPER COINS—1801.

Time of coinage.	Cents.	In dls. & cts.
Quarter ending Sept. 30 -	505,000	5,050 00
Quarter ending Dec. 31 -	857,837	8,578 37
Totals - - - -	1,362,837	13,628 37

RECAPITULATION.

Amount of gold coinage - - -	$422,570 00
Amount of silver coinage - - -	74,758 00
Amount of copper coinage - - -	13,628 37
Aggregate amount of coinage in 1801	$510,956 37

The Director deems it his duty to mention that the greatest part of the gold bullion was received in ingots and lumps imported from foreign ports, which, had it not been for the Mint, would have been exported as remittances to Europe, but has now become an addition to the current coin of the United States.

It becomes necessary for the Director again to mention that the amount of cents issued from the Mint has long since exceeded the sum of $50,000, amounting now in the whole to $93,019 19. The law requires that, after the expiration of six calendar months from the time when there shall have been paid into the Treasury, by the Director, in cents and half cents, a sum not less than $50,000, (which time shall forthwith be announced by the Treasurer of the United States, in at least two newspapers published at the seat of Government,) no copper coin whatever, except the cents and half cents, shall pass current in the United States. If this has been heretofore done, it has not come to the Director's knowledge.

All which is respectfully submitted to the President by his very obedient humble servant,

ELIAS BOUDINOT,
Director of the Mint.

The PRESIDENT *of the United States.*

PROTECTING DUTIES.

[Communicated to the House of Reps., Feb. 18, 1802.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom was referred the petition of Thomas Wallace and others, citizens of Kentucky, praying that additional protecting duties may be laid on hemp, cordage, and sail-duck, imported from foreign nations, made the following report:

That your committee have, in a former report, recommended additional duties on tarred and untarred cordage and yarns, so that the duty payable hereafter may be two cents per pound on tarred, and two and a half cents per pound on untarred, cordage. That the present duty on hemp is twenty-two dollars and forty cents per ton; on sail-duck, twelve and a half per cent. ad valorem. That the duty on hemp is about twenty per cent. on its prime cost in Europe, which is equal to any protecting duty heretofore laid by law, or now recommended by your committee. The committee are apprehensive that the laying of higher duties on those articles would have a tendency to induce our ship-owners to equip their ships in foreign countries, to the great injury of the petitioners, and such other citizens of the United States as may have engaged in the culture of hemp, or its manufacture into cordage or sail-duck.

The committee are therefore of opinion that it would not be expedient to impose further duties on hemp or sail-duck.

To the honorable the Speaker and the other members of the House of Representatives in the Congress of the United States:

The petition of the subscribers, inhabitants of the State of Kentucky, humbly showeth that, in consequence of the termination of the war in Europe, (an event at which, however injurious to their interests, they can but rejoice,) those articles which have hitherto been most usually exported from this State, (flour and tobacco,) have experienced the common fall in price which has attended them throughout the continent; but this decrease is, perhaps, nowhere so sensibly felt in America as in the Western country. While other parts of the Union are so situated as to be able to command the earliest information of the state of the market, and the best prevailing prices for their commodities, the people of the West are compelled to descend two of the longest, and one, for navigation, the most difficult, rivers in the universe. And when they have overcome these natural obstacles, they have only gained, in point of commercial advantage, that position from which their Eastern brethren set out. But the expense, and other obvious disadvantages, the consequences of their remote situation, burden their flour and tobacco so much that, when at length they reach the market, the net sum produced, if a loss (but too often the case) is not sustained, illy rewards the toil of the husbandman, and the enterprise of the merchant. It becomes therefore necessary to abandon these unprofitable articles, and to resort to some other, more likely to give encouragement to industry and commerce. In doing this, your petitioners acknowledge the kindness of Nature, which, though she has thought fit to remove us far from the ocean, has nevertheless bestowed other blessings upon us, which, under a wise Government, fully counterbalance this disadvantage. Hemp has, therefore, formed a considerable object of attention to the cultivator. That article, however, neither in its raw nor manufactured state, has been exempted from the general effects of peace. And the citizens of this State, who have hitherto derived from the sales of it great aid in enabling them to meet the demands of their Governments, will henceforth lose this valuable resource, without the interposition of Congress. Your petitioners beg leave to state, that their country, both as to soil and climate, is well adapted to the raising of hemp; sufficiently so, not only to supply the consumption of America, but to yield a surplus for foreign markets. But, whether from the effects

of despotic governments, the cheapness of labor, a more improved cultivation, or a more bountiful soil, the Northern States in Europe are able to undersell us in the article of hemp. Your petitioners, therefore, pray that Congress will lay a duty on hemp, cordage, and sail-duck, imported from abroad, adequate to prevent or lessen the importation of them, and to give encouragement to the husbandmen and manufacturers of our own country, the present duty being insufficient for those purposes. Your petitioners need not remark, that it is has been the policy of all nations to give such a preference to the productions of their own countries, as might enable them to form a successful competition with those of foreigners. But they cannot omit declaring that, since the value of land depends upon the value of its produce, the lands both of Congress and individuals will be benefited by the measure proposed, which will attract the attention and reward the industry of the cultivator, and demonstrate that the General Government is not more unmindful of the interests of their citizens, than the Governments of other countries.

[Signed by Thomas Wallace and others.]

DRAWBACK.

[Communicated to the Senate, Feb. 19, 1802.]

Mr. TRACY, from the committee to whom was referred the bill passed by the House of Representatives, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" made the following report:

That the original design of the laws of the United States for raising a revenue on importation, seems to be that of taxing consumption; and the system of drawbacks is, undoubtedly, meant to favor trade, by releasing from the payment of duties all goods exported for the want of consumers in this country.

In March, 1799, Congress revised the laws regulating the collection of duties on importation and tonnage; and as experience had taught that goods exported to ports or places within foreign dominions, which joined immediately to the United States, were easily returned into them, and consumed duty-free by our citizens, the law respecting drawbacks was altered so as to meet and remedy that evil.

The 75th section of that law is in the words following: "*And be it further enacted*, That a drawback of duties, as prescribed by law, shall be allowed and paid on all goods, wares, or merchandise, imported into the United States, in respect to all such goods, wares, and merchandise, whereupon the duties have been paid or secured to be paid, as, within twelve calendar months after payment made or security given, shall be exported to any foreign port or place, *other than the dominions of any foreign State immediately adjoining to the United States*," &c. The words in italics were added in this revisal; by which it will be discerned, that New Orleans being in the Spanish province of Louisiana, which immediately adjoins the United States, was clearly within the prohibiting words of the law, and that of course, no drawback was to be allowed on any exportation to that port. For the purpose of giving time for a full understanding of this law, by a clause within it, it was not to go into operation till the first of July next following its passage, which was March 2d, leaving nearly four months for its promulgation.

At this time, and until the peace in Europe of 1801, there were extensive exportations from many of the ports in the United States to New Orleans: and from the 10th of July, 1799, to the 5th of February next following, there were about 240 debentures for drawbacks given by the collector of the port of New York, for duties paid or secured to be paid on goods exported to New Orleans, amounting to more than $60,000, of which somewhat more than $14,000 are paid, and the payment of the residue suspended by order of the Treasury Department.

The excuse of the collector for giving these debentures is, that, from pressure of business, he had not taken notice of the prohibitory clause of the new law, which began its operations on the first of July, and that his neglect is imputable to the removal of his principal and other clerks by the epidemic, which unhappily prevailed in New York the latter part of the summer and autumn of that year.

There were, likewise, similar debentures given by the collector of Salem and Beverly, in Massachusetts, from October 29th, 1799, to February 3d next following, for the sum of about 2,500 dollars, nearly 1000 dollars of which is paid, and the payment of the residue suspended by order of the Treasury Department. Your committee are not informed of any particular causes for issuing these last mentioned debentures, but they suppose the officer had not paid attention to the alterations of the law.

This mistake, it is probable, has not occurred in any other ports, as the period of payment must have arrived before this time, and a discovery of them would have been made.

On the 5th of April, 1800, Congress passed an act allowing a drawback of duties on goods to be exported to New Orleans, after the 10th of said month of April, at the passage of which there was an attempt made to give the law a retrospective operation, to cover all exportations to New Orleans after the last day of June, 1799, but it was refused by both Houses. Your committee have not been able to obtain correct information of the amount of exports from the several por s in the United States to New Orleans, during the time from July 1st, 1799, to April 10th, 1800; but it is well known it must be very considerable; none of the exporters of which, it is presumed, for the reasons mentioned above, received debentures for drawbacks, but those of New York, Salem, and Beverly. Your committee are unable to distinguish, in point of principle, between the claims of those who exported in obedience to existing laws,

without receiving debentures, and those who, by a mistake of the public officers, received debentures.

If payment of the debentures is allowed, the equity of the case in favor of those who did not receive debentures is strong, as their competitors in the market were allowed by the public, from 5 to 15 per cent. advantage over them, without any merit to entitle them to it, and entirely owing to a mistake and violation of the law by the public officers.

Upon these facts, the committee report the following amendment, to be inserted at the close of the bill, in a new section, viz:

SEC. 2. *And be it further enacted*, That all persons who have exported goods, wares, or merchandise, to New Orleans, from any port in the United States, after the 30th of June, 1799, and before the 11th day of April, 1800, and who would have been entitled to a drawback if their exportations had been made to any foreign port or place, other than the dominions of a foreign State, immediately adjoining the United States, upon proof of such exportation and actual delivery in New Orleans, shall receive from the proper officer of the port from which such exportation was made, a debenture or debentures for such drawback, for the same sums, respectively, and payable in the same time, after delivery, as the debentures would have been, had they been delivered at the time of such exportation: *Provided*, That such proof of exportation and delivery shall, in every case, be produced, as shall be satisfactory to the officer who shall issue the debenture; and when such proof shall be produced, such officer shall immediately transmit the whole proof, with his opinion thereon at large, to the Secretary of the Treasury, and if the proof shall, in the opinion of the Secretary of the Treasury, be satisfactory, he shall so signify his opinion in writing to such officer, then he may, and is hereby authorized, to issue a debenture or debentures for drawback, as described above: *And provided, also*, That all such proof shall be complete before such officer, within —— after the passing of this act.

PROTECTING DUTIES.

[Communicated to the House, March 8, 1802.]

Mr. S. SMITH, from the Committee on Commerce and Manufactures, to whom were referred the memorials and petitions of sundry manufacturers of umbrellas, in the city of Philadelphia, and its vicinity, and of sundry manufacturers of paper, in the States of New Jersey, Pennsylvania, and Delaware, made the following report:

That your committee have already recommended that rags, being the gross article of which paper is made, should, in future, be imported free of duty; that this encouragement, added to the twelve and a half per cent. now imposed on the importation of foreign made paper, it is hoped and expected, will be sufficient for the manufacture of that article.

The committee are of opinion that paper is the gross article made use of by our printers of all kinds. It would be extremely injurious to that useful branch, and inexpedient, to increase the duty on imported paper.

Your committee recommend that the duty, in future to be imposed on starch, may be three cents per pound; on hair powder, four cents per pound; and umbrellas, fifty cents each.

INTERNAL DUTIES.

[Communicated to the House, March 8, 1802.]

Mr. RANDOLPH, from the Committee of Ways and Means, who were instructed to inquire into the expediency of repealing the laws laying duties on stills and domestic distilled spirits, on refined sugars, licenses to retailers, sales at auction, pleasurable carriages, stamped vellum, parchment, and paper, and postage on newspapers, made the following report:

That the whole amount of revenue arising from those duties, exclusive of postage on newspapers, as appears by the statements laid before the House by the Secretary of the Treasury, in the early stage of the session, did not exceed, for the year 1800, $925,000, after deducting the amount of drawbacks, paid on the exportation of domestic distilled spirits and refined sugar, during that year, which sum is chargeable with an expense of collection, equal to $137,000, exclusive of the expenses of the officers of inspectors of survey, which have been abolished. The net revenue arising from those duties may, therefore, be estimated at $792,000; but if from this sum be deducted the duties accruing on stamps, which, as, under the existing laws, they will cease to be collected after the fourth of March next, cannot be enumerated among the permanent internal duties, the whole net revenue produced from those duties may be estimated at a sum not exceeding $710,000, chargeable with an expense of collection equal to $120,000. To produce, therefore, into the Treasury, somewhat less than $600,000, an expense must be incurred more than equal to a fifth of that sum; and upwards of four hundred revenue officers, exclusive of the inspectors, must be maintained at the public charge. The continuance of a revenue drawn from the people on such terms, can, in the opinion of your committee, be justified only by an imperious necessity—a necessity which, in their estimation, does not at present, and is not, hereafter, likely to exist.

Of the proceeds of those duties, more than $500,000 arise from the tax on distillation; $372,000 of which are paid by 22,000 country stills, scattered over the immense territory of the United States: 65,000 other dollars are the product of 13,000 retailers' licenses. These facts demonstrate the difficulty, and even the impossibility, of materially lessening the expenses of collection, so long as the subjects from which the revenue is to be drawn are so thinly dispersed over this widely extended country; and the annexed communication from the Commissioner of the Revenue will explain the deficiency which is likely to occur, on

the most productive branches of those duties, unless provisions are adopted, which, by laying the tax on the quantity actually distilled, will require additional officers, to the augmentation of the present heavy charges of collection, and a multiplication of oaths, thereby lessening the security of that sanction, and endangering the public morals. The abolition of one class of these duties, by materially diminishing their product, without effecting, in the same degree, the expense of collection, would be a strong additional argument for the abrogation of all; and when it is recollected that some of those which it might be the most desirable to retain, are, even now, subjects of taxation in the several States, the committee perceive no substantial objection to releasing entirely to the States, objects of revenue, which, to them, may be equally desirable and productive; since, to them, the collection can be attended with little additional charge, and since to the Federal Government exclusively belongs the most fruitful source of revenue which the Union affords. A wise policy, it is believed, will, therefore, induce the United States to abstain, wherever practicable, from exercising the right of taxation, on those subjects over which the individual States possess a concurrent right. Other reasons concur in producing an opinion favorable to the repeal of those duties. They consist—

1st. In the vexation and oppression of many of them, some of which are peculiarly obnoxious to our citizens.

2d. In the nature of excise, which is hostile to the genius of a free people.

3d. In their tendency to multiply offices, and increase the patronage of the Executive. This effect alone would forbid the retention of the internal taxes, and a reduction, to an equal amount, of the impost on articles of the first necessity; since, by that measure, not one of the host of officers employed in their collection would be reduced.

None of the foregoing considerations, however, could have induced your committee to recommend a repeal of these taxes, was it apprehended that, by the measure, the punctual compliance with the public engagements could be endangered. But, believing additional taxes to be unnecessary for defraying the annual charges of Government, at the present rate of expenditure, they conceive that a reduction of that expenditure will justify a proportionate reduction of the public burdens. A contrary doctrine would imply an urgent necessity for an increase of the existing taxes, should no retrenchment be made in the permanent public expenditure. By the annexed letter of the Secretary of War, it will appear that a sum exceeding $400,000 will be saved on the army alone. By the estimate of the Secretary of the Navy, the expenditure for the current year is estimated at $200,000 dollars less than that of the year 1801. Of this sum, not more than $600,000 are applicable to objects of permanent expense. It follows, therefore, that a sum exceeding the whole amount of the internal duties will be saved in the permanent expenditure of those two departments alone, even should future circumstances compel us to keep up our armament in the Mediterranean.

On the subject of the postage on newspapers, the committee are of opinion that it would be unadvisable to take off that tax, inasmuch as it is insignificant in amount, and is the means of insuring the safe delivery of newspapers to their respective subscribers.

From these various considerations, the committee respectfully submit the following bill, to repeal the laws laying duties on stills and domestic distilled spirits; on refined sugar; licenses to retailers; sales at auction; pleasurable carriages; and stamped vellum, parchment, and paper.

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, March 30, 1802.]

To the honorable the Representatives of the United States, in Congress assembled, the memorial of a large number of citizens, from the counties of Morris, Sussex, and Bergen, in the State of New Jersey, who are concerned in the manufacturing of bar, cast iron, rolled iron, nail rods, and nails, humbly showeth:

That, at a meeting held by them at Morristown, in the county of Morris, on the 17th day of March, 1802, John Cobb, Esq., was chosen chairman, and Silas Dickerson, secretary. Your memorialists then thonght it expedient to make known to you the situation in which they find themselves placed, in regard to prosecuting these branches of manufactures, since the late establishment of peace in Europe, many of whom, with a view to render those manufactories a permanent source of wealth and independence to this country, and a profitable employment to themselves, have recently purchased large tracts of woodland, as necessary appendages thereto, at high prices, under an expectation that our Government, following, in this instance, the policy of European nations, would extend a fostering hand, not only to this, but to all other manufactories of our country; that, since that event, so favorable to humanity, such large quantities of foreign bar iron have been imported, as to cause a serious decline in the prices of our own.

Under these discouragements, we presume to look with confidence to our Government, as the only source from whence we can hope for relief. As our country abounds with many yet unimproved sites for those manufactories, large forests of timber, and inexhaustible mines of, perhaps, the best iron ore in the world, which, in our opinion, if protected by such additional duties on foreign iron, as would tend, in a measure, to discourage future importations, would enable us to progress in those branches with renewed vigor, and thereby enable the United States, not only to supply themselves, at present, but shortly, to furnish large quantities for exportation, and prevent the necessity of sending, annually, large sums of money to

countries from whence it never returns, for the purchase of such articles as, with proper encouragement, we could more than supply ourselves.

We have taken the liberty to accompany this with an estimate of the number of furnaces, forges, rolling and slitting mills, in this State, which, on examining, we presume, you will find nearly correct; in which we have likewise stated the probable quantity of iron annually manufactured into nails.

Your memorialists, therefore, request your honorable body will take the foregoing into consideration, and afford such encouragement in the premises, by increasing the duties on imported iron, as as in your better wisdem, you may think most proper.

Signed in behalf of the meeting.

JOHN COBB, *Chairman.*

Attest: SILAS DICKERSON, *Secretary.*

ESTIMATE.

In the State of New Jersey, there are at least one hundred and fifty forges now actually carried on, which, on a moderate calculation, will produce twenty tons of bar iron, each, annually, amounting to three thousand tons. There are also seven blast furnaces now carried on, which yield, on an average, five hundred tons each, annually, amounting to thirty-five hundred tons. There are, likewise, six other blast furnaces, in good situations, which are not at present carried on; besides, many situations unimproved, equal to any in the State. There are also a great number of forges, and situations for forges, in the like condition. About one hundred and twenty of the above-mentioned forges are in the counties of Morris, Sussex, and Bergen, besides three blast furnaces; all of which are actually going. The State of New Jersey, on a moderate calculation, is capable of furnishing, annually, five thousand tons of bar iron, and seven thousand tons of cast iron. There are four rolling and slitting mills, which roll and slit, on an average, each, two hundred tons, one half of which is manufactured into nails. The above estimate is made with as much accuracy as in our power, from the best information we have been able to obtain.

JOHN COBB, *Chairman.*

Attest: SILAS DICKERSON, *Secretary.*

THE MINT.

Communicated to the House, April 2, 1802, with a bill to repeal so much of the acts, the one, entitled "An act establishing a Mint, and regulating the coins of the United States; and the other, an act, entitled "An act supplementary to the act establishing a Mint, and regulating the coins of the United States," as relates to the establishment of the Mint.

TREASURY DEPARTMENT, *March* 9, 1802.

SIR: I have the honor to enclose copies of two letters on the subject of the Mint, and to be, with great respect, sir, your most obedient servant,

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

PHILADELPHIA, *Feb.* 27, 1802.

SIR: In answer to your letter which I had the honor of receiving by this day's post, I must inform you that, having met with great difficulties the two last years, in obtaining a full supply of copper, from various causes attending the means of payment, I wrote to Mr. Boueton, early in the Fall, to send me out, by the first Spring ships, from twenty to twenty-five tons of planchettes, and to repeat it every Spring and Fall, promising to make my remittances, during the Winter, for the next shipment. There will be due him on such shipment, about twelve or fifteen thousand dollars, which I am striving to provide for, by finishing the cents as fast as possible.

This contract is obligatory on us, and must be paid for; but I shall be able to prevent any further shipment, at any time before the first of May, by which, I hope, we shall know the mind of the Legislature on the subject of the Mint.

We have nearly twenty tons of planchettes on hand, and which will keep us employed during the Winter, but the expected shipment, will remain for the Summer's work, if the coinage of copper is continued.

I shall therefore expect your warrant, as requested, and shall push the finishing the planchettes on hand, as fast as possible, to make good the residue of the payment.

As to importing the cents complete from Europe, it can certainly be done for a trifling sum above the price of the planchettes, say about twenty pounds sterling per ton, did the policy of Government admit of it. Of this, I would not venture to determine, the Legislature alone being competent to that purpose. I once stated it to a committee of both Houses, but they determined that it would be a dangerous measure, and would not hearken to it.

An importation of cents, complete, would not diminish the security of having good copper, but it would hazard the running of a flood of cents, lighter than allowed by law, into the United States, and the difficulty of preventing the evil would be very great. It would be a greater security to Government to have the coinage of copper executed here by contract, which might be done without expense to the Union, provided Government would take the cents.

I have the honor to be, with great respect, sir, your obedient humble servant.

ELIAS BOUDINOT.

HON. SECRETARY OF THE TREASURY.

MINT, PHILADELPHIA,
March 4, 1802.

SIR: The probability of the abolition of the Mint Establishment, induces me, thus early, to state to you that, if the Legislature should not be disposed altogether to abandon the copper coinage, or might be willing, after repealing the laws establishing the Mint, to allow of a copper coinage, provided it may be done without an expense to the public, I would solicit your interests and influence to promote a proposition of that kind,

which I do not presume on, only so far as you may deem it to consist with the public good; in connexion with which, I flatter myself you will not be wanting, independent of any other claim I may have, or pretension to public patronage.

However, I need not omit informing you that, on the first establishment of the Mint, I relinquished a profession, at least equally productive and beneficial as that of the engraver's place in the Mint, which I have filled, and I believe without reproach, ever since; by the loss of which, I shall be left without resource, being so long out of the practice of my former profession, that I feel an incapacity to prosecute it with any more effect. I therefore submit the following proposition to your consideration, to the consideration of Congress, or to the Department where it may properly belong.

That I may be vested with the exclusive privilege, according to law, of coining cents of the United States, as well from abroad as within the realm, under such restrictions and provisions, either with respect to time or quantity, as Congress, in their wisdom, may deem proper; that the cents shall be of the present weight and quality, and that they shall be coined free of all expense to Government, excepting that of receiving them when coined, and paying the nominal amount.

Should the above propositions meet with your approbation or otherwise, I should still be happy to know your determination to forward them or not; if the former, I would beg to know the most proper mode of introducing it to Congress, whether by petition, and how conceived, or otherwise.

I am, sir, with the highest respect, your most obedient servant,

ROBERT SCOTT.

ALBERT GALLATIN, Esq.,
Secretary of the Treasury.

TREASURY DEPARTMENT,
March 26, 1802.

SIR: I have the honor to enclose a letter received from the Director of the Mint, and to be, with perfect respect, sir, your most obedient servant,

ALBERT GALLATIN.

Hon. Mr. GILES, *Chairman, &c.*

MINT OF THE UNITED STATES.
Philadelphia, March 22, 1802.

SIR: I am honored with your letter of the 10th instant, and hasten to give you the best answer that I can, with regard to the real and personal estate of the Mint Establishment, &c. This consists of—

Two lots on Seventh street, between Market and Arch streets, 20 feet each on Seventh street, and extending back about 100 feet, with a dwelling-house on the north lot, and a shell of a house on the south lot, which last lot widens on the rear to about sixty feet, on which the stable stands. These lots pay a ground rent of $27 50 cents per annum.

A lot on Sugar alley, at the rear of the above, twenty feet front on the alley, and about one hundred feet deep.

A frame building, improved for a large furnace, in the commons at the north end of Sixth street, of little value, the ground being merely loaned to us.

As to personal estate, this consists wholly of the copper planchettes on hand, amounting to about twenty-two tons.

Three horses, good for little but for the use of the Mint. The machinery of the Mint, of no value but for the use of the Mint.

Five striking presses with machinery.
Three cutting presses.
One milling machine.
Five pair of rollers, great and small.
One drawing machine.
Three pair of smith's bellows.
A set of blacksmith's tools.
A large number of hubs and dies, on hand, of different denominations.
Carpenter's tools.
Seven stoves.
One turning lathe.
Six scale beams, scales, and weights.
Two sets assay scales, and sundry adjusting scales.
Furniture in the clerks' rooms.
Various implements used in the several departments.
About two thousand bushels of charcoals.
Engraver's tools, pots, bottles, &c.; an old horse, cart, and gears.
About two thousand fire brick; a considerable quantity of old iron.

It is impossible to ascertain the value of these articles, as most of them are of but little consequence, except for the use of the Mint, or to persons who may intend to put them to the like uses; and, if sold at public sale, probably will not bring half their real value. The machinery of the Mint may last a year longer, with small repair, but, after that, will cost about three hundred dollars, to put it in good repair. The horses may, also, last another year, but must then, at farthest, be replaced by others.

If it should be thought best to continue the Mint, the establishment should be rendered permanent, and the machinery should be moved by steam instead of horses, which would, in some measure, reduce the annual expenses of labor, as almost the whole of it could be carried on with the same original force. Our lots are much too small, by which we are greatly cramped as to room. They are now very valuable, being in the heart of the city; their price would purchase a very advantageous lot in a less public place, and buildings might be now planned, so as to reduce the expenses of a Mint. But I am perfectly satisfied, that no modification of the Mint could be contrived to lessen them below seventeen or eighteen thousand dollars per annum; though if a larger quantity of bullion could, by any means, be provided, a greater quantity of coin could be annually made with the same expense, although I

am, individually of opinion, that its present issue, of about five hundred thousand dollars, annually, in addition to the current coin of the Union, is sufficient for the present welfare of the United States.

It is the absolute necessity of strict and regular checks, throughout the whole establishment, that makes the expense of the Mint so great, and this cannot be dispensed with, under any modification that can be proposed. I verily believe, that, under no given circumstance, can the necessary coin of the United States be produced with safety to the Government, at a much less expense than it is at present; and, I believe, that, in consideration of the subject, it would not be safe to estimate the expense, at any rate, much under twenty thousand dollars.

In the above estimate of expenses, it should be remembered that the copper cents may produce a profit of five thousand dollars per annum, that ought to be credited against the expenditures of the Mint in future, which reduces the amount considerably.

I have the honor to be, very respectfully, sir, your obedient humble servant.

ELIAS BOUDINOT, *Director.*

Hon. Secretary of the Treasury.

Two gentlemen, in Philadelphia, of respectable character, have requested me to submit the following propositions on the subject of the Mint.

They will engage to coin on the following terms, and will give ample security for the performance of the contract:

Copper for the difference in weight, small silver for three per cent., dollars for two and a half, and gold for one and a half—on the value.

Provided, the United States will give them such part of the present machinery, belonging to the Mint, as they may want, with the use of the building.

REMISSION OF DUTIES.

[Communicated to the House, April 2, 1802.]

Mr. Randolph, from the Committee of Ways and Means, who were instructed to "inquire into the expediency or inexpediency of authorizing the Secretary of the Treasury to remit the duties, in all cases, which have accrued, or may accrue, on spirits distilled, and on stills, within the United States, upon satisfactory proof being made to the said Secretary, that such stills, or distilling materials, have been accidentally destroyed by fire, rendered useless by an inundation of water, or other unavoidable casualty," made the following report:

That, in a variety of individual cases, the principle has been settled, that the Government ought not to become the insurer of any person: That the adoption of a contrary doctrine, should it be extended to commercial cases, might prove infinitely dangerous to the revenue of the United States. The Committee, therefore, respectfully recommend the adoption of the following resolution:

Resolved, That it is inexpedient to authorize the remission of the duties which have accrued, or may accrue, on distillation, in any case whatever.

PUBLIC DEBT.

[Communicated to the House, April 9, 1802.]

Mr. Randolph made the following report:

The Committee of Ways and Means having taken into consideration the subject of the public debt, and the provisions requisite for effecting its ultimate redemption, thereupon respectfully report that the propriety of pursuing efficient measures for the final extinguishment of the public debt, is a position too obviously true, in the opinion of your Committee, to require any illustration from them. The unexampled prosperity of our country, the flourishing state of our finances, and the restoration of peace among the European Powers, all contribute to render the present period peculiarly auspicious to this important undertaking. Should, however, the destructive effects of the preceding war, form any criterion by which to estimate the time necessary to invigorate the exhausted belligerent parties; should a season of great and increasing financial prosperity be suffered to pass away without a vigorous exertion to exonerate the Union from its present encumbrances, every hope may be conceded that a nation shall ever be found to discharge the principal of a debt which she has once funded: and the United States must rest content to encounter, with embarrassed resources, any emergency which may, hereafter, arise. A just confidence is, however, entertained, that every description of persons, as well those who advocate extensive warlike establishments, as those who are desirous of lessening the public contribution, will unite in support of a measure, which, by liberating the revenues of the Union from the present heavy encumbrances, can alone enable its Government to launch into expensive naval preparations, or to reduce the duties on imports.

That no effectual provision for the final redemption of the whole of the present debt of the United States does, at this time, exist, a recurrence to the letter of the Secretary of the Treasury, hereunto annexed, will readily demonstrate. To the measures which have already been adopted in relation to this subject, their complexity forms an objection inferior only to their insufficiency. To establish a plan as simple as the nature of the existing system, on which it is necessarily engrafted, will permit, and altogether adequate in its operation, has been the design of the Committee. To appropriate, permanently, so much of the annual revenue as may be requisite, appeared the only measure calculated to effect this last and principal purpose. This sum does not exceed the probable excess of the annual receipts beyond the current expenditure of the Government. In making the necessary appropriation to the sinking fund, instead of leaving to it only such surplus as the Government might not choose to employ on any other object, an adherence to economy is secured, whilst the resources of the country to meet any extraordinary emergency, remain unimpaired. Nothing less than the regular operation of a permanent system, can induce the rational expectation that the debt will ever be extinguished. Care, at the same time, has been taken, that such portion of the sum appropriated as the Commissioners may be unable annually to apply to the redemption of the debt, shall be returned into the public Treasury. Various other provisions have also been adopted, for an explanation of which, the Committee beg leave to refer to the annexed letter of the head of that Department; and to submit the following bill, making provision for the redemption of the whole public debt of the United States.

Treasury Department,
March 31, 1802.

Sir: In compliance with your letter of the 18th instant, requesting that a precise statement of the existing provisions for the redemption of the public debt should be prepared and transmitted to you, I beg leave to submit the following details, and to suggest, at the same time, in what respect it seems necessary to explain or to reinforce those provisions.

I. *The funds appropriated for the redemption of the debt, are—*

1st. So much of the duties on tonnage and merchandise, (and spirits and stills,) as shall be equal to the interest annually accruing on the principal of any part of the public debt, which has been, or, from time to time, may be discharged, by payment, purchase, or any other means.

2d. So much of the same duties as, together with the preceding item, shall be equal to the payment of the eight per cent. annuity on the six per cent. stock, until the final redemption of said stock in the year 1818; after which redemption, this appropriation shall cease; and the appropriation described by the preceding item, including therein, the interest on the whole amount of six per cent. stock thus redeemed, shall, thereafter, be applicable to the redemption or purchase of any other part of the public debt, existing on the 3d March, 1795; (including any loans since contracted for the reimbursement of the same) which may remain unpaid at that time.

3d. The dividends on the shares in the Bank of the United States, owned by the United States, now released by the payment of the subscription two millions loan from the appropriation of that object.

4th. So much of the duties aforesaid, as, together with the said dividends, shall be equal to the payment of the eight per cent. annuity on the deferred stock, until the final redemption of the said stock in 1824; after which redemption, this appropriation shall cease, and only so much of the said duties as shall be equal to the interest on the deferred stock thus redeemed, shall remain appropriated, and be applicable to the same objects as the amount of the interest on the other public debts, herein-before mentioned.

5th. The net proceeds of the sales of the Western lands.

6th. The amount of moneys received in the Treasury, on account of debts due to the United States, by reason of any matter prior to the present Constitution.

7th. The surplus of revenue to the end of the year 1790, specially appropriated to the purchase of the debt.

8th All surplusses of the revenues of the United States, which shall remain, at the end of any calendar year, beyond the amount of the appropriations charged upon the said revenues, and which, during the session of Congress next thereafter, shall not be otherwise specially appropriated or reserved by law.

All the moneys accruing by virtue of the preceding provisions, are vested, in trust, in the Commissioners of the Sinking Fund, to be applied, according to the provisions hereafter stated, to the reimbursement and redemption of the public debt, until the whole of the debt existing on the 3d March, 1795, including loans thereafter made for redeeming or reimbursing the said debt, shall be discharged; and the faith of the United States is pledged, that the said moneys or funds shall thus remain, inviolably vested and appropriated, until the said redemption or reimbursement shall have been effected: Provided, however, that if, after the whole of the other species of the said debt shall have been redeemed, any part of the three per cent. stock shall remain unredeemed, Congress may, nevertheless, divert the said funds to other purposes. Exclusively of the preceding provisions, the Commissioners of the Sinking Fund are further authorized to raise money in the following manner:

1st By borrowing, with the approbation of the President of the United States, at an interest not exceeding six per cent. and to be reimbursed at the will of the United States, any sums requisite for the payment of any instalments, or parts of the public debt, which may become due.

2d. By borrowing, with the same approbation, a sum not exceeding five millions of dollars, at a rate not exceeding six per cent., irredeemable till after the year 1819; and selling not more than one half of such six per cent. stock below par; the proceeds to be applied to the payment either of any part of the debt, due to the Bank of the United States, and which was demandable before or during the year 1796, or of any instalment of the foreign debt.

3d By selling, instead of effecting the preceding loan, so many of the shares of the Bank of the United States as they may think proper, to be applied as aforesaid.

In addition to the preceding funds, the following appropriations have been made, but the moneys arising from the same have not been specially vested in the Commissioners, nor the faith of the

United States pledged that the appropriation should not be changed viz:

1st. The additional duties laid by the act, entitled "An act for raising a further sum of money by additional duties on certain articles imported, and for other purposes," passed 3d March, 1797, are solely appropriated—first, for the payment of the principal of the then existing foreign debt; secondly, for the payment of the principal of the debt then due by the United States to the Bank of the United States.

2d. So much of the duties on tonnage and merchandise, as may be necessary, is appropriated for the payment of the loans obtained from the Bank of the United States.

3d. So much of the surplus of the duties on tonnage and merchandise beyond the permanent appropriations, as may be necessary, is appropriated for discharging the two eight per cent. loans, authorized by the laws of July 16th, 1798, and of May 7th, 1800, according to the terms and conditions of such loans.

4th. The additional duties laid by the act, entitled "An act to lay additional duties on certain articles imported," passed 13th May, 1800, are solely appropriated for the discharge of the interest and principal of the debts of the United States, theretofore contracted during the year 1800.

Finally, in relation to the interest on any part of the public debt, other than the six per cent. and deferred stock, as much of the duties on tonnage and merchandise as may be necessary, is appropriated, and the Commissioners of the Sinking Fund are authorized to borrow, annually, with the approbation of the President of the United States, one million of dollars, at a rate not exceeding six per cent. and to be reimbursed within one year from the time of each loan, in anticipation of the said duties, to be applied to the payment of the interest on the public debt.

II. *Of the manner of applying the moneys appropriated.*

So far as relates to funds vested in the Commissioners of the Sinking Fund, the law contains two distinct provisions; one, specifying the funds vested in the manner already stated; the other designating, and, in one instance, absolutely directing the manner in which the funds thus vested shall be applied: and in this the law is similar to all others which relate to the expenditure of public money, and which must also include the two distinct provisions, of authorizing the expense, and of appropriating the money necessary to defray the same. The preceding provisions are only appropriation clauses, designating, and, in relation to the Sinking Fund, vesting certain funds applicable to the payment of the debt. The manner in which the fund vested in the Commissioners of the Sinking Fund shall be applied, is provided as follows. They are directed—

1st. To pay, annually, the eight per cent. annuity on the six per cent. and deferred stocks; and in this respect, no discretion is left with them the injunction being absolute.

2d. To cause to be applied all such surplus of the Sinking Fund as may at any time exist, after paying the said annuity, towards the further redemption or purchase of the debt of the United States, existing on the 3d March, 1795, including loans for the reimbursement thereof, until the said debt shall be completely reimbursed or redeemed. And the application of this surplus is left to their discretion, provided that the purchases thus to be made, shall be at the lowest price, either by open purchases, or by receiving sealed proposals; and shall not be made at a higher rate than the market price, or value of the debt.

So far as relates to the appropriations not vested in the Sinking Fund, no provision, other than what results from the appropriations themselves, has been made, directing or even authorizing the application of the moneys appropriated, or, in other words, authorizing the expense. The only exception is that of the additional duties of 1797, in relation to which, the provision that they shall be solely appropriated for a certain object may be considered as an injunction to apply their amount, if it can be ascertained, to that object; and a difficulty would even rise, as to the manner in which that amount could be applied. The law of 3d of March, 1795, having provided that all payments of the principal of the debt shall be made under the direction of the Commissioners of the Sinking Fund; and that which appropriates those additional duties having omitted to vest their proceeds in the said Commissioners.

III. *Operation of the preceding provisions.*

1st. The effect of the four first appropriations in favor of the Commissioners of the Sinking Fund, is, at present, simply an annual payment out of the duties on tonnage and merchandise, of a sum, which, together with the bank dividends, shall be equal to the eight per cent. annuity on the six per cent. and deferred stocks, for the discharge of the said annuity; and those provisions will continue to operate only in that manner until after the redemption of the six per cent. stock in 1818, or, until after the whole amount of the interest accruing on the principal of public debt discharged, other than the six per cent. and deferred stocks, shall exceed the amount of the eight per cent. annuity on the six per cent. stock. In the last case, so much of the duties on tonnage and merchandise as shall be equal to the surplus of such interest beyond the said annuity, and, after the redemption of the six per cent. stock, in 1818, the whole of the interest accruing on the debt thus discharged, including therein the said six per cent. stock, shall be applicable to the discharge of any other part of the public debt, existing on the 3d March, 1795, which shall then remain unpaid. But those two events are too remote to be now taken into consideration. The eight per cent. annuity on the deferred and six per cent. stocks, to be thus paid annually, amounts to $3,350,362 1, of which, $70,040 at the rate of eight per cent. dividend on the bank shares, are paid out of the said dividends; and the balance of $3,280,022 1, out of the duties on tonnage and merchandise.

2d. The proceeds of the sales of lands, and of old debts recovered, the amount of which is uncertain, and has been estimated as yielding on an

average of the eight succeeding years, an annual sum of $400,000, must be annually applied to the payment or purchase of any part of the public debt, excepting only the eight per cent. loans and navy six per cent. stocks, neither of which existed at the time of passing, or is embraced by the provisions of the law of 3d March, 1795: and, under present circumstances, these proceeds will naturally be applied to the reimbursement of the Dutch debt, so far as they can operate towards that object; but, as the instalments due on that debt amount annually for this and the five ensuing years, to a sum which varies from $920,000 to 2 220,000, and which averages, for each of the said six years, almost $1,600,000 a year, it is evident that that appropriation is inadequate for that object.

From thence it results that, for the faithful discharge of about three-fourths of the Dutch debt, no other provision is made, exclusively of the authorities to borrow or to sell bank shares, except that which may result from the surplusses of revenue, or from the additional duties laid by the act of 3d March, 1797; that no provision, until the Dutch debt shall have been discharged, nor, after its payment, any other but the above-mentioned proceeds of lands and old debts, is made for the purchase and redemption of any other of the debts existing on the 3d March, 1795, or embraced by its provisions, (and which consist of the five and half, four and half, three, and 1796 six per cent. stocks) except the above-mentioned surplusses of revenue; and that, for the redemption of the two eight per cent. loans, and navy six per cent. stocks, no efficient provision has been made; the general appropriation of the acts authorizing the two eight per cent. loans, being discretionary and not imperative; and that of the act of the 13th May, 1800, being rendered nugatory so far as relates to the principal, by being applicable to the payment of any part of the interest of the public debt.

3d. The amount of the sums which, by virtue of the appropriation of the surplusses of revenue, should vest in the Commissioners of the Sinking Fund, has never yet been ascertained; and several difficulties occur in attempting to determine the true construction of the law, by which to fix that amount. It is uncertain whether, by the law of the 3d March, 1795, the surplusses of the years preceding that year are vested; whether it was intended, by that law, to vest in the sinking fund the surplus of each calendar year, in which such surplus did exist, without making any deduction for the years where the appropriations exceeded the revenue, or, only the real aggregate amount of surplusses, deducting the deficiencies for those years, from the surplusses of revenue for the years where the same did exist; whether the proceeds of loans should be included in the revenue; and whether the payments on account of the principal of the debt should be charged to that revenue. It does not appear that an uniform construction has prevailed in this department in relation to the two last points. Taking, however, the accounts as they now stand on the Treasury books, and which, until a minute investigation shall have taken place, are the only evidences of those surplusses, it appears by the statement A, hereunto annexed, that, instead of a surplus, those books exhibit a deficiency of $930.128 64 on the aggregate revenue, from the establishment of the present Government to the close of the year 1790, resulting from the appropriations charged to the revenue, having, during that period, exceeded, by that sum, the total amount of revenue, whether collected or outstanding, as it stands entered on those books. From that very result, I am strongly inclined to suspect that some entries have been made or omitted, on erroneous principles; but, it is not less evident that, for the present, this appropriation of surplusses cannot be resorted to, in order to cover the deficiency stated in the preceding item.

4th. The proceeds of the additional duties laid March, 1797, the only remaining resource for that object, not only are not by law vested in the Sinking Fund, but no steps whatever have yet been taken to ascertain their annual amount; and, although it may be practicable, hereafter, to do it, so far as they consist of specific duties, the amount of that part which consists of a two and a half per cent. additional duty on certain cotton goods, specified in the law, could not, without a total alteration in the manner in which duties are ascertained, by the officers of customs, be distinguished from the proceeds of the duties on other goods paying the same rate of duty ad valorem. The total amount, however, even if it could be ascertained, cannot be estimated at a greater annual sum than $500,000, and this, added to the proceeds of lands and old debts, would fall far short of the sum annually wanted to pay the instalments of the Dutch debt. Those instalments have, heretofore, been paid out of the duties on tonnage and merchandise, generally, and charged to the revenue of the year in which they were paid, without paying any attention to the complex and inefficient provision made by law. It does not require any comment to prove, that provisions which leave no option between an irregular and unauthorized mode of payment, and a failure in the public engagements, are eminently defective.

The appropriations made subsequent to the 3d of March, 1795, which are not vested in the Commissioners of the Sinking Fund, are also liable to the general objection, that, for want of that investiture, and not being made in the nature of a contract with the creditors, they are not permanently inviolable, but like any other ordinary law, may, without any breach of faith, be repealed at the will of the Legislature, and afford, therefore, no security for the eventual discharge of the debt. The appropriation of the surplusses of the revenue, though vested in the Commissioners of the Sinking Fund, is substantially liable to the same objection: for, as only the surplus of revenue, beyond all the appropriations charged to the same, is applicable to the payment of the debt, nothing more is necessary to defeat that provision, than large appropriations for other objects.

Not only are those provisions for the public debt difficult to be executed, uncertain in their amount, dependent on the will of the Legislature, and, at all events, inadequate to the object; but, it is ul-

timately a matter of discretion with the Secretary of the Treasury, to carry them into effect, even in the case of surplusses ascertained and vested in the Sinking Fund.

All payments must be made out of moneys in the Treasury. An appropriation authorizing and directing the annual payment of a certain sum, as in the case of the eight per cent. annuity, on the six per cent. and deferred stocks, must be satisfied each year out of those moneys. An appropriation, designating, for a certain object, all moneys arising from a certain source, as in the case of the proceeds of the Western lands, and of old debts, is equally efficient, as those moneys cannot be applied to any other object. But the other appropriations for the redemption of the public debt, are neither accompanied with an imperative clause directing their application, nor, the 1797 additional duties excepted, bottomed on a distinct source of revenue, solely applicable to that object; and they rest, in common with all the appropriations for the civil, military, and naval expenses of Government, partly on moneys in the Treasury, and principally on the outstanding uncollected revenue. The aggregate of all these several kinds of appropriations uniformly exceeds the moneys in the Treasury, and it remains always optional with the Secretary of the Treasury which of them he will satisfy; and where the law does not direct, in express terms, the payment of a debt, it is left to his discretion whether he shall pay it or not.

The object of the law of the 2d March, 1769, seems to have been to make an efficient provision for the gradual reimbursement of the six per cent. and deferred stocks, by payment of eight per cent. a year, and to pave the way for a future, though distant payment of the foreign debt, by giving to the sinking fund the unascertained resources which might be derived from the sales of lands, and from the surplusses of revenue, and after the respective redemption of the six per cent. and deferred stocks, in 1818 and 1824, a sum equal to the interest accruing on the debt thus redeemed.

This last fund being too distant, and the other too uncertain, to rest, upon either, the payment of the foreign debt, the same act contemplated either its conversion into a domestic debt, redeemable at will, but not demandable at certain fixed periods, or its redemption by the proceeds of the sales of a stock of the same nature It might have been unsafe at that time, and in the then existing situation of the revenue, to have attempted more. But although the proposition for thus converting the foreign debt, was accepted for that portion which remained due to the Government of France, and two millions of dollars in a domestic five and half and four and half per cent. stock, which remains unredeemed, were thus substituted to an equal amount of foreign debt, the plan was rejected by the Dutch creditors; and from recent information obtained in that quarter, no expectation remains of its being accepted under any modification whatever. The appropriations made since 1795, instead of being, by an investiture in the sinking fund, engrafted on the plan then commenced, have been made in a detached and unconnected manner, have proven altogether inefficient, and do not seem to have produced any other effect, than that of rendering still more complex, a system in its nature sufficiently intricate. The heavy instalments of the Dutch debt are, in the meanwhile, becoming due, and require an immediate and efficient provision: the exorbitant interest paid on the eight per cent. loans, both of which are irredeemable till the year 1809, renders it necessary that such measures should be adopted as may at least insure the certainty of their reimbursement, as soon as, by their terms, Government may do it; and both with a view to that object, and on account of their being at all times demandable, it is of importance that the temporary loans obtained from the Bank of the United States should be discharged as soon as the situation of the Treasury will permit it. Nothing more seems necessary for those several objects than to make for the debts, which are intended to be discharged, as adequate a provision as is made by the act of 3d March, 1795, for the payment of the eight per cent. annuity on the six per cent. and deferred stocks; by vesting in the Commissioners of the Sinking Fund, in addition to the other funds already vested in them, such annual sum, to be out of the duties on tonnage and merchandise, as will be equal to the proposed redemption, and by directing the Commissioners to apply the same to the redemption of such debts. This provision will be determinate in its amount, simple in its execution, certain in its effect; it will neither derange nor alter a single existing appropriation or payment in relation to the sinking fund, for which the public faith is pledged, but will leave to all the other uncertain funds of that fund, and especially to the surplusses of the revenue, their legitimate operation.

The annual sum of $7,300,000 was designated in the report made by this department to Congress, at the commencement of this session, as applicable to the payment of both principal and interest of the public debt. The interest and the eight per cent. annuity on the six per cent. and deferred stocks, amount, for the present year, to $5,228,000; which would leave something less than $2,100,000 applicable to the redemption of the principal of all the other debts. Of this sum it may be estimated that about $900,000 are produced by the proceeds of lands, and of the additional duties of 1797. The actual additional appropriation, on the principles of that report, would not exceed $1,800,000.

In proposing that sum, I was guided, not by any abstract or arbitrary principles, but by the amount which was actually wanted during the present and the two ensuing years, in order to meet the payments on account of the Dutch debt. It is necessary, for those three years, to provide to that amount; and as, in the ordinary course of things, the receipts in the Treasury must be effected by recent events, to a much greater extent during the two ensuing years than afterwards, it appeared that, if it was intended to make an impression on the debt, no reason could be alleged why the provision necessary for these two arduous years should not be extended to the full redemption of

the whole debt, or at least to the reimbursement of every part which was not effectually provided for by the law of the 3d of March, 1795. The ability of the United States, with their present revenues, to apply annually that sum to that object, rests on the correctness of the estimates annexed to the report. These will not be affected by the repeal of the internal taxes, provided that the retrenchments made in the expenditure shall have been equal to the annual sum of $650,000, for which credit was taken in the estimate of revenue on account of those taxes. But in order to run no risk on that ground, I would suggest the propriety of a modification in the manner of making the appropriation, which will effectually guard us, should the annual amount of the net receipts in the Treasury be more affected by the restoration of peace than has been expected.

It will be recollected that, on the principles of that report, provision was made, independent of the permanent revenues, to meet the probable demands which might arise under the convention with France, or the sixth article of the treaty with Great Britain. The resources, estimated at three millions of dollars, which were suggested as sufficient, for the present, to discharge those eventual demands, were the surplus of specie in the Treasury, an eventual sale of the bank shares belonging to the United States, the arrearages of the direct tax, and the proceeds of duties on the stamps. The deficiency arising from the repeal of those duties will be more than balanced by the arrears which shall remain outstanding on the internal duties, on the 30th day of June, and which will not fall short of one million of dollars; and the amount of specie in the Treasury was greater by $500,000, on the first day of January last, than had been estimated: for, it is proper here to state that that specie which, on the first day of April, 1801, amounted only to $1,794,044 85, had increased, on the 31st December last, to the sum of $3,089,761 78.

Those estimated three millions may therefore be safely relied on in addition to the permanent revenues; and the modification which I would suggest, consists in making the payment of the eventual demands which may become due to foreign nations, conditionally payable out of the proposed appropriation of $7,300,000 for the debt, with a proviso that both those demands, and the temporary loans, might be paid out of other moneys, if the situation of the Treasury should permit it. The effect of this modification would be, eventually, to draw the three millions reserved, to assist the current revenues, if these should fall short of the estimates.

If the receipts of the Treasury should be equal to the sums at which they have been rated, the effect of the appropriation would be precisely that exhibited in the report, namely, that it would be applied to the payment of the public debt, including therein the loans obtained from the bank; and that the demands which may become payable to foreign nations would be discharged out of the reserved three millions. If those receipts should fall short of the estimated sum, the appropriation of $7,300,000 would be applicable both to the payment of the debt, and temporary loans, and of the demands arising under treaties.

If the revenues should exceed the sum at which they have been rated, the $7,300,000 would be applied exclusively to the payment of the debt proper; and both the temporary loans and demands payable to foreign nations, might be discharged out of the surplus moneys thus received in the Treasury. By adopting that mode, we would be safe under every ordinary contingency; the only difference which would result from a greater or less revenue than has been estimated, being, that the ultimate redemption of the debt would be accelerated or retarded in the same proportion.

Having answered the inquiry proposed in your letter with as much precision as the subject seems to admit, permit me to suggest some other arrangements, which, though of less magnitude, are not altogether unimportant.

The inconvenience of paying the large instalments of the Dutch debt, which fall due this and the ensuing years, is much increased by the obligation of discharging them abroad, both on account of the injury arising from such considerable portion of the circulating capital of the United States being thus drawn abroad, and of the difficulty and risk which attach to the purchase of so large an amount of remittances. Although those difficulties must be met, if they cannot be obviated, it seems proper to adopt every measure which may diminish them. The plan contemplated by the act of the 3d March, 1795, of converting that debt into a domestic debt, has heretofore been found impracticable, and, from the latest advices, the event of peace absolutely precludes any expectation of its being carried into effect. It is, however, possible, though very doubtful, that the terms of payment of a part of that debt may be extended by reloans, so as to equalize, on the eight ensuing years, the payments which fall principally on this and the four succeeding years. Should that operation be effected so as to reduce the annual payments in Holland from two millions of dollars to one million, the other million might be applied with more advantage in the payment of the loan obtained from the bank, or of any other part of the debt payable and held in America. For this purpose it would be necessary to give an express authority to the Commissioners of the Sinking Fund, and, in order to enble them to transact, in the most advantageous manner, both that and every other business relative to that debt, it would be eligible to give them a power, if they shall find it necessary, to employ a special agent in Holland. The usefulness of that arrangement had been some years ago suggested by this department, and its necessity is now much increased by the increased extent of the payments and transactions in Holland thereto.

The difficulty and risks attaching to the purchases of remittances, which can only be obtained at a distance from the Treasury Department, and without any immediate control of any officer of the Government, may not perhaps be obviated by

any means. If it shall be found practicable to treat for that object with one of the banks, making a fixed allowance for every uncertain variation in the rate of exchange, and loss in the purchase of bills, it will be considered a beneficial operation to the United States. But although this may be considered as fairly within the power of the Commissioners of the Sinking Fund, it would be desirable to obtain a previous express authorization from Congress.

I have the honor to be, respectfully, sir, your obedient servant, ALBERT GALLATIN.

Hon JOHN RANDOLPH, Jr.,
Chairman of Committee of Ways and Means.

A.

An account of Balances of Revenue and Income, as the same are now exhibited on the books of the Treasury of the United States.

Dr.

1794 -	Amount of appropriations this year - - - - - -	$9,747,569 08	
	Ditto of revenue this year - - - - - - -	7,136,840 79	
	Deficiency - - - - - - - -	–	$2,610,728 29
1798 -	Amount of appropriations this year - - - - -	11,746,948 77	
	Ditto of revenue this year - - - - - - -	7,370,988 38	
	Deficiency - - - - - - - -	–	4,375,960 39
1799 -	Amount of appropriations this year - - - - -	13,185,850 84	
	Ditto of revenue this year - - - - - - -	11,193,322 28	
	Deficiency - - - - - - - -	–	1,992,528 56
			$8,979,217 24
1799 -	December 31. Balance deficiency, as below - - - -	–	930,128 64
	Balance deficiency, as below - - - - - -	–	$95,187,97

Cr.

1791 -	Amount of revenue this year - - - - - - -	$3,561,415 56*	
	Ditto of appropriations ditto - - - - - -	2,442 548 93	
	Surplus - - - - - - - -	–	$1,118,866 63
1792 -	Amount of revenue this year - - - - - - -	5,044,694 95	
	Ditto of appropriations ditto - - - - - -	4,041,346 81	
	Surplus - - - - - - - -	–	1,003,348 14
1793 -	Amount of revenue this year - - - - - - -	6,385,255 33	
	Ditto of appropriations ditto - - - - - -	5,956,040 99	
	Surplus - - - - - - - -	–	429,214 34
1795 -	Amount of revenue this year - - - - - - -	8,526,283 08	
	Ditto of appropriations ditto - - - - - -	5,610,949 57	
	Surplus - - - - - - - -	–	2,915,333 51
1796 -	Amount of revenue this year - - - - - - -	8,344,044 42	
	Ditto of appropriations ditto - - - - - -	7,083,678 07	
	Surplus - - - - - - - -	–	1,260,376 35
1797 -	Amount of revenue this year - - - - - - -	9,373,524 34	
	Ditto of appropriations ditto - - - - - -	8,051,574 72	
	Surplus - - - - - - - -	–	1,321,949 62
			8,049,088 60
1799 -	December 31. Excess of appropriations beyond the net amount of revenue and income to this day - - - - -	–	930,128 64
			$8,979,217 24
	Amount carried to the credit of the surplus fund from 1794 to 1799, inclusively - - - - - - - - -	–	834,940 67
	Balance deficiency - - - - - - - -	–	95,187 97
			$930,128 64

Stated from the records of this office. *Fractions of cents omitted throughout the table.

TREASURY DEPARTMENT, REGISTER'S OFFICE, *March* 31, 1802.

JOSEPH NOURSE, *Register.*

REMISSION OF FORFEITURE.

[Communicated to the House, April 28, 1802.]

The Secretary of the Treasury, to whom was referred the petition of Ferdinand Mullenheim, by his agent, Anthony Lamarlere, respectfully reports:

That the petitioner, a native subject of Denmark, and resident at St. Thomas, was the owner of the schooner Nymph, and of the greater part of a cargo, consisting of 48,676 lbs. (French weight) of coffee, 18,817 lbs. of brown sugar, and 317 pieces of logwood, which was laden at Port de Paix, on 13th day of April, 1799, by the said A. Lamarlere. That William Smith, the commander of the said vessel, which was bound from Port de Paix to St. Thomas, ran away with the said vessel, and, having entered the Chesapeake, did land and sell, at Norfolk, a part of the cargo, consisting of the whole of the sugar, and 6,682 lbs. of coffee, on which the duties were paid, and afterwards attempted, with the assistance of David Porter and others, to smuggle the remainder of the cargo. That, having been detected therein, the vessel and part of the cargo were seized, libelled, condemned, and sold for seven thousand seven hundred and seventy dollars and ninety-five cents; from which, deducting six hundred and eighty-two dollars and seven cents costs, left a sum of seven thousand and eighty-eight dollars and eighty-eight cents for the net proceeds of the sale.

That a certain Lascamela having laid claim to a part of the said cargo, a sum of two thousand two hundred and seventy-five dollars and three cents, part of the net proceeds above-mentioned, were, by order of the court, retained by Jacob Graybill, then Marshal of the District of Maryland, until a decision had taken place on the said claim; and that, by subsequent decree of the court, the said claim was set aside.

Under those circumstances, the petitioner applied, under the provisions, and in the manner directed by law, for a remission of the said forfeitures; whereupon, the Secretary of the Treasury being of opinion that the said forfeitures were incurred in consequence of the barratry and fraud of William Smith, master of the schooner Nymph, and sundry mariners, and without intention of fraud or wilful negligence on the part of the owners of the said schooner and her cargo, did, on the 27th day of December, 1800, decide, that, "deducting the duties on the merchandise shipped at Port de Paix for the Island of St. Thomas, (which merchandise was presumed to have been brought to the United States) and all costs, the proceeds of the sales of the vessel and cargo, which had been forfeited, and which have or may be recovered, be restored to the respective owners."

The duties on coffee shipped at Port de Paix amount to two thousand nine hundred and ninety-eight dollars and forty-four cents, of which sum three hundred and sixty-seven dollars and fifty-one cents were paid on account of the parcel landed at Norfolk, leaving a sum of two thousand six hundred and thirty dollars and ninety-three cents for the amount of duties, which, in pursuance of the Secretary's decision, being deducted from the sum of seven thousand and eighty-eight dollars and eighty-eight cents, net proceeds of the vessel and cargo, leaves, for the whole amount which might have been claimed by the petitioner, a sum of four thousand four hundred and fifty-seven dollars and ninety-five cents. He has already received three thousand four hundred and nineteen dollars and seventy-five cents, and there has been paid into the Treasury, on account of the duties, five hundred and thirty-four dollars and seventy-seven cents.

The balance due to the petitioner is -	$1,038 20
That due to the United States for duties	3,096 16
Making, altogether, - - -	$3,134 36

Which sum has not yet been recovered, the late Marshal of Maryland, who had no sureties, having died insolvent, without having paid the sum of two thousand two hundred and seventy-five dollars and three cents, left in his hands; and the balance of eight hundred and fifty-nine dollars and thirty-three cents, being still in the possession of the informer, to whom it had been paid, as his legal share, before the Secretary had remitted the forfeiture.

From that statement of facts, it is evident that the petitioner has no just claim, unless the Secretary's decision should be supposed not to have been sufficiently favorable.

In the opinion of the present Secretary, that decision is grounded on just principles. However unfortunate the barratry and subsequent conduct of his captain may have proven to the owner of the vessel, he, and not the United States, must bear the loss resulting from that misconduct.

The duties on the whole cargo, consumed within the United States, are justly due to them, whether the merchandise was smuggled or entered according to law; and nothing more can be required from them, than a restoration of what may be recovered, after deducting the amount of those duties. It also appears, that the manner in which the former Secretary's decision has been carried into effect, is more liberal than the petitioner had, strictly, a right to expect, as the duties ought, perhaps, to have been deducted from the specie on hand, leaving him the chance of recovering what he could from Mr. Graybill's estate and from the informer. Against this last, a suit has been instituted, and the amount, if recovered, will be paid to the petitioner. But the eventual loss of the sum which was left in the hands of the late marshal, although it arises from the act of one of the owners, will fall, almost exclusively, on the United States.

From a view of all the circumstances of the case, the petitioner does not seem to be entitled to any legislative relief.

All which is most respectfully submitted.

ALBERT GALLATIN.

TREASURY DEPARTMENT, *April* 26, 1802.

APPLICATION OF PUBLIC MONEY.

[Communicated to the House, April 29, 1802.]

Mr. Nicholson made the following report: The committee appointed "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for; and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money;" submit the following report:

In order to ascertain, generally, in what manner and under what checks, moneys were drawn from the Treasury of the United States, and were afterwards expended and accounted for, the committee applied to the Secretary of the Treasury, stating the several objects to which they intended to direct their inquiry; his answers, under date of the second of March and the ninth of April, are annexed to this report; to which, as well as to the statements of the Accountants of the War and Navy Departments, on the same subject, they beg leave to refer.

The committee deemed it sufficient to state, here, that all public moneys are drawn from the Treasury in virtue of warrants signed by the Secretary of the Treasury, and countersigned by the Comptroller, and are paid to the officers or agents, to whom the same are due, or who are entrusted with their application; or, when relating to the War or Navy Departments, they are placed in the hands of the Treasurer, as agent for those Departments, who disburses them on warrants drawn by the Secretary of the Department, and countersigned by the respective accountants.

For the general construction heretofore given by the Treasury Department to the various appropriation laws, the committee refer to the communication made to them by the Secretary of the Treasury, on the second of March, and more particularly, for the construction given to the annual appropriations for the support of the Navy and Army, respectively, they refer to a report made by the late Secretary of the Treasury, on the —— day of May, one thousand seven hundred and ninety-six, to the Committee of Ways and Means. From both of these, it appears that the appropriations for the Army and Navy, respectively, have been considered as constituting but one general fund for each of these objects, although, in most of the laws making appropriations, a variety of heads of expenditure were distinctly specified. If the general construction be correct, it may, perhaps, be said that, in most instances, moneys have been drawn from the Treasury in the manner prescribed by law. Some irregularities are stated to have occurred, where moneys have been advanced upon the simple application of the Secretary of the Treasury, by letter, without the formality of a warrant, and, sometimes, even without a previous appropriation; but, in these cases, the irregularity has been afterwards covered by subsequent warrants and appropriations, and the committee do not discover that it has been productive of an injurious consequence to the United States. The Secretary of the Treasury, in his communication of the second of March, having expressed a doubt whether the moneys advanced on account of the removal of the seat of Government from Philadelphia to Washington, had been authorized by any previous law, the committee directed their attention to the object, and now offer the result.

The law establishing the permanent and temporary seat of Government (passed on the 16th of June, in the year 1790) provided, "that all offices attached to the seat of Government, should be removed to this District on the first day of December, in the year one thousand eight hundred, by their respective holders," and declared that the necessary expenses of such removal should be defrayed out of the duties on imports and tonnage. This appropriation is indefinite in its nature, and, perhaps, some contrariety of opinion may exist, as to the extent of the expense it was intended to cover; but the committee conceive that a strict adherence to the letter of the law would confine the appropriation to the expenses actually incurred in removing the books, papers, records, and furniture, of the respective offices. From the document marked G, hereto annexed, it appears that the sum of fifteen thousand two hundred and ninety-three dollars and twenty-three cents were paid for the transportation of the books, papers, records, and furniture of the several offices, and the furniture of the President; and the sum of thirty-two thousand eight hundred and seventy two dollars and thirty-four cents for expenses incurred by the officers and clerks for the removal of themselves and families. In general, the vouchers produced in support of these last mentioned expenses, are the stated accounts, and the declarations of the officers and clerks, to whom the same were allowed. Transcripts of the accounts of the officers only, are annexed, those of the clerks being too numerous to be detailed. From these accounts (which are marked G 1 to G 12, inclusive) it will be seen that the charges consist of travelling expenses, losses on the sale of articles th ught too inconvenient to remove, packing, breakage, and transportation of furniture, house rent in Philadelphia, and *extra* expenses after their arrival at the city of Washington. As all the officers and clerks were, at the time, in the service and pay of the Government, and received the full amount of their salaries, exclusive of these extraordinary allowances, and as the act of June, 1790, provided only for defraying the expenses incident to the removal of the offices, the committee are of opinion that this sum of $32,872 34 was drawn from the Treasury and expended without any legal authority.

The manner in which moneys drawn from the Treasury, under previous appropriations, have been afterwards applied, presents a subject of inquiry of more difficulty and importance.

The expenses in relation to the civil list, being *chiefly* for salaries, are not otherwise liable to abuse, than in cases where moneys advanced to agents have not been applied to the objects for which the

advance was made, and have, not been, afterwards, regularly accounted for. Amongst the subordinate agents, to whom moneys have been advanced for miscellaneous objects, of a civil nature, some appear to be delinquents, and some not to have rendered their accounts, as will be seen by a reference to the document marked D, herewith reported.

The moneys necessary to defray the expenses incident to the intercourse with foreign nations, have, till lately, been paid to the Secretary of State, who used to disburse the same. The accounts of Messrs. Jefferson, Marshall, and Madison, who have, at various periods, filled that appointment, have been settled, and no balance is due thereon. A suit, not yet decided, has been instituted against Mr. Randolph, formerly Secretary of State, for a balance unaccounted for by him. The accounts of Mr. Pickering are not yet finally settled. He remains charged with a sum of $3,383 20, erroneously paid by him for the freight of a vessel supposed to have been employed by the Consul at Tripoli, and with another sum of $3,289 50, being the balance of an advance made to Samuel Hodgdon, for the purpose of being remitted to Mr. Humpreys, at Madrid, in part of his salary, which Mr. Humphreys did not receive. Both these sums, it is believed, may, and will be recovered from the persons to whom they were respectively advanced. But the principal reason which appears to have prevented an ultimate settlement with him, arises from the circumstance of his not having applied the whole of the money drawn by him from the Treasury, to the specific objects for which it was appropriated by law. For the extent and result of this misapplication, the committee refer to the statement marked C, accompanying the communication of the Secretary of the Treasury, under date of the second of March. From this statement it appears, that Mr. Pickering drew from the Treasury, under the appropriations made "for defraying the expenses incident to the intercourse with foreign nations, for negotiating treaties with the Barbary Powers, and for the contingent expenses of Government," the sum of $63,999 57 more than he applied to those several objects, which together with the sum of $14,588 54, gained by him on the purchase of bills of exchange for the use of the Government, form an aggregate of $78,588 11. The same statement C will show that the whole of this sum was expended by him on objects of a public nature, (as far as the committee can ascertain the fact,) but this expenditure having been made from appropriations designed for other objects by law, the misapplication of the money has prevented the Comptroller of the Treasury from settling his accounts.

Although the committee will not say that there are no cases in which a public officer would be justified in applying moneys appropriated to one object, to expenditures on another, yet they are of opinion that, in every deviation, the necessity for the application ought to be for some obvious benefit to the United States, and, in every such case, a disclosure thereof to Congress ought to be made, at the next session which should immediately thereafter ensue.

The moneys which have been advanced to the several Secretaries of State, have been remitted by them principally to Ministers, Consuls, and other agents abroad, whose accounts are not yet rendered, (although many of them are of an old date,) and the committee cannot say how, or in what manner, the money has been expended.

The advances necessary for defraying the expenses of the Military and Naval Establishments, were formerly made, in part, to individuals who have accounted directly with that department; but since the law of the 16th July, 1798, the whole of the moneys have been paid to the Treasurer, as agent for these two departments, and have been subject to the drafts of the respective Secretaries. The letter of the Secretary of the Treasury, under date of the 9th of April, ——, accompanied by sundry abstracts, (marked from A 1 to A 9, inclusive) together with the statements of the two accountants (E, E 1, E 2, E 3, and F, respectively) herewith reported, exhibit the amount advanced, settled, and remaining unaccounted for, in each department. From these it appears, that, from the 1st day of January, 1797, to the end of the year 1801, the advances made by the Treasury on account of the War Department, have amounted (exclusively of a sum in the hands of the Treasurer) to $9,846,963, 29.

Of which, there have been paid to individuals who have accounted with, or are accountable to the Treasury, a sum of - - - -	$1,390,238 21
And there have been paid, by virtue of the warrants of the Secretary of War, or to individuals accountable to the War Department, the sum of - - - - - -	8,456,725 07
Making an aggregate equal to -	9,846,963 29
To which is to be added, a balance remaining unaccounted for, on the books of the accountant, of the 1st of January, 1797 - - - - -	1,756,391 36
Making, in the whole, a sum chargeable to the War Department, from the year 1797 to 1801, (both inclusive of - - - - -	10,213,116 43
Of which, the accountant has settled and rendered to the Treasury, accounts to the amount of $6,335,923 93; leaving a balance of	$3,877,192 50
unaccounted for, or not yet settled.	
The moneys advanced to the Navy Department, from its establishment in 1798, to the 1st March, 1801, exclusively of the sum paid by the Treasury to individuals, amount to - -	9,982,313 72
Of which sum, accounts have been settled by the accountant, and rendered to the Treasury, to the amount of - - - - - - - -	5,810,691 98
Leaving an unsettled balance of -	4,170,951 75

These sums differ in amount, nominally, from those contained in the statement annexed to the letter of the Secretary of the Treasury, of the 2d

March, but the difference is explained, and the actual amount proved to be the same in the letter and statements of the 9th of April.

The statements of the accountants, although they exhibit balances apparently unaccounted for, to a large amount, will, likewise, show that accounts have been rendered for a considerable portion, which are in a train of settlement but not finally closed.

The late hour at which the voluminous documents accompanying this report were received by the committee, (upon the 9th of April) and the labor necessary to investigate such a mass of accounts, and of advances unaccounted for, particularly in the War and Navy Departments, embracing an expenditure of twenty million of dollars, have rendered it impossible for the committee, consistently with their attention to their other duties, to form an opinion as to the manner in which this sum has been expended. But, from the partial view which they have taken, they beg leave to present some facts and principles, which they believe to be worthy of the notice of Congress.

There are two previous requisites which are necessary to justify the expenditure of public money, and, without which, no legal expenditure can be made: First, that the expenditure for the object to which it is applied, should be authorized by law; and, secondly, that an appropriation should have been made to cover that authorized expense. In the War and Navy Dapartments, this rule does not appear to have been strictly adhered to in all cases; but, for the reasons above assigned, the committee have been unable to ascertain how far it has been departed from. The most prominent instances which have yet presented themselves, are, herewith, stated.

By an act passed on the 25th day of February, in the year 1799, an authority was given to the President of the United States to cause to be built six ships of war, to be armed with, and carry not less than seventy-four guns each, and to build or purchase six sloops of war, to be armed with eighteen guns each. In part of the necessary expenditures for these objects, a sum not exceeding one million of dollars was appropriated by the same law. And by another act, passed on the same day, it was declared that two docks should be erected, in suitable places, under the direction of the President of the United States, for the convenience of repairing the public ships, and the sum of fifty thousand dollars was appropriated for that purpose; and by another act, passed on the same day, the sum of two hundred thousand dollars was appropriated to be laid out in the purchase of growing or other timber, or of land on which timber is growing, suitable for the Navy, and to cause the proper measures to be taken to have the same preserved for the future uses of the Navy. Under this authority, only, the then Secretary of the Navy expended the sum of $135,846 92 in the purchase of six navy yards, at Portsmouth, Charlestown, (Mass.) New York, Philadelphia, Gosport, (Virginia,) and the City of Washington. For this expenditure, the committee conceive that no authority was given, by law, nor any appropriation made, except for the two docks above-mentioned, as the sum of one million dollars was appropriated by the act of 1799, for building or purchasing the ships only, and the sum of two hundred thousand dollars for the purchase of timber. As public ships of war had been before built under a similar authority, for the use of the United States, at private yards, and as Congress did, at the same time that they authorized the building or purchasing the ships, provide for the erection of two docks only, the committee are of opinion that four of the navy yards were purchased without authority, and the money misapplied which was paid for them.

In the War Department, there likewise appears to have been a transaction equally unauthorized. In the year ——, a pile of buildings was commenced, under the directions of the then Secretary of War, on the banks of the Schuylkill, near the city of Philadelphia, which have since been carried on in a maner highly expensive. These buildings have been called a *Laboratory*, and, although yet in an unfinished state, have already cost the United States $152,608 5, which sum has been paid out of the appropriations heretofore made for the quartermaster's department. The committee are of an opinion that this expenditure of money could not be justified at any time, but more particularly at a moment when the United States were borrowing money, at a high rate of interest, to meet objects which the Legislature considered as necessary, and had sanctioned by law.

The committee beg leave, likewise, to refer to an important principle formerly settled by the Executive, and actually practised upon in the War Department, in relation to the expenditure of public money, which they deem improper, in a Government like ours, where taxes cannot be imposed but by public consent, and where moneys arising from taxes, cannot be disbursed but upon the authority of a law previously passed by the Representatives of the nation. By an act, passed on the 9th of February, in the year 1793 the President is directed to cause the moneys drawn from the Treasury, for the purpose of intercourse with foreign nations, to be settled, by causing the same to be accounted for, specifically, in all cases wherein the expenditure thereof may, in his judgment, be made public; and by making a certificate or certificates, or causing the Secretary of State to make a certificate or certificates of the amount of such expenditures, as he may think it advisable not to specify; and such certificates are to be taken as sufficient vouchers for the sums expressed to have been expended. The policy of this law, the committee do not intend to question, but it is clear that it extends only to cases of compensation, for what are usually termed "*secret services*" that may be rendered to the United States in their intercourse with foreign nations. The section above recited has been engrafted into two laws, passed in the respective years of 1798 and 1800, but in every law on this subject, it has been expressly confined to foreign intercourse, and in the act of 1800, is farther limited to the contingent expenses only of foreign intercourse. It has not, therefore, been without considerable surprise that the committee have seen the same principle applied to the expenditures of the War Department.

In the instructions given by the Secretary of War to the Accountant of the War Department, in his letter of the 28th of December, 1797, herewith reported and marked L, a rule is positively laid down, that expenditures for secret services, rendered in relation to the duties of the War Department, are to be admitted. And on the 20th day of December, in the year 1799, the Secretary of the Treasury made a report on this subject to the President of the United States, (subjoined and marked M) in which the principle is again recognised as applicable to the Department of State, War, and Navy. On the subsequent day the President accordingly signed two certificates as vouchers for moneys said to have been expended in relation to the duties of the War Dapartment, which certificates are annexed to this report, and are marked N and O. The committee entertain no doubt as to the illegality of this measure, as it is authorized by no law whatsoever, and they had flattered themselves that the Federal Government required no services of any nature which ought to be concealed from the officers of the Treasury, or from the Legislature. They consider these facts as coming properly under the head of expenditures not authorized by law.

Two other cases of exceptionable expenditure in the War Department have been sufficiently examined to warrant a report upon them. The first relates to an appointment conferred by the late President on Uriah Tracy, Esq., in the Summer of the year 1800, while he was a member of the Senate of the United States: the second relates to a payment made, from the contingent fund of the War Department, to Mrs. Ariana French, of Georgetown, in the month of July, 1800. Neither of these are very extensive in amount, but both deemed important for the precedents they may hereafter furnish.

It appears from a document herewith exhibited, and marked P, that Mr. Tracy was appointed "to visit and examine into the actual state of the garrisons, Indian trading-houses, factories, &c. in the Northwestern Territory, on the Mississippi, and on the frontiers of Tennessee and Georgia," and that Mr. Tracy received for this service the sum of one thousand nine hundred and eighty-five dollars and five cents; seven hundred and fifty-three dollars and five cents being for travelling and other incidental expenses, and twelve hundred and thirty-two dollars for his compensation, from the sixteenth of June to the sixteenth of November, in the year one thousand eight hundred, at eight dollars per day.

From the account exhibited by Mr. Tracy for his expenses, it will be seen that, during these five months he visited Pittsburg, Presqu' Isle, Niagara, Detroit, and Michillimackinack, but did not fulfil the other objects of his mission.

The committee cannot forbear to remark, that Mr. Tracy's acceptance of this appointment has the appearance, at least, of inconsistency with that part of the Constitution which provides that "no person holding an office under the United States shall be a member of either House of Congress." Mr. Tracy was, at the time of receiving the appointment, during the whole of its continuance, and has ever since been, a member of the Senate of the United States; and, from an inspection of the pay roll of the Senate, the committee find that, for the last seventeen days of the five months of his service, under the above appointment, he not only had his expenses borne by the public to a considerable amount, and received likewise eight dollars per day, but that he had at the same time received, as a member of the Senate, six dollars per day for travelling from Litchfield, in Connecticut, to the seat of Government—a distance of three hundred and forty-four miles—twenty miles being allowed for travelling one day.

James McHenry, Esq., former Secretary of War, resigned that office, it is believed, in the month of May, 1800, and the document marked R, hereto annexed, shows that, in the month of April preceding, Mrs. Ariana French leased a house to him for one year, to commence from the first of June following; that an award was made between the parties, by which it was declared that Mr. McHenry should pay to Mrs. French $208 95, for damages sustained by her by reason of his not occupying her house agreeably to the contract; and that, in conformity to the opinions of the Secretary of the Treasury and the Secretary of the Navy, and by the direction of the Secretary of War, this sum was paid to Mrs. French, out of the fund for defraying the contingent expenses of the War Department.

Upon the whole the Committee are of opinion, that considerable sums of public money have been greatly misapplied, and that much expense has been incurred without any legal authority; but, for the reasons before assigned, it has been impossible for them to make a complete investigation. Nor do they believe that an investigation entirely satisfactory can be made, unless the House should think proper to appoint a committee for this purpose, to sit during the recess, with directions to make a report to the next session of Congress.

The committee deem it their duty to observe, that appropriations for the contingencies of the War and Navy Departments are, at all times, liable to abuses, not only from the very large sums usually appropriated therefor, but, also, from the impracticability of specifying by law the precise objects to which such sums are applicable; and the committee are of opinion, that giving publicity to the accounts of the expenditures of money appropriated for contingencies, would have the most direct tendency to correct the latitude of construction formerly exercised in that respect, by the heads of those Departments, to promote economy in, and attach a proper degree of confidence to, the future proceedings in those Departments. And the committee can discern no possible inconvenience in a disclosure of that nature, since they believe that there is no necessity nor propriety for applying the principle of secret service money to either of those Deparments: and at

least, it ought to be so considered, until it should be otherwise determined by law.

The committee are, therefore, of opinion that a clause to this effect ought to be inserted in the bill already reported by them, respecting the accountability of public officers.

For other arrangements which appear to be necessary "to promote economy, enforce adherence to legislative restrictions, and secure the accountability of persons entrusted with public money," they refer to the bill reported by them during the present session, to provide for the due application of public money, and to secure the accountability of persons entrusted therewith, and also to the communication of the Secretary of the Treasury, made to them on the 2d of March. All which is respectfully submitted.

JANUARY 21, 1802.

SIR: I this morning submitted to the committee, appointed to investigate the state of the Treasury Department, &c., a proposition that the committee should direct their inquiries to the several particular objects contained in the annexed statement. This proposition was agreed to, and I have been desired by the committee to enclose it to you, for the purpose of obtaining from you such information as you may be able to furnish, in answer to these inquiries. It may not, perhaps, be in your power immediately to give the whole information required, but it is expected that you will transmit it, from time to time, as it can be prepared, keeping in view the necessity of all possible despatch. In the interim, it is the intention of the committee to call at the Treasury Office, at convenient periods, in order to inspect the books of the Department, and the accounts of those persons who have been entrusted with the expenditure of public money. I have the honor to be, sir, with high consideration, your obedient servant.

JOSEPH H. NICHOLSON,
Chairman of the Committee.

ALBERT GALLATIN, *Secretary of the Treasury.*

Objects of inquiry submitted by the Chairman, and agreed to by the committee appointed "to inquire and report whether moneys drawn from the Treasury have been faithfully applied to the objects for which they were appropriated, and whether the same have been regularly accounted for, and to report, likewise, whether any further arrangements are necessary to promote economy, enforce adherence to Legislative restrictions, and secure the accountability of persons entrusted with public money.

OBJECTS OF INQUIRY GENERALLY.

1. How are moneys drawn out of the Treasury?
2. How are they expended?
3. How are they accounted for?

MORE PARTICULAR OBJECTS OF INQUIRY.

1. Under what checks, founded either on law or usage, are moneys paid out of the Treasury?
2. To whom are these moneys paid?
3. Under whose control, and under what checks, are moneys drawn out of the Treasury—expended by the agents or departments to whom the same may have been advanced?
4. What construction has been given to the appropriation laws by the Treasury Department, and by the several agents or departments to whom moneys have been advanced?
5. Have moneys always been paid by the Treasury, and applied by the agents or departments in conformity to the laws authorizing expenses and making appropriations for the same?
6. To whom, and in what manner, are the receivers of public moneys accountable?
7. In what situation are the accounts of persons at this time, who have received moneys from the Treasury, and where any of those accounts remain unsettled, what are the causes?
6. What is, particularly, the situation of accounts for moneys advanced to the Secretary of State, or to the War and Navy Departments?
9. Are the checks, under which public moneys are expended, sufficient to enforce a due application to the objects for which they are advanced?
10. Can any mode be devised by which more efficient checks, in relation to the public expenditure, may be adopted, and the accountability of those who receive moneys from the Treasury be more effectually secured, without embarrassing the public service?

TREASURY DEPARTMENT,
March 2, 1802.

SIR: I have the honor to enclose an answer to the queries proposed in your letter of the 21st January last. The statement of balances due by individuals had been prepared as they stood on the 30th June last; but, having been enabled to obtain them, since, as they stood on the 31st December last, that statement is delayed for two or three days longer, in order to give time to transcribe several marginal notes.

I have the honor to be, most respectfully, sir, your obedient servant.

ALBERT GALLATIN.

Hon. J. NICHOLSON, *Chairman, &c.*

In pursuance of the request of the Committee of Investigation, contained in the letter of their Chairman, of the 21st day of January last, the Secretary of the Treasury respectfully submits to the consideration of the Committee the following facts, observations, and statements:

By the Constitution it is provided that "no money shall be drawn from the Treasury but in consequence of appropriations made by law." By the act to establish the Treasury Department it is enacted that the Secretary of the Treasury shall grant, under certain limitations, all warrants for moneys, to be issued from the Treasury, in pursuance of appropriations by law; and that the Treasurer shall disburse the moneys of the United States, "upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, recorded by the Register, and not otherwise."

Although the construction given by the Treasury Department to appropriation laws, may not have been universally uniform, yet it seems to have been generally understood, that the whole of the moneys, appropriated for the annual support of the Army and Navy, respectively, were to be considered as making but one general appropriation for each of those two objects; and that the sums, thus appropriated, were indiscriminately applicable to every distinct object of expenditure embraced under those two general heads.

The appropriations for the Indian department, and those made generally for fortifications, have also been mostly blended with those of the War Department. But it seems, though it is difficult to reduce the practice, heretofore established, to any uniform and certain rule, that the appropriations, in relation to the purchase of cannon, arms, ammunition, and military stores, to the purchase or leasing of foundries and armories, and to the fortifications of certain designated harbors, and, also, those in relation to the purchase of land with growing timber, or of timber, to the erecting of two docks, to the purchase or building of twelve vessels, to building and equipping three ships, not less than thirty-two guns, to the building of ten galleys, to the building six sloops of war, and six seventy-four gun ships, to the safe keeping of French prisoners, as well as those respectively made during the last session of Congress, for completing six seventy-four gun ships and the public navy yards, docks, and wharves, and for erecting marine barracks, have been considered as distinct from each other, and from all other made in relation to the Army and Navy, respectively.

The appropriations made in relation to the public debt, to the civil department, to domestic expenses of a miscellaneous nature, (such as the mint establishment, light-houses, census, &c.,) and to foreign expenses, have been generally considered as constituting, for each distinct object of expenditure, embraced under each of those general heads, a specific distinct appropriation, the amount of which was applicable only to that specific object for which it was appropriated.

If the construction of appropriation laws, adopted by the Treasury Department, shall be considered as having been correct, it is believed that moneys may be said to have been drawn from the Treasury in the manner prescribed by law, only in consequence of appropriations made by law. The only object of expenditure within the knowledge of the Secretary, which may, perhaps, be excepted, is that which relates to the removal of the seat of Government. An examination of the appropriation books, kept in the offices of the Secretary and Comptroller, will give complete information on that part of the inquiry. But the Secretary here begs leave to state, that, having thought it his duty not to innovate in the usual practice, except in cases where the laws appeared to him not to admit of any doubt, his having conformed, in doubtful cases, to the construction heretofore adopted, is not to be considered as expressing an opinion in favor of the correctness of such constructions; but a custom had, till lately, prevailed, to pay moneys out of the Treasury, on a simple letter, addressed from the Secretary to the Treasurer, which payments have, afterwards, been covered by warrants, instead of being grounded, according to law, on those warrants. And, in some instances, moneys have been thus informally paid by the Treasurer, or advanced by the Bank of the United States, before an appropriation had been made, by law, to cover the expense for which the money had thus been advanced. In every such instance, the payment has been authorized by a subsequent appropriation, and covered by a warrant, grounded on the appropriation. It must, also, be observed, that, in some instances, moneys are advanced by the collectors of the revenue, out of the public moneys in their hands, and before the same have been drawn in the Treasury. The two principal objects of expenditure, to which this exception to the general rule applies, are the expenses incident to the courts of the United States, other than those for salary, namely, those for jurors, witnesses, fees, safe-keeping of prisoners, and contingencies, which are advanced by the collectors of the customs, to the marshals, and those incident to the ordinary support and repairs of light-houses, buoys, and piers, which are, also, generally defrayed out of the public moneys, in their hands, by those collectors, or other revenue officers, under whose superintendence those establishments are placed. In those instances warrants issue as if the moneys expended had been previously drawn into the Treasury, and, afterwards, paid out of the same, to the revenue officers, in order to enable them to defray the expense.

All warrants regularly granted by the Secretary of the Treasury, on the Treasurer, for the disbursement of public moneys, issue, either in payment of a balance actually due, or in advance; in the first case, they are drawn in pursuance of a settled account, certified by the Comptroller; in the last case, they rest on the authorization of that particular department who has the control of the object of expenditure to which they refer.

The payments on account of the compensations of the members of the Senate, and of the contingent expenses of that body, are made, on his requisition, to the Secretary of the Senate; those on account of the compensation of the members of the House of Representatives, on his requisition, to the Speaker of the House; those on account of the contingent expenses of the House, in the same manner, to the Clerk of the House.

The payments on account of the official contingent expenses of the several departments are made at the requisition, and are, afterwards, under the control of the head of each department, respectively; those on account of the expenses relative to the courts of the United States, other than those for salary, are made on the requisition of, and to, the marshals.

The payments on account of the Mint are made to the Treasurer thereof, on the requisition of the Director; those on account of invalid pensions, to the several Commissioners of Loans, or other agents, on the requisition of the Secretary of War.

The greater part of all other payments, in relation to the civil list, and to miscellaneous domestic

expenses of a civil nature, as they are made only after the amount has become due, and the account has been settled, never can be liable to abuse. All other payments whatever are generally made in advance, and in the following manner:

1. Those on account of the interest on the whole of the public debt, of the annual reimbursement of the principal of the six per cent. and deferred stocks, and of the instalments of the Dutch debt, are made by the Secretary of the Treasury, as follow, viz: Those on account of the interest and principal of the Dutch debt, to the Commissioners of the United States, at Amsterdam; those on account of the interest and reimbursement of the domestic debt, standing on the books of the Treasury, to the Bank of the United States; those on account of the interest and reimbursement of the same debt, standing on the books of the several Commissioners of Loans, to the said Commissioners, respectively.

The advances to the Commissioners in Holland are made, from time to time, by remittances, purchased, heretofore, by the several cashiers of the Bank of the United States; and the Commissioners render their accounts, annually, to the Treasury. Those to the bank and Commissioners of Loans are made quarterly, and to the amount ascertained to be due to the creditors, on the respective books of the Treasury, and Commissioners. The Commissioners of Loans render their accounts to the Treasury, quarterly; and as the dividends, which remain unclaimed for nine months, are payable only at this Treasury, such unclaimed amount is quarterly deducted from the advances which, otherwise, should be made to the Commissioners, and is paid to the bank. From this arrangement it results, that the accounts of the Commissioners of Loans uniformly exhibit a considerable apparent balance charged to them, and which consists, partly, of the dividends paid by them during the six preceding months, and not yet accounted for, and partly of the sums necessary to pay the outstanding dividends. The accounts with the Bank of the United States, for advances and payments of interest and reimbursement of the domestic debt, not having been settled since the year 1797, they exhibit an apparent balance against the bank of more than six millions of dollars, the whole of which, however, has been paid by them, with the exception of the accumulated unclaimed dividends, the amount of which is not ascertained.

It is here proper to add, in relation to the other payments on account of the public debt, that those for interest on the temporary loans obtained from the bank, are made as the same become due, quarterly or semi-annually, in pursuance of accounts settled and certified by the Comptroller; those for the principal of the same loans, occasionally, and at the discretion of the Secretary of the Treasury, as the situation of the Treasury may permit; and that those for purchase of the public debt, or in payment of any part of the same, which may be payable at the will of the United States, but is not actually demandable by the creditors, are under the exclusive control of the Commissioners of the Sinking Fund.

No abuse is supposed to have taken place, in relation to the expenditure of the advances made, for the purpose of paying either the interest or principal of any part of the public debt. All the agents are immediately accountable, and generally account regularly, to the Treasury. The whole amount of balances, due on that account, to the United States, for moneys not accounted for, is only three thousand three hundred and ninety-three dollars and forty-nine cents.

2. The advances for the War and Navy Departments are uniformly made on the requisition of the Secretaries of War and of the Navy, respectively, to the Treasurer of the United States, who becomes thereby Treasurer of each department, and disburses the moneys, thus placed in his hands, according to law, on warrants signed by the Secretary, and countersigned by the accountant of each department, respectively. The moneys thus advanced by the Treasury, are charged, in fact, to the proper department, in accounts, opened in the names of the accountants of the same. Individuals who receive moneys from the Treasurer, by virtue of warrants of either of those two departments, are accountable to the accountants, who settle provisionally those subordinate accounts, and account themselves, quarterly, to the Treasury. The credits they claim, embrace, therefore, all those to which individuals, accountable to them, were entitled, and the whole is ultimately adjusted and settled by the Auditor and Comptroller, in the same manner as all other accounts.

3. The advances for all expenses incident to the intercourse with foreign nations, including the diplomatic establishment, the moneys expended in relation to the Barbary Powers, those applied to the relief of seamen abroad, those advanced in the prosecution of claims, for property captured by the belligerent Powers, the salaries of agents, and other officers abroad and at home, appointed under, or in relation to, certain articles of treaties with foreign nations, as well as all other expenses, incidental to the execution of those treaties, are made on the requisition of the Secretary of State, who has that class of expenditures under his control. The moneys thus advanced are paid partly to the Purveyor of Supplies, and to some other agents, who are accountable to the Treasury; but they have, till lately, been made principally to the Secretary of State himself, who disbursed the same, and became personally accountable for the amount. The individuals, to whom he advanced the money, used to render their accounts to him; and his account, in some instances, embraced those subordinate accounts, but generally exhibited only the disbursements made by him to those individuals, who were thereupon charged with the proper amount, and became accountable to the Treasury. But, by an arrangement made in the month of June last, the Secretary of State no longer receives any money; the sums required for that part of the public service are paid immediately by the Treasury, to the

agents or other individuals, to whom they were formerly advanced by him; and these are at once charged and made accountable to the Treasury. Those agents are, principally, the Purveyor of Public Supplies, at Philadelphia, and bankers in England and Holland.

From this statement, it is evident that the branches of the public expenditure, which have been most liable to abuse, are those under the control of the three last mentioned departments—the discretion of the head of the department having been the only check, in relation both to the legality of the expense, and to the amount expended under each appropriation, and the accountability of the Receivers of Public Moneys being too remote from the Comptroller, who, by law, can alone ultimately settle and decide upon all accounts whatever. It has not been the duty of the Secretary, nor would the attention due to the business immediately entrusted to his care, have permitted him to investigate the accounts, relative to past transactions, in either of the War or Navy Departments. It is, however, believed that the most easy mode of investigation will be, by a recurrence to the books and accounts of the accountants themselves; and, in order to facilitate the inquiries of the committee, an account, marked A, is annexed, which exhibits the sums advanced to each of those two departments, from the first day of January, 1797, to the thirty-first day of December, 1801, under each head of appropriation, for which a distinct account has been opened in the books of the Secretary and Comptroller of the Treasury, and by virtue of which, the warrants granted by them, for the moneys thus advanced, have been issued.

In relation to the accounts under the control of the Department of State, those of Mr. Jefferson have been settled since the 31st December, in the year 1793, and no balance is due thereon. Those of Mr. Randolph have been adjusted, and a suit instituted ever since the year 1797, for a balance of about 51.000 dollars, which, notwithstanding the strenuous efforts of the Comptroller, to bring it to issue, has not yet been decided. The difficulty to recover balances due to the United States, being one of the great impediments to public service, extracts of the correspondence of the district attorney of Virginia, on that subject, marked B, are annexed. The accounts of Mr. Marshall have been rendered, but are not yet settled. Those of the present Secetary of State, for the short time during which he received public moneys, are settled, and no balance is due thereon. Those of Mr. Pickering have been rendered, and his general account has been stated by the auditor. By this it appears, that, with the exception of two items suspended for want of vouchers, or disputed by the parties, he has accounted for all the public moneys received by him, so far as to show that the whole has been applied for public purposes. But as he has only designated the persons to whom the moneys were advanced by him, without specifying, under the respective appropriations, the object for which they were thus advanced, it is not practicable to state with precision, how much has been paid by him, under each distinct head of expenditure. It is, however, evident, from the account itself, and from a sketch stated by Mr. Kimbal, late clerk in his department, that, although he drew the moneys from the Treasury, under distinct appropriations, he did not sufficiently attend to these, in the application of the money, but has, in many instances, applied the sums drawn under one head, to another head of expenditure, and has, therefore, in some cases, spent less, and in others more, than was authorized by law. The statement C shows the excess, which it appears has thus been expended, so far as the same can be ascertained. The greater part of the sums, thus expended for certain objects, beyond the sums he had drawn from the Treasury, for those, is covered by appropriations, made principally after the expenditure had taken place; and in order to enable the Comptroller to pass the whole of the accounts, some further appropriations are still necessary. In relation to accounts of every description, the statement D is annexed, which exhibits the balances which appeared due on the 31st day of December last, on the Treasury books, by all the receivers of public moneys, arranged under distinct classes, and accompanied with notes, in order to distinguish those cases where the balance is merely nominal, from where it is either ascertained, or expected to be actually due.

The most apparent defects in the present arrangement, seem to be, in relation to the drawing public moneys from the Treasury, a want of specification in the several appropriations, defined by law with such precision, as not to leave it in the power of the Secretary of the Treasury to affix an arbitrary construction, and to blend together objects, which might be kept distinct without any inconvenience; in relation to the expenditure of moneys, drawn from the Treasury, the want of a proper check in the War and Navy Departments, which might prevent the expenditure of money, either for an object unauthorized by law, or beyond the sums appropriated by law; and in relation to the accountability of persons entrusted with public moneys, the delay and other inconveniences arising from the manner in which the moneys advanced for those two departments are now accounted for.

The following provisions are respectfully submitted as necessary and sufficient for those several objects, in relation to the first:

1st. That the accumulated balances of appropriations for the War and Navy Departments made before the present year, and remaining unexpended, shall, henceforth, cease and determine, except so much thereof as may be necessary to defray any expense, incurred before the present year.

2d. That it be enacted, by a general law, that every distinct sum, appropriated by any law, for an object distinctly specified in the law, shall be applicable only to that object; but as laws can be executed only so far as they are practicable, and unavoidable deviations will promote a general relaxation, it will be expedient, in the several appropriation laws, especially for the War and Navy Departments, not to subdivide the appropriations, beyond what is substantially useful and necessary.

In relation to the two last objects, it is proposed, generally, to place the expenses which relate to the War and Navy Departments, precisely on the same footing now established for those under the control of the Department of State, and that the arrangement now existing for these last, be made permanent. This may be done by providing,

1st. That the moneys to be paid, on account of the expenses, under the control of those three Departments, shall neither be paid to the head of the Department, nor placed, subject to his drafts or warrants, in the hands of the Treasurer, or any other agent, but shall be paid, like all other public moneys either to the individuals to whom the same may be due, or to the proper agents, or contractors, who are to be accountable for the same. The moneys paid in advance, to continue, as usual, to be disbursed by the Treasury, on the requisition only of the head of the proper department.

2d. That the individuals to whom moneys may be advanced, on account of any of the abovementioned expenses, shall, hereafter, as all other receivers of public moneys, be accountable immediately to the accounting officers of the Treasury Department; that it shall be the duty of every receiver of public moneys to apply the same only to the object for which they shall have been advanced, and to render quarterly accounts, if residing within the United States, and at least annually, if abroad, of his expenditures, to the accounting officers.

3d. That the offices of accountant of the War and Navy Departments be abolished, and, in lieu thereof, an additional auditor be substituted, whose duty it shall be to examine, and state all the accounts, generally, of receivers, of public moneys, other than those of persons employed in the collection of revenue; the said accounts to be, as usual, settled and finally decided upon by the Comptroller, or, (if it shall be thought more eligible to trust to actual experience, for a proper and equal distribution of duties between the two auditors) that the said additional auditor shall examine and state accounts of such description as shall be assigned to him by the Secretary of the Treasury.

4th. That no credit shall be allowed by the accounting officers, in the settlement of the accounts of individuals, except for expenses authorized by law, and to the amount appropriated for the same.

5th. That it shall be the duty of the auditors, respectively, to state, quarterly, all accounts rendered to them, so far as the same can be supported by vouchers, making, at the end of each quarter, a new statement in relation to any account on which a new debit or credit may be charged or allowed.

Respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *March 1st* 1802.

[The tables, in detail, are necessarily omitted.]

STATE OF THE FINANCES.

[Communicated to the Senate, Dec. 20, 1802.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report:

The permanent revenues of the United States, exclusive of fees, fines, and penalties, which, in a general view of the subject, may be omitted, consist of duties on merchandise and tonnage, proceeds of the sales on public lands, and duties on postage.

The duties on postage, which were, in the annual report of last year, estimated at $50,000, have, during the year ending on the thirtieth day of September last, yielded $50,500. The decrease of ship letters, the extension of the establishment through unproductive roads, and the acceleration of the progress of the mail, may, however, cause some defalcation in the receipts of the ensuing year.

Three hundred and twenty-six thousand and fifty-two dollars and eight cents have been received, during the same year, on account of public lands; of which sum, $17.162 50 were paid in the Treasury, in evidences of the public debt, and $179,575 52 in specie; the local situation of the land offices not having yet rendered it practicable to draw the balance from the receivers of public moneys.

Three hundred and forty thousand acres of land have been sold for six hundred and eighty thousand dollars, during the year ending on the thirty-first day of October last; of which quantity near ninety-seven thousand acres were sold on account of pre-emptions claimed by purchasers under John Cleves Symmes, and two hundred and forty-three thousand acres are the result of current sales. The annexed statement A designates the quantities respectively sold in the several districts, and the annual payments receivable on account of the balance of $960,000, due on these and the preceding sales.

From those several results it appears probable that the annual receipts under this head will not, on an average fall short of the sum of $400,000, at which they have been estimated.

Although it had been anticipated that the receipts in the Treasury, on account of duties on merchandise and tonnage, could not, for the present year, be affected by the restoration of peace in Europe, yet the sum actually paid has exceeded the most sanguine expectations. $12.280,000 have been received during the course of the year ending on the thirtieth day of September last, a sum larger by two millions of dollars, than the amount received for the same duties, during the preceding or any other year; and which exceeds by twelve hundred thousand dollars, the aggregate heretofore collected in any one year, on account of both the impost and the internal duties, repealed by an act of last session.

This excess, which had not been calculated upon, is considered, alone, as amply sufficient to cover any possible defalcation which might, during the next and ensuing year, reduce that branch of the revenue below last year's estimate of $9,500,000. Such defalcation is not, however, apprehended: for, although there are not yet sufficient data precisely to ascertain the effect of peace on the amount of duties, those which are in the possession of this Department tend to corroborate the presumption that that sum, at least, (nine millions and a half,) will hereafter be annually received. The statement B. which exhibits a comparative view of that revenue for each quarter, during the last two years, shows that the amount of duties accrued during the nine first months of the present year exceeds $11,300,000; and, after deducting $3,500,000 amount of debentures issued during the same period, on account of re-exportations of foreign goods, leaves for those three quarters, a balance of more than $7,800,000, subject to no other deduction but the expenses of collection; and from the knowledge already obtained of the importations, during the present quarter, as well as from the gradual diminution of re-exportations, no doubt remains that the net revenue, accruing during the whole year, will exceed the estimate.

From present appearances, the whole of the permanent revenues of the United States may, therefore, be reasonably computed at ten millions of dollars; of which sum $7.300,000 are appropriated for the payment of the principal and interest of the public debt, and $2,700,000 are applicable to the current expenses of the Government.

According to the estimates for the year 1803, those expenses will, exclusively of a sum of one hundred and eighty thousand dollars, wanted to cover the navy deficiencies of the years 1801 and 1802, but including sundry permanent appropriations, which make no part of the annual estimates, amount to two millions six hundred and sixty thousand dollars, to wit:

For the Civil department, and all domestic expenses of a civil nature - - -	$680,000
For expenses attending the intercourse with foreign nations, including prize causes and Barbary Powers - -	250,000
For the Military and Indian departments - - - - - -	830,000
For the Naval Establishment, calculated on a supposition that six frigates shall be kept in constant employment	900,000
	2.660.000

Neither the payments due on account of the convention with Great Britain, and which will, for three years, amount annually to eight hundred and eighty-eight thousand dollars, nor the instalments and interest on account of the $200,000 loan obtained from the State of Maryland for the city of Washington, are included in that calculation, as they may be defrayed out of the following sources, which make no part of the permanent revenues, viz:

1st. The surplus of specie in the Treasury, which, as the whole amount there will not, at the close of the present year, fall much short of five millions of dollars, far exceeds the sum which it is prudent to keep.

2dly. The uncollected arrears of the direct tax, estimated at four hundred thousand dollars. And,

3dly. The outstanding uncollected internal duties, amounting to near seven hundred thousand dollars.

The only embarrassment experienced during the course of last year, arose from the difficulty of procuring the remittances necessary to meet the large instalments of the debt due in Holland. The impossibility of obtaining bills on that country to the amount wanted by Government, and the loss which, on account of the rate of exchange, must be incurred by remitting circuitously through England, induced the Secretary of the Treasury to recommend, in a report to the Commissioners of the Sinking Fund, marked C, a recourse to bank stock, as the most favorable mode of remitting.

Of the five thousand shares in the stock of the Bank of the United States, originally subscribed by the United States, 2.780 shares had been sold in 1796, by virtue of the act, entitled "An act making provision for the payment of certain debts of the United States," and for the purpose of discharging a part of the debt due to the bank. The remaining 2.220 shares were now, under the same authority, sold at 45 per cent. advance. The $1,287,600 which they produced were, in conformity to the provisions of the said act, applied towards discharging an equal amount of that part of the debt which had become due to the bank before or during the year 1796; and the purchaser of the stock sold at the same time to the Treasury an equal sum in bills on Holland at 41 cents per guilder, the securing of which large amount, at that rate, was the inducement, on the part of Government, to dispose of the bank stock on those terms. As the dividend usually received on the bank stock sold, and the annual interest payable on the debt due to the bank, thus extinguished, were nearly equal, the July half-yearly dividend on the stock was, in fact, the premium paid for the purpose of effecting the remittance; and Government has thereby been enabled to obtain, without raising the price of exchange, the whole amount wanted to meet the payments due in Holland till the month of September, 1803.

Exclusively of, and in addition to, the debt of $1,287,600 thus paid to the bank out of the proceeds of the sales of bank shares, a sum of eight millions three hundred and thirty-four thousand seven hundred and fifty-seven dollars and eighty-nine cents has been paid out of the Treasury during the year ending on the 30th day of September last, on account of the principal and interest of the public debt; and the payments, in part, of the principal of the debt made during the same period, have been as follows:

1st. The payments on account of the principal and interest of the domestic debt have been $4,628.105 39

From which deducting one year's interest on the same - - - 3,470,259 75

Leaves a sum applied to the reimbursement of the principal of the six per cent. and deferred stocks of		1,157,845 46
2d. Paid to foreign officers, and for the registered debt - -		9.603 18
3d. Principal of domestic loans (exclusively of $1,287,600 paid out of the proceeds of bank shares -		202,400 00
4th. Evidences of public debt paid for lands - - - - -		17,162 50
5th. The payments on account of the principal and interest of the foreign debt. have been	$3,310,874 32	
From which sum deduct one year's interest, $462.731 00; and a further sum of $82,284 98 -	545,01 985	
Leaves applicable to the payment of the principal - - - -		2,765,858 34
		$4.152 869 66
And if to that sum shall be added the		1,287.000 00
Paid on account of the principal of the debt due to the bank, out of the proceeds of the sale of the bank shares, the total amount of debt extinguished during that year, will be found to exceed		$5.440.469 66

The balance of specie in the Treasury, which, on the first day of October, 1801, amounted to $2,948,718 73, had increased on the first day of October, 1802, to the sum of $4.539. 675 57; making a difference in favor of the Treasury, of $1,590,-956 84; which last sum, added to the above-mentioned payment of $4.152.869 66, made out of the Treasury on account of the principal of the public debt, makes an actual difference in favor of the United States, of more than $5,740,000 during that year.

The payments on account of the principal of the public debt, from the first day of April 1801, to the thirtieth day of September, 1802, (exclusively of, and in addition to the bank debt, discharged out of the proceeds of bank shares) amounts to $5.339.886 44, viz:

On account of the domestic debt	$1.334,942 81	
On account of the foreign debt -	3.302,543 63	
In repayment of temporary loans	702.400 00	
	$5,339,886 44	
And if to that sum shall be added the increase of specie in the Treasury, during the same period, which, (as the amount on the first of April 1801, did not exceed $1,794,044 85) amounts to - - - - - -		2,745,630 72
The difference in favor of the United States, for those eighteen months, will be found equal to		$8.805,517 16

Of the annual appropriation of $7,300,000, for the principal and interest of the public debt, near three millions nine hundred thousand dollars will be wanted to pay the interest which falls due in the year 1803, and the residue, amounting to three millions four hundred thousand dollars, may be considered as the sum applicable, during that year, to the extinguishment of the principal of the debt.

From all which it results, that, so long as the United States shall not be afflicted by any unforeseen calamity, and whilst the public expenditures shall be kept within their present limits, there does not appear any necessity for increasing the public revenues.

All which is most respectfully submitted, by

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Dec.* 16, 1802.

[Tables A and B are omitted.]

C.

At a meeting of the Commissioners of the Sinking Fund, on the 7th of June, 1802,

Present: The Secretary of State, the Secretary of the Treasury, the Attorney General of the United States.

The Secretary of the Treasury reported to the board, that provision has already been made to meet nearly all the demands which will become due in Holland during the course of the present year; but that it is necessary to make immediate provision for the payments on account of principal and interest, which fall due there, during the first five months of the year 1803, and amounting to four millions four hundred and thirty-nine thousand eight hundred and thirty guilders, and payable at the following periods, viz:

1st of January, - -	872.700 guilders.
1st of February, - -	986.350
1st of March, - - -	601.000
1st of June, - - -	1.979,780

That, from the great diminution of trade between this country and Holland, he has ascertained, during his late excursion to New York and Philadelphia, that it is impracticable to obtain bills on Holland to that amount; that the rate of exchange is already forty-one cents per guilder, and that any attempt, on the part of the Government, to procure the large amount now wanted, would indubitably raise, considerably, the rate of exchange.

That, if it shall be attempted to remit, by the way of England, the loss will be also considerable; the present rate of exchange with that country being now above par, and raising, and would indubitably be enhanced, should Government come into the market for large purchases; and the rate of exchange between England and Holland being, by the last advices, ten guilders eight stivers per pound sterling, nor likely to become more favorable, which, supposing the whole amount in bills on England to be procurable (which is not believed to be the fact) at 168, would, including the commission of one per cent. in England, amount to forty-three and a half cents per guilder.

That the Bank of the United States having been applied to, has refused to undertake to contract for making the necessary remittance; and that the two only considerable offers made to the Secretary are now submitted to the board viz:

The Manhattan Company offer to remit the whole, at the rate of forty-three cents per guilder.

Alexander Baring offers to remit guilders 3,140,-487 16½, payable in Amsterdam, at the following dates, viz:

1st of January, 1803, -	605,000 guilders.
1st of February, - -	685,000
1st of March, - - -	425,000
1st of June, - -	1,425.487 16½

And at the rate of forty-one cents per guilder: Provided, however, that the United States shall sell to him the two thousand two hundred and twenty shares of the Bank of the United States, owned by the United States, at forty-five per cent. advance, or at the rate of five hundred and eighty dollars per share; which last proposition is recommended by the Secretary of the Treasury as the most eligible; as, exclusively of the advantageous rate of exchange thereby secured, the transaction will not have any unfavorable effect on the rate of exchange generally, and, by so considerably diminishing the demand, will enable the United States to obtain what is still wanted, at a reasonable rate; and because, in his opinion, the price obtained for the bank shares is more than could be obtained were they thrown in the market for sale, and more than their intrinsic value. Whereupon, it was

Resolved, by the Board, "That the Secretary of the Treasury be authorized to sell the shares of the stock of the Bank of the United States, belonging to the United States, and that the proceeds thereof be applied to the payment of the capital or principal of any part of the debt of the United States, which had become due to the Bank of the United States before or during the course of the year 1796, and which remains still unpaid, in conformity to the provisions of the act, entitled 'An act making provision for the payment of certain debts of the United States,' passed on the 31st day of May, 1796."

JAS. MADISON, *Secr'y of State.*
A. GALLATIN, *Secr'y of Treasury.*
LEVI LINCOLN, *Attorney General.*

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Feb. 4, 1803.]

The memorial of the subscribers, gun manufacturers, in the borough of Lancaster, in the Commonwealth of Pennsylvania, respectfully showeth:

That your memorialists have seen, with deep and affecting concern, a resolution, to exempt from impost duties, arms manufactured in foreign countries, pass in the House of Representatives of the United States. To extend the hand of power, and crush the manufactures of our common country, in their most infant state, your memorialists would, in times more pressing than the present, consider impolitic; but, when, in the full enjoyment of order and peace, the various resources of our country excite improvement and accumulate wealth, the manufacture of arms by ourselves, and for our own use, instead of receiving the fostering protection of our Government, is defeated, after a successful experiment of its utility—your memorialists can behold no point of improvement upon which they can rest with stability; no manufacture, that promises to be permanent; no experiment, that will flatter them with patronage and encouragement.

Encouraged by the Government of the State, in which your memorialists live, they have, at very great expense, established manufactures of arms, and, in conjunction with others in the State, have nearly completed twenty thousand stand, for the use of the Commonwealth of Pennsylvania. Allured by this encouragement, they have increased their establishments, taken in and instructed apprentices, and excited, by their undertakings, a competition—a spirit of enterprise, among their fellow citizens, in this manufacture, so essential to national safety, national independence, and national reputation. If the independence and liberty of a nation depend upon the correspondence of its resources to its wants, then is there no want so imminent now, which should be more necessitously supplied from the resources of our own country, than the manufacturing of arms. But, by giving a loose to the facility of importing arms, the Government of the United States will crush this manufacture in its infant establishment, which your memorialists hoped to see cherished—if not for the maintenance of the artist, at least for the safety of the country. Arms may be imported, but who will keep them in repair, after the dispersion of our journeymen and apprentices, who must engage in other pursuits, when the one they have been trained up in will cease to afford them subsistence? Will the day of importation last forever? or will there never be a day when the manufacture of arms will be thought useful, and merit the protection of Government? A given stock of arms will be exhaustible in war, should it happen; and from whence will it be supplied, if arms are to be procured in another country, when the very cause of the consumption will preclude the possibility of their importation? But the encouragement of such a domestic manufacture will establish an inexhaustible stock of arms, in time of need; artists will be numerous, and manufactures convenient; the means will be easy, and their attainment certain. At considerable expense have your memorialists undertaken, and with some difficulty progressed in, the establishment of this manufacture. Mills for the making of gun barrels have been erected; gun locks, and every other article in a gun, have been made in the best manner, and of the most substantial kind. The workmen, the execution, the machinery, and the demand, have all progressed apace with each other. A few years' more protection from Government, and this manufacture, in this country, we believe, will be too firmly established to be destroyed by the importation of foreign arms. Break it up, by the resolution you have adopted, and it will not revive for ages; for no security can

afterwards be given to its re-establishment, in which a prudent man will confide. But, your memorialists do not consider the manufacture of arms exclusively affected by this resolution, which passed your honorable House; they humbly conceive the principle of that resolution strikes deep at all our domestic manufactures: for, with this example before them, few manufacturers will be disposed to place reliance on the improvement and permanency of any manufacture. Your memorialists beg leave further to represent, that the manufacture of arms, in this State, is not merely circumscribed within the limits of the county of Lancaster; it is diffused over the State, equally progressing in extent and improvement, throughout; and they confidently assert that twenty thousand stand of arms can be annually manufactured in this State.

Your memorialists beg leave to call the attention of your honorable body to this extensive manufacture, in this State, and they would, with deference, ask, if it be prudent or politic to reduce it, by a single decision—to destroy it with one blow! If our sister States to the southward have not established, nor can now practically establish, such extensive manufactures of arms, they can here be supplied, on the same terms we have supplied our own Government; and though they may purchase arms cheaper in Europe than they can from the American manufacturer, yet, as they will suffer no grievance, when supplied on the same terms with other States, they should obtain no preference by being supplied by importation, and that, too, at the expense of destroying a useful domestic manufacture.

If these considerations can command the attention of the honorable the Congress of the United States, we trust and pray that the impost duty on arms will not be taken off; and that the encouragement of manufacturing them among ourselves, will be considered not only expedient, but necessary. And your memorialists, as in duty bound, will ever pray.

[Signed by Jacob Dickert and others.]

SINKING FUND.

[Communicated to the Senate Feb. 2, 1803.]

WASHINGTON, *Feb.* 5, 1803.

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the board, subsequent to their report of the 16th December, 1801, as far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this board, dated the 3d day of the present month, and in the proceedings of the officers of the Treasury, therein referred to, which are herewith referred to, and prayed to be received as part of this report.

All which is respectfully submitted by

AARON BURR, *Vice Pres't U. S.*
J. MADISON, *Secretary of State.*
A. GALLATIN, *Sec'y Treasury.*
LEVI LINCOLN, *Att'y Gen. U. S.*

TREASURY DEPARTMENT, *Feb.* 3, 1803.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund, that, since the date of the last report to Congress, of the 16th December, 1801, and to the 1st January, 1802, the following parts of the public debt have been discharged:

1. In payment of instalments of six per cent. stock, viz: seventh instalment of the six per cent. stock, which, pursuant to the "Act making further provision for the support of public credit, and for the redemption of the public debt," passed the 3d March, 1795; and the act in addition thereto, passed the 28th April, 1796, became payable for the year 1801 - $805,846 30
First instalment of the deferred 6 per cent. stock, which, pursuant to the acts above recited, also became payable in 1801 272,416 24
— $1,078,262 54
2. In payment of the tenth and last instalment of the subscription loan for bank stock, due on the last day of December, 1801 - - - - 200,000 00

Amounting to - - $1,278,262 54

Which payments were made out of the following funds:

1. The interest fund on sums which accrued on the stock purchased, and transferred to the Commissioners of the Sinking Fund, in trust for the United States, as particularly stated in the document hereto annexed, marked B, 1801 $312,282 68
2. The fund arising from the payment of debts which originated prior to the present Constitution, as particularly stated in the document marked C, 1801 - - - - - 420 00
3. The fund arising from dividends on the capital stock, which belonged to the United States, in the Bank of said States, from the 1st January, 1800, to the 30th June, 1801, after deducting the interest on the subscription loan for same period, as stated in the document marked D, 1801 - - - - 94,320 00
4. The fund arising from the sale of public lands, being the amount drawn by the agent to the Commissioners, pursuant to the act of the 3d March, 1795, as stated in the document marked E, 1801 - - 162,021 29
5. The proceeds of duties on goods, wares, and merchandise, imported; on the tonnage of ships or vessels; and on stills, and spirits distilled, in the United States; appropriated by the eighth section of the act of the 3d March, 1795, entitled "An act making further provision for the support of public credit, and for the redemption of the public debt" 709,218 57

Making in the whole the amount of the reimbursements of the six per cent. stock, and the tenth and last instalment of the subscription loan for bank stock, as above stated $1,278,262 54

That, besides the above-mentioned reimbursements, there remained, at the close of the year 1801, an unapplied balance of 2,513,846.9 guilders, applicable to the payment of the principal and interest of the Dutch debt for the year 1802, and consisting of remittances purchased and paid for, before the 1st day of January, 1802, beyond the sums wanted to meet the demands in Holland during the year 1801.

That, during the year 1802, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt:

1. There was paid, on account of the reimbursement and interest of the domestic debt, the sum of - - - - - - $4,654,699 61
2. On account of principal of moneys borrowed of the Bank of the United States - - - - - - 1,290,000 00
3. On account of interest on domestic loans - - - - - - 162,025 00
4. On account of reimbursement of capital and interest of Dutch debt, exclusive of repayments into the Treasury - - - - - - 3,243,065 91
5. On account of debts due to foreign officers - - - - - - 7,994 92
6. On account of certain parts of the domestic debt - - - - - 14,966 84

Amounting to - - $9,372,752 28

Which disbursements were made out of the following funds:

1. From the funds appropriated by the first section of the "Act for the redemption of the whole of the public debt, viz:
From the fund arising from interest on the domestic debt, transferred to the Commissioners of the Sinking Fund, as per statement herewith for 1802, marked B - - - $326,449 92
From the fund arising from payments into the Treasury, of debts which originated under the late Government, as per statement herewith for 1802, marked C - - - 888 79
From the fund arising from dividends on capital stock which belonged to the United States, in the Bank of said States, from the 1st July, 1801, to the 31st December following, as per statement herewith, marked D - - - - - - 33,960 00
From the fund arising from the sales of public lands, being the amount of moneys paid into the Treasury in the year 1802, as per statement herewith, marked E - - - 179,575 52
From the proceeds of the duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels - - - - - - 6,759,125 77

Making, in the whole, the annual appropriation, by law, for the year 1802, under the act afore-mentioned - - - - - - $7,300,000 00
2. From the proceeds of goods, wares, and merchandise, imported, and tonnage, advanced by the Treasury in order to enable the Commissioners in Holland to make the payments in time, conformably to fifth section of the "Act making provision for the whole of the public debt," and being in part and on account of the annual appropriation of $7,300,000 for the year 1803 785,152 28
3. From the proceeds of 2,220 shares of the capital stock of the Bank of the United States, which have been sold, in pursuance of the "Act making provision for the payment of certain debts of the U. States," the proceeds of which have been placed in the Treasury, as appears from the proceedings of the accounting officers, herewith transmitted, marked F - - - 1,287,600 00

Amounting to - - $9,372,752 28

That the above-mentioned disbursements made during the year 1802, and amounting to $9,372,752 28, together with the above-mentioned balance of 2,313,846.9 guilders, which remained unexpended on the 1st of January, 1802, have been applied as follows, that is to say:

1. To the payment of the interest which, during the year 1802, accrued on the whole of the public debt, including domestic loans $4,065,738 47
2. To the reimbursement of the following parts of the debt of the United States, which have been discharged during the year 1802, viz:
Temporary loans obtained of the Bank of the United States, from the proceeds of 2,220 shares of bank stock - - - - $1,287,600 00
From the proceeds of duties on merchandise and tonnage - - - 2,400 00
Instalments of the Dutch debt which became due by contract in 1802, viz: *Guild., at 40 cts.*
Second instalment of two millions loan, of the 4th March, 1774 - - - 250,000
Fifth and last instalment of one million loan, of the 1st January, 1787 - - 200,000
Fourth instalment of one million loan, of the 13th March, 1788 - - - 200,000
Third instalment of three millions loan, of the 1st February, 1790 - - 600,000

First instalment of two millions five hundred thousand loan, of 2d March, 1791 - - - -	500,000	
First instalment of two millions and fifty thousand loan, of 30th Nov., 1791 -	410,000	
First instalment of six millions loan, of the 4th December, 1791 -	1,200,000	
Amounting to -	3,360,000	
At 40 cents - - - -		1,344,000 00
Making, together, the sum of		$2,634,000 00

3. To the provision necessary for the reimbursement of the eighth instalment of the six per cent. stock, and the second instalment of the deferred six per cent. stock, becoming payable the 1st of January, 1803, estimated at the sum of $1,117,869 37

And that, besides the above-mentioned reimbursement and payments, there remained, at the close of the year 1802, exclusively of the amount of sundry protested bills still outstanding, and of unexpended balances in the hands of agents, an unapplied balance, estimated at 5,914,606.10 guilders, applicable to the payment of the principal and interest of the Dutch debt for the year 1803, and consisting of remittances purchased and paid for before the 1st day of January, 1803, beyond the sums wanted to meet the demands in Holland during the year 1802.

No purchases of the debt of the United States have been made since the date of the last report to Congress; and the accompanying statement, marked A, exhibits, for the years 1801 and 1802, respectively, the operations of the Treasury in the transfer of stock to the Commissioners of the Sinking Fund, in trust for the United States, upon the reimbursement of the foreign debt, in the years 1800 and 1801, and include also the sums in the several species of stock transferred in each of these years, in payment for lands sold belonging to the United States, that is to say:

In 1801 - - - -	$23,816 58
In 1802 - - - -	15,518 49

All which is respectfully submitted.

A. GALLATIN, *Sec'y Treasury.*

[Tabular statements in detail omitted.]

DUTY ON REFINED SUGAR.

[Communicated to the House, Feb. 11, 1803.]

Mr. RANDOLPH, from the Committee of Ways and Means, to whom was referred the memorial of Charles Gartes, and others, sugar refiners of the city of Baltimore, made the following report:

That, by an act, passed during the last session of Congress, it is enacted that, from and after the 30th of June, 1802, all internal duties on refined sugar shall cease and be discontinued, excepting such duties thereon as should have accrued, and remained outstanding, on, or before, that day.

That the petitioners complain of a construction given to this act, by the Treasury Department, whereby sugars refined before the above mentioned period, although not removed from the refinery until after its expiration, have been subjected to duty.

This construction your Committee believe to have been correct, for the following reasons:

1st. The duty is laid, by the second section of the act imposing certain duties on snuff and refined sugar, upon all sugars refined after the 30th day of September, 1794, and was not levied on any sugars refined previous to that period, although subsequently removed.

The act of refining, therefore, and not of removing the sugars, rendered them liable to the duty; and the provisions in relation to their removal from the refinery, were intended to render convenient and secure the collection of the duty, which, by the act of refining, had been incurred. On those sugars, therefore, which have been refined before the 30th day of June, 1802, (and on which the duties had not been satisfied,) duties "had accrued, and did remain outstanding," although they might not have been removed, or sent out of the manufactory.

2d. A contrary construction might have enabled the sugar refiners, by forbearing to remove their sugars from the time of passing the act repealing the duty, until the 1st July, 1802, to evade, altogether, the payment of those duties, during that period, to the manifest detriment of the revenue, and the plain intention of the act in question. But, in consideration of the reduction of price, which, it is believed, did actually take place [in consequence of an expectation that the duties would cease to be collected after the 30th of June, 1803] and of the diversity of opinions which exist in relation to the construction of the law in question, the Committee respectfully recommend the following resolution:

Resolved, That no duty shall be collected on sugars, removed from the refinery since the 30th day of June, 1802, any law to the contrary notwithstanding.

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Feb. 21, 1803.]

Mr. S. SMITH, from the Committee of Commerce and Manufactures, to whom were referred the petitions and memorials of the following manufacturers of the United States, to wit: Of the Franklin Association, and other journeymen printers, of combmakers, gunsmiths, cork cutters, calico printers, cordwainers, papermakers, letter founders, makers of umbrellas, brushes, glass, stoneware, gunpowder, hats, and starch, praying for protecting duties to be laid on the importation of articles of their respective manufactures, made the following report:

That justice to the petitioners and sound policy point to the necessity of granting Governmental aid for the protection of such manufactures as are obviously capable of affording to the United States an adequate supply of their several and respective objects, either by admitting, free of duty, the raw article, essential to their manufacture, and which cannot be procured in the United States, or by imposing a higher duty than is paid on those articles, to the manufacture whereof our citizens are incompetent.

The Committee take leave to observe, that the duties now payable on importation do not, in their opinion, operate as protecting duties to our infant manufactures; because that the duties on almost all the articles of consumption being nearly equal, the manufacturers of the United States are charged therewith in everything they consume, and the journeyman being compelled to pay for everything he consumes at least twenty-eight per cent. more than he would be obliged to pay, if such duties did not exist, he must, of course, be paid in proportion to his labor. Your Committee are, therefore, induced to believe that the present duties on imports operate an injury rather than a benefit to the manufacturer of the United States.

Your Committee refrain from pressing this important subject during the present session, as well because that the press of public business is such, that time sufficient could not be afforded for a proper discussion, as that they hope and expect that Congress will, at their next session, revise their laws laying duties on imports; as a preparation for which the Committee submit the following resolution:

Resolved, That the Secretary of the Treasury be, and he is, hereby, directed to prepare, and lay before Congress, early in the session, a plan for the laying new and more specific duties on goods, wares and merchandise, imported into the United States, so that the same shall (as near as may be) neither increase nor diminish the present revenue arising to the United States from imports.

ARREARS OF DIRECT TAXES.

[Communicated to the House, March 1, 1803.]

The Secretary of the Treasury, in obedience to the resolution of the House of Representatives, of the twenty-fourth ultimo, respectfully reports:

That, by the last returns, it appears that the uncollected arrears of the direct tax may be estimated at $367,600 73, as will more fully appear by the letter of the Commissioner of the Revenue, hereunto annexed, and to which the Secretary begs leave also to refer, for the reasons which, in the opinion of the Commissioner, have delayed the completion of the collection of that tax.

That, amongst several other causes, the two most prominent impediments seem to have been, first, the difficulty of completing the assessments; and, secondly, the length of the process necessary to effect a sale of unoccupied lands; which last cause has operated most forcibly in the States of Massachusetts, New York, Pennsylvania, Virginia, and Kentucky.

That the completion of the assessments was retarded in almost all the States, by the novelty of the experiment in some, by the sparse situation of the inhabitants, in several, by the large quantity of unsettled lands; and particularly in the three Southern States, by an alleged want of a sufficient compensation for the Commissioners and Assessors, evidenced by successive resignations.

That, in the State of North Carolina, the difficulty of obtaining assessors was increased by a disqualifying law of the State, and that, for almost a year, until an extra compensation had been provided by law, the abstracts were detained in that State, for want of persons to transcribe the assessment lists; for which reasons the tax did not become due there, till the month of November, 1801.

That, in Georgia, the business was delayed one year, for want of a meeting of the Board of Commissioners; and that the final proceedings of the board, which were received at the Treasury, in April, 1801, were, on account of numerous inaccuracies, returned, for the purpose of being corrected; which prevented the operation of the tax till January, 1802.

And that, in South Carolina, the assessment, which is not yet completed, has been principally retarded by the difficulty of obtaining a Commissioner in the first district, in which five gentlemen, successively appointed Commissioners, refused to act, two resigned, and one died.

All which is respectfully submitted.

ALBERT GALLATIN.

TREASURY DEPARTMENT, *Feb.* 28, 1802.

TREASURY DEPARTMENT,
Revenue Office, Feb. 2, 1803.

SIR: On the subject of the enclosed resolution of the House of Representatives, I have the honor to submit the following information:

The tax assessed on the States of Connecticut, New Jersey, and Delaware, has been collected and accounted for.

The balances outstanding on the New Hampshire and Tennessee lists, were so much diminished, when the Supervisors made up their last returns, that I consider the collection completed ere now.

The situation of the other States, appears to be nearly as follows:

The sums to be collected and accounted for, by the collectors, amount to,

In Massachusetts - - - -	$9,904 89
Rhode Island - - - -	4,833 05
Vermont - - - - -	4,896 38
New York - - - - -	21,582 92
Pennsylvania - - - -	30,783 70
Maryland - - - - -	15,485 45
Virginia - - - - -	16,588 71
Kentucky - - - - -	24,236 25
North Carolina - - - -	85,474 78
	215,788 13

In the State of Georgia, the assessment was complete, and collectors were appointed for all the counties except Bullock and Bryan; the collection was then in progression throughout eighteen districts, but as no moneys had reached the Supervisor's hands, the whole quota, amounting to $38,814 87, may be accounted outstanding.

As the report of the Commissioners, who were appointed in South Carolina, has not made its appearance, the collection of the quota of that State, which amounts to $112,997 73, will be delayed for some time longer.

The circumstances which have impeded the collection are numerous; but, as they have been very frequently the subject of discussion, it may not be deemed necessary to revert to all of them, in the present stage of the business. If inaccuracies are observable in any of the tax lists, they may be attributed, in a great degree, to a want of attention among the land holders, to the provisions and injunctions of the acts of Congress, which authorized the valuations, &c.; and no adequate remedy can now be had for this evil.

Although the compensations allowed to the collectors were not complained of in the populous districts, the rates which were originally established were too low for the newly-settled parts of the country, and especially where there are large bodies of unproductive land owned by non-residents. As the prospect of an indemnity for their trouble and expenses was not flattering, the difficulty of obtaining good men to undertake the responsibility of collecting, &c., in such cases, was very much increased; and, in some instances, occasioned considerable delay. In some of the populous districts to the eastward, where there are a great number of small taxes for dwelling-houses, of the first and second classes, and small lots owned and occupied by indigent persons, with large families, and scarcely any visible property, the trouble has been so much enhanced as to occasion a temporary suspension of the collection, in some instances.

In order to secure to individuals an opportunity of investigating the demands of collectors, a variety of measures were sanctioned by the act of Congress, which are calculated to procrastinate the sales of property, and collection by other compulsory process; but a circumstance which has exceeded all others in delaying the completion of this business, is the tedious period which has been consumed by some of the Boards of Commissioners, in making up the reports upon which the assessments in the several States were founded. I have, however, the satisfaction to state, that, notwithstanding the extraordinary difficulties which have attended the sales of land, for unpaid taxes, they appear to have gone pretty generally into effect in Virginia; and as the same objects are maturing in New York, and other States, I trust that the result of the whole business will be ascertained in a very short period.

I have the honor to be, very respectfully, your obedient servant, WILLIAM MILLER,

Commissioner of the Revenue.

Hon. SECRETARY OF THE TREASURY.

LIBRARY OF CONGRESS.

[Communicated to the House, December 21, 1801.

Mr. RANDOLPH, from the joint committee appointed to take into consideration the statement made by the Secretary of the Senate, respecting books and maps purchased pursuant to a late act of Congress, and to make report respecting the future arrangement of the same, made the following report:

That, in their opinion, the following resolutions contain the proper regulations upon the subject committed to them; they therefore present them for consideration.

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the books and maps purchased by directions of the act of Congress passed the 24th day of April, 1800, be placed in the Capitol, in the room which was occupied by the House of Representatives during the last session of the sixth Congress; and that the books shall be numbered, labelled, and set up in portable cases with handles to them, for the purpose of easy removal, with wire-netting doors, and locks; and that the books or libraries which have heretofore been kept separately, by each House, shall be removed and set up with those lately purchased, and be numbered and labelled with them, making one library of the whole.

2. *And it is further resolved*, That the Secretary of the Senate, and the Clerk of the House of Representatives for the time being, be, and they are hereby, authorized to take charge of the room, books, and maps aforesaid; and they are hereby authorized and directed to make suitable arrangements in said room for the library and maps; to procure proper furniture for the room; to procure the cases; number and label the books, and set them up in their cases; to procure for their own use, and the use of both Houses of Congress, printed catalogues of all the books, with the labelled number of each, and of the maps; to place on each book some proper mark or marks, to designate it as belonging to the Congressional library; to procure printed blank receipts for members to sign them when they take books from the room; and to arrange and hang up the maps: all to be done under the inspection and direction of the President of the Senate and Speaker of the House of Representatives for the time being.

3. *And it is further resolved*, That the Secretary of the Senate, and Clerk of the House of Representatives, shall be responsible for the safekeeping of the room, furniture, books, and maps aforesaid; and shall not permit any map to be taken out of said room by any person, nor any book, except by members of the Senate and House of Representatives for the time being; and no member shall be permitted to take any book out of said room until he shall sign a receipt for the same, the form of which follows, viz:

Received this —— day of ——, of the keepers of the Congressional library (here the book and its number are to be described,) which I promise

to return within —— days from this date, or forfeit the sum of —— dollars, to be paid to said keepers, or either of them, or to their successors, or either of them. Witness my hand.

4. *And it is further resolved*, That no member shall have at any one time more than three books out of said library; and a folio volume shall be returned within —— days; a quarto within —— days; and an octavo within —— days after the date of the receipt, respectively; and in case of such return, the receipt shall be cancelled; but in case of forfeiture, the keepers shall immediately collect the penalty.

5. *And it is further resolved*, That the keepers of said library shall, one of them, attend, or shall cause some proper person, for whose conduct they shall be responsible, to attend in said room, from the hour of eleven in the morning until three in the afternoon, of each day, Sundays excepted, during each session of Congress, for the purpose of delivering and receiving said books; and the keepers of said library shall receive for their services, including the safe-keeping of the room, furniture, books, and maps, delivering and receiving the books, and collecting forfeitures, —— dollars annually; to be paid out of the fund annually appropriated for the contingent expenses of both Houses of Congress.

6. *And it is further resolved*, That the keepers of said library shall, at the commencement of every session of Congress, exhibit a statement to each House, of the condition of said room, furniture, books, and maps, with information of the sum of forfeitures, if any, which they have collected; and of the necessary expenses for fuel, &c., in said room, during the period next preceding each statement, which then remains unsettled, that their accounts may be liquidated and approved by Congress; and the balance shall be paid out of the fund appropriated for the contingent expenses of both Houses of Congress.

7. *And it is further resolved*, That the keepers of said library shall cause a printed copy of the third, fourth, and fifth of the foregoing resolutions to be pasted up in some conspicuous place in said room, which shall be there at all times for the information of the members.

And the committee further report, for the consideration of Congress, the following resolutions:

Resolved, That the Secretary of the Senate be, and he is hereby, directed to make sale of the trunks in which the books lately purchased were imported; that he exhibit to both Houses of Congress an account of the proceeds, including a statement of the actual expenditures incurred under the act of the 24th of April, 1800, as well by the purchase of books and maps, and incidental expenses, as for the expenses of fitting up the room, procuring furniture, cases, &c., as mentioned in the second of the foregoing resolutions; and the residue of the five thousand dollars, appropriated by said act, shall be laid out by the Secretary of the Senate, and Clerk of the House of Representatives, for books and maps, or books alone, under the direction of a joint committee to be appointed for that purpose, to consist of —— members from the Senate, and —— members from the House of Representatives.

Resolved, That Congress, by law, annually appropriate the sum of —— dollars, to be laid out for books and maps, or books alone, by the Secretary of the Senate, and Clerk of the House of Representatives, under the direction of a joint committee, to be appointed by them for that purpose.

CITY OF WASHINGTON.

[Communicated to Congress, January 11, 1802.]

Gentlemen of the Senate, and
of the House of Representatives:

I now communicate to you a memorial of the Commissioners for the City of Washington, together with a letter of later date, which, with their memorial of January 28, 1801, will possess the Legislature fully of the state of the public interests, and of those of the City of Washington, confided to them. The moneys now due, and soon to become due, to the State of Maryland, on the loan guarantied by the United States, call for an early attention. The lots in the city, which are chargeable with the payment of these moneys, are deemed not only equal to the indemnification of the public, but to insure a considerable surplus to the city, to be employed for its improvement, provided they are offered for sale only in sufficient numbers to meet the existing demand: but the act of 1796 requires that they shall be positively sold in such numbers as shall be necessary for the punctual payment of the loans; $9,000 of interest are lately become due; $3,000 quarter yearly will continue to become due; and $50,000, an additional loan, are reimbursable on the 1st day of November next. These sums would require sales so far beyond the actual demand of the market, that it is apprehended that the whole property may be thereby sacrificed, the public security destroyed, and the residuary interest of the city entirely lost. Under these circumstances, I have thought it my duty, before I proceed to direct a rigorous execution of the law, to submit the subject to the consideration of the Legislature. Whether the public interest will be better secured in the end, and that of the city saved, by offering sales commensurate only to the demand at market, and advancing from the Treasury, in the first instance, what these may prove deficient, to be replaced by subsequent sales, rests for the determination of the Legislature; if indulgence for the funds can be admitted, they will probably form a resource of great and permanent value; and their embarrassments have been produced only by overstrained exertions to provide accommodations for the Government of the Union.

THOS. JEFFERSON.

COMMISSIONERS' OFFICE, *Dec.* 4, 1801.

To the President of the United States:

The memorial of the Commissioners appointed by virtue of an act of Congress, entitled "An act

for establishing the temporary and permanent seat of Government of the United States, respectfully showeth:

That, on the 28th of January last, the Commissioners addressed to the late President of the United States a representation, stating such facts respecting the business committed to their charge as appeared necessary for the information of the Government; which representation was by him transmitted to Congress, and by their order referred to a committee; but no measures having taken place in consequence thereof, either by the Executive or Legislature, your memorialists deem it expedient to recapitulate the most important facts then stated, and to add such other facts and observations as may tend to enable the President to judge of the measures proper to be pursued by him, and to aid the Legislature in their deliberations, should the subject be submitted to their consideration. The act of Congress authorizing the President to locate a district for the permanent seat of the Government of the United States; the actual location of that district; the grant of lands for a federal city; the power given by the President to the Commissioners to sell that part of the land so granted, which was placed at his disposal; the sale of six thousand lots to Morris & Greenleaf, by agreement, dated 23d December, 1793; the modification of that agreement by another, entered into in April, 1794; the failure of those gentlemen to fulfil their contracts, and the various measures pursued to obtain money to carry on the public buildings, are recited in the above mentioned representation; and copies of the Legislative acts, deeds, and other writings therein referred to are annexed, and the whole printed for the use of the members of Congress. The property belonging to the public is therein stated to consist of twenty-four million six hundred and fifty-five thousand seven hundred and thirty-five square feet of ground in the City of Washington, equal to four thousand six hundred and eighty-two lots, of five thousand two hundred and sixty-five square feet each, exclusive of lots which bind on navigable water; these form fronts to the extent of two thousand and forty-three feet, and on them are four wharves in a useful state. Of the first mentioned lots, three thousand one hundred and seventy-eight lie northeast of Massachusetts avenue; the remainder, being one thousand five hundred and four, are situated southwest of that avenue; also, an island, containing freestone, in Aquia Creek, in the State of Virginia. The above property your memorialists consider as worthy of public attention; its value may be estimated by the prices at which lots have been heretofore sold, the cost of the wharves, and the price of the island.

Lots on the southwest side of Massachusetts avenue, sold by the Commissioners since passing the guaranty bill in 1796 average three hundred and forty-three dollars per lot; those on the northeast side of that avenue, sold by the Commissioners and proprietors, average one hundred and five dollars per lot; lots binding on navigable waters, sold within the same period, average twelve dollars and seventy-one cents the foot front; the island cost six thousand dollars, and the wharves three thousand two hundred and twenty-one dollars and eighty-eight cents; the whole amounting, at the rate lots have heretofore been sold, with the original cost of the island and wharves, to eight hundred and eighty-four thousand eight hundred and nineteen dollars and eighty-eight cents. The lots sold by the Commissioners since the date of the above-mentioned representation, exclusive of a square sold to the United States for the site of marine barracks, average four hundred and seventy dollars and seventy-one cents per lot.

To elucidate more fully the real value of city property, they have endeavored to ascertain the prices at which proprietors have sold lots within the last eighteen months, and, so far as they have obtained information, their sales average $579 15 for cash and on short credit, and $921 37 on a credit of four, five, and six years, per lot, and their ground-rents are from one to three dollars per foot front.

Your memorialists readily admit that the public property remaining for sale is not, on an average, equal in value to that which has been sold; yet as great abatement was in many instances made in the price of lots, in consideration of building contracts, and as inducements to purchase in the city have much increased, they conceive those on hand may, in the course of a few years, be disposed of, at least to as great advantage as those already sold; but if the law authorizing a loan for the use of the City of Washington should be carried strictly into effect, your memorialists are apprehensive that this property must be, in a great degree, sacrificed. It is known that two hundred thousand dollars have been borrowed of the State of Maryland, under the sanction of that law, and that the city property above-mentioned is to be sold under the direction of the President of the United States, for the repayment of that sum; an arrear of interest to the amount of nine thousand dollars is now due thereon, the accruing interest of twelve thousand dollars per annum, payable quarter-yearly, and the principal, which is payable by annual instalments of forty thousand dollars after the year 1803, are sums which, your memorialists conceive, cannot be raised without frequent sales for ready money—a measure which they consider as highly injurious, if carried to the extent necessary to answer those objects, and which they have in no instance attempted, although the difficulties they have experienced in collecting debts convince them that sales on credit cannot be relied on for the punctual payment of the above-mentioned interest and instalments. They, therefore, with great deference, suggest the propriety of the Government's paying the money borrowed, and reserving the property pledged for its repayment, to be sold as advantageous offers may occur—a policy which dictated the guaranty in 1796, and which has been fully justified by the sales made since that period. By pursuing a contrary policy, the property pledged will be greatly diminished by the payment of interest only, while much larger sums than are necessary to discharge

both principal and interest will probably lie dead in the Treasury. Your memorialists also beg leave to state, that the sum of fifty thousand dollars, in the United States six per cent. stock, has been borrowed from the State of Maryland, to be repaid on the 1st of November, 1802, secured by the bond of the Commissioners, and real and personal security given by private persons. The only fund applicable to the payment of this sum at the disposal of the President or Commissioners is, the debts contracted for city lots purchased previous to passing the guaranty law; this fund is, indeed, much more than sufficient, could those debts be called in; to accomplish which, your memorialists have never ceased their exertions. They are now pursuing a measure not before attempted—a ready money sale, in which, if they fail to sell the property for as much as is due thereon to the public, the same policy should dictate to the Government to pay the sum of fifty thousand dollars likewise; the last-mentioned debts, to a much greater amount, being ultimately secure.

The Commissioners have only received fifty-three thousand two hundred and eighty-one dollars and eighty-one cents from the sales of property pledged by virtue of the guaranty law; they have paid, in conformity to that law, the sum of twenty-nine thousand six hundred and eighty-seven dollars and ninety-two cents, to the original proprietors, for property appropriated to public use, and forty-two thousand dollars interest, which has accrued on money borrowed under the sanction of the same law. Thus, the sum of eighteen thousand four hundred and six dollars and eleven cents, derived from the funds applicable to the payment of debts contracted on the personal security of the Commissioners, has been applied to the purposes of the guaranty, and thereby the necessity of selling at depreciated rates the property pledged to Congress has been avoided.

Your memorialists would also observe, that the debts due, and to become due, to the city fund, and which were considered as good, were stated in the last representation to the President at one hundred and forty-four thousand one hundred and twenty dollars and eighty cents. Since which, forty-six thousand and eighty-one dollars and ninety-nine cents have been received; but it may be observed, that the sum of eighty thousand dollars, which, by the agreement of April, 1794, was to rest on the bond of Morris, Greenleaf, and Nicholson, is not included in that description although your memorialists are advised by their counsel that certain squares in the City of Washington, containing one thousand lots, are liable to the payment of that sum; the same being designated by an agreement of the 9th July, 1794, as the lots, the payment for which was to rest on the said bond; and this point is now depending for decision in the court of chancery of the State of Maryland.

To show the progress and the present state of buildings in the city, your memorialists have had the number of dwelling houses taken, and find, by an accurate report, that, on the 15th of May, 1800, there were one hundred and nine of brick, and two hundred and sixty-three of wood; and, on the 15th of last month, there was an addition of eighty-four of brick, and one hundred and fifty-one of wood, besides seventy-nine of brick, and thirty-five of wood, in an unfinished state; total amount, seven hundred and thirty-five. Their particular situations will appear from the schedule which accompanies this memorial.

The above statement of facts and observations are, with sentiments of the highest respect, submitted to the President of the United States.

WILLIAM THORNTON,
ALEXANDER WHITE,
TRISTRAM DALTON.

COMMISSIONERS' OFFICE,
December 19, 1801.

SIR: Agreeably to the information given in our memorial of the 4th instant, we have held a sale of lots for ready money, which we kept open ten days. It has produced, by actual sales, $4,234, and by payments made by debtors, to prevent their property from being sold, $7,613, making, together, $11,847; yet our expenditures have been such as to leave at this time no more than $5,880 in our hands. During the sale, we pursued our general policy of not selling any property for less than the sum due on it to the public; thinking it improper to change that system until it should be known what measures Government will take with respect to it, although (besides the interest due to the State of Maryland) the Commissioners' note for $5,000, discounted at the Bank of Columbia, will become due 22d (25th) January next, and we estimate the sums due for operations on the roads and buildings, expenses of the Commissioners' office, and other contingencies to the end of the year, at $1,870; demands to which our present means are very inadequate.

We are, with sentiments of the highest respect, sir, your obedient servants,

WILLIAM THORNTON,
ALEXANDER WHITE,
TRISTRAM DALTON.

The PRESIDENT *of the U. S.*

DEBT OF THE CITY OF WASHINGTON.

[Communicated to the House, Jan. 19, 1802.]

TREASURY DEPARTMENT *Jan.* 15, 1802.

The Secretary of the Treasury, to whom was referred a resolution of the Legislature of Maryland, offering to accept six per cent. stock, in payment of a loan obtained from that State by the Commissioners of the City of Washington, respectfully reports:

That, by an act passed the 6th day of May, 1796, the Commissioners of the City of Washington were authorized to borrow a sum, not exceeding $300,000, at an interest not exceeding six per cent. a year, and reimbursable in five annual instalments, to commence from and after the year 1803.

That, by a subsequent act, passed the 18th day day of April, 1798, the President of the United

States was authorized to loan to the said Commissioners one hundred thousand dollars, in part of the above-mentioned sum of three hundred thousand dollars; which loan of one hundred thousand dollars has been accordingly effected, and the amount paid out of the Treasury to the Commissioners.

That, by the said acts, all the city lots, not appropriated to public use, vested in either the Commissioners or trustees, for the use of the United States, and remaining unsold at the time of passing the first mentioned act, are made chargeable with the principal and interest of the loans; and the United States are made liable for the repayment only of the balance which may remain due on such loans after all the lots shall have been sold.

That, under the first above-mentioned act, the Commissioners obtained from the State of Maryland a loan of two hundred thousand dollars, (making, together with the one hundred thousand dollars loaned by the United States, the full sum of three hundred thousand dollars, authorized to be borrowed by the Commissioners under the said act,) the amount of which they have received from the said State, in six per cent. stock, at par, which stock they have sold for specie, at its market price. This loan bears an interest of six per cent. a year, on its nominal amount, and is reimbursable in five equal annual instalments, of forty thousand dollars each, payable in the years 1804, 1805, 1806, 1807, and 1808. And that, in addition to the said loan, the Commissioners have obtained another loan of fifty thousand dollars from the State of Maryland, reimbursable in November, 1802, for the payment of which they have given personal security, and pledged the proceeds of lots sold prior of the date to the abovementioned act of the 6th of May 1796.

The propriety of repealing so much of the existing laws as compels a sale of the city lots, in order to meet the payments due on those loans, is a question, exclusively, of legislative discretion: nor are there any documents, or other information, in the Treasury Department, which would enable the Secretary to form (even if, which is not apprehended to be the case, it had been intended by the reference that he should give) an opinion on that subject.

The only question, therefore, which seems to arise under the reference is, whether, if Congress shall think it expedient not to compel forced sales of the city lots, it will be most eligible for the United States to repay the State of Maryland, in specie, or in six cent. stock; and to place that option in the power of Congress seems to have been the object of the Commissioners, in their application to the Legislature of that State.

It is sincerely believed, and most respectfully submitted, that no act of Government can more effectually tend to increase the external force, or to strengthen the internal union of the United States than a prompt and complete extinguishment of the public debt; and that every measure should be avoided, which may lead to an unnecessary perpetuation or prolongation of any part of the same.

In this instance there can be no doubt that the resources of the United States are fully equal to discharge in specie the five annual instalments, of forty thousand dollars each, which may eventually be payable on that loan, without having recourse to the expedient of creating, for that purpose, an additional six per cent. stock, to that amount.

Under that impression, the Secretary, with submission, but without hesitation, reports, that although the resolution of the Legislature of Maryland was evidently adopted only with a view of accommodating the United States, it cannot, in his opinion, be their interest to avail themselves of the offer it contains.

All which is most respectfully submitted.

ALBERT GALLATIN.

CANAL IN THE CITY OF WASHINGTON.

[Communicated to the House of Reps. Feb. 11, 1802.]

Mr. SPRIGG, from the committee to whom was referred the petition of sundry citizens of the District of Columbia, praying that Congress will pass an act, incorporating a company for the purpose of opening a canal to unite the waters of the Potomac and the Eastern Branch, through Tyber creek and the low grounds at the foot of Capitol Hill, made the following report:

That such a canal was contemplated at a period almost as early as that at which this place was selected for the permanent seat of the General Government; and a course marked out for it, of the width of eighty feet, on a plan of the city, engraved by order of President Washington. Ground was also reserved for a street, eighty feet wide on each side, thoughout its whole course, under the general power given to the President, by deed from the original proprietors of the soil, to lay out, for the use of the public, such ground as he should think necessary.

Some deviations from the course designated for it on the engraved plan have, however, been since made, with the full consent and approbation of the holders of the land, the better to accommodate it to the shape of the ground. All which will more fully appear by documents with which the committee have been favored by the Commissioners of the City, and which accompany this report.

The committee find, also, that the Legislature of Maryland were so fully impressed with an idea of the utility of the intended canal, that they relaxed their usual severity on the subject of lotteries, and, by an act of November session, 1795, c. 47, authorized the persons therein named to propose and carry into effect two annual lotteries for raising the sum of fifty-two thousand five hundred dollars, to be applied to the completion of the said canal; which persons so far complied with the directions of the said act as to give bond for the faithful discharge of their trust to the Commissioners of the City of Washington, a copy of which bond is also annexed to this report; but, for some cause not known to the committee, no money from this source has ever been applied to carrying on the canal.

These circumstances, combined with the present appearance of the grounds through which the canal must pass, add additional weight to the opinion of the committee, that a well-constructed and well-regulated canal would be extremely beneficial to the City of Washington, both with respect to its commerce and the health of its citizens.

They therefore think that the prayer of the petition ought to be granted, with such provisions, and under such restrictions, as, while they hold out to individuals sufficient pecuniary inducements to urge the completion of the work, will guard against the inconveniences which frequently result from incorporations; and they beg leave to submit the following resolution:

Resolved, That it is expedient to pass a law incorporating a company for the purpose of opening a navigable canal to connect the waters of Potomac river with those of the Eastern Branch thereof, through Tyber creek, and the low lands at the foot of Capitol Hill.

COMMISSIONERS' OFFICE,
February 5, 1802.

SIR: We have been honored with your letter of the first instant. The proposed canal is not, in all its parts, designated on the plan of the City usually met with; that plan was engraved by order of President WASHINGTON, and has been generally pursued in laying out the City, as far as it was found practicable on an actual survey of the ground; but some deviations were made, which appear on a plan in this office, sanctioned by the President. The bed of the canal was changed, in part of its course, in the year 1795, by direction of the President, and with consent of the proprietors of the adjacent lots. To render this change intelligible, we have enclosed a portion of the last-mentioned plan, with the width of the canal, and the adjacent streets noted thereon. The competency of the authority by which this disposition was made, cannot be doubted; the deeds from the original proprietors having empowered the President of the United States, for the time being, to lay off all the lands within the limits of the City, into such streets, squares, parcels, and lots, as he should judge proper. A copy of one of those deeds is on the files of Congress, being part of a communication from the late President, dated the 30th of January, 1801. With regard to the lotteries authorized by the act of the Legislature of Maryland, we have only to say that the managers gave bond to the Commissioners, agreeably to that act; a copy of which bond is enclosed: that the first lottery was drawn, and that the Commissioners did everything in their power to prevail on the managers to render an account of the proceeds, and to commence their operations on the canal, but without effect. The correspondence on this subject is voluminous; but, if required, will be transmitted for your perusal. Perhaps you will not deem this necessary, the managers being all in the city.

We are, with sentiments of great respect, sir, your most obedient servants,

WILLIAM THORNTON,
ALEXANDER WHITE,
TRISTRAM DALTON.

RICHARD SPRIGG, Esq.,
Chairman Committee of Congress.

Know all men by these presents, that we, Notley Young, Daniel Carroll, of Duddington, Lewis Deblois, George Walker, William Mayne Duncanson, Thomas Law, and James Barry, are jointly and severally holden, and firmly bound unto the Commissioners, appointed in virtue of the act of Congress for establishing the temporary and permanent seat of the Government of the United States, and their successors, in the full and just sum of one hundred thousand dollars, to be paid to the said Commissioners, or their successors; to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this sixth day of February, in the year of our Lord one thousand seven hundred and ninety-six.

The condition of the above obligation is such, that if the above-bound Notley Young, Daniel Carroll, of Duddington, Lewis Deblois, George Walker, William Mayne Duncanson, Thomas Law, and James Barry, shall well and truly apply the moneys arising from and in virtue of the act of Assembly, entitled "An act to authorize two lotteries in the City of Washington," within two months after the drawing of said lotteries, to the payment of the prizes drawn by the fortunate adventurers in said lotteries, and the necessary expenses incurred in the management thereof, and the residue in the opening and completing the canal in the City of Washington, and rendering the same navigable under the direction and superintendence of the said Commissioners and their successors, then the said obligation to be void, else to remain in full force and virtue in law.

NOTLEY YOUNG,
DANIEL CARROLL,
of Duddington,
LEWIS DEBLOIS,
GEORGE WALKER,
WM. M. DUNCANSON,
THOMAS LAW.

Signed, sealed, and delivered, in the presence of
THOMAS MUNROE.

CITY OF WASHINGTON.

[Communicated to the House, February 12, 1802.]

Mr. NICHOLSON made the following report:

The committee to whom was referred the Message of the President of the United States of the

11th ultimo, transmitting a memorial of the Commissioners of the City of Washington; and to whom was likewise referred a resolution of the House of Representatives of the fifth instant, directing the committee to inquire into the expediency of discontinuing the offices of the said Commissioners, beg leave to report the following resolutions for the consideration of the House:

1. *Resolved*, That, from and after the first day of March next, the offices of two of the Commissioners of the City of Washington ought to be discontinued, and thereafter the powers now vested in the Board of Commissioners ought to be vested in one only, who ought to discharge all the duties now required to be performed by the whole number.

2. *Resolved*, That, prior to the first day of March next, the said Commissioners ought to settle their accounts with the accounting officers of the Treasury; and all debts which have been contracted by them in their capacity as Commissioners, and for the payment of which no particular provision is hereinafter made, ought to be discharged in the usual manner by the Commissioner retained.

3. *Resolved*, That so many of those lots in the City of Washington which are pledged for the repayment of a loan of two hundred thousand dollars, made by the State of Maryland in the years 1796 and 1797, to the Commissioners of the said City, ought to be annually sold, as may be sufficient to pay the interest and instalments of the said loan, as they may respectively become due; provided that, if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency, ought to be advanced from the Treasury of the United States.

4. *Resolved*, That so many of the lots in the said City, which were sold prior to the 6th day of May, in the year 1796, and have reverted to the Commissioners, in consequence of a failure on the part of the purchasers to comply with their contracts, ought to be sold, as will be sufficient to pay to the State of Maryland the sum of fifty thousand dollars, with the interest thereon, on or before the first day of November next; which sum was loaned by the said State to the Commissioners aforesaid, in the year 1799: provided that, if, in the opinion of the President of the United States, the sale of a sufficient number of the said lots, to meet the objects aforesaid, cannot be made without an unwarrantable sacrifice of the property, then so much money as may be necessary to provide for the deficiency ought to be advanced out of the Treasury of the United States.

5. *Resolved*, That all moneys advanced out of the Treasury of the United States, in pursuance of these resolutions, ought to be reimbursed as soon as possible, after the debts already contracted by the Commissioners have been discharged, by applying towards the reimbursement every sum of money which may be afterwards raised out of the City funds, until the whole of the money advanced shall be repaid.

CITY OF WASHINGTON.

[Communicated to the House, April 8, 1802.]

Mr. Dennis, from the committee to whom was referred, on the 5th of February last, a motion, in the form of two resolutions, of the House, "respecting the adjustment of the existing disputes between the Commissioners of the City of Washington and other persons who may conceive themselves injured by the several alterations made in the plan of the said city: also, relative to a plan of the said City of Washington, conformably, as nearly as may be, to the original design thereof, with cetain exceptions," made the following report:

That many disputes have arisen between the Commissioners and proprietors of city property, in consequence of the alterations which, from time to time, had taken place in the plan of the City of Washington. It may not, therefore, be improper for your committee concisely to state the different plans which have existed, or been supposed to exist, for the same; and to present to the view of the House certain documents, explanatory of the nature of the complaints exhibited by individuals against the Commissioners for the innovations made, and of the reasons assigned by the Commissioners for their own and the conduct of their predecessors.

Your committee find that the plan of the city city was originally designed by Mr. L'Enfant, but that it was, in many respects, rejected by the President of the United States, and a plan drawn up by Mr. Ellicott, purporting to have been made from actual survey, which recognised the alterations made therein, and which was engraved and published by the order of General Washington, in the year 1792. This plan was circulated by the Government throughout the United States, and sent to our public agents in Europe, by the authority of the Government, as the plan of the city, and is the only one which has ever been engraved and published; this is generally known by the appellation of the engraved plan. It was, however, found, on actual survey, that the engraved plan was, in many respects, inaccurate; and that the actual situation of many streets and squares differed so essentially from the situation which they seemed to possess on the face of that plan, that though they appeared on paper to lie some distance from the water, they were found to be situated in the Potomac. This circumstance rendered some deviations from that plan inevitable. In some other cases, grounds originally appropriated to public use have been surveyed into building lots, and divided as such between the United States and the proprietors. In certain other cases, the angles formed by the intersection of streets and avenues, and which seem to be a kind of property which neither comes within the description of streets, public appropriations, nor building lots, (which are the only descriptions of property mentioned in the deeds of trust,) have been surveyed also into building lots, and in some instances divided between the proprietors and the public, and added to the plan of

the city. The alterations made, in the instances above enumerated, have been incorporated into the plan of the city, now in the Commissioners' office. This plan has been signed by Mr. Adams; in conformity with which the trustees were directed by him to convey the public grounds to the United States, and is considered by the Commissioners as the true plan of the city. This plan has never been engraved or published. In one instance, known to your committee, since the signature of the plan before mentioned by Mr. Adams, viz. in the case of a Mr. Walker, an original proprietor of certain lands within the city, certain angles, formed by the intersection of streets and avenues, have, on this application, been converted into building lots, and divided between him and the Commissioners, and been inserted in the plan of the city. It is understood that the Commissioners conceive themselves at liberty to proceed in the same manner in all similar cases, and that there are many other cases remaining of the same description. This subject, together with the effect and operation of these angular insertions into the plan of the city, will be fully explained by a recurrence to the protest of one of the Commissioners, who, in the case of Mr. Walker, dissented from the principle, together with his letter to Gen. Washington on the subject, and the answer thereto; all of which are subjoined to this report, and are marked C, D, E. In order to give to the House a full view of the nature of the complaints exhibited against the Commissioners for the innovations made, and to possess them of the reasons assigned by the Commissioners for their own, and the conduct of their predecessors, in relation thereto, your committee have thought proper to exhibit, as a part of their report, the memorial of sundry proprietors, whose names are thereto annexed, presented to Mr. Adams some time in the year 1798, stating the injuries by them respectively received, in consequence of the innovations made, and the statements of the Commissioners in relation to that subject, marked A and B.

The trustees have not yet conveyed the public grounds, as directed by the before-mentioned order of Mr. Adams. The reasons by them assigned for not conveying are, that they consider themselves as the agents for the original proprietors as well as for the United States; that justice to those proprietors requires, as well as the interests of the United States, that before they convey, it should be fully ascertained what is the true plan of the city, and that the disputes in relation thereto should be previously terminated. Your committee are of opinion that suffering the engraved plan, which is no longer the true plan of the city, to continue to pass as such, may be productive of great deception in purchasers, and that measures ought to be taken for its suppression; that measures ought to be taken also for obtaining from the trustees a conveyance of the streets and other public grounds; and that a plan which, as far as practicable, shall prevent all further innovations, ought to be engraved and published under the direction of the President of the United States. But as it would be improper to publish any other plan until the existing disputes be settled, and a conveyance obtained from the trustees of the public grounds, your committee are of opinion it will be proper to invest in the President the power of compromising any dispute, (if justice shall require it,) by giving to such persons as have been injured by any alteration made other public grounds in lieu of the property so affected. Your committee approve of many of the principles contained in the resolutions referred to them; but, as they think it proper to deviate from them in some respects, they would recommend that they be rejected, and beg leave to offer to the House the following resolutions:

Resolved, That the President of the United States be, and he is hereby, requested to take such measures as he may deem necessary for obtaining conveyances to the United States of the public grounds in the City of Washington; and that he be, and he is hereby, authorized and empowered to grant to any individual, whose property may have been injured in consequence of the alterations made in the plan of the city, where, in his opinion, justice or the interests of the United States may require it, other public grounds, in lieu of the grounds so affected; unless, in his opinion, the plan of the city may be so varied as to remove the complaints of such individuals without injury to the city, or affecting the rights of others; in which case, he may authorize a deviation for that purpose.

Resolved, That after having obtained a conveyance, as aforesaid, he cause a plan of the city to be prepared, and such number of copies thereof as he may think proper to be engraved and published, conforming, as nearly as may be, to the plan signed by Mr. Adams, except in the cases contemplated in the foregoing resolution.

A.

The undersigned, proprietors of lands in the City of Washington, beg leave to represent to your Excellency certain circumstances relative to that city highly interesting to the United States, to us, and to all who may become purchasers and residents therein.

Conscious as we are of the inestimable value of your time and attention to the objects presented by the present crisis in public affairs, nothing but the most full persuasion of the absolute necessity of the measure could have induced us, at this time, to divert them to a state of the Federal city; yet, from a knowledge of your patriotism, we believe you will more readily excuse this than our omitting to present to your Excellency an opportunity of averting an impending evil which threatens the prosperity of one of the most important establishments of the Union.

Surrounded by public business, and pressed by official duties, it is probable that many circumstances relative to this city may have escaped your notice, or have been obliterated by more important impressions; we, therefore, take the liberty of introducing to your notice such of them as, we

flatter ourselves, you may think will require the most immediate attention.

Pursuant to the acts of Congress authorizing him thereto, the late President, with that indefatigable zeal which has always marked his attention to the interest of the public, proceeded carefully to examine the country; and, having ascertained the limits of the Federal territory located the City of Washington agreeably to a design of Mr. L'Enfant, which, for its superior beauties and advantages, met with general approbation and applause.

The original proprietors of the lands included within the city, wishing to promote and insure an object so highly beneficial to themselves and to their country, came to the resolution of making such a donation to the United States as should enable them to erect the buildings necessary for the accommodation of the President and Congress, as also the public offices, in a style adapted to the metropolis of the United States.

By deeds of trust, which the proprietors proceeded immediately to give, the streets within the city were to be conveyed to the United States; such squares or grounds as the President should deem proper to appropriate for public purposes were also to be conveyed to the United States, upon the proprietor receiving at the rate of £25 per acre for the ground so appropriated; the remainder of the lands within the city was to be laid off into squares and lots, one moiety thereof to be subject to sale, and the money arising therefrom to be applied, in the first instance, to the payment for the lands so appropriated as above to public purposes, and the residue thereof to be a donation agreeably to the act of Congress; the other moiety of squares and lots to revert to the original proprietor.

The streets and public appropriations on the plan of the city being very large, and the latter, in addition to their great extensiveness, uniformly in the most beautiful situations, it was thought proper that the proprietors should receive a compensation for these appropriations, exclusive of streets, not considering them as building lots; that compensation was fixed at £25 per acre, and to be paid out of the proceeds of sales made by the public of lots given up by the proprietors. This was considered as securing to the United States ground enough for every public building, and to the citizens the advantages of spacious walks and areas, without too great a sacrifice on the part of the proprietor; although, had they been divided into building lots, it would have been infinitely more beneficial to him; yet, as he received some compensation for his land, and the few lots surrounding these vast areas were enhanced in value, he cheerfully complied therewith, when he considered the advantages in point of health and beauty which the city received therefrom.

Appropriations so extensive in themselves, so conducive to the beauty and health of the city, so gratifying to the public and proprietor, were deemed sacredly devoted to the purposes to which they were designated; yet, notwithstanding that public and private sales have been made on the faith of these appropriations; that those sales have been regulated by their proximity to these appropriations; that they had received every sanction which public opinion and the publication of the plan of the city, under the direction of the President and Commissioners, could give; that payments have been made therefor to the proprietors, as appropriations to the sole use of the United States: notwithstanding these circumstances, innovations of the most serious, and to us of the most alarming nature, have been introduced.

The most singular of these innovations we beg leave to present to the view of your Excellency as illustrative of an infinity of cases which must necessarily arise, the right of innovation being admitted. The case we allude to is, the conveyance of a part of the President's square to the Queen of Portugal or her Minister, lately made by the Commissioners. This conveyance we consider as a most unfortunate circumstance, viewing it as a deviation from the plan of the city, and the intention of the parties on the execution of the deeds of trust. It was certainly never contemplated that appropriations of such great utility, so highly ornamental, so conducive to health, would have been alienated; and we rest assured that the alienation could never have obtained your Excellency's sanction had the application been attended with a statement of the preceding facts.

This innovation must certainly never have been contemplated by the proprietors at the time of their executing the deeds of trust, nor since; the letter and spirit of those deeds show evidently what was the intention of the parties at that period. There is an evident distinction drawn in them between public appropriations and private building lots; the fee in the former, with the streets, was to reside and forever continue in the United States; the latter are expressly directed to be sold.

The proprietors, when they relinquished part of their ground as public appropriations, firmly believed that no more would be taken than was deemed proper for the use of the United States, and imagined that the same reasons of necessity, utility, and elegance, which would dictate their location, would forever prevent their being curtailed. This impression received additional confirmation by a variety of sales effected by the Commissioners of lots adjacent to the grounds so appropriated to the United States; at which sales the said appropriations were always mentioned and exhibited as highly appreciating the property to be disposed of. But the official circulation of plans throughout Europe and America, on which plans those appropriations and public areas were designated, was sufficient to have removed any doubt that could possibly have existed.

When it is recollected that a number of the proprietors have, on the confidence they had in the plan of the city, made sale of lots adjacent to these appropriations and open areas, at prices high and proportionate to the supposed advantages arising from their proximity thereto, it is painful to anticipate the inconvenience, the expense, and endless litigation to which they have subjected themselves, should innovations of this nature be admitted. These evils, with additional injuries and injustice, will be extended to purchasers both from

the Commissioners and proprietors, as the advantages exhibited, which induced the purchase, will no longer exist.

The innovations already introduced have but too fatally tended to destroy that confidence which is inseparably combined with the growth and prosperity of the city; the continued introduction of others must necessarily endanger its very existence; as neither purchasers nor improvers will be found sufficiently adventurous to risk their property on a hope of advantage, the permanency of which is so obviously doubtful. And it is melancholy to reflect that even at this late day, when every energy should be employed in preparations for the reception of the Government of the United States, gentlemen anxious to make improvements are deterred, from an apprehension lest at some future period they be deprived of that which constitutes their present inducement.

The advantages which the United States and the proprietors (who, in that case, would be entitled to a moiety thereof) may derive from the sale or donation of these public appropriations or open areas, ought never to be placed in competition with health, beauty, and magnificence, which was singularly and amply provided for in extensive areas and public squares, adapted to a free circulation of air, elegant gardens, and spacious walks; more confined plans having unfortunately subjected our most flourishing cities to the most dreadful calamities.

We shall now proceed to solicit your Excellency's attention to other subjects most intimately connected with the welfare of the city.

The deeds of trust being executed, and some alterations in Major L'Enfant's first plan and design being made at the desire of the late President, commissioners and surveyors were appointed, and the operations in the city commenced.

The President, agreeably to this improved plan of Mr. L'Enfant, declared the appropriations for the Capitol and President's house. Divisions of lots in their vicinity were made between the Commissioners and proprietors, and a public sale thereof took place; a great number of persons became purchasers at this sale, and everything spoke the ardor and sanguine hopes of those interested in the city.

Mr. L'Enfant was succeeded by Major Ellicott in the surveying department; the latter was superseded, and that department devolved on others, perhaps less qualified. It was found that much of the spirit and genius exhibited in the first plans had evaporated, and a dull uniformity, devoid of that elegance which had been so highly praised, had been introduced. An evident derangement of system and perspicuity was observable in that department, and the papers, plans, &c. under their care; which derangement is so far from being rectified, that it has become a source of errors and mistakes, affecting both the public and proprietors. It is now a labyrinth which no man can develop.

While Mr. Ellicott was surveyor, a plan was engraved by the directions of the Commissioners, and a very numerous impression taken therefrom; a number of copies were lodged in the office of the Secretary of State, others with the Commissioners, and many dispersed throughout the United States and Europe for sale, and for the information of persons who might incline to become purchasers of the city property. This plan (although it differed in many respects from that by which the first sales were made, and which had been laid before Congress) was generally considered as the final plan of the city; and from that period sales have invariably been made in conformity therewith, under the idea that the sanction under which it issued was a sufficient guaranty of its stability.

By an act of the State of Maryland, the Commissioners were enabled to carry the plan of the city into complete execution, and to prohibit docks, slips, buildings on wharves, and other nuisances, which have proved so injurious to other cities of this continent.

With these superlative advantages in the plan of the city, persons interested therein looked forward with hope to the removal of Congress to this place, when they would be clearly and fully displayed.

Unfortunately the plan has, in many instances, either been varied from, or not carried into execution; and, instead of having any fixed and determinate limits to our possessions, which would enable us to improve or make sale thereof, there are several mutilated, unfinished, and discordant plans, which bewilder instead of explaining, and paralyze property to a very large amount, that would otherwise be employed in improving the city.

That your Excellency may have a fuller knowledge of the difficulties arising to the proprietors of lands and lots, and to the public, from this unsettled state of things, we shall endeavor to lay a few of them before you.

It has already been observed that there were several alterations made in the plan, between Mr. L'Enfant's first design, and the publishing of the last engraved plan in Philadelphia, by the Commissioners, and promulgated as the plan of the city. It now remains for us to observe, that, since the publication of that plan, there have been other very material innovations made therein by the surveyors; and many of them we believe without any authority. The discordant, inaccurate, and ill-executed ones, which are in the surveyor's office in this city, we shall not notice; but we cannot avoid mentioning, that the plan lately transmitted to your Excellency by the Commissioners, as a plan of the City of Washington, and to which your assent has been obtained, is extremely variant from the engraved one; it is incomplete; it is different from that laid off on the ground, and acted upon by the Commissioners and proprietors on the division of lots and squares thereon exhibited.

It is variant from the plan published as the plan of the city, in the extent, form, and limits of almost all the public appropriations, in several streets, and in many of the squares to be laid off in building lots. By it some of the streets of the greatest magnitude and importance are allowed to be obstructed in the vicinity of the water, by laying off squares or building grounds across the

same, and thereby lessening the utility of the street, preventing the free access of air, and, of course, subjecting the future inhabitants thereof to those malignant disorders which have of late ravaged other commercial towns of the United States.

It is incomplete, inasmuch as the rights and privileges of wharfing and water-lots are not ascertained. That street, which in every former plan circumscribed the city beyond any building lots, and near the channel, and which was intended to promote the intercourse with merchants, and the free conveyance of merchandise along the wharves, open a free passage for air from the water into the different streets and avenues terminating therein; is omitted; and, in many places, a distance of several hundred feet is left to be filled up and occupied by buildings and wharves, at the option of individuals. If the plan is left in this situation, no one can wharf or improve the water property, as he knows not where streets may be introduced; or if it should eventually be permitted that they wharf and build at pleasure, every advantage which the plan of this city had over others is lost, and the United States are voluntarily allowing reservoirs of contagion.

It differs from the plan, as already laid out on the ground, in the position of streets, and the figure and dimensions of squares, already laid off in lots, and divided between the proprietors and the public.

As a further elucidation of this matter, we beg leave to refer your Excellency to the plans and other documents, marked No. 4, No. 5, No. 6, which are hereunto annexed.*

When the trustees, to whom the proprietors of the lands within the City of Washington had conveyed their lands, were requested to convey the public appropriations and streets for the use of the United States, had examined and compared the same with the engraved plan, and that on which they were made, very material differences were observed; so great as, in their opinion, to warrant a refusal to convey, lest by so doing they should betray that trust and confidence the proprietors had in their integrity and justice.

From this statement of facts, which the subscribers are confident they can substantiate before your Excellency, or any tribunal you may be pleased for that purpose to constitue, we flatter ourselves your Excellency will see the necessity of immediately having an accurate and complete plan of the city, properly authenticated and established, and from which there can be no departure, as the only means of restoring public confidence in the city, and of enabling the proprietors to sell and improve their property therein; which plan we humbly conceive may show the limits of the city, and also permanently secure the spacious streets, ample areas, and extensive public appropriations, so conductive, as heretofore frequently observed, of the grand objects we have in view, the health of the citizens, the elegance, utility, and magnificence of the city. We know your Excellency will attend to the necessity of defining what water privilege or right of wharfage is attached to the lots on the Eastern Branch, the Potomac river, and Rock creek; also, all such streets as are to be left in wharfing from the shore to the channel of the said waters, and the extent to which those wharves are to be carried; and what ground, so made and filled up, shall be considered as subject to occupancy by buildings. We are equally certain that your Excellency will clearly perceive the necessity of convincing the public mind that the appropriations and open areas cannot be diverted to private uses but must remain sacred, inviolate and forever considered the property of the United States of America.

Having unsuccessfully attempted to obtain a remedy of the many evils herein detailed from the inferior department, and deeply impressed with the highest confidence in your Excellency's disposition to exert every Constitutional power, vested in you for the benefit, advantage, and happiness of every part of the Union committed to your care, we cheerfully submit to your decision a subject which we humbly conceive is not the least deserving of your notice, amidst the vast variety of objects which at present occupy your unwearied attention.

Robert Peter,	David Burnes,
Dan'l Carroll *of Dud.*	Francis Deakins,
Samuel Davidson,	Isaac Pollock,
William Prout,	James W. Lingan,
Thomas Law,	William H. Dorsey.

CITY OF WASHINGTON, *Nov.* 10, 1798.

To His Excellency JOHN ADAMS,
President of the United States.

* The papers here referred to are not now to be found.

B.

COMMISSIONERS' OFFICE,
March 23, 1802.

SIR: We are favored with your letter of the 20th instant, and, in compliance with your request, shall state the principal facts on which you desire information.

Major L'Enfant's plan of the city was sent to the House of Representatives on the 13th day of December, 1791, by President WASHINGTON, for the information of the House, and afterwards withdrawn. Many alterations were made therefrom by Major Ellicott, with the approbation of the President, and under his authority; all the appropriations (except as to the Capitol and President's House) were struck out, and the plan, thus altered, sent to the engravers, intending that work, and the promulgation thereof, to give the final and regulating stamp. These changes from L'Enfant's plan took place in the year 1792, and the published plan appears to have been engraved in October of that year. It has since been pursued in all the operations of the city, under the direction of the Commissioners, as far as it was practicable; but the city not having been surveyed, and this plan being partly made from the draughts of L'Enfant, and partly from materials possessed by Ellicott, it was probable it would not correspond with an actual mensuration. The Commissioners, therefore, on the 9th of April, 1793, made the following order:

"The head of the surveying department is to conduct the field work, and be answerable for its accuracy and despatch. As soon as any square is finished, and marked on the ground, he is to deliver into the Commissioners' Office a certificate in the following form:

"April 10, 1793.—Surveyed square, No. —, bounded (enumerating the lines as the truth is.)

A. B."

"This work is, from time to time, to be added to the large plat, which, being finished, is to be considered as record. It is desired that stoning the squares may keep pace with the work, and the head of the department is to give so much attention to it as to see that the stones be properly placed. In the actual execution of the work, deviations from the plan may, in some instances, be proper. The Commissioners do not think there is a propriety of their ordering such, in cases of consequence, at their pleasure. Any remarks on this head will not only be attended to, but are invited, that they may be enabled to obtain the President's order."

The surveyors complied with this order, and whenever a space of ground appeared, by actual survey, to be neither in the street nor public square, it was added to the plan, and divided as building lots, without objection or animadversion, until the year 1796, when it was contemplated to obtain from the President a minute description of the public grounds, and an order for their conveyance. The subject was then brought more immediately into view of the board. The above-recited order, and many of the proceedings under it, had taken place before any of the then Commissioners were in office. Some difference of opinion appeared to exist among the Commissioners with respect to the appropriations. One of them thought all the spaces of ground which were not designated on the engraved plan, and which were not already under the orders of the former board, divided into building lots, ought to be appropriated to public use; the other two did not concur with him in opinion, yet they agreed to submit the subject to the President, and, accordingly, in a letter, dated 30th November, 1796, write: "The vacant spaces which appear on the plan of the city, at the intersection of the streets and avenues, and which are composed of the streets themselves, and by striking off the points which these intersections necessarily form, so as to give a degree of regularity to the adjacent buildings, we have not considered as squares appropriated to public use; but some of the proprietors now insist that they ought to be paid, not only for the points thus struck off, but for the streets themselves, so far as they pass through those vacant spaces; or that those points should be laid off into building lots. This suggested the propriety of running a street one hundred and sixty feet wide, round each of those spaces, and appropriating the centre to public use, which may be enclosed with handsome palisades, sown with grass, and ornamented with fountains statues, &c., to the great embellishment of the city, when it becomes populous: this, however, we only suggest, but we believe some decision of the Executive is necessary to silence clamor, and perhaps to prevent litigation." To which the President, on the 26th of December thereafter, answered: "With respect to the claims of individual proprietors, to be compensated for the spaces occasioned by the intersection of streets and avenues, I should conceive that they might, with equal propriety, ask payment for the streets themselves. But the terms of the original contract or cession, if a dispute on that point should arise, must be recurred to; for I presume the opinion of the President in such a case would avail nothing; but if angles are taken off at these spaces, the case is materially altered, and, without designing it, you make a square where none was contemplated, and thereby not only lay the foundation of claim for those angles, but for the space also which is made a square by that act." This letter not containing instruction to include the spaces of ground which were the subjects of it, in the act of appropriation, the draught of an act was prepared and transmitted to the President, describing the grounds which were unanimously agreed to have been reserved for the purpose of appropriation; which draught, after being perused, and in some respects altered, by the Attorney General, received the President's signature; and the Commissioners continued to divide such spaces of ground, as did not appear to be included in the streets or public appropriations, which a majority of the board considered themselves bound to do by the terms of the original cession.

Those spaces were numerous, and consequently occasioned considerable deviations from the engraved plan. The actual survey had another apparent effect; it occasioned many squares to be laid in the water, being governed by the channel, and to insert other squares between the apparent water-squares and the river; but this was of necessity, or in conformity to the engraved plan. There are other variations from the engraved plan which may require explanation. Squares Nos. 728 and 729, on the engraved plan, appear to recede from 1st street east, whereas, in fact, they are brought up to it. The first form was said to have been given to them before the actual site for the Capitol was known. However that may be, the change seems to have taken place previous to the engraving of the plan, for the squares were divided 10th October, 1792, and must consequently have been laid out some time before—a circumstance which probably escaped Mr. Ellicott's attention, when he prepared the plan for the engravers, as he has left those squares nearly as L'Enfant had delineated them. A space appears vacant on the engraved plan south of square No. 104; it is part of Hamburg, a town which was planned previous to the establishment of this city; part of this space was filled up with squares, designated by south of 104, east of 87, and east of 88, in order to compensate the original proprietors of that town, who were entitled to lots equal in value to those given up for public use, and as near as

possible to their former possessions; whereas the proprietors of farms were only entitled to twenty-five pounds per acre for similar cessions. it seems probable that these squares were likewise laid off before the plan was engraved, and also escaped Mr. Ellicott's attention, because there were no returns of squares previous to the order of 9th April, 1793; and these squares were among the first that were returned, and by Mr. Ellicott himself, on the 15th June, 1793, forty-one days before the return of squares Nos. 728 and 729, and because the same vacancy appears also on L'Enfant's plan. There are two ranges of squares laid out south of squares No. 506, on part of a space which appears vacant on the engraved plan. This was done in the year 1793, by order of the President, on the application of Mr. Notley Young, who complained that too great a portion of his land had been taken for public use; more than twenty acres yet remain to the public. The designation of the bed of one branch of the proposed canal was changed in 1795, by order of the President, and on the application of the adjacent proprietors. This was done because the course designated on the engraved plan would have carried it through high ground, and required much more labor than its present course.

The above changes (except the line of the canal and inserting squares, as before related,) took place before any member of the present board was in office; but we have no doubt of their having been made from pure motives, and by proper authority. We do not find that any individual has complained of sustaining an injury in consequence of the above deviations from the engraved plan. It is true that, in the year 1798, several city proprietors presented a memorial to President Adams, stating that innovations of the most serious and alarming kind had been made in the plan of the city, and mentioning the grant of a site for the Minister of Portugal, in the President's square, as the most singular of these innovations. The intention of the memorial was to persuade the President that it was necessary to cause a complete plan of the city, including a water street, to be made and established, so that there could be no departure therefrom. It was referred to the Attorney General, who advised against making a new plan, because the plan to which the President's signature is annexed is sufficiently authenticated, and supersedes all prior plans; against making a plan unalterable, in the sense of the memorialists, because the appropriated grounds may be wanted for one purpose at this time, and for another at a future day: and against making the proposed water street in the present state of the city funds, because it was more necessary to build houses than to reclaim land out of the water. Upon this opinion the prayer of the memorial was rejected; and, as it contained a censure on the conduct of the Commissioners, it was, with all the papers accompanying it, by order of the President, sent to them for such observations as they might deem proper, either with respect to themselves or the public interest. With regard to the first, they deemed it unnecessary to do more than explicitly to deny the whole: with respect to the second, considering the Government as implicated in the grant to the Queen of Portugal, they explained the transaction.

The measure of granting sites for the residence of foreign Ministers was warmly recommended by President Washington, and approved by President Adams, before any steps were taken by the Commissioners to carry it into effect. President Washington, himself, pointed out the spot granted to the Queen of Portugal as a proper site for the residence of a Foreign Minister; and Mr. Adams delivered letters from the Commissioners, making the offer to all the Ministers of friendly Powers near the United States; and endorsed his approbation of the deed to the Queen of Portugal after it was executed. But the Attorney General, on hearing the objection, was of opinion that Congress alone were competent to make the grant—an idea which had never occurred to either of the Presidents, or to any of the Commissioners. We know but one instance of a complaint of injury arising from a difference between L' Enfant's and the engraved plan; that is the case of Samuel Davidson: he alleges that L'Enfant's plan ought to be considered as the plan of the city; and that, agreeably to it, he would be entitled to additional property in the President's square. His case, as stated by himself, was transmitted to President Washington, who, in a letter to the Commissioners, dated 20th February, 1797, says, "That many alterations have been made from L'Enfant's plan by Major Ellicott, with the approbation of the Executive, is not denied; that some were deemed essential, is avowed; and, had it not been for the materials which he happened to possess, it is probable that no engraving from Mr. L'Enfant's draughts ever would have been exhibited to the public; for, after the disagreement took place between him and the Commissioners his obstinacy threw every difficulty in the way of its accomplishment. To this summary may be added, that Mr. Davidson is mistaken if he supposes that the transmission of Mr. L'Enfant's plan of the city to Congress was the completion thereof; so far from it, it will appear, by the message which accompanied the same, that it was given as matter of information only, to show what state the business was in, and the return of it requested; that neither House of Congress passed any act consequent thereupon; that it remained, as before, under the control of the Executive; that, afterwards several errors were discovered and corrected, many alterations made, and the appropriations, except as to the Capitol and President's House, struck out under that authority before it was sent to the engraver, intending that work, and the promulgation thereof, were to give the final and regulating stamp." Upon the receipt of this letter the Commissioners rejected the application; Mr. Davidson, however, made a similar application to President Adams, without success; also to the present President, the event of which we have not heard. With respect to the refusal of the trustees to convey the public property, it is to be observed that President Washington's act directing the conveyance, in the hurry

of business at the conclusion of his administration, was not annexed to the plan as the instrument expressed. The trustees made that circumstance a pretext for their refusal; one of them, Mr. Gantt, saying, if the instrument were annexed to the plan he would execute the conveyance, after giving Mr. Davidson notice of his intention in time to obtain an injunction. This he considered himself under honorary obligations to do. The plan and President Washington's act were sent to President Adams, who directed Washington's act to be annexed to the plan, and, by an act of his own, repeated the order to convey. When the trustees were notified of this, Mr. Gantt showed a letter, signed by Mr. Davidson and some other city proprietors, forbidding the trustees to convey, and promising indemnity in case of refusal. The Attorney General was then applied to for advice, who was of opinion that the property was as effectually vested in the United States as if it were formally conveyed; had he been of a different opinion, compulsory measures would have been taken to obtain a conveyance.

The trustees allege that the description of the appropriations does not agree with the plan to which it refers. In this they are incorrect; it agrees with the utmost precision. From this view of the subject, it is obvious that the trustees act in some degree under the influence of the proprietors.

Let us examine their object: Mr. Davidson's object, it already appears, is to obtain additional property within the President's square. Mr. Carroll's object is to obtain a declaration from Government that there never shall be any buildings erected on the Capitol square, in front of his houses; he has also claimed payment for the streets round the appropriations on his land, and for the bed of the proposed canal; and it is an opinion, generally prevalent among the proprietors that the Government is not, or at least ought not to be, at liberty to exercise the full rights of property over the appropriated grounds, notwithstanding they have received the agreed price for them; and a declaration of this principle is included in their demand of an unalterable plan. We have now stated the principal alterations which have been made in the plans of the city, and the causes of them; also the objections of the trustees to convey the public property. If ungratified demands, which have been rejected by the President, as well as by the Commissioners, are to be considered as existing disputes between the proprietors and Commissioners, we believe they likewise are all stated. It may be proper, however, to mention that no dispute can arise in matters cognizable by the Commissioners which the President is not competent to determine; and that the Commissioners never have determined a matter of importance against an applicant without the unequivocal sanction of the Executive. If, indeed, the Commissioners, whether with or without the sanction of the Executive, should refuse a matter of right, the laws of the country are open; to them we presume it would be much more proper to recur, than to establish a tribunal with undefined powers to determine the disputes of a few dissatisfied individuals.

We are, with sentiments of respect, sir, your obedient servants,

WILLIAM THORNTON,
ALEXANDER WHITE,
TRISTRAM DALTON.

The Hon. JOHN DENNIS,
Chairman of a Committee of Congress.

C.

MAY 22, 1799.

Finding that the board are disposed, on the motion of George Walker, to lay off several small squares, some of which do not contain one lot and a half, by which the intention of the late President, in keeping open the junction of large avenues, will be contravened, William Thornton moves (before they decide upon a measure which may, and he believes will, materially injure the general plan of the city, and establish a principle which, by extending to every other similarly situated space, may do essential injury to individuals who have purchased under an impression that such spaces were meant to be left open) that the board postpone their decision till the opinion of the President of the United States can be obtained, whether it will be proper to lay out these small triangles into building lots, or, by declaring them public appropriations, shall direct payment for the same.

This motion having been made, the board declared that they would not postpone the determination unless it was by the consent of the said George Walker, who, being present, said he would not consent to such a reference, as he would never agree to take at the rate of £25 per acre (the sum the President is authorized to give for ground condemned for public appropriations) for ground that would command ten cents per square foot. In consequence of which, the board proceeded to lay out and divide the following squares or parcels of land, viz: north of 962, east of 1,015, south of 1,062, west of 1,092, and south of 1,039; to which William Thornton does now solemnly protest, thinking the board have assumed a power not delegated by the President.

N. B. These squares were divided, but the board consented to let them remain unsigned for the present.

D.

CITY OF WASHINGTON, *May* 31, 1799.

SIR: Finding that the Board of Commissioners were exceedingly urged by Mr. George Walker to lay off and divide certain small portions of ground within the lines of his property, between the intersection of various avenues and streets, which do not appear in the general plan of the city to have been designed for private occupancy, and, perceiving the board were disposed to adopt the proposal, I declared the measure expressly contrary to the intention of the late President of the United States, and accordingly wrote a formal protest, setting forth the injury that the city would

sustain by admitting a principle which would induce every proprietor to make similar claims, and requested that the board would not sanction the divisions, by signature, until the opinion of the late President should be fully known; if any hesitation remained on the minds of my colleagues, after the perusal of your letters of the 26th December, 1796, and the 27th of February, 1797. Those letters explain clearly, in my opinion, the sentiments I have repeatedly heard you express; but lest your meaning should be misconstrued, in a point so essential to the future benefit of the city, I request you will pardon me for making so free as to solicit a further declaration of your former opinions, if they can be more explicit. There is, perhaps, one point that may be considered as omitted. I mean the declaration of those portions as appropriations; for although many of them are very small, not containing a standard lot, and, if occupied by private individuals, might justly be considered as nuisances; yet, if appropriated to public use, they would not only be highly useful, but also ornamental, as they would serve for churches, temples, infirmaries, public academies, dispensaries, markets, public walks, fountains, statues, obelisks, &c.; and, if the whole were to be paid for as appropriations, they amount to only three hundred and eighty-one thousand six hundred and eighty-three square feet, or eight acres, at £25, making £200. The only doubt remaining on the minds of the Commissioners relative to these portions of ground, was the power of non-insertion; but it appears to me that their not having been inserted, leaves them exactly in the same predicament as the other portions of the city intended for appropriations, but neither yet expressly designated as appropriations, nor even as reservations. They may be considered as reservations, because the points of squares have been cut off, and these latter, therefore, are rendered, by your declaration of 26th of December, 1796, subject to payment, and consequently to public appropriation. If no objection can be made to this, which, indeed, is warranted by the deeds of trust, surely less validity must be given to objections against the adoption of areas, heretofore considered only as streets which, by adoption, will be paid for and rendered highly useful and ornamental. If any objection can arise, it has been justly observed in your letter, last quoted, that they might with equal propriety ask payment for the streets, for these spaces differ in nothing from the avenues but in extent, and every avenue might, by a parity of claim, be reduced to a street, or be charged to the public. No individual has ever contended for the insertion of these irregular portions, except Mr. George Walker; but the principle being admitted, the right will be universally claimed. Many have sold lots fronting on these open spaces; the map of the city has been published without them, and complaints of injustice will certainly be made by persons who have already purchased, if these spaces be filled up by private lots; besides, these insertions not accompanying the maps now dispersee, strangers might be liable to continual impositions, by purchasing lots apparently on open areas on the map, but in reality only fronting stables or greater nuisances; for these lots are too small to admit of houses all round and conveniences within; so that it appears not only against the plan of the city to insert them, (unless for public appropriations, which I should advocate,) but it would be highly unjust to individuals, as well as those who may purchase as those who have become proprietors; and it would materially injure the convenience of the city, by occupying, for private purposes, those places so easy of access and so necessary for the public.

I have the honor to be, sir, with sincere regard, your very respectful friend, &c.

WILLIAM THORNTON.

General Washington.

E.

Federal City, *June* 1, 1799.

Sir: In replying to your favor of yesterday's date, I must beg leave to premise, that when I left the chair of Government, it was with a determination not to intermeddle in any public matter which did not immediately *concern me;* and that I have felt *no disposition since* to alter this determination.

But as you have requested that I would give you my ideas on a certain point which seems to have occupied the attention of the board of Commissioners, and on which I presume my letters to that body (whilst I had the honor to administer the Government) have not been so clear and explicit as it was my intention to be, I have no hesitation in declaring (unless I have *entirely* forgotten all recollection of the fact) that it has always been my invariable opinion, and remains still to be so, that no departure from the engraved plan of the city ought to be allowed, unless imperious necessity should require it, or some great public good is to be promoted thereby.

Minor considerations contribute to this opinion; but the primary, and to my mind an unanswerable one, is, that after the original plan, with some alterations, had been adopted, ordered to be engraved and published, and was transmitted to several if not to all our public agents abroad, for the purpose of inviting purchasers, it would, for reasons too obvious and cogent to require illustration, be deceptious to lay off lots for private purposes, where none appeared in a plan which was intended to inform, aid, and direct the judgment of foreigners, and others, who could not on the premises make a choice.

It is not difficult to form an opinion of the ways of thinking and views of others by one's own under similar circumstances; I shall declare, then, without reserve, that if I had made choice of a site for a house on an open area in the published map, occasioned by the intersection of avenues, and an angle thereof should afterwards be filled up in a manner I might not approve, I should not scruple to complain of both the deception and injury.

But I am straying from my purpose, which was no more than simply to say, (if I am not, as before

mentioned, greatly forgetful,) that I have never had but one opinion on the subject, and that is, that nothing ought to justify a departure from the engraved plan, but the probability of some great public benefit, or unavoidable necessity.

With great esteem and regard, I am, sir, your most obedient servant,

GEORGE WASHINGTON.

William Thornton, Esq.

CITY OF WASHINGTON.

[Communicated to Congress, Jan. 25, 1803.]

Gentlemen of the Senate, and
of the House of Representatives:

I transmit a report by the Superintendent of the City of Washington on the affairs of the city committed to his care. By this you will perceive that the resales of lots prescribed by an act of the last session of Congress did not produce a sufficiency to pay the debt to Maryland, to which they were appropriated; and, as it was evident that the sums necessary for the interest and instalments due to that State could not be produced by a sale of the other public lots, without an unwarrantable sacrifice of the property, the deficiencies were of necessity drawn from the Treasury of the United States.

The office of Surveyor for the City, created during the former establishment, being of indispensable necessity, it has been continued; and to that of the Superintendent, substituted instead of the Board of Commissioners, at the last session of Congress, no salary was annexed by law. These offices being permanent, I have supposed it more agreeable to principle that their salaries should be fixed by the Legislature, and therefore have assigned them none. Their services, to be compensated, are from the first day of June last.

The Marshal of the District of Columbia has, as directed by law, caused a jail to be built in the City of Washington. I enclose his statements of the expenses already incurred, and of what remains to be finished. The portion actually completed has rendered the situation of the persons confined much more comfortable and secure than it has been heretofore.

THOS. JEFFERSON.

January 24, 1803.

Superintendent's Office,
Washington, Dec. 20, 1802.

Sir: Pursuant to the sixth section of the act of Congress of last session, entitled "An act to abolish the Board of Commissioners in the City of Washington, and for other purposes," and under your direction of the 16th of June last, I proceeded with all possible diligence to prepare a statement of all the lots of the description in the said section mentioned; and on the nineteenth of that month, advertised the same for sale on the thirtieth day of August then next ensuing; which advertisement was published according to law; and on the day appointed the said sale commenced, and was continued, by adjournment, until the twenty-ninth day of October last; during which time the whole of the said lots were sold, and produced the sum of $26,848 10; of which I paid away, agreeably to the fourth section of the above-recited act of Congress, the sum of $2,249 03, (together with $2,563 85, which arose out of other funds of the city,) for debts which had been contracted by the late Commissioners, in their capacity as such, the payment whereof was not specially provided for by the aforesaid act of Congress; and the balance, to wit, $24,599 07, was applied, as directed by the said act of Congress, towards the payment of the loan of $50,000 by the State of Maryland.

It may not be improper here to mention that very few, if any, of these lots produced, by the resale thereof, the amount of the original purchase money due thereon; that the deficiency is very considerable, and that it is not probable the debtors will be able to pay more than about $10,000 thereof. Some, however, who are deemed able to pay, contend that they cannot be compelled to make payment, because, they say, the act of the Maryland Legislature of 1793, chapter 58, which authorizes a resale in case of default in payment, does not admit of reselling more than once; and that, if the power of resale be exercised, the original purchaser is not bound for any deficiency, as the public or city agent had a choice of two remedies, to wit, a suit or release; and, having elected to resell, they have not a right to use both remedies, and to resort to a suit for the deficiency. This doctrine is particularly insisted on in the case of an endorser of the note of a deceased purchaser at a resale; in which case a second resale has been made, and a considerable deficiency has in consequence happened. The endorser now says he is ready and willing to pay the amount due on the lots, as purchased by his principal, upon the same being conveyed for his indemnity. Before I adopt any compulsory measure on this subject, I have supposed it to be proper to submit the circumstances for the consideration and opinion of the proper law officer, and to pray the instructions of the President in the premises.

The number of lots which were thrown into the market at the public sale, directed by the act of Congress before recited, being much greater than the demand, and the positive and unconditional obligation imposed by the act of Congress to sell the whole of them within a limited time, not only subjected those lots to great sacrifices and disadvantages in the sale thereof, but has also materially injured the private sales of all the other public lots, in the sale of which the President might exercise his discretion. Of this description of lots, however, I have sold five, which have produced $1,531 43, cash.

In my accounts from the first of June last to the first ultimo, prepared for the Treasury Department, it appears that, in addition to the receipts and expenditures hereinbefore stated, I have received—

From the late Board of Commissioners, being the balance which remained in their hands when the commission ceased, 1st June last	$110 59
For lots purchased prior to 6th May, 1796, voluntarily paid by the purchasers before the public sale on the 30th August last - - - - - -	1,274 28
For balance of purchase money for lots sold by the Commissioners since 6th May, 1796 - - - - - -	109 93
And from sundry persons, for small balances which were due to the city on accounts other than for lots sold -	320 73
Making - - - - -	$1,815 53

Which has been expended as follows, viz: $374 60 for expenses attending the aforesaid public sale of lots; and $408 51 for other expenses necessarily incurred in the execution of the duties of the office of Superintendent; the balance, to wit, $1,032 42, is included in the sum of $2,563 85, hereinbefore stated to have been paid for debts contracted by the Commissioners.

The receipts and expenditures since the first ultimo amount to $36 80 only.

The debts now due to the city, and considered as good, exclusive of the deficiencies on the lots resold for default of payment, amount to upwards of $13,000. Of these deficiencies it is thought (as is before stated) the debtors will be able to pay about $10,000. The property of the city, (besides the debts,) as stated in the representations of the late Commissioners to the President, on the 28th January, 1801, and 4th December, 1801, estimating the lots at the average prices of those previously sold under the condition of improvement, (which were much lower than the unconditional sales by individuals,) amounted to $884,819 88, out of which lots have been since sold to the amount of $9,886 24 only, for about the prices at which they were estimated.

Besides the debts and property before mentioned, there is due to the city (including interest) upwards of $100,000; $80,000 (principal) whereof is for the one thousand lots mentioned in the Commissioners' representations to have been conveyed to Messrs. Morris and Greenleaf, under the circumstances therein particularly detailed, and concerning which a bill has been filed in the high Court of Chancery of the State of Maryland. The balance, between four and five thousand dollars principal, is due for valuable water lots, originally bought by James Greenleaf, and resold in the usual manner for default of payment, and for which the second purchaser has always been ready to pay the purchase money, but has been prevented by an injunction of the Chancellor of Maryland, on a bill filed by Mr. Greenleaf's trustee. This bill, as well as that filed with regard to the one thousand lots, is still pending, and the counsel for the city are of opinion the decisions in both cases will be favorable to the public interest.

The debts due and to become due from the city (except for the advances from the Treasury of the United States, and the two loans by the State of Maryland of $100,000 each) are very inconsiderable; and it is hoped that the large fund hereinbefore stated (by the future sales of the property being made commensurate only with the demand therefor, agreeably to the provision contained in the fifth section of the before-recited act of Congress) will not only be adequate to the indemnity of the Government for its liberal patronage, but will also yield a surplus for the use of the city.

The state of the public buildings, directed to be reported, is the same as at the last session of Congress, or not materially changed. The private buildings, then seven hundred and thirty-five in number, have since increased a few more than one hundred.

The beforementioned representations of the Commissioners in January and December, 1801, and the documents accompanying them, which were laid before Congress, being very full and minute on the affairs of the city, prior to their respective dates, I beg leave to refer to them; but if there be anything which you, sir, deem necessary, and which those representations and the present do not embrace, it will afford me much pleasure to communicate it.

I have the honor to be, with sentiments of the greatest respect, sir, your most obedient servant,

THOMAS MUNROE.

The PRESIDENT *of the U. S.*

WASHINGTON, *January* 21, 1803.

SIR: I now enclose you the account and copies of the contract and bill of particulars respecting the jail directed at the last session of Congress to be built in this city.

Although every effort was made to complete the plan adopted for the sum appropriated, it could not be done; it was then determined to finish only certain parts of the building, and to keep the amount for such as should be finished within the appropriation. Messrs. Huddlestone and Nesmith contracted to complete all the building except the interior of the west wing and the iron grated doors, which were at first contemplated to be put in for the sum of $7,426; and Mr. George Hadfield, whose plan was adopted, was appointed to superinted the erection of the building. An estimate of the sum necessary to complete the west wing in the same manner as the east wing is herewith transmitted, which amounts to the sum of $2,577, leaving out all the iron grated doors. If a kitchen should be built, (and one is absolutely necessary,) the further sum of about $300 will be wanted.

The contractors have completed their work, except a few articles, which will be done. In the sixth article of the contract, it is stipulated, that such alterations or additions to the mode of building the jail as could not be adjusted by the parties, were to be left to reference; some alterations were considered as proper, and directed by the Superintendent, and one respecting the cell doors was directed by me. The contractors claim for extra work the sum of $1,098; on this subject, however, there is a considerable difference between the Superintendent and them. They claim for many things as extra work which he does not admit to be extra. There is also a difference of opinion between them on the amount of the deduction that ought to be made in the iron work. If he is correct in his opinion, there remains the sum of $449 for extra work only to be examined, which will be seen by a reference to his letter to me, a copy of which is sent. The contractors, under the sixth article of the contract, claim a right of reference upon those subjects. If all these claims should be established, and Congress determine to finish the jail and build the kitchen, the sum of $3,702 66, in addition to the sum of $272 34 of the sum appropriated, which is in hand will be requisite.

When I appointed Mr. Hadfield the Superintendent, I agreed to give him for his services the sum of $200, and this is the amount of his claim against me; but he states that he thinks this sum too small a compensation for his trouble. He has, in drawing plans, making out bills of particulars and estimates, and superintending the work, been closely engaged for seven months, so that two dollars per day for his services cannot be thought unreasonable; and I must do Mr. Hadfield the justice to say, that I think the sum of $200 is not a sufficient compensation for his trouble, and I believe he has been very attentive. If it should be thought proper to come up to Mr. Hadfield's idea, the sum of $220 more will be wanted on his account.

With sentiments of the highest respect, I am, sir, your obedient servant,

DANIEL C. BRENT.

The PRESIDENT.

WASHINGTON, *January* 19, 1803.

SIR: The new jail is now ready for your reception, as completed agreeable to contract, except in a few articles, which the present season has prevented being done, and which, by agreement, may be finished at any future period; for which purpose I shall note them hereafter. The building, I presume, is executed throughout with fidelity to the contract; the execution is plain, but the work is strong, substantial, and firm.

An expense for some extra articles has unavoidably accrued, either for work which has been thought greatly advantageous to the building, or other contingencies not to be foreseen but during the progress of a building; in consequence of which, and also of a clause in the contract providing for additional work, the contractors bring in an extra claim of $962, $253 of which I reject as unfounded; the remainder, $709, is for iron work, and other articles ordered for reasons as above mentioned; a deduction in your favor must be made for the omission of the iron frames, which I calculate ought not to amount to less than $260, in which case the remaining sum for extras to be examined, would be $449.

I presume, sir, that if you approve of the building, you might receive it, and close the contract with the undertakers, to prevent delay, leaving the business of extra claims to any time afterwards.

I remain your obedient servant,

GEORGE HADFIELD.

D. C. BRENT, Esq.

Articles to be completed by agreement.—Painting of cornice on the north side and two ends, pointing in slating, finishing, painting inside and outside bars, fixing grate in jailer's room, and repairing whatever plastering that may have been injured by the frost.

There is another claim from Maitland, which has been given in, amounting to fifty-two pounds four shillings, which is positively inadmissible.

G. H.

Estimate of the expense necessary for finishing the interior of the west side of the new jail, in the City of Washington.

Digging foundation and removing the earth - - - - - - - -	$34 00
All rough stone-work, materials and labor included - - - - -	565 00
All brick work, materials, and labor included - - - - - -	286 00
All plastering, materials, and labor included - - - - - - -	96 00
All freestrone work and lead, stone not included - - - - - -	301 00
Finishing pediment - - - - -	13 00
All carpentry and joinery materials, and labor included - - - -	700 00
All iron work - - - - - -	502 00
Clearing away the rubbish from the south side and the ends - - -	80 00
	$2,527 00

GEORGE HADFIELD.

CITY OF WASHINGTON, *Jan.* 18, 1803.

N. B. Iron grated doors in this estimate are not included; nor is the kitchen, which, if built, will cost about $300.

STATE OF OHIO.

[Communicated to the House, February 2, 1803.]

Mr. RANDOLPH, from the committee to whom were referred a letter from Edward Tiffin, President of the Convention of the State of Ohio, and a letter from Thomas Worthington, special agent of the said State, enclosing the constitution thereof, together with sundry propositions in addition to, and in modification of, those contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," made the following report:

That the ordinance for ascertaining the mode of disposing of land in the Western Territory, passed by Congress on the 20th day of May, 1785, establishes the principle of reserving one thirty-sixth part of the lands sold for the use of schools. That to this principle, equally liberal and wise, your committee believe it a sound policy to adhere, and to extend it wherever practicable. They are aware of the objection that the right of the soil in the tract of country commonly called the Connecticut reserve, having been ceded by Congress without any valuable consideration, and no reservation having been made for the support of schools therein, the inhabitants of that portion of the State of Ohio have not equal claims on the bounty of Congress with those who, having purchased their lands of the United States, have contributed large sums to the public Treasury. But if it be recollected that the actual settlers are not, generally, those that have been enriched by that extraordinary donation, but purchasers under them, and at prices, it is believed, not inferior to those received for the public lands, and that whilst they are burdened with their full proportion of their expense of the State government, they are cut off from an equal participation of the benefits enjoyed by their fellow-citizens; when, moreover, it is considered that the provision for schools embraces not the emolument of individuals, but the interests of morality and learning, the committee are of opinion that Congress will perceive the propriety of acceding to a proposition, the tendency of which is to cherish and confirm our present happy political institutions and habits. This last consideration applies equally to the United States' military tract, to the military reservation of Virginia, and to lands which may hereafter be acquired from the Indian tribes.

No objection suggests itself why the lands which are or may be appropriated for the use of schools within the State of Ohio should not be vested in the Legislature of that State, in trust for that purpose.

The appropriation offered in the third proposition of the act enabling the people within the limits of the present State of Ohio to become a co-equal member of the Union, originating in the belief that it would at once enhance the value of the public lands, and cement more strongly together the various interests of the Confederacy, it is believed that these desirable objects will be equally promoted by applying a portion of the proceeds (so offered to be appropriated) to the opening and repairing roads within the State of Ohio.

The provision contained in the sixth section of the seventh article of the constitution of the State of Ohio, respecting the northern boundary of that State, depending on a fact not yet ascertained, and not being submitted in the shape of the other propositions from the convention to Congress, the committee have thought it unnecessary to take it at this time into consideration.

In relation to the grant to John Cleves Symmes and his associates, of one complete township, in trust, for the use of an academy and other seminaries of learning, the committee recommend the adoption of a plan suggested by the Secretary of the Treasury, in a letter hereto subjoined, to which they beg leave generally to refer; and they respectfully submit the following resolutions, in addition to, and in modification of, the propositions contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes," passed the 30th day of April, 1802:

1. *Resolved*, That a donation, equal to one thirty-sixth part of the amount of the lands in the United States' military tract, within the State of Ohio, be made for the support of schools within that tract.

2. *Resolved*, That a donation, equal to one thirty-sixth part of the county of Trumbull, be made out of the lands within the United States' military tract, for the support of schools within the said county of Trumbull.

3. *Resolved*, That a donation, equal to one thirty-sixth part of the Virginia reservation, so far as the unlocated lands within that reservation (after the warrants issued by that State shall have been first satisfied) will supply the same, be made for the support of schools in the district contained between the Scioto and Miami rivers.

4. *Resolved*, That a like provision for the use of schools be made out of any lands which may hereafter be acquired from the Indian tribes.

5. *Resolved* That the lands which now are, or hereafter may be, appropriated to the use of schools within the State of Ohio, be vested in the Legislature thereof, in trust for that object.

6. *Resolved*, That not less than three-fifths of the sum offered to be appropriated by Congress for the opening of roads from the western to the Atlantic waters, shall be appropriated under the direction of the State of Ohio, for the laying out of roads within that State.

7. *Resolved*, That in lieu of the township proposed to be granted for the use of an academy, by the act passed the 5th day of May, 1792, there be granted to the State of Ohio, for the purposes described in that act, one other entire township within the district of Cincinnati: provided that the State of Ohio shall relinquish to the United States all their claim, under the act aforesaid, against the said John C. Symmes.

8. *Resolved*, That these propositions shall depend on the compliance by the State of Ohio with the provisions of the third proposition and second section of the aforesaid act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," passed April 30, 1802.

SIR: The committee to whom were referred sundry propositions submitted by the convention of the State of Ohio, to the Congress of the United States, have instructed me to request of you information on the following points:

1. The gross amount of lands comprised within the United States' military tract.

2. Whether, through default of John Cleves Symmes, the intention of the United States to endow an academy or other public school with one entire township, hath been frustrated?

3. How far the purchasers under the aforesaid Symmes are bound to make good the said township, or the value thereof?

4. Whether the United States are bound to furnish an equivalent? and, if not,

5. How far it may be a matter of policy to comply with the proposition of the convention on that subject?

And such other information touching those propositions, generally, which the Secretary of the Treasury may deem expedient to lay before the committee.

With perfect consideration, I am, sir, yours,

JOHN RANDOLPH, JR.,
Chairman of the Committee.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT,
January 13, 1803.

SIR: The gross amount of lands within the United States' military tract is computed at two million five hundred and thirty-nine thousand one hundred and ten acres; one thirty-sixth part of which, if appropriated for schools in conformity to the proposition of the convention of the State of Ohio, will amount to seventy thousand five hundred and thirty-one acres. The grants already made within that tract amount to one million eighty-one thousand two hundred and seventy acres, which, supposing the school appropriation to take place, will leave one million three hundred and eighty-seven thousand three hundred and nine acres therein for the future disposition of Congress.

If the modifications proposed by the convention shall be acceded to, it will be necessary to define the manner in which the abovementioned seventy thousand five hundred and thirty-one acres, as well as the sections to be given for the use of schools in those fractional townships containing less than three-fourths of an entire township, and in which the section No. 16 has been disposed of, shall be located. There are but thirty-seven such fractional townships in which that section did exist, and only twelve such sections have been sold. The mode of designating an equal number of sections in lieu thereof is not, therefore, material.

The seventy thousand five hundred and thirty-one acres in the military tract may be designated by directing that as many qnarter-townships (which quarters in that tract contain four thousand acres each) as will make up the whole amount, shall be selected by lot; and the same mode may be extended to the designation of the lands which Congress may assign for the use of schools in the Connecticut reserve. But if it shall be thought proper to give an agency in the selection to the State, it will be necessary to limit the time within which that agency shall be exercised, and to provide, in case of failure on their part, for another mode of designating the land.

As the request made by the convention for certain lands in lieu of the township granted to J. C. Symmes and his associates for an academy, is no part of the modifications proposed to the original propositions of Congress, an immediate decision may not be necessary; and it seems proper and just that measures should, in the first place, be taken for the recovery of that township which was granted in trust to J. C. Symmes and his associates, and which, at all events, ought not to be applied to their private use, since they did not pay for it. The difficulty, in this case, arises from the following circumstances:

J. C. Symmes had originally applied for two millions of acres, and it had then been contemplated to give him a township for the use of an academy. The contract was, however, made with the Board of Treasury, (in 1787,) by his attorneys, Messrs. Dayton and March, for only one million of acres, and no grant or promise of an academy or college township was inserted in it.

In 1792, Congress directed that a township for that purpose should be included in the grant of lands to be made to the said Symmes and his associates; and a patent accordingly issued, under date of 30th September, 1794, for a tract containing three hundred and eleven thousand six hundred and eighty-two acres, reserving five sections in each township for certain purposes; and further declaring, "that one complete township, or tract of land of six miles square, to be located with the approbation of the Governor for the time being of the Territory Northwest of the river Ohio, and within the term of five years, as nearly as may be, in the centre of the tract herein granted, has been and is granted, and shall be holden in trust to and for the sole and exclusive intent and purpose of erecting and establishing therein an academy and other public schools and seminaries of learning, and endowing and supporting the same, and to and for no other use, intent, or purpose whatever."

At the time when the patent was granted there was, as Mr. Symmes states, but one entire township within its bounds; some sections having been sold in every other township because he had not contemplated such reservation, and that one entire township remained so, only because it had been reserved by Mr. Symmes for himself and his associates. He applied, in 1798, to Governor St. Clair, in order to obtain his approbation to the location of that township, in conformity to the words of the patent. Although there does not really appear to have existed any other unsold township at the time, the Governor refused his assent, because that offered was, in his opinion, of inferior quality, and not in the centre of the patent, and because a part of it was claimed by Elias Boudinot, one of Judge Symmes's associates.—Since that time, it is understood that one-half of

that township has been sold under judgments obtained against Mr. Symmes; the other undivided half is said to be still claimed by Mr. Boudinot under articles of agreement, dated before the date of the contract of Mr. Symmes with the Board of Treasury; and by which the last mentioned person agreed that he would, after he had received a title from the United States, convey to Mr. Boudinot, as his associate in the intended purchase, a part of the same.

As the patent is in the name of J. C. Symmes and his associates, it is not believed that the claim of any of the associates, as such, can affect the title of the public against them as trustees; but in what manner they shall be compelled to execute the trust is the question to be decided.

Perhaps Congress at the same time that they shall direct legal measures to be taken for the recovery and due application of the land, might provide, that, if J. C. Symmes and his associates shall pay to the United States the original purchase money (two-thirds of a dollar per acre) for that township, with interest from the date of the patent, they shall be released from the execution of the trust, and the township confirmed to them for their own use; and they might also designate another entire township in the Cincinnati district, and as near to the Miami and Ohio as practicable, to be given in lieu of the other, in case either this should not be recovered, or J. C. Symmes and his associates should pay for it on the above-mentioned terms.

Permit me to suggest here the propriety of opening a land office for the sale of all the remaining lands in the military tract, and also to repeal those parts of the general land law which forbid the sales of certain sections throughout the whole extent of the lands of the United States, except so far as relates to the school sections and to the sections reserved for religious purposes in the lands sold prior to the law of the 18th May, 1796. The plan of reserving some sections in each township for the purpose of giving to the public a share in the increasing value of lands, originated at a time when lands were sold by the United States at a lower rate and in large tracts.

The present mode of disposing of the public lands, as under it none are sold until they have attained the value of two dollars per acre, effects the same object, and renders the reservation useless. No further precaution seems necessary in relation to that object, than to order a public sale of those reservations before they shall be offered on the usual terms.

The part of the military tract which shall remain for future disposition may be divided into sections and half-sections, and a land office opened at Zanesville, for the sale both of those lands and of those lying north of the Ohio Company purchase, which now belong to the Marietta district. The sales have been so inconsiderable in that district that little doubt remains that the place selected for the land office was not the most proper. It is, however, suggested that the sales would be eventually promoted in that and in all other districts, by permitting the sale of fractional sections, without being attached to the adjoining entire section.

There is another circumstance which, though of inferior importance, seems to merit some consideration.

The price at which Congress sell their lands is advantageous to the population and prosperity of the State of Ohio. It has effectually destroyed the monopoly of lands, and throws the land exclusively in the hands of actual settlers; yet it is considered as high; and, on that account, the payment of fees, in addition to the purchase money, is generally complained of. This objection should be removed, by giving to the registers a small salary or commission in lieu of their fees. About $500 a year to each, that of Marietta excepted, would be, I believe, a sufficient compensation, in addition to the half per cent. commission which they receive on moneys entered.

I have the honor to be, very respectfully, sir, your obedient servant,

ALBERT GALLATIN.

Hon. JOHN RANDOLPH, *Chairman, &c.*

CHILICOTHE, *Dec.* 4, 1802.

HONORED SIR: Enclosed you will receive an address from the Convention lately convened at this place, for the purpose of forming a constitution and State Government, for the seventeenth State of United America, and which has been made my duty to enclose to you, to be communicated to the honorable body over which you preside.

With every sentiment of respect, I have the honor to be, sir, your most obedient servant,

EDWARD TIFFIN.

HON. SPEAKER *of the House of Reps.*

Address to the President and both Houses of Congress of the United States.

The Convention of the State of Ohio, duly appreciating the importance of a free and independent State Government, and impresed with sentiments of gratitude to the Congress of the United States for the prompt and decisive measures taken at their last session, to enable the people of the Northwestern Territory to emerge from their Colonial Government, and to assume a rank among the sister States, beg leave to take the earliest opportunity of announcing to you this important event.

On this occasion, the convention cannot help expressing their unequivocal approbation of the measures pursued by the present administration of the General Government and of both Houses of Congress, in diminishing the public burdens, cultivating peace with all nations, and promoting the happiness and prosperity of our country.

Resolved, That the President of this Convention do enclose to the President of the United States, to the President of the Senate, and to the Speaker of the House of Representatives of the United States, the foregoing address.

Done in convention, at Chilicothe, the 27th day of Nov., 1802. EDW. TIFFIN, *President.*

THOS. SCOTT, *Secretary.*

PROPOSITIONS.

We, the representatives of the people of the eastern division of the Territory Northwest of the river Ohio, being assembled in convention, pursuant to an act of Congress, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio to form a constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes;" and having had under our consideration the propositions offered by the said act, for our free acceptance or rejection, do resolve to accept of the said propositions, provided the following addition to and modification of the propositions shall be agreed to by the Congress of the United States, viz:

That in addition to the first propositions, securing the section No. 16, in every township within certain tracts, to the inhabitants thereof, for the use of schools, a like donation, equal to the one thirty-sixth part of the amount of the lands in the United States' military tract, shall be made for the support of schools within that tract; and that the like provision shall be made for the support of schools in the Virginia reservation, so far as the unlocated lands in that tract will supply the proportion aforesaid, after the warrants issued from said State have been satisfied; and, also, that a donation of the same kind, or such provision as Congress shall deem expedient, shall be made to the inhabitants of the Connecticut reserve.

That all the lands which may hereafter be purchased of the Indian tribes by the United States, and lying within the State of Ohio, the one thirty-sixth part shall be given, as aforesaid, for the support of public schools.

That all lands before-mentioned to be appropriated by the United States for the support of schools shall be vested in the Legislature of this State, in trust, for said purpose.

That not less than three per cent. of the net proceeds of the lands of the United States lying within the limits of the State of Ohio, sold and to be sold after the 30th day of June last, shall be applied in laying out roads within the State, under the direction of the Legislature thereof.

And if the Congress of the United States shall agree to the above addition to and modification of the said propositions, it is hereby declared and ordained, that every and each tract of land sold or to be sold by Congress, from and after the 30th day of June last, shall be and remain exempt from any tax laid by order or under the authority of this State, whether for State, county, township, or any other purpose whatever, for the term of five years after the day of sale, to be reckoned from the date of certificate of the first quarterly payment.

That whereas Congress, by a law entitled "An act authorizing the grant and conveyance of certain lands to John Cleves Symmes and his associates," passed the fifth day of May, 1792, did authorize the President of the United States to convey, by letters patent, unto the said John Cleves Symmes and his associates, their heirs and assigns, a certain tract of land therein described; and did further authorize the President, by the act aforesaid, to grant and convey unto the said John Cleves Symmes and his associates, their heirs and assigns, in trust, for the purpose of establishing an academy and other public schools and seminaries of learning, one complete township, to be included and located within such limits and lines of boundary as the President may judge expedient; and in pursuance thereof, the President did convey unto the said John Cleves Symmes and his associates, their heirs and assigns, by his letters patent, the aforesaid one complete township, to be located and accepted by the Governor of the Territory Northwest of the river Ohio; and, inasmuch as the township aforesaid has never been located and accepted, agreeable to the provision of the said act:

The Convention recommend the following propositions to Congress, as an equivalent for the one complete township aforesaid, to wit: The lots numbered 8, 11, and 26, reserved in the several townships for the future disposition of Congress, or so many of the said lots as will amount to the number contained in the aforesaid complete township, to be vested in the Legislature, in trust, to and for the purposes for which the said township was originally intended to be designated by the Legislature of this State.

Resolved, That Thomas Worthington be appointed a special agent to lay the aforesaid resolution and propositions before Congress; and that said agent do endeavor to procure the assent of Congress thereto.

Passed in convention, at Chilicothe, the 29th day of November, 1802.

EDW. TIFFIN, *President.*
TH. SCOTT, *Secretary.*

FISHERIES.

[Communicated to Congress, February 12, 1803.]

Mr. HUGER, from the committee to whom was referred "so much of the President's Message as relates to the fostering of the fisheries of the United States," made the following report:

That, by an act of the 16th February, 1792, entitled "An act concerning certain fisheries of the United States, and for the regulation of the government of the fishermen employed therein," it is enacted, that there shall be annually paid to every vessel carrying on the bank or cod fishery, actually employed at sea, four months at least of the fishing season, for each and every ton of such vessel's burden, if of twenty, and not exceeding thirty tons, the sum of one and a half dollars; and if above thirty tons, the sum of two dollars: Provided, That the allowance aforesaid on any one vessel, for one season, shall not exceed one hundred and seventy dollars: And it is further enacted, that an annual allowance of one dollar upon every ton shall be paid to every fishing boat or vessel of more than five, and less than twenty tons: Provided, That such boat or vessel shall have been actually employed at sea, in the cod

fishery, for the term of four months, at the least, of the preceding season, and shall have landed in the course of said preceding season, a quantity of fish, not less than twenty quintals, for every ton of her admeasurement.

By the 8th section of an act of the 2d May, 1793, entitled "An act for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," it is enacted, that there should be paid on pickled fish, of the fisheries of the United States, exported therefrom, at the rate of eight cents per barrel; and there shall be an addition of twenty per cent. to the allowances, respectively granted to ships or vessels employed in the bank or cod fisheries, and in the terms provided by the act of the 16th February of the same year.

By an act of the 8th July, 1797, "laying an additional duty on salt," it is enacted, that there shall be allowed and paid, a bounty of twelve cents per barrel on pickled fish, of the fisheries of the United States, exported therefrom, and that there shall be an addition of thirty-three and a third per cent. to the allowances already respectively granted to ships or vessels employed in the bank and cod fisheries, and in the terms of the act of the 16th February, 1792.

By an act of March 2d, 1799, "to regulate the duties on impost and tonnage," it is enacted, that on all pickled fish, of the fisheries of the United States, exported therefrom, there be allowed and paid a bounty of thirty cents per barrel.

By an act of the 12th April, 1800, it is enacted, that the act of the 16th February, 1792, shall continue in force for the term of ten years, from the 3d March, 1800, and until the end of the session of Congress next ensuing the expiration of that term. And it is further enacted, that the additional allowances, which were by the sixth section of the act, entitled "An act for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," and by the second section of an act, entitled "An act laying an additional duty on salt, and for other purposes," respectively granted to ships and vessels employed in the bank and cod fisheries, shall be continued to the ships and vessels, respectively, which shall be employed, in the terms, and according to the intent of the said first mentioned act, for and during the further continuance thereof, as aforesaid: Provided, That the said allowances shall be understood to be continued for a longer time than the correspondent duties, respectively, for which the said additional allowances were granted, shall be paid.

The above extracts from the laws of the United States, are believed to contain all the most important existing provisions in favor of the American fisheries; and it would appear from them, that, with the exception of a very small bounty allowed on the tonnage of vessels employed in the cod fisheries, the National Legislature have not heretofore found it convenient to extend their aid and patronage further toward the fisheries, than merely to obviate the prejudicial and ruinous effects, which must otherwise have been the necessary consequence of the additional duties, from time to time, laid on salt, by granting on each increase of the duty on salt, a proportionate increase in the allowance on fish, exported from the United States. It has been very justly observed, however, "That the cod and whale fisheries, carried on by different persons, from different ports, in different vessels, in different seas, and seeking different markets, agree in one circumstance, in being as unprofitable to the adventurer, as important to the public." The different nations of Europe, fully sensible of this fact, have, for upwards of a century, been vieing with each other, and endeavoring to draw to themselves a greater or less proportion of these fisheries, by prohibiting in their respective markets the importation of foreign fish and oil, and by granting various immunities to their fishermen, and very high bounties to such of their vessels as were employed therein. An elaborate and extremely interesting report on this subject, (to which the Committee beg leave to refer,) prepared and presented in the year 1791, to the House of Representatives, by the then Secretary of State, would render superfluous any further detail with respect to the fisheries, either foreign or domestic, prior to that period. It would be gratifying, however, to the committee, to have it in their power to present to the House a short sketch of the history of the fisheries since that period, which might answer as a supplement to the report of the Secretary of State; but they have not been so fortunate as to obtain such necessary information, or to meet with such documents relatively to the measures adopted by foreign nations, and the success they have respectively experienced in carrying on their fisheries, during the last ten or twelve years, as would enable them to lay a correct and authentic statement of facts, and of the occurrences which have, for years past, taken place in relation to the foreign fisheries, before the House.

Neither have the exertions of the committee, to procure the means of forming a just estimate of the progressive improvement, or decline of our domestic fisheries, during the same period, been attended with much better success; for the statement, prepared in obedience to a resolution of the House, of the 24th January last, which has been furnished by the Treasury Department, and printed, is (owing, it is presumed, to the want of sufficient and proper documents and returns from the collectors of the different ports,) extremely defective, and throws very little additional light on the subject; nor has the want of time allowed the committee to supply the deficiency and dearth of information, in this instance, by endeavoring to procure more ample and satisfactory details, from other and more remote quarters. Under these circumstances, the committee can only state generally, (as the result of their inquiries on the subject of the foreign fisheries,) that the late war in Europe had put a momentary and entire stop to the fisheries of some, and palsied in a considerable degree those of all the European nations; but that, since the restoration of peace, they begin again to turn their attention towards them; and there is reason

to believe that the two great maritime Powers, in particular (France and Great Britain) are making every exertion to reanimate, and give new vigor both to their cod and whale fisheries; and that attempts, in several instances, but too successful, have been made, to entice away and draw into their service some of our most skilful fishermen, most especially those most experienced and best skilled in the whale fishery.

With respect to our domestic fisheries it appears that, previous to the Revolution, the then American Colonies employed twenty-eight thousand tons of shipping, and four thousand and fifty-nine men in the whale, and twenty-five thousand tons, and four thousand four hundred and five men in the cod fisheries. At that period both the whale and cod fisheries were totally annihilated; but, soon after the return of peace, our fellow-citizens began once more to prosecute them with zeal, and we had, during the years 1787-'88, and 1789, on an average ten thousand two hundred and ten tons of shipping, and one thousand six hundred and eleven men in the one, and nineteen thousand one hundred and eighty-five tons, and three thousand two hundred and eighty-seven men in the other. Agreeably to the statement from the Treasury Department, the American tonnage employed in the whale fisheries in the year 1794, amounted to only four thousand one hundred and thirty-nine tons, navigated probably by not more than from six to seven hundred men, and the numbers of both have since continued annually to decline. It is pretty evident, indeed, that this document cannot give the whole amount of the tonnage and men actually employed in this business during the respective years; but the committee fear there is too much reason to believe that they have both been, for some time past, annually on the decline. In 1798, (according to the same document,) there were employed in the cod fishery of the United States, forty thousand nine hundred and sixty-four tons of shipping, and rather upwards of six thousand men—in 1800, only twenty-five thousand tons of shipping, and three thousand eight hundred and forty men; and, on an average of ten years preceding, rather upwards of thirty-three thousand tons of shipping, and somewhat less than five thousand men.

From the above hasty and imperfect sketch of our domestic fisheries, it would seem that our cod fisheries had gained ground since the Revolution, more especially since the present Government first went into operation. Our whale fisheries, on the contrary, have been, for some time past, more or less on the decline; and, it is more than doubtful whether the United States employ as large a quantity of tonnage, and as many men in all their fisheries combined, as the then Colonies did, prior to the Revolutionary war. Under this impression, and fully sensible of the very great importance of the fisheries to the nation, the committee would fain suggest such means as might tend to reanimate and give new life to them; and, after due consideration, are induced to recommend the following provisions, as most likely to contribute to this desirable end, to wit:

1. Ships and vessels actually and exclusively employed in the cod or whale fisheries, shall not, in future, be subject to the payment of any duty on their tonnage.

2. Fishermen and other persons actually employed in navigating the said vessels, shall not, in future, be liable to the payment of hospital money.

3. The owners of, and persons navigating vessels actually employed in the cod fisheries, which may be shipwrecked, or otherwise lost, whilst so employed; shall, nevertheless, receive such bounty as they would otherwise have been entitled to under the different acts of Congress heretofore passed on the subject of the fisheries.

QUARANTINE REGULATIONS.

[Communicated to the House, February 25, 1803.]

Mr. MITCHILL, from the committee to whom was referred the resolution of the House of the 15th instant, "That provision ought to be made by law for the regulation of quarantine within the District of Columbia," made the following report:

The committee would willingly have contented themselves with reporting a bill, but they reflected that something more was expected by the House. To prevent, in some measure, a disappointment in this respect, a summary view is offered of the present condition and operation of quarantine regulations. This is intended to be plain and practical, not loaded with historical research, nor encumbered with scientific discussion. Though aware of defects, they think it worthy of being referred to the House.

The term quarantine is used in the commercial world to denote the detention of a ship or vessel at a convenient place, some distance from port, for the space of forty days, for the purpose of freeing her from contagion and infection, supposed to have been transported in her from foreign places. Under the persuasion, that their own cities and habitations were exempt from such contagion and infection, and that these destructive agents were always introduced from strange or remote places, less salubrious than their own, mankind have taken great pains to protect themselves from external attacks of the distempers prevalent among their neighbors or strangers. By the presumption that contagion was frequent in many foreign settlements, and was readily transported from country to country, by commercial communications, have the nations of the earth been influenced in framing the rules and the means of restraint imposed upon their mutual intercourse. They have often looked upon each other as lazars or lepers, and treated visiters and passengers, at certain seasons, as such.

The importance of the subject, as well to the commerce and revenue of the United States as to the happiness and security of her citizens, has induced your committee to look into it carefully and attentively. They have endeavored to gather

facts, and to deduce therefrom correct conclusions. And, upon the most complete investigation which they have been able to give the subject, they are decidedly of opinion that the ideas generally entertained are often erroneous, and, at best, extremely defective.

It is true that many of the maladies and diseases which afflict mankind—such as small pox, for example—may be transferred from one person to another, in a state of atmosphere suited to the concentration and transmission of contagion. But of late, doubts have been entertained in the minds of some of the best observers, of such as have had great opportunities of knowing and judging, whether the like contagiousness is true of yellow fever, and the fever infesting ships, sickness of distant places, and the danger arising from any intercourse with them, is one of the trite themes of remark almost everywhere: few people can be brought to acknowledge the noxiousness of the soil and atmosphere of their permanent residence. Thus, the inhabitants of the West India islands are positive that they import yellow fever from Boston, New York, Philadelphia, or Baltimore; while the residents of those cities, respectively, have been quite as decided in their convictions, that the same distemper is brought to them from Cape François, Kingston, Havana, and Demarara. Both sides are equally positive, and both about equally wrong. During the seven or eight hundred years in which these erroneous sentiments have been indulged, great embaraassments have been experienced, and at this day seem to be increasing. It is an object worthy of the attention of the National Legislature, to correct, within these States, this growing evil.

It is apparent to your committee, that most, if not all, the infectious diseases which, at times, afflict the crews of sea vessels, arise not from the ports or countries they have visited, but from causes which exist within the vessel. Human beings inhabiting crowded situations, engender and communicate diseases, which increase in frequency and malignity by sloth and uncleanness. Now, a ship is a human habitation, and sometimes the crew is very numerous, and usually prone to grow unclean. Frequently this uncleanness accumulates to a disgusting degree, and turns to poison: this poison stirs up pestilence. Arrivals from Europe have given recent and useful proofs of this. A ship is not merely a human dwelling; she is also a magazine or store-house; within her sides, as in a common receptacle, are collected many sorts of things, prone to perish and corrupt. Beef, fish, pork, hides, and other animal substances, frequently taint the hold that contains them, with their deleterious vapors. This tendency to putrify, is often increased by the scanty quantity and weak quality of the Liverpool salt with which they are put up. Their provisions spoiling during the West India voyages, and rotting on ship-board, which is a well known case in hot climates, render the berths and quarters of the men unhealthy. The crew sickens from the operation of such mischievous agents, and some of the hands are soon destroyed. The evil is increased when they are obliged to feed upon such impure meat as part of a daily ration. Not only animal substances, but onions, coffee, Indian corn, and various other vegetables, which are transported from country to country, contribute, by their occasional decay, to render unhealthy the vessels in which they are carried. From these causes, it is well known that vessels sailing between our ports and the Southern islands degenerate, and frequently are found in a very filthy and unclean condition. From the corruption of their cargoes, and the uncleanliness of the crews, ships may be filled with a venomous atmosphere, and the timbers, planks, bedding, &c., be charged or impregnated with the inbred mischief. Ships belonging to the United States afford instructive examples of sickness originating in an atmosphere, contaminated by the exhalations from spoiled putrid provisions, on their outward-bound voyages. A corrupting barrel of beef has done great injury on board a vessel sailing from Great Britain to the United States.

It is a remarkable fact, that ships and vessels, though so prone to become foul and pestilential, are seldom cleansed in so complete a manner as they ought to be. From the time that they are launched, to the day of their condemnation, few or none of them are perfectly purified. Year after year this foulness increases, insomuch that old ships and vessels are usually the most foul and loathsome of human habitations.

Ships being thus, from their structure, tenants, and cargoes, peculiarly liable to accumulate pestilence, and are rarely or never cleaned out as they ought to be, carry that infectious miasma engendered within them, to all parts of the world. And, by a curious and unhappy mistake, the pestilence produced in these floating mansions has been almost always ascribed to the place from whence she last came, though that place may, and often has not had any kind of agency in the matter.

From these observations, it will appear indubitable to every reflecting mind, that the common mode of quarantine, by detaining a foul ship at anchor, will rather increase than remedy the evil intended to be guarded against. And that the usual bills of health are nugatory or deceitful; for if a clean ship sails from a sickly place, a foul bill of health will not really indicate an unfavorable state of health on board, nor prove a crew to be infected with the distemper that prevails in the port she left; nor will a clean bill prove that the people in a pestilential vessel are in good health, or that she is in a safe or fitting condition to be admitted to port. Hence, the two-fold evil arises, of punishing the innocent, and letting the guilty go free; and, consequently, bills of health are either useless, or worse than nothing. With the Dutch, who are remarkable for clean ships, and who carry the system of purification on board their vessels to a greater extent than any other nation of Europe, quarantine is a mere form only. Pestilence can neither be bred nor continued, on board the vessels of the Hollanders.

Instead of the rigorous rules of quarantine adopted in the United States, your committee are

of opinion, the evils intended to be guarded against thereby, might be more effectually prevented by less injurious means. It is remarkable what pains are usually taken to prevent the complete and healthy purification of ships. None of the regulations which have hitherto been entered into, direct the method of performing it, or insist upon it with sufficient energy. A ship cannot be deemed healthy and fit for a voyage, merely because the hold and windows have been opened after she is unladed, her decks washed and scraped, and the bilge-water pumped out. Nor will the smoking her out with brimstone, tar, or nitrous and muriatic vapors, render her a suitable habitation to preserve the health and lives of men. As well might it be pretended that infectious rooms, beds, and clothes, could be purified by letting in the air, and setting fumigating mixtures into action; when all domestic experience teaches, that soap, ley, and lime, are sure and necessary auxiliaries in all cases of difficulty and danger.

It is a lamentable fact, that, under the present quarantine regulations, in many places, so little regard is paid to cleaning a fœtid and infectious ship, that, provided she does not transgress the rules of the port where she happens to be proceeding beyond her prescribed limits, she may, nevertheless, weigh anchor, and go in her foul situation to any other port or city, without any manner of impediment. By this unskilful practice, is the poison of plague, pestilence, or yellow fever, produced, continued, and multiplied, in conformity with the order of nature, on ship-board, and carried to all the places she visits. And while this dreadful custom prevails, there will not be an end of the rumors of imported contagion, and all the consequent terror and stagnation of business at home, and of detention and expense of quarantine abroad. The recent accounts of the severe quarantine of one hundred and twenty days, imposed upon American vessels, in some of the principal ports of Spain, must fill every friend of our commerce with regret. It amounts to an almost total prohibition of our trade with those cities; and is viewed by your committee, as arising from the false alarms and unfounded suggestions among our own citizens. In order to prevent these alarming evils, it is necessary to form our health laws upon more scientific principles, and to regulate our commercial intercourse upon maxims more accordant with domestic neatness and economy.

Considering the magic influence of names, in certain circumstances, and the high importance of a correct nomenclature for legal and scientific purposes, it were to be wished that the term quarantine should be erased from the statute books of the Union, and of each particular State. Regulations, precise and explicit, should, in the opinion of your committee, be formed to prevent foul and infectious vessels, with sickly crews, from entering our ports, or proceeding on any voyage in that situation. Nor is the matter so difficult of execution as many have imagined. When a vessel arrives from any foreign port, let her be anchored at some convenient place. If any are sick on board, let them be landed and provided for. If she has any spoiled and putrified provisions or merchandise on board, let them be also landed, and then cause her to be scoured and cleansed, in every part, with clean water, soap, sand, ley, lime, and other cleansing and purifying substances. After which, the admission of a plenty of clean and good air, will complete the object of purification. These are the methods we use with success to purify our habitations on the land. They are equally applicable to habitations on the water. And it is necessary to scour the latter as frequently and as thoroughly as the former. But as individuals, who own and navigate vessels, are too careless or forgetful to cause them to be frequently and efficaciously cleansed, there is a necessity for public authority to interfere. This interference should be exerted to purify every foul and pestilential vessel that enters a port, and not keep her idly and injuriously riding at anchor.

When the civilized world shall, with one accord, enforce the regular and exact purification of ships, there will be nothing on board to turn to pestilential, or any other fever-producing agent. And all the inquiry necessary now, is, when a vessel arrives, whether she is clean and healthy, or dirty. As the latter is almost always the fact, she should be cleansed by public authority, and never suffered to go to sea, no more than enter a port, in a foul internal condition. There would then be no vessels afloat carrying infection from place to place with them; and the tales about contagion from foreign ports would die away, and cease to agitate society, to the great detriment of our commerce, and disgrace of our rational, medical, and philosophical acquirements.

After taking this comprehensive view of the subject, it would have been pleasing to the committee to have proposed a plain, cheap, and expeditious mode of treating vessels arriving at the port of Alexandria, conformably to these principles: but the advanced period of the session prevents their offering anything new or unexplored for the consideration of the House at this time. They content themselves, therefore, for the present, with calling the attention of members to this important subject, and presenting, for their adoption, as a temporary expedient, a bill for extending the quarantine laws of Virginia to the Territory of Columbia.

GEORGIA LAND CLAIMS.

[Communicated to Congress February 16, 1803.]

The Commissioners appointed in pursuance of the act, entitled, "An act for an amicable settlement of limits with the State of Georgia, and authorizing the establishment of a government in the Mississippi Territory," in obedience to the provisions of the act supplemental to the last mentioned act, respectfully submit the following report on the claims made by settlers and other persons to lands within the territory situate west

of the river Chatahoochee, and south of the cession made to the United States by South Carolina:

The territory of the United States south of the State of Tennessee, extends in breadth 275 miles, from the 31st to the 35th degree of north latitude. From east to west, its greatest length, from the river Chatahoochee to the Mississippi, measures 380 miles along the northern boundary of West Florida; the length of its northern boundary along the State of Tennessee is not precisely ascertained, but it is believed that the average length of the whole, may, without material error, be estimated at 300 miles, and the contents of the territory at 52,000,000 acres.

The only portions of that vast extent to which the Indian title has been extinguished, are a tract of about one million and a half of acres, extending along the Mississippi, from the mouth of the river Yazoo, southwardly to the Spanish line, and another tract at least equal in extent, and extending between the rivers Pascagoula and Mobile, or Tombigbee, more than fifty miles north of that line.

The settlements within those two tracts, which are separated from each other by a wilderness of 120 miles in breadth, form the whole population of the Mississippi Territory.

The claims to lands within these boundaries are derived either from the British Government of West Florida, from the Spanish Government, from occupancy and settlement, or from the State of Georgia.

The British Governors of West Florida, after the boundaries of that province had been extended as far north as the parallel of latitude which crosses the Mississippi at the mouth of the river Yazoo, granted lands south of that parallel until the year 1781, when the province was conquered by Spain.

A great portion of the lands granted in that manner, has since been regranted by the Spanish Government; several tracts have continued in the occupancy of the original grantees, or of their representatives; and several remain unoccupied, or are inhabited by persons who have no other claim but that of possession.

The grants of the Spanish Government appear to have been confined to persons actually residing on the lands; but they were made indiscriminately on every unoccupied tract, whether the same had been previously granted by the British Government or not; nor did they discontinue making concessions, even after Spain had, by the treaty of October, 1795, recognised the right of the United States to the whole territory north of the 31st degree of north latitude.

Until the evacuation, which was delayed for nearly two years, had taken place, grants were issued, sometimes bearing their real date, and sometimes, as is alleged, antedated.

On the 7th February, 1785, the State of Georgia passed an act for the purpose of laying out that tract of country extending along the Mississippi from the 31st degree of north latitude to the mouth of the river Yazoo, to which the Indian title had been extinguished, into a county by the name of Bourbon, and declared that whenever a land office should be opened, there should be a right of preference reserved to the possessors of lands within that district, provided they actually lived on and cultivated the said lands. That act was repealed on the 1st day of February, 1788.

By the articles of agreement and cession between the United States and Georgia, it is provided, that the persons who on the 27th of October, 1795, (being the date of the treaty with Spain) were actual settlers within that territory, shall be confirmed in all the grants legally and fully executed, prior to that day, by the former British Government of West Florida, or by the Government of Spain, and in all the claims which may be derived from any actual survey or settlement made under the act of Georgia, commonly called the Bourbon act.

The persons in whose favor that clause was inserted, were, at the request of the Commissioners, invited by the Governor of the Mississippi Territory, to exhibit their claims. This has been partially done in that part of the Territory which lies contiguous to the Mississippi. Claims amounting to about 240,000 acres, and said to be derived from British and Spanish patents, have been transmitted. A few applications have also been filed for lands claimed under the Bourbon act; most of which, however, are for tracts improved after the act had been repealed. Including even these, the Governor is of opinion that there cannot be in the whole more than 350,000 acres on the Mississippi, covered by claims confirmed by the articles of agreement. From that part of the territory which lies on the Mobile, no returns have been received.

The claims derived from the British and Spanish Governments, or from occupancy, and not recognised by the agreement with Georgia, are—

1st. British grants held by persons who were not resident in the territory on the 27th October, 1795, and have not improved their lands. The West Florida patents were, with but few exceptions, accompanied by a clause of forfeiture unless the land should be improved within ten years; and the Spanish Government seems to have considered all the unimproved lands as forfeited. It is, however, alleged on the part of the grantees, that although a condition of settlement was commonly annexed to the grants of the British Provinces under the Royal Governments, with a penalty of forfeiture in case of default, this has never been enforced, either by the British Government, or after the revolution by the States; and that the Indians at first, and the Spanish conquest afterwards, rendered, in this case, a fulfilment of the condition impossible.

Where the land has been regranted by Spain, the parties must be left to a judicial decision; but where it remains unclaimed by any other person, the Commissioners are of opinion that it would be improper for the United States to grant it again, until the amount and nature of the grants shall have been fully ascertained.

2d. British and Spanish incomplete grants.

As lands were granted under both Governments upon the petition of the party, and as the first evidence of the title was a warrant or order of survey, directed to the surveyor of the district, it has happened, in many instances, that the Spanish conquest in 1781, and the treaty with Spain in 1795, found persons who had only a survey executed, or perhaps an order of survey, and who could not, on account of the change of government, complete their titles.

This circumstance is stated both in the petition of the settlers on the Mobile, which has been referred by the House of Representatives to the Commissioners, and in the letter of the Governor of the Mississippi Territory, hereunto annexed, (A.) as more particularly involving claims under Spanish titles; it having been customary, until the American settlers of Natchez requested patents, to consider a Spanish order of survey, when executed and returned, as a sufficient title; whilst, on the other hand, few settlers are obliged to claim under incomplete British titles, as they generally applied, in lieu of them, for Spanish grants and now claim under these.

3d. Settlements without any evidence of title.

It is stated by the Governor of the Territory, that 130 heads of families had, prior to October, 1795, formed settlements without any other title but what might be derived from the Bourbon act; and that 700 more have settled in the country since that time, who either have no title whatever, or rest their claims on Spanish orders of survey, and grants issued after the date of the treaty. It is apprehended that very few of the claimants of the first description will be found to come strictly within the terms of the Bourbon act. Some stress is laid by those of the last description, who migrated to that country before the Spanish posts had been evacuated, on their ignorance at first of the treaty, and on the subsequent acquiescence of the American Government in the continued possession by the Spanish Government.

To those three several classes of claims, may be added that of persons principally from Connecticut, styling themselves a company of military adventurers, who, under a mistaken expectation of receiving large grants from the British Crown, sent agents, in 1773, to West Florida for the purpose of exploring the country. The Governor of that province promised to grant lands to such as should become settlers, on as advantageous terms as he was authorized to do, and to reserve till next Spring, for that purpose, nineteen townships which had been selected and surveyed by the agents. A number of emigrants from Connecticut, accordingly, removed to the Mississippi, in 1774; the war prevented the progress of the settlements, and 140 of the settlers left the country, in 1781, when the Spanish conquest took place, and, traversing the Choctaw and Creek country, reached the inhabited parts of Georgia. The claim which is now set up, in the name of the *company*, for the nineteen townships, has no foundation. Such of the settlers as had obtained grants, or have continued on the lands, will be embraced by the provisions, made for other claimants of a similar description; it will remain for Congress to decide whether any special provision should be made for those who abandoned the lands in the manner above stated.

It would require more correct information than has been obtained by the Commissioners, to enable them to offer a plan perfectly satisfactory to themselves, on the subject of those various and clashing claims. The following outlines are, with diffidence, submitted to the consideration of Congress.

1st. That persons who were resident in the territory on the 27th day of October, 1795, be confirmed in their claims to those tracts of lands, then actually cultivated and inhabited, for which they had received orders of survey, dated before that day, either from the British or Spanish Governments, in the same manner as if their titles had been completed: provided that no such incomplete title shall be ratified, unless the person in whose favor such order had issued, was of full age at the time of its date.

2d. That every head of family (including single persons of twenty-one years of age, and above, who did not reside with their parents) who were resident in the territory on the —— day of ——, 1797, when the Spanish garrisons were evacuated, who claims no land in the territory under British or Spanish grants, and who did, on that day, occupy and cultivate a tract of land not otherwise claimed, shall be confirmed in the possession of such tract, not exceeding 640 acres.

3d. That every head of family, who resided in the territory on the —— day of ——, 1802, when the articles of agreement with Georgia, were ratified by that State, and who did on that day occupy and cultivate a tract of land not otherwise claimed, shall have a right of pre-emption to such a tract, not exceeding 640 acres.

4th. That commissioners be appointed with a fixed salary, and without fees; who shall immediately proceed to the settlements on the Mississippi, and on the Mobile, with power to receive, examine, and decide, on all claims embraced by the articles of agreement with Georgia, and by the preceding provisions, and to issue certificates stating, as the case may be, that the party is entitled to the land or to a right of pre-emption to the same; but no patents shall issue until after the lands shall have been surveyed, and the interferences arising from clashing claims, ascertained; nor shall any other evidence of title, but the commissioners' certificate, issue in cases where the land is claimed either by a British or Spanish title, fully and completely executed.

5th. That all the claims derived from the agreement with Georgia, from British or Spanish grants, or from occupancy, which shall not be filed with the commissioners within a twelvemonth, shall forever after be barred.

6th. That the commissioners shall make a full report to Congress, of the British grants filed with them, on which no improvement had been made by or for the grantees, and which are not claimed under subsequent Spanish grants.

7th. That so much of the five millions of acres, reserved for the purpose by the agreement with Georgia, as may be necessary to satisfy the claims

not confirmed by that agreement, and which are embraced by the preceding provisions, and all those which may be derived from British grants, be appropriated for that purpose.

The last class of claims, consists of those which are derived or pretended to be derived from Georgia. On the 21st December, 1789, the Legislature of that State passed an act, entitled "An act for disposing of certain vacant lands or territory within that State;" by which it is enacted, that two tracts of land comprehending, together, the whole tract of country lying between the Mississippi and Tombigbee, and extending from the parallel which crosses the Mississippi at the mouth of Cole's Creek (about 31 degrees and 45 minutes) to the northern boundary of the State, together with a third tract lying on the Tennessee river, shall, for two years from and after the passing of that act, be respectively referred as a pre-emption for three companies, called the South Carolina Yazoo, the Virginia Yazoo, and the Tennessee Company; and that the Governor shall issue grants for the said tracts, to the said companies, if they shall, within the term of two years, pay into the public Treasury of the State, the following sums: that is to say, the South Carolina Yazoo Company, the amount of $66,964, the Virginia Yazoo Company, the amount of $93,741, and the Tennessee Company, the amount of $46,875.

An inconsiderable sum was paid in the paper emdium of the State, by the two first mentioned companies, and they did, within the two years, tender in payment to the Treasurer of the State, the whole amount of the purchase money, in evidences of the public debt of the State. The payment was refused on the part of Georgia.

The money which had been deposited by the Virginia Yazoo Company was withdrawn; but the South Carolina Company instituted, before the Supreme Court of the United States, a suit against the State, which was terminated by the amendment to the Constitution, relative to the suability of States.

Both companies now claim at least an indemnification on account of the expenses and damages incurred by reason of what they consider a violation of contract on the part of Georgia. There is nothing on the face of the act, which justifies the construction contended for by the claimants; and it is by collateral evidence only that they attempt to prove that it was the intention of the Legislature, when the law was passed, that the payments should be made in evidences of the public debt of the State. In support of the construction, they bring their own petitions to the Legislature, applying for land, which petitions are referred to in the preamble of the act, and the protest of the minority in the Legislature, who voted against the law, principally, as they allege, because the payments were to be made in depreciated certificates.

Upon a full view of the subject, the Commissioners do not perceive that those companies have any equitable claim either for the land, or for compensation from the United States.

On the 7th day of February, 1795, the State of Georgia passed an act, hereunto annexed, (K) authorizing the sale of four tracts of land therein described, and comprehending the greater part of the country lying west of the river Alabama, to four companies, called the Georgia, the Georgia Mississippi, the Upper Mississippi, and the Tennessee Companies, for which they were to pay $500,000.

To the Georgia Mississippi Company was assigned all that tract lying between the Mississippi and Tombigbee rivers, and bounded by the parallels of latitude 31 degrees 18 minutes, and 32 degrees 40 minutes; for which they were to pay $155,000.

The tract designated for the Georgia Company was bounded on the north by the 34th degree of latitude, on the east by the Alabama river, on the west and south by the Mobile or Tombigbee, from the Spanish line to the northeast corner of the lands assigned to the Georgia Mississippi Company, by the northern boundary of the said lands, and by the Mississippi; for which they were to pay $250,600.

The Tennessee Company were to pay $60,000, for a tract lying between the northern boundary of the State, and the parallel of latitude passing by the head of Spring Bear creek, and bounded on the west by Tennessee and Bear creek, and on the east by a meridian crossing the last mentioned parallel, 120 miles east from the source of Bear creek.

And the Upper Mississippi Company were, in consideration of $35,000, to receive a tract of 25 miles in breadth, adjoining the northern boundary of the State, and extending from the Mississippi to Tennessee and Bear creek, its boundaries on the east.

Two millions of acres were reserved out of these several tracts, for the use of such citizens of Georgia, as chose to subscribe on the original terms of the purchase: the moneys paid by those citizens to the State, being considered as purchase money of the companies, in whose territory they subscribed; the quantities thus reserved out of each tract, being one million of acres in the Georgia Company; 620,000 acres in the Georgia Mississippi Company; 242,000 acres in the Tennessee Company: and 138,000 acres in the Upper Mississippi Company. The price paid by the citizens who did subscribe, was two cents and one-third, per acre, it being the price then supposed to have been paid by the companies; which, ($500,000, being the purchase money,) would give about 21,500,000 acres, for the estimated quantity of land in the four tracts. It was further declared by the act, that the lands lying westward of the eastern boundary of the several companies' purchase, were estimated at one-third of the lands within the purchase; and were supposed to contain 7,250,000 acres, which would give 28,750,000 acres, for the quantity intended to be sold. The land contained within those purchases amounts, however, to near thirty-five millions of acres; and the present claimants estimate the quantity at near forty millions of acres.

The several companies did, it is understood, pay

the purchase money, and obtain grants from the Governor of Georgia, for the several tracts designated in the law: the lands have since passed through several hands, and, so far as has come within the knowledge of the Commissioners, the title derived from the grants appear to be now held in the following manner:

The whole tract granted to the Georgia Mississippi Company, was divided into sixteen hundred equal undivided shares; and the President and Directors of the Company, in January, 1796, sold the whole, with the exception of the 620,000 acres, reserved for citizens' subscriptions, to certain individuals in Massachusetts who style themselves the New England Mississippi Company. The title has been conveyed to trustees, for the use of the company, which consists of 2,276 equal shares.

It is urged by sundry associates or shares of the original Mississippi Company, that they have not been paid, and that they are still entitled to a portion of the land.

The tract granted to the Upper Mississippi Company, appears to be divided into twelve equal undivided shares, and to be unentangled by militant claims.

The tract granted to the Tennessee Company, was, by the grantees, Mathias Maher and Zachariah Cox, divided into 420 equal shares. Several hundred thousand acres are, besides, claimed under deeds, signed by Z. Cox alone, and which appear to be exclusively of the shares which he held. The greater part of the original shares are held by trustees, for the use of the proprietors.

The Georgia Company consisted of ten shares, exclusively of a number of sub-shares, and of money shares, which have been either purchased in by the company, or absorbed in the payment of certain tracts sold by them. That company, however, no longer exists, having sold the greater part of the territory by metes and bounds; and surrendered the remainder to the State of Georgia. Instead, therefore, of being held by trustees, or in undivided shares, the lands originally assigned to that company, are claimed by several individuals, each claiming distinct tracts in their own name. There is a number of militant claims in that part of the tract which lies between the Alabama and Tombigbee rivers, south of the parrallel 33 degrees 20 minutes of north latitude.

On the 13th day of February, 1796, the Legislature of Georgia passed an act, (L) declaring the act of the 7th January, 1795, above-mentioned, null and void, as having been obtained by fraud and corruption; directing all records of grants or conveyances relating to the sale, to be expunged; and forbidding the recording, thereafter, of any such conveyances or contracts. The document (F) contains the evidence on which the Legislature acted.

By the articles of agreement of the Georgia Company, and schedule thereunto annexed, bearing date 1st and 10th January, 1795, a copy of which (B No. 9) was transmitted to the Commissioners amongst other documents, by the attornies of Hugh Rose and Valentine Jones, two of the claimants under that company, it appears that the company had disposed of a considerable quantity of the lands they intended to purchase, to divers persons (whose names, with the amount in dollars paid by each, appear in the schedule) for the purpose of raising a fund to effect the purchase of the lands; and that they had also found it necessary to distribute to a variety of citizens of the State, certain sub-shares, or quantities of land, in order that the benefit should be as generally diffused as possible. By the form of the sub-share (C) it appears that the holders were entitled to a certain quantity of land, without making any immediate payment, but on paying within seven months what was supposed the original purchase money: viz. two cents and a third of a cent per acre.

A comparison of the schedule annexed to the articles, and which is declared to be a part of the agreement, with the yeas and nays on the passage of the act, authorizing the sale, (E) shows that all the members, both in the Senate and House, who voted in favor of the law, were with one single exception (Robert Watkins, whose name does not appear) interested in and parties to the purchase.

The articles of agreement, and list of associates of the Tennessee Company, which have been voluntarily furnished by one of the trustees, shows that a number of members of the Legislature were also interested in that company.

It is also proper to state, that all the deeds given by the companies, which have been exhibited to the Commissioners, as well as all the subsequent deeds, with only two or three exceptions, not only give a special, instead of a general warrantee, but have also a special covenant, in the following words: "And lastly it is covenanted, and expresssly agreed and understood, by and between the parties, to these presents, that neither the grantors aforesaid, nor their heirs, executors, or administrators, shall be held to any further, or other warrantee, than hereinbefore expressed, nor liable to the refunding of any money, in consequence of any defect in their title, from the State of Georgia, if any such there should hereafter appear to be."

The act of Georgia, of the 13th February, 1796, as well as several subsequent acts, had made provision for the repayment of money, deposited as the consideration of the purchase; and the document (C) shows that $310,695 15, have been withdrawn under those laws. The Commissioners have not been able to procure the evidence, on which those sums were paid; it is however understood, that supposing the title from Georgia to have been valid, not more than five or six millions of acres have been fairly surrendered by the parties, who have received that money.

A great majority of the persons who claim the lands not surrendered, have signed the propositions of compromise, hereunto annexed, (H), by which they offer to relinquish their claims, provided that the United States shall pay them at the rate of twenty-five cents per acre, for the nominal quantities of land, claimed by them; which after making the proper deductions of lands, which

have been surrendered, would make a gross sum, of about $8,500,000, with interest from the year 1806; provided, however, that the principal and interest shall not exceed the proceeds of those five million of acres, in the territory, which shall ultimately be sold for the highest price.

The Commissioners think those propositions inadmissible, and without pretending to affirm that the Legislature of the State of Georgia was competent to make the decision, they feel no hesitation in declaring it as their opinion, that under all the circumstances which may affect the case, as they have come within their knowledge, and as herein stated, the title of the claimants cannot be supported; but nevertheless, believe that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms.

Under that impression, a plan is respectfully submitted to the consideration of Congress, which although it does not give a full indemnity to every claimant, is believed, from such information as has been received, to give, in the aggregate, nearly as much as has been paid in the whole, by all the present claimants.

As it is understood and generally agreed, that the five millions of acres reserved by the agreement with Georgia, constitute the fund from which the indemnity is to be paid, it is of primary importance, in order to guard against any depreciation, that the nominal sum in money, which may be offered as an indemnity, should not exceed what the fund may be thought amply sufficient to discharge. The probable amount of the annual sales, and the price affixed to the land by Congress, furnish the only data by which that sum can be determined. The Commissioners have supposed that the sales could not reasonably be estimated to yield more than three or four hundred thousand dollars, annually; and although it has been presumed that in opening a land office, the price of the land will, at present, be fixed at two dollars per acre; they have believed that it would be improper to assume the payment of any sum out of the proceeds of the lands, which would bind Congress not to reduce the price hereafter, if other considerations shall render that reduction expedient.

It is after having considered the subject in that point of view, that the Commissioners have been induced to submit the following propositions as the basis of a compromise.

1st. That so much of five millions of acres as shall remain after having satisfied the claims of settlers and others, not recognised by the agreement with Georgia, which shall be confirmed by the United States, be appropriated for the purpose of satisfying and quieting the claims of the persons who derive their claims from an act of the State of Georgia, passed on the 7th day of January, 1795; for which purpose, the several companies or claimants under those companies shall be permitted to locate the quantity of land allotted to them, on any part of the territory they claim, to which the Indian title has not yet been extinguished; provided, however, that the whole shall be located in no more than six tracts; and provided also, that each tract shall extend the whole breadth or length of the territory claimed by the parties respectively, and shall not have a greater proportioned front on the rivers than the whole territory thus claimed.

2d. That the claimants may, nevertheless, receive in lieu of the said lands certificates bearing interest from the 1st January, 1804, to the amount of $2,500,000, or at their option, certificates without interest to the amount of $5,000,000, which certificates shall, in either case, be paid (principal and interest) out of the proceeds of the sales of the public lands in the territory of the United States above-mentioned, next ensuing the completion of the payment of $1,250,000, to be made to the State of Georgia; and shall also be receivable in payment for the lands purchased in the territory, as soon as the payment to Georgia shall have been completed.

3d. That the lands or certificates shall be apportioned amongst the several companies in the following manner, that is to say—the proportion of each company, exclusively of the tracts which may have been surrendered, shall, on every $500 or acres which shall be allowed in the whole, be as follows:

For the Upper Mississippi Company, exclusively of citizens' rights	35
For the Tennessee ditto	60
For the Georgia Mississippi.	155
For the Georgia, not exceeding	225
For citizens' rights not exceeding	25
	500

4th. That every original grant, deed, or other evidence of claim, from which the companies or claimants derive, or pretend to derive, their respective claims, shall be exhibited to the Secretary of State, within a twelvemonth, and there recorded, at the expense of the parties; and, unless thus recorded, shall never after be admitted or considered as evidence in any of the courts of the United States, against any other grant from the State of Georgia, or from the United States.

5th. That after all the claims shall have been exhibited, the lands or certificates allotted to each company, shall be apportioned in proportion to the quantity of lands supposed to be contained within ther espective claims, among the several claimants under each company, by commissioners, who shall also have power to decide, in conformity to the principles of law and equity, on all conflicting claims within each company.

6th. That each individual claimant shall be allowed to have the benefit of these terms, for the amount of his claim thus ascertained, and to receive, at his option, his proportion either of lands, of certificates bearing interest, or of certificates without interest. All which is submitted.

JAMES MADISON,
A. GALLATIN,
LEVI LINCOLN.

FEBRUARY 14, 1803.

INDIANA TERRITORY.

[Communicated to the House, March 2, 1803.]

The committee to whom were referred a letter from William Henry Harrison, President of the Convention held at Vincennes, declaring the consent of the people of Indiana to the suspension of the sixth article of compact between the United States and the people of that Territory; also, a memorial and petition of the inhabitants of the said Territory report:

That the rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States. That the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of Indiana will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration.

On the various objects of the memorial your committee beg leave to observe,

That an appropriation having been made, empowering the Executive to extinguish Indian titles to lands within the limits of the United States, the particular direction of that power rests entirely with that department of the Government. That to permit the location of the claims under the resolve of Congress of the 29th of August, 1788, and the act of the 3d of March, 1791, (of whose number and extent the committee are entirely ignorant) in the mode pointed out in the memorial, would be an infringement upon that regular mode of survey and of location which has been so happily adhered to, in relation to the public lands. At the same time the committee are of opinion that, after those lands shall have been surveyed, a certain number of townships should be designated out of which the claims aforesaid ought to be satisfied. In a country abounding in new and unsettled lands, it is presumed that every individual may become a proprietor of the soil; and inasmuch as the people of Indiana will, at a period not far distant, be enabled to establish the right of suffrage on such principles as the majority may approve, the committee deem it inexpedient to alter a regulation whose effect is to retain in the hands of persons necessarily attached to the welfare of the country, the government of a remote dependency, which, from its vicinage to the territories of foreign States, and from the sparseness of its population, might, otherwise, be exposed to foreign intrigue and influence.

Measures have been taken, to put the salt spring below the mouth of the Wabash river in a situation to yield every possible benefit to the adjacent country; the committee are of opinion that it is, at this time, inexpedient to vest that property in the Legislature of the Indiana Territory. From such a consideration as they have been enabled to bestow on the subject at this late period of the session, and under the pressure of accumulating business, they recommend the following resolutions, which are respectfully submitted to the judgment of the House:

1. *Resolved*, That it is inexpedient to suspend, for a limited time, the operation of the sixth article of compact between the original States, and the people and States west of the river Ohio.

2. *Resolved*, That a provision, not exceeding one thirty-sixth part of the public lands within the Indiana Territory, ought to be made for the support of schools within the same.

3. *Resolved*, That the Secretary of the Treasury be, and he hereby is, required to cause an estimate to be made of the number and extent of the claims to lands under the resolve of Congress of the 29th of August, 1788, and the act of the 3d of March, 1791, and to lay the same before this House at the ensuing session of Congress.

4. *Resolved*, That in all sales of the public lands within the Territory of Indiana the right of preemption be given to actual settlers on the same.

5. *Resolved*, That it is inexpedient to grant lands to individuals for the purpose of establishing houses of entertainment and of opening certain roads.

6. *Resolved*, That it is, at this time, inexpedient to vest in the Legislature of Indiana the salt spring below the mouth of the Wabash river.

7. *Resolved*, That it is inexpedient to alter the existing regulation of the right of suffrage within the said Territory.

8. *Resolved*, That compensation ought to be made to the Attorney General of the said Territory for services performed by him in behalf of the United States.

TRIAL OF NORTHAMPTON INSURGENTS.

[The Report of the Trial of the Insurgents in the Second Pennsylvania Insurrection should properly have followed the Documents upon that subject, laid before Congress by President ADAMS, December 3 and 5, 1799, to be found in the Appendix to the Annals of the Sixth Congress.]

Circuit Court of the United States for the Pennsylvania district.—Philadelphia, 1799, 1800.

A charge delivered to the Grand Jury of the United States, for the district of Pennsylvania, in the Circuit Court of the United States for said district, held in the city of Philadelphia, April 11th, 1799, by James Iredell, one of the Associate Justices of the Supreme Court of the United States, on the trial of the Northampton Insurgents.*

Gentlemen of the Grand Jury: The importance of the duties you are now called upon to fulfil, naturally increases with the increasing difficul-

ties of our country. But however great those difficulties may be, I am persuaded you will meet them with a firm and intrepid step, resolved, so far as you are concerned, that no dishonor or calamity (if any should await us) shall be ascribable to a weak or partial administration of justice.

* *By the President of the United States of America:*

A PROCLAMATION.

Whereas, combinations to defeat the execution of the laws for the valuation of lands and dwelling-houses within the United States, have existed in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania, and have proceeded in a manner subversive of the just authority of the Government, by misrepresentations to render the laws odious, by deterring the officers of the United States to forbear the execution of their functions, and by openly threatening their lives. And whereas, the endeavors of the well-affected citizens, as well as of the Executive officers, to conciliate a compliance with those laws, have failed of success, and certain persons in the county of Northampton, aforesaid, have been hardy enough to perpetrate certain acts, which, I am advised, amount to treason, being overt acts of levying war against the United States; the said persons, exceeding one hundred in number, armed and arrayed in a warlike manner, having on the seventh day of the present month of March, proceeded to the house of Abraham Lovering, in the town of Bethlehem, and there compelled William Nicholas, Marshal of the United States, and for the district of Pennsylvania, to desist from the execution of certain legal processes in his hands to be executed, and having compelled him to discharge and set at liberty, certain persons whom he had arrested by virtue of a criminal process, duly issued for offences against the United States, and having impeded and prevented the Commissioners and Assessors in conformity with the laws aforesaid, in the county of Northampton aforesaid, by threats of personal injury, from executing the said laws; avowing, as the motive of these illegal and treasonable proceedings, an intention to prevent, by force of arms, the execution of the said laws, and to withstand by open violence the lawful authority of the Government of the United States. And whereas, by the Constitution and laws of the United States, I am authorized, whenever the laws of the United States shall be opposed, or the execution thereof obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by powers vested in the Marshal, to call forth military force to suppress such combinations, and to cause the laws to be duly executed; and I have accordingly determined so to do, under the solemn conviction that the essential interests of the United States demand it. Wherefore I, John Adams, President of the United States, do hereby command all persons being insurgents as aforesaid, and all others whom it may concern, on or before Monday next, being the eighteenth day of this present month, to disperse and retire peaceably to their respective abodes: and I do, moreover, warn all persons whomsoever, against aiding, abetting or comforting the perpetrators of the aforesaid treasonable acts, and I do require all officers and others, good and faithful citizens, according to their respective duties and the laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous and unlawful proceedings.

In testimony whereof, I have caused the seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twelfth day of March, in the year of our Lord one thousand seven hundred and ninety-nine, and of the independence of the said United States of America the twenty-third.

By the President: JOHN ADAMS.

T. PICKERING, *Secretary of State.*

If ever any people had reason to be thankful for a long and happy enjoyment of peace, liberty, and safety, the people of these States surely have.

WAR DEPARTMENT, *March* 20, 1799.

SIR: To suppress the insurrection now existing in the counties of Northampton, Bucks, and Montgomery, in the State of Pennsylvania, in opposition to the laws of the United States, the President has thought it necessary to employ a military force, to be composed in part of such of the militia of Pennsylvania, whose situation and state of preparation will enable them to march with promptitude. The corps of militia first desired on this occasion are the troops of cavalry, belonging to this city, and one troop from each of the counties of Philadelphia, Bucks, Chester, Montgomery, and Lancaster. These troops, I have the honor to request your Excellency will order to hold themselves in readiness to march on or before the 28th instant, under the command of Brigadier General Macpherson.

I have the honor to be, with the greatest respect, your Excellency's most obedient and humble servant,

JAMES McHENRY.

His Excellency Gov. THOMAS MIFFLIN.

The response was as follows:

PHILADELPHIA, *March* 20, 1799.
Three o'clock, P. M.

SIR: The Secretary of War has this moment communicated to me the President's intention to employ a military force, in suppressing the insurrection now existing in the counties of Northampton, Bucks, and Montgomery, with a request, that the troops of cavalry belonging to this city, and a troop from each of the counties of Philadelphia, Bucks, Chester, Montgomery, and Lancaster, may be ordered to hold themselves in readiness to march, on or before the 28th inst., under the command of Brigadier General Macpherson.

You will, therefore, immediately issue general orders for complying with the President's request; and communicate by express, with the commanding officers of the several corps. As soon as the troops are ready to march, you will make your report to me; sending the returns of the officers, from time to time, as you receive them.

I am, sir, your obedient servant,

THO. MIFFLIN.

To PETER BAYNTON, Esq.,
Adjutant General of the Militia of Pennsylvania.

The Legislature of the State being then in session, and having received the President's Proclamation, under cover of a message from the Governor, put it in charge of a committee, who reported as follows:

The committee to whom was referred a message from the Governor respecting a Proclamation of the President of the United States, announcing the combination to defeat the laws for the valuation of lands and dwelling-houses, which has existed in the counties of Northampton, Montgomery, and Bucks, report:

That they have had the said message under their serious consideration, and find cause of deep regret,

While every other country almost has been convulsed with foreign or domestic war, and some of the finest countries on the globe have been the scene of every species of vice and disorder, where no life was safe, no property was secure, no innocence had protection, and nothing but the basest crimes gave any chance for momentary preservation; no citizen of the United States could truly

that combinations to defeat the laws of the United States have a second time made their appearance in the State of Pennsylvania; that such combinations are repugnant not only to the pure principles of republicanism and the spirit of our Constitution, but also highly dishonorable to the character of a portion of the citizens of our State. That laws tending to lay the heaviest burden on the most opulent part of the community, should be opposed by those on whom it operates lightest, proves that the opposition has arisen from ignorance, or the most dark and malignant designs.

Your committee cannot hesitate to express, with the most lively sensibility, their entire disapprobation of such unwarrantable conduct, tending to the dissolution of our Government, and subversive of the principles of tranquillity and good order, and it is the duty of every good citizen to discountenance such treasonable combinations, yet, as the General Government has sufficient power to compel obedience to the laws, and the President has, in his Proclamation, determined so to do in this instance, and has not thought the aid of the State necessary,

The committee offer resolutions:

Resolved, That this House will, when required, co-operate with the General Government, with alacrity and prompt tude, to suppress unlawful and treasonable combinations to defeat the execution of the laws of the United States, but as no such co-operation is now required, this House consider their interference at present as wholly unnecessary.

A motion was made by Dr. Logan, and seconded by Mr. Eyre, to add the following resolution to the report of the committee:

Resolved, That the Governor be, and is hereby requested to cause full and due inquiry into the causes of the said riots, and to make special report to this House, thereupon, and particularly of any circumstance which may be alleged or discovered, tending to show the origin of the same in the agency of foreign incendiaries, or the seditious views of domestic traitors.

On the question, Will the House agree to the said resolution? The yeas and nays were as follows:

Yeas 27, nays 45.

The following is a translation of a Manifesto in the German language, issued to the inhabitants of the counties of Northampton, &c. by General Macpherson, the officer in command, which gives a general view of the object with which he was charged:

William Macpherson, Brigadier General of the armies of the United States, commander of the troops ordered to act against the insurgents of the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania: To the people of the aforesaid counties.

Fellow-Citizens: Being ordered, by the President of the United States to employ the troops under my command, or, according to circumstances, further military force, to procure submission to the laws of the United States, and to suppress and disperse all unlawful combinations which have there been made to obstruct the execution of the aforesaid laws, or any of them, by main force of power; I therefore have thought it proper to inform the people of the said counties, and all others whom it may concern, of the danger to which they expose themselves by combining in unlawful proceedings, or giving any assistance or encouragement to those who are concerned therein; and likewise to represent to them, how just it is to submit to the laws in general, but particularly to those against whom they have opposed themselves in the most violent manner. It cannot be unknown to you, my fellow-citizens, nor to any part of the people of the United States, that submission to the laws, constitutionally made, is absolutely necessary to the support of the Government; and that in a Republic, where laws are made by general consent, this consent must be manifested by the majority of such persons as have been appointed for that purpose by the people in general, according to the Constitution.

The whole mass of the people cannot meet together to make laws, as it is clear, in places where a debate takes place, there will always be a difference of opinion, and that, therefore, no decision can ever take place unless the voice of the majority prevails. The people of the United States were so well convinced of this truth at all times, that, since their first settlement in this country, they suffered themselves to become governed by Assemblies, which they chose themselves, to represent their persons; and, whenever it was necessary, they compelled by force of arms everybody to submit to the laws made by a majority in such Assemblies. The Federal Government is as well a Government of the people, as freely chosen by them to represent them, and to make laws for their benefit, as the governments of the respective States. It was established and ordained by the people themselves, as is expressly declared by the Constitution, "To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." In order to obtain these great and desirable ends, for which the first articles of Confederation were found to be altogether insufficient, they gave Congress several powers specified in the Constitution.

From the nature of the Government, sometimes doubts may arise, and have already arisen, whether some of these powers authorize Congress to make certain laws; nevertheless, there is a regular and lawful manner to decide such questions when they occur, to which all good citizens should resort, and submit to them without reserve. But, in the present case, no such doubt has ever been entertained, nor can it take place; because, in the Constitution, it is expressly declared, article 1, section 8, "That Congress" shall have power "to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States." The Constitution giving this power to Congress, that body has to decide when and in what manner it shall be exercised, and this decision must be expressed by a majority; and when this is once expressed, it must be obeyed, or else the Constitution must fall, and with it, all good government, law, and order, must be annihilated, and discord, civil war, and anarchy, must follow

say that in his own country any oppression had been permitted with impunity, or that he had any grievance to complain of, but that he was required to obey those laws which his own Representatives had made, and under a Government which the people themselves had chosen. But in the midst of this envied situation, we have heard the Government as grossly abused as if it had been

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thereupon, where, without government, all things would be overturned and plunged into confusion. The act against which the present treasonable opposition is made, is that for laying and collecting a tax for the common defence and general welfare of the United States, therefore an act which Congress is expressly authorized by the people to make; yea, on the least consideration, it is plain, that it is as necessary and equitable in itself, as agreeable to the Constitution, and even favorable to those people who now oppose the execution thereof. Nobody has denied, nor can anybody deny, that the United States, at the time the act was passed, was threatened with the resentment of a very powerful, very ambitious, and very revengeful nation, and are so yet. From what this resentment originated, or whether it might have been obviated by a different course of conduct, are only incidental questions. The main question is, whether we should submit to those humiliations which that nation has heaped upon us, and subscribe to the scandalous conditions demanded of us, or prepare ourselves for resistance and the defence of our rights, as it becomes a free, independent nation.

With respect to the question which Congress was obliged to decide upon, according to its duty "To provide for the common defence and general welfare of the United States," there was no difference of opinion, or, at least, there was none declared. All agreed that we should not submit to what France proposed, but prepare for our defence in case she should attempt to carry them by force. The only question was, in what manner we should prepare, and how far these preparations were to go. Who were to decide this question! the majority or the minority? A majority, and a large majority of the people's Representatives, chosen by themselves according to the Constitution, made the decision, and resolved upon the manner of proceeding which has been observed. This manner of proceeding required money, and in order to obtain that a tax became necessary. If a different manner of proceeding had been adopted, money and the tax would nevertheless have been necessary; because it is impossible to defend the country in any way, or to make preparations for the defence thereof, without money. Even if there had been any base enough to propose a submission to the conditions of France, and the proposal had been agreed to, nevertheless, money and taxes would have been necessary; because France demanded of us, before all things, the loan of many millions of dollars, and gave us to know that their further demands would be in proportion to our ability to pay. In order to raise this unlimited tribute, we should have been obliged to submit to much heavier taxes than Congress has now laid for our defence. They certainly afterwards pretended to give up this demand; but, after all, so doing was only the consequence of our resistance and our preparations, and these preparations had already rendered the tax necessary. In laying this tax, Congress paid the greatest attention to the situation and wants of the people, and distributed it in such manner, that the burden almost totally falls on the richer part, and the poorer class are greatly screened from the effects thereof. It is laid on lands, dwelling-houses, and slaves; but, as there are no slaves in this State, the whole tax falls upon the lands and dwelling-houses. The lands are to be taxed exactly to their value, be the owner who he may, but the dwelling-houses are appraised at a different rate. The poor man, whose house, out-houses, and lot, not exceeding two acres, are worth less than a hundred dollars, has nothing to pay; and if it were worth one hundred, the tax would be only twenty cents. According to the same rule, other houses of a higher value pay as follows:

If $200	- - - -	40 cents
300	- - - -	60
400	- - - -	80
500	- - - -	100

From which you will perceive, my fellow-citizens, that the house tax is according to the value of the house, at 20 cents to $100; but for houses from $500 to $1,000 value, the tax rises for each $100, 30 cents; so that a house of the value of $600 will have to pay six times 30 cents, or $1 80 cents.

If worth $700	pays	$2 10 cents.
800	-	2 40
900	-	2 70
1,000	-	3 00

At this rate, the rich man, with a house rated at $1,000, has to pay three times as much of the tax as the poor man whose house is rated at one-half that sum, viz: $500; and thus the tax operates progressively to the most costly houses and opulent people, until their houses are taxed in proportion five times as high as those of their poorer fellow-citizens, whose houses are worth only from $100 to $500. A house worth $100 pays 20 cents, which is only the one-fifth part of one per cent. of its value, and consequently five times as much in proportion as the other.

Hereby, my fellow-citizens, you must be convinced that an opposition to this tax in our counties is not only contrary to the Constitution; the laws, and every principle of good government, but in itself is inconsistent and ridiculous, as the tax which is opposed is the most easy on the poorer citizens, whom they irritate to opposition. Many of their houses, however, would have no tax to pay, and very few more than one dollar each, for very few of their houses will be rated at more than $500. It is true they will be subject to a land tax, but the tax on houses must first be deducted from the whole quota of the State, and what is then deficient will be laid upon the land. The houses in this State will probably pay the greatest part of the tax, perhaps the whole, and in that case no tax will be laid upon the land; and those whose houses are rated at less than $100, will be exempted from the tax. As a further proof of the attention of Congress to the accommodation of the people, they have, during the last session, repealed that part which required a statement of the windows of each dwelling-house, and which, as it afterwards appeared, was more disagreeable than necessary and useful. Therefore, no further account of the windows has been demanded. To ascertain the value of the lands and houses was a difficult matter, and connected with a great deal of expense; but when once done, need not be repeated. Great pains were taken, and the most effective measures employed, to select people of good character, who understood the business well, and whose interests were equally involved

guilty of the vilest tyranny; as if common sense or common virtue had fled from our country; and those pure principles of republicanism, which have so strongly characterized its councils, could only

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with their fellow-citizens, to have the business accurately executed.

Besides, this act is not perpetual, being only for one year, and will not be continued, unless the public good demands it, and not otherwise than with the consent of the people through their Representatives; as for those who have in so treasonable a manner opposed the execution of such lawful, necessary, and, for that part of the citizens who were the least able to pay taxes, indulgent law, there can therefore be no excuse; the bad consequences which they draw upon themselves by their criminal conduct, they cannot but impute to their own blindness, obstinacy, and malice. On the contrary, every necessary step will and must be taken to bring them, and all others who have aided and abetted them, to submission, and trial by due course of law, in order that their punishment may serve as an example to others, and prevent the like crimes in future. The necessity of employing arms against a number of our fellow-citizens is painful, but the consequences must be imputed to those whose traitorous conduct has produced the present disturbances, and not to Government, who, according to their most sacred duties, are obliged to maintain order and enforce obedience to the laws.

But all those who return quietly to their homes, and abstain from any participation in these unlawful acts, either through open aid or secret abetting, counsel, or information, shall obtain the utmost protection to their persons and property.

Every precaution shall be taken that the march of the troops shall not be troublesome to the citizens; all subsistence shall be punctually paid for, and the strictest discipline observed. Let me, therefore, my fellow-citizens, warn and entreat you, as you love your country, and estimate the happiness concomitant of liberty, order, and peace; as you wish to avoid the necessity of human bloodshed, which is as much repugnant to my wishes, as to those of the President; as you abhor the horrors of a civil war, and the crimes and punishments of traitors, let me conjure you to shut your ears against the counsels of those malicious persons who would lead you to destruction, in order to satisfy their ambition, while they screen themselves from the punishment due to their crimes; who try to seduce you to take up arms against the laws and Government of your country, and to involve yourselves in a contest as hopeless as it is criminal against the whole power of the United States; who speak to you of peace and liberty, while they are kindling civil war; who complain of expenses, while they are forcing the Government to augment them, in order to suppress sedition and revolt; and who plume themselves upon being republicans, while transgressing the most essential principles of republican Government, to wit: obedience to the laws made by the decision of the majority.

Therefore I forewarn you not to aid or abet those violators of the law in any manner, so that you may avoid a participation of their crimes, and the consequent punishment.

Given under my hand and seal, at headquarters, April 6th, 1799.

WILLIAM MACPHERSON.

By order of the Governor:
JONATHAN WILLIAMS, *Aid-de-Camp.*

This manifest was accompanied with a letter from the Rev. Mr. Helmuth, a Lutheran minister of Philadelphia, conspicuous for his piety and zeal.

To the people of Northampton county:

Friends and Brethren in the Faith: Excuse my addressing these lines to you; where there is fire, everybody is bound to extinguish it, and the clergyman is no more to be blamed for lending his aid than any other citizen. I am depressed with anxiety on your account. I know the consequences of conduct like yours; many of you will doubtless be apprehended and confined, some perhaps will pay the forfeit with their lives. You know it is the duty of the clergy of the city to warn such miserable persons, and prepare them as much as in their power for the awful change; my heart was much oppressed.

I thought, alas! perhaps the same circumstances as those of 1794 will again occur; perhaps other thoughtless people will fall into the same wretched situation, because they were ignorant, and were deluded, and what would be your feelings if you had to witness their sorrow and anguish, their agonies of death! You should have warned the miserable creature; he would then, perhaps, have been saved; but you neglected to warn him, and are, therefore, responsible for the destruction of him and his. Such were the miserable reflections that induced me to write you these few lines.

I trust that you will think, when you read this, as you may in all truth: This man is sincere in his wishes for our welfare—why then should we think it improper in him to send us this advice? If he even should now and then say some things that are not perfectly agreeable to us, we will still take it in good part, for perhaps he is in the right, perhaps we have been deluded, we may have been deceived. If such be your thoughts, you will soon find them perfectly correct.

You have hitherto entitled yourselves to the character of industrious and religious citizens of the Union, and most of the Germans still deserve that praise; but, sorrowful to relate, you have suffered yourselves to be spurred on to the most abominable injustice, to actual rebellion against the Government you yourselves have chosen. How happy it is that your number is but small amongst the serious, and that the far greater part of them view your inconsiderate conduct with detestation! You all know that Government cannot exist without taxes; at least your Bible would so instruct you; read Romans, xiii. 1—7; read it attentively.

Do but reflect seasonably on your conduct. Even the holy passion week have you profaned with the works of actual rebellion. You have undertaken to oppose a tax which is as favorable to the country people as any tax can possibly be; for the rich inhabitants of the cities pay by far the greatest proportion of it; you have undertaken to oppose a tax which never would have been made had not the Government been necessitated to make defensive preparations against the attacks of the French; a nation that aims at the overthrow and destruction of all religion; against a people that would scarcely have dared to attack and plunder us, if they had not been certain that they had their advocates amongst us. You do not consider the dreadful consequencas of such opposition as you have made; I will therefore inform you of some of them.

be found in the happy soil of France, where the sacred fire is preserved by five Directors on ordinary occasions, and three on extraordinary ones; who, with the aid of a republican army, secure its

purity from violation by the Legislative Representatives of the people. The external conduct of that Government is upon a par with its internal. Liberty, like the religion of Mahomet, is propagated by the sword. Nations are not compelled to be free, but to be free on the French model, and placed under French guardianship. French arsenals are the repository of their arms, French treasuries of their money, the city of Paris of their curiosities; and they are honored with the constant support of French enterprises in any other part of the world. Such is the progress of a Power which began by declarations that it abhorred all conquests for itself, and sought no other felicity but to emancipate the world from tyrants, and leave each nation free to choose a Government of its own. Those who take no warning by such an awful example, may have deeply to lament the consequences of neglecting it.

The situation in which we now stand with that country is peculiarly critical. Conscious of giving no real cause of offence, but irritated with injuries, and full of resentment for insults; desirous of peace, if it can be preserved with honor and safety, but disdaining a security equally fallacious and ignominious at the expense of either; still holding the rejected olive branch in one hand, but a sword in the other—we now remain in a sort of middle path between peace and war, where one false step may lead to the most ruinous consequences, and nothing can be safely relied on but unceasing vigilance, and persevering firmness in what we believe to be right, leaving the event to Heaven, which seldom suffers the destruction of nations without some capital fault of their own.

Among other measures of defence and precaution which the exigency of the crisis, and the magnitude of the danger, suggested to those to whom the people have entrusted all authority in such cases, were certain acts of the Legislature of the United States, not only highly important in themselves, but deserving of the most particular attention, on account of the great discontent which has been excited against them, and, especially, as some of the State Legislatures have publicly pronounced them to be in violation of the Constitution of the United States. I deem it my duty, therefore, on this occasion, to state to you the nature of those laws which have been so grossly misrepresented, and to deliver my deliberate opinion as a judge, in regard to the objections arising from the Constitution.

The acts to which I refer, you will readily sup-

In the first place, an army of several thousand men will be marched into your neighborhood; you well know that, in spite of every possible attention of commanding officers, excesses will be committed by an army. You will be, more or less, prevented from following your usual occupations, and yourselves and families will be put in the greatest terror and apprehension.

2dly. The army will cost money, and this money the Government will have to raise by new taxes, for which you must thank your own opposition. The Western Expedition in 1794, cost a million of dollars; from this you may judge what expense you will bring on yourselves and fellow-citizens by your scandalous insurrection.

3dly. If you make any farther opposition, you will necessarily be treated as rebels, and before a month has passed, many of you will be in prison. They will be torn from their wives and children, and some will probably suffer an ignominious death.

Alas! my heart bleeds for you. You have been told a thousand falsehoods. You have been told that the militia approved of your violence, and would not march against you. But you have been wrongfully deceived. For my own part, I have heard many speak of your conduct, but I have not heard one approve of it; your best friends (if those are your best friends who agree with you in political opinion) say, the occurrences in Northampton are very unjustifiable; the insurgents must be subdued; what would become of us if everybody was to create an insurrection! This is the substance of what is thought and said of your conduct; and you may depend upon it, that the Government could, at a very short notice, muster upwards of twenty thousand men, if such a number were necessary, who would willingly march against you. Every one cries, shame! shame! upon you.

I beseech you to mark well the character of those men who have enticed you to this insurrection. Are there not many men who spend more money at the taverns, in the course of a few evenings, than their whole tax amounts to? Honest Christian men will never advise to rebellion, but more especially against a Government which has scarcely an equal under the sun. No, they are wicked, restless men, who have deceived themselves and you.

It is your misfortune thet you have suffered the habit to grow upon you, of scandalizing Government; of cursing, instead of blessing it; and then, indeed, there are enough to be found, who, having particular ends in view, will scheme with you; persons who wish for your friendship on election days, in order that they may get a lucrative office under the very Government that they blaspheme. When matters come to extremities, these deluders know perfectly well how to slip their necks out of the halter, and let the deluded suffer; these who, in comparison with the former, are innocent, will be left to bake, as their deceivers have brewed. Think of me, when you experience this sorrowful truth.

Alas! you have been most scandalously deceived; from my soul, I pity you. But, what is now to be done? Listen, and take my advice. It is possible that the Marshal will be sent with an armed force to seize the wretches who opposed him in arms. For God's sake, do not let yourselves be prevailed upon to abet those rebels; for, should you be found in their company, you will certainly be punished with them.

Rather endeavor to persuade them to deliver themselves up to the proper authority, (and this would be the wisest course they could pursue;) but if they will not do so, give the Marshal every assistance he may require, for it is your duty.

Take my advice. Affection for you, and the impulse of conscience, have compelled me to write you this letter. If you follow my counsels, you will do well; if not, I have done my duty.

Be assured that I remain your friend,

J. HENRY CH. HELMUTH.

Philadelphia, March 28, 1799.

pose to be what are commonly called the Alien and Sedition acts. I shall speak of each separately, so far as no common circumstances belonging to them may make a joint discussion proper.

I. The Alien Laws—there being two.

To these laws, in particular, it has been objected—

1. That an alien ought not to be removed on suspicion, but on proof of some crime.

2. That an alien, coming into the country on the faith of an act stipulating that, in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith.

3. That it is inconsistent with the following clause in the Constitution, (Art. I, sect. 9.)

"The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

With regard to the first objection, viz: "That an alien ought not to be removed on suspicion, but on proof of some crime." It is believed that it never was suggested in any other country, that aliens had a right to go into a foreign country, and stay at their will and pleasure, without leave from the Government. The law of nations undoubtedly is, that when an alien goes into a foreign country, he goes under either an express or implied safe conduct. In most countries in Europe, I believe, an express passport is necessary for strangers. Where greater liberality is observed, yet it is always understood that the government may order away any alien whose stay is deemed incompatible with the safety of the country. Nothing is more common than to order away, on the eve of a war, all aliens or subjects of the nation with whom the war is to take place. Why is that done, but that it is deemed unsafe to retain in the country, men whose prepossessions are naturally so strong in favor of the enemy, that it may be apprehended they will either join in arms, or do mischief by intrigue, in his favor? How many such instances took place at the beginning of the war with Great Britain, nobody then objecting to the authority of the measure, and the expediency of it being alone in contemplation! In cases like this, it is ridiculous to talk of a crime; because, perhaps, the only crime that a man can be charged with is, his being born in another country, and having a strong attachment to it. He is not punished for a crime that he has committed, but deprived of the power of committing one hereafter, to which even a sense of patriotism may tempt a warm and misguided mind. Nobody, who has ever heard of Major Andre, that possesses any liberality of mind, but must believe that he did what he thought right at the time, though, in my opinion, it was a conduct in no manner justifiable. Yet, how fatal might his success have proved! If men, therefore, of good character, and held in universal estimation for integrity, can be tempted when a great object is in view, to violate the strict duties of morality, what may be expected from others who have neither character nor virtue, but stand ready to yield to temptations of any kind? The opportunities, during a war, of making use of men of such a description, are so numerous and so dangerous, that no prudent nation would ever trust to the possible good behaviour of many of them. Indeed, most of those who oppose this law, seem to admit that, as to alien enemies, the interposition may be proper, but they contend it is improper, before a war actually takes place, to exercise such an authority, and that as to neutral aliens, it is totally inadmissible. To be sure, the two latter instances are not quite so plain; the objection I am considering belongs equally to the mall; for, if an alien cannot be removed but on conviction of a crime, then an alien enemy ought not to be removed but on conviction of treason, or some other crime, showing the necessity of it. If, however, we are not blind to what is evident to all the rest of the world, equal danger may be apprehended from the citizens of a hostile Power, before war is actually declared as after, perhaps more, because less suspicion is entertained; and some citizens of a neutral Power are equally dangerous with the others. What has given France possession of the Netherlands, Geneva, Switzerland, and almost all Italy, and enables her to domineer over so many other countries, lately powerful and completely independent, but that her arts have preceded her arms; the smooth words of amity, peace, and universal love, by seducing weak minds, have led to an unbounded confidence, which has ended in their destruction, and they have now to deplore the infatuation which led them to court a fraternal embrace from a bosom in which a dagger was concealed.

In how many countries, alien friends as to us, dependent upon them, are there warm partisans not nominally French citizens, but completely illuminated with French principles, electrified with French enthusiasm, and ready for any sort of revolutionary mischief! Are we to be guarded against the former and exposed to the latter? No, gentlemen. If with such examples before their eyes, Congress had either confined their precaution to a war in form, or to citizens of France only, losing all sense of danger to their country in a regard to nominal distinctions, they would probably justly have deserved the charge of neglecting their country's safety in one of its most essential points, and hereafter the men who are now clamorous against them for exercising a judicious foresight, might too late have had reason to charge them, (as many former infatuated Governments in Europe may now fairly be charged by their miserable deluded fellow-citizens,) as the authors of their country's ruin. But those who object to this law seem to pay little regard to considerations of this kind, and to entertain no other fear but that the President may exercise this authority for the mere purpose of abusing it. There is no end to arguments or suspicions of this kind. If this power is proper,

it must be exercised by somebody. If from the nature of it, it could be exercised by so numerous a body as Congress, yet as Congress are not constantly sitting, it ought not to be exercised by them alone. If they are not to exercise it, who so fit as the President? What interest can he have in abusing such an authority? But on this occasion as on others of the like kind, gentlemen think it sufficient to show, not that a power is likely to be abused (which is all that can be prudently guarded against,) but that it possibly may; and therefore to guard against the possibility of an abuse of power, the power is not at all to be exercised.

The argument would be just as good against his acknowledged powers, as any others, that the Legislature may occasionally confide to him. Suppose he should refuse to nominate to any office, or to command the army and navy, or should assign frivolous reasons against every law, so that no law could be passed but with the concurrence of two-thirds of both Houses! Suppose Congress should raise an army without necessity, lay taxes where there was no occasion for money, declare war from mere caprice, lay wanton and oppressive restraints on commerce, or in a time of imminent danger trifle with the safety of their country, to gain a momentary breath of popularity at the hazard of their country's ruin! All this they may do. Does any man of candor, who does not believe everything they do wrong, apprehend that any of these things will be done? They have the power to do them, because the authority to pass very important and necessary acts of legislation on all those subjects, and in regard to which discretion must be left, unavoidably implies that, as it may be exercised in a right manner, it may, if no principle prevent it, be exercised in a wrong one. If the State Legislatures should combine to choose no more Senators, they may abolish the Constitution without the danger of committing treason. If to prevent a House of Representatives being in existence, they should keep no law in being for a similar branch of their own, deeming the abolition of the Government of the United States cheaply purchased by such a sacrifice, they may do this. They have the same power over the election of a President and Vice President. What is the security against abuse in any of these cases? None, but the precautions taken to secure a proper choice, which, if well exercised, will at least secure the public against a wanton abuse of power, though nothing can secure them absolutely against the common frailty of men, or the possibility of bad men, if accidentally invested with power, carrying it into a dangerous extreme. We must trust some persons, and as well as we can, submit to any collateral evil which may arise from a provision for a great and indispensable good that can only be obtained through the medium of human imperfection. At the same time it may be observed, that in the case of the President, or any Executive or Judicial officer wantonly abusing his trust, he is liable to impeachment, and there are frequent opportunities of changing the members of the Legislature, if their conduct is not acceptable to their constituents.

The clause in the Constitution, declaring that the trial of all crimes, except by impeachment, shall be by jury, can never in reason be extended to amount to a perpetual residence of all sorts of foreigners, unless convicted of some crime, but is evidently calculated for the security of any citizen, a party to the instrument, or even of a foreigner if resident in the country, who, when charged with the commission of a crime against the municipal laws for which he is liable to punishment, can be tried for it in no other manner.

The second objection is, "that an alien coming into the country, on the faith of an act stipulating that in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith."

With regard to this, it may be observed, that undoubtedly the faith of Government ought, under all circumstances, and in all possible situations, to be preserved sacred. If, therefore, in virtue of this law, all aliens from any part of the world had a right to come here, stay the probationary time, and become citizens, the act in question could not be justified, unless it could be shown that a real, (not a pretended) over-ruling public necessity, to which all inchoate acts of legislation must forever be subject, occasioned a partial repeal of it. But there are certain conditions, without which no alien can ever be admitted, if he stay ever so long; and one is, that during a limited time (two years in the case of aliens then resident; five in the case of aliens arriving thereafter.) he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. If his conduct be different, he is no object of the naturalization law at all, and consequently no implied compact was made with him. If his conduct be conformable to that description, he is no object of the alien law to which the objection is applied, because he is not a person whom the President is empowered to remove, for such a person could not be deemed dangerous to the peace and safety of the United States, nor could there be reasonable grounds to suspect such a man of being concerned in any treasonable or secret machinations against the Government, in which cases alone the removal of any alien friend is authorized. Besides, any alien coming to this country must, or ought to know, that this being an independent nation, it has all the rights concerning the removal of aliens which belong by the law of nations to any other; that while he remains in the country in the character of an alien, he can claim no other privileges than such as an alien is entitled to; and consequently, whatever risk he may incur in that capacity, is incurred voluntarily, with the hope that in due time, by his unexceptionable conduct, he may become a citizen of the United States. As there is no end to the ingenuity of man, it has been suggested that such a person, if not a citizen, is a denizen, and therefore cannot be removed as an alien. A denizen, in those laws from which we derive our own, means a person who has received

letters of denization from the King, and under the Royal Government such a power might undoubtedly have been exercised. This power of denization is a kind of partial naturalization, giving some, but not all of the privileges of a natural born subject. He may take land by purchase or devise, but cannot inherit.

The issue of a denizen born *before* denization cannot inherit; but if born *after* may, the ancestor having been able to communicate to him inheritable blood. But this power of the Crown was thought so formidable, that it is expressly provided by act of Parliament, that no denizen can be a member of the Privy Council, or of either House of Parliament, or have any office of trust, civil or military, or be capable of any grants of land from the Crown. Upon the dissolution of the Royal Government, the whole authority of naturalization, either whole or partial, belonged to the several States, and this power the people of the States have since devolved on the Congress of the United States. Denization, therefore, (in the sense here used,) is a term unknown in our law, since the right was not derived from any general legislative authority, but from a special prerogative of the Crown, to which parliamentary restrictions afterwards were applied. So much so, that if an act of Parliament had passed, giving certain rights to an alien with restrictions exactly similar to those of a denizen, I imagine he would not have been called a denizen; because the Royal authority was not the source from which his rights were derived. As to acts of naturalization themselves, they are liable in England, by an express law to certain limitations, one of which is, that the person naturalized is incapable of being a member of the Privy Council, or either House of Parliament, or of holding offices or grants from the Crown. Yet I never heard, nor do I believe that such a person was ever called a denizen; for which, as there is no foundation in precedent, or in the Constitution of the United States, I presume it is a distinction without solidity. Fixed principles of law cannot be grounded on the airy imagination of man.

The third objection is, "That it is inconsistent with the following clause in the Constitution, viz.

"The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on said importation not exceeding ten dollars for each person."

I am not satisfied, as to this objection, that it is sufficient to overrule it, to say the words do not express the real meaning, either of those who formed the Constitution, or those who established it, although I do verily believe, in my own mind, that the article was intended only for slaves, and the clause was expressed in its present manner to accommodate different gentlemen, some of whom could not bear the name *slaves*, and others had objections to it. But though this probably is the real truth, yet, if in attempting to compromise, they have unguardedly used expressions that go beyond their meaning, and there is nothing but private history to elucidate it, I shall deem it absolutely necessary to confine myself to the written instrument. Other reasons may make the point doubtful, but at present I am inclined to think it must be admitted, that Congress, prior to the year 1808, cannot prohibit the migration of free persons to a particular State, existing at the time of the Constitution, which such State shall, by law, agree to receive. The States then existing, therefore, till 1808, may (we will say) admit the migration of persons to their own States, without any prohibitory act of Congress. This they may do upon principles of general policy, and in consistence with all their other duties. The States are expressly prohibited from entering into an engagement or contract with another State, or engaging in war, unless actually invaded, or in such imminent danger as will not admit of delay. The avenues to foreign connexion being thus carefully closed, it will scarcely be contended, that in case of war, a State could, either directly or indirectly, permit the migration of enemies. If they did, the United States could certainly, without any impeachment of the general right of allowing migration, in virtue of their authority to repel invasion, prevent the arrival of such. And as such invasion may be attempted without a formal war, and Congress have an express right to protect against invasion, as well as repel it, I presume Congress would also have authority to prevent the arrival of any enemies, coming in the disguise of friends to invade their country. But admitting the right to permit migration in its full force, the persons migrating on their authority must be subject to the laws of the country, which consist not only of those of the particular State, but of the United States. While aliens, therefore, they must remain in the character of aliens; and, of course, upon the principles I have mentioned, be subject to a power of removal, in certain cases recognised by the law of nations; nor can they cease to be in this situation until they become citizens of the United States; in which case they must obey the laws of the Union as well as of the particular State they reside in. But gentlemen argue as if because the States had a right to permit migration, the migrants were under a sort of special protection of the State admitting it, lest the United States, merely to disappoint the purpose of migration, should exercise an arbitrary authority of removal without any cause at all. It would be just as consistent to say, that if such migrant was charged with a murder on the high seas, or in any fort or arsenal of the United States, he should not be tried for it in a court of the United States, lest the courts and juries, out of ill will to the State, should combine to procure his conviction and punishment, in all events, to defeat the State law. The two powers may undoubtedly be made compatible, if the Legislatures of the particular States, and the Government of the United States, do their duty, without which presumption, not an authority given by the Constitution can exist. They surely are more compatible than the collateral powers of taxation, which, under each

Governmont, go to an unlimited extent, but the very nature of which forbids any other limitation, than a sense of moral right and justice. If we skepticize in the manner of some gentlemen on this subject, suppose each Legislature should tax to the amount of 19s. in the pound; each has the power; but is such an exercise of it more apprehended than we apprehend an earthquake to swallow us all up at this very moment? All systems of Government suppose they are to be administered by men of common sense and common honesty. In our country, as all ultimately depends on the voice of the people, they have it in their power, and it is to be presumed they generally will choose men of this description: but if they will not, the case, to be sure, is without remedy. If they choose fools, they will have foolish laws. If they choose knaves, they will have knavish ones. But this can never be the case until they are generally fools or knaves themselves, which, thank God, is not likely ever to become the character of the American people.

Having said what I thought material as to the alien laws, upon the particular objections to them. I now proceed to discuss the objections which have been made to what is called the sedition act—one of which equally applies to the alien laws, as well as to this. But I think it proper previously to read the law itself.

The objections (so far as I have heard them) to this act, are as follows:

1. (And this applies to the alien law also.) That there is no specific power given to pass an act of this description, though, in the particular specific powers given, there is authority conveyed as to other offences specially named.

2. That this law is not warranted by a clause in the Constitution conveying Legislative authority, which, after designating particular objects, adds:

"And to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other power vested by the Constitution in the Government of the United States, or in any department or officer thereof." Because it is not necessary and proper to pass any such law in order to carry into execution any of these powers.

3. That, admitting the former positions are not maintainable, yet the exercise of this authority is incompatible with the following amendment to the Constitution, viz:

"Congress shall make no law respecting an establishment of religion, or prohibiting the full exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

With regard to the first objection, I readily acknowledge, that, soon after the Constitution was proposed, and when I had taken a much more superficial view of it than I was sensible of at the time, I did think Congress could not provide for the punishment of any crimes but such as are specifically designated in the particular powers enumerated. I delivered that opinion in the convention at North Carolina, in the year 1788, with a perfect conviction, at the time, that it was well founded. But I have since been convinced it was an erroneous opinion, and my reasons for changing it I shall state to you as clearly as I am able.

It is in vain to make any law unless some sanction be annexed to it, to prevent or punish its violation. A law without it might be equivalent to a good moral sermon; but bad members of society would be as little influenced by one as the other. It is therefore necessary and proper, for instance, under the Constitution of the United States, to secure the effect of all laws which impose a duty on some particular persons, by providing some penalty or punishment if they disobey. The authority to provide such is conveyed by the following general words in the Constitution, at the end of the objects of legislation particularly specified: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof." A penalty alone would not in every case be sufficient; for the offender might be rich and disregard it, or poor (though a wilful offender) and unable to pay it. A fine therefore will not always answer the purpose, but imprisonment must be in many cases added, though a wise and humane Legislature will always dispense with this, where the importance of the case does not require it. But if it does, from the very nature of the punishment, it becomes a *criminal* and not a *civil* offence. The grand jury must indict before the offender can be convicted.

This general position may be illustrated by a variety of instances under the penal code of the United States, which have, I believe, never been objected to as unconstitutional, though there have never been wanting penetrating and discerning members who were ready enough to take exceptions where they found any plausible ground for them. I shall enumerate a few.

In the act, entitled an act for the punishment of certain crimes against the United States, (vol. 1, Swift's edition, p. 100,) among other crimes specified, are the following: Murder or larceny in a fort belonging to the United States; misprision of felony committed in any place under the sole and exclusive jurisdiction of the United States; stealing or falsifying a record of any court of the United States; perjury in any court of the United States; bribing a judge of the United States; obstructing the execution of any kind of process issuing from a court of the United States.

In the collection act, (vol. 1, p. 237,) it is provided, that in all cases where an oath is by that act required from a master or other person having command of a ship or vessel, or from an owner or assignee of goods, wares, and merchandise, his or her factor or agent, if the person so swearing shall swear falsely, such person shall, on indictment and conviction thereof, be punished by fine or imprisonment, or both, in the discretion of the court, before whom such conviction shall be had, so as the fine shall not exceed one thousand dollars, and the term of imprisonment shall not exceed twelve months.

In the act laying duties on distilled spirits, (vol. 1, p. 324,) in the 39th section, it is provided, as follows:

"If any supervisor, or other officer of inspection, in any criminal prosecution against them, shall be convicted of oppression or extortion in the execution of his office, he shall be fined not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court, and shall also forfeit his office."

These instances deserve great consideration, because I believe no candid man will deny that these provisions were Constitutional exercises of authority, within the scope of the general authority conveyed, though not specially named as objects which it should be competent for Congress to provide for. And they certainly derive weight from the consideration that the principle of them (which I believe was the case) was never objected to, though the expediency of some of the provisions may have been.

In further illustration of this subject, I shall state a case which was determined in this court—the United States against Worrell, published in Mr. Dallas's Reports, p. 384—where there was an indictment against the defendant for attempting to bribe Mr. Coxe, the Commissioner of the Revenue. The defendant was found guilty, and afterwards a motion was made in arrest of judgment, assigning, together with some technical objections, this general one, that the court had no cognizance of the offence, because no act of Congress had passed creating the offence and prescribing the punishment, but it was solely on the foot of the common law. The very able and ingenious gentleman who is the reporter of that case, and was the defendant's counsel in it, in the course of his argument, makes the following observations, part of which are remarkably striking and pertinent to my present subject: "In relation to crimes and punishments, the objects of the delegated power of the United States are enumerated and fixed. Congress may provide for the punishment of counterfeiting the securities and current coin of the United States, and may define and punish piracies and felonies committed on the high seas, and offences against the laws of nations. Art. 1, sec. 8. And so, likewise, *Congress may make all laws which shall be necessary and proper for carrying into execution the powers of the General Government.* But here is no reference to a common-law authority. Every power is matter of definite and positive grant; and the very powers that are granted cannot take effect until they are exercised through the medium of a law. Congress had undoubtedly a power to make a law, which should render it criminal to offer a bribe to the Commissioner of the Revenue, but not having made the law, the crime is not recognised by the Federal code. Constitutional or Legislative; and consequently it is not a subject on which the judicial authority of the Union can operate." So far, the observations of the defendant's counsel. Judge Chase, who on that occasion differed from Judge Peters as to the common-law jurisdiction of the court, held, that under the eighth section of the first article, which I am now considering, although bribery is not among the crimes and offences specially mentioned, it is certainly included in that general provision; and Congress might have passed a law on the subject which would have given the court cognizance of the offence. Judge Peters was of opinion that the defendant was punishable at common law, but that it was competent for Congress to pass a Legislative act on the subject.

I conclude, therefore, that the first objection is not maintainable.

With regard to the second objection, which is, that this law is not warranted by that clause of the Constitution authorizing Congress to pass all laws which shall be necessary and proper for carrying into execution the powers specially enumerated, and all other powers vested by the Constitution in the Government of the United States, or in any department or officer thereof; because it is not necessary and proper to pass any such law, in order to carry into execution any of those powers: it is to be observed, that, from the very nature of the power, it is and must be discretionary. What is necessary and proper, in regard to any particular subject, cannot, before an occasion arises, be logically defined, but must depend upon various extensive views of a case, which no human foresight can reach. What is necessary and proper in a time of confusion and general disorder, would not perhaps be necessary and proper in a time of tranquillity and order. These are considerations of policy, not questions of law, and upon which the Legislature is bound to decide according to its real opinion of the necessity and propriety of any act particularly in contemplation. It is however alleged, that the necessity and propriety of passing collateral laws for the support of others, are confined to cases where the powers are delegated, and do not extend to cases which have a reference to general danger only. The words are general, "for carrying into execution the special powers previously enumerated, and all other powers vested by the Constitution in the Government of the United States, or any department or officer thereof." If therefore there be anything necessary and proper for carrying into execution any or all of those powers, I presume that may be constitutionally enacted. Two objects are aimed at by every rational Government, more especially by free ones: 1. That the people may understand the laws, and voluntarily obey them; 2. That if this be not done by any individual, he shall be compelled to obey them, or punished for disobedience. The first object is undoubtedly the most momentous; for, as the legitimate object of every Government is the happiness of the people committed to its care, nothing can tend more to promote this than that, by a voluntary obedience to the laws of the country, they should render punishments unnecessary. This can never be the case in any country but a country of slaves, where gross misrepresentation prevails, and any large body of people can be induced to believe that laws are made either without authority, or for the purpose of oppression. Ask the great body of the people who were deluded into an insurrection, in the western parts of

Pennsylvania, what gave rise to it? They will not hesitate to say, that the Government had been vilely misrepresented, and made to appear to them in a character directly the reverse of what they deserved. In consequence of such misrepresentations, a civil war had nearly desolated our country, and a certain expense of near two millions of dollars was actually incurred, which might be deemed the price of libels, and, among other causes, made necessary a judicious and moderate land-tax, which no man denies to be Constitutional, but is now made the pretext of another insurrection. The liberty of the press is, indeed, valuable: long may it preserve its lustre! It has converted barbarous nations into civilized ones—taught science to rear its head—enlarged the capacity—increased the comforts of private life—and, leading the banners of freedom, has extended her sway where her very name was unknown. But, as every human blessing is attended with imperfection, as what produces, by a right use, the greatest good, is productive of the greatest evil in its abuse, so this, one of the greatest blessings ever bestowed by Providence on his creatures, is capable of producing the greatest good or the greatest mischief. A pen, in the hands of an able and virtuous man, may enlighten a whole nation, and by observations of real wisdom, grounded on pure morality, may lead it to the path of honor and happiness. The same pen, in the hands of a man equally able, but with vices as great as the other's virtues, may, by arts of sophistry easily attainable, and inflaming the passions of weak minds, delude many into opinions the most dangerous, and conduct them to actions the most criminal. Men who are at a distance from the source of information must rely almost altogether on the accounts they receive from others. If their accounts are founded in truth, their heads or hearts must be to blame if they think or act wrongly; but if their accounts are false, the best head and the best heart cannot be proof against their influence. Nor is it possible to calculate the combined effect of innumerable artifices, either by direct falsehood or invidious insinuations, told day by day, upon minds both able and virtuous. Such being unquestionably the case, can it be tolerated in any civilized society that any should be permitted with impunity to tell falsehoods to the people, with an express intention to deceive them, and lead them into discontent, if not into insurrection, which is so apt to follow? It is believed no government in the world ever was without such a power. It is unquestionably possessed by all the State Governments, and probably has been exercised in all of them—sure I am it has in some. If necessary and proper for them, why not equally so, at least, for the Government of the United States, naturally an object of more jealousy and alarm, because it has greater concerns to provide for? Combinations to defeat a particular law are admitted to be punishable. Falsehoods, in order to produce such combinations, I should presume, would come within the same principle, as being the first step to the mischief intended to be prevented; and if such falsehoods, with regard to one particular law, are dangerous, and therefore ought not to be permitted without punishment, why should such which are intended to destroy confidence in government altogether, and thus induce disobedience to every act of it? It is said, libels may be rightly punishable in Monarchies, but there is not the same necessity for it in a Republic. The necessity in the latter case I conceive greater, because in a Republic more is dependent on the good opinion of the people for its support, as they are, directly or indirectly, the origin of all authority, which of course must receive its bias from them. Take away from a Republic the confidence of the people, and the whole fabric crumbles into dust.

I have only to add, under this head, that, in order to obviate any probable ill use of this large and discretionary power, the Constitution, and certain amendments to it, have prohibited, in express words, the exercise of some particular authorities, which otherwise might be supposed to be comprehended within them. Of this nature is the prohibitory clause relating to the present object, which I am to consider under the next objection.

4. That objection is, that the act is in violation of this amendment of the Constitution. (Vol. 3, *Swift's edition*, p. 455, *article* 3.)

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The question then is, whether this law has abridged the freedom of the press?

Here is a remarkable difference in expressions as to the different objects in the same clause. They are to make no law *respecting* an establishment of religion, or prohibiting the free exercise thereof, or *abridging* the freedom of speech, or of the press. When, as to one object, they entirely prohibit any act whatever, and, as to another object, only limit the exercise of the power, they must, in reason, be supposed to mean different things. I presume, therefore, that Congress may make a law *respecting* the press, provided the law be such as not to *abridge its freedom*. What might be deemed the freedom of the press, if it had been a new subject, and never before in discussion, might indeed admit of some controversy. But, so far as precedent, habit, laws, and practices, are concerned, there can scarcely be a more definite meaning than that which all these have affixed to the term in question.

We derive our principles of law originally from England. There, the press, I believe, is as free as in any country in the world, and so it has been for nearly a century. The definition of it is, in my opinion, no where more happily or justly expressed than by the great author of the Commentaries on the laws of England, which book deserves more particular regard on this occasion, because for near thirty years it has been the manual of almost every student of law in the United States, and its uncommon excellence has also introduced it into the libraries, and often to the favorite reading of private gentlemen; so that his views of the subject could scarcely be unknown to those who framed

the Amendments to the Constitution: and if they were not, unless his explanation had been satisfactory, I presume the amendment would have been more particularly worded, to guard against any possible mistake. His explanation is as follows:

"The liberty of the press is indeed essential to the nature of a free State. And this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the Revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controversial points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall, on a fair and impartial trial, be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundation of civil liberty. Thus the will of individuals is still left free: the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or inquiry: liberty of private sentiments is still left; the disseminating, or making public, of bad sentiments, destructive of the ends of society, is the crime which society corrects. A man (says a fine writer on this subject) may be allowed to keep poisons in his closet, but not publicly to vend them as cordials. And to this we may add, that the only plausible argument heretofore used for the restraining the just freedom of the press, "that it was necessary to prevent the daily abuse of it," will entirely lose its force when it is shown (by a reasonable exercise of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment: whereas, it never can be used to any good one when under the control of an inspector. So true it will be found, that to censure the licentiousness is to maintain the liberty of the press."—4 *Black. Com.* 151.

It is believed that, in every State in the Union, the common law principles concerning libels apply: and in some of the States words similar to the words of the amendment are used in the Constitution itself, or a contemporary bill of rights, of equal authority, without ever being supposed to exclude any law being passed on the subject. So that there is the strongest proof that can be of a universal concurrence in America on this point, that the freedom of the press does not require that libellers shall be protected from punishment.

But, in some respects, the act of Congress is much more restrictive than the principles of the common law, or than, perhaps, the principles of any State in the Union. For, under the law of the United States, the truth of the matter may be given in evidence, which at common law, in criminal prosecutions, was held not to be admissible; and the punishment of fine and imprisonment, which at common law was discretionary, is limited in point of severity, though not of lenity. It is to be observed, too, that by the express words of the act, both malice and falsehood must combine in the publication, with the seditious intent particularly described. So that if the writing be false, yet not malicious, or malicious and not false, no conviction can take place. This, therefore, fully provides for any publication arising from inadvertency, mistake, false confidence, or anything short of a wilful and atrocious falsehood. And none surely will contend, that the publication of such a falsehood is among the indefeasible rights of men, for that would be to make the freedom of liars greater than that of men of truth and integrity.

I have now said all I thought material on these important subjects. There is another upon which it is painful to speak, but the notoriety as well as the official certainty of the fact, and the importance of the danger, make it indispensable. Such incessant calumnies have been poured against the Government for supposed breaches of the Constitution, that an insurrection has lately begun for a cause where no breach of the Constitution is or can be pretended. The grievance is the land-tax act, an act which the public exigencies rendered unavoidable, and is framed with particular anxiety to avoid its falling oppressively on the poor, and in effect the greatest part of it must fall on rich people only. Yet arms have been taken to oppose its execution; officers have been insulted; the authority of the law resisted; and the Government of the United States treated with the utmost defiance and contempt. Not being thoroughly informed of all particulars, I cannot now say within what class of offences these crimes are comprehended. But as some of the offenders are committed for treason, and many certainly have been guilty of combinations to resist the law of the United States, I think it proper to point your attention particularly to those subjects. The provisions in regard to the former, so far as they may at present be deemed material or instructive, are as follow:

(*Here the passages referred to were read.*)

The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions, and different determinations on the import of those words. But I think I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent by force of arms the execution of any act of the Congress of the United States altogether, (as for instance the land-tax act, the object of their opposition,) any forcible opposition calculated to carry that intention into effect, was a levying of war against the United States, and of course an act of treason. But if the intention was merely to defeat its operation in a particular instance, or through the agency of a particular officer, from some private or personal motive, though a higher offence may have been committed, it did not amount to the crime of treason. The particular motive must, however, be the sole ingredient in

the case, for, if combined with a general view to obstruct the execution of the act, the offence must be deemed treason.

With regard to the number of witnesses in treason, I am of opinion that two are necessary on the indictment as well as upon the trial in court.

The provision in the Constitution, that the two witnesses must be to the same overt act (or actual deed constituting the treasonable offence,) was in consequence of a construction which had prevailed in England, that though two witnessess were required to prove an act of treason, yet if one witness proved an act, and another witness another act of the same species of treason, (as for instance that of levying war,) it was sufficient; a decision which has always appeared to me contrary to the true intention of the law which made two witnesses necessary—this provision being, as I conceived, intended to guard against fictitious charges of treason, which an unprincipled Government might be tempted to support and encourage, even at the expense of perjury, a thing more difficult to be effected by two witnesses than one.

An act of Congress which I have already read to you (that commonly called the sedition act,) has specially provided in the manner you have heard, against combinations to defeat the execution of the laws. The combinations punishable under this act must be distinguished from such as in themselves amount to treason, which is unalterably fixed by the Constitution itself. Any combinations, therefore, which before the passing of this act, would have amounted to treason, still constitute the same crime. To give the act in question a different construction, would do away altogether the crime of treason as committed by levying war, because no war can be levied without a combination for some of the purposes stated in the act, which must necessarily constitute a part, though not the whole, of the offence.

Long, gentlemen, as I have detained you, for which the great importance of the occasion, I trust, is a just apology, it will be useful to recollect that, ever since the first formation of the present Government, every act which any extraordinary difficulty has occasioned, has been uniformly opposed before its adoption, and every art practised to make the people discontented after it; without any allowance for the necessity which dictated it, some seem to have taken it for granted that credit could be obtained without justice, money without taxes, and the honor and safety of the United States only preserved by a disgraceful foreign dependence. But, notwithstanding all the efforts made to vilify and undermine the Government, it has uniformly risen in the esteem and confidence of the people. Time has disproved arrogant predictions; a true knowledge of the principles and conduct of the Government has rectified many gross misrepresentations; credit has risen from its ashes; the country has been found full of resources, which have been drawn without oppression, and faithfully applied to the purposes to which they were appropriated: justice is impartially administered; and the only crime which is fairly imputable is, that the minority have not been suffered to govern the majority, to which they had as little pretension upon the ground of superiority of talents, patriotism, or general probity, as upon the principles of republicanism, the perpetual theme of their declamation. If you suffer this Government to be destroyed, what chance have you for any other? A scene of the most dreadful confusion must ensue. Anarchy will ride triumphant, and all lovers of order, decency, truth, and justice, be trampled under foot. May that God, whose peculiar providence seems often to have interposed to save these United States from destruction, preserve us from this worst of all evils! And may the inhabitants of this happy country deserve his care and protection by a conduct best calculated to obtain them!*

* The publication of the charge was elicited by the following note.

PHILADELPHIA, *May* 15, 1799.

SIR: The Grand Jury of the Circuit Court of the District of Pennsylvania have heard with great satisfaction, the charge delivered to them, on the opening of the court.

At a time like the present, when false philosophy and the most dangerous and wicked principles are spreading with rapidity, under the imposing garb of liberty, over the fairest countries of the Old World, they are convinced, that the publication of a charge, fraught with such clear and just observations on the nature and operation of the Constitution and laws of the United States, will be highly beneficial to the citizens thereof

With these sentiments strongly impressed on their minds, they unanimously request, that a copy of the said charge may be delivered to them for publication; especially for the information of those, who are too easily led by the misrepresentations of evil disposed persons, into the commission of crimes, ruinous to themselves, and against the peace and dignity of the United States.

Isaac Wharton, foreman, *J. Ross, Edward Pennington, Philip Nicklin, Joseph Parker Norris, Benjamin W. Morris, Thomas M. Willing, Robert Ralston, John Craig, Samuel Coates, David H. Conyngham, John Perot, James C. Fisher, Daniel Smith, Gideon Hill Wells, William Montgomery, W. Bulkley.*

Hon. Judge IREDELL.

To the Gentlemen of the Grand Jury of the United States, for the District of Pennsylvania.

GENTLEMEN: I receive with great sensibility the honor of this address, from gentlemen whom I personally respect so much. Believing, as I have long done, that the Constitution and laws of the United States afford the highest degree of rational liberty which the world ever saw, or of which perhaps mankind are capable, I have seen with astonishment and regret, attempts made in the pursuit of visionary chimeras, to subvert or undermine so glorious a fabric, equally constructed for public and private security. It cannot but be extremely pleasing to me, that the sentiments on this subject I delivered in my charge, should meet with your entire approbation; and as you are pleased to suppose the publication of them may be of some service in correcting erroneous opinions, I readily consent to it, considering your sanction of them as giving them an additional value, which will increase the hope of their producing a good effect. JAMES IREDELL.

PHILADELPHIA, *May* 15, 1799.

April 30.—Mr. LEWIS preferred the following motion to the Court in writing.

And now the prisoner, John Fries, being placed at the bar of this court, at the city of Philadelphia, being the place appointed by law for holding the stated sessions thereof, and it being demanded of him if he is ready for his trial for the treason in the indictment mentioned, he moves, *ore tenus*, that his trial for the same offence may not be proceeded on here, and that the same may be had in the county in which the same acts of treason in the said indictment mentioned and laid, and where the offence therein mentioned is alleged to have been committed.

Mr. LEWIS stated this motion to be founded on an act of Congress entitled the Judiciary Act, 24th September, 1789, sect. 29: "That in cases punishable with death, the trial shall be had in the county where the offence was committed; or where that cannot be done without great inconvenience, twelve petit jurors at least shall be summoned from thence." He stated the advantages resulting from this section to the accused to be, that a man might be tried by his peers, where he is known, and where there can be no difficulties to procure witnesses in his behalf. This inestimable right, he said, was one of the grounds of complaint to the United States, which promoted their separation from the mother country, and this was one cause of her taking up arms. This advantage, Congress had held in just estimation, and upon this, no innovation was to be admitted; on which account, the most pointed and positive terms were used, and the divisions of vicinage reduced to counties. But nevertheless, he observed, this rule had an exception, which was where "manifest inconvenience" occurred, twelve jurymen were to be summoned from that county, and therefore, before the court could consider themselves authorized to proceed to the trial in that place, their honors must be well satisfied that the trial could not take place in the county of Northampton without "manifest inconvenience." These words did not refer to the inconvenience the judges might feel in travelling, or the time spent; but an inconvenience arising from some cause which Congress did not foresee at the time of the passing of the act. The trouble and inconvenience to the judges could be no greater than to the prisoners, whom the Government had brought to this city.

Mr. Lewis said he was aware of an objection which would be raised to the force of the section above quoted, founded on a subsequent law passed March 2d, 1793, sect. 3, which directs that a judge of the Supreme Court, with a district judge, "may direct special sessions of the circuit courts to be holden for the trial of criminal causes, at any convenient place within the district, nearer to the place where offences may be said to be committed, than the place or places appointed by law for the ordinary sessions." The places appointed by law for the State of Pennsylvania are, Yorktown and Philadelphia. This, he presumed, must refer to causes of civil nature, or to criminal acts of a less grade than what is peremptorily required in the act first quoted from, to govern "cases punishable with death." The same act says, that trials in capital cases should be elsewhere, and not in the stated places, unless manifest inconvenience attend it. And what, he asked, was the great inconvenience in the present case? Was there any objection of a nature to render it improper or impossible to try the prisoner in that county? It was true that a considerable number of persons in that county had been misguided, but was it to be inferred thence that all were? or that a fair trial could not be had there? No doubt an able and impartial jury might be obtained in that place, and, therefore, an impartial trial could be had. In bad times, with corrupt judges, if ever such a time and such judges should unhappily be in this country, the section of 1789 would form a protection to the citizen against any innovation of his privilege, and prevent their dragging him from his family and friends to a distant part, where he might be unknown, to be tried.

Surely it could not be urged that the safety of the United States, or the protection of the court, made it necessary to try this cause in Philadelphia. The prisoners might have been confined in the jails of that county; the troops of the United States were even now remaining there, to protect the law.

The vicinity of that spot to the witnesses who beheld the transactions was an additional argument for the plea. Some, to be sure, had come to the city; others, perhaps, might come forward; sickness or age might operate to prevent some coming. It was also inconvenient to the prisoner in preventing his neighbors or relatives affording him that comfort which they might wish. But all this, he said, was immaterial; the law was definite, and nothing could supersede its mandate. Here was a list of ninety-eight witnesses, furnished the prisoner by Mr. Attorney, who were to appear against him, and hence the necessity of time and opportunity being allowed the prisoner to examine that numerous train of evidence, and to prepare to controvert them.

Mr. L. then referred to a similar motion which he made before the court, respecting a person tried for high treason in the Western insurrection, in 1795, for which he referred to Dallas's Reports, page 18, volume three. The motion was then rejected, but upon different grounds than could possibly be now urged. Judge Wilson stated it as the opinion of the court, the plea being made at a previous court, that the circuit court, at which the prisoner was to be tried, was so near, that there was not time to send to the witnesses and bail, on account of the great distance of the county from the city, as they were subpœnaed to attend at the next session. The reason was, that the Supreme Court could not order a special session to overrule the stated session, and therefore the inconvenience was great and manifest; but no such excuse could hold good in the present case: the mandatory language of the former clause must be obeyed.

Further, he observed that a man might be charged with the crime of treason, and committed for that crime, or bound over, if the case would

allow it; yet it was impossible to know that he would be indicted for treason by a grand jury; and no court held previous to the indictment could say whether it was a case punishable with death, or a misdemeanor, and therefore the time to move the plea was the present, after the indictment was returned, and when the defendant was arraigned for trial, and till then the motion would be inapplicable. He observed that he considered this motion of considerable importance to the prisoner, and not to him only, but to every citizen of the United States: this was the security of his rights, and those of every man in the court, and therefore he hoped the justice of the court would grant the plea.

Mr. SITGREAVES said he had not been able to distinguish whether this motion had been preferred to the court as a matter of unqualified right, or whether it was merely an application, as a matter of favor in this particular instance; but he would attempt an answer to both. With respect to the twenty-ninth section of the Judiciary act, if the first part of the paragraph was to stand alone, without a qualification, it would be a positive direction, and would not bear an objection, yet there would be a difficulty arise how it could be executed: but it was not so. At the time that law was passed, there were stated places, as well as stated times, for holding the federal courts; there was no provision whatever for holding them elsewhere than the appointed place, although the judges had special powers to alter the time of holding them: whether that reason, or some other, excited the Legislature to put the discretion as to place in the judges also, he could not tell, but although the first direction is positive, an alternative is immediately introduced: twelve jurors summoned from the county where the crime was committed, may suffice, at the discretion of the court, and this second branch of the rule is to avoid what the court may judge a great inconvenience, against which no general rule of common law can provide.

In order to prevent any misinterpretation, and remove the embarrassments which a wrong use of the law of 1789 might produce, the provision of March, 1793, still more defines that discretion, without making any material alteration: that says, "the court might be held at any convenient place within the district, nearer to the place where the crime was committed than the place for holding the stated session." Certain it is that this provision does not require it to be held in the same county: indeed, it is extremely questionable whether the court have authority to remove it there; they may nearer to the place, but the word "nearer" excludes the place itself; if the place was intended, the phraseology would be more accurately inserted. He would now remark that no place nearer the scene of insurrection than this city could have been selected, and here the discretion of the court had fixed it. The law must have been made for one of two reasons: either for the facility of public justice, or to favor the prisoner. Respecting the first, the crime was committed, not in one county only, but in three adjoining counties, and, therefore, agreeably to the arguments of the gentleman, the trial must be held in three counties, by three juries, and the witnesses be harassed to appear three times; but even if the court should determine upon one of those counties for the trial, which was to be selected?

Mr. LEWIS questioned the propriety of this argument, since it appeared that all the cases of treason except one (in Bucks) happened in Northampton county, and no inconvenience could accrue from holding the trials at one place.

Mr. RAWLE said that he should produce evidence to prove the crime of treason committed in the three counties.

Mr. SITGREAVES proceeded to state, that, as the act of 1793, as well as 1798, left a discretion for the court to determine according to existing circumstances, and not according to any known definite principles of law, it would be impolitic, if not illegal, to hold the court in the county, this city being, agreeably to one argument, next to one of the counties, and on the other view, the stated place for holding the courts, the arguments must fall, and the motion be rejected. Philadelphia, he said, was as near to the place where the crime was committed as the court-house of that county, and here, it was probable, the purposes of public justice could be most completely answered.

If, then, the argument was not supported on public convenience, it must be the convenience of the prisoner which the gentleman aimed at; but he had failed to show any such thing, and therefore had precluded any answer. He had argued for the comfort of the prisoner, having his neighbors about him, &c.; but it must be observed that the residence of the prisoner was in Bucks, whereas the crime was committed in Northampton, and there he must have been tried, if the decision should turn in favor of his arguments. Now, Philadelphia was as much an adjoining county to Bucks as Northampton, and therefore as much his vicinage, and each place of holding the courts at about equal points of distance from his residence. Even if it was held in Northampton county, it would neither facilitate the trial, nor be of advantage to the person.

Another question he would suggest was, whether this application was made soon enough? It was nearly, or quite a week, since the indictment was given to the prisoner, and it was a much longer time since he was committed. If it was proper that any application should be made to the court, either as a matter of right or of favor, it ought to have been made in due time, so as not to delay or defeat the question of public justice. It would be unnecessary to say that the question was fully determined in the year 1795, and if it was a matter of law, and as such mandatory, every case which was then decided on was a case of mistrial, and the whole court and counsel must have been guilty of a great dereliction. But he believed it was asked of the court at that time, not as a matter of right, but of favor, and it appeared by the report quoted, that if the favor could have been granted, it would, but the decision was against

the possibility of it, and certainly stronger reason would have weighed for it then than now, on which account there is now, at least, equal grounds for refusing it.

Mr. RAWLE observed, that while he professed as much humanity as any gentleman in court, yet, as counsel for the prosecution, he felt as much desire for the just execution of public justice. He could scarcely persuade himself that the gentleman who moved the court could be serious at this late period of the business; after seven days had elapsed since the indictment was found, after all the inconveniences of a preparation for trial had been incurred, this new, this additional inconvenience of summoning the witnesses and jurors to another place, could not be either to the advantage of the prisoner, or agreeable to a just construction of the law adverted to. The law of March, 1793, does not apply to a case which the offence first charged would make capital so as to affect life. The question seriously was, whether granting the motion, would not deprive the country of the power of prosecuting the trial at all, or even after full proof of the guilt of the prisoner, it would not prevent the court from passing sentence. The act read by Mr. Sitgreaves gave the judge the power to hold courts throughout his whole district—volume two, *Laws United States*, 226—but the act of 1789, which fixed the place, only gave the court power as to times of holding special sessions—volume 1, p. 51. The twenty-ninth section of that act was very ambiguously worded, because the fifth section of the same act had put it out of the power of the court to remove as to place. Whatever, then, was the intention of the Legislature, the courts had not power to effect a change, and as, when an act failed in explaining the intention, the intention could not be carried into execution, to remedy the inconvenience of the court being bound in all cases as to place, the clause of 1793, page 226, was passed.

Mr. R. contended that a special court was more than an adjourned circuit court; it was a substantive court of itself, held for special purposes, and could not issue *certiorari* for any other court; if, therefore, a special court was to be held for this trial, it must begin *de novo*; a new grand jury, a new petit jury, must be called; the witnesses must be summoned anew, which would be a bad precedent, besides a great delay. The impropriety was evident: after a bill had been found, and the prisoner had seen a list of the jury and witnesses; after having had time to calculate its chances, at the seventh day of the proceeding, he came forward to remove the trial!· If the prisoner had not had time to inquire into the character of the jurors or witnesses, some other reason would have been given; but as nothing of that kind had been attempted, and as the inconveniences of delay and removal were so manifest, he trusted the court would not accede to the motion.

Mr. DALLAS declared that it was not the design of the counsel for the prisoner to try experiments by the present motion; they conceived that he had a right to be tried in the county where the crime was charged: the act of Congress was mandatory, unless "manifest inconveniences" should appear. He conceived that distance could not be an inconvenience, because the act contemplated the possibility of crimes being committed in Alleghany as well as in Chester county. Nor could time. The importance of a capital trial was not to be so played with. Congress designed that an impartial trial should be had in all cases, without regard to such trivial objections. He was sure the honorable court would not consider their personal inconveniences as meant; and, therefore, should not mention it. Mr. D. wished it to be observed, that the crimes were recently committed, and public justice had not been long suspended; and, even if the present motion was acceded to, the hand of public justice might shortly give the blow by appointing an early special session. It was not certain, before the court sat, that a bill would be found for high treason, merely because the parties were bound over for high treason; and therefore the prisoner might not be able to meet that charge. Again, the time since the bill was found and the party informed, and served with the enormous list of ninety-eight witnesses, has been very short. It was Wednesday last, seven days only, two of which must be left out, Thursday having been the fast-day, and Sunday intervening. Many of these witnesses and jurors he had never seen nor heard of, and it was necessary he should have time to inquire who they were. There had been no catches on the part of the prisoners. It would be an easy thing for the court, at this time, since all the parties were upon the spot, to bind them over to appear again. In the case read by Mr. Lewis, Judge Wilson expressly declared, that there was a desire in the court to comply, but the difficulties were insurmountable. With respect to the other cases, the mandatory language of Congress imposed a necessity on the officers of justice, where it was possible. The clashing of courts, he presumed, could not be held up for excuse at this time. He did not know how much time the present circuit might consume; but as the Supreme Court would not meet until August, no doubt there could be a period for the business of a special court spared during the recess; but if the period should be filled up, in the August session, arrangements might be made to hold one. With respect to the holding of district courts, Mr. D. observed that the law (vol. 1, pp. 49, 50) allowed a discretion as to the places of holding them; page fifty-one gives discretion, as to the circuit court, to the judges of the Supreme Court with respect to time. These provisions respected all cases alike within the jurisdiction of those courts; but the subsequent act referred to made an exception with regard to cases of a nature highly criminal or capital. Certainly, then, if ever the Congress meant that there should be a trial at all in the proper county, one like the present must come under that intention. The language of the two acts (page 67, vol. 1, and 226, vol. 2) was different. The first declared that cases punishable with death should be tried in the county, &c. The second, that special circuit courts may be holden nearer the place where

the offences may be said to be committed than the place of the ordinary sessions. But, one thing was worthy of notice. The first relates only to offences punishable with death, while the other is worded as *crimes* only, of whatever nature. Cases of insurrection and rebellion must have been in the view of the Legislature; and in them it would be very probable that part of more than one county would combine, and they could have excepted such cases if it had meant to do so. It was further said, that part of the crimes were committed in two counties, and therefore the prisoner had deprived himself of the common law vicinage. This was not clear. The vicinage where the offence was committed would, at any rate, have it in their power to declare what they had seen of the conduct of the prisoner.

As to the stage at which the application was made, no loss of time had been felt; and if it had, it would be extremely severe, if it was in the power of the court to order it otherwise, so that the prisoner in so important a case should be injured thereby. On the whole he trusted, unless manifest inconvenience should appear, that the court would grant the motion.

Mr. LEWIS said it was strange, mischievous, and unfounded doctrine that this application had not been made in time. Three clear days from the notice of the indictment being allowed by law to the prisoner, he was not bound to answer the indictment until yesterday. The trial did not then proceed, and he appeared this day; but, in his sincere opinion, from mature reflection, two, three, nor four days should have weight with the court, because the act of Congress was binding upon them, whatever the learned gentleman had advanced to the contrary. He had a right to demand it; and if their honors, the judges, proceeded to hold the trial in any but the right place they, and not the prisoner, would offend. Mr. Attorney had supposed, if this was granted, all which had been done would be null and void. Grant this for a moment. Did Mr. Attorney or John Fries direct the proceedings of the grand jury, &c.? Certainly the Attorney. In this Mr. Lewis believed he had done strictly right; here was the proper place for the issue to be joined; but Northampton is the proper place for the trial of that issue. It was objected, because it was said the crime was committed in three counties. But, suppose it were in three or thirty counties, the over act in the bill is laid in one county only, and there only does the law support the claim for trial. The two laws referred to are unnecessary in capital cases, if they do extend to them at all, because the first law makes ample provision not only as to time (p. 52.) but as to place (p. 67,) and is not superseded by the other. With reference to the law of 1793, page 227, which says, that criminal causes may be tried nearer to the place where the offences were said to be committed, the argument was taken up by Mr. Sitgreaves to mean *nearer to the county*; hence he says that Philadelphia county is adjoining one of the insurgent counties. In the indictment, Bethlehem is mentioned as the *place*. Now, the law directs a special session to be held nearer to Bethlehem than is Philadelphia; that act does not say whether it shall be held in or out of the county, but near the place. The gentleman appeared to have thought he was in another place, and not at the bar, in his view of the discretionary power of the court, which would leave it to be regulated according to the ebbs and flows of the passions of the judges, or the temper of the times: but he should recollect this discretion was of a legal, and not of a political nature, which the necessity of the case called for. All that must be considered to operate on the question is, whether justice cannot be done between the United States and the prisoners, if the trial is held in the county of Northampton; if it can, we rise to claim this as the *right* of John Fries, and nearly allied to the interests of every citizen.

Judge IREDELL said it was held by Judge Hale that an indictment was part of the trial; if so he should be glad to be told what they were to do with the present indictment, if the trial was to be removed? If so, the prisoner must be indicted as well as tried in the county. (Foster, 235 and 236.) Another question would be, could the court order the dismissal of the indictment?

Judge PETERS could not see how part of the proceedings of this court could be transferred to a special court, and therefore how it could be removed to the county, and while a doubt remained it never would do to renovate a criminal case of so much importance. He could not see the force of the reasoning in favor of the removal. He thought that, however humanity ought to lean towards the prisoner, still the proceedings of the court ought to insure justice to the United States, and to the prosecution, and therefore that public justice ought to be as well guarded as the prisoner's convenience; a fair and impartial trial ought to be had, which he was certain could not be had in the county of Northampton, and if he were now applied to, in his official capacity, to take the necessary steps for that event, he would refuse.

Mr. RAWLE said there were opportunities enough for a motion like this to be made before a bill was found, after the parties were bound over. The accused ought to be preparing for trial from his first commitment, to remove all the inconveniences which delay, until after the proceedings were going on, would occasion; it appeared to him to amount to a *technical trap*, laid to involve difficulties. It was well known that the prisoner could not wait till it was too late to obtain many privileges to which he was entitled by an earlier attention to his interests, of which the present was one. With respect to the difficulties his honor Judge Iredell had mentioned on the indictment, they were too serious and important to be dispensed with.

Judge IREDELL delivered his opinion in effect as follows:—With regard to the lateness of the application, as it does not relate to the merits of the defence, I think the arguments in favor of the motion preponderate, and that no advantage should be taken from the prisoner without full ground. It is evident that, in this case, a number of circumstances might be mentioned which would render

a trial inconvenient in the county of Northampton. I am inclined to think, with the counsel for the prisoner, that the court have the power to order a special court to be held there if they should think proper, and therefore I should not scruple to admit it, if all concurrent circumstances admitted its prudence. The question then is, whether, according to the legal discretionary power of the court, this court think it their duty to admit the force of the motion. When these offences were first known to have been committed, and when the gentleman with whom I have the honor to sit was in that county, it was possible for a court to have been ordered there for the trials, but it appeared to those with whom the power rested, to be improper. And why?—The President in his Proclamation had publicly declared that the lawful authority of that county could not be carried into execution without the aid of a military force. Would it not therefore have been improper for us to order a special court to be held at that place? If a special court could not have been held there, the only thing to be done was to bind the parties over to this court.

There are two very important difficulties in the way of this motion: I say important, because they are such as no gentleman of the law can be perfectly clear upon. First, whether, if we order a special court, we can order, by any process known to the law, this indictment to be transferred to that court. This is a doubt stated by Judge Wilson, of the Supreme Court, at the time of a former motion alluded to; and I am inclined to think this was a great reason which guided the decision; otherwise a doubt would not have been intimated. If this cannot be done, what would be the consequences of the removal of the case? If this indictment were to be taken there, with a doubt in point of law on it, a motion might be made after trial for a new trial; that not being regular, part having been held in another place. Whether this would be moved or not, I cannot say, but I know at best it is doubtful. The court therefore ought to proceed in the clearest manner not to run the risk of defeating the prosecution of a cause so important.

It is the great desire of this court to do the most impartial justice between the public and the prisoner, and not from private humanity on the one hand, or resentment on the other, to lean either way. As to the common law principles of vicinage, there are advantages and there are disadvantages attending it. The advantages are, that the parties are known by, and know their jurors and witnesses, that their characters may be viewed, and the most impartial justice done. But if nearly one whole county has been in a state of insurrection, can it be said that a fair trial can be had there? We may at least presume it could not, because the President of the United States ordered a military force there, to enforce the execution of the laws. It was by this military force that the prisoners are now convened in this city, and I have reason to believe, from the opinion and knowledge of the judge with whom I now act, that it would be exceedingly improper to hold the trials there. It was hinted that troops are still there, and they could promote the execution of justice; but what sort of justice is that of the sword? If they would operate at all, it would be by intimidation, and this would be to the prejudice of the prisoner, and in no respect in his favor. This consideration alone, in my opinion, would make it "manifestly inconvenient" for a trial to be held there. With respect to the principles of common law, the gentlemen well know that the *venire* may be changed, that is, that parts of the jury may be summoned from other counties. I do not know whether there is a power in the courts to change the *venire* in England in a criminal case, but I know that in some difficult cases, where partiality was to be apprehended, an act of Parliament has been passed to remove the trial. This was done respecting the rebellion in Scotland, for the manifest reason of partiality. This proves that we ought not to look to one side only, but to both, and then form our determination.

Upon the whole, I am clearly of opinion that, as the motion could not be granted without running the risk of these uncertainties, but certain inconveniences, it would not be expedient to allow it, and therefore the trial must go forward.

Indictment in the Circuit Court of the United States of America, in and for the Pennsylvania District of the Middle Circuit.

The Grand Inquest of the United States of America, for the Pennsylvania district, upon their respective oaths and affirmations, do present that John Fries, late of the county of Bucks, in the District of Pennsylvania, he being an inhabitant of, and residing within the said United States, to wit, in the district aforesaid, and under the protection of the laws of the said United States and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance and fidelity, but being moved and seduced by the instigation of the devil, wickedly devising and intending the peace and tranquillity of the said United States to disturb, on the seventh day of March, in the year of our Lord one thousand seven hundred and ninety-nine, at Bethlehem, in the county of Northampton, in the district aforesaid, unlawfully, maliciously and traitorously did compass, imagine, and intend to raise and levy war, insurrection and rebellion against the said United States; and to fulfil and bring to effect the said traitorous compassings, imaginations, and intentions of him the said John Fries, he, the said John Fries, afterwards, that is to say, on the said seventeenth day of March in the said year of our Lord one thousand seven hundred and ninety-nine, at the said county of Northampton in the district aforesaid, with a great multitude of persons, whose names at present are unknown to the Grand Inquest aforesaid, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, clubs, staves and other warlike weapons, as well offensive as defensive, being then and there unlawfully, mali-

ciously and traitorously assembled and gathered together, did falsely and traitorously assemble and join themselves together against the said United States, and then and there, with force and arms, did falsely and traitorously, and in a warlike and hostile manner, array and dispose themselves against the said United States, and then and there with force and arms, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said John Fries, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy public war against the said United States, contrary to the duty of his said allegiance and fidelity, against the Constitution, peace and dignity of the said United States, and also against the form of the act of the said United States, in such case made and provided.

WILLIAM RAWLE,
U. S. Attorney Pa. District.

The prisoner having been set to the bar, pleaded *not guilty.*

The petit jury impanneled, consisted of the following gentlemen: William Jolly, City; Samuel Mitchell, Bucks; Richard Leedom, Bucks; Anthony Cuthbert, City; Alexander Fullerton, City; John Singer, City; William Ramsay, Bucks; Samuel Richards, City; Gerardus Wynkoop, Bucks; Joseph Thornton, City; Philip Walter, Northampton; John Rhoad, Northampton.

Some difficulties arose as to the two latter gentlemen being qualified, they being Germans, and not sufficiently understanding the English language: however, it was agreed that any difficulties of that nature might be explained to them, and it was urged that they would understand many of the witnesses better than others, several of those being Germans also, and could not speak English, on which account Mr. Erdman was sworn for interpreter.

Mr. SITGREAVES opened the trial as follows:

Gentlemen of the jury: By the indictment which has been just read to you, you perceive that John Fries the prisoner at the bar, has put himself on trial before you, on an accusation of having committed the greatest offence which can be perpetrated in this, or any other country, and it will devolve on you to determine, according to the evidence which will be produced to you, on the important question of life or death. It is the duty of those that prosecute, to open to you, as clearly as they are able, those principles of law which apply to the offender, and then to state to you the testimony with which the accusation is supported. This duty has devolved upon me, and I hope, while I regard my duty as accuser, I shall do it in such a way as shall do no injustice to the prisoner. However, if I should be incorrect there are sufficient opportunities for me to be corrected by the vigilance which the counsel engaged on behalf of the prisoner will use, and the order which the court will observe. These are sufficient to correct any mis-statements, but I will use my utmost endeavors to be guilty of none.

The prisoner is indicted of the crime of treason. Treason is defined in the Constitution of the United States, section 3, art. 3, in the words following: "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

This crime appears to be limited to two descriptions: the one, levying war against the United States, and the other adhering to its enemies. With respect to the latter branch of the description, there will be no occasion for any explanation, or to call your attention in the least to it, because it is not charged upon the prisoner; he is charged with having committed treason in levying war.

This expression, phraseology, or description, as adopted by our Constitution, is borrowed from a statute of Great Britain, passed in the reign of Edward III., which has, ever since it passed, commanded the veneration and respect of that nation, almost equal with their great charter: It is considered as a great security to their liberties. Indeed the uniform and unanimous consent given to this statute, through a great lapse of time, by the most able writers on law; its never having undergone the least alteration amidst the most severe scrutinies, and its adoption into the Constitution of the United States, without the least amendment, are sufficient encomiums to prove its worth. I shall state to you, as far as is necessary to the present application of that statute, the most able and judicious expositions, but without recurring to a variety of authorities which might be quoted.

The crime of treason, as it has been laid down by those writers, generally allowed to be the most able on law, whose accuracy is unquestionable, is the highest crime that can possibly be committed against the good government of a nation, and a considerable inroad into the liberties of a subject. In discussing this crime, I shall only recur to the notes which I have taken, and my own knowledge of the law; if that statement should be inaccurate, there are sufficient opportunities for amendment in the course of this trial. Treason consists in levying war against the Government of the United States: it may confidently be said not only to consist in joining or aiding the hostile intentions of a foreign enemy; nor is it confined to rebellion in the broad sense in which that word is generally understood; or in the utter subversion of the Government and its fundamental institutions: but it also consists in the raising a military force from among the people for the purpose of attaining any object, with a design of opposing the lawful authority of the Government by dint of arms, in some matter of public concern in which the insurgents have no particular interest distinct from the rest of the community. This is the best description of the crime of treason, as it relates to the matter before you, which I am able to give. A tumultuously raising the people with force, for the purpose of subverting, or opposing the lawful authority of the Government, in which those insurgents have no particular interest distinct from the people at large.

Agreeably to the division made in the definition of treason by Lord Hale, it must consist both in levying war, and in levying war against the Government of the United States. Respecting levying of war, it is to be understood, agreeably to the most approved authorities, that there must be an actual military array. I mention this because I think it proper to be particular in so essential and important an inquiry, and because I think we shall prove to you that this was actually done by the prisoner. Another thing I wish you to bear in mind is, that war may be sufficiently levied against the United States, although no violence be used, and although no battle be fought. It is not necessary that actual violence should take place, to prove the actual waging of war. If the arrangements are made, and the numbers of armed men actually appear, so as to procure the object which they have in view by intimidation, as well as by actual force, that will constitute the offence. It must be war waged against the United States. This is an important distinction. A large assemblage of people may come together; in whatever numbers; however they may be armed or arrayed, or whatever degree of violence they may commit, yet that alone would not constitute treason; the treason must be known; it must be for a public and not a private revenge: it must be avowedly levying war against the United States; if people assemble in this hostile manner only to gratify revenge, or any other purpose independent of war against the United States, it will only amount to a riot; but if it is an object in which the person has no particular interest, this constitutes the offence of treason. There are a variety of instances which might be produced in order to illustrate this definition of the law, but it is not necessary to turn to them. Suffice it to say that it is the intention or end for which an insurrection is raised, which constitutes the crime. This of course you will have in mind when the testimony is gone into.

I will just observe, as applicable to this case, that one instance which is defined, of the crime of treason, is to defeat the operation of the laws of the Government; any insurrection, I will be bold to say, to defeat the execution of the public laws, amounts to treason. Having given you this explanation of treason, so far as I suppose it is connected with the present awful occasion, I shall now proceed to state the amount of evidence we mean to produce, in order to prove that the unhappy prisoner was guilty of that high crime.

It will appear, gentlemen, from the testimony which will be presented to you, that, during the latter months of the year 1798, discords prevailed to an enormous extent throughout a large portion of the counties of Bucks, Northampton, and Montgomery, and that considerable difficulties attended the assessors for the direct tax in the execution of the duties of their assessment. It is not in the nature of this inquiry to explain for what purpose, or by what means, the opposition was made: it is not necessary to say whether the complaints urged were well or ill founded, because it is a settled point that any insurrection for removing public grievances, whether the complaints be real or pretended, amounts to treason, because it is not the mode pointed out by law for obtaining redress. It will then be sufficient to show you that discontents did exist, and that in various townships of those counties: that in several townships, associations of the people were actually formed, in order to prevent the persons charged with the execution of those laws of the United States from performing their duty upon them, and more particularly to prevent the assessors from measuring their houses. This opposition was made at many public township meetings called for the purpose; in many instances resolutions were entered into, and reduced to writing, solemnly forewarning the officers whose duty it was to execute the laws, and these, many times accompanied with threats if they should perform that duty. Not only so, but discontents prevailed to such an height, that even the friends of the Government in that part were completely suppressed by menaces against any who should assist those officers in their duty. Repeated declarations were made, both at public, as well as at private meetings, that if any person should be arrested by the civil authority, such arrests would be followed by the rising of the people, in opposition to that authority, for the purpose of rescuing such arrested prisoners. It will appear to you farther, gentlemen, in the course of evidence, that during those discontents, indefatigable pains were taken by those who were charged with the execution of the laws, to calm the fears, and to remove the misapprehensions of the infatuated people; for this purpose, they read and explained the law to them, and informed them that they were misled into the idea that the law was not in force, for that it actually was; at the same time warning them of the consequences which would flow from opposition; and this was accompanied with promises that even their most capricious wishes would be gratified on their obedience. The favor was in many instances granted, that where any opposition was made to any certain person executing the office of assessor, in some townships, proposals were made for the people to choose for themselves, but notwithstanding this accommodating offer, the opposition continued.

After having shown to you the general extent of this combination and dangerous conspiracy, which existed in all the latitude I have opened to your view, we shall next give in evidence full proof that the consequences were actual opposition and resistance: in some parts, violence was actually used, and the assessors were taken and imprisoned by armed parties; and in others, mobs assembled to compel them, either to deliver up their papers, or to resign their commissions; that, in some instances, they were threatened with bodily harm, so that, in those parts, the obnoxious law did remain unexecuted in consequence of this alarm. Seeing that the state of insurrection and rebellion had arisen to such a height, it became necessary, in order to support the dignity, and, indeed, the very existence of the Government, that some means should be adopted to compel the execution of those laws; and warrants were in consequence issued against certain persons who

had so opposed the laws: these processes being put into the hands of the marshal of the district, were served upon some of them; in some instances, during the execution of that duty the marshal met with insult, and almost with violence; having, however, got nearly the whole of the warrants served, he appointed head-quarters for these prisoners to rendezvous at Bethlehem, where some of them were to enter bail for their appearance in the city, and others were to come to the city, in custody, for trial. It will appear to you that, on the day thus appointed for the prisoners to meet, and when a number of them had actually assembled agreeably to appointment, a number—parties in arms, both horse and foot, more than a hundred men, accoutred with all their military apparatus, commanded, in some instances, by their proper officers—marched to Bethlehem, collected before the house in which were the marshal and prisoners, whom they demanded to be delivered up to them; and, in consequence of refusal, they proceeded to act very little short of actual hostility, so that the marshal deemed it prudent to accede to their demands, and the prisoners were liberated.

This, gentlemen, is the general history of the insurrection. I shall now state to you the part which the unfortunate prisoner at the bar took in those hostile transactions. It will appear that the prisoner is an inhabitant of the township of Lower Milford, in the county of Bucks; that some time in February last, a public meeting was held at the house of one John Kline in that township, to consider, in relation to this house-tax, what was to be done; that at that meeting certain resolutions were entered into, and a paper signed; (we have endeavored to trace this paper, so as to produce it to the court and jury, but have failed;) this paper was signed by fifty-two persons, and committed to the hands of one of their number: John Fries was present at this meeting, and assisted in drawing up the paper, at which time his expressions against this law were extremely violent, and he threatened to shoot one of the assessors, Mr. Foulke, through the legs, if he did proceed to assess the houses. Again, the prisoner, at a vendue, threatened another of the assessors, Mr. S. Clarke, that, if he attempted to go on with the assessments, he should be committed to an old stable, and there fed on rotten corn; we shall further prove that, upon its being intimated by some of them to Mr. Chapman, principal assessor, that if they might choose their own assessors, things would go on quietly, he directed that they should do so; but still they continued in opposition to the law, and would not choose an officer at all. A general meeting was called to read and explain the law to the people, and thus remove any wrong impressions and misapprehensions; the principal assessor was at that meeting; but the rudeness, opposition, and violence, used by the people, prevented him from doing so, which was an evident proof that they did not want to hear the law, and that they understood enough of it to oppose it; thus the benevolent intentions of that meeting were frustrated. We shall farther show you that the assessor of Lower Milford was intimidated so as to decline making the assessments, and that the principal assessor, together with three other assessors, was obliged to go into that township to execute the law; that they proceeded in the execution of their duty during a part of the day of the 5th of March last, without any impediment; that, at eleven o'clock in the morning, Mr. Chapman met, at the house of Jacob Fries, in Lower Milford, with the prisoner, when he, the prisoner, declared his determination not to submit, but to oppose the law, and that, by the next morning, he could raise seven hundred men in opposition to it; that, upon Mr. Chapman telling him that many houses were assessed, the prisoner flew into a violent passion, absolutely declaring that it should soon be in this country as it was in France. We shall farther show you that, at another time, during the same day, the prisoner met with two of the assessors, Mr. Rodrick and Mr. Foulke, whom he warned not to proceed in the execution of their duty, accompanied with threats that, if they did, they would be hurt; and left them in a great rage. Farther; he proceeded to collect parties, with whom he went in search of those men, and attacked them in executing their duty; one of them escaped, but the other he took; but not having got Mr. Rodrick, who appeared to be a particular object of resentment, he let Mr. Foulke go, telling him he would have them again the next day. He told Mr. Clarke, that if he had met with Rodrick, he would not have let him go so easy; and declared to him solemnly and repeatedly, that it was his determination to oppose the laws. We shall farther show you that, after having discharged Foulke, he proceeded to collect a large party in the township, in order to take the assessors the next day. Accordingly, on the day following, a numerous party, to wit, about fifty or sixty, the greatest part of whom were in arms, collected together, and pursued the assessors, and not finding them in that township, pursued them into another, in order, not only to chase them out of the township, but generally to prevent them executing their duty. This party collected, not only many of them in arms, but in military array, with drum and fife, and commanded by this Captain Fries and one Kuyder—Fries himself was armed with a large horse-pistol. Thus equipped, they went to Quakertown, in order to accomplish their purpose, where they found the assessors, two of whom they took, but Rodrick fled. Fries ordered his men to fire at the man who fled, and a piece was snapped, but did not go off. Fries did then compel Foulke to deliver up to them his papers, but not finding in them what they expected, they were returned; but, at the same time, exacting a promise that he, the assessor, should not proceed in the valuation of the houses in Lower Milford. Fries was, in many instances extremely violent against this law, and peremptory in his determination not to submit to it, as will appear by the evidence.

When they left Quakertown, they met with a travelling man who expressed some good will towards the Government, and for that expression they maltreated him very much, and expressed their general dislike to all who supported the same principles. During the time they were at Quakertown, intimation was received that the marshal had taken a number of persons prisoners in consequence of opposing the execution of this law, whereupon a determination was formed among these people to go and effect their rescue; and the people of Milford were generally invited to assist in this business. When they were going, the party halted at the house of John Fries, and then a paper was signed, by which they bound themselves volunteers to go upon the execution of this design. This paper was written by the prisoner at the bar, and signed by him and the rest; therein they engaged to go and rescue the prisoners who had been arrested by the marshal. On the morning of the next day, twenty or more of them met at the House of Conrad Marks, in arms, to go on with their design. John Fries was armed with a sword, and had a feather in his hat. On the road, as they went forward, they were met by young Marks, who told them that they might as well turn about, for that the Northampton people were strong enough to do the business without those from Bucks county. Some were so inclined to do; but at the instance of Fries and some others, the did go forward, and actually proceeded to Bethlehem. Before the arrival of these troops, a party, going on the same business, had stopped at the bridge, a small distance from Bethlehem, where they had been met by a deputation from the marshal, whom he had prevailed on to go and meet them, in order to advise them to return home. They agreed to halt there, and send three of their number to declare to the marshal what was their demand. It was during this period that Fries and his party came up; but it appears that, when they came, Fries took the party actually over the bridge, and that he arranged the toll with the man, and ordered them to proceed. With respect to proof of the proceeding at Bethlehem, it cannot be mistaken; he was there the leading man, and he appears to enjoy the command. With the consent of his people, he demanded the prisoners of the marshal; and when that officer told him that he could not surrender them, except they were taken from him by force, and produced his warrant for taking them, the prisoner then harangued his party out of the house, and explained to them the necessity of using force. And that you should not mistake his design, we will prove to you that he declared, "that was the third day which he had been out on this expedition; that he had had a skirmish the day before, and if the prisoners were not released, he should have another that day. Now, you observe," resumed he, "that force is necessary, but you must obey my orders; we will not go without taking the prisoners, but take my orders, you must not fire first; must be first fired upon; and when I am gone, then you must do as well as you can, as I expect to be the first man that falls." He further declared to the marshal, that they "would fire till a cloud of smoke prevented them seeing one another." And, executing the office of commander of the troops, which, at that time, overawed the marshal and his attendants, he harangued the troops to obey his orders, which they accordingly did, and the marshal was really intimidated to liberate the prisoners; and then the object was accomplished, and the party dispersed, amidst the huzzas of the insurgents. After this affair at Bethlehem, it will be given you in evidence, that the prisoner frequently avowed his opposition to the laws, and justified that outrage; and, when a meeting was afterwards held at Lower Milford to choose assessors, the prisoner refused his assent to the accommodating object of the meeting, and appeared as violent as ever.

These are some of the points we mean to prove before you. I shall, therefore, at present, proceed to introduce our testimony.

William Henry testified, substantially, as follows:

I arrived at Bethlehem on the evening of the 6th of March, 1799. We had heard that there was a party of men would collect, for the purpose of rescuing the prisoners who were there in custody of the marshal; in consequence of that, I went to assist the marshal, and, if possible, prevail on the people to desist. I was one of the judges of the Court of Common Pleas, for the county of Northampton. About ten o'clock on the morning of the 7th, two men, with arms, arrived at the tavern where we were; who, when inquired of by the marshal as to their intention in coming armed, appeared to be diffident about an answer: after first saying that they came upon a shooting frolic, one of them said, they were come in order to see what was best to be done for the country. After that, came in several others, armed and on horseback, two of them in uniform, with swords and pistols. The two first men were placed with the marshal in a separate room, in order to await the issue. At this time a considerable number of people had assembled. The marshal first went and spoke to these men as to their intention; I also walked out for the same purpose, requesting them to withdraw, and not appear in arms in order to obstruct the process of the United States laws. There answered, that they were freemen, and might go where they pleased with their arms. I told them that they ran great risk by appearing in arms for such a purpose as I feared they were come. They came in a number, but I do not know how many particularly, as they mixed among the crowd. We requested them to deliver up their arms, but they refused. I also, at the same time, told one of them, that it would be best for him to surrender himself, and not oppose the process; the others gave me answer, that they had come to accompany their friend, and to see that no injury was done to him. After this, I turned into the lower back room of the house; by this time there were a number more collected round the house, but mostly armed. I do not recollect whether it was before these three men arrived, or not, that the marshal had sent off four men of his posse in order to meet the men with arms who were coming forward; and, after we were up stairs, three men arrived as a deputation from the armed body, making inquiry as to the intention of the marshal in taking these prisoners; with these three

men, the four deputed by the marshal had returned from the armed body that was the other side of the bridge, in order to learn the marshal's object. The marshal assured them of the legality of the process, and reasoned with them as to the consequences of opposition, or threats to him, or preventing him from executing his duty; but I believe he liberated the two men that were first put in confinement, and returned them their guns. During the time that these two men were in confinement, we examined their guns, and found them loaded. I was pretty much in the lower part of the house, backwards, and there was much of the proceedings of these people I did not see, in front of the house; but I endeavored to converse with as many as I knew, informing them of the badness of their conduct, and the consequence of it; but it appeared to be to no effect. About one o'clock, I think, I first saw what was called the main body of this armed force, marching up the street. A party of horse, preceding the foot, came riding up, two abreast; I am not certain whether they had their swords drawn, but I believe they had; and then followed the foot, marching up in Indian (single) file. When they came up, the foot marched twice round the tavern, and placed themselves in front of the house, where they stood some time, drawn up in a single rank; I believe they were riflemen; they continued there till the rescue was effected. During this time, I frequently heard that the prisoners were demanded by them, and they insisted on their release.

Cross-examined.—I did not hear this demand made, but I heard in the house that it had been made; I also heard that they intended to force their passage up stairs. I observed a party coming up stairs, particularly one, whom I did not know, pointing a rifle up the stairs, as though levelling it at some particular person. The people appeared very noisy in the lower part of the house all this time; I frequently heard the cry of "deliver up the prisoners," and it appeared to come from the party at the foot of the stairs. During the affair, I am not certain whether it was previous to this or not, I looked out and saw six or eight men at the foot of the stairs, and the prisoner on the stairs conversing with the marshal; while I was standing there, an old man came running in from the front door, and called for Captain Fries in German, telling him there was his sword (offering it;) I think he called three different times, on which I observed the prisoner wave his hand and tell him to wait, it was not quite time yet; shortly after the prisoners were given up. I was not by to be able to hear the conversation between the marshal and the prisoner.

Fries was going backward and forward among the men, as though he had command, and I saw him marching into the town in front of the footmen.

After the prisoners were delivered up, the principal part of the men marched off.

They did not take the prisoners with them. I heard two or three men in the back room say that they must see the prisoners, and insisted they should be let go before they would leave.

These prisoners were arrested for combinations and misdemeanors. There was, among the company in the lower room, a man who declared himself very violently; he said if the damned stamplers* had only fired a shot, we would have showed what we could do. He really expressed a wish that it had been done. The words were spoken in German.

There were twelve or fourteen of the horse in a military dress, as well as armed. I believe there were none of the foot, except that about ten or twelve had cockades of blue and white, blue and red, &c.

They had shot pouches, particularly the rifle company, and I believe all who had guns. The man who was first disarmed had a powder horn in his pocket; his piece was a common fowling piece, the others were mostly rifles, as far as I could perceive from the window.

I did not count the number, but there appeared about an hundred, or rather above that number. The whole crowd assembled, I think, could not have been less than four hundred.

I think that the marshal had with him for his posse comitatus to arrest these people fourteen or fifteen persons.

I believe there were eighteen or nineteen prisoners.

I understood that releasing the prisoners was the object they had in view, both from themselves and from several persons with whom they had conversed on the subject.

William Barnett.—I was summoned to attend the marshal on the seventh of March at Bethlehem, as one of his posse. I came there about eleven o'clock in the forenoon; I was there but a very little time, when I understood there were some men coming with arms; the marshal then appointed four of us to go and meet them, in order to prevail upon them not to come into the town. We went on about a mile from Bethlehem, and crossed the Lehigh, and there we met a party of horsemen; they were armed. I did not know any of them, but understood they were from Northampton county, near about Millarstown. When we came up to them, we asked them for their commanding officer. They made answer that they had no officers; they were all commanders. We then told them what our errand was— to try to prevail upon them not to go on any farther; but they did not seem to mind it much. We were with them but a very little time, before a company of riflemen came up, who were armed as well as the others. We told them our errand, but they did not seem to mind us. We then returned, and came on with them to the bridge of the Lehigh, where we halted. There we talked with them a great while, but still they wanted to go on. We told them we came from the marshal, and asked them what they wanted by going into Bethlehem with their arms. They said the marshal had two of their men that had come to Bethlehem

* A stampler was explained to be a nick-name given in that county to the friends of Government, originating from their support of the stamp act.

under arms, and had put them under guard, and they wanted them, and they would have those two men set at liberty. As I found that they were determined to go, I asked if they would not allow that if any had done wrong they ought to suffer for it. They agreed that they ought, but they should not be taken to Philadelphia, but have their trial in Northampton county. When we found that they were determined to go on, we agreed that they had better send two or three men over to the marshal, and not to go bodily. This they agreed to, and appointed three men to go, and sent them over.

There was some stipulation that I should return the men safe; they were afraid these three men would be confined also; but we promised them that we would see them safely returned. We then all went over together to the tavern at Bethlehem, where the marshal was. They spoke to him, told him what their business was, and he gave the two men up to them. When they were given up, we went back with them, in order to go to where we had left the remainder of the men. Going down through Bethlehem, we met a party of horsemen, and we stopped them; they were armed; part of them were light-horsemen, and part were other horsemen; they all had swords or some arms or other. The light-horse had their swords drawn. We told them that they had better go back, and not go up into the town; but they seemed very anxious to go up. One of them made answer something like this: "This is the third day that I was out, I had a fight yesterday, and I mean to have another to-day if they do not let the prisoners clear." To the best of my knowledge the prisoner was the man who said so; I never saw the man before, but I took notice of him then. He had a sword. This was a distinct body from those we had left at the bridge; these were others who had come up during the time we were gone. I let them know that the two persons whom they had demanded were liberated; and the three men who went with us told them this also. The horsemen did not wait one moment, but hurried on; they all then marched up town, and formed right in front of the tavern; I returned with them. After they were formed there, I was among them, and talked with them a great deal, but could not do anything with them; if there were ten or twelve that agreed to be moderate, the others would all insist upon it, that they would have the prisoners, all of them. We were there for nearly or quite two hours. This man, whom they called Captain Fries, came out and mentioned to his men that he would now have the prisoners, if any of them would go into the house with him; he had been in backward and forward several times. He said he should go foremost. He told them that he would ask the favor of them, that they were none of them to fire first, if they went in. He mentioned to them likewise, that there were some armed men on the stairs belonging to the marshal. I did not expect he would go in; I was talking to some men there, when I looked round and saw some of the men at the door; he said he would go foremost; he signified, talking in German, that he should get a blow or a stroke; the nearest translation was, "I shall get it." I looking round, saw the men going in at the door, and I followed them in; they were armed men. I did not see the prisoner after he had spoken those words. I got in, between the men and the stairs, at the foot of the stairs; they halted there, I got in there, in order to keep them back from going up stairs; I was there but a few minutes, when I saw the prisoners coming down stairs.

Captain Fries said, when he told the men to come forward, that if he did get it, they should not be scared; they then must do as well as they could; he said he expected to get some stroke; he told they must take care of themselves. I do not recollect that he said they should shoot, yet I recollect something he said; I think it was "slay, strike, or do as well as you can." The prisoner at the bar went before, and he rather wished the men to follow him.

Cross-examined.—When I went out at the request of the marshal, it was to speak to these people, and they told me their object was to obtain the liberation of the two men belonging to their party.

The crowd began to disperse immediately on the release of the prisoners.

John Barnett.—On the 7th of March, in the morning early, just as I got up, the deputy marshal handed me a summons, to be at Bethlehem at 10 o'clock, to aid and assist the marshal in executing the laws of the United States. About 10 o'clock I arrived at Bethlehem. I was there but a very short time, when somebody came in, and said he had met twenty men at one place, ten at another, &c., walking towards a tavern, on the road, about three or four miles from Bethlehem; I cannot recollect its name. The marshal and others agreed that they thought it would be best to send three or four men to meet them, and to stop them on the road; it was then to be decided who should go. I mentioned that I thought John Mohollan and William Barnett could do more with them than anybody else. They were agreed upon, as was Christian Roth (or Rote) and another, but Isaac Hatsel went in his place. This was conformably to agreement, two Federalists and two anti-Federalists. They went and met them; I remained at the house. They were not gone very long, indeed I think it was just as they were getting upon their horses; there were two men, arrayed, and with arms; one had a rifle, and the other a smooth-bore piece. When they were come into the yard, the marshal went down into the yard to them, and talked to them; what he talked to them I did not hear. However, he took their arms away from them, and carried them up stairs, and put them by themselves. Directly after that, there were five or six horsemen came. The marshal and Judge Henry went down to meet them; they asked them what they came there for; they said they only came there to be Shankwyler's bail; and Judge Henry then asked them what they did with their arms? They said they did not mean any harm with them. They then got off their horses, and went into a room with the judge

and the marshal; what they said there I do not know, for I did not hear them. Presently after, there came up a troop of horse, and behind them there were two companies of riflemen. They marched up right into the yard, and formed before the door of the tavern. There were about fifty riflemen, and the light-horse had their swords drawn. On a rough calculation, I suppose there were one hundred and thirty or one hundred and forty armed men, and about sixteen or seventeen of the marshal's posse.

After they had formed a line in the yard about fifteen or twenty minutes, Captain Jarret arrived, when they gave three huzzas. He then went into the house and talked with the marshal; the marshal requested him to get the men to withdraw. He professed he would. He had arrived from Philadelphia, whither he had been to give bail. After this, Jarrett staid at the tavern about two hours. The men kept regular order, and never separated. The marshal appointed four of us, me and three others, to keep the guard of the stairs, armed with pistols, two at the bottom and two at the head. I served my time, and the second time I was ordered on guard by Captain Henry Snyder; I staid on the platform at the turn of the stairs, when Fries, the prisoner, came up to me, and wanted to go up stairs. I told him that he could not be permitted to go up stairs without the marshal's leave. I then asked him what he wanted? He answered that he wanted to see the marshal. I told him that I expected he could see him, and told some men at the head of the stairs to call the marshal out of the room. He came out, and I then told him these two gentlemen wanted to talk to him. He said I should let them pass. As Fries was the first man, I let him pass on between me and the other guard. The other man wanted to go up, but I told him that one at a time was enough, and that when the other had done, he would be permitted to talk to him too. Fries then went up and told the marshal what he came for; he replied that he was come for the release of the prisoners. I stood close by them when they were talking. The marshal made answer that he could not give them up to him; he then told the marshal that he would have them. Well, then, said the marshal, you must get them as well as you can; for he said it was out of his power to deliver them up; he dared not do it. Fries then told the marshal that he had a skirmish yesterday, and he expected to have another to-day; he then said to the marshal, "as for you, marshal, I will vouch that none of my men will hurt you, but as for the other company I will not."

With that, both of them marched off. I remained on guard. A little while after this, I saw the men coming in at the door, and they got into the entry, with arms. I did not know one of those who came in except Fries; he returned with those armed men. He had a sword in his hand, but I think it was in its scabbard. When they got into the entry, they were pressed upon by the posse, who soon got them clean out of the door. I then got off guard. The language of the men was, that they would have the prisoners. I could not hear many of their expressions, because I was chiefly up stairs; but I heard them say they would not leave the ground till they had the prisoners. The marshal at this time had gone back into the room. Before the prisoners were released, I was relieved. When they made the second attempt, I was up stairs, looking out of the window. These prisoners were at this time up stairs in a room by themselves. About sixteen or eighteen prisoners were there. I believe there was not any kind of acquaintance or friendship between Fries and any of the prisoners.

The prisoners said they did not wish to be rescued by those people; they said that they knew none of those people that were before the door. If they had done anything wrong, they said they were willing to go anywhere to take their trials. The Minister and the Lehigh people were all there.

Cross-examination.—I saw them point their guns toward the window often enough. No violence offered to any person, besides what was offered to the marshal.

Christian Winters.—I was summoned on the 7th of March to go up to Bethlehem, and I went accordingly; when I came there, which was about 11 or 12 o'clock—about the middle of the day—the first man that I saw came there armed, was one Keiser; another, I think his name was Paul, came with him to the tavern; the marshal went out, and brought them into the house, and took them up stairs: I was on guard at that time, and, with another, I was set to stand guard by them. (The rest of the testimony of this witness was similar to that of the preceding.)

Christian Roths.—On the 7th of March, I was summoned to go to Bethlehem, but did not know what it was for. About 11 o'clock I got to Bethlehem; when I came, Mr. Eyerly came to me, and told me some men were coming there to rescue the prisoners; I thought it not possible but he told me it was certain. When we had been there about three hours, there came two men on horseback, whereupon Mr. Marshal, myself, and Mr. Philip Sheitz went down and asked them what they were about. They told us they were informed that there were a number of men met there to-day, so they said they came there to see how they came on: they did not say what they heard they were to meet for. We took them and put them into the house under guard, and took their arms from them. I then thought there was something in what Mr. Eyerly had mentioned to me. I then made an observation to Mr. Eyerly if he did not think it proper that one or two men should go and prevent these people coming. Mr. Eyerly told the marshal of it and he thought it would be proper that some men should go. I agreed that if no one else would go, I would go by myself. I do not know who spoke to the others; but I, Judge Mohollan, Major Barnett, and ——, went out. We met them within a mile of Bethlehem. I did not know a single man of them; but Judge Mohollan and Major Barnett spoke to them first; but I did not understand what they said. I went farther back, to the rear: I said to

them, "What in the world are you about, men? you will bring yourselves into great trouble." One of them said, "We don't know you." I mentioned, "if you know me or not, you will thank me for it." I said, "If you do not do as I advise you, you will be sorry for twenty years after this;" so there was one of them that levelled his gun at me: said I, "Little man, consider what you are about; don't be too much in a hurry:" then some of his comrades pushed him back. Then that man hallooed out, "March on; don't mind this, people." I do not know his name. They then marched on to the bridge, and there we stopped them again. They then agreed amongst themselves that they would send three men with us to the marshal, to see if they could get the two prisoners we took at first, liberated, and gave their honor that none of them should come over the bridge with arms. We then went with these three men to the tavern at Bethlehem. They then went to the marshal, and agreed with him, and the two prisoners were discharged; but he set down their names. I do not recollect their names. When these two men were discharged, we went to go back with them again; but when we came to the lower end of Bethlehem, there was that company and another coming on, and there was no stopping them again. The bridge is about half a mile from Bethlehem. These two men went with us, I think; but I am not sure. I endeavored to stop them, to reason with them, but they would not: and I then told them if they were determined not to hear, they might do as they pleased. As I came back to Bethlehem, I went up stairs to Mr. Eyerly and the marshal. The men paraded before the tavern, and there I think they were for two hours. I suppose one hundred and twenty men, or upwards, were drawn up. I saw those two men that were first kept prisoners mix along with these people. The light horse were armed, and with their uniforms. They had not their swords drawn till they came near to the tavern; then they drew their swords, a great number of them. Before we started from the bridge, we asked them again what they were about. They told us that they were informed that they had taken a number of prisoners, and that they would take them to Philadelphia, and put them in jail there, and no bail be taken for them. We asked them what prisoners they meant. They mentioned one name only that I recollect, which was one Shankwyler. They mentioned that they would not suffer Shankwyler to be put to jail in Philadelphia; they mentioned that they would give bail ten double for him, or that they might put him in jail in our own county, and try him in our own county. I saw one Schwartz come up into the room where the marshal was.

No one abused, threatened, or insulted Mr. Eyerly that I know of. I heard no threats against any one.

Colonel Nicholas, the Marshal.—Some time between the 20th and 26th of February, the warrants I now hold in my hand were given to me by the attorney of the district, with orders for me to go to Northampton county to execute them. I set out on the 26th, and after serving some subpœnas on the road, in order to get some evidence, I got to Nazareth on the first of March; next morning, Mr. Eyerman and myself went into Lehigh township to serve some warrants upon some persons who had given their opposition to the house-tax law. I think we got twelve of them that day; the others were not to be found. I think there were five of them; however they came in afterwards. We then returned to Bethlehem, and there met with Colonel Balliott. We went then to Macungy township, and there we met with no difficulty till we went to the house of George Syder; I had a subpœna on him: he and his wife insulted us very much; his wife began abusing us first, and he came ont with a club, and would by no means be persuaded to receive it. I suppose not understanding it: I gave it to a Mr. Schwartz, a neighbor, who undertook to deliver it to him. We then proceeded to Millarstown, a few miles farther: on the way we stopped at the house of the Rev. Mr. Buskirk, where we left our horses, and walked into the town, to the house of George Shaeffer, to serve a warrant on him; but were informed that he was not in town. We returned to the tavern, about the centre of the town, and there we saw a considerable number of people assembled. Mr. Eyerly and myself walked over to Shankwyler. As we walked out, many people ran after us, and many ran past us, and getting into the house, filled the long room. There appeared to be about fifty men. Near the house in which Shankwyler lived, we concluded it was bad policy to ask for him, for by that means it was not likely we should find him. And therefore, as Colonel Balliott knew him, I got him to point him out to me; but observing me, he withdrew into the crowd; I followed him, and laid hold on him, and told him he was my prisoner, in the name of the United States. I told him I was the Marshal of the United States for the Pennsylvania district. He retreated towards his barn. He afterwards called out that he would not hurt the marshal, but Eyerly and Balliott were damned rascals: after this the people called out to each other *Schlaget! schlaget!* (strike! strike!) This seemed to be the general voice of the people. David Shaeffer seemed to be a prominent character.

I told them the consequence of their attempting to strike; I had a pair of pistols, and finding the danger we were in, I pulled open the buttons of my great coat, that I might, if necessary, get a ready gripe at them: whether they saw them or not, I cannot say, but when they found that I was determined not to suffer these people to be abused, they were then a little quiet: they, however, pulled the cockade out of Mr. Balliott's hat, and I believe would have done more violence to him, had they dared. I called on Shankwyler to go with me to Bethlehem, and thence to Philadelphia; but he swore he would not: I told him the consequence of resisting the authority of the United States, that it would be ruin to him; he declared and swore he would resist; he would not submit, be the consequence what it might. I told him it would ruin his interest and family; he said he would do it, if it

was to the destruction of his property and children. However, he finally agreed to meet me at Bethlehem, but never promised to submit, or surrender himself as prisoner. He spoke a good deal about the stamp act, and the house tax; that seemed to be the bone of contention, and he said he had fought against it, and would not submit to it now; I told him he appeared to be too young to have fought on either side during the war: he then said his father had; he then added that there were none in favor of those laws but Tories, and officers of Government. I told him that, as to Tory, that could not apply to me; that I had had a share in the Revolution; and that I was as fond of liberty as any of them. We came away, and as we came out, Mr. Eyerly and Mr. Balliott came out of the door, they huzzaed for liberty: I told them that I should join them in that, if they would huzza for liberty of the right kind; but this was licentious liberty. We then went with a constable to arrest Adam Stephan, Herman Hartman, and Daniel Every. When I returned, I was informed that the rescue of the prisoners at Bethlehem was intended. This was on the 6th of March. I could scarcely conceive it possible; I thought it was somebody for his own diversion had raised it merely to alarm us, until we got to Bethlehem, where we got that night. There we were informed that the report was serious, and that it would be attempted by a body of armed men. On which I consulted with Judge Henry, Mr. Balliott, Mr. Eyerly, Mr. Horsefield, and General Brown. I had taken a bond of the Lehigh people, with sureties for their appearance. I sent Mr. Weed over the mountain to arrest Ireman, the minister, and John Fox, which he did. Seeing this matter very serious and important, I requested General Brown to remain at Bethlehem, as he had very great influence in that county: he said that he was so near home, that he should go home, as he had been so long from his family. I then asked him to return in the morning, but he seemed to think that there was no necessity for it, and did not. I then consulted what steps it would be necessary to take; I had seen an attorney, and told him I was ordered to call a *posse comitatus* in case of necessity, and also that I was ordered that they should not be an armed force; I then spoke to Judge Henry expecting that he could call out armed men, but he told me he could not, for he had received similar instructions. We then concluded to call about twenty men. He called this posse from the neighborhood of Bethlehem and Easton; about eighteen of them came in. About ten or eleven o'clock two men riding into the yard, dismounted, and placed themselves opposite the door, by the side of each other; one of them had a long smooth-bore gun, and the other a rifle. Some people in the house went out to speak to them, and asked them what brought them there: they seemed to be at a loss for an answer; I think one of them said they had come out on a shooting frolic. I then asked them what they meant to shoot: they did not know, nor could they explain the object of their coming. I asked them what they meant to do: one of them said they meant to do what was best for the country. I then supposed that they would all come in by straggling parties, and therefore thought it was the best way of making the business easy, to lead them into the house, which I did, and put their arms into the garret. Shortly after, three horsemen, armed, and, I think, in uniform, came into the yard with Shankwyler: I went and spoke to them, some went with me. I asked Shankwyler if he was come to deliver himself up; he answered no. I asked him what he came for, if he did not come to surrender himself; he answered that he came to see his partner: on farther inquiry, I found he meant his accuser.

By this time the people were collecting very fast, and some persons mentioned that there was an armed force down by the bridge. On consulting with the gentlemen who were with me, it was agreed that a few men should be sent to speak to them, and warn them of the danger they were in, if they persisted in the measure which we supposed they intended. It was accordingly agreed that four gentlemen should go, which they did, and in a little time returned, with three of their force, as a deputation from them to speak to me. I asked them what was meant by this armed force, and what they intended by it. They answered me that they wanted to prevent my taking the prisoners to Philadelphia. I told them that that could not be, nor must it be attempted; they had much better go back, and tell the people to go to their respective homes. I think they asked me particularly for the two men who had first been made prisoners. I forget whether I gave them up then, or some short time after; however, they were given up, and their guns were given up to them; they were both loaded, and one of them was putting a new flint into his gun in the yard before I went out to speak to them. The same gentlemen who went down to speak to them at the bridge, went down to them again, and, a short time afterward, we observed that they were coming up the street in force, Mr. Mohollan riding with the foremost of them, and speaking to them: the horsemen, such as had swords, had them drawn: the infantry marched with trailed arms. The prisoner at the bar was at the head of the infantry, with his sword drawn: the horse marched into the yard, and formed in front of the house; the infantry marched round the house, and the captain, with the leading file, came in at the upper gate. I had a great deal of conversation with different persons among them, who seemed to take a lead. They were all strangers to me; I told them the consequences of their attempting to rescue the prisoners; I told them they might rest assured that things of this kind would be severely punished by the Government; that it would be considered a high offence, and that every insult offered to me, would be an insult to the United States. I had a good deal of conversation with the prisoner at the bar, without knowing that he was Captain Fries till he made himself known to me. I remonstrated strongly against the measures, and told them the consequence, but they seemed regardless of it, and seemed determined that I should give them up. They spoke generally of the prisoners. During this conversation he was without his sword. The substance of the conversation was, he demanded of me the prisoners; I refused to give them up, and told him the consequences of his demands. On his still insisting, I told him that he and those about him would be severely punished for this conduct; that he would surely be hanged. He said that they could not be punished; he said something to the effect that the Government was not strong enough to hang him, for that if the troops were brought out, they would join him. His reason was, that he was opposed to those laws—the alien law, the stamp act, and the house-tax law—and said that they were unconstitutional. He also spoke of bringing people charged with crimes to Philadelphia to be tried as an oppressive thing; they had no objection, he said, to be tried in their own courts, and by their own people. We parted, and met in the crowd two or three times, for the house was much crowded; he still demanded of me the prisoners; I told him that I could not give them up; that I was commanded to bring them to Philadelphia; he insisted upon having them, and I that he should not. He then went and talked to his people, and came to me again. He told me that if I did not give them up, he would not answer for the consequences; he told me that he would not hurt me; he was the oldest captain in the rank, but he would not answer for them that were with me; that he took command of the whole by rank. By this time Captain Jarrett came in, and there was much noise and huzzaing. I was told that this noise was on account of the arrival of Captain Jarrett; I wished him pointed out to me in confidence, that, as he had come to submit to the laws, he would be able to persuade others to do the same. He was shown to me; he had a pair of pistols in his hand. He showed me that he had entered into recognisance for his appearance. I then begged him to use his influence in persuading the people to disperse, and go to their respective homes, and told him what would be the consequence if they did not. His answer was that he had no influence; that he could do nothing. After this, I consulted with Judge Henry and others as to what was best to be done. It seemed to be their opinion that I had better submit, and give up the prisoners. I told them that I would not do it; but that I would immediately march the prisoners to Philadelphia, and if the armed mob thought proper to take them from me they might; it would then be their act and not mine. I went to them and told them to prepare for march immediately, for that we would set off to Philadelphia. The Lehigh prisoners said that that they would not do so; that they would not expose themselves to so much danger; but, if I would suffer them to go to their homes, they would meet me in Philadelphia on the Monday or Tuesday following. I met Mr. Fries about the foot of the stairs, and he still persisted in his demand for the prisoners; that I must give them up.

Cross-examination.—I do not think he had a sword at that moment. I refused, and went into the back room, and a person whom I did not know, told me, that if I did not give them up, I should not be hurt, but the lives of Balliott, Eyerly, and Henry, were in danger. This was not an armed man. I did not like to expose the lives of those men, so I gave up the prisoners. Fries came in directly, and said I had not given up Ireman, the minister. I told him I had; he then went out, and came in again, and said he was without. He then mounted and went off. I did apprehend that the lives of those gentlemen would be in danger if I refused the prisoners.

PHILIP SCHLAUGH.—When I was at Bethlehem, which I expect was the 7th of March, the first I saw was that the company was ordered in rank, and when that was done, this Fries was in the entry of the house, where he was speaking loud. I inquired who that was; they said it was Captain Fries. He said they who were the greatest Tories in the last war, were the head leaders now; then I went out of the house, and he went up to the marshal, and when he came out again, he went up to his company and told them. "Well, brothers, I went up to the marshal, and asked him about the prisoners, and told him I would have the prisoners, but the marshal told me he dare not give them up willingly; I tell you brothers, we have to pass four or five sentries, but I beg you not to fire first on them, till they first fire upon us; I shall be the foremost man; I shall go on before you, and I expect I shall get the first blow." Then he turned himself round. Mr. Mulhollan and others begged him that he would not go on in this matter; they would rather go and speak to the marshal that he should deliver up the prisoners willingly, if they would absolutely have them.

The men, when he told them this, followed him. He then said to them. "You must not fire first; but if they do fire upon you, then I will order you to fire too, and help yourselves as well as you can." I did not wait till the prisoners were released, for when I heard this, I thought there was going to be warm work, so I got upon my horse, and rode off to Easton as fast as I could.

JOSEPH HORSEFIELD, Esq.—I live in Bethlehem; am a justice of the peace there, and was there on the 7th of March. Shortly before last general election, the spirit of discontent and opposition was sensibly felt in the county of Northampton; there were different meetings called in different parts of the county; among others, I was informed there was one at which the militia officers were particularly to attend, which I understood was to prepare a ticket for the election. At that meeting, sundry resolutions were passed, which appeared in public prints; among others, one was that petitions should be formed to obtain a repeal of the alien and sedition laws, and the land-tax act. I was informed that the captains of the militia companies were to be served with a copy of each of these petitions; I was likewise informed that this was done, and a five-penny-bit each paid freely for a copy, though the Germans love their money so well. I think the people were told that the petitions merely contained a request for the repeal of the house and land-tax law. I have seen none of them. On the election day, the people

pretty generally collected, and, at least in the district where I had a right to vote, the spirit of opposition against the measures of Government was so universal, that a friend of Government, by saying one word in favor of it, was ready to be abused; and I understood it was so in every election district in the county; and the county in general gloried that they had gained the day. Nothing material occurred, to my knowledge, from that time till the marshal arrived there.

The spirit of opposition which had begun before the election, daily increased before the marshal arrived. The marshal arrived at Bethlehem about the 3d of March. I, having some personal acquaintance with that gentleman, waited on him, when he told me he was sent to the county on business for the United States, and desired me to inform him where several persons resided, against whom he had precepts from the district judge. I acquainted him. He then went to Nazareth, and returned again about the 5th, telling me he had summoned a number of persons in Lehigh township, and that they were to be at Bethlehem on the 7th. On the 6th, I was informed he had returned from Millerstown, and on the 7th in the morning I went up to town, when he told me that he expected there would be some disturbance that day, and also told me that he had issued summonses for the *posse comitatus*. Between 10 and 11 o'clock the posse came; I think they were about fourteen in number. A considerable number of people from the neighborhood of Bethlehem had collected unarmed. Mr. Dixon arrived from Emaus about 11 o'clock, and informed the marshal that, on his way, he met with a number of people collected at a tavern called Reiter's, in arms, both horsemen and footmen, about six miles from Bethlehem, and that he met a number on the road, partly armed, partly unarmed. About half past eleven, two men arrived at Bethlehem armed, from that quarter; they were disarmed, and sent up stairs into a room; about the same time a number of persons arrived from Lehigh township, who were also sent up stairs by the marshal in a room by themselves; they were about eleven in number. I was present when Mr. Eyerly spoke to these prisoners, telling them that an armed force was formed with intention to rescue them; the prisoners answered that they by no means wished it; that they would submit to go with the marshal rather than be rescued. In about an hour, I was looking out of the window up stairs, and saw riding into the yard a number of horsemen, besides some footmen; I said to the marshal I thought it was best for us now to go down and see these people. I went down and asked one of them what was his name; he answered Daniel Shaeffer. He had a sword at his side, and two pistols; next to him, on horseback, was Henry Shankwyler; next to him was another horseman accoutred in the same manner, whose name was Philip Daesch; there were also John Dillinger and Jacob Cline, not in uniform but with swords in the scabbard. I asked them what they wanted: we are all civil people, and have no arms, was my observation to them. Dillinger, who seemed to speak for them, said that yesterday the marshal had taken Shankwyler, and some other of their neighbors, prisoners; that they were come to see Shankwyler's partner (accuser). The marshal told them that the United States was the accuser of Mr. Shankwyler. Dillinger said he thought it was not right that he should be taken to Philadelphia. The marshal said that the judge had ordered it so. I told him that I thought they were unacquainted with the Government of the United States, and I thought they were in a very critical and dangerous situation; that the United States in less than twenty days could muster 10,000 men, which power I thought they could not withstand, and that it was best for them to surrender the prisoners to the marshal, and go home. They said that Shankwyler and the others were their neighbors, and that they would wait and see what should become of them. They did not mention the other names. I asked whether any more armed men would be there; Jacob Cline answered, fifty more. With that we went into the house. After dinner the people collected very fast, and Dillinger began again to speak in behalf of Shankwyler. The marshal told him it could not be otherwise, go he must; Shankwyler answered that he had a family to take care of, and that he would not go. With this the marshal and myself walked up stairs, and there saw a great number of armed people round the house, I think one hundred and twenty or thirty, and about two hundred and fifty unarmed. I suggested to the marshal that my suspicions were very gloomy; that I doubted whether he would succeed in taking off the prisoners, for I had quietly heard among the people that were in the house, and out of doors, that nothing should satisfy them but the delivery of the prisoners: in front of the house was drawn up a number of men armed. I went up stairs, and there I perceived, several times, guns pointed up to the window of the second story, at which I began to feel very disagreeable. Mr. Eyerly, Mr. Balliot, Mr. Henry, and the others, were occasionally at the windows, though I do not recollect Eyerly being at the window, but the others were: I walked down stairs, and there saw men armed close before the door, pressing in; I pressed through them, and heard two men say if Henry, and that damned Eyerly, and that damned pot-gutted Balliott were there, they would tear them to pieces; this man did not attempt to come into the house. I thought this was bad news, and I walked back again, and proceeded my way up stairs, and desired Mr. Levering (the tavern-keeper) to close the bar, thinking there was madness enough without stimulating it, which was immediately done. I desired the marshal not to protract the delivery of the prisoners to the law. Mr. Mohollan and several others there pushed them back, but just then I heard some of the officers say, "Boys, in the ranks! in the ranks!"

I looked out of the window again up stairs, and there I saw a second pressure to come in at the door; some of the men who were in the ranks, thumped their guns upon the ground, and jumped, pronouncing some unintelligible shrieks, savage-like shrieks. I begged the marshal, for God's sake, to deliver up those men up stairs, for the rescue was perfect, in my opinion: the closing of the men would be only butchering, and I had no doubt the Government of the United States would not let its dignity be trampled upon in this way. The marshal still continued to hesitate. By this time a number of persons had got into the house, adorned with large three-colored French cockades. The posse staid up stairs at this time: I then worked my way down stairs again, in order to be ready for a jump. By this time I understood that the prisoners were delivered. After the prisoners were gone about ten minutes, there was not a single armed man in, or about the house: some of the neighbors who had collected were still there, some of whom were approving, and others disapproving of the conduct of the insurgents, but in my opinion the majority were approving.

I never saw the prisoner till I came down to this place, but I frequently heard the name of Captain Fries called.

Mr. Balliott looked out of the window, but stepped back again pretty quick, afraid of the muzzles of the guns.

John Mohollan, Esq., after describing the preliminary proceedings to the same effect as the preceding witnesses, proceeded:

Having met with those horsemen before we came back to the bridge, we returned with them, and all made a halt in the yard. I spoke all I could to dissuade them from the purpose about which they came, but all to no purpose. I had no answer that I could understand, for they generally spoke in German or broken English, which I could not understand. I always understood, generally, that they wanted the prisoners, and that they wished to give in security, and let them be tried in the county: that if they had done anything that was wrong, it was right they should suffer, but that it was not right to take them to Philadelphia. I heard Major Barnett say this, who interpreted what they said in German. After being a considerable time engaged with people as actively as I could, but it appeared to be but to little purpose, I then went up stairs with a view to take something; as I was returning the stairs were so crowded I could not easily get down. Coming down, I saw a person whom I understood to be Captain Fries, and the marshal standing talking to him. I believe it was the prisoner at the bar. I heard them talk a few words: the marshal said that they were not doing right, and that they must suffer: but I cannot recollect anything particularly that was said, but I observed that he often made a demand of the prisoners, but that he should not be hurt; that he would be answerable for himself and the company, that none of his men should hurt him that day, but that he would not be answerable for any others that did not belong to his company. I think he repeated this twice. I was there but a few minutes. I made some observations to the men, advising them to consider what they were about, for I considered it dangerous and very wrong to proceed in this way. At this time there was a noise in the entry: I was afraid something had happened, so I went down, but I do not recollect seeing Fries the whole day afterwards. There was a great deal said, but none of them spoke to me in English.

Jacob Eyerly.—As to what happened on the seventh of March, I am not able to say much. I was out with the marshal the day before, when he served the process. As we heard that the rescue was intended, it was agreed to send express to Easton, in order to obtain the posse to aid him in the execution of his duty: they accordingly arrived between ten and eleven o'clock, to the number of fifteen or sixteen. Mr. Dixon of Emaus, told us that he had seen about twenty armed men at Reiter's tavern, and some at another tavern, besides some on the road, and he understood from them that they were coming to rescue the prisoners. It was then agreed to take those prisoners, who had surrendered, up stairs. There were a number of people now collected from the neighborhood, and then it was agreed to send the deputation to meet the armed men. About that time I went down stairs into the back room, and there I saw those two men whose arms had been taken from them: I did not see them come in. I then went up stairs again; this was the last time I went down stairs, till after the prisoners were released. I then saw those three men come with Shankwyler. I did not hear what passed, but saw Mr. Horsefield and Judge Henry go to them. Sometime afterwards, I saw an armed force coming in, a great many on horseback, and many footmen with muskets on their shoulders: the horsemen had their swords drawn. The greatest part of those on horseback came from Bucks county. Afterwards, the marshal came up stairs and said that they were determined to have the prisoners, and he believed that Mr. Balliott and myself would be in danger of our lives if we went out of the house, and then desired me to undertake to guard the stairs, and told me to give orders that if anybody would come up with force, they should shoot them. I placed the guard on the stairs; at first there were but two. Some of the posse were at this time below talking to the people. After some time the guard told me that they had got violent, and threatened to come up stairs with violence, and requested of me to double the guard, which I did. As I was in the room, I looked out of the window and saw a company of riflemen, all with three-colored cockades, marching Indian file round the house: I counted them; there were forty-two in that company: another person besides myself was counting them, but I do not recollect who it was, though I rather think it was Mr. Balliott: they marched twice round the House. Another time when I was walking about the room, a person who was along with me, I do not recollect who, told me that they were pointing their guns up to the window, and that he was sure it was dangerous for me to show myself at the window.

There is not the least doubt upon my mind, from what I heard, and from what I saw, and from the marshal's testimony, that if I had gone to any place where they could have done it, they would have shot me; because the people in general ap-

peared to be in such a rage that there was no reason in them.

I abstained from showing myself at the window, or amongst the people, as much as possible. There was nothing particular that I saw, except at one time when I was in the room, I heard a terrible huzza: this was in the afternoon. On this I went to the window to see what produced this noise, and I saw that Captain Jarrett had arrived: he had just dismounted his horse, and had his pistols in his hand, and was walking up toward the stairs. I did not remain long at the window, but just looked out and saw him come in, and shortly after he came up into the room where I was; he had not his pistols with him then: I had that moment received a letter from Mr. Rawle, attorney of the district, that Mr. Jarrett had surrendered himself and given bail, and that he declared he was a friend to Government. I then said to him, "If you are a friend to Government, as you profess to be, you ought to go down and tell your people to desist:" to which he made no reply at all. He walked about in the room for some time, and then went down stairs. I did not see anything more till the prisoners were released. The only time I saw Mr. Fries, the prisoner, was a few minutes before the prisoners were delivered up. I walked out of the room, and saw Mr. Fries upon the head of the stairs, speaking with the marshal: shortly after, the prisoners were requested to go down; but the minister, staying a little while up in the room, there was a call made for him particularly, and therefore I went and requested him to go down. Shortly after, the armed men went off. I looked out of the window, and saw Mr. Jarrett parading his light-horse in rank before the door. He then gave orders to march, and they went off.

That was the only time I saw the prisoner during the day.

I was one of the Commissioners appointed to carry into execution two acts of Congress; one for assessing houses, and the other for laying a direct tax.

After I had received my commission, which was some time in August, 1798, I had received a letter from the Secretary of the Treasury, requesting me to take some pains to find out suitable characters to serve as assessors. I did, in consequence of that, write some letters to some of my friends, in the counties of Northampton, Luzerne, and Wayne, which constituted my division: in Wayne and Luzerne, I found no difficulties whatever, but received a number of applications sufficient, and accompanied with recommendations. In Northampton county I was not so successful; I had but two recommendations from that county; it was necessary for me, from the best information which I could obtain, to endeavor to find men of suitable characters in each township; and likewise to get a number of blank commissions, in case some of those appointed should refuse to accept the office. I received information at Reading, at the time the Board of Commissioners met, from the Commissioner in Bucks, that he had received information from a gentleman in Philadelphia, (Mr. Chapman,) that he had travelled through a great part of Northampton county, and that, in every tavern where he stopped, this tax law was the general topic of conversation, and that great pains were taken to find out who the persons were that were friends of the Government so much as to be assessors, in order to persuade them not to accept of the appointment. Although I could not believe it was the case at the time, yet I found it was the case afterwards.

Agreeably to my duty, I gave notice to the assessors to meet me at a certain place. I should have first said that I appointed the assessors agreeably to the best information I could collect; I took one man from each township, such as was thought qualified for the business. I sent them their commissions, and with them notices to meet me at a time and place appointed in order to receive from me their instructions.

I appointed a meeting of the assessors of the third district of Nazareth, on the third Thursday in November; two of them did not attend, and some of the others who did attend begged to be excused from serving. I asked their reason, and told them I could not very well excuse them; they told me that the people in their different townships were very much opposed to the law; that they thought it was dangerous for them to accept of it. I found that they, as well as the people, had a wrong idea about the law; and I was so happy on that day as to prevail upon all those that wished to be excused, accepting the appointment, upon explaining the law to them, to accept it. The next day I met the assessors of the second district at Allentown, where all attended but one. I had the same difficulty there as at the other place, and it was not without much difficulty that those who did appear, were persuaded to accept the appointment. I then left the blank commissions with Mr. Balliott, and requested him to appoint some person in the room of Mr. Horne, who had refused. The Monday following I met the assessors of the other district at Chestnut Hill township. Previous to that, I had seen Mr. Kearne, who was the assessor appointed at Easton; when I mentioned to him that he was appointed an assessor, he told me that it would not suit him to accept of it. I requested of him that he might name some suitable person, and qualified for it, and I would be willing to accept him. He mentioned Jacob Snyder, and told me he would notify Mr. Snyder to meet me with the rest. When I came there, two of the assessors did not appear, and one from Hamilton did not appear willing to accept of it, but, after a great deal of explaining and persuading, he was prevailed upon. Just as we were going, Snyder came; he told me that he had received his notice, and that he was willing to accept it; that the people were very much opposed to the law, and he did not very well understand it himself; but he thought he would endeavor to get some information; and that when he came there, the information he received was such, that he was determined to go after me, and accept of the appointment, if he were to ride fifty miles in order to accept of it, for that he had been

wrong informed about the law. I then went up to Wayne county, where I had no difficulty, except that one assessor told me that he was persuaded with difficulty to accept of the appointment. As I was going to Luzerne county, the assessor from Hamilton township, (Nicholas Michael,) came after me, and told me that he had been obliged to fly from his house in the night to save his life, and begged of me to accept of his resignation; I told him I could not accept of it, but that I would see perfect justice done. At my request he went with me to Easton, where we went to see Mr. Sitgreaves, attorney of the district; but not finding him at home, we went to Judge Trail, in order to take his deposition. He begged that I would grant the favor for him to consider of it till the next morning; I did, and next morning he came to me and begged me, "Mr. Eyerly, for God's sake, put me to jail, so that I may be secure of my life, for if I inform against these people, I and my family shall be ruined." I told him that I would do no such thing, for I had too much friendship for him; that I would give a few lines to the constable to request him to call a township meeting, and I would meet him in the township. I requested Mr. Henry to go there with me: I had reason to believe that this opposition arose from misrepresentation, which I supposed was given to the people by a few gentlemen, who had travelled through the country a few days since. When we came to Hamilton township, there were about sixty or seventy persons assembled, three or four of them in uniforms; their arms were behind the door at the house of Mr. Hellers. I then told them that I was come as their friend, and without any design of taking the least advantage of their conduct in opposing the assessors; that I had come to read the law to them, and explain it. I did so, and pointed out the impositions practised on them. Mr. Henry assisted me as much as he could, but all to very little purpose. The assessor, after this, again begged me, for God's sake, to accept of his resignation. As there was a number of them that complained against the assessors, I proposed to them that, though I had no authority to do it, yet if I thought it would be a favor to grant them that indulgence, to elect their own assessor themselves, I would grant him the appointment. They told me they would do no such thing, for, said they, "If we do this, we at once acknowledge that we will submit to the laws; and that is what we won't do." I then inquired for a suitable man, and John Hufton was mentioned, who was likewise elected assessor for the county rates. I called him into a room, and requested him to accept the appointment; he told me it was impossible at the present time, but he should, whenever things appeared more favorable, so that he could go through, be willing to do it.

The last week in December, or the first of January, I received a letter from Mr. Heckavelter, the assessor of Upper Milford; by which, he informed me that he was stopped by a regular deputation from the township meeting, consisting of three men. I sent a line to Mr. Heckavelter, and wished him to give notice to Mr. Schymer, Mr. Moretz, and some of the leading men in the township, that I would meet them at such a time, and explain the business to them. When I came, in consequence, within four miles of the place, I was requested by a friend not to go, for that the people were so violent, that if I did go I should certainly be killed: I replied to them that I would go; I was not afraid of any of them. I took Mr. Henry along with me; when we came there, I found about sixty or seventy persons collected at the house of John Schymer. I suppose about twenty of them had French cockades in their hats, red, blue, and white. Mr. Schymer then took me into his own room; there were about eight or ten in the room. Mr. Schymer asked me if I had seen the petitions; he gave one of them to me, and requested that I would read it, which I did in the presence of another person; there were but two in the company that understood English. While I was reading, these two men began to shake their heads; they said it was not such a petition as they had been told. I then asked them whether the general opposition was not on account of the stamp tax and the house tax? They said yes. I then told them there was not a word in this petition against the stamp act; they seemed to be altogether satisfied, and said they had been made to believe it was. I then went into the next room where the people collected; some of them appeared to be extremely violent and very abusive. I told them I had not come there to be abused by anybody; that I had come there as a friend, to inform them of the law, which it was important should be understood. There was a report among them that it was no law; I read the law to them, and explained it in the German language, and told them it was their duty to submit to it. One of them of the name of George Shaeffer jumped up before me, and said, "Mr. Eyerly, it is no law." I told them that if they did not believe me, they might inquire of Squire Schymer whether it was or not. Mr. Schymer told them it was a law; upon which Shaeffer replied, "admitting it is a law, we will not submit to it." He then further said, "Here I am, take me to jail; but you shall see how far you will bring me." Upon which a great many of them jumped up and said, "Yes, by God, if they shall only attempt to take any one to jail, we would soon have him out again." Some of them made use of very abusive language against the assessor, calling him a Tory rascal and the like; and as the assessor had requested me to accept of his resignation, because it was not in his power to go through with it, I proposed to them, that if they had any objections against the assessor, they should elect one, and I would give him his appointment: to which some of the most sensible and most moderate replied, "No, if it must be done, Mr. Heckavelter shall do it;" and some of the others said, "We will do no such thing; if we do, we at once acknowledge that we submit to the law, and that is what we will not." I then went over to the tavern close by, with Mr. Schymer, when Mr. Heckavelter came to me and told

me that he was in danger; that there were three of the Shaeffers who were going to give him a licking; I requested him to stand by me, and I would see him safe. We then went off.

Cross-examined.—All three of them came up to beat him. Mr. Heckavelter told them he would not have anything to do with them, and they charged him something respecting a liberty-pole at Millarstown.

The pole was erected two weeks before that, but after the dissensions arose, with a few exceptions, poles were erected nowhere but where this opposition prevailed.

The law was not executed at Millarstown, nor at Upper Milford, till about two or three weeks ago at farthest. I then agreed to go to Millarstown, where one of the Shaeffers lived. Mentioning this to an assessor, (John Roming,) he requested I would not do it; he told me that the people were so violent that he would not go upon his duties, if anybody would give him £500; if he did, he must run the risk of losing his life. I then went to Mr. Trexler's where I saw Mr. Bobst, who gave me information of Heidelberg, Wiessenberg, Lynn, and Low Hill; he told me that, at a meeting at one of those places, the people had drawn up a paper not to submit to the laws; he then told the people that they were certainly doing wrong, and that they would bring themselves into trouble if they went on that way; upon which they, the people themselves, destroyed the paper. He said the same of Heidelberg. He likewise informed me that, in the township where he lives, it was impossible to execute the laws.

The laws were executed in those four townships only since the troops have been there. All in the township opposed the execution of the law, except three or four.

In Penn township, the assessor did not meet us; he refused to accept the appointment, well aware of the difficulties that would occur: and a general rule was admitted to meet those difficulties. I received information from Mr. Balliott, that he had found a man in that township who was willing to execute the office. At my request, he sent him a commission; but the man was obliged, before he took the oaths, to return it again, declaring it was impossible to do it. This was some time in January. Some time afterwards he wrote to me of another man who would accept. I requested him to sign his commission. I received information, while the marshal, Mr. Balliott, and myself were about the country, that as soon as the people in the township knew that he had received his commission, they raised a mob.

Penn township was assessed about ten days ago. Owing to the opposition in that township, the law could not be executed.

In Moore township there was some opposition; but when the assessor was opposed, he called a town meeting. That township has been assessed about two months.

On the first or second of March last, when the marshal came to Nazareth, and told me that he had process against a number of persons in Northampton county, he requested me to go with him; I went with him first to Lehigh township, where the marshal served process upon those people for opposing the assessments, without any difficulty; we then came to Bethlehem, and then to Emaus; the first subpœna the marshal had to serve was in a house upon George Snyder, where, after being abused by the house, we were sworn at, and abused, by him; he had a large club in his hand. He called us rascals, highway robbers, and the like; the marshal told him he only had a subpœna to appear at Philadelphia to give testimony; to which he answered in German, he would be damned if he would go. The marshal, finding he could do nothing with him, requested Daniel Schwartz sent to read and explain it to him, and we left it with him to serve. We then went to Millarstown to serve a warrant on George Shaeffer, but we were told he was gone to Philadelphia; we went to Seward's tavern. The marshal and myself then went to Shankwyler's, where there were at least fifty assembled in the room. Not knowing Shankwyler, Mr. Balliott pointed him out, and the marshal took him. While the marshal was talking with Shankwyler, the crowd closed upon us, and abused us very much, and in a very menacing manner, accompanied with an almost universal cry of, "Strike! strike! strike!" so that, for some time, we did not know what would be the consequence. The marshal, this time, was persuading Shankwyler to submit, telling him the consequence of opposition; he at first declared he would not, but at length he said, he would do as Jarrett did. Some of the people then said that, if Shankwyler was to be taken out of his house, they would fight as long as they had a drop of blood in their bodies. The marshal then turned round to the crowd, when they were so violent, and told them that Mr. Balliott and myself were under his protection. I forgot to mention that, while the marshal was talking to Shankwyler in the bar, one of the persons present tore the cockade from Mr. Balliott's hat, while he was turning round to speak to the marshal. Mr. Balliott did not, for the present, know but it was a blow some one had given him. They then made back a little. Having found it impossible to do anything farther, Shankwyler promised to meet the marshal at Bethlehem. We then went out of the room, but, but before we came out of the house, there was a terrible huzza in the room. I then sent for a constable, at the request of the marshal, to go with him and show him the persons and places of those against whom he had process. I remained while he served the process at Mr. Trexler's and it was there we first received information that an attempt would be made the next day to rescue the prisoners. We arrived at Bethlehem that evening, the 6th of March, and then the occurrences happened, of which I have given testimony as far as I know.

Samuel Toon.—[The testimony of this witness being in entire accordance with the two immediately preceding, is here omitted.]

Andrew Shiffert.—I was one of the armed party that went to Bethlehem on the seventh of March, and belonged to Jarrett's company. I

was informed by John Hoover that all the light-horse were to meet at Martin Ritter's at ten in the morning; I went to Ritter's the next morning, on the seventh of March, and when I came there, I asked, what was to be done? Their answer was, that they were going to Bethlehem to release the prisoners from the marshal. I told them that, if they were to do this, they would find what would be the consequences. The others said that, if they got the prisoners clear that day, there would be nothing done; it would be all over; that, if the soldiers came with arms against them, it would be all at an end. At Ritter's I wanted to go home, but they would not let me, telling me that Pogle would be at Guise's tavern, whereupon I agreed to go so far with them. Coming there, Pogle was not there, and I and Samuel Toon wanted to go home, for there were no officers there. They then agreed to choose an officer, when the choice fell upon me; I told them I would not go with them without they would obey my orders, and not say any more about taking the prisoners from the marshal. They professed to do so, whereupon we proceeded to within half a mile of the bridge, and there we were met by four gentlemen from Bethlehem, and as they repeated again that they would have the prisoners, I said I would have no more to do with them. They then went into Bethlehem, but I did not go with them, but in about two hours I went in to see what they were about; I staid this side of the bridge till then. When I got to Bethlehem, I was informed that they had got the prisoners out. I remained there about half an hour, and then rode home, so that I know not what happened.

The evidence here was closed, so far as related to the affair at Bethlehem: and the district attorney then proceeded to introduce the following testimony in regard to preceding and succeeding events to show the state of the country, and the prisoner's intention, the material portion of which is here given.

John Dillingher.—It was rumored in my neighborhood that the marshal was coming up to arrest some persons; before he came, it was suspected that some persons would be arrested. The report was, that they were to be taken to Philadelphia.

It was said that, if any person was to be arrested innocently, it would be very hard for such a man, and he ought not to be suffered to suffer. And further, it was said that somebody had sworn against Shankwyler that he had two pistols and a sword on his table, and that he had sworn that, if the assessors should come, he would shoot them.

William Thomas.—On the fifth of March we heard that the assessors were going round to assess the houses in Bucks county; they had assessed a few of the houses about already. My brother was at Jacob Hoover's, and I was there, when he told me to tell two of our neighbors to let the assessors go round.

On the sixth, in the morning, I met Captain Kouder; he told me I must come down to the mill, that his company was assembling there. When we got there, several were met; part of them were armed. There were about fifteen in the whole. We went to Jacob Fries' tavern; then the people said, they went to see the assessors, but I do not know what for.

There were a great many more people there; I think, about thirty. Two horsemen were sent to see if they could find the assessors. Their direction was, that, if they could find them, they should bring them to Quakertown, or to Jacob Fries' tavern. After the horsemen were gone, then the order was for the company to go to Quakertown. A great many were armed, and many who were not, had clubs. I cannot tell how many were armed, but the greatest part had either arms or clubs. There was a drum and fife when we were at Quakertown. We all stood in a rank, and fired off, and hallooed, huzza. Soon after we were there, the assessors came along. They were, Esquire Foulke, John Rodrick, and Cephas Childs. I was at Zeller's when they came along, and they all began to run out of the tavern. When I came out, they had Foulke by his horse's bridle, and him by one leg; and they told him to get off. It was Captain Kouder that had hold of him; then John Fries came up and told him to get off. Fries told Foulke to get off; he wanted to speak to him. Then another came up, and stood at the back of the others, giving one of them a knock with the butt of his gun, and told them to pull him off; Jacob and John Hoover told them they should not abuse the man, for he would get off without. With that, the esquire rode up with them to the shed, and got off. They then went into the tavern together. Then John Fries told him that he had forewarned them yesterday not to assess the houses, and yet they had come to-day again; he then told him that he should show his writings, what he had done in the township. Which he did, and John Fries read them, and gave them to him back again. I then went into another room, and when I came out again, Childs, the other assessor, was sitting on the table, with five or six about him. When I came up to him, I told him that they should not abuse him, for I used to know him: at this time they were abusing him. I do not recollect what they said, but they told him he should not have gone about when they had forewarned him the day before; and they made him promise that he would not come again till farther orders—till they knew how the law was. They told him they thought they had as fit men in their township as what he was, and they wished to choose a man in the same township, if they must have it done. A travelling man, named Captain Seaborn, was there; he was drunk; and some of them asked him whether he was for liberty or Government? He said Government. Some one said, if he said that again, he should be whipped. They were all pretty well drunk, but I was not drunk. I do not recollect ever seeing Fries drunk; Kouder was, and so might Fries, for what I know; but I had known him some time, and knew he was a sober man. They talked of Tories and stamplers; Foulke was one they called a Tory, and so were several others.

Next morning I went to Marks' tavern, in consequence of a message they had left for me that night before, with my mother. By ten o'clock we were all there. John Fries was there; John Fries had the command; but he did not command till he got to Bethlehem; he gave no orders on the road.

The substance of the conversation, before we went from the tavern, was, that they were going to Millerstown; I did not know that they were going to Bethlehem.

Should there be prisoners there, Marks said that he wanted us to show ourselves.

The Northampton people had a mind to take the prisoners again; I understood that the night before at Fries, and along the road before we got there. About three or four miles from old Marks', we met young Marks; he said it was not worth while to go to Millarstown, that the prisoners were up at Bethlehem, and that the Northampton people and the light-horse had all gone there. Some were then for going back again; some, as they had come so far, was for going up to Bethlehem, to see what was going on there; so we went on. Old Marks and John Fries said so. Then we went on about a mile, and stopped at Ritter's; there was a liberty-pole there. Then we went on to Bethlehem. When we came to the bridge, the people had stopped; there were some riflemen and some light-horse. Some asked the reason why they stopped there? They said they could not get over, the bridge was shut; then John Fries rode up, and asked whether they required toll or not—they said, yes. Then he told them to count his men, and told us to follow him.

The words he used were, "Now, boys, follow me." I do not know whether he counted all or only his own men.

I do not know who paid the toll; we did not; we were all mixed together. I did not hear of three men being sent forward. I heard of their having taken some prisoners. I believe only the Bucks county people followed Fries over the bridge, without it was some few of Staeler's riflemen, who came pretty soon after over the bridge. From Marks' to Bethlehem, it is about twenty miles. When we got over the bridge, two men met us, and said we should not hurt them. Fries told them that he should hurt nobody without they hurt him first. Then Judge Mohollan came and spoke with him afterwards, but I do not know what either he or Fries said. When we got up to the tavern at Bethlehem, the whole of Staeler's rifle company were there. They marched round the house twice; we did not stand in ranks; we were separate. They wanted one to go up and talk with the marshal, and they from Bucks and Northampton said John Fries was more fit to go up than e'er a man that was there. Then John Fries and one Hoover went up stairs. After a while Hoover came down; Fries staid up; when he came down, he kept dashing and swearing, and said force should do; give him nine or ten of the best riflemen in the company, and he would storm the house; a great many of them told him he should not do it; he said he would. Jacob Hoover, Mitchel, and Mr. Mohollan, endeavored to keep him off. Fries, when he came down stairs, fetched some writing down with him, that he got from the marshal, which he read to the company. He said the marshal dared not give up the prisoners, and therefore that they would take them by force of arms. At this time the Bucks county people were separate from the others. He spoke to the whole of them. Then he asked, "what shall we do now—take them by force of arms or how?" Several of them said, since they came so far now, they would have them. Frederick Henry said, since they were come so far, it was a damned shame not to have them. Then Fries went up stairs again, and said he would go and talk to them once more. When he came down again, he said that the marshal dared not give them up, without they took them by force of arms. They then told him that he should go and do something pretty soon, for it was getting late. Some of them said it was better to let Fries have the whole command of all the men. Then it was concluded to go into the house, and he spoke five or six times. Fries, when it was concluded to go into the house, said, "for God's sake, don't fire boys, till I am fired upon first;" he said this three or four times over. Then we moved on to go in; he was before us. A good many at last followed him. I could not see who they were, the house was so full. Then Fries went up and talked to the marshal about half way up stairs. Henry told me that Fries was telling the marshal that if he did not give up the prisoners, they would fire on them, so that they should not see each other for smoke. After that the door was opened, and I saw some of them come down. Some came down while Fries was talking to the marshal. There was some not down; they called for them, and they came down. Fries said he was glad Hoover did not go in along with him, because he was too much of a fool; he thought this would not have done so well as it did; he did not want him there. We retired from Bethlehem altogether when we had got the prisoners. Fries went to the minister after he was released, in another room; he pulled off his hat to the minister, and told him he must thank him that he had got out; he said he was out, but he could not thank him, for all.

The Marshal was again called to reconcile some seeming difference in relation to the last conversation Fries held with the marshal, and of the prisoners coming down at once.

The Marshal said, that the last conversation he held with the prisoners was at the foot of the stairs. Mr. Fries declared that he would force his way up stairs, if I would not give them up; I told him that this would be punished with the utmost severity, but that if he was determined to rescue the prisoners, he should not go up stairs, but that I would, and order them down. Finding myself not in a situation to resist his force, I went up and ordered them down.

Cross examined.—At no time when I was in conversation with Fries, did the Lehigh prisoners come down stairs. There might be others that

would not submit; but none from the room in actual custody; if they did, it must have been while I was speaking to them in the crowd; it was possible for them to do it at that time.

They were in the room, and the guard remained there till I went up; it was placed there to prevent any person going up or down. After this conversation with Fries, I went up stairs to order the prisoners down. They were all in the room at that time, though I did not count them. Upon my order they came down, and I came down with them.

George Mitchel.—I keep tavern in Lower Milford township, Bucks county. There was a great disturbance and discontent in my township respecting this house law; a meeting was advertised for the 8th of February, at the house of John Cline, to consult about the house-tax law. No names were signed to the advertisement that I recollect. A number of the inhabitants met; it was pretty late in the day; they all seemed discontented, but they were in doubt whether it had passed into a law or not. There was something in the newspaper of an amendment which made them doubt whether it was in force. They formed an instrument of writing, but I cannot recollect the particulars of it. It was drawn up by John Fries; I assisted him. We passed home after that. I had no particular conversation with anybody after the paper was signed; it was signed by about fifty or fifty-two of the inhabitants. Captain Kuyder was directed by the meeting to give notice to the assessors not to come forward till they had informed themselves farther, whether it was a law or not. I am not sure who put up the notice of this meeting; perhaps it was myself. John Hoover and several had talked about it, and we thought we would call a meeting. This was on Friday. On the Monday following, James Chapman came to my house, and told me I should tell Jacob Hoover that he should give notice over the creek, (I live nearly at the end of the township,) that if they would choose an assessor of their own, they should be welcome; and any man that was capable of the business would be admitted into the office. One Valentine Hoover came to my house that same day, (he lives over the other side,) and told him what Mr. Chapman had told me; likewise I informed Jacob Hoover that day myself. Who opposed it I don't know; but it was reported that it was not adopted. Squire Foulke sent me word to advertise a meeting. Israel Roberts and Samuel Clark called on me and told me. They informed me that Mr. Foulke was of opinion that the people were ignorant of the law, and he would read it for them, and explain it to them; this was the purpose of the meeting. So we advertised the meeting to be held at my house sometime in February, toward the latter end. It was on a Saturday, and there were a great many of the inhabitants at the meeting; Squire Foulke and Mr. Chapman attended it. The people behaved very disorderly; but I cannot recollect any of the conversation that passed. Jacob Kline came in and asked me what the meeting was intended for. I told him that I understood by Squire Foulke, that the Germans were very ignorant of the law, and that he called them together to read and explain it to them; I desired him to try to pacify the people; and I believe he did his endeavor, but it proved in vain; at least they did not read the law. I did not understand that anybody offered to read it; he thought it was in vain, there was such a clamor. After Mr. Chapman was gone, Marks asked me how I came to meddle with the advertisement. John Fries was not at the meeting. I don't recollect anything afterwards till the assessors came, which was the 5th of March. They took the rates of my house and my neighbors. The assessors were Mr. Childs, Mr. Foulke, and Mr. Rodrick. I went from home the rest of the day, and the next morning when I returned, (6th of March,) I heard there had been an uproar about driving away the assessors. It was talked of that they were going to Millarstown the next day. Hearing of such an uproar, I concluded to go and hear what was going on; they said they were going to meet the Northamptons who were going for the relief of the prisoners. I do not know the names of any of the prisoners. There was a talk at Marks' house (7th of March) about going to the tavern above Emaus; Marks said his son would bring word. We went on then till we met young Marks, and he beckoned that we should halt or go back; so we did; he said he had been up at Ritter's tavern, and they had started before he came there. I do not know of any in particular who took the command. Some wished to go to see Bethlehem, some to see the bridge; so they concluded to go on. I cannot say who were for going on, and who were not. We were overtaken by several people going to Bethlehem. None were armed that I can recollect. When we got to the bridge at Bethlehem, there were a great many armed men and light-horse, and two rode over the bridge towards us from the other side. I did not hear the conversation that passed at the bridge; but after a while we went over to Bethlehem. A great many of the company was formed before the house, who seem to speak out that they would have the prisoners. Fries went in; I saw him start to go in; but I did not hear who ordered him, or who desired him. A short time after, in the course of five or ten minutes, Henry Hoover came out to us, and said he was sergeant of their company, and he was chosen to demand the prisoners. He said he went up stairs, and somebody gave him a push, and had like to have tumbled him down stairs, and he came out in a great passion. He went on in a great rage; he said if they would only give him ten men, he would storm the house. A short time after that, I observed Fries come out, and he said "silence!" to the people there. He seemed to be as much among Staeler's company as among ours. He then afterwards said, "gentlemen, an officer of the United States says he cannot deliver up the prisoners, unless they are rescued by force of arms; so, he said, if you are willing, we will; I will go foremost, but if we do, I beg of you, none of you fire till they fire on us first, till I give the word,

and if I drop, then you must take your own command." He repeated these words, at least once more. I heard nothing afterwards of the proceedings in nor out of the house that I recollect. Some time after this, on the 18th of March, a meeting was held at Marks'. The object of the meeting was to choose a committee of the three counties of Northampton, Bucks, and Montgomery. The meeting was to consult what was best to be done, and it was determined to leave it to the committee. John Fries was there. After the meeting, I had some conversation with him. While the committee was sitting, I said to him, "John Fries, you never intended to resist the law, did you?" He made me answer, "yes, I did." We did not in particular mention any laws.

There was a meeting after this at my house, on Easter Monday, March 25th. The object of that meeting was to appoint an assessor. The one that was appointed was to do the business, if he pleased; if not, the person they chose was to do it, or both together.

John Fries was at that meeting at the beginning of it, but I do not recollect that he was at the time they gave in their votes. He said it would not suit him to vote now, as he had been against the law throughout.

Cross-examined.—At the meeting at Marks', it was generally agreed that there should be a submission to the laws. After the business was over, they made mention of it, but I do not know that they made any report of it. I believe the people never knew to the contrary but there would be a return made. It was recommended to submit, and I believed it was agreeable to the meeting; I heard no opposition to it. The return was made in writing.

On the 15th of March, we received the proclamation, and that evening I took it down to Frederick Henny's; I read the proclamation to Frederick Henny, and he agreed to submit; he made no opposition.

When Fries said it would not suit him to vote for the assessor, he seemed rather opposed at that time to the laws than the appointment of an assessor.

This proclamation was communicated to the meeting on the 18th of March.

James Chapman.—I was a principal assessor under the act for laying a direct tax; I believe in all but Lower Milford, the assessments were carried into effect without opposition, or in a majority of the townships, except some little threatenings. The assessor of Lower Milford was taken sick, and did not proceed. His name was Samuel Clark; I called upon him afterwards to know whether he was able to proceed or not; he thought he should be able in a few days. I had occasion to go to Newtown, and was several days from home, but found there was nothing done respecting it; I found the people had had a meeting, and there appeared to be great opposition to the rates being taken. The day after I returned from Newtown, Clark called upon me, and told me he thought it was not safe to go about, from the disposition of the people at that time. I told him that I would meet him the next day at Mitchel's tavern, in Milford, and meet the people to know what their complaints were. I met Clark at a house just by, and he told me he would be in at Mitchel's in a few minutes. I examined Mitchel to know what were their complaints. Mitchel signified that the people were dissatisfied that the assessor was appointed without their having a choice; for they wished to choose for themselves. I told Mitchel if they would choose a man of character, I would use my influence with the Commissioner to have him appointed, and I desired him to give notice of it to Jacob Hoover. I wrote to the Commissioner, stating the situation we were in, and told him what I had done; but he seemed not to be willing to indulge them with it.

Seth Chapman was a Commissioner for that district. I told him it would ease the minds of the people if it were done. At length he consented, but seemingly with reluctance. However, they never chose one.

I do not recollect that it was made known to the people. I met him at a meeting of the assessors, which was held at the house of John Rodrick. On my return home I was told, I think by Squire Foulke, that the township was advertised to meet at Mitchel's. He said, if I would attend there, he would meet me. I got there between one and two o'clock. Just as I got to the house, before I went in, I saw ten or twelve people coming from towards Hoover's mill; about half of them were armed, and the others with sticks. I went into the house, and twenty or thirty were there. I sat talking with some of my acquaintance that were well disposed to the law. Conrad Marks talked a great deal in German, how oppressive it was, and much in opposition to it, seeming to be much enraged. His son, and those who came with him, seemed to be very noisy and rude; they talked all in German, which as I did not know sufficiently. I paid but little attention to them. They were making a great noise, huzzaing for liberty and democracy, damning the Tories, and the like. I let them go on, and I saw no disposition in the people to do anything toward forwarding the business. Between four and five I got up to go out; as I passed through the crowd towards the bar, they pushed one another against me.

No offer was made to explain the law to them while I staid; they did not seem disposed to hear it.

They did not mention my name the whole time of my being there, but they abused Eyerly and Balliott, and said how they had cheated the public, and what villains they were. I understood it was respecting collecting the revenue, but I did not understand near all they said. I recollect Conrad Marks said that Congress had no right to make such a law, and that he never would submit to have his house taxed.

They seemed to think that the collectors were all such fellows; the insinuation was that they cheated the public, and made them pay, but never paid into the Treasury. After getting through the crowd to the bar, I suppose I was fifteen minutes in conversation with Mitchel: he said perhaps they were wrong, but the people were very much exasperated. Nothing very material happened, and I asked Mr. Foulke if it was not time to be going. So I got into the sleigh, and went off; soon after, they set up a dreadful huzza and shout. I stopped at Jacob Fries's tavern, and waited for Mr. Foulke, who soon came: Clark, the assessor, was likewise there. After talking a little more on the subject, Clark still persisted in not having anything to do with it, for he thought it not safe for him. We thought it was best to give the other assessors notice, as their assessments were nearly finished, to meet us at a certain day to take the rates in that township. I then wrote to the other assessors, requesting them to meet at Quakertown, on the 4th of March. Rodrick, Childs, and Foulke, met me there; we waited till evening, but no others came; so we agreed to meet at my house next morning at 9 o'clock. We met, and I went with them to Milford, to Samuel Clark's, but he was not at home. It was thought best for me to go to look for Clark, as he was engaged in a moving. I went to Fries's tavern to wait for him; they went to Mitchel's to take the rates. Clark soon came: he told me he could not undertake to take the rates, for that he might as well pay his fine, if it cost him all he had, for they were so opposed to it at any rate, that he could not think himself safe, for he should at least receive some private injury. Finding he would not do it, I said no more. John Fries was coming up just then: he told me he was very glad to see me: he told me that he understood I had been insulted in their township at one of their meetings: he was very sorry for it, he mentioned Squire Foulke as well as myself: had he been there, he said, it should not have been done. I turned it off, by this: that there was not a person among them that spoke a word to me. I told him I thought they were very wrong in opposing the law as they did: he signified that he thought they were not, and that the rates should not be taken by the assessors. I told him that the rates certainly would be taken, and that the assessors were then in the township taking the rates. I repeated it to him, and he answered, "My God! if I was only to send that man, (pointing to one standing by,) to my house to let them know they were taking the rates, there would be five or seven hundred men under arms here to-morrow morning by sunrise." He told me he would not submit to the laws. I told him I thought the people had more sense than to rise in arms to oppose the law in that manner: if they did, Government must certainly take notice of it, and send an armed force to enforce the laws. His answer was that "if they do, we will soon try who is the strongest." I told him they certainly would find themselves mistaken respecting their force; he signified he thought not: he mentioned to me the troop of horse in Montgomery county, and the people at Upper and Lower Milford, and something about infantry, who were ready to join. He said he was very sorry for the occasion, for if they were to rise, God knew where it would end: the consequences would be dreadful; I told him they would be obliged to comply: he then said huzza, it *shall* be as it is in France, or *will* be as it is in France, or something to that effect. He then left me and went off.

Fries did not appear to be intoxicated. I scarce ever saw him intoxicated. A short time after he was gone, on the same day, the assessors came to Jacob Fries's tavern. We then ordered our dinners there, and I believe it was Childs undertook to take the rates of Jacob Fries's house. We had not gone out of the room after dinner, till John Fries came in; he addressed himself to Squire Foulke, telling him he was very sorry to see him there; he was a man that he had a great regard for, but that he was opposed to the law himself. "I now warn you," said he, "not to go to another house to take the rates; if you do, you will be hurt." He did not wait for any reply, but turned himself about, and went out of the room. I do not recollect anything farther was said to him. He seemed much irritated. The assessors concluded to proceed upon their business.

Rodrick and Foulke agreed to go together, and Childs went by himself: this was an agreement between themselves.

There had been no meeting of the assessors since Mr. Clark had refused, complaining that he found it inconvenient to proceed with the assessment.

This new arrangement was not communicated to the Board of Assessors at all.

John Rodrick.—I was one of the assessors under the direct tax law, appointed for Lower Milford. I took the oaths the law directed. There were twelve townships in our district, and there were six assessors to serve them. We were all six sworn at a meeting held at my house, by the Commissioner, Seth Chapman. Squire Foulke got his warrant afterwards; he was appointed, I think, in addition to Samuel Clark. We met the Commissioner on the sixteenth of February, when it appeared all the other townships were nearly done, except Lower Milford; at that meeting all attended but Clark. The principal assessor James Chapman, was likewise there. We were informed that Lower Milford was not done, for Clark was afraid to go about. The Commissioner told the principal assessor that he must inform the other assessors, that if anything could be done in it, we must try to do it. We all agreed that we would. Mr. Foulke was appointed before this meeting, and was present at it. Not long after this, we got orders from the principal assessor to meet him at Quakertown on the fourth of March, and to go the next day to get the rates at Milford. Only three of us attended. We agreed to meet at the principal assessor's house the next morning, which we did, and thence we went to Clark's to have him go with us: as he was not at home, however, we proceeded on, taking the rates, Mr. Childs, Mr. Foulke, and myself. We had taken between fifty and sixty assessments when we came to the house of Jacob Fries. All were at home when we took the rates, except one, and we left a notice. When we came to Jacob Fries's

we met the principal assessor. After dinner, while we were sitting at the fire, John Fries came into the room: we had a room by ourselves. He said he had heard we were come to take the rates of the township; we told him yes. He said he would warn us not to proceed, else we should be hurt. He said he was sorry for Squire Foulke, and I believe Mr. Chapman he mentioned, for he always respected them very much. He said he was opposed to the law, and he would not submit to it. He then left the room. He seemed to be a little in a passion. We got on our horses, and proceeded at taking the rates: I and Foulke went together, and Childs by himself to some who, we thought, were quiet people. We proceeded on till about sunset, when we were going to the house of one Singmaster, and as we turned down a lane, out from the road, we heard somebody halloo to us: we stopped, and saw it was John Fries and five men more. We stopped, and they came walking toward us. John Fries was in the front. Fries said he had warned us not to proceed, and we would not hear, and now they were come to take us prisoners. I believe I asked by what authority: with that he made a grapple at the bridle of my horse; I wheeled my creature round, and he just catched hold of my great coat, but he could not hold. I rode off then: after I had got about two rods, I turned my creature round again; and he was a little way from the rest. I told him I was surprised at his conduct, that he had behaved so. He began to damn and curse, and walked back towards the other men: he mentioned that if he had a horse he could soon catch me. He was about two or three miles from his own house then.

I rode up nearer to those other men: they had stopped Squire Foulke: as Fries returned back to his men, he said, "Men, let Foulke go, as we cannot get Rodrick: to-morrow morning we will have him. I will have seven hundred men together to-morrow, and I will come to your house, and will let you know that we are opposed to the law." We then went and took the assessment of Singmaster's house. We had agreed, before we left Jacob Fries's, that we would meet the principal assessor the next morning, to see what course we should take.

Singmaster was at home, when we met: we said it was not worth while to attempt anything more; we could not proceed. James Chapman then wrote a letter to the Commissioner to state matters. We agreed to quit taking the rates at Lower Milford at that time, as we thought we should not be able to do anything. When we were going home through Quakertown (on the 6th of March) Cephas Childs rode before us. I and Squire Foulke rode together. When we came to Quakertown, Childs turned into Squire Griffith's: we found a great many people armed with guns, and with uniforms; so I said to Foulke, "Here is Fries and his company." I said, we won't stop if we can help it: I rode through them, but when I had got half through them, they halloed to me to stop; a great many halloed, and came running on both sides of the road, some with their clubs and muskets to strike me. They did not strike me. I rode quickly through them. I saw them running to come to strike. I had passed Roberts's tavern, and when I came to Zeller's tavern, there was John Fries at the porch; he hallooed to me to stop, for I was going to pass by, and not to stop and give myself up: there was another man with me. They followed me to stop me: I stopped, and wheeled my creature round, and asked Fries what he wanted. They damned me, and told me I should deliver myself up; I told him as long as he used such language, I would not. There was order then given to fire at me. I cannot tell who gave the order, but there were two men standing close together at Zeller's door; they pointed their guns: as I saw that, I rode off. I did not hear whether it was Fries or not who ordered them to fire. They halloed to stop me: they hallooed out to get horses to pursue me, but they did not pursue me. I cannot say that Fries had anything in his hand at that time, but the others had clubs. Fries was from me at that time perhaps five or six rods. There was an old man standing with him.

CEPHAS CHILDS.—I was one of the assessors under the act for the valuation of houses in Bucks county.

[Witness showed his warrant, and proved his qualification, dated November 5, 1798.]

At the meeting at Rodrick's, when we were qualified, we had our instructions given us by the Commissioner; he informed us that there were six assessors to twelve townships, which we were all equally concerned in assessing, and it would be proper for us to point out which townships we would severally take. I think this meeting was about the latter end of December. Clark and myself fixed upon a day when I should come and assist him for two days, and another time was appointed for him to assist me. I had made some beginning in my own district before that day came. Before we separated, the assessor pitched upon an early day to make our returns of what we had done, in order to examine whether we had proceeded right or not. I went up to Clark's, agreeably to appointment, and found he was not able to go on: I therefore attended to my own district.

We met to make our returns at Rodrick's: Everhard Foulke, I think, met with us; I know nothing of his appointment. This was on the 5th day of the Bucks court (6th of February.) Not having gone through our business, we were to meet on the 16th again. Foulke, I understood at the former meeting, had been appointed. When we met, Foulke told James Chapman that he dared not go into the township, for he understood that some threats were thrown out against him, and he rather wished that the people would appoint some other person, themselves, to do it. The Commissioner did not seem to agree with it; finally, he consented so far as to intimate to James Chapman, that if they should make such an offer, and appoint one, he would recommend him; if not, he said we must go and assist in that township. There were some proposals made who of us should go, excuses were made, and then the Commissioner

informed us that we were all enjoined as much to assess that township as our own. Upon which he told the principal assessor that if it did not go on, he was to write us, and we were to attend to the call. I received a letter about the first of March, or the last of February, from the principal assessor, that he had been to Milford, and it did not seem likely the assessments could go on, and I was ordered to meet the rest in Quakertown on the 4th of March. Accordingly, Foulke, the principal assessor, and myself, met there. We had word from two others that they were not able to come. We concluded to call upon Clark to go with us, and divide the township so as to complete it in a short time. The next morning we met to begin the business; we went to Clark's, but he was not at home. It was agreed then, that we should go on with the rates, and James Chapman was to go to Jacob Fries' to wait for Clark. The first house we went into was Daniel Weidner's; I went in first, and told him I was come to take down the rates, under the revenue act of the United States: he appeared to be very angry; I reasoned with him, telling him if he wished to read the law, he might; I told him the consequences of opposition, but he might have ten days to consider of it, and give in his account if he chose to take that time. He, seeing me thus, said "take it now, since it must be done." He gave me his account accordingly, and apppeared contented. He said further, "we have concluded not to take it, as we expect the act will be repealed." He meant they had concluded not to take it till they knew what Congress would do with the law. I made reply to him that I believed that was already done, for I had seen a report of a committee of Congress, that it was inexpedient to repeal it, and it was not done. He made some remarks, but I told him it was very wrong. I cannot tell what he said in particular. One thing I think was, that the assessors were to have very extravagant wages. "It does not matter," he said; "you may as well give in my return." I did not get on my horse till I got up to Mitchel's where the other two assessors were. Weidner went out a little before me, and he was there when I came, walking about, seemingly very angry. I again reasoned with him. Another objection he made was, that the houses of high value were to pay nothing, while smaller ones, and of small value, were to pay high. I forgot to say that, after the rates of Weidner's land were taken, he returned, and said he had forgot, there was another piece of land: he then sat down with a heavy sigh, and said, "They will play the devil with me; what shall we do?" I asked him what he meant; he made no answer. I told him I hoped every one would be as well convinced as he was. I took several houses in my way, and went to Jacob Fries'. As I was going in at the door, I met John Fries, who shook hands with me, and told me he was glad to see me, and asked me to take a drink. He came in again after we had done dinner, and said, "I forbid you going to any other houses in the township." He then mentioned that Foulke and Chapman, or Rodrick, were men he much esteemed. He said if we did go to any other houses, we should be, or would be hurt. We then proceeded to assess. Where English people lived, there appeared no objection, except at one place. The people there said, that if they did give in the account, there were some ordinary people in the neighborhood, and they would be set on by them to do them an injury. That afternoon I went to David Roberts'; his wife seemed very anxious, and wished her husband had been there, for she said I should not go home alive. I went afterwards when he was at home, and he said he had no objection, only for his neighbors. After some conversation he said the people there had agreed not to let the rates be taken yet: they had already chosen an assessor in their own township: I told him I wondered they did not let him go on: he signified he was a person of an obnoxious character, and therefore they did not wish to accept of him. In our return home, I called at Squire Griffith's; as I got off my horse, his wife told me that they were come there to take us, and that there were forty or fifty men there, and she did not know what they were about. A little girl just after came in and said that they had hold of Squire Foulke's horse by the bridle, going to take him: I went to the window, and saw them all around him. I did purpose to go out; but at their persuasion I staid. The little girl came in again, and said they had taken Mr. Foulke into Enoch Roberts' tavern. After a short time Fries came over into the house where I was sitting: he took me by the hand, and I rose up; he said, "Mr. Childs, you must go with me to my men:" as we walked along, he said, "I told you yesterday that you should not go to another house, and if you did you would be hurt, and we are now come to take you prisoner, if we find that you will go on with the assessments." My answer was, we are obliged to fulfil our office, and we cannot do otherwise, unless we are prevented. I was endeavoring to inform him of the manner in which I had obtained the warrant, in hopes that I should prevail upon him to go on with the business, as Roberts had proposed, but he would not hear me. When we went into the house, he addressed himself to his men and me: "Here are my men—here is one of them."

He appeared to be angry, but he did not appear to show any revenge to me, or talk angrily. I do not recollect that I knew any one in the house, except the tavern-keeper. Some of them soon began to use rough language. A person then came behind me, and caught me by the collar, over the shoulder, and said, "Damn you, Rodrick, we have got you now; damn you, you shall go to the liberty-pole and dance round it." The house was then crowded as full as it could crowd, and they pushed me up so close, that I could not turn round sometimes for a considerable time; the person who caught me, seemed to wish to keep behind me, but he still kept hold of me; during this time, I had several thumps, which seemed more with the knee than the fist. After some time, he got to see my face; he damned me that I was not Rodrick, but that I was the other damned

son of a bitch that he saw sitting at Rock Hill; he had mistaken me. A short time after this, a person came up to me and said, "Keep a good heart, and you will not be hurt." I turned, or endeavored to turn to them and said, "I am not Rodrick, nor did I ever assess in Rock Hill." He said, "You are a damned liar." With that there were still more of them came up, and pressed about me more, and more took hold of me. There was a good deal of talk, some in German and some in English I then told them that my name was Cephas Childs; that I was not a man known in the country; but I had no doubt many of them, though they did not know my face, knew my name; and that there were some there who knew me as Coroner of the county. A man then said, "If he is Childs, he is no better than the other." He asked me where I assessed; I told him; a number of them asked how they liked it where I had been. I told them some of them had appeared dissatisfied in the first instance, but now, as I believed, every man almost in the townships where I assessed was satisfied; they again said I was a damned liar, for the people had told them that they would join them in the suppression of it, and my own neighbors would fight against me. I told them I thought I knew better than they; that, if I was well informed, they would not do so. Then they began again at me. Then they asked me if I had taken the oath of allegiance to the United States of America; I told them I had; they asked me when; I told them I could not recollect the time, but I knew it was as soon as the law required it of me; they asked me, if I was a friend to the Government of the United States; I told them I was; they then began to damn the Government and the Governor, and shoved me about, many of them taking their Maker's name in vain. There then was a person who spoke very good English; they damned the house tax and the stamp act, and called me a stampler repeatedly; they damned the alien law and sedition law, and, finally, all the laws; the Government and all the laws that the present Congress had made. They damned the Constitution also. They did not mention what constitution, whether of this State or of the United States. They damned the Congress, and damned the President, and all the friends to Government, because they were all Tories, for that none were friends to the present Government except Tories. They asked me if I had been out in the last war; first, I told them the law did not require me to go, and then I said I was under the tuition of my parents; they said they had fought for liberty, and would fight for it again. They said they would not have the Government, nor the President, and they would not live under such a damned government. "We will have WASHINGTON;" others said, "No, we will have Jefferson, he is a better man than Adams—huzza for Jefferson."

They then insisted on my taking an oath of allegiance to them, alleging that, if I did so, I should not be hurt. They insisted on it several times, till at length I had no way to waive it, and then I asked them what their government was. One answered WASHINGTON. I said I had taken an oath of allegiance to WASHINGTON's Government already. They then said Jefferson; "we will have none of the damned stamplers, nor the house tax." So they went on. They said, they embodied themselves to oppose the Government; they meant to do it, and that was their design in coming there.

I do not know who said it, but the words were these: We are determined to oppose the laws, and we have met to do it; the Government is laying one thing after another, and, if we do not oppose it, they will bring us into bondage and slavery, or make slaves of us; we will have liberty." And then they mentioned the number of men that had joined them, or sent them word that they would join them. They mentioned, some a hundred, some more, some less, than they had there, would do it; besides, they said all Northampton county, to a man, would join them, except some Tories, as they called them. Between Quakertown and Delaware river, I recollect they said, they could raise ten thousand men, if they should be wanted, to oppose the sedition and alien laws. I cannot be certain, but I think he said, as he spoke in German, and fifty other damned laws. However, I am not certain as to the number. They likewise said, that General WASHINGTON had sent them account that he had twenty thousand men all ready to assist them in this undertaking to oppose the laws. I begged them not to believe it, for it could not be, and somebody was endeavoring greatly to impose upon them; I thought I knew the situation of things better; and as for General WASHINGTON, I was sure he never would undertake such conduct as that. A great many of them spoke in German, but one or two of them spoke very good English, but they were altogether Germans. This passed while I was in custody.

Cross-examined.—Fries took me in there, and leaving me in custody, went away. They said General WASHINGTON had certainly wrote to them so and so. One of them said, he would be damned if it was not so, for he had seen the letter from WASHINGTON; or something to that effect. During this time they were constantly pushing me; one would come to my back and get his knee up; they would endeavor to push me on the stove; one or two had hold of my hips, and endeavored to throw me down; others seemed ready to lick me, and particularly after this conversation about WASHINGTON. About that time Captain Fries came toward me, and seemed very much surprised; he said, "Mr. Childs, I understand some of my men have abused and insulted you." He really did appear to be very serious; he said he would not allow me to be abused; he appeared to be really distressed for the usage I had received; and if I would tell him who it was, he said he would make him behave himself. He then told me to come into the room. He said he respected me, and did not wish me to be abused. I told him I thought it hard that he should leave me amongst a parcel of intoxicated people. I do not particularly recollect what I said; but he told me, he hoped I would not impute that conduct to him; I told him I was not much injured, and therefore hoped he would not think about it. He said his men were civil men, and seemed to wonder such a thing had happened. I think he then gave me something to drink. He took me into a room, the farthest side of which seemed to be empty. When I got in there, he demanded my papers while I had been an assessor. While he was with me no person insulted me; indeed, some of them, when he came forward into the room where I was, pushed off out of the way. I then told him all that I had done, and reasoned with him, but, notwithstanding that, he insisted on my papers; then told him I had no papers about me relative to the assessment. I do not recollect anybody particularly, but there were a great many crowded into the room after me. He insisted that I had the papers; I told him I had not got the papers; he said I had, and he would have them. I told him I had no papers about me, but what related to my office of coroner. I was going to deliver up to him my county-tax papers; but he said I had other papers; I said I had not. He then looked on those I had given him, and saw Hilltown at the top; then he said, "Hoho! my boys, we have got what we wanted;" and then turned about, and went away. He left the pocket-book, taking the papers with him. There was a considerable huzza made, and they, most of them, followed him out of the room. They were gone but a few minutes, till they rushed in again as hard as they could rush, without Fries, and some got hold of me. They brought Daniel Weidner along with them; some had pistols, guns, clubs, &c., and some had swords. They seemed very angry, and were pushing upon me, while some endeavored to put them off. Weidner came up to me, and insisted on the return of the rate I took of him yesterday; he said he would have it. I desired him just to acknowledge to the truth—did he not give it me freely yesterday? This, while a person had hold of me. Some of them then stepped up, and said it was fair. I then asked him—Did I not say I would not take the measure of your house by force, but you gave me the rates with a free will? Yes, he said; "but I was not forced, and, therefore, I want it again." Some of them then went out, and directly others came in and shook me very hard; one came in and threatened me that I should be shot; some brought in their guns and showed them to me, and told me, if I should be seen in Milford township on the business, I should be shot. Weidner went off. This person with the sword threatened a good deal. He was called Marks, the elder. I believe him to be the same man I have seen here. While I was in this conversation, William Thomas came forward, and said he knew me, and that they should not abuse me. That gave me an opportunity of talking farther, and then I reasoned with them of the bad tendency of such conduct, and told them that I really thought, if I had the law with me, I should persuade them to allow of it. One of them, who had abused me before, came to me and acknowledged he had abused me, and was sorry for it, and wished me to forgive him. I think his name was Smith, but I am not sure. After passing some time in conversation, Fries came back again with the transcript, and delivered it to me, and told me, as near as I can recollect, in these words: I must go home, and never come back again to assess, or I should be shot; and insisted on my promising I would not do it. My reply was, that, from the pains I had taken, I left the township with a view of not returning to it, unless compelled by authority; and, from their present treatment, if they ever catched me going back without that authority, I would give them leave to shoot me. He then told me, Foulke and you may inform the Government what has been done as soon as you please; we can raise one thousand men in one day, and we will not submit to it. They said there were a number of laws they were opposed to, and one of those laws was now putting in execution, and they appeared to think if that was stopped, the others would be. This was how I understood it. The words were, that they were determined to oppose the laws, and not let them be put into execution; there were so many laws coming on, it was time to stop them; and if they were known to oppose them, they expected the others would not be brought forwards. Fries was not present when these words were used.

Judge PETERS (one of the Bench) sworn.*

Ques. Will your honor please to give the jury an account of the circumstances of your issuing warrants in Northampton county, and of circumstances within your knowledge previous to the examination of John Fries on the 6th of April?

Ans. The first time I heard officially of this uneasiness in the counties of Bucks, Northampton, and Montgomery, was some time in February, I cannot precisely recollect what time. I had heard of it before as a piece of news, but this was the first time I heard it officially; it was by depositions being sent to me by the attorney of the district, (Mr. Sitgreaves,) relative to a number of persons. After that, I examined some witnesses relative to it, and upon the whole I concluded to issue my warrants against the parties charged. Being much engaged in the district court, the attorney of the district drew up the form of the warrants for my signature and approbation. We had concluded, by way of ease to the people, that these warrants should be drawn up in a form of order for the defendants to appear before some justice of the peace, or judge of the county, in order to give bail for their appearance at the circuit court of the United States. Neither of us then knew that those insurgents, as it turned out afterwards, had got to such a head. But I doubted, myself, of the propriety of the form and substance of the warrants, because I thought that the justice or judge, before whom bail was taken, ought to be acquainted with the whole case, and ought to have the proof of the fact before him, on which the proof of the warrant was found. I had some doubt, too, whether it was legally right for per-

* The questions, as well as the answers, in Judge Peters' testimony, are given in full.

sons taken by my warrants to go before an inferior magistrate. For, though a justice of the peace of any State has a right, by the laws of the United States, to take cognizance, in the first instance of crimes against the United States, and bind over the offenders to the proper court, yet I did not think that, as such justice had not had the original cognizance of the matter, there would be a propriety in my ordering him to to take secondary notice of it. While I was hesitating on this point, I received information of the length to which, at that time, this opposition to the law had arrived. I doubted very much, and this thought was afterwards clearly confirmed to me, whether the magistrates of those counties, and particularly Northampton, would choose to take cognizance of such offences, or would choose to do any business concerning them. There were two of the magistrates, one of them a justice of the peace, the other a State judge, who had done themselves much honor in persevering so far as they did, in endeavoring to bring those criminals to justice. But, finally, it turned out that they were obliged to abandon even every endeavor towards executing this business. So that the law and the public authority so far failed as it respected that county, that the judicial authority of the United States became entirely prostrate. I found that some of the very persons who were charged before me were magistrates, and I wish I could say that they were the only magistrates who were engaged in this business.

These were the reasons that induced me to alter the form of my warrants. I found that too many magistrates were concerned in flattering the prejudices of the people, and engaging in seditious practices, and encouraging the people in their mistakes, for me to trust them; and I finally found that there were but two magistrates that could be depended upon, and they told me that they were insulted in the performance of their duty to the United States: of this I had good evidence. And further: it arrived to such a pitch that I could not get one of these gentlemen even to issue a subpœna to examine witnesses, and save them the great trouble and expense of coming before me. This was the opinion of those two gentlemen; one of them wrote me, and the other informed me, that they were afraid to perform such an act. They could not only not get persons to serve the process, but they could not get the witnesses to appear before them. This I do not bring as a charge against any particular person, but as a reason why the warrants were thus issued. Another reason was that those people had taken up the fallacious notion that they would not appear before me, and therefore I thought it best, though this should not have been my leading motive, to convince them that every person in this district ought to obey a warrant issued by me, and appear at such time and place as I directed; the whole district being to be considered the same as a county in respect to a State.

The witness then produced the warrants, dated February 20, 1799. One of which was read.

The marshal wrote to me official statements at sundry times, of the difficulties he met with, and at one time informed me that the prisoners had been rescued, by force of arms, from his possession. The account he gave me it is unnecessary to state, being much similar to what has been given in evidence. He took some engagement from those prisoners, particularly those of Lehigh township, that they would appear before me, which, the prisoners themselves told me, was cheerfully given. I understood from them, and other channels, that they several times attempted to come down before me and deliver themselves up; but they were prevented by persons who interrupted them, and would not let them come.

Ques. Was John Fries brought before you after you got up there?

Ans. Yes. I had previously issued my warrant against him.

Ques. Was this the examination he signed in your presence? The witness was then shown Fries' confession, which was as follows:

The examination of JOHN FRIES, 6th April, 1799:—The examinant confesses that he was on the party which rescued the prisoners from the marshal at Bethlehem: that he was also one of a party that took from the assessors, at Quakertown, their papers, and forewarned them against the execution of their duty in making the assessments. The papers were delivered with the consent of the assessors, but without force; perhaps under the awe and terror of the numbers who demanded them, and were by him examined and delivered to the assessors. He confesses that, at the house of Jacob Fries, a paper was written on the evening preceding the rescue of the prisoners at Bethlehem, containing an association or agreement of the subscribers to march for the purpose of making that rescue; but he is not certain whether he wrote that paper; he knows he did not sign it; but it was subscribed by many persons, and delivered to the examinant; he does not know where that paper is. The examinant confesses also, that some weeks ago, he wrote (before the assessors came into that township) an agreement which he, with others, signed, purporting that, if an assessment must be made, they would not agree to have it done by a person who did not reside in the township, but that they would choose their own assessor within their township. A meeting has been held in the township since the affair at Bethlehem, for the purpose of making such a choice. The examinant went to the place of election, but left it before the election opened. The examinant further acknowledges that his motive in going to Bethlehem to rescue the prisoners was not from personal attachment, or regard to any of the persons who had been arrested, but proceeded from a general aversion to the law, and an intention to impede and prevent its execution. He thought that the acts for the assessment and collection of a direct tax did not impose the quota equally upon the citizens, and therefore were wrong. He cannot say who originally projected the rescue of the prisoners, or assembled the people for the purpose. The township seemed to be all of one mind. A man unknown to the examinant came to Quakertown, and said the people should meet at Conrad Marks's, to go to Millarstown. The examinant says that, on the march of the people to Bethlehem, he was asked to take the lead, and did ride on before the people until they arrived at Bethlehem. The examinant had no arms, and took no command, except that he desired the people not to fire until he should give them orders, for he was afraid, as they were so much enraged, that there would be blood shed. He begged them, for God's sake, not to fire, unless they had orders from him, or unless he should be shot down, and then they might take their own command. That he returned the papers of the assessors which had been delivered into his hands back to the assessors privately, at which the people were much enraged, and suspected him (Fries) of having turned from them, and threatened to shoot him between the house of Jacob Fries and Quakertown.

JOHN FRIES.

Taken 6th April, 1799, before Richard Peters.

Witness.—It is my constant practice to tell a prisoner that he is not bound to be evidence against himself. I did not make any promise or threats to extort it from him, but he chose to make a voluntary confession, which, if they do not choose to do, I commit them without it. I am particularly delicate on this subject of confession, and I do not like to encourage it.

Judge IREDELL.—The gentlemen of the jury will observe that the law requires a judge to examine a prisoner, and it is left quite at the option of the man to confess or not.

The counsel for the prisoner hoped, as it was a case of treason, upon which the law and Constitution were extremely cautious how evidence was admitted, the jury would consider that proof of the overt act must be given by two witnesses, independent of any confession the prisoner might make.

Witness.—The prisoner appeared to me to be not at all disinclined; his manner was that of a man not having done anything wrong, but perfectly collected, and possessed of his faculties. It was read to him afterwards, to which he accorded, and, thinking a part not fully enough explained, added the latter part. I have now brought it to my recollection that there were three magistrates in that county, instead of two, to whom we were peculiarly indebted for assistance.

Question.—Were any others applied to besides those three?

Answer.—Some were, but we found much disinclination to do the business, and therefore thought it quite unnecessary to apply further.

Question by District Attorney to Judge Peters.—Did you not discover manifest signs of terror coming from the districts where the army had not marched?

Answer.—Yes, in many instances—some very strong; it was even attempted to raise troops to oppose the army, if they went up. There were one or two instances of testimony given to me that troops were endeavored to be raised, and nothing, I believe, but the rapidity of the progress of the troops prevented its execution. I did believe that, unless the army had gone through the whole country, there would have been the most atrocious instances of violence.

Did not some of the witnesses give their testimony under great reluctance owing to fear?

Yes, I had, in some instances, to state the protection of the United States, and their determination to lay hold of persons who should threaten, in order to stimulate them. Some said, after they had given their testimony, that they were afraid to go home. I can really say, that, in general, they were the most unwilling witnesses I had ever examined. I got evidence that some of them were forming associations for actually opposing the troops. One man was even afraid because I was in his house, asking for some refreshment, as he said he should be suspected for harboring me: however, after I had expressed my own security, he seemed satisfied.

Judge HENRY again called. I was an associate judge of the Common Pleas for the State. I issued a number of subpœnas about the 15th of January to make some inquiries respecting the opposition to the tax law. These were issued at the instance of Mr. Eyerly, one of the commissioners, as he and others could not proceed in the execution of their duty and particularly in Lehigh township. The witnesses generally appeared much afraid at opening themselves: and he could say, that among the people, there were many much opposed to the law. I agreed to meet a number of persons at Trexler's, commonly known as Trexler's town: there Captain Jarrett appeared with a part of his company of light horse. Shortly after the arrival of Mr. Eyerly, Mr. Balliott, and myself, the people seemed to be walking about, and looking in at the window, and seemed to make game at us and mouths. I observed Henry Shiffert in particular; they were mostly in uniform. It was not muster day. I understood it was the general conversation there that Jarrett meant to display his consequence, and to intimidate. One witness in particular appeared to be in great terror; when he was called up to give his testimony, he cried like a child, and begged, for God's sake, that we would not ask him, for that the people would ruin him when he returned home. Indeed, all the witnesses were much agitated. I discovered a general opposition to the execution of this law, and was apprehensive of danger from the threats which were given.

Cross-examined.—I sent for the Captain, and requested him to keep his men in order, for all I wanted was to examine witnesses. There was nothing beyond insult offered to us. The Captain assured me that he would do all that lay in his power.

Mr. CHAPMAN and Mr. CHILDS were again called, at the suggestion of Mr. DALLAS, to be asked how the measurement of a house was taken?

It was always, in every instance, given by the owner; we never measured any houses. Size, length, and breadth, were told us, or the proprietor had ten days to send it in: we left a note for

those people that were not at home. The people who were at home in Milford mentioned the dimensions of their houses.

Mr. Chapman here proved the letter which was mentioned in his evidence to have been written by him to the Commissioner.

Mr. Sitgreaves produced and read the warrants under which those persons at Bethlehem were held; also, the commission from the President of the United States, appointing one of the Commissioners under that act.

Mr. EYERLY again called.

Question.—How were the principal and assistant assessors appointed?

Answer.—At the time I received the notice from the first Commissioner that was appointed in the commission, the Commissioners were to meet at Reading on the 22d of October. After a board were met, every Commissioner was desired to make a plan of his division, and to divide it into a suitable number of assessment districts, so as to have the law executed in a reasonable time; at the same time each Commissioner was requested to make out lists of persons qualified for the office of assessors in each division. As soon as this was done, as the law gives a power to the Secretary of the Treasury to reduce the number of assessors, if too large, the clerk made out a list, and sent it to the Secretary of the Treasury; a list was also entered in the Commissioner's book. Some few alterations were made in some districts afterwards, but at the time the board was sitting. After this was done, the form of the warrant was agreed upon by the Commissioners, and ordered to be printed. They were then filled up, and every warrant signed by all the Commissioners. A rule was then adopted to call all the assessors together in each district, and the Commissioners were to meet and qualify them, and give them instructions. The country was not in a pacific state, except where the army marched. After the President had issued his proclamation, I wrote up to the principal assessor in Northampton county, and to Mr. Balliott, to request them to go on, and have their returns made in a certain time, and to give notice to all the other assessors so to do. I received an answer from Mr. Balliott that he had received information that it was impossible to do the business in the execution of the law.

Mr. DALLAS here remarked in substance that, though they wished to give as little trouble on the part of the defendant as possible, yet he should produce two or three witnesses, in order to show that this indisposition, which was manifested to permit the assessment, was owing to the uncertainty those people were in, of the real existence of the law; that the prisoner himself was under the idea that it was no law; and that they had no intention of opposing Congress by force of arms, but that they wished for time, in order to ascertain its real existence, and if the law was actually in force, that they wished, agreeably to their former custom, to appoint assessors from their own respective townships. It could be shown also that Fries was perfectly quiescent after the proclamation, and that Mitchel was entirely mistaken as to the expressions said to be used by Fries, at the meeting at Conrad Marks's. As the defendant's counsel, however, wished to have time previously to examine the witnesses, he stated that they would not be able to produce them at this stage of the trial.

Mr. RAWLE then opened the constitutional definition of treason, as consisting of only two parts: "levying war against the United States, and aiding the enemies of the United States." As it is only the first of these species of treason the prisoner is charged with, it is only necessary to ascertain what is meant by levying war against the United States. Mr. Sitgreaves has stated that, levying war against the United States consisted, not only in a broad sense of rebellion openly manifested, with an avowed intention of subverting the Government and Constitution of the country, but also with force of arms, or by numbers sufficient for that purpose, to cause an impression of terror: either one of these, or altogether, used to prevent the execution of the laws, or of any particular law of the United States, from motives, not of a special but of a general nature—is treason. This position, I believe, is perfectly correct, and has already received the sanction of a court of the United States, respecting the insurrection in the Western part of Pennsylvania. See 2 *Dallas*, 348, Mitchel's case. This doctrine is laid down in terms short and concise, and is such as is founded on the particular authority of all the writers on English law.

"Bradford—attorney. The design of the meeting was avowedly to oppose the execution of the excise law; overawe the Government; to involve others in the guilt of the insurrection; to prevent the punishment of the delinquents, &c.

"Patterson (Justice).—The first question to be considered is, what was the general object of the insurrection? If its object was to suppress the excise offices, and to prevent the execution of an act of Congress, by force and intimidation, the offence, in legal estimation, is high treason; it is a usurpation of the authority of the Government; it is high treason by levying war. Taking the testimony in a rational and connected point of view, this was the object. It was of a general nature, and of a national concern." (Page 355.)

Let us attend, for a moment, to the evidence. With what view was the attack made on General Neville's house? Was it to gratify a spirit of revenge against him as a private citizen, as an individual? No:—as a private citizen he had been highly esteemed and beloved: it was only by becoming a public officer, that he became obnoxious, and it was on account of his holding the excise office alone, that his house had been assailed, and his person endangered. On the first day of the attack, the insurgents were repulsed; but they rallied, returned with greater force, and fatally succeeded in the second attempt. They were arrayed in a military manner: they affected the military forms of negotiation by a flag; they pretended no personal hostility on General Neville; but they insisted on the surrender of his commission. Can there be a doubt, then, that the object of the insurrection was of a general and public nature?

Patterson (Justice) in the charge against Vigol says:

"With respect to the intention, there is not, unhappily, the slightest possibility of doubt: to suppress the office of excise, in the fourth survey of this State; and particularly, in the present instance, to compel the resignation of *Wells*, the excise officer, so as to render null and void, in effect, an act of *Congress*, constituted the apparent, and avowed object of the insurrection, and of the outrages which the prisoner assisted to commit. Combining these facts and this design, the crime of *high treason* is consummately in the contemplation of the Constitution and laws of the United States." (2 *Dall.* 246.)

This, you will perceive, gentlemen of the jury, is not preventing the execution of *all* the laws, or *all* the authority of the Government, but of "*an* act of Congress." It is a usurpation of the authority of the Government, and thus it is levying war, and is *high treason*. Taking it in this point of view, this was the very object of the insurgents at Northampton, and was of a public, of a general, and not of a private or special nature. In the case I referred to, the prisoner acted different from the prisoner at the bar; he acted in a subordinate station; he does not appear to be a first character in that treasonable enterprise.

Gentlemen, the law thus laid down by the Court, upon that occasion, was derived from the English authorities to which I shall now refer you. 4 *Blackstone*, p. 81, defines that branch of treason of which we are now treating: "Levying war against the King (substitute here the United States for King,) is, pulling down all enclosures, meeting-houses, prisons or brothels."* Although bawdy-houses are illegal, yet by any individuals not authorized, taking the authority which alone is vested in the Government, it is a usurpation of the authority, and the act being of a general, and not of a special nature, is *treason*. Lord Chief Justice Hale, whose name will ever be endeared by the piety, the humanity, and the sound legal learning which characterized him, has a chapter upon this subject of levying war against the King. (*Hale P. C.* 105.) He says, to march with colors flying, drums beating, &c., if on a matter of a public or general nature, is high treason; but if on a private quarrel or for a private purpose, it is not treason. Treason in levying war, by this definition, consists of two sorts. First, marching expressly, or directly against the King's forces: secondly, interpretatively, or obstructively, doing a thing of a general nature. If to pull down a particular enclosure, it is only a riot; but if to pull down all enclosures, it is levying war against the King, because it is generally against the King's laws.

* The language of Blackstone (iv. 82) is, "To resist the King's forces by defending a castle against them, is a levying of war: and so is an insurrection with an avowed design to pull down *all* enclosures, *all* brothels, and the like; the universality of the design making it a rebellion against the State, a usurpation of the powers of Government, and an insolent invasion of the King's authority."

"Insurrections, in order to throw down *all* enclosures, to alter the *established law* or change religion, to enhance the price of *all* labor, or to open *all* prisons—all risings, in order to effect these innovations, of a *public and general concern by an armed force*, are, in construction of law, *high treason*, within the clause of levying war; for though they are not levelled at the person of the King they are against his royal majesty, and besides, they have a direct tendency to dissolve all the bands of society, and so destroy all property and all government too, by numbers and an armed force. Insurrections, likewise, for redressing national grievances, and for the expulsion of foreigners in general, or indeed of any persons living there under the protection of the King; or for the reformation of *real* or *imaginary* evils *of a public nature, and in which the insurgents have no special interest;* rising to effect these ends by force and numbers, are, by construction of law, within the clause of levying war." (*Foster, C. L.* 211.)

1 *Hawkins*, chap. xvii. sect. xxiii. p. 37, is much to the same effect; and see also *Douglass*, 570, in the case of Lord G. Gordon. The case there on the part of the prosecution was an attempt to force the repeal of an act of Parliament, and this was called high treason, although the defendant was not convicted. (*Kelyng*, p. 70, 75.) So in the case of *Messenger, Appletree, and others.*

It will probably be said by the defendant's counsel that this should be simply considered as a rescuing prisoners from the custody of the marshal, and that is not treason, and that a number of crimes of a less degree must be committed in order to make it treason, as arson, burglary, and murder. But I would observe, that when these crimes are committed, one or more of them, they are not component parts of treason, but they lose their qualities and their name in the absorbing crime—*treason*. So when General Neville's house was burnt, it was said only to amount to arson: to that it was answered by Judge Patterson, were it not for the treasonable purpose with which this was done, it would be so; but the guilt rose to treason in the intention. Admitting it is a crime, and worthy of a punishment, the question is, whether or not it must be considered as one of the means made use of to obtain the end in view? If a man break open prison, where a person is convicted for treason, it was ruled to be only a great riot: if several were rescued thereby, it was a riot and rescue, except those persons rescued were convicted for treason; and where it was without any particular view to the persons themselves, and where the prisoners were unknown, then the rescue becomes a part of the treasonable act, and that, with other facts, constitutes the person guilty of treason. (1 *Hale*, 133.) In 4 *Blackstone*, you will find an answer to what Mr. Dallas said this morning ought to be in favor of the prisoner: to wit, an ignorance of the existence of the law.

Suppose every man who would profess himself ignorant of the existence of a law was exculpated from the observance of it, or from the consequences of breaking it, to what would that doctine lead! It would be for the interest of every

man who wished to oppose a law, to keep himself under the shelter of this want of knowledge, in order that he might sin with impunity—without knowing it. This is a mistaken fact, and an error in point of law. I make these observations, not because I suppose that the defence will be seriously set up, or that, did it exist, you would be in the least guided by it, but under the impression, that when you come to examine all the facts, you will discover that it was not so.

Unless these points which I have laid down are controverted, I shall not trouble you with more points of law, and shall leave the observations I am farther to make, to a later period of the case.

Mr. DALLAS opened the defendant's case as follows: It has become so uncommon in the State of Pennsylvania to be employed in a cause, upon the issue of which the life of a fellow-creature depends, that I am confident, the court and jury, as well as the counsel on both sides, are prepared to give a solemn, candid and patient attention to the present investigation. It is, gentlemen, a question of *life* or *death;* and if what we have heard is true, that the prisoner is a husband and a father, it is a question whose importance extends beyond his own life, to the existence and well-being of a miserable family. If I should manifest, therefore, an extraordinary solicitude to secure the attention of the jury, as long as the occasion shall require, these considerations would, I think, furnish a sufficient excuse; yet, permit me to add to my justification another remark. It is not only the life of John Fries, and the well-being of his family, that are at stake on this trial; but we all know that the impressions made on your minds, and communicated to the public by your verdict, may reach the lives and families of many more unhappy men now under indictments for a similar crime. I must confess that I feel agitated by the prospect: for, if it appears so awful, so interesting, as it evidently does, to the court and audience, how must it affect us who are the counsel for the prisoner, charged with the development of every principle and of every fact, that can tend to an acquittal? As it relates to the counsel for the prosecution, the difficulties are comparatively small. They have had an opportunity amply to explore all the facts; to calculate the effects to be produced, and to point their testimony precisely to the object of the charge. We who are counsel for the prisoner, are ignorant of the man and of his connexions. Till you were impannelled, we knew nothing of the evidence to support the prosecution; and could, therefore, be little prepared to encounter and repel it. Besides, in all our inquiries for the means of defence, as well as in our examination of the witnesses, we have been embarrassed by the foreign language in which the parties have spoken. That some of you, however, as well as the opposite counsel, understand the German, has been a source of consolation to us; for, it is your province to decide on the facts. But these are not the only obstacles which we have to encounter. I am sure I shall not be misunderstood when I say, that the prosecution appears to be strongly marked with the authority and influence of Government.

It is, I grant, incumbent upon the Government to exercise its powers for the punishment of crimes; but it is essential to a fair discussion of every accusation, that the acts of the Government should not be estimated as proofs of the prisoner's guilt. Thus, though you find by the proclamation of the President (which, doubtless, he thought, with a wise and upright intention, was required by the extraordinary circumstances of the times,) that the disturbances in Northampton were deemed overt acts of treason by his advisers; and though this denunciation was followed by the march of a considerable army for the express purpose of subduing and apprehending the traitors, you will recollect, that you are to decide whether treason has been committed, from the evidence of the witnesses, and not from the opinions of the Government. Again: great inconveniences have been experienced by many meritorious citizens, who relinquished the pursuits of business and the pleasures of domestic life, to assist in the suppression of the insurgents; but you will not allow the irritation and resentment proceeding from this source, to transfer from your judgments to your passions, the determination of the cause. Far be it from me to contend that outrages have not been committed, which are disreputable to the State or society at large, and to the character of Pennsylvania in particular; or to endeavor to shelter from the punishment of the law, the instigators and perpetrators of such offences. Every citizen is interested, and is bound to assist in detecting, prosecuting, and punishing the offenders; but every citizen, let it be remembered, is still more interested that even the greatest criminals should only be punished in the manner and to the degree which the law prescribes. However we may differ on speculative points of politics abroad, however we may be disposed to approve or to disapprove the measures of Administration, and however we may controvert or assert the Constitutionality or the expediency of particular laws, all party spirit, all personal animosity, must be abandoned when we are called upon to act as ministers of justice; or we shall, in the indulgence of a moment's vengeance, overthrow those barriers which are our own security, and the pledge of safety to posterity.

Whatever you may have thought, whatever you may have said, whatever you may have heard, in other scenes, must now be obliterated from your minds. The character of private citizens, with all the privileges of private opinion and feeling, is here exchanged for the character of public functionaries, with all the restraints of law and justice. Your opinions, as private men, will only be regarded according to their intrinsic merit; but your verdict, as a jury, will be forever obligatory, bearing all the authority of a precedent.

Though, then, a proclamation has issued, an army has marched, and popular resentment has been excited, we claim an unbiassed attention; and, circumscribing your view of the subject to the evidence, we confidently expect a fortunate result. What has happened in England upon a similar occasion, we think will happen here. The British Privy Council announced a traitorous conspiracy to the British Parliament. The British Parliament declared that the party recognised and confirmed the charge of high treason; and thus, the whole weight of public authority in that country, Legislative and Executive, instituted a prosecution, which was afterwards conducted with the greatest zeal and talents, with such zeal and talents as the present prosecution has displayed. What was the event? A jury (that inestimable palladium) without fear, and without favor, examined and pronounced that no treason had been committed. I allude to the recent cases of Horne Tooke, and Hardy.

I shall, I presume, be excused, if I intimate to you some other disadvantages under which the prisoner's case labors; for, it is not merely necessary to produce evidence, to explain, extenuate, or refute the charge; we must guard your minds against any previous bias, any latent pre-determination to convict. The accused gentleman and his companions, you will recollect, are not upon their trial among persons with whom they have been accustomed to live. This is a disadvantage which every candid man will acknowledge. They are to be tried likewise, by a jury, selected and returned by the marshal, the very officer who has been personally insulted, and whose appointment depends on the will and pleasure of the Executive Magistrate, that Magistrate by whom the offenders have already been described as traitors. I mean not to cast the least reflection upon the laws of Congress, nor upon the officers of the Government; but to make a general remark on the defective state of our Judicial institutions. The conduct of the marshal has, indeed, been highly exemplary throughout the transaction; and when, with such powers, he returned such a jury as I have the honor to address, he manifests an impartiality and independence of character that entitle him to the respect and plaudits of his country. Nor is it here that the prisoner's disadvantages terminate; but I hope, I believe, that never, till this day, was the press employed in a base and sanguinary attempt to intimidate the jury and counsel from a faithful execution of their duty in a capital case! Since, however, the jury has been summoned; nay, since the court has been sitting upon this very trial, there have been the grossest, the most insidious practices in a public newspaper, to warp your sentiments, and to deprive the unfortunate prisoner of the benefit of the best talents which the bar of Pennsylvania can afford. On the other hand, a gentleman, whose abilities we all respect, and whose long residence in the offending counties must greatly facilitate the progress of the prosecution, is associated without censure, and certainly without being answerable, in the duties of the attorney of the district. While our ignorance of characters and circumstances perplexes the defence, his accurate information and experience enable him to probe every witness to the quick, and forcibly to combine and interweave all the incidents of the transaction. But his motives are pure; for, if he does arraign, if he does convict, if he does punish, it is because his patriotism and public spirit enable him to soar far beyond the little affections of a neighborhood.

Gentlemen, in this situation we appear before you as advocates for the prisoner. I declare, that as far as my mind is capable of being impressed by a sense of duty, I feel a terror lest anything should be left undone or unsaid which is essential to the cause; and, therefore, complicated as the discussion must necessarily be, accept, I pray you, my sentiments under the following heads.

First, I will endeavor to establish such points of law, as seem to me to be applicable to the facts which have been given in evidence.

Secondly, I will consider the general state of the discontents, and how far the rescue at Bethlehem was connected with the previous disturbances.

Thirdly, I will take a view of the conduct of the prisoner in particular.

Mr. Dallas here went into an examination of the law of treason, taking the same general grounds as those opinions maintained by Mr Lewis, and thus proceeded:

Now, gentlemen, I challenge the prosecuting counsel to say, in what part of the evidence it has appeared, that these insurgents went further than to declare that the law did not please them; that, though they did not mean to compel Congress to repeal it, they had some doubts, and wished to ascertain whether it existed or not; to know whether the country in general had submitted to it; to know whether General Washington was not dissatisfied with it, and to see whether they could not get the assessor appointed by themselves. Under these impresssions many irregularities occurred, but I ask the adverse counsel to point out, if they have discovered, through the whole course of the business, any insurrection existing, any traitorous design, till the meeting at Bethlehem; or whether, till that moment, the people of Northampton could be said to have been guilty of any crime?

We are told that the case of the Western Insurgents in 1794, is in point, and that the decisions upon the trials that then took place are precedents on the present occasion; but, with great deference, I declare that it seems impossible to bring cases more dissimilar into view, where violence has been committed in both. At this stage of the argument, however, I shall only remark, that whatever may have been the language of the judge who then presided, I am sure the attorney of the district will be good enough to recollect, and candid enough to state, that the opposition, though in its origin excited against the excise law, was conducted with the avowed purpose of suppressing all the excise offices, and compelling Congress to repeal the act. See 2 *Dallas. Rep.* 346.

Let us for a moment, gentlemen, trace the motives of the people by looking at their conduct, not at large, but in the lawless scene at Bethlehem. What did they do? Why they rescued the marshal's prisoners; but the moment they had effected the rescue, did they not disperse? Their whole object then was consummated; for, I must presume that they contemplated nothing farther, as I see them attempt nothing more; and yet the

time was very favorable to accomplish a more extensive design, if it had ever been meditated. Men intending to compel, by every hostile means, the repeal of a law, when they had in their hands the obnoxious agents of the law, (Mr. Balliott, Mr, Eyerly, the marshal, and others,) would hardly have let the moment pass without some effort to triumph in their advantage. It was, indeed, rumored to be their intention to dispatch Mr. Eyerly; but where does it appear? Was he not completely in their power? Was he not constantly in their view, though he incorrectly says that he was constantly out of their view? No: I repeat that the rioters, having accomplished the rescue, dispersed; and will you, under such circumstances, in a case of life and death, determine that they came to commit treason—rejecting the plain fact, and adopting a constructive inference? But if they proceeded no farther than I have stated, let us again look to the law of England, to define their crime, as distinguished from treason; and you will not cease to bear in mind that you must establish the distinction.—*Hale's Pleas*, vol. 1, p. 133–4. *Bacon's Abridgment*, vol. 6, p. 513–4–5.

2. Having thus delivered my sentiments upon the points of law that arise on the evidence. I shall now enter upon the consideration of the second proposition—"the general state of the discontents in the Northern counties; and how far the rescue at Bethlehem was connected with the previous disturbances."

And here I find, gentlemen, that the source from which proceeds much, if not all, of our political good, discharges, likewise, much, if not all of our political evil: I mean the business of elections. You will recollect the testimony of Mr. Horsefield.

That gentleman, when he wished to give you a description of the origin of all the mischief that we deprecate pointed his finger emphatically at the election of 1798. Now, I pray that I may not be misunderstood in the progress I shall make through the scene which is thus disclosed: let it not be supposed, that I am depraved enough to justify the misconduct that has been exhibited, because I am firm enough to contend, that it did not proceed from motives directed to treason, nor lead to consequences that amount to treason. At the eve of our election, it is natural for the citizens of a free country to canvass what has been done by the public agents; to applaud the good, and reprobate the bad; and in doing this they exercise a right; nay, they perform a duty. No intelligent and candid man will say that the constitution of a representative republic can be preserved in a vigorous and healthy state, unless the people, from whom it derives its vital principle, are vigilant and virtuous in the exercise of the elective franchise. For this purpose they retain the right of opinion; and though they may use it upon mistaken or erroneous grounds, if they use it fairly and peaceably, there is no power to control or obstruct them.

I ask, then, what were the ostensible causes of discontent? They will be delineated by the opposite counsel as spectres of the most visionary, yet most horrible aspect: but notwithstanding any sincere abhorrence of the manner in which the discontent has been manifested, I cannot admit that the causes did not afford a legal ground for exercising the right of opinion. For instance, the alien and sedition laws. They are a novelty in this country, and their novelty might alone attract the popular attention and displeasure. But were the inhabitants of the Northern counties of Pennsylvania the only dissatisfied citizens? Peruse the debates, examine the files of Congress, and you will find the most pointed declarations of the public opinion, the most unequivocal marks of dissatisfaction, throughout the United States. Exercising the right of opinion, the people disapproved the laws, and the law-makers. Exercising the right of election, they endeavored to promote the success of those candidates who would regularly procure a repeal of the laws. Again: the stamp act was strongly objected to, and produced the nickname of "Stamplers," which was applied generally to the friends of Government. Now, in my opinion, there cannot be a more convenient mode of taxation than an imposition on stamps; but that was not the opinion of the people of Northampton and Bucks. They had imbibed a prejudice against a stamp act in the year 1775, and not considering properly the ground of American opposition to the tyranny of taxation without representation, they confounded the name with the principle of the law. I repeat that I do not agree with them, but I contend that they had a right to speak freely on the subject.

Again. The house tax was objected to; not from the real, but from the imaginary burdens which it imposed; for if it had been intended to devise a tax for the relief of the poor, at the cost of the rich, for the benefit of the country at the expense of the city, there could not, I think, be a more ingenious plan than the present law exhibits. The opposition must evidently, therefore, have arisen from misconception or misinformation. But if their opinion of the law was sincere, however erroneous, it is entitled to indulgence. The fallibility of the human understanding, and the frailty of our passions, must be respected in every wise and benevolent system of politics, or law. A man who honestly acts under a false impression of facts, may be pitied as a weak man, but he ought not to be punished as a wicked one. Then, the rioters were under an evident delusion, as to the principle of the land tax, the purity of the Government, and the compensation of public officers. They had not the ordinary access to information, since our laws are published in English, and most of them only understood German: and this being a question of property, they acted upon the first blind impulse of their avarice, proving the truth of Mr. Horsefield's observation, "that the Germans are fond of their money, and do not like to part with it." But still there is a criterion which, in applying a rule of law, ought always to be regarded—I mean the moral character and mental attainments of the men who are arraigned. If a discontent exists, we cannot fairly expect the same mode of expressing it from illiterate, uncul-

tivated men, the scattered inhabitants of a remote district, that we may reasonably exact from men of education and manners, formed by the luxury and refinements of a metropolis; these will take care, if they do express their discontents, to avoid personal indignity and legal embarrassments; while those without skill to ascertain the limits of the law, as without delicacy to respect the inviolability of the person, rarely act without being riotous, or complain without being abusive. Plain men, then, have but plain ways to manifest what they feel; and they ought not to be tried and condemned by a more perfect and, generally, a more artificial standard. A disturbance similar to the one under consideration is not uncommon in England; but the Government, instead of entering prosecutions against the discontented, for treason, has sometimes thought it proper to acquiesce in the wishes of the people. We all remember the popular influence in depriving Lord North of the reins of government. The attempt of a Minister (Mr. Pitt) to involve that nation in a war with Russia, was a very unpopular measure; murmurs, and complaints reverberated through the kingdom, and, finally, he was obliged to abandon his project. The shop-tax was sanctioned by all the branches of the Parliament; but it generated clamors so loud and so acrimonious, riots so numerous and so outrageous, resistance to lawful authority so daring and so injurious, that the Government itself might justly be said to be assailed; and the act of Parliament to be repealed by force and intimidation; yet, not a single indictment for high treason was projected. Hence it is that I think risings of the people, like the present, should be viewed with the determination to punish, on account of delinquency, but, also, with the disposition to mitigate, on account of prejudice or ignorance. In a country where party spirit beats high, there should be peculiar caution on the subject; for, even in the present case, has not the joy testified by the triumphant majority at the late election, been classed with the symptoms of popular discontent and hostility to the Government? Nor will it be denied that there actually did arise in the minds of the people a serious doubt, whether the law was in existence or not; and although, I repeat, that ignorance is not a legal excuse, yet you must take into view the state of information, before you can understand the degree of guilt. Under this ignorance, in this state of doubt, can the refusal to permit the assessors to enter a particular township be construed into a fixed and deliberate intention of levying war against the Government? Though the law had been enacted, we find that the subject of the law had been brought anew before Congress, and petitions were sent in abundance, praying for a repeal. These discontented people might have supposed that a repeal was effected, or intended; though we, who were at the seat of Government, knew the object of the revision was merely to amend, and not to rescind the law. At the meeting at Kline's, (acting, probably, under the mistake that I have suggested,) there was an express declaration that the people did not think the law was in force at that time. And here let me remark, that the prisoner, who is called the great parent of the discontents, was not present at Kline's, which appears to have been the first step in the opposition to the land-tax. Such was the state of information at that period. Mr. Horsefield has said that there were general discontents prevailing throughout the country: but his allegation is too vague, too comprehensive, to be understood or acted upon. The citizens of a free Government have a right, if they apprehend that a violation of their Constitution is intended, or if they think that any encroachment is made on the bulwarks of liberty, or property, to express their opinion; but is it practicable so to express that opinion as not to encounter from their political opponents the charge of discontent and sedition? How, in the present instance, was the popular discontent expressed? At first, petitions to the Government were proposed, framed, and subscribed. This was the result of Kline's meeting; and in this, I presume, no hostility, no levying war, can be discovered. At every subsequent meeting, whether convened by the assessors, or by the people themselves, the reliance on Legislative redress was never abandoned; though, it is true, there was great intemperance of manner and of language. The assessors were sometimes interrupted in their journeys, and sometimes jostled in the crowd; and the unmeaning epithets of *Stamplers* and *Tories*, were rudely applied to the friends of Government. But however censurable, where is the treason in such proceedings? A rioter and a traitor are not synonymous characters; and let us say what we please about nicknames and slander, the society that patiently submits to the scurrility of the Philadelphia newspapers, will never be disgusted or enraged at the indecorum or vulgarity of the Northern insurgents. But the insurgents went further; they *intimidated* the assessors: and is that treason? No; it is the very gist of the offence for which the Sedition act explicitly provides. Is it not the very phrase of that act, that if any person shall combine to intimidate an officer from the performance of his duty, he shall be deemed guilty of a high misdemeanor, and be punished with fine and imprisonment? Now let us go step by step through the evidence, and I defy the most inquisitional ingenuity to discover anything beyond the design, and the effect, of a system of intimidation. Is there any actual force resorted to? No! I find the bridle of one assessor seized, his leg laid hold of; but the man is not pulled off his horse, nor is he the least injured in his person. I find that a witness thinks that he heard the word "fire" given, and that he saw two men from a neighboring porch present their rifles at another assessor: well, did the riflemen fire? No. They had guns; their guns were, probably, loaded; and if anything more than intimidation was meditated, how shall we account for their not firing? But we hear a great deal of the personal jeopardy of the commissioners and assessors; and yet who of them sustained an injury? Mr. Chapman, Mr. Foulke, and Mr. Childs, are, generally speaking, treated as men of merit

and consideration; and, in particular, wherever the prisoner met them, they were respected and protected; as at Jacob Fries' and Roberts' taverns. To repel the plea for favor founded on such correct deportment towards the officers, we shall be told that the prisoner was an artful man, that he was the leader; and it will be strongly urged against him, that he called on the officers to surrender the public papers. Of his conduct as a leader, I shall speak hereafter; and of his demand of the papers, it is surely sufficient to observe, that, in opposition to the sense of the rioters, and at the risk of his life, he returned the papers, privately, in the same state in which he had received them.

Having spoken of the assessors, I would wish, likewise, to review the evidence with respect to Mr. Eyerly the commissioner, and Col. Nichols, the marshal.

[Here Mr. Dallas entered into an investigation of the evidence, to show that although the people acted violently at the several meetings which Mr. Eyerly had called to explain the law to them; that although Mr. Eyerly accompanied the marshal in his whole progress for serving process, and that although he was conspicuously present at Bethlehem, no personal violence was ever offered to him, or to the marshal; and all the ill-treatment they encountered, amounted to no more than an attempt to intimidate them, but which they both declared was without effect. Mr. Dallas then continued as follows.]

And are we to be told, sir that these acts without force, without any apparent object but to intimidate the assessors of a particular district; that distinct acts of inconsiderate riot and folly shall, when connected and combined, constitute a deliberate treason, by levying war against the United States? If no treason was actually perpetrated, if none was intended when the transactions occurred, I insist, that nothing previous to them, nothing *ex post facto*, can make the prisoner a traitor; the intention *at the time* must have been treasonable, or the act can never be punished as treason.

Let us now, however, proceed to inquire into the circumstances of the rescue at Bethlehem, and its connexion with the previous disturbances. I think the evidence is strong in support of the assertion, that the sole, independent, consummate object of the assembling of the people at that place was to rescue these prisoners. Is there any satisfactory proof of a combination between the people of Northampton and Bucks? I know that an expression is said to have escaped the prisoner, that, in this general discontent with respect to the land-tax, certain persons of a part of Northampton would join the inhabitants of Lower Milford; but let the foundation of his opinions be tested by the facts, and it evidently arose, not from negotiation, conspiracy, and compact, as the prosecution supposes, but from a general knowledge, which he possessed in common with thousands, that the land-tax was unpopular throughout the adjacent country. It is enough, however, for the defence, that no combination or correspondence is proved; since the rule declares, that in legal contemplation, what does not appear and what does not exist are the same. You do not find the people of Bucks attending any meetings but in their own county, nor entering into the county of Northampton at all, previously to their appearance at Bethlehem.

Gentlemen, it might surely be expected, that a concerted insurrection for treasonable purposes, prevailing throughout the three counties of Bucks, Northampton, and Montgomery, and cemented by common interests and passions, would have been inspired and conducted by one common counsel; but is there the slightest proof of such a co-operation? I am aware of the communication made by Captain Staeler to the son of Conrad Marks; but the communication itself was merely accidental, and amounts to nothing more than the request of one individual of Northampton to an individual of Bucks. I am aware, likewise, that a message was received at Quakertown (as one of the witnesses says,) mentioning the arrest of the Northampton prisoners and inviting the people of Bucks to assist in rescuing them. Who brought this message, and to whom it was delivered, I don't recollect; but it seems, that a compliance was resolved on, and a paper expressing the resolution, was prepared and signed by Fries, with a number of other persons. But was the object of the invitation, or of the resolution to comply with it, treason, or rescue?—to commit a riot, or to levy war against the United States? I repeat, that the sole, independent, and exclusive purpose, was to rescue a particular set of prisoners.

Now if, in the previous part of this transaction, nothing has struck your minds as traitorous in the acts, or the intention of the people, I beg you to follow me, gentlemen, with strict attention, to a consideration of the object that was actually effected, and the means of effecting it. The object was to obtain a rescue; a rescue was effected, but it was effected with circumstances of military array; will this alter the original character of the riot? No, sir; if the people did not repair to Bethlehem with a traitorous intention, their arms and military equipments will not convert them into traitors. As on the one hand, I grant, that the circumstance of military array is not necessary to an act of treason, if the intention is traitorous, so I insist, on the other hand, that the circumstance of military array, will not constitute treason, without such intention.

[Here Mr. Dallas entered into an investigation of the evidence in relation to the assembling of the people, their march to Bethlehem, and their conduct there. In the course of the detail, he endeavored to establish, that the sole object of the rioters was to rescue the prisoners; that no injury was offered, or intended against the marshal, the commissioners, the assessors, or the *posse comitatus*; and that, although the prisoner was forced into a conspicuous station among the rioters, his conduct had been marked with civility towards the public officers, and a solicitude to avoid the effusion of blood. On the last of these points, Mr. Dallas concluded as follows.]

And here, permit me to remark, that if the conduct of John Fries was such as to justify his being

selected as a subject for capital punishment, I cannot see the policy or justice of the selection, nor forbear from deprecating the consequences of the precedent. A good man may sometimes affect to join a mob, with a view to acquire and to exercise an influence in suppressing it; or an intelligent and temperate man may, for awhile, be associated for an illicit purpose, with a furious and ignorant rabble, who will naturally look up to him as a leader. But, in either case, the power and the disposition to avert or to limit outrage, will be dangerous to the prominent individual who displays them, and his only safety is in mingling with the crowd, whatever may be the direction or the devastation of the storm.

Gentlemen of the Jury, I have now gone through two of the general propositions into which I divided the consideration of the defence; and, in the course of my observations, I have anticipated much that related to the third proposition, the particular conduct of the prisoner. I should here, therefore, break off, as I feel that my strength, and I fear that your patience, are exhausted, but that the proclamation of the President demands a moment's further attention. By the laws of the United States it is provided, that, under certain circumstances, the President may call out the militia to suppress an insurrection, having previously published a proclamation requiring the insurgents to disperse. This proclamation is obviously in the nature of an admonition; and if the admonition produces the effect, I ask, whether in the present, as in every other case, it ought not to produce impunity? Then I argue, on general principles, that if the rioters did peaceably retire to their homes upon this authoritative warning, they ought to be sheltered from punishment for any offence previously committed. Nor is the argument without a sanction from the positive authorities of the law. (1 *Hale*, 138.) And the court will recollect that the principle is incorporated into the statute, which is usually called in England, the riot act. There must surely be some object in requiring the President to issue his proclamation; and the one which I suggested is equally benevolent and politic. On the present occasion it produced an immediate decisive obedience to the laws. Besides, when we recollect that the President has the power to pardon offences, to discontinue prosecutions, and to grant a general amnesty, as in the case of the Western insurrection, why may we not consider the proclamation as emanating from that attribute of mercy, since no specific formula is prescribed by which its exercise shall be expressed or announced?*

Mr. Dallas then proceeded to point out the differences in the nature, progress, and turpitude, of the Northampton insurrection, and of the Western insurrection, (2 *Dallas' Reports*, 349;) and analysing again the case of Lord George Gordon, he contended that, upon that authority alone, the prisoner ought to be acquitted. In the case of Lord Gordon, the direct, avowed object, was to obtain the repeal of a law; and as petitions and remonstrances were unavailing, a body of forty thousand men were convened and marshalled to surround, intimidate, and coerce the Parliament. Riot, arson, murder, and every species of the most daring outrage and devastation, ensued; and yet, the only prosecution for high treason was instituted against the leader of the association; and that prosecution terminated in an acquittal. View, then, the riots of Lord George Gordon in their origin; estimate their guilt by the avowed object; aggravate the scene with the cotemporaneous insults and violence offered to the persons of peers and commoners; and close the retrospect with the horrors which the British metropolis endured for more than eight days; and then say (exclaimed Mr. Dallas) what was the guilt of John Fries compared with the guilt of Lord George Gordon? what is there in the English doctrine of treason that has justified an acquittal of the latter? what is there in the American doctrine of treason, that will justify a conviction of the former?

Gentlemen, I can proceed no longer. The life of the prisoner is left, with great confidence, in your hands. There are attempts to make him responsible, under the notion of a general conspiracy, for all the actions and all the words of meetings which he never attended, and of persons whom he never saw. But this is too, too harsh in a case of blood. It is inconsistent with the humanity, the tenderness of life, which are characteristics of the American people, and especially of the people of Pennsylvania. Nor is it called for by the policy or practice of those who administer our Government. I believe that to the Chief Magistrate, to every public officer, to every candid citizen, it will be a matter of gratification, if after so fair, so full a scrutiny, you should be of opinion that treason has not been committed. Such an event will by no means insure impunity to the delinquent, for, though he has not committed treason, though the punishment of death is not to be inflicted, the violation of the laws may be amply avenged upon an indictment of a different nature. The only question, however, now to be decided is, whether the offence proved, is like the offence charged, treason against the United States. The affirmation must be incontestably established as to the fact and the intention, by the testimony of two witnesses to the same overt act; but remember, I pray you, what the venerable Lord Mansfield stated to the jury on Lord Gordon's trial, remember that it is enough for us in defence of the prisoner, to raise a doubt; for if you doubt (it is the principle of law, as well as of humanity) you must acquit.

The counsel for the prisoner then called the following witnesses.

John Jamieson.—Some time after last February court, John Fries came to my house; I had heard, on my way coming to Newtown, that there was to be a meeting at Kline's. I asked him whether there were many people there, and what

*Judge Iredell, says the reporter, here interrupted Mr. Dallas, observing that he thought it irregular to make any use of the proclamation as a pardon, without pleading it. Mr. Dallas said, that he only meant to infer, from the fact of the warning and dispersion, that the insurgents never meditated treason.

they had done. He told me there were, and they had agreed not to allow the assessments to be made in the township as yet; he said the reason was, because they did not know whether there was a law passed on it or not. I told him I really believed there was; for though I had not seen it myself, I had heard of it. He likewise told me that Mitchel had undertaken to draw up an instrument of writing, but he could not go through with it, and that he called upon him to assist him to do it, which he did.

On the 6th of March, I had occasion to go to the township meeting on account of a pauper which was likely to become chargeable, calling at Jacob Fries'. I had been there but a short time, before a parcel of men came there, some with arms, and some without. They called for liquor freely. They then proceeded to make an inquiry whether anybody knew whether the assessors were going about the township or not: I do not know whether they got any information or no, but they agreed to go up to Quakertown. After they were gone a little while, Jacob Fries and I concluded that we would ride up after them: we went to the house of Enoch Roberts. We went into a room, but nothing occurred there; and I then asked Jacob Fries if he would ride down to Daniel Penrose's: after we had been there some short time, one of the family told us that our horses were getting loose, so we went out, and there we saw Mr. Rodrick, who halted; he appeared to be much frightened; so I asked him what was the matter; he told me they had catched Foulke and Childs, and that he was afraid they would kill them, and insisted on my going back to try to prevent them being hurt: I told him I would not, except he would too; he said he would, if I would engage they should not hurt him; I told him I would not do that, for I did not know what they had against him. However, at his desire, I went to town, and when I got there, I think I was told they had Foulke in the stable; so I rode up and called him by name, and I think he answered me. At my desire, he came into the house; while we were walking along, I told him it was a pity he should assess the township till they were more reconciled: I told him I thought the best way to quiet the people, was to show them the small assessments he had made, and promise not to go about again till they were satisfied. He said he was willing to do that. We then walked into the room, and soon after we were there, Conrad Marks walked towards us with a kind of a sword in his hand, though I believe sheathed, and said to Foulke, "What! I hear you are going about this business again! did not I tell you not to do this business? but I cannot tell you in English like as I could in Dutch; but is it for the sake of those few dollars that you go about this business?" Foulke answered him that he did not do it for the sake of the money. Marks answered, "Did I not tell you that if you could not do without, come to my house and I would keep you for four or five days? but if you had to do this for half a crown a day, the devil would not send you about the township." I then told Marks what I had advised Foulke: he said if he would do that, he would use him like a gentleman. Then the affair of Captain Seaborne* took place, which seemed to draw the attention from Mr. Foulke. I saw John Fries looking over some papers, but I did not know what they were; I went away.

A day or two after the affair at Bethlehem, John Fries came to me and told me the circumstances, much the same as was related by the marshal, to the best of my knowledge: he then said he did not know what to do with these Germans, for they had got it grafted in them that General Washington was opposed to this law, and that, so poor a man as he was, he would not grudge half the expense of a man to go and get his opinion on purpose to satisfy the Germans. The next knowledge I got about it, was from two gentlemen who came from Philadelphia in order to carry the proclamation about, and they gave me some proclamations, desiring me to do all I could to get submission to the laws. I spoke to many of them, and there was a meeting called at Marks's on the Monday following. There were one hundred and fifty people or more there from the three counties. It was agreed by several people that it would be best to have men chosen to form a committee, from the three counties, to consult what to do for the best. This was agreed to, and four men were chosen from each county. I was one of the four chosen from Bucks, with George Kline, David Roberts, and Conrad Marks. Dr. Baker, Squire Davis, and I think Squire Jarrett, were some. We unanimously agreed to recommend to the people, as near as I can recollect, to desist from opposing any public officer in the execution of his office, and enjoined upon the citizens to use their influence to prevent any opposition, and to give due submission to the laws of the United States.

I did not hear anybody, but did not consent to what was done by the committee. The people of Lower Milford thought it would be necessary to have the assessments taken. David Roberts said, that he believed Mr. Chapman would agree for them to appoint an assessor in their own township. It was then agreed that we should ride to him to know; which we did next day: he said he had once made an offer, but it was now out of his power. He then said Mr. Clark had been first appointed, and that he had not yet given up his commission, and he did not know how another could be appointed now; that if Mr. Clark would go about it, it would answer the end. On returning home, I called at Frederick Henny's, and desired him to draw out some German advertisements, and send them over towards Marks's, to desire the people to meet, and consent to let Clark go about. I believe he did it. At the time of appointment, the people met at Mitchel's; perhaps there were about forty there. John Fries and Frederick Henny were there. The people in general agreed to let Clark go about; I believe Fries and Henny did not vote. I went to Fries and asked the reason: he said he had no objection

* See Thomas's testimony.

to the people voting for him, and he wished it was done; but as he was first opposed to Clark going about the township, he thought it would not be right in him to vote. I believe Henny said about the same. I saw Fries again a few days before he was taken. He told me he had heard a report which troubled him more than anything in his life: I asked him what it was; he said that a report was in circulation that he was collecting up men to assist the French. He said, "Damn the French, if they were now to come to invade this country, so old a man as I am, I would venture my life against them; but I want nothing to do with them."

Cross-examined. I do not recollect any proposition made there about signing a submission paper?

I recollect Fries said that if he was called upon, or summoned, he would come forward and deliver himself up. This he said at Marks's.

Jacob Huber.—I was at the meeting at Conrad Marks's. It was after the Proclamation, and we were choosing the men to meet in the committee: Fries and I got to talking together. He says, "Now, Jacob, you see the error we got into by going to Bethlehem." I answered to him, that the assessors would have to go about and assess the houses; he said, they should not assess his before he gave them a dinner, then they might take the assessment of his house; and "if I am not at home," said he, "my son will give them a dinner." After this meeting, the general situation of the township was quiet. John Fries was as peaceable and quiet as any man could be; I never afterwards heard of the least opposition.

Cross-examined.—I saw George Mitchel at Marks's, but was not much with him: I had no conversation with him: he was clerk of the meeting.

Israel Roberts.—After the Proclamation arrived in our neighborhood, there was a statement in the next week's newspaper, stating the conduct of John Fries, which I procured, and took to John Fries. After looking over the paper, he seemed pretty submissive, but said nothing; he appeared, I thought, much distressed in his mind. I told him that I wanted to have some conversation with him relative to it. I then asked him whether he had rightly considered this matter, whether he had not run himself into danger inconsiderately? and told him the consequences I thought might attend it. He said he never had considered it so much as he had within a few days before. He said he had not slept half an hour for three or four nights, and that he would give all he was worth in the world if the matter was all settled, and he clear of it: he likewise said, if the Government would send for him, he would go with him, even if a little child was sent. After the Proclamation was read, there was still some little opposition to the law in Milford township; but I do not know that there was any made by the prisoner. I recollect that John Fries farther expressed himself to me at that time, that he was charged with taking part with the French, which he took very hard, and signified his determination to defend the country against any invasion; if any army should invade our land, he would, at any time, lay all this aside, and turn out against them, and particularly France.*

There was a meeting at Mitchel's after that, to choose an assessor; Fries was there: he was asked to vote, but he said he would have nothing to do with it. More than once I heard him say that he did not believe it was an established law, and therefore he was determined to oppose it. I think this was the 5th of March, not far from Jacob Fries's tavern, on the road. He said he would oppose it till he had known other counties had agreed to it—then, said he, we must submit; but he would choose Lower Milford should be the last.

At the last meeting at Mitchel's, there appeared a disposition to wait till they should have assistance from any other place. It was said that a letter had arrived to George Mitchel from Virginia, stating that there were a number of men, I think ten thousand, on their way to join them: that letter was traced from one to another, through six or eight persons, till at last it came from one who was not there! Some of the company at that time were in arms and uniform. I do not recollect what was said when the letter was mentioned, but they appeared to be more opposed to the law than they were before.

At the meeting at George Mitchel's, at which Mr. Foulke and Mr. Chapman were present, which was held for the purpose of explaining the law, there was a number (about twelve) came up in uniform, and armed with a flag and *liberty* on it. They came into the house and appeared to be very much opposed to the law, and in a very bad humor. I proposed to read the law to them; they asked me how I came to advertise the meeting: I told them I did it with the consent of a few others: one of them asked me what business I had to do it: I told him we did it to explain the law. He looked me in the face and said, "We don't want any of your damned laws, we have laws of our own," and shook the muzzle of his musket in my face, saying, "This is our law, and we will let you know it." There were four or five who wished to hear it, but others forbid it, and said it should not be read, and it was not done.

I saw Fries on the evening of the 5th of March. He asked me if they had assessed my house? I told him they had: he then asked me if I had told anybody of it; I said I had not: he then added that he had forbade them to come into the township, as he did not believe it was an established law, and others should be gone through with first. I think he then added that they could not get hold of Rodrick: they had got Foulke, but let him go, and added, if they had got Rodrick, they would have put him under guard for that night. He seemed very much opposed to the law. He did not express his opposition to any other law that I

* *Note by Reporter.*—Judge Peters said he must do these people the justice to say that, from all he heard, and all he saw, they were generally disposed against the French; he found none at all in favor of them.

heard, but to the law for assessing houses, that night; in a conversation I had with him before, he appeared to be opposed to the alien and sedition law also. I know that he expressed himself a number of times, that he did not believe it was an established law. I took it that he did not believe the law had ever passed; he seemed to doubt of its being established.

Everhard Foulke.—As I was coming from the house of James Chapman with the other assessors, (John Rodrick and Cephas Childs,) when I came nearly opposite Enoch Roberts's, I saw the prisoner at the bar, and a number of others with their arms, (though I don't know that he had any, but the others had.) Some of them held them nearly as high as my horse's side, on a level, with their arms hanging down. I spoke to them as I passed, and rode on till I got nearly to the other tavern, David Zellers's. When I got there, a number run out and cried "Stop!" Some of them, addressing me by name, desired me to stop; which I did in a pleasant manner. Before any of them got to me, I think John Fries came over from Roberts's; when he was about a rod from me, he called me by my name, and told me he had told me yesterday that he would take me to-day, and he was now come to do it, or it should now be done. I don't know which he said. Captain Kuyder then ran up, and seized my horse by the bridle, and a number of others came round me; the prisoner did not come himself. Some of the people there (Jacob and John Huber) came and took Kuyder off, and he then seized me by the foot, and endeavored to dismount me, but he failed. He then again took hold of the bridle, but Huber released me again. Fries came up and said, "Foulke, you shall be taken; if you will get off, there shall no man hurt you." He took hold of the bridle, and ordered Kuyder to hold it; I rode up to the stable, got off, and went into the house. When in the room, which was very thick of people, the prisoner came and demanded my assessment papers. I told him that I did not like to give them up; he told me not to hesitate, but to do it. In that situation I gave them to him, and told him I was in hopes he would not take them away without giving them to me again when he had looked at them. I then went into another room with some of them, who exclaimed much against the law. Huber said they were not willing to submit to it yet. Fries then gave me the assessment papers again unhurt, and told me that he had used me better than I deserved, and that if I had a mind I might return him to court, which I had before threatened. He then went with me to the bar, and took me to my horse through the mob, and held the bridle while I got on, and rode off. I received no injury. The prisoner said he knew, or thought he had transgressed the law in such a manner as to endanger his life, and that I might return him if I would. The day before he spoke of force that was expected to assist him, when he attacked Rodrick and me in the road. He said there would be 700 men there tomorrow morning, pointing to Jacob Fries's house. I was appointed assessor for the whole district; my appointment was on the last day of the court (January 28.)

Mr. Ewing.—You are now, gentlemen of the jury, in the discharge of the most important duty which possibly has, or ever can fall to your lot as members of society. This is a cause of the greatest magnitude, of the first impression. Its importance is derived not only from a consideration that the life of the prisoner is now at stake, but also from the precedent that your verdict will establish in similar cases in future. From this view of it, it claims the highest and most serious attention that can be bestowed upon it.

When I address you on this occasion, I feel diffident lest my ideas should not be clothed with that perspicuity or clearness that I could wish, or my sentiments delivered with that ease or elegance that might insure success. I shall rely upon your goodness to forgive any inaccuracy of style or sentiment that your penetration may discover in my address to you.

When I address you on this occasion, it is with an anxiety of mind which I never before experienced, when I reflect upon the possible issue of this cause with respect to the unfortunate prisoner at the bar.

The situation of the public mind, now roused to resentment; the place where this subject is made matter of inquiry; together with the prejudices that may exist against the defendant, all conspire to form strong obstacles to the defence which I shall attempt on this occasion. But when I consider your characters, gentlemen, I am fully persuaded that you will suffer no circumstances of this kind to bias your impartial judgments, to destroy that inflexible integrity which characterizes you, or prevent this defendant from receiving from your hands (which is all he asks) a fair, a candid, and an impartial trial; that you will hear his cause under every presumption of his innocence, until the contrary is proved by the most incontrovertible evidence. That it is essential to the very existence of every government; that it is essential to the preservation of life, liberty, and property, that offences should be punished, and that the crime of treason, the highest that a member of society can commit, is what I will admit; but I contend that it is equally essential to the existence of a government, and to our security as members of it, that every man indicted should have a fair trial; to have the offence defined with certainty, and proved in such a manner as to leave no possibility of doubt on the minds of the jury.

That this man has been guilty of a flagrant violation of the law, an offence for which he deserves to suffer, and which the good of society requires should be punished, is what I readily admit; but I do contend, and I assert with confidence, because I think the law will bear me out, that no act the prisoner has committed can be construed treason by the most rigid or strained construction of law.

Gentlemen, permit me to observe, that in proportion to the nature and magnitude of an offence, so ought the evidence to be. As the accusation

against this man is of the deepest dye, as it is the highest possible offence against the laws and Government that he could commit, so should the proof of it come from the purest sources, and be of that nature as to establish the crime beyond the possibility of a doubt.

He is indicted for the crime of treason. Happy for us that we are not now left to the construction of judges, to the opinions of men of any kind, or we might be led astray in a variety of instances, and at times introduce accumulative treason. The people of this country, knowing the magnitude of this object, and the propriety of good security against such constructions, ingrafted into the Constitution the definition of the crime, and transmitted it to us unimpaired. Congress recognised the Constitutional definition, by ingrafting also the very words of the Constitution into the act for the punishment of crimes; they have there prescribed the punishment; they have said that the perpetrators of this crime shall suffer death. We are now to consider how far the defendant is guilty of treason, as laid in the indictment. I had meant to have gone more largely and fully into this subject from the authorities of law writers of eminence, but my learned colleague has so ably, in so masterly a manner handled this cause, that less remains for me to do. I shall endeavor to show you what is to be understood by levying war against the Government of the United States, and think I can rest on that ground with safety, to prove to your satisfaction that the prisoner has not been guilty of the crime of treason.

The defence rests upon three grounds.

First. That he has not been guilty of the crime charged in the indictment.

Secondly. If he has been guilty of any crime at all, the act of Congress has sufficiently defined it, and prescribed the punishment not to be capital.

Thirdly. I contend that the Proclamation of the President should operate as a pardon to take off the guilt of actions done previously thereunto, if not continued in.

[Judge Irdell here interrupted Mr. Ewing respecting the pardon, and said that a plea must be put in if that was insisted on, but the prisoner must plead guilty to plead pardon. The Proclamation was read by Mr. Ewing, in which, he observed, there was no pardon promised.

Mr. Dallas said he had begun speaking on this point before, but was interrupted from explaining his idea: he thought there was much difference between an assemblage before and after an admonition to disperse; it doubtless would have been treason had they continued in arms, but their future actions put a construction upon their past actions, and proved that they were guilty of riot and not treason.]

Mr. Ewing continued.—This opposition arose from ignorance: they did not know that the law was in force; and the first time they knew that was by the Proclamation, when they actually did disperse and submit to the law.

The prisoner at the bar is not guilty of the treason laid in the indictment; for, first, there must be a traitorous intention; and, secondly, that intention must be carried into effect. In order to prove that, we must trace his conduct through Bucks county, and then proceed to Bethlehem, where the act of treason is said to have been committed. In order to discover what is meant by levying war, we are obliged to resort to the authority or decision of English courts on the statute of Edward III: but though everything that has been done there is not to be considered as a proper precedent for us here, yet there are some rules and constructions in England that will apply to particular cases here. Wherever a set of men take up arms to oppose themselves to the Government generally, to subvert the laws, or to reform them, in that case they are said to levy war against the Government. The great criterion to distinguish what amounts to this crime is the *quo animo*, or the intention with which the act was done. The object must be of a general nature, and not an assembly to do a particular act; this would not be treason. I shall now show, by the conduct of the prisoner, that his views were not of a general nature, and that it was by no means marked with that degree of malignity which the counsel for the prosecution have represented. You will consider that the residence of the prisoner was remote from the seat of Government, and from that source of correct information which, as a member of society, he ought to have received, whereby to regulate his conduct. The people with whom he conversed were unacquainted with your language, warmly, and perhaps superstitiously attached to old established laws and customs of the place where they resided. Having been accustomed to be taxed and assessed by men of their own choice; men whose conduct they had a right to scrutinize, and whom they had used to bring to account, you need not be surprised that these people would at least hesitate at admitting innovations into their customs. The ideas which struck them naturally were, "From what source can this law arise, that should send a stranger into our townships to make assessments—a right which, exclusively, as we think, belongs to us?" They did not feel such prejudice against this law, considered as to its effects, but from the manner of its breaking upon their view. The introduction of this new principle alarmed them, but they assembled, not to oppose the law, but to gain time for information of the real existence of it. Under this delusion they labored, because they had not the advantage we have of enjoying information, and the illiterate state they were in operated as a great source of their opposition. This ignorance and delusion were peculiarly manifested throughout all their conduct. Their first meeting was held to consider whether it was a law or not. Not being satisfied about it, and disappointed in their information, they met again, in order to tell the assessors not to come about their township to make the assessments until their doubts were removed. The assessors went on, however, and all this while the people were enveloped in darkness. They warn the assessors; they tell them, "We don't want to repeal this law by violence." No; if they had, arresting the assessors would not have done it;

they must have gone to a higher source; and if they had gone there with a determination to repeal or oppose it, the act might have received the stamp of treason. I deny that they arrested any of the officers of Government in the execution of their duty. We have repeatedly asked upon what authority these men acted: we have asked, and have not obtained satisfaction, and we therefore presume the authority does not exist; and where there is no law, there is no transgression. But, suppose they had produced their authority, to what would their opposition have amounted? To a riot, and no farther. What course did Fries take in this scene? Humanity and tenderness, wherever his interposition was necessary, and he was present, characterized him. So far from subverting the Government; so far from preventing the execution of its laws: so far from injuring or punishing these assessors while entirely in his power, he prevented the very people who were with him from doing those acts, and he himself was industrious to release them, and lead them into a place of safety. If conduct like this is to be construed into the crime of treason, what act, I ask, will not by and by? If this is treason, it is unhappy for us, for thousands in the United States have been guilty of the same thing. Because a law exists, must we acquiesce implicitly? have we not a right, as freemen, to think? have we not a right to object to it? It is impossible that we should be all of one mind with respect to the beneficial consequences of a law; some difference of opinion will necessarily exist. The opposition was manifested in different places, but it was all to the same law. But the opposition did, in no instance, amount to a traitorous intention, nor was it ever manifested in their conduct from the beginning to the end. I ask you, if Fries ever took any active part in it, so as to distinguish him as their leader? It has been declared that he opposed the law, and likewise that he took men to Bethlehem to rescue the prisoners, but we do not find there was any command given. There was a difference of opinion on their way, whether they should go to Bethlehem or not. If he had commanded these men, and had intended to levy war against the Government, some of them would not have returned; but he would have led them on to the object without consultation. Trace him toward Bethlehem: there were several who could not pass the bridge, because toll was demanded. When he came up, he said "Count my men." No doubt he meant only the men of his own company, because we do not hear that he paid for more than his own. It does not appear that he had any communication whatever, informing him that such a party were to meet there that day, much less can it be imagined there was any treasonable communications. He went up with his men; but we find, while another company formed before the house, his men stood aloof: they did not form there in the ranks, nor did they come there for that purpose. The consideration that some of their country people were taken prisoners, and they thought it was unconstitutional and oppressive for them to be taken to Philadelphia to be imprisoned and tried, induced them to insist upon the rescue. What did they say? "We will bail them: if they are guilty, they ought to suffer." Bail is refused. The marshal could not have granted that request, but they did not know that. When they found this, their proposal, was rejected, they determine they will have the men. Then John Fries appeared: a man who had used the assessors respectfully; a man whose character was that of humanity: he was chosen to go in to the marshal to demand the prisoners. One said he should be commander of them; but it does not appear that he did take the command at all; but we hear of two others who commanded on that day. Fries went in and conversed on the release of the prisoners with the marshal, who, with great firmness, said they must be taken from him. He went out again, and the men being pretty warm, he checked them: went a second and third time: all his aim was to prevent the shedding of blood. He pledged himself to the marshal that no harm should come to him from him or his company.

If the object of these people had been of a general nature, men so obnoxious in the county as Balliott, Henry, and Eyerly, would not have escaped their vengeance or resentment, when they were so much within their power. Had their conduct been stamped with treason, they would not have been satisfied with rescuing the prisoners: the officers would have suffered; but not one, we find, was hurt. One strong trait, worthy your observation, is, that their view in going to Bethlehem was not to prevent the operation of the law, but simply to rescue the prisoners; and in this their conduct cannot amount to more than a riot and rescue: an offence defined, as well as its punishment, in an act of Congress. As the overt act must be laid in the county where the offence was committed, and if it is true that treason was not committed at Bethlehem, where shall we look for it? The gentlemen will not attempt to prove, I presume, that the beginning of the treasonable act was in Bucks county, and its completion at Bethlehem. But Bucks had nothing to do with the present indictment at all, and ought not to be brought into view.

Mr. Ewing then referred to Foster 210, and 1 Hale, 143, and Lord George Gordon's case, each of which, he said, far exceeded the case of the prisoner at the bar. But, he observed, as the time and patience of the jury, to which he felt himself so much indebted, had been so severely tried already in this lengthy trial; and as the defence had been so ably handled by Mr. Dallas, and what remained would be, he had no doubt, well conducted by the justly acknowledged great talents of another learned advocate, he should forbear enlarging. The verdict you give, gentleman, said he, will not only be of vast moment to the prisoner, but will also establish a precedent for future similar cases, and it will be to your immortal honor if you preserve and decide with impartiality and firmness; while, on the contrary, it will be a source of shame and disgrace if you do otherwise, through the influence of prejudice or the operation of external circumstances. I can safely trust the life of my client in

your hands, under a consciousness that those feelings of humanity, and a just estimation of the evidence, will outweigh all other considerations, and thus will your righteous verdict gain you the gratitude of your country, the approbation of your own consciences, and the warmest thanks of the defendant.

Mr. Sitgreaves.—I acknowledge the propriety of an observation which dropped from one of the counsel for the prisoner in the course of his address to you: that is, that those who are concerned for the prosecution in criminal cases should not endeavor, by their eloquence or ingenuity, to divert the attention of the jury from the truth, or to stretch that truth so as to give them more unfavorable impressions on the facts than they will bear. This, I must acknowledge, would have been unnecessary advice to me, because the views I shall be able to take of this subject will be but feeble and imperfect. In the course of my limited and short experience, I have been but little conversant with criminal courts, and have paid but little attention to the criminal code, and never have been engaged in a case so important as the present, my public duties having, for some years past, drawn me from the bar. It may not be wondered, then, if I have not been able to bring into this court talents equal to meet those called to the assistance of the prisoner. I must therefore say I shall not be able to do justice to the case. I confess I feel a desire that those persons who have been guilty of this second outrage and disgrace brought on the State of Pennsylvania may feel the punishment the law inflicts. I hope you and every one who hears me will join in this sentiment, for on it hangs much of our peace and security. I have no objection to going still farther. My lot is cast in that part of Pennsylvania where this unfortunate circumstance occurred. I feel particularly for the good order, peace, and prosperity of that part of the State; but I have unhappily seen it in such a situation that all the harmony of society was destroyed; and if I were not to feel a strong desire that peace, harmony, and good order should be restored, I should be destitute of humanity; for we all know that crimes can only be prevented by inflicting suitable punishments on the delinquents. I wish, gentlemen, that the law should be executed against those who were criminal; but when I say so, let me not say that I wish the prisoner at the bar to be executed. No: my earnest wish is that the general good of society may be procured. This man must be tried by the evidence that is brought against him, and upon that alone he must stand for his guilt or innocence.

Having said thus much, I begin now to premise one or two things which I think should be altogether set aside, but which have been much insisted upon. You have been told that the prisoner appears here on the charge of treason, under all the advantages of denunciation by the President of the United States in his Proclamation. Any of the assertions of that Proclamation are not to have weight on your minds, nor will it operate against the prisoner. He is to be tried by the evidence only, and you are not to regard anything you have heard out of doors before this trial commenced. Nothing should operate to doom the prisoner to a harder fate than the law, supported by fair testimony, provides. It is also as true, that nothing contained in that Proclamation should operate to the benefit of the prisoner: if it should not convict him, no more should it acquit him. The analogy which has been drawn does not exist between this Proclamation and the Riot act of England, as you have been told; but even if it did, the inference would not be just. You were told that all who disperse on the reading of that act are pardoned for crimes previously committed. It is not so. But more of that presently. The Proclamation of the President was issued for one purpose, and the Riot act, in England, is read for another. The President has no authority to call forth a military power but under certain circumstances. Wherever a combination should form which is too strong for the civil power to quell, then the military may be called in to aid the civil but with a humanity intending to prevent the effusion of human blood, and to call out military force as seldom as possible, the law has provided that a Proclamation should be previously issued, that the offenders may disperse peaceably to their homes; but there is not a syllable about pardon in it. The President has the power to pardon, it is true, but he has not done it by that Proclamation.

The Riot act, which passed in the reign of George I., was enacted in order to prevent tumultuous assemblies: if people refused to depart within one hour after it was read, they were guilty of felony, for which they were to suffer death, although the offence before was only a misdemeanor, yet the refusal to depart makes it felony; but it cannot be pretended that any such departure excused them from the riot, but, on the contrary, prosecution and conviction frequently take place for that crime, although they should disperse; and therefore it does not affect the merits of the case. The proclamation is a blank paper before us, and therefore we must examine this case upon its own independent merits.

Gentlemen, in summing up this case on the part of the United States, the method most natural to adopt is.

First. To consider the law as relating to this subject.

Secondly. What was the amount of the offences perpetrated at Bethlehem: and,

Thirdly. Inquire whether the facts produced in evidence are such as to convict the prisoner, and make him guilty of the charge in the indictment as applying to his particular case.

First, with respect to the law on treason. I should have expected it was so well understood that there would have been no difference amongst us, however we might differ on its application to the prisoner; yet unfortunately there is, and we must endeavor to meet those objections. The statement which was made to you at the opening by myself, and a statement by the attorney of the district, I believe to be correct: I am confirmed in that opinion, and have no doubt it will be given to you by the court in the charge as correct. We

are not at this day to distract ourselves with theory. The law of Edward III. of England, called by some "the sacred statute," and by others the parliament who enacted it is called "The Blessed Parliament," that law and our Constitution have adopted the same words. The judges in England, as eminent for their patriotism, as eminent for their tenderness, and as eminent for their ability, as any ever were in this country, have solemnly settled this particular in a variety of instances, and unfortunately, young as this country is, there has been the necessity for a court of the United States for this district to settle the principles likewise. The adjudications under this statute were made by men all well known for their love of liberty. We have no need to conjure up a different exposition, or different form of construction, than what has already been admitted in both countries: indeed, it is what cannot be shaken at this day. It is, *that all insurrection by a multitude of the people with intention to usurp by violence or intimidation the lawful authority of the Government in matters of a general and public concern, in which the insurgents have no interests distinct from the rest of the community, is* TREASON. From the best consideration I have been able to give the subject, I have formed this definition, which I believe comprises the whole that can be said about it, and I believe no more. I think this assertion will appear to be justified by the best authorities. If this description is just, the offence is clearly settled, and amounts to "levying war against the United States." In the most essential parts, I think this rule has been settled by the counsel for the prisoner.

The *intention*, which constitutes the gist of the offence, is proved to have been to some general object; if the intention was to gratify some private concern or interest, even if there be all the apparatus of war, as guns, fifes, drums, &c., whatever violence should be committed under it, it cannot amount to treason, because the intention is not to a public matter, whatever other crime it may amount to, and whatever other enormities may be committed. This may be the case, in order to gratify some particular passion, or some particular interest. It is the intention, which distinguishes treason from other crimes. Riot is generally much like it, but not being of a public nature, is only a misdemeanor: Treason, on the contrary, is the greatest crime known to the laws of any country. Lord Mansfield, at the trial of Lord George Gordon, expresses the same opinion. If this a true position, it is certainly an irresistible inference, that insurrection for the purpose of suppressing and preventing the execution of a public law, is to prevent or obtain a public object, and of course must be high treason within the rule of our Constitution. Yet this has been repeatedly denied by the gentleman to be high treason; nay, he even went on so far as to say, that in England, no such thing had taken place; he says it must be a combination to oppose all the laws; or, at least, to force the repeal of a law. Gentlemen, I think I have stated enough to convince you that this is erroneous: If treason is the unlawful pursuit of an object of a public nature, then the suppressing of a public law is treason. But I would not have you rest on my definition, if I cannot bring you full proof in favor of it. See 1 *Hawkins*, chap. 17, sect. 25. 1 *Hale* 133. And this position is confirmed still further by a precedent of our own. 2 *Dallas*, 346. &c. I consider this settles the question beyond all doubt, and it ought to rest so forever, the decision was so serious and solemn in both countries. I shall assume this as an acknowledged point throughout the whole of my inquiry. I should have added the opinion of Mr. Erskine in Lord George Gordon's trial. Speaking of the treason statute, he says—None of them have said more than this, that war may be levied, not only by destroying the Constitution, or the Government itself, but by assuming the appearance of war, to endeavor to suppress a law which it has enacted.

It is certain that British cases go much farther, and if it was necessary, and the case required it, it could be justified by decisions in England upon points infinitely less strong than those I have quoted: points which were settled at a very early period, which neither the Parliaments nor the courts have ever interposed to change. Cases of public grievances, whether real or pretended, whether they grow out of law or out of practice, as pulling down all enclosures, &c., which are the invasions of private right, from its universality—is high treason. Again, usurping the powers of the Government by pulling down all bawdy-houses, is high treason. The case referred to by Mr. Bradford, in Mifflin county, was, that a particular judge was driven from the bench: they did not oppose the sitting of the court, but they had a resentment against the individual, and therefore the prosecution was for riot. This will assist us in our farther inquiries upon the present occasion. This crime is said not to be treason, but a rescue and bare obstruction of process, and within the sedition law, or within a clause of the penal code, and therefore not treason. But whatever nature an offence may be of itself, if it is accompanied with this particular act of treason, the act becomes treason. I willingly admit that a rescue of prisoners may be without treason: a person may be willing to risk the law rather than his friend should suffer, and may therefore rescue him; this would be but misdemeanor. If ten men in arms go to an officer and rescue his prisoner, if it be done in a private manner, it is no more than a misdemeanor; but if these same ten men in arms go from motives of a public nature, then it becomes treason. The intention, therefore, makes the crime to differ.

It is said farther, that the Legislature of the United States have passed a solemn opinion upon it, and that they have called it no more than a combination of certain facts; a rescue, &c., against which it has provided; and therefore it cannot now be called treason. I think this received a good answer by Judge Wilson. 2 *Dallas*, 351, and the objection was solemnly over-ruled by the court.

The Sedition act was not made at that time, to be sure; but if it had, there can be no doubt

but it would receive the same answer, and meet the same fate by this judge, if read in objection. But the first section of the Sedition act describes a different sort of combination, and is not levying of war. There must be of necessity a conspiracy in levying war, but there may not be one in an unlawful combination.

[Judge Peters.—Whatever the crime would have been without a treasonable intention, with a treasonable intention it would constitute the overt act.]

Mr. Sitgreaves.—The cases in the books are strongly demonstrative of this particular. In Benstead's case (*Foster*, 212.) "certain unpopular measures having passed in the council, the odium was thrown on the Archbishop of Canterbury. A paper was pasted up in London, exhorting the apprentices to rise and sack the Archbishop's house at Lambeth, and accordingly some thousands went with a declaration that they would tear the Archbishop in pieces."

It was not attacking the individual, but the officer, that became high treason. The same with respect to the attack on General Neville's house during the Western insurrection; the attack on him was, because he was an officer, and therefore, being upon the office and not the man, it was upon the Government, and high treason.

Such is the general opinion of treason: the great inquiry will now be, what was the intention with which the offence at Bethlehem was perpetrated? It is allowed to be a rescue; it is conceded also that there was an obstruction of process: If it was so, it was a part of the general system which, being of this public nature, obtains the magnitude and operation of treason. Before I go into the examination of this, I will make an observation on what has been said: that the overt act must be proved in the county where it is laid. I heard this position, but I did not discover any application of it, and therefore I am at a loss to know how to treat it. There exists in England, and in the State of Pennsylvania, a form in the direction to the grand jury, which deserves notice: they are sworn to inquire for *the body of the county*. This causes considerable difficulty, particularly where something done out of the county is required as an ingredient in the charge, and if the beginning of a crime was in one county, and its completion in another, the difficulty would be greater; but even those difficulties are remedied. The idea of his honor, Judge Peters, the other day, appears to be sound. That a district is the same as it respects the United States, as a county is to a State, and, therefore, the grand jury are drawn, not from the body of the county, but from the body of the district, and the whole extent of the district is equally connected with the *venue*, if it be laid there. As to the evidence, therefore, I consider the crime may be laid in one county and proved in another. (2 *Hawkins*, chap. 46, sect. 182.) I consider whatever rule applies in England, or in our State Governments relative to counties, is the same respecting districts under the General Government of the United States; likewise, if the overt act be proved in the county where it is laid, you may go out of the county for evidence to show the intention with which it was committed. This, I think, cannot be denied. In *Foster*, 9, we see that an overt act, not laid, may be brought as evidence to support one that is laid, in order to show the intention.

With respect to hearsay evidence, the rule of law is, that the circumstances of the oral testimony is regarded, as it may tend to establish other evidence, though of itself it be no proof. There are a variety of instances in which it is necessary to be admitted, though there is a rule against it in others. In all cases where proof is to be made by evidence of general reputation, it is useful; so, upon this occasion, it is competent to us to prove the general state of the country. If proper to show the general state of a country where insurrection prevails, it is as proper in order to show the general combination, the design and intention, because it may be the only effectual way of coming at that knowledge. For instance, this information, which was received by the Commissioner in the discharge of his official duty, is proper evidence to show why the law was not carried into effect, and, consequently, the criminal spirit of the country.—*Popham's Reports*, 152.

Mr. Sitgreaves then went into the case of Lord George Gordon, which had not been represented to the jury by Mr. Dallas to his satisfaction. He related the circumstances of that riot at length. He said the acquittal of that gentleman was not a certain proof of his innocence; doubts might have arisen on the minds of the jury as to the sufficiency or character of the evidence, or there may have been a contradiction of testimony, by which all the credit of it would be taken away. Besides, it did not appear to him that the act of high treason was committed; the multitude who accompanied Lord George to the Parliament house, did not go to compel a repeal of the law, or to overawe the Parliament, but from a report that the numerous signatures were not rightly obtained, they went to stamp truth on the instrument, and convince Parliament of the respectability of the signers. Besides, the main point of evidence of what a person heard Lord Gordon say in the lobby, was received doubtfully by the jury. Many things went to make the testimony not so unambiguous as it ought to be on a trial for life or death, and on that account, perhaps, the learned judge charged them, if a doubt hung upon their minds, to acquit the prisoner. Upon the whole, no inference can be drawn from that case.

Gentlemen, another extraordinary position was taken, by both the counsel, in defence of the prisoner. It was said, that it could be no offence to rescue prisoners who were taken up for acts committed against men who acted without authority, nor to oppose men who had not authority to assess under this law. It was attempted to be shown you that some of the assessors had not received their warrants agreeably to the act of Congress, and, thence, all the outrages were tolerated! I do not suppose that the gentlemen, engaged for the prisoner, mean to go beyond the case in which they are engaged, but I must say that their zeal

on this occasion has introduced a dangerous principle. If the apostle of any insurrection had come reeking from the gore of Europe, and had preached up to you this doctrine, he could not have done it more completely than those gentlemen; agreeably to this, the whole country may raise themselves into an array against those who, *de facto*, exercise the authority of the Government and the laws, yet, if called to account, the court must be informed, if the ingenuity of the counsel can find a fault in the appointment of the persons engaged in the execution of the laws, that they have not transgressed the laws, and upon that account! Is not this at once sapping the foundation of society, and by a kind of encouragement of insurrection, striking hard at the root of all government? This is an opposition, in my opinion, upon a dangerous and destructive ground. I am not disposed, at this time, to enter into any argument whether it is necessary to prove the appointment of the officers, but, admitting it is true, that upon the indictment of persons for obstruction of process, or obstruction of a public officer in his duty, it is no offence without he prove his due appointment, yet it does not follow that facts given in evidence to prove an outrage, should require all that strictness of examination. You will observe that the prisoner does not stand charged with anything but the rescue at Bethlehem; he is not now charged with the offences he committed in Bucks, or anywhere else, much less with anything where he was not present. These previous transactions are given you to show the intention with which the last outrage was committed; it is only to show the tendency of the design. These gentlemen exercised the offices, and it does not appear that there was the least doubt expressed in those counties of their authority, neither by the prisoner nor any person whatever, who associated with him, at any time or on any occasion; their opposition was not founded on any such pretext, but it grew merely out of the law, and, therefore, it must appear that the outrage was an unequivocal fact, conducted with the intention, so far as we can collect, to defeat the law. On these grounds there is no necessity for proof of due appointment. But what are the objections, or what proof do they require? There is no pretensions to a doubt respecting the legal appointment of any officer but the two assessors at Penn, in Northampton, and Milford, in Bucks; Mr. Eyerly himself tells you, that all the rest were appointed by the Board of Commissioners, and that at Penn, the assessor refused, and Mr. Balliott had the blank to fill up. Respecting the other, Mr. Foulke supplied the place of Clark, who held his appointment, and Mr. Foulke was appointed to assist him. How, then, gentlemen, from those two cases, could a general inference be warranted that the appointments were irregular, and upon that ground these outrages be justified?

We have heard much about the danger of following English precedents, and about the words *high treason*. There is a species of treason in England which cannot exist here; that is, conspiring against the life of the King, and speaking of mere words, which have frequently been construed into that crime. It has been a question of great doubt whether words can be called treason, but, in that country or this, it is necessary to prove the intention with which a crime was committed; and, therefore, mere words, though it is true, cannot convict, yet if a man has done a lawless act, we may exemplify the design by words, even of the prisoner himself. With respect to an action done publicly and notoriously, that is a matter capable of positive and absolute evidence, plain to the senses; those who see it can tell of it, but there can be no way of diving into the heart. If the party himself, from that recess, should develop his designs, these declarations made, either by himself or others who heard him, can prove the intention of his actions, and for that purpose is good evidence.

Gentlemen, I have now said all which I think necessary, with respect to the law on treason. I am confident I have not done justice to it; but what I have omitted will be amply supplied by the attorney of the district, and their honors upon the bench.

I shall now proceed to investigate the facts as they have appeared in evidence, and apply the law to those facts, in order to show you what share of guilt the prisoner transacted. In doing which I shall only select the most prominent features of the testimony which may go to prove my position.

First, with respect to levying war. I think it will require but few words to show that there has been an insurrection in the three counties; that at Bethlehem there was a multitude of people in arms, amounting to the full sense of the words of "levying war with arms;" the insurgents had all the apparatus and accoutrements of a regular military force, and they went there in military array. This is proved by fifteen witnesses, not by two, merely. It is farther certain that this multitude of people perpetrated atrocious and lawless offences, and in contempt of all legal authority, after solemn, reiterated, and repeated warning; that the marshal, conformably to that humanity which characterized him, sent a deputation to them, requiring them to go home and to abandon their purpose; that he selected persons who were most likely, from their political opinions, to procure the object; but, nothing would do for them short of what they set out upon, and the mission failed.

We will next consider for what purpose this outrage was committed. It was said to be simply for the purpose of releasing the prisoners; this was the abstract and naked design. If such is the fact, the prisoner must be acquitted; but if he had an object beyond that; if it should appear that this was one link in the chain of opposition to the laws, then it mounts higher, it mounts to treason. It is my purpose to show you that their object was higher than a mere rescue, and that it did not flow from any particular regard to the prisoners in custody, but it was a public opposition, and one means used with a view to prevent the execution of a law of the United States. Gentlemen, the mere recital of one or two facts will be sufficient to bring this home to the mind of any man who is not determined to shut his eyes against plain testimony.

It is in full and complete proof before you, that, in the counties of Northampton and Bucks, the opposition was almost general, and that in the township of Milford, all along the river Lehigh, and both sides the mountain, there was a union in opposition to the law, uniformly conducted with system, menace, and threats; that the persons who thought proper to assist in the execution of that law, were previously intimidated not to accept it, and after they had accepted, they were prevented from executing it, and in many places, until the march of the army, the law did actually remain unexecuted. I shall not state to you the particulars of this evidence, but remark that the system was general, and that it was accompanied with threats and menace, and that the friends of the law, and those who were peaceably inclined, were prevented, under the influence of this terror, from speaking their minds on the occasion; and even the magistrates of the country were so impressed, or so intimidated, as not to perform the duties of their office; that the law was completely prostrate, and persons who would have given testimony against them for these proceedings, were afraid to do it. In the course of this proceeding, it was repeatedly declared, that if any person should be arrested for opposition to the law, they should be supported. This system of menace was general; it was not an opposition grounded particularly upon the obnoxious characters of persons who were employed in the execution of the law, but upon the law itself. There was an offer of a particular Commissioner to use his influence, that they might choose their own officer, but that would not satisfy their object; no, they said if they accepted that offer, it would be approving the law, and that they would not do. Mr. Eyerly, the Commissioner, had been for many years the representative of this district in the Legislature. Mr. Balliott had been in the Legislature, in the Council, and in the State Convention, which proves they were men of confidence in their district, and that the particular dislike now exemplified was not to them as men, but as officers under the law. One of the counsel for the prisoner went minutely into all their views, and the veins through which they acted, and endeavored to palliate or excuse the conduct of these insurgents; while, at the same time, he appears to know what were the views of Government in prosecuting the delinquents; but there is no necessity to answer that, because the prisoner is not on his trial for obstruction of process. I most solemnly disavow that political party spirit enters at all into this prosecution, and beg the jury will dismiss all party spirit and prejudice from their minds. However we may differ on points of law, we must agree with them that the people had a right to examine and explain the law, and express their dislike to this or any other law. Their opposition to this law might have been right or wrong; it does not alter the case; and God forbid that any motive of the kind should influence us to revenge. These are natural rights under a free Government, which every citizen has a right to exercise. We are not now inquiring into the nature or grades of any or all those particular offences; whether this particular outrage is a riot or that a misdemeanor, or whether it amounts to treason; we are simply showing to you, from the evidence collected, the weight and force of those facts, to wit: that there was opposition to this law, and that universally, and that these people did their utmost to endeavor to stop the execution of the law; and that these acts were in strict union with the last act at Bethlehem, of the intention of which the previous acts collectively are plain proof; for, certain it is, that an act illegal in its nature, may receive color and complexion from one that is strictly legal. Suppose a man had reduced his thoughts on this subject to writing, without any intention of communicating it to any person; suppose, in that writing, his intentions are fully declared with which such writing was drawn; then this act, though innocent in itself, would be competent evidence to show the intention with which a subsequent outrage was perpetrated, and it would be in full proof to show that a violent opposition to the laws in that county, particularly to the act for the valuation of houses, and that it was not from a personal or private motive, but generally an aversion to the law itself, so that a long time after the period fixed for its execution, the law actually remained unfulfilled. In several parts, the people returned to a sense of their duty and submitted to the laws, and happy would it have been for the Government as well as themselves if they had all done it; for, then, this investigation would have been prevented. But, in some parts, the marshal, and those who were with him, who were not volunteers, as has been insinuated, but acted in conformity to their duty as public officers—these were insulted, arrested, and obstructed as officers. The marshal was abused by numbers of people at Millarstown, and he was not able, though he touched Shankwyler, to execute process on him. Gentlemen, all I ask of you is to connect the circumstances in your minds—the general course of events which gave rise to what afterwards was consummated at Bethlehem. The prisoners who were rescued were desirous of accompanying the marshal to Philadelphia; they would rather not be liberated; they were taken from various parts of the country, unknown to each other, and more so to the persons who rescued them; there was no private attachment, regard, or resentment; what, therefore, could be the motive of the insurgents? Could it be interest? No! it would be bad policy to spend dollars to oppose a tax law rather than cents to support it. Was it a private, distinct interest they had, which did not concern the community? If not, agreeably to Judge Foster, it was treason. I have said that these prisoners were not known to the insurgents; I would make the exception of Shankwyler; but you will observe that he never did surrender himself to the custody of the marshal, and though some said they were come to see

him as a neighbor, others to see his partner, (accuser,) &c., yet he was not *de facto* in custody. It could not be to rescue him that this large armed body met, because he could have been safe by keeping at home. But one solemn fact respecting the others demands a solemn inference. The Lehigh prisoners had cordially submitted to the law, and thus desired to recommend themselves to the mercy of the Government by penitence, and actually at last gave the marshal their individual assurances to meet him at Philadelphia. I ask, then, by way of inference, what becomes of all the private object or the neighborhood esteem necessary to vindicate these insurgents? It was not for the prisoners' sakes, but through opposition to the law, that they did this act, for it is plain that the persons in custody of the marshal were afraid as much to trust themselves in the hands of the mob as Mr. Eyerly or Mr. Balliott were. They doubtless had a treasonable, a rebellious determination to oppose the Government; the previous declaration of the party, that "if any persons were there in confinement who were opposed to the law, they should be rescued," was a plain indication of their opposition to the law, and that this rescue was a part of the general opposition. Mr. Sitgreaves then went into a review of the evidence respecting the meetings in Upper Milford, and at Schymer's, where, he said, opposition to the law marked the conduct of the people, but at Lower Milford, the prisoner at the bar, by his own confession, eminently displayed his intention; and, after recapitulating the evidence, proceeded.

Gentlemen, when these facts are taken into view, so immediately preceding and so directly pointing to what took place at Bethlehem, can you hesitate, as honest men, desiring to do justice, and speak impartially between the prisoner at the bar and his country, that he went there, not merely to rescue prisoners, but to execute a part of the general opposition to that law of the United States? If he has done so, he is guilty of treason. Let us now attend to the evidence which grows out of the avowal of the parties themselves at Bethlehem, at the time of the outrage. These are previous indications, which certainly point as truly to the intention as the needle points to the pole.

After a full consideration of the testimony, Mr. Sitgreaves proceeded.—Here, then, gentlemen, the evidence closes. We find this man is not of a yielding texture; he still continued in his opposition, even at the time there was a recommendation to submit to the laws; at a meeting at Marks', it was determined to recommend submission to the officers, and all the laws of the United States, and to *desist from opposition to the laws*. This is proof that there had been opposition to the laws in the three counties. When these things were done, Mitchel asked Fries if he ever did intend to oppose the laws? "Yes, I did," was his answer.

In the testimony of Mr. Roberts, we have proved the general state of opposition, as well as the guilt of the prisoner: this witness was called by the prisoner's counsel. To be sure he proved the prisoner's penitence and submission. If he had not been guilty, he could not have been penitent. He said he had not slept for several nights; an acknowledgment so much the more pertinent to prove that he had been doing what he knew was wrong.

Gentlemen of the Jury, I have endeavored to show you this subject in all the points of view I am able, so as to give you a right understanding of the facts; and permit me to declare to you that I have not wilfully perverted either the law or the facts, to the best of my knowledge; yet it is possible I may have done it; if so, you will be undeceived in those particulars by the court. Gentlemen, you have a solemn duty to perform: we have all had a disagreeable and tedious undertaking: I pray you to do it in such a way as may do justice to the prisoner at the bar; and at the same time consider how much the happiness, the peace, and tranquillity of your country depend upon a fair, impartial, and conscientious verdict, which there is no doubt but you will deliver.

Mr. Lewis.—It is now become my duty to address you on behalf of the prisoner at the bar, who is arraigned before you on the important issue of life or death: I do it with the more confidence, because I have not been able to learn from the counsel for the prosecution, a single instance of English law that comes up to the present case, in good times or in bad times, so as to denominate it treason, except in a determination during the bloody reign of Henry VIII., and that is mentioned among the evils of the time: I have not been able to find it under any existing circumstances whatever, and yet any person who is the least acquainted with English history or law, must know that the excise law and the shop-tax, as well as some others, have led to riot and insurrections, and a variety of trials have been held upon them. It may be right to make the experiment upon the present case; but, unless this prosecution is warranted, established in good times, and upon solid grounds, I am sorry to say, but truth compels me to declare, that it is a burning torch in the hand of a madman; it is a flaming sword in the hand of a tyrant, and has done immense injury in England. I know there is no intention in the Attorney, in this case, to do anything that is wrong; yet I wish more reflection had been used, before the prosecution had gone on. Thus it was in England respecting Hardy, Tooke, Thelwel, and others; those who most understood the whole of the charges were not satisfied to call their crime a misdemeanor, though there was no direct point, in ancient or modern law, warranting any other indictment, yet the experiment was tried; but an English *jury* appreciated it in its proper light, and they resolved to do nothing which their ancestors had not done, not even in the application of constructive treason; and, therefore, after a mature discussion, they returned a verdict of *not guilty*. When on the present occasion, the causes and proceedings are duly considered, I am satisfied you will feel it a duty you owe to the prisoner now before you, and to your country, to pronounce a like verdict. It is

not because a circumstance any way similar to this has once taken place, and been argued upon the same grounds, that therefore it is right it should take place upon the present occasion; adopting a principle of this kind has often made courts, in arbitrary times, take gigantic strides over the statute of Edward III., so that a man could not know how to look, act, speak, or even think, without difficulty and danger. I have said that I am not able, except during the mandatory reign of Henry VIII., to find the trace of a single instance where rescue, under any circumstances whatever, has been found to amount to treason, and if succeeding ages did not consider themselves bound by that practice, I trust you will not sit here to establish a law, but to give it such a construction as justice demands of you. I have undertaken this cause the more readily, because I do not undertake to justify, to palliate, nor to excuse; but I censure the transactions which have given rise to this trial as much as the counsel for the prosecution does: I am as sensible as they are, that those people violated the law without cause; and I came not here to set up a mock excuse for them. No, it is my opinion that they merit exemplary punishment, but that punishment must be conformable to *law*, or, when once the law is overturned, the consequences will be incalculable; offences higher than the present may be committed with impunity by some, while those of less grade will be severely punished in others. It is not for me to say that the prisoner is entirely innocent. To me, to the court, and to you, it is totally immaterial whether he has acted wisely or foolishly, guilty or innocently, if not guilty of the offence upon which he now stands upon his deliverance. I may be asked here, how I came to defend a man who, I had admitted, had violated the law, and in some degree set the Government at defiance? My reasons are these: It is a privilege of every man to have a fair trial, and not to be condemned without being heard, especially in affairs of a highly criminal nature; few men are capable of defending themselves before a court, and in a capital case, from the perturbations of their minds, still less so than in any other; and woe betide that country, where a man so charged should not be entitled to every assistance that he can procure! By the statute of William III., which is the first that ever allowed counsel at all, the court were directed to assign counsel, who were obliged to render all the assistance in their power; the same is allowed by our act of Congress, (p. 112, sect. 29;) for without that, he may be considered as condemned unheard, and the public mind would be left unsatisfied as to the innocence or guilt of the accused. Those who have entertained the surprise I have hinted at, at my being thus engaged, have doubtless acted from the best of motives; but, not satisfied with this, and wishing to spill the blood of a man before he is proved guilty, some calumniating scoundrel has, in a public print, had the hardihood, during the present trial, to impute to the unhappy prisoner's counsel, the base influence of gold, when all concerned know very well that the prisoner has not a farthing to give, and not a farthing nor even a promise of any, was ever given to those who have undertaken his defence. I will say no more respecting this vile attempt, but that the law says no publication shall take place which may tend to influence a court or jury, while a trial is pending, and therefore it is a high contempt thrown upon the court, and upon you, and the probability is that either the author or the publisher will be brought to answer for his conduct.

There is one thing, gentlemen, I would wish to caution you against. There are many citizens who suppose that the troops will never turn out again unless a conviction takes place on the present occasion, and that an insurrection will soon appear again: but this is paying a poor compliment to our volunteer troops, to suppose they would not be satisfied without shedding blood. Gentlemen, let no arguments or considerations have weight with you but what are supported by law, and then decide, regardless of the consequences. Another matter I would caution you against, is one with which I found very considerable difficulty to cope; but at length I divested myself of it, and I pray you to do the same: I mean all kinds of prejudice as to the party tried and trying. Our Constitution and our laws are wisely calculated to preserve the happiness and interest of ourselves and posterity: our Government is composed of tried patriotic characters, and our political bark, with such men at the helm, need not fear a storm; but notwithstanding this, it is vilified and abused. These are grounds for prejudice to work upon, and it is difficult, I can say by experience, to avoid its influence; but when we come to the sacred temple of justice, even if to decide between A and B, on a matter of trifling property, we are sworn to an impartial and unprejudiced decision; and how much more is it demanded of us in a case of life and death? It is necessary to enter that temple divested of opinion or bias, otherwise there is not a fair scope for our reasonable faculties to act, nor can our conscience be acquited of guilt. I will take the liberty of reminding you that your oath is "that you will well and truly try, according to the evidence;" this obliges you to expel everything from your minds which you might have heard out of doors respecting the whole business of the insurrection, excepting such only as proved by the evidence. Your present situation, gentlemen, imposes upon you a duty which is highly important; important as it concerns your country, the prisoner, and likewise yourselves; it concerns him, because his life or death is, in some measure, placed in your hands; it is upon your verdict it depends whether he shall continue with industry to spend the remainder of his life with his family and friends, or whether he must leave them all, and be suspended between heaven and earth to a gazing multitude. Your decision is of importance to your country, because we are now treading upon a dangerous and, I had almost said, unbeaten ground of constructive treason, and because it may and will operate as a precedent to future proceedings. Nor is it less important to yourselves, because, if, owing to honest intention and mistaken views, you should go farther than a

reflecting moment would dictate, in some circumstance of a public nature which may *possibly* occur, the work would be irretrievably done, the reflection would come too late, and pardon would be out of the question.

I will now proceed to consider the particular offence imputed in the indictment to John Fries, the prisoner at the bar, by which he must be convicted, if at all. [Mr. Lewis here read the indictment.] To this indictment he has pleaded not guilty, and you are sworn to decide upon the issue. The question is not whether he has, or not, been guilty of a riot or rescue: he may have been guilty of a high misdemeanor, of this or the other description; but the question is, has he ordered, prepared, and levied war against the United States? That is the language of our Constitution, and the act of Congress formed thereupon. In order to insure the conviction of this man at all events, it has been stated to you, and that with no small degree of confidence, that, as the framers of our Constitution have adopted the words of the English statute, the courts are bound to admit the expositions which have taken place upon it from time to time in the English courts: though we have laws of our own, yet in order to know the true meaning of our Constitution, we are to go back into the remotest and most dark ages of English history, to understand its meaning! The English statute, or the opinions of the courts of justice, are equally become part of the code in that country, it is true, and it was as possible for the framers of our Constitution to have extended the one as the other to this country, had they chosen so to do, but their not doing it, is a presumptive proof that it was not acceptable. To me it appears strange, that while the English statute is not in force here, the English construction of that statute should! That is a position I never mean to subscribe, but controvert it from the beginning to the end of this case. As we have enacted laws of our own, and have not extended the laws of England to this country, we must put our own construction upon them, and not the determination of an English court. Neither the English laws nor the opinions of English judges are to be regarded any farther than is consistent with our good, to appreciate which, the situation of the times when those opinions were given, and whether the judges were dependent or independent, are important considerations. I do not mean to find fault with English decisions in general. I believe that with regard to property, since the judges have been rendered independent of the Crown, it is as wisely administered as the laws of any part of the globe are; but they were not always in a situation to give impartial opinions, when they held their station at the will of an arbitrary monarch, who could hasten or delay causes at his pleasure, to which the judges were the most obsequious tools. Such has been the decisions of some periods respecting treason. But it is not true that the very words of the English statute are adopted in our Constitution; they very materially differ: the statute of Edward III. does not provide that confession must be made in open court if received at all; it does not specify that two witnesses shall be necessary to establish the fact, but it was left to the court upon principles of common law; nor does it say a single word about an *overt act*. Since, then, the two statutes are so dissimilar in important points, it would be very wrong to admit of the same construction in both. So careful was our Government of the lives of our citizens, viewing the injuries other countries had sustained by indefinite laws, they provided that the crime should be put in the indictment, and supported by the testimony of two witnesses. In England there might be one witness to one overt act, and another to another.

But I shall now proceed to show what does, or what does not amount to levying war: in doing this, we are not to go back to corrupt times, under corrupt judges, nor do I think the observations of those judges are in the least obligatory upon our courts; but how far they will be respected, is another question; we may rest assured they will be regarded no farther than reason will suggest. This I consider of importance, not only at present, but to posterity. Most of our laws, it must be remembered, are from England, and were brought with our ancestors as their birth-right: this was the case wherever British subjects emigrated; but as soon as we became independent States, we enacted laws of our own, although in a great degree copied from British statutes, but they became new under our Constitution.

I think, gentlemen, I shall be able to show you, upon the opinions of men sound in law knowledge in England, that the definition of treason in our Constitution will not bear the construction that has been put upon theirs at an early period. We have an express and distinct meaning of this crime in our own acts of Congress; in the act passed 1790 (vol. i, page 100.) Sect. 1 shows what treason is, and particularizes wherein it shall consist. Sect. 5, defines the punishment which should be inflicted on a rescue of persons committed to custody, or in the hands of the officer. But there was another act passed defining the precise circumstances attending this case—this was passed after the declaration of the judges on the case of the Western insurrection—and from its being enacted subsequent to all others upon this species of crime, appears to me to be binding upon our courts: I mean the Sedition act. It appears to reach the present case in the fullest extent; the language of that act is, whoever shall combine or conspire, &c., shall be guilty of a high misdemeanor; this act does not specify the number; a township, a county, or twelve counties, equally are within the law. Combining to *prevent* the execution of the law: this reaches the action, whatever may be the number or force used; it is a *misdemeanor*, and shall be punished with *fine* and *imprisonment*, not death. Whether the object shall or shall not be effected, the law says the punishment shall be the same. Here, then, is a solemn declaration made by the legislature itself, the same body that enacted the punishment of death to what they termed treason by a prior law, and surely that authority had the greatest right to put a construction on, or make an alteration in their own law. If there is a

legal definition of the crime committed by the prisoner at the bar, this act contains it: every case is here provided for by the punishment of fine and imprisonment, and had a prosecution taken place under this act, a conviction would have been certain, and the punishment would have been rigorous and exemplary.

Under this head of English construction, I would ask how it can apply to us, when we consider that before the act of William III., no person charged with high treason was allowed counsel to plead for him, unless he stated some objection in point of law which made an argument necessary, and even then he could not do it without first admitting the truth of the fact charged against him, and yet all the decisions of English courts alluded to, were formed before that period! Further. Not only was the accused not allowed counsel, but if he had hundreds of the most respectable witnesses to prove the falsity of the allegations, he never had a right to bring them forward until the reign of William III. These decisions, gentlemen, of the English courts, which are called up as precedents for us to regard, were formed under these arbitrary circumstances. No counsel allowed, even though the prisoner was deaf and dumb, nor witnesses, if he even could prove he was hundreds of miles distant at the time. Further, to show what dependence can be placed on the sayings of these men, you will observe that, until the time of William III., all the judges held their commissions during royal pleasure only, and even until the first of George III., the judges were never completely independent, and of course were obliged to study the royal pleasure; their opinions being extorted before the trial commenced. The consequence of all this is plain, that no impartial opinion could be given. It was common, before trial, first to closet these dependent judges and bring them to submission, if their opinions ran counter. Bacon, the greatest, wisest, but meanest of mankind, thus stooped to become the tool of his master. Those who could not thus be brought over were deposed, and more obsequious persons placed in their room, and it was not till they could have a decision thus formed that persons were brought on their trial for high treason. And yet we are referred to these persons to tell us what is the meaning of our own statute on treason! Thus it was that many of the best citizens of England fell a sacrifice, and for no other purpose, many of them, than because they possessed exalted virtue. During the existence of this state of things, the judges would sit silent on their bench during a trial for life, and hear the Crown officers, instead of acts and expressions of humanity to the unhappy prisoner, abuse him with the most opprobrious and insulting language. Influenced by this meanness, Sir Edward Coke, while attorney-general, descended to abuse the great and good Sir Walter Raleigh with the vile epithets of *traitor*, *viper*, and *spider of hell*, &c., turning away from him with the greatest scorn: and this was the manner in which trials were commonly managed. See *Foster*, 234.

It was well known that the statute of Edward III. made no provision whatever respecting the charging of an overt act in the indictment, nor does it say anything about proof; but a statute enacted in the reign of Edward VI. made two witnesses necessary in cases of high treason; but Foster says no great regard was paid to this better statute till near a century after, and the reason assigned was, that it was not for the safety of the Crown, or to the common well known rules of legal evidence. It was common to admit one witness of his own knowledge, and another by hearsay, if it was even from the mouth of that one, and at the third or fourth hand, and frequently the depositions were taken out of the court to be read, rather than bring them into open court. This must appear an uncommon representation of the administration of justice, but it is a fair picture of the times under which the decisions took place which are brought against us. At the period in which the seven bishops were tried, Lord Camden declares that Justice Powel was the only honest man that sat on the bench. Blessed justice! I know that since the judges have become independent men in England, there has been as much independence in their conduct as in any country; but then, as Hale tells us, these decisions had already taken place, and, therefore, they must be abode by; but he takes care to caution future judges how they introduce new cases by putting new constructions. The question now is, whether this court and jury are prepared to be bound by judges thus principled and thus circumstanced, to form a decision upon *our own law*. I contend that these decisions are by no means binding upon us. We have the Sedition law, which comprehends the whole case. In 1 *Hale*, 132, and 1 *Blackstone*, 69, it appears to be lamented that the independent judges of later days have no power to alter the rules of law established in the dark ages of English jurisprudence; otherwise, we have reason to believe, they would not be in existence at this day. Lord Kenyon, when counsel for Lord George Gordon, declared, that he did not think the Parliament of Edward III. ever had any design that constructive treason should exist at all, or any wish to leave room for it to be introduced. We are certainly, therefore, untrammelled by every foreign rule; otherwise the question would be, what rules we should adopt, and what not. It is a rule in law that statutes affecting life, should never extend beyond the letter of the law, so as to leave the possibility of a doubt. If that is a rule respecting penal statutes in general, abundant more so is it necessary respecting the high crime of treason. Above all things, if bad times should ever happen in this country—and bad times may come here as well as they have in all other countries—it will be of vast importance that the law should be known precisely; it will be of no consequence to a citizen to know on what law he is to be tried, if he becomes the devoted object of any one's resentment, or commits a crime: it is of consequence that the flood-gates of usurpation and tyranny should never be left open, and the liberties of our citizens be thrown away *ad libitum* on the uncertain ground of construction. 1 *Black-*

stone, 88. *Foster*, 58, we read that it ought to be "clearer than life itself."

We now come to examine the true, full, just, and reasonable meaning of our own treason statute; for I do not admit that constructive treason ought to exist at all. A line is drawn, and if we ever cross it, where are we to stop? Treason against the United States, we find, consists in "levying war against them," &c. The question is, what is levying war? Levying war may fairly extend to the three following things.

First. Where a body of men take up arms, and array themselves in a martial manner against the Government, with a view to put an end to its existence. This is its plain natural meaning, but cannot be said to have been transacted by the prisoner at the bar, and therefore requires no farther definition.

Secondly. It is expressly levying war, if a part of the Union throw off all allegiance and authority of the United States, totally disregarding its laws and institutions, and act as a divided people, as though they did not belong to them.

Thirdly. Where laws have been enacted by the Union, pursuant to the Constitution of the United States, and a number of people, being dissatisfied, should, of their own authority, by numbers, or force of arms, take possession of the Legislative or Executive authority, and by this force of arms or numbers should undertake to compel either of the departments of Government to act as they dictate, thus robbing the Government of its legitimate power, by assuming it themselves.

No doubt the good of posterity was intended in the Constitutional definition of treason, and we are to touch it with a trembling hand indeed, lest it moulder, and grow into God knows what. Now, as this is an act which was deliberately formed, if we go upon the dangerous ground of construction, that cannot be done so deliberately: No; I say it was to be handed down pure to posterity, and we ought not even to depart from a letter of it. If liberty of construction is to take place in any degree, by so much it tends to render the Constitution vague and uncertain, and we know not where it will end. If the Constitution only intended the three definitions of levying war which I have laid down, it is clear, that a man cannot overstep those Constitutional limits without intending to do it. Go beyond this, and you leave jurors and judges to make the Constitution anything or nothing—a mere nose of wax, to be moulded into any form at their will; and they may be excused, because left to exercise their own judgment upon it; but Lord Hale has charged you not to do this, even though encouraged by a parity of reasoning: agreeably to his apprehension, it is deducible that if ever we have a bad President, presidential encroachment may wrest the Constitution to everything that may serve any particular purpose. But God forbid either should ever happen.

Mr. Lewis then went into a full examination of the English law, after which he said:

I shall now proceed more particularly to state my reasons for alleging that the crimes with which the prisoner is charged are fully comprehended, and punishment provided for them, in the Sedition law. This I shall consider first, as it relates to the rescue independently; secondly, I shall make some observations on the law, independent of the rescue; and thirdly, both together.

It is admitted, that the mere rescue of the persons from the custody of the marshal, at Bethlehem, would not amount to treason; and it would not be necessary for me to say a word about that, were it not for the following reasons. Speaking of pulling down meeting-houses, brothels, prisons, &c., the crime is defined, 4 *Blackstone*, 129: "offences against public justice, is obstructing the execution of lawful process." This there can be no doubt, is an offence at common law, and persons found guilty of a rescue of a person convicted of a crime are adjudged guilty of the crime, and would be punishable accordingly, had it not been for our act of Congress, (the Sedition act;) but that act reduces a rescue, generally, to misdemeanor. But agreeably to law, persons rescuing others not committed for treason, are not guilty of treason. A case in 4 *Blackstone*, 86, the party himself was guilty of felony at common law by making escape, but I believe it to be an entire new doctrine to make the offence of the accessaries or assistants higher than those who are rescued; rescue of persons for felony has been always felony, for treason, &c. I think, therefore, it is clear to prove that every exertion has been used to attempt to make treason of this crime, by the gentlemen, but it is as clear that they have searched and tried in vain.

But it is farther said, that this business assumed a generality, and that the object was to defeat a law of the United States, for which purpose a number combined and conspired together, and more effectually to accomplish this, they rescued the prisoners, and therefore committed treason. Were I to admit this, I might call upon the gentleman to support his conclusions by authority, to show that preventing the execution of process, or releasing prisoners before they were carried to jail, is treason. I repeat, that the only case mentioned, is in the disgraceful days of Henry VIII., which I think is inadmissible. But I deny the fact: I deny that there was any combination or conspiracy between the people of Lower Milford, in Northampton county, and those of Bucks county, at all upon the business. First, the people of both counties were alike averse to this law, and for similar reasons. I believe there are many unprincipled men who wish to injure their country, and go about preaching up sedition to the people, which, communicated in different directions, catch fire in the same manner, and perhaps at nearly one period; hence it is that their prejudices and opposition may appear from the same cause, without parties holding the least correspondence. I ask you whether there is a tittle of evidence to prove that ever the prisoner went into Northampton county till this circumstance occurred. Was there any communication by writing, or any other way? No, not at all. Upon what foundation can a conjecture arise, then, that there was a combination? You are not to try by conjecture, or wild supposition: no, you are sworn to "well and truly try, according to evidence." Does it appear, I ask you to recollect, gentlemen of the jury, that this conduct was instigated by any intercourse in any way held with Northampton county? No, it does not; but there is a strong presumption that the discontents took root and grew to that state without any combination at all. But whether or not treason was committed in Milford township, is not for you at present to say; the overt act is laid at Bethlehem, and there it must be proved, that he levied war upon the United States with a number, or by force sufficient for the purpose, and that with them he combined and conspired, &c. If he did this at all, he did it on the 7th of March, for it does not appear that he ever was there before in his life; now if there was a conspiracy, it must appear that he acted previously and in concert with others, and the act would have been alike chargeable to all; but this does not appear. It is true Fries was heard to say "we will oppose you, and all the people of Northampton will join us;" but this could easily arise from his having heard that the people of Northampton were dissatisfied with the law, but it does not follow that, because there were discontents in Northampton county, he should be responsible for their actions, particularly since it all, at least, depends upon conjecture. *Kelyng*, 19, has a case to answer this, where rebellion existed in two parts at one time, but it was determined that this might happen without correspondence, since no such evidence appeared, and therefore no notice was taken of it. Then, gentlemen, if I were for a moment to admit that John Fries had committed treason in Bucks county, which I deny, it would be immaterial upon the present occasion, because upon every indictment for treason, the overt act must be proved in the county. But it is said that doctrine does not apply, each State being to the whole United States as a county to the State, because the grand jury have the district at large to inquire for; and therefore it is immaterial whether laid in one county or the other. If this be sound law, dreadful indeed must be the situation of the people of the United States, if the Government should ever fall into different hands from those in which it is now happily placed, because an attorney may, at any time, keep a person, arraigned for a capital offence, in ignorance, till he comes to the place of trial, and of course not prepared to repel it at a very distant place from where the act is laid. But this, I will be bold to say, cannot be law. My reasons for thinking so are, first, the law of Congress, called the judiciary act, sec. 29, vol. i. page 67, says, that in cases punishable with death, the trial shall be had in the county where the offence was committed: here I would remark that the law takes notice, not of a State or a district, but of a county, and therefore the analogy drawn by Mr. Sitgreaves, that a district to the United States is the same as a county to a State, is not in point. The trial is to be had in the county unless the judges shall determine that it cannot be had there without great inconvenience, (see *Foster*, 194;)

but let the offence be where it may, twelve jurors must be summoned from the county; see p. 237 of the same book. If we examine these authorities, they will appear different from what they were represented. 2 *Hawkins*, c. 46, sec. 34, is an authority to prove that upon a plea of not guilty to a specific charge as to place, &c., in an indictment, if the least variance appears from that place, it is sufficient to acquit the party, and is fatal to the prosecution. It is not necessary for me again to say that you are totally to exclude from your views whatever the prisoner did in Bucks county, since the charge is laid in Northampton, and since an acquittal from that charge will not prevent a prosecution in Bucks county. If it appears that no treason was committed by him on the 7th of March at Bethlehem, you must pronounce him not guilty

Mr. Lewis then reviewed the testimony of Dellinger on the circumstances which led the expedition to Bethlehem, which, he contended, had nothing to do with it, save the *quo animo*. It appeared that they heard Shankwyler was to be there; but it is not pretended that going there upon that account would be treason, and particularly as Shankwyler was not in custody; and it does not appear that the prisoner knew of any others being there at that time. Then the object particularly was to see Shankwyler. When they came to the bridge, it appeared to them that two men were detained at Bethlehem, and it seems they went forward to rescue them. In this they were justifiable; for if the law was violated, it was by Major Nichols, in making an arrest which the law did not authorize him to do. They were illegally detained, and it was lawful for anybody to go and rescue them. (2 *Lord Raymond*, 1301.) I am not disposed to blame the marshal; but I cannot justify him in point of law: his situation, no doubt, rendered it a prudent measure; but it was detaining men by false imprisonment, and was enough to alarm all the people of the State. I mentioned the circumstance only to prove that there can be no rescue, unles the persons liberated are legally confined. Instead of Fries being guilty for that action, a very worthy man (the marshal) was guilty of an assault and battery in the act of detention. If this is fact, how does the affair stand afterwards respecting universality and design? I have justified Fries and the others in leaving the bridge to go up to Bethlehem, and the laws of their country will justify them, because it does not appear that they knew these people were discharged. When they got to Bethlehem, it appeared there were a number of persons under arrest; for, it does not at all appear in evidence that they ever heard before that Fox, Ireman, or the Lehigh prisoners, were there: the gentlemen on the other side only presume it; but you, gentlemen, must not go upon presumption. "You must well and truly try, and true deliverance make, according to evidence." It does not appear they knew it; they came from a great distance, and from quite another part of the country than where the Bucks county people came from; Fox and Ireman had been just

brought in, and none of them knew they were there: however, when they were got there, *upon a lawful occasion*, hearing of a number of persons being confined there, and that they were to be taken to Philadelphia for what they considered to be no crime, they generally waxed warm; but Fries was cool; he endeavored to pacify them: he had brought his sword with him, but when he was appointed an ambassador of peace to treat with the marshal, he left it behind him.

The whole of the transaction must be viewed as a sudden affray, like numerous cases mentioned in Hale, Foster, &c., where great and sudden riots arose. Where is the proof, I ask, of combination, of association, or of correspondence? None at all: they came there to a man without the least treasonable views, for it was merely by chance they came there at all. There was much rage among the people upon the first impression the knowledge of the prisoners in custody made, and had it not been for the cool conduct of the prisoner at the bar, blood and massacre would have been immediate consequences, for, no doubt, liquor was operating pretty much in their brains. An altercation took place; they insisted on the prisoners; and in the prosecution of his delegation, from the peremptory demands of the people, he made use of language which I admit was unjustifiable, and violating the law, for which he ought to be punished, but not with death. 1 *Hale*, 153. But farther: the persons were not in prison, they were in custody of the marshal. These are materially distinct; the releasing of persons taken to prison, is only a misdemeanor, while releasing them after they are in prison, which is in some measure the sanctuary of the law, is felony: 4 *Blackstone*, 130. The breaking open of prisons generally is treason, but in no case is the releasing prisoners before they are taken there (*Kelyng*, 75, 63; *Lord Gordon's trial*;) (*Demarree's case*, 4 *State Trials*, 844 and 900.) It would not have been treason, therefore, if a number of persons had actually conspired to rescue these prisoners from the marshal, nor even if they had been confined in a jail, instead of a room, because it was not a general design to break open all prisons, but one only. But, on the contrary, they were not in prison; they were only in custody of the officer who served the process; how, then, in the name of reason and common sense, will it be made to amount to treason when it would not if they had been in jail? But, say the gentlemen, we will not call it rescuing of prisoners, but a general obstruction of the execution of law, and the means here used were to support that general object. The rescue is of itself a specific offence, and of itself admitted by Mr. Sitgreaves to be only a misdemeanor. If it is so, how is it possible to convert a misdemeanor into a treason, and thus to take away the life of a man when imprisonment only is his desert! But what ground is there alleged for this position? It is said that the arming and arraying a number of men was with this intent. I deny the fact, and it has by no means been proved. The cases referred to in England are treason to a demonstration. Enhancing servant wages could not be done by force but by surrounding the Parliament House, and this was justly denominated waging war against the King. Any rising to alter religion must be effected the same way. Religion is established by law in England, and that law must be altered by the Parliament; therefore, it could not be forcibly altered but by levying. (4 *Blackstone*, 81.) Reforming the laws must be done the same way, if at all. (1 *Hawk.* c 17, § 25; see Erskine in *Gordon's trial*, 32.) Not only open rebellion, but resisting the laws as enacted is treason. The laws are a proof of the authority of the commonwealth, and resisting those laws is making the parties independent of the commonwealth, and therefore a defiance of the authority of the State. Lord Mansfield, in the charge on the same trial, says, among other enumerations, that combinations, &c., to arrest the execution of militia laws, is treason. This strongly merits observation. Why does the learned and experienced Lord Mansfield particularly specify militia laws and no other? Why does he not say to arrest the execution of any law? For the best of all reasons—the same reason as the taking or attacking a fort or a castle belonging to the King, because that is the place where he keeps his military forces, and because the military is the strength of the kingdom, and this is resisting the military authority. Therefore, it must be allowed, that a resistance of militia laws is upon a very different footing than any others, and, in the time of danger, resisting this law would prevent the militia being drawn into the field when there is occasion for them.

Now, gentlemen, these things all considered plainly show, that what is now attempted is a novel experiment, like modern philosophy, an entire new thing, saving the solitary instance in the reign of Henry VIII., and it is clear that the resistance of no law is treason, but the militia law. I agree also with the doctrine Lord Mansfield lays down, that any attempt to oppose the laws, by intimidation and violence, is levying war, and treason.

It is unnecessary for me to turn to the books to prove that confession of the party, or words spoken by him, taken perhaps in the time of fear, are not to be regarded by you. This was so plainly improper, that the law of William III., making two witnesses necessary, or confession in open court, was enacted; I need only turn to our own laws. (Judiciary act.) There must be one of two kinds of proof: the party in open court must confess, for confession out of court cannot avail, even if made before ten thousand witnesses; or else two witnesses must prove the same overt act, and he must be convicted upon that indictment, if any. If you are to go to all parts of the country for heated words, heard by anybody, in any circumstances, I must consider it as a very scandalous abuse of the statute of Edward III. I think it impossible to hesitate at what was the meaning of Congress when they made this act, and, therefore, shall barely recur to the evidence.

Here is a proof that the prisoner came up to Bethlehem, where he acted in a certain manner;

but the gentlemen concerned for the prosecution, think that does not sufficiently indicate his design, and therefore they travel to Jacob Fries's, to Kline's, and a number of other places: now, suppose you convict him, I entreat you to inquire from what evidence you do convict him? Is it from the overt act committed at Bethlehem, or from that and other circumstances together? If this is the broad ground upon which you go, do you convict him upon the evidence of two witnesses, to the same overt act, transacted at the same place? No, you do it upon the evidence of two, and a number of other evidence besides, on a variety of circumstances. Let me suppose, for a moment, that two witnesses had come forward, and given an account of his conduct at Bethlehem; but that evidence was not sufficient to answer the indictment: you hear of such and such conduct at Quakertown, at Kline's, &c., &c. I ask, would he have been convicted upon the evidence of those two, independent of any other? No, he would not. This is by no means agreeable to the statutes of William III., or Edward VI., and, in my view, totally inadmissible. What is the consequence of such a verdict? Why, a man charged with murder, assault, or what not, may know who the witnesses against him are, while one charged with treason the highest possible crime, may not know, if you can travel from town to town, and from county to county for the evidence, if you can bring correspondence, &c., from every part, of which the prisoner knew nothing until brought before the court. No man would be safe in the admission of such things, but you must form your opinion alone from the evidence of two witnesses relating to the act committed at Bethlehem agreeably to the indictment. The statutes, and our act of Congress mean and intend to prevent this kind of rambling over the whole State for evidence; or, indeed, upon the doctrine of the gentlemen, notwithstanding the act says otherwise, they can with equal propriety go throughout the United States to collect evidence to support the prosecution, which was never seen nor heard of before.

I now contend, gentlemen, that the case of the prisoner at the bar does not come within the statute of treason; and I also contend that it does come within one of two other acts, for the Judiciary act, 22d and 23d sections, page 109, vol i, speaking of resistance of process and rescue, completely extends to the prisoner. No, say the gentlemen, it is not a mere rescue, but a rescue for certain intentions and designs. Have the Congress distinguished any particular design, or have they not, in this law? No, they have not: then permit me to say, where Congress have not distinguished it, nor the books, it is not for judges nor juries to distinguish: it belongs to Congress to make or except such cases as they thought proper; they have not thought proper; and you have no right whatever to do it.

But lest any objection should appear of weight to except it from the Judiciary act, there is a very good law, but which has been shamefully vilified and abused, called the Sedition bill, providing fine and imprisonment for any high misdemeanor, under which, as I observed before, the very actions of the prisoner are defined. This act has passed since the trials of the Western insurgents in 1794, so that the opinions of the judges respecting treason at that time, are most clearly and fairly superseded by this act, which has pointed out whatever has heretofore caused doubts about the meaning of treason in the statute, and thus put an end to any judicial construction. That act provides, that if any person should combine or conspire together, to impede the operation of any law of the United States, or to intimidate any persons holding places or offices under the United States, (this last is one of the many little things collected together, in order that, when brought into a mass, they may amount to treason,) and that, if they should advise, attempt, or procure any insurrection, riot, or unlawful assembly or combination, he or they shall be deemed guilty of a high misdemeanor, whether it be carried into effect or not. The very crimes which are here enumerated are charged upon John Fries, the prisoner at the bar. Now, if any act or description can be more just than this, I should wonder; it answers precisely every part of the crime charged, and every concomitant circumstance. Now the question is, whether or not, as the Constitution did not define the punishment of treason, and as a misdemeanor is described here to be what some have thought used to be levying war, and as the punishment is less than what the other law respecting treason enacts—whether this should not operate as a repeal of the former law, so far as related to these points. As to the cases of Vigol and Mitchell, Western insurgents, I should doubt whether it would affect them at all, even if the law had then existed, because the circumstances very much differed from the insurrection in Northampton county. Wells and Neville were inspectors, and their offices were strictly belonging to the United States, and were deposits of the United States, and equally under the protection of the law with castles or citadels: in addition to this, the officers of Government were driven from their own homes, and upon pain of death, they dared not approach their homes. Their offices were burnt by the insurgents, and there was no law that touched their case but the Constitutional act defining treason; on which account, they were tried and convicted under it. I would introduce these ideas, to show you, that the decisions then formed by the court, are inapplicable at this time, since the Sedition act is since passed, and agreeable to these circumstances, which materially differ from those of 1794.

It is now time to close. Gentlemen, the task which you have to perform is very serious, and very important; but I will not insult your understandings, by saying more than my indispensable duty claims from me, in behalf of the prisoner. You will, I have no doubt, consider the case calmly, wisely, and deliberately. You know the law, under the direction of the court; and I have no doubt you will decide according to the impulse of your consciences. I will only add, that the

prisoner received, and has held his life from the authority of Him who is all-wise, great and good, and by Him only can it be destroyed, except he has violated those equitable laws made by his country for the preservation of peace and order in society; he is, therefore, entitled to an equitable verdict: if he has done the acts named in the indictment, I have no doubt you will pronounce him guilty; if he has forfeited his life, go he must, and if he is to go, it is not in the power of man to prevent it. I shall, therefore, rest assured, that you will give a conscientious verdict, upon which you are bound to answer.

Mr. RAWLE, after his exordium, in which he expressed the importance of his situation as public accuser—hoped that while his duty peremptorily imposed upon him the necessity of doing justice to the United States, he should not be divested of candor towards the unfortunate prisoner at the bar, to whom he hoped full justice would be done.

He proposed, in the first place, to collect the detail of transactions, in the clear and unequivocal train they had been testified to by the several witnesses, not only called to support the prosecution, but, unhappily for the prisoner, corroborated by the witnesses called by himself. In the second place he should apply these facts to the laws and Constitution of the United States; from both of which he thought it would evidently appear to the jury that the prisoner was guilty of treason in levying war against the United States.

The prisoner stood indicted for opposing, in a warlike manner, two laws of the United States, the one entitled "An act providing for the valuation of lands and dwelling-houses," &c., passed July 9, 1798, and the other, entitled "An act for levying a direct tax within the United States," passed July 14, 1798. Agreeably to these acts, certain commissioners and assessors were to be appointed to carry the provisions thereof into execution. It appeared in evidence that Mr. Eyerly, one of the witnesses produced, had received a commission conformable thereto in a part of Pennsylvania, which he received in August, 1798, together with a request from the Secretary of the Treasury, that he would find suitable characters to serve as assessors to act in the division assigned to him. In the execution of this request, Mr. Eyerly found very great difficulties, although there was a perfect acquiescence in all other parts of the Union. Many whom he nominated declined on account of the unpopularity of those laws, although Mr. Eyerly very industriously, and in a praiseworthy manner, endeavored to remove those objections.

In order to show the general difficulties there was in the execution of these officers' duty, Mr. Rawle recited the testimony of Mr. Eyerly, and its confirmation by Mr. Chapman, Mr. Henry, and others, and went into an examination of the testimony demonstrative of the difficulties the assessors found in the execution of their duty and the insult they frequently met with, when engaged in their pacific efforts to explain the laws to the misled rabble. But, sorry was he to say, that these commendable efforts were outweighed by the influence of certain leaders, among whom he found several captains of militia, and Fries with the rest: he, throughout the whole scene, appeared the most prominent, and instead of attending to the good advice given him by his best friends, flew in a rage and renewed his opposition. A part of the effects of their hostility was accomplished in preventing Mr. Clark from fulfilling the office which he had undertaken, and the general reluctance there was in others, and, indeed, finally, the abandonment of the assessments; for it appeared that, not only those who were unwilling to give their rates, refused, but those who were willing were intimidated from doing it. To such a pitch was intimidation and disaffection arrived, that, he was sorry to say, the very magistrates of the peace had so far neglected their duty as to join the opposition, and nearly all of them, from one or other of these motives, refused to issue process for the apprehension of delinquents, or examine persons who opposed the laws: and those who did attend to their duty, found the greatest difficulties to procure the attendance of evidences, who were prevented by the impulse of fear from coming forward. Many attempts were made to pacify these deluded people, who were under the most baneful advice, and the attempts accordingly miscarried, even though propositions were made in some townships to indulge them with the choice of their own assessors.

After a full and thorough consideration of the evidence, Mr. Rawle said:

These are facts; not founded on the testimony of a single witness, which is sufficient to convict a man in common cases; nor are they confined to the testimony of two witnesses, which is all the Constitution requires; but they are corroborated by numerous witnesses, produced in order to remove every doubt from your minds as to the material facts of the crime. There is no case in our books more clear than the present; the evidence is so uniform that even the ingenuity and talents of the prisoner's counsel have not been able to contest one fact that has been related; indeed, the whole is so fair, that the most incredulous must be satisfied of the accuracy of the charge, independent of the confession of the prisoner, which confirms the whole: it proves to a demonstration that his main object was nothing less than to prevent the execution of the laws, which all men are bound to obey.

Gentlemen, the counsel for the prisoner have endeavored to diminish the force of that voluntary confession by telling you that no man can be convicted on his own confession out of court, nor without the testimony of two witnesses; the same arguments have been used to nullify the expressions which we have produced proof that the prisoner frequently made use of, from which we evidently discover his intention. I allow that no man should be convicted for treason unless upon the testimony of two witnesses, or confession in open court; but when all the facts necessary to substantiate the crime are proved by two witnesses, the declarations of the prisoner, as well as his confession, may be produced as good evidence as to his intention, and this is not necessary to be proved by two witnesses; this tends to show the designs of his heart, which can only be known to his Creator and himself. These declarations should be known to the court in order to discover the intention with which the crime was perpetrated. In the case of Lord Gordon, the words said to have been used by him in the lobby of the House were not rejected by the jury because it required two witnesses, but on account of the improbability of a declaration having been publicly used which no more than one individual could be produced to prove. We have proved by two witnesses that the overt act was committed by the prisoner, and have produced much corroborative testimony, in which we have not been confined to two, having heard it from twelve respectable witnesses. If we have succeeded to prove the intention, it is sufficient for the law, and if you believe the testimony, it indubitably substantiates the fact.

I shall now proceed to consider what is the law arising upon these facts, in going into the examination of which, I shall put out of the question two objections; one of them only has been produced, the other having barely been alluded to, rather than held up.

A Proclamation was issued by the President, on which Fries did then go to his home, whereupon it has been argued that no instance can be produced to prove a prosecution being commenced for acts committed prior to the reading of the riot act in England, if the mob thereupon dispersed, because they had complied with the Proclamation. It is right in part: if the people do not disperse, the remaining mob are guilty of felony; but I ask the gentleman has the defence been at all set up on the ground of compliance with the Proclamation? In the riot at Drury Lane theatre by the footmen, and that which was held up in which the Earl of Essex and others were engaged, many of the rioters did disperse in consequence of the riot act being read, and yet were afterward punished for the enormities they committed while they were there. Alike trivial is the objection respecting the undue appointment of assessors. It is sufficient that such a person acts as Commissioner or assessor; if he usurps that power, the law has provided a remedy by other means than the dangerous one of an insurrection to know merely whether A, B, or C, is regularly appointed to office. There are legal modes of application to ascertain the fact; there is the whole Board of Commissioners, or even a higher power may be applied to, to ascertain the authority, and no virtuous, honest citizen would think of opposition on that account. We do not think it necessary to trouble the court, since it was fully in the power of the prisoner's counsel to have brought the Commissioners under this act before them; but not having availed themselves of it, nor pressed it home to your notice, gentlemen, why was such a scare-crow insinuated, but to mislead you? There can be no doubt of the legality of those Commissioners; if there was, it would not alleviate the crime of rebellion; it was not even a color for it, nor does it appear that the insurgents ever doubted, in the smallest degree, the legality of the appointments; their declarations were repeatedly, "No assessors shall act in the township, nor shall any assessments be made." No doubt was ever made of the powers used by the officers, and therefore the opposition to the law is alone to be considered.

Having disposed of those two points, I wish now to impress upon your minds a most solemn conviction, to wit: That the law under which the prisoner at the bar stands indicted, without being in the least doubtful, ambiguous, obscure, or perplexing, is well defined in, and composes a part of, the Constitution of the United States, Art. 3, § 3. It is certainly momentous that you should be fully satisfied of the true meaning of that part under which the present crime is placed, to wit: levying war against the United States. I would premise that the indictment is worded precisely in the usual form, and that the only question now is, what is that levying war with which the prisoner is charged?

To ascertain what is levying war, it is necessary for us only to consider what is the nature of civil and political society in the United States. The Government is the organ which the people collectively have thought it their duty and interest to establish for their mutual safety—their will, publicly expressed in the laws, is the legitimate will of the majority of the people; all our laws are the acts of this majority; and it is a radical principle which will not be controverted, that the will of the majority is always binding upon the minority, and should be acquiesced in quietly by them, whether the administration of that Government be in the hands of one person, or of many; those, therefore, who do not choose to continue in that society, ought to withdraw quietly from it, rather than disturb the quiet of the whole. Allegiance is a quiet submission and acquiescence to the supreme power. In monarchical Governments it is placed in the King; but the citizens of America know of no allegiance but to the laws, for they alone are the binding principle by which society at large is kept in domestic peace and security. If, therefore, deviating from this allegiance to the laws, measures are taken to disturb the public peace by a resistance of the laws, accompanied by force of arms, or by the intimidation of numbers sufficient for the purpose, and it be applicable only to a grievance of a public or general, and not of a particular or private interest, such resistance then becomes the crime of *treason*, and particularly so, if the views are to bring about the suspension or repeal of any of the laws; for there is no particular kind of law liable to exception; it is treason, because it is an attempt to overturn the fundamental principles of society, by endeavoring to impose into the system the will of a minority which has no right to be there; it is creating a new agency, a new species of legislature, and eventually dissolving the powers legally ordained. This definition may apply as well to any one law as to all the laws, for each is equally

stamped with public approbation, and to none particularly is sanctity attached, all proceeding from one power, those who undertake to resist any one, may, with equal propriety, resist the whole, and treason appears to me to be the inevitable inference; otherwise it would be impossible to ascertain the limits at which this dangerous licentious conduct must stop; we should be at once thrown back into a state of natural society, which God prevent. I ask the gentlemen who argued for this distinction, to point out to me which law may be resisted with impunity! If one may be, the evil principle will go on to another and another, and where will it stop?

I have no occasion again to recur to the authorities we have produced, which the gentlemen pass over as the acts of bad times, corrupt judges, a profligate court, &c. The counsel, with all their learning and industry, seem to be satisfied with this general discharge of our authorities; but, whatever might have been the baseness of the attorney generals of those times, the meanness of the judges, the profligacy of the court, or the merits of the prisoner, we stand upon broad, established, and general ground, which is not pretended to be obligatory upon us merely because it has heretofore been decided, nor is it obligatory in England upon that account, although you have been so told, but we go upon it, because it is right. That Sir Walter Raleigh was grossly abused by Sir Edward Coke, is notorious; it was the bad practices of those times; but this reference more regards the proceedings on trials than the decisions; the decisions uniformly were, that usurpation of public authority in a certain manner amounted to treason. What! shall a man be permitted to attack the Government by piecemeal? to take out a plank here and a plank there, till our political ship sinks, and such conduct not be called a treasonable division of the Government? With respect to the authorities wherein it was stated to be necessary that the design should be to pull down meeting-houses, brothels, &c., generally, in order to constitute high treason, it must be observable, that it was the assumption of the *legal powers* which constituted the crime; to pull down meeting-houses as such, was interfering with the toleration granted by Government, and therefore treasonable. With respect to bawdy-houses, Government, and not individuals, have a right to correct them, and if individuals pretended to correct the evil, they were attainted of high treason.

We are told that no case is to be found in which a mere rescue is called treason. *Hale*, 133, in my opinion, is an authority in point. Bethlehem was the prison of the United States under the marshal; there the marshal held several persons in custody; and levying war, or attempting by force, or intimidation, to deliver those prisoners out of his custody, is certainly treason. Here we stand upon settled ground, we say, and I appeal, gentlemen, to your recollection, that there was no particular view to relieve any particular person, but that the words were "Shankwyler and others;" the claim was general, and the object was general—the repeal of the law was that object, and these were the means used to obtain it. This is declared to be treason even by that great and virtuous man who is held up to your notice as guarding us to beware of introducing more constructive treasons. Sir Matthew Hale, whose very name carried authority at the period of 1668, and with him all the judges, upon mature deliberation, have declared this to be sound law. As burglary, arson, and murder, may be made the means of treason, so may rescue; treason must have some means; sometimes the most atrocious, sometimes the means may be newly invented; but because newly invented, it cannot lessen the crime. With respect to the murder of Sir Theodosius Boughton by Captain Donnelan, in England, which was merely by a draught of laurel water, (which in that country is poison,) a new invention for murder, the counsel might have argued against the conviction, because no former case had occurred, as well as that the innocence of this rescue should be held up, because new. But there was no such thing. A strong and important part of the combination was actually carried into effect, and it was not absolutely necessary to prove the rescue in order to prove the treason; it has been evidently shown to you in the transactions at Quakertown, that the rescue was only a part, and the termination of the general plan so far as it proceeded.

I have no need to take up more authorities to prove that this is treason; it was so before the birth of our Constitution; this principle was coeval with the reign of Edward III., in 1340. I take it to be a true and incontrovertible principle, that when we find an act on which previous decisions have been made, those decisions have been acted upon, and we should think proper to pass that act by ingrafting it into, and making it a part of our Constitution, those decisions are of course adopted as our direction, whereby we are to understand the applications of that act. I would barely observe, that while those gentlemen are telling us that we are not to have recourse to those volumes of laws, (which we ought all to be acquainted with, as volumes of science, explanatory of the code by which we are bound,) they themselves resort to the same species of authority, to endeavor to prove that treason under the act of Edward III. is not treason in America. We have heard much about constructive and interpretative treason, and constructive levying of war. Agreeably to the form of Government in England, the King is recognised as King in two capacities, one in his natural, as King, and one in his political, as Sovereign: now, when that part of treason called compassing the King's death is mentioned, it refers to his natural capacity; but when of levying war against the King, it refers to his political capacity, and it was therefore necessary to show the distinction between different species of treason; this latter is termed constructive treason; but from the variety of its modes of introduction, cannot be so well defined; but its existence is necessary, in order to support society and preserve it secure: this is what is termed levying of war; it may consist in opposition to the King's forces,

or by threats, or force, attempting to compel the King to remove his Ministers or alter established laws. If you expunge what is direct levying of war, there can be no such thing as treason found; either the law is wrong, or the arguments used on the other side. Gentlemen, the law is established, but the arguments vanish like vapor before the morning sun; what, then, in England is called constructive levying of war, in this country must be called direct levying of war. The framers of our Constitution were as learned and as wise as any gentlemen now at the bar; they certainly saw that this was the only kind of direct levying of war that could exist in this country, and therefore if they had not intended that what was called constructive in England should constitute what they called "levying of war against the United States," they would not have introduced the crime at all: this is an absurdity they never would have been guilty of.

The learned gentleman admits that resistance against one particular law may be termed constructive treason, and may be the crime of treason here. He says that resistance to the militia law would be a restraint upon the principal dependence of the Government, and therefore treason; gentlemen try our arguments by this test, and see whether resistance on the present occasion is not equally so. I ask you what is to become of the militia, the standing army, the eventual army, or the civil power itself, if you are unable to raise revenue? Who will fight, who will transact your civil concerns, if they are not paid? If, by opposing revenue laws, the Government itself, as well as the Army, is fundamentally undermined, is it not at least as much treason as though the militia law alone were more openly (but not more effectually) attacked? Nothing is so much entitled to respect and submission as laws which are the direct means of keeping society together. At the present time, when the feudal system is no more, but from necessity subsistence must be obtained from employment and labor, the defence and preservation of the country must come from the revenue, and to destroy that, is to give a mortal wound to the Government itself.

Mr. R. then went into a review of some of the circumstances alluded to by the opposite counsel, which characterize the insurrection, and the trials thereupon in 1794, which he insisted, though those gentlemen would not allow it, were very similar in circumstances to the unhappy affair now before the court, in which he drew the following parity between the cases:

In 1794, the disturbance was to prevent the execution of one law—the excise law:

In 1799, the house and land-tax laws.

In 1794, four counties were engaged in opposition.

In 1799, but three—Northampton, Bucks, and Montgomery.

In 1794, the excise officers were attacked and prevented executing their duty.

In 1799, the assessors were the same.

In 1794, the insurgents collected into an army, in battle array, displaying their ensigns of triumph, with numbers sufficient to procure their object; say, 6,000 men in Braddock's field.

The object of 1799 was to do it in a similar manner, and they actually did, by their military appearance and boasts of much larger increase, impress a general opinion of their power sufficient to accomplish their purpose.

In 1794, the insurgents made public declarations that the excise law should never be executed.

In 1799, were not declarations of the same nature made by these insurgents? That other counties, and even other States, would support them and that it should never be done?

The object of 1794 was to obtain a repeal of a law—the excise law.

In 1799, it was the same, so far as related to them—the house and direct tax.

In 1794, the excise officers were compelled to promise that they would not execute the law in that part of the country.

In 1799, the same promise is exacted, and obtained respecting Lower Milford and other parts. There was some difference, it is true, as the gentleman stated, some of the officers at that time being banished from their houses, on pain of death. It was further argued, that there was this striking distinction—that General Neville's house might be considered as a castle of the United States, because it was an office of excise; but the analogy still holds good; it was General Neville's dwelling-house, however, that was attacked; the attack was made only because he was an officer employed in the superintendence of a tax they disliked. Mr. Levering's tavern at Bethlehem was made the prison of the United States, and there was an executive officer of the United States; it was as much so as any other prison in the Union. This was the castle, the fortress of the United States, to protect which the marshal had assembled his *posse comitatus*, provided with weapons of defence. I consider this, therefore, a more violent breach of the law than the attack upon Gen. Neville's house, so far as it went—admitting that no guns were fired, nor lives lost, nor was any house burnt; otherwise, so far as it went, the case was rather stronger than the former. Happy is it for the prisoners that the scene of riot was not further from the seat of Government. If it had been more remote from the power of Government, we cannot calculate upon the consequences, or increase of revolt and excess which would have been evinced. I will not pretend to anticipate them, for I wish not to inflame my own mind by the sad calculation, nor the minds of the jury; I only wish the facts to appear in their native colors.

Why, then, can we entertain a doubt, viewing all the circumstances, that the prisoner is guilty of treason? There can be none. We are told that the Legislature have passed a law, entitled the Sedition act, which shows the offence of the prisoner; and that the opinion of the Legislature was to bring under this law the constitutional definition of treason, making it a misdemeanor! To me, of all the weak arguments which have been

brought in behalf of the prisoner, this is the weakest. This law, which has been cried up from one end of the continent to the other by some persons as unconstitutional, is now to be brought into court to explain away what the Constitution positvely defines to be treason. If this ever had been the intention of the Legislature, there certainly would have been something like treason, something like levying of war, introduced into that bill, but we find no such thing; the words do not at all occur in it, and that it is not intended, I think is clear. Sedition and treason are two distinct crimes, and two distinct punishments are enacted to meet them. The description of crime in the Sedition act, is—those who combine with intent to impede the operatton of the law, and those who intend to raise an insurrection: these are to be considered as guilty of a high misdemeanor. Now, those who *conspire* to commit treason are not considered guilty of treason; the treason must have been carried into effect. It cannot be treason for a man to counsel, advise, or attempt to procure insurrection, with intent to impede the operation of any law of the United States; but this is declared to be a misdemeanor, whether executed or not. Besides, the word "*treasonable*" is not inserted in the Sedition law: thus, if a man be indicted for taking the property of another, unless the word *feloniously* is introduced, he is not liable to the charge. So in this case, the act must be traitorously done, or it is not treason. To show the absurdity of this doctrine, we need only for a minute suppose, that in the commission of any of the crimes specified in the Sedition act, lives should be lost, houses burnt, &c. The laws of the United States have previously declared, that such offenders should be punished with death, and surely it ought to be carried into execution—not be mitigated by a future law to the mere penalty of five thousand dollars, and five years imprisonment. If this was the intention of the Legislature, might it not, at least, be expected that they would have declared so in the act? but they have manifested no such intention in that, nor in the present instance, with respect to which, had they done it, they would have overleaped their constitutional powers; for the Constitution is an ark, into which the Legislature itself dare not place its feet; if they were to do it, the judiciary have the power, and it is their duty, to bring them back again, and say, "You have gone too far." They can as much restrain an unconstitutional act, as Congress can make a constitutional act. This Constitution gave Congress the power to declare the punishment that should be inflicted on what it had defined to be treason. Congress had nothing to do with the crime, and if they have declared it, as the gentlemen suppose, they have done it without authority, and it can be of no avail whatever. But no—they have rather, in the act alluded to, declared what should not be considered treason, or removed doubts upon that head. This being the case, the same opinion which operated on the judges in 1795, is still in force; because no legislative act has intervened to change it. Certain it is, that Congress did not intend to enact an unconstitutional punishment for treason; but if, they had intended it, they have not a right to do it, nor have they done it.

Now, gentlemen, whether these things are as we have represented, or not, is for you to judge, and decide upon your information; if you are satisfied that the prisoner at the bar was engaged in the affair at Bethlehem, and that affair was connected with your previous arrangements, you must convict him: otherwise, you must not. We consider, and think the evidence must prove to you, that all are parts of the same whole, were begun long before the 7th of March, and that they partly existed in Northampton and partly in Bucks counties. It must be upon a full conviction in your minds that the treason was committed by him in Northampton county, that you can convict the prisoner; and if you have not that full conviction, I firmly hope you will acquit him; if you have, you are bound to pronounce him guilty.

Judge PETERS then charged the jury as follows:

Gentlemen of the Jury—As this case is important, both in its principles and consequences, I think it my duty to give my opinion, formed with as much deliberation as the intervals of this lengthy trial would permit, on the most prominent points of law which have been made in this cause. I have condensed my sentiments into as short a compass as possible. I shall leave remarks on the evidence, and more enlarged observations on the law, to the presiding judge, who will deliver to you the charge *of the court*. At his request, I state my *individual opinion*, though I do not always deem it necessary, when there is a unanimity of sentiment in the court.

1. It is *treason*, "in levying war against the United States," for persons *who have none but a common interest with their fellow-citizens*, to oppose or prevent, by force, numbers, or intimidation, a *public* and *general* law of the United States, *with intent* to prevent its operation, or compel its repeal. Force is necessary to complete the crime; but the quantum of force is immaterial. This point was determined by this court on a former occasion, which was, though not in all circumstances, yet in principle and object, very analogous to the subject of our present inquiries. I hold myself bound by that decision, which, on due consideration, I think legal and sound. I do not conceive it to be overshadowed, or rendered null, by any legislative construction contained in any subsequent act of Congress. The law, though established by legislative acts, or settled by judicial decisions, may be altered by Congress, *by express words*, in laws consistent with the Constitution. But a mere legislative construction, drawn from any act of intendment, ought not to repeal positive laws, or annul judicial decisions. The *Judiciary* have the duty assigned to them of interpreting, *declaring* and *explaining*—the *Legislature* that of *making*, or *altering*, or *repealing* laws. But the decision of a question on the constitutionality of a law is vested in the judiciary department. I consider the decisions in the case of Vigol and Mitchell in full force, and founded on true principles of law. The authorities from British precedents and adjudications are used as guides in our decisions. I will not enter into a discussion whether we are bound to follow them; because they are precedents,—or because we think them reasonable and just.

If numbers and force can render one law ineffectual, which is tantamount to its repeal, the whole system of laws may be destroyed in detail. All laws will at last yield to the violence of the seditious and discontented. Although but one law be immediately assailed, yet the treasonable design is completed, and the generality of intent designated, by *a part* assuming the government of *the whole*. And thus, by trampling on the legal powers of the constituted authorities, the rights of all are invaded by the force and violence of a few. In this case, too, there is a direct outrage on the judiciary act, with intent to defeat, by force and intimidation, the execution of a revenue law, enacted under clear and express constitutional authority. A deadly blow is aimed at the Government, when its fiscal arrangements are forcibly destroyed, distracted, and impeded; for on its revenues its very existence depends.

2. Though punishments are designated, by particular laws, for certain *inferior* crimes, which if prosecuted as substantive offences, and the sole object of the prosecution, are exclusively liable to the penalties directed by those laws, yet, when committed with treasonable ingredients, those crimes become only circumstances or overt acts. The intent is the gist of the inquiry in a charge of treason; and is the great and leading object in trials for this crime.

The description of crimes contained in the act commonly called the *Sedition act*, lose their character, and become but component parts of the greater crime, or evidences of treason, when the treasonable intent and overt act are proved. So it is with the *rescue of prisoners*; which, in the present case, was not an independent offence, but an *overt act of the treason*. These were crimes—misdemeanors—at common law; and might have been punished by fine and imprisonment when substantive independent offences. But, when committed with treasonable intent, they are merged in the treason, of which sedition, conspiracy, and combination are always the harbingers. I do not think that the acts relating either to *sedition* or *rescue* have altered the principle, though they have defined and bounded the punishments. The law, as to treason, is the same now as if those offences were still punishable at common law. The *Sedition act* cannot Constitutionally alter the description or the crime of *treason*, to which the combination and conspiracy to perpetrate this offence, with force and numbers, are essential attributes. Numbers must *combine* and *conspire* to levy war. But if these indispensable qualities of the crime are, by the Legislature, declared only *misdemeanors*, and separated from the treasonable act, the Legislature nullify the description of *treason* contained in the Constitution; and so indirectly alter and destroy, or make inefficient, this part of that instrument. The Congress neither possess, nor did they intend to exercise any such power. They could not (nor did they so intend) place the crime declared in the Constitution to be *treason*, among the inferior class of offences, by describing some of its essential qualities in the Sedition act, and prescribing punishments, when they solely constitute substantive and independent offences. Congress can only (as they have done) prescribe the punishment for *treason*, regulate the trial, and direct the mode in which that punishment is to be executed.

3. However indisputably requisite it may be to prove, by two witnessess, the overt act for which the prisoner at the bar stands indicted, yet evidence may be given of other circumstances, or even of other overt acts, connected with that on which the indictment is grounded, and occurring or committed in any other part of the district than the place mentioned. Although the prisoner be not on his trial, nor is he now punishable, for any other than the overt act laid, other overt acts and other circumstances, parts of the general design, may nevertheless be proved, to show the *quo animo—the intent*—with which the act laid was committed. Indeed, the treason would be complete, by the conspiracy, in any part of the district, to commit the treasonable act at Bethlehem, if any had, in consequence of the conspiracy, marched or committed any overt act for the purpose, though the actual rescue had not taken place. So we thought in the cases of the Western insurgents, that the treason, concocted at Couche's Fort, would have been complete, if any had only marched to commit the crime; though the design had not arrived to the disgraceful catastrophe it finally attained. Indisputable authorities might be produced to support this position.

4. The confession of the prisoner may be given in evidence as corroboratory proof of the *intent*, or *quo animo*. But, although proved by two witnesses, being made *out of court*, it is not of itself sufficient to convict. Two witnesses are necessary to prove the overt act. But the intent may be proved by one witness, collected from circumstances, or even by a single fact.

5. The doctrine of *constructive treason* has produced much real mischief in another country; and it has been, for an age, the subject of discussions, among lawyers, other public speakers, and political writers. The greater part of the objections to it are totally irrelevant here. The subject of them is unknown, and may it ever remain so, in this country—I mean the compassing the death of the King. It will be found that the British judges, since the days of political darkness and bigotry have passed away, are to be found among the most able and decided opposers of the abuses of this doctrine. They do not follow decisions and precedents rooted in bad times, because they find them in their law books. On the contrary, on a fair investigation, it will be proved, that those contrary to justice, reason, and law, are rejected. It is not fair and sound reasoning to argue against the necessary and indispensable *use* of construction, from the *abuses* it has produced. What is there among the best of *human* (and I wish I could not add *divine*) systems

which has not been perverted and abused? That there must be some defined sense and interpretative exposition made of the terms "*levying war*," and when, and in what circumstances, it is levied "*against the United States*," cannot be denied. The able counsel, in this case, who has said the most on this subject, and travelled the farthest into the gloomy, dark, and tyrannical periods of the British history and jurisprudence, for melancholy and disgusting proofs of atrocious abuses, and even crimes, committed under color of law, has, unavoidably, himself furnished also proofs of the necessity we are under of some constructive or interpretative expositions. He, at first, confined these expositions to *three* cases. Now, if there is a necessity of *one*, it shows that, without supplementary interpretation, the law would be a mere dead letter. Aware of the dangerous lengths to which the abuses of construction have been carried, courts and juries should be cautious in their decisions; but not so much alarmed about *abuses* as to restrain from the proper and necessary *use* of interpretation. I do not then hesitate to say, that the position we have found established, to wit, that opposition, by force and numbers, or intimidation with intent to defeat, delay, or prevent the execution of a general law of the United States, or to procure, or with a hope of procuring, by force and numbers, or intimidation, its repeal or non execution, is treason by levying war against the United States. And it does not appear to me to be what is commonly called *constructive*, but *open and direct* treason, in levying war against the United States, within the plain and evident meaning and intent of the Constitution.

6. As to the objections, founded on want of proof of regular appointments under, and of the proper execution of the law called the house-tax law, I do not see that they apply. If the prosecution was definitively for opposing one or more officer or officers of this tax law, the proof might be more rigidly required. But, as all the necessary use made of these collateral and subordinate circumstances, relative to the tax law officers, is for the purpose of showing the *quo animo* or *intent* with which the treason alleged was committed, I consider them as not relevant in this cause. It is even enough in criminal prosecutions, more directly aimed at the specific offence of opposing an officer, that he was an officer *de facto*.

7. As to the disarming and confining the two videttes, or advance of the armed insurgents, by the marshal at Bethlehem, I think him legally as well as prudentially justified in his conduct. Even a constable has a right to restrain and confine, under strong circumstances of suspicion, persons whose conduct or appearance evidence an intention to commit legal and violent acts. Much more so was the marshal (having notice of an intended rescue of his prisoners) justifiable in seizing and disarming two of the armed body against whom existing circumstances raised strong and evident suspicion. But I think this has been made more important than it really is. Because the release of these men was not the object of, or even known to, the prisoner at the bar and his party, when they commenced their treasonable march for the release of the prisoners in the marshal's custody at Bethlehem.

8. The President's proclamation should have been pleaded as a pardon, if it was intended to be relied on as such. This not having been done, it is not legally before us. But, since it has been mentioned, I think it necessary to declare it as my opinion, that it does not operate as a pardon to precedent offences. It is directed by law as a step preparatory to applying an armed force against those supposed to have committed crimes, and embodied for unlawful purposes. It is a humane warning, calculated to prevent the effusion of blood. Its allegations of facts, or its injunctions, have no operation in the trial of the prisoner at the bar.

Whether the prisoner is or is not guilty of the treason laid in the indictment, in the manner and form therein set forth, it is your province to determine. It is the duty of the court to declare the law; though both facts and law, which, I fear, are too plain to admit a reasonable doubt, are subjects for your consideration. We must all obey our public duty, whatever may be our private feelings. Mercy is not deposited in our hands. It is entirely within the Constitutional authority of another department.

Judge IREDELL.—Gentlemen of the Jury: I am persuaded that every person who has attended to the present very awful and important case upon which you are now called upon to decide, must be impressed with a just respect for the patience and attention which you have shown, through the long period which unfortunately has been taken up; but this, though much personal inconvenience must have been experienced, not only by you, but by all concerned, is unavoidable; none of us can repent that, in a case of such moment as the present, the time which is absolutely necessary for a complete investigation has been employed.

Gentlemen, it is with great satisfaction to me, on the present occasion, that my ideas on the points of law directing our conclusions, upon which it is the duty of the court to give opinion, absolutely coincide with that of the respectable judge with whom I have the honor to sit. Before I state to you any observation with regard to the facts which have appeared from the evidence, I shall previously deliver my opinion upon some points of law, so far as they are unconnected with the evidence; those which are, I shall speak to in their proper place.

This, gentlemen of the jury, is an indictment against the prisoner at the bar, for levying war against the United States; the first inquiry, therefore, is, what is meant by these words of our Constitution? "Treason against the United States shall consist only in levying war against them," &c. These words are repeated verbatim, I believe, in the act of Congress, called the Judiciary Act, defining the punishment of the crime of treason, pursuant to Constitutional authority. This crime being defined in the Constitution of our country, becomes the supreme law, and can only be altered

by the means therein pointed out, and not by any act of the Legislature; and, therefore, the repetition of the words of the Constitution in the Judiciary act is quite unnecessary, as the only power left to Congress over this crime was, to describe the punishment. The same act, in another part, makes provision for the method of trial. Agreeably to their power, Congress have described the punishment, and thereby declared the crime to be capital. It is clear, therefore, that, as the Constitution has defined the crime, the Congress, drawing its sole authority from that Constitution, cannot change it in any manner, particularly as it is so declared; yet the counsel for the prisoner say, that the Legislature have given it a Legislative interpretation, and that their interpretation is binding on this court. They say that Congress did not mean to include the offence charged upon the prisoner at the bar, under the definition of levying war; because the Sedition act describes a similar offence, and because a rescue is provided for in another act, the punishment extending no farther than fine and imprisonment. Several answers may be given to remove these objections:

First. If Congress had intended to interpret these words of the Constitution by any subsequent act, they had no kind of authority so to do. The whole Judicial power of the Government is vested in the judges of the United States, in the manner the Constitution describes; to them alone it belongs to explain the law and the Constitution; and Congress have no more right nor authority over the judicial expositions of those acts, than this court has to make a law to bind them. If this was not an article of the Constitution, but a mere act of Congress, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory sections to it. In this we differ from the practice of England, from whence we received our jurisprudential system in general; for they having no Constitution to bind them, the Parliament have an unlimited power to pass any act of whatever nature they please; and they, consequently, cannot infringe upon the Constitution. The very treason statute of Edward III. itself, contains a provision giving Parliament authority to enact laws thereupon in these words: "Because other like cases of treason may happen in time to come, which cannot be thought or declared at present, it is thought that, if any such does happen, the judges should not try them without first going to the King and Parliament, where it ought to be judged treason, or otherwise felony." On this point Sir Matthew Hale was very careful, lest constructive treason should be introduced.

This, gentlemen, you will observe, only relates to any case not specified in that act. But, on the occasion now before you, it is not attempted, by any construction or interpretation, that anything should be denominated treason, that is not precisely and plainly within the Constitution. No, treason can be committed except war has actually been levied against the United States.

But further, nothing is more clear to me than that Congress did not intend, in any manner whatever, to innovate on the Constitutional definition of treason, because they have repeated the words, I think, verbatim, in their own act. With regard to the rescue and obstruction of process, which are mentioned in the act alluded to, it will not be pretended, by any man, that every rescue, or every obstruction of an officer in serving process, or even both together, amounts to high treason, or else to no crime at all. No, the crimes are differently specified, and rescue or obstruction of process may be committed without that high charge. This, I think, was sufficiently explained by the counsel for the United States. Suppose one thousand men rise in arms, avowedly to destroy the Government, and in the execution of their design commit murder, burn houses, purloin property, &c., does it make the design less evident, because they committed other atrocious crimes in order to obtain their main views? No, it was to destroy the Government, and that crime would be charged upon them, being the higher crime, which the concomitant ones only tended to aggravate, as they were committed, not for the purpose of committing murder, but to intimidate the Government, and accelerate their object. With regard to what is stated in the Sedition act, combinations and conspiracies to raise an insurrection; these, gentlemen, may be committed without the parties being guilty of treason; men may combine and conspire for a private purpose; possibly to injure an individual, merely to gratify some private motive: if so, they come within that act, and that only. It is only when they carry their projects further; when they aim at the destruction of the Government, that the nature of the offence attains the aspect of, and essentially becomes treason; and, therefore, it is necessary to prove the intention; otherwise there can be no treason. There can be no levying war without a number of persons unite, and that number cannot levy war without some previous intention; and, therefore, under this law, there being no previous intention defined, but merely an unlawful combination, the act termed treason in the Constitution, it is plain, is not intended, nor is it of the nature of treason.

With regard to the authority from which the opinion of this court is founded, and of which you have heard much already, I shall trouble you with a very few observations. When this Constitution was made, it was in the power of those who formed it either to define treason or not, or, if they thought proper to do so, to do it in what manner they chose, in which they might have followed the example of the country whence their ancestors came, to which they were accustomed, and in which they were most experienced in their own several States, where the crime of levying war was denominated treason. I believe this has been generally followed through the States; in some I know it has. This term of levying war is an English expression, borrowed from the statute of Edward III.; but, notwithstanding this, the principal provisions respecting treason are taken from an act of the British Parliament in the reign of William III.,

which is principally calculated to guard the independence of the court against the power of the Crown, and the prisoner against his prosecutors. Now, I must confess, as these able and learned framers of our Constitution borrowed the act, in terms, from the British statute alone, an authority with which they were familiar, that they certainly, at least, meant that the English authorities and definition of those terms should be much respected. Those gentlemen knew as well as any counsel at the bar, the danger of constructive treasons; they knew how to guard themselves against the bad times of English history, and were equally acquainted with the better and more modern decisions. Would it not have been natural for men so able, so wise, so cautious, of their liberties, had they entertained a doubt of their insufficiency, to have introduced some new guards, some new interpretations, and not to have left us in later times in the dark, exposed to so much danger as the gentlemen of the bar apprehended? Gentlemen who know anything of that country, know that arbitrary times have existed, and also that a number of decisions have taken place since that period. I do not believe that any judge, since the revolution in England, has ever considered that he was bound to follow every arbitrary example of the English courts, or the Crown laws which had taken place in dark ages. Can any man suppose that, if a man was to be prosecuted for either of the crimes referred to by one gentleman, (Mr. Lewis,) so absurd a prosecution would be for a moment indulged by the judges of this age? No, they would highly resent such an insult offered to an enlightened court. Such instances have ever been reprobated as much by the courts, as by the gentleman who quoted them.

With respect to this doctrine of precedent, I will take the liberty of submitting to you a case of a civil nature; suppose it a case of great moment; suppose, in this court, or any other, from which an appeal could be had, a solemn decision had been had respecting a title to a piece of land; upon this adjudication a gentleman wishes to purchase this land; taking this title to a lawyer, he is confirmed in the opinion that the title is good, and that he is safe because of the decision of the court. On the faith of this decision alone the man lays his money out, and, therefore, it must be important how precedents are formed. If precedent is so important in a civil case, how much more so must it be in one like the present? If a case is new altogether, and no precedent can be found, it ought to be much in favor of the prisoner, but if a solemn declaration has once been made, that such and such facts constitute a certain crime, that declaration ought to be abode by, and for this plain reason; every man ought to have an opportunity to know the laws of his country (if he will take pains to inform himself) lest he should involve himself in guilt ignorantly. The propriety and necessity of this must be manifest, and, if so, it is as necessary that the proceedings of our courts should be uniform, otherwise there can be no dependence upon their judgment. If, therefore, a point has been settled in a certain way, it it enough to direct any court to settle a future case of a similar kind in the same way, because nothing can be more unfortunate than when courts of justice deviate in decisions on the same evidence.

This leads me, gentlemen, to point out to you a consideration of great magnitude. This is not the first time, as I have been informed, that these questions have been discussed in the court. During the trials of the persons concerned in the Western insurrection, they were discussed, and I have no doubt with great ability on both sides. Judges Paterson and Peters were then on the bench; and after all the display of splendid talent used in argument on both sides, and all the authorities produced that men were capable of, from the best judgment that could be formed, the court, without hesitation, declared itself in favor of the prosecution. As I do not differ from that decision, my opinion is, that the same declaration ought to be made on the points of law at this time. Vide 2 *Dallas' Reports*, 355.

It is, however, objected, that after this solemn decision had taken place, the Legislature, by the Sedition act, settled the matter differently, and that we are bound by that act. This has been answered so as to remove it beyond all doubt, and concessions were made at the bar sufficient to remove the seriousness of this objection out of the way. It was acknowledged that, if it had been in opposition to the militia act, then the crime would have been treason; or if it had been done to compel the repeal of an act, it would have been treason. For my part, I cannot perceive what kind of sanctity there is in the militia act more than any other, that should make my opposition to that act *particularly* serious. All the acts of Congress flow from the same authority, and all tend to the same end, to wit, the happiness and security of the community. Individuals may differ in their views of the magnitude of them: some may think the militia law, some the revenue law, some another, but the Legislature have thought all these laws equally necessary, and they having thought so, it is our duty to obey them all alike. But, if the opposition to the militia law, by force of arms, is to have this extraordinary sanctity, because it strikes immediately at the existence of the Government, then I should be glad to know what can be said about a revenue law? Government cannot exist a day without revenue to support it! Farther: opposition by force to one law, is of the same nature as opposition to all the laws; the offence is levying war against the Government; opposing, by force of arms, an act of Congress, with a view of defeating its efficacy, and thus defying the authority of the Government, is equally the same in principle, if done in one instance, as it could be in many. In monarchical governments it will sometimes happen that a rebellion breaks out in an endeavor to destroy one monarch, and set another on the throne. In such a case the treason plainly and unequivocally displays itself, and there can be no doubt about it; but this cannot occur in a republican form of government. Men are seldom found who will be guilty of such open treason, as to come forward in the face of day, and declare their design to destroy the *Constitution* or *all* the laws. No, if men of sense go to promote insurrection, whether they mean to destroy the Government or not, they must be wicked; they go about their design by more insidious means; art will be used, and pains taken to promote a dislike to a certain law; this evil prejudice is encouraged until it becomes general among the people, and they become as ripe for insurrection as in the present case. Nor would the evil cease with the destruction of one law. They may declare they mean to stop at that one act; but having destroyed it, and finding their power above that of the Government, is it not to be apprehended that they would destroy another and another, and so on to any number they disapprove of? If they would not be particular in one case, they would not in another. During the Western insurrection, the excise law was unpopular: in this case it is the house-tax act; and if this is permitted, it will be impossible to know where we can rest secure, nor how soon the Government itself will fall a prey. This reason may account for the introduction into the English statute book, and our Constitution, with the determination of the courts in both countries, of the principle that an attempt by force and violence to impede the operation of a single act, shall be treason, and under the description of levying war, as much as what shall at first appear more dangerous, since the effect may be the same.

There is another preliminary point, meriting a few observations, that is, with respect to the proclamation of the President. It was contended that because that proclamation required the people to disperse, and commit no more crimes, it amounted to a pardon of all they did before. It is sufficient to observe here, that had this objection been seriously made, a plea of pardon upon the ground of that proclamation must have been preferred, or it could not have been admitted. But the plea was not made, nor if it had, would it have been effectual, because, if this did amount to a pardon, it did so only on certain conditions; the attorney of the United States and the party are both allowed to show whether or not the prisoner has complied with the conditions of the pardon. It is possible, also, that the pardon has not been offered in such a manner as the Constitution permits, in which case the attorney must be permitted to put in a demurrer. Of the force of these objections the court are to decide, and of course the plea must be referred to them.

Again, this pardon might have been pleaded in due season. Of this the counsel for the prisoner were informed, and had time to consider, but they did not choose to avail themselves of it. But if it had been proposed, nothing is more clear to me than its insufficiency; for in my view, the proclamation contained no pardon at all. The circumstances which gave rise to, and the nature of the proclamation, ran thus: Certain information was received by the Government of a disturbance having broken out in that part of the country, which baffled the power of civil authority, but as it is necessary to prevent any insurrection with as little trouble as possible, after inferior means have failed, the law provides that the President shall make proclamation, inviting and commanding such disturbers of the public peace to disperse in quietness to their homes by a certain time; this must be done before the military can be ordered out against them. This is in order to prevent more people joining the standard of rebellion afterwards, and to admonish others not to commit farther crimes; but there is not a word in the proclamation implying an offer of pardon for anything committed before.

The riot act of England was cited in support of this doctrine; but there is no similarity in the two cases. That act says, a magistrate shall go to the mob, and endeavor to prevail upon them to disperse. If he cannot do it, he reads the act, and if they still continue combined, they are guilty of felony, but then this felony is a crime created merely by that act, but even that act does not intimate that they should be pardoned for crimes committed before the magistrate came, even if they do disperse. Instances to the contrary might be cited.

Having now, gentlemen of the jury, stated my opinion in the best manner in my power on the law, independent of the facts, or the particular application of that law to the prisoner at the bar, I shall, agreeably to my duty, state to you in the best manner I am capable of, the nature of the issue which you are now called upon to determine. It is an issue of an aspect the most awful and important that any juror can ever be called upon to determine. It is your duty to divest yourselves of all manner of prejudice and partiality one way or the other. Dismiss from your minds, as much as you can, all which you might have heard or thought on this case before you came into this court, and confine your opinions merely to the evidence which has been produced. No extraneous circumstances whatever ought to have the least weight with you in giving your verdict; you ought not, and I hope you will not, take into your consideration at all whether the safety of the United States requires that the prisoner should suffer, on the one hand, or whether, on the other, it may be more agreeable to your feelings that he should be acquitted. It is solely your duty to say whether he is guilty of the crime charged to him or not. No man can conceive that the interest of any Government can possibly make it requisite to sacrifice any innocent man; and I can rest perfectly satisfied, which I have no doubt you also are, that this Government will not, and God forbid any considerations whatever should ever influence such an action.

I do not think it necessary so go into a minute detail of all the evidence which has been produced; it would be only misspending time. The general scenes which passed at Bethlehem must be fully in your mind; these scenes are supported upon the evidence of twelve witnesses. But I think it my particular duty to bring to your recollection those parts of that transaction in which the prisoner at the bar was concerned, leaving the rest,

as much as possible, out of view. On this occasion I must request the gentlemen of the bar, if, in any instance, I should err in stating the evidence, that they will correct me; but I shall endeavor to be accurate.

The Judge here stated the prominent features of the evidence given by Messrs. Henry, John Barnet, William Barnet, Winters, Colonel Nichols, Sclaugh, Horsefield, Eyerly, Toon, and Mitchel, so far as related to the conduct of the prisoner at Bethlehem, which, he said, he thought proper to state first, because the offence charged in the indictment was said to have been committed at Bethlehem. Gentlemen, he continued, if you are not well satisfied that the overt act of *treason* was committed at Bethlehem, and that that overt act is supported by the evidence of two witnesses at least, you will not find the prisoner guilty.

Now, gentlemen, is the proper time for me to state one or two points concerning the law of evidence, of which you have heard much from the bar. As I observed, there must be *two at least* to prove that the act of treason was committed at Bethlehem. It is the opinion of the counsel for the prisoner that you must be convinced, not only of the fact by two witnesses; not only that he was concerned in a certain act, but that you must have the evidence of two witnesses, at least, by evidence drawn from the same place, that it was done with a treasonable intention, before you can pay any attention to any other evidence whatever. The fact is, that, when the overt act is proved by two witnesses, it is proper to go into evidence to show the course of the prisoner's conduct at other places, and the purpose for which he went to that place where the treason is laid, and if he went with a *treasonable design*, then the act of treason is conclusive. In this I am supported by a very respectable authority on Crown law, Foster, in the case of Deacon, from which it appears that it is enough to prove that a rebellious assembly of armed men were there, and that the prisoner joined them. In order to prove to you fully the design with which the prisoner went to Bethlehem and joined in this great outrage, I shall select some of the evidence respecting those previous transactions; it is not necessary to state the whole.

The Judge here read the evidence of James Chapman, John Rodrick, Cephas Childs, and William Thomas, respecting the conduct of Jacob Fries on the fifth of March, and respecting the meeting with Foulke and Rodrick near Singmaster's; and also the transactions of the sixth, at Quakertown; which evidence, he said, so confirmed each other, that no doubt could be entertained.

We now come to the confession of the prisoner, voluntarily made on his examination before Judge Peters. Here is a point of law relied on by the prisoner's counsel—that no man should be convicted of treason but on the evidence of two witnesses, *or upon confession in open court*. This is the provision in England as well as here, and the meaning is, that no confession of the prisoner, independent of two witnesses, or without the facts have been established by two witnesses, should be sufficient to convict him; but if two witnesses have proved a fact, the confession of the party may be received by way of confirmation of what has before been sworn to. In former days in England, it was allowed that confession out of court, and the proof of the witnesses, should be sufficient to warrant a conviction; but happily our Constitution would not admit it, if a hundred would swear to it; that danger is wisely avoided. Instances enough are in the recollection of the court, of a civil and criminal nature, where confessions have been received; but the jury are to judge from other evidence how far that is to be regarded.

Evidence may sometimes be given which may be doubtful, and wants corroboration; you will judge whether that is or is not the case at present. But, if the confession of the prisoner should go to confirm the evidence, if sworn to by two witnesses at least, it may be received, but, unless it does go to corroborate other testimony, I do not think it admissible. You will consider whether any part of this confession has not before been proved by two witnesses; if it has, it goes to corroborate what they say; if it has not, you are to disregard it. I think there ought to be great caution in receiving, as evidence, a confession which any man makes himself, because it possibly might be obtained from him by artifice or intimidation; with respect to this confession, you have the testimony of my honorable colleague, Judge Peters, that he gave the prisoner deliberate warning that he was not bound to convict himself, and that no intimidation was used. Whatever objections, then, there may be as to confession in general, it does not apply in this case, because it was voluntarily given.

The prisoner on his part introduced some witnesses, thinking they would be favorable to him: one of them appeared to be so in his testimony, which I shall endeavor to relate; the other three did not answer his expectation [the Judge related the evidence of John Jamieson.]

With regard to the point of law stated respecting the sufficiency of the warrants, the evidence to this fact shows the general disposition of that part of the country to resist the execution of the law, and prevent it by force or intimidation; our means of showing that, is their conduct towards the assessors. Those who were appointed to that office, so far as they had it in their power, showed a disposition to act as such. It is contended that their warrant ought to have been produced. With respect to the blank commission, which there was a suspicion was unlawfully filled up, there ought to have been the books produced; but it was not material. This indictment, it will be observed, is not for any resistance to the assessors, or obstruction of them in the discharge of their duty. I suppose it is not necessary to show that these officers were *de facto* engaged in the execution of the law; that they were considered as assessors; and that no doubt ever was entertained that they were properly authorized to be assessors. This doubt, if there was any, could be removed by reference to a very respectable authority. It

was sufficient if the warrants, given under the seal of the commissioner, were produced to the court.

The honorable Judge entered pretty largely into the examination of the objection respecting Mr. Foulke's appointment in the place of Mr. Clarke, which, he contended, was not material, since the warrant was filled and he acted under it.

With respect to another point of objection stated at the bar, that the marshal, in detaining the two men at Bethlehem, was liable to an action, he said that, under the circumstances of that period, he could not, because, under certain circumstances, he was warranted to call out the *posse comitatus*, i. e. the power of the county, to assist him, if he was likely to be overpowered. It could not be presumed that the circumstances did not empower and warrant him to call them out, and, therefore, we may conclude that danger was really to be apprehended, and those apprehensions must be heightened by the arrival of those two men in arms. In the opinion of Judge Henry, who was present, the danger was such as to justify the act of detention of those two men. Was it with a view of depriving those men of their liberty? No; but supposing them to have come with intent to assist in the rescue which they acknowledged they had heard was contemplated.

Gentlemen, in looking to the law on this point, I do not think it is encroaching at all upon the liberty of any man to take him into custody. An officer in such an action must be at his peril, and could only be justified on the exigency of the circumstance: if he did it unnecessarily, a jury would teach him to take care how he sported with the liberties of his fellow-citizens; but supposing, from good evidence, that he was in danger of assault, if he waited the united force of the assailants, shall it be contended as unreasonable, that the marshal should take measures of self-defence while it was in his power, and detain what he might reasonably suppose a part of them? He surely acted the part of a prudent man, and was justifiable in the act.

Before I dismiss this general subject, I think it an indispensable duty which I owe, to declare that, excepting the single instance, wherein I do perceive some impropriety of conduct, in the filling up the blank commission, what has been disclosed in the course of this examination of the conduct of the commissioners or assessors, has reflected on those officers the greatest honor: at the same time they acted with industry, fidelity, and firmness, in the discharge of that duty; they did all in their power to make it easy to the people, accommodating themselves to endeavor to give full satisfaction, undeceiving the deluded, and removing the errors which the people had fallen into. If the people still continued in ignorance and opposition, those gentlemen acquitted themselves of blame, and their conduct merited high praise.

As to the plea of ignorance, the law says ignorance shall excuse no man; otherwise, how could it be possible to prove whether a person knew the law or not? If ignorance could excuse a man for crimes, no crime would be brought to justice, or there must be, what is not to be expected, some self-evident proof of the guilt. A complete knowledge of the laws cannot be expected in every corner of our country; but thus much we may say, to remove this kind of excuse. If a man does not know when the law is passed, he knows how to obtain that information, and the law itself; for if he cannot come to Philadelphia, or some other town where they may be purchased by himself, he has opportunity of sending from time to time. But in the present case, any doubt could have been removed by application to the assessors, who were ever ready and willing to show the law, and, therefore, no plea of ignorance can possibly be set up.

Having spoken in commendation of the conduct of the commissioners and assessors, perhaps it is also my duty to say that the conduct of the marshal has been equally exemplary: he did everything in his power, by fair and honorable means, to avoid going to extremity; and as long as he had a hope of retaining his prisoners, he displayed a degree of courage which few men would do. He even offered to expose his life to this armed mob, by proceeding with the prisoners to Philadelphia, which he would have done but for the advice of three or four gentlemen with him, who thought it madness to proceed. He accordingly desisted, and in the event delivered up the prisoners.

This trial has lasted so many days, that we must be all very much fatigued; and I declare, gentlemen, I have scarce had power to examine the various points with minute attention, much less to prepare so proper a statement of them as I intended to have done. The fatigue I have felt many nights at going out of this court has prevented me doing it. Under these circumstances, I have no doubt of your excuse, which I shall the more readily meet, since your fatigue must also be very great.

Gentlemen of the Jury: The occasion is undoubtedly the most awful and important that ever could arise in any country whatever: the great question for you to decide is, whether the prisoner has been guilty of levying war against the United States at Bethlehem, in the county of Northampton, as charged in the indictment, or not. In order to discover the nature of his conduct, you must examine into the motive with which he went to Bethlehem: it is necessary for you to examine the whole of his previous actions relating thereto: if it should appear to you that the prisoner formed a scheme, either on the way or at Bethlehem, by any kind of force, to obtain this object, then, in my opinion, you ought to declare him guilty of the charge laid in the indictment. On the contrary, if you think he had no public and evil motive in view, he is not guilty of the crime.

Before I dismiss you, gentlemen, I would remind you of one consideration which must impress your minds. A great and important end of bringing persons guilty of public crimes to justice is to preserve inviolate the laws of our country. Men who commit crimes ought to be punished; other-

wise no safety or security can be had. On the other hand, it is of consequence that no man's life shall be taken away unjustly. If a man is not guilty of a crime, he ought not to be punished for it; and it cannot be for the interest of the country to put a man to death for what he has not committed: therefore you are not to regard the consequences, but determine merely by the facts in a manner for which you will be answerable at a future day, as well as myself, for all the conduct of our lives, as well as for the verdict you now give.

Mr. LEWIS stated a question to the court, whether the overt act laid in the indictment in a certain county, must not be proved to the satisfaction of the jury, both as to fact and intention, in the same county, or whether the overt act did not include both fact and intention? To which Judge IREDELL replied, that he considered Foster's Crown law as settling that point. When two witnesses are produced, which proves the overt act laid in the indictment, there might be then evidence drawn from other counties respecting the intention: this is the opinion of Judge Foster, and it is my opinion. But there is another thing; it goes to a point which is inadmissible; it is not for the court to say whether there was a treasonable intention or act as charged in the indictment; that is for the jury to determine; we have only to state the law—we therefore should have no right to give our opinion upon it. Again, if no evidence could be regularly admitted out of the county until both the fact and intention were established where the crime is laid, the consequence would be, that there ought to be some way of taking the opinion of the jury, whether they believed that the crime was committed at Bethlehem, before the court could proceed to extraneous testimony! This cannot be done; a jury must give verdict upon all the evidence collectively; if the evidence is admitted, then the jury is bound to respect the weight of it: the competency of that evidence is for the court to decide, but the jury must estimate its weight.

The question for you to decide at this time, gentlemen of the jury, is, whether upon the testimony of two witnesses, there is ground to believe the act was committed; and whether, from the prisoner's conduct at Bethlehem or elsewhere, it is proved to be with a treasonable intention.

Judge PETERS.—I think the overt act and the intention constitute the treason; for without the intention the treason is not complete. If a man goes for a private purpose, to gratify a private revenge, and not with a public or general view, it differs materially. The intention may possibly be gathered at the place where the act was committed, or it may not; if not, evidence is admissible to prove it elsewhere.

The jury then withdrew, and the court adjourned for about three hours, when they returned with the verdict of GUILTY.*

* This trial, says the reporter, occupied the unremitted attention of the court and jury from April 30, until May 9, inclusive, (nine days,) during which time the jury never separated.

Motion for a new trial of John Fries for treason.

May 14.—Mr. LEWIS informed the court that, the other day, in coming into court, he received a slight information, which he thought it his duty, as advocate for the prisoner, to make further inquiries into; but it was not till this morning that he had been able to procure the depositions of witnesses to prove a fact, on which he meant to ground a motion. He read the depositions to the court, which imported that John Rhoad, one of the jurymen on the trial of John Fries, had declared a prejudice against the prisoner after he was summoned as a juror on the trial. He now found that he could procure other affidavits to the same fact, on the ground of which he "moved a rule to show cause why there ought not to be a new trial."† He expressed himself aware of the lateness of the period, verdict having been given, but the impossibility of proving the fact earlier was a sufficient apology. He should forbear to enter on the merits of the motion at present. Rule was granted and made returnable to-morrow morning.

Wednesday, May 15.—Mr. DALLAS said it became his duty, as advocate for the prisoner, to lay before their Honors the grounds on which they had moved for a new trial in the case of their unfortunate client, in which he was sensible some little violence must be offered to *his* feelings in whose behalf it was made, and particularly if judgment should at last be pronounced upon him: but whatever the event, it became their duty to prefer it; and he was certain that, upon examination into the facts, they must be justified in producing them, as the event must alter the decision which had taken place. He was satisfied that the court, without direct reference to authorities, would be inclined to listen to anything that could be offered on good grounds, in favor of life, or the chance of life. With this confidence, he relied on the favorable attention which would be paid by the court, and the intervention of any trifling error in the proceeding, may not expose the defendant to the danger of an unfavorable decision.

In making the motion, Mr. Lewis had laid before the court some affidavits in order to prove that one of the jurors, after he had been summoned to attend the trial, did declare that the man should be convicted: in addition to that circumstance, the following reasons should have been assigned in favor of the motion:

First, That the marshal has, without any order or direction from the court or judges for that purpose, returned a greater number of jurors than he was by law authorized to do.

Secondly, That he returned them from such parts of the district as he thought proper, and without the direction of the court or judges.

Thirdly, That the trial ought to have been held in the county where the offence was committed, except manifest inconvenience should appear; and

† "The prisoner," says the reporter, "had been brought into court in order to receive sentence of death, but on Mr. Lewis's motion for a rule to show cause, judgment was suspended, and he was remanded back to prison."

it does not appear from any part of the record of the court that any inconvenience did prevent it, for whatever were the acts of the court, they ought to have been placed on record, which, not being done, is good ground for a motion.

Judge IREDELL did not think that the court were bound to assign a reason for their judgment on the record of their proceedings; besides, it was a high contempt at this time to call for the renewal of argument whereon a solemn decisive opinion was delivered; he asked what part of the law required it: if it was at that time omitted, it was not in the power of the court to order it now; or if they did not order the reasons to be inserted, the mere decision on the face of the record was enough to make it authoritative.

Mr. DALLAS then addressed the court in an argument of great length on the questions submitted by Mr. Lewis, protesting at the outset that there was no intention of offering a contempt to the court; and if the court would attend, they would be convinced there was not.

He next made a few observations on the conduct of the juror, which, he said, was not merely an expression of opinion, but a previous determination, and an expression of fear that the prisoner should be acquitted, so that it was impossible to doubt that, if this was true, the juror did not give verdict upon evidence, but was influenced by a previous bias, and prejudiced determination; his going into the box with this partial mind, deprived the prisoner of that chance which the law determines he shall have. It is necessary that every jury should enter this box free from malice; but it was not so: this juror labored under particular impressions, unfavorable to John Fries, because he conceived he had been the leader of, and brought on this disturbance, and therefore ought to be hung; this will be proved to have been more than once the language of the juror, and that he indulged himself in those expressions. After running from place to place, influenced by a vindictive spirit of prejudice, to express his desires, can it be contended that he was capable of deciding on the guilt or innocence of the prisoner, by the weight of the testimony only? There cannot be found a stronger case in the books. It is not necessary or right to go into the testimony, or any of the circumstances of the crime of the prisoner, to see whether the verdict was right or wrong; but it is necessary to view the determination of this juror, who wished them all hanged, and particularized Fries. First, his words were, "we will hang them all;" then he said, "I myself shall be in danger, unless we do hang them all." This is not merely an opinion generally expressed, but the language of design to convict at all events. If eleven out of twelve jurors had been of opinion that an acquittal should take place, and this individual, supposing he was in danger, had declared this opinion, and pointed out his view of the probable consequences, would not the voice of the eleven be changed to guard against this danger? 4 *Hawkins*, c. 43, sec. 28, p. 399, supports the doctrine generally, that if a juror has declared his opinions beforehand, that the party is guilty, or will be hanged, or the like, it is good cause of challenge: but if from his knowledge of the case, and not from *ill-will* to the party, he has only declared his opinion, it is no cause of challenge. But even resentment has not the influence upon a man's conduct which self-preservation has: ill will is not the only ground of challenge; interest is as much so; if a man had laid a wager another would be hung, this is not ill-will, but would vitiate the juror. Thefore we must conclude that "*ill-will*," in the above authority, is put merely as an instance. Whether these words were spoken in warmth or not, is immaterial, for it would be no alleviation; it is impossible that they should have been expressed without ill-will; and therefore the man is not impartially qualified to pass upon the life or death of the prisoner. *Salkeld*, 645, and 11 *Modern*, 118. Upon the general ground of what could be with propriety called misconduct in the person summoned to discharge the duty of a juror with impartiality, he observed there could be no doubt upon the propriety of their asking a new trial, nor upon the justice of one being granted.

Mr. LEWIS mentioned 5 *Bacon*, Abr., 251–2 (old ed.) and 4 *Blackstone*, 354–5, in order to show, that in criminal cases there should be no new trial, unless it should appear that the former trial had been attended with fraud, &c., and that a new trial in those cases might be granted after conviction; 11 *Modern*, 119: 5 *Bacon*, 243; and 3 *ibid.* 258 (old edition). If he has declared his will touching the matter, it shall be cause; 4 *Blackstone*, 346 (old edition). The direction respecting the *venire*, he said, was entrusted to the law, and not to the marshal; and by that direction was exercised by the judges in 1795; and if that was neglected, it was not legally executed. The court could, as then, order the jury to be called from all parts of the State, and not to be left to the marshal. 5 *Bacon*, 242, is an instance in which a son was sworn into the jury, (being the same name of John Pierce,) instead of the father, who was the person summoned to attend, whereupon a new trial was granted, because the trial was held by only eleven qualified persons as jurors. If the sheriff did not follow the direction of the law in respect to the *venire*, it was good cause for new trial.

Mr. SITGREAVES, in replying to Mr. Lewis and Mr. Dallas, first doubted the power of the court to give a new trial in criminal cases, upon which,

Judge IREDELL said, he had not discovered any *dictum* which distinguished civil from criminal causes, so that equal justice ought not to be administered; but if either, surely a criminal case called most strongly for justice: it would never do to apply cases so far, as to say that, if one man upon a jury was discovered not to be fully impartial, a new trial should not be granted, when a man's life was at stake.

Judge PETERS said he always understood, that the power of granting a new trial was in the discretion of the court; and that its opinion ought not to be turned by any vagaries which should be presented, but be governed by a reference to legal discretion; but at the same time, he could not say

that the court ought to throw entirely out of their view all the evidence which had been given in the trial, and everything that had been done. If, in the scale of justice, there should appear to be any error, and the case is any way doubtful, then the court will take advantage of a trifle, in order to grant a new trial; but where the court has been fully convinced that the verdict is right, then the evidence ought to have some weight, as well as the law.

Mr. DALLAS observed, that the motion was not in any regard to evidence; if so, the weight of evidence must be considered; but it was alone on the point of law, totally independent of evidence.

After Mr SITGREAVES and Mr. RAWLE had replied, it was agreed by counsel, and ordered by the court, that the deponents should give testimony, and be cross-examined in court, on each side; and also that the witnesses should be examined separately, and kept out of the court, so as not to hear the evidence given by each other.

Five witnesses were then produced, who testified that John Rhoad, one of the jurors who sat on the case, had declared, at two separate occasions, after his being summoned on the jury, but before the trial, that Fries, the prisoner, "ought to be hung;" "that it would not be safe at home unless they hung them all;" &c. Rhoad himself was afterward called by the district attorney, and denied under oath that he had made use of the expressions imputed to him, or any other of a similar character. Some testimony, also, was produced for the purpose of showing his veracity and general good character.

Mr. LEWIS then mentioned the grounds upon which the rule to show cause had been granted; whether either or all the grounds had weight in them, he would not undertake to assert; but, certain it was, that it was the duty of the prisoner's counsel to lay them before the court and wait the event, which, if favorable, would cause a new trial; if not, they should be satisfied with having discharged their duty; in either case they should cheerfully submit to the opinion of the court; and he was sorry to see that the last question, to wit, that the trial ought to have been held in the proper county, had given any discomposure to the court. He then explained the reason, to show the court that it was not agitated out of any disrespect to their former decision, which was that "manifest inconvenience" did prevent the trial being held there, but this did not appear on the record. In criminal prosecutions, and especially capital cases, it was usual for the prisoner's counsel to avail themselves of every slip and inaccuracy, and therefore he was excusable in the present objection.—4 *Burrows*, 252.

It was common to the court to err, and in such a case he considered himself in duty bound to point it out to them; and he was satisfied, if that error was of consequence enough, the court would grant a rule thereupon, and thus retract from their former opinions, which they were fully authorized to do.—3 *Black.*, 391; 1 *Burrows*, 293.

Mr. Lewis then went on to point out the propriety of granting a new trial in criminal as well as civil cases, although the prosecuting counsel had enforced the want of precedent as a reason against it; indeed, he said, it was evidently of more consequence, and therefore he supposed it had been the more strongly opposed; a man's life and his fame were of more value than a part of his property, and he had no doubt that, whatever might have been the verdict, the court would go as far in granting it. It was admitted that the court had the power; if it had the power, there was no doubt but the honorable judges would exercise it according to their conviction.

Mr. Lewis said, the counsel for the prisoner did not come forward to prove that the verdict was given against evidence, but to insist that the prisoner had been tried by eleven jurors only, for the other stood indifferent, as he stood unsworn; they went further—they went to prove that there was an essential error in the panel, and thus the prisoner was bereft of those benefits to which the law entitled him. If we prove this, said he, we do not address ourselves to the discretion of your honors; it is not a matter of will; it is a matter of justice to which we are entitled. As it respects the evidence, you are not at all to consider its weight; the evidence may be clear, and yet the verdict may be wrongly given, because of the incompetency of the jurors. The gentlemen have said, the period for application is past—it is too late—but with all their talents and industrious researches, those learned gentlemen have not been able to produce a single authority to support the doctrine that it is too late; after conviction, or even after condemnation, the court have authority to order a new trial; no time is specified to limit the discretion, if the reasons are good. If the law has not distinguished the period, those gentlemen are certainly unwarranted in saying it is too late.

In 2 *Strange*, 968, is a case where an argument was held on a plea for new trial; but not a single argument is used, that a new trial could not be held on capital cases; that seems to be taken for granted.

It was argued against a new trial, in capital cases, that the court proceeded more deliberately, and more cautiously, and because the prisoner was allowed a challenge of his jury. The argument amounts to this: because the law requires more caution, and gives the prisoner more advantages where his life is at stake, for that reason he should have less advantage and less indulgence; or, in other words, because the benignity of the law allowed more benefits in the awful event of life or death, therefore, in another point essential to the prisoner, he should be bereft of an advantage enjoyed by one indicted for an assault, or in a common civil cause. It may be argued, that the benevolence of the Executive may extend mercy to the prisoner, because of any irregularity in evidence or proceeding; but this will not satisfy the law; it is a hazard at best, while the law gives him the certain advantage of a new trial. The power and right of granting a new trial, in some cases, are admitted; now, if any of the witnesses or jurors could be proved to have perjured themselves, the evidence being first given, and the verdict pronounced, this, it will be allowed, would have weight to grant a new trial; but the case before the court goes as far, if not farther; and if there should appear an extreme error in summoning the jury, or that one of the jurors had disqualified himself from wearing the characteristics of an unbiassed man, then it must equally appear that there has been an infringement of a legal right, sufficient to lay the foundation of a second hearing.

Another doctrine that was insisted on was, that it was discretionary in the court; that, where they were satisfied with a verdict, although against evidence, no new trial ought to be granted. There may be instances of a civil nature in which that doctrine will be allowable; but they differ materially from the one now before the court, and therefore will not apply. That application may go to the favor of the court, where they see the evidence strong; but no favor can be exercised, nor is any asked in this case; we only appeal to the justice of the case.

It was said by one of the gentlemen, that this juror's declaring his sentiments was only cause of challenge to the favor, for which triers ought to have been appointed, and the qualification or disqualification of the juror been determined by them, but for which it was now too late. Mr. Lewis denied the position. He had already proved, both on his own declaration, and by the evidence, that it did not come to their knowledge until after the verdict was given, and therefore they came forward as soon as they were obliged; this was allowed a sufficient excuse in *Salkeld*, 645, and 11 *Modern*, 119, and therefore the objection was unimportant. The witnesses could not inform John Fries, for he was in jail; he could not know it, until yesterday morning, when the motion was made in court, for the witnesses had no knowledge of each other, so as to be able to communicate it. 3 *Bacon*, 258–9, says, "it is particular cause of challenge, if a juror has declared his opinion touching the matter." In causes of particular challenge, the court is to inquire into the truth of the fact, and no triers are to be called; if they find the cause a true one, they are not to judge, nor to be left to discretion, but, *they must try the issue again*. This is the doctrine of ancient law and usage, 266 *Bacon*. Then, all the argument about triers is out of the question; the question is, whether the juror stood indifferent, or whether he was under the influence of bias, and a prejudiced mind; the law compels the issue to steer clear of friends or enemies, no partiality whatever is to predominate: but can any man in the world say that Rhoad's mind was free from prejudice when he took opportunities to make such declarations?

Mr. Lewis then went into an examination of the evidence and depositions. Now, suppose the court to believe the fact nearly as stated by the evidence, Mr. L. asked, whether it was possible, consistent with law or justice, to believe that a just verdict was given, or that any man ought to suffer under such a verdict? Suppose the whole twelve to have made similar declarations; it would require no argument to convince the unbiassed, that the consequence must be fatal. It has been attempted to be proved that even such a declaration was no ground of challenge, if it was not made from malice; but what is the meaning of an independent man? It means a man who stands on the high ground of justice and impartiality, and is not warped by prejudice nor warmed by resentment, quite free from interest in the issue; also, a man whose judgment has not been made up in favor of either the one party or the other; for, if it has, though he may be an honest and well meaning man, it is not likely that his mind would be freely given according to evidence. Without he is free from these entanglements upon his mind, he will, he must err. Now, it appears by the evidence of even Mr. Rhoad himself, that he was warm, and might have forgotten the expressions, and nothing can be shown but that Mayer, the witness, who has lived in this county, is a man of good character; however, he must be supposed so, until he can be proved otherwise. Mr Lewis remarked, that the witnesses spoke of different conversations; Mayer of one, when Rhoad came first to town; the others, of two afterwards, in the room where they were sitting, and in the bed-room. He contended that no material, although a verbal, difference did exist; but the testimony of Rhoad differed materially from them all; his verbal testimony and deposition were also different, as might be seen. But, Mr. Lewis said, he doubted whether the testimony of Rhoad in this matter was legal evidence or not, because it was a matter in which he was materially concerned; however, they had not much objected, as there was a considerable difference in evidence going to a court, and to a jury; he had no doubt their honors would make the necessary allowance.

Although Rhoad was not sworn at the time he used these expressions, he was summoned on this trial, and it was a high misdemeanor—whether it was indictable or not, he would not say—but it was a very imprudent disposition to encourage or even suffer. In *Salkeld*, 153, Cook's case, Chief Justice Holt holds, that if a man ought not to be compelled to prove that he is a party, neither should he be allowed to prove that he is not a party, by his own evidence. This applies to Rhoad giving evidence, in which his character is concerned; 4 *State Trials*, 747–8, the case appears more fully; such conduct is here declared to be scandalous, a misdemeanor, and the man *ought not to be on any jury*. By four witnesses, neither inconsistent with themselves, nor with each other, Mr. Lewis said this fact was clearly proved, and he thought incontrovertibly so; of the respectability of those witnesses he knew nothing; but nothing disrespectful had been proved, and, consequently, not their incompetency.

Judge PETERS said that he did not know about their swearing falsely, nor could he say anything about Mayer; but of the others, he well knew that one was extremely stupid, and the others deeply prejudiced, on which account, their evidence should be carefully scrutinized, and carefully received.

The necessity of great precaution and care. Mr. Lewis was willing to admit; but this stupidity was a good apology for their not revealing the fact until it was drawn from them. Their ignorance, indeed, was deducible from the whole of their conduct, and the opposition they made to the Government, but it did not strike at their credibility; uninformed and misinformed as they were, their verity might be good. They were under indictments, and therefore perhaps afraid to speak; besides, coming from different parts of the country, they knew not John Fries; but let their offence or situation be what it may, they may be honest men, and men of truth and integrity, and, therefore, they must stand upon as good a footing as witnesses could stand.

We must take it for granted, then, said Mr. Lewis, that the juror made these declarations; and if so, according to the law of England and of the United States, he is disqualified from the office; otherwise, that most invaluable right, *trial by jury*, would be eminently impaired.

Mr. Lewis then examined some authorities which had been quoted by the prosecuting counsel, some of which were irrelevant, and some he thought not at all applicable. With respect to the case of Ann Clifton, as quoted from the Pennsylvania Practices, the juror declared that "he did not know how anybody could do otherwise than bring her in guilty, but he did not speak as a *juryman*." The court were of opinion, it was not sufficient to grant a new trial. The objection of the court was, not because it was a *capital case*, but they gave as a reason, that these words were not sufficient to vitiate a juror; his mind as a juror, he declared, was still open to conviction.

It was stated, that the application ought not to be listened to, because the prisoner had the challenge of sixty-eight in effect out of the whole panel; how this was meant to be applied he could not discover, but one fact was plain, that the smaller number there were summoned above thirty-five, the better choice there was for the prisoner, and therefore the whole number cannot be made to exceed sixty, agreeably to common law. Mr. Lewis then observed, that one remark of Mr. Rawle, that Mr. Rhoad was the last they could challenge, but they would rather have him than trust to the next, was a plain implication that they were ignorant of the fact, instead of militating against the motion. In order to remove every suspicion of inaccuracy from the former testimony, he said, he had happily been able to procure one whose respectability could not be questioned, and which he should now introduce to the court.

Here, an additional witness was introduced, to sustain the facts already sworn to on the part of the prisoner.

Mr. Lewis resumed his argument in favor of the evidence, which, he said, had not the last witness come forward, the others being suspected, would have been a question, whether the negative testimony of Mr. Rhoad, in which he was a party, or positive testimony of four others who were not concerned, had the most weight. But now, taking it for granted that Rhoad is mistaken, it can be only accounted for in two ways: first, that his memory failed him; or secondly, that he was extremely prejudiced. Imputing nothing corrupt to him, still we cannot allow him to be less so than any one of the five witnesses we have brought to controvert his assertions; allowing him not to be free from prejudice, he cannot be supposed to be capable of judging for himself.

Mr. Lewis concluded by examining at great length the other reasons submitted on the motion for a new trial.

After some additional evidence had been introduced of the same nature as that already noticed:

Judge PETERS observed, that the opinion of Lord Chief Justice Trevy, in *State Trials*, vol. iv., was much to the point; but that question was not determined by the court. In a question of so much national importance as the present, Judge Peters thought it his duty to give an opinion. When a man lives in the county where insurrection has happened, his impressions of injury from the repetitions of such scenes will be stronger than might be expected in other men, and, therefore, all that Rhoad said about it being unsafe for the friends of Government to live there, is accounted for, and no way improper for him to speak. I think Rhoad an honest man, and do not think he had any malice against Fries more than any of the rest; but I think he must have forgotten. That which appeared to strike Mr. Lewis with such force, does not appear to me important. I think the proceedings might have been more regular, but yet I think they were regular enough to stamp the event with a sufficient sanction. The proceedings were much the same as the court of oyer and terminer, when the sheriff summons a number more than is wanted, in order to have them ready, and when twelve are wanted, they are taken out of that number. This venire issued by the same course as all others do, perhaps not knowing the offences would be capital, but it appearing otherwise afterwards, agreeably to act of Congress some were summoned from the proper counties. The venire says the number is not to exceed sixty, yet these words do not designate more than those in the practice of England, which directs twelve, but twenty-four is generally returned. To be sure the court might have given the order, but I do not see how this could be done without the defendant lying in jail, or a special court being held. There is some weight, to be sure, in the arguments on that point, but they are not so important as they were held up to be. The marshal having ready a certain number when the issue was joined, then, and not before, was the number who did appear made to appear in court. The panel was returned, and furnished to Fries, on which the trial was suffered to proceed, and on that account I think it appears it was approved of by the court, which is a sufficient designation.

Judge IREDELL.—The question which the court have now to decide is certainly as important a one as ever was before a court. With regard to any interest the Government could be supposed to have in the event, or the feelings of private humanity or compassion as men, for the very unhappy situation of the prisoner—these must both be sacrificed to that impartial justice which our duty peremptorily commands us to exercise according to the best of our capacities. Sure I am that it is always my disposition so to be influenced, as I am convinced it is also of the judge with whom I have the honor to sit on the bench.

It is admitted, I believe on both sides, that it is in the power of the court in criminal cases to grant a new trial in favor of the prisoner, though they cannot to his prejudice, and it must be readily admitted that it must be the most obvious considerations, which could possibly render it the duty of the court, lest they too readily grant a new trial; for if the power is placed in a court, it is proof that it must, or might be sometimes exercised, and if ever proper occasion arise for the exercise of it, it must depend on some particular, strikingly applicable circumstances.

With regard to the particular circumstance now brought forward, that one of the jurymen made certain declarations unfavorable to the justice a prisoner has a right to expect, I must confess that until the evidence yesterday given by Mr. Yohe, I was not satisfied that he had said any such thing which could give the court full ground to believe him improperly biassed, so as to admit just cause for a new trial; but that testimony corroborating the testimony of those before given, on which, independently, we could place but little dependence, strikes me with great force, otherwise I should have entertained some doubt, owing to their different relations of apparently the same event. This caution was invigorated by the very excellent character which the juror had borne. From this I have every reason to believe that he has not wilfully done anything wrong, nor sworn to anything which he does not believe to be true. From the relation, it was difficult to arrange the particular parts of the conversation, so as to make it accord at any interval of time, on which account I was extremely desirous that Mr. Rhoad and Mr. Yohe should be confronted, and questions put to remind each other of the facts, so as both might accord; but it does appear that Mr. Rhoad's memory is extremely defective in some material points, and, therefore, without any impeachment, we may presume it was a gross mistake. It is the clear opinion of the court in *State Trials*, vol. iv., that if a juryman, not out of particular malice against the individual, but from any other cause, appears to have formed a predetermined opinion, he was not fit to be a juryman, and it was, therefore, good cause of challenge. In that case the expressions used were much similar to the present case; that opinion appears to be grounded upon the supposition that where a man, from any ill motives, or otherwise, forms an opinion strongly on his mind, an improper bias is extremely difficult to get clear of, and will influence an honest man unwarily to give a wrong verdict, and to these circumstances every man is liable. It is impossible for me to resist the impression, from the number of depositions produced, that Mr. Rhoad must, at different times, have used expressions similar to those related by Mr. Yohe, but I can readily conceive that such expressions were used with an innocent intention, and without meaning to prejudice himself from afterwards serving as an honest juryman; yet I cannot be certain but it might originate from a predisposed opinion of the guilt of the man, and, therefore, it must render him less able to discriminate facts; but if no such idea of guilt did exist, according to the authority stated, it would be good cause of challenge, if known, but if not known until after verdict is given, it would then be sufficient time, for what is good cause of challenge previous to trial, is good ground for a motion after verdict. It is very much to be regretted that the witnesses who heard these declarations did none of them communicate it to the counsel or the prisoner before the jury were sworn, because he might have been set aside, and much unnecessary public expense and distress to the unfortunate man, besides delay of the execution of justice, in this particular case, been prevented.

It being admitted that the court may grant a new trial in criminal cases upon sufficient cause to show, and it following that they ought to do it if shown, I further think that if there is cause of challenge before, there is equal cause, if it is proved that the juror was biassed, to order it, after verdict is pronounced, whatever delay or inconvenience may result therefrom; for that can be no reason to withhold a privilege to which a prisoner is entitled. From these views, I think it my duty to vote for a new trial in the present case, as the fact appears too clear to be controverted. In this event, there will be still an opportunity for the prisoner to be freed, and justice be done between himself and his country.

With regard to the point of law, if my mind had not been clear on the evidence respecting the juror, I should have been decidedly against a new trial, and accordingly should have taken the trouble more fully to have delivered my sentiments; it being so, I shall now make but a few general remarks. As to the point, that the record should evince the proceedings of the court, otherwise they are invalid, with reasons why trial should not be held in the county, I think there is no necessity of the reasons appearing on the record of court. If the question had stood simply upon this ground, it would have been immaterial; but it did not. Application was made to the court, after several indictments were found, alleging that the trials ought to be held in the county, whereupon the court declared its opinion, that "great inconvenience" prevented a compliance with the motion: but further, it appeared to be gone out of the power of the court, because the indictment had been found in this court, which must be considered a part of the trial; and the law means the whole proceeding shall be in one place, so that the indictment must have been found in that county, otherwise the trial by jury could not be held there. These were the reasons which operated to influence the court to refuse the application. In this dilemma, it was impossible for the court to say the trial should not pro-

ceed here; and, had it been removed, a new indictment could not have been found; if it had, the trial could not proceed upon two indictments. The only time for considering this question, I believe, was, when this man was charged with the offence, before he was committed, or even after the court sat, and before the indictment was brought into court. If it had been the opinion of the judge who committed him, that the trial could be held there, then it could have been referred to the Supreme Court, who, if they had been of the same opinion, would have ordered a special court. But from the state of that county, no one can believe that a trial could have been held in any way conducive to justice, or so as to make the proceedings of the court such as they ought to be, because the President has declared, by Proclamation, that the law could not be executed without military assistance, which I never wish to see guard a court of justice as matter of choice, though unavoidable necessity may sometimes make it prudent.

With regard to the summoning the jury, it is to be observed, that the practice now used, was an established usage of this court for many years past, which is a sanction sufficient, if no positive law nullifies it. The venire, issued in this form, in my opinion, did issue with the sanction of the court, and had the same effect as though the express order of the court had been annexed. It appears that it was not known, at the time the venire issued, that any cases were punishable with death, and of course not necessary to include a special provision for twelve to come from the county. Mr. Lewis made a concession, which, if right, did away the whole of this objection: he said, that upon the marshal's receiving information (whether it came from the judge or not) that a case punishable with death had occurred, he had a right, without any order from the court, written or verbal, to summon a greater number of men than in other cases: the words of the law are, not that he should summon twelve, but twelve at least; but he observed that this should not exceed, but be included in the number sixty. I do not know what authority he had to limit the number to sixty, in this or any other case. The law intends that a prisoner shall have a chance of men from his own neighborhood; certainly then the greater the number that comes from it, his chance is proportionably increased; therefore it can never prejudice the prisoner. I think that if the marshal should extend the discretion given to him to an unnecessary number, it would operate to the vexation of the persons summoned, and they alone would have cause to complain. Formerly, by law, a sheriff was directed to summon twelve, but, by usage, he actually did summon twenty-four, yet all above the twelve appeared to acquiesce, and it could not be of disadvantage; so in the grand jury for twenty-four, forty-eight was summoned: the power was assumed, and not complained of. I presume that if the marshal had authority to return that number, without a venire or precept, he was not limited as to number; and that when they came here, they formed the jury attending court. I am farther of opinion, that when the panel was presented to the prisoner, that panel contained the full sanction of the court, as much as though they had given the order.

So far as to substance. With respect to form, the words are, after joining the issue, "let the jury come." That is a direction given by the court to the marshal to summon the jury; but as it would be inconvenient for him to summon the jury after this order, which is for him to do it without delay, those jurors already summoned appear in court, so that if it was entered upon record, it would appear that, after the prisoner was arraigned, and issue joined, the marshal had directed these men to come, and they had come. It appears to me that, whether the marshal summoned the jurors of his own accord, or whether they were summoned under the express order of the court after issue was joined, in substance and in form the law is so far complied with as to do perfect justice. Though I am not certain that my opinion on these points of law is right, not having had much time to examine, yet I am strongly of that opinion at present; however, I have thought less and said less upon them than if the main object of the motion rested on it.

Sensible of the importance of the question, and that if life is once lost, it can never be recovered; leaving aside the question which involves doubt, and resting on the facts which have appeared before the court, I deem it my duty to say that a new trial ought to be granted.

Judge PETERS then said: Although I am not perfectly satisfied with the testimony, which is contradicted by the juror on his oath, I will allow it to be taken for granted, and meet the question on principle. I am in sentiment against granting the motion for a new trial. Because, 1. The juror said no more than all friends to the laws and the Government were warranted in thinking and saying as the facts then appeared to the public. Fries being generally alleged to be the most prominent character, it was on this account, and not with special or particular malice, that Rhoad's declaration was made.

2. If a juror was rejected on account of such declarations, trials, where the community at large are intimately affected by crimes of such general importance and public notoriety, must be had, in all probability, by those who only openly or secretly approved of the conduct of criminals. This would be unjust and improper, as it affects the Government in its public prosecutions. Little success could be expected from proceedings against the most atrocious offenders, if great multitudes were implicated in their delusions or guilt.

3. It is natural for all good citizens, when atrocious crimes, of a public nature, are known to have been committed, to express their abhorrence and disapprobation both of the offences and the perpetrators. It is their duty so to express themselves. This is not like the case of murder, or any offence against an individual; or where several are charged, and none remarkably prominent. In this latter case, selecting one out of the mass might evince *particular malice*.

4. I have no doubt that declarations of an opposite complexion could be proved; and yet the jurors were unanimous in their verdict. The defendant has had a fair, and I think an impartial trial.

But as a division in the court might lessen the weight of the judgment if finally pronounced, and the great end of the law in punishments being *example*, I, with some reluctance, yield to the opinion of Judge Iredell. Although justice may be *delayed*, yet it will not *fail*, either as it respects the United States or the prisoner.

SECOND TRIAL OF JOHN FRIES.

In the Circuit Court of the United States for the Pennsylvania District, Philadelphia, April 29, 1800.

The prisoner was arraigned, and pleaded not guilty to the following indictment (the first having been withdrawn by the district attorney:)

In the Circuit Court of the United States of America, in and for the Pennsylvania District of the Middle Circuit.

The Grand Inquest of the United States of America, in and for the Pennsylvania District, upon their respective oaths and affirmations, do present, that John Fries, late of the county of Bucks, in the State and district of Pennsylvania, yeoman, owing allegiance to the United States of America, wickedly devising, and intending the peace and tranquillity of the said United States to disturb, and to prevent the execution of the laws thereof within the same, to wit, a law of the said United States, entitled, "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," and also a law of the said United States, entitled "An act to lay and collect a direct tax within the United States," on the 7th day of March, in the year of our Lord one thousand seven hundred and ninety-nine, in the county of Northampton, in the State and district aforesaid, and within the jurisdiction of this court, wickedly and traitorously did intend to levy war against the said United States within the same, and to fulfil and bring to effect the said traitorous intention of him, the said John Fries, he, the said John Fries, afterwards, that is to say, on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the said State, district and county aforesaid, and within the jurisdiction of this court, with a great multitude of persons, whose names are to the said Grand Inquest unknown, to a great number, to wit, to the number of one hundred persons, and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive and defensive, being then and there unlawfully and traitorously assembled, did traitorously assemble and combine against the said United States, and then and there with force and arms, wickedly and traitorously, and with the wicked and traitorous intention to oppose and prevent, by means of intimidation and violence, the execution of the said laws of the said United States, within the same, did array and dispose themselves in a warlike and hostile manner against the said United States, and then and there, with force and arms, in pursuance of such their traitorous intention, he, the said John Fries, with the said persons so as aforesaid traitorously assembled, armed and arrayed in manner aforesaid, wickedly and traitorously did levy war against the said United States.

And further to fulfil and bring to effect the said traitorous intention of him, the said John Fries, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the said laws of the United States from being carried into execution, in the State and district aforesaid, he, the said John Fries, afterwards, to wit: on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the State, district, and county aforesaid, and within the jurisdiction of this court, with the said persons, whose names to the Grand Inquest aforesaid are unknown, did wickedly and traitorously assemble against the said United States, with the avowed intention by force of arms and intimidation, to prevent the execution of the said laws of the said United States, within the same; and in pursuance and execution of such their wicked and traitorous combination and intention, he, the said John Fries, then and there, with force and arms, with the said persons to a great number, to wit, the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, did wickedly and traitorously resist and oppose the marshal of the said United States, in and for the said Pennsylvania district, in the execution of the duty of his office of marshal aforesaid, and then and there with force and arms, with the said great multitude of persons, so as aforesaid unlawfully and traitorously assembled, and armed and arrayed in manner aforesaid, he, the said John Fries, wickedly and traitorously did oppose and resist, and prevent, the said marshal of the said United States from executing the lawful process to him directed and delivered against sundry persons, inhabitants of the county aforesaid and district aforesaid, and charged upon oath before the Judge of the District Court of the said United States, for the said district, with having entered into a conspiracy to prevent the execution of the said law of the United States, entitled "An act to lay and collect a direct tax within the United States," which process duly issued by the said Judge of the said District Court of the district aforesaid, the said marshal of the said United States, then and there had in his possession, and was then and there proceeding to execute as by law he was bound to do; and so the said Grand Inquest, upon their respective oaths and affirmations aforesaid, do say, that the said John Fries, in manner aforesaid, as much as in him lay, wickedly and traitorously did prevent, by means of force and intimidation, the execution of the said

laws of the said United States, in the said State and district of Pennsylvania.

And further to fulfil and bring to effect the said traitorous intention of him the said John Fries, and in pursuance and in execution of the said wicked and traitorous combination to oppose, resist and prevent the execution of the said laws of the said United States, in the State and district aforesaid, he, the said John Fries, afterwards, to wit, on the said seventh day of March, in the said year of our Lord one thousand seven hundred and ninety-nine, in the State, district and county aforesaid, and within the jurisdiction of this court, with the said persons whose names to the Grand Inquest aforesaid are unknown, did wickedly and traitorously assemble against the said United States with the avowed intention, by means of force and intimidation, to prevent the execution of the said laws of the said United States, in the State and district aforesaid, and in pursuance and in execution of such their wicked and traitorous combination and intention, then and there in the State, district and county aforesaid, and within the jurisdiction of this court, with force and arms, with a great multitude of persons, to wit, the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, and other warlike weapons, as well offensive as defensive, being then and there unlawfully and traitorously assembled, he, the said John Fries, did traitorously, with force and arms and against the will of the said marshal of the said United States, in and for the district aforesaid, liberate and take out of his custody sundry persons by him before that time arrested, and in his lawful custody then and there being, by virtue of lawful process against them issued by the said Judge of the District Court of the said United States, for the said Pennsylvania district, on a charge upon oath of a conspiracy to prevent the execution of the said law of the said United States, entitled "An act to lay and collect a direct tax within the United States;" and so the Grand Inquest aforesaid, upon their respective oaths and affirmations aforesaid, do say, that the said John Fries, as much as in him lay, did then and there, in pursuance and in execution of the said wicked and traitorous combination and intention, wickedly and traitorously, by means of force and intimidation, prevent the execution of the said law of the said United States, entitled "An act to provide for the valuation of lands and, dwelling-houses, and the enumeration of slaves within the United States," and the said law of the said United States, entitled "An act to lay and collect a direct tax within the United States," in the State and district aforesaid, contrary to the duty of his said allegiance, against the Constitution, peace and dignity of the said United States, and also against the form of the act of the Congress of the said United States, in such case made and provided.

WILLIAM RAWLE.
U. S. Attorney Pa. District.

Mr. Lewis and Mr. Dallas, before engaged to act for the prisoner, on account of the conduct directed by the court to be observed by the counsel, withdrew their assistance; so that the prisoner was left without counsel; and on being asked by the court if he would wish to have some assigned, he did not accept the offer.*

Thursday, April 24.—Before the jurors were sworn in, they were individually asked (upon oath) these questions: "Are you in any way related to the prisoner?" They all answered, "No." "Have you ever formed or delivered an opinion as to the guilt or innocence of the prisoner, or that he ought to be punished? The answer generally was, "Not to my knowledge." Some of the jurors said they had given their sentiments generally, disapprobatory of the transaction, but not as to the prisoner particularly. These were admitted.

One of the jurors (Mr. Taggert) after he was sworn, expressed himself to the court to be very uneasy under his oath; he then meant that he never had made up his mind that the prisoner should be hung, but very often had spoken his opinion that he was very culpable; he did not, when he took the oath, conceive it so strict, and therefore wished, if possible, to be excused. The court informed the juror it was impossible to excuse him, now he was sworn.

The court informed the prisoner, that he had a right to challenge thirty-five without showing cause, and as many more as he could show cause for. Thirty-four were challenged, and the following admitted and sworn on the jury: Samuel Wheeler, *foreman;* Henry Pepper, John Taggert, Cornelius Comegys, Ephraim Clark, Thomas Baily, Lawrence Cauffman, John Edge, Charles Deshler, Henry Dubois, Isaac Dehaven, John Balliot.

Counsel for the prosecution, Mr. Rawle, Mr. Ingersol.

Mr. Rawle then opened the charge exhibited in the indictment. He observed that the jury must be aware of the very unpleasant duty he had to perform: he felt an extreme difficulty of situation—called forth by his duty to exhibit a charge against the prisoner at the bar of the highest magnitude, who now stood to answer, unattended by any legal advice; he felt impressed with the necessity of sticking more than usually close to the line of his duty, which he should endeavor to discharge as faithfully as possible. And he trusted that, while the jury felt their relation to their unfortunate fellow-citizen at the bar, they would, at the same time, make all suitable allowance for any errors which might appear on his (Mr. Rawles's) part, though it was sincerely his desire to avoid any, either in laying down the facts or the law, which he should do under the direction of the court; and he hoped that the jury would

* The "conduct directed by the court," which led to the withdrawal of Mr. Dallas and Mr. Lewis, afterwards became the subject of the first of the articles of impeachment, on which Judge Chase was tried before the Senate of the United States, in February, 1805. A fair view of the transaction may be gathered from the answer of Judge Chase, and the testimony of Mr. Dallas and Mr. Rawle, to be found in Judge Chase's Trial before the Senate.

carefully sift and examine the law and testimony which his duty called upon him to advance, in order to substantiate the charge.

Mr. Rawle then proceeded to open the charge. He said he should be able to prove that John Fries, the prisoner at the bar, did oppose the execution of two laws of the United States, to effectuate which he was provided with men, who, as well as himself, were armed with guns, swords, and other warlike weapons, which, by their numbers and military appearance, were sufficient to accomplish their purpose, which was, not only to intimidate the officers of the Government appointed to execute the above laws themselves, but to release from the custody of the marshal of Pennsylvania a number of persons who were held in prison by the said marshal, and to prevent him executing process upon others. All this was done, as stated in the indictment, by a combination and conspiracy to oppose those laws by a large body of armed men, of whom the prisoner at the bar was the chief and commander.

Mr. Rawle then proceeded, under the direction of the court, to state the law. The treason whereof the prisoner was charged was, "levying war against the United States."—*U. S. Const., Art.* 3, *Sec.* 3.

What, he asked, was levying war against the United States?

He conceived himself authorized, upon good authority, to say, levying war did not only consist in open, manifest, and avowed rebellion against the Government, with a design of overthrowing the Constitution; but it may consist in assembling together in numbers, and by actual force, or by terror, opposing any particular law or laws. Again: there can be no distinction as to the kind or nature of the law, or the particular object for which the law was passed, since all are alike the acts of the Legislature, who are sent by the people at large to express their will. Force need not be used to manifest this spirit of rebellion, nor is it necessary that the attempts should have been successful, to constitute the crime. The endeavor, by intimidation, to do the act, whether it be accomplished or not, amounts to *treason*, provided the object of those concerned in the transaction is of a general nature, and not applied to a special or private purpose.

In order to effect the object of those embarked in crimes of this high nature, it is well known that various means are necessarily employed; various acts may be perpetrated to accomplish the main end: they may proceed by the execution of some enormous crimes, as burglary, arson, robbery, or murder, either, or all of them; but even if one or all of these crimes were committed, except the purpose should be of a general nature, they may form distinct and heinous offences; but the perpetrators may not be guilty of treason. If a particular friend of the party had been in the custody of the marshal; if even a number sufficient for the purpose should step forward and rescue such a person, if it was not with a view to rescue prisoners *generally*, it would amount to no more than a rescue; but, if *general*, it is treason. The views of the party fix the crime, and therefore only the design is necessary to be known.

To prove that this doctrine was well established in the United States, Mr. Rawle turned to 2 *Dallas*, 346 and 355, stating the opinions of the court in the cases of Vigol and Mitchel, charged with, and convicted for, treason. The attack on General Neville's house was of this general nature, because he was an *officer* appointed to execute the obnoxious law; and being to the *officer* and not the *man* that they objected, it was thought to be treason, and that decision was well grounded.

He observed, that the clause in our Constitution was founded on a statute which was passed in England, to prevent the ever-increasing and ever-varying number of treasons, upon the general and undefined opposition to royal prerogative: the situation of things was such, previous to that period, as to call forth from the statesman, from the philosopher, and from the divine, even in those dark ages, the most vehement complaints: in attendance to these reasonable and just murmurs, the statute was passed.

Mr. Rawle was then producing an authority, when Judge Chase said, the court would admit, as a general rule, of quotations which referred to what constituted actual or constructive levying war against the King of Great Britain, in his regal capacity; or, in other words, of levying war against his Government, but not against his person, because it was of the same nature as levying war against the United States would be applied here: so was that part called adhering to the King's enemies: they may, any of them, be read to the jury, and the decisions thereupon—not as authorities whereby we are bound, but as the opinions and decisions of men of great legal learning and ability. But, even then, the court would attend carefully to the time of the decisions, and in no case must it be binding upon our juries.

Mr. Rawle quoted *Hawkins*, b. 1, chap. 17, sec. 23, as an authority of authenticity to prove that not only those who rebelled against the King, by taking up arms with the avowed design of dethroning him, but those who withstood his lawful authority, and who endeavored to oppose his Government; who withstood the King's forces, or attacked any of his fortresses—those, in fine, whose avowed object was of a public and general, and not of a private and personal nature, were guilty of high treason. He also read Sir John Friend's case from *Holt*, 681, and Damarree and Pinchases' case, 8 *State Trials*, 289.

Judge Chase begged the counsel to read only those parts of the cases which referred to what could be treason in the United States, and nothing which related to compassing the King's death. It would be found, he observed, by an attention to the last case, that because the intention was a rising to demolish ALL meeting-houses, generally, it was considered to be an insurrection against the Toleration Act, by numbers and open force, setting the law at defiance. This would be found to be the opinion in *Foster*, 213.

Mr. R. said, that he conceived that, even if the matter made a grievance of, was illegal, the dem-

olition of it in this way was, nevertheless, high treason, because of the people so assembled taking the law into their own hands; thus, in *Foster*, it would be seen that demolishing all bawdy-houses, as such, was high treason, as much as demolishing all meeting-houses, being equally an usurped authority. He also read *Douglas*, 570. Lord George Gordon's case, when it was Lord Mansfield's opinion that any attempt, by violence, to *force* the repeal of a law, or to prevent its execution, is levying war, and treason.

He considered, from those few authorities, that he was justifiable in saying that a rising, with intent, by force, to prevent the execution of a law, as well as laws in general, preventing the marshal executing his warrants, and preventing the other officers charged with the execution of the laws in question, amounted to levying war, agreeably to the Constitution of the United States.

Mr. R. then proceeded to state the most prominent facts which could be produced in the course of the evidence, in which it would fully appear, he presumed that John Fries, the prisoner, was the most active in his opposition to those laws and to every attempt to carry them into effect; that he, in every instance, showed his aversion of, and opposition to, the assessors, and determination by threats and menaces to prevent them doing their duty, and that whenever any force was used, or terrific appearances held up, he was the commander, and gave the orders to his men, who, at times, in great numbers, joined him: and that, finally, by threats and intimidation, equally the same in the eyes of the law as force, he, the prisoner, did attain his object, to wit, the release of a number of prisoners who were confined for opposing the execution of the law, and were actually in custody of the marshal in a house at Bethlehem, which, by reason of his having prisoners there, and his having an armed *posse* to protect his lawful authority, was to all intents a fortress of the United States; and further, that he did, completely for a time, prevent the execution of the laws intended, in those parts, and thus did bid defiance to all lawful authority.

Judge CHASE then said to the prisoner:

John Fries, you will attend to all the evidence that will be brought against you; will attend to their examination, and ask any questions you please of the several witnesses, or of the court; but be careful to ask no questions wherein you may possibly criminate yourself, for remember, whatever you say to your own crimination, is evidence with the jury; but if you say anything to your justification, it is not evidence. The court will be watchful of you; they will check anything that may injure yourself; they will be your counsel, and give you every assistance and indulgence in their power.

[The evidence adduced on this trial is of so similar a character to that reported on the former occasion, as to render a report of it unnecessary. The defendant produced no testimony.]

Mr. RAWLE said he felt himself so very peculiarly situated in this case, that he would wish the opinion of the court. The unfortunate prisoner at the bar appeared to answer to a charge, the greatest that could be brought against him, without the assistance of counsel, or any friend to advise with. To me, the evidence against the prisoner is extremely strong. It will be recollected, that, in opening the evidence, I informed the jury what points I shall prove. I opened my ideas of constructive law, and produced a few authorities in support of my opinions. I believe it will be found, that in no material point have I failed to substantiate what I first gave notice that I could prove. I therefore conceive the charges are fully confirmed.

But although, if this trial was conducted in the usual way, and counsel were ready to advocate the cause of the prisoner, it would now be proper, on my part, to sum up the evidence as produced to the jury, and apply it to the law, in order to see whether the crime was fixed or not; under the present circumstances, I feel very great reluctance to fulfil what would, in other circumstances, be my bounden duty, lest it should appear to be going further than the rigid requisition of my office compels me to. I therefore shall rest the evidence and the law here, unless the court think that my office, as public prosecutor, demands of me to do it, or that I should not fulfil my duty without doing it.

Judge CHASE.—It is not unfrequent for a prisoner to appear in a court of justice without counsel, but it is uncommon for a prisoner not to accept of legal assistance. It is the peculiar lenity of our laws that makes it the duty of a court to assign counsel to the person accused. With respect to your situation, sir, it is a matter entirely discretionary with you whether you will state the evidence and apply it to the law or not. There is great justice due to a prisoner arraigned on a charge so important as the present: there is great justice also due to the Government. On the one hand, an innocent person shall not be made to suffer for want of legal assistance; on the other, a guilty person shall not escape through an undue indulgence, or the failure of the accuser in a duty his office may require of him. If you do not please to proceed, I shall consider it my duty to apply the law to the facts. The prisoner may therefore offer what he pleases to the jury.

Prisoner.—I submit to the court to do me that justice which is right.

Judge CHASE.—That I will, by the blessing of God, do you every justice.

Judge PETERS.—Mr. Attorney, while you are justifiable in considering the situation of the prisoner, that he might not suffer by any partial impressions you may make on the jury, there is another consideration deserving attention—there is justice due to the United States. Though I see no difficulty in resting it here, yet, possibly, persons who may have come into court since the trial commenced, may expect something of a narrative of the transactions, and such a narrative may be of great help to the jury. I wish it to be done for the due execution of public jutice, and, God knows, I do it not with a desire to injure the prisoner, for I wish not the conviction of any man.

It is a painful task, but we must do our duty. Still I think you are at liberty to fulfil your own pleasure.

Mr. RAWLE would, then, under a solemn impression that it was his duty, take up some part of the time of the court and jury in relation to the prisoner at the bar, a task rendered far more painful on his part, from the circumstance of the prisoner's appearing there (unexpectedly) without counsel to plead his cause. In as few words as possible, he would endeavor to collect the most prominent features of the testimony which had been produced, and to apply it to the law.

As he stated before, Mr. Rawle said, levying war in the United States against the United States, was a crime defined by the Constitution; in relation to the republican form of Government existing among us, it could only consist in an opposition to the will of the society, of which we all are members, declared and established by a majority; in short, an opposition to the acts of Congress, in whole or in part, so as to prevent their execution, either by collecting numbers, by a display of force, or by exhibiting that degree of intimidation which should operate, in either way, upon those charged with the execution of the law, either throughout the United States or in any part thereof, to procure a repeal or a suspension of the law, by rendering it impracticable to carry such law or laws into effect in the place so opposing, or in any other part. This offence he considered to be strictly *treason* against the United States.

The question, then, is, how far the case of the prisoner and his conduct merit this definition? In order to be informed of that, it was necessary to call to recollection the evidence, so collected, as to display the train and progress which marked its footsteps from its first dawning till its arrival at the fatal deed denominated treason.

It will first be observed by the testimony of several respectable witnesses (Messrs. Heckavelter, Ramich, Schymer, Ormond, and Williamson,) that attempts were made and executed, by a combination, in which, unfortunately for him, the prisoner at the bar was very active, to prevent the assessors from doing the duty required of them when they accepted their office, and that this combination existed both in Northampton and Bucks counties, and to such a degree that it was impossible to carry the law into effect. In Lower Milford, more particularly, we have the evidence of four respectable gentlemen, (Mr. Chapman, a principal assessor, and Mr. Rodrick, Mr. Foulke, and Mr. Childs, three assessors,) who were employed in the execution of those laws. These gentlemen say that they met with such opposition at an early period of the insurrection, as deterred Samuel Clarke from undertaking the business at all, although he had taken upon him the office. From this difficulty, Messrs. Foulke, Rodrick, and Childs determined they would proceed to assess Lower Milford township together, which they attempted, and did not desist until compelled by the extreme opposition which their respective testimony relates to have happened on the 5th and 6th of March, in their progress to, and at Quakertown, which ill usage is all corroborated by other witnesses. This spirit of opposition to the laws, as exhibited generally, is also related by Mr. Henry and Col. Nichols, the marshal, wherein it appears that process could not be served, and that witnesses could not be subpœnaed, being deterred from the threats made to them by this extensive combination; and that, in the serving of process, personal abuse was given, as well as to the assessors who attempted to execute the law. In short, the law was prostrate at the feet of a powerful combination.

Mr. Rawle here called to view the occurrences in Bucks county, as deposed by Messrs. Foulke, Rodrick, Chapman, Thomas, Mitchel, and Wiedner, exhibiting a disposition to insurrection by a great number of persons, and who engaged in its acts; he referred to the meeting at Jacob Fries', where John Fries, the prisoner at the bar, expressed himself as determining to oppose and continue hostile to the laws; also to the circumstance afterwards near Singmaster's, where Mr. Rodrick made his escape, and where, as well as at other times, the prisoner forbade those officers to proceed, under threats of personal danger. It appeared Mr. Rodrick had given offence, not by his conduct, but because he came from a distance of ten or twelve miles into that township, to prosecute his duty. However, the assessors met the next day, but were stopped at Quakertown, where they were extremely abused. To be sure, while the prisoner at the bar was in the room, and whenever he was present, their abuse was suspended; when he absented himself, it was renewed. The papers were taken from Mr. Childs, and also from Mr. Foulke, but returned because they were not the identical papers. Here it must be observed, in justice to the prisoner, that one more of his few good actions appeared, which Mr. Rawle wished in his heart had been more numerous. Fries assisted Mr. Foulke to get out of the house the back way, and advised him to keep out of the way of the men.

On the evening of that day they went up to Millerstown: here Mr. Rawle called to mind the message delivered by John Dillinger for convening the meeting the next day; this message was the fruit of a consultation held at the house of Jacob Fries, after they left Quakertown, when they determined to proceed to Millerstown the next morning. The next morning they met and went on as far as Ritters', where it appeared they were stopped for a short period by young Marks, who had been sent forward, with information that the prisoners had gone on to Bethlehem. A doubt being started whether they would not be too late, it was debated, and at last determined to go forward; of this latter opinion was the prisoner at the bar. It was in evidence that none of those people knew the prisoners whom they were going to release; this, Mitchel and others swore.

Here, Mr. Rawle thought, commenced the overt act in the indictment. Hitherto, only the general opposition to the law, and the intention with which the after conduct was perpetrated, appeared. They proceeded to Bethlehem, and here the officer of

militia, the man who derived his power from the people, the prisoner, *Captain John Fries*, whose duty it was to support the law and Constitution of the United States, made a most distinguished figure. At Bethlehem it appeared that the prisoner was to step forward to effect the surrender of the prisoners, and of course to lay prostrate the legal arm of the United States. These prisoners were in the lawful custody of the marshal; he had lawful process against them from the district judge; they were in the houses appointed for their safe keeping until they should be removed; he kept guard over them, and in order to execute his office, he had provided, by virtue of the powers given to the sheriff in the several counties agreeable to law, an armed force called a *posse comitatus*, or the power of the county. This force (about sixteen or seventeen) he supposed sufficiently great to prevent the prisoners in his charge being liberated; it appeared, however, in the sequel that they were not sufficient for that purpose. The prisoner with an armed force arrived at Bethlehem, and proceeded on his mission to the marshal: he had a sword when he marched his men into the town; but it appeared he left it when he entered on his other business, to wit: demanding the surrender of the prisoners; the marshal answered, that he could not deliver them up.

John Fries then returned to his men; and from the testimony of Mitchel, Barnet, and Schlaugh, (this was an important part of his conduct,) he said, "They must be taken by force; the marshal says he cannot deliver them up; if you are willing, we will take them by force: I will go foremost; if I drop, then take your own command." Words were followed by actions; they went into the house, and the prisoners were given up.

This, Mr. Rawle thought, was an unquestionable, full, and complete proof of the commission of the *overt act*; and that overt act is *high treason*, as laid in the third and fourth counts of the indictment, to wit: that they did *by force prevent the marshal from executing lawful process to him directed; and, secondly, that they did deliver, and take from him certain persons, whom he had in lawful custody*; and further this was done, *by force and arms*, by men arrayed in a warlike manner, and by a number exceeding one hundred persons. This the indictment justly calls levying war and treason.

To him, Mr. Rawle said, there was no doubt but the act of levying war was completed in the county of Bucks, independently of all those actions at Bethlehem; for there the prisoner and others were armed, and arrayed with all the appearances of war—with drums and fifes, and, at times, firing their pieces; and this to oppose the laws and prevent their execution; and there, by this force, they executed one, and the main part of their plan; they there did set the law at defiance. That was part of their grand object, and was done with a general, and not with a particular view, an essential ingredient in treason. Whether these actions were to be considered as a separate act of treason, or whether they were to evince the intentions of the party, it certainly must be considered as testimony, and such as must have an important weight towards the verdict.

Gentlemen, said Mr. Attorney, you will consider how far the individual witnesses are deserving your credit. If you consider them worthy of being believed, and if the facts related apply to the law which I submitted to your consideration, and which, from the silence of the court, I think you must consider as accurate—if not I shall stand corrected by the court—there can be but little doubt upon your minds, that the prisoner is guilty; if it be not so, in your opinion, you must find him otherwise.

I have endeavored to do my duty with integrity. I have advanced nothing but what appears to me to be clearly substantiated; but with you, gentlemen, and with the court, I leave the truth of the opinion.

COURT.—John Fries, you are at liberty to say anything you please to the jury.

PRISONER.—It was mentioned, that I collected a parcel of people to follow up the assessors; but I did not collect them. They came and fetched me out from my house to go with them. I have nothing to say, but leave it to the court.

Judge CHASE then addressed the jury as follows: Gentlemen of the Jury, John Fries, the prisoner at the bar, stands indicted for the crime of treason, of levying war against the United States, contrary to the Constitution.

By the Constitution of the United States, (art. 3. sec. 3.) it is declared, "that treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By the same section it is further declared, "that no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and that "the Congress shall have power to declare the punishment of treason."

Too much praise cannot be given to this Constitutional definition of treason, and the requiring such full proof for conviction; and declaring, that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

This Constitutional definition of treason is a question of law. Every proposition in any statute (whether more or less distinct, whether easy or difficult to comprehend) is always a question of law. What is the true meaning and true import of any statute, and whether the case stated comes within it, is a question of law, and not of fact. The question in the indictment for levying war against, or adhering to the enemies of, the United States, is, whether the facts stated do, or do not, amount to levying war, within the contemplation and construction of the Constitution.

It is the duty of the court in this case, and in all criminal cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present, and in all criminal cases, both the law and the facts, on their consideration of the whole case.

It is the opinion of the court, that any insurrection, or rising of any body of the people, within the United States, to attain or effect, by force or violence, any object of a public nature, or of public and general (or national) concern, is a levying of war against the United States, within the contemplation and construction of the Constitution.

On this general position, the court are of opinion that any such insurrection or rising to resist, or to prevent, by force or violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burdensome, oppressive, or unconstitutional, is a levying war against the United States, within the contemplation and construction of the Constitution. The reason for this opinion is, that an insurrection to resist or prevent by force, the execution of any statute of the United States, has a direct tendency to dissolve all the bands of society, to destroy all order and all laws, and also all security for the lives, liberties, and property of the citizens of the United States.

The court are of opinion, that military weapons, as guns and swords, mentioned in the indictment, are not necessary to make such insurrection or rising amount to a levying war, because numbers may supply the want of military weapons, and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

The court are of opinion that the assembling of bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason, although the judges, or other peace officers, should be insulted or resisted, or even great outrages committed to the persons or property of our citizens.

The true criterion to determine whether acts committed are treason or a less offence, as a riot, is the *quo animo*, or the intention, with which the people did assemble. When the intention is universal or general, as to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature, so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of property, or the like) are done, will show to what class of crimes the case belongs.

The court are of opinion, that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention into execution by force, that they are guilty of treason, of levying war, and the quantum of the force employed neither lessens nor increases the crime—whether by one hundred or one thousand persons, is wholly immaterial. The court are of opinion, that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used, in pursuance of such design, to levy war; but that it is altogether immaterial whether the force used is sufficient to effectuate the object—any force connected with the intention will constitute the crime of levying war.

This opinion of the court is founded on the same principles, and is, in substance, the same as the opinion of the circuit court for this district, on the trials (in April, 1795,) of Vigol and Mitchell, who were both found guilty by the jury, and afterwards pardoned by the late President.

At the circuit court for the district, (April term, 1799,) on the trial of the prisoner at the bar, Judge Iredell delivered the same opinion, and Fries was convicted by the jury.

To support the present indictment against the prisoners at the bar, two facts must be proved to your satisfaction:

First. That, some time before the finding of the indictment, there was an insurrection (or rising) of a body of people in the county of Northampton, in this State, with intent to oppose and prevent, by means of intimidation and violence, the execution of a law of the United States, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" or of another law of the United States, entitled "An act to lay and collect a direct tax within the United States;" and that some acts of violence were committed by some of the people so assembled, with intent to oppose and prevent, by means of intimidation and violence, the execution of both, or one of the said laws of Congress.

In the consideration of this fact, you are to consider and determine with what intent the people assembled at Bethlehem, whether to effect, by force, a public or a private measure.

The intent with which the people assembled at Bethlehem, in Northampton, is a necessary ingredient to the fact of assembling, and to be proved like any other fact, by the declarations of those who assembled, or by acts done by them. When the question is, "What is a man's intent?" it may be proved by a number of connected circumstances, or by a single fact.

If, from a careful examination of the evidence, you shall be convinced that the real object and intent of the people assembled at Bethlehem was of a public nature (which it certainly was, if they assembled with intent to prevent the execution of both of the above-mentioned laws of Congress, or either of them,) it must then be proved to your satisfaction that the prisoner at the bar incited, encouraged, promoted, or assisted, in the insurrection, or rising of the people, at Bethlehem, and the terror they carried with them, with intent to oppose and prevent, by means of intimidation and violence, the execution of both the abovementioned laws of Congress, or either of them;

and that some force was used by some people assembled at Bethlehem.

In the consideration of this fact, the court think proper to assist your inquiry by giving you their opinion.

In treason, all the *participes criminis* are principals; there are no accessaries to this crime. Every act, which, in the case of felony, would render a man an accessary, will, in the case of treason, make him a principal. To render any person an accomplice and principal in felony, he must be aiding and abetting at the fact; or ready to afford assistance, if necessary. If a person be present at a felony, aiding and assisting, he is a principal. It is always material to consider whether the persons charged are of the same party, upon the same pursuit, and under the expectation of mutual defence and support. All persons present, aiding, assisting, or abetting, any treasonable act, are principals. All persons, who are present and countenancing, and are ready to afford assistance, if necessary, to those who actually commit any treasonable act, are also principals. If a number of persons assemble and set out upon a common design, as to resist and prevent, by force, the execution of any law, and some of them commit acts of force and violence, with intent to oppose the execution of any law, and others are present to aid and assist, if necessary, they are all principals. If any man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law, in this case, judgeth of the intent by the fact. If a number of persons combine or conspire to effect a certain purpose, as to oppose, by force, the execution of a law, any act of violence done by any one of them, in pursuance of such combination, and with intent to effect such object, is, in consideration of law, the act of all who are present when such act of violence is committed. If persons collect together to act for one and the same common end, any act done by any one of them, with intent to effectuate such common end, is a fact that may be given in evidence against all of them; the act of each is evidence against all concerned.

I shall not detain you at this late hour to recapitulate the facts; you have taken notes, and they have been stated with accuracy and great candor by Mr. Attorney.

I will only remark, that all the evidence relative to transactions before the assembling of the armed force at Bethlehem, are only to satisfy you of the intent with which the body of the people assembled there. If either of the three overt acts (or open deeds) stated in the indictment, is proved to your satisfaction, the court are of opinion that it is sufficient to maintain the indictment; for the court are of opinion that every overt act is treasonable.

As to accomplices, they are legal witnesses, and entitled to credit, unless destroyed by testimony in court.

If, upon consideration of the whole matter, (law as well as fact,) you are not fully satisfied, without any doubt, that the prisoner is guilty of the treason charged in the indictment, you will find him not guilty; but if, upon consideration of the whole matter, (law as well as fact,) you are convinced that the prisoner is guilty of the treason charged in the indictment, you will find him guilty.

The jury retired, for the space of two hours, and brought in their verdict, GUILTY.

After the verdict was given, Judge CHASE, with great feeling and sensibility, addressed the prisoner, observing that, as he had no counsel on the trial, if he, or any person for him, could point out any flaw in the indictment, or legal ground for arrest of judgment, ample time would be allowed for that purpose.

FRIDAY, *May* 2d.—The court this morning called before them Charles Deshler, a juror on the above trial of John Fries, who, on the first evening of the said trial, on the adjournment of the court, separated from the jury and retired to his lodgings. Mr. Hopkinson, on behalf of Mr. Deshler, produced his own affidavit, and that of two others, which proved that, on the said evening, Charles Deshler was inadvertently separated from his brethren by the crowd, in going out of the jury box; that he did not know to what place the jury had adjourned: that he then proceeded to his lodgings, where he cautiously avoided all conversation respecting the trial depending.

The court, satisfied by this representation of the innocence of Mr. Deshler, ordered that he be discharged, and that the before-mentioned affidavit be entered on the record of the court.

The prisoner being set at the bar, Judge CHASE, after observing to the other defendants that what he had to say to Fries would apply generally to them, proceeded:

John Fries—you have been already informed, that you stood convicted of the treason, charged upon you by the indictment on which you have been arraigned, of levying war against the United States. You have had a LEGAL, FAIR, and IMPARTIAL trial, with every indulgence that the law would permit. Of the whole panel, you PEREMPTORILY challenged thirty-four, and with truth I may say, that the jury who tried you were of your own selection and choice. Not one of them before had ever formed and delivered any opinion respecting your guilt or innocence. The verdict of the jury against you was founded on the testimony of many creditable and unexceptionable witnesses. It was apparent from the conduct of the jury, when they delivered their verdict, that if innocent, they would have acquitted you with pleasure; and that they pronounced their verdict against you with great concern and reluctance, from a sense of duty to their country, and a full conviction of your guilt.

The crime of which you have been found guilty is treason; a crime considered, in the most civilized and most free countries in the world, as the greatest that any man can commit. It is a crime of so deep a dye, and attended with such a train of fatal consequences, that it can receive no aggravation; yet the duty of my station requires that I

should explain to you the nature of the crime of which you are convicted; to show the necessity of that justice which is this day to be administered, and to awaken your mind to proper reflections and a due sense of your own condition, which, I imagine, you must have reflected upon during your long confinement.

You are a native of this country—you live under a constitution (or form of government) framed by the people themselves; and under laws made by your representatives, faithfully executed by independent and impartial judges. Your Government secures to every member of the community equal liberty and equal rights; by which equality of liberty and rights, I mean, that every person, without any regard to wealth, rank, or station, may enjoy an equal share of civil liberty, and equal protection of law, and an equal security for his person and property. You enjoyed, in common with your fellow-citizens, all those rights.

If experience should prove that the Constitution is defective it provides a mode to change or amend it, without any danger to public order, or any injury to social rights.

If Congress, from inattention, error in judgment, or want of information, should pass any law in violation of the Constitution, or burdensome or oppressive to the people, a peaceable, safe and ample remedy is provided by the Constitution. The people themselves have established the mode by which such grievances are to be redressed; and no other mode can be adopted without a violation of the Constitution and of the laws. If Congress should pass a law contrary to the Constitution, such law would be void, and the courts of the United States possess complete authority, and are the only tribunal to decide, whether any law is contrary to the Constitution. If Congress should pass burdensome or oppressive laws, the remedy is with their constituents, from whom they derive their existence and authority. If any law is made repugnant to the voice of a majority of their constituents, it is in their power to make choice of persons to repeal it; but until it is repealed, it is the duty of every citizen to submit to it, and to give up his private sentiments to the public will. If a law which is burdensome, or even oppressive in its nature or execution, is to be opposed by force; and obedience cannot be compelled, there must soon be an end to all government in this country. It cannot be credited by dispassionate men, of any information, that Congress would intentionally make laws in violation of the Constitution, contrary to their sacred trust, and solemn obligation to support it. None can believe that Congress will wilfully or intentionally impose unreasonable and unjust burdens on their constituents, in which they must participate. The most ignorant man must know, that Congress can make no law that will not affect them equally, in every respect, with their constituents. Every law that is detrimental to their constituents must prove hurtful to themselves. From these considerations, every one may see, that Congress can have no interest in oppressing their fellow-citizens.

It is almost incredible, that a people living under the best and mildest government in the world, should not only be dissatisfied and discontented, but should break out into open resistance and opposition to its laws.

The insurrection in 1794, in the four western counties of this State, (particularly in Washington,) to oppose the execution of the laws of the United States, which laid duties on stills, and spirits distilled, within the United States, is still fresh in memory: it originated from prejudices and misrepresentations industriously disseminated and diffused against those laws. Either persons disaffected to our Government, or wishing to aggrandize themselves, deceived and misled the ignorant and uninformed class of people. The opposition commenced in meetings of the people, with threats against the officers, which ripened into acts of outrage against them, and were extended to private citizens. Committees were formed to systematize and inflame the spirit of opposition. Violence succeeded violence, and the collector of Fayette county was compelled to surrender his commission and official books; the dwelling-house of the inspector (in the vicinity of Pittsburg) was attacked and burnt; and the marshal was seized, and obtained his liberty on a promise to serve no other process on the west side of the Alleghany mountain. To compel submission to the laws, the Government were obliged to march an army against the insurgents, and the expense was above one million one hundred thousand dollars. Of the whole number of insurgents (many hundreds) only a few were brought to trial; and of them only two were sentenced to die, (Vigol and Mitchell,) and they were pardoned by the late President. Although the insurgents made no resistance to the army sent against them, yet not a few of our troops lost their lives, in consequence of their great fatigue, and exposure to the severity of the season.

This great and remarkable clemency of the Government had no effect upon you, and the deluded people in your neighborhood. The rise, progress, and determination of the late insurrection bear a strong and striking analogy to the former; and it may be remembered that it has cost the United States 80,000 dollars. It cannot escape observation, that the ignorant and uninformed are taught to complain of taxes, which are necessary for the support of the Government, and yet they permit themselves to be seduced into insurrections which have so enormously increased the public burdens, of which their contributions can scarcely be calculated.

When citizens combine and assemble with intent to prevent by threats, intimidation, and violence, the execution of the laws, and they actually carry such traitorous designs into execution, they reduce the Government to the alternative of prostrating the laws before the insurgents, or of taking necessary measures to compel submission. No Government can hesitate. The expense and all the consequences, therefore, are not imputable to the Government, but to the insurgents. The mildness and lenity of our Government are as striking on the late as on the former insurrection. Of nearly one hundred and thirty persons who might have

been put on their trial for treason, only five have been prosecuted and tried for that crime.

In the late insurrection, you, John Fries, bore a conspicuous and leading part. If you had reflected, you would have seen that your attempt was as weak as it was wicked. It was the height of folly in you to suppose that the great body of our citizens, blessed in the enjoyment of a free republican government of their own choice, and of all rights civil and religious; secure in their persons and property; and conscious that the laws are the only security for their preservation from violence, would not rise up as one man to oppose and crush so ill-founded, so unprovoked an attempt to disturb the public peace and tranquillity. If you could see in a proper light your own *folly* and *wickedness*, you ought now to bless God that your insurrection was so happily and speedily quelled by the vigilance and energy of our Government, aided by the patriotism and activity of your fellow-citizens, who left their homes and business and imbodied themselves in the support of its laws.

The annual, necessary expenditures for the support of any extensive Government like ours must be great; and the sum required can only be obtained by *taxes*, or loans. In all countries the levying taxes is unpopular, and a subject of complaint. It appears to me that there was not the least pretence of complaint against, much less of opposition and violence to, the law for levying taxes on dwelling-houses; and it becomes you to reflect that the time you chose to rise up in arms to oppose the laws of your country, was when it stood in a very critical situation with regard to France, and on the eve of a rupture with that country.

I cannot omit to remind you of another matter, worthy of your consideration. If the marshal, or any of the posse, or any of the four friends of Government who were with him, had been killed by you, or any of your deluded followers, the crime of murder would have been added to the crime of treason.

In your serious hours of reflection, you ought to consider the consequences that would have flowed from the insurrection, which you incited, encouraged, and promoted, in the character of a captain of militia, whose incumbent duty it is to stand ready (whenever required) to assist and defend the Government and its laws, if it had not been immediately quelled. Violence, oppression, and rapine, destruction, waste and murder, always attend the progress of insurrection and rebellion; the arm of the father would have been raised against the son; that of the son against the father; a brother's hand would have been stained with brother's blood; the sacred bands of friendship would have been broken, and all the ties of natural affection would have been dissolved.

The end of all punishment is example; and the enormity of your crime requires that a severe example should be made to deter others from the commission of like crimes in future. You have forfeited your life to justice. Let me, therefore, earnestly recommend to you most seriously to consider your situation—to take a review of your past life, and to employ the very little time you are to continue in this world in endeavors to make your peace with that God whose mercy is equal to his justice. I suppose that you are a Christian; and as such I address you. Be assured, my guilty and unhappy fellow-citizen, that without serious repentance of all your sins, you cannot expect happiness in the world to come; and to your repentance you must add faith and hope in the merits and mediation of Jesus Christ. These are the only terms on which pardon and forgiveness are promised those who profess the Christian religion. Let me, therefore, again entreat you to apply every moment you have left in contrition, sorrow and repentance. Your day of life is almost spent; and the night of death fast approaches. Look up to the Father of mercies, and God of comfort. You have a great and immense work to perform, and but little time in which you must finish it. There is no repentance in the grave, for after death comes judgment; and as you die, so you must be judged. By repentance and faith, you are the object of God's mercy; but if you will not repent, and have faith and dependence upon the merits of the death of Christ, but die a hardened and impenitent sinner, you will be the object of God's justice and vengeance. If you will sincerely repent and believe, God has pronounced his forgiveness; and there is no crime too great for his mercy and pardon.

Although you must be strictly confined for the very short remainder of your life, yet the mild Government and laws which you have endeavored to destroy, permit you, if you please, to converse and commune with ministers of the gospel; to whose pious care and consolation, in fervent prayers and devotion, I most cordially recommend you.

What remains for me is a very painful, but a very necessary part of my duty. It is to pronounce that judgment, which the law has appointed for crimes of this magnitude. The judgment of the law is, and this court doth award, "that you be hanged by the neck *until dead*;" and I pray God Almighty to be merciful to your soul!

PROCLAMATION.

By John Adams, President of the United States of America.

PHILADELPHIA, *May* 23, 1800.

Whereas, the late wicked and treasonable insurrection against the just authority of the United States, of sundry persons in the counties of Northampton, Montgomery, and Bucks, in the State of Pennsylvania, in the year one thousand seven hundred and ninety-nine, having been speedily suppressed, without any of the calamities usually attending rebellion; whereupon peace, order, and submission to the laws of the United States were restored in the aforesaid counties, and the ignorant, misguided, and misinformed, in the counties, have returned to a proper sense of their duty; whereby it is become unnecessary for the public good that any future prosecutions should be commenced or carried on against any person or persons, by reason of their being concerned in the said insurrection: wherefore be it known, that I, John Adams, President of the United States of America, have granted, and by these presents do grant, a full, free, and absolute pardon, to all and every person or persons concerned in the said insurrection, excepting as hereinafter excepted, of all treasons, misprisions of treason, felonies, misdemeanors, and other crimes by them respectively done or committed against the United States, in either of the said counties, before the 12th day of March, in the year 1799; excepting and excluding therefrom every person who now standeth indicted or convicted of any treason, misprision of treason, or other offence against the United States; whereby remedying and releasing unto all persons, except as before excepted, all pains and penalties incurred, or supposed to be incurred, for or on account of the premises.

Given under my hand, and the seal of the United States of America, at the city of Philadelphia, this twenty-first day of May, in the year of our Lord eighteen hundred, and of the independence of the said States the twenty-fourth.

JOHN ADAMS.

This paper, which was followed by the pardon of Fries himself, was the cause of much dissension in Mr. Adams's Cabinet, and among his immediate supporters.

The petitions on which it rested are as follows:

To the President of the United States:

The petition of John Fries respectfully showeth: That your prisoner is one of those deluded and unfortunate men, who, at the circuit court of this district, have been convicted of treason against the United States, for which offence he is now under the sentence of death. In this awful situation, impressed with a just sense of the crime which he has committed, and with the sincerity of a penitent offender, he entreats mercy and pardon from him on whose determination rests the fate of an unfortunate man. He solicits the interference of the President to save him from an ignominious death, and to rescue a large and hitherto happy family, from future misery and ruin. If the prayer of his petition should be granted, he will show, by a future course of good conduct, his gratitude to his offended country, by a steady and active support of that excellent Constitution and laws which it has been his misfortune to violate and oppose.

JOHN FRIES.

PHILADELPHIA PRISON, *May*, 1800.

The subscribers most respectfully recommend the petitioner to the President of the United States. They are warmly attached to the Constitution and laws of their country, which they will, on every occasion, and at every hazard, manifest their zeal to defend and support. But when they reflect on the ignorance, the delusion, and the penitence of the persons involved in the late insurrection, their pity supersedes every vindictive sentiment, and they sincerely think that an exercise of mercy will have a more salutary effect than the punishment of the convicts. It is on this ground that the subscribers, knowing the humanity as well as the fortitude of the President, venture to claim his attention on the present awful occasion, in favor of the wretched father of a numerous family.

PUBLIC ACTS OF CONGRESS;

PASSED AT THE SECOND SESSION OF THE SEVENTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, DECEMBER 6, 1802.

AN ACT making a partial appropriation for the naval service, during the year one thousand eight hundred and three.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the sum of one hundred thousand dollars be, and the same hereby is, appropriated towards defraying the expenses of the Navy of the United States, during the year one thousand eight hundred and three.

SEC. 2. *And be it further enacted*, That the aforesaid sum shall be paid, first, out of any balance remaining unexpended of former appropriations for the same object; and secondly, out of any moneys in the Treasury, not otherwise appropriated.

NATHANIEL MACON,
Speaker of the House of Representatives.
STEPHEN R. BRADLEY,
President of the Senate, pro tempore.
Approved, January 14, 1803.
TH. JEFFERSON.

An Act authorizing the sale of a piece of land, parcel of the navy yard belonging to the United States, in Charlestown, in the State of Massachusetts, to the proprietors of the Salem Turnpike Road and Chelsea Bridge Corporation.

Be it enacted, &c., That the Secretary of the Navy be, and he hereby is, authorized and empowered, by indenture of bargain and sale, in common form, to convey in fee simple to the proprietors of the Salem Turnpike and Chelsea Bridge Corporation, by their proper name of incorporation, a certain piece of land lying on the western corner, and being parcel of the navy yard belonging to the United States, in Charlestown, in the State of Massachusetts, containing fifteen square perches, or thereabouts, or so much thereof as is required to enable the said proprietors to lay out and make a turnpike road from Salem to Charlestown bridge, near Boston, according to the plan exhibited to Congress by the said proprietors.

SEC. 2. *And be it further enacted*, That it shall be the duty of the said Secretary, prior to the making the said conveyance, to cause the said piece of land to be valued by disinterested men, to be appointed in such manner as he shall agree with the said proprietors; the amount of which said valuation being paid to the use of the United States, it shall then, and not before, be lawful for the said Secretary to make the aforesaid conveyance.

Approved, February 10, 1803.

An Act to provide for the granting of clearances to ships or vessels owned by citizens of the United States, lying in the river Mississippi, south of the southern boundary of the United States, and therein to amend an act, entitled "An act to regulate the collection of duties on imports and tonnage," and for other purposes.

Be it enacted, &c., That whenever articles of the growth, produce, or manufacture, of the United States, shall be intended to be exported from any of the ports of the United States within the Mississippi, by the way of New Orleans, to any foreign port, the identity of such articles shall be ascertained and certified in the same manner by the proper officers as has been, or hereafter may be, provided, for the transportation of the same articles to any of the ports of the United States, without the Mississippi.

SEC. 2. *And be it further enacted*, That it shall be lawful for the collector of the customs for the district of Mississippi, to grant to any ship or vessel owned by citizens of the United States, laden with articles of the growth, produce, or manufacture of the said States, and actually lying in some part of the river Mississippi, south of the southern boundary of the United States, a clearance in the same manner as if such ship or vessel was lying within the said district, which clearance shall be of the form following, to wit:

"District of Mississippi, to ——
Port of Adams, ——

These are to certify to all whom it doth concern, that ——, master or commander of the ——, burden —— tons, or thereabouts, mounted with —— guns, (if any,) navigated with —— men, —— built, now lying in the river Mississippi, out of the United States, and bound for ————, having on board [here specify the articles if required] being of the growth, produce, or manufacture, of the United States, or (if no specification be required) being laden with articles of the growth, produce, or manufacture, of the United States, hath here cleared his said vessel according to law:

Given under my hand and seal, at the custom-house of Fort Adams, this —— day of ——, one thousand eight hundred and ——, and in the —— year of the independence of the United States of America."

Provided, nevertheless, That such clearance shall not be granted until the identity of the articles laden on board such ship or vessel, as being of the growth, produce, or manufacture, of the United States, shall be established to the satisfaction of the said collector, either by the exhibition of a certificate to that effect, from the consul, vice

consul, or other authorized agent of the United States, residing at or near New Orleans, on the said river, or otherwise: *And provided also*, That before the departure of such ship or vessel for any foreign port or place without the said river, it shall be the duty of the master or commander thereof, to exhibit such clearance to the said consul, vice consul, or other authorized agent of the United States, who shall certify thereon, under his consular seal, if he be satisfied that the state of the cargo at the time of such exhibition correspond therewith, that such is the case; or if the whole or any part thereof shall have been unladen, or otherwise changed so as not to agree with the tenor of such clearance, he shall accordingly state the same.

SEC. 3. *And be it further enacted*, That the consul, vice consul, or other authorized agent of the United States residing at New Orleans, or at such other place or deposit on the banks of the Mississippi, south of the southern boundary of the United States, as may be assigned by virtue of the treaty of San Lorenzo, shall be entitled to receive, from the captains or owners of American vessels, two dollars for each certificate he shall sign, certifying that the articles contained in such certificate are of the growth, produce, or manufacture, of the United States; and he shall also be authorized to employ a proper person to attend to the landing and loading such articles, whose duty therein, and compensation, shall be the same as those of an inspector of customs in one of the ports of the United States, which compensation shall be considered as a charge against the revenue, and defrayed by the collector for the district of Mississippi, out of the moneys received by him on account of the duties on tonnage and merchandise.

Approved, February 19, 1803.

An Act to provide for the due execution of the laws of the United States, within the State of Ohio.

Whereas, the people of the eastern division of the Territory Northwest of the river Ohio, did, on the twenty-ninth day of November, one thousand eight hundred and two, form for themselves a constitution and State government, and did give to the said State the name of the "State of Ohio," in pursuance of an act of Congress, entitled "An act to enable the people of the eastern division of the Territory Northwest of the Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," whereby the said State has become one of the United States of America; in order, therefore, to provide for the due execution of the laws of the United States within the said State of Ohio—

Be it enacted, &c., That all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said State of Ohio, as elsewhere within the United States.

SEC. 2. *And be it further enacted*, That the said State shall be one district, and be called the Ohio district; and a district court shall be held therein, to consist of one judge, who shall reside in the said district, and be called a district judge. He shall hold at the seat of government of the said State, three sessions annually; the first to commence on the first Monday in June next, and the two other sessions progressively on the like Monday of every fourth calendar month afterwards, and he shall, in all things, have and exercise the same jurisdiction and powers which are, by law, given to the judge of the Kentucky district; he shall appoint a clerk for the said district, who shall reside and keep the records of the court at the place of holding the same, and shall receive for the services performed by him, the fees to which the clerk of the Kentucky district is entitled for similar services.

SEC. 3. *And be it further enacted*, That there shall be allowed to the judge of the said district court, the annual compensation of one thousand dollars, to commence from the date of his appointment, to be paid quarter yearly at the Treasury of the United States.

SEC. 4. *And be it further enacted*, That there shall be appointed in the said district, a person learned in the law, to act as attorney for the United States, who shall, in addition to his stated fees, be paid by the United States two hundred dollars annually, as a full compensation for all extra services.

SEC. 5. *And be it further enacted*, That a marshal shall be appointed for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees, as are prescribed to marshals in other districts, and shall moreover be entitled to the sum of two hundred dollars annually, as a compensation for all extra services.

Approved, February 19, 1803.

An Act making further provision for the expenses attending the intercourse between the United States and foreign nations.

Be it enacted, &c., That a sum of two millions of dollars, in addition to the provision heretofore made, be, and the same is hereby, appropriated for the purpose of defraying any extraordinary expenses which may be incurred in the intercourse between the United States and foreign nations, to be paid out of any money in the Treasury not otherwise appropriated, and to be applied under the direction of the President of the United States, who shall cause an account of the expenditure thereof to be laid before Congress, as soon as may be.

SEC. 2. *And be it further enacted*, That the President of the United States may, if he shall deem it necessary, and he hereby is authorized, to borrow the whole, or any part of the said sum, at an interest not exceeding six per centum per annum, reimbursable before the year one thousand eight hundred and eleven: And it shall be lawful for the Bank of the United States to lend the whole, or any part of the same.

SEC. 3. *And be it further enacted*, That so much as may be necessary of the surplus of the duties on imports and tonnage, beyond the permanent appropriation heretofore charged upon them by law, shall be, and hereby is, pledged and appropriated for the payment of the interest, and reimbursement of the principal of all such moneys as may be borrowed in pursuance of this act, according to the terms and conditions on which the loan or loans may be effected.

Approved, February 26, 1803.

An Act supplementary to the "Act concerning Consuls and Vice Consuls, and for the further protection of American Seamen."

Be it enacted, &c., That, before a clearance be granted to any vessel bound on a foreign voyage, the master thereof shall deliver to the collector of the customs, a list, containing the names, places of birth, and residence, and the description of the persons who compose his ship's company, to which list the oath or affirmation of the captain shall be annexed, that the said list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them, and the said collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents; and the said master shall moreover enter into bond with sufficient security, in the sum of four hundred dollars, that he shall exhibit the aforesaid certified copy of the list to the first boarding officer, at the first port in the United States, at which he shall arrive on his return thereto, and then and there also produce the persons named therein, to the said boarding officer, whose duty it shall be to examine the men with such list, and to report the same to the collector; and it shall be the duty of the collector at the said port of arrival, (where the same is different from the port from which the vessel originally sailed,) to transmit a copy of the list so reported to him, to the collector of the port from which said vessel originally sailed: *Provided*, That the said bond shall not be forfeited on account of the said master not producing to the first boarding officer, as aforesaid, any of the persons contained in the said list, who may be discharged in a foreign country, with the consent of the consul, vice consul, commercial agent, or vice commercial agent, there residing, signified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew as aforesaid; nor on account of any such person dying or absconding, or being forcibly impressed into other service, of which satisfactory proof shall be then also exhibited to the collector.

SEC. 2. *And be it enacted*, That it shall be the duty of every master or commander of a ship or vessel, belonging to citizens of the United States, who shall sail from any port of the United States, after the first day of May next, on his arrival at a foreign port, to deposit his register, sea-letter, and Mediterranean passport with the consul, vice consul, commercial agent, or vice commercial agent, (if any there be at such port;) that in case of refusal or neglect of the said master or commander, to deposit the said papers as aforesaid, he shall forfeit and pay five hundred dollars, to be recovered by the said consul, vice consul, commercial agent, or vice commercial agent, in his own name, for the benefit of the United States, in any court of competent jurisdiction; and it shall be the duty of such consul, vice consul, commercial agent, or vice commercial agent, on such master or commander producing to him a clearance from the proper officer of the port, where his ship or vessel may be, to deliver to the said master or commander all of his said papers: *Provided*, such master or commander shall have complied with the provisions contained in this act, and those of the act to which this is a supplement.

SEC. 3. *And be it further enacted*, That whenever a ship or vessel belonging to a citizen of the United States, shall be sold in a foreign country, and her company discharged, or when a seaman or mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to produce to the consul, vice consul, commercial agent, or vice commercial agent, the list of his ship's company, certified as aforesaid; and to pay to such consul, vice consul, commercial agent, or vice commercial agent, for every seaman or mariner so discharged, being designated on such list as a citizen of the United States, three months' pay, over and above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul, or commercial agent, to each seaman or mariner so discharged, upon his engagement on board of any vessel to return to the United States, and the other remaining third to be retained for the purpose of creating a fund for the payment of the passages of seamen or mariners, citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute and may be in such foreign port; and the several sums retained for such fund shall be accounted for with the Treasury every six months, by the persons receiving the same.

SEC. 4. *And be it further enacted*, That it shall be the duty of the consuls, vice consuls, commercial agents, vice commercial agents of the United States, from time to time, to provide for the mariners and seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give; and that all masters and commanders of vessels belonging to the citizens of the United States, and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board of their ships or vessels, at the request of the said consuls, vice consuls, commercial agents, or vice commercial agents, respectively, and to transport them to the port in the United States to which such ships or vessels may be bound, on such terms, not exceeding ten

dollars for each person, as may be agreed between the said master and consul, or commercial agent. And the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several abilities: *Provided*, That no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every one hundred tons burden of the said ship or vessel, on any one voyage; and if any such captain or master shall refuse the same, on the request or order of the consul, vice consul, commercial agent, or vice commercial agent, such captain or master shall forfeit and pay the sum of one hundred dollars for each mariner or seaman so refused, to be recovered for the benefit of the United States in any court of competent jurisdiction. And the certificate of any such consul or commercial agent, given under his hand and official seal, shall be *prima facie* evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty aforesaid.

SEC. 5. *And be it further enacted*, That the seventh and eighth sections of the act, entitled, "An act concerning consuls and vice consuls," be, and the same are hereby, repealed; and that the Secretary of State be authorized to reimburse the consuls, vice consuls, commercial agents, or vice commercial agents, such reasonable sums as they may heretofore have advanced for the relief of seamen, though the same should exceed the rate of twelve cents a man per diem.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for every consul, vice consul, commercial agent, and vice commercial agent, of the United States, to take and receive, for every certificate of discharge of any seaman or mariner in a foreign port, fifty cents; and for commission on paying and receiving the amount of wages payable on the discharge of seamen in foreign ports, two and a half per centum.

SEC. 7. *And be it further enacted*, That if any consul, vice consul, commercial agent, or vice commercial agent, shall falsely and knowingly certify, that property belonging to foreigners is property belonging to citizens of the United States, he shall on conviction thereof, in any court of competent jurisdiction, forfeit and pay a fine not exceeding ten thousand dollars, at the discretion of the court, and be imprisoned for any term not exceeding three years.

SEC. 8. *And be it further enacted*, That if any consul, vice consul, commercial agent, or vice commercial agent, shall grant a passport or other paper certifying that any alien, knowing him or her to be such, is a citizen of the United States, he shall on conviction thereof, in any court of competent jurisdiction, forfeit and pay a fine not exceeding one thousand dollars.

SEC. 9. *And be it further enacted*, That all powers of attorney executed after the thirtieth day of June next, in a foreign country, for the transfer of any stock of the United States, or for the receipt of interest thereon, shall be verified by the certificate and seal of a consul, vice consul, commercial agent, or vice commercial agent, if any there be, at the place where the same shall be executed, for which the person giving the certificate shall receive fifty cents.

Approved, February 28, 1803.

An Act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited.

Be it enacted, &c., That, from and after the first day of April next, no master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any negro, mulatto, or other person of color, not being a native, a citizen, or registered seaman of the United States, or seamen, natives of countries beyond the Cape of Good Hope, into any port or place of the United States, which port or place shall be situated in any State which, by law, has prohibited or shall prohibit the admission or importation of such negro, mulatto, or other person of color; and if any captain or master aforesaid, or any other person, shall import or bring, or cause to be imported or brought, into any of the ports or places aforesaid, any of the persons whose admission or importation is prohibited, as aforesaid, he shall forfeit and pay the sum of one thousand dollars for each and every negro, mulatto, or other person of color aforesaid, brought or imported as aforesaid, to be sued for and recovered by action of debt, in any court of the United States; one half thereof to the use of the United States, the other half to any person or persons prosecuting for the penalty; and in any action instituted for the recovery of the penalty aforesaid, the person or persons sued may be held to special bail: *Provided always*, That nothing contained in this act shall be construed to prohibit the admission of Indians.

SEC. 2. *And be it further enacted*, That no ship or vessel arriving in any of the said ports or places of the United States, and having on board any negro, mulatto, or other person of color, not being a native, a citizen, or registered seaman of the United States, or seamen, natives of countries beyond the Cape of Good Hope as aforesaid, shall be admitted to an entry. And if any such negro, mulatto, or other person of color, shall be landed from on board any ship or vessel, in any of the ports or places aforesaid, or on the coast of any State prohibiting the admission or importation, as aforesaid, the said ship or vessel, together with her tackle, apparel, and furniture, shall be forfeited to the United States, and one half of the net proceeds of the sales on such forfeiture shall inure and be paid over to such person or persons on whose information the seizure on such forfeiture shall be made.

SEC. 3. *And be it further enacted*, That it shall be the duty of the collectors and other officers of the customs, and all other officers of the revenue of the United States, in the several ports or places situated as aforesaid, to notice and be governed by the provisions of the laws now existing, of the several States prohibiting the admission or importation of any negro, mulatto, or other person of color, as aforesaid. And they are hereby enjoined vigilantly to carry into effect the said laws of the said States, conformably to the provisions of this act, any law of the United States to the contrary notwithstanding.

Approved, February 28, 1803.

An Act to provide an additional armament for the protection of the seamen and commerce of the United States.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized and empowered to cause to be built, or purchased, (if the exigencies of the service shall require it,) four vessels of war, to carry not exceeding sixteen guns each; to be armed, manned, and fitted out, for the protection of the seamen and commerce of the United States in the Mediterranean and adjacent seas, and for other purposes, as the public service may require.

SEC. 2. *And be it further enacted*, That the sum of ninety-six thousand dollars be, and hereby is, appropriated for the purpose aforesaid, out of any moneys in the Treasury of the United States not otherwise appropriated.

SEC. 3. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized and empowered to cause to be built, a number not exceeding fifteen gun-boats, to be armed, manned, and fitted out, and employed for such purposes as, in his opinion, the public service may require; and that a sum not exceeding fifteen thousand dollars be, and hereby is, appropriated for this purpose out of any moneys in the Treasury of the United States not otherwise appropriated.

Approved, February 28, 1803.

An Act for extending the external commerce of the United States.

Be it enacted, &c., That the sum of two thousand five hundred dollars be, and the same is hereby, appropriated for the purpose of extending the external commerce of the United States to be paid of any money in the Treasury not otherwise appropriated.

Approved, February 28, 1803.

An Act in addition to an act, entitled "An act fixing the Military Peace Establishment of the United States."

Be it enacted, &c., That there be added to the regiment of artillerists, two teachers of music, whose pay, rations, and clothing, shall be the same as is by law allowed to the teachers of music in the regiments of infantry in the service of the United States.

SEC. 2. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to appoint one teacher of the French language, and one teacher of drawing, to be attached to the corps of engineers, whose compensation shall not exceed the pay and emolument of a captain in the line of the army.

SEC. 3. *And be it further enacted*, That the commanding officer of the corps of engineers, be authorized to enlist for a term, not less than three years, one artificer, and eighteen men, to aid in making practical experiments, and for other purposes; to receive the same pay, rations, and clothing, as are allowed to the artificers and privates in the army of the United States; and the same bounty when enlisted for five years; and to be subject to the rules and articles of war.

SEC. 4. *And be it further enacted*, That the President of the United States be, and he is hereby, authorized to allow to the paymaster of the army, the adjutant and inspector of the army, and the military agent at Philadelphia, such sums, not exceeding in the whole three thousand dollars, for clerk hire, as their respective duties may, in his opinion, reasonably require.

Approved, February 28, 1803.

An Act for continuing in force a law, entitled "An act for establishing trading-houses with the Indian tribes."

Be it enacted, &c., That a law, passed on the eighteenth day of April, in the year of our Lord one thousand seven hundred and ninety-six, entitled "An act for establishing trading-houses with the Indian tribes," and which law was revived and continued by another, passed on the thirtieth day of April, in the year of our Lord, one thousand eight hundred and two, shall be, and the same is hereby, further continued for the term of two years, from the fourth day of March next, and from thence until the end of the next session of Congress.

Approved, February 28, 1803.

An Act in addition to an act, entitled "An act more effectually to provide for the national defence, by establishing an uniform Militia throughout the United States."

Be it enacted, &c., That it shall be the duty of the adjutant general of the militia in each State, to make return of the militia of the State to which he belongs, with their arms, accoutrements, and ammunition, agreeably to the directions of the act to which this is an addition, to the President of the United States, annually, on or before the first Monday in January in each year: and it shall be the duty of the Secretary of War, from time to time, to give such directions to the adjutant generals of the militia, as shall, in his opinion, be necessary to produce an uniformity in the said returns, and he shall lay an abstract of the same before Congress, on or before the first Monday of February, annually.

SEC. 2. *And be it further enacted*, That every citizen duly enrolled in the militia, shall be constantly provided with arms, accoutrements, and ammunition, agreeably to the direction of the said act, from and after he shall be duly notified of his enrolment; and any notice or warning to the citizens so enrolled, to attend a company, battalion, or regimental muster, or training, which shall be according to the laws of the State in which it is

given for that purpose, shall be deemed a legal notice of his enrolment.

SEC. 3. *And be it further enacted*, That, in addition to the officers provided for by the said act, there shall be, to the militia of each State, one quartermaster general, to each brigade one quartermaster of brigade, and to each regiment one chaplain.

Approved, March 2, 1803.

An Act supplementary to the act, entitled "An act providing passports for the ships and vessels of the United States."

Be it enacted, &c., That every unregistered ship or vessel owned by a citizen or citizens of the United States, and sailing with a sea-letter, going to any foreign country, shall, before she departs from the United States, at the request of the master, be furnished by the collector of the district where such vessel may be, with a passport of the form prescribed and established by the act to which this is a supplement, for which the master shall pay to the collector ten dollars, and be subject to the rules and conditions prescribed in the said act, for ships and vessels of the United States.

SEC. 2. *And be it further enacted*, That there shall be paid on every such unregistered ship or vessel, sailing or trading to any foreign country, other than some port or place in America, for each and every voyage, the same sum at the time of clearing outwards, to be received and accounted for in the same manner as is by the said act required in cases of ships and vessels of the United States.

Approved, March 2, 1803.

An Act making an appropriation for the support of the Navy of the United States, for the year one thousand eight hundred and three.

Be it enacted, &c., That, for defraying the expenses of the Navy of the United States, during the year one thousand eight hundred and three, and for making good deficiencies for the same, in the year one thousand eight hundred and two, the following sums, including therein the sum of one hundred thousand dollars already appropriated by the "Act making a partial appropriation for the naval service during the year one thousand eight hundred and three," be, and they hereby are, respectively appropriated, that is to say:

For the pay and subsistence of the officers, and the pay of the seamen, two hundred and eighty-three thousand nine hundred and ninety-three dollars.

For provisions, one hundred and fifty-seven thousand three hundred and sixty dollars and twenty cents.

For medicines, instruments, hospital stores, and all expenses on account of the sick, seven thousand seven hundred dollars.

For the purchase of ordnance and other military stores, fifteen thousand dollars.

For the repairs of vessels, store rent, and other contingent expenses, one hundred and eighty-two thousand dollars.

For completing the contracts made for the timber, ordnance, and other materials for the seventy-four gun ships, including their transportation, &c., one hundred and fourteen thousand four hundred and twenty-five dollars.

For the expense of erection of sheds and navy yards, including docks and other improvements, the pay of superintendents, store-keepers, clerks, and laborers, forty-eight thousand seven hundred and forty-one dollars and thirty-seven cents.

For the pay and subsistence of the marine corps, including provisions for those on shore, and forage for the staff, sixty-four thousand and ninety-five dollars and sixty cents.

For clothing and military stores for the same, sixteen thousand two hundred and twenty-three dollars and eighty-three cents.

For medicines, medical services, hospital stores, and all expenses on account of the sick of the marine corps, one thousand dollars.

For quartermaster's and barrackmaster's stores, officers' travelling expenses, armorer's and carpenter's bills, and other contingent expenses, nine thousand four hundred and sixty-one dollars.

To make good deficiencies in the appropriations for the Navy of the United States, in the year one thousand eight hundred and two, that is to say:

For pay and subsistence of the officers, the pay of the seamen, provisions, repairs, and expenses incurred in the year one thousand eight hundred and one, and which have been paid out of an appropriation made in the year one thousand eight hundred and two, one hundred and sixty-eight thousand four hundred and thirty-nine dollars and eighty-one cents.

For salaries of superintendents of navy yards, storekeepers, and clerks, store rent, hire of laborers, &c., on account of expenses incurred in the year one thousand eight hundred and one, including a deficiency for the service of the year one thousand eight hundred and two, eight hundred and seventy-five dollars and sixty-eight cents.

For navy yards, docks, and wharves, eleven thousand five hundred and thirty-five dollars and twenty-eight cents.

For medicines, medical services, and hospital stores for the marine corps, on account of expenses incurred in the year one thousand eight hundred and one, including a deficiency for the service of the year one thousand eight hundred and two, five hundred and ninety-six dollars and thirty-nine cents.

For marine barracks, on account of expenses incurred in the year one thousand eight hundred and one, four hundred and one dollars and ninety-three cents.

For the payment of a balance due the estate of John Habersham, late collector at Savannah, for naval materials ascertained at the Treasury, for sundry payments made by him to John H. Morel, on the same account, including a commission on the said payments at one per cent., sixteen thousand nine hundred and forty-eight dollars and thirty-seven cents.

SEC. 2. *And be it further enacted*, That the

several sums of money herein specifically appropriated, and amounting together to the sum of one million and ninety-eight thousand seven hundred and ninety-seven dollars and forty-six cents, shall be paid, first, out of the sum of one hundred thousand dollars already appropriated for the naval service during the year one thousand eight hundred and three, and secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved, March 2, 1803.

An Act in addition to an act, entitled "An act concerning the registering and recording of ships and vessels of the United States," and to the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That if any person shall knowingly make, utter, or publish any false sea-letter, Mediterranean passport, or certificate of registry, or shall knowingly avail himself of any such Mediterranean passport, sea-letter, or certificate of registry, he shall forfeit and pay a sum not exceeding five thousand dollars, to be recovered by action of debt, in the name of the United States, in any court of competent jurisdiction; and if an officer of the United States, he shall for ever thereafter be rendered incapable of holding any office of trust or profit, under the authority of the United States.

SEC. 2. *And be it further enacted*, That it shall be the duty of the Comptroller of the Treasury, to cause to be provided, blank certificates of registry, with such water and other secret marks as he may direct, which marks shall be made known only to the collectors and their deputies, and to the consuls or commercial agents of the United States; and from and after the thirty-first day of December next, no certificate of registry shall be issued, except such as shall have been provided and marked as aforesaid; and the ships or vessels of the United States, which shall have been duly registered as such, shall be entitled to new certificates of registry (gratis) in exchange for their old certificates of registry. And it shall be the duty of the respective collectors, on the departure of any such ship or vessel, after the said thirty-first day of December, from the district to which such ship or vessel shall belong, to issue a new certificate accordingly, and to retain and deface the former certificate.

SEC. 3. *And be it further enacted*, That when any ship or vessel, which has been or which shall be registered pursuant to any law of the United States, shall, whilst such ship or vessel is without the limits of the United States, be sold or transferred in whole or in part to a citizen or citizens of the United States, such ship or vessel, on her first arrival in the United States thereafter, shall be entitled to all the privileges and benefits of a ship or vessel of the United States: *Provided*, That all the requisites of law, in order to the registry of ships or vessels, shall be complied with, and a new certificate of registry obtained for such ship or vessel, within three days from the time at which the master or other person having the charge or command of such ship or vessel, is required to make his final report upon her first arrival afterwards as aforesaid, agreeably to the thirtieth section of the act, passed on the second day of March, one thousand seven hundred and ninety-nine, entitled, "An act to regulate the collection of duties on imports and tonnage." And it shall be lawful to pay to the collector of the district within which such ship or vessel may arrive as aforesaid, the duties imposed by law on the tonnage of such ship or vessel, at any time within three days from the time at which the master or other person having the charge or command of such ship or vessel, is required to make his final report as aforesaid, anything to the contrary in any former law notwithstanding: *Provided always*, That nothing herein contained shall be construed to repeal, or in any wise change the provisions, restrictions or limitations of any former act or acts, excepting so far as the same shall be repugnant to the provisions of this act.

SEC. 4. *And be it further enacted*, That the power vested in the Secretary of the Treasury, to remove disabilities incurred under the act to which this is a supplement, and under the act, entitled "An act for enrolling and licensing ships or vessels, to be employed in the coasting trade and fisheries, and for regulating the same," shall extend to the remission of any foreign duties, which shall have been or shall be incurred by reason of such disabilities.

Approved, March 2, 1803.

An Act, making appropriations for the support of Government, for the year one thousand eight hundred and three.

Be it enacted, &c., That, for the expenditure of the civil list in the present year, including the contingent expenses of the several departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint establishment; for the expenses of intercourse with foreign nations; for the support of light-houses, beacons, buoys, and public piers; and for satisfying certain miscellaneous claims, the following sums be, and hereby are, appropriated; that is to say:

For compensation granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimating for sixty-two days continuance in the present session, and for twenty-seven days in the first session of the eighth Congress, one hundred and twenty-five thousand three hundred and forty-eight dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of the two Houses of Congress, nineteen thousand dollars.

For the compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks, and persons employed in that department, eleven thousand three hundred and sixty dollars,

For the incidental and contingent expenses in the said department, twelve thousand nine hundred and fifty dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office,

eleven thousand two hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages, allowance to the person employed in receiving and transmitting passports and sea-letters, stationery and printing, eight hundred dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For the expense of stationery and printing in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery and printing in the office of the Auditor, five hundred dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For expense of stationery and printing in the Treasurer's office, three hundred dollars.

For compensation to the Commissioner of the Revenue, clerks, and persons employed in his office, six thousand two hundred and fifty-three dollars and six cents.

For the expense of stationery and printing in the office of the Commissioner of the Revenue, four hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars.

For expense of stationery and printing (including books for the public stocks, and for the arrangement of the marine papers) in the register's office, two thousand eight hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of clerks employed for the purpose of making draughts of the several surveys of lands in the Territory of the United States Northwest of the river Ohio and in keeping the books of the Treasury in relation to the sales of lands at the several loan offices, two thousand dollars.

For fuel, and other contingent expenses of the Treasury Department, four thousand dollars.

For defraying the expense incident to the stating and printing the public accounts for the year one thousand eight hundred and three, one thousand two hundred dollars.

For the purchase of books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a Superintendent employed to secure the buildings and records in the Treasury Department, during the present year, including the expense of two watchmen, and for the repair of fire engines, buckets, &c., one thousand four hundred dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For expenses of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation of clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in the said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of seven hundred dollars, for compensations to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for the expense of stationery and fuel in the said office, three thousand eight hundred dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, including a compensation of five hundred and sixty-one dollars and fourteen cents to the clerk of the navy pension fund, for the years one thousand eight hundred, one thousand eight hundred and one, and one thousand eight hundred and two, nine thousand six hundred and seventy-one dollars and fourteen cents.

For expense of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of the Navy, two thousand seven hundred dollars.

For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a deficiency of three hundred and forty-five dollars in the last year's appropriation, and a sum of three thousand seven hundred and ninety-five dollars for the compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand five hundred dollars.

For expenses of fuel, candles, rent of a house for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the department at large, (these being paid for by the Postmaster General, out of the funds of the office,) two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the commissioners of loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans for the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For extra expenses occasioned by the removal of the loan office of Pennsylvania to Germantown, during the prevalence of the yellow fever in Philadelphia, in the Summer of one thousand eight hundred and two, four hundred and ninety-four dollars.

For extra expenses occasioned by the removal of the office of Purveyor of Public Supplies from Philadelphia, during the prevalence of the yellow fever, in the year one thousand eight hundred and two, one hundred and thirteen dollars and fifty cents.

For compensation to the Surveyor General and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For completing certain surveys of the lands of the United States, authorized by acts of Congress, including an allowance of five hundred dollars for transcribing plats of surveys, near Vincennes, six thousand five hundred and forty-three dollars.

For compensation to the following officers of the Mint, ten thousand six hundred dollars, that is to say:

The director, two thousand dollars;

The treasurer, one thousand two hundred dollars;

The assayer, one thousand five hundred dollars;

The chief coiner, one thousand five hundred dollars;

The melter and refiner, one thousand five hundred dollars;

The engraver, one thousand two hundred dollars;

One clerk, at seven hundred dollars;

And two, at five hundred dollars each.

For the wages of persons employed at the different branches of melting, coining, carpenter's, mill-wright's, and smith's work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die forger, who also oversees the execution of the iron work, six thousand five hundred dollars.

For repairs of furnaces, cost of rollers and screws, timber, bar iron, lead, steel, pot-ash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, Judges, and Secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, Judges, and Secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding for each department, respectively, fifteen per centum, in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For the compensation granted by law to the chief justice, associate judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the attorney general, fifty-two thousand nine hundred dollars.

For the like compensations granted to the several district attorneys of the United States, two thousand eight hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Kentucky, East and West Tennessee, and Ohio, one thousand four hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties; and, likewise, for defraying the expenses of prosecution for offences against the United States, and for safe-keeping of prisoners, including an additional appropriation of three thousand seven hundred and two dollars and sixty-six cents, for completing the jail in the City of Washington, forty-three thousand seven hundred and two dollars and sixty-six cents.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For payment of the annuity granted to the children of the late Colonel John Harding, and Major Alexander Trueman, by an act of Congress passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For payment of the annual allowance to the invalid pensioners of the United States, from the fifth of March, one thousand eight hundred and three, to the fourth of March, one thousand eight hundred and four, ninety-three thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and for occasional improvement in the construction of lanterns and lamps, and other contingent expenses, fifty thousand nine hundred and seventy dollars and eighty-two cents.

For rebuilding the light-house on the eastern end of Newcastle island, in addition to the sum heretofore appropriated for that object, five hundred dollars.

For the erection of the light-house on Smith's Point, in addition to the sum heretofore appropriated for that object, three hundred and fifty dollars.

For the payment of a balance due on contracts for building the light-house on Cape Hatteras, and beacon on Shell Castle island, and for a compensation to the persons who superintend and inspect the execution of the work, the balance of the former appropriation being carried to the credit of the surplus fund, one thousand dollars.

For the erection of a light-house on New Point Comfort, in addition to the sum heretofore appropriated for that purpose, three thousand five hundred dollars.

For erecting light-houses and placing buoys in the sound between Long Island and the main, in addition to the sum heretofore appropriated for that purpose, one thousand dollars.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For the expense of intercourse with foreign nations, seventy-five thousand five hundred and sixty-two dollars.

For the salaries of the commissioners under the seventh article of the treaty of amity, commerce, and navigation, between the United States and Great Britain, including half the compensation of the fifth commissioner, the salary of the assessor to the commissioners, the half of expenses of the board, and the contingent expenses of the commissioners of the United States, twenty-five thousand five hundred and sixty-six dollars and sixty-seven cents.

For salaries of the agents of the United States in London and Paris, expenses of prosecuting claims and appeals in the courts of Great Britain, relative to captures of the vessels of the United States, and of defending American causes elsewhere, twenty-nine thousand dollars.

For intercourse between the United States and Algiers, and other Barbary Powers, one hundred thousand dollars.

For the relief and protection of distressed American seamen, five thousand dollars.

Sec. 2. *And be it further enacted*, That for the purpose of obtaining further cessions of land from the Indian tribes, the sum of ten thousand dollars be, and the same is hereby, appropriated.

Sec. 3. *And be it further enacted*, That the several appropriations herein before made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States," and out of any money which may be in the Treasury, not otherwise appropriated.

Approved, March 2, 1803.

An Act, more effectually to provide for the organization of the militia of the District of Columbia.

Be it enacted, &c., That it shall and may be lawful for the President of the United States, whenever an increase of the militia of the Territory, or other circumstance, shall in his opinion make it necessary, to lay off the said militia into additional companies, battalions, regiments, or legions and brigades, and shall appoint and commission, during pleasure, the proper officers for the same.

Sec. 2. *And be it further enacted*, That the President of the United States shall, when he may deem it necessary, appoint the proper officers, to compose at least one troop of cavalry, one company of artillery, one company of light infantry, and one company of grenadiers or riflemen, to each legion, which officers shall proceed by voluntary enlistment, within their legion, to complete their company or companies with the least possible delay; and every person belonging to the said companies shall wear, while on duty, such caps, or hats, and uniforms, to be purchased at their own expense, as the commanding officer of the brigade, to which they belong, shall determine on and direct; and the said companies shall perform the same routine of duty, and be subject to the same rules, regulations, penalties, and orders, as the rest of the militia; the President may, nevertheless, order them, or any of them, out on duty, as occasion, in his opinion, may require, by entire companies: that no person belonging to any battalion company, shall, under color of enlisting into any company, to be made up by voluntary enrolment, be excused from doing duty in the infantry, and in the company in which he had been enrolled, or might be enrolled, until he shall have equipped himself for service, in such volunteer company, according to law, and shall have produced a certificate thereof, from the commanding officer of such company, to the commanding officer of the battalion company, to which he did or might properly belong; and no person having enlisted in any volunteer company, shall be permitted to withdraw himself from the same, under the penalty of ten dollars, unless in case of removal from his legionary district, to be recovered as other fines imposed by this act, upon the evidence of the commanding officer of the company, from which he shall so withdraw; which commanding officer shall return all such cases to the first battalion court of inquiry, that shall sit thereafter. And the commanders of the respective legions shall direct by order, to the different commanders of battalions, to what battalions the different volunteer companies shall be attached, and shall parade with on battalion duty; and shall direct how they shall be posted on legionary parades, unless differently ordered by the brigadier general.

Sec. 3. *And be it further enacted*, That where any battalion or company districts, or alteration in districts actually laid off may hereafter be found necessary, the commanding officers of legions shall assemble the commanding officers of battalions and companies at some fit and convenient place, and may proceed to lay off or alter any such battalion or company districts, which districts shall in all cases be designated by certain lines and bounds, and recorded by the clerks of the respective courts of inquiry.

Sec. 4. *And be it further enacted*, That it shall

be the duty of the commanding officers of the companies to proceed forthwith to divide their companies into divisions, by ballot, from one to ten, for the purpose of a regular routine of duty when called into actual service, and to return a roster of each division, and its number or rotation, within fifteen days thereafter, to the commanding officer of his battalion, who shall forthwith transmit the same to the commanding officer of the regiment or legion, who shall direct the same to be recorded by the clerk of the court of inquiry. The same regulations shall be observed by every commanding officer of a company, battalion, and legion or regiment, on the subsequent enrolment of any person therein, unless such person shall produce a certificate of his having been before drawn for the above purpose, in which case he shall be enrolled accordingly; and any militiaman removing out of the bounds of one company into another, shall apply to the commanding officer of the company to which he did belong, who shall give him a discharge, certifying the class wherein he was arranged, and whether he had performed his tour of duty or not, and also the time and date of such service, which certificate the said militiaman shall produce to the captain or commanding officer of the company into whose bounds he shall so have removed, within ten days after his settlement, and such officer is hereby required to enrol him in the numerical class specified therein, and every militia man so removing, and failing to produce such certificate, shall be arranged and enrolled in the class destined to perform the next tour of duty; and if any captain or commanding officer of a company, shall refuse to grant such certificate upon application to him made for that purpose, he shall, for such refusal, incur a penalty of thirty dollars, to be assessed and applied as other fines imposed by this act.

Sec. 5. *And be it further enacted*, That each and every officer appointed, or who may hereafter be appointed, and commissioned, in manner aforesaid, shall, previous to entering on the execution of his office, take the following oath, (to be administered by a justice of the peace, or the court of the county in which such officer resides,) to wit: "I, ——, do swear that I will support the Constitution of the United States, and faithfully discharge the duties of ——, in the —— of the militia of the District of Columbia, to the best of my skill and judgment, so help me God." If the said oath be administered by a justice of the peace, it shall be his duty to certify the same to the court of his respective county, there to be entered of record by the clerk.

Sec. 6. *And be it further enacted*, That the commanding officers of companies shall enrol every able-bodied white male, between the ages of eighteen and forty-five years, (except such as are exempt from military duty by the laws of the United States,) resident within his district; and that in all cases of doubt respecting the age of any person enrolled, or intended to be enrolled, in any company, the party questioned shall prove his age to the satisfaction of the legionary court of inquiry within whose bounds he may reside; and it shall, at all times hereafter, be the duty of every such captain, or commanding officer of a company, to enrol every such white male, as aforesaid, and all those who shall, from time to time, arrive at the age of eighteen years, or being of the age of eighteen years, and under the age of forty-five years, (except as before excepted,) shall come to reside within his bounds, and shall, without delay, notify such person of the said enrolment, by a proper non-commissioned officer, by whom such notice may be proved.

Sec. 7. *And be it further enacted*, That the President of the United States, upon complaint for misconduct, lodged with the Department of War, in writing, by any one or more commissioned officers, may, at his discretion, cause to be arrested, any major general or brigadier general, and order a court martial, to be composed of all the other general officers, field officers, and captains, or so many of them (having regard to seniority) as shall amount to thirteen, in the militia of the territory; which court martial shall proceed in the same way, and under the same restrictions, as is hereafter provided for the trial of field officers; and any major general, or brigadier general, for misconduct within their own knowledge, or upon complaint lodged in writing, by any commissioned officer, shall have power to arrest any lieutenant colonel commandant, aid-de-camp, brigade inspector, and major, or any other inferior officer; and the commanding officer of the division or brigade, shall order a court martial, for the trial of such lieutenant colonel commandant, aid-de-camp, brigade inspector, to be composed of one brigadier general, and as many lieutenant colonel commandants, majors, and captains, as shall make up a number not less than thirteen; and such courts martial shall proceed to hear and determine on all offences under this act, and may censure or cashier such officer; which sentence shall be final when approved by the President of the United States; and any brigadier general, lieutenant colonel commandant, or major, for misconduct in any captain or subaltern, within his own knowledge, or upon complaint lodged in writing, by any commissioned officer, may arrest such captain or subaltern; and the brigadier, or commanding officer of the brigade, shall order a brigade court martial for the trial of such captain or subaltern, to be composed of one or more field officers, and a sufficient number of captains and subalterns, to make up a number not less than thirteen; and such courts martial shall proceed to hear and determine on all offences under this act, and may censure or cashier any officer so tried; which sentence shall be final, when approved by the President of the United States: and for obtaining the necessary evidences for the trials aforesaid, the President of the United States, or the presiding officer of the court martial, (as the case may be) shall issue his summonses; and every person so summoned, failing to attend, and to give evidence, shall be subject to, and may be tried by a court martial; and if an officer may, at the discretion of a court martial, be cashiered, or fined, not exceeding six months' pay, as by law allowed;

and if a non-commissioned officer, or soldier, or a person not enrolled, to be reported to the court of inquiry of the regiment, or legion, to which he shall belong, or within whose bounds he shall reside, and be then subject to such fines and penalties as they may think proper to inflict, not exceeding forty dollars.

SEC. 8. *And be it further enacted*, That there shall be battalion courts of inquiry, to be appointed by the commanding officer of the battalion, for the assessment of fines incurred under this act, in such battalion; and such courts of inquiry shall be held in the months of May, August, and November, in each year, at some convenient place within the county, to consist of the commanding officer of the battalion, and the commanding officers of companies, which shall belong, or to be attached to such battalion, or a majority of them, who shall take the following oath, to be administered by the presiding officer, and afterwards by any other officer of the court, to him: "I, ——, will truly and faithfully inquire into all delinquencies which appear on the returns, to be laid before me, and will assess the fines thereon, as shall seem just, without favor, partiality, or affection; so help me God;" the presiding officer shall then lay before the said court, all the delinquencies, as directed by law, whereupon, they shall proceed to hear and determine: and there shall, moreover, be legionary courts of inquiry, for the assessment of fines incurred by the officers of the legion, and for other duties, required by this act, such courts of inquiry shall be held by the appointment of the commanding officer of the legion, in not less than ten, and not more than twenty days, after the battalion courts of inquiry, in every year; and, moreover, one legionary court extraordinary, shall be, in like manner appointed, and held, during the month of March, in the present year, for the purpose of appointing the company musters of the year, and for appointing a clerk, provost marshal, and collector, as hereinafter directed, and for other duties, by this act prescribed; the said legionary courts of inquiry to consist of the commanding officers of the legion, battalions, and companies, or a majority of them, who shall take an oath, in manner and form, as prescribed above; the commanding officer of the legion shall then lay before the said court all delinquencies directed by law, whereupon they shall proceed to hear and determine. It shall be the duty of the presiding officer of every such court of inquiry, to return to the next legionary court of inquiry, all delinquent officers failing to attend the preceding court, to be proceeded against according to law. The legionary court of inquiry may, for good cause shown, remit any fine imposed by the battalion court, last preceding; the said court may also exempt any militiaman from duty, on account of bodily infirmity, and may again direct such person to be enrolled, when able to do duty.

SEC. 9. *And be it further enacted*, That the respective legionary courts of inquiry shall annually appoint by ballot, a clerk, and provost marshal, who shall attend the courts herein-before directed to be held; the clerk shall keep a fair record of the proceedings of such courts, as also of the roster returned by the several captains or commanding officers of companies, for regular routine of duty, and shall make out for the collector a fair list of all the fines assessed by the legionary and battalion courts, and one other list which shall be retained by the clerk, on which list the collector's receipts shall be taken; the said lists shall be made out and delivered to the collector in fifteen days after each legionary court of inquiry, and shall perform all other duties required by this act, and together with the provost marshal, shall receive such allowance, to be paid out of the fines, as the legionary court shall think reasonable.

SEC. 10. *And be it further enacted*, That all fines incurred under the act of Congress, passed at their last session, empowering the President to organize the militia of the District of Columbia, and not then returned to the officers thereby authorized to collect the same, shall be returned to the first legionary court of inquiry which shall be held in the respective counties, to be by them proceeded with as in the case of fines by this act assessed.

SEC. 11. *And be it further enacted*, That there shall be a muster of each troop of cavalry and company of militia, comprehending the companies made up by voluntary enrolment, once in every month, except the months of January, February, March, May, October, and December, in each year, to be appointed by the respective legionary courts of inquiry, at such places as may be deemed most convenient within the county, and that the time and place for the musters aforesaid shall be fixed by the first legionary court of inquiry which is held next after the passing of this act, subject to such changes as future legionary courts of inquiry may think proper; and there shall be a muster for exercise and inspection of each battalion, in the month of May, in every year, to be appointed by the commanding officer of the brigade, to which such battalions respectively belong, at such places as he may think proper within the county. There shall be also a muster of each legion in the month of October, in each year, to be appointed by the commanding officer of the brigade to which such legion belongs, at such place as he may think most convenient within the legionary district; which said company, battalion, and legionary musters, shall continue one day, and no longer; the time and place of such legionary, company, and battalion musters, shall be notified to the commanding officers of legions thirty days previous thereto; the commanding officers of legions shall give notice to the commanding officers of battalions, of such brigade, legionary, companies, and battalion musters, at least twenty days; the commanding officers of battalions to the commanding officers of companies, at least fifteen days; and the commanding officers of companies to their sergeants, at least ten days; and the sergeants to each person in his company, at least three days before such musters, respectively; the notices to be given by

the commanding officers of brigades, legions, battalions, and companies, shall be in writing, delivered to each person to be notified, or left at his usual place of abode, and every sergeant failing to give notice, agreeably to the orders of the commanding officer of his company, to each person therein, shall forfeit and pay for each and every offence five dollars, to be assessed and recovered as other fines imposed by this act; nevertheless, all notices publicly given by the commanding officers of companies, at their respective musters of any subsequent muster, shall be held and deemed as legal notice, as to all persons present at such musters. Every officer and soldier shall appear at his respective muster field, on the day appointed, by ten o'clock in the forenoon, armed and equipped. At every muster, the commanding officer of the company shall cause his roll to be called, and shall examine every person belonging thereto, and note down all delinquencies accruing therein, and shall personally inspect the arms, ammunition, and accoutrements, of all under his command, and make accurate return of the whole thereof to the commanding officer of his battalion, in five days thereafter; and, moreover, it shall be the duty of the commanding officers of companies to have their companies respectively prepared, at the battalion musters, for inspection, by means of returns, the forms of which, to be furnished them by the brigade inspector, through the commanding officers of the legion and battalion, to which they respectively belong, which returns shall be filed, ready to be delivered to the inspector, as he shall commence the inspection of each company: and the commanding officers of legions and battalions, shall, at their respective legionary and battalion musters, (as the case may be,) take notice of all delinquent officers, and shall lay the same, together with returns of delinquencies, from the commanding officers of companies, before the courts of inquiry, appointed under this act to take cognizance of, and determine on them: and to each of the said returns shall be annexed the following certificate, to wit: "I, ——, do certify, that the returns hereunto annexed contain all the delinquencies which have occurred since my last return, having duly examined the same."

SEC. 12. *And be it further enacted*, That every commanding officer of a company shall, within five days after every battalion and legionary muster, make up and report to the commanding officer of his battalion a return of his company, in such manner and form as shall be furnished by the adjutant, from time to time; it shall be the duty of commanding officers of battalions to make like returns to the commanding officers of legions within five days thereafter, who shall cause the adjutant of his legion to make legionary returns to the brigade inspector within ten days thereafter.

SEC. 13. *And be it further enacted*, That each captain or commanding officer of a company shall appoint to his company four sergeants, four corporals, a drummer and fifer, to be approved of by the commanding officer of his battalion; the appointment of such non-commissioned officers to be evidenced by warrant under the hand of the commanding officer of the battalion; and if any person so appointed and approved of, and having accepted, shall refuse or neglect to take upon him the duties of his appointment, or shall neglect or refuse to obey the orders of his superior officer, he shall for each offence forfeit and pay a sum, at the discretion of the court of inquiry, not exceeding ten dollars, to be assessed and applied as other fines imposed by this act; and the commanding officers of battalions shall have power to reduce to the ranks any non-commissioned officer whom, on complaint made, and due notice given, he shall find guilty of misconduct or neglect of duty.

SEC. 14. *And be it further enacted*, That the commissioned officers of the several legions shall meet once in every year, within their respective legionary districts, for the purpose of being trained and instructed by the brigade inspector; the days and places of meeting to be fixed on by the commanding officer of the brigade to which the legions belong; the officers thus assembled shall each continue three days, and no longer; every time they are so called out, the eldest officer present shall call the roll on each day, and report the delinquencies to the succeeding legionary court of inquiry, and every officer failing to attend such meeting, on being summoned, not having a reasonable excuse, to be adjudged of by the court of inquiry, shall forfeit and pay, for each day he shall fail so to attend ten dollars, to be appropriated as other fines by this act.

SEC. 15. *And be it further enacted*, That any officer who shall be guilty of disobedience, or other misbehaviour, when on duty, or shall at any time be guilty of any conduct unbecoming the character of an officer, shall be put under arrest by his commanding officer, and tried as by this act is directed.

SEC. 16. *And be it further enacted*, That if any non-commissioned officer or soldier shall behave himself disobediently or mutinously when on duty, or before any court or board directed by this act to be held, or shall leave the ranks without permission of his officer, on any occasion of parading the company to which he belongs, or appear drunk, or use any reproachful or abusive language to his officers, or any of them, or shall quarrel himself, or promote any quarrel among his fellow-soldiers, the court or board may confine him for the day, or he shall be disarmed and put under guard, by order of the commanding officer present, until the company is dismissed, as the case may be; and he shall, moreover, be fined at the discretion of the court of inquiry, in any sum not exceeding ten dollars, nor less than one dollar, to be appropriated as other fines imposed by this act.

SEC. 17. *And be it further enacted*, That if any bystander shall interrupt, molest, or insult any officer or soldier while on duty at any muster, or shall be guilty of like conduct before any court or board, the commanding officer, or such court or board, may cause him to be confined for the day. And that the commanding officer of each brigade, legion, battalion, or company, shall have power to fix certain limits to the respective pa-

rades, within which no spectator or bystander shall enter, without permission from the commanding officer; and if any person shall intrude or offend, he shall be liable to be confined during the day, in such manner as the commanding officer shall direct.

SEC. 18. *And be it further enacted*, That all commissioned officers are required to appear in full uniform when on duty, and on failure, shall forfeit and pay five dollars for each offence, to be assessed and appropriated as other fines imposed by this act.

SEC. 19. *And be it further enacted*. That a brigade inspector, to act as brigade major, and be commissioned with the rank of major, shall be appointed by the President of the United States, and the lieutenant colonel commandants are hereby authorized to appoint a legionary staff, to consist of one adjutant, one quartermaster, one paymaster, to be taken from the officers of the line, and one surgeon, one surgeon's mate, and also one sergeant major, one quartermaster's sergeant, one drum major and one fife major, which appointments shall be evidenced by warrants under the hand of the lieutenant colonel commandant; and it shall be the duty of the brigade inspector to attend the brigadier general when required, to receive and execute all orders necessary to carry into effect the provisions of this law, and to attend the annual training of the officers, and at the several legionary and battalion musters, and he shall inspect the several battalions belonging to his brigade, at their respective musters, and he shall take an accurate account, from personal inspection, of the quality of the arms and accoutrements, and whether the same are fit or unfit for service, and shall ascertain with precision the bores of muskets; and shall make annual returns in the month of June, in each year, of the state of the militia of the brigade to which he belongs to the commanding officer of the brigade, to be by him reported to the President of the United States; and upon refusal or neglect, he shall be subject to a fine of thirty dollars, unless he can make a reasonable excuse to the commanding officer of the brigade; and it shall be the duty of the adjutant to attend and execute the orders of the commanding officer of his legion, necessary to carry into effect the provisions of this law, and to attend the legionary and battalion musters, as also the meeting of the officers within his legion, and upon refusal or neglect, he shall be subject to a fine not exceeding fifteen dollars, nor less than five dollars, at the discretion of the legionary court of inquiry, unless he can make a reasonable excuse to the commanding officer of his legion; and it shall further be the duty of the adjutant to assist generally in the necessary training of the militia, and he, together with the brigade inspector, shall be allowed such compensation as the legionary courts of inquiry may from time to time think reasonable, to be paid out of the funds arising from fines.

SEC. 20. *And be it further enacted*. That the following forfeitures and penalties shall be incurred for delinquencies, viz: By a lieutenant colonel commandant, or commanding officer of a legion, for failing to take an oath to summon any court or board, or failing to give notice of a brigade, legionary, or battalion muster, to report delinquencies, to make returns of his legion, shall, for each and every offence or neglect, forfeit and pay a sum not exceeding seventy dollars; for failing to send into service any militia legally called for, three hundred dollars. By a major, for failing to take an oath, to attend any court or board, to give notice of any brigade, legionary, or battalion muster, or examine his battalion, to report delinquencies, or to make any return, he shall forfeit and pay, for each offence and neglect, a sum not exceeding thirty dollars; for failing to call forth his battalion with due despatch, any detachment of men or officers as shall be required from time to time by the commanding officer of his legion, or any call from the President of the United States, one hundred and fifty dollars. By a captain, for failing to take an oath, to attend any court, to enrol his men, to give notice of a brigade, legionary, or battalion muster, to attend any muster armed, to cause his roll to be called, examine his company, and report delinquencies, or to allot his company into divisions, from one to ten, for a regular routine of duty, or to make any return as directed by this act, he shall forfeit and pay for each and every offence and neglect, a sum not exceeding twenty dollars; failing to call forth such officers and men, as shall from time to time be legally called from his company, upon any call from the President of the United States, or failing on such occasions to repair to the place of rendezvous, he shall forfeit and pay seventy-five dollars. By a subaltern officer, for failing to take an oath, to attend any court or muster, armed as directed, for each and every such offence he shall forfeit and pay a sum, at the discretion of the court of inquiry, not exceeding ten dollars; failing to repair to the place of rendezvous, armed as required, when ordered upon any call from the President, he shall forfeit and pay fifty dollars, to be adjudged of and determined by the respective legionary courts of inquiry. By a non-commissioned officer or soldier, for failing to repair to his rendezvous when ordered upon any call from the President, he shall forfeit and pay a sum not exceeding fifty dollars, to be adjudged of and determined by the respective battalion courts of inquiry, and moreover shall be enrolled in the class destined to perform the next tour of duty: all officers failing as before mentioned, shall be subject to be arrested, tried, censured, or cashiered, at the discretion of the battalion courts of inquiry. Any non-commissioned officer or soldier failing to attend at his brigade, legionary, battalion, or company muster, armed and equipped as the law directs, shall forfeit and pay a sum not less than seventy-five cents, nor more than five dollars, at the discretion of the battalion courts of inquiry. If any non-commissioned officer or private shall be returned as a delinquent in not appearing, armed and accoutred as the law directs, the court of inquiry before whom the same shall be tried, may, if it appear reasonable, remit the fine incurred by him; provided every such delinquent shall make it appear that he was

unable to procure the legal equipment. Any private, at or near the muster ground, at any legionary, battalion, or company muster, who shall refuse or neglect to go into the ranks when required, shall forfeit and pay ten dollars.

SEC. 21. *And be it further enacted*, That the fines and penalties incurred by infants and apprentices, for the breach or neglect of their duty, in any particular service, by law required of them, shall be paid by the parent, guardian, or master.

SEC. 22. *And be it further enacted*. That the legionary court of inquiry shall, at their first meeting in each year appoint, by ballot, a collector, who shall proceed to collect all fines assessed by virtue of this act, as also, all fines incurred under the act of Congress, at their last session, empowering the President to organize the militia of the District of Columbia, not previously sent out for collection, upon a list thereof, certified by the clerk of the court of inquiry, and delivered to him, in sixteen days after each legionary court of inquiry, who shall give his receipt therefor, and having deducted a commission of six per centum, shall account for, and pay the residue into the hands of the paymaster, in three months thereafter, and in case of default, to be recovered against the collector, by motion, in any court of record within said district, ten days notice of such motion being given to the collector, at the first legionary or regimental court of inquiry, after the time before limited, for accounting and paying to the paymaster as aforesaid, the fines collected by the collector, he shall make return, and report to the said court of inquiry, of such fines as cannot be collected, by reason of the insolvency or want of effects of the delinquent or delinquents; and if the said collector shall fail to account for, and pay into the hands of the paymaster as aforesaid, in the time limited as aforesaid, all the residue of the fines by him collected as aforesaid, the whole amount of such fines, including his commission, shall be recovered against him, by motion, in any court of record within this district, ten days previous notice of such motion being given to the said collector; and if such collector shall fail to make return and report as aforesaid, of such fines as he shall be unable to collect by reason of the causes aforesaid, or shall make a false return and report of the same, the whole amount of the same shall be recovered of said collector, in like manner as if he had actually collected the same. And should any person so charged with fines, fail to make payment when called on, the collector is hereby authorized to make distress and sale therefor. The collector shall immediately after his appointment, and before he shall proceed to his collection, give bond and security for the faithful performance of his duty, in such penalty as the court of inquiry may think proper.

SEC. 23. *And be it further enacted*. That the fines thus paid into the hands of the paymaster, by virtue of this act, shall be held as a fund for defraying the salaries of the officers and other persons herein mentioned, and the maintenance and instruction, and pay of musicians, and of equipping and furnishing the militia with standards and musical instruments, and uniforms, in certain cases, with every other thing necesssary, to be adjudged and determined by the legionary courts of inquiry; and all accounts passed by the said court, and certified by the lieutenant colonel commandant, shall be sufficient to authorize the paymaster to pay the same; the paymaster shall keep a regular account of all moneys received and disbursed by him on account of the legion, and shall, once in every three months, render his accounts, and settle with the court of inquiry. The paymaster shall give bond and security, to be approved of by the court of inquiry, for the faithful performance of his duty, and shall be subject to the same mode of recovery for delinquency as is herein prescribed in the case of a delinquent collector, and shall be allowed a commission of two and a half per centum on the several sums by him disbursed.

SEC. 24. *And be it further enacted*, That the President of the United States be authorized and empowered, on an invasion, or insurrection, or probable prospect thereof, to call forth such a number of militia, and from such county, and in such a manner, whether by routine of duty or otherwise, as he may deem proper; and for the accommodation, equipment and support of the militia, so at any time to be called forth, the President of the United States may appoint such quartermasters, commissaries, and other staff, as to him shall seem proper, and to fix their pay and allowances, and shall also take such measures for procuring, transporting, and issuing all orders which may be necessary. Orders for the militia to be called forth as aforesaid, shall be sent to the commanding officer of the District of Columbia, with a notification of the place or places of rendezvous, who shall immediately take measure for detaching the same, with the necessary number and ranks of officers, by detail and rotation of duty or otherwise, as he may be ordered. Whenever any militia shall be called forth into actual service as aforesaid, they shall be governed by the articles of war, which govern the troops of the United States; and courts martial shall be held as therein directed, to be composed of militia officers only, for the trial of any person, in the militia, but to the cashiering of any officer, or capital punishment of any person, the approbation of the President of the United States shall be necessary; and when any militia shall be in actual service, they shall be allowed the same pay and rations as are allowed by law to the militia of the United States. If a sudden invasion shall be made into either county in this District, or in case of an insurrection in either county, the commanding officer of the militia of the District, or of such county, is hereby authorized and required to order out the whole or such part of the militia, as he may think necessary, and in such manner as he may think best, for repelling or surpressing such invasion or insurrection; and shall call on the commanding officers of the adjacent counties for such aid as he may think necessary, who shall forthwith and in like manner furnish the same; and in the event of any militia ordered out by the commanding offi-

cer of a county, or of the District, as herein authorized, such officer shall immediately notify the same, and the cause thereof, to the commanding officer of the District, or to the President of the United States, as the case may require.

Sec. 25. *And be it further enacted*, That all arms, ammunition, and equipments of militia, shall be exempted from executions and distress at all times, and their persons from arrests and process in civil cases, while going to, continuing at, or returning from, musters, and while in actual service.

Sec. 26. *And be it further enacted*, That the brigadier generals are hereby empowered and authorized to employ some person within their respective districts, to convey all orders from them to the commanding officers of corps, respecting the militia of the District of Columbia, who shall be exempt from all other militia duty, and shall receive such compensation, as the legionary court of inquiry, in which district such orders may from time to time be delivered, shall think proper, on his producing to the court a certificate of his having discharged the said services.

Sec. 27. *And be it further enacted*, That all non-commissioned officers and privates, belonging to battalion companies, shall appear while on duty, uniformly clothed, the color and fashion of which uniforms to be determined on for the respective legions, by the first legionary courts of inquiry which shall be held, and to be approved of by the brigadier general, provided the expense of the same, additional to that of usual, ordinary, and cheap clothing, does not exceed five dollars for each person; and every such non-commissioned officer, or drummer, or fifer, or private, appearing at any muster held after three months from the time that such uniforms shall have been determined on, and the order relative thereto shall have been published, in some newspaper within the legionary district, and not wearing the same, shall be fined five dollars for each offence; unless he can make it appear to the satisfaction of the court of inquiry of the battalion to which he may belong, that he was unable to equip himself.

Sec. 28. *And be it further enacted*, That the respective courts of inquiry shall have power to cause to be bound for a term of years, to the several commandants of companies, battalions, and legions, and their successors in office, as the case may require, such number of boys and young men, with the consent of their parent or other person authorized, as they in their discretion may deem proper, for the purpose of being instructed in the different branches of military music, and of serving as musicians, when they may be competent thereto, to the several companies, battalions, and legions; and the father of any youth who may be so bound, otherwise subject to be enrolled, shall be exempt from all duty in the militia, so long as his son so bound may continue to serve in the corps to which he would otherwise belong, as well during his apprenticeship as thereafter; and the several legionary courts of inquiry shall make provision from time to time for the clothing, maintenance, and the properly instructing all such youths, to be paid from the fund arising from the fines imposed by this act; and the commanding officers of legions shall cause the drummers and fifers and other musicians of their respective legions, to meet at the same times and places that commissioned officers are required to meet, for the purpose of being trained by the brigade inspector, or other officer, there to be instructed in their respective branches of music, for which purpose the commanding officer of the legion may employ such person or persons as he may think proper and capable to instruct such drummers and fifers, and other musicians. The person so to be employed by the commanding officer of the legion, to be allowed such compensations as the legionary court of inquiry may authorize, and each drummer and fifer, and other musician, unless an apprentice, shall be allowed, during the time they are convened, one dollar per day, to be paid out of the funds arising from fines.

Sec. 29. *And be it further enacted*, That the Secretary of War shall cause a sufficient number of copies of this law, together with the act of Congress, more effectually to provide for the national defence, by establishing an uniform militia throughout the United States; and the act of Congress for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; and the articles of war; to be printed and distributed throughout the territory of Columbia, so that every general and field officer therein, and every brigade inspector, and captain, be furnished with one copy each.

Approved, March 3, 1803.

An act in addition to and in modification of the propositions contained in the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes."

Be it enacted, &c., That the following several tracts of land in the State of Ohio, be, and the same are hereby, appropriated for the use of schools in that State, and shall, together with all the tracts of land heretofore appropriated for that purpose, be vested in the Legislature of that State, in trust for the use aforesaid, and for no other use, intent or purpose whatever, that is to say:

First. The following quarter townships in that tract commonly called the "United States military tract," for the use of schools within the same, viz: the first quarter of the third township in the first range, the first quarter of the first township in the fourth range, the fourth quarter of the first township and the third quarter of the fifth township in the fifth range, the second quarter of the third township in the sixth range, the fourth quarter of the second township in the seventh range, the third quarter of the third township in the eighth range, the first quarter of the first township and the first quarter of the third township in the ninth range, the third of the first township in the tenth range, the first and fourth quarters of the third township in the eleventh range, the fourth quarter of the fourth township in the twelfth range, the second and third quarters of the fourth township in the fifteenth range, the third quarter of the seventh township in the sixteenth range, and the first quarter of the sixth township and third quarter of the seventh township in the eighteenth range, being the one thirty-sixth part of the estimated whole amount of lands within that tract.

Secondly. The following quarter townships in the same tract for the use of schools in that tract commonly called the Connecticut reserve, viz: the third quarter of the ninth township and the fourth quarter of the tenth township in the first range, the first and second quarters of the ninth township in the second range, the second and third quarters of the ninth township in the third range, the first quarter of the ninth township and the fourth quarter of the tenth township in the fourth range, the first quarter of the ninth township in the fifth range, the first and fourth quarters of the ninth township in the sixth range, the first and third quarters of the ninth township in the seventh range, and the fourth quarter of the ninth township in the eighth range.

Thirdly. So much of that tract, commonly called the "Virginia military reservation," as will amount to one thirty-sixth part of the whole tract, for the use of schools within the same, and to be selected by the Legislature of the State of Ohio, out of the unlocated lands in that tract after the warrants issued from the State of Virginia shall have been satisfied; it being however understood, that the donation is not to exceed the whole amount of the above-mentioned residue of such unlocated lands, even if it shall fall short of one thirty-sixth part of the said tract.

Fourthly. One thirty-sixth part of all the lands of the United States lying in the State of Ohio, to which the Indian title has not been extinguished, which may hereafter be purchased of the Indian tribes by the United States, which thirty-sixth part shall consist of the section No. sixteen, in each township, if the said land shall be surveyed into townships of six miles square, and shall, if the lands be surveyed in a different manner, be designated by lots.

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury shall, from time to time, and whenever the quarterly accounts of the receivers of public moneys of the several land offices shall be settled, pay three per cent. of the net proceeds of the lands of the United States, lying within the State of Ohio, which, since the thirtieth day of June last, have been, or hereafter may be sold by the United States, after deducting all expenses incidental to the same, to such person or persons as may be authorized by the Legislature of the said State to receive the same, which sums thus paid, shall be applied to the laying out, opening, and making roads within the said State, and to no other purpose whatever; and an annual account of the application of the same shall be transmitted to the Secretary of the Treasury by such officer of the State as the Legislature thereof shall direct: and it is hereby declared, that the payments thus to be made, as well as the several appropriations for schools made by the preceding section, are in conformity with, and in consideration of the conditions agreed on by the State of Ohio, by the ordinance of the convention of the said State, bearing date the twenty-ninth day of November last.

Sec. 3. *And be it further enacted*, That the sections of land heretofore promised for the use of schools, in lieu of sach of the sections, No. 16, as have been otherwise disposed of, shall be selected by the Secretary of the Treasury, out of the unappropriated reserved sections in the most contiguous townships.

Sec. 4. *And be it further enacted*, That one complete township in the State of Ohio and district of Cincinnati, or so much of any one complete township within the same, as may then remain unsold, together with as many adjoining sections as shall have been sold in the said township, so as to make in the whole thirty-six sections, to be located under the direction of the Legislature of the said State, on or before the first day of October next, with the register of the land office of Cincinnati, be, and the same is hereby, vested in the Legislature of the State of Ohio, for the purpose of establishing an academy, in lieu of the township already granted for the same purpose by virtue of the act, entitled "An act authorizing the grant and conveyance of certain lands to John Cleves Symmes, and his associates:" *Provided however*, That the same shall revert to the United States, if within five years after the passing of this act, a township shall have been secured for the said purpose, within the boundary of the patent granted by virtue of the above-mentioned act, to John Cleves Symmes, and his associates.

Sec. 5. *And be it further enacted*, That the attorney general for the time being, be directed and authorized to locate and accept from the said John Cleves Symmes, and his associates, any one complete township within the boundaries of the said patent, so as to secure the same for the purpose of establishing an academy, in conformity to the provisions of the said patent, and in case of non-compliance, to take, or direct to be taken, such measures as will compel an execution of the trust: *Provided, however*, That John Cleves Symmes and his associates shall be released from the said trust, and the said township shall vest in them, or any of them, in fee simple, upon payment into the Treasury of the United States, of fifteen thousand three hundred and sixty dollars, with interest from the date of the above-mentioned patent, to the day of such payment.

Approved March 3, 1803.

An Act concerning the insurance of buildings, goods, and furniture, in the county of Alexandria, in the Territory of Columbia.

Be it enacted &c., that the two incorporated bodies of the State of Virginia, the one known by the name of "The Mutual Insurance Society against fire on buildings, in the State of Virginia;" the other called "A Mutual Insurance Company

against fire, on goods and furniture in the State of Virginia," or either of them hereafter making insurances on buildings, goods, or furniture, situated in the county of Alexandria, in the District of Columbia, according to the laws, rules and regulations, by which the said societies are or may be respectively governed in their insurances in that State, may have the same right and mode of recovery, in the circuit court of the county of Alexandria, in the District of Columbia, against any person so insuring his building, furniture, or property, as the case may be, situated in the county aforesaid, with either of the said societies, which might have been had against him or her, if the person so insuring was resident, and the building, furniture, or property so insured, was situated in the State of Virginia.

Approved March 3, 1803.

An Act making appropriations for the Military Establishment of the United States, in the year one thousand eight hundred and three.

Be it enacted, &c., That for defraying the several expenses of the Military Establishment of the United States, for the year one thousand eight hundred and three; for the Indian department, and for the erection of fortifications, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the army of the United States, two hundred and ninety-nine thousand one hundred and twenty-four dollars.

For forage, four thousand and fifty-six dollars.

For the subsistence of the officers of the army and the corps of engineers, twenty-nine thousand and eighty-six dollars and eighty-five cents.

For the subsistence of non-commissioned officers and privates, one hundred and fifty-four thousand five hundred and forty dollars and seventy-five cents.

For clothing, fifty-six thousand nine hundred and sixty dollars.

For bounties and premiums, eight thousand dollars.

For the medical and hospital department, ten thousand dollars.

For camp equipage, fuel, tools, and transportation, and contingent expenses, fifty-eight thousand dollars.

For fortifications, arsenals, magazines and armories, one hundred and nine thousand six hundred and ninety-six dollars and eighty-eight cents.

For the Indian department, seventy three thousand five hundred dollars.

For purchasing maps, plans, books, and instruments, for the Department of War and the Military Academy, two thousand dollars.

For postage on letters on public service to and from the offices of the Adjutant and Inspector and Paymaster of the Army, four thousand five hundred dollars.

Sec. 2. *And be it further enacted*, That a sum not exceeding twenty thousand dollars, including any unexpended balance of former appropriations for the same object, be, and the same hereby is, appropriated for defraying the expense of any treaty or treaties which may be held with the Indians: *Provided*, That the compensation to be allowed to any commissioner appointed, or who may be appointed, for negotiating such treaties, shall not exceed, exclusive of travelling expenses, the rate of eight dollars per day during the actual service of such commissioner.

Sec. 3. *And be it further enacted*, That the several appropriations herein-before made, shall be paid and discharged, first out of any balance remaining unexpended of former appropriations for the same objects respectively, and secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved March 3, 1803.

An Act for erecting a light-house at the entrance of Penobscot Bay, or any other place in its vicinity, that may be deemed preferable by the Secretary of the Treasury.

Be it enacted, &c., That, as soon as a cession shall be made by the State of Massachusetts to the United States, of the jurisdiction over the land proper for the purpose, the Secretary of the Treasury be, and he is hereby, authorized to purchase so much land as may be necessary, and provide by contract, to be approved by the President of the United States, for building a light-house on Whitehead, at the entrance of Penobscot Bay, or any place in its vicinity, that may be deemed preferable by the Secretary of the Treasury, and to furnish the same with all necessary supplies; and also, to agree for the salaries or wages of the persons who may be appointed by the President for the superintendence and care of the same; and that the President be authorized to make the said appointments.

Sec. 2. *And be it further enacted*, That there be appropriated and paid out of the moneys arising from imports and tonnage, the sum of seven thousand dollars, for the purpose of erecting the light-houses as aforesaid.

Approved, March 3, 1803.

An Act to make Beaufort and Passamaquoddy ports of entry and delivery; to make Easton and Tiverton ports of delivery; and to authorize the establishment of a new collection district on Lake Ontario.

Be it enacted, &c., That, from and after the last day of June next, a district shall be formed from the district of Newbern, in North Carolina, to be called the district of Beaufort, which shall include the town of Beaufort, and all the water and shore north and east of the said town, to Harbor Island, and all the water and shore south and west of the said town, to Dog Island, inclusive. And the town of Beaufort shall be the sole port of entry and delivery for the said district; and a collector for the said port shall be appointed to reside and keep his office at the said town of Beaufort, who shall be entitled to receive, in addition to the fees and other emoluments established by law, the annual salary of two hundred dollars.

Sec. 2. *And be it further enacted*, That, from and after the said thirtieth day of June, Easton, in the district of Oxford, in the State of Maryland, and Tiverton, in the district of Newport, and State of Rhode Island, shall be ports of delivery, and a surveyor shall be appointed to each; each of whom shall be entitled to receive, in addition to the fees and emoluments already allowed by law, a salary of two hundred dollars per annum.

Sec. 3. *And be it further enacted*, That it shall be lawful for the President of the United States, to establish, when it shall appear to him to be proper, in addition to the port of entry and delivery already established on Lake Ontario, one other port of entry and delivery on the said lake, or on the waters or rivers emptying therein, and to appoint a collector of the customs, to reside and keep an office thereat.

Sec. 4. *And be it further enacted*, That, from and after the said thirtieth day of June next, such place within the district of Passamaquoddy, in the State of Massachusetts, as the Secretary of the Treasury may direct, shall be a port of entry and delivery, (at which place the collector shall reside) as well for foreign as for vessels of the United States.

Approved, March 3, 1803.

An Act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee.

Be it enacted, &c., That any person or persons, and the legal representatives of any person or persons, who were resident in the Mississippi Territory on the twenty-seventh of October, in the year one thousand seven hundred and ninety-five, and who had prior to that day obtained, either from the British Government of West Florida or from the Spanish Government, any warrant or order of survey for lands lying within the said Territory, to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years.

Sec. 2. *And be it further enacted*, That to every person, or to the legal representative or legal representatives of every person who, being either the head of a family, or of twenty-one years of age, did, on that day of the year seventeen hundred and ninety-seven, when the Mississippi Territory was finally evacuated by the Spanish troops, actually inhabit and cultivate a tract of land in the said Territory, not claimed by virtue either of the preceding section, or of any British grant, or of the articles of agreement and cession between the United States and the State of Georgia, the said tract of land thus inhabited and cultivated, shall be granted: *Provided, however*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres: *And provided, also*, That this donation shall not be made to any person who claims any other tract of land in the said Territory by virtue of any British or Spanish grant, or order of survey.

Sec. 3. *And be it further enacted*, That every person, and the legal representatives of every person, who, being the head of a family, or above the age of twenty-one years, doth, at the time of passing this act, inhabit and cultivate a tract of land in the said Territory, not claimed by virtue of the preceding sections of this act, or of any British grant, or of the articles of agreement and cession above-mentioned, shall be entitled to a preference in becoming the purchaser from the United States, of such tract of land, at the price at which the other lands of the United States in the said Territory, are by this act directed to be sold; and payment may be made therefor in the same manner and under the same conditions as directed by this act for such other lands: *Provided, however*, That no interest shall be charged upon any of the instalments until they respectively become payable.

Sec. 4. *And be it further enacted*, That, for the disposal of the lands of the United States within the Mississippi Territory, two land offices shall be established in the same, one at such place in the county of Adams, as shall be designated by the President of the United States, for the lands lying west of "Pearl river," sometimes called "Halfway river;" and one at such place in the county of Washington, as shall be designated by the President of the United States, for the lands lying east of Pearl river; and for each of the said offices, a register and a receiver of public moneys shall be appointed, who shall give security in the same manner, and in the same sums, and whose duties and authority shall in every respect be the same in relation to the lands which shall be disposed of at their offices, as are by law provided in relation to the registers and the receivers of public moneys in the several offices established for the disposal of the lands of the United States, north of the river Ohio, and above the mouth of Kentucky river.

Sec. 5. *And be it further enacted*, That every person claiming lands by virtue of any British grant, or of the three first sections of this act, or of the articles of agreement and cession between the United States and the State of Georgia, shall, before the last day of March, in the year one thousand eight hundred and four, deliver to the register of the land office, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plot of the tract or tracts claimed, and shall, also, on or before that day, deliver to the said register, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim, and the same shall be recorded by the said register, in books to be kept for that purpose, on receiving from the parties at the rate of twelve-and-a-half cents, for every hundred words contained in such written evidence of

their claim; and if such person shall neglect to deliver such notice in writing, of his claim, together with a plot as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the above-mentioned articles of agreement, or from the three first sections of this act, shall become void, and forever thereafter be barred; nor shall any grant, order, survey, deed, conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered or admitted as evidence in any court in the United States, against any grant derived from the United States.

Sec. 6. *And be it further enacted*, That the register of the land office in Adams county, and two other persons who shall be appointed by the President of the United States alone, shall, for the lands lying west of Pearl river, and the register of the land office of Washington county, together with two other persons who shall be appointed by the President of the United States alone, shall, for the lands lying east of Pearl river, respectively, be commissioners, for the purpose of ascertaining the rights of persons claiming the benefit of the articles of agreement and cession between the United States and the State of Georgia, or of the three first sections of this act; and the commissioners shall previous to entering on the duties of their appointment, respectively, take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I, —— ——, do solemnly (swear or affirm) that I will impartially exercise and discharge the duties imposed upon me, by an act of Congress, entitled An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee, to the best of my skill and judgment." And it shall be the duty of the said commissioners to meet in the county of Adams, and in Washington county aforesaid, respectively, on or before the first day of December next, and they shall not adjourn to any other place, or for a longer time than three days, until the first day of April, one thousand eight hundred and four, and until they shall have completed the business of their appointment. And each board, or a majority of each board, shall, in their respective districts, have power to hear and decide, in a summary manner, all matters respecting such claims, also to administer oaths and examine witnesses, and such other testimony as may be adduced, and to determine thereon according to justice and equity; which determination, so far as relates to any rights derived from the articles of agreement abovementioned, or from the three first sections of this act, shall be final; and for the safe-keeping of the papers and evidence produced and recording their proceedings, the said boards, respectively, shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, perfect and correct minutes of the proceedings, decisions, meetings and adjournments of the boards, together with the evidence on which such decisions are made; which books and papers, on the dissolution of the boards, shall be transmitted to and lodged in the office of the Secretary of State; and on or before such clerk's entering on the duties of his office, he shall take and subscribe the following oath or affirmation, to wit: "I, —— ——, do solemnly swear (or affirm, as the case may be) that I will truly and faithfully enter and record all minutes, proceedings and decisions of the board of commissioners for the county of ——, appointed under and by virtue of an act of the United States, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States, south of the State of Tennessee," and well and faithfully do and perform all other acts and things in the said act pointed out as the duty of a clerk of the said board; which oath shall be entered on the minutes of the board; and when it shall appear to them that the claimant is entitled to a tract of land under the articles of agreement and cession with Georgia, aforesaid, in virtue of a British or Spanish grant legally and fully executed, they shall give a certificate thereof, describing the tract of land and the grant, and stating that the claimant is confirmed in his title thereto by virtue of the said articles; which certificate, being recorded by the register of the land office, whose duty it shall be to record the same in a book to be kept by him for that purpose, shall amount to a relinquishment forever, on the part of the United States to any claim whatever to such tract of land: And when it shall appear to the said commissioners that the claimant is entitled to a tract of land by virtue of a settlement under the Bourbon act of Georgia, recognised in the said articles of agreement and cession, or of either of the two first sections of this act, they shall give a certificate thereof, stating the circumstances of the case, and that the claimant is entitled to receive a patent for such a tract of land by virtue of this act, which certificate being duly entered with the register of the land office, on or before the 1st day of January, eighteen hundred and five, shall entitle the party to a patent for the said tract, which shall issue in like manner as is provided by this act for the other lands of the United States, without the party paying anything therefor, except the surveying expenses and the fees of office. And when it shall appear to the said commissioners that the claimant is entitled to a right of pre-emption by virtue of the third section of this act, they shall give a certificate thereof, directed to the register of the land office; which certificate being duly entered with the register of the land office, on or before the first day of January, eighteen hundred and five, shall entitle the party to become a purchaser of such tract of land: *Provided*, That he shall, prior to the first day of January, eighteen hundred and six, also produce a receipt from the Treasurer of the United States, or from the receiver of public moneys, for at least one fourth part of the purchase money, and also for the payment of the surveying expenses; and the party shall upon payment in full of the purchase money, on which, if any of the three last payments shall be made in advance, he shall be allowed the same discount allowed in similar cases by this act, be entitled to receive a patent, which shall issue in like manner, and the payment of the same fees as are provided by this act for the other

lands of the United States; but if such person shall neglect to enter his certificate, on or before the first day of January, eighteen hundred and five, or to make such first payment as above provided his right of pre-emption shall cease and become void: *Provided also, and it is further enacted*, That whenever a tract of land to which any person might be entitled by virtue of the three first sections of this act, shall also be claimed by the holder of a British patent, legally and fully executed, and duly recorded in conformity to the provisions of this act, who is not confirmed in his claim by the articles of agreement above-mentioned, the commissioners shall, in the certificate granted to the person claiming the land by virtue of this act, state the existence of the adverse claims, in which case the party shall not be entitled to a patent, unless he shall have obtained in his favor a judicial decision in a court having jurisdiction therein; and for every certificate so granted by the boards, respectively, the clerk of the board granting the same shall be entitled to demand and receive of the party to whom the same is granted, the sum of two dollars.

Sec. 7. *And be it further enacted*, That the commissioners aforesaid shall, on or before the first day of December, one thousand eight hundred and four, make to the Secretary of the Treasury a full report of all the British grants legally and fully executed, which have been duly recorded in conformity to the provisions of this act, the title of which is not confirmed to the holders thereof, by the articles of agreement above-mentioned, stating the present situation of the lands, the date of such grants, the conditions annexed thereto, and how far the same have been fulfilled, together with such other remarks thereon as they may think proper; which report shall be laid before Congress at their next session, and the lands contained in such grants shall not be otherwise disposed of, until the end of one year after that time.

Sec. 8. *And be it further enacted*, That so much of the five millions of acres reserved for that purpose by the articles of agreement abovementioned, as may be necessary to satisfy the claims not confirmed by that agreement which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been re-granted by the Spanish Government, be, and the same is hereby appropriated for that purpose; and so much of the residue of the said five millions of acres or of the net proceeds thereof as may be necessary for that purpose, shall be, and is hereby, appropriated for the purpose of satisfying, quieting, and compensating, for such other claims to the lands of the United States, south of the State of Tennessee, not recognised in the above-mentioned articles of agreement, and which are derived from any act, or pretended act of the State of Georgia, which Congress may hereafter think fit to provide for; provided, however, that no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the Secretary of State, and recorded in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve-and-a-half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim to the said lands, derived or pretended to be derived from the State of Georgia, and not recognised by the above mentioned articles of agreement, ever after be admitted, or considered as evidence in any of the courts of the United States, unless it shall have been exhibited and recorded, in the manner and within the time above-mentioned; and provided also, that nothing herein contained, shall be construed to recognise or affect the claims, of any person or persons, to any of the lands above mentioned; and provided also, that no certificate shall be granted for lands lying east of the Tombigbee river, nor for lands situated without the boundary lines established by treaty between the United States and the Choctaws, made the seventeenth day of October, in the year eighteen hundred and two.

Sec. 9. *And be it further enacted*, That the Secrerary of State, the Secretary of the Treasury, and the Attorney General for the time being, be, and are hereby, authorized and empowered to receive such propositions of compromise and settlement, as may be offered by the several companies or persons claiming public lands in the territory of the United States lying south of the State of Tennessee and west of the State of Georgia; and report their opinion thereon to Congress at their next session.

Sec. 10. *And be it further enacted*, That a surveyor of the lands of the United States, south of the State of Tennessee, shall be appointed, whose duty it shall be to engage a sufficient number of skilful surveyors as his deputies, and to cause the lands above-mentioned, to which the titles of the Indian tribes have been extinguished, to be surveyed and divided in the manner hereafter directed, and to do and perform all such other acts, in relation to the said lands, as the surveyor general is authorized and directed to do in relation to the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky.

Sec. 11. *And be it further enacted*, That the lands for which certificates of any description whatever, shall have been granted by the Commissioners in pursuance of the provisions of this act, shall, as soon as may be, be surveyed under the direction of the surveyor of the lands of the United States above-mentioned, in conformity to the true tenor and intent of such certificates; and the said surveyor shall also cause all the other lands of the United States in the Mississippi Territory, to which the Indian title has been extinguished, to be surveyed as far as as practicable, into townships, and sub-divided into half-sections, in the manner provided for the surveying of the lands of the United States situate northwest of the river Ohio, and above the mouth of Kentucky river, and shall transmit to the registers of

the land offices, respectively, general and particular plots of all the lands surveyed as aforesaid, and shall also forward copies of the said plots to the Secretary of the Treasury; and he shall also, with the approbation of the said Secretary, fix the compensation of the deputy surveyors, chain-carriers, and axe-men: *Provided*, That the whole expense of surveying and marking the lines shall not exceed four dollars for every mile that shall be actually run, surveyed, and marked: *And provided*, That the expense of surveying those tracts of land, to which the title of the claimants is confirmed by the articles of agreement, or by the two first sections of this act, and those tracts claimed under British grants, a return of which is to be made to Congress, shall not be advanced by the United States, but shall be paid to the deputy surveyor by the parties claiming the same; and that in relation to all the land sold by the United States, the purchaser shall make the same payment for surveying expenses, which is directed by law to be made for lands sold north of the river Ohio.

SEC. 12. *And be it further enacted*, That all the lands aforesaid, not otherwise disposed of, or excepted by virtue of preceding sections of this act, shall, with the exception of the section number sixteen, which shall be reserved in each township for the support of schools within the same, with the exception also of thirty-six sections to be located in one body, by the Secretary of the Treasury, for the use of Jefferson College, and also with the exception of such town lots, not exceeding two in the town of Natchez, and of such an out lot adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the Governor of the Mississippi Territory, for the use of the said college, be offered for sale to the highest bidder, under the direction of the Governor of the Mississippi Territory, of the surveyor of the lands of the United States above-mentioned, and of the register of the land office at the places, respectively, where the land offices are kept, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose. The sales shall remain open at each place for three weeks, and no longer; and all lands, other than the section number sixteen, remaining unsold at the closing of the public sales, may be disposed of at private sale by the registers of the respective land offices, in the same manner, under the same regulations, for the same price, and on the same terms and conditions, as is provided by law for the sale of the lands of the United States north of the river Ohio, by an act, entitled "An act to amend the act, entitled 'An act providing for the sale of lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river:'" *Provided always*, That the lands which may be sold at public sale by virtue of this act, shall not be sold for less than two dollars per acre, and shall, in every other respect, be sold on the same terms and conditions as was provided for the lands sold at public sale, by the last recited act. And patents shall be obtained for all lands granted or sold in the Mississippi Territory, in the same manner and on payment of the same fees, as is provided for lands sold north of the river Ohio, by the said last recited act: *Provided, however*, That evidences of the public debt of the United States shall not be received in payment for the purchase of said lands.

SEC. 13. *And be it further enacted*, That the registers of the land offices, and the receivers of public moneys, appointed in pursuance of this act, shall receive the same fees and compensation as the registers and receivers of the land offices north of the river Ohio, and the registers shall also be entitled to receive twenty-five cents for entering each certificate granted by the commissioners above-mentioned. The surveyor of the lands of the United States, appointed in pursuance of this act, shall receive an annual compensation of fifteen hundred dollars, and shall be allowed not exceeding two clerks, whose whole compensation shall not exceed one thousand dollars per annum. The commissioners appointed to ascertain the rights of persons claiming the benefit of the articles of agreement above-mentioned, and of this act, shall receive each a compensation of two thousand dollars for the whole of their services, the registers of the land offices excepted, who shall receive only five hundred dollars each, for their services as commissioners; the clerks of the boards of commissioners a compensation not exceeding seven hundred and fifty dollars each; and the superintendents of the public sales shall receive six dollars each, for each day's attendance on the said sales.

SEC. 14. *And be it further enacted*, That the President of the United States shall have full power to appoint and commission the surveyor, registers of the land offices, and receivers of public moneys above-mentioned, in the recess of Congress, and their commissions shall continue in force until the end of the session of Congress next ensuing such appointment.

SEC. 15. *And be it further enacted*, That a sum not exceeding twenty thousand dollars be, and the same is hereby, appropriated for the purpose of carrying this act into effect; which sum shall be paid out of any unappropriated moneys in the Treasury.

SEC. 16. *And be it further enacted*, That the net proceeds of the lands which may be sold by virtue of this act, after deducting the surveying expenses, and other expenses, incident to the sale thereof, shall, and the same are hereby appropriated, in the first place, towards paying to the State of Georgia a sum of one million two hundred and fifty thousand dollars, in pursuance of the articles of agreement and cession entered into between the United States and that State; and the Secretary of the Treasury is hereby authorized and directed to pay accordingly, and from time to time, as the same shall be received in the Treasury of the United States, so much of the said net proceeds as will amount to the said sum of one million two hundred and fifty thousand dollars.

SEC. 17. *And be it further enacted*, That all navigable rivers within the territory of the United States south of the State of Tennessee, shall be deemed to be, and remain, public highways.

Approved, March 3, 1803.

An Act concerning the Salt Springs on the waters of the Wabash river.

Be it enacted, &c., That, for the purpose of procuring articles necessary to the establishment of salt works at the springs near the Wabash river, which had been ceded to the United States by certain Indian tribes, the sum of three thousand dollars be, and the same is hereby, appropriated, to be paid out of any unappropriated money in the Treasury, and under the direction of the President of the United States, who is hereby authorized to cause the said springs to be worked at the expense of the United States; or, if he shall deem it more proper, to lease the same for a term not exceeding three years, on such conditions as will insure the working the same most extensively, and to the most advantage to the United States.

Approved, March 3, 1803.

An Act concerning the City of Washington.

Be it enacted, &c., That the superintendent of the city of Washington shall be, and he hereby is, allowed as a compensation for his services, a salary of one thousand two hundred dollars, annually.

SEC. 2. *And be it further enacted*, That the surveyor of the city shall receive, as a compensation for his services, an allowance of three dollars for every day during which he shall be actually employed.

SEC. 3. *And be it further enacted*, That the following sums be, and the same hereby are, appropriated for defraying the expense in relation to the said officers, that is to say:

For the salary of the superintendent for the year one thousand eight hundred and three, including an allowance at the same rate for six months of the preceding year, one thousand eight hundred dollars;

For clerk hire in his office, five hundred dollars;

For the wages of the surveyor, one thousand dollars;

For a messenger to both offices, and also to attend the surveyor in the field, two hundred dollars;

For fuel, stationery, and other contingent expenses of both offices, two hundred dollars.

SEC. 4. *And be it further enacted*, That the several appropriations herein-before made, shall be paid and discharged out of any moneys in the hands of the said superintendent arising out of the city funds.

SEC. 5. *And be it further enacted*, That a sum, not exceeding fifty thousand dollars, shall be, and is hereby, appropriated, to be applied under the direction of the President of the United States, in such repairs or alterations in the Capitol and other public buildings, as may be necessary for the accommodation of Congress in their future sessions, and also for keeping in repair the highway between the Capitol and other public buildings; which sum shall be paid out of any money in the Treasury of the United States not otherwise appropriated.

Approved, March 3, 1803.

An Act to revive and continue in force an act, in addition to an act, entitled "An act, in addition to an act, regulating the grants of land appropriated to military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," and for other purposes.

Be it enacted, &c., That the first section of an act, in addition to an act, entitled "An act, in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the twenty-sixth of April, eighteen hundred and two, be, and the same is hereby, revived and continued in force until the first day of April next.

SEC. 2. *And be it further enacted*, That the Secretary of War be, and he hereby is, authorized, from and after the first day of April next, to issue warrants for military bounty lands to the two hundred and fifty-four persons who have exhibited their claims, and produced satisfactory evidence to substantiate the same, to the Secretary of War, in pursuance of the act of the twenty-sixth of April, eighteen hundred and two, entitled "An act, in addition to an act, entitled 'An act, in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

SEC. 3. *And be it further enacted*, That the holders or proprietors of the land warrants, issued by virtue of the preceding section, shall and may locate their respective warrants only on any unlocated parts of the fifty quarter-townships and the fractional quarter-townships which had been reserved for original holders, by virtue of the fifth section of an act, entitled, "An act, in addition to an act, entitled an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

SEC. 4. *And be it further enacted*, That the Secretary of War be, and he is hereby, authorized to issue land warrants to Major General Lafayette for eleven thousand five hundred and twenty acres, which shall at his option be located, surveyed, and patented, in conformity with the provisions of an act, entitled "An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," or which may be received, acre for acre, in payment for any of the lands of the United States north of the river Ohio, and above the mouth of Kentucky river.

SEC. 5. *And be it further enacted*, That all the unappropriated lands within the military tract shall be surveyed into half-sections, in the manner directed by the act, entitled "An act to amend

the act, entitled an act providing for the sale of the lands of the United States in the Territory Northwest of the Ohio, and above the mouth of Kentucky river;" and that so much of the said lands as lie west of the eleventh range, within the said tract, shall be attached to, and make a part of, the district of Chillicothe, and be offered for sale at that place under the same regulations that other lands are within the said district.

Sec. 6. *And be it further enacted*, That the lands within the said eleventh range, and east of it, within the said military tract, and all the lands north of the Ohio Company's Purchase, west of the seven first ranges, and east of the district of Chillicothe, shall be offered for sale at Zanesville, under the direction of a register of the land office and receiver of public moneys, to be appointed for that purpose, who shall reside at that place, and shall perform the same duties and be allowed the same emoluments as are prescribed for and allowed to registers and receivers of the land offices by law.

Sec. 7. *And be it further enacted*, That all persons who have obtained certificates of the right of pre-emption to lands by virtue of two acts, the one entitled "An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes, or his associates, for lands lying between the Miami rivers in the Territory of the United States Northwest of the Ohio;" and the other, "An act to extend and continue the provisions of the said act, passed on the first day of May, eighteen hundred and two," and who have not made the first payment therefor, before the first day of January last, shall be allowed until the tenth day of April next to complete the same; and that all persons who have become purchasers of land by virtue of the aforesaid acts be, and they are hereby, allowed until the first day of January, eighteen hundred and five, to make the second instalment; until the first day of January, eighteen hundred and six, to make their third instalment; and until the first day of January, eighteen hundred and seven, to make their fourth and last instalment; anything in the acts aforesaid to the contrary notwithstanding.

Sec. 8. *And be it further enacted*, That, where any warrants granted by the State of Virginia, for military services, have been surveyed on the northwest side of the river Ohio, between the Sciota and the Little Miami rivers, and the said warrants, or the plats or certificates of survey made thereon, have been lost or destroyed, the persons entitled to the said land may obtain a patent therefor by producing a certified duplicate of the warrant from the land office of Virginia, or of the plat and certificate of survey from the office of the surveyor in which the same is recorded, and giving satisfactory proof to the Secretary of War, by his affidavit or otherwise, of the loss or destruction of said warrant, or plat and certificate of survey.

Approved, March 3, 1803.

An Act for the relief of insolvent debtors within the District of Columbia.

Be it enacted, &c., That any debtor who is now, or may hereafter be, in actual confinement in jail in the District of Columbia, at the suit of any creditor, may apply by petition in writing to any one of the judges of the circuit court of the District of Columbia, and offer to deliver up, for the use of his creditors, all his property, real, personal, and mixed, to which he is in any manner entitled; a schedule whereof, on oath or affirmation, together with a list of his creditors, as far as he can ascertain them, shall be annexed to and exhibited with his petition; and thereupon the said judge shall direct notice of such application to be published in some of the public newspapers, for such time as he may think proper; which notice shall likewise require the attendance of the creditors at the court-house of the county in which the petitioning debtor is confined, and at such time as the said judge may appoint. And it shall be the duty of the said judge, and of the clerk of the county, to attend at the time and place appointed; and on the appearance of the creditors, either in person or by attorney, agreeably to the notification, or on their neglect to appear, the judge shall administer to the debtor the following oath: "I, A. B., do swear (or solemnly, sincerely, and truly, declare and affirm) that I will deliver up, convey, and transfer, for the use of my creditors, all my property that I have any title to or claim any interest in, whether in possession, remainder, or reversion, and all claims, rights, and credits, that I have or am in any manner entitled to; and that I have not at any time given, sold, conveyed, lessened, or disposed of, for the use or benefit of myself, or any other person or persons, any part of my money or other property, claims, rights, or credits, thereby to defraud my creditors, or any of them, or to secure the same with a view or expectation to receive any profit, benefit, or advantage, thereby." And the said judge shall thereupon appoint such person as a majority of the creditors in value, their agents or attorneys, then present, shall recommend, to be a trustee, for the benefit of the creditors of the petitioning debtor; or, in case of non-attendance of the creditors, or of their not making a recommendation, the said justice shall name such person as he shall think proper to be a trustee as aforesaid.

Sec. 2. *And be it further enacted*, That, before the said trustee shall proceed to act, he shall give bond to the United States, in such penalty and with such security as the said judge shall approve, conditioned for the faithful performance of his trust, which shall be recorded in the clerk's office of the county in which the proceedings are had; and a certified copy thereof shall be received as evidence in any court of law in the United States; and the said bond may be sued in the name of the United States, for the use of any person or persons who may conceive himself or themselves aggrieved by the negligence or misconduct of the trustee. And in case of the death or refusal to act of any trustee, the said judge may appoint another in his place, who shall give bond in manner as aforesaid.

Sec. 3. *And be it further enacted*, That, upon the petitioning debtor's executing a deed or deeds to the said trustee, conveying all his property, real, personal, and mixed, and all his claims, rights, and credits, agreeably to the oath or affirmation of the said debtor; and on delivering all his said property which he shall have in his possession, together with his books, papers, and evidences of debts, of every kind, to the said trustee, and the said trustee's certifying the same to the said judge in writing, it shall be lawful for the said judge to make an order to the marshal, jailer, or keeper of the prison, in which said debtor is then confined, commanding that the said debtor shall be thenceforth discharged from his imprisonment; and he shall be immediately discharged, and the said order shall be a sufficient warrant therefor: *Provided*, That no person who has been guilty of a breach of the laws, and who has been imprisoned for or on account of the same, shall be discharged from imprisonment: *And provided, likewise*, That any property which the debtor may afterwards acquire (except the necessary wearing apparel and bedding for his family, and his tools, if a mechanic or manufacturer) shall be liable to the payment of his debts, anything herein to the contrary notwithstanding.

Sec. 4. *And be it further enacted*, That the said judge may allow such petitioning debtor and his family to retain their necessary wearing apparel and bedding, and if the said debtor be a mechanic or manufacturer, he may likewise retain the tools of his trade.

Sec. 5. *And be it further enacted*, That the said judge may direct the trustees to sell and convey the property of the petitioning debtor, at such time, and on such terms and conditions as he shall deem most to the advantage of the creditors, and the product thereof, after satisfying all encumbrances and liens, shall be divided among the creditors in proportion to their respective claims; and no process against the real or personal property of the debtor shall have any effect or operation, except process of execution, and attachments in the nature of executions, which shall have been put in the hands of the marshal antecedent to the application.

Sec. 6. *And be it further enacted*, That every trustee may sue for, in his own name, any property or chose in action assigned to him by virtue of this act.

Sec. 7. *And be it further enacted*, That if any creditor, at any time within two years after the application of such debtor, shall allege in writing, to the circuit court of the District of Columbia, or at any other court of the United States, within whose jurisdiction such debtor may be found, that such debtor had at the time of his application as aforesaid, directly or indirectly, conveyed, lessened, or disposed of any part of his property, rights or credits, with intent to defraud his creditors, or had at any one time, within twelve months next preceding said application, lost by gaming more than three hundred dollars, or had assigned or conveyed any part of his property, rights or credits, with intent to give a preference to any creditor or creditors, or any surety, the said court shall thereupon order notice of such allegation to be given in writing to the debtor, and upon his appearance before them, or on his neglect to appear, after proof that notice has been served, the said court shall, within a reasonable time, examine the debtor or any other person, upon interrogatories on oath, touching the substance of the said allegations, or may direct an issue or issues to be tried in a summary way, without the form of an action, to determine the truth of the same; and if upon the answer to the said interrogatories, or upon the trial of the issue or issues, such debtor shall be found guilty of any fraud or deceit towards his creditors, or of having lost by gaming as aforesaid, or of having given any preference as aforesaid, he shall be precluded from any benefit under this act; and in case such debtor, or any other, testifying either for or against him, shall at any time thereafter be convicted of falsely, wilfully and corruptly swearing or affirming to any matter or thing in virtue of this act, he shall suffer as in the case of wilful perjury, and upon such conviction of the debtor, or any other person testifying for him, he shall be forever precluded from any benefit under this act.

Sec. 8. *And be it further enacted*, That every judge charged with the execution of this act, may, in the respective cases which may be brought before him, allow the trustee a commission not exceeding eight per centum for his trouble, on the amount of debts paid by him; and if any complaint shall be made to the said judge of the misconduct of any trustee by any creditor, or by the debtor, the said judge may call such trustee before them, and inquire into the cause of complaint, and may make such rules and orders as he may think proper for the accomplishment of the object of the trust, and may in his discretion remove such trustee and appoint another in his place.

Sec. 9. *And be it further enacted*, That the acting judge may, by order, limit and appoint a time for creditors to bring in and exhibit their claims to the trustee, and if the said trustee should think proper to contest any claim exhibited against the debtor, it shall be his duty to report the same to the judge having cognizance of the case, who may examine the creditor and debtor upon oath respecting the same, and may submit to a jury such issues as shall be proper to settle the points in contest, or may appoint two indifferent persons to act as arbitrators between the parties, with a power, if they differ, to choose an umpire, and a decision thus made shall be final between the parties; and the said justice may order any part of the debtor's estate to be set apart, and retained for the eventual satisfaction of any contested claim, or to be brought again into distribution; and if any creditor to whom a debt is due, shall collude with a debtor to gain an undue preference, or for the concealment of any part of the debtor's estate or effects, or shall contrive or concert any acknowledgment of the debtor by parol, or in writing, to give false color to his claim, such creditor shall lose the whole of his debt.

Sec. 10. *And be it further enacted*, That if any debtor who shall have been relieved under this act, shall be arrested or imprisoned on any process sued out on any judgment or decree, obtained

against him for any debt, damages, or costs, contracted, owing or growing due before his discharge as aforesaid, the court before whom such process shall be returned or returnable, or any judge thereof, shall discharge such debtor; and if any such debtor shall be arrested or imprisoned on any process for the recovery of any debt, damages, or costs contracted, owing or growing due before his discharge as aforesaid, the court before whom such process shall be returned, or returnable, or any judge thereof, shall discharge such debtor out of custody, on his common appearance being entered, without special bail: *Provided*, and it is the true intent and meaning of this act, that no discharge whatever under this act shall be construed or taken as a discharge of any other person from any debt, contract or engagement of any kind or nature soever.

SEC. 11. *And be it further enacted*, That when the acting judge shall, as above prescribed, give to the marshal an order for the discharge of a debtor, it shall be the duty of the said judge to lodge with the clerk of the county in which the discharge shall take place, a certificate in the following words, viz: "I do hereby certify, that I have this day, ordered the Marshal of the District of Columbia, to discharge from imprisonment A. B., an insolvent debtor, agreeably to the act of the Congress of the United States, entitled, "An act for the relief of insolvent debtors within the District of Columbia;" which said certificate shall be recorded by the said clerk, and a copy thereof under seal, shall be received, in evidence in any court of law in the United States.

SEC. 12. *And be it further enacted*, That if any judge before whom the operation of this act in any particular case shall have been commenced, shall die, resign his office, or become disqualified, the proceedings may be completed by any other judge of the said court, in the same manner as if they had been originally commenced before him.

SEC. 13. *And be it further enacted*, That the application of the debtor, the appointment of a trustee, the deed from the debtor to the trustee, the several claims exhibited to the trustee, and the amount of sales of the debtor's property, shall be transmitted to, and recorded by the clerk of the county in which the debtor was confined at the time of his application; copies of which, under seal, shall be received as evidence in any court of law in the United States, and the clerk shall receive the same fees as are fixed by law for the like services in other cases, to be paid by the trustee out of the first proceeds of the debtor's estate that may come into his hands.

SEC. 14. *And be it further enacted*, That no discharge of an insolvent debtor under this act shall have a greater effect in any particular State, than if such debtor had been discharged under the insolvent debtor's law of any other State.

SEC. 15. *And be it further enacted*, That the circuit court of the District of Columbia, shall, by a general order to be entered on the records of the said court, fix the daily allowance for the support and maintenance of prisoners in execution for debt or damages in civil suits, which allowance the said court may, by a like general order, increase or diminish from time to time, as circumstances may require. And no person taken in execution for debt or damages in a civil suit, shall be detained in prison therefor, unless the creditor, his agent, or attorney, shall, after demand thereof by the marshal, pay, or give such security, as he may require to pay, such daily allowance and the prison fees: *Provided*, That a release from prison for want of such payment or security, shall not discharge the debt; but the body of the debtor shall never be again taken in execution therefor.

SEC. 16. *And be it further enacted*, That the said court may cause to be marked and laid out, reasonable bounds of the prisons in the said District, to be recorded in the same court; and, from time to time, may renew, enlarge, or diminish, the same. And every prisoner not committed for treason or felony, giving such security to keep within the said bounds, as any judge of the said court shall approve, shall have liberty to walk therein, out of the prison, for the preservation of his health; and, keeping continually within the said bounds, shall be adjudged in law a true prisoner.

SEC. 17. *And be it further enacted*, That the provisions of this act shall not be construed to extend to any debtor who is, or shall be, imprisoned at the suit of the United States, nor to alter, lessen, or impair, the right of the United States, to be first satisfied out of the estates of persons indebted to them; nor to any debtor who has not resided within the District of Columbia one year next preceding his said application.

Approved, March 3, 1803.

An Act directing a detachment from the militia of the United States, and for erecting certain arsenals.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized, whenever he shall judge it expedient, to require of the Executives of such of the States as he may deem expedient, and from their local situation shall be most convenient, to take effectual measures to organize, arm, and equip, according to law, and hold in readiness to march at a moment's warning, a detachment of the militia, not exceeding eighty thousand, officers included.

SEC. 2. *Be it further enacted*, That the President may, if he judges it expedient, authorize the Executives of the several States, to accept, as part of the detachment as aforesaid, any corps of volunteers, who shall engage to continue in service for such time, not exceeding twelve months, and perform such services as shall be prescribed by law.

SEC. 3. *Be it further enacted*, That the detachment of militia and volunteer corps, as aforesaid, shall be officered out of the present militia officers, or others, at the option and discretion of the Constitutional authority in each State respectively; the President of the United States apportioning the general officers among the respective States as he may deem proper.

SEC. 4. *And be it further enacted*, That one million five hundred thousand dollars be appropriated for paying and subsisting such part of the troops aforesaid, whose actual service may be wanted; for the purchase of ordnance and other military stores; and for defraying such other expenses as, during the recess of Congress, the President may deem necessary, for the security of the territory of the United States; to be applied under the direction of the President, out of any money in the Treasury not otherwise appropriated.

SEC. 5. *And be it further enacted*, That twenty-five thousand dollars be appropriated for erecting, at such place or places on the western waters as the President may judge most proper, one or more arsenals; and that the President cause the same to be furnished with such arms, ammunition, and military stores, as he may deem necessary.

Approved, March 3, 1803.

An Act to alter the time of holding the court of the United States in Kentucky district.

Be it enacted, &c., That, from and after the first day of April next, the sessions of the court of the United States for Kentucky district, shall commence on the first Mondays in March, July, and November, in every year; any law to the contrary notwithstanding.

SEC. 2. *And be it further enacted*, That all suits, process, and proceedings, of what nature or kind soever, pending in, or made returnable to, the said court, shall, after the said first day of April next, be continued over until the next court to be held in conformity to this act.

Approved, March 2, 1803.

An Act to alter the time for the next meeting of Congress.

Be it enacted, &c., That, after the adjournment of the present session, the next meeting of Congress shall be on the first Monday of November next.

Approved, March 3, 1803.

An Act to prolong the continuance of the Mint at Philadelphia.

Be it enacted, &c., That the act, entitled "An act concerning the Mint," approved March 3d, 1801, is hereby continued in force and operation for the term of five years, after the fourth day of March next.

Approved, March 3, 1803.

An Act in addition to the act, entitled "An act regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia."

Be it enacted, &c., That Samuel Rogers, one of the claimants under the act, entitled "An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia," shall be entitled to two thousand two hundred and forty acres of land, to be located in the manner, and within the boundaries, of the tract designated by the act to which this act is a supplement, and shall receive a patent for the same, in the manner directed by the said last-mentioned act.

Approved, March 3, 1803.

An Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war.

Be it enacted, &c., That any commissioned officer, non-commissioned officer, soldier, or seaman, disabled in the actual service of the United States, by wounds received during the Revolutionary war, and who did not desert the said service, shall be entitled to be placed on the pension list of the United States during life: *Provided*, That, in substantiating the claims thereto, the rules and regulations following shall be complied with:

First. All evidence shall be taken on oath or affirmation before the judge of the district in which such invalid resides, or before some person specially authorized by commission from the said judge.

Secondly. The evidence relative to any claimant, must prove decisive disability to have been the effect of known wounds received while in the actual line of his duty, in the service of the United States, during the Revolutionary war; that this evidence must be the affidavits of the commanding officer or surgeon of the ship, regiment, corps, or company, in which such claimant served, or two other credible witnesses to the same effect, setting forth the time and place of such known wound.

Thirdly. Every claimant shall be examined on oath or affirmation, by some respectable physician or surgeon, to be authorized by commission from the said judge, who shall report in writing his opinion, upon oath or affirmation, of the nature of said disability, and in what degree it prevents the claimant from obtaining his livelihood.

Fourthly. Every claimant must produce evidence of his having continued in the service of the United States to the conclusion of the war, in seventeen hundred and eighty-three, or being left out of the service in consequence of his disability, or in consequence of some derangement of the army, and of the mode of life or employment he has since followed, and of the original existence and continuance of his disability.

Fifthly. Every claimant must show satisfactory cause, to the said judge of the district, why he did not apply for a pension in conformity to laws heretofore passed, before the expiration of the limitation thereof.

SEC. 2. *And be it further enacted*, That the said judge of the district, or person by him commissioned as aforesaid, shall give to each claimant a transcript of the evidence and proceedings had, respecting his claim; and shall also transmit a list of such claims, accompanied by the evidence herein directed, to the Secretary of the Department of War, in order that the same may be examined,

and if correct, agreeably to the intent and meaning of this act, the said applicants are thenceforth to be placed on the pension list of the United States: *Provided*, That in no case a pension shall commence before the first day of January, eighteen hundred and three, except so far as to offset the commutation of half-pay received by such officer, in which case the proper officer is to calculate the pension from the first day of January, seventeen hundred and eighty-four.

Sec. 3. *And be it further enacted*, That the pensions allowed by this act shall be estimated in the manner following, that is to say: a full pension to a commissioned officer shall be considered one-half of his monthly pay as by law established, and the proportions less than a full pension shall be the like proportions of half-pay. And a full pension to a non-commissioned officer, private soldier, or seaman, shall be five dollars per month, and the proportions less than a full pension shall be the like proportions of five dollars per month, but no pension of a commissioned officer shall be calculated at a higher rate than the half pay of a lieutenant colonel.

Sec. 4. *And be it further enacted*, That the pensioners, becoming such in virtue of this act, shall be paid in the same manner as invalid pensioners are paid, who have heretofore been placed on the pension list of the United States, under such restrictions and regulations, in all respects, as are prescribed by the laws of the United States, in such cases provided.

Approved, March 3, 1803.

An Act in addition to an act, entitled "An act to amend the Judicial system of the United States."

Be it enacted, &c., That the circuit court of the second circuit shall consist of the justice of the Supreme Court residing within the third circuit, and the district judge of the district where such court shall be holden.

In the third circuit, the said circuit court shall consist of the senior associate justice of the Supreme Court residing within the fifth circuit, and the district judge of the district where such court shall be holden.

Sec. 2. *And be it further enacted*, That, from all final judgments or decrees in any of the district courts of the United States, an appeal, where the matter in dispute, exclusive of costs, shall exceed the sum or value of fifty dollars, shall be allowed to the circuit court next to be holden in the district where such final judgment or judgments, decree or decrees, may be rendered; and the circuit court or courts are hereby authorized and required to receive, hear, and determine such appeal; and that from all final judgments or decrees rendered or to be rendered in any circuit court, or in any district court acting as a circuit court, in any cases of equity, of admiralty and maritime jurisdiction, and of prize or no prize, an appeal where the matter in dispute, exclusive of costs, shall exceed the sum or value of two thousand dollars, shall be allowed to the Supreme Court of the United States, and that upon such appeal, a transcript of the libel, bill, answer, depositions, and all other proceedings of what kind soever, in the cause, shall be transmitted to the said Supreme Court; and that no new evidence shall be received in the said court, on the hearing of such appeal, except in admiralty and prize causes, and that such appeals shall be subject to the same rules, regulations, and restrictions, as are prescribed in law in case of writs of error; and that the said Supreme Court shall be, and hereby is, authorized and required to receive, hear, and determine such appeals. And that so much of the nineteenth and twenty-second sections of the act of Congress, entitled "An act to establish the Judicial courts of the United States," passed on the twenty-fourth day of September, one thousand seven hundred and eighty-nine, as comes within the purview of this act, shall be, and the same is hereby, repealed.

Approved, March 3, 1803.

An act authorizing the transfer of the duties of Supervisor to any other officer.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized to attach the duties of the officer of supervisor in any district to any other officer of the Government of the United States, within such district, who shall give bond for the performance of the duties imposed on him by this act, in the same manner and under the same penalties as were heretofore provided in the case of supervisors.

Sec. 2. *And be it further enacted*, That, for the discharge of the duties of supervisor, which may be thus attached to another office, by virtue of this act, there shall be allowed to the officer exercising the same, the commissions to which the supervisor is now entitled by law, together with such sum for clerk hire, not exceeding the allowance fixed by law for the supervisor, and such salary not exceeding two hundred and fifty dollars per annum, as the President of the United States shall deem a sufficient compensation.

Approved, March 3, 1803.

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ANNALS

OF

THE CONGRESS OF THE UNITED STATES.

EIGHTH CONGRESS.

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

EIGHTH CONGRESS.

COMPRISING THE PERIOD FROM OCTOBER 17, 1803, TO MARCH 3, 1805, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

PRINTED AND PUBLISHED BY GALES AND SEATON.

1852.

PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE FIRST SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, OCTOBER 17, 1803.

MONDAY, October 17, 1803.

The first session of the eighth Congress, conformably to the Constitution of the United States, commenced at the City of Washington, agreeably to the Proclamation of the President of the United States for that purpose; and the Senate assembled on this day.

PRESENT:

SIMEON OLCOTT and WILLIAM PLUMER, from New Hampshire;

TIMOTHY PICKERING, from Massachusetts;

JAMES HILLHOUSE and URIAH TRACY, from Connecticut;

CHRISTOPHER ELLERY and SAMUEL I. POTTER, from Rhode Island;

STEPHEN R. BRADLEY and ISRAEL SMITH, from Vermont;

DEWITT CLINTON and THEODORUS BAILEY, from New York;

JONATHAN DAYTON and JOHN CONDIT, from New Jersey;

GEORGE LOGAN and SAMUEL MACLAY, from Pennsylvania;

WILLIAM HILL WELLS and SAMUEL WHITE, from Delaware;

ROBERT WRIGHT and SAMUEL SMITH, from Maryland;

JOHN TAYLOR and WILSON CAREY NICHOLAS, from Virginia;

JOHN BROWN and JOHN BRECKENRIDGE, from Kentucky;

JESSE FRANKLIN and DAVID STONE, from North Carolina;

JOSEPH ANDERSON and WILLIAM COCKE, from Tennessee;

ABRAHAM BALDWIN, from Georgia; and

THOMAS WORTHINGTON, from Ohio.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tem.*, as the Constitution provides, and the ballots being collected and counted, the whole number was found to be twenty-nine, of which fifteen make a majority. Mr. BROWN had 24, Mr. BALDWIN 2, Mr. DAYTON 2, and Mr. PICKERING 1.

Consequently, the honorable JOHN BROWN was elected President of the Senate *pro tempore*.

The credentials of the following Senators were severally read, to wit:

Of JOSEPH ANDERSON, appointed a Senator by the Legislature of the State of Tennessee; of THEODORUS BAILEY, appointed a Senator by the Legislature of the State of New York; of JAMES HILLHOUSE, appointed a Senator by the Legislature of the State of Connecticut; of SAMUEL MACLAY, appointed a Senator by the Legislature of the State of Pennsylvania; of SAMUEL I. POTTER, appointed a Senator by the Legislature of the State of Rhode Island; of ISRAEL SMITH, appointed a Senator by the Legislature of the State of Vermont; of SAMUEL WHITE, appointed a Senator by the Legislature of the State of Delaware; for the term of six years from and after the third day of March last, respectively: also, of THOMAS WORTHINGTON, appointed a Senator by the Legislature of the State of Ohio; of JOHN CONDIT, appointed a Senator by the Executive of the State of New Jersey; of JOHN TAYLOR, appointed a Senator by the Executive of the State of Virginia, in place of S. T. Mason, deceased; of TIMOTHY PICKERING, appointed a Senator by the Legislature of the State of Massachusetts, in the place of Dwight Foster, resigned; and the oath required by law was, by the PRESIDENT, administered to them respectively.

The oath was also administered to SAMUEL SMITH, appointed a Senator by the Legislature of the State of Maryland, for the term of six years from and after the third day of March last.

Ordered, That the Secretary wait on the President of the United States and acquaint him that a quorum of the Senate is assembled, and that, in the absence of the VICE PRESIDENT, they have elected the Hon. JOHN BROWN, President of the Senate *pro tempore*.

The Secretary was directed to give a similar notice to the House of Representatives.

Resolved, That JAMES MATHERS, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional as-

sistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for that purpose during the session, and for twenty days after.

Resolved, That each Senator be supplied during the present session with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the usual rate for the annual charge of such papers.

A message from the House of Representatives informed the Senate that a quorum of the House had assembled, and had elected the Hon. NATHANIEL MACON their Speaker, and is ready to proceed to business.

Ordered, That Messrs. CLINTON and BRECKENRIDGE be a committee on the part of the Senate, together with such committee as the House of Representatives may appoint on their part, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communications that he may be pleased to make to them.

A message from the House of Representatives informed the Senate, that the House agree to the resolution of the Senate for the appointment of a joint committee to wait on the President of the United States, and have appointed a committee on their part.

On motion, *Resolved*, That two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

The Senate proceeded to the choice of a Chaplain on their part, and the ballots having been collected and counted, the whole number was twenty-eight: of which fifteen make a majority. Mr. GANTT had 15 votes, and Mr. M'CORMICK 13.

Consequently, the Rev. Dr. GANTT was elected.

Mr. CLINTON reported, from the joint committee appointed for the purpose, that they had waited on the President of the United States, and that he had acquainted them that he would make a communication to the two Houses, by message, immediately.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In calling you together, fellow-citizens, at an earlier day than was contemplated by the act of the last session of Congress, I have not been insensible to the personal inconveniences necessarily resulting from an unexpected change in your arrangements. But matters of great public concernment have rendered this call necessary, and the interest you feel in these will supersede, in your minds, all private considerations.

Congress witnessed, at their late session, the extraordinary agitation produced in the public mind by the suspension of our right of deposit at the port of New Orleans, no assignment of another place having been made according to treaty. They were sensible that the continuance of that privation would be more injurious to our nation than any consequences which could flow from any mode of redress; but, reposing just confidence in the good faith of the Government whose officer had committed the wrong, friendly and reasonable representations were resorted to, and the right of deposit was restored.

Previous, however, to this period, we had not been unaware of the danger to which our peace would be perpetually exposed whilst so important a key to the commerce of the western country remained under a foreign Power. Difficulties too were presenting themselves as to the navigation of other streams, which arising within our territories, pass through those adjacent. Propositions had therefore been authorized for obtaining, on fair conditions, the sovereignty of New Orleans, and of other possessions in that quarter, interesting to our quiet, to such extent as was deemed practicable; and the provisional appropriation of two millions of dollars, to be applied and accounted for by the President of the United States, intended as part of the price, was considered as conveying the sanction of Congress to the acquisition proposed. The enlightened Government of France saw, with just discernment, the importance to both nations of such liberal arrangements as might best and permanently promote the peace, interests, and friendship of both; and the property and sovereignty of all Louisiana, which had been restored to them, has, on certain conditions, been transferred to the United States, by instruments bearing date the 30th of April last. When these shall have received the Constitutional sanction of the Senate, they will, without delay, be communicated to the Representatives for the exercise of their functions, as to those conditions which are within the powers vested by the Constitution in Congress. Whilst the property and sovereignty of the Mississippi and its waters secure an independent outlet for the produce of the Western States, and an uncontrolled navigation through their whole course, free from collision with other Powers, and the dangers to our peace from that source, the fertility of the country, its climate and extent, promise, in due season, important aids to our Treasury, an ample provision for our posterity, and a wide spread for the blessings of freedom and equal laws.

With the wisdom of Congress it will rest to take those ulterior measures which may be necessary for the immediate occupation and temporary government of the country; for its incorporation into our Union; for rendering the change of government a blessing to our newly adopted brethren; for securing to them the rights of conscience and of property; for confirming to the Indian inhabitants their occupancy and self-government, establishing friendly and commercial relations with them, and for ascertaining the geography of the country acquired. Such materials for your information relative to its affairs in general, as the short space of time has permitted me to collect, will be laid before you when the subject shall be in a state for your consideration.

Another important acquisition of territory has also been made since the last session of Congress. The friendly tribe of Kaskaskia Indians, with which we have never had a difference, reduced by the wars and wants of savage life to a few individuals, unable to defend themselves against the neighboring tribes, has transferred its country to the United States, reserving only for its members what is sufficient to maintain them in an agricultural way. The considerations stipulated are, that we shall extend to them our patronage and protection, and give them certain annual aids, in money,

in implements of agriculture, and other articles of their choice. This country, among the most fertile within our limits, extending along the Mississippi from the mouth of the Illinois to and up the Ohio, though not so necessary as a barrier since the acquisition of the other bank, may yet be well worthy of being laid open to immediate settlement, as its inhabitants may descend with rapidity in support of the lower country, should future circumstances expose that to foreign enterprise. As the stipulations in this treaty also involve matters within the competence of both Houses only, it will be laid before Congress as soon as the Senate shall have advised its ratification.

With many of the other Indian tribes improvements in agriculture and household manufacture are advancing; and, with all, our peace and friendship are established on grounds much firmer than heretofore. The measure adopted of establishing trading-houses among them, and of furnishing them necessaries in exchange for their commodities at such moderate prices as leave no gain, but cover us from loss, has the most conciliatory and useful effect on them, and is that which will best secure their peace and good will.

The small vessels authorized by Congress, with a view to the Mediterranean service, have been sent into that sea, and will be able more effectually to confine the Tripoline cruisers within their harbors, and supersede the necessity of convoy to our commerce in that quarter. They will sensibly lessen the expenses of that service the ensuing year.

A further knowledge of the ground in the northeastern and northwestern angles of the United States has evinced that the boundaries established by the treaty of Paris, between the British territories and ours in those parts, were too imperfectly described to be susceptible of execution. It has therefore been thought worthy of attention, for preserving and cherishing the harmony and useful intercourse subsisting between the two nations, to remove, by timely arrangements, what unfavorable incidents might otherwise render a ground of future misunderstanding. A convention has therefore been entered into, which provides for a practicable demarcation of those limits, to the satisfaction of both parties.

An account of the receipts and expenditures of the year ending 30th September last, with the estimates for the service of the ensuing year, will be laid before you by the Secretary of the Treasury, so soon as the receipts of the last quarter shall be returned from the more distant States. It is already ascertained that the amount paid into the Treasury for that year has been between eleven and twelve millions of dollars; and that the revenue accrued, during the same term, exceeds the sum counted on as sufficient for our current expenses, and to extinguish the public debt within the period heretofore proposed.

The amount of debt paid for the same year is about three million one hundred thousand dollars, exclusive of interest, and making, with the payment of the preceding year, a discharge of more than eight millions and a half of dollars of the principal of that debt, besides the accruing interest: and there remain in the Treasury nearly six millions of dollars. Of these, eight hundred and eighty thousand have been reserved for payment of the first instalment due under the British convention of January 8th, 1802, and two millions are what have been before mentioned as placed by Congress, under the power and accountability of the President, towards the price of New Orleans, and other territories acquired, which, remaining untouched, are still applicable to that object, and go in diminution of the sum to be funded for it.

Should the acquisition of Louisiana be Constitutionally confirmed and carried into effect, a sum of nearly thirteen millions of dollars will then be added to our public debt, most of which is payable after fifteen years; before which term, the present existing debts will all be discharged by the established operation of the Sinking Fund. When we contemplate the ordinary annual augmentation of impost from increasing population and wealth, the augmentation of the same revenue by its extension to the new acquisition, and the economies which may still be introduced into our public expenditures, I cannot but hope that Congress, in reviewing their resources, will find means to meet the intermediate interest of this additional debt, without recurring to new taxes; and applying to this object only the ordinary progression of our revenue, its extraordinary increase in times of foreign war will be the proper and sufficient fund for any measures of safety or precaution which that state of things may render necessary in our neutral position.

Remittances for the instalments of our foreign debt having been found practicable without loss, it has not been thought expedient to use the power, given by a former act of Congress, of continuing them by re-loans, and of redeeming, instead thereof, equal sums of domestic debt, although no difficulty was found in obtaining that accommodation.

The sum of fifty thousand dollars appropriated by Congress for providing gun boats remains unexpended. The favorable and peaceable turn of affairs on the Mississippi rendered an immediate execution of that law unnecessary; and time was desirable in order that the institution of that branch of our force might begin on models the most approved by experience. The same issue of events dispensed with a resort to the appropriation of a million and a half of dollars, contemplated for purposes which were effected by happier means.

We have seen with sincere concern the flames of war lighted up again in Europe, and nations, with which we have the most friendly and useful relations, engaged in mutual destruction. While we regret the miseries in which we see others involved, let us bow with gratitude to that kind Providence, which, inspiring with wisdom and moderation our late Legislative Councils, while placed under the urgency of the greatest wrongs, guarded us from hastily entering into the sanguinary contest, and left us only to look on and to pity its ravages. These will be the heaviest on those immediately engaged. Yet the nations pursuing peace will not be exempt from all evil. In the course of this conflict let it be our endeavor, as it is our interest and desire, to cultivate the friendship of the belligerent nations by every act of justice, and of innocent kindness; to receive their armed vessels with hospitality from the distresses of the sea, but to administer the means of annoyance to none; to establish in our harbors such a police as may maintain law and order; to restrain our citizens from embarking individually in a war in which their country takes no part; to punish severely those persons, citizen or alien, who shall usurp the cover of our flag for vessels not entitled to it, infecting thereby with suspicion those of real Americans, and committing us into controversies for the redress of wrongs not our own; to exact from every nation the observance, towards our vessels and citizens, of those principles and practices which all civilized people acknowledge; to merit the character of a just nation, and

maintain that of an independent one, preferring every consequence to insult and habitual wrong. Congress will consider whether the existing laws enable us efficaciously to maintain this course with our citizens in all places, and with others while within the limits of our jurisdiction; and will give them the new modifications necessary for these objects. Some contraventions of right have already taken place, both within our jurisdictional limits, and on the high seas. The friendly disposition of the Governments from whose agents they have proceeded, as well as their wisdom and regard for justice, leave us in reasonable expectation that they will be rectified and prevented in future; and that no act will be countenanced by them which threatens to disturb our friendly intercourse. Separated by a wide ocean from the nations of Europe, and from the political interests which entangle them together, with productions and wants which render our commerce and friendship useful to them, and theirs to us, it cannot be the interest of any to assail us, nor ours to disturb them. We should be most unwise, indeed, were we to cast away the singular blessings of the position in which nature has placed us, the opportunity she has endowed us with, of pursuing, at a distance from foreign contentions, the paths of industry, peace, and happiness; of cultivating general friendship, and of bringing collisions of interest to the umpire of reason rather than of force. How desirable, then, must it be, in a Government like ours, to see its citizens adopt, individually, the views, the interests, and the conduct, which their country should pursue, divesting themselves of those passions and partialities which tend to lessen useful friendships, and to embarrass and embroil us, in the calamitous scenes of Europe! Confident, fellow-citizens, that you will duly estimate the importance of neutral dispositions towards the observance of neutral conduct, that you will be sensible how much it is our duty to look on the bloody arena spread before us, with commisseration, indeed, but with no other wish than to see it closed, I am persuaded you will cordially cherish these dispositions in all discussions among your elves, and in all communications with your constituents; and I anticipate, with satisfaction, the measures of wisdom which the great interests now committed to you will give *you* an opportunity of providing, and *myself*, that of approving and of carrying into execution with the fidelity I owe to my country.

OCT. 17, 1803. TH. JEFFERSON.

The Message was read, and five hundred copies thereof ordered to be printed for the use of the Senate.

TUESDAY, October 18.

PIERCE BUTLER, appointed a Senator by the Legislature of the State of South Carolina, for the unexpired time for which the late John Ewing Colhoun was elected to serve, produced his credentials, which were read, and the oath required by law was administered to him by the President.

JAMES JACKSON, from the State of Georgia, attended.

The credentials of SAMUEL SMITH, a Senator from the State of Maryland, were read.

WEDNESDAY, October 19.

The Senate spent the day in the consideration of Executive business.

THURSDAY, October 20.

The Senate assembled, and, after the consideration of Executive business, adjourned.

FRIDAY, October 21.

JOHN QUINCY ADAMS, appointed a Senator by the Legislature of the State of Massachusetts, for six years, commencing the 4th day of March last, produced his credentials, which were read; and the oath required by law was administered to him by the President.

Mr. WORTHINGTON presented the memorial of Joseph Harrison and others, citizens of the United States, residing in that part of the Indiana Territory which lies north of an east and west line extending through the southerly bend of Lake Michigan, praying that that district may be erected into a separate government; and the memorial was read.

Ordered, That it be referred to Messrs. WORTHINGTON, BRECKENRIDGE, and FRANKLIN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House concur in the resolution of the Senate, of the 17th instant, for the appointment of Chaplains, and have appointed the Rev. WILLIAM PARKINSON Chaplain to Congress on their part.

Mr. CLINTON, after a few prefatory observations on the necessity of designating the persons, severally, whom the people should wish to hold the offices of President and Vice President of the United States, and stating that the State which he represented, as well as others of the Union, had, through the medium of their Legislatures, strongly recommended the adoption of the principle, laid on the table the following motion, which he read; and it was made the order of the day for the next day, and printed.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as part of the said Constitution, to wit:

That the third paragraph of the first section of the second article of the Constitution of the United States, in the words following, to wit: "The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each, which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed, and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose a President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice President; but, if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President:"—be expunged from the Constitution, and that the following paragraph be inserted in lieu thereof, to wit:

"The Electors shall meet in their respective States and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same State with themselves; they shall name in distinct ballots the person voted for as President, and the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be

AMENDMENT TO THE CONSTITUTION.

The order of the day being called for on Mr. CLINTON's motion of yesterday.

Mr. CLINTON said that, as the resolution was but now printed, and laid before the Senate, it might be proper to refer it to Monday for further consideration, but if it was requisite, by the rules of the Senate, that the resolution must have three separate readings, and on three different days, he should call for a second reading on Saturday, that it might be in readiness for a third reading on Monday, and be ultimately acted upon that day, as the Legislatures of Tennessee and Vermont were in session, and probably must be at the trouble of an extra session to act upon the amendment, unless it could be sent to them before they separated.

Mr. BROWN, of Kentucky, the President *pro tem.* of the Senate, said the written rule of the Senate determined that bills should have three readings, and on different days, without unanimous consent to the contrary; but the resolutions were not included; and that he should be glad of the opinion of the Senate upon the subject.

Mr. TRACY of Connecticut said, that there was no written rule which would reach the case, but the Vice President, upon the ground that they came within the reason of the rule, had determined that all resolutions which required a joint vote of both Houses to give them efficacy, should take the same course as bills, and have three readings, and on different days, before a final vote; and as this resolution went to the alteration of the supreme law of the land, as the Constitution was declared to be, he thought it highly requisite to give the deliberations all the solemnity which was required in passing bills.

Mr. BRADLEY, of Vermont, then offered two amendments to the resolution; one went to the form only, and the other makes a majority of votes of the electors requisite for a choice of Vice President, and in case such majority is not obtained, places the choice of Vice President in the Senate.

Mr. BUTLER, of South Carolina, proposed an amendment by adding a new clause, in substance: "That at the next election of President, no person should be eligible who had served more than eight years, and, in all future elections, no person should be eligible more than four years in any period of eight years."

Mr. DAYTON, of New Jersey, moved to refer the resolution, with all the amendments, to a select committee: he said that it was a subject far too important to be carried in this way. There has been no time to consider it. Something more was due in this instance, than, as it were offering it one moment, and deciding upon it the next.

Mr. HILLHOUSE, of Connecticut, supported the motion for referring the question to a select committee. He was opposed to entering now upon the business. Why should this subject be hurried? Why not have taken it up last session? we might in that case have had time to consider it. He had not often known a resolution, of the nature of that before the House, disposed of otherwise, in the first instance, than being referred to a committee. He never knew it refused. In a great and free empire, like the United States, this question is of the highest importance—no less than the choice of the First Magistrate. It is laid upon the table today, and we are to determine upon it to-morrow. He hoped not; and as he never knew it refused before, he hoped that it would not be adopted now. He wished it to be referred to a select committee; that it should there be examined, line by line, letter by letter. In the present mode of doing business, it is impossible to act with accuracy. He again trusted and hoped that it would be referred to a select committee.

Mr. JACKSON, of Georgia, wished the business to be immediately proceeded upon. He was an admirer of Mr. Jefferson; he was happy, and he trusted all were happy, while he was President. But, continued Mr. J., we know not who may follow him; we may have a Bonaparte, or one who will be equally obnoxious to the people. He hoped the motions would be incorporated and immediately come before the House.

Mr. WRIGHT, of Maryland, spoke for some time against the resolution going to a committee. He was against the amendment proposed by Mr. BUTLER. A committee might report when they pleased. He therefore thought it necessary to proceed with the question immediately.

Mr. SMITH, of Maryland, wished to have some principles fixed. If the motion and amendments were to go a committee, he would not tack them together, for by this mode they might both be lost. It has been said that the subject might have been entered into last session. There was then a multiplicity of business of importance before the House, yet this subject might have been entered into. As it stands, this is the proper place to make objections. The mover of the resolution does not say that it shall be determined on Monday; he means that it shall then be before the whole House.

Mr. BUTLER observed, in favor of its going to a committee, in order to prevent delay, he would require that they should report on Monday, for, on such an emergency, they might sit on Sunday. This might be adopted, provided it could be got to a committee. He did not think that the House should legislate upon adventitious or extraneous matter, because the Legislature of Vermont or Tennessee, or any other State, were sitting. We are not, for such reasons, to be hurried.

Mr. CLINTON said, he would consent to waive his motion, if the gentleman who moved last would consent that the whole should be entered into on Monday. We are charged, continued Mr. C., with hurrying on this business, but he was not to be intimidated from doing his duty. What was the use of a select committee? He hoped that the resolution and amendments might be printed, and made the order of the day for Monday.

Mr. BUTLER.—I penned my amendment since I came into the House. I believe the country is as ripe for it, as for the resolution, and the other amendments. I believe this business is hurried more than it ought to be. If the gentleman who first moved, will take up his motion, I think that he will be the first, on Monday, to condemn this hurry.

Mr. HILLHOUSE again spoke in favor of a committee. He observed that, in case a President should die the day after his election, who then is to supply his place? A man chosen by the electors? No; a man named by the Senate. A man may thus be chosen contrary to the wish of the people. Once it was in contemplation to have no Vice President, but again it was thought that either would make a good President, and he did not see any great use in the office of Vice President. If we are to constitute a Vice President to execute the office of President in case of his death, which will be the case, and if the Senate can elect a President, in such case it may fall upon a man who had only two votes, and the man who had a greater number would be Vice President. We must not pass over, concluded Mr. H., a subject of such importance in this way.

After some desultory observations, in which one member observed that he thought it disorderly, the question on Mr. BUTLER's amendment was put—ayes 16, nays 15.

A committee was then chosen for the purpose, namely:

Mr. BUTLER, Mr. BRADLEY, Mr. CLINTON, Mr. NICHOLAS, and Mr. SMITH.

MONDAY, October 24.

The bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes, was read the second time and referred to Messrs. BRECKENRIDGE, DAYTON, and BALDWIN, to consider and report thereon.

AMENDMENT TO THE CONSTITUTION.

Mr. BUTLER, from the committee to whom was referred, on the 22d inst., the motion for an amendment to the Constitution of the United States made report, which was read.

Mr. DAYTON moved to strike out all which respected the appointment of a Vice President.

He said the great inducements of the framers of the Constitution to admit the office of Vice President was, that, by the mode of choice, the best and most respectable man should be designated; and that the Electors of each State should vote for one person at least, living in a different State from themselves; and if the substance of the amendment was adopted, he thought the office had better be abolished. Jealousies were natural between President and Vice President; no heir apparent ever loved the person on the throne. With this resolution for an amendment to the Constitution we were left with all the inconveniencies, without a single advantage from the office of Vice President.

Mr. CLINTON.—The obvious intention of the amendment proposed by the gentleman from New Jersey, is to put off or get rid of the main question. It would more comport with the candor of the gentleman to meet the question fairly. Can the gentleman suppose that the Electors will not vote for a man of respectability for Vice President? True, the qualifications are distinct, and ought not to be confounded; this will stave off the question till the Legislatures of the States of Tennessee and Vermont are out of session, and the object must be very obvious.

Mr. DAYTON.—The custom of the gentleman from New York has been of late to arraign motives instead of meeting arguments; on Saturday he accused me of wishing to procrastinate, and now the same is repeated.

The reasons of erecting the office are frustrated by the amendment to the Constitution now proposed; it will be preferable, therefore, to abolish the office.

Mr. CLINTON.—The charge of the gentleman from New Jersey is totally unfounded that I arraign motives, and do not meet arguments. On Saturday, the gentleman accused me of precipitation; I am not in the habit of arraigning motives, as this Senate can witness, and the charge is totally untrue.

Mr. NICHOLAS.—To secure the United States from the dangers which existed during the last choice of President, the present resolution was introduced. It was impossible to act upon, or pass the amendment offered by the member from New Jersey, with a full view of all its bearings at this time. It ought not to stand in the way of the resolution reported by the committee, for two-thirds or three-quarters of the State Legislatures would be in session in two or three months; the Senate had, therefore, better not admit the amendment, even if convinced that it was correct, because it might jeopardize the main amendment of discriminating.

Mr. BUTLER moved a postponement until Wednesday, because the amendment was important, and he had not had sufficient time to make up his mind.

Mr. WORTHINGTON said the same.

This motion was seconded.

Mr. COCKE was opposed to the postponement, because he feared the State Legislatures would be out of session, so as not to carry the amendment into effect before the next choice of President.

Mr. WRIGHT was opposed to the postponement. The proposition of the gentleman from New Jersey was foreign to the first amendment. The people had not expressed an opinion upon it, *pro* nor *con*, but on the discriminating principle, they had. Whatever his opinion was, he would not vote for this amendment till he knew the voice of the people upon it. Shall we postpone, beyond this session, what we do understand, in order to take up what we do not understand? In a representative Government we ought to act as we think the people wish, and in pursuance to the public mind.

Mr. JACKSON did not know how he should vote on the amendment offered by the gentleman from New Jersey, but was willing to indulge the gentleman who asked for a postponement. What

were the ideas of gentlemen? Were the State Legislatures all about to die? If they were not in session when Congress had acted upon this amendment they could be called together. He remembered that the Vice President was called the fifth wheel to a coach, many years ago, and it might be well, now we are on the subject, to examine whether the office cannot be dispensed with. We have time enough.

Mr. HILLHOUSE.—So important was this subject, that he wished for more time; the gentleman from New York thinks the two offices are very diverse; (here he cited the Constitution, by which the duties of the President devolve on the Vice President in certain cases;) he thought it worthy of mature consideration, if the discriminating principle was introduced into the choice of Vice President, whether the office had not better be abolished.

Mr. TRACY inquired how long the Legislatures of Tennessee and Vermont had been in session; and how long they would probably continue; and supposed a day or two spent in deliberation would not cause much trouble or expense.

Mr. ANDERSON said the Legislature of Tennessee would probably sit till the tenth or fifteenth of November.

Mr. WORTHINGTON said he was opposed to the postponement, and should vote against the amendment, because he was not prepared to act upon it; not knowing what was the opinion of his constituents upon it.

Mr. S. SMITH mentioned that the last choice of President had prepared the people to require the discrimination; but the abolition of the office was new. If the choice of Vice President in the way proposed, should, upon experiment, prove to be improper, then it could be altered.

He was ready to act at once, and vote against the amendment, and should not pay so poor a compliment to any gentleman's abilities, as to say he could not make up his mind at once. He was against postponing.

The question for postponement was taken, and lost—ayes 15, noes 16.

The amendment of Mr. DAYTON was now before the Senate.

Mr. ADAMS thought the discriminating principle was well understood; but the consequences had not been fully contemplated; one was, the abolition of the office of Vice President. Whether it was best to abolish or not, he would not say, but to consider it with the other subject was certainly correct, and he wished for longer time.

Mr. MACLAY could not see that any new principle was introduced by the committee; he thought that a suggestion that an improper person would be chosen Vice President was premature; it could not be known till tried.

Mr. BRECKENRIDGE said his mind was made up to vote for nothing but the discriminating principle, so his constituents wished; and he would not go into consideration of any other amendments, but wished this to go into operation before the next election. His opinion was, that the duration of the office in the Senate, (six years,) was the most anti-republican he could conceive of, but if he moved that and connected it with the discriminating principle, he might lose all; he was against a postponement.

Mr. WHITE was convinced that the members were unprepared to act, and particularly so, by what fell from the member last up, and moved a postponement until to-morrow.

This motion was seconded by Mr. BUTLER.

Mr. CLINTON moved for the yeas and nays upon the question of postponement.

Mr. ANDERSON said, he should vote for the postponement; and as the yeas and nays were called, he would offer the reasons for his vote.

He had long been a member of the Senate, and had never known a postponement denied under similar circumstances. The question was important, and a denial of time to consider it, was, in his opinion, unfair and improper.

Mr. JACKSON would vote as he thought proper, notwithstanding the call for yeas and nays, and if the call had any influence upon him, it was to confirm him in a vote for postponement.

Mr. COCKE would clear his skirts, if gentlemen were determined to reject it in a pet; he should press a vote.

Mr. BUTLER was alarmed at what he saw this day; he wished to take a long and deep view of this subject, and there was not time now, the day was for speed; he rather thought the office of Vice President might be abolished, but he would not commit himself now; he wished for time, not to discredit, by a hasty decision, the States from which the Senate came.

Mr. S. SMITH regretted that a motion for postponement was made, for it has precluded all investigation; if the motion had not been made, a full investigation would have been had, and a postponement till to-morrow would have afforded opportunity to form an opinion with all the arguments in mind.

Mr. DAYTON said that he had already stated to the Senate that he conceived himself impelled by a sense of duty to offer the amendment under consideration for abolishing altogether the office of Vice President, if the change which was proposed to be made in the mode of electing the President should prevail. When gentlemen had considered the subject too important to be decided upon that day, he felt disposed to indulge them with a reasonable time for consideration, and he hoped that the postponement they asked for would be consented to. There existed, Mr. D. said, in the first volume of the Journals of the Senate, a striking monument of the hasty and inconsiderate manner in which amendments might be agreed to by both Houses. He alluded to the first of the twelve amendments, which, it was easy to show, was both absurd and impracticable. It professed to prescribe the ratio of representation for every possible increase of numbers, whereas, instead of effecting that object, it actually contained a positive interdiction of any representation, after our number should exceed eight millions. Extraordinary as it might seem, it was nevertheless most true, that it had been adopted by so many States as to have required

only one more to have made it a part of our Constitution. Had it unfortunately been adopted, what, Mr. D. asked, would have been our situation, when our numbers amounted to nine millions? There could certainly be no representation in the other branch, consistently with that amendment of the Constitution, for there would either be less than two hundred Representatives, or more than one for every fifty thousand, both of which were then expressly prohibited. What would Congress have done in that case? Would they have permitted a dissolution of the Government, or would they have ventured boldly to have broken the Constitution, and, in the language of the honorable gentleman from Virginia, have thrown themselves upon the people for pardon for the breach, and upon Heaven for forgiveness for the violation of their oaths. This was the distressing, the dreadful dilemma to which the Legislature of the Union were exposed in consequence of their having bestowed too little attention to the amendments which themselves had offered to the people, and it ought surely to operate as a solemn warning upon the present and all future occasions, against proposing any alteration in the Constitution without the most deliberate consideration of its intrinsic merits, as well as of all its consequences and of its bearings upon all the other parts of the same instrument.

While he was on the floor, he would take the liberty of saying that he had not thought proper to answer the honorable member from New York, because his high respect for the Senate restrained him from replying in those terms which were due to such rudeness and such indecency of language as that in which that member had indulged himself. There would be a fitter time and a fitter place for taking that notice of it which it merited.

A motion for adjournment was now made and carried—ayes 16, noes 15.

TUESDAY, October 25.

JOHN SMITH, appointed a Senator by the Legislature of the State of Ohio, attended and produced his credentials, which were read, and the oath required by law was administered to him by the President.

Mr. FRANKLIN presented the memorial of Robert Quillin, late a private in the first Virginia regiment, and now on the list of pensioners, praying for an augmentation of his pension; and the memorial was read, and ordered to lie on the table.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 24th instant, the bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes, reported it without amendment.

Ordered, That this bill pass to a third reading.

The PRESIDENT communicated the report of the Secretary for the Department of Treasury, prepared in obedience to the directions of the act, entitled "An act to establish the Treasury Department;" which was read, and the report and the papers accompanying it ordered to be printed for the use of the Senate.

The resolution to amend the Constitution was called up, and Mr. WRIGHT moved a postponement, till to-morrow alleging that as Mr. CLINTON was gone home, there could not be any necessity for hurrying a vote; but as Mr. CLINTON was obliged to go home, and had brought forward the resolution by instruction from the Legislature of his State, he (Mr. WRIGHT) had thought it his duty to press a vote, so that Mr. CLINTON might have an opportunity to give his vote; but the gentleman having now gone, he was willing to afford time for considering this important question.

It was postponed accordingly.

The motion made on the 22d instant, "that the Senate now proceed to the election of a Secretary and other officers of the Senate," was resumed; and on the question, will the Senate proceed to the consideration thereof, it passed in the negative.

WEDNESDAY, October 26.

The bill to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for other purposes; was read the third time. And, on the question, Shall this bill pass? it was determined in the affirmative—yeas 26, nays 6, as follows:

YEAS—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, J. Smith, S. Smith, Stone, Taylor, Wells, White, Worthington, and Wright.

NAYS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, and Tracy.

And the title having been amended,

Resolved, That this bill pass; that it be engrossed; and that the title thereof be "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof."

THURSDAY, October 27.

Mr. WORTHINGTON, from the committee to whom was referred, on the 21st instant, the memorial of Joseph Harrison and others, made a report; which was read, and ordered to lie for consideration.

Mr. WORTHINGTON also presented the petition of Martha Seamans and others, praying to be admitted to the benefits of the act, entitled "An act in addition to the act, entitled 'An act regulating the grants of land appropriated for the refugees from the British provinces of Canada and Nova Scotia'" and the petition was read, and referred to Messrs. WORTHINGTON, FRANKLIN, and WELLS, to consider and report thereon.

A motion was made that the Senate adopt the following resolution, viz:

"*Resolved*, That a committee be appointed to prepare the process to compel the attendance of John Pickering, to answer the charge exhibited against him by the House of Representatives at their last session."

Ordered, That this motion lie on the table.

Mr. LOGAN presented the memorial and petition of the Illinois and Ouabache Land Companies, praying that the memorial presented by them at the last session of Congress, may be resumed and acted on; and the memorial was read, and ordered to lie on the table.

On motion, the resolution proposed on the 22d instant, that the Senate now proceed to the election of a Secretary, and other officers of the Senate, was resumed; and, on motion, the further consideration thereof was postponed until the first Monday in October next.

FRIDAY, October 28.

A message from the House of Representatives informed the Senate that the House have passed the bill, sent from the Senate, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof," with amendments; in which they desire the concurrence of the Senate. They have passed a resolution for an amendment to the Constitution of the United States; in which they desire the concurrence of the Senate.

The papers last brought up from the House of Representatives were read, and ordered to lie for consideration.

SATURDAY, October 29.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof." Whereupon,

Resolved, That they disagree to the said amendments, ask a conference thereon, and that Messrs. BRECKENRIDGE and DAYTON be the managers at the conference on the part of the Senate.

A message from the House of Representatives informed the Senate that the House of Representatives have passed a bill, entitled "An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same;" also, a bill, entitled "An act making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States, by virtue of the convention of the 30th of April, 1803, between the United States and the French Republic;" in which bills they desire the concurrence of the Senate. They insist on their amendments to the bill, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof;" and agree to the conference desired by the Senate on the subject-matter of the said amendments, and have appointed managers on their part.

The two bills brought up for concurrence were read, and ordered to the second reading.

Mr. BRECKENRIDGE, from the committee of conference on the amendments of the House of Representatives to the bill, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th of April last, and for the temporary government thereof," reported, that the Senate recede from their disagreement to the amendments, and agree thereto, with amendments; and a division of the report was called for.

And, on the question to adopt the report, so far as that the Senate recede from their disagreement to the amendments of the House of Representatives, it passed in the affirmative.

And, on the question to adopt the remaining division of the report, it passed in the negative.

So it was *Resolved*, That the Senate recede from their disagreement to the amendments of the House of Representatives to the said bill, and agree thereto.

MONDAY, October 31.

On motion, it was

Resolved, unanimously, That the members of the Senate, from a sincere desire of showing every mark of respect due to the memory of the Hon. STEVENS THOMPSON MASON, deceased, late a member thereof, will go into mourning for him one month, by the usual mode of wearing a crape around the left arm.

On motion, that it be

Resolved, That the Senate is penetrated with the full sense of the merit and patriotism of the late SAMUEL ADAMS and EDMOND PENDLETON, deceased, and that the members thereof, do wear a crape on the left arm for one month, in testimony of the national gratitude and reverence towards the memory of those illustrious patriots.

And, on the question to agree to the resolution, it passed in the affirmative—yeas 21, nays 10; as follows:

YEAS—Messrs. Anderson, Bailey, Baldwin, Breckenridge, Brown, Butler, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, S. Smith, Stone, White, Worthington, and Wright.

NAYS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, John Smith, Tracy, and Wells.

The bill, entitled "An act authorizing the creation of a stock to the amount of $11,259,000, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United

States and the French Republic, and making provision for the payment of the same," was read the second time and referred to Messrs. JACKSON, S. SMITH, and BALDWIN, to consider and report thereon.

The bill, entitled "An act making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States, by virtue of the convention of the 30th of April, 1803, between the United States and the Faench Republic," was read the second time, and referred to the committee last named, to consider and report thereon.

TUESDAY, November 1.

Mr. JACKSON, from the committee to whom was referred the bill, entitled "An act authorizing the creation of a stock to the amount of $11,250,000, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States and the French Republic, and making provision for the payment of the same;" and to whom also was referred the bill, entitled "An act making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States, by virtue of the convention of the 30th of April 1803, between the United States and the French Republic," reported, that the said bills severally pass without amendment.

Ordered, That the bill last mentioned pass to the third reading.

Mr. WORTHINGTON presented the petition of John Crouse, and others, residents and purchasers of lands in the State of Ohio, praying for certain alterations in the existing laws of the United States, respecting the sale of the public lands; and the petition was read.

Ordered, That it be referred to a committee, to consist of five members, with instructions to inquire if any, and, if any, what, alterations, are necessary in the laws of the United States providing for the sale of the public lands, and that they have leave to report by bill or otherwise; and that Messrs. TRACY, WORTHINGTON, BRECKENRIDGE, BALDWIN, and FRANKLIN, constitute this committee.

The Senate resumed the consideration of the bill, entitled "An act authorizing the creation of a stock to the amount of $11,250,000, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same;" and, after debate,

Ordered, That the consideration thereof be postponed.

The following report was taken into consideration:

The committee to whom was referred the memorial of Joseph Harrison and others, resident in that part of the Indiana Territory which lies north of an east and west line, extending through the southerly extreme of Lake Michigan, report,

That it appears from the census taken under the authority of the United States in the year 1800, the territory above described contained three thousand nine hundred and seventy-two free white inhabitants at that time.

It also appears, from the best information that the committee have been able to obtain, that these inhabitants are separated from the other settlements of the Indiana Territory, by a tract of the Indian country, at least three hundred and fifty miles in extent; and that Vincennes, the seat of Government of the Indiana Territory, and place of residence of the Governor and other officers appointed to govern the same, is still more distant.

The committee are of opinion, that the local situation of the inhabitants of Detroit, and of the adjacent settlements, requires the special attention of the General Government, for reasons too obvious to every one, who will examine their geographical situations, to be enumerated.

On the one side, their settlements adjoin to, and are bounded by, the British Province of Canada; and on the other sides, are wholly encompassed by Indian tribes. Thus situated, and in a quarter so interesting to the Union, it is the opinion of the committee, that every accommodation and arrangement which would tend to populate and strengthen that quarter, and thereby enable the General Government with the least expense to maintain good order, ought to be extended to them. Were even these considerations without any weight, the committee conceive that the unreasonable delays and difficulties which must necessarily exist in the administration of justice, and the other concerns of these inhabitants, detached as they are from Vincennes, the residence of the Governor and other principal officers of the Territory, require that a separate territorial government should be extended to them. Under these impressions your committee respectfully submit the following resolution:

"*Resolved*, That the prayer of the memorial of Joseph Harrison and others ought to be granted, and that all that portion of the Indiana Territory which lies north of a line drawn east from the southernmost extreme of Lake Michigan, until it intersects Lake Erie, and west from the said southernmost extreme of Lake Michigan until it shall intersect the Mississippi river, shall form a separate Territory, and that the said Territory shall, in all respects, be governed by, and according to, the principles and regulations contained in "An ordinance for the Government of the Territory of the United States Northwest of the river Ohio," passed on the 13th day of July, 1787."

And the report was adopted.

Ordered, That the committee who made the report be instructed to prepare and bring in a bill accordingly.

A motion was made, that it be,

Resolved, That the sixth section of the seventh article of the Constitution of the State of Ohio be referred to a committee, to consist of —— members, with instructions to examine and report thereon, by bill or otherwise.

And it was agreed that this motion lie for consideration.

WEDNESDAY, November 2.

On motion, it was agreed that the motion made yesterday for a committee to examine the seventh

article of the Constitution of the State of Ohio be withdrawn; and that the following resolution be adopted:

Resolved, That the proposition of the convention of the State of Ohio to the Congress of the United States of America, contained in the sixth section of the seventh article of the constitution of that State, be referred to a committee, with leave to report thereon by bill or otherwise.

Ordered, That it be referred to Messrs. WORTHINGTON, BRECKENRIDGE, and FRANKLIN, the committee who, on the 21st of October last, had under consideration the petition of Joseph Harrison and others, to consider and report thereon to the Senate.

The bill, entitled "An act making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States by virtue of the convention of the 30th of April, 1803, between the United States and the French Republic," was read the third time, and passed.

On motion,

"That a committee be appointed to confer with the Postmaster General on the expediency or inexpediency of extending and furthering the carriage of the mail of the United States in covered or stage carriages:"

Ordered, That this motion lie for consideration.

LOUISIANA TREATY.

The Senate resumed the second reading of the bill, entitled "An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same;" and having amended the bill—

On the question, Shall the bill pass?

Mr. WHITE moved that the further consideration of the bill be postponed until the second Monday in December next, stating as the ground of the motion he had the honor to make, that the question was then involved in much difficulty and doubt. He could not accede to the immediate passage of the bill—that by the day he had named the Senate would be able to act more understandingly on the subject, as it would then probably be ascertained whether we are likely to obtain the quiet possession of New Orleans and Louisiana under the treaty or not, and there would still remain a great sufficiency of time to make the necessary provisions on our part for carrying the treaty into execution, if it should be deemed necessary.

The motion for postponement being stated.

Mr. WHITE rose and made the following remarks:

Mr. President, by the provisions of the bill before us, and which are thus far in conformity with the words of the treaty, we have until three months after the exchange of ratifications and the delivery of possession to pay this money in. Where, then, is the necessity for such haste on this subject? It seems to me to be anticipating our business unnecessarily, and perhaps unwisely; it is showing on our part a degree of anxiety that may be taken advantage of and operate to our injury, and that may serve to retard the accomplishment of the very object that gentlemen seem to have so much at heart. It is not at present altogether certain that we shall ever have occasion to use this stock, and it will be time enough to provide it when the occasion arises, when we see ourselves in the undisturbed possession of this mighty boon, or wherefore are we allowed these three months credit after the delivery of possession? The ratifications have been already exchanged; the French officer who is to make the cession is said to be at New Orleans, and previous to the adjournment of Congress we shall know with certainty whether the First Consul will or can carry this treaty faithfully into operation. We have already passed a bill authorizing the President to take possession, for which I voted, and it will be time enough to create this stock and to make the other necessary arrangements when we find ourselves in possession of the territory, or when we ascertain with certainty that it will be given to us.

But, Mr. President, it is now a well known fact, that Spain considers herself injured by this treaty, and if it should be in her power to prevent it, will not agree to the cession of New Orleans and Louisiana to the United States. She considers herself absolved from her contract with France, in consequence of the latter having neglected to comply with certain stipulations in the Treaty of St. Ildefonso, to be performed on her part, and of having violated her engagement never to transfer this country into other hands. Gentlemen may say this money is to be paid upon the responsibility of the President of the United States, and not until after the delivery of possession to us of the territory; but why cast from ourselves all the responsibility upon this subject and impose the whole weight upon the President, which may hereafter prove dangerous and embarrassing to him? Why make the President the sole and absolute judge of what shall be a faithful delivery of possession under the treaty? What he may think a delivery of possession sufficient to justify the payment of this money we might not: and I have no hesitation in saying that if, in acquiring this territory under the treaty, we have to fire a single musket, to charge a bayonet, or to lose a drop of blood, it will not be such a cession on the part of France as should justify to the people of this country the payment of any, and much less so enormous a sum of money. What would the case be, sir? It would be buying of France authority to make war upon Spain; it would be giving the First Consul fifteen millions of dollars to stand aloof until we can settle our differences with His Catholic Majesty. Would honorable gentlemen submit to the degradation of purchasing even his neutrality at so inconvenient a price? We are told that there is in the hands of the French Prefect at New Orleans a royal order of His Catholic Majesty, founded upon the Treaty of St. Ildefonso, for the delivery of possession of this

territory to France; but which has never been done—the precedent conditions not having been performed on the part of France. This royal order, it is probable, will be handed over to our Commissioner, or to whoever may be sent down to receive possession. We may then be told that we have the right of France, as she acquired it from Spain, which is all she is bound by her treaty to transfer to us; we may be shown the Spaniards, who yet claim to be the rightful owners of the country, and be told that we have the permission of the First Consul to subdue or drive them out, and, according to the words of the treaty, to take possession. Of our capacity to do so I have no doubt; but this we could have done, sir, six months ago, and with one-sixth of fifteen millions of dollars, when they had wantonly violated the sacred obligations of a treaty, had insulted our Government, and prostrated all the commerce of our Western country. Then we had, indeed, a just cause for chastising them; the laws of nations and of honor authorized it, and all the world would have applauded our conduct. And it is well known that if France had been so disposed she could not have brought a single man or ship to their relief; before the news could have reached Europe, she was blockaded in her own ports by the British fleets. But that time was permitted to go by unimproved, and instead of regretting the past, let us provide for the future.

Admitting then, Mr. President, that His Catholic Majesty is hostile to the cession of this territory to the United States, and no honorable gentleman will deny it, what reasons have we to suppose that the French Prefect, provided the Spaniards should interfere, can give to us peaceable possession of the country? He is acknowledged there in no public character, is clothed with no authority, nor has he a single soldier to enforce his orders. I speak now, sir, from mere probabilities. I wish not to be understood as predicting that the French will not cede to us the actual and quiet possession of the territory. I hope to God they may, for possession of it we must have—I mean of New Orleans, and of such other positions on the Mississippi as may be necessary to secure to us forever the complete and uninterrupted navigation of that river. This I have ever been in favor of; I think it essential to the peace of the United States, and to the prosperity of our Western country. But as to Louisiana, this new, immense, unbounded world, if it should ever be incorporated into this Union, which I have no idea can be done but by altering the Constitution, I believe it will be the greatest curse that could at present befall us; it may be productive of innumerable evils, and especially of one that I fear even to look upon. Gentlemen on all sides, with very few exceptions, agree that the settlement of this country will be highly injurious and dangerous to the United States; but as to what has been suggested of removing the Creeks and other nations of Indians from the eastern to the western banks of the Mississippi, and of making the fertile regions of Louisiana a howling wilderness, never to be trodden by the foot of civilized man, it is impracticable. The gentleman from Tennessee (Mr. COCKE) has shown his usual candor on this subject, and I believe with him, to use his strong language, that you had as well pretend to inhibit the fish from swimming in the sea as to prevent the population of that country after its sovereignty shall become ours. To every man acquainted with the adventurous, roving, and enterprising temper of our people, and with the manner in which our Western country has been settled, such an idea must be chimerical. The inducements will be so strong that it will be impossible to restrain our citizens from crossing the river. Louisiana must and will become settled, if we hold it, and with the very population that would otherwise occupy part of our present territory. Thus our citizens will be removed to the immense distance of two or three thousand miles from the capital of the Union, where they will scarcely ever feel the rays of the General Government; their affections will become alienated; they will gradually begin to view us as strangers; they will form other commercial connexions, and our interests will become distinct.

These, with other causes that human wisdom may not now foresee, will in time effect a separation, and I fear our bounds will be fixed nearer to our houses than the waters of the Mississippi. We have already territory enough, and when I contemplate the evils that may arise to these States, from this intended incorporation of Louisiana into the Union, I would rather see it given to France, to Spain, or to any other nation of the earth, upon the mere condition that no citizen of the United States should ever settle within its limits, than to see the territory sold for an hundred millions of dollars, and we retain the sovereignty. But however dangerous the possession of Louisiana might prove to us, I do not presume to say that the retention of it would not have been very convenient to France, and we know that at the time of the mission of Mr. Monroe, our Administration had never thought of the purchase of Louisiana, and that nothing short of the fullest conviction on the part of the First Consul that he was on the very eve of a war with England; that this being the most defenceless point of his possessions, if such they could be called, was the one at which the British would first strike, and that it must inevitably fall into their hands, could ever have induced his pride and ambition to make the sale. He judged wisely, that he had better sell it for as much as he could get than lose it entirely. And I do say that under existing circumstances, even supposing that this extent of territory was a desirable acquisition, fifteen millions of dollars was a most enormous sum to give. Our Commissioners were negotiating in Paris—they must have known the relative situation of France and England—they must have known at the moment that a war was unavoidable between the two countries, and they knew the pecuniary necessities of France and the naval power of Great Britain. These imperious circumstances should have been turned to our advantage, and if we were to purchase, should have

lessened the consideration. Viewing, Mr. President, this subject in any point of light—either as it regards the territory purchased, the high consideration to be given, the contract itself, or any of the circumstances attending it, I see no necessity for precipitating the passage of this bill; and if this motion for postponement should fail, and the question on the final passage of the bill be taken now, I shall certainly vote against it.

Mr. JACKSON rose, and was replying at length to Mr. WHITE, when he was called to order by the Chair, as having departed from the question of postponement, in which decision, notwithstanding Mr. WHITE had also departed, and some members expressed a wish that Mr. J. should proceed, he immediately acquiesced, and sat down.

The further consideration of the bill was postponed until to-morrow.

THURSDAY, November 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

LOUISIANA TREATY.

The bill, entitled "An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the 30th of April, 1803, between the United States of America and the French Republic, and making provision for the payment of the same," was read the third time; and, having been amended, on the question, Shall this bill pass as amended?

Mr. WELLS said: Mr. President, having always held to the opinion that, when a treaty was duly made under the constituted authorities of the United States, Congress was bound to pass the laws necessary to carry it into effect; and as the vote which I am about to give may not at first seem to conform itself to this opinion, I feel an obligation imposed upon me to state, in as concise a manner as I can, the reasons why I withhold my assent from the passage of this bill.

There are two acts necessary to be performed to carry the present treaty into effect—one by the French Government, the other by our own. They are to deliver us a fair and effectual possession of the ceded territory; and then, and not till then, are we to pay the purchase money. We have already authorized the President to receive possession. This co-operation on our part was requisite to enable the French to comply with the stipulation they had made; they could not deliver unless somebody was appointed to receive. In this view of the subject, the question which presents itself to my mind is, who shall judge whether the French Government does, or does not, faithfully comply with the previous condition? The bill on your table gives to the President this power. I am for our retaining and exercising it ourselves. I may be asked, why not delegate this power to the President? Sir, I answer by inquiring why we should delegate it? To us it properly belongs; and, unless some advantage will be derived to the United States, it shall not be transferred with my consent. Congress will be in session at the time that the delivery of the ceded territory takes place; and if we should then be satisfied that the French have executed with fidelity that part of the treaty which is incumbent upon them first to perform, I pledge myself to vote for the payment of the purchase money. This appears to me, arguing upon general principles, to be the course which ought to be pursued, even supposing there were attending this case no particular difficulties. But in this special case are there not among the archives of the Senate sufficient documents, and which have been withheld from the House of Representatives, to justify an apprehension that the French Government was not invested with the capacity to convey this property to us, and that we shall not receive that kind of possession which is stipulated for by the treaty? I am not permitted, by the order of this body, to make any other than this general reference to those documents. Suffice it to say that they have strongly impressed me with an opinion that, even if possession is rendered to us, the territory will come into our hands without any title to justify our holding it. Is there not on the face of this instrument itself some marks of suspicion? You find in the treaty not a single word relating to any substantial consideration to be paid by the United States. It says that the "First Consul 'of the French Republic, desiring to give to the 'United States a strong proof of his friendship, 'doth hereby cede to the said United States, in 'the name of the French Republic, forever and 'in full sovereignty, the said territory, with all its 'rights and appurtenances, as fully and in the 'same manner as they have been acquired by the 'French Republic, in virtue of the above-mentioned treaty concluded with His Catholic Majesty." It is true you perceive in the ninth article of the treaty a general reference to two conventions, signed at the same time with the treaty, which respect the payment of money by the United States to France, and which we regard as the only consideration for the territory ceded to us. Let us attend to the words of this article:

"The particular convention, signed this day by the respective Ministers, having for its object to provide for the payment of debts due to the citizens of the United States by the French Republic, prior to the 30th September, 1800, is approved, and to have its execution in the same manner as if it had been inserted in this present treaty, and it shall be ratified in the same form and in the same time, so that the one shall not be ratified distinct from the other.

"Another particular convention, signed at the same time time as the present treaty, relative to a definitive rule between the contracting parties, is in the like manner approved, and will be ratified in the same form, and in the same time, and jointly."

It is to be observed that the latter part of this article refers to that convention which stipulates for the payment of money to the French Government. But who, I ask, could understand it in this way? The convention here referred to, is said to be "relative to a definitive rule between the contracting parties." Why these dark, obscure, and unintelligible expressions? Is a consideration a "definitive rule?" The first article speaks of the cession as being made, "from a desire to give to the United States a strong proof of the friendship of the First Consul," and when you turn to the convention, which is said to establish the "definitive rule," you find a provision binding the United States to the payment of money to the French Republic, but not a word is said about its being the consideration of the cession. Suspicion hangs over the whole of this business. If the territory is, beyond all doubt, to be put quietly and peaceably into our hands, whence the necessity of sending down to receive it an imposing force? Admit that a nominal possession of the territory has been given by the Spaniards to the French, the latter it is well known have not a single soldier at any of the posts. Suppose, upon the arrival of our troops, the Spanish forces should refuse to obey the orders of the French Prefect, who then can only give you possession by the twig of a tree or the knob of a door; your army left to possess itself of the fortifications as it can, is half destroyed ere resistance by the Spaniards is overcome. In that case, shall we be willing to pay the whole amount of the fifteen millions of dollars? I trust not. If however we pass this bill, we shall have no control over the subject. We have already strong reasons for doubting the validity of the French title to the territory in question: suppose our doubts should be confirmed before the payment of this money, will you then consent to pay any part of it for what you will not be able to hold? I conceive, therefore, that I am fully justified in withholding my assent from the passage of this bill, seeing that no advantage can result from delegating this power to the President; that it may be, without inconvenience, exercised by ourselves, as we shall remain for some time in session; that even in common cases the unnecessary delegation of power is not to be justified; and that, in this particular instance, circumstances exist of a very extraordinary nature, which render it peculiarly improper.

Mr. JACKSON.—Mr. President: In answering the honorable gentlemen who has just sat down, I shall take the liberty of commencing, with repeating what I said yesterday, in answer to another honorable gentleman from Delaware, (Mr. WHITE,) that every argument they have made use of would better have applied at the time the treaty was on its passage for ratification, or at the time of the passage of the bill for taking possession of Louisiana; and it appears extraordinary now, after voting, if not for the treaty, for that bill, to see those gentlemen rise to oppose the conditions to be performed on our part, when France has issued the necessary orders to comply, on her part. The delay of the passage of the bill before you may have the most fatal consequences; and if, as some gentlemen have hinted on former occasions, the French are sick of their bargain, will give them an opportunity to break it altogether, or create such jealousies between the two nations as may render the ceded territory and its inhabitants of little value to us. In my opinion, policy, as well as justice, requires, that we should comply with the stipulations on our part, promptly and with good faith, and leave no opening for complaint with the other party. We shall then stand justified in the eyes of the world, and to ourselves, not only to take, but keep possession of this immense country, let what nation will oppose it.

But the honorable gentleman (Mr. WELLS) has said that the French have no title, and, having no title herself, we can derive none from her. Is not, I ask, the King of Spain's proclamation, declaring the cession of Louisiana to France, and his orders to his Governor and officers to deliver it to France, a title? Do nations give any other? I believe the honorable gentleman can find no solitary instance of feofment or conveyance between States. The Treaty of St. Ildefonso was the groundwork of the cession, and whatever might have been the terms to be performed by France, the King of Spain's proclamation and orders have declared to all the world that they were complied with. The honorable gentleman, however, insists that there is no consideration expressed in the treaty, and therefore it must be void; if the honorable gentleman will but look attentively at the ninth article, I am persuaded he will perceive one: the conventions are made part of the treaty; they are declared to have execution in the same manner, as if they had been inserted in the treaty: they are to be ratified in the same form, and in the same time, so that the one shall not be distinct from the other. What inference can possibly be drawn, but that the payments to be made by them was full consideration for Louisiana? But the honorable gentleman lays stress on that part of the treaty which declares that "the 'First Consul of the French Republic, desiring to 'give to the United States a strong proof of his 'friendship, doth hereby cede to the United States 'the territory," &c.; inferring from thence that our title rests on the friendship of Bonaparte alone. Sir, let my opinion of the present Government of France be what it may, and I confess it is not very favorable, Bonaparte, by the consent of the nation, is placed at its head; he is the organ through which the will of the nation is expressed, and is and must be respected as such by all other Powers. No nation has a right to interfere with the rule or police of another. It is enough that the nation wills it, and Bonaparte's act is the act of the whole nation, which cannot recall it, even if Bonaparte should cease to govern, and another form of Government be adopted. But, sir, admitting the objection of the honorable gentleman, in its utmost latitude, as to pecuniary considerations; are there no other considerations among Powers and Potentates? Does not policy sometimes induce a cession of territory to prevent a

larger portion from being sacrificed? Is not the establishment of a Monarch's connexions sometimes an object and consideration for a cession? The very instance before us is a convincing proof—the establishment of the King of Etruria in Italy. Honorable gentlemen have, however, whenever the treaty has been the subject of debate, expressed their fears that the Treaty of Ildefonso has not been complied fully with by France; that Spain will keep possession, and that we shall be involved in war with that Power. The King of Spain's proclamation fully satisfies me on that head, and I hope, and believe, he will be more prudent than in existing circumstances to involve himself in war with us. The English nation, after the handsome letter of Lord Hawkesbury to our Minister, Mr. King, expressing the approval of His Britannic Majesty of the treaty, cannot, in decency, interfere; and Bonaparte is bound in honor and good faith, to protect us in the possession of that country; disgrace would cover him and his nation if he took any part against us. Whom, then, should we have to contend with? With the bayonets of the intrepid French grenadiers, as the honorable gentleman from Delaware, last session, told us, or with the enervated, degraded, and emaciated Spaniards? Shall we be told now that we are no match for these emaciated beings? Last session we were impressed with the necessity of taking immediate possession of the island of New Orleans in the face of two nations, and now we entertain doubts if we can combat the weakest of those Powers; and we are further told we are going to sacrifice the immense sum of fifteen millions of dollars, and have to go to war with Spain, for the country, afterwards; when, last session, war was to take place at all events, and no costs were equal to the object. Gentlemen seem to be displeased, because we have procured it peaceably, and at probably ten times less expense than it would have cost us had we taken forcible possession of New Orleans alone, which, I am persuaded, would have involved us in a war, which would have saddled us with a debt of from one to two hundred millions, and perhaps have lost New Orleans, and the right of deposit, after all. I again repeat, sir, that I do not believe that Spain will venture war with the United States. I believe she dare not; if she does, she will pay the costs. The Floridas will be immediately ours; they will almost take themselves. The inhabitants pant for the blessings of your equal and wise Government; they ardently long to become a part of the United States. An officer, duly authorized and armed with the bare proclamation of the President, would go near to take them; the inhabitants by hundreds would flock to his standard, the very Spanish force itself would assist in their reduction; it is composed principally of the Irish brigade and Creoles—the former disaffected, and the latter the dregs of mankind. With two or three squadrons of dragoons, and the same number of companies of infantry, not a doubt ought to exist of the total conquest of East Florida by an officer of tolerable talents. Exclusive, however, of the loss of the Floridas, to use the language of a late member of Congress, the road to Mexico is now open to us, which, if Spain acts in an amicable way, I wish may, and hope will, be shut, as respects the United States forever. For these reasons, I think, sir, Spain will avoid a war, in which she has nothing to gain and everything to lose. But what possession, say the honorable gentlemen, are we to receive, the twig of a tree or the knocker of a door? No, sir, I reply; but possession of New Orleans, the capital, and its defence. By whom, will the honorable gentleman ask? I answer, the same men who the honorable gentlemen were so anxious to send forward and take forcible possession the last session, which could not have failed to involve us with the French, for, if we had succeeded and taken possession, whose territory should we have violated? Spain was barely the tenant, at will, of France, and France the real owner. If, in private life, I were to enter a house the honorable gentleman had purchased, and kick his tenant out, would he not feel aggrieved and seek redress? So would France, if we had rashly taken the measures proposed, and what should we have had then to do? Fling ourselves at once into the arms of Britain for protection. Is this what honorable gentlemen wish? It cannot be. I hope, Mr. President, that the citizens of the United States will never see the day when their defence shall depend on a British army or navy, or the army or navy of any other Power on earth. We are happily divided from the distractions and tumults of the Eastern world by the Atlantic Ocean, and I trust we shall steer clear of entangling alliances with any of them.

Mr. President, the honorable gentleman appears to be extremely apprehensive of vesting the powers delegated by the bill, now on its passage, in the President, and wishes to retain it in the Legislature. Is this a Legislative or an Executive business? Assuredly, in my mind, of the latter nature. The President gave instructions for, and, with our consent, ratified the treaty. We have given him the power to take possession, which his officers are, perhaps, at this moment doing; and surely, as the ostensible party, the representative of the sovereignty to whom France will alone look, he ought to possess the power of fulfilling our part of the contract. Gentlemen, indeed, had doubted, on a former occasion, the propriety of giving the President the power of taking possession and organizing a temporary government, which every inferior officer, in case of conquest or cession, from the general to the subaltern, if commanding, has a right to do; but I little expected these doubts, after we had gone so far. For my part, sir, I have none of those fears. I believe the President will be as cautious as ourselves, and the bill is as carefully worded as possible; for the money is not to be paid until after Louisiana shall be placed in our possession.

Sir, it has been observed by a gentleman in debate yesterday, (Mr. WHITE,) that Louisiana would become a grievance to us, and that we might as well attempt to prevent fish from swimming in water, as to prevent our citizens from going across

the Mississippi. The honorable gentleman is not so well acquainted with the frontier citizens as I am. I see an honorable gentleman in my view, who knows whether or not what I am going to assert be the fact—he was part of the time high in office. (Mr. PICKERING.) The citizens of the State I represent, scattered along an Indian frontier of from three to four hundred miles, have been restrained, except with one solitary instance, by two or three companies of infantry and a handful of dragoons, from crossing over artificial lines and water-courses, sometimes dry, into the Indian country, after their own cattle, which no human prudence could prevent from crossing to a finer and more luxuriant range, and this too at a time when the feelings of Georgians were alive to the injuries they had received by the New York Treaty with the Creek Indians, which took Tallassee county from them, after even three Commissioners appointed by the United States had reported to the President that it was *bona fide* the property of Georgia, and sold under as fair a contract as could be formed by a civilized with an uncivilized society. If the Georgians, under these circumstances, were restrained from going on their ground, cannot means be devised to prevent citizens crossing into Louisiana? The frontier people are not the people they are represented; they will listen to reason, and respect the laws of their country; it cannot be their wish, it is not their interest to go to Louisiana, or see it settled for years to come; the settlement of it at present would part father and son, brother and brother, and friend and friend, and lessen the value of their lands beyond all calculation. If Spain acts an amicable part, I have no doubt myself but the Southern tribes of Indians can be persuaded to go there; it will be advantageous for themselves; they are now hemmed in on every side; their chance of game decreasing daily; ploughs and looms, whatever may be said, have no charms for them; they want a wider field for the chase, and Louisiana presents it. Spain may, in such case, discard her fears for her Mexican dominions, for half a century at least; and we should fill up the space the Indians removed from, with settlers from Europe, and thus preserve the density of population within the original States. For, sir, I will agree with the honorable gentleman, (Mr. WHITE,) that it will be as impossible to prevent fish in the water from swimming, as to prevent the distressed of every country from flying to this asylum of the oppressed of the human race. They will come from the ambitious and distracted States of Europe to our mild and happy Government, if they commit themselves to the mercy of the ocean, or on a few planks nailed together. In a century, sir, we shall be well populated, and prepared to extend our settlements, and that world of itself will present itself to our approaches, and instead of the description given of it by the honorable gentleman, of making it a howling wilderness, where no civilized foot shall ever tread, if we could return at the proper period we should find it the seat of science and civilization.

Mr. President, in whatever shape I view this bill, I conceive it all-important that it should pass without a moment's delay. We have a bargain now in our power, which, once missed, we never shall have again. Let us close our part of the contract by the passage of this bill, let us leave no opportunity for any Power to charge us with a want of good faith; and having executed our stipulations in good faith we can appeal to God for the justice of our cause; and I trust that, confiding in that justice, there is virtue, patriotism, and courage sufficient in the American nation, not only to take possession of Louisiana, but to keep that possession against the encroachments or attacks of any Power on earth.

Mr. WRIGHT—Mr. President, I presumed from the observations of the honorable gentleman from Delaware (Mr. WELLS,) that he had not minutely attended to the provisions of this bill, on which the transfer of this stock is made expressly to depend. The treaty has in the most guarded manner secured us in the possession of the ceded territory, as a condition precedent the payment of the purchase money, and this bill has expressly provided that no part of the stock shall be transferred till the possession stipulated by the treaty shall have been obtained. Not such a possession as the gentlemen has said the President may be satisfied with—"the delivery of a twig and turf, or the knocker of a door." The treaty has defined the possession intended, it is the possession of Louisiana, the island and city of New Orleans, with the forts and arsenals, the troops having been withdrawn from thence. But, sir, from his remarks, it would seem that his objections to this bill had been predicated on his want of confidence in the Executive, as he has expressed his fears that the stock would be transferred, before the pre-requisite conditions had been performed. He says, we ought to be satisfied that the possession stipulated by the treaty shall have been delivered up before we pass this bill. Has he forgot that, by the Constitution, the President is to superintend the execution of the law? Or has he forgot that treaties are the supreme law of the land? Or why, while he professes to respect this Constitution, does he oppose the commission of the execution of this law to that organ of the Government to which it has been assigned by the Constitution? Why, I ask, does he distrust the President? Has he not been throughout the whole of this business very much alive to the peaceful acquisition of this immense territory, and the invaluable waters of the Mississippi? A property which, but the other day, we were told was all important, and so necessary to our political existence that if it was not obtained the Western people would sever themselves from the Union. This property, for which countless millions were then proposed to be expended, and the best blood of our citizens to be shed, and which then was to be had at all hazards, *per fas aut per nefas*, seems now to have lost its worth, and it would seem as if some gentlemen could not be satisfied with the purchase, because our title was not recorded in the blood of its inhabitants. But that this is not the wish of the American people, has been unequivocally declared by their immediate representatives

in Congress, as well as by this House, who had each expressed their approbation of the peaceful title we had acquired, by majorities I thought not to be misunderstood. And the gentleman, although he voted for the ratification of the treaty, now again calls on us to investigate the title. It is certainly too late. But I ask, if he was not possessed of the most satisfactory evidence of the title, why he consented to the ratification of the treaty? Does he not know that France, the original proprietor, ceded it to Spain? Does he not know that Spain retroceded it to France, in exchange for Tuscany, which is now held as the kingdom of Etruria, by the King of Etruria, the relative of His Catholic Majesty, by virtue of that exchange? Does he not know that Spain disclaims all title to it, and has issued the royal order for delivering it to France under its original limits, and that that order was lately in the possession of the Minister of the French Republic near the United States? that the treaties had been ratified and exchanged for the sale of Louisiana to the United States, and that the Minister of the First Consul had concerted with our Government such measures as were deemed necessary to put us in possession of the ceded territory, agreeably to the treaty? How correct, then, it may be to investigate the title after we have ratified the treaty, and become thereby the purchasers, or how prudent to question that title when claiming under it, are questions the gentleman's own feelings will best decide! But of this I am sure, that we can have no just cause of complaint against the French Republic until an eviction under a pre existing title paramount, which Spain herself disclaims. But if after we shall be in possession, under this peaceful, this legitimate title, any Power on earth shall attempt to disturb our possession, I trust we can obtain injunctions from our Secretaries of War and of the Navy, and secure our title in the way it was wished by some gentleman to have been originally obtained. The gentleman tells us he understands we are to be opposed by the subjects of His Catholic Majesty in taking possession of the ceded territory, or why send so many troops to take possession? I cannot tell where the gentleman got his information, either as to the opposition intended or the number of troops to be sent. I have never heard there was to be any opposition, but the reverse. I have never heard the number of troops that are intended to take possession; but I hope and trust a number sufficient to preserve the forts in good order, and to defend them against any Power that may presume to invest them. This, I have no doubt, will be done, as it is committed to the President, under his high responsibility, aided by the heads of the departments to which it belongs, who will be possessed of all necessary information, and who will, I trust, do their duty in preserving and defending these important posts.

Can it be supposed that the Louisianians, who so lately gave so demonstrative proof of their loyalty in their answer to the address of the Prefect of France, will be less disposed to loyalty to the United States, when they recollect that we have treated them as our children, and ourselves, by securing them in their property and in their civil and religious liberty, agreeably to the principles of our own Constitution? Can they be so unwise as to prefer being the colonists of a distant European Power, to being members of this immense Empire, with all the privileges of American citizens? Can any gentleman seriously entertain such an unauthorized opinion—that that people, whom we have seen so lately, with so much respect to their late King, submit cheerfully to be citizens of the French Republic, will now, in direct violation of the royal order, refuse to obey it, and treasonably take up arms to resist its execution? It is as cruel as it is unfounded! But should an infatuation so treasonable beget in them insurgent principles of resistance, I hope and trust that our troops on the spot may be permitted to aid the officers of His Catholic Majesty to reduce them to reason and submission to the royal order of their King; that they may be delivered up to be brought to condign punishment, and that their treasonable project may be nipped in the bud.

I had for myself, however, supposed that from the time of the address of the French Prefect he had been in possession of and in the discharge of the civil functions of the government, and that the Spanish troops in the forts held the possession of them to preserve and protect them till the French troops should arrive under his direction; but I never did suppose that after the First Consul consented to sell that country, that he would send over his troops to take possession of it, but to surrender it; nor did I ever entertain a single doubt that after the King of Spain had sold that property to France and secured and held the property in exchange of which his royal order for the delivery of the possession was full proof, that if it was not in his power to induce the First Consul to keep it, that he would commit that integrity hitherto unsullied, by any measure violative of the faith of his own treaty.

Mr. PICKERING said, if he entertained the opinion just now expressed by the gentleman from Delaware, (Mr. WELLS,) of the binding force of all treaties made by the President and Senate, he should think it to be his duty to vote for the bill now under consideration. "The Constitution, and the laws of the United States made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land."—But a treaty to be thus obligatory, must not contravene the Constitution, nor contain any stipulations which transcend the powers therein given to the President and Senate. The treaty between the United States and the French Republic, professing to cede Louisiana to the United States, appeared to him to contain such an exceptionable stipulation—a stipulation which cannot be executed by any authority now existing. It is declared in the third article, that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States." But neither the President and Senate, nor the President and Congress, are competent to such an act of incorporation. He believed that our Administration admitted that this incorporation could not be effected without an amendment of the Constitution; and he conceived that this necessary amendment could not be made in the ordinary mode by the concurrence of two-thirds of both Houses of Congress, and the ratification by the Legislatures of three-fourths of the several States. He believed the assent of each individual State to be necessary for the admission of a foreign country as an associate in the Union: in like manner as in a commercial house, the consent of each member would be necessary to admit a new partner into the company; and whether the assent of every State to such an indispensable amendment were attainable, was uncertain. But the articles of a treaty were necessarily related to each other; the stipulation in one article being the consideration for another. If, therefore, in respect to the Louisiana Treaty, the United States fail to execute, and within a reasonable time, the engagement in the third article, (to incorporate that Territory into the Union,) the French Government will have a right to declare the whole treaty void. We must then abandon the country, or go to war to maintain our possession. But it was to prevent war that the pacific measures of the last winter were adopted—they were to "lay the foundation for future peace."

Mr. P. had never doubted the right of the United States to acquire new territory, either by purchase or by conquest, and to govern the territory so acquired as a dependent province; and in this way might Louisiana have become a territory of the United States, and have received a form of government infinitely preferable to that to which its inhabitants are now subject.

There was another serious objection to this treaty. It purported to contain a cession of Louisiana to the United States. The first article had often been read and commented upon; yet he begged leave to refer to it once more. It was therein stated, by the third article of the Treaty of St. Ildefonso, made the first of October, 1800, that the King of Spain promised and engaged, on certain conditions, "to cede to the French Republic the 'colony or province of Louisiana, with the same 'extent that it then had in the hands of Spain and 'that it had when France possessed it, and such as 'it should be after the treaties subsequently en-'tered into between Spain and other States." Now, under this mere conditional promise of Spain, the First Consul (declaring that the French Republic had thereby an incontestable title to the country) undertakes to cede Louisiana to the United States; and how does he cede it? "In 'the same manner as it had been acquired by the 'French Republic, in virtue of the above-men-'tioned treaty with Spain." That is, by that treaty, France acquired a right to demand an actual cession of the territory, provided she fulfilled all the conditions on which Spain promised to cede. But we know Spain declares that those conditions have not been fully performed; and, by her remonstrances, warns the United States not to touch Louisiana. Now we, standing (as some gentlemen have expressed themselves) in the shoes of France, can have only the same right relative to the subject in question. We can ask of Spain an actual cession, or a confirmation of the claim we have purchased of the French Republic, provided we will and can fulfil the conditions of the Treaty of St. Ildefonso; and what are these conditions? We cannot tell. Mr. P. believed that our Executive knew not what they were; and he believed, too, that even our Envoys, who negotiated the treaty for Louisiana, were alike uninformed. He believed that they never saw (for they had not intimated that they had ever seen) any other part of the Treaty of St. Ildefonso, than what is recited in the first article of our treaty with France; and this defect has not been supplied by any guaranty of the territory on the part of France. She had not stipulated, nor is under any obligation, to procure the assent of Spain, as a confirmation of the cession to the United States.

Such is the nature of our title to Louisiana. We had, indeed, been told of a publication, long since made at New Orleans, of the King of Spain's orders to his officers there, to deliver possession of the province to the French Republic. Mr. P. would also take the liberty of mentioning what he had heard, and from good authority: that the Prince of Peace, more than a year subsequent to the Treaty of St. Ildefonso, declared that the King of Spain (his master) had not ceded Louisiana to France.

Another honorable gentleman has entertained us with an account of the animating address of the French Prefect to the inhabitants of Louisiana, the largest portion of whom are French; and of the cordiality with which they received, and echoed, in their answer, the sentiments of the Prefect. But what were the feelings and conduct of the Spanish officers on seeing these French proceedings? Mr. P. had heard from an honorable member in his eye, (Mr. DAYTON,) that they sent for the printer, and forbade all further promulgation of the address and answer, on pain of his being sent to the dungeon, or to the mines, for life. Thus tenacious was Spain of her right to Louisiana, and thus severe in her prohibition of whatever might disparage her title.

But gentlemen rely on the royal order, now in the hands of the French agent here, for the delivery of the possession of Louisiana to the French Republic. They seem to consider it as full evidence of the cession of that territory to France; and as supplying all apparent defect of title under the Treaty of St. Ildefonso. That order (said Mr. P.) is a year old. Before that time France had concluded a peace with Great Britain; and whatever the French Government should demand of Spain would be given.

It is likewise supposed that the Spanish officers in Louisiana will not dare to refuse obedience to that order; and one gentleman has expressed his opinion, in case such refusal should happen, that the American troops, whom the President should send thither, would be justified in compelling them to obey. But what if a subsequent royal order had been issued requiring those officers not

to deliver up Louisiana to France, or to the United States? We have some reason to think that such is the fact; and resistance, he presumed, was apprehended. Why, else, all this parade of war? Why had the President been authorized to employ the Army and Navy of the United States, and to call forth any portion of eighty thousand militia? Honorable gentlemen, he knew, held cheap the power of Spain; they have spoken plainly their opinion of her feebleness and inability to withstand the force of the United States: and have seemed to rest the security of our title (as he remarked on a former occasion) rather on that feebleness and inability, than on the validity of the cession from the French Republic; and one honorable gentleman has said, that Spain will be left alone; that the French Republic is bound in honor not to give her any aid. The French Republic bound in honor! For ten or fifteen years past, we had known too well what were the honor and the justice of the Government of that Republic. Perhaps Spain may not resist at the present moment. She may wait until France gets the war with Britain off her hands. Then pretences will be easily found to reclaim Louisiana; and Spain, once engaged to wrest it from us by force, will receive from France, her ally, all necessary aid. Mr. P. believed that this whole transaction had purposely been wrapt in obscurity by the French Government. The boundary of Louisiana, for instance, on the side of Florida was, in the treaty, really unintelligible; and yet nothing was more easy to define. The French Government, however, would find no difficulty in the construction. An honorable member from New Jersey (Mr. DAYTON) had informed us, that the French Prefect, at New Orleans, told him, that as soon as General Victor should arrive with the French troops he should extend Louisiana far into West Florida.

Mr. P. said, that whatever way he turned his eyes, war was in prospect, as the final result of our pacific measures—measures deemed so wise as to have been ascribed to divine inspiration! He wished they might merit that high character; but feared, in the end, they would bear the stamp of indiscretion, perhaps of folly.

Mr. DAYTON.—As the honorable gentleman from Massachusetts has quoted what was suggested by me in a former debate, to deduce from it an inference which the information I gave can by no means warrant, I must be allowed the liberty of correcting him. When I said that there existed an essential difference between the French and Spanish officers at New Orleans as to the real boundaries of the province of Louisiana, I did not mean to insinuate that this disagreement extended so far as an opposition to the French taking possession. It was a question of limits only, varying, however, so much in extent as would have produced a serious altercation between those two countries, although closely allied.

The Spanish Governor had taken it upon himself to proclaim that the province lately ceded and about to be given over to France would be confined on the east of the Mississippi to the river Iberville, and the lakes Maurepas and Pontchartrain, or in other words to the island of New Orleans; but the French Prefect on the contrary declared that he neither had nor would give his assent to the establishment of those limits, which would be regarded no longer than until the arrival of their troops.

The same gentleman (Mr. PICKERING) has said that the advocates of this measure seem to rely much more upon their power than upon their right, and in this assertion I am compelled to say that he has done us very great injustice. The title of the French is founded upon the often quoted treaty of St. Ildefonso, confirmed by the royal order signed by the King of Spain himself, so lately as the 15th October, 1802, directing the delivery of the "colony of Louisiana and its dependencies as well as of the city and island of New Orleans, without any exception, to General Victor, or other officer duly authorized by that Republic to take charge of the said delivery."

When at New Orleans in July last, I obtained from the best source a translated copy of that royal order, and can aver that it absolutely directs possession to be given without reservation or condition. It is not, and cannot be, denied that the lately ratified treaty of Paris transfers to us completely all the title acquired by France in virtue of the first treaty and order alluded to. We have, then, most incontestably the right of possession, and our object now is, by passing the bill before us to obtain the possession itself, which we can certainly never effect, consistently with good faith, if the reasonings and objections of my honorable friends from Delaware and Massachusetts should prevail. We are asked by the same gentlemen what will be the consequence if it shall appear that the royal order has been revoked? I answer, first, that it is not in the least degree probable, for neither of them pretend to have heard of such revocation, nor is it intimated in the confidential communications before the Senate. But admitting for argument's sake that it were revoked, of what avail could it be against a third party, who had in the meantime become a *bona fide* purchaser? Shall one nation give to another a written, formal evidence of transfer of territory, and revoke it at pleasure, especially after a third shall have been tempted and induced by that very evidence of title to contract for the purchase of it. Would an act so fraudulent be countenanced between individuals in a court of equity? Could it be justified between nations in a high court of honor? The honorable gentleman from Delaware has taken a more delicate ground of objection. He has insinuated that there exists in the knowledge of the Senate, the evidence of a serious opposition to our possessing that country, which if known to the other branch of the Legislature would probably have defeated this bill in its progress there. Allusions artfully made in this manner to documents communicated under the injunction of secrecy, place us in an embarrassing situation. Forbidden by our rules to expose the papers referred to, even in argument, we can only declare what impressions they have

made upon ourselves. Every Senator must understand him, every one must have heard and read, and weighed deliberately the contents of those documents, and, for myself, I am free to avow my belief that, if known to every member of the other House, they would have had no effect against this bill, but would rather have quickened and insured its progress, for such is the influence they have upon me.

The same gentleman goes on to say, that our own Government undoubtedly expects to meet with opposition, and to be compelled to use violence, instead of receiving peaceable possession, or why should it send there so imposing a force. From what source that honorable gentleman has acquired a knowledge of the number of troops ordered down the river, he does not tell us, nor indeed how many he means when he calls the force an imposing one. If in times of peace and profound tranquillity the Spaniards have found it prudent to keep there constantly at least four or five hundred troops, could we be justified in sending no greater number when so important an act is about to be performed as the transfer of an extensive territory with the posts connected with it, and this too before we can have had an opportunity of sounding the dispositions of the inhabitants and of the Indians in the vicinity, in order to judge what effect the change will have upon them? These are wise precautions, which our Government, I presume, would take, even if they could be most certain that the delivery would be voluntary and peaceable on the part of Spain, and therefore afford no color for the presumption that they expect or intend to use violence. The bill before us is drawn up in terms which are at the same time consistent with our late treaty, and perfectly well calculated to secure our interests, for it does not authorize payment of the stocks until after complete possession of the territory. Timely arrangements, which a law only can warrant, ought to be made for preparing the forms of certificates and for creating the stock, that everything depending on us may be ready; and where can the discretionary power of transferring it in payment be so well vested as with the President, who will certainly be the first to know when we have received the valuable consideration for it, viz: actual possession? When this event happens, Congress, which the honorable gentleman thinks should be the only judge and sole depositary of this power, may possibly not be in session, and in this case, upon his plan, our plighted faith would be violated, our acquisition of the country jeopardized, and our right to it lost. If we thus seasonably take all the preliminary steps for complying with our stipulations, and obstacles should nevertheless exist to the attainment of our object, it will be seen and known that they are not of our creation, but that we stand ready to fulfil all the engagements on our part, as I trust we shall be to compel it, if there be need, on the part of others.

Mr. TAYLOR.—There have been, Mr. President, two objections made against the treaty; one that the United States cannot constitutionally acquire territory; the other, that the treaty stipulates for the admission of a new State into the Union; a stipulation which the treaty-making power is unable to comply with. To these objections I shall endeavor to give answers not heretofore urged.

Before a confederation, each State in the Union possessed a right, as attached to sovereignty, of acquiring territory, by war, purchase, or treaty. This right must be either still possessed, or forbidden both to each State and to the General Government, or transferred to the General Government. It is not possessed by the States separately, because war and compacts with foreign Powers and with each other are prohibited to a separate State; and no other means of acquiring territory exist. By depriving every State of the means of exercising the right of acquiring territory, the Constitution has deprived each separate State of the right itself. Neither the means nor the right of acquiring territory are forbidden to the United States; on the contrary, in the fourth article of the Constitution, Congress is empowered "to dispose of and regulate the territory belonging to the United States." This recognises the right of the United States to hold territory. The means of acquiring territory consist of war and compact; both are expressly surrendered to Congress and forbidden to the several States; and no right in a separate State to hold territory without its limits is recognised by the Constitution, nor any mode of effecting it possible, consistent with it. The means of acquiring and the right of holding territory, being both given to the United States, and prohibited to each State, it follows that these attributes of sovereignty once held by each State are thus transferred to the United States; and that, if the means of acquiring and the right of holding, are equivalent to the right of acquiring territory, then this right merged from the separate States to the United States, as indispensably annexed to the treaty-making power, and the power of making war; or, indeed, is literally given to the General Government by the Constitution.

Having proved, sir, that the United States may constitutionally acquire, hold, dispose of, and regulate territory, the other objection to be considered is, whether the third article of the treaty does stipulate that Louisiana shall be erected into a State? It is conceded that the treaty-making power cannot, by treaty, erect a new State, however they may stipulate for it. I premise, that in the construction of this article, it is proper to recollect that the negotiators must be supposed to have understood our Constitution. It became very particularly their duty to do so, because, in this article itself, they have recited "the principles of the Constitution" as their guide. Hence, it is obvious, they did not intend to infringe, but to adhere to those principles; and therefore, if the article will admit of a construction consistent with this presumable knowledge and intention of the negotiators, the probability of its accuracy will be greater than one formed in a supposition that the negotiators were either ignorant of that which they ought to have known, or that they fraudu-

lently professed a purpose which they really intended to defeat. The following construction is reconcileable with what the negotiators ought to have known, and with what they professed to intend.

Recollect, sir, that it has been proved that the United States may acquire territory. Territory, so acquired, becomes from the acquisition itself a portion of the territories of the United States, or may be united with their territories without being erected into a State. An union of territory is one thing; of States, another. Both are exemplified by an actual existence. The United States possess territory, comprised in the union of territory, and not in the union of States. Congress is empowered to regulate or dispose of territorial sections of the Union, and have exercised the power; but it is not empowered to regulate or dispose of State sections of the Union. The citizens of these territorial sections are citizens of the United Ssates, and they have all the rights of citizens of the United States; but such rights do not include those political rights arising from State compacts or governments, which are dissimilar in different States. Supposing the General Government or treaty-making power have no right to add or unite States and State citizens to the Union, yet they have a power of adding or uniting to it territory and territorial citizens of the United States.

The territory is ceded by the first article of the treaty. It will no longer be denied that the United States may constitutionally acquire territory. The third article declares that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States." And these words are said to require the territory to be erected into a State. This they do not express, and the words are literally satisfied by incorporating them into the Union as a territory, and not as a State. The Constitution recognises and the practice warrants an incorporation of a Territory and its inhabitants into the Union, without admitting either as a State. And this construction of the first member of the article is necessary to shield its two other members from a charge of surplusage, and even absurdity. For if the words "the inhabitants of the ceded territory shall be incorporated in the Union of the United States" intended that Louisiana and its inhabitants should become a State in the Union of States, there existed no reason for proceeding to stipulate that these same inhabitants should be made "citizens as soon as possible, according to the principles of the Federal Constitution." Their admission into the Union of States would have made them citizens of the United States. Is it not then absurd to suppose that the first member of this third article, intended to admit Louisiana into the Union as a State, which would instantly entitle the inhabitants to the benefit of the article of the Constitution, declaring, that "the citizens of each State shall be entitled to all the privileges and immunities of citizens in the federal States," and yet to have gone on to stipulate for citizenship, under the limitation "as soon as possible, according to the principles of the Federal Constitution" after it had been bestowed without limitation? Again; the concluding member of the article is to bestow "protection in the mean time;" incorporating this stipulation, and the stipulation for citizenship, with the construction which accuses the treaty of unconstitutionality, the article altogether must be understood thus, "the inhabitants of the ceded territory shall be 'taken into the Union of States, which will instantly give them all the rights of citizenship, after 'which they shall be made citizens as soon as possible; and after they are taken into the Union 'of States, they shall be protected in the interim 'between becoming a State in the Union, and being made citizens, in their liberty, property and 'religion."

By supposing the first member of the article to require that the inhabitants and their territory shall be incorporated in the Union, in the known and recognised political character of a Territory, these inconsistencies are avoided, and the article reconciled to the Constitution, as understood by the opposers of the bill; the stipulation also for citizenship "as soon as possible" according to the principles of the Constitution, and the delay meditated by these words, and the subsequent words "in the mean time" so utterly inconsistent with the instantaneous citizenship, which would follow an admission into the Union as a State, are both fully explained. Being incorporated in the Union as a Territory, and not as a State, a stipulation for citizenship became necessary; whereas it would have been unnecessary had the inhabitants been incorporated as a State, and not as a Territory. And as they were not to be invested with citizenship by becoming a State, the delay which would occur between the incorporation of the Territory into the Union and the arrival of the inhabitants to citizenship according to the principles of the Constitution, under some uniform rule of naturalization, exhibited an interim which demanded the concluding stipulation, for "protection in the meantime for liberty, property, and religion." As a State of the Union, they would not have needed a stipulation for the safety of their "liberty, property and religion;" as a Territory, this stipulation would govern and restrain the undefined power of Congress to make "rules and regulations for Territories."

If my construction is correct all objections to the treaty and to this bill for fulfilling it, on the ground of unconstitutionality, are unfounded. The three distinct members of the third article will be each separately and distinctly complied with; first, by an incorporation of the territory and its inhabitants in the Union, as a Territory. Secondly, by admitting them to all the rights of citizens of the United States, under some uniform rule of naturalization; and, thirdly, by protecting their liberty, property, and religion, by "rules and regulations," to be, "in the meantime," enacted by Congress, under a Constitutional power extending to Territories, but not to States.

To prove the treaty unconstitutional, a member from Massachusetts, (Mr. PICKERING,) has quoted from the sixth article of the Constitution these words: "This Constitution, and the laws of

'the United States which shall be made in pursuance thereof, and all treaties made, or which 'shall be made, under the authority of the United 'States, shall be the supreme law of the land;" and he has reasoned upon the ground, that the words "in pursuance thereof," referred to treaties as well as to laws. But the difference between the phraseology in relation to laws and to treaties, is plain and remarkable; laws were to be made "in pursuance of the Constitution;" treaties "under the authority of the United States." This difference, probably, arises from the following consideration. The objects of the Legislative power could be foreseen and defined; therefore laws are limited to be made "in pursuance of" the definitions of the objects of Legislative power in the Constitution. But the objects of the treaty-making power could not be foreseen, and are not defined; by confining the treaty-making power to a definition of its objects in the Constitution, it can never be exercised if no such definition exists; and by misapplying to the treaty-making power, the definitions of Legislative power, every right possessed by the latter would be opened to the former. But if the words, "under the authority of the United States," are considered as having been applied to treaties, in place of these—"in pursuance of the Constitution," which are applied to laws; because the objects of treaties are not defined; then the treaty-making power retains all the political attributes belonging to it, not inconsistent with the principle of agency or subordination, interwoven with our policy in all its parts. Among these, is the right or attribute of acquiring territory. And it was probably the absence of a definition as to the objects of the treaty-making power, which suggested the precaution of checking it by two-thirds of the Senate; thus subjecting it, in this body, to the same restraint imposed upon amendments to the Constitution. Whether these observations, in relation to the quotation upon which the gentleman from Massachusetts relied, do or do not prove that the objects of the treaty-making power are undefined by the Constitution, and that it is incorrect to condemn this treaty by applying to it definitions made for Legislative power, is immaterial, if the construction I have given of the third article of the treaty is correct; because that construction proves its constitutionality upon the principles contended for by the gentleman himself; and if so, his reasoning, founded upon a construction of the Constitution forbidding the erection of new States to the treaty-making power, whether right or wrong, vanishes into smoke, as the third article requires no such thing.

Mr. BUTLER next delivered his sentiments in favor of the bill, as well as generally in favor of the treaty.

Mr. TRACY.—Mr. President: I shall vote against this bill; and will give some of the reasons which govern my vote in this case.

It is well known that this bill is introduced to carry into effect the treaty between the United States and France, which has been lately ratified. If that treaty be an unconstitutional compact, such a one as the President and Senate had no rightful authority to make, the conclusion is easy, that it creates no obligation on any branch or member of the Government to vote for this bill, or any other, which is calculated to carry into effect such unconstitutional compact.

The third and seventh articles of the treaty are, in my opinion, unconstitutional.

The third article is in the following words:

"The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and, in the meantime, they shall be maintained in the free enjoyment of their liberty, property, and the religion they profess."

The obvious meaning of this article is, that the inhabitants of Louisiana are incorporated, by it, into the Union, upon the same footing that the Territorial Governments are, and, like them, the Territory, when the population is sufficiently numerous, must be admitted as a State, with every right of any other State.

Have the President and Senate a Constitutional right to do all this?

When we advert to the Constitution, we shall find that the President, by and with the advice and consent of the Senate, may make treaties. Now, say gentlemen, this power is undefined, and one gentleman says, it is unlimited.

True, there is no definition in words of the extent and nature of the treaty-making power. Two modes of ascertaining its extent have been mentioned: one is, by ascertaining the extent of the same power among the monarchs of Europe, and making that the standard of the treaty-making power here; and the other is, to limit the power of the President and Senate, in respect to treaties, by the Constitution and the nature and principles of our Government.

Upon the first criterion, it is obvious that we cannot obtain any satisfactory definition of the treaty-making power, as applicable to our Government.

It is well known that, in Europe, any part of a country may be ceded by treaty, and the transfer is considered valid, without the consent of the inhabitants of the part thus transferred. Will it be said that the President and Senate can transfer Connecticut by treaty to France or to any other country? I know that a nation may be in war, and reduced to such necessitous circumstances, as that giving up a part or half the territory, to save the remainder, may be inevitable: the United States may be in this condition; but necessity knows no law nor constitution either; such a case might be the result of extreme necessity, but it would never make it constitutional; it is a state of things which cannot, in its own nature, be governed by law or constitution. But if the President and Senate should, in ordinary peaceable times, transfer Connecticut, against her consent, would the Government be bound to make laws to carry such a treaty into effect? Such a transfer of territory can certainly be made by the

monarchs in Europe, under the head of the treaty-making power. I am convinced, sir, that only a cursory view of this subject will be sufficient to show every reasonable man that the treaty-making power in the United States cannot be the same that it is in the European Governments; and further, that the only method to obtain a sound construction of that power, as part of our Constitution, is by examining it with a view to the Constitution, and the nature and principles of our Government.

A number of States, or independent sovereignties, entered into a voluntary association, or, to familiarize the subject, it may be called a partnership, and the Constitution was agreed to as the measure of power delegated by them to the Federal Government, reserving to themselves every other power not by them delegated. In this Constitution they have restricted the powers of Congress, or the Federal Government, in a number of instances. In all these, I think the treaty-making power is clearly restricted, as much as if it had been mentioned in the restriction. For instance, Congress can lay no tax or duty on articles exported from any State. If this restriction should be violated by treaty, could it be thought valid? Congress can give no preference by any regulations of commerce or revenue to the ports of one State over those of another. Can this preference be given by treaty, and the preference be Constitutional? If the treaty-making power is so extensive as not to be limited by the Constitution, we must submit to the most extraordinary condition, of seeing the parts of a Government, when acting separately, possessing more power than the whole when acting together. And this further absurdity would follow: Congress itself would be released from an equivocal restriction, contained in the Constitution in the cases mentioned; for if a treaty, containing stipulations to tax exports, or giving commercial preference to one port over another, be Constitutional, it is, of course, binding on every branch of the Government, and we should see the Government not only released from a Constitutional restriction, by such a treaty, but absolutely bound by it to act in open violation of the Constitution.

Many instances could be given, but I cannot conceive, that any sober opinion can be entertained, that the treaty-making power is not limited by the restrictions contained in the Constitution. To give a precise definition, and mark out unerring limits to the treaty-making power, by the nature and principles of our Government, is not an easy task, neither is it requisite for the purpose of obtaining clear ideas upon the point now before us.

The object of the original sovereignties, or partners to the compact, is obvious, from the Constitution itself; they united as equals in power, to promote the political welfare of all. Certain powers they gave: but no one partner can be supposed stupid enough to give power to transfer itself, without and against its consent, to the Government of Algiers, or any other despotic Government.

It is agreed, by the friends to the treaty, that the President and Senate cannot transfer a State. Let us examine the power of introducing a State. Suppose Louisiana contain ten millions of inhabitants; or, for the sake of argument, let it be supposed that we had a President inclined to monarchical principles, and he lived in the northern part of the Union, say in Connecticut or Massachusetts, and that two-thirds of the Senate were with him in sentiment, and that the four northern provinces of Great Britain contained ten millions of inhabitants, and were all determined monarchists, would the parties of the Union say it was competent and Constitutional for the President and Senate to introduce these ten millions of monarchists, who could at once out vote us all; and even give fifteen millions of dollars for the benefit of having them?

The principles of our Government, the original ideas and rights of the partners to the compact, forbid such a measure; and without the consent of all the partners, no such thing can be done.

The principle of admission, in the case of Louisiana, is the same as if it contained ten millions of inhabitants; and the principles of these people are probably as hostile to our Government, in its true construction, as they can be, and the relative strength which this admission gives to a Southern and Western interest, is contradictory to the principles of our original Union, as any can be, however strongly stated.

The paragraph in the Constitution, which says that "new States may be admitted by Congress into this Union," has been quoted to justify this treaty. To this, two answers may be given, either of which are conclusive in my favor. First, if Congress have the power collectively of admitting Louisiana, it cannot be vested in the President and Senate alone. Second, Congress have no power to admit new foreign States into the Union, without the consent of the old partners. The article of the Constitution, if any person will take the trouble to examine it, refers to domestic States only, and not at all to foreign States; and it is unreasonable to suppose that Congress should, by a majority only, admit new foreign States, and swallow up, by it, the old partners, when two-thirds of all the members are made requisite for the least alteration in the Constitution. The words of the Constitution are completely satisfied, by a construction which shall include only the admission of domestic States, who were all parties to the Revolutionery war, and to the compact; and the spirit of the association seems to embrace no other. But I repeat it, if the Congress collectively has this power, the President and Senate cannot, of course, have it exclusively.

I think, sir, that, from a fair construction of the Constitution, and an impartial view of the nature and principles of our association, the President and Senate have not the power of thus obtruding upon us Louisiana.

But it is said, that this third article of the treaty only promises an introduction of the inhabitants of Louisiana into this Union, as soon as the principles of the Federal Government will permit; and that, if it is unconstitutional, it is void; and, in that case, we ought to carry into effect the Constitutional part.

To this, I answer, if it is a promise only to admit into the Union, and this promise is unconstitutional, while I agree it is void, it must be agreed on the other side that it makes the whole treaty void; and that one article in a treaty being void, either from an unconstitutional or any other impossibility to carry it into effect, puts it in the power of either party to stay a fulfilment of any and every part of it. No principle in the law of nations respecting the construction of treaties, is better settled, than that every article of a treaty is a consideration for every other article: and if any one article shall be expunged, or its performance becomes impossible, the other party is released from a performance. And my opinion is, that a new negotiation upon the subject of this very article, and an agreement, on the side of the French Government, to release us from a compliance with this article, can alone render us safe in paying the money. After we have paid the money—the $15,000,000—and have fulfilled with ever so much conscientious punctuality every other part of the treaty, yet, if we refuse an admission of these people into our Union, the French may, and probably will, say that, to give the people of Louisiana the full and complete rights of citizens of the United States, was the great and leading motive in ceding to us the territory, and if we deny them that, the treaty is void, and they will take them back again, and give them the enjoyment of real liberty under the First Consul. They will be justified by the law of nations if they do so; but how shall we stand justified if we pay the money, which, with the interest, amounts to twenty-six or twenty-seven millions of dollars, and finally, get nothing for it; unless we call a breach of faith, and war with France, an acquisition?

The seventh article admits for twelve years the ships of France and Spain into the ceded territory, free of foreign duty—this is giving a commercial preference to those ports over the other ports of the United States; because, it is well known that a duty of forty-four cents on tonnage, and ten per cent. on duties, are paid by all foreign ships or vessels in all the ports of the United States. If it be said we must repeal those laws, and then the preference will cease, the answer is, that this seventh article gives the exclusive right of entering the ports of Louisiana to the ships of France and Spain, and if our discriminating duties were repealed this day, the preference would be given to the ports of the United States against those of Louisiana, so that the preference, by any regulation of commerce or revenue, which the Constitution expressly prohibits from being given to the ports of one State over those of another, would be given by this treaty, in violation of the Constitution. I acknowledge, if Louisiana is not admitted into the Union, and that if there is no promise to admit her, then this part of our argument will not apply; but, in declaring these to be facts, my opponents are driven to acknowledge that the third article of this treaty is void, which answers every purpose which I wish to establish, that this treaty is unconstitutional and void, and that I have, consequently, a right to withhold my vote from any bill which shall be introduced to carry it into effect. I acknowledge, sir, that my opinion ever has been, and still is, that when a treaty is ratified by the constituted authorities, and is a Constitutional treaty, every member of the community is bound by it, as a law of the land; but not so by a treaty which is unconstitutional. The terms of this treaty may be extravagant and unwise, yet, in my legislative capacity, that can form no excuse for an opposition; we may have no title, we may have given an enormous sum, we may have made a silly attempt to destroy the discriminating duties, yet, if the treaty be not unconstitutional, every member of the Government is bound to carry it into effect.

I shall be asked, sir, what can be done? To this question I have two answers: one is, that nothing unconstitutional can or ought to be done; and if it be ever so desirable that we acquire foreign States, and the navigation of the Mississippi, &c., no excuse can be formed for violating the Constitution; and if all those desirable effects cannot take place without violating it, they must be given up. But another and more satisfactory answer can be given. I have no doubt but we can obtain territory either by conquest or compact, and hold it, even all Louisiana, and a thousand times more, if you please, without violating the Constitution. We can hold territory; but to admit the inhabitants into the Union, to make citizens of them, and States, by treaty, we cannot constitutionally do; and no subsequent act of legislation, or even ordinary amendment to our Constitution, can legalize such measures. If done at all, they must be done by universal consent of all the States or partners to our political association. And this universal consent I am positive can never be obtained to such a pernicious measure as the admission of Louisiana, of a world, and such a world, into our Union. This would be absorbing the Northern States, and rendering them as insignificant in the Union as they ought to be, if, by their own consent, the measure should be adopted.

Mr. BRECKENRIDGE observed, that he little expected a proceeding so much out of order would have been attempted, as a re-discussion of the merits of the treaty on the passage of this bill; but as the gentlemen in the opposition had urged it, he would, exhausted as the subject was, claim the indulgence of the Senate in replying to some of their remarks.

No gentleman, continued he, has yet ventured to deny, that it is incumbent on the United States to secure to the citizens of the western waters, the uninterrupted use of the Mississippi. Under this impression of duty, what has been the conduct of the General Government, and particularly of the gentlemen now in the opposition, for the last eight months? When the right of deposit was violated by a Spanish officer without

authority from his Government, these gentlemen considered our national honor so deeply implicated, and the rights of the western people so wantonly violated, that no atonement or redress was admissible, except through the medium of the bayonet. Negotiation was scouted at. It was deemed pusillanimous, and was said to exhibit a want of fellow-feeling for the Western people, and a disregard to their essential rights. Fortunately for their country, the counsel of these gentlemen was rejected, and their war measures negatived. The so much scouted process of negotiation was, however, persisted in, and instead of restoring the right of deposit, and securing more effectually for the future our right to navigate the Mississippi, the Mississippi itself was acquired, and everything which appertained to it. I did suppose that those gentlemen, who, at the last session so strongly urged war measures for the attainment of this object, upon an avowal that it was too important to trust to the tardy and less effectual process of negotiation, would have stood foremost in carrying the treaty into effect, and that the peaceful mode by which it was acquired would not lessen with them the importance of the acquisition. But it seems to me, sir, that the opinions of a certain portion of the United States with respect to this ill-fated Mississippi, have varied as often as the fashions. [Here Mr. B. made some remarks on the attempts which were made in the old Congress, and which had nearly proved successful, to cede this river to Spain for twenty-five years.] But, I trust, continued he, these opinions, schemes, and projects will forever be silenced and crushed by the vote which we are this evening about to pass.

Permit me to examine some of the principal reasons which are deemed so powerful by gentlemen as to induce them to vote for the destruction of this treaty. Unfortunately for the gentlemen, no two of them can agree on the same set of objections; and what is still more unfortunate, I believe there is no two of them concur in any one objection. In one thing only they seem to agree, and that is to vote against the bill. An honorable gentleman from Delaware (Mr WHITE) considers the price to be enormous. An honorable gentleman from Connecticut, who has just sat down, (Mr. TRACY) says he has no objection whatever to the price; it is, he supposes, not too much. An honorable gentleman from Massachusetts (Mr. PICKERING) says that France acquired no title from Spain, and therefore our title is bad. The same gentleman from Connecticut (Mr. TRACY) says, he has no objection to the title of France; he thinks it a good one. The gentleman from Massachusetts (Mr. PICKERING) contends that the United States cannot under the Constitution acquire foreign territory. The gentleman from Connecticut is of a different opinion, and has no doubt but that the United States can acquire and hold foreign territory; but that Congress alone have the power of incorporating that territory into the Union. Of what weight, therefore, ought all their lesser objections be entitled to, when they are at war among themselves on the greater one?

As to the enormity of price, I would ask that gentleman, would his mode of acquiring it through fifty thousand men have cost nothing? Is he so confident of this as to be able to pronounce positively that the price is enormous? Does he make no calculation on the hazard attending this conflict? Is he sure the God of battles was enlisted on his side? Were France and Spain, under the auspices of Bonaparte, contemptible adversaries? Good as the cause was, and great as my confidence is in the courage of my countrymen, sure I am, that I shall never regret, as the gentleman seems to do, that the experiment was not made. I am not in the habit Mr. President, on this floor, of panegyrizing those who administer the Government of this country. Their good works are their best panegyrists, and of these my fellow-citizens are as competent to judge as I am; but if my opinion were of any consequence, I should be free to declare, that this transaction from its commencement to its close, not only as to the mode in which it was pursued, but as to the object achieved, is one of the most splendid which the annals of any nation can produce. To acquire an empire of perhaps half the extent of the one we possessed, from the most powerful and warlike nation on earth, without bloodshed, without the oppression of a single individual, without in the least embarrassing the ordinary operations of your finances, and all this through the peaceful forms of negotiation, and in despite too of the opposition of a considerable portion of the community, is an achievement of which the archives of the predecessors, at least, of those now in office, cannot furnish a parallel.

The same gentleman has told us, that this acquisition will, from its extent, soon prove destructive to the Confederacy.

This, continued Mr. B., is an old and hackneyed doctrine; that a Republic ought not to be too extensive. But the gentleman has assumed two facts, and then reasoned from them. First, that the extent is too great; and secondly, that the country will be soon populated. I would ask, sir, what is his standard extent for a Republic? How does he come at that standard? Our boundary is already extensive. Would his standard extent be violated by including the island of Orleans and the Floridas? I presume not, as all parties seem to think their acquisition, in part or in whole, essential. Why not then acquire territory on the west, as well as on the east side of the Mississippi? Is the Goddess of Liberty restrained by water courses? Is she governed by geographical limits? Is her dominion on this continent confined to the east side of the Mississippi? So far from believing in the doctrine that a Republic ought to be confined within narrow limits, I believe, on the contrary, that the more extensive its dominion the more safe and more durable it will be. In proportion to the number of hands you intrust the precious blessings of a free government to, in the same proportion do you multiply the chances for their preservation. I entertain, therefore, no fears for the Confederacy on account of its extent. The American

people too well know the art of governing and of being governed, to become the victims of party factions or of domestic tyranny. They not only understand the true theory of a free government, but as well understand a much rarer thing, the true art of practising it. Had a great nation beyond the Atlantic, so often alluded to by some gentlemen on this floor, understood the practice but half as well as she did the theory, a very different result would have been produced by her revolution. I believe, sir, there are a set of general causes which operate in every Government, and either exalt and support it, or else involve it in ruin. If any particular cause has destroyed the Government of a country, some general cause has existed and produced the ruin. Whenever that general cause shall exist, it matters little whether the extent of the Republic be great or small, for its destruction is equally inevitable.

But is the immediate population of that country, even admitting its extent were too great, a necessary consequence? Cannot the General Government restrain the population within such bounds as may be judged proper? Will gentlemen say that this impracticable? Let us not then, sir, assume to ourselves so much wisdom and foresight in attempting to decide upon things which properly belong to those who are to succeed us. It is enough for us to make the acquisition: the time and manner of disposing of it, must be left to posterity. If they do not improve the means of national prosperity and greatness which we have placed in their hands, the fault or the folly will lie with them. But nothing so remote is more clear to me, than that this acquisition will tend to strengthen the Confederacy. It is evident, as this country had passed out of the hands of Spain, that whether it remained with France, or should be acquired by England, its population would have been attempted. Such is the policy of all nations but Spain. From whence would that population come? Certainly not from Europe. It would come almost exclusively from the United States. The question, then, would simply be, "Is the Confederacy more in danger from Louisiana, when colonized by American people under American jurisdiction, than when populated by Americans under the control of some foreign, powerful, and rival nation?" Or, in other words, whether it would be safer for the United States to populate this country when and how she pleased, or permit some foreign nation to do it at her expense?

The gentlemen from Delaware and Massachusetts both contend, that the third article of the treaty is unconstitutional, and our consent to its ratification a nullity, because the United States cannot acquire foreign territory. I am really at a loss how to understand gentlemen. They admit, if I do understand them, that the acquisition of a part at least of this country is essential to the United States, and must be made. That this acquisition must extend to the soil; and to use the words of their resolutions last session, "that it is not consistent with the dignity of the Union to hold a right so important by a tenure so uncertain." How, I ask, is this "certain tenure" to be acquired, but by conquest, or a purchase of the soil? Did not gentlemen intend, when they urged its seizure, that the United States, if successful, should hold it in absolute sovereignty? Were any Constitutional difficulties then in the way? And will they now be so good as to point out that part of the Constitution which authorizes us to acquire territory by conquest, but forbids us to acquire it by treaty? But if gentlemen are not satisfied with any of the expositions which have been given of the third article of the treaty, is there not one way, at least, by which this territory can be held? Cannot the Constitution be so amended, (if it should be necessary) as to embrace this territory? If the authority to acquire foreign territory be not included in the treaty-making power, it remains with the people; and in that way all the doubts and difficulties of gentlemen may be completely removed; and that, too, without affording France the smallest ground of exception to the literal execution on our part of that article of the treaty.

Suppose, continues the same gentleman, we should discover before the end of the session that France had acquired from Spain no title to Louisiana; would you not put it out of your power to withhold the stock, by passing this bill? If such a discovery had any possibility of existence, there would be some force in the objection; but with the information before us, such discovery is impossible. By the treaty, France declares and covenants that she has an "incontestable title." Spain has sanctioned that covenant by a similar declaration that the right is in France, and has parted, so far as is in her power, with the possession, by the delivery to France of the royal order for its surrender. It would, therefore, be a strange discovery now to make, that France had no title, nevertheless the declarations and the acts of Spain to the contrary. But how could we reconcile such conduct to ourselves and to the world, after what has passed? A purchase has been made from France, and no exception taken during the negotiation to her title. The treaty has been ratified and proclaimed by the President; Congress have passed an act authorizing him to take possession. He has no doubt made the arrangements, and is at this moment carrying into execution the injunction of that act; but when we are about to fulfil the only stipulation which is important to France we are called on to hold our hands, and examine if we cannot discover some flaw in the title we have purchased. Is this a candid, a becoming, an honorable course of proceeding? Would it not rather be a diplomatic and Legislative *coup de main*, to avail ourselves of the possession of this country, which France and the world might justly call perfidy? It certainly would; and the rejection or even postponement of this bill on such grounds would, in my opinion, afford France no trifling pretext for the non-execution of the treaty on her part.

It is said that there is something mysterious in the very face of the treaty, for no consideration

is stated to be given for this territory. The gentleman has certainly not examined these instruments with attention: and I shall merely refer him to the ninth article of the treaty. That article expressly refers to the conventions, and declares them to be a part of it. Those conventions, which are to be ratified jointly and at the same time with the treaty, state the consideration.

I had hoped, sir, that the gentleman from Connecticut, (Mr. TRACY,) from the trouble he was so good as to give himself yesterday in assisting to amend this bill, would have voted for it; but it seems he is constrained to vote to-day against it. He asks, if the United States have power to acquire and add new States to the Union, can they not also cede States? Can they not, for example, cede Connecticut to France? I answer they cannot; but for none of the reasons assigned by him. The Government of the United States cannot cede Connecticut, because, first, it would be annihilating part of that sovereignty of the nation which is whole and entire, and upon which the Government of the United States is dependant for its existence; and secondly, because the fourth section of the fourth article of the Constitution forbids it. But how does it follow as a consequence, that because the United States cannot cede an existing State, they cannot acquire a new State? He admits explicitly that Congress may acquire territory and hold it as a territory, but cannot incorporate it into the Union. By this construction he admits the power to acquire territory, a modification infinitely more dangerous than the unconditional admission of a new State; for by his construction, territories and citizens are considered and held as the property of Government of the United States, and may consequently be used as dangerous engines in the hands of the Government against the States and people.

Could we not, says the same gentleman, incorporate in the Union some foreign nation containing ten millions of inhabitants—Africa, for instance—and thereby destroy our Government? Certainly the thing would be possible if Congress would do it, and the people consent to it; but it is supposing so extreme a case and is so barely possible, that it does not merit serious refutation. It is also possible and equally probable that republicanism itself may one day or other become unfashionable, (for I believe it is not without its enemies,) and that the people of America may call for a King. From such hypotheses it is impossible to deduce anything for or against the construction contended for. The true construction must depend on the manifest import of the instrument and the good sense of the community.

The same gentleman, in reply to the observations which fell from the gentleman from South Carolina, as to the admission of new States, observes, that although Congress may admit new States, the President and Senate who are but a component part, cannot. Apply this doctrine to the case before us. How could Congress by any mode of legislation admit this country into the Union until it was acquired? And how can this acquisition be made except through the treaty-making power? Could the gentleman rise in his place and move for leave to bring in a bill for the purchase of Louisiana and its admission into the Union? I take it that no transaction of this or any other kind with a foreign Power can take place except through the Executive Department, and that in the form of a treaty, agreement, or convention. When the acquisition is made, Congress can then make such disposition of it as may be expedient.

In the search for objections to this treaty, the same gentleman has discovered that it is not the business of France to deliver possession of this country, because the second article of the convention says we are to take possession of it; and another gentleman on the same point observes that the possession may also be an incomplete one, for the President, for aught he knows, may consider the seizing a twig or the knocker of a door sufficient. Here is another instance of an objection which is refuted by a mere reference to the instrument itself; for the fourth and fifth articles of the treaty expressly stipulate that the Government of France shall send a commissary to Louisiana to receive it and all its dependencies from the officers of Spain, and in the name of the French Republic to transmit it to the commissary or agent of the United States. As to the other objection, which is founded on a doubt whether the President will take complete possession or not, it really exhibits the most unconstitutional distrust of the Executive Department which I have ever witnessed. If he cannot be trusted, who are to be the judges whether this delivery of possession be complete or not? Does the gentleman intend that the two Houses of Congress shall take upon themselves the management of this business? But greater trusts have been confided to former Presidents. Have gentlemen forgotten the law of 1798 or 1799, which enabled the then President not only to raise an army, but to go to war, if in *his opinion* exigencies should require it? Have they forgotten a more recent event—the resolutions proposed by themselves at the last session, authorizing the President to raise an army of 50,000 men, and take possession of this country by force? The confidence of gentlemen in the President was then abundant, indeed; but now he cannot be trusted to receive peaceable possession of that, which, but a few months ago, they were anxious to authorize him to take by conquest from both France and Spain.

Although the gentleman from Connecticut declares that he has no objection to the title of France, nor to the price agreed to be given; and although he admits the United States have power, under the Constitution, to purchase and to hold the country as territory; yet, still, he cannot vote for the measure. Has that gentleman, and those who mean to give a similar vote, well weighed the state of things which will result, in case they should be successful in their opposition?

Is not the national honor pledged to procure this right? What course do gentlemen mean to pursue to attain it? Or do they mean to abandon near a million of your Western citizens to ruin and

despair? If you reject this treaty, with what face can you open another negotiation? What President would venture another mission, or what Minister could be prevailed on to be made the instrument of another negotiation? You adopt the treaty, direct possession to be taken of the country, and then refuse to pay for it!

What palliation can we offer to our Western citizens for a conduct like this? Will they be content with the refined and metaphysical reasonings and constructions upon which gentlemen have bottomed their opposition to-day? Will it be satisfactory to them to be told that the title is good, the price low, the finances competent, and the authority, at least to purchase, Constitutional; but that the country is too extensive, and that the admission of these people to all the privileges we ourselves enjoy, is not permitted by the Constitution? It will not, sir.

Without disparagement, Mr. President, to any portion of America, I hesitate not to declare that I believe the people of the Western States are as sincerely attached to the Confederacy, and to the true principles of the Constitution, as any other quarter of the Union. A great portion of them have emigrated from the Atlantic States, and are attached to them by all those ties which so strongly bind societies together. The present generation may therefore possibly be disposed to endure much. But can you hope that those attachments, or dispositions to acquiesce in wrongs, will descend to our sons? Let no such calculations, I pray you, be made either upon us, or on those who are to succeed us. They will prove fallacious. There is a point of endurance beyond which even the advocates for passive obedience and non-resistance cannot expect men to pass. That point is at once reached the moment you solemnly declare, by your vote, that a part of your citizens shall not enjoy those natural rights and advantages of which they are unjustly deprived, and which you have not the complete power to restore to them. Then it is that gentlemen may talk of danger to the Union; then it is I shall begin to tremble for my country; and then it is, and not till then, I shall agree with gentlemen that the Confederacy is in danger.

Mr. ADAMS.—It is not my intention to trespass long upon the patience of the Senate, on a subject which has already been debated almost to satiety; but, as objections on Constitutional grounds have been raised against the bill under discussion, I wish to say a very few words in justification of the vote which I think it my duty to give.

The objections against the passage of the bill, as far as my recollection serves me, are two: the first, started by the honorable gentleman from Delaware who opened this debate; the second, urged by several of the other members who have spoken upon the question.

The gentleman from Delaware admits the necessity of making the provision for carrying into execution, on our part, the treaty which has been duly ratified by the Senate, *provided* we can obtain complete and undoubted possession of the territory ceded us by France, in that treaty. But he observes, that the term possession is indefinite; that it may mean nothing more than the delivery of a twig, or of the knob of a door. That, from sources of the authenticity of which we have no reason to doubt, we are informed that Spain is very far from acquiescing in the cession of this territory to us; that probably the Spanish officers will not deliver peaceable possession; and that we ought not to put out of our own hands the power of withholding the payment of this money, until it shall be ascertained, beyond all question, that the territory, for which it is the consideration, is in our hands. But, sir, admitting that the word possession were of itself not sufficiently precise, I think, with the gentleman last up, that the fourth and fifth articles of the treaty, read by him, render it so in this instance. The fourth, stipulating that the French commissary shall do *every act necessary* to receive the country from the Spanish officers, and transmit it to the agent of the United States—and the fifth, providing, not only that all the *military posts* shall be delivered to us; and that the troops, whether of France or Spain, shall cease to occupy them, but that those troops shall all be embarked, within three months after the ratification of the treaty. Now, when the country has been formally surrendered to us, when all the military posts are in our hands, and when all the troops, French or Spanish, have been embarked, what possible adverse possession can there be to contend against ours? Until all these conditions shall have been fulfilled on the part of France, neither the convention nor the bill before us requires the payment of money on ours; and we may safely trust the execution of the law to the discretion of the President of the United States. For, even if I could see any reason for distrusting him in the exercise of such a power, under different circumstances, which I certainly do not, still, in the present case, his own interest, and the weight of responsibility resting upon him, are ample security to us, against any undue precipitation on his part, in the payment of the money. On the other hand, I am extremely solicitous that every tittle of the engagements on our part in these conventions should be performed with the most scrupulous good faith, and I see no purpose of utility that can be answered by postponing the determination on the passage of this bill.

But it has been argued that the bill ought not to pass, because the treaty itself is an unconstitutional, or to use the words of the gentleman from Connecticut, an extra constitutional act; because it contains engagements which the powers of the Senate were not competent to ratify, the powers of Congress not competent to confirm, and, as two of the gentlemen have contended, not even the Legislatures of the number of States requisite to effect an amendment of the Constitution are adequate to sanction. It is therefore, say they, a nullity; we cannot fulfil our part of its conditions, and on our failure in the performance of any one stipulation, France may consider herself as absolved from the obligations of the whole treaty on her. I do not conceive it necessary to enter into the merits of the treaty at this time. The proper occasion for that discussion is past. But, allowing

even that this is a case for which the Constitution has not provided, it does not in my mind follow, that the treaty is a nullity, or that its obligations, either on us or on France, must necessarily be cancelled. For my own part, I am free to confess, that the third article and more especially the seventh, contain engagements placing us in a dilemma, from which I see no possible mode of extricating ourselves but by an amendment, or rather an addition to the Constitution. The gentleman from Connecticut, (Mr. TRACY,) both on a former occasion, and in this day's debate, appears to me to have shown this to demonstration. But what is this more than saying, that the President and Senate have bound the nation to engagements which require the co-operation of more extensive powers than theirs, to carry them into execution? Nothing is more common in the negotiations between nation and nation, than for a Minister to agree to and sign articles beyond the extent of his powers. This is what your Ministers, in the very case before you, have confessedly done. It is well known that their powers did not authorize them to conclude this treaty; but they acted for the benefit of their country, and this House by a large majority has advised to the ratification of their proceedings. Suppose then, not only that the Ministers who signed, but the President and Senate who ratified this compact, have exceeded their powers. Suppose that the other House of Congress, who have given their assent by passing this and other bills for the fulfilment of the obligations it imposes on us, have exceeded their powers. Nay, suppose even that the majority of States competent to amend the Constitution in other cases, could not amend it in this, without exceeding their powers—and this is the extremest point to which any gentleman on this floor has extended his scruples—suppose all this, and there still remains in the country a power competent to adopt and sanction every part of our engagements, and to carry them entirely into execution. For, notwithstanding the objections and apprehensions of many individuals, of many wise, able and excellent men, in various parts of the Union, yet such is the public favor attending the transaction which commenced by the negotiation of this treaty, and which I hope will terminate in our full, undisturbed and undisputed possession of the ceded territory, that I firmly believe if an amendment to the Constitution, amply sufficient for the accomplishment of everything for which we have contracted, shall be proposed, as I think it ought, it will be adopted by the Legislature of every State in the Union. We can therefore fulfil our part of the conventions, and this is all that France has a right to require of us. France never can have the right to come and say: "I am discharged from the obligation of this treaty, because your President and Senate, in ratifying it, exceeded their powers," for this would be interfering in the internal arrangements of our Government. It would be intermeddling in questions with which she has no concern, and which must be settled altogether by ourselves. The only question for France is, whether she has contracted with the department of our Government authorized to make treaties; and this being clear, her only right is to require that the conditions stipulated in our name be punctually and faithfully performed. I trust they will be so performed, and will cheerfully lend my hand to every act necessary for the purpose. For I consider the object as of the highest advantage to us; and the gentleman from Kentucky himself, who has displayed with so much eloquence the immense importance to this Union of the possession of the ceded country, cannot carry his ideas further on that subject than I do.

With these impressions, sir, perceiving in the first objection no substantial reason requiring the postponement, and in the second no adequate argument for the rejection of this bill, I shall give my vote in its favor.

Mr. NICHOLAS.—Mr. President, so much has been said upon this subject that but little remains for me to say, as I mean to confine myself to a few observations, that I have not heard made by others. It is extraordinary that arguments to show the unconstitutionality of the treaty, should be addressed to this Senate, to prevent its execution, after two-thirds of this body have advised and consented to its ratification. The motive for this must be what was suggested by the gentleman from South Carolina; an expectation of making impressions unfavorable to the treaty; and that, after the full discussion that has been had, the friends of the treaty would not deem it necessary to refute arguments so unseasonably repeated. The gentlemen on the other side differ among themselves. The two gentlemen from Delaware say, that if peaceable possession is given of Louisiana this bill ought to pass; the other gentlemen who have spoken in opposition to it have declared, that if they believed the Constitution was not violated by the treaty, they should think themselves bound to vote for the bill. To this Senate it cannot be necessary to answer arguments denying the power of the Government to make such a treaty; it has already been affirmed, so far as we could affirm it, by two-thirds of this body; it is then only now necessary to show that we ought to pass the bill at this time. In addition to the reasons which have been so ably and forcibly urged by my friends, I will remark, that the treaty-making power of this Government is so limited that engagements to pay money cannot be carried into effect without the consent and cooperation of Congress. This was solemnly decided, after a long discussion of several weeks, by the House of Representatives, which made the appropriations for carrying the British Treaty into effect, and such I believe is the understanding of nine-tenths of the American people, as to the construction of their Constitution. This decision must be also known to foreigners, and if not, they are bound to know the extent of the powers of the Government with which they treat. If this bill should be rejected, I ask gentlemen whether they believe, that France would or ought to execute the treaty on her part? It is known to the French Government that the President and Senate cannot create stock, nor provide for the payment of either principal or interest of stock; and if that Government should be informed that a bill, authorizing the issue of stock to pay for the purchase, "after possession shall be delivered," had been rejected by the only department of our Government competent to the execution of that part of the treaty, they would have strong ground to suspect that we did not mean to execute the treaty on our part; particularly when they are informed, that the arguments most pressed in opposition to the bill were grounded upon a belief that the Government of the United States had not a Constitutional power to execute the treaty. Of one thing I am confident, that if they have the distrust of us which some gentlemen have this day expressed of them, the country will not be delivered to the agents of our Government should this bill be rejected.

The gentleman from Connecticut, finding himself unable to combat or refute the able and ingenious exposition of the third article of the treaty given by my colleague, has attempted to lessen the force of his observations by representing him as having given a construction to the Constitution by which the treaty-making power is rendered omnipotent. This is an artifice often practised. But in this instance, as in all others, it must fail of producing the intended effect with such an assembly as this. The gentleman from Massachusetts had read and commented on the Constitution in such a manner as to make an impression, that it was declared in the sixth article, that the Constitution, the laws of the United States, and all treaties made or to be made in pursuance thereof, shall be the supreme law of the land. My colleague showed that the Constitution had not been correctly quoted, and stated that the expression of the Constitution was "all treaties made or to be made under the authority of the United States;" that the Legislative power was defined and that the treaty-making power was not defined, though not unlimited; and this is evident and palpable, for if the treaty-making power is trammeled in the manner that some gentlemen now contend it is, why declare that the laws made in pursuance of the Constitution and all treaties made or which shall be made under the authority of the United States are the supreme laws of the land? The reason is obvious, the Legislative power is limited in a manner that it was neither intended, nor was it practicable to limit the treaty-making power. The power of legislation was only meant to be given for certain and particular purposes; all other Legislative powers were reserved to the States, whereas the whole treaty-making power of the nation was vested in the President, to be exercised with the advice and consent of the Senate. To refute the arguments of my colleague, it is necessary to show, that the powers of the President and Senate, in their treaty-making capacity, are defined and limited, either by special grants of power, which exclude powers not given, or by particular reservations. Upon an examination of the Constitution it will be found that the powers are neither specified nor are there any reservations. But it must not be inferred from this, that we believe the treaty-making power is unlimited. The Constitution imposes particular and general limitations upon the powers of the Government of the United States. No department of the Government can do any of the things that are prohibited by the Constitution. Nor would they be justifiable in not doing what is positively enjoined upon them to do. I do not believe therefore that the President and Senate would cede a State or any part of a State, because our common defence was one of the great purposes for which the Government was formed, and because the Constitution guaranties to every State in the Union a Republican form of Government, and engages to protect each of them against invasion.

If the special grants of power to Congress are to be considered as limitations of the treaty-making power, the power of making treaties does not substantially exist in this Government; and if our time would permit it, I would show that a commercial treaty cannot be formed, without interfering with the power given to Congress to regulate commerce, lay and collect duties, imposts, &c., and that no other treaty can be formed that will not require an engagement for the payment of money, or, in one way or other, the exercise of one or more of the powers vested in Congress. To make ours a practicable Government, it must be understood that the treaty-making power may negotiate respecting many of the subjects upon which Congress may legislate, but that Congress are not bound to carry into execution such compacts (where an act of theirs is necessary to give them effect) unless they approve of them. And this must be fully understood by all nations with whom such compacts may be formed. Upon every other subject proper for a national compact, not inconsistent with our Constitution, and under the limitations by me stated, a treaty may be negotiated and absolutely concluded by the treaty-making power, so as to bind the nation.

The gentleman from Connecticut (Mr. TRACY) must consider the grant of power to the Legislature as a limitation of the treaty-making power, for he says, "that the power to admit new States and to make citizens is given to Congress, and not to the treaty-making power;" therefore an engagement in a treaty to do either of these things is unconstitutional. I cannot help expressing my surprise at that gentleman's giving that opinion, and I think myself justifiable in saying, that if it is now his opinion, it was not always so. The contrary opinion is the only justification of that gentleman's approbation of the British Treaty, and of his vote for carrying it into effect. By that treaty a great number of persons had a right to become American citizens immediately; not only without a law, but contrary to an existing law. And by that treaty many of the powers specially given to Congress were exercised by the treaty-making power. It is for gentlemen who supported that treaty, to reconcile the construction given by them to the Constitution in its application to that instrument, with their exposition of it at this time.

If the third article of the treaty is an engagement to incorporate the Territory of Louisiana into the Union of the United States, and to make

it a State, it cannot be considered as an unconstitutional exercise of the treaty-making power; for it will not be asserted by any rational man that the territory is incorporated as a State by the treaty itself; when it is expressly declared that "the inhabitants shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution. Evidently referring the question of incorporation, in whatever character it was to take place, to the competent authority; and leaving to that authority to do it, at such time, and in such manner, as they may think proper. If, as some gentlemen suppose, Congress possess this power, they are free to exercise it in the manner that they may think most conducive to the public good. If it can only be done by an amendment to the Constitution, it is a matter of discretion with the States whether they will do it or not; for it cannot be done "according to the principles of the Federal Constitution," if the Congress or the States are deprived of that discretion, which is given to the first, and secured to the last by the Constitution. In the third section of the fourth article of the Constitution it is said, "new States may be admitted by the Congress into this Union." If Congress have the power, it is derived from this source; for, there are no other words in the Constitution that can, by any construction that can be given to them, be considered as conveying this power. If Congress have not this power, the Constitutional mode would be by an amendment to the Constitution. If it should be conceded then that the admission of this territory into the Union, as a State, was in the contemplation of the contracting parties, it must be understood with a reservation of the right of this Congress or of the States to do it, or not; the words "admitted as soon as possible," must refer to the voluntary admission in one of the two modes that I have mentioned; for in no other way can a State be admitted into this Union.

Mr. COCKE.—Mr. President, it is with reluctance I rise, at this late hour of the day, to claim your attention on a subject that has been so ably discussed, but the deep interest the State must feel, that I have the honor in part to represent, pleads my apology, and requires that the objections made to the passage of this bill should meet my answer.

Gentlemen appear to have rested their objections on two grounds; first, the constitutionality; secondly, the expediency of passing the bill at this time; these objections when we give them their full weight, cannot appear well founded or consistent with opinions formerly delivered by the gentlemen on this floor, at a time when they contemplated taking New Orleans and the Floridas by military force. Here, however, I must except the gentleman from New Jersey, (Mr. DAYTON.) and freely confess that he has been consistent, and that a manly consistency has accompanied him through the whole of this business, although I believe him to have been mistaken in point of true policy.

But what must we think of gentlemen in whom this sudden change has taken place, and who now exclaim against the passage of this bill, when we recollect that last winter they were ready to storm the Spanish garrisons, and who then promised by their valor to secure us a free trade down the Mississippi, and to make New Orleans and the Floridas their own? Did the Constitution then form a barrier against them? They must excuse me, if in point of candor, I cannot compliment them, for they have not only voted against the treaty, that secures to us more than they could have contemplated by their arms and their valor, but they have also voted against the law for carrying the objects of that treaty into effect, after the treaty has been ratified, and the exchange of ratifications taken place in due form; and now, sir, we hear those warlike spirits expressing their fears, that the Western country will soon become too powerful for the East, and that a separation must inevitably take place between us. I ask gentlemen the ground on which they build their fears. It cannot be, sir, that we have paid less respect to the laws of the Union, than any other portion of our fellow-citizens; or have we in any instance shown less regard for our Government, or its honest administration? Is it then that gentlemen had determined in their own minds to treat us with such marked indifference, or injustice, as should rouse us to just resentment? When that shall be the case, I agree with my friend from Kentucky, that there is a point, beyond which we cannot go. But let not gentlemen be alarmed at the acquisition of Louisiana, this New World as they please to call it, and which they seem at so great a loss to know what to do with. Since, sir, we have made it our own, I trust we shall find capacity sufficient to govern it. For why all those fears? Is it not the true interest of all to be united, and will not our mutual interest and love of country bind us together? It certainly will. But gentlemen appear as if they thought our late acquisition has made us too rich, and seek to know how we shall dispose of that vast country. When that shall be the question before us, there will be but little difficulty on that subject, and for myself I promise the gentleman I shall, without hesitation, say what I think will best accord with the interest, and bind in friendship, every part of the Union.

It must, however, be recollected that about six or eight months past, these gentlemen had no Constitutional objections, or conscientious scruples, on this subject. Had they then taken New Orleans and the Floridas, will the gentlemen now tell us that they intended to return it again to those from whom they might have taken it? Would they then have said the Constitution limited them to certain bounds? If so, I would ask what are the Constitutional limitations? It has none, sir, in that respect; and I contend that the treaty-making powers in this country are competent to the full and free exercise of their best judgment in making treaties, without limitation of power; for, on every subject in which that power is called to act, it must act on its own responsibility. Our Government is indeed the Government of the People; the Constitution is the instrument of their choice; it is

that instrument that grants the power I contend for, and which says that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. This power then, sir, passes out of the hands of the people, by their consent, and is vested for the time limited by themselves, and until the period they have chosen for free exercise of their elective rights shall return. On the ground of expediency, little need to be said, and I hope gentlemen will excuse me if I again repeat a desire to know the extent of their objects, when they so loudly clamored for war. Were I as suspicious as themselves, I might readily indulge a belief, from the present state of things, that they wished to check the rising growth of the Western people, by getting them into a war, make them a handsome bow, and leave them to fight their battles. But, happily, our treaty secures us against all such apprehensions, and I hope we shall pass the bill now before you, as necessary for carrying into effect the conditions of our treaty with good faith.

The gentleman from Delaware (Mr. WHITE) should have stated me more correctly; he should have said that I contended, that if his favorite plan of recession took place, that the Power to whom the recession was made would entice our citizens, by every means, and by the very means that the gentleman seems to wish to put in their power, to settle west of the Mississippi; that in an event like that, we might as well pass a law to prevent the fish from swimming up the Chesapeake as to prevent our citizens from migrating to that country. And I again warn gentlemen of the dangerous tendency of such recession, and assure them that I am not among those that believe that France, Spain, or even the British Government, would govern that country more to our interest than we do; nor do I credit a doctrine so absurd as to believe the people of the Western country will abandon their interest, and prostitute their honor, to create dangers so imminent as the gentleman from Connecticut (Mr HILLHOUSE) seems to apprehend, and who is so fearful of the day in which the Western people shall give laws to the Union; but if ever it should so happen, I hope they will be at least as just and salutary as they were when that honorable gentleman and his friends formed the political majority in this House.

The question was then taken on the passage of the bill, and carried in the affirmative—yeas 26, nays 5, as follows:

YEAS—Messrs. Adams, Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Plumer, Potter, Israel Smith, John Smith, Stone, Taylor, Worthington, and Wright.

NAYS—Messrs. Hillhouse, Pickering, Tracy, Wells, and White.

FRIDAY, November 4.

Mr. WORTHINGTON, from the committee appointed on the 21st of October last, on the petition of Joseph Harrison and others, and on the proposition contained in the sixth section of the seventh article of the constitution of the State of Ohio, reported "A bill to divide the Indiana Territory into two separate governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State;" which bill was read and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

By the copy now communicated of a letter from Captain Bainbridge, of the Philadelphia frigate, to our Consul at Gibraltar, you will learn that an act of hostility has been committed on a merchant vessel of the United States, by an armed ship of the Emperor of Morocco. This conduct on the part of that Power is without cause and without explanation. It is fortunate that Captain Bainbridge fell in with and took the capturing vessel and her prize; and I have the satisfaction to inform you that about the date of this transaction, such a force would be arriving in the neigeborhood of Gibraltar, both from the east and from the west, as leaves less to be feared for our commerce, from the suddenness of the aggression.

On the 4th of September, the Constitution frigate, Captain Preble, with Mr. Lear on board, was within two days sail of Gibraltar, where the Philadelphia would then be arrived with her prize; and such explanations would probably be instituted as the state of things required, and as might perhaps arrest the progress of hostilities.

In the mean while, it is for Congress to consider the provisional authorities which may be necessary to restrain the depredations of this Power, should they be continued.

Nov. 4, 1803. TH. JEFFERSON.

The Message and papers therein referred to were read and ordered to lie for consideration.

The bill, entitled "An act making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty," was read the second time.

Ordered, That it be referred to Messrs ADAMS, TRACY, and BALDWIN, to consider and report thereon to the Senate.

On motion, that it be

Resolved, That the Secretary of the Senate be, and he hereby is, authorized and directed to pay, out of the money appropriated to defray the contingent expenses of the Senate, the sum of two hundred dollars, each, to the Doorkeeper and Assistant Doorkeeper of the Senate, in addition to their allowance for services during the last session of Congress:

It was agreed, that this motion lie for consideration.

On motion to take into consideration the resolution of the House of Representatives for an amendment to the Constitution of the United States, it passed in the negative—yeas 12, nays 19, as follows:

YEAS—Messrs. Adams, Anderson, Butler, Dayton, Hillhouse, Maclay, Olcott, Pickering, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Nicholas, Potter, Israel Smith, John Smith, Stone, Taylor, Worthington, and Wright.

The Senate took into consideration the motion made on the 2d instant, that a committee be appointed to confer with the Postmaster General, on the expediency of carrying the mail in covered or stage carriages; and the honorable mover having amended his motion,

Resolved, That a committee be appointed to consider and report on the expediency of extending the carriage of the mail of the United States, in covered or stage wagons. And it was agreed that Messrs. JACKSON, ANDERSON, and BRADLEY, be this committee.

MONDAY, November 7.

The Senate took into consideration the memorial of Robert Quillin, presented on the 25th of October last, praying for an augmentation of his pension.

Ordered, That it be referred to Messrs. FRANKLIN, TRACY, and ANDERSON, to consider and report thereon to the Senate.

The bill to divide the Indiana Territory into two separate governments, and giving the assent of Congress to the proposition of the Convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, was read the second time, and referred to Messrs. BRADLEY, TRACY, BALDWIN, WORTHINGTON, and FRANKLIN, to consider and report thereon to the Senate.

The Senate took into consideration the motion made on the 4th instant, authorizing the payment of two hundred dollars each to the Doorkeeper and Assistant Doorkeeper of the Senate; and, on the question to agree thereto, it was determined in the affirmative.

Resolved, That when the Senate adjourn, they adjourn to Thursday next; and that the President of the Senate order such repairs and alterations to be made in the meantime in the Senate Chamber as will render the same safe and convenient for the members thereof.

THURSDAY, November 10.

The credentials of JOHN CONDIT, appointed a Senator by the Legislature of the State of New Jersey, for the time limited in the Constitution of the United States, were presented and read.

Ordered, That they lie on file.

Mr. BRADLEY stated in his place that the Legislature of the State of Vermont had passed a resolution that it is highly important that an alteration should take place in the second article of the Constitution of the United States, which prescribes the mode of choosing a President and Vice President, and that a copy of the said resolution should be sent to their Senators and Representatives in Congress, respectively; and the resolution being read, it was moved that the Senate do now proceed to the consideration of the report of the committee, made on the 24th of October last, on an amendment to the Constitution of the United States respecting the election of President and Vice President. The question being required, it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Anderson, Butler, Dayton, Hillhouse, Olcott, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Adams, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Stone, Taylor, Worthington, and Wright.

FRIDAY, November 11.

Mr. WORTHINGTON stated in his place that the State of Ohio had passed a "resolution that the Senators and Representative of that State in Congress be requested and instructed to endeavor to obtain an amendment to the first section of the second article of the Constitution of the United States, which shall authorize the Electors of each State to designate on their ballots the person voted for as President and the person voted for as Vice President of the United States;" and the resolution was read.

Ordered, That it lie on file.

Mr. ADAMS, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty," reported the same without amendment.

Ordered, That this bill pass to a third reading.

A motion was made, that it be

Resolved, by the Senate and House of Representatives, That —— copies of the laws passed the first session of the seventh Congress be printed, under the direction of the Secretary of the Senate and Clerk of the House of Representatives.

And it was agreed that the motion lie for consideration.

The PRESIDENT communicated a letter from Dewitt Clinton, late a Senator from the State of New York, stating that he had resigned his seat in the Senate.

MONDAY, November 14.

The PRESIDENT administered the oath required by law to Mr. CONDIT, a Senator from the State of New Jersey.

On motion, the Senate resumed the consideration of the resolution proposed on the 27th of October last respecting the impeachment of John Pickering; and having agreed to an amendment thereto,

Resolved, That a committee be appointed to inquire if any, and what, further proceedings at present ought to be had by the Senate respecting the impeachment of John Pickering, made at the bar of this Senate by two members of the House of Representatives on the last day of the last session of Congress; and

Ordered, That Messrs. TRACY, BRADLEY, BALDWIN, WRIGHT, and COCKE, be the committee to consider and report thereon to the Senate.

The Senate took into consideration the motion made on the 11th instant for printing —— copies of the laws passed the first session of the seventh Congress; and

Ordered, That it be referred to Messrs. TRACY, BALDWIN, and STONE, to consider and report thereon to the Senate.

On motion, that the Senate do now proceed to the consideration of the report of the committee, made on the 24th of October last, on an amendment to the Constitution of the United States respecting the election of President and Vice President, it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Anderson, Butler, Dayton, Hillhouse, Olcott, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Adams, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Stone, Taylor, Worthington, and Wright.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate a digest of the information I have received relative to Louisiana, which may be useful to the Legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

Nov. 14, 1803. TH. JEFFERSON.

The Message was read, and, with the digest therein referred to, ordered to lie for consideration.

The bill, entitled "An act making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty," was read the third time, and passed.

TUESDAY, November 15.

Mr. WORTHINGTON presented the petition of a number of the inhabitants of the Indiana Territory, praying to be set off into a separate district, for reasons therein stated.

Ordered, That it be referred to Mr. BRADLEY and others, the committee to whom were referred, on the 7th instant, petitions on the same subject, to consider and report thereon to the Senate.

A motion was made, by Mr. ANDERSON, that it be

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay, out of the money appropriated to defray the contingent expenses of the Senate, the sum of two hundred dollars each to the principal and engrossing clerks in his office, for their extra sevices during the last session of Congress.

And it was agreed that this motion should lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to repeal the act, entitled 'An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

WEDNESDAY, November 16.

The bill, entitled "An act to repeal the act, entitled 'An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled An act to regulate the collection of duties on imports and tonnage," was read the second time, and referred to Messrs. ANDERSON, BRECKENRIDGE, and FRANKLIN, to consider and report thereon to the Senate.

The Senate took into consideration the motion made yesterday, to authorize the Secretary of the Senate to compensate his principal and engrossing clerks for their extra services during the last session of Congress; and, on the question to agree thereto, it passed in the affirmative.

On motion, it was agreed that the further consideration of the report of the committee to whom was referred the motion for amendments to the Constitution of the United States, respecting the election of President and Vice President, and also the resolution of the House of Representatives on the same subject, be the order of the day for Monday next.

On motion, by Mr. TRACY, that it be

Resolved, That the Secretary of the Treasury be, and he is hereby, requested to lay before the Senate a statement of the payments which have been made by the respective States of the direct tax; distinguishing, as far as may be, the sums which have been paid into the hands of supervisors, and not paid into the Treasury:

It was agreed that the motion lie for consideration.

Mr. BRADLEY, from the committee to whom was referred, on the 7th instant, the bill to divide the Indiana Territory into two separate governments, and giving the assent of Congress to the proposition of the convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State, reported the bill with amendments; which were read, and ordered to lie for consideration.

THURSDAY, November 17.

Mr. TRACY presented the petition of Ezekiel Scott, of the State of New York, praying allowance of compensation for military services; he having acted in the capacity of major in one of the regiments raised by order of the Governor and Council of that State, in the year 1781, to be subsisted at the expense of the United States; and the petition was read, and ordered to lie on the table.

Mr. TRACY also presented the petition of Henry

Glen, praying compensation for military services and supplies, furnished by himself and others under his authority, during the late Revolutionary war; and the petition was read, and ordered to lie on the table.

The Senate took into consideration a motion made yesterday, that the Secretary of the Treasury be requested to lay before the Senate a statement of the payments of the respective States, of the direct tax, distinguishing the sums received by supervisors, and not paid into the Treasury.

Ordered, That it be referred to Messrs. BRADLEY, TRACY, and STONE, to consider and report thereon to the Senate.

FRIDAY, November 18.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the further protection of the seamen and commerce of the United States," in which they desire the concurrence of the Senate.

The bill brought up for concurrence was read, and ordered to the second reading.

Mr. ANDERSON, from the committee to whom was referred, on the 16th instant, the bill, entitled "An act to repeal the act, entitled 'An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled An act to regulate the collection of duties on imports and tonnage;" reported it without amendment.

Ordered, That this bill pass to a third reading.

Mr. BRADLEY reported, from the committee appointed the 17th instant, on the motion to request the Secretary for the Department of Treasury to report on the subject of the direct tax, an amendment; which was adopted; and it was

Resolved, That the Secretary of the Treasury be, and hereby is, requested to lay before the Senate a statement of the payments which have been made by the respective States, of the direct tax; designating, as far as may be, what sums have been paid into the Treasury, what sums are retained by the supervisors, what sums are in the hands of the collectors, and the persons in whose hands such moneys are; and the progress that has been made in those States from which no payment hath been received.

A motion was made, by Mr. LOGAN, that it be

Resolved, That the President of the United States be requested to cause to be laid before the Senate such information as may have been received relative to the violation of the flag of the United States, or to the impressment of any seamen in the service of the United States, by the agents of any foreign nation.

And it was agreed that this motion should lie for consideration.

MONDAY, November 21.

The bill entitled "An act for the further protection of the seamen and commerce of the United States," was read the second time.

On motion to amend the bill, by adding a proviso to the end of the first section—a motion was made that the further consideration of the bill, together with the proposed amendment, be the order of the day for Wednesday next; and it passed in the negative. The motion was then resumed, to add a proviso to the first section of the bill; and, after debate, the Senate adjourned.

TUESDAY, November 22,

The Senate resumed the second reading of the bill, entitled "An act for the further protection of the seamen and commerce of the United States," together with the amendment proposed to the first section thereof; and, other amendments having been proposed,

Ordered, That the bill, together with the amendments, be referred to Messrs. SAMUEL SMITH, ADAMS, and JACKSON, to consider generally and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act fixing the salaries of certain officers therein mentioned," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The bill, entitled "An act to repeal the act, entitled 'An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled An act to regulate the collection of duties on imports and tonnage," was read the third time and passed.

The Senate took into consideration the motion, made on the 18th instant, relative to the violation of the flag of the United States. Whereupon,

Resolved, That the President of the United States be requested to cause to be laid before the Senate such information as may have been received relative to the violation of the flag of the United States, or to the impressment of any seamen in the service of the United States, by the agents of any foreign nation.

Ordered, That the Secretary lay this resolution before the President of the United States.

The Senate resumed the consideration of the report of the committee to whom was referred the motion for amendments to the Constitution of the United States, respecting the election of President and Vice President; and, after debate,

Ordered, That the consideration thereof be postponed.

WEDNESDAY, November 23.

The bill, entitled "An act fixing the salaries of certain officers therein mentioned," was read the second time, and referred to Messrs. BRADLEY, BALDWIN, and SAMUEL SMITH, to consider and report thereon to the Senate.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 22d instant, the bill, entitled "An act for the further protection of the seamen and commerce of the United States," reported the bill with amendments; which were read, and ordered to lie for consideration.

AMENDMENT TO THE CONSTITUTION.

The Senate resumed the consideration of the report of the committee to whom was referred the motion for an amendment to the Constitution in the mode of electing the President and the Vice President of the United States; whereupon, the President *pro tem.* (Mr. BROWN) submitted to the consideration of the Senate the following question of order:

"When an amendment to be proposed to the Constitution is under consideration, shall the concurrence of two-thirds of the members present be requisite to decide any question for amendments, or extending to the merits, being short of the final question?"

[A debate took place on this proposition, tedious, intricate, and desultory, which it was very difficult to follow, and often to comprehend.]

Mr. ADAMS was of opinion that on *all* questions involving the amendment two-thirds of the votes were requisite, but not on any of the forms of proceedings on the subject.

Mr. DAYTON thought two-thirds necessary on all questions upon which the amendment might ultimately depend; that the reasoning in the case of treaties would apply here as well in a single principle as on the aggregate.

Mr. FRANKLIN differed altogether from the last speaker. He considered all the preliminary proceedings, previous to the ultimate vote, subject to the decision of an ordinary majority. The motion here is a simple proposition, involving the mode of proceeding in that House, and could not affect the final vote on the amendment, which must be carried by two thirds. The amendment will come fairly before the House for discussion by the vote of a simple majority; but subject the House to the control of two-thirds in the first instance, and discussion itself is obstructed—you can neither strike out nor insert.

Mr. WRIGHT supposed that the forms of proceeding in that House hitherto observed would not be departed from. It had never been considered that a preliminary question in proceedings was to be decided upon as a final question of amendment of the Constitution. Such a form of proceeding would leave it in the power of a minority to arrest every proposition on such a subject before it passed the threshold; and it might even put it in the power of the Vice President himself to decide a question, though in the eye of the Constitution he is not a member of the Senate at all.

Mr. MACLAY.—This appears to me a very simple question: it is no other, in fact, than whether the House may or may not determine its rules of proceeding. Now, he was convinced that the Constitution had already settled this question, by declaring that each House shall be competent to establish its own rules. It was in the nature of things necessary, and it was fair to infer that in Legislative proceedings the simplest form was most eligible: who would apply a clumsy apparatus while one simple and sufficient was at hand? The gentleman from North Carolina (Mr. FRANKLIN) had made the proper distinction. Treaties bore no analogy to forms of proceeding. We may object to a treaty, in the whole or in part, even after it had been negotiated and communicated to us by the proper authority. How we shall proceed upon measures originating with ourselves is a different subject.

Mr. DAYTON never suggested that we have no right to form rules for our own proceedings: he did not consider the question itself so much a Constitutional one as of expediency.

Mr. HILLHOUSE said, it was a matter of indifference to him how the House proceeded on the question, so that the rules of the Senate may not be embarrassed. The question appeared to him now to be principally the best mode of taking up the subject for deliberation.

Mr. TAYLOR.—The gentleman from New Jersey (Mr. DAYTON) has acknowledged, and the gentleman from Connecticut (Mr. HILLHOUSE) has concurred in the sentiment, that this amendment is not so much a Constitutional question as one of expediency and form. In this view, the gentlemen must consider that they cannot take from the Vice President a right which he possesses to a Constitutional equality in the election, as the Constitution declares (article 2, section 1) that the President "shall hold his office during the term of four years, and, together with the Vice President, be chosen for that term." No right of expediency can find room in this place: if there be any, gentlemen will of course show it. The gentleman from Pennsylvania (Mr. MACLAY) had felt no doubt on his mind on the subject.

Mr. BUTLER.—It never was intended by the Constitution that the Vice President should have a vote in altering the Constitution: whatever of the arguments of gentlemen relate to that point falls to the ground. The question now before the House is, whether, when a general proposition is brought up, shall the same number of two-thirds be requisite to decide upon its admission, as upon the subsequent and perfecting vote? In his opinion the same number was necessary. So on a motion formerly made by a gentleman from New Jersey, (Mr. DAYTON,) for striking out all that related to the Vice President, he thought two-thirds were necessary to a vote of that kind, as the striking out would go to an alteration of the Constitution. On minute alterations of the letter or phraseology, which did not involve the principle, perhaps a simple majority would be sufficient.

Mr. COCKE considered the House as competent to the formation of its own rules, and was opposed to this new mode of proceeding, evidently calculated only to embarrass.

Mr. HILLHOUSE thought the decision on this question perfectly analogous to the cases which arise on treaties. Suppose that two-thirds of the Senate present concur with the proposition of the bill now before the Senate from the House of Representatives, and a majority agree to strike out a part?

Mr. WRIGHT.—Gentlemen cannot or will not keep it in mind that the proposition before the House is not an alteration of the Constitution, but the formation of a proposition upon which two-thirds of the House must ultimately decide,

and, after which decision, must go to the several States, and depend for its final adoption upon three-fourths of the States. It does not, as the gentleman from Connecticut (Mr. HILLHOUSE) seems to assume, require two-thirds of the Senate to prepare and propose an amendment to a treaty; it is the principal confirmation or ratification only that requires two-thirds.

Mr. JACKSON was not averse to a postponement; though he did not approve of the idea of the gentleman from New Jersey, (Mr. DAYTON.) concerning the abolition of the Vice President's office. If the Senate would postpone, a committee might be appointed who would search for precedents, and report by Monday or on some other day. He moved to postpone, seconded by Mr. BRADLEY; lost—ayes 15, noes 16.

Mr. PICKERING.—There appears to me so close an analogy between the proposed amendment and the case of treaties, that it ought to govern. The striking out of a part of the Constitution must be considered as an amendment, for if a part is struck out it is no longer the same thing; he did not approve of subjecting a Constitution to repeated alterations.

Mr. ISRAEL SMITH.—This appears to be a very important Constitutional question; and in fixing the principle, care is requisite, though he did not see why it should not be done as early as possible. All our details of bills go through the forms of reading and engrossing; they are read and considered section by section and clause by clause, so that nothing shall be admitted but by a majority. Then, why not, in the debates of an amendment, use the same precautions? If you admit amendments to the Constitution by a common majority, it appears that there is no the same precaution.

Mr. TAYLOR.—The gentleman's arguments were entitled to an answer; but a short one would be sufficient. The analogy with treaties is no more perfect than that with relation to ordinary Legislative acts. Treaties originate with the Executive, with a power over which there is always entertained a salutary jealousy. On the other hand, a law must have the consent of the President after it has passed both Houses; if the President refuses his consent, the whole is inchoate, and two-thirds of both Houses may, *non obstant*, pass the law without that consent; and here only the cases are analogous. We may proceed to give a law perfection in its preliminary stages, so may we discuss an amendment; but to the ultimate perfection of the thing, two-thirds are required. If the doctrine held by some gentlemen were to prevail, it would be difficult ever to amend the Constitution, be its imperfections ever so great.

Mr. HILLHOUSE was convinced, by the arguments of the gentleman from Vermont, (Mr. I. SMITH,) that this was a question of the first magnitude. In the case of a law to which the President denies his concurrence, when it is returned to both Houses, no amendment can be made thereto, it must pass altogether by two-thirds, or is lost. Again: If you were to move to strike out a part of the amendment, it would appear by the vote on your journals that the question had not been decided by two-thirds. In the passage of laws it is understood that all parts of a law must have a majority of votes, but it is also well understood that different parts of the same law will not obtain the same number of votes, and that some will vote against particular parts who approve of the rest, yet that the whole must have a majority. He never doubted that a proposition for an amendment may be admitted by a majority for discussion; but it was no more a conclusion that two-thirds were not necessary on a vote involving the principle during the discussion, because there was to be a final vote, than that two thirds would not be necessary on the last vote here, because it is not final in relation to the other House.

Mr. ANDERSON proposed to postpone the subject till to-morrow.

Mr. TRACY also wished to postpone to next day.

Mr. NICHOLAS hoped the question would be decided before the House rose; and as it was a simple question of order, he wished the wholesome rule of the other House to be pursued, to decide the questions of order without debate.

The question to postpone being taken, was lost—ayes 14, noes 16.

The proposition offered by the President was then called up for decision, whether two-thirds were necessary—ayes 13, noes 18.

Mr. BUTLER desired to know from the President if the question now decided did not require a majority of two-thirds?

The PRESIDENT said, according to the rule of the House, the question required only a principal majority to decide it.

Mr. DAYTON's motion for striking out what related to the Vice President was called for, and the question taken on striking out—ayes 12, noes 19.

The report of the committee at large being then under consideration.

Mr. NICHOLAS moved to strike out all following the seventh line of the report, to the end, for the purpose of inserting the following:

"In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person voted for as President, having a majority of the votes of all the Electors appointed, shall be the President; and if no person have such majority, then from the three highest on the list of those voted for as President, the House of Representatives shall choose the President in the manner directed by the Constitution. The person having the greatest number of votes as Vice President, shall be the Vice President; and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution; but no person constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States."

Mr. ADAMS objected to the number "three" instead of five, and wished five to be restored, as

the House of Representatives had already agreed to it. He asked for a division of the question; which was not agreed to.

Upon the question for striking out being put, it was carried without a dissenting voice, and the amendment of Mr. NICHOLAS adopted in the report, leaving the number blank.

Mr. DAYTON moved to fill up the blank with the number five; upon the question being put, it was lost—only eleven rose in the affirmative.

Mr. ANDERSON moved to strike out the word "two" in the nineteenth line—ayes 6. Lost.

Mr. S. SMITH then moved to fill the blank with the word "three;" which was carried—ayes 18, noes 13.

Mr. ADAMS suggested an objection to the amendment as it stood, which appeared to arise out of the treaty of cession of Louisiana. His original idea was adverse to the limitation to natural-born citizens, as superfluous; but, as it stood, the terms upon which Louisiana was acquired had rendered a change necessary, for it appeared to him that there was no alternative, but to admit those born in Louisiana as well as those born in the United States to the right of being chosen for President and Vice President.

Mr. BUTLER said that, if there was a numerous portion of those who were already citizens of the United States who can never aspire to, nor be eligible for, those situations under the Constitution, he did not see how this supposed alternative could be upheld. The people of Louisiana, under the treaty and under the Constitution, will clearly come under the description of naturalized citizens. While he was up, he would take the opportunity of speaking to the question at large, and to examine the motives which produced this amendment; the principal cause of solicitude, on this subject, he understood to be the base intrigues which were said to have been carried on at the Presidential election.

Mr. WRIGHT called to order; and a short altercation on the point of order took place.

Mr. BUTLER proceeded. He had on a former day asked if he might, in this stage of the discussion, take a view of the whole subject; the House had decided in the affirmative. When the proposition was first laid before the House, he had felt a disposition in favor of it; his mind had been shocked by those base intrigues, which had taken place at the late Presidential election, and he was hurried by indignation into a temper which a little cool reflection and some observation on a particular mode of action in that House, had checked and corrected, and finally convinced him that much caution was required in a proceeding of that nature, and that, in all human probability, such a scene of intrigue may never occur again; that it became questionable whether any steps whatever were necessary. Upon a careful review of the subject, it appeared to him that an alteration might make matters worse; for though at present there has been afforded, by a course of accidents and oversights, room for intrigue, it would be preferable to leave it to the care and discretion of the States at large to prevent the recurrence of the danger, than put into the hands of four of the large States the perpetual choice of President, to the exclusion of the other thirteen States. It was a reasonable principle that every State, should, in turn, have the choice of the Chief Magistrate made from among its citizens. The jealousy of the small States was natural; and he would not tire the House by bringing to their ears arguments from the history of Greece, because the subject must be familiar to every member of that House, and, indeed, to every school-boy. He would not weary them with the painful history of the conflicts of Athens and Sparta, for the supremacy of Greece, and the fatal effects of their quarrels and ambition on the smaller States of that inveterate confederacy of Republics. Their history is that of all nations in similar circumstances; for man is man in every clime, and passion mingles in all his actions. If the smaller States were to agree to this amendment, it would fix for ever the combination of the larger States, and they would not only choose the President but the Vice President also in spite of the smaller States. It would ill become him who had been a member of that Convention which had the honor of forming the present Constitution to let a measure such as the present pass without the most deliberate investigation of its effects. Before the present Constitution was adopted all the States held an equal vote on all national questions; by the Constitution their sovereignty was guarantied, and the instrument of guarantee and right, he had subscribed his name to as a Representative from South Carolina, and had used all the zeal and influence of which he was possessed to promote its adoption. To give his assent to any violation of it, or any unnecessary innovation on its principles, would be a deviation from morality.

He had heard it said with confident boldness that experience had shown the necessity of amendment, and that the Constitution had already undergone correction. But gentlemen should show him that healing a wound and cutting off a limb were operations not of a different nature and different degrees of danger. He did not mean, nor did he apprehend that the proposed amendment would cut off any State in the Union, but he was persuaded that it would cut off the weight and the influence of many of the small States.

He had been told that the people of the United States called for this amendment. How had this sense been collected? It was a difficult matter to collect their sense; the great variety of habits, the diversity of climates, the space over which they are spread, the different modes of education and way of thinking, all render it difficult to ascertain the general sentiment, and he who says the people at large wish for this amendment, in my judgment, hazards greatly the respectability of character.

It is urged that the people did feel great indignation at the scenes which were exhibited in the House of Representatives on a former election; and that the people might be hurried into strong and dangerous measures to prevent the recurrence of scenes so disreputable to republican Govern-

ment. But if the people knew and would see all the points tending to one extreme line, they would take care to inquire whether, in endeavoring to avoid a weather shore, they had not forgotten the lee one. If the people are to have a master, Mr. President, it is indifferent whether they are to be bowed down by an insolent individual oligarchy, or a proud and haughty aristocracy of States, if, in the change of masters, the only change that is experienced is a change of habits.

But where, sir, is the danger of letting the choice ultimately go to the Legislatures? If there is danger it is certainly wrong to send it to any Legislature; yet we find the Constitution admits of considerable Legislative authority in the organization of various Constitutional powers; the fact carries with it some evidence of the principles of that instrument. What is the purport of this amendment but to cut off a part of that solemn compact, the result of four long months' deliberation, where low ambition or the pride of States never found admission; and where disinterested patriotism and the light of virtue only found access? But, sir, there are motives operating in this body, and promoting this amendment, which, though not prominent, are powerful; it is said, if you do not alter the Constitution, the people called Federalists will send a Vice President into that chair; and this, in truth, is the pivot upon which the whole turns. When we were as Republicans out of power, did we not reprobate such conduct? Shall we then do as they did? Shall we revive party heat? No, he hoped not; but that, by a just and mild policy, we should evince that we would do as we would be done by.

The question was immediatly taken, on the report and carried—yeas 23, nays 11.

Mr. ADAMS said, that though he had voted for the amendment, he disapproved of the alteration from five to three. He felt, however, though a representative of a large State, a deep interest in this question. Was there no champion of the small States to stand up in that House and vindicate their rights?

Mr. DAYTON was not there as champion of the small States; but, as the representative of one of them, he was ready to enter his protest against being delivered over bound hand and foot to four or five of the large States. The gentleman from South Carolina had offered arguments on the subject irrefutable. The little portion of influence left us he has demonstrated to be now about to be taken away, and the gentleman from Massachusetts, (Mr. ADAMS,) after aiding the effort with his vote, has taken mercy upon us, and after he has helped to knock us down, asks us why we do not stand up for ourselves.

Mr. S. SMITH was not surprised to find those who were members of the old Congress, in which the subject of large and small States was frequently agitated, familiar with the subject of those days. Under the present Constitution he had been ten years in Congress and had never heard the subject agitated, nor the least ground given for any apprehension on this subject; he had seen the small States possess all the advantages secured to them without even a moment's jealousy. The State he represented was once considered a large State, the increase of others in population however had rendered it properly belonging to neither class; it was an intermediate State; but from the natural progression of the Union it must be ranked among the small States. In this view then he could speak dispassionately, and the small States could not with reason be apprehensive that a State, which must speedily take rank among them, could be indifferent to their rights if there were the least cause for apprehension.

He had moved for the insertion of three instead of five, with this precise and special intention, that the people themselves should have the power of electing the President and Vice President; and that intrigues should be thereby forever frustrated. The intention of the Convention was that the election of the chief officers of the Government should come as immediately from the people as was practicable, and that the Legislature should possess the power only in such an exigency as accident might give birth to, but which they had considered as likely to occur. Had it not been for these considerations, the large States never would have given up the advantages which they held in point of numbers. If the number five were to be continued, and the House of Representatives made the last resort, he would undertake to say that four times out of five the choice would devolve upon them. Diminish the number to three, and the compromise of two and two between the opposing parties, which has heretofore prevailed, will be superseded by an opposition of one on each side for President, and a third between both for Vice President. The question of small and large State interests is not at all involved in this question; it is a mere matter of imagination; and if it were at all real, it would perhaps be found to operate differently from what is supposed. There are many of the States, which are now small in reference to their population, which must already feel the influence, if any exists, of their being very soon likely to become large States. Georgia, Tennessee, and Kentucky, were of this description; in less than ten years these States will be larger than many now called large States, and their circumstances alone would be a sufficient guard against those dangers apprehended. He would be one of the last to doubt the virtue and the wisdom which framed the present Constitution; but, like other gentlemen, he was aware of the fallibility of the wisest of mankind; the founders of that Constitution had taught him the important lesson, for they had provided in that instrument a remedy for their own inexperience or fallibility; and time has in this instance, as in numerous others, proved their uncommon wisdom, for evils have arisen which though they could not foresee, they have provided the means to correct them: they could not have foreseen the danger to which the country was exposed at the late election; they could not have believed, that at so short a distance from the foundation of the Constitution, the country escaped from a civil war only from the prevalence of that kind temper, and

magnanimity in the Legislature, which prevailed in the Convention itself. And shall we not do all that is in our power to avoid the recurrence of similar danger? Had the gentleman from South Carolina (Mr. BUTLER) been present at this critical period, he would have felt, as many of his friends felt, a serious and restless anxiety. Two candidates before the House—party spirit high; the one determined to support the candidate upon whom public affection and confidence had unequivocally centered; the other seeking to place in the Executive Chair, not a candidate of their original choice, but a candidate through whom they wished to retain at least a share of power; unsuccessful in that effort, bringing forward a proposition to create a President; and how? By a law to be passed for the purpose, and in which the person was to be named, leaving the votes and choice of the people out of consideration altogether. Had this been effected, what other result would follow but civil war? Without pretending to be in the counsels of either party on that occasion, he believed that civil war was seriously apprehended, and so much so, that he felt perfectly convinced, that had a choice been made in the way proposed, and a person could be found to accept it, that his head would not have remained on his shoulders for twenty-four hours afterwards. Dangers of this kind he was solicitous to avoid; and by that mild and benignant mode provided by the Constitution, that of amendment to the Constitution.

Mr. HILLHOUSE.—In avoiding rocks he feared we were steering for quicksands. The evils that are past we know; those that may arrive we know not. The object proposed is to provide against a storm, a phenomenon not rare or unfrequent in Republics. You are called upon to act upon a calculation that all the States in the Union will vote for the same persons, or that each of two parties opposed in politics will have an individual candidate. Suppose the two candidates who had the highest votes on the late election had been the champions of two opposite parties, and that neither would recede, what then would be the consequence; according to the gentleman from Maryland, a civil war! When men are bent on a favorite pursuit, they are too apt to shut out all consequences which do not bear out their object. Thus gentlemen can very well discover the danger they have escaped, but they do not perceive that the opposition of two powerful candidates gives, besides the hazard of civil war, the hazard of placing one of them on a permanent throne. The First Magistracy of this nation is an object capable of exciting ambition; and no doubt it would one day or other be sought after by dangerous and enterprising men. It was to place a check upon this ambition that the Constitution provided a competitor for the Chief Magistrate, and declared that both should not be chosen from the same State. Here also was a guard against State pride, and this guard you wish to take away; and what will be the consequence? Instead of two or three or five, you will have as many candidates as there are States in the Union. By voting for two persons without designation, the States stood a double chance of a majority, besides the chance of a majority of all the States in the House of Representatives. For once or twice there may be such an organization of party as will secure for a conspicuous character the majority of votes. But that character cannot live always. The evil of the last election will recur, and be greater, because the whole field will be to range in.

He hoped this amendment would not be hastily adopted. The subsisting mode was the result of much deliberation and solemn compromise, after having long agitated the Convention. It is now attacked by party; whatever gentlemen may say to the contrary; the gentleman from South Carolina has confessed it. If gentlemen will suffer themselves to look forward without passion, great good may come from the present mode; men of each of the parties may hold the two principal offices of the Government; they will be checks upon each other: our Government is composed of checks; and let us preserve it from party spirit, which has been tyrannical in all ages. These checks take off the fiery edge of persecution. Would not one of a different party placed in that chair tend to check and preserve in temper the over-heated zeal of party? he would conduct himself with firmness because of the minor party; he would take care that the majority should have justice, but he would also guard the minority from oppression. If we cannot destroy party we ought to place every check upon it. If the present amendment pass, nine out of ten times the election will go to the other House, and then the only difference will be that you had a comedy the last time, and you'll have a tragedy the next. Though it was impossible to prevent party altogether, much more when population and luxury increase, and corruption and vice with them, it was prudent to preserve as many checks against it as was practicable. He had been long in Congress and saw the conflicting interests of large and small States operate; the time may not be remote when party will adopt new designations; federal and republican parties have had their day, their designations will not last long, and the ground of difference between parties will not be the same that it has been; new names and new views will be taken; it has been the course in all nations. There has not yet been a rotation of offices in which the small States could look for their share, but the time may, it will come when the small will wrestle with the large States for their rights. Each State has felt that though its limits were not so extensive as others, its rights were not disregarded. Suffer this confidence to be done away, and you may bid adieu to it; three or four large States will take upon them in rotation to nominate the Executive, and the second officer also. This will be felt. A fanciful difference in politics is the bugbear of party now, because no other, no real cause of difference has subsisted. But remedy will create a real disease. States like individuals may say we will be of no party, and whenever this shall happen blood will follow

Mr. BRADLEY moved an adjournment. The motion was agreed to.

THURSDAY, November 24.

Mr. COCKE gave notice that he would, to-morrow, ask leave to bring in a bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky.

AMENDMENT TO THE CONSTITUTION.

The consideration of the report on the amendment to the Constitution being taken up; the amendment as directed to be printed on the preceding day, was taken up, and read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following amendment be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as a part of the said Constitution, viz:

In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person voted for as President having a majority of the votes of all the Electors appointed, shall be the President, and if no person have such majority, then from the three highest on the list, of those voted for as President, the House of Representatives shall choose the President in the manner directed by the Constitution. The person having the greatest number of votes as Vice President, shall be Vice President; and in case of an equal number of votes for two or more persons for the Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution; but no person Constitutionally ineligible to the office of President, shall be eligible to that of the President of the United States.

Mr. BRADLEY did not approve of the amendment, as it now stood; he could not see why the Vice President should not be chosen by a majority, as well as the President. He considered the possibility of the Vice President becoming President by any casualty, as a good reason for both being chosen by the same ratio of numbers. If it should be carried as the amendment now stands, the office of Vice President would be hawked about at market, and given as change for votes for the Presidency. And what would be the effect?—that it might so happen that a citizen chosen only for the office of Vice President might, by the death of the President, though chosen only by a plurality, become President, and hold the office for three years eleven months and thirty days. He did not approve of many arguments which he had heard on the preceding day: and however disposed to concur in the principle of designation for the two offices, he could not give it his vote in the present shape. He would, in order to render the report more congenial with his wishes, move to strike out the following words beginning with the words *shall*, in the thirteenth line, to *Constitution*, in the eighteenth. The motion was seconded.

Mr. TRACY opposed the striking out, as not in order, it being an amendment to an amendment already received by the House. He thought however it would be in order to reconcile the whole, and then any part might be amended.

The PRESIDENT said that the motion for amending the amendment was not in order; but if the member from Vermont, or any other gentleman of the majority on the question yesterday, chose to move for a recommittal, or even to refer the report to a select committee, it would be in order.

Mr. BRADLEY said that he held it to be a sound truth that in legislating we ought not to be afraid of using words to express our meaning as far as language could go; he thought that there was a deficiency of words and a deficiency of meaning, which if suffered to go abroad would be attended by great inconvenience. He would move for the reference of the report to a select committee, and that they be instructed to insert in the room of the words he before proposed to omit, the words, "if such number be the majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest on the list the Senate shall choose the Vice President."

He would also move that the committee be instructed to insert after the word President, in the tenth line, the following words: "But in choosing the President the votes shall be taken by States, the Representatives from each State having one vote; and there shall be two-thirds of the representation of the States to form a quorum."

Mr. WRIGHT, to give the gentleman an opportunity to discuss his subject, as one of the majority on the question of yesterday, moved for a reconsideration of the whole report.

Mr. BRADLEY was not disposed to favor reconsideration; the custom he took was borrowed from the town-meetings to the Eastward; if this practice were to be pursued, we should be called upon at the end of a session to reconsider the proceedings of the first, and reduce the Senate even below a New England town-meeting.

Mr. ADAMS had no objection to a recommitment, as he considered that one or two further alterations were extremely necessary. He could foresee a probable case which he thought ought to be provided against; and one or two simple expressions would answer the end. He could conceive no election to take place under the form proposed, and the election of a Chief Magistrate was not in his mind a matter of small moment. He would suppose that there should not be three persons voted for; or that, though three or more should be voted for, that none should have an actual majority. What would your situation be then? He would suppose another case, that there were two who should have the highest, and yet an equal number of votes, and that there were to be a third and fourth who should have equal numbers also—how could the *three* highest be found in this

case, when the third and fourth persons were equally high in votes?

Mr. TAYLOR was against the recommittal, because he had no doubt that the ingenuity of gentlemen would, upon amendment in a committee, discover new defects and motives for amendment. The gentleman from Vermont (Mr. BRADLEY) had however stated a new idea; the Constitution does not require a majority in the choice of a Vice President, after the choice of President shall have been made, but says "in *every case*, after the choice of a President, the person having the *greatest number* of votes shall be the Vice President"—purposely omitting "a majority of the whole," as in the case of the President; but the gentleman, who disapproves of amending, wishes to carry amendment farther and to render the difficulty more difficult. He would oppose recommitment, for if this new principle were necessary the gentleman could introduce it in the shape of a new amendment to the Constitution. With respect to the simple expressions which the gentleman from Massachusetts proposed to insert, and which appeared to him to promise with so much facility such great advantages, he should be glad to see them introduced. But he thought that in one case as well as in the other, of those which he had suggested as necessary to provide against, no difficulty whatever existed. For it appeared plain enough to him that if only two had the highest numbers and equal, that one of the two would be preferred to an extension of choice to a third who had not an equal number of votes, and that the selection of one of the two would be in fact a choice from one of the three highest; so in the case of the third and fourth, though they might have also an equal number of votes, he could perceive no difficulty; if there were even four of them, the choice out of any three of the four would be a correct choice.

Mr. DAYTON—Gentlemen appear to forget that the Chair has decided that no words can be introduced into the amendment already adopted, and consequently that a recommitment is the only course left. The gentleman from Virginia (Mr. TAYLOR) objects to the proposition of the gentleman from Vermont, (Mr. BRADLEY,) upon the ground that it seems too sacred to touch it, as there exists already a different principle in the Constitution; but though he considers it too sacred, he nevertheless recommends as a remedy the introduction of a new resolution separably and in opposition to that sacred principle. We have been hitherto trammelled by incongruous rules, but here an amendment is proposed to be got rid of by a side wind.

Mr. TRACY could not see why a Vice President should not be chosen by a majority instead of a plurality as well as President—he was for the recommitment.

Mr. S. SMITH supposed that if the motion of the gentleman from Vermont should be lost, it would be then in order to move a reconsideration. He could not see, with that gentleman, anything exceptionable in town-meetings, nor could he discover that town-meetings in New England were more exceptionable than elsewhere, unless there was anything specially wrong transacted at them. The practice of reconsideration was familiar in all Legislative bodies; and it was in the nature of legislation that it should be so; for new knowledge as well as new circumstances render it necessary to reconsider and revive long established laws.

The motion for referring to a select committee was then lost—yeas 15, nays 16.

Mr. WRIGHT then renewed his motion for a reconsideration.

Mr. BUTLER disapproved of the rule of the House which authorized this mode of reconsideration in so loose a way; he thought that no subject discussed should be reconsidered without an unanimous vote; if that practice was pursued it would prevent a great abuse and waste of time. In the present mode it matters not whether it is a thin or a full House; any member of the majority has the House at his mercy.

Mr. TRACY did not comprehend the meaning of the gentleman in demanding a reconsideration—did he mean to reconsider the whole day's work?

Mr. S. SMITH said his colleague meant, as he meant, to reconsider the amendment made yesterday to the report of the committee.

Mr. TRACY did not suppose that the House was to reconsider the rule of order as to the majority; nor six or seven other motions; but unless the gentleman specifies the subject to be reconsidered, the motion will necessarily comprehend the whole day's work.

Mr. DAYTON understood it to be confined to the amendment of the resolution.

Mr. PLUMER requested the motion to be committed to writing; which was done, and the motion was carried.

Mr. BRADLEY then renewed his motion as before, for striking out and inserting after the 13th line; this amendment he thought of great importance, as under the Constitution as it now stands the Vice President must be a person of the highest respectability, well known, and of established reputation throughout the United States; but if the discriminating principle prevails without some precautions such as the amendment proposed, that assurance would be lost; and he should not be surprised to hear of as many candidates for Vice President as there are States, as the votes for President would be offered in truck for votes for Vice President, and an enterprising character might employ his emissaries through all the States to purchase them, and your amendment lays the foundation for intrigues. He was desirous that he who is to be set up as candidate for the Vice President should as at present be equally respectable, or that there should be none—that at least he should be the second man in the nation; adopt the designating principle, without the most guarded precautions, and you lose that assurance.

Mr. HILLHOUSE accorded with the gentleman's amendment, as it naturally grows out of the principles of the report. There was not a word in the Constitution about voting for the Vice President, no vote in fact is given for such an office; the al-

teration to designation alters the whole thing; and as the gentlemen has expressed, will send the Vice President's office into market to be handed about as change for the candidate supported by larger States; he would prefer leaving the choice of President and Vice President at once to the larger States than take it in this way. In calm times any government may work well, but he wished in calm times to provide against storm. If we designate any, then designate both and on equal terms.

Mr. WRIGHT'S object was the discriminating principle, or the designating principle in its most simple and efficacious form; but this by no means authorized the abridging of the rights of the small States; nor could it be shown in argument that the designating principle would have such an effect. The provision that not more than one of the two candidates should be voted for in the several States, showed that the lesser States were equally guarded with the rest: upon the incidental election in the House of Representatives the same guardianship of the smaller States was conspicuous—the Union was the result of a fair compromise, and the designation in no way departs from it. The amendment proposed, so far as it went to decide the choice of Vice President by a majority instead of a plurality, as the Constitution now stands, he approved, as it was the principle most consonant with the spirit of representative democracy, that no officer should be elected but by a majority; as it now stands, admitting a choice by a plurality, there were contrary principles received. He saw no difficulty in the event of an election of Vice President not being made, as it might be done by this House. The idea he acknowledged he had borrowed from the resolutions of March 4, 1800, passed by the Legislature of Massachusetts, and forwarded to their representatives in Congress; the recommendation of an alteration in this part of the Constitution originated in Vermont, but was adopted and forwarded by Massachusetts.

Commonwealth of Massachusetts.

IN SENATE, *Feb.* 28th, 1800.

Whereas the Legislature of the State of Vermont, on the fifth day of November, last, passed two resolves in the words following, viz:

"STATE OF VERMONT.

In General Assembly Nov. 5, 1799.

Resolved, That the Senators and Representatives of this State in the Congress of the United States be, and they hereby are, requested to use their best endeavors that Congress propose to the Legislatures of the several States the following amendment to the Constitution of the United States, viz: That the Electors of President and Vice President in giving in their votes, shall respectively distinguish the person whom they desire to be President from the one they desire to be Vice President, by annexing the word President or Vice President, as the case may require, to the proper name voted for; and the person having the greatest number of votes for Vice President, if such number be a majority of the whole number of Electors chosen, shall be Vice President; and if there be no choice, and two or more persons shall have the highest number of votes, and those equal, the Senate shall immediately choose by ballot one of them for Vice President; and if no person have a majority, then from the five highest on the list, the Senate shall in like manner choose the Vice President; but in choosing the Vice President, the votes shall be taken by States, the Senators from each State having one vote. A quorum for this purpose shall consist of a member or members from two thirds of the States; and a majority of all the States shall be necessary to a choice. And in case the Senators and Representatives of this State in Congress, shall find that the aforesaid amendment is not conformable to the sentiments of a Constitutional majority of both branches of the National Legislature, they are hereby requested so to modify the same as to meet the sentiments of such majority.

Provided, however, That any amendment which may be agreed on, shall oblige the Electors to designate the person they desire to be President, from the one whom they desire to be Vice President.

Resolved, That his Excellency the Governor be requested forthwith to transmit the same to the Supreme Executives of the several States."

Which resolves have been communicated by the Supreme Executive of the State of Vermont to the Supreme Executive of this Commonwealth.

Resolved, That the Legislature of this Commonwealth have a high sense of the wisdom and patriotism of the Legislature of the State of Vermont, and accord with them in the opinion, that it is expedient that the Constitution of the United States be amended in the manner contemplated in the aforesaid resolves of the Legislature of the State of Vermont.

Resolved, further That the Senators and Representatives of this State in the Congress of the United States be and they are hereby requested to adopt the necessary measures to effect the amendment aforesaid.

Resolved, further, That his Honor the Lieutenant Governor be and he is hereby requested to communicate the foregoing resolves to the Supreme Executive of the State of Vermont, and also to transmit copies thereof to the Senators and Representatives of this Commonwealth in the Congress of the United States.

Approved, March 4th, 1800.

The propriety of this House choosing its President he considered as perfectly conformable to the principles of the Constitution. The House of Representatives never vote by States but when the election of President devolves upon them; the Senate never; but he did not see why it should not be so in the event of a non-election of Vice President by the want of a majority. As to the number from which the choice was to be made, he cared not whether it were three or five—he considered the principle of designation as everything, and the number but as trimmings to the cloth. He would recommend it to the gentleman from Vermont so to alter his amendment as to render an election in the House the resort, in the defect of a majority; he was for the choice being made not in the numerical capacity of the members, but by States.

Mr. BRADLEY considered the provision of voting in the House of Representatives by States, as a good one in the particular case. But he did not think it necessary here, because this House already represents States equally; a member or members, may, it is true, be absent, but then that is a great neglect of duty, and subjects to heavy responsibility the absent member. Under the present order of things a State may have no vote, though both its Representatives are present, for A and B

may vote differently; if five or six States were in the same predicament, a case not very unreasonable to suppose, then there would not be a majority.

The question was then put, and Mr. BRADLEY'S motion carried.

Mr. BRADLEY then moved his amendment in the 16th line as above cited, to be inserted in the place of the words, "in the manner directed by the Constitution." He observed this amendment would render it necessary in order to avoid confusion to repeal the section which comes within its purview; if no manner of election is pointed out, it will be impossible to tell what construction to put upon it; and instruments of this important nature cannot be expressed in language too explicit. If a provision, such as is offered, should not be adopted, might not the House of Representatives consider themselves at liberty to choose by the numerical vote? It is true that any vote we may here give will not alter the principle, but it is proper that provision be now made that no mistaken interposition take place at a future time.

Mr. ADAMS said, if he understood the state of the question, the principle relates in the most important degree to the numbers from which the choice should be made—as it now stood he could not say whether three or five was the number to be chosen from; he hoped the Senate would determine whether the choice was to be made from the highest numbers in all cases; or to make provision specially for either case of five or three; if the choice was to be fixed by the number five, then he conceived that the words from the whole number, if less than five, should be introduced. He was himself in favor of the number five, because by taking three you reduce the power of the small States, and their chances in the House of Representatives; for certainly it is a much higher power to elect from five than from three. He questioned whether the House of Representatives would part from that number, for in general popular bodies are very tenacious of power; it is in their nature, and so in a degree are Senates.

Mr. DAYTON said, the remarks of the gentleman (Mr. ADAMS) in favor of small States were too precious to be lost; but he wished they had been reserved for the proper place; with regard to number likewise, it was out of place, as there was no reference to numbers in the motion of the gentleman from Vermont.

The second amendment of Mr. BRADLEY was then put and carried.

Mr. COCKE called for a consideration of the vote of the preceding day on the number in the 15th line, which he moved to strike out, in order to afford gentlemen the opportunity they seemed to wish for to discuss the number.

The motion was carried, and a blank left for the number.

Mr. COCKE.—Gentlemen had now full latitude for discussion, and he wished it would be settled so far as concerned the number, this day; he could not but express his sorrow, however, to hear gentlemen making such a stir about supposed dangers to the small States; this kind of clamor is worn thread-bare, and could not pass muster much longer; on all occasions we hear in one shape or another this opposition of States brought forward; lately it was the West was in danger; at other times the South is arrayed against the East; and now we are called upon to believe the large are going to swallow the small States; gentlemen must have a large swallow indeed who can take in these things. Another gentleman, from Connecticut, (Mr. HILLHOUSE,) presents us another horrid spectacle; he tells us that those States must be merged in blood, and truly the remedy by which all this bloodshed is to be prevented, he tells us, is the election of a Federal Vice President! He was not surprised at this kind of remedy being recommended, but he thought it little better than a quack medicine. He believed that if the remedy was accepted, the day would not be far distant when they would come forward with another, and tell us that a Federal President was necessary to our existence. He for one was not for taking the remedies of those who, when disorder prevailed, instead of curing them, created new ones. Gentlemen would not a few years ago listen to any advice or even complaints of a minority; they think now, as they said then, that there was no talents or virtue in the country but what they possess; and they now tell us that minorities should govern. While he stood in that House he would never submit to be governed by a minority, especially a minority which, when a part of the majority, declared the then minority deserved a dungeon. We shall not treat them in that way; they shall experience no persecution; we will even endeavor to make their situation comfortable for them; but they must not expect our aid to set aside majorities, or to depart from the principles of the Constitution.

Mr. HILLHOUSE.—If the gentleman alludes to me, he is mistaken.

Mr. COCKE.—No gentleman in this House can be a stranger to my meaning—he had proposed to insert the number five in the blank.

Mr. DAYTON seconded the motion, but not for the reasons offered by the gentleman from Tennessee.

Mr. COCKE.—As I cannot pocket that gentleman's superior reason, I must be content to make use of that plain reason God has given me. He had heard it said on that floor, that the object of our amendment was to prevent a Federal Vice President being elected. For his personal feeling on that subject he could account; he entered into no examination of other gentlemen's feelings, but for himself he would avow that he was actuated by a strenuous wish to prevent a Federal Vice President being elected to that Chair; he could not subdue his memory, and he would not wish to see any man chosen whose attachment to Republican Government he doubted; he was against the election of any man who differed from the majority; he was as adverse to persecution as any man; he could not persecute, but he would, while he had breath, guard against all men and all parties that countenance or practise persecution for opinion's sake. He would assert the right of the

majority, and entertained no sort of apprehensions from those spectres and hobgoblins, those denunciations of blood, and such declamations as were thrown out by some gentlemen, and which betrays the rancor which rankles in some gentlemen's breasts, who judge of others by themselves, and furnish the strongest argument against trusting to them. He disdained persecution, but he would guard against it. He would follow the letter and the spirit of the Constitution, which excluded the choice of minorities; which was advantageous to the minority, if it was not their own fault. We are called upon to make a choice or we are not. Will gentlemen tell us that we make a choice, if we admit what is contrary to our sentiments of right and wrong. What is the object of the amendment? To put it in the power of the people to choose those whom they think most entitled to confidence and respect. If we furnish an amendment which they do not approve they will send it back to us.

Mr. TAYLOR.—This appears to be a subject of much importance, and the matter introduced into the debate had given it a more serious air than it at first assumed. To estimate a measure of a public kind we must look to the consequences which it is intended, or may incidentally produce. If the measure had the tendencies, or would produce such effects as some gentlemen surmise, it would be very serious indeed. But he would be bold to say that it was never contemplated to countenance or encourage a classification of States. No man he believed who advocated the amendment would submit to a classification of States any more than a classification of men, or the establishment of patrician and plebeian orders. Are gentlemen who hold forth these delusions conscious that the course they pursue is the only mode to excite that jealousy and distraction which they say they deprecate? Do gentlemen wish to excite an hostility of this kind, to inculcate the idea of discriminating the States into patrician and plebeian? Are they regardless of the consequences, or have they ever considered them?

How, he would ask, is this amendment to favor the large at the expense of the small States? Gentlemen have not shown. Have they considered that nothing is so fatal to freedom as the existence of orders and distinctions in society? Could the effect be less pernicious if you attempt with any effect to stir up rivalry of States? Are you prepared to estimate the consequences of violence and the conflict of weakness against strength? Can any gentleman reflect on it without horror? Is it to be presumed that if you set the furious passions in agitation, that the large States will sit patiently and bear unmerited reproach and outrage? Do you not perceive that these menaces and clamors proceed exclusively from those who affect so much concern for the small States? Are gentlemen aware of the responsibility which they attach to themselves—that of exciting resentment and animosity, and that kind of animosity which a weak man injured always feels towards the strong; for it is of no consequence whether the weak man is deceived and insulted by the imposition put upon him, if he is really deceived into the pernicious belief?

He had persuaded himself a mode of argument so pernicious could not be employed on this occasion; he had expected that the question would be examined and decided upon its true grounds. But beside this we find an attempt to defeat the amendment by its form. Let us examine this amendment. By filling up the blank with five, you carry the election into the House of Representatives; and why do we wish to keep the election out of the House of Representatives? Because experience teaches us to avoid the danger of diets, which are always exposed to intrigue and corruption, as we avoid elections by mobs, from their liability to be misled by the sudden impulse of passion and violence. We wish to avoid both, because each by different paths leads to the same consequence. One or two elections by a diet would repay the small States—with what? with monarchy. Elections by diets always lead to monarchy. It is for this reason, then, that we wish to keep the elections where they should be, in the hands of the people, where, from very obvious cause, neither intrigue nor corruption can operate. It is by diets that Great Britain has been ruined in her prosperity and liberties. By placing the election in the House of Representatives, you expose the small States to the evils which Great Britain has suffered through her rotten boroughs. The small number of Representatives in the small States will expose them to the allurements against which humanity is not always fortified. The danger of temptation must be guarded against, else the minority may be through corruption made to govern. The small boroughs where there are few electors have given the rule over the majority in England for more than a century; corruption has been the Prime Minister, and the Parliament has been in fact the mere registers of the monarchical edicts.

But it will be asked, do we lessen the chance by lessening the number? Yes, sir; the greater the scope is which you give the House of Representatives, your chance is the greater for a number of candidates; if you fill the blank with twenty, you will have twenty; if with five, you will have five within the scope of that power; and the greater numbers the electors may have to nominate, the greater division of sentiment, and more numerous will be the inducements to corruption.

Limit the number to three and you reduce the danger, and by condensing public sentiment, you will then have the watchfulness of ambition on one side and of virtue on the other, directed without distraction to the limited number; he would, therefore, prefer three to five.

Mr. DAYTON believed it would come to this, that when the question came to be discussed, and the rights of the small States maintained, the large States would threaten us with their power. The same threats had been heard in the old Congress, but they were laughed at, for the votes of the States were equal; they were heard in the convention, but they were spurned at, for the votes

were equal there also; the large States must be cautious here, for in this body, too, the votes are equal. The gentleman had talked of a classification of States as a novelty, but he would ask if that gentleman pretended to be wiser than the Constitution? Look through that instrument from beginning to end, and you will not find an article which is not founded on the presumption of a clashing of interests. Was this fine process instituted for nothing? Was developing the election in particular circumstances in the House of Representatives intended for nothing? Was nothing meant by the provision of the Constitution, that no amendment should ever deprive the States of the equality of votes in this House? Yet, it was that jealous caution which foresaw the necessity of guarding against the encroachments of large States. The States, whatever was their relative magnitude, were equal under the old Confederation, and the small States gave up a part of their rights as a compromise for a better form of government and security; but they cautiously preserved their equal rights in the Senate and in the choice of a Chief Magistrate. The same voice that now addresses you made the solemn claim, and declared there was no safety in association unless the small States were protected here. The warning was taken, and you find in that part, as in all others, a classification governs every line of the Constitution.

Mr. JACKSON said, that though coming from a small State he had not been instructed, and was therefore at perfect liberty to act according to the best of his judgment; though his State was now, in regard to population, small, and though it were to remain so, he could have but one opinion on this subject. He saw abundance of reason for preferring three to five. The Constitution under the present form has directed the choice to be made from five. But the reason of this was consistent with the result to be produced; the Electors were to vote for two persons indiscriminately, but with the restriction of voting for one only belonging to the State where the vote was given. The voting for two would necessarily bring forward four candidates, and a fifth possibly, for we saw in the two elections before the last that there was one more than the four, though in each case the fifth had but one vote; he alluded to the vote for Mr. Jay. In the amendment proposed you are called upon to designate for each office, and there can be little apprehension of having more than two or three principal candidates; and for twenty years to come he had no apprehension of a greater number of candidates if this amendment prevails.

Now, supposing that, as on the first and second elections, there were to be five candidates, and that there should be a candidate with one vote like Mr. Jay, and that the number were five; that there was an equal number of votes for two candidates as at the last election, two others with inferior numbers, and the fifth only with one vote, the election would devolve upon the House of Representatives, and thus would have them place him, who had only one vote, on the same footing with him who had seventy-three.

Suppose the result to be the same as the last election, when the votes were, for Thomas Jefferson 73, Aaron Burr 73, John Adams 65, C. C. Pinckney 64, J. Jay 1; here the unequal numbers would be placed under the power of the House upon equal terms.

What would you do, sir, if there was not barely five who had not the highest numbers?—your difficulties would increase with your numbers. He had no apprehensions on the score of the present election; every member of that House must be satisfied that there can be no doubt of his being the man of the people above all competition; he believed, too, he was the man of the Legislature. All considerations as to the next election could have no influence here; we must look to the future, when we may not be so fortunate. He was sorry to hear gentlemen talk of separate interests; he knew of no separate interests, but felt himself bound to maintain the interests of the great whole. This, he thought, could not be done but by the choice from the number three. You had best avoid the danger which experience has shown you narrowly escaped. You must keep the election out of the House of Representatives, if you wish to keep the Government from civil war, from the danger of having a man not voted for by the people proposed to be placed over your head, as you are plainly told had been proposed. We are but the servants of the people, and it is our duty to study their wishes. Separate interests do not exist; and the agitation of such ideas should not be countenanced. It is all a cant, a mere factious pretence; he had never known any separate or hostile interests in this country but that of Whig and Tory; though he had heard much less said about these real enemies than the imaginary adverse interests so much talked of as the Eastern and Southern States; then the Eastern and the Western; then come the federalists and anti-federalists; subsequently, federalism and republicanism; and now, it is the large and small States. Presently, he should not be surprised to hear of the hostility of the rats and anti-rats: the danger from one is as real as from the other. He hoped to see all this delusion banished; he was well satisfied it would not make any impression on the people. By fixing on the number three, division and passion will be more effectually prevented, and intrigue will have less room for operation.

Mr. WRIGHT.—We need not be told in this House, that the Constitution was the result of a compromise, or that care was taken to guard the rights of each State; these things we must be very ignorant, indeed, not to know. But does it therefore follow that it is not susceptible of amendment or correction under experience? Does it follow, because, for mutual interest and security, this compromise was made, that we are precluded from effecting any greater good? No man would accuse him of a wish to see the interest of any State impaired. But we can preserve the spirit and intention of the Constitution in full vigor, without impairing any interests. And this is to be done, by the discriminating principle; it fulfills the intention, and it forefends the recurrence

of that danger from which you have once escaped. By this principle, each elector may name his man for each office, and this can be done whether the number be three or five. For the latter number he was disposed, because already adopted by the other House, and he did not wish to delay its progress. If we were to form a constitution, he would provide that there should be only two candidates presented to the House. But he did not rely on any number so much as on the discriminating principle.

Mr. NICHOLAS.—Several gentlemen profess much reluctance to make any change in the Constitution; he would make no such profession; and though he should be as jealous of improper alterations, or the introduction of principles incompatible with Republican Government, he would not hesitate to make any alteration calculated to promote, or secure the public liberty upon a firmer basis; nay, if it could be made better he would expunge the whole book. Gentlemen who are for adhering so closely to the Constitution, appear not to consider that a choice of President from the number three, is more in the spirit of the Constitution than from five; and preserves the relation that the election of two persons, under the present form, holds to the number five. A reason equally forcible with him was, that, by taking the number three instead of five, you place the choice with more certainty in the people at large, and render the choice more consonant to their wishes. With him, also, it was a most powerful reason for preferring three, that it would render the Chief Magistrate dependent only on the people at large, and independent of any party or any State interest. The people hold the sovereign power, and it was intended by the Constitution that they should have the election of the Chief Magistrate. It was never contemplated as a case likely to occur, but in an extreme case, that the election should go to the House of Representatives. What, he asked, would have been the effect, had Mr. Jay been elected when he had only one vote? What, he would ask, would be the impression made upon our own people, and upon foreign nations, had Mr. Aaron Burr been chosen at the last election, when the universal sentiment was to place the present Chief Magistrate in that station? He did not mean anything disrespectful or invidious towards the Vice President, he barely stated the fact, so well known, and asked, what would be the effect? Where would be the bond of attachment to that Constitution which could admit of an investiture in a case so important, in known opposition to the wishes of the people? The effect would be fatal to the Constitution itself; it would weaken public attachment to it, and the affectation, if alone for the small States, would not have been heard of in the deep murmur of discontent. Gentlemen, who pretended to feel, for he would not enter into their conceptions, if they had any real apprehensions on the subject of the danger of the smaller States, forget that this is not a project of the large States; they ought to have considered that it has originated with the small States; and that, in the House of Representatives, two-thirds of the representation is that of the smaller States. Have gentlemen forgotten that the amendment has been twice recommended from South Carolina, afterwards by Vermont, then by New Hampshire, and finally by Tennessee? Are these large or small States? Away with such groundless pretences! The attempt to excite jealousy in the small States cannot succeed. The people know that it is calculated to prevent a crisis which was long apprehended, and which the experience of the last election proved to be well founded.

Mr. MACLAY said, he believed that, as it concerned one more than another State, it was perfectly immaterial whether the number five or three were chosen. He conceived that it involved no question but what was common to all the States; and he wished this clannish spirit could be laid aside on occasions of this important nature; and that the general interest of the whole should be considered. In this point of view, the present amendment cannot affect the political rights of any State, for, being on a perfect equality, in the choice of one from three as well as one from five, no danger of rights can exist, though other dangers may be apprehended. If any rights can be at all affected, they must be civil rights. But here he found it difficult to convey, with the clearness he could wish, his ideas on the application of the amendment to civil rights; he would, therefore, endeavor to do that by comparison, which was not so easily explained by itself. He would compare the States of the Union, in their collective capacity, to individuals in society; wealth, in society, is power; and he who has wealth possesses a more extensive influence than he who is poor; in this respect, perhaps it may be said, they are not upon a perfect equality, because one man possesses an equal direct power with the poor man, and an overplus of indirect power, which the poor man does not possess. But the same men, in their civil capacity as citizens, are upon complete terms of equality, possessing equal rights and power, as in the right of suffrage, and in the sight of the law, they are equally *units* in the mass of society.

Extent of territory, occupied by a numerous population, is, in a State, what wealth is to the private individual. The State of small extent, or of comparatively small population, stands in the same relation to society as the poor man. Notwithstanding this disparity of political or physical power, the rich and the poor man, the large and the small State, are equally interested in supporting their actual or personal rights. But they may be considered as equally interested in supporting those personal rights which connect themselves with the security of their wealth, in which they have but unequal interest. The wealthy have, besides their civil rights, their property at stake, and may therefore be supposed more vigilant and watchful of innovations which might weaken or destroy that security by which they hold their rights and privileges. If this reasoning be correct, let us apply it to the case under consideration; why attempt to alarm and raise jealousies in the

small States, when it is evident that the interest of the large States will be constant protection to the smaller States? The idea might be carried farther, and it might be shown that, if there is anything in this amendment that has any tendency to alter the relative power and influence of any States in the Union, the danger would be to every State, in proportion to its extent and population.

It was probable, that on this subject he entertained opinions different from gentlemen whose talents and information he highly respected; on such occasions he always offered his sentiments with diffidence, and he was willing to hear and be convinced if mistaken; but from every view he had taken of the amendment, it did not appear to him that it could alter the principle in the Constitution, nor change in any way the relative rights and situation of the States. In simple truth, it is only alteration in the detail of the elective process, calculated to assimilate the election of President and Vice President of the United States to the modes already in practice in the election of the Executive of several of the States. He could not see that it would be attended with any danger to any of the States; if there was danger, the danger would be greater to the larger States, as their interest is the greatest. But danger of this kind cannot and does not exist; for it cannot be shown that this amendment has or can produce any effect on the law-making power in this country, and it is in this power that we are to seek for the nature and the protection of all our rights, civil and political; and, with this impression, he would vote for the amendment with the number three.

An adjournment was now called for and carried.

FRIDAY, November 25.

The Senate took into consideration the amendments reported by the committee on the 23d instant to the bill, entitled "An act for the further protection of the seamen and commerce of the United States;" and having amended the report, it was adopted: and the bill passed to a third reading as amended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The treaty with the Kaskaskia Indians being ratified with the advice and consent of the Senate, it is now laid before both Houses in their Legislative capacity. It will inform them of the obligations which the United States thereby contract, and particularly that of taking the tribe under their future protection; and that the ceded country is submitted to their immediate possession and disposal.

Nov. 25, 1803. TH. JEFFERSON.

The Message was read, and ordered to lie for consideration.

On motion, by Mr. ADAMS, that it be

Resolved, That a committee of —— members be appointed to inquire whether any, and, if any, what further measures may be necessary for carrying into effect the treaty between the United States and the French Republic, concluded at Paris on the 30th April, 1803, whereby Louisiana was ceded to the United States; which committee may report by bill or otherwise.

Ordered, That this motion lie for consideration.

Agreeably to notice given yesterday, Mr. COCKE had leave to bring in a bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky.

AMENDMENT TO THE CONSTITUTION.

The Senate resumed the consideration of the report of the committee appointed to consider the amendment proposed to the Constitution, in the mode of electing the President and Vice President.

On motion, it was agreed to amend the amendment, adopted yesterday, and strike out the words "in the manner directed by the Constitution," and insert:

"But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice."

On motion, it was agreed to amend the amendment adopted yesterday, and to strike out the words, "and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution," and insert:

"If such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice."

On motion, by one of the majority, it was agreed to consider the vote of yesterday for inserting the word "three" in line tenth of the amendment agreed to, so that it stand blank; and, after debate, the Senate adjourned.

MONDAY, November 28.

The PRESIDENT laid before the Senate a letter from the Postmaster General, with his annual report, made conformably to law; and they were read, and ordered to lie for consideration.

The bill, entitled "An act for the further protection of the seamen and commerce of the United States," was read the third time.

Resolved, That this bill pass with amendments.

On motion,

"That a committee of —— members be appointed to prepare a form or forms of government for the Territory of Louisiana."

Ordered, That this motion lie for consideration.

On motion,

"That a committee be appointed to inquire whether any, and what, addition may be necessary to the Naval Armament of the United States, and whether it would

be proper to authorize the President to dispose of any of the public ships of war now in the service of the United States, and to report by bill or otherwise."

Ordered, That this motion lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,'" in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

Mr. BRADLEY, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act fixing the salaries of certain officers therein mentioned," reported the bill with amendments.

Ordered That they lie for consideration.

AMENDMENT TO THE CONSTITUTION.

The Senate resumed the consideration of the report of the committee appointed to consider the amendment proposed to the Constitution, in the mode of electing the President and Vice President of the United States.

Mr. ADAMS suggested the propriety of postponing the question this day, as a member was absent indisposed, (Mr. ANDERSON,) who was the representative of a small State. He was ready on Saturday to give his vote on the main question and on the incidental question; but as he understood the number three to be a *sine qua non* with the gentleman from Virginia, he thought it better the subject should be postponed until the House should be full.

Mr. COCKE said, that number was not with him a *sine qua non;* he would vote for the amendment with either number; though, from a more deliberate consideration of the arguments he had heard, he was disposed to think *three* the best number, as it promised to bring the election closer to the people. He was not apprized how his colleague meant to vote.

Mr. FRANKLIN was against a postponement. His mind was perfectly made up on the subject, and it was time the Senate should come to a decision. The Legislature of his State was in session; their sentiments were decidedly in favor of the amendment, and he wished it to reach them before Christmas, as they would most likely rise about that time.

Mr. WHITE said that he, as well as other gentlemen, was ready to vote on the main and incidental questions, and was fully aware of the importance of an early decision. His mind was made up, as a member from a small State, for the number five, and he understood that the member absent was in favor of the same number. He wished, on his account, therefore, to postpone, though ready himself. The gentleman might be able to attend to-morrow.

Mr. NICHOLAS thought there was no necessity whatever to delay a decision. If the indisposition of a member was a good reason for delay, business might be postponed forever; but even if the gentleman absent was solicitous to deliver his sentiments, the filling up the blank with any number need not prevent it, as the number might be withdrawn to afford him that opportunity, and the discussion of the main question might still proceed.

Mr. DAYTON was opposed to that mode of proceeding. Upon the issue of the number *five* or *three*, it was probable that the whole question would depend.

Mr. TRACY was for a postponement. He felt himself unwell.

Mr. COCKE was indifferent; whether decided now or to-morrow, it would be the same. Postponed.

TUESDAY, November 29.

Mr. BRADLEY presented the petition of Elijah Brainard, stating that he had received a wound in the service of the United States during the late Revolutionary war, and that he is thereby reduced to great distress, and wholly incapacitated for bodily labor, and praying admission on the pension list, although his claim may be barred by the statute of limitations; and the petition was read, and ordered to lie on the table.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now communicate an appendix to the information heretofore given on the subject of Louisiana. You will be sensible, from the face of these papers, as well as of those to which they are a sequel, that they are not, and could not, be official, but are furnished by different individuals, as the result of the best inquiries they had been able to make, and now given as received from them, only digested under heads to prevent repetitions. TH. JEFFERSON.

NOVEMBER 29, 1803

The Message and papers therein referred to were read, and ordered to lie for consideration.

The bill entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,'" was read the second time.

Ordered, That the further consideration thereof be the order of the day for to-morrow.

AMENDMENT TO THE CONSTITUTION.

The order of the day being called up on the amendments to the Constitution—a considerable time elapsed, when

Mr. DAYTON rose and said, that since no other gentleman thought proper to address the Chair, although laboring himself under a very severe cold, which rendered speaking painful, he could not suffer the question to pass without an effort to arrest it in its progress; and should consider his last breath well expended in endeavoring to prevent the degradation which the State he represented would suffer if the amendment were to prevail.

As to the question immediately before the Senate for filling the blank with five, he felt himself indebted to the member from Tennessee for renewing the subject. He was grateful, also, to

the member from Maryland (Mr. WRIGHT) for declaring he would support it, as well as for giving the assurance that he was disposed to consider and spare the interests of the small States as far as possible, consistently with the great object of discrimination.

Every member who had spoken on this subject seemed to have admitted, by the very course and pointing of their arguments, even though they may have denied it in words, that this was really a question between great and small States, and disguise it as they would the question would be so considered out of doors. The privilege given by the Constitution extended to five, out of which the choice of President should be made; and why should the smaller, for whose benefit and security that number was given, now wantonly throw it away without an equivalent? As to the Vice President, his election had no influence upon the number, because the choice of President in the House of Representatives was as free and unqualified as if that subordinate office did not exist. Nay, he said, he would venture to assert that, even if the number five were continued, and the Vice Presidency entirely abolished, there would not be as great a latitude of choice as under the present mode, because those five out of whom the choice must eventually be made, were much more likely hereafter to be nominated by the great States, inasmuch as their electors would no longer be compelled to vote for a man of a different State. The honorable gentleman from Maryland (Mr. SMITH) has said, he was not surprised that those who had seats in the old Congress, should perplex themselves with the distinctions; but he could tell that gentleman, that it was not in the old Congress he had learnt them, for there he had seen all the votes of the States equal, and had known the comparatively little State of Maryland controlling the will of the *Ancient Dominion*. It was in the Federal Convention that distinction was made and acknowledged; and he defied that member to do, what had been before requested of the honorable gentleman from Virginia, viz: to open the Constitution, and point out a single article, if he could, that had not evidently been framed upon a presumption of diversity (he had almost said, adversity) of interest between the great and small States.

The gentleman from Georgia, too, (Mr. JACKSON,) is very much afflicted that the State distinctions had been introduced on the occasion, and admonished the Senate to put away all local considerations. That gentleman may now be prepared to do so, since he has obtained all his heart could wish for his immediate constituents; but if there was a single member who had more ably, more perseveringly, and more successfully and warmly contended for the rights and interests of his particular State, than any or all the other members on that floor, he was that member. The gentleman had not only been quickly, but tremblingly alive to every measure that could in the most distant degree affect the interests of his State. It would be remembered that in the session before last, when a bill came up from the other House for allowing the privilege of franking a few letters to a gentleman who sat there as delegate, and had travelled about thirteen hundred miles from the banks of the Mississippi to inform us that it was inhabited by other creatures than alligators, the bill was opposed by that very gentleman, upon the ground that the dignity of Georgia would be wounded, and her rights injured by the passage of that bill. It was afterwards committed and recommitted, whilst the unhappy delegate (since put in his grave, poor man! no doubt of a broken heart) was compelled to wait several weeks without writing under privilege and without drawing a shilling of money, until the gentleman from Georgia could find leisure to secure the rights and dignity of his State from being injured by allowing the delegate to frank his billets.

In a more recent and far more important transaction, it might be recollected also, how dexterously, how zealously, and how very successfully he advocated the interests of a little corner of the Union known by the name of Georgia. On the list of expenditures there would hereafter be seen between one and two millions accounted for by being paid over to the treasury of the State he represents, as the fair fruits of his zeal and address. He may now be ready, since he has obtained thus the extent of his wishes, to banish all local attachments pending this question. He would give him credit for his assertion, and for two reasons: first, because the gentleman himself had said so; and next, because he should, on any other principle, be at a loss to account for the vote he was about to give.

Since these instances of State attachment, and of the good fruits of it, were so fresh in the recollection of the Senate, it was to be hoped the gentleman from Georgia would allow members from other States, sometimes, to imitate his commendable example, by taking a little care of the interests of their constituents—not in the more trivial question of franking letters or of a few dirty acres, but in a question so very serious in its nature as to strike at their sovereignty itself.

Some attention was due to the remarks of the gentleman from Pennsylvania, (Mr. MACLAY,) who went into an ingenious but subtle distinction between civil and political rights, artfully calculated to divert the attention of the Senate from the true distinction upon which this motion and the main question turned, by amusing them with an ingenious disquisition on the rights of men in society, distinguishing them under the heads of political and civil. But without following him through his regular chain of reasoning, he would make shorter work, and reduce all that gentlemen had said to the test of analysis. To those Representatives of small States who should vote with him, his disquisition was intended doubtless as a sort of justification; and to those of them who, although voting against him, must be compelled to submit, it was kindly meant as a consolation under the new dispensation of State influence. They were told that their rights were of two kinds, viz: political, in relation to their standing

as members of a State, and civil in reference to their rights as mere individuals; that their political rights might be abolished or abridged, or their State sovereignties invaded and prostrated, but their civil rights might remain unimpaired; that they might, to be sure, be less respected as Jerseymen, Rhode Islanders, or Georgians, but they would not therefore be less respected and regarded as members of the Union, or Americans. Mr. D. said he liked the gentleman's illustration of his argument much better than the argument itself; and he approved the machinery he had employed much more than the use he had made of it. With his leave, therefore, he would take the materials he had furnished for the occasion, and put them into plain and simple allegory.

The gentleman from Pennsylvania had compared the great and small States confederated, to rich and poor men associated in one community. Let the comparison for argument's sake, be admitted to be just, and let the analogy be pursued. Suppose these rich men, four in number, and the poor men thirteen, had entered into a compact which required that a chief should be chosen from among them once in four years, and that, as their votes would be in proportion to their wealth, the four men would have a preponderance over the other thirteen. Suppose them allowed to vote for themselves exclusively, but with this stipulation, that if, on the first ballot, a majority should be found for one, it should devolve upon the whole seventeen to decide upon a chief, with equal voices; would it not in this case be the interest of these four to limit the choice to the three highest on the list, and of the thirteen to extend it to five? In the first case of three, they would be compelled to elect one of the three rich, however unworthy; and in the other case, they would be at liberty to choose one of their own number, if they thought him better qualified than any of the other four. They might, it was true, risk the displeasure of the four rich men, but why debar themselves from doing it, if the case should justify their running the risk? This could with propriety be said to be such a case, or, to drop all figure, a question between the great and small States. The Constitution allowed a choice from the five highest on the list, and why should we debar ourselves of the right of such a choice? It was a privilege which ought to be persisted in, even though the resentment of the great States might be aroused. As expressed in the animated language of the honorable gentleman from Virginia, "their power was great, and he could hear the menace of a former day reverberating through the Senate Chamber;" its effects would perhaps be best ascertained by the vote which was to follow.

Mr. WRIGHT rose only to correct an error into which the gentleman from New Jersey had fallen, concerning the number five, which he had spoken in favor of on a former day; he had never admitted nor argued that the number five or three would affect the Constitution or the small States; he had, on the contrary, declared that all he wanted was the discriminating principle; and so that was effected, he cared not whether the choice was to be made from five or from twenty. As he had not used such arguments, he supposed he must have been imposed upon, by the misrepresentation of his sentiments in an infamous paper, called the *Washington Federalist*, in which nothing said on his side of the House was reported truly; that paper had falsified his speech, and he took that opportunity to state that, whosoever was the reporter of his speech in that paper, was guilty of a lie.

Mr. DAYTON observed that the allusion he had made was to the support which the gentleman certainly gave to the number five; as to what the paper alluded to might say, he had nothing to answer.

Mr. WRIGHT had repeatedly advocated the discriminating principle, and he had been represented as holding opinions which he did not hold, that the amendment was an attack on the small States; now, as he had never entertained that opinion, and as that infamous paper had so misrepresented him, he must repeat, that whoever wrote that charge in that paper, wrote a lie.

Mr. DAYTON hoped the gentleman did not mean to connect him in his observations; he could not certainly suspect him as the author of any piece in that paper.

Mr. COCKE had also come in for a share of the gentleman's thanks, but there were none due, as he had acted as one of the majority, and was willing by giving them an opportunity to say all they had to say in favor of the number five. With him, at first, it was a matter of indifference, so he obtained the discriminating principle. His constituents were unanimous in favor of this principle, and he had their instructions to that effect. He preferred the number three for the reasons he had already given; it brought the election closer to the people; five would give a greater latitude, and subject it to the Legislature, which he did not wish to see take place. As to those dreadful consequences, and all this depredation of States, he could not see how those things could happen. What if the larger States were foolish enough to attempt the enslavement of the smaller States, were the small States so feeble and so few as not to be able to prevent them? As to this degradation of small States, he could recollect the time when it was said that if Pennsylvania would give an unanimous vote, New Jersey would give a vote to counteract it. He knew nothing that would degrade a State so much as intrigues of such a nature; and, it was to avoid that degradation, he wished for the amendment. He wished the President not to be an intriguer; he wished to have him what he now is, the man of the people; and, for that purpose, he would vote for three.

Mr. JACKSON had intended to have given only a naked vote on this question, but the profusion of compliments heaped upon him for merely discharging his duty, demanded some return; he had been sent to that body to watch the interests of his State, and to do, to the best of his judgment, justice between it and the United States. He had conceived the rights of Georgia invaded, and he felt it to be his duty to seek justice according to

the Constitution. Whatever gentlemen may insinuate about dirty acres, no State of the Union was so much oppressed as Georgia had been; not by the large States, from which the gentleman apprehends so much, but by the small. Let any gentleman consult the Convention at New York, and they will find that not a single small State came forward to support her protest against a great wrong when a treaty was sanctioned that violated her rights and parcelled out her territory. As well might the Union pretend to give up Philadelphia to Great Britain, as the county of Talassee to a parcel of tomahawking Indians. Had that gentleman been a Representative no doubt he would have come down upon them in thunder, he would have with a loud voice rent the Hall of Congress with the wrongs of the State, and the ravage and carnage to which it was exposed; he would have described the children torn from their mothers' arms by the unfeeling savage, and dashed to pieces; the matron abused and murdered; and deplored that, to the authors of such cruelties, the territory had been consigned.

Gentlemen either knew not or cared not for these wrongs; and, after several years supplication, it was only two years ago that half justice was done; for half what was taken away by usurpation, has not been restored by justice. We had paid other States for defending the Union, but Georgia had not yet been paid, and it remains yet to be known, whether the widow, bereaved of her husband in battle, or murdered by treachery, while defending his country, or the orphan who survived her murdered parents, are to be remunerated even for their country and equitable demands. Government by a law seized upon this territory and legislated for it. It was for that territory a Delegate was sent, to whom the gentleman adverted. He opposed the extension of the privilege of franking to any Delegate, because agreeing to it would be to acknowledge the title of injustice.

No State had ever been oppressed by Georgia; year after year they had sent petitions demanding payment for the service of the militia which has protected the frontiers, but they had not been paid to this hour.

Upon the merits of the question of numbers, he had wished to remain silent, but, as he was up, he would intrude upon the House a few observations. He preferred the number three, for several serious reasons; he wished to prevent the choice from devolving upon the House of Representatives; he wished it to be out of their power, if it should devolve upon them, to elect any man not evidently intended by the people; the smaller number would render this more certain; he did not consider it a matter of any consequence from what State a President was chosen; he believed the small States had never offered a candidate; the period was too short, since the existence of the Government to admit of many States having an opportunity to bring forward a candidate; and various good causes had contributed to make the selections that had been from large States. While parties existed there would be a champion chosen by each; if New Jersey has not brought forward one, it cannot be for want of inclination; and where Princeton College exists it would be ungracious to suppose that the requisite talents could not be found there. Georgia had never wished to bring forward a candidate, neither had Tennessee, nor several other States. He believed that wherever a man should be found in the Union distinguished by his virtues, his genius, and his devotion to republican principles, that he would be taken up, without concern for the State in which he has his residence.

This league of the large States, so much harped upon, he could not comprehend; where was it to be formed, and how? Are we certain that Massachusetts and Virginia, Pennsylvania and New York, will, notwithstanding their distance, several interests, and views, combine to tie the small States, hands and feet? No, sir, we find the large States disagreeing and as jealous of each other as the small; and with more reason, if the argument has any weight at all.

He preferred the number three in the amendment, as it brought the election two degrees nearer to the people; because a Constitution was not intended for the convenience of the servants, but for the use of the Sovereign—the people. Out of five persons the provision for a choice was before directed to be made; the Constitution as now proposed to be altered would approach to the principle and number of five in a safer and more certain way, for the President would be chosen out of the three highest, and the Vice President out of two others. It was not proper that any man should have a chance of being placed in a situation of so much consequence, contrary to the intention of the people. It is, therefore, our duty to prevent such an occurrence; and we ought to send our amendment to the people as free from defects as possible, because their rights are involved therein; neglect their rights, and they will form a Constitution for themselves; or, in seeking to reform it, they will incur the dangers, either of a sanguinary revolution, or of the establishment of a Government like that of Great Britain, sustained by corruption and wretchedness of the people.

Mr. TAYLOR would trespass on the House with a few observations. With other gentlemen, he was not so much disposed to dispute about the number five or three, as strenuous to obtain the principle of designation. The argument of those who opposed the amendment, he perceived, had been all along founded on extreme cases, which, even if they were to happen, would not produce the affirmed effects on the small States. The number three he certainly preferred, because it gave a greater certainty to popular choice; the extreme case of this would be an election by the House of Representatives; if the number were three, how would this operate in the House? Would not the small States have a greater share of influence than the large States, in the proportion of thirteen to four? Another case is, that election should remain in the divisible electoral bodies, as heretofore, or, in the extreme, be elected by an accumulated body in the House of Representatives.

Would this latter lie in favor of the small States? Would the election by a Diet be preferable or safer than the choice by Electors in various places so remote as to be out of the scope of each other's influence, and so numerous as not to be accessible by corruption? It is true, that the number three has a greater tendency to give the choice to the people; it cannot be true that the small States would wish to place it in the House of Representatives, because three would give the people the choice; and, even if they did wish to take the choice out of the hands of the people, it ought to be opposed, because it is contrary to the spirit and intent of the Constitution.

The division of election is one of the soundest principles of the Constitution; elections are more free and less liable to passion and corruption in the state of division; for experience has shown that elections, any more than Executive powers, cannot be so well effected by accumulative bodies. Your Constitution directs elections in States, not assembled in one place. And why? To prevent the evils to which Diets or Legislative bodies are exposed. Does not three, then, adhere infinitely more to the leading principle of your Constitution, by placing it in the power of the numerous election districts, and keeping out of the reach of the numerous or accumulated body the choice? Is it not necessary to guard, by every means, against what has proved fatal to so many Republics?

Let the extreme cases, on the other hand, be taken. The number five is adopted. For what end? To carry the election to the House of Representatives; will the small States be benefited by five more than three? Will they not, from the number, be more likely to be divided; and would not a number of the large States then possess all the advantages of number and union? For the gentlemen consider this union of the large States as certain, and they cannot refuse their own arguments, or the consequences of them.

Suppose the elective power of the people annihilated, and transferred solely to the Legislature? Would the small States consent to this? Would they be so blind? Yet, by adopting five, you promote this evil; by three you prevent it. And yet gentlemen say they look upon this as only a contest of small and large States.

The gentleman from New Jersey had talked something of a threat alleged to have been thrown out in that House, by him in a former day's debate. He would beg leave to say, that the gentleman had most egregiously misrepresented or misconstrued him. But he could see in it a very shallow stratagem; he thought the gentleman possessed more skill; had his generalship been as great as his reputation he would not have planted his ambuscade where the enemy must see him from all sides, and expose all his force by this state of his advance party. When he heard this clamor about the danger of small States, he was led to ask, what was their number? And, looking round that House, he found that there were thirteen represented, and only four large States! Are the Representatives of the small States in this Senate, then, so blind to their danger, that, possessed of a full majority of nine States, they will deny themselves the power of self-government? It is a principle of heroism, or something else, which enables minorities to govern; but it is a principle of reason and virtue, which gives the Government to majorities in a free Government. Are we, then, in making the designating principle, to adhere to the form and desert the substance? How does the Constitution now stand? We choose from five the President and Vice President. How, if we adopt three? Then the President would be chosen from three, and the Vice President from two—making five. Here preserving the substance, and indirectly the form. How, if we adopt the designating principle, and leave the number five? Then, we would choose the President from the five, and the Vice President from two other—making seven! The more the subject is examined the more we must be convinced that three should have the preference.

Before he sat down he would say a word more on the subject of the threat alleged to have come from the Ancient Dominion. If he mistook not there were intimations held out in the course of the debate, that bloodshed would be the result of the amendment of the Constitution; and many other expressions of that nature had been employed, which by no means argued decorum, and could not serve as argument with any member of that House. The malignant passion of jealousy was conjured up, to be the herald of this civil discord, and the most disastrous afflictions were predicted as the consequence. In glancing at these unwarranted and unwarrantable sentiments, he had assumed it as a principle not to be overthrown, that free governments must exist upon moral rectitude, or perish; and that if the United States were, capable of being actuated to rage by their pernicious and destructive passions, rectitude and morality would no longer exist among them, and they must be destroyed by each other. What, sir, because there are strong and powerful States, must the weak be tolerated to menace them with injury and bloodshed, without the liberty of warring against the fatal consequences? Are strong men bound to bear the wrongs done them by the weak? Are the rich to fold their arms and bear to be robbed by the poor with silence, and without remonstrance? Yet such is the inference that must be made from what the gentleman has undertaken to call a threat. Wherefore threaten with good? Can evil be the result of good, or good of evil? Natural and moral consequences flow from moral actions; and when there are any who undertake to do evil, it is but strict justice he should suffer. He found some difficulty in bringing himself to notice this charge of a threat, because he had perceived, particularly in the paper published in this city, a common practice of misrepresentation. In a former day's debate he had alluded to the fatal effects which the British Government had produced on the liberty and prosperity of that country, by the means of the rotten boroughs; and he had been misrepresented as depreciating the small States and describing them as the rotten boroughs of America. It must be obvious that a

purposed intention to misrepresent could alone have given sentiments of the kind as uttered by him. He had not alluded to the States in their capacity as States; he had objected to elections by diets, and the small States having but few representatives, he stated as more exposed to corrupt attempts upon them, than States where the number was larger. In an election by the House of Representatives this would be the case: some States have but one, others two representatives, attempts would be made upon them, and though we have had virtue enough to resist temptation, our country must be like all others subject to the casual decay of virtue, and at a future day the representatives of small States may become as venal as those of the rotten boroughs of England; and no longer represent the feelings, the interests, or the freedom of their country.

Mr. ADAMS in a former debate had stated that he had not a wish to avoid or seek for the yeas and nays on any question; on the present occasion, however, he would, when the question was taken, call for the yeas and nays. But his own vote on the final question would be governed by the decision of the number five, and he wished to have some record of his vote, that he might be hereafter able to defend himself against any charge of inconsistency. On the principle of the amendment he had formed his opinion, and he was free to confess, that notwithstanding the many able productions which he had seen against it, he thought it calculated to produce more good than evil. He was not however influenced in this opinion by the instructions which had been read in a preceding debate from a former Legislature of Massachusetts to their Senators; he presumed these were not read by way of intimidation. To the instructions of those to whom he owed his seat in that House he would pay every respect that was due, but he did not think that the resolutions of a Legislature passed in March 1799 or 1800 ought to have the same weight. Since that time four total and complete changes had taken place, and probably not one third of those who gave those instructions now remained. He held a seat in the Legislature himself three years since, but did not perceive any particular anxiety on the subject, and he did not think that the present Legislature would be extremely offended if he were to give a direct vote against what was recommended four years ago. But as it seemed to be read to influence him he would state his reasons for his vote.

Upon the alteration of the number from that agreed upon by the House of Representatives several arguments had been offered; they were of three descriptions.

1. That no alteration of the Constitution ought to take place unless it should be indispensably necessary, and that in altering the Constitution no departure should be made from its spirit.

2. That it ought not to be carried in the House of Representatives.

3. That the alteration proposed would affect the small States.

To the first he would say that although the amendment might be useful, yet it was not necessary.

The gentleman from South Carolina (Mr. BUTLER) had argued on the necessity of adhering to the principles of the Constitution on a former day with great force; and though his arguments were used upon an amendment of another kind proposed by himself they applied in this case as closely as possible; the same arguments had been used by other gentlemen, on a suggestion of the gentleman from New Jersey (Mr. DAYTON) concerning the abolition of the office of Vice President. It is true that some gentlemen declared that they had no objection to the abolition, but disapproved of the time it was brought forward; he agreed and voted with the gentleman on that occasion.

But the ground is now changed and we are told that the principle of designation is not so much the choice as to keep the election out of the House of Representatives, and in a variety of ingenious arguments we are referred back to antiquity to justify the injurious effect resulting from elections by diets. As a speculation upon the principles of government he admired the gentleman's information and eloquence, but he was not prepared to act upon the principle. We had been shown the great inconveniences of carrying the elections into the House of Representatives; make it a separate question, and let it be fairly and fully discussed and he would then prepare his mind to vote. But before he could act on it now, he would just observe, that if you do not pursue that course you pursue some other, and it would be necessary to provide a substitute before we abandon that we possess. This consideration he therefore thought had no concern with the subject before us.

On the third point, that it would essentially affect the rights of the small States, he thought it the true object of discussion; and he saw it wholly as a federative question, and rejected all arguments of the popular kind. From the mode in which it had been argued the question would seem to be a dispute between sixteen small, and one large State. The Constitution however was a combination of federative and popular principles. When you argue upon, or wish to change any of its federative principles, you must use analogies as arguments; popular arguments will not apply to federative principles. The House of Representatives was founded on popular principles; in this House the representation is federative, and not popular, it is in its nature aristocratic. The foundation of all popular representation is equality of votes; but even the ratio of representation is different in different States; the numbers in Massachusetts and Virginia, in Vermont and Delaware, are different in their proportions; but still an equality of representation is preserved, and the only difference is in the details. But if you argue upon the principles of the Senate, this equality of popular representation, or by an equal or relatively equal number, will not apply; you must discuss it upon another species of equality, of sovereignties, and the independence of several States federatively connected. Applying principles then to the elec-

tion of President if you reduce the number from which the House of Representatives is authorized to choose, do you not attack the principles of the federal compact, rather than the rights of the small States? The Executive, it had been said, is the man of the people; true, and he is also, as was said, though upon different grounds, the man of the Legislature—it was here a combined principle, federative and popular. Virginia had in that House twenty-two popular representatives, in this she has two federative; Delaware has one popular and two federative representatives. And even in the operation of election in the popular branch of Congress, the federative principle is pursued, and the State which has only one popular representative has an equal voice in that instance with the State that has twenty-two popular representatives. It was therefore evident that the attempt to alter the number from five to three, is an attack upon the federative principle, and not upon the small States.

In answer to the gentleman from New Jersey, (Mr. DAYTON,) the gentleman from Maryland (Mr. SMITH) had said he was not surprised to hear him who was a member of the old Confederation talk of the jealousy of States, and expressed much exultation that those State jealousies had been long laid asleep; that he had been ten years in the Government and had heard nothing of them; hoped never to hear of them again. He was equally happy that they had been so long laid asleep; but why was it that they had not complained? For very different reasons from those which had been inferred. It was because the excellent provisions of the Constitution had guarded against all cause of complaint. The States had no reason to murmur, and they had not been stirred up; but is it to be therefore inferred that if you now give them cause, that they will be equally silent, and that it may not tend to civil discord? He knew of nothing more likely to stir them up than an attempt to reform your federative institutions upon popular principles.

The gentleman from Virginia, as he understood him the other day, had intimated that the smaller States ought to be cautious how they excited the indignation of the large States; on this account he had complained that the gentleman from New Jersey had misrepresented him. From the illustration of his statements now given he was persuaded that no threat was intended on that occasion; but as that impression was made, it surely was incumbent on those who felt it to notice it. Was it unnatural for a gentleman coming from a comparatively small State to feel indignant under such a circumstance? The gentleman from Virginia (Mr. TAYLOR) is so ingenious, that, like all ingenious men, his sentiments are not at once accessible to plain minds, and to this cause misapprehension ought to be attributed.

Another gentleman from Virginia (Mr. NICHOLAS) had said that the amendment had originated with the small States; that the small States having a majority in this House and a majority of the Legislatures, may defeat it if they choose; and these are with him decisive as to safety. But the gentleman has not taken into view that this question of number has never been before the States, and that having had no opportunity to examine it, the arguments do not apply. It is by this principle his own vote should be regulated; if three were adopted, he should vote against the amendment.

But the gentleman (Mr. TAYLOR) had taken another novel ground—that the smaller number was the most favorable to the small States. This, however, he supported by a mode of argument to which he had himself objected. He had argued that if it was proposed to vest the election of President in the House of Representatives exclusively, it would not be agreed to by the small States, because it was contrary to their interests. But this was an extreme case, and the gentleman well knew that, so far from its being consistent with sound logic, to argue from extreme cases, they are not admitted into argument at all.

Mr. S. SMITH, when he made the motion for filling up the blank with three, did it after the most deliberate consideration of the theory and the principles of the Constitution; which, if he understood it right, intended that the election of the Executive should be in the people, or as nearly as was possible, consistent with public order and security to the right of suffrage. The provision admitting the choice by the House of Representatives, was itself intended only for an extreme case, where great inconvenience might result from sending a defective election back to the people, as is customary in Massachusetts, where, if the majority is deficient, a new election is required. Our object in the amendment is or should be to make the election more certain by the people. This was to be done most effectually by leaving it to them to designate the persons whom they preferred for each office. As under the present form there was an extreme case, so there might be when the change of number should take place; for, although even with the number three, there was a possibility of the choice devolving on the House of Representatives, yet the adoption of the designating principle and the number three, would render the case less probable. It never was the intention of the framers of the Constitution that the election should go to the House of Representatives but in the extreme case; nor was it ever contemplated that about one fifth of the people should choose a President for the rest, which certainly would be the case if what some gentlemen contended for were to take place. When gentlemen contend for such a power as would transfer the choice from the people, and place it in the hands of a minority so small, how happens it that gentlemen will not bear to hear of the efforts which such arguments or such measures would produce on the large States? It was not the interest of the small States to combine against the large. Suppose it were possible that the four large States should combine—and a combination of the small States alone could produce such an effect—nine States in the Union have but thirty-two votes out of one hundred and forty-two, yet nine States, with one vote each, make a majority

of seventeen, though in relation to population they contain only about one-fifth of the whole; and by such a proceeding the one-fifth might choose a President and Vice President in defiance of the other four-fifths. What would be the consequence of such an election? At a subsequent election the large States would combine, and by the use of their votes they would frustrate every object which the small States might use their efforts to accomplish.

Notwithstanding what had been said concerning the jealousy of States, he could see nothing in it but the leaven of the old Congress, thrown in to work up feelings that had been long still. It was the forlorn hope, the last stratagem of party; and he was the more disposed to think so, when he saw gentlemen from the large States coming forward as the champions of the small—this might to be sure, be magnanimity; but if his discernment did not deceive him, it was a stratagem to divide the friends of the amendment. Why was not the same jealousy entertained of the power of thirteen out of seventeen combining and giving absolute law to the other four? Why have gentlemen paid no regard to the experience which they have had from the last election, when less than one third of the members harassed the public mind, kept the Union in agitation, and Congress engrossed to the exclusion of nearly all other business for two weeks? Suppose that the House had been as accessible to corruption as the diets of other nations have been, and that three men, having in their power the votes of three States, had been seized upon, and the election made contrary to the wishes of the people. What would be the effect—on the minds of the people—on the administration of the Government—and on the attachment which the people feel for the Constitution itself? He need not attempt to describe the effects. But it is our duty to prevent the return of such dangers, by keeping the election out of that House. And the most effectual mode is to fix the selection from the number three.

The gentleman from New Jersey had affected to consider a comparison of the effects of combinations of States, as a threat against the small States. He had listened as he always did to the ingenious arguments of the gentleman from Virginia (Mr. TAYLOR;) he thought he had attended to his arguments with particular attention on that occasion, because they carried to his mind that conviction which truth always carries couched in the language of sincerity. To him, the gentleman's observations on that day conveyed the same ideas and convictions which his explanations conveyed this day in a more copious way, but to him it appeared impossible; and if he had not heard the gentleman from New Jersey, (he confessed with astonishment,) he could not have believed it practicable to give any coloring of menace to his arguments. The gentleman from New Jersey had censured the gentleman from Georgia for his attention to the State which he represented; but what bearing had the gentleman's discharge of his duty to his State on the present question? The gentleman from Georgia had not taken up the present question on the narrow ground of a selfish, jealous, and illiberal policy, but upon great national principles. It was the practice of that gentleman to act; it was his practice to discharge his duty with fidelity to his State and to his country at large, and such conduct reflected honor on him.

The gentleman from Massachusetts (Mr. ADAMS) says we had forgot the main object; that we changed our ground; and that having first claimed the designating principle, we abandoned it in order to keep the election of President out of the House of Representatives. The gentleman had misconceived the subject entirely; if he would only consider the subject again, he would find that nothing had been abandoned, nor anything new assumed; he would find that the principles correspond so exactly as to support and enforce each other. It is to place the election in the hands of the people we wish to designate; it is for the same purpose we wish to keep the election out of the House of Representatives; it is to prevent intrigues we wish to designate; it is to prevent intrigues we wish to keep the choice out of the House of Representatives; it is to conform the election, out of three instead of five, to the spirit of the Constitution, that we wish to adopt that number, and the wish to keep it out of the House of Representatives is already sanctioned by the Constitution. Where, then, is this contradiction—this abandonment of one principle and adoption of another? When he referred to one part of the gentleman's speech and compared it with another, he felt some concern when he considered the gentleman as the champion of the small States.

Mr. ADAMS said he did not professs to be the champion of the small States.

Mr. SMITH.—When the gentleman first rose he said he was the representative of a large, and he did call for the champions of the small States to come forth, in their defence; upon the failure of an answer to this challenge he had boldly entered the lists himself in their defence, and carried his chivalry so far as to marshal the contending parties, contrary to all former order, into sixteen small and one large State! What was the intention of this mode of distinction; to what end was it directed? Was it not to excite envy and jealousy, the worst of all passions which affect man? Was it consistent with professions of regard for the public good to encourage this rivalry of States—the commercial against the agricultural—the East against the South—the small against the large? There was something in this besides liberality. He says he is not the champion of the small States, yet he tells you how they could be stirred up and what would be the consequence if they were roused; he tells you of the distinction between federative and popular principles; and has employed all his ingenuity to induce the belief that we wish to undo the federative principle, to sacrifice it to the popular principle, which is, he has told you, the thing above all others which would stir up the small States and no doubt arm this classification of sixteen against the one State. But the people

were not to be stirred up by such argument; they would know the value of national union and unanimity to their prosperity and liberty too well to be led away by anything we may say or do on this floor.

While he was up he would offer an observation or two on what had fallen from the gentleman from South Carolina. He had said that the object of the amendment was to prevent the election of a Federal Vice President. Undoubtedly such would be the effect of the amendment. The real effect of the amendment was two-fold—to guard against the dangers of intrigue and corruption, and to place the choice in the power of the people. Could that gentleman who was a member of the Convention object to render one of its fairest and best principles more safe and secure? Was it an objectionable principle to secure to the majority of the people the right of choosing their chief officers? This was intended by keeping the election out of the other House, and by limiting the number to three to leave as little room for corruption as possible, should it ever devolve by any accident on that House to make the choice. For if ever the right should again devolve on that House, he not only saw reason to apprehend corruption among ourselves but dread it from foreign nations. Had our people been as corrupt as European nations generally are, there was a facility for it at our late election; but the members were incorruptible and we were saved. It is to guard against the danger we look for this amendment. That gentleman being a member of the Convention who formed the Constitution deems it sacrilege to touch that instrument, yet in an early state of discussion he had found that sacred as it was to him there was a part which he wished to change, and had brought forward an amendment for the purpose. The merits of that gentleman's amendment he was not now called upon to discuss, but with the lights which he at present possessed, it was probable he might give it his approbation; and it surely could not be deemed so extraordinary if other gentlemen should wish to amend certain parts, when one of the framers of the Constitution had thought it susceptible of amendment.

Mr. PICKERING had not intended to have spoken on this question so far as it concerned the numbers; but as he should probably vote differently from his colleague, he conceived it proper to give his motives for his vote. His wishes for the entire preservation of the Constitution were so strong, that he regretted any change was contemplated to be made in it, and he wished if an alteration was made to keep as near as possible to the spirit of the Constitution as it now is, and it appeared to him that the number *three* conformed more to that spirit than the number *five*. He believed it to be the intention of the Constitution, that the people should *elect*. As to what gentlemen said concerning the will of the people, he paid but little regard to it. The will of the people! he did not know how the will of the people could be known—how gentlemen came by it; it would not be asserted that it was to be found in the newspapers, or in private society; in truth he believed it never had been fairly expressed on the subject. We have seen an amendment brought forward from New York, but was that an expression of the public opinion? if it was, it was a very remarkable one, for it contained an absurdity—visible to every one. He wished to avoid innovations on the Constitution, and to preserve the combined operation of federative and popular principles upon which it rested unimpaired.

Mr. WORTHINGTON hoped the number three would be adopted in preference to five. Nevertheless he approved so much of the principle of designation in the election of the President and Vice President, that rather than lose it he would vote for it with either number.

The yeas and nays being called for on filling up the blank with the largest number according to order; the votes were—yeas 12, nays 19, as follows:

YEAS—Messrs. Adams, Bailey, Butler, Condit, Dayton, Hillhouse, Olcott, Plumer, Tracy, Wells, White, and Wright.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Franklin, Jackson, Logan Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, and Worthington.

The question on the number three being inserted was then put, and the yeas and nays being demanded by one fifth of the members present; they were, yeas 21, nays 10, as follows:

YEAS—Messrs. Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright.

NAYS—Messrs. Adams, Butler, Condit, Dayton, Hillhouse, Olcott, Plumer, Tracy Wells, and White.

The House then adjourned.

WEDNESDAY, November 30.

Mr. JOHN SMITH presented the petition of William Gahagan and others, settlers at Dayton and Mercer's Station, in the State of Ohio, praying a deduction from the price of certain lands stipulated for, on the 15th of November, 1795, for reasons stated in the petition; and the petition was read.

Ordered, That it be referred to the committee appointed on the 1st instant, on the petition of John Crouse and others, to consider and report thereon to the Senate.

On motion, it was agreed that the consideration of the bill, entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,'" the order of the day, be postponed.

AMENDMENT TO THE CONSTITUTION.

The Senate resumed the consideration of the report on the amendment to the Constitution as amended yesterday, which was read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following amendment be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as a part of the said Constitution, viz:

In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person voted for as President having a majority of the votes of all the Electors appointed, shall be the President; and if no person have such majority, then, from the three highest on the list of those voted for as President, the House of Representatives shall choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person Constitutionally ineligible to the office of President, shall be eligible to that of the Vice President of the United States.

Mr. BRADLEY thought some provision should be made against the difficulties which might arise upon an equality of votes between several candidates. For example, though the amendment as it stands contemplates a choice from the three highest, there may be four who have equal numbers.

Mr. WRIGHT said it was not possible, under the designating principle, for four persons to have an equal number, and have a majority of the whole of the votes likewise.

Mr. ADAMS thought that some explanation should be given of the principle upon which the votes were to be counted; and if it were to go to the House of Representatives, whether the choice was to be made from the three highest numbers, even if three were unequal, or if only two were equal, in numbers, and the third being one of the highest, were still less in number than the other two.

Mr. BRADLEY said that, under the amendment as it now stood, a candidate with one vote may be chosen, (for there had been single votes,) and there being two candidates equal in votes, then the House of Representatives would have the power to choose the third. He would offer an amendment.

Mr. SMITH wished the gentleman would let his amendment lie over for the present, or it might be printed.

Mr. TAYLOR thought that the word "highest," in the eighteenth line, should be changed.

Mr. BUTLER.—It is evident gentlemen cannot agree among themselves. Now, if one side proposes one measure, and another a second measure, and so on to a third and a fourth, (all of which appeared to him objectionable,) there was little prospect of arriving at any useful conclusion. Yesterday we had heard of objections to extreme cases, and yet all the arguments used were drawn from extreme cases. If they were data then, they must be data now. But it was very clear that the real object was to take away from a portion of society every share of participation in the choice of Vice President. If the people could but have heard their representatives, they could not but smile at them. Notwithstanding the respect which he personally bore for the gentleman from Virginia, (Mr. TAYLOR,) he did not completely explain, to his satisfaction, the menace against the smaller States. As to those arguments which were employed against the election devolving on the other House, he thought it was paying the people a poor compliment to say they make a selection of Representatives for that House in whom trust cannot be placed, and that their delegates resemble the representatives of rotten English boroughs: this he thought an extreme case—an extremely hard case. We had been told, also, that the people wished for the number *three*. He should like to have some other evidence than the bare opinion of gentlemen.

The PRESIDENT called to order.

Mr. BUTLER was willing to reserve what he had to say to a future time.

The PRESIDENT observed the House was now ready to receive amendments proposed by gentlemen.

Mr. BUTLER thought the amendment of the member from Vermont should have the preference, as it was first offered.

Mr. BRADLEY's amendment was called up, read, and lost—ayes 10, noes 20.

A desultory presentation of amendments, without going into detailed argument, now took place, in which Messrs. JACKSON, TAYLOR, NICHOLAS, WRIGHT, and TRACY, took part; when

Mr. ADAMS observed, from the multitude of amendments, it now became difficult to comprehend it. He suggested the propriety of adjourning, so that the amendments might be all printed, which was agreed to.

THURSDAY, December 1.

Mr. BUTLER presented the petition of James Simons, lieutenant in Colonel Washington's regiment, and brigade major in the corps of light troops of General Greene's army, during the late Revolutionary war, praying to be allowed the commutation as paid to other officers of similar grade, for reasons stated at large in the petition; and the petition was read, and referred to Messrs. BUTLER, JACKSON, and BRADLEY, to consider and report thereon to the Senate.

AMENDMENT TO THE CONSTITUTION.

The Senate took up the amended report, as amended the preceding day, which was as follows:

"*Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring*, That

in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the Legislatures of the several States, shall be valid, to all intents and purposes, as part of the said Constitution, to wit: 'The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But, in choosing the President, the vote shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States must be necessary to a choice.

"The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person Constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States."

MR. DAYTON moved to strike out from the words "and Vice President," in the twelfth line, and all that concerned the Vice President in that paragraph.

The PRESIDENT said it was not in order to strike out.

MR. DAYTON then moved to strike out all that related to a Vice President in the forty-third line, and to the end of the paragraph.

The PRESIDENT said that it was not in order in that stage of the business to strike out any part.

MR. DAYTON.—If there is no way to come at the abolition of that office, when the majority of the Senate have it so much at heart, he must even give it up as a fruitless attempt.

MR. TRACY concurred in the decision of the Chair. The motion, however, arose from not reading the resolution three times, as was the usage with bills; in which cases, having amended them on a second reading, you cannot amend on a third without the consent of the whole. Here you have amended, and the resolution is taken up amended; if the Senate is determined it shall have but the one reading, there is no remedy; but the form of proceeding is so different from Parliamentary rules, that some correction of it should take place. He asked what would now be the regular question?

The PRESIDENT.—On inserting the amendments adopted in Committee of the Whole, in the report of the select committee.

MR. NICHOLAS said, the object of the gentleman from New Jersey was to abolish the office of Vice President; but the sense of the Senate had been already expressed on that subject. He hoped the time of the House would not be lost on a subject already decided.

MR. DAYTON would not ask any favor.

MR. ADAMS.—If an amendment cannot be inserted now, he thought the mode of proceeding inconsistent with order. He understood that, originally, it was decided that nothing should be considered as final which had not the sanction of two thirds; and he had held back some amendments under the impression that it was still open. If the rules of the Senate determine that a resolution shall have but one reading, there was a palpable contradiction between them and the rules of the other House.

The PRESIDENT entered into a circumstantial detail of the progress of the proceedings on the amendment; and concluded by stating that the proceedings had been perfectly regular and according to order; that, in the present stage, all that had been adopted must be considered as ready for the final vote; that no amendment could be made inconsistent with what had been already agreed to in the detail; but that it was still open to any amendment not incompatible with what was already adopted.

MR. PICKERING offered an amendment in addition, and not incompatible with what had passed. It was to insert after the word "President," in the thirty-second line, the following words: "But if within twenty-four hours no election shall have taken place, then the President shall be chosen by law." This amendment he offered as a remedy by which we could avoid that civil war threatened on a former occasion.

MR. ADAMS wished the motion to be varied so as to come in after the 37th line. The motion he considered as embracing an object extremely important, and though the case was an extreme one, of no election being made, it was not unprecedented, for it had very recently happened in New Jersey, where no Governor had existed for a whole year. He did not approve of the precipitation with which the Senate was carrying this amendment forward. He considered it as intending to prevent a federal Vice President being chosen. He hoped that the House would proceed with more deliberation.

MR. PICKERING consented to the alteration proposed by his colleague.

MR. TRACY thought the amendment offered by the gentleman from Massachusetts like a great many others, it would require a dozen more amendments to explain it. How was the choice to be made of a person to be chosen by law?

MR. PICKERING.—The States might choose by lot, or by ballots in a box, which the President might collect; or a number of names might be put in a box from which the Speaker might draw one.

MR. SMITH admired the ingenuity of gentlemen, as they left all consideration of what the people would wish or think about such a proceeding out of the question. Suppose they were to throw the dice for the Executive Chair! It would be equally wise with any of the expedients offered; the gentlemen could serve their friends; the candidates names might be written, and the highest throw have it!

MR. TRACY.—However gentlemen may ridicule the ballot, it has a precedent. By the constitution of Kentucky it is provided that when two candidates are equal in votes, the choice shall be made by lot.

MR. BRECKENRIDGE.—That practice has been long exploded.

MR. HILLHOUSE.—We had been told, some days ago, that a candidate proposed to be chosen by law, was near having his head cut off; such a process would be rather disagreeable to him. He wished to avoid it himself, and to prevent others getting into such a critical situation, and if the amendment were to be adopted, he had no doubt that nineteen times out of twenty, the choice would devolve on the House of Representatives. It was certainly not an unusual practice in elective governments to choose persons for eminent stations by lot. It was very common at Athens, and they were a very wise and prosperous people, and had an orderly and well regulated Government. It would certainly be a preferable mode to the choice at the point of the bayonet. If he had any conception of the operation of the proposed amendment, it would be to produce no election. The complex mode provided by the Constitution was conceived in great wisdom. It was necessary, when the country was agitated, to operate as a check upon party and irregular passions. Parties will always have their champions, and they will be always well known; to attack another champion is to restrain the passions by some degree of uncertainty during the contest. But, by the new amendment, it would be every man to his own book, and every demagogue would be a leader and a champion, and, in the contest, parties would be divided between the two principal champions, and a third would come in and win the race.

If every man were to act correctly, no party passions would prevail on an occasion so important; but carry the champions of two opposite parties to the House of Representatives, and instead of voting thirty-seven times before they decide, as on the last occasion, they will vote thirty hundred times. You are told that, at the last election, one was intended by the people for President, and the other for Vice President; but the Constitution knows no vote for Vice President. Alter it as you now propose, and let two candidates be equal, and then you will be told that they were both intended for President. What will be the consequence? On the third day of March neither party will give out, and it will end in the choice of a third man, who will not be the choice of the people, but one who will, by artful contrivances, bring himself to that place with the sole intention of getting in between them. Choice by lot would certainly be better than this. Would not any man prefer a choice by lot rather than such a course, as it would break up the Constitution, and leave the people without a President in whom they would confide?

The principle of the Constitution, of electing by electors, is certainly preferable to all others. One of the greatest evils that can happen is the throwing of the election into the House of Representatives. There, Pennsylvania, Virginia, Massachusetts, and New York, may combine; they may say to the other States, we will not vote for your man; for either of those States giving their whole votes to a third character may bring him in. We see the practice daily in Congressional elections, when both parties obstinately adhere to their candidate; a third is set up and carried in to the rejection of both. By the new mode proposed every man will have an interest to intrigue for himself to obtain the eminent station. Gentlemen may suppose that such is the predominancy of their party, they may carry in any President. But no party can long hold an ascendancy in power; they will ill treat each other—or some of them will disagree, and from the fragments new parties will arise, who will gain power and forget themselves, and again disagree, to make way for new parties. The Constitution was predicated upon the existence of parties; they will always exist, and names will not be wanting to rally under, and difference of interests will not be wanting for pretexts: the agricultural will be arrayed against the mercantile; the South against the East; the seaboard against the inland. As to what he had heard about cutting off heads, he supposed that could not have been meant as a threat; in his part of the country such a crime could not take place. The gentleman, however, must be supposed to know his neighbors better than he did, but he could not suspect such danger from a valiant people.

MR. PICKERING said the amendment he had offered was suggested to him by the alarming picture of danger drawn by the gentleman from Maryland. He thought the dangers indeed exaggerated, though possibly they might not be; but he thought it proper to provide how elections should be conducted, and to determine between tumult or civil war and law.

MR. SMITH did say that, at the last Presidential election, the party opposed to the present Chief Magistrate did contemplate laying aside the popular choice and electing a President by a law to be passed for the occasion, at the time: he had also said, that had the measure been carried into effect, the person, whoever he might have been, would have met the fate of an usurper, and his head would not have remained on his shoulders twenty-four hours.

MR. WRIGHT.—It had been said, that we meant

to precipitate this amendment of the Constitution—to make the minority swallow it; he hoped the gentlemen, in their eagerness to render it insipid, would not make it totally unpalatable to us: as they had proceeded, the modes they had proposed struck him at least by their novelty. Since what was offered was not satisfactory, and they were willing to commit it to chance, why did they not take up the ancient mode of *grande battaile?* we should have no objection to have it decided by the champions of both parties armed with tomahawks! Gentlemen talk of the danger and of the rights of the small States, do they expect that any man can think their professions serious, when they are, at the same time, willing to commit their rights to the chance of a lottery? The rights of freemen are not to be gambled away, or committed to chance, or sorcery, or witchcraft; we look to reason and experience for our guides; we seek for the means most conducive to the general happiness; to this, reason conducts us. By experience, we correct what may have escaped our sagacity at first, or may have been defective or erroneous in practice. It is upon these principles our Constitution is founded; it is for these words that the provision is made in the Constitution itself for its own amendment; and it is not compatible with reason, or with the principles of the Constitution, to commit anything to capricious fortune, in which reason and human rights are concerned. Gentlemen charge us now with a wish to press this amendment forward with precipitation; what do gentlemen mean by this? A few days only have passed, when the same gentlemen were eager for an immediate decision; they declared their readiness to decide immediately; that the subject was as well understood then as ever it would be; and that we delayed the decision to the exhaustion of their patience. The subject has, nevertheless, undergone a long discussion, and the time has only served to prove that the gentlemen were at first mistaken, or that the numerous amendments which they have brought forward have their origin in other considerations.

Mr. ADAMS had declared that he was ready to give his vote upon the amendment in the first stage; but it did not therefore follow, that when his opinion on the whole was not likely to prevail, that he should endeavor to render it as palatable as possible. He was totally adverse to any decision by lot, and agreed perfectly with the gentleman from Maryland, that it was not a mode suited to the principles of our Government. But gentlemen say there is a defect, and wish to provide a remedy. He had drawn up an amendment which he should offer to the House, if that of his colleague should not be approved. He confessed he did approve of the designating principle, and for one among other reasons, that the present mode is too much like choice by lot. For instance, A may be intended by a large majority of the people for President, and B as Vice President; yet the votes might be so disposed, or chance might operate so contrary to intention, that the votes for B should exceed by a vote those for A. This was a defect in the Constitution; and there was a further reason why he was in favor of the designating principle, and that was, that it appeared to be called for from all parts of the United States. It was very true, as had been observed, that sometime ago the opposers of the amendment did press for a decision; but he had seen those dispositions prevail alternately; but the minority had not so much pressed for a decision as for the discussion of the question.

Mr. PICKERING suggested his wish to substitute forty-eight hours for twenty-four, in his amendment; and if the election should not then take place, a choice to be made in such manner as the House should direct.

The question, on Mr. PICKERING's motion, was then put and negatived, without a division.

Mr. ADAMS then moved the following amendment: In the 37th line, after the word "choice," insert—

"And in case the House of Representatives shall not, within —— days, effect the choice in manner aforesaid, and there be a Vice President duly elected, the said Vice President shall discharge the powers and duties of the President of the United States. But if the office of Vice President be also vacant, then the said powers and duties of President of the United States shall be discharged by such person as Congress may by law direct, until a new election shall be had, in manner already prescribed by law."

Mr. HILLHOUSE thought that there should be provision made for the choice so made, to remain only until such period as the Electors could be called again.

Mr. DAYTON hoped the gentleman did not mean to lay a larger patch upon the Constitution than the hole they make in it required. Had gentlemen considered, that when there is a Vice President, that in case of death or inability, he alone can exercise the powers of the Executive, and that you cannot place any person over his head?

Mr. ADAMS.—The gentleman is certainly right; he had offered his proposition hastily. The observations which arise in this discussion evidently prove that we have not as full a consideration of the subject as it is susceptible of.

Mr. WRIGHT.—Gentlemen did not perceive that the House of Representatives are Constitutionally bound and impelled to choose when it devolves upon them: they are sworn to do their duty. The amendments offered are wholly founded on the presumed corruption of the House of Representatives. You may as well make provisions against the corruption of a jury.

Mr. HILLHOUSE.—There is another point which gentlemen appear not to have taken into view: how the objections of their oaths are to operate or be enforced, when the functions themselves expire on the third of March. There is another view of the subject, which ought not to be passed over: The members are sworn, to be sure, but one half of the House may sincerely believe that A is the popular choice; while the other half may as sincerely believe that the wishes of the majority are with B; and how are we to compel them by moral obligations, when the obligation rests wholly on the consciences of the individuals? The

true principle, then, would be to make provision for the appointment of a person who should carry on the functions of Government till the Electors may again meet and choose a President. A provision vesting in the Senate the right of choice, even for one year, may be a motive for the other House to perform their duty promptly. It was not pleasant to discuss some topics, but we must discuss them, if we mean to avoid evil. We must suppose the existence of faction, of party, and even corruption, for we know that evil passions do and will exist, and that, by discussing, we guard against them. A House of Representatives elected two years before your Presidential election, may hold sentiments very different from him; the public mind may change in the time; and a party losing power may be led away by passion to conspire and throw every difficulty in the way.

Mr. BRADLEY thought the sentiments of the gentleman last up perfectly correct. He was satisfied that, if the House made no choice, the Vice President would administer the Government.

Mr. WRIGHT said that although the functions of the House of Representatives would expire with the third of March, yet there was, assuredly, time enough between the second Wednesday in February, and the third of March, to make a proper choice; nothing but obstinacy, or worse, would prevent an election; he would shut them up, like a jury, until they had made a choice: he could not conceive a case wherein any number of men in Congress would dare to set themselves up against the country, and put its happiness and their own lives at hazard, in such a way as the gentleman supposed.

Mr. S. SMITH.—The gentleman from Massachusetts (Mr. ADAMS) appears not to be perfectly satisfied with his own amendment; and certainly the gentleman from Connecticut had shown that the amendment was defective; the candor of that gentleman he must acknowledge, he had taken the strongest hold possible of the subject; he had laid the fruits of experience before you, and pointed out the weakness which you had to protect. He would recommend it to the gentleman from Massachusetts to alter his amendment, so as to make it, that, in case the House should fail to choose, then, in four days after, the Vice President shall be President.

Mr. ADAMS saw a new difficulty there also, for there may not be a majority for both, and provision will be necessary for the vacancy of the Vice Presidency.

Mr. HILLHOUSE thought there would be no danger of the Senate omitting to elect their President, who is, on a vacancy, the Vice President in fact. As to shutting the House up like a jury in a dark room, depriving them of fire, light, and food, he thought the measure too strong; he did not wish to see them at the mercy of the sheriff, who upon their laches might call in the *posse comitatus*, and trundle them out of the District, or send them to Coventry. If the House of Representatives should not make a choice, he saw no reason why the Government should not go on until an election should take place.

Mr. COCKE was astonished to see gentlemen going over so much unnecessary ground. Could they suppose the people so indifferent to their own rights as not to make an election? Or, do gentlemen mean all these cavillings as amusement—to display their ingenuity at finding fault? If there should be any failure of choice, why could not the Secretary of State arrange and carry on the Executive business until an election should again take place?

Mr. TRACY rose.

Mr. COCKE called for the question—the question!

Mr. TRACY.—Does the gentleman mean to call for the question while I am on the floor? I will not sit down upon such a call. What is the question, sir?

Mr. DAYTON hoped the gentleman from Massachusetts (Mr. ADAMS) would withdraw his amendment.

Mr. ADAMS thought the deliberation of one or two hours could not be thrown away.

Mr. WRIGHT hoped the decision on the amendment would not be pressed upon the House. What! is it proposed to take the choice of President out of the hands of the Electors and place it wholly in the House of Representatives, and tell them, hold out only four days, and you will then have the whole power in your hands; you may set aside all consideration for the wishes of your constituents—set popular opinion at defiance, and please yourselves by choosing a President of whom the people never thought? Gentlemen should avoid this dangerous path which they wish to prepare; the people will not bear to be frowned upon by those whom their breath has made, and can unmake.

Sir, it is our wish to prevent all these dangerous or fatal courses and consequences; and we should keep in mind, that whatever we may conclude upon here, is completely guarded, not alone by the necessary consent of the other House, but that of three-fourths of the States. The Constitution, sir, would be preferable as it is, without the odious and anti-republican forms which gentlemen propose to engross upon it. What, sir, determine a most important principle of effective government by a non-effective act—determine an election by holding out a temptation to non-election! He should prefer having the choice open to the Representatives bound by oath, by duty, and by the Constitution, to such an alternative. If men so placed would be so blind to the calls of duty, the public indignation would bring them to their senses before the fourth of March. Honor and their oaths, sir, would bind them. He had too much confidence in the choice of his countrymen, and of the virtue and morality of those who are sent to the important stations of Representatives, to think they disregarded their oaths or their duty. Some gentlemen tell us, indeed, they know of no persons who would raise their hands against an usurper, if he had been set up, and insinuate that it would be a crime; but they find ready belief for acts ten thousand degrees more base and heinous in themselves; they can

believe their countrymen capable of the breach of every tie of honor, of oaths, and of duty. Gentlemen must speak from their own knowledge; for his part, he was happy to say there were no such men among his acquaintance nor in his neighborhood.

The arguments which gentlemen draw from their experience would be with him powerful ones for opposing the measure which they are brought forth to sustain. For if men elected to such stations as seats in Congress are capable of the breach of every obligation of honor and oath, the greatest care should be taken to keep the power of election forever out of their hands, by rendering it impossible for the people not to elect; nay, he would prefer carrying the election to the individual vote of every citizen, without the intervention of Electors, to suffering it to go into any body liable to such dishonor.

An observation of the gentleman from Massachusetts (Mr. ADAMS) produced a sensation which at once showed that something besides the care of the people's rights had an influence here. He proposes that the proper officer, the Vice President, should succeed to the Presidential chair upon a failure of election or vacancy after a few short months. Whence arose the agitation and interest excited by this proposition? Is it because we wish not to see a man seated in the Executive chair whom the people never contemplated to place there, and who never had a vote?

Mr. DAYTON.—You are about to designate who shall be President and who Vice President; and some gentlemen have gone so far as to favor the choice of one who had not a vote for either office. The gentleman from Massachusetts, (Mr. ADAMS,) indeed, professes to have in view the succession of the Vice President to the Executive Chair when vacant. But gentlemen should perceive, that if you designate, the principle will be totally changed. He could not assent to the conclusion of some gentlemen on another point. If anything could be understood from the Constitution more clearly than another, it was that the votes are given to two persons for President, and that, as has been observed before, the Constitution never notices a vote for the office of Vice President. How, then, can it be said which was the person intended? The gentleman from Maryland (Mr. WRIGHT) had said that one of the candidates at the late election had not a single vote for President, while the official returns show that each and every vote was the same for both candidates as President.

Mr. TAYLOR.—That matter appears susceptible of a very simple explanation. There can be no question that in form, the votes for each candidate were equal; but that is not the question; the *quo animo* must be taken into view. Would any gentleman say no preference was intended? It is very true that such was the form, but looking to the well known intention, have you not in the very fact stated an evidence that the principle of designation is essential, were it only to prevent the consummation of an act never contemplated or expected?

Mr. DAYTON was for a postponement of the amendment.

Mr. JACKSON was for postponement also.

Mr. ADAMS's amendment was postponed, and ordered to be printed.

Mr. TAYLOR wished to offer an amendment as an addition to the report—

"*Provided*, That whenever the right of choosing a President shall devolve upon the House of Representatives, the Vice President shall act as President, in case they fail to make such choice, in like manner as in case of the death or resignation of the President."

It was moved that this, with the other amendment, be printed; and the House adjourned.

FRIDAY, December 2.

The Senate took into consideration the motion made on the 28th of November last, for the appointment of a committee, to report by bill or otherwise, respecting the naval armament of the United States; and, having agreed thereto.

Ordered, That Messrs. SAMUEL SMITH, ISRAEL SMITH, and JOHN SMITH, be the committee.

AMENDMENT TO THE CONSTITUTION.

The order of the day being the amendment proposed in the House of Representatives, to be made to the Constitution of the United States, and the report of the committee being under consideration.

Mr. TAYLOR, of Virginia, desired to withdraw his motion of the preceding day, in order to accommodate the terms of his proposition to the wishes of gentlemen. His only object was to obtain the principle, and provided that was obtained in such a manner as to promise an accomplishment of the good intended thereby, he should consider the words in which the provision was to be couched of inferior moment. In lieu of the addition which he offered before, he now proposed to insert after the word *choice*, in the 37th line, the following words:

"And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the 4th day of March next following, then the Vice President shall act as President, as in case of the death or other Constitutional disability of the President."

Mr. ADAMS had no sort of objection to this addition to the paragraph; it reached his ideas as far as it went; but he conceived that though this made a very necessary provision for the case of the President, it did not go far enough, inasmuch as no provision was made in case there should be no Vice President. He would submit this case to gentlemen, that if there was no Vice President existing nor any more than a President chosen, in the event of a high state of party spirit, would it be difficult to foresee that there would be much room left for contention and evil? Unless provision should be made against the contingency, therefore, the amendment would be imperfect, in his mind. Like the gentleman from Virginia, he was not tied to words, but he thought it worth while to employ two lines to provide against the danger.

Mr. HILLHOUSE concurred in the amendment of the gentleman from Virginia but he hoped the idea of the gentleman from Massachusetts would also be adopted.

Mr. PICKERING objected to the length of time allowed for the House of Representatives to decide. We have been told that the small States, from the smaller number of votes, are exposed to corruption; he wished no time to be left for corruption to operate, and he therefore desired that the period for the House of Representatives to decide should be limited to forty-eight hours or three days.

Mr. WRIGHT approved of the amendment that had been offered in all its parts; and the more so as it in effect supplies a deficiency which exists in the Constitution even as it now stands.

The amendment was agreed to—yeas 22, nays 10, as follows:

YEAS—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright.

NAYS—Messrs. Adams, Butler, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

Mr. ADAMS offered another amendment, of the following effect, to be added to the provisions concerning the election of Vice President:

"And if there shall be no Vice President duly elected within ten days after the fourth of March, then the power and duties of the President of the United States shall be discharged by such person as shall be by law invested with that power, until such time as a new election by Electors shall take place."

Mr. TRACY wished to know why ten days was the period fixed?

Mr. ADAMS.—Because the amendment proposed gives the House of Representatives until the fourth of March, during which time the old Vice President continues in office; and ten days appeared to him a reasonable period; but he was not tied to any particular number of days.

Mr. TRACY would prefer the word "vacant," suggested yesterday, to the words "not duly elected."

Mr. HILLHOUSE was not disposed to concur with the proposed amendment; he did not think a period of agitation a proper one to make choice of an officer of so much power; he would prefer making provision by law before the happening of the event; for, in a high state of party he could see no likelihood of an agreement, and out of disagreement confusion might arise. His wish was to have some person designated who should discharge the Executive duties until an election should take place, and that this officer should be previously fixed upon, so that party spirit should have no room for agitation.

Mr. JACKSON could not discern the necessity of the proposition now offered; the case proposed to be provided against, he thought so extreme as likely never to happen. Besides, the mover appeared not to have taken it into consideration that one-third of the Senate go out at the close of the second session of every Congress by rotation, and would he have only two-thirds to make the law which was to provide for this choice? Upon the principle of the general amendment, he had not at first made up his convictions, but the amendment adopted had removed his doubts, and he thought this addition to this amendment unnecessary. He hoped the Senate would abide by that they had already agreed to, and preserve the right of choice to the people.

Mr. WRIGHT.—There was another difficulty which the gentleman from Massachusetts appears not to have foreseen. To make a law it is not enough that the Senate are present even if complete; the House of Representatives is necessary to an act of legislation, and that body can have no existence after the fourth day of March, nor within the ten days suggested, for they could not, if all elected, be called even by proclamation within that time; and further, if there should be no election of President, there would be no power to convene Congress; so that the proposed addition is improper altogether.

Mr. ADAMS did not feel extremely solicitous for the proposition; when the Constitution is proposed to be amended, however, he was disposed to offer every suggestion which might appear to him calculated to render it more perfect. The objections offered by the gentleman from Georgia, highly as he respected his opinion, did not appear to him conclusive; for his calculations of time and circumstances do not entirely correspond with experience past. The President has at all times heretofore been inaugurated after the House of Representatives had closed its session by limitation, and the Senate had been uniformly assembled for the purpose of the inauguration. Here then is a body in session, and if there shall not be a Vice President chosen, they can and must proceed to choose one, and that choice would of course fall, as proposed, upon one of the candidates. The gentleman from Connecticut (Mr. HILLHOUSE) had mistaken his view, concerning the choice of a person by law; his intention certainly was to provide for the future contingency by a previous law.

Mr. JACKSON still conceived the gentleman's proposition founded in mistake; for it would be impracticable for the Senate to act, since, according to the rules of the Senate, two-thirds of the whole are necessary to form a quorum; one third must Constitutionally go out of that body at the time, and the absence of a single member would disable the Senate from business.

Mr. ADAMS.—There would remain still two-thirds of the Senate, and it would be the duty of the Executive to call them together, as had been done in some cases; and as to the deduction of the third by rotation, there are several of the small States that elected their Senators several months before the period. To argue that they would neglect it, would be to argue that the States are indifferent to their representation on this floor.

Mr. JACKSON—We know that vacancies do occur from other causes than indifference or neglect of States; we know that at this moment New York has but one Representative on this floor, and that New Jersey had but very lately been so much embarrassed by a faction as to leave her for sometime without more than one Senator.

The question on the amendment of Mr. Adams was then put and lost without a division.

Mr. PICKERING.—The case which the gentleman from Georgia founded his arguments upon applies to a non-election, and thought such a case an extreme one; he thought differently, and the Constitution as it now stands has made a provision for such an exigency. Some provision should be made for such a case; he would therefore move an amendment, which would provide for the event of a non-election, to insert after the words President:

"But if on the 4th of March the office of Vice President shall be vacant, then the powers which devolve by the Constitution on the Vice President, shall be exercised by such persons as the law shall direct, until a new election."

Mr. HILLHOUSE.—This amendment would supply all that was proposed by the allowance of ten days in a former amendment, and it seemed to him indispensable, because as the non-election of both President and Vice President may happen, there should be some organ to keep the wheels of Government in motion. It appeared to him to be necessary to provide for this contingency as for that of the death of the President or Vice President.

The amendment was lost, without a division.

The main question of the whole resolution then recurring,

Mr. WHITE, of Delaware, rose and addressed the Chair as follows:

Mr. President, it may be expected that we, who oppose the present measure, and especially those of us who belong to the smaller States, and who think the interests of those States will be most injuriously affected by its adoption, shall assign some reasons for our opinion, and for the resistance we give it: I will for myself endeavor to do so. I know well the prejudices of many in favor of this proposed amendment to the Constitution; I know too, and acknowledge with pleasure, the weight of abilities on the other side of the House by which those prejudices, if I may so be permitted to call them, will be sustained; this might perhaps be sufficient to create embarrassment or even silence on my part, but for the consciousness I feel in the rectitude of my views, and my full reliance on the talents of those with whom I have the honor generally to think and act. Upon a subject of the nature and importance of the one before us a great diversity of sentiment must be expected, and is perhaps necessary to the due and proper investigation of it. Without detaining the Senate with further preliminary remarks, presuming upon that patience and polite indulgence that are at all times extended by this honorable body to gentlemen who claim their attention, I will proceed immediately to the subject of the resolution; barely premising that notwithstanding the opinions of the gentleman from Virginia (Mr. TAYLOR) and the gentleman from Georgia, (Mr. JACKSON,) whose opinions I highly respect, I must yet think with my honorable friend from New Jersey (Mr. DAYTON) that the Constitution of the United States bears upon the face of it the strongest marks of its having been made under the influence of State classifications. It was a work of compromise, though not formed, as stated by the gentleman from Virginia, by the large States yielding most, but by the smaller States yielding much more to the general good.

It will be recollected that, previous to the adoption of the Constitution, on all Legislative subjects, in fact, on every measure of the Constitution, each State had an equal voice; but very different is the case now, when, in the popular branch of your Government, you see one State represented by twenty-two members, and another by but one, voting according to numbers. So that, notwithstanding the ideas of those gentlemen, and the declaration of an honorable member from Maryland, on my right, (Mr. SMITH,) that, during his ten years' service in Congress, he had never seen anything like State jealousies, State divisions, or State classification, I must be permitted to predicate part of my argument upon this business. Should any gentleman be able to show that the foundation is unsound, the superstructure of course will be easily demolished. Admitting, then, sir, for the sake of argument, that there were no very great objections to this proposed alteration in the mode of electing a President and Vice President, and that it were now part of the Constitution, it might be unwise to strike it out; unless much stronger arguments had been urged against than I have heard in favor of it, yet I would not now vote for its adoption. What appears specious in theory, may prove very inconvenient and embarrassing in practice, and my objections go to any alteration of the Constitution at this time; we have not given it a fair experiment, and it augurs not well to the peace and happiness of the United States to see so much increasing discontent upon this subject, so many projected alterations to the great charter of our Union and our liberties; not less than four are now upon our tables, and which, if adopted, will materially change the most valuable features of the Constitution. The first alters the mode of electing the President and Vice President; the second changes the ground upon which the Vice President is to be appointed by the Senate, in case one is not elected by the Electors, according to the Constitution; the third extends the powers of the Senate in the choice of this latter officer beyond what was ever contemplated by the people of this country; and the fourth, which is not now immediately before us, goes to incapacitate any citizen from being eligible to the office of President more than a certain number of years. All these important changes we are about to introduce into the Constitution at once; and, indeed, were attempted to be forced into a final vote upon them, in little more than the space of one day from the moment they were submitted to us. Are we aware of what we are about? Is this the way in which the Constitution was formed? Was it put together with as much facility and as little reflection as we are tearing it to pieces? No, Mr. President, it was constructed after much thought, after long and mature deliberation, by the collected wisdom and patriotism of America, by such a set

of men as I fear this country will never again see assembled; and we should be cautious how we touch it. The fewer changes we make in it, the longer it remains; the older it grows the higher veneration will every American entertain for it; the man born to its blessings, will respect it more than him who saw its birth; he will regard it not only as the great bulwark of his liberties, but as the price of the blood of his ancestors—as a sacred legacy from his father, deposited with him for the benefit of himself, and in trust for his posterity. But if, in this way, every succeeding Congress, every party enjoying the short-lived triumph of a day, shall be mutilating it with alterations, from whatever motives, either to thwart their political opponents, or to answer particular purposes, ere long no trace of the original instrument will remain; it will be kept in a state of tottering infancy, until some Gallic Cæsar, turning to his advantage an unhappy moment of popular phrenzy, may make the last change, by trampling upon its ruins, and substituting the strong arm of power in its place.

What, sir, let me ask, are the objects of these proposed amendments? The first, we are told, will so mark, so designate the man to be President, as to close forever the doors upon that subject! Could this be the effect, the adoption of it would indeed be wise and provident; but I fear a directly contrary tendency, that will open a new and immense field for intrigue.

The United States are now divided, and will probably continue so, into two great political parties; whenever, under this amendment, a Presidential election shall come round, and the four rival candidates be proposed, two of them only will be voted for as President—one of these two must be the man; the chances in favor of each will be equal. Will not this increased probability of success afford more than double the inducement to those candidates, and their friends, to tamper with the Electors, to exercise intrigue, bribery, and corruption, as in an election upon the present plan, where the whole four would be voted for alike, where the chances against each are as three to one, and it is totally uncertain which of the gentlemen may succeed to the high office? And there must, indeed, be a great scarcity of character in the United States, when, in so extensive and populous a country, four citizens cannot be found, either of them worthy even of the Chief Magistracy of the nation. But, Mr. President, I have never yet seen the great inconvenience that has been so much clamored about, and that will be provided against in future by substituting this amendment. There was, indeed, a time when it became necessary for the House of Representatives to elect, by ballot, a President of the United States from the two highest in vote, and they were engaged here some days, as I have been told, in a very good-humored way, in the exercise of that Constitutional right; they at length decided; and what was the consequence? The people were satisfied, and here the thing ended. What does this prove? that the Constitution is defective? No, sir, but rather the wisdom and efficiency of the very provision intended to be stricken out, and that the people are acquainted with the nature of their Government; and give me leave to say, if fortune had smiled upon another man, and that election had eventuated in another way, the consequence would have been precisely the same; the great mass of the people would have been content and quiet; and those factious, restless disorganizers, that are the eternal disturbers of all well administered Governments, and who then talked of resistance, would have had too much prudence to hazard their necks in so dangerous an enterprise. I will not undertake to say that there was no danger apprehended on that occasion. I know many of the friends of the Constitution had their fears; the experiment however, proved them groundless; but what was the danger apprehended pending the election in the House of Representatives? Was it that they might choose Colonel Burr or Mr. Jefferson President? Not at all; they had, notwithstanding what had been said on this subject by the gentleman from Maryland, (Mr. WRIGHT,) a clear Constitutional right to choose either of them, as much so as the Electors in the several States had to vote for them in the first instance; the particular man was a consideration of but secondary importance to the country; the only ground of alarm was, lest the House should separate without making any choice, and the Government be without a head, the consequences of which no man could well calculate. The present attempt, to say the least of it, as has been well observed by my honorable friend from Jersey, (Mr. DAYTON,) is taking advantage of a casualty to alter the Constitution that astonished every one when it happened, and that no man can imagine, in the ordinary course of events, will ever arise again. Sir, every hour that is added to the age of our Government, every day's increasing population of our country, every State admitted into the Union, renders still more remote even this improbable contingency. Gentlemen have urged, with exulting confidence, and particularly the honorable gentleman from Maryland, (Mr. SMITH,) that the people have long thought on this subject, and prepared for the amendment, and expect its adoption. I respect the sentiments of the people as highly as any man when they are well digested and clearly expressed; but in my mind this is a dangerous ground to advance far upon, without examining it well for ourselves; it is an argument that will apply alike to almost every question of importance, and goes to preclude debate upon them; for it is well known that there are few such submitted to us that have not been previously the subject of thought and speculative conversation out of doors. Ours is a country of politicians, and from the nature of our Government must continue so; every member of society feels such a portion of interest in the affairs of the nation as to excite inquiry; be his lot humble or exalted, be his sentiments right or wrong, he expresses them, as he is entitled to do, with freedom; but is it abroad in the country that the most important measures of the Government are to be matured and decided upon? Is it

in private circles, in caucuses, in clubs, in coffee-houses, streets, and bar-rooms, that great Constitutional questions are to be settled? And are we convened here but to register the crude decrees of such assemblages, or only for the humble purpose of answering to the call of our Secretary with a yea or nay? If the argument proves anything, it amounts to this. Would the gentleman from Maryland, or any other honorable member, be content to hold his seat upon such terms? If so, he may indulge himself in one consolation, that no private citizen would envy him the place; but for myself I claim the exercise of higher and more responsible privileges of thinking and acting for myself, holding it my duty, so far as I am capable, to assign to my constituents the reasons that govern my public conduct.

It has of late, Mr. President, become fashionable to attach very little importance to the office of Vice President, to consider it a matter but of small consequence who the man may be; to view his post merely as an idle post of honor, and the incumbent as a cypher in the Government; or according to the idea expressed by an honorable member from Georgia, (Mr. JACKSON,) quoting, I believe, the language of some Eastern politician, as a fifth wheel to a coach; but in my humble opinion this doctrine is both incorrect and dangerous. The Vice President is not only the second officer of Government in point of rank, but of importance, and should be a man possessing, and worthy of the confidence of the nation. I grant, sir, should this designating mode of election succeed, it will go very far to destroy, not the certain or contingent duties of the office, for the latter by this resolution are considerably extended, but what may be much more dangerous, the personal consequence and worth of the officer; by rendering the Electors more indifferent about the reputation and qualification of the candidate, seeing they vote for him but as a secondary character; and which may occasion this high and important trust to be deposited in very unsafe hands. By a provision in the first section of the second article of the Constitution, "in case of the removal of the President 'from office, or of his death, resignation or inabil-'ity to discharge the powers and duties of the said 'office, the same shall devolve on the Vice Presi-'dent"—and he is Constitutionally the President, not until another can be made only, but of the residue of the term, which may be nearly four years; and this is not to be supposed a remote or improbable case. In the State to which I have the honor to belong, within a few years past, two instances have happened of the place of Governor becoming vacant, and the duties of the office, according to the constitution of that State, devolving upon the Speaker of the Senate. We know well too, generally speaking, that before any man can acquire a sufficient share of the public confidence to be elected President, the people must have long been acquainted with his character and his merit; he must have proved himself a good and faithful servant, and will of course be far advanced in years, when the chances of life will be much against him. It may indeed, owing to popular infatuation, or some other extraordinary causes, be the ill fate of our country, that an unworthy, designing man, grown old and gray, in the ways of vice and hypocrisy, shall for a time dishonor the Presidential chair, or it may be the fortune of some young man to be elected, but those will rarely happen. The Convention in constructing this part of the Constitution, in settling the first and second offices of the Government, and pointing out the mode of filling, aware of the probability of the Vice President succeeding to the office of President, endeavored to attach as much importance and respectability to his office as possible, by making it uncertain at the time of voting, which of the persons voted for should be President, and which Vice President; so as to secure the election of the best men in the country, or at least those in whom the people reposed the highest confidence, to the two offices—thus filling the office of Vice President, with one of our most distinguished citizens, who would give respectability to the Government, and in case of the Presidency becoming vacant, having at his post a man Constitutionally entitled to succeed, who had been honored with the second largest number of the suffrages of the people for the same office, and who of consequence would be probably worthy of the place, and competent to its duties. Let us now, Mr. President, examine for a moment the certain effect of the change about to be made, or what must be the operation of this designating principle, if you introduce it into the Constitution; now the Elector cannot designate, but must vote for two persons as President, leaving it to circumstances not within his power to control which shall be the man: of course he will select two characters, each suitable for that office, and the second highest in vote must be the Vice President; but upon this designating plan the public attention will be entirely engrossed in the election of the President, in making one great man. The eyes of each contending party will be fixed exclusively upon their candidate for this first and highest office, no surrounding object can be viewed at the same time, they will be lost in his disc. The office of President, is in point of honor, profit, trust, and influential patronage so infinitely superior to any other place attainable in this Government, that, in the pursuit and disposal of it, all minor considerations will be forgotten, everything will be made to bend, in order to subserve the ambitious views of the candidates and their friends. In this angry conflict of parties, against the heat and anxiety of this political warfare, the Vice Presidency will either be left to chance, or what will be much worse, prostituted to the basest purposes; character, talents, virtue, and merit, will not be sought after, in the candidate. The question will not be asked, is he capable? is he honest? But can he by his name, by his connexions, by his wealth, by his local situation, by his influence, or his intrigues, best promote the election of a President? He will be made the mere stepping stone of ambition. Thus, by the death or other Constitutional inability of the President to do the duties of the office, you may find at the head of your Government as First Magistrate of the nation, a man who has either smuggled or bought himself into office. Who, not having the confidence of the people, or feeling the Constitutional responsibility of his place, but attributing his elevation merely to accident, and conscious of the superior claims of others, will be without restraint upon his conduct, without that strong inducement to consult the wishes of the people, and to pursue the true interests of the nation, that the hope of popular applause, and the prospect of re-election, would offer. Such a state of things might be productive of incalculable evils; for it is, as I fear time will show, in the power of a President of the United States to bring this Government into contempt, and this country to disgrace, if not to ruin. Again, sir, if this amendment succeeds, if you designate the person voted for as President, and the person voted for as Vice President, you hold out an irresistible temptation to contracts and compromises among the larger States for these offices; it will be placing the choice of the two highest officers in the Government so completely in their power, that the five largest States, viz: Massachusetts, New York, Pennsylvania, Virginia, and North Carolina, may not only act in every previous arrangement relative to the appointment of these officers without the necessity of consulting the other twelve, but may totally exclude them from any participation in the election. The whole number of Electors, according to the present representation in Congress, will be one hundred and seventy-seven; these five States will have ninety-six of them, a clear majority of eight, and should they agree among themselves they can say absolutely who shall be the President. The other twelve States will not have even the humble privilege of choosing between their candidates; for their whole number of votes being but eighty-one given to the candidate for the Vice Presidency as President, would be but thrown away, since the other would still have his designated majority of eight for that place. Should it be said that such a coalition is improbable, I answer that my opinion is different, and it is enough for me that it is possible. Again, sir, counting only the States of Massachusetts, New York, Pennsylvania and Virginia, these four will be found to be entitled to eighty-two Electors, wanting seven of a majority of the whole number; so that, leaving North Carolina among the smaller States, if they unite, and can by any species of influence, by promises of offices, bribery, or corruption, gain over to their interest but seven of the Electors belonging to the other States, they can in like manner appoint who they please. I might go on to show that lopping even Massachusetts from the list, the other four, viz: New York, Pennsylvania, Virginia, and North Carolina, could with very little difficulty effect the same object, since they are entitled to seventy-seven Electors. And now let me ask gentlemen representing the twelve smaller States, if they are prepared to yield up not only the high and honorable ground upon which the Constitution has placed them in the House of Representatives in case of an election for a President to be had there, but to vest in the five larger States, or even in a smaller number of them, whenever they shall be pleased to exercise it, the exclusive power of appointing the President and Vice President of the United States?

Again, Mr. President, admitting these coalitions of the larger States, of which I have been speaking, for the purpose of appointing a President and Vice President by themselves, may none of them ever take place under this amendment, if adopted, notwithstanding its strong and natural tendency to such an effect, (and this is certainly admitting much more than gentlemen on the other side of the House could in argument have any right to demand of me,) yet there is one other which I am sure, in candor, they must grant me, is not only possible, but very probable, indeed, upon a subject of this kind—I mean the States of Virginia, North and South Carolina, Georgia, Kentucky, and Tennessee, together with the Territories upon the waters of the Mississippi, that are every day growing into States. And such is the rapidly increasing population of that country, that, after the next census, it will be forever in their power, upon this designating plan of election, to appoint the President and Vice President of the United States. The other ten Middle and Eastern States will have only to acquiesce in the choice, without, as I before observed, the power even of electing between the candidates, and much less the right of being consulted, in the first instance, as to the suitable and proper characters. Gentlemen will, I hope, do me the justice to believe that I mention these coalitions as likely to be entered into, only in relation to this particular object. I have no doubt but that these States are as well disposed, and as much attached to the Union, as any that belong to it; but who does not know the indissoluble bonds that will bind together the citizens of that Southern and Western country, in the pursuit of an object of this kind? Their similarity of manners, of habits, of laws, of civil institutions, of local interests, added to their native prejudices and ties of consanguinity, unite them inseparably, and make their views the same. Yet gentlemen, to my utter astonishment, tell us that this amendment is intended to preclude intrigue. Sir, no other measure could be adopted that would so effectually produce it. It will create ill blood between the smaller and the larger States—between one part of the Union and another. It will give rise to local prejudices, to envious territorial distinctions, to State schisms; and I should not wonder if, in the end, it were to be the means of plunging this country into a civil war, and of producing a separation.

As to the second and third alterations proposed in this resolution, that of enlarging the ground upon which the Vice President may be appointed by the Senate, by giving them authority to elect from the two highest, whenever no person has a majority of the whole number of votes, whereas now they can choose but in the case of two persons being upon a vote, and thus extending the powers of the Senate in the election of this officer, they would, at first view, seem to be mere matters of speculation, introduced for the sake of change only, or for the want of something else to employ

ourselves about. No inconvenience is even pretended to have been experienced under those provisions of the Constitution, as they now stand; yet we, in the plenitude of our wisdom, are about to recommend to the several State Legislatures an alteration of them; and so every successive Congress, which will no doubt in the same ratio as the present be more wise, more learned, more enlightened, and more patriotic, than their predecessors, will improve upon our example, until the Constitution shall be entirely regenerated. But the gentleman from Vermont (Mr. BRADLEY) now tells us—and I believe correctly—that these amendments, though not before contemplated, result necessarily from the introduction of the designating principle into the Constitution. Does not this show us, most clearly, the danger of meddling with the Constitution at all? Out of the single amendment proposed by the gentleman from New York, (Mr. CLINTON,) that of designating the person voted for as President, and the person voted for as Vice President, these two other very important changes have already grown—have forced themselves upon our consideration; and another of still greater importance immediately presents itself, which gentlemen on all sides seem to think must shortly follow—that of abolishing entirely the office of Vice President. Several honorable members have told us that their minds have long been made up on this subject; that they had long since seen the necessity of introducing this change in the mode of electing a President and Vice President; but never before saw its operation upon other parts of the Constitution, or that any other alterations must be the necessary consequence of its adoption. The honorable mover of this subject, from New York, who, according to his own account, had been two years maturing it in his mind, and who pressed the immediate adoption of it, with even more than his usual eloquence, had never before seen the bearing of his own resolution upon the Constitution, and was himself one of the first to vote for striking out part, and to second a motion of a gentleman from Vermont, (Mr. BRADLEY,) who I do not now see in his place, for a very important amendment to another part, of it. Indeed, sir, after all the deep deliberation bestowed upon it by the learned mover, the resolution, as at first introduced, provided very carefully for an impossible case, that in the nature of things could never happen—that of two candidates, upon the designating plan of election, having each a majority of the whole number of votes for President. Added to all this, sir, recollect the awkward and embarrassed situation of the Senate for a week past on this subject. Every step we have taken has involved us in new difficulties. We have several times been so completely lost in the mazes of our own amendments as to be under the necessity of adjourning, in order to have them printed, that we might see what we had done; and no sooner were they laid before us, than they directed our eyes to some other part of the Constitution where an unexpected injury had been sustained; and all this has arisen from the attempt to introduce the designating principle into the Constitution. The favorers of the amendments have been alternately at variance with themselves and with each other, and sometimes so scattered that no two of them could agree; at other times, all were entirely lost. These are the most irresistible arguments, the strongest circumstances, to show how dangerous it is to attempt any alteration in the Constitution; and that, as has been urged on a former occasion, every comma has its meaning. You cannot strike out a word from one section, without inflicting a wound upon some other. So nicely has it been woven together, that no thread can be spared. Every principle it contains is a keystone, and no one of them can be removed without endangering the edifice. No man can tell how these amendments may operate—how they enfeeble and shackle other parts of the Constitution—or what other alterations they may render necessary. Look at this paper now, and recollect what it has been. At different times it has assumed different shapes—at one time proposing but one alteration; at another, four or five. Thus, one alteration will beget the necessity for another, and so we shall have to go on in this work *ad infinitum*, as the regular series of cause and effect. It may be said that this second amendment, so far as it goes to extend the powers of the Senate in the election of the Vice President, if adopted, may prove advantageous to the smaller States. I grant the possibility, but such advantage is too casual, too remote and unimportant, to induce me, as a Representative from one of the smaller States, to vote for any alteration in the Constitution. It is the true interest of the smaller States, especially, to preserve sacred and untouched the Constitution, and not be weakening it by alterations—expecting temporary advantages that may or may never arise; and which, if attained, would be little—would be less than insignificant—compared with the infinite importance of this instrument to those States, as it stands at present. Their independence, nay, their very existence, as States, hangs upon their preservation of it. They could never get such another, and they should be the last to tamper with it: when they do so, they risk their only stake. And now let me entreat gentlemen representing the twelve smaller States in the Senate (for it is here, and here only, they are felt in the Government) to weigh well their amendments before, by their affirmative votes, they do an act that may encroach upon the Constitutional rights of those States. I know well that, with some of the States, it is the highest source of mortification that the Constitution has placed the larger and smaller ones so nearly upon an equality in certain respects. The pride of some of the larger States will, for instance, never submit that, by any possible contingency, the State of Delaware, of Rhode Island, of Vermont, or New Hampshire, should have an equal voice with them in the choice of a President, as in case of an election by the House of Representatives. This is an evil that must be cured; and if alterations shall prove insufficient, a more effectual remedy, I fear, will be prescribed, the moment that the national pulse can be prepared for the application.

So far, Mr. President, as human wisdom, or rather human frailty, might be permitted to judge of the future from the past and the present, I should think it no act of rashness to foretell that the next alteration attempted will be to destroy the influence of the smaller States in this branch of the Legislature, not directly by expunging that provision of the Constitution which gives to each State an equal representation upon this floor, for that cannot be done with the consent of every State, but indirectly in conformity with the idea of the gentleman from Kentucky, (Mr. BRECKENRIDGE,) expressed the other day, by shortening the period for which Senators shall be elected, and which, in effect, will amount to the same thing. I know too well the weight and influence of the gentleman from Kentucky in this Government at present, to treat lightly what he says upon a subject of such magnitude, and must consider the charge of aristocracy, which he has been pleased to bring against the Senate as the denunciation of this body. Indeed, sir, I shall not be surprised to hear at the next session, that the people are prepared for the change, or even that some of the smaller States have recommended it, for such is at present the infatuated confidence of many of them in those who, I fear, are encompassing their ruin, that they seem to be constantly acting under instructions, and to have resigned both themselves and the Constitution to the guardianship of others. The gentleman from Virginia, (Mr. TAYLOR,) in order to lull our fears and divert our attention from the threat uttered by him to the smaller States, has very artfully called the alarm sounded on that subject by my honorable friend from New Jersey, (Mr. DAYTON,) at one time a stratagem, and at another an ambuscade; and asked, how he, as a general, could lay an ambuscade so unconcealed, so exposed to the enemy? Sir, we resort to no stratagems or ambuscades, our opposition is public, and our movements undisguised; and it was on the part of my friend only a prompt attack upon an ambuscade laid by the gentleman from Virginia himself, who has been entrusted with the chief command in this campaign, and which by him had been incautiously too soon uncovered; whilst gentler means succeed so well, threats are unnecessary, and might be dangerous. I was not a little surprised, Mr. President, to hear an honorable member from Maryland, (Mr. SMITH,) after reminding us that he belonged to a small State, come out on this occasion the mighty champion of the large ones, and whilst exhibiting himself to the greatest possible advantage in this new and enviable character, calling upon my friend from Massachusetts before me, (Mr. ADAMS,) to know why he, representing a large State, had been pleased to give himself any concern about the interests of the small States, intimating that such conduct concealed views not intended to be discovered, or, in the courtly language of the day, that it was stratagem; I wonder it had not been an ambuscade too. The honorable member from Virginia (Mr. TAYLOR) has prudently attempted to conceal again the ambuscade that had been so much annoyed by the fire of my friend from New Jersey, endeavoring to soften down and explain away an expression used by him, and which, by a very natural construction, was considered a threat to the smaller States; the gentleman has indeed told us since that he intended no threat, and we are bound to accept his explanation. I mean not to scrutinize his meaning, especially after what the honorable member has said; but let us see how far the gentleman from Maryland was correct, when he declared that his friend from Virginia had used no language that could amount to a threat to the smaller States. If, sir, the language, I will say the menacing language of the gentleman from Virginia used on this subject, taken according to its common import, was not sufficient to rally and unite the smaller States, then the rancor of party has stifled more noble sentiments, we are a house divided against itself, and our day has passed.

After reproaching us with our weakness, the gentleman proclaimed in the language of triumph, (for I will give his very words as noted down by myself and others at the time,) "Let the smaller States beware how they rouse the resentment of the larger ones. What," asked he, "must become of them in such a collision?" And is this no threat? Sir, I answer, we might sink; but it is to avoid this very collision that I resist, with my feeble efforts, the present measure. We are now safely entrenched behind the barriers of the Constitution, and shall we ourselves demolish this great bulwark of our defence? Shall we not rather make our stand here, whilst the means of protection and resistance are within our power? Ambition is insatiable; the more we give up the more will be demanded of us, and every inch of ground we yield, the less tenable does the rest become. The honorable member from Virginia has told us, that the present mode of electing the President and Vice President was the road to Monarchy. I have often, sir, heard it intimated, that the Government of the United States had a tendency to Monarchy, a doctrine I could never accede to. (I mean as the Government is at present organized.) I speak and judge from things as they now present themselves; what effect these many speculative changes that are at present taking place in the Constitution may have, I know not, I presume not to foretell. But one thing was, years since, foretold and denied, and I now call it up to the recollection of gentlemen on the other side of the House, not to upbraid or offend them—but short-sighted man feels a kind of pleasure, (it is indeed though, Mr. President, on this occasion a melancholy one,) in having foretold truly the events of futurity. It was foretold that the Constitution would not suit those who were coming into power; that it was obnoxious to them, or to to their leaders, which is in effect the same, and that the moment they should lay their hands upon it, if they could not get rid of it entirely under the pretence of amending and altering, they would fritter it away, until but the shadow, the empty shadow, should remain. How far the proceedings of this session, which is the first that the

present majority ever consisted of two-thirds of both branches of the Legislature, will go to justify this prediction. I will leave the world and the consciences of those honorable gentlemen on the other side of the House to judge. But such was the anxiety on this subject, that scarcely had we convened before the long wished for, hallowed work, was commenced, and the order of almost every day since has been a resolution to alter the Constitution. If, sir, the Constitution was suffered to remain as it is, I have no idea, from my acquaintance with the people of this country, and from the nature of our civil institutions, that any set of men, entrusted with the management of our public affairs, could ever, by a system of measures tending to such an end, succeed in the subversion of our rights and liberties. The people watch their servants with a jealous eye. If they err at all, it is on this side, and this is the safe side. No, Mr. President, what we have most to fear to our Government, and our liberties, must come from another and a very different source, from the licentiousness of democracy. This is what Republican Governments have forever to guard against; this is the vortex in which they are most likely to be swallowed up. God grant it may never be the case with ours, and I fear nothing else. By the licentiousness of democracy, I mean no imputation or offence to any portion of this community; I refer not to the political sentiments of any honorable gentlemen, or to the sentiments of their constituents—but to that wild infuriated spirit that we have seen in France, under the prostituted name of liberty, anarchizing the world, and rioting in the destruction of everything dear and valuable to society; and after having sported itself in all the wantonness of excess with the terrors, the crimes, the miseries and the murders of mankind, has seated a Corsican adventurer upon the high and dignified throne of the Bourbons—has riveted the manacles of tyranny upon a great, a brave, but a deluded people, and is now reclining in the shade of a military despotism.

Mr. COCKE.—The gentleman last up has, to be sure, in a well studied speech, as often times before, sounded the tocsin of alarm, and called in even the aid of prophecy to enforce his fears. But, sir, this Senate has been so much accustomed to these false alarms, that it appears to me the only danger we are in is that of going wide of the subject, and taking up our time with matters of imagination, instead of sticking to matter of fact. The object of this amendment to the Constitution is only one thing, one plain and simple principle, to enable the people to discriminate in the choice of their fellow-citizens for the offices of President and Vice President. Gentlemen tell us of large and small States, but is this amendment more in favor of the large than small; is this not such an amendment as will induce the large States to promote the election by the people? Is it not such an amendment as will prevent that corruption which so many gentlemen on all sides apprehend, if it goes into the House of Representatives? Where is the use of gentlemen sounding an alarm of danger which they do not really believe themselves? Why will gentlemen talk of the danger of confusion—threaten us with it, when the whole confusion arises from the acts of gentlemen themselves? We have listened here with patience for weeks together to the arguments of gentlemen; they have had every fair opportunity to give their opinions, and it is now time to come to a conclusive vote. We hear nothing now but a repetition in fine dressed words of what we have heard from day to day for weeks; and for what purpose? to excite our fears, fears which it is our wish to guard against in reality.

Gentlemen tell us, first, they suppose the people may not elect a President and Vice President. Upon what ground do they pretend to believe this possible? Are the people so disgusted with their liberties; are they so little attentive to their rights—are they tired of a Government that every day makes them more happy? No, sir.

They then tell us that they do not wish that the election should go into the House of Representatives; and then that that House may not elect; and then our very honorable selves are recommended to make up all deficiencies! Do gentlemen doubt themselves, or can they compel Congress to pass such a law as they require for the election of a dictator, without a voice from the people? If gentlemen fear that the people will not elect, and that the other House will not elect, with equal reason they may fear that the other House would not make the law they wish for.

But it is said that some of us are governed by a fear that the people may not have a choice in the election of Vice President. If it will afford gentlemen any satisfaction, I tell them that it is my wish that the people should elect the Vice President as well as the President. I say, I do not understand the principle of minorities governing majorities. The law of the minority is not the law of the Constitution, and it is not the law for me. How gentlemen can pretend to advocate the Constitution, and talk of the minority giving law, is to me very surprising; they say too the Constitution is very sacred to them, and it should not be altered; so it is too, every word, sacred to me; but among its most sacred parts, I find that the Constitution provides for its own alteration and amendment; not indeed by a minority, but by a large majority in both Houses, and by a much larger majority of States. Gentlemen are not willing that a majority should elect a Vice President, but they are not willing that three-fourths of the States should amend the Constitution; they pass by the open door on the right hand to get in at a private passage.

Mr. WHITE—to order—the gentleman is not surely using any arguments of mine; they are of his own making.

Mr. COCKE.—The gentleman from Delaware thinks the minority should govern—that is his argument, however he may disguise it. I think the majority should govern; I like to speak out—I do not wish to have a man put upon us contrary to our wishes. What! shall the majority abandon the right of choosing a man whose opinions are conformable to theirs, and suffer a man of principles hostile to theirs to be put upon them? I am, sir, for a government of the people, whether well born or born by accident; I am for a government not of checks and balances, but one that will not suffer a bad check upon good principles.

But we are once more told of a Gallic Cæsar, and our fears are to be provoked this way too—but this more than the rest of alarms will not do; we fear no Cæsar, foreign or domestic. We have indeed seen the day when we were near getting a President not of our choice; but because we have escaped from the danger and the intrigue of that day, are we to take no precaution against such measures again. It is to guard against such danger we wish to amend this Constitution. But gentlemen tell us we have not given it a fair trial. I think we have, and found it defective. Here we have been a week and upwards, laboring and bewildered in every kind of discussion, and what have we come to? exactly where we set out. Not one of us has altered our opinions—we have argued and listened and done nothing. Why? Because gentlemen have been attempting impossibilities; there is no such thing as moving either side from their principles. One side thinks the minority should give the law; we think with the Constitution the right is in the majority, and we will submit to no other law. I am for the amendment, and for a discrimination.

Mr. PLUMER said that he had generally contented himself with expressing his opinion by a silent vote, but on a question which affected the rights of the smaller States, (one of which he had the honor to represent,) he requested the indulgence of the Senate to a few observations.

He said the Constitution had provided only two methods for obtaining amendments, and both are granted with great caution. If two-thirds of the several State Legislatures apply, Congress shall call a convention who are to propose amendments, which, when ratified by the conventions of three-fourths of the States, will be valid. If this mode is adopted, Congress have nothing to do but to ascertain the fact, whether the necessary number of States require a convention. If they do, a convention must be called. The State Legislatures are only to apply for a convention. They can neither propose nor decide the amendments.

The other mode is, if two-thirds of both Houses of Congress deem it necessary to propose amendments, and three-fourths of the State Legislatures ratify them, they are valid. This is the present mode. The State Legislatures have nothing to do till after Congress has proposed the amendments, and then it is their exclusive province either to ratify or reject them. But they have no authority to direct or even request Congress to propose particular amendments for themselves to ratify. Instructions on this subject are therefore improper. It is an assumption of power, not the exercise of a right. It is an attempt to create an undue influence over Congress. It is prejudging the question before it is proposed by the only authority that has the Constitutional right to move it. If these instructions are obligatory, our votes must be governed, not by the convictions of our own judgments, or the propriety and fitness of the measure, but by the mandates of other Legislatures. This would destroy one of the checks that the Constitution has provided against innovation. State Legislatures may, on some subjects, instruct their Senators; but on this, their instructions ought not to influence, much less bind us, to propose amendments, unless we ourselves deem them necessary.

The Senate consists of two members from each State; and in this case, the concurrence of two-thirds of all the Senate are necessary. A majority of the Senate constitutes a quorum to do business, but that quorum is a majority of all the Senators that all the States are entitled to elect. This applies with equal force to the term "two-thirds of the Senate." But in cases where from necessity a speedy decision is requisite, and where the concurrence of two-thirds is required, the Constitution is explicit in confining that two-thirds to the members present; as in cases of treaties and impeachments; and also a fifth of the members present requesting the yeas and nays. If amendments can be Constitutionally proposed by two-thirds of the Senate present, it will follow that twelve Senators, when only a quorum is present, may propose them against the will of twenty-two Senators.

Mr. P. observed, that he had said the Constitution had provided for amendments, but with great caution. In some cases, they cannot, in the nature of things, be ever made. For instance, the equal representation of each State in the Senate cannot be abridged without its own consent. Other parts of the Constitution cannot be amended till after a certain period, to wit: those relating to slaves, and the apportionment of direct taxes. The United States are bound to guarantee to each State a Republican form of government, and to protect each against invasion. Can these stipulations be expunged? They cannot. Because a change here would introduce new principles into the Constitution. That instrument is a compact formed by each individual State with the United States, and it may be difficult to ascertain how far a new principle, introduced into the Constitution, would operate as releasing the dissenting States from the compact. Nothing but imperious necessity can justify the introduction of new principles. The specious term of "amendments," will be falsified by applying it to forms and proceedings, without extending it to the principles and substance of the Constitution.

In an elective government much depends upon public opinion. It is important that the Constitution should be stable and permanent as the standard to direct that opinion. A Constitution frequently changed, cannot command the esteem or veneration of any people. The proposing of amendments has a tendency to infuse a spirit of fickleness and love of novelty into the public mind. One change prepares the way for another. How many constitutions have there, within a few years, been established in France, each of which was thought better than the one that preceded it? Have not their frequent changes ren-

dered everything dear to man so precarious and uncertain, as to induce them to establish a military despotism, in preference to a free Government? Their fate should serve as a solemn warning to us not to change our Constitution, unless compelled by absolute necessity.

It has been said, the people require this amendment; but of this fact we have no evidence.

This amendment affects the relative interest and importance of the smaller States. The Constitution requires the Electors of each State to vote for two men, one of whom to be President of the United States. This affords a degree of security to the small States against the views and ambition of the large States. It gives them weight and influence in the choice. By destroying this complex mode of choice, and introducing the simple principle of designation, the large States can with more ease elect their candidate. This amendment will enable the Electors from four States and a half to choose a President, against the will of the remaining twelve States and a half. Can such a change tend to conciliate and strengthen the Union?

This amendment has a tendency to render the Vice President less respectable. He will be voted for not as President of the United States, but as President of the Senate, elected to preside over forms in this House. In electing a subordinate officer the Electors will not require those qualifications requisite for supreme command. The office of Vice President will be a sinecure. It will be brought to market and exposed to sale to procure votes for the President. Will the ambitious, aspiring candidate for the Presidency, will his friends and favorites promote the election of a man of talents, probity, and popularity for Vice President, and who may prove his rival? No! They will seek a man of moderate talents, whose ambition is bounded by that office, and whose influence will aid them in electing the President. This mode of election is calculated to increase corruption, promote intrigue, and aid inordinate ambition. The Vice President will be selected from some of the large States; he will have a casting vote in this House; and feeble indeed must his talents be, if his influence will not be equal to that of a member. This will, in fact, be giving to that State a third Senator.

In the Southern States the blacks are considered as property, and the States in which they live are thereby entitled to eighteen additional Electors and Representatives. A number equal to all the Electors and Representatives that four States and a half are entitled to elect. Will you, by this amendment, lessen the weight and influence of the Eastern States in the election of your first officers, and still retain this unequal article in your Constitution? Shall property in one part of the Union give an increase of Electors, and be wholly excluded in other States? Can this be right? Will it strengthen the Union?

This amendment is designed to prevent the evils that occurred at the last Presidential election. That was an extraordinary event; it was a casualty that can seldom happen. Two men had a majority of all the electoral votes, but neither of them was chosen. But what was the consequence? Why, the House of Representatives in a peaceable manner completed the choice, and that, fourteen days before the President could enter upon the duties of his office. It may be desirable to prevent the choice being carried into the House of Representatives, but this amendment will not do it. It expressly provides for such an event. And if two or more candidates of different parties are carried there, (and if the state of parties should be nearly equal it will happen,) the House must then decide between candidates of different parties.

Mr. P. said that the amendment appeared calculated to give power to the strong; enfeeble and weaken the small States; to lessen the respectability of the Vice President, and not to prevent the evil it was designed to remedy; and therefore that he should vote against it.

Mr. JACKSON.—The gentleman last up and another who had preceded him (Messrs. WHITE and PLUMER) had taken a ground which he did not expect to hear in the elective Senate of a free people. They questioned not only the propriety of the present amendment but of all amendments. This he considered as of no great consequence, but he thought it merited notice, because the dislike of amendments is expressed by gentlemen who wish to have it believed that they are more strongly attached to the Constitution than others; and though the Constitution which they so ardently admire provides expressly for its own amendment. Gentlemen liked the Constitution, but they disliked all amendment, forgetting that as long as human society exists, it must be subject to human frailties; nothing that comes from the head of man can be perfect; and though we may fail to correct imperfections in human institutions, it is our duty to persevere and employ every means which time and experience point out to us, to render our state as secure from evil as possible.

Why is it that gentlemen constantly refer us to France? Do gentlemen, by referring us to that unfortunate country, expect to impress a belief on us that there is any resemblance of situation or circumstances between the two countries?—or are they so blind as not to see that the state of liberty in that country should be a most earnest motive with us to provide such amendments to our Constitution as may secure us against the danger of usurpation? Our situation has never resembled that of France, but during our Revolution. That nation had not the opportunity of sitting down after the overthrow of her enemies, and forming a free constitution in peace, as we had. It was in the conflicts of faction excited by foreign enemies, that the state of France was changed; but she had been always different from us. France was always one and indivisible. In that country we have seen the conflicts of faction, and the frantic zeal of adherents convulsing the nation; have we not had any similar transactions during our own Revolution? Were there no factions even in our Revolutionary councils? Have

we had no ambitious men since seeking to destroy our liberties? Are there none now who would, if they could hope for success, attempt it? Thanks to our better fortune, though we have encountered many a storm, and though bad pilots had nearly foundered us, the vessel of State is still safe, and her liberties are not gone by the board. Thanks to the sound sense of the people, unbounded thanks to the able pilot who now holds the helm, we have escaped a wreck, and are now more prosperous and happy than at any former period. The exalted character who is now at the head of affairs defies the shallow railings and little-minded attacks of his enemies; his character stands too high above their reach to be affected by the insects that crawl beneath him; his conduct is above their censure, and his good deeds have rendered him dear to his fellow-citizens. His countrymen had fixed their eyes upon him, but arts had been employed to frustrate their wishes. The effect, however, had been fortunate; and if it had not been for accidental circumstances, there never would have been room for the alarming contest which took place in the House of Representatives. He had the best reason to know, that it never was intended to make any other man President. He was at that period at the head of the government of Georgia, and happened to be present when a letter was received, directed to some of the Electors, the contents of which were communicated to him. The Electors of Georgia had determined to give two of their votes to Governor Clinton. The letter was from an influential gentleman in South Carolina, pressing them to give all their votes equal, as it was alleged that if they were not given, a character not acceptable to the people would be Vice President. It was therefore to secure for Mr. Burr the Vice Presidency that those two votes were given, which would not have been given if the least suspicion had been entertained of what subsequently happened.

But it is asserted that there may be a coalition of the large States, and thus this amendment is intended to depress the small States. These things gentlemen said only because they could say nothing to the purpose. Will any gentleman say that Massachusetts and Virginia have united? Look to their representatives, and ask them if such is the case. Will those States be ever likely to coalesce in party views? Never; there is one point only upon which they could be united—the defence of a common country. Tear a leaf from the Constitution and they will rally together, and the small States will cling around them.

But why is this jealousy of Virginia excited—when and where has she domineered over her sister States? She is as incapable of the attempt as of submission to an insulting and insidious domination. From whence do you derive your Constitution? From Virginia. When your small States refused to submit to a paltry five per cent. impost on foreign goods, what was then your situation? Who stood forward? Virginia; she saw the situation of their common country, she saw the glories of the Revolution and the liberties of the people endangered by the blind and selfish policy of the small States; and she with her accustomed sagacity found out the remedy, by proposing a convention, in which your Constitution originated.

To whom are you indebted for the Revolution! To the brave State of Massachusetts, the gratitude of America is due for her valor, her constancy, and her sufferings. But it is to Virginia you owe the instructive spirit and the manful determination of the first resolve and first determination to be free, sovereign, and independent. Why then is this jealousy attempted? Is it because she had given us Washington in our Revolution, and Jefferson now? Is it to the superiority of her patriots and statesmen we must attribute this unworthy envy? It has been asked why we do not resort to a convention, if we wish to amend the Constitution? For his part he was averse to calling conventions, but when no other remedy was provided; bodies of that description are invested with boundless power; the physical and political powers of the State are in their hands; and they are therefore more exposed to the zeal and the intrigues of the ardent and ambitious. The Constitution has provided means more simple, and fully adequate; and, even though we might err in our determinations, the check of three-fourths of the Legislatures will be an adequate protection against the invasion of the public rights.

We are told we shall give up everything if we pass this amendment. Shall we, really, have more or less power than before; or, has there been any coalition which is under an apprehension of losing everything by its passage?

We are told that the candidates, on a former occasion, had an equal claim and equal pretensions to the office of President. He did not wish to make comparisons; but he could not but recollect that the attempt to supersede one of the candidates, and to place the other in his station, had endangered the Government; and, from what he had already said, he believed it would not be questioned that, so far as concerned Georgia, it never was intended to give them an equal chance; and small and obscure as that little corner called Georgia is, had the measure been pursued to consummation, which had been attempted on that occasion, she would have flown to arms, and South Carolina would have joined her to do justice to the interest of the nation.

The gentleman from Delaware (Mr. WHITE) had talked of intrigues. The days of intrigue are past, they are gone, and the intriguers with them; the people have got the man of their choice; Mr. Jefferson has no occasion for intrigue were he disposed to employ it; the Administration has none; the policy of the Executive is above all intrigues; the affections of the people are his, and justly, for, under his Administration, they are the happiest people that ever existed. Never will there be a Federal President or Vice President again elected, to the end of time; if there should ever be any other chosen out of the line of the present politics, it must be from some new sect, which, assuming the principles of the republicans, may succeed by carrying their zeal for liberty farther.

He did not wish to discuss largely the allusion of the gentleman to a fifth wheel. Were the subject to be confined to our own country, he should go fully into that subject; he wished not to afford any handle for the disrespect of foreign nations towards any part of our institutions. But he would spurn the insinuations of those who would suggest that we shall not choose a man of integrity for the office of Vice President. The people, sir, will solicit a man worthy of their confidence, and honored abroad and at home.

The amendment to the Constitution, he considered necessary and salutary; and he was in hopes, when gentlemen saw the benefits, they would come forward and thank us for it.

Mr. TRACY hoped the Senate would now adjourn; on the question being put, it was lost.

The motion of Mr. TRACY for an adjournment having been negatived, he then addressed the President.

Mr. TRACY moved an adjournment, because he thought a more full and fair discussion was due to this important question than could be had after this late hour.

The merits have never, until now, been before us, for, although considerable time has been consumed in debate, it has chiefly been directed to the subordinate amendments, and not to the main resolution. But, since the Senate have refused to adjourn, I will now offer some observations on the merits; in doing which, I will study brevity, as much as the importance of the subject will permit.

I shall attempt to prove, sir, that the resolution before us contains principles which have a manifest tendency to deprive the small States of an important right, secured to them by a solemn and Constitutional compact, and to vest an overwhelming power in the great States. And, further, I shall attempt to show that, in many other points, the resolution is objectionable, and, for a variety of causes, ought not to be adopted.

As I shall be obliged, in delineating the main features of this resolution, to mention the great States in the Union as objects of jealousy, I wish it to be understood that no special stigma is intended. "Man is man," was the maxim expressed in an early part of this debate, by the gentleman from South Carolina, (Mr. BUTLER,) and in application to the subject of Government, the maxim is worthy to be written in letters of gold. Yes, sir, "man is man," and the melancholy truth that he is always imperfect and frequently wicked, induces us to fear his power, and guard against his rapacity, by the establishment and preservation of laws, and well-regulated constitutions of Government. Man, when connected with very many of his fellow men, in a great State, derives power from the circumstance of this numerous combination; and from every circumstance which clothes him with additional power, he will generally derive some additional force to his passions.

Having premised this, I shall not deem it requisite to make any apology, when I attempt to excite the attention, the vigilance, and even the jealousy of the small, in reference to the conduct of the great States. The caution is meant to apply against the imperfections and passions of man, generally, and not against any State, or description of men, particularly.

It may be proper, in this place, to explain my meaning, when I make use of the words "small" and "great," as applicable to States.

Massachusetts has been usually called a great State; but, in respect to all the operations of this resolution, she must, I think, be ranked among the small States. The district of Maine is increasing rapidly, and must, in the nature of things, soon become a State. To which event, its location, being divided from what was the ancient Colony of Massachusetts, by the intervention of New Hampshire, will very much contribute. I believe there is a Legislative provision of some years' standing, authorizing a division at the option of Maine. When this event shall occur, Massachusetts, although, in comparison with Connecticut and Rhode Island, will not be a small State; yet, in comparison with many others, must be so considered. I think myself justifiable, then, for my present purposes, in calling Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New Jersey, Delaware, Maryland, and South Carolina, small States. They are limited in point of territory, and cannot reasonably expect any great increase of population for many years, not, indeed, until the other States shall become so populous as to discourage emigration, with agricultural views; which may retain the population of the small States as seamen or manufacturers. This event, if it ever arrives, must be distant. A possible exception only may exist in favor of Maine; but, when we consider its climate, and a variety of other circumstances, it is believed to form no solid exception to this statement.

By the same rule of deciding, the residue of the States must be called great; for although Georgia and several others are not sufficiently populous, at this time, to be considered relatively great States, yet their prospect of increase, with other circumstances, fairly bring them within the description, in respect to the operation of the measure now under consideration.

It will be recollected that, in the various turns which the debate has taken, gentlemen have repeatedly said that the Constitution was formed for the people; that the good of the whole was its object; that nothing was discernible in it like a contest of States, nothing like jealousy of small States against the great; and although such distinctions and jealousies might have existed under the first Confederation, yet they could have no existence under the last. And one gentleman, (Mr. SMITH, of Maryland,) has said that he has been a member of this Government ten years, and has heard nothing of great and small States, as in the least affecting the operations of Government, or the feelings of those who administer it.

Propriety, therefore, requires that we attentively examine the Constitution itself, not only to obtain correct ideas upon these observations, so repeatedly urged, but to place in the proper light the operations and effects of the resolution in debate. If we attend to the Constitution, we shall immediately find evident marks of concession and compromise, and that the parties to these concessions were the great and small States. And the members of the Convention who formed the instrument have, in private information and public communications, united in the declaration, that the Constitution was the result of concession and compromise between the great and small States. In this examination of the Constitution it will be impossible to keep out of view our political relations under the first Confederation. We primarily united upon the footing of complete State equality—each State had one, and no State had more than one vote in the Federal Council or Congress. With such a Confederation we successfully waged war, and became an independent nation. When we were relieved from the pressure of war, that Confederation, both in structure and power, was found inadequate to the purposes for which it was established. Under these circumstances, the States, by their Convention, entered into a new agreement, upon principles better adapted to promote their mutual security and happiness. But this last agreement, or Constitution, under which we are now united, was manifestly carved out of the first Confederation. The small States adhered tenaciously to the principles of State equality; and gave up only a part of that federative principle, complete State equality, and that, with evident caution and reluctance. To this federative principle they were attached by habit; and their attachment was sanctioned and corroborated by the example of most if not all the ancient and the modern Confederacies. And when the great States claimed a weight in the Councils of the nation proportionate to their numbers and wealth, the novelty of the claim, as well as its obvious tendency to reduce the sovereignty of the small States, must have produced serious obstacles to its admission. Hence it is, that we find in the Constitution but one entire departure from the Federal principle. The House of Representatives is established upon the popular principle, and given to numbers and wealth, or to the great States, which, in this view of the subject, are synonymous. It was thought, by the Convention, that a consolidation of the States into one simple Republic, would be improper. And the local feelings and jealousies of all, but more especially of the small States, rendered a consolidation impracticable.

The Senate, who have the power of a legislative check upon the House of Representatives, and many other extensive and important powers, is preserved as an entire federative feature of Government as it was enjoyed by the small States, under the first Confederacy.

In the article which obliges the Electors of President to vote for one person not an inhabitant of the same State with themselves, is discovered State jealousy. In the majorities required for many purposes by the Constitution, although there were other motives for the regulations, yet the jealousy of the small States is clearly discernible. Indeed, sir, if we peruse the Constitution with attention, we shall find the small States are perpetually guarding the federative principle, that is, State equality. And this, in every part of it, except in the choice of the House of Representatives, and in their ordinary legislative proceedings. They go so far as to prohibit any amendment which may affect the equality of States in the Senate.

This is guarding against almost an impossibility, because the Senators of small States must be criminally remiss in their attendance, and the Legislatures extremely off their guard, if they permit such alterations, which aim at their own existence. But, lest some accident, some unaccountable blindness or perfidy should put in jeopardy the federative principle in the Senate, they totally and forever prohibit all attempts at such a measure. In the choice of President, the mutual caution and concession of the great and small States, is, if possible, more conspicuous than in any other part of the Constitution.

He is to be chosen by Electors appointed as the State Legislatures shall direct, not according to numbers entirely, but adding two Electors in each State as representatives of State sovereignty. Thus Delaware obtains three votes for President, whereas she could have but one in right of numbers. Yet, mixed as this mode of choice is, with both popular and federative principles, we see the small States watching its motions and circumscribing it to one attempt only, and, on failure of an Electoral choice, they instantly seize upon the right of a Federal election, and select from the candidates a President by States and not by numbers. In confirmation of my assertion, that this part of the Constitution was peculiarly the effect of compromise between the great and small States, permit me to quote an authority which will certainly have great weight, not only in the Senate, but through the Union, I mean that of the present Secretary of State, (Mr. Madison,) who was a leading member of the Federal Convention who formed, and of the Virginia Convention who adopted the Constitution.

In the Debates of the Virginia Convention, volume 3, page 77, Mr. Madison says, speaking of the mode of electing the President:

"As to the eventual voting by States it has my approbation. The lesser States and some larger States will be generally pleased by that mode. The Deputies from the small States argued, and there is some force in their reasoning, that, when the people voted, the large States evidently had the advantage over the rest, and, without varying the mode, the interests of the little States might be neglected or sacrificed. Here is a compromise. For in the eventual election, the small States will have the advantage."

After this view of the Constitution, let us inquire, what is the direct object of the proposed alteration in the choice of President?

To render more practicable and certain the choice by Electors—and for this reason: that the people at large, or in other words, that the great States, ought to have more weight and influence in the choice. That it should be brought nearer to the popular and carried further from the fede-

rative principle. This claim we find was made at the formation of the Constitution. The great States naturally wished for a popular choice of First Magistrate. This mode was sanctioned by the example of many of the States in the choice of Governor. The small States claimed a choice on the federative principle, by the Legislatures, and to vote by States; analogies and examples were not wanting to sanction this mode of election. A consideration of the weight and influence of a President of this Union, must have multiplied the difficulties of agreeing upon the mode of choice. But as I have before said, by mutual concession, they agreed upon the present mode, combining both principles and dividing between the two parties, thus mutually jealous, as they could, this important privilege of electing a Chief Magistrate.

This mode then became established, and the right of the small States to elect upon the federative principle, or by States, in case of contingency of electoral failure of choice, cannot with reason and fairness be taken from them, without their consent, and on a full understanding of its operation; since it was meant to be secured to them by the Constitution, and was one of the terms upon which they became members of the present Confederacy; and for which privilege they gave an equivalent to the great States, in sacrificing so much of the federative principle, or State equality.

The Constitution is nicely balanced, with the federative and popular principles; the Senate are the guardians of the former, and the House of Representatives of the latter; and any attempts to destroy this balance, under whatever specious names or pretences they may be presented, should be watched with a jealous eye. Perhaps a fair definition of the Constitutional powers of amending is, that you may upon experiment so modify the Constitution in its practice and operation, as to give it, upon its own principles, a more complete effect. But this is an attack upon a fundamental principle established after a long deliberation, and by mutual concession, a principle of essential importance to the instrument itself, and an attempt to wrest from the small States a vested right, and, by it, to increase the power and influence of the large States. I shall not pretend, sir, that the parties to this Constitutional compact cannot alter its original essential principles, and that such alterations may not be effected under the name of amendment; but, let a proposal of that kind come forward in its own proper and undisguised shape; let it be fairly stated to Congress, to the State Legislatures, to the people at large, that the intention is to change an important federative feature in the Constitution, which change in itself and all its consequences, will tend to a consolidation of this Union into a simple Republic; let it be fairly stated, that the small States have too much agency in the important article of electing a Chief Magistrate, and that the great States claim the choice; and we shall then have a fair decision. If the Senators of the small States, and if their State Legislatures, will then quietly part with the right they have, no person can reasonably complain.

Nothing can be more obvious, than the intention of the plan adopted by our Constitution for choosing a President. The Electors are to nominate two persons, of whom they cannot know which will be President; this circumstance not only induces them to select both from the best men; but gives a direct advantage into the hands of the small States even in the electoral choice. For they can always select from the two candidates set up by the Electors of large States, by throwing their votes upon their favorite, and of course giving him a majority; or, if the Electors of the large States should, to prevent this effect, scatter their votes, for one candidate, then the Electors of the small States would have it in their power to elect a Vice President. So that, in any event, the small States will have a considerable agency in the election. But if the discriminating or designating principle is carried, as contained in this resolution, the whole, or nearly the whole right and agency of the small States, in the electoral choice of Chief Magistrate, is destroyed, and their chance of obtaining a federative choice by States if not destroyed, is very much diminished.

For this indentical purpose is the principle of electoral discrimination and designation introduced into the resolution before you; for the same purpose is the number of candidates reduced from five to three, from whom the House of Representatives may elect, in case of electoral failure of choice; that is, to destroy or diminish the agency of the small States in the choice of President.

For what purpose else are we perpetually told, and from all parts of the Senate, that the public will is opposed by the present mode, and public will cannot be gratified, without the introduction of the discriminating principle?

By the public will thus mentioned, the gentlemen mean the will of a popular majority, or, the will of the great States, which in this case, I repeat it, are the same. How is it possible for the gentlemen to increase the chances of gratifying this description of the public will, without decreasing the agency of the small States?

The whole power of election is now vested in the two parties; numbers and States, or, great and small States; and it is demonstration itself, if you increase the power of the one, in just such proportion you diminish that of the other. Do the gentlemen suppose that the public will, when Constitutionally expressed by a majority of States, in pursuance of the federative principle of our Government, is of less validity, or less binding upon the community at large, than the public will expressed by a popular majority? The framers of your Constitution, the people who adopted it, meant, that the public will, in the choice of a President, should be expressed by Electors, if they could agree, and if not, the public will should be expressed by a majority of the States, acting in their federative capacity, and that in both cases the expression of the public will should be equally binding.

It is pretended that the public will can never, properly or Constitutionally, be expressed by a majority of numbers of the people, or of the

House of Representatives. This may be a pleasing doctrine enough to great States; but it is certainly incorrect. Our Constitution has given the expression of the public will, in a variety of instances, other than that of the choice of President, into very different hands from either House of Representatives or the people at large. The President and Senate, and in many cases the President alone, can express the public will, in appointments of high trust and responsibility, and it cannot be forgotten that the President sometimes expresses the public will by removals. Treaties, highly important expressions of the public will, are made by the President and Senate; and they are the supreme law of the land. In the several States, many great offices are filled, and even the Chief Magistracy, by various modes of election. The public will is sometimes expressed by pluralities instead of majorities, sometimes by both branches of the Legislatures, and sometimes by one, and in certain contingencies, elections are settled by lot. The people have adopted constitutions containing such regulations, and experience has proved that they are well calculated to preserve their liberties and promote their happiness. From what good or even pardonable motive, then, can it be urged that the present mode of electing our President has a tendency to counteract the public will? Do gentlemen intend to destroy every federal feature in this Constitution? And is this resolution a precursor to a complete consolidation of the Union, and to the establishment of a simple Republic?—Or will it suffice to break down every federative feature which secures to one portion of the Union, to the small States, their rights?

I am not without my fears, Mr. President, that this is but the beginning of evils, and that this Constitution, the bulwark of the feeble members of the Confederacy; the protection of the weak against the strong; the security of the small against the great; the last, best hope of man, with a view to stability in a free Government, and to the preservation of liberty in a Republic; is destined to undergo changes, and suffer innovations, till there be no residue worth preserving, and nothing left which ambition will condescend to overturn.

Time will not permit me to dwell any longer on this part of my argument. But I am deceived, sir, if the view I have now taken of the Constitution does not show most obviously, that in its formation there was a struggle between the great and small States, with respect to many of its principles and leading features; and that the participation in the election of the Chief Magistrate, clearly secured to them by the Constitution, will receive a deadly blow by the adoption of the proposed amendment.

It can be no contradiction to my ideas upon the subject, if we have heard nothing of State conflicts, in the administration of this Government. The great States have never, till now, directly attempted to violate the sanctuary of the small, and despoil them of their rights; had this been earlier attempted, we should have heard and seen the same jealousy awakened, and the same opposition exerted.

The conflict could happen in no other way than by an attack from the large States. We had neither the desire nor ability to injure them, and we now ask no favors, but their permission to enjoy, in peace and safety, the rights conceded to us by themselves, and secured by a solemn Constitutional compact.

We have been told by a gentleman from Virginia, that it would be impolitic in us to rouse the great States. I shall, at present, take no further notice of this warning, given to us, no doubt, in the full exercise of benevolence, but to request the small States to preserve it in constant recollection. It may induce them not hastily to part with Constitutional security.

There are some other points of light, in which I wish to place the subject before us.

The Constitution is of recent date; it was formed by the mutual concessions of conflicting parties, and balanced with a view to the securing of all. Experience alone can test its utility, and time and practice discover its faults. It is a sound position that you should never attempt an alteration in an instrument so complicated, and calculated to serve so many various and opposite interests, without being able, by the test of experiment, to discern clearly the necessity of alteration, and without a moral certainty that the change shall not only remove an existing evil, but that it shall not produce any itself. The article in the Constitution establishing the mode of electing a Chief Magistrate, and which is now proposed to be altered, was undoubtedly one of the most difficult parts of the whole at its formation. I am convinced, sir, that the public mind is not sufficiently impressed with the difficulty of adopting, not only an unexceptionable but even a tolerable and practicable mode of electing a Chief Magistrate, possessing such important and extensive powers as are Constitutionally vested in the President of the United States. An attempt to detail the number and magnitude of his powers, to this Senate, would be impertinent. But it must and will be acknowledged by all, that the President is vested with powers vastly extensive and important, and that he will bring with him into the Government more or less of State politics and State prejudices, and these facts, to which may be added the probability that he will be taken from a large State, must have increased the difficulties of the Convention in fixing on a mode of choice.

How often have contests, wars, and bloodshed, the destruction of confederacies, of liberty and of vast portions of the human race, arisen from the election of Chief Magistrates? When we consider that the powers vested in the President of this Union are sufficiently important to excite the avarice and ambition of the human heart, its two most active principles, to gain possession of the office; when we consider the difference of sentiment, habit, and interest, in this country; State pride and State jealousy, which could never be laid asleep; the difficulties of fixing upon a proper mode of election must be also infinitely multiplied. And yet this article is now selected for alteration. All the amendments which have been hitherto

adopted, went to some general explanation upon very general principles, not changing but rather expounding the Constitution.

This, as I have before said, is taking up the most difficult and most important article in the Constitution, both in relation to rights and principles. But it is said that experience has shown us the necessity of an alteration in this article; that an evil has been found in practice to grow out of the Constitutional provision, which calls imperiously for remedy.

At the last election of President two persons had an equal number of votes, and that number was a majority of the votes of all the Electors appointed, which circumstance gave the House of Representatives a Constitutional right to select one of them for President. In exercising this Constitutional right, they voted by States, and there was at first a division, no choice being made until the sixth day; when an election was effected, of the very man whom the great States, and the advocates of this resolution, wished.

It ought to be noted here, that although they voted by States, yet it happened, in this division, that a majority, in point of numbers, voted for the person as President who eventually became Vice President. As to intrigue, by either of the candidates, or by their friends, I know of none; the sentiments and conduct of the Vice President, as published, were perfectly fair and honorable, containing a declaration of his wishes not to stand in the way of the other candidate.

After the view of the Constitution which we have taken, and comparing this fact, or set of facts, with the provisions for electing a President, we shall really be at a loss to find out the mighty evil, which the experience of this election has discovered, and which is said to call so imperiously for a remedy. But the advocates of this resolution have had the goodness to put their finger on the spot. They say, that in the certificates of the Electors, Mr. Jefferson's name stood first; this is called a sort of record testimony, and, in addition, some, if not all the Electors said they meant to elect Mr. Jefferson President, and Mr. Burr Vice President; and this is declared to be the public will, expressed by the Constitutional organ, the Electors. Notwithstanding this expression of the public will, say the gentlemen, a large portion of the House of Representatives withstood and opposed the public will for the space of six days, and wilfully voted for the man to be President, who, they knew by the evidence just mentioned, was meant to be Vice President. One gentleman (Mr. WRIGHT) has said, that if he had been a member of that House, possessing such sentiments upon the subject as he now does, such voting would in him have amounted to the crime of perjury, or words to the same effect. I mean to quote his ideas, as expressed, and believe I have given nearly his very words. And, it is added, that thus there was imminent danger of a person being imposed upon the United States as Chief Magistrate, who was not originally intended for that high office, and that civil war must have been the consequence; and, as is common in such cases, the picture is filled—in the back ground, with brother raising his murderous hand against brother, father against son, and with an afflicting group of *et ceterus*; and to avoid a repetition of this tremendous crisis, as it is called, the present resolution, it is said, must pass.

Let this statement of facts be kept in view while we examine the duties assigned by the Constitution to the several agents concerned. The duty of the Electors is precisely defined. They are each to bring forward two candidates fully qualified for President, because they cannot know at the time of giving their ballots upon which the choice will fall. The circumstance of two having a majority, and both being equal in number of votes, is an expression of the public will, through the only Constitutional organ, by which, in this case, the public will can be expressed, that both had the requisite qualifications. The public will, then, was in this instance clearly and unequivocally expressed, by a Constitutional and numerous majority, that both candidates were worthy of the office; but here the expression of the public will ceased, and which of these two should be President was now to be decided by another Constitutional organ, that is, by the House of Representatives, voting by States.

The framers of the Constitution so intended, and the people who adopted it have so ordained, that their will in this case should be expressed by a majority of the States, acting by their representation in the House of Representatives. The right of selection is a right complete in itself, to be exercised by these second Electors, uninfluenced by any extraneous consideration, and governed only by their own sense of propriety and rectitude. The opinion of the people had been expressed by the Electors, but it only reached a certain point, and then was totally silent as to which of the two should be President, and their sense upon this point could only be collected through their Constitutional organ, the House of Representatives, voting by States. Any interference of the first Electors, or of an individual or individuals, must be informal and improper. The advice of sensible and candid men, as in every other case, might be useful; but could have no binding force whatever. The first Electors had no right to choose a Vice President. To claim it was overstepping their duty, and arrogating to themselves a power not given to them by the Constitution.

If there is anything in this whole transaction which has the most distant appearance of a breach of duty, it was in the Electors, by attempting to designate, and by exercising the important office of an Elector under the influence of improper motives; that is, by officiously attempting to decide the question, which of the two persons was proper for Vice President, which they were constitutionally incompetent to decide. By this conduct they attempted to break down an important guard provided by the Constitution, and improperly to release themselves from its obligations, which made it their duty to select two men qualified to be President. But if there can be a shadow

of reason in this claim of the Electors to designate under the present Constitutional regulations, of which, to doubt, seems to be so heinous, what necessity can there be for this amendment? The object of the amendment, or certainly its chief object, is to establish the designating principle; but why this, if it can already be effected by the simple mode of placing one name first on the ballot, which is so easy to be done that it can scarcely be avoided? And if done, by the doctrine of gentlemen, it is so far binding on the House of Representatives, that if they even doubt, they are damned?

The fact certainly was, that at the last election, the great States brought forward the two candidates. They were both of the same political sentiments. This they had a Constitutional right to do. But it now seems that their language to the small States was: "because you will not give up your Constitutional rights to us, and let us go on and designate, we will stir up a civil war, and lay the blame to you; and of this improper conduct of ours we will take the advantage, and obtain an alteration of the Constitution, which will hereafter gratify us in every respect." A gentleman from Maryland (Mr. SMITH) had said, that he heard, though he could not prove it, that the Federal majority, at the time of the last election, contemplated making a law authorizing or appointing some person as President, in case no choice had been made by the House of Representatives. I was then, sir, a member of the Government, and knew nothing of such a project; it might have been so; but supposing it was, what then? Why, says the gentleman, the person thus appointed could not have kept his head on his shoulders twenty-four hours; and this would have made a civil war. If the majority now should contemplate a measure which the Constitution does not authorize—as it clearly did not authorize the measure suspected by the gentleman, though he cannot prove it—the best thing in the world for them to do would be to give up, without any attempt to effect it, as it seems the Federal majority did. But what argument all this can afford in favor of the amendment, or why it was mentioned in this debate, is beyond my comprehension. In the result of the last election, the great States and the ruling political party were certainly gratified, and there does not appear the least reasonable ground of complaint against the small States, in the use of their Constitutional rights on the occasion. All support, therefore, to the amendment, drawn from that transaction, must fail.

I have said that the article fixing the mode of electing a Chief Magistrate was, from its nature, attended with many difficulties. A more strict inquiry into the Constitutional mode, and a comparison of it in some other and more particular points with the proposed alteration, will be useful in forming an opinion of their relative merits.

As the Constitution stands each Elector is to write the names of two persons on a piece of paper called a ballot. Either of the two persons thus voted for may be President, and the Elector cannot know which. This affords the most powerful inducement to vote for two, both of whom are qualified for the very important office. For it is not only uncertain upon whom the choice will fall at first, but the one remaining will certainly be President upon any contingency which shall remove or incapacitate the first. The Convention seem to have selected a mode of proceeding the most simple, the least liable to accident, and the best calculated to insure the main object, that is, that both should be really worthy of the trust. If one candidate wishes to make interest with the Electors, as each must vote for two, it will be impossible for bribery or intrigue to succeed; for, without corrupting the whole, or certainly many more than half, he may be defeated by the other candidate on the ballot. This is, perhaps, the most effectual bar to intrigue that was ever contrived; for, unless all, or a great proportion of the Electors are corrupted, an extreme case of depravity not probable in any country, intrigue can have no assurance of success. The danger and difficulty which must always attend such an important election as that of Chief Magistrate of the United States, was meant to be avoided by diminishing the chances of its frequent recurrence. So, two persons are placed in condition to act as President in succession, to prevent both the evils of vacancy and a recurrence of choice more frequently than once in four years: and it seems merely incidental to this second person to be called Vice President, and neither the first nor second description of Electors can have any right to vote for him as such. Indeed, he can have no existence till the first character is designated, and then seems to be discovered, not elected. The Senate, in case of an equal number of votes for two or more remaining persons, after the President is elected, are vested with authority to choose a Vice President, for as such he is to preside over this body, and this body therefore seems to be the only Constitutional organ to designate him. Both the other descriptions of Electors have nothing to do with such a character or office, but are confined to act with a single reference to the character and office of President, and are trusted with no power to give any opinion of the character or qualifications of a Vice President; and it is remarkable that there are no appropriate qualifications made necessary by the Constitution for a Vice President; but every qualification has reference to President. There is another important feature in this part of the Constitution. It was known by the Convention that in this country, in common with all others where there is freedom of opinion and of speech, there would be parties. They likewise knew, that the intolerance of the major or ruling sect and political party, was frequently exercised upon the minor party, and that the rights of the minority ought to be protected to them.

As well then to secure the rights of the minority, as to check the intolerance of the majority, they placed the majority in jeopardy, if they should attempt at grasping all the benefits of a President and Vice President within themselves, to the total exclusion of the minority. This very case which

happened at the last session was contemplated, in which the majority attempted totally to exclude the minority from any participation. The language of the Constitution to such majorities is, "take care that you aim not at too much, for if 'you do, it is put into the power of the minority 'to check you, and, by a judicious disposition of 'their few votes, determine the choice of Presi-'dent." To avoid this event the majority will probably be cautious in the exercise of power; and thus the rights, the proper weight and influence of a minority, are secured against the conduct of the majority, which is certainly liable to be intolerant and oppressive. In this respect the spirit of the Constitution is, political moderation. And it is clear to my mind, that the experience of the last election has taught a lesson to all majorities, which will in future completely secure them from again incurring a similar risk. I recollect well that it was thought probable, when the electoral votes were given, that Mr. Burr would have a vote or two in some of the Eastern States. If he had received but one, he would have been by an electoral choice the Constitutional President. If the majority in future have powers of recollection, they will undoubtedly avoid the evil, if it is one, which happened at the last election, with such unfailing certainty, that there will be no need of the remedy proposed by the amendment. But the majority say, if their votes are so scattered for one candidate as to avoid this danger, that another will be incurred; and that is, the minority will elect a Vice President. The language of the Constitution to them is, again, "that this was meant as a security for the minority against the majority." But the majority exclaim against both these provisions as very unreasonable indeed. "What!" say they, "are minorities to govern majorities?" The answer of the Constitution is, "no, but their due weight and influence shall be secured to them, and the danger of your intolerance guarded against." For the security of small States and minorities, there is in the Constitution a mixture of the federative with the popular principles. And as it is well known that when popular majorities alone prevail, and exercise power uncontrolled by Constitutional checks, the minorities, who generally possess their proportion of integrity and virtue, are overwhelmed, and liberty itself, by the same means, destroyed; so it is in kindness to both parties, to the country and to humanity, that these wholesome checks are Constitutionally provided. Had the majority or the great States been willing fairly to have submitted to the Constitutional checks in the last election, no evil could have happened. And it is remarkable that the Constitution completely protects them, as long as they obey its precepts, in the creation of which they had an agency, and to which they have solemnly agreed. To prove that I am correct in these ideas, I not only refer to the Constitution but to the Secretary of State, (Mr. Madison.) In the Virginia Debates, volume I, page 96, he says:

"But on a candid examination of history, we shall find that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions which, in Republics, have more frequently than any other cause produced despotism. If we go over the whole history of ancient and modern Republics, we shall find their destructions to have generally resulted from those causes. If we consider the peculiar situation of the United States, and what are the resources of that diversity of sentiments which pervades its inhabitants, we shall find great danger that the same causes may terminate here in the same fatal effects which they produced in those Republics. This danger ought to be wisely guarded against. Perhaps, in the progress of this discussion, it will appear that the only possible remedy for those evils, and means of preserving and protecting the principles of republicanism, will be found in that very system which is now exclaimed against as the parent of oppression."

Mr. President, it has been often said by the discerning and judicious of this and other countries, that our Constitution, for its brevity, its comprehensiveness, its perspicuity, and the political skill contained in it, was the best State paper extant. I believe all this and even more is a tribute justly due to its merits; and I am persuaded that the article which fixes a mode for the choice of a Chief Magistrate stands most prominent among its excellencies.

Let us now, sir, examine and compare the merits of the amendment with a special reference to this last view we have taken of the Constitutional provision.

The amendment authorizes the Electors to vote for a President and Vice President by a specific designation. Is ambition in your country? Here is a direct and inviting object for its operation.—Is the integrity of your Electors assailable? You place it here in the most encouraging attitude for an assault. A fear of detection, and a sense of shame, upon the exposure of an improper action, has been, perhaps, a better security against political errors or crimes, than all the moral virtues united, when the temptation has been attended with an impossibility of detection. An intrigue with an Elector can be carried on without much danger of detection; but when your election is carried into the House of Representatives, besides the ordinary weight of character in favor of the members of that House, a detection of an intrigue with a candidate is almost certain. It will be recollected that at the last election two or three members held the choice perfectly in their own hands. If I mistake not, three gentlemen, that is, a member from New Jersey, a member from Vermont, and one from either Maryland, Delaware, or Tennessee, could have given a President to the United States. The particular gentlemen mentioned were above suspicion of bribery; but, in addition to this circumstance, if they had in the contest gone over from improper motives, or under the influence of bribery, a detection was certain.

This will remain forever the criterion, as it respects the relative danger of intrigue and bribery, in the two modes of choice. And the amendment is avowedly intended to secure a choice by Electors, and to prevent a resort to the House; because, says the gentleman from Virginia, (Mr. TAYLOR,) "if you permit the election to go into 'the House, there are small States, and minorities, 'and all the evils of a diet election;" meaning that corruption must be the consequence. But he says, "let there be a divided election by the 'Electors, meeting by States separately, and you 'lessen the tendency to corruption." This may look plausible in theory, but I think practice will show its fallacy.

It may be better for the Electors to meet by States than for all to be together, but this can never prove that they are less liable to corruption than the House of Representatives; which is the only point in question.

The manner of electing the Vice President, as proposed by the amendment, not only invites ambition to an unchecked operation, but exposes us to the selection of a less important and more unfit person than the Constitutional provision. In addition to his importance in the Government, arising from his incidental succession to the Chief Magistracy, the Vice President is *ex officio* President of the Senate, and gives a direct influence to the State from which he is chosen, of a third vote in this body, in all cases of equal division, which are usually the cases of most importance. Besides, his influence as presiding officer is, perhaps, more than equal to the right of a vote. It becomes therefore peculiarly important to the small States, and to minorities, whose security rests in this body, not only that their influence in the election of Vice President should not be diminished, but that no measure be adopted which may tend to bestow the office upon an unworthy character. By the proposed amendment, this character must necessarily become a sort of make-weight and stepping-stone for the Presidency. As in recruiting for an army, a man, active, and of a particular cast of character, but not very proper for a Commander-in-Chief, is employed to obtain recruits, and, upon condition that he obtains a given number, is to be rewarded with a sergeant's warrant; so, in this case, the man who can procure a given number of votes for President will be encouraged to hope for the Vice Presidency; and where will such characters be sought after? In Delaware or Rhode Island? No, sir, but in the great States; there the recruiting talents will be put in operation, because the number of recruits, or votes, will be sufficient to test his active and recruiting merits. And thus the office of Vice President will be sent to market with hardly a possible chance to meet an honest purchaser.

I have already remarked upon the alteration made by the Senate in the resolution passed by the House of Representatives, changing the number five to three. But one addition, made this morning deserves attention. I mean that which authorizes the Vice President to administer the Government in case neither the first nor the second Constitutional Electors effect a choice of President. This is a new principle, and its operation is more uncertain than that of any other part of the proposed amendment. Viewing it in one point of light, it may be thought to confer a new power upon the Senate, that of giving a President to the Union. And, it is said, that this part will recompense the small States, who have the ascendency in the Senate, for the injury inflicted by the other parts of the amendment. If it be true that the last part restores all which the former parts have taken away from us, it is inconceivable why any man can wish to pass a resolution the parts of which thus mutually destroy each other. It is possible that, by the force of intrigue and faction, the Electors may be induced to scatter their votes for both President and Vice President, in such manner as to present several candidates to the House for President, and two or more to the Senate for Vice President; in which case the Senate might immediately choose or select a Vice President. In this state of things, there is an opportunity afforded for intrigue of a very extensive and alarming nature. The Senate, I mean a majority of them, might wish that the man whom they had elected Vice President should administer the Government, and if the House could be prevented from agreeing, their wishes would be gratified. The facility of preventing over that of producing a choice is very obvious.

A bold address may be made to any member of the House, without wounding his pride or offending his morality, to adhere to his candidate, and not change his vote so as to effect a choice. He can be told that there is no danger of leaving the United States without a President, as there is one already chosen to his hand by the Senate; and this person may be more the object of his wishes than any of the other candidates, his favorite excepted. In this process the Senate may give a President to the United States. But if the probability of such a process and such an event is increased by the amendment of this morning, it cannot certainly greatly recommend it. For myself I wish for no alteration in the Constitution, not even if its operations were directly in favor of the small States, more especially if such a favor is to be derived through a sort of double conspiracy of intrigue; in the first place, to operate on the Electors, and then on the House of Representatives. It seems to me, that the small States had better be contented to enjoy the rights now secured to them by the Constitution, which they can honestly do, rather than submit to a deprivation of their rights for the sake of dishonestly obtaining a restoration of them. We may charitably and safely conclude that the majority do not intend, by this part of the amendment, to expose the country to such a scene of iniquity. And the uncertainty of its operations alone, is, in my mind, a sufficient ground for rejection. However the operation of this part of the amendment may appear in theory, as to other points, it seems to me that, in one point, all must agree: and that is, when the House of Representatives know that the United States will be left without an Executive Magistrate, in case they do not agree. This awful responsibility will speak in a voice too loud for the hardihood of party entirely to disregard. And may I not suggest, without giving offence, that the operation of this very responsibility has

been proved, at least in some degree, in the proceedings of the last Presidential election?

If this last-mentioned security be worth preserving, it follows, of course, that the part of the amendment alluded to ought not to pass.

There is another view of the Constitution which has a reference to the general subject before us; and that is, the caution exhibited with respect to the introduction of amendments. In an instrument so important, and containing many features new, if not to the world, at least to ourselves, although we might approve of its principles, yet experience might discover errors as to the mode devised for carrying those principles into effect. Hence it was the part of wisdom and caution to provide for such alterations in practice as would give the fairest operation to principles, without incurring the confusion and agitation incidental to a general Convention. But, lest the daring and restive spirit of innovation should injure or destroy, under the specious name of amendment, that same wisdom and caution hath provided salutary checks.

"Two-thirds of both Houses of the Congress shall deem it necessary" to propose amendments; and three-fourths of the State Legislatures shall ratify such amendments, before they acquire validity. I speak now, sir, of the mode which has always been, and probably will be, put in practice to obtain amendments. The other Constitutional mode is equally guarded as to numbers, but, as it has no relation to the subject now in debate, may be laid aside. "Two-thirds of both Houses," must, I think, on every fair principle of construction, mean two-thirds of all the members. The number of Senators is thirty-four, two-thirds being twenty-three. And as there is no representation from New Jersey, the number of Representatives is one hundred thirty-six, two-thirds being ninety-one.

My impressions are, sir, that this amendment cannot constitutionally be proposed to the State Legislatures unless it is agreed to in the two Houses by those numbers twenty-three and ninety-one, respectively. This is a Constitutional point, which, I am told, has never been agitated, but is certainly worthy of attention. If the construction should prevail that two-thirds of the members present, at any time, might propose amendments, the consequence is that twelve Senators, being two-thirds of a quorum, and forty-eight Representatives, being a similar two-thirds, might propose any and the most important amendments. I am aware sir, that it may be said such propositions are not final, they may yet be ratified or rejected by the State Legislatures. But the spirit of the Constitution seems to require two-thirds of the nation, acting by its proper organs, to propose amendments; and that, in so interesting a subject as a Constitutional alteration a less number should have no authority.

The letter of the Constitution will certainly justify this idea of its spirit. When two-thirds of the Senate are requisite to consent and advise to a treaty, the words are "two-thirds of the Senators present." To convict on impeachment "two-thirds of the members present." Yeas and nays are to be entered on the Journal "at the desire of one-fifth of those present." In the two first cases it is requisite to act immediately, whether two-thirds of the whole are present or not; then we see, the expressions are clear, "two-thirds" refers to the numbers present. Why so? Because, without these expressions, the reference would have been understood to the whole number of members. In the last case, why add the word "present" to the one-fifth? Because, without that word, "one-fifth" of the whole would have been its meaning. In all other cases, when two-thirds are required, the spirit of the Constitution certainly is, and the words seem to carry the meaning, "two-thirds" of the whole numbers. It is said, "that a majority of each House shall constitute a quorum to do business." "House," in this case, must mean all the members. Two-thirds of both Houses must, on the same principles, mean two-thirds of all the members of both. There is, I acknowledge, some obscurity, in the Constitutional use of the word "House," when either of the two branches of Congress is described by it; but if the intention and sense, as well as words, are attended to, I am forcibly led to believe that two-thirds of all the members of both Houses are required to sanction propositions for amendments, and that this construction is most consistent with the wisdom and political skill of the Convention. The construction for which I contend is analogous to the caution manifest in other parts of the Constitution. It was well known to the Convention that amendments, if recommended or proposed by Congress, would have an imposing influence with the State Legislatures; and that, in no possible instance, could more evil arise from indigested measures than in the case of amendments, owing to the impossibility of clearly foreseeing their operation and effects on the general Constitutional system. It was made requisite, therefore, to wait for the uninfluenced movement of two-thirds of the popular and Federative Representatives of the nation. Whatever may be our opinion on the point now discussed, the State Legislatures have a Constitutional right to judge of it for themselves and to determine whether a proposition for an amendment is presented to them, with the sanction required, and, if, in their opinions, the requisite numbers have not agreed to the proposition, they will guard the Constitution, by refusing to ratify such amendment. My honorable friend from New Hampshire (Mr. PLUMER) has done such ample justice to this part of the subject as to place it out of the reach of my assistance, and beyond the need of any.

I am convinced, Mr. President, that the amendment now under consideration could not, in the Senate, obtain a Constitutional majority of two-thirds, or even a simple majority, were it not for the influence of instructions. Some gentlemen have ingeniously said that, until they gave this amendment the present particular examination, they had not contemplated the extent of its probable effects, and, although they entertained doubts, yet they were induced, by the instructions given them, to make the proposition to the Legislatures and let them decide for themselves.

Whatever may or can be said in favor of instructions generally, cannot be applicable to this case. For the purpose of obtaining amendments to the Constitution, Congress can only propose and the State Legislatures ratify. The duties are appropriate and distinct, and the uninfluenced independent act of both requisite. The Legislatures cannot ratify till a proposal is made. This subject can be elucidated and enforced by familiar examples. The House of Representatives alone can originate a bill for raising revenue, but it cannot become a law without the concurrence of the Senate. Would not the advice and instruction of the Senate to the House, intimating our desire that they would originate and send to us for concurrence, a revenue bill, be thought improper, indelicate, and even unconstitutional? The President and Senate can appoint certain officers, but they have distinct and appropriate agencies in the appointment. The President can nominate, but cannot appoint without the advice and consent of the Senate.

But the Senate cannot nominate, nor could their advice to the President to make a nomination, be either binding or proper. The character of the several independent branches of our Government, forming Constitutional checks upon each other, cannot be exemplified more fully than in the mode of producing amendments. And an interference of one independent body, upon the appropriate and distinct duties of another, can in no instance have a more prejudicial effect. Can it be thought, then, either proper or Constitutional for the State Legislatures to assume the power of instructing to propose to them a measure when the power of proposing is not only not given to them but given exclusively to Congress? As well and with as much propriety might Congress make a law attempting to bind the State Legislatures to ratify, as the Legislatures, by instructions, bind Congress to propose. In either case, the check which, for obviously wise purposes, was introduced into the Constitution, is totally destroyed. And we have not as much security against improper amendments, as we should have if the power were exclusively vested in the State Legislatures, and for this obvious reason, that, in this mode of operation, the responsibility for the adoption of an improper amendment is divided and destroyed. Is the sentiment correct, sir, that we shall be justifiable in sending forth this proposition to be considered by the State Legislatures, if we believe it ought not to be ratified? What would be thought of the Senate if they should pass a bill and send it to the House of Representatives for concurrence, the provisions of which they disliked entirely, and wished not to be established? And can any sound distinction be made between such a measure and the one now before us? In either case, the single act of the other body would be final, and in either case the people at large would be safer to have but one body in existence to legislate or make amendments; for all our agency, in both cases, would only tend to deceive and mislead, and, in addition, to diminish if not destroy, as has just been observed, the responsibility of the other body. It has been said, sir, that the House of Representatives have twice given a sanction to this measure, and that their conduct, in this particular, adds weight to it. I wish to treat that honorable body with the highest respect, but I must deviate from the truth were I to acknowledge that their conduct upon this amendment has a tendency to convince me that they have a full understanding of the subject. Twice have they sent us a resolution, similar in its leading feature to that on your table, and made no provision that the person to be Vice President should be qualified for the highly responsible office, either in age, or citizenship; and, for aught that they had guarded against, we might have had a man in the Chief Magistracy from Morocco, a foreigner, who had not been in the country a month.

Mr. President,—it was suggested in a former part of the debate, by a gentleman from South Carolina, (Mr. BUTLER,) that the great States, or ruling party of the day, had brought forward this amendment, for the purpose of preventing the choice of a Federal Vice President at the next election. And we are now put beyond the power of doubt, that this is, at least, one motive, by the observations of several of the majority, but especially by those of the gentleman from Virginia. He informs us, and I appreciate his frankness, that if the friends of this measure do not seize the present opportunity to pass it, the opportunity will never recur. He tells us plainly, that a minor faction ought to be discouraged, that all hopes or prospect of rising into consequence, much more of rising into office, should be crushed, and that this amendment is to produce a part of these beneficial effects; which amendment he compares to the bill which was introduced into the British Parliament, to exclude a popish successor to the Crown, commonly called the exclusion bill. Have the minority then, no right left, but the right to be trampled upon by the majority? This is identically the conduct which is mentioned in the quotation which I have had the honor to make from the Secretary of State; to which I ask leave to recur: "The majority, by trampling on the 'rights of the minority, have produced factions 'and commotions, which, in Republics, have more 'frequently than any other cause produced des-'potism."

What avails it then, that this country has triumphed over the invasion and violence of one oppressor, if they must now be victims to the violence of thousands? Political death is denounced now; what denunciation will follow? It would be a useless affectation in us to pretend to close our eyes upon either the cause or consequences of this measure.

The spirit of party has risen so high, at the present day, that it dares to attempt what in milder times would be beyond the reach of calculation. To this overwhelming torrent every consideration must give way.

The gentleman is perfectly correct, in supposing that now is the only time to pass this resolu-

tion; there is a tide in the affairs of party most emphatically, and unless its height is taken, its acme improved, the shallows soon appear, and the present demon of party give place to a successor. A hope is undoubtedly now indulged that one great and dominant passion will, like Aaron's rod, swallow up every other, and that the favorable moment can now be seized to crush the small States, and to obtain their own agency in the transaction. And when we recur to the history of former confederacies, and find the small States arrayed in conflict against each other, to fight, to suffer, and to die, for the transient gratification of the great States, have we not some reason to fear the success of this measure?

In the Senate, is the security of the small States; their feeble voice in the House of Representatives is lost in the potent magic of numbers and wealth. Never until now has the force of the small States, which was provided by the Constitution, and lodged in this federative body, as a weapon of self-defence, been able to bear upon this question. And will the small States, instead of defending their own interest, their existence, sacrifice them to a gust of momentary passion? to the short-lived gratification of party prejudice?

This resolution, if circumstances shall equivocally demand it, can pass at the next, or any future session of Congress. But once passed, and its passage will operate like the grave; the sacrificed rights of the small States will be gone for ever. Is it possible, sir, that any small State can submit to be a satellite in the State system, and revolve in a secondary orbit around a great State? Act in humble devotion to her will, till her purposes are gratified, and then content herself to be thrown aside like a cast garment, an object of her own unceasing regret, and fit only for the hand of scorn to point its slow unmoving finger at? Can the members of the Senate who represent the small States quietly cross their hands and request the great States to bind them fast, and to draw the ligature?

I am aware, sir, that I shall be accused of an attempt to excite the jealousy of the small States. Mr. President, I represent a small State. I feel the danger, and claim the Constitutional right to sound the alarm. From the same altar on which the small States shall be immolated, will rise the smoke of sacrificed liberty; and despotism must be the dreadful successor.

It is the cause of my country and of humanity which I plead. And when one vast, overwhelming passion is in exercise, full well I know, sir, that no warning voice, no excitement but jealousy, has been found sufficiently active and energetic to dissolve the wizard spell, and force mankind to listen to argument. Jealousy, hateful in private life, has perhaps done more in the preservation of political rights than all the virtues united.

I have made the stand, sir, in the Senate, which I thought the importance of the subject demanded. If I fail here, there is hope of success with the State Legislatures. If nothing can withstand the torrent there, I shall experience the satisfaction which is derived from a consciousness of having raised my feeble voice in defence of that Constitution, which is not only the security of the small States, but the palladium of my country's rights, and shall console myself with the reflection that I have done my duty.

Mr. TAYLOR.—The opposition to this discriminating amendment to the Constitution is condensed into a single stratagem, namely: an effort to excite the passion of jealousy in various forms. Endeavors have been made to excite geographical jealousies—a jealousy of the smaller against the larger States—a jealousy in the people against the idea of amending the Constitution; and even a jealousy against individual members of this House. Sir, is this passion a good medium through which to discern truth, or is it a mirror calculated to reflect error? Will it enlighten or deceive? Is it planted in good or in evil—in moral or in vicious principles? Wherefore, then, do gentlemen endeavor to blow it up? Is it because they distrust the strength of their arguments, that they resort to this furious and erring passion? Is it because they know that

> ——"Trifles light as air,
> Are, to the jealous, confirmation strong
> As proofs of holy writ!"

So far as these efforts have been directed towards a geographical demarcation of the interests of the Union into North and South, in order to excite a jealousy of one division against another; and, so far as they have been used to create suspicions of individuals, they have been either so feeble, inapplicable, or frivolous, as to bear but lightly upon the question, and to merit but little attention. But the attempts to array States against States because they differ in size, and to prejudice the people against the idea of amending their Constitution, bear a more formidable aspect, and ought to be repelled, because they are founded on principles the most mischievous and inimical to the Constitution, and could they be successful, are replete with great mischiefs.

Towards exciting this jealousy of smaller States against larger States, the gentleman from Connecticut (Mr. TRACY) had labored to prove that the federal principle of the Constitution of the United States was founded in the idea of minority invested with operative power. That, in pursuance of this principle, it was contemplated and intended that the election of a President should frequently come into the House of Representatives, and to divert it from thence by this amendment would trench upon the federal principle of our Constitution, and diminish the rights of the smaller States, bestowed by this principle upon them. This was the scope of his argument to excite their jealousy, and is the amount also of several other arguments delivered by gentlemen on the same side of the question. He did not question the words, but the ideas of gentlemen. Words, selected from their comrades, are easily asserted to misrepresent opinions, as he had himself experienced during the discussion on the subject.

This idea of federalism ought to be well discussed by the smaller States, before they will suffer it to produce the intended effect—that of exciting their jealousy against the larger. To him it appeared to be evidently incorrect. Two principles sustain our Constitution: one a majority of the people, the other a majority of the States; the first was necessary to preserve the liberty or sovereignty of the people; the last, to preserve the liberty or sovereignty of the States. But both are founded in the principle of majority; and the effort of the Constitution is to preserve this principle in relation both to the people and the States, so that neither species of sovereignty or independence should be able to destroy the other. Many illustrations might be adduced. That of amending the Constitution will suffice. Three-fourths of the States must concur in this object, because a less number or a majority of States might not contain a majority of people; therefore, the Constitution is not amendable by a majority of States, lest a species of State sovereignty might, under color of amending the Constitution, infringe the right of the people. On the other hand, a majority of the people residing in the large States cannot amend the Constitution, lest they should diminish or destroy the sovereignty of the small States, the federal Union, or federalism itself. Hence a concurrence of the States to amend the Constitution became necessary, not because federalism was founded in the idea of minority, but for a reason the very reverse of that idea—that is, to cover the will both of a majority of the people and a majority of States, so as to preserve the great element of self-government, as it regarded State sovereignty, and also as it regarded the sovereignty of the people.

For this great purpose certain political functions are assigned to be performed, under the auspices of the State or federal principle, and certain others under the popular principle. It was the intention of the Constitution that these functions should be performed in conformity to its principle. If that principle is in fact a government of a minority, then these functions ought to be performed by a minority. When the federal principle is performing a function, according to this idea, a majority of the States ought to decide. And, by the same mode of reasoning, when the popular principle is performing a function, then a minority of the people ought to decide. This brings us precisely to the question of the amendment. It is the intention of the Constitution that the popular principle shall operate in the election of a President and Vice President. It is also the intention of the Constitution that the popular principle, in discharging the functions committed to it by the Constitution, should operate by a majority and not by a minority. That the majority of the people should be driven, by an unforeseen state of parties, to the necessity of relinquishing their will in the election of one or the other of these officers, or that the principle of majority, in a function confided to the popular will, should be deprived of half its rights, and be laid under a necessity of violating its duty to preserve the other half, is not the intention of the Constitution.

But the gentleman from Connecticut has leaped over all this ground, and gotten into the House of Representatives, without considering the principles of the Constitution, as applicable to the election of President and Vice President by Electors, and distinguishing them from an election by the House of Representatives. And by mingling and interweaving the two modes of electing together, a considerable degree of complexity has been produced. If, however, it is admitted that in an election of a President and Vice President by Electors, that the will of the electing majority ought fairly to operate, and that an election by the will of a minority would be an abuse or corruption of the principles of the Constitution, then it follows that an amendment, to avoid this abuse, accords with, and is necessary to save these principles. In like manner, had an abuse crept into the same election, whenever it was to be made under the federal principle by the House of Representatives, enabling a minority of States to carry the election, it would not have violated the intention of the Constitution to have corrected this abuse, also, by an amendment. For, sir, I must suppose it to have been the intention of the Constitution that both the federal principle and the popular principle should operate in those functions respectively assigned to them, perfectly and not imperfectly—that is, the former by a majority of States, and the latter by a majority of the people.

Under this view of the subject, the amendment ought to be considered. Then the question will be, whether it is calculated or not to cause the popular principle, applied by the Constitution in the first instance, to operate perfectly, and to prevent the abuse of an election by a minority? If it is, it corresponds with the intention, diminishes nothing of the rights of the smaller States, and, of course, affords them no cause of jealousy.

Sir, it could never have been the intention of the Constitution to produce a state of things by which a majority of the popular principle should be under the necessity of voting against its judgment to secure a President, and by which a minor faction should acquire a power capable of defeating the majority in the election of President, or of electing a Vice President contrary to the will of the electing principle. To permit this abuse would be a fraudulent mode of defeating the operation of the popular principle in this election, in order to transfer it to the federal principle—to disinherit the people for the sake of endowing the House of Representatives; whereas it was an accidental and not an artificial disappointment in the election of a President, against which the Constitution intended to provide. A fair and not an unfair attempt to elect was previously to be made by the popular principle, before the election was to go into the House of Representatives. And if the people of all the States, both large and small, should, by an abuse of the real design of the Constitution, be bubbled out of the election of Executive power, by leaving to them the nominal right of an abortive effort, and transferring to the House of Representatives the substantial right

of a real election, nothing will remain but to corrupt the election in that House by some of those abuses of which elections by diets are susceptible, to bestow upon Executive power an aspect both formidable and inconsistent with the principles by which the Constitution intended to mould it.

The great check imposed upon Executive power was a popular mode of election; and the true object of jealousy, which ought to attract the attention of the people of every State, is any circumstance tending to diminish or destroy that check. It was also a primary intention of the Constitution to keep Executive power independent of Legislative; and although a provision was made for its election by the House of Representatives in a possible case, that possible case never was intended to be converted into the active rule, so as to destroy in a degree the line of separation and independency between the Executive and Legislative power. The controversy is not therefore between larger and smaller States, but between the people of every State and the House of Representatives. Is it better that the people—a fair majority of the popular principle—should elect Executive power; or, that a minor faction should be enabled to embarrass and defeat the judgment and will of this majority, and throw the election into the House of Representatives? This is the question. If this amendment should enable the popular principle to elect Executive power, and thus keep it separate and distinct from legislation, the intention of the Constitution, the interest of the people, and the principles of our policy, will be preserved; and if so, it is as I have often endeavored to prove in this debate, the interest of the smaller States themselves, that the amendment should prevail. For, sir, is an exposure of their Representatives to bribery and corruption (a thing which may possibly happen at some future day, when men lose that public virtue which now governs them) an acquisition more desirable than all those great objects best (if not exclusively) attainable by the election of Executive power by the popular principle of the Federal Government, as the Constitution itself meditates and prefers?

So far, then, the amendment strictly coincides with the Constitution, and with the interests of the people of every State in the Union. But suppose by some rare accident the election should still be sent into the House of Representatives, does not the amendment then afford cause of jealousy to the smaller States? Sir, each State has but one vote, whether it is large or small; and the President and Vice President are still to be chosen out of five persons. Such is the Constitution in both respects now. To have enlarged the number of nominees, would have increased the occurrence of an election by the House of Representatives; and if, as I have endeavored to prove, it is for the interest of every State, that the election should be made by the popular principle of Government and not by that House, then it follows, that whatever would have a tendency to draw the election into that House, is against the interest of every State in the Union; and that every State in the Union is interested to avoid an enlargement of the nominees, if it would have such a tendency.

Sir, the endeavor to excite a national jealousy against the idea of amending the Constitution, is in my view infinitely more dangerous and alarming than even the attempt to marshal States against States. The gentleman from Connecticut (Mr. TRACY) has twice pronounced with great emphasis, "man is man," and attempted to make inferences against all attempts to amend our Constitution from the evil moral qualities with which human nature is afflicted! Sir, he has forgotten that Governments as well as nations are constituted of men, and that if the vices of governed man ought to alarm us for the safety of liberty, the vices of governing man are not calculated to assuage our apprehensions. Sir, it is this latter species of depravity which has suggested to the people of America a new idea, enforced by constitutions. Permit me to illustrate this new idea by the terms political law and municipal law. The former is that law, called Constitutional, contrived and enacted in the United States, to control those evil moral qualities to which this creature "man" is liable when invested with power. The latter is that law enacted to control the vices of man in his private capacity. If the former species of law should be suffered to remain unchanged, the effects would be the same as if the latter should remain unchanged. Both, unaltered, would be evaded by the ingenuity, avarice, and ambition of public man, as well as private man. And, therefore, it is as necessary for the preservation of liberty, that constitutions or political law should be amended from time to time, in order to preserve liberty against the avarice and ambition of men in power, by meeting and controlling their artifices, as it is occasionally to amend municipal law, for the preservation of property against the vicious practices of men not in power.

To illustrate this argument, I will repeat a position which I lately advanced, namely, that the substance of a Constitution may be effectually destroyed, and yet its form may remain unaltered. England illustrates it. The Government of that country took its present form in the thirteenth century; but its aspect in substance has been extremely different at different periods, under the same form. Without taking time to mark the changes in substance which have taken place under the form of Kings, Lords, and Commons, it will suffice to cast our eyes upon the present state of that Government. What are now its chief and substantial energies? Armies, debt, Executive patronage, penal laws, and corporations. These are the modern energies or substance of the English monarchy; to the ancient English monarchy they were unknown. Of the ancient, they were substantial abuses; for, whether these modern energies are good or bad, they overturned the ancient monarchy substantially, without altering its form. Under every change of Administration these abuses proceeded. The *outs* were clamorous for preserving the constitution, as they called it;

for, though divorced from its administration, the hope of getting in again caused them to maintain abuses, by which their avarice or ambition might be gratified upon the next turn of the wheel; just as in Prussia, where divorces are common, nothing is more usual than for late husbands to affect a violent passion for a former wife, if she carried off from him a good estate! And the *ins* fearing the national jealousy, and the prepossession against amending the form of Government, and meeting new abuses by new remedies, brought no relief to the nation. So that under every change of men abuses proceeded.

The solution of this effect exists in the species of political craft similar to priestcraft. Mankind were anciently deprived of their religious liberty by a dissemination of a fanatical zeal for some idol; in times of ignorance, this idol was of physical structure; and when that fraud was detected, a metaphysical idol in the shape of a tenet or dogma was substituted for it, infinitely more pernicious in its effects, because infinitely more difficult of detection. The same system has been pursued by political craft. It has ever labored to excite the same species of idolatry and superstition for the same reason, namely, to conceal its own frauds and vices. Sometimes it sets up a physical, at others a metaphysical idol, as the object of vulgar superstition. Of one, the former "Grand Monarch of France;" of the other, the present "Church and State" tenet of England is an evidence. And if our Constitution is to be made like the "Church and State" tenet of England, a metaphysical political idol, which it will be sacrilege to amend, even for the sake of saving both that and the national liberty: and if, like that tenet, it is to be exposed to all the means which centuries may suggest to vicious men for its substantial destruction, it is not hard to imagine that it also may become a monument of the inefficacy of unalterable forms of political law to correct avarice and ambition in the new and multifarious shapes they are forever assuming.

A Constitution may allegorically be considered as a temple for the preservation of the treasure of liberty. Around it may be posted one, two, or three, or more sentinels; but unless these sentinels are themselves watched by the people, and unless the injuries they are frequently committing upon the temple are diligently repaired, such is the nature of man in power, that the very sentinels themselves have invariably broken into the temple and conveyed away the treasure. And this because of the delusion inspired by political idolatry, which forbids nations to meet abuses by amending their Governments or constitutions; and teaches them that municipal law alone will suffice for their happiness.

Permit me, sir, to illustrate this argument by declaring how I would proceed, if such was my design to destroy the Constitution of the United States, premising that I speak prospectively and not retrospectively. I would have recourse to those very energies which constitute the English monarchy: armies, debt, Executive patronage, penal laws, and corporations. I would endeavor, by these monarchical energies, to produce the same effects as in England; and I would hide my intentions by exciting a fanatical adoration for the Constitution, which I would endeavor to make a metaphysical idol; and which I would myself adore, in order to destroy. Whilst I pretended to be its devotee, it should become my screen.

This, sir, will be the consequence, if the people of the United States should become jealous of the amending the Constitution; and therefore this species of jealousy so industriously attempted to be excited, is calculated, if it could operate, to bring upon them the utmost calamity. Abuses of a political system will happen; and amendments only can meet abuses. Public opinion, and not an idolatrous tenet, is the element of our policy; and, however the gentleman from Massachusetts (Mr. PICKERING) may deride the opinion of the people, it is the element in which our policy is rooted, and which can at all times be safely entrusted with moulding their form of Government.

[Mr. PICKERING here explained.]

Sir, I quote gentlemen's ideas and not their words. Is it not true that the gentleman ridiculed a recommendation of this very amendment, even from a State Legislature, because of some grammatical inaccuracy; and that he reasoned against the possibility of knowing what the public opinion was; and yet, however inaccurately it may be expressed, that gentleman certainly has had sufficient evidence to convince him that public opinion is really a *noun substantive*.

It has been urged, sir, by the gentlemen in opposition, in a mode, as if they supposed we wished to conceal or deny it, that one object of this amendment is to bestow upon the majority a power to elect a Vice President. Sir, I avow it to be so. This is one object of the amendment; and the other, as to which I have heretofore expressed my sentiments, is to enable the Electors, by perfecting the election of a President, to keep it out of the House of Representatives. Are not both objects correct, if, as I have endeavored to prove, the Constitution, in all cases where it refers elections to the popular principle, intended that principle to act by majorities? Did the Constitution intend that any minor faction should elect a Vice President? If not, then an amendment to prevent it accords with, and is representative of, the Constitution. Permit me here again to illustrate by a historical case. England, in the time of Charles the Second, was divided into two parties—Protestants and Papists—and the heir to the throne was a Papist. The Protestants, constituting the majority of the nation, passed an exclusion bill, but it was defeated, and the minor Papist faction, in the person of the Duke of York, got possession of Executive power. The consequences were, domestic oppressions and rebellions, foreign wars occasionally for almost a century, and the foundation of a national debt, under which the nation has been ever since groaning, and under which the Government will finally expire.

Had the majority carried and executed the proposed exclusion of James II. from Executive power, the English would have escaped all these

calamities. Such precisely may be our case. I beg again that it may be understood that, in this application, I speak prospectively and not retrospectively.

But it is far from being improbable, that in place of these religious parties, political parties may arise of equal zeal and animosity. We may at some future day see our country divided into a Republican party and a Monarchical party. Is it wise, or according to the intention of the Constitution, that a minor monarchical faction should, by any means, acquire the power of electing a Vice President; the possible successor to Executive power? Ought a Republican majority to stake the national liberty upon the frail life of one man? Will not a monarchical Executive overturn the system of a republican Executive? And ought the United States to shut their eyes upon this possible danger until the case shall happen, when it may be too late to open them?

Sir, let us contemplate the dreadful evils which the English nation have suffered from the cause of investing Executive power in a man hostile to the national opinion, and avoid them. They suffered, because their exclusion bill was abortive. Election is our exclusion bill. Its efficacy depends upon its being exercised by a majority. It is only a minority which can render election insufficient to exclude monarchical principles from Executive power. It is against minority that election is intended to operate, because minority is the author of monarchy and aristocracy.

Shall we, sir, be so injudicious as to make election destroy the principle of election by adhering to a mode of exercising it, now seen to be capable of bestowing upon a minority the choice of a Vice President? Shall we make election, invented to exclude monarchy, a handmaid for its introduction? Or shall we, if we do not see monarchy at this day assailing our republican system, conclude that it never will; although we know that this system has but two foes, of whom monarchy is one? No, sir, let us rather draw instruction from the prophetic observations of a member of the English House of Commons, whilst the bill for excluding James II. was depending, who said:

> "I hear a lion in the lobby roar,
> Say, Mr. Speaker, shall we shut the door,
> And keep him there? Or shall we let him in,
> To try if we can get him out again?"

Instead of shutting the door, the English left it open; tyranny got in; and the evils produced by its expulsion, to that nation, may possibly have been equal to those which submission would have produced.

Sir, much has been said about the rights of minorities, and the tendency of this amendment to keep up party spirit. I wish I could hear these rights of minorities defined. It is easy to comprehend the justice of the position, "that every individual in society has equal rights, whether he belongs to a majority or a minority;" but the idea of a minor faction, having political rights as a faction, to me is incomprehensible. On the contrary, I consider all minor factions as inflamed, excited, and invigorated by a prospect of success; just as the Popish faction, in the period quoted of the English history, was kept alive and propelled to make attempts, which they never would have made, had it not been for the excitement arising from the prospect of gaining possession of Executive power; so here, if at a future day a minor and monarchical party should arise, that also will be propelled and excited by the chance of getting possession of Executive power, to keep party spirit alive, and to make attempts which they never would have made, if no such excitement existed. Hence the amendment, if it will have the effect of depriving a minor faction of the possibility of getting possession of Executive power, will suppress and not provoke party and faction.

Mr. President, we have been warned by a picture of the evils produced by the French revolution, to forbear to amend our Constitution; for what end I am at a loss to conjecture. Sir, how are these arguments intended to apply to the people of the United States? If the state of national information in France has disqualified the great mass of that nation for the enjoyment of self-government, does it therefore follow that the people of America are disqualified for self-government? If this State adopts the French nation for the species of government now existing in France, does it follow that we are adapted for a similar government? Sir, it is our superior degree of national knowledge which enables us safely to use national opinion as an element of government. This is evinced by facts. In France, constitutions were several times made and amended without producing good effect; in America, constitutions have been, in many instances, perhaps to the extent of sixty or seventy, made, repeated and amended, without producing the least disturbance or evil effects in a single case. Changes in France, even often for the worse; here generally, and perhaps constantly, for the better. It is because the public will is here rooted in a sufficient degree of public knowledge to preserve a moderate and free government. Shall we sacrifice this will and a right to amend our constitutions, to a species of metaphysical idolatry, although we owe to these sources all the prosperity and happiness we now possess? For the doctrine, "that it is a species of political sacrilege to amend constitutions, and that the people should be jealous of every such attempt;" it is precisely the best means to destroy the right in the people to do so. It is a doctrine levelled against the people themselves, under the predominance of whose will the right can only be exercised; and tending to throw this mode of national self-defence against the arts of avarice and ambition in the back ground; whilst these foes can carry on their encroachments upon liberty and property, by form of law. Let not, then, the people of the United States be deterred from exercising their right to alter their constitutions, so frequently and so successfully exercised, by a picture of the French Revolution.

Finally, Mr. President, this amendment receives my approbation and support, because I think it conformable to public opinion, evidently the

special recommendation of sundry States, and the concurrence of a great majority of the representatives of the people in the other House; because it accords with the principle of self-government that this expression of the public will should be obeyed, that the right of the nation to amend the form of its Government, should, upon that ground, be solemnly recognised; because elections, the result of preference, are more consistent with moral rectitude, than those influenced or guided by intrigue, party artifice, or the intrigues of diets; and because it was the intention of the Constitution that the election of a President and Vice President should be determined, by a fair expression of the public will by a majority, and not that this intention should be defeated by the subsequent occurrence of a state of parties, neither foreseen nor contemplated by the Constitution or those who made it.

Mr. JACKSON.—The gentleman from Connecticut has alleged that the Georgia Electors had consulted him, and that there was an intrigue, and seemed to insinuate something about bribery. I expect that gentleman will explain himself.

Mr. TRACY said he had meant no improper imputation whatever on the gentleman's character. The gentleman had talked of his being at a meeting of gentlemen in Georgia, and that a letter had been received which changed the intentions of the Electors; and he had also talked of intrigues; and it certainly appeared as if there had been something more than ordinary election proceedings when the intention was changed by a letter. He then observed that the hour was late, and moved that the House, when it adjourns, adjourn to Monday. The question was lost.

It was then moved that the House adjourn now. The question was taken, and lost, by a large majority.

Mr. BUTLER hoped gentlemen would not do one thing and tell us another. After hearing them for several hours—after sitting without refreshment from eleven to now near six—will not gentlemen afford us an opportunity to deliver our opinions upon this subject? Are gentlemen afraid of argument? Or do they wish to press us to debate, when this state of fatigue renders it scarcely possible to do justice to the subject or to ourselves? As gentlemen proceed thus, he could not avoid using strong language, and must say that he conceived such conduct grievous and oppressive—it was almost tyrannical. There were other gentlemen beside himself who wished to offer their opinions, and he hoped they would not persist in forcing a great portion of the Representatives of the States to vote without a hearing at this late hour. He moved an adjournment.

Mr. LOGAN.—As the gentleman wished to give his opinion, he hoped the House would adjourn.

On this question there were—yeas 12, nays 15.

Mr. HILLHOUSE was sorry that, after so long a debate, he should be obliged to trespass on the House, and perhaps be obliged to repeat arguments with which the House was already familiar. But the extraordinary speech of the gentleman from Virginia (Mr. TAYLOR) was such that, although much fatigued, he could not pass it by without notice. He agreed with that gentleman, that there was danger of this Government being destroyed by idol worship: the framers of the Constitution foresaw and made provision against it. But there are more kinds of idol worship than one: the Republics of antiquity will bear witness, by their ruin, to the existence of this destructive idolatry. It is that idol worship, I fear, which blinds the gentleman himself to the consequences of this amendment, though in general he would allow him to be distinguished for candor and fairness, and for which he admired him. What is the position which the gentleman lays down and avows? That it is his purpose to prevent a minor faction from carrying a Vice President into that Chair. Had the gentleman laid aside all consideration of what the Constitution intended? Does it not say that two persons shall be voted for as President? And what was the object of this, but to afford the minority an opportunity of putting in one of the two? But gentlemen will say this is not reasonable. He thought differently. It was to prevent this idol worship, and to make the majority look about them; it was to prevent any one State domineering over the rest, or attempts of particular States to carry their idol at all risks. For this purpose, two persons were directed to be voted for. Your amendment proposes to persuade the people that there is only one man of correct politics in the United States. Your Constitution provides a remedy against this, and says you must bring forward two. If the majority will select two, and bring them fairly forward, how is it possible for the minority to bring any forward with effect?

He would suppose a case, that there is in a particular State a man who in every view is entitled to the highest respect, and so popular as to be beyond the reach of competition. According to the laws of some ancient Republics he would be condemned to the ostracism, and banished. This was the punishment of the most virtuous and meritorious men. They were banished because their popularity made them dangerous to the liberties of the Republic—because, in short, he was in danger of becoming an idol. Our Constitution, more wise and just, has provided a more safe and effectual remedy: no man can become too popular; for, if there is a portion of the people who are disposed to be infatuated, the Constitution provides there shall be two candidates; and those who are not infatuated can choose a man perhaps not so popular, but probably possessed of equal talents for the station. Had the Convention supposed two religious sects, as the Protestants and Catholics, and that there should be a candidate from each sect, the gentleman's arguments, drawn from the English exclusion bill, would be parallel. But here they have the right to choose two Protestants, or two of any sect; and the comparison of course is not perfect. What avails it that the minority should propose a Catholic, if the Protestants have a majority? They may select two Protestants, and the two will have the major vote.

The time was very remote, he believed, when it would be in the power of any man to wrest the

power out of the hands of the people of this country; but get this alteration made, and you never get back to so safe a station again. At some future day an artful and powerful man will rise, (as has been the case in all nations,) and if, by this alteration of the Constitution, he can command a majority of votes, he will take possession of the Executive Chair, and your liberties are gone; for the people of no nation have ever knowingly destroyed their own liberties.

When a whole society has become acquainted with its constitution, changes in it are dangerous. Every change you make renders the knowledge of it uncertain to the people, and the uncertainty is equally pernicious as ignorance; for, after successive changes, is the time for an usurper; and then the *friend of the people* who had stolen away their hearts, under the pretence of preserving their liberties, steals them away too. But now, as our Constitution stands, you have every guard against ambition; no man can corrupt the whole people; and if you put up two candidates, the second will be preferred to the first, if there is any danger to be apprehended from him.

When we wish to promote a particular object, we are too apt to view it only on one side. The gentleman from Virginia had compressed the object of amendment in one expression—he wished to prevent a minor faction from choosing a Vice President. The gentleman from Tennessee (Mr. COCKE) had avowed the same sentiment in still plainer terms.

It was most certainly a wise principle to guard against evil; but wisdom requires that there be a just apprehension or a real evil. He did not believe that a Federal Vice President was an evil of any kind. The gentleman had indeed talked of armies, debts, patronage, and so on, but what concern have the Senate and House of Representatives in those evils? They have not the command of armies; no member of either House can be appointed to them. The evil apprehended from these things can only attach where the command devolves upon some ambitious man, as the gentleman (Mr. JACKSON) said, above impeachment.

He was sorry the gentleman had made use of such an epithet as the *minor faction*. He believed, when that gentleman was in the minority, he did not think himself a member of a faction. Difference of opinion does not constitute faction; and a free government always implies the right of free opinion. He was in a minority, but he disclaimed faction.

Mr. TAYLOR had before stated that his arguments were wholly prospective—not present or retrospective—but founded on a presumption that, at some *very remote* time, there may be a *monarchical faction*.

Mr. HILLHOUSE was glad of the explanation; for it could not be supposed that he was a monarchical politician, nor the section of the Union which he came from disposed to monarchy. He would never consent to put up any man as a candidate for office who was in favor of monarchical principles. There were men enough in this country, always to be found, without taking up men of that description. But how will gentlemen reconcile their dislike to monarchy with their dislike of Federalism also? The expression is to prevent a Federal Vice President being elected: this comes nearer home than monarchism. Is not every friend to this Government a Federalist—is not our Government a Federative Republic? The habits and feelings of every man in this country are strictly Republican. He was not indeed an Utopian Republican, nor could he flatter himself that the time would ever arrive when every man would think alike. He should rejoice to see such a time, but believed it would not arrive before the millenium, and was alike the creation of an heated brain. There may be degrees of party spirit—more or less asperity—but there never will come a time when party spirit will not exist; never will come a time when there will be no ambitious men aspiring to power. In the present time, gentlemen are perfectly able to place two persons of their own opinions in the two great offices. The minority cannot do it. What is the evil, then, which calls for this amendment? Is it from a fear that the minority may bring forward a monarchical character? He would not undertake to characterize those who brought forward a man whom they never intended for that office. If they have done an improper thing, bought wit is best; but he hoped that gentlemen would not do away the salutary checks of the Constitution.

Mr. DAYTON said that, in the course of their debates upon this important question, the Senate had been favored with some novel lessons in the science of ethics by an honorable member from Virginia. Aware of the impracticability of inducing the small States by mere force of reasoning to assent to a measure so injurious to their rights, he had resorted to the stronger argument of power, and threatened them with the resentment of the great States. When the too hasty threat was thrown back upon him, and treated in the manner it deserved; when an appeal was made on the occasion to the independent spirit of the Senate, the honorable gentleman from Virginia explained it to be intended, not as a menace, but only as a more effectual means of inculcating a higher sense of morality upon the little States. He had been so good also as to give the Senate a lecture in favor of calmness and moderation in debate, in a style and manner rather singular and uncommon, for he had done it in one of the most warm, animated, and impassioned speeches, that he had ever uttered on that floor. Thus to inculcate morality in the language of terror and moderation of temper in the style and voice of passion, seems to be the peculiar faculty of that gentleman, and would have passed without this notice, if it had not been for its effect as an example. The honorable member from Tennessee, (Mr. COCKE,) either allured by the novelty or success of thus recommending one quality by exemplifying in himself the opposite character, had perfectly copied after so favorite an original. He had indeed done full justice to his great prototype by recommending to the Senate, in the commencement of that day's discussion, to take the

vote immediately without talking, and by pointing out, in his usually concise style, the advantages and economy of silence, in a speech of nearly one hour's length. To such authorities and precepts, enforced too in such a manner, it was Mr. D.'s disposition to bow submissively, and therefore in the little he should take the liberty of saying, he should neither threaten nor rave, nor claim for any length of time the attention of the Senate. There were other considerations which prevented him from entering deeply into the merits of this question, no less than a serious indisposition, and a firm conviction that the decision in favor of the measure was immoveably fixed.

Although, however, no arguments can avail to prevent the adoption of an amendment of the Constitution so fatal to the interests of a great portion of the community, yet, as a member of one of the small States, I claim a right to mourn over our fallen honors and dignity, and as a Representative from New Jersey, I deem it my duty to enter my solemn protest against the injury done to our interests and our sovereignty. But a few years ago we were equal in votes and influence, though inferior in size and population, to the largest States. We consented to give up a certain portion of that influence for the general good, expressly retaining the other portion for our own protection and security. This instrument, the Constitution, which we have sworn to support, and are now about to deface, is the new compact which that temper produced. It is the great plan of compromise between the jarring and contending interests of the great and small States. One of its most prominent and fairest features is now about to be changed and deformed. All the other amendments which have been proposed since its adoption are unimportant when compared with this. They may generally be regarded rather as operating to explain than alter the Constitution; but this strikes at that great principle, which, in all countries, has been found the most difficult of all others to settle; yet, in this country, had been considered as unalterably fixed, viz: the successorship to the office of Chief Magistrate. This point, so essential to the tranquillity of every people, is now about to be disturbed and unsettled, and so important a provision as the mode of electing that great officer is to be henceforth varied according to the whim of the prevailing party, and subjected to all the fluctuations of political opinion, or the gusts of popular passion. Never was a more just sentiment expressed than that which had been uttered by an honorable gentleman, highly respectable for his talents and influence, in the other House, "that in framing amendments we ought to consider not so much what the Constitution ought to be as what it is." Paradoxical as this might seem at first sight to those who view the subject superficially, yet it is to persons of such description only, it will appear so, for never has been inculcated a doctrine more sound and salutary. It is now however, I fear, about to be disregarded in the case before us, but it cannot be done with impunity, for we shall one day repent the departure from it. You are now about to change this form of Government, with regard only to existing circumstances and present convenience or policy, and to change it too in one of its most prominent features. You are now about to reduce the already too little influence of the small States, without restoring to them the consideration which they gave for it. Let it not be believed, however, that (although perhaps blindly instrumental themselves in effecting this reduction) they will not hereafter claim an equivalent for the sacrifice they are compelled to make. When it is once established that the Constitution is thus to undergo changes in reference only to the prevailing policy or temper of the day, and the existing state of things, what will be the situation of this country, and whither will the principle carry us, or where will it be arrested? Even the apportionment of representation in the other branch of the Legislature must be condemned if tested by that standard, and will probably be shaken, or at least most justly attacked. It was never founded upon numbers merely, but regulated by a qualified ratio of wealth and numbers. An additional representation, equal to three-fifths of a certain description of population, was considered as the best criterion which at the time of forming the Constitution could be adopted; but it is far, very far, from being a just and true one now. Who will pretend, at this period, that six persons in North Carolina are richer than seven in Massachusetts or Connecticut; that they consume more or pay more into the Treasury? Yet this is most assuredly the calculation upon which that representation is framed and apportioned. Gentlemen may perhaps feel full security that an amendment to regulate anew the proportion of Representatives, by taking off the additional allowance for the three-fifths of the number of slaves, can never be carried; but they must be sensible that the serious discussion of it would produce most disagreeable sensations throughout the country, and they ought to beware how they originate and establish a principle, which, losing sight of the original plan of compromise, and regulated only by present expediency, will render the reconsideration and revision of that delicate subject, an act of right as well as duty.

Through the whole course of this discussion great art has been used by some of the most zealous advocates of the measure, to divert us from the real ground of distinction upon which it rests, and to lull into a fatal repose the jealousies of the small States for their rights and sovereignty. A remark of the honorable gentleman from Maryland (Mr. SMITH) tending to that object, ought not to escape animadversion. He averred that no law could be found in our statute book that was produced by a combination of States, and hence inferred that no such combination ought to be apprehended. The fact admitted, said Mr. D., and what does it prove? Not what the gentleman from Maryland would infer; not what he ought to prove, before the assertion and the argument can be worth anything to him on this occasion; not that such combination may not be feared if you alter the Constitution, but that it is

impracticable as it now stands. The refined process established for electing a President was calculated to guard against that very danger, but if altered and destroyed, we shall soon be subject to that evil. Why is it, sir, that none of our laws are the result of any combinations of States? The reason is to be found in the checks provided against it in the Constitution. Any project founded upon a coalition of the small States, originating as it must in the Senate, would be checked in the House of Representatives; and, on the other hand, any one resulting from any concert among the great States in the other branch, would and must be defeated in this. But if these wholesome checks could be done away, where could be found a security against so great a temptation? I thank God that the Convention were so enlightened as to place the equality of States in the Senate beyond the reach of amendment. Fortunate, most fortunate indeed is it, that there has been provided at least this one sanctuary of our rights, too sacred to be approached by the unhallowed feet, or touched by the unsparing hands of amendment makers.

The seventeen States, said Mr. D., may now be regarded as so many planets, equal in dignity, though unequal in size and splendor, composing the same system, and revolving in their own orbits around one common centre; but, under this new dispensation, the greater number of them are to be degraded to the dependent station of satellites, moving in diminished circles as humble attendants and with feeble lustre around the few great planets, and forever hereafter subject to their control and influence. Judging then from my own feelings, and from my knowledge of the people of the State whose sovereignty I represent—a people proud of their independence, and high-spirited in defence of their rights—they will never willingly submit to such degradation. I cannot therefore see another portion of our sovereignty stripped from us and remain silent in my place. I cannot behold that death warrant of our dearest rights and interests about to be sanctioned, without raising my loudest voice against it, and entering against it in the name of that people, the citizens of New Jersey, my formal and solemn protest.

Mr. PICKERING said, after the very able discussion which had taken place, he would not have risen on this question, but to repel a misrepresentation. He had not said "that the will of the people was never to be regarded." He had expressed his belief that the people had viewed the subject under consideration very superficially; and therefore, that their opinion, or their will, ought not to determine the votes of the Legislature. He recollected that some three or four years ago, he had heard mentioned the designating principle now contended for, and that it had struck him agreeably, as some inconvenience had occurred in the present Constitutional mode of electing the President and Vice President, to which the designating principle seemed to offer a remedy. He well remembered, however, to have heard at that time a few persons, of the first intelligence and patriotism, say that this principle was pregnant with mischief. But he had not then investigated the subject; he had indeed viewed it very superficially. Since that time he had been a farmer, and without leisure or occasion to examine it. Thus circumstanced, he had thought himself not very uncharitable in supposing the opinion of his brother farmers, who compose the great body of the nation, to be as superficial and incorrect as his own. He would go farther, and say, that he believed the Legislative bodies who had advised the adoption of the proposed amendment had also viewed it superficially. As one evidence of it, he had referred gentlemen to the instructions of the Legislature of New York, laid before the Senate at the commencement of the session, and presenting the proposed amendment, which contained, not a clerical, or a grammatical error, as the gentleman from Virginia (Mr. TAYLOR) had said, but a palpable absurdity, in supposing that on the designating principle, when each elector would vote for one candidate, by name, to be the President, that two candidates could each have a majority of all the votes!

When this amendment was first urged upon the Senate, the motive was declared to be to prevent a recurrence of such a state of things as had happened at the last election of President, when the choice came Constitutionally before the House of Representatives. The division of the States in that House suspending for several days any choice, had brought us, some gentlemen had said, to the brink of a civil war. And an honorable member from Georgia (Mr. JACKSON) had told us, that if Mr. JEFFERSON had not been elected, the citizens of that State would have been ready, and he was disposed to believe the citizens of their sister State, South Carolina, would have been equally ready to taken up arms in his behalf. And were, Mr. P. asked, the people of the United States thus early decrepit, thus early corrupt, that, like the old monarchies of Europe, for the sake of one man, they would have rushed to arms, and involved their country in a civil war? On that one man, indeed, the honorable gentleman had repeatedly pronounced his eulogies; he was unimpeachable, he was beyond the reach of censure. Others, however, thought differently. Mr. P. believed there was abundant room for censure, but he should waive it. Men are often blind, not only to their own faults, but those of their friends. In politics, men differed in their opinions of men and things, as in religion they differed as to their religious tenets. Hence the poet's remark:

> "One thinks on Calvin Heaven's own spirit fell,
> Another deems him instrument of hell."

But, said Mr. P., the great motive for the proposed amendment, at first expressed by its friends, seems not now to be relied on; while a gentleman from Tennessee, (Mr. COCKE,) with great simplicity, has told us what was its real object: "That the majority, the Republicans, may obtain the man of their choice, and with certainty prevent the election of either a Federal President or Vice President." And a gentleman from Virginia (Mr. TAYLOR) has suggested that the proposed amendment would finally destroy the minority. And it was by such destruction, Mr. P. supposed, that "harmony was to be restored to social intercourse." But he would quote an authority which certainly the advocates of the amendment would respect. This authority had declared, "that the minority possess their equal rights, and that the will of the majority, to be rightful, must be reasonable."

Mr. P. believed that one of the most embarassing questions before the General Convention, respected the choice of the chief Executive officer. He had been informed by a member of that convention, the gentleman from Georgia on his left, (Mr. BALDWIN,) that it had been proposed and concluded that the President of the United States should be elected by Congress for seven years, and be ever after ineligible to that office; but that late in their session the present complex mode of electing the President and Vice President was proposed; that the mode was perfectly novel, and therefore occasioned a pause; but when explained and fully considered was universally admired, and viewed as the most pleasing feature in the Constitution.

As to the proposed alteration of that mode of electing those two great officers, Mr. P. said that, when it was first offered in the Senate, at the beginning of their session, not having then examined the question, he was unprepared to give his vote; yet, if its instant decision had been forced upon the Senate, as was demanded by a gentleman from New York (Mr. CLINTON) not now of the House, he should have voted against it; believing it safer to adhere to a rule established by the deliberate wisdom of the enlightened statesmen who formed the Constitution, than to adopt an untried mode offered at a time of party dissension, and for a particular object. He should also, at that time, have been influenced to vote against it by the respect he entertained for the gentlemen with whom he usually voted, and who, at a former session, had had the subject presented to their consideration. But, having since had time to consider it, he should now vote against the amendment, on the fullest conviction of the mischiefs which would flow from it. What these were, and how much superior, how much safer was the present Constitutional mode of electing the President and Vice President, had been so amply, so clearly, and so ably shown by an honorable gentleman from Connecticut, (Mr. TRACY,) that he (Mr. P.) would not attempt to add anything to his observations. If these should have no weight with the Senate, nothing which he could offer would have the smallest influence.

But Mr. P. would attempt to trace the Constitutional mode of election to its source.

When these States were British Colonies, they had Governors and Lieutenant Governors. Both those officers were yet retained in some of the States, and in those States the designating principle had always been observed. The people gave their votes for one candidate by name, to be Governor, and to another to be Lieutenant Governor. This practice was perfectly familiar to the members of the General Convention; why then did not they adopt it? Mr. P. would offer a conjecture.

The Governors and Lieutenant Governors were chosen for one year. The inferiority of rank and importance attached to the office of Lieutenant Governor, would naturally induce the people to think a man competent to the duties of that office, although his qualifications should be decidedly inferior to those they would deem requisite in the man they would choose for their Governor; and no material inconvenience would be apprehended from the choice of such a Lieutenant Governor, because he would administer the Government for so short a period—a portion only of one year. But to administer the affairs of a great nation more circumspection was necessary, and a longer continuance in office. The President and Vice President were to be chosen for four years. In case the office of President became vacant, the Vice President would succeed and be charged with all the duties of the President; and this might happen to be for two or three years, or even for four years, if the President should die between the time of his election and the period of his taking upon himself the Government. It was therefore an object of the highest importance to place the election of Vice President on such ground as, if possible, would necessarily produce the choice of one every way qualified for the office of President. And this would be the happy result of a correct adherence to the present Constitutional mode of electing those two great officers. All the difficulty, all the embarrassment which had hitherto been experienced, had arisen from a palpable departure from the plain Constitutional rule, from the Electors acting on the discriminating principle; not indeed by designating by name, but in their minds, which of the two persons voted for should be the President, and which the Vice President; a designation forbidden by the spirit, if not by the letter of the Constitution. If the Electors, laying aside all attempts to give one of the candidates for President an advantage over the other, vote for two men, each possessing the qualifications requisite for that high office, it will then be a matter of much indifference, as it respects the great interests of the nation, which becomes the President, and which the Vice President. The evil arising from the non-observance, by the Electors of this plain rule would, after a few elections, work its own cure. They would see a necessity of a strict adherence to the spirit of the Constitution, convinced that the true interests of the people lay in such an equal choice.

Much had been said about the interests of the large and of the small States, and those of the latter it was conceived would be deeply affected by the proposed alteration of the Constitution; but without adding to the numerous observations which had been made on that subject, Mr. P. would only remark, what on all sides had been admitted, that the Constitution was the result of compromise—of mutual sacrifices of State interests, of local wishes, and attachments, to the common good. The General Convention, after long

and full deliberation and discussion, had adjusted the balance of power among the States comprising the Union, and there was great danger, by making any alterations in the Constitution, that this balance would be destroyed. It was inexpedient frequently to change the ordinary acts of legislation; it was dangerous to be often changing the fundamental laws of a State, and still more dangerous to change those which, like the Constitution of the United States, form the bond of Union among a great number of confederated States. It was only in case of great and manifest evil arising under a Constitution, that an amendment should be attempted. Such a case did not now exist.

Mr. P. repeated that the subject of the amendment before the Senate had not been well understood by the people. That it had been only on a very superficial view of it, that what was called the *public mind* and the *public will* had been expressed; and that it was therefore the duty of gentlemen, uninfluenced by the popular voice, now to act independently, according to the dictates of their own minds; and thus secure the real and permanent interests of the people.

Mr. JACKSON.—The gentleman last up has thought proper to notice what he had said would have been the effect of the meditated usurpation at the last election. He assured that gentleman, that however much he might plume himself on his own virtues, that the people of Georgia would not take their ideas of the course that ought to be pursued, when their liberties were at stake, from any other source than the principles of virtue and freedom. The gentleman had also thought proper to notice what he called an eulogium upon the present Chief Magistrate. His language was too humble and inadequate for that great and good man's eulogium; it was far beyond any form of words which he could employ, to express the veneration which he felt for him; and he believed that, excepting only the departed WASHINGTON, no man ever possessed or merited more of the affection of the people of America than he did.

But, not content with noticing my tribute of truth, which the occasion called for and which the gentleman questions, he has given the Senate what it was to be supposed he intended for poetry; he would not compliment him on his taste for selection, any more than on his liberality. The verses are bad enough, and the application worse; they reminded him of the speech of Moloch, in the second book of Paradise Lost. But taking his verses as they are, he was content to believe the first; the gentleman might, if it could console him, believe in the second. For he did believe that the President's virtues were a hell to him.

The zeal of Georgia appears to be a matter of surprise to the gentleman. But it is by no means surprising. Why was that State so anxious for a change of Administration? Under the former Administration her rights were violated, her Government treated with studied insult. In discharge of his duty as Governor, he could scarcely get an answer on public business from the Department of State, at the head of which that gentleman (Mr. PICKERING) was then placed. Under that Administration State rights were degraded and disregarded; we saw the principles of the Revolution brought up as topics for reproach, and we saw that we had no chance but in the resort to first principles. We looked up to the author of the Declaration of Independence,—he has not disappointed us. Would to God I were capable of doing justice to his eulogium.

Mr. WHITE proposed an adjournment; he feared the fatigue would create irritation; some warmth had already been displayed.

On the question being called (10 minutes past 7) it was lost.

Mr WRIGHT would offer but a few words. It had been observed that our Government is the result of a compromise. So are all federal Governments. The reference to the old Confederation and their voting by States amounted to nothing conclusive; the old Congress possessed no Legislative power, they had only an Executive and recommendatory power. The Constitution was produced by the necessity of the case; no impost could be levied by the old Congress, and, to preserve the benefits of the Revolution, Virginia called the Convention. He could not account for the opposition of the gentleman from Delaware, as he would not strike the amendment out if it formed part of the Constitution.

Mr. WHITE.—The gentleman misapprehended my expression.

Mr. WRIGHT.—I took the gentleman's words down—they were these: "If the amendment formed part of the Constitution I would not vote for striking it out." He then went very largely into a recapitulation and reply to the various points of discussion, and asked if it was consistent with the principles of the Government that our laws should be like those of the Medes and Persians, their form immutable and error eternal? He asked if gentlemen would not think it a hard case if men were placed in the two first offices of Government who were neither the choice nor agreeable to either party? Yet this would not be more inconsistent or absurd than to have any one man so placed, contrary to the fundamental principle of representative government, the will of the majority. Every gentleman must recollect what a scene was exhibited in the Legislature of Pennsylvania at the late election, which could have its origin in intrigues alone, and which ended at length in a compromise which gave the most populous State in the Union the real value of no more than one vote; the same intrigues existed in New Jersey, where an organized plan existed to place a man in the Executive chair against the wishes of the nation, unchosen and unintended for the Executive chair by either party.

Here we provide a remedy for such evils—we offer you the certain means of frustrating and rendering them hopeless; we offer you a designation. But it is said that this is a party question. Gentlemen appear not to look around them, or to overlook facts staring them in the face. Do we not see gentlemen of opposite parties in politics on

both sides of this question? Is it from party views the gentleman from South Carolina opposes it?

He was as much a friend to the principles of a majority governing as any man, but here it was a different question which he thought principally concerned—it is to prevent the disgrace and injuries of intrigues; it is to prevent men not intended to be chosen from being edged into power. At the last election what did we see? An attempt made by a party in truth hostile to the man at that time, endeavoring to put him into the Executive chair! And for what purpose? For the purpose of confusion—to distract and divide the country, and to lay the foundation of another factious Administration on one already humbled by public indignation. Had they succeeded in corrupting a single man from his duty, would it not have been usurpation of the worst species? What did his colleague say?—that after this project of wrong had failed, another was meditated; it was even supposed to set up a man who had not a single vote, and that had they attempted to carry it into execution, the people would not bear it. And the gentleman from Connecticut expresses his astonishment that the people would not bear usurpation, while he confesses that his section of the Union would have been quiet spectators of the act! He knew that the people of Maryland felt the danger and were determined to resist it, not with their arms folded but with the energy of freemen; and such was the sensation which the meditated wrong had occasioned, such was the spirit of the people to resist it, that some of the most opulent men in the State found it time to interfere.

This amendment then is intended to prevent the recurrence of such alarming dangers. Does it deprive any one or any State of a right? Is it not fit, that if I am called on to vote for President and Vice President that I should have my free choice? Is it then consistent with reason that I should be compelled to vote for one man upon equal terms whom I do not think has equal talents or equal claims to my confidence? Is it fair that I should be reduced to the alternative of choosing a wise man and a fool, in order to give the former a chance? Are not the small States as well secured by this amendment as the large? If this amendment was not intended, why has it not been guarded like those parts which cannot be changed before 1808? In this Senate the small States have their security—their equal representation, and in the provision against any change being made in their representation here without the consent of each.

The gentleman from Massachusetts (Mr. ADAMS) has drawn all his eloquence in force, he has collected all his vengeance, and pours out the vials of his wrath upon Virginia. Why this vehement, this toothless rage against that State, which in evil times had indeed stood firm, the rock of our political salvation: to whom we looked in the hour of adversity for counsel, for succor, for statesmen and leaders of our armies? To her we were indebted for a WASHINGTON, and is it because we are indebted to her for other great men that this jealous rage is vociferated against her? Is it to be supposed that with her twenty-four votes for President she can control all the rest? We hold the true federative counterpoise, the other House has the democratic or popular, for he knew no difference. Nine or ten are destined to be small States, and will always have a majority here? Gentlemen, when they cannot make good their case by argument or fact, endeavor to make it out as well as they can. Hence, we have the declaration about small and large States, and hence so many warnings against touching the Constitution. But who are they who wish to tear up this Constitution? Two propositions have been offered of infinitely more force on the principles of the Constitution—one to abolish the office of Vice President altogether, the other to limit the election of President. We wish to provide against an evil not foreseen, and to supply the deficiency; the gentlemen wish to tear a part of the Constitution altogether. And who have proposed and advocate these erasures? The opposers of this amendment. So, that when reverence for the Constitution is spoken of, these amendments must be abandoned. Experience, sir, is worth a thousand volumes of experiments. Had it been foreseen at the last election, that such events could have proceeded from the principles of honor and good faith being rigidly observed by the republicans, many would have opposed their uniform vote and cast their vote away rather than lay the country open to intrigue and its consequences.

He had thought the number five would equally answer the purpose of election. Arguments had convinced him that three would be still more safe; because it would give the greater certainty of a choice by the people. And was there a man in that House who would dare to say that the people ought not to have the man of their choice? They look for the security of that right, and the principle of designation secures it. Is there any man who as an Elector would prefer the uncertainty of two for the certainty of one. Some affect to say we strike at fundamental principles. But we say we wish to strike at error and give stability to republican representative principles. The Constitution says the President shall be chosen by Electors; he believed there was a militant spirit against democratic republican principles, which would take the power from the people and their Electors, which would fly in the face of the Constitution itself, and tell the people it ought not to be amended; that error should be perpetual, and experience fruitless; this was notoriously avowed. Our greatest blessing and our first pride is that we have the power and the right to amend, and to redress wrongs without the resort to arms which nations are ever exposed to, where abuses are rendered sacred and hereditary. On the subject of this amendment, so far as it concerns designation, he believed the public mind could not be better known; could three-fourths of our Legislatures and two-thirds of both Houses of Congress commit treason and treachery on themselves? He was decidedly for the amendment, and for the number three.

Mr. WHITE.—The gentleman says the old Congress had no Legislative powers. Did they not

raise armies, and emit money, both high Legislative acts?

Mr. WRIGHT.—The gentleman is wholly mistaken; the several States raised armies, and moneys were raised by State contributions—all the power they had was to recommend to the States and make requisitions upon the State grants.

The question on inserting the number three was put (at ten minutes past 8 o'clock, P. M.) and carried—21 yeas, 11 nays.

Mr. DAYTON asked if the question could be taken on the whole of the designating amendment, without deciding upon the remainder of the report?*

Mr. BUTLER.—You assuredly cannot decide upon the first part without deciding upon the whole of the report, unless you do it by power; and you can do anything, as Judge Blackstone says, by power, but make a man of a woman. Power, however, appears to be the order of the day; though he hoped the Chair will do so much justice to himself as to acknowledge that we have been hitherto in a Committee of the Whole. Some gentlemen had spoken as often as nine or ten times in the debate, and in the House that would have been contrary to order. The object of his wishes was to probe innovation. If we have hitherto been in a Committee of the Whole, as this is only a part of the report, of course it will stand as it is, and we may proceed to the remainder of the report—though, from what he had already seen, he did not expect the indulgence that he thought was due to every member of that House; and it was not impossible that it meant to press into a different course. If so, gentlemen should look to what the people of the United States would say, when they see the doors closed against all dispassionate discussion, and all opportunities open to one side of the House. There was an example of this kind given by a gentleman (Mr. COCKE,) who, after making a speech of an hour, sits down and roars out, the question! the question! Unless gentlemen mean to practice the same indelicacy as two hours ago.

The PRESIDENT wished to interrupt the gentleman for a moment barely to inform him that the question has never been before a Committee of the Whole.

A desultory conversation on the point of order here took place, in which Messrs. NICHOLAS, BUTLER, TRACY, S. SMITH, DAYTON, TAYLOR, FRANKLIN, HILLHOUSE, and ADAMS, spoke a few moments each. In which it was contended that the first amendment could not be decided on without first deciding on the second amendment, which was reported by the same committee.

On the other side it was maintained that the amendment for designation was a separate proposition, and might be voted upon, whether the other was voted upon or not; that the other amendment might be called up at any time without interfering with the principle or the passage of that now before the House.

The PRESIDENT decided that the question now was on agreeing to the resolution as amended. Upon which the yeas and nays were demanded, and were as follows:

YEAS—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, S. Smith J. Smith, Stone, Taylor, Worthington, Wright—22.

NAYS—Messrs. Adams, Butler, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, White—10.

Mr. ADAMS thought it proper for him at this stage to notice some observations directed to him. It had been presumed that he had expressed some solicitude about the election of a federal Vice President; he had expressed nothing which could countenance a solicitude about the election of a federal or anti-federal Vice President; but he had indeed noticed that the amendment appeared to him as intended directly to affect the next election; though at the same time as far as related to himself he turned out of the consideration every idea of its effect on any single case; he looked to it as it would affect a century to come—he never meant to take the diameter of the earth for the measure of a barleycorn.

The gentleman from Maryland (Mr. WRIGHT) had charged him with pouring out the vials of his wrath on Virginia; he was not conscious of uttering any degree of wrath against Virginia, and could not be persuaded that he had uttered what he certainly never felt; so far from wrath, he had ever entertained for that State the highest respect, as producing the greatest men of our Revolution. It was true, indeed, that when he heard a gentleman from that State holding forth what he had then considered as a menace, he had felt some irritation; and when he compared it with the mould and process of the measure before us, that was increased; and had he not been convinced that no menace was intended, by subsequent explanations, he should have entertained a serious alarm. His impressions were generally on the subject, that no regard had been paid to the permanent operation of the measure, but that all argument had been drawn from the last, and all consequences are calculated for the next election. From the open avowal of the gentleman from Maryland (Mr. S. SMITH) to the labored, ingenious, and eloquent arguments of the gentleman from Virginia, (Mr. TAYLOR,) all had this tendency and that view only.

*This question has reference to the following amendment proposed by Mr. Butler, for limiting the period for which a President should be elected, and which was not acted upon:

"*Resolved*, That the following amendment be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as part of the said Constitution, to wit:

"That no person who has been twice successively elected President of the United States, shall be eligible as President, until four years shall have elapsed; but any citizen who has been President of the United States, may, after such intervention, be eligible to the office of President, for four years, and no longer."

To the designating principle itself he had no objection, and believed it calculated to be productive of good. But when he heard gentlemen talk of the jealousy of States, he had little expected to find a mixture of argument drawn from English corruptions and degeneracy, applied to our home institutions. When jealousy of Executive power was spoken of, so much like the unmeaning noise out of doors, he had expected that after adding fifteen millions to the public debt at a blow; when eighty thousand men were proposed to be placed at the will of the Executive; when by four short lines the whole of the arbitrary power of the Spanish King over his subjects in Louisiana was transferred to the Executive, with all the consequent patronage, he did not expect to hear armies, debts, and patronage, introduced in the debate. When declamation of this kind is given, the best return that can be expected is declamation of the same species.

Mr. S. SMITH had not intended at any hour to have taken a further part in this debate; but when he found gentlemen resorting to stratagem when sound argument failed them, and words and sentiments are tortured from their intention, he could not remain silent. It requires very little ingenuity to lop off a part of a sentence, even in scripture, and to make the remainder blasphemy; though the whole sentence as written were the most solemn truth. The gentleman from New Jersey (Mr. DAYTON) thinks it consistent, perhaps, to construe words which never had that meaning as a threat. He would beg leave to notice a mistake of the gentleman from Massachusetts, (Mr. ADAMS,) who had charged him with an open avowal that the sole object of the amendment was to preclude the election of a Vice President. He had said that it would certainly have that effect; and that the effect would be proper and conformable to the spirit and intention of the Constitution; and he approved of it for that reason; for, under the existing mode the people, who wished to secure a proper person, or that person in whom they have the greatest portion of confidence, would be obliged to throw their votes away, and make no choice of the second officers, or leave the choice to chance. But how could the gentleman say himself, or think him guilty of the absurdity of supposing, that this amendment originated and was conducted solely with a view to the next election, and that only; or that all arguments were drawn from the last election? If he recollected correctly, the subject of this amendment was brought forward several years ago, by the representative of a small Eastern State, Mr. ABIEL FOSTER of New Hampshire. At that period those persons were of the predominant party. But they tell us it was not then carried. And why not? Most probably because they could not find members convinced of its necessity. It was proposed before the last election, and that event has convinced every one who before doubted. After all, if the Legislatures do not think proper to adopt it, it cannot pass.

Mr. TRACY.—We are told this is a proposition for the Legislatures; but will its passage through Congress have no influence on the votes of the States? Will the Legislatures not say two-thirds of both Houses of Congress passed it, and they would not deem it necessary if it was not good? But here we have Legislatures prompting us to this measure, and it goes back to them again for their decision; that this is a measure, a measure in a hoop, it comes and goes whence it came.

The gentleman complains of attacks made on Virginia, it was never meant to reproach Virginia. But the gentleman tells us we must make an exclusion bill, and he tells you of the consequences if you do not, in order to induce you to pass it. He admired the gentlemanly manner, the openness and good nature, and he was certain that he never meant to kill us outright, but he will exclude us. We know very well what was intended by the bill for the exclusion of Popish recusants, and that with regard to the objects of the measure we stand precisely in their place. This was the very condition of the gentleman; he supposed a minority had no rights, beside that of being trampled upon, and he is for bringing in a bill of exclusion. He says he does not quote words; he caught ideas, not words. He has given a key for his ideas, they go to the extirpation of the sect of Federalists, as the exclusion bill went to the total exclusion of the sect of Popish recusants.

If gentlemen wish to shake the Constitution to pieces, if majorities must decide everything, why not go at once to a simple democracy? There were many who did not think the Constitution sufficiently democratical. The gentleman thinks so perhaps, for he tells us that a Constitution may be preserved while the liberties of the people are destroyed; he wishes you to go to the spirit which is democracy, and against which we guard. But he would not consent to go to that spirit for his remedy.

Mr. BRECKENRIDGE.—The gentleman last up had insisted on two or three arguments before repeated, that he thought proper to notice him. He insinuates that we are destroying principles. But the gentleman has lost sight of the amendment altogether, where no principle is in the smallest degree violated. He has indirectly questioned the democratic principles of the Constitution; but in the course of three weeks' discussions, for the first time he had heard anything even glancing at a denial of the people's right to choose the Executive though the medium of Electors. What is this clamor about large and small States? It has nothing to do whatever with the question. The true and only point is, what will be the best mode of effectuating the choice? We hold that the amendment is that best mode. If any principle is more sacred and all-important for free government it is, that elections should be as direct as possible; in proportion as you remove from direct election you approach danger. And if it were practicable to act without any agents in the choice, that would be preferable even to the choice by Electors. But if you wish to elect A, and you are so placed as that B is elected contrary to your wishes, can you say that this is a reasonable and just process? Has it not always been insisted that

the two characters chosen at the last election were equally estimable? Why then was there any hesitation? Why has public opinion, so ready to declare itself, never uttered a sound of discontent at the issue, while the nation was almost in arms at the retardment of the choice. Had the now Vice President been placed by whatever secret means in that Chair, is there a man who now hears who would not say it was contrary to the intention of the people? If ever public opinion was more strongly known on any point than another, it is on this. Nine States he believed had testified their wishes on the subject. New Hampshire, New York, Vermont, Massachusetts, Tennessee, North Carolina, and Ohio, have in the most solemn manner recommended it. If the gentlemen from Massachusetts, or one of them particularly, (Mr. PICKERING,) are in doubt as to the understanding or information of their constituents on the subject, there can it is presumed be no doubt but the other House understand both the subject and the opinions of the people whom they so immediately represent. And this supposed ignorance is a reply to the gentleman from Connecticut. It is to be presumed, if they are now ignorant, that when the amendment comes before them they will possess new lights—and that all danger will be avoided by their watchfulness.

Mr. BUTLER had allowed every gentleman to speak, though he had early in the debate signified his intention to offer a few observations on this important subject, which it was his lot to oppose from a conviction of its injurious tendency. He had gratified himself in the opening of the discussion with the expectation that the regularity of proceeding would be such, that we should never more hear the voice of menace or of civil war—words which should never enter the walls of that Senate any more than the most vulgar expressions. But the hour was late. The gentleman from Kentucky has said that you should not remove the election farther from the people, and he appears to think that at the late election the disposition to place a man not intended in the Chair, was the consequence of that form of proceeding. Whatever may be the sentiments or wishes of the individuals who vote, he could take upon him to say what was the intention of the Constitution; the framers of that instrument were apprehensive of an elective Chief Magistrate; and their views were directed to prevent the putting up of any powerful man; that for this end the States should choose two, and that as public suffrage would be common to both, that either would be alike eligible, and it was totally immaterial which—he feared that the election of a single individual might exhibit all the evils which afflicted Poland.

One observation he owed to the side he had taken in this debate: it had been suggested abroad that he had changed his opinion from being in favor to an opposition of the amendment. This was not so, for when the amendment was introduced he had avowed his purpose to oppose it. He was more confirmed when he heard arguments employed avowing the determination to remove every possibility of an election in the House of Representatives, and for this reason, that the smaller States having fewer representatives in that House, would be exposed to the corruption of any designing man, and they might be made the instruments of national ruin, as the rotten boroughs of England have in the hands of the King of that country.

If the small States then are mere rotten boroughs, and their representatives liable to corruption, is the evil remedied by this amendment? He asked if only two were to be voted for and had equal votes would it not then go to the House of Representatives as much as if there were five from which to make a choice? But the time which has been expended in this discussion has only served to render more conspicuous the anxieties by which it is pressed forward. A gentleman has asked us, shall a factious minority give a Vice President to the United States? Aye, there's the rub! He had thought that the reproachful epithet of faction, that all heat and animosity of party, should long since have been buried; and the representatives of the small States he hoped would see that they were bound by duty and by feeling not to suffer the votes to go along with those reproaches; for with that vote would pass a very material part of their sovereignty.

A great deal had been said to remove this idea of the jealousy of the States, and that it was only a stratagem set up for the occasion. Whatever gentlemen might say on that subject he would say to the small States, with the orator of Greece, "Beware of Macedon!" Beware of the great States! In this, however, there was one exception; he would exclude the State of Pennsylvania; and civil liberty was better understood and practised there than in any age or in any part of the world. He had, however, seen something very like this combination of States, and thought it behooved the small States to watch them, else they would monopolize the whole of the Executive departments; and the moment that was accomplished, farewell to the Republic, it would no longer exist; it would be succeeded by a high, haughty aristocracy of States, with an Executive moulded and accommodated to their views.

When you pass this you plant the seed of discord; the dissolution of Federalism. He thought that after a contention of seven years, with a party who he had thought abused their power, the time was come when a better course would have been pursued; he had conceived that principles would have prevailed, and that men would not absorb every consideration; but, with a member of the Convention, he would say, I hoped after so long a course of pork that our diet would be changed, but I find it is pork still with only a change of sauce.

Pass this amendment, and no man can live in the small States but under disparaging circumstances; they will have about as many rights left in society as the Helots of Greece. And why is all this done? For the purpose of showing one of the least becoming of the weak passions of man, resentment, you pursue a line of conduct reprobated by yourselves in the time of your predecessors. He was sorry the embers of party were

kindled even by the very injudicious manner in which it had been supported. The best reflecting men see in this only the change of men without regard to measures; and that it had paved the way for a revival of the heats and animosities which ought to have been buried but which may lead to a separation of the Union.

The question was called for loudly at half past nine, and put—the yeas and nays being taken, were:

YEAS—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright—22.

NAYS—Messrs. Adams, Butler, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White: 10.

Upon the PRESIDENT declaring the question carried by two-thirds—

Mr. TRACY said he denied that the question was fairly decided. He took it to be the intention of the Constitution, that there should be two-thirds of the whole number of Senators elected, which would make the number necessary to its passage 23.

It was moved to adjourn to Monday.

Mr. TAYLOR said that since it was proposed to adjourn to Monday, when he should be disqualified to sit in that House, he hoped the Senate would not rise without deciding the question definitively on the gentleman's objections.

Mr. TRACY said he certainly would avail himself of the principle to oppose its passage through the State Legislatures.

The PRESIDENT declared the question had passed the Senate by the majority required, and conformable to the Constitution and former usage.

The amendment, as adopted, is as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That, in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the Legislatures of the several States, shall be valid, to all intents and purposes, as part of the said Constitution, to wit:

The Electors shall meet in their respective States and vote by ballot for President, and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and, in distinct ballots, the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for the President, shall be the President, if such number be a majority of the whole number of Electors appointed: and if no person have such majority, then, from the person having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members, from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of death or any other Constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person Constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States.

Ordered, That the Secretary request the concurrence of the House of Representatives in this resolution.

MONDAY, December 5.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

In compliance with the desire of the Senate, expressed in their resolution of the 22d of November, on the impressment of seamen in the service of the United States, by the agents of foreign nations; I now lay before the Senate a letter from the Secretary of State, with a specification of the cases of which information has been received.

DEC. 5, 1803. TH. JEFFERSON.

To the Senate and House of Representatives of the United States:

I have the satisfaction to inform you, that the act of hostility mentioned in my message of the 4th of November, to have been committed by a cruiser of the Emperor of Morocco, on a vessel of the United States, has been disavowed by the Emperor. All differences in consequence thereof have been amicably adjusted, and the Treaty of 1796, between this country and that, has been recognised and confirmed by the Emperor, each party restoring to the other what had been detained or taken. I enclose the Emperor's orders given on this occasion.

The conduct of our officers generally, who have had a part in these transactions, has merited entire approbation.

The temperate and correct course pursued by our Consul, Mr. Simpson, the promptitude and energy of Commodore Preble, the efficacious co-operation of Captains Rodgers, and Campbell, of the returning squadron, the proper decision of Captain Bainbridge, that a vessel which had committed an open hostility, was of right to be detained for inquiry and consideration, and the general zeal of the other officers and men, are honorable facts, which I make known with pleasure. And to these I add, what was indeed transacted in another

quarter, the gallant enterprise of Captain Rodgers, in destroying, on the coast of Tripoli, a corvette of that Power, of 22 guns.

I recommend to the consideration of Congress, a just indemnification for the interest acquired by the captors of the Mishouda and Mirboha, yielded by them for the public accommodation.

DEC. 5, 1803. TH. JEFFERSON.

The Messages and papers therein respectively referred to, were read.

Ordered, That they severally lie for consideration.

On motion,

"That a committee be appointed to take into consideration the law to establish an uniform act of bankruptcy throughout the United States, and report amendments to the same, if any shall, in their own opinion, be requisite:"

It was agreed that this motion should lie for consideration.

Mr. ANDERSON laid before the Senate the address of the Commissioners of the State of Tennessee, being their Senators and Representatives in Congress, appointed, and fully empowered, to settle the disputes between the United States and the said State, respecting the vacant unappropriated lands lying within that State; and it was read.

Ordered, That it be referred to Messrs. TRACY, BRECKENRIDGE, and ANDERSON, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported, on the 16th of November last, to the bill to divide the Indiana Territory into two separate governments, and giving the assent of Congress to the proposition of the Convention of the State of Ohio, contained in the sixth section of the seventh article of the constitution of that State; and having agreed thereto and further amended the bill.

Ordered, That it pass to the third reading as amended.

The Senate took into consideration the motion made on the 28th November last, that a committee be appointed to prepare a form or forms of government for the Territory of Louisiana; and it was agreed to; and

Ordered, That Messrs. BRECKENRIDGE, WRIGHT, JACKSON, BALDWIN, and ADAMS, be the committee.

On motion, that it be

Resolved, That when any bill, resolution, or amendment, shall be agreed on, no reconsideration shall take place on the same day, unless moved for by a member in the majority; nor shall any reconsideration of a bill, resolution, or amendment, take place the succeeding day, but with the consent of four-fifths of the House.

It was agreed that this motion should lie for consideration.

TUESDAY, December 6.

The Senate took into consideration the amendments, reported the 28th of November last, to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," and having amended the report, the amendments were adopted, except the last.

Ordered, That the consideration of the last amendment reported be postponed.

The bill to divide the Indiana Territory into two separate governments, and giving the assent of Congress to the proposition of the State of Ohio contained in the sixth section of the seventh article of the constitution of that State, was read the third time and further amended; and,

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act to divide the Indiana Territory into two separate governments."

Mr. S. SMITH, from the committee to whom the subject was referred, on the second instant, reported a bill to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States; and the bill was read and ordered to the second reading.

Ordered, That the last resolution reported by the committee, appointed on the 22d of October last, to consider the motion for an amendment to the Constitution, in the mode of electing a President and Vice President of the United States, be the order of the day for to-morrow.

On motion, the Senate adjourned.

WEDNESDAY, December 7.

AARON BURR, Vice President of the United States and President of the Senate, attended.

The bill to authorize the sale of the frigate General Greene, and a further addition to the Naval armament of the United States, was read the second time.

JOHN ARMSTRONG, appointed a Senator by the Executive of the State of New York, in the room of De Witt Clinton, resigned, attended.

THURSDAY, December 8.

The credentials of Mr. ARMSTRONG were read, and the oath was administered to him by the Vice President, as the law provides.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Since the last communication made to Congress of the laws of the Indiana Territory, I have received those of which a copy is now inclosed, for the information of both Houses. TH. JEFFERSON.

DECEMBER 7, 1803.

The Message was read,

Ordered, That the Message, and the laws therein referred to, lie for consideration.

On motion,

"That a committee be appointed to examine whether any, and what, amendments are necessary to the "Act for the punishment of certain crimes against the United States."

It was agreed that this motion lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States;" and, after debate, the Senate adjourned.

FRIDAY, December 9.

The Senate took into consideration the motion made yesterday, that a committee be appointed to examine whether any, and what, amendments are necessary to the "Act for the punishment of certain crimes against the United States;" and,

Ordered, That Messrs. SAMUEL SMITH, BALDWIN, and ARMSTRONG, be the committee.

On motion,

"That a committee be appointed to examine and report whether any, and what, further protection ought to be given to the navigation and seamen of the United States:"

Ordered, That this motion lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States."

Ordered, That this bill have the third reading on Monday next.

The Senate resumed the second reading of the bill to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States; and having agreed to sundry amendments, the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill entitled "An act fixing the salaries of certain officers therein mentioned;" and it was agreed that the consideration of this bill be postponed.

The Senate took into consideration the motion made on the 25th of November last, that a committee of —— members be appointed, to inquire whether any, and, if any, what, further measures may be necessary for carrying into effect the treaty between the United States and the French Republic, concluded at Paris on the 30th of April, 1803, whereby Louisiana was ceded to the United States; and on the question to agree to this motion, it passed in the negative.

On motion, the Senate adjourned.

MONDAY, December 12.

Mr. WORTHINGTON presented the petition of Eleazer Olney, of Marietta, late a resident in the province of Nova Scotia, praying to be entitled to the benefits of the "Act for the relief of the refugees from the British provinces of Canada and Nova Scotia," for reasons stated in the petition; and the petition was read.

Ordered, That it be referred to the committee appointed, on the 27th of October last, to consider the petition of Martha Seamans and others, to report thereon to the Senate.

The Senate resumed the consideration of the last resolution reported by the committee appointed on the 22d of October last, to consider the motion for an amendment to the Constitution in the mode of electing the President and Vice President of the United States; which is as follows:

"*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring*, That the following amendment be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, to wit:

"That no person who has been twice successively elected President of the United States shall be eligible as President until four years shall have elapsed: but any citizen who has been President of the United States may, after such intervention, be eligible to the office of President for four years and no longer."

On the question to agree to this resolution, it passed in the negative—yeas 4, nays 25, as follows:

YEAS—Messrs. Anderson, Butler, Dayton, and Jackson.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter Israel Smith, John Smith, Samuel Smith, Tracy, White, Worthington, and Wright.

The Senate took into consideration the motion made on the 9th instant, that a committee be appointed to examine whether any, and what, further protection ought to be given to the navigation and seamen of the United States; and, having agreed thereto,

Ordered, That Messrs. S. SMITH, DAYTON, and ARMSTRONG, be this committee.

A message from the House of Representatives informed the Senate that the House have passed a resolution that the President of the United States be requested to transmit to the Executives of the several States copies of the article of amendment proposed by Congress to be added to the Constitution of the United States, respecting the election of President and Vice President, in which they desire the concurrence of the Senate.

The Senate took into consideration the motion made on the 5th instant:

"That when any bill, resolution, or amendment, shall be agreed on, no reconsideration shall take place, unless moved for by a member in the majority; nor shall any reconsideration of a bill, resolution, or amendment, take place the succeeding day, but with the consent of four-fifths of the House."

And it was agreed that this motion be referred to Messrs. TRACY, DAYTON, and BALDWIN, to consider and report thereon to the Senate.

Mr. WORTHINGTON notified the Senate that he should, to-morrow, ask leave to bring in a bill to ascertain the northwest boundary of the lands reserved by the State of Virginia for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands.

The Senate took into consideration the resolution sent from the House of Representatives that the President of the United States be requested to transmit to the Executives of the several States copies of the article of amendment proposed by Congress to be added to the Constitution of the United States, respecting the election of President and Vice President.

Resolved, That they do concur therein.

The VICE PRESIDENT signed the enrolled resolution last reported to have been examined, and it

was delivered to the committee, to be deposited with the President of the United States.

On motion,

"That the Committee on Enrolled Bills be directed to present to the President of the United States, for his approbation, the resolution which has been passed by both Houses of Congress proposing to the consideration of the State Legislatures an amendment to the Constitution of the United States respecting the mode of electing the President and Vice President thereof:"

It passed in the negative—yeas 7, nays 23, as follows:

YEAS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

NAYS—Messrs. Anderson, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Worthington, and Wright.

On motion, the Senate adjourned.

TUESDAY, December 13.

ABRAHAM B. VENABLE, appointed a Senator by the Legislature of the State of Virginia on the 7th instant, produced his credentials, was qualified, and took his seat in the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the officers of Government, and other citizens, who suffered in their property by the insurgents in the Western counties of Pennsylvania;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. ISRAEL SMITH notified the Senate that he should, to-morrow, ask leave to bring in a bill to amend the "Act making further provision for the payment of the debts of the United States."

The bill, entitled "An act to repeal an act, entitled 'An act to establish an uniform system of bankruptcy throughout the United States,'" was read the third time; and, on motion, that the further consideration of this bill be postponed to the second Monday in December next, it passed in the negative—yeas 13, nays 17, as follows:

YEAS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Brown, Condit, Jackson, Israel Smith, Samuel Smith, Tracy, White, and Wright.

NAYS—Messrs. Anderson, Breckenridge, Butler, Cocke, Dayton, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, John Smith, Venable, and Worthington.

On the question, "Shall this bill pass? it was determined in the affirmative—yeas 17, nays 12, as follows:

YEAS—Messrs. Anderson, Breckenridge, Butler, Cocke, Dayton, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, John Smith, Venable, and Worthington.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Brown, Condit, Israel Smith, Samuel Smith, Tracy, White, and Wright.

So it was *Resolved*, That this bill do pass.

WEDNESDAY, December 14.

The bill, entitled "An act for the relief of the officers of Government and other citizens who suffered in their property by the insurgents in the Western counties of Pennsylvania," was read the second time, and referred to Messrs. WORTHINGTON, LOGAN, and FRANKLIN, to consider and report thereon to the Senate.

Agreeably to notice given on the 12th instant, Mr. WORTHINGTON asked and obtained leave to bring in a bill to ascertain the northwest boundary of the lands reserved by the State of Virginia, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands.

The Senate resumed the second reading of the bill, entitled "An act for fixing the salaries of certain officers therein mentioned," and on motion to strike out the following amendment, reported by the committee and adopted:

Line 19—After the word "dollars," "which said several compensations were established by the act passed on the second of March, 1799, and to"—

It passed in the negative—yeas 9, nays 17, as follows:

YEAS—Messrs. Anderson, Butler, Ellery, Hillhouse, Maclay, Olcott, Pickering, Plumer, and Worthington.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Jackson, Logan, Potter, Israel Smith, Samuel Smith, Venable, and Wright.

And, having agreed to further amendments,

Ordered, That this bill pass to the third reading as amended.

The bill to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States, was read the third time, and passed.

Mr. LOGAN presented the petition of John Taggart, of Philadelphia, praying the remission of the duty on a quantity of sugar and molasses, totally destroyed by fire on the 25th of August last, as stated at large in the petition; and the petition was read, and ordered to lie for consideration.

On motion, that it be

Resolved, That a committee be appointed to inquire whether any, and, if any, what amendments ought to be made in the act, entitled "An act to prevent the importation of certain persons into certain States, by the laws whereof their admission is prohibited," and that the committee have leave to report by bill or otherwise:

Ordered, That this motion lie for consideration.

THURSDAY, December 15.

The VICE PRESIDENT laid before the Senate the report of the Secretary, for the Department of Treasury, on the petition of Aaron Man; which was read, and ordered to lie for consideration.

On motion, the Senate proceeded to ascertain the classes in which the Senators of the State of Ohio should be inserted, as the Constitution and rule heretofore adopted prescribe; and it was

ordered, that two lots, No. 2, and a blank, be by the Secretary rolled up and put in the ballot box; and it was understood that the Senator who should draw the lot No. 2, should be inserted in the class of Senators whose terms of service respectively expire in four years from and after the third day of March, 1803; in order to equalize the classes.

Accordingly, Mr. WORTHINGTON drew lot No. 2, and Mr. JOHN SMITH drew the blank.

It was then agreed that two lots, Nos. 1 and 3, should be by the Secretary rolled up and put into the ballot-box, and one of these be drawn by Mr. JOHN SMITH, the Senator from the State of Ohio not classed; and it was understood that, if he should draw lot No. 1, he should be inserted in the class of Senators whose terms of service will respectively expire in two years from and after the third day of March, 1803; but, if he should draw lot No. 3, it was understood that he should be inserted in the class of Senators whose terms respectively expire in six years from and after the third day of March, 1803. Mr. JOHN SMITH drew lot No. 3, and is classed accordingly.

The bill, entitled "An act fixing the salaries of certain officers therein mentioned," was read the third time; and, on motion to strike out the words agreed to yesterday, to wit:

"Which said several compensations were established by the act passed the third of March, 1799, and to:"

It passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Butler, Dayton, Ellery, Hillhouse, Maclay, Olcott, Pickering, Plumer, White, and Worthington.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Jackson, Potter, Israel Smith, John Smith, Samuel Smith, and Wright.

And the additional section agreed to yesterday, was amended and adopted, as follows:

And be it further enacted, That, when the annual compensation of any officer of the United States, or of either House of Congress, is fixed by law, there shall not be granted or allowed, out of any contingent fund, to such officer, any other or greater compensation than is or shall be fixed by law.

On the question to agree to the final passage of the bill as amended, it was determined in the affirmative—yeas 22, nays 5, as follows:

YEAS—Messrs. Adams, Anderson, Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Worthington, and Wright.

NAYS—Messrs. Hillhouse, Maclay, Olcott, Plumer, and White.

So it was *Resolved*, That this bill pass with amendments.

Mr. BUTLER reported, from the committee to whom was referred, on the 1st instant, the petition of James Simons, that the prayer of the petition ought not to be granted.

Mr. SAMUEL SMITH, pursuant to notice given on the 13th instant, had leave to bring in a bill to declare the law in the case of saltpetre imported into the United States, and thereby to revive the act making provision for the payment of the debts of the United States, as far as the same respects saltpetre; and the bill was read, and ordered to a second reading.

Mr. COCKE, agreeably to leave given on the 25th of November last, brought in a bill to make further appropriations for the purpose of extinguishing Indian claims in the States of Tennessee and Kentucky; and the bill was read, and ordered to the second reading.

FRIDAY, December 16.

The bill to declare the law in the case of saltpetre imported into the United States, and thereby to revive the act making further provision for the payment of the debts of the United States, as far as the same respects saltpetre, was read the second time, and referred to Messrs. S. SMITH, TRACY, and BROWN, to consider and report thereon to the Senate.

The bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky, was read the second time, and referred to Messrs. BRADLEY, COCKE, and BROWN, to consider and report thereon to the Senate.

The Senate took into consideration the motion made yesterday, that a committee be appointed to inquire whether any, and, if any, what, amendments ought to be made in the act, entitled "An act to prevent the importation of certain persons into certain States, by the laws whereof their admission is prohibited," and that the committee have leave to report by bill or otherwise; and the motion was adopted; and

Ordered, That Messrs. FRANKLIN, VENABLE, and I. SMITH, be this committee.

The Senate resumed the consideration of the resolution of the House of Representatives, of the 28th of October last, for an amendment to the Constitution, in the mode of electing the President and Vice President of the United States; and

Resolved, That the further consideration thereof be postponed until the first Monday in September next.

On motion that a committee be appointed to take into consideration the expediency of establishing an uniform law on the subject of bankruptcies throughout the United States," it was agreed that this motion should lie for consideration.

A motion was made "that no person shall be admitted on the floor of the Senate Chamber except members of the House of Representatives, foreign Ministers, and the Heads of Departments, unless introduced by a member of the Senate."

Ordered, That this motion lie for consideration.

MONDAY, December 19.

Mr. WORTHINGTON from the committee to whom were referred, on the 27th of October last,

the memorial of Martha Seamans and others, and on the 12th instant, the petition of Eleazer Olney made report; which was read, and ordered to lie for consideration.

Mr. S. SMITH, from the committee to whom the subject was referred on the 12th instant, reported a bill in addition to the act, entitled "An act for the punishment of certain crimes against the United States;" which was read, and ordered to the second reading.

The Senate took into consideration the motion made on the 16th instant, that no person be admitted on the floor of the Senate Chamber except members of the House of Representatives, foreign Ministers, and the Heads of Departments, unless introduced by a member of the Senate.

On motion, it was agreed to strike out the words, "unless introduced by a member of the Senate;" and on motion, it was agreed to subjoin, after the word "Departments," "and Judges of the Supreme and District Courts of the United States."

On motion to insert after the word "States," "and the ladies," it passed in the negative—yeas 12, nays 16, as follows:

YEAS—Messrs. Anderson, Breckenridge, Brown, Dayton, Jackson, Maclay, Potter, I. Smith, S. Smith, Tracy, White, and Wright.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Bradley, Cocke, Condit, Ellery, Franklin, Hillhouse, Olcott, Pickering, Plumer, J. Smith, Venable, and Worthington.

On motion to insert after the word "States," "the Governors and Counsellors of the respective States, and the Representatives of the State Legislatures," it passed in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Adams, Anderson, Bailey, Breckenridge, Dayton, Maclay, Potter, I. Smith, S. Smith, Tracy, Venable, Worthington, and Wright.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Jackson, Olcott, Pickering, Plumer, J. Smith, and White.

On motion to agree to the resolution amended as follows:

Resolved, That no person be admitted on the floor of the Senate Chamber, except members of the House of Representatives, foreign Ministers, and Heads of Departments, and Judges of the Supreme and District Courts of the United States:

It was determined in the negative—yeas 7, nays 21, as follows:

YEAS—Messrs. Adams, Bailey, Condit, Dayton, Franklin, Jackson, and Wright.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Ellery, Hillhouse, Maclay, Olcott, Pickering, Plumer, Potter, I. Smith, S. Smith, Tracy, Venable, White, and Worthington.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" in which they desire the concurrence of the Senate.

The bill brought up for concurrence was read, and ordered to the second reading.

TUESDAY, December 20.

The bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," was read the second time, and referred to Messrs. S. SMITH, BRECKENRIDGE, ANDERSON, ARMSTRONG, and DAYTON, to consider and report thereon to the Senate.

The bill, in addition to the act, entitled "An act for the punishment of certain crimes against the United States," was read the second time.

The VICE PRESIDENT laid before the Senate a report, prepared in obedience to a resolution of the Senate of the 18th ultimo, accompanied with a statement of the direct tax; and the report was read.

Ordered, That it lie for consideration, and that 500 copies thereof be printed.

The Senate took into consideration the report of the committee made yesterday upon the petition of Martha Seamans and others, and Eleazer Olney; and

Ordered, That it be recommitted to the committee who made the report, further to consider and report thereon to the Senate.

WEDNESDAY, December 21.

A message from the House of Representatives informed the Senate that the House disagree to all the amendments of the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," except to the last, to which they agree.

THURSDAY, December 22.

The Senate took into consideration the disagreement of the House of Representatives to their amendments to the bill, entitled "An act fixing the salaries of certain officers therein mentioned;" and

Resolved, That they insist thereon, and ask a conference on the disagreeing votes of the two Houses; and that Messrs. BRADLEY and JACKSON be the managers at the conference on the part of the Senate.

The Senate resumed the second reading of the bill, in addition to the act, entitled "An act for the punishment of certain crimes againt the United States," and

Ordered, That it be recommitted to the original committee, further to consider and report thereon to the Senate; and that Messrs. BRECKENRIDGE and ADAMS be added thereto.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to incorporate the Directors of the Columbian Library Company," and a bill, entitled "An act for the relief of Paul Coulon;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

Ordered, That Mr. MACLAY be added to the committee to whom was referred, on the 14th instant, the bill, entitled "An act for the relief of the officers of Government and other citizens who have suffered in their property by the insurgents, in the western counties of Pennsylvania."

On motion, the Senate adjourned.

FRIDAY, December 23.

The bill, entitled "An act for the relief of Paul Coulon," was read the second time, and referred to Messrs. TRACY, S. SMITH, and FRANKLIN, to consider and report thereon to the Senate.

The bill, entitled "An act to incorporate the Directors of the Columbian Library Company," was read the second time, and referred to Messrs. BRADLEY, BROWN, and S. SMITH, to consider and report thereon to the Senate.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the Senate and Speaker of the House of Representatives be, and they are hereby, authorized to adjourn the respective Houses of Congress from this day until Monday, the 2d day of January, 1804;

It passed in the negative—yeas 9, nays 11, as follows:

YEAS—Messrs. Ellery, Hillhouse, Olcott, Pickering, J. Smith, S. Smith, Tracy, Worthington, and Wright.

NAYS—Messrs. Adams, Bailey, Baldwin, Bradley, Breckenridge, Brown, Condit, Franklin, Plumer, Potter, and Venable.

Mr. BRECKENRIDGE presented the petition of the judges of the Indiana Territory, stating that great additional duties have devolved upon them since the establishment of their respective salaries, and praying an increase of compensation; and the petition was read.

Ordered, That it be referred to Messrs. BRECKENRIDGE, BALDWIN, and BROWN, to consider and report thereon to the Senate.

Mr. S. SMITH, from the committee to whom was referred, on the 20th instant, the bill, entitled "An act giving effect to the laws of the United States, within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," reported amendments; which were read, and ordered to lie for consideration.

On motion, it was agreed that when the Senate do adjourn they adjourn to Tuesday next.

The VICE PRESIDENT laid before the Senate the general account of the Treasurer of the United States, from October 1st, 1802, to October 1st, 1803; as also his accounts for the War and Navy Departments for the same period; which were read, and ordered to lie for consideration.

On motion, the Senate adjourned.

TUESDAY, December 27.

The Senate assembled, and on motion, adjourned.

WEDNESDAY, December 28.

Mr. JACKSON, from the committee to whom was referred, on the 4th of November last, the inquiry into the expediency of extending the carriage of the mails of the United States in stage or covered wagons, reported a letter to, and answer from, the Postmaster General on that subject; which was read.

Ordered, That three hundred copies thereof be printed for the use of the Senate.

A message from the House of Rrpresentatives informed the Senate that the House insist on their disagreement to the amendments of the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," and agree to the proposed conference on the subject-matter of the disagreeing votes of the two Houses, and have appointed managers on their part.

Mr. FRANKLIN, from the committee to whom was referred, on the 7th of November last, the memorial of Robert Quillin, reported:

"That the petitioner is a pensioner on Government, with an allowance of thirty-three and a third dollars per annum, as set forth in his memorial.

"That his ratio of disability was properly ascertained, and a suitable allowance made at the time of his admission on the pension list of the United States.

"That the committee are of opinion it would be improper to make further provision for any particular cases, and therefore recommend that the petition be rejected."

And the report was adopted.

Ordered, That the petitioner have leave to withdraw his petition and papers.

The amendments reported by the committee to the bill, entitled "An act giving effect to the laws of the United States within the territory ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," was postponed until to-morrow.

THURSDAY, December 29.

Mr. WORTHINGTON presented the petition of John Boggs, sen., and others, residents and purchasers of lands in the State of Ohio, praying for certain alterations in the existing laws of the United States respecting the sale of the public lands; and the petition was read.

Ordered, That it be referred to Mr. TRACY and others, the committee appointed on the 1st day of November last, to whom was referred the petition of John Crouse and others, to consider and report thereon to the Senate.

Mr. BRADLEY, from the managers appointed to confer on the amendments insisted on by the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," reported, that having conferred with the managers appointed on the part of the House of Representatives, they could come to no agreement.

On motion, that the Senate adhere to their amendments, disagreed to by the House of Representatives, to the bill last mentioned, it passed in the affirmative—yeas 17, nays 7, as follows:

YEAS—Messrs. Adams, Anderson, Armstrong, Baldwin, Bradley, Brown, Condit, Ellery, Franklin, Jackson, Maclay, Pickering, Potter, Israel Smith, John Smith, Worthington, and Wright.

NAYS—Messrs. Breckenridge, Cocke, Hillhouse, Olcott, Plumer, Tracy, and Venable.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act giving effect to the laws of the United States within the territory ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and, after progress, the Senate adjourned.

FRIDAY, December 30.

Mr. BRECKENRIDGE, from the committee appointed, on the 5th instant, for that purpose, reported a bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and the bill was read, and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of John Coles;" in which they desire the concurrence of the Senate. They adhere to their disagreement to the amendments of the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned."

The bill brought up for concurrence was read, and ordered to the second reading.

Mr. WORTHINGTON, from the committee to whom was referred, on the 14th instant, the bill, entitled "An act for the relief of the officers of Government, and other citizens, who suffered in their property by the insurgents in the western counties of Pennsylvania," reported the bill with amendments; which were read, and ordered to lie for consideration.

The Senate resumed the consideration of the amendments reported by the committee to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and, after progress.

Ordered, That the consideration thereof be further postponed.

On motion, the Senate adjourned.

MONDAY, January 2, 1804.

The Senate assembled; and, on motion, adjourned.

TUESDAY, January 3.

Mr. TRACY, from the committee to whom was referred, on the 14th of November last, the motion to inquire if any, and what, further proceedings, at present, ought to be had by the Senate respecting the impeachment of John Pickering, made report; which was read.

The bill, entitled "An act for the relief of John Coles," was read the second time, and referred to Messrs. TRACY, SAMUEL SMITH, and ELLERY, to consider and report thereon to the Senate.

Mr. FRANKLIN notified the Senate, that he should to-morrow ask leave to bring in a bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, passed on the 22d day of December, 1803, entitled "An act to authorize the State of Tennessee to perfect titles to lands reserved to this State by the cession act."

The bill erecting Louisiana into two Territories, and providing for the temporary government thereof, was read the second time.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before Congress the annual account of the fund established for defraying the contingent charges of Government. No occasion having arisen for making use of any part of it in the present year, the balance, of eighteen thousand five hundred and sixty dollars, unexpended at the end of the last year, remains now in the Treasury.

DEC. 31, 1803. TH. JEFFERSON.

The Message and account therein referred to were read, and ordered to lie on file.

The Senate resumed the consideration of the amendments reported by the committee to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and, after progress.

Ordered, That the consideration thereof be further postponed.

A message from the House of Representatives informed the Senate that the House have appointed managers on their part to conduct the impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, and have also directed the said managers to carry to the Senate the articles agreed upon by the House of Representatives to be exhibited against the said John Pickering.

On motion, the Senate took into consideration the report of the committee, made this day, on what further proceedings at present ought to be had by the Senate respecting the impeachment of John Pickering; and, on motion, it was agreed that the report be postponed.

On motion, it was

Resolved, That, at 12 o'clock to-morrow, the Senate will resolve itself into a Court of Impeachments, at which time the following oath or affirmation shall be administered by the Secretary to the President of the Senate, and, by him, to each member of the Senate, viz: "I —— solemnly swear (or affirm, as the case may be,) that, in all things appertaining to the trial of the impeachment of John Pickering, judge of the district court of the district of New Hampshire, I will do impartial justice, according to law;" which Court of Impeachments, being thus formed, will, at the time aforesaid, receive the managers appointed by the House of Representatives to exhibit articles of impeachment, in the name of themselves and of all the people of the United States, against John Pickering, judge of the district court for the district of New Hampshire, pursuant to notice given to the Senate this day by the House of Representatives, that they had appointed managers for the purposes aforesaid.

Ordered, That the Secretary lay this resolution before the House of Representatives.

Ordered, That a committee be appointed to search the Journals and report precedents in cases of impeachments; and that Messrs. TRACY, BRADLEY, BALDWIN, WRIGHT, and COCKE, to whom it was referred on the 14th of November last, to consider and report, if any, what further proceedings ought to be had by the Senate, respecting the impeachment of John Pickering, be this committee.

WEDNESDAY, January 4.

Mr. TRACY, from the committee appointed yesterday, to examine precedents, and prepare forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors, reported, in part, that it be,

Resolved, That, after the managers of the impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against John Pickering, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a Court of Impeachments, articles of impeachment against John Pickering, judge of the district court for the district of New Hampshire."

After which the articles shall be exhibited; and then the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

And the report was adopted.

On motion, by Mr. ADAMS, that it be

Resolved, That any Senator of the United States, having previously acted and voted as a member of the House of Representatives, on a question of impeachment, is thereby disqualified to sit and act, in the same case, as a member of the Senate, sitting as a Court of Impeachment:

It was agreed, that this motion should lie for consideration.

Agreeably to the resolution of yesterday, the Senate formed itself into a Court of Impeachments, and proceeded therein as is stated at large in the records of the Court. [See end of Senate Debates, *post*.]

Agreeably to notice given yesterday, Mr. FRANKLIN asked and obtained leave to bring in a bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina; and the bill was read.

Ordered, That it pass to the second reading, and that it be printed, together with the act to which it refers, for the use of the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of the Military Establishment of the United States in the year 1804," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. ISRAEL SMITH presented the memorial of the Washington Building Company, signed Daniel C. Brent, and others, their committee, praying Legislative sanction and an act of incorporation; and the petition was read, and referred to Messrs. ISRAEL SMITH, SAMUEL SMITH, and ARMSTRONG, to consider and report thereon to the Senate.

THURSDAY, January 5.

After proceeding as the High Court of Impeachments, as is stated in the record, and the Court being adjourned,

Mr. ADAMS presented the petition of Constant Freeman, a native of the State of Massachusetts, and at the commencement of the Revolutionary war a resident in Canada, stating that, from early attachment to the cause of his country, he was obliged to leave that province, and having been long employed in public service, he prays to be entitled to the provisions of the acts passed the 7th of April, 1798, and the 18th of February, 1801, for the relief of the Nova Scotia and Canadian refugees; and the petition was read.

Ordered, That it be referred to the committee appointed on the 27th of October last, on the petition of Martha Seamans and others, to consider and report thereon to the Senate.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States in the year 1804," was read the second time, and referred to Messrs. BRADLEY, DAYTON, and JACKSON, to consider and report thereon to the Senate.

The bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina was read the second time, and referred to Messrs. FRANKLIN, BALDWIN, COCKE, VENABLE, and ANDERSON, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1804," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act giving effect to the laws of the United States, within the territories ceded to the United States, by the treaty of the 30th of April, 1803, between

the United States and the French Republic, and for other purposes;" and having in part adopted the amendments,

On motion to strike out of the first section of the bill, after the words "United States," in the second instance, the following words:

"Heretofore enacted not locally inapplicable, and now in force, and all the laws of the United States which may hereafter be enacted, shall have the like force and effect in the territories ceded to the United States by the treaty of the thirtieth day of April last, between the United States and the French Republic, which they have, or may have, in the United States, unless otherwise specially provided for."

It passed in the affirmative—yeas 18, nays 8, as follows:

YEAS—Messrs. Adams, Anderson, Bailey, Baldwin, Bradley, Brown, Condit, Dayton, Ellery, Hillhouse, Jackson, Olcott, Pickering, Plumer, Potter, John Smith, Venable, and Wells.

NAYS—Messrs. Armstrong, Breckenridge, Cocke, Franklin, Maclay, Israel Smith, Samuel Smith, and Worthington.

On motion that the bill be recommitted, it passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Adams, Anderson, Dayton, Hillhouse, Jackson, Olcott, Pickering, Plumer, Tracy, Venable, and Wells.

NAYS—Messrs. Armstrong, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Maclay, Potter, Israel Smith, John Smith, Samuel Smith, and Worthington.

A motion was made to insert, in the first section, after the word "States," in the second instance, in lieu of the words stricken out, the following:

"Which relate to the imposing and the collection of duties on the importation of goods, wares, and merchandise, and on the tonnage of ships and vessels, shall have the same force and effect in the territories ceded to the United States, by the treaty of the thirtieth of April last, between the United States and the French Republic, which the said laws now have within the United States."

And on motion, the Senate adjourned.

FRIDAY, January 6.

The bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year 1804," was read the second time, and referred to Messrs. NICHOLAS, DAYTON, and TRACY, to consider and report thereon to the Senate.

The Senate resumed the consideration of the amendments to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and,

Ordered, That the bill, together with the amendments, be recommitted, and that Messrs. BRECKENRIDGE, DAYTON, SAMUEL SMITH, ANDERSON, and JACKSON, be the committee, further to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act for the relief of the officers of Government and other citizens, who have suffered in their property by the insurgents in the western counties of Pennsylvania:" and, on motion, it was agreed that the bill and amendments be recommitted to the original committee, further to consider and report thereon to the Senate.

MONDAY, January 9.

Mr. TRACY, from the committee to whom was referred, on the 3d instant, the bill, entitled "An act for the relief of John Coles," reported the bill without amendment.

Mr. BRADLEY, from the committee to whom was referred, on the 23d of December last, the bill, entitled "An act to incorporate the Directors of the Columbian Library Company," reported the bill with an amendment; which was read and ordered to lie for consideration.

Mr. S. SMITH, from the committee to whom was recommitted, on the 22d of December last, the bill in addition to the act, entitled "An act for the punishment of certain crimes against the United States," reported the bill with amendments; which were read and ordered to lie for consideration.

After proceedings as the High Court of Impeachments, the Senate adjourned.

TUESDAY, January 10.

The Senate took into consideration the amendments reported to the bill in addition to the act, entitled "An act for the punishment of certain crimes against the United States;" and having agreed to further amendments, they were adopted; and the bill was ordered to the third reading as amended.

Ordered, That the bill erecting Louisiana into two Territories, and providing for the temporary government thereof, be the order of the day for Thursday next.

The Senate took into consideration the amendment reported to the bill, entitled "An act to incorporate the Directors of the Columbian Library Company;" and the amendment was adopted.

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act for the relief of John Coles."

Ordered, That it pass to the third reading.

A motion was made by Mr. ADAMS, that the following resolutions be adopted, to wit:

Resolved, That the people of the United States have never, in any manner, delegated to this Senate the power of giving its Legislative concurrence to any act for imposing taxes upon the inhabitants of Louisiana without their consent.

Resolved, That, by concurring in any act of Legislation for imposing taxes upon the inhabitants of Louisiana without their consent, this Senate would assume a power unwarranted by the Constitution, and dangerous to the liberties of the people of the United States.

Resolved, That the power of originating bills for raising revenue, being exclusively vested in the House of Representatives, these resolutions be carried to them by the Secretary of the Senate: that, whenever they think proper, they may adopt such measures as to their wisdom may appear necessary and expedient for raising and collecting a revenue from Louisiana.

And it was agreed that the question should be taken on the resolutions separately; and, on the question to adopt the first resolution, it passed in the negative—yeas 4, nays 22, as follows:

YEAS—Messrs. Adams, Olcott, Tracy, and White.

NAYS—Messrs. Anderson, Bailey, Baldwin, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Plumer, Potter, I. Smith, John Smith, S. Smith, Stone, Venable, and Worthington.

On the question to adopt the second resolution, it passed in the negative—yeas 4, nays 22, as follows:

YEAS—Messrs. Adams, Olcott, Tracy, and White.

NAYS—Messrs. Anderson, Bailey, Baldwin, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Plumer, Potter, I. Smith, J. Smith, S. Smith, Stone, Venable, and Worthington.

And on the question to adopt the third and last resolution, it was determined unanimously in the negative—nays 26, as follows:

Messrs. Adams, Anderson, Bailey, Baldwin, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Plumer, Potter, I. Smith, J. Smith, S. Smith, Stone, Tracy, Venable, White, and Worthington.

Mr. BRECKENRIDGE, from the committee to whom were recommitted, on the 6th instant, the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," together with the amendments thereto, reported further amendments; which were read and ordered to lie for consideration.

After proceedings as the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, January 11.

The bill in addition to the act entitled "An act for the punishment of certain crimes against the United States," was read the third time.

On motion to strike out of the bill the following words: "and shall suffer death:"

It passed in the negative—yeas 7, nays 22, as follows:

YEAS—Messrs. Bradley, Ellery, Logan, Maclay, Potter, I. Smith, and Worthington.

NAYS—Messrs. Adams, Armstrong, Bailey, Baldwin, Brown, Cocke, Condit, Dayton, Franklin, Hillhouse, Jackson, Nicholas, Olcott, Pickering, Plumer, J. Smith, S. Smith, Stone, Tracy, and White.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act in addition to an act, entitled 'An act for the punishment of certain crimes against the United States."

After proceedings as the High Court of Impeachments, the Senate adjourned.

THURSDAY, January 12.

Mr. TRACY, from the committee to whom was referred, on the 23d of December last, the bill, entitled "An act for the relief of Paul Coulon," reported it without amendment.

The bill, entitled "An act for the relief of John Coles," was read the third time and passed.

The bill, entitled "An act to incorporate the Directors of the Columbian Library Company," was read the third time.

Resolved, That this bill pass with an amendment.

After proceedings as the High Court of Impeachments, the Senate adjourned.

FRIDAY, January 13.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The Director of the Mint having made to me his report of the transactions of the Mint for the year 1803, I now lay the same before you for your information.

TH. JEFFERSON.

JANUARY 13, 1804.

The Message and report therein referred to were read, and ordered to lie for consideration.

Mr. TRACY, from the committee to whom was referred, on the 12th of December last, a motion respecting the rule of the Senate in the case of reconsideration of bills, resolutions, or amendments, made report; which report was read, and ordered to lie for consideration.

Mr. WORTHINGTON, from the committee to whom was recommitted, on the 6th instant, the bill, entitled "An act for the relief of the officers of Government and other citizens who suffered in their property by the insurgents in the western counties of Pennsylvania," together with the amendments thereon, reported the bill with further amendment; which was read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Paul Coulon;" and

Ordered, That it pass to a third reading.

The Senate took into consideration the amendments reported by the committee to whom was recommitted the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes."

On the question to adopt the first section of the bill, amended as follows:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the same duties which by law now are, or hereafter may be, laid on goods, wares, and merchandise, imported into the United States, on the tonnage of vessels, and on the passports and clearances of vessels, shall be laid and collected on goods, wares,

and merchandise, imported into the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic; and on vessels arriving in or departing from the said territories; and the following acts, that is to say, the act, entitled

An act to establish the Treasury Department;

An act concerning the registering and recording of ships and vessels;

An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries;

An act to regulate the collection of duties on imports and tonnage;

An act to establish the compensations of the officers employed in the collection of the duties on imports and tonnage, and for other purposes;

An act for the more effectual recovery of debts due from individuals to the United States;

An act to provide more effectually for the settlement of accounts between the United States and receivers of public money;

An act to authorize the sale and conveyance of lands in certain cases, by the marshals of the United States, and to confirm former sales; and

An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities, accruing in certain cases therein mentioned; or so much of the said acts as is now in force, and also so much of any other act or acts of the United States as is now in force, or may be hereafter enacted, for laying any duties on imports, tonnage, seamen, or shipping, for regulating and securing the collection of the same; and for regulating the compensations of the officers employed in the collection of the same; for granting and regulating drawbacks, bounties, and allowances, in lieu of drawbacks; concerning the registering, recording, enrolling, and licensing, of ships and vessels; to provide for the settlement of accounts between the United States and individuals; for the recovery of debts due to the United States; and for remitting forfeitures, penalties, and disabilities; shall extend to and have full force and effect in the above-mentioned territories.

It passed in the affirmative—yeas 21, nays 8, as follows;

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Venable, and Worthington.

NAYS—Messrs. Adams, Olcott, and Plumer.

And the bill having been further amended, conformably to the report of the committee,

Ordered, That it pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha;" in which they desire the concurrence of the Senate.

The bill brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and after progress therein, and proceedings as the High Court of Impeachments, the Senate adjourned.

SATURDAY, January 14.

Mr. SAMUEL SMITH from the committee appointed on the 12th of December last, on the subject, having obtained leave, reported a bill further to protect the seamen of the United States; and the bill was read, and ordered to the second reading.

Mr. SAMUEL SMITH presented the petition of certain aliens, inhabitants of the city of Baltimore, praying the repeal or amendment of the first section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" and the petition was read.

The bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," was read the second time, and referred to Messrs. S. SMITH, DAYTON, and JACKSON, to consider and report thereon to the Senate.

The bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," was read the third time.

On motion, it was agreed further to amend the bill by striking out the words "or Natchez," in the fourth line of fourth section; and the blank in the twelfth section was filled with the word "thirty." It was also agreed to amend the title by striking out the words, "giving effect to the laws of the United States," and inserting in lieu thereof the words, "for laying and collecting duties on imports and tonnage."

On the question to agree to the final passage of the bill as amended, it was determined in the affirmative—yeas 21, nays 3, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Israel Smith, John Smith, Samuel Smith, Stone, Venable, and Worthington.

NAYS—Messrs. Adams, Plumer, and Wells.

So it was *Resolved*, That this bill pass with amendments.

MONDAY, January 16.

The VICE PRESIDENT communicated a letter of this date from the Hon. THEODORUS BAILEY, resigning his seat in the Senate; which was read, and

Ordered, That the VICE PRESIDENT be requested to notify the Executive of the State of New York accordingly.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 14th instant, the bill entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," reported it with an amendment; which was read and adopted.

Ordered, That the bill pass to the third reading as amended.

Mr. JACKSON presented the petition of Charles Goodwin and others, inhabitants of the district of Barnwell and Edgefield, in the State of South

Carolina, praying the establishment of a post office at the court-house within the said district, and another between the court-house and Campbleton, for reasons therein mentioned; and the petition was read, and ordered to lie for consideration.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In execution of the act of the present session of Congress, for taking possession of Louisiana, as ceded to us by France, and for the temporary government thereof, Governor Claiborne, of the Mississippi Territory, and General Wilkinson, were appointed Commissioners to receive possession. They proceeded with such regular troops as had been assembled at Fort Adams, from the nearest posts, and with some militia of the Mississippi Territory, to New Orleans. To be prepared for anything unexpected which might arise out of the transaction, a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky, and Tennessee, and a part of those of Tennessee was moved on to the Natchez. No occasion, however, arose for their services. Our Commissioners, on their arrival at New Orleans, found the province already delivered by the Commissioners of Spain to that of France, who delivered it over to them on the 20th day of December, as appears by their declaratory act accompanying this. Governor Claiborne being duly invested with the powers heretofore exercised by the Governor and Intendant of Louisiana, assumed the government on the same day, and, for the maintenance of law and order, immediately issued the proclamation and address now communicated.

On this important acquisition, so favorable to the immediate interests of our western citizens, so auspicious to the peace and security of the nation in general, which adds to our country territories so extensive and fertile, and to our citizens new brethren to partake of the blessings of freedom and self-government, I offer to Congress and our country my sincere congratulations. TH. JEFFERSON.

JANUARY 16, 1804.

The Message and papers therein referred to were read.

Ordered, That they lie for consideration, and that three hundred copies thereof be printed for the use of the Senate.

Mr. SAMUEL SMITH notified the Senate that he would to-morrow ask leave to bring in a bill in relation to the Navy pension fund.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof.

On motion to amend the fourth section of the bill, by inserting the following words at the end thereof:

"The Legislative Council, a majority of the whole number concurring therein, shall have power to elect, by ballot, a delegate to Congress, who shall have a seat in the House of Representatives, and shall have the right of debating, but not of voting."

It passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Ellery, Logan, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Venable, and Worthington.

NAYS—Messrs. Adams, Armstrong, Baldwin, Bradley, Brown, Condit, Dayton, Franklin, Hillhouse, Jackson, Maclay, Olcott, Pickering, Plumer, Stone, Tracy, Wells, and White.

On motion to strike out the fourth section of the bill, as follows:

"SEC. 4. The Legislative powers shall be vested in the Governor, and in twenty-four of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be selected annually by the Governor from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory, or the United States. The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal, the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution of the United States, with the laws of Congress, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, declarations, or worship; in all which he shall be free to maintain his own, and not be burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall, from time to time, report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene, prorogue, and dissolve the Legislative Council whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions, of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States:"

It passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Adams, Anderson, Cocke, Hillhouse, Olcott, Plumer, Stone, Tracy, Venable, Wells, White, and Worthington.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, and Samuel Smith.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, January 17.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 16th of December last, the bill to declare the law in the case of saltpetre imported into the United States, and thereby to revive the act making further provision for the payment of the debts of the United States, as far as the same respects saltpetre, reported the bill with amendments; which were read, and ordered to lie for consideration.

Agreeably to notice given yesterday, Mr. S. SMITH asked and obtained leave to bring in a bill

in relation to the Navy pension fund; and the bill was read, and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States;" and a bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick;" in which bills they desire the concurrence of the Senate.

The two bills brought up for concurrence were read, and ordered to the second reading.

Mr. BRADLEY, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804," reported the bill with amendments; which were read, and ordered to lie for consideration.

Mr. FRANKLIN presented the petition of Thomas Dillon, addressed to the Legislature of the State of North Carolina, together with a resolution of the Legislature of the said State, representing that he, the said Dillon, is the holder of a grant from the State of North Carolina for lands within the State of Tennessee, guarantied by the United States, but that he is prevented by the laws of the United States from obtaining possession of those lands, as being within the present acknowledged Indian territories, and praying the State of North Carolina to interpose for his relief; and the memorial, together with the resolution thereon, were read.

Ordered, That they be printed for the use of the Senate.

The bill further to protect the seamen of the United States was read the second time.

The bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," was read the third time.

Resolved, That this bill pass with an amendment.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and on the question to amend the following clause of the fifth section:

"In all criminal prosecutions which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage," by striking out the words "which are capital."

It passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Adams, Anderson, Cocke, Logan, Maclay, Plumer, Stone, Tracy, Wells, White, and Worthington.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Condit, Dayton, Ellery, Franklin, Jackson, Nicholas, Olcott, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, and Venable.

And after progress, on motion.

Ordered, That the consideration of this bill be further postponed.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, January 18.

The bill in relation to the Navy pension fund was read the second time, and referred to Messrs. SAMUEL SMITH, ELLERY, and BALDWIN, to consider and report thereon to the Senate.

The bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick," was read the second time, and referred to Messrs. BALDWIN, SAMUEL SMITH, and ADAMS, to consider and report thereon to the Senate.

The bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States,'" was read the second time, and referred to Messrs. ARMSTRONG, BROWN, and NICHOLAS, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and sundry amendments thereto were moved for and read. Whereupon, it was agreed that the several amendments be printed, and that the consideration of the bill be further postponed.

On motion.

"That a committee be appointed to inquire whether any, and what amendments are necessary to the acts for recording of ships and vessels of the United States:"

Ordered, That this motion lie for consideration.

The Senate took into consideration the amendments reported by the committee to whom was recommitted the bill, entitled "An act for the relief of the officers of Government, and other citizens, who have suffered in their property by the insurgents in the western counties of Pennsylvania;" and

Ordered, That the consideration thereof be further postponed until to-morrow.

The Senate took into consideration the amendments reported to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804;" and having agreed thereto,

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the second reading of the bill further to protect the seamen of the United States; and, after debate,

Ordered, That the consideration thereof be postponed.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

THURSDAY, January 19.

The Senate took into consideration the motion made yesterday, that a committee be appointed to inquire whether any, and what, amendments are necessary to the acts for recording of ships and vessels of the United States; and agreed thereto; and

Ordered, That Messrs. SAMUEL SMITH, ELLERY, and PICKERING, be the committee to consider and report thereon to the Senate.

The bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804," was read the third time as amended.

Resolved, That this bill pass with amendments.

The Senate took into consideration the amendments reported by the committee to "the bill to declare the law in the case of saltpetre imported into the United States, and thereby to revive the act making further provision for the payment of the debts of the United States, as far as the same respects saltpetre;" and having agreed thereto,

Ordered, That the bill pass to the third reading, as amended.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act for the relief of the officers of Government, and other citizens, who have suffered in their property by the insurgents in the western counties of Pennsylvania;" and,

Resolved, That the further consideration of this bill be postponed until the first Monday in December next.

The Senate resumed the second reading of the bill to protect the seamen of the United States; and, after debate,

Ordered, That the consideration thereof be postponed until Tuesday next.

The Senate took into consideration the petition of Thomas Dillon, together with the resolution of the Legislature of the State of North Carolina thereon; and

Ordered, That they be referred to the committee appointed on the 5th instant, on the bill declaring the assent of Congress to the act of the General Assembly of the State of North Carolina, to consider and report thereon to the Senate.

After adjournment of the High Court of Impeachments, the Senate adjourned.

FRIDAY, January 20.

The bill, entitled "An act for the relief of Paul Coulon," was read the third time and passed.

The bill to "declare the law in the case of saltpetre imported into the United States, and thereby to revive the act making further provision for the payment of the debts of the United States, as far as the same respects saltpetre," was read the third time; and, on the question to agree to the bill as amended, it passed in the negative.

Mr. NICHOLAS, from the committee to whom was referred, on the 6th instant, the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year 1804," reported it without amendment.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

MONDAY, January 23.

The VICE PRESIDENT being absent on account of the ill state of his health, the Senate proceeded to the election of a President *pro tempore*, as the Constitution provides; and the ballots having been collected and counted, a majority thereof was for the honorable JOHN BROWN, who was accordingly elected President of the Senate *pro tempore*.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the Vice President, elected the honorable JOHN BROWN, their President, *pro tempore*. And that the Secretary make a like communication to the House of Representatives.

Mr. WORTHINGTON presented the petition of Christian Van Gundy, an early settler in the Territory of the United States Northwest of the river Ohio, praying the pre-emption of a lot of which he hath long been in possession, and hath erected a mill, and made other improvements thereon; and the petition was read.

Ordered, That it be referred to the committee appointed on the first of November last, on the petition of John Crouse, and others, to consider and report thereon to the Senate.

Mr. LOGAN presented the memorial of the American convention for promoting the abolition of slavery, and improving the condition of the African race, signed Matthew Franklin, president, praying that such laws may be enacted as shall prohibit the introduction of slaves into the Territory of Louisiana, lately ceded to the United States; and the petition was read.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and, after progress, and the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, January 24.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the better direction of the collectors of the respective ports of the United States in granting to seamen certificates of citizenship;" in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and, on motion to strike out of the fourth section, from the word "annually," line fourth, to the words "United States," line seventh, the words, "by the Governor, from among those holding real estate therein, and who shall have resided one year, at least, in the said Territory, and hold no office of profit under the Territory or the United States," for the purpose of inserting the words following:

"The Governor shall lay off and divide the territory aforesaid into twenty-four convenient districts, from each of which districts there shall be chosen, annually, by the housekeepers resident therein, two of the most fit and discreet persons, who shall also be residents therein and landholders, and holding no office of profit under the territorial government, or that of the United States, and make a return of their names to the Governor, out of which number the Governor shall select twenty-four, to wit, one from each district. But if any of the districts should refuse or neglect to make such appointment for one month after the time appointed by the Governor for making the said elections, he shall

then have the power of selecting from each district, so refusing or neglecting, one fit person for the purposes aforesaid."

On this, a division of the question was called for, and that it be taken on striking out.

Whereupon, the yeas and nays being required by one fifth of the Senators present, on striking out, it passed in the negative—yeas 15, nays 14, as follows:

YEAS—Messrs. Adams, Anderson, Breckenridge, Cocke, Condit, Hillhouse, Logan, Maclay, Plumer, John Smith, Stone, Tracy, Venable, and Worthington.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Brown, Dayton, Ellery, Franklin, Jackson, Nicholas, Olcott, Pickering, Potter, Israel Smith, and Samuel Smith.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate, and of the House of Representatives:

I communicate herewith, for your information, a letter just received from Governor Claiborne, which may throw light on the subject of the government of Louisiana, under contemplation of the Legislature. The paper being original, its return is asked.

TH. JEFFERSON.

JANUARY 24, 1804.

The Message and paper were read, and ordered to lie for consideration.

WEDNESDAY, January 25.

Mr. JACKSON presented the petition of Moses Young, praying compensation for services rendered as Consul General of the United States at Madrid; and also as Secretary of Legation to the late Henry Laurens, Esq., on an embassy to Holland, as stated in his petition at a former session; and the petition was read, and referred to the Secretary for the Department of State, to consider the merits of the same, and report thereon to the Senate.

The bill, yesterday sent up for concurrence, entitled "An act for the better direction of the collectors of the respective ports of the United States, in granting to seamen certificates of citizenship," was read, and ordered to the second reading.

Mr. BALDWIN, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick, reported it without amendment.

On motion, it was agreed that the consideration of this bill be the order of the day for Monday next.

The Senate resumed the second reading of the bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1804," and

Ordered, That it pass to the third reading.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 18th instant, the bill in relation to the Navy pension fund, reported it without amendment.

Ordered, That the further consideration of this bill be the order of the day for Monday next.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and, after debate, the Senate adjourned.

THURSDAY, January 26.

The bill, entitled "An act for the better direction of the collectors of the respective ports of the United States, in granting to seamen certificates of citizenship," was read the second time, and referred to Messrs. JACKSON, ARMSTRONG, and MACLAY, to consider and report thereon to the Senate.

The bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year 1804," was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House disagree to the amendments of the Senate to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804."

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to amend the bill, by inserting the following as section eighth:

"That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves; and every person so offending, and being thereof convicted, before any court within the said Territory, having competent jurisdiction, shall forfeit and pay, for each and every slave so imported or brought, the sum of —— dollars, one moiety for the use of the United States, and the other moiety for the use of the person who shall sue for the same; and every slave so imported or brought shall thereupon become entitled to, and receive his or her freedom."

Whereupon, a motion was made to amend the amendment by striking out, after the words "port or place," the words "without the limits of the United States," and insert in lieu thereof, "for sale."

A division of the question was called for, and that it be taken on striking out; and, on the question, Shall the words be struck out? it passed in the negative—yeas 6, nays 22, as follows:

YEAS—Messrs. Baldwin, Bradley, Ellery, Jackson, Israel Smith, and Samuel Smith.

NAYS—Messrs. Adams, Anderson, Armstrong, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, John Smith, Stone, Venable, Wells, White, and Worthington.

On motion to agree to the original amendment, it passed in the affirmative—yeas 21, nays 6, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, John Smith, Stone, Venable, Wells, White, and Worthington.

NAYS—Messrs. Adams, Baldwin, Bradley, Ellery, Jackson, and Israel Smith.

FRIDAY, January 27.

Mr. NICHOLAS, from the committee to whom was referred, on the 18th instant, "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States,'" reported it without amendment.

Mr. FRANKLIN, from the committee to whom was referred, on the 5th instant, the bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, reported the bill without amendment.

The Senate took into consideration their amendments disagreed to by the House of Representatives to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804; and,

Ordered, That the consideration thereof be postponed.

MONDAY, January 30.

The Senate resumed the consideration of their amendments disagreed to by the House of Representatives to the bill, entitled "An act making appropriations for the Military Establishment of the United States during the year 1804;" and,

Resolved, That they ask a conference thereon, and that Messrs. JACKSON and BRADLEY be managers at the same, on the part of the Senate.

Agreeably to the order of the day, the Senate resumed the consideration of the bill in relation to the Navy pension fund; and having amended the bill,

Ordered, That it pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House agree to some, and disagree to other, amendments of the Senate, to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes."

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to amend the bill, by adding the following to the new section, adopted as section eighth:

"*And be it further enacted*, That no male person brought into said Territory of Louisiana, from any parts of the United States or Territories thereof, or from any province or colony of America belonging to any foreign Prince or State, after the —— day of —— next, ought or can be holden by law to serve for more than the term of one year, any person as a servant, slave, or apprentice, after he attains the age of twenty-one years; nor female in like manner, after she attains the age of eighteen years, unless they are bound by their own voluntary act, after they arrive to such age, or bound by law for the payment of debts, damages, fines, or costs: *Provided*, That no person held to service or labor in either of the States or Territories aforesaid, under the laws thereof, escaping into said Territory of Louisiana, shall, by anything contained herein, be discharged from such service or labor, but shall be delivered up in the manner prescribed by law."

It passed in the negative—yeas 11, nays 17, as follows:

YEAS—Messrs. Bradley, Brown, Ellery, Hillhouse, Logan, Olcott, Plumer, Potter, Israel Smith, Wells, and Worthington.

NAYS—Messrs. Adams, Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Condit, Dayton, Franklin, Jackson, Maclay, Nicholas, Pickering, John Smith, Samuel Smith, Venable, and White.

A motion was made to amend the bill, by adding to the end of section eighth, last adopted, the following:

"That it shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or cause to, or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves, which shall have been imported since the —— day of —— into any port or place within the limits of the United States, from any port or place without the limits of the United States; and every person so offending and being thereof convicted, before any court within the said Territory having competent jurisdiction, shall forfeit and pay, for each and every such slave so imported or brought, the sum of —— dollars; one moiety for the use of the person or persons who shall sue for the same. And no slave or slaves shall directly or indirectly be introduced into said Territory, except by a person or persons removing into said territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to and receive his or her freedom."

And a division was called for, and that the question be taken on the first proposition, ending with the words, "sue for the same:" and, on the question to agree to this first division of the amendment it passed in the affirmative—yeas 21, nays 7, as follows:

YEAS—Messrs. Anderson, Armstrong, Bradley, Breckenridge, Brown, Cocke, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, I. Smith, John Smith, Venable, Wells, White, and Worthington.

NAYS—Messrs. Adams, Baldwin, Condit, Dayton, Ellery, Jackson, and Samuel Smith.

A motion was made to strike out all that follows the word "and," in the second division of the amendment, for the purpose of a further amendment; and, after debate, the consideration of the subject was postponed.

A message from the House of Representatives informed the Senate that the House agree to the conference desired by the Senate on the amendments of the Senate to the bill, entitled "An act making appropriations for the Military Establish-

ment of the United States during the year 1804," and have appointed managers on their part.

After the adjournment of the High Court of Impeachments to 12 o'clock to-morrow, the Senate adjourned.

TUESDAY, January 31.

The Senate took into consideration their amendments, disagreed to by the House of Representatives to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes." Whereupon,

Resolved, That they do insist on their amendments disagreed to, ask a conference thereon, and that Messrs. BRECKENRIDGE, DAYTON, and ANDERSON, be the managers at the same on the part of the Senate.

The bill in relation to the Navy pension fund was read the third time, and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to an act, entitled 'An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;" in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and a motion was made to strike out the last division of the amendment proposed yesterday, to wit:

"And no slave or slaves shall, directly or indirectly, be introduced into said Territory except by a person or persons removing into said Territory for actual settlement, and being, at the time of such removal, *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall, thereupon, be entitled to, and receive, his or her freedom;" and to insert the following:

"No slave shall be admitted into the said Territory from the United States or their territories, who shall not be the property of some person *bona fide* removing from the United States into the said Territory, and making an actual settlement therein, or who shall not have passed by descent or devise to the person or persons claiming the same, and residing within the said Territory, from some person or persons deceased in some one of the United States or their territories; and every slave who shall be brought into said Territory, otherwise than is hereby permitted, shall be forfeited, and may be recovered by any person who shall sue for the same; and the person or persons offending herein shall moreover forfeit and pay —— dollars for every slave so brought in, to be recovered by action of debt in any court having jurisdiction thereof; one moiety to the use of the United States, and the other moiety to the use of the person who shall sue for the same. And in any action instituted for the recovery of the penalty aforesaid, the person or persons sued may be held to special bail:"

And a division of the question was called for, and that it be taken on striking out; and, on the question, shall the words be stricken out? It passed in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Condit, Jackson, Nicholas, John Smith, Samuel Smith, Stone, Venable, and Wells.

NAYS—Messrs. Adams, Bradley, Brown, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Pickering, Plumer, Potter, Israel Smith, Worthington, and Wright.

WEDNESDAY, February 1.

The bill yesterday brought up from the House of Representatives for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and on motion, to agree to the last division of the amendment proposed on the 30th ultimo, amended as follows:

"And no slave or slaves shall, directly or indirectly, be introduced into the said Territory except by a citizen of the United States, removing into said Territory for actual settlement, and being, at the time of such removal, *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive, his or her freedom:"

It passed in the affirmative—yeas 18, nays 11, as follows:

YEAS—Messrs. Armstrong, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Hillhouse, Logan, Maclay, Olcott, Plumer, Potter, S. Smith, Wells, White, Worthington, and Wright.

NAYS—Messrs. Adams, Anderson, Baldwin, Dayton, Ellery, Jackson, Nicholas, Pickering, J. Smith, Stone, and Venable.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

THURSDAY, February 2.

Mr. JACKSON, from the committee to whom was referred, on the 26th of January last, the bill, entitled "An act for the better direction of the collectors of the respective ports of the United States, in granting seamen certificates of citizenship," reported it without amendment.

The bill, entitled "An act supplementary to an act, entitled 'An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read the second time and referred to Messrs. ANDERSON, STONE, and WRIGHT, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House agree to the conference proposed by the Senate on their amendments to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," and have appointed managers on their part. They have passed a bill entited "An act continuing for a limited time the salaries of the officers of Government therein mentioned;" in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on motion, to strike out the eighth section of the original bill, amended as follows:

"SEC. 8. The residue of the province of Louisiana, ceded to the United States, shall remain under the same name and form of government as heretofore, save only that the executive and judicial powers exercised by the former Government of the province shall now be transferred to a Governor, to be appointed by the President of the United States: and that the powers exercised by the Commandant of a post or district shall be hereafter vested in a civil officer, to be appointed by the President in the recess of the Senate, but to be nominated at the next meeting thereof for their advice and consent; under the orders of which Commandant the officers, troops, and militia, of his station, shall be; who, in cases where the military have been used, under the laws heretofore existing, shall act by written orders and not in person; and the salary of the said officers, respectively, shall not exceed the rate of —— dollars per annum. The President of the United States, however, may unite the districts of two or more Commandants of posts into one, where their proximity or ease of intercourse will permit without injury to the inhabitants thereof. The Governor shall receive an annual salary of —— dollars, payable quarter-yearly at the Treasury of the United States:"

It passed in the affirmative—yeas 16, nays 9, as follows:

YEAS—Messrs. Adams, Anderson, Armstrong, Breckenridge, Cocke, Condit, Franklin, Hillhouse, Maclay, Olcott, Pickering, Plumer, J. Smith, Stone, Venable, and Worthington.

NAYS—Messrs. Baldwin, Brown, Dayton Ellery, Jackson, Nicholas, Potter, S. Smith, and Wright.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

FRIDAY, February 3.

The bill yesterday brought up from the House of Representatives for concurrence, entitled "An act continuing for a limited time the salaries of the officers of Government therein mentioned," was read, and, by unanimous consent, the rule was dispensed with and the bill was read the second time.

Ordered, That it be referred to Messrs. BRADLEY, BALDWIN, and JACKSON, to consider and report thereon to the Senate.

Mr. WRIGHT presented the memorial of John Hoskins Stone, late a Colonel of the first Maryland regiment, in the service of the United States in the Revolutionary war, in which he was wounded and rendered incapable of bodily exertions; and praying to be allowed the compensation of five years whole pay, in lieu of ten years half pay, together with the bounties in land to which his rank in the army entitle him, and such other emoluments as have been granted to officers in similar circumstances; and the memorial was read, and referred to Messrs. WRIGHT, ARMSTRONG, and ADAMS, to consider and report thereon to the Senate.

Ordered, That the petition of Elijah Brainard, presented on the 29th of November last, be referred to the same committee, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House agree to the amendment of the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirbeha," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendment to their amendment to the bill last mentioned, and it was referred to Messrs. BRECKENRIDGE, STONE, and S. SMITH, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and, after progress, the Senate adjourned.

MONDAY, February 6.

THOMAS SUMTER, from the State of South Carolina, attended on the 4th instant, and took his seat this day in Senate.

Mr. TRACY presented the petition of Oliver Pollock, praying the final liquidation and settlement of claims grounded on his services, sufferings, and advances, as a public agent of the United States, during the Revolutionary war with Great Britain; and the petition was read and referred to Messrs. TRACY, FRANKLIN, and BALDWIN, to consider and report thereon to the Senate.

Agreeably to leave obtained on the 14th of December last, Mr. WORTHINGTON brought in a bill to ascertain the boundary of the lands reserved by the State of Virginia, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands; and the bill was read.

Ordered, That it pass to the second reading.

The PRESIDENT communicated the report of the Commisioners of the Sinking Fund, stating that the measures which have been authorized by the board, subsequent, to their report of the 5th of February, 1803, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to the board, dated the 3d day of the present month, and in the statements therein referred to, and now transmitted; and praying that they be received as part of this report; and the documents were read, and ordered to lie for consideration.

Ordered, That the consideration of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof, be postponed until to-morrow.

The Senate resumed the second reading of the bill, declaring the assent of Congress to "An act of the General Assembly of the State of North Carolina;" and a motion was made to amend the bill; and, after debate, the further consideration thereof was postponed until to-morrow.

Mr. JACKSON reported, from the managers at the conference, on the bill, entitled "An act ma-

king appropriations for the Military Establishment of the United States, in the year 1804, that they had agreed on a report, that the House of Representatives recede from their disagreement to the amendments of the Senate to the said bill.

The Senate resumed the second reading of the bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick;" and after debate, the Senate adjourned.

TUESDAY, February 7.

The bill to ascertain the boundary of the lands reserved by the State of Virginia for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands, was read the second time, and referred to Messrs. WORTHINGTON, ANDERSON, and TRACY, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House recede from their disagreement to the first and second amendments of the Senate, to the bill, entitled "An act making appropriations for the Military Establishment of the United States in the year 1804;" and insist on their disagreement to the last amendment to the said bill. They recede from their disagreement to the seventeenth amendment of the Senate to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and agree thereto. They recede, in part, from their disagreement to the first and thirteenth amendments to the said bill, and agree thereto under the modifications proposed by the joint committee of conference, with a further amendment to the first section, in which they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof, and agreed to sundry amendments; and on motion to agree to a further amendment, as follows:

"SEC. 7. All free male white persons, who are housekeepers, and who shall have resided one year at least in the said Territory, shall be qualified to serve as grand or petit jurors in the courts of the said Territory; and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the judges of the said courts, respectively, shall prescribe, so as to be most conducive to an impartial trial, and to be least burdensome to the inhabitants of the said Territory"—

A motion was made to strike out from the beginning, to the words "and they," inclusive, for the purpose of inserting, "persons to serve as grand and petit jurors in the courts of the said Territory."

A division of the question was called for, and that it first be taken on striking out; and on the question, Shall these words be struck out? it was passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Adams, Bradley, Brown, Hillhouse, Logan, Olcott, Pickering, Plumer, John Smith, and Stone.

NAYS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Condit, Ellery, Franklin, Jackson, Maclay, Nicholas, Potter, Samuel Smith, Sumter, Venable, Wells, Worthington, and Wright.

On the question to agree to the original motion, it passed in the affirmative—yeas 21, nays 7, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Samuel Smith, Stone, Sumter, Venable, Wells, Worthington, and Wright.

NAYS—Messrs. Adams, Bradley, Hillhouse, Olcott, Pickering, Plumer, and John Smith.

Mr. NICHOLAS gave notice that he should to-morrow, at eleven o'clock, move for a call of the House.

WEDNESDAY, February 8.

Mr. BRECKENRIDGE, from the managers appointed on the part of the Senate, to confer with those of the House of Representatives, on their disagreement to the amendments of the Senate to the bill, entitled "An act giving effect to the laws of the United States, within the territories ceded to the United States by the treaty of the 30th of April 1803, between the United States and the French Republic, and for other purposes," reported that, having attended the conference, the managers had agreed to sundry modifications to the said amendments, which were read and in part adopted; and

The Senate took into consideration the further amendment proposed by the House of Representatives to the modification agreed on by the joint committee of conference; and,

Ordered, That it be postponed until to-morrow.

Mr. MACLAY presented the petition of William T. Smith, now a citizen of the State of Pennsylvania, stating that he was a resident in the island of St. Eustatia, during the Revolutionary war, and shipped for the United States large quantities of woolen goods necessary for public supply; and which he sold for that purpose and received his compensation therefor in loan office certificates, which were mislaid or lost by casualty; and praying that provision may be made by law, that he may be enabled to fund the amount; and the petition was read, and ordered to lie for consideration.

The Senate took into consideration their amendment, disagreed to by the House of Representatives, to the bill, entitled, "An act making appropriations for the Military Establishment of the United States in the year 1804;" and

Resolved, That they do recede therefrom.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and having adopted a further amendment,

Ordered, That the bill, as amended, be printed for the use of the Senate.

The Senate resumed the second reading of the

bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States;'" and

Ordered, That it pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act for the better direction of the collectors of the respective ports of the United States, in granting seamen certificates of citizenship; and on the question to agree to the third reading of this bill it passed in the negative.

So the bill was lost.

The Senate took into consideration the amendment proposed on the sixth instant, to the bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina.

Resolved, That the further consideration of the bill, together with the amendment, be postponed until the first Monday of December next.

THURSDAY, February 9.

Mr. BRADLEY, from the committee to whom was referred, on the third instant, the bill entitled "An act continuing for a limited time the salaries of the officers of the Government therein mentioned," reported the same with an amendment.

The Senate resumed the consideration of the modifications reported by the managers of the conference, on the first amendment of the Senate to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes," together with the resolutions of the House of Representatives on the amendments.

Resolved, That they agree to the amendment proposed by the House of Representatives to their first amendment, in the following words, viz: At the end of the 25th line add "An act to establish a Mint, and regulate the coins of the United States;" "An act regulating foreign coins, and for other purposes; and the acts supplementary to, and amendatory of, the two last mentioned acts." They disagree to the proviso proposed to be added at the end of the same amendment, and they adhere to their first amendment, as above amended.

Resolved, That they so far recede from their other amendments, disagreed to by the House of Representatives, as to agree to the modifications reported by the committee of conference thereon.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and providing for the temporary government thereof; and sundry motions for further amendment having been read,

Ordered, That they lie for consideration.

After the consideration of the Executive business, and the adjournment of the High Court of Impeachments, the Senate adjourned.

FRIDAY, February 10.

Mr. JOHN SMITH presented the petition of Nancy Flinn, of Ohio, stating that her husband was killed by the Indians, while proceeding with a flag to the Indian territories, under the command of Major Truman, in the year 1798, and praying that the same relief may be extended to her orphan children as was provided for those of Major Truman; and the petition was read, and ordered to lie for consideration.

Mr. ADAMS presented the memorial of William A. Barron, a Captain in the Corps of Engineers, in the service of the United States, praying the allowance of his account, amounting to $109 50, for extra services, in executing certain instructions relative to the Corps of Engineers and Military Academy; and the memorial was read.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making temporary provision for the government thereof; and, on motion of Mr. ANDERSON, to amend the bill, by adding the following after the eleventh section:

"As soon as there shall be —— thousand free white male inhabitants, of full age, in the Territory, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect Representatives from their counties or townships, to represent them in the General Assembly: *Provided*, That for every five hundred free, white, male inhabitants there shall be one Representative; and so on progressively with the number of free, white, male inhabitants, shall the right of representation increase, until the number of Representatives shall amount to ——, after which the number and proportion of Representatives shall be regulated by the Legislature: *Provided*, That no person be eligible, or qualified to act, as a Representative, unless he shall have previously resided three years within the limits of the said Territory; and shall likewise hold in his own right, in fee simple, one hundred acres of land, or, in like manner, possess a house and lot in the city of New Orleans: *Provided, also*, That a freehold of fifty acres of land in the Territory, and a residence within its limits for one year previous to its formation, shall be necessary to qualify a man as an Elector or a Representative.

"SEC. —. The Representatives thus elected shall serve for the term of two years; and, in case of the death of a Representative, or removal from office, the Governor shall issue a writ to the county or township for which he is a member, to elect another in his stead, to serve for the residue of the term.

"SEC. —. The General Assembly, or Legislature, shall consist of the Governor, Legislative Council, and a House of Representatives; the Legislative Council shall consist of —— members, to continue in office five years, unless removed by the President, any —— of whom to be a quorum; and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as Representatives shall be elected, the Governor shall appoint a time and place for them to meet together, and when met, they shall nominate —— persons, residents in the Territory, and each possessed of a freehold in —— hundred acres of land, and return their names to the President, —— of whom he shall nominate, and, by and with the advice and consent of the Senate, appoint and commission; and, whenever a vacancy shall happen in the Council, by death, resignation, or removal from office, the House of Representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their

names to the President, one of whom he shall, in manner aforesaid, appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of Council, the said House shall nominate —— persons, qualified as aforesaid, and return their names to the President, —— of whom he shall, in manner aforesaid, appoint and commission to serve as members of Council five years, unless sooner removed. And the Governor, Legislative Council, and House of Representatives, shall have authority to make laws, in all cases, for the good government of the district, not repugnant to, nor inconsistent with, the Constitution and laws of the United States. And all bills, having passed by a majority in the House of Representatives, and by a majority in the Council, shall be referred to the Governor for his assent; but no bill or Legislative act whatever shall be of any force without his consent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly when, in his opinion, it shall be expedient."

And, on the question to agree to this amendment, it passed in the negative—yeas 5, nays 19, as follows:

YEAS—Messrs. Adams, Anderson, Cocke, Condit, and Worthington.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Breckenridge, Brown, Dayton, Ellery, Franklin, Hillhouse, Jackson, Olcott, Pickering, Potter, John Smith, Samuel Smith, Stone, Sumter, Venable, and Wright.

And, having gone through the bill as in Committee of the Whole,

Ordered, That the consideration thereof be further postponed.

On motion,

Ordered, That the Secretary subscribe for one copy of the plan and view of Louisiana, by T. L. Boquet de Woiseri, to be hung up in the Senate Chamber, the subscription money to be defrayed by the Secretary, from the contingent fund of the Senate.

MONDAY, February 13.

Mr. JACKSON gave notice that he should, to-morrow, ask leave to bring in a bill to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on St. Simon's bar.

The Senate resumed the second reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and, on motion to amend the 4th section, by striking out the words "by the Governor, from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory or the United States," for the purpose of inserting:

"The Governor shall lay off the said Territory into twenty-four convenient districts, from each of which the free male householders, residents therein, shall annually elect one discreet person, who shall have resided one year, at least, therein, and who holds no office of profit under the Territory, or the United States. The Governor shall, until the Legislature of the Territory shall otherwise direct, prescribe the time, place, and manner, of holding said elections, and of making the returns thereof; and in case the inhabitants of any of the said districts shall refuse or neglect to make an election, the Governor shall then select from each district one fit person qualified as aforesaid:"

It passed in the negative—yeas 13, nays 13, as follows:

YEAS—Messrs. Adams, Anderson, Breckenridge, Cocke, Condit, Hillhouse, Maclay, Pickering, Plumer, John Smith, Venable, Wells, and Worthington.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Brown, Dayton, Franklin, Jackson, Logan, Nicholas, Potter, Samuel Smith, Sumter, and Wright.

And, having agreed to sundry amendments,

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the consideration of the amendment reported by the committee to the bill, entitled "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned;" and on the question to agree to the amendment, it passed in the negative—yeas 11, nays 16, as follows:

YEAS—Messrs. Anderson, Bradley, Condit, Dayton, Jackson, Maclay, Potter, Israel Smith, John Smith, Wells, and Wright.

NAYS—Messrs. Armstrong, Baldwin, Breckenridge, Brown, Franklin, Hillhouse, Logan, Nicholas, Olcott, Pickering, Plumer, Samuel Smith, Stone, Sumter, Venable, and Worthington.

Ordered, That this bill pass to a third reading.

Mr. SAMUEL SMITH notified the Senate that he would, to-morrow, call up the bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick."

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, February 14.

The Senate resumed the second reading of the bill, entitled "An act to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick;" and, on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina;" a bill, entitled "An act to reduce the Marine Corps of the United States;" a bill, entitled "An act for the relief of Samuel Corp;" also, a resolution for the appointment of a committee to join with such committee as the Senate may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same; in which bills and resolution, respectively, they desire the concurrence of the Senate.

The bill, entitled "An act for the relief of Samuel Corp," was read, and ordered to the second reading.

The bill, entitled "An act to reduce the Marine Corps of the United States," was read. On the question, Shall this bill pass to the second reading? it was determined in the negative. So the bill was lost.

The bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina," was read, and ordered to the second reading.

Agreeably to notice given yesterday, Mr. JACKSON requested and obtained leave to bring in a bill to erect a light-house on the south end of St. Simon's island, in the State of Georgia," and for the placing of a buoy or buoys on St. Simon's bar; and the bill was read, and ordered to a second reading.

WEDNESDAY, February 15.

The bill to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on St. Simon's bar, was read the second time, and referred to Messrs. JACKSON, PICKERING, and BALDWIN, to consider and report thereon to the Senate.

The bill, entitled "An act for the relief of Samuel Corp," was read the second time, and referred to Messrs. SAMUEL SMITH, BRECKENRIDGE, and BALDWIN, to consider and report thereon to the Senate.

The bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina, was read the second time, and referred to Messrs. SUMTER, FRANKLIN, and BALDWIN, to consider and report thereon to the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same; and

Resolved, That they do concur therein, and that Messrs. BRECKENRIDGE, ANDERSON, and NICHOLAS, be the committee on the part of the Senate.

On motion, by Mr. JACKSON, that the Senate do adopt the following resolution:

Resolved, That the Secretary of the Navy be directed to report to this House the present general statement of the receipts and expenditures of the commanding officer of the Marine Corps:

Ordered, That this motion lie for consideration.

Mr. SAMUEL SMITH, from the committee to whom the subject was referred, on the 19th of January last, requested and obtained leave to report a bill relating to the recording, registering and enrolling of ships and vessels in the district of Orleans; and the bill was read, and ordered to the second reading.

Mr. ANDERSON, from the committee to whom was referred, on the 2d instant, the bill, entitled "An act supplementary to an act entitled 'An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," reported sundry amendments thereto; which were read.

Ordered, That they lie for consideration.

The PRESIDENT communicated the report of the Secretary for the Department of War, on the memorial of William A. Barron; made in conformity to the order of the Senate of the 10th instant; and the report was read.

Ordered, That it be referred, together with the petition and papers accompanying it, to Messrs. ADAMS, BRADLEY, and DAYTON, to consider and report thereon to the Senate.

The bill, entitled "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned," was read the third time; and on the question to agree to the final passage of this bill, it was determined in the affirmative, —yeas 20, nays 7, as follows:

YEAS—Messrs Adams, Anderson, Armstrong, Baldwin, Breckenridge, Brown, Cocke, Dayton, Franklin, Logan, Nicholas, Olcott, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Sumter, Venable, and Wright.

NAYS—Messrs. Condit, Ellery, Hillhouse, Maclay, Plumer, Tracy, and Wells.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the appointment of commissioners to explore the routes most eligible for opening certain public roads," in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The Senate proceeded to the third reading of the bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States;" and, sundry amendments having been proposed,

Ordered, That the bill, together with the proposed amendments, be referred to Messrs. BRADLEY, TRACY, ANDERSON, ARMSTRONG, and VENABLE, to consider and report thereon to the Senate.

They proceeded to the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and sundry amendments were adopted; and, on motion, the Senate adjourned.

THURSDAY, February 16.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 15th instant, the bill, entitled "An act for the relief of Samuel Corp," reported it without amendment.

The bill, entitled "An act authorizing the appointment of commissioners to explore the routes most eligible for opening certain public roads," was read the second time, and referred to Messrs. JOHN SMITH, ANDERSON, and BRECKENRIDGE, to consider and report thereon to the Senate.

The bill relating to the recording, registering, and enrolling of ships and vessels in the district of Orleans, was read the second time.

The Senate resumed the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and, having agreed to sundry further amendments, on motion, the Senate adjourned.

FRIDAY, February 17.

The Senate resumed the second reading of the bill relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to amend the charter of Alexandria," in which they desire the concurrence of the Senate.

The Senate resumed the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on motion to amend the bill, by striking out of section 10th, the words:

"And no slave or slaves shall, directly or indirectly, be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves:"

It passed in the negative—yeas 9, nays 19, as follows:

YEAS—Messrs. Anderson, Baldwin, Cocke, Dayton, Nicholas, John Smith, Stone, Venable, and Wright.

NAYS—Messrs. Armstrong, Bradley, Breckenridge, Brown, Condit, Ellery, Franklin, Hillhouse, Jackson, Logan, Maclay, Olcott, Plumer, Potter, Israel Smith, Samuel Smith, Sumter, Wells, and White.

On motion, to expunge from the same section, after the word "slaves," the words "and every slave imported or brought into said Territory, contrary to the provisions of this act, shall thereupon be entitled to and receive his or her freedom:"

It passed in the negative—yeas 11, nays 17, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Dayton, Jackson, Nicholas, Stone, Sumter, and Venable.

NAYS—Messrs. Bradley, Brown, Condit, Ellery, Franklin, Hillhouse, Logan, Maclay, Olcott, Plumer, Potter, Israel Smith, John Smith, Samuel Smith, Wells, White, and Wright.

On motion to insert, in the same section, line 3d, after the word "States," the words "or from any State authorizing the importation of slaves from any foreign port or place:"

It passed in the negative—yeas 8, nays 13, as follows:

YEAS—Messrs. Brown, Hillhouse, Logan, Olcott, Plumer, John Smith, White, and Wright.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Maclay, Nicholas, Potter, Israel Smith, Samuel Smith, Sumter, and Venable.

And having further amended the bill, and filled the blanks, it was agreed that the question on its final passage be postponed until to-morrow.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

Information having been received some time ago that the public lands in the neighborhood of Detroit required particular attention, the agent appointed to transact business with the Indians in that quarter was instructed to inquire into and report the situation of the titles and occupation of the lands, private and public, in the neighboring settlements. His report is now communicated, that the Legislature may judge how far its interposition is necessary to quiet the legal titles, confirm the equitable, to remove the past and prevent future intrusions, which have neither law nor justice for their basis.

TH. JEFFERSON.

FEBRUARY 16, 1804.

The Message was read, and, with the report therein referred to, ordered to lie for consideration.

SATURDAY, February 18.

The bill entitled "An act to amend the charter of Alexandria," was read, and, by unanimous consent, the rule was dispensed with, and the bill was read the second time, and referred to Messrs. WRIGHT, VENABLE, and ANDERSON, to consider and report thereon to the Senate.

Mr. JACKSON, from the committee to whom was referred, on the 15th instant, the bill to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on St. Simon's bar, reported amendments thereto; which were read.

Ordered, That they lie for consideration.

The bill relating to the recording and enrolling of ships or vessels in the district of Orleans, was read the third time and amended.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans."

Ordered, That the petition of Nancy Flinn, presented on the 10th instant, be referred to Messrs. JOHN SMITH, LOGAN, and BRECKENRIDGE, to consider and report thereon to the Senate.

The Senate resumed the third reading of the bill erecting Louisiana into two Territories, and making provision for the temporary government thereof; and on the question to agree to the final passage of this bill, it was determined in the affirmative—yeas 20, nays 5, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, John Smith, Samuel Smith, Sumter, Venable and Wright.

NAYS—Messrs. Adams, Hillhouse, Olcott, Plumer, and Stone.

So it was *Resolved*, That this bill pass, that it be engrossed, and that the title thereof be "An act erecting Louisiana into two Territories, and making provision for the temporary government thereof."

Mr. NICHOLAS gave notice that he should, on Monday next, ask leave to bring in a bill to amend an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President.

Mr. LOGAN notified the Senate he should, on Monday next, ask leave to bring in a bill laying a duty on slaves imported into the United States.

MONDAY, February 20.

On motion, to correct the Journal of the 18th instant, and to expunge therefrom the following words, to wit:

"Mr. LOGAN notified the Senate that he should, on Monday next, ask leave to bring in a bill laying a duty on slaves imported into the United States:"

It passed in the negative—yeas 5, nays 21, as follows:

YEAS—Messrs. Adams, Baldwin, Bradley, Plumer, and Tracy.

NAYS—Messrs. Anderson, Breckenridge, Brown, Cocke, Condit, Dayton, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Sumter, Venable, White, Worthington, and Wright.

Mr. WORTHINGTON, from the committee to whom was referred, on the 7th instant, the "bill to ascertain the boundary of the lands reserved by the State of Virginia for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands," reported it without amendment.

Ordered, That this bill pass to a third reading.

The Senate took into consideration the amendments reported by the committee to the bill to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on St. Simon's bar; and the amendments were adopted.

Ordered, That the bill pass to the third reading as amended.

Mr. BRECKENRIDGE reported, from the committee to whom was referred, on the third instant, the amendment of the House of Representatives to the amendment of the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha." Whereupon,

Resolved, That the Senate do agree to the amendment of the House of Representatives to their amendment of the said bill.

Mr. BRECKENRIDGE reported, from the committee appointed on the 15th instant, jointly with the committee appointed on the part of the House of Representatives, to consider what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same; and the report was read.

Ordered, That it lie for consideration.

The Senate took into consideration the amendments reported to the bill, entitled "An act supplementary to the act, entitled 'An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;" and having agreed thereto, and further amended the bill.

Ordered, That it pass to the third reading as amended.

Mr. VENABLE presented the memorial of Richard Soderstrom, agent for and on behalf of the owners of the Danish brigantine called the Henrick, and her cargo, heretofore commanded by Peter Scheel, a subject of Denmark, captured October, 1799, by a French privateer, and recaptured on the 10th of the same month by an American armed vessel, and carried into and condemned in the island of St. Christopher's, (as he states,) in violation of the law of nations, and praying such justice may be done in the premises as will protect the property and commerce of a neutral nation, which has always respected the American flag; and the memorial was read.

Ordered, That this memorial lie for consideration.

The Senate took into consideration the motion made on the 16th of December last, for a committee to be appointed to take into consideration the expediency of establishing an uniform law on the subject of bankruptcy throughout the United States; and, on the question to agree thereto, it passed in the negative.

The Senate took into consideration the motion made on the 15th instant, that it be

"*Resolved*, That the Secretary of the Navy be directed to report to this House the present general statement of the receipts and expenditures of the commanding officer of the Marine Corps."

And, on the question to adopt this resolution, it passed in the affirmative—yeas 21, nays 10, as follows:

YEAS—Messrs. Anderson, Armstrong, Bradley, Cocke, Dayton, Hillhouse, Jackson, Logan, Olcott, Pickering, Plumer, Potter, Israel Smith, John Smith, Saml. Smith, Stone, Sumter, Tracy, Wells, White, and Wright.

NAYS—Messrs. Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Maclay, Nicholas, Venable, and Worthington.

Ordered, That the committee appointed on the 19th December last, to consider whether any, and, if any, what, amendments ought to be made to the "Act to prevent the importation of certain persons into certain States, by the laws whereof their admission is prohibited," be discharged.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, February 21.

Mr. WRIGHT, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act to amend the charter of Alexandria," reported the bill with sundry amendments, which were adopted, and the bill was further amended.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take the depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," in which they desire the concurrence of the Senate.

The bill, entitled "An act supplementary to the act, entitled 'An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read the third time.

Resolved, That this bill do pass with amendments.

The bill to erect a light-house on St. Simon's

island, in the State of Georgia, and for the placing of a buoy or buoys on St. Simon's bar, was read the third time; and the title having been amended, and the blank filled,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on or near St. Simon's bar."

The bill to ascertain the boundary of the lands reserved by the State of Virginia for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands, was read the third time; and the title having been amended, and the blanks filled,

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act to ascertain the boundary of the lands reserved by the State of Virginia, northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands."

On motion, it was

Resolved, That a committee be appointed to examine what amendments, if any, are necessary to be made to the act, entitled "An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President, in case of vacancies in the offices both of President and Vice President, and that they have leave to report by bill or otherwise; and that Messrs. NICHOLAS, BALDWIN, BRECKENRIDGE, STONE, and ANDERSON, be this committee.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Samuel Corp;" and an amendment thereto was adopted; and, after debate, the Senate adjourned.

WEDNESDAY, February 22.

Mr. BRADLEY, from the committee to whom was referred, on the 15th instant, the bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States,'" together with the amendments proposed thereto, reported the bill amended.

Ordered, That it lie for consideration.

The bill, from the House of Representatives, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take the depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," was read.

Ordered, That it pass to a second reading.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Samuel Corp;" and,

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of Government for the year 1804," in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate to Congress for their information a report of the Surveyor of the Public Buildings of Washington, stating what has been done under the act of the last session concerning the city of Washington, on the Capitol and other public buildings, and the highway between them. TH. JEFFERSON.

FEBRUARY 22, 1804.

The Message and report therein referred to were read and ordered to lie for consideration.

The bill, entitled "An act to amend the charter of Alexandria," was read the third time, and further amended.

Resolved, That this bill pass with amendments.

Mr. SUMTER, from the committee to whom was referred, on the 15th instant, the bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina," reported the bill with amendments.

Ordered, That they lie for consideration.

THURSDAY, February 23.

JOHN SMITH, appointed a Senator by the Legislature of the State of New York, in the room of De Witt Clinton, took his seat in the Senate, and his credentials were read, and the oath prescribed by law was administered to him by the President.

The bill, entitled "An act for the relief of Samuel Corp," was read the third time.

Resolved, That this bill pass with amendments.

On motion,

Resolved, That this House will to-morrow proceed to elect a doorkeeper, or assistant to James Mathers, Sergeant-at-arms, in the room of James Mathers, jr., deceased.

The bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take the depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," was read the second time, and referred to Messrs. FRANKLIN, VENABLE, and I. SMITH, to consider and report thereon to the Senate.

The bill, entitled "An act making appropriations for the support of Government for the year 1804," was read the second time, and referred to Messrs. NICHOLAS, J. SMITH, of New York, and ELLERY, to consider and report thereon to the Senate.

On motion, that it be

Resolved, That the President be requested to communicate to the Senate the measures which have been taken by the Executive, and the conduct of the commanders of the public armed vessels of the United States in the execution of those measures, in pursuance of an act for the protection of the commerce and seamen of the United States against the Tripolitan cruisers, passed February 6, 1802; the expenses attending the same, and, if any, what, further provision may be necessary, on the part of Congress, to bring the existing war with Tripoli to a speedy and honorable termination:

Ordered, That this motion lie for consideration.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina;" and the amendments were adopted.

Ordered, That the bill pass to the third reading as amended.

On motion,

Ordered, That the memorial of Richard Soderstrom, presented on the 20th instant, be referred to Messrs. VENABLE, S. SMITH, and BRECKENRIDGE, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to allow drawbacks of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned; also, a bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes;" in which several bills they desire the concurrence of the Senate. They concur in the bill sent from the Senate, entitled "An act relating to the recording, registering, and enrolling of ships and vessels in the district of Orleans," with amendments; in which they desire the concurrence of the Senate.

The two bills last brought up for concurrence, were read and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act relating to the recording, registering, and enrolling of ships and vessels in the district of Orleans," and

Resolved, That they disagree to the first, but agree to the other amendments of the House of Representatives to the said bill.

FRIDAY, February 24.

Agreeably to the resolution of yesterday, the Senate proceeded to elect a doorkeeper, or assistant to James Mathers, Sergeant-at-Arms; and Henry Timms was appointed.

On motion,

Ordered, That the committee appointed 23d of October last, consisting of Messrs. TRACY, ANDERSON, and BALDWIN, for the revisal of unfinished business, be discharged.

The PRESIDENT communicated the report of the Secretary for the Department of the Navy, made in pursuance of the resolution of the Senate of the 20th instant; and the report was read and ordered to lie for consideration.

The bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment,' and for other purposes, was read the second time, and referred to Messrs. DAYTON, JACKSON, and BRADLEY, to consider and report thereon to the Senate.

The bill, entitled "An act to allow drawbacks of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned," was read the second time, and referred to Messrs. SAMUEL SMITH, ELLERY, and WELLS, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States,'" and they were amended and adopted.

Resolved, That this bill do pass with amendments.

The bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina," was read the third time.

Ordered, That the further consideration thereof be postponed until to-morrow.

SATURDAY, February 25.

JOHN ARMSTRONG, appointed a Senator by the Legislature of the State of New York, in the room of Theodorus Bailey, took his seat in the Senate, and his credentials were read, and the oath prescribed by law was administered to him by the President.

Mr. S. SMITH, from the committee to whom was yesterday referred the bill, entitled "An act to allow drawbacks of duties on goods, wares, and merchandise, transported by land, in the case therein mentioned," reported it without amendment.

Ordered, That this bill pass to a third reading.

MONDAY, February 27.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" in which they desire the concurrence of the Senate.

The Senate resumed the third reading of the bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina;" and having further amended the bill,

Resolved, That it pass as amended.

The Senate resumed the second reading of the bill further to protect the seamen of the United States; and on motion to strike out of section 2d the words "while on passage to or from any port or place;" it passed in the negative—yeas 13, nays 17, as follows:

YEAS—Messrs. Adams, Baldwin, Condit, Dayton, Franklin, Nicholas, Olcott, Pickering, Samuel Smith, Stone, Venable, White, and Worthington.

NAYS—Messrs. Anderson, Armstrong, Bradley, Breckenridge, Brown, Cocke, Ellery, Hillhouse, Jackson, Logan, Maclay, Potter, John Smith of Ohio, John Smith of New York, Sumter, Wells, and Wright.

And sundry amendments having been agreed to,

Ordered, That the consideration of this bill be further postponed.

The Senate took into consideration the resolution moved for on the 23d instant, that the President of the United States be requested to communicate the measures that have been taken, in pursuance of the act, for the protection of the commerce and seamen of the United States against the Tripolitan cruisers, passed February 6, 1802; and on the question to agree to the resolution, it passed in the negative.

The bill entitled "An act to allow drawbacks

of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned," was read the third time; and passed.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, February 28.

The bill from the House of Representatives, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read and ordered to the second reading.

Mr. LOGAN communicated a letter from the Speaker of the House of Representatives of the State of Pennsylvania, enclosing a resolution of that House on the subject of an uniform standard of weights and measures; which were read, and ordered to lie on the table.

Ordered, That the committee to whom was referred, on the 6th instant, the petition of Oliver Pollock be discharged.

Mr. JOHN SMITH, of Ohio, from the committee to whom was referred, on the 16th instant, the bill, entitled 'An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads," reported amendments thereto, which were read; and, after debate,

Ordered, That the further consideration thereof be postponed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act further to alter and establish certain post-roads, and for other purposes;" also, a bill, entitled "An act for the relief of George Lee Davidson;" in which bills they desire the concurrence of the Senate.

The two bills last mentioned in the message were read, and ordered to the second reading.

Ordered, That the committee appointed on the 4th of January last, on the memorial of the Washington Building Company, signed Daniel C. Brent and others, be discharged.

The Senate resumed the second reading of the bill further to protect the seamen of the United States, and a motion was made that the further consideration thereof be postponed to the first Monday in December next; and, after debate, and the adjournment of the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, February 29.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the second time, and referred to Messrs. COCKE, STONE, and TRACY, to consider and report thereon to the Senate.

The bill, entitled "An act for the relief of Geo. Lee Davidson," was read the second time, and referred to Messrs. TRACY, BRADLEY, and BALDWIN, to consider and report thereon to the Senate.

The bill, entitled "An act to alter and establish certain post roads, and for other purposes," was read the second time, and referred to Messrs. ANDERSON, JACKSON, and BRADLEY, to consider and report thereon to the Senate; and that the report of the Postmaster General, of the 22d November last, be referred to the same committee.

Mr. FRANKLIN, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," reported the bill without amendment.

A message from the House of Reprerentatives informed the Senate that the House have passed a bill, entitled "An act to revive and continue in force an act, entitled 'An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the bill further to protect the seamen of the United States; and on motion that the further consideration thereof be postponed until the first Monday in December next, it passed in the affirmative—yeas 21, nays 11, as follows:

YEAS—Messrs. Anderson, Baldwin, Brown, Cocke, Condit, Dayton, Franklin, Hillhouse, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Israel Smith, John Smith of Ohio, John Smith of New York, Venable, Wells, and White.

NAYS—Messrs. Armstrong, Bradley, Breckenridge, Ellery, Potter, Samuel Smith, Stone, Sumter, Tracy, Worthington, and Wright.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter stating certain fraudulent practices for monopolizing lands in Louisiana, which may perhaps require Legislative provisions.

FEB. 19, 1803. TH. JEFFERSON.

The Message and letter therein referred to were read, and ordered to lie for consideration.

Mr. COCKE gave notice that he should to-morrow ask leave to bring in a bill to make compensation to the militia of Tennessee, who marched to Natchez under the command of Colonel George Doherty.

After the consideration of the Executive business, and the adjournment of the High Court of Impeachments, the Senate adjourned.

THURSDAY, March 1.

The bill, entitled "An act to revive and continue in force an act, entitled 'An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia," was read the second time, and referred to Messrs. WORTHINGTON, ISRAEL SMITH, and WHITE, to consider and report thereon to the Senate.

Ordered, That the committee appointed on the 27th of October last on the petitions of Martha Seamans and others, be discharged, and that the petitions be referred to the committee last appointed, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act declaring the assent of Congress to an act of the Legislature of Virginia therein mentioned;" a bill, entitled "An act altering the sessions of the district courts of the United States, for the districts of Virginia and Rhode Island;" and a bill, entitled "An act making an appropriation for carrying into effect the convention concluded between the United States and the King of Spain, on the 11th day of August, 1802;" in which bills they desire the concurrence of the Senate.

The bills were read, ordered to a second reading.

It was agreed, by unanimous consent, to dispense with the rule, and that the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned," be now read the second time.

Ordered, That it be referred to Messrs. VENABLE, STONE, and NICHOLAS, to consider and report thereon to the Senate.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads; and, after debate,

Ordered, That the consideration thereof be postponed.

Agreeably to notice given yesterday, Mr. COCKE asked and obtained leave to bring in a bill to make compensation to the militia of Tennessee, who marched to Natchez under the command of Colonel George Doherty; and the bill was read, and ordered to the second reading.

Mr. BALDWIN gave notice that he would to-morrow ask leave to bring in a bill to amend the laws providing for the organization of the accounting officers of the Treasury, War, and Navy Departments.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

FRIDAY, March 2.

The Senate resumed the consideration of the motion made on the 4th January last, that it be

"*Resolved*, That any Senator of the United States, having previously acted and voted as a member of the House of Representatives, on a question of impeachment, is thereby disqualified to sit and act in the same case, as a member of the Senate, sitting as a Court of Impeachment."

And, on the question to agree to this motion, it passed in the negative—yeas 8, nays 20, as follows:

YEAS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Cocke, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, Samuel Smith, Sumter, Venable, Worthington, and Wright.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

SATURDAY, March 3.

Mr. WORTHINGTON, from the committee to whom was referred, on the 1st instant, the bill, entitled "An act to revive and continue in force an act, entitled 'An act for the relief of the refugees from the British provinces of Canada and Nova Scotia," reported the same without amendment.

Mr. NICHOLAS, from the committee to whom was referred, on the 23d January, the bill, entitled "An act making appropriations for the support of Government for the year 1804," reported the bill with amendments.

The bill, entitled "An act altering the sessions of the district courts of the United States for the districts of Virginia and Rhode Island," was read the second time, and referred to Messrs. POTTER, ELLERY, and NICHOLAS, to consider and report thereon to the Senate.

The bill, entitled "An act making an appropriation for carrying into effect the convention concluded between the United States and the King of Spain, on the 11th day of August, 1802, was read the second time, and referred to Messrs. BALDWIN, SMITH, of New York, and ADAMS, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act providing for the expenses of the civil government of Louisiana;" also, a bill, entitled "An act granting further time for locating military land warrants, and for other purposes;" also, the bill, entitled "An act to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar," with amendments; in which they desire the concurrence of the Senate.

The two bills last brought up for concurrence were read, and ordered to the second reading.

Agreeably to notice given on the 1st instant, Mr. BALDWIN asked and obtained leave to bring in a bill to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy, Departments; and the bill was read and ordered to the second reading.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

MONDAY, March 5.

Mr. VENABLE, from the committee to whom was referred, on the 1st instant, the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned," reported the same without amendment.

The bill, entitled "An act granting further time for locating military land warrants, and for other purposes," was read the second time, and referred to Messrs. FRANKLIN, VENABLE, and WORTHINGTON, to consider and report thereon to the Senate.

The bill, entitled "An act providing for the expenses of the civil government of Louisiana" was read the second time, and referred to Messrs. BRECKENRIDGE, ANDERSON, and DAYTON, to consider and report thereon to the Senate.

The PRESIDENT communicated a letter from the Secretary for the Department of the Treasury,

dated the 2d instant, accompanying a statement of the emoluments of the officers employed in the collection of the customs for the year 1803; which were read, and ordered to lie for consideration.

Resolved, That the Secretary of the Senate notify to the House of Representatives, that, at 12 o'clock to-morrow, the Court of Impeachments, holden for the trial of John Pickering, will be open and ready to proceed to business in the Senate Chamber.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, March 6.

The bill to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments, was read the second time, and referred to Messrs. BALDWIN, STONE, and TRACY, to consider and report thereon to the Senate.

The bill making compensation to the militia of Tennessee who marched to Natchez under the command of Colonel George Doherty, was read the second time, and referred to Messrs. COCKE, TRACY, and VENABLE, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the sufferers by fire in the town of Norfolk;" in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act making appropriations for the support of Government for the year 1804;" and the amendments were adopted; and

Ordered, That the bill pass to the third reading as amended.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act to erect a light house on St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on or near St. Simon's bar, and, referred it to Messrs. ELLERY, JACKSON, and S. SMITH, to consider and report thereon to the Senate.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, March 7.

The bill, entitled "An act making appropriations for the support of the Government for the year 1804" was read the third time, and further amended; and,

Resolved, That this bill pass as amended.

Mr. COCKE, from the committee to whom was referred, on the 29th of February last, the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of North Carolina," reported it without amendment.

The bill, entitled "An act for the relief of the sufferers by fire in the town of Norfolk" was read the second time, and referred to Messrs. NICHOLAS, FRANKLIN, and BALDWIN, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a resolution to authorize the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the third Monday of the present month; in which they desire the concurrence of the Senate.

The resolution was read, and ordered to lie for consideration.

Ordered, That the bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," pass to the third reading.

The Senate resumed the second reading of the bill, entitled "An act to revive and continue in force an act, entitled 'An act for the relief of the refugees from the British provinces of Canada and Nova Scotia;" and

Ordered, That it pass to the third reading.

On motion,

Ordered, That the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned," pass to the third reading.

Mr. BALDWIN, from the committee to whom was referred, on the 3d instant, the bill entitled "An act making appropriation for carrying into effect the convention concluded between the United States and the King of Spain, on the 12th day of August, 1802," reported the same without amendment; and, on motion, the bill was amended; and,

Ordered, That it pass to the third reading, as amended.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

THURSDAY, March 8.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate to Congress an extract of a letter from Governor Claiborne to the Secretary of State, with one which it covered, for their information as to the present state of the subject to which they relate.

MARCH 7, 1804. TH. JEFFERSON.

The Message and letters therein referred to were read and ordered to lie for consideration.

Mr. NICHOLAS, from the committee appointed the 21st of February last, reported a bill to amend the act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President; and the bill was read and ordered to the second reading.

On motion,

Ordered, That the committee appointed on the 3d of January last, to search the journals and report precedents in cases of impeachments, be revived; and that they be empowered to examine and approve the account of James Mathers, and all others, for services and supplies to the Senate, sitting as a court of impeachments on the trial of John Pickering; also, the account of William Roberts, acting as assistant porter to the Senate.

Mr. ADAMS, from the committee to whom were referred, on the 15th of February last, the petition and papers of William A. Barron, together with the report of the Secretary of War thereon, made report; which was read and ordered to lie for consideration.

Mr. NICHOLAS, from the committee to whom was referred, on the 3d instant, the bill, entitled "An act altering the sessions of the district courts of the United States for the districts of Virginia and Rhode Island," reported it without amendment.

Mr. ELLERY, from the committee to whom were referred, on the 6th instant, the amendments of the House of Representatives to the bill, entitled "An act to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on or near St. Simon's bar," reported amendments thereto; which were read.

Mr. DAYTON, from the committee to whom was referred, on the 24th of February last, the bill, entitled "An act supplementary to the act, entitled 'An act providing for the Naval Peace Establishment, and for other purposes," reported the same with an amendment.

Mr. JACKSON gave notice that he would to-morrow ask leave to bring in a bill to erect a light-house on or near the Pitch of Cape Lookout, in the State of South Carolina.

FRIDAY, March 9.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington;" in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

The bill to amend an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in the case of vacancies in the offices both of President and Vice President, was read the second time, and referred to Messrs. NICHOLAS, STONE, and BALDWIN, to consider and report thereon to the Senate.

Agreeably to notice given yesterday, Mr. JACKSON asked and obtained leave to bring in a bill to erect a light-house at the mouth of the Mississippi river, and, also, a light-house on or near the Pitch of Cape Lookout, in the State of North Carolina; and the bill was read and ordered to a second reading.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act providing for the expenses of the civil government of Louisiana," reported amendments thereto; which were read.

A motion was made,

"That the Secretary do acquaint the House of Representatives that the Court of Impeachments will, on Monday at twelve o'clock, proceed to pronounce judgment on the articles of impeachment exhibited by them against John Pickering."

And after the adjournment of the High Court of Impeachments, the Senate adjourned.

SATURDAY, March 10.

The VICE PRESIDENT being absent, the Senate proceeded to the election of a President *pro tempore*, as the Constitution prescribes, and the ballots having been collected and counted, a majority thereof was for the honorable JESSE FRANKLIN, who was accordingly elected President of the Senate *pro tempore*.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that the Senate have, in the absence of the VICE PRESIDENT, elected the honorable JESSE FRANKLIN President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

Ordered, That Nancy Flinn have leave to withdraw her petition, and that the committee appointed thereon be discharged.

Mr. WORTHINGTON, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act granting further time for locating military land warrants, and for other purposes," reported amendments thereto; which were read and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "A nact making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering;" in which bill they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The Senate took into consideration the report of the committee to whom were referred the amendments of the House of Representatives to the bill, entitled "An act to erect a light-house on St. Simon's island, in the State of Georgia, and for the placing of a buoy or buoys on or near St. Simon's bar." Whereupon,

Resolved, That they agree to some, and disagree to other, of the said amendments.

The bill to erect a light-house at the mouth of the Mississippi river, and, also, a light-house on or near the Pitch of Cape Lookout, in the State of North Carolina, was read the second time, and referred to Messrs. JACKSON, ELLERY, and SAMUEL SMITH, to consider and report thereon to the Senate.

Ordered, That Mr. BRECKENRIDGE be of the committee on the bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky, in place of Mr. BROWN, absent by permission.

The PRESIDENT communicated the report of

the Secretary for the Department of State on the petition of Moses Young, referred to him on the 25th of January last; and the report was read, and ordered to lie for consideration.

The resolution of the House of Representatives on the subject of the adjournment of the two Houses of Congress was resumed; and the further consideration thereof ordered to be postponed until Monday next.

The Senate took into consideration the motion, that the Secretary do acquaint the House of Representatives that the Court of Impeachments will, on Monday, at 12 o'clock, proceed to pronounce judgment on the articles of impeachment exhibited by them against John Pickering:

And, on the question to agree to this motion, it passed in the affirmative—yeas 20, nays 9, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

MONDAY, March 12.

Mr. NICHOLAS, from the committee to whom was referred, on the 9th instant, the bill to amend an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President, reported the same without amendment; and it was agreed that the further consideration of this bill be the order of the day for Wednesday next.

The bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering," was read the second time, and referred to Messrs. WRIGHT, LOGAN, and TRACY, to consider and report thereon to the Senate.

The bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington,'" was read the second time, and referred to Messrs. WRIGHT, STONE, and VENABLE, to consider and report thereon to the Senate.

After the adjournment of the High Court of Impeachments, the Senate adjourned.

TUESDAY, March 13.

The Senate resumed the consideration of the resolution of the House of Representatives of the 7th instant, authorizing the President of the Senate and the Speaker of the House of Representatives to adjourn their respective Houses on the third Monday of the present month. And a motion was made to postpone the consideration thereof until Friday next, and, on the question to agree to this motion, it passed in the negative—yeas 11, nays 15, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Ellery, Nicholas, Israel Smith, John Smith of Ohio, Tracy, White, Worthington, and Wright.

NAYS—Messrs. Armstrong, Baldwin, Bradley, Dayton, Franklin, Hillhouse, Jackson, Logan, Maclay, Pickering, Plumer, John Smith of New York, Samuel Smith, Sumter, and Venable.

And having amended the resolution by substituting the 4th for the 3d Monday,

Resolved, That they do concur therein as amended.

Mr. BALDWIN, from the committee to whom was referred, on the 6th instant, the bill to amend the laws providing for the organization of the accounting officers of the Treasury, War, and Navy Departments, reported it without amendment.

A message from the House of Representatives, by Messrs. J. RANDOLPH and EARLY, two of their members, was received, as follows:

"*Mr. President:* We are ordered, in the name of the House of Representatives and of all the People of the United States, to impeach Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

"We are also ordered to demand that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment."

A message from the House of Representatives informed the Senate that the House have passed a resolution to instruct the joint committee of enrolled bills to wait on the President of the United States, respecting a variance between the engrossed and enrolled bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," which bill originated in the House of Representatives.

The bill, entitled "An act to revive and continue in force an act, entitled 'An act for the relief of the refugees from the British provinces of Canada and Nova Scotia,'" was read the third time, and passed.

The Senate took into consideration the resolution of the House of Representatives of this day, directing the joint committee for enrolled bills to wait on the President of the United States for the purposes therein mentioned; and

Resolved, That they do concur therein.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of Virginia therein mentioned," was read the third time, and passed.

The bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take the depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes," was read the third time.

Ordered, That the further consideration thereof be postponed until to-morrow.

The bill, entitled "An act making an appropriation for carrying into effect the Convention concluded between the United States and the King of Spain, on the 11th day of August, 1802," was read the third time as amended.

Resolved, That this bill pass, with an amendment.

The Senate took into consideration the amendment reported by the committee to the bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads; and on the question to agree to the said amendment, as follows:

Strike out, in the first section, after the word "proceed," in the fourth line, to the word "and," in the seventh line, and insert, "to explore and designate the most eligible route for a turnpike road, to lead from Fort Cumberland, on the Potomac, to Wheeling, on the Ohio.

It passed in the negative—yeas 13, nays 15, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Franklin, Pickering, Israel Smith, John Smith of Ohio, Samuel Smith, Stone, Sumter, Worthington, and Wright.

NAYS—Messrs. Adams, Armstrong Baldwin, Bradley, Ellery, Hillhouse, Jackson, Logan, Maclay, Nicholas, Olcott, Plumer, John Smith of New York, Venable, and White.

Ordered, That the bill be recommitted, and that Messrs. NICHOLAS, WORTHINGTON, and DAYTON, be be the committee further to consider and report thereon to the Senate.

On motion,

"That the House of Representatives be notified that the Senate will not receive, so as to act on the same same this session, any new matter or bill after the 20th instant:"

It was agreed that this motion should lie for consideration.

The Senate took into consideration the amendment reported by the committee to the bill, entitled "An act providing for the expenses of the civil government of Louisiana;" and having adopted the amendment,

Ordered, That the bill pass to the third reading as amended.

Mr. WRIGHT, from the committee to whom were referred, on the third of February last, the petition of John Hoskins Stone; also, the petition of Elijah Brainard; reported a bill in addition to an act making provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war; which was read, and ordered to the second reading.

The Senate took into consideration the amendment reported by the committee to the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes;" and, after debate,

Ordered, That the further consideration thereof be postponed until to-morrow.

The Senate took into consideration the message of the House of Representatives, delivered this day at the bar of the Senate by two of their members, on the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court; and,

Ordered, That it be referred to Messrs. BALDWIN, ANDERSON, and NICHOLAS, to consider and report the same to the Senate.

The Senate took into consideration the report of the Secretary for the Department of State on the petition of Moses Young; and,

Ordered, That it be referred to Messrs. JACKSON, STONE, and BALDWIN, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill, entitled "an act altering the sessions of the district courts of the United States for the district of Virginia and Rhode Island; and,

Ordered, That it pass to a third reading.

WEDNESDAY, March 14.

Mr. JACKSON, from the committee to whom was referred, on the 10th instant, the bill to erect a light-house at the mouth of the Mississippi river, and also a light-house on or near the Pitch of Cape Lookout, in the State of North Carolina, reported amendments thereto; which were read.

On motion,

Ordered, That the Secretary of the Senate do wait on the President of the United States and present to him a copy, from the records of the Senate, while sitting as a Court of Impeachments, of the judgment pronounced by them on the 12th instant, removing from office John Pickering, district judge of the district of New Hampshire.

The Senate resumed the second reading of the bill, "entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" and,

Ordered, That it pass to the third reading.

The Senate took into consideration the amendment reported by the committee to the bill, entitled "An act granting further time for locating military land warrants, and for other purposes," which was not agreed to; and,

Ordered, That this bill pass to a third reading.

Mr. WRIGHT, from the committee to whom was referred, on the 12th instant, the bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering," reported amendments thereto; which were disagreed to; and, on motion, the bill was amended.

Ordered, That it pass to the third reading as amended.

Mr. BALDWIN, from the committee to whom yesterday was referred the message from the House of Representatives relative to the impeachment of Samuel Chase, made report; which was read and adopted, as follows:

"Whereas, the House of Representatives, on the 13th day of the present month, by two of their members, Messrs. John Randolph and Early, at the bar of the Senate, impeached Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors, and acquainted the Sen-

ate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same;

"And likewise demanded that the Senate take order for the appearance of the said Samuel Chase to answer to the said impeachment. Therefore,

"*Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives."

Resolved, That the Secretary of the Senate notify the House of this resolution.

A motion was made, that it be

Resolved, That the record of the proceedings of the Senate sitting as a Court of Impeachments on the impeachment of John Pickering, district judge for the district of New Hampshire, together with the documents on file in the cause, be printed as an appendix to the Journals of the Senate for the present session.

It was agreed that this motion should lie for consideration.

Mr. ANDERSON, from the committee to whom was referred, on the 29th of February last, the bill, entitled "An act to alter and establish certain post roads, and for other purposes," reported amendments thereto; which were read.

Ordered, That they lie for consideration.

The amendment reported by the committee to whom was referred, on the 24th of February last, the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes,'" was resumed; and, on the question to agree to the report, which is to strike out the third section of the bill, as follows:

"*And be it further enacted*, That the act, entitled 'An act fixing the rank and pay of the commanding officer of the Corps of Marines,' passed on the 22d day of April, in the year 1800, shall be, and the same is hereby, repealed, and that nothing herein contained shall be construed to revive the office of Major of the Marine Corps, and that the President of the United States be, and he is hereby, authorized to make such reductions in the officers of the Marine Corps as he may deem expedient and consistent with the public interest and safety:"

It passed in the affirmative—yeas 14, nays 12, as follows:

YEAS—Messrs. Adams, Anderson, Dayton, Jackson, Logan, Olcott, Pickering, Plumer, Samuel Smith, Stone, Tracy, Venable, White, and Wright.

NAYS—Messrs. Armstrong, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Maclay, Nicholas, Israel Smith, John Smith of Ohio, John Smith of New York, and Worthington.

Ordered, That this bill pass to the third reading as amended.

The bill in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war, was read the second time, and referred to Messrs. BALDWIN, WRIGHT, and NICHOLAS, to consider and report theron to the Senate.

The Senate resumed the second reading of the bill to amend an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President; and,

Ordered, That it pass to the third reading.

The Senate resumed the third reading of the bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take the depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes; and,

Ordered, That the consideration thereof be further postponed.

The Senate resumed the second reading of the bill to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments; and

Ordered, That the consideration thereof be further postponed.

The bill, entitled "An act providing for the expenses of the civil government of Louisiana," was read the third time as amended; and,

Resolved, That this bill pass with an amendment.

Mr. COCKE, from the committee to whom was referred on the 6th instant, the bill making compensation to the militia of Tennessee who marched to Natchez, under the command of Colonel George Doherty, reported the bill with amendments.

The Senate took into consideration the report of the committee on the petition of William A. Barron; and, after debate, the Senate adjourned.

THURSDAY, March 15.

Mr. VENABLE, from the committee to whom was referred, on the 23d of February last, the memorial of Richard Soderstrom, made report; which was read, and ordered to lie on the table.

The Senate resumed the consideration of the report of the committee on the petition of William A. Barron; and,

Ordered, That it be postponed.

Mr. NICHOLAS, from the committee to whom was referred, on the 7th instant, the bill, entitled "An act for the relief of the sufferers by fire in the town of Norfolk," reported the bill without amendment.

Ordered, That it pass to the third reading.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the third time; and

Ordered, That the further consideration of this bill be postponed until the first Monday in December next.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

Agreeably to the request of the Senate and House of Representatives, delivered me by their joint Committee of Enrolled Bills, I have returned the enrolled bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," to the House of Representatives, in which it originated.

MARCH 15, 1804. TH. JEFFERSON.

The Message was read, and ordered to lie on file.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering," was read the third time as amended; and,

Resolved, That this bill pass with an amendment.

The Senate took into consideration the amendments reported by the committee to the bill making compensation to the militia of Tennessee who marched to Natchez under the command of Col. George Doherty; and having considered some of the amendments,

Ordered, That the further consideration thereof be postponed until to-morrow.

Mr. ISRAEL SMITH gave notice that he would, to-morrow, ask leave to bring in a bill altering the time for the next meeting of Congress.

FRIDAY, March 16.

Mr. TRACY, from the committee to whom was referred, on the 29th of February last, the bill, entitled "An act for the relief of George Lee Davidson," reported it without amendment.

The bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was read the second time.

Ordered, That it be referred to Messrs. BRADLEY, TRACY, BALDWIN, JACKSON, and SAMUEL SMITH, to consider and report thereon to the Senate.

The bill to amend an act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President, in case of vacancies in the offices both of President and Vice President, was read the third time.

Resolved, That this bill pass, that it be engrossed, and that the title thereof be "An act supplementary to the act, entitled 'An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President, in case of vacancies in the offices both of President and Vice President,'"

The Senate resumed the third reading of the bill, entitled "An act to authorize the Courts of the United States to appoint Commissioners to take depositions of witnesses out of Court, to administer oaths to appraisers, and for other purposes;" and, on motion, the bill was amended;" the question to agree to the final passage of the bill, as amended, passed in the negative—so the bill was lost.

Mr. COCKE notified the Senate that he should to-morrow ask leave to bring in a bill providing for the sale of the public lands in the district of New Orleans.

The bill, entitled "An act granting further time for locating military land warrants, and for other purposes," was read the third time, and passed.

The bill, entitled "An act for the relief of the sufferers by fire in the town of Norfolk," was read the third time, and passed.

The Senate resumed the third reading of the bill, entitled "An act altering the sessions of the district courts of the United States for the district of Virginia and Rhode Island;" and, having amended the bill,

Resolved, That this bill pass as amended.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act to alter and establish certain post roads, and for other purposes;" and they were amended, and, together with other amendments, adopted; and,

Ordered, That the bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House disagree to the amendment of the Senate to the bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering." The House of Representatives have passed a bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on the subject;" a bill, entitled "An act supplementary to the act, entitled 'An act to incorporate the subscribers to the Bank of the United States;" a bill, entitled "An act concerning the public buildings at the City of Washington;" a bill, entitled "An act for the relief of the heirs of John Habersham;" and a bill, entitled "An act for the relief of the legal representatives of David Valenzin, deceased, and for other purposes;" in which bills they desire the concurrence of the Senate.

The five last mentioned bills were read, and ordered to the second reading.

The Senate took into consideration the resolution of the House of Representatives disagreeing to the amendment to the bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering;" and

Resolved, That they do recede from said amendment.

Agreeably to notice given yesterday, Mr. ISRAEL SMITH asked and obtained leave to bring in a bill altering the time for the next meeting of Congress; which was read, and ordered to the second reading.

Mr. WRIGHT gave notice that to-morrow he would move for leave to bring in a bill for the

temporary removal of the seat of Government to the city of Baltimore.

Mr. LOGAN gave notice that he should to-morrow ask leave to bring in a bill for the relief of Philip Sloane.

SATURDAY, March 17.

Mr. JOHN SMITH, of Ohio, presented the memorial of James Sutton, holding lands under John C. Symmes, and praying to be enabled to perfect his title thereto, as stated at large in his petition; which was read; and,

Ordered, That it be referred to the committee appointed on the 15th instant, on the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and other purposes," to consider and report thereon.

Mr. BRECKENRIDGE presented the petition of Perez Morton and others, agents for sundry claimants of lands south of the State of Tennessee, and west of the State of Georgia, praying the attention of Congress to their claims, and that they may be confirmed in their titles to the premises, for reasons mentioned in their petition; which was read; also, similar petitions, signed by James Strawbridge, and Thomas Young, by his attorney, John Thomas Mason, were presented by Mr. ANDERSON, and read.

Ordered, That they lie on the table.

Mr. BRADLEY, from the committee to whom was referred, on the 16th of December last, a bill to make further appropriations for the purpose of extinguishing the Indian claims im the State of Tennessee and Kentucky, reported amendments, which were read.

Ordered, That they lie for consideration.

Agreeably to notice given yesterday, Mr. WRIGHT asked and obtained leave to bring in a bill for the temporary removal of the seat of Government to the city of Baltimore; and the bill was read.

Ordered, That it pass to the second reading.

Agreeably to notice given yesterday, Mr. LOGAN asked and obtained leave to bring in a bill for the relief of Philip Sloane; and the bill was read, and ordered to the second reading.

The Senate resumed the consideration of the report of the committee, made on the 8th instant, on the petition of William A. Barron, which was read, as follows:

"That the said William A. Barron, having performed the journeys referred to in his said petition, on public service, and under the orders of his commanding officer, it appears reasonable to the committee that the account of his travelling expenses should be paid.

"But, with respect to the prayer for the allowance of extra rations, the committee are of opinion that this arrangement must rest with the proper Executive department, and is not a subject for the interference of the Legislature; they submit, therefore, the following resolution:

Resolved, That the accounting officers of the Treasury be authorized to adjust and settle the account of William A. Barron, Captain in the Corps of Engineers, for his travelling expenses, on two journeys, performed by him in September and October, 1802, on public service, and by order of the Lieutenant Colonel commandant of Engineers at West Point;"

And the report was adopted.

On motion by Mr. COCKE, that it be

Resolved, That a committee be appointed to bring in a bill to authorize the President of the United States to appoint Commissioners to inquire and report to the next session of Congress, what lands in Louisiana have been granted, by legal authority, prior to the —— day of ——.

It was determined in the negative.

The bill altering the time for the next meeting of Congress was read the second time, and ordered to the third reading.

The bill, entitled 'An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," was read the second time, and referred to Messrs. TRACY, BALDWIN, and BRECKENRIDGE, to consider and report thereon to the Senate.

Ordered, That the committee appointed to take into consideration the petitions of John Crouse, Christian Vangundy, and others, be discharged, and that their several petitions be referred to the committee appointed on the 16th instant, to whom was referred the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," to consider and report thereon.

The bill, entitled "An act supplementary to the act, entitled 'An act to incorporate the subscribers to the Bank of the United States," was read the second time, and ordered to the third reading.

The bill, entitled "An act concerning the public buildings at the city of Washington," was read the second time, and referred to Messrs. JACKSON, WRIGHT, and S. SMITH, to consider and report thereon.

The bill, entitled "An act for the relief of the heirs of John Habersham," was read the second time, and referred to Messrs. BALDWIN, BRADLEY, and ARMSTRONG, to consider and report thereon.

The bill, entitled "An act for the relief of the legal representatives of David Valenzin, deceased, and for other purposes," was read the second time, and referred to Messrs. TRACY, S. SMITH, and BRADLEY, to consider and report thereon.

The bill, entitled "An act to alter and establish certain post roads, and for other purposes," was read the third time as amended.

Ordered, That the further consideration of this bill be postponed to Monday next.

A message from the House of Representatives informed the Senate that they have passed the bill, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," with amendments, in which they desire the concurrence of the Senate.

The amendments to the bill last mentioned were read, and ordered to lie for consideration.

Mr. BALDWIN, from the committee to whom was referred the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the

actual service of the United States during the Revolutionary war," reported amendments; which were read, and ordered to lie for consideration.

Mr. ADAMS, agreeably to the report of the committee this day appointed on the subject, brought in a bill for the relief of William A. Barron; which was read, and ordered to the second reading.

MONDAY, March 19.

The Senate resumed the third reading of the bill, entitled "An act to alter and establish certain post roads."

On motion, to add the following after section third:

"*And be it further enacted*, That two post roads shall be laid out, under the inspection of Commissioners to be appointed by the President of the United States, one to lead from Tellico block-house, in the State of Tennessee, and the other from Jackson court-house, in the State of Georgia, by routes the most eligible, and as nearly direct as the nature of the ground will admit, to New Orleans:"

It passed in the affirmative—yeas 17, nays 10, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Dayton, Franklin, Jackson, Maclay, Nicholas, John Smith of Ohio John Smith of New York, Samuel Smith, Stone, Sumter, Venable, and Worthington.

NAYS—Messrs. Adams, Bradley, Hillhouse, Logan, Olcott, Pickering, Plumer, Israel Smith, Tracy, and White.

And, sundry other amendments having been agreed to,

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels," in which they desire the concurrence of the Senate.

Mr. JACKSON, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act concerning the public buildings at the City of Washington," reported the bill without amendment.

The bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes," was resumed.

Ordered, That the consideration of this bill be further postponed.

The Senate resumed the second reading of the bill to erect a light-house at the mouth of the Mississippi river; and also a light-house at or near the Pitch of Cape Lookout, in the State of North Carolina; and, having agreed to sundry amendments, as reported by the committee on the 14th instant,

Ordered, That this bill pass to the third reading as amended.

The bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships or vessels," was read and ordered to the second reading.

The bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan was read the second time, and referred to Messrs. PICKERING, S. SMITH, and LOGAN, to consider and report thereon.

The bill for the relief of William A. Barron was read the second time.

Ordered, That it pass to the third reading.

The bill, entitled "An act supplementary to the act, entitled 'An act to incorporate the subscribers to the Bank of the United States," was read the third time and passed.

Mr. BRECKENRIDGE gave notice that he should to-morrow ask leave to bring in a bill giving additional compensation to the Governor, Secretary, and Judges of the Indiana Territory.

SEAT OF GOVERNMENT.

The bill for the temporary removal of the seat of Government of the United States to the city of Baltimore was taken up for its second reading. The bill is as follows:

Be it enacted, &c., That, prior to the first Monday of November next, all offices attached to the seat of Government of the United States shall be removed to, and, until the first Monday in November, in the year eighteen hundred and ——, shall remain in the city of Baltimore, in the State of Maryland, at which place the session of Congress next ensuing shall be held.

SEC. 2. *And be it enacted*, That the President appoint three Commissioners, who, or any two of whom, shall, under the direction of the President, be authorized to provide suitable buildings in the city of Baltimore, for the accommodation of Congress and of the President, and for the public offices of the Government of the United States.

SEC. 3. *And be it enacted*, That all offices attached to the said seat of Government shall be removed thereto, by their respective holders, and shall, after the first Monday of November next, cease to be exercised elsewhere; and that, to defray the necessary expense of such removal and temporary residence, the President of the United States be authorized to accept such grants of money, lots, or buildings, as may be offered by the citizens of the United States for the same.

[The debate which took place on this occasion, had progressed to some length before the reporter entered the House. Mr. WRIGHT was then on the floor, and had made a motion to postpone the further consideration of the bill until the first Monday in May.]

Mr. W. assigned as reasons for this motion, that it was not his intention in presenting the bill, that it should pass; but that it had been offered with the view of acting as a spur to the inhabitants of Washington to effect a more complete accommodation of Congress. He trusted and believed it would have that effect; and the operation of the postponement would, by hanging the bill over their heads, most powerfully tend to produce the desirable result of a concentration of the city, and an augmentation of accommodation.

Mr. JACKSON followed, and, in terms of appropriate energy, condemned the proposition of removal. He said he should not have believed, but for the express declaration of the gentleman from Maryland, that he would have brought forward a

bill the sole object of which was to frighten the women and children of Washington. So far from the measure having the desired effect avowed by the gentleman, if it had any effect whatever, it would be to shake all confidence in the Government, to repress the very accommodation desired.

Mr. J. denied the moral right of Congress to remove the seat of Government; it had been fixed under the Constitution, and without its violation could not be changed.

Such a measure would indicate a prostration of plighted faith; would destroy all confidence in the Government, from one end of the continent to the other.

Gentlemen, in favor of this measure, should know its cost. Already had the present seat of Government, in its origination and consequences, cost the nation the assumption of the State debts to the amount of twenty-one millions, and between one and two millions for public accommodation. Would gentlemen be willing not only to lose all that had been expended, but likewise to indemnify the proprietors in the city, whose assessed property amounted to two and a half millions of dollars, and the proprietors of property in the whole District, the amount of which he was unable to state?

Mr. J. concluded by saying, he should vote against the postponement, under the expectation that the Senate would take up the bill and reject it by a majority so great, that no similar proposition should ever again be brought before them.

Mr. ANDERSON declared himself hostile to the postponement, as he was in favor of the passage of the bill, under certain modifications. He considered Congress possessed the Constitutional power of altering the seat of Government; and he believed, from an experience of the inconveniences attending the existing seat, it was their duty to change it. He allowed that, in such an event, an obligation would arise to indemnify the proprietors for the losses they would thereby sustain. This, however, he considered the lesser evil; as the sum required to make an indemnity would be less than that required for the improvements contemplated, and which were necessary to accommodate the Government.

Mr. COCKE declared himself decidedly inimical to the bill. The permanent seat of Government was fixed under the Constitution, and the power did not belong to Congress to alter it.

Mr. ADAMS strenuously contended against the right of Congress to remove the seat of Government. To do so, would be to prostrate the national faith, and to shake the confidence of the nation in the Government. He considered the proposed measure as inexpedient as it was unconstitutional; as it tended directly to defeat the object of the mover.

Mr. S. SMITH said, he should vote in favor of the postponement, because he believed, if the bill were not postponed, it would consume more time than could, at this late period of the session, be spared, without a serious neglect of important business before Congress. He expressed his regret at its introduction.

The question was then taken on the motion of postponement, and decided in the negative—yeas 3, nays 24, as follows:

YEAS—Messrs. I. Smith, S. Smith, and Wright.

NAYS—Messrs. Adams, Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Cocke, Dayton, Franklin, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, John Smith of Ohio, John Smith of New York, Stone, Sumner, Tracy, Venable, White, and Worthington.

The bill was then read a second time.

Mr. DAYTON said, he had been instructed by the Legislature of New Jersey, in case any prospect presented itself of a removal of the seat of Government, to offer, in their name, the public buildings in Trenton for their accommodation. He, therefore, gave notice that, in case the bill went to a third reading, he should produce his instructions, and move the substitution of Trenton in the room of Baltimore. At the same time, he was free to declare his opinion of the impolicy of the proposed measure. The provision of the Constitution had arisen from an experience of the necessity of establishing a permanent seat for the Government. To avert the evils arising from a perpetual state of mutation, and from the agitation of the public mind whenever it is discussed, the Constitution had wisely provided for the establishment of a permanent seat, vesting in Congress exclusive legislation over it. While he declared this as his creed, he begged it to be understood that there were, in his opinion, some rightful grounds of removal. There were four such, two of which were the following: if the place should be found a grave-yard for those who resided in it, or if the inconveniences of conducting the machine of Government should be so great as to prevent the due transaction of the public business. For the existence of these, no fault could be attached to the District. If, therefore, a removal took place on their account, Congress were bound to indemnify the proprietors. There were two other grounds of removal, which would justify a removal without indemnity, as they would be the effect of the misconduct of the inhabitants of the District. These were the evidence of a turbulent spirit, of endangering the safety of Congress, and of a determined resolution, arising from a dissatisfaction which the Government or Congress expressed in favor of a recession.

When he stated these grounds for removal, Mr. D. said, it was not from any apprehension of their occurrence. On the contrary, he believed the Government in perfect safety, and he was convinced, if any hostile arm should be raised against it, the inhabitants of Columbia would be ready to shed their blood in its defence.

Nothing could exceed his surprise at the motives expressed by the gentleman from Maryland for bringing forward this measure. He should have expected, if the gentleman wished to promote the interests of the city, he would have imitated the example of the Athenians, who, in order to make a particular fund devoted to theatrical exhibitions sacred, had passed a law punishing with death any man who should move to divert it from

its allotted purpose; and that the honorable gentleman, instead of bringing forward this bill, would have introduced one punishing with death the man who should move a change of the seat of Government; so that he who made the attempt might know that he did it with a halter around his neck.

Mr. MACLAY moved to strike out the words "Baltimore," and "Maryland," in the first section.

Motion agreed to—ayes 14, noes 10.

Mr. M. then observed, that he would concisely state the ideas which influenced him on this subject. For the existing inconveniences of this place, and the want of accommodation to which Congress was exposed, he did not consider the inhabitants of Washington in the least to blame. The causes from which these flowed, it was not in their power to control. They arose, in a great measure, from the city being surrounded by seats of trade, which naturally repressed its rise here. Those inconveniences were, he believed, of a nature not to be cured by time, and, if there was no Constitutional obstacle, it would be the best policy to remove immediately. He contended that no Constitutional obstacle did exist. On the contrary, he was of opinion that it was the duty of the Legislature, in case the public good required it, to remove the seat of Government. He believed that this place would not long remain the seat. The members of the Government will become tired of remaining here, when they are convinced that the inconveniences which they experience will not promote the advantage even of their posterity. The single question then is, whether less inconvenience will be produced by an immediate or a protracted removal. He was clearly of opinion that the inconvenience of removing, at this time, would be less than at a future day. He concluded by saying, that he should not, himself, have brought forward this measure at the present time. He would have waited for more conclusive proofs of the insuperable inconveniences attending a residence at this place, when opinions, at present variant, would be more united.

Mr. JACKSON said, the gentleman from Pennsylvania (Mr. MACLAY) had picked a hole in the bill, and what effect it would produce, he could not pretend to say. If the word "Baltimore" had been suffered to remain, it would have been rejected by a large majority.

Mr. J. then went, at some length, into a view of the unconstitutionality of a removal, and the happy situation of Washington for the seat of the Government. He said that he was far from being friendly, in the first instance, to this measure, which might be called the hobby-horse of, perhaps, the most illustrious man that ever lived. But, once adopted, it became sacred in his eyes; and nothing short of an act of God, in the shape of an earthquake, a plague, or some other fatal scourge, would justify a removal; and, he trusted, that unless some such act occurred, this would be the last time the measure was proposed.

The time would come, though he hoped to God neither his children nor his children's children would live to see it, when the population on this side of the Mississippi would pass that river, and when the seat of Government would be translated to its banks. Centuries would, however, elapse before that period arrived.

Mr. ANDERSON said, there was no such word in the Constitution as "permanent," applied to the seat of Government; nor did the Constitution prohibit the removal of it when the public interest should require it. Believing that such would be the experience of the inconveniences of the place, that Congress would certainly remove within five years, he was for taking that step now. The ill accommodation of the place was manifest to every man; nor did he believe that time would cure the evil. Such losses, however, as should be sustained by the proprietors, he was ready to remunerate. This was the least expensive course which could be pursued, as to make the necessary improvements in this place, will require at least the annual sum of fifty thousand dollars for twenty years to come, and at least thirty thousand dollars a year to keep the public buildings in a state of repair. In addition to this immense expense was to be added, the great loss of time which arose from the inconvenient arrangements of the place, and the consequent expenditure of public money. For these reasons, Mr. A. said, he should give a decided vote in favor of the bill.

Mr. JACKSON remarked, that the gentleman from Tennessee ought, in forming his opinion of the constitutionality of removing the seat of Government, to attend as well to the laws passed by Congress on the subject, as to the provisions of the Constitution itself. [Mr. J. here read the article of the Constitution on the subject.] He said that, according to the rigid construction of this provision, it excluded altogether a *temporary* seat, after this part of the Constitution was carried into effect. Under this Constitutional provision, Congress passed an act on the 6th of July, 1790, not more than a year and a half after the first meeting of the Legislature, and when many of the members of that body had been members of the Convention, and might, therefore, be presumed to be the best acquainted with the true meaning of the Constitution. This act fixed a temporary and a permanent seat of Government. [Mr. J. read it.] He then asked, can anything be more clear and explicit? Does it not show, in terms of unequivocal meaning, that it was the opinion of the men best qualified to decide, that the seat of Government, once fixed under the provision of the Constitution, must be permanent? It was not then imagined that the Government ought to be travelling about from post to pillar, according to the prevalence of this or that party or faction. All the ideas of that day were hostile to this wheelbarrow kind of Government.

Mr. WRIGHT contended that, while the Constitution had sacredly and irrevocably fixed the permanent seat of Government in this place, Congress might make some other place the temporary seat.

Mr. ANDERSON said, that all that the law passed by Congress proved was, that Congress, and not the Constitution, had declared this place the

permanent seat. This law, like other laws, was subject to repeal.

Mr. ADAMS wished, on this subject, to be explicit. He asked what was the meaning of the article of the Constitution on this point, and all the laws of Congress passed under it? From the formation of the Constitution until the removal of the Government to this place, but one sentiment had existed, which was, that the seat of the Government once fixed under the Constitution, became the permanent seat. As to the idea of the gentleman from Maryland, who says this is the permanent seat while Congress are going from one place to another, he could not understand it. The Constitution says, the place fixed on by Congress, on the cession of jurisdiction by the States, shall be the seat of Government. The idea of a temporary seat implies, necessarily, two seats of Government. But the expression in the Constitution is "seat," and that implies only one seat. The reason of this provision of the Constitution is obvious. As the gentleman from Georgia has very justly observed, the Government had been driven from post to pillar. The question, what place should be the seat of Government, had never presented itself without enkindling violent feelings; and it was supposed that the question would continue to distract our public councils, until some permanent seat of Government was fixed. To carry this into effect, the Constitution interposed, and said, ten miles square shall be given to Congress, where their power shall be sovereign, and that shall be the seat of Government. Why give this exclusive legislation, if their residence is not to be permanent? Would it not be the acme of the ridiculous, for Congress to go to Philadelphia, and still continue to exercise exclusive legislation here? Let us now turn to the acts of Congress, and the proceedings had under them. [Mr. A. here read the act of Congress fixing the seat of Government.] It will appear that it was the intention of Congress that this should be the permanent seat of the Government, from the public buildings erected. Thus much as to the understanding of the Government. Now, as to the meaning of Maryland and Virginia, who gave up the territory, and also gave considerable sums of money for its improvement. Could this have possibly been done under the contemplation that Congress would come here, and, after staying three or four years, run off to different quarters of the Union?

Now then, after this uniform opinion, entertained by Congress, by the States of Maryland and Virginia, and by every man who has expressed an opinion on the subject, until within a few years past, are we to be told that it is possible to give a different construction to the Constitution? If anything can fix a meaning to words, everything which has occurred to this day, unites to decide this the permanent seat of the Government. These, said Mr. A., are my ideas. On the ground of expediency, if it were admitted as applicable to the present question, I would not undertake to say whether this is the most proper place for the residence of the Government. Nor will I say that Congress could not, consistently, remove in consequence of an act of God; that implies force, to which all human institutions must give way. But, say gentlemen, if we remove, we must indemnify the proprietors. But why indemnify if the Constitution does not make this the permanent seat of Government, as it has been understood to be by everybody until this day? Where is the propriety of indemnifying the holders of property here, if this is not the permanent seat, more than proprietors in Philadelphia or New York, where Congress formerly met? This very argument, urged by the advocates of the bill, shows that the Constitution has made this the permanent seat. As to the idea of some gentlemen, of granting millions for an indemnity, the thing is impossible; it cannot be done; the people will not suffer it.

Mr. DAYTON replied to some of the remarks made in the course of the debate, principally for the purpose of explaining his previous observations.

When the question was taken, on ordering the bill to a third reading, and passed in the negative—yeas 9, nays 19, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Bradley, Maclay, Plumer, Stone, Tracy, and Worthington.

NAYS—Messrs. Adams, Baldwin, Cocke, Dayton, Franklin, Hillhouse, Jackson, Logan, Nicholas, Olcott, Pickering, I. Smith, S. Smith, J. Smith, of Ohio, J. Smith, of New York, Sumter, Venable, White, and Wright.

So the bill was lost.

TUESDAY, March 20.

Agreeably to notice, Mr. BRECKENRIDGE asked and obtained leave to bring in a bill giving additional compensation to the Governor, Secretary, and Judges of the Indiana Territory; and the bill was read and ordered to the second reading.

Mr. MACLAY gave notice that he should to-morrow ask leave to bring in a bill to provide for a more extensive distribution of the laws of the United States.

Mr. BALDWIN, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act for the relief of the heirs of John Habersham," reported the bill with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the legal representatives of the late General Moses Hazen," in which they desire the concurrence of the Senate.

The bill last mentioned was read and ordered to the second reading.

Mr. TRACY, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act for the relief of the legal representatives of David Valenzin, deceased, and for other purposes," reported the bill without amendment.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof;" and on the question to agree to the amendment of the fourth section, as follows:

Section 4th—strike out the whole of the section, and, in lieu thereof, insert a new section, in the words following, to wit:

SEC. 4. The Legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed by the President of the United States from among those holding real estate therein, and who shall have resided one year, at least, in the said Territory, and hold no office of profit under the Territory, or the United States, to serve one year from the time of their appointment; and the said Legislative Council shall, at their first session, lay off or divide the said Territory into convenient counties or districts, and apportion among the said counties or districts, according to their respective numbers, the thirteen members of the said Legislative Council: the members of the Legislative Council shall, after the expiration of one year from the time of the appointment aforesaid, be chosen annually by all the free male white persons of the age of twenty-one years, who were resident in said Territory, on the 30th day of April, 1803, and who had been resident therein one whole year next before the election, on their producing satisfactory proof to the officers of the election that they have taken an oath of allegiance to the United States, agreeably to an act of Congress passed on the 14th day of April, 1802, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," and by citizens of the United States who may since that time have become residents in said Territory, or who may hereafter become residents, and who shall have resided therein one whole year, six months of that time next before the election, to be in the district or county in which he or they shall vote; and the Legislative Council, so chosen as aforesaid, shall have power to fix the times and places, and to determine the manner of holding the said elections, and to judge of the qualifications of the members, and the validity of their elections. But if any of the said districts or counties shall refuse or neglect to make such election for one month after the time appointed for holding the same, then the Governor with the Council, shall appoint a person or persons who shall reside within the district, and be qualified as aforesaid, to serve for the district or county so neglecting or refusing. The Governor, by and with the advice and consent of the Legislative Council, or a majority of them, shall have power to alter, modify, or repeal, the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful objects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not be burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall, from time to time, report the same to the President of the United States, to be laid before Congress, which, if disapproved by Congress, shall, thenceforth, be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor tax the lands of the United States, nor to interfere with the claims to lands within the said Territory. The Governor shall convene and prorogue the Legislative Council whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States:

It passed in the negative—yeas 6, nays 22, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Maclay, Israel Smith, and Worthington.

NAYS—Messrs. Adams, Armstrong, Baldwin, Bradley, Dayton, Ellery, Franklin, Hillhouse, Jackson, Logan, Nicholas, Olcott, Pickering, Plumer, John Smith of Ohio, John Smith of New York, Samuel Smith, Sumter, Tracy, Venable, White, and Wright.

On the question to agree to the amendment to the amendment to the fourteenth section, as follows:

"Section 14, line 1, after the words 'and be it further enacted,' insert the following words: 'That all grants for lands within the territories ceded by the French Republic to the United States by the treaty of the 30th of April, in the year 1803, the title whereof was, at the date of the treaty of St. Ildefonso, in the Crown, Government, or nation, of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim, to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and have been from the beginning null, void, and of no effect in law or equity; and;"

It passed in the negative—yeas 1, nays 27, as follows:

YEA—Mr. Wright.

NAYS—Messrs. Adams, Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Cocke, Dayton, Ellery, Franklin, Hillhouse, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Stone, Sumter, Tracy, Venable, and Worthington.

And having agreed to the amendment to the fifteenth section; and, also, to that of the sixteenth section with an amendment—

Resolved, That the Senate disagree to all the other amendments to the said bill.

Mr. JACKSON, from the committee appointed on the subject, reported a bill for the relief of Moses Young; which was read and ordered to the second reading.

Mr. PICKERING from the committee to whom was referred, on the 19th instant, the bill authorizing the payment of $2,800 to Philip Sloan, reported the bill without amendment.

The bill to erect a light-house at the mouth of the Mississippi river; and, also, a light-house on or near the Pitch of Cape Lookout, in the State of North Carolina, was read the third time as amended, and passed.

The bill altering the time for the next meeting of Congress was read the third time.

Ordered, That the further consideration thereof be postponed until to-morrow.

The bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels,'" was read the second time and referred to Messrs. SAMUEL SMITH, ARM-

STRONG, and BALDWIN, to consider and report thereon to the Senate.

The bill for the relief of William A. Barron was read the third time and passed.

The Senate took into consideration the amendments reported by the committee to the bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky; and having agreed to one, and disagreed to all the other amendments reported,

Ordered, That the bill pass to the third reading as amended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate to Congress a letter from Captain Bainbridge, commander of the Philadelphia frigate, informing us of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the hands of the Tripolitans. This accident renders it expedient to increase our force and enlarge our expenses in the Mediterranean beyond what the last appropriation contemplated. I recommend, therefore, to the consideration of Congress, such an addition to that appropriation as they may think the exigency requires.

TH. JEFFERSON.

MARCH 20, 1804.

The Message and papers therein referred to were read, and ordered to lie for consideration.

WEDNESDAY, March 21.

Mr. BRADLEY, from the committee to whom was referred, on the 16th instant, the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" reported amendments thereto; which were read, and ordered to lie for consideration.

Mr. S. SMITH from the committee to whom was referred, on the 20th instant, the bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels," reported the bill amended.

The bill for the relief of Moses Young was read the second time, and referred to Messrs. TRACY, BALDWIN, and JACKSON, to consider and report thereon to the Senate.

The bill giving additional compensation to the Governor, Secretary, and Judges of the Indiana Territory, was read the second time, and ordered to the third reading.

The Senate resumed the third reading of the bill altering the time for the next meeting of Congress, and

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act altering the time for the next meeting of Congress."

The bill, entitled "An act for the relief of the legal representatives of the late General Moses Hazen, was read the second time, and referred to Messrs. TRACY, ARMSTRONG, and BALDWIN, to consider and report thereon to the Senate.

Agreeably to notice given yesterday, Mr. MACLAY asked and obtained leave to bring in a bill to provide for a more extensive distribution of the laws of the United States; and the bill was read, and ordered to the second reading.

The bill to make further appropriations for the purpose of extinguishing the Indian claims in the States of Tennessee and Kentucky, was read the third time; and, on motion to amend the bill, by striking out the words, "their claims in the States of Tennessee and Kentucky," and inserting in lieu thereof, "any Indian claims to any lands lying within the limits of the United States;" it passed in the affirmative—yeas 16, nays 7, as follows:

YEAS—Messrs. Adams, Armstrong, Baldwin, Bradley, Dayton, Logan, Nicholas, Pickering, Israel Smith, John Smith of New York, Samuel Smith, Stone, Sumter, Tracy, White, and Wright.

NAYS—Messrs. Anderson, Breckenridge, Cocke, Franklin, Maclay, John Smith of Ohio, and Worthington.

So it was *Resolved*, That this bill do pass, that it be engrossed, and that the title thereof be "An act to make further appropriations for the purpose of extinguishing the Indian claims."

A message from the House of Representatives informed the Senate that the House agree to some and disagree to other amendments of the Senate to the bill, entitled "An act to alter and establish certain post roads, and for other purposes."

The Senate resumed the second reading of the bill making compensation to the militia of Tennessee who marched to Natchez under the command of Colonel George Doherty;" and on the question to agree to the third reading of this bill it passed in the negative—yeas 10, nays 18, as follows:

YEAS—Messrs. Anderson, Breckenridge, Cocke, Ellery, Franklin, Maclay, Nicholas, Sumter, Venable, and Worthington.

NAYS—Messrs. Adams, Armstrong, Baldwin, Bradley, Dayton, Hillhouse, Jackson, Logan, Olcott, Pickering, Plumer, Israel Smith, John Smith of New York, Samuel Smith, Stone, Tracy, White, and Wright.

So the bill was lost.

The Senate resumed the second reading of the bill to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments; and having amended the bill,

Ordered, That it pass to the third reading as amended.

The Senate took into consideration the resolution of the House of Representatives disagreeing to several of their amendments to the bill, entitled "An act to alter and establish certain post roads, and for other purposes;" and,

Resolved, That they insist on their first amendment disagreed to by the House of Representatives to the said bill, which amendment is to add a new section after the 3d section of the original bill, ask a conference thereon, and that Messrs. JACKSON and ANDERSON be managers at the same on their part,

Resolved, That the Senate so far recede from

their other amendments disagreed to by the House of Representatives, as to adopt their amendments to the amendments of the Senate.

THURSDAY, March 22.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels," in which they desire the concurrence of the Senate. They insist on some and recede from other amendments disagreed to by the Senate to the bill, entitled "An act erecting Louisiana into two Territories and providing for the temporary government thereof," ask a conference on the disagreeing votes of the two Houses, and have appointed managers on their part.

The bill first mentioned in the message was read, and ordered to the second reading.

The Senate took into consideration the resolution of the House of Representatives on the amendments to the bill last mentioned in the message, and asking a conference thereon; and

Resolved, That they agree to the said conference, and that Messrs. JACKSON and DAYTON be the managers at the same on the part of the Senate.

Mr. TRACY, from the committee to whom was referred, on the 21st instant, the bill for the relief of Moses Young, reported the bill amended.

Mr. TRACY, from the committee to whom was referred, on the 17th instant, the bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject" reported the bill without amendment.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I lay before Congress the last returns of the militia of the United States; their incompleteness is much to be regretted, and its remedy may at some future time be a subject worthy the attention of Congress.

MARCH 22, 1804. TH. JEFFERSON.

The Message and paper therein referred to were read, and ordered to lie for consideration.

The bill to provide for the more extensive distribution of the laws of the United States was read the second time, and referred to Messrs. TRACY, BALDWIN, and BRADLEY, to consider and report thereon to the Senate.

The bill to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments, was read the third time, and passed.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," and which were in part adopted; and the bill was further amended.

Ordered, That the bill pass to the third reading, as amended.

A message from the House of Representatives informed the Senate that the House concur in the bill, entitled "An act to ascertain the boundary of the lands reserved by the State of Virginia northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands." They have passed a bill, entitled "An act to repeal a part of the act, entitled 'An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The bill giving additional compensation to the Governor, Secretary, and Judges, of the Indiana Territory, was read the third time and amended; and passed.

The Senate resumed the second reading of the bill, entitled "An act for the relief of George Lee Davidson;" and

Ordered, That the consideration thereof be postponed.

The Senate took into consideration the amendments reported by the committee to the bill in addition to an act making provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war; and the amendments were not adopted.

Ordered, That this bill pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act concerning the public buildings in the City of Washington;" and

Ordered, That this bill pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act for the relief of the legal representatives of David Valenzin, deceased, and for other purposes;" and

Ordered, That it pass to the third reading.

The Senate took into consideration the amendments reported by the committee to the bill, entitled "An act for the relief of the heirs of John Habersham," and agreed thereto; and

Ordered, That the bill pass to the third reading as amended.

The Senate resumed the second reading of the bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan; and

Ordered, That it pass to a third reading.

The Senate took into consideration the amendments reported to the bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels," and agreed thereto; and

Ordered, That the bill pass to a third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject:" and agreed to an amendment.

Ordered, That the bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed

a bill, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers;" in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

FRIDAY, March 23.

The bill, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers;" was read the second time, and referred to Messrs. SAMUEL SMITH, BRECKENRIDGE, and ANDERSON, to consider and report thereon.

A message from the House of Representatives informed the Senate, that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act regulating the grants of land and providing for the disposal of the lands of the United States south of the State of Tennessee;" and a bill, entitled "An act relative to the compensations of certain officers of the customs, and to provide for appointing a surveyor in the district therein mentioned;" in which bills they desire the concurrence of the Senate.

The two bills last brought up for concurrence were read, and ordered to the second reading.

The bill, entitled "An act imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships and vessels," was read the second time, and referred to Messrs. BALDWIN, SAMUEL SMITH, and TRACY, to consider and report thereon to the Senate.

Mr. SAMUEL SMITH submitted the following resolution as an amendment to the bill last committed:

"*And be it further enacted*, That the person exercising the powers which, under the Spanish Government, were vested in the Intendant of the Province of Louisiana, shall, until a district court of the United States shall have been established in the Territory of New Orleans, in conformity with the provisions of this act, have and exercise, in all cases whatever arising within the said Territory under the laws regulating and providing for the collection of duties on imports and tonnage, or under any other revenue laws of the United States, the same jurisdiction and powers which by law are given to the district and circuit courts of the United States; and the powers to remit fines, penalties, or forfeitures, and to remove disabilities, which by law are vested in the Secretary of the Treasury, may and shall, in all cases of such fines, penalties, forfeitures, or disabilities, incurred within the Territory of New Orleans, and until a Governor of the said Territory shall have been appointed, and shall have entered into the functions of his office, be exercised by the person exercising the powers which, under the Spanish Government, were vested in the Governor of the Province of Louisiana; and the said power to remit fines, penalties, or forfeitures, and to remove disabilities, may, and shall, in like manner, be exercised by the Governor of the said Territory, from the time when he shall enter into the functions of his office, in conformity with the provisions of this act, until the next session of Congress, and no longer."

Ordered, That it be referred to the committee last mentioned, to consider and report thereon.

Mr. SAMUEL SMITH presented the memorial of the manufacturers of gunpowder in the vicinity of the city of Baltimore, praying encouragement to the importation of saltpetre, and the memorial was read.

Ordered, That it be referred to the committee last appointed to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate, that the House so far recede from their amendment insisted on to the bill, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as to adopt the report of the joint committee of conference; and they concur in the bill, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States," with an amendment, in which they desire the concurrence of the Senate. They have passed a bill, entitled "An act to authorize the adjournment of district courts by Marshals in certain cases;" a bill, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes;" a bill, entitled "An act in addition to an act for fixing the Military Peace Establishment of the United States;" and a bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States during the Revolutionary war, and for other purposes;" in which bills they desire the concurrence of the Senate.

The four bills last brought up for concurrence were severally read.

On the question to agree to the second reading of the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war, and for other purposes;" it passed in the negative. So the bill was lost.

Ordered, That the three other bills last brought up for concurrence severally pass to the second reading.

Mr. JACKSON, from the managers at the conference on the bill, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," made report.

Whereupon,

On motion that the Senate so far recede from their disagreement to the amendment to the 14th section as to adopt the report of the joint committee of conference, which subjoins to the said amendment the following proviso:

"*Provided, nevertheless*, That anything in this section contained shall not be construed to make null and void any *bona fide* grant made agreeably to the laws, usages, and customs, of the Spanish Government, to an actual settler on the lands so granted for himself, and for his wife and family, or to make null and void any *bona fide* act or proceeding done by an actual settler, agreeably to the laws, usages, and customs, of the Spanish Government, to obtain a grant for lands actually settled on by the person or persons claiming title thereto, if such settlement in either case was actually made prior to the 20th day of December, 1803: *And provided further*, That such grant shall not secure to the grantee or his assigns more than one mile square of land, together with such other and further quantity as heretofore hath been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs, of the Spanish Government:"

It passed in the affirmative—yeas 15, nays 9, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Dayton, Ellery, Franklin, Jackson, Logan, John Smith of Ohio, Samuel Smith, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs. Adams, Cocke, Hillhouse, Maclay, Olcott, Pickering, Plumer, Stone, and Tracy.

And the remainder of the report of the joint committee of conference was adopted.

The Senate took into consideration the amendment of the House of Representatives to the bill, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States;" and,

Ordered, That it lie for consideration.

The bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was read the third time, and further amended; and,

Resolved, That this bill pass with amendments.

The bill, entitled "An act for the relief of the legal representatives of David Valenzin, deceased, and for other purposes," was read the third time, and passed.

The bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the act heretofore passed on that subject," was read the third time as amended.

Resolved, That this bill pass with an amendment.

The bill, entitled "An act for the relief of the heirs of John Habersham," was read the third time as amended.

Resolved, That this bill pass with an amendment.

The bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels," was read the third time as amended, and passed.

The bill authorizing the payment of two thousand eight hundred dollars to Philip Sloan, was read the third time, and passed.

The bill, entitled "An act to repeal a part of the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read the second time, and ordered to the third reading.

The Senate took into consideration the amendment reported by the committee to the bill for the relief of Moses Young, and, having adopted the amendment,

Ordered, That the bill pass to a third reading as amended.

Mr. SAMUEL SMITH gave notice that he would, to-morrow, ask leave to bring in a bill to repeal the first section of the act passed the third day of March, 1803, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war."

SATURDAY, March 24.

Mr. WRIGHT, from the committee to whom was referred, on the 12th instant, the bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington," reported the bill with amendments.

Mr. DAYTON, from the committee to whom was recommitted, on the 13th instant, the bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads," reported the bill amended.

On motion, that it be

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the resolution of the thirteenth instant, authorizing the adjournment of Congress on Monday the 26th, be rescinded, and that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on Wednesday the 28th instant;

It passed in the negative.

A motion was made, that when the Senate adjourn, it be to eleven o'clock to-morrow morning; and it passed in the negative—yeas 3, nays 21, as follows:

YEAS—Messrs. Armstrong, Ellery, and Samuel Smith.

NAYS—Messrs. Adams, Anderson, Baldwin, Breckenridge, Cocke, Dayton, Franklin, Hillhouse, Maclay, Olcott, Pickering, Plumer, John Smith of Ohio, John Smith of New York, Stone, Sumter, Tracy, Venable, White, Worthington, and Wright.

Mr. JACKSON, from the joint committee of conference, on the disagreeing votes of the two Houses, on the amendments to the bill, entitled "An act to alter and establish certain post roads, and for other purposes," reported that they could not come to an agreement, and that the Senate adhere to their amendment.

On motion, that the Senate do now resume the consideration of the motion made on the 14th instant, "that the record of the proceedings of the Senate, sitting as a Court of Impeachments, on the impeachment of John Pickering, district judge of the district of New Hampshire, be printed:"

It passed in the negative.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers," reported it without amendment.

A message from the House of Representatives informed the Senate that the House concur in the amendments of the Senate to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," except to the last two, in which they do not concur. They have passed a bill, en-

titled "An act supplementary to an act, entitled 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

Mr. BALDWIN, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels," reported amendments thereto.

Mr. TRACY, from the committee to whom was referred, on the 21st instant, the bill, entitled "An act for the relief of the legal representatives of the late General Moses Hazen," reported the bill without amendment.

The Senate took into consideration the resolution of the House of Representatives, disagreeing to their two last amendments to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" and,

Resolved, That the Senate recede from the first of the said amendments disagreed to.

Resolved, That they do insist on their last amendment disagreed to on the said bill, ask a conference thereon, and that Messrs. WORTHINGTON and BRECKENRIDGE be managers at the same on the part of the Senate.

The Senate took into consideration the amendment of the House of Representatives to the bill, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States;" and,

Resolved, That they agree thereto.

The bill, entitled "An act concerning the public buildings at the City of Washington," was read the third time; and, on motion, the bill was amended, and passed.

The bill for the relief of Moses Young was read the third time as amended, the blank filled with the words "two thousand;" and then the bill was passed.

The bill, entitled "An act to repeal a part of the act, entitled 'An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read the third time, and passed.

The bill, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes," was read the second time, and referred to Messrs. TRACY, BRECKENRIDGE, and ANDERSON, to consider and report thereon to the Senate.

The bill, entitled "An act to authorize the adjournment of district courts, by marshals, in certain cases," was read the second time, and ordered to the third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated, so as to take effect in every other State," in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

The bill, entitled "An act in addition to an act for fixing the Military Peace Establishment of the United States," was read the second time, and ordered to the third reading.

The bill, entitled "An act supplementary to the act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the second time, and referred to Messrs. ANDERSON, BALDWIN, and BRECKENRIDGE, to consider and report thereon to the Senate.

Mr. JACKSON submitted an amendment to the bill last mentioned; and it was referred to the said committee, to consider and report thereon.

The bill, entitled "An act relative to the compensation of certain officers of the customs, and to provide for appointing a surveyor in the district therein mentioned," was read the second time, and referred to Messrs. SAMUEL SMITH, ANDERSON, and STONE, to concur and report thereon to the Senate.

The bill, entitled "An act for the relief of George Lee Davidson" was resumed; and,

Resolved, That this bill do not pass.

A message from the House of Representatives informed the Senate that the House adhere to their disagreement to the amendment insisted on by the Senate, to the bill, entitled "An act to alter and establish certain post roads, and for other purposes." They agree to the conference proposed by the Senate on their amendment insisted on to the bill, entitled "An act making provision for the disposal of the lands of the United States in the Indiana Territory, and for other purposes," and have appointed managers on their part.

The Senate resumed the second reading of the bill, entitled "An act to protect the commerce and seamen of the United States against the Barbary Powers;" and, on motion to strike out of the first section the words "two and a half per centum, ad valorem:" it was determined in the negative—yeas 8, nays 17, as follows:

YEAS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Maclay, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Sumter, Venable, Worthington, and Wright.

Ordered, That the bill pass to the third reading.

A message from the House of Representatives informed the Senate that the House do not concur in the amendment of the Senate to the bill, entitled "An act concerning the public buildings at the City of Washington." They insist on their disagreement to the last amendment of the Senate to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes."

The Senate took into consideration the resolution of the House of Representatives, adhering to their disagreement to the sixteenth amendment of the Senate to the bill, entitled "An act to alter and establish certain post roads, and for other purposes;" and on motion, that the Senate adhere to the said amendment, it passed in the negative—yeas 10, nays 16, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Franklin, Jackson, Samuel Smith, Sumter, and Worthington.

NAYS—Messrs. Adams, Dayton, Ellery, Hillhouse, Logan, Maclay, Olcott, Plumer, Israel Smith, John Smith of Ohio, John Smith of New York, Tracy, Venable, White, and Wright.

Resolved, That the Senate recede from their said amendment.

Mr. WORTHINGTON, from the managers at the conference to the amendment of the Senate, to follow the 17th section of the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," reported that they had agreed to modify the amendment, by inserting "three per cent." instead of "five per cent."

The Senate took into consideration the resolution of the House of Representatives, insisting on their dissagreement to the said amendment; and,

Resolved, That they do recede therefrom.

The Senate took into consideration the resolution of the House of Representatives disagreeing to their amendment to the bill, entitled "An act concerning the public buildings at the City of Washington;" and, on motion to adhere to the amendment, it passed in the negative—yeas 12, nays 12, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Hillhouse, Maclay, Olcott, Pickering, Plumer, Sumter, Tracy, White, and Worthington.

NAYS—Messrs. Adams, Baldwin, Cocke, Ellery, Franklin, Jackson, Logan, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, and Venable.

On motion to postpone the consideration of this bill to the next session of Congress, it passed in the negative—yeas 9, nays 14, as follows:

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Hillhouse, Maclay, Pickering, Plumer, Tracy, and Worthington.

NAYS—Messrs. Adams, Baldwin, Cocke, Ellery, Franklin, Jackson, Logan, Olcott, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Sumter, and Venable.

Resolved, That the Senate do insist on their amendment, disagreed to by the House of Representatives, to the said bill, ask a conference thereon, and that Messrs. ANDERSON and TRACY be the managers at the same on their part.

MONDAY, March 26.

Mr. ANDERSON, from the committee to whom was referred, on the 24th instant, the bill, entitled "An act supplementary to the act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," reported amendments thereto; which were read.

The bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes," was read the third time as amended; and,

Resolved, That this bill do pass with an amendment.

The bill, entitled "An act supplementary to an act, entitled 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," was read the second time.

Ordered, That it pass to the third reading.

A message from the House of Representatives informed the Senate that the House do not concur in the amendment of the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes." They agree to the resolution of the Senate asking a conference on the disagreeing votes of the two Houses, on the amendment to the bill, entitled "An act concerning the public buildings at the City of Washington," and have appointed managers on their part.

The bill, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers," was read the third time.

On motion to strike out the second section of the bill, as follows:

SEC. 2. *And be it further enacted*, That a distinct account shall be kept of the duties imposed by this act, and the proceeds thereof shall constitute a fund, to be denominated "the Mediterranean Fund," and shall be applied solely to the purposes designated by this act. And the said additional duty shall cease and be discontinued at the expiration of three months after the ratification, by the President of the United States, of a treaty of peace with the Regency of Tripoli, unless the United States should then be at war with any other of the Barbary Powers, in which case the said additional duty shall cease and be discontinued at the expiration of three months after the ratification, by the President of the United States, of a treaty of peace with such Power: *Provided, however*, That the said additional duty shall be collected on all such goods, wares, and merchandise, liable to pay the same, as shall have been imported previous to the day on which the said duty is to cease:"

It passed in the negative—yeas 8, nays 18, as follows:

YEAS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

NAYS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

On motion to strike out the word "two," in the eleventh line of the first section of the bill, it passed in the negative—yeas 8, nays 17, as follows:

YEAS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

On motion to strike out from the words "a duty," inclusive, in the eleventh line of the first section of the bill to the end thereof, as follows:

"A duty of two and an half per centum ad valorem, in addition to the duties now imposed by law, shall be laid, levied, and collected, upon all goods, wares, and merchandise, paying a duty ad valorem, which shall, after the thirtieth day of June next, be imported into the United States from any foreign port or place, and an addition of ten per centum shall be made to the said additional duty in respect to all goods, wares, and merchandise, imported in ships or vessels not of the United States; and the duties imposed by this act shall be levied and collected in the same manner, and under the same regulations and allowances as to drawbacks, mode of security, and time of payment, respectively, as are already prescribed by law in relation to the duties now in force on the articles in which the said additional duty is laid by this act:"

It passed in the negative—yeas 7, nays 20, as follows:

YEAS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, and White.

NAYS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Israel Smith, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

On the question to agree to the final passage of the bill, it was determined in the affirmative—yeas 20, nays 5, as follows;

YEAS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Cocke, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Pickering, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs, Adams, Hillhouse, Olcott, Plumer, and Tracy.

So it was *Resolved* That this bill do pass.

On motion, it was

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the resolution of the 13th instant, authorizing the adjournment of Congress on the 26th instant, be rescinded; and that the President of the Senate and Speaker of the House of Representatives be authorized to adjourn their respective Houses on Tuesday, the 27th instant.

Ordered, That the Secretary desire the concurrence of the House of Representatives in this resolution.

The Senate took into consideration the resolution of the House of Representatives disagreeing to the amendments to the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes," and

Resolved, That they do adhere thereto.

Mr. TRACY, from the committee to whom was referred, on the 24th instant, the bill, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes," reported the bill with an amendment.

The bill, entitled "An act in addition to the act for fixing the Military Peace Establishment of the United States," was read the third time and passed.

The bill, entitled "An act to authorize the adjournment of district courts by marshals in certain cases," was read the third time and passed.

The Senate took into consideration the report of the committee proposing an amendment to the bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads;" and,

On motion to postpone the consideration thereof until the next session of Congress, it passed in the negative—yeas 6, nays 15, as follows:

YEAS—Messrs. Adams, Ellery, Maclay, Nicholas, Pickering, and Venable.

NAYS — Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Dayton, Franklin, Israel Smith, John Smith of Ohio, Samuel Smith, Stone, Sumter, Tracy, White, and Worthington.

Ordered, That this bill pass to the third reading as amended.

Mr. SAMUEL SMITH, from the committee to whom was referred, on the 24th instant, the bill, entitled "An act relative to the compensations of certain officers of the customs, and to provide for appointing a surveyor in the district therein mentioned," reported it without amendment.

Ordered, That this bill pass to a third reading.

The bill, entitled "An act supplementary to the act, entitled 'An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State, shall be authenticated, so as to take effect in every other State," was read the second time, and ordered to the third reading.

The Senate resumed the second reading of the bill, entitled "An act supplementary to the act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee;" and having amended the same,

Ordered, That it pass to the third reading, as amended.

The Senate resumed the second reading of the bill, entitled "An act for the relief of the legal representatives of the late General Moses Hazen."

Ordered, That the further consideration of this bill be postponed to the first Monday in November next.

The Senate considered the amendments to the bill, entitled "An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light money on foreign ships and vessels;" and the amendments were agreed to.

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the consideration of the amendments to the bill, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes;" and, having agreed to the same,

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the consideration of the bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington;" and having amended the same,

Ordered, That this bill pass to the third reading as amended.

The Senate resumed the consideration of the bill, entitled "An act relative to the compensations of certain officers of the customs, and to provide for appointing a surveyor in the district therein mentioned."

Ordered, That this bill pass to a third reading.

The bill to provide for a more extensive distribution of the laws of the United States was read the second time; and the bill having been amended, it was ordered to the third reading.

TUESDAY, March 27.

The bill, entitled "An act supplementary to the act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the third time as amended; and,

Resolved, That this bill do pass, with an amendment.

The bill, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light money on foreign ships or vessels," was read the third time as amended.

Resolved, That this bill do pass, with amendments.

The bill, entitled "An act for the appointment of an additional judge for the Mississippi Territory, and for other purposes," was read the third time as amended.

Resolved, That this bill do pass, with an amendment.

The bill, entitled "An act supplementary to the act, entitled 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," was read the third time; and the further consideration of the bill was postponed until the first Monday of December next.

The bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads," was read the third time as amended.

Resolved, That this bill do pass, with an amendment.

The bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington." was read the third time as amended.

Resolved, That this bill pass, with an amendment.

The bill, entitled "An act relative to the compensations of certain officers of the customs, and to provide for appointing a surveyor in the district therein mentioned," was read the third time, and passed.

The bill to provide for a more extensive distribution of the laws of the United States was read the third time, and, being further amended, the bill was passed.

Mr. ANDERSON, from the managers at the conference on the disagreeing votes of the two Houses on the amendment to the bill, entitled "An act concerning the public buildings at the City of Washington," reported that they could come to no agreement; but that it was the opinion of the managers, on the part of the Senate, that the bill be postponed to the next session of Congress.

Whereupon, a motion was made, that the further consideration of this bill be postponed until the next session of Congress; and it passed in the negative—yeas 5, nays 19, as follows:

YEAS—Messrs. Anderson, Hillhouse, Maclay, Plumer, and Tracy.

NAYS—Messrs. Adams, Baldwin, Breckenridge, Cocke, Dayton, Ellery, Franklin, Jackson, Logan, Nicholas, Olcott, Pickering, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

On the question to recede from their amendment insisted on to the said bill, it passed in the affirmative—yeas 17, nays 7, as follows:

YEAS—Messrs. Adams, Baldwin, Cocke, Dayton, Ellery, Franklin, Jackson, Logan, Nicholas, Olcott, Pickering, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, and Wright.

NAYS—Messrs. Anderson, Breckenridge, Hillhouse, Maclay, Plumer, Tracy, and Worthington.

A message from the House of Representatives informed the Senate that the House have appointed a committee on their part, jointly with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress; and they desire the appointment of a committee on the part of the Senate. They concur in the bill, entitled "An act to provide for a more general distribution of the laws of the United States," with an amendment, in which they desire the concurrence of the Senate.

The bill, entitled "An act supplementary to the act, entitled 'An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State, shall be authenticated so as to take effect in every other State," was read the third time, and passed.

The Senate took into consideration the amendment proposed by the House of Representatives to the bill, entitled "An act to provide for a more extensive distribution of the laws of the United States;" and,

Resolved, That they do concur therein.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States, and notify him of the proposed recess of Congress; and,

Resolved, That they do concur therein, and that Mr. BALDWIN be the committee on their part.

On motion, it was

Resolved, That the Secretary of the Senate be authorized to pay, out of the contingent fund of this House, the sum of two hundred dollars to each of the clerks in his office, two hundred dollars to the Sergeant-at-Arms, and Doorkeeper, each, and to the Chaplain of this House the sum of one hundred and fifty dollars, in addition to their usual compensation, for their extra services during the present session; and to the two attendants, Thomas Harvey, William Roberts, and also to Michael Tilghman, fifty dollars each.

Mr. BALDWIN, from the joint committee, reported that they had waited on the President of the United States, and notified to him the proposed recess of the two Houses; to which the President of the United States replied that he had no further communications to make to Congress.

Ordered, That the Secretary notify the House of Representatives that the Senate, having finished the business before them, are about to adjourn.

A message from the House of Representatives informed the Senate that the House, having finished the business before them, are about to adjourn to the first Monday in November next.

The PRESIDENT then adjourned the Senate to the first Monday in November next.

EXTRACTS FROM

EXECUTIVE JOURNAL OF THE SENATE.

MONDAY, October 17, 1803.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

Gentlemen of the Senate:

In my message of this day to both Houses of Congress, I explained the circumstances which had led to the conclusion of conventions with France, for the cession of the Province of Louisiana to the United States. Those conventions are now laid before you, with such communications relating to them as may assist in deciding whether you will advise and consent to their ratification.

The ratification of the First Consul of France is in the hands of his Chargé des Affaires here, to be exchanged for that of the United States, whensoever, before the 30th instant, it shall be in readiness.

OCT. 17, 1803. TH. JEFFERSON.

The Message, Treaty, Conventions, and papers accompanying, were in part read.

Ordered, That the Message, Treaty, and two Conventions, be printed, in confidence, for the use of the members.

TUESDAY, October 18.

The Senate resumed the reading of the papers referred to in the Message of the President of the United States of the 17th instant.

On motion, the Treaty and Conventions communicated with the Message of the President of the United States, were read the second time.

WEDNESDAY, October 19.

The Treaty and Conventions with the French Republic were read the third time, in paragraphs; and, after debate, a motion was made by Mr. JACKSON; and seconded by Mr. BRADLEY, that it be

"*Resolved*, (*two-thirds of the Senators present concurring therein.*) That the Senate do advise and consent to the ratification of the Treaty, made and concluded at Paris, the 11th day of Floreal, in the 11th year of the French Republic, (30th April, 1803,) between the United States and the said French Republic, by Robert R. Livingston and James Monroe, Ministers Plenipotentiary on the part of the United States, and Barbe Marbois, Minister of the Public Treasury of the French Republic, on the part of the said Republic."

Ordered, That this motion lie until to-morrow.

THURSDAY, October 20.

The Senate resumed the consideration of the Treaty and Conventions made with the First Consul of France; and, on the question, Will the Senate agree to the ratification of the same? it passed in the affirmative—yeas 24, nays 7, as follows:

YEAS—Messrs. Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Butler, Clinton, Cocke, Condit, Dayton, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, Samuel Smith, Stone, Taylor, Worthington, and Wright.

NAYS—Messrs. Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

So it was *Resolved*, (two-thirds of the Senators present concurring therein,) That the Senate do advise and consent to the ratification of the Treaty, as well as to the ratification of the two Conventions connected therewith, made and concluded at Paris, on the 10th day of Floreal, in the 11th year of the French Republic, (30th April, 1803,) between the United States and the said French Republic, by Robert R. Livingston and James Monroe, Ministers Plenipotentiary on the part of the United States, and Barbe Marbois, Minister of the Public Treasury of the French Republic, on the part of the said Republic."

Ordered, That the Secretary lay this resolution before the President of the United States.

A motion was made that it be

"*Resolved*, That the President of the United States be requested to obtain from the French Republic, such a modification of the third article of the Treaty as will leave the Government of the United States at liberty to make such future arrangements, or disposition of the Territory of Louisiana, as, in their wisdom, may best promote the general interest; always securing to the free inhabitants of Louisiana protection to their persons, security to their property, and the free and open enjoyment of their religion."

Ordered, That this motion lie until to-morrow.

FRIDAY, October 21.

The Senate took into consideration the motion made yesterday, for a modification of the third article of the Treaty between the United States and the First Consul of France, respecting Louisiana.

Ordered, That it be printed, confidentially, for the use of the Senate.

SATURDAY, October 22.

The Senate proceeded to consider the motion made on the 20th instant for a modification of the third article of the French Treaty.

Ordered, That it be postponed to Monday next.

MONDAY, October 24.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

I lay before you the Convention signed on the 12th day of May last between the United States and Great Britain, for settling their boundaries in the Northeastern and Northwestern parts of the United States, which was mentioned in my general message of the 17th instant, together with such papers relating thereto, as may enable you to determine whether you will advise and consent to its ratification.

OCT. 24, 1803. TH. JEFFERSON.

The Message and papers were read, and ordered to lie for consideration, and that the treaty be printed, confidentially, for the use of the Senate.

On motion, to resume the consideration of the resolution moved for on the 20th instant, for a modification of the treaty respecting Louisiana, it passed in the negative.

THURSDAY, October 27.

The Convention with Great Britain respecting the Eastern boundaries of the United States was read the second time.

FRIDAY, October 28.

The Senate resumed the consideration of the motion made on the 20th instant for a modification of the treaty respecting Louisiana; and, after debate,

Ordered, That the further consideration thereof be postponed until to-morrow.

MONDAY, October 31.

The Senate resumed the consideration of the British Convention for fixing the Eastern boundaries of the United States:

A motion was made that it be

"*Resolved*, That the Senate (two-thirds of the Senators present concurring) do advise and consent that the Convention between the United States of America and His Britannic Majesty, for determining boundaries, pursuant to the provisions contained in the Treaty of Peace of 1783, concluded at London on the 13th day of May, 1803, be ratified." Whereupon,

A motion was made to amend the fifth article by inserting, after the word "Commissioners," in the first instance, "upon the demand of either Government," and to add the word "immediately," after the word "shall," in the next line.

And, after debate, adjourned.

FRIDAY, November 4.

The Senate resumed the consideration of the Convention made between the United States and His Britannic Majesty, for fixing the Eastern boundaries of the United States; and the motion for amendment being withdrawn after debate, the further consideration thereof was postponed to Monday next.

The Senate took into consideration the motion made on the 20th of October for a modification of the third article of the treaty between the United States and the First Consul of France respecting Louisiana.

And on the question, Will the Senate agree to the resolution moved for? it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Anderson, Baldwin, Butler, Dayton, Jackson, Logan, Potter, Wells, and White.

NAYS—Messrs. Adams, Bailey, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Maclay, Nicholas, Olcott, Pickering, Plumer, Israel Smith, John Smith, Stone, Taylor, Tracy, Worthington, and Wright.

TUESDAY, November 15.

The Senate resumed the consideration of the treaty made between the United States and His Britannic Majesty for establishing the Eastern boundaries of the United States.

Ordered, That it be referred to Messrs. ADAMS, NICHOLAS, and WRIGHT, to inquire and report thereon to the Senate.

FRIDAY, November 25.

Ordered, That a committee be appointed to inquire if any, and what, further proceedings are necessary by the Senate, on the Convention between the United States and the King of Spain; and that Messrs. BRADLEY, JACKSON, and BALDWIN, be the committee to inquire and report thereon to the Senate.

WEDNESDAY, December 21.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate of the United States:

On the 11th of January last, I laid before the Senate, for their consideration and advice, a Convention with Spain, on the subject of indemnities for spoliations on our commerce, committed by her subjects during the late war; which Convention is still before the Senate. As this instrument did not embrace French seizures and condemnations of our vessels in the ports of Spain, for which we deemed the latter Power responsible, our Minister at that Court was instructed to press for an additional article, comprehending that branch of wrongs. I now communicate what has since passed on that subject. The Senate will judge whether the prospect it offers will justify a longer suspension of that portion of indemnities conceded by Spain, should she now take no advantage of the lapse of the period for ratification.

As the settlement of the boundaries of Louisiana will call for new negotiations, on our receiving possession of that province, the claims not obtained by the Convention, now before the Senate, may be incorporated into those discussions.

DEC. 21, 1803. TH. JEFFERSON.

The Message and papers accompanying it were read, and ordered to lie for consideration.

Ordered, That Mr. VENABLE be of the committee appointed on the 15th of November, on an article of the British Treaty, in place of Mr. NICHOLAS, absent.

THURSDAY, December 22.

Mr. BRADLEY reported, from the committee appointed on the 25th of November, on the Spanish Convention, that the Message of the President of the United States, of December 21st, gave the Senate all the information within their power to obtain. Whereupon,

Ordered, That the committee be discharged.

A motion was made by Mr. BRADLEY, that it be

"*Resolved*, That the Message and documents communicated by the President of the United States, to the Senate, on the 21st instant, be referred to a select committee, to consider and report whether any, and, if any, what, further proceedings ought to be had by the Senate, in relation to the Message on the disclosures made by the same."

And it was agreed that this motion lie for consideration.

Ordered, That the Message of the President of the United States, of 21st December, with the communications referred to, be the order of the day for the second Monday in January next.

WEDNESDAY, December 28.

Mr. ADAMS, from the committee to whom was referred, on the 15th ult., the Convention for ascertaining boundaries between the United States and the British Government, concluded at London, May 12, 1803, made report; and it was agreed that the consideration thereof be the order of the day for to-morrow.

WEDNESDAY, January 4, 1804.

The Senate resumed the consideration of the British Convention, for fixing the Eastern boundaries of the United States, and the motion made to ratify the same, the 31st October last; and, after debate, the Senate adjourned.

MONDAY, January 9.

The Senate resumed the consideration of the Convention between His Catholic Majesty and the United States; and a motion was made that it be

"*Resolved*, (*two-thirds of the Senators present concurring therein.*) That the Senate do advise and consent to the ratification of the Convention entered into between His Catholic Majesty and the United States, concluded at Madrid, on the 11th day of August, 1802."

On motion to amend the resolution, by adding the following words:

"It being understood that this Convention shall embrace all the losses, damages, and injuries sustained by the subjects of Spain, and citizens of the United States of America, in consequence of the excesses and irregularities committed by Spanish subjects, or American citizens, whether being private persons, or officers, or agents of either Government:"

It passed in the negative—yeas 8, nays 19, as follows:

YEAS—Messrs. Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Adams, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Samuel Smith, Stone, Venable, and Worthington.

And, on the question to agree to the original motion for ratification, it passed in the affirmative—yeas 21, nays 7, as follows:

YEAS—Messrs. Adams, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, John Smith of Ohio, Samuel Smith, Stone, Venable, White, and Worthington.

NAYS—Messrs. Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, and Wells.

So it was

"*Resolved*, (*two-thirds of the Senators present concurring therein.*) That the Senate do advise and consent to the ratification of the Convention entered into between His Catholic Majesty and the United States, concluded at Madrid, on the 11th day of August, 1802."

Ordered, That the Secretary lay this resolution before the President of the United States.

The Senate resumed the consideration of the Convention between the United States and His Britannic Majesty, for fixing the boundaries between Great Britain and the United States; and, on motion, to advise and consent to the ratification, with the exception of the 5th article, it was agreed to postpone the subject until to-morrow.

Agreeably to the order of the day, the Senate proceeded to consider the motion made on the 22d of December last, that it be

"*Resolved*, That the Message and documents communicated by the President of the United States to the Senate, on the 21st instant, be referred to a select committee, to consider and report whether any, and, if any, what, further proceedings ought to be had by the Senate, in relation to the Message, or the disclosures made by the same."

The motion was adopted; and

Ordered, That Messrs. BRADLEY, BALDWIN, and JACKSON, be the committee.

WEDNESDAY, February 8.

On motion, it was agreed that the motion to ratify the Convention between the United States and His Britannic Majesty, for fixing the boundaries between the United States and Great Britain, be the order of the day for to-morrow.

On motion, it was agreed that the injunction of secrecy, contained in the 37th rule of the Senate, so far as relates to the Convention ratified on the 9th day of January last, between the United States and His Catholic Majesty, be taken off.

THURSDAY, February 9.

The Senate resumed the motion made for a ratification of the British Convention, for fixing the boundaries between the United States and Great Britain. Whereupon, a motion was made to except the 5th article; and, on the question, Will the Senate consent and advise to the ratification of the 5th article? it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Israel Smith, and Tracy.

NAYS—Messrs. Anderson, Armstrong, Breckenridge, Baldwin, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, John Smith, Stone, Sumter, Venable, Wells, Worthington, and Wright.

On the question, Will the Senate consent and advise to the ratification of the Convention, with the exception of the 5th article? it passed unanimously in the affirmative—yeas 31, as follows:

YEAS—Messrs. Adams, Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Hillhouse, Jackson, Logan, Maclay, Nicholas, Olcott, Pickering, Plumer, Potter, Israel Smith, John Smith of Ohio, Samuel Smith, Stone, Sumter, Tracy, Venable, Wells, Worthington, and Wright.

So it was *Resolved*, That the Senate do advise and consent to the ratification of the Convention between the United States and His Britannic Majesty, for fixing the boundaries between the United States and Great Britain, concluded at London, May 12, 1803, with the exception of the 5th article.

Ordered, That the Secretary lay this resolution before the President of the United States.

On motion, that the injunction of secrecy upon the members of the Senate be taken off, in respect to the Convention of boundaries with Great Britain, signed at London, on the 12th of May, 1803:

Ordered, That this motion lie on the table.

FRIDAY, February 10.

The Senate resumed the motion made yesterday, "that the injunction of secrecy upon the members of the Senate, be taken off, in respect to the Convention of boundaries with Great Britain, signed at London, on the 12th of May, 1803;" and, after debate, it was agreed that the consideration thereof be postponed.

FRIDAY, February 24.

Mr. BRADLEY reported, from the committee to whom was referred, on the 9th ultimo, the Message from the President of the United States, of 21st December, and the documents accompanying the same; and the report was read.

Ordered, That it be printed, under an injunction of secrecy, for the use of the Senate.

The Senate resumed the consideration of the motion, made on the 9th instant, "that the injunction of secrecy, upon the members of the Senate, be taken off, in respect to the Convention of boundaries with Great Britain, signed at London, on the 12th day of May, 1803;" and, on the question to agree to this motion, it was determined in the negative—yeas 11, nays 20, as follows:

YEAS—Messrs. Adams, Dayton, Hillhouse, Logan, Olcott, Pickering, Plumer, Tracy, Wells, White, and Wright.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Jackson, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Stone, Sumter, Venable, and Worthington.

TUESDAY EVENING, March 27.

The Senate took into consideration the report of the committee, to whom was referred, on the 9th of January, the Message of the President of the United States, of December 21, as follows:

IN SENATE OF THE UNITED STATES,
February 24, 1804.

Mr. BRADLEY, from the committee appointed on the 9th of January, to consider and report whether any, and, if any, what further proceedings ought to be had by the Senate, in relation to the Message and documents communicated by the President of the United States, on the 21st of December last, submitted the following report:

Upon a careful examination of the Message and documents communicated by the President, on the 21st of December, your committee notice certain unauthorized acts and doings of individuals, contrary to law and highly prejudicial to the rights and sovereignty of the United States, tending to defeat the measures of the Government thereof; and which, in their opinion, merit the consideration of the Senate.

They find that, on the 15th of November, 1802, and before and subsequent to that day, divers controversies and disputes had arisen between the Governments of the United States and Spain, concerning certain seizures and condemnations of the vessels and effects of the citizens of the United States, in the ports of Spain, and for which the Government of Spain was deemed responsible, and in the prosecution of which, for indemnification, the Minister of the United States, near the Court of Spain, had been instructed to press that Government, by friendly negotiation, to provide for those wrongs.

Your committee find, while said negotiation was pending, and the said disputes and controversies in no wise settled or adjusted, that Jared Ingersoll, William Rawle, Joseph B. McKean, and P. S. Du Ponceau, of the city of Philadelphia, did, at said Philadelphia, on the same 15th of November, 1802, and Edward Livingston, of the said city of New York, did, at said New York, on the 3d day of the same November, in violation of the act, entitled "An act for the punishment of certain crimes therein specified," passed the 30th day of January, 1799, commence and carry on a correspondence and intercourse with the said Government of Spain, and with the agents thereof; and, as the committee believe, with an intent to influence the measures and conduct of the Government of Spain, and to defeat the measures of the Government of the United States, and did, then and there, counsel, advise, aid, and assist, in such correspondence, with intent as aforesaid.

Your committee, with the knowledge of these facts, are compelled to observe, that however there might exist in Senate a great reluctance to express any opinion in relation to the proceedings in the ordinary course of criminal jurisprudence, yet, when they reflect on the nature of the offence, the improbability of the ministers of the law ever coming to the knowledge thereof without the aid of the Executive, and the delicate situation of the Executive in relation to the subject, duty seems to demand, and propriety to justify, their expressing an opinion in favor of that aid, without which, in their judgment, the justice of the nation would be exposed to suffer.

Your committee have no doubt that precedents may be adduced, and from the best authority, to justify such a measure, and warrant the proceedings with safety, to

the remedial justice of the law, which admits of no rules, or pretended rules, uncorrected and uncontrolled by circumstances, the certain result of which would be the failure of justice.

With these impressions, your committee respectfully offer to the Senate the following resolutions:

Resolved, That the President of the United States be requested to cause to be laid before the Attorney General, all such papers, documents, and evidence, as he may deem expedient, and which relate to any unauthorized correspondence and intercourse, carried on by Jared Ingersoll, William Rawle, Joseph B. McKean, P. S. Du Ponceau, and Edward Livingston, with the Government of Spain, or with the agents thereof, with an intent to influence the measures and the conduct of the Government of Spain, or to defeat the measures of the Government of the United States, in relation to certain disputes and controversies between the said Governments.

Resolved, That, if, in the opinion of the Attorney General, such papers, documents, evidence, or such other evidence as may be presumed, from any that is *participes criminis*, shall be deemed sufficient to warrant a prosecution of the aforesaid persons, or either of them, that the President of the United States be, and hereby is, requested to instruct the proper law officer to commence a prosecution, at such time and in such manner as he may judge expedient, against Jared Ingersoll, William Rawle, Joseph B. McKean, P. S. Du Ponceau, and Edward Livingston, or either of them, on the act, entitled "An act for the punishment of certain crimes therein specified." And that he be requested to furnish the Attorney on the part of the United States, for the purpose of carrying on said prosecution, with such papers, documents, and evidence, from the Executive Department of the Government, as he may deem expedient and necessary.

A motion was made by Mr. WHITE, that it be

Resolved, That the Senate will take no further order on the report made to them respecting the opinions of certain lawyers, relative to the Convention between the United States and His Catholic Majesty; the Senate not considering it within the province of their duty to do so, and that the injunction of secrecy upon the same be taken off.

Ordered, That the consideration of this resolution be postponed to the first Monday in November next.

TRIAL OF JUDGE PICKERING,

On a charge of High Crimes and Misdemeanors, exhibited to the Senate of the United States.

IN SENATE OF THE UNITED STATES.

THURSDAY, March 3, 1803.

A message was received from the House of Representatives, by Messrs. NICHOLSON, and RANDOLPH, two of the members of the said House, in the words following:

Mr. President: We are commanded in the name of the House of Representatives, and of all the people of the United States, to impeach John Pickering, judge of the district court of the district of New Hampshire, of high crimes and misdemeanors; and to acquaint the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

We are further commanded to demand that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment.

Ordered, That the message received this day from the House of Representatives, respecting the impeachment of John Pickering, judge of a district court, be referred to Messrs. TRACY, CLINTON, and NICHOLAS, to consider and report thereon.

Mr. TRACY from the committee appointed on the subject, made the following report; which was adopted, and the House of Representatives notified accordingly:

Whereas the House of Representatives have this day, by two of their members, Messrs. Nicholson and Randolph, at the bar of the Senate, impeached John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors, and have acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same. And have likewise demanded that the Senate take order for the appearance of the said John Pickering, to answer to the said impeachment.

Therefore, *Resolved*, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

THURSDAY, October 27.

A motion was made that the Senate adopt the following resolution:

Resolved, That a committee be appointed to prepare the process to compel the attendance of John Pickering to answer the charge exhibited against him by the House of Representatives at their last session.

Ordered, That this motion lie on the table.

MONDAY, November 14.

On motion, the Senate resumed the consideration of the resolution passed on the 27th of October last, respecting the impeachment of John Pickering; and having agreed to an amendment thereto,

Resolved, That a committee be appointed to inquire if any and what further proceedings, at present, ought to be had by the Senate respecting the impeachment of John Pickering, made at the bar of this Senate by two members of the House of Representatives, on the last day of the last session of Congress; and

Ordered, That Messrs. TRACY, BRADLEY, BALDWIN, WRIGHT, and COCKE, be the committee to consider and report thereon to the Senate.

TUESDAY, January 3, 1804.

Mr. TRACY from the committee to whom was referred the inquiry, "If any and what, further procedings at present ought to be had by the Senate respecting the impeachment of John Pickering, made at the bar of the Senate, by two members of the House of Representatives, on the last day of the last session of Congress," reported:

"That they find the following facts, which have an immediate relation to the subject committed to them, viz: 'On the last day of the last session of Congress, two members of the House of Representatives came to the Senate, and in the name of the House, and of all the people of the United States, verbally impeached John Pickering, district judge of the district of New Hampshire, of high crimes and misdemeanors, without any specification; and likewise, they verbally acquainted the Senate that the said House of Representatives would in due time exhibit particular articles of impeachment against him, the said Pickering, and make good the same. And they verbally demanded that the Senate should take order for the appearance of the said John Pickering, to answer to the said impeachments;' and that said verbal declaration of impeachment was committed by the Senate to a select committee, who reported thereon, in the following words, viz: '*Resolved*, 'That the Senate will take proper order thereon, (that 'is, of the verbal impeachment aforesaid,) of which 'due notice shall be given to the House of Represent-'atives," of which resolution, the Secretary of the Senate gave information to the House of Representatives.

"With these facts in view, your committee have attended to the Constitutional powers vested in the Senate as a Court of Impeachment, and they find that "judgment in case of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States;" and that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law." Hence your committee suppose that no power is Constitutionally vested in the Senate to take into custody, or hold the body of the person impeached for trial; but that a notification to the party of the impeachment, with a copy of the articles exhibited, is all the process requisite in the case; and that it is optional with the party to appear in *propria persona*, by attorney, or not at all; and that after the notice given as aforesaid, it is competent for the Senate to proceed to a trial and judgment on said impeachment, whether the party shall appear by himself, his attorney, or not at all. And although your committee would not in the smallest degree interfere with the House of Representatives, in the manner of instituting the process of impeachment, since the *sole right* of impeaching is vested by the Constitution in that House, yet they believe the Senate, in common with other Courts, have the sole power, while acting as a Court of Impeachments, to regulate all forms as well as substance of impeachments which shall be presented to them, and all proceedings to be had thereon. They therefore are of opinion, that at present no further proceeding ought to be had by the Senate respecting the verbal impeachment of John Pickering, made at the bar of the Senate by two members of the House of Representatives, on the last day of the last session of Congress; and that in strict and proper construction of the Constitution, there is no impeachment before the Senate, until exhibited to them by the House of Representatives, in written articles.

On a full view of the subject, the committee respectfully submit for the consideration and adoption of the Senate the following resolution, viz:

"*Resolved*, That the Senate cannot with propriety take any order upon the verbal notification to them by the House of Representatives, on the last day of the last session of Congress, that they did impeach John Pickering of high crimes and misdemeanors. And that all proceedings thereon by the Senate must be deferred until written articles shall, in due form, be presented by said House of Representatives."

A message from the House of Representatives informed the Senate that the House of Representatives have appointed managers on their part to conduct the impeachment against John Pickering, judge of the district court of New Hampshire, and have also directed the said managers to carry to the Senate the articles agreed upon by the House of Representatives, to be exhibited against the said John Pickering.

On motion, the Senate took into consideration the report of the committee, made this day, on what further proceedings, at present, ought to be had by the Senate respecting the impeachment of John Pickering; and on motion, it was agreed that the report be postponed.

Resolved, That at twelve o'clock, to-morrow, the Senate will resolve itself into a Court of Impeachments, at which time, the following oath or affirmation, shall be administered by the Secretary to the President of the Senate, and by him to each member of the Senate, viz:

"I solemnly swear, or affirm, (as the case may be) that, in all things appertaining to the trial of the impeachment of John Pickering, Judge of the district court of the district of New Hampshire, I will do impartial justice, according to law."

Which court of impeachments, being thus formed, will, at the time aforesaid, receive the managers appointed by the House of Representatives, to exhibit articles of impeachment, in the name of themselves and of all the people of the United States, against John Pickering, judge of the district court for the district of New Hampshire, pursuant to notice given to the Senate this day by the House of Representatives, that they had appointed managers for the purpose aforesaid.

Ordered, That the Secretary lay this resolution before the House of Representatives.

Ordered, That a committee be appointed to search the journals, and report precedents in cases of impeachment, and that Messrs. TRACY, BRADLEY, BALDWIN, WRIGHT, and COCKE, to whom it was referred on the 14th of November last to consider and report, if any, what further proceedings ought to be had by the Senate respecting the impeachment of John Pickering, be this committee.

WEDNESDAY, January 4.

Mr. TRACY from the committee appointed yesterday to examine precedents and prepare forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors, reported, in part, that it be

Resolved, That, after the managers of the impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against John Pickering, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a Court of

Impeachments, articles of impeachment against John Pickering, judge of the district court for the district of New Hampshire."

After which the articles shall be exhibited, and then the President of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

And the report was adopted.

Agreeably to the resolution of yesterday, the Senate proceeded to organize the Court.

The Secretary administered the following oath to the President.

"You solemnly swear that, in all things appertaining to the trial of the impeachment of John Pickering, judge of the district court of the district of New Hampshire, you will do impartial justice, according to law."

The President administered the oath, respectively, to Messrs. Adams, Armstrong, Anderson, Bailey, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Hillhouse, Jackson, Olcott, Pickering, Potter, Israel Smith, Samuel Smith, John Smith, Tracy, Venable, Wells, and Worthington; and the affirmation to Messrs. Logan, Maclay, and Plumer.

A message was received from the House of Representatives.

The managers on the part of the House of Representatives, Messrs. Nicholson, Early, Rodney, Eustis, John Randolph, jr., Samuel L. Mitchill, George W. Campbell, Blackledge, Boyle, Joseph Clay, and Newton, were admitted; and Mr. Nicholson, the chairman, announced that they were the managers instructed by the House of Representatives to exhibit certain articles of impeachment against John Pickering, district judge of the district of New Hampshire.

They were requested by the President to take seats assigned them within the bar.

The Sergeant-at-Arms was directed to make proclamation, in the words following:

Oyes! Oyes! Oyes!—All persons are commanded to keep silence on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, sitting as a Court of Impeachments, articles of impeachment against John Pickering, judge of the district court of the district of New Hampshire.

The managers then rose, and Mr. NICHOLSON, their chairman, read the articles, as follows:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against JOHN PICKERING, judge of the district court of the district of New Hampshire, in maintenance and support of their impeachment against him, for high crimes and misdemeanors.

ARTICLE 1. That whereas George Wentworth, surveyor of the district of New Hampshire, did, in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than ten tons burden, on the fifteenth day of October, in the year one thousand eight hundred and two, seize the ship called the Eliza, of about two hundred and eighty-five tons burden, whereof William Ladd was late master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of four hundred dollars and upwards, and did likewise seize on land within the said district, on the seventh day of October, in the year one thousand eight hundred and two, two cables of the value of two hundred and fifty dollars, part of the said goods, which were alleged to have been unladen from on board the said ship as aforesaid, contrary to law; and whereas Thomas Chadbourne, a deputy marshal of the said district of New Hampshire, did, on the sixteenth day of October, in the year one thousand eight hundred and two, by virtue of an order of the said John Pickering, judge of the district court of the said district of New Hampshire, arrest and detain in custody, for trial, before the said John Pickering, judge of the said district court, the said ship called the Eliza, with her furniture, tackle, and apparel, and also the two cables aforesaid: and whereas, by an act of Congress, passed on the second day of March, in the year one thousand seven hundred and eighty-nine, it is among other things provided, that "upon the prayer of any claimant to the court, that any ship or vessel, goods, wares, or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties, to be approved of by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum of which the ship or vessels, goods, wares, or merchandise, so prayed to be delivered and appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured, in like manner as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be delivered to the said claimant:" Yet the said John Pickering, judge of the said district court, of the said district of New Hampshire, the said act of Congress not regarding, but with intent to evade the same, did order the said ship called the Eliza, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalet Ladd, who claimed the same, without his, the said Eliphalet Ladd's producing any certificate from the collector and naval officer of the said district, that the tonnage duty on the said ship, or the duties on the said cables, had been paid or secured, contrary to his trust and duty as judge of the said district court, against the laws of the United States, and to the manifest injury of their revenue.

ART. 2. That whereas, at a special district court of the United States, begun and held at Portsmouth, on the eleventh day of November, in the year one thousand eight hundred and two, by John Pickering, judge of said court, the United States, by Joseph Whipple, their collector of said district, having libelled, propounded and given the said judge to understand and be informed, that the said ship Eliza, with her furniture, tackle, and apparel, had been seized as aforesaid, because there had been unladen therefrom, contrary to law, two cables and one hundred pieces of check, of the value of four hundred dollars and upwards, and having prayed in

their said libel, that the said ship, with her furniture, tackle and apparel, might, by the said court, be adjudged to be forfeited to the United States, and be disposed of according to law, and a certain Eliphalet Ladd, by his proctor and attorney, having come into the said court, and having claimed the said ship Eliza, with her tackle, furniture, and apparel, and having denied that the said two cables, and the said one hundred pieces of check, had been unladen from the said ship contrary to law, and having prayed the said court that the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalet Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the cause, thus depending between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited by law, and the said Eliphalet Ladd on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right; and whereas John S. Sherburne, Attorney for the United States, in and for the said district of New Hampshire, did appear in the said district court, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States, in their libel, filled by their collector as aforesaid, in the said court, and to show that the said ship Eliza, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States; yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses so as aforesaid produced in behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States, in the trial of the said cause, did order and decree the said ship Eliza, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty, as judge of the said district court, in violation of the laws of the United States, and to the manifest injury of their revenue.

ART. 3.—That whereas it is provided, by an act of Congress, passed on the twenty-fourth day of September, in the year one thousand seven hundred and eighty-nine, "that from all final decrees in a district court, in causes of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars, exclusive of costs, an appeal shall be allowed to the next circuit court, to be held in such district; and whereas, on the twelfth day of November, in the year one thousand eight hundred and two, at the trial of the aforesaid cause, between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited for the causes aforesaid, and the said Eliphalet Ladd on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right, the said John Pickering, judge of the said district court of the district of New Hampshire, did decree that the said ship Eliza, with her tackle, furniture, and apparel, should be restored to the said Eliphalet Ladd, the claimant; and whereas the said John S. Sherburne, attorney for the United States, in and for the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said twelfth day of November, in the year one thousand eight hundred and two, did, in the name and behalf of the United States, claim an appeal from the said decree of the district court, to the next circuit court, to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid; yet the said John Pickering, judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, as prayed for and claimed by the said John S. Sherburne, in behalf of the United States, contrary to his trust and duty as judge of the said district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice.

ART. 4.—That whereas, for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits, on the eleventh and twelfth days of November, in the year one thousand eight hundred and two, being then judge of the district court, in and for the district of New Hampshire, did appear upon the bench of the said court, for the purpose of administering justice, in a state of total intoxication, produced by the free and intemperate use of inebriating liquors; and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment, against the said John Pickering, and also of replying to his answers which he shall make to the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said John Pickering may be put to answer the said high crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments may be thereupon had and given, as may be agreeable to law and justice.

Signed by order and in behalf of the House.

NATHANIEL MACON, *Speaker.*

JOHN BECKLEY, *Clerk.*

He then delivered the articles at the table; whereupon,

The PRESIDENT notified the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives. And they withdrew.

The Court adjourned to 12 o'clock to-morrow.

THURSDAY, January 5.

The PRESIDENT administered the oath prescribed to Mr. DAYTON.

The Court adjourned to 12 o'clock on Monday.

MONDAY, January 9.

The oath prescribed was administered to Messrs. NICHOLAS, STONE, and WHITE.

Mr. TRACY reported from the committee appointed on the 3d instant to examine precedents, and to prepare the forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors; and the report was read.

Ordered, That it be printed for the use of the members.

The Court adjourned to 12 o'clock to-morrow.

TUESDAY, January 10.

The Court took into consideration the report of the committee made yesterday; and, after discusson, and agreeing that the words "Michael McClary, Esq., marshal of the district of New Hampshire," in the first resolution, should be struck out,

Ordered, That the report be recommitted to the original committee, further to report thereon.

The Court adjourned to 12 o'clock to-morrow.

WEDNESDAY, January 11.

Mr. TRACY, from the committee appointed on the 3d instant to examine precedents, and to prepare the forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors, made report in part, which was read; and, after progress,

The Court adjourned to 11 o'clock to-morrow morning.

THURSDAY, January 12.

The Court resumed the consideration of the report made yesterday.

On motion, to fill the second blank in the form of the writ of summons, prescribing the day on which the defendant shall appear, with the words "second Tuesday of December next," it passed in the negative—yeas 6, nays 21, as follows:

YEAS—Messrs. Bradley, Brown, Condit, Jackson, Plumer, and Samuel Smith.

NAYS—Messrs. Adams, Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Franklin, Hillhouse, Logan, Maclay, Nicholas, Olcott, Pickering, Potter, I. Smith, John Smith, Tracy, Venable, Wells, White, and Worthington.

On motion, it was agreed to fill the blank with the words, "second day of March next."

On motion, it was agreed to fill the blank in the clause of the report providing that the Secretary of the Senate advance a sum of money out of the contingent fund, towards the travelling expenses of the Sergeant-at-Arms, with the words "two hundred dollars."

And the report having been further amended, was adopted, as follows:

Resolved, That a summons issue, directed to the said John Pickering, in the form following:

United States of America—set:

The Senate of the United States of America, in their capacity of a Court of Impeachments, to John Pickering, judge of the district court for the district of New Hampshire, greeting:

Whereas the House of Representatives of the United States of America did, on the fourth day of January, exhibit to the Senate, then sitting as a Court of Impeachments, articles of impeachment against you the said John Pickering, charging you with high crimes and misdemeanors, therein specially set forth in the words following, viz: [Here insert the articles] And did demand that you the said John Pickering should be put to answer the accusations of high crimes and misdemeanors, as set forth in said articles; and that such proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and justice. You, the said John Pickering, are therefore hereby summoned to be and appear before the Senate of the United States of America, in their capacity of a Court of Impeachments, at their chamber in the City of Washington, on the second day of March next, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform, such orders and judgments as the Senate of the United States, acting in their said capacity of a Court of Impeachments, shall make in the premises, according to the Constitution and laws of the said United States. Hereof you are not to fail.

Witness, AARON BURR, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this 12th day of January, in the year of our Lord one thousand eight hundred and four, and of the Independence of the United States the twenty-eighth.

Which summons shall be signed by the Secretary of the Senate, and sealed with their seal, and served by James Mathers, Sergeant-at-Arms to the Senate, who shall serve the same pursuant to the directions given in the next following resolution;

2d *Resolved*, That a precept shall be endorsed on said writ of summons, in the form following, viz:

United States of America, ss.

The Senate of the United States, in their capacity of a Court of Impeachments, to James Mathers, Sergeant-at-Arms to the Senate, greeting: You are hereby commanded to deliver to and leave with John Pickering, Esq., district judge of the district of New Hampshire, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence; and in which ever way you perform the service, let it be done at least thirty days before the appearance day mentioned in the said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day therein mentioned in said writ of summons. Witness, AARON BURR, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this 12th day of January, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

Which precept shall be signed by the Secretary of the Senate, and sealed with their seal.

3d. *Resolved*, That the Secretary of the Senate be, and he is hereby, directed to pay the necessary expenses arising upon the process aforesaid, after the same shall be allowed by the President of the Senate for the time being, out of the fund appropriated to defray the contingent expenses of the two Houses of Congress, and the Secretary of the Senate is hereby authorized and directed to advance, out of said fund, to said James Mathers, for his travelling expenses, the sum of two hundred dollars, to be by said James Mathers accounted for in a final settlement for his services.

4th. *Resolved*, That the Secretary of the Senate do acquaint the House of Representatives of the foregoing resolutions, and deliver to them a copy of the same.

Mr. TRACY, from the committee last mentioned, further reported, in part, and the report was amended, as follows:

Resolved, That whenever application shall be made to the Secretary of the Senate for a subpœna or subpœnas for witnesses, by the House of Representatives, either by their managers of the impeachment, or in any other proper way, or by the party impeached, or his counsel, acknowledged as such, by the Senate, sitting as a Court of Impeachments, he shall issue to such applicant a subpœna, or subpœnas, in the following form, viz:

To [here name the witnesses and residence] Greeting: You and each of you are hereby commanded, laying aside all excuses, to appear before the Senate of the United States, in their capacity of a Court of Impeachments, on the —— day of ——, at the Senate Chamber, in the City of Washington, then and there to testify your knowledge in the cause which is before said Court of Impeachments for trial, in which the House of Representatives have impeached John Pickering, judge of the district court for the district of New Hampshire, of high crimes and misdemeanors. Fail not. Witness, AARON BURR, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord 1804, and of the Independence of the United States the twenty-eighth.

Which shall be signed by the Secretary of the Senate and sealed with their seal.

Which subpœnas shall be directed in every case to the marshal of the districts where such witnesses reside, to serve and return.

Resolved, That the Secretary of the Senate do issue twelve subpœnas for witnesses, in the above form, for the use of the said Pickering, with blanks therein for such witnesses as he the said Pickering may think proper to summon, which subpœnas shall be delivered by the Sergeant-at-Arms to him at the time he shall serve the summons aforesaid, on the said Pickering.

On the question to adopt this report, as amended, it was determined in the affirmative—yeas 23, nays 5, as follows:

YEAS—Messrs. Anderson, Armstrong, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Logan, Maclay, Nicholas, Pickering, Potter, Israel Smith, John Smith, Samuel Smith, Stone, Tracy, Wells, White, and Worthington.

NAYS—Messrs. Adams, Hillhouse, Olcott, Plumer, and Venable.

Ordered, That the Secretary lay these resolutions before the House of Representatives.

The Court adjourned to 12 o'clock to morrow.

FRIDAY, January 13.

Form of direction to the Marshal for the service of the subpœna.

[L. S.] The Senate of the United States of America, sitting as a Court of Impeachments: To the Marshal of the district of ——

You are hereby commanded to serve and return the within subpœna according to law.

Dated at Washington, this —— day of ——, in the year of our Lord one thousand eight hundred and four, and of the Independence of the United States the twenty-eighth.

[From January 13 to Febuary 9 the Court met and adjourned, without transacting any business.]

THURSDAY, February 9.

The following return made by the Sergeant-at-Arms, on the summons issued against John Pickering, was filed; also, his return of the subpœna served upon Michael McClary, to wit:

United States of America, ss.

I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons, did proceed to the house of the within named John Pickering, on the twenty-fifth day of January, in the year one thousand eight hundred and four, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him the said John Pickering. JAMES MATHERS.

United States of America, ss.

I, James Mathers, Sergeant-at-Arms to the Senate of the United States, did, on the twenty-sixth day of January, in the year one thousand eight hundred and four, proceed to the house of the within named Michael McClary, and served this subpœna by reading the same, and leaving with him a copy thereof. JAMES MATHERS.

The Court adjourned to 12 o'clock on Monday next.

MONDAY, February 20.

The returns of the Sergeant-at-Arms on the writ against John Pickering was read; also, the return on the subpœna issued in the case of Michael McClary, marshal of the district of New Hampshire.

The Court adjourned to 12 o'clock on Monday next.

[The Court met daily, but no business reported on the Record till]

THURSDAY, March 1.

Mr. TRACY, from the committee appointed to examine precedents, and to prepare the forms necessary in the trial of John Pickering, made a report, which was in part adopted.

The Court adjourned to 12 o'clock to-morrow.

FRIDAY, March 2.

The PRESIDENT administered the oaths prescribed to Messrs. JOHN SMITH of New York, SUMTER, and WRIGHT.

The report of the committee, appointed to examine precedents, and to prepare forms necessary in the trial of John Pickering, impeached of high crimes and misdemeanors was resumed, and sundry amendments agreed to; and the report was adopted, as follows:

Resolved, That the President of the Senate shall direct all the forms of proceeding, while the Senate are sitting as a Court of Impeachments, as to opening, adjourning, and all forms during the session, not otherwise specially provided for by the Senate.

And that the President of the Senate be requested to direct the preparations in the Senate Chamber for the accommodation of the Senate while sitting as a Court, and for the reception and accommodation of the parties to the impeachment, their counsel, witnesses, &c.

And that he be authorized to direct the employment of the marshal, or any officer, or officers, of the District of Columbia, during the session of the Court of Impeachments, whose services he may think requisite, and which can be obtained for the purpose.

And all the expenses arising under this resolution, after being first allowed by the President of the Senate, shall be paid by the Secretary, out of the fund appropriated to defray the contingent expenses of both Houses of Congress.

Resolved, That, on the second day of March instant, at one o'clock, the Legislative and Executive business of the Senate be postponed, and that the Court of Impeachments shall then be opened. After which, the process, which, on the twelfth day of January last, was directed to be issued and served on John Pickering, and the return thereon, shall be read. And the Secretary of the Senate shall administer an oath to the returning officer, in the following form, to wit:

"I, James Mathers, do solemnly swear, that the return made and subscribed by me, upon the process issued on the twelfth day of January last, by the Senate of the United States, against John Pickering, is truly made, and that I have performed said services as there described. So help me God."

Which oath shall be entered at large on the records.

The Secretary shall then give notice to the House of Representatives, that the Senate, in their capacity of a Court of Impeachments, are ready to proceed upon the impeachment of John Pickering, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

Resolved, That counsel for the parties shall be admitted to appear and be heard upon said impeachment. And upon the attendance of the House of Representatives, their managers, or any person, or persons admitted to appear for the impeachment, the said John Pickering shall be called to appear and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly if by himself, or if by agent or attorney—naming the person appearing, and the capacity in which he appears. If he does not appear, either personally or by agent or attorney, the same shall be recorded. All motions made by the parties or their counsel shall be addressed to the President of the Senate, and, if he shall require it, shall be committed to writing, and read at the Secretary's table; and, after the parties shall be heard upon such motion, the Senate shall retire to the adjoining committee room for consideration, if one-third of the members present shall require it; but all decisions shall be had in open court, by ayes and noes, and without debate, which shall be entered on the records.

Witnesses shall be sworn in the following form, viz: "I, A B, do swear (or affirm, as the case may be,) that the evidence I shall give to this court in the case now depending shall be the truth, the whole truth, and nothing but the truth. So help me God."

Witnesses shall be examined by the party producing them, and then cross examined in the usual form.

If a Senator is called as a witness, he shall be sworn and give his testimony standing in his place.

If a Senator wishes a question to be put to a witness, it shall be reduced to writing, and put by the President.

The summons to John Pickering was read, together with the return made thereon by the Sergeant-at-Arms, and the oath prescribed was administered to the returning officer by the Secretary.

Subpœnas having been issued in the form prescribed, and directed for service to the marshal of the district of New Hampshire, upon Joseph Whipple, John S. Sherburne, Jonathan Steele, Richard Cutts Shannon, Thomas Chadbourne, Edward Hart, and Ebenezer Chadwick, the following return was made to them respectively:

NEW HAMPSHIRE DISTRICT, *ss.*
January 28, 1804.

Pursuant to this precept, I have served the same by reading it to the within named Ebenezer Chadwick, &c.

MICHAEL M'CLARY.
Marshal for the New Hampshire district.

Ordered, That the Secretary give notice to the House of Representatives that the Senate, in their capacity of a Court of Impeachments, are ready to proceed upon the impeachment of John Pickering, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives; and that the Secretary communicate a copy of the regulations agreed on to that House.

Whereupon, the managers on the part of the House of Representatives attended; and the said John Pickering was three times called, to answer the articles of impeachment exhibited against him by the House of Representatives, but came not.

A petition of Jacob S. Pickering, son of John Pickering, and a letter from Robert G. Harper, enclosed to the Vice President, were submitted by him to the court, and read as follows:

Petition of Jacob S. Pickering.

At a Court of Impeachments holden before the honorable the Senate of the United States of America, sitting in their capacity of a High Court of Impeachment at the City of Washington, on the second day of March, 1804:

The House of Representatives of the United States, *vs.* John Pickering, judge of the district court for the district of New Hampshire:

Jacob S. Pickering, of Portsmouth, in the district of New Hampshire, and son of the said John Pickering, against whom articles of impeachment have been exhibited by the House of Representatives of the United States, conceives it his duty most respectfully to state to this high and honorable Court, the real situation of the said John Pickering, the facts and circumstances relative to said articles, wherein he stands charged of supposed high crimes and misdemeanors, and to request that this court would grant him such term of time as they shall think fit and reasonable to substantiate this statement.

Your petitioner will be able to show that, at the time when the crimes wherewith the said John stands charged, are supposed to have been committed, the said John was, and for more than two years before, and ever since has been, and now is, insane, his mind

wholly deranged, and altogether incapable of transacting any kind of business which requires the exercise of judgment, or the faculties of reason; and, therefore, that the said John Pickering is incapable of corruption of judgment, no subject of impeachment, or amenable to any tribunal for his actions.

That this derangement has been constant and permanent, every day of his life completely demonstrating his insanity; every attempt for his relief, which has been prescribed by the Faculty, who have been consulted on his case, has proved unavailing, and his disorder has baffled all medical aid.

Your petitioner is well aware that the most conclusive evidence of the aforegoing fact would result from an actual view of the respondent, which unfortunately, by reason of his great infirmities cannot now be, but at the hazard of his life—he is wholly unable at this inclement season to support the fatigue of so long a journey; yet if the respondent's life be spared, and his health in any degree restored, it will be the endeavor of your petitioner, that the said John shall make his personal appearance before this honorable court at any future day they shall think proper to assign.

Your petitioner will be able to show, any pretence to the contrary notwithstanding, that the decisions made in the cause stated in the first article of impeachment, although not the result of reflection, or grounded on any deductions of reason, were, nevertheless, correct, perfectly consonant to the principles of justice, and conformable to the laws of the land; and the refusal of the said judge to grant the appeal claimed by the said John S. Sherburne, in behalf of the United States, was not against law, or to the injury of the public revenue, as the third article of the impeachment supposes; there being no law to warrant such appeal in such a case.

While, with deep humility, your petitioner admits and greatly laments the indecorous and improper expressions used by the said judge on the seat of justice, as mentioned in the last article of impeachment, he will clearly evince the injustice of that part thereof which respects his moral character, and show abundantly, that from his youth upward, through a long, laborious, and useful life, and until he was visited by the most awful dispensation of Providence, and the most deplorable of all human calamities, the loss of reason, he was unexceptionable in his morals, remarkable for the purity of his language, and the correctness of his habits, and the deviations in these particulars now complained of, are irresistible evidence of the deranged state of his mind.

When this high and honorable Court shall take into their consideration the situation of this respondent, oppressed with infirmity, incapable of making arrangements for his defence, the inclemency of the season, his great distance from the place of trial, and the shortness of notice—when your honors reflect on the high and atrocious crime with which he stands charged; in the decision of which is involved, not his life, (indeed his remains of life would be but a slender sacrifice,) but that which, to an honest mind, is more dear than life itself, his good name—when you advert to the consequences attached to a conviction; the indelible stigma which will befall a numerous family whose only patrimony was the unsullied reputation of their parent, which they have ever cherished, and of which they fondly, perhaps too fondly, hoped, no time, or circumstance, or adverse fortune could deprive them—when your honors shall think of these things, your petitioner has strong confidence that the wisdom and justice of this Court will permit a respondent, whose integrity until now has been unexpected; who has sustained offices high and honorable, through a long life, and the general tenor of whose character and conduct has hitherto furnished him with a coat of armor against the assaults of his enemies, but who is now incapable of defending himself, to be defended by his friends.

Audi alteram partem is a maxim held in reverence wherever liberty yet remains. The Senate of America will be the last tribunal on earth that will cease to respect it; they will never condemn unheard; they will never refuse time for a full and impartial trial.

That time, that impartial trial, your petitioner prays for; the charity of the law presumes the innocence of the respondent; and your petitioner, also, respectfully entreats that, in the meantime, and more especially as the evidence on which the impeachment is founded, was taken *ex parte*, no unfavorable impressions may be made on the minds of this honorable Court, by any report or extra-judicial representations which may have been made on the subject before them.

JACOB S. PICKERING.

Letter of Robert G. Harper.

SIR: Mr. Jacob S. Pickering, the son of Judge Pickering of New Hampshire, has forwarded to me, through one of his friends here, the enclosed petition, with a request that I will lay it before the Court of Impeachments, and will appear on his part, if permitted, and support the prayer of it. I am also furnished with several depositions, showing that Judge Pickering, from bodily infirmity, and total derangement of mind, is wholly incapable of appearing before the Court at this time, of making a defence, or of giving authority to any person to appear for him.

The process of subpœna heretofore issued by the Court not being compulsory, and Judge Pickering's narrow circumstances not enabling his son to defray the expenses of the witnesses whose testimony it is important for him to produce, it was judged necessary to serve the subpœna. The object of the petition is to obtain a postponement of the trial, and either compulsory process, or an order to take depositions, which may be received in evidence. Be pleased, sir, to lay the petition before the Court, and to inform me whether I shall be received to appear on the part of the petitioner, Mr. Jacob S. Pickering, in its support. In that case I will attend in the capacity of agent or counsel for the petitioner, and submit to the Court the reasons and proofs with which I am furnished in support of his application.

With the highest respect, I have the honor to be, sir, your most obedient very humble servant,

ROBERT G. HARPER.

The VICE PRESIDENT *of the United States.*

The PRESIDENT inquired if Mr. HARPER was in Court, and invited him to a seat within the bar, which, having taken, he made the following address:

Mr. President: Before I proceed to address this honorable Court in the case now before it, I think it proper to repeat explicitly what is stated in the letter just now read, that I do not appear as the counsel, agent, or attorney of Judge Pickering, or by virtue of any authority derived from him, he being in a state of absolute and long-continued insanity, can neither appear himself nor authorize another to appear for him. I present myself to this honorable Court, at the request of

Jacob S. Pickering, son of Judge Pickering, stating his father's insanity, and praying that time may be allowed for collecting and producing complete proof of the melancholy fact. This application for postponement I am prepared to support by depositions now in my possession; and it is also my intention, if permitted, to make a further application on the part of Judge Pickering, for compulsory process to compel the attendance of such witnesses as it may be necessary to produce in proof of the fact of insanity or for an order to take their depositions in writing on interrogatories, and notice to the prosecutors.

It rests with this honorable Court whether it will receive such an application, and hear counsel so appearing in its support.

After a short pause, Mr. HARPER again rose and inquired, whether his appearance in support of the petition would be construed as the appearance of John Pickering, by counsel?

The PRESIDENT answered, he presumed that it would not be so construed.

Mr. NICHOLAS, in behalf of the managers, objected to the hearing of Mr. HARPER, in any other capacity than as counsel of the accused; and remarked, that, as Mr. HARPER disclaimed appearing in that capacity, he could not, in his opinion, be heard.

Several additional remarks, to the same point, were made by Messrs. G. W. CAMPBELL, EARLY, and J. RANDOLPH.

Mr. RODNEY.—Mr. President; I rise to make a few observations on this case, in addition to those which have fallen from my colleagues who have preceded me; and to submit to the consideration of this Court remarks which have suggested themselves to my mind, on the application made, at the present stage of this business.

I understand the President as having declared that, agreeably to the rules of proceeding adopted by the Senate, no person can be heard in this case but the accused, or his agent or counsel. I believe I have correctly understood what was expressed, (the Vice President nodded assent;) I also understand the gentleman who appeared on this occasion, as clearly and explicitly stating, that he does not appear as the counsel of Mr. Pickering, nor does he wish it so to be understood. That gentleman has informed us in a very fair and candid manner of the only character in which he does appear, and has assumed very properly and correctly the only ground upon which he wishes to stand; He has in positive terms disavowed the idea of his being the agent or counsel of the accused, because he has protested against Mr. Pickering's being affected by any act done by him. On this single ground then, I respectfully submit whether it would be proper to hear the gentleman under these circumstances, and whether it be not manifested that he does not come within the rules laid down by the Senate for the government of this High Court of Impeachments.

But if the gentleman is to be heard on this subject in the anomalous character in which he appears, with a view of postponing the proceedings of this Court, it will first be necessary for the Court to decide that the case is properly before them, agreeably to the rules which have been established. If no appearance in person nor by attorney has been entered, unless proceedings have been had which they shall consider tantamount to an appearance, there is no cause regularly in Court, and it would be idle for any person to talk of postponing the consideration of that which really was not before the Court. A question of this kind must, from the nature of it, ever be incidental to the principal or main question. When a writ is in court according to the rules of the court, a motion for postponement may with propriety, if the circumstances justify it, be made. This must always be a subsequent consideration, after the court are in full possession of the case. Agreeably to the correct course of proceeding in ordinary courts, until bail and appearance, there can be no case in court. The party has no day given him, because he is, until this takes place, considered to be out of Court; nor would any counsel, though duly authorized, be heard in his behalf. There has in his case, then, been no appearance in person or by agent or counsel. The accused has made default, and no agent or attorney has been recorded for him. Surely then his default should be first recorded, and if the Court consider that after his having been duly served, and making default, they will proceed to a hearing and determination of the principal question, it will then be proper to listen to those which are necessarily incidental. It will be at this stage of the business competent for the Court, if at all, to hear the gentleman. But I am decidedly of opinion, there is no period in which it will be proper so to do, unless he claims this right as the agent or counsel of the accused. In that capacity he has a right to be heard—and in that capacity alone. Our Constitution has wisely secured to every man this privilege, and I would not deprive the humblest object in the community of this inestimable benefit. I flatter myself, therefore, that this honorable Court will adhere strictly to the rules which they have prescribed for themselves, and that they will for these reasons, and those which have been assigned by my colleague, refuse the present application.

Mr. HARPER inquired, whether it would be regular in him to reply to these remarks?

The PRESIDENT said, it would not; and immediately after put the question to the Senate, whether Mr. HARPER should be heard in support of the prayer of the petition of Jacob S. Pickering.

Whereupon the Senate retired to a private chamber; from which they returned about three o'clock, when the PRESIDENT advised the managers that the Senate would take further time to consider the question before them, and would make them acquainted with their decision.

During the ensuing day and Monday, the Senate were engaged in private debate on granting the prayer of the petition; about four o'clock of the last day their doors were opened, and the sense of the Senate taken on the following question:

On the question, "Will the Court hear evidence

and counsel respecting the insanity of John Pickering, upon the suggestion contained in the petition of Jacob S. Pickering, and the letter of R. G. HARPER.

It was decided in the affirmative—yeas 18, nays 12, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bradley, Dayton, Ellery, Franklin, Hillhouse, Logan, Olcott, Pickering, Plumer, Israel Smith, John Smith of Ohio, John Smith of New York, Tracy, Wells, and White.

NAYS—Messrs. Armstrong, Breckenridge, Cocke, Jackson, Nicholas, Potter, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

Resolved, That, on the motion made and seconded, the Court shall retire to the adjoining committee room, if one-third of the Senators present shall require it.

The Court adjourned to 12 o'clock the next day.

TUESDAY, March 6.

The Court was opened, and the managers of the impeachment, on the part of the House of Representatives, against John Pickering, attended.

Mr. HARPER also attended.

The PRESIDENT informed Mr. HARPER, that the Court will hear evidence and counsel, respecting the insanity of John Pickering, upon the suggestion contained in the petition of Jacob S. Pickering, and the letter of R. G. HARPER.

Mr. NICHOLSON, in behalf of the managers, said he was instructed to ask for the reading of the proceedings of the Court on the last day of its sitting.

The Clerk having read the record, by which it appeared that John Pickering had been called three times without appearing,

Mr. NICHOLSON inquired at what point of time it was intended that Mr. HARPER should be heard; and whether this was to be a step preliminary to the trial.

The PRESIDENT said, he could not undertake to give an explanation of the proceedings of the Senate, adding that their meaning must be gathered from the proceedings themselves.

Mr. NICHOLSON then said that he begged leave to state that the managers were ready to proceed with the trial of the articles preferred by the House of Representatives.

The PRESIDENT said that, under the decision of the Senate, it had been determined, in the first instance, to hear Mr. HARPER in support of the petition of Jacob S. Pickering.

Mr. NICHOLSON said, he was instructed by the managers again to state, that they were ready to support the articles of impeachment. They, however, not being at present under the consideration of the Senate, they did not consider themselves under any obligation to discuss a preliminary question raised by a third person, unauthorized by the person charged. He was therefore instructed to state to the Senate, that the managers would, under these circumstances, retire, and take the opinion of the House of Representatives respecting their further procedure.

The managers thereupon retired.

Mr. WRIGHT moved that the Senate should withdraw to their private chamber.

Motion lost—ayes 6.

Mr. JACKSON submitted to the Senate, whether it would not be proper to delay all further proceedings until they should hear from the managers of the House of Representatives.

Apparently, with this view, Mr. ADAMS moved an adjournment.

Lost—ayes 10.

Another motion was made, that the Senate retire to their private chamber.

Lost—ayes 8.

Mr. WRIGHT offered a motion, that the counsel in support of the petition of J. S. Pickering be not heard until the return of the managers, or until their intention be signified.

Lost—ayes 7.

Mr. HARPER being then called on by the PRESIDENT to proceed within the rule, rose and addressed the Court as follows:

Under the permission of this honorable Court, and as the friend of the family of Judge Pickering, as the friend likewise of this honorable Court, if I may be allowed to claim so high a distinction, I beg leave to state the nature of those facts and proofs, on which the friends of Judge Pickering have thought fit to found the application they have made to this Court. As I despair being able to convey their sentiments in language more impressive, or more in unison with their wishes, than that which they have themselves used, I beg leave to begin with reading the petition of J. S. Pickering. It is in the following words:

[Here Mr. HARPER read the foregoing petition.]

These allegations, resumed Mr. HARPER, are, I apprehend, sufficient to insure the object sought for, provided they shall be substantiated by sufficient testimony, and such, as in questions of this kind, would be received in a common court of justice. This point this honorable Court will decide, after I shall have adduced the testimony I have to offer.

Mr. HARPER then read the following depositions:

Deposition of Samuel Tenney.

I, Samuel Tenney, of the county of Rockingham and State of New Hampshire, one of the Representatives of said State in the Congress of the United States, testify and say:

That on the first day of October last, I called on John Pickering Esq., Judge of the district of New Hampshire, at lodgings provided for him by his friends in Greenland, (his family residing in Portsmouth,) for the purpose of ascertaining the real state of his mind by a personal interview, and found him with some laborers in a field at a small distance from the house, between the hours of four and five in the afternoon; that, when I addressed him, he appeared not to know me, asking me if I did not live in Dover; but, on my answering that I lived in Exeter, he recollected me, observing that I was a Representative in Congress; that, on my informing him I had done myself the pleasure to call and see him, he invited and accompanied me into the house, where he conversed with me on several unimportant topics long enough to satisfy me that he was *perfectly sober*. During which time he called a servant and or-

dered spirits, water, &c., to be placed on the table by which we were sitting; that the servant took a bottle of rum out of a closet belonging to the room, which closet was secured only by a button; that the said Judge turned out and diluted about a table-spoonfull, part of which he drank, apparently out of attention to me, and set down his tumbler; that his conversation was at first rational and pertinent, but on my mentioning the conflagration in Portsmouth last Winter, by which nearly all the property he possessed was destroyed, he instantly became wild, extravagant, and incoherent, asserting various things concerning the value of the estate he had lost and what he still possessed, which I have abundant reason to believe were not true; and exhibiting demonstrative evidence of a mind *quoad hoc*, altogether deranged; and this, so far as my knowledge extends, is the decided opinion of all who are acquainted with his present state.

I further testify that the said John Pickering has successively filled most of the important offices in the State, the duties of which, so far as a constitution extremely disposing him to nervous and hypochondriac complaints would permit, he ever discharged with honor to himself and to the public approbation, so long as Heaven saw fit to continue to him the exercise of the talents with which it had endowed him; that through this long and useful period of his life, he supported a character so singularly pure, amiable, and estimable, that the late irregularities in his conduct, which his friends confess and deplore, might alone be charitably deemed sufficient to demonstrate his insanity.

I testify, finally, that, from the emaciated and debilitated appearance of the said John Pickering, I have full reason to believe him altogether incapable, at this season of the year, of supporting the fatigues of a journey to this city, to attend his trial.

S. TENNEY.

Deposition of A. R. Cutter.

I, Ammi R. Cutter of Portsmouth, in the county of Rockingham and State of New Hampshire, physician, depose and say: That I have been frequently called on as a physician to visit John Pickering, Esq., Judge of the district court of this district, before his appointment to that office, and since; that he has been, during all that time, very subject to nervous and hypochondriacal complaints, which, in his own mind, often rendered him incapable of transacting business; that from my first visiting him he has never been free from such complaints, until his mental derangement took place. That, for several years past, Judge Pickering has been subject to great pain and debility of body from a rupture, which at times has confined him to his chamber, and always has such an effect as to prevent his walking as heretofore; that I have been particularly acquainted with Judge Pickering for many years, and have never known him to be in the habit of intemperance, intoxication, or of using profane language, excepting in some instances only, since his derangement of mind took place; that, on the contrary, his morals have always been remarkably correct and exemplary, both while at the bar and on the bench as chief justice of this State, and a district judge.

And I farther depose, that such is the situation of Judge Pickering that he cannot, in my opinion, proceed on a journey to the City of Washington, at this time, without imminent hazard of his life.

AMMI R. CUTTER.

PORTSMOUTH, *Feb.* 11, 1804.

Deposition of J. Brackett.

I, Joshua Brackett of Portsmouth, in the district of New Hampshire, physician, depose and say: That about six years past I began the study of physic under Dr. Joshua Brackett, late of said Portsmouth, deceased, family physician and long and intimate acquaintance of John Pickering, Esq., district Judge of this State; that then and there I became acquainted with the Judge; that he was then very hypochondriacal, and subject to nervous complaints, but, as far as my knowledge extended, very exemplary and correct in his morals until within about three years, when he discovered symptoms of mental insanity, and consequent intemperance and profanity in some instances. That I have since visited the Judge as a physician for the last two years, and have found him laboring under mental insanity during said time, and think his mental insanity at this time to be in about the same degree as when I first visited him.

I further depose, that, from the history of Judge Pickering's character from his youth, given by his cotemporaries, and particularly by the late Doctor Brackett, it appears that he was very subject to hypochondriacal complaints, but very exemplary and correct in his morals.

J. BRACKETT.

PORTSMOUTH, *Feb.* 14, 1804.

Mr. HARPER then read the following deposition of William Cutter:

I, William Cutter of Portsmouth, in the county of Rockingham and State of New Hampshire, physician, depose: That I have often and lately been in company with John Pickering, Esq., district Judge of this State, and that he cannot, from his bodily infirmities, proceed on a journey to the City of Washington at this time without, in my opinion, greatly endangering his life.

W. CUTTER.

PORTSMOUTH, *Feb.* 11, 1804.

The PRESIDENT observed that, as the order of the Senate was confined to the single allegation of insanity, this deposition could not be received.

Mr. HARPER remarked that, under an act of Congress of 1801, provision was made, that in case a Judge in any district court of the United States should be unable to perform the duties of his office, the circuit court for such district might appoint one of its members to perform the duties of such Judge. This case was provided for under the term "inability," without stating the kind of inability. He would therefore read the record of the circuit court on this point.

Mr. H. accordingly read the record, with the subjoined deposition of William Plumer, as follows:

To the honorable Judges of the circuit court of the United States for the first circuit now sitting at Portsmouth within and for the district of New Hampshire, this 25th day of April, Anno Domini 1801:

Humbly showeth the subscriber, that the district Judge of the district court for said district, through indisposition and mental derangement, is at this time incapable of performing the duties of his office. Whereupon, he suggests to this honorable court the necessity of directing one of the circuit judges of said court to perform the duties of the said district Judge within and for said district, during the period the inability of said district Judge shall continue.

JAMES SHEAFE.

Copy examined by JOHN STEELE, *Clerk.*

DISTRICT OF NEW HAMPSHIRE, *ss.*

At a circuit court of the United States for the first circuit, begun and held at Portsmouth in said district of New Hampshire, on the 23d day of April, 1801.

Present—The honorable John Lowell, Chief Judge; the honorable Benjamin Bourne and the honorable Jeremiah Smith, Esqs., circuit Judges.

It having been represented to this court that the district Judge of this district is unable to perform the duties of his office, and satisfactory evidence of the inability of said district Judge being shown to the circuit court, it is thereupon directed by the court, in pursuance of the powers vested in them by the 25th section of the act of Congress, entitled "An act to provide for the more convenient organization of the courts of the United States, that Jeremiah Smith, Esq., one of the judges of this court, perform the duties of the said district Judge during the period the inability of the said district Judge shall continue.

A true copy of the record.

Attest: JOHN STEELE, *Clerk.*

I, William Plumer, of lawful age, do testify that I was present at said court when the foregoing application was made. That testimony was given to prove the insanity of the said Pickering; that, during the week in which that court was in session, I saw the said Pickering several times in company with said Judges at their lodgings and at other places; and that I heard each of them, to wit, Lowell, Bourne, and Smith, say, that from their own view, as well as from testimony, they were fully satisfied that Judge Pickering was in a state of insanity, and on that ground they had made the order aforesaid. W. PLUMER.

WASHINGTON, *March* 5, 1804.

Mr. HARPER then commenced the reading of the deposition of Edward St. Loe Livermore. During the reading, particularly of that part wherein the deponent states his opinion that the insanity of Judge Pickering did not arise from his intemperance, but the latter from the former, Mr. H. was interrupted by the President, who desired him to read only that part which related to the allegation of insanity. In compliance with this injunction Mr. H. waived reading a considerable portion of the affidavit. Notwithstanding, however, this circumstance, we give it entire; remarking that only that part of it relative to the allegation of insanity was received as evidence.

Deposition of Edward St. Loe Livermore.

I, Edward St. Loe Livermore, depose and say, that in the beginning of November in the year 1802, I was applied to by Eliphalet Ladd, Esq. of Portsmouth, in the State of New Hampshire, to attend a special district court to be holden at Portsmouth on the eleventh of said November, to exhibit a claim for a certain ship called the Eliza, and two cables, seized by the officers of the customs and libelled in said court. The statement of the case made to me by the said Ladd, was this: that in the month of September, 1802, the ship Eliza, owned by him and of which his son was master, arrived at Boston with a cargo of salt, and nothing else, except some pieces of check linen which were the private adventure of the captain. That the ship was entered at Boston and the duties on the salt secured, and the duty upon the linen paid by the captain, and the vessel authorized to proceed to Portsmouth to discharge her cargo; accordingly she arrived at Portsmouth, where the captain obtained a permit from the collector for landing the linens and also a permit was given for landing the salt. That while the ship was at some foreign place (I think Bonavista) her cables, which were old, became much chafed, and injured, at some bad anchorage ground; and that a vessel of which a certain Captain Lamb was master, being cast away, the seamen from the Eliza were employed in saving goods from the wreck, and Capt. Lamb to compensate them gave them a new cable which had been saved. This cable had been purchased by Capt. Lamb intending it for sale in the Southern States, but it was a very ordinary one, made of very bad materials. That Capt. Ladd thinking the situation of his ship to be such as to require a new cable, purchased it of his crew for his ship's use; and it was accordingly bent to his best anchor on the passage home; and that with old and new the ship was but indifferently found. That while the ship was discharging her cargo of salt at Portsmouth, the cables (being in the way) were taken out of the ship, and put into a store upon the wharf; and that the vessel, after discharging, was intended to be hove down for the purpose of graving; that it always had been customary to take out the cables, as well as the ship's sails, upon such occasions, and that the same had now been done in the presence of some of the custom-house officers; and no question had ever been made as to the legality of such doings. From this statement (which was afterwards fully proved on the trial) I was of opinion that the revenue of the United States had not been in danger of suffering material injury and accordingly engaged with Mr. Ladd to undertake his defence. The cables he informed me had been appraised by two merchants and a ropemaker (all as respectable as any in the town of Portsmouth) at two hundred and fifty dollars value; and by an order from the district judge had been delivered to him, but had again been immediately seized by the officers, alleging that the judge was incompetent and the proceedings had been irregular. I informed Colonel Ladd that the trial must be truly farcical as the judge was insane and wholly incapable of transacting business; and as there could be no appeal in the case of the cables, it was but the cast of a die whether he lost them or not. It was at that time considered by me to be an unfortunate circumstance that the cables were valued so low; but the reason, he informed me, was, that the ropemaker, who well understood the value of such articles, said the new cable was made of so bad materials, and the others so old and rotten they were worth very little. But with respect to the ship he could appeal if the insane judge decreed against him—and even if it were possible to conceive that the cables were illegally landed, yet as the value did not amount to four hundred dollars, and the affair of the linens appearing to be merely a mistake at the custom-house, the ship could not be condemned. Accordingly I attended at the time and place; soon after the Judge arrived and appeared to me very feeble in body and greatly deranged in mind. By his singular appearance and extravagant incoherent language he drew a large concourse of people into the court-house, and behaved in so wild and disordered a manner, as to afford mirth to the giddy multitude, but the most painful sensations to all those who knew his excellent character and had judgment enough to reflect on the deplorable situation of a man when deprived of his reason. He seemed to have some recollection of the business before him, and ordered the parties to proceed; saying that he had heard enough of the libels (using very profane language) and would decide upon them in a few minutes. But such was the situation of the judge, and

the general confusion, that I suggested to the district attorney the propriety of postponing the business until the ensuing day. Mr. Sherburne acquiesed. I accordingly moved for the postponement, upon which the judge demanded the reason. I informed him I wished for time to prepare my claim—he immediately answered in his former benevolent style "my dear, I will give you to all eternity;" and immediately ordered the court adjourned to nine o'clock the next day, observing that he would "then be sober." I do not recollect that he said "I am damned drunk now," and am strongly inclined to believe he did not utter those words, and think I should have recollected them if he had uttered them, as the other expressions made a deep impression on my mind, and very much surprised me, and induced me to believe, as I apprehend it did many others, that the judge was intoxicated. At the hour appointed the next day, he attended, and his appearance was not different from the preceding day, and was equally as irrational. I then concluded it would be best to get through the farcical trial as soon as possible, wholly uncertain of the event; but was informed that the judge, before he reached the court-house, had declared he was determined to condemn both ship and cargo, and had expressed himself with great disapprobation of the claimant, Col. Ladd. The trial of the libel against the cables being the first in order, I immediately proceeded to the examination of the witnesses for the claimant, who testified very circumstantially to the facts in the statement which I have before mentioned. During the testimony of the witnessess the judge appeared attentive, but I do not apprehend he understood much of their testimony. Possibly he might, but he pretty soon declared that both vessel and cargo should be restored to the claimant, and ordered the clerk to enter the decree. Mr. Sherburne then observed to him he had heard only one side, and that he wished to produce his witnesses in behalf of the United States. The Judge replied he might produce forty thousand, but it would not alter the decree. Mr. Sherburne then claimed an appeal to the Circuit Court; upon which the Judge said he might appeal, but he would take care that the decree should not be altered. I objected to an appeal, as the matter in controversy, the cables, did not amount to three hundred dollars in value. The Judge then said there should be no appeal. I intimated to Mr. Sherburne that it must be the court *ad quem* not *a quo* that should determine the right of appeal, and if he was dissatisfied with the determination of the distracted judge, he could apply to the Circuit Court—but he persisted in demanding an appeal, and the Judge refused, telling him that he knew that he had talked the matter over with him in his office five hundred times. This was answered with warmth, by an absolute contradiction by Mr. Sherburne; and the Judge as positively persisted in the assertion, which produced a scene of confusion. I told Mr. Sherburne that he ought not to let the assertion of a distracted man disturb him, to which he assented; and I thought that Mr. Sherburne entertained no doubt of the judge's distraction. At length the court was adjourned, to the great relief of all the thinking part of the audience.

I do not recollect any demand of an appeal being made in the case of the ship, and am confident that had there been I should have recollected it, as the same objection as to value could not have been made, but I have ever since presumed that the prosecutor was satisfied that there were no linens illegally imported, and that the value of the cables could not amount to four hundred dollars—and even if they were illegally landed, it would not subject the vessel to condemnation: and this was the cause that no application was ever made to the circuit court upon the subject.

It is impossible for me to repeat all the incoherent jargon uttered by Judge Pickering at this time, and the talk would be very painful should I repeat it. But during the whole of the transaction I entertained but one opinion on the subject, relative to the cause of the judge's irregularities of this day, which was merely, that it was distraction. I am sensible some gentlemen entertained a different opinion, and among those was the Marshal of the district. But as I well knew that from his situation in life, he had not had the opportunity of knowing the judge as well as myself, I endeavored to convince him his distraction was not occasioned by too free a use of liquor of any kind; and I am fully of the opinion that he was not intoxicated with any kind of spirituous liquor on this day.

It is now more than twenty years since I have had a most intimate acquaintance with Judge Pickering; our avocations being the same, of course led to it, and always until his distraction he has sustained a most excellent moral character, and I never knew a man more perfectly free from the imputation of any vice or immorality than Judge Pickering. But he was not merely negatively good; his active virtues were always considered of the most amiable kind. He was very chaste in his conversation, and in no instance, that I can recollect, did he use profane, obscene, or indelicate language; and a person of much discernment, formerly acquainted with him, and hearing his conversation at this time, I think would be convinced of his distraction, were there no other proof. I am sensible that it has been reported that Judge Pickering injured himself by the too free use of inebriating liquors; and it has been the opinion of some not so well acquainted with him, this was the principal cause of his distraction. I think it was very erroneous and the supposition uncharitable. It is possible at times he may have drank too freely, but I think I have good reason to conclude it was the consequence of his insanity, as it is easy to imagine that a man in this situation would be intemperate. For many years I have known him to have been grievously afflicted with nervous disorders, to which all studious and sedentary men are in some degree liable; but frequently I have seen him so extremely affected, that to appearance his distress and sufferings have been as great as the human frame could endure—and I can distinctly recollect instances from June seventeen hundred and ninety to eighteen hundred, the time in which his distraction became very apparent, that his disorder has rendered him unfit for public business; and, being Chief Justice of the Supreme Court several years, much disappointment and confusion was occasioned by his frequent illness, and his situation was the subject of much conversation. This disorder showed itself in different ways, sometimes in acute pains, at others in hypochondriac affections; he grew excessively fearful of crossing ferries, and frequently was very wild in his imagination; and such were his conceits (as they were called by some) and fearful apprehensions of—he could not tell what—that some of his most intimate friends pronounced him to be approaching to a state of insanity, or total incapacity for business; but in all this time, there was not the least suggestion or surmise that a fondness for drink was the cause, although, perhaps no man in New Hampshire was at the time more conversed about. One instance in particular I will mention, of the business of the court being thrown into confusion on account of his illness. In the fall of the year seventeen hundred and ninety-four, it was necessary that he should go the circuit; as there were but three judges of the Superior Court at that time, and the whole were necessary to constitute a quorum. The judge was so ill, that he declared it was impossible for him to reach Amherst, which is little short of sixty miles from Portsmouth, his place of residence. With much difficulty and great entreaties, he was prevailed upon to make the attempt, but consented, provided I would ride with him in a chaise, and carry him a roundabout way in order to avoid a ferry, and pass the river Merrimack, upon a bridge newly erected, and (as he said) take care of him. We travelled part of the way the first day, but his distress and sufferings were so great that I am confident he slept none through the night, as he wholly prevented my sleeping. The next morning he expressed his determination of returning, but with much persuasion I induced him to proceed to Amherst, where the first court was to be holden; and the day following he came into the court, and sat while a cause was partly tried: but finding he could sit no longer, the court was adjourned, and he went to his lodgings, where he was confined by sickness about a fortnight; he then returned to Portsmouth, and thus ended the Fall circuit of 1794. Many unfeeling people at this time, affected to say, that his disorder was feigned or imaginary—in the same manner that some do now, that his distraction is the effect of drink.

In the beginning of the year 1800, I heard it intimated that Judge Pickering was deranged in his mind—that his extravagant actions and conversation could be accounted for upon no other principle. But the first proof I recollect to have received, was in the summer of that year, when he called at my house before sun-rise one morning, and insisted on seeing me, having business of great importance: when I came to him to know the cause of so early a visit, he informed me that he was immediately going to set out for Philadelphia in a coach and six, to see the President, and should be back in five days. I instantly perceived his situation, and my conversation with him was in conformity. I told him there were many obstacles in his way, such as bad ferries. He answered, he had got above all those considerations since his voyage to England. I inquired of him when he had been in England; well knowing that a ferry was the utmost extent of his navigation. He said he had been in England, France, and Germany, and various other countries across the Atlantic; and then mentioned his having been a captain of horse in the British army—told me the particular uniform he used to wear—that he was sent at a particular time by Government as ambassador to make peace with the Indians, interlarding his stories with oaths, and the most incoherent language imaginable, that left not a doubt upon my mind of his distraction. I mentioned this affair to gentlemen, and found he had told the same stories before. I saw no more of him for some time, as he was removed into the country by his friends on account of his insanity; and I thought it was perfectly understood by all persons who knew him that he was distracted; and many anecdotes respecting him have been related as proofs of his derangement; and one in particular has been deemed an unequivocal proof, that is, his undertaking to dismiss Jonathan Steele, Esq., from his office of clerk of the district court, and of appointing R. Cutts Shannon, Esq., as Mr. Steele had given universal satisfaction in the office, and there was no cause for his removal. Mr. Steele, upon the application of Mr. Shannon, refused to give up the records; and the relatives of the judge have so managed the business that Mr. Steele has continued in the office ever since. I thought that both Mr. Steele and Mr. Shannon were convinced of his distraction, and have several times conversed with them upon the subject.

The Judge continued to grow worse, and, after the passing of the late judiciary act—now repealed—Judge Smith was appointed to do the duties of the office, and New Hampshire was relieved from the embarrassment until the repeal of the act, since which time several distressing scenes have passed, in consequence of the duties again devolving upon the unfortunate Judge.

E. ST. LOE LIVERMORE.

Portsmouth, N. H., Feb. 15, 1804.

Then Edward St. Loe Livermore, Esq., made oath that the foregoing affidavit by him subscribed, was just and true, according to the best of his knowledge.

Attest: GEO. SULLIVAN, J. P.

Mr. HARPER said this was the testimony on which he founded the application, which was to postpone the trial until such time as the Court may think fit, in order to take depositions.

The PRESIDENT.—It does not seem to me proper to receive any motion from you. The Senate will attend to what you have said, and take proper order upon it.

Mr. HARPER said he was but little solicitous about form; he regarded substance. His only wish was that an opportunity should be allowed, and the necessary facilities afforded to obtain testimony. This being his object, it was not his wish to occupy the time of the Court unnecessarily. The testimony he had just submitted was of itself amply sufficient, upon which to rest, with this honorable Court, the prayer of the petitioner, and to ground the application he had intended to make. It was such as carried conviction with it, and required no observations of his to apply or elucidate it. Most of the gentlemen whose affidavits he had read, and their respectability of character, must be well known to members of the Court; and he humbly presumed that, after evidence so direct and conclusive, scarcely a doubt could possibly remain upon the mind of any gentleman as to the insanity of this most unfortunate man, as well at present, as at the time when the offences charged against him in the articles of impeachment were committed. And surely, Mr. President, said Mr. H., it cannot be necessary to produce authorities to prove to this Court that the mildness and humanity of our laws exempt the insane from prosecution and punishment. Surely it cannot be necessary to show to this Court that the man whom God has been pleased to bereave of the greatest of all earthly blessings, his reason, and who, without mind, is incapable of committing any crime, and not amenable to human laws for his conduct. Surely, sir, it cannot be necessary to show to this Court that to constitute any crime a vicious will is necessary, and that a man insane cannot be put upon his trial—cannot in a criminal prosecution be called upon to plead, either by himself or counsel, guilty or not guilty—being at the time without any rational will, and not knowing

the meaning of such a plea; or of showing that such a person is utterly incapable even of receiving any legal notice to attend upon judicial proceedings. The principles, Mr. H. observed, were too well settled, and too well known to every member of this honorable Court to render such a proceeding on his part necessary. To their justice and to their wisdom he would, therefore, confidently appeal, and beg leave to submit the prayer of the petitioner in behalf of his most unfortunate parent.

The Court then adjourned until the next day.

A short time after the managers returned from the Court, Mr. NICHOLSON, in their behalf, made to the House of Representatives the following communication:

"That on Friday, the second of March, the managers, agreeably to the directions of the House, appeared at the bar of the Senate, to support the said articles of impeachment, when John Pickering was three times solemnly cased, but did not answer, or appear, either in person, or by counsel. The President of the Senate then stated, that he had received a letter, signed R. G. Harper, accompanying a petition, signed Jacob S. Pickering, who called himself the son of the party charged. The petition being read, it was found to contain a statement of a variety of matter, particularly the insanity of Judge Pickering, upon which the prayer of the petition was founded for a postponement of the trial to some future day. Mr. Harper was called to the bar of the Senate; he entered, and stated, that he wished it to be distinctly understood, that he did not appear at the bar of the Senate as counsel for John Pickering, from whom he had received no authority for that purpose: but that his object was to support the facts contained in the petition of Jacob S. Pickering, and the prayer thereof. There was a short pause,—when Mr. Harper rose again, and inquired, whether his appearance in support of the petition would be construed as the appearance of John Pickering, by counsel. The President of the Senate answered, he presumed, that Mr. Harper's appearance would not be considered as the appearance of John Pickering by counsel.

"The managers, under these circumstances, felt themselves bound to object to Mr. Harper's being heard in any other capacity than as counsel for the party who was impeached; and briefly stated their reasons for the objection.

"The Senate withdrew to a private chamber, where it is presumed the question was debated. The managers again appeared at the bar of the Senate this day, and were informed by the President, that it had been resolved to hear Mr. Harper in support of the allegations contained in the petition of Jacob S. Pickering, and the prayer thereof. The managers inquired at what point of time it was intended that Mr. Harper should be heard, and whether this was to be a measure preliminary to the trial: The President of the Senate declared, that he could not undertake to explain the resolutions of the Senate; but that their sense must be collected from the resolutions themselves. The managers then offered themselves ready for trial, declaring that they were prepared to open the prosecution on behalf of the House of Representatives, and that the witnesses were ready to prove the facts charged in the articles of impeachment. Upon this offer being made, the President of the Senate stated that he considered it to be the sense of the Senate, that Mr. Harper was to be heard before the trial commenced.

"The managers considered this as an irregular step, and not believing that they ought to discuss any petition presented to the Senate from a person who was not a party to the impeachment, and this, too, before the party charged, although duly notified, had appeared, either in person, or by attorney, withdrew from the Senate Chamber. They will not feel themselves either bound or authorized to appear again, until the Senate shall inform them that they are prepared to proceed in the trial, unless specially directed by this House."

Mr. SMILIE, as soon as the above report was read, moved the following resolution:

Resolved, That this House doth approve of the conduct of the managers appointed to support the articles of impeachment in the case of John Pickering, as stated in their report of this day, and that the said managers do not appear at the bar of the Senate, until they shall be specially instructed by this House.

Mr. ELLIOT moved to strike out the words "as stated in their report of this day."

Mr. ELMER remarked that the managers appeared to think the proceedings of the Senate incorrect. This might be the case; but from the information before him he was not prepared to say so. He was of opinion that the Senate were the sole judges of the mode of conducting trials before them.

Mr. SMILIE.—The Senate undoutedly have the right of fixing their mode of procedure; but if that mode shall be such as to interfere with our rights, we have a right to insist upon them. Such a procedure, as has been adopted by the Senate, in the present instance, I have never heard of. But if the managers are satisfied with what has been already done, without any further act on the part of the House, I am also. It is my wish that they would inform us of what they desire.

Mr. DANA.—It is very proper for the managers of an impeachment to apply to the House on the occurrence of a new case; but it is not necessary for the House to express an opinion of their conduct in every stage of the trial. It may be proper to give them instructions when they desire it; but it is not necessary to pass a vote of approbation or disapprobation on their conduct. In this case it is entirely useless, and may be injurious. I therefore move the previous question.

Mr. NICHOLSON.—The managers entertain no other desire but that of being guided in the discharge of the duty devolved upon them by the directions of the House. They would deem it a matter of extreme regret were the House to disapprove their conduct on the present occasion. But no individual among them—I speak for myself, and believe I may likewise speak for all those associated with me—wishes a vote of approbation by this House. I would, therefore, be pleased, if the gentleman would agree to strike out that part of the resolution which expresses such approbation. If the mover does not agree to this modification, I shall take the liberty of moving it.

Mr. SMILIE.—I cannot agree to strike out this part of the resolution, as it is, in my opinion, the most important feature in it. The conduct of the Senate has met with the disapprobation of the managers, and they have withdrawn, right or wrong. It is proper for the House to express an opinion, whether it is correct or incorrect.

Mr. NICHOLSON observed that on further reflection he did not consider himself at liberty to make any motion, or to vote on any made on the subject before the House.

Mr. G. W. CAMPBELL was of opinion that it would only be necessary for the House to express an opinion in case they disapproved the conduct of the managers.

Mr. HUGER declared himself of the same opinion.

Mr. J. LEWIS moved a postponement of the further consideration of the motion until to-morrow.

Mr. SMILIE had no objection to the postponement.

All further procedure was arrested by the agreement to a motion of Mr. NICHOLSON to adjourn.

On the ensuing day, Mr. SMILIE said, as the resolution appeared to be disagreeable to some gentlemen, he would withdraw it. It was accordingly withdrawn.

WEDNESDAY, March 7.

On motion that the Secretary inform the House of Representatives that the Court of Impeachment is open and now ready to receive and hear the managers in support of the articles of impeachment exhibited by them against John Pickering, judge of the district of New Hampshire, it passed in the affirmative—yeas 19, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of New York, John Smith of Ohio, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs. Adams, Bradley, Ellery, Hillhouse, Olcott, Pickering, Plumer, and Tracy.

The Court adjourned to 12 o'clock to-morrow.

THURSDAY, March 8.

About 12 o'clock the Court was opened, and the managers appeared before the Senate, when

Mr. EARLY, in their behalf, addressed the Court as follows:

Mr. PRESIDENT: The Representatives of the United States appear before this high Court, as suitors for remedial justice against John Pickering, district judge for the district of New Hampshire.

Among the various duties assigned to Congress by the Constitution, there is no description of superior importance; none, the discharge of which is equally painful with that now before them. The grand inquest of the nation have accused before this tribunal an officer whose functions are the most delicate—whose trust is the most sacred. They have charged him with acts highly derogatory to his character as a man; with transgressions disgraceful to him as a judge; with crimes ruinous to the interest and reputation of his Government: and the time has arrived, sir, when they are called upon to make good these charges.

The wisdom manifested in the organization of that admirable Constitution which forms the glory of this country, is in nothing more eminently conspicuous than in the mode of trial prescribed for high State offenders. While on the one hand it guards against the influence and intrigue of power and of patronage, it raises, on the other, a shield sufficiently formidable to resist the weight of the Representatives of the Union. To this grand depositary of national justice are safely committed the dearest rights and interests of public officers, and the most sacred claims of the Government.

It is certainly true that the trial by impeachment has not unfrequently in another country, been made the engine of oppression. But it is equally true that there the influence of a Crown, armed with all the weapons of prerogative, has proved the most usual source of invasion upon individual rights. Not so with us. This judicature owes nothing to Executive patronage. The source of their appointment and responsibility is found elsewhere. It is situated where there is least danger of its operating upon their hopes or their fears in the discharge of their judicial functions.

But, sir, there is another guard pre-eminently distinguishing the wisdom of the American Government, and the sacred care with which its framers endeavored to fortify the rights of the accused. It is the peculiar privilege of the officers of this Government, that nothing short of the voice of two-thirds of their judges can produce their conviction.

The House of Representatives have not, Mr. President, resorted to the said expedient of impeaching, and demanding the trial of the defendant, without the most mature deliberation. They have not done it, sir, without a thorough conviction that the interests of their country and the solemn duty of their stations, imperiously required it at their hands: and they now proceed to make good their charges, under the fullest confidence that the decision will be governed by the immutable principles of justice, and redound to the honor of our common country.

Believing that the best course which can be pursued in this case, and that which will be most likely to simplify it, will be to take the articles offered by the House of Representatives, in succession, I will, in support of the allegations contained in each article adduce the proof, necessary to substantiate them.

The first article is in the following words:

"ARTICLE 1. That Whereas George Wentworth, Surveyor of the District of New Hampshire, did in the port of Portsmouth, in the said district, on waters that are navigable from the sea by vessels of more than ten tons burden, on the fifteenth day of October, in the year one thousand eight hundred and two, seize the ship called the Eliza, about two hundred and eighty-five tons burden, whereof William Ladd was late master, together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of

said ship, contrary to law, sundry goods, wares, and merchandise, of foreign growth and manufacture, of the value of four hundred dollars and upwards, and did likewise seize on land within the said district, on the 7th day of October, in the year 1802, two cables of the value of two hundred and fifty dollars; part of the said goods which were alleged to have been unladen from on board the said ship as aforesaid contrary to law; and whereas Thomas Chadbourn, a deputy marshal of the said district of New Hampshire, did, on the 16th day of October, in the year 1802, by virtue of an order of the said John Pickering, judge of the district court of the said district of New Hampshire, arrest and detain in custody for trial before the said John Pickering, judge of the said district court, the said ship, called the Eliza, with her furniture, tackle, and apparel, and also the two cables aforesaid:

"And whereas by an act of Congress, passed on the second day of March, in the year one thousand seven hundred and eighty-nine, it is among other things provided that 'upon the prayer of any claimant to the court that any ship or vessel, goods, wares, or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court to appoint three proper persons to appraise such ship or vessel, goods, wares, or merchandise, who shall be sworn in open court, for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties to be approved of by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise, so prayed to be delivered and appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares, and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured in like manner, as if the goods, wares, or merchandise, ship or vessel, had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares, or merchandise, to be delivered to the said claimant;' yet the said John Pickering, judge of the said district court of the said district of New Hampshire, the said act of Congress not regarding, but with intent to evade the same, did order the said ship called the Eliza, with her furniture, tackle, and apparel, and the said two cables, to be delivered to a certain Eliphalet Ladd, who claimed the same, without his, the said Eliphalet Ladd, producing any certificate from the collector and naval officer of the said district that the tonnage duty on the said ship, or the duties on the said cables, had been paid or secured, contrary to his trust and duty as judge of the said district court, against the law of the United States, and to the manifest injury of their revenue."

I will first read that part of the act of Congress that requires the certificate stated as necessary in the article which I have just read, and then adduce testimony to substantiate the facts set forth in it.

[Mr. EARLY here read from the acts of Congress the provisions above recited.]

It will be observed, said Mr. E., that not only a bond, with one or more sureties, is required to be executed for the payment of the sum at which the vessels and goods shall be appraised, but that previous to the delivery of the vessel or goods a certificate must be produced from the proper officers that the duties on the goods and the tonnage duty have been secured. We have an explanation of the record in the case of the ship Eliza.

Mr. E. here read that part of the record bearing on the allegations set forth in the first article. To avoid the repetition of the several parts of the records, we subjoin the whole.

NEW HAMPSHIRE DISTRICT, *ss:*

At a special district court of the United States, begun and held at Portsmouth, within and for said district, on the eleventh day of November, Anno Domini one thousand eight hundred and two, by the Hon. John Pickering, judge of said court.

The United States of America, by John Whipple, collector of the said district, libel, propound and give the judge of said court to understand and be informed, that on the 15th day of October, 1802, George Wentworth, surveyor of said district of Portsmouth, did, in the port of Portsmouth, in said district, on waters that are navigable from the sea by vessels of more than ten tons burden, seize the ship called the Eliza, of about two hundred and eighty-five tons burden, whereof William Ladd was late master, together with all her tackle, apparel, and furniture, for the following causes, namely, that sundry goods and merchandise, viz: two cables, and one hundred pieces of checked linen, of the value of four hundred dollars and upwards, were unladen and delivered from said ship Eliza, in the district aforesaid, between the twentieth day of September last, and the thirtieth day of the same September, without a permit from the collector and naval officer, or any other person authorized to give the same. And the said Joseph Whipple doth aver, that the said two cables and said linen are of foreign growth and manufacture, and subject by law to the payment of duties on importation into the United States; and that said cables and linen were brought into said district of Portsmouth in said ship Eliza from some foreign port or place, and that the duties to which said cables and linen were subject on importation, have not been paid or secured to be paid, and that said cables and linen were unladen, delivered, and landed from said ship Eliza in said district without a permit therefor from the collector and naval officer, and contrary to law; and the said Joseph Whipple doth further aver, that said cables and linen at the time of discharging, unlading, and delivering thereof as aforesaid, were, and ever since have been, and now are, of the value of four hundred dollars and upwards, and that said cables were seized on land in said district of Portsmouth, and are duly libelled in this honorable court. Wherefore, the said Joseph Whipple, collector as aforesaid, in the name and behalf of the United States of America, prays the advisement of this court in the premises, and that said ship Eliza, together with her tackle, apparel, and furniture, may be adjudged to be and remain forfeited and disposed of according to law. Due notice having been given of the seizure aforesaid, and of this trial thereon, Eliphalet Ladd, by Edward St. Loe Livermore, Esq., his proctor and attorney, now comes into court and claims the said ship, her tackle, apparel, and furniture, and shows to this honorable court that he is owner of said ship and appurtenances, and that at the time mentioned in said libel, or at any other time, there was not unladen from on board said ship any goods, wares, and merchandise, of the value of four hundred dollars, or of any other value, contrary to law, and that said ship, her tackle, apparel, and furniture, are not by law forfeited in manner and form as by said libellant is set forth in said libel; and he thereupon prays the advisement of this honorable court, and that the same may be decreed to be restored to him. And on hearing the said parties, it is ordered and decreed by the court, that the said ship Eliza, her tackle, apparel, and furniture, be restored to the said Eliphalet Ladd the claimant, from which decree an appeal to the next circuit court for said district is claimed and refused by the court.

A true copy of record with the seal of said court annexed.

Attest: J. STEELE, *Clerk.*

NEW HAMPSHIRE DISTRICT, *ss:*

At a special district court of the United States, begun and held at Portsmouth, within and for said district, on the eleventh day of November, Anno Domini one thousand eight hundred and two, by the Hon. John Pickering, judge of said court:

The United States of America, by Joseph Whipple, collector of said district, libel, propound and give the judge of said court to understand and be informed, that George Wentworth, surveyor of said district of Portsmouth, did, on the seventh day of October, one thousand eight hundred and two, on land, within said district, seize and secure sundry goods and merchandise, viz: two cables, which were imported into said United States contrary to law. And the said Joseph Whipple, collector as aforesaid, further propounds, shows, and informs, that the said cables are of foreign growth and manufacture, and subject by law to the payment of duties on importation into the United States, and that said duties have not been paid nor secured to be paid; and that said cables were brought into said district in a certain ship called the Eliza, whereof William Ladd was then master, and unladen and delivered thereupon between the twentieth day of September last and the thirtieth day of the same September, within said district, without a permit from the collector and naval officer for such unlading and delivery. Wherefore the said Joseph Whipple prays the advisement of this court in the premises in the behalf of the United States and of all persons interested in said seizure, and that said cables may be decreed to be and remain forfeited and be disposed of according to law. Due notice having been given of the seizure aforesaid and of this trial, Eliphalet Ladd, by Edward St. Loe Livermore, Esq., his attorney and proctor, now comes into court and claims the said cables as part of the tackle and appurtenances of a certain ship called the Eliza, whereof he is the owner, and says that said cables, at the time of said seizure, as mentioned in said libel, were appurtenant, and belonging to said ship as her cables; and that before that time, according to usage and custom, and for the necessary repairs of said ship, and for the purpose of again fitting her for sea, had been taken out said ship, and for no other purpose whatever; and that said cables were not illegally imported into the United States, neither were the same at any time subject to the payment of duties, agreeably to the true intent and meaning of the laws of the United States, and that the same are not by law forfeited as said libellant has set forth; he thereupon prays that said cables may be decreed to be restored to him. On hearing the said parties, it is ordered and decreed by the court that the cables aforesaid be restored to the said Eliphalet Ladd, the claimant; from which decree an appeal to the next circuit court for said district is claimed and refused by the court.

A true copy of record with the seal of said court annexed.

Attest: J. STEELE, *Clerk.*

Joseph Whipple, Collector of Portsmouth, was then sworn:

He testified that no duties had been secured on the two cables seized; that on intimation being made that they were landed, they were seized, and as they exceeded four hundred dollars in value, the ship Eliza was also seized. He had understood that one of the cables was taken from the wreck of a vessel cast away, and that it had been bent for the purpose of evading the duty. On inquiry the cost of the two cables was found to be $520. One cable appeared not to have been used. On being asked the value of that cable, he said he could not recollect what it was.

[Mr. EARLY here read the record of the court in the case of the libel against the cables, as above.]

Mr. EARLY.—Having thus made good the facts and allegations contained in the first article, I will proceed to the second, which represents:

"ART. 2. That whereas, at a special district court of the United States, begun and held at Portsmouth, on the 11th day of November, in the year 1802, by John Pickering, judge of said court, the United States, by Joseph Whipple, the collector of said district, having libelled, propounded and given the said Judge to understand and be informed, that the said ship Eliza, with her furniture, tackle, and apparel, had been seized as aforesaid, because there had been unladen therefrom, contrary to law, two cables and one hundred pieces of check, of the value of four hundred dollars, and having prayed in their said libel that the said ship, with her furniture, tackle, and apparel, might by the said court be adjudged to be forfeited to the United States, and be disposed of according to law; and a certain Eliphalet Ladd, by his proctor and attorney, having come into the said court, and having claimed the said ship Eliza, with her tackle, furniture, and apparel, and having denied that the said two cables and the said one hundred pieces of check had been unladen from the said ship contrary to law, and having prayed the said court that the said ship, with her furniture, tackle, and apparel, might be restored to him, the said Eliphalet Ladd, the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the said cause thus pending between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited by law, and the said Eliphalet Ladd on the other part, claiming the said ship Eliza, with her furniture, tackle, and apparel, in his own proper right; and whereas John S. Sherburne, attorney for the United States, in and for the said district of New Hampshire, did appear in the said district, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States in the libel filed by the collector as aforesaid in the said court, and to show that the said ship Eliza, with her tackle, furniture, and apparel, was justly forfeited to the United States, and did pray the said court that the said witnesses might be sworn in behalf of the United States, yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States did refuse to hear the testimony of the said witnesses so as aforesaid, produced in

behalf of the United States, and without hearing the said testimony so adduced in behalf of the United States in the trial of the said cause, did order and decree the said ship Eliza, with her furniture, tackle, and apparel, to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty as judge of the said district court, in violation of the laws of the United States, and to the manifest injury of the revenue."

Mr. EARLY.—The record of the court applicable to this article, is as follows. [Mr. E. here quoted the record.] This record states that the ship Eliza was ordered to be restored by Judge Pickering, and an appeal refused.

Jonathan Steele, Clerk of the Court, sworn:

The deponent said he was present at the trial, and that witnesses were offered on the part of the Government to make good the charges stated in the libel. The court decided that they should not be examined; afterwards allowed their examination, and then refused to hear a word, and directed an adjournment; after ordering a restoration of the vessel to the claimants, and refusing an appeal. All the proceedings were had on the second day, when several witnesses, though he believed not all on the part of the United States, were sworn. No distinct reason was assigned for refusing to examine the witnesses. He believes the counsel for the claimant did assign some reasons, but he does not recollect them. The attorney of the district attempted to reply, but was stopped. The Judge said he had decreed the restoration of the ship and cables, and would not hear him.

John S. Sherburne, District Attorney, was sworn.

He stated that, in support of the libel, he exhibited the manifest received from the Collector of Boston, where the ship landed a part of her cargo. He offered this as evidence that the cables were a part of the cargo, they being so stated in the manifest to the Collector of Boston. He offered some witnesses to show, that by the captain's own declaration, they had been considered as merchandise. The Judge immediately interrupted him, and said he had decreed the restoration of the ship and cables. The deponent is not certain whether the counsel for the claimant did or did not object to his making the observations he was about to do to the court. The business was pressed; the Judge then said the deponent might examine the witnesses. On proceeding to examine them, the Judge interrupted the deponent, and adjourned the court. The deponent does not recollect that the Judge assigned any reasons for refusing to hear testimony. He declared, on opening the business, that he would spend very little time in attending to it—adding that he could finish the business in four minutes. He decreed the restoration without hearing any witnesses whose testimony was material. Some testimony was adduced as to the value of the cables. The deponent expected that his witnesses would prove that one of the cables was purchased by the captain of the Eliza for sale and not for use; and that the captain had said, on approaching land, that the cable should not be bent but to deceive the officers of the customs.

PRESIDENT.—Did you state to the court that testimony?

Mr. Sherburne.—I did not.

Mr. EARLY.—Are there any witnesses present that you intend to bring forward on the trial?

Mr. Sherburne.—I believe not. They were the crew of the vessel.

Mr. EARLY.—I will now proceed to make good the facts and allegations contained in the third article, which is as follows:

"ART. III. That whereas it is provided by an act of Congress, passed on the 24th day of September, in the year 1789, "that from all final decrees of the district court in cases of admiralty and maritime jurisdiction, where the matter in dispute exceeds the sum or value of three hundred dollars exclusive of costs, an appeal shall be allowed to the next circuit court to be held in such district;" and whereas on the 12th day of November in the year 1802, at the trial of the aforesaid cause between the United States on the one part, claiming the said ship Eliza, with her furniture, tackle, and apparel, as forfeited for the cause aforesaid, and the said Eliphalet Ladd, on the other part, claiming the said ship Eliza with her furniture, tackle and apparel, in his own proper right, the said John Pickering, judge of the said district of New Hampshire, did decree that the said ship Eliza with her tackle, furniture and apparel, should be restored to the said Eliphalet Ladd the claimant; and whereas the said John S. Sherburne, attorney for the United States in and for the said district of New Hampshire, and prosecuting the said cause for and on the part of the United States, on the said 12th day of November in the year 1802, did, in the name and behalf of the United States, claim an appeal from said decree of the district court, to the next circuit court to be held in the said district of New Hampshire, and did pray the said district court to allow the said appeal, in conformity to the provisions of the act of Congress last aforesaid, yet the said John Pickering, judge of the said district court, disregarding the authority of the laws, and wickedly meaning and intending to injure the revenues of the United States and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, as prayed for and claimed by the said John S. Sherburne, in behalf of the United States, contrary to his trust and duty of judge of the district court, against the laws of the United States, to the great injury of the public revenue, and in violation of the solemn oath which he had taken to administer equal and impartial justice."

Mr. EARLY here read the act of Congress referred to.

Mr. EARLY.—The following record establishes beyond doubt the truth of the fact contained in this article.

[Mr. E. here read that part of the record relating to the allegations in the third article.]

Mr. EARLY.—In addition to this testimony, I will call on Mr. Sherburne again to relate the circumstances attending the refusal to allow the appeal.

Mr. Sherburne was again examined:

On the Judge declaring that he decreed a restoration of the vessel and cables, the deponent, after several efforts to obtain a hearing of the witnesses, required the allowance of an appeal, one in relation to the cables, and the other in relation to the ship. The Judge at first assented to the appeal,

and, after using some profane language, observed that the decree should not be altered. The counsel for the claimant remarked that the cables were not valued at a sum that entitled the libellant to appeal from the decision of the district court. The deponent understood the appraisement of the ships and cables to have been made at the house of the Judge, and that the cables had been there valued at less than three hundred dollars. The deponent said he considered the whole of that proceeding a nullity, as the Judge had not a right to restore the vessel until the duties were secured or paid.

Mr. EARLY.—The testimony now required, relates to the refusal of an appeal in regard to the vessel.

Mr. Sherburne.—The whole was a scene of confusion. The deponent does not recollect any distinct observations made in relation to the ship. He claimed an appeal on both decrees; whereupon the counsel of the claimant observed that the valuation of the cables did not entitle the libellant to an appeal. The Judge did refuse an appeal on both decrees.

Mr. EARLY here stated that the ship was valued at three thousand five hundred dollars; and then proceeded to the fourth article, which is as follows:

"ART. 4. That whereas for the due, faithful, and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge; yet the said John Pickering, being a man of loose morals and intemperate habits, on the 11th and 12th days of November, in the year 1802, being then judge of the district court, in and for the district of New Hampshire, did appear on the bench of the said court, for the administration of justice, in a state of total intoxication, produced by the free and intemperate use of intoxicating liquors; and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States; and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor of the United States.

"And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter any further articles, or other accusation or impeachment against the said John Pickering; and also of replying to his or any answers which he shall make to the said articles, or any of them; and of offering proof to all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall require, do demand that the said John Pickering may be put to answer the said high crimes and misdemeanors; and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as may be agreeable to law and justice."

Thomas Chadbourne, Deputy Marshal of New Hampshire, sworn.

He said he was present at the trial of the libel. On the first day nothing was done. On the second day the proceedings commenced. It was a hurly-burly business. The Judge refused hearing anything about the ship, and when an appeal was requested, ordered the court to be adjourned; and the court was adjourned. He saw the Judge on the morning of the second day, who was in a situation that disqualified him from discharging the duties of his office. The marshal required the deponent to go with him to the Judge's house, but he refused.

The deponent being asked, what was the situation of the Judge when he came into court? replied, that all was disorder and confusion; the Judge appeared to be in a state of intoxication. The attorney of the United States said, the revenue would be injured by such proceedings. The Judge damned the revenue, and said that he got but a thousand dollars of it, and cared nothing about it. He desired a number of gentlemen to come on the bench and sit along side of him. Some refused. He called me up, said Mr. Chadbourne. I went up, and sat along side of him. He talked to me in a most strange way. He called on a perfect stranger to sit aside of him. When I went up, he said, now damn him, we will fight him. I do not know what he meant. He said to a person within the bar, if you do not come up, I will come down and cane you. I believe he said the same thing to the marshal. I sat on one side of the Judge, and another person on his other side. When, on the first day, after holding his head down awhile, he ordered me to adjourn the court; he said, "I'm damn'd drunk, but I'll be sober by the morning."

Question. Did the Judge exhibit all the usual marks of intoxication?

Answer. He did.

Question. Did you smell his breath?

Answer. No. I wanted nothing to convince me of his intoxication.

Question. Was he intoxicated at his own house on the first day?

Answer. Yes. He appeared so to me. He said, with some profane language, he had heard enough about the damned ship; and he did not mean to hear any more about her.

Question. What language did he use when the district attorney spoke of filing a bill of exceptions?

Answer. He said he would then sit along with an old wig. I did not, at first, know what he meant, but understood afterward that he meant a judge of the circuit court.

Question. Is Judge Pickering habitually addicted to intoxication?

Answer. For ten years past he has appeared to me to have been given to the habit of intoxication. He has appeared to me to exhibit all the symptoms of growing intoxication.

Question. How long have you known him?

Answer. For forty years.

Question. Had his face the usual marks of intoxication?

Answer. A good deal so—divers times before the trial I have seen him intoxicated in the streets.

Question. Have you ever seen him reel like a drunken man?

Answer. I have seen him go out sober in the morning, and return intoxicated at noon.

Jonathan Steele examined.

I was present at the trial in the district court, and remarked when the Judge entered the court

that he was intoxicated. He with great difficulty got in. He exhibited every mark of intoxication; staggered and reeled, spoke in a thick way, scarcely articulating his words so as to be understood by me, though I was directly under him. He ordered the crier to open the court, and the gentleman to proceed with the trial, without having the libel read. He said he had heard of the damned libel. The gentleman hesitated; the Judge called on a number of the officers to come up on the bench; some refused, and others went up. To one person that refused, he said he would come down and give him a caning. No business was done, and the court adjourned.

The next morning the Judge came into court in the same situation, as much intoxicated as on the preceding day. He pursued the same system. Before the libel was read the counsel of the claimant was heard. The Attorney of the District then made a few observations, and called his witnesses. The Judge said their examination was inadmissible; abruptly stopped the trial; decreed the restoration of the ship and cables, and ordered the court to be adjourned. The Judge was outrageous, and used many profane expressions, frequently invoking the name of the Supreme Being. The Attorney of the District said he claimed an appeal. The Judge replied, appeal and be damned. The claimant's counsel objected to the appeal, on the ground that the valuation of the cables did not amount to three hundred dollars. The Judge said there should be no appeal. The District Attorney asked leave to file a bill of exceptions. The Judge refused, and adjourned the court.

On being interrogated, the deponent said it was the general opinion of the bystanders—of everybody present, that the Judge was drunk. The court was crowded, and this was the language in the mouth of everybody.

Question. When did you first hear of, or perceive the intoxication of Judge Pickering?

Answer. The first I ever knew of his intoxication, except on hearsay, was in May, 1799, at court. On that occasion he took three days to do some business that might have been done in half the number of hours. In November, 1799, I went into a barber's shop, where I found Judge Pickering, who could with great difficulty be kept in a chair. He staggered, when he went out of the shop, and with great difficulty got home. In March, 1800, he was at court, and appeared intoxicated. Before the next term he was removed into the country.

I saw him in November, 1802, when he conducted himself with more propriety than usual; and in December, 1802, he conversed rationally, and expressed himself with legal accuracy when he attended court. After the court broke up, he said no person ought to object to his getting drunk then. I saw him afterwards drunk, and was obliged to carry him to his carriage.

I saw him on one occasion ask for some spirits; and punch being given to him, he said that was nothing but beverage, and afterwards got brandy.

Richard Cutts Shannon, sworn.

I was present at court on the 11th and 12th days of November, 1802. When I entered the Judge was on the bench. The statement I have heard given by Mr. Sherburne, Mr. Chadbourn, and Mr. Steele is, I think, correct. On the first day the Judge appeared to me to be intoxicated. I found the deputy marshal on his right hand and —— on his left. He called upon some person to come up and sit by him. The person declined. The Judge said if he did not come up, he would come down and cane him; said he had heard enough of the damned case, and damned the revenue. He appeared to be in a state of intoxication; that was the general impression of the bystanders.

I have seen the Judge other times intoxicated; when he staggered, and conversed like a drunken man. I have seen him in a state of intoxication three or four years before the trial; during the same time I have seen him, when he was free from intoxication, when he conversed rationally. I have seen him hold a court and conduct himself in a proper manner. I think I have seen him, within three or four years past, not intoxicated, when he conversed rationally. In the year 1792 I was at Amherst, when Mr. Pickering was chief justice. After a cause was opened, he adjourned the court; it was said he was sick.

Interrogatories put to Mr. Steele.

Question. Did you ever see Judge Pickering immediately after arising from bed?

Answer. Never.

Question. Did you ever see him when he was apparently perfectly sober?

Answer. I think I have.

Question. Did he then on all subjects speak correctly and rationally, or incoherently and wild?

Answer. He did not speak rationally on all subjects, though he generally conversed correctly; but he would sometimes tell strange stories.

Question. Was he sober when he told you those stories?

Answer. He appeared to be sober.

Question. What were those stories?

Answer. Such as that he had been sent abroad on an embassy; that he had been among the Indian nations, among which he said he performed many exploits, stating them. He would tell these stories immediately after conversing very rationally on other subjects.

Question. At what time did you discover that he began to tell these stories?

Answer. The first I knew of them was in April, 1801, when the circuit court sat. In the Summer of 1800 I heard of his being deranged.

Question. How long before did you understand him to have been in the habit of intoxication?

Answer. So long ago as March 1799.

Question. Did intoxication always appear to deprive him of his reason?

Answer. Yes. It produced extravagant conduct and conversation.

Michael McCleary, Marshal for the District of New Hampshire, sworn.

I was present on the 11th and 12th of November, 1802, at the trial of the libels. I went to the house of the Judge in the morning of the fifth day, and he stated to me the time appointed for

holding the court. About that time, I again went to his house. He was not there. I afterwards met him in the streets, and took him by the arm, and led him to a bench. He ordered Mr. Steele to sit along side of him; he likewise ordered another person to come up on the bench, and said if he would not come up he would give him a damned caning. Mr. Livermore examined evidences on the part of the claimant; and after he sat down the Judge said, I decree the restoration of the ship and cables, and my decrees, like those of the Medes and Persians, are irrevocable. This was objected to by Mr. Sherburne, who begged to be indulged with a few remarks. The Judge said, you may go on to all eternity. Some witnesses were examined, when the Judge interrupted the proceedings and ordered the restoration of the vessel. On the fifth day, the Judge said, I'm damned drunk, but I will be sober to-morrow.

On the second day I went to the house of the Judge. He was not at home. In returning I passed a grog-shop, where I saw him with a pint cup in his hand. He was very feeble and could scarcely walk. I put him on the bench. Then came on what has been mentioned before about the decree. He ordered the court to be adjourned. The Judge at first allowed an appeal; Mr. Livermore objected to it, and he then reversed his decision. Mr. Sherburne asked leave to file a bill of exception. The Judge said, yes and be damned.

I saw the Judge in October last. He appeared in a regular state of mind. I laid some papers before him that required considerable attention, and he examined them carefully.

Question. Have you seen him when he was quite sober?

Answer. I have, before breakfast. On the 11th of November, early in the morning, he appeared to be free from intoxication. It was notorious that his ill health was brought on by intemperance. I have often heard intemperance ascribed to him when chief justice.

President. When you saw Judge Pickering sober, did he appear in a state of insanity?

Answer. When I last saw him he appeared as well as ever. The woman with whom he lived said she was obliged to give him half a pint of spirits to go to bed with.

President. How long have you been Marshal?

Answer. Two years last May.

President. Had Judge Pickering the general character of drunkenness before he was appointed district judge?

Answer. He had the character of intemperance when chief justice.

Mr. Steele examined.

Being interrogated, he said that he had been clerk of the court since the year 1789, and that it was generally understood that Judge Pickering's irregularities proceeded from intoxication; that was the general opinion.

President. Has Judge Pickering any property?

Answer. I do not know. He had a house in Portsmouth which was burnt. He also had a farm.

Question. Who manages his property?

Answer. I am unable to say whether he or some other person manages it.

Question. Do you know anything about his salary?

Answer. I have not the least knowledge as to his salary.

Question. When was his house burnt?

Answer. After the trial of the Eliza.

Mr. Shannon, examined.

He said the prevailing opinion of the inhabitants of New Hampshire, and of those acquainted with Judge Pickering, was, that he was for some time past in the habits of intoxication. He had never heard of anybody having expressed an opinion that he was deranged longer than four years. He frequently saw him, and never conversed with him when deranged from any other cause than liquor. He did not himself believe him deranged. He believed it was so said that he might be kept in office.

The Judge had a house in Portsmouth, which was burnt in December, 1802. He had also another house in the country, in right, the witness believes, of his wife.

Being further interrogated, the witness said, he had known Judge Pickering for thirty-five years; though he was not so well acquainted with him as to visit at his house.

He said Judge Pickering was formerly very temperate. For eight or ten years past he was, by general reputation, in habits of intoxication. The witness never saw the Judge when he thought him insane.

Mr. Steele being asked how long he had been acquainted with Judge Pickering—*answered*, for fifteen years.

Mr. Nicholson here addressed the Court. He said he wished, in case it should be deemed proper by the Court, to ask one of the witnesses whether he had conversed with the family physician of Judge Pickering, and what his opinion was as to the origination of his insanity. Mr. N. observed that he had doubts of the propriety of this question, and therefore, in the first instance, stated it to the Court.

The Court decided the question inadmissible.

Ebenezer Chadwick—sworn.

The deponent had been acquainted, though not intimately, with Judge Pickering, about twenty-two years. He was deputy sheriff, when Mr. Pickering was Chief Justice of New Hampshire. He thinks he discovered habits of intoxication in him while a State judge. The first instance he knew was in 1791, when he was Chief Justice. He has frequently seen him intoxicated since judge of the district court. He has seen him stagger, and be obliged to take hold of the fence to support himself. It is near three years since he discovered these symptoms. The general impression of his neighbors is, that he has been a long time in the habit of drinking too freely.

Edward Hart—sworn.

I have known Judge Pickering for twenty-five or thirty years. I was deputy sheriff when he was Judge of the Supreme Court of New Hampshire. I have never but once before the trial, ten or

eleven years ago, seen in him any symptoms of intemperance. On that occasion he was on the bench, and appeared to be sick; he left the court, when I went to him, and then concluded that he was intoxicated. I have frequently seen him since. There was a report of his being in the habit of intoxication, but I never saw him so.

I was present at the trial of the Eliza. I cannot say more of the proceedings on that occcasion than has been said by other gentlemen. Whether his conduct arose from insanity or drunkenness I cannot say. It was generally thought at Portsmouth that liquor was the cause of his insanity.

Mr. WHIPPLE, being interrogated, said that he had known Judge Pickering for thirty years; and that about eight years ago, from the face and general appearance of Judge Pickering, he was led to suppose that he was in the habit of intoxication.

[Mr. Whipple was here going on to state some conversation he had with Judge Pickering's physician at this time, which he was induced to ask in consequence of solicitude to gain true information as to the reported intemperance of the Judge; when he was interrupted by the Court, and informed that this species of testimony had been already decided to be inadmissible.]

Question. What was the general opinion respecting Judge Pickering?

Answer. The general opinion was, that he was in habits of intoxication.

Inquiry being made of the witness, as to the knowledge he had of the management of the property of Judge Pickering, and the mode in which he received his salary;—he said, he had seen some post notes within the last four months issued in the name of Judge Pickering, and endorsed by his son, and he understood that he had drawn his salary by the transmission of those notes. The witness had never seen such notes till within these four months past—six months ago he had seen them endorsed by himself.

Mr. NICHOLSON informed the Court, that the managers here closed the testimony they had to offer. Whereupon they withdrew, and the Court adjourned until the next day.

FRIDAY, March 9.

On the suggestion of Mr. TRACY, SIMEON OLCOTT, and WILLIAM PLUMER, Senators from New Hampshire, were respectively sworn and affirmed.

Mr. OLCOTT.—I have had an acquaintance with Judge Pickering for more than thirty years last past, but more immediately for about the last thirteen or fourteen years last past; we being justices of the Supreme Court for New Hampshire, for about that term, until he was removed to the district court, during which time we were together, on the circuits, about five months in each year, and generally lodged and travelled together, while on the circuits; and during that term I never knew, heard, or suspected, that said Pickering was at any time intoxicated with, or made excessive use of spirituous liquor. He was often affected with a nervous complaint, or what was called the hypochondria, which sometimes produced extraordinary effects, but he never saw the effect of spirituous liquors, which he thinks he should have noticed, if true, as his seat was generally next to said Pickering, while on the bench. As to the testimony of Mr. Hart I am certain it is in part a mistake, as he says, what he testifies happened before I was on the bench—whereas in fact, I was justice of said court before said Pickering, and continued so after his removal to the district court; as to the fact, as related by said Hart, he has no perfect recollection, but has an idea that said Pickering did once leave the court at Portsmouth and went home, under a complaint of sickness, but he did not think any such cause existed as alleged by said Hart, nor does he believe the same well founded. As to the testimony of Mr. Shannon, so far as it relates to what occurred at the Supreme Court at Amherst, I have a full and perfect recollection of what then took place, as the particular circumstances made a deep impression on my mind; it may be noticed, the Supreme Court of New Hampshire consists of four justices, three of whom were necessary to make a quorum to do business; at the court mentioned by said Shannon, three justices only attended, which were Pickering, Farrar, and myself. After the court had proceeded in business, I think for one or two days, said Pickering, while at our lodgings, and before the opening the court for that day, complained of being very unwell, and objected against going into court, for that reason; but, as the court could not form a quorum for business without him, he was persuaded to make the attempt. After being in court a short time, and having made some progress in business, said Pickering complained of being so unwell as not to be able to keep his seat longer, on which the court adjourned to the next day, hoping he might then be able to attend, but that not happening, it was farther adjourned, and this for three several times, if my recollection serves me; where, from the opinion of the physicians who attended Judge Pickering, there was no probability he would be able to attend (in the court-house) that term, the court was adjourned to his lodgings, in order to complete the business as far as they proceeded; which having done, the court was adjourned without day. The disorder with which said Pickering was affected at that time was a violent dysentery, and his life was thought to be in much danger—and I never heard, or thought, (before said Shannon's testimony) that any person suspected it to be the effect of intemperance; and, from every circumstance by which I can judge, am convinced said testimony is altogether incorrect and erroneous.

Mr. PLUMER.—I have been intimately acquainted with Judge Pickering for near twenty years; within that term he held some of the most important offices in the State, and discharged the duties thereof with great propriety. From 1785 to 1790, I spent much time in company with him, particularly during his attendance in the Legislature, and at the courts of law; and frequently lodged with him at the same house. In 1790, he was appointed chief justice of the supreme court of judicature in New Hampshire, and continued until February, 1795, when he was appointed district judge. When he was chief justice, I was much in company with him, attending the same court, and travelling and lodging with him. During all the time aforesaid, and, I think, until 1800, he was very temperate; and I have no recollection of seeing him once disguised with intoxicating liquors. His reputation for temperance and sobriety were fair and general. I never heard a suggestion of his being intemperate, until after I was informed of his insanity, which was about four years since. I have seen him many times within the last four years; sometimes he was intoxicated, at other times he was sober; but when wholly free from intoxication he appeared to me to be in a state of insanity. On some subjects he conversed more rationally than on others; but on particular subjects he was wild and incoherent. He was formerly remarkable for the chastity and delicacy of his language; but, in the last four years, he was often profane, and sometimes obscene. I saw him within a week after the trial of the libels mentioned in the impeachment. At the first instance he was sober, but quite insane; at the second, he appeared intoxicated.

I saw him two days before I left the State, (the 30th September last,) at Newington, where he then lived. He was then altogether free from intoxication, although he had spirituous liquors at his command, and took some from a closet, and urged me to drink. He then conversed on some subjects rationally, but on others was incoherent, wild, and extravagant. He appeared weak, emaciated, and, from bodily infirmities, was then, in my opinion, unable to bear the fatigues of a journey to this place.

The judge, for many years, has been subject to nervous and hypochondriac complaints, and these have increased till they have produced what, I think, is a state of confirmed insanity. I believe (for I am required to give my opinion) that his insanity was the cause of his intemperance. Though I think it not improbable that, after his insanity had produced a degree of intemperance, the intemperance and insanity might then act mutually as cause and effect; but I have no doubt that the insanity preceded the intemperance.

Mr. Shannon, being interrogated, said that the first he had heard of Judge Pickering being in habits of intoxication was in the year 1792. About four or five years ago, he saw him intoxicated, and he has frequently seen him drunk since.

Mr. Hart deposed that Judge Pickering, in 1792, had not been in court more than half an hour before he appeared intoxicated, when he left the bench. He was induced to believe his sickness arose from intoxication, from having smelt his breath, which clearly smelt of liquor. The deponent at the time communicated the circumstance to Mr. Chadwick.

Mr. Chadwick said he recollected that, about nine or ten years ago, there had been a laugh raised against the judge on that account.

Mr. Steele said he had been clerk of the court ever since 1789. The first he had heard of the intoxication of Judge Pickering, was about seven years ago. In October, 1799, he was so intoxicated that he could not get into court. He never heard of his insanity till April, 1800. His conjecture was, that the report of insanity was raised as a cover to his intoxication. He thinks he heard the report of insanity from the connexions of Judge Pickering. The general report was, that he was intoxicated.

Mr. NICHOLSON observed that the managers would withdraw for a few minutes.

The managers having, in a short time, returned, Mr. NICHOLSON, in their behalf, addressed the Court, and said the managers of the House of Representatives considered the testimony offered in support of the articles of impeachment so conclusive and pointed, as to render it impossible for them to elucidate or enforce it by any observations in their power to make. He was, therefore, directed by the managers to inform the Court that they submitted the articles on the evidence offered, entertaining no doubt of full justice being done by the decision of the Senate.

Whereupon the managers retired.

Mr. TRACY offered the following motion:

Resolved, As the opinion of this Court, that the proceedings on the articles of impeachment, exhibited by the House of Representatives, against John Pickering, be postponed to the —— day of —— next.

It passed in the negative—yeas 10, nays 20, as follows:

YEAS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, John Smith of New York, Samuel Smith, Stone, Sumter, Venable, Worthington, and Wright.

The Court then adjourned to the next day.

SATURDAY, March 10.

Mr. FRANKLIN was chosen President *pro tem.*

Upon the opening of the Court, Mr. WHITE submitted the following resolution:

Resolved, That this Court is not at present prepared to give their final decision upon the articles of impeachment preferred by the House of Representatives against John Pickering, district judge of the district of New Hampshire, for high crimes and misdemeanors, the said John Pickering not having appeared, or been heard by himself or by counsel; and it having been suggested to the Court by Jacob S. Pickering, son of the said John Pickering, that the said John Pickering, at the time of the conduct charged against him in the said articles of impeachment, as high crimes and misdemeanors, was, and yet is, insane, which suggestion has been supported by the testimony of two members of the Court, and by the affidavits of sundry persons, whose integrity is unimpeached; and it being further suggested in the said petition, that at such future day as the Court may appoint, the body of the said Pickering shall be produced in Court, and further testimony in his behalf, which will enable the Court to judge for themselves as to the insanity of the said John Pickering, and to act more understandingly in the premises; but that the said John Pickering, owing to bodily infirmity, could not be brought to Court at present, at so great a distance, and at this inclement season of the year, without imminent hazard of his life.

Mr. NICHOLAS, Mr. WRIGHT, and other gentlemen, objected to the resolution as not being in order.

Mr. ANDERSON asked if it would be in order to move an amendment to it?

Mr. ADAMS said, he would object to any amendment to it, as, by the rule of the Court, a gentleman had a right to a vote upon any specific proposition he might please to submit, connected with the trial.

Mr. WHITE called for the reading of the rule.

Mr. ANDERSON then moved that the resolution, submitted by the gentleman from Virginia yesterday, be taken up as being entitled to be acted upon first.

The President *pro tem.* declared that the resolution of the gentleman from Delaware was fairly before the Court, and must be disposed of in some way before anything else could be taken up.

A motion for postponing the further consideration of it was then made and withdrawn.

Mr. NICHOLAS hoped it would not be permitted to go upon the Journals of the Court.

Mr. JACKSON moved the previous question, viz: "Shall the main question be now put?"

Mr. WHITE hoped that whatever question should be taken on the subject, should be by yeas and nays; that his resolution, and the manner in which it might be got rid of, should be seen and understood.

Mr. ANDERSON then moved to amend the resolution, by striking out the words "not having been heard by himself or counsel;" and all after the words "was and yet is insane," to the end of the resolution.

On motion of Mr. DAYTON, the galleries were cleared and the doors closed.

At three o'clock the doors were opened, and the question was taken upon the resolution as at first submitted—yeas 9, nays 19, as follows:

YEAS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

NAYS—Messrs. Anderson, Armstrong, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, Sam'l Smith, Sumter, Venable, Worthington, and Wright.

So it passed in the negative.

On motion of Mr. NICHOLSON, the resolution he had submitted the day before for notifying the House of Representatives that the Court would be prepared to pronounce judgment on Monday next, was taken up and passed—yeas 20, nays 9. Those who voted in the affirmative last above, here voted in the negative, and so *vice versa*, except Mr. JOHN SMITH, of New York, who was not then present, and who voted here in the negative.

The Court then adjourned.

MONDAY, March 12.

The Court being opened, Mr. WHITE inquired how the question was to be taken; whether upon each article separately, as is practised in the House of Lords, or upon the whole together? He hoped upon each separately, as gentlemen might wish to vote affirmatively on some and negatively on others, from which privilege they must be precluded by giving but one general vote of guilty or not guilty. He would, therefore, beg leave to submit to the consideration of the Court the following, as the form of the question to be put to each member upon each article of impeachment, viz:

"Is John Pickering, district judge of the district of New Hampshire, guilty of high crimes and misdemeanors upon the charges contained in the —— article of impeachment, or not guilty?"

For this form of question, Mr. W. observed, he could adduce precedent; it was nearly the same as was used in the very celebrated case of Warren Hastings, and he presumed would collect the sense of the Court with as much certainty as any that could be proposed, which was his only object.

After some conversation, Mr. ANDERSON moved the following as the form, and prayed that it might be taken up:

"Is John Pickering, district judge of the district of New Hampshire, guilty as charged in the —— article of impeachment exhibited against him by the House of Representatives?"

The President *pro tem.* declared that it would not be in order to take it up till the motion of the gentleman from Delaware was acted upon, as it was first before the Court, and had not yet been disposed of in any way; and was about to put the question following upon it, when—

Mr. ANDERSON mentioned that he had objections to the form of question proposed by the gentleman from Delaware, and moved to strike out the words "of high crimes and misdemeanors."

On motion, the galleries were cleared and the doors closed. After some debate, Mr. WHITE'S form of question was lost—only ten voting in favor of it, and eighteen against it.

Mr. ANDERSON'S form was then adopted—yeas 18, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, Israel Smith, John Smith of Ohio, John Smith of New York, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs. Adams, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, Wells, and White.

Mr. WHITE stated, that he believed Judge Pickering had practised much of the indecent and improper conduct charged against him in the articles of impeachment; that he had been seen intoxicated, and heard to use very profane language upon the bench; that he had acted illegally and very unbecoming a judge in the case of the ship Eliza, as charged against him in the articles, but that he was very far from believing that any part of his conduct amounted to high crimes and misdemeanors, or that he was in any degree capable of such an offence, because, after the testimony the Court had heard, scarcely a doubt could remain in the mind of any gentleman, but that the judge was actually insane at the time; and Mr W. wished to know whether it was to be understood, by the two last votes just taken, that the

Court intended only to find the facts, and to avoid pronouncing the law upon them; that they could have it in view to say merely, that Judge Pickering had committed the particular acts charged against him in the articles of impeachment, and, upon such a conviction, to remove him, without saying directly or indirectly whether those acts amounted to high crimes and misdemeanors or not; for, in the several articles they are not so charged, though judgment is demanded upon them as such. Upon such a principle, and by such a mode of proceeding, good behaviour, he observed, would be no longer the tenure of office; every officer of the Government must be at the mercy of a majority of Congress, and it will not hereafter be necessary that a man should be guilty of high crimes and misdemeanors in order to render him liable to removal from office by impeachment; but a conviction upon any facts stated in articles exhibited against him will be sufficient.

Mr. DAYTON observed, that the honorable gentleman from Virginia seemed to be offended at the language of his honorable friend from Delaware, who, in speaking of the proceedings on the impeachment, had called them a mere mockery of trial. To such terms, however, the ears of that honorable gentleman must be accustomed and accommodated, for, whilst either he or his friend had the honor of a seat in that body, they should designate this trial by no other character. It deserved no better appellation, and would be thus characterized in all parts of the United States where these proceedings could be seen and understood.

That the conclusion of this exhibition might perfectly correspond with its commencement and progress; that the catastrophe might comport with the other parts of the piece; the Senate were now to be compelled, by a determined majority, to take the question in a manner never before heard of on similar occasions. They were simply to be allowed to vote, whether Judge Pickering was guilty as charged—that is, guilty of the facts charged in each article—aye or no. If voted guilty of the facts, the sentence was to follow, without any previous question whether those facts amounted to a high crime and misdemeanor. The latent reason of this course was, Mr. D. said, too obvious. There were numbers who were disposed to give sentence of removal against this unhappy judge, upon the ground of the facts alleged and proved, who could not, however, conscientiously vote that they amounted to high crimes and misdemeanors, especially when committed by a man proved at the very time to be insane, and to have been so ever since, even to the present moment. The Constitution gave no power to the Senate, as the High Court of Impeachments, to pass such a sentence of removal and disqualification, except upon charges and conviction of high crimes and misdemeanors. The House of Representatives had so charged the judge, and had exhibited articles in maintenance and support, as they themselves declare, of those charges. The Senate had received and heard the evidence adduced by the managers, and had gone through certain forms of a trial, and they now, by a majority, dictate the form of a final question, the most extraordinary, unprecedented, and unwarrantable. For himself, Mr. D. said, he felt at a loss how to act. He was free to declare that he believed the respondent guilty of most of the facts stated in the articles, but, considering the deranged state of intellect of that unfortunate man, he could not declare him guilty in the words of the Constitution; he could not vote it a conviction under the impeachment. Let the question be stated, as had been proposed by his honorable friend from Delaware, agreeably to the form observed in the well-recollected case of Warren Hastings—"Is John Pickering guilty of a high crime and misdemeanor upon the charge contained in the first, the second, the third, or the fourth article of the impeachment, or not guilty?" Or, if the Court preferred it, he should have no objection against taking the preliminary question, whether guilty of the facts charged in each article, provided they would allow it to be followed by another most important question, viz: whether those facts, thus proved and found, amounted to a conviction of high crimes and misdemeanors, as charged in the impeachment, and expressly required by the Constitution. Both these forms of stating the question were, it was now too evident, intended to be refused by the majority, and thus a precedent established for removing a judge in a manner unauthorized by that charter.

Mr. WHITE asked whether, after the question now before the Court—which goes merely to settle, as gentlemen themselves believe, the point whether Judge Pickering has committed the particular acts charged against him in the articles of impeachment or not—should be decided, it would then be in his power to obtain a vote of the Court upon another question which, without presenting at present, he would state in his place, viz: Is it the opinion of this Court that John Pickering is guilty of high crimes and misdemeanors, upon the charges exhibited against him in the articles of impeachment preferred by the House of Representatives?

The PRESIDENT *pro tem.* replied that he thought such a motion could not be received after the vote had been taken.

Mr. WRIGHT submitted the following as the final question, viz: Is the Court of opinion that John Pickering be removed from the office of judge of the district court of the district of New Hampshire? Carried.

Messrs. Armstrong, Bradley, Stone, Dayton, and White, retired from the court. The two last not because they believed Judge Pickering guilty of high crimes and misdemeanors, but because they did not choose to be compelled to give so solemn a vote upon a form of question which they considered an unfair one, and calculated to preclude them from giving any distinct and explicit opinion upon the true and most important point in the cause, viz: as to the insanity of Judge Pickering, and whether the charges contained in the articles of impeachment, if true, amounted in him to high crimes and misdemeanors or not.

The questions were then taken in the presence of the managers, and of the House of Representatives, and decided as follows:

And on the question—Is John Pickering, district judge of New Hampshire, guilty, as charged in the first article of impeachment, exhibited against him by the House of Representatives?

It was determined in the affirmative—19 yeas, 7 nays:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, S. Smith, John Smith of New York, Sumter, Venable, Worthington, and Wright.

NAYS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, and Wells.

The same question was put, in the same way, upon the three remaining articles, and decided by a like result.

On the question—Is the Court of opinion that John Pickering be removed from the office of judge of the district court of the district of New Hampshire?

It was determined in the affirmative—yeas 20, nays 6:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Ellery, Franklin, Jackson, Logan, Maclay, Nicholas, Potter, I. Smith, S. Smith, J. Smith of Ohio, John Smith of New York, Sumter, Venable, Wells, Worthington, and Wright.

NAYS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, and Tracy.

The Court then adjourned *sine die*.

Early in the trial a question was raised as to the propriety of those gentlemen, viz: Samuel Smith, Israel Smith, and John Smith, of New York, who were during the last session members of the House of Representatives, and voted here upon the question for impeaching Judge Pickering, sitting and voting as judges upon the trial.

Mr. SMITH, of New York, wished to be excused.

Mr. S. SMITH declared that he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject, the vote he had given in the other House to impeach Judge Pickering, would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive or consent to deprive them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of a seat.

Upon the vote, it was carried by the usual majority.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE FIRST SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, OCTOBER 17, 1803.

MONDAY, October 17, 1803.

This being the day appointed by a Proclamation of the President of the United States, of the sixteenth of July last, for the meeting of Congress the following members of the House of Representatives appeared, produced their credentials, and took their seats, to wit:

From New Hampshire—Silas Betton, Clifton Claggett, David Hough, Samuel Hunt, and Samuel Tenney.

From Massachusetts—Phanuel Bishop, Manasseh Cutler, Jacob Crowninshield, Richard Cutts, Thomas Dwight, William Eustis, Seth Hastings, Nahum Mitchell, Ebenezer Seaver, William Stedman, Samuel Taggart, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

From Rhode Island—Nehemiah Knight, and Joseph Stanton.

From Connecticut—Samuel W. Dana, John Davenport, Calvin Goddard, Roger Griswold, and John C. Smith.

From Vermont—William Chamberlin, Martin Chittenden, James Elliot, and Gideon Olin.

From New York—Gaylord Griswold, Josiah Hasbrouck, Henry W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, Thomas Sammons, Joshua Sands, David Thomas, Philip Van Cortlandt, and Daniel C. Verplanck.

From Pennsylvania—Isaac Anderson, David Bard, Robert Brown, Joseph Clay, Frederick Conrad, William Findley, Andrew Gregg, John A. Hanna, Joseph Heister, William Hoge, Michael Leib, John Rea, Jacob Richards, John Smilie, John Stewart, Isaac Van Horne, and John Whitehill.

From Delaware—Cæsar A. Rodney.

From Maryland—John Campbell, Wm. McCreery, Nicholas R. Moore, Joseph H. Nicholson, and Thomas Plater.

From Virginia—Thomas Claiborne, Matthew Clay, John Dawson, John W. Eppes, Peterson Goodwyn, Edwin Gray, Thomas Griffin, David Holmes, John G. Jackson, Walter Jones, Joseph Lewis, jun., Thomas Lewis, Anthony New, Thomas Newton, jr., John Randolph, jun., Thomas M. Randolph, John Smith, James Stephenson, and Philip R. Thompson.

From Kentucky—George Michael Bedinger, John Boyle, John Fowler, Matthew Lyon, Thomas Sanford, and Matthew Walton.

From North Carolina—Nathaniel Alexander, Willis Alston, jun., William Blackledge, James Holland, William Kennedy, Nathaniel Macon, Richard Stanford, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

From Tennessee—George Washington Campbell, William Dickson, and John Rhea.

From South Carolina—William Butler, Levi Casey, John Earle, Wade Hampton, Benjamin Huger, Thomas Moore, and Richard Winn.

From Ohio—Jeremiah Morrow.

And a quorum, consisting of a majority of the whole number, being present, the House proceeded, by ballot, to the choice of a Speaker; and upon examining the ballots, a majority of the votes of the whole House was found to be in favor of NATHANIEL MACON, one of the Representatives from the State of North Carolina: Whereupon, Mr. MACON was conducted to the Chair, from whence he made his acknowledgments to the House, as follows:

"*Gentlemen:* Accept my unfeigned thanks for the honor which you have conferred on me. The task which you have assigned me will be undertaken with great diffidence, but my utmost endeavors shall be exerted to discharge the duties of the Chair with fidelity. In executing the rules and orders of the House, I shall rely with confidence on the liberal and candid support of the House."

The House proceeded, in the same manner, to the appointment of a Clerk; and upon examining the ballots, a majority of the votes of the whole House was found in favor of JOHN BECKLEY.

The oath to support the Constitution of the United States, as prescribed by the act entitled "An act to regulate the time and manner of administering certain oaths," was administered by Mr. NICHOLSON, one of the Representatives from the State of Maryland, to the SPEAKER; and then the same oath or affirmation was administered by Mr. SPEAKER to all the members present.

WILLIAM LATTIMORE having also appeared, as the Delegate from the Mississippi Territory, the said oath was administered to him by the SPEAKER.

The same oath, together with the oath of office prescribed by the said recited act, was also administered by Mr. SPEAKER to the Clerk.

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and have elected NATHANIEL MACON,

one of the Representatives for North Carolina, their Speaker; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business; and that, in the absence of the Vice President of the United States, the Senate have elected the honorable John Brown their President, *pro tempore*.

Resolved, That Mr. J. Randolph, jun., Mr. R. Griswold, and Mr. Nicholson, be appointed a committee, on the part of this House, jointly, with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

Ordered, That the rules and orders, established by the late House of Representatives, shall be deemed and taken to be the rules and orders of proceeding to be observed in this House, until a revision or alteration of the same shall take place.

Ordered, That a committee be appointed to prepare and report such standing rules and orders of proceeding as are proper to be observed in this House; and that Mr. Eustis, Mr. New, and Mr. Huger, be the said committee.

The following committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections—Mr. Findley, Mr. Goddard, Mr. M. Clay, Mr. Hunt, Mr. Varnum, Mr. Livingston, and Mr. Kennedy.

Committee of Claims—Mr. J. C. Smith, Mr. Gregg, Mr. Plater, Mr. Holmes, Mr. T. Moore, Mr. Chamberlin, and Mr. Bedinger.

Committee of Commerce and Manufactures—Mr. S. L. Mitchill, Mr. Dana, Mr. Crowninshield, Mr. McCreery, Mr. Leib, Mr. Newton, and Mr. Wynns.

Committee of Revisal and Unfinished Business—Mr. Tenney, Mr. Boyle, and Mr. Dickson.

Committee of Ways and Means—Mr. J. Randolph, jun., Mr. Nicholson, Mr. R. Griswold, Mr. Rodney, Mr. Hastings, Mr. J. Clay, and Mr. Sands.

A message from the Senate informed the House that the Senate have resolved that two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly.

The House proceeded to consider the foregoing resolution of the Senate.

Ordered, That the farther consideration thereof be postponed until Thursday next.

The House then proceeded, by ballot, to the appointment of a Sergeant-at-Arms to this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of Joseph Wheaton.

Thomas Claxton was appointed Doorkeeper, and Thomas Dunn Assistant Doorkeeper.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members, respectively, shall choose, to be delivered at their lodgings; and that if any member shall choose to take any newspaper other than a daily paper, he shall be furnished with as many of such papers as shall not exceed the price of a daily paper.

A message from the Senate informed the House that the Senate have appointed a committee on their part, jointly, with the committee appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

Resolved, That, unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

Mr. Dawson, after a few preliminary observations, offered to the House the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States; which, when ratified by three-fourths of the said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, viz:

That, in all future elections of President and Vice President, the persons shall be particularly designated, by declaring which is voted for as President, and which as Vice President.

Ordered, That the said motion be referred to the Committee of the Whole House on the state of the Union.

The Speaker laid before the House sundry papers transmitted to him from Kenawha county, in the State of Virginia, touching the election of Thomas Lewis, one of the members returned to serve in this House, for the said State; which were read, and ordered to be referred to the Committee of Elections.

Mr. John Randolph, jr., from the joint committee appointed to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled, and ready to receive any communication he may be pleased to make to them, reported that the committee had performed that service, and that the President signified to them that he would make a communication to this House, to-day, in writing.

A Communication was received from the President of the United States to the two Houses of Congress. The said Communication was read, and referred to the Committee of the whole House on the state of the Union. [See Senate Proceedings of this date, for the Message, *ante* page 11.]

Tuesday, October 18.

Several other members, to wit: from Pennsylvania, John B. C. Lucas; from Maryland, Daniel Heister; from Virginia, John Clopton, and John Trigg; from North Carolina, Samuel D. Purviance; and from Georgia, David Meriwether; appeared, produced their credentials, were qualified, and took their seats in the House.

Resolved, That a committee be appointed to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States; and that the said committee have power to report by bill, or otherwise.

Ordered, That Mr. Thomas, Mr. Walton, Mr. Hanna, Mr. Wadsworth, and Mr. Alexander, be appointed a committee, pursuant to the said resolution.

Resolved, That a committee be appointed to inquire and report, by bill or otherwise, whether any further provisions are necessary for the more effectual protection of American seamen.

Ordered, That Mr. Nicholson, Mr. Eustis, Mr. Sands, Mr. Hampton, Mr. Knight, Mr. Eppes, and Mr. Joseph Clay, be appointed a committee, pursuant to the said resolution.

The Speaker laid before the House a letter from the Clerk, accompanying a memorial of Samuel J. Cabell, of Amherst county, in Virginia, with sundry depositions and other papers relating to the contested election of Thomas M. Randolph, one of the members returned to serve in this House for the district composed of the counties of Albemarle, Amherst, and Fluvanna, in the said State; likewise, sundry other depositions and papers in the case of the contested election of Thomas Lewis, another of the members returned to serve in this House for the said State of Virginia, which were addressed to him during the late recess of Congress; and also the copy of a contract entered into by him for printing certain documents, in pursuance of a resolution of this House, of the twenty-fifth of February last.

The memorial of Samuel J. Cabell was read, and, together with the depositions and other papers relating to the contested elections of members for Virginia, ordered to be referred to the Committee of Elections.

PRESIDENT'S MESSAGE.

The House resolved itself into a Committee of the Whole on the state of the Union; and, after some time spent therein, the Committee rose and reported the following resolutions:

1. *Resolved*, That so much of the President's Message as relates to the regulations proper to be observed by foreign armed vessels within the jurisdiction of the United States; to the restraining of our citizens from entering into the service of the belligerent Powers of Europe; and to the exacting from all nations the observance, towards our vessels and citizens, of those principles and practices which all civilized people acknowledge; be referred to a select committee.

2. *Resolved*, That so much of the President's Message as relates to the adopting of measures for preventing the flag of the United States from being used by vessels not really American, be referred to the Committee of Commerce and Manufactures.

3. *Resolved*, as the opinion of this committee, That so much of the Message of the President of the United States as relates to our finances, ought to be referred to the Committee of Ways and Means.

The House proceeded to consider the said resolutions, and the same being again read, were agreed to by the House.

Ordered, That Mr. John Randolph, jr., Mr. Nicholas R. Moore, Mr. Gaylord Griswold, Mr. Crowninshield, Mr. Blackledge, Mr. Rodney, and Mr. John Rhea, of Tennessee, be appointed a committee pursuant to the first resolution.

Wednesday, October 19.

Another member, to wit: Peter Early, from Georgia, appeared, produced his credentials, was qualified, and took his seat in the House.

Ordered, That Mr. John Campbell, Mr. Hough, Mr. Clopton, and Mr. Stanford, be added to the committee appointed yesterday, to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United States.

AMENDMENT TO THE CONSTITUTION.

The House resolved itself into a Committee of the Whole on the proposition amendatory to the Constitution, offered on Monday by Mr. Dawson, as follows:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as part of the said Constitution, namely:

"That in all future elections of President and Vice President, the persons voted for shall be particularly designated, by declaring which is voted for as President, and which as Vice President."

Mr. Nicholson said, the proposition now under consideration contemplated an important amendment of the Constitution, and he thought it the duty of the House to render it so plain and intelligible, that hereafter no room should be left for doubt. The circumstances attending the election of the present Chief Magistrate were uncommon in their nature, and he believed had left an almost universal impression upon the public mind, that some amendment to the Constitution should be adopted. In doing this, however, it was necessary that the amendment should clearly and precisely express the meaning of those who are to adopt it as a rule for the future government of their conduct. The motion before the committee was sufficiently correct as far as it went, but, in his opinion, if that alone were to be agreed to, the Constitution itself would be extremely equivocal, and future Legislatures would be involved in difficulties not very far inferior to those from which we are anxious to relieve them. The Constitution, as it now stands, provides that the Electors shall assemble and vote for two persons, that the votes thus given shall be sealed up and sent to the President of the Senate, and by him shall be opened in presence of both Houses of Congress, and that the person having the greatest number of votes, if such number be a majority of all the Electors appointed, shall be the President; but if more than one have an equal number, then the House of Representatives is to choose one of them

as President; and if no person has a majority, then the House are to choose from the five highest on the list one of them as President. In all cases, however, it is further provided, *after the choice of a President, the person having the greatest number of votes shall be the Vice President.* Thus the Constitution now stands; but if it is amended in the manner proposed, it may be extremely uncertain what part of the original Constitution is annulled, and what is to remain in force. These are to be left to future construction. To make himself more fully comprehended, Mr. N. said he would suppose a case. After adopting the proposed amendment, A and B being voted for as President, have an equal number of the votes of the Electors, neither having a majority, and C and D have an equal number of votes; neither of these having a majority. In such an event, the Constitution as it now stands provides that the House of Representatives shall choose a President from the five highest on the list, and unless this provision is annulled by the amendment now proposed, a person voted for by the Electors, as Vice President, may be chosen by this House as President. Again, A and B being voted for as President, have an equal number of votes, but neither of them has a majority; C, D, and E, being voted for as Vice President, have likewise an equal number of votes, but neither of them have as great a number as the two first. Here, agreeably to the Constitution as it now stands, after the President is chosen, the person having the greatest number of votes is to be the Vice President, and of course the choice must fall upon a man who has not been voted for by the Electors as Vice President, but upon one who has been voted for as President. If these difficulties occur at this time, they will certainly present themselves with much more force, when the facts alluded to happen; and that they may happen no one can deny. To prevent these difficulties, Mr. N. said, was his object, and for this purpose he had prepared an amendment to the proposition under consideration. Too extensive a latitude of construction, he had always thought dangerous; as a very great difference of construction might honestly be given by different men. The committee would discover, after hearing the amendment which he was about to offer, that although he might be mistaken in the opinions he had offered, yet the safest course would be to adopt it. He was anxious to prevent all possibility of doubt on future occasions, and to make that clear and unequivocal, which in his opinion would otherwise be involved in obscurity. He then offered the following amendment to the proposition originally moved by Mr. Dawson

"The person voted for as President, having the greatest number of votes, shall be the President, if such number be a majority of all the Electors appointed; and if no person have such majority, then from the five highest on the list of those voted for as President, the House of Representatives shall immediately choose by ballot one of them as President. And in every case, the person voted for as Vice President having the greatest number of votes, shall be the Vice President. But if there should be two or more who have equal votes, the Senate shall choose one of them for Vice President."

Mr. Dawson observed that the resolution offered by him was, in his opinion, sufficiently clear and precise. But as the gentleman from Maryland (Mr. Nicholson) thought otherwise, he had no objection to the amendment proposed by him.

Mr. Clopton said, that he approved of the principle introduced in the amendment proposed by the gentleman from Maryland, (Mr. Nicholson,) but he considered the amendment as liable to some objection; that it was susceptible of objection inasmuch as it proposed to extend to this House a right of deciding the election, by choosing a President among five persons in case an event should happen so as to render their decision necessary; and that the same objection might be raised to that part of it which related to the election of Vice President, in case the interposition of the Senate should become necessary for that purpose. He said that, if the gentleman from Maryland would permit the word "five" to be struck out, and the word "two" to be inserted, he thought the amendment would then be more conformable to the principles of a representative Government. Mr. C. said, that the reason which induced the extension of a right to make a legislative decision from the five highest on the list, in case no person should have a majority of electoral votes, arose from a circumstance, which could not happen if the proposed amendment to the Constitution should be adopted. He said the circumstance he alluded to was, that under the existing mode, which requires each Elector to vote for two persons indiscriminately, without designating whether for President or for Vice President, there might be four persons, each of whom might have a number of votes, but a little less than a majority of the whole number of Electors appointed; and it might so happen that five persons might have a number equal to two-fifths of the whole number. He said that, therefore, it appeared proper to him that the right of choosing from the five highest on the list should be extended to the Legislature under the existing mode, as two-fifths were so considerable a proportion of the whole number; but, if the proposed amendment (which requires that the persons voted for should be designated whether voted for as President or as Vice President) should be adopted, the reason which existed and heretofore rendered the provision a proper one, will then entirely cease; for each of even two persons cannot then have a majority of the whole number of electoral votes, either on the list designated for President or on the list designated for Vice President. As, therefore, the operation of the resolution, if agreed to and adopted as an amendment to the Constitution, will so materially differ from the operation of the existing mode, he thought the alteration he proposed to the amendment of the gentleman from Maryland would be expedient. He said he begged leave to state a case, which might happen even at the next election, if that amendment should be introduced into the resolution without the alteration he proposed. He said that, at the next election, there will be

176 Electors; and it might so happen that one person might have 86 votes, a second person might have 87 votes, a third person might have 1 vote, a fourth person might have 1 vote, and a fifth person might have 1 vote. If, therefore, the number five, as proposed by the amendment of the gentleman from Maryland should be retained, either of those persons to whom only one electoral vote had been given might be chosen; and both of those persons, one of whom had 86 votes, the other 87 votes, might be rejected.

Mr. C. said, that he could not conceive that any member of this Committee would agree that such a decision could be proper, or any way consistent with the vital principles of our Government. He therefore wished that the gentleman from Maryland would consent to the alteration he had the honor to suggest to the Committee, and after the clause immediately succeeding the word proposed to be struck out, words to this effect might be added:

"If, on the list designated for President, no person shall have a majority of the whole number of Electors appointed, then, from the two highest on that list, the House of Representatives shall choose, by ballot, one of them for President; unless more than two persons shall have an equal number of votes, in which case the said House shall, in like manner, choose one of those persons for President."

Mr. Clopton said that a similar clause might be inserted in relation to a final decision of the election of Vice President, in case no person should have a majority of the electoral votes on the list designated for Vice President.

Mr. C. said, that he believed the provision, if conformed to the ideas suggested by him, would be more likely to insure the ultimate election of President and Vice President according to the will of the people, as the electoral votes are to be considered as their expression of the public will, than if the amendment should be agreed to exactly as proposed by the gentleman from Maryland; and if the alteration suggested did not obtain his assent, he (Mr. C.) begged leave to move the Committee to that effect.

Mr. Nicholson could not say that he had any material objection to the amendment recommended by the gentleman from Virginia, (Mr. Clopton.) In framing the resolution he had submitted, he had pursued the language of the Constitution, by inserting the word "five." The object of the gentleman might be obtained by striking out the word "five." To give time, however, for the House to reflect on the subject, and to compare the several propositions, he would move that the Committee should rise.

This motion was carried without dissent; when the House ordered the resolutions to be printed.

ABUSE OF THE AMERICAN FLAG.

Mr. Mitchill moved that the Committee of Commerce and Manufactures may be discharged, and that the measures for preventing the flag of the United States from being used by vessels not really American, be referred to a select committee.

Mr. Dana.—I am of opinion that the Committee of Commerce is more proper to investigate the business in question than a select committee. It is more of a commercial nature. I have known several instances where people have come to this country to get naturalized, for the evident purpose of holding the shipping of this country in their names, and then returning to their real country, and to their allegiance to their Prince. An American Consul of the United States, in Europe, had sometime suspected these practices, and he determined to investigate the matter. For this purpose, on the next arrival of the vessels into the port of his consulship, he made the most minute inquiries into the situations of the owners. He found one of these owners to be second officer, in the city and port of arrival, and that he had actually come over to America to be naturalized, in order to entitle him to this privilege. This, and other instances which have come under my observation, convinces me that the inquiry is of a commercial nature, and I therefore hope and trust the Committee of Commerce will stand.

Mr. John Randolph did not think it material which committee it was referred to. He never thought a flag at the mast-head sufficient to cover property; and the meaning of the President must be, to comprise the whole security of our commerce; a Committee of Commerce, however, he thought most proper; it could be provided for in one and the same bill, yet it would make but little difference.

Mr. Griswold observed, that it was a matter of no great importance to which committee it was referred. The object was fully and fairly to identify that we are Americans; that we do not wish to cover property not *bona fide* our own, and that we are ready to punish rogues who represent us. The principal proof, continued Mr. G., is the register, but our further object will be to furnish our vessels with other certificates of property. The business is, therefore, best, upon the whole, with a Committee of Commerce and Manufactures.

Mr. Mitchill withdrew his motion, to make another, that the select committee be discharged.

Carried—yeas 55, nays 40.

MOURNING FOR SAMUEL ADAMS.

Mr. J. Randolph observed, that it had lately been announced to the public that one of the earliest patriots of the Revolution had paid his last debt to nature. He had hoped that some other gentleman, better qualified for the task, would have undertaken to call the attention of the House to this interesting event. It could not, indeed, be a matter of deep regret that one of the first statesmen of our country has descended to the grave full of years and full of honors; that his character and fame were put beyond the reach of that time and chance to which everything mortal is exposed; but it became the House to cherish a sentiment of veneration for such men—since such men are rare—and to keep alive the spirit to which they owed the Constitution under which they were then deliberating. This great man,

the associate of Hancock, shared with him the honor of being proscribed by a flagitious Ministry, whose object was to triumph over the liberties of their country, by trampling on those of her colonies. With his great compatriot he made an early and decided stand against British encroachment, whilst souls more timid, were trembling and irresolute. It is the glorious privilege of minds of this stamp to give an impulse to a people and fix the destiny of nations.

Mr. R. said, that he felt himself every way unequal to the attempt of doing justice to the merits of their departed countryman. Called upon by the occasion to say something, he could not have said less. He would not, by any poor eulogium of his, enfeeble the sentiment which pervaded the House, but content himself with moving the following resolution:

Resolved, unanimously, That this House is penetrated with a full sense of the eminent services rendered to his country in the most arduous times by the late Samuel Adams, deceased; and that the members thereof wear crape on the left arm for one month, in testimony of the national gratitude and reverence towards the memory of that undaunted and illustrious patriot.

Mr. ELLIOT spoke as follows:

Mr. Speaker: If any apology could be necessary for a new member, unversed in Parliamentary proceedings, to offer for rising so early in the session, it would be, that the topic which arrests his attention is connected with the illustrious and ever memorable name of Samuel Adams. The eloquence of the gentleman from Virginia I shall not attempt to rival; his remarks were peculiarly impressive, and the more so from his remarking that he was unable to do justice to the subject. I have been extremely affected by his calling the attention of the House to the circumstance that the name of that patriot was united with that of John Hancock, in an exemption from the general pardon which the British Government offered to those American revolutionists, whom they dared to style rebels. The longer I should address the House upon this subject, the more feeble would be my language, as the greater would be my sensibility. I shall, therefore, only further observe, that I shall most cordially support the motion of the gentleman from Virginia.

The question was then taken on Mr. RANDOLPH's motion; which was agreed to unanimously.

Mr. NICHOLSON observed that, on occasions like the present, it had been usual for the House to adjourn. He, therefore, moved an adjournment; which was carried.

THURSDAY, October 20.

Several other members, to wit: from Massachusetts, SAMUEL THATCHER; from New York, JOHN SMITH; and from Maryland, JOHN ARCHER; appeared, produced their credentials, were qualified, and took their seats in the House.

The House then proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. WILLIAM PARKINSON.

Mr. NEW, from the committee appointed, on the seventeenth instant, to prepare and report such standing rules and orders of proceeding as are proper to be observed in this House, made report; which was read, and ordered to be referred to a Committee of the Whole House on Monday next.

Mr. NICHOLSON said, that during the last session the House had voted an impeachment against John Pickering, judge of the district court for New-Hampshire, for high crimes and misdemeanors. But the impeachment had been voted at so late a period of the session, as rendered it impossible to act then finally upon it. In order that it might be now acted upon, and the impeachment proceed, he moved the appointment of a committee, to prepare articles of impeachment, with power to send for persons, papers, and records.

The motion was immediately taken up, agreed to and a committee of five appointed viz: Messrs. NICHOLSON, J. RANDOLPH, R. GRISWOLD, EARLY, and THATCHER.

AMENDMENT TO THE CONSTITUTION.

Mr. NICHOLSON, after making a few preliminary remarks, moved to discharge the Committee of the Whole from the further consideration of the propositions amendatory of the Constitution of the United States; which motion was agreed to.

Mr. N. then moved a reference of the propositions to a committee of seventeen, composed of one member from each State; which motion was agreed to, and the following members named of the committee: Messrs. Dawson, Betton, Butler, Stanton, Dana, Elliot, J. Smith of New York, Smilie, Rodney, Nicholson, Stanford, Blackledge, G. W. Campbell, Winn, Meriwether, Morrow, and Lattimore.

Mr. HUGER observed it would be recollected, by those gentlemen who had been members of the preceding Congress, that the propositions to designate the President and Vice President, in future elections, had originated in the State of New York, and been submitted to the consideration of Congress, in a resolution to that effect, from the Legislature of that respectable State. It would be recollected however by gentlemen, that the resolution in question, which had just been committed to a select committee, was accompanied by another, having for its object to divide the United States into election, and, to a certain extent, permanent districts, in all future Presidential elections; he thought therefore that, from respect to the State of New York, the latter as well as the first proposition should receive the attention of the House, and be equally referred to the select committee. He professed himself indeed to have little inclination or rather a great disinclination to make any changes in the Federal Constitution. He was sincerely attached to and perfectly satisfied with it as it now stands. The prosperity we had enjoyed under it, and the experience we had, made it a matter of great doubt with him, whether we should not lose more than we should gain by any alteration of this our great bond of Union. Nevertheless, as he was

aware that a change in the Constitutional provision for electing the President and Vice President was a favorite point with many gentlemen, and from everything he could collect would in some shape or other be effected, he thought, as he had before observed, that respect alone for the State in which the business had originated, should lead us to take up and consider both of the resolutions recommended to us by New York. He would acknowledge, moreover, that his impressions were in general favorable to district elections. But as he presumed there would be no opposition to the motion for a reference to the committee of the resolution he held in his hand, he should not enter into any further argument in support of it. He would simply move, that the following resolution be submitted to the consideration of the select committee which had just been raised, viz:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the Constitution, to wit:

That the State Legislatures shall, from time to time, divide each State into districts, equal to the whole number of Senators and Representatives from such State in the Congress of the United States; and shall direct the mode of choosing an Elector of President, and Vice President in each of the said districts, who shall be chosen by citizens having the qualifications requisite for Electors of the most numerous branch of the State Legislature; and that the districts so to be constituted, shall consist, as nearly as may be, of contiguous territory and of equal proportion of population, except where there may be any detached portion of territory, not of itself sufficient to form a district, which then shall be annexed to some other portion nearest thereto; which districts, when so divided, shall remain unaltered until a new census of the United States shall be taken.

The resolution was referred to the aforesaid committee—yeas 63.

Before the question of reference was taken, Mr. VARNUM inquired whether the concurrence of two-thirds, or of a simple majority, was required on points preliminary to the final adoption of amendments to the Constitution.

The SPEAKER observed that, according to the usage of the House, a simple majority was competent.

FRIDAY, October 21.

Two other members, to wit: from New York, JOHN PATTERSON and ERASTUS ROOT, appeared, produced their credentials, and took their seats in the House.

Resolved, That the resolution of the tenth of December, one thousand eight hundred and one, authorizing Thomas Claxton to employ an additional assistant, two servants, and two horses, be, and the same is hereby, continued in force during this and the next session: and that the said Thos. Claxton be allowed a further sum of one dollar and twenty-five cents, to be paid in like manner, to enable him to increase the number of his attendants.

A message from the Senate informed the House that the Senate have appointed the Rev. Dr. GANTT, a Chaplain to Congress, on their part.

SATURDAY, October 22.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In my communication to you of the 17th instant, I informed you that Conventions had been entered into with the Government of France for the cession of Louisiana to the United States. These, with the advice and consent of the Senate, having now been ratified, and my ratification exchanged for that of the First Consul of France, in due form, they are communicated to you for consideration in your Legislative capacity. You will observe that some important conditions cannot be carried into execution, but with the aid of the Legislature; and that time presses a decision on them without delay.

The ulterior provisions, also suggested in the same communication, for the occupation and government of the country, will call for early attention. Such information relative to its government, as time and distance have permitted me to obtain, will be ready to be laid before you within a few days. But, as permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not, forthwith, make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require.

OCT. 21, 1803. TH. JEFFERSON.

Mr. HUGER hoped the reading of the treaty and conventions would be dispensed with, and that they would be printed for the use of the members.

Mr. RANDOLPH hoped they would be read.

The reading of course was proceeded with, which being finished,

Mr. RANDOLPH moved a reference of the Message, and of the documents accompanying it, to the whole House on Monday; which motion was agreed to without a division.

Mr. RANDOLPH begged leave to submit a resolution, arising out of the Message, which he hoped would be considered at that time, for the purpose of referring it to the same committee to whom had been just referred the Message:

Resolved, That provision ought to be made for carrying into effect the treaty and convention concluded at Paris on the 30th April, 1803, between the United States of America and the French Republic.

Referred to the same committee, without a division.

Mr. LEIB said that during the last session a bill had passed the House for reducing the Marine Corps, but which had been arrested in the Senate. From the present circumstances of the country, it appeared to him a proper subject for consideration. He therefore submitted the following motion:

Resolved, That a committee be appointed to inquire whether any, and if any, what alterations are necessary in the several acts relative to the establishment of

a Marine Corps, and in an act fixing the rank and pay of the commanding officer of the Corps of Marines: and that the committee be authorized to report by bill or otherwise.

Agreed to, and a committee of five appointed, viz: Messrs. LEIB, JACKSON, CUTTS, L. WILLIAMS, and OLIN.

AMENDMENT TO THE CONSTITUTION.

Mr. DAWSON, from the committee to whom had been referred two propositions of amendment to the Constitution, made a report in part, as follows:

"*Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring,* That the following article be proposed to the Legislatures of the different States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as a part of the said Constitution, viz:

"In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person having a majority of all the Electors appointed as President shall be the President; and if there shall be no such majority, the President shall be chosen from the highest numbers, not exceeding three, on the list for President, by the House of Representatives, in the manner directed by the Constitution. The person having the greatest number of votes as Vice President shall be the Vice President; and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution."

Referred to a Committee of the Whole on the state of the Union.

THE LOUISIANA TREATY.

Mr. RANDOLPH said the House would recollect a report made during the last session having relation to the subject of the Message of the President, delivered that morning, which had been acted upon at a late day. The report it had been thought inexpedient to publish at that time. As tending, to throw light on the important subject before the House, and as a very able composition of a gentleman not then in his place, (Mr. NICHOLSON,) he thought it worthy of publication. He therefore moved its reference to the committee to whom the Message had been committed, and would afterwards move that it should be printed for the use of the members.

The SPEAKER doubted whether it was in order to receive such a motion respecting a paper which had been considered confidential.

Mr. RANDOLPH said he would withdraw his motion for the present, and bring it forward at a future time in a less objectionable shape.

Mr. GREGG observed that, if his memory did not fail, the injunction of secrecy was taken off, though there had been no resolution for printing the report. He regretted it had not been published last session. If his impression was correct, it might now be published.

Mr. RANDOLPH said his friend from Pennsylvania would perceive a very cogent reason for not publishing the report at that time. Its contents rendered it inexpedient to publish it till the negotiations then depending should be terminated one way or the other. That reason had ceased, and the report might therefore be published. As it appeared necessary to clear the galleries before the injunction of secrecy could be taken off, he hoped that measure would be adopted before an adjournment took place. He would not, however, offer such motion until any other important business coming before the House might be attended to.

Mr. DANA inquired whether there was on the public Journal any notice of the report alluded to. If there were, they could act upon it in public; if there were not, they could not act.

Mr. GRISWOLD.—What, Mr. Speaker, is the question before the House?

The SPEAKER said there was no question before the House.

Mr. GRISWOLD.—The Speaker having decided that there is no question before the House, all this conversation is out of order.

Mr. RANDOLPH.—There is nobody out of order but the gentleman himself. His colleague asks if there is any mention of the report on the public Journal? For answering his inquiry the Clerk is examining the Journal. There is, therefore, a question before the House; and any member has a right to require that the Journal be examined to determine his mind on any particular business.

Mr. GRISWOLD was sorry to see a difference between the Speaker, and the gentleman from Virginia. The Speaker says there is no question before the House—the gentleman from Virginia says there is. It was very well for any gentleman requiring information contained in the Journal to inquire of the Clerk. But he never knew before that that made a motion.

Mr. LYON saw no difference between the Speaker and the gentleman from Virginia.

The Clerk said there was no mention on the public Journal of the report.

Mr. LYON moved that the doors be closed for the purpose of taking off the injunction of secrecy.

Mr. RODNEY was opposed to closing the doors. It might be proper to publish the report, but that could be directed at a future day. He felt very hostile to closing the doors of that House except on important occasions.

The question was taken on Mr. LYON's motion, which was lost—ayes 49, noes 62.

Mr. DAWSON wished, as the injunction of secrecy could not be taken off with open doors, that they would be shut for that purpose, when he should move a resolution for taking off the injunction on all subjects before us at the last session.

The SPEAKER said the regular course would be to move a reconsideration of the motion for closing the doors.

Mr. SMILIE hoped the House would reconsider the motion. He was no friend to shut doors; but

it was apparent that the only way of giving publicity to the report was to come to a resolution to that effect with closed doors.

After some further remarks, the question of reconsideration was taken and agreed to; as also was the question for closing the doors.

The doors were then closed for a short time, and the injunction of secrecy respecting the report of the secret committee taken off, and the report ordered to be printed.

MONDAY, October 24.

THE LOUISIANA TREATY.

Mr. GRISWOLD moved the following resolution:

Resolved, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the first of October, one thousand eight hundred, together with a copy of the deed of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France, (if any such deed exists;) also copies of such correspondence between the Government of the United States and the Government or Minister of Spain, (if any such correspondence has taken place,) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States; together with copies of such other documents as may be in the Department of State, or any other Department of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France, of the thirtieth of April, one thousand eight hundred and three.

Mr. GRISWOLD said that, by adverting to the Message of the President respecting the treaty and conventions lately concluded between the United States and the French Government, he found that the President, speaking on the subject, observes: "As permanent arrangements for this object require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require." He recommends to the immediate attention of Congress the passage of some temporary laws. This being the case, and the subject being about to be brought before the House, it became important that they should know distinctly what they had obtained by the treaty; and whether there were any territory belonging to the United States to take possession of, or any new subjects to govern. Inasmuch as if no new territory or subjects were acquired, it was perfectly idle to pass even temporary laws for the occupation of the one, or the government of the other. He believed it would be admitted that, by the express terms of the treaty, the United States had neither acquired new territory nor new subjects. The part of the treaty having relation to this point, is thus expressed:

"Whereas by the article the third of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9 (1st October, 1800,) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows:

"His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States; and whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory; the First Consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of of the French Republic, forever, and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic, in virtue of the above-mentioned treaty concluded with His Catholic Majesty."

By this article it appears, that, in a treaty between Spain and France, Spain stipulated to cede to France, upon certain conditions, the province of Louisiana. The treaty between the United States and the French Government does not ascertain whether these terms have been complied with by France, or whether the cession has been actually made by Spain to France. All that appears is a promise made by Spain to cede. If the terms stipulated by France have not been complied with, and Spain has not delivered the province to France, then it results that France had no title, and of consequence that the United States has acquired no title from France. If this be correct, the consequence will be that we have acquired no new territory or new subjects, and that it is perfectly idle to spend time in passing laws for possessing the territory, and governing the people. This point not being ascertained by the language of the treaty, it may be important to obtain documents that may satisfy the House whether the United States have acquired either new territory or new subjects. In the treaty lately concluded with France, the treaty between France and Spain is referred to; only a part of it is copied. The treaty referred to must be a public treaty. In the nature of things it must be the title-deed for the province of Louisiana. The Government must have a copy of it. As there is but a part recited, it is evidently imperfect. It becomes therefore necessary to be furnished with the whole, in order to ascertain the conditions relative to the Duke of Parma; it also becomes necessary to get the deed of cession; for the promise to cede is no cession. This deed of cession, Mr. G. also presumed, was in the possession of Government. It was also important to know under what circumstances Louisiana is to be taken possession of, and whether with the consent of Spain, as she is still possessed of it. If it is to be taken possession of with her consent, the possession will be peaceable and one kind of provision will be necessary; but if it is to be taken possession of in opposition to Spain, a different provision may be necessary. From these considerations he thought it proper in the House to call upon the Executive for informa-

tion on this point. Other important documents may, perhaps, likewise be in the hands of the President. Hence he considered it his duty, before the House went into a consideration of the resolutions laid on the table, to submit the following resolution:

"*Resolved*, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the first of October 1800, together with a copy of the deed of cession from Spain, executed in pursuance of the same treaty, conveying Louisiana to France, (if any such deed exists;) also copies of such correspondence between the Government of the United States and the Government or Minister of Spain (if any such correspondence has taken place) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States; together with copies of such other documents as may be in the departments of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France, of the 30th of April 1803.

Mr. RANDOLPH hoped the resolution would not be agreed to. He was well apprized of the aspect which it was in the power of ingenuity to give to a refusal, on the part of that House, to require any information which gentlemen might think fit to demand of the Executive, however remotely connected with subjects before them. But the dread of imputations which he knew to be groundless should never induce him to swerve from that line of conduct which his most sober judgment approved. Did he indeed conceive that the nation, or the House, entertained a doubt of our having acquired new territory and people to govern; could he for a moment believe that even a minority, respectable as to numbers, required any other evidence of this fact than the extract from the treaty which had just been read, he would readily concur with the gentleman from Connecticut in asking of the Executive, whether indeed we had a new accession of territory and of citizens, or, as that gentleman had been pleased to express himself, subjects to govern. He hoped the gentleman would excuse a small variation from his own phraseology, since, notwithstanding the predilection which some Governments and some gentlemen manifested for this form, Mr. R. asked for himself the use of such as were more familiar to American ears and American constitutions.

The Executive has laid before this House an instrument, which he tells us has been duly ratified, conveying to the United States the country known under the appellation of Louisiana. The first article affirms the right of France, to the sovereignty of this territory, to be derived under the Treaty of St. Ildefonso, which it quotes. The third article makes provision for the future government, by the United States, of its inhabitants; and the fourth provides the manner in which this territory and these inhabitants are to be transferred by France to us. There has been negotiated a convention, between us and the French Republic, stating, in the most unequivocal terms, that there does exist on her part a right to the country in question, which is supported by the strongest possible evidence, and pledging herself to put us in possession of that right, so soon as we shall have performed those stipulations, on our part, in consideration of which France has conveyed to us her sovereignty over this country and people. From the nature of our Government, these stipulations can only be fulfilled by laws to the passing of which the Legislature alone is competent. And when these laws are about to be passed, endeavors are made to impede, or frustrate, the measure, by setting on foot inquiries which mean nothing, or are unconnected with the subject, and this is done by those who have always contended that there was no discretion vested in this House by the Constitution, as to carrying treaties into effect. If, sir, gentlemen believe that we must eventually do that which rests with us, towards effecting this object, to what purpose is this inquiry? Mr. R. begged the House not to impute to him any disposition to countenance this monstrous doctrine, whose advocates now found it so difficult to practise. On the contrary, he held in the highest veneration the principle established in the case of the British Treaty, and the men by whom it was established, that, in all matters requiring legislative aid, it was the right and duty of this House to deliberate, and upon such deliberation, to afford, or refuse, that aid, as in their judgments the public good might require. And he held it to be equally the right of the House to demand such information from the Executive, as to them appeared necessary to enable them to form a sound conclusion on subjects submitted, by that Department, to their consideration. But those who then contended that this House possessed no discretion on the subject, that they were bound implicitly to conform to the stipulations, however odious and extravagant, into which the treaty-making power might have plunged the nation—those who then said that we cannot deliberate, are now instituting inquiries to serve as the basis of deliberation—(for if we are not to deliberate upon the result, why institute any inquiry at all?)—inquiries, which are in their very nature deliberation itself. But whilst he arraigned the consistency of other gentlemen, Mr. R. said that it behooved him to assert his own. Information on subjects of the nature of that which they were then discussing, might be required for two objects: to enable the House to determine whether it were expedient to approve a measure which on the face of it carried proof of its impolicy; or to punish Ministers who may have departed from their instructions—who may have betrayed the interests confided by the nation to their care.

To illustrate this remark, let us advert to the case of the Treaty of London, generally known as Mr. Jay's treaty. That instrument had excited the public abhorrence. The objections to carrying it into effect were believed insuperable. This sentiment pervaded the House of Representatives, and when they demanded information from the Executive, they virtually held this language: "Sir, we detest your treaty—we feel an almost invincible repugnance to giving it our sanction—

but if, by the exhibition of any information in possession of the Executive, we can be convinced that the interests of the United States have been supported to the utmost extent;—that, wretched as this instrument is, the terms are as good as were attainable; and that, bad as those terms are, it is politic under existing circumstances to accept them, we will, however reluctantly, pass the laws for carrying it into effect. The present case, if he understood anything of the general sentiment, was, happily, of a different nature. The treaty which they were then called upon to sanction, had been hailed by the acclamations of the nation. It was not difficult to foresee, from the opinions manifested in every quarter, that it would receive the cordial approbation of a triumphant majority of that House. If such be the general opinion—if we are not barely satisfied with the terms of this treaty, but lost in astonishment at the all-important benefits which we have so cheaply acquired, to what purpose do we ask information respecting the detail of the negotiation? Has any one ventured to hint disapprobation of the conduct of the Ministers who have effected this negotiation? Has any one insinuated that our interests have been betrayed? If, then, we are satisfied as to the terms of this treaty, and with the conduct of our Ministers abroad, let us pass the laws necessary for carrying it into effect. To refuse—to delay, upon the plea now offered, is to jeopardize the best interests of the Union. Shall we take exception to our own title? Shall we refuse the offered possession? Shall this refusal proceed from those who so lately affirmed that we ought to pursue this very object at every national hazard? I should rather suppose the eagerness of gentlemen would be ready to outstrip the forms of law in making themselves masters of this country, than that, now, when it is offered to our grasp, they should display an unwillingness, or at least an indifference, for that which so lately was all-important to them. After the message which the President has sent us, to demand, if indeed we have acquired any new subjects, as the gentleman expresses it, which renders the exercise of our legislative functions necessary, would be nothing less than a mockery of him, of this solemn business, and of ourselves. Cautionary provisions may be introduced into the laws for securing us against every hazard, although, from the nature of our stipulations, we are exposed to none. We retain in our own hands the consideration money, even after we have possession.

Mr. R. expressed himself averse to demand the Spanish correspondence. The reasons must be obvious to all. The possession of Louisiana by us, will necessarily give rise to negotiations between the United States and Spain, relative to its boundaries. These have probably commenced, and are now pending. He hoped, therefore, the House would go into committee on the Message of the President, and after resolving to pass the requisite laws, if further information shall be wanting in relation to the mode of taking possession, or any other object of detail, the Executive might be called upon to furnish it.

Mr. LYON said he might have agreed to the resolution offered by the gentleman from Connecticut, had he brought it forward in a respectful manner. But the terms of the motion imply that the Executive has made a bargain for that, to which we have no right. He wished the gentleman would give a little of that confidence which he had been in the habit of giving so liberally on former occasions. For his part, he was willing to see all the papers. He had no doubt of obtaining possession of Louisiana; and that gentlemen might have seen the order of the Spanish Government to surrender the province to the French.

Mr. LYON concluded by saying he had only risen to express his sense of the indecency of the motion.

Mr. GODDARD did not intend to enter upon a long discussion of the resolution; but it seemed to him that the reasons of the gentleman from Virginia for opposing it were very erroneous. On what ground was the opposition made? Altogether on the ground that Spain had actually made the cession to France. Mr. G. apprehended no such impression had been made on the House by the information before them. In the first article of the treaty they learned what the title of France was. The treaty says,

"Whereas, by the article the 3d of the treaty concluded at St. Ildefonso, the 9th Vendemiaire, an 9 (1st October, 1800,) between the First Consul of the French Republic and His Catholic Majesty, it was agreed as follows:

"His Catholic Majesty promises and engages on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations therein relative to his Royal Highness the Duke of Parma, the colony of province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it; and such as it should be after the treaties subsequently entered into between Spain and other States.

"And whereas, in pursuance of the treaty, and particularly of the third article, the French Republic has an incontestable title to the domain and to the possession of the said territory; the First Consul of the French Republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the said United States, in the name of the French Republic, for ever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French Republic in virtue of the above-mentioned treaty, concluded with His Catholic Majesty.

Mr. GODDARD asked whether the conclusion followed that France had an incontestable title to Louisiana? There was no such evidence. If in virtue of this treaty we purchase a promise on the part of His Catholic Majesty to cede, and not an incontestable title, he would ask if the promise constituted a title? France only says, we cede all our title. This, and this only, is the language of the instrument. If this is the case, is it not proper to inquire whether there are other acts by which Spain has ceded Louisiana to France? Such acts may exist. Certain stipulations were made by France to Spain, on which the cession depended. Do we not then wish to know whether these stipulations have been fulfilled and whether

they are binding, or whether Spain has waived them? Are there in existence any documents to that effect? It has been hinted that such documents exist in the newspapers; but are we in an affair of this magnitude to be referred to the dictum of a newspaper? He apprehended that this was a novel mode of legislation.

The gentleman from Virginia says that the 4th article of the treaty stipulates for the delivery of the country. That article is to this effect:

"There shall be sent by the Government of France a Commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies, in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the Commissary or Agent of the United States."

Now, what is the Commissary to do? He is, in the first instance, to receive the province from Spain. Can he transmit it to the United States before he receives it from Spain? We require to know, if Spain refuses to deliver Louisiana to France, can France transmit it to us? We desire to know whether there is any prospect of a refusal on the part of Spain.

Suppose we shall receive the colony from France, under the dictation of the First Consul to Spain, without experiencing any opposition from her. May not the time arrive, on a revolution in the affairs of Europe, when she will inquire by what title we hold it? Is it not proper then for us to obtain papers, by which our title may be fully understood?

One singular argument is used by the gentleman from Virginia. This treaty, he says, is hailed by the acclamations of the country. But Mr. Goddard would ask if the public had had any opportunity of examining it, and being fully acquainted with its principles and probable operation? It had been made public only within a few days. What evidence of popular affection for it can there yet have been manifested? Will people hail it with acclamation when they shall learn that it gives fifteen millions of dollars for a mere promise. At any rate, as all agree in the importance of the subject, and as we are all called upon to legislate upon it, is it not proper first to obtain all the necessary information that is to be had? The resolution goes this far, and no farther, and if gentlemen claim our confidence, ought they not to furnish us with information?

Mr. Smilie remembered that a subject of this nature had been brought before the House, in the first session of the fourth Congress. He thought it proper to recur to the proceedings on that occasion, to learn the sentiments entertained at that day. At that day it had been argued by certain gentlemen that the right of passing or not passing the necessary laws for carrying a treaty into effect did not belong to that House, but that they were under an absolute obligation to pass them; that they had no discretion on the subject. This was a doctrine which he did not believe true. He then believed that they possessed the right, and still entertained the same opinion. To show the sentiments entertained in the case of the British Treaty, he would recur to the Journal of the House.

On the 24th of March, 1796, the following motion was made:

"*Resolved*, That the President of the United States be requested to lay before this House a copy of the instructions to the Minister of the United States who negotiated the treaty with the King of Great Britain, (communicated by his Message of the first instant,) together with the correspondence and other documents relative to the said treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed."

This resolution was carried in the affirmative by ayes and noes, and among the noes I observe, said Mr. S., the name of the mover of this resolution. The resolution was carried by a large majority, and sent to the President. What was his opinion? Not that I approve it, or am governed by it; though it ought, in my opinion, to be a rule on this occasion to those who coincided with him. On the 30th of March, the President communicated the following Message to the House:

"*Gentlemen of the House of Representatives:*

"With the utmost attention I have considered your resolution of the twenty-fourth instant, requesting me to lay before your House a copy of the instructions to the Minister of the United States who negotiated the treaty with the King of Great Britain, together with the correspondence and other documents relative to that treaty, excepting such of the said papers as any existing negotiation may render improper to be disclosed. In deliberating upon this subject, it was impossible for me to lose sight of the principle which some have avowed in its discussion, or to avoid extending my views to the consequences which must flow from the admission of that principle.

"I trust that no part of my conduct has ever indicated a disposition to withhold any information which the Constitution has enjoined upon the President as a duty to give, or which could be required of him by either House of Congress as a right; and with truth I affirm that it has been, as it will continue to be, while I have the honor to preside in the Government, my constant endeavor to harmonize with the other branches thereof, so far as the trust delegated to me by the people of the United States, and my sense of the obligation it imposes to preserve, protect, and defend the Constitution will permit.

"The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion, a full disclosure of all the measures, demands, or eventual concessions, which may have been proposed or contemplated, would be extremely impolitic: for this might have a pernicious influence on future negotiations, or produce immediate inconveniences—perhaps danger and mischief in relation to other Powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate—the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand, and to have as a matter of course, all the papers respecting a negotiation with a foreign Power, would be to establish a dangerous precedent.

"It does not occur that the inspection of the papers asked for can be relative to any purpose under the cognizance of the House of Representatives, except that of an impeachment, which the resolution has not expressed. I repeat, that I have no disposition to withhold any information which the duty of my station will permit, or the public good shall require to be disclosed; and, in fact, all the papers affecting the negotiation with Great Britain were laid before the Senate, when the treaty itself was communicated for their consideration and advice.

"The course which the debate has taken, on the resolution of the House, leads to some observations on the mode of making treaties under the Constitution of the United States.

"Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment, my conduct has exemplified that opinion, that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided that two-thirds of the Senators present concur; and that every treaty so made and promulgated, thenceforward becomes the law of the land. It is thus that the treaty-making power has been understood by foreign nations; and, in all the treaties made with them, *we* have declared and *they* have believed that, when ratified by the President, with the advice and consent of the Senate, they become obligatory. In this construction of the Constitution, every House of Representatives has heretofore acquiesced; and until the present time not a doubt or suspicion has appeared, to my knowledge, that this construction was not the true one. Nay, they have more than acquiesced; for, till now, without controverting the obligation of such treaties, they have made all the requisite provisions for carrying them into effect.

"There is also reason to believe that this construction agrees with the opinions entertained by the State conventions, when they were deliberating on the Constitution—especially by those who objected to it—because there was not required, in commercial treaties, the consent of two-thirds of the whole number of the members of the Senate, instead of two-thirds of the Senators present; and because, in treaties respecting territorial and certain other rights and claims, the concurrence of three-fourths of the whole number of the members of both Houses respectively, was not made necessary, is a fact declared by the General Convention, and universally understood, that the Constitution of the United States was the result of a spirit of amity and mutual concession. And it is well known that under this influence the smaller States were admitted to an equal representation in the Senate with the larger States, and that this branch of the Government was invested with great powers; for, on the equal participation of those powers the sovereignty and political safety of the smaller States were deemed essentially to depend.

"If other proofs than these, and the plain letter of the Constitution itself, be necessary to ascertain the point under consideration, they may be found in the journals of the General Convention, which I have deposited in the office of the Department of State. In those journals it will appear that a proposition was made, that no treaty should be binding on the United States which was not ratified by a law, and that the proposition was explicitly rejected.

"As therefore it is perfectly clear to my understanding that the assent of the House of Representatives is not necessary to the validity of a treaty; as the treaty with Great Britain exhibits in itself all the objects requiring Legislative provision, and on these the papers called for can throw no light; and as it is essential to the due administration of the Government, that the boundaries fixed by the Constitution, between the different departments, should be preserved; a just regard to the Constitution, and to the duty of my office, under all the circumstances of this case, forbid a compliance with your request. GEO. WASHINGTON.

"United States, *March* 30, 1796."

Mr. Smilie concluded by saying he perceived no necessity for the papers desired by gentlemen, and should therefore vote against the motion.

Mr. Randolph said, if the gentleman from Connecticut would confine his motion to the Treaty of St. Ildefonso, he should be ready to acquiesce in it, though he did not believe that instrument would throw any new light on the subject.

Mr. Gregg said his wish was that the resolution should be divided, and that the Treaty of St. Ildefonso only should be requested. It had been conceded that it might be of some use in ascertaining the limits of the cession. To the other members of the resolution he was opposed. He therefore moved a division of the question.

Mr. Griswold remarked that it would be more orderly to move the striking out the last paragraph.

Mr. Sanford did not rise to say, with his colleague, (Mr. Lyon,) that the resolution offered by the gentleman from Connecticut was indecent, but to say that, in his opinion, it was altogether unnecessary. It appeared to be a fact, well understood in the United States, that Louisiana did, before the late convention, belong to France. The fact was recognised in the treaty. If this fact be acknowledged, what remains for us to do, but to pass the necessary laws for carrying into operation the convention concluded on the 30th of April? Though there might be no official information to that effect, he was correct in saying possession of the country had been given to France by Spain. What then can be necessary on our part to obtain possession, other than the passage of the necessary laws to carry the treaty into effect?

Mr. Elliott was opposed to every part of the call on the Executive for papers. He had a variety of objections to this request, with the mention of all of which he should not, however, trouble the House. His great objection was, that the call was premature, and this appeared—in his opinion, clearly appeared—even from the showing of the honorable gentleman from Connecticut, (Mr. Griswold,) and his honorable colleague, (Mr. Goddard.) To their brilliant talents he was disposed to give the highest homage. The first gentleman was not only ingenious and indefatigable, but likewise thoughtful and profound. He had already been frequently delighted with his eloquence, and instructed by his intelligence. The remarks also of his colleague were ingenious, and worthy of attention. But still he thought them premature. For what purpose was this call made? The gentleman says his attention is called to the subject by the President informing us in his Message that it is necessary to pass temporary laws, and that thence it becomes desirable to learn whether we

have acquired either new territory or new subjects. Mr. E. was clearly of opinion that as yet we had not, though in a short time, if the treaty were carried into effect, we shall acquire them. The difficulties stated by the gentleman, the least investigation will show to be imaginary. Young as I am, said Mr. E., and little conversant in diplomatic knowledge, I believe the views I shall exhibit will be as clear as those of that gentleman. The Message of the President, at the opening of the session, announces that "the enlightened Gov-'ernment of France saw, with just discernment, 'the importance to both nations of such liberal 'arrangements as might best and permanently 'promote the peace, friendship, and interests of 'both: and the property and sovereignty of Lou-'isiana, which had been restored to them, has, on 'certain conditions, been transferred to the United 'States by instruments bearing date the 20th of 'April." The President then informs us, that, 'when these shall have received the Constitutional 'sanction of the Senate, they will, without delay, 'be communicated to the Representatives also, for 'the exercise of their functions, as to those condi-'tions which are within the powers vested by the 'Constitution in Congress." The Message goes further, and informs us—not in the phraseology of the gentleman from Connecticut, that we have acquired new subjects, but—that if the treaty shall receive the Constitutional sanction of the Senate and House of Representatives, we shall gain an acquisition, not of subjects, but of citizens. "With 'the wisdom of Congress, says the President, it 'will rest to take those ulterior measures which 'may be necessary for the immediate occupation 'and temporary government of the country; for its 'incorporation into our Union; for rendering the 'change of Government a blessing to our newly 'adopted brethren."

Whether we acquire this territory and these citizens is consequential on the Constitutional ratification of the treaty.

But it is said that our title to Louisiana is deducible from the first article of the treaty, and that that article only contains a promise: and it is triumphantly asked whether the people of the United States will be satisfied with paying fifteen millions for a mere promise [Mr. Elliot here quoted the first article of the treaty.] I acknowledge, said he, that this is only an assertion of France of her incontestable title, and an assurance that on certain terms she will convey this title to the United States. But, according to the treaty and convention, an agent is to be appointed by France, who is to deliver up the possession before we pay the fifteen millions. But, say gentlemen, though this may be done, Spain may not abandon her title to the province. No such consequence, however, can result. The convention that follows the treaty contains a stipulation, that the stock created shall not be delivered until "after Louisiana shall be taken possession of in the name of the Government of the United States." So that, taking the treaty and the convention together, there can result none of the inconveniences apprehended. A treaty has been made between the First Consul and the United States, by which the First Consul has transferred to us the domain and jurisdiction of Louisiana. In the treaty it is stipulated that a commissary shall be sent to receive the country from the Court of Madrid and give us the possession. If these two articles be carried into effect, and they must be to make the treaty binding, we must obtain not only the actual but also the legal possession. It is incumbent, therefore, on us to do everything necessary on our part to realize the possession.

Mr. Thatcher said, though the gentleman who had just sat down had acquitted himself handsomely, he had neither convinced him that the resolution of the gentleman from Connecticut was ill-founded or unnecessary. As they were, in the capacity of a legislative body, called upon to pass laws for new territory and new citizens, it was, according to his understanding, necessary, in the first instance, to learn that they had acquired new territory and new citizens. The title to Louisiana, as derived to France from Spain, was stated in the first article of the treaty. [Here Mr. T. read the first article.] By this it appears that another treaty had been formed between France and Spain. It was admitted that the province had belonged to Spain; and to her it must still belong, unless France has performed certain stipulations agreed to as the price of the cession. The object of the mover is to obtain this treaty, and to learn whether France has performed these stipulations.

Gentlemen objecting to this resolution, have taken different grounds. Some oppose it as inconsistent with the sentiments that prevailed in the case of the British Treaty; others, because it is premature, and others, because it is unnecessary. He did not expect the first objection from any member on that floor; much less did he expect it from the quarter in which it originated. The advocates of the motion were charged with inconsistency. He was not a member of the House at the time of the British Treaty, but, on referring to the Journal, it would be perceived that the object of gentlemen who then called for papers was to go into the merits of the British Treaty. It would not be denied that the ground then taken by gentlemen on the other side was, that the House had a right to examine the merits of the treaty, and to the assertion of that right it was that the President answered. We now say that it is not necessary for us to act in our legislative capacity, intending, if it shall appear to be necessary, not to withhold acting. Mr. T. therefore conceived that they exhibited no inconsistency, as they did not purpose at this time to go into the merits of the treaty, and as they acknowledged the treaty, if constitutionally made, to be binding. But they wanted information on subjects of legislation.

It has been said that the newspapers inform us of the order of Spain to deliver Louisiana to France. But they were not to be guided by newspaper accounts. We desire to know from an authentic source whether the stipulations entered into by France have been executed. By the first article of the treaty it appears that "His Catholic

'Majesty promises and engages on his part, to cede 'to the French Republic, six months after the full 'and entire execution of the conditions and stipu-'lations herein, relative to his Royal Highness the 'Duke of Parma, the colony or province of Louis-'iana, with the same extent that it now has in the 'hands of Spain, and that it had when France pos-'sessed it; and such as it should be after the treaties 'subsequently entered into between Spain and other 'States." This article goes to say that Spain may have altered the boundaries of Louisiana differently from what they were when France before possessed it. And for what we know, she has done so. Hence the importance of seeing the papers asked for. If we obtain the bare possession, it is one thing; the legal possession is another thing. It is one thing to govern the colony with a corps of civilians, and another and a different thing to govern it with an army. The President may, perhaps, have considered it a good bargain to obtain, for the payment of fifteen millions, the mere quit-claim of France to the province. At any rate it is proper that we should act with our eyes open; and, therefore, the importance of having a copy of the treaty entered into between the Governments of Spain and France, or evidence that Spain has acquiesced in the cession to the United States.

Mr. Nicholson was extremely glad to find that gentlemen on the other side of the House had at length abandoned the ground which they had taken some years ago. He was rejoiced that they were now willing to acknowledge, what they had heretofore most strenuously denied, that the House of Representatives had a Constitutional right, not only to call for papers, but to use their discretion in carrying any treaty into effect. That it must now be their impression was evident, or their conduct was surely unaccountable. Why else do they call for papers, why inquire into our title to the province of Louisiana? If the doctrine of a former day was still to be adhered to, why urge this inquiry? If gentlemen are consistent with themselves, if they have not forgot the lessons which they inculcated upon the ratification of the British Treaty, this House has no right to call for papers, no right to make inquiry, no right to deliberate, but must carry this treaty into effect, be it good or bad; must vote for all the necessary measures, whether they are calculated to promote the interests of the United States or not. The doctrines of old times, however, are now given up, the ground formerly taken is abandoned. We shall no longer hear that the Executive is omnipotent, and that the Representatives of the people are bound to vote, blindfolded, for carrying into effect all treaties which the President and the Senate may think proper to make and ratify. He thanked the gentlemen for the admission, and hoped that the country would profit by it hereafter.

He was happy to say that this was not now, nor ever was, the doctrine of himself and his friends. They meant to deliberate, they meant to use their discretion in voting away the treasure of the nation. He agreed with gentlemen, that if a majority of the House entertained any doubt as to the validity of the title we have acquired, they ought to call for papers; and he had no doubt, if there was any dissatisfaction, they would call. He himself should have no objection to vote for the resolution if it was confined to proper objects, not indeed to satisfy himself, for he was already fully satisfied, but to satisfy other gentlemen; to satisfy the American people, that the insinuations thrown out about the title, are totally without foundation. The resolution in its present shape, however, was highly improper; it looked to extrinsic circumstances, and contemplated an inquiry into subjects totally unconnected with the treaty with France. What, said Mr. N., has Spain to do in this business? Gentlemen ask if she has acquiesced in our purchase, and call for her correspondence with our Government. What is the acquiescence of Spain to us? If the House is satisfied from the information laid on the table, that Spain had ceded Louisiana to France, and that France had since ceded it to the United States, what more do they require? Are we not an independent nation? Have we not a right to make treaties for ourselves without asking leave of Spain? What is it to us whether she acquiesces or not? She is no party to the treaty of cession, she has no claim to the ceded territory. Are we to pause till Spain thinks proper to consent, or are we to inquire, whether, like a cross child, she has thrown away her rattle, and cries for it afterwards?

The treaty itself, he said, and the conventions attached to it, furnished all the necessary information. By reference to the treaty it would be found, that Louisiana is ceded to the United States with the same boundaries that it had before been ceded with by Spain to France; and that France had obliged herself to send a commissary to New Orleans to receive the possession from Spain and to transfer it to us. For this the United States were to pay fifteen millions of dollars to the French Government. But how, and when? Not immediately; not till we had actually acquired the possession. And if France shall fail to put us into actual possession, the United States are not bound to pay a single dollar. So that the call for papers can be of no possible use. Suppose these papers should show that Spain had not acquiesced, what is this to us? Is her pleasure to be a law to the United States!

With regard to the Treaty of St. Ildefonso, Mr. N. said, he should have no objection to its being laid before the House, if it was in the possession of the Executive. In all probability, however, this was not the case, as it was known to be a secret treaty on other subjects of great importance between France and Spain. As to the deed of cession spoken of, he really did not understand what was meant, for he imagined it was not expected a formal deed of bargain and sale had been executed between two civilized nations, who negotiated by means of ambassadors. If there were any other papers which could give gentlemen more information, he had no objection, either, that these should be laid before them. Not indeed for his own satisfaction, but for that of those who were not already satisfied, if there were any of that description. One very important paper, he

knew from high authority, was certainly in existence, and possibly might be in the power of the Executive. This was a formal order, under the royal signature of Spain, commanding the Spanish officers at Orleans to deliver the province to the French Prefect, which he considered equal, perhaps superior to any deed of cession; for it was equal to an express recognition on the part of Spain, that France had performed all the conditions referred to in the Treaty of St. Ildefonso. It was an acknowledgment that Spain had no further claim upon Louisiana, and would show that any interference on her part ought to have no influence on the American Government.

The call for the correspondence between the Government of Spain and that of the United States, if there was any such, he should not assent to, as it could be of no possible importance. The acquiescence or the refusal of Spain, could have no weight on the question, whether we should take possession or not. Any interference on her part would be idle and extravagant. We might as well ask, whether the cession had received the approbation of Great Britain, of Russia, or even of the Dey of Algiers himself, for they each had as good a right to interpose as Spain had, either of them having full as good a title to Louisiana. To those parts of the resolution which pointed at the object he had mentioned, he should have no objection, but he never would consent to call on the Executive to say, whether Spain, Great Britain, or any other nation, was satisfied with a treaty made between the United States and the French Government.

Mr. MITCHILL said he rose to express his sentiments against the whole body of the resolution under debate. But his disinclination to adopt it did not arise from any doubt of the right which the House possessed to call upon the Executive for information. He had no hesitation to ask the President for papers whenever it was necessary to obtain them. And it was equally clear to him that whenever that dignified officer was properly applied to, he would comply cheerfully with the request of Congress, or of either branch of it. He owned that in some cases it would be the duty of the House to pursue this mode of inquiry, and equally would it be the duty of the head of the Executive department to give his aid and countenance.

In the present stage of the proceedings respecting the Treaty and Conventions with France concerning Louisiana, he deemed it improper to embarrass the business by an unseasonable call upon the Executive for papers. The President had already communicated various information on this subject, in his Message on the first day of the session. Additional information was given in his Message of the 21st, wherein he told the House that the ratification and exchanges had been made. This was accompanied with instruments of cession and covenant concluded at Paris between our Ministers and the agents of the French Republic. All this information we had already on our tables. This the President had put the House in possession of from his own sense of duty. This obligation was imposed on him by the Constitution, which declares that he shall, from time to time, give to Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient. Mr. M. said he had a firm belief that the President had complied with this Constitutional injunction. He had communicated such intelligence as he had received; and if he was possessed of anything else needful for the deliberation of the House, he was willing to think the Chief Magistrate of the Union would have spontaneously imparted it.

The gentleman from Connecticut (Mr. GRISWOLD) however says, that the cession expressed in the treaty, is no cession at all, but a mere pretence. He says that our title is derived from France, who has no title whatever to Louisiana, and of course can convey none to the United States. He differed in opinion with that gentleman entirely. The treaty contained internal evidence enough for him to act upon. And it was accompanied with extrinsic events and circumstances of great publicity. The united evidence of these we could not resist without rejecting all human testimony, and sinking into absolute scepticism.

Let us review, sir, what the sum of this information amounts to. By the first article of the treaty which has so lately been laid before us, we have a recital of that part of the Treaty of St. Ildefonso, concluded October 1, 1800, whereby His Catholic Majesty promises and engages to cede to the French Republic the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States. Here is a promise to cede; but the stipulation is accompanied with a condition which, as is alleged by the mover of the resolution, has never been performed. This condition, though not expressed at large in the first article, is well understood to be the establishment of the Duke of Parma in the full and entire possession of Tuscany, and the making him a monarch, under the title of the King of Etruria. This has been done in the face of all Europe. And the deliberations in the Diet of Ratisbon, concerning German indemnities, shows that the Prince, who was turned out of that country to make room for a younger member of the blood royal of Spain, was one of those who suffered a loss of dominion and revenue when Italy was borne down by the victorious arms of France. Mr. M. said he would not enter into the detail of European politics, nor dwell upon the splendid campaigns which had been made beyond the Alps. He would only urge upon the attention of the House, that France had put the Duke of Parma on the throne of Etruria, and had thereby acquired a title to Louisiana. This was the consideration or price with which the American province was purchased from Spain. But the right of France to Louisiana does not rest here—it is not a *nudum pactum*—so far from it, effective measures have been adopted to carry it

into operation by adding possession to right. A Commissioner has been sent to New Orleans, on the part of the French Republic, to receive the province of Louisiana from Spain. This officer has been received respectfully there. He has been officially recognised, and has had solemn induction and investiture. He may be considered as completely in possession, and enjoying, as far as the treaty requires, actual seizin of the country. If even possession by twig and turf was required, the French Republic really seemed to have been permitted by the Government of Spain to have such a possessory establishment. A title thus acquired, and accompanied by an allowed and peaceful possession, is about to be granted to the United States. The provisions to the completion of this object are stated in the fourth article of the treaty, which stipulates that there shall be sent by France a commissary to Louisiana, to the end that he do every act necessary, as well to receive from the officers of His Catholic Majesty the said country and its dependencies, in the name of the French Republic, if it has not been already done, as to transmit it in the name of the French Republic to the commissary or agent of the United States.

An objection had been raised on the ground of the uncertainty of the limits of Louisiana. He did not feel the force of this. In the ignorance in which the world was at present involved as to American geography, we should indeed receive it *talis qualis*, such as it was generally understood or usually reputed to be. He perfectly well knew it had been very little explored, and far less travelled over by surveyors with chain and compass. Uncertainty overhung the subject; but this would be dissipated by degrees, as the unknown regions should be visited and described. We might then proceed to adjust the limits in a manner similar to that we had repeatedly adopted with respect to the present territory of the United States. As Commissioners had been from time to time appointed to settle our boundaries on the Southern, Northeastern, and Northwestern frontiers, so might every geographical difficulty as to the extent of Louisiana be removed by Commissioners acting under like authority and powers.

Previously, however, to receiving the perfect transfer and possession on our part, it is necessary that we should make arrangements to pay for it. For although, by the second article of the first convention, it is agreed that no money or stock shall be advanced before Louisiana shall be taken possession of in the name of the Government of the United States; yet, as no money can be paid but by virtue of appropriations made by law, it is incumbent on Congress forthwith to declare whether they will make appropriation or not. If this appropriation is not made by law, there is an end of the treaty, and of all the expectations to which it has given rise. On the other hand, if duly and promptly made, our Government will be enabled, according to the promise contained in the fifth article, to receive from the commissary of the French Republic all the military posts of New Orleans and other parts of the ceded territory, and to see the troops of France and Spain, who may be there, withdraw from the country, and evacuate it. Mr. M. thought that Congress already possessed as much information as was requisite to act with wisdom and intelligence on the great question before them.

Acknowledging as he did the right of the House to request the President to give the copies of papers mentioned in the resolution under debate, his opposition to it arose merely from the persuasion he felt, that they were unnecessary, and some of them impossible to be had. Some papers were asked for, which he was confident did not exist in the hands of the President or anywhere else. It would be as agreeable to him, Mr. M. said, as to the mover of the resolution, to examine these papers as matters of rational curiosity, or as documents of authentic history. But now was not the time for these secondary researches, however amusing they might be. Graver subjects demanded our immediate attention, and there might be danger in delay. The operation of the resolution, if adopted, would certainly be to procrastinate and embarrass; and he did not discern what good would be wrought at that time by agreeing to it. There was an additional reason, and that a very weighty one, for refusing the motion at this time. By the treaty it must "be ratified in good and due form, and the ratifications exchanged within six months after execution." The date of this deed of cession is the 30th of April last; consequently the limited time would expire on the 30th of the current month. A doubt had been expressed by some gentlemen, for whose judgment he entertained the greatest respect, whether the ratification would be consummated in "good and due form," unless the declaration and act of this House should follow up the determination of the President and Senate. Mr. M. therefore concluded that, as there were but a few days left to decide on the question which involved the sovereignty of the Mississippi, and the adjacent country on both its banks, it would be better to proceed without delay to comply with all the pre-requisites. At a future day, he would have no objection to amuse his leisure with the perusal of the paper comprised in the resolution; but at present, he thought the members had neither inclination nor time to spare. Mr. M. therefore concluded by moving a postponement of the resolution until the 30th day of May next. The motion then being seconded,

Mr. FINDLEY said he was opposed to the postponement. He would rather face the resolution and decide upon it at once. If this House thinks it expedient, they will say so; if they think it inexpedient, they will manifest their opinion. He was one of those who considered the resolution as neither necessary nor expedient. It was not pretended that we yet had either territory or people to govern; but we were required to carry a treaty into effect that would give us both territory and people. Doubts had been suggested of the validity of our title; but shall doubts be put in competition with official papers? It was not, however, his intention to detain the House with a discussion of this point, on which sufficient had

been already said; but to notice an allusion made to the proceedings of a former Congress. It was proper that they should be correctly understood. When he looked around him he did not see more than eight or ten members of the House at the time referred to. It had been said by a gentleman from Massachusetts (Mr. THATCHER) that the House in the case of the British Treaty claimed to decide on treaties. In answer to this observation, he begged leave to read the reply of the House to the Message of the President; first observing that the contest was respecting the discretion of the House not to agree to treaties, but to grant money for carrying them into effect. On that occasion it had been contended there was no such discretion. The following are the proceedings on that occasion:

"The House, according to the order of the day, resolved itself into a Committee of the Whole House on the Message from the President of the United States assigning the reasons which forbid his compliance with the resolution of this House of the 24th ultimo, requesting a copy of the instructions, correspondence, and other documents, relative to the treaty lately concluded between the United States and Great Britain; and after some time spent therein, Mr. Speaker resumed the chair and Mr. Muhlenberg reported that the Committee had, according to order, again had the said Message under consideration and come to two resolutions thereupon, which he delivered in at the Clerk's table where the same was read; as follows:

"*Resolved*, That it being declared by the second section of the second article of the Constitution, 'That the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided that two-thirds of the Senators present concur: The House of Representatives do not claim any agency in making treaties; but that when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations, on a law or laws to be passed by Congress; and it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such treaty into effect, and to determine and act thereon, as in their judgment may be most conducive to the public good."

This resolution was carried by a majority of 57 to 35. From this statement it was evident that the point at that day in dispute was not whether the House had a right to ratify treaties, but whether they had a right to grant money; that is, whether they had not the same discretion on this as on other occasions? Mr. FINDLEY concluded by observing that he was himself prepared, with the information before them, to carry the present treaty into effect.

Mr. R. GRISWOLD scarcely believed the gentleman from New York (Mr. MITCHILL) serious in his motion to postpone this resolution. If it ever was proper to decide it, it was certainly proper to decide it now. If ever the information requested was wanted, it was for the purpose of legislating correctly on the subject of the Message. If it is not wanted, the House will not hesitate to negative the resolution. In my judgment, said Mr. G., it is wanted for the purpose of legislating correctly on those subjects that are before us. I am one of those who do now believe, and always have believed, that the exclusive right of forming treaties resides in the President and Senate; and that when ratified, it is the duty of every department of the Government to carry them into effect. This treaty then, if fairly and constitutionally made, is a law of the land, and we are bound to execute it. But it is necessary to know its nature and effects to carry it into execution. If it is a mere dead letter, there is no necessity for any laws whatever. Hence the necessity of knowing precisely its nature and effects, before we are able to pass the necessary laws for carrying it into effect. Gentlemen will not deny this. If the treaty itself is in these respects uncertain, they will admit the necessity of having recourse to other documents to decide what we are to do to carry it into effect. In my judgment the treaty is uncertain. I am not able to say from the light it supplies, whether we acquire by it new territory or subjects, or if the gentleman from Virginia pleases, new citizens; though I have always understood that all persons living under every description of Governments were bound to obey it, and of course were subjects, and that the term was as applicable to a Republic as to a Monarchy. Will gentlemen say that it is not necessary to ascertain the nature and effects of this treaty, in order to legislate correctly respecting it? What does the President say in his Message? He says, "It is for your consideration whether you will not forthwith make 'such temporary provisions for the preservation, 'in the meanwhile, of order and tranquillity in 'the country as the case may require." He calls upon us forthwith to legislate. If we have acquired the country and people, it is certainly proper to pass laws for the preservation of order and tranquillity; but if we have acquired neither, whence the necessity of passing such laws? It would be improper; it would be usurpation. We contend that the treaty does not ascertain these points; gentlemen differ from us in opinion. But I beg them calmly and seriously to attend to its language. By the first article it apears that Spain promised to cede Louisiana to France on certain stipulations. She *promises* to cede. Gentlemen cannot mistake the import of the language; it is a promise, not a cession. Will it be said that France acquired any title by this promise? This cannot be contended; the treaty does not declare whether the terms stipulated by France have been complied with, or whether the cession was actually made. The terms of the treaty are "whereas, in pursuance of the treaty, and particulary of the third article, the French Republic has an incontestable title," &c. Will gentlemen say that this assertion on the part of France gives her a title? It gives her no title. An assertion by France cannot affect Spain.

But, say gentlemen, France has stipulated the sending a commissary to receive Louisiana from Spain, and transmit it to us. What is the amount of this engagement? It is an engagement to receive and transmit. But suppose France does not send the commissary, or Spain refuses to deliver

the country. If gentlemen are correct in the construction they give to the first article, to wit: that we have acquired a good title, will not the House hold the language of the gentleman from Maryland, (Mr. NICHOLSON,) and say, "what do we care for Spain?" I therefore consider the fourth article as amounting to nothing. This consideration enforces the motion I have had the honor to submit; because if it shall turn out that we have acquired a good title, and the treaty shall appear to be fairly and Constitutionally made and ratified, we have a right in virtue of every principle of the law of nations to enforce our title.

The President has called upon us forthwith to pass laws for the preservation of order and tranquillity in this Territory. Should we not then seriously inquire into the validity of our title? for we have no right to exercise jurisdiction over it if our title is not rightful. Suppose France had ceded to us the Island of Great Britain. Would the mere cession give us the right to the soil and jurisdiction of that country? Before we pass the laws that are alleged to be necessary, we ought to ascertain whether the people of Louisiana owe us allegiance as their rightful sovereigns.

Gentlemen say, though they are content to call for the Treaty of Ildefonso, there are other parts of the resolution to which they cannot assent, and particularly that which relates to Spain. In one view this information is important. If it shows the consent of Spain to the cession to us, it is equivalent to an abandonment, so far as relates to us, of the stipulations made to her by France, and all that remains for us to do is to organize a government over the people of that Territory. But if Spain refuse her consent, and remains in possession—and I always understood till this day that she does remain in possession—it may be necessary to resort to other measures. For that purpose I have thought it proper to call for papers that may ascertain the disposition of Spain. As to the expression "deed of cession," it may not, perhaps, be the most apt; and it will be perfectly agreeable to me to substitute the word "instrument," if that shall be more agreeable to gentlemen. I beg leave to add that with regard to all these documents, no doubt can be entertained of their being in the possession of the Executive. When realizing this important purchase, he certainly felt it important to know whether the nation selling had a right to sell; and that right must have depended upon the treaty of 1800. Let not gentleman ascribe to me the least wish to pry into the secrets of State. This measure cannot be fairly so construed. The Treaty of Ildefonso must be a public treaty from the nature of it. As to the correspondence with the Government of Spain, I should presume that that cannot be secret. But if the President will say that Spain has assented to or dissented from the treaty of cession, that will be sufficient for me. For these reasons I deem the adoption of the resolution at this time important, and that it is consequently improper to postpone it to a future day. I presume gentlemen are desirous to carry this treaty into effect without delay. I am not the least disposed to frustrate their wishes; and when these documents shall be received, if gentlemen permit them to be received, we shall be enabled immediately to decide whether the treaty calls for any particular laws to carry it into execution.

Mr. RANDOLPH said, that when the gentleman from Connecticut introduced the resolution it struck him as being irregular, but as it had not received any animadversion from the Chair, and as he felt greatly disposed to favor the utmost latitude in debate, especially on the part of the other side of the House, he had offered no objection to the course which had been pursued; although it appeared to him that, this subject being in the possession of the Committee of the Whole House, it would have been more regular to have moved a previous discharge of that committee, or to have offered the resolution in that committee, by way of showing that it was not expedient to pass the necessary laws for carrying the treaty into effect. This was not the only case in which a question had been discussed on incidental points, rather than on its own merits. It had become almost habitual with the House to decide the principal questions before them, by debating others of a preliminary nature. He hoped therefore he should be excused in following the extensive but devious track of the gentlemen from Connecticut. He declared himself entirely at a loss how to reconcile the theory and practice of that gentleman. He confessed that he had rather have seen him come boldly forward and deny the propriety of carrying the treaty into effect, than fighting behind entrenchments which cramped his exertions, whilst they did not cover him from that charge of inconsistency against which he vainly endeavored to shield himself. Mr. R. regretted, therefore, that the gentleman had given any previous pledge which tended, at this time, to fetter his opposition to the treaty. He felt himself at a loss how to understand an expression which had been repeatedly and emphatically used—'if the treaty were constitutionally ratified." The Executive informs us that this instrument has received the sanction of the Senate, and yet the scepticism of gentlemen is so extreme, that they cannot argue from the fact, but put the case hypothetically. Do they suppose the ratification to have been informal and incomplete?

Mr. GRISWOLD explained. He said he would merely inform the gentleman what he had thought and intended to express, viz: that if the treaty be constitutionally made and ratified, that House was bound to carry it into effect.

Mr. RANDOLPH continued—"If it be Constitutionally made and ratified!" Really, sir, this is the age of ingenious distinction. Unfortunately I am too dull to comprehend how a treaty can be constitutionally ratified, which is not constitutionally made. If, however, it be constitutionally made and ratified, the gentleman acknowledges himself bound to carry it into effect; and yet he wants documents. To prove, what? That the treaty is Constitutional? to clear up doubts of this nature? Not at all; not to decide whether

we have a treaty which contravenes the provisions of the Constitution, but to determine whether we have any treaty at all. We must first see whether we have acquired territory and inhabitants to govern before we can pass the necessary laws giving effect to the treaty; although, by the gentlemen's own showing, we must pass the laws for carrying the treaty into effect, (provided they do not violate the Constitution,) even if it should be found that we have acquired neither territory nor inhabitants. According to the gentleman's doctrine, we must make good the stipulations into which the Executive may have entered, in the name of the nation, whether we have acquired anything in return or not. To what purpose then is this inquiry made? But we are told that inquiry is necessary to enable us to ascertain the proper mode of effecting the desired end; to determine whether (as a gentleman from Massachusetts, Mr. Thatcher, has said) we shall march a body of soldiers, or civilians, to take possession of Louisiana. But was it necessary to determine the mode of taking possession, before they would resolve to take possession at all? If the House would previously decide this question—if they would come to a resolution that it was expedient to take possession, that resolution would be referred to a select committee to prepare a bill in conformity to it, and when that bill should be under their consideration, it would be proper to determine whether we would send soldiers, or civilians, to New Orleans. From the zeal which that gentleman and his friends had manifested on this subject, Mr. R. entertained no doubt of their willingness to serve in either capacity.

Gentlemen allow that they are bound to carry the treaty into effect, if consistent with the Constitution; but they say, that there may be, and are, dubious points, which must be cleared up, in order to enable them to understand how to carry it into effect. It would be strange indeed if there were not dubious expressions in this, as in almost all other treaties. For to what purpose are treaties generally made, but to define and settle the doubts of prior treaties, furnishing themselves matter for other negotiations, in an uninterrupted succession of cause and effect? Thus subsequent treaties have been made to settle the construction of the Treaty of Paris of 1783—and yet later conventions endeavor to destroy the ambiguity of these explanations. There never was a convention between nations to which this objection would not be urged. The Treaty of 1783 was so deficient in respect to the limits assigned the United States, that it could not be carried into execution, unless two straight lines can enclose space. This was the natural result of our then ignorance of the extent and direction of the great rivers and lakes, on the northeastern frontier. The treaty now before us may be presumed to be equally or more indefinite, as to the boundaries, than that of Paris—since the geography of the United States, at that time, was better understood than that of Louisiana is at this. But a new discovery is made. That whatever doubts may arise under the treaty in question, it belongs to the Executive to clear them up, and for that purpose this application is proposed to be made. Mr. R. said that he had always understood, till now, that doubts arising on any compact between independent Powers were the proper subject of negotiation between those Powers. That in this way alone they could be resolved, and not by one of the parties undertaking to put his own construction on the question. To what purpose then apply to the Executive for a solution of doubts to which both the parties interested alone are competent, and which it belongs not to one of them to decide?

It is said that the Treaty of St. Ildefonso would enable us to ascertain whether France had complied with the stipulations in consideration of which Louisiana was ceded to her by Spain, and that probably it defines the boundaries of that country. With respect to the first object, even if it were in the power of the Executive to furnish us with a copy of that instrument, we should only learn, what we already know, that France engaged to raise a younger son of the Spanish branch of the House of Bourbon to the Etrurian throne. Suppose, sir, we were officially apprized of this fact; would that satisfy the gentleman from Connecticut? By no means. Whilst there is a possibility of doubt, he has told us honestly, he does not mean to be satisfied. No sir; you must summon a *venire* to establish the fact that the Duke of Parma has been elevated to the rank of Tuscan King, and obtain a verdict in his favor, before you prevail on the cautious jealousy of that gentleman to assent to the proposition. In regard to the limits of the country in question, it is well known that neither in that of St Ildefonso, nor any other treaty, have they been accurately defined. Nor ought this to be a matter of surprise, since neither the Treaty of Paris in 1783, nor that of London in 1794, has fixed the boundaries of the United States, and in consequence, our northwestern line was still unclosed. If gentlemen wanted information on this subject, instead of sending this resolution to the President, they should send their doorkeeper into the library for Du Pratz, and Chalmers, and Jenkinson. They will find more concerning the extent of Louisiana in Louis XIV's grant to Crozat than in the treaty which they require, or in any other. By the Treaty of St. Ildefonso, Spain "cedes to France the province of 'Louisiana, with the same extent it now has in the 'hands of Spain, and that it had when France pos-'sessed it; and such as it should be after the trea-'ties subsequently entered into between Spain and 'other States." The only article then of this treaty which concerns us, is quoted in that which is now in our possession. To establish what was the extent of the country when France possessed it, will doubtless form—perhaps now forms—the subject of negotiation with Spain. If, then, the precision which the gentleman requires be insisted on, the assent of this House may be refused to the laws for carrying the treaty into effect, until a complete adjustment of our boundary shall have taken place with Spain; and inasmuch as this can never be effected until these laws are passed, and possession thereby taken of the country, the gentleman will

obtain a perpetual virtual adjournment of this question. Availing himself of this newly discovered distinction, whilst he acknowledges an indispensable political obligation to carry treaties into effect, he may refuse his sanction to any particular treaty. It is only to discover some real or apparent obscurity, should no Constitutional objections present themselves, and the business is done. The gentleman thus surmounts, or gets around his own doctrine, and opposes a treaty as effectively as if he had never supported the position that this House was bound to execute them. But it requires all the intrepidity of the gentleman from Connecticut to assert his consistency. What do we now propose? Only to submit to the House the bare abstract proposition that it is expedient to pass the laws for carrying this treaty into effect. We propose no particular measure; no matter of detail is before us; we are not debating whether we shall employ soldiers or civilians; and yet the gentleman, while he acknowledges an obligation to carry treaties Constitutionally made, into effect, whilst he urges no Constitutional objection in this case, refuses his assent to the general position of the expediency of passing the laws necessary to give effect to the treaty in question, on the ground of difficulty, or hazard to the United States; in other words, on the ground of inexpediency. The House will perceive how greatly the gentleman must be embarrassed, when he is driven to such glaring inconsistency; when he is compelled to compound the question, whether the treaty ought to be carried into effect? with one entirely different; the manner in which that effect is to be attained?

But, says another gentlemen from the same quarter of the Union, to whose reputation for ingenuity, although it has been supported by a gentleman from Vermont, Mr. R. could not subscribe, Spain may have a right which she dare not now assert, since she trembles at the nod of the First Consul, but which, hereafter, she may reclaim, and unless you procure her formal relinquishment of that right, you cannot stand on safe ground. Twenty years hence she may demand Louisiana at your hands, and wrest it from you, as it has been wrested from her, by force. Mr. R. said, that, with some variation of terms, this was the same monstrous opinion which had been urged against every proposition for peace between England and France: because at some undefined future period, events may take place which are beyond the control of human prudence, we are now called upon to act, not upon the existing state of things, but upon a possible future state of existence, which speculative minds have chosen to imagine. But how are we to reconcile this reluctant caution to the doctrine of forcible possession, so lately inculcated by gentlemen? At one time it was necessary to possess ourselves of the key of the Mississippi, on any terms, and in any way. There was no waiting to examine into the title of other nations, or scarcely into our own. The Mississippi must be had at every hazard, and in any mode. Now that it was offered to us, gentlemen can devise no mode of getting it. They are so embarrassed with forms, which sometime past were held as nothing, that the value of the Mississippi, which was held as everything, has sunk in their estimation. That Mississippi, for whose acquisition the nation was to be precipitated at once into war, is now of so little consequence that the most trivial form outweighs it in their estimation.

Mr. Randolph said, that he expected to have seen those gentlemen foremost in zeal for taking possession of the country in question, and so far from throwing impediments in the way, that in case Spain manifested any opposition to the step, they would have been the first to originate measures for compelling her assent. This would have been consistent. He treated the idea of future reclamation by Spain as futile in the extreme. If, however, gentlemen were disposed to examine into the question of the extent of Louisiana, instead of the treaty of St. Ildefonso, they must look elsewhere for its history—from the first settlement of La Salle to its surrender in 1736, to Spain and Great Britain. The only clause of the Treaty of St. Ildefonso which affects this subject, is now in the possession of the House. With them it rests to determine whether we will accept it, as there described, and upon the conditions stipulated. After we shall have resolved to accept it, it will be incumbent on every gentleman to devise the best means for securing our possession. At that stage of the subject, said Mr. R. it will be proper for gentlemen to descant upon the state of our relations with Spain, to demonstrate the danger of opposition from that quarter, and to devise the means of surmounting it. But on the plain abstract question, whether we would accept the country or not, all these observations were premature. He hoped, therefore, that having acquired Louisiana, as possessed by Spain, and as it was held by France, the House would pass the laws for enabling the Executive to give effect to the contract, and he should vote against the resolution, as tending to embarrass a question which he wished to see decided, and as lengthening a discussion which he hoped would be terminated before they rose.

Mr. Goddard remarked that though the gentleman from Virginia (Mr. Randolph) had not pleased to compliment him on the score of ingenuity, yet he had replied copiously to his remarks; and this, he presumed, he would have spared himself the trouble of doing, had he not considered those remarks entitled to his notice. The gentleman asks, what has become of the hostile sentiments of his political friends? Mr. G. did not understand exactly to what he alluded. He and his political friends had seen the time when they thought the essential rights of their country invaded. Then it was that they were disposed by vigorous measures to assert them, and to them it was indifferent whether these rights were violated in Virginia or on the banks of the Mississippi. But where will it appear that they proposed to acquire Louisiana by force? Was it proposed during the last session to acquire this country by warlike measures? The project of acquiring that

extensive territory by force or by other means was entirely novel. Did we then ever hear of passing the banks of the Mississippi? Did we then hear a proposition to acquire this vast territory by war? No gentleman had ever heard this. It may have been said, if our rights are invaded, it is our duty to put ourselves in a situation to defend them. But was that war? Let me then, said Mr. G., ask with what justice gentlemen charge us with having had a disposition to go to war with France or Spain? The war-whoop has been sounded, and we have been charged with wishing to embroil our country in war. But the charge is injurious. Then, and now, we feel disposed to repel the unjust aggressions of Spain and France on our rights. We then were in favor of vigorous measures to repel them, and we are still in favor of the same measures, should our rights be again invaded. But because we were for exerting proper and efficient means of securing those rights invaded at New Orleans, are we to be told that it is our duty *per fas et nefas* to take it? If so let us have it one way or the other—either by war or by purchase; and if in the latter way, do not let us obtain it in such a manner as shall compel us to resort to war. The object is certainly of great importance, and we ought to make great sacrifices to obtain it by peaceable means, but when acquired by these means, at a great sacrifice of treasure, let us avoid laying the foundation for future wars.

The gentlemen have resorted to peculiar grounds to show our right to this Territory: they have resorted to verbal information. The gentlemen say the cession to France is well known to all Europe. Suppose I say I am not willing to rely on such general information, and that not being so learned as they, I have not obtained this information. But the gentleman from Virginia refers to the Treaty of St. Ildefonso, and he informs us that the treaty will not afford us the information we wish. The gentleman may have access to the Cabinet, but I belong to an humble and unlearned minority. The majority of this House, who may be acquainted with its contents, may say to us "you must act in the dark, it is sufficient that we have seen it." For my part, although disposed to pay great deference to the learning of the gentlemen from New York and Virginia, yet as a Representative of the American people, called upon to legislate on objects of vast interest, I consider myself entitled to correct information, and that I ought not, instead of receiving this information, be referred to newspaper statements.

But, say gentlemen, it is unnecessary to be acquainted with the facts we ask for, and the gentleman from Virginia has referred to my observation, that, though Spain may not now oppose the execution of our Treaty with France, yet the time may arise when she will call upon us to prove the validity of our title. All I meant was, that if Spain considers herself entitled to Louisiana, though she may not, under the pressure of present circumstances, oppose our taking possession of it, yet if, by a revolution in European politics, she shall retrieve her national character, and demand of us by what right we hold this territory, what answer shall we make? We may say it is ours by Treaty with France; but suppose it shall then appear that the possession by France was mere usurpation, would we under such circumstances enter into a contest with Spain for it? She might have yielded under the pressure of imperious circumstances to the giving it up, without any justice in the measure. I would wish to avoid in this business all seeds of war; and is it, in this point of light, of no importance to learn whether or not France has a good title? Are we to be satisfied with the mere declaration of France to this effect? Suppose we pay France the fifteen millions, and Spain afterwards demands the territory, and we call on France to refund the money—France will assuredly say, you made the purchase with your eyes open, we recited to you the title under which we ceded the territory, and you accepted it at your peril. I apprehend, therefore, that it becomes important to inquire, not whether the treaty has been made according to the forms of the Constitution, but whether Spain has actually ceded Louisiana to France, and whether Spain assents or dissents from the cession. If she assents, it may be inferred that France has perfected her engagements; and if she does not assent, that she has failed to comply with them.

With regard to the precedent in the case of the British Treaty, appealed to on the other side, we may say, if correct on that occasion, it is likewise correct on this occasion. You called for papers then, and we call for them now. But I conceive there is no analogy between the cases. For how does our call affect or impugn the treaty-making power of the President and Senate?

I apprehend that to postpone this motion is to negative it. We call for information. Gentlemen say act first, and we will then give it to you. Need gentlemen be again told that we do not make the demand through a blind curiosity, but because we deem it absolutely necessary to know whether the title is in us before we pass the laws to carry the treaty into effect?

Mr. Elliot.—Mr. Speaker, as I have not spoken on the question of postponement, and although my views of the subject are almost exactly the same with those of the gentleman from New York who made the motion, yet as I shall vote against the motion, and as I wish to appear consistent in my conduct, I am under the necessity of again asking the indulgence of the House for a few moments; it shall be but for a few moments only. When I was up before, I mentioned that I had other objections to the resolution than merely its prematurity, but that I did not think it necessary to state them. Those objections, in part, have since fallen from a gentleman from Kentucky, (Mr. Lyon;) they apply to the form of the resolution; to the propriety and decorousness of its expression. It struck me at first, it still strikes me, as improper and indecorous towards the President. I have no idea that such was the intention of the gentleman from Connecticut, for I know, at least I believe, that he is a gentleman of honorable feelings, and utterly incapable of anything of that nature; but such was the impression on my mind, and I can-

not remove it. I am therefore for an absolute rejection of every part of the resolution; I cannot vote even for a postponement.

I hope I shall not be considered as guilty of very great vanity in observing that my objections to the resolution as being premature have not been directly answered by gentlemen on the other side of the House. It is said the treaty may not have been constitutionally made. This must be determined from the face of the treaty itself, and not from any of those extraneous considerations which gentlemen are laboring to connect with it. The view taken of the subject by the gentleman from Virginia is certainly the only correct one. Let us first decide whether we will impart our Constitutional agency to carry the treaty into operation, and when we consider ourselves as having acquired the territory and its inhabitants, proceed to legislate accordingly. I shall not deny that, presuming upon the good faith of the French Government, and of course that we shall obtain the possession according to the laws of nations, we may immediately proceed to pass such laws as may be necessary in that event. But of this subject the President and ourselves have the same views.

He speaks of "ulterior provisions," and of "temporary provisions." With reference to these provisions alone the gentleman from Connecticut moves his resolution, and on this subject alone wishes for information. The President says:

"As permanent arrangements for this object may require time and deliberation, it is for your consideration whether you will not forthwith make such temporary provisions for the preservation, in the meanwhile, of order and tranquillity in the country, as the case may require."

And he tells us that such information on the subject as he has been able to collect shall be laid before us in a few days, or as soon as the subject shall be in a state for our consideration. I am willing to take him at his word, and when we arrive at such a stage of the business as to render that information desirable, if the President is forgetful of us, I shall be ready to call upon him for a fulfilment of his promise.

Mr. Mitchill withdrew his motion of postponement. He had made it, he said, to save time, but as the time he hoped to have saved was already consumed, he would waive it. The gentleman from Connecticut declares his disposition to carry the treaty into effect by all necessary measures, without delay. To accommodate him he would withdraw his motion.

Mr. Griswold, but for one idea thrown out, should not again ask the indulgence of the House. The gentleman from Virginia (Mr. Randolph) observes, that when we shall go into Committee of the Whole, we shall have but one resolution before us, to wit:

Resolved, That provision ought to be made for carrying into effect the treaty and convention concluded at Paris on the 13th of April, 1803, between the United States of America and the French Republic.

And that in debating on this resolution there will be no necessity for the documents, which it is the object of the resolution to obtain. There would be weight in this observation, but for the circumstance that it is competent for any gentleman in committee to move any resolution connected with the subject. It was competent to move that this or that article should be carried into effect; for the provision of a military force to take possession of New Orleans; for the appointment by the President of governor or judges. The gentleman has admitted that these documents may be useful when we go into the details of the subject. If so, they certainly will be useful when we shall be in Committee of the Whole. Besides, if it be proper to agree to the general resolution, it would be absurd to agree to it unless previously satisfied that some laws are necessary. If the United States have no right to govern the province, it is absurd to say that it is expedient to make provision by law for governing it. And unless gentlemen can show this or that law to be necessary, we ought not to agree to the general proposition. The argument, therefore, of the gentleman from Virginia is entitled to no weight.

Mr. Randolph would not have trespassed further on the patience of the House had he not been called on personally by the gentleman from Connecticut (Mr. Goddard.) He was sorry that whilst bearing testimony to the ingenuity of the gentleman's colleague on his left (Mr. Griswold) he had been unable to include the gentleman himself in the description; on all other subjects he should be ready to acknowledge the gentleman's ingenuity, but on this he must be excused from subscribing to the opinion of the gentleman from Vermont. Candor forbade it. He regretted that the gentleman from Connecticut had felt this exclusion so deeply, and could he have foreseen it, Mr. R. would have endeavored to conceal the impression which the gentleman's display had made upon him.

The gentleman asks, when did he or his friends evince a disposition to acquire territory west of the Mississippi? Mr. R. said he must have been misunderstood if his position had been taken with such latitude; but the gentleman immediately corrects himself by asking when was a disposition for hostility with Spain manifested by any description of persons in that House? If his memory did not deceive him, gentlemen had that day declared that the interruption of the navigation of the Mississippi justified warlike measures on our part. If, then, to acquire the navigation of the river, with the bare right of deposit, would have justified hostility, surely the acquisition of the island of New Orleans and both banks of the river, giving a perfect security to our navigation, and the entire, uninterrupted control of the river, would have justified an appeal to arms—unless the unlucky ingenuity of the gentleman from Connecticut would undertake to prove that a part was less than the whole, and that although the attaining of a qualified and precarious right to a given object furnished good cause for war, yet to acquire an unqualified and secure right to the same object would not justify hostility. Surely, it is not meant to insinuate that all which was heard on this sub-

ject last winter was mere clamor, and that notwithstanding the war-speeches of the day, war was never contemplated by those who delivered them. If, then, the obtaining of the free navigation of the Mississippi was good cause of war, surely the obtaining that which was essential to the unfettered exercise of this right, (New Orleans,) which, in other words, is the right itself, would have justified hostility; but we have not only obtained the command of the mouth of the Mississippi, but of the Mobile, with its widely extended branches; and there is not now a single stream of note, rising within the United States, and falling into the Gulf of Mexico, which is not entirely our own, the Apalachicola excepted. To these acquisitions are added the extensive region west of the Mississippi and northeast of New Mexico. If the possession of the right of deposit there, or the island of New Orleans, a part of this acquisition, would have justified hostility, is the importance of this part lessened by having the whole added to it?

The gentleman had complimented his learned friend from New York, (for so he must insist upon calling him,) and had been liberal enough to include him also, on their very great learning. Mr. R. acknowledged himself altogether unworthy of the honor of this association; and lamented his inability to return the compliment, but at an expense of sincerity and truth, which even the gentleman from Connecticut, he hoped, would be unwilling to require. The gentleman says, that we must have seen the Treaty of St. Ildefonso, because we have undertaken to say what it does not contain. This may be logic in some schools, but surely it does not deserve, in this House, so respectable an epithet. Might we not declare, without having seen it, that this treaty does not contain the Declaration of American Independence? It is insinuated that certain gentlemen possess avenues to information, which are closed to another description of members of this House. Although he did not mean to attempt to satisfy the jealous spirit which had so frequently manifested itself in surmises of this sort, yet, Mr. R. said, he had access to no information but such as it was in the power of every gentleman to obtain. Without having seen the Treaty of St. Ildefonso, (although he had seen as much of it, he believed, as the Executive, from whom gentlemen require a copy of the instrument; that is to say, the extract from it, contained in our treaty with France,) he would undertake to affirm, that it did not accurately define the limits of Louisiana. And the House would perceive that he hazarded little by this assertion. Being apprized that the boundaries of this country were not specially described in any previous convention, whether of a general nature, as the Peace of 1783, the Treaty of Paris, in 1763 of Aix-la-Chapelle, or any other pacification of Europe of an anterior date to the Peace of Ryswick, in 1697, which was posterior to the settlement of the country by France, or in any particular convention between France and Spain; that of 1762 conveying Louisiana to this last Power; the family compact, or any other known stipulation between the parties; he could not fail to know that, unless an accurate description of the boundaries in question was contained in the Treaty of St. Ildefonso, it must be sought for in documents of another sort. Now, that article of this treaty which describes the extent and limits of Louisiana, is contained in the treaty before us. Here Mr. R. read the extract, and asked if it were possible that the Treaty of St. Ildefonso could contain a description of Louisiana by certain specific boundaries, when it was described by that treaty in such language? Had certain limits been agreed upon, would not the treaty have described those limits? Would it not have resorted to those rivers, highlands, parallels of latitude, or degrees of longitude, had such been laid down, instead of the definition which had been given? "Such as it was possessed by France, such as it then was in the possession of Spain, and such as it ought to be in consequence of subsequent treaties." The treaty between the United States and France, in describing the country ceded to us, having quoted the description of it contained in the Treaty of St. Ildefonso, are we not warranted in concluding that the Treaty of St. Ildefonso contains no other more definite description of the country? Is not the inference irresistible, that, had it contained such a definition, by that definition it would have been ceded to us? The gentleman from Connecticut would therefore perceive that, without information other than that which is accessible to every man, it was not difficult to ascertain the fact in question. As to the Treaty of St. Ildefonso, he professed an entire ignorance of it, the extract in question excepted. He had always understood it to have been a secret treaty. He left the House to judge how far, under these circumstances, he had erred in refusing his sanction to the character of ingenuity and learning with which, on this occasion, the gentleman had been complimented by the member from Vermont.

Gentlemen profess a wish to debate the merits of the treaty, and yet all their arguments go to show that it is an illusive bargain, a ruinous contract; and, so far, are applicable only to the question, "Ought the laws to be passed for carrying it into effect?" The gentleman from Connecticut (Mr. GODDARD) relied much on a very singular argument, the future reclamation of this country by Spain. She may, indeed, truckle now to the will of the First Consul, but hereafter she may be in a condition to assert her rights. He was at a loss to know in what language a Minister of Spain would demand the possession of a country, occupied for years by the United States, under a solemn and public treaty with France, to which Spain shall have given her tacit acquiescence, against which she shall have entered no protest or remonstrance. He had not as much difficulty to conceive the answer that would be returned her by some millions of citizens of the United States, seated on and near the lands in question, in case her application carried anything of hostility along with it.

Whilst he was up—and he would not have risen but for the satisfaction of the gentleman from

Connecticut, he would notice an observation of his colleague (Mr. GRISWOLD) that, although on the mere abstract question, whether the treaty ought to be carried into effect, information as to the mode of doing it was necessary; yet, as every gentleman would be free to move in the Committee of the Whole, specific propositions, it was proper, to enable the House to judge of those propositions, that this information should be previously possessed by them. But, surely, the House may believe it expedient to pass these laws without having any idea of the skeletons of the particular bills. When these specific propositions shall have been made, they will go to particular committees, who will obtain of the proper departments the necessary information—of these committees the gentlemen and his friends will be members. So much of the treaty as touches the appropriation of money, on our part, will go, of course, to the Financial Committee, of which the gentleman has long and deservedly been a member. Other propositions will be submitted to other committees. If the bills which they present are, in the opinion of gentlemen, inefficient, they will have it in their power to show it; to demonstrate the hostility of Spain, and to bring forward other measures better calculated to insure the desired effect.

Mr. R. apologized for his long and repeated intrusion on the House, which the personal application of the gentleman from Connecticut had produced, and he hoped justified, and thanked them for their polite and patient attention.

Mr. NICHOLSON said he should vote for the first part of the resolution, as well as for that part which related to the order by Spain for the delivery. Though it might not be in the power of the Executive to show that the stipulations made by France had been complied with, yet it would be in their power to show an order for the delivery to the French, under the sign manual of His Catholic Majesty, and this would be conclusive evidence of the title of France.

Mr. ELLIOT.—I must again ask the attention of the House to a very few observations. Whatever may be said of newspaper information, there are occasions when we must be governed by it, when we can obtain no other. I am very confident, and I believe every member of this House believes, that the Treaty of St. Ildefonso, of the first of October, 1800, between the First Consul of the French Republic and His Catholic Majesty, was a secret treaty. I believe it never has been published. If it has been, every editor of a newspaper in the United States, every person in the habit of reading, may be supposed to have access to it, equally with the President. There is the greatest probability, however, that neither the First Consul nor His Catholic Majesty could, at this day, publish that treaty without being guilty of a breach of faith, and that, if the President possesses it, it has been confidentially communicated to him. Whether it be a secret or a public treaty, we have no right to take it for granted, as contemplated by the resolution, that it is in the possession of the President; and we have no right to require it from him.

I am disposed to do perfect justice to the pure intentions, the candid views of the gentleman from Maryland (Mr. NICHOLSON) in relation to this subject. He may be able to justify himself for voting in favor of that resolution, but I cannot. I conceive it would be highly improper.

The question was taken on agreeing to the first member of the resolution, as follows:

Resolved, That the President of the United States be requested to cause to be laid before this House a copy of the treaty between the French Republic and Spain, of the 1st of October, 1800.

The House divided—ayes 59, noes 59. The Speaker declaring himself in the affirmative, the motion was carried.

Mr. RODNEY suggested an alteration in the second member of the resolution, so as to read "instrument," instead of "deed."

Mr. GRISWOLD had no objection to the modification.

The second member, so modified, was read as follows:

"Together with a copy of the instrument of cession from Spain, executed in pursuance of the same treaty conveying Louisiana to France, (if any such instrument exists.")

Mr. HUGER confessed his impressions to be favorable to the treaty, though the arguments urged that day, certainly possessed great weight. He was rather of opinion that no such instrument, as that referred to in the resolution, existed. But if it did exist, its publication would certainly be satisfactory to the people and the House. He declared himself ready to vote for carrying the treaty into effect.

Mr. NICHOLSON did not know whether his remarks had been correctly understood. He did not know whether the document he alluded to could strictly be called the instrument of cession. He had drawn an amendment to this part of the resolution, which he would propose, if in order, to wit:

"Or other instrument showing that the Spanish Government had ordered the province of Louisiana to be delivered to France."

The SPEAKER said, the House having agreed to insert the word "instrument," it was not in order to receive a substitute.

Mr. HUGER moved to reconsider the vote of the House in favor of the insertion of the word "instrument."

Motion lost—ayes 24.

The question was then taken on the second member, as above stated, and lost—ayes 34.

The question was then taken on the third member, viz:

"Also, copies of such correspondence between the Government of the United States and the Government or Minister of Spain, (if any such correspondence has taken place,) as will show the assent or dissent of Spain to the purchase of Louisiana by the United States."

And lost—ayes 34.

The question was then taken on the last member of the motion, and lost, without a division, viz:

"Together with copies of such other documents as may be in the Department of State, or any other department of this Government, tending to ascertain whether the United States have, in fact, acquired any title to the province of Louisiana by the treaties with France of the 30th of April, 1803.

The question recurring on the whole of the resolution, as amended,

Mr. NICHOLSON moved to amend the second member by adding to the end thereof:

"Together with a copy of any instrument in possession of the Executive, showing that the Spanish Government has ordered the province of Louisiana to be delivered to the Commissary or other agent of the French Government."

Agreed to—ayes 64.

The question was then taken by yeas and nays on the whole of the original motion, amended as follows:

"*Resolved*, That the President of the United States be requested to cause to be laid before the House, a copy of the treaty between the French Republic and Spain, of the 1st October, 1800, together with a copy of any instrument in possession of the Executive, showing that the Spanish Government has ordered the province of Louisiana to be delivered to the Commissary or other agent of the French Government."

And lost—yeas 57, nays 59, as follows:

YEAS—John Archer, William Blackledge, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Matthew Clay, John Clopton, Samuel W. Dana, John Davenport, Thomas Dwight, John Eagle, Peter Early, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Daniel Heister, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Matthew Lyon, William McCreary, Nahum Mitchell, Nicholas R. Moore, Joseph H. Nicholson, Thomas Plater, Samuel D. Purviance, Jacob Richards, Cæsar A. Rodney, Erastus Root, Joshua Sands, John Cotton Smith, John Smith of New York, John Smith of Virginia, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, John Trigg, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, junior, Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, John Boyle, Robert Brown, William Butler, Geo. W. Campbell, Levi Casey, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, James Elliot, John W. Eppes, William Eustis, William Findlay, John Fowler, Edwin Gray, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland, John G. Jackson, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Samuel L. Mitchill, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, Richard Stanford, Joseph Stanton, John Stewart, Philip Van Cortlandt, Isaac Van Horne, Daniel C. Verplanck, Matthew Walton, John Whitehill, and Richard Winn.

AMENDMENT TO THE CONSTITUTION.

The House resolved itself into a Committee of the Whole on the report of a select committee on propositions of amendment to the Constitution.

The report was read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the different States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes as a part of the said Constitution, viz:

"In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President, of whom one at least shall not be an inhabitant of the same State with themselves. The person having a majority of all the Electors for President shall be the President; and if there shall be no such majority, the President shall be chosen from the highest numbers, not exceeding three, on the list for President, by the House of Representatives, in the manner directed by the Constitution. The person having the greatest number of votes as Vice President shall be the Vice President, and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution."

Mr. DAWSON observed, that at the time of the adoption of the Constitution, that part of it which related to the election of a President and Vice President had been objected to; and evils likely to occur had been foreseen by some gentlemen at that day. Experience had shown that they were not mistaken. Every gentleman in that House knew the situation in which the country had been placed by the controverted election of a Chief Magistrate; it was one which he trusted never would return. It had been a subject much reflected on by the people, and by the State Legislatures, several of which had declared their approbation of the principle contained in the resolution reported by the committee. This House had two years since ratified a similar amendment by a Constitutional majority of two-thirds. At that time no objections were made to the principle of the amendment. All the objection then made was on account of the lateness of the day and thinness of the House. Mr. D. considered it unnecessary to make any further remarks at that time, as he could not anticipate any objections that might be urged. He moved that the Committee should rise and report the resolution without amendment.

Mr. J. CLAY, though in favor of the principle of the amendment, was of opinion that, as to some of its parts, it required alteration. He therefore moved

"But if no person have such majority, then the House of Representatives shall immediately proceed to

choose by ballot from the two persons having the greatest number of votes, one of them for President; or if there be three or more persons having an equal number of votes, then the House of Representatives shall in like manner, from the persons having such equality of votes, choose the President; or if there be one person having a greater number of votes—not being a majority of the whole number of Electors appointed—than any other person, and two or more persons who have an equal number of votes one with the other, then the House of Representatives shall in like manner, from among such persons having the greater number of votes and such other persons having an equality of votes, choose the President."

Mr. VAN CORTLANDT thought the amendment liable to objection.

Mr. G. W. CAMPBELL was in favor of the principle contained in the amendment. He considered to be the duty of this House, in introducing an amendment to the Constitution on this point, to secure to the people the benefits of choosing the President, so as to prevent a contravention of their will as expressed by Electors chosen by them; resorting to Legislative interposition only in extraordinary cases: and when this should be rendered necessary, so guarding the exercise of Legislative power, that those only should be capable of Legislative election who possessed a strong evidence of enjoying the confidence of the people. This was the true spirit and principle of the Constitution, whose object was, through the several organs of the Government, faithfully to express the public opinion. For this reason he was in favor of the proposed amendment. By it we shall make a less innovation on the spirit of the Constitution than by rejecting it, and adopting the report of the select committee. There were obvious reasons why the persons from whom a choice may be made should be fewer in case of a designation of the office than heretofore. At present the whole number of electoral votes is one hundred and seventy-six. As the Constitution now stands, four candidates might have an equal number of votes, or three might have a majority, viz: one hundred and seventeen each. According to the proposed amendment, but one can have a majority, and if two persons should be equal and highest, it is not probable that the third candidate will have many votes.

Mr. GRISWOLD said it was very difficult to ascertain the precise import of the amendment offered by the gentleman from Pennsylvania by barely hearing it read from the Chair. In the meaning therefore which he gave it, he might perhaps be mistaken. If not mistaken, it involved a principle and implied a change, which he had never before heard suggested on that floor, or in the part of the country from which he came. It is well known to every member, that under the Constitution as it at present stands, the votes given for a President in this House are by States, and not according to the majority of the members of the whole body. The amendment, as reported by the select committee, preserves this original feature of the Constitution by prescribing that the election shall be proceeded with as pointed out by the Constitution. But the present amendment varies this mode, according to which it is to be made without respect to States. Of course a majority of the members are to decide. He submitted it to gentlemen whether they were willing in this way to sacrifice the interests and rights of the smaller States. If this be the intention of gentlemen, we ought to have time to deliberate on the subject before it is pressed to a decision. The gentleman from Pennsylvania will explain whether this is his intention.

Mr. J. CLAY begged leave explicitly to state, for the satisfaction of the gentleman from Connecticut, that it was not his intention to change that part of the Constitution which prescribed that the votes should be by States; and if it would induce the gentleman to vote for the resolution he had moved, he would add the words of the Constitution, viz:

"But in choosing the President the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice."

These words were accordingly added.

Mr. DAWSON observed that this proposition had been submitted to the select committee, who had considered it more objectionable than that reported. Their object was to innovate as little as possible on the Constitution. A great part of it referred to cases so extremely remote as were not likely to happen. The only material change it made was to reduce the number of persons from whom a choice should be made from three to two. At present the election for a President and Vice President was made from the five highest on the list. As, according to the proposed amendment, a designation of the persons voted for as President and Vice President was to be made, it was considered that by giving the three highest to the House of Representatives, from which to choose a President, and the two highest to the Senate, from which to choose a Vice President, the spirit of the Constitution would not be changed. He hoped therefore the report of the committee would be agreed to. He believed it comprehended all cases which were probable; and he further believed that if they spent a month they would not devise an amendment that would provide for all possible cases that may happen.

Mr. CLOPTON said he rose to express his approbation of the amendment offered by the gentleman from Pennsylvania (Mr. CLAY.) He said that indeed the amendment could not but be acceptable to him, inasmuch as it corresponded with the ideas he had the honor to express to the Committee on this subject the other day. He begged leave now to make a few remarks in addition to those which he had then stated. He said, if anything is to be lamented as a defect in the fundamental principles of our Government, that defect perhaps consists in a departure from the plain and simple modes of immediate election by the people as to some of the branches of the Government. He did not mean however now to discuss,

nor did he know that he ever should discuss, this point. The Constitution of the United States having established a different principle in respect to the election of the several departments of the Government, except that branch of the Legislature which this House composes; and the object of the proposed amendment to the Constitution not being the transmutation of a fundamental principle, but merely an alteration in the mode heretofore directed of electing one branch of the Government according to the principle already established, his business and his object was to state to this Committee those ideas which occurred to him on this occasion as suited to the subject as it now stands before the Committee.

When the framers of this Constitution, said Mr. C., submitted it to the consideration of the people of the several States, drawn as it is, directing the election of President and Vice President to be made through the medium of Electors chosen by the people for that purpose, never could it have been their intention in submitting, or the intention of the people in accepting the Constitution, to admit a principle that any eventual Legislative election would be proper, if the object of it did not bear the stamp of public confidence. They never could have abandoned that great political consideration that the people, as the primary source of all power, should first give to those particular citizens, among whom such Legislative choice might be made, the evidence of a very considerable share of their confidence. The Electors are the organs, who, acting from a certain and unquestioned knowledge of the choice of the people, by whom they themselves were appointed, and under immediate responsibility to them, select and announce those particular citizens, and affix to them by their votes an evidence of the degree of public confidence which is bestowed upon them. The adoption of this medium, through which the election should be made, in preference to the mode of immediate election by the people, was no abandonment of the great principle, that the appointment of the constituted authorities ought to be conformable to the public will. It was no abandonment of that principle in respect to the President and Vice President. The adoption of this medium in the first resort, and the adoption of this alternative of a Legislative election in the last resort, were not intended as disparagements to the energy of that principle—were not intended to operate any diminution of its force. The spirit, the genius of the Government, is the same. The same principle was intended to influence its operations; the same principle was intended to influence its elections, although in a different form and after a different manner. It is a great characteristic feature of the Government. It is a primary, essential, and distinguishing attribute of the Government, that the will of the people should be done; and that the elections should be according to the will of the people.

Mr. C. said that most seriously considering the principles of the Government in such a point of view as he had the honor to state to the Committee, he was irresistibly impressed with the opinion that a Legislative election of President or Vice President, whenever resorted to, should be restrained to the smallest number above an unit, or to those persons who have equal electoral votes. He considered it as a position clearly and unquestionably true, that if the field of election, when not decided by the voice of the people themselves, should be left too wide, more chances will there always be for the introduction of abuses in determining on a choice, if those whose province it shall be to decide, should be actuated by a spirit adverse to the public sentiment. Results ungrateful to the public feeling might indeed become sources of discontent truly to be lamented. The demon of discord might be called forth, and stalking over our land, might unfortunately produce a state of things very different from that peaceful, tranquil state, which would follow a decision more conformable to the will of the people. Such a decision he believed would be insured were the election to be confined to those two persons only who had received the most ample testimony of the public confidence, or to those who had been stamped with equal testimonials of that confidence.

For the reasons, Mr. C. said, which he had stated, he was in favor of the amendment as proposed by the gentleman from Pennsylvania. He had, indeed, he said, prepared an amendment to the same effect, but was anticipated by that gentleman. He said, if it were in order, he would offer it as a substitute for that amendment. He then read it in his place, as follows:

"The Electors shall make two lists, one of which shall contain the names of all the persons voted for as President, and the number of votes given to each person respectively; the other list shall contain the names of all the persons voted for as Vice President, and the number of votes given to each person respectively; which two lists they shall sign and certify, and transmit sealed to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes on the list containing the votes for President shall be the President if such number be a majority of the whole number of Electors appointed. If on the list containing the votes for President no person have a majority of the whole number of the Electors appointed, then from the two highest on that list the House of Representatives shall immediately choose, by ballot, one of them for President, unless more than two persons have an equal number of votes, and that number shall be the highest on the list; in such a case the said House shall, in like manner, choose one of those persons for President; but, if one person only have the highest number on the list, and that number be not a majority of the whole number of Electors appointed, and if two or more other persons have an equal number of votes, if that number be the next highest, then from the person having the highest number and the persons having equal votes, the said House of Representatives shall, in like manner, choose one for President."

Mr. C. said, he was not tenacious of his own composition, but he believed what he had prepared

went somewhat further than the amendment proposed by the gentleman from Pennsylvania, and provided more explicitly as to the mode of proceeding of the Electors in making lists of their votes. On a subject of such immense importance as the present, a subject which might involve the liberty and happiness of millions yet unborn, it was necessary that the expressions should be as clear and as definite as possible, that there ought to be no ambiguity, no expressions which might admit of misconstructions; that he had endeavored so to draw that which he had read to the Committee, in which he had thought it safer to repeat phrases than refer to them by relative expressions. He hoped that the decision would be conformable to the ideas contained in the proposed amendment.

The Speaker said it was not in order to receive the amendment of the gentleman from Virginia, unless that of the gentleman from Pennsylvania was previously withdrawn.

Mr. Gregg.—It was impossible fully to comprehend the two propositions offered, barely by hearing them read. Amendments to the Constitution were of great importance. He felt at a loss how to act in the present instance, not clearly understanding the resolutions proposed. He was in favor of the principle they contained, and had always been so. He had been in Congress in the year 1796 when the first proposition to this effect was made by a gentleman from New Hampshire. The inconveniences attending the last election had strengthened his conviction of the propriety of an amendment similar in substance to that offered. He viewed, therefore, with pleasure the attention now paid to the subject by the House, and hoped an amendment would take place at the present time. The more simple that amendment was, the more likely it would be to be approved by the States. In order ultimately to simplify it, so as to render it the least objectionable to the States, he wished every member, who had formed in his mind an eligible proposition, would now bring it forward, that the whole might be printed.

Mr. J. Clay said, as there existed considerable difference of opinion, he would withdraw his motion, in order to move that the Committee should rise, when he would move a recommitment of the report of the select committee.

Mr. Nicholson said that, before the question was taken on the rising of the Committee, he would offer an amendment to the resolution reported by the select committee. It was his opinion that the question of principle should be settled in the House; if not so settled, it would be impossible for the report of any select committee to meet the approbation of the House. In the select committee a variety of propositions had been offered; the Committee reported one, to which they had agreed; there were still endless amendments offered, which he was convinced would continue to be offered until some principle was fixed by the House. In making an amendment to the Constitution on this point, they ought to guard against all possible difficulties. The amendment of the gentleman from Pennsylvania goes to guard against those difficulties. But cases may arise in which the amendment of the select committee will not be adequate. It says the election shall be made from the three highest persons voted for, but there may be cases where there are no three highest, where four, ten, or twenty of the persons voted for shall be equal in number of votes. This case is not embraced in the resolution. For this reason, Mr. N. said he should have been pleased in having the question taken on the amendment of the gentleman from Pennsylvania. But as that amendment had been withdrawn, he would move another, that the principle might be settled. He said he could conceive of no objection to giving the House of Representatives the right of making a choice of President from all those voted for by the Electors. The case, stated some days since by the gentleman from Virginia, (Mr. Clopton,) of one candidate having 87 votes, a second candidate having 86 votes, and three others having one vote, was extreme; and, if it should occur, he could see no inconvenience likely to result from the House of Representatives enjoying the right of making a choice from the whole five. It would be remembered that the House were chosen by the people, and would, in the selection they made, express the public will, as well as the Electors themselves. The feelings of the one would be in unison with those of the other; nor could he conceive that a House of Representatives would ever exist that would dare to choose a person having one vote. None would be found hardy enough to violate the public sentiment. He therefore moved to strike out from the report of the Committee all that part of it which confined the choice to the three highest. If the majority of the Committee should not coincide with him in opinion, he should wish the gentleman from Pennsylvania to renew his proposition, And, if the Committee concurred in neither, he should wish some other gentlemen to bring forward another principle. For, if the principle were not fixed there, he was convinced they would be involved in endless difficulties by the reports of select committees.

Mr. N. then moved to strike out these words:

"And if there shall be no such majority the President shall be chosen from the highest numbers, not exceeding three, on the list for President by the House of Representatives:"

And insert in lieu thereof the following words:

"And if no such person have a majority, then the House of Representatives shall immediately choose a President from among those persons who have not been voted for as President."

Mr. Dawson said that when the gentleman from Maryland moved the appointment of a select committee, he had voted against it, and for the very reason now assigned by him. As to the propositions at present offered, they had been severally reflected upon by the select committee; and, if referred to that committee, the House ought, in the first instance, to decide the principle. As to the amendment offered by the gentleman from Maryland, he conceived it scarcely necessary to make a single remark upon it, as the House was disposed to reduce rather than to extend the num-

ber of persons from whom a choice should be made. If adopted, it will give the House of Representatives a right to vote for 176 persons, as no candidate might have more than one vote.

Mr. Nicholson believed the proposition of the select committee would reduce them to the same situation as if of the 176 votes given, one was given to each candidate, no one would be higher than another. The proper reply to this remark was, that it was an extreme case, not likely to happen. Mr. N. said, he was not so anxious that his amendment should succeed, as that the principle should be fixed, in that House, some way or other.

Mr. Goddard said, though he would not pledge himself to vote for the proposed amendment to the Constitution, in any shape whatever, yet he was in favor of the amendment offered by the gentleman from Maryland. He thought with him that there would be no great danger from the latitude allowed the House of Representatives, as they were chosen by the people as well as the Electors; nor could he perceive why they were more to be distrusted than the Electors. But the principal reason that operated with him in favor of the amendment was, that it extended the right of suffrage in the House of Representatives. It is well known that our system is that of a Confederation. There appeared to him no danger of 176 persons being voted for; the nature of the Government was such that but few persons would be voted for. But, if no choice is made by the Electors, he wished the right of the House of Representatives to be extended for this reason, because it will increase the power of the small States. As he conceived, the original proposition went effectually to impair the rights of the small States; and, indeed, any amendment would have that effect; but the amendment of the gentleman from Maryland having this effect as little as possible, he should vote for it.

Mr. Smilie would wish one principle altered in the report of the select committee, viz: that which confined the election of the President to the three highest persons voted for. It was impossible for human wisdom to provide for all cases that might occur. Their time was not well spent in providing for cases extremely remote. He had but one object in view, the designation of office; and the more simple the proposition, the more likely they were to obtain this object. It should be recollected that the Constitution was the act of the people, and ought not to be altered till inconveniences actually arise under it. He believed, though particular parts might be defective in theory, they ought not to be changed till practical inconveniences had been experienced. No such inconvenience had yet been felt from choosing the President from the five highest on the list. Is it, then, prudent to embarrass the great principle, in which they generally concurred, with incidental propositions, when there was no necessity for them? This amendment was to obtain the assent of thirteen Legislative bodies before it would be binding. The simpler, then, the proposition, the more likely it was to succeed. His idea, therefore, was to leave the Constitution as it now stood, so far as it related to a choice being made from the five highest, and only so far to change it as related to a designation of the office.

Mr. Sanford said the great object of the amendment ought to be to prevent persons voted for as Vice President from becoming President. If the amendment effected this, it was sufficient. All other innovation upon the Constitution was improper; and no danger could arise from extending the right of the House of Representatives to making a choice from the five highest.

Mr. Rodney said that in the select committee he had been in favor of the number stated in the Constitution. He was not for innovating on the Constitution one tittle more than was absolutely necessary. As to the mere designation of office, the people looked for and expected it; and if that were obtained, they would be satisfied. He well knew that if amendments to this simple proposition were multiplied, objections to the whole would also be increased. Having been originally in favor of five, and thinking the inconveniences apprehended by some gentlemen not likely to occur, he should vote in favor of the amendment of the gentleman from Maryland, principally for the reason assigned by the gentleman from Connecticut, that it would allow to the smaller States a larger scope of choice.

Mr. Elliot hoped the amendment of the gentleman from Maryland would not prevail; and coming, as he did himself, from a small State, he trusted the House would pardon him for assigning his reasons for that hope. He felt as much confidence in the House of Representatives as the gentleman from Connecticut; but he was of opinion that their discretion ought to be limited. The amendment will give the House of Representatives the unqualified power of electing from the whole number on the list of persons voted for as President, and on that ground he opposed it. It was said to be a question of larger and smaller States, and those who represent the smaller States were called upon to check the usurpation of the larger States. Our system was undoubtedly federative, and there might be danger of an usurpation of the large States if the small ones were not protected by the Constitution. His wish was that they might be so guarded. But he still thought the discretion of the House of Representatives ought to be limited. When this subject was first discussed, an observation of a gentleman from Virginia (Mr. Clopton) had struck him with force. That gentleman had correctly stated that, according to the proposition then before the House, one candidate might have eighty-seven votes, another eighty-six, and three have one vote each, and a choice be made from among the candidates having but one vote. Should the amendment of the gentleman from Maryland obtain, the same right would exist in the House of Representatives. But the gentlemen asks if any House of Representatives will dare to elect a person having but one vote. He hoped they always would dare to do their duty, and it would then be their Constitutional right. But Mr. E. thought they ought

not to possess this discretion. Gentlemen further say the great object is a designation of the office. It is so. It was his sincere wish that the simple object should be obtained. But he believed there would be no danger in adding to the proposition an amendment restricting the number from which the choice should be made.

Mr. G. W. Campbell said he, too, represented a small State, and was anxious to preserve the rights of the small States. But in a great Constitutional question, while these rights were not lost sight of, principle ought also to be regarded. This he conceived to be his duty, whatever effect it might have upon the State he represented. For this reason he considered it proper to express his opinions on the present occasion. It was a vital principle to preserve the Constitution as pure as possible. This rendered it necessary to show that the proposition of the gentleman from Pennsylvania (Mr. Clay) came nearer to the principle of the Constitution than that offered by the gentleman from Maryland. He had already observed that, there being at present no designation, four was the smallest possible number from which a choice could be made: to this number but one was added, making, altogether, five. In future elections there will be one hundred and seventy-six Electors, and if there be a designation of office, but one person can have a majority. To confine the choice to two persons will, therefore, in principle, approach as near as possible to the original principle of the Constitution.

Mr. C. was in favor of preserving that part of the Constitution which directed the election to be made by States, wishing as little innovation as possible on the principles of the Constitution. He did not, however, conceive a mere change of words dangerous, but the establishment of a principle that deprived the people of the power of electing those who possessed the largest share of their confidence. He was decidedly in favor of whatever had this effect, as according with the true spirit of the Constitution; and he was, therefore, opposed to the amendment of the gentleman from Maryland. His own opinion, too, was that it was best to express in one article whatever related to the election of President and Vice President, than refer to the Constitution; by which the provisions on that subject would be rendered much clearer.

The question was then taken on Mr. Nicholson's amendment, and lost—ayes 29, noes 77.

Mr. Smilie, in order to try the principle, would move to strike out "three," and insert "five."

Mr. Findley seconded the motion.

Mr. Dawson would only repeat a remark which he had already made. The select committee, in proposing three as the number from which an election should be made, did not consider themselves as departing in the least from the spirit of the Constitution; as, when both President and Vice President were voted for without discrimination, the choice was made from five.

Mr. Smilie observed he did not know that there would be any danger in this innovation; but it was his wish not to alter the Constitution, except in cases of necessity.

Mr. Goddard said that he was in favor of that amendment for the same reason that he had been in favor of that proposed by the gentleman from Maryland. The gentleman from Tennessee (Mr. Campbell) has told us that it is our duty to act, not from motives of interest, but duty. Mr. G. considered it as his duty so to act as to protect the interests of his constituents, and of the State which he had the honor to represent. The gentleman further observes that in limiting the number from which a choice may be made, we shall insure a nearer approach to the will of the people. Now what is that will, but the will of the large States of Virginia, New York, and Pennsylvania? He apprehended that there might be cases where the interests of the smaller States might be materially affected. The larger States will generally have first nomination of the persons voted for as President and Vice President. If we dislike all the candidates, neither of whom shall have a majority of all the electoral votes, we may select from among them the one that best pleases us. He considered the Constitution so framed as to guard all the States. And if gentlemen are so tenacious of its vital principle, let them suffer it to remain as it is. But if there is a determination to alter it, which he feared was the case, he hoped no greater alteration would be made than was necessary to secure the end which gentlemen professed to have in view. The greater the number of candidates, the greater, in his opinion, would be the influence of the smaller States. Nor could there be any danger from reposing a discretion in the House of Representatives, as they were elected by the people as well as the Electors; and when it was known by the people that on them devolved the eventual election, they would be chosen in reference to the discharge of this duty, as well as the other duties constitutionally imposed upon them.

Mr. Alston was opposed to the amendment offered by the gentleman from Pennsylvania (Mr. Smilie) to the amendment of the select committee, because in his opinion it would have a tendency to bring the election of a President of the United States more frequently into the House of Representatives, than otherwise it would be brought; he was as much disposed to guard against the influence of the large States as any member upon that floor.

The gentleman from Connecticut last up (Mr. Goddard) was in favor of the amendment, because he thought it calculated to lessen the influence of larger States. For his part, Mr. A. thought very differently from that gentleman; he believed that, provided the amendment should be acceded to, it would be an inducement to any one of the large States to prevent an election of President by the Electors of the several States, that if the votes of a large State should be withheld from any of the candidates proposed as President, it would prevent such candidate from obtaining a majority of all the votes of the Electors. What then, Mr. A. asked, would be be the consequence? The choice would have to be made by that House, which circumstance he never wished to witness again; this

he conceived to be an important point to guard against as much as possible.

He believed the fewer the number of the candidates or persons voted for, that the choice of President was confined to, the less chance there would be for that House to be called upon to make it. Should they adopt the amendment proposed, a strong inducement would be held out to any one of the large States, which might be displeased with the candidate proposed as President, to withhold the vote of their State, by which a majority of the votes of all the Electors would not be given to any one candidate, because the whole vote of a large State given to their favorite would be certain to bring him within the five highest upon the list; but, on the contrary, should they confine the choice to be made out of the two highest upon the list, agreeably to the proposition of another gentleman from Pennsylvania, (Mr. Clay,) which had been withdrawn, many still would be more likely to promote the election of one of the candidates most likely to get the largest number of votes. He was therefore much better pleased with the motion which had been withdrawn. He should therefore give his vote against the present proposition, and should it be rejected, he would himself renew the proposition made by the gentleman from Pennsylvania on the other side of the House, (Mr. Clay,) should it not be renewed by the gentleman himself.

Mr. Randolph said he came to the House under the impression that another subject would have occupied their attention on account of its primary importance, not meaning, however, to disparage the importance of an amendment to the Constitution. But on a subject which must be discussed in a few days, if at all, it was improper that time should be lost. The proposed amendment to the Constitution was not, he believed, so extremely pressing as to require immediate attention. The subject to which Mr. R. had expected the attention of the House would have been first directed was the Treaty with France. Hoping that the Committee would have decided on the amendment at an early hour, he had refrained from any motion. But perceiving that a decision was not likely soon to be made, he would move that the Committee should rise, for the purpose of taking up the treaty respecting Louisiana.

Mr. Dawson opposed the rising of the Committee.

The question was taken on Mr. Randolph's motion, and carried—yeas 60, nays 55. When the Committee rose.

And on motion, the House adjourned.

Tuesday, October 25.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a report and sundry documents, marked A, B, C, D, E, F, G, and H, prepared in pursuance of an act, entitled "An act to establish the Treasury Department;" which were read, and ordered to be referred to the Committee of Ways and Means.

LOUISIANA TREATY.

The House resolved itself into a Committee of the Whole on the Message from the President of the United States, of the twenty-first instant, enclosing a Treaty and Conventions entered into and ratified by the United States and the French Republic; to which Committee of the whole House was also referred a motion for carrying the same into effect.

Mr. G. Griswold said he had hoped that some gentleman, in favor of the resolution under consideration, would have risen to assign his reasons in favor of it. But no gentleman friendly to its adoption having risen, and feeling himself embarrassed, he would take the liberty of suggesting his doubts as to the propriety of the resolution. He hoped the Committee would have the candor to believe that, in stating those doubts which hung upon his mind, his object was not to delay the progress of the measures contemplated, but to gain information.

In reflecting, for the short time during which the subject had been before him, he had not been able to pursue it in all its bearings, nor to solve all the difficulties it presented. He had first asked himself where was to be found the Constitutional power of the Government to incorporate the Territory, with the inhabitants thereof, in the Union of the United States, with the privileges of citizens of the United States—is there any such power? And if there is, where is it lodged? In giving his opinion on the Constitutional right of making treaties, he would say that it was vested in the President and Senate, and that a treaty made by them on a subject constitutionally in their treaty-making power, was valid without the assent of this House. This House had, to be sure, the physical power of refusing the necessary means to carry treaties into effect; but this power was essentially different from that conferred by the Constitution. But if the treaty-making power should be exceeded, if it should be undertaken to make it operate upon subjects not constitutionally vested, he had a right to say that it was his duty not to carry it into effect. Even should its provisions be highly beneficial, it was no less their Constitutional duty to resist it. He would not undertake to say that his mind was perfectly fixed, but he entertained doubts—serious doubts; and he hoped gentlemen would candidly give them answers.

He found in the third article of the treaty that

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Here then is a compact between the French Government and that of the United States, to admit to citizenship persons out of the jurisdiction of the United States, as it now is, and to admit territory out of the United States to be incorporated into the Union. He did not find in the Constitution such a power vested in the President and

Senate. If such a power be not expressly vested it must be reserved to the people. It was not consistent with the spirit of the Constitution that territory other than that attached to the United States at the time of the adoption of the Constitution should be admitted; because at that time the persons who formed the Constitution of the United States had a particular respect to the then subsisting territory. They carried their ideas to the time when there might be an extended population; but they did not carry them forward to the time when an addition might be made to the Union of a territory equal to the whole United States, which additional territory might overbalance the existing territory, and thereby the rights of the present citizens of the United States be swallowed up and lost. Such a measure could not be consistent either with the spirit or the genius of the Government.

For these reasons, Mr. G. was of opinion that no such power was delegated to any department of the Government; but if such power was delegated to any department, it must, in his opinion, be to the Legislature, as he should afterwards notice. It was not consistent with the spirit of a republican government that its territory should be exceedingly large; for, as you extend your limits you increase the difficulties arising from a want of that similarity of customs, habits, and manners, so essential for its support. It was certainly difficult to draw the precise line; but there was, notwithstanding, one beyond which we should not go.

But if the right of extending our territory be given by the Constitution, its exercise is vested in the Legislative branches of the Government. In the 3d section of the fourth article of the Constitution it is said, "New States may be admitted by the Congress into this Union." Congress may admit new States,—but, according to my construction of this article, are confined to the territory belonging to the United States at the formation of the Constitution—to the territory then within the United States. Existing territory, not within the limits of any particular States, may be incorporated in the Union. He contended, therefore, that the power to incorporate new territory did not exist; and that, if it did exist, it belonged to the Legislature, and not the Executive, to incorporate it in the Union. If this were the case, it was the duty of the House to resist the usurped power exercised by the Executive.

There was another ground as to the constitutionality of the treaty; at least one which excited doubts in his mind, which he hoped gentlemen would take up and remove. In the 7th article of the treaty are these words:

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations for a limited time in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on: it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage than paid by the citizens of the United States."

This article gives to the ships of France and Spain the same right of entering the ports of the ceded territory with our own vessels; and it precludes the ships of all other nations from the same right. Now if, as gentlemen contend, the new ceded territory with the inhabitants should become incorporated with the United States, there will be ports of entry in the United States into which French and Spanish vessels may enter on terms different from those on which they may enter other ports of the United States. The inference was that here was a favor granted to the ports of New Orleans over other ports. This was against an important principle of the Constitution; for, in the ninth section of the first article, we find, "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." This treaty then becomes a law of the land. It has made a commercial regulation. It gives to the ports of the ceded territory a preference to any other ports. Because the produce of France and Spain can be carried cheaper to their ports than to any other. If the principle contended for by gentlemen in favor of the treaty is admitted, I think I see a fatal blow proposed against the Constitution of the United States, by destroying the reciprocity of interest that unites at present the different members of the Union. Perhaps I see wrong.

Mr. Randolph rose for the purpose of satisfying, so far as was in his power, the doubts expressed by the gentleman from New York. (Mr. G. Griswold.) He had listened with great pleasure to the candid exposition which the gentleman had given of his objections, and from the temper which he had manifested, Mr. R. relied on being able to satisfy some of his scruples on this subject. The objections which have been urged to the motion before the Committee, resolved themselves into arguments against the constitutionality, and arguments against the expediency of the treaty proposed to be carried into effect. As it would be needless to repel objections of this last kind, unless those of the first description could be satisfactorily answered, he should first reply to the observations which had been made on the Constitutional doctrine.

He understood the gentleman from New York as denying that there existed in the United States, as such, a capacity to acquire territory; that, by the Constitution, they were restricted to the limits which existed at the time of its adoption. If this position be correct, it undeniably follows that those limits must have been accurately defined and generally known at the time when the Government took effect. Either they have been particularly described in the Constitutional compact, or

are referred to as settled beyond dispute, and universally acknowledged. But this was not the fact, in either case. The Constitution not only did not describe any particular boundary, beyond which the United States could not extend, but our boundary was unsettled on our northeastern, southern, and northwestern frontier, at the time of its adoption. But perhaps we shall be told, that, although our limits were in dispute with our English and Spanish neighbors, still there were certain boundaries specified in the Treaty of Paris, of 1783, which were the actual boundaries of the United States. It was, however, a well-attested fact—one of which we possessed official information from the Executive—that the limits assigned us by that treaty were incapable of being established. A line running west, from the Lake of the Woods, not touching the Mississippi at all: it followed that the United States were without limits beyond the source of the Mississippi. It will not be denied, that, among the powers which the Government possesses under the Constitution, there exists that of settling disputes concerning our limits with the neighboring nations. This power was not only necessary in relation to the disputed boundaries on the side of Canada and Florida, but was indispensable to a government over a country of indefinite extent. The existence of this power will not be denied: it has been exercised in ascertaining our northeastern and southern frontier, and it involves in it the power of extending the limits of the Confederacy. Let us suppose that the Commissioners, under the Treaty of London, had determined the river St. John or St. Lawrence to be the *true* St. Croix—would not that part of the province of New Brunswick or Quebec which lies on this side of those rivers at this time have been a part of the United States? Suppose the northern boundary of Florida had been fixed, under the Treaty of San Lorenzo, to extend from the Atlantic ocean to the Gulf; would not all the country north of this line and east of the Mississippi—part of the very country conveyed by the treaty lately negotiated, and which gentlemen conceived we could not constitutionally hold—would not that country, at this time, compose a part of the United States? That the Constitution should tie us down to particular limits, without expressing those limits; that we should be restrained to the then boundaries of the United States, when it is in proof to the Committee that no such bounds existed, or do now exist, was altogether incomprehensible and inadmissible. For, if the Constitution meant the practical limits of the United States, the extent of country which we then *possessed*—our recent acquisitions, on the side of Canada and the Natchez, could not be defended. But, sir, said Mr. R., my position is not only maintainable by the reason of the Constitution, but by the practice under it. Congress have expressed, in their own acts, a solemn recognition of the principle, that the United States, in their Federative capacity, may acquire, and have acquired, territory. It will be recollected, that adverse claims once existed between the United States and the State of Georgia, in relation to a certain tract of country between the northern boundary of the Spanish possessions and what we contended was the southern limit of Georgia—the United States asserting that the country in question was the property of the United States, in their Confederate capacity, and the State of Georgia claiming it as hers. Although I have always advocated the claim of that State, it never was on the principle of an incapacity in the United States to acquire territory, or any other which affects the question now before us. It is true, sir, we appointed Commissioners to settle the matters in dispute, amicably, with Georgia; but in the meantime we assumed the jurisdiction, erected a government over the country, and thereby established the principle that the United States, as such, could acquire territory; the country in question, as we contended, never having been included within the limits of any particular States, and being ceded to the Confederacy by the Treaty of 1783. But perhaps it may be answered, that this acquisition, being made anterior to the date of the present Constitution, cannot affect any limitation or restriction, which it may have provided in relation to this subject; and that to prove that the old Confederation could acquire territory, is not to prove the same capacity in the present system of Government. To this I reply, that the Constitution contains no such expressed limitation, nor can any be fairly inferred from it: and that if the old Confederation—a mere government of States—a loosely connected league—all of whose powers, with many more, are possessed by the present Federal Government—if this mere alliance of States could rightfully acquire territory in their allied capacity, much more is the existing Government competent to make such an acquisition. To me the inference is irresistible.

But the gentleman does not rest himself on this ground alone. He does not embark his whole treasure in a single bottom. Granting that the United States are not destitute of capacity to acquire territory, he denies that this acquisition has been made in a regular way—Congress, says he, alone is competent to such an act. In this transaction he scents at a distance Executive encroachment, and we are called upon to assert our rights, and to repel it. If any usurpation of the privileges of Congress, or of this House, be made to appear, I pledge myself to that gentleman to join him in resisting it. But let us inquire into the fact. No gentleman will deny the right of the President to initiate business here, by message, recommending particular subjects to our attention. If the Government of the United States possess the Constitutional power to acquire territory, from foreign States, the Executive, as the organ by which we communicate with such States, must be the prime agent, in negotiating such an acquisition. Conceding, then, that the power of confirming this act, and annexing to the United States the territory thus acquired, ultimately rests with Congress, where has been the invasion of the privileges of that body? Does not the President of the United States submit this subject to Congress for their sanction? Does he not recognise the principle, which I trust we will never give up,

that no treaty is binding until we pass the laws for executing it—that the powers conferred by the Constitution on Congress cannot be modified, or abridged, by any treaty whatever—that the subjects of which they have cognizance cannot be taken, in any way, out of their jurisdiction? In this procedure nothing is to be seen but a respect, on the part of the Executive, for our rights; a recognition of a discretion on our part to accord or refuse our sanction. Where then is the violation of our rights? As to the initiative, in a matter like this, it necessarily devolved on the Executive.

The unconstitutionality of this treaty is attempted to be shown by the following quotation from that instrument: "No preference shall be given to the ports of one State over those of another State," &c. But by the seventh article of the treaty, French and Spanish vessels, laden with the produce of their respective countries, are, for twelve years, to be admitted into the ports of the ceded territory on the same terms with our own vessels. In our other ports a discrimination is made between American and foreign bottoms. New Orleans, therefore, will enjoy an exemption, which will enable her to trade to the French and Spanish colonies on terms more advantageous than other ports. She is, therefore, a favored port, in contradiction to the express letter of the Constitution. To me it appears that this argument has more of ingenuity than of force in it—more of subtlety than of substance. Let us suppose that the treaty, instead of admitting French and Spanish vessels on the terms proposed, merely covenanted to admit American vessels on equal terms with those of France and Spain. If we had acquired this right (divested of the country) it would have been considered, and justly, as an important privilege. Annex the territory to it and you cannot accept it. You may indeed acquire either the commercial privilege, or the territory, without violating the Constitution—but take them both, and that instrument is infringed.

But the gentleman will recollect that the discrimination between foreign bottoms and our own is a creature of law, and not a provision of the Constitution. If his construction be sound it does not involve a necessary violation of the Constitution, it only involves the necessity of repealing these discriminating duties on French and Spanish products, brought in their own bottoms, into other ports than those of the ceded territory. It would therefore become gentlemen to adduce this as a proof of the inexpediency, rather than of the unconstitutionality of the treaty. For, however inexpedient it may be to repeal this discrimination, no one will contend that it is unconstitutional, and if the Constitution or the law were to give way, no one would hesitate between them. But I regard this stipulation as a part of the price of the territory. It was a condition which the party ceding had a right to require, and to which we had a right to assent. The right to acquire involved the right to give the equivalent demanded. Mr. R. said, that he expected to hear it said in the course of the debate, that the treaty in question might clash with the Treaty of London, in this particular. He would therefore take this opportunity of remarking, that the privilege granted to French and Spanish bottoms, being a part of the consideration for which we had obtained the country, and the Court of London, being officially apprized of the transaction, and acquiescing in the arrangement, it would ill become any member of that House to bring forward such an objection.

Another case may be adduced to illustrate this question of constitutionality. During the last session of Congress, they had received information of the manifestation of a disposition, on the part of the possessors of this country, to violate our rights to the navigation of the Mississippi, as secured to us by existing treaties. There was no difference of opinion but as to the mode of asserting this right. On all hands, it was agreed that we would never relinquish this great object. A certain portion of the Legislature were disposed to resort immediately to violent measures. Another portion was of opinion that it was best to waive such measures, until amicable means of settling this difference had proved ineffectual. Let us suppose this to have been the case; that our negotiation, instead of its present happy issue, had terminated in a refusal of justice. I believe there would, in that event, have been but one sentiment in this House and in this nation. We should have appealed to arms, and if fortune had only been as impartial as our cause was just, we should have possessed ourselves, at least, of a part of the territory in question. Did any one dream of denying our right to the forcible possession of New Orleans, if necessary to secure the navigation of the Mississippi? Can a nation acquire by force that which she cannot acquire by treaty? Must not the eventual right to the country, possessed by conquest, be confirmed by treaty? And is it not idle to contend that so long as we employ force we may occupy the country, but no longer; that we cannot retain it by convention? Is not this to convert the question, from a question of political right, to a question of physical power? Mr. R. said, he was now done with the Constitutional objections, and he would finish by saying something of the expediency of the measure.

The gentleman from New York seems to dread this treaty as a death-blow to our commerce and carrying trade. What is the state of that trade now, in relation to the ceded country? But a short time ago, who would have asked more than to be put on an equal footing with the possessors of that country? We now have the sovereignty of it, and only stipulate that (for 12 years) France and Spain should be admitted, not on an equal footing with us, but that their vessels, laden with their own produce, not otherwise, should pay no higher duties than our own. At the expiration of that period we can give a decided preponderance to our trade by discriminating duties. Will the hardy and enterprising New Englander shrink from a competition with France and Spain on these terms? Cannot the discriminating duties be still enforced by the existing regulations in respect to imports from New Orleans to other parts

of the United States? So far from a clog on our commerce, does not this treaty unfetter the Mississippi trade and give us a preference over all other nations, except the case of the French and Spanish vessels, laden with the produce of their respective countries, and there we are on a footing with them?

Mr. R. said, that he would not dilate upon the importance of the navigation of the Mississippi, which had been the theme of every tongue, which we now possessed unfettered by the equal claim of the nation holding the west bank, a fruitful source of quarrel; but he would call the attention of the Committee to a report which had been made at the last session and to which publicity had lately been given.

I am not surprised, Mr. Chairman, that in a performance so replete with information, a single error should be discovered, especially as it does not affect the soundness of its conclusion. As long ago as the year 1673, the inhabitants of the French province of Canada explored the country on the Mississippi. A few years afterwards (1685) La Salle, with emigrants from old France, made a settlement on the Bay of St Bernard, and at the close of the 17th century previous to the existence of Pensacola, another French settlement was made by the Governor, D'Ibberville, at Mobile, and on the Isle Dauphin, or Massacre, at the mouth of that bay. In 1712, a short time previous to the peace of Utrecht, Louis XIV described the extent of the colony of Louisiana (by the settlements) in his grant of its exclusive commerce to Crozat. Three years subsequent to this, the Spanish establishment at Pensacola was formed, as well as the settlement of the Adais on the river Mexicana. After various conflicting efforts, on both sides, the bay and river Perdido was established, (from the peace of 1719) as the boundary between the French province of Louisiana on the one side and the Spanish province of Florida on the other: this river being nearly equi-distant between Mobile and Pensacola. Near the close of the war between England and France, rendered memorable for the unexampled success with which it was conducted by that unrivalled statesman the great Lord Chatham, Spain became a party on the side of France. The loss of the Havana, and other important dependencies, was the immediate consequence. In 1762, France, by a secret treaty of contemporaneous date with the preliminary Treaty of Peace, relinquished Louisiana to Spain, as an indemnity for her losses, sustained by advocating the cause of France. By the definitive Treaty of 1763, France ceded to England all that part of Louisiana which lies east of the Mississippi except the island of New Orleans—the rest of the province to Spain. It is to be observed that although France ostensibly ceded this country to England, virtually the cession was on the part of Spain; because France was no longer interested in the business, but as the friend of Spain, (having previously relinquished the whole to her,) and because in 1783 restitution was made by England, not to France, but to Spain, England having acquired this portion of Louisiana, together with the Spanish province of Florida, annexed to the former that part of Florida which lies west of the Apalachicola and east of the Perdido; thereby forming the province of West Florida.

It is only in English geography, and during this period, from 1763 to 1783, that such a country as West Florida is known. For Spain, having acquired both the Floridas in 1783, re-annexed to Louisiana the country west of the Perdido subject to the government of New Orleans, and established the ancient boundaries of Florida; the country between the Perdido and Apalachicola being subject to the Governor of St. Augustine. By the Treaty of St. Ildefonso, Spain cedes to France "the province of Louisiana with the same extent that it now has in the hands of Spain:" viz. to the Perdido, "and that it had when France possessed it" to the Perdido—and such as it should be after treaties subsequently entered into between Spain and other Powers:" that is, saving to the United States the country given up by the Treaty of San Lorenzo. We have succeeded to all the right of France. If the navigation of the Mississippi alone were of sufficient importance to justify war, surely the possession of every drop of water which runs into it—the exclusion of European nations from its banks, who would have with us the same causes of quarrel, did we possess New Orleans only, which we have had with the former possessors of that key of the river; the entire command of the Mobile and its widely extended branches, scarcely inferior in consequence to the Mississippi itself—watering the finest country and affording the best navigation in the United States—surely these would be acknowledged to be inestimably valuable.

But it is dreaded that so widely extended a country cannot subsist under a Republican Government. If this dogma be indisputable, I fear we have already far exceeded the limits which visionary speculatists have supposed capable of free Government. This argument, so far as it goes, would prove that instead of acquiring we ought to divest ourselves of territory. If the extent of the Republics of Greece, or Switzerland, of ancient or modern times, is to be our standard, we shall dwindle indeed. They have formed the basis of most theories on this subject. The acquisition of the country west of the Mississippi does not reduce us to the necessity of settling it now, or for a long time to come. It will tend to destroy the cause of Indian wars, whilst it may constitute the asylum of that brave and injured race of men.

Mr. R. concluded by apologizing for detaining the Committee so long. He was sorry that he had been unable to compress his remarks into a smaller compass.

Mr. J. Lewis said, that, on a question so important, it was proper that his vote should be accompanied by his reasons. With the gentleman from New York, (Mr. Griswold,) he entertained doubts as to the constitutionality of the treaty; and if those doubts should be removed, he should vote for carrying it into effect. The part of the

treaty to which he referred was in the seventh article, in the following words:

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on, it has been agreed between the contracting parties, that the French ships coming directly from France or any of her colonies, loaded only with the produce and manufactures of France or her said colonies; and the ships of Spain coming directly from Spain or any of her colonies, loaded only with the produce or manufactures of Spain or her colonies, shall be admitted during the space of twelve years in the port of New Orleans, and in all other legal ports of entry, within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage, than that paid by the citizens of the United States."

In opposition to this part of the treaty, he found in the Constitution of the United States this declaration: "No preference shall be given by any 'regulation of commerce or revenue to the ports 'of one State over those of another."

It was on this point that he entertained doubts, which he wished might be removed. His honorable colleague (Mr. Randolph) had not removed them: so far from removing, he had confirmed them.

Mr. L. was free to declare that his only objections were as to the unconstitutionality of the treaty; and should any gentleman remove them, he would not object to voting for carrying the treaty into operation; but, unless they were removed, he must vote against it.

Mr. Randolph, in explanation, said that he thought he had suggested that the preference referred to was a legal and not a Constitutional difficulty.

Mr. Lewis—Still the gentleman has not removed my difficulty. Congress possess no power to give a commercial preference to one State over another; and if the ships of France and Spain are permitted to enter New Orleans on terms more advantageous than they are permitted to enter other ports of the United States, it is a palpable violation of the Constitution.

The gentleman from Virginia has also told us that this preference is to be considered as the price paid for the ceded territory. I am astonished at this observation. As I understand the treaty, we are to take possession of Louisiana within three months from the ratification of the treaty; and as soon as taken into our possession, a specific sum is to be paid for it, which being done it becomes our sole property. If then we give a great advantage to the port of New Orleans, not enjoyed by other ports, I say such preference will be a palpable violation of the Constitution. For it must be evident to every mind that such a preference will operate against every State in the Union. For if the ships of France and Spain are permitted to enter New Orleans upon better terms than any other ports, they can afford to bring the productions of those countries into New Orleans much cheaper than into any other ports of the United States. These are my only objections; if removed I shall have no difficulties; but until they are removed, I must be opposed to the resolution before the Committee.

Mr. Griffin said that upon a subject so important, and so deeply interesting to his country, it would be unpardonable in him, and evince a dereliction of duty, to give a vote without assigning his reasons. On referring to the Treaty and the Constitution, and comparing their provisions, considerable apprehension had arisen in his mind; and he seriously feared the consequences of a collision between them. As he was only in search of truth, and as it was his sincere wish that all his apprehensions and doubts should be removed, he would take the liberty of stating his doubts on the constitutionality of the treaty.

In the 7th article of the treaty were these words, [quoting the words recited by the last speaker, as above stated.] This was evidently a commercial regulation. If a commercial regulation, and such he deemed it, the President and Senate have undertaken to form commercial regulations for the ceded territory.

In the eighth section of the first article of the Constitution, power is given to *Congress* "to regulate commerce with foreign nations." Is not, then, this treaty stipulation, made by the President and the Senate, in direct contravention of this Constitutional investiture of Congress? The Constitution says, "*Congress* shall have power to regulate commerce with foreign nations." Who are Congress? The Senate and House of Representatives. If, then, the President and Senate make a treaty for the regulation of commerce, they infringe the Constitution, by doing that which Congress alone can do. Thus, then, have the President and Senate, in their Executive capacity, legislated, and thereby infringed the rights of this House, as a branch of the Legislature.

In the same seventh article of the treaty, we find that "French ships coming directly from France, 'or any of her colonies, loaded only with the prod'uce and manufactures of France or her said colo'nies; and the ships of Spain coming directly 'from Spain or any of her colonies, loaded only 'with the produce or manufactures of Spain or 'her colonies, shall be admitted during the space of 'twelve years in the port of New Orleans, and in 'all other legal ports of entry within the ceded 'territory, in the same manner as the ships of 'the United States coming directly from France 'or Spain, or any of their colonies, without being 'subject to any other or greater duty on merchan'dise, or other or greater tonnage than that paid 'by the citizens of the United States."

In the ninth section of the first article of the Constitution, we find, "No preference shall be 'given, by any regulation of commerce or revenue, 'to the ports of one State over those of another." He was correct, he believed, in stating, that, under the present regulations of trade, Spanish vessels pay fifty cents per ton, while American vessels paid only six cents. Here, then, the President and

Senate undertake to destroy this provision made by law! For, according to the treaty, Spanish and French vessels entering the ports of New Orleans will hereafter pay only six cents a ton, while similar vessels coming to all the other ports of the United States will be obliged to pay fifty cents a ton. The difference between six and fifty constitutes the preference given to New Orleans.

Feeling these doubts most forcibly, he could not consent to give his approbation to the resolution until they were completely removed. He did not feel a disposition to discuss the merits of the treaty, or to go at large into the consequences which it might produce. He did, however, fear those consequences; he feared the effects of the vast extent of our empire; he feared the effects of the increased value of labor, the decrease in the value of lands, and the influence of climate upon our citizens who should migrate thither. He did fear (though this land was represented as flowing with milk and honey) that this Eden of the New World would prove a cemetery for the bodies of our citizens.

Mr. Purviance.—I am clearly and decidedly in favor of the resolution on your table, premising the appropriations for carrying the treaty between France and this country into effect; and I sincerely regret, that in doing so, I shall act adversely to the general sentiment of the gentlemen with whom it is my pleasure and my pride to confess I have hitherto politically officiated.

It is true I am, and always have been, opposed to the general tenor of the present Administration. It has not appeared to me to possess that bold commanding aspect—that erect and resolute front—which ought to be assumed by the Executive of a free people, when claiming satisfaction for a wrong sustained. It has not shown that strong, muscular, athletic shape, which is calculated to intimidate aggression, or which is enabled to resist it; nor do I think that it has manifested that firm, dignified, manly tone of virtue and of spirit, which, resting on the love of a free people, and conscious of their strength, can ask for the prompt, direct, and unequivocal satisfaction to which it is entitled, and, being denied, can take it. It has not appeared like the veteran chief, ready to gird his loins in defence of his country's rights; but, if I may be allowed to use the *magna componere parvis*, it has, to my mind, somewhat resembled a militia subaltern, who, in time of war, directed his men not to fire on the enemy, lest the enemy might fire again.

Under such an Administration, I have thought that it would be better to have the ceded territory on any terms than not to have it at all. If we have not the spirit or the means of doing ourselves justice, would it not be better that we bribe those who might be in a situation to molest us, and thus put it out of their power to do us any injury, which we cannot or which we will not avenge? There are but two ways of maintaining our national independence—men and money. Since we did not use the first, we must have recourse to the last. One of these two we should be compelled to resort to if France gained possession of Louisiana, and we had better resort to it now. I deny that they have as yet gained possession: they have not received a delivery of the four redoubts which garrison and command the country, nor have they a single armed soldier there, except those which are particularly attached to the equipage of the Colonial Prefect. If, sir, we were obliged to resort to the necessity of purchasing their friendship, after they had procured an establishment, it would not be confined to one instance of humiliation and acknowledgment on our part, or one instance of insult only on theirs. If we purchase this friendship once, we should be compelled to make annual contributions to their avarice, and be annually subjected to their insolence. Repeated concessions would only produce a repetition of injury, and, at last, when we had completely compromitted our national dignity, and offered up our last cent as an oblation to Gallic rapacity, we would then be further from conciliation than ever. The spirit of universal domination, instead of being allayed by those measures which had been intended for its abatement, would rage with redoubled fury. Elated by those sacrifices which had been intended to appease it, it would still grow more fierce; it would soon stride across the Mississippi, and every encroachment which conquest or cunning could effect might be expected. The tomahawk of the savage and the knife of the negro would confederate in the league, and there would be no interval of peace, until we should either be able to drive them from their location altogether, or else offer up our sovereignty as an homage of our respect, and permit the name of our country to be blotted out of the list of nations forever.

I confess there are many gentlemen of that nation for whom I entertain the sincerest esteem; but although I love some of them as friends, they will pardon me when I say that I do not like all of them as neighbors. Blood, havoc, and devastation, have for some years past encircled their proximity, and circumstances equally disastrous and equally improbable have already taken place. Do we want any evidences of this? We can find them in Switzerland, in Italy, in Egypt, in Hanover, in France itself. We have seen the ancient throne of the Capets tumbled from its base; we have seen the tide of succession which had flowed on uninterruptedly for ages dammed up for ever; we have seen the sources of the life blood royal drained dry. And by whom? By the pert younglings of the day.

"An eagle towering in his pride of flight
Was, by a mousing owl, hawkt at and killed."

We have afterwards seen these puny upstarts, when their hands had been reddened in the slaughter-pens of Paris, kicked from their seats and a Corsican soldier embellished with the majesty of the Bourbons. We have seen one half of the Old World subjected to his dominion, and the other half alarmed at his power. And is it thought, sir, that America alone, with an army scarcely sufficient to defend our garrisons, with a navy scarcely sufficient to punish a Bashaw, with a treasury incommensurate to our engagements, and an Executive unwilling to strain our energies—is it, I say sir, for America alone, under these circumstances, singly to withstand that gigantic nation, fighting on her own ground, fed from her own granaries, and furnished from her own arsenals? The time once was, indeed, when we could have redressed our own wrongs, and had an opportunity of doing so; but that necessity and that opportunity, I take it sir, have now both passed away.

Yes, thank God! We have now a treaty, signed by themselves, in which they have voluntarily passed away the only means of annoyance which they possessed. But I do not thank the honorable gentleman who is at the head of our Executive. At the time this negotiation was commenced there could not be the smallest hope of its being carried into effect. The French Consul had obtained it perhaps for the express purpose of carrying into effect his favorite scheme of universal domination; it might give him the chance of injuring the British, controlling the Spaniards, and dismembering America. Compared with these objects a handful of bank stock was of no more consequence to him than a handful of sand. His fleet and army were ready to sail, and his colonial prefect had already arrived. But, mark! The King of Great Britain, who at this crisis I take to have been by far the most able negotiator we had, declares war. The scene is now changed. That which France had refused to our intercessions, she was now compelled to grant from mere necessity. A state of warfare took place about the last of March, and the treaty was signed soon afterwards. As long as I retain the small stock of understanding which it has pleased God to give me, I shall never be induced to believe, that it was owing in the smallest degree to the efficacy of diplomatic representation. The mind of that great man is not made of such soft materials as to receive an impress from the collision of every gentle hand. Stern, collected, and inflexible, he laughs to scorn the toying arts of persuasion; his soul is a stupendous rock, which the rushing of mighty waters cannot shake from its place. No, sir; had it not been for this happy coincidence of circumstances, the personal solicitations of our Ministers would have been regarded with as listless an ear as if they had been whispered across the ocean.

But, sir, whatever may have been the causes which produced this treaty, whether it was owing to diplomatic agency, or to fortuitous incidents, its effects will certainly prevent an evil, if it does not produce a good. I do not think that there will be any positive advantage resulting from the sale of unlocated lands, as has to-day been hinted. On this score we need not expect a reimbursement; there is no doubt but that all the valuable lands contained within the circumscriptions of the Territory have already been granted by the Courts of Spain and France to their own subjects; nor do I see any restrictive provision in the treaty which would prevent the latter from continuing to issue patents up to very date of the ratification.

There may, however, be other advantages, or there may indeed be disadvantages, which, shrouded as I am in the gloom of uncertainty, and not possessing the intelligence which has been asked for and withheld, I am unable to discern. To gentlemen who have been pleased to prevent our procuring it, these circumstances may be obvious, as they are more eminently situated they perhaps command a larger and a clearer prospect. If then the claim which has been transferred should be invested with any latent embarrassment; if the Court of Madrid has already signified any hostility to this treaty, in consequence of the non-performance of the stipulations contained in that of St. Ildefonso, respecting the recognition of the late King of Etruria; if our possession should be opposed, or our right of property hereafter contested, let the President look to it. He only will become responsible for every drop of American blood which may be drawn in such a contest, as he ought to have communicated any information to this effect which he possessed, in order that our discretion might be regulated accordingly.

As no such obstacles have been made known to us by the President, I will suppose that none such do exist, and I will, therefore, vote for the treaty; and even if a larger sum were necessary for its execution I would not withhold my assent, for the same reason that a man would give an exorbitant price for a piece of land adjoining his own, in order to prevent the settlement of a disorderly neighbor, who he thought would plunder his property or burn his enclosures; and, if this was the *last* public act of my life, I would sink into the grave under the pleasing impression that it was perhaps the best.

Mr. Elliot.—Mr. Chairman, although in the short time since I have had the honor of a seat on this floor, I have several times risen in debate, that circumstance scarcely diminishes my diffidence at the present moment. Uneducated in the schools, and unpractised in the arts, of parliamentary eloquence, it is with no inconsiderable degree of diffidence that I rise upon the present occasion. There are occasions, however, where even the eye of timidity should sparkle with confidence; and there are questions in the discussion of which the finger should be removed from the lip of silence herself. And such is every occasion and every question involving the existence, the infraction, or even the correct and just construction of that Constitution which is the palladium of our privileges, and the temple of our glory. If I might be permitted to borrow a metaphorical expression from one of the most celebrated commanders of antiquity, who declared that he intended to spread all his sails on the ocean of war, I would say that it is with fear and trembling I presume to launch my little feeble bark on the vast ocean of eloquence and literature (*pointing to the federal members*) by which I am surrounded. If, however, the remark be just, that it is even sweet and glorious to die for one's country, surely the humbler sacrifice of native diffidence may with propriety be expected and exacted from a juvenile American Representative.

Whatever minuter shades or minor differences of opinion may exist among the American people,

there is one point in which we shall all meet with cordial unanimity. We all unite in an ardent devotion to the Constitution. He who is not devoted to it is unworthy of the honorable name of an American. I lament that it is necessary to speak particularly of myself; but duty, not only to myself, but to my constituents, a numerous and respectable section of the American people, demands it. It may be objected to me, and with truth, that there was a time when I professed sentiments hostile to some of the most important provisions in the Constitution. It was not, however, at the time when the Constitution was submitted to the people. I was then in infancy and obscurity, deprived of the means, and even of the hopes of education. I had yet read much and reflected more. My ardent and excursive eye had wandered rapidly over the wide field of ancient history; I thought I beheld my country, like the Roman Republic in the age of Cato, the sport of every wind and of every wave. As far as I understood the Constitution, I admired it and wished for its adoption. But when an elegant anonymous writer predicted, as the consequence of its adoption, that "liberty would be but a name, to adorn the short historic page of the halcyon days of America," I trembled and shuddered for the possible consequences. If in the plenitude of juvenile self-sufficiency (and who has not been young?) I have since fancied that I could form a more perfect constitution, that dream of the imagination has long been past. I have long been sincerely and ardently attached to the Constitution.

I foresee that I shall be led into a wide field, and that I shall long, too long, occupy the attention of the Committee. Will the Committee hear me? I imagine that I read a favorable answer in the countenances of all its members. I shall be interrupted by no unpleasant indications of impatience, by no loud calls for the question.

The treaty before us is of an immense consequence, and my attention was early turned to the subject. From the moment of my election, I have devoted many studious and laborious hours to the subjects connected with it, and I have anticipated all the objections against it; none of those presented this day by the gentleman from New York, who opened the debate, or by the gentlemen who followed him on the same side, have struck my mind as novel. The question of the constitutionality of the treaty first presents itself. It is said to be unconstitutional, because it enlarges the territory of the United States. To reduce the arguments of gentlemen on this head to syllogistic form, they would not strike the mind with great force. The Constitution is silent on the subject of the acquisition of territory. By the treaty we acquire territory; therefore the treaty is unconstitutional. It has been well remarked by an eminent civilian, that those are not the most correct and conclusive reasoners who are very expert at their *quicquids*, their *atquis*, and their *ergos*; but those, who, from correct premises, by just reasoning, deduce correct conclusions. This question is not to be determined from a mere view of the Constitution itself, although it may be considered as admitted that it does not prohibit in express terms, the acquisition of territory. It is a rule of law, that in order to ascertain the import of a contract, the evident intention of the parties, at the time of forming it, is principally to be regarded. This rule will apply, as it respects the present question, to our Constitution, of which it may be said, as the great Dr. Johnson said of the science of the law, that it is the last result of human wisdom acting upon human experience. The Constitution is a compact between the American people for certain great objects expressed in the preamble, [Mr. E. here read the preamble.] in language to which eloquence and learning can add no force or weight. Previous to the formation of this Constitution there existed certain principles of the law of nature and nations, consecrated by time and experience, in conformity to which the Constitution was formed. The question before us, I have always believed, must be decided upon the laws of nations alone; and under this impression I have examined the works of the most celebrated authors on that subject.

I recollect a time, sir, when a foreign Minister in this country, at a moment when genius, fancy, and ardent patriotism, were lords of the ascendant over learning, wisdom, and experience, spoke of the law of nations and its principles as mere worm-eaten authorities, and aphorisms of Vattel and others. I also recollect that the illustrious man, who is now President of the United States, was then Secretary of State, and that he delivered the unanimous sentiments of the American people when, in his reply to that Minister, he observed that something more than mere sarcasms of that kind was necessary to disprove those authorities and principles; and that, until they were disproved, the American nation would hold itself bound by them. This is the man, sir, who has been so injuriously calumniated within these walls this morning, and upon whom such a torrent of bitter eloquence has been poured by the gentleman from North Carolina (Mr. Purviance;) a gentleman who is himself a model of eloquence, uniting all the excellencies of Cicero and Demosthenes, and all other orators, ancient and modern.

The American people, in forming their Constitution, had an eye to that law of nations, which is deducible by natural reason and established by common consent, to regulate the intercourse and concerns of nations. With a view to this law the treaty-making power was constituted, and by virtue of this law, the Government, and the people of the United States, in common with all other nations, possess the power and right of making acquisitions of territory by conquest, cession, or purchase. Indeed the gentlemen who deny us the right of acquiring by purchase, would probably allow us to keep the territory, were it obtained by conquest.

Colonies, or provinces, are a part of the eminent domain of the nation possessing them, and of course are national property; colonial territory may be transferred from one nation to another by purchase; this purchase can be effected by treaty alone, as nations do not, like individuals,

execute deeds, and cause them to be recorded in public offices; that department of the Government of the nation purchasing, which possesses the treaty-making power generally, is competent to make treaties for that purpose. These positions are established by the laws of nations, and are applicable to the case before us. [Here Mr. E. read a variety of extracts from Vattel to establish these positions, and observed that they were corroborated by Grotius, Puffendorf, and other eminent writers on the law of nature and nations, whose works he had consulted.]

A mere recapitulation, and that not a tedious one, of these principles and authorities, will now answer the present purpose. Colonies have always been considered as national property, although the law or practice of nations, in this instance, may not conform to the law of nature. Greece treated her colonies with peculiar indulgence: Rome considered any privileges which her's were suffered to possess, as mere matters of grace, not of right. The one was a natural and tender parent, the other a cruel stepmother. Yet I have no recollection that the Grecian colonies in Asia Minor, Italy, or even at Ionia, were represented in the Amphyctionic Council, the General Assembly of the States of Greece. The claim of the British Colonies, which now constitute the United States, to be represented in that body by which they were taxed, though just in itself, was novel and unwarranted by the practice of nations. Thank God the claim was successful, and in consequence of it, we are now here as the representatives of the American people, deliberating upon their most important interests. It is unnecessary to reiterate the other positions; they are undeniable in themselves, and their applicability to the present case will hardly be disputed. If the treaty be extremely pernicious, or has not been made by sufficient authority, or has been made for unjust purposes, it is void by the laws of nations.

Another ground of objection to the constitutionality of the treaty is taken. It is said that a clause of the Constitution which forbids any preference, as to duties and privileges, being given to the ports of one State over those of another, is irreconcileable with the seventh article of the treaty, by which "it is agreed between the contracting 'parties, that the French ships coming directly 'from France or any of her colonies, loaded only 'with the produce or manufactures of France or 'her said colonies; and the ships of Spain coming 'directly from Spain or any of her colonies, loaded 'only with the produce or manufactures of Spain 'or her colonies, shall be admitted during the space 'of twelve years in the ports of New Orleans, and 'in all other legal ports of entry within the ceded 'territory, in the same manner as the ships of the 'United States, coming directly from France or 'Spain, or any of their colonies, without being 'subject to any other or greater duty on the merchandise, or other or greater tonnage, than that 'paid by the citizens of the United States." Let us again inquire with what views, and for what objects, the Constitution was formed. The articles of Confederation were but a feeble band of union, the "shadow of a shade," to borrow a poetical expression, of a federal system. Several States, sovereign and independent with respect to many objects, united under a national Government as it respected the most important national objects, and formed a federal system, novel in its nature, and unequalled in the annals of all ages and nations. The States as such were equal, and intended to preserve that equality; and the provision of the Constitution alluded to, was calculated to prevent Congress from making any odious discriminations or distinctions between particular States. "No preference shall be given to the ports of one State." It was not contemplated that this provision would have application to colonial or territorial acquisitions. But it is said that the treaty obliges us to receive the inhabitants of the ceded territory into the Union, and of course to form them into new States. By the treaty, "the 'inhabitants of the ceded territory shall be incorporated in the union of the United States, and 'admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all rights, advantages, and immunities of 'citizens of the United States." This stipulation of the treaty is of a novel, singular, and curious nature, but does not diminish my zeal to have it carried into effect. A complete discretion is left to the United States as to the time and manner of admission, and I have no idea that it will be necessary to admit them within the twelve years during which France and Spain are to enjoy those privileges. The eloquent and honorable member from Virginia (Mr. R.) took a very different view of this subject, which of itself was perfectly satisfactory to my mind, and I could take still other views equally satisfactory. There can be no possible violation of the Constitution.

The expediency of the treaty is another question, and an important one. I once hoped that the interests of our country would never require an extension of its limits, and I regret even that that necessity now exists. Evils and dangers may be apprehended from this source, and great evils and dangers may possibly result. But the regions of possibility are illimitable; those of probability are marked by certain well defined boundaries, obvious to all men of reason and reflection, and, in the language of the poet,

> "As broad and obvious to the passing clown,
> As to the letter'd sage's curious eye."

If we cannot find, in the peculiar principles of our form of Government, and in the virtue and intelligence of our citizens, a sufficient security against the dangers from a widely extended territory, in vain shall we seek it elsewhere. There is no magical quality in a degree of latitude or longitude, a river or a mountain. And it has been well remarked, that every danger from this quarter might have been apprehended before the acquisition of this territory. The Roman Empire, or that of Alexander in the zenith of its glory, was scarcely capable of containing a greater population than the territory of the United States; and men conversant with history do not wonder at the transient existence and rapid ruin of those

empires. I repeat it, look for our security in principles and circumstances inapplicable to the ancient nations. With the present question of expediency, I confess, sir, are naturally intermingled many considerations, infinitely interesting to the future peace, prosperity, felicity, and glory of our beloved country. The physical strength of a nation depends upon an aggregation of circumstances, amongst which, compactness of population, as well as territory, may be reckoned; our population may become too scattered; but this too is only a possible event. These possible evils ought not to be put in competition with the certain advantage which we derive from the acquisition.

But a gentleman tells us that the Administration hold out to us an Eden of the western world, a land flowing with milk and honey, while they have obtained nothing but a dreary and barren wilderness. Perhaps, if the gentleman be correct, the acquisition is scarcely the less important. To demonstrate the advantages of this purchase, it is not necessary to describe Louisiana as an Elysian region—to describe it, as Homer does the Fortunate Islands, a region, on whose auspicious climate even Winter smiles, where no bleak wind blows from its mountains, and no gale is felt but the zephyr, diffusing health and pleasure. But from geographical information, defective as it is, and from reasonable analogies, we may conclude that, with the exception of some considerable tracts, it is a country fertile and salubrious. Geography points us to China, Persia, India, Arabia Felix, and Japan, countries situated in corresponding latitudes, which, though always overshadowed by the horrid gloom of despotism, are always productive, and teaches us by analogy that Louisiana, in natural fertility, is probably equal to those beautiful oriental regions.

The gentleman from North Carolina (Mr. Perviance) says, he shall vote for carrying the treaty into effect, because the possession of the territory is important, and the Administration not having, as it ought to have done, made use of men to obtain it, he will consent to make use of money. He has applied many curious epithets to the Administration. He wishes for an Administration *athletic* and *muscular*, meaning, I suppose, like the wrestlers in the Grecian circus, or the gladiators in that of Rome. When I came within these walls, sir, I ardently hoped that the voice of party would be silent during the discussion of this subject, and I did not expect to hear the Administration attacked in the language of vulgarity, malignity, and factious fury. When it is thus assailed, shall its defenders be silent? During the last session of Congress, an extraordinary degree of agitation was produced in the public mind by an egregious violation of our rights by an officer of the Spanish Government. Neither the people nor the Government were deficient in that spirit which the gentleman extols, but they were not governed by false ideas of national honor, and they were acquainted with the law of nations; they knew that we had no right to make the *denunciatio belli* precede the *repetitio rerum*—a declaration of war precede a demand of justice. Other epithets which the gentleman applies to his favorite Administration I believe justly belong to the present one; bold, firm, intrepid, manly, virtuous, spirited; it is owing to its wise and temperate conduct that we are not now engaged in the horrors of war, and it has erected an immortal monument to its own glory. Yet we hear of malicious subaltern, and the epithet cowardly——

Mr. Perviance here interrupted, and observed that he did not use those expressions.

Mr. Elliot proceeded.—I wrote them down the moment the gentleman uttered them, and I could not understand them otherwise than as intended to have at least a remote application to the President of the United States; I hope the gentleman had no such intention. That we did not go to war, though peculiarly happy for our country, was probably unfortunate for that gentleman, as, in that event, he might have displayed, at the head of a triumphant army, those military talents which he undoubtedly possesses in an equal degree with his oratorical powers.

I must remark upon another extraordinary part of that extraordinary speech. Was it politic, was it prudent, was it just, at a moment when such an important negotiation between the French and American Governments was closing, for a Representative of the American people to labor to irritate the French, or any portion of our own people, by ardent declamation against what is called the unbounded ambition and rapacity of the French Consul? That gentleman has told us what his great predecessor, but not equal in eloquence, Edmund Burke, told us long ago, that "the age of chivalry is gone." But why turn our attention at this moment to Switzerland, to Italy, to Hanover, the bloody scenes of revolutionary France herself? He deplores the fate of the royal Capets, devoted to destruction by the pert younglings of a day. If the French revolution has been unsuccessful, if the hopes of the friends of man and liberty have not been gratified, if the whole Eastern world is still to groan under the iron hand of despotism, is it a subject of such deep regret that a gleam of light has darted athwart the horrid gloom; that we have for a time anticipated, though we have failed to realize, the blessings of extended liberty? It is rather a subject of pleasure, and gratitude to Heaven. The First Consul is styled a Corsican usurper. I believe, sir, that there is not within these walls an admirer of the present Government of France. But we all know the distinction between a King or Government *de jure* and *de facto*. If Bonaparte be not the rightful ruler of the French Republic, he is the actual possessor of the powers of Government, and can bind the nation by treaties. If the Bonapartian shall have followed the Capetian race to the regions of the tomb, when the exchange of the ratifications of this treaty shall reach Paris, it will not be the less obligatory upon the French nation.

The gentleman to whom I have so often alluded denies all merit to the President and the American negotiators, and says that the King of Great Britain was our only meritorious and

successful negotiator. Without attributing to the President the powers of prophecy, I must hazard the opinion that, in common with all philosophic politicians, he foresaw that the peace between France and Great Britain would not be permanent. The elements of war were mingled with those of peace.

[Mr. Sanford rose, and Mr. Elliot giving way, Mr. S. inquired of the Chairman, whether any rule existed by which members in Committee of the Whole could be required to keep closely to the point in discussion? The Chairman, Mr. Dawson, replied, that it had not been customary, in Committee, to confine gentlemen to narrow limits in their remarks.]

Mr. Elliot concluded as follows: I had determined, sir, on the first unequivocal manifestation of impatience by any member, immediately to close my observations. I acknowledge that I have imperceptibly occupied more than my share of the valuable time of the Committee. But I had not quite done with the gentleman from North Carolina. I have paid him some compliments as an orator, perhaps more than were due to the merit of his oration, or the character of its author. I allude only to his political character; his private character, so far as I have information of it, I highly respect; but the political part which he acted this day was to me so extraordinary and astonishing, that I could not restrain the expression of my feelings. To other gentlemen on his side of the House, I look for *real* eloquence and ingenious argument. And although the gentleman from Virginia, (Mr. Randolph,) from the display of his powers this day, may safely trust his fame as an orator to the impartial voice of history and posterity, in competition with any orator on the other side of the House, yet I am not without my fears, from former specimens of the talents of gentlemen in the opposition, that we shall one day be swept away in the overwhelming tide of their eloquence. The friends of the present Administration can behold, with emotions only of pity, mixed with contempt, the innumerable little, muddy, murmuring rills of faction, folly, and slander, which, like spots upon the orb of day, are scattered upon the fair scenery of our far extended country. But they are compelled to listen, with a loftiness of feeling bordering on sublimity and not unmingled with terror, to the awful roaring of that tremendous torrent of opposition eloquence which resounds within these walls, thunders around the Capitol, terrifies the Administration, and makes even the Republican system itself tremble to its centre.

Mr. Claiborne urged the propriety of coming to an immediate decision, declaring his conviction of the constitutionality and expediency of the treaty.

Mr. Thatcher moved that the Committee should rise.

Motion lost, without a division.

Mr. Sanford did not rise to make a display of his talents. Those who had confided to him the representation of their interests could have no such expectations, as they had unfortunately selected a plain Western farmer. He was sorry to see so much time wasted. He begged the House would recollect the time within which it was necessary to pass laws for carrying the treaty into effect. Much has been said of a breach of the Constitution; but has any man shown it? The Constitution does not prohibit the powers exercised on this occasion; and not having prohibited them, they must be considered as possessed by Government. In his opinion, it was necessary to carry the treaty into immediate effect. This done, other measures would require attention which would afford an ample harvest for the talents and eloquence of gentlemen with which, on any other occasion, he would be highly pleased.

Mr. Thatcher was sorry to be obliged, at this late hour, to state his reasons for voting against the resolution; but he should not discharge his duty to his constituents, were he to refrain from expressing his ideas. These reasons he should state as briefly as possible. This resolution is general, and contemplates two objects; it calls for the occupation and government of Louisiana, and for an appropriation of fifteen millions of dollars. He had hoped that, on a question of such national importance, they would have been allowed the papers necessary for its elucidation. But gentlemen have denied us this privilege. As the question, whether the treaty should be carried into effect, is a great Constitutional question, I shall in my remarks confine myself to the Constitutional objections against the treaty. Two objections have been made arising from the 3d and 7th articles of the treaty.

The third provides that "the inhabitants of the 'ceded territory shall be incorporated in the union 'of the United States, and admitted as soon as 'possible, according to the principles of the Federal 'Constitution, to the enjoyment of all the rights, 'advantages, and immunities of citizens of the 'United States; and in the mean time they shall 'be maintained and protected in the free enjoy-'ment of their liberty, property, and the religion 'which they profess."

I conceive, said Mr. T., that the only sound doctrine is, not that which has been stated by the gentleman from Kentucky, (Mr. Sanford,) that whatever power is not prohibited by the Constitution is agreeable to it, but that such powers as are not given are still held by the States or the people. No arguments have been addressed to prove that the Constitution delegates such a power. The gentleman from Vermont, (Mr. Elliot,) who has gratified us with so long and flowery a speech, and who has ransacked Vattel, and various other eminent authors on the laws of nations, has proved that where the United States have a right to make a treaty, a treaty may be made. But these authorities do not apply unless he prove that the Constitution gives the powers exercised in the present instance. The Confederation under which we now live is a partnership of States, and it is not competent to it to admit a new partner but with the consent of all the partners. If such power exist, it does not reside in the President and Senate. The Constitution says

new States may be admitted by Congress. If this article of the Constitution authorizes the exercise of power under the treaty, it must reside with the Legislature, and not with the President and Senate.

The gentleman from Virginia says, the principle contained in the third article of the treaty has been already recognised by Congress, and has instanced our treaties with Spain and Great Britain respecting the adjustment of our limits. By adverting to these treaties, it will be seen that there was then no pretence that we had acquired new territory. They only establish our lines agreeably to the Treaty of Peace. Certainly then the facts are not similar, and there exists no analogy of reasoning between the two cases. The gentleman from Virginia asks whether we could not purchase the right of deposit at New Orleans? But the argument meant to be conveyed in this question does not apply. We had the right before this treaty was formed; nor did we, in consequence of that right, undertake to admit the people of New Orleans into the Union.

Gentlemen say, we were for going to war during the last session, for the purpose of acquiring new territory. Mr. T. knew the gentlemen with whom he generally acted, asserted on that occasion the right of the United States to the deposit at New Orleans, and were, in defence of that right, ready to go to war if necessary. But he had never heard that it was intended to hold that right in perpetuity; he believed it was only contemplated to hold it as a pledge until our right should be restored, and indemnity rendered for our injuries.

It is said that the preference given in the treaty to Spanish and French vessels is to be considered as part of the purchase money. But will gentlemen say it was a part of the purchase money when it is applied as well to Spanish as French vessels, though the purchase is altogether made of France? For these reasons it is, that the gentleman from Virginia has not convinced my mind respecting the constitutionality of this power. If it is not expressly delegated, I must hold that it is still retained by the States or the people. I believe, also, that the power now contended for by gentlemen implies the power of alienating a part of the United States, and that we might as constitutionally alienate Massachusetts and annex it to the British Provinces; for these rights of annexation of new territory and alienation of old must go together: and I shall not be surprised hereafter, if this treaty shall go into effect, at Massachusetts or Vermont being annexed to the British Provinces. Under color of this power, a large portion of the Union may be annexed to some European Kingdom, so as totally to change the principles of our Government.

So far as the provisions of this treaty affected the Eastern States, it bore hard upon their interests. The Constitution says, "no preference shall be given, by any regulation of commerce or revenue to the ports of one State over those of another." Now, if this territory shall be annexed to the United States, New Orleans will have a decided preference over all the other ports of the Union, inasmuch as the vessels of Spain and France entering that port will have to pay no higher duties than are demanded of our own vessels. The consequence will be, that the ships of Spain and France will come in, and supply not only New Orleans but all the country bordering on the Mississippi and the Ohio. What will be the consequence of this to the Eastern States, which the gentleman from Virginia has so handsomely complimented? If they possess a spirit of enterprise, it ought to be encouraged; instead of that, the effect of this treaty will be, that they must bring their goods from Europe to their own ports, and then carry them to New Orleans; by which freight and insurance will be greatly increased; and these charges will enable the French and Spanish vessels to monopolise the carrying trade. But it is said, this is not a Constitutional, but a legal provision. Now, if I can understand the obligations imposed by the Constitution, every department of the Government is bound by it. I conceive that the President and Senate in making treaties, as well as the Legislature in making laws, are bound by it. However great gentlemen may imagine the benefits of this treaty, they do not affect the Constitutional question. It was not therefore necessary to discuss the expediency of the measure, if unconstitutional; but as gentlemen had dressed these advantages in very alluring colors, it might not be improper to say that, if it went into effect, it would carry from its present centre a great portion of the population of the United States; would probably remove the seat of Government, and might dismember the Union.

Mr. T. was not disposed to discuss the causes which have produced the dismemberment of empires, though all history showed that great empires, whether monarchies or republics, had been ultimately broken to pieces by their magnitude.

This acquisition of distant territory, said Mr. T., will involve the necessity of a considerable standing army, so justly an object of terror. Do gentlemen flatter themselves that, by purchasing Louisiana, we are invulnerable? No, sir. Spain will still border on our Southern frontier; and so long as Spain occupies that country we are not secure from the attempts of another nation more warlike and ambitious.

Under these impressions it was impossible for him to vote for the resolution.

Mr. Randolph was sensible of the value of the time of the House, and would not, in the few remarks he should make, occupy five minutes. The gentleman from Massachusetts (Mr. Thatcher) had misapprehended and misstated what he had previously observed. He had not said that the Constitutional question made by gentlemen was a mere legal injunction which that House might get rid of; but he had said that the preference of our ships over foreign ships *was* a legal regulation; and that, therefore, those gentlemen who were now so tender with regard to the Constitution, might have it in their power entirely to get rid of the Constitutional difficulty, by taking off from the ships of Spain and France such duties as

were higher than the duties paid by American vessels. When I say this, said Mr. R., I speak for them, and not for myself; nor shall I move to take off these heavy duties, as I do not feel the force of the Constitutional objections urged by gentlemen. The article of the treaty, so often quoted, shows that no preference is given to one port over another. Yet, by turning to our statute books, it will be perceived that, at present, there are some ports entitled to benefits which other ports do not enjoy; that they are set apart for particular objects; and particularly for the entry of articles brought from beyond the Cape of Good Hope. According, therefore, to the doctrine of this day, this is a violation of the Constitution.

Mr. Smilie should not long detain the Committee. He differed with gentlemen on the Constitutional question; considering a right of annexing territory incidental to all Governments. If he were correct in this opinion, such a power was vested in some department of Government in the United States. That it was not vested in the States was clear, as they were expressly divested of the right. They were by the Constitution expressly divested of the right of forming treaties and making war. It could then reside in the General Government only. It was a position that could not be denied, that all societies possessed the right of self-protection. Let us then suppose that a nation unjustly attacked by another nation repels the hostility, and that the injured nation proves successful. Two things will result: the one, a right to indemnify for the injury received and the expense incurred; and the other, a right to future security by making such provisions as shall place it beyond the power of the aggressing nation in future time to repeat her injuries. If he was correct in these principles, and they were not disputed, the right of the United States to annex territory could not be contested, if that measure were connected with her future security. The right, indeed, was common to all nations, admitted by all, and denied by none.

Another Constitutional difficulty had been started, from the alleged obligation of the United States to incorporate this territory in the Union. Mr. S. wished gentlemen to attend to that part of the treaty which related to this point, and their difficulties would be removed. The treaty says:

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Now, where, said Mr. S., is the difficulty? We are obliged to admit the inhabitants according to the principles of the Constitution. Suppose those principles forbid their admission; then we are not obliged to admit them. This followed as an absolute consequence from the premises. There existed however a remedy for this case, if it should occur; for, if the prevailing opinion shall be that the inhabitants of the ceded territory cannot be admitted under the Constitution as it now stands, the people of the United States can, if they see fit, apply a remedy, by amending the Constitution so as to authorize their admission. And if they do not choose to do this, the inhabitants may remain in a colonial state.

Mr. Crowninshield.—Mr. Chairman: I rise, sir, to correct the gentleman from North Carolina in one particular; he has stated that the First Consul of France signed the treaty ceding Louisiana to the United States after the declaration of war by Great Britain against France. I believe he is mistaken, sir, for the Louisiana treaties were signed the 30th April, and Great Britain issued a declaration of war against France on the 17th of May. If I am right, the gentleman might have spared himself the trouble of detracting from the merits of the Executive on this great occasion.

Now I am up, I beg leave to state to the Committee some of the reasons why I shall give my vote in favor of the treaties.

A resolution is on the table which recommends that the provision ought to be made to carry into effect the late treaties with France, which cede Louisiana to the United States. Feeling as I do that we have acquired this country at a cheap price, that it is a necessary barrier in the Southern and Western quarters of the Union, that it offers immense advantages to us as an agricultural and commercial nation, I am highly in favor of the acquisition, and I shall most cordially give my vote in approbation of the resolution.

What, sir, shall we let slip this golden opportunity of acquiring New Orleans and the whole of Louisiana for the trifling sum of fifteen millions of dollars, when one-quarter part of the purchase money will be paid to our own citizens, and the remainder in public stock, which we are not obliged to redeem under fifteen years? I trust, sir, we shall not omit to seize the only means now left to us for getting a peaceable possession of the finest country in the world. The bargain is a good one, and considering it merely in that light, we ought not to relinquish it. I have no doubt that the country acquired is richly worth fifty millions of dollars, and it is my opinion that we ought not to hesitate a moment in passing the resolution on the table.

A gentleman from New York has started doubts respecting the privilege given in the seventh article to French and Spanish vessels coming directly from France and Spain, and their colonies, and loaded only with their produce and manufactures, to trade to ports in the ceded territory for twelve years upon the same terms as American or native ships coming directly from France and Spain. I have no objection to that article of the treaty; those vessels are to pay a tonnage duty, and a duty on their cargoes similar to our own; they are not to be admitted free of duty, but the United States reserve the right to make any regulations concerning the exportation of the produce and merchandise of our own country which may be thought necessary.

Our trading ships can easily contend against those of France and Spain in the ports of Louisiana. I should be very sorry that American vessels could not meet those of any other nation in all situations and in every country, where they may be received on equal conditions as it respects the duties. We actually build cheaper, and can navigate cheaper than any other nation on the globe; and of course we run no risk in contending with other vessels in the open market; and I flatter myself we shall soon see all foreign vessels driven from those ports by an honorable competition with them.

It surely cannot be unconstitutional to receive the ships of France or Spain in the ports of the new territory upon any terms whatever; it is a mere condition of the purchase, and this House may or may not agree to it; being a commercial regulation, we have the power to give our assent or dissent to the article in question, for I hold it to be correct doctrine, that the House, by the Constitution, have the power to regulate commerce with foreign nations, as well as with the Indian tribes; and that whenever the President and Senate make a treaty involving any commercial points, our consent is absolutely necessary to carry the treaty into effect.

By giving our assent we do not injure the rights of the other ports in the Atlantic States, as the privilege is extended only to ports in the ceded territory. I consider the Eastern States as particularly and deeply interested in the acquisition of Louisiana; it is true their ships already visit almost every port, but under many restrictions; and I wish to see them sailing on the Mississippi without any molestation or restraint.

Sir, I am in favor of adopting these treaties, and they shall have my hearty support.

There is no superiority granted to foreign vessels trading to Louisiana, it merely places them on an equal footing with our own ships in those ports, for a limited time. The difference of duties is only ten per cent. on the duty, and forty-four cents of tonnage; which difference of duties, I venture to say, have never given us but very trifling advantages in the intercourse of foreign nations with the United States.

We have now an opening for a free trade to New Orleans and Louisiana, which we never had before, and I hope we shall embrace it. Let us ratify the treaties, with all their provisions, and we shall see in less than three years that we have gained the greatest advantages in our commerce. I wish we may immediately proceed to adopt the resolution before the Committee.

Mr. R. GRISWOLD called for the reading of two resolutions which had been referred to the Committee of the Whole, and after the same had been read, he observed: That the two resolutions which had been read from the Chair explained, in some detail, the measures, with which the general resolution, for carrying into execution the treaties, was to be followed up. In deciding therefore, on the general resolution, it became necessary to keep in view the measures which were to result from it, that if we were not satisfied with these, we might give our votes accordingly. The second resolution declares that it is expedient to provide by law for governing the ceded territory; and if gentlemen are not prepared to do this, or to provide the stock contemplated by the first resolution, they cannot agree to the general proposition under immediate consideration.

Before entering however into a consideration of these points, I think it proper, said Mr. G., to say, that I have been one of those who have long felt the importance, to this country, of the free navigation of the Mississippi, and of a place of deposit at some place near the mouth of that river. I deem the enjoyment of that navigation and deposit indispensable to the prosperity of our Western brethren; and there are few sacrifices I would not cheerfully make, consistent with the Constitution, to place those important privileges and rights beyond the reach of foreign control. The opinion which I now express has been of long standing and has not been weakened by any events which have recently taken place. So fully was I impressed at the last session, with the importance of these claims, that I was persuaded very vigorous measures ought to have been adopted for vindicating and securing rights which had been grossly violated. But whilst I again repeat, that the importance of our rights on the Mississippi has not been diminished in my view, it is necessary to declare, that I can never consent to secure this object, however desirable and important, by means which shall set at defiance the Constitution of my country.

It may not be improper, said Mr. G., in this place, also to declare, that I have been one of those who have long believed that the power of making treaties belongs exclusively to the President, with the consent of the Senate, and that a treaty, when constitutionally made and ratified, becomes a law, and must be executed accordingly. But it is essential to the existence of a treaty that it should be consistent with the Constitution, in every respect—both as it regards the subject-matter, and the form of ratification. If a treaty is repugnant to the Constitution, either in the matter of which it treats or in the form of ratification, it cannot be considered, within the meaning of the Constitution, a treaty. It is not within the words of the Constitution, "made under the authority of the United States,"—it is a dead letter, and void. If it shall then be found, that the instrument under consideration, contains stipulations which the Constitution does not warrant, it will result, that it cannot be respected as a treaty; that Congress, so far from being bound to carry it into execution, are obliged, by their duty and their oaths, to support the Constitution, and to refuse their assent to laws which go to infringe this great charter of our Government.

Having made these preliminary remarks, and in some measure explained the general principles by which I shall consider it my duty to test the treaty, I will again call the attention of the Committee to those parts of the instrument which have been noticed by other gentlemen, and which have equally excited in my mind doubts of its

constitutionality. The third article of the treaty is thus expressed.

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

By this article it is declared: "That the inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as posible, according to the principles of the Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens." It is, perhaps, somewhat difficult to ascertain the precise effect which it was intended to give the words which have been used in this stipulation. It is, however, clear, that it was intended to incorporate the inhabitants of the ceded territory into the Union, by the treaty itself, or to pledge the faith of the nation that such an incorporation should take place within a reasonable time. It is proper, therefore, to consider the question with a reference to both constructions.

It is, in my opinion, scarcely possible for any gentleman on this floor to advance an opinion that the President and Senate may add to the members of the Union by treaty whenever they please, or, in the words of this treaty, may "incorporate in the union of the United States" a foreign nation who, from interest or ambition, may wish to become a member of our Government. Such a power would be directly repugnant to the original compact between the States, and a violation of the principles on which that compact was formed. It has been already well observed that the union of the States was formed on the principle of a copartnership, and it would be absurd to suppose that the agents of the parties who have been appointed to execute the business of the compact, in behalf of the principals, could admit a new partner, without the consent of the parties themselves. And yet, if the first construction is assumed, such must be the case under this Constitution, and the President and Senate may admit at will any foreign nation into this copartnership without the consent of the States.

The Government of this country is formed by a union of States, and the people have declared, that the Constitution was established "to form a more perfect union of the United States." The United States here mentioned cannot be mistaken. They were the States then in existence, and such other new States as should be formed, within the then limits of the Union, conformably to the provisions of the Constitution. Every measure, therefore, which tends to infringe the perfect union of the States herein described, is a violation of the first sentiment expressed in the Constitution. The incorporation of a foreign nation into the Union, so far from tending to preserve the Union, is a direct inroad upon it; it destroys the perfect union contemplated between the original parties by interposing an alien and a stranger to share the powers of Government with them.

The Government of the United States was not formed for the purpose of distributing its principles and advantages to foreign nations. It was formed with the sole view of securing those blessings to ourselves and our posterity. It follows from these principles that no power can reside in any public functionary to contract any engagement, or to pursue any measure which shall change the Union of the States. Nor was it necessary that any restrictive clause should have been inserted in the Constitution to restrain the public agents from exercising these extraordinary powers, because the restriction grows out of the nature of the Government. The President, with the advice of the Senate, has undoubtedly the right to form treaties, but in exercising these powers, he cannot barter away the Constitution, or the rights of particular States. It is easy to conceive that it must have been considered very important, by the original parties to the Constitution, that the limits of the United States should not be extended. The Government having been formed by a union of States, it is supposable that the fear of an undue or preponderating influence, in certain parts of this Union, must have great weight in the minds of those who might apprehend that such an influence might ultimately injure the interests of the States to which they belonged; and although they might consent to become parties to the Union, as it was then formed, it is highly probable they would never have consented to such a connexion, if a new world was to be thrown into the scale, to weigh down the influence which they might otherwise possess in the national councils.

From this view of the subject, I have been persuaded that the framers of the Constitution never intended that a power should reside in the President and Senate to form a treaty by which a foreign nation and people shall be incorporated into the Union, and that this treaty, so far as it stipulates for such an incorporation, is void.

But, it has been said that the treaty does not in fact incorporate the people of the ceded country into the Union, but stipulates that they shall be incorporated and admitted according to the principles of the Federal Constitution. Or, in other words, the treaty only pledges the faith of the nation that such an incorporation shall take place. On this point, I will observe, that there is no difference in principle between a direct incorporation by the words of a treaty, and a stipulation that an incorporation shall take place; because, if the faith of the nation is pledged in the latter case, the incorporation must take place, and it is of no consequence whether the treaty gives the incorporation, or produces the law which gives it; in both cases, the treaty produces the effect. And the question still returns, does there exist, under the Constitution, a power to incorporate into the Union by a treaty or by a law, a foreign nation or people? If it shall be admitted that no such power exists without an amendment to the Constitution, and it shall be said that the treaty-mak-

ing power may stipulate for such an amendment, it will be a sufficient answer to say, that no power can reside in any of the national authorities to stipulate with a foreign nation for an amendment to the Constitution. The constituted authorities of our Union have been created to execute the Constitution, not to change, or stipulate for changing it, and they can in no case lay the States under the smallest obligation to make the smallest change. Stipulations, therefore, of this nature, which create no obligation, are void.

Again: It cannot be said that the stipulations for this incorporation are Constitutional and valid, because it is declared that the inhabitants of the ceded territory are to be admitted to the right of citizens, according to the principles of the Constitution; because if, as has been contended, there is no principle, in the existing Constitution, by which they can be incorporated, the stipulation and treaty is not only void, but absurd.

A gentleman from Pennsylvania, however, (Mr. Smilie,) has said, that it is competent for this Government to obtain a new territory by conquest, and if a new territory can be obtained by conquest, he infers that it can be procured in the manner provided for by the treaty. While I admit the premises of the gentleman from Pennsylvania, I deny his conclusion. A new territory and new subjects may undoubtedly be obtained by conquest and by purchase; but neither the conquest nor the purchase can incorporate them into the Union. They must remain in the condition of colonies, and be governed accordingly. The objection to the third article is not that the province of Louisiana could not have been purchased, but that neither this nor any other foreign nation can be incorporated into the Union by treaty or by a law; and as this country has been ceded to the United States only under the condition of an incorporation, it results that, if the condition is unconstitutional or impossible, the cession itself falls to the ground.

Although I am unwilling to detain the Committee at this late hour, and wish not to delay the wishes of the majority, yet I must be permitted again to refer the Committee to the seventh article of the treaty. This article declares, that the ships of France and Spain, together with their cargoes, being the produce or manufacture of those countries, shall be admitted into the ports of the ceded territory on the same terms, in regard to duties, with American ships. It is certainly worth the consideration of the Committee, whether this article is consistent with the provisions of the Constitution. As our laws now stand, the ships of France and Spain are liable to an extra tonnage duty, and their cargoes to a duty of ten per cent. advance, when arriving in the Atlantic ports. The treaty declares that, in the ports of the ceded territory, this extra duty of impost and tonnage shall cease. The treaty does not, and probably cannot, repeal the law, which lays this extra duty in the Atlantic States, but those duties must still be collected. The Constitution, however, declares, in the eighth section of the first article, that "all duties, imposts, and excises, shall be uniform throughout the United States," and in the ninth section of the same article, it is said, that "no preference shall be given by any regulation of commerce, or revenue, to the ports of one State over those of another." By the treaty, however, the uniformity of duties is destroyed, and by this regulation of commerce, contained in the treaty, a preference is certainly given to the ports of the ceded territory over those of the other States. Gentlemen who advocate the constitutionality of the treaty will scarcely say that the ceded territory is no part of the United States, and not embraced by the provisions of the Constitution, because such an assertion, while it avoided one difficulty would plunge them into another equally fatal, and prove that the third article is void, and, of course, that the cession itself is a nullity.

The gentleman from Virginia (Mr. Randolph) has said that the discriminating duties of impost and tonnage are not a Constitutional but a statute regulation. This is undoubtedly true, but it must be recollected that the statutes are in force, and, so long as they remain unrepealed, the preference is given to the ports on the Mississippi, and the uniformity of duties is violated; and it cannot, most assuredly, be correct, to violate a principle of the Constitution for a day, under the expectation of curing the violation by a Legislative interference. It, however, it is really intended in this side manner to bring about a repeal of the discriminating duties, I hope it may at this time be so understood. The commerce of this country, and particularly that of the Northern States, has long flourished under these protecting duties; and it would be extraordinary, indeed, if a treaty should be formed, laying the Government under an obligation to repeal laws so essential to our commercial prosperity.

Before I dismiss this part of the subject, it may not be improper to consider some points which have been started by a gentleman from Massachusetts, (Mr. Crowninshield,) in regard to the effect which the seventh article of the treaty must produce upon the commerce of the Eastern States. The remarks, which I shall submit upon these points, will apply only to the policy of the stipulation; but they may have some effect on those gentlemen who feel themselves at liberty to decide at large on the merits of the treaty; and they appear to me to be necessary, in reply to the gentleman from Massachusetts, to whose opinions I cannot subscribe. It has appeared to me, that the stipulation in the seventh article must be highly injurious to the trade of the Eastern States. The ships of France and Spain are to be admitted into New Orleans, on the same terms with our own ships. The discriminating duty, therefore, in respect to them, in that port, is virtually repealed. But we obtain no repeal of the countervailing duties in French and Spanish ports. The consequence must be that, while we are laboring under all the embarrassments of extra duties in their ports, they are liberated from every embarrassment in ours. The effect is easy to be seen; the whole trade from the mouth of the Mississippi to the French and Spanish colonies, and probably to their European possessions, must ultimately be carried on in French and Spanish bottoms, to the entire exclusion of American ships. Nor will the injury stop here; both France and Spain will doubtless prefer procuring their supplies from the United States in their own ships, and, while they hold the monopoly of the trade to the mouth of the Mississippi, they will be able to draw from that point an abundant supply of flour and other articles of produce, to the great prejudice if not to the ruin of the trade from the Atlantic ports to the French and Spanish colonies. How gentlemen, under such circumstances, can consider the interests of the Eastern States uninjured, is to me inexplicable.

Without detaining the Committee longer upon this subject, I will only observe that it is my wish that every doubt touching the constitutionality of the treaty may be removed. I do not personally feel any peculiar hostility to it. The importance of the navigation of the Mississippi, and a place of deposit at the mouth of it, has long convinced me of the necessity of adopting measures to place those objects beyond all future hazard. At the same time, I must be permitted to say, that I have not viewed the advantages from possessing the country on the west, as some gentlemen appear to have considered them. This subject was much considered during the last session of Congress, but it will not be found either in the report of the secret committee, which has recently been published, or in any document or debate, that any individual entertained the least wish to obtain the province of Louisiana; our views were then confined to New Orleans and the Floridas, and, in my judgment, it would have been happy for this country, if they were still confined within those limits. The vast and unmanageable extent which the accession of Louisiana will give to the United States; the consequent dispersion of our population, and the destruction of that balance which it is so important to maintain between the Eastern and the Western States, threatens, at no very distant day, the subversion of our Union. For these reasons, and many others which I will not detain the Committee to detail, I have doubted the policy of the treaty itself, when taken altogether; but the only points on which I feel myself at liberty to decide, are those which have been before explained, respecting the constitutionality of the treaty, and, until the doubts on these points are cleared up, I shall be compelled to vote against the resolution for carrying the treaty into execution.

Mr. Nicholson apologized for rising at so late an hour, and begged the indulgence of the Committee for a short time. He said he would endeavor to pursue the laudable example held out by the gentleman from Connecticut, who had just sat down, (Mr. R. Griswold,) by compressing his observations into as small a compass as possible. He should, therefore, necessarily be compelled to pass over the immense advantages which would be derived to the United States from the acquisition of territory made by the treaty with France; nor, indeed, did he consider it a subject that required to be dwelt on in this House, as the attention of the public had been drawn to it for some months past, and he believed that nothing could now be added to the volumes which had been already written and circulated in the daily prints.

Gentlemen had noticed the report of a committee during the last session, of which he had the honor to be the chairman, and had endeavored to question the value of the acquired territory, because that report had only contemplated the acquisition of New Orleans and the Floridas. It was certainly true that the committee, in viewing this subject, had confined themselves to the immediate cause of complaint, and as the right of deposit had been suspended at New Orleans, their great object was to have this restored as speedily as possible, and to recommend such measures as would prevent a similar suspension at a future day. An inquiry of this kind naturally led to a view of the situation of the Western country generally, and it was readily perceived that the same inconveniences which had occurred in relation to the mouth of the Mississippi, might at some future period, perhaps not very distant, embarrass the commerce of the whole Mississippi Territory, the western part of Georgia, and the eastern parts of Tennessee. It was seen that the produce of this valuable country must be carried to sea by means of the great rivers which rise in the Mississippi Territory, but pass through East and West Florida before they reach the Gulf of Mexico; and the committee were of opinion that these ought, if possible, to be secured by treaty. As one of the committee, he was free to declare that he did not at that time entertain the most distant idea that the almost boundless tract of country lying west of the Mississippi, could be obtained by our Government on any terms, much less for the comparatively inconsiderable sum which we had agreed to pay for it. Had he then offered an opinion on the subject, he should have no hesitation to say that the west bank of the Mississippi was almost incalculable in its value to the United States, if it was only for the purpose of preventing any foreign nation from colonizing it. If that country were thickly settled by a foreign nation, the whole river Mississippi, from its source to the sea, must have been guarded by a strong chain of military posts; whereas the wilderness itself will now present an almost insurmountable barrier to any nation that may be inclined to disturb us in that quarter. The opportunity of acquiring this country, together with the island of New Orleans had presented itself to our Executive, and they had most wisely resolved to embrace it. The error, which had been spoken of in the report, was in fact no error. The committee intended to offer a geographical and not a historical view of the subject. Their object was to describe the country lying between the southern boundary and the Gulf of Mexico, and they adopted such names as were used by modern geographers, without intending to settle the dispute as to the ancient boundaries of Louisiana.

The gentleman from Virginia (Mr. Randolph) had very accurately detailed the various changes

that territory had undergone, and had correctly stated, that it was divided into East and West Florida after the peace of 1763, while in possession of Great Britain. If we should be able to fix the eastern boundary of Louisiana at the river Perdido, there was no doubt that the value of our purchase would be considerably enhanced, as by that means we should certainly secure the whole of the Mobile bay, and the mouths of some other large rivers. Mr. N. said, however, he did not mean to go into a consideration of the numberless advantages derived to us by the acquisition of Louisiana, nor would he at that very late hour have trespassed upon the time of the Committee, but for the Constitutional doubts which had been expressed by gentlemen on the other side of the House.

These Constitutional difficulties, he said, appeared to him to be entirely separate and distinct, though gentlemen had very ingeniously blended them, and had considered them as one. Whether the United States, as a sovereign and independent empire, had a right to acquire territory, was one question, but whether they could admit that territory into the Union, upon an equal footing with the other States, was a question of a very different nature. Upon this latter point, he meant to offer no opinion, because he did not consider it before the House; when the subject should come properly into discussion, he should have no objection, not only to enter at large into the Constitutional authority to admit the newly acquired territory into the Union as a State, but likewise to inquire whether this was really the spirit and intention of the third article of the treaty? The question now before the Committee was, is it expedient to carry this treaty into effect? And to be sure, if gentlemen were of opinion that the Government had no authority to acquire territory, the treaty ought to be rejected, because we should gain nothing by it.

But, sir, said Mr. N., had I been asked anywhere but in this House, whether a sovereign nation had a right to acquire new territory, I should have thought the question an absurd one. It appears to me too plain and undeniable to admit of demonstration? Is it necessary to resort to ancient authorities to establish a position which is proved by the conduct pursued by all nations, from the earliest periods of the world, and which arises from the very nature of society? Can it be doubted that, when a State is attacked, it has the right to assail its enemy in turn, and weaken the aggressor by dispossessing him of a part of his territory? Surely, the opinions of all writers, both ancient and modern, and the examples of all nations, in all ages, can leave no reason to doubt on this subject. But, sir, on this, as on most other occasions, we are told that the Constitution stares us in the face, and that this treaty cannot be carried into effect without violating the Constitution. If, indeed, this sacred instrument forbids the acquisition of territory by the United States, I will most readily admit that we ought to stop here.

Let the Constitution, however, be examined, let the principles on which it was formed be taken into view, and it will be found that, instead of forbidding, the Constitution recognises the authority to acquire territory. In the year 1776, when the United States absolved their allegiance to Great Britain, each State became a separate and independent sovereignty. As independent sovereignties, they had full power, in the language of the Declaration of Independence, "to levy war, 'conclude peace, contract alliances, establish commerce, and do all other acts and things which 'independent States might of right do." Each State, separately and for itself, had all the attributes of sovereignty, and no man can be hardy enough to deny that, at that time, any of the respective States had the capacity to extend its limits, either by conquest or by purchase. These are the only two methods, indeed, by which territory may be acquired; and there have been very few wars in which the subjects of one nation or another have not been compelled to change masters. In the year 1781, the articles of Confederation were finally agreed to, and each State surrendered a portion of its sovereignty for the common benefit of the whole. Much was reserved, but much was given up. The management of external concerns was given to Congress, and Congress alone had the power to levy war, conclude peace, and contract alliances. The capacity of the individual States to acquire new territory no longer remained to them. It was surrendered to the General Government, with the powers of peace and war. In the year 1788, the States again returned, as it were, to their original independence. Their sovereignty was once more assumed. They deliberated about the means of a more permanent Union, to secure to themselves and their posterity all the blessings of liberty. The present Constitution was adopted, and even a larger portion of individual sovereignty was surrendered. The right to declare war was given to Congress, the right to make treaties to the President and Senate. Conquest and purchase alone are the means by which nations acquire territory. The one can only be effected by war, the other by treaty, and when the States divested themselves of these powers, and gave them to the General Government, they gave, at the same time, that right to acquire territory, which they themselves originally had. The right must exist somewhere. It is essential to independent sovereignty. The tenth section of the first article of the Constitution expressly prohibits the States from entering into treaties, or levying war, and even from forming any compact or agreement with another State, or a foreign Power, without the consent of Congress. All the rights which the States originally enjoyed, are either reserved to the States, or are vested in the General Government. If they once had the power individually to acquire territory, and this is now prohibited to them by the Constitution, it follows, of course, that the power is vested in the United States.

The gentleman from Connecticut (Mr. R. Griswold) admits that, during the last session, he was an advocate for very vigorous measures. By vigorous measures, he means war. Will he deny, that it was his wish to seize upon New Orleans by force? Will he deny, that this, and this alone, was the reason why his friends and himself did not unite with us in the measures then adopted for the purpose of acquiring this country? If the gentleman's object was war, if his object was conquest, did he mean that we should drive all the inhabitants of the island into the Gulf of Mexico, and afterward retire into our own limits? Did he wish that we should fight for the sake of conquest only, and not with a view to enjoyment? If he then thought that, after conquering New Orleans, we should have a right to hold it, surely, it will not now be denied that we can hold it, after having obtained it by peaceable measures.

The gentleman seems, however, partly to have abandoned this ground, but, in his opinion, the treaty itself violated the Constitution. With that gentleman, I am unwilling to set the Constitution at defiance. I trust we shall maintain it in all its vigor. The third article of the treaty, he says, either admits the ceded territory into the Union immediately, or pledges us to do it hereafter. It cannot be contended that the territory is *ipso facto* admitted, but the objection is, that the President and Senate have no right to pledge the Government for anything not immediately within their own powers. This objection is not solid. Every day's practice proves that it is without any force whatever. The President and the Senate have the treaty-making power vested in them, but almost all their treaties contain stipulations which must be performed by this House, if they are ever performed at all. In our last convention with Great Britain, the President and Senate pledged the United States to the payment of six hundred thousand pounds sterling, yet the payment of this money was not within the powers granted to them by the Constitution, nor could it ever have been paid without the concurrence of this House. It was never doubted, however, that this stipulation was Constitutional. The present treaty with France pledges the United States to the payment of fifteen millions of dollars, yet gentlemen do not question the constitutionality of this measure, although it never can be carried into effect without the co-operation of this House. In fact, there is no treaty made with a foreign Power in which some of the regulations must not lie entirely inactive, unless this House shall give its assent to them. So, in the present instance, the fifteen millions of dollars can never be paid, nor the ceded territory admitted into the Union, unless this House shall give its assent.

It is said, however, that Congress cannot, under the Constitution, admit foreign territory into the Union upon an equal footing with the States, even under that article of the Constitution which provides that new States may be admitted. I have before said that, upon this point, I mean to offer no opinion, because, at this time, I think it unnecessary; nor need we now inquire, whether this is, in reality, the meaning of the treaty. The gentleman from Connecticut, however, assuming this ground, contends that as the treaty embraces objects not in the power of the General Government the whole is, of course, invalid. There may be some plausibility in this argument, but it is plausibility only. It has been already proved that the treaty-making power frequently and of necessity embraces objects not in the power of the President and Senate, but of the whole Legislature, yet that this does not of course invalidate the treaty. It may be shown that, where a treaty contains stipulations which are not in the power of the General Government, and, of course, cannot be carried into effect, yet that this does not invalidate the whole, although these particular stipulations may of themselves be void. An instrument might sometimes contain covenants which were impossible, or that were *mala in se;* these, of course, would be void, but others might, nevertheless, stand good. I take a distinction, which I am warranted in by the best writers, between articles of a treaty, which are violated by one party, and articles which, from the nature of things, or from previous engagements, are void. Where one party violates an article in a treaty, the other has the right to declare the whole void, because the violation is a breach of faith, and is a voluntary act. But where some of the stipulations of a treaty are impossible to be performed, or cannot be fulfilled consistently with the engagements of an antecedent treaty with a third Power, these are, of course, void, but other parts will stand good. A variety of cases might be cited to prove this, but a very strong one will be found in our Treaty of Peace with Great Britain, concluded in 1783. The fourth article of that treaty provided that creditors on either side should meet with no lawful impediment to the recovery of debts *bona fide* contracted previous to the war. This was a stipulation which Congress could not perform. In all matters relating to the recovery of debts, the individual States retained entire and uncontrolled authority. The objects embraced by this article were completely out of the power of Congress. The right to make treaties had been committed by the articles of Confederacy to the General Government, but, in this particular, the assent of the States was absolutely necessary before that part of the treaty could be carried into effect. Great Britain remonstrated repeatedly, but some of the States, particularly Virginia, refused to concur. Congress recommended it to the States, to declare the treaty the supreme law, but the recommendation was not attended to. That article of the treaty was, of course, invalid, and never was fulfilled on the part of the United States. Yet it is certain that the whole treaty was not thereby rendered a nullity. Our independence was acknowledged. Hostilities ceased, and the British armies were withdrawn. The cases are extremely analogous, and if it should finally be determined that Congress cannot admit the ceded territory into the Union as a State, yet the other parts of the treaty with France will stand good. If this was the intention of our Ministers, (which, perhaps, may be doubted,) they seem to have guarded against the event of a refusal either by Congress or by the people. For it is declared expressly that, until the inhabitants can

be incorporated into the Union, and can be admitted to all the privileges of citizenship, they shall be protected in the enjoyment of their civil and religious rights.

The other Constitutional objection is raised upon the seventh article of the treaty, which provides that the ships of France and Spain shall be admitted for twelve years into the ports of the ceded territory, without paying higher duties than the ships of the United States. To this gentlemen have opposed that part of the Constitution which declares that no preference shall be given to the ports of one State over those of another, and that all duties, imposts, and excises, shall be uniform through the United States. There appears to be a strange inconsistency in the arguments of the gentleman from Connecticut. He tells you that this territory is not a State, and that it never can become a State; yet he afterwards declares that the treaty violates the Constitution by giving the port of New Orleans a preference over the ports of the Atlantic States. There is surely a contradiction here. Whatever may be the future destiny of Louisiana, it is certain that it is not now a State. It is a territory purchased by the United States, in their confederate capacity, and may be disposed of by them at pleasure. It is in the nature of a colony whose commerce may be regulated without any reference to the Constitution. Had it been the Island of Cuba which was ceded to us, under a similar condition of admitting French and Spanish vessels for a limited time into the Havannah, could it possibly have been contended that this would be giving a preference to the ports of one State over those of another, or that the uniformity of duties, imposts, and excises thoughout the United States would have been destroyed? And because Louisiana lies adjacent to our own territory, is it to be viewed in a different light? Or can the circumstance of its being separated by a river only, instead of the sea, constitute any real difference in regard to the commercial regulations which we may think proper to establish? The restrictions in the Constitution are to be strictly construed, and I doubt whether under a strict construction the very same indulgence might not be granted to the port of Natchez, which does not lie within any State, but in the territory of the United States. It has never been deemed expedient to do so, and in all probability never will. Nor is it presumable that this regulation in relation to New Orleans would have been made, but for the importance of the great objects with which it was connected.

Mr. N. believed that the gentleman from Connecticut need not entertain any apprehensions that the provisions contained in the seventh article of the treaty were intended to commence the repeal of the countervailing duties. It was true that some gentlemen had thought very favorably of the repeal at a former session, and he acknowledged himself to be of that number. But as it was a regulation more materially affecting the commercial part of the community, and as they had been opposed to it, the subject was dropped. He did not know that there was any intention to revive it, although possibly a majority of that House might be inclined to assent to it. Yet this could have no connexion with the treaty, much less could it have any connexion with the question immediately under consideration. We only have to determine whether we will carry this treaty into effect. Whether we will agree to appropriate the fifteen millions of dollars, and authorize the President to take possession. The latter has been agreed to, and surely we cannot consent to receive possession without paying the equivalent promised on our part.

Mr. N. closed his remarks by again begging pardon of the Committee for the time he had occupied, and offered his acknowledgments for the indulgent attention he had received.

Mr. RODNEY said, that in the observations he rose to make at that late hour, he should be brief, and apply them entirely to the Constitutional question, as it was scarcely contended the bargain was not a good one. In making them he cordially joined with the gentleman from Connecticut, (Mr. GRISWOLD,) when he expressed his wish that the discussion should be conducted with coolness and temper. It was not only the duty, but the interest, of every gentleman on the floor that this important subject should be decided on argument and argument alone. He felt the force of the objection urged by the gentleman from Maryland, (Mr. NICHOLSON,) that the discussion of some of the points was premature. He should, however, enter into a brief exposition of them.

It is contended that the United States have no right to purchase territory; that they have no right to admit the people of Louisiana to a participation of the rights derived from an admission into the Union, and that a peculiar favor is about being granted to the ports of New Orleans, in violation of the Constitution.

In the view of the Constitution the Union was composed of two corporate bodies, of States and Territories. A recurrence to the Constitution will show that it is predicated on the principle of the United States acquiring territory, either by war, treaty, or purchase. There was one part of that instrument within whose capacious grasp all these modes of acquisition were embraced. By the Constitution Congress have power to "lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." To provide for the general welfare! The import of these terms is very comprehensive indeed. If this general delegation of authority be not at variance with other particular powers specially granted, nor restricted by them; if it be not in any degree comprehended in those subsequently delegated, I cannot perceive why, within the fair meaning of this general provision is not included the power of increasing our territory, if necessary for the general welfare or common defence. Suppose, for instance, that Great Britain should propose to cede to us the island of New Providence, so long the seat of pirates preying upon our commerce, and the hive from which they have swarmed; will any gentleman say that we ought

not to embrace the opportunity presented as a defence against further depredations? Suppose the Cape of Good Hope, where our East-Indiamen so generally stop, were offered to be ceded to us by the nation to which it belongs, and that nation should say on our possessing it, you shall declare it a free port. Is there any member who hears me that could contend that we were not authorized to receive it, notwithstanding the great advantages it would insure to us?

But it appears to me, independently of this provision of the Constitution, and the gentleman from Connecticut (Mr. GRISWOLD) admits it, that according to the rights of war we may extend our territory. An enemy might come within our lines, and we expel him: our lines not being the limits to which our arms would be confined, we could pass them, and take possession of the enemy's country, and thereby undoubtedly acquire a right to the territory occupied. For, in the Constitution, it is expressly said that Congress shall have power "to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" and among the *jura bella* was clearly recognised the right of annexing territory. But there is one article of the Constitution which is predicated on the right to purchase territory. We have a right to obtain territory by purchase from a State. In the provision made in the Constitution respecting the territory of the United States, we find that Congress are invested with power "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings." Here, then, is given to Congress exclusive legislation over particular places, over the ten miles square, and over such places as they may purchase. This provision is expressly predicated on the right to purchase, and only limits that purchase by the consent of the States. If Congress have the right of purchasing territory from a State, how can gentlemen contend that they have not the right of purchasing territory elsewhere, if in their judgment they shall consider it well calculated to subserve the great interests of the Union?

It does appear to me that the right of acquiring territory must be included in the treaty-making power. As there are very few treaties which are not merely commercial that do not change the property belonging to nations; and if this principal power be contained in the treaty making provision, every incidental power is of consequence to be considered as fairly embraced within it, and I should deem this important authority as nugatory, if it did not give the President and Senate the right to accept a cession of territory. It is certainly not the right of the President and Senate to make such a cession conclusively binding; when it shall embrace powers within the pale of those delegated to this House, it will require our sanction. Have we not also vested in us every power necessary for carrying such a treaty into effect, in the words of the Constitution, which gives Congress the authority to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof?" It, therefore, appears very clearly to my mind that, according to the Constitution, the United States have a right to acquire territory. If they possess this right according to the Constitution, this measure cannot be said to be unconstitutional, and if not unconstitutional, as the gentlemen who have spoken against it, did not insist upon the point of inexpediency, some of them because they believed that ground was not open, and others because it was not tenable, will ultimately give it their support.

But another Constitutional objection is stated. Though the United States may acquire a valid title to the territory, the hills and the groves, the rivers and the lakes, it is alleged that they have no right to bring the persons inhabiting it into a state in which they shall enjoy the blessings of free government. My friend from Maryland (Mr. NICHOLSON) has observed that the article of the treaty relating to this object is most cautiously worded. If ever there was a precision of language calculated to avoid the imputation of an invasion of the Constitution, it is the language of this article. Its words are:

"The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

How are these people to be admitted? According to the principles of the Federal Constitution. Is it an open violation of any part of the Constitution? No; an express reservation is made by those who formed the treaty, that they must be admitted under the Constitution. Now, if admitted agreeably to the Constitution, it cannot be said to be in violation of it; and if not in violation of it, the fears of gentlemen are groundless. But, as I observed before, does not the Constitution refer to territory? Do not the United States possess territories now? Is the possession of territory confined by the Constitution to those they now hold? I believe not; for, in the Constitution, it is stated that "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States." Here is a clear recognition of territory belonging to the United States, and not merely of territory then held, but of territory which might in future be acquired by treaty or purchase. And if this territory be ceded to the United States, Congress have power, as soon as it is ceded, to make rules and regulations respecting it.

There is another sound answer to the objections of gentlemen. This is property ceded to us, by the Power ceding it, with a particular reservation. I am not for quibbling about words or distorting terms. Taking the seventh article, and fairly considering it, it amounts to nothing more than a particular reservation—upon delivering possession of the territory, which I take to be the true meaning of the language which is used; and will any gentleman say that accepting the treaty, under this stipulation, will not be most advantageous to us? What individual State will be affected by it more than any other? Does it give the State of Massachusetts an advantage over New York? I would be glad to know what State it particularly affects, and in what way. "No preference," says the Constitution, "shall be given by any regulation of commerce or revenue to the ports of one State over those of another." In what way, under this treaty, is there any preference of one port over another? I would be glad to see it pointed out, and to be shown whether there is any preference of Delaware over Massachusetts, or of Virginia over Georgia. No. The Constitution adverts to States themselves; and that the distinction between States and Territories is bottomed upon reason. Whence the necessity of the distinction? When Territories grow into States, and become represented in the public councils, a majority of them may league together, and carry into effect regulations prejudicial to other States. Hence the Constitution provides that in all commercial regulations all the States shall be equally affected. But such a league cannot be affected by Territories, which have no Senators in the other branch, and in this only the voice, without the vote, of a single delegate. Independent of this consideration is this: if by any particular territorial regulation the territory of the United States is benefited, that territory being the common property of the United States, a public stock in which they all share, every State in the Union reaps alike the benefit.

These are my reasons for considering this measure perfectly Constitutional. I might dwell upon these reasons corroborative of this conviction; but these have been so ably enforced by my friends from Virginia and Maryland, and by other gentlemen, as to render more remarks superfluous. I cannot, however, avoid noticing the observation made yesterday and reiterated to-day, that we do not know whether we have a title to this territory, or whether it be not the purchase of so many acres of mere moonshine. I voted yesterday for some papers because I wished beyond all cavil or dispute to establish the Constitutional right of this House to call for papers, and from a respect to the opinions of some gentlemen who considered them important, not from any doubts of my own as to the validity of the title. The publicity of the cession of Louisiana by Spain, its former owner, to France, is too notorious; it has been noticed, dilated on, and recognised in the British Parliament, and in the Senate of the United States. We have not in our possession, it is true, the original Treaty of St. Ildefonso, nor the subsequent one, concluded between France and Spain at Madrid, which referred to the former, for we were not furnished with duplicates of either, nor have we the testimony of the King of Etruria to prove that every stipulation contained in them was strictly complied with—poor man! he is no more. We have not sent a Commissioner to Madrid or St. Cloud to take the examination of the Ministers of Spain and France, to obtain their evidence, in order to verify the fact of all conditions having been performed by France on her part; but we have seen in the papers which record the transactions of the times, the arrival of the French Prefect of Louisiana at New Orleans announced. We have read his proclamation to the inhabitants of that country informing them of the cession, and, if I mistake not, our own Government has received through the proper channel intelligence of the same event, which has been duly published. All these circumstances combined are satisfactory to my mind on this subject. No fact in the history of nations can be more rationally proved, and gentlemen should recollect that they rely on the same kind of testimony (the letter of Mr. King to the answer of Lord Hawkesbury) when they confess themselves satisfied that England is agreed to this measure.

I would further observe, from the course which the debate has taken, that if we had taken all the papers and documents which the gentlemen desire, agreeably to the mode of argument which they have adopted, they might object to passing the necessary laws until we had got possession of the country, and at the same time object to our taking possession, without laws to authorize it. By thus arguing in a circle, as the logicians term it, they would most effectually defeat an object of the first importance to the community, and render the acquisition of an inestimable territory of as little value as the same extent of moonshine or starlight. With these impressions, believing the measure a good one, and consistent with the Constitution, I shall most cheerfully give my vote for carrying it into effect.

Mr. Mitchill rose, and said, he entreated the indulgence of the Committee for rising at so late a stage of the debate, when seven hours have already been employed in the sitting of the day. And the reason of his request was, that such extraordinary doctrines have been advanced against carrying into effect the treaty with France which cedes Louisiana to our nation, and such repeated allusions have been made to the sentiments which he submitted to the House during the debate of yesterday, that he felt himself called upon to attempt a reply, and therein to show that the grounds taken by the gentlemen of the opposition are neither strong nor tenable. Although the subject is ample and copious, he should endeavor to condense his remarks, to so moderate a compass, as not to trespass long upon the patience of the Committee.

My colleague, said Mr. M., who opened the debate this morning, (Mr. G. Griswold,) displayed in his speech the objections raised against the resolution on the table, so fully, that he almost exhausted the subject. For, in listening attentively to the reasoning of the gentleman from

Virginia, who followed him, (Mr. J. Lewis) and of the other gentleman from Virginia, who spoke next, (Mr. Griffin,) he could not discern that any new or additional matter of much consequence had been urged. Nor did he discover much more than a repetition in substance of his colleague's reasoning, in what had been urged by the gentleman from Mass., (Mr. Thatcher,) and the gentleman from Connecticut (Mr. Griswold;) though the statement of their objections had received a form and coloring diversified according to the skill and ingenuity of each.

In the reply which he should make to the gentlemen in opposition to the appropriations for carrying the treaty into operation, he should not examine their arguments, severally, as they had been brought forward in the course of the debate. That mode would necessarily lead him into tedious and needless repetition. He should, therefore, endeavor to reduce all the arguments he had heard from the other side of the House into their elementary propositions, and having done so, to show that they were weak in their nature, and wrong in their direction. And even this view of the question would be much circumscribed, on account of the strong and masterly manner in which a part of the objections had been already repelled by his eloquent friend from Virginia, (Mr. J. Randolph,) and by the impressive remarks of his other friend from Delaware (Mr. Rodney.)

The gentlemen, Mr. Chairman, who resist the provisions necessary to the completion of this treaty, do so because they say it has been ratified by the President and Senate in open violation of the Constitution of the United States, and is, therefore, no treaty, but a nullity, an instrument void *ab initio*, not a part of the supreme law of the land, and consequently not binding upon Congress or the nation. They draw this bold and extraordinary conclusion from the style and meaning of the 3d and 7th articles of the treaty. The former of these, they say, is unconstitutional, because it proposes to annex a new territory, with its inhabitants, to our present dominion; the latter, because it abolishes for a term of years the discriminating duties of tonnage and impost within the ceded territory, giving a preference there to France and Spain, and leaving those duties unaltered in all the ports of the Union.

By the third article, it is agreed that the inhabitants of the ceded territory shall be incorporated into the union of the United States as soon as possible, according to the principles of the Federal Constitution, and be admitted to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States; and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess.

On expounding this article, my colleague has declared that the President and Senate have no power to acquire new territory by treaty, and he argues that our people are to be forever confined to their present limits. This is an assertion directly contrary to the powers inherent in independent nations, and contradictory to the frequent and allowed exercise of that power in our own nation. We are constantly in the practice of receiving territory by cession from the red men of the West, the aborigines of our country. The very treaty mentioned in the President's Message, with the Kaskaskias Indians, whereby we have acquired a large extent of land, would, according to this doctrine, be unconstitutional; and so would all the treaties which add to the size of our statute book, with the numerous tribes of the natives on our frontiers. According to this construction, all our negotiations so happily concluded with those people, whom we ever have uniformly acknowledged as the sovereigns of the soil, are nugatory, and to be holden for naught. He said, he was perfectly aware of the answer which would be made, that we held all our national domain, under Great Britain, by virtue of the treaty concluded at Paris in 1783. What, after all, was the amount of that cession by England? Certainly not a conveyance of a country which never was theirs, but rightfully belonged to the Indian natives; for it was, in its true construction, merely a *quit claim* of the pretensions or title to the land which the English had obtained by conquest and treaty from the French. By that negotiation, the United States obtained a bare relinquishment of the claims and possessions of those two powerful nations. But the paramount title of the original inhabitants was not affected by this. However contemptuously the rights of these rude and feeble tribes had been regarded by the Europeans, their descendants in these States had considered them with recognition and respect. Until the Indians sold their lands for an equivalent, the humane and just principles of the American Government acknowledged them to be the only legitimate owners. And the sovereignty acquired by treaty or purchase to our Government was derived from the title which the natives transferred to them as grantees in a fair bargain and sale. Such, Mr. M. argued, were the rules of true construction, and these rules admitted and acted upon by the Federal Government; and yet, according to the novel doctrine of this day, every treaty with the natives for parcels of their country, although hitherto deemed lawful, would be an unconstitutional act. According to this notion, every treaty for lands, held with the aborigines since the organization of the Government, was a violation of the Constitution. And thus this invaluable instrument, this bulwark of our liberties, had been violated perhaps twenty times or more, since we began to buy the surplusage of their hunting grounds. The Indian tribes are as much aliens as any other foreign nations. Their lands are as much foreign dominion as the soil of France or Spain. Yet we have gone on to annex the territories which they sold us, to our present territory, from the time we acquired independence, and no mortal, until this debate arose, Mr. Chairman, has so much as thought that thereby a breach of the Constitution was made. My colleague is surely entitled to great credit for his perspicuity in finding out that all our great and wise predecessors in administering this Government have been blunderers and

constitution-breakers. But, Sir, the just judgment on this subject is, that the Presidents and Senate of the United States have heretofore acted constitutionally in acquiring by purchase foreign dominions from the alien Indians. And by a parity of reasoning, they have acted not only constitutionally, but eminently for the interest of the country, in buying Louisiana from the white men, its present sovereigns.

But, independent of correct principles and steady precedent in favor of the acquirement of new terrritory, it may be worth the while to mention a few of the strange consequences which flow from the doctrine which the gentlemen of the other side of the House contend for. According to their reasoning, if by any force of the currents of the ocean, or any conflicts of the winds and the waves, a new surface of earth should emerge from the neighborhood of Cape Hatteras, it would be unconstitutional to take possession of it. Yet it appears to me, sir, very like an absurdity to say the United States would break their bond of union by erecting a light-house on it. Suppose that, by volcanic action, islands should be suddenly elevated from the bottom of the neighboring Atlantic, as they have repeatedly risen from the depths of the Mediterranean, would it be unconstitutional to take possession of them? So far from it, there would on the other hand be a duty in the Government to assume the dominion of all adjacent islands. Again; suppose for a moment that our present limits were full of people, would it be unconstitutional to purchase additional territory for them to settle upon? Must the hive always contain its present numbers, and no swarm ever go forth? At this rate we should, before a great lapse of time, arrive at a *plenum* of inhabitants, and if no new settlement could be obtained for them, the Chinese custom of infanticide must be tolerated to get rid of those tender little beings for whom food enough could not be procured, to rear them to manhood. And thus, when this *maximum* of population shall have arrived, there would be no Constitutional power to purchase and possess any of the waste lands on this or the other side of the Mississippi, for them to spread and thrive upon. A doctrine against which, he confessed, his understanding revolted.

Our Government having in this manner the right of acquiring additional territory, had very often exercised that right by actual purchases and by possessions and settlements afterwards. The whole of the recent State of Ohio and of the Indiana Territory was obtained and peopled in this manner. And in the settlement of limits both on the side of Florida and Nova Scotia, the principle had again and again been acted upon; and strange to tell, nobody, until this eventful time, had possessed acuteness enough to find out the error.

But the gentleman from Connecticut, Mr. Chairman, (Mr. GRISWOLD) contends that even if we had a right to purchase soil, we have no business with the inhabitants. His words, however, are very select; for he said and often repeated it that the treaty-making power did not extend to the admission of foreign nations into this confederacy. To this it may be replied that the President and Senate have not attempted to admit foreign nations into our confederacy. They have bought a tract of land, out of their regard to the good of our people and their welfare. And this land, Congress are called upon to pay for. Unfortunately for the bargain, this region contains civilized and Christian inhabitants; and their existence there, it is alleged, nullifies the treaty. The gentleman construed the Constitution of the United States very differently from the manner in which Mr. M. himself did. By the third section of the third article of that instrument, it is declared, that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing therein contained shall be construed so as to prejudice any claim of the United States or of any particular State.

In the case of Louisiana no injury is done either to the nation or to any State belonging to that great body politic. There was nothing compulsory upon the inhabitants of Louisiana to make them stay and submit to our Government. But if they chose to remain, it had been most kindly and wisely provided, that until they should be admitted to the rights, advantages, and immunities of citizens of the United States, they shall be maintained and protected in the enjoyment of their liberty, property, and the religion which they profess. What would the gentleman propose that we shall do with them? Send them away to the Spanish provinces, or turn them loose in the wilderness? No, sir, it is our purpose to pursue a much more dignified system of measures. It is intended, first, to extend to this newly acquired people the blessings of law and social order. To protect them from rapacity, violence, and anarchy. To make them secure in their lives, limbs, and property, reputation, and civil privileges. To make them safe in the rights of conscience. In this way they are to be trained up in a knowledge of our own laws and institutions. They are thus to serve an apprenticeship to liberty; they are to be taught the lessons of freedom; and by degrees they are to be raised to the enjoyment and practice of independence. All this is to be done as soon as possible; that is, as soon as the nature of the case will permit; and according to the principles of the Federal Constitution. Strange! that proceedings declared on the face of them to be Constitutional, should be inveighed against as violations of the Constitution! Secondly, after they shall have been a sufficient length of time in this probationary condition, they shall, as soon as the principles of the Constitution permit, and conformably thereto, be declared citizens of the United States. Congress will judge of the time, manner, and expediency of this. The act we are now about to perform will not confer on them this elevated character. They will thereby gain no admission into this House, nor into the other House of Congress. There will be no alien influence thereby introduced into our councils. By degrees, however, they will pass on from the childhood of republicanism, through the improving period of youth, and arrive at the mature experience of manhood. And then, they may be admitted to the full privileges which their merit and station will entitle them to. At that time a general law of naturalization may be passed. For I do not venture to affirm that, by the mere act of cession, the inhabitants of a ceded country become, of course, citizens of the country to which they are annexed. It seems not to be the case, unless specially provided for. By the third article it is stipulated, that the inhabitants of Louisiana shall hereafter be made citizens; *ergo* they are not made citizens of the United States by mere operation of treaty. In confirmation of this construction, I will mention the second article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty, concluded in 1794. It is therein stipulated that all British subjects who shall continue within the evacuated posts and precincts, should be considered, if they remained there longer than one year, to have abandoned all allegiance to the Crown of Britain, and to have made their election to become citizens of the United States: after which, by taking the oath of allegiance, they became instantly, by act of treaty, and by force of statute, citizens of the United States. I, therefore, consider the point already adjudged, when the Treaty of 1794 was decided on, that without an act of Congress aliens can be converted into citizens by the provisions of a treaty duly ratified by the President and Senate. In the treaty respecting Louisiana, there is happily no cause for alarm. This power of making citizens has not been exercised by the President and Senate; but at a future day may be used by Congress.

But I proceed to the second objection to the treaty. This is derived from an alleged unconstitutionality in the 7th article. By this, it is agreed that French ships coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France or her said colonies, shall be admitted for twelve years into New Orleans and the other legal ports of entry in Louisiana, without being subject to any greater duty on merchandise or tonnage than is paid by our own citizens. The like covenant exists with regard to the ships, ports, and colonies, of Spain. This, they say, is a violation of a declaration contained in the ninth section of the first article of the Constitution, which declares that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another.

In my view of the subject, Mr. Chairman, this prohibitory clause of the Constitution is meant as a check to the legislative power of Congress only, and by no means as a restraint upon the treaty-making power of the President and Senate. The Constitution leaves this very broad, and with great wisdom; it being improper and impossible to limit the negotiations which it might be expedient for this Government to make with other Governments. From the silence of the Constitution on the matter and extent of the treaties, it has been argued, with great appearance of truth and fairness, that there is no Constitutional boundaries to the treaty-making authority. Hence, according to this mode of reasoning, the treaty-making privilege, being so vast and unlimited, is unfettered by Constitutional impediments, and like that great charter of freedom itself, originates from its own source, supreme laws of the land. A treaty, therefore, can scarcely be conceived to be unconstitutional; except in the case of outraging all common principles, rights, and feelings. On this ground, the commercial regulations of the 7th article are secured against all charges of unconstitutionality.

But, even if the treaty-making power was not so extensive and mighty, there would be no violation of any of its directions by granting the favors to Spain and France which the treaty stipulates. For the preference forbidden by the Constitution applies to States in the Union and equal members thereof. The domain we are about to acquire is not a State; for that is a sovereign and independent republic. Nor is it a province; this being an inhabited country, subdued by force of arms. Nor is it a colony; which is a sprout or scion, as it were, of the parent trunk. In its relation to us, it is a territory; a word signifying a peculiar and mingled idea of a country and inhabitants in the inchoate or initial condition of a republic. By the treaty, therefore, there is no preference given to one State over another, in any commercial regulations. The port of New Orleans is not a part of any State in the Union. The abolition of the discriminating duties in favor of the two European nations is confined absolutely to the ports of Louisiana. They have no preference in the ports of any of the States. Nor is there given to one an advantage over the other. In right construction, these indulgences are, in fact, a part of the purchase money; and, on account of this valuable consideration, Congress will have less money to appropriate and the nation thereby be saved from several millions additional debt. Our constituents have certainly great reason to rejoice at this. I, therefore, conclude that the apprehension and alarm expressed by the two gentlemen from Virginia (Mr. J. LEWIS and Mr. GRIFFIN) were wholly unfounded. There is no breach of the Constitution.

Notwithstanding all this, one gentleman says, the adoption of this seventh article will give "a death wound to the northern commerce of the United States;" and another declares, "that under it, France and Spain will gain a monopoly of the commerce and navigation of Louisiana, and the adjacent country." Mr. M. said he could not conceive how this should happen. Ever since the ratification of the Treaty of St. Lorenzo el Real, there had been a great resort of American vessels to the Mississippi. From New York, in particular, there had been large and frequent commercial intercourse, almost ever since that time. This had been rapidly increasing, and promised to be more and more important—and all this under a foreign jurisdiction, and while Louisiana belonged to Spain. Now that province was about to be changed into

a Territory of the United States. What an augmentation of tonnage and navigation might we not expect, when our own Mississippi should be whitened with our canvass! How eagerly would the Eastern and Middle States engage in a carrying trade, now rendered easy and free from impediment! It appeared to him that the transportation of the vast and valuable productions of both banks of that river would increase the demand for vessels. Greater capital will be called for to carry on the Louisiana commerce, and greater profits would result. Ship building, and all the attendant arts, would be promoted. The number of seamen would be augmented; who, trained up to maritime discipline in merchant vessels, might on any appearance of danger be transferred to the Navy, and serve as a bulwark and safeguard of the nation. Valuing most highly, as he did, the commercial prosperity of the United States, he considered that a new spring would be given to all its enterprise, by the acquisition of Louisiana. Our skill in commerce and dispatch in navigation would overmatch and bear down all the competition of the French and Spaniards. A more cordial union would be promoted between the Western and Eastern States; who would then be connected by the strong ties of commerce and interest, as well as of law and policy; and the jealousies, by which attempts had been made to divide them, and which had been raised to a mountainous magnitude, would be entirely levelled and done away. He was confident that all the Atlantic seaports, and, beyond all, the great commercial city which he represented, would participate largely of the benefits flowing from our complete sovereignty of the Mississippi and all its waters.

Mr. M. then applauded the mild and dignified conduct of an Administration, which had accomplished these great events by peaceful means, rather than war; and concluded, that if in the course of his observations he had not been successful in convincing the understandings of the gentlemen who thought differently from him, he had at least expressed some of the reasons which governed his judgment and would guide his vote on the proposition then depending. He hoped the resolution would be agreed to, for making immediate preparatory provision to take possession of Louisiana, according to the stipulations of the treaty.

Mr. J. RANDOLPH said that a sense of duty alone could have induced him to rise at that late hour. He wished to call the attention of the Committee to a stipulation in the Treaty of London. [Here Mr. R. read an extract from the third article of that treaty, whereby the United States are pledged not to impose on imports in British vessels from their territories in America, adjacent to the United States, any higher duties than would be paid upon such imports, if brought into our Atlantic ports in American bottoms.] In this case, he said, gentlemen could not avail themselves of the distinction taken by his friend from Maryland (Mr. NICHOLSON) between a Territory and a State, even if they were so disposed,—since the ports in question were ports of a State. The ports of New York, on the Lakes, were as much ports of that State, as the city of New York itself; they had their custom-house officers, were governed by the same regulations, as other ports,—duties were exacted at them; and yet, under the article of the British Treaty which had been just read, British bottoms could and did enter them subject to no higher duties than were paid by American bottoms in the Atlantic ports. Mr. R. said that he did not mean to affirm that this exemption made by the Treaty of London was Constitutional, so long as a distinction prevailed between American and British bottoms in other ports. He had never given a vote to carry that treaty into effect—but he hoped the gentlemen from Connecticut—both of whom he believed had done so; one of whom, at least, he knew had been a conspicuous advocate of that treaty—he hoped that gentleman (Mr. GRISWOLD) would inform the Committee how he got over the constitutional objection to this article of the Treaty of London, which he had endeavored to urge against that under discussion. How could the gentleman, with the opinion which he now holds, agree to admit British bottoms into certain ports, on the same terms on which American bottoms were admitted into American ports, generally? Thereby making that very difference,—giving that very preference to those particular ports of certain States, which he tells us cannot constitutionally be given to the ports of New Orleans—although that port is not within any State, and, if his (Mr. GRISWOLD's) doctrine be correct, not even within the United States!

The gentleman from Connecticut professed a wish that this important discussion should be conducted with moderation and candor. In this sentiment he concurred. He was therefore altogether unprepared, after this preamble, to hear the gentleman from Connecticut represent the treaty in question as conceding the most valuable commercial privileges to France and Spain, and thereby sapping the very foundation of our own carrying trade. In the spirit of candor the stipulations in question would be viewed, not as conceding advantages in trade to those nations, but as securing them to ourselves. The article in question did indeed profess to grant, for a limited time, to French and Spanish vessels, laden with the products of their respective countries, admission into the ports of the ceded territory, on equal terms with our own ships. But, although nominally an advantage has been conceded to these nations, substantially their situation was changed for the worse, and the benefit in fact conferred on us. For what were our rights in these ports, and what were theirs, setting aside the treaty? The treaty then had rendered our situation more eligible and theirs less so. How then could gentlemen declare that it was calculated to injure our carrying trade? When by it our trade was put on the footing of absolute security, while that of France and Spain was admitted under considerable restrictions, enjoying in but one particular, and for twelve years only, an equality with ours. Their trade, before on so superior a footing, had descended from its pre-eminence in privilege, and given way to ours; and yet gentlemen warn us

of the destruction of our carrying trade, and commercial prosperity, from the very source which has enlarged and secured both. The enemies of the treaty, therefore, are the advocates of the trade of France and Spain, and the enemies so far of our own. Since, by retaining things in their present posture, they would continue to those nations the superior advantages which they now enjoy in the ports of Louisiana, they would continue the restrictions which heretofore have fettered our commerce to that country, and they would refuse to put our trade on a footing superior to that of France and Spain.

But while gentlemen endeavor to alarm us with the idea of this formidable competition, I cannot, sir, feel a moment's apprehension from this quarter. Exclusive of the limitation of twelve years, and the restriction that their cargoes shall be of French or Spanish growth or manufacture, who that considered the present condition and future prospects of those countries could regard them as formidable commercial competitors? Was there not infinitely greater probability that the third article of the Treaty of London, which had no limitation as to time, and embraced our whole frontier on the side of Canada, would enable Great Britain to supply that frontier on terms as cheap, or cheaper, than we ourselves could?

With more candor, however, the gentleman has boldly avowed that he was among the number of those who, at the last session of Congress, were for pursuing "vigorous measures," for enforcing our rights in relation to the Mississippi. What those vigorous measures were, the House would be at no loss to determine. The gentleman had disdained to deny his principles. He would not now shrink from what he had then advocated, and Mr. R. said that he applauded him for it.

Mr. R. said that the gentleman had laid his premises a great way off, as if from the expectation that they would not be closely examined, and that therefore there would be nothing to oppose to the conclusions which he had drawn from them. He had stated a case scarcely supposable, and from it inferred the very principle in question. His whole argument was founded on presuming the very principle to be granted which was in dispute. The United States, says he, cannot incorporate into the Union Great Britain or France; and therefore they cannot unite to themselves the colonies of either nation. If the gentleman meant to prove the impolicy or impracticability of adding France or England to the United States, no one, he believed, was disposed to question the justice of his remark. But the position in contest was, can the United States constitutionally extend their limits? And this point in dispute the gentleman takes for granted by saying, that we cannot extend our dominion over England or France, and therefore cannot acquire dominion in any other country. That is, we cannot, because we cannot.

On the subject of expediency, the gentleman had undervalued the country west of the Mississippi, and had declared that he considered the barren province of Florida as more important to us. Mr. R. asked if the country west of the Mississippi were not valuable, according to the gentleman's own statement, since it afforded the means of acquiring Florida, which he prized so highly, from Spain? He had no doubt of the readiness of that Power to relinquish Florida, in itself a dead expense to her—only valuable as an outwork to her other possessions, and now insulated by those of the United States—for a very small portion of the country which we claimed in virtue of the treaty under discussion. He said that he stated early in the debate, and had stated truly, that the limits of Louisiana were not actually defined; but, nevertheless, we were not without some light on this interesting subject. Thirty years before the Spaniards made their settlement of the Adais, the French had established themselves on the bay of St. Bernard or St. Louis—the nearest Spanish colony being then on the river Panuco, one hundred leagues to the west. The great river of the North, as nearly equi-distant between the Panuco and bay of St. Bernard was—on the principle generally admitted by European nations forming establishments in savage countries—considered by France as the boundary between French and Spanish America, and accordingly we find it so laid down in many of the old maps. This boundary would embrace within the limits of Louisiana some very valuable dominions of Spain, including the rich mines of St. Barbe, and the city of Santa Fe, the capital of New Mexico. On the other hand, in virtue of her settlement of the Adais, Spain might claim the country as far east as the river Mexicana, and to the highlands dividing the waters of the North river from those of the Mississippi. Beyond them she could have no color of claim. In settling this important barrier, there were ample materials for the acquisition of Florida, still retaining to ourselves all the country watered by the Mississippi.

Another gentleman from Connecticut (Mr. DANA) had declared that if the inhabitants of the ceded territory were now, or should hereafter be, admitted into the Union, it would be a violation of that clause of the Constitution which relates to the establishment of an uniform rule of naturalization, since those people will be converted from foreigners to citizens, not in the mode prescribed by our naturalization law. Mr. R. wished to know in what manner the subjects of Great Britain settled around our western posts were admitted to the privilege of citizenship? Whether it was not done by treaty, and not in the mode prescribed by law? How did the people at Natchez become entitled to the rights of citizens? Although born out of our allegiance, the moment our Government was established over them, did they not possess of right a security for their lives and property? Could they not demand trial by jury in case of criminal prosecution? When he spoke of their acquiring the rights of citizens, he did not mean in the full extent in which they were enjoyed by citizens of any one of the particular States; since they possessed not the right of self-government, but those rights of personal lib-

erty, of personal security, and of property, which were among the dearest privileges of our citizens. A stipulation to incorporate the ceded country does not imply that we are bound ever to admit them to the unqualified enjoyment of the privileges of citizenship. It is a covenant to incorporate them into our Union—not on the footing of the original States, or of States created under the Constitution—but to extend to them, according to the principles of the Constitution, the rights and immunities of citizens, being those rights and immunities of jury trial, liberty of conscience, &c., which every citizen may challenge, whether he be a citizen of an individual State, or of a territory subordinate to and dependent on those States in their corporate capacity. In the meantime they are to be protected in the enjoyment of their existing rights. There is no stipulation, however, that they shall ever be formed into one or more States.

He denied the correctness of the doctrine advanced by the same gentleman, that the stipulation entered into by France, in time of war, to raise the Duke of Parma to the throne of Etruria, bound her to obtain a recognition of that King from every Power of Europe. All which concerned us in that treaty had been recited in ours with France. By the Treaty of St. Ildefonso His Catholic Majesty stipulates "to redeliver (*retroceder*) to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to his Royal Highness the Duke of Parma, the colony or province of Louisiana." What these stipulations were is certainly known only to the parties themselves, for they never were officially made public, although we are at no loss to conjecture them. Nor are we at all concerned whether France has or has not complied with them. Because in a treaty executed at Madrid, six months after, in March, 1801, they show that they consider the former treaty as having passed the title to the country to France. The fifth article is as follows:

"This treaty being in pursuance of that already concluded between the First Consul and His Catholic Majesty, by which the King delivers to France possession of Louisiana, the contracting parties agree to carry into effect the said treaty," &c.

Spain, therefore, being satisfied as to the stipulations entered into by France in the Treaty of St. Ildefonso, declares herself in the second treaty ready to redeliver the country to her whenever she was ready to receive it, and Mr. R. said, he had it from high authority that the royal mandate to that effect was in the hands of the Minister of the French Republic near the United States, and would be forwarded to the existing government of Louisiana so soon as the treaty should be confirmed on our part.

Having departed considerably from the particular point on which he wished to be satisfied by the gentleman from Connecticut, who had spoken first (Mr. GRISWOLD,) he would again recall the attention of that gentleman to the third article of the Treaty of London, and request that he would reconcile its provisions to the doctrine which he had advanced on the seventh article of the treaty then before the Committee.

The Committee now rose, Mr. SPEAKER resumed the Chair, and Mr. DAWSON reported that the Committee had, according to order, had the said message, treaty, conventions, and motion, under consideration, and come to several resolutions thereupon; which he delivered in at the Clerk's table, where the same were read, as follows.

1. *Resolved*, That provision ought to be made for carrying into effect the treaty and conventions concluded at Paris on the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic.

2. *Resolved*, That so much of the Message of the President, of the twenty-first instant, as relates to the establishment of a Provisional Government over the Territory acquired by the United States, in virtue of the treaty and conventions lately negotiated with the French Republic, be referred to a select committee; and that they report by bill, or otherwise.

3. *Resolved*, That so much of the aforesaid conventions as relates to the payment, by the United States, of sixty millions of francs to the French Republic, and to the payment, by the United States, of debts due by France to citizens of the United States, be referred to the Committee of Ways and Means.

The House proceeded to consider the said resolutions at the Clerk's table: Whereupon the first resolution being again read, was, on the question put thereupon, agreed to by the House—yeas 90, nays 25, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, Levi Casey, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, David Holmes, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—William Chamberlin, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Nahum Mitchell, Thomas Plater, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Peleg Wadsworth, and Lemuel Williams.

The second resolution being again read, and amended at the Clerk's table, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That so much of the Message of the President of the twenty-first instant, as relates to the occupation and establishment of a Provisional Government over the Territory acquired by the United States, in virtue of the treaty and conventions lately negotiated with the French Republic, be referred to a select committee; and that they report by bill, or otherwise.

Ordered, That Mr. JOHN RANDOLPH, Jr., Mr. JOHN RHEA of Tennessee, Mr. HOGE, Mr. GAYLORD GRISWOLD, and Mr. BEDINGER, be appointed a committee, pursuant to the said resolution.

The third resolution reported from the Committee of the whole House, being again read, was agreed to by the House.

WEDNESDAY, October 26.

Mr. FINDLEY, from the Committee of Elections, to whom it was referred to examine the certificates and other credentials of the members returned to serve in this House, made a report in part thereupon; which was read, and ordered to lie on the table.

A memorial of sundry inhabitants of the two western counties of the Indiana Territory of the United States, was presented to the House and read, stating certain inconveniences and embarrassments to which the petitioners have been and are now subjected, in consequence of their connexion, under the same Government, with the eastern extremity of the said Territory; and praying that, whenever Congress in their wisdom may think proper to establish a Territorial Government for the district of country called Upper Louisiana, the petitioners and other inhabitants of the said two western counties may be connected under the same Territorial Government.

Ordered, That the said memorial do lie on the table.

The SPEAKER laid before the House sundry depositions and other papers, transmitted to the Clerk from Fluvanna county, in the State of Virginia, touching the election of Thomas Mann Randolph, one of the members returned to serve in this House, for the said State; which were read, and ordered to be referred to the Committee of Elections.

Mr. TENNEY, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a report in part thereon; which was read, and ordered to lie on the table.

Ordered, That the Committee of Ways and Means, to whom was yesterday referred "so much of the treaty and conventions, lately negotiated with the French Republic, as relates to the payment by the United States of sixty millions of francs to the French Republic, and to the payment by the United States of debts due by France to citizens of the United States," have leave to report thereon by bill, or bills, or otherwise.

Mr. J. RANDOLPH, from the committee last mentioned, presented a bill for carrying into effect the conventions of the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic; which was read twice, and committed to a Commitee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof;" to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole House to-morrow.

AMENDMENT TO THE CONSTITUTION.

The House resolved itself into a Committee of the Whole on the state of the Union, on the proposed amendment to the Constitution.

Mr. CLOPTON addressed the Chair as follows: Mr. Chairman, I beg leave to solicit the indulgence of the Committee a few minutes. Having had the honor to propose an amendment to the report of the select committee, and having failed of obtaining it, I feel a wish to state my reasons why I am in favor of the principle of the provision contained in the report; the principle of designating the persons voted for as President and Vice President. Sir, the propriety, the eligibility, and the importance of such a provision, appear to my mind so plain, and so obvious, as scarcely to require a single argument to support it. Nevertheless, plain and obvious as I think it is, it does not meet with universal approbation; inasmuch as it contemplates a material alteration in one of the provisions of the Constitution, and an important provision too, inasmuch as it may involve consequences of vast moment to the happiness and tranquillity of this country. I trust the Committee will pardon me for troubling them with a statement of the principal grounds of my opinion in favor of the resolution. I promise the Committee that I will not utter a single word but what applies directly to the principle of the resolution. Every sentence shall be a reason why I am in favor of that principle. I am in favor of the resolution because it is perfectly congenial with the most essential principles of our Government, even the principle of representation. For, sir, in a Government constituted as our Government is, wherein all the constituted authorities are the agents of the people, the suffrages given for the election of those agents ought ever to be a complete expression of the public will, and should therefore be directed immediately to those persons in whom the Electors intend to place confidence, as their agents, in the particular offices for which the elections are made. An election, therefore, which may, from the mode of holding it, ter-

minate ultimately in the appointment of a different person to an office, than the one originally intended for it by a majority of the Electors, cannot be said to be such complete expression of the public will. When one person is intended for an office and another person actually obtains it, such election, if indeed it can properly be called an election, is not conformable to the will of those by whom it was made. No sir, it is contrary to it. The effect resulting from the act of the majority, in such a case, would be completely at variance with the will of that majority in performing the act. Such an event would indeed exhibit a case in which the will of the majority would be defeated by the act of the majority in the very exercise of its elective franchise. I think, sir, I can prove that such a consequence may result from the present mode of choosing the President and Vice President of the United States. I think I can prove it in the following manner: I will suppose that four persons, A. B. C. and D. shall be held up for candidates. I will then suppose that ninety-five Electors shall prefer A for President, and vote for him with the intent to elect him to that office, and that the other eighty-one Electors shall prefer B for President and accordingly vote for him. I will suppose also that, of the ninety-five Electors, who prefer A for President seventy-five shall also prefer C for Vice President, and give him their votes with that intent, and that the other twenty Electors shall prefer D for that office. Lastly, I will suppose that of the eighty-one Electors who prefer B for President, twenty-five shall also prefer C for Vice President, and accordingly vote for him; and that the other fifty-six shall prefer D for that office. Now, because seventy-five of those ninety-five Electors who prefer A for President and twenty-five of those who prefer B for President, are also willing that C should be Vice President, and vote for him with that intent, C actually becomes President with one hundred votes, not one of which was given to him for that purpose. Thus the will of ninety-five, who compose a clear decided majority of the whole number of Electors, is defeated by seventy-five of their own votes, together with the other twenty-five votes given to C; that is to say, the will of the majority is defeated by the act of the majority, in the very exercise of its electoral capacity. But, Mr. Chairman, if the proposed amendment should be adopted, this anomalous effect cannot then result; for, as each of the candidates would then be designated for the particular office for which he was intended, ninety-five votes would be given to A for President; eighty-one would be given to B for President; one hundred to C for Vice President; and seventy-six to D for Vice President. So that A would then be elected President, according to the real will and intention of ninety-five Electors, by a majority equal to the difference between eighty-one and ninety-five; and C would be elected Vice President agreeably to the will and intention of one hundred Electors, by a majority equal to the difference between seventy-six and one hundred.

Mr. Chairman, such an event as that which I have stated as a possible, and, perhaps, a probable result, from the present mode of choosing the President and Vice President of the United States, must be a serious evil. In no point of view can I contemplate it, in which it does not present itself as an evil of considerable magnitude. For, sir, however respectful the public attention might have been towards the person who thus becomes Chief Magistrate of the Union, contrary to the intention of the Electors, contrary to the public sentiment, contrary to the public will, it cannot be expected that with the acquisition of the office, under these circumstances, he will receive the public confidence. It is not the nature of Governments as purely elective as this Government is, to produce a spirit altogether acquiescent in elections of this sort. It is not in this country, where the elective principle is so highly revered, so warmly cherished, and so dearly valued, that we are to look for a disposition in the public mind to feel itself satisfied with the introduction of agents into office, who are not the objects of its choice. Even in respect to departments of inferior consideration, this disposition is not to be found; much less can it be expected to appear and display itself, should the great and important duties of the Chief Executive Magistrate, by an appointment thus brought about, be devolved on a person not contemplated for that station. It is, indeed, the nature of elective representative Governments to produce a very different spirit, a spirit of dissatisfaction, under such appointments. Or, more properly may it be said, sir, that in all such Governments there is a spirit coeval in existence with the Governments themselves, which disposes the people rather to withhold their affection from public functionaries, than to bestow it upon them, when introduced into office after this manner. It is inseparable from the people of all countries, where the elective system prevails in any degree. Its influence and activity, ever commensurate with the degree of perfection which pervades that system, proportionably diffuse themselves through the great body of the people. Wherever genuine rational liberty most abounds (and I believe, sir, that so far from abounding, it cannot exist at all, where election and representation do not exist,) there this spirit abounds in like degree; there it is to be traced through all the departments of life; there it animates the mass of the community; there it spreads. It extends and enlarges its sphere of action through the whole circle of society, and that influence is exerted to a degree of prevalence in proportion as the principles of that liberty actuate the public mind. It is not the spirit of a wild and furious licentiousness, thirsting for the destruction of law and of order. It is not a spirit which aims to loosen the bands of society, or to weaken the sanctions of law. No, sir, it breathes quite a different wish. It believes that the strength of the one and the efficacy of the other of these essential means of human happiness are best secured in the agency of those organs of public authority whose creation springs from the public will; and, believing this, wishes that the elective principle in its practical operations may be directed through the channel of that public will. It believes that such direction of this great, this important, this inestimable principle is necessary to give full effect to the representative system, on which depends the attainment of all the great *desiderata* of a free Government—everything truly desirable in Government. And where sir, does this spirit more abound than in America? Where does it so much abound? Is it not the pride and the boast of Americans? Sir, I believe it is. I believe, too, it is a laudable, an honorable pride. It is a great, leading, characteristic sentiment which pervades the American mind—which dignifies and adorns this country—which constitutes the very germ of true American greatness. It is that which operates as the source of everything which spreads forth the lustre and the glory with which this nation is surrounded. It is the life, the soul, of the Republic. It is that vivid flame which warms and cherishes, and gives to the body politic its just and proper and natural impulse, and directs its course towards the true end of the social institution—the universal good. I believe, therefore, Mr. Chairman, it must be a consideration of primary importance that the modes of election be so established that in their event they may always secure a full expression of the public will, and the appointment of all public agents conformably thereto.

With these impressions on my mind, Mr. Chairman, and from the evident risk attendant on the present mode of choosing the President and Vice President of the United States, that the election of those high and important officers of the Government may terminate contrary to the public will, I am thoroughly convinced of the expediency of the proposed amendment to the Constitution, directing a designation of them in the electoral votes.

Sir, the case which I had the honor to state to the Committee as possibly, and perhaps probably, resulting from the present mode of election, is a case wherein a decided majority of the electoral votes shall have been given to one of the candidates, though not according to the intention of the Electors who gave them. But, sir, what can we expect to be the public sensation in a case wherein an equal number of votes shall have been given to each of two candidates, and this House shall finally decide the election by rejecting that candidate for the Presidency, who was intended for it by a majority of the people and of the Electors, and choosing the other candidate who was not so intended for that office? The first mentioned circumstance of such a case we have already witnessed; and, sir, should I mistake the circumstance, were I to say we had mournfully witnessed it? And what, sir, would have been the condition of these States, if, when assembled at this Capitol, by their Representatives, they had continued so divided in their votes that no actual election of a President had taken place, although the public sentiment had been clearly and unequivocally pronounced in favor of one of the candidates? There was every reason to believe, sir, that gloomy indeed would have been the prospect! A long train of evils incalculable in their consequences could hardly have failed to overspread the face of this delightful country! Indeed, sir, what would have been the ultimate issue it is not within the compass of human foresight to divine. This great, this flourishing country, which at this time pours forth innumerable streams of prosperity, displaying in vast and rich variety every means of individual happiness, every means of national happiness, and every means of true national glory, instead of exhibiting the present pleasing, animating prospect, before this period might have been enveloped in dark and dismal clouds of confusion, disorder, and political distraction! The bands of society being thus in a manner broken asunder, and all the angry turbulent passions incident to man left unrestrained, what fatal consequences might be expected to follow! What violence of party, what rage of ambition, what dreadful commotions, might be expected to agitate this then unfortunate country! And, sir, is there a single American living whose blood is so far chilled with indifference concerning the fate of this country, that he would not be stricken with awful alarm at the prospect of such an event—an event tending directly to produce so complete a state of anarchy with all its concomitant calamities? No, sir, no! I would hope, I would persuade myself, Mr. Chairman, there is not one. Nevertheless, although the spirit of patriotism might have predominated over that of party in the case which has happened—determined the election, and determined it conformably to the public sentiment—yet, sir, have we any infallible security that, in all future times, should any similar case occur, the same regard for the peace, the tranquillity, and happiness of this great community will retain the ascendency and arrest the evil? The mournful experience of ages, transmitted to us through the page of history, teaches an awful lesson that such security cannot be expected. I am seriously impressed with this sentiment, therefore, that it behooves us to let it be a work of the present day to guard against so great an evil by removing from the Constitution the means whereby it may be accomplished.

But suppose, sir, in the case alluded to, the election had terminated otherwise than it did, is there a single man in existence who believes that such election would have been hailed by the public voice with any degree of complacency? Innumerable, sir, and strong were the evidences of a contrary operation on the public mind; innumerable and strong were the evidences that such an event would have been very unfortunate—would have produced much more of the public indignation than of the public approbation—although it would have been better than no election at all. And there can be no manner of question, sir, that if, in any future election, a similar case should occur, and such should be the ultimate event, whoever might be the candidates, a very disagreeable effect would be wrought upon the public mind; that whenever such an event should happen, it would call forth the public indignation.

Should it be objected, Mr. Chairman, that even if the proposed amendment should be adopted and become a part of the Constitution, it will not make such provision as would, in all future elections, secure a majority of electoral votes to be given to some one or other of the candidates, and thereby preclude the necessity of ever again resorting to a vote of this House for a final decision; it must be acknowledged that no provision whatever can be made so as to have that operation; but if, in any election, no person should have a majority of electoral votes, a Legislative decision in such a case cannot possibly be attended with the same disagreeable consequences as such a decision might be attended with in a case happening under the existing mode, similar to that which has been cited; for, if the amendment should be adopted, inasmuch as each of the candidates would then be designated by the electoral votes for the particular office for which he was intended, and consequently thus pointed out as being so far the objects of public choice, on whomsoever of them the ultimate election should fall, the successful candidate, I apprehend, would be more acceptable to the public mind than any person could be who had not been contemplated for President by any of the Electors. Such public approbation I consider, sir, as a circumstance of incalculable importance in such an election. I hope, therefore, the resolution will be agreed to, and obtain the sanction of a full Constitutional majority.

The Committee rose, and reported a resolution thereupon, which was twice read, amended, and agreed to by the House, as follows:

"*Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring*, That the following article be proposed to the Legislatures of the different States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid, to all intents and purposes, as part of the said Constitution, viz:

"In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; of whom, one at least shall not be an inhabitant of the same State with themselves. The person voted for as President having a majority of the votes of all the Electors appointed, shall be the President; and if there shall be no person having such majority, the President shall be chosen from the highest numbers, not exceeding three, on the list for President, by the House of Representatives, in the manner directed by the Constitution. The person having the greatest number of votes as Vice President shall be the Vice President; and in case of an equal number of votes for two or more persons as Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution."

THURSDAY, October 27.

Another member, to wit: ABRAM TRIGG, from Virginia, appeared, produced his credentials, was qualified, and took his seat in the House.

Ordered, That the resolution agreed to yesterday, in the form of a concurrent resolution of the two Houses, proposing an article of amendment to the Constitution, respecting future elections of President and Vice President, be recommitted to a Committee of the whole House to-day.

A memorial and petition of the Illinois and Ouabache Land Companies was presented to the House and read, praying that Congress will consider and ultimately decide on their memorial presented to this House on the eleventh of March, one thousand eight hundred and two, in such manner as may be deemed equitable and proper.

Ordered, That the said memorial and petition do lie on the table.

Ordered, That the Committee of Ways and Means, to whom was referred so much of the treaty and conventions lately negotiated with the French Republic as relates to "the payment by the United States of debts due by France to citizens of the United States," have leave to report thereon by bill or bills, or otherwise.

Mr. RANDOLPH, from the committee last mentioned, presented a bill making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States, by virtue of the convention of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. LYON observed that the country in which he lived had been for some time supplied with salt and lead from the Louisiana country, on which articles considerable and burdensome duties are imposed. For the purpose of liberating the citizens from these duties, he moved a resolution, declaring it expedient that provision should be made for suspending the collection of all duties on articles imported into the ports of the United States from the territory ceded to the United States by the Louisiana convention, with the view of having it submitted to the Committee of Commerce and Manufactures.

Ordered, That it lie on the table.

AMENDMENT TO THE CONSTITUTION.

Mr. J. CLAY, after observing on the proceedings of yesterday in respect to the future mode of election of President and Vice President, said he should move an amendment to strike out the word *three*, and insert the word *five*.

Mr. DAWSON said that a motion, in substance, to the same purpose, had been presented to the House yesterday, and rejected. He felt no anxiety whether the House, in case of equal votes for President and Vice President, was confined to three or five; but it was his wish that the least alteration possible should be made in the Constitution, as first framed. Under this consideration, the insertion of the word *three* was, in his opinion, the least of the alterations proposed. He thought that making the choice out of *five*, was guarding against what might perhaps never happen. He should, however, feel little difficulty in voting for either.

Mr. NICHOLSON declared that it was unnecessary to take up the time of the Committee. The gentleman who moved the amendment tells us that *five* is the least deviation. He could not agree to this. It did not in the least affect the choice of a Vice President.

Mr. SMILIE considered it a duty due to himself to assert that his sentiments through the whole of this business were uniform. He thought that he could discern that the Chairman was surprised at the deviation from the original opinion of some gentlemen. His present sentiments he had declared before the select committee, and to these he still adhered. He said he would vote in any way, so that an opinion might be had; and the less they deviated, the safer they were. He had no object in view but the public good. He was extremely tenacious in altering the Constitution, but, without the spirit of accommodation, they could never agree upon a number. If one gentleman, to indulge himself, persisted in the number *three*, and others of *five*, he knew not when an opinion could be obtained.

Mr. ELLIOT said that he would engross the attention of the Committee but a moment, and he would not ask for that moment if he did not think that what he had to offer would facilitate an accommodation. Some gentlemen, he observed, were so tenacious of the number being *five*, that, unless they were indulged, they would never make an amendment. He would therefore vote for that number, in order to promote his desired accommodation.

The question was taken for inserting the word *five*—ayes 59, noes 47.

On motion, the Committee rose, and the SPEAKER resumed the Chair, when the question was again put and carried. It was then moved that the amendments be engrossed, and that a third reading be had to-day. Agreed to.

LOUISIANA TREATY.

The House resolved itself into a Committee of the Whole on the bill from the Senate, entitled; "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for other purposes."

The bill having been read, by paragraphs, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy the territories ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army and navy of the United States, and of the force authorized by an act passed the third day of March last, entitled, "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," which he may deem necessary; and so much of the sum appropriated by the said acts as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

SEC. 2. *And be it further enacted*, That, until Congress shall have made provision for the temporary government of the said Territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct.

Mr. J. RANDOLPH said he was apprized that the bill was of such a nature as seemed to delegate to the President of the United States a power the exercise of which was intended to have but a short duration; he was also aware that some such power was necessary to be vested in the Executive, to enable him to take possession of the country ceded by France. But he could conceive no cause for giving a latitude, as to time, so extensive as that allowed by the second section, which says, that "until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner, as the President of the United States shall direct." If we give this power out of our hands, it may be irrevocable until Congress shall have made legislative provision; that is, a single branch of the Government, the Executive branch, with a small minority of either House, may prevent its resumption. He did not believe that, under any circumstances, it was proper to delegate to the Executive a power so extensive; but if proper under certain circumstances, he was sure it was improper under present circumstances. As he conceived it proper to deal out power to the Executive with as sparing a hand as was consistent with the public good, he should move an amendment to substitute in the place of the words "Congress shall have made provision for the temporary government of the said territories"—these words, "the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress." So that if Congress shall make provision for the government of the territory at any time during the session, the power of the President will cease, and at any rate at the expiration of the session. In other words, this amendment will compel Congress to take early measures for reducing this enormous power, delegated to the Executive, by the establishment of a government for the people of Louisiana.

Mr. R. GRISWOLD moved to strike out the whole of the second section, which would supersede the motion of the gentleman from Virginia. He made this motion to obtain an explanation respecting the nature and extent of the delegated power. That section provides "that until Congress shall have made provision for the temporary government of the said territories, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same, shall be vested in such manner, as the President of the

'United States shall direct." I wish to know, said Mr. Griswold, whether any gentleman can inform me what the military, civil, and judicial powers, exercised by the officers of the existing province are; for we are about to confirm them, and direct their execution by the authorities of the United States.

It is probable that some of them may be inconsistent with the Constitution of the United States. We have certain restrictions on powers exercised under it. For instance, that the *habeas corpus* shall not be suspended in cases of invasion or rebellion, and a variety of other restraints. It is for this reason that I think we ought to have some knowledge of the powers exercised in Louisiana, before we confirm them in the lump; and in order to obtain this information, I move to strike out the section.

Mr. ELLIOT rose to second the motion of the gentleman from Connecticut, and to express his coincidence in the sentiments of that gentleman on this subject. He would never consent to delegate, for a single moment, such extensive powers to the President, even over a Territory. Such a delegation of power was unconstitutional. If such a provision as that contemplated by the section were necessary, it became Congress itself to enter upon the task of legislation.

Mr. J. RANDOLPH had hoped that some other member would have given the gentleman from Connecticut the satisfaction he asked in relation to the provisions of the section proposed to be stricken out. No one having risen, he would do it himself as well as he was able. That gentleman asks whether we know the civil, military, and judicial powers that subsist in Louisiana; and contends that it is necessary we should know them before they are transferred to the Executive of the United States. If the section were to stand as it now does, Mr. R. said he would be as unwilling as the gentleman from Connecticut to agree to it. But, with the proposed limitation, he saw no substantial objection to it. He was one of those who did not know with precision what the subsisting civil, military, and judicial powers exercised in Louisiana were; and yet he saw not the difficulty which the gentleman had stated, as to the temporary transfer of the powers to the Executive with the limitation proposed—And wherefore? Because, in the nature of things, it was almost impossible to take possession of the country without the exercise of such powers at some point of time, and if they should be exercised but for a single moment, such exercise would be as hostile to the principles of the gentleman as the exercise of them for a whole year.

I ask, said Mr. R., whether if the country should be taken possession of on the principles advocated by the gentleman on a former day, these powers would not all have attached to the Executive? Suppose instead of assuming the civil government of the territory, it had been taken possession of by storm, by an army of 40 or 50,000 soldiers—Will the gentlemen contend that under such circumstances, the privilege of the habeas corpus or trial by jury would have been invaded? Undoubtedly not. If the gentleman will advert with precision to the first section, he will perceive that it is contemplated to take possession in such a manner as will give the United States security in that possession. For though we might not doubt the disposition of the Government of France to give us a secure possession, or apprehend difficulty from any other quarter, yet it would be recollected that there were citizens or subjects in the territory requiring some government. It was not impossible that on taking possession there may be some turbulent spirits, who, having at heart the advancement of personal schemes, may be disposed to resist. It would be unwise then in Congress to delay making the requisite provision, until necessity claimed it, and until, perhaps, after Congress had adjourned.

Gentlemen will see the absolute necessity of the path chalked out by the Senate. They will see the necessity of the United States taking possession of the country in the capacity of sovereigns, in the same extent as that of the existing government of the province. After having taken possession, and being in the secure enjoyment of the country, it will be extremely proper to guard against any apprehended Executive invasion of right. This step will then be politic, and it will be observed that the section as amended enjoins this duty upon Congress. If, however, the gentleman from Connecticut will show us any way in which the country may be taken possession of, with security, and by which the people may enjoy all the rights and franchises of citizens of the United States immediately, I shall be happy to give it the sanction of my vote. But to my mind this appears impossible.

Mr. GRISWOLD thought it extraordinary that the gentleman from Virginia should call upon him to propose a plan for avoiding the difficulties that would apparently result from the system proposed by the bill; when it had only that day been laid upon their tables, and had been yesterday refused to be referred to a select committee; and of consequence, no time for reflection had been allowed. Under these circumstances, it was indeed extraordinary that he should be expected to propose a plan. He confessed he was unable to offer any. To do it would doubtless require time and deliberation. It was sufficient for him that the bill infringed the Constitution. By the second section it is proposed to transfer to the President of the United States all the powers, civil, military, and judicial, exercised at present in that province. What are those powers? No gentleman is able to inform me. It may be presumed that they are legislative; the President, therefore, is to be made the legislator of that country: that they are judicial; the President, therefore, is to be made judge: that they are executive, and so far they constitutionally devolve on the President. Hence we are about making the President the legislator, the judge, and the executive of this territory. I do not said Mr. G., understand that, according to the Constitution, we have a right to make him legislator, judge, and executive, in any territory belonging to the United States. Though, therefore,

on this occasion I feel no jealousy of the abuse of the powers conferred on the President, yet I cannot agree to them, because I consider them repugnant to the Constitution.

The argument that the powers are necessary, though unconstitutional, is no argument with me. If gentlemen can so explain the section, as to show to the satisfaction of the Committee that it is competent to this House to transfer to the President all these powers, I shall have no objection to the section; but until this is done, it is my duty to vote for striking it out. And though it is impossible for me, at this moment, to devise a plan for overcoming these difficulties, yet I trust, if time be allowed, there will be found wisdom enough in the Committee to devise one. To the first section, authorizing the taking possession of the country, so far as I can understand it, I can see no objection.

Mr. NICHOLSON was opposed to striking out the second section, as he did not perceive the evils contemplated by the gentleman from Connecticut. The question is, whether we shall take immediate possession of this country, or wait till this body shall have time to form such a government as shall be hereafter likely to render the people happy, under laws according to the provisions of the Constitution? I think, said Mr. N. it will be injudicious to delay taking the possession, until such a government shall be formed. The only question then that can be started is, whether the second section of this bill violates the Constitution. On this point I differ entirely from the gentleman from Connecticut. I do not see in it any violation of the Constitution. The gentleman supposes that by adopting the provisions of the second section we shall vest all the civil, military, and judicial powers of the existing Government of Louisiana in the President. But it clearly is not so. We vest in him the appointment of the persons who shall exercise these powers, but we do not delegate to him the exercise of the powers themselves. Is there any difference between this, and the provisions of the ordinance of 1787, which relates to territorial governments? By that ordinance, and I have never heard its constitutionality questioned, all the civil, military, and judicial powers are vested in such persons as the President may appoint. Judicial powers are vested in persons appointed by the President; so with respect to the civil and military powers; and the legislative powers are vested in a body, part of which is appointed by the President. I am, with other gentlemen, unable to say what are the nature and extent of the powers exercised by the present Government of Louisiana. But we must authorize the taking possession of the country, and we must on such an event, authorize the exercise of these powers, viz: the exercise of military power by an army, the judicial powers by judges, and the other necessary powers by other officers; and unless Congress shall divest the President of the power of appointing these officers, it will be vested in him by the Constitution. I repeat it; these powers are not delegated to the President, but to such persons as he may appoint. I know the old axiom, *qui facit per alium facit per se;* but it does not apply in this case. It is possible that these appointments may be conferred on persons in the ceded country, or the persons may be sent from the Atlantic States, or from the Mississippi Territory; but be this as it may, some persons must be appointed to exercise these powers until Congress shall establish a new government.

Mr. MITCHILL expressed his wish that the section of the bill might stand. To strike it out would be to make void all the proceedings respecting the province of Louisiana, on which Congress had been engaged with so much care and diligence. We had purchased the country, and made arrangements to pay for it; and now, with the consent of France, possession is to be taken; when behold! an objection is made to that part of the intended statute which confers on the President the power to occupy and hold it peaceably for the nation.

The motion to obliterate the second section of the bill, is grounded on the danger to be apprehended from an enlargement of the Presidential power. And it is alleged that if the section should receive the vote of the House, all military, civil, and judicial authority would be thereby centered in the Executive. It was declared to be unconstitutional in Congress to delegate such vast unlimited authority; and, even if the Constitution permitted it, there would be great indiscretion in the delegation of such power.

For his own part, Mr. M. said, he was strictly tenacious of the rights reserved to the people. He was equally regardful of the privileges belonging to the States. He was a zealous advocate too, of the powers secured to the National Legislature by the Constitution. In taking possession of the ceded country, in the manner proposed by the bill, there was no violation of the rights of the citizens, no usurpation of the privileges of the republics, nor any infraction of the great national deed of settlement. The jealousy expressed by some gentlemen against the accumulation of excessive power in the Chief Executive Magistrate was excited by slight circumstances. Mr. M. was totally averse to the creation of a dictator; nor did he discern any thing tyrannical or despotic lurking in the paragraph which had been spoken of in such odious terms. The mischief complained of was rather imaginary than real.

But, let it be examined fairly what Congress are meditating to do. The third section of the fourth article of the Constitution contemplates that territory and other property may belong to the United States. By a treaty with France the nation has lately acquired title to a new territory, with various kinds of public property on it or annexed to it. By the same section of the Constitution, Congress is clothed with the power to dispose of such territory and property, and to make all needful rules and regulations respecting it. This is as fair an exercise of Constitutional authority as that by which we assemble and hold our seats in this House. To the title thus obtained, we wish now to add the possession; and it is proposed that for this important purpose, the

President shall be duly empowered. There is no person in the nation to whom this can be so properly confided as to the President. Besides, being the head of the Executive department, he is indebted for his promotion to that exalted place to the suffrages of electors chosen from the people. And the people of the United States can have no serious or solid objection to the part of the bill now proposed to be expunged, which authorizes the man of their confidence and choice to take possession of Louisiana in their behalf.

It has been said that all civil, military and judicial powers are to be consolidated and confounded in the President. There is no such thing meditated, Mr. Chairman, in the bill. The President is not to officiate in either of those capacities personally in Louisiana. He is only to direct in whom the authority now existing in the French or Spanish officers of the province shall vest when our Government shall have gained the possession of it; and in what manner that authority so transferred shall be exercised by those to whom it shall be by him delegated. In all this, the President does not so much himself act, as he puts other persons in a condition to act. In the accomplishment of the object the President would indeed provide for the performance of civil, judicial, and military duties; but in effecting these he would only appoint the others and give directions as to their manner of proceeding, but he would not himself be either a legislator, a judge, or a colonel of the island of New Orleans. He was in short only the organ by which certain acts necessary to be done, and incidental to gaining the actual possession of the country, could be performed. And if ever the plea of adopting measures *de necessitate* could be made, it was on such an occason as this.

Mr. M. then drew a parallel, which he hoped would be agreeable to the opposers of the bill, between the powers intended to be vested in the President of the United States and those which, according to the law and usage of England, were inherent in the King. According to the true theory of the British constitution, the Sovereign was the chief judiciary officer and president in his courts; he was also the head of the established Church, and of course the great spiritual President of the realm; in him, also, were deposited the important concerns of war and peace. The writs were tested in his name, yet it was notorious that he nowadays never went personally and took a seat on the bench. He did not take upon himself the performance of sacerdotal functions, nor act the part of a bishop or archdeacon. Neither did he go forth into the field of battle, and do the duties of a general or a quartermaster. Yet the King had a qualified superintendence over all these great departments of the public business, which it was not expected he should perform in person, but cause to be performed by fit persons of his appointment. So it was with the President in the present case. He was not supposed by anybody to be sent into Louisiana to act personally, in either a civil, military, or judicial character. The spirit and meaning of the bill went no further than to authorize him to employ such men as he should judge capable and worthy of those several kinds of trusts. And so far, Mr. M. said, in the present case, he was entirely willing to delegate the power by law. It would not be permanent, but *ad interim* only. There was a provision in the section against the perpetuity of this power, by the resumption of it as soon as Congress should have collected information enough to establish a temporary government. And this might in all probability be done during the present session. Mr. M. owned, however, that he should think the bill rather more complete if there was a limitation in it to the amount of expense which would be necessary to carry it into effect, but as he observed a reference in it to the act passed on the 3d of March last, which act contained a limitation as to the sum of money which might be expended, he thought there was no need of moving an amendment for that purpose. As, therefore, there was nothing like a claim of prerogative on the part of the Executive, but on the other hand a Constitutional and sound deposit of powers in him by Congress, Mr. M. hoped the motion to strike out would not prevail.

Mr. Gregg thought the section might be retained, and yet the inconvenience apprehended by the gentleman from Connecticut be obviated by a small amendment, to wit: by adding after the word manner, "not inconsistent with the Constitution of the United States." Mr. G. had no fears of the exercise of the powers vested in the President by this bill, or that he would not concur in relinquishing them when Congress may establish a temporary government for the territory. If the gentleman from Connecticut withdrew his motion, he would offer the amendment he had stated.

Mr. Dana said if the amendment proposed by the gentleman from Pennsylvania were inserted, it might imply that we may pass laws that were unconstitutional; it was, therefore, superfluous. It is objected to the scope of the second section, that it is unconstitutional; insert the amendment and it nullifies it. The gentleman from New York (Mr. Mitchill) has referred to a subject with which he is well conversant. He is correct in stating that the formal style of the English acts is in the name of the King. In the formal style of the acts of Parliament, the King is legislator; but will it be inferred from this circumstance that he is the real legislator? The gentleman is too well acquainted with the constitution and laws of that country not to know that the King, though nominally the dispenser of justice, cannot himself sit upon the bench, and that this has been the case since the act of settlement. He might, in support of this position, refer to the declaration of a celebrated Chief Justice of England, who had said that the honor of the Crown had nothing to do with the courts of justice.

The gentleman is equally unfortunate in his remarks on the power of Congress to make rules for the government of a territory. It is objected to this, that in this case you make no laws at all. Is it to make laws, to say a man may do as he pleases? The proposed government is not even

provisional or circumscribed. Insufficient also is any argument deducible from the ordinance establishing territorial governments. He presumed the ordinance alluded to was that of 1787. Under that ordinance the President is authorized to appoint the judges of the territory; but once appointed they hold their offices during good behaviour. Who, under that ordinance, make the laws? Neither the judges nor the President. No laws can be accepted but such as have received the sanction of a representative body. What is proposed by the bill? That all powers, military, civil, and judicial, exercised by the officers of the existing government, shall be vested in such persons, and shall be exercised in such manner as the President shall direct. He may, under this authority, establish the whole code of Spanish laws, however contrary to our own; appoint whomsoever he pleases as judges, and remove them according to his pleasure; thus uniting in himself all the power, Legislative, Executive, and Judicial. This, though a complete despotism, gentlemen may perhaps say is necessary. If so, let the military power be exercised by the President as Commander-in-Chief of the armies.

Mr. Varnum observed, that it seemed to him that gentlemen who had made a Constitutional difficulty respecting the provisions of this bill, and those of the treaty, had, in their arguments, mistaken their ground on the same point; and that they were objecting to the constitutionality of things not within the Constitution. During the previous discussions, as well as on this day, he thought that as to the retention of the free navigation of the Mississippi by Spain and France, the sovereignty of the ceded territory was not completely vested in the United States until the end of twelve years. We acquire the sovereignty over that country under certain terms; we have not at once all of it that relates to trade. There could, therefore, be no unconstitutionality in carrying the treaty into effect on the ground taken by gentlemen.

He considered the objections made to the second section of the bill under consideration of the same nature. We are told that we are about to authorize the exercise of power over the ceded territory not authorized by the Constitution. He would ask if the Constitution were to take effect as soon as the United States take possession of the territory? On this point he would refer to the treaty. It provides that "the inhabitants of the 'ceded territory shall be incorporated in the union 'of the United States, and admitted as soon as pos-'sible." How incorporated? By a Legislative act? No, "according to the principles of the Fede-'ral Constitution, to the enjoyment of all the 'rights, advantages, and immunities of citizens of 'the United States; and in the meantime they 'shall be maintained and protected in the free en-'joyment of their liberty, property, and the reli-'gion which they profess."

In what meantime? There is a time when the country is acquired, and a time when it will be admitted into the Union. Between these periods, in the meantime, the people are to enjoy their liberty, property, and the religion which they profess. I, said Mr. V., can devise no way of their enjoying these rights, until admitted into the Union, but by their continuing under the government of the laws of Spain. The Senate have made provision for carrying into effect this part of the treaty, and it cannot be carried into effect in any other way. I am, therefore, against striking out the section, and think the amendment unnecessary.

Mr. Eppes said the only question before the Committee was, whether it was important to take possession of this country or not. If a proper view be taken of the proposition of gentlemen opposed to the present measure, though they profess to be the friends of the people of that territory, it will appear in fact to disfranchise them. What will be the effect of striking out the second section of the bill? If the President take possession of the country, what will be the situation of the people? The moment he takes possession, the Spanish government ceases. By what laws then will they be governed? He had never expected from that quarter of the House such a proposition. He had expected from their uniform professions that an attachment to order and good government was with them an universal sentiment. He hoped, therefore, before the Committee concurred with them in striking out the section, some substitute for the government of these people would be offered.

Mr. Eustis said it was possible the bill under consideration might in its details be objectionable, but in principle it was certainly sound. The Government of the United States has a Constitutional right to acquire territory, and they have consequently a right to take possession of it when acquired. The taking possession of it was not only the right, but the duty of the Government. And how is this to be effected? Will any gentleman venture to propose a delay until Congress shall have passed a new code of laws? Are gentlemen, at this late day, to be informed that this would be to throw away one of the most valuable acquisitions made by our country since the adoption of the Constitution, or the Declaration of Independence? As the gentleman, last speaking, rightly observes, the entire government of Spain ceases on our taking possession. Are we then to abandon the people to anarchy?

As to the extent of the power vested in the Executive, it arises from necessity. This is a new case altogether. There is no doubt that on many particular subordinate points, respecting the secure possession of this country, difficulties may present themselves. But Mr. E. presumed and expected that the same wisdom that acquired it, would preside over the councils of the nation to meet and overcome those difficulties. The second section of the bill contemplates the transfer to officers of the United States, of the same powers now exercised. It may be that the exercise of all these powers will not be necessary; while it is possible that others may be necessary. There may be difficulties of various kinds. He should name none. But as they arise, it will be the duty of the Government to be prepared to meet them.

He would, therefore, wish this act rather to increase than curtail them; and that the President should be authorized not only to continue all necessary existing powers, but to institute such other powers as may be necessary for the well being of the territory. Till when? Until this House and the other branch of the Legislature shall make the necessary laws. The powers delegated by the bill are imposed by the imperious circumstances of the case. What if forcible possession shall prove necessary, and the innocent inhabitants should be slaughtered, through a want of the powers necessary to preserve tranquillity and good order; whose will, under such circumstances, will be the governing one? Will not the President, in such event, have all the powers now given him?

Mr. Eustis said he must confess that the objections made to the temporary government of the country, arose from a quarter, which, by opposing every step taken to acquire it, greatly weakened, in his mind, the force of the arguments urged. He recollected when, during the last session, two millions of dollars were proposed to be appropriated towards the acquisition of this important object, it had been objected to, on different grounds—there was then no objection to the constitutionality of the acquisition. He should not, however, go into a detail of the arguments urged on that occasion; those who were present well remembered them. Those objections were well surmounted; and the territory was acquired. After the acquisition, what were the objections of gentlemen? Objections were made that were calculated to weaken our title, and to strengthen that of Spain; and it was further contended that we had no Constitutional right to acquire the territory. These surmounted, what followed? We were then told that we had no right to guaranty to the people the right of citizenship, although the gentleman who urged this difficulty, answered himself in the same breath by saying the Constitution had not provided for such a case. That objection removed, what is the last, and present difficulty? Though called upon to take immediate possession of this territory, you are told, you are not to govern it. This is the amount of the arguments of gentlemen, for if you do not govern it in this way, you can govern it in no other. Mr. E. saw no other alternative; there was no possibility of any other course. He was, therefore, happy to see nothing in the Constitution that forbade pursuing it. On the contrary, it arose imperiously from the acquisition; and the same objections that were now so strenuously insisted upon, would lead to the adoption of those very measures which had been reprobated by both branches of the Legislature, and by a great majority of the American people.

Mr. Elliot said as he had the misfortune to differ, on this occasion, from the gentlemen with whom he generally voted, he should take the liberty of stating his objections to the section moved to be stricken out. He was persuaded there would not be imputed to him, for so doing, the least wish to embarrass the accomplishment of the important object of the secure possession of Louisiana. No; the opinions he entertained were dictated by a wish to accelerate the taking possession. He would endeavor to show that his view of the subject was that taken by the President of the United States. By the law of nations, on the acquisition of country by cession, the laws of the nation ceding continue in force until the laws of the nation acquiring the territory supersede them. What then is necessary to carry this treaty into effect? It is necessary to make the appropriations; this the House have already determined to do. It is necessary to enable the proper authority to take possession of the country. That is done by the first section of this bill. These measures carry the treaty into effect; and the temporary government is immediately consequential.

But it is said, if the President is authorized to take possession, and there shall be no other provision made by Congress, a military government will exist, and will disturb the rights of the people as guarantied by the treaty. No such thing; for the military power will take possession in subordination to the civil authority. To show that the President entertained this view it was only necessary to advert to the language of his Message at the commencement of the session. He therein says: "With the wisdom of Congress it will 'rest to take those ulterior measures which may 'be necessary for the immediate occupation, and 'temporary government of the country."

It is evident that the President considers a temporary government as one of those ulterior measures. In his subsequent Message, he alludes to the same temporary government as an ulterior measure. He says, "the ulterior provisions also 'suggested in the same communication, for the 'occupation and government of the country, will 'call for early attention. Such information relative to its government, as time and distance have 'permitted me to obtain, will be ready to be laid 'before you within a few days." This information we have not yet received; and it is but proper that we wait for it.

Mr. E. apprehended no danger from a military government; information will be soon communicated, and in a few days we will be enabled to establish a temporary government on the information we shall have received.

He could not reconcile the second section with the Constitution of the United States; he believed that the Constitution delegated the legislative power to Congress, and not to the President; and that it not only precluded the President from exercising it, but likewise forbade our delegation of it to him. He repeated, what he had before observed, that he had full confidence in the President; but he objected to this delegation of power on principle; he had sworn to support the Constitution, and believing that, under it, Congress, and Congress only had the power of legislation, he must be against delegating it to the President.

Mr. R. Griswold would agree to withdraw his motion for striking out the section, if he thought that the amendment suggested by the gentleman from Pennsylvania (Mr. Gregg) could have the effect contemplated; but he believed it would not

remove his objection, which was, that the powers, stated in the section, could not be delegated in the manner proposed; therefore to say, that when delegated, they shall not be exercised, was saying nothing, or saying that they should not be delegated. The gentleman from Maryland (Mr. Nicholson) has not taken his ground with his usual accuracy. He has said that these powers are not transferred to the President, but to the officers appointed by him. True, but how are they to be executed? As the President shall direct; therefore the officers are to be viewed as under subjection to the President, and the powers to be exercised as he shall direct. Virtually then they are to be exercised by the President, and are, in fact, transferred to him; and if we cannot transfer to him the power of legislation and judging in any one territory, we cannot in this, and the act is a violation of the Constitution.

There is another objection to the power reposed in the President by this section. The Constitution provides that "he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein provided for, and which shall be established by law: but the Congress may, by law, vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of Department." Now, by the section of the bill under consideration, power is given to the President to appoint all the officers in the province, from the governor down to the lowest officer. Gentlemen will not say that the office of governor or judge is one of the inferior offices contemplated in the Constitution. They had never been so considered. In all the arrangements of appointments for the territorial governments, the sanction of the Senate had been required for the governors, judges, secretaries, &c.; whereas, in this instance, the President is clothed with power to appoint all the officers in the territory. He apprehended that such a power could not be constitutionally given.

Mr. Griswold said he had no wish to retard the enaction of the necessary laws for taking possession, which ought to be immediately done; and he expected, if this section were stricken out, the wisdom of Congress would devise a proper provision.

A gentleman from Massachusetts, (Mr. Eustis,) not content with the extensive delegation of power made by this bill, is for giving to the President all power; the effect of which would be, not only to make him King, but Grand Inquisitor likewise.

Mr. Eustis explained, and said that he was for giving all powers necessary for the welfare of the territory.

Mr. R. Griswold.—The powers proposed to be conferred by the gentleman are without limits. It may be necessary for the welfare of the people, to secure their religion. The President may be therefore, constituted grand inquisitor, he may also be made a king, and likewise a judge, for the good of the people. I am not, said Mr. G., willing myself to give him such extensive powers. I can, however, well account for certain gentlemen urging on this occasion the old French argument of "imperious necessity." But such a pretext can never justify me in giving a vote that will violate the Constitution. I can, in truth, see no such necessity, as provision can be made for admitting these people to the enjoyment of all the privileges stipulated by the treaty, without involving a violation of the Constitution. Gentlemen may criminate, as they please, the motives of those who are for restraining this extension of Executive power; but I trust, whatever may be the feelings of gentlemen, that the Committee will not be impressed with the same opinion entertained by them; but that if they consider this delegation of power as repugnant to the Constitution, they will not agree to it, or, in other words, to the investiture of the President with absolute power over this province. If, on the other hand, they think the delegation is Constitutional, they will feel no repugnance to agreeing to it; because, as I observed before, the power will be of short duration, and will not, probably, be abused.

As to the idea of some gentlemen, that this territory, not being a part of the United States, but a colony, and that therefore we may do as we please with it, it is not correct. If we acquire a colony by conquest or purchase—and I believe we may do both—it is not consistent with the Constitution to delegate to the President, even over a colony thus acquired, all power, Legislative, Executive, and Judicial; for this would make him the despot of the colony. Mr. G. concluded his remarks by observing that he had no jealousy of the abuse of this power by the President; but not being, in his opinion, authorized by the Constitution he could not agree to vote for it.

Mr. Jackson considered the second section of the bill as repugnant to the Constitution; but if this were not the case, he had other objections to it. He thought it important to take immediate possession of the country, and was deeply interested as the representative of constituents who lived on the waters connected with the Mississippi; still he did not think it proper to be premature in establishing a system of government. So far as relates to the taking possession, said Mr. J., let us then adopt immediately the necessary measures. But so far as relates to the formation of a government, let us take time for it. I would prefer an interregnum to doing anything which should militate against the Constitution, or principles that have been long respected. I wish not to adopt the principle of the right of this House to delegate such extensive powers for even one day; for, if they possess the right of delegating them for one day, they possess the co-extensive right of delegating them forever. Let us not then delegate them at all. It is my wish to be consistent. I have always been against delegating extensive power to the Executive; and I know not of any power so extensive before delegated. But gentlemen say it is incumbent on us to take immediate possession. For this the first section of the bill is amply sufficient; and I cannot see the inconve-

nience of postponing the other part of the bill for a few days; particularly if the ideas of the gentlemen from Vermont (Mr. Elliot) are correct, that the laws of the ceding country will remain in force until superseded by those of the country that has acquired the territory. The gentleman from New York sees no danger in giving to the President despotic power over this territory for a few days.

Mr. Mitchill explained, and observed that the gentleman had mistaken his remark. His object was to show, that though the power might appear to be despotic, yet that it really was not so.

Mr. Jackson said he understood the gentleman as he had explained. If the power delegated carried with it such an appearance, it ought to be a sufficient reason for rejecting it.

The gentleman from Massachusetts (Mr. Varnum) has observed that we do not acquire the exclusive sovereignty of this territory till the expiration of twelve years after the ratification of the treaty. In this opinion I differ from him, for if we do not possess the exclusive sovereignty, it would be impossible for us to legislate, as the act of legislation is the highest attribute of sovereignty.

When I recur to the Constitution, I find that though it does not expressly say, the Legislative, Executive, and Judicial powers shall be distinct, as some constitutions lately formed do, yet it amounts in fact to the same thing, by delegating special powers exclusively to particular departments. I believe also the President to be inimical to the extension of Executive power. I am not afraid of delegating such power, if not inconsistent with the Constitution, because I have so much confidence in the President, as to be convinced that he would not abuse it. But I believe principle ought, under all circumstances, to be respected; and under present circumstances, though we may have a President so congenial to our wishes. What, if hereafter we should deem it important to oppose the delegation of such power? gentlemen, in favor of such a delegation will say, here is a precedent set by yourselves, and thus preclude us, on the score of consistency, from opposing the measure.

I did intend to say something about the right of the United States to acquire territory; but the gentleman from Connecticut (Mr. Griswold) having acknowledged the right to acquire it, either by purchase or cession, renders all further remarks on this point unnecessary.

Mr. Smilie said, this subject struck him differently from other gentlemen. If it appeared clear to him that the Constitutional right to delegate the powers contemplated by the second section did not exist, he should vote against it. But he entertained no doubt on this point. He knew that it had been doubted whether the Constitution authorized the Government of the United States to acquire territory; but those doubts were this day abandoned. He agreed in opinion with the gentleman from Massachusetts, (Mr. Varnum,) that the Constitution of the United States did not extend to this territory any farther than they were bound by the compact between the ceding power and the people. On this principle they had a right, viewing it in the light of a colony, to give it such government as the Government of the United States might think proper, without thereby violating the Constitution; when incorporated into the Union, the inhabitants must enjoy all the rights of citizens. He would thank gentlemen to show any part of the Constitution that extends either Legislative, Executive, or Judicial power, over this territory. If none such could be shown, it must rest with the discretion of the Government to give it such a system as they may think best for it. At the same time, Mr. S. said, he would pledge himself to be among the first to incorporate the territory in the Union, and to admit the people to all the rights of citizens of the United States.

Mr. Rodney.—When a Constitutional question is made, and Constitutional objections urged, by a respectable member of this House, they shall always receive from me a respectful attention. On this occasion I shall endeavor to answer the objections, and remove the doubts entertained by some gentlemen. I believe we shall find that, by adopting the second section of the bill under consideration, we shall not infringe the Constitution in the remotest degree. No person is more opposed to the extreme of absolute and unlimited power, or to vesting in any man that authority which, by not being circumscribed within known bounds, may be easily abused. No man can be more opposed to the exercise by the President of powers exercised by the Spanish inquisition, and authorized by other Governments. But cases may occur where, for a moment, powers to which, without an absolute necessity, no one would agree, become necessary to be vested in some department of the Government; and I am in favor of this section for the reasons assigned by my friend from Virginia, to wit, that the exercise of the powers delegated will be confined to a short space, and will be of no further duration than shall be necessary to obtain the end of a secure possession of the territory. It is admitted by the gentleman from Connecticut, (Mr. Griswold,) and he deserves infinite honor for the admission, which shows that he has magnanimity to acknowledge an error when he discovers it, that the United States have a right to acquire territory by treaty or purchase. The other day the gentleman admitted the right to acquire territory by warlike means; to-day he goes a step further, and admits that which enables me to demonstrate that this section involves no violation of the Constitution.

Mr. Griswold explained.—He wished, once for all, to state what he had stated on a previous occasion, and what he had stated that day. He did admit that the United States might acquire territory by war or purchase; and he had always admitted this. But he had said that they could not by treaty admit a foreign country and incorporate it into the Union. If the gentleman from Delaware considers these remarks as inconsistent, he is welcome to the opinion.

Mr. Rodney.—I thank the gentleman from Connecticut for his explanation. The observations I was about to make were on no other ground than that now stated by the gentleman. The United States, it is acknowledged, have a right to extend their territory beyond that which they possessed when the Constitution was formed. If, then, there exist the right to acquire territory, there is a consequence of the laws that pervade all civilized nations, which will show not only the constitutionality but the propriety also of this section. It is a received principle of the law of nations, that, when territory is ceded, the people who inhabit it have a right to the laws they formerly lived under, embracing the whole civil and criminal code, until they are altered or amended by the country to whom the cession is made. This is the received principle of the law of nations, and operates wherever the right to acquire territory is previously given. I will put a plain case, on the ground so commonly of late resorted to, that of acquiring territory by war. The right to make war is vested by the Constitution in the Government of the United States. Suppose we had gone down the Mississippi, and favored the wishes of some of our citizens. Would not gentlemen, in that case, have acknowledged that we should have possessed the right of laying contributions? Should we not have had the right of saying to those who exercised the powers of government in that country, "Begone! We will make new arrangements; the powers of government shall be exercised by such particular organs as we like. Your laws and your religion shall be preserved; but your officers shall be replaced by ours." Under the laws of nations we should have enjoyed all these powers.

But, independent of this power conferred by the law of nations, I am inclined to think the provisions of the Constitution apply to this case. There is a wide distinction between States and Territories, and the Constitution appears clearly to indicate it. By examining the Constitution accurately, it will be found that the provision relied upon by the gentleman from Connecticut will not avail to support his argument. It will appear that it is to operate in the case of States only. By the third section of the fourth article of the Constitution, it is declared that "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or any particular State."

This provision does not limit or restrain the authority of Congress with respect to Territories, but vests them with full and complete power to exercise a sound discretion generally on the subject. Let us not be told this power, from its greatness, is liable to abuse. If arguments are drawn from the abuse against the use of power, I know no power which may not be abused, and it will follow that the same arguments that are urged against the use of this power may be urged against the use of all power. If the Constitutional powers given to Congress are abused by their Representatives, the people may dismiss them. But on this subject I apprehend there is little danger of abuse by Representatives coming from States. If I am correct in this construction of the Constitution, it puts an end to the Constitutional objections urged by gentlemen. They may oppose the present measure as inexpedient; but when we contemplate the people on whom it is to operate, we may rest satisfied that they will consider it as beneficial, inasmuch as it does not produce a violent change in their habits and laws.

We may be told that, in the government of the Northwestern Territory, there are certain fixed rules established. But by a recurrence to the ordinance for the government of that Territory, and to the laws of Congress subsequently made, it will be seen that Congress have conceived themselves to be possessed of the right, and have actually exercised the power, to alter the Territory, by adding to or taking from it as they thought proper, and by making rules variant from those under which it was originally organized.

In the Territories of the United States, under the ordinances of Congress, the Governor and the Judges have a right to make laws. Could this be done in a State? I presume not. It shows that Congress have a power in the Territories, which they cannot exercise in States; and that the limitations of power, found in the Constitution, are applicable to States and not to Territories.

The question was then put on striking out the second section, and lost—ayes 30.

Mr. Dana asked if this army, to be raised for the purpose of taking possession of this territory, was intended to march out of the United States?

Mr. J. Randolph asked, whether Gen. Wayne, with his army, did not go out of the United States? An act authorized them to go out of the United States.

Mr. Sanford asked, whether there was not a law passed last session for marching troops out of the United States to New Orleans? He said he was not then a member of the House, and could not correctly ascertain the fact.

Mr. Dana.—No power was given to the President to march an army to New Orleans, though a vote might have passed to raise eighty thousand men; but I maintain that they could not be compelled to go out of the United States.

Mr. Sanford understood these eighty thousand men were intended to take possession of New Orleans by force.

Mr. G. Griswold.—I want to know when they were voted for to march to New Orleans. I cannot recollect such a circumstance. I was in favor of vigorous measures, but I know of no such law that passed for their going to New Orleans.

The Committee rose and reported the bill without amendment.

Mr. Randolph moved to amend the second section, by adding to the end thereof the following words: "for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property, and religion."

Agreed to without a division.

The bill was ordered to be engrossed for a third reading to-morrow.

On motion of Mr. Randolph,

Resolved, That so much of the President's Message as relates to permanent arrangements for the government of Louisiana, be referred to a select committee.

Ordered, That Mr. Randolph, Mr. Rhea, Mr. Hoge, Mr. G. Griswold, and Mr. Bedinger, be appointed a committee, pursuant to the said resolution.

Friday, October 28.

A petition of William Pancoast, of Georgetown, in the District of Columbia, was presented to the House and read, praying that a patent may be granted to him for a quantity of vacant land in this District, a warrant of survey for which was obtained by the petitioner from the land office of the State of Maryland, and placed in the hands of the Surveyor of Prince George's county, in the said State, who refused to execute the same previous to the period when Congress assumed the jurisdiction of the District of Columbia.

Ordered, That the said petition be referred to Mr. Leib, Mr. Thompson, and Mr. Plater; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, accompanied with a report made to him of the opinion of the persons employed to take a survey of the harbor in the island of Nantucket, and of the bar and shoals near the same, as to the measures necessary to secure a sufficient channel for loaded ships destined for that port; together with an estimate of the probable expenses, and a chart of the said harbor and shoals, in pursuance of a resolution of this House of the sixteenth of February last; which were read, and referred to the Committee of Commerce and Manufactures.

Mr. Rodney submitted a resolution for the appointment of a committee to inquire into the expediency of extinguishing the claims of the United States against several States for balances of debt.

Mr. Thomas moved to take the resolution into immediate consideration. Carried—ayes 43, noes 42.

Mr. Griswold moved its reference to a Committee of the Whole. Agreed to ayes 53, noes 34; and it was made the order for Monday next.

AMENDMENT TO THE CONSTITUTION.

An engrossed resolution for the amendment of the Constitution was read a third time, as follows:

"*Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring*, That the following article be proposed to the Legislatures of the different States, as an amendment to the Constitution of the United States; which, when ratified by three-fourths of the said Legislatures, shall be valid, to all intents and purposes, as a part of the said Constitution, viz:

"In all future elections of President and Vice President, the Electors shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; of whom, one at least shall not be an inhabitant of the same State with themselves. The person voted for as President having a majority of the votes of all the Electors appointed shall be the President; and if no person have such majority, then, from the five highest on the list of those voted for as President, the House of Representatives shall choose the President, in the manner directed by the Constitution.

"The person having the greatest number of votes as Vice President shall be the Vice President; and in case of an equal number of votes for two or more persons for Vice President, they being the highest on the list, the Senate shall choose the Vice President from those having such equal number, in the manner directed by the Constitution."

Mr. G. Griswold.—I rise to assign the reasons for the vote which I shall give against the resolution now under consideration. When in Committee of the whole House on the same resolution, it was with much satisfaction that I heard gentlemen who advocated the resolution declare their anxious desire and full determination not to make any inroad upon the article of the Constitution, now under consideration, so as in any degree to impair the rights and benefits thereby secured to the smaller States.

The honorable gentleman from Virginia (Mr. Randolph) acknowledged his very great respect for the worthies who formed the Constitution—that our Union was a Confederation of States; and the result of a compromise between the several different States, as States, and that he was the last man who would consent to take from the smaller States any right or advantage secured to them by this article of the Constitution.

Should I be able to show that the alteration now proposed would materially affect the interest of the smaller States in the choice of President of the United States, I trust that gentlemen, agreeably to their public declarations, will vote with me against the resolution.

The Constitution of the United States is a compact formed by the several States to and for the general good. It is well known to have been produced by a spirit of compromise among the several States; that much difficulty arose in its formation; and, perhaps, in no one article of the Constitution, could there have arisen greater jealousies between the larger and smaller States than that pointing out the mode of electing the Chief Magistrate. The larger States, as is natural to suppose, would contend for an election, according to the number of inhabitants of each State, as they thereby would secure more votes; the smaller States, on the principle that it was a confederation of States, would contend for an equal vote; that is, to vote by States, and not by population or numbers. To settle the difficulty, the present article was agreed to, and thereby both of the above principles, as contended for by the larger and smaller States, adopted to a certain extent—the mode being a mixture of both principles. First, it permits the election of President to be by numbers; that is, giving each State votes in proportion to its population; whereby the larger States, considered in their corporate capacity as States, have the advantage of the smaller States in their corporate capacity as States. But in case of a failure of choice in the first mode, then the second, of choosing by States, is to be pursued, whereby the former States have an equal vote with the larger States.

In no other place than on this floor are the smaller States on an equal footing with the larger States in the choice of the President of the United States. It follows then, of course, that the greater the chance of bringing the States to a vote on this floor, the more advantageous it is to the smaller States, as here the smaller States are as powerful as the larger States. By the Constitution, as it now stands, there are two chances for a choice of President on this floor: 1st, when there are more persons than one who have a Constitutional majority of votes and are equal in number; 2d, when there is no person who has a Constitutional majority. Only one of the above cases can happen at a time; but there is always a chance for one of the two to happen. But, by the proposed amendment, the first before-mentioned chance can never happen; it is wholly taken away, and only one possible chance of voting on this floor by States left. For, when your ballots designate who is voted for as President, it never can happen that more persons than one can have a Constitutional majority of votes. One chance then of voting on this floor by States being taken away by the proposed amendment, it follows irresistibly that the smaller States will be injured, and the larger States benefitted. I ask then, sir, if gentlemen representing the larger States can be sincere, when they declare that they mean not to infringe upon the rights of the smaller States, as secured by this article of the Constitution, and still give their vote for the present resolution? The one in my opinion will contradict the other.

I have the honor of representing one of the larger States, but I feel no wish to lessen the rights of the smaller States, as secured by this article of the Constitution, and I trust my vote will correspond with my declaration.

I also ask, sir, if gentlemen who represent some of the smaller States are willing to give up so important a right as is secured them by this article of the Constitution? Gentlemen may think they are answering the wishes of their constituents, but I am sure if their constituents fully understood the principles of this article of the Constitution, they never would thank the gentlemen for their votes in favor of the resolution.

I well know, sir, that at first view it appears plausible that the ballots should designate who is voted for as President. I also confess, sir, that when the subject was first mentioned to me, I could see no solid objection why it should not be. But, sir, when I examine the nature of our Government, the clashing interests of the several States, the balance of power and influence necessary to be formed between the larger and smaller States, and trace all the minute ways and means by which this power and influence may operate, I find many objections. The more this article of the Constitution is investigated, the more will its principles be admired.

The present mode of bringing forward candidates for the office of President and Vice President is the least liable to call forth art, intrigue, and corruption; the uncertainty of the event and the difficulty of making arrangements are strong checks to the artful and designing. But the moment the mode pointed out by this resolution is adopted, the door for intrigue and corruption is open; the candidates and their friends can calculate with certainty and apply the means direct; the power of party, influence of office, art, cunning, intrigue, and corruption, will all be used, and used to effect, because the object is certain.

I would ask, sir, if this is a proper time to alter the Constitution? The public mind is agitated with violent party rage. Cool, calm reasoning is not to be expected. The general good must and will yield to party purposes, because parties will consider that to be for public good, which immediately promotes their own views. In such a state of things, I think an attempt to alter the Constitution not advisable. Again, sir, I believe it is better to suffer a small inconvenience, should any exist, than to attempt an alteration; for the habit of compliance on the part of the people with a rule of Government, is of as much importance to give effect to that rule, as the soundness of the principle contained in the rule itself. By altering the articles of the Constitution for every trivial pretext, you destroy that sacred regard which every citizen ought to have for the Constitution. For these reasons I shall assuredly vote against the resolution.

Mr. Huger—Much as has been said, Mr. Speaker, and much of our time as has been already taken up, since the commencement of the present session, in discussing the resolution now under consideration, you will no doubt have remarked, that the debate has heretofore been almost exclusively carried on by gentlemen of one particular side of the House; neither will it have escaped your observation, that numerous as have been the speakers, and various and lengthy as have been their arguments, scarcely one of them has deemed it necessary to discuss the general merits of the question, or to show the propriety of making the proposed alteration in our national compact. The necessity, propriety, and expediency of making such an alteration, would seem, indeed, to have been regarded as points conceded on all hands, as constituting a proposition, so plain, so self-evident, so unencumbered with anything like a doubt, that it would have been superfluous to bestow a moment's thought on, or to adduce a single argument in support of it. The gentlemen, therefore, who have preceded me, taking it for granted that an alteration must, and would of course, be made, have confined themselves almost exclusively to the consideration of the manner in which it was to be brought about, and the extent to which it was at this time to be carried. I have listened with the utmost attention for several days past to the various propositions which they have presented to the consideration of the House. I have been greatly edified by their arguments and have admired the ingenuity and ability with which the

respective propositions have been supported. You will permit me to add, sir, that I have heard with infinite pleasure, the declarations and assurances of attachment to our present happy Constitution, which have been so frequently expressed by almost every gentleman who has taken any part in the debate. It has given the peculiar satisfaction to hear these sentiments repeated again and again, by characters no less respectable for their talents, than distinguished for their influence in the community. The fears and apprehensions which, I will candidly acknowledge, had made a deep and painful impression on my mind, have been greatly lessened, in some degree removed, by the assurances of unfeigned acquiescence in, and perfect contentment with the present Constitution of the United States, and by the expressions of unequivocal disapprobation of every other alteration in the national compact, (save the one now proposed,) which have fallen from quarters, from whence, I will not deny, that I had anticipated and apprehended sentiments of a very contrary tendency. But whilst I give full and perfect credit, Mr. Speaker, to the assertions of honorable gentlemen; whilst I rejoice most sincerely that the members of this respectable body one and all accord, and unite in one common attachment to that compact which forms the bond of our Union; whilst I deprecate the idea of casting anything like an imputation on the motives of any member on this floor, I cannot but lament that an exception is made in one instance, and that the Constitution is not allowed to remain unaltered and as it now stands. I impute not, I repeat it, any improper motives to the friends of the resolution at present under consideration. The rage, however, for change and innovation has, of late years, spread itself with a rapidity unequalled among the nations of the earth; and we have seen and heard enough out of doors and in our own country, to authorize caution, and to excite the apprehension that there are many among us to whom great and material alterations in our national compact would be more than acceptable. *Obsta principiis* is an oldand trite, but, on most occasions, a sound and safe maxim. In times like the present, I deem it our only safeguard—the sheet-anchor of our political salvation. This nation has experienced too immediate, and too fortunate a change in its political situation and prospects, since the adoption of the present Constitution; we have increased too rapidly in wealth, in strength, and in national prosperity, and we enjoy too great a portion of present happiness under its benign auspices to assent easily, and at a moment's warning, to many great and evidently serious alterations in it. The most enthusiastic advocate of innovations would not venture to propose such; for it is evident the public mind is not yet sufficiently prepared to receive them. It is only by degrees, and by undermining under plausible pretexts, and at favorable moments, first one, and then another of the main supports of the fabric, that we shall be exposed to see it, sooner or later, begin to totter, then crumble, and I fear bury us in its ruins.

Here, then, on the merits of the Constitution, as it was presented to us by the Convention, as it now is, I take my stand. Upon this ground I am unequivocally opposed to the alteration proposed, for I feel the strongest conviction that, if it obtains, we shall have given a deadly wound to the national compact, we shall have effaced one of its leading features, we shall have signed the death warrant of one of the vital and most important principles upon which it was originally established.

I have already observed, Mr. Speaker, that the gentlemen who preceded me in the present debate have avoided everything like a discussion of the general merits of the question, and confined themselves almost exclusively to the consideration of the manner in which the proposed alteration is to be brought about, and the extent to which it is at this time to be carried.

Some observations have, nevertheless, fallen from two gentlemen, both of them from the very respectable State of Virginia, which appear to me peculiarly worthy of attention. The one (Mr. CLOPTON) has presented to us a view of the subject, which, although I by no means think the correct one, is evidently that in which most of the gentlemen in this House have regarded it, and in which persons out of doors are for the most part wont to consider this, and indeed every other Constitutional question. I have listened to him however with great pleasure, and from the ingenuity and information which pervaded such of his arguments as I could fully comprehend, I feel much regret that the utmost attention on my part, owing partly to the feebleness of his voice, and partly to the unfavorable situation of his seat, did not enable me always to connect his ideas and arguments, and perfectly to understand him. This gentleman seems, for the moment, to have forgotten that the Government under which we live is formed upon Federative no less than upon Republican principles; and though wishing to introduce an important alteration in our national compact, puts the compact itself, the spirit with which it was formed, and the vital principles upon which it was established, entirely out of the question. He takes an abstract view of the subject, as if it had no connexion whatever with other parts and principles of the compact, carries us back to a state of nature, and seems to regard it as a radical error in the Constitution that the provisions and modifications it contains are not solely founded upon the broad basis of population and numbers. He talks to us of the rights of man in a state of nature, of the origin of the social compact, of the foundation upon which all Governments ought to be formed, viz: the will of the people; and, drawing his inference from these pure, unmixed, and abstract principles and theories, thinks, whilst he shows us what would be the most eligible mode of providing for the Executive branch of Government about to be formed for the protection of the people, just rising for the first time into political existence, he proves triumphantly and unanswerably that such too ought to be the mode adopted by a Union like ours, composed of so many distinct and independent sovereignties, of so old a date,

and having such various, distinct, and complicated views and interests. Let me not, however, be misunderstood; I am not finding fault with, or condemning in the abstract, the principles laid down by the honorable member. Still less would I be understood to deny that the Constitution has been formed upon the broad basis of the public good, and the will of the people of the respective States. I well know, and it is for that very reason I feel so sincere an attachment to it, that the Federal compact is founded upon liberal and genuine republican principles; but let not gentlemen in the meantime forget that the Government under which we live is of a federative nature; and that these general, unmixed, and abstract principles, upon which we are called on exclusively to act, were then modified and practically applied to the wants, prejudices, and clashing interests of a numerous and increasing population, divided into a number of distinct sovereignties, spread over a vast extent of country by that very compact in which it is now proposed to make so material and essential an alteration. This is the true point of view in which the subject should be taken up; and I am happy in finding the ideas of the gentleman's colleague, to whom I before alluded, (Mr. J. RANDOLPH,) accord so perfectly with my own in the present instance, and that he too is of opinion, that this is the true and proper point of view in which not only the present but every other proposition to alter or amend the Federal compact, should invariably be considered. Sir, I am truly happy to recollect that the sentiments of that gentleman and my own accord so perfectly on this part of the subject, for, exclusively of the advantages which the weight of his authority must afford to my argument, I am free to acknowledge that it has frequently been a source of regret to me to find a difference in our view of things led me on so many occasions to differ in opinion with most of the companions of my youth whom I have met on this floor, and whom I have for so many years been in the habit of regarding as persons of honor and worth.

It was stated, and in my humble opinion correctly stated, by the honorable member from Virginia (Mr. RANDOLPH) of whom I have last spoken, some days since, that, when we were about to make any alteration in the compact which unites these States together, it behooved us not to take into view merely what we thought, individually, it ought to have been, or wished it to be, nor what shape, were we in convention for that purpose, we should give it; but rather to consider what shape had already been given to it, and what the compact, as it presents itself to us in the Constitution, now is. Taking up the subject then under this point of view, allow me, sir, to put these questions to the House. Let me ask, what is the Constitution of the United States? From what sources did it originate? In what manner, by whom, from what causes, upon what principles, in what spirit, was it originally adopted? Is it not a federative Government, agreed upon between thirteen distinct and separate sovereignties, for their mutual defence and protection?

Is it not, in its essence, a compact, a bargain, a perfect compromise of the interests, powers, influence, and rights of a number of independent societies, who have united for their common advantage, and who are no further bound or pledged to each other than by the articles and conditions in the written contract—the Constitution—which has been acceded to by them all? And is it not upon the spirit, in which the conditions of that compact was originally formed, that every amendment to, or alteration in it, should be predicated? These questions must all be necessarily answered in the affirmative. The inhabitants of these United States did not then, in forming the Federal Constitution, act in mass as one people, nor can the abstract principles borrowed from different authors on the primeval formation of political societies apply to them. The worn-out theory of a number of insulated beings assembled together in an extensive plain, and led by their common wants and necessities to form themselves into a body politic, cannot be applied to the Federal Government, nor can inferences drawn from notions of this kind afford correct grounds upon which to build or support alterations and amendments in the national compact.

Thirteen Colonies, at this time composing the United States, spread over an extensive continent, having been threatened with a privation of their rights and liberties, were induced to form a league, offensive and defensive, and to unite for their mutual and common defence. After a bloody though not inglorious contest, they severed themselves forever from the mother country, and they became and were acknowledged as thirteen independent and distinct Republics or Sovereignties. Under what gloomy and critical circumstances they found themselves for some few years after the close of the war, it would be superfluous for me to detail to this House. Let it suffice to say, that their situation was such as seriously to alarm all classes of our citizens, and to threaten complete anarchy, perhaps political dissolution, unless some bond of union, better adapted to their wants and necessities than the original Confederacy, could be established. That band of worthies therefore, as they have been aptly styled, were sent from twelve, I believe, of the States, who, having met together in convention, ultimately formed that compact, which, having been since ratified by all the States, now happily unites us in one great Union. But by whom and by what authority were the members of the Convention delegated? Whom did they represent when assembled together? They were not, it must be acknowledged, even in the degree that the members of this House are, the immediate representatives of the people, inhabiting that part of this vast continent in which the United States are comprised. They were not selected by the people at large, nor did they represent them in their original and individual capacities. No, sir, they were sent to represent the interests and views of thirteen distinct sovereignties; they were appointed by the governments of the different States, and they held their authority from the States, as

States, and not from the people of the United States generally and indiscriminately. When met therefore, in convention, their object was not to form one general consolidated government for the inhabitants scattered over this vast territory, but to modify still further, and to draw still closer the bands of alliance, by which these States were already connected. And it cannot surely be forgotten, that one of the strongest objections, one of those most insisted on against the Constitution, was, that federative principles had not been sufficiently retained, or rather that they had been totally abandoned, and the Constitution approached too nearly to a consolidation of the different members of the Confederacy, and one general national Government. It is not necessary for me here to detail the difficulties, which opposed themselves to the formation and adoption of any compact, more efficient than that of the old Confederacy, nor would the opportunities I have had of knowing them, (for I was not only under age, but absent from America, when the Convention met) enable me to do justice to the subject. Every one knows, however, that difficulties without number did present themselves, and the Convention was more than once on the eve of dissolving itself without agreeing upon anything. It is a fact equally well ascertained, that the great bone of contention, the point of all others which it was most difficult to adjust, was the jarring interests and opposite pretensions of the large and small States. This was the point upon which the whole business turned, and gentlemen will see at once the justice of the remark, when they recollect that although every other amendment whatever, after the year eighteen hundred and eight, may be made to the Constitution, by two-thirds of both Houses of Congress, when ratified by the Legislatures of three-fourths of the States, yet a single exception is made, and it is particularly specified, that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Why then this single exception, but because the interest and opposite pretensions of the large and small States were the great bone of contention, and the equal suffrage in the Senate the great, the essential compromise between these conflicting interests and pretensions. But this, though the most important, the *sine qua non* of any compromise, was by no means the only compromise which took place between them.

The great outlines of the Constitution were, I presume, Mr. Speaker, agreed on without much difficulty, and pretty generally acquiesced in. It was understood on all hands that the Government should be formed on republican principles—that the great departments of which it must necessarily consist should be distinct, and, as far as possible, independent of each other. The difficulty was in the detail, and more especially in respect to the quantum of State sovereignty which was to be yielded to the Union, and the degree of influence which was to be respectively given up or retained by the large and small States. Both were at that time independent of each other, and perfectly equal in their rights and sovereign powers, though very unequal in size, strength, wealth, and population. The basis of a republican government, however, is no doubt the will of the people; and that will could only be expressed and brought into action in a country so extensive as ours, by representation and elections. How then was that representation to be apportioned and those elections organized? To adopt the most common and simple principle in the abstract, and allow the representation to depend entirely on numbers, and the elections to be made indiscriminately and without modification by the people at large, would have been to put an end at once and at one blow to all State sovereignty, to amalgamate the inhabitants of thirteen free and independent Republics into one common mass, and to place the smaller and more feeble completely and forever at the mercy of the more powerful and larger States. But was this done? was such a result desirable? would the States at that day have acquiesced in any similar arrangement? Most certainly not; and, consequently, a totally different modification and compromise took place. The Legislative department of the Government was divided into two distinct branches—a Senate and House of Representatives. In the latter, it is true, the principle of numbers and population was, to a certain degree, adopted, yet still under very important modifications, and with evident deviation from the abstract principle. In the first place, a certain class of people, who unfortunately existed in one portion of the Union, though not allowed any immediate interest themselves in the Government, and regarded rather as property than as beings entitled to any civil or political rights, were included at a certain ratio in the calculation of the number of Representatives who were to have a seat in this House. This difficult and knotty point happily settled, it was in the second place determined that the members of this body, though understood to be the immediate representatives of the people, should not be elected by the people of the United States at large, as one people; but its share of the whole representation according to the ratio and in conformity to the compromise above specified, was apportioned to each respective State, and is to be exclusively elected by the people of that State. Notwithstanding every modification, however, which could be devised, it was evident, and perfectly understood, that although the smaller States would have a voice and proportionate vote, yet the interest and the will of the larger must virtually prevail in the House of Representatives, and that they would in fact dispose of this body at their will. As a partial check, therefore, as some little safeguard against this overweening power on their part, the federative principle was completely retained in its utmost purity, and without the smallest modification, in the other branch of Legislature, the Senate; and not only an equal vote and representation is given to all the States, however large, or however small, but the members who compose the Senate are not even to be elected by the people of the several States, but are to be chosen by, and immediately to represent, the government of each individual State. The difficulties which presented themselves in organizing the Legislative department of the Government, being thus surmounted and compromised, another question no less embarrassing and difficult to solve, arose, viz: in what manner the Executive powers ought to be disposed of.

Before I proceed to investigate this part of the Constitution, it may not be amiss, Mr. Speaker, to observe that in the formation of any political association upon free principles, it has ever been deemed the Gordian knot, the great desideratum, to find out and to ascertain the best mode of disposing of and organizing the Executive branch of the Government; nor is the experiment which these States are now (I trust successfully) making of the practicability of uniting so vast a territory as is comprised in the American Confederacy, under one general and national government, (founded on free and republican principles,) more interesting or important to the interests of mankind, in any one point of view, than as relates to the creation and disposal of the Executive power.

The history and experience of past ages show us indeed the rocks and quicksands, among which our bark may be stranded and wrecked; but we are still left without a chart or compass, by the assistance of which we might be enabled to avail ourselves of the mistakes and misfortunes of those who have gone before us, and steer our course in safety and security. Divide the Executive power and place it in the hands of many, and you so distract, weaken, and enfeeble it, that it becomes unequal to its end: the security and protection of the body politic. Hence it seems to be the received maxim, that this branch of the Government should be as compact and as concentrated, as a due respect to existing circumstances may permit. A serious difficulty, nevertheless, remains yet to be gotten over, in relation to the mode and manner in which it is to be created and brought into action. The first impulse of our feelings and common sense, untaught by experience and waiving local objections, would seem no doubt to point out at once the mode of election: yet such have been the inconveniences, such the fatal and bloody effects of creating the Executive branch in this way, that we have found not only in monarchical, but in some even of those governments deemed most free, an heriditary has been thought preferable to an elective Executive.

The members of the Convention, however, were too well acquainted with the feelings and sentiments of the American people to hesitate long on this point, and it was consequently determined that the Executive powers should be lodged in the hands of a single individual, under the title of President, who should hold his office during the term of four years, at the end of which period a new election should take place. But the real difficulty in the organization of this department under our Constitution now naturally suggests itself to the mind, viz: how, and by whom, this President was to be elected; for it must be obvious, that all these jealousies and conflicting views and interests of the large and small States, which had been happily compromised, as relates to the Legislative authority, would, of course, apply with increased force in the case of the Executive. To divide this branch, as had been done in the former instance, would be, as I have already shown, to enfeeble it, to deprive it of all energy, to render it insufficient and entirely unequal to the purposes for which it was intended. If the Executive power, on the other hand, was to be vested in a single person, and he elected by the people of the United States, or even on the modified principles upon which the members of the House of Representatives were to be elected, it followed, of necessity, that the larger States would elect whom they pleased, and consequently, the Executive branch of the Government would be entirely under their control and the champion and promoter of their views and interests. But the large States have an entire control over one of the two Houses, of which the National Legislature is composed, and an equality of votes (with all the advantages accruing from superior strength and power, and consequently superior influence) in the other. If, then, in addition to all this, the election of the Executive is put in their hands, you add strength to the strong, grant more power to those already too powerful, and yield up virtually to the large States that branch of the Government, which not only was to have a partial veto on the proceedings of the Legislature, but would probably give impulse to the whole, and be always on the watch and ever ready to avail itself of such favorable occurrences and favorable moments as might best enable them to carry their projects of aggrandizement and encroachment on their more feeble associates, into execution. On the other hand, the larger States, to whom fortune and the nature of the case necessarily gave a preponderating influence in this instance, could scarcely be expected to make a sacrifice of this advantage to the jealousies and fears of the small and weaker, and suffer them, as a thing of course, to take possession of the Executive branch of the Government. In this dilemma, what was done by the Convention?

As usual a compromise took place, and as nearly as possible upon the same principles upon which every other provision of the Constitution is predicated. It was decided that the Executive power should rest in a single individual. It was agreed that he should be elected, not by the people at large, not by the people of each State in the first instance; but by a number of Electors (equal to the combined representation of the States in the Senate, and that of the people of the several States in the House of Representatives) elected by the people of the several States, in the proportion to which they might be respectively entitled, according to the complicated ratio which had been adopted. This modified and complicated mode of election notwithstanding, it was evident the election of the President would be in the hands of the larger States. Every additional security therefore was sought for, the ingenuity of the Convention was put to the rack to invent and devise some further means of quieting the fears and apprehensions of the smaller States, affording them every safeguard, and putting in

their hands every check which the nature of the case would admit of, against the preponderating influence of the interest opposed to them; and I have ever understood, I have ever been taught to believe, by those few of the original framers of the Constitution with whom I have had the happiness to be acquainted, or to converse on the subject, that this very provision which obliges the Electors in each State to vote indiscriminately for two persons to fill the offices of President and Vice President, and which it is now proposed to do away, was regarded as the best, the most effectual means, and that which did in fact tend most to sooth and quiet the fears of the smaller States, and was in this view, and for this very purpose, adopted as a part of the Constitution. The more I turn the subject over in my mind, indeed, the more closely I endeavor to examine and investigate it, the more confirmed are my impressions and convictions, that this really was the case; that the proposition to alter or amend the Constitution in the manner proposed, is neither more nor less than a State question; a question between the different States of the Union, regarded in their original capacity as sovereign and independent States; a question which involves in it the vital principle upon which the Federal compact was formed, viz: a compromise between the fears and jealousies, the jarring interests, and pretensions of the large and small States. I feel myself I confess, sir, unequal to this part of the subject. I am sensible of my inability to calculate all the chances of influence and consequent protection which this, in my humble opinion, little understood provision, affords to the small States, or to point out the various modes in which it was anticipated, that it might and would, in various instances and on various occasions, operate in their favor. Waiving, however, one happy and material effect which I think it must have in regard to the Union at large, viz: that it tends to create a moral necessity on the part of the Electors to bring forward the most eminent characters, as well to fill the office of Vice President as that of President, waiving this certainly not unimportant consideration, I think I can prove to demonstration that this indiscriminate mode of electing the President and Vice President, affords to the smaller States a degree of influence over the election, places an important barrier to the superiority which the large States possess in this instance, and in every event, and at the worst, insures to the former a safeguard and defence against the encroachments of the latter, which they would not otherwise possess, and of which, if the proposed alteration takes place, they will be absolutely deprived.

By that article of the Constitution, to which I have so often had occasion to allude, and in which it is now the object to make so material an alteration, it is provided "that two persons shall be indiscriminately voted for as President and Vice President, by the Electors in the respective States, one of whom at least shall not be of the same State with themselves." In carrying this provision into operation, the larger States must necessarily do one of three things. They must either (in the hope of securing to themselves both the President and Vice President) give an equal number of votes to the two candidates whom they may agree upon, or at least a very large portion, if not exactly an equal number of votes to them both; or, confining themselves to the securing the office of President to the individual whom they prefer, they must be satisfied to give one of the two votes to which each of their Electors is entitled exclusively to him, and throw away the other. What follows in either case? In the first place, if two candidates have an equal vote, and at the same time a majority of the votes of the whole number of Electors appointed, it devolves on the House of Representatives to select which of them they please as President; and as the Constitution has (in the spirit I have already described, and for the purpose of affording every possible check and security to the smaller States, which the nature of the thing would permit) provided, that in every instance in which the choice of the President devolves on the House of Representatives, the votes shall be taken by States, and the whole representation of each State shall have one equal vote—it follows of course that in every case of this kind, they are all, large and small, placed precisely upon an equal footing. But in the case of two or more candidates having an equal vote, yet less than a majority of the votes of the whole number of Electors appointed, a further advantage accrues to the smaller States, for then, according to the Constitution, they not only vote by States, the representation of each State having one vote, but they may choose the President from the five highest candidates on the list, and of course have a wider field for choice, and a greater and even equal chance of making him President whom their Electors perhaps had originally supported as such.

In order to avoid this, suppose the larger States support two candidates, giving to the one however a few less votes than to the other. What advantages in this instance are afforded to the smaller States? Why, in the first place it gives them a greater chance of bringing in their own candidate, at least as Vice President—for their opponents, in order to secure to themselves the office of President, and to avoid an ultimate election by the House of Representatives, have not thought proper to give their full support to him whom they run as Vice President; but have thrown away from him a part of their votes. In the next place, if it is discovered (and this will not always be as difficult a point to ascertain as might at first view be supposed) how many votes are to be thrown away, the Electors of the smaller States may give an equal number of votes, and thus, putting the two candidates on an equality, bring the final election into the House of Representatives, where each State representation has an equal vote in deciding the election.

Nor is this their only alternative, for although it is true that they will not, from their inferior number of votes, have it in their power to select from all the citizens of the Union the individual

whom they might prefer, yet, in the case supposed, (of the larger States giving a considerable portion, though not exactly an equal number of votes to the two candidates, whom they have determined to support,) the smaller States will at least have it at their option to choose between the two candidates, and by giving him their votes, insure the election of that one of them against whom they have the fewest objections, and who sensible that the preference given him in the election ultimately turned on their votes, and possibly not being taken from the very largest and most powerful States, would probably feel less inimical to their interests, and in fact have it less in his power to injure them.

The third and last case is that in which the large States, in order to secure the election of the individual they wish to the office of President, unite in giving one of the two votes to which each Elector is entitled exclusively to him, and throw away the other. The obvious and necessary consequence is, that the Vice Presidency remains completely at the disposal of the small States, and they make whom they please Vice President—a point of far more importance than gentlemen seem to suppose, or are perhaps aware of. It is in the first place to be recollected, that as the person who will usually be thought most worthy of being raised to the office of Chief Magistrate will most probably be advanced in years, there must be more than the common chances of his demise in the course of the term for which he was elected, and of the heir apparent, the Vice President, consequently succeeding to his station, and becoming himself in fact the President. Exclusively, however, and waiving this consideration, let it be moreover recollected, that the Senate have a part of the treaty-making power, participate in the appointment of the Judiciary, and of the other public officers, and form in short, to a certain degree, a portion of the Executive branch of the Government. Now all the States have an equal vote in the Senate, and the Vice President is *ex officio* President of the Senate. He enjoys therefore all the influence necessarily attached to such an office, and to the character of heir apparent; and he has, in addition, the peculiarly important right of giving the casting vote in all cases of an equality of votes in the Senate, an assembly composed of so very few members. Such then is the importance of the Vice Presidency, and such the influence and protection which in every point of view the indiscriminate mode of electing the two first officers in our Government affords. And is all this nothing, sir? Does the alteration proposed really constitute a proposition so plain, so self-evident, so unencumbered with anything like a difficulty or doubt, as not to require a moment's thought, or be worthy of the least investigation or discussion? Is it possible that any one within or without these doors will deny, after what I have just stated, that we are about to make a serious and important innovation in the vital principle, the very essence of the Constitution? Are we not in fact and in truth acting upon the maxim, "that from those who have not, that which they have shall be taken away, whilst to those who have, more shall be given?" Shall we not by this alteration lessen the chances of the smaller States, and take from them one of the most effectual checks, one of the most essential safeguards, in respect to the election of the Executive branch of the Government, which was secured to them by our national compact; and add, at the same time, to the preponderating and overweening influence which the larger States have heretofore possessed, the evident means and moral certainty of disposing at pleasure of the whole Executive department? These must necessarily be the consequences of the proposed alteration in the Constitution; and for my own part, I must say, that it appears to me to give a death-blow to that portion of the State sovereignties which has been reserved to the several States, and that we thereby take a monstrous and more than a gigantic stride, towards that very consolidation of the States against which gentlemen have been wont of yore so bitterly to exclaim. For we may boast as much as we please; we may say what we will of our moderation, sincerity, and political virtue; we may give every security which can be devised upon parchment or upon paper, and endeavor to render it more sacred by seals, and even by oaths; still, so long as human nature remains human nature—where power exists on the one side and weakness on the other—there ever will arise ambition, and the inclination to obtain additional power on the part of the most powerful; and consequently, in proportion as you add to the means of encroachment already possessed by the large, and lessen those of defence and self-protection heretofore given to the small States, in the same proportion do you throw the latter at the mercy, and invite the aggression of the former, and thereby carry us further from a federative, and draw us nearer to a consolidated government.

I am perfectly aware, Mr. Speaker, that the ground I take is not the popular one of the present day. I well know that the principles for which I contend, and upon which our national compact was originally formed, have no longer the same influence on the public feelings, nor are they regarded in the smaller States with that degree of interest with which they were wont to be at the time the Convention met and the Constitution was adopted. The prosperity we have enjoyed for fourteen years past, under the auspices of the General Government, has happily done away State jealousies in a very considerable degree. The occurrences which have since intervened, the new interests which have sprung up, and the different shapes which parties have assumed, have all contributed to lessen the impressions and obscure the grounds and basis upon which the great bond of our Union was framed and bottomed. This happy and natural effect of the successful experiment we have made in our political association, must give pleasure to every friend of his country; and so long as the original compact which unites and forms us into a band of brothers continues to be held sacred, and no attempt is made to innovate upon and alter the principles

upon which it was formed, I should rejoice as much as any man at this union of sentiment—this mutual confidence among the members of the Confederacy; but when I see (it matters not whether intentionally or from inadvertence) that advantage is about to be taken of this circumstance, that in the moment of party irritation and party zeal, and at a time when it may be truly stated that the influence and interests of the larger States are completely triumphant, and many of the smaller States, unconscious of danger, are enlisted from various causes under their banners; that at such a moment a proposition is brought forward to alter the Constitution in one of its most important features, and, under the plausible pretext of giving effect to the will of the people, the small States are at one blow to be deprived of the checks and safeguards secured to them by the Federal compact in the election of the Executive, and this important branch of the Government is henceforward and forevermore to be put entirely and exclusively into the hands of the larger States; when I see and behold all this, I acknowledge that I do feel the most serious alarm, and feeble and unavailing as my voice may be, I still deem it a duty incumbent on me, as one of the immediate citizens of a small State, no less than as a member of this House, and consequently a sworn guardian of the Constitution, to raise that voice, and loudly to protest against the innovation which it is contemplated to effect in the fundamental and vital principles of the compact which unites these States together.

I am not ignorant, however, that a very different turn has been given to this business; that the proposed alteration in the mode of electing the President and Vice President has been presented under a very different aspect to the public view. A respectable member from Pennsylvania (Mr. Gregg) has indeed undertaken to give us the whole history of the amendment, as he terms it, and infers from thence, that such an alteration in the Constitution has been long contemplated and wished for by all parts of the Union. He tells us that a former member from South Carolina, the State I have the honor at this time to represent, had brought forward a proposition to the same effect; that a similar one had once originated in New Hampshire; that the State of New York had two years ago submitted to the consideration of Congress a resolution proposing in substance the very alteration now about to be adopted, and that it had been before us during both of the last sessions. All this, sir, is no doubt true, but I draw a very contrary inference from it to that of the honorable gentleman. He has proved to be sure that certain individuals, some parts even of the Union, have at different times, for party and local purposes, or from whatever cause, proposed and perhaps been desirous that an alteration of this kind should be made in the Constitution. He has proved however at the same time, and not less evidently, that the great body of the Union have always been opposed to any such change; that the public mind has not heretofore been ripe for it: and even at this moment, sir, I feel the most perfect conviction, that if the people had time and could take a correct and temperate view of the real merits of the question, if the irritation of the moment, the party feelings of the day, could be laid aside, the small States in particular could never become so wantonly *felo de se*—to commit such evident self-murder—if I may be allowed the expression—nor could the Constitutional majority in the two Houses of Congress, still less the Constitutional number of States, ever be found to ratify so great, so all important an innovation and change in the fundamental principles of the Federal compact. The chance of ultimate success depends, I am confident, even now, upon the party feeling and party zeal of the times, and the irritation which was excited and has been so industriously kept up since the late contested election of the President. I was myself, as you know, sir, one of the actors in that scene, and I may venture to say, that, from the peculiar situation in which I was placed, I had it in my power to judge more cooly and dispassionately of the occurrences of that day than almost any other individual in the United States. It is well known to every one who knew anything of me at the time, that I was a warm, sincere, and zealous advocate of the two gentlemen who were understood to be the Federal candidates. The majority of the Electors, however, having given the votes to the two candidates who were brought forward and supported in opposition to them, and they having been found to have equal votes, it devolved upon the House of Representatives to fix upon the one of the two characters who should fill the office of Chief Magistrate. In this state of things, it is no secret, that although we afterwards voted by ballot, that I separated from my political friends, and those of my colleagues who were on the floor, and performed the painful task of acting in direct opposition to them; I consequently voted invariably for the candidate who ultimately prevailed, and now fills the office of Chief Magistrate of the United States, until the last ballot, when I withdrew into an adjoining committee room, in order to facilitate a decision of the contest. Situated as I was, therefore, it may well be imagined that I could not be over zealous, or feel any very peculiar interest in the success of either of the two candidates who were opposed to each other. I had acted according to the best of my judgment, and in compliance with the dictates of my conscience, in voting for the one; while my political friends gave a preference to and supported the other. I could consequently take a perfectly dispassionate view of the subject, and must say that the zeal and violence of party appeared to me to give much more importance to the contested election than it was intrinsically entitled to. I showed, by my vote, my own opinion and wishes to be in favor of the person who was elected; and inasmuch as I believed that he would be more acceptable to the majority of our fellow-citizens out of doors, and more especially to those in that portion of the Union from whence I came, and of whose opinions and feelings I could judge most correctly; insomuch, I acknowledge, that I should have regretted and deemed it a misfortune if the election had terminated differently.

But, sir, I could not then suppose, nor do I yet think, that the salvation and political happiness of the Republic depends so entirely on the election of any one man as President, however great or good he might be; nor could I persuade myself that it would be so monstrous and terrible an event, in an elective yet complicated government like ours, if, of two individuals brought forward by precisely the same description of Electors, to fill the two first offices under the Government, that one of them, whom they were supposed to hold up for the second office, (and consequently in case of accident to the other to supply his place, and be to all intents and purposes Chief Magistrate,) should have been preferred by their political opponents, and through their means have in the first instance been constitutionally elected to the highest office. I well know that of the two federal gentlemen whom I had originally advocated, although I should no doubt have given a preference myself to the one, yet I should have been perfectly satisfied to see either of them put at the head of the Government, had they had the majority and equal votes; for, I repeat it again, I cannot persuade myself that the political salvation of the Republic depends upon the election of any man as President. To me indeed it appeared, during the whole course of the election, that there was one result far more to be deprecated, and which might have given rise to consequences beyond the ken of human foresight. I frequently shuddered at the idea, that it might possibly happen, from the enthusiasm of party zeal, the violence of party prejudices, and the irritation of the moment, that neither side would give way, and the country might be left in a sort of interregnum, without executive officers, or perhaps any Constitutional means to obtain them; and it has often struck me as a peculiarly fortunate circumstance that the contest was between two individuals originally brought forward by Electors of the same political description, and not between the favorite candidates of the two opposite parties, each supported by his immediate party friends. In my humble opinion, the great desideratum, the only thing necessary to be done, is to make some provision, which would insure, in such or any other case in which the election of the Executive devolved on the House of Representatives, that a selection of one or other of the candidates should take place before the House separated, or its political dissolution took place; or that, if an election did not take place, one of the candidates, in consequence of superior age or whatever other cause of preference might be deemed most eligible, should of course be the President. I have not however touched upon the late contested election, in the intention of discussing the *pro* and *con* with respect to the relative merits of it, neither is it my intention to deny the abstract proposition, that the will and the wishes of the people ought to be consulted in elections. I wish only to show that this alteration—even allowing it for a moment to be desirable, yields but a partial remedy, to a partial and comparatively speaking trivial and temporary inconvenience, whilst we leave a most awful and very possible event unnoticed and unguarded against.

My further object has been, to recall to the recollection of this House, and, as far as my feeble voice avails, of the nation at large, that our Government is not only Republican but Federal; that the provisions of the Constitution are of a very complicated nature; that they have been formed upon the general principles of free government, so modified as to comport with those of a federative alliance; and at the same time to quiet the fears, jealousies, and apprehensions, and to compromise the clashing interests and opposite pretensions of the respective States which compose this great and flourishing Union. I beg of gentlemen therefore to pause and reflect, and then decide, whether it be really correct and agreeable to the dictates of sound sense and good policy to alter or rather totally annihilate one of the great and leading features of an original compact, in order to obviate, at the most, a momentary inconvenience. For I trust I have gone far enough to prove, whilst I venture to foretell, without pretending to the gift of prophecy, that a case similar to the one which has lately taken place will never again happen; yet that if such an event should again turn up, and of two individuals who had an equal number of the votes of all the Electors appointed, the one should be made President, (by the selection of the House of Representatives voting by States,) and in consequence of the present indiscriminate mode of election, who might not perhaps be the most immediately acceptable to the majority of all the inhabitants of the Union, taken in the aggregate, (and the inhabitants of the large States must of necessity form such a majority,) yet I say, should such an event take place in the course of things, I have I trust gone far to prove that it is at worst, but a partial, temporary, and very restricted evil, arising necessarily out of a peculiar form of government, the natural consequence of our territorial divisions and the political provisions and modifications advisedly adopted to compromise our various interests, foreseen at the time our national compact was formed, yet adopted as a minor and necessary sacrifice to prevent far greater evils; and as presenting the best, perhaps the only mode of compromising the jarring interests, of satisfying the opposite pretensions, and of quieting the jealousies, fears, and apprehensions of the various members, so unequal in size, power, population, and riches, who are at this time so happily united in one great confederacy.

Such, Mr. Speaker, is, in my humble opinion, the true point of view in which this and every other proposition to alter our national compact ought ever to be considered—such is the point of view in which the subject now under consideration has presented itself to my mind. I have therefore complied with my sense of duty and obeyed the dictates of my conscience in opposing the alteration to the Constitution, which it is now proposed to make. I know full well the popular feelings and sentiments are against me on this question, and that what falls from a gentleman on

this side of the House, is, in the actual state of things, not very favorably received out of doors, and for the most part attributed merely to party feelings and party opposition. In the present instance, however, I can in honor and with truth declare that I act from no party motive or party considerations whatever. My objections and opposition to the resolution on your table, are the result of a sincere conviction in my own mind, after the most dispassionate and attentive consideration I have been able to bestow on the subject; and I most fervently pray that whilst we are endeavoring to extricate ourselves from a dilemma of secondary importance, necessarily growing out of our peculiar mode of government, and to provide a remedy against a partial inconvenience, we may not inadvertently place ourselves in a labyrinth of difficulties and expose our posterity to a multitude of evils, more fatal to the peace and happiness of this Union, than we are any of us at this time aware of.

Mr. Hastings.—Mr. Speaker, I do not rise for the purpose of going into an elaborate discussion upon the subject of the proposed amendment to the Constitution, (for that has been already very fully debated,) but merely to state some of the reasons which will influence me in voting against it. I have always believed, sir, that the Federal Constitution was as much the result of compromise and mutual concession, as of great deliberation and wisdom; and that alterations in this charter of our national union ought to be made with extreme caution. In respect to the amendment proposed, I have understood that in the Convention of delegates that framed the Constitution, variety of ways for electing President and Vice President were proposed and all rejected, until the new Constitutional one was offered, which was agreed to; with this mode of electing a President and Vice President, I am satisfied. I believe many advantages result from it; by the present mode, the Electors in giving their votes for two persons to be President and Vice President, will be induced (from the uncertainty which of the two voted for will be elected President) to give their ballots for two persons, either of whom shall be well qualified to discharge the important powers or duties of First Magistrate of the nation. But, if the proposed amendment prevails, will not the office of Vice President, in all future elections, be considered as a mere sinecure? And though the person voted for to fill the office may be well qualified to perform the duties incumbent upon him as President of the Senate, yet he may be wholly unqualified to fill the office of President of the United States, and a person in whom the American people would have no confidence as such: but by the proposed amendment, upon such unfit person—in the event of the removal of the President from office, death, resignation, or his inability to discharge the duties and powers of the office—will devolve all the duties and powers of First Magistrate. Another advantage that I conceive may be the effect of the existing Constitutional mode of electing a President and Vice President, is, that it may be the means of checking and moderating the rage and violence of party spirit, and of controlling and putting down faction, by the election of a President who may be agreeable to the wishes of the minority, and thereby produce an equilibrium of power between contending parties. Besides, sir, I fear, if the amendment obtains, that it may give a weight and influence to the large States in the Union, in the election of a President and Vice President, that they ought not to possess; and though I have the honor to be a Representative from a State of some consequence in the Union, on account of its population and resources, still I cannot wish that Massachusetts, in this or any other way, should acquire any undue advantage or improper influence over the smaller States.

In fine, the reasons and arguments that I have heard in this House in the course of the debate, particularly those offered by the honorable gentleman from South Carolina, last up, (Mr. Huger,) have convinced me that the proposed amendment ought not to made. I will not say, Mr. Speaker, that the Constitution is perfect in all its provisions; there is a particular part of it, in article first, section second, and third paragraph, that fixes the rule of representation, which I wish to see altered in due time. I wish to see this part of the Constitution altered, because I wish to see upon the floor of this House an equal representation of free citizens, and of free citizens only. As the Constitutional rule now is, the representation is made unequal. But this it will be said was also the effect of a spirit of accommodation and compromise. It was a compromise, however, by which one part of the Union has obtained a great, and in my opinion, unjust advantage over other parts of the Union. A compromise, sir, by which the Southern States have gained a very considerable increase of Representatatives and Electors, founded solely upon their numerous black population. I hope, sir, that in the year 1808, an alteration will be made in this part of the Constitution, and that the representation, by being proportioned only to the number of free persons, will be rendered equal and just. I hope, also, that those gentlemen who now advocate the proposed amendment to the Constitution, will then, if members of this House, be also the advocates for altering and amending this part of the Constitution—the friends and advocates of an equal representation, founded upon the population of free persons only. I will not occupy the attention of the House with further observations, or repeat what has already been said by gentlemen against the amendment: I will only say that, in my opinion, it is neither necessary nor expedient to make the proposed alteration in the Constitution, and that I hope it will not be made.

Mr. Thatcher.—Having waited in expectation of hearing the arguments of gentlemen in favor of the resolution, I feel great regret at the silence which they have thought proper on this occasion to observe. This course, though not entirely novel, was not anticipated upon a question of great national importance; a subject which invites, which demands investigation.

My colleague (Mr. Eustis) has stated to the House that, in the year 1797, the Legislature of Massachusetts voted to instruct the Senators and to request the Representatives of that State in Congress, to propose an alteration of the Constitution similar to that now proposed. A gentleman from New York (Mr. Thomas) has informed us that a similar vote passed in the Legislature of that State. As these two statements are the only answers (if such they can be considered) to the various arguments which have this day been adduced in opposition to the resolution, and as the gentlemen who have made them appear to consider these votes of the State Legislatures obligatory upon the members of the House who now represent those States, I beg leave to state as succinctly as possible some of the reasons which will induce me to vote against the resolution.

An amendment of the Constitution must be sanctioned not only by two-thirds of both Houses of Congress, but must be ratified by three-fourths of the State Legislatures. The Constitution considers these different Assemblies as entirely independent of each other. They must act with perfect independence upon this subject, or this provision of the Constitution is virtually destroyed. Most certainly the resolution of a State Legislature, in 1797, ought not to control the votes of members of this House in 1803. It is, I conceive, not only their right, but their duty to decide upon this question with the most perfect independence of opinion.

It has been already urged that the Constitutional mode of electing the President and Vice President is admirably calculated to disappoint intrigue and prevent corruption. Should an aspiring and dangerous faction obtain the ascendency in this country, this mode of election affords the means of counteracting its influence, of checking its control. For although such a party will make the greatest exertions to elect that leader who may chance to be the idol of the day, while the Electors are obliged to vote for two candidates, without designating which is intended, those Electors who are not devoted to the interest of the ruling faction will exercise a preference of great importance, they will select the candidate least exceptionable.

The article, which this resolution proposes to alter, has always been considered as the great barrier and shield of the smaller States against the encroachments of the large. By the present mode of election, provided it is effected by the Electors, each State has its due proportion of influence. If it be decided by the House of Representatives, the Constitution has put the States upon the ground of perfect equality. But, if the proposed alteration takes place, it will undermine the very basis of the Confederacy; it will throw the whole power, in this most important election, into the hands of a few States exclusively. With the present population five States may, by combination, exclude the other twelve from all participation in the choice. It will be totally impossible, by any precaution whatever, to prevent such a combination.

The situation of the States forming the Federal Constitution, and the nature of the compact itself, furnish strong evidence of the policy of the article under consideration. It was absolutely necessary that some of the rights of the individual States should be secured for the interest and safety of all. This Constitution, to use the language of the Convention who framed it, "was the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable." Upon no other principle is it possible to account for that article of the Constitution which provides for the representation of slaves. This article operates with peculiar inequality in the Northern and Eastern States.

The representation of slaves adds thirteen members to this House in the present Congress, and eighteen Electors of President and Vice President at the next election. Yet the whole of New England contains but thirteen hundred and thirty-one slaves. Massachusetts and Vermont have none.

The New England States have submitted to this inequality, sensible of the extreme danger of tampering with the Constitution. But, if it is to be altered, justice requires that the article authorizing the representation of slaves should be the first to receive amendment.

Mr. Speaker, I know that the objections to the article proposed to be altered are plausible—they are popular; but I am confident that, upon close examination of the different modes of electing our First Magistrate which have been proposed, none will be found to combine so many advantages as that prescribed by the Constitution. The Journal of the Convention evinces that this was a subject of long discussion and mature deliberation. It was devised by a most illustrious assembly of sages and patriots; it was adopted at a time when the heat of party had not influenced the country; shall we then, at a time when party feelings animate all parts of the Union, shall we destroy one of the firmest pillars of our political fabric? I trust, sir, we shall not venture into the boundless region of hypothesis, that we shall not alter one of the fundamental principles of the Federal Constitution.

Mr. J. C. Smith rose and observed, that the friends of the resolution had been so occupied with its details, he feared they had lost sight of its principle. And he was not a little confirmed in this suspicion, from their profound silence on the present occasion. But as he felt so, he could not but express a faint hope that a Constitutional majority of the House would not be found to yield their assent to the proposition. Mr. S. said, it was worthy of remark that no alteration had yet been made in the national compact. Of the eleven articles subjoined to the Constitution as amendments, ten were mere declarations of certain rights, not materially affected by that instrument, and which had their origin in State jealousy, and the remaining one was intended only to settle the construction of an article in the Constitution which had before been considered of doubtful im-

port; he alluded to the amendment respecting the suability of States.

It had been repeatedly acknowledged, Mr. S. said, by gentlemen on all sides of the House, that the Constitution of the United States was an affair of compromise—the result of a spirit of amity and mutual concession. But was there a gentleman on that floor who could inform what were the precise terms to that compromise? What sacrifices were made? What equivalents were given? If so, he would thank him to state to the House what mighty boon was accorded to the eastern section of the nation in return for that remarkable provision of the Constitution, which permits slaves to become a basis of representation in that House, and which indeed renders them no inefficient agents even in the choice of the Chief Magistrate himself. For his part, Mr. S. said, he would confess he knew not what recompense could have been adequate to so extraordinary a concession. In truth, neither he nor any other member present could declare the exact manner in which the jarring interests, the conflicting claims of the several States, were adjusted in Convention. It, therefore, became a matter not only of delicacy but of extreme hazard, to touch the instrument with ever so slight a hand, lest the arrangement, thus happily made, should be broken down and destroyed.

Mr. S. said, he had ever understood the smaller States were, in Convention, peculiarly tenacious of that particular provision in the Constitution which was now proposed to be modified. The reasons were apparent—and they had been so clearly and forcibly stated by the gentleman who had preceded him, that it was quite unnecessary for him to detain the House upon that point. The consequence of those States, in the election of President, was thereby, in some measure, preserved; they were enabled, in some degree, to counteract any combination which might be formed between four or five of the larger States to keep the office of Chief Magistrate in perpetual rotation among themselves. But, Mr. S. said, cogent as these reasons were, he apprehended they were not the only object of the provision. He said, it was no doubt desirable that the Executive power of the Government should be vested in an individual; but the Convention must have perceived, as indeed it was very obvious, that such an office in an elective Government must become a prodigious lure to ambition; that as the power, the patronage, the duration, and the emoluments of the office were augmented, in the same proportion would be the violence of competition between rival candidates, in the same proportion would the order and tranquillity of the nation be endangered at the return of every election. This evil, so formidable in its nature, if not rescinded, is at least mitigated by the existing provision of the Constitution. For, while it effectually secures to the nation an eventual choice, it places it wholly beyond the reach of any candidate to calculate confidently on the issue of his pretensions. Such an uncertainty, arising not from the casualties incident to ordinary elections, but from the circumstance that even a majority of the electoral votes may not ultimately secure the office, must ever form a powerful check to corrupt or ambitious views. The aspiring demagogue, willing to barter wealth for distinction, would hardly be induced to lavish his treasures upon so hazardous an experiment. And even the man in possession of the office would scarcely be tempted to use unworthy means to retain it, when its preservation must be so much a thing of chance. It was, (Mr. S. said,) to complete this refined process; to complicate it in such a manner as to effectuate this great object alone, that the office of Vice President was instituted. And I demand of gentlemen what apology they will make to the American people for retaining this officer if the present amendment is to prevail? What duties has he to perform other than such as are devolved upon the Speaker of the House? Why will you pay him five thousand dollars, annually, merely to preside in the deliberations of the Senate, who might as well elect one of their own body for that purpose? And why, sir, will you keep here a high officer, with a liberal salary, for no other earthly purpose than to enable him, from his proximity to the Government, to cabal with greater effect for the succession? If pretensions to economy rest not solely in profession, gentlemen will now abolish this sinecure; they will finish their amendment by expunging the office of Vice President from the Constitution.

Mr. S. said he would close his remarks by seriously asking gentlemen whether the present resolution had not grown out of an overweening anxiety to secure, at all hazards, the re-election of the present Chief Magistrate?

The Speaker said it was improper to introduce the Chief Magistrate into the debate.

Mr. Smith said he was not about to speak disrespectfully of the President, but he would say that no modification whatever of the Constitution, having for its object either to enlarge the power, or to facilitate the attainment of that office, ought to be attempted, so long as the incumbent, whoever he may be, is considered as a candidate for a re-election. Sir, said Mr. S., I will again ask gentlemen, whether they will suffer themselves to be influenced on this great question by their predilection for an individual? Are they prepared to immolate the Constitution of their country upon an altar erected to private friendship and personal esteem? Will they remember that the conservative Senate of France "desirous of furnishing a proof of national gratitude," proposed to the French people, to amend their Constitution by creating Napoleon Bonaparte Consul for life! If the two cases are not altogether parallel, who can say there is much difference in principle? And who, sir, will be answerable for the consequences, if the National Legislature will permit themselves to be governed by considerations of a personal nature, when acting upon a subject infinitely momentous, not only to themselves but to remotest posterity?

Mr. Thomas said that he was in favor of the amendment as it then stood in the resolution, and

hoped that it would receive the support of a Constitutional majority of that House. At the same time, he confessed that he should have been better satisfied had it gone no further than to designate the President and Vice President, because he thought the more it was trammelled with detailed provisions, the greater the hazard of its final ratification by the respective State Legislatures.

He was not at all alarmed at the variety of opinions which had been expressed on that question, even by those in favor of the general principle. On a subject of so much importance to the welfare of this country, it was natural to expect a difference of sentiment, as to its bearings, and the lengths to which it ought to go. He was happy, however, to find the appearance of a disposition on the part of those honorable gentlemen to concur in passing the amendment, since it embraced the important object of designation, although it was not shaped exactly agreeable to their wishes. He rejoiced to find that, with respect to the great principle contained in the resolution, there appeared but one opinion in that House, unless it was from a quarter from whence we look for opposition on all occasions.

On this question, however, said Mr. T., I do confess that I am greatly disappointed in finding two of my honorable colleagues (Mr. Livingston and Mr. G. Griswold) hostile to this measure; considering that the Legislature of the State from which those gentlemen are Representatives, in January, 1803, unanimously recommended, in the most impressive terms, the adoption of this amendment to our Constitution, notwithstanding at that time a respectable minority of one branch, and a large majority of the other, coincided with those gentlemen in political sentiment. Knowing this, Mr. Speaker, I did expect, and I think I had a right to expect, different conduct on the part of those honorable gentlemen on this occasion. With the permission of the House, he would read a letter addressed to him as a Representative of the State of New York, on that floor, by the President of the Senate, and Speaker of the House of Assembly of that State, enclosing two resolutions, one of which embraced this object.

[Here Mr. T. read the letter alluded to, and then remarked, that it was not his intention to enter into the merits of the question; he only rose with a view to state this circumstance, and to express his disappointment in finding those gentlemen opposed to this amendment.]

Mr. Livingston said he should not have risen but for the remark of his colleague. (Mr. Thomas.) He had, at the time alluded to, the honor to be a member of the Legislature of New York, but he was in a small minority. He had then the same opinion of the majority as at present. He did not, therefore, imagine that anything that came from him would succeed, and did not think it in the least useful to oppose himself to the torrent.

Mr. Eustis did not rise to discuss the merits of the amendment, but to answer the call of his colleague, (Mr. Hastings.) In 1797, as well as he recollected, the Assembly of Massachusetts instructed their Senators and advised their Representatives to vote for an amendment to the Constitution, founded on the same principle with the present amendment. He presumed the gentleman from Massachusetts was ignorant of this fact, or he would not oppose the voice of the people of that State.

Mr. Hastings confessed his ignorance of this circumstance. But, had he known it, he should not have considered himself bound to make sacrifice of his own opinion to such instructions. He had no idea that, when a person was chosen to represent the people, he was under any obligation to pursue a line of conduct contrary to the dictates of his own mind, whatever might be the instructions of his constituents. If, after a thorough consideration of a measure, which he should be thus instructed to vote for, he should be convinced that it would operate against the interest of his constituents, he asked if he were not under a solemn obligation to act in opposition to his instructions? Because such measure, if carried into effect, might operate to the disadvantage, perhaps destruction, of the public good. He would not, however, enter into a discussion of this point, but satisfy himself with saying that, if he was instructed by every free citizen of Massachusetts to vote for a measure, which, after mature reflection, he was convinced would prove injurious, he should pursue the dictates of his own judgment and vote against it.

Mr. Dana.—It is extraordinary that the gentleman (Mr. Eustis) should rise to make this explanation. Does he mean to say to the Representatives of the people, the State Legislatures may issue their mandates to you, and though they are not your constituents, you shall, nevertheless, obey them? They are not our constituents; they are not authorized to give us instructions; and we are not bound to obey them when given.

Mr. Eustis said, he had barely risen to give the honorable gentleman from Massachusetts information; he had not expected to call up his champion from Connecticut, behind him. He had risen merely to state a fact, for the information of his colleague, as, from the observations he had made, it might be inferred that the State of Massachusetts was adverse to the principle of this amendment. It was far from his intention to oppose the sentiments of the Legislature of Massachusetts to the will of that House. He honored the independence his colleague expressed. It was, to be sure, an independence that went to the utmost limit a Representative could have of his constituents. Yet, he did not censure him for asserting it.*

* On a subsequent day, Mr. Eustis stated that he had made inquiry respecting the instructions of the Legislature of Massachusetts, to which he had on a preceding day referred, without having been able to obtain satisfactory information. He was inclined to think he had been in error in stating their existence; and, with this impression on his mind, he considered it due to his colleague (Mr. Hastings) to render an apology for the remarks he had applied to him.

Since the period of the above debate, a letter has been addressed to the Secretary of the Commonwealth

Mr. Thomas asked his colleague, (Mr. Livingston,) as a member of the Legislature of New York when instructions were given to vote for a similar amendment, whether a majority of the Senate of that State were not of the same political sentiments with himself?

Mr. Lyon said, he should not have risen on this occasion had he not heard the old subject of irritation harped upon. Gentlemen opposed to the amendment of the Constitution, under consideration, had introduced the hackneyed topic of the representation of the slaves, and talked of that as being a sacrifice in the formation of the compact on the part of the States who held no slaves, and as included in the general compromise; for himself, although he had formerly the honor of representing a State where there were no slaves, and now had the honor of representing a State where slavery is allowed of, he had not changed his opinion, nor held two opinions on the subject; he always considered the article of the Constitution alluded to as containing the compromise on that subject within itself, and that the sacrifice was on the part of the people where slavery is admissible. Numbers was agreed on as the basis of representation; it certainly was the best criterion to form an estimation of the property and of the ability of the States to contribute to the public expenditure; but the States where the blacks were free, say to the States where the blacks were slaves, your slaves must not be counted in the numbers to be represented. The natural reply was, why not count our black people as well as you count yours? we enter not into your local policy, nor examine what kind of freedom you allow to black or white; yet they gave up two-fifths of their slaves as a compromise, so the sacrifice was made by them. For my own part, said Mr. L., the opportunity I have had of feeling the operation of both the freedom and the slavery of the black people, convinces me that the blacks who are slaves are much more useful and beneficial to the community and to the nation, according to their number, than those that are free; and I always have considered this subject, when brought up, as mere matter of exclamation, and intended to create popular murmur and discontent.

On the question whether the resolution should pass, it was carried in the affirmative—yeas 88, nays 31, as follows:

Nays—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George M. Bedinger, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Wade Hampton,

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of Massachusetts on the subject, who has returned a certified copy of the instructions, the nature of which appears to have been correctly stated by Mr. Eustis. It will be perceived that their date varies from that stated by him, and that they are more recent by two years than he represented them. They are as follow:

Commonwealth of Massachusetts.

In Senate, *Feb.* 28, 1800.

Whereas the Legislature of the State of Vermont, on the fifth day of November last, passed two resolves, in the words following, viz:

"State of Vermont.

"*In General Assembly, Nov.* 5, 1799.

"*Resolved*, That the Senators and Representatives of this State in the Congress of the United States be, and they hereby are, requested to use their best endeavors that Congress propose to the Legislatures of the several States the following amendment to the Constitution of the United States, viz: That the Electors of President and Vice President in giving in their votes, shall respectively distinguish the person whom they desire to be President from the one they desire to be Vice President, by annexing the word President or Vice President, as the case may require, to the proper name voted for; and the person having the greatest number of votes for Vice President, if such number be a majority of the whole number of Electors chosen, shall be Vice President; and if there be no choice, and two or more persons shall have the highest number of votes, and those equal, the Senate shall immediately choose by ballot one of them for Vice President; and if no person have a majority, then from the five highest on the list, the Senate shall in like manner choose the Vice President; but in choosing the Vice President, the votes shall be taken by States, the Senators from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States; and a majority of all the States shall be necessary to a choice. And in case the Senators and Representatives of this State in Congress, shall find that the aforesaid amendment is not conformable to the sentiments of a Constitutional majority of both branches of the National Legislature, they are hereby requested so to modify the same as to meet the sentiments of such majority.

"*Provided, however*, That any amendment which may be agreed on, shall oblige the Electors to designate the person they desire to be President, from the one whom they desire to be Vice President.

"*Resolved*, That his Excellency the Governor be requested forthwith to transmit the same to the Supreme Executives of the several States."

Which resolves have been communicated by the Supreme Executive of the State of Vermont to the Supreme Executive of this Commonwealth.

Resolved, That the Legislature of this Commonwealth have a high sense of the wisdom and patriotism of the Legislature of the State of Vermont, and accord with them in the opinion, that it is expedient that the Constitution of the United States be amended in the manner contemplated in the aforesaid resolves of the Legislature of the State of Vermont.

Resolved, further, That the Senators and Representatives of this State in the Congress of the United States be, and they are hereby, requested to adopt thene cessary measures to effect the amendment aforesaid.

Resolved, further, That his Honor the Lieutenant Governor be, and he is hereby, requested to communicate the foregoing resolves to the Supreme Executive of the State of Vermont, and also to transmit copies thereof to the Senators and Representatives of this Commonwealth in the Congress of the United States.

Approved, March 4, 1800.

John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thos. Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jr., Thomas M. Randolph, John Ren of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Hoge, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jr., Thomas Lewis, Henry W. Livingston, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Sam. Thatcher, and Lemuel Williams.

LOUISIANA TREATY.

The bill sent from the Senate, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof," together with the amendments agreed to yesterday, was read the second time, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of and occupy the territory ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, between the two nations; and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the Army and Navy of the United States, and of the force authorized by an act passed the third day of March last, entitled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," which he may deem necessary, and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

Sec. 2. *And be it further enacted*, That, until the expiration of the present session of Congress, or unless provision be sooner made for the temporary government of the said territories, all the military, civil, and judicial powers exercised by the officers of the existing Government of the same, shall be vested in such person and persons, and shall be exercised in such manner as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the full enjoyment of their liberty, property, and religion.

On the question, Shall the bill pass? the yeas and nays were required, and stood—yeas 89, nays 23, as follows:

Yeas—Willis Alston, Isaac Anderson, John Archer, David Bard, George M. Bedinger, Samuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, John W. Eppes, William Eustis, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thos. Newton, jr. Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Jos. Winston, and Thomas Wynns.

Nays—William Chamberlin, Martin Chittenden, Clifton Claggett, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Joseph Lewis, jr., Thomas Lewis, Henry W. Livingston, Nahum Mitchell, Thomas Plater, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Tenney, and Samuel Thatcher.

The House resolved itself into a Committee of the Whole on the following bill:

A bill for carrying into effect the Convention of the thirtieth of April, one thousand eight hundred and three, between the United States of America, and the French Republic.

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That, for the purpose of carrying into effect the convention of the thirtieth day of April eighteen hundred and three, between the United States of America and the French Republic, the Secretary of the Treasury be, and he is hereby, authorized to cause to be constituted, certificates of stock, signed by the Register of the Treasury, in favor of the French Republic, or of its assignees, for the sum of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per cent. per annum, from the time when possession of New Orleans shall have been obtained, in conformity with the treaty of the thirtieth day of April, eighteen hundred and three, between the United States of America and the French Republic, and in other respects conformable with the tenor of the convention aforesaid; and the President of the United States is authorized to cause the said certificates of stock to be delivered to the Government of France, or to such person or persons as shall be authorized to receive them, in three months at most, after the exchange of ratifica-

tions of the treaty aforesaid, and after Louisiana shall be taken possession of in the name of the Government of the United States; and credit or credits to the proprietors thereof, shall thereupon be entered and given on the books of the Treasury, in like manner as for the present domestic funded debt, which said credits or stock shall thereafter be transferable only on the books of the Treasury of the United States, by the proprietor or proprietors of such stock, his, her, or their attorney: And the faith of the United States is hereby pledged for the payment of the interest, and for the reimbursement of the principal of the stock, in conformity with the provisions of the said convention: *Provided, however*, That the Secretary of the Treasury may, with the approbation of the President of the United States, and with the assent of the proprietors of the said stock vary the terms and instalments fixed by the convention for its reimbursement: *And provided also*, That every proprietor of the said stock may, until otherwise directed by law, on surrendering his certificate of such stock, receive another to the same amount, and bearing an interest of six per cent. per annum, payable quarter-yearly at the Treasury of the United States.

Sec. 2. *And be it further enacted*, That the annual interest accruing on the said stock, which may, in conformity with the convention aforesaid, be payable in Europe, shall be paid at the rate of four shillings and sixpence sterling for each dollar if payable in London, and at the rate of two guilders and one half a guilder, current money of Holland, for each dollar if payable in Amsterdam.

Sec. 3. *And be it further enacted*, That a sum equal to what will be necessary to pay the interest which may accrue on the said stock to the end of the present year, be, and the same is hereby appropriated for that purpose, to be paid out of any moneys in the Treasury not otherwise appropriated.

Sec. 4. *And be it further enacted*, That, from and after the end of the present year (in addition to the annual sum of seven millions three hundred thousand dollars, yearly appropriated to the sinking fund by virtue of the act, entitled "An act making provision for the redemption of the whole of the public debt of the United States,") a further annual sum of seven hundred thousand dollars, to be paid out of the duties on merchandise and tonnage, be, and the same hereby is, appropriated to the said fund, making in the whole an annual sum of eight millions of dollars, which shall be vested in the Commissioners of the Sinking Fund in the same manner, shall be applied by them for the same purposes, and shall be, and continue appropriated until the whole of the present debt of the United States, inclusively of the stock created by virtue of this act, shall be reimbursed and redeemed, under the same limitations as have been provided by the first section of the above-mentioned act respecting the annual appropriation of seven millions three hundred thousand dollars, made by the same.

Sec. 5. *And be it further enacted*, That the Secretary of the Treasury shall cause the said further sum of seven hundred thousand dollars to be paid to the Commissioners of the Sinking Fund, in the same manner as was directed by the above-mentioned act, respecting the annual appropriation of seven millions three hundred thousand dollars; and it shall be the duty of the Commissioners of the Sinking Fund to cause to be applied and paid out of the said fund, yearly and every year, at the Treasury of the United States, such sum and sums as may be actually wanted to discharge the annual interest and charges accruing on the stock created by virtue of this act, and the several instalments or parts of principal of the said stock, as the same shall become due and may be discharged, in conformity to the terms of the convention aforesaid, and of this act.

Mr. R. Griswold proposed to amend the fifth section by introducing near the end thereof, after the word "conformity," the following words: "to the provisions of the said act, entitled 'An act making provision for the redemption of the whole of the public debt of the United States."

Mr. Randolph and Mr. Nicholson considered the amendment as altogether useless. After some consideration, it was lost without a division.

Mr. Eustis moved to substitute in the first section, the word "Louisiana" in room of New "Orleans," making the payment of interest on the stock commence at the period when possession of Louisiana, instead of New Orleans, shall have been obtained. Agreed to without a division.

The Committee then rose and reported the bill with this amendment, and the House immediately took up the report and concurred therein; when the bill was ordered, without a division, to be engrossed for a third reading to-morrow.

Saturday, October 29.

Two other members, to wit: from New York, Killian K. Van Rensselaer, and from South Carolina, Thomas Lowndes, appeared, produced their credentials, were qualified, and took their seats in the House.

On motion of Mr. Randolph the House went into Committee of the Whole on the bill making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the Government of the United States, by virtue of the convention with the French Government of the thirtieth of April.

The bill appropriates $3,750,000, inclusive of $2,000,000 appropriated the last session, and authorizes the President to borrow, at a rate of six per cent., $1,750,000.

Mr. Randolph moved an additional section appropriating $20,000 for compensation to commissioners, secretary, and agent for investigating claims, and for contingencies. This sum was afterwards reduced, at the instance of Mr. R., to $18,750.

The Committee agreed to the amendment, and reported the bill so amended. The House immediately took up the report of the Committee, and agreed thereto, when the bill was ordered to be engrossed for a third reading this day.

The bill was afterwards read the third time and passed without a division.

LOUISIANA TREATY.

An engrossed bill for carrying into effect the convention of the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic, was read the third time, and on the question that the same do pass, it was resolved in the affirmative—yeas 85, nays 7, as follows:

Yeas—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Wm. Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, John Campbell, Levi Casey, Martin Chittenden, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John Earle, Peter Early, John W. Eppes, William Findley, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Manasseh Cutler, Thomas Griffin, David Hough, Joseph Lewis, jr., James Stephenson, Peleg Wadsworth, and Lemuel Williams.

Resolved, That the title be, "An act authorizing the creation of a stock to the amount of eleven million two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic, and making provision for the payment of the same."

A message from the Senate informed the House that the Senate disagree to the amendments proposed by this House to the bill sent from the Senate, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States by the treaty concluded at Paris, on the thirtieth of April last, and for the temporary government thereof," and desire a conference with this House, on the subject-matter of the said amendments; to which conference they have appointed managers on their part.

The House proceeded to consider the said message: Whereupon,

Resolved, That this House doth insist on their said amendments, disagreed to by the Senate, and doth agree to the conference desired by the Senate on the subject-matter thereof; and that Mr. Randolph, jr., Mr. Lowndes, and Mr. Sandford, be appointed managers at the same on the part of this House.

LOST CERTIFICATES.

Mr. J. Randolph called the attention of the House to the subject of lost certificates. He said that he was not prepared to move a general question; but he would offer a specific case, which might bring the whole matter before the House. He alluded to the case of Philip Bush, on which the Commissioners had never made a report. The Committee of Claims, he said, declined proceeding until the Senate determined upon the subject, and the Senate decided in favor of those who held lost certificates. The House of Representatives refused to concur, and the matter rests. He therefore moved that the case of Philip Bush be referred to a select committee. He said, that he did not wish to interfere with the Committee of Claims, and whether a select committee should determine for or against the petition, it would gain the opinion of the House.

Mr. Leib said that, if he recollected right, the petition of Philip Bush had been long before the House, and he had hoped there had been an end to it; but he was willing that it should go to a Committee of Claims in order to preserve uniformity.

Mr. Smilie asserted that it was a rule of the House, that, when once a petition had been decided upon, it could not again be taken up. He thought it a good rule; if it was not so, there would be no end to applications; they would engross the whole time of the House. He knew not, he said, what the petition was; but if it contained anything material to be brought before the House, a new petition could be presented; but he did not wish to deviate from established rules.

Mr. Nicholson.—The gentleman who spoke last is perfectly right, provided the fact was as he conceives; but the petition of Philip Bush was never decided upon. The House refused to concur with the report of the Committee of Claims. He had, he said, looked into the records of the Journals, but the leaves were either misplaced or it was not noticed; he therefore thought a new petition would be best, for he should feel great pleasure in hearing the question discussed. There had been many great sufferers by lost certificates, and it was high time to make them satisfaction.

Mr. J. Randolph.—The Committee of Claims made a general report in the year 1800; but I know not whether the petition in question was rejected or not.

Mr. R. then proceeded to search the Journals; which taking up considerable time—

Mr. Eustis asked, whether any business was before the House?

The Speaker replied, that the Journals were being examined.

Mr. Smilie said, until it could be ascertained, it had best be deferred.

Mr. Randolph replied that, to oblige his friend, he would for the present withdraw the motion, though he thought that there was sufficient proof before the House that the petition had not been decided upon.

A letter from the Secretary of the Treasury was then read, which stated in answer to an application made to him; that there were several Journals of the House in his office; but not more than were necessary for the despatch of business of the department.

Referred to a select committee.

Mr. Mitchell then moved, that a committee

be appointed to consider on the expediency of reprinting the Journals of the House.

Mr. Huger observed, that he wished the word "documents" to be added to the motion. He wished the documents from the first time of the sitting of Congress to be reprinted. He observed, that only two copies of those valuable records were in the possession of the House, and in the first volume there was most important business.

After some observations on the words of the motion, it was agreed to.

MOURNING FOR EDMUND PENDLETON.

Mr. Eustis rose and observed that within a few days past the House were called upon to take notice of an event which perhaps would be more interesting to posterity than to the present generation; the death of one of those illustrious patriots who, by a life devoted to his country, had bequeathed a name and an example to posterity which he would not attempt to describe. He had information that another of these sages, Edmund Pendleton, of Virginia, had paid the last tribute to nature.

On this occasion he begged leave to offer to the House the following resolution:

Resolved, That this House, impressed with a lively sense of the important services rendered to his country by Edmund Pendleton, deceased, will wear a badge of mourning for thirty days, as an emblem of their veneration for his illustrious character, and of their regret that another star is fallen from the splendid constellation of virtue and talents which guided the people of the United States in their struggle for Independence.

The resolution was immediately taken up, and agreed to—ayes 77.

Monday, October 31.

Another member, to wit: Tompson J. Skinner, from Massachusetts, appeared produced his credentials, was qualified, and took his seat in the House.

Ordered, That the select committee of seventeen members, appointed on the twentieth instant, to whom were referred two motions for an amendment to the Constitution of the United States, respecting the election of President and Vice President, be discharged from the further consideration of the same.

Mr. John Randolph, jr., from the managers appointed on the part of this House to attend a conference with the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act to enable the President of the United States to take possession of the Territories ceded by France to the United States, by the treaty concluded at Paris on the thirteenth of April last, and for the temporary government thereof," reported that the conferees on the part of this House, did meet the conferees on the part of the Senate, who agreed to report to their House certain modifications of the said amendments.

A message from the Senate informed the House that the Senate recede from their disagreement to the amendments insisted on by this House to the bill, sent to the Senate, entitled "An act to enable the President of the United States to take possession of the Territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof."

On a motion made and seconded, that the House do come to the following resolution:

Resolved, That provision ought to be made by law for the relief of the owners of the Danish brigantine Henrick, taken by a French privateer in 1799, retaken by an armed vessel of the United States, carried into a neutral island, and there adjudged to be neutral, but under allowance of such salvage and costs as absorbed nearly the whole amount of sales of the vessel and cargo.

Ordered, That the said motion, together with a report of the Secretary of State, communicated by a message to this House, from the President of the United States, on the twenty-third of February last, and the accompanying documents, be referred to the Committee of Claims; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The House resolved itself into a Committee of the Whole on the report of the committee appointed on the seventeeth instant, to prepare and report such standing rules and orders of proceeding as are proper to be observed in this House; and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

Ordered, That the consideration of the said report be postponed until to-morrow.

Resolved, That the order of the day for the House to resolve itself into a Committee of the whole House on a motion of the twenty-eighth instant, for the appointment of a committee "to inquire into the expediency of extinguishing the claims of the United States for certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, with power to report by bill, or otherwise," be postponed until the first Monday in December next.

Ordered, That the Committee of Ways and Means have leave to bring in a bill or bills making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty.

Mr. John Randolph, jr., from the committee last mentioned, presented a bill making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty; which was read twice, and committed to a Committee of the whole House to-morrow.

Tuesday, November 1.

The House proceeded to consider the report of the committee appointed on the seventeenth ultimo to prepare and report such standing rules and orders of proceeding as are proper to be observed in this House, to which the Committee of the whole House, yesterday, reported their agreement; and the resolution contained therein, being twice read at the Clerk's table, was, on the question put thereupon, agreed to by the House, as follows:

Resolved, That the Rules and Orders established and observed by the late House of Representatives, be adopted by this House.

Mr. Jackson moved the following resolution:

Resolved, That provision be made by law for the application of one-twentieth part of the net proceeds of the land lying within the State of Ohio, sold or to be sold by Congress, from and after the thirtieth of June, one thousand eight hundred and two, to the laying out and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio river, and to the said State of Ohio, in conformity with the act of Congress, entitled "An act to enable the people of the western division of the Territory Northwest of the river Ohio to form a constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes;" passed upon the thirtieth of April, one thousand eight hundred and two, as well as the act passed the third of March, one thousand eight hundred and three, in addition to, and in modification of, the propositions contained in the act aforesaid, and the ordinance of the Convention of the State of Ohio, bearing date the twenty-ninth day of November, one thousand eight hundred and two.

Ordered, That the said motion be referred to a Committee of the whole House to-morrow.

The motion for excluding strangers from the floor of the House was resumed.

Mr. Claiborne spoke against the motion. He did not think that a certain part of the citizens (females) should be excluded from their right of hearing the debates. They had a curiosity to be gratified, and they were interested in the proceedings of the House. It would be inferred that they had transgressed, by being debarred at this time. He had ever observed that they have conducted themselves in a manner that gave no interruption to the business pending in the House. He should therefore vote against the resolution.

Mr. Early replied, that he had but one single observation to add, which was, that it was not the particular class of citizens referred to who caused the interruption, but the members themselves, when they were present. They would remain peaceable, if gentlemen who attended them did not occasion the complaint.

Mr. Claiborne wished members so offending to be reprimanded, by name, from the Chair.

The motion was rejected.

Mr. Varnum moved the order of the day on making provision for carrying into effect the seventh article of the British Treaty, and the House went into a Committee—Mr. J. C. Smith in the Chair.

The bill was read and agreed to, without a division.

The Speaker having resumed the Chair, was proceeding to read the bill—when

Mr. R. Griswold observed, that the seventh section provides that the Commissioners shall examine claims, and award thereon. The article in the present bill says, that interest of six per cent. shall be allowed upon the claim. He thought this improper; he wished the interest to take place upon the award being made, and he should therefore move to strike out the word "claim," and insert "award."

Mr. Early said, he did not rise to oppose the amendment, but to observe that he thought it improper to proceed upon the business in the absence of the gentleman who moved it, (Mr. J. Randolph.) he therefore moved the postponement until to-morrow; upon which a division took place—yeas 60, nays 32.

On motion of Mr. Nicholson, it was

Resolved, that a committee be appointed to inquire and report, by bill or otherwise, whether any additional provisions are necessary to be made to the act, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated, so as to take effect in every other State."

Ordered, That Messrs. Nicholson, Griffin, and Holland, be appointed a committee, pursuant to the said resolution.

Mr. Dawson said he had, last session, submitted two resolutions respecting post roads, which had not been acted upon; he therefore renewed them, in substance, as follows:

1. *Resolved*, That provision ought to be made by law for the establishment of post roads throughout the United States.

2. *Resolved*, That whatever money received from the Post Office shall remain, after defraying the expenses of the same, be appropriated to the fixing and improvement of the post roads.

Referred to a Committee of the Whole, and made the order for Monday.

Mr. John C. Smith, from the Committee of Claims, to whom was referred, on the eighteenth ultimo, the petition of Amey Dardin, presented on the third of February last, made a report thereupon; which was read, and ordered to be referred to a Committee of the whole House on Friday next.

Wednesday, November 2.

A remonstrance and memorial of Zachariah Cox, a citizen of the United States, was presented to the House and read, stating certain injuries which he sustained in his person and property, some time in the year 1798, in the Mississippi Territory, and at Nashville, in the State of Tennessee, by a body of armed men, belonging to the army, commanded by officers in the service of the United States, and by the proceedings of the Judge of a Federal Court; and praying that such redress may be afforded in the premises, as to the wisdom and justice of Congress shall seem meet.

Ordered, That the said remonstrance and memorial be referred to Messrs. Early, Thomas M. Randolph, Purviance, Skinner, and Lewis;

that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. NICHOLSON, from the committee appointed yesterday, presented a bill supplementary to the act, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be authenticated, so as to take effect in every other State;" which was read twice, and committed to a Committee of the whole House to-morrow.

The House took up the report of the Committee of the Whole on the bill making an appropriation for carrying into effect the 7th article of the British Treaty.

An amendment, not affecting the principle of the bill, being made at the instance of Mr. R. GRISWOLD, and Mr. J. RANDOLPH, the bill was ordered to a third reading to-morrow.

Mr. MITCHILL called the attention of the House to a subject of considerable importance, growing out of our possessions on the Mississppi. He stated that the mail to the Natchez was at present transported by a route circuitous and difficult of performance. The Cherokee country, which constituted a part of it, was so destitute of water and articles of subsistence, as to render it necessary for the conveyor of the mail to carry whatever himself or his horse required. Even the water used was carried in goat skins. A great portion of the country was likewise infested with robbers. The measure he proposed was to inquire by what means the carriage of the mail to the Natchez and New Orleans could be facilitated, so as to abridge the time now consumed, and lessen the dangers and difficulties attending the transportation. Mr. M. believed a route might be pursued whereby four hundred miles could be saved in the present distance to the Natchez. Mr. M. desired such an inquiry to be made into the means of accomplishing this important object, as should, while it tended to promote the great political and commercial interests of the country, convince the Indian tribes that our object was not to invade their rights. He further observed that the usual voyage to New Orleans was about thirty days. If the route by land should be improved, that place might be probably reached in ten days. He therefore offered the following resolution:

Resolved, That the Committee on Post Offices and Post Roads be directed to inquire by what means the mail may be conveyed with greater facility and dispatch, than it is at present, between the City of Washington, and the Natchez and New Orleans.

Agreed to without a division.

THURSDAY, November 3.

Ordered, That the memorial of sundry inhabitants of the two western counties of the Indiana Territory of the United States, which was read and ordered to lie on the table, on the twenty-sixth ultimo, be referred to Mr. LUCAS, Mr. MORROW, Mr. CHITTENDEN, Mr. LYON, and Mr. CLAGGETT; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

An engrossed bill making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty, was read the third time, and passed.

Mr. DAWSON laid on the table a motion for continuing for —— years the act of April, 1799, for augmenting the salaries of certain officers.

Mr. JACKSON observed that when he submitted a resolution for the application of one-twentieth part of the net proceeds of land sold in Ohio, he did not expect there would exist that diversity of opinion, which he had since learned did exist, in relation to the construction of the ordinance for the government of the Northwestern Territory. In order to give time for such a full investigation of the subject, as might, in its issue, be satisfactory to the State of Ohio, he moved a postponement of the consideration of the resolution, until the third Monday in November.—Agreed to.

FRIDAY, November 4.

A Message was received from the President of the United States, transmitting information of an act of hostility committed on a merchant vessel of the United States by an armed ship of the Emperor of Morocco.

The said Message, and letter transmitted therewith, were read, and referred to Mr. EUSTIS, Mr. JOSEPH CLAY, Mr. SANDS, Mr. M'CREERY, and Mr. DANA, to examine and report upon the same.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the Convention of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and making provision for the payment of the same," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said message: Whereupon,

Ordered, That the amendment of the Senate, together with the bill, be referred to the Committee of Ways and Means.

Ordered, That the Committee of the Whole House to whom was referred, on the first instant, a report of the Committee of Claims on the petition of Amey Dardin, be discharged from the consideration thereof; and that the said petition and report be recommitted to the Committee of Claims.

Mr. LYON moved the following resolution:

Resolved, That provision ought to be made, by law, for suspending the collection of duties in the ports of the United States on all articles the growth, produce, or manufacture, of the territory ceded to the United States by the Treaty of Paris, of the thirtieth of April last, as well as for the reimbursement of such duties as shall have been paid on such articles since the ratification of the said treaty.

Ordered, That the said motion be referred to the Committee of Ways and Means.

Mr. EARLY, in order to attract the attention of

the House to a subject of some importance, that it might obtain an early decision, moved the following resolution.

Resolved, That the petition of John F. Randolph and Randolph McGillis, in behalf of themselves and others, presented to this House at the last session, together with the report of the Secretary of War, accompanied with sundry documents respecting claims against the United States, for services of the militia of Georgia, made the 6th February, 1803, and also the report of the select committee thereon, made on the 10th of the same month, be referred to the Committee of Claims."

The motion was agreed to.

Mr. RANDOLPH invited the attention of the House to a subject of some importance to the revenue. Under an existing law a drawback of duties on goods exported to New Orleans was allowed. Should this act remain in force, goods sufficient to supply the Mississippi Territory and the other western country for several years might be stored in the warehouses of New Orleans, which, on possession being taken by the United States, may be carried into the United States, thereby evading the payment of duties. He therefore moved a resolution for the repeal of that act.

Resolution agreed to, and referred to the Committee of Ways and Means.

Mr. NEWTON said he held in his hand a resolution, which it was not his wish should be immediately acted upon, but at a future day. It would be recollected that during the last session the propriety of repealing the bankrupt law had come under the consideration of the House; but that, owing to the lateness of the day, its consideration had been postponed. As he was desirous that the subject should be investigated this session, he made the following motion:

Resolved, That the act entitled an act to establish an uniform system of bankruptcy throughout the United States ought to be repealed.

Referred to a Committee of the Whole, and made the order for the 21st inst.

Mr. EARLY said he held in his hand a manuscript copy of the original report of the Commissioners who had settled the accounts between the United States and the several States; as a document, throwing much light on this subject, he moved that it might be printed.—Agreed to.

On motion of Mr. DAWSON, a resolution laid by him on the table for continuing for —— years an act augmenting certain salaries, was referred to a Committee of the Whole, and made the order for Monday next.

Mr. ELLIOT offered a resolution for the appointment of a committee to inquire whether any, and, if any, what, provision was necessary to be made to produce a more general circulation of copper coin throughout the United States.—Agreed to, and a committee of five appointed.

MONDAY, November 7.

Another member, to wit: OLIVER PHELPS, from New York, appeared, produced his credentials, was qualified, and took his seat in the House.

A petition of sundry inhabitants of the State of New York, was presented to the House and read, stating certain grievances and losses to which a number of the citizens of the said State have been and are now subjected, in consequence of the unjust and oppressive practices committed by collectors appointed under an act, entitled "An act to lay and collect a direct tax within the United States;" and submitting to the consideration of Congress sundry propositions for redress therein, which they pray may be adopted; or that such other relief may be afforded in the premises as may be best calculated to remedy the evils of which the petitioners complain.

Ordered, That the said petition be referred to the Committee of Ways and Means.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of appropriation necessary for the service of the year one thousand eight hundred and four; also, a statement of receipts and expenditures at the Treasury of the United States for one year preceding the first day of October, one thousand eight hundred and three; which were read, and ordered to be referred to the Committee of Ways and Means.

Mr. JOHN RANDOLPH, jr., from the Committee of Ways and Means, to whom was referred, on the fourth instant, the amendment proposed by the Senate to the bill, entitled "An act authorizing the creation of a stock, to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the Convention of the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic, and making provision for the payment of the same," reported that the committee had had the said amendment under consideration, and directed him to report to the House their agreement to the same.

The House then proceeded to consider the said amendment of the Senate at the Clerk's table. And on the question that the House do concur with the Committee of Ways and Means in their agreement to the same, it was resolved in the affirmative.

Mr. SAMUEL L. MITCHILL, from the Committee of Commerce and Manufactures, to whom were referred, on the twenty-eighth ultimo, a letter and report from the Secretary of the Treasury, with sundry accompanying documents, relative to a survey of the harbor in the island of Nantucket, in the State of Massachusetts, and of the bar and shoals near the same, made a report thereon; which was read: Whereupon,

Ordered, That the said report and accompanying documents, together with a petition of the inhabitants of the island and town of Nantucket, presented the eleventh of February last, be referred to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on a motion of the fourth instant relative to a farther continuance of an act passed the second of March, one thousand seven hundred and ninety-nine, entitled "An act to augment the salaries of the officers therein mentioned; and, after

some time spent therein, the Committee reported their agreement to the same, as amended.

The House then proceeded to consider the said motion at the Clerk's table; and the resolution contained therein, as amended by the Committee of the Whole, being twice read in the words following, to wit:

Resolved, That an act passed on the second day of March, one thousand seven hundred and ninety-nine, entitled "An act to augment the salaries of the officers therein mentioned," which was revived and continued in force by an act passed on the fourteenth of April, one thousand eight hundred and two, ought to be farther continued for the term of two years from the first day of January next:

The question was taken that the House do concur with the Committee of the Whole in their agreement to the said resolution, and passed in the negative.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That provision ought to be made, by law, for fixing the salaries of certain officers in the several Executive Departments of Government:

Ordered, That the said motion be referred to the Committee of Ways and Means.

TUESDAY, November 8.

Resolved, That the Committee of Commerce and Manufactures be directed to inquire and report by bill, or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports or places.

WEDNESDAY, November 9.

A petition of the Mayor, Aldermen, and Assistants of the city of Natchez, in the Mississippi Territory of the United States, in Common Council assembled, was presented to the House and read, praying that Congress will confirm to the petitioners the title of such lots and land, for the use of the said city, as may be found vacant within the present limits thereof.

Ordered, That the said petition be referred to Mr. LATTIMORE, Mr. ALSTON, and Mr. STEDMAN, to examine and report thereon.

The SPEAKER laid before the House sundry depositions and other papers transmitted from the counties of Botetourt and Amherst, in the State of Virginia, relative to the contested elections of Thomas Lewis and Thomas M. Randolph, two of the members returned to serve in this House for the said State; which were read, and ordered to be referred to the Committee of Elections.

THURSDAY, November 10.

Another member, to wit, JAMES GILLESPIE, from North Carolina, appeared, produced, his credentials, was qualified, and took his seat in the House.

Mr. J. RANDOLPH, jun., from the committee appointed, presented a bill to repeal the act, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" which was read twice, and committed to a Committee of the Whole to-morrow.

Resolved, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of exempting pilots from paying hospital money for their apprentices; and that they have power to report by bill, or otherwise.

FRIDAY, November 11.

The House met, but transacted little or no business, and adjourned till Monday.

MONDAY, November 14.

A petition of Andrew Moore, of the State of Virginia, was presented to the House and read, complaining of an undue election and return of Thomas Lewis, to serve as a member in this House, for the district composed of the counties of Greenbrier, Kenawha, Monroe, Botetourt, and Rockbridge, in the said State.

Ordered, That the said petition be referred to the Committee of Elections.

Mr. SAMUEL L. MITCHILL, from the committee appointed, on the twenty-ninth ultimo, "to take into consideration the propriety of reprinting the Laws of the United States, the Journals of the House of Representatives, and other Public Documents," made a report thereon; which was read and referred to a Committee of the Whole House on Friday next.

Mr. CHITTENDEN, one of the members from the State of Vermont, presented to the House certain resolutions of the Legislature of the said State, passed the twenty-fourth of October last, relative to an amendment to the Constitution of the United States in the case of future elections of President and Vice President; which were read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill to repeal the act, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the whole House on the report of the Committee of Claims, of the tenth instant, to whom was referred the petition of John Hunter; and, after some time spent therein, the Committee reported their agreement to the same, without amendment.

The House then proceeded to consider the said report at the Clerk's table; and the same being twice read, in the words following, to wit:

"The petition states that Colonel John Fitzgerald, a naval officer in the service of the United States, hired of the petitioner a dwelling-house in the town of Alexandria, and that the property of Fitzgerald had been seized by the United States, 'to satisfy his delinquency.' The petitioner prays that the rent of his dwelling-house,

which is in arrears for seven months, may be paid by the Government.

"If the house was hired for the use of the United States, and by one duly authorized for that purpose, the claim may, at any time, be adjusted at the proper department. This, however, is not pretended; nor do your committee know of any principle, either of justice or equity, which would require the Legislature to afford relief to the petitioner. They are, therefore, of opinion, that he have leave to withdraw his petition:"

The question was taken, that the House do concur with the Committee of the whole House in their agreement to the said report, and resolved in the affirmative.

TUESDAY, November 15.

Another member to wit: GEORGE TIBBITS, from New York, appeared, produced his credentials, was qualified, and took his seat in the House.

A Message was received from the President of the United States, communicating a digest of the information received relative to Louisiana, which was read, and, together with the digest of information transmitted therewith, ordered to be referred to the committee appointed, the twenty-seventh of October last, on so much of the President's Message, of the twenty-first of the same month, as relates "to permanent arrangements for the government of Louisiana."

An engrossed bill to repeal the act, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage," was read the third time, and passed.

Ordered, That the committee to whom was referred, on the fourth instant, a Message from the President of the United States, relative to an act of hostility committed on a merchant vessel of the United States by an armed ship or vessel of the Emperor of Morocco, and the copy of a letter from Captain Bainbridge, of the Philadelphia frigate, accompanying the same, have leave to report thereon by bill or bills, or otherwise.

Mr. EUSTIS, from the committee last mentioned, presented a bill for the further protection of the seamen and commerce of the United States; which was read twice and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the seventh instant, to whom were referred a letter and report from the Secretary of the Treasury, with sundry accompanying documents, relative to a survey of the harbor in the island of Nantucket, in the State of Massachusetts, and of the bar and shoals near the same; to which Committee of the whole House was also referred a petition of the inhabitants of the island and town of Nantucket, presented the eleventh of February last; and, after some time spent therein, the Committee rose and reported two resolutions thereupon, which were severally twice read, and agreed to by the House, as follows:

1. *Resolved*, That the inhabitants of the island and town of Nantucket, in the State of Massachusetts, who presented a petition to this House on the eleventh of February last, have leave to withdraw the said petition, together with the papers accompanying the same.

2. *Resolved*, That the report of a select committee, made at the last session of Congress, on the subject of the fisheries of the United States, be referred to a select committee, with instruction to inquire and report whether any, and, if any, what, measures are necessary for the encouragement of the whale and cod fisheries.

Ordered, That Mr. HUGER, Mr. BISHOP, Mr. GRAY, Mr. GODDARD, and Mr. RHEA of Tennessee, be appointed a committee, pursuant to the second resolution.

Resolved, That the President of the United States be requested to cause to be laid before this House copies of any documents which may be in the possession of the Executive, relative to the arrest and confinement of Zachariah Cox, by the officers in the service of the United States, at Natchez, in the year one thousand seven hundred and ninety-eight.

Ordered, That Messrs. EARLY and THOMAS M. RANDOLPH be appointed a committee to present the foregoing resolution to the President of the United States.

WEDNESDAY, November 16.

Mr. FINDLEY, from the Committee of Elections, to whom it was referred to examine the certificates and other credentials of the members returned to serve in this House, made a farther report, in part, thereupon; which was read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill for the further protection of the seamen and commerce of the United States.

The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

THURSDAY, November 17.

Mr. JOHN COTTON SMITH, from the Committee of Claims, to whom was referred, on the thirty-first ultimo, a motion relative to a provision for relief of the owners of the Danish brigantine Henrick, together with a report of the Secretary of State, communicated by a message to this House from the President of the United States, on the twenty-third of February last, and the accompanying documents, made a report thereon; which was read, and referred to a Committee of the whole House on Tuesday next.

Mr. EPPES moved the following resolution:

Resolved, That it is expedient to discontinue the offices of Commissioners of Loans in the different States, and to transfer the duties of those offices to the Secretary of the Treasury, with an allowance of —— dollars for additional clerks.

Referred to the Committee of Ways and Means.

SALARIES OF OFFICERS.

Mr. RANDOLPH, from the Committee of Ways and Means, reported a bill fixing the salaries of certain officers therein mentioned.

The bill leaves the salaries blank.

Mr. LEIB moved the recommitment of the bill to the Committee of Ways and Means, under the impression that it had been the intention of the House, in making the original reference to that committee, that they, understanding the resources of the country, should fix the quantum of the salaries, and not report a bill in blank.

Mr. RANDOLPH, the Chairman of the Committee of Ways and Means, explained at some length the reasons which had operated with the committee in reporting the bill in blank. He observed that he had himself been in favor of making a report, predicated on the previous decision of the committee, whether the existing salaries should be increased, diminished, or remain unaltered. In this opinion he had been overruled, and the committee, not being able to agree among themselves on these points, had directed a bill in blank to be drawn up.

Mr. NICHOLSON vindicated the report of the committee as perfectly regular, and conformable to the invariable practice in analogous cases. In all cases where a discretion as to the quantum of money applied to specific objects existed, committees had reported a bill in blank, leaving the decision on the proper sums to the determination of the House.

Mr. LEIB's motion to recommit was lost without a division, and the bill referred to a Committee of the Whole to-morrow.

PROTECTION TO SEAMEN AND COMMERCE.

An engrossed bill for the further protection of the seamen and commerce of the United States was read the third time.

Mr. CROWNINSHIELD, of Massachusetts, rose and said, he wished to recommit the bill to a Committee of the whole House, in order to introduce an amendment immediately at the end of the first section. He stated that as the clause now stood a power was given to our cruisers to capture the merchant vessels of friendly and allied Powers, having on board goods and effects the property of the Emperor of Morocco or of his subjects.

I will suppose, said Mr. C., that our public ships should meet with a neutral vessel which is suspected to be loaded with enemies' goods, and a capture follows; and it should afterwards appear upon a proper examination in port, that a mistake had been committed, and that the cargo as well as the ship was neutral; I would ask whether the United States would not be held responsible to pay heavy damages; and if an unjust condemnation were to take place, should we not be answerable to the owner of the neutral ship or to his Government?

I have known the flag of our country torn away from the mast, and the fairest documents trampled upon and thrown into the sea by the lawless freebooters of the ocean. I have also known, and the members of this House cannot be ignorant of the fact, that more than one thousand American merchant vessels were captured during the late war in Europe, and wantonly and unjustly condemned as enemies' property, when every timber belonging to the vessels, and every dollar of the cargoes, were *bona fide* American. And having seen this I do not wish an authority should be given to our own cruisers, whereby the merchant vessels of an unoffending nation may be captured, and their cargoes afterwards adjudicated. Mr. C. here offered the following amendment to the bill, to be introduced at the termination of the first section:

"Provided nothing herein contained shall be construed to authorize the capture or detention of any vessel bearing the flag of any European Power whatever, although such vessel may be loaded in whole or in part with goods and effects belonging to the Emperor of Morocco or his subjects—contraband goods destined to the enemies' ports excepted."

After reading the amendment in his place, Mr. C. said that he offered it to the consideration of that honorable body, wishing most sincerely that it should be incorporated into the bill, or that some other provision might be introduced guarding against the practice he had alluded to by the ships of the belligerent nations.

Mr. DANA observed that the alleged objection did not lie against the bill, as the nature of the instructions to commanders of American vessels was confided to the President, who would, no doubt, adopt such regulations as should be proper.

Mr. EUSTIS opposed the recommitment, on the ground that the provisions of the bill were an exact transcript of those contained in an act passed two years since in relation to Tripoli, and on the ground that the insertion of the proposed amendment might, while it failed to affect the principle of the law of nations, produce considerable inconveniencies so far as it related to the Barbary Powers.

After some debate, in which Mr. NICHOLSON supported the amendment, upon the principle that free ships ought to make free goods, it was put and lost, 39 members only being in favor of it.

The question recurring on the passage of the bill.

Mr. DANA observed that it had been hitherto usual to require the yeas and nays to be taken to mark the disagreement of the members of the House; he moved that they should be taken on this question to show their cordial agreement.

The question was then taken by yeas and nays on the passage of the bill, and carried unanimously in the affirmative—yeas 117, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Calvin Goddard, Peterson Goodwin, Edwin Gray, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Daniel Heister, Joseph Heister, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jr., Thomas Lowndes, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, Samuel D. Purviance, John Randolph, jr., John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Cotton Smith, John Smith of New York, John Smith of Virginia, Richard Standford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, George Tibbits, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, John Whitehill, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

POSTAGE OF NEWSPAPERS.

Mr. G. W. CAMPBELL.—There is a subject to which I wish to draw the attention of the House. It is, sir, the postage charged on the transportation of newspapers in the mail. This subject I conceive of sufficient importance to meet the attention of this House, as it affects the means of acquiring political information in the different parts of the Union.

I presume it will not be denied, that the most effectual way of rendering the people at large useful citizens, and of securing to them their liberties and independence, would be to increase the sources of information, make them well acquainted with their political rights, and also with the proceedings of their Government. So long as they are informed on those subjects, so long they will be disposed to acquiesce in, and support such measures as may be calculated to promote the general good, but will be prepared to resist any attempts that may be made to infringe their rights by those in power. It is believed that newspapers are the most general and effectual means of disseminating political information among the citizens at large; and it ought therefore to be the object of Government to facilitate their circulation as much as possible. I conceive, sir, the most direct way to attain this object would be to cause them to be transported in the mail free of postage.

The moneys arising from the postage on newspapers cannot certainly be such an object to Government, as would justify the principle of laying a tax on information, or pursuing any measures that would have a tendency to diminish, in the least degree, the means by which it may be acquired. It seems to be admitted by all those who have considered the subject, that the Post Office establishment was never intended as a paramount source of revenue; and therefore we find that the moneys arising therefrom have not generally been taken into the calculation, in the estimates of our finances. The whole amount of the postage on newspapers I believe to be very inconsiderable, as an item of revenue; and a great proportion of it, as I am informed, is given to the deputy postmasters for keeping the accounts of such postage, and for collecting the same: and if information is to be relied upon, many of those deputy postmasters, who are allowed about fifty per cent. on the amount of postage thus collected, are of opinion that the labor of keeping those accounts and of collection, exceeds this compensation; and they would be well satisfied that no such postage existed. If this statement be correct, it will go a great way to prove the measure impolitic.

But perhaps it may be said that the postage to be collected on newspapers, has a tendency to insure their arrival at the places of destination, and the delivery of them to those to whom they are directed. This, upon investigation will, I believe, be found not to be the case. It is made the duty of the postmasters, by law, to forward and deliver newspapers, as well as letters,—they act upon oath, and if a sense of propriety in their conduct, and the obligation of an oath, would not induce them to perform their duty in this respect, it cannot be expected that the paltry emolument accruing to them from their part of one cent, or one and a half cents on each newspaper, would have that effect; and even this sum must be still less relied upon as an inducement, when it is considered, as already stated, that the labor required in keeping accounts for this purpose and in collection, is not in reality compensated by the sum received. In order, therefore, to bring this subject fairly before the House, I move that the House come to the following resolution:

Resolved, That so much of the act to establish post-offices and post roads in the United States as charges a postage on the transmission of newspapers ought to be repealed.

Ordered to lie on the table.

FRIDAY, November 18.

Two other members, to wit: JOSEPH BRYAN, and SAMUEL HAMMOND, from Georgia, appeared, presented their credentials, were qualified, and took their seats in the House.

SALARIES OF CERTAIN OFFICERS.

The House resolved itself into a Committee of the Whole on the bill fixing the salaries of certain officers therein mentioned. The bill was read, as follows:

Be it enacted, by the Senate and House of Representatives of the United States of America, in Congress assembled, That, from and after the end of the present year, the following annual compensations, and no other, be and they are hereby granted to the officers herein enumerated respectively, that is to say: To the Secretary of State, $ ——; to the Secretary of the Treasury, $ ——; to the Secretary of War, $ ——; to the Secretary of the Navy, $ ——; to the Attorney General, $ ——; to the Comptroller of the Treasury, $ ——; to the Treasurer, $ ——; to the Commissioner of the Revenue, $ ——; to the Auditor of the Treasury, $ ——; to the Register of the Treasury, $ ——; to the Accountant of the War Department, $ ——; to the Accountant of the Navy Department,

$ ——; to the Postmaster General, $ ——; and the Assistant Postmaster General, $ ——: which respective sums shall be payable quarter-yearly at the Treasury of the United States.

Mr. J. RANDOLPH moved to fill the blank in relation to the salary of the Secretary of State with "five thousand dollars."

Mr. LEIB moved to fill it with "three thousand five hundred dollars." According to the rules of the House, the question was first put on the highest sum.

Mr. SANDFORD said he was not able to ascertain what the existing salaries given to the officers named in the bill were, and was therefore, unprepared to vote on the question. He wished that some gentleman would state precisely what these salaries were.

Mr. J. RANDOLPH rose to give the gentleman from Kentucky the information he desired. The salaries under the existing law, were as follows: Secretary of State, $5,000; the Secretary of the Treasury, $5,000; the Secretary of War, $4,500; the Secretary of the Navy, $4,500; the Comptroller, $3,500; the Treasurer, $3,000; the Auditor, $3,000; the Register, $2,400; the Attorney General, $3,000; the Accountants of the War and Navy Departments, each $2,000.

These are the salaries, said Mr. R., to which these officers are now entitled, and which they have received from the time of their coming into office; and these are the salaries received by their predecessors when they went out of office. The law under which these salaries are received expires with the present year, and if the law now submitted be not passed, the salaries will be as follows: the Secretary of State, $3,500; the Secretary of the Treasury, $3,500; the Secretary of War, $3,000; the Secretary of the Navy, $3,000; the Comptroller, $2,650; the Auditor, $2,400; the Treasurer, $2,400; the Register, $2,000; the Attorney General, $2,400; the Accountants of the War and Navy Departments, $1,600 each.

Mr. LEIB—The gentleman from Virginia, (Mr. RANDOLPH,) has stated that the existing salary of the Secretary of State is the same with that received by his predecessor. If the gentleman means by his predecessor, the gentleman who immediately preceded the present Secretary, he is correct; but if he means all his predecessors, he is incorrect. Under the Government as first organized, the Secretary of State received only $3,500. That office was then filled by a man of the first talents, and the country was also in a critical situation; yet the salary of $3,500 was deemed sufficient. When it was increased, in the year 1799, it was contended that articles of consumption were at war prices, and that the seat of Government being about to be removed to Washington, it was necessary to make an additional provision. Suppose these were facts then, are they so now? Are the articles of living dearer now, than they were before the passage of the act of 1799? they are not dearer in Washington than in Philadelphia; while house rent is dearer there than here. These are reasons why the salaries as they stood at that period should not now be increased. When the act of 1799 was passed, it was urged, by certain gentlemen now in favor of an increase of salaries, that economy in a Republican Government was highly necessary, and that there was a large national debt, the discharge of which required the most frugal disbursement of the public moneys. Now, when a change has taken place in the administration of the Government, and gentlemen possess the power of reducing these salaries, they are in favor of their continuance. Mr. L. hoped they would regard consistency of character, and recollect that if these salaries were wrong then, they could not be right now. He therefore trusted, when they fully considered the circumstances, they would vote in favor of filling the blank with the small sum proposed.

Mr. ALSTON hoped the motion of the gentleman from Virginia would prevail. If gentlemen really wish to make a saving, they will not turn their attention to the trifling difference between the present salaries and those that existed four or five years back; the difference is so small as not to be noticed in the scale of national expenditure. We know, also, that the salaries now received have called forth the first talents. If they shall be reduced, we do not know that those given will call forth the best talents. It therefore appears to me, said Mr. A., extremely probable that the small saving contemplated by some gentlemen will be attended with great eventual loss. With regard to the remarks of the gentleman from Pennsylvania (Mr. LEIB) on the comparative expenses of this place and Philadelphia, I can only judge from my own expenses, which were less in Philadelphia than here.

Mr. LEIB said it was true that boarding was dearer in this city than in Philadelphia; but that arose from the session of Congress being but for part of a year, which obliged those who keep boarding houses to charge enough during a part of the year for them to subsist on during the whole. This was the case with those whose residence was permanent.

Mr. FINDLEY believed that gentlemen were so far agreed with regard to the salaries of permanent offices, as to unite in opinion that there should be attached to them established salaries. As far as he knew the intention of those who were friendly to the motion made by the gentleman from Virginia, the object was to fill the blanks with the same salaries which had been allowed for five years past. This object, therefore, had received the sanction of five years' experience; an experience which, in ordinary concerns, ought not, in his opinion, to be disregarded. In the course of his experience, under either Federal or State Governments, he had not known salaries lowered. Besides, if from time to time, changes be made in the salaries of the officers of Government, it may be said that we are actuated by a spirit of favoritism to particular men.

His colleague (Mr. LIEB) had taken a review of the state of the salaries, and of the comparative expenses of living. To the opinion expressed by him, the gentleman from North Carolina (Mr. ALSTON) had replied. He (Mr. F.) agreed

with that gentleman. As far as his experience extended, he found no abatement, but an augmentation of the expenses of living; all the changes that had taken place were in favor of higher living and higher salaries. The necessaries of life might be cheaper as far as they depended upon a foreign demand; but we cannot calculate on this as a permanent state of things. The late peace of Europe had been of long duration and war had returned. Nor can we derive any argument for reducing the salaries, from the existing state of the circulating medium. A few years back there was but one bank in Philadelphia, which had but a small capital, now there are three. A similar increase of those institutions has taken place in different parts of the United States. This is proof of a great increase of capital and depreciation of money.

But gentlemen, desirous of reducing salaries, should look round to other officers than those named in this bill. For his own part, Mr. F. said, he did not know that he had ever voted for lowering the salary of any officer; and when he desired gentlemen to turn their attention to other officers, it was not that he was in favor of reducing their salaries. But he asked gentlemen to look to the collectors of the ports, some of whom received $5,000 a year—a sum equal to the highest allowed, under this bill, to officers where the responsibility incurred and talents required were infinitely greater. With regard to the policy of the measure, he would appeal to gentlemen whether it was politic in the Government of the United States to narrow the field of choice for the selection of these important officers? For his part, he wished the Government might always hold out a temptation to the greatest talents. When he considered the salaries given by the States to their officers, the present salaries did not appear more than a competence. With respect to the motion to fill the blank with $3,500, Mr. F. said he called it lowering the present salaries; and the gentlemen now in office came in under the expectation that the existing salaries would be continued. They had not, it is true, the security of law for their continuance, but they had a well-founded expectation. In Pennsylvania, the salaries of the judges were raised for a time, and then made permanent.

Mr. F. said that he, in 1799, voted against raising these salaries; but now, after the increase had so long existed, and had become fortified by experience, he should be against reducing them, under the impression that the salaries of such officers should be permanent. He therefore hoped that the motion to fill the blank with $5,000 would prevail.

Mr. J. RANDOLPH said he did not understand the reasoning adduced by the gentleman from Pennsylvania, (Mr. LEIB,) to show that the blank ought to be filled with a smaller sum than $5,000. There had, indeed, been adduced an argument that might apply with some force to particular gentlemen in that House, but which was inapplicable to a great majority of the members: he alluded to the argument that those who in 1799 voted against an increase of salaries, should at this time vote in favor of a diminution of them. At that period, he had not the honor of a seat in the House. But, if this argument applied with any force to those who voted against an increase, to restrain them from voting for this bill, it ought surely to be more conclusive on the minds of those who on that occasion voted for it, to induce them now not to vote against it. And for this plain reason, the Committee would perceive that the same cause which induced members in 1799 to vote against the increase of salaries, might induce them to vote for their continuance after they were raised. It did not, therefore, follow that there was any inconsistency between opposing the increase in 1799, and voting for its continuance in 1803. There was a wide difference between refusing to augment a salary and refusing to diminish it after it was augmented. For, though there may have been in 1799 strong reasons against an increase, there may be stronger reasons at present entertained by the same men against a diminution. He believed, had he been a member then, he should have voted against the increase. But there would be an obvious and glaring inconsistency in those, who, having voted in 1799 for an increase, should now vote for a diminution of these salaries. He said so, not from an idea that there were in the House any such gentlemen. He was, on the contrary, persuaded those gentlemen had too great a regard to consistency and to character to commit such a glaring inconsistency of conduct.

As this reduction of the salaries of a few of the Executive officers was supported on the ground of economy, Mr. R. said he would take a view of the expenses of the Government, in order to determine whether this object, so much the favorite of some gentlemen, was worthy of the attention bestowed upon it. Of the expenditures of the Government, those usually classed under the name of civil list amounted to $564,000; those of a miscellaneous nature, which in some of the items partook of the character of those which constituted the civil list, $183,000; for foreign intercourse, $159,000; for the Military department, $863,000; for the Naval Establishment, $650,000. These, constituting the whole estimate of the expenses for the ensuing year, fell short of two millions and a half,; of which, only about half a million goes to the support of the civil list. What are we now about to do? To legislate at an expense greater than the saving contemplated—to bring a mere pepper-corn into the Treasury—to cut off, perhaps, some of the most responsible officers of the Government. In my opinion, said Mr. R., if a reform of expenses is our object, it belongs to us to begin (where we ought to begin, on some other solemn occasions) at home. Let us look at our own expenses and receipts—at the contingent fund of this House, and of the other branch of the Legislature—at the contingent fund of the departments. We shall find the expenses of the Department of State, exclusive of the expense of printing and distributing the laws, $12,000, while the salary of the Secretary is $5,000; of the Secretary of the Treasury, $9,000, while the salary of the Secretary is $5,000; of the Comptroller's office, $9,000, while

the salary is $3,500; of the Auditor, $9,000, while the salary is $3,000; of the Register's office, $14,000, while the salary is $2,400. We shall also find in the same Department other miscellaneous expenses to the large amount of $11,000. We shall find in the War Department the expenses $12,000, of which $4,500 constitutes the salary of the Secretary; and in the Accountant's office, $10,000 expenses, while the salary is $2,000, besides the expenses of the Paymaster and Purveyor of Public Supplies. We shall find in the Navy Department the expenses $6,000, and the salary of the Secretary $4,500; and in the Accountant's office the expenses $8,000, and the salary $2,000. In the Post Office Department we shall find the same ratio between the expenses and the salary of the head of the Department. Then come the expenses of the officers of the Commissioners of Loans in the several States, properly the expenses of the Treasuary Department, and which are immense. Then follows that glorious institution—that splendid attribute of sovereignty—the Mint, for which the Government annually pays $11,600 in salaries to its officers, exclusive of other expenses, amounting to $9,400, and making altogether the enormous sum of $20,000! Then follows the Judiciary, respecting the expenses of which I have no further observations to make, than that I believe the salaries of the men who fill those high and responsible offices are very inferior to what they ought to be. Then follows that description of expense, which I have always understood to be the peculiar fund from which a nation may economize—the Marine and War Departments; one of which amounts to $860,000, and the other to $650,000. They are the departments in which a nation can alone exercise true economy. When I make this observation, I do not mean to say that reform ought not to take place in the civil expenditures; but even then we ought to strike at the contingent funds—the stationery and fuel of the Departments, and of this and the other House.

It has been stated truly by the venerable gentleman from Pennsylvania, (Mr. Findley,) that it is not sound policy to narrow the range of the choice for the great Executive officers of the United States. I believe it will be narrowed by the proposed diminution of their salaries. On this subject, I speak without any understanding with the gentlemen who at present hold those offices. I believe that inducements other than pecuniary brought those gentlemen into office; and I also believe, that if this blank shall be filled with $3,500, it will be impossible to get men to hold these offices from pecuniary considerations. We know the fact that no man of talents, devoted to the liberal professions, fails to get a large sum. Of course it follows that men who hold these offices cannot be actuated by such motives. No, it is to an attachment to certain political opinions—to particular men—to the love of glory inherent in every noble breast—that we are to look for the true motives; and these, I believe, are the motives that would induce the men who at present hold these high offices still to hold them, if the compensation were reduced to a single cent. But whether these are motives which can or ought to induce a man to become a public servant, will you induce such a man to sacrifice his patrimony, or abandon his office, unless fortune has been so kind as to make the sum he is necessarily called upon to expend, to him, a trifling consideration? Is this policy—is it Republicanism—that no man, unless of overgrown fortune, should be able to hold a high Executive office in a fair way? I know there is an abundance of hunters and bidders for offices, who are ready to take them on any terms; but these are not the men with which these important and dignified offices ought to be filled. There is not a doubt, if you put the office of the Secretary of State up at auction, you will get men who will undertake to execute its important functions at the sum proposed by the gentleman from Pennsylvania; but in this way, for a saving of $1,500, we may lose millions.

I beg gentlemen to attend to the nature and extent of the duties of the great offices of the Department of State and of the Treasury. I speak without reference to those who at present hold them, though I might speak with reference to them. Do not those stations require an unblemished character, the highest talents, and an unwearied assiduity to discharge their duties with benefit to the nation; and can you expect such men to accept such offices for the small sum of $3,500 a year, if influenced by pecuniary considerations? While gentlemen are for detracting from the little which these great officers possess, we find that collectors, and supervisors, and other officers whose duties are merely ministerial, and which require only ordinary talents, are drawing from the Treasury to the amount of $5,000 a year; and until a late law passed drew from $5,000 to $12,000; and these men, according to the ideas of some gentlemen, are to retain their $5,000, while the Secretary of State and of the Treasury are only to receive $3,500.

I well know that when the act establishing the salaries as they now stand passed, it was a subject of clamor; but it was a clamor that never reached me; I mean one by which I was not affected. For I have always believed, in public as well as in private life, it is sound policy to obtain the best agents, to give them enough to do, and to pay them well for their services. I believe that in a single negotiation conducted by a Secretary of State, millions may depend upon the exercise of the discretionary power with which he is clothed. It may depend upon his answer to a foreign Minister, whether we shall have peace or war. There is also a vast responsiblity attached to the Secretary of the Treasury; and though the scope of his duties may be less extensive than those of the Secretary of State, yet millions may be won or lost by the manner in which he discharges them. There are other officers whose compensations are fixed by this bill, called upon to discharge high duties, on the proper execution of which much depends.

It may be said, for all these things the President is responsible; that he is, or ought to be a man of the first talents, and that the heads of the

Departments cannot go amiss without his sanctioning their measures. It has, however, always appeared to me that every form of Government that devolves the whole Executive power on a single individual, differs but in form from that which devolves it upon a plurality of persons. It is the essence of Government that one man cannot execute it alone; and that he is obliged to share it with heads of Departments, or with agents by some other name. The imbecility of human nature is such that he must participate power with others. It is the nature of the human race not to possess confidence in themselves, to take advice, and of consequence to be influenced by others in whom they repose confidence. Whatever, therefore, the theory of the Government may be, the acts of the Government must take their color more or less from the advisers of the heads of the Executive power; and hence the necessity of those advisers being men of wisdom and of the purest character. Such men ought to receive a compensation that will render them independent; for it is in the middling ranks, neither among the rich nor the poor, that such characters abound.

As I have before remarked, I know when the last act on this subject passed there was a clamor; a clamor on one point, and then on another. But what effect had it on the nation? Let us inquire of the people, whether, while the affairs of the nation are so prosperously managed, they are not content to give a fair compensation? We only ask that those, to whom the country eminently owes its peace and prosperity, may be enabled to support with comfort themselves and their families. Let us suppose that those who manage the public concerns had acted indiscreetly; that, instead of preserving us in peace and paying off with great rapidity the public debt, they had produced a state of war, and had saddled the people with additional and heavy impositions. If they, in such circumstances, should ask for salaries and argue that the articles of life are at war prices, I would have them answered: no, gentlemen, you have brought us into war wisely or unwisely, no matter which; it calls for sacrifices; begin at home; you have laid new taxes upon the poor and the rich; live then yourselves upon small salaries, and set an example to the people by being the first to make some personal sacrifices yourselves. I say so to the House. I cannot enter into a comparison of the price of wheat and bread, and other articles of necessity or comfort. I cannot huckster with such men as fill the great offices of Government; and go to them and say whatever your talents, or whatever the services you render your country, you may live on leeks and onions—no, sir, I cannot stoop to this conduct. If on my return home, I should have to tell my constituents, we have reduced the salaries of the heads of the departments, small as they were, to save the public money; but we have made sacrifices at the expense of others—were I obliged thus to address my constituents on my return to them, I should not be able to find language for the occasion. I should blush to tell them, that for my poor insignificant services as a member of this House, I had demanded what would carry me through the session without debt, while I had screwed from men so superior to me in every respect, the small pittance rendered them as an inadequate compensation for their great services. I should blush to be obliged to tell them so. I cannot go home and address them in this language.

Mr. Chittenden—Mr. Chairman, I rise with extreme diffidence when I consider the talent and experience of gentlemen who compose this honorable House, being unaccustomed to take an active part in public debate. It is a sense of duty and not a matter of vanity which induces me to rise on this occasion. Therefore, without attempting to court praise on the one hand, or fearing censure on the other, I shall, neglectful of both, deliver my opinion on this interesting subject, hoping it will be received with the same candor it is given. The filling the blanks in this bill, or determining the salaries of the officers of Government to be provided for by it, is not a question simply between this House and the persons now holding the offices, but, sir, it is a question in which every individual in society is more or less interested. It is, what the Government ought to allow their public agents or servants as a compensation for their services rendered in their several departments? And sir, permit me to say, I think it a question which this House, as the more immediate representatives and guardians of the rights and interests of the people, ought to decide upon the true principles of honor, justice, sound policy, and strict economy, without reference to particular men or parties, as the bill under consideration has for its object the permanent establishment of those salaries. We ought not to combat with the weapons of passion or prejudice, both of which are known to be the vices of the mind, and unsupported by virtue, justice or honor. The prevailing policy of absolute Governments has ever been to enrich their favorite few at the expense of the nation.

But God forbid that this policy should ever prevail in a Government like ours, the very existence of which, in my opinion, depends on the honor and virtue with which our public officers are selected, and the justice and economy with which they are compensated. The office of Secretary of State is an office of trust and high responsibility, and it requires a person of the first talents to perform its duties with ability and safety to the nation. Those men have been found, who, (to their honor may it ever be said,) have discharged the duties of this office with reputation to themselves and in a manner highly conducive to the prosperity of their country, and for a compensation $1,500 less than the sum now proposed, until March, 1799, when from a combination of circumstances then existing the advanced prices of almost every article of living, in consequence of the European war, and the inconvenience of the removal of the public offices to the permanent seat of Government, the salaries of certain officers contemplated in the bill on your table were augmented, and by an act passed by Congress in the year 1800 have been continued until

this time, which act will soon expire, and the salaries remain as they were previous to March 1799. The reasons, sir, which induced the Legislature to pass the bill augmenting those salaries having ceased, and gentlemen in favor of the motion not having been able to offer others which appear to me sufficient, I can see no good reason why at this time we should by a permanent law establish those salaries at the advanced sum now proposed. It is well known that the passing the act augmenting the salaries was a subject of very considerable alarm, and has been made a step-stone to power and preferment by gentlemen, some of whom are now enjoying the benefits arising from the augmentation of those very salaries with perfect satisfaction; and from whom at this time and on this occasion we hear no cry either in favor of economy or against high salaries. An honorable gentleman from North Carolina, (Mr. ALSTON,) expressed his fears that we shall not be able to retain the gentlemen who now fill those offices, nor find others of equal talents willing to accept of the appointment, unless the blank should be filled with the round sum of $5,000. But, sir, experience teaches us otherwise. It has been very candidly acknowledged, even by gentlemen of the same political sentiments with himself (and I think very much to their honor) in the course of the present debate, that those offices were formerly filled by gentlemen whose talents and integrity were unquestionable, and for a compensation $1,500 lower than the sum now proposed, and at a time when the means of living were equally as high, if not higher than they now are.

An honorable gentleman from Pennsylvania (Mr. FINDLEY) informs us that, in the course of his long experience, both in this House and in the State Legislature, he has never known a single instance of the salary of any officer being reduced, but often raised. If, sir, any conclusion can be drawn from this statement, it is, in my mind, a sufficient reason why the progress of this prevailing evil ought now to be arrested.

An honorable gentleman from Virginia, last up, (Mr. J. RANDOLPH,) with his usual eloquence, has said much in favor of the talents and discretion of the gentlemen who now fill the public offices—placing the value of their services almost out of the reach of calculation. I, sir, have no disposition to detract from the merit of those gentlemen in the least, neither am I disposed to be lavish of the public money on this occasion; for, from the gentleman's own statement, we are unable to compensate them in proportion to their talents and services. I shall therefore be satisfied with giving them a compensation which I deem adequate to the performance of the ordinary duties of the offices to which they belong. The difference between the present permanent salaries and those contemplated by this bill being something short of $12,000, the gentleman thinks it a trifling sum—a mere pepper-corn saving; and he says, if our intention is to make a reduction in the expenses of our Government, there are many other objects which he has enumerated, and from which, in his opinion, a saving might with much more propriety be made. This is a subject worthy of consideration; and, from the gentleman's own showing, I am clearly convinced that this is the proper time to make a stand—a powerful stand, give me leave to say, sir—against every abuse of this kind. And if the gentleman will come forward, I pledge myself that I will join him in examining into, and preventing every improper expenditure of the public money. For, although it may be the opinion of some gentlemen that eleven or twelve thousand dollars is a trifling saving, still I am of a different opinion; and, sir, I am induced to believe that the honest industrious farmer and mechanic, who are accustomed to labor in their own fields and shops—and of this description are a very large and respectable portion of our fellow-citizens—will not consider eleven or twelve thousand dollars an inconsiderable or pepper-corn saving, as the gentleman is pleased to consider it. And, sir, although I am decidedly in favor of allowing a reasonable and adequate compensation to every officer of Government, yet, when we compare the sum of five thousand dollars per annum with the salaries of any of the State officers, and particularly the State which I have the honor to represent, the highest of which does not exceed seven hundred and fifty dollars; or should we compare it with the salaries of the other officers of the General Government, I think the sum proposed must appear too high, or the others comparatively too low. The compensation allowed the Supreme Court of the United States is but four thousand dollars to the chief judge, and to the associate judges three thousand five hundred dollars each. And it must be allowed, that, to fill these offices, it requires men of the first talents and information, who, to discharge the various duties of their offices, are obliged to travel through the different parts of the Union, at very considerable expense, while the Secretary of State and other heads of Departments are at home, enjoying the society of their families and friends. Thus, sir, in every point of view in which this subject has been considered, I am induced to believe the sum proposed too high, and therefore shall give my vote against the motion for filling the blank with the sum of five thousand dollars.

Mr. J. CLAY.—As this subject is one which will probably occasion considerable difference of opinion in the Committee, it is a duty which I owe to myself and to my constituents, to state, in a few words, the reasons which induce me to vote against filling the blank with the larger sum named. I perfectly agree with the gentleman from Virginia, (Mr. RANDOLPH,) in the general opinions he has expressed. I believe, that, unless sufficient inducements are held out to men of talents to accept the first offices, the Government will go to ruin; and I agree that those who hold them are men of talents and virtue. With them it has been my pride to agree in political sentiment, and it has been my duty on several occasions to justify and support their measures. On personal considerations, therefore, I should be the last man on this floor to vote for a diminution of the salaries at present attached to these offices.

The ideas of the gentleman from Virginia are

such as, it appears to me, would favor any salary, however extravagant, given to these officers. He has not attempted to show that the salaries allowed before the year 1799 were too low. He has objected to some items in the expenses of the Government that certainly militate against the ground he has taken. He has stated that the expenses of clerk-hire and the contingent funds of the Departments are extravagant. Now, the number of the clerks and the direction of the contingent fund depend on the mere will of those who hold these offices. The gentleman gives them great credit for their savings. If it be necessary to save in the clerk-hire and contingent funds of these Departments, why have not these saving gentlemen made the necessary savings? The gentleman has alluded to the nature of the offices under the Government of the United States. They may be considered as of three kinds; such as are menial, and deprive the individuals who hold them of some estimation in society; others that, while they take no honor away, confer none; and others, which give honor to those who hold them. Of the first description, are the offices of clerks, which require a species of talent, and equal integrity with that required for the head of a Department: but there is no acquisition of honor, while there is a sacrifice of personal independence. The second description, in general consists of fee offices, the emoluments of which depend upon contingencies subject to the control of circumstances. They may amount to, but never can exceed, a certain sum. As to the last kind of offices, which confer honor on those who hold them, I believe with the gentleman from Virginia, that, unless there are other motives besides those which are pecuniary, to induce men of talents and virtue to accept them, five thousand dollars will be but a paltry consideration. But if we attend to the nature of these offices, we shall perceive that there are other inducements, such as, to use the phrase of the gentlemen, "All noble souls feel the love of glory." But, reducing these motives to mere pecuniary ones, I will ask if three thousand five hundred dollars will not purchase a man of talents and integrity, will the additional sum of fifteen hundred dollars? I believe not.

The gentleman says, we cannot go home, and say to our constituents, while we have reduced the salaries of these offices to the state at which they originally stood, we have not reduced our own. I believe that, in this point of view, those who represent on this floor the seats of commerce, sacrifice more by holding seats in this House than officers who receive an annual compensation. I will ask if the man, whose eye is usually on his own affairs, does not, by a six months' absence every year, sacrifice more than he whose property is vested in a farm, and who receives a handsome salary at the seat of Government? I believe the amount of a member's wages is about eight hundred dollars a year. A clerk, therefore, receives double the sum that is paid to a Representative of the people. The gentleman from Virginia has enumerated other articles of expense as fit subjects for reduction. If the gentleman is willing to enter into a full review of the expenses of the several offices of the Government, from that of the President to the lowest clerk, and to reduce them from profusion to economy, I am willing to unite with him hand in hand. But this is not the subject at present before the House. As connected with the subject, I should have been glad to have heard any reasons why the salaries, allowed to these officers, were adequate in 1799, and are inadequate now. The gentleman says that he cannot go into detail; that he is unwilling to huckster with the gentlemen who hold these offices. If a vote of this House is to be determined by any epithet which a gentleman may think fit to appropriate to a particular act, we had better rise at once, and trust to chance—for anything may be called huckstering.

I have reasons, which operate with force on my mind, for filling this blank with three thousand five hundred dollars. There exists on this subject a great degree of clamor. How raised, is one thing; that it exists, is another. I consider this clamor as the loud voice of the people. I know that advantages are taken to render the measures of the present Administration odious. I am unwilling, therefore, to give to the enemies of the Administration any advantages that may return to them the sceptre of power which has been recently stricken from their grasp. Believing that the giving large salaries will surely have this effect; believing that the people of the State I have the honor to represent expect a reduction of the existing salaries; believing that a failure to reduce them will produce great clamor among the people, and that such clamor will be just, I shall vote in favor of filling the blank with the smallest sum proposed.

Mr. SANDFORD said the information imparted by the gentleman from Virginia had enabled him to give a correct vote on this subject; before he did which he should trouble the House with a few observations. His ill state of health had not permitted him to attend to the progress of the bill before the Committee, and when he before rose he was new to the subject. But, from the remarks which had dropped from different gentlemen in the course of this debate, he had found no reasons that satisfied his mind of the propriety of a reduction of the salaries of the officers contemplated in this bill. He, on the contrary, believed those salaries were at present full low enough. It was a maxim with him, unless good reasons were offered for the reduction of salaries, to be in favor of continuing them; and no such reasons had he heard. It had been stated by a gentleman from Pennsylvania (Mr. CLAY) that the wages of a member of that House amounted only to about the rate of $800 a year: that statement was incorrect; calculating for the year at the rate per *diem* they would amount to about $2,100 a year, and in the case of members, living remote from the seat of Government, to about $2,500. He would ask the House to recollect the difference between his services, and those of a head of a Department; and yet he received more than half of the compensation made to the highest officers under the

Government, excepting the President and Vice President. Mr. S. said he was clearly of opinion, for these and other reasons, that the salaries should continue to stand as they then did.

Mr. SKINNER rose, and made some preliminary remarks, not distinctly heard. He then said, his opinion was that this place was more expensive than any within the United States. Comparing the expenses here with those in the east wing of the continent, they bore no proportion. Gentlemen say these are war salaries; and is there not now a state of war in Europe? Would it then be wise, when these salaries were formed under circumstances arising out of war, to reduce them at the commencement of another war, before its effects are known? He drew, in his mind, a distinction between increasing salaries, and continuing them after such increase. At the time these salaries were increased, it had been stated as a reason for the increase that we were about removing the seat of Government to this place; but he believed it had been opposed on this ground, that it would be best to wait until the Government was removed, when, being here, the necessary expenses could be better ascertained.

Much has been said of economy. Mr. SKINNER said he had never been for fixing the compensation of officers so low as not to admit the highest talents. True economy, in his opinion, consisted in saving unnecessary expenses; and this would be effected by filling the first offices of the Government with the best men in the Union. Let it be recollected too that these officers have been arraigned before the public until the weapons of slander had broken harmless at their feet. Was this a time to reduce their compensations? Such a measure would surely be most indiscreet, as it might produce an impression of demerit on their part. It would also be an act of ingratitude to the people. Mr. SKINNER stated his belief, that, so far as related to his constituents, the present salaries were deemed no greater than the officers merited, and not more than sufficient to support them. He said he was against continuing useless systems that involved expense, but should be one of the last to reduce the salary annexed to an office of the first importance. He had never been in the habit of contemplating a reduction of these salaries, or of relying upon the patriotism of officers. He believed the best way was to give salaries to the public officers that would enable them to live comfortably. Suppose the patriotism of the gentlemen now in office should not induce them to continue in place at reduced compensations, would we be able to select men of the first talents to supply the vacancy? He did not believe they would. He should, therefore, vote for the highest sum.

The question was then taken on filling the blank with $5,000, and carried—yeas 78.

On motion of Mr. J. Randolph the blank respecting the salary of the Secretary of the Treasury was filled with $5,000.

Mr. J. RANDOLPH then moved to fill the blank respecting the salary of the Secretary of War with $4,500, which was carried—yeas 75, as was a similar motion respecting the Secretary of the Navy with the same sum.

On a motion to fill the blank respecting the Attorney General with $3,000, Mr. J. CLAY asked for information; the reasons in favor of the salaries allowed to the other officers, did not, in his opinion, hold good in this case. He moved to fill the blank with $2,000.

Mr. J. RANDOLPH.—The gentleman from Pennsylvania asks for information, and professes ignorance of the duties of the Attorney General. I believe those duties are prescribed by law. As to his compensation, the first act, passed under this Government, gave him $1,500. In 1792, $400 were added; and in 1797, $500 more were added, making in the whole $2,400. By the act of March, 1799, this salary, with the others, was raised to $3,000. It appears to me that these progressive additions made to the original salary of this officer, furnish proof that it has heretofore been too low. The gentleman proposes to make the salary $2,000, when, before the passage of the act of March, 1799, it was $2,400. In my turn, let me ask the gentleman from Pennsylvania—and it is the first inquiry I have made of him—his reasons for reducing this salary below that fixed previously to 1799? I understand him as willing to put the salaries generally on the same footing on which they stood before the passage of the act of 1779. This salary was then 2,400 dollars; it then was increased with the rest, and having been increased proportionably with them is a reason with me that it is not exorbitant and does not require diminution. I have no other reason to offer. The gentleman asks if the important officers at the head of the State and Treasury Departments receive only $5,000, why we give $3,000 to an inferior officer? For the plainest reason on earth. We must give him a salary that will enable him to live in a comfortable manner. I agree with the gentleman, if we were to remunerate our officers in the ratio of their merits, and were to give the Comptroller $3,000, we ought to give to the head of the Department at least $50,000. I speak as to the offices, not as to the men that fill them. But this is impossible. It is, however, proper that every man should live in some style; however we may reason on this point, the feelings of men will decide it. This is my reason for giving the Attorney General $3,000. If I am asked, why give our Clerk $2,000, or his chief clerk $1,300, I have no other reason. There is no doubt, if we give our Doorkeeper $800, $5,000 is not competent to the Secretary of State; but it is necessary, nevertheless, to give our Doorkeeper enough to live on, that we may insure his daily faithful services.

While I am up, I will take the opportunity of making an explanation, which will show how far I have been misunderstood by the gentleman from Pennsylvania. I did not state, as represented by him, that the contingent expenses of the Departments were profuse, or that any reform could be made in them. But I went over the list to show that, if the object of gentlemen really was to make a saving of the public money, it was

in them that it was to be made, and not in the salaries of particular officers. I stated that, in the Department of the Treasury, whose whole expenses are $100,000, it was idle to attempt an economical reform, by curtailing a few salaries. I could not have stated that I considered the Departments conducted with profusion, for I do not believe it.

I also stated that gentlemen who wished to save money should resort to the Marine and Military departments, and that they were the two great sinks of nations; but I did not state that they were the sinks of this nation. Did the gentleman ever hear of a nation ruined by its civil list? I do not, however, mean to say that abuses should be tolerated in the civil list, but that in great pecuniary reforms, we ought to begin with the marine, the army, diplomatic expenses, and then come to the civil list—thus embracing a full inquiry into the expenditures of the Government.

Mr. SKINNER said he was for continuing the salaries as they stood. If he were disposed at all to alter them, he should be in favor of raising that of the Attorney General. The reason at first assigned for the smallness of the salary of this officer was, the residence of the Government at a commercial city, where he could discharge the duties of his office without sacrificing his professional pursuits. This reason had ceased.

Mr. J. CLAY merely rose to answer one question of the gentleman from Virginia, who had asked why he was in favor of reducing this salary? Simply because the services rendered by the officer were more than adequately compensated.

Mr. NICHOLSON observed that the gentleman from Pennsylvania was mistaken in saying that the Attorney General was more than compensated for his services. Mr. N. could not say, with precision, what those services were. But he knew that there was scarcely a law in relation to the revenue that did not come under the view of this officer for his advice and opinion. He knew that he was frequently called upon by the heads of the Departments for his opinion of the construction of laws. He was also a member of the Cabinet and was bound to give an opinion, in writing, to the President, whenever required. It was, therefore, absolutely necessary that this officer should be a man of the first talents and integrity. Mr. N. was of opinion that he ought to be a man of equal talents and integrity with those at the head of the Departments. Not, however, being obliged to relinquish all professional pursuits, it was not necessary that he should have an equal salary with them.

For some time it had been the practice of the Government to compensate the Attorney General for extra services. For such services, performed under the British Treaty, he had been allowed $600. His salary, with this additional compensation, had never been heretofore considered as more than sufficient. It was true that his duties were not so arduous as those of the heads of the State and Treasury Departments, but they require equal talents and integrity; and if the officer should be brought from a distance, he ought to be enabled to live comfortably.

Mr. GODDARD asked if the $600 alluded to by the gentleman from Maryland, did not make part of the salary of $3,000 given the Attorney General, although the services for which the $600 were allowed were at an end?

Mr. NICHOLSON replied that the gentleman was mistaken. The Attorney General had received $2,600 since the year 1799, when the salary was raised to $3,000.

Mr. GODDARD said he considered the augmentation of the salary from $2,400 to $3,000 as having arisen from the temporary duties of that officer, which augmentation was made by a temporary law.

Mr. NICHOLSON.—By an act passed in 1797, an additional compensation of $600 was allowed this officer. In 1799, his salary was fixed at $3,000. He accordingly received thereafter $3,600 until his temporary duties under the English Convention were completed.

The question to fill the blank with $3,000 was then carried in the affirmative—yeas 59, nays 30.

It was then agreed, without a division, to fill the several other blanks with the same sums allowed by the act of March, 1799, to the Comptroller, the Treasurer, the Auditor, the Register, and the Accountants of the War and Navy Departments.

On filling the blank respecting the Postmaster General, Mr. LYON moved to fill it with $3,500.

Lost, without a division.

It was then agreed to fill it with $3,000, and that respecting the Assistant Postmaster General with $1,700.

Mr. EUSTIS moved an amendment to the first section, so as to make it read "that, from the end of the present year, the following annual compensations, as established by an act passed on the 2d of March, 1799," &c.

This motion was opposed by Messrs. LOWNDES and GODDARD.

Carried—yeas 65, nays 43.

The Committee then rose and reported the bill, with amendments, which the House immediately took up.

On the question to agree to the first amendment, (that moved, as above, by Mr. EUSTIS,) Mr. J. CLAY hoped it would not be agreed to. As it decided the principle of the bill, he called for the yeas and nays; which, being taken, were—yeas 69, nays 46, as follows:

YEAS—Willis Alston, jun., John Archer, David Bard, William Blackledge, John Boyle, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, Peter Early, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Sam-

uel L. Mitchill, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—Nathaniel Alexander, Isaac Anderson, Geo. Michael Bedinger, Silas Betton, Phanuel Bishop, Robert Brown, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Joseph Clay, Matthew Clay, John Davenport, Thomas Dwight, John B. Earle, James Elliott, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Seth Hastings, Joseph Heister, William Hoge, David Hough, Benjamin Huger, Samuel Hunt, Michael Leib, Joseph Lewis, jun., Thomas Lewis, Thomas Lowndes, Nahum Mitchell, Jeremiah Morrow, Thomas Plater, Samuel D. Purviance, Jacob Richards, Thomas Sammons, Richard Stanford, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Isaac Van Horne, Peleg Wadsworth, Marmaduke Williams, and Joseph Winston.

The second amendment was to fill the blank in relation to the Secretary of State with $5 000.

Mr. J. Randolph observed, that as this question would more correctly than the last try the sense of the House on the principle of the bill, he desired the taking the yeas and nays; which, being taken, were—yeas 83, nays 28, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Silas Betton, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Nehemiah Knight, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, Samuel L. Mitchill, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—Phanuel Bishop, William Chamberlin, Martin Chittenden, Joseph Clay, Matthew Clay, John B. Earle, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Seth Hastings, Joseph Heister, William Hoge, David Hough, Michael Leib, Joseph Lewis, jun., Thomas Lewis, David Meriwether, Thomas Moore, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Richard Stanford, James Stephenson, John Stewart, George Tibbits, Isaac Van Horne, Marmaduke Williams, and Joseph Winston.

The remainder of the report was then agreed to, without a division;

When the question on engrossing the bill for a third reading on Monday was taken by yeas and nays, and carried in the affirmative—yeas 78, nays 28, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, Silas Betton, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, James Holland, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, Samuel L. Mitchill, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—George Michael Bedinger, Phanuel Bishop, William Chamberlin, Martin Chittenden, Joseph Clay, Matthew Clay, John Davenport, Thomas Dwight, John B. Earle, Calvin Goddard, Gaylord Griswold, Seth Hastings, Joseph Heister, William Hoge, Michael Leib, Joseph Lewis, jun., David Meriwether, Thomas Moore, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Richard Stanford, James Stephenson, John Stewart, George Tibbits, Isaac Van Horne, Marmaduke Williams, and Joseph Winston.

Monday, November 21.

Two other members, to wit: Simeon Baldwin and Benjamin Tallmadge, from Connecticut, appeared, produced their credentials, were qualified, and took their seats in the House.

The Speaker laid before the House sundry depositions and other papers transmitted from Kenawha county, in the State of Virginia, respecting the contested election of Thomas Lewis, one of the members returned to serve in this House for the said State; which were ordered to be referred to the Committee of Elections.

SALARIES OF CERTAIN OFFICERS.

The bill fixing the salaries of certain officers therein mentioned, was read the third time, and on the question, "Shall the bill pass?"—

Mr. Taggart said:—I rise, Mr. Speaker, for the purpose of stating some reasons for the vote which it is probable I shall give on the passing of the bill now before the House. I feel no hostility to the principle of the bill in general. I am not certain that any of the specific sums contemplated as salaries are too high. With the official duties of several of the Departments I am unacquainted, and therefore consider myself as not being a competent judge. With respect to some of them, however, when we bring into view the great importance of the trust to the United States, the high responsibility of the respective officers, and the talents necessary for the prompt discharge of the duties, I am persuaded the salaries are not too high. This I view to be particularly the case with the Secretaries of State and of the Treasury. I believe, sir, that where an office is of such high trust and responsibility as to require men of the first characters for talents and integrity to fill it, it is the truest economy for Government to give such encouragement as shall be adequate to the calling forth of those talents. Though the time has been in our country (and possibly may again arrive) when there was a loud call upon the patriotism of individuals to make important sacrifices, both of their own property and ease, for the public good, yet in a time of profound peace and national prosperity—when we are blessed with a regular Government—a productive revenue, and a full Treasury, adequate to all necessary expenses—for a man to abandon the superintendence of his domestic concerns, and, for a great proportion of his time, the comforts of domestic life, and, as is frequently the case, the emoluments of a lucrative profession, and embark in the public service without an adequate compensation, is a species of sacrifice which the public has no right to expect from individuals. I make no doubt but the highest departments of State may be filled for a less sum than the one contemplated in this bill. But to starve the Departments by rendering the salaries inadequate to the calling forth the first talents of the nation, is the way to have them either filled with men unequal to the trust, or to force worthy men, who have it at their option to follow other honorable and lucrative employments, frequently to abandon the public service, thereby exposing the Department to such frequent changes and resignations as must be highly injurious to the public. By saving in this way three or four thousand dollars, we may run the hazard of losing millions, by having the business pass into inexperienced and unskilful hands, while, had an adequate compensation been allowed, the man of real talents and integrity would have felt an honest pride in continuing in the public service, and discharging the duties of his office with promptness and fidelity. Some have in this House spoken warmly of the merits of the gentlemen who fill the respective Departments. I have no disposition to detract from their merits. But I apprehend, Mr. Speaker, that this is not a principle which ought to have the least influence in fixing the quantum of salaries for the several Departments, and I trust is not the motive with any gentleman on this floor. Perhaps these Departments never have been and never will be filled by men for whom every member of this House has an equal esteem. Perhaps there never, either, was or will be a time when, if the members of this House were to consult their own feelings of personal attachment, they would not, some of them, at least, be led to make a discrimination in the several heads of Departments. But the feelings of private esteem and friendship ought, in my opinion, to have no influence whatever in fixing the quantum of salaries. The only principles by which, as I apprehend, the House ought to be governed in making the specific appropriation, are the importance of the office itself to the United States, the responsibility of the respective officers, and the talents necessary for the discharge of their high trust. In this view of the subject, I do not know that the salaries are too high, and shall not oppose the passing of the bill now before the House. But to the passing of the bill in its present form I shall have objections, arising chiefly from the amendment introduced by my colleague from Massachusetts, (Mr. Eustis.) Having formed a high opinion of the candor, and having been several times witness to the accuracy of that gentleman upon the floor of this House, conjecture has been busy in inquiring what could possibly be his motive for introducing, and what possible advantages the bill could receive by being encumbered with the above amendment? If the bill cannot stand on the footing of its own intrinsic merits, it ought to be abandoned. Why, then, shall we attempt in an indirect way to prop it? For myself, I can conjecture only two reasons for which a clause of this kind should be introduced. Either it must be adapted to the circumstances of those who were members of this House when the law of 1799 was passed, and who opposed the enacting of that law, to come forward in an indirect manner and practically own that their opposition to that law was wrong. If this is meant, I can certainly have no objection to gentlemen confessing an error, though the confession should be made in an indirect manner. I conclude, however, that this is not the intention; therefore, does not the language of the amendment, apparently, at least, amount to this? We have a secret conviction that the law in question is not quite right, but we do not wish to disoblige our friends by lowering the salaries, and we do no more than the majority of both Houses did in 1799, to oblige their friends; and in order to show that we do no worse, we will allude to that law, and make it the basis of the present, thereby making it the scapegoat to bear our transgressions. But should this be intended, I think it will by no means answer the purpose. Reformation, particularly with regard to salaries as well as other expenses, was what was called for and expected. It will not satisfy that expectation to say we have done no worse than the Congress of 1799. As I had not at that time the honor to be a member of this House, and consequently can have no confession to make; and as I feel a willingness that the law should stand upon the footing of its own intrinsic merits, independent of the law of 1799, which has

already once died a natural death, and after being again revived is upon the point of expiring. I feel opposed to this amendment. But, Mr. Speaker, I have still a farther objection to it. By means of this amendment, the bill, which was before sufficiently plain to the meanest capacity, becomes perplexed, and apparently, at least, at variance with itself. The bill now before the House proposes to fix the salaries of these officers. It was only a temporary grant for three years. I do not understand that any permanent law was ever made for fixing the salaries of these officers, only the law of 1789, which fixed the salaries of the two Secretaries of State and of the Treasury at $3,500 each, and the others in proportion. The object of the present bill is to fix permanent salaries. But professedly to fix these upon the principles of a law which did not fix, and never was intended to fix them, appears to me to render the bill completely inconsistent with itself. I humbly conceive, therefore, that the amendment introduced by my colleague from Massachusetts is not only needless, but tends to destroy the force and consistency of the bill itself; and for these reasons, though not opposed to the general principles of the bill, I cannot, in its present form, give it my vote.

Mr. HASTINGS.—Mr. Speaker, I am one of those who are willing to allow to every public officer a reasonable, just, and honorable compensation for his services. I am for annexing to the great and important offices of our Government such salaries as shall be sufficient to induce persons of suitable and proper talents to fill them. I am not disposed to pay our public officers grudgingly for their labors; but I think the salaries we propose by this bill to grant are too high.

By the law of 1789, the salaries of Secretary of State and Secretary of the Treasury were each fixed at $3,500, and the salary of the Secretary of War at $3,000; I would ask if those salaries did not then command the first talents of the country? Was not Mr. Jefferson the first Secretary of State under the present Government? And did he resign that office because the compensation was insufficient? I believe not. I have never understood that this was the cause of his resignation. As to the first Secretary of the Treasury, (General Hamilton,) when we consider his great professional talents as a lawyer, and the great profits he might have made by the exercise of those talents, (probably to three or four times the amount of his salary as head of the Treasury Department,) we cannot, I think, be surprised at his resignation; it must be more a matter of surprise that he should have ever accepted of the office; or, after having accepted it, that he should have continued in it so long as he did. Did the first Secretary of War (General Knox) resign because his salary was insufficient? I have never understood that to have been his reason for resigning. But admitting that the insufficiency of salaries was the only reason which induced those gentlemen to resign their offices, I then ask, was there any difficulty in finding persons of suitable talent to fill those offices for the same compensations allowed to their predecessors? This, I believe, will not be pretended. What, then, were the reasons for augmenting the salaries of those officers in 1799? The reasons have been stated in the course of the debate—a war had been raging in Europe for four or five years, and one of the effects of that war upon this country was to advance the price of provisions and most of the necessaries of life beyond what perhaps had ever before been known in this country. Flour at that time, we are told, was sold for fifteen and sixteen dollars a barrel, which is now selling for six and seven dollars. House rents, we are also told, were much higher at that time in Philadelphia than at the present time. These are some of the reasons which I presume then induced the National Legislature to increase the salaries of certain officers of the Government for a limited time only; the inquiry then is, have the causes which gave rise to the temporary augmentation of salaries in 1799 ceased to exist? If they have, ought not the effect also to cease? I would ask, if it costs the heads of Departments as much to live in this city now as it did in Philadelphia in 1799? Are house rents as high, or have they ever been as high in this city as in Philadelphia? I apprehend it will not be pretended that this now is or ever has been the case. I have been informed that house rents in most parts of this city, except just in the neighborhood of the Capitol, have (within twelve or eighteen months past) fallen forty or fifty per cent., and that within the same time rents for houses the nearest to the Capitol have fallen from twenty to twenty-five per cent. Are provisions as high now in this city, or in Philadelphia, or in any part of the country, as they were in 1799? Is flour now selling for fifteen or sixteen dollars a barrel, and other articles of produce and of the first necessity, in the same proportion? Are the heads of Departments, whose salaries we now propose to augment, in a situation which obliges them to receive and entertain more company in this city than in Philadelphia? At a time, then, when the prices of house rent, of provisions, and many articles of the first necessity, are reduced from what they were in 1799, some of them probably to nearly their standard prices in 1789, yet in these times of economy, when the cry is to save the public money, we are about to give an instance of our love of economy, by increasing the salaries of certain officers of our Government.

One of my colleagues has assigned as one of his reasons for the proposed augmentation of salaries, that a war had recommenced in Europe, and that this war may produce the same effects in this country, in raising the price of produce and articles of the first necessity, which the last war produced. But will it not be prudent and proper for us to wait and know whether the same effects are produced by the present European war, before we undertake to increase salaries? Although my colleague does not now consider the proposed salaries to be too high, yet I find that in 1799, when house rent and provisions, I apprehend, were much higher than they now are, he voted against the temporary augmentation of salaries—

against those salaries which it is now the object of this bill permanently to establish. He says, also, that he has not heard any complaints against salaries in that part of Massachusetts in which he lives. No doubt my colleague is correct; but compare the salaries proposed to be increased by this bill with the salaries of other persons in the Government, with the pay of members of Congress, with the salaries of the highest State officers, and they appear to be enormously high. In Massachusetts the Governor has a yearly salary of $2,666 66. The Judges of the Supreme Court, who, in holding courts in the several circuits, are obliged to be absent from their families half the year or more, have each a permanent yearly salary something short, I believe, of $1,200, except the Chief Justice, who has something more than that sum; the Treasurer, Secretary of the State, and Attorney General, each permanent salaries, I think, of $1,000; and yet I have never understood that there has been any difficulty in Massachusetts in procuring suitable and proper persons to fill those important offices. I believe, however, that for a few years past some temporary grants have been made by the State to those officers (excepting the Governor) in addition to their fixed salaries.

The bill before the House is intended to increase and make permanent the salaries of the officers therein mentioned—the law of 1798 was only temporary. By that law the salaries of certain officers were increased for special and sufficient reasons, which then existed; but now, when those reasons, or many of them, no longer exist, we are about to augment salaries and render permanent those which were only limited and temporary.

Considering the increase and depreciation of money, arising from the increase of bank institutions and other causes, perhaps the salaries of the officers named in the bill, as at first established in 1789, may now be considered as too low; but the great augmentation which by this bill we propose to make to some of those salaries, I cannot but consider as too high for the present time, and I must therefore vote against the passage of the bill.

Mr. VARNUM.—My two colleagues have expressed an opinion, in which I agree, that the salaries of the officers mentioned in this bill as fixed before the year 1799, are, under the existing state of things, too low for the present time; but they have drawn different conclusions from this fact. I believe they are not now too high, and shall therefore vote in favor of the bill. For, although I voted in 1799 against the bill for augmenting salaries, I believe there is a perfect consistency in the vote I then gave and in that which I shall this day give. My colleague last up, has stated that rents are fifty per cent. lower in this city than they were at Philadelphia in 1799. For such an opinion I can find no data. In my mind, the statement is highly erroneous, and I believe the other statements of the gentleman are equally erroneous. I wish he had brought forward the data on which he hazarded such statements. He further states that provisions are at present forty or fifty per cent. lower than they then were. This remark may, perhaps, be just in its application to bread, but it will apply to that article only; and this arises from circumstances of a temporary nature, well known to every member of the House. There were greater crops of wheat the Summer before the last than were ever before known, and the surplus of those crops now on hand has reduced the price. My colleague lives in the midst of a country where one great staple article, beef, is raised in great quantities. I will ask him whether that article has been higher at any period since 1799 than it has been for three months past? You may go through all the other articles of living, and you will find them, on the average, to be about the same thing that they were in 1799. But will my colleague say that any kind of manual labor is now lower than it was at that time? He will not. He must acknowledge that the reverse is the case in the country where he lives, and that a laboring man is there enabled to procure more for the occupation of his time than he could five years ago. These being the facts, the conclusions of my colleague do not hold, when the principles on which he founds them do not exist. I have reasons which justify me for voting for the bill. I believe that a person in genteel life might entertain company in Philadelphia in the year 1799 as well for $3,500 as he can here at this time for $5,000. If this be a fact, of which I have no doubt, the salaries allowed by this bill bear only a proper proportion to those that then existed.

My colleague observes that we are in favor of making this bill perpetual. But he will recollect that the other day a resolution was introduced for making it temporary. Yet he voted against it, and though he now acknowledges that the salaries, as they stood before the year 1799, were too low, yet he does not make any specific proposition to increase them, but contents himself with voting against the whole bill.

My colleague has additional reasons for voting against this bill, inasmuch as it is propped up, he says, by the act of 1799. I voted for the amendment to which the gentleman refers for this reason: When the last act on this subject passed, we heard it echoed and re-echoed through the newspapers that an economical, saving Administration had raised their own salaries; and to prove this, a contrast must be made in distinct columns between the salaries as they existed previously to the passage of the act of 1799 and as they then stood; and in some districts of the country the people were deceived, and made to believe that this Administration, instead of continuing, had raised the salaries. This, together with the calumny, industriously circulated, that secret-service money to a vast amount was put into the hands of the President, alarmed the people. To prevent the repetition of like misrepresentation, I voted for the amendment.

Mr. V. concluded his remarks by observing that he should vote for the bill on the express principle that it did not give to Executive officers higher salaries in this place than they received in Phila-

delphia. In addition to this consideration, is it probable, inquired Mr V., that gentlemen competent to the discharge of the high duties of the first offices under the Government, will serve as low here as they would in New York or Philadelphia? Will they have no regard to the prospect of educating a rising family? Is this circumstance no inducement to an individual to accept a lower compensation where the means of educating his children exist, than in a place where they are not to be found?

Mr. Elliot.—I feel no disposition to detain the House many minutes upon this question. I shall be brief in my remarks, with the less reluctance, from the reflection that it is almost impossible, at the commencement of the debate, to say anything new upon the subject. But, as I represent a portion of the American people, than whom none are more attached to the principles of political economy, or more sparing in the compensation they afford their public officers, and, as the views I take are somewhat different from those of any gentleman who has spoken, I must be indulged in a very few observations.

I candidly confess, sir, that I have not examined this subject with that minute exactness with which I wish generally to investigate subjects of consequence that come before this House. To dispose my mind for a decision, I do not wish to calculate the exact differences between the prices of house rent, beef, flour, or butter, at Philadelphia or Washington, in 1799, or 1803; I do not wish to ascertain the precise sum necessary for the support of a family in genteel life; I do not ask what were the political sentiments of the men who raised the salaries to the present state; I do not ask for the information that the Governor of Massachusetts receives two thousand six hundred and sixty-six dollars and sixty-six cents, nor do I wish to inform other gentlemen that the Governor of Vermont receives but seven hundred and fifty dollars as an annual salary. I am satisfied with general views of the state of society, of the importance of the offices in question, and the talents requisite for the discharge of their duties. These general views satisfy me that the blanks in the bill on the table have not been filled with sums too large. I think it unnecessary to attempt to form a scale of the relative usefulness of those persons who may fill these offices at different times. But is it possible to arrest the progress of society and manners? I wish we could be as simple and economical as the ancient Romans. But I think it in vain to strive to stop the progress of society to refinement, or even to luxury and extravagance. The present question is not, shall we augment salaries? But, shall we continue them as they are? Fears seem to be entertained by some gentlemen, that we must raise them hereafter, and some think the present law will be unpopular. We ought, undoubtedly, to raise them hereafter, if it should be necessary, but it is a strong argument with me in favor of the bill, that the *quantum* of salary, which it contemplates, has been established for some years; if we now reduce it, we shall have frequent complaints, and probably just ones, of its insufficiency, and we shall annually be employed in augmenting or reducing. I wish to make these salaries permanent, and to establish them on such a liberal basis, that there will be no probability of our being called upon again very soon for a further augmentation. My constituents are attached to the principles of economy. I am attached to them myself. But I believe that the whole people, were this subject properly explained to them, would be satisfied, although the round sums with which the blanks are filled seem so large to the farmer and to the day-laborer.

While I do my duty, I am regardless of the consequences to my own popularity, which may result from the vote which I shall now give. I wish for no popularity which is not founded on independence of sentiment, and conduct dictated by a liberal policy.

Mr. Holland said, though it was probable he should ultimately vote for the bill, he considered it exceptionable on account of its permanency. He did not consider this a proper time to fix the permanent salaries of their officers. He looked forward to the time when those officers might execute their duties for a lower sum than that at present necessary. The present situation of this city rendered their discharge extremely inconvenient. But the time was fast approaching when the city itself would afford talents for filling these offices, which were at present drawn from a distance. For these, and other reasons, he was in favor of limiting the period of the bill. For this purpose, he moved a recommitment of the bill to a select committee, to fix a limitation to it.

Mr. J. Randolph.—I know of no object for which this bill can be recommitted but to delay the proceedings of the House. I am satisfied the worthy member from North Carolina has no such intention; but such, notwithstanding, will be its effect. What has been the course pursued in this business? A gentleman from Virginia, in the first instance, made a motion for continuing, for a further and limited time, the law of March, 1799. It was objected, that this simple proposition did not give the individual members of the House an opportunity of canvassing the amount of salary allowed by that bill to each officer; and that a disposition might exist to increase some and to diminish other salaries. It was also objected that a temporary provision ought not to exist for permanent offices; and alleged that the House ought to be liberated from the unpleasant necessity of discussing the subject every two years. On this ground the resolution was disagreed to, and a substitute was referred to the Committee of Ways and Means. That resolution was, not that it was expedient to continue the law of 1799, for a particular time, but that it was expedient to fix by law the salaries, or, in other words, to make them permanent. Not make them permanent, by putting it out of the power of the Legislature at any time, when they shall see fit, to alter them—for, at any future time, they will have a right to repeal this act—but to make them so far permanent as to relieve Congress from discussing the subject every session of a new Congress. Thus instructed, the committee reported a bill in blank. In filling up these blanks, every gentleman possessed the right of objecting to every item. The sense of the House was fairly taken, and the result was a determination to establish the salaries precisely on the same basis fixed by the law of 1799. Now, it appears to me, that if there really are any electioneering views within or without these walls, which I am sorry to see displayed on the floor of this House, gentlemen will be willing to fix the responsibility of raising the salaries upon certain members, and other gentlemen, if actuated by such motives, will not fix the responsibility on themselves, but place it where it ought to rest, by re-enacting the law of 1799. But, for myself, I entertain no fear of the public sentiment respecting any measure dictated, as this is, by a regard to the public good. I believe that, to legislate on other principles, is tacitly to say the people are incompetent to their own government.

So much as to the recommitment of the bill. When I came into the House, I found the reverend gentleman from Massachusetts delivereng his sentiments, on which I beg leave to offer a few remarks. I understood the reverend gentleman as maintaining that, in the discussion of this bill on a previous day, the salaries, as now established by law, were advocated from personal friendship to the gentlemen now in office. I can only reply for myself that I did not advocate them on that principle, and, for others, that if they advocated them from that principle, it altogether escaped my notice. Another objection of the reverend gentleman is, that an amendment, made by a gentleman from the same State with himself, (Mr. Eustis,) represents these salaries as the same with those established by the act of 1799. This is either a matter of fact, or it is not. Let gentlemen examine the laws; let them compare every salary fixed in this bill, with every salary established by the act of 1799, and say whether they are not the same. If this is the fact, can the insertion of the amendment, which is at most an act of supererogation, vitiate the whole bill? Is it sufficient that it contains a declaration of a fact which no one can deny, and which does not affect its details, to vitiate it? When the gentleman began his observations, I had not taken my seat. There may have, therefore, been some observations of weight which I did not hear. But, if the rest were of the same nature with those I did hear, I would wish it were consistent with the rules of our proceeding to have dispensed with the reading, and to have printed the speech for the use of the members, or of those for whom it was intended. In some of the remarks which I did hear, the reverend gentleman violated all the rules of the drama. I have always understood that the scape-goat had gone into the wilderness, and was never afterwards heard of. But a few days since he had been packed off by a gentleman from Connecticut, loaded with our political sins. Is it possible, then, that since last Friday, when we first heard of this scape-goat, that so many sins have accumulated upon us as to require the sending another scape-goat, in expiation of them, into the wilderness? The reverend gentleman may, however, say that he is not acquainted with the rules of the drama, and that they have nothing to do with his professional concerns; but still I should have supposed him better acquainted with his profession, than to have introduced this scape-goat a second time.

The gentleman from North Carolina (Mr. Holland) has taken a ground that will defeat his own motion. He observes that there is not at present sufficient talents in the City of Washington for the filling of these offices; though there may be, in a short time. I should be happy if the citizens of Washington comprised persons capable of executing all the great offices of the Government; but I should look with regret to that time, if I supposed, when it arrived, there could be a necessity to fill those offices from such persons; as I never wish to see the time when all the great officers of the Government shall be taken from a disfranchised Territory. Independent of the consideration arising from the propriety of obtaining that information, which can only arise from a selection of men from the different parts of the Union, I never wish to see the time when these great officers shall be taken from men not endowed with the blessings of self-government.

For these reasons, I hope the bill will pass, and that this discussion will be laid aside, until, at some future day, it may be considered proper to enter into an inquiry as to the expediency of reducing or increasing the salaries. I believe, however, from the progress of society and the depreciation of money, the time will never come when it will be expedient to reduce them.

I will now say a word in reply to the gentleman from Massachusetts, (Mr. Hastings,) who advocates a reduction of salaries, not because they are too high for men of eminent professional talents, but because they are enough for the men now in office. I understood him as saying the present salary was not too much for a gentleman once Secretary of the Treasury, (Mr. Hamilton,) respecting whom the only wonder was, that he had accepted that office, or, having accepted it, had so long continued to hold it.

Mr. Hastings desired to explain. He had stated that the first Secretary of State (Mr. Jefferson) had not resigned his office because his compensation was too small. He had stated that the Secretary of War had not, he believed, resigned solely on that account. He had stated that it was a matter of surprise, that a gentleman of such great professional talents as the first Secretary of the Treasury, had ever accepted, or, having accepted, had so long continued to hold the office.

While up, he would reply to his colleague (Mr. Varnum,) who had asked if beef and other articles were not higher at present than they ever had been in the part of the country in which he lived. He would answer that they had not been so high in that part of the counsry for two or three years past, as they were in the year 1799.

Mr. Randolph.—I assure the gentleman from Massachusetts that it is no part of my intention to enter into a comparative view of the merits of the officers of the present Administration and those of the last.

I regret that the gentleman from Massachusetts, (Mr. Varnum,) who possesses so strong a claim to the consideration of the House, should have made an exposition calculated to repel newspaper animadversion. I believe that it is a task beyond the power of that gentleman, or any other, to check its misrepresentations. I believe, likewise, that it is enough for a member of this House to repel arguments adduced on this floor, without descending to a warfare with the editors of newspapers.

Mr. Holland said, he was very far from intending to say that the time was near at hand when all the offices might be filled by persons residing in this city. He only meant to say that some choice might be made from among them; and that the inducements would hereafter be greater to gentlemen to come forward than they were now. The only inducement that could now operate, was a sense of public duty. By coming here, gentlemen are placed in a state of exile, and cut off from all society.

Mr. Smilie.—I hope, before this bill shall be recommitted, we shall hear better reasons for it than have been yet adduced. I am sure, if the gentleman from North Carolina will candidly examine the reasoning he has used, he will be convinced there is no force in it. Does he really suppose that we shall ever see a state of society in which we shall be subjected to less expense than at present? As society progresses, so will expenses. But I am against the recommitment for another reason. This is a disagreeable subject to come before this House; and I would wish gentlemen in favor of making a temporary provision, to reflect that we are not now about giving these salaries a Constitutional establishment; that is not in our power; we are no more making them permanent than we have already made permanent the salaries of the President and Vice President, and our own compensations. If this bill passes, it will put the salaries of the officers provided for in it on the same footing with them. It will remain with the Legislature, at any future time, to raise or diminish them according to the circumstance of the country. As to a future diminution of them, I have no idea of it; on the contrary, I believe that men younger than myself, will live to see the time when they will be raised. An opposition to this bill may be considered by some gentlemen as the road to popularity. But this consideration shall never influence me. I believe the only road to popularity is to do what we think right, and what our consciences approve. It has always been a principle with me to have as few officers as possible, and to pay them well for their services.

My colleague (Mr. Clay) has dropped an idea, that it is the wish of the people that these salaries should be reduced. If it is the wish of the people of his district, I cannot say that it is the wish of the people of mine. I voted last year for continuing these salaries, and yet my constituents have never blamed me; indeed, I have not heard the subject mentioned by them. I have confidence in the good sense of the people, and I believe that this discontent is not with the people. Have we not good reason to expect that they will be satisfied? Are not the great reductions we have made in the expenses of the Government known to them? Will they not be satisfied with these, and not regard the trifling differences between the amount of the present salaries and the proposed reductions? Mr. S. concluded, by saying that he differed with gentlemen on the expenses of living between this place and Philadelphia, considering the expenses here greater than they were there.

Mr. Skinner, in reply to the remarks of his colleague, (Mr. Hastings,) stated that he was incorrect in his facts. He had stated the price of flour in 1799 at sixteen dollars a barrel. It was not so. It was only nine dollars. From his conversance with the shipping business, he was also justified in stating that beef and pork were now higher than they had been at any time heretofore.

Mr. Eustis.—It is well known in the State of Massachusetts that the salaries of the Governor and judges are not competent; and, for the many years that I have had the honor of a seat in the Legislature of that State, I have not known one in which there has not been a temporary grant in addition to the permanent compensations; and during the last year an act passed one branch of the Legislature for their increase. Hitherto, I have been satisfied with a silent vote on the subject, as I have been of opinion that the decision of the question depended upon circumstances on which the judgment of every member was made up, and which, I am sorry to say, have received no light from the long discussion which we have heard. Some gentlemen have gone into a detailed view of the expenses of living. If they had actually gone to market, and judged for themselves, they would have been convinced that these officers receive a bare competence. Let gentlemen look at the state of the country, what it is, and what it is to be. It is said that the present salaries are predicated on war prices. What war? Between France and England? Does not a war between the same nations now exist, and is it not probable that articles of life will rise as high as they were before?

These, however, are small considerations. The true question is, whether men of talents, equal to a discharge of the most important duties under the Government, will devote themselves to the service of their country, and how long, without remuneration? For my part, I acknowledge my surprise, that any gentleman should consider five thousand dollars too much for talents fitted to preside over the destiny of a nation. I am astonished at such an opinion. My own conviction is, that the present salaries are inadequate, and I know that, in some instances, the officers are trenching upon their private fortunes. I am still willing to continue the salaries without augmentation, as they were fixed in 1799. Let gentlemen look at the situation of our officers, and how long they are likely to be employed. In other Governments there is other provision besides salaries. After receiving a liberal compensation, an officer, under other Governments, retires with a pension or a peerage. But what is the fact with regard to the best of our officers, if their services are required till they have reached the age of three score years and ten? If they die, we wear a piece of black crape on our arm in commemoration of their services. If they survive their office, and are able to provide for themselves, it is well; but if they are not able, we make no provision for them. These, sir, are the cheapest services in the world; the salary is all; and they die with it, or by it. Gentlemen will perceive, from its amount, that it is impossible to lay by a farthing for the day of adversity.

As to the motion to limit the existence of the act, it is improper, because, if the war continues, the price of consumable articles will rise; besides that, the depreciation of money will operate a regular augmentation. And though the act be unlimited by itself, yet it will be in the power of the present, or the next, or any other Congress, to take it into consideration and act upon it according to their discretion. The limitation is, therefore, unnecessary, and may be vexatious; for no subject can be touched, so troublesome within doors, and more calculated to excite feeling out of doors.

I was unfortunately absent when my revered colleague made his observations on the amendment I had the honor to introduce. I understand him as being in favor of the principle of the bill, but as meaning to vote against it on account of that amendment. Not having the discriminating judgment of the gentleman, it may be my misfortune not to perceive how this furnishes him with an argument against the whole bill. I was, in the first instance, for re-enacting the act of 1799, in its very words; but, gentlemen not liking that course, the proposition to that effect was negatived, and another proposition agreed to. On this proposition, as its basis, a bill was brought in specifying the salaries given to the several officers. To this bill I offered the amendment now objected to. The gentleman from North Carolina objected to it as unnecessary; but the House overruled the objection, and determined that it should be incorporated in the bill. The House determined that it was proper; but whether it is proper or not will appear from a single consideration. We pass a bill fixing certain salaries; which bill appears, by itself, to be a new act, fixing new salaries, whereas the principle on which it is founded, has been practised upon ever since the year 1799. It appears, then, proper to trace this principle to its first origination. Not that it is my intention to derive a sanction to the measure from the act of 1799, but simply to record a fact undisputed and indisputable, that the salaries are now established as they were in 1799, that every man who reads this law may know it. It is no part of my intention to cast reproaches upon a former Administration. I know this is impossible; for, by agreeing to this act, I approbate that measure, by giving to these officers the same salaries then given. I mean it simply as a matter of record.

One gentleman from Connecticut, (Mr. Goddard,) with great facetiousness, proposed the other day that I should make proclamation of this fact. Why, the honorable gentleman, with his usual sagacity, has precisely hit my intention. It is, sir, my intention to make proclamation of this fact, or publication of it, that we may make it appear that this is a continuation of the same act passed by the gentleman and his friends, when they were in power, in the year 1799; and that the honorable gentleman may take it home and show his constituents, by an undisputed declaration on the face of it, that this is the same act with that passed in 1799; and that it may appear that we have done neither more nor less than continue, without augmentation or diminution, the salaries as established by the act of 1799.

Mr. J. Clay.—I do not intend to trouble the House with any further observations on the general merits of the bill. The gentleman from Massachusetts is the only one who, in my opinion, has adduced any arguments why these salaries should be raised. Under the idea that no answer is required, I intended to give a silent vote against the bill. I wish, by my vote, to oppose it in all its stages to the last. I will not, therefore, by voting for the present motion, with a view to render it less exceptionable, become accessary to any amendments which may ultimately induce others to vote for it. My colleague (Mr. Smilie) has observed, though my constituents might be hostile to this bill, yet his are not. I congratulate him on the confidence his constituents have in him—a confidence which induced them, in 1799, to agree with him in voting against an increase of these salaries, and which, the last year, made them concur with him in voting for an increase.

Mr. Smilie explained. He had not, he said, the honor of a seat in that House in the year 1799, when the salaries were raised. He had nothing to do with the business.

Mr. J. Clay.—I beg my colleague's pardon; I was mistaken. But there are strong reasons to show that the salaries are too high. If I am not mistaken a gentleman, who holds an honorable situation in the Government, did, in the year 1799, vote against the augmentation of these salaries. I know, likewise, that in the place where I live, the people are extremely opposed to this measure. The honorable gentleman from Massachusetts (Mr. Eustis) has stated reasons for an increase of salaries, which, I trust, will have no weight with this House. He states that, in other countries, public men are rewarded with a peerage and a pension; and that this is the cheapest Government on earth. As long ago as the year 1740, we were told that the trappings of monarchy could furnish out many a commonwealth. I presume, however, the gentleman did not introduce this remark, to infer from it that it was proper for public servants to batten on the spoils of the people. If these are the sentiments of the gentle-

man, and correct, these salaries, if raised five times as high as they now are, will be infinitely too low.

Mr. EUSTIS.—It is due to myself and to the House, to do away the imputation of the gentleman last up. I never said that these salaries were incompetent, because they were not accompanied with a peerage or a pension. But I predicated their incompetency on the fact that they were barely adequate to defray the necessary expenses of living. I said, secondly, that the compensations were barely such as enabled the Executive to obtain men of talents; and I said, further, that they were lower than those granted by any other Government on earth; because other Governments had other means of remunerating their officers than this Government possesses. This is a fact known to the honorable gentleman and to every man in the nation. It is known that, under monarchies, there is first a splendid establishment provided for the officers while in place, and afterwards other remuneration. No; I do not desire in this country to see either monarchy, peerage, or pensions; and without pretending to any particular knowledge of the sentiments of the gentleman's constituents, I may say that mine are as averse as his can be to anything that wears the appearance of monarchy, and as unwilling to give away a shilling of the public treasure unnecessarily. But I do know, at the same time, that they feel a pride in paying for public services. They know, from fatal experience, from having paid their own officers too low, the necessity of an adequate compensation. In my part of the Union, there exists the same jealousy over the public expenditure; it is salutary, and I rejoice to see it. But, like the liberty of the press, to which we are indebted for the security of our rights, it may be carried too far. We are not able, if the ideas of the gentleman prevail, to ascertain what will be the effects. For, if we suffer a dereliction of the Government by men of talents and virtue, we cannot calculate the evil. It is such an evil that no price can be too great to avert it.

Mr. SANDFORD asked a moment's indulgence. He was opposed to the recommitment, because the object of the gentleman who introduced the motion was to give a limitation to the bill, as though it were not, without such limitation, subject to the control of Congress. The fact was, that Congress could at any time increase or diminish these salaries. Though in favor of them as they at present were, if good reasons should at any time be offered for their diminution, he should vote for a repeal of this act, though he was ready to declare that he did not expect such reasons could be offered. Why, then, limit the bill, when its sole effect would be waste of time in renewing this discussion at a subsequent day? As to the argument derived from lowness of State compensations, Mr. S. said, no comparison could be drawn between the duties of the State and Federal officers. He added that not a murmur of discontent among the people on this point had reached his ears. He was ready, therefore, with the gentleman from Pennsylvania, to vote according to the dictates of his conscience.

Mr. MITCHILL observed, that he had almost laid himself under an injunction to remain silent during the whole of this debate about salaries. But as the subject had not as yet been displayed by any of the gentlemen who had spoken upon it in the manner that it appeared to him most worthy of being stated to the House, he should, before the question was called, briefly offer his sentiments. I am opposed, said Mr. M., to high salaries and extravagant allowances of all sorts to men in office. But I am at the same time desirous that the citizens who are called from private life to stations of eminent honor and confidence, should have a sufficient compensation.. A man who barters away the sweets of domestic enjoyment for the toil and envy incidental to most of the offices provided for in the bill, ought to receive from those whom he serves something more than merely his daily bread.

I must own I am not one of those who can, with the calculating powers which some gentlemen possess, exactly adopt the pecuniary reward to these great and responsible offices. I cannot put integrity, talents, and industry, in one scale of the balance, and throw dollars and cents into the other, until it descends to an equipoise. It surpasses my skill to weigh the rare endowments of the head, and the excellent qualities of the heart, which mingle in the character of an officer of State, against the copper, the silver, or even the gold, of which our coin is made. When I attempt to reduce patriotism, honesty, and intelligence, to a price, and to cypher out, by rules of arithmetic, what they are worth in money, I abandon the task as above my powers. And I am not ashamed to confess my inability to appraise the inestimable, I will say incalculable, value of genius, capacity, and virtue, in any denomination of paper current among men. I cannot gauge the human understanding, nor take the dimensions of moral fitness, with such exactness as to satisfy me in giving my vote, that the sums in the bill are exactly what they ought to be, without varying, in any degree, from the true amount of compensation. Employments of high trust and dignity have no tariff or market price to rate them. There is a something in a great and noble mind, that is far above comparison, or equivalent with anything the Mint affords.

But although the task just mentioned surpasses my ability, I do not quit in despair the subject out of which it grows. The problem by which professional men and official men ought to be paid, can be solved only by the aid of political arithmetic; or it can be made to approximate near enough to certainty to answer all the purposes of ordinary conduct. If a boy is destined to a profession, he is an object of expense through the whole course of his scholastic, collegiate, and professional studies. Whether he receives premiums, earns diplomas, or private license to practise, he is a constant drain upon the purse of his father. This expenditure must be made, although under the most favorable circumstances of health, capacity, and diligence, in the pupil. If he is idle, sickly, and perverse, the cost is usually greater.

Frequently a young man after acquiring a profession cannot gain a living by it, but must be maintained out of other funds than those which the exercise of his profession can raise. Now, in the progress of such a person's life, every dollar laid out upon him is to be considered as so much capital consolidated in his person. This capital is exposed to great risk, and without insurance. For the whole adventure is hazarded upon the life and health of the individual. A young man, therefore, upon whose education five thousand dollars have been expended, ought not only to support himself by the profession he has learned, but to reimburse with interest the capital which has been laid out upon him. This reimbursement ought to take place within the few years to which his life may be calculated to reach—for if he dies, there is a total loss of principal, interest, and prospects. But, in the case of lengthened days, a professional man ought to do more than pay his board and recover his capital in a moderate period of time. He ought to accumulate enough to maintain a family, to pay his assessments, and have a decent surplus for old age, and for descendants. All this a man who has undergone an expensive preparation for a profession ought to be able to do before his activity fails him, by the observance of industry and economy. If he does not do this, he has but a poor bargain of his profession. I believe, Mr. Speaker, that all professions are full of such hard bargains. The lottery of a profession has many blanks to a prize, and the prizes which are within the wheel are for the principal part of but moderate value. Though a few draw rich prizes, by far the majority are allotted blanks, or small prizes. This is so much the case that it has been questioned whether the profession of the law, deemed the most lucrative, upon the great scale actually supports itself. I think, therefore, that the individual practisers may grow very wealthy in a profession, yet professional talents are upon the average not compensated to their full amount in money. The reason is obvious, as man devoting himself to a profession expects honor and reputation from his calling—he courts the smiles of fame, and listens to the echoes of renown; and if he has a mind of that happy constitution which seeks its due proportion of glory, while it provides against want and accidents by an efficient system of ways and means, his reward is rich and ample. It is true he commutes self for celebrity; in leaving off a part of the selfishness of his nature, he becomes more a citizen of the world; and though he disposes of less property by his testament, he leaves to his family the precious inheritance of a great and a good name. Generally speaking, then, men who betake themselves to professions run an extraordinary risk for their profits, and these profits, after all, are not received in cash alone, but in a compound ratio of money and fame. It follows from this view of the subject, and it is indisputably the just one, that professional men, as such, receive a smaller return of profit on their professional stock or capital vested in their persons than any other species of adventurers in trade on equal capital and hazard.

Suppose then, sir, a professional man becomes an official character. Does he acquire a "pecuniary" reward equal to the amount that might be found due to him by a calculation on the principles which have been laid down? Certainly not. Speaking in gross, such official men as are contemplated in the bill now depending are not so well paid as professional men are. If the latter are underrated in their compensations, the same *a fortiori* must happen to the former. Take the career of one of these officers about whom there has been so much discussion among us. He possesses little or no chance of obtaining one of these distinguished appointments before the sun of his life has passed its zenith, and he is declining in the afternoon of age. Time must first have furrowed his face with wrinkles, and planted gray hairs on his temples under this preparatory course; and with such preliminary steps for preferment, what chance has the successful competitor to hold his possession long? Though his constitution should remain vigorous; though he should have husbanded his powers by temperance; though, like an evergreen tree, he shall have carried his juvenile verdure far into the winter of years; the incumbent on one of these benefices deceives himself if he calculates upon a protracted tenure. Though he should be favored with health, and have both the will and capacity to perform the duties of his station, he must expect, at the close of every lustrum or sooner, that a harsh decree from the mouth of political expediency will supersede his commission and oust him from his place. In the meantime the constant wear and tear of his animated machinery is going on, and he quits his office with a diminished ability to betake himself once more to the employment he may have relinquished.

It will be perhaps demanded, how the officer is to be made whole under all these casualties? I reply that his worldly reward is partly of an honorary and partly of a pecuniary kind. In some places of eminent trust and delicate responsibility, the virtue which is necessary to their execution is its own reward. Those emotions of laudable ambition which agitate the breast of man, and fill it with the desire of excellence, are in a great degree settled, I may say paid, by the very enjoyment and gratification they afford. The towering distinction, the elevated rank, and the far-sounding title of the statesman, who has reached these grades of promotion, are justly considered as making an essential and important part of what he ought to receive from the public. Nothing can afford the good and faithful servant so much delight as the approbation, the respect, and the confidence of his Sovereign. These are the most tasteful cordials in the cup of life. The accents of commendation and praise are so acceptable, that even the vicious part of public men procure them by venal means to be uttered in their ears. The godlike soul exults when the public voice concurs with the sentiment of self-approbation which it feels. But as men holding offices cannot sustain life by mere applauses, whether real or fictitious, and must be nourished and cher-

ished by substantial fare, like their fellow-citizens, there must be some rule by which the amount of their salaries may be ascertained. I repeat, sir, that Congress should be moderate in all their allowances of this kind; and in order to calculate the amount of wages to be paid to the public servants, the market price of the articles they must purchase should be attended to. An examination of the leading objects of expense will enable a tolerable estimate to be made. The amount of salary should be such, (at least I am willing to consider it so) as to furnish payments for the rent of a decent house; for the food and drink of a middling family; for fuel, and for clothing, in the style of frugal gentility; for the hire of needful domestics; for taxes and other contingencies; for occasional charities, and the encouragement of good works. I would make an allowance for a horse or two, in a city almost destitute of lamps and pavements, to carry the officer from his dwelling, in such a sparse settlement, a mile or two to his place of business. To render him more capable of performing his serious functions, his mind will require seasonable amusement and recreation. He must also provide for the wants and education of his children; and after all these disbursements, he ought to be able, with prudence and economy, to lay up a little surplusage for future use.

If these several articles are charged at the existing rate, they will pretty nearly balance the sums with which it is proposed to pay the officers named in the bill. It may possibly be found, by a very nice scrutiny, that they are one or two dollars higher, or two or three hundred dollars lower than the exact state of the times require. This I am not disposed to investigate with fractional minuteness. The salaries have been proved by several years experience to suit their purposes tolerably well. There is no need whatever to raise them, and I think there would be an impropriety in lowering them at this time.

Before he resumed his seat, Mr. M. said he would offer a few further observations on salaries. In free, and especially in republican Governments, there might be danger of reducing them too low. As a republican, he would concisely advert to the operation of very low salaries upon the country at large. By such a regulation, which might be mistakenly termed by some an economical one, all persons not possessing large hereditary or acquired estates, would be excluded from offices. There would thereby be created a moneyed aristocracy of the most odious and alarming kind. It had been long remarked, that the most stern integrity, and the most useful talents, emerged from the middle or humbler walks of society. He wished that compensations might be such as to promote the evolution of genius and virtue, and bring them from their modest or sequestered abodes into action; and, in this way, well directed talents would continue to rule this land of freedom, as they always had done and of right ought to do. He thought there was a medium between too much and too little, which it was desirable to hit. This was to allow manly merit to come north, though not attended with the recommendations of wealth. This was to apportion salaries to services in the way the bill proposed, neither with profusion on the one part, nor parsimony on the other.

Mr. BEDINGER said his only objection was to that part of the bill which prevented an inquiry into the just apportionment of the several salaries allowed. He was in favor of the general principle of the bill, though from the circumstance he had stated, he should be obliged to vote against it.

The question was then taken on recommitting the bill, and lost.

Mr. GODDARD.—I am sensible, Mr. Speaker, that to oppose the passage of a bill, the object of which is to give an increased compensation to men who may be personally respected, is, at any time, an invidious task. Opposition to the passage of the bill now on your table, is rendered peculiarly unpleasant from the severe reprehension which gentlemen meet with, who take the liberty to state their sentiments against its provisions; and, although I think the salaries proposed to be given by this bill are too high, yet I do not know but I should have contented myself with a silent vote on the subject, had it not been for the very singular amendment which, on the motion of an honorable gentleman from Massachusetts, (Mr. EUSTIS,) has been introduced into the bill, and the notice which that and another honorable gentleman (Mr. RANDOLPH) have seen fit to take of the few hasty remarks which, on a former day, I had the honor of submitting to the House. Notwithstanding the remarks which have fallen from gentlemen respecting that amendment, I still think that, with gentlemen at least with whom I have the honor generally to concur in opinion, it may form a solid objection against the passage of the bill, whatever may be their sentiments respecting its general provisions. By the terms of that amendment, the salaries are to be paid to the several officers therein named, "as established by the act of the 2d of March, 1799." Now, sir, for what purpose is this amendment introduced? Not to have any effect upon the bill itself; for it can have no beneficial effect; and the gentleman from Massachusetts (Mr. EUSTIS) has told us that it is not for the purpose of casting any imputation or reproach upon those who passed the act of March, 1799, but simply for the purpose of recording a fact, and promulgating it to the people of the United States. But will the gentleman from Massachusetts permit me to ask whether, if he and his political friends had been in power at the time when the temporary act of March, 1799, passed, this amendment would ever have appeared in the bill? Would there, in that case, have been such solicitude to record this fact? If not, why introduce it now? The gentleman says, to serve as the proclamation which he says I some days past proposed as a substitute for this amendment; and the gentleman is good enough to give me leave to carry it home for the benefit of my constituents in Connecticut.

Another gentleman from Massachusetts (Mr. VARNUM) has added that when the act of 2d of March, 1799, was revived and continued in force

by the act of the 14th of April, 1802, an attempt was made, and which excited some uneasiness among the people, to prove that those who passed the last act had *raised* the salaries of the Executive officers of the Government; and, sir, let me say that it was successfully done. I do not mean successful in any effect produced by it, but successful in proving the position that the salaries were raised by that act. How stands this matter? At the time when the act of 14th of April, 1802, passed, the Secretaries of State and the Treasury were each entitled, by the law then existing, to receive, as a compensation for their services, the sum of $3,500 annually, and no more; by virtue of the act of April 14, 1802, they were severally entitled to receive the sum of $5,000, and yet, by some political legerdemain, gentlemen attempt to prove that they did not raise those salaries! Such also is the case with respect to every other officer named in the bill, and yet this amendment is to proclaim to the people of the United States, that under this Administration salaries are not raised! It is true, that in March, 1799, owing to the high price of living and other circumstances, a temporary act passed increasing the compensation, but for a limited time. It is expressed, in so many words, in that act, that it should continue in force for three years, and no longer. It expired, by its own limitation, on the 31st day of December, 1801, operating only upon the years 1799, 1800, and 1801; and it was a mere dead letter at the time of passing the act of April, 1802. And is it, sir, for the purpose of informing the people of the United States that such an act passed, that this provision is introduced into a permanent law? Who ever denied, and who does not know, that such an act passed at that time? Does the gentleman seriously suppose that the people of this country are so ignorant as not to know this? or that they need information on this subject? But, sir, the amendment purports to record a fact which I do not consider as existing. It holds out the idea that the compensations given by this bill were *established* in 1799. The term, *established*, conveys an idea of permanency, and it is agreed by all, that the act in question was of a temporary nature, and long since expired. If, as a gentleman from Massachusetts (Mr. EUSTIS) has said, the bill under consideration is so perfectly correct and proper, and its provisions so just, as to induce him to express his astonishment that any gentleman should oppose it, why, let me ask, not permit it to stand upon its own intrinsic merit, and not attempt, in this strange manner, to ingraft it upon an act of his predecessors? Why are not gentlemen willing to take upon themselves the responsibility of their own acts? If measures are adopted which are deemed popular, I perceive no indisposition in gentlemen to claim the merit of them. Why, then, let me ask, do they wish, in this manner, to devolve the odium of those which they think otherwise, upon their predecessors? I do not consider myself responsible for all which may have been done by those who have gone before me, and whom I generally respect; and I had hoped, sir, if the quotation does not give offence to certain gentlemen, that the time might have arrived when it should no longer be said, politically, that the fathers have eaten sour grapes, and the children's teeth are set on edge. If, therefore, gentlemen are determined to persevere in legislating in this manner, I should consider myself perfectly justified in voting against the passage of this bill, whatever might be my sentiments respecting its general provisions.

But, sir, there are other objections in my mind against the passage of this bill, which do not apply to the question, whether the salaries generally are too high or too low.

I took the liberty on a former day to state some objections respecting the salary of the Attorney General, and wish now to make myself understood on that subject, and I hope, sir, that what I may say will not be considered as having allusion to the gentleman who now sustains that office, for I was educated in habits of respect towards him; but I do conceive that error has crept in, and a misconstruction been adopted, respecting the compensation given to that officer; and whether the salary is too high or too low, we are about to sanction that misconstruction, and increase the salary of the Attorney General much more in proportion than we do other officers of Government.

By a law which passed September 23, 1789, the salary of the Attorney General was fixed at $1,500. By another law passed March 2, 1797, it was increased $500, making in the whole $2000. By another law afterwards passed, an additional annual compensation of $600 was granted to that officer, for services to be performed under the sixth article of the British Treaty, which was to be allowed him during the continuance of those services. Afterwards and before the Attorney General had ceased to perform services under the British Treaty, and while he was in the reception of the sum of $600 annually on account of those services, as well as the other sums which I have stated, the act of the 2d of March, 1799, passed, and what, sir, were the terms of that law? "In 'lieu of the salaries heretofore allowed by law, 'the following annual compensations are hereby 'granted," &c., and then giving to the Attorney General the sum of $3,000. Not, sir, in lieu of the compensation which he was entitled to by any one or two laws, but in lieu of the salary heretofore allowed by law—by any existing law; comprehending, I believe, as well the $600 for services under the sixth article of the British Treaty, as any or all other sums, to which by law he was entitled; and yet it has been said that the Attorney General has received under all these laws the sum of $3,600 annually, by what construction I am unable to decide; and now, sir, when the performance of all services under the British Treaty have wholly ceased, we are about to sanction a misconstruction of our laws, and render permanent the salary of the Attorney General at $3,000.

But, sir, in my opinion, there is very good reason why the salary of that officer should not be high. If he is selected from among professional gentlemen, who resides at the seat of Government

it will be only paying him for some opinions which will not much interfere with his other business. If a gentleman is called from distant parts of the Union, a man of talents and high respectability will probably be selected. He will come to the seat of Government under very favorable circumstances; the office will increase his reputation. The sessions of the Supreme Court of the United States will always be held here. Causes of the first magnitude, from all parts of the Union, and which will of course afford the largest fees, will there be litigated. The Attorney General we may suppose will be the first person applied to, and the office, in that way, will furnish him with much greater compensation than any other officers are entitled to.

But, Mr. Speaker, I have another objection to the passage of the bill on your table, of a special nature, and not relating to the question whether the salaries are too high, or too low.

By this bill, the sum of $5,600 is proposed to be given to the Secretary of the Treasury. In all that has been said on the subject of the comparative prices of provision, and the expenses of living in Philadelphia in the year 1799, and this place, at the present time, no gentlemen say that they are greater now than at that time. Some gentlemen undertake to prove that they are not as great.

By a recurrence to the Journal of this House, at the time when the temporary act of 1799 passed, annexing for a limited time, to that office, the same salary which is now proposed to be given, I find the name of the gentleman who now holds that office, and who was then a distinguished member of this House, recorded against the passage of that law. He thereby has declared to the world, that the sum now proposed to be given, is too great for the performance of the duties of that office. This is the best evidence in the present case. Was not that gentleman a competent judge? If he was, shall we give to a public officer a greater sum of money than he himself thinks his services are worth? He cannot in conscience receive a greater salary than that fixed by the law of 1799. And if we persevere in passing this bill, we shall place that officer in a very delicate situation; we shall compel him to take a greater compensation for his services than he believes they merit.

I find also, on examining the same Journal, that more than twenty gentlemen, who were members of this House in 1799, when the act so often referred to passed, and who voted against its passage, are now members of this House, and not one of them, I believe, on any of the questions which have been taken, respecting this bill, have voted against it. Some of them have spoken in its favor. Gentlemen may be consistent in doing this, and I dare say they have reasons which, in their own mind, justify their votes; what they are, is not for me to inquire. One gentleman from Massachusetts, (Mr. Skinner,) who voted against that bill, has indeed told us, that if gentlemen should change some of their opinions once in the course of five years, he does not think it exposes them to the charge of inconsistency. I can certainly have no objection to gentlemen's acknowledging that they were formerly in an error, and I am very willing that the work of reformation should progress, and that gentlemen should correct other errors which they then entertained.

Having made these remarks, I might content myself to vote against this bill, finding it liable to the several objections I have stated. But, sir, I ask the patience of the House, while I submit a few remarks upon its general provisions.

I have listened with much attention to the arguments of an honorable gentleman from New York, (Mr. S. Mitchill) on this subject. The first part of his remarks went to prove, that the pecuniary compensation generally given to professional men is very inadequate to their services. This argument, as a gentleman from Virginia (Mr. Randolph) saw fit to observe, respecting that of an honorable and very respectable member from Massachusetts, (Mr. Taggart,) I should be glad to have printed, not so much for the use of members of this House, as for the benefit of a certain class of people, called clients. But the gentleman from New York adds, that professional men take a part of their compensation in money, and a part in fame. Of this latter article, that gentleman has received a large share, and I do not know but he has, also, of the former. But he has proceeded to show, by a course of ingenious reasoning, that high salaries are necessary to be given to support a Republican Government. A few years ago, arguments in abundance were used, to prove that low salaries were essentially necessary, to support a Republican Government.

I speak not of any used by the gentleman from New York, for I do not know what were his sentiments formerly. But it now seems very easy to prove that high salaries are necessary to be given, to call men from the lower and middle walks of life, and induce them to aspire to your first offices. [Here Mr. Mitchill rose and said, that he had not contended that high salaries were necessary for this purpose.] Mr. G. proceeded: High and low are relative terms; I am sensible the gentleman advocates only the salaries to be given by the bill on your table. That gentleman may call them low, I call them high, and considering them as high, I say, that it is now easy to prove, that high salaries are necessary to be given to support republicanism; and I do not know to what extent they may not ultimately be raised, to do this. In the French Republic, many millions of livres annually are not thought too high to be given to the First Consul, to support his Republican Government, and I know not how soon similar provisions may be thought necessary, to support her sister Republic, in America. A compensation has certainly been given there, sufficient to call, from the middle walks of life, a Corsican soldier, to support by his talents that Republic. And we have the more reason to fear that similar inducement will be held out here, as, according to the remarks of the gentleman from Virginia, (Mr. R.) on a former day, nothing is consistent but keeping salaries in the ascending series; for the gentleman seemed to suppose that gentlemen who formerly voted against the present salaries, might now very consistently vote for them; but that those who formerly voted for them, would now act very inconsistently to vote against them. And to what extent this sort of consistency is to be carried, I do not know, but we may conjecture from the opinion which has been here expressed, of the almost incalculable value of the services of some officers, and their claim upon the public gratitude.

But permit me, sir, to state my view of this subject generally. I am perfectly content to give to the officers of Government a reasonable and just compensation for the services which they render. It is difficult to determine the abstract question, what that is. In my opinion we ought not to consider it in an abstract point of view, but relatively only. It ought to be adapted to the nature, genius, and situation of Government. We are in our youth, and the compensation to be given to the officers to be provided for by this bill ought to bear some proportion to those given to the other officers of our Government. Compare, sir, a salary of five thousand dollars, now proposed to be annexed to the offices of Secretary of State and the Treasury, to the salaries given to the officers of your State governments. Do the States give to their Governors, their Judges, or any of their highest officers, a sum to be compared to this? I cannot answer for them all, but I believe there is not existing, under any of the State governments, a permanent salary of this magnitude. In some of them, I know, they fall far short of this sum. And are not those offices filled by men of the first talents? It will not be doubted.

But, if gentlemen do not like this comparison, let me ask them to compare these salaries with others under the General Government. Look at the salaries which you give to the judges of your Supreme Court. These were established in the year 1789, and have remained unaltered. And I have seen no attempt made to increase them. The salary given to your Chief Justice is $4,000; and that to the other justices $3,500 each. Will any gentleman tell me that these offices ought not to be filled with men of pre-eminent talents?

And are not the duties of their offices very laborious? Aside from their duties in court they are obliged to travel from one end of the United States to the other—deprived of those domestic comforts of which gentlemen have justly spoken so highly, and not only exposed to much bodily and mental fatigue, but subjected to heavy expenses in their travels. And yet gentlemen seem perfectly contented to suffer their salaries to remain as they are, and will give to the officers of the Executive departments, who reside constantly with their families at the seat of Government, a compensation much beyond theirs! Let gentlemen pursue the comparison further, if they please, and inquire what sums are given to the district judges, and, indeed, any other officers of Government, and they will find that they all fall short—very far short—of the compensations proposed to be given by this bill. Gentlemen have mentioned our own compensation, as members of this House, and, in doing it, the gentleman from Kentucky, (Mr. Sandford,) and also the gentleman from Virginia, (Mr. Randolph) seem disposed to descend into the vale of humility, when comparing their own talents and services, as members of this House, with those of some of the officers for whom we are providing. I am content to go along with them, and have no disposition to compare my talents or services with theirs. Yet, let me say, sir, that it is essentially necessary that these seats should be filled with men of the first talents. For, unless your legislators are qualified to judge of the measures proposed to them by the Executive department of the Government, they will become the humble tools of the Executive, will only echo his will, and become the registers of his edicts.

There is, therefore, the same necessity, of which gentlemen have so often spoken, of giving such compensation as will call forth the services of the first men to act in a Legislative capacity. And what do you give your Senators and Representatives? The annual sum of eight hundred and ten dollars! I know very well that a gentleman from Kentucky, (Mr. Sandford,) on a former day, made this compensation amount to more than two thousand dollars annually. Upon what principles he calculated, I cannot conceive. I take as the basis of calculation the estimate laid on our tables from the Treasury Department for the service of the year 1804. That calculation is made upon the supposition that Congress will be in session four and a half months, or one hundred and thirty-five days in a year. This amounts to the sum of eight hundred and ten dollars only. I am sensible that there is an addition for the expenses of travelling to and from the seat of Government; but that is supposed to be given on account of those expenses. Whether the gentleman from Kentucky made his calculation by including travelling compensation, for I do not know at what distance he lives from this place, or by computing on a session for the whole year, I do not know, but I presume the latter.

Any gentleman who has been a member of this House knows, that attendance here, necessarily deranges, for the year, any other business in which he may be engaged. Now, sir, I do not complain that our compensation is not high enough. No difficulty is found in inducing gentlemen to accept seats here; but the point which I attempt to prove is, that the salaries contained in this bill are too high. Compare the sum of eight hundred and ten dollars, our annual compensation, with the sum of five thousand dollars, to be given to some of your officers, by this bill, and who will say it is not too much? In examining all the subordinate offices under this Government, none will be found to furnish salaries which compare at all to those in the bill on your table, excepting those mentioned by a gentleman from Virginia, (Mr. Randolph,) on a former day. I refer to the collectorship of certain ports. I am sensible we have a law by which it is declared that collectors' compensation shall not exceed $5,000.

But, let it be remembered, that we do not give to those officers a salary, but a per centage upon

the business which they do, and something is doubtless allowed as a premium for the risk of receiving and paying over large sums of money; yet, while I give this answer to that case, stated by the gentleman from Virginia, (Mr. R.,) I wish not to be understood to say that the compensations given to some of those officers are not too high. I believe they are, and if the gentleman pleases, I am ready to join him in this reduction. For, sir, there are officers, and some in the State from which I come, who, a few years ago, could declaim against high salaries, declare that compensations were too high, when they were much less than they are now, and make orations to publish it to the world, and assert that five hundred or one thousand dollars, at most, was an abundant compensation for the performance of the duties of offices, from which some of those very men now pocket, with much complacency, between three and four thousand dollars a year.

[Here Mr. Nicholson called Mr. G. to order, which occasioned some remarks from Mr. Nicholson and Mr. Lowndes; when the Speaker declared Mr. G. to be in order. He again rose and said, although he had been so happy as to have a decision from the Chair, that he was in order, yet the intimation from the gentleman (Mr. N.) had given him time to repress a warmth which sometimes attended him in debate, and, but for this interruption, might have led him away from the question under immediate discussion. He would endeavor not to make any more remarks which should give the gentleman uneasiness.]

I have no disposition, said Mr. G., to proceed further with a comparison of the salaries contained in the bill on your table, and those of any other officers of your Government.

But, on a former day, our attention was called first from the subject immediately before us to the contingent expenses of this House, of the War and Navy Departments, as well as to the general expenditures belonging to those departments, and we were told that here were the great sinks of the public money, and here we ought to turn our attention if we wished to make retrenchments in our expenses. Why, sir, is this done? Did the gentleman from Virginia mean to say that the expenses, to which he has referred us, are improper and extravagant? If so, let us correct the abuse; if not, why call our attention to the subject at all? If improper expenditures are made from the contingent funds, or in anything connected with the departments referred to, retrench them. But surely this can furnish no reason why we should give extravagant salaries by this bill. If the expenses there are no greater than they should be, unless this subject is only brought into view to show us that, of necessity, we must expend large sums there; it furnishes another reason why we should exercise economy here, that we may be better enabled to meet the necessary expenditures there.

But, the gentleman says, this is but the saving of a barley-corn, and ought not to be regarded.

[Here Mr. Randolph rose, and said he did not say so.]

Mr. Goddard.—Pepper-corn, sir, I believe, was the gentleman's expression, and perhaps it is a more proper word for him to use. But the word is immaterial, and the sentiment, I think, is incorrect.

Let us now exercise our best judgment on the subject now before us, and see to it that we authorize no improper expense by this bill; and, as other subjects may be presented us, conduct in the same manner as to them. I should be perfectly content to give just and reasonable salaries to all public officers, and those contained in the old permanent law may be too low. But, I cannot be induced to vote for the sums contained in this bill, through fear of not being able to call into exercise the talents of the best men in the nation. I have heard this argument used here and elsewhere in favor of high salaries; but is it not, let me ask, an argument founded on theory and not on experience? It is the least of the difficulties which the Government has to encounter, that of inducing men to accept its offices; and when we shall find, from experience, that suitable men will not accept our offices, on account of the small compensation annexed to them, it may be time to apply the remedy now proposed, and raise their salaries. For a period of ten years, from the commencement of the Government until the year 1799, men of the first talents and integrity were found to fill the offices now in question for the salaries contained in the old law, which this will repeal; and when the men in power shall have evinced their patriotism by a like period of service for the like compensation, it may be time to increase it.

But, at present, the bill on your table being liable to the several objections which I have stated, and the salaries therein given being comparatively higher than other salaries enjoyed under the General or State governments, I shall give my vote against its passage.

Mr. J. Randolph.—I am sensible, with every gentleman who has spoken ont his subject, that it is one, on which every member has made up his mind. But as the gentlemen have, in discussing it, gone into other questions, and have misrepresented what has fallen from the friends of the bill, I must beg the attention of the House for a few minutes.

The gentleman from Connecticut (Mr. Goddard) has stated—and I hope the Chair and not the gentleman will correct me in case I misrepresent what has fallen from him—for I must be permitted to say that the manner in which you, sir, have uniformly executed its duties give an ample pledge that I shall be corrected if I do misrepresent him; the gentleman has stated that the amendment, introduced into the bill, is contradicted by fact. The first section of the bill is in these words: "That, from and after the end of the present year, 'the following annual compensations and no other 'be, and they are hereby, granted to the officers 'herein enumerated, respectively, that is to say." The whole question then is, whether the same salaries are established by this bill as were established by that act. The act has been repeatedly read, or I should call on the Clerk to read it now

to prove that the compensations allowed by it are precisely those of the bill under consideration. But, says the gentleman, these salaries were not established by that act, because it was limited to a term of years. The gentleman may give the word "established" any meaning he pleases; but it is not for him to make this House give it a meaning which they are persuaded it does not bear. Let me ask him if the phrase "established for two years," may not be used with strict propriety? Has he never heard of temporary and permanent establishments—of War and Peace Establishments; and is there not an almost annual fluctuation in their extent and amount? I desire then to know whether it becomes him, under these circumstances, to declare that the amendment adopted by this House (to use his own words) purports that to be a fact which is not a fact.

The same gentleman has undertaken to show that, in the observations which I offered on Friday on this subject, I endeavored to prove that abuses existed in other departments, and that those abuses ought to sanctify these. On this occasion, I beg leave to call the attention of the House to the fact, and I have no hesitation to say that the fact is not so. If I did say what the gentleman represents, I beg the correction of the Chair. I stated that in the Treasury Department, the expenses were equal to $70,000, and that of this sum the salaries did not amount to $30,000; that if it was the object of the House to effect a reform, they ought to take up the departments themselves, and not to strike barely at the salary of the principals. I repeat it, if gentlemen mean reform, let them reform the department itself. But let us not gain less than $10,000, by only striking at the salaries of a few officers, whose responsibility and capacity entitle them to superior compensation. I did state, not that these departments, but those of the military and marine were the great sinks of the treasure of every nation. What does the gentleman make me say? Why that our own departments of the military and marine were the great sinks. Sir, I stated no such thing; I believe no such thing. By making particular a general assertion, my meaning has been totally perverted. I can scarcely conceive how any military or naval force can be maintained for less cost than our own—although I am ready to repeat that such establishments are the sinks of national treasure. The assertion is sustained by the expense which we pay even for our small army and navy.

I will again call the attention of the House to the estimates laid on our tables. The expenses of the Department of State, exclusive of those of foreign intercourse, amount to $22,000. The gentleman is for striking at a single salary. I am unwilling to do this. I am for going through the whole Department if any reduction is commenced. In the Treasury Department the expenses are $70,000. Pursue the ideas of some gentlemen, and there will be a saving in the salary of the Secretary of $1,500, of the Comptroller $850, of the Treasurer 600, of the Auditor $600, of the Register $400, something less than $4,000; and that is all. In the War Department the expenses amount to $28,000. If the salaries of the Secretary and Accountant are reduced as is proposed, there would be a retrenchment of $1900, and this would be the amount of the saving. But the gentlemen have not ventured to propose the general reduction of the War establishment, which costs the nation (even now) the annual sum of $363,000. A saving to the same amount would, by a like reduction, be made in the Navy Department, whose expenses, under the most economical arrangements which have been made under this Government, amount at present to $650,000, which have exceeded heretofore $1,000,000, and in times not very remote several millions. I find the expenses of the Judiciary estimated at $98,000, and a saving is proposed to be made by retrenching $600 from the salary of a single officer, the Attorney General. I have no desire to diminish the salaries of any officers in this department, in which there appears to me to be an economical disbursement of the public money. When I speak, however, of the economy of the department, I mean not to refer to that portion of expenditure which is made in the District wherein we are now deliberating; for I find that the estimate "for defraying the expenses of the supreme, circuit and district courts of the United States, including the District of Columbia, also for jurors and witnesses in aid of the funds arising from fines, forfeitures, and penalties, incurred in the year 1804, and preceding years, and likewise for defraying the expenses of prosecution for offences against the United States and for the safe-keeping of prisoners," amounts to $40,000.

I did on Friday express myself, that if gentlemen were seriously bent on retrenchments, they ought to take up the departments generally; particularly the marine and military; and, after reforming them, take up the civil list; thus revising the expenses of a whole department, and not striking at the salary of individual officers. I did say that to make a saving of not quite $10,000, in this way, out of an expenditure of millions, was to bring a mere pepper-corn into the exchequer. The term was used on a most memorable occasion, and by an ever to be venerated man. It was used by Lord Chatham, on the project to tax this country. It was then declared by that illustrious statesman, that all the revenue which could be wrung from this country would be but a poor equivalent compared with the services we had rendered, and should render Great Britain as allies, as customers, and as friends, and the miserable financier was denounced who would bring a pepper-corn into the exchequer at the expense of millions to the nation. And I now say, that the saving of $10,000, out of the salaries of officers, who ought to be the ablest men in the world, on whose talents and virtue depends the peace and welfare of the country, and the honest expenditure of millions, would be to bring a pepper-corn into the exchequer.

The gentleman from Connecticut, (Mr. Goddard,) in the course of his observations, has expressed a hope that the advice which my learned friend from New York (Mr. Mitchill) had given to the House would be taken by his clients.

If I could arrogate to myself the right of giving

advice to any member of this House I would recommend to their patron one rule, a rigid adherence to which will always keep up the appearance of saying something on a subject. Whenever you are unable to answer your adversary, always answer yourself. Having only yourself to answer, you insure one important point—the being equal to a reply.

This remark applies with peculiar force to the statement which has been made of what has fallen from my friend from Massachusetts, (Mr. Eustis,) not one of whose arguments the gentleman has answered, though he has misrepresented them all. Mr. R. concluded by observing that he wished a mode could be devised of bringing members back to the subject under consideration, and by which also a gross misrepresentation would receive a proper correction.

The question was then taken by yeas and nays, on the passage of the bill—yeas 76, nays 35, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Daniel Heister, James Holland, David Holmes, Benjamin Huger, Walter Jones, Nehemiah Knight, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, Samuel L. Mitchill, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Bernh Palmer, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Matthew Walton, John Whitehill, Richard Winn, Thomas Wynns.

Nays—George Michael Bedinger, Phanuel Bishop, William Chamberlin, Martin Chittenden, Joseph Clay, John Davenport, Thomas Dwight, John B. Earle, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Seth Hastings, Joseph Heister, David Hough, William Kennedy, Michael Leib, Joseph Lewis, jun., Thomas Lewis, David Meriwether, Nahum Mitchell, Thomas Moore, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, John Cotton Smith, Richard Stanford, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, George Tibbits, Marmaduke Williams, Joseph Winston.

Tuesday, November 22.

Two petitions of sundry residents and purchasers of lands in the State of Ohio, were presented to the House and read, respectively submitting to the consideration of Congress, certain propositions of amendment to the existing laws relative to the sale of the lands of the United States, lying within the said State, which they pray may be adopted, as well to enable the industrious residents or emigrants to purchase a quantity of land proportionate to their capital, as to promote the general interests of the Union.

Ordered, That the said petitions be severally referred to Mr. Nicholson, Mr. Morrow, Mr. Dwight, Mr. Brown, and Mr. Bryan; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

BANKRUPT LAW.

Mr. Newton called for the order of the day on a resolution, laid by him on the table, for repealing the Bankrupt law.

Mr. J. Clay moved a postponement till the 2d of February 1804, in order to allow, in the mean time, an opportunity to inquire into the practicability of so amending the law as to render its provisions just, and agreeable to the community.

This motion was supported by Messrs. J. Clay, Nicholson and Gregg, and opposed by Messrs Newton, Elliot, Smilie and Eustis.

Mr. Griswold suggested the propriety of postponing the consideration of the subject to a shorter day. Mr. J. Clay acquiesced.

Mr. Nicholson moved a postponement to the first Monday of January.

This motion was supported by Messrs. Huger, Dana, Alston and Goddard; and opposed by Messrs. Newton, Dawson, Rodney, Smilie, and Randolph.

When the question on postponement was taken, and lost—yeas 19.

The House then went into a Committee of the Whole on Mr. Newton's resolution for repealing the Bankrupt law.

Mr. Newton and Mr. Smilie advocated a repeal, and Mr. Jackson and Mr. Early opposed it; when the Committee rose and asked leave to sit again.

Wednesday, November 23.

Resolved, That the Committee of Claims be directed to inquire into the expediency or inexpediency of making provisions, by law, for all those officers and soldiers who were disabled by wounds in the Revolutionary army, and for whom no provision has heretofore been made by law; and report by bill, or otherwise.

BANKRUPT LAW.

The House resolved itself into a Committee of the Whole, on the resolution, offered by Mr. Newton, for repealing the Bankrupt law.

The resolution was advocated by Messrs. Newton, Elliot, Smilie, Hastings, Stanford, and Randolph; and opposed by Messrs. Jackson, Early, Skinner, and Eustis.

[The advocates of repeal observed that though the resolution had laid on the table for a considerable time, purposely with a view to collect public opinion, no remonstrance hostile to it had been received from any part of the Union, and that this circumstance indicated the unfavorable sentiment entertained of the bankrupt system; and that

even among those most materially interested in its provisions, a dead silence prevailed. Some gentlemen were averse to the repeal, inasmuch as the law would expire by its own limitation, in a few years; but the House should recollect that in the mean time they were responsible for all its evils and iniquities. If, too, it should be suffered to die a natural death, the inevitable effect would be that those who are now struggling to avoid bankruptcy will precipitate themselves into such a situation as to avail themselves of its benefit.

With regard to the principle of the present bankrupt system, and probably of any other bankrupt system that could be devised, it was unjust, inasmuch as it favored one class of citizens, the merchants, at the expense of all other classes; to advance the interest of the first it sacrificed the interests of all the other members of the community. To prove this, it was only necessary to illustrate it by the common case of a merchant availing himself of the benefits of bankruptcy, and thereby cancelling the demands of the mechanic or the farmer who might be his creditor; and of the same individual mechanic or farmer, the debtors of another merchant, remaining his debtor with their property subject at any period of their life to his seizure. In the case of the insolvent merchant his debts were totally discharged; whereas in the case of the insolvent mechanic and farmer, they were of eternal obligation. The preferable system was that established by the several States, which existed before the bankrupt system, and which still existed, extending to all insolvent debtors the same relief.

It was contended that the partial operation of the bankrupt system had the most mischievous influence on the morals of the mercantile world. That it operated as an impunity to fraud and negligence; that it created extensive credits, and excited a spirit of the most prodigal expenditure; that although the American merchants were probably the most honest, and certainly the most able and enterprising in the world, the facility with which credits were obtained, and the impunity with which risks were incurred, had, under the auspices of this law, introduced into their private expenditures a ruinous extravagance; and that nothing was more common than to see a merchant, of but small capital, living at an expense superior to that of the European trader who had realized his plum, and at an expense which shamed the frugal disbursements of the affluent planter. What were the effects? The scene of luxury and splendor was enjoyed for a few years, and was succeeded by a failure. Did it become the Legislature to encourage, or repress this spirit?

The principle of the bankrupt system was inequitable as it regarded the relation of debtor and creditor. However it might be averred to the contrary, it was a truth that its provisions operated to the advantage of the debtor, and of course to the detriment of the creditor. There was no weight in the remark that the commission was taken out at the instance of the creditor, as that was merely a nominal act, a creditor usually being made use of who was the friend of the bankrupt. That it operated to the benefit of the debtor was clear from its liberating all his future acquisitions, after availing himself of the benefit of a commission, from seizure: whereas under an insolvent law the person alone was released. That hence sprang up a ten-fold temptation to fraud under this act, over that which existed under the common insolvent laws. For that under the latter an insolvent debtor, if guilty of a fraudulent concealment of property, could at any future period be called upon to satisfy the claims of his creditors by a delivery of his visible property; while, under this law, the bankrupt may live in the greatest splendor, even ostentatiously displaying his property, without rendering it liable to seizure. Fraud once successfully perpetrated and concealed, every restraint is removed; and so deleterious had this effect been that it had manifestly inflicted a deep wound upon the confidence of man with man in the ordinary transactions of life.

It was further contended, that while justice and humanity dictated the liberation from arrest of the body of the unfortunate debtor, justice inhibited the exoneration of property from going to satisfy just debts; that the obligation, wherever the ability existed to pay just debts, was eternal, and that this law, in having a retro-active effect, was unjust. Evils infinitely greater had been inflicted by inconsiderate and fraudulent debtors taking refuge in the provisions of the bankrupt law than from all the inhumanity exercised by merciless creditors over unfortunate debtors. That the principle of the bankrupt law was also retro-active, inasmuch as it destroyed the grade of dignity existing in many of the States, by which a bonded debt obtained a preference over an open account; that it absolutely impaired the subsisting contract between the person holding and the person signing the bond.

It was remarked that the principle of the bankrupt law, however good in theory, could never be carried into effect, as had been proved by a long course of British experience, without a recurrence to those sanguinary laws which they had introduced for the prevention and punishment of fraud, but which were so abhorrent to our code of laws that public opinion could not tolerate them.

The expenses of going through the forms of bankruptcy constituted no inconsiderable objection to the system. The appointment of a Commissioner was understood to be in no small degree lucrative, and the various processes through which the bankrupt was compelled to go, in practice, reduced the little property he had left to a state still less. Indeed, from the practical effects of the system, it would appear that it had been made more for the emolument of the Commissioner than for the benefit of the creditor.

However necessary this system might be in England, who owed almost the whole of her prosperity to trade, it became not a nation, the leading feature of whose character was agriculture, to tread in her footsteps; but, on the contrary, to avert rather than to hasten the period when such a system would be rendered necessary; that, in

truth, the spirit of trade in this country was sufficiently vigorous, and only required the common protection given to all other occupations, to prosper to every beneficial purpose.

In the commercial world, the honest, though unfortunate merchant, had nothing to fear from his creditors. A long experience had shown that the mercantile world felt with sympathy and acted with magnanimity to the unfortunate. In addition to these objections, it was urged that the bankrupt law was injurious, as it enlarged the sphere of the Federal courts. The Constitution was a system of compromise. Many powers were given without a view to their immediate exercise. It did not, therefore, follow that, because the power given to establish an uniform system of bankruptcy was given, it must now be exercised. The powers of the General Government, if not too great, were sufficiently great. It became Congress, therefore, neither to take from or add to the powers of the State courts. To increase the powers of the Federal courts, through the operation of the bankrupt system, was to derogate from the powers of the State courts. The State tribunals were weak enough, without thus trenching upon them.

The authorities under this law not only went to enlarge the powers of the Federal Government generally, but particularly to the extension of Executive power. The appointment of Commissioners of bankruptcy was an additional weight thrown into the scale of Executive patronage. The power of that Department ought to be viewed with an eye of jealousy, and the House, however willing to allow to it the enjoyment of all fair and necessary power, ought vigilantly to guard against its undue increase. It might be answered that this evil might be removed by placing the appointment of the Commissioners in the hands of the courts. But this would not be the effect. The Judicial department, in the aspect of its political weight, was not to be contemned. So long as it remains, as fixed by the Constitution, it will rest for support somewhere—it will naturally ally itself to some other department of the Government, and the inducements to such alliance will be most naturally held out by the Executive; but however peculiar circumstances might at this time indicate otherwise, such a tendency was a kind of political gravity, which, however it might for a time be checked, would eventually exert its influence.

On the other hand, the opponents of the repeal observed that the silence of the public on the subject indicated neither hostility nor opposition to the present system of bankruptcy; if it indicated any prevailing sentiment, it was that of confidence in the judgment of their representatives. If the system really was so unpopular as some gentlemen had represented it to be, their tables would ere this have been covered with memorials for its repeal, whereas not a single petition to that effect had been presented during the session.

They contended that it would be true policy to suffer the act to expire by its own limitation. Little more than two years would elapse before the arrival of that period. This conduct was dictated by the undisputed fact that the present system had been adopted as an experiment. Hence the limitation of the act. This experiment was now in a fair course of trial. Little more than three years had elapsed since its commencement, and sufficient time had not yet passed to test the goodness or the badness of the principle it involved. It was a fact that the distresses of the commercial world called forth such a system when it was formed in the year 1800; it was a fact that it had done much good; and it might be that a system of bankruptcy, improved to the extent of which it was susceptible, would be of permanent utility. Amendments, radical amendments, the system certainly required; and should the House determine not to destroy it, the amendments could and doubtless would be made.

It was believed that the general sentiment of the nation concurred in the propriety of affording some relief to the distresses of the commercial world. On the form and extent of that relief great contrariety of opinion existed. It was the opinion of well informed merchants and of the best writers, that a greater relief should be afforded to the misfortunes of men engaged in trade than in other occupations. To the argument that the proper relief to be extended should be left to the determination of the States, the objection, that the laws of the different States were on this point various and contradictory, was conclusive. Trade, of all human occupations, embraced the widest range. Its operations were confined to no particular State, or climate, but pervaded the whole world. It was of great importance then, if practicable, that laws in relation to it should be equally wide with this extensive range. Though this was utterly impracticable, yet it was practicable to make the same laws pervade a whole nation. Of this opinion were the venerable patriots of 1789, who framed the Constitution; such was the spirit of the Constitution itself; and such its language in speaking of uniform laws respecting imports, bankruptcies, and intercourse between the several States. Not that the power to pass such laws was imperative: but they manifested the sense of that body and the spirit of the instrument, that all laws on those subjects should be uniform throughout the United States.

To the argument, that the exoneration of property from the payment of just debts was a violation of justice, it was replied, that however correct the principle might be in ordinary cases, it did not hold in commercial concerns. In other employments an inability to comply with contracts was generally the result of idleness or imprudence; but so great and inevitable were the risks attendant on commerce, that no human prudence could guard against them.

Of trade, credit was the life; without it, it could not exist. In this country, too, it was the great source of revenue. How politic then was it, in a country where the whole of the revenue, and much of the wealth of its citizens, depended upon trade, to adopt regulations which would repress mercantile exertion and enterprise?

It was contended, that it was not true that the principle of a bankrupt law operated in favor of the debtor; the reverse was the case, and constituted one of the strongest arguments of its superiority to insolvent laws, under which the time of surrender was left to the option of the debtor, whereas, under a bankrupt law, the creditor, whenever he had reason to apprehend the fraud or failure of his debtor, could take out a commission under the bankrupt law; the creditor may arrest the prodigal or unjust career of the debtor; while under the insolvent law, the debtor rarely surrenders his property, until he has squandered nearly the whole, or until he has made a fraudulent transfer of it. Such was the operation of the principle of a good bankrupt system; with regard to the present it was admitted that its provisions were unfair, and operated frequently the other way.

A leading argument in favor of a bankrupt system was that it multiplied checks against fraud; there would of course be less temptation to commit fraud, as the chances of concealing it diminished. In most countries the terrors of an awful punishment awaited the commission of fraud under this act, even the terrors of death. Though it might not be sound policy in this country to make punishments so terrible, yet it was always within the power of the Legislature to make transgressions so penal, as to guard against the apprehended evils.

It was contended that one great object of the Constitution in bestowing this power on the General Government was the establishment of national credit upon the broad principles of justice; such was the effect of the system of bankruptcy by which the same obligations were imposed upon the merchants of all the States in their relation to each other, and towards foreigners. Remove this system, and you virtually re-enact the partial and varying laws of the different States. In Virginia, for instance, the person only of the debtor is liberated, while in Maryland both person and property are liberated. Will not the citizen of one State acquire advantages over the citizen of another, and will not foreigners have reference in their dealings to the laws of the States, and prefer dealing with the citizens of that State where there shall exist the greatest security for the recovery of their debts? Will not the citizen of one State remove into another, and evade the operation of the laws of the State where contracts were made? The friends of the repeal say the bankrupt system is retrospective in its operation. That was true, inasmuch as it changed the relations of debtor and creditor. But what will the repeal do? Contracts have been made under the contemplated existence of the act for a fixed period. By repealing it before that period arrives, you likewise change again the relations of debtor and creditor.]

About four o'clock, the debate being closed, the question on the resolution to repeal, was taken and carried in the affirmative, ayes 94.

The Committee rose, and the House immediately took up their report, on agreeing to which the yeas and nays were required, and were, yeas 99, nays 13, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George M. Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, James Elliot, John W. Eppes, William Findley, John Fowler, James Gillespie, Calvin Goddard, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, William Hoge, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., John B. C. Lucas, Andrew McCord, David Meriwether, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, Anthony New, Thoms Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John C. Smith, John Smith of Virginia, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—John Campbell, Joseph Clay, Peter Early, William Eustis, Daniel Heister, Benjamin Huger, John G. Jackson, Thomas Lowndes, William McCreery, Nicholas R. Moore, Joseph H. Nicholson, Tompson J. Skinner, John Smith of New York.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Newton, Mr. Hammond, Mr. Tallmadge, Mr. Van Cortlandt, and Mr. Marmaduke Williams, do prepare and bring in the same.

Thursday, November 24.

A Message was received from the President of the United States, as follows:

To the House of Representatives of the United States:

In conformity with the desire expressed in the resolution of the House of Representatives, of the fifteenth instant, I now lay before them copies of such documents as are in possession of the Executive, relative to the arrest and confinement of Zachariah Cox, by officers in the service of the United States, in the year one thousand seven hundred and ninety-eight. From the nature of the transaction, some documents relative to it might have been expected from the War Office; but, if any ever existed there, they were probably lost when the office and its papers were consumed by fire.

Nov. 24, 1803. TH. JEFFERSON.

The said Message was read, and, together with the documents accompanying the same, referred to the committee appointed the second instant, on the memorial and remonstrance of Zachariah Cox.

On motion it was

Resolved, That the committee to whom were referred, on the twenty-second instant and this day,

the petition of sundry residents and purchasers of land in the State of Ohio, and of sundry inhabitants of Fairfield county, in the said State of Ohio, be directed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States, and report thereon to the House.

Mr. LUCAS, from the committee to whom were referred on the third and eighth instant, the memorials of sundry inhabitants of the two western counties of the Indiana Territory of the United States, made a report thereon; which was read, and ordered to lie on the table.

Mr. NEWTON, from the committee appointed yesterday, presented a bill to repeal an act, entitled "An act to establish an uniform system of bankruptcy throughout the United States;" which was read twice and committed to a Committee of the Whole House to-morrow.

AMEY DARDEN.

On the motion of Mr. CLAIBORNE, the House resolved itself into a Committee of the Whole on the report of the Committee of Claims on the petition of Amey Darden. The report is unfavorable to the prayer of the petitioner.

On agreeing to this report, a discussion took place which occupied the greater part of the day. Messrs. J. C. SMITH, GREGG, and MACON supported, and Messrs. CLAIBORNE, SMILIE, and ELLIOT opposed the report; when the question was taken on agreeing to the report of the Committee of Claims and lost, ayes 32.

Mr. CLAIBORNE then moved a resolution, "that the prayer of Amey Darden is reasonable and ought to be granted."

Messrs. CLAIBORNE and NICHOLSON supported, and Messrs. GRISWOLD and GREGG opposed this resolution, which, on the question being taken, was carried, ayes 61, nays 38.

The Committee then rose, and reported their agreement to the resolution.

Mr. GREGG moved an amendment directing the proper accounting officer of the Treasury to settle the claim of Amey Darden, on the same principle with similar cases, the statute of limitations notwithstanding.

Messrs. GRISWOLD and GREGG supported, and Messrs. NICHOLSON and CLAIBORNE opposed the amendment.

A concurrence in the report was then agreed to, and the Committee of Claims instructed to bring in a bill.

FRIDAY, November 25.

Mr. JOHN C. SMITH, from the Committee of Claims, presented a bill for the relief of the legal representatives of David Darden, which was read twice, and committed to a Committee of the Whole House on Monday next.

A memorial of the Legislature of the State of Tennessee was presented to the House and read, praying that Congress will adopt such measures, as in their wisdom may be deemed expedient and proper, for extinguishing the Indian claims to lands within the limits of the said State.

Ordered, That the said memorial be referred to Mr. DICKSON, Mr. JOHN RANDOLPH, jun., Mr. PURVIANCE, Mr. LOWNDES, and Mr. VAN HORNE, to examine, and report thereupon to the House.

Sundry memorials of the people of the Mississippi Territory of the United States were presented to the House and read, respectively praying a revision and amendment of the laws relative to the sale of lands of the United States, in such manner as that grants for small or moderate portions of unappropriated land may be made to actual settlers, and that similar terms of disposal may be extended to future emigrants; or that such other measures may be adopted by Congress, as will accelerate the settlement and insure the prosperity of the said Territory.—Referred.

A petition of the Legislative Council and House of Representatives of the Mississippi Territory of the United States, was presented to the House and read, submitting to the consideration of Congress certain propositions of amendment to the act passed the third of March last, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" which they pray may be adopted for the benefit of the purchasers of land and other inhabitants within the said Territory.—Referred.

A petition and memorial of sundry inhabitants of the district of Washington, situate on the Mobile, Tombigbee, and Alabama rivers, in the Mississippi Territory of the United States, was presented to the House and read, praying, for the reasons therein specified, that a division of the said Territory may be made, and a separate Government established within and for the said District of Washington.—Referred.

Mr. SAMUEL L. MITCHILL, from the committee to whom was referred on the eleventh instant, the petition of sundry inhabitants of the town of New Shoreham, in the State of Rhode Island, made a report thereon, which was read and considered; Whereupon,

Resolved, That this House do concur with the Committee of Commerce and Manufactures in their opinion "that it is not expedient to make provision for allowing the petitioners a bounty for dried fish caught in boats of a smaller capacity than five tons."

Ordered, That the petition of Memucan Hunt, William Polk, and Pleasant Henderson, for themselves and others, addressed to the General Assembly of the State of North Carolina; also, sundry resolutions of the said Assembly, respecting a claim for the value of certain lands in the State of Tennessee, presented to this House on the nineteenth of January, one thousand eight hundred and two, and the report of a select committee thereon, made the twenty-fourth of March, in the same year, be referred to the Committee this day appointed on the memorial of the Legislature of Tennessee.

A Message was received from the President of the United States, communicating the treaty with the Kaskaskia Indians, as ratified by the Senate.

After some conversation on the mode of disposing of this communication, it was, on the motion

of Mr. J. RANDOLPH, committed to a Committee of the whole House on Monday, in order to give the House an opportunity to exercise its Constitutional right of deciding on the propriety of passing the necessary laws to carry this treaty into effect.

On motion of Mr. NICHOLSON, the House went into a Committee of the Whole on the bill supplementary to an act, entitled "An act to prescribe the mode in which acts, records, and judicial proceedings of the States shall be so authenticated as to take effect in each State."

After considerable discussion, developing much diversity of opinion, the Committee rose, and the bill was recommitted to a select committee of nine members.

BANKRUPT LAW.

Mr. NEWTON called for the order of the day on the bill to repeal an act to establish an uniform system of bankruptcy throughout the United States; and the House then resolved itself into a Committee of the Whole on the said bill.

Mr. VARNUM moved an amendment, extending the period of repeal to the first of January, 1804, instead of from the passage of the act; and afterwards varied the motion, so as to leave the period of repeal blank.

This motion was supported by Messrs. R. GRISWOLD, EARLY, and SKINNER; and opposed by Messrs. SMILIE, NEWTON, RODNEY, and HASTINGS. Lost—ayes 25.

On motion of Mr. R. GRISWOLD, an amendment was introduced, directing the completion of all proceedings under commissions taken out previous to the repeal.

The Committee then rose and reported the bill with the above amendment, in which the House immediately concurred, and ordered, without a division, the bill to be engrossed for a third reading on Monday.

[The bill is concise, and is confined to repealing the bankrupt act, saving cases where commissions have been taken out previously to the passage of the act, at which time the repeal takes effect.]

RETRENCHMENT OF EXPENSES.

Mr. EPPES observed, that, when the bill fixing the salaries of certain officers was under the consideration of the House, allusion had been made to the expenses of the several Departments of the Government. As he thought it proper that the Legislature should meet all such in a fair manner, he submitted the following resolution:

"*Resolved*, That the Committee of Ways and Means be instructed to inquire whether any, and, if any, what reduction may be made in the expenses of the different Departments of the Government; and that they report to this House such arrangements as they may think calculated to promote economy, either by the reduction of compensations or contingent expenses in any of the Departments, or by the discontinuance of such offices, or such establishments, as may be dispensed with, without injury to the United States."

Mr. J. RANDOLPH moved that the resolution should lie on the table. He observed that the same duties enjoined by it on the Committee of Ways and Means had been already devolved on them by the Standing Rules of the House. The resolution seemed to him, therefore, unnecessary. He concluded by moving a postponement of the further consideration of it to the first day of January next.

Mr. EPPES replied, that, although the resolution he had offered embraced some subjects assigned already by the rules of the House to the Committee of Ways and Means, yet, if the wording of it were attended to by the gentleman from Virginia, it would be found that it also embraced subjects that did not belong more to that committee than to any other committee. When he had proposed a resolution a short time since, the object of which was to reduce an establishment, in his opinion useless, it had been submitted to that committee. And in what consists the difference between the nature of that resolution and the one now offered? That was for the reduction of the single expenses of a single Department; this is for taking into consideration the state and expenses of the whole Departments of the Government. When the subject of salaries was before the House, we were told that it did not become us to make a saving in the salaries alone, but that it was proper to take an enlarged view of the whole of the Departments. What does this resolution contemplate? An inquiry into the state and expenses of the whole of the Departments. If this duty had been enjoined already on the Committee of Ways and Means, and they had either omitted or neglected to discharge it, the House was perfectly competent to lay an injunction on them to attend to it. For these reasons, Mr. E. said, he should not consent to the resolution either lying on the table, or being postponed, but should demand either its immediate adoption or rejection.

Mr. J. RANDOLPH.—Far be it from me to question the power of this House to make such disposition of this resolution as they shall see fit. It is a power to which I shall implicitly yield obedience. But, with that freedom which belongs to every member of the House, and which I shall always exercise, without any consideration of the quarter from which a motion comes, I shall use that degree of understanding with which it has pleased God to invest me, in forming a judgment of the course proper to be pursued on this as well as on every other occasion. My colleague does not take the distinction between a general and a specific resolution. It would be arrogating merit, which I do not deserve—a merit which I disclaim—to assume that my judgment is more clear or comprehensive than that of my colleague; and yet, my mind does perceive the widest difference between the reference to the Committee of Ways and Means of a general and of a specific proposition. It is the general duty of that committee, according to the Standing Rules of the House, "to examine into the state of the several public Departments, and particularly into the laws making appropriations of money, and to report whether the moneys have been disbursed conformably with such laws; and also to report, from time to time, such provisions and arrangements as may be necessary to

add to the economy of the Departments, and the accountability of their officers."

This (if I may use the term) is a power of attorney by which the committee is authorized to act. If, therefore, any gentleman lay upon the table a resolution, which, to my poor judgment, appears to be a mere transcript of one already in existence, I shall be compelled to say that it seems to me to be either unnecessary, or to imply a censure on the manner in which the committee have discharged their functions. Does it follow, that, because a specific resolution is laid on the table respecting one Department in which there may be an abuse, or wherein a specific retrenchment of expense may be made, that thence there is a necessity to call the attention of the committee to all the objects within the sphere of their duties—that it is necessary for the House to go over the whole of their duties, and call them generally to a discharge of them? Therefore, when the gentleman called our attention to a particular source of expense—to a particular object—I thought the resolution in order, and voted for its reference to the Committee of Ways and Means. So, if he had laid on the table a string of resolutions calling the attention of the House and of the committee to certain specific objects of expense, I should have had no objection to referring them to that committee, unless, while the resolutions purported to specify particular objects, they embraced the whole duties of the committee. The gentleman says he calls upon the House, and demands an instantaneous adoption or rejection of the resolution. I presume, that, when any gentleman lays a resolution upon the table, his object is, that it shall be disposed of in such manner as shall be consonant with the rules of the House, or as the House may think proper.

Mr. EPPES rose to explain. He did not intend to prescribe the particular disposition which the House should make of the resolution, but had said that he would not consent to its postponement, or that it should lie on the table.

Mr. J. RANDOLPH.—The gentleman presses an immediate rejection or adoption of the resolution. To prevent an immediate decision of resolutions offered, I presume, the rules were established directing that they should lie on the table, or admitting of their postponement; and of that rule I wish to avail myself on this occasion. Let me ask, with what view instruct the committee generally as to the performance of duties already enjoined? If with a view to censure, as the gentleman seemed to intimate, let the gentleman bring forward a fair and open resolution of censure, and not aim at producing this effect in a side way. To what purpose give the committee this instruction, unless the House think they have neglected their duties? I will ask, if there is anything in this stage of the session that will warrant such a conclusion? I will ask if this, instead of being so early a day, were the last of the session, whether it would not be the fair and honorable conclusion, that the committee had adverted to the duties they had to perform; and, having made no report, had found that there existed no necessity of a reform, or a further accountability of the departments? For these reasons, I shall vote for a postponement of this resolution to the first day of January next; and shall form my opinion of every resolution that shall come before this House, without reference to the quarter from which it shall proceed, according to the degree of judgment with which is has pleased Heaven to invest me, and shall exercise the right of expressing my sentiments freely, and in a manner most congenial to my habits and temper.

Mr. GREGG hoped the gentleman who had offered this resolution would agree to let it lie on the table. He was himself, at first, induced to think with the gentleman that, from the remarks which had fallen on both sides of the House, on the bill respecting salaries, such an inquiry as that at present proposed would be highly proper, and had himself contemplated the offering a similar resolution. But, on further inquiry, he had found that, by the existing rules of the House, the Committee of Ways and Means were already fully instructed to make the necessary inquiries; and he thought that such a resolution, under those circumstances, would wear the appearance of censure on that committee. It was known to the House that that committee had much and important business submitted to them. They had already done much business, and much, he understood, was in a state of preparation. He hoped, therefore, that the resolution would be suffered to lie on the table; and that, at some future day, it would be called up, in case the committee did not, in the interim, pay a due attention to the duties enjoined on them.

Mr. NICHOLSON.—I am persuaded that the gentleman who offered this resolution did not intend, in the most distant manner, to censure the Committee of Ways and Means. I, as a member of that committee, do not feel that the least censure was intended or is deserved. Nor do I think that this would be the effect of the resolution if adopted by the House. It is true, that one part of the resolution contemplates objects embraced in the general rules; but it is also true that it embraces other objects, not mentioned in the rules. It is more than probable that it was to these last particular objects that the gentleman meant to direct the attention of the Committee of Ways and Means. I allude to that part of the resolution that contemplates the discontinuance of such offices or establishments as are useless. The rule of the House does not empower the committee, in express terms, to make such an inquiry, though I have no doubt that that object is substantially embraced by the spirit of it. The powers of the Committee of Ways and Means were materially changed at the beginning of the seventh Congress. They were then empowered

"To examine into the state of the several public departments, and particularly into the laws making appropriations of moneys, and to report whether the moneys have been disbursed conformably with such laws; and also to report, from time to time, such provisions and arrangements as may be necessary to add to the economy of the departments, and the accountability of their officers."

This power was ingrafted on the previous powers of that committee, from a bill that originated with the committee usually styled the Committee of Investigation. The bill was introduced to destroy the two offices of the Accountants of the War and Navy Departments; and the title of it was transfused into the standing rules of the House. It is extremely probable that the gentleman who has offered this resolution, as well as other gentlemen, had no idea of the extent of the powers given to the Committee of Ways and Means. Under this view, I do not think the resolution will answer any useful purpose, as the Committee of Ways and Means have already the same duties devolved upon them which it assigns. I am convinced the same gentlemen who offered it will have no objection to its postponement till the 1st of January; and, in the meantime, the Committee of Ways and Means will, if they see fit, make the inquiry which appears to be the object of it.

Mr. RODNEY.—With my friend from Virginia, (Mr. RANDOLPH.) I will, on all occasions, exercise an independent judgment on any proposition submitted to the House, without regard to the quarter from which it may come, and, with my friend from Maryland, (Mr. NICHOLSON.) I am satisfied that the idea of censuring the Committee of Ways and Means was the most remote from the intention of my friend from Virginia, (Mr. EPPES,) from his known character. I shall consider, then, this resolution, as well as all others, on its merits alone. Three objections have been raised against it; first, that it implies a censure upon the Committee of Ways and Means, of which I am a member; secondly, that the subjects to which it relates are already before that committee; and, thirdly, it is required that it lie on the table for consideration. As to the first objection, I shall put it out of the question, as I am satisfied such an idea as that of censuring the committee never entered the imagination of the gentleman who moved the resolution; and as no such idea can be collected from the expressions of the gentleman, or appears on the face of the resolution. As a member of that committee, I am not sensible of its implying any censure, though, I trust, I should be as much alive as any other member of the committee to the imputation of censure.

As to the second objection to the resolution, that it assigns duties already devolved by the rules of the House, it may be true that all the duties imposed by the resolution are embraced by the rules; but, as a member of the Committee of Ways and Means, I shall always feel thankful to any member for calling to my view any specific duties which that committee ought to perform. I shall never be offended by the call of any gentleman upon me to discharge my duty. It is true, that we have certain duties assigned us by the House, for the performance of which we may be said, in the language of the gentleman from Virginia, to be the attorney of the House; but, I think, if I may use the expression, the fee simple resides in the House; and it is not only the right, but the duty of any member to call any committee to the discharge of the duties assigned it. I feel, therefore, no objection to the resolution on this score. The same course has been pursued in the other resolution offered by the same gentleman; and though, in that case, it was a particular duty to which the attention of the committee was called, yet I do not consider that there is any solidity in the distinction attempted to be drawn by my learned friend from Virginia, between specific and general propositions. If there is any distinction, it is so slight that I am unable to perceive it. As the original resolution offered by my friend from Virginia, called the attention of the committee to a specific point, so does this. It does not call upon the committee to discharge all the duties devolved upon them, but invites their attention to particular points of duty; and though we may, by the standing rules of the House, be empowered to make an inquiry on the same subjects, yet, as this resolution directs us specifically to particular points, I shall consider it my special duty to attend to them, if it shall pass.

For these reasons, said Mr. R., I consider the resolution in every point of view correct. As to a postponement, I have no objection, with the consent of the gentleman who moved the resolution, to postpone it to a distant day, not however so distant as January.

Mr. NICHOLSON.—I think the resolution useless, and if the question now before us was, whether we should agree or disagree to it, I should give it my negative, that the House may preserve some consistency in their proceedings. I will call the attention of gentlemen to the fate of several resolutions, offered two years since, from a certain quarter of the House, calling the attention of the Committee of Ways and Means to the expediency of reducing the duties on brown sugar, coffee, and bohea tea. They were then rejected, on the ground that the previous general powers conferred on that committee involved power to inquire on that specific proposition. If now we adopt this resolution, coming from another quarter of the House, we shall not preserve consistency of conduct. I hope gentlemen, from a regard to consistency, will agree to postpone this resolution.

The question was then taken on a postponement of the resolution, to the first day of January, and lost—ayes 37, noes 61.

Mr. SMILIE considered it improper to pass a resolution of so much importance so hastily. He moved a postponement to the first Monday of December.

Mr. STANFORD moved an adjournment of the House. Lost—ayes 45, noes 55.

Mr. S. then moved a postponement to the third Monday of December. Lost, without a division.

The motion of Mr. SMILIE, to postpone the resolution to the first Monday of December, was then agreed to—ayes 72.

Mr. VARNUM then moved that the resolution offered by Mr. EPPES should be printed for the use of the members.

Mr. J. RANDOLPH moved for printing, in connexion with the resolution, the standing rules of the House respecting the duties of the Committee of Ways and Means.

Mr. Varnum called for a division of the question.

Mr. Nicholson moved an adjournment. Carried—ayes 60.

Monday, November 28.

The Speaker laid before the House a letter from the Postmaster General, enclosing his annual report respecting post roads which have been established within the United States more than two years, and have not, in the second or last year, produced one-third part of the expense of carrying the mail on the same for such year; which was read, and ordered to be referred to the committee appointed, on the eighteenth ultimo, "to inquire whether any, and what, amendments are necessary to be made to the acts establishing a post office and post roads within the United States."

A petition of sundry residents and claimants of lands on the Alabama river, and on the east side of the river and bay of Mobile, in the Mississippi Territory of the United States, was presented to the House and read, praying, for the reasons therein specified, a repeal of so much of the eighth section of an act, passed the third of March last, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," as provides that no certificate shall be granted for lands lying east of the Tombigbee river; or that such modification and amendment of the said act may be made, as Congress in their wisdom shall deem expedient and proper.—Referred.

Mr. Early, from the committee to whom was referred, on the second instant, the remonstrance and memorial of Zachariah Cox, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Wednesday next.

An engrossed bill to repeal an act, entitled "An act to establish an uniform system of bankruptcy throughout the United States," was read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the further protection of the seamen and commerce of the United States," with several amendments; to which they desire the concurrence of this House.

PUBLIC ROADS.

On the call of Mr. Jackson, the House resolved itself into a Committee of the Whole on the following resolution:

"*Resolved*, That provision be made, by law, for the application of one twentieth part of the net proceeds of the land lying within the State of Ohio, sold, or to be sold by Congress, from and after the 30th day of June, 1802, to the laying out, and making public roads, leading from the navigable waters emptying into the Atlantic, to the Ohio river, and to the said State of Ohio: in conformity with the acts of Congress, entitled "An act to enable the people of the eastern division of the territory Northwest of the river Ohio, to form a constitution, and State government, and for the admission of such State into the Union on an equal footing with the original States; and for other purposes," passed upon the 30th April, 1802, as well as the act passed the 3d of March, 1804, in addition to and in modification of the propositions contained in the act aforesaid; and the ordinance of the convention of the State of Ohio, bearing date the 29th day of November, 1802."

Mr. Jackson called for the reading of the acts of Congress which were referred to in the resolution; which was done: he then moved that the Committee rise and report their agreement.

Mr. Varnum said he hoped the question would be taken separately on the resolution.

Mr. Jackson hoped that gentlemen opposed to the resolution would rise at that time and express their opinions.

Mr. Nicholson was opposed to the resolution, but was prevented from indisposition from expressing his sentiments; he would do it at a future period.

Mr. J. Randolph was sorry that the indisposition of his friend from Maryland should prevent him from delivering his sentiments on this occasion. He was himself unprepared to speak on this question, but it appeared to him, from a complete view of the subject some time since, that the resolutions contravened one of the provisions of the law to which it was referred; by reverting to that law, it would be found that in one of the propositions offered by Congress to the State of Ohio, it was provided that one twentieth part of the net proceeds, arising from the sale of lands in that State, should be laid out in roads to and from it, and laid out under the direction of Congress. The State of Ohio agreed to adopt the propositions if Congress would make an amendment, (which he read.) He wished to call the attention of the Committee to the facts and wished them to attend to the different propositions. He should not have troubled the Committee but from an apprehension that when gentlemen had taken up an opinion, they were loth to abandon it. One of the propositions of Congress was, that one-twentieth part of the net proceeds arising from the sale of lands in the State of Ohio should be laid out under the direction of Congress in the making of roads from the Atlantic to that State. The State of Ohio agrees to the proposition with this amendment, that not less than three per cent. should be laid out exclusively in that State, under the direction of their Legislature. He conceived that the last proposition was only a modification of the former, and that the three per cent. was a part of the five, and not an additional allowance; if the latter had been intended, why, he asked, was it not so expressed? There were several other propositions and they were stated to be amendments. He considered Congress never intended to grant more than five per cent., and should therefore vote against the resolutions.

Mr. Jackson differed with gentlemen who considered the three per cent. as a part of the five; he considered it as an addition, and he hoped he should be able to convince the Committee of it. In order to do this, it would be necessary to read a number of documents on the subject; they were lengthy, but the subject was important, and he conceived them necessary in order to decide correctly on the subject. Here Mr. Jackson read a number of documents on the subject, and observed that he conceived that the State of Ohio expected that the three per cent. was in addition to the five; if the last proposition was to be taken as a modification of the former, then the three per cent was to be taken in lieu of the five; if however, it was in addition to it, then the three per cent. was to be added to the five. If they would recur (Mr. J. said) to the letter of the Secretary of the Treasury, it would be found that he was in favor of ten per cent.; but Congress were for five. If the Legislature of Ohio were for taking three per cent. to be laid out under their own direction, instead of five to be laid out under the direction of Congress, they would so have expressed it; and if Congress intended it, they were bound so to express themselves; but they intended no such thing. If the proposition was of a doubtful nature, and it appeared to be so from the arguments of his colleague, he begged leave to recommend to the Committee a liberal construction; we ought, he said, to extend a fostering hand to our western brethren; the people of the western country are attached to the Government, but if we do not extend to them the fostering hand, he could not say how long they would be so.

Mr. R. Griswold apprehended there could be no doubt as to the construction which Congress give to the law in question; there might be some doubt whether that construction was a sound one, he however thought it perfectly so. In the year 1801, Congress provided that one-twentieth part of the net proceeds arising from the sale of lands in the State of Ohio should be applied to making roads to that State, under the direction of Congress. The proposition was laid before the State of Ohio. The Convention of Ohio agreed to it, provided Congress would consent to a modification of it; they wished some part of the five per cent. to be laid out exclusively in their own State and under the direction of their own Legislature; they therefore proposed that three per cent. should be laid out in the State, and under the direction of the Legislature of Ohio. If the State of Ohio had intended that the three per cent. was to be added to the five, they would have stated it (as in the other propositions) to be in addition to it. The committee which were on the subject last session, gave the law the same construction which he did, and the House concurred in that construction. He thought they were under no obligation to lay out more money than they had agreed to do, and if the committee would attend to the subject they could be under no difficulty to determine the construction. We had an appropriation of two per cent. to make, and perhaps it might be necessary to pass a law to that effect; but he could not consent to give any more.

Mr. G. W. Campbell would beg the indulgence of the Committee while he said a few words on the subject before them. As he should vote in favor of the resolution on the table, he conceived that when they were about to determine on the construction of a law, they were only to refer to the face of it, and not to inquire what the framers of it meant. He begged leave to read the law on the subject, and said that the law of Congress concerning five per cent. was in force unless repealed by another law; and the subsequent law which provided for the laying out of three per cent. in roads, was either in addition to or a repeal of it; he believed that it was an addition to it. It could not be the intention of the Convention of Ohio to accept of three per cent. to be laid out in their own State, and under the direction of their own Legislature, in lieu of five per cent. to be laid out under the direction of Congress. He should, considering the appropriations to be be distinct ones, vote in favor of the resolutions.

Mr. Rodney deemed it necessary to make but few obsevations after the able arguments of his friend from Virginia, (Mr. Randolph.) and the luminous observations of the gentleman from Connecticut, (Mr. Griswold.) against the resolutions. The question to be determined, was, whether the five per cent. was to be given exclusive of the three? It had been said that they ought not to consider the intention of those who framed the law, but he conceived it to be proper, in order to give a right construction. When they reverted to the propositions themselves, they would find one of them was, that provided the State of Ohio would not for a limited time tax the lands of the United States, that then one-twentieth part of the net proceeds arising from the sale of lands in that State should be laid out in making roads to the State of Ohio, the same to be laid out under the direction of Congress. When this proposition, came before the Convention of Ohio, they said that three per cent. ought to be laid out exclusively in their own State and under the direction of their Legislature. This could only be intended as a modification of the law. He did not think there was any difficulty in determining the construction of the law, and should vote against the resolution.

Mr. Varnum conceived that the construction given to the law by the gentlemen from Virginia, Connecticut, and Delaware, was perfectly correct. He did not know whether it would be necessary to make an appropriation of the remaining two per cent. during this session, but in order to try the principle, he moved to strike out of the resolution the words one-twentieth and insert one-fiftieth.

Mr. Sandford had not intended to have troubled the Committee on this occasion, but being a Representative from the West, it might be expected that he might be in favor of the resolution. But he did not conceive that more than five per cent. was ever intended to be given, and this was not a question of expediency. He did not believe that the Convention of Ohio intended that the three per cent. should be given in addition to the five, nor had they any reason to expect it. This ought not to be an Eastern and a Western question. If the five per cent. were now given, Mr. S. asked whether it would not operate for the benefit of

the rest of the States as well as the State of Ohio? But, as they must determine not what Congress *ought* to give, but what they meant to give, and he conceived that three per cent. was a part of the five, he should therefore vote against the resolution.

Mr. Lyon spoke in favor of the resolution, at some length.

Mr. Macon did not think it necessary to say anything on the construction of the law, because he conceived that the arguments of the two first gentlemen who opposed the resolution (Messrs. J. Randolph and R. Griswold) to be unanswerable; but as the question appeared to be made an Eastern and a Western one, he would say a few words. He considered the whole United States concerned in it, and not merely the State of Ohio. He believed that the arguments of gentlemen that they had not done justice to the State of Ohio were groundless. There was no State in the Union which has been so much favored as that State. He was sorry gentlemen had used threats on the occasion, that if they did not grant this, they might not be attached to the Union; but he believed that the State of Ohio would be the greatest loser by it. He was willing to leave it to the Western people themselves to determine, whether Congress had not done them justice, and he was certain they would answer in the affirmative.

Mr. Boyle did not consider this a question of party nor of expediency; not what Congress ought to give, but what they had given. If the construction of the law was difficult to determine, it ought to be taken against the United States and favorable to the State of Ohio, because Congress was the grantor and that State the grantee. This was the manner in which private contracts were always construed, and he thought it a sound one. The gentleman from Virginia (Mr. John Randolph) had said that the three per cent. was not intended to be given in addition to the five, because it was not so expressed; but Mr. B. said, the last law was not said to be a modification, the construction was therefore doubtful and ought to be taken favorable to the State of Ohio.

Mr. Goddard did not think they were under any difficulty in determining the true construction of the law in question. He considered it to admit of but one construction; this appeared to him to be a negotiation between Congress and the State of Ohio. It was proposed by the former, that if the latter would not tax their lands for a limited time, the one-twentieth part of the net proceeds should be laid out in making roads for that State under the direction of Congress; the State of Ohio acceded to it, provided three per cent. should be laid out exclusively in that State, and Congress agreed to it; this appeared to him to be the true state of the case.

Mr. Smilie would make one observation on the subject. He believed it to be a good rule, when any subject was to be examined, to look at the intention of the parties; he never conceived that it was the intention of Congress to give to the State of Ohio more than five per cent., nor did he believe any gentleman, a member of Congress at the time the law passed, had any such intention.

Mr. Jackson moved that the Committee rise.—Lost without a division.

Mr. Morrow would beg the indulgence of the Committee while he made a few observations on the subject. He was sorry this was made a party question. He read the report of the committee of Congress and the propositions of Congress to the State of Ohio; and observed that when the propositions came before the Convention, they were pleased with them, but did not consider that the five per cent., which was to be laid out in roads, was an equivalent for what they asked: which was, that the State of Ohio should not for a limited time tax the lands of Congress. How, said Mr. M., gentlemen would ask, was this known? He would answer, by an estimate of the value of both; therefore they agreed to the propositions, provided Congress would make an amendment, and allow them an additional three per cent. to be laid out exclusively in their own State and under the direction of their Legislature; to this Congress agreed. He conceived the question for them to determine, whether the three was in addition to or in lieu of the five; he believed it could not be the latter, because it would go to defeat the original design, which was facilitating the communication between the Eastern and Western States. He was in favor of the resolution believing that it was the intention of the Convention of Ohio, at the time they agreed to the propositions, that the three per cent. was to be given in addition to the five.

The question was taken on Mr. Varnum's motion to strike out one-twentieth and insert one-fiftieth and carried—yeas 75.

The question was then taken on the resolution as amended, and carried without a division.

Tuesday, November 29.

The amendments proposed by the Senate to the bill, entitled "An act for the further protection of the seamen and commerce of the United States," were read, and, together with the bill, ordered to be committed to Messrs. Eustis, J. Clay, McCreery, Dana, and Hasbrouck.

Mr. Findley, from the Committee of Elections, to whom it was referred to examine the certificates and other credentials of the members returned to serve in this House, made a farther report, in part, which was read, and ordered to lie on the table.

A Message was received from the President of the United States, communicating an appendix to the information heretofore given on the subject of Louisiana. The said Message was read, and, together with the appendix transmitted therewith, referred to the committee appointed on the twenty-seventh of October last on so much of the President's Message of the twenty-first of the same month as relates "to permanent arrangements for the government of Louisiana."

The amendment of the Senate to the bill making provision for the further protection of the seamen and commerce of the United States, were referred to a select committee.

The House took up the report of the Committee of the Whole on Mr. Jackson's resolution making an appropriation of a certain part of the proceeds of lands, sold in Ohio, to the making public roads, and agreed to it without a division. After which several verbal amendments were made, and the resolution thus amended referred to a committee to bring in a bill.

Mr. Dawson called for the order of the day on two resolutions, some time since offered, respecting post roads.

AMEY DARDEN.

Mr. Claiborne called for the order of the day on the bill for the relief of Amey Darden.

The motion of Mr. Dawson being lost, there being only thirty-two ayes in favor of it, Mr. Claiborne's motion was taken up.

Mr. Sanford moved to postpone the order of the day on the bill for the relief of Amey Dardin till to-morrow, in order to introduce a resolution for the appointment of a committee to inquire into the expediency of extending the time for adjusting the claims of individuals for supplies furnished and services rendered during the Revolutionary war, with the view of trying previously to the granting individual relief the general principle, whether Congress would repeal the statutes of limitation.

After a debate of considerable length, the motion to postpone was lost.

The House then went into a Committee of the Whole on the bill, which was so amended as to allow Amey Darden two thousand five hundred dollars for the horse Romulus, being the estimated value thereof, not including interest.

The Committee reported the bill so amended.

The question was then taken on two thousand five hundred dollars, and decided in the negative by the vote of the Speaker.

Mr. Nicholson moved to fill the blank with two thousand three hundred and twenty dollars, being the amount of principal and interest on the value of the horse.

Mr. Sanford moved to fill it with one thousand dollars.

The House agreed to Mr. Nicholson's motion—ayes 58, noes 43.

The yeas and nays were then taken on the engrossing of the bill for a third reading—yeas 57, nays 49, as follows:

Yeas—Willis Alston, junior, Isaac Anderson, John Archer, David Bard, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Richard Cutts, William Dickson, John B. Earle, Peter Early, James Elliot, John W. Eppes, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, Seth Hastings, Joseph Heister, James Holland, John G. Jackson, Michael Leib, Joseph Lewis, jun., John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, John Smith of Virginia, Richard Stanford, Joseph Stanton, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Nathaniel Alexander, Simeon Baldwin, Geo. Michael Bedinger, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, William Eustis, William Findley, Calvin Goddard, Edwin Gray, Andrew Gregg, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, William Hoge, David Holmes, David Hough, Benjamin Huger, William Kennedy, Henry W. Livingston, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Thomas Plater, John Randolph, jun., Erastus Root, Thomas Sandford, Tompson J. Skinner, John Smilie, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, David Thomas, George Tibbits, Peleg Wadsworth, John Whitehill, Lemuel Williams, and Thomas Wynns.

Ordered, That the said bill be read the third time to-morrow.

Wednesday, November 30.

The Speaker laid before the House sundry depositions and other papers, transmitted from the counties of Greenbriar and Rockbridge, in the State of Virginia, respecting the contested election of Thomas Lewis, one of the members returned to serve in this House for the said State; which were ordered to be referred to the Committee of Elections.

Mr. John Randolph, jr., from the Committee of Ways and Means, presented a bill giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes; which was read twice, and committed to a Committee of the whole House on Monday next.

An engrossed bill for the relief of the legal representatives of David Darden, deceased, was read the third time; and on the question that the said bill do pass, there appeared—yeas 58, nays 57. And Mr. Speaker having declared himself with the nays, the said question was, in conformity with the rules of the House, decided in the negative. And so the said bill was rejected.

Yeas—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, John Boyle, Robert Brown, Joseph Bryan, William Butler, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Richard Cutts, William Dickson, John B. Earle, Peter Early, James Elliot, John W. Eppes, James Gillespie, Peterson Goodwyn, Samuel Hammond, Daniel Heister, Joseph Heister, John G. Jackson, Walter Jones, Michael Leib, Joseph Lewis, jr., Matthew Lyon, Andrew McCord, David Meriwether, Jeremiah Morrow, Anthony New, Thos. Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas M. Randolph, John Rea, of

Pennsylvania, John Rhea of Tennessee, Jacob Richards, C. A. Rodney, Thomas Sammons, John Smith of Virginia, Richard Stanford, Joseph Stanton, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Nathaniel Alexander, Simeon Baldwin, Geo. Michael Bedinger, Silas Betton, Phanuel Bishop, Wm. Blackledge, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, Thomas Dwight, William Eustis, William Findley, Calvin Goddard, Edwin Gray, Andrew Gregg, Gaylord Griswold, Roger Griswold, Josiah Hasbrouck, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, William Kennedy, Nehemiah Knight, H. W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, John Randolph, jr., Erastus Root, Thomas Sandford, Tompson J. Skinner, John Smilie, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbitts, Peleg Wadsworth, John Whitehill, Lemuel Williams, and Thomas Wynns.

Thursday, December 1.

Mr. Eustis, from the Committee to whom were referred, on the twenty-fourth ultimo, the amendments proposed by the Senate to the bill, entitled "An act for the further protection of the seamen and commerce of the United States," made a report thereon; which was read, and, together with the said amendments, ordered to be referred to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the sixteenth ultimo, on the memorial of Paul Coulon, a French citizen; and, after some time spent therein, the Committee rose and reported progress.

Ordered, That the Committee of the Whole be discharged from the farther consideration thereof, and that the said report and memorial be recommitted to the Committee of Claims.

The House resolved itself into a Committee of the Whole on the report of the committee of the twenty-eighth ultimo, on the remonstrance and memorial of Zachariah Cox; and, after some time spent therein, the Committee rose and reported to the House their agreement to the resolution contained therein.

Ordered, That the consideration of the said report and resolution be postponed until Monday next.

Ordered, That the memorial and petition of the Illinois and Ouabache Land Companies, which was read and ordered to lie on the table on the twenty-seventh of October last, be referred to Mr. Leib, Mr. Thompson, Mr. Sandford, Mr. Taggart, and Mr. McCord, to examine and report their opinion thereupon to the House.

The House resolved itself into a Committee of the Whole on the Message from the President of the United States, of the twenty-fifth ultimo, enclosing a treaty lately concluded between the United States and the Kaskaskia tribe of Indians; and, after some time spent therein, the Committee rose and reported two resolutions thereon; which were, severally, twice read, and agreed to by the House, as follow:

1. *Resolved*, That provision ought to be made for carrying into effect the treaty concluded at Vincennes, in the Indiana Territory, on the thirteenth of August, one thousand eight hundred and three, between the United States of America and the Kaskaskia tribe of Indians.

2. *Resolved*, That the committee appointed, on the twenty-second of November last, on the petitions of sundry residents in the State of Ohio, be authorized and directed to report by bill, or otherwise, the provisions for carrying the said treaty into effect, and on our other concerns with the Indian tribes.

Friday, December 2.

Another member, to wit: John Dennis, from Maryland, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. Nicholson, from the committee appointed the twenty-second of November last, who were directed by a resolution of the House, of the twenty-fourth of the same month, "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United Ssates," made a report, in part, thereupon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

Mr. Leib, from the committee appointed on the twenty-second of October last, presented a bill to reduce the Marine Corps of the United States;" which was read twice and committed to a Committee of the whole House on Monday next.

BENJAMIN WELLS.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims on the petition of Benjamin Wells, which is as follows:

"The object of the petitioner is to obtain indemnification for the losses he sustained by the insurrection in the western counties of Pennsylvania, in the year 1794. These were estimated by the commissioners appointed for that purpose, under the act of Congress passed the 27th of February, 1795, at one thousand two hundred and thirty-seven dollars and fifty cents; on account of which, there was advanced to the petitioner, by Government, the sum of eight hundred and twenty-seven dollars and fifty cents, for which he is held responsible by the terms of the act just mentioned.

"If your committee entertained the opinion, that the Government is bound to make reparation for damages occasioned by rioters or insurgents, still they would not be disposed to admit the report of the commissioners in the present instance, as conclusive evidence of the just amount of those damages. It is very obvious that, with the best possible intentions to do complete justice, they were exposed, in an *ex parte* inquiry, to various impositions, from the representations of their losses by the parties interested.

"From the best information your committee can obtain, they are satisfied that the sum already received from the Government by the petitioner, must be viewed as an adequate compensation for the actual destruction of property he has sustained. To exonerate him from further liability, to refund this sum, would, it is believed, under all the peculiar circumstances of the case, be an act of justice as well as of liberal policy. And, as there are other sufferers from the same unfortunate transactions, to whom similar advances have been made, your committee are of opinion that relief should be extended to all, under one general provision. They, therefore, respectfully submit to the House the following resolution, to wit:

"*Resolved*, That the officers of Government and other citizens to whom moneys were advanced by the President of the United States, pursuant to a law passed the twenty-seventh day of February, one thousand seven hundred and ninety-five, entitled "An act to provide some present relief to the officers of Government, and other citizens, who have suffered in their property by the insurgents in the western counties of Pennsylvania," ought to be exonerated from any future responsibility for the moneys so advanced to them respectively."

Messrs. J. C. Smith, Smilie, and Findley, supported, and Mr. Claiborne opposed the report.

The report was agreed to—ayes 64, noes 24.

The Committee rose and reported the report of the Committee of Claims without amendment.

Mr. Jackson moved a postponement of the further consideration of the report until Monday.

Messrs. Jackson, Holland, and Claiborne, supported, and Messrs. J. C. Smith and Smilie opposed the postponement, which was lost.

The House then concurred in the report of the Committee, and directed a bill to be brought in.

STEPHEN KINGSTON.

The House went into Committee of the Whole on the report of the Committee of Commerce and Manufactures on the petition of Stephen Kingston, which is unfavorable to the prayer of the petitioner.

Messrs. Mitchill, J. Clay, and R. Griswold, opposed the report.

Mr. Nicholson moved that the Committee should rise, in order to have the report recommitted to the Committee of Commerce and Manufactures.

The motion was opposed by Messrs. J. Clay and S. L. Mitchill, and lost.

The Committee then non-concurred in the report of the Committee of Commerce and Manufactures—ayes 43, noes 57.

The Committee then rose, and the House agreed to their report.

Mr. J. Clay then moved a resolution, "that the prayer of the petition of Stephen Kingston ought to be granted."

Mr. R. Griswold moved a recommitment of the report to the Committee of Commerce and Manufactures. Lost—ayes 25.

The House then agreed to postpone the further consideration of the resolution until Monday.

Monday, December 5.

The Speaker laid before the House sundry depositions and other papers, transmitted from the county of Montgomery, in the State of North Carolina, respecting the contested election of Samuel D. Purviance, one of the members returned to serve in this House for the said State; which were ordered to be referred to the Committee of Elections.

The Speaker laid before the House a letter from the Secretary of State, enclosing his report on a petition, in the French language, of sundry inhabitants of Post Saint Vincennes, in the Indiana Territory of the United States, referred to him by order of the House, on the second of March last; which were read, and ordered to lie on the table.

A Message was received from the President of the United States, transmitting information that all differences with Morocco had been amicably adjusted.

The said Message, and the papers transmitted therewith, were read, and referred to Mr. Eustis, Mr. Dennis, Mr. Conrad, Mr. Gillespie, and Mr. Lowndes, to examine and report their opinion thereupon to the House.

Mr. J. C. Smith, from the Committee of Claims, presented a bill for the relief of the officers of the Government, and other citizens, who suffered in their property by the insurgents in the Western counties of Pennsylvania; which was received, read twice, and committed to a Committee of the whole House to-morrow.

Mr. Nicholson observed, that when the City of Washington was laid out, a considerable portion of ground was surrendered by the proprietors to the Commissioners, for the purpose of providing for public walks and gardens, it being considered that when the population of the city should be advanced they would contribute to the health and convenience of the inhabitants. This ground was at present in a waste state; neither productive of profit nor embellishment. By putting it in a state of cultivation, it might contribute to the convenience of the inhabitants as well as of the members of Congress. This might be effected by leasing it for a number of years to one or more persons, on condition of their laying out the rent in its improvement. Mr. N. said he was unwilling to expend any public money on this object, but he believed it might be effected without expense. He therefore moved the following resolution:

Resolved, That a committee be appointed to take into consideration the present situation of the grounds in the City of Washington, which were appropriated for the purpose of laying out public walks and gardens, and to report such measures to this House as may tend to carry into effect the original intention of the proprietors by whom the said lands were granted for public use.

Agreed to without a division, and referred to Messrs. Nicholson, S. L. Mitchill, Cutler, Anderson, and J. Smith of Virginia.

A message was received from the Senate, advising that they had passed an amendment to the Constitution of the United States respecting the election of a President and Vice President; which was read twice, and committed to a Committee of the Whole to-morrow.

Mr. Huger moved the commitment to the same committee of a proposition of amendment to the Constitution by the Legislature of New York, directing the establishment of electoral districts throughout the United States, on the ground of connexion between it and the amendment of the Senate.

Mr. Thomas, though in favor of electoral districts, was averse to blending in one proposition two distinct amendments.

The question on commitment was lost—yeas 44, nays 50.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of granting further time to the proprietors of military land warrants to obtain and locate the same, and report their opinion thereon to this House.

Ordered, That Mr. Van Horne, Mr. Archer, Mr. J. Trigg, Mr. Sammons, and Mr. Tenney, be appointed a committee, pursuant to the said resolution.

THE POST OFFICE.

On the motion of Mr. R. Griswold, the following resolution was taken into consideration:

Resolved, That the Postmaster General be directed to prepare and report to this House a statement of the gross sum received *in each State* for the postage of letters, packets, and newspapers, in the years 1801, 1802, and 1803, respectively, together with the sums which have been paid in each year, *and in each State*, for commissions to postmasters, for carrying the mail, and for all other expenses in relation to the Post Office, *in each State, respectively*.

Mr. Varnum inquired what was the object of the resolution? If the information it requested was important, he had no objection to calling for it. It appeared to him it could not be had without considerable expense and the loss of much time.

A short debate then took place on the resolution.

By Mr. R. Griswold it was contended that the information desired was important; that with regard to the expenditures of all public moneys, it was important that that House and the nation should be acquainted with the details; that there were propositions before the House for applying the surplus proceeds of the Post Office establishment to the making and repairing of roads, and that it appeared in the first instance to be intended to commence the application to roads near the seat of Government; hence the propriety of knowing, before this object was decided on, the amount of revenue drawn from the different States, in order to determine where, if at all, it should be laid out. The information would also be useful, inasmuch as it would exhibit the progress of business in different quarters of the Union, indicated by the increased receipts of the Post Office establishment.

Messrs. J. Randolph and Dawson also supported the resolution, on the ground that full information should be laid before Congress and the public of the application of all public moneys.

Messrs. Varnum and Gregg opposed the resolution, on the ground of the great trouble it would impose on the Postmaster General to comply with it, and the expense that would unavoidably attend it. They acquiesced in the resolution so far as it respected obtaining the expenses generally, but objected to that part which required a statement of the receipts and expenses in each State. With regard to the propositions before the House for applying the surplus receipts of the Department to repairing or making roads, it was very doubtful whether they would receive the approbation of Congress. So far, therefore, as this resolution was predicated upon them, it was altogether premature.

Mr. Gregg moved to strike out the parts in *italic*, which required a statement of the receipts and expenses in *each State*.

Mr. R. Griswold moved the taking the yeas and nays on the motion; which, being taken, were—yeas 19, nays 95, as follows:

Yeas—Messrs. David Bard, George Michael Bedinger, William Blackledge, John Boyle, John Dawson, Andrew Gregg, John A. Hanna, William Kennedy, Matthew Lyon, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Tompson J. Skinner, John Smith of Virginia, Richard Stanford, David Thomas, Joseph B. Varnum, Matthew Walton, and John Whitehill.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, Silas Betton, Phanuel Bishop, Robert Brown, Joseph Bryan, William Butler, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, James Gillespie, Calvin Goddard, Peterson Goodwin, Gaylord Griswold, Roger Griswold, Samuel Hammond, Josiah Hasbrouck, Seth Hastings, Daniel Heister, Joseph Heister, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, Thomas Plater, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Cotton Smith, John Smith of New York, Joseph Stanton, James Stevenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, John Trigg, Isaac Van Horne, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

The question was then taken by yeas and nays on the resolution as originally moved by Mr. R. Griswold—yeas 108, nays 10, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Martin Chittenden, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, James Gillespie, Calvin Goddard, Peterson Goodwyn, Edwin Gray, Gaylord Griswold, Roger Griswold, Josiah Hasbrouck, Seth Hastings, Daniel Heister, Joseph Heister, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, Thomas Plater, Samuel D. Purviance, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Cotton Smith, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, John Trigg, Isaac Van Horne, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

Nays—Andrew Gregg, Samuel Hammond, John A. Hanna, James Holland, Beriah Palmer, Tompson J. Skinner, David Thomas, Joseph B. Varnum, John Whitehill, and Richard Winn.

STATE BALANCES.

Mr. Rodney called for the order of the day on his resolution to extinguish the State balances.

Mr. Early moved a postponement of the further consideration of the subject to the first Monday in January, assigning for reason the unrepresented situation of the State of New Jersey, a creditor State to a considerable amount.

Mr. Rodney replied.

Mr. Huger supported the motion for postponement.

Mr. Rodney said, his solicitude that this business should be considered at an early day arose from his fear that, otherwise, it would, as it had been the last session, be deferred till the close of the session, and then, from the interference of other objects, be got rid of. But as gentlemen were anxious that New Jersey should be represented on that floor previously to a discussion of this business, he would give a pledge of his desire that the decision should be made with fairness, by acquiescing in the postponement.

The question of postponement was then carried—yeas 82.

Tuesday, December 6.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to divide the Indiana Territory into two separate governments;" in which they desire the concurrence of this House.

AMENDMENT TO THE CONSTITUTION.

The order of the day for the House to resolve itself into a Committee on the amendment to the Constitution, received from the Senate, was called for.

Mr. R. Griswold.—The House of Representatives some time since passed a resolution, amendatory of the Constitution, and sent it to the Senate for their concurrence. Of this resolution the Senate have taken no notice, but have sent us a different resolution on the same subject. This proceeding is, I think, unprecedented and unparliamentary; and I think we ought not to decide upon this resolution until the Senate shall have answered our resolution. I move, therefore, a postponement of the resolution from the Senate, until to-morrow.

Mr. Elliot hoped the consideration of the resolution from the Senate would not be postponed until to-morrow. How far it was proper to impeach the correctness of the course pursued by that body, it was not for him to say. Should they, on any occasion, invade the rights or the dignity of that House, no member would be found more ready to repel the invasion. In this case the Senate have sent us a proposition, embracing the same principle contained in our amendment, with other principles. He hoped, therefore, the House would immediately proceed to give the subject that attention which its intrinsic merits deserved.

Mr. Dawson only rose to correct the gentleman from Connecticut as to precedent. It must be in the recollection of every gentlemen on the floor, that the Senate have frequently sent us bills on the same subject with bills sent by us to them.

Mr. R. Griswold wished the gentleman from Virginia would name an instance. He never knew a bill sent to the Senate, which they neglected acting on, and in the room of which sent one of their own.

The question was then taken on Mr. Griswold's motion, and lost—yeas 32.

Mr. R. Griswold.—I will submit another motion, to wit; that the Committee of the Whole be discharged from the further consideration of the resolution of the Senate. My grounds for this motion are these;—that this resolution has not been transmitted to us by a Constitutional number of Senators, and therefore, that the House cannot act upon it.

Mr. Dawson inquired if the motion were in order.

Mr. Speaker said it was in order.

Mr. R. Griswold.—The principle, I assume, is that this resolution has not passed the Senate by a Constitutional majority of that branch of the Legislature. By a certificate, obtained from the Secretary of that body, it appears that the resolution was passed by the votes of twenty-two members in favor of it; twenty-two voting in the affirmative, and ten in the negative. It is known to every gentleman that the Senate consists of thirty-four members, and that it consequently requires twenty-three to constitute two-thirds of its members. The principle, I assume, is, that it requires two-thirds of the members of each House to pass

a resolution proposing to alter the Constitution. The article of the Constitution on this point is the fifth. It is thus expressed: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution." The question is, what is here meant by a House? Is it merely a majority of the Senators or Representatives; or is it the whole and entire number? To decide this point, we must refer to other parts of the Constitution where the word House is used. I hope gentlemen will critically attend to the words used, and from that attention form their opinions. The third section of the first article is thus expressed: "The Senate of the United States shall be composed of two Senators from each State." Two Senators then from each State are declared to constitute a Senate. A Senate of the United States cannot, therefore, be composed but of two Senators from each State. One House referred to in the fifth article is the Senate. If then it be necessary that there should be two members from each State to compose a Senate, the House of the Senate cannot be composed but of two members from each State. This is corroborated by other parts of the Constitution. In the fifth section of the first article, it is said, "Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business." A majority of each—Of what?—Of each House shall constitute a quorum to do business. The expression is a fair commentary on the other section which I have read: "A majority of each House shall constitute a quorum to do business." The inference is that the Constitution, when it declares that "the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution," requires that the proposing them shall be made by two-thirds of the whole number of members constituting the Senate.

There are cases in the Constitution where the concurrence of two-thirds of each branch of the Legislature is required for the performance of certain acts, which is a further commentary on this article of the Constitution. In the case of impeachments it is provided that the Senate shall try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present. The word *present* is introduced. For what purpose, if it was not the opinion of the framers of the Constitution, that without it, two-thirds of all the members of the body would be necessary to a conviction?

The same expression is used in the case of treaties. The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur." Why use here this expression, "two-thirds of the Senators present," unless it was considered necessary to qualify the expression, from the conviction that otherwise it would mean two-thirds of the whole body?

On this ground I apprehend that this resolution has not come constitutionally before us. It has not passed the Senate with the concurrence of two-thirds of the whole body. It has only received the votes of twenty-two Senators, which do not make two-thirds. I, therefore, move that the Committee of the Whole be discharged from the further consideration of it.

Mr. J. RANDOLPH.—There are frequent occasions on which it is necessary to answer doctrines advanced, not on account of their intrinsic merit, but on account of the weight of character of those by whom they are advanced. This is one of those cases. Had the arguments delivered to-day by the gentleman from Connecticut fallen from a less respectable quarter, I should have deemed them unworthy of reply, and have satisfied myself with a silent vote.

The gentleman, with an ingenuity peculiarly unfortunate, has quoted the very clauses and sections of the Constitution which disprove the opinions he has advanced. To these I beg the attention of the House for a moment. He has attempted to sustain the position that two-thirds of both Houses must imply two-thirds of the whole number of each House respectively. If I have misstated the gentleman, I beg to be corrected [Mr. R. here paused.] As there is no disposition to correct my statement, I presume I am correct. If this be the case, are we at this moment a House? If the term House means the whole number of members, can there be a House unless the whole number are present? Can there, therefore, be a House or a Senate so long as a single member is absent?

But it is said that the Constitution, wisely foreseeing this dilemma, has provided that a majority of each House, shall constitute a quorum to do business. Now, I ask, is a majority a quorum or a House? If it is not a House, but merely a quorum, it will be absolutely necessary that we alter our language as well as our journals, and say, not that the House, but a quorum met to transact business, &c.

"Each House may determine the rules of its 'proceedings, punish its members for disorderly 'behaviour, and, with the concurrence of two-thirds, 'expel a member." Will the gentleman hold, on this floor, that it requires two-thirds of the whole body to expel a disorderly member? Will he deny that two-thirds of those present may expel in such a case, and that they are competent in all cases mentioned in the Constitution? I will call the attention of the House to a fact. The session before the last, the House passed an amendment to the Constitution, similar in principle to the present, by the votes of two-thirds of the members present; when, too, there was little more than a bare quorum present. I might answer the doctrine, advanced this day, by saying the practice under the Constitution is already settled. I might ask the gentlemen where was this Constitutional objection then? Why was it then permitted to do so unconstitutional an act, when there was but a bare quorum? I should be glad to receive to these questions a satisfactory answer.

"Each House shall keep a journal of its pro-'ceedings, and from time to time publish the same, 'excepting such parts as may in their judgment re-'quire secrecy; and the yeas and nays of the mem-

'bers of either House on any question, shall, at the 'desire of one-fifth of those present, be entered on 'the Journal." Now, according to the doctrine of the gentleman, unless the whole body is present, the yeas and nays cannot be entered, because there is no House unless all the members are present.

The gentleman inquires why the Constitution has so sedulously directed that in certain cases the concurrence of two-thirds of the members present shall be required. For an obvious reason. The Constitution could not ascertain the number of which the two Houses would consist, from their varying numbers, and, therefore, has required, that in certain cases, two-thirds of those present shall be required.

The article of the Constitution, on which the gentleman relies, is, that "Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments." When two-thirds shall deem it necessary. The sense then in this case is to be determined by the exposition given to the term House. I again ask, have or have not the House met to-day? They have. I ask, are we, so met, the House of Representatives? We undoubtedly are. I ask, whether it is not in order to move to expel a disorderly member, or to adjourn? And I ask if the solemn business on which we are now acting shall be defeated by a mere play upon words, that would much better fit a subordinate court than this body? Believing that no doubt can be entertained of the just meaning of this article of the Constitution, either by the House or by the nation, I hope the Committee of the Whole will not be discharged.

Mr. LOWNDES.—I agree with the gentleman from Virginia that we are a House. The Constitution says, that a majority shall constitute a quorum, for the performance of ordinary business. But it appears to me very doubtful whether less than two-thirds of the whole members of each House can pass an amendment to the Constitution. It is possible that the practice of the House heretofore may settle the point. I hope therefore the House will refer it to a select committee, to obtain its investigation. Until I took my seat I was not aware of the objection; but, since I have considered the subject, it does appear to me that two-thirds of the whole members are necessary in this case. I will assign my reasons for this opinion. The framers of the Constitution, I have no doubt, intended to oppose difficulties to the alteration of it, and therefore required the previous concurrence of two-thirds of the whole members of each House, and three-fourths of the Legislatures of the respective States. And they did this very wisely. Without the existence of such obstacles to a change, not a session of Congress would pass away, without materially altering the national compact. If this construction be adopted, the result will be certain, and it will be in the power of every man to ascertain it. If it is not, the result will be perfectly uncertain. For even less than a majority of the whole body may, in such case, propose amendments. A majority of 34 is 18. Eighteen, therefore, is a majority of the Senate to do ordinary business. Two-thirds of eighteen are twelve, which is less than a majority of all the members of the Senate. If, then, the doctrine of the gentleman from Virginia prevail, less than a majority of all the members of the Senate and House of Representatives may propose amendments. This is not, in my opinion, the spirit of the Constitution. For these reasons I am in favor of the motion, with a view that the subject may be referred to a select committee.

Mr. EUSTIS.—If the construction of the gentleman from Connecticut be correct, I will ask how it can be reconciled with the practice under the Constitution, in the case of bills on which the President has put his veto. In the 7th section of first article it is provided that "every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House, it shall become a law." I will ask, if, according to the construction of the gentleman from Connecticut, it will be in the power of the two Houses, in any case, to pass a bill, having thus received the President's veto, unless they consist of the full number of members, which I believe will never be the case. It appears to me that a bill under such circumstances can never pass. But this doctrine does not rest here. For, by the Constitution, amendments shall be proposed whenever two-thirds of both Houses shall deem it necessary. Now, if this doctrine applies to this Legislature, that it must be full, it appears to me that the same requisition will apply to the Legislatures who are finally to adopt the amendments proposed by Congress. Has it ever been known that either this Legislature, or the Legislatures of the States, were completely full? Consequently the doctrine renders it impossible for any amendment ever to be carried.

Mr. THOMAS rose to state, from the Journals of the Senate, in what light they contemplated the doctrine advanced by the gentleman from Connecticut. By the Journal of their proceedings in the year 1789, it appears that on amendments, made by the House of Representatives, a concurrence was voted, though there were only sixteen members out of twenty-six present. There did not appear to be any division on the passage of the amendments; but the entry was in this form:

"IN SENATE, *Sept.* 9, 1789.

"*Resolved*, That the Senate do concur in the resolve of the House of Representatives, on 'Articles to be proposed to the Legislatures of the States, as amendments to the Constitution of the United States,' with the amendments, two-thirds of the Senators present concurring therein."

Mr. SMILIE.—It is well enough to understand what is meant in the Constitution by the term

House. I believe that the general rule prescribed is, that a majority of the House is capable of doing business. What business? All that is not specially excepted. I believe also that it is a sound principle that, whenever there is an exception to a general rule, it shall be construed strictly, and not be suffered to contravene the general rule but in the case of the exception. By Congress, then, is meant the two Houses in their organized forms, in which forms they are fully competent to all business, except in cases where more than a majority is required. To this there are two exceptions, viz: in the case of treaties, and the election of a President, wherein a quorum is made to consist of a member or members from two-thirds of the States. There is also another exception in the case of impeachments. What is the reason, if it is the intention of the Constitution that in proposing amendments there should be two-thirds of the whole number of Senators elected present, it has not told us so, as explicitly as in the case of impeachment, in the case of treaties, and the election of a President, it has provided the rule? Gentlemen should likewise reflect how far this doctrine carries them. They ought to consider that it is possible that, under their construction, no amendment made to the Constitution is valid. If some are, it is pretty certain that others are not.

Mr. Thatcher.—I have examined the Constitution as carefully as time will permit, in every instance in which the Senate is mentioned as a House. The Senate is defined as "composed of two Senators from each State." In this article there is a complete definition of the Senate. But there are two instances in which the members present are particularly designated. The first is in the last part of the third section, in cases of impeachment: "The Senate shall have the sole power to try all impeachments." "No person shall be convicted without the concurrence of two-thirds of the members present." The other instance is in the second section of the second article: "The President shall have power, by 'and with the advice and consent of the Senate, 'to make treaties, provided two-thirds of the Sen-'ators present concur." In these two instances the only allusion is to the members present. The other instances in which the Senate is mentioned as a House are three. The first is in the case of the expulsion of a member: "Each House may, with the concurrence of two-thirds, expel a member." Another instance is that in which the President puts his veto upon a bill. This part of the Constitution has been already read, and I need not repeat it. The last is the one under consideration: "The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments." I believe that, in this clause, it is intended by the Constitution that two-thirds of the Senate, composed of two members from each State, should concur; that is, two-thirds of the whole body.

The idea of the gentleman from South Carolina (Mr. Lowndes) has struck me very forcibly. He says that, under the construction attempted to be put on the Constitution, twelve members of the Senate will be sufficient to propose amendments. The same doctrine will apply to this House, where forty-eight members may propose amendments, although seventy-two are required to make a common quorum. Gentlemen will see at once that this could not have been the intention of the framers of the Constitution. But my colleague (Mr. Eustis) says that, if our construction prevail, whereby the concurrence of two-thirds of the whole of the members of each House is required, the same construction will extend to the State Legislatures. But the article in the Constitution does not warrant this conclusion. Its language is, that amendments shall be valid "when ratified by the Legislatures of three fourths of the several States." There is no idea expressed that the concurrence of two-thirds of the Legislatures shall be necessary. Hence, I see no weight in this remark.

Mr. Eustis explained. He had no idea that two-thirds of the State Legislatures were required; but he had said that the House might, with the same propriety, require the sanction of two-thirds of all the members of the State Legislatures as of the other branch of Congress.

Mr. Thatcher proceeded. The gentleman from New York (Mr. Thomas) is equally unfortunate. By recurring to the Journals of the Senate for the year 1789, it will be found that several States were not then in the Confederacy. Rhode Island, North Carolina, and Vermont, were not then in the Union.

Mr. Thomas explained. He said he had referred to the Journals of the Senate to show that, by declaring amendments carried by two-thirds of the members present, they had considered two-thirds of the members present a Constitutional majority.

Mr. Thatcher.—The gentleman from Pennsylvania has cautioned us against going too far. Caution, I would myself advocate. He says the amendments heretofore adopted are not valid, in case our construction be just, inasmuch as they were passed by less than two-thirds of the whole members of each branch. But he has shown no precedent. Such precedent it is incumbent on gentlemen to advance. There is none within my knowledge.

Mr. J. Randolph.—I rise to adduce the precedents the gentleman calls for. They will be found in the Journal of the House of Representatives, under the date of August 21, 1789. Congress then consisted of the thirteen original States, excepting Rhode Island and North Carolina. It will be found that the whole number of members of the House of Representatives at that time was fifty-nine. Of those fifty-nine, forty composed two-thirds. By turning to the Journal the gentleman will perceive that some of the most important amendments that now form a part of the Constitution were passed, not by forty members, but by two-thirds of the members present. Among these amendments are the following:

"Congress shall make no law establishing religion, or prohibiting the free exercise thereof, nor shall the rights of conscience be infringed."

"The freedom of speech and of the press, and the right of the people peaceably to assemble and consult for their common good, and to apply to the Government for the redress of grievances shall not be infringed."

"A well-regulated militia, composed of the body of the people, being the best security of a free State, the right of the people to keep and bear arms shall not be infringed; but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person."

"No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law."

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly the place to be searched, and the persons or things to be seized."

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."

These are by far the greater number of amendments that now exist, and which, according to the doctrines of gentlemen, compose no part of the Constitution, and ought to be expunged from our records. I hope the House is not disposed to countenance such a doctrine.

Mr. G. W. Campbell.—I do not rise to inquire into the intrinsic merits of the arguments advanced by the gentleman from Connecticut, but to demand by what authority we make the inquiry into the vote given by the Senate on this occasion. We have received a resolution from the Senate in a regular way, by which it appears to have been passed by a Constitutional majority. I am at a loss to know how the gentleman can ascertain that it is not passed by a Constitutional majority. I believe each House is a judge of its own proceedings; and I believe that, when a resolution or bill comes to this House under the usual forms, we are bound to consider it as passed conformably to the Constitution.

Mr. C. said he believed, by an examination of the Constitution, it would be found that the word Senate was used barely to designate the number of members to which each State was entitled; and that when they came to do business they were called House. In the fifth section, the term House is used in three places. In the first, it is stated that "each House may determine the rules of its proceedings." Here the word House must mean a quorum.—"Each House shall keep a Journal," &c. The meaning, here, likewise, of House must be a quorum. There is another instance not noticed by gentlemen—"Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days," &c. I will ask if the sole question is the definition of the word House, whether this single paragraph will not clearly establish it? Can it be said with any degree of plausibility, that in this instance, the word House means anything more than a quorum? Certainly the word in the fifth section means the same thing, unless there is some restrictive language attached to it, which is not to be found. I believe also that the construction proper to be given on this, as well as on other occasions, ought to comport with the practical sense of mankind.

Mr. Dana.—The gentlemen asks by what authority we examine the manner in which this resolution has passed the Senate. I will endeavor to answer the inquiry. The Constitution says each House shall keep a journal of its proceedings. The Senate keeps a journal, which is public, and from that we are enabled to ascertain the fact how it passed. This is a sufficient authority to inquire. The question, I apprehend, to be decided is, whether two-thirds of a House can be less than a majority? Frequent reference has been had to the fifth section of the first article of the Constitution; "A majority of each House shall be a quorum to do business." What then is the majority? A majority of the whole. When the Constitution in another place requires two-thirds, will it be said that two-thirds is less than a majority? In examining the Constitution it will be found that it is not the ordinary business of Congress to amend the Constitution; it is not a usual Legislative power; it is an unusual power for those with limited authority to change or extend or limit their own power. In doing this, then, Congress does not act in their Legislative capacity. In all instances in which they do act in such capacity, their acts must be submitted to the President for his approbation. Whereas in proposing an amendment to the Constitution this is not necessary. Why? Because the measure does not partake of Legislative character; it is in virtue of a special grant of power. As then in this case there is a complete deviation from the ordinary authority of Congress, as there is a deviation from the principle of the Constitution which confers limited powers, as there is a deviation from the general principle of agency, it ought not to authorize a change but on the agreement of a majority of the whole members composing the confederacy. To the gentleman from Massachusetts (Mr. Eustis) I answer that there is no precedent of a bill passed, returned by the President with his veto. The question is the same in that case as in this. There is no precedent for either; that it is undecided; and to settle one case which is undecided, reference is had by gentlemen to a case equally disputed. These are the principal ideas which have occurred to me, in addition to those suggested by others, and which I forbear to repeat.

Mr. Thatcher said that in the cases alluded to by the gentleman from Virginia (Mr. Randolph) the yeas and nays were not taken; it, therefore, did not appear what the majority was. He admitted, that from the language of the Journal, the Clerk of the House entertained the idea that the concurrence of two-thirds of the members present was sufficient; but such an opinion was not binding upon them.

Mr. Rodney.—Notwithstanding the respect I entertain for the opinion of the gentlemen who support this construction of the Constitution, it seems to me to be utterly without foundation. The ideas of the gentleman from Tennessee (Mr. Campbell) are, I think, conclusive. That gentleman asks by what authority we inquire into the proceedings of the Senate, of which they are exclusively the Constitutional judges? It is replied that they are obliged to keep a public journal and that it appears therefrom that this amendment has not received the votes of a Constitutional majority. Is this a fair answer? By the Constitution each House may determine the rules of its own proceeding. If the Senate then have a right to decide on their own rules, they are the only competent judges whether the amendment has been approved by the number which the Constitution requires. On what foundation is this objection taken? Do we know the proceedings of the Senate but through the medium which the Constitution has provided? We have received then this amendment to the Constitution through their legitimate organ, the Clerk. He has in due form notified us of its passage. And to-day we are told, on the evidence of his certificate, that the Senate has not passed it at all, or what is the same thing, that they have not passed it by a Constitutional majority. Now, are we to believe the information we have received from the Senate in the regular and established way, or are we to take their proceedings on a certificate given to a member of this House? Are we to take this information from them, or are we to send a committee to watch their proceedings, and are they to send a committee to watch ours? Surely there is a respect due to the Senate when they transmit to us a resolution declared to be adopted by them, by which we are bound to give credit to it. If this is not the case, all intercourse between the two Houses must be stopped. For if the Senate are to watch us, to determine by what majority and in what manner our acts are passed, and we do the same in relation to their proceedings, we may consume the whole time of the session in discussing these previous questions, without reaching the merits of the measures proposed. These ideas appear to me conclusive. The Constitution is predicated on the existence of a principle of moral integrity in the two Houses, and without such confidence in them, it cannot exist for a day.

But taking the fact, as the gentleman from Connecticut has stated it, I think this resolution has passed the Senate by a Constitutional majority. The gentleman contends that it has not, because it has not received the assent of two-thirds of all the Senators elected; he says that when the Constitution requires the assent of two-thirds only of the members present, we always find it expressly so stated, whereas when it requires two-thirds of either House, it merely calls for two-thirds of the members; and he contends that there is here a wide distinction and essential difference in the meaning. But all this arises from a mere play upon the term House. That term, according to the gentleman, is of wonderful import! He has now discovered that at the first organization of the Government, when every sentiment that gave it birth was fresh on the recollection, when we find among others two venerable members from the State of Delaware, members of the Senate and likewise members of the Federal Convention, giving their assent to amendments to the Constitution, all these proceedings were unconstitutional. How was the assent of the two Houses to these amendments given? Was it by two-thirds of all the members of each House? The Journal proves the reverse to have been the fact. It expressly says they were adopted by two thirds of the Senators present concurring. It is said, however, that this is only the record of the Clerk, and that it shows no more than his opinion. But this is not so. For it is the practice of each House, on the next day, to read the Journal of the proceedings of the antecedent day, and if there be errors to correct them. Now, if we look to this record, at a period immediately after the adoption of the Constitution, we shall find that in September, 1789, it is declared on the Journal of the Senate that amendments passed, and which are now part of the Constitution, were ratified by two-thirds of the members present.

I have ever understood it to be a sound rule of construction, because a sound rule of reason, that a construction of an instrument once received shall not be changed, even if the construction be not so proper as might be given. As then it appears that such was the construction given to the Constitution by many of the members whose labors contributed to its formation, and who may, therefore, be considered as the most perfect masters of its true meaning, shall we at this distant day undertake to give a different construction? Shall we say that we are wiser than all who have gone before us, and expunge from the Constitution those amendments, which have been proposed by two-thirds of the members present of each House, and have been afterwards ratified by three-fourths of the States?

I believe this construction to be the true one. In the Constitution the term House means merely a majority of all the members; and an examination of that instrument will show them that House and Quorum are convertible terms. "Each House 'shall be the judge of the elections, returns, and 'qualifications of its own members; and a majority 'of each shall constitute a quorum to do business; 'but a smaller number may adjourn from day to 'day, and may be authorized to compel the attend-'ance of absent members, in such manner and 'under such penalties as each House may provide." According to the distinction of gentlemen a majority shall be a quorum. Thus a majority, being assembled, may proceed to business. Now let us see how we are to separate. We must, according to the arguments of gentlemen, work night and day until we get the whole members present. We have, therefore, been transgressing the Constitution every day we have met. We have made rules, by a great quorum, it is true, but every member was not present; and if every member were not present it was not a House, and therefore

we had no right to form rules! And yet every gentleman knows that some rules are indispensably necessary. "The yeas and nays of the members of either House on any question, shall, at the desire of one-fifth of those present, be entered on the Journal." Therefore, we cannot have the yeas and nays entered unless every member be present! "Neither House shall, without the consent of the other, adjourn for more than three days." In every clause of this particular section the term House is made use of. The House is to determine its rules, and to keep a journal. Gentlemen then must admit, if they are right in their construction, that, without the presence of every member there can be no rules and no journal, and that though we are obliged to keep working without rule or record, yet we cannot adjourn. Is this, Mr. Speaker possible? Do gentlemen seriouly contend for such an absurdity?

Gentlemen have referred to a section of the Constitution where two-thirds of the members present are required, and to other sections where a different language is used; and have thence inferred that a different meaning was intended. But I believe we may use different terms and yet mean the same thing. In the case of treaties and impeachments different language is used to convey the same meaning. If then in these cases different language is used to mean the same thing, will not the like liberty be allowed in other cases? I do not know that the framers of an instrument are bound to use on all occasions the same words to convey the same idea, more than the members of this House are.

Mr. Dennis.—This, sir, is a motion to discharge the Committee of the Whole from the resolution of the Senate, on the ground that that resolution comes to this House unsupported by such a Constitutional majority, of two-thirds of that body, as is requisite to amend the Constitution. It therefore becomes necessary incidentally to discuss the point, whether a majority of two-thirds of the attending members, or of the whole number of Senators, be necessary, to give validity to the proposed amendment; for if this resolution is not supported by the Constitutional majority, it is a nullity in itself, and the sooner we are discharged from it the better.

But here we are met in the outset by an objection from the gentleman from Delaware, which ties up our hands and precludes us from this investigation. I incline to think that gentleman hazarded the position without that deliberation and caution to which he is accustomed; for his argument would go to the extent, that if this resolution had passed by a bare majority of the Senate and was reported by their Secretary as passed by the Constitutional majority, it would be so conclusive upon us, that we should not have a right to assert the negative. Whatever is done by the competent authority, ought to be presumed to be rightfully done, but this presumption ceases when the negative appears. According to our construction of the Constitution, the negative does expressly appear, for we know the resolution was passed by a less number than a majority of two-thirds of the members of that body. Notwithstanding the objections made to the evidence, independently of the personal knowledge of the members of this House, we have a transcript from the Journal of the Senate, under the official signature of their Secretary, which I had thought was as good evidence as could reasonably be required.

In relation to the Constitutional question, perhaps little can be added to the remarks of the gentleman from Connecticut (Mr. Griswold,) because I think the passages cited from the Constitution by that gentleman, and the deductions drawn from those passages, demonstrate the proposition which he contends for; which is, not that every member of the Legislature should be present, as some gentleman suppose, but that there shall be a sufficient number present, voting in the affirmative, to amount to a majority of two-thirds of all the members. If we look into the Constitution we shall find in the first section, it declares all Legislative power shall be vested in a Congress, consisting of a Senate and House of Representatives. It then says, "that the House of Representatives shall be composed of members chosen every second year by the members of the several States." &c. In the third section it says, "the Senate of the United States shall be composed of two Senators from each State," &c. And in the clause respecting amendments, it says, "the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to the Constitution," &c. It then results from these provisions that unless the House of Representatives or Senate, taken distinctly, are bodies composed of less than all their parts and members; and that Congress, which is composed of a junction of the two, may be composed of a less number than all the members of each House, that this resolution which is passed only by a majority of two-thirds of the attending members, and not of all its members, is not passed in conformity with the amendatory clause of the Constitution.

But we are told that if this be the construction of the Constitution, we are violating that instrument every day, in passing laws by a majority of the attending members. But, sir, the gentlemen ought to remember that this is in consequence of a positive grant in another part of the Constitution, which says that "a majority of each House shall constitute a quorum to do business." What business? Their ordinary legislative business, where a simple majority is only necessary to effect it. But surely no man can suppose that the clause last cited is to be applied to any case except to the legislative power which that clause procedes; or can torture it to have an application to a provision in the latter part of the instrument, wholly unconnected with it, and where two-thirds are necessary to give validity to an act. For if any doubt could exist on that subject, it will be removed by adverting to the clause respecting the treaty-making power and the power of impeachment; where two-thirds must concur, and where it is confined to two-thirds of the members present. The using of the word *present* in these clauses proves, that the Convention conceived that unless in these cases they

had expressly confined it to the attending members, two-thirds of the whole number would be requisite to a decision; and it also proves, that having omitted the word present in the important article of amendment, they did not mean, in that case, that less than a majority of two-thirds of the whole should be competent to act. To my mind it is impossible that a stronger implication can arise, than what results from these clauses, to prove that wherever they spoke of a majority of two-thirds as being necessary to act, they meant what every person must conclude, that it must be a majority of two-thirds of the whole, unless where they expressed themselves to the contrary. Nor is this construction at all affected by any of the precedents cited; for all of them relate to acts of ordinary legislation, except the case cited by a gentleman from New York (Mr. Thomas.) and another by a gentleman from Virginia (Mr. Randolph.) The first proves nothing; because it appears that there were sixteen members present and no division on the question, and the whole of them may have voted in the affirmative; and as North Carolina and Rhode Island had not come into the Union at the time, the whole number of Senators was but twenty-two—so that sixteen was a majority of two-thirds of the whole. The same answer may be given to the other; for at that time this House consisted of fifty-nine members, and forty-nine members were present and voted on the question, upon which no yeas and nays were taken, and all of whom, from aught that appears to the contrary, may have voted for it. From this view of the subject, therefore, I conceive the resolution before us has not received the support of a sufficient number of the Senators, and I shall vote to discharge the Committee of the Whole from the further consideration of the subject.

Mr. J. Clay.—The gentleman last up from Maryland, and the gentleman from Connecticut, have undertaken to draw a distinction between ordinary Legislative business and other business confided to Congress. In the third section of the Constitution, the power to try impeachments is given to the Senate and to the Senate alone. If the construction of the gentleman obtain, it is given only to the whole body, as this power is not conferred upon them in their ordinary Legislative capacity: "The Senate shall have the sole 'power to try impeachments; when sitting for 'that purpose they shall be on oath or affirmation. 'When the President of the United States is tried 'the Chief Justice shall preside, and no person 'shall be convicted without the concurrence of 'two-thirds of the members." There are a great number of formalities which show the intention of the Constitution to draw a distinction between this power and the powers of ordinary legislation. The section concludes by saying that no person shall be convicted without the concurrence of two-thirds of the members present. Now, if the word Senate did not in all cases mean the members present, these powers will be exercised in direct contravention of the Constitution.

The last article of the Constitution is, that 'the ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same." These conventions are bodies raised under the Constitution, by which no quorum is provided, and, under the construction contended for, must mean the whole bodies by which it has not been ratified. If the construction then be correct, the Constitution can be of no effect, unless it has been ratified by them unanimously, which has not been done.

When we use such terms as House, people, or quorum, we always mean a majority, otherwise we should run into absurdity; and gentlemen will see, that in all cases where the terms are not restricted, they mean a majority, and that in other cases where a different meaning is intended, restrictive language is used.

In that part of the Constitution respecting the election of President, if the construction of gentlemen be sound, the words "whole number" are superfluous; it prescribes "that each State shall 'appoint, in such manner as the Legislature there-'of shall direct, a number of Electors equal to the 'whole number of Electors for Senators and Rep-'resentatives to which the State may be entitled 'in the Congress." The word State does not here mean all the people, but a majority of them exercising political power through the members of their Legislature.

In the case of the President refusing to approve a law, the words are the same as in the present instance. In such a case I should suppose the Legislative bodies were sitting in their Legislative capacity; and in such case, notwithstanding, according to the ideas of gentlemen, two-thirds of the attending members would be insufficient to pass the law.

In the case of the amendments agreed to in 1789, sixteen members were present. The gentleman from Maryland (Mr. Dennis) has stated that the whole body consisted at that time of twenty members; but the fact is, it consisted of twenty-two, two-thirds of which are fifteen. Sixteen were present. I find the amendments were opposed by some members, and gentlemen will agree with me, that where members are in the habit of opposing measures they will not be likely to vote for them. The inference is that some of the sixteen voted against the amendments on their final passage. I ask if the fair inference be that only one member voted against them? If more than one voted against them, according to the doctrine of gentlemen, they were not constitutionally passed, and therefore we are legislating under amendments to the Constitution, which are not part of the Constitution, inasmuch as they were not constitutionally proposed.

Mr. R. Griswold.—The first objection made by gentlemen to the motion which I have had the honor to submit is, that this House has no right to inquire into the fact of how the Senate passed the resolution on our table. It is said by the gentlemen from Tennessee and Delaware, that we had no right to inquire further than into facts as they appear on the face of the resolution. This doctrine I did not expect. What is the resolution? Is it anything more than a record of the proceedings of the Senate? Is not the Journal of that House also a record? And suppose, instead of receiving this resolution, as we have received it, without information of the yeas and nays on its passage, the Senate had sent us a record of those yeas and nays, would the gentleman then say that we had not a right to draw an inference for ourselves as to whether it was or was not passed by a Constitutional majority? The Secretary in this case has only brought us part of the record. When we see the whole, we perceive how it has passed, to wit: twenty-two members voting in the affirmative, and ten voting in the negative; and whether the whole record is brought by the Secretary, or whether we receive it in any other way, is altogether immaterial. For from the whole record we must at last decide. This is a sufficient answer to the comments of gentlemen. We have a right to view the whole record, and to determine from it whether this resolution has been regularly passed.

The next objection is, that precedent is against us. But the fact is, that when the amendments alluded to by gentlemen, were passed in the Senate and House of Representatives, all the members were not present; and instead of taking the yeas and nays on them, the Secretary of the Senate and of the House made a record that they were agreed to by two-thirds of the members present. Gentlemen infer from this fact that they were not passed by two-thirds of the whole members, but I do not perceive how they draw the inference. I admit that it was assumed by those who made up the journals, that all that was necessary was the concurrence of two-thirds of the members present; but it does not appear whether two-thirds of the whole members did or did not concur. This precedent therefore concludes nothing. Hence we are brought back to the Constitution, to put our own construction on its several provisions; and I submit it to the House, whether its language is not clear, plain, and definite. The fifth article requires the concurrence of two-thirds of each House. What is meant by House? It must mean either a quorum to do business, or the whole of the members. To determine what it means we must refer to the Constitution, and see how the term is there used. The first expression of it is the third section, "the Senate shall be composed of two Senators from each State." This is perfectly clear and definite; you cannot compose the Senate in any other form. But gentlemen say that the term Senate is used in a different sense from the term House, and in one the meaning is different from that in the other. If gentlemen will turn to the fifth section of the first article, they will find this language: "Each House shall be the judge of the elections, returns, and qualifications, of its own members, and a majority of each shall constitute a quorum to do business." What is meant by a majority of each House? Barely a majority of a majority! This is nonsense; the term House then means every member; it is clear that such was the meaning of the framers of the Constitution. I say, therefore, that when these parts are taken altogether, we obtain a clear and definite construction of what they meant by the terms House and Senate.

It is true there are some instances in which House means a quorum, such are the cases in which ordinary business is transacted, in which the House adjourns or expels a disorderly member. The words are there synonymous, yet in its strict meaning the word House means the whole number of members, and all cases where it is intended to have a different meaning are provided for by the Constitution. In the fifth section of the first article it is said, "the yeas and nays of members of either House on any question, shall, at the desire of one-fifth of those present, be entered on the Journal." Why introduce this language? For the plain reason that without it one fifth of the House, that is of the whole number of members, would be required. This construction comports with the just remark of the gentleman from Pennsylvania (Mr. Smilie) that every exception to a general rule should be construed rigidly—that is, in the present instance, without an exception, one fifth of the whole of the members will be required. So in the case of impeachments and treaties, unless the expression were two-thirds of the members present, the concurrence of two-thirds of the whole would be necessary. Gentlemen will see in all these cases, as the honorable member from Pennsylvania says, the exception proves the thing. While there is no restriction to two-thirds of the members present, or to a majority, the Constitution must be construed according to the general principle.

It is not my wish to detain the House longer on this subject. I have expressed myself in general terms. I add, that it is proper, that in an affair of such importance, we should proceed with deliberation and caution. The subject is a new one, and it can do no harm to discharge the Committee of the Whole and take it up seriously. Some gentlemen are of opinion that there are precedents which apply to the elucidation of this point; if the committee shall be discharged, they will have time to search for them, the resolution can be referred to a select committee, the journals be examined, and the House enabled to proceed with caution and deliberation.

Mr. Rodney stated two precedents, in his opinion, in point. One of which took place in May, 1802, in the House of Representatives, on an amendment to the Constitution embracing the same principle with the present. The House then consisted of one hundred and six members, two-thirds of whom were seventy-one. By the journals it appeared that an engrossed resolution of an amendment passed—yeas 47, nays 14.

Another precedent fresh in the recollection of gentlemen, had been made this session. An amendment containing the same principle had passed that House; the whole number of members of which was 140; of which ninety-five constituted two-thirds; and yet it would be found that it passed by 88 votes for, and 31 against it.

Mr. Lowndes replied that the amendment which had passed this House in 1802, had been

agreed to in great haste at the close of a session; the act was inadvertent, and therefore was not entitled to much weight.

Mr. Huger required the taking of the yeas and nays; at about 4 o'clock the question was accordingly taken—yeas 34, nays 85, as follows:

Yeas—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, P. Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryant, Wm. Butler, Geo. W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

And then the House adjourned.

Wednesday, December 7.

AMENDMENT TO THE CONSTITUTION.

Mr. J. Randolph called for the order of the day on the amendment to the Constitution, received from the Senate.

Mr. Huger moved to postpone the order of the day. He observed that he had very seldom, since he had the honor of a seat in the House, originated business. It was contrary to his habits to obtrude himself upon the House; and he would not undertake the task of originating business but from a strong impulse of duty. He was against altering the Constitution; but as it was probable that an alteration would be made, he considered it his duty to render it as little prejudical as possible. This he believed would be the case, if the resolution he had laid on the table for dividing the United States into Electoral districts, was incorporated into the resolution from the Senate. He found that this resolution had been proposed not only by the Legislature of New York, but likewise by the Legislature of South Carolina. It had also been submitted in a former Congress by a respectable member from a respectable State, (Mr. Nicholas.) Mr. H. said that this could not be considered as a party question, as it was probable the Federal party would lose strength by its adoption; it was probable the members on that side would oppose the amendment. The principal hope of success was from the aid of those who generally differed from him in political sentiment. Mr. H. concluded by moving a postponement of the order of the day till to-morrow, to enable him in the mean time to submit the resolution for Electoral districts.

Mr. G. Griswold agreed with the gentleman from South Carolina, that it was important that both amendments should go to the same committee. He was in favor of the amendment for districts—not, however, because he considered himself bound by the instructions of the Legislature of New York, given long since. On a former occasion, when this subject was before the House, some of his colleagues had thought themselves bound by those instructions, and had expressed astonishment at his resisting them. He was not disposed to question the correctness of their opinions, but for himself he could never consent to be bound by such instructions against the dictates of his own judgment. He was not the representative of a Legislature, but of a section of the people, and did not represent the State, but those combined with other sections of the people. He had a right then to express his own opinion. It so happened, however, that this resolution for electoral districts accorded with his own opinion, and therefore he should advocate its adoption. According to the reasoning of gentlemen, this resolution should be considered as the first in rank, as it was first named in the resolutions agreed to by the Legislature of New York. Will gentlemen who advocate the last, (embracing the principle of designation,) reject the first, or neglect to pay it the same attention with the first? He should consider the vote against postponement as a virtual vote against the first resolution. Is it not fair and proper that both these points of amendment should go to the same committee, as they both relate to the same subject? He was in favor of the division of the United States into electoral districts, as it carried to the people directly the election of Electors, which is now three degrees removed from the people, whereas by the amendment it would be only two degrees. We may be told that the Legislature of New York may, under the Constitution, if she pleases, district the State; and we may be asked why she does not do this if desirable. This question Mr. G. could not undertake to answer. Gentlemen of similar political sentiments with the majority of that Legislature can best answer it. He could only say that, if in the Legislature, he should be in favor of it. Mr. G. concluded by saying he was not in favor of altering the Constitution at all, with regard to the

election of President, but if it were altered, he was in favor of uniting the amendment for electoral districts with that on the table. He should therefore vote for the postponement.

Mr. Elliot did not rise to reply to the arguments of gentlemen, but merely to express his surprise that those who wished no amendment whatever, should thus labor to defeat the wishes of the House. He had expected that one amendment to the Constitution would have been sufficient for a session. Yet we had sent one to the Senate where it reposed, and in return they had sent us three. If these are not enough, where are we to stop? He hoped gentlemen would not add another until these had been acted on.

Mr. Rodney only rose to say that he was in favor of dividing the United States into districts, but was decidedly against an amendment to that effect being incorporated with the one on the table, lest by grasping at too much they might lose all.

Mr. G. Griswold did not perceive how the agreeing to the amendment for electoral districts could embarrass the present amendment, as it was in the power of the different State Legislatures to agree to a part, if they saw fit, and not the whole.

Mr. Thomas observed that, in legislating, he had always been adverse to incorporating different subjects in the same bill or resolution; because he thought each should stand on its own bottom. He said the resolution sent from the Senate proposes an important amendment to our Constitution, and the one which his colleague, (Mr. G. Griswold) and the gentleman from South Carolina, (Mr. Huger) wishes considered, at the same time proposes another important amendment. Although he was in favor of both, he considered it highly improper to blend them together. He thought each ought to stand or fall on its own merits. My colleague, said Mr. T., appears to have a high reverence for the people's opinion, in affecting to support this amendment at this moment; but why has he suffered this zeal to slumber for these five or six weeks, since which this House passed a resolution similar to the one sent from the Senate? Why did he not call this up before? Why has he suffered this thing to sleep all this time, and at this moment urge its being taken up with such warmth? I am unwilling, Mr. Speaker, to impute to gentlemen improper motives for their conduct, but I must confess this looks too much like an intention to embarrass and procrastinate the passage of the other amendment to admit of a doubt.

I am, said Mr. T., decidedly against considering this proposition at this time. Let us take up the one sent down from the Senate, and when that has been agreed to, as I trust it will be, and sent out to the States for their consideration, I pledge myself to those gentlemen that I will unite with them in not only considering, but will support the other proposition.

Mr. Mitchill said he felt it incumbent on him to offer a few remarks on the proposition to amend the Constitution from the Legislature of New York. It might seem as if a large share of gratitude was due to the gentleman from South Carolina (Mr. Huger) for his care of that State, if his remarks were not coupled with a tacit reflection on those who represented it. He would concisely state the history of this proposition. During the first session of the seventh Congress, two propositions of amendment to the Constitution were received from the Legislature of New York, which the Representatives of that State were requested to endeavor to have incorporated into the Constitution. At that time, said Mr. M., I did myself make a motion to bring forward both these propositions, and they were both referred to a Committee of the whole House. They remained in this state for a considerable time, under the consideration of the House. Towards the close of the session one of them was adopted by this House, but was lost in the Senate. The other was not acted upon. I recollect that I informed the House at that time, that it was not my wish to have the first proposition taken up. The reasons which then induced me to be against taking it up were those which will influence me against voting for taking it up at this time. I do consider that however a State Legislature may instruct their Representatives in Congress, they have a right to refuse obedience to their instructions. I consider it a sound doctrine that, in a Government like ours, the Representative has a right to act according to the best dictates of his judgment. So judging for myself, I did believe that the first proposition was of such a nature as rendered it inexpedient to make it a part of the Constitution. My further reflection since that time, and intercourse with my constituents, make me believe that it is inexpedient to bring it forward at this time. Independent of this consideration, I shall be opposed to the taking up this proposition at this time on other grounds. There is certainly a much better chance of wisely deciding on amendments singly, than by taking them together. Were I a friend of the proposition, I would be for considering it separately.

Mr. Dana said he was in favor of the postponement, in order to make some disposition of the motion of his friend from South Carolina, (Mr. Huger.) He thought there would be an impropriety in making two distinct amendments on the same subject at the same session. He was not a friend to the proposition, but wished to postpone it to the next session to put it out of the way.

The yeas and nays were then taken, at the instance of Mr. Huger, on his motion of postponement, and were—yeas 34, nays 86, as follows:

Yeas—Simeon Baldwin, Silas Betton, John Campbell, Martin Chittenden, Clifton Clagget, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

The House then went into a Committee of the Whole—Mr. Varnum in the Chair.

The amendment from the Senate having been read, as follows:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That in lieu of the third paragraph of the first section of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the Legislatures of the several States, shall be valid to all intents and purposes, as part of the said Constitution, to wit:

The Electors shall meet in their respective States, and vote by ballot for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates; and the votes shall then be counted. The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest number, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President; but in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other Constitutional disability of the President.

The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

Mr. Elliot moved to amend the resolution from the Senate by striking out the following words:

"And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other Constitutional disability of the President."

When, said Mr. E., the final question on the amendment to the Constitution passed some time since this House, which contemplated the simple principle of discrimination, I contented myself with a silent vote in favor of it. I should remain silent on this occasion, had I not, by intervening circumstances, been placed in a peculiar situation. My colleague, a short time ago, laid on the table a resolution passed by the Legislature of the State which I have the honor to represent, with singular unanimity, by which the Senators of Vermont were instructed, and the Representatives requested to use their utmost exertions to obtain an amendment to the Constitution containing the simple principle of designation. This request was mingled with another, that we should not be tenacious of the form if we could obtain the substance. I felt happy on this occasion not to be under the necessity of discussing the principle how far a Representative is bound by the instructions of his constituents, as I never possessed a sentiment hostile to the principle of discrimination. I do believe that my constituents, of both of the parties which divide America, are almost unanimous in their approbation of this principle. But I do not believe that the people or Legislature of that State wish to combine with it any other principles. However I may myself be in favor of the great principle of discrimination, I do not consider myself under any obligation to vote for it, if combined with other principles, which I think tend, in a tenfold degree, to introduce a greater evil than that at present to be apprehended, to wit: to introduce a person to the Presidency, not contemplated by the people or the Electors. I sincerely believe the resolution from the Senate, if adopted, will have this effect. I have likewise objections to the language in which the resolution is couched. In the Constitution, as it now stands, it is prescribed that the House of Representatives

shall elect a President, in case there be no choice by the Electors. It appears to me inconsistent, almost in the same breath, to say you may choose or not choose, as is virtually declared in the present resolution. You may reject all the candidates for the Presidency, and introduce a person intended for a different office. It appears to me improper to use this imperative language, and at the same time allow a wide discretion; not that I believe the framers of the Constitution intended to coerce the physical or moral volition of the members of the House of Representatives; but I believe they intended, by the strongest language which could be used, to discontenance the idea of no election. To this we owe the last election by the House of Representatives. I will ask, what would have been the result, if, instead of this simple dignified language, this temporising language had been used? You may prolong your session to the fourth of March, and if there shall not be then a President elected, the President of the Senate shall be President of the United States for four years. I believe that the language of the Constitution ought to be imperative; but if it ought not, still it ought not to say you may choose, in the same sentence that it says you may not choose a President.

With this view of the subject, I cannot satisfy my mind to vote for the amendment of the Senate. I believe it is the wish of the people to amend the Constitution, simply so far as regards the designating principle. I believe that they do not desire many amendments to the Constitution. Three or four distinct amendments are embraced in the proposition of the Senate. I am in favor of one amendment only. I am not prepared to vote for any other. If this motion succeed, it may be proper to strike out other parts of the proposition from the Senate. It will then stand as we sent it to the Senate, or an additional provision, if it shall be considered necessary, may be introduced, for an extraordinary election by the people, in case the House should not elect the President, which will be perfectly agreeable to me.

Mr. Huger said it was unnecessary for him to repeat arguments already so fully urged, to prove the improper nature of the amendment from the Senate. But, though he should ultimately vote against it, yet he considered it his duty to render it as unexceptionable as possible. He should, therefore, vote against the motion made by the gentleman from Vermont. If any amendment of the Constitution were necessary, this was, in his opinion, precisely the one. It had been well observed in another place that man was man, and that this nation must ultimately be prepared to meet and resist the vices attached to human nature. If we could always calculate upon having our councils filled with men of virtue, the Constitution itself would scarcely be necessary. But all constitutions and all laws were predicated on the vices of men. Mr. H. said it had always struck him as a most important circumstance, and as one that might lead to the most fatal consequences, that the election of a President should absolutely depend on the votes of the House of Representatives; and that, if these votes should prove equal, there would be no election. The time might come, and would come, when the election of a President would be brought into that House, and when they would make no choice.

Mr. Chittenden declared himself in favor of the amendment of his colleague. If the election of a President should be brought into the House of Representatives, it would be known who had been voted for as President, and who as Vice President. It would only then be required to frustrate the election of a President to make the Vice President President. He believed there was no danger to the rights and liberties of the people, by suffering the Constitution to remain as it was.

Mr. Skinner said he believed the great States ought to have some rights as well as the small. He had always considered the Constitution as formed upon principles that gave the small States as extensive rights as were reasonable, and that gave them power enough to make them secure in the enjoyment of those rights. As to the designating principle, he was fond of it. He believed it was a sound principle that a majority should govern. But he could never agree, but from absolute necessity, to make a provision that would offer a strong temptation to an individual to intrigue, and would enable one-fourth of the representation of the people to frustrate an election. He did not think this provision necessary, as he did not believe the period would ever arrive when a majority of that House would not obey a solemn Constitutional injunction. He was therefore in favor of striking out that part of the amendment which eventually devolved the Presidency on the Vice President, in the case of no election in the House of Representatives. He would rather take the amendment without this provision; and he did not know whether he would not reject the whole, rather than adopt this provision.

Mr. Holland was in favor of the amendment from the Senate, as better than the one sent from the House. He had always thought the Constitution faulty from the want of this provision, and experience had shown the necessity of it. In the case of a non-election in the House of Representatives, (were it a possible case,) this provision was calculated to remedy it. The only objection now urged, is, that the House of Representatives may act corruptly. Mr. H. would not give into this idea as possible, yet it was very possible that some circumstances might arise which would prevent the House of Representatives from making an election. Some great disaster might occur—for instance, the House might fall, and crush the members to death.

Mr. Smilie.—The Senate have made two alterations in the propositions that went from this House. The only thing for us to consider, is, whether they are of such a nature as to render it better for us to adopt or reject the entire resolution. The Senate appear to have considered the difficulties and evils lately experienced, and to have provided against their recurrence. To this provision gentlemen now except. This amendment, which it is proposed to strike out, is in favor of the

small States. Notwithstanding this, I, as a Representative of a large State, shall not reject it. We have heard, on this occasion, a great deal about State interests; but I have never witnessed an instance in which it has influenced the decision on any question of great importance. And if the time ever does arrive, when local interests shall direct the Councils of our country, we need care little about the Constitution. Be this as it may, those who think this amendment renders the Constitution better than it now is, will vote for it. We must consider the other branch of the Legislature as participating with us; and in order to obtain a correspondence of opinion with them, we must conciliate. As I consider this amendment as a grave for the whole business, I shall vote against it.

Mr. Thatcher expressed himself in favor of the motion of the gentleman from Vermont. As to the idea of the gentleman from Pennsylvania, (Mr. Smilie,) that we must take this resolution from the Senate, or nothing, I do not know whence he draws his inference. I should suppose we ought to make the amendment as perfect as possible. Are we to adopt what we think totally improper, because the Senate approve it? What, in my opinion, principally renders this resolution exceptionable is, that it carries the election of President from the popular to the federative branch of the Legislature. The friends of each candidate will be induced to scatter their votes, and thus, aided by the influence of the Senate, prevent an election in the House of Representatives. There will not, in such event, exist the same inducements to make an election, flowing from a dread of the evils of anarchy and of an interregnum. Another objection also, in my mind, is powerful. The effect of this proposition will be to send a number of candidates into the House, not the three or five highest on the list, but the three highest numbers, containing an indefinite number of persons. One consequence must follow, either that the election will come into the House, or that the large States will combine together in order to prevent it.

Mr. Lowndes said he was in favor of the motion of the gentleman from Vermont, for the reasons which had been already urged. It appeared to him that, under the propositions received from the Senate, the Vice President would intrigue with the members of the House of Representatives. Having the whole patronage of the Government in his hands, in case of success, he may work upon them, as he believed, that though they were not corrupt now, they might be hereafter. If the object be to prevent the recurrence of a late event, that would be easily effected by providing that in case of an equal vote in the House of Representatives for President, lot shall decide; and if the present motion prevailed he would move an amendment to such effect.

Mr. Dana said he would make a motion, the object of which was to abolish the office of Vice President; he therefore moved to strike out the following words:

"And if the House of Representatives shall not choose a President whenever the right of a choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other Constitutional disability of the President

"The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then, from the two highest number on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

"But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States."

The motion being more comprehensive than that of Mr. Elliot, superseded it.

Mr. Sandford observed, that if the gentleman would have waited a short time his motion would have been decided upon in determining the principle of designation. If there were no Vice Pesrident, no designation would be necessary.

He said he was against the amendment of the gentleman from Connecticut, and in favor of the resolution from the Senate.

Mr. Dana.—Notwithstanding the admonition of the gentleman from Kentucky, I shall assign my reasons in favor of the motion which I have submitted. The more I have reflected on the subject the more I am convinced that we ought not to agree to the amendment on the plain principle of discrimination. If the resolution is to pass in any form, it is my wish that it should pass with this modification. It has been referred to as a reason for altering the Constitution, that it is a fact, that the will of the people will be in favor of one of the candidates for the Presidency, and that it will not become the House of Representative to choose from the two equal in votes, according to their discretion. The object of the amendment is to guard against this evil. Gentlemen will well recollect the indignant eloquence that was so copiously lavished at the last Presidential election upon those who voted for one of the candidates. This competition cannot exist, if the office of Vice President does not exist. But it is said that one public benefit will result from the continuance of the office of Vice President after the adoption of the discriminating principle, that is, that the Vice President will be the eventual successor of the President. But on this view of the subject, the adoption of the discriminating principle produces a great change in the present provision of the Constitution. The Vice President is to exercise, in case of his succession to the Presidency, the duties of that office, until the expiration of four years, from the election of the President; not until a new election is held, but for the remaining term. This amendment makes the Vice President a secondary character. The reasons, therefore, for continuing the office of Vice President are not so great under this amendment, as under the Constitution, as it at present stands; for it will be extremely easy to make provision for the temporary filling of the office of President,

in case of vacancy. In Pennsylvania, and in several other States, this provision is made by the designation of a particular existing officer. Gentlemen may be convinced there is no necessity for this office, if the discriminating principle prevails, by a recurrence to the Journals of the Grand Convention. From them it will appear, that there was originally no idea of a Vice President; but that it was explicitly agreed that the Senate should choose their own President. The necessity of a Vice President did not suggest itself until the idea of a double ballot was introduced. In one point the members of the Convention were agreed, to wit: that the Supreme Executive should consist of one person; but as to the manner of appointing him, the term of his office, and whether he should be eligible in future, there existed great diversity of opinion. The first plan was that he should be chosen by the National Legislature, by the joint ballot of both Houses: it was then proposed that he should be chosen by the people, but this was disagreed to, as well as a proposition that he should be chosen by the Electors appointed by the State Legislatures; a proposition that he should be chosen by Electors appointed by the people, was likewise disagreed to. All these different propositions were disagreed to, until the principle of double ballot prevailed.

Unless some great good result from the office of Vice President, no argument for its continuance can be deduced from the necessity of having an eventual successor; that case can easily be provided for, when the Senate choose their own President, and, as in many of the States, the President of the Senate may eventually preside.

The principle of the Constitution is this: In the Senate the representation of the States is equal, but by introducing into the chair of the Presidency of the Senate a representative of a State, you give to that State the advantage of having the man who presides over the deliberations of the Senate; and, in addition to this, when the votes are equal, he holds the balance, and one State, having thus three votes, in particular cases, destroys the equality contemplated by the Constitution. To this amendment there is another objection: the Vice President under it being but a secondary character, that office will become a lure to ambitious men, who, by flattering the States, and by the exertion of undue influence, will enable particular parties to make a bargain as to the possession of the Executive power, which, so far from being a benefit, will be a great evil. Perceiving no good that will result from the continuance of the office, but great evil, in case the discriminating principle prevail, I am in favor of abolishing the office, though I am at the same time in favor of the Constitution remaining as it is.

Mr. Elliot.—As the motion I submitted is superseded by that of the gentleman from Connecticut, I will assign a few reasons for the vote which I shall give. I originally contemplated the same motion, but with different views and sentiments from those expressed by that gentleman. I have no desire to abolish the office of Vice President; nor do I think the arguments urged by the gentleman possess any force. I have a different view. I believe the principle of discrimination is the only amendment of the Constitution which the public sentiment calls for, and I wish to make no amendment in which we are not anticipated by the public sentiment. I shall, therefore, vote for the motion of the gentleman, but under different sentiments, and with a different object.

Mr. R. Griswold.—The gentleman from Kentucky will, on examination, find the amendment of my colleague not inconsistent with the spirit of the resolution. The object of that resolution is, that every Elector shall give a vote for President. If the office of Vice President shall be abolished, every Elector will give one vote, and that vote will be for President. It may be said, it is true, that the discriminating principle will be done away; but it may be answered that it is no longer necessary. I am clearly of opinion, if we adopt the discriminating principle it will be useless, worse than useless. If that principle is adopted, of what use can the Vice President be? For what purpose do we want him? To receive $5,000 a year? This may be beneficial to him, but it cannot be useful to his country. The office may confer honor on him, but the honor of an individual can be of no public utility. Will he be wanted to preside in the Senate? That will not be necessary, for the Senate sit half their time without the Vice President, and I have not understood that the business is not as well done without as with him. For what purpose, then, will you have this officer? As heir apparent to the Crown? If this is your object, select him from the best and greatest of your citizens, and do not adopt the principle that the Electors shall vote for one man for President and for another as Vice President.

What will be the effect of this principle? The office of Vice President will be carried to market to purchase the votes of particular States. A large State, having numerous Electors, and claiming a right to designate the President, but not having votes enough itself for that purpose, will carry the office of Vice President to another State, and will say, give us the President and we will give you the Vice President. If it be your desire to consider the Vice President as heir apparent to the Presidency, elect him not in this manner, for he must be the mere child of corruption! With these views, I am justified in saying the continuance of the office will be worse than useless, inasmuch as it will only tend to introduce a system of corruption. It will also give a particular State great weight in the Senate, by giving it three votes, and the presidency over that body. Why do this? Under the old Confederation all the States were equal. Why unnecessarily impair that great principle? Why give to the State from which the Vice President is selected this power, together with influence of another kind? For these reasons, I am of opinion that when gentlemen determine to discriminate, they ought to go the full length of the principle. If they agree to amend the resolution, it may be so altered as to

make every part of the Constitution correspond. Gentlemen will observe that I am discussing their principle, and that though I think the Constitution far better as it is, yet if the discriminating principle is to prevail, I think that the amendment proposed by my colleague will render the resolution far less exceptionable.

The question was then taken on Mr. Dana's motion, which passed in the negative—yeas 34.

Mr. Elliot's motion recurring—

Mr. Elliot said he could not suffer the question to be taken without noticing one argument urged by the gentleman from Pennsylvania, who conveyed the idea that, as the resolution had passed the Senate, we must either take it as it is, or lose it altogether. From what premises this conclusion was drawn he was not able to discover, as he had observed before; after laboring for weeks on the resolution which embraced the discriminating principle, and we had agreed to it, the Senate have not acted on that, but have sent us another, to which he was decidedly opposed. He could not but believe that a spirit of accommodation would actuate the Senate if we struck out this part of the resolution; but if he did not believe this, he would not even then sacrifice his ideas to the opinions of the Senate, nor adopt the doctrine advanced by gentlemen of an imperious necessity. To this doctrine he would always oppose the dictates of duty and conscience. For he did believe, if they adopted the resolution from the Senate, they would render the Constitution pregnant with greater evils than it was at present.

Mr. Goddard was happy to see the notice taken by the gentleman from Vermont of the remarks of the gentleman from Pennsylvania. If these remarks were just, we might as well be done with business at once. Are our minds to be trammeled with the decisions of the Senate? With great deference to that body, he would not suffer his mind to be bound down to their will. We have passed a resolution with a discriminating principle, they have sent us another resolution with other principles. Suppose they had said, if there were no election in the House of Representatives, the Senate should choose the President, would the gentleman from Pennsylvania vote for it? There was another effect of the resolution of the Senate; it would be giving to the large States both the power and the premium to combine in the election of the President. By the discriminating principle, you vest the large States with the power of making the President, and through the medium of the Vice President you give them the means of effecting that object.

The question was taken on Mr. Elliot's motion, which passed in the negative—yeas 38, nays 81.

Mr. Chamberlin moved to amend the resolution by striking out, in the second clause, the words "persons having the highest numbers not exceeding three," for the purpose of inserting the words "five highest."

Mr. Dana called for a division of the question.

Mr. Sandford could not help again advising the gentleman from Connecticut. The object of the motion seemed to be to defeat the whole business by sending it back to the Senate. He trusted the question would be taken on the main resolution, on which every member, he believed, had made up his mind.

Mr. Chamberlin did not know by what spirit of divination the gentlemen penetrated into his motives. He had expressed no motive but to render the Constitution as perfect as possible, having previously expressed a wish not to change the Constitution as it at present stood.

Mr. Goddard.—The gentleman from Kentucky is opposed to the motion of the gentleman from Vermont. This subject has been considered before. The numbers three and five were then before us, and gentlemen with great deliberation settled five as the best. So the resolution went from us, and it comes back again with the number three. The gentleman says he is for three, and intimates that it is the object of the motion of my friend to defeat the whole business by sending it back to the Senate! As the amendment stood, Mr. G. did not understand it, "the highest number, not exceeding three," could not certainly mean only persons having three votes.

The Chairman said the word "number" was a misprint; in the manuscript it stood numbers.

Mr. Goddard said if a classification of persons were intended, the principle was the same.

Mr. Elliot was equally at a loss, with others, to discover the motives ascribed to his colleague in making this motion. Some gentlemen say his motive is to defeat the whole resolution. How defeat it? By making it conform to the resolution sent by this House to the Senate. How long is it since some gentlemen, now in favor of a precipitate decision, in protracted debates threatened, if the number five were not introduced, that they should vote against the whole resolution? It was astonishing that what they themselves were so lately friendly to, should now be calculated to defeat the whole object!

Mr. E. said he was prepared to lose the discriminating principle forever, rather than incorporate with it the principle sent down by the Senate.

Mr. Smilie said he was sorry to see the gentleman warm without occasion. He was one of those originally in favor of the number five, but had uniformly declared that that circumstance should not prevent him from agreeing to any number, provided the principle of discrimination were adopted. But gentlemen think it strange, said Mr. S., that I should utter an opinion that the effect of sending this resolution back to the Senate, will be to defeat it. Such was my opinion when I uttered it, and I think so still. I also said that I did not like the amendment from the Senate so well as our own; but, liking it better than the present provisions of the Constitution, I was in favor of its adoption. When two bodies have to agree, there must be a mutual spirit of concession, or business can never be transacted. This concession takes place every day. I repeat, then, what I said before, that those who believe this the best amendment we can get, ought to vote for it.

Mr. R. Griswold.—The first question is on striking out the words "persons having the highest number, not exceeding three." If gentlemen will critically attend to these words, they will perceive that, in order to make sense of the resolution, or to accomplish their object, they must strike them out. I know perfectly well that it is disagreeable to enter into verbal criticisms in public bodies, and that they ought not to be made on ordinary occasions; but, when we are amending the Constitution, it is proper to make it as plain as possible, and to convey our ideas in apt words, which shall not admit a construction different from that which we intend. I ask gentlemen to tell me the meaning of these words: "and 'if no person have such majority, then from the 'persons having the highest numbers, not exceeding three, on the list of those voted for as Presi-'dent, the House of Representatives shall choose," &c. To what does "three" refer? Either to persons or to numbers. I conceive it clearly applies to numbers. If so, what will be the effect? Then "from the persons having the highest numbers"—of what? number of votes. It will then read, that the elections shall be confined to persons having three votes, and consequently persons not having precisely three votes, cannot be elected. This is not the intention of gentlemen, to exclude those having the greatest number of votes, and to confine the choice to those who have only three votes, and yet the word "numbers" must refer to the last antecedent. I do not know how it came about that the Senate introduced this absurdity into their resolution; but I do hope that the members of this House will look to it, and see whether they are not doing a different thing from what they intended. Surely it is not the object of gentlemen to send an amendment to the people, either different from what they intended, or so obscure as not to be intelligible.

I am inclined to think the idea of the Senate was to confine the election to three classes of persons. I am of opinion that they have not used the apt and proper words to convey this meaning. I ask gentlemen to read over the resolution. I will venture to say three-fourths of the people who shall read it, will think it is intended to confine the election to three persons; and yet, I understand, it is the intention of the Senate only to confine it to three classes. This may, perhaps, be the true construction of the words, but, in amending the Constitution, we ought to render it as clear and explicit as possible; so clear and explicit that every man who runs may read. I therefore trust that gentlemen will take up this resolution, and render it so clear as to avoid all doubt.

Mr. Dennis said, whatever might be the precise grammatical construction of the words proposed to be stricken out, he believed that nineteen-twentieths of the people would place that construction upon them that made persons and numbers synonymous. It was immaterial to him whether the existing obscurity were removed by striking out these words, or introducing additional expressions. He thought it could not be denied that the words admitted of different constructions, and that they ought not to leave a principle so important to a variety of interpretations; but ought, on the contrary, to use language the most accurate and pointed. He hoped gentlemen would exercise a due degree of indulgence to those who did not understand these words as they did, and agree to remove their obscurity. For this reason, he was in favor of the motion to strike out.

Mr. J. Randolph said, that this was not the first time that the House had been sent back to their accidence and ferula, to Lilly and Ruddiman, to solve the doubts of gentlemen from Connecticut. Since such was the case, he recommended a recurrence to a well known rule, in all cases of difficulty as to concord, to ask the question, who or what? He concurred with the gentlemen in the position, that, in all cases of construction, where the sense would warrant it, the relative was to be referred to the last antecedent. The choice is to be made out of "the persons having the highest numbers, not exceeding three." Three what? numbers—what number? highest numbers. Will the gentleman undertake to maintain that not exceeding the three highest numbers is the same as not exceeding three in number? That three numbers and the number three are one and the same? But, whether the numeral three agree with persons, or numbers, the sense contended for cannot be made out. If it refer to persons, then the choice is to be made out of those persons, not exceeding three, having the highest numbers on the list. If to numbers, which was the evident construction, then the choice was to be made from those persons having the highest numbers, not exceeding three.

Mr. R. Griswold said, this expression was not so clear, in his opinion, as the gentleman from Virginia thought it. The gentleman from Kentucky (Mr. Sandford) says, the word "numbers" refers to persons, while the gentleman from Virginia says, they refer to the three highest numbers, which may refer to forty persons, if they should be equal. When doctors disagree, what is to be done? I think the different construction of gentlemen, as well in favor of as against the resolution, shows the necessity of clothing it in language that will remove all doubt. If this were an amendment of a law, the obscurity of the language would not be so material, as it would be in the power of the Legislature at any time to alter it; but, being part of the Constitution, it will be out of their reach.

Mr. Sandford could not see the difference between his construction and that of the gentleman from Virginia. The gentleman from Vermont had charged him with voting for the number five, and being now in favor of three. Mr. S. said, he did not vote for the number five, and he would ask that gentleman if he would not allow him to show the same spirit of accommodation that actuated himself in voting for three instead of five? The same spirit would induce him to vote for the resolution of the Senate, since they had not acquiesced in our proposition.

Mr. Huger, after impressing the propriety of

removing the obscurity of the language contained in the resolution, moved that the Committee should rise.

Motion lost—ayes 32.

Mr. Elliot.—It is a task of delicacy to decide whether the gentleman from Kentucky, Connecticut, or Virginia, is the best grammarian. I believe, however, that the palm of grammatical learning and verbal criticism will be found to be justly due to the gentleman from Virginia. On this occasion he has been extremely ingenious; but, in undertaking to prove that there is no obscurity in the language of the amendment, I conceive that he has failed in his object. The very ingenious mode in which he has managed the subject has convinced me there is obscurity in it. He says it is immaterial to which of the antecedents the words not exceeding three refer. I do believe, though perhaps less conversant with Lilly, or Ruddiman, or Webster, than the gentleman, that it refers to persons and not to numbers. He has asked the difference between the three highest and the persons having the highest numbers, not exceeding three? If the expression should be the three highest numbers, and it should happen that two persons have thirty-five each, and four persons sixteen each, it will, I apprehend, be extremely difficult to determine which are the three highest persons. I believe, also, that, according to this construction, the gentleman who think five involves too great a discretion, will consider the extending the number to thirty will be still more exceptionable; but, we are told, notwithstanding all the obscurity and other defectiveness of this resolution, we must pass it, as it came from the Senate, lest by sending it back it may be defeated. But, I will prophecy, though, like Cassandra, my prophecy may not be believed until it is verified by time, that this resolution, though passed by us, will not be adopted by the State Legislatures. This, time will determine. For these reasons, I am in favor of erasing these words, that others may be introduced less susceptible of grammatical criticism.

Mr. Baldwin inquired, whether the expression "that the election of President, in the House of Representatives," should be confined to "the persons having the highest number, not exceeding three," did not imply that the House might, if they chose, confine the election to two; and whether on such election, there must not be a previous question decided, whether the word "three" related to persons or numbers? How was this to be determined? The choice of a President is to be by States. How is this question to be settled; by the whole of the members? If so, what will be the consequence? The four States of Virginia, Pennsylvania, North Carolina, and Massachusetts, having a majority of all the members on the floor, their combination may limit the number to two persons, and thus exclude the candidate who might otherwise have been voted for by the thirteen other States. Considering the effect of this construction, and of the different constructions put upon the language of the resolution, by other gentlemen, and that the language of the Constitution ought to be so correct as to free it from a variety of constructions, Mr. B. hoped the House would pause, and, before they gave the amendment its final passage, make it as free from ambiguity as possible.

Mr. Rodney would detain the Committee but a few moments. He said he might be permitted to remark that, accustomed to consider subjects on principle, and to act himself under the best impressions of his judgment, he was willing to give credit to others, and to believe that they also acted on the same motives. He agreed with his friend from Virginia as to the construction proper to be put upon the amendment. By attending to every part of it, according to the rules of syntax, it appeared to him that no doubt could exist, on the most mature reflection, as to its proper construction. "The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President the House of Representatives shall choose immediately, by ballot, the President." The Committee will observe, that, in the previous part of the paragraph, the term, *number* of votes, is used, and that reference must be had to it in construing the meaning of those words through every subsequent part of it. He believed that, by a simple reading of the paragraph, it would appear that *three* does refer to *numbers*. To give a just construction to any sentence, we must use every part of it, and not exclude a single word if we can give it meaning. Taking this as a sound rule, and giving effect to the term, *highest*, the argument of gentlemen is answered. They pretend to say, when they find the expression, *the highest numbers not exceeding three*, that the highest on the list are to be excluded, and the choice to be confined to persons having only three votes. The House is to take the highest numbers—the three highest, whether more or less. As the Constitution now stands, it says, if no person have a majority, the House shall choose by States from the five highest. A case might occur where six of the candidates would have equal votes. What would be the consequence? The Constitution confines the choice to the five highest; there would, in that case, be returned to the House six candidates equal and highest. To remedy this defect, the amendment is so framed that, instead of tying down the House to a choice from five persons, it authorizes it from the three highest numbers. Gentlemen object to this by saying that it allows a wide scope, and permits the House to choose a person, having, perhaps, but one vote. And is not this the case at present? Suppose the two highest have all the votes but three, and that three other persons have but one vote each, the case will be precisely the same. Mr. R. confessed that it was so long since he had left school, that he was not able to repeat the rule of grammar to which he had referred, but it did appear to him, when reference was had to a substantive qualified by an adjective, it was proper to

take both together. No instrument was so perfect but that, if the parts were taken separately, it might not be rendered nonsense. He had learned, somewhere, that a clergyman, reciting in a place of worship the old version of the Psalms by Sternhold and Hopkins, had said—

"The Lord will come, and he will not—
Keep silence, but speak out"—

A sailor, who happened to be listening, thinking the man crazy, and all who heard him, immediately left the house. So, in this case, the gentleman, by a similar species of ingenuity, may make this or any other resolution, perfect nonsense.

Mr. Dana said it was not his purpose to enter into a grammatical disquisition. To understand correctly the meaning of particular words, it was not necessary to refer to the authority of grammarians. When they understood the principles of grammar they did not want those authorities. He rose merely to observe that on the first reading of the resolution, many gentlemen entertained different ideas from those expressed by the gentlemen from Delaware and Virginia, some gentlemen considering the term, *highest*, as referring to persons, and others to numbers; as had been observed, the punctuation would decide it one way or the other—the construction might depend on commas. On a question in which the passions are so apt to be engaged as in the election of a Chief Magistrate, the language ought to be plain. He did hope, therefore, that where all agreed in principle, all would agree to clothe it in language that would free it from obscurity.

Mr. Elliot moved that the Committee should rise.

This motion was lost—ayes 36, noes 66.

The question was then taken on striking out, and lost—ayes 29.

Mr. Thatcher said that in the first paragraph of the resolution, the following expression was used: "when ratified by three-fourths of the Legislatures of the several States." It appeared to him that this expression required the ratification by three-fourths of each Legislature, and not, as expressed in the Constitution, of the Legislatures of three-fourths of the States. To make the phraseology conform to the Constitution, he moved to substitute, in the room of the former words, the following: "when ratified by the Legislatures of three-fourths of the States."

The motion was lost without a division.

The question being then stated on the resolution generally—

Mr. Elliot said, as the Committee were not disposed to hear him, and as he felt quite exhausted, he should not, on cool reflection, trouble them with the full remarks he intended to make, but should, when the amendment came into the House, ask for a division of the question, and offer a few remarks in support of the opinions he held.

The main amendment was then agreed to—ayes 75, noes 26.

The Committee having risen, and the Chairman having reported an agreement to the resolution from the Senate, without amendment, the House immediately took the same into consideration.

Mr. Chittenden said, as this was an important question, requiring, in his opinion, more time for deliberation, he would move an adjournment.

The yeas and nays being taken on the adjournment, were, yeas 30, nays 77.

Mr. Dana renewed the motion, made in Committee of the Whole, for so altering the resolution as to abolish the office of Vice President by striking out so much thereof as is contained in the words following, to wit:

"And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

"The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and, if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

"But no person, constitutionally ineligible to the office of President, shall be eligible to that of Vice President of the United States."

And on the question that the House do agree to the said amendment, it passed in the negative—yeas 27, nays 85, as follows:

Yeas—Simeon Baldwin, Silas Betton, Martin Chittenden Clifton Claggett, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Hoge, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Pluter, Samuel D. Purviance, John Cotton Smith, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Lemuel Williams.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram

Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Mr. GODDARD moved to strike out "persons having the highest numbers not exceeding three," in order to insert, "five highest," and called for the yeas and nays; which were taken, and the motion negatived—yeas 32, nays 85, as follows:

YEAS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Lemuel Williams.

NAYS—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Mr. G. GRISWOLD moved to strike out "two," and insert "three," being the number of candidates for the Vice Presidency, from whom an election shall be made by the Senate.

The motion was lost without a division.

Mr. ELLIOT moved a division of the question on agreeing to the whole amendment at the word Vice President in the second paragraph. And on the question that the House do agree to the first member of the resolution in the words following to wit:

"*Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring,* That in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, the following be proposed as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the Legislatures of the several States, shall be valid, to all intents and purposes, as part of the said Constitution, to wit:

"The Electors shall meet in their respective States, and vote, by ballot, for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name, in their ballots, the person voted for as President, and, in distinct ballots, the person voted for as Vice President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President:"

It was resolved in the affirmative—yeas 85, nays 30, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, Benjamin Huger, Samuel Hunt, Joseph Lewis, jr., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Thatcher, George Tibbitts, and Lemuel Williams.

The other member of the resolution was, on the question put thereupon, agreed to by the House, as follows:

"And of the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President, shall be President, if such number be a majority of the whole number of Electors appointed; and, if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But, in choosing

the President, the votes shall be taken by States, the representation from each State having one vote; a quorum, for this purpose, shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

"The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed, and, if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice."

"But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States."

The SPEAKER put the question on the whole resolution.

Mr. ELLIOT.—I shall detain the House but a few moments in submitting to their attention a few remarks. If the vote I shall give this night shall induce my constituents to call me back to the studious and rural life from which I was reluctantly taken, I shall have the consolation to reflect that I have done my duty. I have voted for the simple principle of discrimination, believing it the only amendment the public voice calls for. I believe the objections to that principle to be founded on ideas that are erroneous and visionary; I believe it will not impair the rights or relative importance of the smaller States; I believe the Constitution to be founded on elementary and federative principles, and that, by their union, it constitutes the most illustrious monument of human wisdom; I believe it important to all the members of the Union that the process of election should be simple and pure, and that the President should be elected by a fair expression of the public sentiment, that he may, thereby, be the correct organ of the public will; and that, compared with this, it is of little consequence whether once in a hundred years he may be a citizen of Massachusetts rather than of Virginia, or of Vermont rather than of Delaware. I have heard many ingenious arguments on a former occasion, without being induced to believe that either the rights or relative importance of the small States would be impaired by this principle; but, in deciding on this subject, I also believe this House ought to manifest caution and deliberation in making the alteration. I believe that all irritation and pride of party should be laid asleep. A different course from this has been pursued to-day. I have no doubt, with pure motives, but I have some doubts whether with becoming judgment. I believe the amendments incorporated into the resolution of the Senate, to be infinitely more important than gentlemen may imagine. This can only be demonstrated by experience. I venture to prophesy this resolution will not be adopted by three-fourths of the States. I hope it never will. I believe, if adopted, it will jeopardise the union of the States, and open a door to intrigue and corruption, which gentlemen should wish to close forever; and I believe instead of making the Constitution better than it now is, it will make it infinitely worse. We are about to increase tenfold the probability of introducing a person into the Presidency not calculated for that office, and to increase the avenues by which corruption and ambition may be advanced to supreme power. I am comforted by the assurance that I shall not be the only member friendly to the Administration that will give it a negative, and that this will induce gentlemen to believe that I do not vote from irritation or prejudice. Neither birth, wealth, talents, nor connexions, introduced me to public favor. I am induced to believe that I owe that distinction to a conviction of my personal integrity; and, though I do not wish to use the language of arrogance, I expect that the vote I shall give this night, instead of lessening, will increase the favorable opinion of the Republicans, and if, on any future occasion the people of this country shall be under the necessity of mourning over their departed liberties, of lamenting the destruction of a Constitution, the work of so much toil, labor, and wisdom, by the passage of this resolution, and perceive my name recorded in the negative, they will remember the prediction I have made on this occasion.

The resolution was then agreed to, and the question was put on engrossing it for a third reading.

Mr. J. RANDOLPH moved that it be read a third time to-day.

Mr. R. GRISWOLD moved that it be read a third time to-morrow. He hoped it would be postponed till to-morrow. This was the first moment, during the progress of the resolution, in which it was in order to discuss its merits. They had been already eight hours in session. All the previous deliberations of the House had been taken up in amending the resolution, and now when its merits came to be discussed, he trusted a majority would not be in favor of precipitating a vote. The merits of the amendment had not been fully discussed, and if ever it was imporant that any measure should be deliberately discussed, it was the one about being adopted, which went to change the radical features of our Government. He concluded by moving that the yeas and nays should be taken on the third reading of the resolution to-morrow.

Mr. J. RANDOLPH said that the gentleman from Connecticut had called on the House, to use his own words, not to precipitate a decision on an important measure, contemplating nothing less than a change of a fundamental principle on which the national compact was founded. I will ask you, Mr. Speaker, said Mr., R., and that gentleman, whether in the whole course of this business, from the first motion to amend the Constitution to the present time, such precipitation can be justly charged on the House? I ask him as a man of honor, whether a postponement until to-morrow can affect a single vote? I ask whether he believes a single member has not made up his

mind on the subject? I ask him and the House, whether in the course of this day and yesterday, and on previous occasions, all the great bearings of this resolution have not been sifted, and every line and sentence carped at by critics and hypercritics? Why then are we charged with precipitation? Yesterday it was moved to postpone the resolution; that motion was lost, and on that occasion the object of gentlemen was carried though their motion was lost, for the day was consumed. The same course has been pursued to-day, and on incidental motions to amend particular parts of the resolution, gentlemen have debated its merits. I ask you, therefore, if the resolution has not been discussed in every point of view of which it is susceptible, or if any new matter can be introduced? I ask if the House be disposed to postpone the question until to-morrow, and if the day shall be consumed in making and discussing the same evasive motions made to-day, whether an attempt to take the question then will not be charged with precipitation? There can be no doubt that, unless we adopt the peculiar course of gentlemen, we shall still be charged with precipitation. I for one am willing to submit to this charge, and am willing to hear it urged within and without these walls. If I did not believe the question had been fully discussed, and that further discussion would fail to change a vote, I would acquiesce to postpone it until to-morrow, or the next month; but believing the contrary, I shall be against it.

Mr. Elliot—Some of the gentleman's remarks are so extraordinary, that I cannot, I will not suffer them to pass unnoticed. It is immaterial to me what the gentleman from Connecticut, or Virginia, thinks on this subject. Some gentlemen may think the mind of every gentleman fixed; some gentlemen may rely on a degree of personal influence, which I trust will never be realized, and that some gentlemen will take their opinions on the subject from others. But be this as it may, I think it improper to put the queries submitted by the gentleman from Virginia, at the first moment when it is strictly in order to debate the merits of the amendment. Good Heavens! is it come to this, when most material amendments are about to be made in the Constitution, and after an extraordinary degree of irritation and fatigue, when one day more is asked for, the gentleman from Virginia shall get up, and ask if every member has not made up his mind on the vote he shall give; after two new principles are introduced in the resolution sent from this House, which, though confined to the simple principle of discrimination, occupied a month's discussion?

I do not accuse of improper motives the majority of this House, with whom it is my pride and pleasure on most occasions to act. I believe they sincerely think it for the interest of their country that this important decision should be immediately made. I know that the State I represent has manifested great zeal and uncommon unanimity in favor of the discriminating principle. Impressed with its importance, they have, contrary to their usual course, submitted to the inconvenience of an extra session, in the expectation that this principle would be adopted by the two Houses. But I believe that not a member of the Legislature of that State will be gratified, that so many important amendments, additional to this, have been made after the discussion of a single day; the greater part of which has been consumed in the discussion of incidental points. I do not believe that the people of the United States wish us to spend day after day in examining the merits of a private claim, and to give but a single day to the making of three or four alterations in the Constitution, without allowing a single member an opportunity of discussing any but incidental questions. These are my opinions. I do not believe, however, that they will be accepted by the majority as of any weight. In making them, I mean no reflection on the majority. Yet I believe the majority may, without offence, be informed that even a humble minority have rights as well as they, and that while they feel power they ought not to forget right. These are my reasons for hoping another day may be devoted to the subject.

Mr. Gregg said he would vote in favor of a postponement, were he not persuaded that the question had been fully discussed. It would be recollected that two of the propositions, contained in the present resolution, had been on a former occasion before the House, and had been ably discussed. These same propositions now appeared in a shape somewhat different in form, but the same in substance. They related to the principle of discrimination, and to the number of persons from which the House of Representatives should elect a President. It would be conceded that these two questions had been as fully discussed as they could be. Everything the subject admitted of had been already advanced. The remaining principle, embraced by the resolution of the Senate, authorizing the Vice President eventually to become President, has been also fully discussed on the motion by the gentleman from Vermont. That gentlemen calls this an incidental question; but without deciding whether it was an incidental question or not, Mr. G. believed it questionable whether anything could be added to what had been advanced. Another motion had been made to do away the office of Vice President. This likewise had been discussed. These four propositions embraced the whole of the resolution from the Senate; and although there may have been no discussion on the whole of it, yet as there had been a full discussion of all the parts of which it consisted, the effect was the same.

Mr. Huger said he must exercise the liberty of disagreeing with the gentleman from Pennsylvania. The fact was that the question of discrimination had never been fully discussed. When it was first before the House the gentlemen in the majority acted as if all acquiesced in it. Its real merits had not been, therefore, entered into by them. The only question discussed was, the number from which a choice should be made by the House of Representatives. That was fully done. What then followed? On the main question, Mr. H. said, he was almost the only one, who really went into a discussion of its merits, the gentlemen

on the other side had not thought proper to make any answer.

Mr. Dana.—After having been before Congress for ten years, and the members of the House having spent three days in discussing the petition of Amey Darden for the price of a horse, the amendment of the Senate, to the Constitution is brought before us; and after but two days discussion, we are now called up to decide finally upon it. I do not ask gentlemen to change their opinion, but I require them to have some regard to common decorum; and that when it is unusual on the most ordinary occasions to read a bill the third time on the same day that it has been discussed in a Committee of the Whole, they will not urge a measure of the first importance, which goes to reverse the ideas of our wisest men, to a precipitate decision, in violation of this common rule. This is all I ask, and no more. When gentlemen say there is nothing new to be advanced, I acknowledge myself willing to pay great respect to their intuitive judgments and reach of thought. I do not pretend to say they have not this eminent qualification; but I must say that few men possess these vast powers of mind. It might be arrogance in me to say that I could add anything to what has been so ably urged, particularly in the other branch of the Legislature. Yet I might perhaps present the subject in a light somewhat different. Gentlemen are graciously pleased to say they will hear patiently what we have to advance; but to say they will hear us patiently, when four hours have elapsed since the usual time of dining, is giving us but little indulgence; the exhaustion of the Speaker, and the impatience of the House are such discouragements as a speaker is not accustomed to bear. For these reasons I hope the business will be permitted to take its ordinary course, and the third reading of the amendment be postponed until to-morrow.

Mr. Bedinger urged the necessity of coming to an immediate decision, as the State Legislatures would be exposed to serious inconvenience by further delay. The Legislature of Kentucky would, he understood, adjourn about Christmas. This business had begun with the session, and he was persuaded the mind of every member was made up on it.

Mr. R. Griswold hoped the Legislature of Kentucky would not become extinct on their adjournment, and, if not, when they meet again, they could take up this amendment. He trusted, therefore, the House would not precipitate a decision on this account. He could not promise himself, if indulged with time, with the ability to make any observations that would convince the judgment of a single member. Indeed, it was a melancholy truth, that the temper of the House was such as to indicate no change. Gentlemen say, they have made up their minds. He still thought it proper that the subject should be fully discussed on that floor, as the State Legislatures were ultimately to decide. He wished to see it discussed everywhere, on the floor of the House as well as in the public prints. He hoped, also, a respect for the dignity of their proceedings would restrain gentlemen from calling for a decision at so late an hour. It was not usual to carry a bill to the third reading on the same day with its discussion in a Committee of the Whole. This may have been practised some at the close of a session on unimportant subjects, but had never been practised at the commencement of the session. For these reasons, he hoped the subject would be postponed until to-morrow, when he would offer his opinion on it. It was certainly true, that the gentlemen in favor of it had hitherto refused to discuss its merits. He did hope that, before a final vote was taken on the amendment of the Senate, they would come forward, and, divesting themselves of party sensibility, show the grounds on which they advocated it.

The motion to read the resolution a third time to-morrow, was rejected by yeas and nays—yeas 45, nays 74, as follows:

Yeas—John Archer, Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thos. Dwight, Peter Early, James Elliot, James Gillespie, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Walter Jones, Joseph Lewis, junior, Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel D. Purviance, Tompson J. Skinner, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, John Trigg, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Rd Cutts, John Dawson, William Dickson, John B. Earle, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thos. Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, and Thomas Wynns.

The question was then taken on its being read the third time to-day, by yeas and nays, and carried in the affirmative—yeas 78, nays 35, as follows:

Yeas—Willis Alston, junior, Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown,

Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Rd. Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richard, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—John Archer, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Manasseh Cutler, Samuel W. Dana, John Dennis, Thos. Dwight, James Elliot, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, junior, Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel D. Purviance, Tompson J. Skinner, John Cotton Smith, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, and Joseph Winston.

The engrossed resolution was then read the third time; and on the question, Shall the same pass?

Mr. Purviance said, as I am aware that this question will induce a lengthy discussion, which may not be terminated until to-morrow, I move an adjournment.

Motion lost—ayes 30.

Mr. P. rose again. Fatigued as I am, said he, by the long time we have remained in session, and not having had time to prepare myself fully on the merits of the question, though impelled to trouble the House with some ideas, they shall be few, and shall be concisely expressed. I am against the amendment, for several reasons. First, because it is calculated to injure the interests of the smaller States. This point having been ably discussed, I shall merely remark, that it is more than probable, should this amendment obtain, the President, for more than one hundred years to come, will be confined to some person within the five large States of Massachusetts, New York, Pennsylvania, Virginia, and North Carolina. The whole number of Electors consists of one hundred and seventy-six, of which eighty-nine make a majority, and the number of Electors attached to these States are ninety-six. The amendment confines the number of persons from whom the election shall be made, if brought within these walls, to three; and two must, at all events, be chosen by one of the larger States. If the Constitution remains in its present state, the number brought into the House will be five, whereby the smaller States will have a better chance of getting one or other of the two officers. This idea must have operated forcibly on the minds of the persons delegated to consider the Constitution, and had it not been for that number being so large, the smaller States might not have come into the Union. Having come into the Union, with rights so guarded, and expecting a continuance of them, it is now extremely improper to deprive them of that chance which, if not held out, might have prevented the adoption of the Constitution. We know that the Constitution was regarded as a compromise between the large and small States, in which the large States made considerable concessions to the small States, and induced them thereby to come into the measure. If this amendment is not a violation of the compact, why may we not further alter it, and say that the ratio of Representatives in this House may be as one to one hundred thousand, by which some States may be deprived of any representation whatever? One measure is as just as the other.

In the second place, I am against the amendment, because it does appear to me that a sacred right of franchise, a right of choosing our governors for ourselves, for which ourselves and our fathers fought and bled, is now to be made a kind of job, a subject of barter, and the Constitution so altered as that one State may say to another, if you consent to give us Titius, we will, in return, agree to give you Caius; and, if you do not give us Titius, we will not give you Caius. Thus, the five larger States will always enjoy the power of choosing the President. The time may arrive, though God forbid it should! when this country may become corrupt, when persons, candidates for the great Executive offices, may, by promises of ample compensation, influence the Electors. In the third place, I am opposed to the amendment because the office of Vice President is still retained, when the original reasons for it are entirely done away. We know that the principal reasons for creating it were to bring forward two of our ablest characters, without discrimination, and to keep all intrigue from being interwoven in the election of the Chief Magistrate. This object is done away, and the office is retained at the expense of five thousand dollars a year, when the duties attached to it might as well be discharged by some other person, as is the case in every State in the Union, where there is not a Lieutenant Governor. In North Carolina, and in other States, where the office of Governor becomes vacant, it is provided that it shall be filled by the Speaker of the Senate, and eventually by the Speaker of the House of Representatives.

But, in the fourth place, I am opposed to any innovation on the sacred charter, because when we shall have once begun to make incursions on it, there is no knowing at what point of progress we shall stop. It is extremely probable that we shall not stop, until some of the fairest features of the system, are crumbled into dust. This is my strongest reason against the amendment. For, I

believe, that, if it is adopted, not a session will pass without other amendments, until the whole system shall be destroyed. As for myself, while one fragment of this sacred charter remains, I will hug it to my heart and cherish it as I would the vital juices of my existence. I believe that it is now absolutely perfect, and that, if it shall be once invaded, the work of destruction will not be arrested until the happiness and liberties of our country are destroyed.

Mr. Elliot.—I wish to place the reasons on which I shall vote, on the present occasion, beyond the reach of misconception. I do not agree with the gentleman from North Carolina as to the effects of this amendment upon the large or small States. I dread no collision between them. I am in favor of one principle, viz: the designation of office. I am opposed to the other principles contained in the amendment, because I believe them fraught with more evil than this is with good. I therefore think the amendment will make the Constitution worse than it now is, believing as I do that it may bring a man into the Presidency, not contemplated by the people for that office. On this ground, I am opposed to this resolution. I am also opposed to it, because it makes more alterations in the Constitution than the people wish, or than, I think, necessary. It is my wish to preserve all the prominent features of the Constitution in their original simplicity. Another objection with me is, that the language is unworthy of the Constitution; that it is absurd and contradictory; that it commands the Representatives to elect a President; and, at the same time, gives permission not to elect; and that, in such an event, it makes the Vice President President. Believing, therefore, that it is fraught with the most pernicious consequences, and may jeopard the interest of the Union; believing that the people, though now virtuous, may at some future day become corrupt, and that the language is absurd, inconsistent, and undignified, I shall give my decided negative to the resolution, although it embraces an important principle, which I wish incorporated into the Constitution.

Mr. J. Randolph said that the remarks which the House had just heard rendered any apology for addressing them unnecessary. The friends of the amendment had been repeatedly called upon to assign their reasons for supporting it. In order to avoid, as far as was possible, taking up the attention of the House unnecessarily, he had reserved such observations as he intended to offer for that stage of the discussion. To state the reasons which induced him to vote for the proposition then before them, and to repel the imputation of inconsistency which had been thrown out, was his object. He did not hesitate to acknowledge that he would have preferred the amendment which had been sent to the Senate, or one which went to abolish entirely the office of Vice President, to that which was then submitted to their consideration. But on this, as on every other political question where principles were not at stake, he should adopt the practice which he had heretofore pursued, of acquiring that good which was within his grasp, without putting everything to risk, merely because he was not gratified in every matter of detail. This sentiment was obnoxious, he very well knew, to the reproach which had been thrown out against gentlemen, for displaying too great a deference to the opinions of the other branch of the Legislature. He had, however, no hesitation to avow his disposition, whilst he adhered inflexibly to certain principles, to vary the modification of those principles, so as to meet the wishes of those with whom he had the honor to act. And whilst he should always feel a disposition to show a deference to the opinion of the Senate, this was, he conceived, an occasion which entitled the sentiments of that body to more than ordinary respect. It would be recollected that the act of the two Houses of Congress on any amendment of the Constitution was very far from being conclusive: that the State Legislatures must finally determine upon any proposition of that nature, which might be submitted to them, and that in making such a proposal we must consult not merely our own opinion, but, whilst we adhered to the object in view, we ought to offer it in that shape which was most likely to prove acceptable to them. The opinion of the Senate, therefore, the immediate organ of those Legislatures, and the surest index of their temper and disposition, was, on an occasion like this, entitled to peculiar respect: for it would be idle to offer to the States propositions which there was no prospect of their accepting.

The amendment in question embracing the great object which he had in view, the designation of the person voted for as President, and of him voted for as Vice President, he was disposed to adopt it, although the modification of that principle was not precisely what he could have wished. But who could expect to be gratified to the utmost extent, in a matter where so many various opinions and interests were to be reconciled! A pertinaciousness of that sort would inevitably have prevented the adoption of the Constitution under which they were then deliberating. It is not, therefore, sir, (said Mr. R.) because I conceive this to be the best possible amendment of the Constitution, but because I believe the Constitution will be more unexceptionable with it, than without it, that I shall give it my vote, and on the same principle, and on no other, did I support that which has previously received the sanction of this House. In most respects the two amendments are the same. The difference between choosing "out of the five highest," and out of "the highest numbers, not exceeding three," will hardly be insisted upon as material. It may not be improper here to remark that the Constitution, as it now stands, and the amendment which we offered to the Senate, are both open to the same criticism which has been reiterated so frequently against that under consideration: the words "five highest" being referable either to numbers, or to persons. The only part of the resolution, therefore, substantially at variance with our own, is that which enjoins on the Vice President the duties of President, in case of a failure in the Electoral body to succeed in an election, in the first place, or of a refusal on the

part of this House to make one, in the second. To this provision it is objected, that a person not contemplated as President may be raised to that high station, because the person voted for as Vice President, by the Electors, may become the President. But how is this position to be reconciled to the fact that the Electors will give their votes under the knowledge that, in this very contingency, the person whom they select for Vice President will be the President, and that in case of the death, resignation, or removal from office of the President, (cases much more likely to occur than that contemplated by this provision,) the Vice President will succeed to his functions. How therefore can it be pretended that the man not intended to be President may succeed to the office, when it is explicitly understood that he may, and will succeed to it, under certain contingencies?

But another objection is taken. It is said that the Electors may fail not only to elect a President, but a Vice President also; in which case, if this House should not elect a President, out of those voted for to fill that office, the Senate will virtually have the election of President, because the Vice President elected by them will exercise the office of President: in which case the rights of the people, and of this body, will be transferred to the other branch of the Legislature?

I scarcely expected this objection, sir, from those who contend that the amendment under discussion narrows the influence and power of the smaller States. I shall not altogether rely on the extreme improbability of such an event, although it appears to me that it is as likely that the Senate, in such a state of things, should fail to elect a Vice President as that we should fail to elect a President. Remote as such an event is, for it depends on a failure of the election either of President or Vice President by the Electors, in the first instance, (a circumstance extremely improbable when a designation takes place,) and afterwards, on a refusal on our part to make a choice, out of those offered for our selection,—I shall not dwell upon its being a case barely possible, but will ask whether the right of this House to make an election can be abandoned but with its own consent? but upon a refusal on its part to exercise its right of choice? And how the power of the people can be said to be affected by such a transfer of the right of election from this House to the other, when it is notorious that in electing in that House the vote is taken by States, those of the greatest population and wealth having no more influence than the smallest? Is not the Senate as likely to prove a faithful organ of the will of the States as this House voting by States? In conceding this point, therefore, what do we give up? It is because the amendment contains the principle of designation; because in the first place the Electors must fail to elect a President; in the next place, they must fail to elect a Vice President; in the third place, this House must refuse to exercise their Constitutional right to choose a President out of those in nomination for that office; because all these events must concur before an election can devolve upon the Senate; and then they are restricted to a small number of those nominated for the Vice Presidency—persons, too, who will be selected by the Electors with a view to this contingency, because the wealth and population of the States have no more influence here in an election than they have in the Senate. It is for those reasons that I am in favor of the amendment. Even if this possibility of the election of a Chief Magistrate devolving on the Senate were more objectionable to me than it is, I would not sacrifice the discriminating principle contained in this resolution for a bare possibility. In case of a refusal however on the part of this House to make an election, will it not be better that the functions of President should be exercised even by a person nominated by the Electors and appointed by the Senate, than that there should be an interregnum, as gentlemen have chosen to style it? Are not the people as willing that such an officer should discharge those duties as that they should devolve upon a President *pro tempore* of the Senate, (a person who could never have been contemplated on his election to a seat in that body as succeeding to the Presidency,) who will necessarily act as President in case of the death, resignation, disability, or removal from office, both of President and Vice President—events equally probable, and in my opinion more so than that contemplated by this amendment? But perhaps I shall be told that this position is inconsistent with a doctrine advanced by me at the outset, that I should approve an abolition of the office of Vice President. But the sole condition on which I would consent to such an abolition would be an immediate re-election in case of a vacancy in the office of President. I never could assent to the exercise of those powers by a President *pro tempore* of the Senate longer than was absolutely necessary to make a new election by the people.

Having stated some of the reasons which will induce me to vote for the resolution on your table, permit me, sir, to reply to some of the observations which have fallen from the gentlemen from North Carolina and Connecticut. The first of these gentlemen (Mr. Purviance) is of opinion, that the small States would never have come into the Union if the Constitution had originally stood as it is now proposed to amend it. A plain answer offers itself to this remark. If the small States are as hostile to this amendment as the gentleman supposes, they have only to put their veto upon it. The dissent of five States destroys it. If so little judgment has been displayed by the friends of this measure as to insure opposition from all the States except those five States which the gentleman styles large States, in contradistinction from the other twelve, which he denominates small States, it was scarcely worth the trouble of the gentleman and his friends to make so vigorous an opposition to it. But it is because I do not believe the resolution to be so drafted as to insure opposition from the smaller States; because I judge of the temper of those States as well by the approbation which three-fourths of the Senate have given it as by that which has been expressed in the course of this discussion from various quarters, that I am anxious for its adoption. The gentleman says that we had as well alter the ratio of representation from thirty-three thousand to five hundred thousand, and thereby deprive the smaller States of any vote on this floor. Surely the gentleman does not mean to say either that Congress have not the power to enlarge the ratio of representation, or that such increase would be injurious to the smaller States. The gentleman has expressed too great an attachment to the Constitution not to be well acquainted with it. He must know that each State is entitled by it to at least one Representative on this floor, and that by an increase of the ratio of representation, the number of Representatives might be reduced to that of the States, and the influence of the largest be only co-extensive with that of the smallest member of the Union; and this was a well known objection urged to the adoption of the Constitution. But at last the gentleman from North Carolina candidly confesses that he is averse to any alteration of the Constitution whatsoever. One of my greatest objections to the Constitution is the difficulty of obtaining desirable amendments, which increases with the increasing number of the States. Thinking differently from the gentleman on this point, he cannot be surprised at my acting differently. But he has surely little cause of alarm when he recollects that we possess merely the initiative in this business, and that the assent of three-fourths of the State Legislatures is necessary to give validity to what we shall do. I consider this as an answer to the charge of precipitancy, thrown out by the gentleman from Connecticut, even if it were not fully answered by the history of this amendment. One of the same nature had passed that House during the present and the preceding session. It had been the theme of conversation and discussion, both in and out of doors; and now we are charged with precipitancy, although the resolution had to pass through the ordeal of three-fourths of the States. But a more serious charge is brought against this amendment. It is denounced as opening an endless source of venality and intrigue. But to my mind the present system is more favorable to such mischiefs, and it is because I regard it as the death-blow to all intrigue; because I do not wish chance to preside where there ought to be choice; because I want no blind ballot, under cover of which intrigue or corruption may take shelter, that I advocate the resolution before you. From the manner in which some gentlemen have expressed themselves on this subject, it would appear that they had had personal knowledge of some such agency heretofore. Whether such enginery has been brought into action I cannot undertake to affirm; on this subject I am totally in the dark, nor do I wish to be enlightened.

Much too has been said of the spirit of party, exhibited on this occasion, and on what is due to decorum on so solemn a subject. We ought not, we are told, to touch the Constitution under the irritation produced by the struggle of contending factions. Most sincerely, sir, do I wish that the American public could have been spectators of this whole transaction, or even that every word and every act which has passed within these walls on this day could go forth to the world. I am aware that this is impossible. But were it otherwise, I would willingly trust the issue of this question to the decision which should be given to the other. I would fearlessly leave the public mind to decide from what quarter party spirit and irritation have been manifested; by whom that conduct has been pursued which is calculated to reduce this House from the station which we ought to hold, and to lessen us in the eyes of the nation.

Mr. R. Griswold.—The gentleman from Virginia cannot expect us at this late hour to go into a discussion of the merits of this important question. He has himself cautiously avoided going extensively into them. Instead of showing us that the amendment is not incompatible with the spirit of the Confederacy, he has contented himself with stating that though he objects to one part of it, it contains one principle to which he is friendly, and therefore he will vote for it. Without assigning his reasons, he simply says he will vote for it. Whatever gentlemen may profess, they cannot expect us at this late hour to go into a fundamental view of the principles this amendment contains. I therefore repeat the motion to adjourn, that we may to-morrow have the opportunity of discussing the merits of a question so important to the interests of the States.

The question was immediately taken on adjourning and lost—ayes 47, noes 75.

Mr. Elliot.—As an adjournment has been denied, it would not be considered as out of order, even at this late hour, to answer the elaborate speech of the gentleman from Virginia. I rise however to answer only one part of it. I wish, with the gentleman from Virginia, that a correct view of the whole proceedings of this day may go to the public, that they may be enabled to judge whether there has not been manifested, during the course of this business, rash precipitation, indecorum, and party irritation. With the gentleman from Virginia I am totally in the dark as to any intrigue heretofore exercised. That gentleman says, from certain circumstances, he is induced to believe some persons know of some such intrigue. This I conceive to be an attack on the minority which ought not to pass unnoticed. How far it is correct to impute such motives to gentlemen entitled—if not by the brilliancy of their genius, yet by the public suffrage—to the same degree of respect with himself, I will not undertake to say. It is no privilege of a Representative to say, I believe you a corrupt, intriguing——

Mr. J. Randolph wished the Speaker to decide whether he had said any such thing.

Mr. Elliot.—Such was my understanding of the gentleman's expression; the allusion was of a peculiar nature, and might be intended to impeach the motives of men of different political opinion from himself, or to impeach the motives of one or

two members who generally agree with him. I know not his view in making the observation; but if the proceedings of this day shall correctly go to the public, I shall be much mistaken if they will not be of opinion that there has been more indecorous language in the speeches of that gentleman than in all the others put together. I hope the language and conduct of gentlemen on this day may be recorded; I hope this will become a subject of investigation with the people; and I hope that posterity will have no occasion to impute to them party spirit, rash precipitancy, indecorum, or anything else, that tends to lessen the respect which it is my sincere wish that the measures of this House should always command. I fear much, however, that the proceedings exhibited to-day will constitute a scene on which posterity will not delight to dwell, that they will wish it blotted from the annals of history, and that gentlemen themselves will, in the cool moments of reflection, regret that it ever existed. With one more remark I shall close what I have to say. If in the course of this debate any imputation has been aimed at my moral or political integrity, or if any hereafter shall be made from any quarter, however clothed in the language of brilliancy or decorated with the flowers of genius, I shall on all occasions meet it with contempt. I feel bold in the conscious purity of my motives, and I believe that the people I represent will never charge me with corruption or intrigue.

On motion of Mr. SMILIE the House adjourned about nine o'clock.—Ayes 65.

THURSDAY, December 8.

Mr. J. RANDOLPH, from the Committee of Ways and Means, on a resolution referred to them touching the expediency of discontinuing the office of Commissioner of Loans in the several States, made a report, with a concluding resolution, that it is inexpedient to discontinue said office.

The report, with accompanying documents from the Secretary of the Treasury, was referred to a Committee of the Whole on Monday.

The bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments, was read twice, and committed to Mr. LUCAS, Mr. MORROW, Mr. CHITTENDEN, Mr. LYON, and Mr. CLAGGETT.

A memorial of sundry sugar refiners, citizens of, and residents in, the State of Pennsylvania, was presented to the House and read, stating certain inconveniences and losses to which the memorialists have been, and are now, subjected, in consequence of a construction given at the Treasury Department to an act passed the sixth of April, one thousand eight hundred and two, entitled "An act to repeal the internal taxes," in the case of duties accruing on sugars refined within the United States prior to the first day of July, in the same year, which were not delivered from the refineries until after that period; and praying that Congress will take the premises into consideration, and grant such relief therein as to their wisdom shall seem meet.

AMENDMENT TO THE CONSTITUTION.

The House resumed the consideration of the question which was depending yesterday at the time of adjournment, "that the House do now agree to the resolution of the Senate, in the form of a concurrent resolution of the two Houses, proposing an article of amendment to the Constitution of the United States, respecting future elections of President and Vice President."

Mr. GREGG.—Entertaining the opinion, Mr. Speaker, that the amendment to the Constitution now on your table had been already sufficiently discussed, I did hope that the question on its final passage would have been decided yesterday. I thought the minority could have no just cause of complaint that they had not been heard, and I believe the people of the United States will concur with me in this sentiment, when they attend to the lengthy speeches on the subject, with which the newspapers have been filled for several weeks. The great anxiety of the majority, discovered by their loud and repeated calls for the question, convinced me that they also were fully satisfied with what had been said, and were willing to rest the decision on the discussion that had taken place. It appeared, however, that one gentleman of the majority entertained a different opinion. At a late hour last night he again entered the field of discussion, and delivered his sentiments at considerable length. A decent respect for the minority requires that they should be heard in reply. I shall now attend with patience to gentlemen on both sides; and, although I had intended to take no part in the debate, I shall ask the indulgence of the House while I briefly state the reasons that will influence my vote, and notice the most prominent objections that have been urged by gentlemen in the opposition.

I am willing to acknowledge, Mr. Speaker, that the Constitution far surpasses in excellence, nay, that it is infinitely superior to the constitution of another country, that has been styled "the most stupendous monument of human wisdom." I believe it to be the best that now is, or perhaps that ever was, in the world. The names of those sages, to whose wisdom and patriotism we are indebted for it, will, I trust, be always recollected by the American people with gratitude and pleasure. But, sir, it is a Constitution of experiment. The wise framers of it, with all their sagacity, could not foresee how far its various provisions would, in practice, correspond with their views, or answer their expectations. It looked fair in theory, but its real excellence was to be tested by experience, and, therefore, a provision was inserted for introducing amendments, when experience should prove the propriety of adopting them. This, it must be acknowledged, is an admirable provision, and also a convincing evidence of the candor of the Convention. Conscious of their own fallibility as men, they did not, as some have since done, proclaim the Constitution to be perfect. They foresaw that experience might discover imperfections, and, therefore, they inserted the fifth article, declaring that "the Congress, whenever 'two-thirds of both Houses shall deem it necessa-

'ry, shall propose amendments to this Constitu-'tion; or, on the application of the Legislatures 'of two-thirds of the several States, shall call a 'convention for proposing amendments, which, in 'either case, shall be valid to all intents and pur-'poses as part of this Constitution," &c.

The article respecting the election of President and Vice President, I have understood, was suddenly adopted by the Convention. A variety of modes of choosing the Chief Magistrate had been suggested, none of which received the approbation of a majority. Fatigued with the subject, all parties united in support of the mode contained in the article as it now stands, which was not proposed until all the other plans had been rejected. Plausible, however, as it appears, and supported, as it has been, by the opinions of very eminent men, it is on experience found to be imperfect. The result of the last election evinces this beyond the possibility of a doubt. Had the discriminating principle now contended for been at that time in the Constitution, could the Electors have designated on their ballots who they voted for as President and who as Vice President, no person will pretend to say they would not have made a President, and by that means saved the country from that anxious solicitude, from those distressing fears and alarms which were excited by the uncertainty and delay which attended that election in the House of Representatives. This single experience appears to me superior to a volume of abstract reasoning on the subject. It is, in my view, an unanswerable argument in favor of the amendment.

Another reason in support of the amendment, which has great weight with me, is, the public sentiment being so long and so loudly expressed in its favor. Several years have elapsed since it was first brought into view. It originated in the East; it has been echoed from the South, and the people of the West are also calling for its adoption. It has been advocated in turns by men of all political parties. A federal member from the federal State of New Hampshire, if I recollect right, first introduced it into Congress. A proposition, the same in substance, was afterwards renewed by a federal member from the then federal State of South Carolina. In the two last instances it has been brought forward by republican members, from republican States—first, by one of my colleagues from Pennsylvania, a republican State, and, during the present session, by a gentleman from Virginia, which is said to be also republican. New York, Vermont, Tennessee, Ohio, and, I believe, Kentucky, have, by their Legislatures, expressed their approbation of the measure, and invited its adoption. Federalists and Republicans, in every part of the country, thus uniting in recommending the measure, is conclusive evidence that a majority of the people, however they may differ on other political questions, are in favor of the leading principle contained in the amendment. This circumstance led me to conclude that it would have received but little opposition in this House. The members from those States that had been most forward in recommending it, I did expect would have given it their unanimous support.

To obtain such an amendment as would confine itself to the principle of discrimination, was the only object I had originally in view. That principle I consider as of the first importance. It would, I think, be sufficient to guard against the inconvenience attending the present mode of election. If the Electors are authorized to designate on their ballots who they vote for as President and who as Vice President, there is little danger of their failing to make an election, while the country continues to be divided, as it is at present, into two great political parties. I would even now prefer a proposition embracing that single principle to the amendment on the table, not only because I think it adequate to the attainment of the object in view, but, also, because I believe, in that form, it would be most likely to receive the sanction of the States. There is, I acknowledge, one feature in it, as it now stands, which recommends it to my approbation, and gives it, in my opinion, a decided preference to the proposition which went from this House to the Senate. In the event of the Electors not making a President, the House of Representatives were, by our proposition, restricted in their choice to the five highest on the list of the persons voted for as President, provided no one had a majority. By the amendment on the table, they are confined to the three highest on the list. I prefer the number three before five, because it evidently brings the choice nearer to the will of a majority of the people. This was so fully discussed, and so clearly elucidated on a former occasion, that it would be an unpardonable trespass on the patience of the House to dilate further on it at this time.

But the most objectionable part of this amendment, in the opinion of many gentlemen, and against which the gentleman from Vermont, in particular, has levelled his keenest darts, is that which vests the Vice President with power to discharge the duties of President, in the event of a President not being elected. The passage stands thus: "And if the House of Representatives shall 'not choose a President, whenever the right of 'choice shall devolve on them, before the fourth 'day of March next following, then the Vice 'President shall act as President," &c.

It is acknowledged that, at first view, the principle contained in this provision appears liable to objections, but it must be admitted that much may be urged in its defence; nay, I will even go so far as to say, that on a fair and candid investigation, the objections will lose their weight, and the principle be found not to be incorrect, considering the bearing it may eventually have on the people, on the Electors, and on the House of Representatives, in making a President. Let us, sir, for a moment, examine the probable tendency of the principle. The possibility, or if you will, the probability, of the Vice President being placed in the Presidential chair, through the obstinacy or neglect of the House of Representatives to make an election, may have a powerful influence over the Electors, and produce a concentration of their

votes in favor of one candidate. The same consideration may operate as a considerable excitement to the people, to be careful in their selection of characters as candidates for the office of Vice President. The additional chance now given of his being called to discharge the duties of President, will determine their choice in favor of such men as are entitled to their esteem and confidence, next to the persons whom they may nominate for President. It will also operate as a stimulus to the House of Representatives to make an election. They will not be likely through obstinacy to suffer themselves to be divested of the power of making a President, when that power constitutionally devolves upon them. They will be very reluctant to yield it to the Senate. Their immediate responsibility will not permit them either to refuse or neglect making a choice. They will consider themselves more immediately the organ of the public will, even for the purpose of election, than the Senate. They are so. The long period for which the Senators are appointed, clearly justifies this position. But without resorting to arguments, I will elucidate it by an example taken from the State in which I live, (Pennsylvania.) At the late election for President, the members of the House of Representatives from that State gave a vote for the present Chief Magistrate. Had the vote been given by the Senators of the State, there is no doubt it would have been different. The question then was, who speaks the voice of the people? Look to the result for an answer. As soon as the Constitutional period expired for which their Senators had been appointed, they supplied their places by successors, whose political opinions they supposed to be in coincidence with those of their members who composed the majority at the Presidential election.

But there is one provision in this part of the amendment which is certainly of very considerable importance. As I have several times observed, I again repeat, I do not think the Electors will be likely to fail in making an election. Should they, however, not agree, I cannot conceive that the House of Representatives will be so lost to a sense of duty, as either to refuse, or neglect complying with their Constitutional obligations. But should an election fail there also, we will have by this provision a person Constitutionally vested with Presidential power, until a President is elected. Surely it is better to have a Constitutional officer to discharge these important functions, (and that officer chosen too in the first instance, with an eye to such contingency, infinitely preferable,) than to suffer the office to become vacant, and thereby expose ourselves to all the evils incident to such a state of things, as would be unavoidably produced thereby. I could have wished that this provision had extended further, and directed the vacancy to be supplied by an extraordinary election within one year from the commencement of such vacancy. But as it is providing for a remote contingency, one which may not, and I hope will not happen in a century, I think we may trust it as it is. As the Constitution now stands, "In case of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President."—Art. 2, sec. 1. This is only adding one other possible, and barely possible, for it is not a probable case of vacancy of that office, and it is securing against all the dangers and confusion to be dreaded from an interregnum.

The objections that have been raised to the amendment generally, I think, all resolve themselves into two. First, the danger of innovating on the Constitution, and, second, the jeopardy in which the small States will be placed by its adoption.

I perfectly accord in sentiment with gentlemen in all their remarks respecting the great caution to be observed in touching the Constitution. No abstract, theoretic reasoning could induce me to alter it in many of its parts; but when on experience it is found to be defective, as in the case in the present instance, I think we are bound to exercise our Constitutional privilege in obviating that defect.

With respect to the objections drawn from the danger to which the small States are to be exposed if the amendment prevails, I confess, Mr. Speaker, my mind is not capable to comprehend their force. From whence do gentlemen derive those fears and alarms with which they endeavor to persuade us their minds are so distressed? Do they know, or have they ever heard of the large States forming combinations against the interest of the small ones? I live in a large State, and I declare I never heard such a thing even hinted. Such an idea, I am persuaded, would receive no currency in that State. Such a combination is unnatural—it cannot obtain.

Should local considerations ever have any influence on the election of our Chief Magistrate, that period I believe is far distant. While the country is divided into two great political parties, (and I believe it will long continue to be so divided,) each party will endeavor to select the most prominent character, whose political sentiments are in unison with their own, and place him in the Presidential chair, without any regard to local situation. His politics will be the criterion by which he will be judged, without any reference to his being an inhabitant of the Eastern, Middle, or Southern sections of the Union.

How far would the ambition of the small States extend? Look into the Constitution, and see what ample provision is there made for their security. In the Senate, a distinct and entire branch of the Legislature, they are placed on the same footing with the largest States. There, Rhode Island, which is but a ninth part of Massachusetts, has an equal vote with that large and populous State; there, Delaware is on equal ground with Pennsylvania, although it contains but little more than one-eighteenth part of her population. In this House, also, their weight is equal to that of the large States in the important election of President, when that power devolves upon the House. The Constitution declares, "that in choosing the President, the votes shall be taken

by States, each State having one vote." What greater powers, what more extensive privileges, can the small States desire? Do they expect the large States to surrender their independence, and bow at the shrine of their omnipotence? Sir, I live in a large State, and although as a Representative of it, I would spurn every idea of combining with other large States to injure the small ones, or to divest them of the Constitutional standing and influence which they possess in this Union, yet I hope I shall never be influenced by the alarms now attempted to be excited on their account, to surrender the rights secured to the large States by the same Constitution. Important as the federative principle is which pervades the Constitution—which links the States together in a common band—which places the small States on a level with the largest in the Senate, and in this House in the exercise of one of its most important functions—equally important, at least, is the democratic principle it contains, which secures to the people the right of choosing their public agents. To enable them to exercise this right with a greater probability of succeeding in making a choice, and thereby preventing the removal of it to a different set of Electors, is the main object of the amendment. It scarcely appears proper to dwell so much on a subject calculated to excite State jealousies.

Should the large States, contrary to the ordinary and natural course of things, attempt to form such a combination as has been alluded to, I would ask how it is to be effected? They are separated from each other in their geographical situation by the intervention of the small States. There is no commercial connexion betwixt them, except what is confined to their maritime towns. Distant from each other, they differ considerably in their customs and manners. They can derive no possible advantage from breaking up the political standing of the small States, and therefore I am unable to discover any force in the objection that has been so much relied on respecting their danger. Should local considerations ever have influence in deciding this important business, and combinations be formed to effectuate that object, the combinations will be betwixt States that lie contiguous. There may be Eastern, Southern, and Middle associations. In such a state of things, which, however, is by no means probable, Pennsylvania might unite with New Jersey, Delaware, and Maryland, but surely never with Virginia or Massachusetts.

Upon the whole, the objections to this measure do not appear to me to be by any means conclusive; and the arguments in its favor are of such weight as to satisfy me that the vote I shall give is in conformity with the Constitution, is sanctioned by the experience already had on this subject, and is in unison with the wishes of a great majority of the people in every part of the country.

Mr. Eustis considered the subject important, as it went to effect a considerable change in the existing provisions of the Constitution, in the mode of electing the Chief Magistrate; and also important, as it had long occupied the attention of the States and of the people. When, said Mr. E., I consider the resolution from the Senate, and compare it with that which passed this House, I find several marked differences. It contains three provisions. The first provides for a designation of the persons voted for as President and Vice President, which is a modification rather than a change of principle, and is in unison with the amendment sent from this House, and with the general sentiments of the people—perfectly so with the sentiments of the State I have the honor to represent. While on this point, it may be proper to state, that, when I some time since mentioned the instructions given by the Legislature of that State on this subject, I did it to show that the great principle of this amendment had been sought for by all parties in the United States. So far, then, as it embraces the discriminating principle, I am in favor of it. I find that the instructions alluded to leave some latitude with regard to the modification of the amendment, so as to conform it to the opinions of the two Houses.

I do not conceive that the amendment sent from this House effects any alteration in the essential features of the Constitution; for, when the Constitution provides that two persons shall be voted for, it follows that one must be voted for as President, and the other as Vice President, and the discriminating principle only tends to carry this view into effect. So far, this resolution meets my entire approbation.

The second provision of our amendment was, that this House should choose the President from the five highest on the list: by the resolution from the Senate the number *five* is struck out and *three* inserted, in my opinion unnecessarily. Has any serious inconvenience resulted from the practice under the existing rule in the Constitution, as to the number of persons from whom a choice shall be made? We have heard of none. The inconvenience experienced arose from another source. This provision, therefore, of the amendment, appears to me exceptionable on this account. It is also exceptionable on account of the language used, which appears to me not to partake of that precision which at present characterizes every part of the Constitution.

The third provision contained in this resolution is more objectionable than the second, because it is predicated on the presumption that the House of Representatives will refuse to make a choice, in case the election of a President is devolved on them. It goes, in my opinion, to provide for a contingency that will never happen.

I am inclined to think that the designating principle will remove every solid objection to the present provisions of the Constitution. I wish not to touch the principles of that instrument. Not changing its principles, I wish the election to remain as heretofore, with this sole difference, that the person voted for as President shall be designated by the Electors. I object also to this provision, as countenancing and inviting intrigue, and because it removes from the House of Representatives the responsibility under which they are placed by the Constitution. It appears to me, that in

case two rival candidates are presented to the House for a choice, by means of the influence of the Vice President the election may be protracted till the fourth of March, or that, in other words, the Vice President will become President.

I am sensible that this is only a proposition made to the several States, and that it must be submitted to their decision before it becomes part of the Constitution. At the same time, I am convinced, that going forth as an act of this Government, it will have great influence with the State Legislatures. It ought, therefore, before it is submitted to them, to be so correct and explicit that the collected wisdom of the country may be presumed to adopt it.

I repeat it, the first part of this amendment—that which establishes the designating principle—is a desirable object. I am sorry that I am reduced to the alternative of taking other provisions to obtain this, or otherwise to lose it. I, however, yet entertain a hope of accommodation, and that gentlemen will suffer this principle, desired by the people, to go to them unencumbered. Under this hope, I move a recommitment of the resolution to the Committee of the whole House, and that it be made the order for Monday next, that we may, in the meantime, send a message to the Senate to desire them to answer our resolution. The Senate may be induced, by this step, to take up our resolution and recede from theirs, when they find that it is not agreeable to this House. If after this measure on our part they prove tenacious, and insist on their resolution, we shall then have to meet the question of agreeing to it in the whole, or of abandoning every thing. I do not know whether I shall not be induced to vote for the whole resolution, when I am satisfied that a better could not be had. I do not perceive any reasonable objection to this course of procedure. I do not think a decision of this important subject should be precipitated. The resolution is certainly less perfect than its best friends could wish it; therefore, I think it proper to recommit it.

Mr. Lowndes.—It is with very great pleasure that I rise to second the motion of the honorable gentleman from Massachusetts. (Mr. Eustis,) because I believe if it is adopted it may be the means of preventing this House from precipitating itself into a dilemma in which it will not be very honorable for it to be placed. It is the practice of this House, in its ordinary business of legislation, to correct inaccuracies of expression when they are pointed out. Ought it then, sir, on so important an occasion as that of changing the Constitution, to pass a resolution replete with obscurity? Verbal criticisms are said to be unpleasant, and we have had enough of them. Suffice it to say, that gentlemen who press the passing of this resolution in the very form in which it came from the Senate, give it a very different meaning. It is, sir, with equal pleasure I heard the very handsome eulogium passed upon our Constitution by the gentleman from Pennsylvania, who says he thinks it better than even the constitution of that country which has been termed the most stupendous monument of human wisdom. I hope, sir, that it is better; but the eulogium of the gentleman is, to me, an admonition to beware how I meddle with it. I think, sir, that the gentleman might have gone on and applied to our Constitution the observation of a celebrated writer upon that of England, that, "though in some of its parts its policy was 'not obvious, and did not strike the superficial ob-'server, yet, when tested by practice and experi-'ence, was discovered to be founded in the great-'est wisdom and ability." It is this feature of our Constitution which, above all others when examined into, is discovered to be founded in that wisdom and utility. Considering the Constitution was the deliberate result of the best talents and integrity of our country, exercised at a time when party spirit did not influence our Councils, I am unwilling to give into any alteration of it which is not dictated by an imperious necessity. I am unwilling, sir, to familiarize the public mind to innovations upon this compact. I am afraid, sir, that any alteration we may make, however unimportant it may appear to us, may lay the foundation and make necessary other alterations, and that the nice adjustment of the different interests of the States may finally be destroyed. What, sir, is the result of the attempt to make a single alteration in your Constitution? For this House, certainly, when it passed the resolution sent to the Senate, did not contemplate anything more than a designation of the persons voted for as President and Vice President; but the resolution now before us contains three distinct, specific, and independent alterations. If we vary the principle established by the Constitution for the election of our Chief Magistrate, and by that means diminish the influence of the small States in the choice of that officer, what security have we that at another time the combined principle upon which the people of the different States are represented in this House may not also be varied, and the influence of the State which I have the honor of representing, and others similarly situated, be lessened on this floor?

In the few observations which I have to submit to the House, I will endeavor to avoid a repetition of arguments which have been already advanced. The two leading objections made to the Constitution, as I understand them, and which are made the ground-work of the proposed alterations, are, that by the double ballot two persons may be returned to this House having an equal number of votes, and a majority of the votes of the Electors, and, in the event of this House not determining which of the two shall be the President, the peace and tranquillity of the country may be hazarded, and that the person not designated by the Electors for the President, may, by a concurrence of circumstances, be elevated to the Chair of State. Though the policy of a double ballot may not be obvious at first sight, from the best reflection I have been able to give the subject, I am of opinion that it is founded in wisdom, and the more I examine it, the more confirmed I am in the opinion. The uncertainty which of the two candidates will be the President, is to me a strong argument in favor of it, because it is calculated to render an access to the office of President, through the medium of cabal and intrigue, less practicable, and thereby diminishes the inducement, which would be held out by the proposed amendments, to a resort to those practices: the intrigues of a candidate, if successful at all, may result in his being only the Vice President, a situation certainly not calculated to inspire or satisfy the expectations of an ambitious man. The object of the Constitution is to produce the election of fit persons to be magistrates, and, compared with this great object, the elevation of a favorite character is of trifling importance. This country is not so destitute of talents that one man only can be found qualified for the office of President. I have no doubt that this country abounds with men eminently qualified. I have no doubt that every State in the Union can furnish men who would administer the Government advantageouly. The uncertainty who will be the President, will impose upon the Electors the obligation of voting for none but men of high character, and, if they do their duty, no inconvenience can arise to the country. It is true that two persons may be returned to the House having an equal number of votes, and a majority of the votes of the Electors, but it is an event which I think it improbable will ever again occur. I think it much more likely that the elections will come into this House in consequence of no candidate having a majority of votes, than from the cause first stated. The men heretofore elected to the office of President, were conspicuous characters during the Revolution; it was their conduct during that period which acquired them the confidence and attachment of the people; they must ere long be off the stage of life. It appears to me that the time is not far distant when the elections will be much more likely to come into this House from the defect of any candidate having a majority of votes, than from the other cause; but, Mr. Speaker, suppose what has happened should again occur, and that two candidates with an equal number of votes should come into the House; it will then be the duty of the House to determine which of them shall be President. We then assume the character of Electors, we become Electors under the Constitution equally with the original Electors, and I do not see but that we should represent the wishes of the people as correctly; we are equally chosen by the people, and, in some of the States, more immediately than the original Electors. But I do not apprehend the mischief which some gentlemen have predicted from this occurrence. I trust that there will always be found more patriotism in this country, more of the spirit of conciliation, than would permit, by a pertinacious adherence to a favorite candidate, to endanger the peace of the country. The person not designed by the Electors may indeed be the President; but if the Electors do their duty, and vote for none but men of high character, no injury can result to the country. Establish the discriminating principle, and the Electors, calculating upon the durability of human life, will, in their choice of Vice President, be influenced by considerations by which they ought not to be governed. They will select some popular man for qualities other than those which would fit him for the station of President. They will say he is a good man—he can preside with credit in the Senate. But he may be called to the exercise of higher duties, and the country exposed to all the evils of a weak and inefficient Administration. As the Constitution now stands, it may indeed happen that the person not designed by the Electors may indeed be the President, but I think it very improbable. But if this resolution is adopted and becomes a part of the Constitution, it appears to me inevitable, that the person designed for the Vice President will be the President, and that under circumstances of very great disadvantage. The resolution goes to defeat the very object which has been stated as the ground of an alteration in the Constitution. It says, "and if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, in the case of death or Constitutional disability of the President."

This part of the resolution, Mr Speaker, I think fraught with the greatest mischief to this country. We alter our Constitution to prevent, among others reasons, the person from being President who was not intended by the Electors; and in the same resolution we prescribe, under circumstances much more likely to happen, that the Vice President shall act as President. But, sir, this is not all, you make it the interest of this Vice President to prevent an election taking place in this House. You allure him by the greatest temptation which can be held out, to exercise all the arts of intrigue, bribery, and corruption, to elevate himself, and the whole patronage of the Executive is made subservient to his success. I do not think that a person who comes into office through these means will ever make a good Magistrate. He will not be at liberty to pursue those measures which the good of the country may require and his own judgment dictate. I think it the worst of all possible provisions that can be made. There are other objections to this resolution, but, as they are of minor importance and have already been noticed, I shall forbear making any comments upon them. The gentleman from Virginia said that the difficulty of obtaining amendments to the Constitution had been made an objection to it, but this resolution departs from the language of the Constitution, and instead of the ratification of the Legislatures of three-fourths of the States, requires that of three-fourths of the Legislatures of the several States to its adoption. In every point of view in which I have considered this resolution, it appears to me objectionable, nor can I see that necessity exists for any alteration which alone in my opinion can justify us in meddling with the Constitution.

Many gentlemen have disclaimed being influenced upon this occasion by party views or considerations. I am unwilling to impute such views to any gentleman, particularly those who disclaim them; but I think the House ought in justice to its own character to avoid even the appearance of its being actuated (when altering the Consti-

tution) by improper motives, and taking up the subject at this time, when the election of a President is so near, does exhibit an appearance not very favorable. If it was for no other reason, I would wish this resolution deferred until the next Presidential election is over; it might then be taken up and acted upon without any imputation or appearance of its being designed to meet a particular case.

Mr. ELLIOT.—While the present subject is under discussion I shall not quit it until hurled from my seat by the hand of death. As to the doctrine of submitting to the will of a majority, when that majority itself is not ascertained, I must again consider myself as opposing a torrent which threatens the destruction of my country. I have listened with extreme pleasure to the remarks of the gentleman from Massachusetts (Mr. EUSTIS.) To-day the terms Federal and Republican have been introduced into the debate. The gentleman from Pennsylvania, (Mr. GREGG.) I am persuaded, in the privilege he exercised on this occasion, did not mean to use any improper terms. That gentleman has had the candor to say that one of the majority having risen in the debate it ought to be protracted till every member is heard. It is never my custom to adopt the language of admiration; panegyric is one thing, truth another. That the proposition now under consideration comes from a republican quarter cannot be doubted. I glory that the gentleman who made it is an eminent republican, who stood in the high places of danger when we, as the poet says, "were mewling and puking in our nurses' arms." I rejoice that we can take ground so high, assumed by one whose republicanism cannot be questioned. What objection can gentlemen have to recommit a most important proposition, and to postpone it for three or four days?

Is not this republican, to invite to cool reflection the agitated minds of the members of this House and of the people? If this is not republican, then what is? The object we have in view is most decidedly, most gloriously republican. What is that object? To support the dignity of the Representatives of the people. This I repeat, is gloriously republican. I am glad such an opportunity is presented to evince to the American people, the sincerity of our republican principles; those principles I will ever support, in imitation of the bright example of the Revolutionary patriot who has made this motion. I will die at my post, if necessary, to support them. Sometime since, after long and deliberate discussion, we passed a resolution which was some weeks ago sent to the Senate. There it seems to sleep the sleep of death. The Senate have not deigned to inform us, whether they have deigned to bestow on it a moment's attention. It has been superseded by a resolution to which I trust in God that the American people are not prepared to agree; by a resolution bearing on the face of it the most manifest want of precision and of haste, that I ever saw; and we are now told that it is disrespectful to inquire whether the Senate will or will not bestow the least attention. I have no wish to wander into the wide field of discussion; I wish only to make a few observations in favor of the reference. The object of the motion has been already stated. It has been stated that it comes from a republican quarter, from one who cannot be considered as a federal man, or as actuated by a desire to defeat the great object of the amendment. It may further be stated, that the prospect begins to brighten; the dark clouds which yesterday hovered over us have passed away. I have been assured by several republican members, that it is their sincere wish that this amendment should be altered before it is passed. I know of one republican member, from the republican State of Pennsylvania, (Mr. HOGE,) who desires an opportunity of introducing an amendment; such a one as, if adopted, may remove his objections to the resolution. This is a forcible argument in favor of a recommitment, and can only be answered by a recurrence to the principle of the omnipotence of a majority. Unless amended, I feel a strong presentiment that the resolution on the table will not obtain a Constitutional majority. I believe it will be rejected by republican men, on republican principles, as anti-republican, as tending to destroy the Constitution, and to introduce intrigue, venality, and corruption. I believe the great mass of the American people to be virtuous, but I believe there are bad men in both parties. I believe there are in both parties some men of aspiring and unprincipled genius, who, if advanced to the banks of the Rubicon, would not, as Cæsar did, pause for a moment. Believing that this motion comes from a republican quarter, that it will have a republican effect, by preserving our Republican Constitution, and being one who can never be in favor of anything not republican, I must support this motion, hoping there is that spirit of wisdom in the House that will insure its adoption.

Mr. GREGG.—I understand the gentleman as saying it would save time to send a message to the Senate to require an answer to our resolution. I did believe the gentleman too well versed in parliamentary proceedings to fall on this idea. I do not recollect such a proceeding ever to have occurred. Each House will undoubtedly act as they see proper.

After a few observations by several gentlemen on the propriety of sending a message to the Senate, as intimated by Mr. EUSTIS, the question was taken on the preliminary motion to recommit, and passed in the negative—ayes 49, noes 59.

Mr. GODDARD.—After what passed in the House yesterday, respecting the resolution on your table, and after the remarks which have fallen from the gentleman from Pennsylvania, (Mr. GREGG.) I presume it will not be thought strange that gentlemen opposed to a concurrence with the Senate in the passage of this resolution, should express to the House their reasons for that opposition. I rise Mr. Speaker, to do this. Before I enter into a consideration of the merits of the resolution, let me notice a remark which fell from the gentleman from Pennsylvania, that the time had been when the adoption of the discriminating principle, in the choice of President and Vice President

was, to use the gentleman's own expression, a federal measure. Now the gentleman considers it as a republican measure, using his own terms of distinction. But sir, if the time has been when it was a favorite measure of opposite parties, I will venture to say that the time never was, when the subject has been fully discussed, examined, and understood. Prior to the last Presidential election, and when I suppose the gentleman would consider this as a federal measure, a resolution containing the discriminating principle came from the Legislature of New Hampshire to that of Connecticut, of which at the time I was a member, and that Legislature, although in the language of the gentleman, it was a federal measure, rejected it, I believe unanimously. It was at that time opposed by those who chose to call themselves republicans. The subject was not then very fully discussed, and I believe was rejected rather from a repugnance to innovate upon the principles of our Constitution than from a full perception of all the beauties and advantages which belong to this feature in the Constitution. But, sir, ever since that time, the more the provisions of the Constitution, as it now stands, have been examined, the more beautiful, useful, and wise, do they appear, and the more reason have I had to be satisfied with the vote then given. Let the simple principle be stated, and almost any person, without much examination, would ask why shall not the Electors be permitted to distinguish by their votes which man is intended for the office of President, and which for Vice President? What good reason can be given? This measure is now said to be called for by the voice of the people; it has received the sanction of several State Legislatures, yet, as I have never seen any newspaper discussion of it, nor any debates of those Legislatures, I am inclined to believe, that it has been acted upon by first impressions only, and the alteration been considered as proper, without much inquiry into the motives which induced the framers of the Constitution to adopt its provision.

Let me premise further, that I consider it as our duty to proceed with the same care, and examine with the same deliberation, as if the proposed amendment became, by our vote, a part of the Constitution. I state this, because I understood a gentleman from Virginia, (Mr. RANDOLPH,) on a former day, to advance a different doctrine. That gentleman considered us as only initiating a proposition, which could not become part of the Constitution until it shall be ratified by the Legislatures of three-fourths of the States. This is correct; but the inference drawn from it, that it is, therefore, unnecessary for us very seriously and carefully to consider it, before we give it the sanction of our votes, is not correct. The Constitution has here erected one of its most powerful barriers against innovating upon its principles. It must not only be agreed to by us, but two-thirds of both branches of Congress must concur in proposing amendments. If we adopt any other rule of conduct than that of giving to this proposition the most deliberate attention, it will be dangerous in the extreme. The Legislatures of some of the States call upon Congress to propose amendments. The Senate take up the subject and agree to it, because the States, and the people require it. It comes to us, under the confirmed influence of the vote of the Senate, and the Legislatures. We adopt it, because they recommend it; and we send it to the States, with accumulated credit. They adopt it because we recommend it. In this way, sir, it will, like the description which we have of fame, acquire strength by going. It is, therefore, our duty seriously to examine the merit of the amendment, and not give the sanction of Congress to an improper resolution, under an idea that, if it is wrong, the States themselves will reject it.

Received in this point of light, the resolution on your table assumes a very important aspect. It goes to change entirely a fundamental principle of that Constitution, under which, for more than fourteen years, the people of the United States have enjoyed unexampled national happiness and prosperity. It goes to change that Constitution in a part of all others the most delicate and dangerous, that which respects the choice of a Chief Magistrate, to whom is confided the whole Executive power of an extensive country.

I consider it as more dangerous to change the principles in the Constitution by which a Chief Magistrate is elected, than any other; and a mode once adopted, ought not be altered until experience has proved to us its disadvantages. Gentlemen seem disposed to join in extolling the virtue, wisdom, and integrity of the sages and patriots who framed the Constitution. Why not then permit their work to remain untouched until we feel or clearly perceive the evils which it does, or may produce? The framers of the Constitution adopted the principle which we are about to explode, at a time when no party spirit prevailed on this subject; when they had no rival candidates in view to fill the office. They discarded the discriminating principle, which we are about to adopt, when all eyes were directed to and all hearts united in the man who was designed to become the first President of the United States under the Constitution. And nothing shows in a stronger point of light, how highly they valued the principle of election, by double ballot, contained in the Constitution, than that they were willing even to put at hazard the election of that man, rather than to lose a principle which was calculated to give future peace, tranquillity, and liberty to their country. We are now about to destroy this principle. Before we do this, let us pause and inquire, what are the evils to be feared under the Constitution, as it now is? What are the benefits to be gained by the alteration proposed? I say feared, because no evils have as yet been experienced. Gentlemen tell us that the Constitution as it now stands is calculated to promote intrigue, venality, and corruption, and that the amendment is to give a death-blow to these enemies of our repose and Republican institutions. If this be true, it is certainly a formidable objection to the Constitutional provision. But when gentlemen say this, they deal only in general terms. Why not condescend to tell us how the Constitution is calculated to produce these

evils? Has it been shown to us, by experience, that such is its operation? If so, at what period of our Government has it done it? When did this intrigue, venality, and corruption show itself? At the first or second Presidential election? The thought will not be harbored for a moment. At the third? No one will pretend it. At the fourth? The friends of this amendment will not surely say that the present Chief Magistrate owes his election to intrigue, venality, or corruption. Reference has been often had to the last Presidential election for instruction on this subject. But what does that prove to us? Why, that two men, whom the friends of the present amendment chose to select, and recommended to the people of the United States, were elected; and that they now fill the very offices for which gentlemen themselves say they were intended. Experience then proves to us, not that any evil has actually occurred, but that there was a period when they dreaded an evil. And what was that evil? They feared that their own favorites might have been misplaced! On a review of our proceedings under the Constitution, it cannot be surely said, that experience has proved to us that the provisions of the Constitution as they now stand are pernicious. If experience does not furnish this evidence, are gentlemen capable of pointing out to us clearly how the Constitution is capable of producing the evils which they fear? I heard a supposition stated, that hereafter a party might arise in this country, hostile to a republican government, and favorable to introducing a monarchy, and that the Constitution must be amended to prevent this. To be able to prevent this is one of the very reasons why the Constitution ought not to be altered. If such a party should ever arise in this country, they will either be a majority or a minority. If a majority, the amendment to the Constitution now proposed to be adopted furnishes them with the ready means of designating their man, without competition or embarrassment, and elevating him to the Chief Magistracy. But suppose they are a minority? Leave the Constitution as it now is, and they will be compelled to have for their President one of two republican candidates, who shall be presented to them by a republican majority. The Constitution has therefore erected a most effectual barrier against the intrigue and corruption of any aspiring individual, who may be disposed to trample on the liberties of his country. But the moment you introduce the designating principle such an individual may proceed directly towards his object—set all his engines to work, and operate with effect, having no competitor and but a single object in view.

Suppose a proposition should be made to alter the Constitution, so as to elect one man President for life? Would not gentlemen startle at it? I think they would, and yet, in my view of the subject, the proposition on your table falls little short of doing it. The advantages which the designating principle holds out, will always be in favor of the present incumbent of office. When I say present incumbent, I would be understood to refer to the Chief Magistrate for the time being—at any time. Once elevated to that high station, and the double ballot being abolished, he will, by means of his extensive powers, and the patronage which he possesses, always have the means of exercising a species of indirect corruption, if he should be ever disposed to use them. Preserve the Constitution as it now is, and he will have little inducement improperly to exert himself to maintain his station, because he must always be uncertain whether he can operate to effect. I am therefore, clearly of opinion that the provisions of the Constitution as it was originally adopted, are wisely calculated to prevent intrigue and corruption; and that the amendment on your table, if substituted in lieu of those provisions, is calculated to open the door to those evils, and perpetuate the Executive power in the hands of a single man; and am therefore opposed to it.

I am not disposed, Mr. Speaker, to go at this time into arguments which have already been advanced, with much force, respecting the influence of this change upon the rights of great and small States—I can add nothing to their weight by a repetition. But I may be permitted again to call the attention of the House to the important and singular additions which the Senate have annexed to the discriminating principle. We sent a resolution to the Senate in which we declared that, in case no choice should be made by the Electors, a President should be chosen from the five persons highest on the list. The Senate have not adopted this, but sent down to us the number three. Without attending at this time to verbal criticism, or adverting to the extreme ambiguity of the sentence which contains the number or numbers of persons, or the classes of persons, out of which the House of Representatives are to choose, in case no election is made by the Electors; I will only say, that whether *three* in that sentence is made to refer to persons, or to classes of persons, highest on the list, it is, in either view, the most objectionable *number* which the Senate could have selected. I am not disposed to cultivate local feelings, or distinctions arising from geographical situations, but, sir, such is the extent of this country, such its diversity of interests, manners, and habits, that parties will rise up hereafter, influenced by such considerations. Look at the United States, and consider what may, and probably will be, the great sections of the Union most likely to be united in their views respecting a Chief Magistrate. The Eastern States will form one section, the Middle, another, the Southern a third, and the Western, a fourth. This last, from its great accessions and rapid increase, will soon be the most influential of the whole. Suppose each of these sections of the Union should set up their candidates for the offices of President and Vice President—from a disunion, no election is made—a choice devolves on the House of Representatives. By this resolution a choice must be made from the candidates presented by three of these sections of the Union, to the total exclusion of the fourth; and which that fourth will be, is not difficult to predict. The adoption of this part of the resolution is, on this account, extremely objectionable.

But, sir, the Senate have in this resolution proposed to alter the Constitution in another important particular, and have varied essentially from the resolution which we sent to them. No less, in effect, than to take the choice from us, the immediate Representatives of the people, and assume it to themselves. And we are called upon to submit to this! I speak not now under the impression of State, or any other local feelings, but as the Representative of a free people. In case no choice is made by the Electors, the Constitution has confided that choice to the Representatives of the people, without even the concurrence of the Senate. By the resolution on your table, we surrender that power wholly, in certain events, to the Senate.

Having stated this objection on a former day, when that part of the resolution was under discussion, a gentleman from Virginia, (Mr. Randolph,) in reply to my objection, gave two answers—One, which he considered as conclusive, was, that although the Senate, if this amendment becomes part of the Constitution, may elect a Vice President, who may become President of the United States for four years, yet that this could only happen upon a failure of the House of Representatives to do their duty, and make a choice. Did the gentleman, before he gave this answer, consider that the provision in this resolution, to which the objection is taken, is predicated wholly on the idea that the House of Representatives will fail to make a choice? The provision itself supposes that a case will happen, in which no choice will be made by the House of Representatives. It is introduced to guard against the evils which it is supposed may result from such an event; and is wholly idle and nugatory, unless we are to suppose that such a case may happen. Another answer which the gentleman gave to this objection, but which he did not consider as conclusive as the former, was, that in case an election should devolve on the House of Representatives, the vote must be taken by States; and he says that the Senate are peculiarly the Representatives of the States, and will be as faithful guardians of their rights on such an occasion as the members of this House.

Is this, sir, a reason for our resigning to that body a power which the Constitution has confided to us? It is true that the Senate, in performing this high duty, may act as wisely and with as much circumspection as the Representatives would, under the same circumstances.

But let it be recollected that they are chosen for a much longer period than the Representatives, and may not feel the same responsibility as they would. Besides, the Senate would not vote by States when electing their President, who may become *the* President. It is true, that all the States are equally represented in that body, but it does not follow that the vote would be taken, as in this House, by States. A member from a State may be absent; if present they may disagree in sentiment. That may happen in this House, it is true, where the Representatives from any State shall be equally divided. But the States here, being represented by much greater and generally unequal numbers, it is much less likely to happen. The election, therefore, in almost all its features, will be essentially changed, in case the amendment should prevail. And I believe the time has been when the people of this country would have startled at the idea of conferring on the Senate of the United States the power of giving them, in any event, a Chief Magistrate. But gentlemen say it is desirable to provide for the contingency of no choice being made, either by the Electors or the House of Representatives, that the United States may not be without a Chief Magistrate. Admit it. But why not provide for a new election immediately by Electors, and designate some officer of the Government to administer in the meantime? This is easily done, and would be much preferable to taking, for four years, such President as the Senate may give us.

As, therefore, I can see no necessity for resigning this power to the Senate, of giving to the United States a President in any event, I shall feel constrained to resist this insidious claim of theirs, by my vote against the resolution which they have sent us.

Mr. G. W. Campbell.—When this resolution came from the Senate to this House, it was not my intention to have spoken on the subject. I had determined to vote in favor of it, and let the measure itself justify my conduct in so doing. But so much has been said on this floor with regard to the interests of small and large States, and the effect which it is insisted this resolution will have on the rights of the former, that I conceive it my duty, having the honor to represent (in part) one of those small States, to state some of the reasons that induce me to vote for the resolution, and to be of opinion that its adoption will not, in the manner contended for, infringe the rights of the small States, or diminish their relative weight in the General Government. I am, sir, of opinion that our Government was formed by the people of the United States, in their capacity as such, by their immediate representatives in the General Convention, and not by the several States convened in their State capacities. The words of the Constitution are: "We, the people of the United States, in order to form a more perfect Union," &c., and not we, the United States, in our State capacity, which I presume would have been the language used had the framers of the Constitution intended to have formed a Government for the States united in their State capacities: and though the State interests, as such, are regarded in our Government and their sovereignties represented, whereby it may be considered as partaking in some degree of the federative principle, yet this will not prove our Constitution to be a Confederation of States, in the extent contended for in their State capacities; but only shows that the framers of the Constitution intended, by thus regarding the State rights and sovereignties as such, to qualify and limit the operations of the General Government with regard to the several State Governments and their respective interests and rights. The laws that are made by the General Government are binding on the

people of the United States at large, and not on the State Governments; for though the State Governments are limited by, and bound not to violate the Constitution of the United States, yet they certainly cannot be controlled, or in any manner bound by the legislative acts of the General Government. This, I conceive, shows, in a very strong manner, that the Union is not a mere Confederation of States. And considering the subject in this view will not tend to produce a consolidation of the General Government so as to encroach upon the rights of the State sovereignties; for the operations of the General Government being felt by the people only in their individual capacities, the State Governments will not be affected thereby so as to infringe their powers or endanger their independence; provided the General Government, in exercising its legislative powers, keep within those bounds prescribed by the Constitution, and does not assume the right of legislating on subjects that properly belong to, and are cognizible by the respective State Governments. I will here observe, that the object of every free Government is to lay down a rule of conduct for the people who live under it, by the observance of which, their general welfare and happiness may be promoted. Whenever, therefore, the intentions of the people in framing their Government can be ascertained, I conceive it the duty of those who administer the Government to pursue those intentions as nearly as possible. I have always considered it to be the intention of the framers of the Constitution, and the true spirit of that instrument, that the Chief Magistrate shall be chosen by the people, through their Electors, and not by the States represented in this House; and that the provision for electing the President by the House of Representatives, in case no election should be made by the Electors, was intended to guard against an event that might happen, which, if unprovided for, would stop the operations of Government, and not as a mode of election that was desired by any portion of the Union, or contemplated to be introduced when it could be avoided. I conceive, therefore, such measures ought to be adopted as would prevent, as much as possible, the necessity of resorting to that mode of election. It is certainly of primary importance that the people should have that person to govern them that possesses their confidence in the highest degree. In him they will repose the protection of their rights and the security of their interests, and will acquiesce with the greatest readiness in the just measures he may pursue. It will, I presume, be admitted that in all free Governments the will of the majority must be considered for the purposes of Government as the will of the nation, and that it ought, therefore, to prevail, and control the will of the minority when opposed to it. This, I conceive, sir, is a fundamental principle in our Government. I am, therefore, of opinion that whatever part of our Constitution is found in its operations to contravene this principle, ought to be altered, and so modified that the will of the majority of the people should be pursued. This, I conceive, sir, is the case with that part of the Constitution prescribing the mode of electing the President and Vice President now proposed to be amended; it puts it in the power of the minority to control the will of the majority, and elevate a man to the Presidential chair who did not receive a vote from the majority for that office. According to the present provision of the Constitution, two persons are voted for by the Electors for President and Vice President, without designating which of them is voted for as President and which as Vice President. Suppose the majority nominate two candidates, the one intended for President and the other for Vice President, and vote for them accordingly. It is well known that the Electors, who are presumed to express the will of the people, have in view at the time they vote which of these persons they intend shall be President and which Vice President, though they are not permitted so to designate them in voting. In this case the minority, by voting for the person intended by the majority to be the Vice President, and not voting for the person by them intended to be President, will contravene the intentions of the majority, and place in the Presidential chair a person not designed by the majority, or by one of them, for that office, nor in most cases agreeably to the minority, but preferred by them in consequence of not possessing in so high a degree the confidence of the majority as the person by them intended for President, and therefore most likely to favor the measures of the minority. And the person thus elected would, in all probability, become suspected by both parties, and possess the confidence of neither. Hence a very serious inconvenience would arise; the majority, being disappointed, would become dissatisfied, and the minority would not have the man of their choice, but one from whom they expect some favor, in consequence of having contributed to his elevation; and it is confidently believed the peace of the nation would, in such a case, be more endangered than if a person decidedly the choice of the minority as President had been elected to that office. To avoid these and many other inconveniences likely to arise from the present mode of electing the Chief Magistrate of the nation, I am decidedly of opinion that the Electors ought to designate by name the person they vote for as President and the person they vote for as Vice President. By this mode, a fair and unequivocal expression of the public will may be obtained, and will have its due weight—the man declared best qualified by the general voice of the nation to direct the Government, will by that voice be placed in the Presidential chair; he will be more likely than any other to give general satfaction in conducting the affairs of State; and this will very much contribute to promote the general welfare and happiness of the people.

I will notice another reason here, which I have not heard mentioned, that in my view has considerable weight in proving the expediency of adopting the designating principle. I am of opinion the election of the Chief Magistrate of a nation ought not to be left in such uncertainty, that it would depend on a mere casualty or chance who

should be the person chosen to that office. This is the case according to the present Constitutional provision for electing the President. A difference of opinion among the majority, with regard to the person who shall be Vice President, or a greater unanimity in their choice of a person as Vice President, than in that of President, may, contrary to the design of the Electors, by giving the person designed as Vice President the greatest number of electoral votes, (though all were given with the view of making him Vice President only,) operate to the exclusion from the Chair of State of the person intended by the majority, and also of the person wished for by the minority, to fill that place, and elevate to the First Magistracy a man who did not receive one electoral vote from either party with the design of putting in his hands the reins of Government. This I conceive, sir, is contrary to the representative principle in Government, which I understand to be, that the sense of the nation should be made known, by a fair and unequivocal expression of the public will, and when thus made known should govern. But it has been said that the minority ought to have some share in the Government, and have a chance of obtaining the man of their choice to fill the second office in Government, if they should not expect to succeed in electing him to the first, or at least, that they should have an opportunity of voting for that person as Chief Magistrate that might be their choice, of the two persons nominated by the majority, to fill the office of President and Vice President; and it is stated that the present mode of voting for those officers, without designation, is calculated to answer these purposes. I am, sir, of opinion the voice of the minority should be expressed, and fairly heard in Government, and that it should have its due weight consistent with the principles on which that Government is founded; but I am not willing that the minority should rule the nation, or have it in their power to defeat the will of the majority, as I conceive this would sap the very foundation of our Government; and the present mode of electing the President and Vice President, without designation, cannot strengthen the minority, or give them a share of the Administration of Government, in any other way than by enabling them to contravene the will of the majority. They have not thereby a fairer prospect of obtaining the person of their choice to fill the second office in our Government, than they have to fill the first; to succeed in their choice as to either, they must probably vote for those nominated by the majority; and the ultimate consequence is, that if they succeed, the majority must yield to their wishes; therefore, according to the present mode of election, the major part of the society have only the power of nominating, and it will, in most cases, rest with the minor part to make the election from such nomination. This I conceive, sir, does not accord with the general sense of the American nation in theory, and will not operate more to the general satisfaction in practice. But it is insisted the proposed amendment is calculated to infringe the rights of the small States, that they have certain advantages secured to them by the present provision of the Constitution, directing the Electors of President and Vice President to vote for two persons without designation; and in requiring the votes in the House of Representatives, for President, to be given by States, in case the event should bring the election into that House, and also, in that the President is to be chosen in such event from the five highest on the list of those voted for. These provisions are said to constitute a part of the original compact between the States, and it is insisted, that although this amendment preserves the right of voting by States in this House, yet it diminishes the chances of the election coming into this House, and changes the number of persons from whom the President is to be chosen in such an event, from the five highest on the list, to the persons having the highest numbers not exceeding three, on the list of those voted for as President; and thereby, it is pretended, affects the interest of the small States, as they will not so frequently have the opportunity of exercising the power of voting for President by States, should this amendment be adopted, as they otherwise would have had; and also in that they will be more limited in the number from whom the choice is to be made. These are the only arguments I have heard advanced on this part of the subject by the opposite side of the House, that appear to me to possess sufficient plausibility to merit the examination, and these it is confidently believed, upon a fair investigation, will not support the objections made to this amendment, on the ground of its affecting the interests of small States.

It is certainly true that our Constitution, in some of its features, partakes of the nature of a compact, bottomed on a compromise of powers and rights between the small and large States; and this compromise will be found to be confined chiefly to the share which the several States have in the National Legislature, and the consequent effect which that modification produces with regard to the number of Electors of President and Vice President to which each State is entitled, according to the provisions of the Constitution; but it will not follow, as a necessary consequence, that the right of voting by States in this House for President, (in the event of the choice being left to the House,) was considered as an advantage granted to the small States in order to induce them to come into the Union. I cannot be of opinion that this was considered, by the Convention who formed the Constitution, as an equivalent given to the small States for any rights or powers by them surrendered to the General Government. If the small States considered it so, they must have esteemed those rights and powers thus surrendered of very small importance indeed. For the event in which they could have the opportunity of exercising the right this mode of election secures to them (of voting by States,) is extremely uncertain, and might not occur once in a century. And though it has once happened, it is evident the small States did not in that case unite, nor did the interests of the large and small

States seem to be taken into view as opposed to each other. But, sir, let me ask what real benefit can the small States expect to derive from this mode of election, more than the large States? Have they the power to bring the election into the House of Representatives at their pleasure? They have not. It is a mere casualty, in which the small States can have no more agency than the large States. But what interest have the small States in bringing the election into the House of Representatives if it were in their power? Is it very probable that in such an event, there would be a candidate from either of the small States on the list of those from whom this House would be authorized to choose the President? I presume it is not. But is it to be expected that the small States would in such an event combine, so as to succeed in electing a President in opposition to the large States? Would the small States to the east and northeast, unite with those to the south and west? This may be possible, but certainly it is not very probable. Their positions are remote from each other, and each neighboring on large States; their local interests are different, and they differ in politics as much from each other, at least, as they do from the large States. I am then, sir, inclined to conclude, that all the benefit the small States could expect to derive from the election of President coming into this House, would be only the opportunity of throwing their weight and influence, as each of them might feel disposed, into the electoral scales, in favor of such of the candidates from the large States as might be most agreeable to them. And this cannot be deemed such an interest as would induce the small States, at the least possible hazard of the national tranquillity, even to desire such an event. But, I am decidedly of opinion, it is the substantial interest of the small States that the election should be decided by the Electors, and not come into this House. It is their interest that the Government should be administered according to its genuine principles, that no jarring interests should so come into collision with each other, as to produce a convulsion in the nation or endanger the fate of the Union. So long as this is the case, so long will the small States and their respective rights be in perfect security; and if they ever should be in danger, it will be when the bonds of union between the States are broken asunder, and each left to protect its own interests. But I am of opinion the mode of voting by States is productive of advantages of a different kind from those contended for by the opponents to this amendment. It was probably intended to guard the interests of the small States in some degree, in case the event should happen of the election coming into this House, and not as an advantage to the small States, that would induce them to endeavor to bring about that event; it was intended as a wholesome rule in applying a remedy in the case of a possible evil, and not as a measure to invite that very evil that seems to have been dreaded. It was probably considered by the framers of the Constitution, that, in case the election came into the House of Representatives, unless the votes were taken by States, the weight and influence of the large States would render them too powerful for the small, because the large States could, if disposed, more easily act in concert, and unite their powers and influence in order to effect their purpose, as there would be but few of them necessary to constitute a majority of votes in this House, and it would be more difficult for the small States, being more numerous, and of course their interests more variant, to combine so as to act in concert. To this may be added that the mode of voting by States is less liable to the inconveniences that might arise from voting *per capita* in so large a body as this is, on such an occasion, which would in some degree partake of the nature of a popular election. From this view of the subject, I conceive it will also result, that the framers of the Constitution in fixing on the five highest on the list of those voted for as President and Vice President, as the number of candidates from whom this House should choose the President, in case the event should render such a choice necessary, could not have intended thereby to confer any favor on the small States, more than they would have done by fixing on the two, three, or four highest on the list; as it has been shown that the small States could not be benefitted by the election being decided in this House. I am therefore decidedly of opinion, that the relative interests of the large and small States had no influence whatever in fixing the number five in the Constitution. But I conceive the number was adopted by the framers of the Constitution as the least exceptionable to the States in general, when connected with the present mode of voting for President and Vice President without designation. According to that mode of election, three persons might have each a majority of the votes of all the Electors, and if the whole number of votes be an equal number, (which will be the case at the next election,) four persons might divide the votes equally, each having within one of a majority of the whole number of Electors appointed; and this is a case that might have been considered as likely to take place, upon the supposition that two persons would be nominated and voted for by one political party, and two other persons by the opposite party; therefore, less than the four highest on the list could not with any reason have been adopted, from whom this House should choose the President in case no election was made by the Electors; and the framers of the Constitution thought it advisable to add one to this number, making it the five highest on the list, conceiving, in all probability, that this would have an effect to prevent an equality of electoral votes being given for different persons, and thereby be more likely to produce an election by the Electors. It must also be taken into view that from this number of candidates (five) both the President and Vice President are to be chosen, and on that ground might be considered as small a number as could reasonably have been fixed upon. Here, sir, I cannot help noticing a circumstance in this debate which presents to me a very singular aspect, and that is, that most of those who have opposed this amend-

ment on the ground of its affecting the interests of the small States, are Representatives from large States. These would seem to become the protectors of the rights of the small States, as if they were not sufficiently tenacious of their own interests. Is this anxiety in those gentlemen, for the security of the small States and their rights, really serious, or is it intended to awaken the fears of the small States and alarm them, in order to defeat the proposed amendment? I trust the Representatives of small States will see their true interests, and will not be influenced by such measures. With regard to the verbal criticisms made on the manner in which this resolution is expressed, I deem it unnecessary to enter into any examination of them, except so far as they relate to the number of candidates from whom the President is to be chosen by this House, in case the event should render such a choice necessary. As the resolution was printed and laid on our tables, the words alluded to are, "from the persons having the highest number, not exceeding three, on the list," &c. In this, the word number, being singular, might occasion some doubt in the construction of this clause, whether the word three related to person as its antecedent, or was intended to relate to number; but as the words in this resolution as it came from the Senate, and as it is now considered under discussion, are, "from the persons having the highest numbers not exceeding three on the list," &c., the word numbers being plural, the word three must relate to numbers as its antecedent, (with which it agrees,) not to persons; and the word numbers evidently means aggregate numbers, each number including all the votes given for one candidate, or for all the candidates that shall have an equal number of votes. Therefore, the "persons having the highest numbers not exceeding three on the list," &c., will include all those persons whose names shall be on the three highest numbers on the list of those voted for as President, and may not exceed three persons; but in case of different candidates having an equality of votes, may be more than three, four, or five. Hence I conceive the difference between the three highest numbers, and the five highest persons on the list will not be very material, as there will seldom be more than five persons on the three highest numbers, and there may frequently be more than three persons; and as there are some members in this House who would prefer the five persons highest on the list, and others would prefer the three highest numbers, while some would prefer the two or three persons highest on the list, &c. I trust this will not be considered as a material objection, as it seems to come as nigh the wish of a majority of this House as any number that could be adopted. I should myself, sir, (as I had the honor of stating in this House on a former occasion,) prefer the two highest persons on the list of those voted for, &c., under certain modifications, in case of an equality of votes, to any other number, because it would confine the choice of President to such persons as should appear to have the strongest evidence of possessing the confidence of the people. But I do not consider the difference between two and three persons, or between three persons and three numbers, or between three numbers and five persons, of sufficient importance to induce me not to vote for either, in order to obtain the principal object of this amendment, that of designating the persons voted for as President and Vice President. I will only claim the further indulgence of the House while I make a very few remarks on the provisions in this resolution, by which the Vice President is to act as President, in case the House of Representatives shall not make a choice of President. I am free to declare that I would have been as well satisfied with the resolution had this provision not been annexed to it. But I cannot consider this as introducing a dangerous principle, or likely to produce any real inconvenience. It only provides who shall administer the Government in the event of the House of Representatives failing to elect a President, by which the election is brought into this House. The House must next fail to make a choice, before the fourth of March next following, and a Vice President must also have been elected before this provision can operate, so as to vest the Vice President with the reins of Government, which seems to be the event so much dreaded—but one which may not happen for ages. But it is said that this provision will have a tendency to introduce a scene of corruption into the House; that the friends of the Vice President will endeavor to prevent the election of the President in order that the Vice President may succeed to that office; that this will be effected by the promises of lucrative offices, of favors, &c., or in fact by bare corruption. This is indeed supposing the members of this House will become more degenerate than the mass of mankind. I should presume we might rely on their continuing to possess as much public virtue as is usual in public bodies, and if this be admitted, I conceive there can be no serious cause of apprehension from this provision. But the arguments advanced, if they prove anything, would prove too much; they would prove, with almost equal force, that you must not provide for a successor to the President in the cases of his death, resignation, or inability, lest the person appointed to succeed him should be induced to cause his assassination, or use other corrupt means to produce his removal from office, in order to open the way for himself to ascend the Presidential chair. But this would certainly be destroying the necessary and useful provisions of Government on a mere possibility, and it is trusted groundless fears, of their being abused.

The gentleman last up, (Mr. Goddard,) has asked if any inconveniences had been experienced from the present provision in the Constitution for electing President and Vice President? To this inquiry I might answer, that if this part of the Constitution be evidently defective, and calculated to produce inconveniences in practice, and such as are of a very serious nature to society, it would be extremely impolitic to wait until we had experienced all the evil consequences that would arise from it before we attempted to make

the necessary amendment. I should suppose we ought to apply the remedy as soon as we discovered the defect, and thereby prevent those evils that it might otherwise bring on society. But I may further answer that gentleman that, on a late occasion, well remembered by every gentleman in this House, a very serious inconvenience was experienced by the Union in consequence of the operations of that part of the Constitution now proposed to be amended. On this occasion the Legislative functions of the Government were suspended, and the aspect of affairs seemed to excite very serious apprehensions in the most deliberate minds, with regard to the external peace of the nation; the feelings of the American people were wound up to the highest degree of sensibility; they felt indignant at the attempt so obstinately made to contravene their wishes, and deprive them of the person of their choice to direct the affairs of the nation; and the agitation of the public mind rose to such a height as seemed to threaten a general convulsion. In consequence of this event, the voice of the American people, from almost every quarter of the Union, has called for the amendment; the same sentiment has been expressed by the Legislatures of most of the States; and are not these the strongest evidence of the general wish of the nation? Will you then, sir, when the voice of united America seems to demand this amendment, refuse to comply with that demand? Will members of this House, on account of a mere verbal difference of phraseology, or an unimportant provision for a case not likely to occur in an age, refuse their assent to a measure embracing a principle necessary to secure the tranquillity of the Union? I trust they will not. I hope we shall in some degree yield up our preference for particular modes of expression, and our opposition to a provision of minor consideration, in order to unite in adopting, so far as respects us, this amendment, and in so doing, perform an act that will be agreeable to, and joyfully hailed by nine-tenths of the American people.

Mr. Hoge having declared himself in favor of the principle of designation, but adverse to the other provision of the resolution, moved to recommit it, for the purpose of obtaining the following amendment:

"For the term of one year; an extraordinary election of President and Vice President, shall be made by Electors, who shall be chosen in the same manner, and shall give their votes on the same day, as is directed by the Constitution in the case of a regular election of a President and Vice President; and in case of such extraordinary election, the votes shall be transmitted to the seat of Government, and the election ascertained and concluded in the same manner; and if no election shall be made by the House of Representatives, in the same manner as is provided by the Constitution in relation to the regular election of President and Vice President; and the person who shall be elected at such extraordinary election, shall be the President until the next Constitutional period of election."

The motion to recommit was lost—yeas 40, nays 63.

Mr. Taggart.—Mr. Speaker, unaccustomed as I am to parliamentary discussions, I feel a degree of diffidence and embarrassment to which many others are probably in a great measure strangers. I have no intention to enter into a lengthy discussion, or investigation of the resolution now before the House. But as I stand here in my place the Constitutional Representative of a section of the American people, perhaps equal in point of respectability to other sections represented on this floor, and as I suppose some of my constituents expect that I will, upon certain occasions, do something more than give a silent vote upon such questions as may from time to time come before the House, I request the indulgence of a patient hearing, whilst I offer two or three reasons for the vote I shall give upon the resolution under consideration. I have not the vanity to suppose that I shall be able, by anything I shall offer, to influence the members of this House to vote in a different manner from that in which they have already made up their minds. Probably no discussion which can now take place will alter so much as one single vote. I think it likely that the proposed alteration in the Constitution, comprised in the resolution now before us, will pass this House by the Constitutional majority, and I know not but it may be finally ratified by a sufficient number of State Legislatures to make a part of the Constitution of the United States. If this event should take place, I shall, nevertheless, feel a satisfaction in having done my duty, in endeavoring, though feebly and unsuccessfully, to arrest the progress of a spirit of innovation, which I fear (God grant that my fears may prove groundless!) will undermine, and finally destroy our national compact.

I have not heretofore been particularly hostile to what is called the mere designating principle. I have sometimes inquired within myself, what good reasons could be assigned why the Convention which framed the Constitution left that article in its present form? It never having been a subject of investigation in the small circle of my acquaintance, I viewed it as a matter of but little consequence either one way or the other; and I am persuaded that, heretofore, this inattention to the merits of the question has been general in the part of the country to which I belong. But after seriously reflecting upon the subject, and attending to the discussions which have taken place in this House, both upon a former occasion and since the resolution was transmitted from the Senate, as well as listening occasionally to the debates in that body, I have received that evidence which, in the view of my mind, has more weight than a thousand metaphysical arguments, that the Constitution ought not to be meddled with. When I have beheld the many difficulties and perplexities attending every attempt to adjust the proposed alterations to the various bearings of the other parts of that instrument, I have been led to admire the wisdom and discernment of the framers, as well as to have a more realizing sense both of the difficulty and danger of innovating. Innovations in a national system, I humbly conceive, ought never to be admitted without the most imperious necessity. They are, at all times, a matter of hazardous experiment. But where is the imperious necessity in the present case? I trust it does not exist. If our national system is, in the main, a good one, though it may not in every particular completely meet the wishes of every individual, or even of every State in the Union, which, considering that it was formed upon a compromise, uniting a variety of different, and, some of them, clashing interests, was an event rather to be desired than expected, it ought to be like the law of the Medes and Persians, which altered not. But that it is, in general, a good one, we have had the most striking practical demonstration in its beneficial effects; in the almost unexampled national prosperity and advancement enjoyed under that system. In one respect I must be permitted to differ widely from an opinion advanced during the discussion of this question, by a gentleman from Virginia. I don't know that I should be correct in saying that he advanced it as his own opinion; I believe he rather spoke of it as the prevailing sentiment of particular sections of the Union, at the period in which the Constitution was adopted. The sentiment alluded to was, that the Constitution was objectionable on account of the difficulty of obtaining amendments. I believe, on the other hand, that the facility wherewith alterations may be proposed and obtained, is not one of the least of its imperfections. That provision of the State Constitution of Massachusetts, which, agreeably to the general sentiment and impression of the people, was at the time of its establishment, considered as an obstacle not easily surmounted in the way of its revisal, until after the term of fifteen years had elapsed, was, in my opinion, a wise one; though objected against by many at the time of its adoption, about six or seven years afterwards there was a peculiar season of ferment and irritation throughout a large portion of the Commonwealth. Had it not been for that provision in the Constitution, which threw an obstacle in the way of its revisal for a limited time, it is probable it would then have underwent some important alterations. This public sentiment happily subsided, and when the fifteen years elapsed, the period when the voice of the people was called for, to see whether they wished for a revisal, I do not recollect that there was found one town or corporation in the Commonwealth which manifested the desire of an alteration, in so much as a single article. At the end of another fifteen years, it is probable the public sentiment may be found still the same. Had as great, or even greater obstacles been thrown in the way of alterations in the Constitution of the United States, for the term of twenty years, instead of its being exposed to frequent alterations under the name of amendments, so much am I opposed to innovations in a national system, I could not have viewed it as less perfect. Upon this general principle I am at present opposed to any alteration whatsoever in the Constitution of the United States.

But further, Mr. Speaker, another reason which, as it is a point of delicacy to mention, I previously declare that I consider it as having reference to no individual but myself. I make no doubt but every gentleman on this floor can reconcile the part he takes in this business, with the utmost purity of intention. But so far as it respects myself the consideration of taking a solemn oath to support the Constitution of the United States is of considerable weight. I cannot see how I could act consistently in taking such an oath to day, and endeavoring to introduce an alteration in one of its important principles and provisions to-morrow.

It further appears to me, that should alterations in our national compact become really necessary, this House, or even both Houses of Congress, are the most improper of all places to originate them. That the Senate and House of Representatives have a jointly Constitutional right to originate amendments, is a point not to be contested. But in allusion to a remark which, upon another occasion, fell from a gentleman, who occupies a conspicuous station upon the floor of this House, that there were certain provisions or powers in the Constitution, which Congress never had exercised, and which probably there would be no occasion to exercise, and which he hoped never would be exercised; I am free to declare it as my opinion the power of originating amendments to the Constitution ought to be the last of all constitutional powers to put in practice. If any thing in the world approaches to a solecism in practice, it is a legislative body engaged in enlarging, altering, varying, or narrowing the sphere of their own powers.

I further observed, that, after hearing the subject discussed largely in this House, when it was first under consideration, and occasionally attending debates in the Senate, after patiently attending to the discussions on the different arrangements, adjustments, and modifications of the proposed amendment, which, as all are sensible, has proved a subject of no small difficulty; I could not but feel a degree of surprise to find that, in the course of such a lengthy discussion, not so much as one solitary argument should be advanced in support of the general principle of the resolution. It seemed to me as if the importance of the designating principle was, in the view of its advocates, one of those self-evident propositions which were in themselves so plain as to be incapable of any illustration by proofs. I am free to confess that I am not possessed of that intuitive knowledge which enables me to discover either the importance or correctness of the principle. Before I can vote for it I must have some sound, convincing argument in its favor.

It is true, some attempts of this kind have been made in an advanced stage of the discussion, first by a gentleman from Virginia, afterwards by a gentleman from Pennsylvania, and lastly by another gentleman from Tennessee. But, when I reflect upon the acknowledged talents of these gentlemen, I cannot but be affected with some degree of surprise that a measure of so much importance should be prosecuted with such a degree of zeal, while supported with such superficial ar-

guments. My design is merely to state my own reasons for voting against the resolution, and not to answer arguments in favor of it. I shall only briefly mention one, which appears to be principally relied on, viz: that it is the voice or will of the people. I know not of a more equivocal phrase in the English language than this—"the voice or will of the people." Gentlemen, I presume, will not assert that the voice of the multitude, but too frequently formed upon a sudden impulse, and ever fluctuating, which is one thing to-day and another to-morrow; changing many times by the breath of some popular demagogue who is disposed to make this voice a hobby-horse to serve a turn, can furnish any solid basis, either for legislation or the formation of a national compact. But it is said that this voice has been expressed by the Constitutional organ, by the Legislatures of the several States, from time to time. We are referred back to New Hampshire and South Carolina, to New York and Vermont, to federal and republican States, and to the same State when federal and when republican. If the distinction between federal and republican is meant merely to discriminate the two great political parties into which the United States have been principally divided, it is acknowledged some terms must be used for that purpose. Whether this is the most proper I pretend not to say. I presume the term is not meant to convey an idea that those who choose to call themselves republicans are so exclusively, and that all others are opposed to a republican government. Such a distinction is better adapted to a discussion in a party newspaper than to the floor of this House. I give full faith and credit to that gentleman when he says he is a republican, and that the State of Pennsylvania which he represents is a republican State. But will the gentleman assert that the State of Massachusetts is not equally republican, and that the representatives of that State upon this floor are not republicans as well as those from Pennsylvania? No, I trust he will not. I am willing to go hand in hand with that gentleman in favor of real practical republicanism. I hope to live and to die under a republican Government. I know of no State in this Union which is not a republican State, nor any period of the Union in which they were otherwise; and I know of no member upon this floor who is any other than a republican, nor of any prevailing party in the United States opposed to a republican Government. But to return from this digression to the subject of public opinion. This, as expressed by Legislative acts, has been various. What it is at the present moment I pretend not to say. In some States I believe important changes have taken, and are gradually taking place. To say positively what it is in Massachusetts, I perhaps am incompetent. Many probably have never viewed the question in a serious point of light. I am far from supposing a majority in the State to be decidedly in favor of the designating principle. But, sir, the public opinion, when constantly and uniformly expressed, ought to have its due weight. There are other reasons which ought more especially to govern the decisions of public bodies. The question ought to be, rather, what will operate for the best good of the people, than what will strike the present full tide of public opinion, which perhaps before another year may be greatly, if not almost totally changed. I can therefore see no reason arising from this why I should vote in favor of the resolution.

But as I have as yet heard no arguments sufficiently forcible to evince the propriety of adopting the resolution, so there are still many good reasons for its rejection, at least they appear so to me. Here I shall not again travel over the ground of the clashing interests of great and small States when elections shall happen to be finally determined in the House of Representatives. Nor shall I inquire whether three, five, or twenty, are the most proper numbers of candidates from which to select the President. I believe that an election in any form by the House of Representatives is an event which will happen but very seldom. The larger States, by acting in concert, can always carry an election by the Electors. It will be for their interest to do it, and we are not to suppose that it is an interest which will be often overlooked. Whatever objections may be against the designating principle on account of its militating against small States when the election happens to be determined in the House of Representatives, I have a still stronger one admitting the determination to be made by the Electors, which will be an event more common, and that is, that whenever we adopt the discriminating principle, we will throw an influence almost unbounded into the hands of the President of the United States, which will in the end make him President for life. That extensive patronage which is necessarily attached to the Presidency of the United States, aided by twenty-five thousand dollars per annum—a sum which, with our growing wealth and population, will probably increase—joined to his influence in the army, navy, and militia, can scarcely fail to render his re-election at all times so certain as to be nothing more than form. I have not the most distant apprehensions that these consequences would be immediate. Probably this generation may not realize them in their fullest extent. But if the progress is slow, I apprehend it will be sure, and that we will hereby forge Presidential chains for posterity, it may be to the latest generation. I see no security that we have that a President of the United States may not, at one time or another, be ambitious, artful, and intriguing. The love of power is congenial to mankind; this desire seems to be interwoven with human nature. It grows with our growth, and strengthens with our strength. Is it not natural to expect that a President of the United States, unless he is such a prodigy of virtue and disinterestedness as is not at all times to be expected to fill that important office, having once tasted the sweets of power as well as the emoluments of office, would wish to perpetuate it? We cannot but suppose that a judicious distribution of the places of honor and profit which he has in his gift will have a great tendency to secure his re-election, and if a little extra expense should be sometimes necessary in the view of an ambitious and unprincipled man, the importance of the object to be obtained will be sufficient to justify the means. I wish to entertain as high an opinion of the integrity and incorruptibility of every member of the Government as any gentleman on this floor. I wish not only that all the individuals attached to any branch of our Government, but that all our citizens were forever to remain so entirely incorruptible as to be totally uninfluenced by indirect means and motives. But is such a degree of public and private virtue to be expected in the existing state of things? It was a maxim of a wise statesman, one who had a very extensive knowledge of human nature, especially on the dark side, I mean the noted Sir Robert Walpole, Prime Minister of Great Britain during the first part of the reign of George the Second—"that every man had his price." Though I cannot suppose this observation true in its fullest extent, yet I believe its opposite is equally untrue, that is, that no man has his price. Truth, I believe, lies between the extremes. The same statesman further observed, "that patriots were like mushrooms. He could cause fifty of them to spring up in a night, and leave the world to judge by what means." Such patriots or friends to prerogative may spring up in our country. They may, at some future time, spring up on the floor of this House. Why then will we, by the adoption of the discriminating principle, lay such a temptation before a President by putting it into his power, with so much greater facility, to prolong and perpetuate his authority. It appears to me that the wisdom of man could scarcely adopt a more effectual check to ambitious views of that kind than the present mode of election, by a double ballot for two persons without discrimination. So long as elections are managed in this way, an ambitious man, as he must forever remain uncertain of carrying an election, even by securing all the Electors, unless he can secure the House of Representatives too, will be under comparatively small temptations to use any unfair means to accomplish that end. But adopt the designating principle, and according to the present ratio of population, his election is secured by eighty-nine votes.

Besides, as the Vice President will not stand on such high ground in the method proposed, as he does in the present mode of a double ballot, so it is probable so great care will not be taken in the selection of a character to fill that office. Not standing on such high ground, the probability is that he will take the more humble station of the mere tool of the President; and truly, if the designating principle be once introduced into the Constitution, I see not what end a Vice President can answer, unless it be to take a pleasant journey to the seat of Government once a year, meet with and preside in the Senate for a few weeks, possibly not more than three or four in a session, receive five thousand dollars, and go home again. This to be sure is a very pretty douceur, and if he can, by the by, lend a hand to bring forward the President's re-election, he may expect to be assisted in securing his own in return. Upon the whole, can it be thought necessary, in order to avoid a momentary inconvenience, such as was supposed to be experienced at the last Presidential election, and such as will rarely happen more than once in an age, if so often, to set aside an important principle in the Constitution, and thereby subject our country to inconveniences of a more serious nature?

If it be said that should these or any other serious inconveniences be experienced, the amendment may be dropped, or a new one introduced to guard against them. I reply in the words of the poet:

"Facilis descensus Averni sed revocare gradum,
"Hic labor, hoc opus."

The descent is easy, but to retrace the step on an up-hill road, this is the arduous task, this the painful labor. But as I view the proposed alteration as needless in every respect, and as injuring instead of amending the Constitution of the United States, so I view the resolution which has come from the Senate as still much more exceptionable than the one which originated in this House. I agree with gentlemen who urge the propriety of paying a suitable deference to the opinions of the Senate, but as no member of this House is obliged to give the sanction of his vote to a measure merely because it is agreeable to the Senate, I think this House ought to pay some respect to their own opinions. To pay an implicit deference to a resolution of the Senate, which I have reason to suppose the majority of this House, so far from considering as superior, view as much more objectionable than their own, merely from its being a supposed expression of the opinion of the Senate, is a degree of deference which I can hardly suppose due from one Legislative body to another.

The resolution in its present form tends to plunge us completely back into all the difficulties apprehended from the Constitution as it now stands, which its advocates proposed to avoid by the adoption of the discriminating principle, by rendering it possible that we may have an acting President of the United States, who never was contemplated; and never had so much as one vote for the office; a man who in all probability will not have that dignity, independence, and respectability of character, which we would naturally expect would be found in one chosen by a joint ballot, with some probability of his becoming the President; and indeed, whenever an election of President shall come into the House of Representatives, there is the greatest probability of the Vice President's succeeding to that office. Supposing that officer to be previously elected, either by the Electors or by the Senate, and must succeed of course to the Presidency in case of the non-election of a President, as he would have strong temptations; so the nature of the resolution is calculated to invite intrigue, in order to defeat the election of a President; and although I have purposely guarded against running a com-

parison between large and small States, yet permit me to remark, that seven Representatives will be more likely to be tampered with than seventy-four, and as according to the present apportionment they would represent an equal number of States, they, when voting by States, would have an equal weight in either effecting or defeating a Presidential election. Upon the whole, as the amendment now proposed shields us from no difficulty, and may, and probably will, expose us to evils innumerable, whatever may be its fate, I feel an entire satisfaction that I shall do my duty in voting against it.

Mr. Holland.—I am not surprised, after hearing the declarations of the honorable, I might add the venerable, member from Massachusetts, (Mr. Taggart,) that the resolution on your table proposing an amendment to the Constitution as it respects the election of President and Vice President, will not obtain his support. The venerable gentleman states that he has taken an oath to support the Constitution, and therefore infers that he is under sacred obligations not to admit the alteration or amendment, as it would violate his oath. If the venerable member had read a certain provision in the Constitution, he would have there found, that in cases of amendment, he would be completely absolved from the obligations of his oath.

The venerable member has also said that the reasons offered so far as respects the will of the people in favor of this amendment is entitled to little weight. That the will of the people is unstable, versatile, fluctuating, and not to be relied on. Sir, I am one of those who have been early taught to respect the will of the people, and notwithstanding what has been said, I still retain an opinion that the public will is of binding obligation, and I hope I shall continue to regard it. The Constitution itself is predicated upon the will of the people, and in order to ascertain this will at all times, the framers were obliged to resort to elections and delegations of power by which agents were to be appointed to express and execute their will, whether acting in a Legislative or Executive capacity. But the delegation of power ought to be imposed only in cases where the will of the people cannot be otherwise known. Under these impressions I have not admired the plan adopted in the Constitution of electing those high officers by Electors. I should have preferred an immediate suffrage to this indirect mode of electing by Electors; but as the framers of the Constitution have thought proper to ascertain the public will through the medium of Electors, I am unwilling that they also should be under any unnecessary trammels whereby the will of their constituents should be impeded.

The gentleman that I have alluded to has acknowledged that on his first reading the Constitution he did not discover the policy of confining the Electors to what he calls a double vote, but is now willing to suppose that it was intended for wise and good purposes. I must confess, sir, that I, who have labored under the same difficulty, have never understood the policy that dictated this provision. It was doubtless intended for the best of purposes. I am far from implicating the motives, but it appears to be an effort to conceal in midnight silence and secrecy the intent of the Electors as to the person intended to be President, and the person intended to be Vice President. If this was the intention of this provision, let me ask gentlemen if it has been effected? A recurrence to all the elections for President and Vice President since the commencement of the Government will solve this question, and fully demonstrate that the person intended by the Electors to fill each office was well understood and known to all the Electors, and to all other persons that wished to know the secret has not been kept; from which it follows that the end has not nor never will answer the original design? And for what purpose shall we continue it any longer?

This mode takes more of the nature of a lottery than an election; the Electors are compelled to put two persons' names in a box, deprived of the liberty of exercising their rationality as to the application of either person to any specific office, and must leave the event to blind fate, chance, or what is worse, to intrigue to give him a President. Experience has shown that difficulties have attended this mode, and that it has not answered the original intention, and it is easy to foresee that it may be so practised upon as to destroy the first principle of our Government, that of the will of the majority in their election of the Chief Magistrate. I will not say that there is a faction now existing that would wish to defeat the will of the majority. But I may be permitted to say that it is a possible and a probable case that such a faction may exist, and on the existence of such faction, how easy would it be for them, under the existing provisions of the Constitution, to defeat the public will. I have before said that the intention of the majority is known to all; the Electors compose a part of this faction, and knowing that the majority to fulfil their object will decline to give all their votes to the person intended by them for the second office, this minor faction will accomplish their design by giving all their suffrages to the person intended to fill the second office, and by this means contravene and totally defeat the will of the majority; and all this may be right and proper in the view of many gentlemen, but to me who regard the public will, it is exceedingly improper—to prevent which, I am in favor of the amendment. Nor do I conceive the force of the objection of my worthy friend from Massachusetts, (Mr. Eustis,) for whose opinions I entertain a high respect, to the amendment to our original resolution as made by the Senate, in reducing the number from which the President is to be chosen by the House of Representatives, when the choice devolves upon them, from five to three; and I hope, when he comes to reconsider his objections, that they will be found not to be solid, and that the amendment of the Senate is not an innovation of the principles of the Constitution, but more in unison with it than our original resolution. In the Constitution, when the election devolves upon the House of

Representatives, the President and Vice President are to be taken from the five highest numbers on the list. In our original resolution the President alone was to be elected from the five highest numbers of those voted for as President, and the Vice President was to be elected from the two highest of those voted for as Vice President, augmenting the numbers from which those officers were to be chosen from five to seven. In the reduction of the Senate from five to three, from which the President is to be chosen, and the Vice President to be chosen from two other distinct numbers, makes precisely the same number out of which those officers are to be chosen as in the existing provisions of the Constitution.

In regard to the additional amendment providing in cases where the House of Representatives fails to elect a President, the whole objections are predicated upon a presumption that the House of Representatives and Senate have or will become so corrupt, that they will not regard the high duties attached to their stations.

Mr. Speaker, when the American Congress are thus contaminated, it will be an extreme case; against the evils of such a situation no remedy would avail you—all is gone. But this is only a possible case, and such a one that I will not suffer myself for a moment to apprehend, and therefore shall not attempt to guard against. And as I think that the resolution is calculated to avoid evils heretofore experienced in the election of our Chief Magistrate, and is consistent with the wish of the people, and will contribute to their happiness, it shall have my most cordial support.

Mr. Thatcher.—Mr. Speaker: My principal object in rising upon this occasion is, to examine some of those ideas which were suggested by gentlemen of the majority in the course of yesterday's debate. But, before I attempt that examination, I beg leave to call the attention of the House for a moment to a view of the subject, which has convinced my mind that the proposed amendment cannot be adopted without materially impairing the rights of individual States—without, in fact, destroying the very basis of the Confederacy.

Under the first confederation the States composing the Union were equal and independent. They voted by States. This Constitution was adopted by States, acting in their corporate capacity. They relinquished certain important rights, and the United States, by the Constitution, guarantied to each State the enjoyment of other rights as an equivalent. The one was a consideration for the other. The States, for example, which held few or no slaves, consented to relinquish their right of equal representation in the House of Representatives; and that those States which possessed a vast number of slaves should be represented in Congress "according to their respective numbers, 'which shall be determined by adding to the whole 'number of free persons including those bound to 'service for a term of years, and excluding Indians 'not taxed, three-fifths of all other persons." The number of Electors of President and Vice President is increased in the same proportion. Among other things, in return, the Constitution establishes a mode of electing the President and Vice President which gives to each State a share in the election, and in determining the number of Electors it has express reference to States in their corporate capacity. By the article which it is proposed to alter, each State is entitled to "a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress." It provides that two persons shall be voted for, without designating which is intended for President. It further provides that "if there shall be more than one" (person) 'who have a majority, and have an equal number 'of votes, then the House of Representatives shall 'immediately choose, by ballot, one of them for 'President; and if no person have a majority, 'then from the five highest on the list, the said 'House shall in like manner choose the President. 'But in choosing the President the votes shall be 'taken by States, the representation from each State 'having one vote,"&c. By this important article of the Constitution a degree of influence in the choice of President and Vice President is in fact guarantied to each State, and the large States consented that the small States should have a greater share of votes in the choice than they would have been entitled to by their population. It has been so clearly shown, indeed it is so evident, that the Constitutional mode of election is calculated to guard the rights and interests of each State, but most of all the small States, that I forbear to enlarge upon this point. It is certain that the larger States would not have guarantied to the small, rights so important, rights which abridged their own power materially, unless they had received an equivalent. We cannot determine, with certainty, that one of these rights was solely a consideration for another, but it is sufficient for this argument to know that the rights guarantied were a consideration for those relinquished. It follows, that although we may modify the forms of the Constitution, in such a manner as will operate equally upon all the States, we cannot, under the article providing for amendments, ingraft new principles into the Constitution which will destroy the rights of individual States, without the consent of those States. There are certain rights inherent in States, as well as in individuals, of which they can never be divested without an express consent. Suppose two-thirds of Congress and the Legislatures of three-fourths of the several States should adopt a resolution which in direct terms should declare that in future other States should give no votes, or should have no share in the election of President and Vice President, would any one pretend that they were authorized to do this under the article providing for amendments of the Constitution? I consider it impossible to adopt a resolution which will impair the rights of sovereign States, which in fact will secure to the few States the power of choosing the President and Vice President at pleasure, to the total exclusion of all the other States, (and it has been clearly shown that with the present population five States may choose the President and Vice President, to the exclusion

of the other twelve,) without making the Constitution a *mudum pactum;* without destroying the very basis of the Confederacy. I look forward, sir, with fearful apprehension to the consequences, should this resolution be adopted. It will create the greatest dissatisfaction in the States injured by the alteration. It will furnish arguments to the enemies of this Union, which may effect its destruction.

An honorable gentleman from Tennessee (Mr. Campbell) has founded his argument principally upon the position that the proposed amendment will carry into effect the public will; that it will prevent a contingency, which, under the present mode of election may occur, viz: the person intended by a majority of the Electors for President may be supplanted by the person intended by them for Vice President, and will fill the second office in the Government. This argument has also been urged by other gentlemen.

It is scarcely within the compass of possibility that, with the experience already had, an equal number of votes, and a majority should be given to two candidates for the Presidency. But it is demonstrable that whenever the right of choosing a President shall, under this amendment, devolve upon the House of Representatives, the danger that the person intended by the Electors for President will be excluded, not only from the Presidency, but also from the Vice Presidency, will be increased in a tenfold ratio. For, under this amendment, as adopted by the Senate, the House of Representatives may choose the President not only from five candidates, as under the present mode, but from among the candidates who may have either of the three highest numbers. The number of candidates, therefore, is almost unlimited. Every State candidate, every ambitious man who can secure a few votes, will offer himself for the office, and knowing that his only chance of success will be in the House of Representatives, it will be the object of all his supporters to prevent a choice by the Electors. The Vice President will be impelled by the most powerful inducements to prevent a choice, because by this amendment, "if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March then next following, then the Vice President shall act as President, as in the case of the death or other Constitutional disability of the President." If the Vice President shall be elected by the Senate, the influence of the Senators may be added, to prevent a choice by the House, for they will naturally prefer that the man of their own choice should act as President. Thus, to the clashing interests of States, and of numerous candidates, may be added the influence of the Vice President and of the Senate, all tending to prevent a majority of States from uniting in one candidate. Under the present mode, if, by possibility, the choice should devolve upon the House of Representatives, the responsibility for all the evils of an interregnum must operate as the most powerful inducement to make an election; but, under this amendment, the horrors of anarchy will not be dreaded, because in case of no choice the Government will be administered by the Vice President. It is fairly to be calculated that no election will be made by the House of Representatives. What is the consequence? A man who, from the nature of the choice, will probably be unqualified for the office, (as has been very clearly shown by my friend from Connecticut,) a man who had not one vote for President, succeeds, in fact, to that office. Thus the choice may be virtually tranferred from the popular to the federative branch of the Government.

The gentleman from Tennessee tells us that this argument, drawn from the omission of the House to elect a President, implies corruption. This cannot be admitted, for men will naturally disagree in their opinions of candidates, and may very honestly adhere to the dictates of their judgments and consciences. But, sir, if it did imply corruption it would not destroy the force of the argument. With the growth and opulence of our country, we must expect corruption; with the progress of our Government we must calculate upon intrigue.

To prevent the difficulties and dangers of a contested election in the House of Representatives, we hold out by this amendment to the large States the strongest inducements, we almost compel them, by the principles of self-interest, so to combine that the right of choice shall not devolve upon the House of Representatives. As a few States may so combine as to secure to themselves the election of President and Vice President, to the total exclusion of the other States, the greatest evils are generally to be apprehended from such exclusive combinations.

What, let me ask, sir, are the evils, the great, the impending evils, which will induce us to brave all the dangers of this hazardous experiment? The worst that can be apprehended from the present mode of choice is, that two of the first citizens in the United States, each having a majority of votes—voted for by the same Electors—if it should happen that they have an equal number of votes, the one preferred by the majority of Electors for President may chance to fill the second office in the Government, while the candidate intended by a majority of the Electors for the second office, may, by the votes of a majority of States, be chosen President.

The gentleman from Tennessee conceives that the minority can have no share in the election but by counteracting the will of the majority. Let it be remembered, sir, that it requires a majority of the Electors to make a choice. All that is left to the minority, under the present mode of election, when they have any share in the choice, is, to vote for one of the candidates offered by the majority. Is there to be a line of demarkation drawn between the parties by the Constitution itself, which will render the Chief Magistrate of the Union the mere instrument of a party? Is this calculated to secure the equal rights of the minority?

Mr. Speaker, several gentlemen in the majority

have told us that the people call for this "amendment." My colleague (Mr. Taggart) has been accused of speaking disrespectfully of the people. I understood him simply to say, that public opinion is mutable, and that the opinion of the people respecting this "amendment" has not been ascertained. How, sir, do gentlemen know the opinion of the "people" upon this question? By what evidence does it appear? It is said, that some of the State Legislatures have expressed a wish in favor of the "amendment." I know that two or three Legislatures, at different times, have passed a vote in favor of the designating principle. But, sir, no State Legislature has ever expressed approbation of the various other alterations in this resolution.

If the State Legislatures had expressed their approbation of this resolution, will gentlemen say that it ought to be obligatory upon the members of this House? We certainly are under the strongest obligations to give an independent vote upon the question, controlled only by the dictates of our own consciences. The Constitution has, in this instance, made each House of Congress and the State Legislatures a check upon each other; else, why are two-thirds of both Houses of Congress, and the Legislatures of three-fourths of the several States, required by the Constitution to concur in an amendment? If the opposite doctrine be correct, it would have been better to have decided questions respecting Constitutional amendments by the State Legislatures alone, than to have assigned to Congress a part in such a political farce.

In the course of this debate, various and repeated allusions have been made to party distinctions. We have, I believe, for the first time in this House heard the terms federal and republican applied to members of this House, and contradistinguished to each other. I have long seen these distinctions in newspaper publications, but I feel great regret that they should be introduced here, more particularly upon a question which demands of us to divest ourselves of all partial considerations, and to investigate this subject with candor and with coolness. What can gentlemen intend to effect by this denunciation? Is it intended to cast a reproach upon the name of federalist? Do they recollect whence was derived the honorable distinction of federalist? Do they not know that it is derived from an early and warm attachment to the Federal Constitution? If gentlemen claim the title of republicans, let them not claim it exclusively. Let them remember that we are all bound by oath to support the same Federal Republican Constitution.

Mr. Speaker, my mind is deeply impressed with a sense of the vast importance of rejecting this resolution. We are not discussing an ordinary, a party, or a local question, but it is proposed to adopt a material change in a fundamental principle of the national compact; an alteration which will affect the whole Union, which will influence the condition of millions long after the present distinctions of party shall have passed away, and we shall have passed away with them. While we endeavor to render the present principle of the Constitution as operative and beneficial as possible, let us beware lest, under the plausible pretext of "amendment," we introduce principles destructive of the compact itself. On former occasions, extracts have been read from the speeches and from the writings of eminent statesmen. Permit me to quote a few sentences from an authority which once had great influence in this House. I trust it will now have an effect:

"Towards the preservation of your Government and the permanency of your present happy state, it is requisite not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretext. One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are, at least, as necessary to fix the true character of Government, as of other human institutions; that experience is the surest standard by which to test the real tendency of the existing Constitution of a country; that facility in changes upon the credit of mere hypothesis and opinion exposes to perpetual change, from the endless variety of hypothesis and opinion."

These sentiments are from the Farewell Address of that most illustrious statesmen and patriot who presided in the Convention which formed this Constitution.

Mr. Speaker, I have been greatly gratified by the various motions which have been made, some of them by gentlemen of the majority, to recommit this resolution for the purpose of amendment. It is evident that some of the expressions are so extremely ambiguous and obscure, as to admit a great variety of construction. Such a variety of constructions have, indeed, been given in this House to some of the most important clauses, and so just have been the criticisms upon the phraseology of this resolution, that the necessity of amendment must be obvious to the friends of the resolution. It certainly cannot be necessary to adopt it precisely as it stands. If it must be sent to the State Legislatures, I hope we shall so far respect the reputation of the House as at least to make the resolution intelligible.

Some gentlemen wish so to amend this resolution as to make it conform to that which passed this House, and of which gentlemen were, at that time, so tenacious.

I sincerely hope that two-thirds of this House will never adopt the various alterations of the Constitution, contained in this resolution. If disappointed here, the State Legislatures will, I trust, perceive, that the important right guarantied to them by this Constitution, once relinquished, can never be regained; that, by defacing the fairest feature of the Constitution, they sacrifice the rights of other States, they hazard the peace, the existence of the Union.

Mr. Thomas.—A number of gentlemen opposed to this amendment, and particularly the gentleman last up from Massachusetts (Mr. Thatcher,)

appear to lay great stress on exceptions to the phraseology of the resolution. In the first paragraph, they contend that it is absurd, because it reads: "which when ratified by three-fourths of the Legislatures of the several States." I agree with the gentlemen that it would have read better, to my mind, had it said: "which when ratified by the Legislatures of three-fourths of the said States;" and it would have been nigher the phrase made use of in the Constitution. But, as on all occasions like this, when there are precedents, as to form, we generally adopt them; the Senate appear to have done it in this instance. I wish gentlemen to examine a resolution of the first Congress, under this Constitution, proposing a number of amendments to the State Legislatures. They will find, in that resolution, it is thus expressed: "which when ratified by three-fourths of the Legislatures of the said States." Now, I ask, what is the difference in the phraseology of these two resolutions? One says: "when ratified by three-fourths of the Legislatures of the several States." The other, which I have just read, says: "when ratified by three-fourths of the Legislatures of the said States." For my part, I can see no difference between these two; besides, in my opinion, it is altogether unimportant whether anything is said in the resolution about its being ratified by three-fourths, all, or any of the State Legislatures. I believe it sufficient that the bare proposition go out from Congress, and when it has received the ratification of the Legislatures of three-fourths of the States, the Constitution itself, which is paramount to anything we can say on the subject, declares it to be a part of that instrument. And I ask the gentleman from Massachusetts, or any other gentleman on this floor, whether this is not correct? Whether what is said on the resolution, or what we could say, in relation to its ratification by the State Legislatures, can possibly affect its validity? It cannot; therefore, all that has been said about that part goes for nothing.

With respect to the criticism of gentlemen as to the wording of the second paragraph, I wish they would read the exceptionable sentence, and then compare that with the one on the same subject in the Constitution. [Here Mr. T. read the two, and then said:] To my mind it appears plain, and properly enough expressed; and I do consider that the objections to the phraseology of that part are equally preposterous with the other.

Mr. Speaker, (said Mr. T.,) I am in favor of the resolution as it now stands, and shall give it my decided support. I, however, acknowledge that I should like it better myself, without the provision made by the Senate, that the Vice President should act as President, in case no election should be made by the House of Representatives previous to the fourth of March, when the choice devolves on them; and as several gentlemen have expressed a desire that a trial should be made to effect this alteration, I wish the Speaker to inform me whether if the House should amend the resolution, and the Senate should not concur in the amendment, when it comes down again to this House, a majority cannot rescind the amendment, or whether it will require two-thirds? Because, although I have heretofore voted against a recommitment, if the Speaker is of the opinion that a majority can rescind, I am willing to make the trial, and shall, in that case, move to recommit the resolution to a Committee of the whole House for that purpose.

The Speaker said, he considered it improper to give an opinion on a question of order relating to a subject not immediately before the House. He said, on all incidental questions, he considered a majority sufficient.

Mr. R. Griswold.—I feel no disposition to protract the debate to any considerable length. Nor can I flatter myself that any remarks which I shall make will convince a single member of the House, whose opinions have been formed in favor of the resolution, of its pernicious tendency. But upon a question of so much importance, I must be permitted to state, in a concise manner, some of those considerations which will induce me to give my decided negative to the measure.

The election of a President is a transaction of vast importance to the United States. In the hands of this officer is deposited the Executive power of the Government; the Constitution having expressly declared that "the Executive power shall be vested in a President of the United States of America." On the execution of this power depends, in a great measure, the character and prosperity of the country. The President is entrusted with the execution of the laws. He appoints, with the consent of the Senate, the Judicial and Executive officers. He forms, and with the advice of the Senate concludes, treaties, and in his hands is virtually lodged the peace and safety of the country. Even the right of declaring war, although nominally confided to the Legislature, must be substantially controlled by the acts of the Executive; because it must generally happen that the necessity of war will depend on the management of our foreign relations by the President, and the power of terminating a war by treaty rests with him. In a period of war the President is the Executive to conduct it, and in a time of peace he is the guardian of our neutral rights. A power so important and extensive must necessarily carry along with it vast patronage and influence; and a President may at all times become emphatically a blessing or a scourge to the community.

From this hasty sketch may be perceived the deep interest which every State has in the Presidential election.

The election of the first magistrate of a nation has always been considered the most difficult part of the science of government. The authority which the office necessarily confers, the respect which it creates, and the patronage which it gives, must render it the great object of ambition to aspiring men. The Journal of the General Convention shows that this subject created more difficulty than any other which fell under the deliberations of that respectable body. To organize the election in such a manner as to guard against popular cabals and corruption on the one hand,

and to secure a proper dependance on the people on the other; to prevent improper combinations of States or of individuals, and at the same time to give each State its due weight and influence in the election, was no easy task. They formed, however, the great objects which engaged the attention of the Convention; and after every project had received a deliberate consideration, that body agreed upon the plan under which we have successfully practised for fourteen years. It is now proposed to introduce an essential and radical change in this plan, and we are called upon to decide whether we will recommend the change to the States. Under these circumstances, it cannot be improper to caution gentlemen against precipitancy, and to request them to examine critically the nature of our Government, and to be careful that they do not, under the pretext of amendment and reform, violate one of the first and most important principles of the Union.

The Government of the United States is not a consolidated Government; it is strictly federal, and its friends are of course federalists. It is true, that this branch of the Legislature (the House of Representatives) bears many marks of a consolidation. We are the Representatives of the people of the respective States, and in this respect the principle of consolidation may be considered as existing in this House. But in the Senate, nothing but the federative principle is seen. In that body, each State is not only represented as a sovereign State, but the representation is equal; nor can the size, population, or wealth of a State, increase or diminish its rights or its vote on that floor. In the election of a President, the federative principle is likewise discernable. That officer is elected by Electors, chosen in such manner as the State Legislatures shall direct, and to consist of a number of Electors equal to the Senators and Representatives of each State. By this arrangement, the choice of President is controlled by the States; and although the large States have a greater influence in the election than the small States, yet this influence is not entirely regulated by population. The votes to which each State is entitled for its Senators increases the influence of the small States; and it is in consequence of this, that the State of Rhode Island now gives four votes for President, when, upon the principle of consolidation, she would be entitled to no more than two. The votes of Delaware, on the same principle, would be reduced from three to one.

There is not a feature of our Government more strongly marked than this of its Confederation, nor any to which the people are more strongly attached. And it would be impossible to submit any proposition which could create more alarm than a direct project of consolidating the States into one Government. The States always have, and probably will continue, to preserve with jealousy their sovereignty and independence. The present Government, it is well known, grew out of the old Confederation; in which form the States were, in every respect, equal—each State having one vote in the National Congress. The innovation which was made on the pure federative principle by the present Constitution was the result of necessity and compromise. But still, as has been already observed, the federative principle is distinctly preserved, and remains the great and leading feature of the Constitution.

It has been often repeated, that the Constitution of the United States was the result of compromise between the large and the small States. This is undoubtedly true, and the basis of this compromise ought to be considered as sacred—never to be shaken whilst the Constitution endures. After mutual concessions by the large and small States, (for both may be considered as conceding something,) the principles by which the influence of each State is balanced in the Legislative and Executive departments may be fairly considered as constituting the basis of this compromise. It results from this, that every attempt to diminish the influence of large States on the one hand, or to weaken that of the small States on the other, is sapping the foundation of our Confederacy. The power to amend the Constitution was not given to authorize the change of any radical principle in which particular States might be interested. This power, it is well known, was given for very different purposes.

I have made these general observations, because it has appeared to me that every proposal to amend the Constitution ought to be first tested by the nature and scope of the Constitution itself; and if it shall be found to interfere with the rights of States, or with any fundamental principle of the compact, it ought to be rejected, although it may promise some temporary advantages in the eyes of speculative men. It cannot be too often repeated, that in considering projects for changing the Constitution, we ought to consider what the Constitution is, and not what it ought to be, in the opinion of individuals. Our Government is in fact a Confederacy, and as such we are bound to respect the rights of each party to the compact.

In respect to the resolution under consideration, the first principle I assume is, that it must necessarily diminish the influence of small States in the election of a Chief Magistrate, and, of course, that it is a direct violation of that spirit of compromise which produced the Constitution.

The effect of the proposed amendment upon the influence of small States, in the Presidential election, has scarcely been denied on the floor of the House. Indeed, after the very able and lucid exposition of this part of the subject, by the gentleman from South Carolina, (Mr. Huger,) some days ago, it appears to be generally understood and admitted that the power of the small States, in this great point of electing a President, must be diminished. Under such circumstances, it can scarcely be necessary to repeat arguments or to support a position which has been so clearly sustained in the debate. But as this is a point of great magnitude, and (if well understood) must be felt in every small State, I will take the liberty of adverting again to some of the proofs on which the assertion rests.

If the proposed amendment is adopted, it will remain in the power of five large States to com-

bine, and with perfect certainty to give a President and Vice President to the Union. As the electoral votes were distributed under the last census, this power may be exercised by Virginia, North Carolina, Pennsylvania, New York, and Massachusetts. To say that no such combination can be formed, is speaking without a knowledge of the human character. And although a combination of the particular States which I have named cannot at this time be formed, yet it is certain that a combination of large States, equally effectual, may at this moment be produced. Gentlemen deceive themselves, if they imagine that the large States can have no interest or inducement to form these combinations. We ought not to forget that our Government is a confederacy of States; that the office of President is vastly important, and that the State which can possess the Executive power in the person of one of its own citizens, is necessarily elevated above the other members of the Confederacy. Nor can we forget our own feelings as men. There is not a member of this House who does not feel particularly attachsd to the State to which he belongs—whose pride would not be gratified by seeing the State which he represents giving a President to the Union, and a tone to the Government—who does not believe that the interests of those with whom he is particularly connected would on many occasions be better, and on every occasion be as well secured under the administration of a President from his own State as from any other quarter. Whenever communities or individuals are stimulated by the powerful inducements of interest or ambition to form combinations, they will necessarily be created. And although at this time there is no State which can openly claim the exclusive right of giving a President to the Union, yet this right may be enjoyed in rotation by a few large States, in defiance of any combination which can be formed against them. We have already seen, upon one occasion, some evidence of a combination crumbling to pieces by the jealousies which the present peculiar mode of election has excited.

It might appear to a cursory observer that the same combinations may be formed under the existing mode of election, it being equally in the power of the large States to give a President and Vice President to the Union. But a critical attention to the subject will satisfy gentlemen that the present mode of election must necessarily create so much jealousy among the large States as to render all lasting combinations impracticable. As the election is now regulated, each Elector must give his vote for two candidates for the office of President, one of whom must be the citizen of a State to which the Elector does not belong. Under such circumstances, if the large States should combine for the purpose of securing to themselves the two offices, they must give to each of their candidates nearly an equal number of votes; in which case it will be left in the power of a small State to decide the election in favor of the least objectionable candidate. The effect of which must often be to defeat the plan of rotation agreed upon by the large States, and to create suspicions that the votes of a small State thus given to the successful candidate have been obtained by a secret combination with the State to which the candidate belongs, or with the candidate himself. In the same manner, the views of any particular State may be forever defeated by the small States; and such views will be defeated if any one of the States, from its local situation, its great extent, and its population, should arrogate to itself the right of giving a President. Gentlemen must be sensible that no combination formed under such circumstances can be lasting. Political combinations can only be lasting where the object for which they are formed is obtained with certainty, and where no jealousies are excited. But where the object is defeated, where jealousies arise, and more especially where the views of the most powerful and ambitious member of the combination are forever defeated, the combination can never endure.

The advantages resulting to the small States from the present mode of election is not confined to the power of defeating the combination of large States. It is certainly important to possess the power of selecting the least objectionable of two candidates. Although neither candidate may be the particular object of our choice, there may still exist, in our opinion, a wide difference in their respective qualifications for office. Whenever a candidate has been preferred to his rival, by the suffrages of his political opponents, he will entertain those sentiments towards them which every liberal mind must feel towards those who have granted a favor. He will be conscious that he is indebted to them for office. He will feel bound to treat them with respect, and promote their interests. Such are the sentiments which must be entertained by every man under similar circumstances—such are the sentiments which the presiding officer of the House must always feel when promoted to the chair, in consequence of the division of his own party by his political opponents. This influence of the small States in the Presidential election will promote the harmony of the Union. The power of the small States, although circumscribed, may, under certain circumstances, become effectual. And as public bodies and individuals, in all political transactions, are caressed and respected in proportion to their power, the small States will be courted and respected by the large States, and the mutual dependence which they feel on each other must soften their passions, and in a great measure diminish those State animosities which endanger our domestic tranquillity. And will gentlemen tell me that these advantages are of no importance? In my opinion they are advantages which not only tend to harmonize the Union, but they form the strongest barrier for the small States in one of the most important transactions of the nation, against the overwhelming power of the large States. It is this peculiar mode of election which can render the votes of small States truly efficient in the choice of a President. Strip the Constitution of this feature—introduce the discriminating principle, and you transfer the whole power to the large States. Their combinations cannot be defeated; and whilst they give you a President and Vice President with perfect certainty, and in perpetual rotation, they will laugh at our interference, and deride our impotency.

Permit me, on this point, to appeal to those gentlemen who represent the large States for the correctness of the opinions which I have expressed, and to ask them whether it is consistent with their characters, as guardians of the Constitution, to avail themselves of the moment of party violence to pursue this serious and radical change, and to aggrandize the States which they represent, at the expense of those with whom they are connected? To those gentlemen who represent small States, it would not be necessary, under any other circumstances, to make an appeal. The interests of the States to which they belong would not be forgotten. But this is a moment when every object appears to be forgotten but the temporary views of party; and I must be permitted to remind those gentlemen, that if they suffer themselves to be carried along by the torrent, and consent to abandon the interests of the States to which they belong, their votes can never be recalled. If they agree to the resolution, and the amendment should be ingrafted upon the Constitution, the rights thus sacrificed are lost forever. For myself, I should be as well satisfied to see an amendment which should, in express terms, confine the choice of President to certain large States, as to see the resolution on your table. The effect must be precisely the same. But as it is not my intention to consume much of the time of the House, I will waive all further remarks upon this part of the subject.

There is another view of this subject, which furnishes to my mind a conclusive argument against the proposed amendment. In all governments which have hitherto existed, in which the elective principle has extended to the Executive Magistrate, it has been impossible, for any length of time, to guard against corruption in the elections. The danger is not an imaginary one, in this country. The office of President is at this time the great object of ambition, and as the wealth and population of this country increases, the powers and patronage of the President must necessarily be extended. We cannot expect to escape the fate of other Republics. Candidates for the office of President will arise, who, under the assumed garb of patriotism and disinterested benevolence, will disguise the most unprincipled ambition. Corruption will be practised by such candidates, whenever it can be done with success.

It is therefore an object of the first importance, to regulate the election in such a manner as to remove, as far as possible, both the temptation and the means of corruption. If gentlemen will attend to the proposed amendment with reference to this point, they will find that the means and the temptation to corruption must be increased. As the Constitution now stands, the man who aspires to the office of President, can at best but run the race on equal terms with some individual of his own party. In order to succeed, he must not only obtain for himself and his associate, a greater number of votes than his own political opponents, but he must obtain more votes than the associate himself. The chances of success are by those means rendered more remote, and however desirable the office may be, the temptation to enter the list, or to make individual exertions, are diminished. The means of corruption must generally be found in the offices at the disposal of the President; and these, it is well known, constitute a fund of great extent, and where the election is brought to such a point, as to rest with two candidates only, this fund may be used with great success. One office may be promised to this Elector as the price of his vote, whilst other offices are promised to other Electors on the same corrupt consideration, and the aspiring candidate may thus mount to the first office in the Government. But so long as your elections remain on this present footing, the means of corruption are diminished; because the aspiring candidate can only promise this corrupt distribution of offices upon eventually succeeding to the Presidency, and as his chances of success are diminished by the mode of election, his promises are of less value to the Elector, and of course will be less frequently made, and more generally rejected.

So far as I can understand the objections which are made to the present mode of election, they are brought within a narrow compass. They consist principally of a general and loose assertion, that it is reasonable and proper Electors should on all occasions designate the man they intend for a particular office; and secondly, that the experience of the last Presidential election shows the necessity of a designation in this particular case.

If it was true, that one man only could be found within the United States qualified to fill the office of President, there would be force in the first objection. But such is not the fact. There are men to be found in every State, eminently qualified for this important trust. Where then can be the necessity of confining the votes of Electors to a single candidate? Is it an hardship upon an Elector to be compelled to vote for two candidates, when two may so easily be found? And are there not advantages arising from this mode, of a serious and decisive nature? I have already mentioned the interest which the small States have in the arrangement, and I have alluded to the door of corruption which the change will open, and it is not necessary at this time to repeat those opinions. But I must be permitted to ask, is it not of some importance, that the most eminent men should be selected for the offices of President and Vice President? The President is elected for four years; he may die within that period—he may be removed from office, or he may become disqualified to execute its duties; in either of these events the Vice President succeeds to the power. Under the existing arrangement you will secure, as far as human prudence can accomplish it, the most eminent men for these two offices. Each candidate must be voted for as President, and if the Electors fairly execute the Constitution, they will give their votes for those men who are the best qualified to ad-

minister the Government. Thus, under every probable event, you will find one of the most eminent of your citizens at the head of your Government.

But if the amendment prevails the case must be greatly changed. The man voted for as Vice President will be selected without any decisive view to his qualifications to administer the Government. The office will generally be carried into the market to be exchanged for the votes of some large States for President. And the only criterion which will be regarded as a qualification for the office of Vice President, will be, the temporary influence of the candidate over the Electors of his State. It is in this manner you must expect to obtain a man to fill the second office in the Government, and who must succeed to the power of President, upon every vacancy. The momentary views of party may perhaps be promoted by such arrangements, but the permanent interests of the country are sacrificed.

Far from believing that experience has shown the impropriety of the existing mode of election, I am convinced, so far as it has gone, that it has evinced the wisdom of the arrangement. The general success of the Government is well understood, and exhibits a strong proof in favor of the Constitution, as it now stands. But gentlemen speak of the late election of President by the House of Representatives, and by the manner in which that transaction is described, I am persuaded the circumstances which attended it are not understood. I was a member of the House of Representatives at the time, and I take this occasion to declare that no transaction ever was more grossly misrepresented, than that has been, in every part of this country. When the election commenced in the House of Representatives, every gentleman knew that it must terminate in the choice of one or the other of the two candidates, and the only question was, who could, or would think proper, to persist the longest in support of the candidate he had first chosen. The election was conducted with perfect mildness and good humor; not an expression or look of severity escaped from any one; and when the election was closed, the House proceeded to the ordinary business of the session, as though nothing of particular importance had taken place. The candidates who on that occasion were brought into the House, were both selected by the same political party. It could not be of much importance to that party which should be chosen, nor could it be supposed to be of vast importance to their opponents. The event therefore was certain that an election would be made, and there did not exist the smallest hazard that the Government would be left without a President. Had the election terminated in favor of either candidate, those who brought them into the House must have been satisfied. If the controversy had arisen between two candidates of different political parties, the contest might have been a serious one, but that is a state of things for which the present amendment makes no provision. The public agitation, which it is said by some gentlemen existed at that time, was not called for by the occasion, and must have been harmless. The people of this country are not at this time, nor were they then disposed to rebel against their Constitution and Government. It was not only the right but the duty of the House of Representatives, to select from the two candidates the man who in their opinion was best qualified to execute the office of President. And if the choice had fallen on the gentleman who now presides in the Senate, "all United America," to use the favorite expression of the gentleman from Tennessee, (Mr. G. W. Campbell,) would have acquiesced in the decision, and submitted without rebellion or insurrection to the Administration.

But there is one important lesson which the experience of that election has taught the people of the United States—it is this, that it becomes the great and solemn duty of Electors, upon all occasions, to give their votes for two men who shall be best qualified for the office of President. The Electors do not, they cannot know which of their own candidates will succeed. They are therefore called upon by every sacred principle to select the most eminent of their fellow-citizens. They will be stimulated on all future occasions, by the experience of the last election, to do, what I trust they have heretofore done, to give their votes for two men, in either of whom they are willing to confide the Executive power of the Government. What then can induce us to change the form of our elections? Some gentlemen have said a great deal about the voice of the people, and declared that the people demand the alteration. This is a language too frequently used within these walls. The purposes for which it is used, I leave to others to explain; but it must be perfectly understood that the clamors of designing men are too often mistaken for the voice of the people. The people are rarely disposed to seek for changes whilst they feel and enjoy the blessings of their old establishments. Be this as it may, we have been sent into this House to obey no voice but that of our own consciences and judgments.

If gentlemen would, upon this occasion, divest themselves of those party considerations, which are so apt to swallow up deliberation, I cannot persuade myself that they would agree to the resolution. When they view the deep wound which it inflicts on the interests of small States—when they see the wide door which it opens to corruption—the certain and pernicious effect which it must produce on the Electors of a Vice President, and the destruction of that balance of power among the States, which was settled by the Constitution, they will at least hesitate, before they give a final vote for the passsage of the resolution. The security given by the Constitution to the interests and influence of the different States, in our great national concerns, forms the only basis on which the Government can rest. Disturb those interests, and the Government must tremble to its foundation. And although the effect may not be immediately perceived, yet the day will come when it will be both seen and felt, and the large States, who have now seized a moment of passion to grasp the power, may regret the hour when they violated the compact which binds us together

Mr. Dennis.—Encouraged by the indulgent attention with which the remarks of other gentlemen have been received, I submit to the consideration of the House some observations on the resolution before us. Not having been present when the resolution, which originated in this House, containing alone the discriminating principle, was under consideration, and which it is presumed was fully discussed, because that point was exclusively considered, and deprived of the elaborate and learned argument of the Senate in relation to that principle, I should not have offered myself to the consideration of this House, if there had not been incorporated into the resolution other principles which have been but little investigated, and which, though called subordinate principles, I conceive to be as important as the principle of designation itself.

The friends of the resolution, aware of the influence of names, have chosen to call the two last, secondary principles; have omitted to discuss them themselves, and have presumed that others would regard them as subordinate principles, because they have chosen so to denominate them. It may, however, be shown, that these principles, acknowledged on all hands to be obnoxious, even to many of those who favor what I will term the pre-eminent principle, and which they are admonished to surrender to obtain that object, are far from being so innocent and unimportant as is represented; and that the last one goes essentially to impair if not entirely to defeat the favorite principle of designation itself.

As far as I have been able to develope the leading argument in favor of a discrimination, it is, that by such distinction we shall insure the complete control of the public will, and that the man intended as the secondary, may never become the primary character. But, according to the last member of the resolution, instead of assuring to us that object, in every case where no one candidate shall have a majority of all the votes of the Electors, and where by any means or contrivance a choice in this House can be prevented, the person designated as Vice President becomes the President.

In considering the combined but warring principles of this resolution, we are not to consider their tendency simply in the present state of things, but look to a period when our States and our political parties shall have multiplied their numbers. Scarcely does the earth perform her annual revolution without adding to our existing numbers a sister State; and I will venture to predict that many years will not have passed away when this nation will be divided into three or four political parties. As your States and those parties augment their respective members, so will increase the difficulty of procuring a majority of electoral voices in favor of any individual. Admit that the designating principle may render it less probable that the election shall be brought into this House, as in the case of a tie, the case of a non-election by the electoral bodies, for the reasons before assigned, on account of no one candidate having a majority of votes, may frequently occur. For, let it be remembered, that this case will be but little affected by the discriminating principle. When the election shall be brought into this House the increase of States and of parties will in like manner, as in the electoral bodies, render it extremely difficult (even without the influence of fraud or corruption to prevent it,) to effect an union of a sufficient number of members voting by States, where there may be a number of candidates, to give any one of them a majority of the States. A non-election by this House then, by this resolution, is precisely equivalent to an election of the man to the Presidency who was intended as the Vice President; because, by the last member of the resolution, if no choice be made in the House by the fourth of March, then the Vice President, already chosen by the Senate, is to become the President. Thus it is, that by the magical operation of these conflicting principles, you do the very thing you mean to prevent, and elect the man intended as a secondary character to the Chief Executive Magistracy.

Again, sir, in order to secure the certainty of electing a man of the people, you throw the whole weight of the Senatorial branch and of the Vice President, who have nothing to do but to defeat an election here to make him President, into that scale which is opposed to the public will; and you hold out a temptation to the exercise of every species of contrivance which the mind of man, stimulated by a love of power and possessed of allurements to acquire it, may suggest and put into motion in this House, to preponderate the balance on the side of non-election; which non-election is tantamount to an election by the Senate of their President to be the President of the United States.

Nor will the weight of that body be realized alone when the election shall be brought here; but may be exerted in the first instance to multiply candidates, perplex and divide the electoral bodies, and prevent, in them, a majority in favor of any one candidate; so as to bring as many as practicable into this body, in order that they may again perplex and obstruct it.

Surely, Mr. Speaker, the Senate ought to have been satisfied, (determined as they have been to innovate on the Constitution in a point never contemplated by any but themselves,) to have provided that the election of their President, a secondary character, should vest him with the powers, emoluments, and patronage of the high office of President of this great nation; so long and no longer than an election should be made. This would have taken away that strong inducement to intrigue and corruption, which results from exhibiting to human frailty the important price of the Chief Magistracy of this country, for four succeeding years. I was about to move such a modification or extension of that principle in Committee of the Whole; but we were told, nay, the friends of the principle of designation were told, that all efforts at amendment, even for changing an obscure and unintelligible phraseology, differently construed by those who held this language too, would be vain and illusory. These intimations have since grown into fact, in the rejection of the resolution

this morning submitted by a gentleman from Pennsylvania (Mr. Hoge.) Yes, sir, we are told that although the discriminating principle is the only one to which the public attention has been invited, and the only one embraced in the resolution of this House, yet it must be adopted, because the other branch of the Legislature, not deigning to consider the resolution of this House, have incorporated into it a principle vesting in their own body a novel and important power; and that they will not adopt the one without the other.

But, Mr. Speaker, let me here in a particular manner address myself to those gentlemen who are favorable to the designating principle, and who acknowledge the other to be extremely obnoxious. Can you discharge your duty to your constituents, who have required the one and not the other, and reconcile it to your conscience to take the resolution as it stands? You are told the last is a subordinate principle and must be yielded to effectuate the main design. Is that a subordinate principle which transfers the choice in any contingency from this House to the Senate? Is that a minor principle which not only makes that transfer from the immediate representatives of the people, to a body much less responsible to the public, but changes the mode of voting by States to a vote *per capita*?

You are told the object of amending the Constitution is to conform the choice of the President to the will of the people. But is this object attained by holding out temptations to frustrate that will in the first place, and transferring the jurisdiction from the House of Representatives to the Senate in the second?

But you are told you must do so, otherwise the Senate will not agree to your principle of designation. Other gentlemen may be in possession of means of individual information to which I am a stranger, but sure I am, we do not possess that information as a body, which warrants the assertion. Have you ever asked them to recede, or signified your wishes on the subject? Has not every effort of the kind been rejected by this House? Shall it be said that whilst our rules indicate the propriety of this course in case of a difference between the two branches, in ordinary legislation, we will not make one attempt to expunge from the resolution principles which almost all of us declare to be repugnant to our wishes?

You are told that the people of the United States and the Legislatures of the States imperiously demand a change of the Constitution. In relation to the discriminating principle, let it be conceded; but, have the people or the States required you to transfer your own power to the Senate, and has the declamation respecting the will of the people any application to the two last principles of the resolution? No. I will venture to assert that this ingenious contrivance had its origin in the other branch of the Legislature.

We are told we have only the initiative in the business and our acts are to undergo the revision of the State Legislatures; and, therefore, the less need for that caution and deliberation which might otherwise be requisite. It would be a very poor excuse in a judge of an inferior court to say he was less sedulous to understand a legal question, and to decide correctly upon it, because his decision would be revised by a superior tribunal. We should not transfer into the hands of others that trust which is confided to ourselves. I will not say that there is not any individual in any State Legislature who is not possessed of as much knowledge as any individual here; but I will say, that it is not to be calculated that the Legislative body of any State possesses as much collective knowledge as does this House, of a subject affecting not only individuals but States differently situated in regard to geographical position, population, wealth, and interests. That the decision of this House will have its influence on the State Legislatures is not to be doubted, and therefore we should scrutinize the contrarient principles of the resolution, and go as far as practicable to remove its defects.

I have said, in the course of the discussion on some incidental questions, that to say I would in no case change the Constitution, would be using unconstitutional doctrines, because the instrument contains within it a principle of its amendation, and it may be necessary to conform it to new circumstances and contingencies as they emerge. But I have also said, and beg leave to repeat it, that to induce a change of it, the existing evil ought to be clearly demonstrated, and the aptitude of the remedy proposed to effectuate the object ought to be unequivocally established. The alteration of the Constitution of the United States is of a more delicate nature than to change that of a single State. In one case you have only to quiet the apprehensions and compose the disquietude of discordant individuals; in the other to disarm the jealousies and reconcile the interests of jarring States. To this distinction those gentlemen who have reposed the whole argument on the basis of the popular will, have not sufficiently attended.

A gentleman from Tennessee, (Mr. Campbell,) and other gentlemen who have advocated the adoption of the resolution, have informed us that this Constitution was adopted by, and that the departments ought to be organized according to, the dictates of a majority of the people. Admit it to be so, and that the designating principle will produce the effect I have endeavored to show, the whole resolution will defeat it. But, I beg leave to enter my dissent to their theory of our Government. That the will of the majority in a republican Government, and in a single State, must and ought to prevail, I do not deny: but I wholly deny this to be the theory of the American Confederacy. The Constitution of the United States was not adopted by the people of the United States, but by the people of the several States as such, voting through the medium of their State Conventions; and, so far from its being adopted by the people of the United States as such, it is doubtful whether it was not adopted by a minority of the people, though ratified and confirmed by a majority of the adopting States. North Carolina and Rhode Island rejected it, and in Virginia, Pennsylvania, and New York, the minorities were

powerful. The minority in Virginia and Pennsylvania alone were more than equal to countervail the majorities of five or six of the smaller States; so that, if the vote had been taken by the whole American people voting together, it is doubtful if it had ever been adopted.

When we view it in relation to the organization of the departments, they are equally mistaken. The House of Representatives, which partakes most of the popular or consolidated principle, is not chosen by the will of the people of the United States, but in different modes, by the people of the respective States. The Senate partakes in its mode of appointment exclusively of the federative principle, without regard to the number of individuals contained in the several States.

When we come to the organization of the Executive department, we find an intermixture of federative and popular or consolidated principles, combined and interwoven with so delicate a hand that it is impossible to strip it of the one without destroying the other. The Electors who choose the President are not chosen in a manner to ascertain the sense of the people of the United States, but are chosen in some States by the Legislatures, in others by the people voting in a general ticket, and smothering the voice of the minority; while, in others, the choice is made by the people voting in districts, and giving the proportional weight to the minority. The number of Electors likewise assigned to the different States depend on the combined number of the Senators and Representatives of each State in the Congress of the United States; so that a State having one Representative, has two votes on the federative principle, to one on the popular principle. The result of this analysis of the Constitution will satisfy gentlemen that State interests are materially affected by this amendment; and that the public will, always equivocal, is not the only thing to be considered in this particular. Indeed, sir, it proves to them that, instead of giving complete effect to the popular will, the choice of the Electors is made through the medium of so refined a process, and in so artificial a manner, that it may happen that a majority of the Electors may be chosen and the President elected by a minority of the people. I believe, sir, a President of the United States has been elected by a minority of the people of the United States.

We have been told that numerous amendments have been made to the Constitution, and it is therefore proved by experience that those State jealousies and other dangers, which are represented as likely to arise from this amendment, have no place except in the imagination of the opponents of the resolution. I think I shall not be considered as metaphysical, however, when I declare that, there occurs to my mind a material distinction between an amendment which goes merely to enlarge or abridge the Legislative power, or the power of any given department, and one which materially changes the manner in which one of the departments itself is organized.

All the amendments heretofore made are of the first description; operating merely on the popular, and affecting in no wise the federative principle, there was no ground for local jealousy. But, in this case, for the first time, you are affecting the organization of the departments, and, of course, the federative principle; and the arguments used in this discussion have but too well demonstrated the State jealousies and inquietudes likely to result from every such amendment between the large and smaller States. Representing a State which occupies and is likely to maintain, for a long time to come, a middle position in the Union, I have not critically examined whether the resolution will operate for or against the one or the other; but I know that there are jealousies on this subject, and we ought to be cautious not to fan the flame. If there be individuals in this nation hostile to the Union, (and we have been admonished that such exist,) let us be cautious how we put into their mouths the strongest arguments to effectuate their designs; and, let me again repeat it, there must always exist inquietude both among States and individuals wherever you attempt to change the mode of organizing a department, and every amendment you make tends to weaken the bond of our Union. The idea of the friends of the resolution, on the subject of changes in the Constitution, therefore, is wholly erroneous, when they suppose there is nothing to be considered but what they call the public will; and they have made the mistake by regarding the Confederacy as a consolidated Government. But it partakes of this equality in no instance, except in the operation of its laws. Here it reaches our citizens as one people, regardless of State limits and State inequalities. It is this property alone which forms the distinguishing characteristic between that system and the Confederation. Here we operate upon the people, and there they operated on States through the medium of requisitions. I am sensible I have availed myself to the full extent of the patience of the Committee, and shall conclude with an exhortation that we do nothing which may affect the harmony of our Union; and that we revise, and revise again, this resolution, before we stamp it with our sanction.

Mr. Jackson.—Mr. Speaker, when I came to the House this morning, nothing was more foreign to my intention than to trespass upon their indulgence, but the importance of the subject, and the bold and daring assertions made by gentlemen in the opposition, will be my apology for the remarks I shall make, and I promise the House as a remuneration for the attention they may honor me with, to be as concise as possible. Sir, I must call that a bold and daring assertion, made by the gentleman from North Carolina, (Mr. Purviance,) that if the small States had contemplated a change in the Constitution, and had not considered it as inviolable and intangible, they would not have come into the Union; when I look at the Constitution and see used not vague expressions or dubious language admitting of its amendment, but an express article, to wit: the fifth, authorizing amendments and designating the mode by which they may be obtained, which declares that—

"The Congress, whenever two-thirds of both Houses

shall deem it necessary, shall propose amendments to the Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress:"

And when I consider the perspicuous and emphatical language used by its framers, that they have not inserted a single clause not intended to have a full meaning, and that they were incapable of holding forth a feature in the Constitution which should be construed contrary to the plain acceptation of it, I am induced to believe that the gentleman has not paid a proper attention to the subject, or he would not have hazarded the observation.

The same gentleman has said, we are about to encourage fraud, intrigue, venality, and corruption, by the passage of this resolution; my respect for decorum and the rules of this House prevents me from answering this assertion in the language it deserves. I may, however, be permitted to say that the reverse will be the case; and I contend that there is more danger that fraud, intrigue, venality, and corruption, will be practised in cases resulting from the Constitution as it now stands, than there will be under the amendment before us, if adopted. To illustrate my position, I will suppose an understanding and agreement among the States, (for without them no election for President can take place,) that A shall be supported as President, and B as Vice President; will not the importance of the office, and the probability of success, under the want of the discriminating principle, warrant the assertion that there is great danger of intrigue, to secure the election of B, the ostensible candidate for the office of Vice President to the Presidential chair, by reducing some of the Electors in one of the States to violate the agreement thus made with the sister States, in voting for him only, whom none but themselves and those active in the intrigue, contemplate to be President, and thereby a President will be crammed upon us, whom nine-tenths of the people never thought of? Much has been said by gentlemen respecting the spirit of compromise and accommodation which governed the framers of the Constitution, and it is contended that this spirit of accommodation and compromise will be materially affected, and one of the main principles of the Constitution violated by this amendment. I admit that a spirit of compromise and accommodation influenced some of the framers of that instrument, but I deny that it was mutual. There certainly was a noble magnanimity evinced in the accommodating spirit of the Representatives of the large States, to induce the small States to come into the Union, but that spirit was not reciprocal. I believe that those who represented the large States justly estimated the danger and rivalries of neighboring States, if not subject to one confederated Government, competent to their individual protection. The fate of other little Republics warranted the idea that the smaller members would be swallowed up by the larger ones, who would, in turn, attack each other; and that the liberty achieved by the blood of some of the bravest men that ever lived would pass away without leaving a trace behind it. They, therefore, yielded everything to the little States, knowing they were most numerous, and naturally jealous of the large ones. If we examine the Constitution, we shall find the whole of the great powers of the Government concentred in the Senate. They have the sole power of trying impeachments, and of making treaties. Congress may declare war; but, once declared, they cannot make peace; that power as well as the boundless, undefined, treaty-making power, generally, are exclusively vested in the Senate; in the Legislative power they possess an absolute veto on the passage of every measure sanctioned by the Representatives of the people; and how are they chosen? Two from each State; the smallest State has the same influence in that body with the largest. In the choice of Electors of President the small States have this additional extraordinary privilege of choosing one Elector for each Senator, and if the election of President comes into the House of Representatives each State has equal power. The small States also possess the power, under the Constitution, of reducing the Representatives on this floor to one from each State, and in such event of completely controlling the power of the large States in every department of the Government, for the Constitution, says:

"The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative."

I therefore think that, in the formation of this Constitution, the accommodation was exclusively on the part of the large States, and that, of course, it was not reciprocal. Though the large States have not their due share of power, I do not complain. I only infer that, as the small States have almost all the power of the Government, or may get it by amendments, and as they are vested with all this power, without an equivalent given to the large States, they are most interested in the existence of the Constitution, and if most interested in its preservation they are also most interested in the adoption of this amendment, because I have proven that intrigue and corruption are more likely to occur under the Constitution, wanting the discriminating principle, than under the amendment now proposed; and I ask gentlemen whether any engine that can be set in motion will be more destructive to this Constitution than fraud, intrigue, venality, and corruption? Sir, the friends of republican Government have justly considered that the great danger it has to dread is from overgrown Executive power, and from the desperate efforts of aspiring individuals to obtain it. Render the election a matter of chance, make the Electors vote blindfolded, as they now do, and often indeed will the election come into the House of Representatives, where (I wish to be understood, I speak not of the present time, I believe the present Representatives would spurn at every effort to influence them improperly,) intrigue, venality, and corruption will be brought to a focus with wealth and all the allurements of office in the train, arrayed against virtue, and the wishes of the nation. Will there not be great danger that corruption will be played off here in such a way as to induce the members to disregard the voice of the people, and elevate to supreme Executive power an aspiring individual? Sir, experience has borne testimony against the present mode of election. Let us not reject its admonitions. By recurring to the situation of this country, not long since, it will be recollected that there was serious danger of a dissolution of the Government, and I believe it was felt in the most remote parts of the United States. Under the discriminating principle now contemplated, the election will not, probably in one case out of a hundred, be brought into the House of Representatives, and the awful crisis of alarm, to which I have alluded, never occur again.

I observed, upon a former occasion, when this subject was before us, that the polar star of republicanism was, that the majority should govern; and that, so far as we have deviated from that principle, our Constitution is anti-republican. Shall we reject the present favorable opportunity to give efficacy to that principle in a most essential branch of our Government? and, by adhering to a mode which experience has proven is fraught with imminent danger, suffer the minority of this nation to choose a President of the United States? For, unless we sacrifice the election of Vice President, they may vote for him whom we intend for that office, and thereby make him, contrary to the wishes of the majority, the President of the United States. If we desire to reward talents and patriotism with the highest office in the power of the nation to bestow, we shall be obliged to give up the Vice Presidency to the minority, and thereby set a price of $80 000 on the head of the President, with all the honors and offices of the nation, to be given to a political enemy. I hope, sir, as such a state of things may happen, we shall take care to guard against it. The gentleman from Connecticut says this subject is not understood by the American people, and, that it may be understood, he wishes it to be discussed here, in the newspapers, and in the State Legislatures. Sir, it has been, long since, discussed here and elsewhere, and is, in my opinion, well understood. In several State Legislatures, whose politics correspond with those of that gentleman, (and which will, therefore, be allowed by him to have been uninfluenced by party zeal,) as well as in States which correspond in political opinion with the majority of this House, it has been repeatedly examined, and the States have almost invariably concurred in recommending the discriminating principle, in the election of President and Vice President. Can there be a stronger evidence of its justice than its being recommended at a time when party views were out of the question? The gentleman is correct when he says the interests of the States are implicated by this amendment. Sir, I believe there are talents and virtue sufficient in the State Legislatures to discern the import of measures implicating their interests, and to adopt or reject them as those interests dictate; they will not be thankful to the gentleman and his political friends for attempting upon this, as on a former, occasion, to guard the people against themselves as their worst enemies. Much has been said against the details of this amendment. I acknowledge, sir, I am one of those who do not like them all, but I think the cases in which inconvenience is apprehended, so extreme and unlikely to occur, that I am unwilling to hazard the great principle of the amendment on account of them. I am not disposed to risk a certain good, by guarding against a visionary evil, which it may be supposed will result from it. I believe the guarding against the right of the Senate to elect a President would be providing for an extreme case that will never happen. For, as I before observed, it is not likely that the election will come into the House of Representatives for a century to come, if the discriminating principle be adopted; and when it does come into this House, it is not to be presumed they will neglect to make a choice, when, in that case, they know the Senate have the authority. I ask, if a man would not be esteemed mad, who, having a ship and its cargo in the hands of an enemy, should refuse to accept the restoration of the one without the other? As the Constitution at present stands it has, in a great measure, placed the election (as I have attempted to show) in the hands of a minority—in the hands of political enemies—and out of the control of the majority? Shall we suffer this to be the case, because we cannot make the resolution more perfect; although we acknowledge it contains a most essential amendment, and almost all the States, before the prevalence of party spirit, declared an alteration necessary? These are my reasons for voting for the resolution, and I hope it will be agreed to.

Mr. Stanton.—Mr. Speaker, I exceedingly regret that I cannot forbear troubling the House with a few remarks, in justification of the vote I am about to give, on the all-important resolution on your table, for amending the Constitution of the United States. Sir, that venerable body, who were the framers of that valuable instrument, presupposed that, after its merits had undergone the ordeal of experience, it would need amendment. All intelligent, well-disposed men, of every description, agree that the main object of Government is, or ought to be, such as expressed in the language introductory to our Constitution: "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity;" that being the case, it strongly recommends the adoption of the resolution in contemplation. That part of the national compact that relates to the choice of President and Vice President, which does not permit the Electors to designate on their ballots who they vote for as President and Vice President, which envelopes the Electors in darkness, and cannot be reconciled with the good pur-

pose of the Convention, but by their own sentiments expressed in their letter to the President of Congress, signed by their illustrious President, the words are emphatical:

"This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected, and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our situation rendered indispensable."

For it evidently appears that the divided situation of the Convention was such, in consequence of the difference among the several States as to their particular extent, habits, and particular interests. This being the case, the Convention was obliged to submit to improprieties and imperfections, and to wait the test of experience on the merits of the compact. Sir, I am hostile to the doctrine advanced on this floor, that the least innovation in this sacred charter would endanger the tranquillity of the Union. At the same time, I admit that it should not be touched but for cogent reasons and emergencies like the present. Sir, that Constitution which, in its operation, tends most to promote the happiness of the people, by rewarding intrinsic merit, defending the innocent, and affording speedy and effectual redress of grievances, is the best. No doubt but the framers of the national compact, in all their deliberations, kept in view the greatest good of the people. And, while I am disposed to pay homage to their superior talents and patriotism, I am unwilling to pay them a compliment or encomium that may, in the least degree, depreciate the good sense of their creator, the people. I believe our Constitution is as free from imperfections as any on earth; yet it is, like all other human productions, susceptible of improvement. Sir, the fifth article in the Constitution says:

"The Congress, when two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by Conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; and that no State without its consent shall be deprived by its equal suffrage in the Senate."

This article, that forever keeps open the door for amendment, and secures an equal suffrage in the Senate, and gives an equal vote in the choice of a President, in the event of no choice by Electors, is the life, beauty, and quintessence of the Constitution. Sir, I recollect that, yesterday, when this subject was discussed, an honorable member from Connecticut repeatedly called on the friends of the resolution to point out one evil that had resulted to the people of the Union from the existing Constitution. Sir, permit me to ask the honorable gentleman where he was at the awful crisis of the Presidential election, when the public mind was agitated and tossed to and fro on the tempestuous sea of doubt, and forced to the verge of despair? Surely the honorable gentleman must have been out of the United States, or out of his senses, or he must have lost his usual sagacity, patriotism, and sound regard for the honor of his country, or he must have recollected the alarming catastrophe. Even had he been among the antipodes, who walk on the other side of the globe, with their feet opposite to ours, he would almost have heard the destructive sound, which seemed to be from the clouds, and penetrate the solid earth. Sir, I ought to apologize for this digression and detention of the House; but, while I am up, I hope to be indulged to make a few remarks on what dropped from an honorable gentleman from Pennsylvania, who appeared an able advocate for the discriminating part of the resolution, and opposed the clause relative to the ex-President acting as President in the event of certain contingencies. But, he suddenly seems to change his ground, and says, the most objectionable part of this amendment, in the opinion of many gentlemen, and against which the gentleman from Vermont in particular has levelled his keenest darts, is that which vests the Vice President with power to discharge the duties of President in the event of a President not being elected; and proceeds by saying, at first view it appears liable to objections, but, on a candid and fair investigation, the objections lose their weight and the principle is found, in his opinion, correct. Sir, I beg leave to differ with the honorable gentleman, not only in this, but also on another position, where he says, it will also operate as a stimulus to the House of Representatives to make an election. I think, sir, it will produce a contrary effect; they will, I fear, consider themselves exonerated from the imperative language of the present Constitution, that says: "They shall immediately choose a President." Sir, after viewing the whole ground, and notwithstanding the imperfections of the resolution in its present form, as it contains the discriminating principle, which alone was all I wished to obtain, I shall give it my feeble support. Being fully impressed in my mind that, by adopting the designating principle contained in the resolution, it will frustrate the machinations of factions, secure in future a fair expression of the public will, and tend to increase the domestic happiness, and national prosperity and glory.

Mr. Gregg said, he regretted the expression he had made yesterday, as it appeared to have given dissatisfaction to some gentlemen. That expression had, however, been misconceived. He had said, that the people were in favor of the discriminating principle; he had said that this country was divided into two parties, and that an amendment for the establishment of this principle had at one time been brought forward by one party and then by the other; he had said that one of these parties was called republican, and the other federal. He did not consider this last term an imputation on any gentleman. Some gentlemen were called federalists; he was called a republican. They differed, it was true, in political sentiment;

but he had never understood that gentlemen thought there was anything reproachful in being called federalists; on the contrary, he knew the time when the epithet was deemed honorable.

Mr. Leib moved a postponement of the subject till Monday. Lost—ayes 41.

A motion to adjourn was then made, and lost.

Mr. Elliot.—There are two or three remarks, which fell from me in the animation of debate, I wish to explain. I used the observation of rash precipitancy as applicable to the majority in this business; of personal indecorum, imperious necessity, and Senatorial authority, as applicable to particular members. I also observed that there were men of both parties, who, in my opinion, were aspiring and unprincipled. I beg leave explicitly to state that I did not, at the time I made this remark, entertain an idea of any individual citizen. I alluded to no particular person. The remark was general, and I believe it to have been just. As to the charge of rash precipitancy, I did not mean to apply it to the majority. Perhaps I was wrong in making it; I hope I was. When, at an advanced stage of the debate, I intimated a wish to be heard, when no more than one day had been spent on the subject, and when I declared myself too much exhausted and indisposed to declare my opinions at that late hour, the House, by a great majority, deprived me of the time necessary to do justice to my ideas. For a moment, I felt myself placed in a humiliating and degraded situation; in such a situation as I thought no Representative, and particularly a Representative of one of the largest districts in the Union, containing a population of between fifty and sixty thousand souls, ought to be placed. If there was in this procedure anything of rash precipitancy, it was, perhaps, the error of the moment; and what I considered at the time as the offspring of temper and passion, may have been nothing more than an evidence of that disposition to which the greatest men have told us the first bodies in the world are sometimes exposed. If the body did, for a moment, yield to this disposition, I am ready to acknowledge that it has amply atoned for it by the magnanimity and patience it has since exhibited. I also made the charge of personal indecorum. I thought that it really existed. I thought it indecorous for any gentleman to tell other gentlemen that they had personal knowledge of dishonorable intrigue practised on a late important occasion. As to the imputation of Senatorial authority, I am still of opinion that this charge is merited by gentlemen who say we must take this resolution precisely as it came from the Senate, or lose everything. I conclude what I have to say on this subject, by declaring that, whatever warmth I may have exhibited in this debate, the vote which I am now about to give is the result of the coolest deliberation, and in conformity to the most sincere dictates of conscience.

Mr. J. Randolph said, that they had been told the other night, by the gentleman from Connecticut, (Mr. Griswold,) that it was necessary to procrastinate this decision in order to give time for that thorough investigation which it was then contended had not taken place. From the promise which was held out on that occasion, and from the time which had intervened, his expectations had been wound up to a very high pitch; whether they had been gratified or not he would leave the House to determine. Since the gentleman had expressed a desire, and the House had affirmed it, that this discussion should be protracted, Mr. R. hoped that he, on this subject, (whatever might be the case on others, where he was compelled to defend what it was his duty to originate,) had occupied as little of their time as most of those who had discussed it, and might be permitted to make a few remarks in reply to those which had fallen from gentlemen.

He would begin with those of the worthy member from Massachusetts, (Mr. Eustis.) He has stated that this amendment embraces three objects: The designation of the persons voted for as President and Vice President; the mode in which the choice of President should be made by that House, in case of no election by the Electors, in the first instance; and the provision that the duties of President should be exercised by the Vice President, if the House of Representatives should also fail to make an election. To the first of these provisions, the gentleman from Massachusetts felt himself warmly attached, but could not be brought to adopt it, when combined with the other two. On the first objection which he had taken, the gentleman had dwelt so short a time, and with so little force, and the difference between electing out of "the five highest," or out of those "having the highest numbers not exceeding three," was, in itself, so trivial, that little reliance seemed placed upon it. The possible succession of the Vice President to the Presidency, appeared to form the chief obstacle, and because he conceived it calculated to defeat the discriminating principle he could not be prevailed upon to assent to any amendment into which it was incorporated. And yet against this very principle of designation, the gentleman from Connecticut (Mr. R. Griswold) has made his utmost exertions, as subversive of the original ground of compact between the States. Let me ask, said Mr. R., upon what ground these gentlemen will vote together against this amendment when their views of its tendency are so entirely opposite, and when they are equally opposed in opinion as to what ought to be effected by us. I beg, sir, this inquiry may be understood to proceed from the high respect in which I hold the gentleman from Massachusetts, and from the regret which I must always feel in being compelled to act against him. It is dictated only by my anxiety to add the sanction of his character and his talents to every measure in which I may be concerned. The gentleman from Massachusetts advocates the discriminating between the persons voted for as President and Vice President; the gentleman from Connecticut deprecates it. The first gentleman is opposed to the amendment because it is calculated to defeat this principle of discrimination; the second because it contains it. When these gentlemen assigned such opposite and irreconcil-

able objections. I hoped they would not unite their votes against the amendment—that one of them would become a convert to the other, and that we should derive some support from them on the question. But there is one point on which they agree. They contend that it does not become us to suppose that the House of Representatives can refuse to obey the imperative voice of the Constitution, which commands them to elect a President, and that the provision of the Senate for such an emergency contains at once an unwarranted imputation on that branch of the Legislature, and an inducement to them to swerve from their duty. The supposition that this House will refuse to make an election when it is enjoined upon them by the Constitution, is said to be degrading, and therefore inadmissible. We are exhorted not to libel ourselves on our own statute book, and a late case is adduced to prove that all fears on that head are groundless. From that case I draw directly an opposite inference. Gentlemen then told us, we are highly averse to both the persons from whom we are to select a President, but there are shades in our dislike; we conceive that we have a right to be indulged with the candidate whom we consider the least obnoxious to our principles and views. If a mere shade of dislike, between two persons whom they highly disapproved would warrant such an opposition as we then saw, what would have been the struggle if the choice had been to be made between the gentleman who succeeded to the Presidency, and either of those who were held up for that office from Massachusetts or South Carolina? Does any man believe that we should have succeeded in an election under such circumstances? Would the gentleman from Connecticut have abandoned his principles in that case, or does he expect that we should have surrendered ours?

I put it to the gentleman himself whether he could under such circumstances have relinquished his own judgment and principles. I ask if he could have justified to himself the giving of such a vote? I answer for him that he could not. I take upon me to say so, because I could not have justified it in myself. I never could have justified myself, because the House of Representatives are directed to choose a President, in abandoning a candidate for whom I had the highest confidence, and voting for one of whom I felt the greatest diffidence. The Constitution enjoins it upon this House to make an election, but it cannot enjoin upon any man an abandonment of his judgment and his principles. When we have conscientiously given our votes we have discharged our duty. It is equally our business to pass laws and to perform other important functions. But does that imply an obligation on any man to vote for laws which he believes impolitic, oppressive, or unjust? If the case which I have put had actually occurred, I presume we should have broken up without an election. For one I do not hesitate to say, that I would have continued balloting till the 4th of March, and let things take their course.

Let us suppose such a case to have happened. The gentleman from Massachusetts objects that the provision discriminating between the President and Vice President will be totally defeated, since the Vice President, chosen either by the Electors or the Senate, will succeed to the Presidency. Is it not better that a person selected by the Electors, who are apprized of the contingency, or by the Senate out of two presented to their choice, should succeed to the Presidency, than that anarchy should ensue, or desperate measures be resorted to for carrying on the Government? Will it not serve to diminish the violence of the conflict here, when this House is apprized that it does not rest with a party within its walls to defeat the election of President altogether? But this we are told will give rise to endless intrigue. The Vice President, if any, or candidate for that office, will use every means to prevent an election, in hopes of succeeding to the Executive power. Do gentlemen reflect that this argument equally applies to every case of election by the House, as the Constitution now stands? Is it not as easy for a candidate for the Presidency to intrigue, in order to effect an election, as for a Vice President to intrigue to defeat one? When two or more men come into this House as candidates for the office of President, are not their inducements to intrigue as strong as any which can exist under the proposed amendment, and is not the event of an election by the House of Representatives much more probable under the present than under the proposed amendment?

To vote for two persons, without designating which is intended for the President and which for Vice President, is, we are told by the gentleman from Connecticut, to insure the selection of the two most capable men in the United States for those offices, respectively; but if a discrimination be made, combinations will take place between the States, and the Vice President will become a weight to secure the election of President; that he will be selected rather with a view to the State of which he is a citizen, or to his influence with particular Electors, than his worth or abilities. So far is this from being true, in my opinion, that a designation is absolutely necessary to secure the election of a fit person for the office of Vice President. When the Electors designate the offices and persons, respectively, for whom they vote, after choosing the person highest in their confidence for President, they will naturally make choice of him who stands next in their esteem for Vice President; but where they are not permitted to make this discrimination, they will, to secure the most important election, give all their votes to him whom they wish to be President, and scatter the other votes; thus leaving to chance to decide who shall be Vice President. Where a discrimination takes place, the Vice President will necessarily be a man standing high in the public confidence. Where it does not take place, it is more than probable that he will be a secondary character. But we are told that it is degrading in the lowest degree to suppose that there is but one person in the United States equal to the Presidency. Far be this idea from me. Were I of this opinion, weak as I am, I should expect to survive the Constitution—since I may reasonably expect to survive the term of the present Chief Magistrate. But whilst I admit that there are hundreds capable of filling the office, I do not believe it possible to present to the public, or to an individual, two candidates between whom there will not exist a preference. This is the nature of man, and it is the nature of free Governments to gratify this preference.

But the gentleman from Connecticut has gone into a wide field. He takes a view of the elementary principles of our Government, which he states to be consolidating and federal, and he declares that the discrimination attempted to be introduced will violate the last of those principles, to which he professes himself particularly attached. It is a matter of some surprise to me that, agreeing so nearly as we do in general principles, we should differ so widely in our conclusions. With some variation of expression, (perhaps of ideas,) I subscribe to his general doctrine. With him, I consider this a Government of States—as a Federal Government. Inasmuch as it tends to consolidation, by so much is it objectionable to me.—With him, I prize the federal principles on which it is founded, and I will join that gentleman, or any other, in heightening every federal feature of the Constitution. I consider it, too, not only a Government of States, but as a compromise between States of various dimensions and interests. When embarked in one common bottom, with a common sword and common Treasury, it became necessary to give the large States a superior degree of influence, to induce them to put their superior wealth and population at the disposal of the Confederacy; whilst the small States were to be secured against encroachment. While, therefore, they are equal in the Senate, on this floor the States are represented in proportion to their population and wealth—their influence in the choice of President is compounded of their influence in both branches of the Legislature. This is the basis of the Constitution, and carries compromise in every feature. I will venture to say, that even this House is not organized on the principle of a consolidated Government, because the representation on this floor is not of the whole mass of the people of the United States, but it is a representation of each State. The United States are not divided into as many districts as there are members, nor is there a general election, but each State sends its own delegation; and the rule of apportionment of representatives is an additional proof that this is a federative Government and a Government of compromise. If I were to point out the part of this Constitution which tends most to consolidation, I should lay my hand on the Judiciary. The giving to that department jurisdiction not only under Federal laws, but in cases between man and man, arising under the laws of a State, where one of the parties is a foreigner, or citizen of another State, and even between citizens of the same State under the bankrupt system, is the strongest feature of consolidation in this Government. I will go all lengths with gentlemen in abrogating this jurisdiction—in restoring the federal principle to this department of Government. I wish to see the day when the jurisdiction of the Federal courts shall be confined to cases arising under the Federal laws.

Mr. R. apologized for the digression into which he had been carried by the view which the gentleman from Connecticut had taken of the principles of our Government. It is contended that the discriminating principle of this amendment goes to destroy the compromise between the States, since it will annihilate the power of the small States. To this I conceive it is an unanswerable reply that if such be its effect it can never become a part of the Constitution.

Five States may put their veto upon it. Rhode Island, Delaware, Ohio, Tennessee, and Georgia, are five as small States as can be found in the Union. They belong to the great subdivisions of the country, Eastern, Middle, Western, and Southern. These five States, judging from their representation, contain less than one-twelfth of the population of the United States. Eleven-twelfths of the Union may be forbidden by these States from adding this amendment to the Constitution. An additional proof that this proposition is not injurious to the smaller States is, that the Representatives of those very States have expressed their approbation of it. If, on the contrary, as has been contended by other gentlemen, this amendment impairs the influence of the large States, Massachusetts, New York, Pennsylvania, Virginia, and North Carolina, will reject it. But a strong proof that it neither affects the interest of the one nor the other is, that objections have been made to it on both these grounds. Whilst, however, the gentleman from Connecticut combats this discrimination as subversive of the rights of the small States his friend from Maryland (Mr. DENNIS) objects to it because the last provision renders nugatory the discriminating principle. Does the gentleman mean to disarm his friends of their objections to the amendments and induce them to support it; or does he, relying on their stability, expect to excite alarm in its friends and thereby defeat it? The gentleman and his friends have uniformly opposed all discrimination, and now it seems, he objects because that object is likely to be defeated. This objection the gentleman from Connecticut had, with his usual clear sightedness, cautiously avoided. He knew better the real bearing of the amendment, and if such had been the effect of the last provision, the amendment would never have received so strenuous an opposition from him. No sir, it is because he sees this principle, so obnoxious to him, existing unimpaired in this amendment, that he has thrown every obstacle in his power against it. He has indeed taken the objection that it will open the door to intrigue—for so soon as any man is put in reach of the Presidency you arm him with the power, whilst you give him the disposition to corrupt the Electors. It will therefore be the interest of the Vice President to defeat an election by this House. But will not the disposition and power to intrigue be equally brought into action as the Constitu-

tion now stands, when two or more candidates shall be presented to that House for their selection? And is not the probability of such an event diminished by discriminating between the officers? I conceive this provision, by lessening the chance of an election by this House, has done much. It will tend in a great degree to strengthen the union of these States, which never was more endangered than at the last election. The gentleman from Connecticut complains that the events of that period have been grossly misrepresented. Whether that be the case or not, I have no hesitation to state that it was, in my opinion, a period of imminent danger to this country. It was a crisis such as I hope we shall never again be exposed to, and to avoid its recurrence is my motive for advocating the amendment which has been sent to us, and which is as unexceptionable as any which I believe at this time attainable. The worst that can befall us will be the exercise of the duties of President by the same person who would be called upon to discharge them in case of his death, resignation, or removal from office.

Mr. EUSTIS.—If at this late hour I could expect the attention of this House, I should derive a peculiar satisfaction in replying to the observations of my friend from Virginia; and as from present indications I have a right to experience that indulgence, I shall proceed with the same candor which has distinguished the remarks of that gentleman, with whom it would be my pleasure to act on this as on other occasions.

That gentleman expresses his hope, as the resolution under consideration embraces the great object had in view, that those who are desirous of attaining this object will not refuse their assent to it because the resolution contains other provisions which he terms of an inferior or secondary nature. It is necessary to review the resolution, and I must repeat the objections which were made when it first came under consideration. I stated at that time that it differed widely and materially from the resolution sent up by this House to the Senate, and on which it does not appear that the Senate have acted. That resolution contemplated a single object, viz: a designation of the persons voted for as President and Vice President. The resolution of the Senate I also stated to consist of three distinct and separate propositions: the first containing what has been termed the designating principle; the second reducing the Constitutional number of candidates from whom the House of Representatives are to choose, in case there be no choice by the Electors, from five to three; the third providing in case there shall be no choice by the House of Representatives, that the Vice President shall be President of the United States. The first provision, that of designating, appears to me, and the House will recollect, and the gentleman from Virginia will also recollect, that I then stated this to be a modification rather than a change of a Constitutional rule or principle, by which the votes of the Electors, given in that case as they are now given under the Constitution, will be subject only to this alteration, that the person voted for as President, and the person voted for as Vice President, will be respectively designated in distinct ballots. This is the alteration contemplated in the resolution which passed the House—this embraces the whole of the change contemplated by the House and by the public—this is the amendment which I continue to approve, and against which I have heard no substantial objection.

The second amendment proposed by the Senate, it may also be recollected, was objected to on two grounds: first, that it contemplated another important alteration in the Constitution in a point where no evil had resulted, and where no inconvenience had been experienced. Without any reason, it proposed to narrow the choice of the House from five to three. It has been contended—and I hope the gentleman from North Carolina will take this as an answer to his observations—it has been contended by that gentleman, as well as others, and with some ingenuity, that the President and Vice President are to be chosen from the five highest candidates, by the Constitution; and as, by the resolution, the President is to be chosen from the three highest, and the Vice President from the two highest, that the three and the two make five, and of course there is no difference; and the gentleman, therefore, does not see how the resolution can be objected to on this ground. But it will be seen that at present, and under the Constitution, the President is chosen from five; if the proposed amendment be adopted, he must be chosen from three candidates; making a change, and narrowing the choice from among the candidates, from five to three. The election of Vice President, by this amendment, is totally changed; he is to be chosen at another time and in another place, and gentlemen must see that his election bears no relation to, and cannot be coupled with, that of the President.

The second objection to this amendment was grounded on the indefinite mode of expression—"from the persons having the highest numbers, 'not exceeding three, on the list of those voted for 'as President, the House of Representatives shall 'choose immediately by ballot." There is a want of precision in these words. Some gentlemen understand it as limiting the choice to the three highest candidates, while others suppose them intended to embrace five, ten, or fifteen, if there be so many having an equal number of votes in the three highest grades; and, if gentlemen on this floor differ in their construction, is it not to be expected that the State Legislatures when they come to consider, and the House of Representatives of the United States, when they come to act under it, will also differ?

The third proposition provides that, if the House of Representatives shall not choose a President before the fourth of March following, the Vice President shall act as President, as in case of his resignation or death—another and a still more important change in the Constitution. To this I did object, and I do still object, because it is predicated on a concession which I am not willing to have ingrafted in that instrument. It is predicated on a presumption that the House of Representatives may refuse to carry into effect the public will—that they will refuse to obey the imperative language of the Constitution, which ordains that, in case there be no choice by the Electors, *they shall immediately proceed to a choice;* because it assails a first and fundamental principle—it presumes on a privation or absence of political morality, on which all our institutions rest. The Constitution cannot exist if this principle become extinct.

The formation of this House—which is the democratic branch of the Government—how is it effected? In apportioning the representation of the several States, the words of the Constitution are,—"The State of New Hampshire shall be entitled to three Representatives." Suppose the people of the State of New Hampshire had declined to choose their Representatives, has this House the power to compel that State to exercise this right? They have not; and if other States had, from whatever motives, pursued a similar course, this House could not have been formed, and the Constitution must have been defeated.

A sense of interest and of political obligation are the basis and the security of the Constitution, and distinguish the people and Government of this from those of other countries; if you presume on its absence, you discourage, you diminish, you destroy it. "If the House of Representatives shall not choose." The House of Representatives will not refuse, they will not dare to refuse; the transaction which is passed proves they dare not defeat the will of the people. But if you make this amendment you furnish them with an apology, with an excuse, with a justification for refusing; and, what is worse, you tempt them to refuse; you presume, at least, that they may refuse. The high responsibility imposed on the House by the Constitution is destroyed. This provision will be pleaded in justification of their refusal to make a choice; and when they shall refuse what is to be the consequence? The officer whom it is intended to be defeated, by the first resolution, is promoted; the man whom the people never intended should be President, the Vice President, becomes President of the United States. The Vice Presidency will thenceforth become the office of importance to be secured in the Government, and by the means, and with the temptation, which will be in his power to offer and to use, he will finally become President.

I am sensible this is a provision in a last resort, and which cannot take effect excepting in case of a failure of two other processes: that of the Electors first, and that of the House in the second instance; and I am also sensible that the three provisions for securing a President stand separate from each other; but it is true, and it will be found in practice, that they have each a relation to, and bearing on the other. The responsibility of the Electors will be diminished, the House of Representatives will feel less responsibility, encouragement will be given to intrigue, and the means which have been, perhaps, too often alluded to on this floor, will receive a facility in the hands of the person who shall be chosen Vice President, which may become dangerous to the public peace and destructive to the public happiness.

These are the objections which I made to the resolution under consideration; a review of the subject has not diminished them. We continue to approve the designating principle—we approve the number five of candidates from which the House is to make a choice when the election shall be brought there. My friend from Virginia was with us in opinion on these points; our affirmative vote is on the Journals; if there be any change of opinion, that change is not with us, it is the majority of the House who have changed. And what reason is assigned for the change? What is the reason assigned by the gentleman from Virginia? That this is the best or the most he can attain, or that, as he gains the discriminating principle, he is willing to take the two other amendments which the Senate have added. We ask to be satisfied that we are reduced to this alternative. It is not satisfactory to be told that the Senate will not recede when they shall be made acquainted with the objections of the House; we ask for an intercourse with them—we desire that the rules of procedure in ordinary business be observed in this. With this view, I moved yesterday that the resolution might be committed; that we might send a message to the Senate, asking an answer to the proposal made to them for their concurrence in the resolution which passed the House, or to propose a committee of conference. The motion was negatived—it was said not to have been a custom in this Government to send such an order or message. Without pretensions to much experience, I know it must be in order. I know it must be consistent with parliamentary rule to send messages of this nature. In what other manner is the sense of one House to be made known to the other? On a subject of this importance, where there appears a difference of sentiment in the two Houses, some intercourse ought to be had, and some explanation is required. Perhaps the Senate, when they shall become possessed of the objections of the House, will be willing to recede from one or both the alterations which they have made in our resolution. When we ask them to institute this inquiry, gentlemen rise in their places and tell us, the Senate will not recede; and this is all we can have—this is not satisfactory.

By what means can gentlemen know this? It is due to those who object, and it is due to the House, that the inquiry should be made, that the ordinary course should be pursued. The resolution in the meantime will remain in custody of the House, and if there shall be a conviction that the Senate will give up nothing for the sake of accommodation, it may finally be adopted; until this course shall have been pursued it is unreasonable to press a decision. Many gentlemen who approve of the designating principle are opposed to the amendments proposed by the Senate. Some of those gentlemen have expressed their disapprobation; some of them will be compelled to vote against the resolution if insisted on at this time.

On the subject of amendments generally, two

of my colleagues have expressed sentiments not founded in a knowledge of the letter or spirit of the Constitution. One of them, a reverend gentleman, (Mr. Taggart,) speaking of the constitution of Massachusetts, ascribed great wisdom to the framers of that instrument, because they had provided that it should not be amended until after the expiration of fifteen years; that within that term an insurrection had prevailed in the State, and if the constitution had admitted of being amended or altered at that time, the temper and disposition of what he has called the public mind were such as would have cast the State afloat on the ocean of anarchy. Sir, that worthy gentleman is not acquainted with the constitution of his own State. That constitution is bottomed on the principle that the people have at all times a right to alter, to amend, and change their form of Government, whenever their own interest or their own happiness shall in their opinion require it.

Impressed with this principle, the framers of that constitution provided by an express article that the General Court which should be in session fifteen years after the adoption, "shall issue precepts to the several towns and plantations, calling a convention in order to take the sense of the people, whether they wished for any alteration." Understanding their own constitution, and knowing that they have at all times the right to alter and amend it, the people of the State have rested easy under it without alteration.

With respect to the Federal Constitution, are gentlemen ignorant of the difficulty with which the convention of Massachusetts finally adopted it? Do they recollect that amendments were for a long time insisted on as a condition of the ratification; that the people of that State having gone through the war under a federative Government very different from this, were afraid of the powers granted by the new Constitution; that their fears were extensive and influential; and that this Constitution was finally adopted, because it carried with it the means of being altered and amended as time and experience should suggest, and because the State Legislatures as well as Congress had a right to institute amendments?

One of the gentlemen (Mr. Thatcher) has quoted an authority to which every member of this House will bend with respect and attention. But the passage he has quoted, makes directly against him. Whilst we are cautioned against alterations under the garb of amendments, we are invited to adopt such as "experience" shall recommend, and the object of this amendment so far as it respects the designating principle is suggested by experience; that the true way to preserve the affections of the people for this Constitution is to recur to the principles and conditions with which it was adopted, and instead of objecting, to give facility to such amendments as experience shall suggest.

When Mr. Eustis had concluded, the question was taken, and decided in the affirmative, by yeas and nays, two-thirds of the members present concurring in their agreement to the said resolution of the Senate, to wit—yeas 83, nays 42—and Mr. Speaker declaring himself with the yeas.

Yeas—Nathaniel Macon, (Speaker,) Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Jno. Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, Jas. Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Daniel Heister, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Silas Betton, Phan. Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, William Eustis, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Hoge, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thos. Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, Ebenezer Seaver, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

Monday, December 12.

The House resolved itself into a Committee of the Whole on the bill for the relief of the officers of Government, and other citizens, who suffered in their property by the insurgents in the western counties of Pennsylvania; and, after some time spent therein, the Committee rose and reported the bill without amendment.

Ordered, That the said bill be engrossed, and read the third time to-morrow.

On motion, it was *Resolved*, That a committee be appointed to inquire whether any, and if any, what alteration is necessary to be made in the law regulating the mode of selecting jurors to serve in the courts of the United States.

Ordered, That Messrs. Early, George W. Campbell, Dennis, Eppes, and Hastings, be appointed a committee pursuant to the said resolution.

Mr. John Randolph, jun., from the Committee of Ways and Means, to whom was referred, on the eighth instant, the memorial of sundry sugar refiners, citizens of and residents in the State of Pennsylvania, made a report thereon; which was read and ordered to be referred to a Committee of the whole House to-morrow.

On motion, it was

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be requested to transmit to the Executives of the several States copies of the article of amendment proposed by Congress to be added to the Constitution of the United States respecting the election of President and Vice President.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House proceeded to consider a motion of the second instant, in the words following, to wit:

Resolved, That the prayer of the petition of Stephen Kingston is reasonable, and ought to be granted.

And the said motion being twice read at the Clerk's table, was disagreed to by the House.

Mr. Findley, from the committee appointed on the twenty-second ultimo, to whom was referred a petition of sundry inhabitants of Georgetown and its vicinity, in the District of Columbia, reported a bill to incorporate the Directors of the Columbian Library Company; which was read twice, and committed to a Committee of the whole House on Thursday next.

On motion, the House adjourned.

Tuesday, December 13.

Mr. Thomas, from the committee appointed on the eighteenth of October last, who were directed by a resolution of this House of the second ultimo, "to inquire by what means the mail may be conveyed with greater despatch than at present, between the City of Washington and Natchez and New Orleans," made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Thursday next.

An engrossed bill for the relief of the officers of Government, and other citizens, who suffered in their property by the insurgents in the western counties of Pennsylvania, was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, of the eighth instant, to whom was referred, on the seventeeth ultimo, a motion relative to "the expediency of discontinuing the office of Commissioner of Loans in the different States, and of transferring the duties of that officer to the Secretary of the Treasury," with the accompanying documents; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the resolution contained in the said report.

The House then proceeded to consider the said report at the Clerk's table; when, on motion, it adjourned.

Wednesday, December 14.

Two memorials of the Mayor, Recorder, Aldermen, and Common Council, and of sundry citizens of Georgetown, in the District of Columbia, were presented to the House and read, respectively submitting certain propositions to the consideration of Congress, by way of amendments to the existing law for incorporating the said town, which they pray may be adopted, for the convenience and benefit of the inhabitants thereof.—Referred.

COMMISSIONER OF LOANS.

The House resumed the consideration of the report of the Committee of Ways and Means of the eighth instant, on a motion of the seventeenth ultimo, relative to the expedieney of discontinuing the office of Commissioner of Loans in the different States, and of transferring the duties of that officer to the Secretary of the Treasury," to which the Committee of the Whole House yesterday reported their disagreement; and the resolution contained therein being twice read, in the words following, to wit:

Resolved, That it is inexpedient to discontinue the office of Commissioner of Loans in the several States:"

The question was taken that the House do concur with the Committee of the whole House in their disagreement, and was determined in the affirmative—yeas 58, nays 55, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, John Clopton, Frederick Conrad, William Dickson, John B. Earle, James Elliot, William Findley, James Gillespie, Andrew Gregg, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, John G. Jackson, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer John Randolph, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, John Smilie, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thos. Wynns.

Nays—Nathaniel Alexander, Simeon Baldwin, David Bard, Silas Betton, William Blackledge, William Chamberlin, Martin Chittenden, Clifton Claggett, Joseph Clay, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Thomas Dwight, Peter Early, William Eustis, Calvin Goddard, Edwin Gray, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, Seth Hastings, Joseph Heister, David Hough, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Joseph Lewis, jun., Thomas Lewis, Thomas Lowndes, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Thomas Plater, Samuel D. Purviance, Ebenezer Seaver, Tompson J. Skinner, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher,

George Tibbits, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, and Lemuel Williams.

And on motion, the House adjourned.

THURSDAY, December 15.

A message from the Senate informed the House that the Senate have passed a bill entitled "An act to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States;" to which they desire the concurrence of this House. The said bill was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the bill giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes; and, after some time spent therein, the Committee rose and reported progress.

The House resolved itself into a Committee of the whole House on the supplementary report of the Committee of Claims, of the thirteenth instant, on the memorial of Paul Coulon, a French citizen; and, after some time spent therein, the Committee reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That there be paid to Paul Coulon, as Agent for the captors of the ship Betty Cathcart, and brig Aaron, prizes to the privateer La Bellone, out of any moneys in the Treasury not otherwise appropriated, the sum of six thousand two hundred and forty-one dollars and forty-four cents, being the amount retained by the Treasury Department from the sales of the ship Betty Cathcart, for duties on the cargo of the brig Aaron.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

On motion, it was

Ordered, That the report of a select committee, made the second of March last, on a letter from William Henry Harrison, President of the Convention held at Vincennes, in the Indiana Territory, declaring the consent of the people of that Territory to the suspension of the sixth article of compact between the United States and the said people; also, on a memorial and petition of the inhabitants of the said Territory; be referred to Mr. RODNEY, Mr. BOYLE, and Mr. RHEA, of Tennessee; to examine and report their opinion thereupon to the House.

Resolved, That a committee be appointed to inquire into the expediency of vesting the powers usually exercised by a court of equity, in the Judges of the United States within the Indiana and other Territories; and, also, to inquire into the expediency of allowing writs of error and appeals from the judgments and decisions of the said Judges to the Supreme Court of the United States.

Ordered, That Mr. RODNEY, Mr. BOYLE, and Mr. RHEA, of Tennessee, be appointed a committee, pursuant to the said resolution.

Mr. EUSTIS, from the committee to whom was referred, on the fifth instant, a Message from the President of the United States, enclosing sundry papers relative to the amicable adjustment of differences between the United States and the Emperor of Morocco, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

FRIDAY, December 16.

A message was received from the Senate stating that they had passed the salary bill, with sundry amendments—also that they had resolved to postpone till the first Monday of September, the amendment to the Constitution sent to them by the House of Representatives.

[This is the amendment, in lieu of which the amendment agreed to by the two Houses was passed.]

Mr. JOHN C. SMITH, from the Committee of Claims, presented a bill for the relief of Paul Coulon; which was read twice and committed to a Committee of the whole House on Wednesday next.

TERRITORY OF LOUISIANA.

The House went into Committee of the Whole on the bill giving effect to the laws of the United States, in the territory ceded by France to the United States.

The amendment of Mr. LATTIMORE, having for object the preservation of a port of entry in the Mississippi Territory, was again taken into consideration.

Mr. LATTIMORE moved that the Committee should rise, to allow further time for obtaining information.

This motion was supported by Messrs. LATTIMORE and SANDFORD; and opposed by Messrs. J. CLAY and J. RANDOLPH; and lost—yeas 48, nays 50.

Messrs. LATTIMORE, GREGG, SANDFORD and GRISWOLD, then spoke in favor of the amendment; and Messrs J. RANDOLPH, S. L. MITCHILL, J. CLAY, EUSTIS, MACON, and VARNUM against it. When the question was taken on it and carried in the negative—yeas 25.

Mr. LYON offered a motion to exempt from duty goods exported from Louisiana, to the ports of the United States, since the twenty-second day of October last.

This motion was opposed by Messrs. J. RANDOLPH and J. CLAY, and rejected without a division.

The Committee then rose and reported the bill with several amendments, which the House immediately considered, and agreed to with other amendments, when the bill was ordered to a third reading on Monday.

MONDAY, December 19.

A memorial of the House of Representatives of the Mississippi Territory of the United States,

signed by William Dunbar, their Speaker *pro tempore*, and attested by Richard S. Wheatly, their Clerk, was presented to the House and read, stating certain disadvantages to which the inhabitants of the settlement on the Tombigbee and Alabama rivers have been and are now subjected, in consequence of their remote situation from the other inhabited parts of the said Territory; and praying that a line of separation may be drawn between the settlements on the Mississippi river, and those of Washington district, or that judges, learned in the law, may be appointed to reside within the said district, for the benefit and convenience of the inhabitants thereof.

Ordered, That the said memorial be referred to the committee appointed, on the twenty-fifth ultimo, on the petition and memorial of sundry inhabitants of the District of Washington, situate on the Mobile, Tombigbee, and Alabama rivers, in the said Mississippi Territory; to examine and report their opinion thereupon to the House.

TERRITORY OF LOUISIANA.

An engrossed bill giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes, was read the third time: Whereupon a motion was made, and the question being put, that the said bill be recommitted to the consideration of a Committee of the whole House, it passed in the negative. And then the main question being taken that the said bill do pass, it was resolved in the affirmative—yeas 88, nays 13, as follows:

YEAS—Willis Alston, junior, Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, William Findley, James Gillespie, Edwin Gray, Andrew Gregg, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hasting, Joseph Heister, William Hoge, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, junior, Henry W. Livingston, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jun., John Patterson, Samuel D. Purviance, John Randolph, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

YEAS—Simeon Baldwin, Silas Betton, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Calvin Goddard, David Hough, Matthew Lyon, Jeremiah Morrow, Gideon Olin, Thomas Plater, and George Tibbits.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned:" Whereupon,

Ordered, That the said amendments, together with the bill, be committed to a Committee of the whole House to-morrow.

MAIL ROUTES.

The House went into a Committee of the Whole on the following report of the Post Office Committee:

The Committee on the subject of the Post Office and Post Roads, to whom was referred a resolution of the 2d ultimo, directing them to inquire by what means the mail may be conveyed with greater security and dispatch than at present, between the City of Washington and Natchez and New Orleans, report—

That the late cession of Louisiana by France to the United States renders it an object of primary importance to have the nearest and most expeditious mode of communication established between the City of Washington and the city of New Orleans, the capital of that province; not only for the convenience of Government, but to accommodate the citizens of the several commercial towns in the Union.

That at present the mail is conveyed on a circuitous route from this place to Knoxville and Nashville in Tennessee, and from thence through the wilderness by Natchez to New Orleans, a distance of more than 1500 miles.

That, by establishing a post route as nigh on a direct line between those two cities, as the Blue Ridge and Alleghany Mountains will admit of, will not only lessen the distance about 500 miles; but as this route will pass almost the whole way through a country inhabited, either by citizens of the United States or friendly Indians, the mail will be more secure, and the persons employed in transporting it better furnished with the means of subsistence.

The committee flatter themselves that the views of the General Government, in effecting this important object, will be seconded by the governments and citizens of those States through which this road will pass, by laying out, straitening, and improving the same, as soon as the most proper course shall be sufficiently ascertained; but as this has not heretofore been used for conveying the mail between those places, they presume that the best route will be better known after it has been used for this purpose, than it can be at present: and with this view of the subject, they deem it improper at this time to designate intermediate points; they are, therefore, of opinion—

That a post road ought to be established from the City of Washington, on the most direct and convenient route to the Tombigbee settlement in the Mississippi Territory, and from thence to New Orleans.

And further, that a post road ought also to be established from the said Tombigbee settlement to the Natchez. This road will not only afford the inhabitants of that place a direct mode of communication with the seat of the Territorial Government, who at present are destitute of any, but will shorten the distance between this city and Natchez nearly three hundred

miles. And for the consideration of the House, the committee submit the following resolution

Resolved, That a post road ought to be established from the City of Washington, on the most direct and convenient route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement in the Mississippi Territory, and from thence to New Orleans; and also from the said Tombigbee settlement to Natchez.

Mr. Stanford moved the insertion of the following words:

"And Carter's Ferry on James river, Cole's Ferry on Stanton, Dansville on Dan river, in Virginia; Salisbury, Beatty's Ford, on Catawba, in North Carolina; Spartanburg, Greenville Courthouse, and Pendleton Courthouse, in South Carolina; and Jackson Courthouse, in Georgia:"

His object being to designate the intermediate points of the route between the seat of Government and New Orleans and Natchez.

This motion was supported by Messrs. Stanford, J. Randolph, Early, Earle, and Macon, on the principle that it was proper that Congress should designate the route, and on the ground that the route contemplated by the amendment would be the fittest.

On the other hand, the motion was opposed by Messrs. Thomas, Smilie, Holland, Claiborne, S. L. Mitchill, and G. W. Campbell, on the ground that a discretionary power should be reposed in the Postmaster General to designate the route; and on the ground that, if Congress should undertake to designate the route, the one fixed by the amendment was not an eligible one.

Mr. Dennis declared himself in favor of the House exercising the power of designating the route, but was not sufficiently informed to vote on any particular line.

Mr. R. Griswold moved that the Committee of the Whole should rise and ask leave to sit again, with the view that leave should be refused, and the report recommitted to the Post Office Committee, in order to obtain from them a detailed report, that would furnish the House with satisfactory information.

This motion was supported by Mr. Gregg, and opposed by Mr. Thomas, and carried—yeas 70.

The House then refused leave to the Committee of the Whole to sit again—yeas 19, and recommitted the report to the Post Office Committee.

Tuesday, December 20.

Mr. Alston presented a memorial from sundry inhabitants of the Indiana Territory, praying a repeal of the sixth article of the ordinance establishing the Indiana Territory, which prohibits slavery in said Territory.

Mr. Varnum objected to the reference of the memorial on the ground that its prayer was both unconstitutional and unjust.

Mr. Alston replied that this remark might be an argument against agreeing to the prayer of the memorial; but would not apply against making the reference, especially as the same subject was already referred to a committee on another petition.

The reference to a committee was carried—yeas 48, nays 34.

Mr. Claiborne moved a resolution for the appointment of a committee to inquire whether any, and, if any, what description of claims against the United States are bound by statutes of limitation, which in reason and justice ought to be provided for by law, with leave to report by bill or otherwise.

Ordered to lie on the table.

Mr. Samuel L. Mitchill, from the Committee of Commerce and Manufactures, who were directed by a resolution of this House of the ninth ultimo, "to inquire and report by bill, or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports or places," made a report thereon.

Ordered to lie on the table.

ZACHARIAH COX.

Mr. Early called for the order of the day on the report of the Committee of the Whole on the petition of Zachariah Cox.

The House took up the report, which is, that the prayer of the petitioner cannot be granted.

Mr. Early hoped the report would be disagreed to, in which case he would move the following resolution:

Resolved, Although the arrest and confinement of Zachariah Cox, by Winthrop Sargent, Esq. appears to have been illegal and oppressive, yet that the circumstances are not such as to justify the interposition of this House.

Messrs. R. Griswold and Smilie opposed the adoption of this motion, on the ground that it involved a decision on the character of a public officer on ex-parte evidence; that if Governor Sargent had abused his power, he was a fit subject of impeachment, and that this would be the becoming course to pursue; and that inasmuch as he might be brought before a court of justice, it was highly improper and unjust to impose a stigma on his character, which might operate injuriously to the course of justice.

Messrs. Early and J. Randolph advocated the adoption of the motion, on the ground that Governor Sargent appeared, from documents which he had himself transmitted to the Department of State, to have made an illegal and oppressive arrest and confinement of the petitioner, for which act he was, in their opinion, impeachable; but inasmuch as the power of impeachment was a high and solemn one, which ought not to be cheapened by an application to trifling cases; and inasmuch as it was the general opinion of the House that this was a case that did not merit such interposition, it became proper, at the same time, to avoid a decision, that might appear, in a side way, to exculpate Governor Sargent, which might be considered as the effect of confirming the report, that the prayer of the petitioner cannot be granted.

On concurring in the report of the committee, viz: that the prayer of the petitioner cannot be granted, the House divided—yeas 54, nays 26.

This decision of course superseded the motion contemplated to be made by Mr. Early, in case the report of the committee should have been disagreed to.

SALARIES OF OFFICERS.

The House went into Committee of the Whole on the amendments of the Senate to the salary bill. These amendments were:

1. To strike out these words, "as established by the act passed the second of March 1799, and no other."

2. To increase the salary of the Postmaster General from $3.000 to $4,000.

3. To increase the salary of the Assistant Postmaster General from $1.700 to $2.000.

4. To insert a new section, prohibiting the allowance of any extra compensation, from contingent funds, to officers compensated by fixed salaries.

The Committee disagreed to the three first amendments, and agreed to the last.

The House immediately took up the report of the Committee, and concurred in it.

On a concurrence with the Committee on their agreement, to the last amendment, the yeas and nays were taken—yeas 56, nays 42, as follows:

Yeas—Willis Alston, jr., Simeon Baldwin, David Bard, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, William Findley, James Gillespie, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Henry W. Livingston, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Gideon Olin, John Patterson, John Randolph, jr., John Rea of Pennsylvania, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, John Stewart, Benjamin Tallmadge, David Thomas, John Trigg, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Nathaniel Alexander, Silas Betton, John Campbell, Thomas Claiborne, Joseph Clay, John Clopton, Jacob Crowninshield, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Michael Leib, Joseph Lewis, jun., Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Thomas Moore, Thomas Plater, John Rhea of Tennessee, Tompson J. Skinner, John C. Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Abram Trigg, and Lemuel Williams.

Wednesday, December 21.

The report received yesterday, from the Committee of Commerce and Manufactures, who were directed by a resolution of this House of the 5th ultimo, "to inquire and report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States and exported to foreign ports or places," was read, and ordered to be referred to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the bill for the relief of Paul Coulon. The bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

Resolved, That the Secretary of the Treasury be directed to report to this House an account of the money received for the support of sick and disabled seamen; designating particularly the sums collected and expended at each port.

On motion of Mr. Claiborne, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what description of claims against the United States are barred by the statutes of limitation, which, in reason and justice, ought to be provided for by law; and that they have leave to report by bill or otherwise.

Ordered, That Mr. Claiborne, Mr. Tenney, Mr. Varnum Mr. Stanton, Mr. Tallmadge, Mr. Chittenden, Mr. Patterson, Mr. Smilie, Mr. Nicholson, Mr. Sandford, Mr. Winston, Mr. Dickson, Mr. Casey, Mr. Meriwether, Mr. Morrow, Mr. Lattimore, and Mr. Gray, be appointed a committee pursuant to the said resolution.

On motion, it was

Ordered, That Mr. Purviance and Mr. Verplanck be added to the committee appointed, on the eighteenth of October last, "to inquire, and report, by bill or otherwise, whether any further provisions are necessary for the more effectual protection of American seamen."

On motion, it was

Resolved, That the committee appointed "to inquire and report whether any further provisions are necessary for the more effectual protection of American seamen," do inquire into the expediency of granting protections to such American seamen, citizens of the United States, as are free persons of color; and that they report by bill or otherwise.

Mr. Dennis observed that he was one of those who had long been of the opinion that the existing duties paid on certain imported articles ought to be either taken off or reduced. He considered the situation of the country such as would now justify a reduction. He, therefore, moved a resolution, declaring it expedient to reduce the duty on brown sugar to one cent per pound, and enjoining it on the Committee of Ways and Means to bring in a bill for that purpose.

Ordered, To lie on the table.

The House went into a Committee of the Whole on the bill to incorporate the Directors of the Columbian Library Company.

Mr. J. Clay moved an amendment to limit the term of incorporation to fourteen years. Motion lost—ayes 25.

After making a few verbal amendments, the Committee rose and reported the bill, and the House ordered it to be engrossed for a third reading to-morrow.

Mr. Stanford moved an instruction to the Post Office Committee, to inquire into the most convenient route, designating the same, for the mail from Washington to New Orleans.

Agreed to without a division.

Thursday, December 22.

An engrossed bill for the relief of Paul Coulon was read the third time, and passed.

An engrossed bill to incorporate the Columbian Library Company, was read the third time, and passed.

Mr. John Randolph, jr., from the Committee of Ways and Means, presented a bill further to amend the act, entitled "An act to lay and collect a direct tax within the United States;" which was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the report of the committee appointed on the fifth instant, to whom was referred a Message from the President of the United States, enclosing sundry papers relative to the amicable adjustment of differences between the United States and the Emperor of Morocco; and, after some time spent therein, the Committee reported their agreement to the resolutions contained therein: which were severally twice read, and agreed to by the House, as follows:

Resolved, That it is inexpedient for the United States to pursue further hostilities against the Emperor of Morocco, unless they should be rendered necessary by future aggressions.

Resolved, That provision ought to be made, by law, to indemnify the captors of such armed vessels belonging to the Emperor of Morocco, as have been captured and surrendered to the said Power, for the prize-money to which they are entitled.

Ordered, That a bill or bills be brought in, pursuant to the second resolution; and that the Committee of Ways and Means do prepare and bring in the same.

A message from the Senate informed the House that the Senate insist on their first, second, third, and fourth amendments, disagreed to by the House, to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," and desire a conference with this House on the subject-matter of the said amendments, to which conference the Senate have appointed managers on their part.

The House went into Committee of the Whole on the report of the Committee of Claims, in the case of the Danish brigantine Henrique.

After a debate which occupied the day, the Committee rose without coming to a decision, and the report of the Committee of Claims was recommitted.

Friday, December 23.

The House proceeded to reconsider the first, second, third, and fourth amendments of the Senate, disagreed to by this House, and insisted on by the Senate, to the bill, entitled "An act fixing the salaries of certain officers therein mentioned;" whereupon,

Resolved, That this House doth insist on their disagreement to the said amendments.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendments; and that Mr. John Randolph, jr., Mr. Roger Griswold, and Mr. Alston, be appointed managers at the said conference, on the part of this House.

Mr. John Randolph, jr., reported, from the Committee of Ways and Means, that the committee had taken into consideration the contingent expenses of this House, and agreed to a report thereon; which was read, and ordered to lie on the table.

REFINED SUGAR.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means on the memorial of sundry sugar refiners of Pennsylvania, and, after some time spent therein, the Committee rose, and reported to the House their disagreement to the same.

The House then proceeded to consider the said report; and the resolution contained therein being twice read, in the words following, to wit:

Resolved, That no internal duty shall be collected on sugars removed from the refinery since the thirtieth day of June, one thousand eight hundred and two, any law to the contrary notwithstanding.

The question was taken that the House do concur with the Committee of the whole House in their disagreement to the same, and resolved in the affirmative—yeas 52, nays 37, as follows:

Yeas—Willis Alston, jr., Nathaniel Alexander, Geo. Michael Bedinger, Silas Betton, Phanuel Bishop, Wm. Blackledge, John Boyle, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Richard Cutts, John Dawson, James Elliot, William Eustis, James Gillespie, Edwin Gray, Samuel Hammond, Seth Hastings, William Hoge, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lucas, jun., John B. C. Lucas, Matthew Lyon, Nahum Mitchell, Thomas Moore, Thomas Newton, jun., John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Cotton Smith, John Smith of New York, Richard Stanford, Joseph Stanton, William Stedman, John Stewart, Abram Trigg, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Robert Brown, Joseph Bryan, John Campbell, Thomas Claiborne, Joseph Clay, Manasseh Cutler, Samuel Dana, Thomas Dwight, Peter Early, William Findley, Calvin Goddard, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Benjamin Huger, Thomas Lowndes, Andrew McCord, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Joseph H. Nicholson, Thomas Plater, Samuel D. Purviance, John Randolph, jun., John Smilie, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, George Tibbits, John Trigg, Isaac Van Horne, John Whitehill, and Marmaduke Williams.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States."

The Committee reported the bill without amendment.

The House then proceeded to consider the said bill; and, after some progress therein, adjourned.

Monday, December 26.

Mr. S. L. Mitchill, from the Committee of Commerce and Manufactures, presented a bill to extend the time for making the oath required in cases of goods, wares, and merchandise, exported and entitled to drawback, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice and committed to a Committee of the whole House on Monday next.

Mr. Van Horne, from the committee appointed, on the fifth instant, "to inquire into the expediency of granting further time to the proprietors of military land warrants to obtain and locate the same," and to whom were referred sundry petitions on the same subject, made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Monday next.

The House resumed the consideration of the bill sent from the Senate, entitled "An act to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States;" whereupon,

Ordered, That the said bill be recommitted to a Committee of the whole House on Thursday next.

The House resolved itself into a Committee of the Whole on the report of the committee appointed, on the twenty-ninth of October last, "to inquire into the expediency of reprinting the laws of the United States, the Journals of the House of Representatives, and other public documents;" and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were severally twice read, and agreed to by the House, as follow:

1. *Resolved*, That the Secretary for the Department of State shall, after the end of the next session of Congress, cause to be printed and collated, at the public expense, a complete edition of the laws of the United States, to consist of ten thousand copies, comprising the Constitution, public acts in force, and treaties, together with marginal abstracts, table of contents, and indexes; to be distributed as Congress shall direct.

2. *Resolved*, That it is inexpedient, at present, to reprint the Journals of the House.

3. *Resolved*, That the further consideration of reprinting the other public documents be postponed until the next session of Congress.

Ordered, That a bill or bills be brought in pursuant to the first resolution, and that Mr. S. L. Mitchill, Mr. Jones, and Mr. Huger, do prepare and bring in the same.

Tuesday, December 27.

Mr. S. L. Mitchill, from the Committee of Commerce and Manufactures, to whom was referred, on the twentieth and twenty-second instant, the memorials of sundry merchants of the district of Boston and Charlestown, and of the district of Salem and Beverly, in the State of Massachusetts, made a report thereon; which was twice read, and agreed to by the House, as follows:

"The petitioners pray for permission to transport goods, wares, and merchandise, from the one of the aforesaid districts to the other, by land conveyance, to avoid the hazard and delay of transporting them coastwise, particularly during the Winter season, pursuant to the provisions contained in the twenty-ninth section of the collection law.

"The committee are of opinion that the prayer of the petition is reasonable, and ought to be granted; they have prepared a bill for that purpose, which they ask leave to present to the House."

Mr. S. L. Mitchill, from the same committee, presented a bill to allow drawbacks of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned; which was read twice, and committed to a Committeee of the whole House on Tuesday next.

The House proceeded to consider the report of the Committee of Ways and Means, of the twenty-third instant, relative to the contingent expenses of this House; and the resolution contained therein being twice read, was agreed to by the House, as follows:

Resolved, That a committee be appointed, to consist of three members, to be styled "The Committee of Accounts," whose duty it shall be to superintend and control the expenditure of the contingent fund of the House of Representatives, and to admit and settle all accounts which may be charged thereon.

Ordered, That Mr. Early, Mr. Blackledge and Mr. Tallmadge, be appointed a committee, pursuant to the said resolution.

A petition of sundry free negroes and mulattoes was presented to the House and read, stating that the petitioners have been regularly emancipated from slavery, under the authority of a statute of the Commonwealth of Virginia; and praying that the same privilege may be extended to them of taking the oath or affirmation required by the acts of Congress for the enrolling and licensing of ships or vessels employed in the coasting trade and fisheries, as is granted by the provisions of the said acts to negroes and mulattoes born free within the United States.

Ordered, That the said petition be referred to the Committee of Commerce and Manufactures.

Mr. Nicholson, from the committee appointed, on the twentieth of October last, to prepare and report articles of impeachment against John Pickering, district judge of the district of New Hampshire, who was impeached by this House, during the last session, of high crimes and misdemeanors, made a report; which was read, and ordered to be referred to a Committee of the whole House on Thursday next.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That it is expedient so to alter and amend the several acts relative to the establishment and regulation of marine hospitals within the United States, as to exempt from the operation of the same such sailors and boatmen as are exclusively employed in the navigation of the Bay of Chesapeake, and the waters thereof.

Ordered, That the said motion be referred to a Committee of the whole House on Monday next.

WEDNESDAY, December 28.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the twenty-first instant, on the memorial of John Coles; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the proper accounting officers liquidate and adjust the claim of John Coles for the detention of the ship Grand Turk, at Gibraltar, by direction of the Consul at that port, from the tenth day of May to the fourth day of July, Anno Domini one thousand eight hundred and one, inclusive; and that he be allowed demurrage, at the rate stipulated in the charter-party, together with the interest thereon.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that the Committee of Claims do prepare and bring in the same.

A memorial of Alexander Moultrie, of the State of South Carolina, in behalf of himself and others, claimants of compensation under the late cession and convention between the State of Georgia and the United States, and the acts lately passed by Congress thereon, as purchasers of lands in the Mississippi Territory, in the year one thousand seven hundred and eighty-nine, from the said State of Georgia, was presented to the House and read, praying that Congress will adopt such suitable mode as in their wisdom may be deemed equitable and proper, for the settlement and allowance of the aforesaid claims of the memorialist and his associates.

Also, a memorial of the Virginia Yazoo Company, signed for and on behalf of the said company by William Cowan, their agent, to the like effect.

Ordered, That the said memorials be referred to Mr. NICHOLSON, Mr. MORROW, Mr. DWIGHT, Mr. BROWN, and Mr. BRYAN, to examine and report their opinion thereupon to the House.

Mr. J. RANDOLPH, jun., from the Committee of Ways and Means, presented a bill making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four; which was read twice and committed to a Committee of the whole House on Friday next.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the Secretary of War be directed to issue a land warrant to George L. Davidson, son of Brigadier General Davidson, of North Carolina, who fell in defence of his country in the Revolutionary war with Great Britain, for two thousand acres; which shall be surveyed and patented in conformity to the laws regulating the grants of land appropropriated for military services;

Ordered, That the said motion be referred to the Committee of the whole House to whom was committed, on the twenty-sixth instant, the report of the committee appointed "to inquire into the expediency of granting further time to the proprietors of military land warrants to obtain and locate the same."

The House resolved itself into a Committee of the Whole on the report of the committee, of the second instant, who were directed by a resolution of this House, of the twenty-fourth of November last, "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States;" and, after some time spent therein, the Committee rose and reported progress.

The SPEAKER laid before the House a letter from the Secretary of the Navy, accompanying a report of the Commissioners of the fund for navy pensions; which were read, and ordered to lie on the table.

Mr. J. C. SMITH, from the Committee of Claims, presented a bill for the relief of John Coles; which was read twice and committed to a Committee of the whole House to-morrow.

THURSDAY, December 29.

Mr. BOYLE, from the committee appointed, on the fifteenth instant, "to inquire into the expediency of vesting the powers usually exercised by a court of equity in the judges of the United States within the Indiana and other Territories; and, also, to inquire into the expediency of allowing writs of error and appeals from the judgments and decisions of the said judges, to the Supreme Court of the United States;" made a report thereon; which was read, and ordered to be referred to a Committee of the whole House on Wednesday next.

The House resolved itself into a Committee of the Whole on the bill for the relief of John Coles. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

A message from the Senate informed the House that the Senate adhere to their first, second, third, and fourth amendments insisted on by the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned; to their disagreement to which this House hath insisted.

ADDITION TO THE NAVY.

The House went into Committee of the Whole on the bill, received from the Senate, to sell the General Greene, and to make an addition to the Navy.

Mr. EUSTIS moved an additional section, allowing rations to half-pay officers, subject to Navy orders, provided they are not employed on board of merchant vessels, or otherwise engaged in transacting their personal affairs.

This motion was supported by Messrs. EUSTIS, NICHOLSON and CLAY; and opposed by Messrs. MACON, SMILIE, GREGG, and CLAIBORNE; and on the question being taken, was agreed to—yeas 52, nays 44.

Mr. MACON moved to strike out the second section of the bill, which authorizes the President, in case the public exigency shall require it, to cause to be built or purchased two small vessels of war, appropriating therefor $50,000.

This motion was supported by Messrs. MACON, SMILIE, and HOLLAND; and opposed by Messrs. S. L. MITCHILL, NICHOLSON and EUSTIS.

Mr. GREGG moved that the Committee should rise, in order that leave should be refused them to sit again, and that the bill should be committed to the committee appointed on naval affairs, for the purpose of obtaining information.

The motion for the rising of the Committee was carried—yeas 52 nays 42. The House then gave the Committee leave to sit again—yeas 48, nays 45.

SALARIES OF OFFICERS.

Mr. JOHN RANDOLPH, jun., from the managers appointed the twenty-third instant, on the part of this House, to attend a conference with the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act fixing the salaries of certain officers therein mentioned," made a report thereon.

The House then proceeded to consider the said report, together with the message this day received from the Senate; and the same being twice read the question was taken, that the House do agree to the resolution contained in the said report of the conferees appointed on the part of this House, in the words following, to wit:

Resolved, That this House adhere to their disagreement to the first, second, third, and fourth amendments proposed by the Senate to the bill, entitled "An act fixing the salaries of certain officers therein mentioned."

And resolved in the affirmative—yeas 71, nays 22, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Joseph Clay, Jacob Crowninshield, Manasseh Cutler, John Davenport, John Dennis, Thomas Dwight, John B. Earle, Peter Early, John W. Eppes, William Eustis, James Gillespie, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Josiah Hasbrouck, Seth Hastings, William Hoge, David Holmes, David Hough, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, John B. C. Lucas, Andrew McCord, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Thomas Newton, jun., Gideon Olin, Thomas Plater, John Randolph, jun., John Rea of Pennsylvania, Thomas Sammons, John Cotton Smith, Richard Stanford, Joseph Stanton, William Stedman, Samuel Tenney, Samuel Thatcher, George Tibbits, Abram Trigg, John Trigg, Isaac Van Horne, Matthew Walton, Lemuel Williams, Marmaduke Williams, and Joseph Winston.

NAYS—David Bard, Thomas Claiborne, Richard Cutts, James Elliot, William Findley, Edwin Gray, Benjamin Huger, Matthew Lyon, Beriah Palmer, John Patterson, Samuel D. Purviance, John Rhea of Tennessee, Erastus Root, Thomas Sandford, John Smilie, John, Smith of New York, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Richard Winn, and Thomas Wynns.

FRIDAY, December 30.

Three other members, to wit: EBENEZER ELMER, JOHN SLOAN, and HENRY SOUTHARD, from New Jersey, appeared, produced their credentials, were qualified, and took their seats in the House.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That no person or persons claiming, under an act of Georgia, any part of the territory lately ceded by Georgia to the United States, shall be entitled to receive compensation from the Government, for any real or pretended loss they may have sustained in consequence of that cession, if they have, subsequent to the acts under which they claim, withdrawn from the treasury of Georgia any moneys deposited as a consideration. And all person or persons who have derived a title to any part of the said territory, from any grantee, grantees, or other persons, so situated as above, shall equally be excluded from any compensation whatever:

Ordered That the said motion be referred to the Committee of the whole House to whom was committed, on the second instant, a report of the committee appointed to inquire into the expediency of amending the several acts for the sale of the public lands of the United States.

Mr. LUCAS, from the committee to whom was committed, on the eighth instant, the bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate Governments," reported that the committee had had the said bill under consideration, and agreed to a report thereupon; which he delivered in at the Clerk's table, where the same was read, and, together with the bill, ordered to be referred to a Committee of the whole House on Tuesday next.

Mr. JOHN RANDOLPH, jun., from the Committee of Ways and Means, presented, according to order, a bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and four; which was read twice and committed to a Committee of the whole House on Monday next.

An engrossed bill for the relief of John Coles was read the third time and passed.

IMPEACHMENT OF JUDGE PICKERING.

The House resolved itself into a Committee of the Whole on the report of the committee, of the twenty-seventh instant, appointed on the twentieth of October last, to prepare and report articles of impeachment against John Pickering, district judge of the district of New Hampshire, who was impeached by this House, during the last session, of high crimes and misdemeanors.

Mr. TENNEY called for the reading of several depositions; which, being read, Mr. T. said he had called for their reading to show that Mr. Pickering had sustained a respectable character, and that his recent conduct had arisen from insanity. For this reason, he thought the articles of impeachment should not be agreed to by the House.

Mr. NICHOLSON replied, that, at the last session, the House had determined that they would impeach John Pickering. It became therefore their duty at this time to furnish the Senate with the articles. Whether John Pickering was insane or not, it was not for him to decide; but he was clearly of the opinion that the insanity stated by the gentleman from New Hampshire proceeded from con-

stant and habitual intoxication. This information he had obtained from the most respectable sources. After the last session, Mr. N. said, when he perceived the charges made in some public prints against the House of Representatives for impeaching a man laboring under insanity, he had made it his business to inquire into this fact; in consequence of which, he had received information by letter from several respectable men in New Hampshire, stating that the Judge was under the influence of habitual intoxication. It was also stated, in the deposition of the marshal, that the last time the Judge was on the bench, he went directly from a grog-shop, and was in a state of intoxication.

The report was agreed to, without a division.

On motion of Mr. Nicholson, the articles were ordered to be enrolled, in correspondence with the practice of the House.

Also, on motion of Mr. Nicholson,

Ordered, That eleven managers be appointed on the part of this House.

Mr. Jackson moved that the managers should be appointed by the Speaker.

The motion was supported by Messrs. Smilie, Findley, and Thatcher; and opposed by Messrs. Dennis, Mitchill, and Gregg. It was negatived.

It was then moved that the appointment should be made by ballot.

This motion was supported by Messrs. R. Griswold, S. L. Mitchill, Gregg, Elliot, Holland, G. W. Campbell, Dennis, Skinner, Bedinger, and Sandford; and opposed by Messrs. Smilie, Nicholson, and Alston, who advocated an appointment by votes given *viva voce*.

The question being put, it was, without a division, resolved, that the appointment should be by ballot. The first ballot was postponed till Monday.

Monday, January 2, 1804.

Two other members, to wit: Adam Boyd and James Mott, from New Jersey, appeared, produced their credentials, were qualified, and took their seats in the House.

A memorial and petition of William Henry Harrison, Governor of Indiana Territory of the United States, was presented to the House and read, stating that much inconvenience has arisen, and does daily arise, to the citizens, from the want of money in the Territorial treasury to answer the exigencies of the Government; and praying that a law may pass authorizing the requiring of the Superintendent of Indian Affairs, or other persons employed to issue licenses to Indian traders within the Indiana Territory, to receive for each license issued such a sum, for the use of the said Territory, as in the wisdom of Congress may be deemed reasonable and proper.

Ordered, That the said memorial and petition be referred to Mr. Epps, Mr. Elmer, and Mr. Livingston, with leave to report thereon by bill, or bills, or otherwise.

Mr. S. L. Mitchill, from the committee appointed on the twenty-sixth ultimo, presented a bill for reprinting the laws of the United States, and for the more extensive distribution of the same; which was read, and committed to a Committee of the whole House on Thursday next.

IMPEACHMENT OF JUDGE PICKERING.

The enrolled articles of impeachment against John Pickering were read and signed by the Speaker.

The House proceeded to elect by ballot eleven managers. Mr. Nicholson and Mr. R. Griswold acted as tellers. One hundred and nine ballots were given—fifty-five making a majority.

For Mr. Nicholson, 104; for Mr. Early, 89; for Mr. Rodney, 81; for Mr. Eustis, 71; for Mr. R. Griswold, 70; for Mr. J. Randolph, 70; for Mr. S. L. Mitchill, 61; for Mr. G. W. Campbell, 60; for Mr. Blackledge, 57; for Mr. Boyle, 46; for Mr. J. Clay, 37; for Mr. Newton, 35; for Mr. Varnum, 30; for Mr. Elliot, 25; for Mr. Holland, 21; for Mr. Smilie, 19; for Mr. Huger, 14; for Mr. Thatcher, 13—with other scattered votes. Of which gentlemen, the first nine, having a majority, were declared to be elected.

The House then proceeded to ballot for the two remaining managers—Mr. R. Griswold and Mr. J. Randolph acting as tellers. Eighty-eight votes were given—forty-five constituting a majority.

For Mr. Boyle, 72; for Mr. J. Clay, 59; for Mr. Varnum, 12; for Mr. Newton, 12; for Mr. Elliot, 7—with other scattered votes. The two first, having a majority, were declared to be elected.

Mr. Griswold begged to be excused from serving as a manager, and stated as a reason that he was already on several committees; and he was excused accordingly.

The House then proceeded to a third ballot. Seventy-nine votes were given—forty constituting a majority.

For Mr. Newton, 26; for Mr. Elliot, 19; for Mr. Varnum, 19; for Mr. Thatcher, 12; for Mr. Dana, 2; for Mr. Findley, 1. No choice.

The House then proceeded to a fourth ballot. Eighty ballots were given—forty-one constituting a majority.

For Mr. Newton, 49; for Mr. Elliot, 14; for Mr. Mott, 14. Mr. Newton, having a majority, was declared to be elected.

[In the above ballots, several votes given for Messrs. Randolph, Mitchill, Campbell, and Clay, were not counted, owing to there being other gentlemen of similar names in the House.]

The eleven managers elected are, therefore, as follows: Mr. Nicholson, Mr. Early, Mr. Rodney, Mr. J. Randolph, Mr. Eustis, Mr. S. L. Mitchill, Mr. G. W. Campbell, Mr. Blackledge, Mr. Boyle, Mr. J. Clay, and Mr. Newton.

A motion was made and seconded that the House do now adjourn; and, on the question thereupon, it was resolved in the affirmative—yeas 53, nays 29, as follows:

Yeas—Nathaniel Alexander, George M. Bedinger, Silas Betton, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Chamberlin, Martin Chittenden, Joseph Clay, John Clopton, Samuel W. Dana, John Davenport, Thomas Dwight, John B. Earle, Peter Early, William Findley, Roger Griswold, Samuel Hammond, Josiah Hasbrouck, Seth Hastings, David Hough, Walter Jones, William Kennedy, Nehemiah Knight, Henry W. Livingston, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Gideon Olin, Beriah Palmer, Thomas Plater, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sandford, Tompson J. Skinner, John Cotton Smith, John Smith of N. York, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Philip R. Thompson, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, and Thomas Wynns.

Nays—Willis Alston, jr., William Butler, Levi Casey, Thomas Claiborne, Manasseh Cutler, James Elliot, Ebenezer Elmer, James Gillespie, Gaylord Griswold, Matthew Lyon, Andrew McCord, John Patterson, John Randolph, jr., Thomas M. Randolph, Erastus Root, Ebenezer Seaver, James Sloan, Henry Southard, Samuel Tenney, Samuel Thatcher, Geo. Tibbits, Abram Trigg, John Trigg, Killian K. Van Rensselaer, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Richard Winn, and Joseph Winston.

Tuesday, January 3.

A Message was received from the President of the United States, transmitting an annual account of the fund established for defraying the contingent charges of the Government. The Message and account were ordered to lie on the table.

The Speaker laid before the House sundry depositions and other papers transmitted from the town of Fayetteville, in the county of Cumberland, and State of North Carolina, respecting a contested election of Samuel D. Purviance, one of the members returned to serve in this House, for the said State; which were referred to the Committee of Elections.

Resolved, That the articles agreed to by this House, to be exhibited in the name of themselves, and of all the people of the United States, against John Pickering, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

Ordered, That a message be sent to the Senate, to inform them that this House have appointed managers, on their part, to conduct the impeachment against John Pickering, and have directed the said managers to carry to the Senate the articles agreed upon by the House, to be exhibited in maintenance of their impeachment against the said John Pickering; and that the Clerk of this House do go with the said message.

The House resolved itself into a Committee of the Whole, on the bill making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four; and, after some time spent therein, the bill was reported with several amendments, which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time tomorrow.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That provision ought to made by law to authorize the Secretary of War to frank all letters, returns, and other papers on public service, transmitted from the office of the Paymaster and Inspector of the Army; and directing that all such letters, returns, and papers, transmitted to the offices of the Inspector and Paymaster shall be addressed to the War Department:

Ordered, That the said motion be referred to the Committee appointed, on the eighteenth of October last, to inquire whether any, and what, amendments are necessary to be made in the acts establishing a post office and post roads within the United Staes.

A petition of sundry freeholders of the counties of Knox, St. Clair, and Randolph, in the Indiana Territory of the United States, was presented to the House and read, praying the confirmation of certain donation lands granted by a former Congress, and submitting certain propositions to the consideration of Congress, relative to the location and settlement of lands of the United States within the said Territory, and to other objects therein specified, which they pray may be adopted by Congress, for the convenience and benefit of the petitioners, and other inhabitants within the said Indiana Territory.—Referred.

Mr. John Cotton Smith, from the Committee of Claims, to whom was recommitted, on the twenty-second ultimo, their report on a motion relative to a provision for the relief of the owners of the Danish brigantine Henrick, together with sundry accompanying documents, made a supplementary report thereon; which was read, and referred to a Committee of the whole House on Thursday next.

On motion of Mr. Leib, it was

Resolved, That the Secretary of the Navy do report to this House a statement of all the moneys advanced for the pay, clothing, subsistence, and contingencies, of the Corps of Marines, from the time of the organization and establishment of that corps to the close of the last year; exhibiting the dates of the advances, and to whom made; also, an account stating, generally, under each head of expenditure aforesaid, when, and by whom, and what amount of money has been accounted for; and showing the balance, if any, now in advance and not accounted for.

Mr. Huger, from the committee to whom was referred, on the fifteenth of November last, the report of a select committee, made at the last session of Congress, on the subject of the fisheries of the United States, with instructions to inquire and report whether any, and if any, what measures are necessary for the encouragement of the whale and cod fisheries, made a report thereon; which was read, and referred to a Committee of the whole House on Monday next.

Mr. Kennedy called up his resolution, prescribing that the sums received in the ports of the United States, for the relief and maintenance of sick and disabled seamen, be expended in the districts wherein they are collected, and that the surplus be placed for certain purposes under the direction

of the President.—Referred to a Committee of the Whole on Monday.

Mr. J. CLAY observed, that considerable injury had accrued to the United States from the existing provisions of the revenue laws in cases wherein they were infracted. He therefore moved the following resolution:

Resolved, That persons guilty of crimes arising under the revenue laws of the United States, or incurring fines or forfeitures by breaches of the said laws, may be prosecuted, tried, and punished, at any time within five years after the time of committing the offence or incurring the fine or forfeiture; any provision of law to the contrary notwithstanding:

Referred to the Committee of Ways and Means.

The House went into a Committee of the Whole, on the bill to allow a drawback of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned.

The Committee, after some discussion of the bill, rose, and obtained leave to sit again.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of authorizing the Courts of the United States to appoint Commissioners to administer oaths to appraisers; to take the depositions of witnesses out of Court; and to enforce the attendance of such witnesses as may be summoned to appear before the Commissioners so to be appointed.

Ordered, That Mr. NICHOLAS, Mr. ROGER GRISWOLD, and Mr. THOMPSON, be appointed a committee, pursuant to the said resolution.

LIGHT-HOUSE DUTIES.

Mr. MITCHILL observed, that there had been some conversation in the House during the last session, concerning the sums of money paid by our merchants on foreign voyages. He wished to renew that subject, as well worthy of the attention of Government.

Foreign nations levy money upon our vessels, which frequent their ports, for the purpose of supporting their light-houses. The sums paid by our merchants in compliance with these exactions are very considerable. The contribution which strangers are thus obliged to make, constitutes a fund, that goes a great way towards defraying the expense of those establishments, to the great relief of their own subjects.

The average amount of light-money paid by every vessel that enters a British port, is about four pence sterling the ton, for every light she may have passed inwards, or that she may be expected to pass outwards. Calculating by this rule an American ship of two hundred and eighty-four tons, entering the port of London, is charged with duties for the maintenance of the following lights, all along up the British channel, to wit: Scilly, Longships, Lizard, Eddystone, Portland, Caskets, Needles, Owers, Dungenness, Foreland, Goodwin, and the Nore. They amount to thirty-four pounds sterling, and the stamped paper for the receipt four pence more. Besides this, the duties of the Trinity House, for such a ship, amount to nine pounds, seven shilling and eight pence. In addition to which there is demanded and paid, by virtue of an act of George III. for the maintenance and improvement of the harbor of Ramsgate, seven pounds and two shillings. So that the amount of these impositions for light-money and Ramsgate harbor money, on a ship under three hundred tons, for a single voyage to London, amounts to fifty pounds and ten shillings sterling, which is equal to two hundred and twenty-two dollars, independent of her tonnage, duties on merchandise, pilotage, and other expenses.

An American vessel entering the harbor of Hull, the lights are charged as before, viz: Scilly, Longships, Lizard, Eddystone, Portland, Caskets, Needles, Owers, Dungenness, Forelands, and Goodwin; and to these are added the lights on the Eastern coast of England, such as Sunk, Harwick, Gatt, Lowstoft, Harbro, Winterton, Oxford, Shawl, Dudgeon, Faulness, and the Spurn. The amount of these demands for light-money on an American ship of two hundred and forty-five tons is thirty-seven pounds and six shillings sterling. At Hull, the collector enforces payment of Ramsgate harbor duties to the amount of £6 2*s*. 6*d*., and of Dover harbor dues to the amount of £3 1*s*. 3*d*. The demand for supporting lights, few of which perhaps were seen on the passage, and for improving harbors which were not entered by the ship, amount to forty-six pounds nine shillings and nine pence sterling on a burthen less than two hundred and fifty tons. An amount of demand exceeding two hundred and four dollars.

An American ship goes to Liverpool, she is charged for the light up St. George's Channel. A ship of three hundred and fourteen tons is made to pay for supporting the lights at Milford, that called the Smalls, and another known by the name of Skerries. These several demands, with the price of stamps, come to £15 14*s*. 2*d*. sterling on a vessel of that burthen for one voyage, or more than sixty-three dollars for light-money alone. For each of these three light-houses the charge is exactly four pence sterling the ton.

Light-houses have been established by the Government of the United States on many parts of our extensive coast. Many parts of it are admirably illuminated. And the whole expense of these valuable establishments is defrayed from the Treasury out of the ordinary income. Foreigners who visit our ports participate the security and advantage of these guides to mariners, as fully as our own citizens; but they pay nothing for this privilege of directing themselves by our lights. Foreign nations have acknowledged the principle that duties ought to be collected from their commercial visiters, for supporting light-houses, and they compel our merchants to pay them. It is a correct principle of distributive justice, that we should cause our commercial visiters to pay something also for the establishment and improvement of our light-houses. A duty of tonnage, for this express purpose, could easily be laid and collected from foreign vessels, and would add materially to our means of keeping them in good repair and attendance. A sum for example, of six or seven cents per ton upon every foreign vessel for every light-house she shall have passed, will make a valuable fund for the humane and excellent institution of light-houses. To the intent that this interesting subject may be investigated and that our Government may avail itself of its own proper rights and resources, I move the following resolution:

"That the Committee of Commerce and Manufactures be directed to inquire into the expediency of laying and collecting a tonnage duty on foreign ships and vessels, entering the ports and harbors of the United States, for an equivalent for the advantages which such ships and vessels derive from the light-houses they pass, inwards and outwards."

WEDNESDAY, January 4.

A message from the Senate informed the House that, the Senate will, at twelve o'clock this day, be ready to receive articles of impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, to be presented by the managers appointed by this House.

An engrossed bill making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four, was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and four; and, after some time spent therein, the bill was reported with several amendments, which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House proceeded to consider a motion of the third instant, relative to "the expediency of laying and collecting a tonnage duty on foreign ships and vessels entering the ports and harbors of the United States, as an equivalent for the advantages such ships and vessels derive from the light-houses they pass, inwards and outwards;" and the said motion being twice read and amended at the Clerk's table, was agreed to by the House, as follows:

Resolved, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of laying and collecting a tonnage duty on ships and vessels entering the ports and harbors of the United States, as an equivalent for the advantages such hips and vessels derive from the light-houses they pass, inwards and outward; and report their opinion thereon by bill, or otherwise.

The House resolved itself into a Committee of the Whole on the bill to extend the time making the oath required in cases of goods, wares, and merchandise, exported and entitled to drawbacks, and therein to amend the act, entitled "An act to regulate the collection of imports and tonnage;" and, after some time spent therein, the bill was reported with an amendment, which was twice read, and agreed to by the House.

Ordered, That the further consideration of the said bill be postponed until Monday next.

Mr. NICHOLSON, from the managers appointed on the part of this House, to conduct the impeachment against John Pickering, judge of the district court of the United States for the district of New Hampshire, reported that the managers did, this day, carry to the Senate the articles of impeachment agreed to by this House, on the thirtieth ultimo; and the said managers were informed by the Senate that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

Mr. G. W. CAMPBELL offered a resolution for the appointment of a committee to inquire whether any, and if any what, alterations are necessary to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontier.

Ordered to lie on the table.

ADDITION TO THE NAVY.

The House again resolved itself into a Committee of the Whole on the bill from the Senate for the sale of the General Greene, and for making a further addition to the Navy.

The CHAIRMAN stated that the motion under consideration when the Committee rose was, to strike out the second section of the bill, which provides for the building or purchase of two small armed vessels, and appropriates therefor $50,000.

Mr. NICHOLSON observed that since this subject had been before the Committee he had made it his business to inquire into the existing necessity for the two small vessels contemplated to be added to the Navy. He had learned, from authority in which he reposed full confidence, that two such vessels might at present be advantageously employed, but that one of them was indispensably necessary. Sensible of the large demands upon the Treasury, though his opinions remained unchanged, he would agree, in case the honorable Speaker (Mr. MACON) would waive his motion, to strike out the whole section, or in case they should negative it, to a provision being made for one vessel instead of two, and to a reduction of the sum appropriated to $25,000.

Mr. MACON (Speaker) expressed his regret at his inability, holding still the same sentiments he had on a former occasion avowed, to comply with the wishes of the gentleman from Maryland.

A debate of some length ensued on the motion of Mr. MACON to strike out the second section.

Messrs. SMILIE and J. RANDOLPH supported the motion. They contended that no necessity existed in the present situation of the United States for an augmentation of the Navy; that it remained in the same state it had been fixed in during March, 1801, with the addition of four small vessels for the Mediterranean service; that it had heretofore proved fully competent to the protection of commerce, even when the complexion of our affairs was less pacific than at present; that the Mediterranean service had evinced that large vessels produced in that quarter more decisive effects than small ones, and that of the former description of vessels we had a sufficient number unemployed; that one great occasion for small vessels was removed by the permission of the State of South Carolina to import slaves, which superseded the

necessity of any additional force to restrain their illegal admission into the United States; that this addition to our marine force did not appear to be necessary, inasmuch as the President, whose Constitutional duty it was to give information to Congress of the state of the Union, and who directed the armed force of the nation, had not intimated his opinion of its necessity; and that Congress might be sure, if he thought it necessary, he would not hesitate to apprize them of it; that in adopting this provision of the bill the House was acting altogether in the dark, as no estimates of the expense had been furnished, and not even a committee appointed to examine either the propriety or expense of the measure. It was alleged that it became the Legislature, in the present posture of the national finances, to be uncommonly circumspect. New and heavy pecuniary obligations had been incurred, and time alone could show whether the present resources would be more than commensurate to meet them. That the Secretary of the Treasury, at the opening of the session, had spoken of the competency of our resources with a caution which ought to impress the House with the necessity of exercising strict economy, unless disposed to vote new taxes. To this point, this measure manifestly tended, and it became those who were hostile to new taxes, to hesitate before they adopted a measure that promised to lead to it.

The motion was, on the other hand, opposed by Messrs. Nicholson, Eustis, R. Griswold, and Huger. They observed that the bill under consideration had received the sanction of the Senate, and it might be rationally presumed that they had previously to its passage received satisfactory proof of its necessity; that the first section authorized the sale of the frigate General Greene, in the lieu whereof it was contemplated to build or purchase two small ships; that this measure therefore constituted no increase of the Navy beyond its present strength; that so far as related to expense, whatever the temporary cost, arising from the building or purchase might be, the permanent expense of two small vessels would be greatly inferior to that of one large one; that the annual expense of a forty-four gun frigate was $104,000, while that of a vessel of sixteen guns was only $36,000; that with regard to the argument of gentlemen drawn from a want of estimates, it was idle, as estimates had been furnished at the last session, as the basis of adding four small vessels for the Mediterranean service, which amounted to $90,000, which sum appeared to be sufficient. If, therefore, four vessels cost $96,000, two would not cost more than $50,000; that with regard to the necessity of these ships, Congress were the proper and Constitutional judges; that it was their special duty to provide and maintain a navy, and to provide for the common defence and general welfare of the United States; and that the absolute dependence placed by gentlemen on Executive mandates was unprecedented, anti-republican, and unconstitutional; that it became the Legislature to judge for themselves as to the propriety of the measure; that from the knowledge they possessed of the state of the country, and the extended sphere of commerce, abundant evidence was presented of its necessity. It was a fact well ascertained that, for Barbary warfare, these small ships were eminently useful, and that service required relief; for in case of a disaster occurring to one of our present small vessels, it was proper to be provided with others that might promptly make good the deficiency. That the acquisition of Louisiana would undoubtedly require some naval force to insure the collection of the revenue in that quarter; and that the state of the West Indies absolutely demanded an addition of some small vessels to protect our trade from the barges that were fitted out by the brigands for the purposes of depredation; that it was a fact that if the Executive, at this moment, possessed one of these ships, it would be immediately sent to the West Indies; that there were other important purposes for which these vessels were wanted. The Government had frequent occasion to send special Envoys, on points of vast importance, to the two great Powers in Europe. Was it then safe, or becoming the dignity of the nation to send such characters, in a private merchantman subject to the search or capture of any armed vessel of Europe?

Before a question was taken on the motion to strike out the section, Mr. Jackson moved that the Committee should rise. If they rose he would oppose their having leave to sit again, with the intention of referring the bill to the Committee of Commerce and Manufactures.

The Committee agreed to rise; ayes 63.

Leave having been refused to them to sit again, Mr. J. Randolph moved that a committee be appointed to inquire whether any and what, further additions may be necessary to the Naval Establishment of the United States.

Mr. Alston moved to amend the motion by striking out "a committee be appointed," and inserting "the Committee of Commerce and Manufactures be instructed." Messrs. Alston, Nicholson, and Eustis, supported, and Mr. J. Randolph opposed this amendment. Carried, yeas 51, nays 46.

The motion thus amended was supported by Messrs. Huger and Elmer, and opposed by Messrs. Varnum and Smilie. Carried, yeas 57, nays 44.

Mr. Jackson then moved the reference of the bill to the Committee of Commerce and Manufactures. Agreed to without a division.

Thursday, January 5.

An engrossed bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and four, was read the third time, and passed.

Ordered, That the committee appointed, on the twelfth ultimo, "to inquire whether any, and, if any, what, alteration is necessary to be made in the law regulating the mode of selecting jurors to serve in the Courts of the United States," have leave to report thereon by bill, or bills, or otherwise.

Mr. Early, from the committee last mentioned, presented, according to order, a bill directing the mode of selecting jurors to serve in the Courts of the United States; which was read twice, and committed to a Committee of the Whole House on Wednesday next.

PRINTING OF LAWS.

The House went into a Committee of the Whole on the bill for reprinting the laws of the United States.

Mr. Jackson moved to strike out the first section.

A motion was made that the Committee should rise, on account of the absence of the chairman of the committee that brought in the bill, (Mr. Mitchill.)

This motion was supported by Messrs. R. Griswold and Holland, and opposed by Messrs. Smilie, Jackson, and Nicholson.

Before the question was put, Mr. Mitchill entered the House, when it was taken, and the motion rejected—ayes 47, noes 54.

The motion to strike out the first section recurring, Mr. Mitchill spoke at some length on the expediency of reprinting the laws; but suggested the propriety of suffering the bill to rest until the next session.

Mr. Jackson withdrew his motion to strike out the first section, and moved that the Committee should rise, with the view of postponing the bill to the next session.

This motion, after debate, was carried—ayes 67.

The Committee were then refused leave to sit again.

Mr. Jackson moved a postponement of the bill to the first day of December next.

Mr. Thomas opposed the postponement. In case the motion to postpone should be negatived, he said he would move the recommitment of the bill to a Committee, with a view to empower the Secretary of State to distribute the laws in the Territory of Louisiana.

The motion to postpone was rejected—ayes 47, noes 52.

Mr. Thomas's motion was then agreed to—ayes 60.

Mr. Dennis offered a motion directing the Secretary of State to transmit to each member of Congress a copy of the laws of the antecedent session.

Referred to the above Committee.

OFFICIAL CONDUCT OF JUDGE CHASE.

Mr. J. Randolph said, that no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the Constitution of the United States, and of many of the States also, had rendered the magistrates who decided judicially between the State and its offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement whether of intimidation or seduction which could cause them to swerve from the duty assigned to them might be removed. But such was the frailty of human nature that there was no precaution by which our integrity and honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir, of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States who has been found wanting in his duty to himself and his country. At the last session of Congress a gentleman from Pennsylvania did, in his place, (on the bill to amend the Judicial system of the United States) state certain facts in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention however thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as to those whom I represent, to investigate the charges then made, and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase hath so acted in his judicial capacity as to require the interposition of the Constitutional power of this House.

After the motion made by Mr. J. Randolph had been read from the Chair,

Mr. Mitchill said, before the question was taken, he should be glad, from the novelty and serious nature of the proposed measure, to hear a statement by his friend from Virginia of the reasons in detail on which it was founded.

Mr. J. Randolph observed, that when he was up before he had stated that the gentleman from Pennsylvania (Mr. Smilie) had, in his place, at the last session of Congress, given a description of the official conduct of the officer to whom the resolution referred, which he considered the House bound to notice. It could not be conceived that the gentleman would have laid before the House a statement, the facts of which were not supported by his own knowledge, or by evidence on which he could place the utmost reliance. He did not conceive this to be a time to decide whether the information exhibited by the gentleman from Pennsylvania was or was not correct. At present an inquiry alone was proposed. If it should be made, it must result either that the conduct of the judge would be found to be such as not to warrant any further proceedings on the part of the House, or such as would require the interposition of that authority, which, as the immediate Representatives of the people, they alone possessed. If on inquiry the committee shall be

persuaded that the judge has not exceeded his duty, they will so report; if, on the contrary, they find it such as to require the interposition of the House, they will recommend that course of proceeding to which the House alone is competent. With respect to the facts which had come to his knowledge, Mr. R. said that they were such as he did not wish to state. He preferred its being done by witnesses, who were most competent to do it correctly.

Mr. Elliot said, I am as deeply convinced as the gentleman from Virginia that the streams of justice should be preserved pure and unsullied. I am also sensible that the Judicial department ought to attach to itself a degree of independence. I am of opinion that this House possesses no censorial power over the Judicial department generally, or over any judge in particular. They have alone the power of impeaching them; and when a judge shall be charged with flagrant misconduct, and when facts are stated which shall induce them to believe those charges true, I shall be at all times prepared to carry the provisions of the Constitution into effect, in virtue of which great transgressors are punishable for their crimes. The basis of this resolution is, that a gentleman from Pennsylvania, at the last session, stated that the judge named in it had been guilty of improper conduct. Of these charges I am uninformed, and every new member must be uninformed. It is astonishing to me that we are called upon to vote for an inquiry into the character of a judge without any facts being adduced to show that such an inquiry should be made. If the resolution pass in its present form, it appears to me that we shall thereby pass a vote of censure on this judge, which neither the Constitution nor laws authorize. If the judge be guilty, I should suppose the first step proper to be taken would be for some person aggrieved, or for members having personal knowledge, to exhibit facts on which the House may act. I can never consent, because the gentleman from Virginia, or any other gentleman, says that there are facts which have come to his knowledge that induce him to think an inquiry ought to be instituted, to vote for it, unless those facts are first stated. I can never agree to any act which shall in this manner, without the exhibition of proof, impose censure or suspicion on a judge. This course may be perfectly Parliamentary; but it strikes me as altogether unprecedented. I shall, therefore, until some facts are adduced, resist every attempt to impose a censure upon the conduct of any public officer.

Mr. Smilie.—If the gentleman from Vermont had commanded a little patience, he would have perceived the remarks which he has just made to have been altogether unnecessary. He would have perceived the necessity imposed upon me by the observations of the gentleman from Virginia of stating those facts to which that gentleman alluded. It must be seen that these proceedings contemplate the possibility of an impeachment. It will be recollected by gentlemen who were in Congress at the last session, that I was then led to give a statement of facts respecting the conduct of Judge Chase on a particular occasion. That statement was not made with a view to impeachment. A bill had been introduced to change the districts of the circuit courts of the United States; when I discovered that Mr. Chase was assigned to the district of Pennsylvania, I felt interested in having him transferred to another district, considering that his previous conduct had rendered him obnoxious to the people of that State. These circumstances I stated to the House, and was in consequence called upon to assign my reasons why Judge Chase was obnoxious to the people of Pennsylvania. This is the history of the business so far. I am now called upon to state the facts which I mentioned on that occasion. This I shall do briefly.

A man of the name of Fries was prosecuted for treason in the State of Pennsylvania. Two of the first counsel at that bar, Mr. Lewis and Mr. Dallas, without fee or reward, undertook his defence. I mention their names to show that there could have been no party prejudices that influenced them. When the trial came on, the judge behaved in such a manner that Mr. Lewis declared that he would not so far degrade his profession as to plead under the circumstances imposed upon him. Mr. Dallas declared that the rights of the bar were as well established as those of the bench; that he considered the conduct of the judge as a violation of those rights, and refused to plead. The facts were these: The judge told the jury and the counsel that the court had made up their minds on what constituted treason; that they had committed their opinion to writing, and that the counsel must therefore confine themselves to the facts in the case before the court. The counsel replied that they did not dispute the facts, but that they were able to show that they did not constitute treason. The end of the affair was, that the counsel retired from court, and the man was tried without counsel, convicted, and sentenced to death.

After this the Attorney General wrote a letter to Messrs. Dallas and Lewis, requesting them to furnish their notes and opinions for the use of the President. They drew up an answer, in which they stated that the acts charged against Fries did not amount to treason, but were only sedition; and that they were so considered in the British courts. This letter was read to me by Mr. Dallas. After receiving the letter the President pardoned the man.

Mr. J. Clay.—This debate appears to me to arise from causes the most extraordinary, and such as we are not accustomed to hear assigned on this floor. The gentleman from Virginia has made a motion justified by his own knowledge as well as that of my colleague; and this motion is opposed in a most extraordinary manner. I believe this is the first instance in which a motion to appoint a committee of inquiry into the official conduct of a public officer has been opposed. We are told by the gentleman from Vermont that this House has no right to pass a censure on a judge, and that judges should be highly independent. I am afraid that unless great care be taken the

doctrine of judicial independence will be carried so far as to become dangerous to the liberties of the country. This motion does not, however, affect the character of the judge. Let it also be recollected, that if the reputation of the judge be at stake, the reputation of this House also is implicated. I consider this House as the Constitutional guardians of the morality of the Judiciary. Whenever even suspicion exists as to that morality, a committee of inquiry should be appointed. For the pure administration of justice is surely more important than the reputation of any particular judge. I am sorry my colleague thought it necessary to make any statement of facts to the House. I believe that more important facts than he has mentioned will be stated by witnesses. I believe likewise the reputation of the judge will be better preserved by the appointment of a committee than by assertions made on this floor by particular members, not responsible elsewhere for what they allege.

With regard to my opinions in this case, whatever my political impressions may be, they are entirely unbiassed. I have heard facts stated, but I cannot say that they have been satisfactorily proved to my mind. There are other charges equally reprehensible. Under these circumstances I ask if the character of the judge is not more implicated by a discussion of his official conduct on this floor than by appointing a committee to obtain facts. If he is guilty of the facts alleged against him, no gentleman will say that he is not impeachable. If he is only suspected of them, there ought to be a committee, that if guilty he may be impeached, and if innocent, be freed from the imputation thrown upon him.

Mr. R. Griswold.—Gentlemen will acknowledge that this is a subject of great importance and delicacy. No one will doubt but that we ought to execute our duty so as to preserve the fountains of justice pure, and that we ought at the same time to treat the important character of a judge, or of any other high officer, with respect. I do not know but that this mode of procedure is warranted by precedent. But if it is, it is unknown to me. As the resolution now stands, I do not think it perfectly correct. The honorable gentleman from Virginia says he is acquainted with facts that warrant the proposed inquiry. The question is whether the House ought to be governed by the opinions of any one member. We know not what those facts are; the gentleman declines stating them. I do think, as the subject now strikes me, that the conviction of any one member of the propriety of this measure cannot warrant the interposition of the House. Instead of taking the individual opinion of a member, it ought to be stated that certain facts exist, which, if proved, will justify an impeachment. I do not know whether these ideas are not incorrect, having never before contemplated, or had a suspicion that such a motion would be made.

As to the remarks of the gentleman from Pennsylvania, I do not consider them as entitled to much weight. If the facts stated by him were of his personal knowledge, they would undoubtedly merit attention. But he merely states that which he has received from others, and which amounts to nothing more than that the judge refused liberty to the counsel to argue a point of law after it was decided, and confined their argument to facts. In so doing, the judge may have erred, but it was an error of judgment for which he cannot be impeached. No lawyer will perhaps say that it was not the province of the judge to decide the law, and that he has not the right to prevent counsel from arguing it after his mind is made up. But this information is not of the knowledge of the gentleman. Are we then to institute an inquiry into the conduct of a high officer of the Government merely on hearsay? This has never been done under our Government. In the late case of Judge Pickering proof was furnished by the affidavits of witnesses testifying certain facts. I do not therefore consider it correct to proceed to inquire on the opinion of any gentleman. The proper course is first to have proofs which will justify ourselves to our own consciences in making the inquiry—for we ought not to touch the character of a judge, unless we are satisfied from facts that there is good reason for an investigation into his conduct. Gentlemen will not say that making an inquiry into the official conduct of a judge does not touch his character.

Gentlemen say if this committee find the conduct of the judge to have been correct, they will make a report to that effect; but it does not follow that the report will contain all the evidence adduced, and suspicion may still rest on the character of the judge, and that some facts may not be stated, which, if stated, would show his misconduct. Whereas if the business be brought generally before the House, on the exhibition of certain facts, the public will be enabled to decide whether they warrant impeachment or even suspicion. With this view of the subject, I am of opinion that it will be best to delay acting in this affair until facts shall be disclosed which will justify the step now proposed to be taken. I have as high a respect for the opinion of the gentleman from Virginia as for that of any other member on this floor; but I doubt whether we can justify our votes on the opinion of any single member; facts alone ought to govern our opinions. I, therefore, for the purpose of considering the course most proper to be pursued, move a postponement of the further consideration of the motion until to-morrow.

Mr. J. Randolph.—Were I the personal enemy of the gentleman who is the object of this resolution, I should take precisely that course which, on this occasion, the gentleman from Connecticut seems more than half inclined to take. That gentleman wishes the resolution to lay until to-morrow, in order that he may have time to consider whether he can bring himself to refuse the inquiry altogether. He says that he cannot, or rather (for he speaks doubtingly) he thinks he cannot see the propriety of instituting an inquiry without evidence. What evidence? Nothing short of legal proof—testimony on oath. And what is the object of the resolution? To acquire that

very evidence. If we had the evidence, to what purpose make inquiry? As however the evidence cannot be had without inquiry, and the gentleman will not grant the inquiry but upon the evidence, it is plain that if we take the course which he recommends, we must go without both. Will gentlemen offer objections against inquiry which are applicable only to impeachment? If an impeachment were moved, they would have a right to call for evidence. But what is the object of the present motion? Merely to inquire whether there exists evidence which will justify an impeachment. But this inquiry we are told cannot be instituted on mere hearsay, although we have the declaration of a member in his place. What would be said of a grand jury, who being informed by one of their body that A or B could testify to the fact of a murder being committed within their jurisdiction, should refuse an application to the court to have them summoned, and because they could not find a bill of indictment unsupported by evidence, should reject that evidence which might be within their reach? I profess not that tenderness of conscience which has been displayed by the gentleman from Connecticut. My conscience teaches me to accuse no man wrongfully, but to deny inquiry into the official conduct of no one, however exalted his station; and I had supposed, from his practice, that the gentleman held the same opinion. For it will be recollected that on the eve of the close of the last session he had himself instituted an inquiry which went to impeach the conduct of some of the first officers of the Government. No one on that occasion stepped in between the demand for an inquiry and those officers implicated in it? No inquiry was made, and it precluded any further proceeding on the part of the House, since the charges which had been attempted to be brought forward would not bear examination. Mr. R. concluded by calling for the yeas and nays.

Mr. GREGG said he should vote against the postponement and in favor of the resolution. The case was somewhat new, but he perceived no impropriety in giving it the same direction with all the other business originated in the House. What is this committee to be appointed for? To investigate facts and report them to the House. Was it not most proper that gentlemen whose characters were implicated should have, in the first instance, facts stated privately before a committee, than that parts of their character should be immediately brought into view before the House? He recollected one fact not yet alluded to in debate. In 1792, after the army under the command of General St. Clair was defeated, great dissatisfaction arose, and the character of the commander was implicated. The idea was that the expedition had not been conducted with propriety. The business was brought before Congress. It was understood at that time, whether justly or not, Mr. G. would not pretend to say, that the commander-in-chief could not be tried by a court martial. Congress therefore took up the business, and appointed a committee of inquiry, who went through a lengthy examination of the subject. Mr. G. mentioned this precedent that gentlemen might turn their attention to it.

Mr. R. GRISWOLD said—I had hoped that the language used by me, when I was up before, would not have led gentlemen to suppose that I was acting as the friend or the enemy of Judge Chase. I am acting in neither capacity. I am acting only as a member of this House, who ought to be anxious on an occasion of such importance to take that course which is most consistent with propriety; that course which results from the duty this House owes the nation, and that duty which they owe the character of a judge. It did appear to me that it was not correct to call the character of a public officer into question unless some necessity should first appear. No facts are presented on this occasion. The gentleman from Virginia has said that he is in possession of facts, or of something which makes him believe that an inquiry is proper, but he does not choose to communicate those facts. The gentleman from Pennsylvania has given us his information. The question is, whether it is proper on these light suggestions to institute a solemn inquiry into the character of this judge. It appears to me that we ought not to throw any imputation on the character of any officer without evidence that such an inquiry is necessary. The case mentioned by the gentleman from Pennsylvania (Mr. GREGG) does not apply. Dissatisfaction existed in the country and in this House on the events of a campaign; an inquiry was instituted; but what was its object? The committee were appointed to inquire into the general causes of the failure of the expedition; they were not instructed to inquire into the character of a particular officer.

The gentleman from Virginia has referred to another case, when he says that we were ready enough to institute an inquiry, and has left it to be inferred that the inquiry was made without any previous proofs of its necessity. But certainly on that occasion inquiry was not made without proof. I suppose the inquiry alluded to was that which related to the conduct of the Commissioners of the Sinking Fund. It was instituted on a report made by them, and which we thought was not satisfactory. The resolution offered was adopted, and inquiry was made, the result of which is well known to every gentleman. It follows, therefore, that there are no precedents adduced which apply to the present case.

It is my wish that the proceedings of this House may on this occasion be perfectly correct, and that we may not be precipitated into the adoption of this resolution without due consideration. If it is correct to vote an inquiry in all cases where a member rises on this floor and desires it, it is correct to vote it in this case. In this case a gentleman rises and says that he is satisfied an inquiry ought to take place. The question is, whether it is proper to inquire on the suggestion of a member? If it is proper without facts being adduced, then it will be always proper to inquire whenever any member requires it, and it will be also proper whenever any individual citizen requires it. This

course I have never thought correct. On the contrary I think some facts ought to be previously presented to establish the necessity of an inquiry before it is voted. In the case of Judge Pickering a very different course has been pursued. The appointment of a committee of inquiry originated from a Message of the President. We find in February, 1803, the House received the following Message:

"The enclosed letter and affidavits, exhibiting matter against John Pickering, District Judge of New Hampshire, which is now within Executive cognizance, I transmit them to the House of Representatives, to whom the Constitution has confided a power of instituting proceedings of redress, if they shall be of opinion that the case calls for them."

This Message was referred to a committee, with the accompanying papers, furnishing evidence of the necessity of an inquiry. But the course pursued to-day is very different. A gentleman gets up, and moves an inquiry into the conduct of Judge Chase, and says that he is of the opinion that it ought to be made. This course, I think, is incorrect. Some facts ought first to be adduced. I repeat it, I am on this occasion neither the friend nor the enemy of Judge Chase. I am the friend of this House; I wish its proceedings to be correct, and I hope they will not do hastily what they may hereafter regret.

Mr. DENNIS.—The only question now before the House is, whether they will postpone the consideration of the motion on the table. I cannot but express my surprise that the gentleman from Virginia should oppose this motion, when several have declared that they are not prepared to vote on this resolution. Gentlemen ought to recollect that, according to our rules, on all motions which require the concurrence of the two Houses, one day's delay is necessary. Although this resolution is not of this kind, yet it surely is not of inferior importance.

I believe that the gentleman alluded to by the motion would rather court than shrink from an investigation of his official conduct. I believe, also, that it has become necessary, from the discussion of this day, that an investigation should take place. I am not, therefore, prepared at this time to say whether I shall not ultimately vote for an inquiry. But it appears to me that the course proposed is inverting the natural order of things, inasmuch as it institutes an inquiry not growing out of facts, but for facts. I believe also that the facts stated, if authenticated, will furnish no ground for impeachment. Circumstances attending this motion show that the gentleman from Virginia does not consider them as a sufficient ground for an impeachment. The refusal to hear the point of law discussed was the act of the court. Mr. Chase did not sit alone on the bench. Another judge must have been associated with and have concurred with him. If so, why does not the resolution allude to the other judge? Why select one judge, when both are equally implicated in the charges?

I believe the most parliamentary way would be for a gentleman to state, in the form of a resolution, the grounds of impeachment, and then to refer such a resolution to a select committee for investigation. In this mode the House may correctly institute an inquiry, and send for persons and papers. This is the only parliamentary mode of proceeding. In every case where impeachments have been made, the facts have been stated in a resolution, concluding with a motion for an impeachment. The House possess no censorial power over the judges, except as incidental to the power of impeachment. If gentlemen are possessed of facts, why not state them in the form of a resolution, and move an impeachment? Then, if the facts appeared to me to warrant an impeachment, I would not object to their going to a select committee, though I believe the most proper course would be for the House to send for persons and papers, and to examine for themselves. But it is extremely novel and unprecedented for the House, without facts, to institute an inquiry into the character of a high officer of the Government.

May they not, in the same way, extend their inquiry into the conduct of every judge in the United States, without stating any facts on which the inquiry is founded? For these reasons I shall vote for postponing the further consideration of this resolution for one day, on account of the importance and delicacy of the subject, and the serious deliberation it is entitled to. I do not know whether, if sufficient time is allowed for consideration, and I shall be convinced that this course is consistent with parliamentary usage, I shall not be in favor of an investigation.

Mr. ELLIOT.—When the yeas and nays are called, I shall on every occasion rise in favor of taking them. I wish the votes I give in this House entered on the Journal, and known to every citizen of America. The more I contemplate the course pursued on this occasion, the more extraordinary and unprecedented it appears to me. The gentleman from Virginia rose, and, after an elegant exordium, stating that the streams of justice should be preserved pure, and other fine things, told us that he had received information of facts that convinced his mind that an inquiry ought to be made into the conduct of a judge. Suppose the gentleman, on facts known to himself, had stated his opinion, that an inquiry ought to be made into the conduct of the President of the United States. We have the same right to impeach the President as a judge. If the inquiry would be improper in the one instance, without facts being adduced, it would be equally so in the other. For we possess no censorial or inquisitorial powers over the conduct of the judges of the Supreme Court. If Judge Chase has been guilty of misconduct, let it be stated. If that misconduct be of a private nature, let the House assume the character of a grand jury, hold private sittings, receive evidence, and determine whether the judge shall be impeached or not. The gentleman asks whether a grand jury in the case of a charge of murder can send for persons. Undoubtedly they can. But did gentlemen ever hear of their appointing a committee to inquire whether a man charged with a partial offence ought to be indicted? We are called on, as the grand

inquisitors of the nation, to appoint an inquisitorial committee to get evidence; for it is granted that as yet we have none. I believe that no committee of this nature ought to be constituted, without previously ascertaining facts that will warrant the delegation of such great power. No accusation, even, is before us; but we are called upon to appoint a committee to look one up—a committee to be invested with power to send for persons and papers—a committee to inquire in private. I will never consent to the appointment of such a committee, until facts that will justify the inquiry are stated.

The facts adduced by the gentleman from Pennsylvania, if proved, could not induce me to believe that the judge is impeachable. I may suspect that his conduct was erroneous and improper, but I cannot conceive it proper to impeach a single judge for the act of the court. Believing, therefore, this conduct unprecedented, unparliamentary, and replete with improprieties; believing it novel; believing that, in an affair of so much consequence, we ought not to proceed with precipitation; believing that we are entitled to demand one day to reflect upon it,—I am proud, on this occasion, to record my vote in favor of the postponement until to-morrow; and if it were for a week, I should with equal pride and pleasure vote for it.

Mr. Holland moved an adjournment.

Mr. J. Randolph said, that considering a motion to adjourn equivalent to a postponement for a day, he moved the taking the yeas and nays upon it.

Mr. Holland moved an adjournment, on which the question was taken—yeas 52, nays 62.

Yeas—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Marasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Edwin Gray, Gaylord Griswold, Roger Griswold, John A. Hanna, Seth Hastings, James Holland, David Hough, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, Tompson J. Skinner, John Cotton Smith, John Smith of Virginia, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

Nays—David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Andrew Gregg, Thomas Griffin, Samuel Hammond, Josiah Hasbrouck, William Hoge, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of New York, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne Joseph B. Varnum, John Whitehill, and Richard Winn.

The question of postponement recurring,

Mr. Huger considered the course contemplated by the resolution as improper, unparliamentary, and unprecedented. To make up his mind on the course proper to be pursued, he was in favor of the postponement.

Mr. Holland observed that he had moved an adjournment to allow those gentlemen time for reflection who had not yet made up their minds on the propriety of the motion. He was himself of this number. Having been allowed no time for reflection, he did not feel perfectly satisfied with the appointment of a committee of inquiry before any facts had been substantiated. Desiring further time to form his judgment, and seeing no occasion for precipitation, he should vote in favor of a postponement.

Mr. G. W. Campbell.—I will not, at this late hour, detain the House with the expression of my ideas in detail. I am as desirous as any member of this House that the streams of justice should flow pure and unsullied, as on their purity depend the safety and liberties of the people of the United States. But when we are about to enter into measures for preserving them clear, we owe it to ourselves to preserve order in our conduct, and to act in such a manner as we shall be able to justify to our constituents. Every member of this House, on such an occasion, ought to be as cautious in his proceeding as a judge in delivering his opinions, lest, while we are condemning the conduct of the judge, we ourselves go astray from our duty. For this reason, I am against the adoption of a measure which may throw a censure on a character invested by the United States with high authority, until I am convinced we have sufficient ground for doing so. The resolution on the table can have but one object, to wit: the direction of an inquiry whether sufficient evidence can be procured to authorize an impeachment. I conceive that this House cannot proceed in any other way. I am therefore of opinion, that, before the vote for an inquiry, there ought to be probable grounds that facts exist that authorize an impeachment, and that evidence can be procured of their existence. I am not prepared to say, from anything which has been adduced, that such evidence does exist. I conceive that until probable grounds are shown, we ought not to authorize such a procedure, inasmuch as it may establish a precedent that we may hereafter regret—a precedent which will put it in the power of any member to move and obtain an inquiry into the conduct of the President, a judge, or any other officer under the Government. Under these circumstances, I am not prepared to say this is the regular course of proceeding. I do not profess to have much knowledge of parliamentary proceedings, and have therefore waited, before I expressed my opinions, to hear such precedents as gentlemen could adduce. Having heard none, I conclude none exist.

I conceive that the act of this House, in voting for a committee of inquiry, is equivalent to the expression of the opinion that they have evidence of the probable grounds of the guilt of the judge. The gentleman from Virginia has told us that the powers of this House are, in some degree, like those of a grand jury. I agree that they have all the powers of a grand jury, and it is on this ground that I deny the power now contended for. I say that a grand jury has no right to send for testimony: they have only a right to receive testimony from any one of their body, and to receive such witnesses as the court may send them. If, then, there be evidence in the present case, let us act upon it, even though it be *ex parte*, and although that might, perhaps, be going too far.

I repeat it, I have heard no statement satisfactory to my mind that there are probable grounds for proceeding in this business. It is true, the gentleman from Pennsylvania has made a statement, but that statement appears to me to depend not so much on facts as on opinions; and it is not my wish to decide on the propriety of the conduct of the judge until the facts are before us. It is certain that a judge has a right to control counsel, and to say when his mind is made up, while it is also his duty to hear the allegations that shall be made.

In addition to these reasons for a postponement, I am also in favor of it, because, whenever a sincere desire exists to gain information, which can only be done by allowing further time, I shall always be in favor of it, when no material injury can result from the indulgence.

Mr. Mott.—I am in favor of the postponement, because I wish time for consideration, and because I am against the resolution itself. I think it is improper to go into such an inquiry before specific charges are laid before the House, when it will be proper for the House to consider whether those charges are sufficient to sustain an impeachment; then it will be proper to proceed, and not till then. No charges have yet been laid before the House: we have only been told, by one member that he is satisfied sufficient grounds exist.

Mr. J. Randolph was sorry to be obliged to trespass again on the patience of the House, but the direct application made to him by the gentlemen from Tennessee and South Carolina imposed upon him the necessity of stating his reasons for proceeding in what they were pleased to term so precipitate a manner. They ask, why not have laid the resolution on the table by way of notice to the House? Because, sir, I cannot in a matter of extreme delicacy make the opinions of other gentlemen the standard of my own actions. I should have conceived the character implicated in the resolution as having just cause of complaint against me, had I not been ready to decide in a moment on it, and did I not press its immediate decision. I should have deemed it an act of cruel injustice to have hung the inquiry over his head even for a day. I should have expected the reproach of setting suspicion afloat whilst I avoided examination into them; for I should have deserved it, had I pursued the course which gentlemen wish to adopt. I can see no difference between hanging up this motion for a day or a year but the mere difference of time. What is the object to be obtained? Do we wait for evidence, or any information, which will assist us in forming a correct opinion? Not at all. To-morrow the question will recur upon us—"Is it proper, from what has already appeared, to institute an inquiry into the conduct of this officer?" And this we are as competent to decide at this moment as at any future day. When, however, gentlemen consider a resolution to make inquiry the same as an inquiry already had, I am not surprised at finding myself opposed to them in opinion. I repeat that all their arguments are applicable to a motion of impeachment only. But it seems that no precedents have been adduced, and time is wanted to hunt them up. Gentlemen should recollect that but two cases of impeachment have taken place under this Government; one of a Senator from Tennessee, the other of a district judge of New Hampshire. By what precedents were the proceedings in those cases regulated? How is it possible in a Government hardly in its teens, where new cases must daily occur, as its various functions are called into exercise, to find precedents? It did so happen, in the case of the Senator from Tennessee, that the information on which his impeachment was grounded came from the Executive. But suppose that information had not been communicated by the Executive? Would that have precluded all inquiry? Suppose too, in the case of Mr. Pickering, that no information had been received from the Executive, and that a gentleman from New Hampshire had risen and said "However painful the task, I deem it my duty to state that the conduct of the judge of the district in which I reside, has been such as renders him unfit for the important station which he holds, and I therefore move for an inquiry into his conduct." Would the House have denied the inquiry? Will they rely altogether on the attorney of the district, whose interest it is to be well with the judge, and whose patience must be worn out with his misconduct before he will undertake to call the attention of Government to it? Are gentlemen aware of the delicate situation in which those officers are placed? Suppose information had been given to a member of the malfeasance of a judge by a person who should say: "It is not pleasant to originate accusations; those who come forward in these cases undertake an invidious task; while therefore I wish my name not to be mentioned, I shall be ready when called upon, by proper authority, to give my testimony." This is a hypothetical case, but one by no means improbable. Would it not be a point of honor not to expose the name of the informant?

But say gentlemen, the charge is of a general nature. While I do not admit the force of this remark, supposing it to be correct, I deny that it is a general charge. The inquiry is general, but

it is founded on a statement made by the gentleman from Pennsylvania. I made no other statement. I have said that I believed there existed grounds of impeachment. What they are I shall not state here. They may be those exhibited by the gentleman from Pennsylvania, or they may be others. Will gentlemen assert that the statement of facts made by the gentleman from Pennsylvania will not, if true, warrant an impeachment? What does it amount to? A person under a criminal prosecution, having a Constitutional right to the aid of counsel in his defence, has, by the arbitrary and vexatious conduct of the court, been denied this right. Such is the nature of the charge. Has it come to this, that an unrighteous judge may condemn whom he pleases to an ignominious death, without a hearing, in the teeth of the Constitution and laws, and that such proceedings should find advocates here? Shall we be told that judges have certain rights, and whatever the Constitution or laws may declare to the contrary we must continue to travel in the go-cart of precedent, and the injured remain unredressed? No, sir, let us throw aside these leading-strings and crutches of precedent, and march with a firm step to the object before us.

As to the motion of postponement, Mr. R. said it was of little consequence to him whether it prevailed or not. On a charge of specific malfeasance, he thought it impossible to refuse an inquiry. Whatever should be the result he should rest satisfied with having discharged his duty to the House and to the nation. Believing the circumstances to demand inquiry, he had made it. Without circulating whispers of reproach, he had given the person implicated that opportunity of vindicating his character which he himself should require if he stood in the same unfortunate situation.

The Committee rose, and the House adjourned.

FRIDAY, January 6.

A memorial of the officers of the militia of the District of Columbia was presented to the House and read, praying a revision and amendment of an act of Congress, passed at the last session, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia," for the reasons therein specified.

Ordered, That the said memorial be referred to Mr. VARNUM, Mr. JOHN SMITH of Virginia, Mr. JOHN CAMPBELL, Mr. STEPHENSON, and Mr. NICHOLAS R. MOORE; to examine and report their opinion thereupon to the House.

Ordered, That the Committee of Commerce and Manufactures, to whom was referred, on the eighteenth of October last, so much of the Message from the President of the United States, of the seventeenth of the same month, as relates "to the adopting of measures for preventing the flag of the United States from being used by vessels not really American," have leave to report thereon by bill or bills, or otherwise.

Mr. SAMUEL L. MITCHILL, from the committee last mentioned, presented a bill to amend the act, entitled "An act concerning the registering and recording of ships and vessels;" which was read twice and committed to a Committee of the Whole on Tuesday next.

A petition of sundry aliens, resident in the city of Baltimore, was presented to the House and read, praying that the act of Congress, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject," passed the fourteenth of April, one thousand eight hundred and two, may be so amended, that the petitioners and others, who resided in the United States previous to the passing of the said act, may be admitted to the rights of citizens after five years' residence.—Referred to Mr. MCCREERY, Mr. VAN RENSSELAER, and Mr. JOSEPH CLAY; to examine and report their opinion thereupon to the House.

IMPORTATION OF SLAVES.

Mr. BARD.—For many reasons this House must have been justly surprised by a recent measure of one of the Southern States. The impressions, however, which that measure gave my mind, were deep and painful. Had I been informed that some formidable foreign Power had invaded our country, I would not, I ought not, be more alarmed than on hearing that South Carolina had repealed her law prohibiting the importation of slaves.

In the one case we would know what to do. The emergency itself would inspire exertion, and suggest suitable means of repelling the attack. But here we are nonplussed, and find ourselves without resource. Our hands are tied and we are obliged to stand confounded, while we see the flood-gate opened, and pouring incalculable miseries into our country. By the repeal of that law, fresh activity is given to the horrid traffic, which has been long since seriously regretted by the wise and humane, but none have been able to devise an adequate remedy to its dreadful consequences.

Congress has but little power, or rather they have no power to prevent the growth of the evil. To impose a tax on imported slaves is the extent of their power; but every one must see that it is infinitely disproportionate to what the morality, the interest, the peace, and safety, of individuals, and of the public at this moment, demand. And though in regard to their present case the power of the General Government may be insufficient to check the mischief, yet I hope they are disposed to discourage it, as far as they are authorized by the Constitution. Therefore I beg leave to offer the House the following resolution:

"*Resolved*, That a tax of ten dollars be imposed upon every slave imported into the United States."

Ordered to lie on the table.

OFFICIAL CONDUCT OF JUDGE CHASE.

The House resumed the consideration of the motion of the fifteenth instant, "for the appointment of a committee to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States," and the said motion, as originally proposed, being again read, in the words following, to wit:

"*Resolved*, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and to report their opinion whether the said Samuel Chase hath so acted in his judicial capacity, as to require the interposition of the Constitutional power of this House:"

A motion was made and seconded to amend the same, by inserting, after the words "one of the Associate Justices of the United States," the following words, "and of Richard Peters, District Judge of the district of Pennsylvania."

Mr. SMILIE.—When the motion now under consideration was made yesterday, I should have felt surprised at the course which the debate took had I not often witnessed such things in former times. It seems to be considered as improper that a gentleman should bring forward a motion for an inquiry into the official conduct of a public officer, and expect the House to comply with his request, unless he should at the same time produce such evidence as shall prove the facts charged. If this course of proceeding be correct, I have ever been in error. What does the gentleman from Virginia ask? Suppose he has taken exception to the conduct of the judge from some facts which have come to his own knowledge. Under such circumstances it will be allowed that it is the duty of the House to make the inquiry. When the question shall be whether an impeachment shall be preferred, it will be proper that evidence should be produced. But now only a committee is asked to receive evidence, and to determine whether it be such as in their opinion will afford grounds for an impeachment. It is impossible for me to conceive any way that can be pursued which will be more favorable to the person whose character is implicated than that which is proposed. It is merely to inquire whether such facts can be sustained as will afford grounds for an impeachment. Certainly in this stage of the business it is not necessary to produce evidence to the House, as the House are not competent to receive testimony which a committee is. It is a rule of this House that so much respect is due to a member, that if he states that he possesses information proper to be communicated to the House, but which in his opinion ought not to be done but with closed doors; that, in such case, the doors shall be shut without any vote of the House.

Surely, then, on the request of a member for a committee of inquiry, that measure ought to be adopted. This, in my opinion, is the best course that can be pursued for the person implicated. There is, it is true, thereby expressed an opinion of some one member that this judge has done wrong. So far his character is implicated; this is the only possible way in which it is implicated. The committee are to inquire whether there are grounds for an impeachment or not. If they report that there are not grounds, the accusation will be dismissed; and if the report is that there are grounds, the House will at once perceive the necessity of taking this step to ascertain their existence.

Another ground of resistance is taken. It is said there are precedents for this proceeding. I believe that all precedents must have an origin; and that one person has as good a right to establish them as another. Our Government is young, and only two cases of impeachment have occurred under it. Most of our precedents respecting Parliamentary proceedings are borrowed from England, and, if precedents are necessary in this affair, we must resort to that country for them. My opinion is that they are not necessary, and that common sense and the reason of the thing are all that are necessary to guide our decision in this case. There is, however, in the British annals, no deficiency of precedents. The first I shall mention is to be found in the case of the Earl of Strafford. I may be told that this precedent was established in turbulent times: I may also be told of the improper mode of proceeding. I do not pretend to vindicate the whole course of proceedure. I think it was wrong. But with regard to the first stages of the business, I believe them to have been correct. It will be seen that, in that instance, a more direct mode was pursued than is proposed in the present case.

The precedent I allude to will be found in Hume's History, vol. 2, page 249. That historian says.—"A concerted attack was made upon the 'Earl of Strafford in the House of Commons. It 'was led by Pym, who, after expatiating on a 'long list of popular grievances, added, 'we must 'inquire from what fountain these waters of bit-'terness flow; and though, doubtless, many evil 'councillors will be found to have contributed 'their endeavors, yet is there one who challenges 'the infamous pre-eminence, and who, by his 'courage, enterprise, and capacity, is entitled to 'the first place among these betrayers of their 'country. He is the Earl of Strafford, the Lieu-'tenant of Ireland, and President of the Council 'of York, who, in both places, and in all other 'provinces where he has been entrusted with 'authority, has raised ample monuments of ty-'ranny, and will appear, from a survey of his 'actions, to be the chief promoter of every arbi-'trary council.' Many others entered into the 'same topics, and it was moved that Strafford 'should be impeached. Lord Falkland alone, 'though the known enemy of Strafford, entreated 'the House not to act with precipitation. But 'Pym replied that delay would blast all their 'hopes; without further debate the impeachment 'was voted, and Pym was chosen to carry it up 'to the Lords."

In this case it does not appear that any evidence was called for; a member of the House of Commons got up and declared his opinion of that officer, and the same session an impeachment was voted. This course of proceeding is very different from that now proposed. I will now refer to a more modern precedent which at the time does not appear to have been objected to. It occurred in the reign of George I, and will be found stated in Russel's "Modern Europe," vol. 4, page 398.

"A new Parliament was called in which the 'interest of the Whigs predominated, and a secret 'committee, chosen by ballot, was appointed to 'examine all the papers, and inquire into all the 'negotiations relative to the late peace, as well as 'the cessation of arms by which it was preceded. 'The Committee of Secrecy prosecuted their in-'quiry with the greatest eagerness, and, in conse-'quence of their report, the Commons resolved to 'impeach Lord Bolingbroke, the Earl of Oxford, 'and the Duke of Ormond, of high treason."

One circumstance is worthy of attention. A cause of dissatisfaction at the conduct of the judge has undoubtedly prevailed. Whether he is wrongfully accused I will not say; but the dissatisfaction is manifest; for the Representatives of two respectable States lately came forward and opposed his being assigned to circuits which embraced their States. This single fact ought to make an impression on the House.

It is alleged that there is no proof before the House; but one thing is notorious—is universally known. It is this, that this man (Fries) was tried before that judge for his life, and was tried without being heard. This fact cannot be disputed. When we consider the importance of the life of a citizen, and know that such an event has taken place, is it not the duty of the only body competent to inquire into the fact? With other gentlemen, I believe that the fountains of justice ought to be kept pure; I believe also that the judges are like other men, and that like them they are subject to the common frailties of human nature; and I do believe that when the frailties of human nature produce such effects, the House cannot be justified to themselves or their country without making an inquiry. Our duty to our country calls for it; our duty to the man who is implicated also calls for it. If innocent, a proper regard to his character claims it; and his friend from Maryland informs us that he will rejoice at this opportunity of coming forward and vindicating himself. If, then, the inquiry be equally necessary for placing the character of the man upon its proper footing, and for preserving the purity of justice, how can the House resist it?

Mr. DENNIS said he had only expressed an opinion that such an investigation would be rather solicited than avoided by Judge Chase.

Mr. LEIB.—I am by no means an enemy to inquiry, but I am not a friend to the partiality of this resolution. We are told that it is grounded on the misconduct of the Circuit Court in Philadelphia on the trial of Fries. If one judge of that court was guilty of misconduct, the other attending judge must have been equally guilty. The conduct complained of was the act of the court, and not of an individual judge. This resolution ought therefore to embrace both the attending judges. My opinion is that both are criminal, and ought to be brought to the bar of justice. I therefore move an amendment of the resolution by introducing the name of Richard Peters, so as to embrace an inquiry into the conduct of both judges, and call for the yeas and nays on the amendment.

Mr. J. RANDOLPH.—I wish to state for the information of those gentlemen who were not in the last Congress, that the gentleman from Pennsylvania, whose statement, thus made, is the groundwork of the present inquiry, did not offer any matter which tended to impeach the conduct of Mr. Peters, while there was a specific charge of misconduct brought against the other judge. In consequence of this charge I conceived it my duty to make an inquiry into the official conduct of Judge Chase. I mention this circumstance to show that however the charge of partiality may apply to the resolution, it cannot apply to the mover.

Mr. LEIB.—I do not charge the mover with partiality, but the resolution, with embracing one judge instead of two. Judge Peters was on the bench at the time. This outrage upon justice was the act of the court. How the conduct, therefore, of one judge shall claim investigation, while that of the other is passed over in silence, to me is mysterious. I think impartial justice calls for an investigation into the conduct of both.

Mr. SMILIE said there could be no doubt that if the court were agreed, Judge Peters had been equally guilty of misconduct. On the trial of Fries, Mr. Chase presided, and Mr. Peters attended. If Judge Peters concurred in the decision, he was equally culpable.

Mr. NICHOLSON.—This resolution is grounded upon a statement made during the last session, by a member from Pennsylvania implicating the character of one of the justices of the Supreme Court. Upon information thus given, my friend from Virginia has thought himself bound to bring the business before the House, that an inquiry may be made into his conduct. For myself I will never hesitate, I care not who the person implicated may be, and however exalted his station, to give my vote for inquiring into his official conduct, when a member of this House rises in his place, and states that, in his opinion, he has been guilty of misconduct. For this reason I shall vote for the amendment; it having been stated by a member that Judge Peters was on the bench and did concur with Judge Chase.

And on the question that the House do agree to the said amendment, it was resolved in the affirmative—yeas 79, nays 37, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, John Campbell, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, John Dennis, William Dickson, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, James Gillespie, Edwin Gray, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Hoge, James Holland, David Holmes, Benjamin Huger, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Thomas Lowndes, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, James Stevenson, John Stewart, David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Gaylord Griswold, Roger Griswold, David Hough, Samuel Hunt, Thomas Lewis, Henry W. Livingston, William McCreery, Nahum Mitchell, Samuel L. Mitchill, James Mott, Beriah Palmer, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, Henry Southard, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, John Whitehill, and Lemuel Williams.

Mr. LOWNDES.—Were I to be governed by considerations other than those resulting from a sense of duty I should vote for this resolution, as I believe it would afford the character implicated the readiest mode of vindication. But I do not feel so high a respect for the opinion of any one member as to give up my opinion to his, as to the course most proper to be pursued on this occasion. The gentleman who has offered this resolution says, that the facts on which it is founded are within his own knowledge. Let the gentleman then lay them before the House. Otherwise we shall legislate not on the facts before us, but merely on the opinion of a single member on facts only known to himself. We are told that this motion is founded on the statement of an honorable gentleman from Pennsylvania. What is that statement? That one of the counsel in the trial of Fries informed him that the judge declared the counsel had no right to argue a point of law after the mind of the court was made up. I ask if any gentleman is prepared to say that the judge was wrong? I am not prepared to say so. While, too, I am unwilling to detract from the respect due to the statement of the gentleman from Pennsylvania, I am equally unwilling to subscribe to his opinions. He may have misconceived the information communicated to him. It is said that it is necessary to preserve pure the streams of justice. I agree in this remark, and I say that the resolution on the table goes to destroy the independence of the judges, and of consequence to pollute the streams of justice; to make the judges the flexible tools of this House. It is impossible that under such circumstances men of talents and integrity will take seats on the bench, when their character shall be liable to be scrutinized without any facts being previously adduced.

I think it absolutely necessary that this resolution should not pass. For if it passes, it will establish a precedent that any member may procure an investigating committee to inquire into the conduct of any executive or judicial officer merely upon his opinion, unsupported by facts that such an inquiry is necessary. Suppose parties to be nearly equally divided; a member has only to propose an inquiry into the conduct of any officer to whom he may feel inimical, and thereby throw a cloud upon his character, and render him the object of suspicion. Thus do I fear that this precedent will furnish the instrument of vengeance of one party against another. The price we pay for our liberties is the existence of parties among us; but it becomes us rather to restrain than to invigorate their passions. If we establish this precedent we shall render impeachments so easy, as greatly to facilitate the means of oppression.

Mr. LOWNDES concluded by saying that in this affair he threw party considerations entirely out of view. He was personally unacquainted with Judge Chase, and if there was a single affidavit of his misconduct, the appointment of the committee of inquiry should have his vote; but that under the circumstances attending it, he considered the measure improper in every point of view in which he could consider it.

Mr. FINDLEY observed, that though the abstract right of the members to move for an inquiry into the conduct of public officers, in order to find whether presumptions against their character afforded ground for impeachment, was not expressly denied, yet the manner in which the opposition to the present resolution was conducted was equal to denying the right. He trusted, however, that the House would support this right, as it was one of the most important of any with which they were vested. It grew out of the power of impeachment, and it was necessary for the exercise of that power, and was justified by precedents. By the rules of the House any member has a right to have the doors shut in order to move such a resolution as he thinks proper. This has been usual in cases of impeachment in Britain, from which we derive the forms of impeachment. There it has been common to shut the doors and for a member to move for an impeachment of a public officer, and to procure the officer impeached to be taken into custody before there was time or opportunity to take any other testimony than the information stated by the member who moved the resolution, probably supported by public fame. Taking the party into custody was necessary to the circumstances of that country and the extent of punishment, which might not only affect the liberty and property, but even the life of the party found guilty. It was necessary because of the influence of the powerful nobility, who might have it in their power to stand in their defence; but, as all the penalties in the power of this Government to inflict by impeachment only affect the official trust and character, taking into custody is unnecessary.

He observed, that the arguments in opposition to the resolution turned chiefly on the ground of expediency and of precedent.

In his opinion it appeared not only expedient but necessary, from the notoriety of facts on which the resolution was founded; that they were publicly known and had impaired confidence in these judges, could not be denied. That it was known to Congress during the last session was acknowledged. It was not only known, but Congress acted on it. A bill was in progress before this House appointing the attendance of judges to particular districts—the members of two respectable States in which, by the bill, Judge Chase was ap-

pointed to attend, objected unanimously to that appointment, because they had not confidence in him: and the facts on which the resolution is founded were stated on the floor, upon which the House altered the bill and appointed another judge to that district. This was a strong testimony that Congress believed that this open expression of want of confidence in that gentleman was justified by the facts that had been stated. He said, that though he had not at that time a seat in the House, he had expected an inquiry to be made into the causes of this want of confidence at that time. Perhaps it was prevented by the shortness of the session.

It is expedient for the character of the gentlemen and for the public good; for the gentlemen themselves, if they are innocent or have acted on justifiable ground; it is necessary that their characters may be vindicated, and confidence in their public conduct restored. It is expedient for the public good, because if the judges are guilty in the manner stated—if they have justly lost the confidence of the people and of Congress, as it appears by the transaction of last session, one of them has done, the case ought to be examined and the citizens protected; for if he was unfit to preside on the bench for one district, he is unfit to preside in another. It is expedient, in order to secure the confidence of the citizens in the Government itself.

But precedents are called for by the gentlemen opposed to the resolution, and several of them contend that such special facts should be stated as would be unexceptionable ground of impeachment, before the inquiry is gone into. A gentleman from Vermont, (Mr. ELLIOT,) who argued yesterday in favor of postponement for further information on the subject, in the same argument said that he never would agree to the appointment of a committee of inquiry, until the charges were first stated and proved to his satisfaction. Mr. F. said he was astonished at this inconsistency. If the facts were first stated and established, appointing a committee of inquiry would be an absurdity. What would they inquire after but what they already knew? That gentleman and others, in order to defeat the resolution, gave the object of it an odious designation: they called it an inquisition and spoke of it in such terms as if it was the well known Spanish law of that name. The character of that court was too well known to the members of this House to require definition; it was sufficient to say that in it witnesses were examined without the knowledge of the party accused; that it compelled the accused to give testimony against themselves, and had authority to pass sentence of the most dreadful kind, without appeal. The gentlemen knew that no such thing was intended by the resolution. The character of the judges had been impeached in public opinion, by numerous citizens of all descriptions. Congress on that account gave a decisive testimony of want of confidence in one of them. The object of the resolution was to inquire whether there was a real foundation for this want of confidence and ill fame. If Congress did not make inquiry in such cases, who was to do it? It did not by the Constitution belong to any other authority; every other method of proceeding would be as ingeniously objected to as the one proposed, by those who wished to prevent further proceedings in the case; denying the means of bringing forward impeachment, had the same effect as if the power of impeachment was renounced.

The power of this House has been asserted to be similar to that of a grand jury; this seems to be conceded on both sides, but though it bears a resemblance, it was not strictly so—it was more extensive. Grand juries were authorized to present such indictments or such complaint or information as were submitted to them by the Attorney General, or which they knew of their own knowledge. The attorney also inquires if there is probable ground for the complaint, and brings the witnesses before the jury, who examine them to establish the facts alleged; but this House has no officers authorized to make inquiry and bring forward the business in due form; therefore the House possess both the power of the Attorney General and the grand jury, with relation to impeachment; for where a power of decision is given, all the powers necessary to carry that decision into effect are implied. The making inquiry, procuring witnesses, or other testimony, and preparing the case in due form, is the object of the resolution; and if the House does not do it in this or some other such method, there is no other agent authorized to do it.

With respect to precedent and Parliamentary usage, Mr. F. said he had formerly examined many, but was not prepared to state them at this time, and did not think them necessary on this occasion. In all the examples of impeachment by the British Parliament, from the reign of Henry VIII, when Parliamentary power was reduced to a mere shadow, till the present time, when the Parliamentary power has been amply enlarged and established, and their proceedings become more uniform, there will be shades of difference found in all of them, arising from various circumstances; we have few precedents of our own, and of these few none of them apply to the present case. It is the Constitutional duty of this House to impeach, when impeachment is necessary, and of the Senate to decide on impeachments; but with respect to the manner in which each House should proceed, they are not trammelled by forms nor entangled in precedents.

There are, however, examples of proceedings both with the British Parliament and with us, as similar to the method now proposed as the various cases would admit. With ourselves, the case of the unfortunate Western expedition mentioned by my colleague (Mr. GREGG) yesterday, was much more to the purpose than the gentleman from Connecticut (Mr. GRISWOLD) was willing to admit. Mr. F. said he had the honor to be one of the committee of inqury which sat on that subject a great proportion of two sessions. The expedition was too late in setting out to the Indian country; they were said to have been illy provided with necessaries, and long detained for want of them; a large proportion of the army

were killed or taken by the savages, and all the stores with the army left. The citizens were discontented, and numerous complaints were heard, but none knew with certainty whom to blame; a committee was appointed to examine witnesses and report the testimony to the House, in order to discover the party who had been to blame. Some had charged it on the commanding General, others on the Secretary of War, and others on the Commissary of Military Stores, and these last endeavored to wrest the blame from themselves and fix it on the General. It was certain that a great misfortune had happened, but it was not certain that any officer was to blame; no charge had been made to Congress against any officer, yet Congress thought proper to make an inquiry, and it was not opposed on account of want of form, or want of precedents, by any of the friends of the parties. Towards the close of the first session, the committee made a concise report, referring to a great amount of testimonies. Some of the parties implicated by the report thought themselves injured by it, and it was alleged that other witnesses ought to be examined. Consequently, at the next session, the business was recommitted to the same committee, and as it was near the close of the last session of that Congress, before all the witnesses were procured and examined, and the parties heard by the committee, each of the parties wrote and delivered to the committee a large book of explanations and defence. The committee reported a large wooden box full of testimony, of original letters and instructions, and the three books of explanations and defence accompanied with some observations. It was not possible for that Congress to enter on the business, and the cause being of a transient nature, and the parties who applied for the second inquiry not wishing a disclosure of the testimony, the business was not afterwards entered on; but the mass of testimony, &c., is yet in possession of Congress. This, it is presumed, applies well in favor of the present resolution.

Gentlemen object to the resolution because of the indelicacy of implicating the character of a judge. They seem to believe the character of a judge to be sacred and immaculate. But are not judges men? Are they not men subject to like passions and like feelings as other men? Judges and other official characters voluntarily surrender a part of the rights they enjoyed in common with other citizens, in return for the honors and emoluments of office; others have a right to the privilege of trial by jury, in the decision of all charges against them; but public officers, by accepting of office, subject themselves, under this Government, to trial by impeachment. Subjecting judges to impeachment, indicates, unequivocally, a Constitutional opinion that judges would be even more liable to transgress than other citizens, and might transgress in a more aggravated manner than mere citizens. This mode of trial, however, in this country, is become almost a harmless thing; it is deprived of more than half its terrors. It does not reach life or property, but only the official character.

Mr. F. said he was a friend to the independence of judges, but that all independence in all Governments had its limits and restraints. It was not provided for the aggrandizement of the judges, but for the protection of the citizens. So far as it is applicable to this purpose, it is necessary, but any further, it is injurious and subjected to restraint. Under no Government with which we are acquainted are the judges rendered so independent as that of the United States. In Britain, from which we have derived the mode of our judiciary, the judges were appointed during pleasure; till little more than a century ago, they were rendered independent by the Revolution Parliament for the security of the people against the encroachments of the Monarch, and the overbearing influence of a very powerful nobility, and for this purpose it was not only salutary, but absolutely necessary. But even with that boasted independence, that Judiciary is subjected to restraints and modes of correction not provided in the Federal Constitution. The judges are liable to be removed from office by the vote of both Houses of Parliament, without trial. They are liable to be removed, or their standing changed by act of Parliament. That Parliament, on whose act their independence depends, can repeal the act; the two Houses of Parliament can make and unmake their Kings. They are also liable, by an act of attainder, not only to lose their office, but their estate, the honor of their families, and even their lives.

The Judiciaries in all the States of the Union are rendered less or more independent, some are appointed for shorter and some for longer periods. In New Jersey, they are appointed for seven years; they were so in Pennsylvania formerly; since the revision of the Constitution they are appointed during good behaviour; they are, however, subjected not only to removal by impeachment, but also by the vote of two-thirds of each House, for any cause which the House do not think a sufficient cause of impeachment; but in the Federal Government there is no method provided for removing them for the most scandalous indiscretions or incapacity, as even when they may unfortunately be under mental derangement, except by impeachment, which is inapplicable to official crimes, and conducted with tedious forms. The power of impeaching being the only shield provided by the Government for the protection of the citizens from judicial oppression, and this House being the only Constitutional organ for obtaining information of official excesses, and bringing forward articles of impeachment, ought not to bind up their own hands from doing their duty, and this they will do if they reject the resolution now on the table.

But while the gentlemen consider the character of these judges so sacred that their conduct cannot be inquired into, notwithstanding such proofs of want of confidence in them, and that as a gentleman near me from South Carolina (Mr. LOWNDES) has said that he is afraid of impeachment, and grounds his fears on the incapacity or the unfitness of the members of this House, or be-

cause the members of this House may abuse the power; Mr. F. asked, were not the members of this House elected and qualified for the discharge of this necessary duty? Were they not appointed by as respectable authority as the judges? Were they not under a solemn oath of office for the faithful discharge of this as well as every part of their high trust? And were they not protected by special privileges and protection during the discharge of their trust equally with the judges, and their stations as respectable as the judges? They are not only protected from civil actions, but are not subjected to impeachment for misbehaviour in office as the judges are. They are, in their official capacity, subjected only to the censure of public opinion. If this is true, it is improper, it is impolitic, for the members of this House to degrade their own character: it amounts to saying, they are not capable of discharging the trust they are solemnly bound to discharge, and ought not to have been invested with. He knew, however, that this was only introduced as an excuse for unwillingness. But the same gentleman adds, as a reason for opposing the resolution, that he is not acquainted with the history of the business. That is probably the case with him and others, especially such as had not a seat in the last session of Congress, or who resided at a great distance from the scene alluded to in the resolution. Admitting this to be true, the best and the only regular way to become acquainted with the history of the case, is to carry the resolution into effect—to have a committee appointed with such power as would enable them to procure such information as that gentleman and every other member could depend on. The gentleman's objection, in fact, is one of the strongest arguments in favor of the resolution. The gentleman from South Carolina has, however, offered one other objection to the resolution, which merits some notice. He has said that if a committee is appointed for the object proposed by the resolution, men of character and talents will not accept of appointments in the Judiciary. The solidity of this objection will be best examined by the test of observation and experience. It has been already mentioned that several States have appointed their supreme judges for short periods, and that others have vested the Legislature with the power of removing judges from office without impeachment, merely on their own opinion. Can the gentleman from South Carolina say—can any member on this floor, where all the States are represented, say—that these States are deficient in judges of respectability and talents? They cannot say so—there is no such complaint. The Judiciary of New Jersey, where the judges are chosen but for seven years, is as repectable, and the application of her laws as well brought home to the security and happiness of her citizens as they are in the States where judges are appointed for life. The same may be asserted with confidence of the State of Pennsylvania, before the revision of her constitution as they are since. There is this difference, however: where they have been appointed for limited periods there has been no impeachments or removals, and generally, if not always, the judges were reappointed, and justice was well administered; but since they have been appointed for good behaviour, there has, at least in Pennsylvania, been both, and more complaints of inattention, expense, and delays, in the administration of justice than had been formerly. Many of the judges, however, are very respectable, and enjoy a high degree of confidence, but not more confidence than they did before the change of the constitution. There has been no attempt to remove or impeach the judges of the supreme court of that State.

To inquire into the conduct of the judges when confidence in them is evidently wanting, is the only true way to secure the respectability of the Judiciary. If that necessary confidence is withdrawn without cause, an official inquiry will restore confidence and the usefulness of the judges. This observation is supported by precedent and parliamentary usage. In that country from which precedents are so frequently sought, one precedent offers itself to recollection. In the year 1730 a committee of the British House of Commons was appointed to examine the jails. In the course of examination, the committee discovered that Sir Robert Eyres, Chief Justice of the Common Pleas, a judge of very respectable character, was suspected, not of tyranny on the bench, or of putting any man's life in jeopardy, but of having held an improper correspondence with a person confined for crime or misdemeanor, and this suspicion chiefly supported by anonymous letters. A committee of the House of Commons were appointed to make inquiry, and it was found, to the satisfaction of the committee and of the people, that the allegations on which the suspicion was founded were false, and the judge's character was vindicated and restored.

Mr. F. said this precedent applied well to the present case. If the judges mentioned in the resolution had done their duty, their characters would be vindicated by the inquiry, and the public confidence in their integrity restored; if they were guilty, and not entitled to confidence, they ought to be removed from office, and neither the one nor the other could be done unless the inquiry proposed was authorized.

He said that the inquiry was necessary to secure the purity, honor, and usefulness of the Judiciary department. If that House refused or neglected to exert the powers vested therein for securing public confidence in the Judiciary, unprincipled men would find means of recommending themselves to appointments, and would vitiate the streams where justice is expected to flow, and the citizens would be oppressed without the means or hopes of redress, and would feel the effects of tyrannical power in the administration of a Government which, in its other departments, was the greatest and best of any in the world. Let proper inquiries be made where they are necessary; let the character of judges unjustly charged be vindicated, and the vicious and unworthy be removed, and improper characters will cease to intrude themselves; their friends will not dare to

recommend, and Congress will have confidence that the laws which they pass will be applied, agreeably to their genuine principles, to the protection and ease of the citizens; if we do not provide for this, we had better cease to make laws.

If virtuous men are appointed and the vicious discouraged, Congress may, from particular circumstances, be called on to make inquiries, but very rarely indeed to be employed in impeachments, (no men of real virtue and talents would refuse a seat on the bench for fear of inquiry or impeachment.) He said that the judges of the supreme court in the State he had the honor of representing, though they differed in political opinions, administered justice with such purity and diligence, that though some of them had been long in office, they enjoyed the confidence of the citizens, were in no danger of impeachment or removal by vote, and he believed would not shrink from inquiry if necessary. The more extensive the confidence of the citizens that was reposed in the Judiciary, the easier it would be to supply vacancies with men of character and talents. He said that among several other observations which occurred to his mind, with offering which he would not now detain the House, he had once thought of stating other charges against the official conduct of these judges, of which he had been well informed, but on due reflection he declined mentioning them, and thought it most for the public good to insist on the appointment demanded by a member on the responsibility of his own official character, and as a matter of right, and would do nothing that would impair the weight of the precedent that he hoped would be set by agreeing to the resolution as it stood.

Mr. F. said that having so long engaged the attention of the House he would conclude by observing, that as the case now stood it is proper for all the members to vote for the resolution; those that believed as he did, that there was a want of necessary confidence in those judges, and that this want of confidence was occasioned by their unauthorized and oppressive conduct, were obliged in conscience to vote for the inquiry; and every member who believed the judges to have done their duty, and that the public confidence is withdrawn from them without cause, are bound in duty to vote for the resolution, in order that the judges may have an opportunity to vindicate their character, that confidence in them being restored they may become useful to the public; therefore, in every light he could view it, he was convinced it was his duty to vote for the resolution, and would act accordingly.

Mr. JACKSON.—As, Mr. Speaker, this subject is novel in its nature, and may be important in its consequences, I presume there exists a disposition to hear the reasoning which any gentleman may be disposed to offer upon it. It is with this view that I rise to express my opinion in favor of creating a committee of inquiry. I consider this House as the grand inquest of the nation, whose duty it is to inquire, on a proper representation, into the conduct of every official character under the Government. Like a grand jury, we ought, in my opinion, at the instance of any member, to send for all persons possessed of information calculated to throw light upon the conduct of any individual inculpated. A contrary doctrine would lead to the most unfortunate consequences. It would lead to this, that a minority would never be able to inquire into the conduct of a State offender, unless such inquiry were favored by the majority. As it is now contended that the inquiry is not a matter of right which any member may demand, but a matter of favor, to be granted according to the pleasure of the majority, it may be said that, if a majority favor an individual, he will always escape without an impeachment. But I believe otherwise; and that the Senate, like a virtuous judge, will not suffer an atom of prejudice or partiality to fall into the scales of justice.

But, say gentlemen, though it may be the duty of the House to impeach an officer, it is necessary that facts, warranting such an impeachment, should be first presented. This is not the course pursued in cases where a grand jury is called upon to act. If a murder is committed it is their duty to inquire, and diligently inquire, who is guilty of the act, and to send for all persons capable of giving information respecting it. Such is the practice. If it shall be required to furnish facts, as is urged by gentlemen, the consequence will be that offences of the highest nature will be committed with impunity. It has been observed that it is odious to undertake the task of a public informer. But what the Constitution and laws make our duty, so far from being odious, is honorable; because we thereby discharge a duty imposed upon us by our oaths, and because we show ourselves unawed by the vicious conduct of bad men. If the character of a public informer be odious, are we to expect that private individuals will come forward with affidavits? In such a case, to say the least of it, the duty would be of an unpleasant nature.

We have, in the course of this debate, been frequently called upon for precedents, and been told that, when found, they ought to be adhered to. In a country from which we are accustomed to draw precedents—England—common report has been considered as a sufficient authority for similar inquiries. We do not, however, ask for an inquiry in this case on common report, but on the declaration of a member of this House, made in his place. Suppose there was no such declaration, has not a common report, from Maine to Georgia, condemned the conduct of the judge in the case of Fries, and others, at Philadelphia, in the case of a grand jury in Delaware, whom he directed to inquire for seditious practices, and in the case of Callender, in Virginia? Has not the general sentiment of the country charged him with having, in these cases, abused his powers as a judge by tyrannizing over those who were brought before him? If we possess the right to inquire, on common report, surely we ought to institute this inquiry on the prevalence of so general a sentiment. To such an inquiry I would unhesitatingly agree, if the character of the Pres-

ident were implicated, the opinion of the gentleman from Vermont to the contrary notwithstanding. I would likewise agree to make the same inquiry in any other case; because the inquiry would redound to the honor of the individual implicated, if innocent; and because, if guilty, he ought to be punished.

I am sorry my friend from Pennsylvania stated any facts, as I do not consider it necessary that the House should be acquainted with any facts to make this inquiry; and because I think the facts, stated as grounds of impeachment, are not such as will warrant an impeachment. I have always understood that it was the right of a judge to expound the law, and I have known frequent instances where the court have refused the counsel the liberty of discussing the law on points on which they have made up their minds. While I am free to declare that the conduct of the court in the trial of Fries is not, in my opinion, such as to require an impeachment, yet I am in favor of instituting the inquiry. But, say gentlemen, by the passage of this resolution, we shall censure the judge. I believe not. If I believed so, I would first require testimony; for I hold it a good principle, that no man ought to be condemned until he has been heard. In my opinion, this resolution will have no such tendency; as, if the judge has not been guilty of misconduct, the inquiry will redound to his honor, and as it is the duty of a virtuous man to demand an inquiry whenever charged with an offence.

Gentlemen, in opposition to this measure, say they wish to guard against suspicion. But suspicion has long since gone forth; has been heard and re-echoed from every part of the Union; and the only way of defeating it, if ill-founded, is to institute an inquiry, and if the character of the judge be innocent, to pronounce it so. I am surprised to find gentlemen, who profess a friendship for the character of one of the persons implicated, opposed to this inquiry, when they believe him innocent. I should suppose it their peculiar duty to call for the inquiry, that the accused might have an opportunity of proving to the world that his character has been assailed without cause.

Mr. R. GRISWOLD.—After what has passed on this floor, there can be no doubt that the gentlemen whose characters are implicated by this resolution will ardently desire an investigation of their conduct; and if, on this floor, we were merely to consult our own wishes, we should unanimously agree on an investigation. But this is not our duty; our duty is to take on this, as well as on all other occasions, a correct course; to take those steps only which are warranted. It is because I doubt, after considerable deliberation, whether this course is warranted, that I am opposed to it. What, I ask, is the nature of the resolution on the table? It contains no charges against the judges implicated; it only proposes to raise a committee to inquire whether their official conduct has been such as to justify the interposition of the Constitutional power of this House. If a committee of inquiry is raised, what will be their powers? One thing will certainly follow. They will be clothed with a power to send for persons, and probably for papers. Is it consistent with principle to appoint a committee, which, from its nature, must be secret, with power to ransack the country in the first instance for accusations against the judges, and then for proofs to support them? Is this correct? Are gentlemen prepared to say so? to seek for accusations, and then for proofs to support those accusations, against high officers of the Government? For one, I believe that this course is not correct. I believe it to be dangerous. I agree with the gentleman from Vermont, that it operates in the nature of an inquisition. A committee will be raised to act in secret, first to find an accusation, and next to prove it. If there is now any accusation against the judges, let it be made; let it be made on this floor; and, as the gentleman from New Jersey has observed, let us ascertain, if true, whether it will be a sufficient ground for an impeachment. This will be a correct course, and it will be the only safe course. If, on the contrary, we proceed in the manner proposed, it will be attended with this consequence: at the commencement of every session we shall raise a secret committee, to compose an inquisition, to ascertain whether there are not charges against some public officer, and to search for proofs to justify them. Is the Government of this country founded on this principle? I know that this secret course of procedure is practised by the Spanish Government, and by some others, but I never thought that it would be the practice of this Government. When a charge is made against a public officer, it ought to be boldly made. It ought to be made here, and should be committed to writing. Instead of this being done, there is no charge made. The resolution contains none. It is merely calculated to raise a secret committee. Why? Because the gentleman from Virginia is of opinion that it is proper. Is his opinion, or the opinion of any other gentleman, to govern this House? Are we brought to this? I trust this is not the case. I trust that gentlemen will think it necessary not only to consider his opinion, but to form their own. What can gentlemen say, if they agree to this resolution? That they voted to investigate the conduct of two judges. Why? Because the gentleman from Virginia says it is necessary to investigate. Why investigate? Because the gentleman demands it. This is the language of that gentleman yesterday. Because a gentleman of this House gives his opinion of the course proper to be pursued on this occasion, it does not follow that we are to be governed by it. We may respect it; but we must respect our own opinions still more, if we faithfully discharge our duty. I am sensible that some facts have been mentioned by the gentleman from Pennsylvania, or rather, that that gentleman has heard a story; but it is mere hearsay.

I ask, also, how this formidable charge has rested to this day? When and where did the transaction, on which it is founded, happen? In Philadelphia, and in the Winter of the year 1800, when Congress were in session within twenty rods of the place where the court was held. The

gentleman from Virginia, as well as other members on this floor, were then in the House. The case being, I believe, the only one in which there was a charge of treason, excited, in a considerable degree, the attention of members, many of whom attended the trial. How comes it, then, that this charge was not then made? If it shall be said the House did not interfere at that time because the criminal was lying under sentence of death, it will be recollected that, in 1801, Fries was pardoned. Why was not the inquiry then made? If it shall be said that it would have been imprudent to make it on account of the party then in power, why was it not made in the seventh Congress, when a change of men took place? How can gentlemen reconcile this great delay with the high regard they profess for the purity of the streams of justice, and for justice itself? For such is the respect they entertain for justice, that they have determined to bring to conviction this unjust and criminal judge. Gentlemen ought to account for this culpable neglect. It is impossible that they should have been ignorant of the trial of this man. It was not a sudden or a hidden thing, done in a corner; it was done in public, in the face of the Legislature, and yet it has slept to the present day. Under such circumstances, I submit it to the House, whether much respect ought to be paid to the hearsay of the gentleman from Pennsylvania. The very delay, and other circumstances attending this transaction, show that it is not of the serious nature contended. I therefore think that, if properly brought before the House, and suffered to rest upon proof, it would constitute no ground for impeachment.

As to the proposed form of proceeding, if we examine precedents, we shall find that it is not warranted by them. None mentioned compare with the case under consideration. The precedent in the case of Lord Bolingbroke does not compare with that. In that case the House of Commons raised a secret committee to examine the negotiations made for a peace. The committee was not raised to impeach Lord Bolingbroke, but to investigate the negotiations of the Ministry; and on the disclosure of facts, which took place on that occasion, the impeachment was grounded. Such, also, was the case in the instance of the Western expedition. The House appointed a committee vested with general powers to inquire into the causes of its failure, without particular reference to the conduct of any person.

If we turn our attention to British precedents, we shall find that a committee has never failed to investigate the official conduct of any person contemplated to be impeached. In the case of Hastings, Mr. Burke came forward and moved an impeachment directly. In all cases this course has been pursued in the British House of Commons. So far as we have had precedents in this country, a similar course has been pursued. In the instance of Governor Blount, the Executive transmitted documents to this House, which contained, as it was supposed, evidence of his guilt, they were referred to a committee to examine them, and also to determine whether it was proper to print them. The committee reported that, in their opinion, they contained evidence of his guilt, and he was impeached. In the case of Judge Pickering, the same course has been pursued. The Executive transmitted documents to the House which contained, as it was supposed, proofs of misconduct, and the House proceeded to an impeachment. These precedents confirm the principle of those drawn from the practice of the British House of Commons. What course is now proposed? Without any charge against the judges, without any man saying they are guilty of any misconduct, we are about to appoint a secret committee, to determine whether any charges can be made, and whether any proofs to support them can be found. Although I am willing that the conduct of these gentlemen shall be investigated, for I am sure they must desire it, and although I have no objection to impeach them, if gentlemen wish it, and exhibit proper proofs on which to ground it, yet I cannot consent to pursue a course so improper as that now proposed. For this reason I am against the resolution, not because I am hostile to an investigation, but because I cannot consent to the appointment of a secret committee to search, in the first instance, for an accusation, and to look for proofs to justify it.

Mr. FINDLEY rose to explain. He said it was not the object of the House, in their investigation of the causes of the failure of the Western expedition, to make new arrangements, but to inquire into the conduct of certain officers who had directed it, viz: the Secretary of War, the Commander-in-Chief, and the Commissary.

Mr. NICHOLSON said, he happened not to be in the House yesterday at the moment when the resolution, under consideration, was introduced; and when he entered he found the gentleman from Connecticut (Mr. R. GRISWOLD) on the floor, who concluded his remarks by moving a postponement. Mr. N. did not think it then correct to offer remarks upon the main question, but as the resolution itself was now under consideration, and the subject of no common nature, he could not think of passing a silent vote upon it.

When he rose, to-day, for a few moments, on the motion to amend, by inserting the name of Judge Peters, he had then declared, and he now begged leave to repeat it, that whenever any member of the House should rise in his place and state that any officer of the Government had been guilty of official misconduct, he had no hesitation in saying, that he would consent to an inquiry. He cared not how exalted his station, or how far he was raised above the rest of the community; the very circumstance of his superior elevation would prove an additional incitement. Such, he said, was the nature of the Government, and so important the duty, in this respect, devolved upon the House of Representatives, that the conduct of the Chief Magistrate himself, as far as his vote could effect it, should be subjected to an inquiry whenever it was demanded by a member. The greater responsibility, the more easy and more simple should be the means of investigation. Were he, indeed, the friend, personal or political, of the officer

charged, and he believed that impeachment would be the result of inquiry, it was possible that his feelings as a man might induce him to forget his duty as a Representative, and urge him to resist the inquiry; but, were he convinced of his innocence, he would do all in his power to promote it, in order that he might stand justified to the nation and to the world.

Upon the present occasion, he begged that he might not be understood to say that the offence with which these judges were charged, was such as would warrant an impeachment. But, while he meant not to commit himself on a question of such high moment, he could not avoid expressing his astonishment that the conduct stated should not only be defended upon the floor of the House, but entirely approved; that gentlemen should venture to declare that the court acted strictly in the line of their duty, in refusing to hear counsel on a point of law which involved the guilt or the innocence of the prisoner. A man was charged with the highest offence against the Government, and, if guilty, was subject to the severest and most ignominious punishment recognised by our laws. High treason was the crime, and death the penalty. The Constitution declared that treason against the United States should consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. The framers of the Constitution intended to be as precise as possible in their definition of treason, they were anxious that no room should be left for doubt afterwards. They had seen to what an infinite variety of objects the crime of treason had been extended in England, and wisely confined it here to the only two offences which could be said to strike at the existence of the Government. The laws of the United States had declared that resistance to the execution of a law should only be considered as sedition, and had provided the punishment of fine and imprisonment. Fries was charged with resisting the execution of a law, and this offence the court determined to be treason, without hearing his counsel, and refused to permit them to address the jury on the subject, although the jury were the judges as well of the law as the fact. A resistance to the execution of a law, they construed to be treason, in the face of the act of Congress, which declared it to be a misdemeanor only, punishable with fine and imprisonment. These constructive treasons, he said, had been reprobated by the wise and good in all ages, and at a very early period in the history of English jurisprudence had received the pointed disapprobation of the Parliament. He adverted to what he called a wise and humane provision in the statute of Edward III., by which the judges were prohibited from declaring anything to be treason not so expressly defined by the letter of the statute. That the court had given such an opinion, was not now, however, the point of charge against them; that they extended the doctrine of treason beyond both the letter and spirit of the Constitution, was not now the foundation of the present motion. The accusation was that, in a case involving the life or death of a freeman, the party was condemned without a hearing; that he was denied the assistance of counsel, which was secured to him by the Constitution of his country; that the right of the jury to decide both the law and the fact was refused; for it amounted to a refusal when the court would not permit the jury to be assisted by the arguments of counsel. He asked if gentlemen would consider it correct in a court, upon an indictment for murder, to prohibit the prisoner's counsel from contending before the jury, that the offence charged amounted to manslaughter only? Surely not. The question, in the case of Fries, was, whether the act of which he had been guilty amounted to treason, or to a misdemeanor? and this the court refused to suffer the jury to have an argument upon. He declared that, in all criminal prosecutions, the jury had a clear, undoubted right to decide, as well the law as the fact; they were not bound by the direction of the court; and that, in capital cases, it was a right which they ought always to exercise. But, in Fries's case, the law was not permitted to be brought into the view of the jury by his counsel; the court denied to the prisoner the assistance of counsel, which was secured to him by the Constitution, and he was condemned to an ignominious death, which he must have suffered but for the subsequent interference of the Executive. Mr. N. said, he had thought proper to make these remarks in answer to those gentlemen who had undertaken to pronounce the conduct of the court to be strictly correct. Although he did not mean to commit himself by declaring that this afforded sufficient ground for impeachment, yet he could not avoid saying, that the refusal to hear counsel in defence of the prisoner, did not meet his approbation.

The gentleman from Connecticut had doubted whether the present proceeding was conformable to principle. He thought that we ought to have the proof before we take any steps to procure it. Mr. N. begged leave to ask how proof was to be procured before inquiry was made? In what manner information was to be obtained before it was sought for? If a member had stated upon oath that a judge had been guilty of improper conduct, which would warrant an impeachment, the motion would not be, in the first instance, to inquire, but to impeach. If information was necessary, how was it to be procured? By sitting here, and writing for depositions to be sent in? Surely not. If a person was in the lobby, acquainted with all the facts, how were they to be communicated to the House? Was he to come to the bar, and offer a voluntary affidavit, or would it be correct to introduce him without any previous proceeding? In that case, would it not be necessary to declare, by a prior resolution, that we would commence an inquiry before testimony could be offered at the bar? If a member should state that a witness was at hand who could prove official misconduct in a judge, the correct course would be to introduce a resolution, declaring that the House would inquire, and it could not be resisted. What, he asked, was the proposed course? Instead of making the inquiry in the House, it

was requested that it might be made by a committee. Instead of using our power to bring witnesses before us, it is proposed to authorize a committee to examine them. This would be more convenient and more proper. To bring them before the House would be attended with inconvenience, and unnecessary delay. He could not tell what the mode of proceeding before the House of Representatives would be, but, generally, he believed, it was the practice for a member to propound the question to the Speaker; the Speaker then to propound it to the witness; the answer to be made to the Speaker, and by him reverberated back again to the House. He asked, if the House would consent to this? If they would agree to a course of proceeding so tedious, so procrastinating, so evidently embarrassing? And yet this must be the course, unless that proposed was adopted.

It was said by a gentleman from Connecticut, (Mr. R. GRISWOLD.) that we were about to appoint a committee to ransack the country for an accusation, and afterwards to search for proof to support it. He complains that no accusation is made. Mr. N. averred that an accusation was made; it was made during the last session, and again repeated during the present. He asked, if it was no charge to declare that a judge had condemned a man to the most ignominious death, without a hearing; without allowing him those benefits which he claimed under the Constitution? Was it a trivial circumstence for a member of this House to declare that a freeman had been indicted for a high capital offence; that he appeared at the bar and pleaded not guilty; that his counsel were ready to prove the truth of the plea, but that the presiding judge had refused to hear them? If this was not a charge, and a charge, too, of a most solemn nature, he did not understand the meaning of the words. It was brought forward as boldly as the gentleman from Connecticut could wish, and the only question now was, in what manner shall we inquire into the truth of it? Shall we appoint a committee to make the inquiry by calling witnesses before them, or shall we dismiss it without investigation? Shall we give it the go-by, and suffer the character of the judges to rest under an imputation so heavy? Shall we proclaim our own dishonor, by publishing abroad that a heavy charge had been made, in the face of this House, against one of the highest judicial officers of the Government, and that we were too pusillanimous to notice it?

What the gentleman meant by comparing the proposed committee to the Spanish Inquisition, Mr. N. did not really understand. Did the gentleman wish to make a false impression upon the public mind? Was he anxious to cast an odium upon the proceeding by calling it an inquisitorial committee, and affecting to believe that it was to be clothed with the powers of the Holy Inquisition? The Inquisition had the power to seize the person of the party, to deny him all access to his friends, to confine him in a cell, and refuse him all assistance whatever; to stretch him on the wheel, and rack and torture him into confession. Does the gentleman wish to induce a belief that this committee is to be clothed with the same powers? All committees appointed to inquire, might, to be sure, be called Inquisitorial, because they were to make inquiry, but the epithet of Spanish inquisition was intended to convey an idea totally incorrect.

The gentleman had asked why this charge had been suffered to rest so long? The facts upon which it was made were said to have taken place in 1800. Mr. N. thought it would be fair to reply to the gentleman that, possibly, he himself had, in some measure, accounted for the delay; the proper time had not before arrived. But if the act upon which the charge was grounded was criminal at that day, was it less so now? If Justice had slept so long, did it follow that she was dead? He hoped and trusted not. Though she had lain dormant till she was almost trampled to death, she was again roused to her accustomed vigilance, would pursue her victims, and drag them to punishment. The day of retribution, he hoped, was at hand.

The gentleman from Connecticut had declared that the proposed course was not warranted by precedent. He had noticed, but had not explained away, the precedents introduced by the gentleman from Pennsylvania. (Mr. FINDLEY.) His own precedent, derived from the impeachment of Mr. Hastings, instead of being in his favor was directly against him.

In that case it was not pretended that the proof was before the House of Commons. Mr. Burke had derived his information from certain papers relative to Indian affairs, which some years before had been produced and referred to a select committee. In the year 1786, Mr. Burke rose in his place, not as a member of that committee, and charged Warren Hastings with high crimes and misdemeanors. About the same time he presented a written paper containing a specification of these charges. But this was not the impeachment. The written paper stated that as Governor General of Bengal he had disobeyed the instructions of the court of directors; that he had acknowledged himself perfectly acquainted with their wishes, but instead of obeying, had used his utmost endeavors to defeat them; and much more of an important nature. This he moved might be referred to a Committee of the whole House, in order that an inquiry might be made; and there was not a single dissenting voice. He did not adduce the proofs in the first instance, but stated his opinions that Mr. Hastings's conduct had been criminal, and demanded an inquiry. The Commons of England did not hesitate—they instantly resolved to inquire. No one was heard to declare that there was no charge, because there was no proof. Witnesses were brought to the bar and there examined by a Committee of the Whole, in support of the charges; nor was there a motion to impeach until the testimony was gone through. On the contrary, the facts proved were reported by the Committee of the Whole, who likewise expressed an opinion that Warren Hastings had been guilty of high crimes and misdemeanors, and ought to be impeached. The impeachment therefore was not upon the

motion of Mr. Burke, but upon the report of a committee, who under the instruction of the House had made an inquiry.

What then, Mr. N. asked, was the course now proposed? His friend from Virginia had called the attention of the House to certain alleged misconduct of a judge, which had been stated by a member in his place during the last session. That statement had again been repeated in the House yesterday, not in writing, indeed, but in language so clear and in terms so unequivocal that none were so stupid as not to understand it. Like Mr. Burke, he asked that a committee should be appointed to inquire into the truth of the charge. The House of Commons had referred the subject before them to a Committee of the Whole, and the House of Representatives were moved to refer the subject before them to a select committee. A select committee was proposed, because it would be more convenient and more expeditious. If the subject might with propriety be referred to a Committee of the Whole, with equal propriety might it be referred to a select committee.

He had noticed this precedent, not because he thought it necessary to cross the Atlantic for authorities, but because the gentleman had introduced it as favoring his own doctrines. If there was already no precedent, in his opinion the House ought to make one; but he believed their own Journals would furnish them with one. At the first session of the seventh Congress, in a very few days after the House met, Mr. N. said he had risen in his place, and stated that he had seen in the public prints, during the preceding Summer, charges of a serious nature against an individual who had filled one of the highest stations under the Government, that he had misapplied considerable sums of public money, and was a defaulter to a very large amount. Upon this vague rumor, he had moved that the accounts of the former Secretary of State should be laid before the House. No gentleman then declared that it was necessary to have proof before an inquiry took place. No one dreamt that information as to facts was to be had, before it was sought for. Some indeed had asked how far the motion was to extend; whether it was to embrace all the other Secretaries of State? Others desired that the accounts from all the departments should be called for, and finally it was determined to let the resolution lie for a short time. In a few days after, on the 14th of December, he modified the resolution, in conformity with the wishes of several gentlemen, and it passed, directing that "a committee should be appointed to inquire and report, whether moneys drawn from the Treasury had been faithfully applied to the objects for which they had been appropriated, and whether they had been regularly accounted for," &c. A precedent more in point he thought could not be desired. The inquiry was produced, not upon proof, not even upon the suggestion of a member, but because a report as to the misapplication of public money had circulated through the public prints of the day. He might be told perhaps that this was an inquiry of a general nature. But general as it might be, it was directed at the conduct of individuals, and under other circumstances might have furnished materials for an impeachment. The gentleman from Connecticut was a member of that committee, and Mr. N. asked him if he would pretend to say that it was a secret committee, as he had called that now asked for? Or was this only another attempt to impose upon the public?

Another precedent, he thought, might be furnished from the Journal, but he was unwilling to refer to it.

It had been said, too, that impeachments would be cheap if they were to be made upon the suggestion of a member. It appeared to him that the motion to inquire had been constantly mistaken for a motion to impeach. Did gentlemen suppose that an impeachment must necessarily follow an inquiry? It would seem as if they entertained a poor opinion of those whose conduct was the subject of discussion. But they ought to recollect that the impeachment could not be the act of any individual, nor of the committee, but of the House; and this, too, after all the facts were collected and presented, with the evidence to support them. If this mode was not to be adopted, he did not know any other manner in which an impeachment could be instituted, unless where the President thought the peace of the country or the revenue were endangered, and gave the information himself, as in the case of Governor Blount and Judge Pickering. Nor did he think this could affect the independency of judges, unless they were to be made independent of the laws, the Constitution, and the people.

Had it not been for the debate which had taken place on this subject, he should have imagined that the friends to the judge would have been the first to promote the inquiry, after it was moved for. If he was innocent, the inquiry ought to be wished for: after passing through the ordeal, he would come out like pure gold from the crucible. If guilty, no man ought to feel a disposition to screen him from punishment. Mr. N. could not avoid on this occasion alluding to the recent conduct of a judge in a neighboring State, upon whose character an imputation of the blackest nature had been thrown by a miscreant. That judge, conscious of his own rectitude, and disdaining to shelter himself from inquiry, demanded an investigation of the charge, and the consequence was an entire and honorable acquittal.

Mr. ELLIOT.—When, in the course of a late debate in this House, it was observed that a member had advanced an anti-republican sentiment, the supposed imputation was repelled by the remark, that the gentleman to whom allusion had been made, had passed a political ordeal which few had experienced, and which ought to place his character as a republican above the reach of suspicion. I have myself suffered an ordeal of that description, under circumstances of gloom and depression which have fallen to the lot of but few young men of this country; and I am far from being confident that one ordeal only will fill up the measure of my humble fortune. A more anti-republican resolution than the one upon your table, sir, I think I never saw. Reflection has confirmed me in the

opinion which I expressed yesterday, that it is unprecedented, unparliamentary, and tends to the assumption, on the part of this House, of a censorial and inquisitorial power over the Judiciary, unwarranted by the Constitution. The intention and object of the mover, however, must have been extremely different; the motive is pure and the object meritorious; but that honorable gentleman, with all his talents and discernment, has, in my opinion, fallen into an error. I believe it a sound principle, that no official measures should be taken to censure or criminate the conduct of a public officer, until facts shall be stated which amount to a specific and definite charge of misconduct. In the present instance we have no written allegations, and what is the amount of the verbal information with which we are furnished? A gentleman from Pennsylvania has stated in his place that *he has heard* that some one of the judges, whose name appears in the resolution, was guilty of improper and oppressive conduct, in the exercise of his judicial functions, on a trial for treason some years since. And a gentleman from Virginia has stated that he has received information which induces him to believe that the inquiry he demands will lead to an impeachment. Is it our duty to act upon the vague rumors of common fame, or the opinions of individual members?

The resolution under consideration has been materially altered this morning, and I gave my vote for the alteration, because I believed that the misconduct of a court ought not to be attributed to a single judge.

I feel it my duty, Mr. Speaker, to remark, that the information which is possessed by the members of this House, respecting the conduct of those judges is extremely contradictory. No gentleman has told us that he possesses personal knowledge of the misconduct imputed to those officers; and I possess information on the subject, derived soon after the transaction, from a source which I considered as authentic, and which produced so deep an impression upon my mind, that I should scarcely abandon my belief of its authenticity, even from the general recollection of persons who were present at the scene. I understand that the judges did nothing more or less than decide a legal question in a legal manner. They did not interdict the counsel for the prisoner from examining a question of law, but they restricted them to what they considered as their legal and Constitutional limits. They told them that the Constitution of our country had clearly and explicitly defined the crime of treason, and confined them to the plain field of the Constitution, inhibiting them from a resort to British authorities to prove that to be treason which the Constitution of our country had not made treason, or to prove that what our Constitution had made treason, was not recognised as such by foreign precedents. This statement may be incorrect, and, if it be correct, the conduct of the judges may have been improper and severe, but it cannot justify an impeachment. And if the court went farther, interrupted the counsel for the prisoner, informed them that it was the province of the court to determine points of law, declared that their opinion was fixed upon those points, and even forbade the counsel to prolong their arguments upon them, it might still be questionable whether the conduct of the court rendered its members liable to impeachment. A venerable gentleman from Pennsylvania, (Mr. FINDLEY,) who has long been in the service of his country, has been incorrect in stating that I had observed that I would never go into the inquiry without evidence; that incorrectness must have been unintentional; if I used an expression of that description, it was a *lapsus linguæ;* but I am confident that I said, and I am certain that I intended to say, that I thought it improper to institute the inquiry until some fact or facts should be stated as a ground of accusation. A gentleman from Virginia (Mr. JACKSON) has told us that common fame is sufficient ground for impeachment in Great Britain. That gentleman has not adduced his authorities for this proposition, and, had he adduced them, I am confident they would not have answered his purpose, when contemplated in all their bearings, when examined with all their qualifications. The same gentleman also observed, if I understood him correctly, that were he satisfied that the conduct of the judges, in the case alluded to, was legal and correct, he would still vote for the inquiry. To me this declaration appears extraordinary. Why vote for an inquiry when satisfied that no criminality existed?

A gentleman from Pennsylvania, (Mr. SMILIE,) who contends that there is no necessity for precedent in the present instance, as we are competent to form precedents for ourselves, has yet thought proper to explore the books for precedents, and has presented us with the result of his labors. To guide our conduct on the present occasion, we are referred to the case of the Earl of Strafford, over whose tomb genius and virtue love to mourn, and will mourn in future ages! It cannot be possible that that gentleman wishes to recommend for our imitation that flagrant perversion of every principle of law and justice, that cruel catastrophe! A gloomy and terrible precedent, one of the most dark and disgraceful in the British annals, and utterly unsusceptible of application to the principles of a Republican form of Government. The gentleman from Maryland, (Mr. NICHOLSON,) to whom I listened with peculiar pleasure, and who has certainly displayed ingenuity, has been equally unfortunate in his selection of precedents, and in his application of them to the case under consideration. He has cited cases, which, by his own statement, militate against the principles he assumes. We are first presented with the celebrated case of Warren Hastings. In that case, a member rose in his place, and after accusing Hastings of high crimes and misdemeanors, exhibited specific charges of malconduct, in consequence of which an inquiry was instituted. Here is a solid basis, and the very basis which is wanting on the present occasion, upon which to erect the superstructure of impeachment. That gentleman has also mentioned a resolution intro-

duced by himself in a former Congress, which was expressed in general terms, and directed to general objects, and of course was perfectly dissimilar to the present one.

Allusions have repeatedly been made to a remark of mine in the debate of yesterday, that this House is the grand inquest of the nation. It has been asked, if a grand jury were informed that a murder has been committed, would they not send for evidence to ascertain the fact? We are the grand inquest of the nation, and our practice ought, in many respects, to be analogous to that of grand juries; but in becoming that inquest, we do not entirely lose our deliberative and legislative character. I believe it would be descending from the dignity of our station, to listen to the murmurs of general rumor, and seek for guilt. I have heard that one of the judges whom we are called upon to censure, when in the exercise of his judicial functions, inquired of a jury, "Is there no sedition here? Are there no seditious newspapers within your jurisdiction?" I am ignorant whether this report be or be not founded on fact. But if it be true, let me ask, shall we not pursue a similar course by adopting the present resolution? Shall we not authorize a committee to inquire. Is there no judicial guilt abroad in our land? Is there no latent inquiry in some unexplored corner of our country? A grand jury is sworn diligently to inquire, and true presentment make, of all such offences against the laws of the land, as shall come to their knowledge. Have we taken such an oath? Are we under such obligations? And are we not about to attach to ourselves that character which gentlemen tell us is so odious, the character of common informers? I am under no fears that the stream of justice, which ought to be so pure, will become turbid, from a want of accusers, when our judges shall be guilty of crimes. When our courts shall become corrupt and despotic, patriotic motives will induce our citizens to bring forward accusations. I am also sensible of the propriety and force of the observation of the gentleman from Connecticut (Mr. R. Griswold) that the trial in question was a transaction of great publicity, and all its circumstances must have been known to thousands of our citizens. This induces me to believe that the conduct of the court was not so oppressive and despotic as is now represented. Why has this awful charge slumbered so long?

One or two remarks upon the allusions that have been made to my observation, that we are about to assume censorial and inquisitorial powers, and I will dismiss the subject. What is the language of the resolution? Without the allegation of a single fact, it constitutes a committee to inquire whether the judges have not so acted in their official capacity as to render necessary the interposition of the Constitutional powers of this House. The expression is unequivocal; the allusion to the power of impeachment is perfectly obvious. This is what is called a *petitio principii*; it takes for granted, at least in some degree, what remains to be proved, that the conduct of the judges has been improper and illegal. Else why adopt a language which implies suspicion and censure? But gentlemen are alarmed at the ephithet inquisitorial, and imagination teems with the horrors of the Spanish Inquisition. If the creation of this committee be an unauthorized act, if in creating it we transcend those limits which we ought, by a reasonable construction of the Constitution, to set to our own powers, it instantly becomes inquisitorial in its nature and in its operation. We must delegate to it more than general powers. We must authorize it to send for persons, and probably for papers and records. The proposition is hostile to republican principles, and, as a republican, I cannot give my vote in its favor.

Mr. Holland.—When I before addressed the House on this subject, I had no doubt of the charge being sufficiently explicit to found an inquiry into the conduct of the judges. My only doubt was whether it was proper to proceed without affidavit. Since yesterday, I have reflected on the course pursued in similar cases; and I will state to the House the proceedings adopted in two or three cases in the Legislature of which I was a member: In the year 1796, a charge was preferred against certain judges of the State of North Carolina for illegally extending their power. A committee was appointed to inquire into their conduct, and the result was, that the judges had exiled certain persons from the State. The proceedings did not go so far as an impeachment; for the judges wrote an explanatory letter, which gave satisfaction, and they were acquitted with honor. The other charge, to which I have alluded, was against the board of army accounts; that also was referred to a committee. The last case is the most recent. A suspicion existed that the Secretary of State had been guilty of misconduct. A letter had been received by the Governor from some citizens to that effect; in consequence of which, and of other corroborating circumstances, the Legislature appointed a committee of inquiry, of which I had the honor to be a member. That committee was empowered to send for persons and papers. There was no specific charge, but an impeachment was contemplated, if the officer should appear to be guilty. The Secretary was brought before the committee, who examined him on oath, and reported the existence of frauds much more extensive than had been imagined; in consequence of which the land office was shut up, and the Secretary notified that articles of impeachment would be exhibited against him. But the late period of the session not then admitting of a trial, it was postponed to the next General Assembly. At the succeeding Assembly the officer resigned, and superseded the necessity of an impeachment. He was afterwards indicted at common law. These precedents, drawn from the proceedings of the Legislature of the State which I have the honor to represent, induce me to think that the course proposed is proper, and I shall, accordingly, vote for the appointment of a committee of inquiry.

Mr. Dennis said, he did not rise for the purpose of entering into an investigation of the merits of the question, but principally for the purpose

of stating, in a few words, what appeared to be the difference between the friends and the opponents of the resolution. He had never experienced, on any occasion, a stronger conflict between inclination and duty than in the present instance. On the one hand, he was confident that, after the official conduct of the judges had been thus publicly implicated, it must be desirable to them that an investigation of the facts charged against them should take place, and it seemed to be a duty due to those gentlemen, that they should have an opportunity of being confronted with their accusers. On the other hand, we owe to the laws and Constitution, as well as to those considerations which must always govern in the establishment of important precedents, a paramount duty, which appeared in this case irreconcileable with the indulgence of individual considerations. The true difference between the advocates and the opponents of the resolution appeared to be this: That the one thought it a proper procedure to raise an inquisitorial committee, without any definite or assignable object, and without stating in the resolution any specific charge. The other did not demand, as it had been supposed, the production of all the evidence in the outset of the proceeding, which might be necessary in the ulterior stages of the transaction, nor that precise and technical specification of the charges which might be proper in articles of impeachment, but only required that some fact should be stated, or charge alleged, as the basis on which to erect a committee. He believed, to create a committee by resolution, with general inquisitorial powers, without specifying any charge, or stating any reason in the resolution for the proceeding, was without precedent, and might become an engine of oppression. In order to satisfy the friends of the resolution on that, he did not wish to avoid that investigation which might be founded on proper principles, and which he believed, after what has been said, is rather courted than avoided by the judges in question. He would beg leave to read, in his place, the form of a resolution, such as he supposed ought to be the ground-work of a procedure like this:

"Whereas information hath been given to the House, by one of its members, that, in a certain prosecution for treason, on the part of the United States, against a certain John Fries, pending in the circuit court of the United States, in the State of Pennsylvania, Samuel Chase, one of the associate justices of the Supreme Court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner that, as the court had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine themselves to the question of fact only. And whereas, it is represented that, in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact, and the said John Fries was found guilty of treason, and sentenced by the court to the punishment in such case, by the laws of the United States, provided, and was pardoned by the President of the United States."

He said he read this by way of argument, to show that the present resolution ought to be rejected, and though he would not offer it himself, in case the resolution before them should be rejected, yet he would pledge himself to vote for such an one, if the gentleman from Virginia or any other member would offer it. The resolution which has been read, embraces all the facts stated by the gentleman from Pennsylvania, which contains the only charge that has been exhibited. But if any gentleman possesses a knowledge of any other facts or charges, let him specify them, and he would be willing to vote for an extension of the powers of the committee to them also; for he did not wish to confine the inquiry to the specific charge stated by the gentleman from Pennsylvania, if other gentlemen had charges to exhibit, and would state them in the resolution. If they would specify a charge or charges of a serious nature, and give us any reason to believe them true, although originating from hearsay evidence, he would vote for the inquiry proposed; and he begged that he should be understood as objecting rather on the ground that no charge had been specified, than on the ground of incompetent evidence. The vague charges verbally communicated by the gentleman from Pennsylvania, and none of which are reduced to writing, give no grounds of procedure; not only because, if true, they constitute no cause for impeachment, but because they are not specified in the resolution.

The motion was then further amended to read as follows:

Resolved, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion whether the said Samuel Chase and Richard Peters, or either of them, have so acted, in their judicial capacity, as to require the interposition of the Constitutional power of this House.

Mr. Speaker stated the question, that the House do agree to the said motion, as so amended, when an adjournment was called for and carried—yeas 61, nays 43.

Saturday January 7.

Mr. Nicholson, from the committee appointed on the memorial of Alexander Moultrie, agent for the South Carolina Yazoo Company, and of William Cowan, agent of the Virginia Yazoo Company, made a report, going considerably into detail, and concluding with a resolution adverse to the prayer of the memorialist. Referred to a Committee of the Whole on Monday.

OFFICIAL CONDUCT OF JUDGE CHASE.

The House resumed the consideration of the question depending yesterday, at the time of adjournment, "that the House do agree to the motion of the fifth instant, as amended by the House, for the appointment of a committee to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the

United States, and of Richard Peters, district judge of the district of Pennsylvania."

Mr. J. RANDOLPH expressed his regret that the attempt which he had made yesterday, to reply to the very personal allusions of a gentleman from Connecticut, (Mr. GRISWOLD,) whom he was sorry not to see in his place, had, by the adjournment, proved abortive. Such was his regard for the opinions of the House, that he should always, when called upon from a respectable quarter, justify any conduct which he deemed it proper to pursue in its deliberations. He felt it due to the respect in which he held the Chair and those around it to reply to the remarks of the gentleman from Connecticut, and this consideration alone could have induced him to offer anything in addition to what he had already advanced in favor of the motion. He should otherwise have left the resolution to its fate. In that fate he did not feel himself personally implicated. If it should be rejected, he would be satisfied in having done his duty, and the House, he supposed, would feel equally satisfied in having discharged theirs. It was asked, where was the mover of this resolution at the time when the alleged misconduct took place? Did it not, said the gentleman, pass under their own eyes? Were not their deliberations held on the very spot? and why had the motion slept until this day? He hoped he should be permitted to say that it did not pass under his eyes, although he knew, at the time of the condemnation in question, he did not become acquainted with the circumstances under which it took place until long after their occurrence. It was true that the deliberations of Congress were then held in Philadelphia, the scene of this alleged iniquity, but, with other members he was employed in discharging his duties to his constituents, not in witnessing, in any court, the triumph of his principles. He could not have been so employed. It would be recollected, that the information given by the gentleman from Pennsylvania formed the ground-work of his proceedings, and he asked whether it was more the duty of the mover of the resolution to have brought it forward than every other member of the House who was a witness of the statement made by that gentleman? This information, of an official nature, given by a member in his place, of a transaction in open court, and which it was the duty of them all to have noticed, had been called a story related on hearsay; a rumor of an affair which had happened in a corner; and the House was asked if they would take such evidence as ground of proceeding, on the *dictum* of any one member, however great their confidence in him might be? If he really felt that respect for the House which the gentleman from Connecticut had professed, he would not have insulted their understandings by such language. He would not have stood up, as *amicus curæ*, to prevent their being precipitated into absurdity and injustice by an influential member of their body. That, however, was the station which the gentleman had assumed, and he hoped the duties of it would be discharged with the fidelity which they required. After clothing himself with this character, Mr. R. said he expected to have seen him at his post—he regretted that he did not see him there, and that his duty did not permit him to withhold the observations which he was compelled to make. Whilst, however, the gentleman was engaged in discharging the new and important function with which he stood self-invested, he seemed cautious of replying to the masterly statement of his venerable friend from Pennsylvania, and which he believed had remained unanswered because it was unanswerable. It must, said Mr. R., be a subject of high gratification to us all, and I congratulate this House upon it, that age has not yet dimmed the lustre of those talents which have so long presided in the councils of this country. And if the time shall come when we are to resign our understandings and place ourselves under the direction of an individual, I hope to be permitted to range myself under the banners of that tried patriot, and not under those of the gentleman from Connecticut. In the same spirit with which he challenged the confidence of the House, as a friend unwilling to see them led into error and absurdity, that gentleman had endeavored to alarm their pride by representing the motion as a demand made upon them. It was so. It was (if he might so express it) a writ of right, not of favor—and as such he demanded it, as such he urged it. But an objection was taken that no act of misconduct had been alleged. With his friend from Maryland he would say that, a fact of the first importance had been adduced, on which he was sorry his friend had not dwelled longer. It could not receive too much attention. On a trial for life and death, the jury, who were the Constitutional judges both of the law and fact, were deprived of the right of a discussion of the point of law, "what constitutes treason?" The rights of the jury and of the accused were equally invaded. It was conduct not dissimilar to this, in a case of libel, which drew forth from the English Parliament the famous declaratory bill of Mr. Fox. Lord Mansfield had laid down the doctrine that the jury had a right to decide only upon the bare facts of printing and publishing, and not upon the question of guilt, which was compounded of the law and the fact. This produced the declaratory act, which passed a strong censure on the practices of courts—since it did not amend or alter the law, but declared what the law was—and established the point resisted by the court, that the jury was the judge both of the fact and of the law. If, then, on a question of criminal law, where the punishment was only fine and imprisonment, the conduct of a judge was deemed highly reprehensible in encroaching upon the rights of the jury, what shall we say of him who usurps those rights in a case of life and death, in a case of treason? This denial to the prisoner and the jury of the right of having the point of law discussed, seemed to be the first step towards assuming those powers in cases of treason the exercise of which, in case of libel, had drawn down upon the English courts the censure of their Parliament. Would the gentlemen say this was nothing? Would he affirm that if a man were under trial for murder, the court would be justified in saying to his counsel, You may, if you can, disprove the fact, with which the prisoner stands charged, but you shall not endeavor to show that it does not amount to the crime with which he stands charged? If you admit the killing you shall not argue the point that such killing does not constitute murder. Would the gentleman contend that treason is better defined than murder? What is murder? Killing with malice aforethought; can any definition be clearer? What is burglary? Breaking in during the night. What is treason? The Constitution defines it as levying war against the United States; adhering to their enemies; giving them aid and comfort. But what had definitions to do with the case? Because murder was defined, had counsel ever been stopped in an attempt to show that the killing with which their client stood charged was not a killing with prepensive malice, a killing which constituted murder? What was more common than to see the facts admitted, and the crime not only denied, but disproved to the satisfaction of the jury; and upon what principle shall counsel be arrested in the attempt to show that the facts charged in an indictment for treason do not amount to such a levying of war, or an adherence or aid to such enemies as would constitute treason? Mr. R. said that the fact mentioned by the gentleman from Pennsylvania was of a remarkable nature. He had never heard of a similar proceeding, and he rejoiced that another instance of so black a nature could not probably be furnished by any tribunal in this country.

The gentleman from Maryland, (Mr. DENNIS,) however, had entirely abandoned the ground taken by his friend. He agrees that there is a charge of an important nature exhibited, and if it was incorporated into the resolution, and the inquiry confined to that subject only, he would vote for it. The object of the one gentleman was only to confine the inquiry, whilst that of his friend was to deny it altogether. He could not thank the gentleman for his liberality. He would have what he asked or nothing. He would never consent to confine the inquiry; if it could not be full and free, let it be denied.

The gentleman from Maryland had, with very little dexterity, endeavored to confound the resolution of inquiry with the articles of impeachment which may follow from it, and said that if the House would consent to confine the inquiry to any particular charge he would vote for it. It was true that after articles of impeachment should have been exhibited against the accused, the House would not be permitted to prefer any new accusation, or to adduce testimony to prove any guilt other than that which was charged in those articles. In the same manner as when a criminal was indicted, evidence would not be suffered to be brought forward to prove any act of criminality not contained in some one of the counts of the indictment. But would gentlemen persist in confounding things so entirely different, as to confine an incipient inquiry by the same rigid rules which would govern a criminal trial? It was trifling with the judgment of the House. The gentleman was eager for inquiring, but the charge must be incorporated into the resolution, and the inquiry confined to a specific point, before he could be brought to consent to it. Whatever other misdemeanors might come to the knowledge of the committee in the course of the investigation, he would not agree to have them reported to the House. And at the same time he told them of the struggle between his inclination and his sense of duty—his inclination as a friend of the accused to grant the inquiry, his duty as a member of the House and a friend of justice to refute it. Mr. R. was sorry to find the gentleman in this awkward predicament; he regretted that it was out of his power to gratify him by narrowing the inquiry. This, his duty would not suffer him to do. He hoped, however, the strength of the gentleman's constitution would carry him through the arduous struggle in which he was involved, by his wishes on the one hand, and his principles on the other.

Whilst so much was said on the subject of precedent, he hoped he might offer a few cases to their consideration. He did not come to the House armed with precedents. Neither his health nor leisure permitted him to search for them. Gentlemen of greater industry, and who attached more importance to them than himself, had furnished him with them. For his part he thought precedents had nothing to do with the case, but for the sake of those who thought differently, he would show the course which he advocated was not destitute even of their support. Here Mr. R. referred to Mr. Hatsell's precedents. "On the 21st of April, 1626, Mr. Glanvylee, from the select committee appointed to consider of the charges against the Duke of Buckingham, reports that, they desire the House will resolve whether common fame is a ground for this House to proceed upon?" It is resolved to consider this the next day. After a long debate the House resolve that, "common fame is good ground of proceeding of this House, either to inquire of here, or to transmit the complaint, if the House find cause, to the King or Lords."

Mr. R. begged to call the attention of the House to the opinion of a gentleman, delivered during this debate, to which he must be permitted to attach more importance than to that of the gentleman from Connecticut. When he mentioned the name of Selden, he believed he should stand justified in the opinion of the gentleman himself, and in that of his warmest admirers. "These cases (said Mr. Selden) are to be ruled by the law of Parliament and not by the common or civil law." Mr. Littleton says, "this is not a House for definitive judgment, but for information, denunciation, or presentment, for which common fame is sufficient." Mr. Noy says, "There are two questions—first, Whether a common fame? Second, Whether this fame be true? We will not transmit without the first inquiry: but without the second we may; for peradventure we cannot come by the witnesses; as if the witnesses be in the Lords' House."

Again, on the 16th October, 1667, the House being informed "that there have been some innovations of late in the trials of men for their lives and deaths, and in some particular cases restraints have been put upon juries, the matter is referred to a committee." This case (Mr. R. said) was precisely in point. "On the 18th of November, this committee are empowered 'to receive information against the Lord Chief Justice Keeling, for any other misdemeanors besides those concerning juries." Thus on a particular fact, innovation in trials for life and death, a committee was raised, and yet they were not confined to the examination of that single charge, but empowered to inquire generally into the misconduct of the judge. A stronger or more pointed precedent could not be conceived.

By the Constitution, Mr. Randolph said, that House was vested with the sole power of impeachment. How this power was to be exercised must depend on their discretion, and on no other law or principle whatever: for "these cases are not to be ruled by the common or civil law, but by the law of Parliament" That law of Parliament it remained with them to establish. It could not be matter of surprise that he, one of the leading principles of whose politics it was to support the weight of that branch of the Government, and to be jealous of Executive influence—it could not surprise any one, that he should exert himself in behalf of the Constitutional rights of that House. When he saw the importance which was attached to precedent, he was more than ever solicitous for that which they were then about to establish. He trusted that they would not consent to abridge the power with which the Constitution had invested them—to reduce it below the standard which the English House of Commons had fixed as the measure of their own power in similar cases. A time might come when a wicked President and his flagitious Ministers might so conduct themselves in office, as to make every man regret the proceedings of that day, in case they should suffer their power to sleep. The refusing to exercise it, then, would hereafter be adduced as a denial of its existence. Such might be the circumstances of the times, that no private man would dare to step forward with a specific charge against the Executive. If they should deny an inquiry without a specific charge, they would do all in their power to screen such a President and such Ministers at a future day. It had been remarked that, in this Government, an officer found guilty, on an impeachment, could not be punished capitally. The sentence could only remove him from office, and disqualify him, for ever after, from holding one under the United States. If, in a country where the accused may be brought to the block, free, unfettered inquiry is warranted against any rank however exalted—would it be denied here, where the punishment was comparatively light? Should they hold the other departments of the Government more inviolable than they were considered even in England? Would they afford to a criminal, Executive or Judiciary, a shelter denied by the laws of that Government? He hoped they would not. He trusted that they would give an example of their readiness to bring every offender to justice, however great might be his station.

Mr. Griffin.—I had hoped that no subject would have been agitated during this session which should have interrupted the tranquillity or disturbed the harmony of this House, so necessary to the faithful and correct discharge of our public duties; but, sir, I perceive, from the turn which the debate upon the resolution now before the House has taken, that sensations have been excited which I fear it will be difficult to allay.

The proposition now before the House, nursed with so much secrecy, and forced on us so suddenly and unexpectedly, comes in such a questionable shape, that I must beg the attention of the House for a few moments while "I speak to it."

What, sir, does the resolution demand of us? That a committee be appointed to inquire into the official conduct of Samuel Chase and Richard Peters, &c. But how is this inquiry to be conducted? Are there any data by which the committee are to be guided? Is there any specific charge to which their attention or inquiries are to be directed? None. And who, sir, before this enlightened day ever heard of a committee of inquiry being raised, without possession of a single subject to direct or guide the inquiry? What, sir, erect an inquiring committee vested with all the powers of a Star Chamber, and yet assign them no specific objects of their duty! But, sir, the official conduct of these judges has given offence—and are we now, sir, to probe and search the whole judicial lives of these gentlemen, for causes of complaint and censure? Are the records of the States of Maryland and Pennsylvania now to be ransacked, for evidences of their guilt and cause of impeachment? I never have and never shall deny the right of this House, to inquire into the conduct of public officers—but, sir, if the honorable mover of the resolution is serious——

[Here Mr. Randolph interrupted, and desired the gentleman to explain his meaning by the word serious.]

Mr. Griffin continued. I will answer the gentleman: my meaning is, that if the gentleman believes there are just grounds for impeachment—if he is in possession of information or facts, let him declare them, and if they appear to my mind to be sufficient whereon to ground an impeachment, let him demand it and I will join with him. Let him specify the instances of malfeasance of which these judges have been guilty, and I will unite with him—let him declare the malconduct of these public functionaries, and I will cordially co-operate with him. If these judges have travelled beyond the line of their duty, if they have wantonly exceeded the limits of their power, I will aid in the infliction of such punishment as they may merit; but, sir, I cannot, I will not, in this indirect manner, wound the feelings or censure the characters of men, holding high responsible offices under your Government. Could I induce myself to believe that the course now proposed to be pursued is correct, I will gladly give

it my assent; but for reasons very different from those the advocates of this measure adduce: could I deem it correct I would support the resolution because I believe the characters implicated therein will safely pass the ordeal preparing for them, and that the inquiry will redound to their honor. I would cheerfully support the resolution, because, by the impeachment which I predict will follow, an opportunity will be offered to remove that load of unmerited calumny under which the Federal Judiciary of the United States have too long labored, and with which our public prints have been long filled. But the course is incorrect—the measure in its present shape appears to me to be fraught with incalculable mischief to our country, and I never will assist in the establishment of a precedent which may at some future day be made an engine of persecution, as "wicked as intolerant." Mr. Speaker, let me ask of you, sir, to remember the consequences which may flow from the adoption of this resolution—let me conjure this House to reflect upon the dreadful effects which must arise to us, if, upon the bare assertion of a single gentleman, unsupported by any direct allegation, a committee of this nature shall be raised, a precedent of this kind established, what public character will be safe? nay, sir, how soon may not we ourselves feel its baneful influence? Far be it from me, sir, to impute to the honorable mover of the resolution any impurity of motives. I believe his conduct has proceeded from a consciousness of duty, and from a similar consciousness of duty I must oppose the measure. I cannot deny the power of this House to adopt the resolution upon your table, but I beg of you to pause ere you take the fatal step, and do not, because "dressed with a little brief authority, play such fantastic tricks before high heaven as make e'en angels weep."

Sir, I have endeavored to discharge what I conceived to be my duty upon this occasion, and when experience shall fatally convince us of the dreadful effects of the precedent we are now about to establish, I shall derive consolation from the reflection, that I lent my feeble aid to check the overwhelming torrent.

Mr. Eustis said, he did not view this subject in the same light with the gentleman last up; he did not see those awful consequences which he had pointed out. He hoped the time would never come, when an inquiry into the conduct of an officer of the Government should be deemed a subject of alarm in that House. It was the first principle of the Constitution, that every man was amenable to the Constitution and laws of his country, and however elevated any one might be, that he could not be raised above the reach of inquiry. The observations of the gentleman who had last spoken, and of others who had preceded him, were predicated on a principle that was not correct. If the resolution on the table was to impeach the judge, those observations would be relevant, but they were incorrect on the preliminary motion to inquire.

In making up, said Mr. E., my judgment on this subject, I have endeavored altogether to avoid the inquiry, whether the officer implicated in this resolution, has so conducted himself as to require impeachment by this House. I have not accepted the opinion of the mover of the resolution, and I have excluded all the other information adduced in the debate; because I consider it as alone applicable to the question of impeachment, which is not now before the House. The question before the House is a very different one, and, in my opinion, it is plain and simple. What is it? It is that a committee be raised to inquire into the official conduct of a certain public officer. When a member of this House, under the obligations of honor, and the additional obligations of an oath, rises and takes upon himself the responsibility of moving an inquiry into the official conduct of a public officer, which can only be effected in virtue of the impeaching power of this House, which power it exclusively possesses, I view the request for an inquiry in the nature of an information laid before the House as the grand inquest of the nation.

When this proposition was made, the mind of every gentleman was naturally cast about for the situation of the officers in question. If it shall be the opinion of the House that their conduct is such as to afford grounds for an impeachment, it will be granted that it is an indispensable duty to make the inquiry. If, on the other hand, the House are of opinion that no testimony can be produced which will lead to an impeachment, then it is due to the officers to institute an inquiry. The object of inquiry is two-fold—arising from the duty to the people, and that due to the officer whose conduct is impeached. If gentlemen are of opinion that, in this case, there are no grounds for impeachment, then it is clear that the conduct and character of the officer ought to be vindicated, and the inquiry instituted to afford him the means. If they are of opinion that there are grounds for an impeachment, then the duty they owe to the people urges them to the inquiry. In the Constitution I find no excuse, no justification, on which to ground a refusal to institute an inquiry into the conduct of any public officer charged with misbehaviour.

To such an inquiry, what is objected? That the power may be abused. Indeed, the objection is, that it is abused in this instance. How abused? To argue from abuse of the power against the use of it, is no argument at all. If the House believe either alternative I have mentioned, and one or the other you must believe, it is their duty to make the inquiry. But it is said that the committee are to be clothed with power to send for persons and papers. Granted. That power is indispensably necessary. It is said their powers are to be inquisitorial. This is not true. Will not the committee be accessible by every member of the House, and what are their ulterior powers but to collect facts, and to express an opinion whether they afford grounds for an impeachment? That opinion they will eventually submit to the House, and, without its approbation, it will be settled.

It is further said that no specific charge is ad-

duced, and if there were, gentlemen say they would vote for the inquiry. But if a specific charge were made, I ask if any member would be enabled to give a more enlightened vote than on the present resolution? I consider the general power to inquire as most important, and that it is the duty of the House, on such occasions as the present, to enlarge rather than to narrow the field of inquiry.

It is further said that this course of proceeding will discourage respectable men from accepting the offices of Government. But certainly every officer, from the President to the most menial, knows that he holds his office subject to inquiry, to impeachment, and to punishment, in case of criminality.

If the House do not pursue the present course, from what quarter are they to expect the origination of an inquiry? Is it to be supposed that it will come from the citizen, when his life and fortune are probably at the disposal of particular officers charged with misconduct. This line of inquiry ought, in my opinion, to be courted and encouraged; more especially in this instance, after the course which the debate has taken, and after specific charges have been adduced. The debate has given an importance to the inquiry, which its original merits may not, perhaps, have entitled it to.

When this subject was first introduced, it appeared to me novel, and that there were no precedents in point under the Federal Government. It is time that this precedent should be established. It is time that every officer should know that this House is ready at any time to inquire into his official conduct, if charged with misbehaviour; and instead of declining the inquiry, in this instance, from a false delicacy to the officer, it becomes the House to embrace the resolution and make the inquiry. If evidence shall be collected, and it appears that there are no grounds for impeachment, the officer will be restored to the public confidence, and will be acquitted. If, on the other hand, it appears that he has been guilty of malfeasance in office, a duty will be imposed upon the House, from which they cannot recede, to bring him to trial.

Mr. Thatcher.—As gentlemen seem to consider the decision of the court in the trial of Fries as unprecedented, I beg leave to refer them to the cases of the United States *versus* Vigol, and the same *versus* Mitchell, 2 Dallas's Reports, 346 to 357. They will find that the decision of the court, in the case of Fries, was exactly conformable to cases adjudged in 1795. Without troubling the House with the whole of those cases, I beg leave to read the decision of the court in the last case. "The charge of the court, says the reporter, 'was delivered to the jury in substance as follows. 'Patterson justice. 'The first question to be con- 'sidered is, what was the general object of the in- 'surrection? If its object was to suppress the excise 'offices, and to prevent the execution of an act of 'Congress, by force and intimidation, the offence, 'in legal estimation, is high treason: it is an usur- 'pation of the authority of Government; it is high 'treason by levying of war." The decision, sir, is also conformable to the English authorities. The charge then against Judge Chase and Judge Peters, after divesting it of the coloring which imagination has given it, amounts to this—that, in the trial of Fries for treason, the court prevented the counsel from arguing to the jury against a point of law long settled by that and other courts of the United States. I have attended closely to the statement made by the gentleman from Pennsylvania, (Mr. Smilie,) and I believe I am correct.

The very point which the counsel of Fries would have argued to the jury, was that which had long before been settled by the courts of the United States. I contend, sir, that this court did no more than they had a right to do—no more than is practised by every well regulated court. They prevented counsel from arguing law in the face of the authorities, and of the opinion of the court. That this is usual, I appeal to gentlemen of the law who are present. This, sir, is the only fact stated to the House upon which the motion is founded.

The gentleman from Virginia (Mr. Randolph) has said, that he has been informed of facts, which convince him that an inquiry ought to be made. But that gentleman has not stated to the House what those facts are.

It has been contended that where a member of this House shall state that he is convinced that an inquiry ought to be made, the House ought to institute such an inquiry. Precedents have been adduced to prove that this has been done in the British Parliament. There certainly has been no case cited where an inquiry has been commenced upon the motion without stating his facts or his evidence. But whatever may have been the practice in England I can never consent to vote upon any impressions or convictions but my own.

If the official conduct of the judges upon the trial of Fries was such as to require the interposition of this House (why, as the gentleman from Connecticut, Mr. Griswold, has asked) why was not this inquiry sooner announced? This trial, I am told, was in February, 1800. It took place, within the hearing of Congress. It was the subject of universal attention. Why has it slept four years? Upon what ground shall we invest a committee with power to ransack the country for charges against our judges? Shall we, upon the motion of a member—shall we, upon the statement of the gentleman from Pennsylvania, (Mr. Smilie.) commence an inquiry, troublesome and expensive—an inquiry, which must attach suspicion to the official conduct of the judges? Sir, I respect the conduct of the gentlemen who attempt to remove obstructions from the stream of justice, but I must be convinced that obstructions now exist, before I can vote for this resolution.

Mr. Early.—Like other gentlemen who have gone before me in this discussion, I do not consider myself at liberty to vote against the resolution on the table. Like them, I deem myself bound to vote for an inquiry into the conduct of any public officer, when that inquiry is demanded by a member of this House. After the view taken of

the merits of this measure by the gentlemen from Pennsylvania and Virginia, I did expect that all further opposition to it would have ceased. In this expectation I have been disappointed.

I feel constrained to vote in favor of this resolution, because I believe that the inquiry it contemplates is an act of justice due to the people of the United States on one hand, and to the characters of the individuals charged, on the other. A charge of high crimes and misdemeanors has been made on this floor against two individuals, and two members of this House have demanded an inquiry into their official conduct. To this demand may be added the weight of public opinion. I am apprized of the delicacy of this ground, and when I resort to it, it is my wish to be understood as meaning that when charges of a high nature are instituted and reiterated from one end of the Union to the other, so as to create a general belief, so as to destroy confidence in the principle and integrity of those who administer justice, and to beget a suspicion that justice cannot be obtained equally by all men; under such circumstances the public voice demands an inquiry into the truth of the charges. Is this a fact, or is it not, in relation to the officers implicated in this resolution? I presume that it is the fact to a great extent will not be denied. Every gentleman on this floor, in the habit of reading the public prints, must have had so forcible an impression made on his mind on this subject, as not to have lost a recollection of the conduct charged upon one of the judges named in this resolution, in the case of Fries, Cooper, and Callender. I cannot, therefore, refuse my assent to the inquiry, because I believe it due to the public, as well as to the individuals charged with the improper conduct, and who, if they were on the spot, would undoubtedly memorialize us for an inquiry. Indeed one of the officers referred to in the resolution, if conscious of his innocence, ought, in my opinion, long since, to have demanded an inquiry into his official conduct, when he witnessed the strong and numerous charges against him in the public prints from one end of the Continent to the other.

It is objected to this resolution that no proof has been adduced to the House of the truth of the allegations preferred. In my mind there is all the difference that can be imagined between an inquiry and an impeachment; and almost all the arguments urged on this occasion apply exclusively to an impeachment. A strong proof of this has been given by the gentleman who has just sat down. That gentleman (Mr. R. Griswold) has taken this remarkable ground, that this House ought not to inquire without proof. I suppose he meant, by proof, the depositions of witnesses; this is, in other words, saying that we, whose Constitutional duty it is to inquire, may omit to do it, because they whose duty it is not to inquire, have not done it.

The present resolution is nothing more than this: A certain officer of the Government is charged, in the face of the nation, with malfeasance in office, and a committee appointed to inquire into the truth of the charge. Gentlemen allege that the committee is to be appointed to inquire what accusations can be found, and then for testimony to sustain them. But this is not so. The accusations have been long since made, and they are not of a day, but of a year's standing.

The analogy between the functions of this House and a grand jury, is correct and forcible. Before a grand jury, it is the right of any individual to apply for and demand an inquiry into the conduct of any person within their cognizance; and it is more especially the right of any member of the jury to make such a demand; and it is their bounden duty, according to their oaths, to make the inquiry when so demanded.

The official conduct of the judges I view as more delicate and important than that of any other description of officers; for, on their impartiality the whole people of the United States depend for obtaining justice in ordinary cases, and individuals depend, in the last resort, for the preservation of their lives. Their official conduct should, therefore, not only be correct, but likewise free from suspicion. Simply to be charged ought to produce an inquiry; and I must confess that a recent case, in which the integrity of a judicial officer was impeached, excited my warmest approbation. I mean the case of a judge (Judge Tucker) in a neighboring State, who, on a suggestion believed by no man, deemed it a duty to himself and his country to demand an inquiry into his conduct.

Another view, by no means unimportant, which may be taken, is, that the reputation of the Government, of which the judges are a component part, demands the inquiry in question. Will any gentleman pretend to say that reputation is not at stake? that it is not affected at home or abroad by the charges which have been so long and so loudly made? I presume not. Whether those charges are true or not, is not the question; for, whether true or not, so long as they are generally believed the reputation of the Government is affected; its reputation for impartial justice is affected, and deeply too. To refuse this inquiry would be to give weight to this impression abroad—to add to the suspicion, at home and abroad, that impartial justice is not done to all men. Let us, then, make the inquiry, and restore the reputation of the Government, by inflicting a proper punishment upon these officers, if guilty, and, if innocent, by proving the charges against them calumnies.

Mr. Eppes.—If, in adopting the resolution before us, we were to attach odium to the characters in question, I should feel no surprise at the course pursued by the gentlemen who oppose this inquiry. In this country the official conduct of every man is, and ought to be, subject to examination. It is not the examination, but the result of that examination, which attaches merit or demerit to a public character. In a Government like ours no principle ought to be cherished with greater care than a free inquiry into the conduct of public officers. So friendly am I to this principle in its fullest extent, so necessary do I believe it to be to the preservation of that purity in public officers essential to a Republic, that it will always be sufficient for me to vote an inquiry, for a member to

declare he considers an inquiry necessary. A proper regard to his own reputation will always, I am certain, prevent any member of this House from calling on us to exercise this important duty on light or trivial grounds. As to the extensive field of inquiry to which this doctrine may lead, I care not; and whenever a member of this House shall rise in his place and declare that he considers an inquiry into the conduct of a public officer or officers necessary, I shall be ready to pass the whole circle in review, to begin with the first and end with the last, to vote an inquiry into the conduct of each, and even to go further, to vote an impeachment if necessary. I shall on every such occasion consider it a duty I owe to the individual accused, and to the community in whose behalf the accusation is made, to vote an inquiry.

Thus much for the general principle which would induce me to vote for this resolution if no specific charge had been made. In the present case, however, a specific charge of a serious kind has been made by a member from Pennsylvania; and, however gentlemen may have attempted to weaken the force of this charge, it does substantially amount to this: that, by the opinion of a judge, a citizen of the United States was deprived of his Constitutional right to counsel, when arraigned for his life. I will not, however, dwell on this charge. It has been placed by a gentleman from Maryland (Mr. NICHOLSON) in a point of view satisfactory to myself, and, I believe, to the House. I consider it, however, my duty on this occasion to mention a trial which took place in the Commonwealth of Virginia, which affords another specific charge against Judge Chase. I was not present at this trial, and am not personally acquainted with the circumstances. I believe, however, that in the Commonwealth of Virginia but one sentiment prevails as to the conduct of Judge Chase on this occasion, viz: that it was indecent and tyrannical. In the course of the trial he refused to allow a witness on the part of the prisoner to be examined, because the witness could prove the truth of a part only, and not the whole of the words laid in the indictment. By a system of conduct peculiar to himself, he deprived the prisoner of the aid of Mr. George Hay, as counsel, a man, who, although not as generally known as some others in our State, is inferior to none in his profession. I do not mention these circumstances as hearsay evidence, but as facts, which I am induced to believe can be established by legal testimony. If, on this statement, there is any gentleman who can refuse an inquiry, I am willing to leave him in the enjoyment of his opinion. For my own part, I shall be always ready, on the demand of any member of this House, to exercise my Constitutional right of inquiry, and, without partiality or prejudice, pursue the course pointed out by my duty, whether it shall lead to impeachment or an honorable acquittal.

Mr. NICHOLSON rose for the purpose of calling the attention of the House to precedents. When he yesterday addressed them he had thought it unnecessary to introduce authorities from foreign nations; but as they had been insisted on by the opponents to the resolution, he would refer to two or three; and he was more solicitious to do so at the present moment, as he saw a gentleman from Connecticut (Mr. DANA) about to rise, and he wished to call the gentleman's attention to them, in order that he might remark on them, and show, if it was to be done, that they did not apply to the case under consideration. If gentlemen would refer to the powers exercised by the Commons of England, for time almost immemorial, and to those exercised by the several State Legislatures, he believed that precedents innumerable would be furnished. The Commons of England were the grand inquest of the nation. As such it was their duty to inquire into the official conduct of all those entrusted with the powers of Government. Every officer in the realm was liable to impeachment by them. The same principle would be found to run through the constitutions of most of the States, and it was wisely introduced into the Constitution of the United States. The power to impeach is admitted to be in the House of Representatives, and the only question is, as to the manner in which this power shall be exercised. The proposed method is called a loose one, and we are asked to show some precedent for it. The House of Commons at the commencement of every session appoint what is there called a committee of grievances and courts of justice. Many of the State Legislatures appoint a similar committee annually, and, in the State from which he came, the House of Delegates always appoint a committee of grievances and courts of justice. It was one of their standing committees, and the appointment was as regular and as usual as the appointment of a committee of claims in this House. What then he inquired was the duty, what the authority of this committee? In England, in Maryland, and in every other State where it exists, it is their duty to inquire into the conduct of every officer of the Government, to call witnesses before them to prove official misconduct, to report offences to the House from which their powers are derived, and recommend the proper measures to be adopted.

This House, like the Commons of England, and the most numerous branch in the State Legislatures, is the grand inquest of the nation; they are to inquire into crimes and bring offenders to justice. It had not, he said, heretofore been customary for the House to appoint a committee of grievances and courts of justice, but he believed no man would deny the power, and when appointed they would not only have the authority proposed to be in this committee, but one infinitely more extensive. They would have the right to inquire into the conduct of all civil officers, and to report such facts as might come to their knowledge. If, then, we could, with propriety, and agreeably to precedent, authorize an inquiry into the conduct of several hundred officers, could it be denied that the same precedent would warrant an inquiry into the conduct of two only? In 5th *Comyn's Digest*, page 204, it would be found that a committee of grievances and justice was one of their standing committees, and in page 205 it was declared that they might "summon any judges and examine

them in person, upon complaint of any misdemeanor in office." He presumed it had not been thought necessary heretofore to appoint a general committee of this kind, but at present the necessity was apparent, as a complaint had been made to the House of the official misconduct of two judges. Again, in the same book, page 209, it is said, "The Commons are the general inquisitors 'of the realm, and therefore if a Lord, spiritual or 'temporal, commit oppression, bribery, extortion, '&c., the Commons shall inquire of it, and if, by 'the vote of the House, the crime appears to have 'been committed, they transmit it, with the evi'dence, to the Lords." This, he said, would clearly show, what indeed he thought common sense would teach every man, that the inquiry should be made before proof was exhibited upon which an impeachment was to be grounded. In the same page it would be seen that "common 'fame is a sufficient ground of a proceeding in the 'House of Commons by inquiry, or by a com'plaint, if need be, to the King or Lords." And *Rushworth's Historical Collection*, page 217, is cited, it is said by some of the ablest lawyers of that day that "if common fame were not to be 'admitted as public accusers, great men would be 'the only safe ones, as no private man would ven'ture to complain of them." Mr. N. referred to these authorities at that particular stage of the discussion, as he was desirous of giving gentlemen an opportunity of commenting upon them. As he had no wish to prolong the debate, he would not multiply observations upon that point, but could not sit down without noticing what had fallen from a gentleman from Massachusetts, in which he had again attempted to vindicate the conduct of the judges upon the trial of Fries.

The gentleman had referred to a case in *Dallas' Reports*, respecting the Western Insurrection, in which he says the point of law determined upon the trial of Fries, had been previously settled by one of the federal courts, and from thence infers that Mr. Chase and Mr. Peters were justified in preventing counsel from arguing it a second time. That such conduct might be perhaps excusable in a civil cause he was not prepared to deny; but, in a case of criminal jurisdiction, involving the guilt or innocence of a man whose life was to be the forfeit, he held it totally unjustifiable.

All men, he said, were acquainted with the circumstances of what was generally called the Western Insurrection. Some of the Western counties of Pennsylvania were opposed to the excise law. A considerable majority of the people had resolved to oppose its execution, and took strong measures to prevent individuals from accepting offices under it, and compelled some of them to resign the places to which they had been appointed. While they professed an attachment to the Government of the Union they resolved to resist the execution of one of its laws. Among these was a man by the name of Mitchell, and he was charged with high treason before the circuit of Pennsylvania in which Judge Paterson then presided. A doubt existed whether the resistance to the execution of a law, even by force of arms, was such a levying of war within the meaning of the Constitution, as amounted to treason. What was the conduct of the judge on that occasion? He had no disposition to preclude inquiry. He had no wish to keep the jury in ignorance by forbidding fair and open argument. On the contrary, it appeared from a note on page 348 that he called the attention of the prisoner's counsel to the point and requested that they would notice it in their observations. This was done before the defence was opened, and he said he should beg leave to read a part of the argument made in favor of the prisoner.

"The counsel for the prisoner (E. Tilghman and Thomas) premised that they did not conceive it to be their duty to show that the prisoner was guiltless of any description of crime against the United States, or the State of Pennsylvania, but they contended that he had not committed the crime of high treason, and ought, therefore, to be acquitted on the present indictment. The adjudications in England upon the various descriptions of treason, had been worked, incautiously, into a system, by the destruction of which the Government itself would be seriously affected; but even there, the best judges and the ablest commentators, while they acquiesce in the decisions that have already taken place, furnish a strong caution against the too easy admission of future cases, which seem to have a parity of reason. Constructive and interpretive treasons must be the dread and scourge of any nation that allows them—1 *Hale, P. C.*, 132, 259—4 *Black. Com.*, 85. Take, then, the distinction of treason by levying war, as laid down by the attorney of the district, and it is a constructive or interpretive weapon which is calculated to annul all distinctions heretofore wisely established in the grades and punishments of crimes, and by whose magic power a mob may be easily converted into a conspiracy, and a riot aggravated into high treason."

Such, he said, was the opinion of two gentlemen ranking high in their professon, and who would not be charged with having any feeling toward the offence or the offender inconsistent with the rights or interests of the Government. The whole argument was too lengthy to be read to the House, but he considered it well worth the perusal of every American. Able as it was, however, it had not the wished for weight with the court. Judge Paterson gave the following charge to the jury: "The first question is, what was the 'general object of the insurrection? If its object 'was to suppress the excise offices, and to prevent 'the execution of an act of Congress, by force and 'intimidation, the offence, in legal estimation, is 'high treason; it is an usurpation of the authority 'of Government; it is high treason by levying of 'war." Sir, said Mr. N., this opinion of the court may have been honest; I mean not to impeach the purity of motive which dictated it, but I mean to show that the offence with which Mitchell was charged, the resistance to the execution of a law, was not considered as treason by the highest existing authority of this country. Mitchell was pardoned by the President of the United States, and Congress, not long after, expressed their opinion on the subject in the most ample manner.

The trial of Mitchell which I have just quoted took place in 1795, and in 1798 the subject was

taken up by Congress, who by the act of the 14th of July, 1798, provided that the resistance to the execution of a law should be considered a high misdemeanor only, punishable by fine and imprisonment. The act is in these words: "If any persons shall unlawfully combine or conspire together, with intent to oppose any measure or measures of the Government of the United States which are, or may be directed by proper authority, or to impede the operation of any law of the United States, or to intimidate or prevent any person holding a place or office in or under the Government of the United States, from undertaking, performing, or executing his trust or duty, he or they shall be deemed guilty of a high misdemeanor, and on conviction before any court of the United States having jurisdiction thereof, shall be punished by a fine not exceeding $5,000 and by imprisonment during a term not less than six months nor exceeding five years." Here, sir, the resistance to the execution of a law is declared to be a high misdemeanor only, punishable by fine and imprisonment. Fries was tried in 1800, two years after the passage of this law. The offence of which he had been guilty was rescuing prisoners from the marshal by force, thereby, in the language of the act, "preventing an officer of the United States from performing and executing his duty," and it was to show that he was punishable under this act by fine and imprisonment only, that his counsel were desirous of bringing the law before the jury. This, however, the court refused; the man was convicted of high treason, and was sentenced to a most ignominious death. Let such conduct be vindicated where and by whom it may, I must declare that it can never meet my approbation.

Mr. Dana.—It is to be regretted, Mr. Speaker, that a resolution so novel and of so much importance as that on the table was not postponed, at least for one day after it was presented to the House. Had this been done, gentlemen might have had some opportunity deliberately to examine the subject, before they were required to make a decision. But as the resolution was moved without giving any previous notice, and has been pressed upon us immediately after it was moved, I do not feel myself perpared, as I could have wished to be on such a question, before attempting to deliver my sentiments in this House. Unprepared, however, as I am, I request your indulgence while I offer a few remarks.

I will first attend to some precedents mentioned by the gentleman from Maryland. (Mr. Nicholson.) He has stated that it has been usual in the English House of Commons to appoint a committee for courts of justice, with power to inquire into the proceedings of courts, and for this purpose to call persons before them for examination. But, sir, is not such a committee appointed for general purposes, not directed against any individual, and therefore not affecting the character of any magistrate? Their powers relate to the judicial system generally, and do not implicate any one of the judicial officers. Does the resolution on the table propose a committee of this kind? On the contrary, it is explicitly directed against two of the judges. If gentlemen would justify their proceedings by the practice of the British House of Commons, let the resolution be made to have a general reference to all the courts, instead of being pointed as it now is, against particular persons. In its present form it departs essentially from the principle of the case mentioned by the gentleman from Maryland, and therefore cannot be warranted by that precedent.

The gentleman has also stated that a committee was appointed by the last Congress to investigate the accounts of the officers of Government, merely upon common report. But it should be remembered that those officers were officers of the Executive Departments. It is the acknowledged duty of such officers—it is made their duty by law to give information to Congress, whenever required, upon any of their public transactions. And it is the peculiar right of the House of Representatives, as guardians of the Treasury, at any time, to inquire into the expenditures of public money. But are the judges of the United States placed in the same situation with the Executive officers? Are they to be under the same control, and equally dependent? You may indeed impeach the judges, if guilty of impeachable offence. But what other power over them is given you by the Constitution? It should further be remembered, that the resolution for appointing the investigating committee did not criminate any particular officer. At first it was proposed to examine only the accounts of the former Secretary of State. But upon its being suggested by a gentleman from Massachusetts, (Mr. Eustis,) who has been so strenuous an advocate for the present resolution, that it would be improper in that manner to attack the character of a particular officer, the resolution was made general, and extended to the accounts of all the Executive Departments.

Upon the like principle, the resolution now on the table is improper. My objection to it is, that it points out two particular officers as objects of suspicion, and proposes a committee for inquiring into their conduct without assigning any cause, and without specifying any subject of inquiry. Gentlemen have expressed a dissatisfaction that such a committee should be compared to the star chamber or the inquisition. If they do not perfectly resemble the star chamber, formerly known in England, or the inquisition of Spain, the proposed powers of the committee are certainly indefinite and inquisitorial. Perhaps, if a comparison was necessary, they might more properly be compared to the State inquisitors of Venice, who are well known to have formed one of the most detestable tyrannies ever tolerated in a country pretending to freedom.

If charges were specified in the resolution, a member of this House on moving it might then have a right to demand an inquiry. But are the House bound to investigate the conduct of a particular officer, without any charge against him? Gentlemen have said much about the general right of this House to inquire into the conduct of public officers, as if this were the point in dispute.

But who has denied the right of inquiry as incident to the power of impeachment? When any officer is charged with an impeachable offence, it is admitted to be, and from the nature of the thing it might be, the right of the House to inquire into the truth of such charge. I trust no gentleman in opposition to the present resolution can be found so ignorant of the true principle on which it is opposed as to deny the responsibility of the public officers, or the right of the House to inquire into their conduct. But, the right being admitted, the question is made as to the exercise of that right in the manner now proposed. When this House is called upon to direct the whole force of its influence against a particular judge, is it not reasonable, is it not just, that some charge should first be stated against him? This is but a decent respect to judicial character. It is but a decent respect to the character which becomes the assembled Representatives of a nation. The person implicated might then be enabled to meet the inquiry and obviate unfounded suspicion. Our power with respect to the judges is the power of impeachment; but we are not, therefore, justified in wantonly assailing their characters and sporting with their sensibility to reputation. The right of inquiry relates to impeachable offences. Shall we, then, inquire where no offence is stated? So far is the resolution from stating what would warrant an impeachment, that it does not mention any offence, or refer to any transaction.

The gentleman from Virginia, who moved the resolution, (Mr. J. Randolph,) has, indeed, declared his own conviction, that the judicial officer in question had done wrong. Might not other gentlemen also have their opinions and exercise their own judgments in forming them? They ask for the reasons of his conviction before they vote for his resolution. His information, he says, was received in such a manner that he does not choose to disclose it. If any person has communicated anything to him confidentially, he is not desired to name his informant. The gentleman shall not be desired by me to make any disclosure which would offend against the most delicate sense of honor. But can it be improper for him to state the general nature of the offence which he believes to have been committed? Will this violate any honorary confidence? He is desired to make such a statement that other members of the House may have an opportunity of judging whether the believed offence will warrant a vote of impeachment. In cases of this kind, is any member to be deemed infallible? When a gentleman, in his place, states a fact as of his own knowledge, his veracity is regarded as unquestionable; but his infallibility is not supposed to extend to matters of mere opinion. Upon the principle of its being possible for the gentleman from Virginia to err in opinion, and its being equally the right of the other members to judge what conduct amounts to an impeachable offence, it might have been reasonably thought that he would at least state to the House the nature of the facts on which he relies as the basis of his resolution. If he, or any other member, declaring his conviction that a judge has misdemeaned himself in office, will exhibit to the House a statement of any fact, or series of facts, which would warrant an impeachment, I will be ready instantly to vote for an inquiry. But nothing of this kind is exhibited, and therefore the resolution on the table is now opposed. Before you agree to oppress a judge with all that weight of suspicion which may be imposed by a vote of this House, let him be permitted to know what part of his conduct is supposed to be exceptionable, that opportunity may be had in the progress of any inquiry to vindicate himself against unmerited reproaches! Instead of a course of proceeding so fair and obviously just, the resolution on the table marks two of the judges for public suspicion, without specifying any supposed misconduct. It marks them as public objects of suspicion throughout the whole of their judicial life, and, without naming anything, invites private enemies to accuse them of everything.

To support such a resolution, common fame has been mentioned in the course of debate, as a sufficient ground of proceeding; and this idea is supposed to be authorized by English precedent. Whatever may have been done formerly, and in a period of rudeness or violence, the more improved system of modern jurisprudence should discard such a doctrine if it ever prevailed. But even that doctrine, if admitted, would not justify you in adopting the present resolution. You cannot thence infer the propriety of proceeding against a person who is not accused of anything punishable. Will it be pretended that the common fame, which is to be a ground of proceeding, does not refer to any offence or to any transaction? Common fame, if admitted for proof, must be supposed to apply to some subject of complaint. On the principle even of this very questionable doctrine, a statement of some charge is requisite. What, then, in the present case, is the accusation which could be supported by common fame? If there be any such, let it be stated.

The gentlemen who advocate the resolution in its present form fail in their efforts to support it, notwithstanding all the aid which they have sought from "the leading-strings and crutches of precedents." (to use the language of the gentleman from Virginia.) On general principles, on the broad basis of universal right, the resolution is condemned; and no precedent is adduced which can justify it. I do not wish to shield any public officers, whether judges or others, who may merit impeachment; but I wish the House, when acting as public accusers, to proceed in such a manner as not to do injury to any individual. Justice is due to the individual as well as to the public. No public duty can require this House to adopt a resolution of general reproach, yet stating no public offence. And it but illy accords with the principles of justice to subject the judicial officers of the Union to all the inconvenience, vexation, and expense, of being obliged to vindicate themselves against secret accusations, which it may be more difficult to discover than to overthrow.

You will observe, sir, that I do not enter into

any particular examination of the case referred to by the gentleman from Pennsylvania, (Mr. Smilie,) whether there was a controversy as to prerogative and privilege between the court and the bar, in which the pride of professional rank appeared in opposition to judicial authority. Whether the judge very properly refused to yield to the counsel, or whether the court committed an error in pronouncing the law, these are topics which I think it needless to examine in considering the resolution now on the table; for the resolution itself states nothing, and there is no case before us for examination.

On so grave a subject as the present, when we are called upon to aid in the administration of justice, it was to be desired that the advocates of the resolution should so far regard their own exhortations as to refrain from attempting to enkindle the animosity of party. The gentleman from Pennsylvania (Mr. Smilie) seems to have thought himself at liberty to pursue a different course. But, considering the nature of the question on which our votes are to be given, I hope to be excused if I deem it not proper in this debate to reply to him on the various topics of party discussion which he has chosen to mention, although the task might be easy indeed to repel his charges against the former Administration. A single observation, however, may be proper on a law to which he has alluded in the language of censure. There was at least one prominent feature which might recommend it to the friends of truth. It expressly declared that the truth might be given in evidence.

Mr. Dennis observed that in the course of the remarks which he had the honor of making yesterday, he had declared himself in favor of the proposed investigation, provided it were made on proper principles; and, in order the more clearly to illustrate his ideas and evince his sincerity, he had read in his place a resolution embracing all the facts which had been suggested to the House as the foundation of this proceeding. He had then said he would not pledge himself to offer a resolution such as he then read, but would vote for it if offered by others. As the gentleman from Virginia (Mr. Randolph) had not accepted his overtures, and in the course of his observations had done him the honor of noticing some of his ideas expressed in yesterday's debate, he rose principally for the purpose of offering an amendment, and partly for the purpose of replying to one or two of the gentleman's remarks. He was not a little surprised at the animated strain in which that gentleman had addressed the House in the course of this morning, nor did anything appear to have fallen from any gentleman in the course of the discussion which appeared to him calculated to produce so much excitement as he had manifested. But as he did not claim to set up his own feelings or his own conduct as the standard by which the feelings or actions of others ought to be guided, and as the gentleman had applied his observations without implicating motives, he had not at all interrupted the equanimity of his disposition. He had exercised a right which he should always be disposed to accord to that gentleman and every other member—the right of placing the observations of his opponents in the most ludicrous point of view of which they were susceptible. In this right he would also indulge himself whenever the subject required it.

The gentleman from Virginia, in replying to some of his observations, had said that he had conceived the charge exhibited was of a very serious nature, but did not appear to comprehend in what respect he considered it so, and therefore he wished to explain in what manner he considered it as such. He considered it as serious, inasmuch as it was calculated to excite suspicion and asperse the official conduct of the gentlemen in question; but did not mean to insinuate, but on the contrary repelled the idea of its being serious as regarded its sufficiency, if true, as a foundation of impeachment. In order to show that the conduct of the judges had not been so highly censurable even as the statement of the gentleman from Pennsylvania, (Mr. Smilie,) or his colleague and the gentleman from Virginia, seemed to suppose, he begged leave to state his ideas as to the rectitude of their conduct. Here he might use the observation of the gentleman from Virginia, applied to one of his own remarks, and say, that gentleman had with no great dexterity confounded two principles as distant from each other as the northern from the southern pole. He seemed to assimilate the case in which the court have arbitrarily withdrawn the question of law entirely from the jury, to the conduct of the court in this case, which only went to restrict the counsel from arguing before the jury a case already settled in the minds of the court, by a train of judicial determinations in similar cases, and in which they left both law and fact to the determination of the jury; directing them as to the law upon the subject. He was warranted in his opinion, because the gentleman from Virginia, in illustrating some of his positions, had cited the case of libel as decided by Lord Mansfield, and Mr. Fox's celebrated declaratory bill, which grew out of that decision. What analogy has that case to the case in question? Lord Mansfield decided that in the case of a libel, all the jury had to do was to find the fact of publication or not, and that whether when published it were criminal or not, they had no right to determine, and thus withdrew the question of law altogether from their decision.—This was justly regarded as a gross violation of that principle of the criminal law of that country, which invests the jury with the right to decide as well on the law as the fact. This principle I fully acknowledge, and if the court in the case of Fries had deprived the jury of that right, and withdrawn the question of law from them, there might be some foundation for this resolution. But, according to the statement of the gentleman from Pennsylvania, the question of law and fact were both submitted to the jury, with the instructions of the court on the legal question. He had always been taught to believe that the court were the proper organ through which the law was to be communicated to the jury, though he did not deny but the jury had the right which they should cautiously exercise, but which they would always exercise, when they discover an inclination in the court to oppress the citizen or exculpate the guilty, to reject the direction of the court and decide for themselves.

But the complaint is, that the court denied to the counsel the privilege of arguing the law before the jury. Mr. Dennis said he believed the court possessed a power of this nature, to be regulated by a sound discretion. If the court should believe that a question had been put at rest by a long train of judicial decision, such as was the case in this instance, they not only have the right, but it becomes their duty to prevent a useless consumption of time, and to prohibit the counsel from agitating the question. Indeed it is indelicate in counsel to impress on the jury an opinion of law contrary to the known opinion of the court; nor is there any court who will not take on themselves the right of checking counsel, in an attempt to mislead the jury on a question of law. Such was the practice of the courts in Maryland, and in that country from which we derive all our notions of jurisprudence.

But though he did not conceive that there was any ground for impeachment in the statement of the gentleman from Pennsylvania, yet he knew that this discussion would produce a vague and undefined censure, which he believed the judges in question ought to have an opportunity of repelling. He therefore moved the following amendment, by way of preamble to the resolution:

Whereas information has been given to the House by one of its members, that, in a certain prosecution for treason on the part of the United States against a certain John Fries, pending in the circuit court of the United States in the State of Pennsylvania, Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, district judge for the district of Pennsylvania, by whom the said circuit court was then holden, did inform the counsel for the prisoner, that as the court had formed their opinion upon the point of law, and would direct the jury thereupon, the counsel for the prisoner must confine their argument before the jury to the question of fact only; and whereas it is represented, that in consequence of such determination of the court, the counsel did refuse to address the jury on the question of fact, and the said John Fries was found guilty of treason and sentenced by the court to the punishment in such case by the laws of the United States provided, and was pardoned by the President of the United States:

Resolved, That a committee be appointed to investigate the truth of the said allegations, and to report a statement of facts in the case aforesaid, with their opinion thereupon, whether the said Samuel Chase and Richard Peters, or either of them, have so conducted themselves on the trial aforesaid as to render necessary the interposition of the Constitutional powers of this House.

This amendment embraces all the facts stated by the gentleman from Pennsylvania, points out a specific charge as the foundation of the proceeding, and yet, when attached to the resolution, gives to the committee the power of general inquiry.

We are told that the facts have been stated by a member on the floor, and there is no reason for stating them in the resolution. Will the statement of the gentleman from Pennsylvania appear on your journals, and how will it hereafter be known that any fact was stated as the foundation on which to erect a committee with general inquisitorial powers? Posterity will only see the resolution, and to them it will be a precedent which will justify the creation of a committee of inquiry into the official conduct of any officer, without the allegation of a single fact, whenever a member may choose to be of opinion that a vexatious and expensive proceeding shall be instituted. It was therefore that he wished to resist the principle, and for that purpose moved the amendment.

Mr. Huger said he had before stated, and he now repeated, that he was not averse to an investigation; but he did not consider himself bound to vote for a resolution so general and vague. If the amendment of the gentleman from Maryland were adopted he should vote for the resolution.

Mr. Nicholson moved to amend the amendment, by striking out the whole of it after the word "whereas," and by inserting—

"Members of this House have stated in their places that they have heard certain acts of official misconduct alleged against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and Richard Peters, judge of the district court of the district of Pennsylvania"

Mr. Huger had no objection to the insertion of the last amendment, but he had to striking out the first. He therefore called for the yeas and nays upon striking out.

The question was then taken by yeas and nays upon striking out, and carried—yeas 79, nays 41, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, David Bard, Geo. Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, Wm. Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Silas Betton, John Camp-

bell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

The question was now taken on inserting the amendment of Mr. NICHOLSON, and carried.

The question was then put upon agreeing to the amendment thus amended.

Mr. PURVIANCE said he could not vote for it because it did not state the fact. It declared that members of the House had stated that they had heard of official acts of misconduct of both the judges, when but one act had been charged against Judge Peters.

Mr. J. RANDOLPH observed that he perceived no reason for the preamble. He hoped therefore it would not be agreed to. General inquiry was his object, and, as going to limit it, he was against the preamble.

Mr. ELLIOT said that, had the amendment of the gentleman from Maryland prevailed, he might have reconciled it to his mind to vote for the resolution thus amended. But as it stood, he could not.

Mr. NICHOLSON remarked that when he offered the amendment, the incorrectness suggested by the gentleman from North Carolina had not occurred to him. To obviate this incorrectness he would move to amend the amendment by saying "a certain act of Richard Peters."

The SPEAKER said this amendment was not in order.

Mr. NICHOLSON said that under such circumstances he must vote against the whole amendment.

The question being taken, the amendment as amended was lost without a division.

When the resolution for appointing a committee of inquiry was carried—yeas 81, nays 40, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander, David Bard, George M. Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, Wm. Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, Wm. Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jun., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, Wm. Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Ordered, That Messrs. JOHN RANDOLPH, jun., NICHOLSON, JOSEPH CLAY, EARLY, ROGER GRISWOLD, HUGER, and BOYLE, be appointed a committee pursuant to the said resolution.

MONDAY, January 9.

Another member, to wit: WILLIAM HELMS, from New Jersey, appeared, produced his credentials, was qualified, and took his seat in the House.

The resolution offered by Mr. BARD, for the imposition of a tax of ten dollars upon every slave imported into any part of the United States, was taken up and referred to a Committee of the Whole on Thursday.

The House resolved itself into a Committee of the Whole on the bill further to amend the act to lay and collect taxes within the United States; and, after some time spent therein, the Committee rose and reported several amendments, which were ordered to lie on the table.

TUESDAY, January 10.

Mr. JACKSON, from the committee appointed on the twenty-ninth of November last, presented a bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio river; which was read twice and committed to a Committee of the Whole on Friday next.

Mr. FINDLEY, from the Committee of Elections, to whom it was referred to examine the certificates or other credentials of the members returned to serve in this House, made a further report, in part, thereupon; which was read, and ordered to lie on the table.

Mr. NICHOLSON, from the committee appointed on the eighteenth of October last, presented a bill to provide for the further protection of American seamen; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. NICHOLSON, from the same committee, presented a bill for the better direction of the collectors of the respective ports of the United States, in granting to seamen certificates of citizenship; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. NICHOLSON, from the committee appointed, presented a bill to authorize the courts of the United States to appoint Commissioners to take the depositions of witnesses out of court; to administer oaths to appraisers, and for other purposes; which was read twice and committed to a Committee of the whole House on Thursday next.

Mr. DICKSON, from the committee to whom were referred, on the twenty-fifth of November last, a memorial of the Legislature of the State of Tennessee, together with the petition of Memucan Hunt and others, addressed to the General Assembly of the State of North Carolina; also sundry resolutions of the said Assembly respecting a claim for the value of certain lands in the said State of Tennessee, presented to this House on the nineteenth of January, one thousand eight hundred and two, and the report of a select committee thereon of the twenty-fourth of March, in the same year, made a report; which was read, and referred to a Committee of the whole House on Monday next.

A petition of sundry citizens of the United States, resident in the Territory of Columbia, was presented to the House and read, praying the aid and patronage of Congress in the establishment of a company for the building of a bridge across the Potomac river, from the western and southern extremity of the Maryland Avenue, in the City of Washington to the nearest and most convenient point of Alexander's island in the said river.—Referred to Mr. J. CLAY, Mr. THOMPSON, and Mr. J. CAMPBELL, to examine and report their opinion thereupon to the House.

Mr. J. RANDOLPH, from the Committee of Ways and Means, presented a bill for the relief of the captors of the Moorish armed ships Meshouda and Mirboha; which was read twice and committed to a Committee of the whole House to-morrow.

On motion of Mr. RANDOLPH,

Resolved, That the committee appointed to inquire into the official conduct of Samuel Chase and Richard Peters, be empowered to send for persons, papers, and records.

The committee on the petition of William H. Harrison, made a report that it ought to be rejected.—Referred to a Committee of the Whole.

Mr. EARLY, from the Committee of Accounts, reported a resolution directing that in future the stationery used by members shall be drawn on the order of each member, and entered in a book to be kept by the Doorkeeper.—Agreed to.

The House took up the amendments of the Committee of the Whole to the bill further to amend the act to lay and collect a direct tax within the United States; and having agreed to the same, with amendments, ordered the bill to a third reading on Thursday.

WEDNESDAY, January 11.

Mr. S. L. MITCHILL, from the Committee of Commerce and Manufactures, to whom was committed, on the fourth instant, the bill sent from the Senate, entitled "An act to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States, made a report thereon; which was read, and, together with the said bill, referred to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of the captors of the Moorish armed ships Meshouda and Mirboha; and, after some time spent therein, the bill was reported with several amendments; which were twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States;" in which they desire the concurrence of this House.

Ordered, That the bill further to amend the act, entitled "An act to lay and collect a direct tax within the United States, as amended by the House, on the tenth instant, and ordered to be engrossed for a third reading on Thursday next, be recommitted to a Committee of the whole House immediately.

The House resolved itself into the said committee; and, after some time spent therein, the Committee rose and reported progress.

VIRGINIA YAZOO COMPANY.

On a motion made and seconded,

"That the agent or agents of the Virginia Yazoo Company, 'claimants of compensation under the late cession and convention between the State of Georgia and the United States, and the acts lately passed by Congress thereon, as purchasers of land in the Mississippi Territory, in the year one thousand seven hundred and eighty-nine, from the said State of Georgia,' be heard in person, or by counsel, at the bar of the House, on Monday next:"

The question was taken thereupon, and resolved in the affirmative—yeas 61, nays 49, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander, Silas Betton, Phanuel Bishop, George W. Campbell, John Campbell, William Chamberlin, Joseph Clay, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, William Dickson, John B. Earle, Ebenezer Elmer, John W. Eppes, Thomas Griffin, Roger Griswold, James Holland, Benjamin Huger, Samuel Hunt, William Kennedy, Michael Leib, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas Plater, Samuel D. Purviance, John Randolph, jr., Thomas M. Randolph, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Tompson J. Skinner, James Sloan, John Cotton Smith, Henry Southard, Joseph Stanton, James Stephenson, Samuel Taggart, Samuel Thatcher, Philip R. Thompson, George Tibbits, Abram Trigg, John Trigg, Philip Van

Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Martin Chittenden, Clifton Claggett, Frederick Conrad, John Davenport, John Dennis, Thomas Dwight, James Elliot, William Findley, Edwin Gray, Andrew Gregg, Gaylord Griswold, Samuel Hammond, Josiah Hasbrouck, Seth Hastings, William Helms, William Hoge, John G. Jackson, Andrew McCord, David Meriwether, Nahum Mitchell, Nicholas R. Moore, Jeremiah Morrow, James Mott, Anthony New, John Patterson, John Rea of Pennsylvania, Erastus Root, Thomas Sandford, Joshua Sands, Ebenezer Seaver, John Smilie, John Smith of New York, Richard Stanford, William Stedman, John Stewart, Samuel Tenney, Joseph B. Varnum, John Whitehill, and Marmaduke Williams.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the South Carolina Yazoo Company be heard by their agent, on Monday next, at the bar of the House:

And the said motion being twice read at the Clerk's table, a motion was made and seconded to amend the same, by striking out all the words from the word "Resolved," in the first line, to the end of the motion, and inserting, in lieu thereof, the following words: "That this House will, on Monday next, hear all the agents of the different companies claiming lands south of the State of Tennessee, who may choose to speak at the bar of this House."

And on the question that the House do agree to the said amendment, it passed in the negative. And the main question being taken that the House do agree to the said motion, as originally proposed, it was resolved in the affirmative—yeas 67, nays 46, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, Silas Betton, Phanuel Bishop, Adam Boyd, George W. Campbell, William Chamberlin, Joseph Clay, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Dennis, William Dickson, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, John W. Eppes, John Fowler, Thomas Griffin, Roger Griswold, James Holland, Benjamin Huger, William Kennedy, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Samuel L. Mitchill, Thomas Moore, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Thomas Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, Jacob Richards, Cæsar A. Rodney, Erastus Root, Joshua Sands, James Sloan, John Cotton Smith, John Smith of Virginia, Henry Southard, Joseph Stanton, William Stedman, Samuel Taggart, Samuel Tenney, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Isaac Anderson, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Martin Chittenden, Clifton Claggett, Frederick Conrad, John Davenport, William Eustis, William Findley, Edwin Gray, Andrew Gregg, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, William Hoge, David Hough, John G. Jackson, Walter Jones, Matthew Lyon, Andrew McCord, David Meriwether, Nahum Mitchell, Nicholas R. Moore, Jeremiah Morrow, James Mott, Anthony New, John Patterson, John Rea of Pennsylvania, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, Richard Stanford, John Stewart, David Thomas, George Tibbits, Joseph B. Varnum, John Whitehill, and Marmaduke Williams.

On motion, the House adjourned.

Thursday, January 12.

The bill sent from the Senate, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States,'" was read twice and committed to a Committee of the whole House to-morrow.

Ordered, That the Committee of Ways and Means, to whom was referred, on the third instant, a motion relative "to the prosecution, trial, and punishment of persons guilty of crimes arising under the revenue laws of the United States, or incurring fines or forfeitures by breaches of the said laws, at any time within five years after committing the offence, or incurring the fine or forfeiture," be discharged from the consideration thereof; and that the said motion be referred to the Committee of the whole House to whom was this day committed the bill sent from the Senate, entitled "An act in addition to the act, entitled 'An act for the punishment of certain crimes against the United States."

Mr. Thomas, from the committee appointed on the subject of post offices and post roads, to whom was recommitted, on the nineteenth ultimo, their report relative to the means by which the mail may be conveyed with greater despatch than at present between the City of Washington and Natchez and New Orleans, made a supplementary report thereon; which was read, and referred to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to incorporate the Directors of the Columbian Library Company, with an amendment; to which they desire the concurrence of this House.

A message from the Senate communicated to the House certain proceedings of the Senate relative to the impeachment of John Pickering, Judge of the District Court of the United States for the district of New Hampshire.

DANISH BRIG HENRICK.

The House resolved itself into a Committee of the Whole on the supplementary report of the Committee of Claims, of the third instant, to whom was recommitted their report on a motion relative to a provision for the relief of the owners of the Danish brigantine Henrick, and the documents accompanying the same; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was read, as follows:

Resolved, That the sum of —— dollars ought to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to enable the President of the United States to make such restitution, as shall appear to be just and equitable, to the owners of the Danish brigantine, called the Henrick, and her cargo, which were recaptured by an American armed vessel, in the year one thousand seven hundred and ninety-nine, and sold by order of the Vice Admiralty Court in the British Island of St. Christopher.

The House then proceeded to consider the said resolution at the Clerk's table, and the same being again read, the question was taken that the House do agree to the said resolution, as reported from the Committee of the whole House, and resolved in the affirmative—yeas 108, nays 15, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Clifton Clagget, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, William Helms, James Holland, David Holmes, David Hough, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Patterson, Oliver Phelps, Thomas Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Joshua Sands, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Cotton Smith, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—William Butler, Martin Chittenden, Samuel W. Dana, James Elliot, Edwin Gray, Thomas Griffin, Roger Griswold, Seth Hastings, William Hoge, Michael Leib, Thomas Sammons, Thomas Sandford, John Stewart, George Tibbits, and Peleg Wadsworth.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that the Committee of Claims do prepare and bring in the same.

An engrossed bill for the relief of the captors of the Moorish armed ships Meshouda and Mirboha, was read the third time: whereupon, Mr. Speaker stated the question, that the said bill do pass; and a debate arising thereon, the House adjourned.

Friday, January 13.

A Message was received from the President of the United States, transmitting a report of the Director of the Mint. The Message was read, and, together with the report, ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report and sundry documents marked A, B, and C, exhibiting an account of the money received for the support of sick and disabled seamen, and designating particularly the sums collected and expended at each port, prepared in obedience to a resolution of this House of the twenty-first ultimo, which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from Edward Tiffin, Governor of the State of Ohio, transmitting a certified copy of an act of the Legislature thereof, declaring the assent of the said Legislature to an amendment proposed by Congress, in lieu of the third paragraph of the first section of the second article of the Constitution of the United States; which were read, and ordered to lie on the table.

The Speaker laid before the House a letter from the Secretary of the Navy, accompanying "a statement of all the moneys advanced for the pay, clothing, subsistence, and contingencies, of the corps of marines, from the time of the organization and establishment of that corps, to the close of the last year, exhibiting the dates of the advances, and to whom made; also, an account, stating, generally, under each head of expenditure aforesaid, when, and by whom, and what amount of money has been accounted for, and showing the balance now in advance and not accounted for," in pursuance of a resolution of this House of the third instant; which were read, and ordered to lie on the table.

On motion, it was

Resolved, That a committee be appointed to revise the rules and articles for the government of the Army of the United States, and that they report by bill, or otherwise.

Ordered, That Mr. Varnum, Mr. Helms, Mr. Dana, Mr. Butler, and Joseph Lewis, junior, be appointed a committee pursuant to the said resolution.

The House resumed the consideration of the question depending yesterday at the time of adjournment, "that the engrossed bill for the relief of the captors of the Moorish armed ships Meshouda and Mirboha do pass?" And, after farther debate thereon, the said question was taken, and resolved in the affirmative.

Mr. John Cotton Smith, from the Committee of Claims, presented a bill to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick; which was read twice, and committed to a Committee of the whole House to-day.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act to incorporate the Directors of the Columbian Library Company:" Whereupon,

Ordered, That the said amendment, together with the bill, be committed to Mr. Findley, Mr. Phelps, Mr. Nahum Mitchell, Mr. Claiborne, and Mr. Lowndes.

The House resolved itself into a Committee of the Whole, on the bill to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick; and, after some time spent therein, the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time on Monday next.

DIRECT TAX.

The House again resolved itself into a Committee of the Whole on the bill further to amend the act, entitled "An act to lay and collect a direct tax within the United States;" and, after some time spent therein, the Committee rose and reported several amendments thereto; which were twice read, and agreed to by the House.

A motion was then made and seconded that the said bill, as amended by the House, be recommitted, and it passed in the negative.

Another motion was then made and seconded farther to amend the said bill, as amended, by striking out the sixth section thereof, being the fifth section of the original bill, in the words following, to wit:

"*And be it further enacted*, That whenever any tract of land or lot shall have been sold, or shall hereafter be sold for non-payment of the direct tax, and for a larger sum than the amount of such tax, with the legal costs and charges, the collector of the said tax shall be accountable to the purchaser for the excess of money paid by such purchaser beyond the amount of such tax, charges, and costs: And deeds shall be executed in favor of such purchasers only for so much of the land as shall bear the same ratio to the whole quantity of land sold: And whenever a deed shall be executed for a part only of any tract of land, not described previous to the sale, such part shall be laid off at the expense of the purchaser, under the direction of the District Court, and in conformity with the instructions given to the collector, by the supervisor, or officer acting as supervisor, respecting the sales of lands sold for non-payment of the direct tax:"

And the question being taken that the House do agree to the said amendment, it passed in the negative—yeas 31, nays 80, as follows:

Yeas—Nathaniel Alexander, Isaac Anderson, Silas Betton, William Blackledge, Adam Boyd, George W. Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Samuel W. Dana, John Davenport, John Dawson, Thomas Dwight, James Elliot, Roger Griswold, James Holland, David Hough, Samuel Hunt, John B. C. Lucas, Matthew Lyon, James Mott, Gideon Olin, John Cotton Smith, William Stedman, Samuel Thatcher, Abram Trigg, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, and Joseph Winston.

Nays—Willis Alston, junior, Simeon Baldwin, David Bard, George Michael Bedinger, Robert Brown, Joseph Bryan, William Butler, John Campbell, Levi Casey, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dennis, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, Andrew Gregg, Thos. Griffin, Samuel Hammond, Wade Hampton, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Helms, William Hoge, Benjamin Huger, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, junior, Henry W. Livingston, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Beriah Palmer, John Patterson, Oliver Phelps, Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Joshua Sands, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of New York, Henry Southard, Richard Stanford, Joseph Stanton, James Stephenson, John Stewart, Samuel Tenney, David Thomas, Philip R. Thompson, George Tibbits, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Richard Winn, and Thomas Wynns.

Ordered, That the said bill, with the amendments agreed to, be engrossed, and read the third time on Monday next.

JUDGE PICKERING.

The proceedings of the Senate, communicated yesterday by their Secretary, relative to the impeachment of John Pickering, Judge of the District Court of the United States for the district of New Hampshire, were read, and are as follow:

"In Senate of the United States.

"*High Court of Impeachments, January* 12, 1804.

"The United States vs. John Pickering.

"Mr. Tracy, from the committee appointed to examine precedents, and to prepare the forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors, reports, in part, as follows:

"*Resolved*, That a summons issue, directed to the said John Pickering, in the form following, viz:

"*United States of America*, ss.

"The Senate of the United States of America, in their capacity of a Court of Impeachments to John Pickering, Judge of the District Court for the district of New Hampshire, greeting: Whereas the House of Representatives of the United States of America did, on the fourth day of January, exhibit to the Senate, then sitting as a Court of Impeachments, articles of impeachment against you, the said John Pickering, charging you with high crimes and misdemeanors therein specially set forth in the words following, viz: [Here insert the articles.]

"And did demand that you, the said John Pickering, should be put to answer the accusations of high crimes and misdemeanors as set forth in said articles; and that such proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and justice. You, the said John Pickering, are, therefore, hereby summoned to be and appear before the Senate of the United States of America, in their capacity of a

Court of Impeachments, at their Chamber, in the City of Washington, on the second day of March next, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments, as the Senate of the United States, acting in their said capacity of a Court of Impeachments, shall make in the premises, according to the Constitution and laws of the said United States. Hereof you are not to fail.

"*Witness*, Aaron Burr, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this twelfth day of January, in the year of our Lord one thousand eight hundred and four, and of the Independence of the United States the twenty-eighth.

"Which summons shall be signed by the Secretary of the Senate, and sealed with their seal; and served by James Mathers, Sergeant-at-Arms to the Senate, who shall serve the same pursuant to the directions given in the next following resolution:

"*Resolved*, That a precept shall be endorsed on said writ of summons, in the form following, viz:

"*United States of America*, ss.

"The Senate of the United States, in their capacity of a Court of Impeachments, to James Mathers, Sergeant-at-Arms to the Senate, greeting: You are hereby commanded to deliver to, and leave with, John Pickering, Esquire, District Judge of the district of New Hampshire, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or, in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept at his usual place of residence; and in which ever way you perform the service, let it be done at least thirty days before the appearance day mentioned in the said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day therein mentioned in said writ of summons.

"*Witness*, Aaron Burr, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this twelfth day of January, in the year of our Lord one thousand eight hundred and four, and of the Independence of the United States the twenty-eighth.

"Which precept shall be signed by the Secretary of the Senate, and sealed with their seal.

"*Resolved*, That the Secretary of the Senate be, and he is hereby directed to pay the necessary expenses arising upon the process aforesaid, after the same shall be allowed by the President of the Senate for the time being, out of the fund appropriated to defray the contingent expenses of the two Houses of Congress; and the Secretary of the Senate is hereby authorized and directed to advance out of the said fund to said James Mathers, for his travelling expenses, the sum of two hundred dollars, to be by said James Mathers accounted for in a final settlement for his services.

"*Resolved*, That the Secretary of the Senate do acquaint the House of Representatives of the foregoing resolutions, and deliver to them a copy of the same.

"And the report was adopted.

"Attest: SAM. A. OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

A message from the Senate communicated to the House certain farther proceedings of the Senate relative to the impeachment of John Pickering, Judge of the District Court of the United States, for the district of New Hampshire.

The said proceedings of the Senate were read, and are as follow:

"In Senate of the United States.

"*High Court of Impeachments, January* 12, 1804.

"The United States vs. John Pickering.

"Mr. Tracy, from the committee appointed to examine precedents, and to prepare forms necessary in the trial of John Pickering, impeached by the House of Representatives of high crimes and misdemeanors, report, in part, as follows:

"*Resolved*, That, whenever application shall be made to the Secretary of the Senate for a subpœna or subpœnas for witnesses, by the House of Representatives, either by their managers of the impeachment, or in any other proper way, or by the party impeached, or his counsel, acknowledged as such by the Senate sitting as a Court of Impeachments, he shall issue to such applicant a subpœna or subpœnas in the following form, viz:

"To [here name the witnesses and residence] Greeting:

"You and each of you are hereby commanded, laying aside all excuses, to appear before the Senate of the United States, in their capacity of a Court of Impeachments, on the —— day of ——, at the Senate Chamber in the City of Washington, then and there to testify your knowledge in the cause which is before said Court of Impeachments for trial, in which the House of Representatives have impeached John Pickering, Judge of the District Court for the district of New Hampshire, of high crimes and misdemeanors. Fail not.

"*Witness*, Aaron Burr, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord one thousand eight hundred and four, and of the Independence of the United States the twenty-eighth, which shall be signed by the Secretary of the Senate, and sealed by their seal.

"Which subpœna shall be directed, in every case to the marshal of the districts where such witnesses respectively reside, to serve and return.

"*Resolved*, That the Secretary of the Senate do issue twelve subpœnas for witnesses in the above form, for the use of the said Pickering, with blanks therein for such witnesses as he, the said Pickering, may think proper to summon, which subpœnas shall be delivered by the Sergeant-at-Arms to him, at the time he shall serve the summons aforesaid on the said Pickering.

"Attest: SAM. A. OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

Monday, January 16.

A Message was received from the President of the United States, transmitting the proceedings of the Commissioners appointed to receive possession of Louisiana.

The Message, and the documents transmitted therewith, were read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States

by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes." with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the said bill: Whereupon, the said amendments, together with the bill, were referred to the Committee of Ways and Means.

An engrossed bill to enable the President of the United States to make restitution to the owners of the Danish brigantine called the Henrick, was read the third time, and passed.

The House, in pursuance of a resolution agreed to on the eleventh instant, proceeded to the hearing of Alexander Moultrie, agent of the South Carolina Yazoo Company, at the bar of the House; and thereupon, the said agent being fully heard, withdrew from the bar.

On a motion made and seconded,

"That the order of the day for the House to hear William Cowan, agent of the Virginia Yazoo Company, in person, or by counsel, at the bar of the House, on this day, be postponed until Thursday next:"

The question was taken thereupon, and resolved in the affirmative.

On motion, it was

Resolved, That the Speaker of this House be requested to transmit to the Secretary for the Department of State of the United States, the letter from Edward Tiffin, Governor of the State of Ohio, enclosing a certified copy of an act of the Legislature thereof, declaring the assent of the said Legislature to an amendment proposed by Congress, in lieu of the third paragraph of the first section of the second article of the Constitution of the United States, which were received, read, and ordered to lie on the table, on the thirteenth instant.

DIRECT TAX.

An engrossed bill further to amend the act, entitled "An act to lay and collect a direct tax within the United States," was read the third time; and, on a motion made and seconded, amended by unanimous consent, at the Clerk's table. And on the question that the said bill, as amended, do pass, it was resolved in the affirmative—yeas 100, nays 18, as follows:

Yeas—Willis Alston, junior, Isaac Anderson, Simeon Baldwin, David Bard, George Michael Bedinger, Adam Boyd, Robert Brown, Joseph Brown, Joseph Bryan, William Butler, John Campbell, Levi Casey, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Thomas Dwight, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Eustis, Wm. Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, G. Griswold, R. Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hastings, J. Heister, Wm. Helms, William Hoge, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, Oliver Phelps, Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Joshua Sands, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Cotton Smith, John Smith of New York, John Smith of Virginia, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, David Thomas, Philip R. Thompson, George Tibbits, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Nathaniel Alexander, Silas Betton, William Blackledge, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, William Dickson, James Elliot, Edwin Gray, James Holland, David Hough, John B. C. Lucas, James Mott, Gideon Olin, Henry Southard, Peleg Wadsworth, and Matthew Walton.

Tuesday, January 17.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," with an amendment, to which they desire the concurrence of this House.

STATE BALANCES.

The House resolved itself into a Committee of the Whole, on the motion of Mr. Rodney, to extinguish the State balances.

Mr. Rodney.—I hope the Committee will agree to the resolution as modified, and to the extinguishment of the balances reported against the several States. It is true, as has been remarked, when the subject was before the House sometime since, that it has been repeatedly under discussion, and that by this time it is probably perfectly understood and familiar to every member. It is true that it has heretofore undergone an investigation, more able, perhaps, than I am able to give it; I believe, however, every time it has been discussed, its friends have increased in number. I flatter myself, therefore, there can be no objection to inquiry into its merits at this period, because I believe that those who have heretofore voted one way, have sufficient magnanimity, if it shall be made clearly to appear that these balances ought to be extinguished, to think for themselves, without regard to any previous opinions they may have imbibed. It is honorable to any person to alter his opinion whenever he is convinced of his error. Besides, there are a great number of new members in this House who will not be disposed to pin their faith on the sleeves of their predecessors. It is well known the State I have the honor to represent is more affected by the heavy balance against her hanging over her head, than any State in the Union. It will be recollected, agreeably to the report of the Commissioners who settled the accounts between the United States and the respective States, that $612,000 were reported to be due by her; this with interest from the year 1793, amounts to about $1,000,000. This is a very serious subject to the State of Delaware; one which she severely feels; which depreciates the price of her land and paralyzes the industry of her citizens. I beg leave to say it is not my object to touch the settlement of the Commissioners, so far as it regards the creditor States; like the ark of the covenant, I deem it too sacred to be touched by impure hands. I am likewise far from imputing to them any improper or unjust motives whatever. Whilst I subscribe to this doctrine, and that the creditor States receive the balances reported in their favor, permit me to take a retrospective view of the business, to show, so far as can be proved from the nature of the case, that there may have been, nay, must have been, some important mistake in the settlement, the Commissioners having no standard to resort to, by which to determine with mathematical or arithmetical certainty what was due by the States. If the Committee shall be of opinion that some mistake may have occurred, when they consider that so far as relates to the claims of the creditor States, they have been provided for, I trust they will view with indulgence the claims now made by the debtor States.

When in consequence of the acts of a flagitious Ministry, who attempted to forge chains for our free country, America rose as one man to assert her rights and destroy the tyranny of that Government which wished to enslave her, she was understood as one nation engaged in a common cause; certain articles of Union were proposed, one of which stipulated that the proportion in which each State should contribute to the general defence, should be according to the value of lands in the respective States. It will be recollected that the Articles of Confederation were not agreed to until the war had nearly terminated, and that this ratio was not uniformly acted upon by Congress as the basis on which requisitions were made. It was not relied on in all cases and on all occasions; if it had been agreed upon, Congress would have still been at a loss how to proceed. Every apportionment must therefore have necessarily been arbitrary. In this embarrassing situation, with a view to relieve themselves from the difficulties which surrounded them, Congress, in the month of April, in the year 1783, recommended to the several States the adoption of that rule of apportionment which is to be found in the Federal Constitution. This rule, however, was not adopted by the States, until it was incorporated in that instrument. I mention these facts to show that there was no permanent, universal, and unerring foundation on which the ratio of taxation rested. If each member of the Board of Commissioners, had possessed the fiscal talents and financial knowledge of the present Secretary of the Treasury, and instead of the comparatively short time they were occupied in the settlement, had consumed a series of years, it is scarcely within the confines of possibility, and much less of probability, that they should have attained in every case substantial justice. It will be recollected what was the nature and extent of the accounts which they had to adjust. *Rudis indigesta que moles.* They were not accounts kept with the regularity of those of a merchant's counting-house, they were not confined to the transactions of a single voyage, nor to the business of one company, but comprehended the complicated transactions of independent States, the multiplied and intricate accounts of entire sovereignties, and those too, not in time of peace, but during the stormy period of a Revolution, in which we were contending against one of the most powerful nations in Europe for our liberties and independence. I believe them to have done the best they could, and to have attempted faithfully to bring about a settlement so important to be effected, and which Congress, as early as 1787, attempted to make. Congress in that year passed a resolution by which the States were districted, and Commissioners appointed to go through the several States to receive accounts; but all those accounts were warranted by acts of Congress themselves; at the same time they constituted a Board to audit accounts for particular defence, and such as were not authorized by the resolutions of Congress, considering what a State did for herself she did for the Union.

Thus the business rested when the Federal Constitution was brought about; that Constitution the State of Delaware had the honor first to adopt, and was, I believe, the only State whose Legislature adopted it unanimously. When Congress met under the Constitution, the general principle on which the settlement of the accounts of the several States should take place was not much disputed. No man pretended to say, when South Carolina was overrun with internal foes and subject to civil war, the United States were not benefitted in proportion to the efforts she made to crush those enemies; everything she did was for the general good, and every man acquiesced in the justness of the principle, that she should bring forward her accounts for particular as well as general defence, and it was seen that the United States would fall in debt from this circumstance to every State in the Union: every State had to contend with the external enemy, or with the internal foe in the shape of insurrections.

It may be proper at this place, to advert to the report of the Secretary of the Treasury, which laid the foundation for the assumption of the State debts. I am not about to inquire into the policy of the measure, or whether it was best to be effected in this way, in that, or the other; I take it as I find it; when examined, it will be found that the then Secretary thought the ratio or rule of apportionment adopted by the Commissioners under the act of Congress, passed in the year 1790, would not be the correct one, as will appear from the report and suppositious statement made by him of the relative situation of the different States, as debtor, and creditor. Delaware, so far from being considered at that time as a debtor State, was contemplated in the light of a creditor State, and in proportion to her ability

more so than any in the Union. I will read a passage or two from the report, and advert to the statement. The Secretary, after concluding that a discrimination ought not to be made between original holders and subsequent purchasers, proceeds to examine "whether a difference ought to be permitted, to remain between them and another description of public creditors—those of the States individually.

"The Secretary, after mature reflection on this point, entertains a full conviction that an assumption of the debts of the particular States by the Union, and a like provision for them as for those of the Union, will be a measure of sound policy and substantial justice.

"It would, in the opinion of the Secretary, contribute in an eminent degree to an orderly, stable, and satisfactory arrangement of the national finances.

"Admitting, as ought to be the case, that a provision must be made in some way or other, for the entire debt, it will follow that no greater revenues will be required, whether that provision be made wholly by the United States, or partly by them, and partly by the States separately.

"There is an objection, however, to an assumption of the State debts, which deserves particular notice. It may be supposed that it would increase the difficulty of an equitable settlement between them and the United States.

"The principles of that settlement, whenever they shall be discussed, will require all the moderation and wisdom of the Government. In the opinion of the Secretary, that discussion, till further lights are obtained, would be premature.

"All, therefore, which he would now think advisable on the point in question, would be, that the amount of the debts assumed and provided for, should be charged to the respective States, to abide an eventual arrangement. This the United States, as assignees to the creditors, should have an indisputable right to do.

"But as it might be a satisfaction to the House to have before them some plan for the liquidation of accounts between the Union and its members, which, including the assumption of the State debts, would consist with equity, the Secretary will submit in this place such thoughts on the subject as have occurred to his own mind, or been suggested to him, most compatible, in his judgment, with the end proposed.

"Let each State be charged with all the money advanced to it out of the Treasury of the United States, liquidated according to the specie value at the time of such advance, with interest at six per cent.

"Let it also be charged with the amount, in specie value, of all its securities which shall be assumed, with the interest upon them, to the time when interest shall become payable by the United States.

"Let it be credited for all moneys paid and articles furnished to the United States, and for all other expenditures during the war, either towards general or particular defence, whether authorized or unauthorized by the United States; the whole liquidated to specie value, and bearing an interest of six per cent. from the several times at which the several payments, advances, and expenditures accrued.

"And let all sums of Continental money now in the treasuries of the respective States, which shall be paid into the Treasury of the United States, be credited at specie value.

"Upon a statement of the accounts according to these principles, there can be little doubt that balances would appear in favor of all the States, against the United States.

"To equalise the contributions of the States, let each be then charged with its proportion of the aggregate of those balances, according to some equitable ratio, to be devised for that purpose.

"If the contributions should be found disproportionate, the result of this adjustment would be, that some States would be creditors, some debtors to the Union.

"This plan seems to be susceptible of no objection, which does not belong to every other, that proceeds on the idea of a final adjustment of accounts. The difficulty of settling a ratio is common to all. This must, probably, either be sought for in the proportions of the requisitions, during the war, or in the decision of the Commisssioners, appointed with plenary power. The rule prescribed in the Constitution, with regard to representation and direct taxes, would evidently not be applicable to the situation of parties, during the period in question."

He then makes a supposititious statement, by which it appears that Delaware was considered as having a demand against the United States of about $10,000. [Here Mr. RODNEY particularly adverted to the statement below.]

It may abundantly appear to the minds of gentlemen that in this business it was impossible, from the nature of the case, for the Commissioners to ascertain with mathematical certainty the balances due to or from any one State to the United States. If considered in this point of view, I hope gentlemen will be not over anxious in pressing the debtor States for every shilling alleged to be due by them, when the creditor States have had their demands fully satisfied.

When we advert to the particular case of the State I have the honor of representing, we shall find abundant reason why her balance should be extinguished. The State of Delaware does not stand in need of any eulogium from me, and, if she did, I am not accustomed to the language of panegyric; but I may say, that in proportion to her resources, her efforts in the Revolutionary cause were second to no State in the Union. When we find in the report that the State of Delaware was not heard before the Commissioners, though she requested a hearing, gentlemen may account for the extraordinary result of a settlement so far as related to her. She was told, it was true, she might have a hearing, but she was informed at the same time that the case on which she desired to be heard was already decided; this will appear from an official document laid before the Senate of that State.

"The late Commissioner for stating and supporting the claims of this State against the United States, in obedience to the order of the honorable the General Assembly of the 17th instant, makes the following report:

"Having in his report to the General Assembly at October sessions, 1791, exhibited a general statement, he now transmits the particular accounts, as far as they are in his possession, from whence the said statement was drawn.

"The accounts exhibited to the district Commissioners, marked No. 1, in general statement, are contained in a book lodged in the office of the Board of Commissioners, which book ought now to be returned to this State. These included all charges for general defence, depreciating certificates, recruiting accounts, supplies to the army, and every other expense which could be supported against the Union under the ordinance of May 7, 1787.

"The accounts in the second line, marked No. 2, are for general and particular defence; containing expenditures by the State, not warranted by resolutions of Congress, and therefore inadmissible under the ordinance of May 7, 1787. This is accompanied by a sheet marked No. 2, and an account of particulars answering to No. 19, in the said sheet.

"The accounts in the third line, marked No. 3, being for payments on warrants and requisitions of Congress, was drawn from the books of the State, in the Auditor's office, and needs no explanation.

"The late Commissioner reports what he mentioned in his former report, that he never had an opportunity given him to advocate the claims of Delaware, after their first delivery. He applied to the Commissioners several times, both personally and by letter, to know when he should attend for that purpose. The answer was, that notice should be given him; and the notice was, that his further attendance was unnecessary, as the Commissioners had already determined on the accounts of Delaware.

"All which is respectfully submitted.

"ELEAZER M'COMB.

"Wilmington, January 25, 1794.

"Also were delivered the general account, with the other papers and documents referred to in the aforesaid report, which said general account stood as follows:

A General Statement of Charges exhibited against the Union by the State of Delaware.

Description of accounts.	Old emissions.	Specie.
1. Amount of accounts to the District Commissioners - - -	$131,142 14	$206,547 34
2. Amount of acc'nts exhibited for general and particular defence -	68,960 38	45,402 92
3. Amount of payments on warrants and requisitions of Congress -	3,060,941 66	128,278 64
Total - - -	$3,261,044 19	$380,228 90

Note.—Fractions of cents omitted.

I do not mean to impute improper motives to the Commissioners, but merely to state a fact proved by the highest authority. The simple, plain, and stubborn fact is, that in this settlement Delaware was not heard; and I call on gentlemen to bring the case home to their own business and bosoms. Suppose they were individually condemned to pay sums to an enormous extent without being heard, would they consider it fair or just? It is a maxim of eternal and immutable justice to hear both sides before a decision is made, and I have heard it observed by a celebrated character, that he was an unrighteous judge who decided without hearing both parties, even where

SCHEDULE A.

Supposititious Statement of Accounts between the United States and individual States.

STATES.	Ratio.	Balances due to the States respectively.	Proportion of each State of the aggregate of those balances, according to the ratio.	Balances against certain States.	Balances in favor of cert'n States.	Proportion of each State, in the aggregate of the balances against certain States.	Ultimate balances in favor of certain States, upon the principle of an extinguishm't of the balances owing by the debtor States, and a proportional allowance to the other States, adjusted according to the ratio given, and to be paid by the United States.
New Hampshire - - -	3	$57,500	$60,000	$2,500	–	$3,000	$500
Massachusetts - - - -	8	180,000	160,000	–	$20,000	8,000	28,000
Rhode Island - - - -	1	20,000	20,000	–	–	1,000	1,000
Connecticut - - - -	5	110,000	100,000	–	10,000	5,000	15,000
New York - - - - -	6	135,000	120,000	–	15,000	6,000	21,000
New Jersey - - - -	4	72,500	80,000	7,500	–	4,000	
Pennsylvania - - - -	8	170,000	160,000	–	10,000	8,000	18,000
Delaware - - - -	1	30,000	20,000	–	10,000	1,000	11,000
Maryland - - - -	6	110,000	120,000	10,000	–	6,000	
Virginia - - - -	10	187,500	200,000	12,500	–	10,000	
North Carolina - - - -	5	90,000	100,000	10,000	–	5,000	
South Carolina - - - -	5	87,500	100,000	12,500	–	5,000	
Georgia - - - -	3	50,000	60,000	10,000	–	3,000	
Total - - - - -	65	$1,300,000	$1,300,000	$65,000	$65,000	$65,000	$94,500

he decided correctly; because he acted against the first maxim of justice, and because his decision, though right, was the effect of accident. If this statement be correct, will not gentlemen advert to the fact and suffer it to make a proper impression on their minds? It appears, from the account of Mr. McComb, that $3,261,044 was furnished by Delaware in paper money, and $380,228 in specie. Much of the first description of money was paid before it had undergone any considerable depreciation by the scale established in that State. Owing to fortuitous circumstances the paper medium was better, and the State had to pay more, of consequence, than any other State in the Union. By the laws of Delaware it will also appear that Congress no sooner made a requisition than the Legislature of that State passed an act to comply with it—no sooner was the call made than the people were compelled to pay their taxes to meet it. Every requisition Congress made till the year 1787, was promptly complied with, and on some occasions we raised more than *sixty thousand dollars a year* to enable us to comply with the requisitions of the United States; and it will be found from the report of the Auditor of the State, (Thomas Montgomery,) a man every way qualified for that situation, for the year 1794, that, prior to the year 1784, there was not a single tax levied that was not paid, nor a single county behindhand a single dollar. Afterwards there was a small balance remaining unpaid by the county of Sussex, a smaller from the county of Kent, and a still smaller perhaps from the county of Newcastle. I mention these circumstances to show that more must have been paid by that State than is allowed in the settlement, for all this money was certainly levied and collected from the pockets of the people of that State; and to prove that the account rendered by our Commissioner (Mr. McComb) against the United States, was accurate and just. An account supported by such plain, unequivocal testimony as the solemn acts of our Legislature, and the report of that officer to whom the State confided the superintendence of her finances, for sums of such magnitude, in specie as well as in paper currency, ought to make a favorable impression on the members of this Committee. It proves most manifestly that our State contributed the sum of —— in Continental money and —— in gold or silver coin towards the exigencies of the war, besides the services of her soldiers, than whom none were braver, especially those who composed her intrepid regiment. One charge of the United States against the several States referred to a certain species of certificates, known by the name of *depreciation certificates*, given to the officers and soldiers in consequence of the depreciation of their pay. At this moment there lie in her chest sixty or eighty thousand dollars of these certificates, and, if she had been disposed to act unfairly, she might at the proper time have loaned them, and that amount might have gone into the coffers of the State, but she would not descend to this act, she was disposed to do as she would be done by, and I trust this will be considered as a meritorious act on her part.

In some laws found in our volume, particularly in a law of 1787, it will be found that the State of Delaware was compelled to pay requisitions whose proportion was greater than they ought to have been according to any known federal rule. Still, even when she considered the imposition made upon her more than it ought to be, when her representatives in the Legislature in the act of 1787 declared, "that her proportion was greater than it ought to be on any known or acknowledged principle of federal taxation," she cheerfully acquiesced and paid the money required from her. It has been, I believe, on a former occasion when this subject was before the House, ably and eloquently observed by my friend from Virginia (Mr. J. Randolph) that if the State of Delaware had been asleep during the whole Revolutionary conflict, and had not contributed a cent or soldier to the common cause, the balance charged against her could not amount to the enormous sum of one million of dollars. When, on the contrary, we take into consideration the great sums which she actually paid, and the gallant soldiers furnished in her regiment and from her militia, ought not gentlemen to listen to the reasons now urged, and ought they not to have great weight on the minds of liberal and candid men? As I said before, I do not mean to impeach the original settlement; but if such an inexplicable result has occurred in the case of Delaware, what may not have occurred in the settlement of the accounts of the other States? With their cases I am unacquainted. I will not, therefore, trespass on the patience of the Committee further on this score, but considering the subject in this favorable point of right as to Delaware, I will advance to the strongest ground which presents itself.

How are the United States by any competent authority to obtain payment of these balances? Are they to put any State to the ban of the empire? Are they to make war upon any State by means of an army on land or a navy at sea? This is a position for which, I presume, no gentleman will contend. Are they to fund the balances due in the proportion of the creditor States? If it is the wish of gentlemen to add to our debt millions, I know not how many, the object may, perhaps, be accomplished in this way; but such a measure, I presume will not be adopted. Will gentlemen then preserve this bone of contention with the States? For a bone it literally is; it contains not an atom of nutrition to the United States. Will they preserve it when it will not bring one shilling into their pockets? will they keep alive this coal which may hereafter be fanned into a flame, and which may, at some future day, become a subject of compromise, not to say bargain, and may be made an instrument of much greater injury even to the creditor States than the nominal balances can possibly be of benefit to them? Remember that two of the principal debtor States are, from their wealth and numbers, among the most respectable in the Union. If you will keep these balances suspended over them, what may not be apprehended? If the subject be considered in this point of view, it will appear that it is for

the interest of the whole United States that these balances should be done away. It is for the interest of the creditor States that no subject of dispute may remain—that the hatchet may be buried. Their balances are already funded; and if the debtor balances be extinguished, these will be considered as sacred. And need I say that it is for the interest of the debtor States? They, year after year, have called for the extinguishment.

With regard to the State of Delaware, the continuance of these balances is of the most serious injury to her. I know an honorable Senator from Maryland, who owns lands on both sides of the line which separates Delaware from Maryland, who cannot get as much by one-third for his land in Delaware, as for that within the borders of Maryland, although the land in Maryland is part of the same tract, and of precisely the same quality as that in Delaware. Is not this of some importance to the State of Delaware? is it not enough to distress, and essentially to check, the progress of her citizens in every laudable pursuit? must it not necessarily tend essentially to retard the improvement of her land, to depress trade and to paralyze industry, and all this without one scintilla of use to the United States or to any State in the Union? I hope the Committee, considering the subject in this view, will agree to the resolution, impressed with the opinion that it would be equally for the welfare of the United States, for those States which are debtor, and for those which are creditor, to adopt it.

Mr. Elmer.—I agree in opinion with the gentleman from Delaware, who introduced the resolution on your table, that it involves in it an important and interesting question. And I am, with him, fully persuaded that every member of this Committee will weigh the consequence of it with that seriousness and candor which it demands, and decide upon it, after the most mature deliberation, according to his sense of justice and propriety, notwithstanding any prejudices or preconceived opinions which he may have formed. But I can by no means agree in sentiment with him, that some mistake must have taken place in the settlement of the accounts between the United States and the individual States, nor that any such mistake ought to be presumed of so serious a nature as to induce the Supreme Legislature of the land to extinguish the balances found due from the debtor States, by the strong arm of sovereign authority.

Upon what foundation, sir, does this resolution rest? What are the facts or reasons which have or can be adduced to prove the settlement erroneous in point of principle or equity, or to justify Congress to abolish an important part of it? The gentleman alleges, that in apportioning the expenses of the Revolution, which proved so glorious, and happily relieved us from the tyranny of a foreign Power, among the several States, the Commissioners deviated from the rule prescribed by the Articles of Confederation, upon which the requisitions of the old Congress were founded, in a point which materially affected some of the debtor States. But it should be observed, that this line of conduct was authorized by the laws of the United States, in conformity with the Constitution, and upon the most correct principles that could be established. No other method could have produced a settlement at all. And, further, it was well calculated to insure an equitable settlement—at least, a more equitable one than could be obtained in any other way. Several of the States which were found debtor were then increasing rapidly in wealth and population, and are still increasing, far beyond the creditor States, or any former calculations. Can it then be pretended, with the least color of propriety, that, under these circumstances, it was either unfair or unequitable to apportion the expenses of the Revolution according to the enumeration of the inhabitants of each State? In my judgment, the measure was correct and legitimate.

In order to show that the State of Delaware could not be justly charged with all the balance found against her, the gentleman has produced a supposititious statement, made by the Secretary of the Treasury in his report to Congress, on the subject of funding the State debts. This statement however was, as far as appears, wholly supposititious, not bottomed on a single data, and very probably introduced into the report with no other view than to induce Congress to pursue those measures with relation to the public debt which he was then intent upon. It cannot with any shadow of reason be brought in competition, or in the least degree to invalidate a settlement made by men specially appointed for that purpose, acting under the solemnity of an oath, and who spent much time and pains to make a correct and equitable adjustment of all the accounts.

The honorable gentleman has further urged, as an objection to the settlement, that the agent for the State of Delaware complained, at the time, of the conduct of the Commissioners in refusing to hear him in support of the claims which he exhibited. But this, like most other objections, will vanish in empty air when fairly examined. I always understood that none of the State agents were heard any further than to explain or elucidate their accounts. The agent for New Jersey, I know, was as fully debarred of a hearing before the Commissioners as the agent of Delaware. It is perfectly clear to me, that it would have been highly improper to have heard the agents; and I very much doubt whether all the eloquence of the honorable gentleman, aided by all the learned councils of the nation, would have altered the opinion of the Commissioners, or produced a different result. Besides, it has not been shown that any of his accounts were rejected; and, if not, it would have been perfectly idle to have spent time in advocating them. No partialities for or against particular States have been made to appear against the Commissioners, and none can, with any propriety, be imputed to them. The settlement, therefore, has the appearance of being as correct as the nature of the business and other circumstances rendered practicable, and ought to be maintained by the nation.

Mr. Chairman, could I be impressed with the propriety and justice of the measure, and could

I be persuaded that it would tend to strengthen the bands of the Union and promote the peace and harmony of the States, I would, with as much cordiality as any gentleman of the Committee, give my assent to the resolution on your table. But, sir, there are several objections which operate forcibly on my mind against it. I fear it would tend to destroy, or at least greatly to weaken, the principle of distributive justice, which is the band of our union, and which we are most solemnly bound to maintain and support with scrupulous exactness. The public debt, as has been well observed, arose out of the exigencies of the Revolution—it is the price of our glorious emancipation—and the balances resulted from the equalization of that debt among the parties benefitted.

When pressing emergencies compelled Congress to call upon any State to furnish supplies or troops beyond her estimated quota, she always accompanied the request with assurances that she would be remunerated upon the final adjustment of the accounts. In consequence of this, great and efficient aid was frequently afforded to the common cause, which could not otherwise have been expected or obtained. When peace arrived, Congress did not lose sight of her promises, but, in 1787, constituted a Board of Commissioners for the apportionment and liquidation of all the debts incurred during the war, and clothed them with ample powers to distribute the most complete justice that was attainable; and the States were called upon to exhibit their respective accounts. After the adoption of the present Constitution, a law was passed confirming the ordinance of the old Congress, and prescribing the mode that was to be observed in the liquidation of the accounts. This solemn transaction, so long in maturing, could never have been intended as a mere mockery of the parties concerned. It was predicated upon Federal principles, and was designed to obtain substantial justice. Thus instituted and appointed, the Commissioners proceeded, with great care and laborious investigation, to the liquidation of the accounts; and, after great length of time, struck the balances with as much justice as could possibly be attained. Some inequality of a partial nature might probably have taken place, yet none of a very serious nature can fairly be supposed. And shall we now, when the documents are destroyed, or placed without our reach, and without any evidence of incapacity or corruption in the Commissioners, proceed to disannul their proceedings by extinguishing the balances which they reported? I trust not. Justice and propriety, in my mind, forbid the measure.

Further, Mr. Chairman, the resolution on your table is objectionable inasmuch as it would exhibit to the nation and to the world an instance of inconstancy in our Councils, and thereby weaken the confidence of individuals and of the respective States in the wisdom and stability of the General Government. It has on its front an anti-federal aspect, and in every point of view exhibits an incorrect principle of legislation, and extreme impropriety.

The gentleman from Delaware has endeavored in a variety of ways, and with great ingenuity, to impress the Committee with a belief that the State which he represents was relatively hard dealt by in the settlement, and, therefore, in reason and justice, she is not bound to pay the balance due from her. But all his labor on this head will have but little weight. We shall probably hear the same tale from the members of the creditor as well as the debtor States, and the dispute on this subject would be futile and endless. I believe I could make some gentlemen of this Committee believe that New Jersey suffered as much injustice, if not more, in the liquidation of the accounts than Delaware. In fact, sir, there are very strong reasons for suspecting that a State which was for almost the whole period of the war the theatre of hostile manœuvres, and frequently occupied by large contending armies, must have had accounts to a very large amount for military services, and supplies for our army in distressing times, in such an irregular and unsupported form as to be excluded upon the principles adopted for their adjustment. And whatever credit may be due to other States, and much merit is attached to all of them, I must contend that in zeal, activity, and energy, New Jersey was second to none. But I shall not dwell on this topic. Every observation of this kind is totally irrelative to the present subject. I rely upon the correctness of the settlement, which, I repeat, ought to be presumed, as it was made with great deliberation, under the solemn authority of the General Government, and in part at least ratified and confirmed by subsequent acts.

After occupying ultimately a variety of less eligible stations, the gentleman took his stand upon what he styles strong ground, beyond the reach of every assault. He asks how the debtor States are to be compelled to pay? Will the United States employ physical force, and lay them under contributions at the point of the bayonet, with fleets and armies? No, this is not contemplated by any gentleman. We should all start at the proposition. But the gentleman himself has suggested a method of obtaining these balances, which, although I do not know that it is contemplated by any person, is certainly by no means repugnant to the principles of our Government; and that is, to fund a sum equal to the balance due to the debtor in favor of the creditor States, in a ratio proportionate to their respective credits. We, however, do not call upon them for payment in any way. We are content to let the matter rest in the present situation of business—and why should not the debtor be content? But it is asked why keep up this bone of contention, which does not contain an atom of nourishment? Why keep alive a spark which may be blown up into a desolating flame? But may we not ask, in our turn, from whence does this contention proceed; and what reason can be given for relinquishing a claim so well sanctioned? It would illy comport with that magnanimity and heroic patriotism which the whole Union has exhibited to the view of an admiring world, for the debtor States to refuse payment on a proper occasion. I cannot entertain the idea. The State of New York has

already expended a considerable sum on the terms held out to her by law, and she has ample resources for doing more, honorable to herself, and advantageous to the public.

If the whole sum should prove hard and oppressive upon the some of the debtor States, let it be lightened, and the mode of payment made easy and convenient to them. I am far from wishing that any State should ever pay anything that would prove burdensome and oppressive upon her citizens. But stability and consistency forbid us to stretch forth the arm of sovereignty and with one dash blot out a debt ascertained with so much care and founded on principles so correct and truly federal. The measure might be attended with evil consequences which the most sagacious do not apprehend, and which the wisest may not hereafter be able to prevent.

Mr. Chairman, this subject has been so often discussed, and is so well understood by the nation and by the members of the House, that it is not probable any arguments which can be adduced will change the sentiments of any one. I shall, therefore, conclude with expressing my firm persuasion that the resolution on your table ought not, and my confidence is that it will not pass.

Mr. Thatcher was decidedly opposed to the extinguishment of these balances due from the debtor States; and as the State which he had the honor to represent was deeply interested in this question, he should attempt a reply to what had been advanced in support of this resolution, and should briefly state his reasons for voting in the negative.

These balances, said Mr. T., were found due upon a settlement of the demands of the respective States for services and supplies during our Revolutionary war. Although Congress, no doubt, equalised the burden as much as possible, during the Revolution, it was found, at the close of the war, that the States had contributed to the common defence in very unequal proportions. It was well known that the New England States, in particular, had furnished more than their respective quotas of men and money. From a sense of this inequality, Congress submitted the debts due from and to the several States, to a Board of Commissioners who, for several years, investigated the subject with the most minute and laborious attention. During this time each State had an opportunity to present and to substantiate its claims; and the report of the Commissioners has been repeatedly sanctioned by Congress. Although, as the gentleman from Delaware has said, the State which he represents was not heard before the Commissioners by its special agents, this was the case of all the States.

It is impossible, said Mr. T., as the gentleman from New Jersey has observed, to examine the ground upon which this report was formed. From the loss of documents, the lapse of time, and the vast extent of the subject, this is certainly impracticable. It is not even proposed by the mover of the resolution. The gentleman from Delaware has not arraigned the motives of the Commissioners, but he conceives that, upon a just settlement, the State he represents could not have been found so much in arrears; although he calls upon us to expunge the sums reported against the debtor States, he is willing that those reported to be due to the creditor States should be paid. Sir, said Mr. T., I conceive that the debts and credits must stand upon precisely the same ground. They both resulted from one settlement, and it is impossible to separate them. Upon what ground can we pay the creditor States, if we admit that nothing is due from the debtor? He conceived that expunging these balances, as contemplated by the resolution, upon the ground of a partial or unjust settlement, would most clearly imply that the sums awarded to the creditor States are not due. This, of itself, would render it unjust and impolitic to extinguish the balances due from the debtor States.

Another argument in favor of the resolution is, that the debtor States cannot be compelled to pay these balances. If that be correct, where is the injury to the debtor States which has been exhibited in such lively colors? If the States cannot be compelled to pay these debts, how can they so materially reduce the value of real estates? How can they hang in terror over their heads? It is even said that it is dangerous to suffer these debts to remain. No evils have yet resulted to the United States, said Mr. T., from this source, nor could he perceive that any were to be apprehended. He knew there was in this House a majority of about thirty members, who represented debtor States, besides those from States formed out of debtor States; but he had too firm a reliance upon their sense of justice to suppose, that because gentlemen were the majority, they would vote themselves out of debt. Surely, said Mr. T., when gentlemen reflect that these sums are due for those exertions which achieved the Independence of America, they will acknowledge the justice of the claim. The State of New York (the largest debtor State) has already paid a part of its debt, under a law of Congress authorizing that State to apply the sums expended upon fortifications to the reduction of these balances. Shall we relinquish the claim because some of the States do not acknowledge the debt? The idea is inadmissible.

We are urged, sir, to adopt this resolution, because it is said Delaware can never pay her debt. Even if that be correct, it is no argument for expunging these balances. By adopting the resolution, we extinguish our claim, not only against that State, but against all the others. The conclusion will then be irresistible, that we question the accuracy and the fairness of the settlement, and the final consequence will probably be the extinguishment of the credits also.

This settlement cannot be disturbed upon any ground consistent with policy or good faith. It is the result of a reference voluntarily made by all parties concerned, and they are conclusively bound by the award.

Mr. Thomas remarked, that as this subject had been so often before the public, so much had been said on it on former occasions, and he considered

it so well understood, that he had determined not to have risen or said anything on it at this time, nor would he, had he not deemed it necessary to reply to the gentleman from Massachusetts (Mr. THATCHER.) That gentleman has endeavored to impress the Committee with an opinion, that by extinguishing those balances we shall affect the credits of the creditor States; this said Mr. T. will not be the case; those States have received the whole of the balances reported in their favor, and extinguishing the balances reported against those called debtor, cannot possibly affect the credits of the creditor States; besides, if the credits of those States could have been affected by a measure of this kind, why did not the act of Congress passed in 1799 affect them? By the operations of that act, about one-half of the amount of those balances were extinguished had the States complied with the terms of it; and he would ask the gentleman from Massachusetts, or any other gentleman on that floor, whether these credits, as they are called, were impaired by that act? He presumed no one would say that they were, nor can the measure contemplated in this resolution impair them in the least.

Mr. Chairman, said Mr. T., what possible good can result from a continuation of those claims? All agree that a payment of them cannot be coerced; and it cannot be expected that those States, believing the claims unjust, will pay those balances voluntarily; therefore, will your Treasury ever be a cent the richer by holding these claims over the heads of those States? Will it bring a cent into your Treasury? But, on the contrary, may not much evil result to the interests of this country by keeping up this bone of contention? Will it not have a powerful tendency to irritate the minds and disturb that cordial harmony so necessary to be preserved among the members of this Union? I trust the members of this Committee generally will see the folly of continuing the shadow of a claim over the heads of those States any longer, which can never be of any benefit, but which may be productive of much mischief, and will unite in expunging them from your records.

Mr. STANTON.—Mr. Chairman, the honorable member from Delaware, who introduced the resolution on your table for extinguishing the balances found due to the United States from the debtor States, says the aggregate amount is $3,517,582; the proportion of Delaware is about $600,000.

The honorable member from that State tells us, with his usual pathos, and great zeal, but without producing any proof, that the State he represents is much injured by the settlement made by the Commissioners for settling the accounts of the United States with the individual States, that the citizens of Delaware have suffered a diminution in the value of their land, by having this enormous debt hanging over their heads; at the next moment, the honorable gentleman asserts, that there is no coercion in the General Government to oblige debtor States to pay the balances. If his position be correct, he may dismiss his fears, and so may his constituents, the people of Delaware. Mr. Chairman, I ask where is the policy of this measure; can the Legislature relinquish these balances, and at a single stroke, as with a sponge, wipe them off, without violating the public faith deliberately and solemnly pledged? I hope they will not; respect to the former Government, as well as to ourselves, forbid the idea. But we are told, by the advocates of the resolution, that it never will be paid; if that is a sound doctrine, it goes to prove the inexpediency of passing the resolution. Mr. Chairman, this is turning the tables; whereas it has been the practice for ages, that the creditor call on the debtor, but in this instance the old order of things is reversed, and the debtor duns the creditor: this novel mode would suit my circumstances well, as I am largely in debt; but such a practice must not be indulged; in my opinion it is dangerous to society. Sir, I will refrain from bringing into view a comparison of the exertions of the States in the Revolutionary war, lest a comparison should wound the feelings of gentlemen. I am convinced that they all did their utmost, and the exertions of the State I have the honor to represent were inferior to none in the Union. I can assure the honorable mover of the resolution, that the citizens of Rhode Island have the most reason to complain of the settlement of any State in the Union; the reason is obvious, the law under which the Commissioners acted, was so framed as to exclude one-third of our debt, by a clause in the law, constituting the board, in these words—"Nor shall the claim of any citizen be admitted as a charge against the United States, in the account of any State, unless the same was allowed by such State, before the 24th September 1788." In consequence of this clause in the statute, three hundred thousand dollars, in the accounts of the State of Rhode Island against the United States, for services rendered, and supplies furnished during the Revolutionary war, was included. Two of the Commissioners gave me this information, and very much regretted that it was not in their power to do us equal justice with our sister States; they also remarked that the charges for similar services rendered, were five per cent. on an average lower than charges made by the Southern States. Sir, if it were practical to obtain a revision of the settlement, I would, in behalf of the State of Rhode Island, cheerfully embrace it, under a full persuasion of extricating that State I have the honor of representing from the severe burden of taxation they are now struggling under. Taking it for granted that a reconsideration cannot be effected, I hope the resolution will be rejected. Sir, if it should be asked how it came to pass that our debt was so large, I would answer, in consequence of the British fleet and army taking possession of Newport, and all the valuable land of Narraganset Bay, also Block Island, and remaining three years in the bowels of the State, annihilating our commerce, burning our towns, plundering our inhabitants, dragging them into prisons, and stripping the shores of their stock. Sir, I will not longer trespass on the indulgence of the House, but content myself by giving my hearty negative to the resolution.

Mr. BLACKLEDGE.—Mr. Chairman, I had determined not to trouble the Committee with any remarks upon the subject now under discussion, from a conviction that enough had already been said by the gentleman from Delaware to satisfy every liberal mind of the propriety of adopting the resolution. But, sir, when I hear the gentleman from Massachusetts (Mr. THATCHER) applying epithets to those States that are reported debtors, calculated to stamp them with the character of profligate dishonesty, while others in an indirect way appear to be aiming at the same end, I feel it a duty I owe the State which I have the honor to represent in part, to assign the reasons why she has heretofore refused, and I am convinced will ever continue to refuse paying the balance reported against her. Every gentleman who has as yet spoken against the resolution, has endeavored to impress upon the Committee a belief that the settlement made by the Commissioners was either just, or at least as nearly so as was possible. But, sir, on this subject I must beg leave to differ in opinion with them; and if I can be favored with the attention of the Committee, I trust I shall be able to show clearly that by the operation of some of the principles by which the Commissioners were governed in this settlement, the State of North Carolina was in the first place charged with a much larger proportion of the national debt than she ought to have been, and in the next place, that her charges against the Union, or at least a large portion of them, were improperly valued at a much lower rate than they should have been, and from hence it has happened that she was reported a debtor instead of being made a creditor to a very considerable amount.

The first injury sustained by the State of North Carolina in this settlement, which I shall notice, is the one which arose from changing the ratio by which the several States were bound to each other to bear all the expenses of the war. That the Committee may the more clearly comprehend the force of her exception against this measure, I must beg them to bear in mind that every item in the accounts which were settled by the Commissioners were for advances which had been made by the several States, towards defraying the expenses of the war, previous to the 24th day of September, 1788; while the States were bound by the Articles of Confederation, and each was suffering all the disadvantages, and enjoying all the advantages arising from that instrument; and that the ordinance by which the Board of Commissioners was established for settling these accounts, was passed by the old Congress on the 7th of May, 1787. They will thus see that the whole of the charges originated, and that the Board of Commissioners was established for settling them previous to the adoption of the present Constitution; and from hence I think they will be induced to conclude with me, that Congress had not a right to vary the ratio as they did by their act of the 5th of August, 1790, without first obtaining the consent of the several States to the measure, in the manner pointed out by the Articles of Confederation.

By the eighth article of the Confederation the States stipulate to bear all expenses of war, each in proportion to all its appropriated lands and improvements, but reserve to their respective Legislatures the power of laying and levying the taxes necessary to pay off their quotas; and by the thirteenth article of that instrument, they provide that no alteration shall at any time be made in the Articles of Confederation, or any of them, unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the Legislatures of every State. Yet, sir, after the Commissioners had been appointed, and had actually been nearly or quite two years engaged in the settlement, when it may be presumed that the amount of the charges of each State was pretty nearly known, as well as the effect which a settlement of them according to the principles of the Articles of Confederation would have, Congress proceeded by their act of the fifth of August, 1790, to direct the Commissioners, in apportioning the debt of the Union among the States, to do it according to the number of polls which each should contain, as prescribed by the Constitution. Thus, sir, was the State of North Carolina, as well as some others, whose lands were of but little value compared with those of the commercial and wealthy States, deprived of every advantage which had been secured to them by the Articles of Confederation, without having any equivalent for the injuries they had been subjected to under that instrument; and this too when no one ever pretended that, by the Constitution, Congress possessed a power to alter the ratio. It is not possible to ascertain exactly the amount of the loss which any State sustained by this measure, because the gross amount of the accounts has "from motives of policy" been ever kept concealed. But by turning to the seventh volume of the old journals, in the year 1782, near the close of the war, we shall see what sum each State was required to raise of $2,000,000, apportioned among them under the Confederation; and comparing that with the sums which each had to pay of the $2,000,000 laid and collected, according to the ratio prescribed by the Constitution, we may form a pretty correct opinion of the effect which the measure had upon the different States. And it appears that of the $2,000,000 raised in 1782, under the Confederation, North Carolina (at that time including all the State of Tennessee) had to pay $148,000, and Virginia (at that time including all the State of Kentucky) had to raise $290,000. Whereas of the direct tax of $2,000,000 apportioned among the States, according to the principles of the Constitution, North Carolina and Tennessee had to pay $212,504, Virginia and Kentucky $387,132. From whence it results that North Carolina, in every two millions of the aggregate of all the charges of the several States against the Union, lost by the change of ratio the sum of $67,701, and Virginia $97,132. Then supposing the aggregate of the charges to have been but $24,000,000, and judging by the sum reported against the State of Delaware, and admitting she never paid one cent, it must have been very nearly double that sum. North Carolina

must have lost by the change of ratio, the sum of $774,048, and Virginia $1,165,384. It would be an easy matter to show the effect which this measure had upon every State in the Union; but it would be foreign to my purpose, and I shall therefore decline it, with barely observing, that it is evident a considerable majority of the States were gainers by the measure.

In addition to the injury sustained by the State of North Carolina from the change of ratio, I must beg leave to mention another, which I have understood from the Commissioners who attended to the settlement of her accounts with the Union, she suffered from having her vouchers for currency certificates first reduced to their specie value, and then these as well as her specie certificates scaled at four shillings in the pound. By what authority, or upon what principle of equity or justice, the Commissioners felt themselves justified in doing this, I am at a loss to determine. The only reason assigned for it, as I have understood, was, that this was the rate at which the Legislature of the State had valued them. Now, sir, I admit that this was the sum at which the Legislature had rated her certificates; but it by no means follows as a consequence that the Commissioners, in the settlement of her accounts with the Union, did justice to her in giving her credit for them at the same rate. For, sir, it will be recollected that under the Articles of Confederation each State raised from its citizens, in the way most suitable to themselves, the different sums of money or supplies which Congress might require of them. It is also well known, that the great scarcity of specie rendered it necessary to resort to some expedient to supply the place of it, and that the first attempt was by issuing a paper currency, which depreciated rapidly, and in a short time fell upon the hands of those who held it. The next step was to issue certificates to those who either performed services, or furnished supplies in support of the common cause, purporting that the bearer was entitled to the amount thereof, either in currency or specie, from the State on whose account the service was performed or the supplies furnished. The paper currency which had been issued, having borne at the same periods in different States very different rates of depreciation, it was necessary, in order to do justice, that the Commissioners should be vested with power to scale the currency certificates in the different States, according to the value which the currency had borne in them respectively, and this power by the ordinance of May, 1787, was given them. Such, however, was the scarcity of cash in that State, that by far the greater part of the soldiers as well as others who had received even her specie certificates for services performed, or supplies furnished, had, some from necessity and others from a want of confidence in the Government, parted with them to speculators at about two shillings and six pence in the pound. This being a fact notorious to all, the Legislature of the State determined to do full justice to the speculator who had purchased the certificates at one eighth of their value, without oppressing the soldiers and others who had paid full price for them; and in order to effect their object, they passed certain acts by which they depreciated even their specie certificates to four shillings on the pound. And by way of recompense to the soldiers for the loss they had sustained from the depreciation on their certificates, they made them very liberal donations of the unappropriated lands of the State, giving to the common war soldier six hundred and forty acres. And here, sir, I will beg leave to remark, that these were not what are commonly called Crown lands, but lands which had been granted by the Crown before the Revolution. I make this remark, because I know it is the opinion of some of the Committtee that all the States had a right to any lands which, previous to the Revolution, belonged to the Crown, while all admit that lands which had been previously granted by the Crown belonged properly to the State within whose limits it lay. Now, sir, if the Commissioners in settling the accounts of this State with the Union, did not think she ought to be credited at a higher price for her certificates than she, for the reasons just mentioned, had thought proper to set upon them, they should at least have given her credit for the lands which she had given her soldiers as a recompense for the depreciation of their certificates. It will not, I presume, be pretended that they were ignorant of any advance having been made on lands to her soldiers, because, in searching for the laws by which she had rated her certificates, they could not fail seeing the one by which she had granted the lands to her soldiers. The operation of this principle of the Commissioners must have been very partial, as few of the States had adopted similar measures for paying off their certificates; and that its operation must have been unjust, will be obvious to the weakest mind when it is recollected, that the Union had received from the citizens of North Carolina full value in the services and supplies for which these articles had been issued by the State. If the citizens of any State thought proper by their Representatives in their Legislature to consent to give up to the State sixteen shillings in every pound of the debt, which the State in complying with the requisitions of Congress had contracted with them, and which the State alone under the Articles of Confederation stood responsible to them for; could this justify the Commissioners in adopting a rule by which they were to be compelled to pay to the other States the sums they had consented to give up to their own? Certainly not. And yet, sir, no man will say that this is not the obvious effect of this principle adopted by the Commissioners in the settlement of these accounts. The exact amount of the injury sustained by the State of North Carolina, by this rule of the Commissioners, it is impossible to ascertain; but when we recollect the enormous quantity of certificates which from the scarcity of specie were obliged to be issued for the pay of the army, and purchase of supplies, we may fairly conclude that the loss to her from this measure, fell very little short of that which she suffered from the changes of ratio.

These, sir, were the two principal injuries sus-

tained by the State of North Carolina in the settlement of her accounts with the Union, and are the whole that I should have troubled the Committee with had not the gentleman from Rhode Island, (Mr. Stanton,) with a view, I presume, of showing that the settlement was as fair for one State as another, inasmuch as all suffered by it more or less, told us that his State had lost a very considerable sum by the operation of that part of the act of Congress of the fifth of August, 1790, which prohibits the Commissioners allowing any claim, which had not been allowed by the State producing it previous to the twenty-fourth day of September, 1788. By the operation of the same part of that law the State of North Carolina also lost nearly $100,000, which she has felt herself bound to pay principally to the heirs of those who had either fallen in the service or died soon after the close of the war, and had not come of age to claim their rights as early as the year 1788. The truth of this can be vouched by one of the present Senators from that State, as he was one of the board of auditors appointed by the Legislature to settle with the claimants, about the year 1791 or 1792.

I have now, sir, gone through the principal objections taken by the State which I have the honor to represent in part, to the settlement of her accounts with the Union, and I think it must be obvious to every candid person who has heard me, that if she had been settled with agreeably to the principles of equity by which the Commissioners under the ordinance of 1787 were directed to be governed, she must in the result have proved to be a creditor to a much larger amount than she has been reported to be in debt. By the change of ratio, admitting the aggregate of all the charges of the several States to have been but $24,000,000, she lost better than $770,000; by the very unjust rule adopted by the Commissioners in scaling her certificates she must have lost nearly as much, if not more; and by claims which were barred under the act of Congress of the 5th of August, 1790, she lost about $100,000, making in the whole better than $1,500,000. The sum reported against her is but little better than $500,000, from whence it results that instead of being reported a debtor she should have been a creditor for about $1,000,000. I feel myself bound to make this statement, after what has fallen from gentlemen, in the course of the debate, who have opposed the resolution upon the principle that they believe the settlement to have been just, or at least that it was made upon principles which operated nearly alike upon all the States. This, sir, it is evident was not the fact, for by the change of ratio a majority of the States were gainers to a very large amount, while the others were as largely losers; and the rule by which the specie certificates of North Carolina were scaled could not have applied generally, because there were but few of the States that had adopted the same method for extinguishing this part of their debt. But, sir, we have been asked by a gentleman from Massachusetts, (Mr. Hastings,) if there were such enormous injuries done to the States reported debtors by the settlement, why was it not objected to, and the error pointed out at first, when they might have been examined into and corrected with ease? Why has it been let alone till this late period, when there is not the most distant hope that, were the accounts opened anew, a settlement could be effected, that would prove even as satisfactory as the one already made, and against which we so loudly complain? I am convinced that the gentleman has not examined this subject with his usual accuracy, or he would never have asked such questions. The fact is, that the settlement has been complained of by the Representatives from the State of North Carolina, as well as several other States, ever since the report was made; and at the very session when it was first published an attempt was made to bring to light the principles upon which the Commissioners had settled the accounts, with a view, no doubt, that the errors which had arisen from them might be corrected, and justice done to those States which had been injured by them. To prove this fact, I must beg leave to read a resolution which will be found in the Journals of the first session of the third Congress, page 247, in the following words:

"*Resolved*, That a committee be appointed to examine into, and report on, the practicability of obtaining a statement of the principles on which the accounts of the individual States with the United States have been settled, and a statement of the several credits allowed in the said settlement."

This resolution, sir, it appears was lost on taking the question by yeas and nays, and among those who voted in favor of it, will be found the whole of the Representatives from North Carolina, as well as many members from other States. In the Journals of the same session it will be found that when the bill was on its passage providing for the payment to the creditor States of the balances reported in their favor, an attempt was made to extinguish the balances reported to be due from the debtor States, by adding a section to the bill in the following words: "And be it further enacted, that the balances reported by the said Commissioners, and carried to the debt of certain States, be and the same are hereby relinquished." The section was rejected, but the yeas and nays not having been taken on the question, we are not able to say, to a certainty, who voted for it or against it. There can, however, be but little doubt as to who were the advocates or opposers of this section, when we attend to its objects, and see who voted for and against the resolution just read. The Committee I hope are now satisfied that the report of the Commissioners has never been tacitly acknowledged to be just, by the State of North Carolina, as well as several other States; they have seen that at the very session of Congress to which the report was first communicated, an attempt was made to bring to light the principles upon which the settlement had been made, in order that its errors might be exposed and justice done; and this attempt, they have seen, failed of success. The reasons why it failed I leave the Committee to conjecture for themselves. It also appears that at the same session an attempt was

made to extinguish the balances reported against the debtor States, and the Journals will show that repeated attempts have since been made for the same purpose, but that these attempts have uniformly failed of success.

The reasons which may have induced Congress formerly to reject the measure I know not. But I doubt not in the least, that the ingenuity and industry of the gentlemen who have on this occasion with so much zeal opposed the resolution, have enabled them to assign every reason against the measure which the nature of the case would possibly admit. In the first place all agree that the General Government does not possess the power of enforcing the payment of the balances, against the consent of the States. But the gentleman from Maryland thinks that, by continuing to refuse to extinguish the balances, the States may at length be induced to accept of offers to lay out either the whole or a part of the sums they owe, either in turnpikes, fortifications, or some other work of public utility within their own limits, as has been done by the State of New York formerly. What the State of New York or any other State may be induced to do, I cannot pretend to say, but I think I can venture to predict, that the gentleman will to a certainty be disappointed in any expectations of this nature which he may have calculated on from the State of North Carolina, and that for the reasons I have already mentioned. And really the gentleman must be much more sanguine in his expectation than I am, if he entertains any serious hopes of ever getting anything more, voluntarily, from the State of New York. Another plan has been hinted at by a gentleman from New Jersey, (Mr. Elmer,) by which the balances might be collected, which is by funding and apportioning them among the different States; but the gentleman had not the goodness to tell us how large a sum we should have to fund, or how it would have to be apportioned among the several States to carry his plan into effect. I wish he had done it, because I am convinced, if he had, it would have furnished one of the strongest arguments in favor of the resolution that could possibly have been adduced. My reason for thinking so is, because I do believe this is the only way in which the balances ever will be collected; and should the reins of this Government ever fall into the hands of men who believe, as some great men do, that a national debt is a national benefit, this will become a pretext for making a very large addition to the national debt; a thing which I conceive a very considerable majority of this Committee would not only discountenance, but would use their utmost exertions to prevent, and would of course advocate the resolution for extinguishing the balances altogether, rather than leave a pretext to those who may succeed them, for adding so largely to our national burdens. These are the only plans which have been suggested for collecting the balances; there are few I believe of the Committee who have any hope of ever getting them upon the one suggested by the gentleman from Maryland, and a still smaller number who would ever wish to see them collected upon the plan suggested by the gentleman from New Jersey. What injury then can possibly arise from the adoption of the resolution? I confess I can see none. It is true, some gentlemen have said that it would excite in the States reported creditors a fear that attempts would be made to wipe off the balances which have been funded for them. The weakness and fallacy of this argument has been so ably shown by a gentleman from Pennsylvania, (Mr. Smilie,) that I will not take up the time of the Committee in attempting to refute it; but will proceed to state what in my humble opinion will be the good effects resulting from an adoption of the resolution. In the first place I believe it to be certain that the State of Delaware will be relieved from the most distressing embarrasments. In the next place we shall remove a bone of contention, which in all probability would, on some future occasion, be the cause of some legislative bargain, that in effect may be extremely injurious to the Union. The unusual anxiety of the members upon this subject, at this time, justifies a belief that this will be the case, particularly should any attempt ever be made to collect the balances. In the third place we shall prevent a future waste of much of the precious time of this House on a subject which tends to excite too highly the feelings of a large portion of its members; and lastly, we shall take from those who may succeed us, and be disposed to add to the national debt, a pretext which would be but too favorable to their design.

As then I do not see that any real injury can, but on the contrary, that very considerable benefits certainly will follow, from carrying the object of the resolution into effect, I shall conclude with expressing my earnest hope that it may meet with the support of a majority of the Committee.

The resolution was further supported by Messrs. Smilie, Macon, and Mitchill, and opposed by Messrs. Hastings, Gregg, Boyd, Sloan and Davis.

The Committee now rose, without coming to a decision, and obtained leave to sit again.

Wednesday, January 18.

Mr. Dennis, from the committee appointed, presented a bill to incorporate the Washington Building and Fire Insurance Company; which was read twice and committed to a Committee of the Whole on Monday next.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha:" Whereupon, the said amendment, together with the bill, were committed to the Committee of Ways and Means.

Mr. Newton observed that Congress having assumed jurisdiction over the Territory of Columbia, it became their duty to prevent laws existing therein from being oppressive in their operation. At present a person, though a citizen of a particular State, and prosecuted in his State for debt, might be held to bail in the Territory, without obtaining relief. Mr. N. after stating a recent

case of this nature, moved the appointment of a committee to inquire whether any, and if any, what alterations are necessary to be made in the laws of the District of Columbia relative to holding persons to bail.

The resolution was agreed to, and a committee of five members appointed.

STATE BALANCES.

The House again went into a Committee of the Whole on Mr. Rodney's motion to extinguish State balances.

Mr. Rodney.—I hope I shall receive the indulgence of the Committee in replying, in a very concise manner, to the remarks of gentlemen against the resolution which I have had the honor of submitting. The strong ground taken by the friends of the motion has not, in my opinion, been shaken by anything which has fallen from those who are opposed to it. We have stated that there exist on the books of the Treasury certain balances against particular States, which are productive of great injury to them, while they do not and cannot benefit the United States one dollar. Have gentlemen pointed out any mode in which the amount of these balances is to be obtained? Have they shown the way in which the United States can legitimately obtain a single cent? Have not gentlemen admitted that so far as these balances apply to the State I have the honor of representing, they affect her citizens most oppressively—that they sit like an *incubus* upon her, producing a stagnation in the culture and improvement of her lands, in the increase of the trade and commerce, and thereby checking the vital current of the country? And when the United States reap no benefit, will gentlemen say it is politic or just to keep them suspended over her head? What is their worth to the United States? If they should be taken to market, what would they bring? Is there a visionary speculator in the land that would bid sixpence for them? Do gentlemen contemplate compelling the payment of these balances? The amendment to the Constitution, inhibiting the suability of States, has put that remedy out of their reach forever. Do they expect that any State will voluntarily pay them? No. If then this is the situation of the business, is the object worth the candle consumed in discussing it on this, or on any other occasion? When the United Sates cannot pocket a cent from the continuance of these balances, and they are so injurious to some of the States, will the Government of the Union suffer the interests of those whom they are bound to protect to be thus seriously sported with?

By attention to the law passed by Congress on this subject, it will abundantly appear that it was never contemplated that the debtor States should make payment. For it appears to have been believed that every State in the Union had exerted itself in the common cause to the utmost; that the blood of the citizens of Delaware had been mingled with the blood of the citizens of South Carolina; that the citizens of the different States had fought, bled, and died together; that they had been confined in the same prison-ships, had inspired the same impure air, and had died alongside of each other, and their bones are now bleaching on the same shores. That such was the intention of the framers of the law appears from this strong circumstance: It provides for the payment of the balances due to the creditor States, while there is no provision for the payment of the balances of the debtor States. For is there in that law any provision to compel the payment? Is there any direction to the Attorney General, or to any other organ of the Government, to prosecute the recovery of them? While there is a provision for funding the balances of the creditor States, the law is altogether silent as to any provision to coerce the payment by the debtor States of their balances. Am I not fully justified, therefore, in saying that coercion was never intended?

I fear that on one point I have been misunderstood. I stated yesterday, in the outset of my remarks, that it was my decided opinion, that the Commissioners had acted to the best of their judgments and according to honest consciences. I did not impeach their motives. I did not mean to be understood as desiring to touch the settlement they made. I afterwards, however, stated that from the nature of the country, comprehending an extensive range of communities of various habits, engaged in a revolution in which they were contending for the rights conferred upon them by God and nature, it was impossible, or extremely improbable to avoid the commission of honest mistakes: and that if this reasoning were supported, it would afford an additional reason why the United States should extinguish these balances. But did I question the justice of the proceedings or the motives of those who made the settlement? I did not. The utmost extent to which I went was that which I have just stated.

There is another point on which my remarks have been misconceived. I observed that by keeping in suspense these balances consequences might take place, by which the interests of States, now hostile to the extinction, might be seriously compromitted. I did not say a bargain and sale might be made of these interests. I hope no such thing as this can take place. Bnt I said a compromise might be effected, and I spoke of what might happen from what has happened. In this I find myself supported by the language of a respectable member in this discusssion. I did not use this argument in the way of a threat; but I stated a fact, and, reasoning from experience and from human nature, I calmly inquired of the intelligence of the Committee whether such a thing might not possibly occur, and whether the possibility of its occurrence was not a strong reason for removing everything of the kind.

As long as these balances remain suspended over the heads of the debtor States they will be monuments of the imbecility of the General Government, and will, in the eyes of the world, present an unfavorable aspect of the disposition of several of the States to that Government. They will show that several States refuse to comply with the demands of the General Government, and that the General Government has not power to make

them comply. Ought not the Government, on this ground alone, when it is acknowledged on all hands that she is unable to exact these debts, and when their continuance operates so injuriously to several of the States, to abandon them?

I will take the liberty of noticing one or two other remarks which have fallen from different gentlemen in the course of this discussion. In this notice it is my wish to be brief, as the subject is so clear to my mind. My only wish is that I were the Representative of one of the creditor States, that I might plead with the greater effect the cause of the debtor States, believing, as I do, that this circumstance would not alter my opinion.

While gentlemen repel the charge made by us against the equitable operation of the settlement of the Commissioners they acknowledge that settlement, so far as it regards their own States, to be unjust. Because they have not been allowed a full indemnity for the services and supplies they have rendered, they are unwilling to suffer these balances to be extinguished so far as they bear hard upon the debtor States. They say, because they have suffered, they desire some companions in their misery. I do not think this a strong argument in their favor. On the contrary, I consider it as one of the strongest arguments for an extinguishment, as by the acknowledgment that the operation of the settlement is unequal, it lessens the obligation of the Government to adhere rigidly to it.

Let us then put this subject on its true grounds, let us view these balances, as they ought to be viewed, as not worth a pepper-corn to the Union, as not worth the time that is spent in this discussion; and, under this view, let gentlemen be asked what they sacrifice by giving them up. They abandon nothing that is valuable; while on the contrary they throw away the last apple of discord, and pave the way to the final closing of this unpleasant business.

But it is contended that the moment you extinguish these balances, you revive a right in the United States to call on the creditor States for a repayment of the balances funded in their favor. But surely this cannot be considered as a natural inference. Is such a principle assumed as the ground on which our arguments in favor of the extinguishment rest? Have we not, on the other hand, declared and pledged ourselves, that so far as regards the balances reported in favor of the creditor States, it is our desire that they may remain sacred forever. Those balances have been funded, and interest has been and is now receiving on them. They were given for their exertions in the common cause, and ought therefore to remain untouched. Besides, in the bill which will be brought into the House should this resolution pass a clause can be inserted making the stock now held by creditor States transferable to whom they please. Forgive us our balances and you heal the only remaining wound of the Revolution. With this view of the subject we ask gentlemen, yielding to a liberal and magnanimous spirit of accommodation, to agree to extinguish that debt whose continuance cannot benefit them, while it seriously injures us.

Mr. Southard.—I rise, Mr. Chairman, to give a reason for the vote I shall soon be called upon to give. Every member of this House who has preceded me on this question has drawn conclusions, and founded his opinion in favor of the State he represents, arising from the partial and circumscribed knowledge he has of the subject under consideration.

Gentlemen appear to have formed their judgment of the justice of the report of the Commissioners from what they themselves have seen or heard of the sufferings of the respective States from whence they came, during the Revolutionary war with Great Britain.

Were I, Mr. Chairman, to take the same ground and point out to you—by taking a view of the sufferings of the State I have the honor to represent—the supplies she furnished and the services she rendered, it would appear that she would not yield to any other State in the Union.

But I acknowledge my information is too limited to form my opinion from this source. I consider the Commissioners who settled the accounts between the United States and the individual States, and who reported those balances, as having been men of talents, knowledge, and integrity, mutually chosen by all the parties concerned; and that each State, by their agent, furnished them with the evidences of their respective claims, and therefore as standing on higher ground than any member on this floor, and possessed of more information on this subject than this House collectively.

It was well observed by the gentleman from Delaware who introduced this resolution into the House, that those balances were occasioned by, or grew out of the war. It was a common danger, sir, that pressed these States into the Union for their mutual defence against a powerful enemy. The old Congress under these circumstances entered into a Confederation, and resolved, that to defray the expense of the war, on final settlement, each State should bear its just proportion of the expense of the war, according to the principles therein prescribed. In pursuance of this object Commissioners were appointed, and several laws have been passed by Congress for the purpose of carrying those resolves into effect.

I consider, Mr. Chairman, the settlement just, from the subsequent acts of the National Legislature. The report of the Commissioners was accepted by the parties concerned, and the balances due the creditor States funded. But they went further; the State of New York actually paid about $250,000 in part of the debt due from her. The Legislature of Pennsylvania made provision for the payment of the whole sum due from that State. North Carolina, another debtor State, and who was so much opposed, if I am rightly informed, when she ceded to the United States a part of her territory, now the State of Tennessee, bound the citizens of that district to pay their proportion of this debt. This, however, I am not certain of; I have it only from information. If I am wrong, the gentlemen from that State will correct me.

I adduce these facts to show in what light Congress viewed this subject at the time when the Commissioners made their report. I presume the National Legislature at that time, though less in number, were as competent to judge of the justice of the settlement as this House now is, though more numerous.

But gentlemen in favor of extinguishing the balances, say the debtor States will not pay; and if they would, that there is no way pointed out for them to do it. If they will turn to the act of Congress passed February 15, 1799, they will there find that there is a way provided by law for these balances to be paid.

I am opposed to the resolution to extinguish, because it tends to weaken and destroy the confidence of the citizens of the United States in their Government, for the hand that would blot out the balances due from the debtor States has the same power to wipe off the whole debt funded in favor of the creditor States; the principle is the same, for if the report be unjust as to the debtors, it is so as to the creditors.

But the gentlemen ask, what advantage is there in holding those balances hanging over their heads? I answer, I consider them as a security for the payment of the debt already funded. Believing as I do that the settlement made by the Commissioners between the United States is as just as the nature of the case and the difficulties attending it would admit of, I hope the resolution on your table will not prevail.

Mr. Varnum.—The resolution under consideration is for the extinguishment of the balances due from several of the individual States to the United States, as appears by a report of Commissioners appointed to adjust and finally to settle the demands of the several States for services rendered and supplies furnished the United States in the late Revolutionary war with Great Britain. This report was made on the 5th day of December, 1793. The whole amount of the balances due from the debtor States, and which is now proposed to be extinguished, is $3,517,582. This resolution is supported on the ground that the settlement was unjust, and consequently that the balances found by it were improper and not due; and in fact, sir, I cannot conceive of any other ground on which an extinguishment could be supported, for it is evident that the debtor States are not deficient in ability to pay that which they justly owe; and if not deficient in ability, surely no other consideration can be sufficient to exonerate them from the payment. No principle, either political or moral, can justify an individual or a State in holding property justly due to another without the consent of the individual or State to whom it is due. In order to establish the position that the settlement was unjust, the gentleman from Delaware (Mr. Rodney) has produced a document from the Comptroller of that State to show that Delaware did comply with the requisitions of Congress for a part of the time in which the United States were engaged in the war. And if it is granted that the statement is true, does that prove that the settlement was unjust? No, sir, nor would any documents which can be produced of the services rendered by that State go to prove the fact without contrasting them with the services rendered by the other States in the Union; and gentlemen very well know that this cannot be done without a revision of all the documents of the services rendered and supplies furnished by each State in the Union during the whole of the war. Will Congress undertake to do this? If they will not, the documents which the gentleman has referred to must go for nothing. In fact, sir, they prove nothing relative to the question under consideration. Several other gentlemen have expatiated on the services rendered by the debtor States to prove that the settlement was unjust; and, sir, I might with as much propriety go into a detail of the services rendered by the State which I have the honor in part to represent on this floor to prove the reverse; but this might also be considered irrelative to the question before you. Yet, as gentlemen have taken this ground, in justice to Massachusetts I shall be permitted generally to say that she was second to no State in the Union in point of exertion for the general defence during the whole of the war. Her exertions in furnishing men and supplies were general, uniform, and without a parallel. History does not in my opinion, since the first formation of civil government, give you an instance of any people ever having paid, according to their numbers and wealth, in the same length of time, so great an amount in specie value as was paid by the way of direct taxes by the people of Massachusetts in the ten years the next subsequent to the year 1777. At the close of the war, towns and individuals were deeply involved in debt, which had grown out of their exertions to furnish supplies for your armies, and to hire soldiers to fight the battles of the country, at a time when the credit of the nation could not produce them. The pressure of those debts, and the exorbitant taxes which had been unavoidably imposed by the State, drove the people into an insurrection, which, for a considerable time, assumed an aspect which threatened the destruction of all the fair prospects which had been acquired by the Revolution; but, thanks to Heaven, this insurrection happily subsided. But notwithstanding all their exertions, the assumption of a part of the debt by the United States, and the payment of the balance found due on the settlement in stock of the United States, yet, after all, the State was burdened with an unwieldy debt, which grew entirely out of the transactions of the war, and for the gradual extinguishment of which a heavy direct tax has from that period to the present time been annually imposed on the people, and must continue for years to come before the debt can be entirely extinguished. This being the case, while some of the debtor States have glided easily along without the imposition of a direct tax to the amount of a single cent for the discharge of the expense of the war during the many years which Massachusetts has labored under this pressure of taxation, has induced gentlemen the best informed on the subject to doubt whether the services of

that State had all been taken into the account; but, sir, although the settlement was supposed to bear hard on that State, the people were determined to make the best of their situation, and not complain of a settlement which was made under so much solemnity, and, as they conceived, with the most upright intentions, so far as the perplexed state of the accounts would permit, to do equal justice to all the States.

The honorable Speaker, in order I presume to enforce on the minds of the gentlemen of this House the injustice of the settlement, has stated that the Commissioner of the great middle department has, since the report was made, stated on the floor of Congress "that those balances ought to be extinguished, and if it were not done, that he would unfold a tale which would make the hair stand on end, or some strong expression of that kind." The Speaker did not mention the name of the Commissioner who he said had uttered this sentiment; but being so clearly designated that every gentlemen present must know the Commissioner alluded to, there can be no harm in mentioning his name; I conceive it must be General Irwin. When I look at the report and find that General Irwin is the first Commissioner who signed, it is difficult for me to reconcile the statement of the honorable Speaker with this document; and when I recur to a more recent transaction, I am confident there must have been some misunderstanding in regard to the General's declaration. (for I am sure the honorable Speaker would not intentionally misrepresent it.) General Irwin did not only sign the report of the Commissioners, but there is at this time a letter in the possession of a gentleman of this House written by General Irwin since the commencement of the present session of Congress, and to which his signature is subjoined, stating that all possible pains was taken by the Commissioners to do equal justice to all the States in that settlement.

Now, sir, will this Committee conclude that General Irwin had, ten years ago, any frightful tale, to develope which would evince the injustice of this settlement? Or will they not rather conclude that his signature, subjoined to the report under the solemnity of an oath, (for all the official transactions of the Commissioners were done under that solemnity,) together with his statement in the letter which I have mentioned, afford sufficient evidence that he has always considered the settlement a just one? Another objection to the justice of the settlement is, because the expense of the war was not apportioned among the States by the value of their lands, agreeably to an article of the Confederation. It is an old adage that consent takes away error, and it is true that that mode of settlement was adopted by the unanimous consent of all the States. When a recurrence is had to the history of the whole transaction, I believe it will be found that this objection has no weight. Sir, I am far from entertaining a wish in the least degree to depreciate the exertions of any State in the Union in the Revolutionary war. I know they all made great exertions. Yet, sir, I presume it will not be derogating from the merit of any State to say, that the exertions of some of the States exceeded those of others. It is well known that in some of the States many of the citizens were inimical to the cause in which we were engaged, and did all in their power to assist the enemy in subduing our common country. This was a misfortune, although local in its operation, that was general in its effects, and it was generally lamented. Yet it did by no means detract from the merit of those citizens who were friendly in the same States; but it goes to show that those States in which it happened did not, nor could not, do as much towards the common cause as those who had nothing of the kind to impede their exertions; and, consequently, the improbability of the settlement being unjust as it relates to those States which stand the most indebted to the United States.

The ordinance which passed the old Congress in 1787, authorizing the settlement of the accounts of the several States against the United States, for services rendered and supplies furnished during the war, makes as ample and liberal provision for an allowance of all the accounts exhibited, as could possibly be expected, or even asked, by any of the parties to the settlement: it was founded on the principles of mutual compromise, and by the unanimous consent of all the States. By the conditions of the settlement agreed upon by that ordinance, the public faith of each State was solemnly pledged to all the other States, and the public faith of the United States was solemnly pledged to each individual State, that the settlement, and proportion of the debt allotted to each State, by the Commissioners thus mutually agreed upon and chosen by all the States, should be final and conclusive. Soon after the establishment of the present Government, in the year 1789, a law was passed by Congress for facilitating the settlement and for filling vacancies in the board agreeable to the principles of the ordinance of 1787, and so far as I have discovered by a recurrence to the Journals, this law passed without any opposition. In 1790 Congress again assumed the consideration of the subject, and passed a law which recognised all the principles of the ordinance of 1787, and provided that a distribution of the whole expense should be made among the several States, according to the first census under the present Constitution. This law was also passed by the almost unanimous consent of the House, and in the Senate, where the State sovereignties are more particularly represented, it appears by the journals to have passed without opposition. Thus, sir, from the first agreement of 1787 to the final close of the settlement, all the States were unanimous in the mode prescribed for settlement, and stood most solemnly bound to each other to abide by it; and the public faith of the nation was, by the several acts of Congress on the subject, most solemnly pledged to carry it into effect.

Can the Legislature then relinquish these ballances, without a violation of plighted public faith? And yet will they undertake to do it? Sir, it is a fundamental principle in the governments of all civilized nations to pay the most sacred regard to

plighted public faith. And, sir, the friends of our Government have derived much consolation from the idea, that the United States would never suffer their national character to be stained by a violation of this important national principle. Yet, sir, from what has taken place, it has been believed, that the United States would not be behind any nation on the earth in the preservation of this public virtue. But, if the resolution on the table should be passed into a law, this valuable principle will receive a wound which may lead to fatal consequences. I must be permitted to doubt the power of Congress to extinguish these balances without the concurrence of all the States. The settlement having been made under a solemn agreement of all the States, where will you find a power vested in Congress to alienate the interest which any individual State has acquired in the balance in consequence of that agreement, and vest it in another State? No such power is expressed in the Constitution, nor can I conceive it to be implied by anything which is expressed in that instrument. If then Congress have no Constitutional power to make the extinguishment, will not the transaction be considered an innovation on the rights of individual States, as well as a dereliction of the public faith?

A gentleman from New York has said that the extinguishment could not be a violation of public faith, because Congress had already given up part of the debt. It seems to me that the gentleman's conclusion does not naturally follow the premises which he has stated, for if it could, under any circumstances, be considered a dereliction of public faith to extinguish these balances, it cannot at this time be considered the less so, merely on the ground of the Legislature having heretofore fallen into an error on the subject. The fact is, that Congress did, in 1799, pass a law for remitting the balances, on condition, that each debtor State would pay into the Treasury of the United States by a given period the amount of the sums which had been assumed by the United States, of their respective State debts prior to the settlement. But, sir, at the time of passing that law, and ever since, I have considered it in the same point of light as I do the resolution before you, and therefore cannot admit that as a circumstance in favor of the resolution. That provision has now expired, without being embraced by any of the debtor States, except in that which has been done by the State of New York, in fortifying her ports and harbors. If the State of Delaware had thought proper to have complied with this liberal provision, she might have been discharged from a debt of $600,000 for $60,000, but it seems that she prefers a total extinction to a partial payment. If the balances should be extinguished on the principle that the settlement was unjust, which is the only ground taken in favor of their extinguishment, I am apprehensive that this is only to be a stepping stone to a more favorite object. I mean the extinguishment of the balances due to the creditor States on the settlement: for, although these balances have been funded by the United States, it is well known that the evidences of the debt in the possession of the creditor States are not transferable, so that Congress will have nothing to do to effect this part of the business, but to order payment to the creditor States on those balances to be stopped. And if this House shall consider the settlement so entirely unjust as has been stated by some gentlemen, and in consequence thereof give their vote for the extinguishment of the balances due from the debtor States, I cannot conceive why the same principle might not with the same propriety be extended to stop payment to the creditor States; nor should I be surprised, if the one should be carried, at seeing a resolution laid upon your table, before the close of the present session, for effecting the other. And will not the same parity of reasoning which has been adduced on this occasion lead to the extinguishment of all the debts of the Nation? If $3,500,000 due to the United States is to be wiped off on a mere statement on this floor, that the settlement was unjust, without the least particle of evidence to prove the fact, will a pretext ever be wanting for passing sentence against any class of your public debt? Sir, I have always been an admirer of the system of government established in the United States. I have thought it the best calculated of any government on earth, to perpetuate national faith, and secure individual rights. I have entertained exalted ideas of the wisdom and economy of the present administration, and I have consoled myself on the pleasing prospects of the future prosperity and happiness of our nation. But, sir, I view the measure before you as calculated to veil those pleasing prospects, and excite fearful apprehensions for the honor and fate of our country.

The resolution was further supported by Mr. J. Clay, and opposed by Mr. Findley, and Mr. Bedinger.

Mr. Root begged the indulgence of the House, for a few moments, while he briefly stated some of the reasons which guided his judgment in favor of the resolution on the table. Coming, as he did, from a State against which a large balance had been reported by the Commissioners, it would probably be expected that he should lend his feeble efforts in aid of its extinguishment. But, while making these efforts, he should not call in question the conduct of the Commissioners in striking these balances, nor inquire whether they were actuated by pure or impure motives. As the balances have been for a long time reported, and as the proceedings of the Commissioners, as well as the documents and vouchers on which they acted, are secluded from the public eye, he should suffer them all to rest together undisturbed, and confine himself to the justice and expediency of the measure.

If, said Mr. R. there is no probability that the debtor States, so called, will ever pay the balances reported against them, wisdom and sound policy require the passage of this resolution; else they may remain a source of future jealousy and hatred between the several States, and a subject of management highly prejudicial to the Union. Or are they, he inquired, to remain as a rod over the debtor States to whip them into compliance with some favorite measure? If this was the object, he

thought it prudent to extinguish them at once. The national Treasury, he said, can never be enriched from this source, unless a voluntary payment shall be made by the debtor States, or the United States shall, by coercion, compel a payment. And although, according to the report of the Commissioners, there are several States which are nominally debtor, yet there are but three, viz: New York, Delaware, and North Carolina, which are, by that report, really debtor. And a voluntary payment on the part of those States cannot reasonably be expected: For you are told, Mr. Chairman, that Delaware cannot pay; and you are also told, by two honorable gentlemen from North Carolina (Mr. BLACKLEDGE and Mr. HOLLAND) that that State will not pay—and as one of the Representatives from the State of New York, I think I may with confidence assert that she will make no farther payment. She yet remembers, sir, that at the commencement of the Revolution nearly one half of her citizens were inimical to that cause which you venerate. She yet remembers, that early in that revolution her only avenue to the ocean was blocked up, and by that and other causes, growing out of the existing state of things, the price of her produce, and of her supplies furnished to the army, was deeply depressed. That State was the theatre of war almost during the whole conflict. Her western frontiers were burnt and pillaged by a savage foe, and her southern borders overrun by worse than savages. From her northern frontiers a formidable enemy penetrated into the very bowels of the State. Surrounded by these distressing scenes she not only raised her regiments and paid her quotas required by Congress, but also set apart, as bounty lands for her soldiers, a large tract of the most fertile part of the State. After having done and suffered so much, she could not but view with astonishment that enormous sum of more than two millions of dollars which was reported against her. Further, Mr. Chairman, the State of New York cannot believe that the act of Congress of the 15th of August, 1790, pointed out a fair and equitable mode of setttlement. When men and money were called for, to carry on that war in which these expenses were incurred, that State had not more than half the population which she possessed at the time this act was passed. The quota of expenses, therefore, which were charged to her according to this ratio, were nearly double to what it would have been, had a settlement been made, by the same ratio, at the close of the war. Had her quota been fixed according to her population at that period, it is presumed that she would have been reported a creditor instead of a debtor State. That State must therefore think that this enormous balance is an unjust and an unreasonable demand. And if she thinks it unjust, it is enough; for whether the settlement is just or unjust, if a State thinks it unjust the result is the same; she will not voluntarily pay.

But said Mr. R., perhaps we shall be told that the State of New York has already made appropriations for complying with the terms offered by the act of Congress of the 15th of February, 1799, and that she has actually expended in the defence of the port of New York, and for which she is credited on the books of the Treasury, to the amount of $220,000, and that thereby she has acknowledged the justice of the demand, and will pay the residue. But, let gentlemen remember that, at that time, a momentary frenzy had seized upon the people of the United States, to wage war upon the Republic of France. And was it strange, he inquired, that the Legislature of that State caught the contagion? When the General Government had either refused or neglected to fortify her ports, was it strange that she should attempt to defend herself against the danger of an invasion, then supposed to be imminent? Since that frenzy has subsided, it is presumed that New York will not make a further waste of money, in compliance with the terms of the act of 1799. And, besides, sir, should the debtor States, for a moment, suppose the settlement to have been equitably made, and that the balances are justly due, we should probably find each State withholding a payment till other debtor States had paid the balance reported against them. Thus, by each State's waiting for others to go forward, you would find that no payment would be made. If you can have no reasonable expectation that these balances will ever be voluntarily paid, why retain them on your books? Do you intend, by coercion, to compel a payment? In what manner, I beg to know, will you institute suits against the debtor States? Will you bring a State sovereignty to bend at the feet of your courts? I presume not, since you have amended the Constitution respecting the suability of States. Will you sequester their stock in the funds, if they should happen to hold any, and thus violate the national faith? And will you lay a direct tax upon the United States, and remit the same to the creditor States, and thus indirectly evade the Constitutional provision that direct taxes and representation shall be according to a certain ratio? Or will you, as the last resort, put the debtor States out of your protection, and send your fleet to block up their harbors? I presume you will not, especially when you reflect that the people of New York alone pay more than one-fourth of all your duties on imports and tonnage. This is too considerable an item in your revenue to be wantonly thrown away.

But, Mr. Chairman, it has been suggested that the enormous balance reported against the State of New York proceeds from the assumption of the State debts, and that she is bound in honor to pay, and will pay, the amount assumed for her. In reply to this suggestion, permit me to remark, that the sum which was assumed for her was not equal to her proportion of the aggregate amount of State debts assumed. The sum assumed for New York was $1,183,716 69. The aggregate amount assumed for the several States was $18,271,787 47. Hence, it will appear that, according to the ratio for settling the accounts as established by the act of 1790, the proportion of New York of that aggregate sum is $1,715,169 78; which is $532,453 09 more than the sum assumed for that State. Less sums were also assumed for Delaware and North Carolina than their respective proportions of that aggregate.

Another objection is made to the resolution on your table, that its passage will affect the credit of the creditor States; and one gentleman from New Jersey (Mr. SOUTHARD) has gone so far as to say that the same power which can extinguish these balances, can wipe off the whole funded debt; and my friend from Massachusetts (Mr. VARNUM) expressed a belief that the passage of this resolution is a violation of public faith. But I must confess, sir, my total inability to perceive the force of these observations. If Congress possess the physical power by one Legislative stroke to wipe off the whole funded debt, yet, if that power cannot rightfully be exercised, I trust it will not be exercised at all by this House. And I cannot see that, because you remit to your debtor that debt which he claims to be unjust, you thereby destroy the credit of your creditors. Or, does it necessarily follow that if an individual remits the supposed debt, that he, by the same act, destroys the bond of his creditors? Those States in whose favor balances were reported have funded those balances, and the national faith is pledged for the payment. And I trust that this nation will continue to preserve its faith inviolate.

Permit me, sir, to add, if the extinguishment of these balances is a violation of public faith and a destruction of the credits of those States who have funded the balances reported in their favor, that that faith is already violated and those credits are already destroyed. For, by the operation of the act of 1798, had the debtor States complied with its proffered terms, the balance against New York of more than two millions, with interest, would have been paid with less than eight hundred thousand dollars, and the six hundred and odd thousand dollars against Delaware would have been paid with about fifty thousand. And the same principles which gave you a right to remit a part, gave you a right to remit the whole. If the extinguishment of the whole will give a deadly blow to public faith, I should think that the remission of so large a part had, at least, inflicted a mortal wound.

From a full view of this subject, Mr. Chairman, I am convinced that if you retain these balances as a rod over the debtor States, you will only excite jealousy and animostity among the members of this Union, without deriving any benefit to the nation. Permit me, therefore, to express a hope that a majority of this Committee will be in favor of sponging them out of the books of the Treasury.

Mr. LEIB said that he never rose to give an opinion on that floor but with reluctance, and he should not then have risen but for the demand of the yeas and nays on the question. As he had heretofore voted against a similar proposition to that on the table, he felt it a duty he owed himself, as the vote was to be recorded, to assign his reasons for rejecting the report of the Committee of the whole House and voting in favor of the resolution.

This is not a new question. It had been repeatedly before Congress and before the public since he had had the honor of a seat on that floor. He should not inquire whether the accounts upon which the balances were predicated had been fairly liquidated or not; whether the sums were justly due; nor should he examine which of the States had rendered most services to the nation. These considerations with him bore not upon the case. The question had simplified itself to his mind and lay in a narrow compass. It had resolved itself into this: Can or will these balances ever be paid? If they cannot, nor will not be paid, there ought to be an end to the inquiry, and an end to the demand. It had been said, during the discussion, by a gentlemen from New York, that when this subject was formerly under consideration, New York sold out the stock which she held in the funds of the United States, lest it might be sequestered for the payment of her balance. Can anything evince a stronger hostility to the payment of this claim than this fact? And yet, with this open declaration against the payment of the balance due by her, we are to persist in continuing the claim! As New York has manifested her determination not to pay, what mode of coercion has been suggested? None. No one has pretended to say that these balances ever can, or ever will be collected. If New York and North Carolina will not pay, can Delaware discharge the claim against her? With her what process is to be pursued? Is she to be sent to auction and sold to the highest bidder? And if gentlemen are willing to put her under the hammer of the auctioneer, who is to be the purchaser and how is the sale to be enforced? The justice of these balances has been contested, nay, it has been flatly denied; it is not to be expected, therefore, that the debtor States would willingly discharge them, and as no feasible mode of enforcing payment has been or can be suggested, policy and economy call for their extinction.

It would be well for gentlemen, who are for keeping alive this demand, to calculate its cost to the nation, and then, perhaps, they would feel less reluctance to the surrender. Large sums are spent in the discussion, and the time and the purse of the people very unprofitably employed. In his apprehension, therefore, it would be a saving to the United States to pass the resolution. It is idle to keep up a demand which never can nor never will be satisfied; he hoped, therefore, the House would agree with him in rejecting the report of the Committee of the Whole and adopting the resolution.

Mr. HOLLAND.—It is to be expected that gentlemen representing various parts of the Union, and particularly those who were eye-witnesses to the hardships experienced under the Revolutionary war, will be led to think that the distresses they saw, and the exertions performed immediately within their own view, were not equalled in any other part of the continent. That this is the case, we have sufficient evidence by the declarations of many honorable gentlemen on the present question. A gentleman from Massachusetts (Mr. THATCHER) has said, that the States of New

England had suffered and done more for the obtaining of independence, than what had been done or suffered by the Southern States. That we are greatly indebted to the prowess of our Eastern brethren, that they were unanimous in sentiment, prompt, and fought many a well-fought battle in the Revolutionary war, and acquitted themselves with honor, I am not disposed to deny, and that we are greatly indebted to them for the bold, intrepid manner of their conduct against the common enemy; and that it was by the exertion of those patriots with that of those throughout the Union that procured our independence.

The patriots in New England, being of one sentiment, had only to contend with the common enemy; a contention which, when compared with that of their Southern brethren, will be found to be unequal in exertion, honor, or consequences. The Eastern was a foreign, the Southern a foreign and civil war. In the East they could, without suspicion of being betrayed, collect together and level all their forces against one object, and could retreat with safety into the bosom of their country. But there were no such advantages with us—we had no retreat. We had the common enemy on the coast, the savages on the frontier, and enemies within our own bosom. We were nearly equally divided, and it has never been decided which had the majority, and the controversy was not to be determined by argument but by battle, and battles were frequent, not of a people against a foreign foe, but a battle of neighbor against neighbor; and among the slain it was common to see acquaintances, neighbors, brothers, and sometimes a father who had fallen by the hostile arms and prowess of his son. It was a war the most distressing and intolerable of all wars, too much so to be further related. But I hope, after the imperfect sketch that I have given, the honorable gentlemen from Massachusetts will admit that their friends in the South have at least experienced their equal share of distress in the Revolutionary war. That the patriots of the South (and it was a war of patriots and not of States—States were only described by geographical boundaries, and boundaries that were yet to be contested for) have suffered in the contest equal to any given number of patriots in the States of New England; and let it be recollected that the object of the contest has, by the united exertions of those patriots, been obtained, and let us not tarnish it by invidious comparisons, or sully it by keeping in remembrance and repeated discussion this bone of contention; this old, dry bone that, as before stated by my friend from Delaware, has no nutriment upon it.

But perhaps the honorable gentlemen from Massachusetts draw their conclusions of the services performed by the Eastern States from the report of the Commissioners of Settlement. If this is the source from which those conclusions are drawn, I am convinced, upon examination, that it will also fail. Agreeably to this report, Massachusetts, New Hampshire, South Carolina, and Georgia, are creditor States. So that it appears from this document that the little convulsed State of South Carolina, not having a third of the population, has done within a few thousand dollars as much as the powerful State of Massachusetts, and that the two weakest States to the southward, and on the southern frontier, harassed, divided, and under British domination a great part of the time, have from this evidence done more, vastly more indeed, in proportion to their whole numbers, than was done by the two most powerful, unanimous, and wealthy States of New England. But this report is not to be relied upon, and when I say this, it is not my intention to impeach the integrity of the Commissioners who made it, nor to cast any reflection upon any one of the creditor States, touching the manner of keeping or exhibiting their accounts. But I mean to say, that the manner in which North Carolina kept her accounts and performed her services, was such that it was impossible that justice could have been done her in the settlement.

In the early stages of the Revolution, it never occurred to the Legislature of that State that they would be indemnified for any services but such as were done by the immediate order of the General Government. Of course, all the services performed for her immediate defence, such as expeditions against the savages—and there were several campaigns carried into the Indian country, and a continual line kept up on the frontier for protection against savage depredations during the whole war—together with a number of volunteer services to the aid of South Carolina and Georgia, against their internal and external enemies, with the perpetual services necessarily performed for the subjection of our own disaffected citizens—these services were sometimes volunteer, sometimes by draught, and sometimes it was made the duty of a given number to hire, clothe, and equip a soldier. This was done under a general sense of duty, without any expectation of private or public remuneration, other than the hope of an eventual freedom. What ground of hope existed? The paper money of every description had sunk to nothing, and the State had no fund to authorize even a hope for redemption. All was gone, and nothing remained but the most disinterested and vigorous exertion to secure the main object. And towards the close of the war the only place of safety was in the camp—a constant, unregistered service. Under these circumstances, can it be possible that we had justice in the settlement? Having no documents to be produced to the board, could we obtain a credit? The thing was impossible, but the services, nevertheless, were performed, for which, if we could have obtained a credit, would have placed us in a different position. There is one other case noticed by my colleague (Mr. BLACKLEDGE) of services actually performed in the Continental department that we had no credit for, owing to a fraud having been committed by the board for settling the army accounts. The Legislature thought proper to set aside and nullify the whole of these proceedings, and previous to their being again liquidated and settled, these accounts were barred by the act of Congress. The extent thus barred I am not advised of, but they were considerable.

I will now submit this case to the gentleman from Pennsylvania, (Mr. GREGG) who differed widely from his venerable colleague, whether, under all the above circumstances, and many more that might be cited, North Carolina had justice done her in the settlement; or whether it was possible for her to bring forward to the board the vouchers and evidences of the services she performed in the Revolutionary war. It appears to me, sir, upon this view of the case, that every impartial, honest, and candid mind, will be ready to conclude that the thing was impossible. And also, let honest candor examine the statement made by my friend from Delaware, (Mr. RODNEY,) and I think that the conclusion will most inevitably be, that the State of Delaware has not a fair settlement, and that it was impossible that she can be in arrears near $1,000,000.

These are the impressions that an impartial examination of this case has produced on my mind, and I am led to believe that many gentlemen representing the creditor States, and even bystanders, are obliged to coincide in the same general sentiment, to wit, that justice had not been done, and that justice could not be done in the settlement of the State balances; and as the gentlemen from the creditor States have at all times reprobated a revision of settlement, and as the debtor States, from a conviction of the injustice of the demand, will not voluntarily pay it, and as there has been no means pointed out to compel the payment, why will you keep it up? But gentlemen say that they are not asking payment at this time. Why, if it is just, not ask it now? Why has the demand been so long delayed? A just demand gains nothing by delay. Why disguise this business? Would it not comport more with the dignity of this House and the honor of the creditor States to come out at once, and say in plain, unequivocal language what they intend to do? Is it kept over us as a rod to tantalize or to keep us in the back ground? Gentlemen will not avow this. Then for what other purpose? To this no explanation can be had. All is left to conjecture. And may we not suspect that there is a lying in wait to obtain power to demand, to enforce this measure? I hope this is not the case; but the holding it up attaches suspicion, that, if groundless, ought to be done away by a removal of the cause of it. I am further of an opinion that it was the intention of the old Congress, and of the Congress under the present Government, who passed the act of 1790, never to call upon those States who should be reported against for the balances, and all that was contemplated was to admit the creditor States to fund the excess. This has been done—and I am strongly impressed with a belief that nothing more was intended. If anything more was intended, it is reasonable to suppose that it would have been expressed either on the resolves of the old Congress, or in the act authorizing the Commissioners to make the settlement—a mode would have been pointed out as to the manner, time, or to whom, the payments were to be made. But not a syllable is expressed on that subject. And as to the creditor States, it is to be remarked that they are not entitled to all the privileges attached to common creditors; they are limited in the act that admits them to fund; they are not admitted to transfer their balances so funded, from which it may be inferred that it was a thing of compromise—that it was so understood, that creditors should not transfer and that the debtors were not to be called upon; that they were considered to be nominal, but not real debtors, and this for the purpose of raising and augmenting the funded stock. For, by adverting to the proceedings of those times, assuming and funding was the system—it was the common order of the day. But if it had been understood that under the legal operation of the act of 1790, that the States reported as debtor States were to be liable, the act would not have passed. A measure so dangerous would not have obtained. And from the conduct and expressions of one of the Commissioners at a subsequent session of Congress this opinion was also entertained by the Commissioners themselves; for this Commissioner, although he insisted that it was a just settlement, yet he advocated the extinguishment of these balances. Under all these circumstances I most sincerely hope that gentlemen will feel themselves at liberty to expunge from your record this demand by voting for the resolution on your table.

The Committee rose, and had leave to sit again.

THURSDAY, January 19.

The House, in pursuance of a resolution of the eleventh instant, proceeded to the hearing of William Cowan, agent for the Virginia Yazoo Company, at the bar of the House; and the said agent being heard, in part, on the subject-matter of the claims of said Company, retired from the bar.

Ordered, That the further hearing of the said agent be postponed until to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the motion of the twenty-eighth of October last, for the appointment of a committee "to inquire into the expediency of extinguishing the claims of the United States for certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, with power to report by bill, or otherwise," as amended by the Committee of the Whole, and to which the said Committee yesterday reported their disagreement; and the said motion, as amended, being twice read in the words, following, to wit:

Resolved, That it is expedient to extinguish the claims of the United States for certain balances reported to be due from the several States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States.

Mr. WILLIAMS, of North Carolina, said: This being a question of importance to the State I have the honor to represent, I will offer some reasons to the House in favor of the present resolution. I shall first contend that the act passed in the year 1790, was in violation of the original compact which was entered into by all the States, establishing the principles by which each State was to supply her part for the support of the Revolutionary War; and that, by changing that mode, it operated against the State of North Carolina. Secondly, that by the settlement which was made by the Commissioners, injustice was done to that State.

In making these remarks, I do not wish to be understood by the House that they ever ought to go into an examination of that settlement; but if, from the nature of things, any one State can show how she was injured, that will have considerable weight, and be a good reason to abolish those debts which are said to be due from the several States. In the eighth article of the Confederation, all charges of war, and all other expenses that shall be incurred for the common defence and general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land, and the buildings and improvements thereon, shall be estimated according to such mode as Congress shall, from time to time, direct and appoint. In the twelfth article it is expressly declared that the articles of this Confederation shall be inviolably observed by each State: nor shall any alteration take place, unless such alteration be agreed to in Congress, and afterwards confirmed by the Legislatures of every State.

But a gentleman from Pennsylvania has stated that Congress unanimously agreed to change the eighth article of the Confederation; therefore, the act passed in 1790, saying that each State should pay in proportion to the number of inhabitants, was done by consent, and that consent would do away error; but if the gentleman will examine the case strictly, he will find he is wrong, for two States never did consent to alter the mode prescribed by the Confederation, and it is a principle which cannot be denied, that wherever parties enter into a contract, they must all consent before it can be altered; and I take the question now before us to be similar; for each in her sovereign capacity entered into that compact, and Congress had no more right to pass a law in violation of it, than we now have to pass a law directly in violation of the Constitution which we have sworn to support.

I will now endeavor to show that by changing the mode by which each State was to furnish her proportional part to support the war, it operated against the State of North Carolina. I believe after the close of the war it was nearly ten years before the number of the inhabitants was taken within the United States; during that period there was considerable emigration to that State, it being extensive in territory, and land very cheap. But let us consider what is the comparative difference between the price of land in the Northern States and in North Carolina. I believe, sir, at the time this settlement was made it was at least five to one, that is, one acre would sell for as much as five, therefore, in the same proportion as our population increased, and the inequality of the value of land, so much was the relative proportion of the debt changed, and thrown on the citizens of that State; and whenever a capitation tax is laid it always operates hard on that part of the community which are upon an equality and not very wealthy.

I will now show in what manner injustice was done to that State in the settlement of the accounts. In the year 1781 the Legislature passed a law giving full power to the board of creditors to settle and liquidate the claims of individuals for supplies furnished during the war, and fix the price of articles. In 1783 a law was passed fixing the scale of depreciation, and under those existing laws the Commissioners must have settled the accounts of that State, or it would be impossible for her to have been a debtor State. But it may be said that if the State passed laws which operated against her, it was not the fault of the General Government. But at that time we had not adopted the Federal Constitution, therefore each State had a right to pass such laws as would relieve her from a heavy debt which she had incurred in our struggle for liberty. Also, the very situation of our country rendered it impossible for an accurate account to be kept of the supplies furnished by the different States, when an enemy was ravaging our country; and if one State should have the good fortune to keep her accounts more accurate, she ought not now to wish to exact the sums stated to be due from her sister States. I believe there were few States in the Union which suffered more than the State of North Carolina, for she not only was ravaged by a foreign enemy, but a continual scene of distress was kept up by an internal enemy. A number of her citizens, after having furnished all they could spare to support our army, were, perhaps, the next day stripped of all their property, and nothing left to support their helpless families.

It appears that Congress repeatedly recommended to the several States, as well for hastening the extinguishment of the debts as also for the establishing of the harmony of the United States, to make liberal cessions of their territorial claims. The Legislature of North Carolina, taking the matter into consideration, not only made a liberal cession of her claims, but ceded all that extensive country which forms the State of Tennessee. This I take to be a strong reason why she ought to be released from her debt. The gentlemen who have spoken against the resolution, I take it, have not stated any solid reasons why the debts should not be abolished. They have contended that the settlement made by the Commissioners was a just one, and that it would be impossible to rectify the matter; and that if we release those debts, the creditor States may be called on to refund the money they have received. I think neither of those positions are correct; for I believe the settlement was made in the dark, and in darkness it will remain. The total amount of the advances made by the several States, as fixed by the final settlement, is not known. Neither has the proportion of the debts been correctly ascertained. This matter has been kept a secret; and if the business had been conducted with such propriety, and settled fairly, why is it concealed from us? I am warranted to make use of these expressions from the proceedings of Congress.

After the adoption of the Federal Constitution, Congress was anxious to bring the matter to a close, and labored some time to effect it, but at last they assumed a debt of upwards of twenty millions of dollars, whereas it was only necessary to have assumed about eleven millions of dollars, and the same result which now exists might have been effected had they waited till the accounts had been settled; and thus they created a debt of upwards of ten millions of dollars. Therefore, Congress have, in the whole of their proceedings, shown clearly that they never intended to call on the debtor States, and that it was only necessary to make provision for those States which had a balance struck in their favor. Ought not, then, those creditor States be content, when they have had their debt assumed by the Government, and they are annually drawing interest for the same? And with respect to the objections which gentlemen have made, that by discharging the debtor States, it will be the means of destroying their debts, they are merely ideal. I believe there is not a person on this floor who is in favor of the resolution that has any such wish; neither do I think it ever will be attempted.

Some gentlemen have asked, if we release the debtor States, what is the *quid pro quo*? Have not the creditor States got their debts funded, and the faith of our Government pledged for the payment? But, independent of that, I think, sir, the liberty and freedom we now enjoy would be a sufficient *quid pro quo*. But there is one reason more, which I think alone would be sufficient to extinguish these debts. The cause which gave rise to them—that noble cause of liberty which gave to us our independence. It seems as if the God of Nature had destined this happy land of America the only asylum for liberty; and I would ask those gentlemen if it was not by the joint effort of all our sister States that we liberated ourselves from the hand of tyranny? Was it not owing to the supplies of the several States, be they great or small, that we are now breathing the air of liberty? Was it not by that noble impulse which filled the breasts of the American people with a thirst for freedom that gave birth to our Government? For in that momentous hour, when the fate of our nation was suspended on the wings of fortune, if one of our States had withdrawn her assistance from the Union, I believe we should not now be within these walls as legislators, but under the scourge of a Monarch. And in order to unite us more permanently under our present form of Government, I think it would not only be policy but justice to abolish these debts, which are said to be due, as it is impossible to know whether they were settled on principles of equity and justice between the several States; and it was a joint cause, and one which will always do honor to America as long as time shall last. I hope that the House will reject the report of the committee, and be of the opinion that the balances which are reported to be due from the several States ought to be extinguished.

Mr. KENNEDY.—Mr. Speaker: The State which I in part represent being one of those that are denominated debtor States, and being strongly impressed with a belief that the means by which she has become so are improper, I conceive it my indispensable duty to submit to the House my reasons for forming such opinion.

In endeavoring to perform this task, the first point that I shall attempt to establish is, that the act of Congress which fixed the ratio according to numbers, and under which the accounts were settled that produced these balances, was unconstitutional; and in order to prove this position, it may not be improper to give, for the information of those gentlemen who have not made themselves particularly acquainted with the subject, a concise statement of the proceedings of the old Congress relative to the matter now under consideration.

Permit me, sir, in the first place, to premise that when the King of Great Britain thought proper to commence a cruel and distressing war against the American colonies, for the purpose of reducing them into a state of passive obedience, it became their interest to unite for their security, and accordingly they associated and leagued together under certain terms and conditions, the whole of which are contained in what is known by the Articles of Confederation; the 8th of which declares that all charges of war and all other expenses that shall be incurred for the common defence or general welfare shall be defrayed out of a common treasury, which shall be supplied by the several States in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated, according to such mode as the United States, in Congress assembled, shall from time to time direct and appoint; and the thirteenth article thereof prohibits any alteration in any of them unless agreed to in Congress, and which shall be afterwards confirmed by the Legislature of every State, From which it may be perceived that the manner of settling, adjusting, and finally determining the proportions to be borne by the several States of the evidences of the war, was as completely fixed and established as the same by language could be done.

In the year 1782, in order to bring the accounts relative to those expenses to a final settlement, Congress appointed Commissioners for that purpose, and at the same time recommended to the several States, to authorize Congress in the final settlement of the proportions to be borne by each State of the expenses before mentioned, to adopt

such principles as, from the particular circumstances of the several States at different periods, might appear just and equitable, without being confined to the rule laid down in the eighth article of confederation. This recommended alteration did not meet with the approbation of all the States; of course it failed, as the article intended to be amended or affected thereby remained untouched and unrevoked.

In the year following, they formally agreed to revoke that article, and in the place thereof declared that the charges and expenses of the war should be apportioned among the States according to numbers, which was submitted to the Legislatures of the several States, for their ratification; but, in this, as in the first attempt, they were also unsuccessful, some of the States deeming it contrary to their interest to adopt the same.

In the year 1787, the subject was again resumed by Congress; by passing an ordinance establishing a new board of Commissioners, with powers to make a final adjustment of all the accounts, agreeable to such quota as Congress should thereafter determine. If, sir, Congress meant by this ordinance to fix the rate of expense, agreeably to the eighth article, and to empower the Commissioners to make a final adjustment of all the accounts subsisting between the United States and the several members thereof, that principle was, in my opinion, correct; but if they intended thereby to declare their power of establishing the ratio upon any other principle, then I must be permitted to say that the ordinance is in direct violation of the terms of the Confederation, and therefore void; for I hold it to be a sound principle, that the old Congress had no powers but what were expressly given by the then federal compact, and whenever they exceeded the limits by that instrument prescribed to them, their acts are entirely invalid. Having shown, as I humbly conceive to the satisfaction of every reasonable gentleman, that the former Congress had no power to settle those accounts upon any principles, other than those under which they were contracted, I will omit further remarks on that point, and proceed to show that the Congress under the Federal Constitution are equally as destitute of such powers.

Sir, after the most deliberate examination I have not been able to discover anything in that instrument that either expressly or implicitly gives to them that power; but, on the contrary, find the sixth article positively declaring that all debts contracted, and all engagements entered into before the adoption of that Constitution, should be as valid against the United States under the Constitution as under the Confederation.

Will any gentleman pretend to say, that, when the expenses of the war are apportioned among the States, according to numbers, that the balances would be precisely the same that they would be when apportioned according to the value of the surveyed or granted land and improvements? I trust that no one will hazard that opinion.

It follows, then, of course, that if the balances due any of the States, upon the settlement of those accounts, according to the principles fixed by the act, are less than they would have been had the settlement been made according to the principles contained in the Confederation, those balances being due from the United States, are, so far as they are reduced, not as valid as they were under the Confederation; therefore, the act that fixes the standard by which they are reduced is contrary to the Constitution, and of course void.

By the seventh section of the first article of the same instrument, Congress has the power to lay and collect taxes, duties, imposts, and excises; not to add to or diminish, but to pay, the debts of the United States.

Having, as I conceive, in a clear point of view, proved the act under consideration unconstitutional, I will dismiss that point, and proceed to show wherein the alteration of the principles upon which the accounts ought to be settled affected and materially injured the State of North Carolina; in the doing of which, those circumstances necessarily will be mentioned which will serve to prove what I have already asserted, that the balances would have been different had the ratio been made upon the proper principles.

Mr. Speaker, that State being inferior in square miles to but few in the Union, gentlemen might suppose, without reflection, that her quota of the general expense, when calculated in the way I contend for, would be proportionately large. But, sir, I must be permitted to remark, that she had within her chartered limits a large quantity of surplus or unappropriated land, which was not by the Articles of Confederation to be taken into the valuation—that expressly declaring the lands granted or surveyed, with their improvements, only to be estimated.

There is, sir, another fact equally well founded: the lands in that State are of less value than the lands in any State within the Union. This, I conceive, has not arisen because they are of inferior quality, but principally on account of her difficult navigation. And perhaps I might not be far wrong in saying that one of the large Northern cities is worth half as much as all the lands in that State. From which, I may fairly conclude that her relative proportion in numbers is much greater than the relative proportion in the value of the surveyed or granted land and improvements. And in order to establish this fact, I will briefly state to the House the proportion in which the former Congress laid their requisitions on the several States in the year 1779. Fifteen millions of dollars were required, of which North Carolina had to pay one million and ninety thousand. In the same year, out of eighty battalions of troops, she had only to raise six; at another time two millions of dollars were required, of which she had only to contribute one hundred and forty-eight thousand. In none of these did her quota exceed one-twelfth part.

But, by the act of 1790, she had to pay one-tenth of the expense, as, by the first census, that was about her relative proportion in numbers. And as the aggregate amount of expense is at least thirty millions of dollars, (and less than that sum cannot be presumed,) her quota, according to numbers, was three millions of dollars. But, was it fixed according to terms on which the debts were contracted, allowing her proportion to be one-twelfth, then it would only amount to two millions five hundred thousand dollars—making a difference of five hundred thousand, which I consider as a dead loss to her by the change. I add to this a loss of upwards of one hundred thousand dollars in claims for services and supplies, which were prohibited by the act from being received by the Commissioners in the final settlement, as the certificates for the same were not issued previous to the 24th day of September, 1788; which two sums would make her a creditor State to the amount, at least, of one hundred thousand dollars, had the accounts been settled as they ought.

But, supposing for a moment that Congress had the power of varying the mode for settling those debts, the termination of the Revolutionary war was the most proper time for taking the census for that purpose: the debts then ceased to accrue. The act, sir, is predicated upon the supposition that the same or a proportionate state of things existed then that did when the debts were contracted, when the fact was really otherwise; for the unappropriated land already mentioned induced vast numbers to emigrate from States that did not possess those advantages, and from other parts of the world into the State of North Carolina; the consequence was, her increase of population was greater than those States that were not similarly situated, which may be proved by referring to her increase of representation beyond that of Connecticut, Rhode-Island, New Jersey, and others. Of course she had more to pay than she would have had if the census had been taken previous to this emigration. And what is this extra expense for? nothing that I can discover but because she did not compel those emigrants to grant supplies and perform services for the defence of the country, when they were not under her control, not being then inhabitants of that State, and, with respect to many, not citizens of any of the States. The injury sustained on this account cannot be precisely ascertained, but no doubt it was considerable.

Her injury however did not end here, for by an act of her Legislature the prices of a great part of the articles furnished the United States by her citizens were established in the then depreciated currency, and for which certificates accordingly issued, which when brought into the settlement were reduced, as I am informed, by the Commissioners, according to a scale of depreciation, to less than one-half of their real value; the amount of which loss must be enormous indeed.

Under all these circumstances, can any gentleman suppose that she will voluntarily pay any part of the balance reported against her? If they do flatter themselves with such expectations I humbly conceive, ultimately, they will discover their error; and will now conclude my remarks with a hope that the House will not agree to the report of the Committee of the Whole.

Messrs. SKINNER, EUSTIS, GREGG, and FINDLEY supported, and Messrs. RODNEY and LEIB opposed the report of the Committee of the Whole.

The question was taken that the House do concur with the Committee of the Whole House in their disagreement to the said resolution, and passed in the negative—yeas 65, nays, 67, as follows:

YEAS—Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, Adam Boyd, Joseph Bryan, William Butler, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Roger Griswold, Samuel Hammond, Wade Hampton, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, William Hoge, David Hough, Samuel Hunt, Nehemiah Knight, Joseph Lewis, jr., John B. C. Lucas, Matthew Lyon, David Meriwether, Nahum Mitchell, Thomas Noble, James Mott, Anthony New, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Cotton Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Abram Trigg, John Trigg, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

NAYS—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, John Archer, William Blackledge, John Boyle, Robert Brown, George W. Campbell, John Campbell, Thomas Claiborne, Joseph Clay, Frederick Conrad, John Dawson, William Dickson, John W. Eppes, James Gillespie, Edwin Gray, Gaylord Griswold, Josiah Hasbrouck, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Michael Leib, Henry W. Livingston, Andrew McCord, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, Thomas Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Joshua Sands, John Smilie, John Smith of New York, John Smith of Virginia, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, George Tibbits, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

The question then recurring that the House do agree to the said motion, as originally proposed, in the words following, to wit:

Resolved, That a committee be appointed to inquire into the expediency of extinguishing the claims of the United States, for certain balances reported to be due from several of the States to the United States, by the Commissioners appointed to settle the accounts of the individual States with the United States, and that the said committee have power to report by bill, or otherwise—

Mr. VARNUM moved to amend it, by adding:

"And that provision ought to be made to pay to the creditor States, in the stock of the United States, their respective proportions of the whole amount of said balance, in the ratio prescribed by the Constitution of the United States for the apportionment of direct taxes among the several States."

On this amendment a debate ensued, in which it was supported by Messrs. Varnum and R. Griswold, and opposed by Messrs J. Clay, Blackledge, Findley, Dennis and Alston.

Mr. Nicholson moved to amend the amendment by inserting after "proportions," the words "if entitled to any." Lost yeas 53, nays 61.

Friday, January 20.

Ordered, That so much of the report of the Committee of Revisal and Unfinished Business, of the twenty-sixth of October last, as relates to a bill to lay out and open a new public road in the county of Washington, in the District of Columbia, presented at the last session, be referred to the committee appointed, on the twenty-sixth ultimo, on a representation of the City Council of Washington, in the said District of Columbia.

Ordered, That the petition of sundry citizens of the United States, resident in the Territory of Columbia, presented the 29th of December, 1801, "praying that a bridge may be erected from the western and southern extremity of the Maryland avenue, in the city of Washington, to the nearest and most convenient point of Alexander's island, in the river Potomac," be referred to the committee appointed, on the tenth instant, on a petition to the same effect, of sundry other citizens of the United States, resident in the said Territory of Columbia; to examine the matter thereof, and report their opinion thereupon to the House.

Mr. John Randolph, from the Committee of Ways and Means, to whom was referred, on the eighteenth instant, the amendment proposed by the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," reported that the Committee had had the said amendment under consideration, and directed him to report to the House their disagreement to the same.

The House then proceeded to reconsider the said amendment of the Senate, at the Clerk's table: Whereupon, the amendment, together with the bill, were recommitted to the Committee of Ways and Means.

Mr. John Randolph, from the committee appointed, presented, according to order, a bill to ascertain and provide for the salaries of the Judges of the Orphans' Courts in the District of Columbia; which was read twice and committed to a Committee of the whole House on Monday next.

Ordered, That the committee to whom was referred, on the sixth instant, the petition of sundry aliens resident in the city of Baltimore, and State of Maryland, have leave to report thereon by bill, or bills, or otherwise.

Mr. McCreery, from the committee last mentioned, presented, according to order, a bill in addition to an act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on the subject;" which was received, read twice, and committed to a Committee of the whole House on Monday next.

The House, in pursuance of a resolution of the eleventh instant, proceeded to a farther hearing of William Cowan, Agent of the Virginia Yazoo Company, at the bar of the House; and, thereupon, the said agent being fully heard, retired from the bar.

A petition and memorial of the citizens of the town of Alexandria, in the District of Columbia, signed in behalf of the said citizens, by Jacob Hoffman, their Mayor, was presented to the House and read, submitting certain propositions to the consideration of Congress, by way of amendments to their existing charter of incorporation; and praying that the same may be adopted, under such modifications and regulations as shall be deemed best calculated to promote the convenience and prosperity of the petitioners.—Referred to Mr. John Randolph, Mr. John Campbell, Mr. Findley, Mr. Goodwin, and Mr. Dennis, to examine and report their opinion thereupon to the House.

Monday, January 23.

Another member, to wit: Walter Bowie, from Maryland, appeared, produced his credentials, was qualified, and took his seat in the House.

The Speaker laid before the House sundry letters of the same tenor, written in the German language, addressed to the "General Congress of North American Free States," from the Council of Directors of the city of Memel, in the province of East Prussia, and dated the 25th of May, 1803, stating "that a certain Charles Melvill, formerly a resident of the said city of Memel, had, about four years previous to the date aforesaid, removed from thence to Charleston, in South Carolina, and remains indebted to the Comptroller of the said city for two bills of exchange, amounting to twenty-four thousand seven hundred and nine florins, Prussian currency: that the said Charles Melvill, it is believed, died some time ago, possessed of considerable property; the said Directors, with great submission, request the honorable Congress of the United States to oblige them with such information as the nature of the case will admit, offering a reciprocation of services therefor.

Ordered, That the said letters be referred to Mr. Conrad, Mr. Sammons, and Mr. Jackson; to examine and report their opinion thereupon to the House.

A memorial of the American Convention for promoting the abolition of slavery, and improving the condition of the African race, signed at the city of Philadelphia, by order and on behalf of the said Convention, by Matthew Franklin, their President, and attested by Othniel Alsop, their Clerk, was presented to the House and read, praying that Congress will, by law, prohibit the importation of slaves into the Territory of Louisiana, lately ceded to the United States.—Referred to the committee appointed, on the twenty-seventh of October last, on so much of the Message from the President of the United States, of the twenty-first of the same month, as relates "to permanent arrangements for the government of Louisiana;" to examine and report their opinion thereupon to the House.

Mr. Nicholson, from the committee to whom were referred, on the twenty-fifth of November, sundry memorials of the people of the Mississippi Territory of the United States, made a report in part thereon; which was read and referred to a Committee of the whole House to-morrow.

Mr. N., also, from the committee to whom were referred, on the twenty-second of November last, and the fourth instant, the petition of sundry residents and purchasers of land in the State of Ohio, made a report, in part, thereon; which was read, and referred to a Committee of the whole House on Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary in the "Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" and that the committee have leave to report thereon by bill, or otherwise.

Ordered, That Mr. George Washington Campbell, Mr. Early, Mr. Thomas Lewis, Mr. Roger Griswold, and Mr. Earle, be appointed a committee, pursuant to the said resolution.

The House resolved itself into a Committee of the Whole, on the bill for the better direction of the collectors of the respective ports of the United States in granting to seamen certificates of citizenship; and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

Resolved, That the Secretary of State be requested to lay before this House the documents and papers deposited in his office by the South Carolina Yazoo Company, and the Virginia Yazoo Company, in support of their claims to public lands; and that the Clerk of this House do return the said documents and papers to the office of the Secretary of State, when the House shall have decided upon the memorials of the said companies.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, in the year 1804:" Whereupon, the said amendments, together with the bill, were committed to the Committee of Ways and Means.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments," together with the report of a select committee thereon, made the thirtieth ultimo; and, after some time spent therein, the Committee rose and reported progress.

Mr. Bryan moved the following resolution:

Resolved, That the Committee of Ways and Means be directed to bring in a bill fixing the permanent salaries of those officers whose salaries were increased by an act passed on the second of March, 1799, &c.

Mr. J. Clay inquired whether such a resolution was in order, a similar one having been decided upon before?

The Speaker said it was in order, as the former resolution was general, and this particular.

The resolution was agreed to—ayes 52, noes 43.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government, during the year one thousand eight hundred and four; which was read twice, and committed to a Committee of the whole House on Monday next.

Tuesday, January 24.

An engrossed bill for the better direction of the collectors of the respective ports of the United States, in granting to seamen certificates of citizenship, was read the third time, and passed.

Mr. John Randolph, from the Committee of Ways and Means, to whom were referred, on the sixteenth instant, the amendments proposed by the Senate to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," made a report thereon; which was read, and referred to a Committee of the whole House to-morrow.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying his report respecting the levying new and more specific duties on goods, wares, and merchandise, imported into the United States, prepared in pursuance of a resolution of this House of the twenty-first of February last; which were read, and ordered to be referred to the Committee of Ways and Means.

Mr. Findley, from the committee to whom was referred on the thirtieth instant, the amendment proposed by the Senate to the bill, entitled "An act to incorporate the Directors of the Columbian Library Company," reported that the committee had, according to order, had the said amendment under consideration, and directed him to report to the House their agreement to the same.

The House then proceeded to reconsider the said amendment of the Senate, at the Clerk's table; and, on the question that the House do concur with the committee in their agreement to the same, it was resolved in the affirmative.

A Message was received from the President of the United States, communicating a letter from Governor Claiborne, in relation to the government of Louisiana, under contemplation of the Legislature.—The Message together with the letter of Governor Claiborne, were read.

Ordered, That the Speaker be requested to return to the President of the United States the letter from Governor Claiborne, aforesaid.

Mr. John Randolph, from the Committee of Ways and Means, to whom were yesterday referred the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four, reported that the committee had had the said amendments under consideration,

and directed him to report to the House their disagreement to the same.

The House then proceeded to reconsider the said amendments of the Senate at the Clerk's table: Whereupon, the question being taken that the House do concur with the Committee of Ways and Means in their disagreement to the same, it was resolved in the affirmative.

PUBLIC ROADS.

The House went into Committee of the Whole on the bill making provision for the application of the moneys appropriated for making public roads to the Ohio.

Mr. Smilie moved the rising of the Committee, with a view to the postponement of the bill to the next session.

This motion was supported on the ground that the application of the money was premature, there being but about $800 in the Treasury, and that the designation of the route would occasion much discussion, which would interfere with the transaction of important business before the House.

It was opposed by Messrs. Jackson, Samuel L. Mitchill, Holland, and Lyon, who contended that considerable time would elapse before the necessary arrangements could be made for making the roads; previously to which, upon a calculation made on a report of the Secretary of the Treasury, $20,000 would be accumulated, and an annual sum accrue thereafter of about $10,000; and that the present was as eligible a period as could occur for designating the points of the roads to be laid out.

The Committee rose—ayes 70; when the question being for giving leave to the Committee to sit again.

Mr. R. Griswold said he should vote for it. He was of opinion that sufficient information did not exist to designate the points of the routes, and that it could not be had without authorizing the appointment of Commissioners to explore the ground; for the purpose of modifying the bill, to effect this object alone, he should vote for leave being given to the Committee to sit again.

This motion was supported by Messrs. Roger Griswold, Dennis, Lyon, and Holland, and opposed by Mr. Smilie; and carried—yeas 72, nays 54, as follows:

Yeas—John Archer, Simeon Baldwin, George M. Bedinger, Silas Betton, Phanuel Bishop, William Blackledge, John Campbell, William Chamberlin, Clifton Claggett, Thomas Claiborne, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John Dennis, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, John Fowler, James Gillespie, G. Griswold, Roger Griswold, Samuel Hammond, Josiah Hasbrouck, Seth Hastings, Wm. Helms, Jas. Holland, David Holmes, D. Hough, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Joseph Lewis, junior, Henry W. Livingston, Matthew Lyon, Andrew McCord, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Anthony New, Beriah Palmer, Oliver Phelps, Thomas Plater, Cæsar A. Rodney, Joshua Sands, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, Richard Winn, and Thomas Wynns.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, David Bard, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Martin Chittenden, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, William Dickson, John B. Earle, John W. Eppes, William Findley, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Thomas Griffin, Wade Hampton, Joseph Heister, William Hoge, Samuel Hunt, Michael Leib, John B. C. Lucas, David Meriwether, Thomas Moore, Jeremiah Morrow, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Samuel D. Purviance, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, John Smilie, James Stephenson, John Stewart, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, and Joseph Winston.

On a motion made by Mr. Eppes that the House do come to the following resolution:

Resolved, That a committee be appointed to prepare and bring in a bill to discontinue the office of Commissioner of Loans in the several States, and to provide for the future discharge of the duties at present assigned to that officer:

The House proceeded to consider the said motion at the Clerk's table: When, an adjournment was called for, and carried.

Wednesday, January 25.

The Speaker laid before the House a letter from the Secretary of State, accompanied with sundry documents and papers, which have been deposited in his office by the South Carolina and Virginia Yazoo Companies, in support of their claims to public lands, transmitted in pursuance of a resolution of the twenty-third instant; which was read, and, together with the said documents and papers, referred to Mr. Nicholson, Mr. Morrow, Mr. Dwight, Mr. Brown, and Mr. Bryan.

Ordered, That the Committee of the whole House to whom was committed, on the seventh instant, the report of a select committee on the memorials of Alexander Moultrie, of the State of South Carolina, in behalf of himself and others, and of the Virginia Yazoo Company, by William Cowan, their agent, be discharged from the consideration thereof, and that the said report and memorials be referred to the committee last appointed.

Mr. John Cotton Smith, from the Committee of Claims, to whom was referred, on the thirteenth instant, the petition of George Mason, of the State of South Carolina, presented the 28th of January, 1803, made a report thereon; which was read, and considered: Whereupon,

Resolved, That provision ought to be made, by law, for the payment of such invalid pensioners as

were placed on the list in the State of South Carolina, agreeably to the former resolves of Congress, who, by the regulations of that State, were entitled to pensions at the commencement of the present Government of the United States, and who have not since been paid the same.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Ordered, That the committee to whom was referred, on the twenty-sixth ultimo, the memorial of the City Council of Washington, in the District of Columbia, have leave to report thereon, by bill, or bills, or otherwise.

Mr. Nicholson, from the committee last mentioned, presented, according to order, a bill supplementary to an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia;" which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. N., also, from the committee appointed, presented, according to order a bill to lay out and open a new public road in the county of Washington, in the District of Columbia; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill fixing the salaries of those officers of Government whose salaries were increased by the act of the 2d of March, 1799; which was read twice, and committed to a Committee of the whole House to-morrow.

Mr. Lattimore, from the committee to whom were referred, on the twenty-fifth and twenty-eighth of November last, the petitions of the Legislative Council and House of Representatives of the Mississippi Territory of the United States, and of sundry residents and claimants of lands on the Alabama river, and on the east side of the river and bay of Mobile, in the said Mississippi Territory, made a report thereon; which was read, and referred to a Committee of the whole House on Monday next.

LOUISIANA TERRITORY.

The House went into a Committee of the Whole, on the report of the Committee of Ways and Means on the amendments of the Senate to the bill giving effect to the laws of the United States in Louisiana.

The Committee of Ways and Means recommend a disagreement to the first amendment of the Senate, providing for a port of entry at Natchez.

On concurring with this part of the report, a debate of several hours ensued, on the expediency of constituting Natchez a port of entry; when, the question being taken, the Committee of the Whole voted a disagreement to the report of the Committee of Ways and Means, only 33 members rising in favor of it. This decision is a virtual agreement to the amendment of the Senate, for constituting a port of entry at Natchez.

Having made progress in the amendments, the Committee rose, and had leave to sit again.

DOMESTIC MANUFACTURES, &c.

Mr. Samuel L. Mitchill, from the Committee of Commerce and Manufactures, to whom were referred on the eighth, fourteenth, nineteenth, and twenty-sixth ultimo, the petitions and memorial of sundry manufacturers of corks; of sundry manufacturers of coach and harness ware; of sundry calico printers and dyers; and of sundry manufacturers of paper within the United States; made a report thereon; which was read, as follows:

Report of the Committee of Commerce and Manufactures on various memorials and petitions from citizens of New York, New Jersey, Pennsylvania, and Maryland, praying for Legislative patronage to several domestic arts, trades, and manufactures.

During the first session of the seventh Congress petitions and memorials were presented to Congress from the manufacturers of gunpowder, of hats, of printing types, of brushes, and of stoneware. These were severally referred to the Committee of Commerce and Manufactures. And upon them a distinct report was made by the same committee on the subject of hemp, in consequence of a memorial from certain citizens, praying an increase of duty on imported hemp and sail-duck. This was presented to the House on the 18th of February, 1802.

Afterward, during the same session, the memorials and petitions of various manufacturers of starch, paper, and umbrellas, referred by order of the House, were severally reported on. And this report was offered on the 8th of March, 1802.

The session then drawing toward a close, the reports on these petitions, together with the memorials of certain calico printers, cordwainers, and shoemakers, were, few of them, acted on, but were left with other unfinished business to be taken up at the succeeding session. The resolution of the House to this effect, passed on the 16th of April, 1802.

In the course of that succeeding session, a considerable number of the former petitions were renewed, or others presented for similar purposes; and to the former collection were added memorials from printers, combmakers, gunsmiths, and cork-cutters. The report on this volume of memorials was made on the 21st of February, 1803.

A number of these memorials, or others of the like import, have been presented again during the present session. The cutters of corks, the makers of plated trappings for carriages and horses, the stainers of plain cotton goods, and, in short, the domestic tradesmen and artists of almost every other denomination, have applied to Congress to patronize their respective employments, and to increase their profits. The modes of favoring domestic manufactures by Governmental aid may be reduced to the following heads:

First. *Encouragement by the exempting imported raw materials from imposts.* Already has it been recommended to the House to encourage some of our domestic manufactures, by increasing the facility of introducing the raw materials which enter into them. And it was thought sufficient encouragement for the manufacture of wheat into flour, and of mill stones, that rough or unwrought burrs should be admitted free from duty. The like opinion was entertained concerning the encouragement of the brush manufacture, by advising that the bristles of swine should be admitted free. As our country is not known as yet to furnish pure antimony, the exemption of the regulus of

that metal from impost, was thought a sufficient encouragement for the incipient type manufacture. The paper manufacture seemed to be sufficiently provided for, if rags were permitted to be brought into the country without being duties. Though saltpetre and sulphur both abound in the United States, yet as their preparation is still in a backward state, it was thought that the manufacture of gunpowder would receive due patronage by exempting them both from the payment of impost on their importation from Italy and India. Some think indigo ought to come free; as also the bark of the cork tree.

Second. *Encouragement by laying higher or prohibiting duties on manufactured articles imported.* It has been urged that a duty of twenty-five per centum ad valorem on fur hats, brushes, stoneware, saddles, cannon ball, glass bottles, and glassware of all kinds; and fifty cents on umbrellas; three cents per pound on starch; and four cents on hair powder would have an operation favorable to the domestic enterprise of hatters, brushmakers, potters, saddlers, iron masters, glass, umbrella, and starch manufacturers.

In like manner, it has been considered by a former committee, that if five cents the pound was laid upon imported gunpowder; three cents per pound upon glue; two cents upon tarred cordage; two-and-a-half cents upon untarred cordage or yarns; on printed calicoes an additional duty of two and a half per cent.; on all plated ware, an additional duty of five per cent.; on soap, three cents the pound; on candles of tallow three cents the pound; on anchors, two cents per pound; on spikes or bolts of iron, two cents per pound; on cut, slitted or rolled iron, one cent per pound; on foreign pickled fish, one dollar the barrel; and on all dried fish, one dollar the quintal; there would be an adequate Governmental aid extended to the manufactures of gunpowder, glue, cordage, soap, and candles, anchors, spikes, slit iron, and to the cod fishery.

Thirdly. *Encouragement by withholding drawback from articles of foreign manufacture exported again.* This is done already in the case of loaf and refined sugar, and might easily be extended to other articles.

Fourthly. *Encouragement by allowing drawback of duties paid on domestic manufactures equal to what was paid for the raw materials on their importation.* This has generally been allowed on the exportation of sugar refined from foreign materials, and on rum distilled from foreign molasses, though under our present law neither is entitled to the drawback. It has been supposed that plain cottons which undergo the operation of staining and printing within the country might be permitted to receive drawback on exportation in the form of calicoes.

Fifthly. *By direct bounties.* This mode of encouragement has been thought to have been employed partially in the curing and exporting of codfish; and could be extended to other branches of business if sound policy required it.

From this view of the proceedings of Congress it will appear that much has been done already to encourage the domestic industry of our citizens.

That industry, under such aids as the Government by these means has given at a time when population is so rapidly increasing, has caused useful arts and manufactures to rise up and thrive in almost every part of the country; our works in wood, copper, hemp, leather, and iron, are already excellent and extensive. And if we do not excel in the manufacture of the finer articles of cotton, silk, wool, and the metals, we may felicitate ourselves that, by reason of the ease of gaining a subsistence and the high price of wages, our fellow-citizens born to happier destinies are not doomed to the wretchedness of a strict discipline in such manufactories.

Our citizens are distinguished for their ingenuity and skill, they have invented many expedients by machinery to shorten and cheapen labor. The machine for making wool and cotton cards, the machines for ginning cotton, the machines for cutting and heading nails, the machinery for elevating wheat, and for raising and stirring meal in mills, and the improvements in the manufactures of muskets, class with the most useful inventions with which the age has been adorned.

It is, perhaps, to be regretted by the petitioners that Congress is deprived of the power *to encourage manufactures by imposing duties on certain domestic raw materials if exported*; if this, however, had not been withheld by the Constitution, an export duty upon horns and bones of oxen and deer, might operate in favor of the comb, knife, lantern, &c., manufacture; and an export duty upon green myrtle wax, might favor the bleaching of that choice vegetable production and the formation of white candles from it; so, perhaps, the laying an export duty upon furs, would be a ready method of aiding the hat manufacture. Or, to take a stronger case, an export duty on provisions, by making bread, meal, and other articles of food, cheap at home, might be viewed by some of the petitioners as a capital method of lowering labor, and encouraging domestic manufactures. But none of this latter class of expedients is under the control of the Government.

The committee observe, in the Journals of the House, that on the 21st of February, 1803, a resolve was passed, directing the Secretary of the Treasury to prepare and lay before Congress a plan for levying new and more specific duties on goods, wares, and merchandise imported into the United States, so that the same shall, as near as may be, neither increase nor diminish the present revenue collected from imports. From this plan, lately presented to Congress, additional light has been thrown on this subject.

In the meantime it ought to be considered that there is great scope for agriculture, tillage, and rural employment in the United States. Agriculture is the great occupation which sets in motion all kinds of manufactures. It furnishes both the raw materials, and the articles of subsistence, to those who are engaged in manufacturing employments. The cultivation of the earth is, therefore, absolutely necessary to provide the ingredients for artisans to work upon, and the food for enabling them to live, while they are engaged in labor. This being the fact, the great question arises, whether we shall furnish raw materials and food to manufacturers in our own country, or in foreign lands!

Political economists will instantly see that the good of the revenue, and the happiness of the people, are best promoted by offering a part of our unwrought materials, and of our surplus provisions, to domestic manufacturers, and, at the same time, to export the other part of what we can spare, in exchange for the wrought productions of foreign manufactories.

In a country devoted to agriculture, the cluster of arts and trades which minister to its wants spring up, of course, and almost from necessity. The plainer, coarser, and more useful fabrics in wool, leather, iron, flax, cotton, and stone, are manufactured with tolerable skill; while the more fine, costly, and high wrought articles of those several kinds can be procured more conveniently from foreign parts. And while the country consumer pays for the former with one part of his spare produce, he barters away the other part to procure a proportion of the latter.

There may be some danger in refusing to admit the manufactures of foreign countries; for, by the adoption of such a measure, we should have no market abroad for our produce, and industry would lose one of its chief incentives at home.

In addition to the wise calculations and estimates of our predecessors in Congress, who devised the existing system of imposts, there may probably be something done. And the following plan appears to the committee as well adapted as anything that has occurred, to suit the wishes of the petitioners as far as seems reasonable, and as far as actual circumstances warrant:

Resolved, That rags of linen, cotton, woollen, and hempen cloths; bristles of swine; regulus of antimony; unwrought burr stones; saltpetre; and the bark of the cork tree, (which pay at present twelve-and-a-half per cent. ad valorem,) be admitted free of duties.

Resolved, That brushes and black bottles, (now paying twelve-and-a-half per cent.,) be henceforward charged with a duty of twenty-five per cent.

Resolved, That fur hats, and plated ware, (which now pay fifteen per cent.,) shall be raised to a duty of twenty per cent.

Resolved, That stoneware, window glass, and cannon ball, (which now pay fifteen per cent.,) be hereafter charged with a duty of twenty-five per cent.

Resolved, That foreign pickled and dried fish, (which now pay twelve-and-a-half per cent. ad valorem,) be subjected to a duty of $1 50 the barrel for the former, and of one hundred cents the quintal for the latter.

Resolved, That a duty of three cents the pound be laid upon starch, of four cents the pound upon hair powder, and four cents upon glue, on their importation, in lieu of the present duties of fifteen per cent. ad valorem.

Resolved, That printed calicoes, and gunpowder, (now paying twelve-and-a-half per cent.,) be henceforward charged with a duty of fifteen per cent.

Resolved, That tarred cordage and cables, (now paying 110 cents the cwt.) be subjected to a duty of two cents the pound; and that untarred cordage, (now paying two hundred and twenty-five cents the cwt.,) be made to pay two-and-a-half cents the pound.

Resolved, That a duty of fifty cents a piece be laid upon umbrellas; of three cents per pound upon soap; of three cents the pound upon tallow candles; of two cents the pound upon anchors; of two-and-a-half cents upon spikes, and bolts of iron.

The report was referred to a Committee of the Whole on Monday next.

THURSDAY, January 26.

A petition of William Dunbar, of the Mississippi Territory of the United States, was presented to the House and read, praying that the title to a certain lot of land containing about twenty-three acres, within the limits of the city of Natchez, which was granted by the Spanish Government, in consideration of services rendered by the petitioner, may be confirmed to him, in fee simple.

Ordered, That the said petition be referred to Mr. LATTIMORE, Mr. ALSTON, Mr. STEDMAN, Mr. THOMAS, Mr. RANDOLPH, and Mr. HAMPTON; to examine and report their opinion thereupon to the House.

LOUISIANA TERRITORY.

The House again resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, of the twenty fourth instant, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States, by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and, after some time spent therein, the Committee rose and reported to the House their agreement to some, and their disagreement to others, of the said amendments.

The House then proceeded to consider the said report and amendments: Whereupon,

Resolved, That this House doth disagree to the first and thirteenth amendments.

Resolved, That this House doth agree to the second, third, and fourth amendments.

Resolved, That this House doth agree to the fifth amendment to the said bill, for striking out, in the eighth line of the third section, the words, "*Natchez and.*"

The question was taken that the House do agree to the resolutions, and decided in the affirmative—yeas 84, nays 40, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, Walter Bowie, Adam Boyd, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, John Fowler, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Gaylord Griswold, Roger Griswold, Samuel Hammond, Seth Hastings, William Helms, William Hoge, James Holland, David Hough, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, John B. C Lucas, Matthew Lyon, David Meriwether, Nahum Mitchell, Jeremiah Morrow, James Mott, Anthony New, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, Thomas Plater, Thomas M. Randolph, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Thompson J. Skinner, James Sloan, John Cotton Smith, John Smith of Virginia, Henry Southard, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Killian K. Van Rensselaer, Daniel Verplanck, Matthew Walton, Lemuel Williams, Marmaduke Williams, and Richard Winn.

NAYS—Nathaniel Alexander, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, Joseph Clay, Jacob Crowninshield, John B. Earle, Peter Early, William Eustis, William Findley, James Gillespie, Thomas Griffin, Josiah Hasbrouck, Joseph Heister, David Holmes, Samuel Hunt, Walter Jones, Michael Leib, Andrew McCord, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Thomas Newton, jr., Joseph H Nicholson, Samuel D. Purviance, John Randolph, John Rea of Pennsylvania, Jacob

Richards, Thomas Sammons, Joshua Sands, John Smilie, John Smith of New York, Richard Stanford, Joseph Stanton, Philip Van Cortlandt, Joseph B. Varnum, John Whitehill, and Thomas Wynns.

Resolved, That this House do agree to the sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth amendments to the said bill.

The House then proceeded in the farther consideration of the said amendments of the Senate: When an adjournment was called for, and carried.

FRIDAY, January 27.

Mr. NICHOLSON, from the committee appointed on the twenty-second of November last, who were directed by a resolution of this House, of the twenty-fourth of the same month, "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," made a farther report in part thereupon; which was read, and referred to a Committee of the whole House on Monday next.

The House resumed the consideration of the amendments proposed by the Senate to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes:" Whereupon the House agreed to the fourteenth, fifteenth, and sixteenth amendments; and disagreed to the seventeenth amendment of the Senate to the said bill.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the twenty-third instant, on the petition of Samuel Corp, of the city and State of New York; and, after some time spent therein, the Committee rose and reported to the House their agreement to the same. The House then proceeded to consider the said report; and so much as is contained in the last clause thereof, being twice read, in the words following, to wit: "That the request of the petitioner is reasonable, and that he ought to be relieved:" the question was taken that the House do concur with the Committee of the whole House therein, and resolved in the affirmative.

Ordered, That a bill or bills be brought in pursuant thereto; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

MONDAY, January 30.

Mr. JOHN COTTON SMITH, from the Committee of Claims, to whom was referred, on the 28th of November last, the petition of sundry citizens and inhabitants of the counties of Washington and Allegany, in the State of Pennsylvania, presented the 22d of March, 1796, and the memorial of sundry inhabitants of the four western counties of the said State of Pennsylvania, presented the 30th of January, 1798, made a report thereon; which was read and considered; whereupon, the petitioners and memorialists, respectively, had leave to withdraw their said petition and memorial, together with the documents accompanying the same.

Mr. DANA, from the Committee of Commerce and Manufactures, presented, according to order, a bill for the relief of Samuel Corp; which was read twice, and committed to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate desire a conference with this House on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four;" to which conference the Senate have appointed managers on their part.

The House proceeded to consider the foregoing message of the Senate: Whereupon,

Resolved, That this House do agree to the said conference; and that Messrs. J. RANDOLPH, R. GRISWOLD, and RODNEY, be appointed managers at the same, on the part of this House.

The House resolved itself into a Committee of the Whole on the report of the committee, of the twenty-sixth ultimo, on "the expediency of granting further time to the proprietors of military land warrants to obtain and locate the same; and, after some time spent therein, the Committee rose and reported several resolutions thereupon; which were twice read, and agreed to by the House, as follow:

1. *Resolved*, That further time ought to be given to claimants of military land warrants to obtain and locate the same.

2. *Resolved*, That further time ought to be given to the holders of military land warrants to locate the same.

3. *Resolved*, That all locations hereafter to be made, shall be on the unlocated parts of the fifty quarter townships and fractional parts of townships, appropriated for satisfying the claims of individuals for military services, by a law of the first day of January, one thousand eight hundred.

Ordered, That a bill or bills be brought in, pursuant to the said resolutions; and that Messrs. VAN HORNE, ARCHER, JOHN TRIGG, SAMMONS, and TENNEY, do prepare and bring in the same.

COMMISSIONER OF LOANS.

The House took into consideration the resolution of Mr. EPPES, for the appointment of a committee to bring in a bill for the discontinuance of the office of Commissioner of Loans in the several States.

Mr. EPPES observed, that after the discussion which this subject had already received, he should not think it necessary to trouble the House with any further remarks, but that he believed more evil and more inconvenience had been apprehended from this measure than it was calculated to produce. If the office of Commissioner of Loans shall be discontinued, it is not contemplated by the friends of this measure to make any change in the payment of the interest of the public debt—that will still be paid within the individual States—the only change that will take place will be this, that stock of the United States, instead of

being transferred partly on the books of the Treasury, and partly on the books of the Commissioners of Loans, will be transferrable on the books of the Treasury only. He should confine his observations, therefore, to the right of Congress to regulate the transfer in the way proposed, and to the expediency of exercising this right. By the act passed on the 4th day of August 1790, making provision for the public debt, the then creditors of the United States were invited to come forward and exchange the certificates or evidence of their debt for other certificates. At this time no complete register of the debt of the United States existed, many of the outstanding certificates had never been liquidated at their specie value, and having been issued by various persons in various situations were liable to counterfeit and the public and individuals to imposition. In providing for the payment of the debt it was necessary for the Government to ascertain its amount. This could only be done by calling in the outstanding certificates for liquidation, and for register or exchange. To have compelled every holder of a public certificate in this extensive country, to have resorted to the seat of Government for the purpose of registering or exchanging his certificate, would have been oppressive and unjust. Hence it was found necessary to make provision for receiving the old and issuing the new certificates within the individual States. Under the old Confederation, persons, under the denomination of Commissioners of Loans, had been employed in the different States in borrowing money, and issuing what were called indents of interest. This establishment was adopted by the framers of this law, and as this Government had experienced the inconvenience of wanting a register of her debt, a new duty was assigned to Commissioners of Loans, and the register of the debt rendered perpetual, by confining transfer to certain Government books, partly under the care of these Commissioners, and partly under the control of the Secretary of the Treasury. By the 7th section of the act it is declared that "the stock which shall be created pursuant to this act shall be transferable only on the books of the Treasury, or of the said Commissioners respectively." This provision as to transfer, it was on a former occasion contended, was a part of the contract between the public and the individual, and ought to be considered as one of the conditions on which the public creditor came forward to exchange the evidence of his debt. So far, however, from being a contract between the public and the individual, it is certainly nothing more than an ordinary legislative limitation of the right which the individual before possessed as to transfer. Previous to the passing of this law, certificates were payable to bearer, and, like a bank note or other negotiable paper, were transferable from individual to individual by delivery. By this clause in the law the individual was deprived of this facility of transfer, and compelled, instead of transferring his stock by delivery, to go in person, or by power of attorney, to a particular place, and a particular book, to make his transfer. The Government secured, by this arrangement, a perpetual register of its debt. The individual gained nothing; and I cannot suppose that a provision which abridged considerably the right of the public creditor as to transfer could have been designed exclusively for his benefit. The regulation was evidently adopted for the public convenience, and intended principally to facilitate the different operations of the Government in the payment of her debt. That this limitation or transfer was designed solely for the convenience of the Government, and not for the benefit of the individual, is evident from the 10th section of the law. This section applies to persons who shall not come forward to subscribe to the new loan—

"Such of the creditors of the United States as may not subscribe to the said loan, shall nevertheless receive, during the year 1791, a rate per centum on the respective amounts of their respective demands, including interest to the last day of December next, equal to the interest payable to subscribing creditors, to be paid at the same times, at the same places, and by the same persons as is hereinbefore directed, concerning the interest on the stock which may be created in virtue of said proposed loan. But as some of the certificates now in circulation have not heretofore been liquidated to specie value, as most of them are greatly subject to counterfeit, and counterfeits have actually taken place in numerous instances, and as embarrassment and imposition might, for these reasons, attend the payment of interest on those certificates in their present form, it shall, therefore, be necessary to entitle the said creditors to this benefit of the said payment, that those of them who do not possess certificates issued by the Register of the Treasury, for the registered debt, should produce, previous to the first day of June next, their respective certificates, either at the Treasury of the United States, or to some one of the Commissioners to be appointed as aforesaid, to the end that the same may be cancelled, and other certificates issued in lieu thereof; which new certificates shall specify the specie amount of those in exchange for which they are given, and shall be otherwise of the like tenor with those heretofore issued by the said Register of the Treasury, for the said registered debt, and shall be transferable on the like principles with those directed to be issued on account of the subscriptions to the loan hereby proposed."

From this section it appears that individuals who did not come forward to subscribe to this loan, who had no share in this pretended contract, were nevertheless compelled to produce their certificates at the Treasury, or before some one of the Commissioners, to lose their right of transferring their certificates by delivery, to receive other certificates in exchange, transferable only on the Government books. Not for the benefit of the individual certainly, who merely exchanged his paper, but for the convenience of the Government, to whom it is always important to know its creditors.

In ordinary transactions between man and man, the mode of transferring a debt is not a part of the contract. A. gives his bond to B. The transfer of the bond is subject to the local regulations of the country where it is given, and, however these regulations may vary, it never has been or will be contended that they affect the

original obligation of transfer. The regulation of transfer is a mere ordinary act of legislation—a legislative provision, therefore, as to transfer, is like every other legislative provision, subject to legislative change. It would be necessary, therefore, to show that the faith of the United States was pledged expressly, as to the transfer of her debt, or this regulation may certainly be varied as the public convenience shall direct. In the 21st section of the act the faith of the United States is pledged for the payment of the principal and interest, according to the tenor of the certificates. I know of no part of the act in which the faith of the United States is pledged as to the transfer of the debt. The certificate is the evidence of debt against the public in the hands of the public creditors. If the public discharges its debt, agreeable to the tenor of the certificate, it complies with the whole of its obligation; the certificate does not include any obligation as to transfer, it only promises the payment of the principal and interest, nor is the faith of the United States pledged for more. While we make provision for paying the interest regularly, and for the discharge of the principal within the limited time, no charge of violated faith can be made against the Government.

The question, therefore, resolves itself, in my mind, into a mere question of expediency—whenever the interest of the public and of individuals shall come in contact. I shall be willing fairly to examine what is due to the public, and what is due to the individual. If the office of the Commissioner of Loans is discontinued, it will not affect the value of the stock in the hands of the public creditors, because, it is a fact which will not be denied, that stock on the books of the Treasury is as valuable as stock on the books of the Commissioners; it will not affect the facility or certainty with which the public creditor will receive his interest, because that will still be paid within the different States. It will add nothing to the expense of transfer; because it is contemplated to make it the duty of an officer, residing at the seat of Government, to make the transfer free from expense. It will produce no inconvenience to the individual but this—at present during fourteen days in each quarter no transfer can be made, as during that period the officers prepare the dividend books; if the office of Commissioner is abolished, the books will probably be closed against transfer during twenty-one or perhaps twenty-eight days in each quarter instead of fourteen.

The public will gain the advantage of having all the operations relating to the debt under the immediate control of the Secretary of the Treasury. The public will be released from the dangerous responsibility of officers who make heavy disbursements, and give but little security. The Commissioner of Loans disburses annually in Massachusetts $785,036; in Connecticut $113,484; in New York $770,150; in Pennsylvania $848,065; in South Carolina $188,618. Notwithstanding these heavy disbursements, no Commissioner gives security in a larger sum than $10,000. The disbursements in all the States except North Carolina and Delaware greatly exceed the sum for which the Commissioners give security. The public will gain further, as appears from the letter of the Secretary of the Treasury, an annual saving of $20,000. The States of Ohio, Kentucky, and Tennessee, will be released from this proportion, a tax from which they receive no earthly benefit, not even a Commissioner.

He hoped that gentlemen who were not decidedly of opinion, that the transfer of stock was a part of the contract with the public creditor, would suffer a bill to be brought in, and the provisions rendered as unexceptionable as possible; if, after the subject is placed in its best form, inconvenience to the public creditor shall still be apprehended, the bill may be finally rejected.

Mr. Elliot said he had voted on a former occasion in favor of concurring with the report of the Committee of the Whole in their disagreement to the report of the Committee of Ways and Means, who had declared it inexpedient to discontinue the offices of Commissioners of Loans. In so voting he did not mean to pledge himself for the ultimate vote he should give on this subject. Not having then maturely considered it, his judgment was not fully made up. He was then of opinion that Congress possessed the power of substituting such arrangements in lieu of the Commissioners of Loans as would afford an equal security to the rights of the public creditors; and he was then inclined to believe that such arrangements could be devised. From subsequent impressions, he was of opinion that the public creditor would, whether justly or not he would not say, consider the measure as invasive of his rights. Under this impression he considered the small saving contemplated by this measure as inadequate to the injury, real or imaginary, which it might do to that description of men. On examining the law, he was inclined to think that the public creditor had a right to give it such a construction as would make the mode of transfer prescribed a part of the contract. By the act of August, 1790, it is provided, that

"A Commissioner shall be appointed for each State, to reside therein, whose duty it shall be to superintend the subscriptions to the said loan; to open books for the same; to receive the certificates which shall be presented in payment thereof; to liquidate the specie value of such of them as shall not have been before liquidated; to issue the certificates above-mentioned in lieu thereof, according to the terms of each subscription; to enter in books to be by him kept for that purpose, credits to the respective subscribers to the said loan for the sums to which they shall be respectively entitled; to transfer the said credits upon the said books from time to time, as shall be requisite; to pay the interest thereupon as the same shall become due, and generally to observe and perform such directions and regulations as shall be prescribed to him by the Secretary of the Treasury, touching the execution of his office."

It is not denied that the payment of interest within the several States is part of the contract between the public and the creditor. By the same section that provides for the payment of the interest, it is also enacted that the Commissioner of

Loans shall transfer the credits on his books in such manner as shall be required by the creditor. Mr. E. said he never entertained the idea that Congress could act with propriety in abolishing these offices without establishing a substitute in their room, by which transfers might be made in the several States. This idea appeared now to be abandoned by the friends of the measure, and it is now contended that the stock need only be transferable at the seat of Government.

But the gentleman requires those not decidedly hostile to the measure, to suffer a bill to be brought in, whose details may perhaps be satisfactory. Mr. E. said, no bill could be introduced that would succeed in securing his vote, that did not provide for effecting transfers in the several States; and on mature reflection he perceived no way in which this important end could be accomplished.

It was said that this measure would be conducive to public economy. Mr. E. declared himself as much attached to public economy as any member on the floor. But when he viewed the subject in all its aspects, he feared this measure, if adopted, would expose the Government to the imputation of being penny-wise and pound-foolish. For these reasons he should give the resolution his negative.

Mr. J. Clay regretted that he was not in the House when the honorable gentleman from Virginia had offered his remarks on the resolution before the House. It was not his purpose in rising to detain the House. After the ample manner in which this measure had been discussed on a former occasion, he considered it unnecessary other than briefly to assign the reasons which would govern him in passing his negative on the present motion. From the terms of the act of 1790, he considered the facility of transfer secured to the public creditor by the establishment of the loan office as one part of the contract with the United States. Viewing the subject in this light he did not think that Congress had the power to take this facility away without a violation of the public faith. The facility of transfer certainly added something to the value of the stock. When necessity urged its possessor to part with it, any delay in making the transfer must decrease its value. This point had in a former debate been so fully discussed, and this effect been made so conspicuously to appear, that he deemed it unnecessary to say a single word more upon it. Without referring to the circumstances under which the public debt was created, or to the provisions of the law which formed a part of the funding system, without saying that system was the offspring of folly or of fraud, or adverting to the infamous circumstances attending it, he considered it as the offspring of Congress, and that they were not at liberty to touch a hair of its head.

Mr. J. Randolph said if the question had been taken by a silent vote, he should not have risen; but as the yeas and nays were required, and the vote he was about to give might appear to be inconsistent with that which he had given on a former occasion, he would concisely state the reasons why he should vote against the resolution. They were these—when the report of the Committee of Ways and Means came into the House, it was attempted to be sustained on the ground that the existence of the loan offices formed part of the compact between the creditors and the public, and that any modification of them would involve a violation of public faith. For this reason, because he was unwilling to affirm a doctrine so untenable, and because he then believed that a modification might be made that would be rather beneficial than hurtful to the creditor, he was opposed to the resolution; and he was happy to find the doctrine that the existence of those offices made a part of the contract was not sustained by the House, and the report was therefore on that ground negatived. When the discussion was on a former occasion prosecuted, Mr. R. said he found gentlemen, without reference to political opinion, from all quarters of the Union, deprecating the subversion of this establishment. In particular, he perceived those gentlemen that represented the largest stockholding States, peculiarly averse to it; among them were several members from Massachusetts, and his learned friend from New York. Many members from North Carolina were also averse to the abolition of these offices. Under these circumstance, he should vote against the resolution. Not because he considered the Legislature as not possessed of the power to do away this establishment; not because he did not believe the plan suggested by the Secretary of the Treasury would not be ultimately beneficial to the public creditors, but because gentlemen, with whom it was his pride and pleasure to act, thought differently. In such a case, he was willing, out of deference to them, and to that which at present appeared to be the public opinion, to give up the saving which might result from the proposed measure.

Mr. R. then read the report of the Committee of Ways and Means on the resolution submitted to them on the subject; and stated that the right of the Government to abolish the loan offices being affirmed by a former vote of that House he was willing for the present to waive the exercise of it.

Mr. Smilie declared his opinion on this subject unaltered. He never had considered the existence of the Commissioners as a part of the contract, and he had no idea that the public faith would be violated by doing them away.

The question was then taken by yeas and nays, and the resolution rejected—yeas 52, nays 58, as follows:

Yeas—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Levi Casey, Thomas Claiborne, Matthew Clay, John B. Earle, John W. Eppes, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Wade Hampton, William Hoge, James Holland, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, Matthew Lyon, Alexander McCord, David Meriwether, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, James

Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Abram Trigg, John Trigg, Isaac Van Horne, John Whitehill, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Nathaniel Alexander, Simeon Baldwin, William Blackledge, Adam Boyd, Joseph Bryan, Martin Chittenden, Clifton Claggett, Jos. Clay, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, Edwin Gray, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, Seth Hastings, William Helms, David Hough, Benjamin Huger, Samuel Hunt, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, John B. C. Lucas, William McCreery, Nahum Mitchell, James Mott, Beriah Palmer, John Patterson, Samuel D. Purviance, John Randolph, Thomas M. Randolph, Joshua Sands, Ebenezer Seaver, John Smith of New York, John Smith of Virginia, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

And so the said motion was lost.

CITY OF WASHINGTON.

The House went into a Committee of the Whole, on the bill supplementary to the act to incorporate the inhabitants of the City of Washington. The first section of the bill made the incorporation perpetual.

Mr. J. Randolph moved to limit its duration to five years from the end of the next session of Congress.

Mr. Rodney supported, and Messrs. Nicholson, J. Clay, and Dennis, opposed the motion, which was agreed to—ayes 48, noes 32.

On motion of Mr. Dennis, a section was introduced, declaring citizens competent witnesses in suits to which the corporation may be a party—when the bill was ordered to be engrossed for a third reading to-morrow.

JUDGE CHASE.

Mr. J. Randolph, in the name of the committee appointed to inquire into the conduct of Samuel Chase and Richard Peters, stated that documents had been received by them which occupied a considerable bulk, the printing of which would considerably assist their investigation, by rendering them more convenient for perusal. He added, that it would probably be necessary to print these papers for the information of the House, when the report of the committee was made. He therefore moved the vesting in them authority to cause to be printed such papers as they might conceive proper.

Mr. Eustis suggested a doubt of the propriety of printing detached papers, which might produce an improper impression upon the public mind.

Mr. Nicholson observed, that it would rest with the committee to preclude, if they saw fit, a publication of the papers, though printed, until the report should be made, and remarked that this was the course pursued by the committee of investigation.

The motion was then carried—ayes 59.

Mr. Leib said, we had heard much lately about the independence of the judges; that it had been a theme within the walls of this House, and the subject of animated discussion without them. To the *rational* independence of the Judiciary, he professed himself a friend, and to evince his sincerity, he begged leave to submit to the consideration of the House the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of providing by law against the appointment of judges of the courts of the United States to other offices under the Government.

Tuesday, January 31.

An engrossed bill supplementary to an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act in relation to the Navy Pension Fund;" to which they desire the concurrence of this House. The Senate have reconsidered their first, thirteenth, and seventeenth amendments, disagreed to by this House, to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the 30th of April, 1803, between the United States and the French Republic, and for other purposes;" and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers on their part.

The House proceeded to consider so much of the foregoing message of the Senate as desires a conference with this House on the subject-matter of the amendments depending between the two Houses to the bill therein mentioned: Whereupon,

Resolved, That this House do agree to the said conference; and that Messrs. Nicholson, Joseph Clay, Sands, Hastings, and Newton, be appointed managers at the said conference, on the part of this House.

SALARIES OF CERTAIN OFFICERS.

The House went into a Committee of the Whole on the salary bill.

Mr. J. Randolph moved to fix the salary of the Secretary of State at $5,000 per annum.

Mr. Elmer moved to fix it at $4,500.

On Mr. Randolph's motion, the Committee divided—ayes 64, noes 22.

The salary of the Secretary of the Treasury was fixed at $5,000 by a like division.

Mr. J. Randolph moved to fix the salary of the Secretary of War at $4,500.

Mr. Elmer moved to fix it at $4,000.

First motion carried—ayes 50, noes 33.

The salary of the Secretary of the Navy was fixed at $4,500—ayes 55.

The salaries of other officers were fixed in the same manner as by the act of 1799.

On fixing the salary of the Postmaster General, Mr. Hoge moved to fill the blank with $4,000.

Mr. Varnum moved $3,500.

Mr. J. Randolph moved $3,000, the sum fixed by the act of 1799.

Mr. Leib moved $2,000.

The motion to fill the blank with $4,000 was lost—ayes 17.

Messrs. Varnum, Gregg, Claiborne, and Southard, supported the motion to fill the blank with $3,500, on the ground that the duties of the Postmaster General had greatly increased within these few years.

Mr. Alston opposed the motion; which was agreed to—ayes 59, noes 46.

Mr. J. Randolph moved to fix the salary of the Assistant Postmaster General at $1,700.

Mr. Varnum moved $2,000.

The last motion having failed—ayes 35, noes 47—that of Mr. Randolph prevailed.

The Committee rose, and reported the bill with the above-stated amendments.

On agreeing to the report of the Committee, so far as it went to fix the salary of the Secretary of State at $5,000, a desultory debate ensued, not so much on the proposed compensation, as on the mode in which the bill had progressed.

By Messrs. Conrad, Gregg, Elmer, and Rodney, it was remarked that a bill similar in substance with this having failed, owing to the disagreeing votes of the two Houses, it was contrary to parliamentary usage to permit a similar bill to be introduced during the same session. They further expressed their opinion, that it would be most proper to postpone the subject until the next session, when the consideration of compensations generally might be more advantageously entered upon.

Messrs. Eustis and Smilie advocated the correctness of the form as well as principle of the bill, and asked if there was not an absolute necessity imposed upon the Legislature, in case bills making appropriations for the civil list or military establishment should be rejected, to re-originate bills having the same object?

The yeas and nays were taken on agreeing with the Committee in fixing the salary of the Secretary of State at $5,000, and carried—yeas 80, nays 31, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Clifton Claggett, Thomas Claiborne, Jacob Crowninshield, Richard Cutts, John Dawson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, John W. Eppes, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, Wade Hampton, John A. Hanna, William Helms, James Holland, David Holmes, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, Nahum Mitchell, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, Thomas Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sandford, Joshua Sands, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Abram Trigg, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—Isaac Anderson, Phanuel Bishop, William Chamberlin, Martin Chittenden, Joseph Clay, Matthew Clay, Fredrick Conrad, John Davenport, John Dennis, Ebenezer Elmer, Andrew Gregg, Gaylord Griswold, Joseph Heister, William Hoge, David Hough, Michael Leib, Joseph Lewis, jun., David Meriwether, Thomas Moore, James Mott, Gideon Olin, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, James Sloan, Henry Southard, Richard Stanford, John Stewart, Isaac Van Horne, Marmaduke Williams, and Joseph Winston.

The remaining salaries were affirmed by the House, until they reached the allowance to the Postmaster General reported by the Committee, viz: $3,500, being $500 beyond the past allowance.

On agreeing to this sum, a debate ensued—Messrs. Varnum, Elliot, Lyon, and Holland, advocated, and Messrs. Huger, Lucas, Nicholson, and Eustis, opposed its adoption. The question being taken, it passed in the negative—yeas 53, nays 66, as follows:

Yeas—John Archer, David Bard, Walter Bowie, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Clifton Claggett, Thomas Claiborne, Jacob Crowninshield, Richard Cutts, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, William Findley, John Fowler, Andrew Gregg, Samuel Hammond, Wade Hampton, William Helms, James Holland, Thomas Lowndes, Matthew Lyon, Andrew McCord, David Meriwether, James Mott, Anthony New, Gideon Olin, Beriah Palmer, Oliver Phelps, Samuel D. Purviance, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, David Thomas, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Blackledge, John Boyle, Robert Brown, William Chamberlin, Martin Chittenden, Joseph Clay, Matthew Clay, Frederick Conrad, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, John W. Eppes, William Eustis, James Gillespie, Peterson Goodwyn, Edwin Gray, Thomas Griffin, John A. Hanna, Joseph Heister, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, John B. C. Lucas, William McCreery, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, John Randolph, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Joshua Sands, John Smilie, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, Abram

Trigg, John Trigg, Isaac Van Horne, Matthew Walton, Lemuel Williams, Marmaduke Williams, and Joseph Winston.

The blank was then filled with $3,000.

Mr. J. Randolph offered a new section, limiting the duration of the bill to three years, and to the end of the next session of Congress thereafter. Carried—ayes 51, noes 45.

The bill was ordered to be engrossed for a third reading to-morrow—ayes 51, noes 47.

Mr. J. Randolph, from the Committee of Ways and Means, to whom was recommitted, on the twentieth instant, the amendment proposed by the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," made a report thereon: Whereupon the amendment of the Senate, together with the bill, were committed to a Committee of the whole House to-morrow.

Wednesday, February 1.

Mr. Nicholson remarked that, from information received from the Navy Department, it appeared to him that a modification of the subsisting arrangements for the distribution of the officers and seamen on board of national vessels laid up in ordinary, would be advantageous to the public service, while a retrenchment of about $30,000 a year could be probably made. With this view he moved the appointment of a committee to inquire into the expediency of amending the act providing for a Naval Peace Establishment.—Agreed to, and a committee, consisting of Messrs. Nicholson, Sands, Cutts, Lowndes, and Stanton, appointed.

SALARIES OF CERTAIN OFFICERS.

An engrossed bill fixing the salaries of those officers of Government whose salaries were increased by the act of the 3d of March, 1799, was read the third time.

Mr. Leib moved to postpone the bill to the first Monday in December next.

This motion was supported by Messrs. Gregg, Leib, J. Clay, Elliot, Thatcher, Elmer, and Sloan; and opposed by Messrs. Rodney, J. Randolph, Dawson, Smilie, Eustis, Findley, Nicholson, and Huger.

The advocates of the motion assigned different reasons for the votes they contemplated giving. Some declared themselves hostile to the quantum of allowance, as too high; others considered the apportionment of compensation partial and unequal, and were of opinion that it would be best to defer the entire subject of compensations to the ensuing session, when it might be gone into generally, and a permanent salary given to each officer correspondent to the services rendered by him. But the principal grounds of opposition to the passage of the bill, and in favor of its postponement, were, 1st. The rejection of a bill that very session alleged to be substantially the same with that under consideration; and, 2d. The insufficient and disproportionate salary allowed by it to the Postmaster General.

It was declared to be unparliamentary, inconvenient and dangerous, to permit a measure, similar in substance to one previously rejected the same session, to be brought again before the House. To show that it was unparliamentary, sundry precedents were appealed to in the proceedings of the British Parliament, and the invariable practice of Congress was likewise urged; it was said to be inconvenient, from the great waste of time it produced, after a full discussion of any subject; and it was declared to be highly dangerous from the power which it gave a minority at the close of a session to avail themselves of the accidental absence of members, to carry a favorite measure, though opposed by the express sense of the majority at an early period of the session. It was contended that the present bill was substantially the same with that lately before the House, and lost, owing to the disagreeing votes of the two Houses. This was evident from the salaries allowed being precisely similar in both bills; and it was insisted that the limitation of the last bill to three years did not discriminate it from the preceding bill, inasmuch as its effects would be as permanent as those of the former, should it be renewed from time to time.

The insufficient and disproportionate salary allowed the Postmaster General was strenuously insisted upon as an argument for postponing the bill. The office, it was alleged, required eminent talents, which the present officer, by the discharge of its duties, had shown himself fully to possess. Since the year 1799, the duties of the Post Office Department had greatly increased, and called for a remuneration, in some degree, correspondent to them.

The opponents of the postponment avowed their impression—an impression sanctioned on a late occasion by a great majority of the House—that the salaries allowed by the bill were moderate, and in no instance more than an equitable compensation for services performed. They contended that great inconvenience would flow from postponing the making compensations to the Executive officers until the ensuing year, and that the effect of such omission would be the necessity of then passing laws retroactive in their operation, which would be to create a precedent of an alarming nature, that might lead a Legislature, which had lost the confidence of their constituents, to empty the public Treasury into the hands of their favorites as a remuneration for services, compensated at the time they were rendered, by a smaller and what was then considered a competent allowance.

They contended that this bill was not the same with the one previously before the House, as the one was limited to three years duration, and the other was permanent; and that this variation constituted a characteristic and marked difference. That, as to precedents, those referred to, in the proceedings of the British Parliament, were opposed by others, afforded by the same body, which justified not only the passage of the present bill, but which went farther, and would justify the passage of a bill the same with one previously rejected. That this bill had not, in point of fact,

been rejected; the principle of it had been affirmed by large majorities of both Houses, and the only difference arose on the amendment of the Senate for making an addition to the salary of the Postmaster General. It was further contended that the precedents of the British Parliament did not apply to the proceedings of Congress, who were free to act for themselves, who, as they had adopted no written rule applicable to this case, were under no other restraints than those which flowed from their own convictions of the good or ill effects of particular modes of procedure.

In reply to the alleged incompetency of the compensation allowed the Postmaster General, it was admitted that the present officer had ably and faithfully discharged the duties of the department, but it was denied that his official duties were of the grade asserted. While they required respectable talents, they did not call for those great and rare qualifications essential to the able administration and superintendence of the other great departments of the Government.

The question was then taken by yeas and nays on the postponement, and passed in the negative—yeas 45, nays 72, as follows:

Yeas—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Chamberlin, Martin Chittenden, Clifton Claggett, Joseph Clay, Frederick Conrad, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, John Fowler, Andrew Gregg, Gaylord Griswold, Joseph Heister, William Helms, William Hoge, William Kennedy, Michael Leib, Joseph Lewis, junior, Thomas Lewis, Matthew Lyon, David Meriwether, Nahum Mitchell, Thomas Moore, Gideon Olin, Beriah Palmer, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, Richard Stanford, William Stedman, John Stewart, Samuel Thatcher, David Thomas, Abram Trigg, John Trigg, Isaac Van Horne, Marmaduke Williams, and Thomas Wynns.

Nays—Willis Alston, junior, John Archer, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Jacob Crowninshield, R. Cutts, John Dawson, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Thomas Griffin, Samuel Hammond, Wade Hampton, James Holland, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, Walter Jones, Nehemiah Knight, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, John Patterson, Oliver Phelps, Thomas Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Thomas Sandford, Joshua Sands, John Smilie, John Smith of New York, John Smith of Virginia, Henry Southard, Joseph Stanton, James Stephenson, Samuel Taggart, Samuel Tenney, Philip R. Thompson, Philip Van Cortlandt, Daniel C. Verplanck, Matthew Walton, John Whitehill, Richard Winn, and Thomas Wynns.

And then the main question being taken that the said bill do pass, it was resolved in the affirmative—yeas 57, nays 52, as follows:

Yeas—Willis Alston, junior, John Archer, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, John Clopton, Jacob Crowninshield, Richard Cutts, John Dawson, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Samuel Hammond, Wade Hampton, James Holland, David Holmes, Benjamin Huger, Walter Jones, Nehemiah Knight, John B. C. Lucas, Andrew McCord, William McCreery, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sandford, John Smilie, John Smith of New York, John Smith of Virginia, Joseph Stanton, Samuel Tenney, Philip R. Thompson, Philip Van Cortlandt, Daniel C. Verplanck, Matthew Walton, John Whitehill, Richard Winn, and Thomas Wynns.

Nays—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Silas Betton, Phanuel Bishop, William Chamberlin, Martin Chittenden, Joseph Clay, Matthew Clay, Frederick Conrad, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, John Fowler, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Joseph Heister, William Helms, William Hoge, Samuel Hunt, William Kennedy, Michael Leib, Joseph Lewis, jun., Thomas Lewis, Thomas Lowndes, Matthew Lyon, David Meriwether, Nahum Mitchell, Thomas Moore, James Mott, Gideon Olin, Beriah Palmer, Oliver Phelps, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, Henry Southard, Richard Stanford, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Thatcher, David Thomas, Abram Trigg, Isaac Van Horne, and Joseph Winston.

Resolved, That the title be, "An act continuing, for a limited time, the salaries of the officers of Government therein mentioned."

Mr. Early moved the following resolution:

Resolved, That to witnesses summoned to attend any committee of this House, during the present session of Congress, there shall be paid, out of the contingent fund of the House, the sum of —— per day for their attendance, and the further sum of —— for every twenty miles' travelling. And that to any messenger, sent under an order of the House for the person of a witness, there be paid, from the same fund, the sum of —— for every twenty miles' travelling.

The House proceeded to consider the said motion at the Clerk's table; when, an adjournment being called for, the House adjourned.

Thursday, February 2.

The House took up the following resolution, moved by Mr. Early:

"*Resolved*, That, to witnesses summoned to attend any committee of this House, during the present session of Congress, there shall be paid, out of the contingent fund of the House, the sum of *two dollars and fifty cents* per day for their attendance, and at the rate of *twelve and an half cents* for every mile's travelling. And that, to any messenger sent under an order of the

House for the person of a witness, there shall be paid, from the same fund, at the rate of *three dollars* for every twenty miles' travelling."

The sums in italic were left blank in Mr. EARLY's original motion, but were so fixed after an expression of considerable diversity of opinion; when the resolution, so amended, was agreed to—ayes 69.

The bill sent from the Senate, entitled "An act in relation to the Navy pension fund," was read twice, and committed to a Committee of the whole House on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, of the thirty-first ultimo, to whom was recommitted the amendment of the Senate to the bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha;" and, after some time spent therein, the Committee rose, and reported to the House their agreement to the report.

The House then proceeded to consider the said report and amendment; whereupon, the House agreed to the said amendment of the Senate, with an amendment thereto by adding the following words at the end of the first section:

"And that the further sum of seven hundred and thirty-eight dollars and twenty-five cents be, and the same hereby is, appropriated for defraying the expenses incurred for the said ship, whilst in possession of the captors."

Mr. J. CLAY observed, that, by looking over a printed paper on their tables, he perceived there were several articles on which the drawbacks allowed exceeded the duties. He therefore moved a resolution instructing the Committee of Ways and Means to inquire into the expediency of discontinuing the allowance of drawback on spirits, gunpowder, soap, candles, and playing-cards of foreign manufacture, and of allowing, in the lieu of drawback, —— per gallon on all spirits exported, both of foreign and domestic manufacture. The motion was agreed to.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the sixteenth of December last, to whom were referred the petition of John F. Randolph and Randolph McGillis, in behalf of themselves and others, together with a report of the Secretary of War, accompanied with sundry documents respecting claims against the United States for services of the militia of the State of Georgia; also, the report of a select committee thereon: and, after some time spent therein, the Committee rose and reported progress.

FRIDAY, February 3.

Ordered, That the Committee of the whole House, to whom was committed, on the fifteenth of December last, the report of the committee on a petition of the Mayor, Aldermen, and Assistants of the city of Natchez, in the Mississippi Territory of the United States, be discharged from the consideration thereof; and that the said report and petition be referred to the committee appointed, on the twenty-sixth ultimo, on the petition of William Dunbar, of the said Mississippi Territory.

Mr. J. RANDOLPH, from the committee appointed, presented a bill, supplemental to the act, entitled "An act concerning the City of Washington;" which was read twice and committed to a Committee of the Whole on Monday next.

Ordered, That Mr. GRAY be excused from serving on the committee appointed on the twenty-first of December last, "to inquire whether any, and if any, what description of claims against the United States are barred by the statutes of limitation, which in reason and justice ought to be provided for by law," and that Mr. MOTT be appointed on the said committee in his stead; also, that Mr. DAVENPORT be appointed on the same committee in the room of Mr. TALLMADGE, who has obtained leave of absence.

GEORGIA MILITIA CLAIMS.

The House went into Committee of the Whole on the report of the Committee of Claims, on the petition of John M. Randolph and Randolph McGillis, which is unfavorable to the prayer of the petitioners.

The petitioners claim their pay as militiamen, called out in the State of Georgia for the protection of that State against the Indians. They allege, that, being called out under the authority of the Government of the United States, the General Government is bound to compensate them and the other men called out for their services.

The Committee of Claims report that the petitioners are to look for compensation to the State of Georgia, who, by the articles of cession recently concluded, had agreed to receive one million two hundred and fifty thousand dollars, in full for all demands for military service.

Mr. EARLY.—Mr. Chairman, I cannot but be sensible of the difficulty which opposes itself to the present claim after an unfavorable report from the committee to which it was referred. And it is impossible not to discern that this difficulty is increased by the opinion of the Attorney General upon the construction of the articles of cession from Georgia to the United States. But as to that opinion, it may not be improper to observe, that so far as it applies to the case of the claimant, it is repelled by the positive certificate of two of the Georgia Commissioners, gentlemen of veracity and legal talents equal with himself. To give to the opinion, or rather the "private ideas and recollections" of that officer, the weight and authority which have been thereunto attached by the Committee of Claims, would be to adopt in practice a principle at war with the maxims of all free Governments, it would be to constitute the framer of an instrument the judge of its construction. This is the essence of despotism. But I apprehend that neither the principle laid down in that opinion nor the facts therein stated do bear upon the case; but that the facts do negatively prove that the claims now under discussion were not included in the compensation stipulated to Georgia in the articles of cession and agreement. The principles are, that the term "territory," as

used in the instrument, meant not only the territory ceded, but that retained. Now, Mr. Chairman, as I cannot possibly comprehend what bearing this has upon the question before us, I must be excused if I leave the Attorney General in the undisturbed enjoyment of his premises and pursue the discussion. Another principle which he appears to consider as unquestionable, is only necessary to be stated to show that it proves as little to the purpose as the former. He says that the words in the cession which stipulate that the one million two hundred and fifty thousand dollars shall be paid to Georgia "as a consideration for the expenses which the said State had incurred in relation to the said territory," must, from the mere force of the terms, include all expenses which that State had incurred for past military defensive operations. Now, sir, as it has never been admitted that the claims at present under discussion did constitute an expense which had been incurred by the "State," and as it is only upon the establishment of that principle that a rejection can possibly be authorized, I humbly conceive that the Attorney General has assumed that which it was essentially incumbent upon him to prove. So much for his principles. The facts by him stated are, that the Commissioners of Georgia, by way of inducement to the stipulation for paying a certain sum of money as a consideration for the cession, represented that the State had a debt incurred for military defensive operations, "which the United States upon an application had unreasonably refused to allow." Now, sir, as neither part of this description can apply to the claims of individuals against the United States for services performed under the sanction of the General Government, and which so far from having been unreasonably refused allowance by that Government, had not at the date of the compact been even the subject of discussion in its counsels, that statement must necessarily have relation to some other debt. This other debt I will now unfold.

So early as the year 1787 the State of Georgia, being sorely distressed by the violence of the Indians, passed a law directing the establishment of two regiments of troops to serve until a restoration of peace could be secured. But the enlistments not having been completed, in the following year a law was passed holding out additional inducement, and in the year 1789 the present Federal Constitution having gone into operation and the rights of peace and war thereby vested exclusively in the General Government, the Legislature of Georgia passed a law discharging the troops which had been enlisted, and declaring the rate of pay which they should receive. For this pay certificates were directed to be issued, and these certificates constitute a debt unredeemed to this day. [Mr. E. turned to the several laws above referred to and read from each extracts as proofs of his statement.] Here, Mr. Chairman, you have unfolded a debt, which, without the least violence to construction, fills up the description given in the articles of cession. Here are expenses incurred by the State totally distinct from and unconnected with the claims now under discussion. It is important also to observe, that every attempt made by the State of Georgia prior to the cession to dispose of her vacant territory, appears from the face of the acts to have been dictated by a view of discharging the public obligations to those troops. No less than three attempts at a disposition of her territory were made prior to the cession. The first was an offer to cede to the General Government, in 1788, provided Congress would pay the expenses which had then accrued in defending the frontiers, and would yield the wonted protection in future at their own expense. This was rejected. In the following year a law passed for disposing of a part of the territory to companies, notoriously with a view to raise money wherewith to meet the same engagements. This also failed, for causes which have been amply unfolded to the House on another occasion. The next attempt was in the year 1795, which, in the very title of the law, is expressed to be made to meet the particular engagements to the same soldiery. Of the result of this transaction the House is also possessed. The last attempt was by the articles of cession. Thus it appears that in no instance were the present claims ever thought of as a debt to be met by the State of Georgia out of the proceeds of her unlocated lands, but that the expenses incurred by, and the engagements made to the troops in the years 1787, 1788, and 1789, were uniformly the moving cause toward a disposition of her territory.

The Committee of Claims however, sir, notwithstanding they have throughout their report endeavored to rest upon the Attorney General the responsibility of the construction given to the cession, have at the same time erected a pillar of their own to support it, where they saw it must fall. They well perceived that all reasoning upon the subject was idle, unless one principle could be established; this they have boldly advanced to, and instead of proving have assumed as the groundwork of their whole superstructure. It is, that the State was bound in the first instance to compensate the soldiery, notwithstanding the ulterior responsibility of the General Government. From this they infer that the State had a right and by the cession did exercise the right of exonerating the latter Government. Now, Mr. Chairman, grant to the Committee their premises and there is an end to the question between us; their consequences must result. But, sir, I must supplicate their pardon if I refuse my assent to their position until my judgment is convinced. And I must be pardoned for saying that the reasoning to which they have resorted for the purpose of proving it, strikes my mind as the reverse of sound; that it proves too much to prove anything. It is, that the State Government is in the first instance liable, because the troops were called into the field by the State Executive. This reasoning, Mr. Chairman, would go to prove that in every instance in which militia have been called into the service of the General Government, the States from which they were draughted were in the first instance liable for

their compensation, because, in every case which has taken place, they were called into the field by State Executives. The truth is, sir, that in every case the orders have issued from the Executive of the General Government to that of the State Government, and that orders have from the latter issued in consequence thereof, for making the requisite draughts; so that the troops engaged in service under the immediate directions of the State, but under the mediate directions of the United States. This was the course pursued in both the insurrections in the State of Pennsylvania; it was the course in the State of South Carolina in relation to Indian invasion, at the same period at which the services were performed in Georgia for which we are now claiming compensation. It was the same course the other day with the troops ordered down the Mississippi to occupy New Orleans and its dependency. In all these cases the troops were compensated by the General Government in the first instance. It never entered the heart of any man that the States from which the draughts were made, were in the first instance liable, and that resort must afterwards be had by the State Government against the United States. I have always been taught that precedents established principles, but it now seems that the Committee of Claims in the profoundness of their researches have discovered that by assuming premises, principles may be established in the face of an uniform current of precedents.

There are, Mr. Chairman, two modes marked out in the Constitution in which the militia may be called into service. The first is a case where from necessity the war attribute of sovereignty is left in the individual States. It is the case of invasion or such imminent danger thereof as will not admit of delay. The other mode is that of issuing orders from the Executive of the General, to the officers of the State governments. This is the usual method by which the militia of the States are drawn into the service of the United States. And it is of importance to observe here, that the act of Congress which was intended to give effect to the Constitutional powers of the General Government to "call forth the militia," authorizes the President "to issue his orders for that purpose to such officer or officers of the militia as he shall think proper." For, inasmuch as there can be no other difference in a military point of view, and for military purposes, between the Governor of a State and the next highest military officer, than the difference of rank, the one being first, the other second, in command, it must follow that if the militia are to resort for pay to the State Governments because their orders have passed through the Governor, they must also resort to the same source in case their orders should pass through the second or third in command; the principles upon which the committee found their reasoning apply equally to both cases. The soundness of conclusions drawn by the committee is, therefore, not merely questionable, but to me it appears not difficult to prove that the conclusions themselves are at war with the most obvious principles of justice.

I hold it, sir, accordant with the most common rules by which individuals are regulated in a state of society, that when service is performed, the party for whom it was performed is the only one responsible for the compensation. The rule applies with equal force to the case of Governments, who are moral agents. Happily, Mr. Chairman, there is no difficulty in ascertaining the party for whom the service was performed in the case under discussion. Fortunately for the States in general, it is made the Constitutional duty of the General Government to "protect each of them against invasion." And fortunately for the State of Georgia in the present instance, there is the recorded sanction of the Executive of the Union, couched in the following words—"If the 'information which you may receive, shall substantiate clearly any hostile designs of the 'Creeks against the frontiers of Georgia, you will 'be pleased to take the most effectual measures for 'the defence thereof, as may be in your power, 'and which the occasion may require." If, therefore, the principles and reasoning of the committee be correct it must follow that troops engaged in performing the Constitutional duty of the United States must resort for their compensation in the first place to the States. To premises leading to such conclusions, I will not, cannot yield assent.

Mr. Chairman, it is recollected that when this subject was under discussion at the last session of Congress, a distinction was taken between the situation of troops called into the field by order from the General Government, and those called out by the State Executive in virtue of authority given by the former. But sir, I humbly apprehend that such a distinction is one of words, and not of principles. And I must here profess to the honorable Committee of Claims my profound acknowledgment, for furnishing me with an idea, and a mode of phraseology most suited to my purpose. They, in their report have told the House that the "manner of exhibiting" the demand, assuredly cannot change its nature. Now, sir, I repeat, in nearly their own words, that the manner of calling out the troops, cannot change the nature of the service. It cannot change the United States service into State service. And indeed the Committee of Claims themselves have given us the strongest proofs, that with them the distinction had no weight. For of claims which have been so contradistinguished in the reports from the War Department, there were committed to them, both descriptions; but they draw no difference. Indeed, their principles would admit of none.

But, sir, if a difference in principle did exist between claims of the two kinds, it would prove nothing in the present case, because the difference does not here appear in fact; and I cannot but consider it as one of the unfortunate circumstances attendant upon our claims, that the epithet *unauthorized*, has, without foundation, been attached to them, because, as was supposed, they were founded upon services not specially ordered. The fact is, Mr. Chairman, that they were not only *authorized*, but they were *ordered*, by the General Government. I beg leave to compare the tenor of the orders for draughting the militia in Georgia, with the orders issued in other cases, about which no difficulty ever occurred. The words used in the Georgia case are, "you will be pleased to take the most effectual measures for the defence thereof," &c. What are the words used in the orders issued to the Governors of four States, to march militia to quell the insurrection in the Western counties of Pennsylvania? "I have to request your Excellency," &c. The words are the same in every other instance in which militia have been ordered into the service of the United States. They are the same which were used for enlisting the one hundred horse and one hundred foot to serve upon the frontiers of Georgia, about whose compensation there never has, until the present moment, been any difficulty; they are the same under which several corps were raised in the same quarter, whose services have long since been remunerated.

Let us here pause for a moment, and view the extent to which we shall be led by adopting this report. Sir, the principles of that report, and the application therein made of those principles, lead to a conclusion from which, if I mistake not, every gentleman upon this floor will revolt. Sure I am, every State in the Union will reject it with horror. What, sir! has the great, the all-important right of peace and war been yielded up by the States to the General Government, and yet the States bound to compensate for war services? It is no reply to this conclusion to be told that the States are only liable in the first instance; for it is then completely within the power of the General Government, by *withholding*, to make them bear the burden altogether. And to that may be added, that the expenditure might frequently be of such magnitude as to create extreme oppression in the imposition of taxes, and, in some States, might produce general ruin and bankruptcy.

There is, Mr. Chairman, one other fact to which I deem it important to call the attention of the House, and it is the last with which I will trouble them. From a report made by a select committee upon this claim, at the last session, it is ascertained that the supplies furnished to these troops were paid for by the General Government. Now, sir, I wish some gentleman would undertake to answer the question, whether such payment was not an unequivocal acknowledgment of the validity of this claim as against the United States. To my mind there is nothing more clear. If the troops were in the service of Georgia, why did the United States supply them? Where is the instance of troops in the service of one Power, supplied by another? Sir, the General Government was not surprised into this payment. It was made long after the services were performed, and when all the circumstances were well known. This act was—it cannot be considered in any other light than, an acknowledgment that the service was performed under the United States. Such acknowledgment, sir, creates an assumption too, which would bind any individual in a court of justice. It is conclusive against the Government, and a refusal to abide by it, will prove a dishonorable abandonment of the common principles of justice, because there is wanting a power of enforcement.

Mr. Chairman, I will conclude these observations, by bringing home to the House a question before asked—for whom was the service performed? From him must be the debt. Between him and the soldier was the contract. By rejecting the present claims, you will impair that contract—you will violate the Constitution of your country. What right has this Government to turn over its creditors, without their consent, to any State for payment? And truly, sir, if these unfortunate troops are to depend for their compensation upon your performance of the articles of cession, in paying the money you have therein stipulated, you have already given them a woful specimen of the soundness of that dependence. For by that compact this Government was, within twelve months, to open a land office, for the purpose of raising as speedily as possible, the sum to be paid. Where is your land office, sir? Nearly two years have elapsed, and we find it no where but upon paper. The public faith is pledged for the demand of the claimants—their pay is their right. To refuse it longer will be to stamp upon the national character, a wound, which it will deserve to carry unhealed so long as it has existence.

Mr. J. C. Smith observed that the Committee of Claims, in submitting to the House the reports then before them, had not been influenced by the magnitude of the sum claimed for services. The simple question considered by them, was whether compensation had, or had not been rendered for those services. The decision of this question depended on another question, whether from the nature of our Government, the State of Georgia was to be considered as, in the first instance, liable for the satisfaction of these claims. If this should be admitted, he thought the proper construction to be placed on the articles of cession was extremely plain. There are two ways in which the militia of a State may be called out by the Executive of the United States. The first is by a direct detachment of any portion of the militia. It was not necessary, in any instance, for the Government of the United States to call on the Executive of a State for this purpose. It was in their power directly to call into the public service a brigade or other division. This is one course, which may be pursued, and in this case it is admitted that the soldiers are soldiers of the United States, and that for their compensation they are to look to no other Government than that of the United States, in the first instance. The other course is that where a requisition is made by the General Government on the Executive of a State. What is the state of things in this case? It must be presumed that the citizens of a State, thus called into service, are to look to their own State for compensation in the first instance, though he admitted that the General Government was in the last resort responsible. They are to look, in the first instance, to the State Government, for this obvious reason: The Gov-

ernor of a State is not amenable to the General Government; and he consequently cannot be punished for exceeding their orders. Is that Government then bound at all events to pay the expenses incurred in consequence of the orders of the State Executive, when they may be in direct violation of the orders of the General Government? It is a clear position then, that when the militia are called out by the Executive of a State they are to look to the State in the first instance. Application may be made to the General Government in the first instance, and if there shall have been no disobedience to its orders it may make payment; but, put the case of the orders of the General Government being disobeyed, will it be contended that it will be obliged to remunerate services rendered in opposition to its commands?

Contemplating the subject in this view, it must be admitted that the militia are in the first instance to look to the State Government, which may make a compromise with the General Government.

The second question is, what is the nature of the compromise made in this case? The articles of cession purport to be [Mr. Smith here quoted the beginning of these articles.]

It may here be proper to premise that Georgia is the first State in the Union that has ever received a compensation for her territory transferred to the United States. That territory was acquired by the joint exertions and blood of the citizens of all the States. Under such circumstances it becomes necessary to inquire into the compensation stipulated to be given by the United States to the State of Georgia; a compensation not given for the land, but for expenses incurred by Georgia in relation to it. The Attorney General tells us that these expenses were incurred for the portion surrendered to the United States, as well as for the whole State.

It behooves the gentleman from Georgia to show the precise expenses incurred. Were this once proved it would remove all doubt. The Commissioners who formed the articles of cession, it may be presumed, had before them the whole materials; and it must be inferred that the claims now made were fully considered by them, and were, so far as they are just, included in the settlement. Mr. S. concluded his remarks by saying he felt no uncommon tenacity or zeal against the claims; but that he would be very willing to allow them in case it should be satisfactorily shown that they were not already compensated.

Mr. Meriwether and Mr. Holland opposed the report, when a vote was passed against the claims—yeas 73, nays 28; when the House, on the motion of Mr. J. Clay, postponed the further consideration of the subject till Monday next.

LOUISIANA TERRITORY.

Mr. Nicholson, from the managers appointed to confer with the managers on the part of the Senate, on the amendments depending between the House to the bill giving effect to the laws of the United States in the Louisiana Territory, made a report, recommending an agreement to several of the amendments proposed by the Senate with amendments.

[One amendment proposed to the amendment of the Senate limits the registry of vessels to citizens of the United States, or to persons resident five years in Louisiana.]

Mr. Lucas suggested the repugnance of this provision to the treaty, which appeared to him to require the admission of all the inhabitants of Louisiana, at the period of cession, to the same privileges. This opinion was concisely supported by Mr. G. W. Campbell, and repelled by Mr. Nicholson.

Mr. Varnum moved an amendment, destroying the limitation. This produced a point of order, viz: whether an amendment to the report of a committee of conference was in order.

The Speaker being called upon to decide, stated that his recollection supplied him with no precedents. He would wish, therefore, before he decided the point, to avail himself of the recollection of any gentlemen who was possessed of apposite facts. No gentleman rising, the Speaker said his mind was not exempt from doubt and embarrassment; but a decision being required, he determined the amendment in order.

Mr. Nicholson observed that the point appeared to be a new one, and he was far from having himself formed a decided opinion respecting it. With great deference to the decision of the Chair, in order to have the point settled, he appealed to the House.

The appeal being stated, the House adjourned, without taking a vote upon it.

Monday, February 6.

Mr. Newton from the committee appointed, on the eighteenth ultimo, presented a bill to prohibit the exaction of bail upon certain suits brought in the District of Columbia; which was read twice, and committed to a Committee of the whole House on Monday next.

On motion, it was

Resolved, That the Committee of Claims be directed to consider whether any, and, if any, what, alterations are necessary to be made in the "act to make provision for persons that have been disabled by known wounds received in the service of the United States, during the Revolutionary war," passed March third, one thousand eight hundred and three; and that they report by bill or otherwise.

Mr. J. Randolph, from the committee of conference on the disagreeing votes of the two Houses on the bill making appropriations for the Military Establishment, made a report.

The report recommends an agreement to all the amendments proposed by the Senate.

The House concurred in the report, excepting so far as regarded an amendment of the Senate appropriating $4,500 for paying the postage of letters received or forwarded by the adjutant and inspector, and on their disagreement to which they insisted.

Mr. Jackson observed, that, it would be found by a recurrence to the journals, that a resolution had been offered for discontinuing the offices of

Commissioners of Loans, and referred to the Committee of Ways and Means, who had reported a disagreement thereto. To this report the House, after a full discussion, had disagreed—yeas 58, nays 55. It would also be found that, on a subsequent day, a resolution had been offered for the appointment of a select committee to bring in a bill for the discontinuance of those officers. This resolution appeared to have been rejected—yeas 52, nays 58. It followed from this statement that the first decision had been made when there were one hundred and thirteen members present, while the last was made when there were but one hundred and ten members present. The use, Mr. J. said, which he meant to make of these facts, was this: that inasmuch as the House, by their first disagreement, had negatived the disagreement of the Committee of Ways and Means to the original resolution, that resolution must be considered as still before the House; which was, that the Committee of Ways and Means be instructed to bring in a bill; whereas the last vote had only decided that a select committee should not be appointed to bring in a bill. He therefore gave notice that he should, on Thursday next, call up the original resolution.

LOUISIANA TERRITORY.

The House resumed the consideration of the unfinished business of Friday, being the report of the committee of conference on the amendments proposed by the Senate to the bill for carrying into effect the laws of the United States in Louisiana.

The Speaker stated, that when the House had adjourned, an amendment had been offered to the report, which he had declared in order, and that an appeal had been made from his decision.

At the request of a member, the Speaker stated several precedents, considered by him to be in point; and declared that on mature reflection he was of opinion that the amendment was in order; on which Mr. Nicholson observed, that he had made the appeal in consequence of the doubts suggested by the Speaker; as they were removed, he would withdraw his motion.

The amendment of Mr. Varnum was then stated, and after considerable verbal variation, was agreed to, in such a form as substantially to allow all the inhabitants of Louisiana on the 30th of April, on taking an oath of allegiance to the United States, and citizens, to obtain register for their vessels.

The motion was supported by Messrs. Varnum, Lucas, G. W. Campbell, Bedinger, Smilie, Dennis, Sloan, and Holland; and opposed by Messrs. Nicholson, Dana, and Hastings.

By the former it was contended, that according to the third article of the Convention with France the inhabitants of the ceded territory were to be admitted into the Union as soon as possible, according to the principles of the Federal Constitution; and that in the meantime they were to be maintained in the enjoyment of their liberty, property, and religion; that vessels were property, and that consequently the undisturbed right to all the immunities appurtenant to them attached to all the inhabitants at the period of cession; that the treaty admitted of no discrimination, embracing in its provisions all the inhabitants of the ceded territory. To allow one description of inhabitants, viz. those who had resided in the Territory for five years, according to the report of the committee of conference, to register their vessels, while those who had resided a shorter period were prohibited, would be in effect to invade the rights of the latter by giving the former exclusive privileges. The treaty being the supreme law of the land, it was insisted that Congress did not possess the right of violating it, and that should they make any distinction, in hostility to it, they would give the inhabitants of the ceded Territory just grounds of dissatisfaction, and might create a pretext on the part of the ceding Power to obstruct its execution. It was further observed that the distinction would sow the seeds of jealousy among the inhabitants of Louisiana, and disturb that tranquillity and content which it was the policy of the United States to cherish.

Mr. Gregg, during the course of the debate, declared himself so far friendly to the principle of the amendment, as to be in favor of extending the right to register vessels to citizens of the United States, Spanish subjects, and French citizens.

The opponents of the motion observed that the Constitution had authorized Congress to fix one uniform rule of naturalization, under which authority they had passed a law requiring five years' residence, previous to the naturalization of an alien; and that under the revenue laws of the United States none but citizens were permitted to register their vessels; to extend this right to all the inhabitants of Louisiana would be to give them an unjust and unconstitutional preference over the inhabitants of the United States who were not citizens. It was allowed that when the inhabitants of the ceded territory were admitted into the Union, they would be entitled to all the rights of citizens of the United States; but it was contended that until such admission, they must be viewed in the light of colonists, subject to the discretionary government of the United States. The proposed amendment was unjust, as it extended important privileges to the inhabitants of Louisiana denied by our laws to our own citizens. For, while a citizen could not naturalize a foreign bottom, this amendment would permit an inhabitant of Louisiana to naturalize his ships, which could be considered in no other light than foreign bottoms. It had been said that this provision ought to be extended to all the inhabitants of Louisiana because the treaty had so prescribed. To this it was replied, that were there no other reasons for rejecting the motion, this would be sufficient, as, if agreed to, it went to establish the principle that the President and Senate, in the exercise of the treaty-making power, could make as many foreigners citizens, as they pleased; and that on this ground alone, were there no other, it became Congress, and especially that House, to resist the adoption of a principle so fraught with danger.

To this last remark the advocates of the amendment answered that the treaty-making power was unquestionably under the Constitutional control of Congress, who might, or might not, carry a treaty into effect; but that, after having carried it generally into effect, as had been the case with the Louisiana Convention, it became the supreme law of the land, and a discretion ceased to exist in the Government to fulfil or violate it.

On agreeing to the amendment, the House divided—yeas 55, nays 48.

The remaining part of the report of the committee of conference was then agreed to without any division.

Tuesday, February 7.

Mr. Nicholson, from the committee to whom was committed, on the twenty-fifth of November last, the bill supplementary to the act, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be authenticated, so as to take effect in every other State," reported an amendatory bill; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Randolph, from the committee, presented a bill to amend the charter of Alexandria; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Eustis, from the committee to whom was recommitted the bill for reprinting the laws of the United States, and for the more extensive distribution of the same, reported an amendatory bill to provide for a more extensive distribution of the laws of the United States; which was read twice and committed to a Committee of the whole House to-morrow.

On motion made and seconded that the House do come to the following resolutions:

Resolved, That, whenever any number of citizens of the United States, not less than forty, residing within the District of Columbia, shall present a petition to the Circuit Court of the United States for the District of Columbia, praying that a public road may be laid out within the said District, the said Court, if they think the same reasonable and proper, may authorize the laying out of such road, in such manner, and of such width, as to do as little injury as possible to the owner or owners of the land through which the same shall pass, and so as to promote the public convenience: And the Court shall direct the person appointed to lay out the same, to make a return of his proceedings therein, and shall cause notice to be given to the proprietors of the lands, over which the same shall be laid out, to appear before the Court, on the return thereof, to show cause, if any, he, she, or they have, why the Court should not confirm the said return: And if any objection be made thereto, the Court, on hearing the parties, may either reject or confirm the same; and, in case of a rejection thereof, may proceed to take such order as to the course of such road, as they may think proper; *Provided*, That no such road shall be made to run through any yard, garden, or orchard.

Resolved, That the Court shall cause an accurate description of such road to be made and recorded in the office of the clerk of the county in which the said road shall be established; the same shall thereafter be deemed and taken as a public road: And if any person shall alter, change, or obstruct the same, the person so altering, changing, or obstructing the same, shall be liable to a penalty, not exceeding fifty dollars, for every such offence.

Resolved, That the said Court shall have power to estimate the damages to which the proprietor or proprietors of the land, over which such road shall be established, is entitled, and the same shall be levied and paid to such proprieter or proprietors in the manner hereinafter provided.

Resolved, That the Court shall appoint an overseer or superintendent to make and keep in repair such road, and may allow such compensation therefor as they may think reasonable, and may, for incapacity, negligence, or other misconduct, remove such overseer or superintendent, and appoint another in his place, as often as may be necessary.

Resolved, That if such road shall be laid out within that part of the District which was formerly included within the limits of Prince George's county, in the State of Maryland, the whole expense of establishing and keeping in repair the same shall be assessed upon, and paid by, the City of Washington and that part of the county, without the limits of the city, which was included within the county aforesaid, in a proportion corresponding to the amount of assessable property within their respective limits. If such road be established in that part of the District formerly included within Montgomery county, in the State aforesaid, then the expenses aforesaid shall be defrayed in manner aforesaid by Georgetown, and that part of the county included within the limits of the last mentioned county, in proportion to the amount of the assessable property within their respective limits.

Ordered, That the said motion be referred to the Committee of the whole House to whom was committed, on the twenty-fifth ultimo, the bill to lay out and open a new public road in the county of Washington, in the District of Columbia.

Mr. Van Horne, from the committee appointed on the thirtieth ultimo, presented a bill granting further time for locating military land warrants, and for other purposes; which was read twice and committed to a Committee of the Whole on Friday next.

Mr. Thomas, from the committee appointed on the eighteenth of October last, presented a bill further to alter and establish certain post roads, and for other purposes; which was read twice and committed to a Committee of the Whole on Thursday next.

The House took up Mr. Leib's motion for the appointment of a committee to bring in a bill to prohibit the appointment of Judges of the United States to other offices, and agreed to it—yeas 67.

PUBLIC LANDS.

On motion of Mr. Nicholson, the House resolved itself into a Committee of the Whole on the report of the committee appointed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States.

The following resolution was before the Committee of the Whole on a former day:

"*Resolved*, That the Secretary of State, the Secretary of the Treasury, and the Attorney General, for the time being, be authorized to receive propositions of compromise and settlement from the several companies, or persons claiming public lands in the territory of the United States lying south of the State of Tennessee and west of the State of Georgia; and, finally, to adjust and settle the same in such manner as, in their opinion, will conduce to the interest of the United States."

An amendment, limiting the power of the Commissioners to the limits prescribed by the convention between the United States and Georgia, had been adopted in Committee of the Whole.

No records being kept of the proceedings in Committee of the Whole, a question arose how far the Committee had proceeded on the subject heretofore?

Mr. Varnum suggested that the resolution, as amended, had been agreed to. This being denied by other gentlemen, the Committee proceeded to debate the resolution.

Mr. Gregg made a few observations against the resolution, and Messrs. Nicholson and Jackson replied; when

Mr. Elliot observed that he was apprehensive the debate was perfectly out of order. Upon reflection, he was convinced, beyond a doubt, that the resolution, as amended had already been adopted in Committee of the Whole.

This statement being confirmed by Mr. Varnum and Mr. Tenney,

The Chairman decided that it was not in order further to debate the merits of the resolution.

Mr. Eustis moved that the Committee rise and report the resolution to the House.

Mr. Nicholson, although in favor of the resolution, moved to reconsider it, in order to open the debate *de novo*.

Mr. Elliot inquired of the Chairman whether the motion to reconsider superseded the motion to rise and report?

The Chairman decided that it did not.

The Committee then rose and reported the resolution, as amended; when

Mr. Huger moved that the further consideration of the resolution be postponed for a fortnight, in order to introduce an amendment placing the Virginia and South Carolina Yazoo Companies on the same footing with other claimants.

This motion was withdrawn on the suggestion of

Mr. J. Randolph, who moved to recommit the resolution to a Committee of the Whole. After considerable debate, the motion was lost—yeas 50 nays 51.

The question recurring on the postponement, was, likewise, after debate, lost.

Mr. Bryan moved to refer the subject to a select committee; lost—yeas 37, nays 59.

When the House adjourned without deciding on the resolution reported by the Committee.

Wednesday, February 8.

Mr. J. C. Smith, from the Committee of Claims, presented a bill for the relief of certain military pensioners in the State of South Carolina; which was read twice and committed to a Committee of the Whole House on Friday next.

A representation of Duncan McFarland, of the State of North Carolina, accompanied with sundry documents, was presented to the House, complaining of an undue election of Samuel D. Purviance, the member returned to serve in this House for the district composed of the counties of Anson, Cumberland, Richmond, Robinson, Moore, and Montgomery, in the said State. The representation, with the papers accompanying it, was referred to the Committee of Elections.

The House resumed the consideration of the resolutions reported yesterday from the Committee of the Whole, to which was referred the report of the committee who were directed "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," made the second of December last; and, after some debate thereon, adjourned.

Thursday, February 9.

A memorial and petition of sundry citizens of Baltimore, in the State of Maryland, and mariners of the United States, in the said city, was presented to the House and read, praying that a law may be passed to authorize the admission into the marine hospitals of the United States of seamen paying, and subject to payment of hospital money, at all times, and in all cases of disease, under such provisions and regulations as to the wisdom of Congress shall seem meet.—Referred to the Committee of Commerce and Manufactures, to report thereon by bill or bills, or otherwise.

A message from the Senate informed the House that the Senate recede from their first amendment to the bill, entitled "An act giving effect to the laws of the United States within the territories ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," so far as to agree to the modification and amendment thereof proposed by the joint committee of conference; they disagree to the further amendment proposed by this House to so much of the said amendments as proposes to add a proviso to the end of the first section proposed by the Senate; and they do adhere to their said first amendment, as above amended. The Senate also so far recede from their thirteenth amendment to the said bill as to agree to the amendment and modification thereof proposed by the joint committee of conference.

PUBLIC LANDS.

The House resumed the consideration of the resolution reported on the seventh instant, from the Committee of the whole House to whom was referred the report, in part, of the committee who were directed "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," made the second of December last; whereupon, the first resolution being again read, in the following words, to wit:

Resolved, That the Secretary of State, the Secretary

of the Treasury, and the Attorney General, for the time being, be authorized to receive propositions of compromise and settlement from the several companies or persons claiming public lands in the territory of the United States lying south of Tennessee and west of the State of Georgia, and finally to adjust and settle the same in such manner as, in their opinion, will conduce to the interests of the United States: *Provided*, That, in such settlement, the said Commissioners shall not exceed the limits prescribed by the convention with the State of Georgia:

A motion was made and seconded to amend the second resolution, by striking out therefrom the word "*finally*," next before the words "to adjust and settle the same," and by adding to the end of the resolution the following words: "and that the said Commissioners report to this House such settlement as they may make on this subject; which, when confirmed by Congress, shall be binding on all the claimants under such companies, and on the United States."

And on the question that the House do agree to the said amendment, it passed in the negative.

The Speaker then stated the question, that the House do agree to the said first resolution, as reported from the Committee of the whole House; and further debate arising thereon, the House adjourned.

Friday, February 10.

Mr. Thomas laid on the table the following resolution:

Resolved, That a committee be appointed to join with such committee as the Senate may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same.

Ordered That Mr. Baldwin be appointed of the Committee of Elections, in the room of Mr. Goddard, who hath obtained leave of absence for the remainder of the session.

PUBLIC LANDS.

The House resumed the consideration of the resolutions reported on the seventh instant from the Committee of the Whole, to whom was referred the report, in part, of the committee who were directed "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," made in December last; and after some farther debate thereon, the question was taken taken that the House do agree to the first resolution, in the words following, to wit:

Resolved, That the Secretary of State, the Secretary of the Treasury, and the Attorney General, for the time being, be authorized to receive propositions of compromise and settlement from the several companies or persons claiming public lands in the territory of the United States lying south of the State of Tennessee and west of the State of Georgia; and finally to adjust and settle the same in such manner as, in their opinion, will conduce to the interests of the United States: *Provided*, That, in such settlement, the said Commissioners shall not exceed the limits prescribed by the convention with the State of Georgia.

On this resolution a long and interesting debate ensued on the circumstances attending the Yazoo speculation, and the consequences likely to ensue from the entire disallowance or compromise of the claims of individuals for compensation for lands purchased under the several acts of Georgia and ceded to the United States; when, about six o'clock, the question was taken by yeas and nays on the resolution, and carried in the affirmative—yeas 62, nays 56, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, Silas Betton, Phanuel Bishop, John Boyle, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, John Fowler, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, Jeremiah Morrow, James Mott, Joseph H. Nicholson, Thomas Plater, Joshua Sands, Tompson J. Skinner, John Cotton Smith, John Smith of New York, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, John Trigg, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, and Thomas Wynns.

Nays—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Frederick Conrad, John B. Earle, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Joseph Heister, William Hoge, James Holland, David Holmes, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, John Whitehill, Richard Winn, and Joseph Winston.

After motions to adjourn and postpone the subject were made and lost, and the proposition of an amendment of Mr. J. Randolph so to modify the resolution as to inhibit all compensation for lands purchased under the act of Georgia of 1795 was declared not in order, the following resolution was carried:

Resolved, That the time limited by law for filing claims in the office of the Secretary of State ought to be extended to the first day of May next.

A motion was then made to refer the two resolutions to a select committee to bring in a bill, which was superseded by an adjournment until Monday.

Monday, February 13.

Mr. John Cotton Smith, from the Committee of Claims, presented a bill in addition to "An act

to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" which was read twice, and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the whole House on the bill for the relief of certain military pensioners in the State of South Carolina. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House resumed the consideration of the question depending on Friday last, at the time of adjournment, that the resolutions agreed to the same day by this House, on a report, in part, made on the second of December last, by the committee who were directed "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," be referred to a committee, with instruction to prepare and bring in a bill, or bills, pursuant thereto: Whereupon, the said question was taken, and resolved in the affirmative.

Ordered, That Messrs. Nicholson, Morrow, Dwight, Brown, and Bryan, be the said committee.

The House agreed to the modification of the amendments to the bill for carrying into effect the laws of the United States in Louisiana, as agreed to by the Senate.

Previously to the vote of agreement, Mr. Nicholson stated that by such agreement, all provision for registering vessels, whether owned by citizens of the United States or inhabitants of Louisiana, would be waived; and that that subject was before the Senate in another shape. The bill is consequently passed.

Mr. Nicholson presented a memorial signed by Thomas Tingey, Robert Brent, Thomas Herty, and Augustus B. Woodward, in behalf of themselves and others, subscribers and members of the association in the City of Washington, for the erection of a theatre, praying for an act of incorporation.

On the reference of this memorial the House divided—yeas 44, nays 51.

Mr. Nicholson made a report on the petition of Matthew Phelps, and others, styling themselves military adventurers, concluding with a resolution that the petitioners have leave to withdraw their petition.

Mr. Lyon opposed, and Mr. Nicholson supported the resolution, which was agreed to by the House.

ALEXANDRIA, Va.

The House went into Committee of the Whole, on the bill to amend the charter of Alexandria.

An unsuccessful motion having been made to waive the ordinary reading of the bill, it was in part read, when Mr. Leib moved that the Committee should rise, and ask leave to sit again.

He observed that as the bill had not been printed, it was difficult to understand it; from that part which he did understand, he was persuaded certain principles were sanctioned by it which it did not become Congress to countenance. Certain qualifications of electors as well as elected were required, which were improper. [Mr. L. particularly alluded to the requisition of freehold estate.]

Mr. Eppes stated his understanding, from a respectable inhabitant of Alexandria, that the bill differed materially from the propositions agreed to by the citizens of that town.

After some remarks from Messrs. J. Lewis, Findley, Smilie, and Southard, the rising of the Committee was agreed to.

PUBLIC ROADS.

On motion of Mr. Jackson, the House took up the bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio river.

Mr. J. Clay moved to postpone the bill to the 1st Monday of December. Lost—yeas 41, nays 40.

Mr. R. Griswold moved so to amend the first section, as to vest the President with a general power to appoint three Commissioners to designate a route, to be reported to Congress, for their ultimate decision; which motion, after a short conversation, was agreed to by a considerable majority.

Mr. Lyon offered a motion for empowering the President to designate the routes. Lost, without a division.

The Committee rose and reported the bill with several amendments, in which the House concurred, and ordered the bill to a third reading on Wednesday.

SAMUEL CORP.

The House resolved itself into a Committee of the Whole, on the bill for the relief of Samuel Corp. The bill was reported to the House with an amendment; which was twice read, and agreed to by the House. On the question that the said bill, with the amendment, be engrossed for a third reading, it was resolved in the affirmative—yeas 63, nays 40, as follows:

Yeas—Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, David Bard, Silas Betton, Phanuel Bishop, Adam Boyd, John Campbell, William Chamberlin, Clifton Claggett, Thomas Claiborne, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, James Gillespie, Gaylord Griswold, Roger Griswold, John A. Hanna, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jun., John Patterson, Oliver Phelps, Thomas Plater, Samuel D. Purviance, Erastus Root, Joshua Sands, James Sloan, Henry Southard, Richard Stanford, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Matthew Walton, and Lemuel Williams.

Nays—George Michael Bedinger, William Blackledge, Robert Brown, William Butler, Levi Casey, Martin Chittenden, Matthew Clay, Frederick Conrad, William Dickson, John W. Eppes, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, William Hoge, James Holland, William Kennedy, Andrew McCord, David Meriwether, Thomas Moore, James Mott, Joseph H. Nicholson, Gideon Olin, Beriah Palmer Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of Virginia, Abram Trigg, John Trigg, Isaac Van Horne, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Ordered, That the said bill be read the third time to-morrow.

MARINE CORPS.

The House went into Committee of the Whole, on the bill for the reduction of the Marine Corps.

The bill reduces the officers of the corps to one captain and twelve lieutenants, and empowers the President, at any future period, when in his opinion it may be necessary, to augment the number of officers so as not to exceed those at present authorized by law.

Mr. Eppes moved to strike out from the word next in the third line of the first section to the end of the section, and insert:

"The whole of the officers of the Marine Corps, except such as are at present in actual service in the Mediterranean, shall be, and the same are hereby, discharged from the service of the United States: *Provided, however*, That if the President of the United States shall deem it expedient to employ a greater naval force than is now in actual service, he shall be, and hereby is, authorized to appoint such additional officers as may be necessary for the additional vessels called into service."

Mr. Leib said, it might be proper to state that the bill on the table was the same with that passed by the House the last session, and arrested by the Senate. It was then alleged to be improper to pass it, as the state of the country as to its foreign relations, was such as might require the aid of the whole military force in existence. That reason had ceased, and the bill was consequently reported to the House. The committee, who reported it, were of opinion that it was not the intention of Congress to reduce the corps entirely; they had supposed that the reduction contemplated by the bill might be made, and a sufficient number of marines still retained in service. They had considered a lieutenant colonel commandant unnecessary, as it would be found, by consulting the report of the Secretary of the Navy lately laid before the House, that not more than 112 marines were attached to this place; they had supposed a captain fully competent to this command, which embraced as large a number as was stationed in any other part of the United States. The bill contemplated the retaining one captain, to be stationed here, and twelve lieutenants, three of which were to be attached to the command of Norfolk, Philadelphia, and New York. At Philadelphia there was at present one captain with the command of only fifteen marines. There were likewise several lieutenants and one captain in the Mediterranean. According to the contemplation of the bill, there would be one lieutenant at Philadelphia, another at Norfolk and another at New York; and for further service in the Mediterranean, leaving five at this place, which were considered as sufficient to relieve a returning squadron. It was, therefore, considered that twelve lieutenants would be amply sufficient, allowing the establishment of a Marine Corps to be necessary. Since the bill had been reported, a statement of the expenses of the corps had been laid before the House by the Secretary of the Navy. On looking at that statement, he was inclined to the opinion of the gentleman from Virginia, that the whole establishment ought to be done away. It would appear from it, that it was the most expensive military establishment existing in any country. It was so far beyond the ordinary expenses of the military, that, in his opinion, the Committee ought not to hesitate a moment about either reducing it, or incorporating it as part of the Army. The lieutenant colonel commandant received more than $3,000 a year. This extravagant sum, paid for the support of this officer, was a sufficient reason of itself for reducing that office. It appeared that he charged the United States for pay and subsistence, $1,722; for house rent, under the denomination of quarters, $500; for fire-wood, $200; for forage, (the Committee will recollect that he is a marine officer,) $200. It also appeared that subaltern officers, charged exorbitant sums for fire-wood and forage; how forage could be used on board of ships he was yet to learn. It further appears that the colonel commandant had passing through his hands the annual sum of between sixty and seventy thousand dollars; and that, in his accounts, there remained to be accounted for a sum of near $13,000; that, for the present year, the unaccounted sum was $5,700; and, for the preceding years, $7,200—making in the aggregate, $12,924.

Considering the expense of this corps extravagant, and that if it were necessary it might be placed on a different footing, and that the marines required might be draughted from the regular military establishment, Mr. L. said, he should heartily give his assent to the motion of the gentleman from Virginia.

Mr. Eustis inquired how, if the proposition of the gentleman from Virginia should be adopted, those officers at present in the Mediterranean were to be relieved? It must be well known to the gentleman that one squadron went out before the other returned. As to the idea of the gentleman from Pennsylvania, to take the requssite number of marines from the Army, it was not practicable. The ordinary soldiers were not enlisted for this kind of service; they were not qualified to discharge it. There was another and a stronger objection; there were not men in the Army to be found, who could be spared. For these reasons, he was of opinion that, if the bill were to pass, it would be better to keep it in its original shape.

Mr. Nicholson said, he was friendly to the bill

for reducing the Marine Corps, but did not perceive the propriety of adopting the amendment proposed by the gentleman from Virginia. He considered some few marine officers, under the direction of the President, to be necessary. If all the officers should be disbanded, there would remain private, under the command of no officers, unless of the Secretary of the Navy. While we kept up our naval establishment in the Mediterranean, there appeared to him a necessity of having five or six officers in readiness to relieve those engaged in the service, for the present force must be relieved before it can return. For these reasons, he should vote against the amendment.

Mr. Lyon expressed a similar sentiment.

Mr. Eppes rose to give the gentleman from Massachusetts (Mr. Eustis) the explanation he asked. If the gentleman, were friendly to the principle of the amendment, it would be easy to obviate the difficulty he had started. In making the amendment, Mr. E. said he had been guided by the conviction that the Marine Corps, whatever duty they might have performed, had not rendered services equivalent to the expenses incurred in their establishment. The corps had been established in 1798, since which period they had cost the United States $353,573. There appeared to have been advanced, in 1798, $7,200; in 1799, $37,000; in 1800, $84,600; in 1801, $85,000; and in 1802, to the 30th June, $38,300—making in the aggregate $252,834. This sum appears to have been actually advanced to the lieutenant colonel commandant, before he had filed a single account or voucher, and on his individual responsibility. Any one who will examine the accounts will perceive that, throughout the whole list of expenses, a mode of adjustment is adopted which is calculated to prevent a fair adjustment of the accounts. It is impossible to ascertain what a particular officer has received, and to what he is entitled. I have made a statement, said Mr. E., as far as I have been able, of the sums received by the commandant.

[Mr. Eppes here specified the several items of charge made by the commandant.]

From which it appeared, he said, that he had received $9,170. It also appeared that, during part of the period covered by these accounts, he had received $480 for quarters. From this statement it followed that the commandant received within $400 as much as Brigadier General Wilkinson, whose salary was limited to $2,700, while Col. Burrows received $2,398.

He observed that he had not had an opportunity of investigating the other accounts in the statement; but he had seen enough of them to convince him that the corps ought to be reduced. He asked whether it were the interest of the United States to support this establishment at an enormous expense, when the adjustment of our differences in the Mediterranean had nearly rendered their services unnecessary in that sea? It was not, however, his intention to dwell on the subject. He was fully convinced the corps might be dispensed with, without any injury to the United States. For this purpose a law had passed Congress, two years ago, and it was well understood that the continuance of the officers in the service arose solely from a mistake in wording it.

Mr. Varnum said, if he understood the effect of the amendment, it went to reduce the officers and not the men; it would, therefore, leave the men without any person to command them. This, he apprehended, would produce a state of chaos.

The question was then put on Mr. Eppes's amendment; which was negatived—ayes 45, noes 50.

On motion of Mr. Leib, the period from which the reduction is to take place was fixed to be the first of March.

When the Committee rose and reported the bill, which the House immediately took up and ordered to a third reading to-morrow—ayes 68.

Tuesday, February 14.

Mr. Alston, one of the members for the State of North Carolina, presented to the House a copy of an act passed on the twenty-second of December last, by the Legislature of the said State, entitled "An act to authorize the State of Tennessee to perfect titles to lands reserved to this State by the cession act;" which was read and referred to Mr. Alston, Mr. Huger, and Mr. Rhea, of Tennessee, with leave to report thereon by bill, or bills, or otherwise.

An engrossed bill for the relief of certain military pensioners in the State of South Carolina was read the third time, and passed.

An engrossed bill to reduce the Marine Corps of the United States was read the third time; and on the question that the same do pass, it was resolved in the affirmative—yeas 73, nays 40, as follows:

Yeas—Nathaniel Alexander, Isaac Anderson, John Archer, George Michael Bedinger, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, James Elliot, Ebenezer Elmer, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Samuel Hammond, John A. Hanna, Joseph Heister, William Hoge, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Joseph H. Nicholson, Gideon Olin, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of New York, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Yeas—Simeon Baldwin, Silas Betton, Walter Bowie, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Peter

Early, Gaylord Griswold, Roger Griswold, Wade Hampton, Seth Hastings, William Helms, David Hough, Benjamin Huger, Samuel Hunt, Thos. Lewis, Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of Virginia, William Stedman, James Stephenson, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, and Lemuel Williams.

An engrossed bill for the relief of Samuel Corp was read the third time, and passed.

Resolved, That a committee be appointed to join with such committee as the Senate may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session, and when it may be expedient to close the same.

Ordered, That Mr. THOMAS, Mr. JOHN RANDOLPH, Mr. JOHN COTTON SMITH, Mr. SAMUEL L. MITCHILL, and Mr. TENNEY, be appointed of the said committee, on the part of this House.

Mr. RODNEY observed that, a subject had some time been before Congress, in which the commercial world was considerably interested; he alluded to fixing the standard of weights and measures. Under an impression that this was a fit time to resume its consideration, he moved a resolution to instruct the Committee of Commerce and Manufactures to inquire into the expediency of fixing a standard of weights and measures.

Mr. LEIB suggested the propriety of referring the subject to a select committee, in which idea Mr. RODNEY acquiesced.

Mr. MITCHILL, after assigning a number of reasons which led him to be of opinion that Congress would not, during the present session, be enabled to arrive at any conclusive measures on the subject, moved to postpone the resolution until to-morrow.

In which, Mr. RODNEY acquiescing, the motion was ordered to lie until to-morrow.

IMPORTATION OF SLAVES.

The following motion, offered by Mr. BARD, was taken into consideration in Committee of the Whole:

"*Resolved*, That a tax of ten dollars be imposed on every slave imported into any part of the United States."

On motion of Mr. JACKSON, it was agreed to add after the words United States, "or their territories."

Mr. LOWNDES.—I will trespass but a very short time upon the attention of the House at this stage of the business, but as I have objections to the resolution, it may be proper that I should state them now. I will do so briefly, reserving to myself the privilege of giving my opinion more at length when the bill is before the House, should the resolution be adopted, and a bill brought in. I am sorry, Mr. Speaker, to find that the conduct of the Legislature of the State of South Carolina, in repealing its law prohibitory of the importation of negroes, has excited so much dissatisfaction and resentment as I find it has done with the far greater part of this House. If gentlemen will take a dispassionate review of the circumstances under which this repeal was made, I think this dissatisfaction and resentment will be removed, and I should indulge the hope that this contemplated tax will not be imposed. Antecedent to the adoption of the Constitution under which we now act, the Legislature of South Carolina passed an act prohibiting the importation of negroes from Africa, sanctioned by severe penalties. I speak from recollection, but I believe not less than the forfeiture of the negro and a hundred pounds sterling for each brought into the State, and this act has been continued in force until it was repealed by the Legislature at its last session. This long interdiction, I think, manifests, on the part of the Government of the State, a disinclination to the trade, and had we received the aid from Congress which was necessary to enforce the act, the repeal which is now complained of would never, in my opinion, have taken place. But, Mr. Speaker, the State was unable to enforce its laws. It had given up to the Government of the United States all revenues derived from foreign imposts, and was, therefore, necessarily divested of the means of preventing the introduction into the country from sea of whatever the excitements to gain might allure it into. The geographical situation of our country is not unknown. With navigable rivers running into the heart of it, it was impossible, with our means, to prevent our Eastern brethren, who, in some parts of the Union, in defiance of the authority of the General Government, have been engaged in this trade, from introducing them into the country. The law was completely evaded, and, for the last year or two, Africans were introduced into the country in numbers little short, I believe, of what they would have been had the trade been a legal one. Under these circumstances, sir, it appears to me to have been the duty of the Legislature to repeal the law, and remove from the eyes of the people the spectacle of its authority being daily violated.

I beg, sir, that, from what I have said, it may not be inferred that I am friendly to a continuation of the slave trade. So far from it that, without adverting to considerations by which I know other gentlemen are influenced, I think the period has passed when the interests of the country required, and her policy dictated, that an end should be put to it. I wish the time had arrived when Congress could legislate conclusively upon the subject. I should then have the satisfaction of uniting with the gentleman from Pennsylvania, who moved the resolution. Whenever it does arrive, should I then have a seat in this House I will assure him I will cordially support him in obtaining his object. But, Mr. Speaker, I cannot vote for this resolution, because I am sure it is not calculated to promote the object which it has in view. I am convinced that the tax of ten dollars will not prevent the introduction into the country of a single slave. Gentlemen must be sensible of the truth of this observation, when they are informed, and the fact is too notorious even to be doubted, that, notwithstanding the expense

and risk which attend an illicit trade, they have been introduced in very great numbers. Was I friendly to the trade, I should, without any hesitation, embrace the proposition contained in the resolution, and I should consider it a point gained of no small importance, that the Legislature of the General Government had given a sanction to it—for I can regard the Government deriving a revenue from it in no other light than a sanction. The gentleman from Pennsylvania, and those who think with him, ought, above all others, to deprecate the passing of this resolution. It appears to me to be directly calculated to defeat their own object—to give to what they wish to discountenance a legislative sanction; and, further, an interest to the Government in permitting this trade after the period when it might constitutionally terminate it. When I say that I am myself unfriendly to it, I do not wish, Mr. Speaker, to be misunderstood; I do not mean to convey the idea that the people of the Southern States are universally opposed to it—I know the fact to be otherwise. Many of the people in the Southern States feel an interest in it, and will yield it with reluctance. Their interest will be strengthened by the immense accession of territory to the United States by the cession of Louisiana. Gentlemen cannot foresee what the situation of the country will be when the period arrives when Congress may constitutionally interdict the trade. The finances of the country, and the exigencies of the times, may be such as to prevent the Government from dispensing with any part of its revenue. The tax, if imposed, will undoubtedly produce a revenue, and in proportion to the amount of this revenue will be the interest of the Government in the trade. But, Mr. Speaker, my greatest objection to this tax is, that it will fall exclusively upon the agriculture of the State of which I am one of the Representatives. However odious it may be to some gentlemen, and however desirous they may be of discountenancing it, I think it must be evident that this tax will not effect their object; that it will not be a discouragement to the trade, nor will the introduction of a single African into the country be prevented. The only result will be, that it will produce a revenue to the Government. I trust that no gentleman is desirous of establishing this tax with a view to revenue. The State of South Carolina contributes as largely to the revenue of the United States, for its population and wealth, as any State in the Union. To impose a tax falling exclusively on her agriculture would be the height of injustice, and I hope that the Representatives of the landed interest of the nation will resist every measure, however general in its appearance, a tendency of which is to lay a partial and unequal tax on agriculture.

Mr. BEDINGER observed, that the gentleman from South Carolina had so fully expressed the opinions he entertained, that he should say but little. Everybody who knew his opinions on slavery might think strange of the vote he should give against the resolution. There was not a member on the floor more inimical to slavery than he was, still he was of opinion that the effect of the present resolution, if adopted, would be injurious. He should, therefore vote against it.

Mr. BARD.—It was my wish that the question before the Committee might be taken without discussion, but, as the gentleman from South Carolina has preferred a different course, I beg permission to offer a few thoughts on the subject.

As to the constitutionality of the measure, I believe there can be but one opinion. It is pretty well understood that the union of the States was a matter of compromise; and, indeed, the language of the Constitution suggests the idea that the Convention which formed that instrument, must have had the emancipation of slaves under their consideration. They had achieved liberty, and their object was to transmit it to posterity; and we cannot permit ourselves to suppose that men whose minds were so enriched with liberal sentiments, and who had so often reiterated the sacred truth, "That all men were born equally free"—I say we cannot suppose that they would consider slavery to be a subject unworthy their discussion; and it appears to be equally suggested that the Convention were not all agreed to an absolute prohibition of the slave trade, but yielded so far that a duty or tax might be imposed on the future importation of that description of people. The question, then, is only on the policy of laying this tax; and it appears that there can be no doubt on this question.

The slave trade, in terms, makes African men mere articles of traffic, and of course they must be as much a subject of commercial regulation as any other species of foreign manufactures. The tax will be high or low, in proportion to the price the article will bring. And if my information is correct, a slave will bring four hundred dollars; the tax, then, is but two and a half per cent., which is many degrees lower than any other imported article pays. The tax is a general one; no State in the Union is exempted; it will operate wherever its object can be found. It may be that some States will pay more and some less, but it will be at the option of any State how much, or whether it will pay any of this tax; for it will be just as the State shall please to deal in this article of commerce. And, on the score of uniformity, no objection can lie against the tax—the slaves have already been the object of direct taxation, and Vermont paid none of that tax, because she had none of that kind of taxable property; and yet I never heard it complained of as not being uniform. It is said the tax is impolitic, because it will not prevent the importation of Africans into our country. This may, indeed, be the case; and I believe it will be but a feeble check to the trade if not aided by nobler motives. However, if any of the States engage in the trade, the tax will have two effects—it will add something to the revenue, and it will show to the world that the General Government are opposed to slavery, and willing to improve their power, as far as it will go, for preventing it. Both these ends are valuable; but I deem the latter to be the more important one, for we owe it indispensably to ourselves and to the world, whose

eyes are on our Government, to maintain its republican character. Everything compared to a good name is "trash;" and it rests with us whether we will preserve or destroy it. If our Government will respect power only, and justify whatever it may be able to do, then will our hands be against every man, and every man's hand against us; and Americans will become the scorn of mankind.

On what principles, whether moral or political, I do not know; but so it was, that abut the close of the Revolutionary war, the Quaker society in South Carolina brought the slave trade, or perhaps slavery itself, under their serious consideration, and declared it to be unjustifiable. They afterwards, in 1796 or 1797, addressed Congress on the subject; but failed in their object, and for no other reason, probably, than that the powers of Congress did not reach it.

Some years ago the States, even those in which slaves abound most, loudly exclaimed against the further importation of that class of people, and by their laws prohibited their traffic. Either they did this on moral principles or considerations of policy. In 1892, Congress stretched out her arm to aid the State Governments against the evil they so much deprecated, and passed a law inflicting fines and forfeitures on every man who should be found importing slaves into the United States. What might have been the issue of these combined exertions, or how far they might ultimately secure their end, I cannot tell; but, as to South Carolina, they have become nugatory; by repealing her prohibitory law she has rejected the interference of Congress. Why that State has done so; why she has abandoned a measure which, the other day, was considered so much her interest, I know not, nor is it for me to offer any conjectures. South Carolina is a sovereign State, and has a right to consult and pursue her own interest, so far as the general good will permit; for hitherto she may come, and no further. Every State has a right to import slaves if it so chooses, and Congress has a right to tax all the slaves imported; but when the powers of a State, though Constitutional, operate against the general interest, then the exercise of those powers are politically wrong, because it is contrary to the fundamental principle of society, the public good, which is paramount to law and the Constitution itself. And, in my opinion, the importation of slaves is hostile to the United States: to import slaves is to import enemies into our country; it is to import men who must be our natural enemies, if such there can be. Their circumstances, their barbarism, their reflections, their hopes and fears, render them an enemy of the worst description.

Gentlemen tell us, though I can hardly think them serious, that the people of this description can never systematize a rebellion. I will not mention facts, it is sufficient to say that experience speaks a different language—the rigor of the laws, and the impatience of the slaves, will mutually increase each other, until the artifices of the one are exhausted, and until, on the other hand, human nature sinks under its wrongs, or obtains the restoration of its rights. The negroes are in every family; they are waiting on every table; they are present on numerous occasions when the conversation turns on political subjects, and cannot fail to catch ideas that will excite discontentment with their condition. And what is to be expected from the people of this description, but that they will some day, and especially if their importation continues, produce a disturbance that may not be easily quieted, or kindle a flame that may not be readily extinguished. If ten thousand of them have been, as it is said, smuggled into the United States, in the course of a year or two past; and if ten or fifteen thousand of them may now be legally brought annually into our country, for four years to come, it will hardly be imagined that the general interest will be unaffected by such an importation.

If they are ignorant, they are, however, susceptible of instruction, and capable of becoming proficients in the art of war. To be convinced of this we have only to look at St. Domingo.

There the negroes felt their wrongs, and have avenged them; they learned the rights of man, and asserted them; they have wrested the power from their oppressors, and have become masters of the island. If they are unarmed, they may be armed; European Powers have armed the Indians against us, and why may they not arm the negroes? And if they are already as numerous as is consistent with safety, it must be extreme impolicy to import more; it is to accelerate an event which we cannot contemplate without pain.

Slavery is not only impolitic as it affects the strength and tranquillity of the United States, but as it prevents their wealth, which can only grow out of society where the arts, sciences, and manufactures, are cultivated and improved. But, sir, I despise to argue on the advantages or disadvantages of what is contrary to the genius of our Government; what is radically unjust, and violates the principles of morality.

The Americans boast of being the most enlightened people in the world—they certainly enjoy the greatest share of liberty, and understand the principles of rational government more generally than any other nation on earth. They have denounced tyranny and oppression; they have declared their country to be an asylum for the oppressed of all nations. But will foreigners concede this high character to us, when they examine our census and find that we hold a million of men in the most degraded slavery? This is nearly one-fifth of our whole population; in some of the States nearly the half. Here, then, is a fact that must have weight to sink our national character, in spite of volumes to support it. It is a fact, from which foreigners will infer, that we possess the principles of tyranny, but want the power to carry them into operation, except against the untutored and defenceless African. If, then, we hold a consistency of national character in any estimation, we will give every discouragement in our power to the importation of slaves. It is in this view that the tax contemplated by the resolution is principally to be considered, and only incidentally as matter of revenue.

But, sir, I presume, on permission, to say, that the importation of slaves is in direct contradiction to the principles of morality. On these principles the Constitution of the United States is founded; on them every law ought to be founded; otherwise legislation will progress in the dark, and every step deviate still more from its true direction. "Do unto others as you would that others should do unto you," is a law paramount to all human institutions; it is the fundamental law of human nature, of Christianity, and of every rational Government; it is a law which we wish all men to respect in their dealings with us; and it is a law which every man confesses he ought to observe, and, in spite of all the sophistry of depravity, must acknowledge himself subject to its cognizance. I need not, nor will I, ask if we have observed this law as to the Africans; for it must be obvious to every man that it is not possible to violate it in a greater degree than we have done towards that unfortunate and wretched people.

But, notwithstanding all the information our country enjoys, numbers in the Eastern States have been embarked, for some years past, in the cruel traffic of slaves, and smuggling them into other States. And it is to be feared that many of them are, at this moment, preparing means to stimulate the barbarous tribes of Africa to war against each other; mutually to torture every human feeling; to violate the strongest ties of nature and affection; to tear the husband from the wife, and the wife from the husband; the parent from the child, and the child from the parent; and are coolly and deliberately forging irons, that they may have the infernal pleasure of coolly and deliberately rivetting them on the unfortunate men, women, and children, who may fall into their hands. Such an enterprise, such a traffic as this, must affect our national character; it is self-evidently wrong, and, at first view, must receive the disapprobation of every disinterested man. The genius of our Constitution, the mildness of its administration, and the prevailing sentiment of the nation, must sanction every measure to discourage the further admission of a people whose numbers already excite most painful sensations. In a word, the tax is Constitutional; no article can bear a tax better than the one here proposed; it is an uniform tax, and justified on the ground of sound policy; and so far as it tends to discourage the slave-trade, it is supported by every principle of virtue. If I have uttered a word offensive to any member of the House, it will not be attributable to design, but to an honest solicitude to promote the honor and interest of our country.

Mr. Bedinger said he differed widely, as to the effects of this motion, from the gentleman who had just spoken. He was as hostile to the slave-trade as any man in the Union; and if he could believe that the imposition of a tax of ten dollars upon every imported negro would check the importation, he would vote for it. But he believed the resolution would have a different effect, and would rather sanction than discourage the trade. In point of revenue, the tax was of little consideration. Suppose a thousand slaves to be imported monthly, the amount of the tax would be about $100,000 a year; which, in four years, at the expiration of which Congress would have power to prohibit the trade altogether, would amount to $400,000—a sum too trifling to be put into competition with the adoption of any measure that went to sanction such a trade.

Mr. Macon (the Speaker) believed the resolution was not founded in good policy. All the declamation and appeal to the passions urged in its behalf appeared to him unnecessary and irrelevant. The avowed object of the proposed tax was to show the hostility of Congress to the principle of importing slaves. How would this opposition of Congress be manifested, when it would become the duty of the armed ships of the United States, as soon as the tax was imposed, to protect this trade, as well as all other trade on which taxes were laid? He asked whether vessels engaged in this trade would not, under such circumstances, possess the same right to the protection of the Government as any other vessels engaged in any other kind of trade? Can this House tax this trade, and refuse it the same protection that is extended to all other trade? The question is not whether we shall prohibit the slave trade, but simply whether we shall tax it. Gentlemen are of opinion that the State of South Carolina has done wrong in permitting the importation of slaves. Suppose that this is the case. May not this measure be wrong also? Will it not look like an attempt in the General Government to correct a State for the undisputed exercise of its Constitutional powers? It appeared to him to be something like putting a State to the ban of the empire. It will operate as a censure thrown on the State. To this, said Mr. M., I can never consent. As far as the law that may be founded upon this resolution can go, it will hold forth an evidence of the opinion entertained by Congress of the act of the Legislature of South Carolina. I know that these ideas may be unpopular in some parts of the Union, but I, notwithstanding, consider them just. There does not appear to me to be any necessity for our interposition, as, since the adoption of the Constitution, no slaves have, I believe, been permitted to be imported, and as only four years are yet to run before Congress will be possessed of the Constitutional right of prohibiting such importation altogether. And the simple question now is, whether, for a trifling revenue, we will undertake to protect this trade. My idea is, that those who at present go into the traffic, have no right to claim your protection; but once legalize it by taxing it, and they will acquire the right thereto, and will demand it. All that has been said on the circumstances connected with the slave trade, either here or in England, and on its morality or immorality, are in my opinion foreign to the true point involved in this debate, which is, Is the measure contemplated by the resolution politic, or is it not? In my opinion it is impolitic, for the reasons I have assigned, and for many others which might be added. I shall therefore, on this ground, vote against it.

Mr. FINDLEY was of opinion that the policy of the measure embraced by the resolution, and nothing else, was before them. Gentlemen seemed all to unite in their abhorrence of the slave trade; they differed only about the means of preventing it. It was well understood that a large majority of the Federal Convention were inimical to the slave trade. That Convention had only acted upon it in a commercial point of view. As they considered imported slaves an article of commerce, the House possess the same liberty of acting with regard to them as with regard to other articles of trade. In some of these articles, Congress had the right of exercising unlimited taxation; in this case, their power was limited to a certain amount. Imported goods, on an average, were subjected to a duty of about 20 per cent. On this subject, a difference of opinion exists as to the propriety of making imported slaves an article of revenue. This is the true question, and not whether we shall cast a censure upon any particular State. It does not follow, that, because we lay a particular tax, we censure those who pay it. Considering this, then, as an article of trade, the tax might have been long since laid, had not all the States prohibited the traffic. Under those circumstances, it could not be taken up as a subject of revenue.

Mr. F. observed, that, though it might be unbecoming in the House to be influenced by resentment against the State of South Carolina, yet it was proper that they should be influenced by the policy of the case. As a profitable article of commerce, it appeared as eligible a subject of taxation as could be found, and as justly liable to taxation as any other. As to the disgrace, which some gentlemen were of opinion would arise from taxing it, that arose from the existence of the slave trade. In laying the tax, we shall do all we can to discourage it; and if we do not like to use the money derived from taxing it on the common way, we may apply it to special objects—to ameliorate the state of slavery, or to any other object.

Mr. F. concluded his remarks by observing, that this question being brought forward, he could not justify himself in neglecting to embrace the opportunity it presented of discountenancing the importation of slaves. He considered it proper that Congress should take up the subject as the Constitution presented it to them. At a certain period they would possess the right of prohibiting it altogether, and until then they enjoyed the power of taxation. This being the only Constitutional power they did possess, he trusted they would exert it.

Mr. S. L. MITCHILL declared his wish that the proposition of the gentleman from Pennsylvania (Mr. BARD) should be considered merely as a subject of political economy. In the remarks which he proposed to offer upon it, he should, therefore, confine himself to that object. He would, therefore, say nothing on the immorality of a trade which deprived a large portion of the human species of their rights. He should pass over, in silence, everything that might be urged to exhibit it as impious and irreligious; and he would not utter a word on its repugnance to the principles of our equal jurisprudence, and the spirit of our free Government. The slavery of a portion of our species was a copious theme, when viewed in either of these aspects; but, on the present occasion, he was willing to waive them all. The proposition was to be considered only in its commercial, economical, and fiscal relations; and on each of these it would be proper to make a few observations.

It was much to be regretted that the severe and pointed statute against the slave trade had been so little regarded. In defiance of its forbiddance and its penalties, it was well known that citizens and vessels of the United States were still engaged in that traffic. During the present session, memorials had been presented to Congress praying for exoneration from the exportation bonds, which had been given to one of the collectors of the customs, to insure the landing of a cargo of New England rum in Africa, which it was not pretended to be denied was bartered away for slaves. These voyages were said to be carried on under the flag of a foreign nation; and the common practice, as was alleged, was, to go to the island of St. Croix and procure Danish papers and colors. Under this cover, the voyages were performed. To prevent the confiscation of the vessels under the law, on conviction of being engaged in the slave trade, it had been customary to sell that article of property in a foreign port.

Mr. M. observed that the extent of this shocking commerce was very considerable at this time. Some time ago, he had seen a list of the American vessels then known to be hovering on the coast of Guinea in quest of captive negroes. They were numerous and active, and so fatally busy as to excite the apprehensions of the benevolent Sierra Leone company. In various parts of the nation, outfits were made for slave-voyages, without secrecy, shame, or apprehension. The construction of the ships, the shackles for confining the wretched passengers, and all the dismal apparatus of cruelty, were attended to with the systematic coolness of an ordinary adventure. Regardless of legal prohibitions, these merciless men, as greedy as the sharks of the element on which they sailed, collected their slaves along the shores, and at the factories of Negroland, from the river Senegal to the countries of Congo and Angola. Countenanced by their fellow-citizens at home, who were as ready to buy as they themselves were to collect and to bring to market, they approached our Southern harbors and inlets, and clandestinely disembarked the sooty offspring of the Eastern, upon the ill fated soil of the Western hemisphere. In this way, it had been computed that, during the last twelve months, twenty thousand enslaved negroes had been transported from Guinea, and, by smuggling, added to the plantation stock of Georgia and South Carolina.

So little respect seems to have been paid to the existing prohibitory statute, that it may almost be considered as disregarded by common consent. And, therefore, as was observed by a gentleman from South Carolina, (Mr. HUGER,) the Legislature of that State had lately repealed their restrictive law, and legitimated a trade which neither that regulation of their commonwealth, nor the

concurrent authority of the nation, could prevent. And it may be received as a correct general idea on this subject, that the citizens of the navigating States bring negroes from Africa, and sell them to the inhabitants of those States which are more distinguished for their plantations.

Thus in spite of the spirit of our republican institutions, and the letter of our laws, a commerce in slaves is carried on to an alarming extent—a species of slavery peculiar in its form and character, and unlike that which was practised in ancient or modern Europe—a kind of servitude unheard of by the civilized world, until it was made known among the discoveries of the Portuguese along the western coast of that continent which reaches from Ceuta to the Cape of Good Hope. There it seems to have been extant from time immemorial, among the barbarous Powers of a country who have eradicated all the tender relations of society, and established in their place the forceful and ferocious distinctions of MASTER and SLAVE. From those rude and uncivilized tribes, did Christian people learn the lessons of negro slavery. Under such instructers, and with such examples before them, have the Europeans and their descendants carried those savage customs of the Africans into the New World, and most unfortunately tainted with them the manners and ordinances of a more refined race of men. For a delineation of this peculiar state of society, in its native regions, the world is much indebted to the undaunted enterprise of Mr. Parke; as, for its baneful effects upon the white nations who have adopted it, they will long remember the disclosures of Mr. Wilberforce, and the researches of Mr. Clarkson.

This doleful traffic it was not in the power of Congress to prevent by any present regulations. By the 9th section of the first article of the Constitution the power of admitting such persons as they please is reserved to the States, until the year 1808. South Carolina has authorized the importation of negro slaves from Africa. This Congress can neither prohibit nor punish. But the National Legislature can exercise the authority granted by the same paragraph of the Constitution, "of imposing on such importation a tax or duty not exceeding ten dollars for each person."

There could be no doubt of the power of Congress to declare and levy such an impost on imported slaves for four years to come. The only question therefore was, whether it would be good policy to do so? Mr. MITCHILL contended that it would. On this point, he replied to a gentleman from South Carolina, (Mr. LOWNDES,) who had argued that such a tax would discourage agriculture. He contrasted the cultivation of lands by the labor of freemen, with the more expensive management of them by slaves. He compared the husbandry of the Northern and Middle States, with the rural economy of the South. He examined in detail the moderate profits of a plantation on which bread, corn, grass, and live stock, were raised, and the enormous income derived to the proprietor of an estate employed in the culture of tobacco, rice, cotton, and sugar. He examined the smaller expense of feeding, clothing, and housing laborers in warm than in cold climates. It has been computed by men of observation, that a working slave on a cotton plantation would, besides supporting himself, clear for his master a net sum of two hundred dollars a year. On the average course of crops, where the plants were not attacked by the cherille, this estimate was considerably below the mark. And on this conviction he believed there was no important article whatever that would bear an impost so well.

Mr. M. then replied to an argument of the gentleman from North Carolina, (Mr. MACON,) that the imposition of the tax would be a recognition of the right to trade in slaves, and bind the nation to protect it with the force of the Navy. He considered slavery already recognised in many of the States, and permitted by the Constitution. It was a fact that it did exist, and Congress could not put an end to it. But this body might interpose its authority, and discountenance it as far as possible; and by laying the duty as high as the Constitution permitted, a very desirable addition would be made to the revenue. Two hundred thousand dollars might be computed to be derived from this sort of merchandise imported into the country. Nor would Congress be bound to protect the African commerce on the high seas; the existing statute would be in force against it; the trade would still be unlawful as far as the power of Congress extended. And under the proposition now under debate, this species of traffic would be so far from receiving encouragement, that it would be punished in cases where Congress could punish it, and taxed in the cases to which the power to punish it did not extend.

He then delineated the wretched condition of a man subdued by fraud or force, deprived of the exercise of his will and judgment, subjected to the dominion and caprice of another, robbed of his rights and privileges, divested of moral power and agency, degraded from the rank of a human being, and brutalized into a *chattel*—a *thing*—and divested of the character of a *person*. In this point of view, such articles, bought and sold publicly in the market, were to be considered as mere merchandise, as working machines, or animals of labor. Distressing as the reflection was to every sympathizing or patriotic heart, it was useless to dwell upon it, as it was beyond our reach to grant relief. He would therefore treat it strictly as a case of foreign merchandise heretofore admitted free, but upon which it was now intended to impose a duty. For his own part, he should be glad if it could be laid, *ad valorem*, upon the price of the article. But, as the matter was circumstanced, there was no other method that could be adopted than to impose it, *per capita*, upon the individual persons imported. By laying the tax, he would imitate the ways of Divine Providence, and endeavor to extract good out of evil.

Concluding thus that the tax was Constitutional, that the subject would bear it, and that it would be a seasonable and proper expression of the Congressional sentiment on the subject, Mr. M. proceeded to show what an abundance of excellent

purposes could be answered by $200,000 collected annually for four years. We might then venture to unbar the door of the statute of limitation, which had been barricaded so firmly and so long, and pay off the balance of the claims demanded by the crowds of supplicating officers and soldiers who wrought out our Revolution, and whose only fault was that they had not presented their accounts within the prescribed time. We might make roads between the Western and Atlantic waters, and transport persons, goods, letters, and newspapers, with greater ease, cheapness and despatch. We might possibly prevent the necessity of new loans and expedients, on a call of emergency. We might afford more ample appropriations for completing the public buildings and streets in the Territory of Columbia, and particularly in the City of Washington; or, besides a variety of other works of public utility, missionaries might be sent forth to explore the new country which had been lately annexed to the United States, by tracing the Red river, the Arkansas, and others of the vast streams south of the Missouri to their sources, that we might thereby acquire a more enlarged and circumstantial account of the extent, boundaries, productions, and value of Louisiana.

In the course of his remarks, Mr. M. said, he had endeavored to avoid all harshness of expression on a topic of a peculiarly delicate nature, and prone to excite much sensibility in debate, but considered it strictly as a matter of political economy. In his attempt to state his reasoning to the Committee, not as an abstract speculator, but as a man of business, he hoped he had given no offence to any gentleman by any severity of animadversion. He looked upon negro slavery as a dark spot on some of the members of the national body, which was spreading wider, turning blacker, and threatening a gangrene all around—and he felt a confidence that all friends to the health of this body would take warning by its fatal progress in a neighboring island—which had so mortified in St. Domingo, as to make that extreme part rot and drop off from the system to which it once belonged.

Mr. Sloan said he rose to observe, in a few words, that however afflicting it might be to contemplate a certain part of the creation used as articles of traffic, imported and exported the same as cattle, he did not consider the morality or immorality of the practice before the House. We must take the Constitution as we find it, and as it is not in our power to prohibit the importation, the only question to be considered is, whether we shall most encourage the traffic, by letting the articles imported remain free of duty or by imposing a tax upon them. This view, he believed, presented to the mind the true question, and believing himself that a tax would, in some degree, discourage the importation, he should vote for the resolution.

Mr. T. Moore.—I am astonished to hear gentlemen, who advocate the resolution now under consideration, reprobate a traffic as horrid and infamous, and yet wish to draw a revenue from infamy, if it is an infamy.

I differ very widely in opinion from the honorable gentleman from Pennsylvania, who thinks that a tax of ten dollars per head will operate as a check to the growth of this horrid traffic. If I thought it would have that effect I would cheerfully vote for the resolution. I believe a tax of ten dollars will not prevent the importation of a single person of this description.

The gentleman told us that he hoped the General Government were disposed to discourage this traffic as far as they are authorized by the Constitution. I hope this House will discourage this impolitic act of the Legislature of one of the Southern States—not by imposing a tax on those unfortunate people imported into the United States, but by passing a resolution expressive of its disapprobation of all acts permitting the importation of certain people into the United States. As the General Government cannot prohibit this traffic before the year 1808, I hope this House will reject the resolution under consideration, and totally disapprove every measure which attempts to draw revenue from an act that rivets the chains of slavery on any of the human race.

I will not attempt to follow the honorable gentleman from Pennsylvania, who offered this resolution, through his book of lamentations, or through his chapter of horrid traffic, blood, murder, and treason, but will content myself with observing, that I flatter myself this House will never legalize an act by which our national coffers will be stained with the price of liberty.

The same gentleman says, he wishes the General Government to show that they are enemies to slavery. If that is the gentleman's wish, and it is in order, I will offer the following resolution as a substitute for the one under consideration:

Resolved, That this House receive with painful sensibility information that one of the Southern States, by a repeal of certain prohibitory laws, have permitted a traffic unjust in its nature, and highly impolitic in free Governments.

The Chairman declared this motion not in order while the previous motion of Mr. Bard was undecided upon.

Mr. Huger regretted that he could not see the subject in the same light with other gentlemen who had taken a part in the debate. He had no hesitation in saying that he had always been hostile to the importation of slaves. Nor had he any hesitation in saying that if he had the power he would prohibit the importation. But the situation in which they were now placed was very different from that in which they would find themselves in the year 1808, when they would possess the Constitutional power to prohibit the introduction of slaves. The Constitution was known to be the offspring of concession and compromise, and in no part of it was this feature more apparent than in that which related to this subject. When the Southern States were admitted into the Union they were in the habit of carrying on this species of trade, and they, by the express language of the Constitution, retained the right of continuing it until the year 1808. Under this Constitution the State of South Carolina enjoyed the exclusive right of judging of the propriety of allowing the trade or of prohibiting it. Had he had the honor of a seat in the Legislature of that State, Mr. H. certainly would have opposed the passage of this law. But he was only one of that community, standing here as their Representative, and after the State had exercised their undoubted right, however he might dislike the measure, it was his duty to defend the right which they had to adopt it. That State had in truth done no more than she possessed a Constitutional right to do, and he believed there was in that State as much true compassion as in any other in the Union. He said he could not therefore but feel sensibly the attempt to single out this particular State to censure her for doing that which she had an undisputed right to do.

This was not, as contended by some gentlemen, a mere question of revenue; but it was a question whether the Government of the Union should come forward and condemn the act of a State, which she was fully authorized to pass. If it is necessary to increase the revenue, let us meet that subject fairly and fully, and not single out a particular resource of a particular State. It is on this ground that I principally object to this measure. The gentleman from New York (Mr. Mitchill) has endeavored to prove that because in the Southern States the article of slaves produces a great profit, it is therefore proper to make it the subject of taxation. I ask if there should be a profitable species of trade carried on in any other part of the Union, it would be deemed politic or just on that account to lay an additional tax upon it? The fair principle of taxation is, that every part of the Union should contribute equally. When any branch of trade is profitable in New York, I, though a Southern man, rejoice at it. When the fisheries of the Eastern States prosper, I feel highly gratified—not because those whom I represent are particularly interested in them, but because I consider myself as a part of the whole, and that whatever advances the interests of any part of this Union must promote the interests of every part of it.

With regard to the moral principle involved in the slave trade, we have nothing to do with it. On this point the Union ought to be silent. On this subject can anything be more pointed than the provisions of the Constitution, which, contrary to most of the other provisions, cannot be altered but with the consent of every State in the Union. Why then shall we cry over what we cannot prevent, like a school-boy? Each State, so long as she confines herself within the limits of her Constitutional powers, must be the exclusive judge of her own conduct; and it becomes not one State, influenced by different feelings, habits, and interests, to pronounce upon the conduct of another. All, so far as regards themselves, are judges of right and wrong. We, too, have as strong a conviction of the propriety of our measures as those who differ from us in sentiment on this subject. We may perhaps think it more blameable to make slaves of white people than of the blacks.

I confess I have not been able clearly to understand the ideas of the gentleman from New York (Mr. Mitchill.) A few days since that gentleman offered a report, the object of which was to free raw materials from duty. Will the State of South Carolina profit by this? No. It will conduce to the benefit of other parts of the Union; but we shall bear the burden: and still, on this occasion, because we derive a certain profit from a particular description of trade, the gentleman contends for taxing it.

Let gentlemen also consider that we are not to be hurried away by our feelings or passions. We are sent here to attend to the business of the nation, and, to do that as it ought to be done, we must yield to a spirit of mutual deference and compromise, we must act fairly and impartially. All we ask in the present case is, to do as we would be done by. We permit the Eastern States to import German redemptioners and others. Let them then permit us to enjoy our Constitutional right of importing slaves, especially when that right will exist but for a short time.

We do not pretend to advocate the act, but the right of our State to pass this law. It is not to be inferred that we are friendly to the importation. I believe, on the contrary, every Representative of the State on this floor is hostile to it. But how can gentlemen expect that we will disregard the voice of our own State, and especially when the measure may have been dictated by good and substantial reasons. One good reason may be that the importation could not be prevented, and that the restraining law was extensively broken. This we know was the fact. If so, may it not have been sound policy in the State to repeal it? There may have been another reason for the measure. It may have been conceived to have been better to import slaves directly from Africa than to be indebted for them to New York and other States in which they may have been surreptitiously introduced.

The gentleman from New York (Mr. Mitchill) observes that it is demonstrable that even in a pecuniary point of view, slaves are an evil; and that they impoverish those who hold them. What does this show, but that in the North they kept slaves as long as their interest dictated, and then got rid of them; and that because it is a misfortune to have them, we must be punished for our poverty. Though young, I am happy to state that I have seen the evil decreasing in the State I have the honor to represent. Let us alone, and we will pursue the best means the nature of the case admits of. Interfere and you will only increase the evil; for, whenever the Government of the Union interfere in the peculiar concerns of a State, it must excite jealousy and a spirit of resistance.

I beg gentlemen to lay aside, on this occasion, the prejudices to which local circumstances and peculiar State interests and feelings expose them. When I see the lowest of the animal tribe tortured, I feel for them; but does it follow that my interference will mitigate their pain? Do we not all know, that by interfering between a man and his wife, we only aggravate the difference;

and do we not likewise know that any interference between a master and his slave induces the former to be more severe. I believe the State of South Carolina has as great an inclination as any State, similarily circumstanced, to do away this evil. But they must, and ought to take their own course. It is a circumstance well known, that the people to the North, who make the most noise on this subject, are those, who, when they go to the South, first hire, then buy, and last of all turn out the severest masters among us.

Mr. Holland said he would trouble the House with a few observations on this subject. On the resolution before the committee, he considered it improper for the advocates to go so fully as they had gone, into the subject of slavery. All their remarks applied as forcibly to those who held as to those who imported slaves. He could not, for a moment, conceive it the intention of the mover of the resolution to throw out anything that would induce the slaves to rise against their masters. He ascribed his remarks to the zeal which he entertained to set all mankind upon an equal footing. Had the gentleman considered the real situation of the United States, and the situation of those who held slaves, it would have occurred to him that observations of this kind could answer no valuable purpose. What would probably be their effect upon masters and slaves? Might it not tend to make the slaves more refractory; might it not tend to make them rise and commit crimes too horrid to name? Mr. H. was certain this was not the intention of the mover.

Mr. H. said he would take the further liberty of observing, that such remarks did not apply to the real subject before the House. The only question was, whether it was expedient to lay a tax of ten dollars upon every slave imported into the United States. The only question was, as to the expediency of this measure. The morality or immorality of slavery were not to be considered at this time; they were to be laid entirely out of the question. It was not doubted that South Carolina had a Constitutional right to admit the importation of slaves; and it was not competent to that House to censure them for the exercise of a Constitutional right. Why, then, will gentlemen contend against the exercise of this right? In his opinion it was exceedingly improper.

As to the expediency of the measure, will it be of any advantage to the United States to lay this tax? Will they not by laying it pledge the United States to protect the trade? Is not the principle correct that taxation and protection are reciprocal? He had always understood this to be the case, and if it was, would not the General Government, by the imposition of this tax, pledge themselves to protect the trade? If then we are not prepared to protect the trade shall we undertake to draw revenue from it?

Gentlemen, however, allege that this tax, so far from protecting, will discourage the trade. But how does this appear? Are taxes laid in this way? No. Their object is to raise revenue, and all persons taxed are thereby entitled to the protection of the Government. If this law shall pass, the Government of the United States will derive part of their revenue from the slave trade. For this reason all those opposed to the traffic ought to pay no regard to the proceedings of the Legislature of South Carolina. Thus, in a short time, South Carolina may be induced to repeal the law. If, on the contrary, you raise a revenue from imported slaves, the citizens of that State may consider it right to go into the trade on an extensive scale. Mr. H. said he believed the greatest disapprobation would be shown by passing over the subject in silence, and by refusing to consider slaves as an article of taxation. The time would shortly arrive when Congress would possess the right of prohibiting the importation of slaves. He trusted, when it did arrive, they would make it a capital offence to import them, and thus prohibit the practice altogether.

Mr. Lucas observed that, though much had been said on the merits of the resolution, he would take the liberty of adding a few remarks. It was a maxim that, to justify the raising of a revenue, a Government ought previously to stand in need of money. The pecuniary wants of a Government were absolute and relative. The fit objects of taxation were likewise various. Some objects bore taxation better than others. When Governments want money to satisfy indispensable demands, taxes must be laid; and even when they are not in immediate want of money for pressing emergencies, there are frequently important purposes that might be answered in case they possessed resources. On this occasion it is said that the Government is not in want of money, that the existing revenue meets the wants of the nation, and that, consequently, a new tax ought not to be laid. This may possibly, strictly speaking, be correct. But to say absolutely that we do not want money, he must deny; for he believed if they had money in the Treasury, not required for pressing exigencies, they could find abundant occasions for spending it to good effect. It was known that there were many claims preferred against the Government, of a meritorious kind, and which had been disallowed, not so much on their intrinsic merits, as from the operation of the statute of limitations. This limitation, said Mr. L., it is my wish shonld be removed, and one way of effecting that end will be to increase our revenue, as we shall thereby be enabled to discharge all just demands exhibited. The laying out, likewise, of roads was an important object. One is contemplated from this place to New Orleans. Without going further into a view of the various demands on the Government, we shall see the occasion that exists for more money being drawn into our Treasury.

As to the nature of the slave trade, we must, in my opinion, consider slaves imported as so much produce or merchandise. This article ought, in my opinion, likewise to be taxed, because the trade is odious; also, because it affords a great profit to those who carry it on. It was yesterday stated by a gentleman from New York that a slave employed in the Southern States would pay for himself in two years; that is, that a slave that costs four

hundred dollars will give a profit to the owner of two hundred dollars a year. As, therefore, no article imported into the United States gives a greater profit, so no article can better bear a tax. It ought also to be taxed, because the importation of slaves into the United States operates injuriously on the poor whites who draw their subsistence from labor. Their comparative situation in relation to the rich, is reduced; for if you increase the black laborers, so as to make them work for a lower compensation, you virtually reduce the value of the labor of the whites, and proportionally lessen the chance of a poor white man getting employment on favorable terms. It is well understood that competition always reduces the price of an article in the market; and although the blacks may not, in all respects, enter into a competition with the whites, yet, so far as respects labor, the competition will be complete. The rich part of the community will not employ a white man who feels the spirit of a freeman, and who will not submit to be subservient to the caprices of his employer, so long as they can employ a slave whom they can control as they please, and at a smaller expense. The indisputable effect, therefore, of the introduction of additional slaves will be the reduction of the value of labor, and the augmented severity of the lot of the poor white man, who is entirely dependant on his labor for the support of himself and family.

Gentlemen tell us we ought not so closely to scrutinize the conduct of the Legislature of South Carolina. I am, said Mr. L., far from scrutinizing in this instance the conduct of that State. I respect the people of South Carolina. Their situation may, perhaps, be such as in a great measure to justify their conduct, though I am far from saying that I approve it. But when we lay a tax on the importation of slaves, it is a sufficient reply to such remarks to say that the tax is not laid exclusively on slaves admitted into South Carolina. It does not therefore apply to South Carolina alone. That State has an undoubted right to admit the importation; but Congress have also an undoubted right of taxing them. The resolution, therefore, does not encroach on the rights of that State. The United States and South Carolina form two bodies politic, both of which are possessed of Constitutional rights. To the one belongs the right of importing, to the other, the right of taxation; and this last right may be exercised without involving any censure of the State of South Carolina. The only necessary inquiry is, whether the proposed tax will be oppressive or unjust. I believe it will be universally agreed that an imported article worth four hundred dollars will not be taxed high compared with other articles, when it pays a duty of ten dollars. As to the constitutionality of the tax not a word need be said; that has not and cannot be disputed.

It cannot, I think, be justly said, by imposing this tax we single out the State of South Carolina with a view to punishing her. The mode of inflicting punishment is otherwise devised, as will appear by our statute books. They will show that when punishment is meant, it is by fines and penalties and not by taxes. The resolution does not, therefore, single out South Carolina; there is, in fact, not one word respecting South Carolina in it. It is not said the tax shall be laid upon slaves coming from Africa or going to South Carolina, but on slaves imported into the United States. If the tax shall operate more on South Carolina than on any other State, it will not be our fault. It will remain at her option at any moment to put herself into such a situation as to avoid it. The remedy is in her hands; she can when she pleases prohibit the importation of slaves, and the tax, so far as it falls on her, will immediately cease. And if other States admit the importation of slaves the tax will equally apply to them.

It is known that the thirst for gain is, at this time, more alive in this country than ever. This inordinate appetite, unless checked, may, in a few years, effect the introduction of one hundred thousand slaves. The opening in South Carolina will virtually amount to the same thing as if the importation of slaves were admitted into every State in the Union; for once introduced into one State, and they will soon find their way into the others where slavery is allowed. Wherever they go, the poor white man need not fix himself; for his labor and relative importance in society will be as nothing. If there be an importation of one hundred thousand, each being taxed ten dollars, the product will be one million of dollars, a handsome sum, by no means to be despised.

I do not, with some gentleman who have taken a part in this debate, believe that the imposition of the tax will legalize the trade, or that this Government will thereby countenance it. On the contrary, I draw a very different inference, The importation is not legalized by the Union, but by the act of South Carolina; and, legalized by her, it is out of our power to illegalize it. In laying this tax we are only exercising that power which the Constitution confers. Nor can the Constitution or our statute books be stained by Congress doing that which the Constitution itself empowers. Deeming the importation an evil, we shall, by laying this tax, do all in our power to diminish it, and, to the extent of our ability, extract the little good it is capable of producing. In making these remarks I am not the mere moralist, or the visionary speculatist. I consult the Constitution, and am governed by its language. As the Constitution acknowledges the right of the State to admit the importation of slaves, I also acknowledge it; and as the same Constitution vests us with the right of taxing them, I consider that also to be proper.

The Committee rose and the House adjourned.

Wednesday, February 15.

Ordered, That the committee to whom was referred, on the thirteenth instant, the petition and memorial of sundry inhabitants of the City of Washington, in the District of Columbia, subscribers and members of the association for the erection of a theatre in the said city, have leave to report thereon by bill, or bills, or otherwise.

Mr. Nicholson, from the committee last mentioned presented a bill to incorporate the Washington Theatre Company; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Nicholson, from the committee appointed the thirteenth instant, presented a bill providing for the settlement of sundry claims to public lands lying south of the State of Tennessee; which was read twice and committed to a Committee of the whole House on Monday next.

NAVY ACCOUNTS.

Mr. Leib observed that an account of the most extraordinary nature had been recently laid before the House, by the Navy Department, respecting the expenses of the Marine Corps. It was indeed a phenomenon in accounts. It was of such a nature as required the interposition of the House, either to annihilate or reform the office of Accountant of the Navy. The statement was a species of nondescript never seen before in the United States. From it, it appeared that the public money had been expended in a most extravagant way, without any efficient check.

From it, it likewise appeared that the lieutenant colonel commandant has united in his person the offices of quartermaster, foragemaster, commissary, and paymaster, without check or control. There was a high necessity, Mr. Leib said, when the Government was looking to economical reforms, to attempt some reform in this department of expenses. It was his opinion that the office of the Accountant of the Navy ought to be abolished, or, at any rate, some salutary reform effected. He, therefore, moved a resolution,

"That the Committee of Ways and Means be instructed to inquire into the expediency of abolishing the office of Accountant of the Navy; to report by bill or otherwise."

The House having taken up the resolution—

Mr. J. Clay said that he had no objection to the passage of the resolution; but he would state, for the information of the House, that the Committee of Ways and Means had had the subject, together with that presented by an inquiry into the expediency of abolishing the office of the Accountant of the War Department, before them, for some weeks past.

Mr. Leib replied that he was aware that the subject was generally before the Committee of Ways and Means; but the House had been in session four months without any report being made on it. His object was that this resolution should be passed as an instruction to the committee to pay a particular and early attention to the subject.

Mr. Nicholson moved to amend the motion by adding to it, "and the office of the Accountant of the War Department." His reason for this motion was that a bill to that effect was introduced into the House two years ago. Mr. N. added that he was of the opinion, that an infinitely better arrangement could be made at the Treasury if these offices were abolished than if they were retained.

Mr. Leib acquiesced in the amendment.

The resolution, so amended, was then agreed to, yeas 61.

PUBLIC ROADS.

The bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic to the Ohio river, was read the third time.

Mr. Smilie moved its postponement to the first Monday in December, on the ground that the measure was premature, as the fund had not become sufficiently productive to justify the taking any immediate steps.

Mr. Jackson supported the bill, on the ground, that Congress having pledged themselves to appropriate the money, there was an obligation imposed upon them to expedite the application of it, that the beneficial effects expected from it might be the sooner realized.

Mr. Morrow advocated the postponement till the next session. He was hostile to the present bill on account of the transfer of the power of designating the routes to Commissioners, under the direction of the President; under the belief that it would involve a great and useless expense.

After a few remarks from Mr. Sloan, in favor of the bill, and from Mr. Lyon in support of the postponement, the motion to postpone was negatived—yeas 38, nays 49. When the bill passed—yeas 60.

On motion of Mr. Jackson, the title was varied, so as to read "An act authorizing the appointment of Commissioners to explore the routes most eligible for certain roads," &c.

IMPORTATION OF SLAVES.

The House again resolved itself into a Committee of the Whole, on Mr. Bard's resolution to impose a tax of ten dollars on every slave imported into the United States; the debate on which occupied the remainder of the sitting.

Mr. Lucas supported, and Mr. Holland opposed the resolution.

Mr. Earle moved that the Committee rise and report progress. His reason for this motion was, that, from information received from South Carolina, on which he placed much reliance, it was expected that the Legislature would meet in April, and would then repeal the act admitting the importation of slaves. Should the Committee rise, he would move a postponement of the consideration of the resolution to the first Monday in May.

Mr. Gregg.—I hope the motion for the Committee to rise will prevail, and that any further proceeding on this subject will be postponed for the present. It has been said by the gentleman from South Carolina who made the motion, and I have heard it mentioned by others, that a considerable ferment has been excited in that State by the passage of the law authorizing the importation of slaves, and that it is highly probable the Legislature, at its next session, will repeal that law. That session, it is expected, will be held in April, the Governor having it in contemplation to convene the Legislature at that time for the purpose of submitting to their consideration the proposed amendment to the Constitution.

When this resolution was first proposed by my

colleague, I felt pleased that it was brought forward, and considered its adoption as a necessary and proper measure; but, on mature reflection, I acknowledge I have very considerable doubts. I think the House had better pause, and weigh with deliberation the probable effects of the resolution, before they give it their final sanction. Irritated by such a resolution, South Carolina may continue the law, which, although very obnoxious in our view, she certainly had a Constitutional right to pass, and which, if undisturbed by any act of ours, she may, on cool reflection, and in conformity to the wishes of her own citizens, be induced to repeal. By precipitancy in the business we may possibly confirm the very act which it is our intention to destroy.

Let it not, Mr. Chairman, be inferred, from what I have said, that I am in principle opposed to the effect which I am confident the mover of the resolution expected it would produce. No member of this House is, or can be, more decidedly opposed to slavery than I am. In the State from which I come slavery is scarcely, if at all, known. I do not know whether, at this moment, it has any existence there. However the inhabitants of that State may differ on other points, on the subject of slavery we are all united. All parties have joined in abolishing it. I sincerely wish that Congress possessed a Constitutional power to abolish it, or at least to check its further progress in the United States. If they did possess such power, I would most cordially concur in putting it into operation. Instead of ten dollars, I wish the Constitution would warrant us in imposing a tax of one hundred, or of five hundred dollars on each imported slave. I would willingly vote for that sum, because it would amount to an entire prohibition of such importation, and effectually destroy the traffic, which I consider highly impolitic, as well as contrary to the principles of justice. But, admitting the resolution to be proper, the arguments by which it has been supported are, in my view, very exceptionable. The immorality of the slave trade has been insisted on at considerable length and with great zeal. This, to say no more of it, is certainly unnecessary in this House, because I am confident no gentleman on this floor will advocate the practice on the ground of morality. Why then so much pains to prove what we already believe? The conduct of the General Government, ever since the adoption of the present Constitution, affords sufficient evidence of the sentiment of Congress on this subject. Their records will prove that they have omitted no favorable opportunity of exerting their Constitutional power to suppress the trade.

But the argument founded on slaves being a fair article of commerce, warranted as such by the Constitution, and, of course, that a duty on their importation is a proper source of revenue, is still more extraordinary. I felt both surprised and hurt by this argument. I never expected to hear such a one advanced on this floor. Never, until now, did it occur to me that Congress would at any time think of deriving revenue from such a source. If money is wanting, I would submit to any tax—I would even agree once more to have recourse to a direct tax—rather than stain our Treasury by filling it with money collected from a duty on imported slaves. The imposition of such a tax certainly wears the appearance of giving countenance to the trade. However contrary to our intention, it will have the appearance, and so it will be construed by the importers. Sanction the trade by imposing the tax, and soon the traders will demand your protection.

When the present Constitution was adopted, there were no laws in several States to prohibit the importation of slaves. It is but a few years since such a law was passed by the State of Georgia. During all that period money was much wanted. The revenue was not adequate to the demand. Government was compelled to have recourse to loans, and in some instances had to submit to a heavy interest; yet in all that time the idea, I believe, was never suggested in Congress of supplying the deficiency by imposing a tax on slaves, although numbers were then imported. From this it may be inferred, that at that time the power vested in Congress by the Constitution of imposing a tax of ten dollars on each person imported into any of the then existing States, agreeably to its laws, was not considered as given for the purpose of raising revenue. It was given, it may be presumed, for the purpose of being used as a check to the trade, and at the time the Constitution was adopted, the exercise of that power might have contributed to produce such effect. The price of slaves was then low; their labor was not so productive to their owners, and, of course, ten dollars in addition to the then current price might, in some measure, have checked the spirit of purchasing. But soon after that period, by the introduction of the cultivation of cotton, the labor of slaves became more valuable, and their price enhanced in proportion. Ten dollars then bore some proportion to the price of a slave, but at this time it is comparatively as a cypher. A planter who can find his advantage in giving four hundred dollars, which is said to be the present current price of a good negro, will think but little of ten additional dollars. In the present state of things, therefore, I take it the proposed tax cannot effect the object contemplated by the mover of the resolution—it can neither prevent nor remedy the evil; and as it has the appearance of giving legal sanction to the trade, and may have an influence on the Legislature of South Carolina, inasmuch as it is an implied attack on their sovereignty, and a censure on them for passing an act which, however important it may be in our view, the Constitution certainly did authorize them to pass, I think the further consideration of the subject had better be postponed for the present; perhaps always, until Government may have it in its power to adopt measures calculated to produce an entire prohibition of the tsade.

Mr. Smilie regretted that a motion of postponement was made. He wished to meet the subject fairly, and to obtain the decision of the House directly. He well knew, from experience,

that this was a favorite way of getting rid of a subject which gentlemen were indisposed to meet. So viewing the subject, he could not but feel surprise at the sentiments of his colleague.

It is urged that we have no right to intermeddle in the affairs of South Carolina, or to speak of the act of the Legislature. He allowed that they had no right, as a Legislative body, to censure the State of South Carolina for the exercise of a Constitutional power. They undoubtedly had a right to do what they have done. But at the same time the Legislature of the Union possesses as good a right to do what is now proposed to be done. This is a complete answer to the argument advanced against the resolution.

Mr. S. said he would wish to steer clear of the question of morality. But at the same time that he considered it prudent to avoid this discussion, he could not but think the interest of the Union involved in the measure pursued by South Carolina. It was but a short time since Congress had received a representation from that State expressing the great danger apprehended from slaves pouring into the country. It would be recollected how earnestly they had been pressed to pass a law to counteract this effect, which, in some of its provisions, was so exceptionable as not to be agreed to. When I recollect this circumstance, said Mr. S., I feel surprised that that State has again opened the importation of slaves. It is true that the importation from the West Indies is not opened. But this description of persons, though in the first instance brought from Africa, may, at a future day, be converted into as formidable enemies as the others.

This measure so far affects the interests of the Union, as it tends to weaken the common defence of the country, into which every slave that is admitted must be viewed in the light of an imported enemy. In this view, the act of the Legislature of South Carolina seriously affects the Union. For we know that in case of an insurrection in any one part of our country, the Union is bound to suppress it.

Mr. S. said he would notice a few other objections urged against this resolution. He would first declare, as to revenue, so far as the resolution was considered merely in that light, he was not its advocate; for he abhorred the idea of raising a revenue from a traffic in human beings; if it were considered in that light he should vote against it. But he viewed the subject on a larger scale. He considered its effect on national character.

Gentlemen say the tax will sanction the law of South Carolina. Such an argument he could not comprehend. He had ever understood that the laying a duty on any particular article of trade rendered it more difficult to carry that trade on. He knew the proposed tax was very small; but small as it was it would have some effect; it would, at all events, show that it was a trade not approbated by the Legislature of the Union.

Mr. S. concluded by saying that, whether the resolution was expedient or not, it was before them, and they must express their sentiments upon it. He would ask, whether it would be for the reputation of the nation to reject it? As to the existence of slavery in some parts of the Union, they were not chargeable with it. It was out of their power to help it. But, on this occasion, some act was required of the House expressive of their disapprobation of the renewed importation of slaves.

Mr. Lyon said he considered the resolution as giving a sanction to the trade; and he also considered the State of South Carolina as having, in the passage of the law admitting slaves, exercised the right of a sovereign State. He should, therefore, not vote for the resolution, but for the postponement.

Mr. Huger said the arguments urged by the friends of the motion were two-fold. One class of gentlemen say they are not in favor of this tax for purposes of revenue, but to manifest the opinion of the National Legislature; while another class declares their only reason for laying it is the revenue it will bring into the Treasury. A decision, therefore, by the House, will settle no principle; for supposing that a majority of the members shall be found in favor of the tax, one-half of them will vote for it on one principle and one-half on another. Under these circumstances, he appealed to gentlemen inclined to favor the resolution, whether it would not be the best policy to wait until the Legislature of South Carolina had an opportunity of repealing the obnoxious law. Is it a pleasant thing to any gentleman on this floor to throw a stigma upon a State? And will not gentlemen from the Middle and Eastern States recollect that the situation of South Carolina is very different from that of their States? Let them, then, do as much good as they can at home; but let them, in God's name, permit us to act for ourselves. It is a very easy thing to make some harsh remarks on the conduct of particular States, even of the State of Pennsylvania, much as that State is deservedly respected. Mr. H. said he did not believe that State stood one iota higher than other States in the Union. For he believed that peculiar interest operated there as well as in other States.

Mr. H. said, from what had been expressed today, he did not believe the people of South Carolina friendly to the act admitting the importation of slaves. Every representative of that State on this floor wished, he believed, that it had never been passed. But as it had passed, they conceived it to be their duty to resist a measure which went to censure the State for the exercise of an undoubted right.

After making some further remarks, Mr. H. concluded by expressing his hope that the resolution would be postponed.

Mr. Stanton.—Mr. Speaker, I am highly gratified to find honorable members in every part of the House who reprobate the infamous traffic of buying and selling the human species. On this occasion but a few remarks are necessary, if morality, humanity, and justice, are conducive to the happiness of society. It is not my duty nor intention to criminate the State of South Carolina,

whose late conduct has created serious and well founded alarm. It is a duty I owe to my constituents and myself not to connive at a measure that, in my humble opinion, goes to shake the pillars of public security, and threatens corruption to the morals of our citizens, and tarnishes the American character. Sir, while I deprecate the repeal of the non-importation act of South Carolina, I console myself with the pleasing expectation that the State will retract the error they have recently and unguardedly fallen into, and I can not doubt but the honorable members from that State, on this floor, will lend their aid to effect so desirable a measure—to enact again the prohibitory statute. We are told if the House adopt the resolution, it will irritate South Carolina, notwithstanding the opposers of the resolution confess the impolitic conduct of South Carolina. I wish not to offend any of our sister States, much less, that important State whose wisdom, virtue, and patriotism, have been conspicuous on every other occasion. The opposers of the resolution inform us its adoption will both encourage and sanction the importation, and that they have a Constitutional right to import until 1808. I grant it, but I hope better things of that State; and things that accompany reformation. She has recently, with other States, emancipated herself from tyranny and oppression, and will she sully her fair fame by commencing tyrant herself? Sir, the speakers from the State of South Carolina, and particularly the honorable member who offered a resolution as a substitute for the one under consideration, delivered himself in sentiments of the most admirable humanity, and constitutional love and zeal for his country; and if he were a member from any other State in the Union, I should have the honor, I make no doubt, of voting with him for the resolution on your table. Sir, I am sensible the General Government cannot prohibit the traffic previous to the year 1808. This is one of the most humiliating concessions made by that venerable Convention which framed the Constitution, and we are bound by it. I ask, is the policy of the measure embraced by the resolution sound? I believe it is. I consider slaves a luxury—they are considered by the Constitution, three-fifths of them, to give a Representative, and I ask why not tax them? It is a sound maxim that representation and taxation should go hand in hand. To lay a tax being the only Constitutional power the General Goverment possesses, I think it good policy to exercise it. It is the opinion of some gentlemen, and of the honorable gentleman before me, whose sound judgment and correctness I highly approve on most occasions, that the tax is of little consideration in point of revenue. I beg leave to differ from them, when I take into consideration the wish of many influential characters to emigrate to our newly acquired territory, and carry with them slaves almost without number. We may fairly calculate that the probable number imported will not be less than one hundred thousand a year for four years, which will bring a revenue of four million of dollars; and this sum may be appropriated to remunerate the veteran, war-worn old soldier, who is now languishing in misery, and whose just claim is barred by an act of limitation. I beg pardon of the House for this deviation from the subject under consideration. While I am up, I beg the indulgence of the House to permit me to relate to the House what I beheld on the road to the seat of Government—twenty or thirty negroes, chained to each other, and drove like mules to market. I asked the gentleman who appeared to have charge of them, if they were criminals? He answered with a smile, No sir; they have been sold. Sir, this awful sight gave me such sensations and emotions, that it is painful to relate and not easy to describe them. Sir, if I have been compelled, in the discharge of the duty I owe to society and my constituents, to make any remarks that have wounded the feelings of any honorable gentleman who may differ with me in sentiment, I regret it much, as I am conscious it was far from my intention. I shall give my vote for the resolution.

The State of Rhode Island, from whence I came, passed a law declaring negro children born posterior to 1784, as free as white children. Mr. Speaker, I mention this statute merely to obviate the erroneous impression, that otherwise, might be made with a view to mislead the public mind, that the citizens of Rhode Island are disposed to favor the villanous traffic. I wish not to egotize, but I can assure the House this traffic has been abhorrent to me upwards of forty years, and if I should live to see 1808—that auspicious period in our national compact which shall be exonerated from the tragic feature that has cast a shade on that valuable instrument—if the important acquisition of Louisiana gave ample cause for festivity, still greater cause shall we have when the glorious period shall arrive of 1808. That shall be my jubilee.

Mr. Southard observed that the object contemplated to be answered by the rising of the Committee was to give an opportunity to the Legislature of South Carolina to repeal the law admitting the importation of slaves. He was opposed to the rising of the Committee for this reason. He believed the House proceeding to act upon the resolution would have a much greater influence upon that State. For he did presume that the House would agree to the resolution, and to a law founded upon it; and he also believed that if they proceeded to this extent, the Legislature of South Carolina would be most likely to be induced from that very circumstance to repeal the law. We are told that a number of the citizens of that State are opposed to the law, and every representative of South Carolina on this floor regrets its passage. Mr. S. said he believed almost every member of the House was of this opinion. If then we shall dismiss this resolution, what effect will the act have on the whole United States? Will it not convey the idea that the Congress of the United States do not consider the introduction of slaves into the country a real evil? For this, Mr. S. said, he was opposed to the rising of the Committee, as it would prevent the House from declaring their sentiments on so important a question. He did

not so much regret the introduction of the resolution as some gentlemen who had spoken. He rather rejoiced at it, as it gave the National Legislature an opportunity to bear their opinion against the increase of the slaves in the United States. Mr. S. said he avoided intentionally saying anything on this occasion as to the right of holding slaves already in the country; meaning to confine his remarks entirely to the impolicy and injustice of allowing new importations of them. And he was surprised, after the exposure of the evils likely to ensue from it, gentlemen still opposed the resolution. Let them look forward to what may happen before the four years shall elapse when we may make the importation a capital offence; and consider how large a number may be previously introduced. Mr. S. said he did not consider the resolution important so far as it went to raise revenue; but if any State would encourage the traffic, he thought they ought to be made to pay for it.

Mr. Sloan declared himself against the proposed postponement, which was supported on the supposition that South Carolina would repeal the law allowing the importation of slaves, a supposition which might prove illusory. Even should the law be repealed, he saw no injury that would result from passing the resolution. Should the law not be repealed, it was extremely probable that a very large importation would take place—at least a hundred thousand might be introduced, the evil of which to the United States would be incalculable. Mr. S. said that, in his humble opinion, to pass over the business would be to create the appearance throughout the Union that Congress were disposed to sanction this traffic. He should, therefore, vote against the Committee rising.

After a few further remarks, by Mr. Huger and Mr. Lucas, the question was taken on the rising of the Committee, and passed in the negative—yeas 58, nays 60. When the resolution was agreed to.

The Committee rose and reported their agreement to the resolution, which the House immediately took into consideration.

Mr. Winn moved to postpone the further consideration of the resolution till the first Monday in January, and required the yeas and nays.

Mr. J. Clay said, as it was probable that he should vote for the postponement, it was proper to assign the reasons which decided his vote. From information given to the House during the present discussion, it appeared that considerable agitation existed on the subject of the law admitting the importation of slaves in the State of South Carolina. As there appeared to be considerable irritation in the State, the interposition of the House might frustrate its repeal. From the ideas of the representatives of that State, it was probable that, on fuller reflection, the Legislature would repeal this act. If, after an opportunity was given them, they should not repeal it, he should certainly vote for the resolution. But wishing to prevent the traffic, rather than to raise revenue, he should vote for the postponement.

Mr. Lucas, Mr. Sloan, and Mr. Stanton, concisely opposed the postponement, and Mr. Claiborne supported it.

The question was then taken on the postponement, by yeas and nays, and passed in the negative—yeas 54, nays 62, as follows.

Yeas—Willis Alston, jun., Nathaniel Alexander, George Michael Bedinger, Silas Betton, William Blackledge, Walter Bowie, John Boyle, William Butler, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, Roger Griswold, Samuel Hammond, Wade Hampton, Seth Hastings, Joseph Heister, James Holland, Benjamin Huger, Michael Leib, Thomas Lowndes, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, Joseph H. Nicholson, Thomas Plater, John Randolph, John Rhea of Tennessee, Thos. Sandford, Tompson J. Skinner, John Cotton Smith, James Stephenson, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Daniel C. Verplanck, Lemuel Williams, Richard Winn, and Thomas Wynns.

Nays—Isaac Anderson, John Archer, Simeon Baldwin, David Bard, Adam Boyd, Robert Brown, Joseph Bryan, William Chamberlin, Clifton Claggett, Matthew Clay, Frederick Conrad, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Gaylord Griswold, John A. Hanna, William Helms, William Hoge, David Holmes, David Hough, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lewis, jr., Henry W. Livingston, John B. C. Lucas, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Gideon Olin, Beriah Palmer, Thomas M. Randolph, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Samuel Taggart, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Marmaduke Williams, and Joseph Winston.

And then the main question being taken that the House do agree to the said resolution, as amended to read as follows:

Resolved, That a tax of ten dollars be imposed on every slave imported into any part of the United States:

It was resolved in the affirmative—yeas 71.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee Ways and Means do prepare and bring in the of same.

Thursday, February 16.

The House went into a Committee of the Whole on the bill to amend the charter of Alexandria.

After undergoing several amendments the bill was reported to the House.

On motion of Mr. Eppes, an amendment was made—ayes 49, noes 39—by which every freeholder is made eligible as a member of the Common Council, instead of only such freeholders as are worth five hundred dollars.

On motion of Mr. Leib, the bill was so amended as to make every freeholders eligible as Mayor,

instead of requiring a freehold estate of one thousand dollars—ayes 47, noes 36.

The bill was then ordered to be engrossed and read a third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" and, after some time spent therein, the bill was reported without amendment, and the farther consideration thereof postponed until to-morrow.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill laying a duty on slaves imported into the United States; which was read twice and committed to a Committee of the Whole House.

And on motion, the House adjourned until to-morrow.

Friday, February 17.

Memorials of John P. Van Ness, and others, inhabitants of the city of Washington, in the District of Columbia, and residing on the west side of Tiber creek, in opposition to the prayer of sundry petitions lately presented to this House, "that Congress will, by law, authorize the establishment of a company for the purpose of building a bridge over Potomac river, from the western and southern extremity of the Maryland avenue, in the city of Washington, to the nearest and most convenient point of Alexander's island, in the said river," were presented to the House, and referred.

Ordered, That the committee appointed, on the seventh instant, "to inquire into the expediency of providing by law against the appointment of Judges of the Courts of the United States to other offices under the Government," have leave to report by bill, or bills, or otherwise.

Mr. Leib, from the committee last mentioned, presented, according to order, a bill more effectually to secure the independence of the Judges of the Courts of the United States; which was read twice and committed to a Committee of the Whole House on Monday next.

Resolved, That a committee be appointed to prepare a bill for altering the days of session of the Federal District Court for the district of Virginia.

Ordered, That Mr. Newton, Mr. Lowndes, and Mr. George W. Campbell, be appointed a committee, pursuant to the said resolution.

A memorial of sundry merchants of the city and State of New York, was presented to the House and read, praying that such further encouragement may be given for carrying on the fisheries of the United States, as to the wisdom of Congress shall be deemed reasonable and proper.

Ordered, That the said memorial be referred to Mr. Huger, Mr. Bishop, Mr. Gray, Mr. Claggett, and Mr. Rhea, of Tennessee; to examine and report their opinion thereupon to the House.

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the propriety of amending the laws establishing the compensations of the officers of the customs; and to report thereon by bill, or otherwise.

Mr. Alston, from the committee appointed on the fourteenth instant, presented a bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina; which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. Claiborne, from the committee appointed on the twenty-first of December last, presented a bill making farther provision for extinguishing the debts due from the United States; which was read twice and committed to a Committee of the Whole House on Monday next.

A petition of Moses White and Charlotte Hazen, executor and executrix of the last will and testament of Moses Hazen, deceased, a Brigadier General in the Army of the United States, during the Revolutionary war with Great Britain, was presented to the House and read, praying to be indemnified for the losses sustained by the deceased, on account of relinquishing his half pay as a British officer, and adhering to the American cause; to which indemnification the petitioners conceive the legal representatives of the deceased are justly entitled, by a resolution of Congress, under the former Government, of the twenty-second day of January, one thousand seven hundred and seventy-six.—Referred to the Committee of Claims.

Also a petition of Henry Lenhart, the elder, of the city of Baltimore, in the State of Maryland, was presented to the House and read, praying relief against a judgment recovered against him in the Circuit Court of the United States in the district of Maryland, and execution issued thereon, in the case of a bond given by the petitioner, some time in the month of October, in the year one thousand seven hundred and ninety-eight, as one of the securities for a certain John Holmes, part owner, and William Smith, captain of a schooner, called the Active, bound from the port of Baltimore to the West Indies, with condition that the said John Holmes and William Smith should not, during the voyage aforesaid, violate the law prohibiting the intercourse between the United States and France, and the dependencies thereof.—Referred to the Committee of Claims.

A Message was received from the President of the United States, transmitting information in relation to the public lands in the neighborhood of Detroit.

The Message was read, and, together with the papers, referred to the committee appointed on the twenty-second of November last, who were directed by a resolution of this House, of the twenty-fourth of the same month, "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States."

Mr. Nicholson, from the committee appointed, on the thirty-first ultimo, presented a bill supplementary to the act, entitled "An act providing for a Naval Peace Establishment, and for other purposes;" which was read twice and committed to a Committee of the Whole House on Monday next.

Mr. Nicholson, from the committee to whom

were referred, on the twenty-first of December, one thousand eight hundred and three, and the twenty-fourth ultimo, the several petitions of Marcella Stanton, of Ann Alricks, and of Judith Crow, (late Judith Sayse,) of the District of Columbia, made a report thereon; which was read and considered:

Resolved, That the District Court of the District of Columbia ought to be invested with a power to grant divorces, in certain cases.

Ordered, That a bill, or bills, be brought in pursuant to the said resolution: and Mr. Nicholson, Mr. Roger Griswold, Mr. Winn, Mr. Dawson, and Mr. Smilie, do prepare and bring in the same.

An engrossed bill to amend the charter of Alexandria was read the third time, and passed—ayes 79.

Previously to its passage Mr. Sloan spoke against it, principally on account of the restriction of the right of suffrage to freeholders.

INDIANA TERRITORY.

Mr. Rodney, from the committee to whom were referred a letter from William Henry Harrison, President of the Convention of the Representatives of the people of the Indiana Territory; also a memorial and petition from the said Convention, together with the report of a former committee on the same subject at the last session of Congress, made the following report:

That, taking into their consideration the facts stated in the said memorial and petition, they are induced to believe that a qualified suspension for a limited time of the sixth article of compact between the original States and the people and States west of the Ohio river, might be productive of benefit and advantage to the said Territory.

They do not conceive it would be proper to break in upon the system adopted for surveying and locating public lands, which experience has proved so well calculated to promote the general interest. If a preference be given to particular individuals in the present instance, an example will be set by which future claimants will obtain the same privilege. The committee are nevertheless of opinion, that after those lands shall have been surveyed, a certain number of townships should be designated, out of which the claims stated in the memorial ought to be satisfied; and that, for the encouragement of actual settlers, the right of pre-emption should be secured to them.

They consider the existing regulations contained in the ordinance for the government of the territory of the United States, which requires a freehold of fifty acres as a qualification for an elector of the General Assembly, as limiting too much the elective franchise. They conceive the vital principle of a free Government is, that taxation and representation should go together after a residence of a sufficient length to manifest the intention of becoming a permanent inhabitant, and to evince, by conduct orderly and upright, that a person is entitled to the rights of an elector. This probationary period should not extend beyond two years.

It must be the true policy of the United States, with the millions of acres of habitable country which she possesses, to cherish those principles which gave birth to her independence and created her a nation by affording an asylum to the oppressed of all countries.

One important object desired in the memorial, the extinguishment of the Indian title to certain lands, has been happily accomplished; whilst the salt spring below the mouth of the Wabash river has also been placed in a situation to be productive of every reasonable advantage.

After a careful review, and an attentive consideration of the various subjects contemplated in the memorial and petition, the committee respectfully submit to the House the following resolutions, as embracing all the objects which require the attention of Congress at this period:

Resolved, That the sixth article of the ordinance of 1787, which prohibited slavery within the said territory, be suspended in a qualified manner for ten years, so as to permit the introduction of slaves born within the United States from any of the individual States: *Provided*, That such individual State does not permit the importation of slaves from foreign countries: *And provided further*, That the descendants of all such slaves shall, if males, be free at the age of twenty-five years, and if females at the age of twenty-one years.

2. *Resolved*, That every white free man, of the age of twenty-one years, who has resided within the territory two years, and within that time paid a territorial tax which shall have been assessed six months before the election, shall enjoy the right of an elector of members of the General Assembly.

3. *Resolved*, That in all cases of sales of land within the Indiana Territory, the right of pre-emption be given to actual settlers on the same.

4. *Resolved* That the Secretary of the Treasury be, and he is hereby, required to cause an estimate to be made of the number and extent of the claims to lands under the resolution of Congress of the 29th of August, 1788, and the law of the 3d of March, 1796, and to lay the same before this House.

5. *Resolved*, That provision, not exceeding one thirty-sixth part of the public lands within the Indiana Territory, ought to be made for the support of schools within the same.

6. *Resolved*, That it is inexpedient to grant lands to individuals for the purpose of establishing houses of entertainment, and opening certain roads.

7. *Resolved*, That it is inexpedient at this time to vest in the Legislature of Louisiana Territory the salt spring below the mouth of the Wabash river.

8. *Resolved*, That compensation ought to be made to the Attorney General of the said Territory for services performed by him on behalf of the United States.

The report was read and referred to a Committee of the Whole on Monday next.

IMPORTATION OF SLAVES.

The House resumed the consideration of the unfinished business of yesterday, viz: "What day should be made the order to the Committee of the Whole to consider the bill laying a tax of ten dollars upon every slave imported into the United States."

Mr. Lowndes moved that the further consideration of the bill should be postponed till the first Monday in December.

Mr. Lowndes.—In moving a postponement of the bill to the first Monday in December next, my object is to get rid of it altogether. Gentlemen have supported the resolution upon which this bill is founded, upon such a variety of, and contradictory grounds, that their arguments are not very susceptible of a reply. I am, however, very

glad that it has been conceded by every gentleman who has spoken upon the subject, that this tax, if laid, would not have the effect of diminishing the number of Africans imported into the country. When it was admitted that the object for which the resolution was avowedly brought forward, would not be obtained, I did hope that the resolution itself would not have been persevered in. The gentleman from Pennsylvania, (Mr. Gregg,) to whose arguments I generally listen with pleasure, has told us that he would not for the world give his vote for this tax, for the purpose of raising revenue; but that he would be obliged to vote for the resolution, to show his disapprobation of the trade. The gentleman did, however, manifest a disposition to get rid of the question, without taking a direct vote upon it. Another gentleman from Pennsylvania (Mr. Smilie) has told us, that he too is averse to this tax with a view to revenue, but that he must vote for it, for if he does not, it will be an admission, on his part, that Congress is favorable to the trade. What am I to infer from this observation? Am I to infer that Congress until this time has been favorable to the trade; and am I to infer that the gentleman himself, who has for so long a time been an active member of Congress, has also been favorable to it? This trade has from the adoption of the Constitution until a few years ago, when it was first prohibited by Georgia, been carried on; and yet Congress have never exercised their power of imposing any tax, nor have I heard that the gentleman did ever bring forward a resolution for the purpose. Upon many topics a difference of opinion must be expected to exist; but I cannot help expressing my surprise that gentlemen should advocate a tax, which they admit will not have the effect of a restraint, upon the principle that it is a legislative discountenance of the trade. This is a commercial as well as agricultural country, and we have ever estimated the national prosperity by the extent of the revenue. From imposts on importation is derived the whole revenue of the United States. Will the gentleman then, say, that the impost on foreign merchandise, or the produce of the West Indies, is a discouragement of the trade with the places from whence they are brought? I imagine he will not. And with as little reason can it be said that the tax upon slaves is a discouragement of the slave trade.—When a Government, by laying taxes, derives a revenue from a trade, and by that means participates in the profits and gains of it, it is in my opinion giving an approbation of it. Another gentleman from Pennsylvania (Mr. Lucas) has strenuously contended for the imposition of this tax; and, to do him justice, he has been consistent throughout his argument. Revenue is his object, and he has told you that a great amount will be produced by this tax. It doubtless will produce considerable revenue; and in proportion to it, ought, in my opinion, to be the aversion of those who are inimical to the trade. I will repeat, sir, what I said on a former debate, that there are in the Southern States many persons who are attached to this trade, and who will yield it with reluctance. Their influence in the country and in this House will necessarily be greatly increased by the immense accession of territory to the westward; the cultivation of which we have been told, even in an official memoir, will require the labor of slaves. Is it then politic in the enemies of this trade, under these circumstances, to superadd to the law of the State of South Carolina, one of Congress, by which the United States will become partakers in the profits and whatever else is connected with it? I think not. And why should this tax be laid with the view of deriving revenue? The State of South Carolina pays to the Government of the United States, for her wealth, population, and extent of country, as largely as any State in the Union. If the exigencies of the country require it, I hope the people of that State will not be unwilling to pay more, but not to be subjected to a tax which will fall exclusively on her while the rest of the community will bear no part of it. This was my idea when I said it would be a tax on the agriculture of the State, and not, as the gentleman from New York represented me as saying, "that it would be a discouragement of agriculture." I do not believe the agriculture of the State would be discouraged by it. I do not believe that it would be carried on with less activity or success. But the tax, if imposed, will be partial, and therefore unjust. I do not believe that a land tax would operate as a discouragement of agriculture; but when the United States, generally, have been relieved from the payment of one, I think it highly injurious that it should be continued, in this indirect way, on the State of South Carolina. This tax will draw from the landed interest of that State a greater amount than was her proportion of the late land tax. But, say gentlemen, this is not a tax intended to be confined to any one State, but a general one upon Africans imported into the United States, and will attach upon them into whatever State they are imported. This is indeed the law, but when it is known that the State of South Carolina is the one only into which they will be imported—that in every other they are prohibited by the laws of the State—the result is too unequivocal to be denied that it is a tax exclusively falling on the State where the importation is admitted. There is another description of persons imported into the United States—I mean those bound to serve for a term of years. The comparison I admit is not analogous throughout, but it is to a certain extent. These persons are chiefly introduced into the States of Pennsylvania, and New York; none, or at least very few of them, into New England. Were it proposed to embrace them by this tax, would the representatives from those States be satisfied with the arguments that it was a tax upon merchandise, and a general one, and therefore fair? Their discernment would quickly point out to them, that whatever was the appearance, it was a tax principally falling upon those States, and they would resist. Plaster of Paris is evidently an object of merchandise, and in those districts of the country where it is found advantageous as a manure, gives immense fertility to the land; but it is only particular districts where

it is of any utility. A tax therefore upon plaster of Paris, however general the law by which it was imposed, would be a tax upon those particular districts where it is used and would be beneficial. I should be sorry if Government availed itself of this fortuitous but fortunate circumstance for these districts, and should draw a revenue from them by an imposition of a tax upon plaster of Paris. It has been contended by some gentlemen, but very unnecessarily, that it is Constitutional to lay this tax; it never was pretended to be otherwise: the Constitution expressly gives the right, but Congress has never exercised it, nor do I see the policy or the justice of doing it at this time. It will not answer the end which was designed, for it is conceded that it will not restrain the importation, but, on the contrary, will oppose greater difficulties to the exercise of the power, when Congress shall be possessed of it, of prohibiting the trade absolutely. When the period does arrive when Congress will have the power of legislating conclusively upon this subject, and it is only four years off, something more than a law will be necessary; unless active and vigilant measures are taken to enforce it, no law will be availing. An armed force on our coasts will be necessary, to prevent the introduction of them into our country; if the law of the State had been aided by such means, the repeal which has given rise to the discussion would never have taken place.

Entertaining the opinions which I have expressed against the principle of the bill, and wishing to get rid of it in a manner most agreeable to those gentlemen who feel a difficulty of voting directly upon it, I move that the further consideration of the bill be postponed until December next.

Mr. BIDDINGER said he felt the greatest veneration for the honorable mover of the resolution, as he thought it proceeded from the purest motives. But as he thought the slave trade was but little better than murder, he felt a difficulty in his mind as to the propriety of admitting one shilling of it into the Treasury of the United States, lest those traders should think themselves entitled to protection; but as the mover and many others declare their assent towards the appropriation of said tax hereafter to humane purposes, he believed he should vote for a bill, if drawn in correspondence with such principles.

Mr. FINDLEY observed that it was not his wish to go into a lengthy argument on this subject; but merely to observe that this was the first instance of a law prohibiting the importation of slaves being repealed, and that it might not be the last; and that, therefore, if the argument advanced by gentlemen was good against taking it up in the first instance, it would be equally good against taking it up in case all the States should repeal their prohibitory laws. He also wished gentlemen to consider that the friends of the motion were conscience-bound as well as they, and that they considered it a moral duty to restrain, as far as they could, the continuance of the slave trade. As, however, a question of expediency was involved in this measure, he entertained no desire to hasten its decision; on the contrary, his wish was to allow ample time for considering its merits. He should therefore vote against the postponement to December; but would move a postponement to the 2d Monday of March, not with the view of getting rid of the subject altogether, but to allow an opportunity of considering it fully.

Mr. HUGER did not rise with the view of going into the merits of the bill, but to impress the propriety of agreeing to the postponement. It was a painful subject, which necessarily excited unpleasant feelings. He thought, if gentlemen suffered it to lay over to the next session, there was a probability that by giving the representatives of South Carolina an opportunity of returning home and expressing the sentiments of Congress, the Legislature of that State would repeal the law; whereas, should the tax be laid, it would prevent this desirable effect. Where we differ, said Mr. H., it is proper for us to accommodate—to meet each other half way.

Mr. SLOAN said a few words against the postponement.

Mr. CONRAD hoped the postponement would not be agreed to, but that the main question would be met directly. He was sorry any State was implicated in the proposed tax, but it rested with every State to pay it, or not, by allowing or prohibiting the introduction of slaves. He moved for the taking the yeas and nays.

Mr. SMILIE said he thought it incumbent on the Government of the United States to show their disapprobation of the slave trade. As to the revenue to be derived from this tax, it was no object with him; and as to checking the importation, he did not believe it would have the effect. He could, therefore, perceive but one object of this act, to wit: that the Government of the United States should express their disapprobation of the act of the Legislature of South Carolina. However, for the reasons assigned by the representatives of that State, he would agree to postpone the consideration of the bill to the second Monday of March.

Mr. LUCAS replied at some length, to the arguments in favor of the postponement.

Mr. EPPES, believing that either motion of postponement would defeat the main measure, said he should vote against both. It was not his wish to erect the Government of the United States into a national tribunal to censure the proceedings of the Legislature of South Carolina, or to wound their feelings; but he was not prepared to say that Congress, in exercising a Constitutional right, erected such a tribunal. It was in some respects immaterial whether they interfered or not, so long as the world knew that a Legislature of a respectable State, in the eighteenth century, passed an act allowing the importation of slaves. That Legislature ought not to complain if the United States availed themselves of the measure to raise revenue from it. According to the estimate of some gentlemen, there would probably be an importation of one hundred thousand in four years, which, if this tax shall be laid, will produce a revenue of a million of dollars. And yet we are entreated by the gentleman from South Carolina not to molest the trade. Mr. E. said he was not

surprised at this anxiety, as, by gaining a delay of one year, that State might be saved from the payment of above one hundred thousand dollars.

Mr. E. said he came from a Southern country, where slaves were as much a subject of taxation as lands; and he did not know that the statute books of Virginia or South Carolina were stained by imposing taxes upon them. He believed them as fair a subject of taxation as any other species of property. He believed it as fair to lay taxes upon them as to make the poor pay a tax upon brown sugar and other articles of the first necessity. For these reasons he was against the postponement either to December or March.

Mr. R. GRISWOLD considered a postponement till December as destructive to the bill. He said he would as soon meet it on its merits, but being prepared, as far as his vote went, to reject the bill, he should vote for what he considered equivalent, a postponement to December. He did not think it proper for the House to go into the measure contemplated by the bill. There were but two principles that would justify the laying a duty on imported articles: the one to discourage the importation of particular articles, and the other with a view to revenue. As to the first principle, under the Constitution as it at present stood, Congress had no right to interfere; as the States had an undoubted right to admit the importation of slaves until the year 1808. The Constitution, on this point, had gone so far as to restrict the right of the General Government to a tax not exceeding ten dollars upon each slave imported. This would not amount to a prohibition or prevention of the importation. Congress was, therefore, precluded the right of taxing, with this view, until the year 1808. This part of the argument, on which gentlemen support the measure, must be laid, therefore, out of view. The question then recurs, whether we shall lay this tax for purposes of revenue? For one, (said Mr. G.) I am unwilling to do this. I abhor the slave trade as much as any member on this floor, and therefore I will not consent to give it a legislative sanction. For this measure will certainly be viewed in that light by the people of this country and by the civilized world. It will appear to the world that Congress are raising a revenue from a commerce in slaves. I am not for introducing such a law, calculated to have this impression, on our statute books. Were it in our power to prohibit the trade, there is not, I trust, a member on this floor that would not unite in the prohibition. But on this point our hands are tied. We can only avail ourselves of the trade as a subject of revenue. The sum likely to be raised from this tax may be as great as has been mentioned; but if the raising of it be connected with the passage of a law that recognises a traffic in human flesh, so far as fixing the price at which it may be freely carried on, will have this effect, I, for one, must protest against it.

Viewing this tax in the aspect of revenue, there does not appear to be any occasion for it. We have no report from the Secretary of the Treasury that the Treasury is deficient in receipts. For these reasons, said Mr. G., and because this subject is calculated to produce unpleasant impressions on this floor and elsewhere, I shall vote for the postponement to December.

Mr. GREGG observed, that when this subject was on a former day before the House, he assigned his reasons, at some length, in favor of a postponement. The same reasons would influence his vote this day, and he should not trouble the House with a repetition of them. He only rose to suggest to his colleague that, by attending to one consideration, he would be induced, he thought, to change his opinion, and to vote for the most distant day to which it was proposed to postpone this subject. It had been stated by a gentleman from South Carolina, and he believed correctly stated, that by the law lately passed in South Carolina, a considerable ferment had been excited in that State, and that it was probable that the Legislature would, at their next session, repeal it. If it were probable that they would repeal this law in April, it appeared to him improper to pass an act that would operate as a censure upon the conduct of that State.

Mr. ALSTON was surprised how it was that he and his worthy friend from Virginia (Mr. EPPES) differed so widely upon the present occasion, living, as it were, in the same country, and owning property of the same kind, and pursuing the same means of obtaining a living. My friend advocates the resolution for laying a tax of ten dollars on each slave imported into the United States, because a considerable revenue will be derived from such a tax; it is for that very reason that he opposed it, because he would not consent to pass a law which had for its operation a partial effect. Can it be right to pass a law which will impose a heavy tax upon one part of the community, and not a cent upon the other? No State in the Union would be affected except South Carolina. Gentlemen ought to take care how they acted towards a sister State, and a respectable one too.

Whenever a tax is to be laid by Congress, such objects of taxation should be selected as would apply generally to every part of the Union. In the present case, it was impossible that the contemplated tax would be general; for in some of the States in this Union slavery was prohibited by their constitution—they had incorporated a clause which prevented a slave from being carried into them. How then, sir, can the effect of the resolution now before you have an uniform operation, if it should be adopted, and a law passed in conformity thereto? He therefore hoped it would not obtain; at the same time he wished it to be understood that he was not friendly to the slave trade, and could the resolution now under consideration operate equally throughout the Union, he would have no objection to it. Viewing the thing, therefore, as he did, as calculated to cause discontent and uneasiness to so respectable a State as that of South Carolina, he could not but hope that however much gentlemen might be opposed to the slave trade generally, that in the present case, under all existing circumstances, they would permit it to remain as it was: perhaps South Carolina would revoke what she had done,

and everything become quiet upon the subject before the next session of Congress. This is an extremely delicate subject, and one in which the feelings of almost the whole Southern country are always alive. Why will gentlemen choose to agitate it upon this floor? It can answer no good purpose. Those gentlemen who are not interested in this description of property ought to let us alone, and permit us to enjoy it as the necessity of the case requires.

Mr. JACKSON said, if he were of opinion that the law of South Carolina, allowing the importation of slaves, would be repealed before the occurrence of the baleful effects to be apprehended from it, he might be in favor of the proposed postponement. But, when he recollected that the gentleman (Mr. LOWNDES) who first rose in opposition to the imposition of a tax, stated the defective measures of the United States in preventing an illicit trade from being carried on, as one of the grounds of the act of South Carolina, he was induced to believe that the Legislature of that State would not repeal a law enacted under such circumstances. The observation of the gentleman that, notwithstanding persons carrying on this traffic, when illicit, were subjected to a fine not exceeding two thousand dollars, one thousand of which were to go to the informer, and to imprisonment not exceeding two years, there were no prosecutions and no convictions, induced him (Mr. J.) to believe that the trade was favored by South Carolina, and that, of consequence, that State would not consent to repeal the law.

Mr. J. said, he was induced to view the postponement as intended entirely to defeat the object of the bill, and he should therefore vote against a postponement to any day, however near, under the hope that the session would be soon terminated. He contended that if a postponement was effected for one year, or to the first Monday in March, the effect produced would be the same—an entire frustration of the measure. He had no doubt that a delayed interposition would, by permitting, in the meantime, importations to a great extent, supersede the necessity of all interference. Before the next session, it was probable that one or two hundred thousand slaves would be introduced, or, at any rate, as many as would fully supply the market. If, therefore, it is our intention to legislate at all on this subject, let us take time by the forelock, and act now or never.

Without entering into a consideration of the arguments, urged the other day, I will advert to the argument used to-day by the gentleman from South Carolina, who compares the proposed duty to a tax on agriculture, and thence infers its impolicy. Anything which tends to depreciate the price of articles here by importations from abroad is an injury to agriculture. What will be the result of the additional importation of slaves? Our agriculture will produce beyond our necessities, and in proportion to that increase will the surplus articles raised and the price of labor be diminished. The proposed tax will repress the importation of slaves, and thus prevent, in some degree, this effect. For, if we advert to the import duties, we shall find that when a duty is laid on a foreign article of the like description with that raised in the United States, it operates as a premium on the latter. In the same proportion will the proposed tax enhance the value of slaves at present within the United States.

Gentlemen say the proposed tax will legalize the trade, and render it the duty of the United States to protect it. This argument is conclusively answered by asking, whether any vessel sailing under the flag of the United States, and pursuing a lawful commerce, is not entitled to the protection of the Government? by asking whether a vessel sailing to the coast of Africa, and there kidnapping negroes, under the authority of a State, is not as much entitled to protection as any other vessel, however differently engaged? On this point our laws know of no distinction. All vessels, engaged in unforbidden traffic, are entitled to the same protection. So that we shall not, by imposing this tax, legalize the trade, to any further extent than it is already legalized by the existing state of things.

The gentleman from South Carolina alleges that, if this tax is contemplated to prevent the importation of slaves, it will not have the effect intended. But, although it might not have this effect, Mr. J. was anxious that Congress should oppose to it all the obstacles in their power. Believing that the interests of the United States were deeply implicated in the measure, and that if anything will induce the people of South Carolina to repeal the law, it would be an evidence of the opinion entertained respecting it by the collected representation of the nation, he should vote most cordially against the postponement.

Mr. RODNEY said, he should not have troubled the House with any remarks on the present occasion, had he not made up his mind to vote differently from the vote which he had before given. He said he had before voted against the postponement of the consideration of this subject; he should now vote in favor of a postponement; and he would, in a few words, assign his reasons. When the resolution for imposing a tax on imported slaves was first laid on the table, he was of opinion that he could not vote for it without sanctioning the practice it was meant to censure. Reflecting further, he afterwards got his own consent to vote for it. First thoughts were frequently best; we sometimes miss the mark by taking sight too long. In this instance, after a more mature consideration, his mind inclined to his original opinions, for reasons which he would assign.

It was agreed, on all hands, that the conduct of the Legislature of South Carolina was such as not to merit the disapprobation of the members of that House. On many occasions there were political dissensions within these walls. But he rejoiced that, when questions of this kind presented themselves, they were sure to find us unanimous. Inhumanity was considered as a common enemy, and so inhuman a practice was justly reprobated by all. Every gentleman from the South, as well as the East, deprecated the act and lamented its existence.

There is one view in which the passage of this act would be extremely improper. If it were in their power to lay a duty on the importation of slaves, that would amount to a prohibition, they ought not to hesitate. But they had no such power. If we have not, said Mr. R., we ought to hesitate before we assume the moral chair, and impose upon the proceedings of an independent State, a censure, however just. If we do not possess the power, we ought to pause and consider the natural effects of the proposed measure, before we go into it. If the tax will not prohibit the trade, upon what principle can it be passed or justified? Can it be passed with the view of bringing into the public coffers a certain sum? Is it from so impure a fountain that streams are to flow to enable the Government to meet the national emergencies? If this is its object, I will put a striking case. Suppose all the expenses of the Government of the United States would be defrayed by a tax on the slave trade, would gentlemen grasp it on this account? would they agree that a nation of freemen should support their Government by a tax on slaves? Would they proclaim to the world that a free nation existed by slavery? If they would prohibit the trade by taxation, it would not be worth a cent.

Another consideration ought to have weight. It is very probable that the Legislature of South Carolina passed the law from the impulse of the moment, for it has been declared on this floor that the people of the State are not friendly to it, that it excites a feeling in the community, and that when the Representatives shall be fully apprized of the sentiments of their constituents, they will repeal the law. If we enact the bill on the table we give it our sanction, and the opinion will go forth to that State that slaves may be rightfully imported on the payment of the tax, and this impression will undoubtedly add to the number imported. I do not know that we can act better to the Legislatures of the several States, than in the language of the poet:

> "Be to their faults a little blind,
> And to their virtues very kind."

We had better, then, delay acting on this business until the general sentiment of the State shall be ascertained. If we believe, as we have reason, the general sentiment hostile to the act, let us give it an opportunity deliberately to express itself, without the infliction of a censure that, by creating irritation in the minds of her citizens, may tend to frustrate the end we all have in view. In this view, I am in favor of the postponement. No man can ascribe to me a friendship to slavery. I have been uniformly and warmly opposed to it. To blot it out of the pages of our country is one of the objects nearest my heart. In my own State I have hitherto maintained an unequal conflict on this subject. But great is the force of truth, and it will prevail. No person can abhor and detest the miserable traffic in human flesh more than I do. I hope to live to see the day, when, to use the language of an eloquent advocate, "liberty 'shall become commensurate with our soil. When 'we shall proclaim to every stranger and sojourner, the moment he sets his foot on American 'earth, the ground on which he stands is holy and 'consecrated by the genius of universal emancipation. No matter in what language his doom 'may have been pronounced; no matter what 'complexion, incompatible with freedom, an Indian or an African sun may have burnt upon 'him; no matter in what disastrous battle his liberty may have been cloven down; no matter 'with what solemnities he may have been devoted 'on the altar of slavery; the first moment he 'touches the sacred soil of America, the altar and 'the god shall sink together in the dust; his soul 'shall walk abroad in her own majesty; his body 'shall swell beyond the measure of his chains, 'which burst from around him, and he shall stand 'redeemed, regenerated, and disenthralled by the 'great genius of universal emancipation."

But it is impossible, with our limited powers, by a mighty fiat of legislation, to effect this great object. I am unwilling, therefore, to legislate unless we can legislate with effect. I trust, then, we shall agree to the postponement, and thereby give to the freemen of South Carolina an opportunity of expressing their deliberate opinion on the act recently passed by the Legislature, and which, I trust for the honor of the State, will occasion its repeal.

Mr. ELMER considered the question of postponement as that which, in its decision, would determine the passage of the bill. He believed that the principle of the bill was predicated on a sound principle of morality and political economy. He was sorry that existing circumstances brought before Congress a question of this kind, calculated to affect the feelings of gentlemen who represented some of the Southern States; but, being brought up, it ought to be met fairly and fully. If the proposed measure is not bottomed on sound political principles, it ought to be rejected; but, if it is so bottomed, it ought to pass.

Mr. E. did not see that this measure had any pointed relation to South Carolina in particular. If agreed to, it will only appear that Congress are hostile to the importation of slaves, and have, therefore, passed a law laying the only imposition on them authorized by the Constitution. It was generally understood to be the sense of the people of the United States, that the importation of slaves was improper. But, in the formation of the Constitution, the States had reserved to themselves the right of importation until the year 1808. They have, therefore, at present, the clear Constitutional right to import them. But the Constitution has given to the Government of the United States another right; that of taxing the slaves imported, to a certain amount. It declares that the General Government shall not prohibit the importation of slaves, but that it may benefit the Treasury by taxing them.

Mr. E. said he considered it a sound principle of finance to tax those articles whose importation operated most injuriously to society. In this view, slaves were the fairest subject of taxation. On these articles, as on others, those who use them

will pay the tax imposed. To him it was strange reasoning to say, because a tax of ten dollars will not entirely prohibit the importation, it will therefore not decrease it. He, on the contrary, verily believed that fewer ships would be fitted out for carrying on this traffic, after the passage of this law, than are at present. Those who carry on the trade will calculate their profits, which will be diminished by as much as the tax amounts to; which will, to its extent, operate as a discouragement to the trade. If a tax of two hundred dollars would prohibit the trade altogether, it may be fairly inferred that, under a tax of ten dollars, not more than nineteen twentieths of the number that would otherwise be imported will be introduced, and perhaps a lesser number.

Mr. E. could not see the least impropriety in the proposed tax, on national principles. It is alleged that its operation will be partial. It was unnecessary to inquire in what parts of the Union the objects of this tax principally existed. Wherever they are found advantageous they will exist; it is, besides, in the power of any State, feeling a repugnance to the tax, to get rid of it by disallowing the importation.

For these reasons, and for others already urged, Mr. E. said he should vote against the postponement.

After a few additional remarks from several gentlemen, the question was taken by yeas and nays on a postponement to the first Monday in December, and passed in the negative—yeas 55, nays 62, as follows:

YEAS—Willis Alston, jun., Nathaniel Alexander, Silas Betton, William Blackledge, Walter Bowie, John Boyle, William Butler, George W. Campbell, John Campbell, Levi Casey, Martin Chittenden, Thos. Claiborne, Joseph Clay, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, William Eustis, John Fowler, Edwin Gray, Andrew Gregg, Samuel Hammond, Wade Hampton, Seth Hastings, James Holland, Benjamin Huger, Walter Jones, Michael Leib, Thos. Lewis, Thomas Lowndes, Matthew Lyon, Andrew McCord, David Meriwether, Nahum Mitchell, Thomas Moore, John Randolph, John Rhea of Tennessee, Cæsar A. Rodney, Thomas Sandford, Tompson J. Skinner, John Cotton Smith, James Stephenson, Samuel Taggart, Samuel Tenney, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Richard Winn, and Thomas Wynns.

NAYS—Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Robert Brown, Joseph Bryan, William Chamberlin, Clifton Claggett, Matthew Clay, Frederick Conrad, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Thomas Griffin, Gaylord Griswold, John A. Hanna, William Helms, William Hoge, David Holmes, David Hough, John G. Jackson, William Kennedy, Nehemiah Knight, Joseph Lewis, junior, Henry W. Livingston, John B. C. Lucas, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, junior, Gideon Olin, Oliver Phelps, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Joshua Sands, Ebenezer Seaver, James Sloan, John Smilie, John Smith of New York, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, and Joseph Winston.

Mr. FINDLEY moved a postponement to the second Monday in March; which, after some debate, prevailed—ayes 56, noes 50.

[To prevent an erroneous impression being made on the public by the above proceedings, it is proper to remark that, during the whole discussion, not a single voice was raised in defence of the act of the Legislature of South Carolina, allowing the importation of slaves; but that, on the contrary, while by some of the speakers its immorality and impolicy were severely censured, by all its existence was deprecated. A large number of those who voted for the postponement, advocated it on the express and sole ground that it would give the Legislature of South Carolina an opportunity, which they believed would be embraced, to repeal the act.]

SATURDAY, February 18.

Mr. EPPES offered the following resolution:

Resolved, That a committee be appointed to inquire whether the moneys drawn from the Treasury of the United States on account of the Marine Corps, from the year 1798 to the end of the year 1803, have been faithfully applied to the public service, in conformity to existing laws.

The resolution was immediately taken up, agreed to, and referred to Messrs. EPPES, SANDS, MCCREERY, LEIB, and BOYLE.

Mr. MOORE offered a resolution instructing the Committee of Commerce and Manufactures to inquire into the expediency of authorizing the President of the United States to employ persons to explore such parts of the province of Louisiana as he may think proper; and to report their opinion thereupon to the House.

Mr. M. said, it was scarcely necessary to make any remarks on the object of this resolution. The Government were not in possession of a good geographical description of Louisiana, which it was very desirable that they should possess, inasmuch as its limits were not completely designated in the articles of cession, and as the time might not, perhaps, be distant, when its boundaries may be a subject of negotiation between the former owners of the province and the United States.

The resolution was agreed to—ayes 53.

Mr. MITCHILL, from the Committee of Commerce and Manufactures, made a report on the subject of laying duties for the support of light-houses.

The report is accompanied with several documents, and concludes with a resolution that a duty of forty cents a ton be laid on foreign vessels entering the ports of the United States, for the support of light-houses.

The House took up the report of the Committee of the Whole on the bill making provision for

persons disabled by known wounds received during the Revolutionary war.

Mr. ELLIOT moved the following amendment, which was agreed to without a division:

"And also all those persons who, in consequence of known wounds received in the actual service of the United States, during the Revolutionary war, have, at any period since, become disabled in such manner as to render them unable to procure a subsistence by manual labor."

The further consideration of the bill was then postponed to Tuesday next.

A message was received from the Senate stating that they had passed a bill relating to the recording and registering vessels in the district of New Orleans.

The bill allows all the inhabitants of Louisiana, on the 30th of April last, to obtain registers.—Referred to a Committee of the Whole on Monday.

On motion of Mr. LEIB,

Resolved, That it is expedient to abolish the office of Lieutenant Colonel Commandant of the Marine Corps.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. LEIB, Mr. LEMUEL WILLIAMS, and Mr. JACKSON, do prepare and bring in the same.

PUBLIC LANDS.

Mr. LATIMORE, after some preliminary observations, offered the following resolution; which was agreed to:

"*Resolved*, That the committee who was directed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States, be directed to inquire—

"Whether any, and, if any, what additional compensation ought to be allowed to the several officers appointed under the act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;'

"Whether any, and, if any, what additional allowance ought to be made for the expense of surveying the lands in the Mississippi Territory;

"Whether any, and, if any, what alterations ought to be made in such parts of the act aforesaid as provide for laying out the public lands in the said Territory into townships and sections, and for disposing of the same agreeably to that plan;

"Whether any, and, if any, what reduction in the price and quantity of land ought to be made in favor of those settlers who hold, under the third section of the said act, a right of pre-emption only;

"Whether any, and, if any, what further time ought to be allowed for laying in of claims before the registers of the land offices in the Territory aforementioned;

"Whether it be expedient to exempt from a re-survey such tracts of land as are held by titles legally and fully executed; and likewise such tracts, the quantities of which are already ascertained, and the titles to which are confirmed by the act aforesaid; and

"Whether an act of Congress be necessary to legalize the proceedings of the commissioners for the district east of Pearl river, in consequence of their not having met on or before the first day of December last, agreeably to the sixth section of the act abovementioned."

MONDAY, February 20.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof;" to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole House on Wednesday next.

A memorial of William Eaton was presented to the House and read, stating that, during his residence at Tunis, in Barbary, as Consul and Agent of the United States, he incurred certain expenses which are deemed not to come within Executive discretion; that he has also received, in his capacity aforesaid, from the King of Denmark, "a token of satisfaction," for services rendered to subjects of Denmark, and praying that Congress will indemnify his said expenses, and decide upon the Constitutional propriety of his retaining "the token of satisfaction," aforesaid. Referred to the Committee of Claims.

A memorial of sundry merchants of the city of New Orleans, in the province of Louisiana, was presented to the House and read, stating the great inconveniences under which they labor, through the want of an extension to them of the laws of the United States; that they are yet subject to duties on their exports and imports, according to the Spanish tariff; and that for want of proper documents to navigate with, their ships and vessels are laid up in a perishing state; and praying that Congress will make provision for their relief in the premises.

Ordered, That the said memorial be referred to the Committee of the Whole to whom was committed, on the eighteenth instant, the bill sent from the Senate, entitled "An act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans."

Mr. LEIB, from the committee appointed on the eighteenth instant, presented a bill to repeal the act fixing the rank and pay of the commanding officer of the Corps of Marines; which was read twice, and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill to authorize the courts of the United States to appoint commissioners to take depositions of witnesses out of court, to administer oaths to appraisers, and for other purposes. The bill was reported with an amendment; which was read twice, and agreed to by the House.

Ordered That the said bill, together with the amendment, be engrossed, and read the third time to-morrow.

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alteration ought to be made in the times of holding the district court in the State of Rhode Island; and that they report by bill, or otherwise.

Ordered, That Mr. STANTON, Mr. CUTLER, and Mr. THOMPSON, be appointed a committee, pursuant to the said resolution.

Mr. Newton, from the committee appointed on the seventeenth instant, presented a bill altering the days of session of the district court for the district of Virginia; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. Thomas, from the joint committee of the two Houses, made a report, specifying the business, in their opinion, necessary to be transacted the present session, and concluding with a resolution that it be closed the 12th of March.

Messrs. Huger and Varnum advocated an immediate agreement to the report; and Messrs. Nicholson, Leib, Smilie, Findley, and S. L. Mitchill supported a postponement.

The motion to postpone its consideration to Friday was agreed to—yeas 56, nays 49.

Mr. Samuel L. Mitchill, from the committee appointed, presented a bill to provide for lighthouses and buoys in the cases therein mentioned, and to establish the district of Saint Mary's for that of Nanjemoy; which was read twice and committed to a Committee of the Whole on Monday next.

GEORGIA CLAIMS.

Mr. J. Randolph said, the House would recollect that he had, on a former day, offered a resolution barring any claims derived under any act of the State of Georgia passed in the year 1795, in relation to lands ceded to the United States. It was not his purpose in rising at this time to trespass on the patience of the House; nor did he know that he should in future offer any remarks additional to those he had already made. But he conceived it his duty to place the subject in such a point of light that every eye, however dim, might distinctly see its true merits. For this purpose he withdrew the resolution which he had before offered, and moved the following resolutions:

Resolved, That the Legislature of the State of Georgia were, at no time, invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same, but in a rightful manner, and for the public good:

That, when the governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been clothed for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people, so circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them:

That it is in evidence to this House, that the act of the Legislature of Georgia, passed on the seventh of January, one thousand seven hundred and ninety-five, entitled "An act for appropriating a part of the unlocated territory of this State, for the payment of the late State troops, and for other purposes," was passed by persons under the influence of gross and palpable corruption, practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest:

That the good people of Georgia, impressed with general indignation at this act of atrocious perfidy and unparalleled corruption, with a promptitude of decision highly honorable to their character, did, by the act of a subsequent Legislature, passed on the thirteenth of February, one thousand seven hundred and ninety-six, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their constitution, declare the preceding act, and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State, and publicly burnt; which was accordingly done; provision at the same time being made for restoring the pretended purchase-money to the grantees, by whom, or by persons claiming under them, the greater part of the said purchase-money has been withdrawn from the treasury of Georgia:

That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature, provided such repeal be not forbidden by the constitution of such State, or of the United States:

That the aforesaid act of the State of Georgia, passed on the thirteenth of February, one thousand seven hundred and ninety-six, was forbidden neither by the constitution of that State, nor by that of the United States:

That the claims of persons derived under the aforesaid act of the seventh of January, one thousand seven hundred and ninety-five, are recognised neither by any compact between the United States and the State of Georgia, nor by any act of the Federal Government: Therefore,

Resolved, That no part of the five millions of acres reserved for satisfying and quieting claims to the lands ceded by the State of Georgia to the United States, and appropriated by the act of Congress passed at their last session, shall be appropriated to quiet or compensate any claims derived under any act, or pretended act, of the State of Georgia, passed, or alleged to be passed, during the year one thousand seven hundred and ninety-five.

On considering the resolutions, the House divided—ayes 53. Carried.

Mr. J. Randolph then moved their reference to the Committee of the Whole on the bill providing for the settlement of sundry claims to public lands lying south of the State of Tennessee. Carried—yeas 50, nays 30.

INDIANA TERRITORY.

The House went into a Committee of the Whole on the report of a select committee on the bill from the Senate, to divide the Indiana Territory into two separate Governments. The report, for the reasons assigned, recommends a rejection of the bill.

The report was supported by Messrs. Gregg and Lyon, principally on the ground that the population around Detroit was too small to justify the expenses attending a separate Territorial Government; and on the ground that if the advantages derived from a separate Government were conferred on them, they might, and would be claimed, with equal justice, by several detached settlements in the Mississippi and Louisiana Territories.

The report was opposed by Messrs. Lucas, Jackson, Sloan, and Morrow, on a variety of grounds. They contended that equal justice was due to every member of the American community,

and that of course, however small the population, it was entitled to the same protection with a community composed of larger numbers; that the distance of this population from St. Vincennes was so great as to deprive them of the benefits resulting from the administration of justice; that Michilimackinac, which exported produce valued at above $200,000, and from whose imports the United States derived a revenue of $17,000 was more than eight hundred miles from the present seat of Government.

The question being put on agreeing to the report, it passed in the negative—yeas 34.

When the bill from the Senate was read, and so amended as to designate the new Territory by the name of Michigan, instead of Northwestern Territory; and the Committee rose and reported the bill, which was ordered by the House to a third reading to-morrow.

Thursday, February 21.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to an act, entitled 'An act to incorporate the inhabitants of the city of Washington, in the District of Columbia,'" with several amendments; to which they desire the concurrence of this House. The Senate have passed a bill, entitled "An act to ascertain the boundary of the lands reserved by the State of Virginia, northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental establishment, and to limit the period for locating the said lands;" also, a bill, entitled "An act to erect a light-house on the south end of St. Simon's Island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar;" to which bills, respectively, the Senate desire the concurrence of this House.

The bill sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar," was read twice and committed to the Committe of Commerce and Manufactures.

The bill sent from the Senate, entitled "An act to ascertain the boundary of the lands reserved by the State of Virginia, northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental establishment and to limit the period for locating the said lands," was read twice and committed to a Committee of the Whole on Friday next.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act supplementary to an act, entitled 'An act to incorporate the inhabitants of the city of Washington, in the District of Columbia:" Whereupon,

Ordered, That the said bill, together with the amendments, be committed to Mr. Nicholson, Mr. Joseph Lewis jr., and Mr. Elliot.

INDIANA TERRITORY.

A bill to divide the Indiana Territory into two separate governments was read the third time.

Mr. Holland moved to postpone its further consideration until the first Monday in November next.

This motion was supported by Messrs. Holland, Sandford, and S. L. Mitchill, and opposed by Messrs. Morrow and Sloan; and was disagreed to—yeas 56, nays 62, as follows:

Yeas—John Archer, David Bard, Phanuel Bishop, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John B. Earle, Ebenezer Elmer, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Thomas Griffin, Samuel Hammond, Josiah Hasbrouck, Joseph Heister, William Helms, James Holland, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, James Mott, Anthony New, Gideon Olin, Beriah Palmer, Samuel D. Purviance, John Randolph, Thomas M. Randolph, Jacob Richards, Thomas Sandford, Ebenezer Seaver, John Smilie, Henry Southard, Richard Stanford, John Trigg, Philip Van Cortlandt, Daniel C. Verplanck, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Blackledge, John Boyle, George W. Campbell, Levi Casey, Joseph Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, John W. Eppes, William Eustis, John Fowler, Gaylord Griswold, Roger Griswold, Wade Hampton, John A. Hanna, Seth Hastings, William Hoge, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Henry W. Livingston, Andrew McCord, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, Joseph H. Nicholson, Oliver Phelps, Thomas Plater, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Cæsar A. Rodney, James Sloan, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas Philip R. Thompson, Killian K. Van Rensselaer, Joseph B. Varnum, Matthew Walton, Lemuel Williams, and Marmaduke Williams.

The question was then taken on the passage of the bill, and passed in the negative—yeas 58, nays 59.

The bill is therefore lost.

The House went into Committee of the Whole on the bill making appropriations for the support of Government for the year 1804. Mr. Leib moved to strike out the appropriation of $11,885 for fifteen per cent. compensation to clerks, additional to that allowed by the act to regulate and fix the compensation of clerks.

Mr. J. Randolph opposed the motion; which was agreed to—yeas 42, nays 36.

The Committee, having filled the respective blanks, reported the bill. The House negatived the amendment of Mr. Leib, respecting compensation to clerks—yeas 42, nays 46—and reinstated the appropriation struck out in committee. The bill was then ordered to be engrossed for a third reading to morrow.

On motion, the House adjourned.

Wednesday, February 22.

Mr. Nicholson, from the committee appointed on the twenty-second of November last, who were directed by a resolution of this House of the twenty-fourth of the same month "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," made a farther report, in part, thereon; which was read, and committed to the Committee of the whole House to whom is committed a farther report, in part, of the same committee, made on the twenty-seventh of January last.

Mr. John C. Smith, from the Committee of Claims, presented a bill to revive and continue in force an act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia;" which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Stanton, from the committee appointed, presented a bill, to alter the time of holding the district court in the State of Rhode Island; which was read twice and committed to the Committee of the Whole to whom was committed, on the 20th instant, the bill altering the days of session of the district court for the district of Virginia.

An engrossed bill making appropriations for the support of Government for the year one thousand eight hundred and four, was read the third time and passed.

Resolved, That the committee to whom were referred a petition of the inhabitants of the district of Washington, in the Mississippi Territory, and a memorial of the House of Representatives of the said Territory, relative to the establishment of a separate government for that district, or the appointment of judges to reside therein, be directed to inquire whether it will be necessary to extend Federal jurisdiction to the ordinary courts, or to courts to be organized for that special purpose in the aforesaid Mississippi Territory.

Mr. Samuel L. Mitchill, from the Committee of Commerce and Manufactures, who were directed, by a resolution of this House, of the tenth of November last, "to inquire into the expediency of exempting pilots from paying hospital money for their apprentices, made a report thereon; which was read, and considered: Whereupon,

Resolved, That it is inexpedient for Congress to make any declaration concerning the payment of hospital money, for pilots, for their apprentices.

Mr. Conrad, from the committee to whom were referred, on the twenty-third ultimo, sundry letters of the same tenor, written in the German language, and addressed to "The General Congress of the North American Free States," from the Council of Directors of the city of Memel, in the Province of East Prussia," made a report thereon; which was read and considered.

Resolved, That the said letters be transmitted by the Speaker of the House to the Secretary of State, with a request that he cause them to be transmitted to the Prussian Consul at Charleston, in the State of South Carolina.

The House went into a Committee of the Whole on the bill to authorize the payment of drawbacks on goods exported from the places therein mentioned.

Mr. Rodney moved a new section to the bill placing goods, wares, and merchandise, imported into the district of Delaware on the same footing as to the receipt of drawbacks on exportation to any foreign country, after having been conveyed by land, with those imported into the district of Philadelphia, New York, or Baltimore.

Mr. Eustis opposed, and Mr. Rodney replied.—Carried.

When the Committee rose, and the House ordered the bill to a third reading.

A Message was received from the President of the United States, communicating a report of the Surveyor of the Public Buildings of Washington.—The Message was read, and, together with the report, referred to Mr. Thompson, Mr. Smilie, Mr. Huger, Mr John Campbell, and Mr. Cutts; to examine and report their opinion thereupon to the House.

Mr. Nicholson, from the select committee to whom were referred the amendments of the Senate to the bill supplementary to the act to incorporate the inhabitants of the City of Washington, reported a recommendation to agree to the same.

On agreeing to the first amendment, extending the duration of the incorporation to fifteen years, instead of five, the House divided—yeas 51, nays 35; Messrs. Southard, Nicholson, and S. L. Mitchill, having previously spoken in favor of agreeing to it.

The other amendments were then agreed to without a division.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend the charter of Alexandria," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the last mentioned bill; and the said amendments being twice read, were agreed to by the House.

DISTRICT OF ORLEANS.

The House went into a Committee of the Whole on the bill from the Senate providing for the recording, registering, and enrolling, ships or vessels in the District of Orleans.

The bill authorizes the inhabitants of Louisiana on the 30th of April, and the citizens of the United States residing therein, to register their vessels.

Mr. R. Griswold moved to strike out that part of the provision that extends the right of registry to citizens of the United States.

This motion was advocated by Messrs. R. Griswold and Sloan; and opposed by Messrs. Nicholson, Eustis, and Rodney, and was agreed to—yeas 48, nays 39. On which the Committee rose and reported the bill.

On concurring with the vote of the Committee of the Whole on the amendment of Mr. R. Griswold, a short debate, though of greater length than that which preceded ensued, in which the amendment was supported by Messrs. R. Griswold, and Dana; and opposed by Messrs. G. W. Campbell, J. Clay, Nicholson, and Varnum; when the question was put and the House negatived, by yeas and nays, the amendment—yeas 31, nays 78, as follows:

Yeas — Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Clifton Claggett, Frederick Conrad, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, William Eustis, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, Benjamin Huger, Samuel Hunt, Henry W. Livingston, Thomas Lowndes, James Mott, Thomas Plater, James Sloan, John Cotton Smith, William Stedman, John Stewart, Samuel Taggart, Samuel Tenney, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Yeas — Willis Alston, jr., Isaac Anderson, John Archer David Bard, George Michael Bedinger, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, John Fowler, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jr., John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

By the advocates of the amendment it was contended, that however proper it might be, according to the stipulations of treaty, to extend the right of registering their vessels to the inhabitants of Louisiana, at the time of the cession, it was neither just nor obligatory upon Congress to extend this right to citizens of the United States in the ceded territory, while the like right, under similar circumstances, was refused to citizens in the Atlantic States. This was unjust, as it would enable citizens of Louisiana to naturalize foreign bottoms which they might have purchased on speculation, and to trade with them, not only in the ports of Louisiana, but also in the ports of the United States—thereby affecting the rights of those who, under the existing navigation system, had obtained registers.

On the other hand, the opponents of the amendment declared their conviction that it became the Government to place the citizens of the United States on an equal footing with the inhabitants of Louisiana, and that the denial of rights to which they conceived themselves entitled, would sow much dissatisfaction among them. It was observed that the citizens who had gone to Louisiana must have had in view their becoming inhabitants, and would therefore feel themselves aggrieved in being denied the rights extended to the inhabitants; and that the situation of citizens owning Spanish or French bottoms, previous to the cession, if inhibited from registering them, would be peculiarly hard, as great doubts were entertained whether those vessels did not, together with the ceded country, lose their national character; and if that was the fact, (and it was believed to be so,) such bottoms would be divested of all the advantages and immunities of American, Spanish, and French bottoms.

On motion of Mr. Mott, the words "thirtieth of April," were substituted in the room of "twentieth of December," his object being to place the citizens and inhabitants on the same footing. Adopted—yeas 45, nays 36; and the bill was ordered to a third reading to-morrow.

NAVAL PEACE ESTABLISHMENT.

The House went into Committee of the Whole on the bill supplementary to an act providing for a Naval Peace Establishment.

[This is the bill introduced at the instance of Mr. Nicholson, with a view to a more economical and beneficial arrangement in relation to the national ships laid up in ordinary.]

Mr. Leib moved an additional section, virtually abolishing the office of Lieutenant Colonel Commandant of the Marine Corps, and authorizing the President to make such other reductions of the subordinate officers as he may think fit. The object of the bill being a reform of the expenses attending the Naval Establishment, the measure contemplated in the amendment was, in his opinion, a very proper one to be answered by it. The bill, he said, contemplated an annual saving, in the single article of provisions, of $7,000. By abolishing the office of Lieutenant Colonel Commandant, a saving of sixty thousand dollars in addition might be made. This officer made, it appeared, all the contracts, and it would be seen by documents before the House, that while the price of the ration in the War Department was fifteen cents, that fixed by this officer was twenty cents—the difference made the sum of $3,750 a year. It would also be seen that exorbitant sums were expended in postage and fuel. In the single article of postage, $150 had been expended within three months. The amendment was then agreed to—yeas 62.

Mr. Eustis moved a new section, for the allowance to captains, holding themselves in readiness to enter the service, the same rations they are entitled by law to receive when in actual service. Disagreed to—yeas 37, nays 45.

The Committee rose, and the House agreed to the amendment of Mr. Leib without a division.

Mr. Jackson moved a new section, for the allowance to captains, required to hold themselves in readiness for service, of the same rations they are entitled to receive when in actual service.

Mr. Nicholson supported the amendment, to which the House agreed—yeas 44, nays 40; when the bill was ordered to a third reading to-morrow.

On motion, the House adjourned.

Thursday, February 23.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Samuel Corp," with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said amendment of the Senate; and the same being twice read, was agreed to by the House.

A message from the Senate informed the House that the Senate disagree to the first amendment, and agree to all the other amendments proposed by this House to the bill, sent from the Senate, entitled "An act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans."

The House resolved itself into a Committee of the whole House on the report of the committee of the twenty-fifth ultimo, to whom were referred the petitions of the Legislative Council and House of Representatives of the Mississippi Territory of the United States; and of sundry residents and claimants of lands on the Alabama river, and on the east side of the river and bay of Mobile, in the said Mississippi Territory; and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were twice read, and agreed to by the House as follows:

Resolved, That so much of the eighth section of the act passed at the last session of Congress, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," as provides that no certificate shall be granted for lands lying east of the Tombigbee river," ought to be repealed: *Provided*, That no certificate shall be granted for any lands to which the Indian title has not been extinguished.

Resolved, That the Commissioners appointed in pursuance of an act passed at the last session of Congress, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," be authorized and required to make, on or before the first day of December next, a full report, to the Secretary of the Treasury, of all claims that may be laid before them for lands held by warrant of survey and improvement, in cases where the claimants were minors, and not heads of families, at the time such warrants were issued, with the circumstances which occasioned the issuing of such warrants, and the validity which has been considered as attached to them.

Ordered, That a bill or bills be brought in pursuant to the said resolutions; and that Messrs. Lattimore, Nicholson, Butler, Baldwin, and Rhea of Tennessee, do prepare and bring in the same.

The House proceeded to reconsider their first amendment, disagreed to by the Senate, to the bill sent from the Senate, entitled "An act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans;" and

Resolved That this House do recede from its said first amendment.

The House then went into Committee of the Whole on the post office bill. After making several amendments, the Committee rose and asked leave to sit again, which was granted.

NAVAL PEACE ESTABLISHMENT.

An engrossed bill supplementary to the act providing for a Naval Peace Establishment was read the third time.

Mr. Varnum moved to recommit it to a Committee of the Whole, for the purpose of striking out the section allowing rations to captains ordered to hold themselves in readiness.

This motion was supported by Messrs. Varnum, Bedinger, Sloan, Smilie, Holland, and Elmer, and opposed by Messrs. Nicholson, Jackson, and Eustis.

The House went into Committee, who disagreed to the above section—yeas 55, nays 37. The bill was afterwards brought in, in an engrossed form, omitting this section, and passed—yeas 63, nays 54; as follows:

Yeas—Isaac Anderson, John Archer, George M. Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, William Butler, Levi Casey, Martin Chittenden, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, William Dickson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland William Kennedy, Nehemiah Knight, Michael Leib, Henry W. Livingston, Andrew McCord, David Meriwether, Thomas Moore, Anthony New, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Jos. Winston, and Thomas Wynns.

Nays—Willis Alston, jr., Simeon Baldwin, David Bard, Silas Betton, Joseph Bryan, John Campbell, William Chamberlin, Clifton Clagett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, Thomas Dwight, John B. Earle, James Elliot, William Eustis, John Fowler, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Newton, jun., Joseph H. Nicholson, Thomas Plater, Samuel D. Purviance, Thomas M. Randolph, Joshua Sands, John C. Smith, John Smith of Virginia, William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, and Richard Winn.

DISTRICT OF ORLEANS.

The bill from the Senate, entitled "An act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans," together with the amendments agreed to yesterday, was read the third time. And on the question that the same do pass, it was resolved in the affirmative—yeas 82, nays 32, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George M. Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Joseph Bryan, William Butler, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Jos. Heister, William Helms, William Hoge, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Thos. Moore, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Smith of Va., Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Manassch Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Edwin Gray, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Joshua Sands, James Sloan, John Cotton Smith William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Friday, February 24.

Mr. Newton, from the committee appointed, presented a bill to authorize the Secretary of the Navy to receive proposals from the Norfolk Drawbridge Company for the purchase of a piece or parcel of the navy yard in Gosport, Virginia, belonging to the United States, and to decide on the propriety of selling the same; which was read twice, and committed to a Committee of the Whole on the first Monday in December next.

Mr. Nicholson, from the committee appointed on the seventeenth instant, presented a bill to authorize the District Court for the District of Columbia, to decree divorces in certain cases; which was read twice and committed to a Committee of the whole House on Monday next.

The House again resolved itself into a Committee of the Whole on the bill further to alter and establish certain post roads; and for other purposes; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States." with several amendments; to which they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina; and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be engrossed and read the third time on Monday next.

On a motion made and seconded, that when the House adjourns, it will adjourn to meet on Monday next, the question was taken thereupon, and resolved in the affirmative—yeas 47, nays 36, as follows:

Yeas—Willis Alston, jr., David Bard, Adam Boyd, Joseph Bryan, George W. Campbell, Thos. Claiborne, Joseph Clay, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, Thomas Griffin, Samuel Hammond, James Holland, David Holmes, David Hough, Benjamin Huger, John G. Jackson, Michael Leib, Joseph Lewis, jun., John B. C. Lucas, Andrew McCord, Wm. McCreery, David Meriwether, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Samuel D. Purviance, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sandford, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, James Stephenson, John Stewart, Samuel Taggart, Philip R. Thompson, Abram Trigg, Killian K. Van Rensselaer, Daniel C. Verplanck, and Peleg Wadsworth.

Nays—John Archer, Geo. Michael Bedinger, Wm. Blackledge, John Boyle, Robert Brown, William Butler, Levi Casey, Clifton Claggett, Matthew Clay, John Clopton, J. Crowninshield, Ebenezer Elmer, P. Goodwyn, Andrew Gregg, Gaylord Griswold, Josiah Hasbrouck, William Hoge, William Kennedy, Henry W. Livingston, Nicholas R. Moore, Jeremiah Morrow, James Mott, Beriah Palmer, Thomas M. Randolph, Jacob Richards, Erastus Root, Thomas Sammons, J. Sands, Ebenezer Seaver, David Thomas, John Trigg, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

CONTESTED ELECTION.

Mr. Findley, from the Committee of Elections, to whom was referred a memorial of Andrew Moore, of Virginia, respecting the election of Thomas Lewis, a sitting member, made a report, which, after stating the bad votes given for each of the candidates, concludes with the opinion that Thomas Lewis is not, and that Andrew Moore is entitled to a seat in the House. The report is as follows:

"That, at an election held on three several days, in the month of April, in the year one thousand eight hundred and three, directed by the law of the State of Virginia, for a member of the House of Representatives of the United States for the district composed of the counties of Botetourt, Rockbridge, Kenawha, Greenbriar, and Monroe, in the western district of Virginia, it appears—

"That, of the polls taken in the county of Botetourt Thomas Lewis had one hundred and fifty-five votes, and Andrew Moore had three hundred and five votes,

that, out of the persons who voted for Thomas Lewis, twenty-three were unqualified to vote; and that out of the persons who voted for Andrew Moore, twenty-eight were unqualified to vote.

"That of the polls taken in Rockbridge, Thomas Lewis had sixty-five votes, and Andrew Moore had three hundred and twenty-one votes: that out of the persons who voted for Thomas Lewis, there were four persons unqualified to vote; and out of the persons who voted for Andrew Moore, there were twenty persons unqualified to vote.

"That, of the polls taken in Kenawha county, Thomas Lewis had one hundred and sixty-one votes, and Andrew Moore had one vote: that out of the persons who voted for Thomas Lewis there were ninety persons unqualified to vote.

"That, of the polls taken in Greenbriar, Thomas Lewis had five hundred and thirty-nine votes, and Andrew Moore had one hundred and three votes; that out of the persons who voted for Thomas Lewis two hundred and two were unqualified to vote; and out of the persons who voted for Andrew Moore thirty-two were unqualified to vote.

"That, of the polls taken in Monroe county, Thomas Lewis had eighty-four votes, and Andrew Moore had one hundred and two votes; that out of the persons who voted for Thomas Lewis thirty-six were unqualified to vote; and out of the persons who voted for Andrew Moore, forty-four were unqualified to vote. Hence it appears—

"That all the persons who voted for Thomas Lewis in the several counties aforesaid, which compose the western district of the State of Virginia, were one thousand and four; and that all the persons who voted for Andrew Moore in the said counties were eight hundred and thirty-two.

"It further appears, on a deliberate scrutiny, that, of the above votes, three hundred and fifty-five persons voted for Thomas Lewis who were unqualified to vote, and that one hundred and twenty-four voted for Andrew Moore who were unqualified to vote; and that, by deducting the unqualified votes from the votes given for each of the parties at the elections, Thomas Lewis has six hundred and forty-nine good votes, and Andrew Moore has seven hundred and eight good votes, being fifty-nine more than Thomas Lewis. Whereupon,

"Your committee are of opinion that Thomas Lewis, not being duly elected, is not entitled to a seat in this House; and they are further of opinion that Andrew Moore, who has the highest number of votes, after deducting the before-mentioned unqualified votes from the respective polls, is duly elected and entitled to a seat in this House."

Ordered, That the report be committed to a Committee of the whole House on Wednesday next.

MONDAY, February 27.

An engrossed bill further to alter and establish certain post roads, and for other purposes, was read the third time: Whereupon, a motion was made, and the question being put, that the said bill be recommitted to the consideration of a Committee of the whole House to-day, it was resolved in the affirmative.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina was read the third time, and passed.

On motion, it was

Resolved, That a committee be appointed to prepare and bring in a bill declaring the assent of Congress to an act of the General Assembly of Virginia, entitled "An act for improving the navigation of James River."

Ordered, That Messrs. EPPES, MERIWETHER, and SANDS, be appointed a committee pursuant to the said resolution.

The SPEAKER laid before the House a letter addressed to him from JOHN SMITH, one of the members of this House for the State of New York, stating that, "having been elected by the Legislature of the State of New York a Senator of the United States, he had accepted the appointment, and taken his seat in the Senate."

The said letter was read, and ordered to lie on the table.

Mr. S. L. MITCHILL, from the Committee of Commerce and Manufactures, to whom was committed, on the twenty-first instant, the bill sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar." made a report thereon; which was read, and, together with the bill, ordered to be referred to a Committee of the whole House to-day.

Mr. LATTIMORE, from the committee appointed on the twenty-third instant, presented a bill supplementary to an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" which was read twice, and committed to a Committee of the whole House to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act further to amend the act entitled 'An act to lay and collect a direct tax within the United States:" Whereupon,

Resolved, That this House do agree to the said amendments.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, presented a bill for the relief of George Lee Davidson; which was read twice, and committed to a Committee of the whole House to-day.

Also, a bill making an appropriation for carrying into effect the Convention concluded between the United States and the King of Spain, on the eleventh day of August, one thousand eight hundred and two; which was read twice, and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on an engrossed bill further to alter and establish certain post roads, and for other purposes; and, after some time spent therein, the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said amendment be engrossed, and, together with the bill, read the third time to-day.

Resolved, That JOHN SMITH, one of the Representatives from the State of New York, having accepted the appointment of Senator from that State in the Senate of the United States, has thereby vacated his seat in this House, and that the SPEAKER be requested to notify the Executive of the said State of New York accordingly.

Mr. LEIB, from the committee appointed, presented a bill to amend the charter of Georgetown; which was read twice, and committed to a Committee of the Whole on Wednesday next.

The House resolved itself into a Committee of the Whole on the bill for the relief of George Lee Davidson; and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed and read the third time to-day.

Mr. ELLIOT, from the committee to whom was referred the petition of Benjamin Emmons, made the following report:

"The petitioner, in behalf of himself and sixty associates, inhabitants of the State of Vermont, prays that Congress would grant to them, for the purpose of settlement and cultivation, a tract of the territory lately acquired by the United States on the west side of the Mississippi, near the mouth of the Ohio, of six miles square, on such terms and conditions as the States composing the Union have heretofore granted their lands to settlers, or as Congress shall deem proper.

"While the committee feel no disposition to express an opinion unfavorable to the prayer of the petitioners, they believe it would be improper to grant it at the present moment. Without presuming to anticipate the course which it may be the interest and policy of the United States to pursue in the disposition of the public lands in the territories west of the Mississippi, they beg leave to recommend that the further consideration of the prayer of the said petition be postponed until the next session of Congress."

The report was agreed to.

The House went into a Committee of the Whole on the resolution of Mr. KENNEDY to lay out the money collected for the relief of seamen in the ports wherein it is collected. The Committee, after some discussion of the resolution, rose and obtained leave to sit again.

The House then went into Committee of the Whole on the report of a select committee on the memorial of Tennessee, &c., which concludes with a resolution for the appropriation of —— dollars to defray such expenses as the President may sanction for holding any treaty or treaties with any nation of Indians south of the Ohio to extinguish Indian rights.

On motion of Mr. DICKSON, the blank was filled with fifteen thousand dollars.

A debate then ensued on the resolution, which was supported by Messrs. DICKSON, LYON, G. W. CAMPBELL, ALSTON, BLACKLEDGE, and HOLLAND, and opposed by Messrs. SAMUEL L. MITCHILL, R. GRISWOLD, and GREGG, when the question was taken, and the resolution negatived.

TUESDAY, February 28.

An engrossed bill further to alter and establish certain post roads, and for other purposes, with the amendment agreed to yesterday, was read the third time, and passed.

An engrossed bill for the relief of George Lee Davidson was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act for the relief of certain military pensioners in the State of South Carolina," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for the relief of certain military pensioners in the State of South Carolina:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The House, resolved itself into a Committee of the Whole on the bill to revive and continue in force an act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia;" and, after some time spent therein, the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

LOUISIANA TERRITORY.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof."

The fourth section being under consideration, as follows:

"SEC. 4. The Legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually by the President of the United States, from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory or the United States. The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful powers of legislation: but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall from time to time report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene and prorogue the Legislative Council, whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States;"

Mr. Leib observed that he did not like the provisions of this section, and least of all that which gave the Governor the right of proroguing the Legislative Council. It appeared to him that that body was the most dependant thing of its nature in the United States; and when the power of prorogation vested in the Governor was considered, it seemed to him that the people would do much better without any such body. This was a royal appendage which he did not like. He, therefore, moved to strike out the words "and prorogue."

Mr. Gregg said he was not only in favor of the motion of his colleague, but against the section generally. It would require much further amendment to induce him to vote for it. He was opposed to the power it gave the President to appoint the members of the Legislative Council. It appeared to him a mere burlesque to say they shall be appointed by the President. How is the President to get information of the qualifications for office? This could only be obtained from the officers appointed by him, and principally from the Governor, who will not fail to recommend to the President the appointment of persons favorable to his own views. Mr. G. said that they would, therefore, rather vest the appointment of the members of the Legislative Council in the Governor; the mode pointed out in the bill was only calculated to rescue the Governor from the responsibility attached to his office, by dividing it among others. It might, perhaps, in the first institution of the government be difficult to get the Council appointed in any other way. Mr. G. said he had it in contemplation to move an amendment, which, although it would not render the section entirely agreeable to him, would so far remove the objections he entertained against it, as to induce him to vote for it. It would give the President the appointment of the Legislative Council for one year; but direct the Council during that time to lay off the district into counties, and thereupon divest the President of the power, and vest it in the white free male inhabitants of the Territory on the 30th of April last and the citizens of the United States.

[Mr. Gregg here read a section to this effect.]

By the introduction of this amendment, or of one embracing similar principles, and incorporating the amendments of his colleague, Mr. G. said he should be prevailed upon to vote for the section. It had been suggested to him by some gentlemen that it might be more agreeable to the people of Louisiana, and consonant with our plans of Territorial government, to vest the powers of a Legislative Council, for the first year, in the Governor and Judges, making it their duty to provide for the election of a Council thereafter by the people. It was also intimated that some other gentlemen had prepared different amendments as a substitute to the whole section. When he heard them read, he might, perhaps, prefer them to his own. Mr G. concluded by moving the amendment stated above.

Mr. Leib said his amendment did not in the least intertere with that of his colleague, with whom he fully accorded in sentiment.

Mr. Varnum was of opinion that the section in the bill provided such a kind of Government as had never been known in the United States. He thought sound policy, no less than justice, dictated the propriety of making provision for the election of a Legislative body by the people. There was not only the common obligation of justice imposed upon Congress to do this, but they were bound by treaty. The treaty with France expressly says:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

The treaty makes it obligatory on the United States to admit the inhabitants of Louisiana, as soon as possible, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States. In order to decide the principle of this section of the bill by an expression of the sense of the Committee, he would move that the Committee should rise, report progress, and ask leave to sit again, with the view of refusing them leave, and afterwards referring the bill to a select committee to receive a modification in conformity to the opinions of the House.

Mr. Huger trusted the Committee would not rise. He knew not the impressions on this subject on the minds of other gentlemen; but the information lately received from Louisiana convinced him of the propriety of proceeding with the bill immediately. In addition to the principles contained in the section under consideration, there were others of great importance. He thought it would be most advisable, in a future stage of discussion, to commit the bill to a select committee, if any material alterations should be made in it. It was best, at present, to deliberate fully on the several provisions of the bill, and for gentlemen to make an interchange of opinions. Were the bill now committed, the report of the committee would not advance the business in the least, as that report might be as objectionable to the House as the bill from the Senate.

Mr. Elliot, for like reasons assigned by the gentleman from South Carolina, and for other reasons, hoped the Committee would not rise. He did not believe the section under consideration was, in its present form, consistent either with the spirit of the Constitution or the treaty; but he believed that, by the introduction of a small amendment, the section might be rendered perfectly consistent with them, and the passage of the bill be greatly accelerated. He preferred a middle course between the existing section and the amendment offered by the gentleman from Pennsylvania. Whatever amendments were necessary would be easily offered and discussed at present; whereas no desirable object could be effected by a reference.

Mr. Gregg said it also appeared to him that no valuable purpose would be answered by referring the bill to a select committee. What can such a committee do? There exists no diversity of sentiment in the House on principle. Some are for giving to the people of the Territory, instead of the President, the power of electing members of the Legislative Council. Here, then, are two distinct principles, and unless the House determine which of them it will adopt, a select committee can do nothing. Let us settle the principle of the bill first, and then refer it to a select committee, to modify it in correspondence with them.

Mr. Eustis said this subject was, in his opinion, inferior to no other discussed this session. With regard to the provisions of the section under consideration, it was to be expected that there would be a diversity of opinion. Gentlemen inimical to them had taken different grounds. One gentleman desires the power of the Governor to prorogue the Council to be rescinded; another gentleman wishes an entire change in the formation of the Council; and a third is in favor of the Committee rising, that the bill may go to a select committee to report different provisions for the government of the people of Louisiana from those contained in the bill before us. This motion necessarily brings the principle on which the Council is organized by the bill before us.

It is extremely difficult to form any system of government for this Territory with our ideas of civil liberty under the Constitution of the United States. It appears to me, said Mr. E, that before we determine the principle on which the Council is to be formed, it is necessary distinctly to understand the genius, the manners, the disposition, and the state of the people to be governed. The treaty has been resorted to by my colleague to show that they are entitled to elect their own Legislature. It says:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States."

Are the people of Louisiana admitted into the Union at this time, or not, with all the rights of citizens of the United States? The answer to this inquiry will lead to a right decision of the question under discussion. If they are so admitted, they are entitled to all the rights of citizens of the United States. And if they are thus entitled, there remains another inquiry: are they qualified from habit, and from the circumstances in which they are placed, to exercise these high privileges? If they are both entitled and qualified to enjoy them, we can have no hesitation in pronouncing the bill grounded on a wrong principle, that it ought to be rejected, and another bill, of a far different nature, be introduced in its room. But I do not consider the subject in this light. The people, in my opinion are at present unprepared for, and undesirous of, exercising the elective franchise. The first object of the Government is to hold the country. How? By protecting the people in all their rights, and by administering the Government in such a manner as to prevent any disagreement among them—to use no other term. Suppose the people called upon to choose those who are to make laws for them, does the information we possess justify the belief that this privilege would be so exercised as to conduce to the peace, happiness, and tranquillity of the country? I apprehend not. On the sentiments of the House on this point the decision of this motion must turn.

According to this bill, the Governor and Council are to make the laws. Suppose the Council is in session, and the Governor possess no power to prorogue them. Suppose they should engage in acts subversive of their relation to the United States. Would not this power be of essential utility? It appears to me indispensably necessary that a vein of authority should ascend to the Government of the United States, until the people of the Territory are admitted to the full enjoyment of State rights. From that knowledge of this people which I have been able to acquire, I have formed an opinion that authority should be constantly exercised over them, without severity, but in such a manner as to secure the rights of the United States and the peace of the country.

The government laid down in this bill is certainly a new thing in the United States; but the people of this country differ materially from the citizens of the United States. I speak of the character of the people at the present time. When they shall be better acquainted with the principles of our Government, and shall have become desirous of participating in our privileges, it will be full time to extend to them the elective franchise. Have not the House been informed from an authentic source, since the cession, that the provisions of our institutions are inapplicable to them? If so, why attempt, in pursuit of a vain theory, to extend political institutions to them for which they are not prepared? I am one of those who believe that the principles of civil liberty cannot suddenly be ingrafted on a people accustomed to a regimen of a directly opposite hue. The approach of such a people to liberty must be gradual. I believe them at present totally unqualified to exercise it. If this opinion be erroneous, then the principles of the bill are unfounded. If, on the contrary, this opinion is sound, it results that neither the power given to the President to appoint the members of the Council, or of the Governor to prorogue them, are unsafe or unnecessary.

The extension of the elective franchise may be considered by the people of Louisiana a burden instead of a benefit. I have understood there is none of that equality among them which exists in the United States; grades are there more highly marked, and they may deem it rather a matter of oppression to extend to them the privileges which we deem inestimable, and with the value of which we have been long familiar.

Before we decide this principle, it is absolutely necessary to consider the relation of these people to the United States. I consider them as standing in nearly the same relation to us as if they were a conquered country. By the treaty they are, it is true, entitled to the enjoyment of all the rights, advantages and immunities, of citizens of

the United States, and to be incorporated into the Union as soon as possible, according to the principles of the Federal Constitution—but can they be admitted now? Are they at this moment so admitted? If not, they are not entitled to these rights; but if they were, I should doubt the propriety of extending them to them.

If the present provisions of the bill are carried into effect, there will be more security than will arise under the motion of my colleague. It is very natural and honorable to gentlemen of liberal minds to be desirous of extending to this people the privileges enjoyed by our own citizens; but sentiments of this kind, however liberal and praiseworthy, may be carried in the face of facts, and may operate injuriously on those they are intended to benefit. I have thrown out these sentiments for the consideration of the Committee, and if they shall determine in favor of striking out this section, I shall consider the decision as equivalent to losing the bill. Upon the whole, as the bill only purports to provide for a temporary government, and as, in the course of a year we shall have more information respecting the country, when it will be in our power, in case such information shall justify it, to extend all the privileges which gentlemen seem so desirous of doing, I hope the Committee will not rise or agree to strike out this section.

Mr. LYON said when he first thought of rising on this subject, it was merely to remind the gentleman from South Carolina, (Mr. HUGER,) and the gentleman from Vermont, (Mr. ELLIOT,) that there was no need of the hurry they seemed to think necessary on this occasion, as the bill before us contains a section providing against its going into operation until October next; and to express his hope that the Committee would rise, as there were so many traits in the bill so disgusting to him that he would be willing to send it to any select committee; better it they might, but he thought they could not make it worse. Yet, after having heard the gentleman from Massachusetts advocate the principle of the section under consideration, he could not avoid making a few observations. I think, said Mr. L., that these people have a right, by nature and by treaty, to have some concern in their own government, and, although they may not be completely qualified for self-government, and we may not be willing to put them on the same footing with the people of a free and independent State, I know of no reason why they may not be allowed by their representatives to come before the Governor in an organized way with an expression of their wishes and their wants, and to propose for his adoption laws they may think fitting and salutary for their country. I am not ready to say, with the gentleman from Pennsylvania, (Mr. LEIB,) that I wish to take from the Governor the power of convening and proroguing the Legislative Council or Assembly. I am willing for the present he should have that power, as well as an unqualified negative on their bills. In that case, how can the representatives of that people injure our Government? It is the business of the Governor appointed by the Executive of the Union to watch over them for the interest of the nation—his power will be ample for the protection of that interest. When they ask his assent to those things that are fitting and proper, he will give it, I hope; when they ask it for those things which are not fitting or proper, he will no doubt refuse it; and if they should at any time become troublesome, he will prorogue them, and tell them to go home about their business. I cannot refuse these people the humble boon, the pitiful specimen of liberty, the laying before their Governor by their representatives, for his consent, the bills they wish passed into laws for their local accommodation, and for their satisfaction with respect to their rights and their property; neither would I mock their feelings by a Legislative Council appointed by the President of the United States. I do not believe he wishes that power. I do not think it fits his character. How is he to divine who it is best to appoint? I would as soon compliment Mr. Bonaparte with that power; I dare say he is better acquainted with the people there. But the gentleman from Massachusetts seems to think these people are not desirous of exercising the power of electing legislative representatives. If that is the case, do we not owe something on this score to principle—to consistency—to the national honor, pledged by treaty? If there is danger on that score, (which I am pretty certain there is not,) let the government be so organized that it can go on without the representatives of those districts who neglect or refuse to elect.

But the most ludicrous idea I have heard expressed on the subject is, that these people must be kept in slavery until they can be learned to think and behave like freemen. "Establish the government proposed, and let them learn under that to enjoy the rights and benefits of freemen." I wonder how much longer this probationary slavery is to last in order to bring about the purpose proposed; for my part, I believe they have had it longer than has done them any good. I really wish to know how much longer this apprenticeship is to continue, and what are the symptoms by which we are to know when slaves are fitted to become freemen. I shall, sir, eventually vote for the Committee's rising, although I am quite willing to hear what farther can be said in favor of this section.

Mr. LUCAS was against the rising of the Committee, inasmuch as the bill under consideration offered the widest field of discussing the subject before them, and inasmuch as it was proper, that the principles of it should be settled by a majority, to enable a select committee to collect the sense of the House. When this decision should have taken place, he should have no objections to a recommitment for the purpose of modifying the bill in consonance with it.

It was known, by the treaty, that the United States are bound to secure to the people of Louisiana as large a portion of liberty and security of rights, as though they remained under the Government of France and Spain; and he trusted the bill as it stood secured to them much more. As an instance, it might be mentioned that the privilege of habeas corpus had never been enjoyed by them while they were connected with either Spain or France. An argument was drawn from the treaty, that these people are to be admitted to the absolute enjoyment of the rights of citizens; but gentlemen would not deny, that the time when, and the circumstances under which this provision of the treaty was to be carried into effect, were submitted to the decision of Congress. It has been remarked, that this bill establishes elementary principles of government never previously introduced in the government of any Territory of the United States. Granting the truth of this observation, it must be allowed that the United States had never before devolved upon them, the making provision for the government of people under such circumstances. Governors must not rest on theory, but must raise their political structures on the state of the people for whom they are made. Mr. LUCAS said, that without wishing to reflect on the inhabitants of Louisiana, he would say that they are not prepared for a government like that of the United States. Governed by Spanish officers, exercising authority according to their whim, supported by a military force, it could not be said that a people thus inured to despotism, were prepared on a sudden to receive the principles of our Government. It was questionable whether there was a nation in Europe whom these principles would be so advantageous to as they are to us. It would be recollected by gentlemen, who so strenuously advocated the abstract principle of right, that the people of Louisiana have not been consulted in the act of cession to this country, but had been transferred by a bargain made over their heads. It was a proof this act had not been received with approbation by them, that when they saw the American flag hoisted in the room of the French, they shed tears; this was a proof that they were not so friendly to our Government as some gentlemen imagined. He was persuaded the people of the Mississippi Territory would not have acted in this manner. There is no doubt but that after they shall have experienced the blessings of a free Government, they will wonder at their having shed tears on this occasion; but they must, in the first instance, feel these blessings.

Mr. LUCAS said he was fully of opinion with the gentleman from Massachusetts (Mr. EUSTIS) in the sentiments he had expressed. The United States had it eminently in their power to make these people happy without an extension to them of all our privileges. They will not be gratified from knowing that the theory of liberty is extended to them, but from its practical effects. The people of Louisiana know but little of political theories, but they will feel the just operation of equal laws; and if they can obtain practical justice, though it may not arise from an extension of our elementary political principles, they will not find fault with it.

Mr. LUCAS said he was not among those who considered the bill, in all its provisions, perfect. He considered it susceptible of much amendment; though not in the principle now under review. In this provision, by declaring that the inhabitants of the Territory shall compose the Legislative Council, a great point is gained by the people. For it cannot be supposed that the inhabitants, thus called upon to discharge high duties to society, will so far lose sight of their own permanent interest as to sacrifice them, together with the good of the country, to whim or corruption.

Their election by the President is another important security. Suppose the Governor shall wish to render the Council his puppets. The President will not feel an interest in gratifying his improper views. It is, however, said that his information will be derived from the Governor. But, the fact is, he will receive it in part from the Governor, and in part from others; and he will be sagacious enough to judge, not from a part, but from the whole that reaches him.

A valuable effect will flow from composing the Council of the inhabitants of the country; its members will thereby be initiated in the theory of our Government and laws, and this knowledge will hereafter qualify them for higher political trusts; they will acquire much political knowledge; they will return home, and their conversation with their friends will naturally turn on political topics, and on the laws they have passed; thus will a spirit of inquiry and of political discussion spring up in the country. When this effect shall be produced, it will be time, and only then, to give them a government as liberal and free as that contemplated by the amendment.

Mr. MACON (Speaker) observed that he coincided in opinion with the gentleman from Massachusetts, (Mr. VARNUM,) whose object would, he thought, be better tried by a motion to strike out the section. This motion would bring the principle before the House. If the section should be stricken out the bill would be recommitted for new modification to a select committee. Mr. M. accordingly moved to strike out the fourth section.

This motion having been stated from the Chair,

Mr. MACON again rose. I will endeavor, said he, to compress my ideas on this point in a few words. My first objection to the principle contained in the section is, that it establishes a species of government unknown to the laws of the United States. We have three descriptions of Government; that of the Union, that of the States, and Territorial governments. I believe the Territorial government, as established by the ordinance of the Old Congress, the best adapted to the circumstances of the people of Louisiana; and that it may be so modified as best to promote their convenience. The people residing in the Mississippi Territory, are now under this kind of government. Is it not likely that the people of Louisiana will expect the same form of government and laws with their neighbors; and is it not desirable for the general peace and happiness that there should be a correspondence between them? If they are as ignorant as some gentlemen represent them, (and of this I know nothing,) will they not expect the same grade of government with the inhabitants of the Mississippi Territory, with

whom they will have a constant intercourse? Although they lived previously under the Spanish Government, and although their number did not entitle them, when formed into a Territory, to the second grade of government, no inconvenience resulted. It is said, in reply to this observation, that a large number of inhabitants of that Territory were Americans. It is true that many of them were native Americans, but some also were Spanish.

The simple question is, what kind of government is most fitted to this people? It is extremely difficult to legislate for a people with whose habits and customs we are unacquainted. I, for one, declare myself unacquainted with them; nor would I in fixing the government, unless for the safety of the Union, do an act capable of disgusting the people for whom it is adopted. It will be a wise policy to avoid whatever is calculated to disgust them. My opinion is that they will be better satisfied with an old-established form of government, than with a new one. Why? Because they have seen it established in the adjacent Territory of Mississippi, and know the manner in which it operates. If there are bad men in Louisiana, will anything be more easy than to disgust the people against the General Government by showing that they have given one kind of government to the people of the Mississippi Territory, and a different kind to them? In my mind, it is sound policy to give them no cause of complaint. We ought to show them that we consider them one people.

I will not pretend to say that the people of Louisiana are prepared for a State government, which differs most materially from a Territorial government. The best way to prepare them for such a government, is to take the system already known to our laws; one grade or the other of the Territorial government. For myself, I would prefer the adoption of the second grade, but I would prefer the first to any new system. For these reasons, I hope the section will be struck out, and the bill referred to a select committee.

Mr. G. W. CAMPBELL said he would submit a few reasons in favor of the motion to strike out the section. As the hour was late, he would endeavor to compress his observations in as narrow a compass as possible. The principal question is, whether we shall give the inhabitants of Louisiana the right of self-government, or even the hope that they will hereafter enjoy the benefits of self-government, and of those rights which there is no doubt but that they conceive themselves entitled to under the treaty with France? In examining this question, it may be proper to take a brief notice of the section proposed to be stricken out, and the degree of liberty it is calculated to give the inhabitants of Louisiana. On examining the section, it will appear that it really establishes a complete despotism; that it does not evince a single trait of liberty; that it does not confer one single right to which they are entitled under the treaty; that it does not extend to them the benefits of the Federal Constitution, or declare when, hereafter, they shall receive them. I believe it will, on investigation, be found difficult to separate liberty from the right of self-government; and hence arises the question, now to be decided, whether we shall countenance the principle of governing by despotic systems of government, or support the principle that they are entitled to be governed by laws made by themselves, and to expect that they shall, in due time, receive all the benefits of citizens of the United States under the Constitution.

By the section all Legislative power is vested in a Governor and thirteen Counsellors, appointed by the President. The people have no share in their choice. The members of the Council are only to aid the Governor; they have no right to make laws themselves; the words of the section are:

"The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act."

That is, the Governor makes the laws by and with the advice of the Council. They are not to deliberate on what shall be law; but he, like some ancient potentates, is to suggest to them what, in his opinion, is proper to be law. This is the proper construction of this section, or I do not understand it. "He is to make," &c. They are not to make the laws, and submit them to him for his approbation. He makes them, and asks his creatures whether they will agree or not agree to them. I hope we are not prepared to establish such a system as this.

If, then, the proposed system be despotic, it is proper, in the next place, to inquire why it is erected over the people of Louisiana? Is their condition such as not to qualify them for the enjoyment of any of the blessings of liberty? Are they blind to the difference between liberty and slavery? Are they insensible to the difference of laws made by themselves, and of laws made by others? We have no evidence that this is the case. If we retrace the progress of liberty among other nations, I would ask gentlemen where they find reason for the opinion that the people of Louisiana are unfitted for the enjoyment of its blessings? They will find that it has, in many cases, arisen among people far less enlightened. I trust, therefore, we shall not determine that because the people of that country have not investigated the full value of a free Government, they are not qualified to enjoy any freedom. I ask gentlemen, when they talk of the abuse of the elective franchise, to point out a solitary instance where the people have abused the rights they acquired under it? They will find it hard to point out one. Whereas I ask them for a single instance, in the annals of mankind, where despotism has not been abused. This they will find it equally difficult to adduce. One principle cannot be denied: When power is vested in the people, they exercise it for their own benefit, and to the best of their skill. They have no object in abusing it; for they are sure to be the first victims of its improper exercise. I ask, then, where is the danger of placing

in the hands of the people the right of choosing those who are to regulate their own internal concerns? Surely, when gentlemen depicted the great danger of this investiture of power, they did not consider that the very act before us, subjects all laws to the control of Congress, and that in all cases wherein Congress shall negative them, they will have no validity. Where, then, is the danger? Will it be injurious to the United States that the Legislature of the Territory, chosen by the people, should make laws for their own accommodation, without prejudice to the Union? It cannot. I feel surprised when gentlemen say, we ought to be cautious in giving power, lest it should be used in opposition to the interests of the Union. How can this be, when this Government has the appointment of all the officers, and particularly the Governor and judges; and when to the Legislature is only confided the management of internal concerns? When they have no authority to form connexions with foreign Powers, or to form any coalition with their neighbors, in opposition to the measures of the General Government? If the people are already hostile to the United States, it is evident that it is not the severity of despotism that will make them friendly. I ask, how are we to account for this change? Not long since, this people were congratulated on their releasement from a despotic Government, and were invited into the arms of a Government ready to extend to them all the blessings of self-government. Now we are about to damp all their hopes, and to send forth a few creatures to lash them with despotism, to make all their laws. We go further. We do not even hold forth the idea that, at a future day, they shall make their own laws. Our language is, if, notwithstanding the despotism we extend over you, like good subjects, you patiently bear your chains, we may withdraw them, and let you govern yourselves. If this is not the amount of the language of gentlemen, I do not comprehend it.

It is stated by a gentleman from Massachusetts, that it is difficult to form a government for such a people; and that it is necessary previously to consider the habits and manners of the people to be governed. I am sorry, at this enlightened day of the world, to hear arguments in favor of despotism, so often used before. How does a despot govern his subjects? He tells them, and makes them believe, that they are ignorant and unqualified to govern themselves; considering their ignorance, he tells them he does them a favor by governing them, and they have nothing to do but to obey. This is the doctrine on which monarchy and despotism rise; as it prevails, despotism prevails, and in proportion as it is destroyed, the principle of liberty prevails. Let us not say, the people are too ignorant to govern themselves. No. Give them an opportunity, and they will acquire knowledge, at least sufficient to make a proper choice of those best qualified to superintend their public concerns. This will act as a stimulus to those who expect to be chosen, to make themselves qualified. But I never knew, before this day, that for a people to be fit for the enjoyment of liberty, they must, for a certain time, be under the scourge of despotism.

The same gentleman inquires, in case the elective franchise shall be extended, what hold we shall have on the people of Louisiana? This inquiry is readily answered; we shall have power to reject all laws they may make; and a Governor appointed by us, will have the nomination of all military and civil officers, who administer the Government. If this is not a hold and check upon them I know not what is. While examining this point, it may not be improper to inquire, what is the best way of making these people most attached to the United States; and whether that end will be answered best by denying them all liberty, and by making a radical difference between their Government and that of territories similarly situated with themselves. Let me for once observe, that it is the true policy of this Government to conciliate the people to us, to our manners and laws; to show them, that considering them as a part of the Union, they have a right to expect the enjoyment of privileges unknown to them before; instead of disappointing their hopes and compelling them to serve a long quarantine before they are admitted to a participation of those rights which we ourselves possess.

It has been intimated that these people are unfit to govern themselves, but I am acquainted with no information that warrants this inference. I believe that information of a different nature derived from other gentlemen, is more to be relied on, because those who give it are better informed. As to their interests I cannot conceive what can have rendered them so different from those of the people of the Mississippi Territory; they were once the same people and under the same Government, and they could not have then become unfit for self-government. The best information assures us that a considerable proportion of the population is composed of American citizens, amounting perhaps to one-fourth or one-fifth of the whole. There are also many British subjects, not so ignorant as to be entirely insensible to the benefits of a free Government.

Is there, too, anything in the Spanish Government whose effects are so degrading as to disqualify a man from enjoying freedom? If this were the case it would have been an argument against accepting the country at all. Have we not, however, understood that this great measure has been effected with a double view of accommodating the United States and benefitting the people of Louisiana, by extending to them the advantages of a free Government? Shall we consider ourselves at liberty to barter them, to view them as cattle, and govern them as such? I hope not. Let us look at the treaty and attend to its language. It says, "The inhabitants of the ceded territory shall be incorporated in the union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty,

'property, and the religion which they profess." By the very act before us, a number of the laws of the United States are extended to them; by this the principle is admitted that the rights, advantages, and immunities, can, according to the Constitution, be extended to them. If they can be so extended, it becomes a question of policy altogether, how far they shall be extended. Is it then politic, or not, at this time to extend the privileges they are entitled to as a Territory of the United States? One idea relied on by gentlemen is worthy of notice; it takes for granted that the people do not wish for a free Government. I ask gentlemen if they are really serious in this remark? If they are, the argument will be conclusive in giving them, if they choose it, an absolute despotism. If we knew it were the desire of the people to have a King, whatever might be our opinions of the benefits of liberty, it would be our duty to give them one! Gentlemen cannot think so, nor would they suffer the United States to degrade their character by such an act. I conceive the United States bound to give them a republican form of Government, and to consider therefore not what they may desire, but what will best suit their ultimate interest, while it promotes the benefit of America at large. One gentleman observes, that we ought to regard the people of Louisiana as totally distinct from, and as not possessed of any similar habits with ourselves. I trust, however, we shall consider them as a part of the human species. I believe the gentleman will find the human character the same in different parts of the globe. If this principle had been pursued, liberty had never flourished; if the people had never enjoyed liberty till they were ripe for it, how many ages of darkness would have passed away! But the fact is, the people suffer oppression to an astonishing degree—despotism grinds them down till human nature can endure no more, and then they break their chains in a revolt. I therefore can see no force in the argument of waiting till they are ripe for liberty. How ripe? If they have never tasted its benefits how can they know them? I trust, therefore, we shall extend to them the same rights as are enjoyed by the other Territories. I will close what I have to say on this subject with a few additional remarks. Much has been said of the interests of the people, to prove them incapable of exercising the elective franchise. I will only observe, in addition to what I have already stated, that I believe that principle was the first made use of among nations. We find it among savage nations, and we find all nations, even in the darkest periods, exercising it, until deprived of their liberties by one or a few designing and ambitious characters. Should the Committee agree to strike out this section, it is my wish to propose an amendment similar in substance to the provisions established in the Mississippi Territory. I will not take up the time of the Committee with reading the rough draught which I have drawn to this effect, but barely state that my object is to empower the Governor and judges to execute the government until they shall divide the Territory, and until the people choose their own Legislature. I trust, therefore, the Committee will agree to strike out the section, and that it shall not hereafter be said, that we met to make laws for a people, whom we have called our friends and brothers, different from the laws which we have made for ourselves.

Messrs. Elmer and Leib, supported, and Mr. Huger opposed this motion; when the Committee rose, without any question being taken, and obtained leave to sit again.

Wednesday, February 29.

Mr. John C. Smith, from the Committee of Claims, to whom was referred, on the twentieth instant, the memorial of William Eaton, made a report thereon; which was read, and the consideration thereof postponed until Friday next.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill providing for the expenses of the civil government of Louisiana; which was read twice, and committed to a Committee of the whole House on Friday next.

An engrossed bill to revive and continue in force an act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia," was read the third time, and passed.

Mr. Eppes, from the committee appointed, presented a bill declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned; which was read twice and ordered to be read the third time to-morrow.

Ordered, That the depositions and other papers transmitted from several counties in the State of Virginia, respecting a contested election of Thomas Lewis, one of the members returned to serve in this House, which were referred to a Committee of Elections, during the present session, be referred to the Committee of the whole House to whom was committed, on the twenty-fourth instant, the report of the Committee of Elections in the case of the said contested election.

The House resolved itself into a Committee of the Whole on the bill altering the days of session of the district court for the district of Virginia; and, after some time spent therein, the bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A Message was received from the President of the United States, communicating a letter stating certain fraudulent practices for monopolizing lands in Louisiana. The Message, and the letter transmitted therewith, were read, and ordered to lie on the table.

Mr. Jackson moved the going into Committee of the Whole, on the report of the Committee of Elections, respecting the seat of Thomas Lewis.

Mr. Dana moved a postponement of this order until to-morrow, and required the yeas and nays, which were yeas 64, nays 48.

The House went into a Committee of the Whole on the bill making appropriations for carrying into effect the convention of the 11th August, 1802, between the United States and the King of Spain.

The bill appropriates $15,760 for the compensation of two Commissioners, half of the fifth Commissioner, a secretary, and an agent.

Having passed through the Committee, the House ordered the bill to a third reading to-morrow.

Mr. Eppes, from the committee appointed to inquire whether the moneys drawn from the Treasury on account of the Marine Corps have been faithfully applied to the public service, made a report, which concludes with recommending a resolution, that provison ought to be made by law for a monthly or quarterly adjustment of the accounts of the Marine Corps.

GOVERNMENT OF LOUISIANA.

The House went again into a Committee of the Whole on the bill for the government of Louisiana.

The fourth section of the bill being under consideration—

Mr. Jackson said: As this section is the corner stone on which the whole superstructure rests, and involves the most important principle of the bill, I will ask the indulgence of the Committee to make a few remarks upon it. It presents two important questions; first, Whether it is proper on the broad principle of political justice to adopt it? And secondly, Whether it is consistent with our treaty with France? Two questions arise out of the first proposition; first, Is the system consonant to the habits of a free people? And, secondly, if not, is it the best calculated to advance the happiness of those who have never tasted the blessings of liberty? The first question requires no discussion; it will be answered in the negative by every section of this Union. Every section has been engaged in forming a constitution, and both the State and Federal constitutions have decided this point in the negative, because neither partake of the aristocratical or monarchical features contained in this section. The question remains to be considered whether it is best calculated for those who have never enjoyed the blessings of liberty. Gentlemen say it is, because the people are hostile to the enjoyment of the blessings of self-government, and the gentleman from South Carolina thinks we ought to look upon them as a certain portion of the people among us—meaning those in slavery—and to treat them as such.

Mr. Huger explained. He said his meaning was not such as the gentleman's language implied; he spoke of them barely by way of comparison, to show that nothing was more dangerous than to pass from the extreme of slavery to perfect liberty.

Mr. Jackson.—I will not pretend to say I comprehended the meaning of the gentleman; his words were, "they ought to be looked upon as a certain portion of people among us and treated as such." If he did not allude to slaves, I do not know to whom he did allude. But as he says he did not allude to them, I will avoid any remarks that go to implicate him in such allusion. Admitting they are not to be compared to the slaves of the Southern States, or to those human beings who are made the subject of traffic, gentlemen allege that a system of free government will be inconvenient to them. I believe they are wrong in this position, and that man is the same, whether born in the United States or on the banks of the Ganges, under an African sun or on the banks of the Mississippi, and that a love of liberty is implanted in his nature. If the gentleman from South Carolina meant to impress a belief on the Committee, or is under the influence of that belief himself, that the inhabitants of Louisiana are exclusively subjects of France or Spain, he is mistaken. A great number of the inhabitants are Americans. Emigration has been carried to a great extent; many have gone from the West, from the East, and from the middle States; and I will ask gentlemen, whether those persons who have carried with them the habits of Americans, are not fit objects of free government? Surely they are; and yet these must be excluded from the benefits of self-government, if this bill pass in its present shape. I flatter myself that great good will result to the United States, and to the political system we support, by the introduction of Americans into that country; they will explain to the natives and to those who have emigrated from Europe, the nature and principles of our Government; the language of liberty will captivate them; its principles are just, and will be omnipotent, and in receiving a free system of government from the United States, they will feel a sentiment of gratitude instead of abhorrence.

Allow, for the sake of argument, that the people are slaves. This does not prove that they are not fit objects of a free Government. Look at the ensanguined plains of St. Domingo; the oppressed have there broken their chains, and resumed their long lost rights. The example proves more than a volume. There, notwithstanding the great debasement of the human character, the sacred fire of liberty is not extinguished. Wherever it exists, sooner or later, it bursts forth into an irresistible flame, and consumes everything opposed to it. And are the subjects of a monarchy, the inhabitants of Louisiana, more deficient in manly sentiment than the people of St. Domingo? This argument of incompetency in the people to govern themselves, is the essence of despotism; its language is, the people are a mob; a swinish multitude; and the Divine Goodness has pleased to send into the world kings and nobles to keep them in order. A language well suited to bold and ambitious spirits, but which, thank God! the American people know how to estimate.

One gentleman, in the course of his remarks, in order to show that the people of Louisiana are not qualified for self-government, has informed us they shed tears at the lowering of the French flag, and the hoisting of ours in its room. Perhaps they were not unfriendly tears, but tears of joy; perhaps those who shed them were sycophants of Mr. Laussat, and they were shed to gratify him. At all events, whether they laughed or cried, I am unwilling to form a judgment of the character of the people from the conduct of a few persons at

New Orleans, who, from proximity and the nature of a despotic government, felt themselves obliged to weep, to smile, or dress their faces in sunshine, as the occasion prompted, through fear of the inquisition or incarceration for life.

But gentlemen say, men of information who have been amongst them are convinced they are not qualified to receive a free government; that it would indeed disgust them: I believe, however, that this impression has been founded on the same *ex parte* views. Persons going to New Orleans, where despotism rages with unbounded sway, beholding a few persons around the despot, ready to sacrifice everything to his caprice, are not proper to give a character to several hundred thousand people. I believe, if the interior of the country be explored, among those who have heretofore been subjects of Spain and France, we shall find many desirous of receiving civil and religious liberty, and as opposite to the fawning sycophants at New Orleans, as light from darkness. We were told some time since, that Mr. Laussat could not obtain the cession of the country, so great was the hatred of the people to France, and their love of Spain. But in a short time we perceive this hatred turned into affection, so ardent as to produce extreme distress at the transfer of the country to America from France, after but a few days possession. If this statement be true, and the people are so versatile, we may predict that they will be as soon attached to us, and as willing to receive a free system of Government as they were lately enamored of slavery.

It is urged by gentlemen, that we ought to give to this people liberty by degrees. I believe, however, there is no danger of giving them too much of it; and I am unwilling to tarnish the national character by sanctioning the detestable calumny that man is not fitted for freedom. What will the world say if we sanction this principle? They will say we possess the principle of despotism under the garb of Republicans; and that we are insincere, with whatever solemnity we may declare it, in pronouncing all men equal. They will tell us that we have emphatically declared to the American people and to the world, in our first act evincive of emancipation from the tyranny of England, that all men are equal; and that all Governments derive their rightful power from the consent of the governed; and that notwithstanding, when the occasion offers, we exercise despotic power, under the pretext that the people are unable to govern themselves.

I come now to the second question; Is it consistent with the treaty, for the performance of which we have pledged our faith, to withhold from the people of Louisiana the privileges of free government?

The article on this point is in these words:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

A gentleman from Massachusetts, who advocated this section, asserted that the treaty does not apply, because the people are not yet admitted into the Union; but what does the treaty say? "The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible," &c.—*As soon as possible*, not as soon as conveniently can be admitted; there is no such limitation; and unless gentlemen can make it appear impossible to admit them to a participation of rights, anterior to their admission into the Union as an integral part of it, this provision does require the extension of political rights to them, unless contrary to the Constitution. Cannot we do this under the Constitution? We certainly can—it is not denied that we have the right and possess the power to authorize the people to elect their own magistrates; and as this is not inconsistent with the principles of the Constitution, we are bound to admit them "to the enjoyment of all the rights, advantages, and immunities of citizens of the United States." Upon the whole, whether we view the subject on the principle of policy, so far as it respects the propriety of extending the principle of free government to this people, or so far as respects the treaty, to the execution of which we have pledged our faith, I have no hesitation in saying, that policy no less than moral obligation dictates the establishment of a system of government different from that contained in the fourth section. I shall, therefore, most cheerfully vote for striking it out.

Mr. Holland.—As my ideas are very different from those of the gentleman who has preceded me, and as I do not believe that either policy or moral obligation recommends the adoption of a system such as he has avowed to be proper, I will, in a few words, state the sentiments I entertain. I do not view this discussion as involving the question, whether the people of Louisiana shall be admitted into the United States. The only question is, whether we shall extend to them the right of free suffrage in its fullest extent, and such as is enjoyed by the people of the United States? Gentlemen in favor of striking out this section, seem impressed with the idea that every gentleman friendly to the section is in favor of an absolute despotism—is inimical to their rights, is desirous of making the people of Louisiana slaves. They take the ground that, if we deny them this right, we deny them everything. But there is a wide difference between denying them the privilege of election and extending to them other high privileges; more, perhaps, than they are capable of enjoying. This law will extend to them the privileges of twenty-one acts of the United States, to which the freemen of the United States are subject. Is this nothing? Gentlemen say they ought not to be subjected but to laws of their own making; but the whole frame of this bill contradicts the assertion, as it principally consists in imposing laws which the people never made, or ought to participate in making. Will the gentleman take

the broad ground that people should never be governed but by laws of their own making? This is, indeed, the amount of the argument, and proving too much, it proves nothing. Mr. H. said he believed the people of St. Domingo, who had been alluded to, not qualified to support a free government—not possessed of sufficient knowledge. People who never had an opportunity to obtain knowledge cannot be supposed to possess it, and no kind of knowledge was more difficult to obtain than that which qualified men to be legislators. Can gentlemen conceive the people of Louisiana, who have just thrown off their chains, qualified to make laws? Under the late system the people had no concern in the government, and it was even criminal for them to concern themselves with it; they were set at a distance from the government, and all required from their hands was, to be passive and obedient. Can it be supposed such a people made the subject of Government their study, or can it be presumed they know anything about the principles of the Constitution of the United States? Would persons thus elected be of any service to the Government? So far from being an assistance they would be an encumbrance. Why then impose this burden upon them? The object of this bill is to extend the laws of the United States over Louisiana, not to enable the people of Louisiana to make laws. This extension, so far from being an act of despotism, will be an important privilege. If the laws of the United States were founded in injustice they might have some right to complain, but we only apply to them laws by which we ourselves consent to be governed. Gentlemen say, if we deny the right of self-government, we deny everything; but before they are permitted to make laws, ought they not to understand what law is? If we give power to the people, will they not choose persons as ignorant as themselves? It is a fact that many of the most respectable characters in the country conceive the principle of self-government a mere bubble, and they will not consider themselves aggrieved if it is not extended to them. Does the history of nations show that all men are capable of self-government? No such thing. It shows that none but an enlightened and virtuous people are capable of it; and if the people of Louisiana are not sufficiently enlightened, they are not yet prepared to receive it. If this be the case, the arguments of gentlemen are inconclusive. They are not prepared for self-government. For what are they prepared? To remain in a passive state, and to receive the blessings of good laws; and receiving these, they have no reason to complain.

The provisions of this section are said to be worse than those of the first grade of Territorial governments; but this is incorrect. This plan is not equal to the second grade, but it is certainly superior to the first grade. The first grade gives the Governor and judges all the powers granted by this section; and this section, in addition to the Governor and judges, contemplates the appointment of thirteen counsellors. Is not this preferable to giving the whole power to the Governor and judges?

When the people understand the value of laws equally and impartially administered, and begin to feel an attachment to the United States, and to inquire into the principles of free government, it will be time enough to give them the elective franchise.

Mr. Sloan.—Mr. Chairman, although silent, I have not been an inattentive spectator of the business now before the House. I was, yesterday, about to rise to express my disapprobation of the section now under consideration, and my concern on hearing sentiments adduced in support of its principle—which I consider as repugnant to justice and sound policy as frost is to fire, or darkness to light—when my friend from Tennessee (Mr. G. W. Campbell) rose, and in so clear and explicit a manner opposed the bill, and exposed its unjust, impolitic, dangerous, and despotic principle, that nothing appeared necessary to be added; after which, I flattered myself no further attempts would be made to support a principle subversive of the inalienable rights of man, but, to my surprise, I hear a repetition of sentiments urged in favor of this principle!

Here let me ask, can anything be more repugnant to the principles of just government; can anything be more despotic, than for a President to appoint a Governor and Legislative Council, the Governor having a negative on all their acts, and power to prorogue them at pleasure? What liberty, what power is here vested in the people? But, perhaps, I may be told that, in the present case, this power will be delegated to one who will not abuse it. This bears no weight with me. None have a higher esteem and respect for the superior talents, integrity, and justice of our present Chief Magistrate than I; but I can never consent to delegate that power to a just person, which an unjust person, who may succeed him, may use for oppressive and tyrannical purposes.

Perhaps I may be also told, that I am ignorant of the situation of the people—I acknowledge it. I only know their situation from printed narrative, and historical or verbal accounts, and probably the greater part of the members of the present House are equally ignorant. But, Mr. Chairman, the only thing I want to know, to decide the present question, is, are they human beings possessed of rational understanding? If so, give them an opportunity to improve it.

But we have been told, that giving these people their just rights will make them enemies dangerous to Government; enable them to combine together, &c. This is, in my opinion, not supported by a single fact, either ancient or modern. That to make the situation of rational beings better, will render them enemies to their benefactors, is as impossible as for streams to turn backward to their source, flames to descend, or sparks cease to fly upwards.

Here, Mr. Chairman, permit me to ask what danger can possibly arise from allowing them the elective franchise? Every law must be sanctioned by the Governor, under the control of Congress. Thus circumscribed, what power have they? I answer, being elected in different, and

some of them from distinct districts, they will consequently have knowledge of the various situations of the people, and form a proper medium through which to convey an account of grievances, and information of whatever subjects require Legislative interposition—which, I trust, would be strictly attended to by the Governor. And all laws made for the promotion of their peace and prosperity, sanctioned by the Government, would bind them to the United States, by the strongest of all ties, gratitude and love.

For the foregoing reasons I shall vote for striking out the section, in order that one may be introduced allowing them the elective franchise—which I consider not only as their inherent and inalienable right, but as a right we are bound to give them to fulfill the treaty of cession—and without which, neither the present, nor any other bill, depriving any description of free white citizens of what I consider an inalienable right, shall ever have my vote.

Mr. Smilie said it was not his purpose to detain the House by any detailed observations. His ideas differed in some respects from those expressed by gentlemen on both sides of the question. The subject of liberty was so grateful a theme that gentlemen, desirous of speaking, could not wish a better. All the arguments, however, which had been uttered as to the right of man to self-government, were, in his opinion, irrelevant to the present occasion. He could not agree with gentlemen who considered man, in every situation, as capable of enjoying all the blessings of free Government. The universal experience of the world disproved it. History informs us of many nations, once possessed of free Governments, who afterward became incapable of enjoying them. If this be the case, we may suppose those who never enjoyed liberty, incapable of enjoying it to the same extent as those who have had a long experience of its blessings. Whether the people of Louisiana are qualified to enjoy all the blessings of free Government, I have my doubts. But, I do not, said Mr. S., see the danger of extending to them, ill-informed as they may be supposed to be, the elective franchise, while under the immediate control of the Government of the United States, as they necessarily must be. We ought to discriminate between the situation of a people forming a government for themselves, over which there is no external control, and the situation of a people whose power is under a controlling government. This is an important consideration. I ask, where will be the danger, or the capacity of their doing anything injurious to the United States, provided we give them the elective privilege? They will only be empowered to pass laws for the management of their own internal concerns, and even in these they may be controlled by the United States. Two of the departments of the government will still remain in the hands of the Government of the Union. The Executive power will be amenable to the President, as well as the military, The Government of the United States will retain in their own hands the purse and the sword. Where, then, can be the danger of trusting the people with the exercise of the elective franchise? To me there appears to be none. As I take it for granted that there is but one opinion as to the propriety of bestowing every blessing consistent with the provisions of the Federal Constitution, I think there can be no difficulty in striking out this section, and amending it so as to render its provisions more consonant with what appears to be the disposition of the Committee.

Mr. Boyle said he should not have risen on this occasion but for the impression that some arguments of weight had been omitted, or had not been sufficiently dwelt on. In the few remarks he purposed to make, he should endeavor to avoid a repetition of ideas already expressed. It was not so much to the novelty, as to the nature of the plan of government contained in the fourth section, that he was opposed. He did not consider the Territorial government proposed to be substituted, as perfect, but he believed it infinitely preferable to that contemplated in the bill. Preferring, therefore, either grade to this, said Mr. B., I shall concur in supporting the substitution of the second grade as most fitted to the circumstances of the people of Louisiana. I feel peculiarly hostile to the mode of appointing the Legislative Council. The power of appointing them is unnecessarily vested in the President. Waiving all objection arising from the distance of the President from the men to be appointed; from the necessity of his relying on the representations of others as to their qualifications, and his liability to be deceived by misrepresentations; still one objection remains, which, to my mind, is most important. I am, said Mr. B., unwilling to extend Executive patronage beyond the line of irresistible necessity. For, I believe, if ever this country is to follow the destiny of other nations, this destiny will be accelerated by the overwhelming torrent of Executive patronage. I feel as high a veneration for the present Chief Magistrate as any man on this floor. Early attached to him, I have retained the full force of my regard for him. But, were he an angel, instead of a man, I would not clothe him with this power. Because, in my estimation, the investiture of such high powers is unnecessary. My opinion is, that they will be more properly exercised by the people. To give them to the President is to furnish a dangerous precedent for extending Executive power and patronage; and as he has himself said, one precedent in favor of power is stronger than a hundred against it. I am in favor of giving to the people all that portion of self-government and independence which is compatible with the Constitution. To this I consider them entitled, as well on natural principle as by the terms of the treaty. When the British Parliament passed the celebrated declaratory act, we declared to the world our right of being governed by laws of our own making. If this right was then, as we declared it, an inalienable and indefeasible right, is it less so now? If it was our indefeasible right, is it not likewise the indefeasible right of every individual of the human species?

But, it is said, the people of Louisiana are not

capable of self-government. This assertion must be founded either on the incapacity of the people to choose fit Representatives, or on their inability to find men properly qualified for Representatives. It is unnecessary, on this point, to go into detail. For the section under consideration presupposes the existence of men of sufficient talents to discharge Legislative functions. The President is bound to limit his appointments to persons who have resided one year in Louisiana. The only question is, whether the people are capable of making a discreet choice of Representatives? Wisdom and virtue are the qualifications of a legislator. Abstractly considered, these qualities are inscrutable; but, in particular individuals, they become objects of sense, visible to the most ignorant. And, from a happy ordinance of nature, the most ignorant and wicked are bound to venerate talents and virtue wherever they are found. As what has been said by a celebrated writer on this subject will be more conclusive, and carry with it more weight than anything I can urge, I will quote his words:

"The people are extremely well qualified for choosing those whom they are to entrust with part of their authority. They have only to be determined by things to which they cannot be strangers, and by facts that are obvious to sense. They can tell when a person has fought many battles, and been crowned with success; they are, therefore, very capable of electing a general," &c.—*Montesquieu.*

This distinguished writer does not, in these remarks, allude to particular people, living under a free Government, but refers to mankind in general, in all climates and ages. If, then, there can be no want of men qualified to legislate, and no want of discernment in the people to select them, no objection can arise to conferring the right of self-government, so far as consistent with the Constitution and our national sovereignty.

It is said, by the gentleman from Massachusetts, that the people of Louisiana stand in the same relation to us as if we had obtained the country by conquest. If so, we ought to operate upon them more by the influence of love than fear. It will be acknowledged, on all hands, that the exercise of power must be modified by the terms of the cession; and the treaty stipulates that:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Not content with having provided for their incorporation, inasmuch as the period of incorporation could not be precisely fixed by an express engagement, it provided that, until that period, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess. If by liberty is meant doing that which the laws do not prohibit, then it is immaterial what kind of government be given them; but if, by liberty, it be understood that they shall not be bound by laws to which they have not consented, it is essential that there be given a form of government in which they shall either participate by themselves or through their Representatives. For these reasons, I have no hesitation in declaring, that my vote shall be in favor of striking out the section, and adopting in the place of it one or the other of the grades of Territorial government, or something similar to them.

Messrs. Elliot, Olin, and Elmer supported; and Messrs. S. L. Mitchill, and Lucas opposed the motion to strike out the fourth section, made with the view of extending to the people of Louisiana the elective franchise; when the question was put, and the motion to strike out carried—yeas 80, nays 15.

Mr. G. W. Campbell offered the following substitute:

"The Governor and Judges, or a majority of them, shall adopt and publish in the said Territory, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the Territory, and may also make such laws as they shall deem conducive to the good Government of the inhabitants thereof, and report the same to Congress from time to time, which laws shall be in force in the said Territory until the organization of the General Assembly therein, unless disapproved of by Congress, but afterwards the Legislature shall have authority to repeal or alter them as they shall think fit.

"The Governor or Judges, or a majority of them, shall, as soon as may be, after they are appointed and commissioned, divide the said Territory into —— divisions, to be called counties, in such manner as may best suit the convenience of the inhabitants, each county to contain, as nearly as may be consistent with the nature of the settlements, an equal number of free persons; and the city of New Orleans shall form one county.

"Previous to the organization of the General Assembly, the Governor shall appoint such magistrates, and other civil officers, in each county of the said Territory, as he shall find necessary for the preservation of the peace and good order in the same; after the General Assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, whose appointments are not herein otherwise provided for, shall, during the continuance of this temporary Government, be appointed by the Governor.

"The General Assembly, or Legislature, shall consist of a Legislative Council and a House of Representatives: the House of Representatives shall consist of —— members, of whom —— shall be chosen from the county, including the city of New Orleans, and —— from each of the other counties in the said Territory; a majority of whom shall be a quorum to do business.

"No person shall be eligible or qualified to act as a representative except a free white male, who shall have been a citizen of one of the United States, or of one of the Territories, heretofore belonging to the United States, three years, and be a resident in the county for which he shall be chosen, or who shall have resided in the said Territory of New Orleans three years, and be resident in the county for which he shall be chosen, and in either case shall likewise hold in his own right, in fee, two hundred acres of land within the same.

Every person of the age of twenty-one years, having been a citizen of the United States, or having resided in the said Territory one year immediately preceding any election, shall be qualified to vote for a Representative or Representatives in the county in which he shall reside at the time of such election.

"The Governor and judges, or a majority of them, as soon as may be, after the said Territory shall have been divided into counties, and within —— from the passing of this act, shall make the necessary regulations; and give time and place to the inhabitants of each county of the said Territory, qualified to vote as herein-before prescribed, to elect representatives to represent them in the General Assembly. The representatives thus elected shall serve for the term of one year, and in case of the death of a representative, or removal from office, the Governor shall issue a writ to the county for which he was a member, to elect another in his stead to serve for the residue of the term.

"The Legislative Council shall consist of —— members, to continue in office one year, unless sooner removed by the President of the United States, a majority of whom shall be a quorum to do business; and they shall be appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet, and when met, they shall nominate —— persons, having the same qualifications as are herein declared necessary for representatives, and return their names to the Governor, who shall within —— days thereafter, appoint and commission —— of them to serve as a Legislative Council; and whenever a vacancy shall happen in the Council, by death or removal from office, the House of Representatives shall nominate two persons qualified as aforesaid for each vacancy, and return their names to the Governor, one of whom he shall appoint and commission for the residue of the term. The General Assembly shall meet at least once in every year, at the city of New Orleans, at such time after the first meeting as may be appointed by law. And the Governor shall have power on extraordinary occasions to convene the General Assembly.

"After the first election, representatives shall be elected annually, in such manner as the Legislature may direct, not contrary to the provisions of this act. And a Legislative Council shall likewise be annually appointed, in the manner herein-before directed.

"The General Assembly shall have authority to make laws in all cases for the good Government of the said Territory, not repugnant to the Constitution and laws of the United States. All bills having passed by a majority in the House of Representatives, and by a majority of the Council, shall be referred to the Governor for his assent, but no bill or Legislative act whatever shall be of any force without his assent.

"The Legislature of the said Territory shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory."

The Committee now rose and obtained leave to sit again; and the House ordered the section proposed as a substitute to be printed.

CONTESTED ELECTION.

Mr. FINDLEY, from the Committee of Elections, to whom were referred, during the present session, a representation of Duncan McFarland, of the State of North Carolina, complaining of an undue election of SAMUEL D. PURVIANCE, returned to serve in this House as a member for the seventh election district in the said State; also, sundry depositions and other papers transmitted from the counties of Montgomery and Cumberland, being part of the aforesaid seventh district, in the case of the said contested election; made a report thereon; which was read, as follows:

"That at an election held at the times and places directed by a law of the State of North Carolina, for the election of a member to serve in the eighth Congress, for the seventh district of said State, among other complaints alleged by Duncan McFarland, it is proved by testimony, legally taken in presence of William McCarroll, the voluntary agent of Samuel D. Purviance, that, at the elections held at the different election districts into which the county of Montgomery is, by law, divided, the inspectors and clerks of the elections held at the several election divisions of the said county of Montgomery not only neglected, but refused, to take the oath obliging them to act with justice and impartiality, as directed by an act of Assembly of North Carolina, passed in the year 1802, notwithstanding that they were thereto required by Duncan McFarland, at the opening of the election; therefore, the committee, without deciding on the other complaints made against the said elections, consider the neglect and refusal to take the oath prescribed by law as sufficient ground to set aside the election held for the said county of Montgomery.

"That, with respect to the elections held at the election districts in and for the county of Cumberland, of the Congressional district aforesaid, a notification was given, according to law, by William Cochran, Esq., on the application of Duncan McFarland, on the 5th day of October, 1803, to Samuel D. Purviance, informing him of the times and places where depositions were to be taken, in support of the complaint of Duncan McFarland against the election of the said Samuel D. Purviance.

"That, agreeably to the notification, William McCarroll attended, and acted as the voluntary agent of Samuel D. Purviance; that from the examination taken on this notification, sufficient cause does not appear to change the state of the poll, so far as to set aside the elections held in and for the said county of Cumberland.

"That all the witnesses not appearing agreeably to the said notification, a second notification was left at the house of Samuel D. Purviance, for the said Samuel D. Purviance, or William McCarroll, directed to the said McCarroll, his friend, on the 2d of November, 1803, appointing another examination of witnesses on the 22d, 23d, 29th and 30th days of that month. Of this notification, Samuel D. Purviance, then in Congress, was not informed until the 23d, viz: the day after that on which the examination was to commence, and he had authorized no agent; and neither William McCarroll, nor any other person, attended as his voluntary agent.

"That, on the first day of December, a third notification was left at the house of Samuel D. Purviance, for the said Samuel D. Purviance, or William McCarroll, his agent, or friend, directed to the said William McCarroll, to attend on the ninth and tenth days following, to the further examination of witnesses, as aforesaid; but the notification did not, or could not, reach Samuel D. Purviance, then in Congress, in due time; and neither William McCarroll, nor any other person, in behalf of Samuel D. Purviance, attended.

"It further appears to the committee, that though various irregularities and abuses are set forth in the depositions taken, agreeably to the second and third notifications, and alleged to have been practised at the said election, yet that Samuel D. Purviance had not such notice as put it in his power to attend the said examination of witnesses, or to appoint an agent so to do.

"It further appears, from the documents, that depositions were taken, and examinations made, by magistrates who were not named in the notification issued by the magistrate to whom the application was made, and without a certificate of the matters and proceedings had by him in that behalf, as the law enacted by Congress provides. It also further appears that part of the testimony so taken is in the hand-writing of Duncan McFarland, one of the parties, and signed by the mark of the deponent, inconsistent with the act aforesaid, which provides that the magistrate shall cause the examination to be reduced to writing, in the presence of the parties, or their agents; which the committee are of opinion does not authorize the writing the examination by the parties themselves.

"Influenced by the aforementioned facts and circumstances, the committee are of opinion that the aforesaid testimony, respecting the election held in and for the county of Cumberland, cannot be admitted or acted on by the House.

"By comparing the certified records of the lists of taxables in said county, with the list of votes given at the election now contested, it appears that the number who voted exceeds the number of taxables in the county; viz: the number of persons who voted is 1,159, and the number of free taxable polls taken from the last returns of taxables is 1,117; but the committee discover that the tax lists of any year, agreeably to the laws of North Carolina, are not a perfect record of those who are entitled to vote, because citizens who, at any time, had formerly paid taxes, by the laws of that State, appear to the committee to continue to enjoy the privilege of voting, though they might, for many years, have ceased to pay taxes.

"Therefore your committee are of opinion that there is not sufficient legal testimony to set aside the election of Cumberland county, so as to vacate the seat of Samuel D. Purviance."

The report was referred to a Committee of the Whole on Monday next.

THURSDAY, March 1.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned, was read the third time and passed.

An engrossed bill making an appropriation for carrying into effect the Convention concluded between the United States and the King of Spain, on the eleventh day of August, one thousand eight hundred and two, was read the third time, and passed.

An engrossed bill altering the days of session of the District Court for the District of Virginia was read the third time and passed.

Mr. RODNEY, from the committee appointed, presented a bill for the appointment of an additional Judge for the Mississippi Territory, and for other purposes; which was read twice and committed to a Committee of the Whole on Monday next.

The order of the day for the House to resolve itself into a Committee of the whole House on the bill sent from the Senate, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," being called for, a motion was made, and the question being put that the said order of the day be postponed until to-morrow, it was resolved in the affirmative.

The SPEAKER laid before the House a letter from the Postmaster General, transmitting a detailed report of the amount of postage in each State for three successive years, commencing with the first of October, 1800, and ending on the 30th of September, 1803, together with the expense of transporting the mails on all roads, in each State, and the amount of commissions of postmasters, as well as the other expenses in relation to the post offices, in three books, marked A, B, C, together with a summary report of the same, marked D, in pursuance of a resolution of this House of the fifth December last.—Referred to Mr. EUSTIS, Mr. A. TRIGG, and Mr. HAMPTON, to examine and report their opinion thereupon to the House.

Ordered, That the Committee of the whole House to whom was referred, on the twenty-third and twenty-seventh of January last, a report, in part, of the committee to whom were referred the petitions of sundry residents and purchasers of land in the State of Ohio; also, a farther report, in part, of the same committee, on "the expediency of amending the several acts providing for the sale of the public lands of the United States," be discharged from the consideration of the same.

CONTESTED ELECTION.

The House went into Committee of the Whole on the report of the Committee of Elections, respecting the election of THOMAS LEWIS, the sitting member, declaring him not entitled, and declaring ANDREW MOORE entitled to a seat.

Mr. BALDWIN called for the reading of part of the evidence transmitted from the county of Greenbriar, which being read at the Clerk's table, Mr. B. observed, that as the Committee of Elections were not unanimous in their report, he felt it his duty, being one of those who were opposed to it, to state the ground of their opposition, in the hope that it might influence the House to reject the report. As no facts were detailed in the report as the basis of the result, he had called for the reading of the evidence from Greenbriar, the issue of the election depending on the principles to be adopted relative to the votes of that county. From the facts thus disclosed he was opposed to the report.

The act of Congress regulating the mode of taking evidence relating to contested elections, requires that a notification of the time, place, and object of the examination of witnesses shall be served on the opposite party, a convenient time before the day appointed, that he may be present.

It appeared that the election was in the month of April. The President's proclamation for an extraordinary meeting of Congress was published in July, yet no measures were taken by the petitioner for the examination of witnesses until the

month of September. notified to attend an house in Greenbriar He attended, and the petitioner neglected to appear or proceed in the examination. After this, notification was issued, on the 29th of September, fixing the time for the examination of witnesses at the same place, on the 12th day of October, accompanied with a written direction from the magistrate who issued it, that it should be served by copy five days before the 12th. It appeared by the affidavit on the return, that service was made by posting a copy on the door of the dwelling-house of the sitting member on the 6th of October, after he had left home and was on his way to the seat of Government, in obedience to the proclamation of the President of the United States requiring his attendance in Congress on the 17th of the same month, a distance of three hundred miles from his place of residence; that no person was left residing in his house, and he had no actual notice of the service. That when on his journey, at Lexington, seventy miles from home and more than one hundred from Greenbriar court-house, on the 8th of October, within four days' time of examination, a copy was put into his hands, as also appears by the affidavit.

The sitting member was examination at the court- on the 21st of that month. witnesses attended, but the

This notice he said he did not consider such as ought to bind the sitting member. A notice of five days at least was required by the terms of the warrant; the service on the 8th gave but four days; this of course could not be claimed on any principle as legal service. Of the copy left at his house, it did not appear that he had or could have actual notice, and this alone is the notice which can be pretended to give validity to the evidence.

It is true, that by law, the magistrate issuing the warrant shall fix the time for its service; but he shall also fix a convenient time having respect to the distance. It was a fact well known through the country, that Congress were to meet on the 17th, and that according to the principles assumed in the act fixing the compensation for the travel of members, allowing one day for twenty miles, he might claim fifteen days for his journey. This notice was served within eleven days of the commencement of the session, and after the sitting member had in fact commenced his journey. His appearance was to be within five days of the session. The time fixed could not therefore be convenient or reasonable, even if service had been actually made. Indeed it may well be questioned whether the privilege of the House does not protect its members from the service of a process, so directly calculated to divert their attention from the concerns of the nation, during the period of its privilege, without its consent. He was therefore of opinion that the notice was not such as could on any principle bind the sitting member. It appears from the documents that a friend of the sitting member attended as his voluntary agent, but it also appears that he protested against the notice, and that he neither had instructions nor authority to appear. Such appearance can give no validity to the evidence. He further observed that if the notice, such as it was, should be deemed legal, and the evidence taken under it admissible, he still contended the proof was insufficient to warrant the report.

By the laws of Virginia the right of voting for Representatives in Congress is in freeholders having certain specified quantities of estate, and when entitled by deed or grant with six months' possession. The mode of elections is prescribed by law, and known officers are designated to superintend the elections and certify the result. The result of this election is by the proper officers duly certified in favor of the sitting member. From the return of these officers, under the sanction of their official oath, the presumption is in favor of the due election of the member returned and of the legality of his votes, and cannot be set aside without stronger proof on the part of the petitioner. Let us then examine the proof on which he relies. The proof of the petitioner is in fact nothing more than the land list of the county. He rests his claim on a result of a comparison of the poll with this list, and the rejection of those from the poll whose names are not on the list.

By the poll for the county of Greenbriar, it appears that 589 votes were given for the sitting member, 245 of which do not appear on the land list; and 202 of these are eventually rejected by the committee as bad votes, and thus a majority of 59 is reported in favor of the petitioner. Of the 202 votes thus rejected, 175 were decided to be bad on no other proof than that they were not found on the land list.

As this alone turns the election, it becomes a serious question how far the land list is in any instance, and particularly in this country, a criterion to determine the qualifications of voters. It is not by any express law made a criterion; nor can it from its nature be such, even when most perfect. It appears that a list of lands was made for the purpose of taxation in the year 1782, and that the law of the State requires that the returns shall annually be made to the commissioners of the county, from the registers, of all new titles, and from the clerk of the county, of the records of conveyances. It cannot be presumed therefore that it can show the changes of title within the year, nor of course the right to vote which such titles may convey.

A freeholder by descent or marriage may vote immediately on the acquisition of title; a purchaser may vote after six months' possession, and is not required to record his deed for any purpose under eight months, and his right of voting would continue if the title should never be recorded; a freeholder by lease has also a right to vote; of course there is a numerous class of voters whose right will never appear by the land list. A document which must necessarily be so imperfect ought not in any case to be a criterion by which alone the right of suffrage shall be denied to those whose names do not appear on it. But it is in proof that the land list of the county of Greenbriar is peculiarly inaccurate and imperfect. It is

a new county, and vast tracts of land have been located and patented within a few years, the titles of which do not appear on this list. The deposition of nine persons, including the sheriff, clerk, surveyor, the late and present commissioners, with others, selected as men best acquainted with the circumstances of this list, has been read. Those men on their oaths declare that this list is of their own knowledge unusually inaccurate; that it does not contain half the land in the county; that the returns have not been regularly made to the commissioner, and that no returns of patents have been made from the register's office since the year 1782. That the inaccuracy became so apparent as to induce the Legislature to attempt a revision in 1796. That so many difficulties occurred in the execution of this law that it was repealed in 1799, and the list has never been revised; and, in their opinion, is no criterion whereby to test the important right of suffrage.

It further appears by their deposition that so far as they jointly or severally know the persons objected to because not on the list, they are in possession of real estate, and in their opinion are legal voters. Such is the evidence respecting the land list of this county, coming from witnesses summoned on the part of the petitioner. Yet it is contended, and your committee, by their report, have sanctioned the principle, that this imperfect list, though unsupported even by the affidavit of belief, that those whose names do not appear on it are unqualified, shall turn the proof of the legality of nearly half the votes of the county upon the sitting member; and this too without ever furnishing him with a list of objectionable votes till the moment of examination. Thus not less than 175 voters out of 539 are deprived of the right of suffrage without opportunity of defence.

If this mode of taking proof, without previous notice of the points to which it is to apply, shall be sanctioned by the House; if the land list, however imperfect, is to be the criterion of the qualifications of voters; if the neglect of the petitioner to take his proof in the proper time is to be disregarded; if the privilege of the House and the rights of the member must yield to the humor of the petitioner, surely the House will not suffer the member to be entrapped while in discharge of his duties by notice merely constructive, where the actual presence of the party is so essentially necessary to rebut the presumptions arising from such negative proof.

As Mr. B. was clearly of opinion that the notice given would not sanction the evidence, and that this land was not a criterion whereby to test the right of suffrage, he hoped the House would not agree to the report.

Messrs. Findley and Varnum supported, and Messrs. Jackson and Huger opposed the report. Messrs. R. Griswold, Gregg, Dawson, Early, and J. Randolph, delivered their sentiments with a view principally to obtain explanations of facts or principles involved in the report.

Mr. J. Randolph then moved that the Committee should rise in order to give the petitioner an opportunity of being heard at the bar of the House.

The Committee rose, and the motion was agreed to.

On motion of Mr. Huger, permission was given to the petitioner and the sitting member to be heard by counsel.

The further consideration of the report was then postponed until to-morrow.

Friday, March 2.

Ordered. That the report, in part, of the committee on the petitions of sundry residents and purchasers of land in the State of Ohio, made the twenty-third of January last; also, a further report, in part, of the same committee, "on the expediency of amending the several acts providing for the sale of the public lands of the United States," made the twenty-seventh of the same month, from the consideration of which the Committee of the whole House were yesterday discharged, be referred to Mr. Nicholson, Mr. Morrow, Mr. Dwight, Mr. Brown, and Mr. Bryan, with leave to report thereon by way of bill or bills.

The House resolved itself into a Committee of the Whole on the bill granting further time for locating military land warrants, and for other purposes; and, after some time spent therein, the bill was reported with an amendment thereto; which was read twice and agreed to by the House.

Ordered. That the bill, with the amendment, be engrossed and read the third time to-morrow.

Mr. Nicholson, from the committee appointed, presented a bill relating to ferries in the District of Columbia; which was read twice and committed to a Committee of the whole House to-morrow.

On motion, it was

Resolved. That a committee be appointed to inquire into the expediency of fixing the standard of weights and measures.

Ordered. That Mr. Rodney, Mr. J. Clay, Mr. Tenney, Mr. S. L. Mitchill, and Mr. T. M. Randolph, be appointed a committee pursuant to the said resolution.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar," together with a report of the Committee of Commerce and Manufactures thereon, made the twenty-seventh ultimo; and, after some time spent therein, the Committee rose and reported several amendments to the bill; which were twice read and agreed to by the House.

Ordered. That the said bill, with the amendments, be read the third time to-morrow.

On motion, it was

Resolved. That the Committee of the whole House be discharged from further consideration of the report of the Committee of Commerce and Manufactures on laying a tonnage duty on foreign ships and vessels, to be denominated light-money; and the report of the same committee on various memorials and petitions for the encouragement

of domestic arts, trades, and manufactures; and that the said two reports be referred to the Committee of Ways and Means, with leave to report by bill or otherwise.

The House resolved itself into a Committee of the Whole on the supplementary report of the Committee of Claims, of the first ultimo, to whom was recommitted, on the twelfth of December last, their report on the petition of David Valenzin; and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were severally twice read and agreed to by the House, as follow:

Resolved, That provision ought to be made, by law, for restoring to the legal representatives of David Valenzin the value of the property captured from him in the Mediterranean by the American squadron, in the month of January, one thousand eight hundred and three.

Resolved, That provision ought to be made, by law, for indemnifying the individuals who, during the imprisonment of the said David Valenzin, contributed to his support, and who have defrayed the expenses of his interment.

Ordered, That a bill or bills be brought in pursuant to the said resolutions, and that the Committee of Claims do prepare and bring in the same.

A message from the Senate informed the House that the Senate, in their capacity of a Court of Impeachments, are ready to proceed on the impeachment of John Pickering, in the Senate Chamber, and that the said Chamber is prepared with accommodations for the reception of the House of Representatives. Communicating also an attested copy of the forms of proceeding agreed to by the Senate, to be observed on the trial of the said impeachment.

The said message was read: Whereupon,

Resolved, That the managers appointed on the second of January last, do now attend in the Senate Chamber for the purpose of conducting the impeachment against John Pickering, on the part of this House.

The resolution fixing the period for the adjournment of the two Houses was taken up.

Mr. Nicholson moved a postponement of the further consideration until this day week; which was disagreed to by yeas and nays—yeas 52, nays 62; when,

On motion of Mr. J. Clay, a postponement was made to Monday—yeas 72.

The bill providing for the civil expense of the government of Louisiana, appropriating $20,000, having passed through Committee of the Whole, was ordered to a third reading to-morrow.

Mr. Thomas observed, that some time ago, when a resolution proposing an amendment to the Constitution designating the persons voted for as President and Vice President was before that House, a motion had been made and repeated, to consider at the same time another resolution proposing an amendment districting the States for the choice of Electors of President and Vice President; at that time, although he was decidedly in favor of amending the Constitution so as to direct the States to be districted for the choice of Electors by the people, he opposed these motions, because he was against blending the two amendments in one proposition; he considered that each ought to stand on its own merits, but as the one designating the President and Vice President has been agreed to, and sent out to the States, and which he was happy to hear had been generally approbated by the State Legislatures, he now wished to consider the other proposition; and in order to try the sense of the House whether they would take it up for this session or not, he moved that the resolution proposing an amendment to the Constitution districting the States for the choice of Electors of President and Vice President, be committed to a Committee of the whole House on the state of the Union.

The motion was lost.

Saturday, March 3.

An engrossed bill granting further time for locating military land warrants, and for other purposes, was read the third time and passed.

An engrossed bill providing for the expenses of the civil government of Louisiana, was read the third time and passed.

The bill sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar," together with the amendments agreed to yesterday, was read the third time. And on the question that the same do pass, it was resolved in the affirmative.

Resolved, That the title of the said bill be, "An act to provide for light-houses and buoys, in the cases therein mentioned, and to establish the district of St. Mary's for that of Nanjemoy."

On motion, it was

Resolved, That the Committee of Ways and Means be directed to prepare and report a bill to authorize the Secretary of the Treasury to suspend, for a limited time, the collection of bonds due to the United States by merchants of Norfolk and Portsmouth, in Virginia, who have suffered by the late conflagration of part of the town of Norfolk.

The Speaker laid before the House a letter from the Secretary of the Treasury, transmitting a statement of the emoluments of the officers employed in the collection of the customs for the year one thousand eight hundred and three, together with a letter from the Comptroller of the Treasury thereon; which were read, and ordered to be referred to the Committee of Commerce and Manufactures.

Mr. J. C. Smith, from the Committee of Claims, presented a bill for the relief of the legal representatives of David Valenzin, deceased, and for other purposes; which was read twice and committed to a Committee of the whole House on Monday next.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House, as soon as may be, a particular statement of all the moneys which, since the establishment of the present Government, have been

paid as fees to assistant counsel, and for legal advice in the business of the United States, distinguishing the several sums, when paid, for what services, and to whom paid, respectively:

The question was taken thereupon, and resolved in the affirmative—yeas 99, nays 3, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, William Butler, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Clagget, Thomas Claiborne, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, David Hough, Benjamin Huger, Samuel Hunt, William Kennedy, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Thomas Plater, Samuel D. Purviance, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Joshua Sands, Tompson J. Skinner, James Sloan, John Smilie, John Cotton Smith, John Smith of Virginia, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, John Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston,

Nays—Joseph Bryan, John Rhea of Tennessee, and Abram Trigg.

CONTESTED ELECTION.

The report of the Committee of Elections on the memorial of Andrew Moore, respecting the seat held by Thomas Lewis, was again taken into consideration.

Mr. Moore appeared at the bar, and spoke in favor of his memorial, claiming the seat of Mr. Lewis.

Mr. Jones, the counsel of Mr. Lewis, then spoke in favor of his right to his seat.

Mr. Griffin moved to postpone the further consideration of the report until the first Monday in December; which motion was rejected—yeas 37, nays 73, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Peter Early, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams and Marmaduke Williams.

Nays—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, James Elliot, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Joseph B. Varnum, Matthew Walton, Richard Winn, Joseph Winston, and Thomas Wynns.

Mr. J. Clay spoke against the report, on the ground that the sitting member had not received due notice to examine witnesses on a canvass of votes in one of the counties.

Mr. J. Randolph spoke at length in favor of that part of the report which declares the sitting member not entitled to his seat, without expressing an opinion on admitting Andrew Moore to the seat; when the House adjourned without taking any question on the report.

Monday, March 5.

Mr. Nicholson, from the committee appointed on the second instant, presented a bill supplementary to the act, entitled "An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee;" which was read twice and committed to a Committee of the Whole House to-morrow.

Mr. Nicholson, from the committee, presented a bill making provision for the disposal of the public lands in the Indiana Territory, and for other purposes; which was read twice and committed to a Committee of the Whole House on Thursday next.

Mr. S. L. Mitchill, from the Committee of Commerce and Manufactures, to whom was referred, on the ninth ultimo, the memorial and petition of sundry citizens of Baltimore, in the State of Maryland, and mariners of the United States in the said city, made a report thereon; which was read, and referred to the Committee of the Whole House to whom was committed, on the third of January last, a motion respecting "the application of surplus moneys collected in the different ports of the United States for the relief and maintenance of sick and disabled seamen."

Mr. John Randolph, from the Committee of Ways and Means, presented a bill for the relief of

the sufferers by fire in the town of Norfolk; which was read twice, and ordered to be engrossed and read the third time to-day.

A message from the Senate informed the House that the Senate, in their capacity of a Court of Impeachments, will, at 12 o'clock, to-morrow, open the said Court, in the Senate Chamber, and be ready to proceed on the trial of the impeachment of John Pickering.

CONTESTED ELECTION.

The House resumed the consideration of the report of the Committee of Elections on the petition of Andrew Moore, respecting the seat held by Thomas Lewis.

Mr. R. Griswold moved a postponement of the further consideration of the report till the first Monday in November, that in the meantime opportunity should be given to ascertain facts.

Mr. Dawson opposed the postponement.

Mr. J. Clay also opposed the postponement; and declared, for reasons assigned by him, that he should vote in favor of the first part of the report, declaring that Thomas Lewis does not appear to be entitled to a seat, and against the second part, declaring Andrew Moore entitled to a seat, that a new election might be held.

A debate ensued on the motion to postpone, which continued the whole day; when the question was taken, and the motion lost—ayes 36.

The question was then taken by yeas and nays on the first member of the report, viz: that Thomas Lewis, not being duly elected, is not entitled to a seat in this House and carried in the affirmative—yeas 68, nays 39, as follows:

Yeas—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Ebenezer Elmer, Wm. Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Wm. Helms, William Hoge, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Matthew Walton, Richard Winn, and Joseph Winston.

Nays—Willis Alston, jr., Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Peter Early, James Elliot, William Eustis, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

The question was then put, that the House do agree to the second and last member of the said last clause of the report, in the words following, to wit:

"And that Andrew Moore, who has the highest number of votes, after deducting the before-mentioned unqualified votes from the respective polls, is duly elected, and entitled to a seat in this House:"

And resolved in the affirmative—yeas 64, nays 41, as follows:

Yeas—Isaac Anderson, David Bard, Geo. Michael Bedinger, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, Ebenezer Elmer, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Joseph B. Varnum, Matthew Walton, Richard Winn, and Joseph Winston.

Nays—Willis Alston, jun., John Archer, Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Joseph Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Wm. Eustis, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, James Mott, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, John Cotton Smith, Henry Southard, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Whereupon, the said Andrew Moore took his seat in the House as the Representative for the district composed of the counties of Botetourt, Rockbridge, Kenawha, Greenbriar, and Monroe, in the State of Virginia; the oath to support the Constitution of the United States being first administered to him by Mr. Speaker, according to law.

Tuesday, March 6.

Mr. Varnum, from the committee appointed, presented, according to order, a bill supplementary to the act, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia;" which was read twice, and committed to a Committee of the whole House to-morrow.

Ordered, That the Committee of the whole House, to whom was referred, on the twenty-ninth ultimo, a report of the committee appointed "to inquire whether the moneys drawn from the Treasury of the United States, on account of the Marine Corps, from the year one thousand seven hundred and ninety-eight to the end of the year one thousand eight hundred and three, have been fully applied to the public service, in conformity to the existing laws," be discharged from the consideration thereof; and that the said report be recommitted to Mr. Leib, Mr. Boyle, Mr. Van Rensselaer, Mr. A. Moore, and Mr. N. R. Moore.

Mr. Thompson, from the committee appointed on the Message of the President respecting the state of the public buildings in Washington, made a report, stating the objects on which the sum appropriated at the last session was expended, expressing their opinion that two annual appropriations of fifty thousand dollars ought to be made, and will be sufficient to finish the south wing of the Capitol in a commodious manner, and recommending an immediate appropriation of fifty thousand dollars.—Referred to a Committee of the Whole.

Mr. Varnum moved a resolution for the appointment of a committee to consider if any and what alterations are necessary in the Military Peace Establishment.—Agreed to.

[Mr. V. founded this resolution on the expediency of increasing the number of surgeons' mates, rendered necessary by the increased garrisons, arising out of the possession of Louisiana, and on an opinion entertained of the propriety of substituting malt in the room of spirituous liquors.]

Mr. J. Randolph, from the committee appointed on the seventh of January last, "to inquire into the official conduct of Samuel Chase, one of the associate justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania; and to report their opinion whether the said Samuel Chase and Richard Peters, or either of them, have so acted, in their judicial capacity, as to require the interposition of the Constitutional power of this House," made a report thereon; which was read, and ordered to be referred to a Committee of the Whole House on Monday next.

A petition of the members of the Richmond James River Company, signed in behalf of the said company by Robert Pollard, their chairman, was presented to the House and read, praying that the assent of Congress may be given to an act of the General Assembly of the State of Virginia, entitled "An act for improving the navigation of James river;" which was read, and referred to Mr. Clopton, Mr. Cutts, and Mr. Conrad; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

An engrossed bill for the relief of the sufferers by fire in the town of Norfolk was read the third time and passed.

The House resolved itself into a Committee of the Whole on the report of the Committee of Elections, to whom were referred, during the present session, a representation of Duncan McFarland, of the State of North Carolina, complaining of an undue election of Samuel D. Purviance, returned to serve in this House as a member for the seventh election district in the said State; as also sundry depositions and other papers transmitted from the counties of Montgomery and Cumberland, being part of the aforesaid seventh district, in the case of the said contested election; and, after some time spent therein, the Committee rose, reported progress, and were discharged from the further consideration thereof.

Resolved That the Committee of Commerce and Manufactures be directed to inquire into the propriety of repealing the ninth section of the act, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen;" and that they have leave to report by bill.

QUESTION OF ADJOURNMENT.

The House proceeded to the further consideration of the report of the joint committee of the two Houses "on the business necessary to be done by Congress in their present session, and when it may be expedient to close the same," made on the twentieth ultimo. Whereupon, the resolution submitted by the said committee being read, in the words following, to wit:

"*Resolved*, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the second Monday in March next:"

A motion was made, and the question being put, to amend the said resolution by striking out therefrom the words "second Monday in March next," it was resolved in the affirmative.

Another motion was then made and seconded, that the further consideration of the said resolution, as amended, be postponed until Monday next; and the question being put thereupon, it passed in the negative—yeas 44, nays 56, as follows:

Nays—Willis Alston, jr., John Archer, David Bard, William Blackledge, Adam Boyd, Joseph Bryan, George W. Campbell, Thomas Claiborne, Joseph Clay, Manasseh Cutler, William Dickson, John B. Earle, Peter Early, William Findley, John Fowler, James Gillespie, James Holland, David Hough, Walter Jones, Michael Leib, Joseph Lewis, jr., John B. C. Lucas, Matthew Lyon, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, Samuel Taggart, Abram Trigg, Philip Van Cortlandt, Peleg Wadsworth, and Matthew Walton.

Nays—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, John Boyle, Robert Brown, William Butler, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Davenport, John Dawson, Thomas Dwight, James Elliot, Ebenezer Elmer, Peterson Goodwyn, Andrew Gregg, Roger Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Helms, William Hoge, Benjamin Huger, William Kennedy, Nehemiah Knight, Thos. Lowndes, Andrew McCord, Nahum Mitchell, Anthony New,

Gideon Olin, Beriah Palmer, Oliver Phelps, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Ebenezer Seaver, John C. Smith, William Stedman, John Stewart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, John Trigg, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

Another motion was then made, and the question being put, that the further consideration of the said resolution, as amended, be postponed until Friday next, it passed in the negative—yeas 40, nays 64, as follows:

Yeas—John Archer, David Bard, William Blackledge, Adam Boyd, Joseph Bryan, George W. Campbell, Thomas Claiborne, Joseph Clay, Matthew Clay, Manasseh Cutler, William Dickson, Peter Early, William Findley, John Fowler, James Gillespie, James Holland, Michael Leib, Joseph Lewis, jun., John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Samuel L. Mitchill, Andrew Moore, N. R. Moore, Jeremiah Morrow, Thomas Newton, jun., Joseph H. Nicholson, John Randolph, John Rhea of Tennessee, Erastus Root, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Abram Trigg, Philip Van Cortlandt, Peleg Wadsworth, Matthew Walton, and Joseph Winston.

Nays—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, William Butler, Levi Casey, Clifton Claggett, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, Thomas Dwight, James Elliot, Ebenezer Elmer, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, William Helms, William Hoge, David Hough, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, Anthony New, Gideon Olin, Beriah Palmer, Oliver Phelps, Thomas Plater, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Cotton Smith, Henry Southard, Joseph Stanton, Wm. Stedman, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, John Trigg, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Lemuel Williams, Marmaduke Williams, and Richard Winn.

Another motion was then made and seconded to fill up the blank in the said resolution, as amended, with the word "fourth Monday in the present month:" And the question being put thereupon, it passed in the negative—yeas 24, nays 83, as follows:

Yeas—John Archer, Adam Boyd, Thomas Claiborne, Joseph Clay, Frederick Conrad, John B. Earle, Peter Early, William Findley, Thomas Griffin, William Helms, James Holland, David Hough, William Kennedy, Michael Leib, Matthew Lyon, Samuel L. Mitchill, Jeremiah Morrow, Thomas Newton, jun., Joseph H. Nicholson, Cæsar A. Rodney, Erastus Root, James Sloan, John Smilie, and Peleg Wadsworth.

Nays—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Phanuel Bishop, William Blackledge, John Boyle, Robert Brown, William Butler, Levi Casey, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Gaylord Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Hoge, Benjamin Huger, Walter Jones, Nehemiah Knight, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Andrew McCord, David Meriwether, Nahum Mitchell, Andrew Moore, Nicholas R. Moore, Anthony New, Gideon Olin, Beriah Palmer, Oliver Phelps Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Cotton Smith, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

Another motion was then made, and the question being put, to fill up the blank in said resolution, as amended, with the words "third Monday in the present month;" it was resolved in the affirmative—yeas 81, nays, 27 as follows:

Yeas—Isaac Anderson, Simeon Baldwin, George Michael Bedinger, Silas Betton, Phanuel Bishop, John Boyle, Robert Brown, William Butler, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowinshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Hoge, Jas. Holland, David Hough, Benj. Huger, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Andrew McCord, Nahum Mitchell, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Gideon Olin, Beriah Palmer, Oliver Phelps, Thomas Plater, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Ebenezer Seaver, John Smilie, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Willis Alston, junior, John Archer, William Blackledge, Adam Boyd, Joseph Bryan, Joseph Clay, William Dickson, John B. Earle, Peter Early, John Fowler, William Helms, Michael Leib, Joseph Lewis, junior, Matthew Lyon, David Meriwether, Andrew Moore, Thomas Newton, junior, Joseph H. Nicholson, John Randolph, John Rhea, of Tennessee, Cæsar A, Rodney, Erastus Root, Thomas Sandford, James Sloan, Henry Southard, Richard Stanford, and Matthew Walton.

And the main question being taken, that the House do agree to the resolution, amended to read as follows:

Resolved, That the President of the Senate and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on the third Monday in the present month:

It was resolved in the affirmative.

IMPEACHMENT OF JUDGE PICKERING.

Mr. Nicholson, from the managers appointed the second of January last, to conduct the impeachment, on the part of this House, against John Pickering, District Judge of the United States for the district of New Hampshire, made a report; which he delivered in at the Clerk's table, where the same was read, and is as follows:

"The managers appointed on the part of this House to appear at the bar of the Senate, for the purpose of supporting the articles of impeachment against John Pickering, District Judge of the district of New Hampshire, for high crimes and misdemeanors, report:

"That, on Friday, the second of March, the managers, agreeably to the directions of the House, appeared at the bar of the Senate to support the said articles of impeachment, when John Pickering was three times solemnly called, but did not answer or appear, either in person or by counsel. The President of the Senate then stated, that he had received a letter signed R. G. Harper, accompanying a petition signed Jacob S. Pickering, who called himself the son of the party charged. The petition being read, it was found to contain a statement of a variety of matter, particularly the insanity of Judge Pickering, upon which the prayer of the petition was founded for a postponement of the trial to some future day. Mr. Harper was called to the bar of the Senate; he entered, and stated, that he wished it to be distinctly understood, that he did not appear at the bar of the Senate as counsel for John Pickering, from whom he had received no authority for that purpose; but that his only object was to support the facts contained in the petition of Jacob S. Pickering, and the prayer thereof. There was a short pause; when Mr. Harper rose again, and inquired whether his appearance, in support of the petition, would be construed as the appearance of John Pickering, by counsel? The President of the Senate answered, he presumed, that Mr. Harper's appearance would not be considered as the appearance of John Pickering, by counsel.

"The managers, under these circumstances, felt themselves bound to object to Mr. Harper's being heard in any other capacity than as counsel for the party who was impeached; and briefly stated their reasons for the objection. The Senate withdrew to a private chamber, where it is presumed the question was debated. The managers again appeared at the bar of the Senate, this day, and were informed by the President, that it had been resolved to hear Mr. Harper in support of the allegations contained in the petition of Jacob S. Pickering, and the prayer thereof. The managers inquired at what point of time it was intended that Mr. Harper should be heard, and whether this was to be a measure preliminary to the trial? The President of the Senate declared that he could not undertake to explain the resolutions of the Senate; but that their sense must be collected from the resolutions themselves. The managers then offered themselves ready for trial, declaring that they were prepared to open the prosecution on behalf of the House of Representatives; and that the witnesses were ready to prove the facts charged in the articles of impeachment. Upon this offer being made, the President of the Senate stated, that he considered it to be the sense of the Senate that Mr. Harper was to be heard before the trial commenced.

"The managers considering this as an irregular step, and not believing that they ought to discuss any petition presented to the Senate from a person who was not a party to the impeachment, and this, too, before the party charged, although duly notified, had appeared, either in person or by attorney, withdrew from the Senate Chamber. They will not feel themselves either bound or authorized to appear again, until the Senate shall inform them that they are prepared to proceed in the trial, unless specially directed by this House."

Mr. Smilie moved the following resolution:

Resolved, That this House doth approve of the conduct of the managers appointed to support the articles of impeachment in the case of John Pickering, as stated in their report of this day, and that the said managers do not appear at the bar of the Senate until they shall be specially instructed by this House.

Mr. Elliot moved to strike out the words "as stated in their report of this day."

Mr. Elmer remarked that the managers appeared to consider the proceedings of the Senate incorrect. This might be the case; but, from the information before him, he was not prepared to say so. He was of opinion that the Senate were the sole judges of the mode of conducting the trials before them.

Mr. Smilie.—The Senate undoubtedly have the right of fixing their mode of procedure; but if that mode shall be such as to interfere with our rights, we have a right to insist upon them. Such a procedure, as has been adopted by the Senate, in the present instance, I have never heard of. But if the managers are satisfied with what has been already done, without any further act on the part of the House, I am also. It is my wish that they would inform us what they desire.

Mr. Dana.—It is very proper for the managers of an impeachment to apply to the House on the occurrence of a new case; but it is not necessary for the House to express an opinion of their conduct in every stage of the trial. It may be proper to give them instructions when they desire it; but it is not necessary to pass a vote of approbation or disapprobation on their conduct. In this case it is entirely useless, and may be injurious. I therefore move the previous question.

Mr. Nicholson.—The managers entertain no other desire but that of being guided, in the discharge of the duty devolved upon them, by the directions of the House. They would deem it a matter of extreme regret, were the House to disapprove their conduct on the present occasion. But no individual among them—I speak for myself, and believe I may likewise speak for all those associated with me—wishes a vote of approbation by this House. I would, therefore, be pleased if the gentleman would agree to strike out that part of the resolution which expresses such approbation. If the mover does not agree to this modification, I shall take the liberty of moving it.

Mr. Smilie.—I cannot agree to strike out this part of the resolution, as it is, in my opinion, the most important part of it. The conduct of the Senate has met with the disapprobation of the

managers, and they have withdrawn from the court. Their conduct must be right or wrong. It is proper for the House to express an opinion, whether it is correct or incorrect.

Mr. NICHOLSON observed that on further reflection he did not consider himself at liberty to make any motion, or to vote on any made, on the subject before the House.

Mr. G. W. CAMPBELL was of opinion that it would only be necessary for the House to express an opinion, in case they disapproved the conduct of the managers.

Mr. HUGER declared himself of the same opinion.

Mr. J. LEWIS moved a postponement of the further consideration of the motion until to-morrow.

Mr. SMILIE had no objection to the postponement.

All further procedure was arrested by the agreement to a motion of Mr. NICHOLSON to adjourn—yeas 60.

WEDNESDAY, March 7.

The House resolved itself into a Committee of the Whole on the bill supplemental to the act, entitled "An act concerning the City of Washington; and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That said bill, with the amendments, be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and four, with several amendments; to which they desire the concurrence of this House. And that the Senate, in their capacity of a Court of Impeachments, are now ready to receive and hear the managers appointed on the part of this House, in support of the articles of impeachment against John Pickering, District Judge of the district of New Hampshire.

GEORGIA CLAIMS.

The House resolved itself into a Committee of the Whole on the bill providing for the settlement of sundry claims to public lands lying south of the State of Tennessee; to which Committee of the Whole were also referred, on the twentieth ultimo, a motion containing sundry resolutions "respecting claimants to the said lands under an act of the Legislature of the State of Georgia, passed in the year one thousand seven hundred and ninety-five."

Mr. J. RANDOLPH called for the reading of sundry resolutions lately offered by him on this subject. The resolutions having been read, Mr. R. said, when he had submitted them, it was with the view of trying the question then before the Committee as he thought fairly. It was no part of his intention to embarrass the operations of the friends of the bill, further than to take the sense of the Committee and of the House on each specific proposition embraced by the resolutions. His wish, therefore, was, that the sense of the Committee, in the first instance, should be taken on the resolutions. If they should be rejected, the vote of rejection would be a virtual admission of the claims of 1795; and gentlemen might then modify the bill in such manner as might best please them to do.

The CHAIRMAN said he was of opinion, that the bill being first committed had the preference.

The first section of the bill was then read, and no objections made to it, as follows:

"*Be it enacted*, That the Secretary of State, the Secretary of the Treasury, and the Attorney General for the time being, shall be, and they are hereby appointed Commissioners on the part of the United States, to receive propositions of compromise and settlement from the several companies, and persons having claims to public lands lying west of the State of Georgia, and south of the State of Tennessee, derived under any act or pretended act of the State of Georgia; and the said Commissioners are authorized to compound and settle the same, in such manner as they shall deem most advantageous to the interests of the United States: *Provided, however*, That in such settlement due regard shall be had to the articles of agreement and cession entered into on the twenty-fourth day of April, in the year one thousand eight hundred and two, between the United States and the State of Georgia; and to the provisions of an act of Congress passed on the third day of March, in the year one thousand eight hundred and three, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

The second section was read, as follows;

SEC. 2. *And be it further enacted*, That the time limited in the last above recited act for exhibiting and recording evidences of claims in the Secretary of State's office, shall be, and the same is hereby, extended to the first day of March next: *Provided*, That nothing in this act contained, shall ever be hereafter construed to recognise or affect the said claims or any of them.

Mr. NICHOLSON said the bill provided for a settlement of claims to public lands south of the State of Tennessee, and the power was given to certain officers to make the settlement. Since the bill had been reported, he was induced to think that the settlement ought not to be binding without giving Congress an opportunity of considering it. He would therefore offer a section to this effect. Mr. N. accordingly offered a motion directing that the report of the Commissioners should be binding, unless this act be repealed within six months after the settlement shall be made; he observed that a similar provision had been made in the articles of cession between the United States and Georgia.

Mr. LUCAS opposed the amendment on the ground that it did not extend far enough; and contended for the propriety of vesting in Congress unlimited power over the subject; and moved to amend the motion of Mr. NICHOLSON, by adding "if approved by Congress shall be binding on the United States."

Mr. NICHOLSON said he would only observe that if this amendment should be agreed to, it would leave the business in the same situation in

which it now stood, Commissioners having been already authorized to make a settlement, to be binding when ratified by the United States.

Mr. LUCAS's amendment was then rejected—yeas 45, nays 50.

The motion of Mr. NICHOLSON recurring,

Mr. BEDINGER said, the foundation was so bad that the superstructure could not be amended. It was degrading to the United States to compel Congress within six months to approve or disapprove the act of any three individuals. Suppose the settlement were made at the close of a session, it would be necessary in that case to convene Congress.

The question was then taken on Mr. NICHOLSON's amendment, and decided in the negative—yeas 38, nays 51.

Mr. J. RANDOLPH said, he would move an amendment, which would try the merits of the question, to wit: to strike out the words "or pretended act," and insert an additional proviso, at the end of the section, as follows: "And provided that no proposition of compromise or settlement be received by the said Commissioners, from any persons claiming under any act or pretended act of the State of Georgia, alleged to be passed during the year 1795."

A division being called for, the question was first taken on striking out the words "pretended act," and passed in the negative—yeas 44, nays 55.

The question was then taken on inserting the additional proviso at the end of the section, which likewise passed in the negative—yeas 46, nays 57.

Mr. VARNUM moved, that the Committee should rise, report their agreement to the bill without amendment, and that they had made some progress in considering the resolutions referred to them.

Mr. RODNEY hoped the the Committee would first consider the resolutions, and take a question on them. To rise in this stage of the business would be to give them the go-by.

Mr. ELMER.—The Committee have already sufficiently considered them; the amendment just moved embraces their substance. That amendment has been negatived; the other resolutions are confined to abstract points.

Mr. RODNEY.—I hope the Committee will not rise, but that they will consider the resolutions. It is said the principle of the resolutions is contained in the amendment offered by my friend from Virginia. I take those resolutions to contain premises from which certain inferences must flow. They contain what I believe to be the vital principles of government, and require no proof to elucidate them; like axioms in mathematics, they only require to be stated to be self-evident. It is not, therefore, my desire to go into their discussion, but it is my desire to learn whether we are agreed among ourselves. I wish to know whether the Government of Georgia were at any time "invested with the power of alienating the right of soil 'possessed by the good people of that State, in 'and to the vacant territory of the same, but in 'a rightful manner and for the public good." I wish to know why, "when the governors of any 'people shall have betrayed the confidence reposed 'in them, and shall have exercised that authority 'with which they have been clothed for the general welfare, to promote their own private ends, 'under the basest motives and to the public detriment," it is *not* the "inalienable right of a people 'so circumstanced to revoke the authority thus 'abused, to resume the rights thus attempted to 'be bartered, and to abrogate the act thus endeavoring to betray them." I wish to proceed in the same manner, and see if the premises are not good and the inferences sound. If this shall appear to be the case, it will not be too late to adopt the amendment proposed by my friend, and express a decided opinion on the celebrated act of 1795. So much has been, however said on this subject, that I will not at present further trespass on the patience of the Committee.

Mr. MITCHILL.—These resolutions tend to involve Congress in the proceedings of the State of Georgia. I consider myself as one of those who, by assenting to certain acts heretofore passed by Congress, have consented to a hearing and compromise with the grantees. If this construction be correct, the Committee are precluded from adopting these resolutions; nor is it proper, in my opinion, for Congress to go into a view of the proceedings of Georgia on this occasion. That State is sovereign to a certain extent, and this Government possesses no right to interfere with her sovereignty. Attached to this sovereignty is the right of granting land belonging to her. But it is alleged that Georgia was, in the year 1795, in a disorderly state, and that a certain Legislature in that year did a certain act which a subsequent Legislature declared to be totally unauthorized. This may be so. It is certain the second Legislature declared the act of the first null, under circumstances of a very extraordinary nature. I do not, however, see that it is our duty to give an opinion whether the Legislature of Georgia acted wickedly or uprightly. Which ever course they may have pursued, I do not believe this body to be a Constitutional board of censors. We find frequent occasions enough on which, without going out of our way, our duty calls upon us to give our opinions. Believing this to be an occasion on which no opinion is required from us, and one which it is most prudent to pass by without giving such opinion, I wish not to vote for or against the resolutions. I am, therefore, for the Committee's rising and reporting the bill. If this motion does not succeed, I shall be prepared to move a postponement of the whole subject until the first Monday in December. By so doing, I am ready to avow that my object is to get rid of the discussion of the resolutions, and to avoid voting on them in detail.

Mr. J. RANDOLPH.—I had hoped that when these resolutions were sent from the House to the Committee, they would have received the respectful attention to which every such reference is entitled; and that the Committee would at least have deemed them worthy of some expression of opinion on them; that they would have deigned to say whether the reasoning or facts contained in them

are or are not erroneous and unfounded. The gentleman from New York tells the Committee that, by an act passed at a previous session of Congress, a pledge has been given to a certain description of claimants under the act of 1795, to do something in relation to their claims. If so, is this a reason for not acting on the resolutions? No; it is a reason for taking them up and rejecting them. One of those resolutions says, and I am prepared to prove it true, and I call on gentlemen to show its falsehood, "that the claims of persons derived under the act of January first, 1795, are recognised neither by any compact between the United States and the State of Georgia, nor by any act of the Federal Government." I deny that they are so recognised. If they are, what can be easier than for the learned gentleman to refer to the compact under which they are recognised? This he cannot show, and hence his unwillingness to express an opinion. At an antecedent session we passed a law on this subject. The gentleman may have given his vote for this law under the impression he states, but it does not follow that the Legislature acted under the same impression; on the contrary, I know several gentlemen who voted for it, though hostile to the claims under the act of 1795 because it contained a general provision for claims, and did not particularly recognise those arising under the act of 1795; and now, because Congress have passed an act of a general nature, when it was notorious there are a variety of claims besides those under the act of 1795, and none of which are mentioned either in the compact or treaty with the State of Georgia, it is said we have given a pledge, and we are called upon to fulfil it. And this language is held by gentlemen who, in the same breath, have expressed a disposition to reject another description of claims. Could absurdity speak in stronger language? A general appropriation has been made by Congress for claims; the claims preferred are of two classes—those under the acts of 1789 and 1795. There might have been claims of an hundred other descriptions—for all these Congress have made a general appropriation—and yet we are told by gentlemen hostile to the claims of 1789 that we are pledged to provide for those of 1795. If we are pledged to satisfy one description, are we not equally pledged to the other? But the truth is, we have given no pledge. If we have, nothing is so easy as to refer to the statute book, and to point it out. No such pledge is recognised by our compact with Georgia. While I am up permit me to say, if the compact with Georgia be construed according to its letter, the appropriation of $5 000,000 ought to be considered as not embracing claims under the act of 1795, for the best reason in the world: the statute book of Georgia shows the reason. But, say gentlemen, we possess the power to satisfy these claims, though such satisfaction may not have been contemplated by our compact with Georgia. There must, say they, have been an understanding between the Commissioners of Georgia and our Commissioners in favor of compromising them, and therefore it is inferred that we ought to be governed more by the *quo animo* with which the compact was formed than by its strict letter; it is accordingly attempted to be proved, that there was an understanding between our Commissioners and those of Georgia, that relief should be extended to claimants under the act of 1795. I am authorized by the Commissioners to say that this was not the case. Whether, therefore, we are governed by the strict letter of the contract, or by the *quo animo*, we cannot discover the grounds for this opinion. I have been told, in a way which removes all doubts, by the Commissioners on both sides, at least by a Commissioner of the United States having a great participation in the business, and by the Georgia Commissioners, that the stipulation in the compact was not inserted at the instance of Georgia, but reluctantly inserted by them at the instance of the Commissioners of the United States.

When I rose, it was no part of my intention to make this reply to the remarks of the gentleman from New York, who considers us as precluded by a former vote from putting aside all claims under the act of 1795. If this is the case, why not take up the resolutions and negative them? When under consideration, he can assign his reasons against them, and if he is of opinion they go to violate the rights of an independent State, that is a reason which no gentleman need be ashamed to avow. I trust, therefore, if the resolutions are false, either in principle or in fact, the Committee will say so. If they are passed over in silence by the Committee, I shall certainly move them again in the House. I ask gentlemen, therefore, to say how their difficulty will be got over? unless we are told that, being in possession of the Committee, the House will be precluded from acting upon them. If this is the course intended to be pursued, I hope gentlemen will avow it. No course that can be pursued shall prevent me from bringing out the sense of the House. Whether the question on these resolutions shall be attempted to be got rid of by the previous question, or by a postponement, I will have the sense of the House expressed to the public; for this is one of the cases which, once being engaged in, I can never desert or relinquish, till I shall have exercised every energy of mind, and faculty of body I possess, in refuting so nefarious a project.

Mr. Elliot said he hoped that the Committee would not be intimidated by the threats of individual members, or induced by any means whatever to swerve from the correct course of proceedings. He hoped they would act with independence and with dignity. In respect to the manner of performing the business of legislation, no member can claim the right of exercising dictatorial powers. Yet we are told that we shall, at all events, pursue a particular course of conduct, and shall be compelled to give a separate vote upon every member of a connected series of abstract propositions, although we may be of opinion that the whole are improper to be acted on at all. Are we to be governed by violence? Are we to resort, on this occasion, to revolutionary principles? Shall the *ipse dixit* of the honorable mover prevent our precluding, in such manner as we may deem proper, a discussion

which we may consider as impolitic and useless? It will not be denied that the result and the only possible result of the whole chain of resolutions before us, has been negatived by a majority of the Committee, in the form of an amendment to the bill upon your table. I believe it to be a maxim as well established as any of those which have this day been asserted as incontrovertible, that a majority should govern in a republican Government. Mr. E. hoped the Committee would carry this correct theory into practice on the present occasion.

The observations of the gentleman from New York (Mr. Mitchill) appear to me, said Mr. E. peculiarly impressive. But, I have other objections to the resolutions, still stronger than those urged by that gentleman. I believe them repugnant to the spirit if not to the express letter of the Constitution of the United States. By that great national compact, all those rights and powers appertaining to the States, and not expressly yielded to the General Government, are reserved to the States respectively, or to the people. The Legislative powers of the State of Georgia, alluded to in these resolutions, belong to the class which has never been given up to the Union. We have no power, therefore, to make any decision upon their validity or invalidity, or to delineate the sphere or extent of their operation. It would be an act of usurpation. Whatever idea may be entertained of inquisitorial and censorial powers, in relation to other subjects, there can be no doubt that this would be an assumption, on the part of Congress, of inquisitorial and censorial powers over the State governments.

I hope the Committee will rise, and that an unnecessary and dangerous discussion will be closed as soon as possible. I regretted that the mover of the resolution announced his determination to compel us to record our votes upon a variety of propositions, however inconsistent with our own ideas of propriety and policy. I regretted that we were under the necessity of demolishing this blooming and wide-spreading tree of resolutions, by single branches. I am gratified that the gentleman from Massachusetts (Mr. Varnum) has laid the axe to its root, and that we are enabled to prostrate it in the dust in a moment, "with all its blushing honors thick upon it."

Mr. Eustis said, in seconding the motion of his colleague, it was his desire that the bill should be reported, and the resolutions virtually dismissed from further consideration. Should the Committee, therefore, agree to rise, he should vote against their having leave to sit again on the resolutions. At this time, he should express no opinion respecting them. Whether they contained sound political axioms, or not, and such as the House ought to adopt, he would not say. He took it for granted they were offered to produce an effect on the conduct of the House in their Legislative capacity. Such was their avowed object. They all tended to one point, to the result embraced by the last resolution. When the mover of them offered the amendment just considered and rejected, he considered it as containing their substance; and he did expect that as a decision had been thus made on the conclusion, all necessity for a decision on the premises would be superseded. He did consider the determination of the Committee not to ingraft the amendment on the bill as foreclosing a discussion of the resolutions. He would submit it to the judgment of the gentleman from Virginia, whether a decision of the Committee on the resolution which contained the essence of the whole, was not conclusive. After such a decision he was almost led to inquire, whether it was in order to consider the rest? The Committee were not unconvinced that the gentleman from Virginia was deeply interested in the issue of this discussion. He had expressed himself with warmth. He wished to have the discussion again opened. But it does not follow that because any member makes a particular motion, that there is an obligation on the Legislature to consider it. The Legislature may have doubts of the propriety of considering it. The same right is common to all. And if one gentleman, after the rejection of a motion, is indulged with the privilege of renewing it, other gentlemen being entitled to the same privilege, it will be impossible to progress with the public business. It is no imputation on any gentleman that a majority differs from him. The indisposition of a majority to consider a proposition is not a denial of its truth.

Mr. Bedinger said he never expected to see the time when it would be out of the power of a respectable minority to express their opinion. On this subject he thought with his friend from Virginia. With him he would say to the opponents of the resolutions, examine them and see if they are not true. But some gentlemen seemed rather disposed to lay a bushel on the candle, to prevent their constituents from seeing what was going on. It was unnecessary to say more. If gentlemen were bent on pursuing their course, they must do it.

Mr. Lyon said he wished to let his constituents know all he did. But from delicacy to the gentleman who had moved the resolutions, he wished to give them the go-by. As to the first resolution he would amend it by adding "of which such Legislature were judges." If that amendment should be rejected he would vote against the whole.

Messrs. Lucas and Sloan said a few words against the rising of the Committee.

Mr. Macon (Speaker) remarked that this question, like many others which presented themselves, had taken up a long time in discussing the preliminary point that might have been required on the resolutions. To rise and report the bill, without acting on the resolutions, would be a virtual rejection of them; especially as the House had determined to rise on the 19th. For one, Mr. M. said, he was ready to vote on the resolutions. If it were wrong to vote on them, it was certainly proper to vote against their reference. But why not vote on them? We may not all agree; but have we not a right to think for ourselves? Let us then meet them, and vote as we see best. Mr.

M. said he was more desirous of meeting the question, as he differed from those with whom he generally coincided in opinion. It may be said the resolutions embrace an abstract question. If so, gentlemen ought not to have allowed their reference. In the present stage of the business, no question could be taken unless in the Committee, or on a motion to discharge the Committee from their further consideration. Mr. M. said, he thought it the right of every member of a deliberative body to express his sentiments and record his opinion on any subject before it. This had always been the practice. He trusted, therefore, the Committee would not rise, but proceed to the discussion of the resolutions.

Mr. Gregg said, if it were earlier in the session, he might have no objection to a consideration of the resolutions; or if he thought, late as it was, that a discussion of them would take up but a short time. But he entertained no hope, from the variety of matter they contained, of the debate arising out of them being brought to a close within several days. The last resolution had been a short time since decided, in the shape of the amendment offered by the gentleman from Virginia. This certainly expresses the sense of the Committee on the last resolution. The first resolution likewise had been virtually decided on by a former vote of the House. The substance of it had been much depended on by those opposed to the bill, and it had been this which had regulated their former vote. Mr. Gregg said he believed the principle it contained was generally correct. Those, however, in the majority appeared to entertain a different opinion, and were thence opposed to the principle of the resolutions. Mr. G. said he had no objection to having his vote recorded to the resolution. But he did not perceive the necessity, at this time, when the session was pressing to a close, of occupying unnecessarily the time of the House. He should, therefore, be in favor of a postponement.

Mr. J. Randolph.—Certain resolutions have been submitted by the House to this Committee, and when it is proposed to take them up, objection is made, on the ground that no opinion ought to be expressed upon them, and a motion accordingly brought forward for the Committee to rise. From the prospect before us, it is probable that the Committee will rise, and if leave be given them to sit again, which seems to be the object of some gentlemen, these resolutions will be equally out of the power of the mover, or their friends. How far gentlemen were warranted in saying that this Committee, which although it being inferior only to the House itself, is yet subordinate to it, and as much bound by its instructions as any other committee whatever, should refuse to be governed by those instructions, he would not undertake to say: but of this he would assure them that how much soever they might embarrass, they should not defeat the discussion of this subject, by any course which they might pursue. Consistent only in their hostility to the resolutions, gentlemen advocated the Committee's rising by the most opposite and contradictory arguments; on the one hand contending that no opinion ought to be expressed upon them, whilst on the other, they assert that such opinion has been fully expressed. Irreconcilable in their objections, they are not less united in their object. When men for whatever reason, however opposite their premises, invariably agree in the same conclusion, by what arguments are they to be assailed? In this dilemma he was impelled much more by a sense of duty, than by any hope of success, to reply to some of the remarks which had fallen from various quarters of the Committee.

It was said, that the amendment which he had the honor to propose to the bill, which had been just then considered, embraced the substance of the resolutions, and that its rejection was a fair decision upon their merits. Permit me, (said Mr. R.) in the most explicit terms, to deny this position. One of these resolutions, and one only, to give gentlemen all that they can airly ask, may have been virtually decided by the rejection of that amendment. But why will any one be hardy enough to assert that the question, "whether the act of Georgia, of 1795, was, or was not passed by the grossest corruption," was embraced in that amendment, or in any wise affected by the decision upon it? Surely not. Gentlemen who voted against that amendment have not, in debate, pretended to deny the fact. They cannot, they dare not deny it. He might go on and specify resolution after resolution, and show that no opinion had been expressed upon them, (one only excepted,) but the Committee would anticipate, in the recollection of their contents, all that could be urged to demonstrate the variance between them and the amendment. They must be satisfied of the feebleness and insufficiency of this objection. Before he touched on any other, he deemed it proper to answer some observations which had fallen from a gentleman from Massachusetts, (Mr. Eustis,) to the left. I must here, said Mr. R., express my satisfaction at finding myself supported by the conclusive authority of my respectable friend the Speaker, in the position which I assumed at the outset, that every member has a right to claim a decision on any question brought by him before the House, which they shall have agreed to consider. The gentleman from Massachusetts thinks differently. In his opinion no member has a right to interpret a refusal on the part of the House to act on his motion, into a personal disrespect to himself. I certainly have never expressed myself to the effect that this gentleman insinuates. If the zeal with which I have supported a claim, sanctioned by the highest authority here, has been so construed, it has been my misfortune, not for the first time perhaps, to give rise to erroneous impressions. From the warmth, however, which has been exhibited by the mover of these resolutions, whenever their subject has been agitated, the gentleman from Massachusetts would infer that they are the offspring of feeling, rather than of judgment. I could wish, sir, when that gentleman condescends to notice any remarks of mine, he would confine himself to their substance and matter, and not pass over these, in order to fix upon

the manner in which they are delivered. If the warmth with which an opinion be supported be made the standard of its truth or falsehood, it will have been my misfortune, perhaps, never to have advanced a correct position on this floor. Some men have a smooth, oily, insinuating address; they can make you a proposition ruinous to yourself or to your country, with a face couched in smiles. Others can scarce offer you an intercharge of civility without wounding your feelings; it is their misfortune. But I trust that the adventitious circumstances of temperament and complexion are not to be made the criterion of truth; that propositions and arguments will be decided here, upon their own intrinsic merits, and not by considerations altogether foreign from them. On other occasions we have heard much of party spirit and the rights of minorities. But this is one of those cases in which the tocsin of party spirit and an overruling majority will not answer the purpose in view. This is a season in which the old dark maxim "*divide et impera*" is to be resorted to; in which personal pique and private jealousies shall enable an hopeless opposition to hold the scales of this House—once hopeless, though now like Antæus rising from their fall. From observations made out of doors, I expected to hear these resolutions treated as an encroachment on the rights of Georgia, and by the very men, too, who did not scruple to usurp the jurisdiction of a great portion of the country in question, (the Mississippi Territory,) in contempt of the rights and in defiance of the remonstrances of that State. Yes, I was prepared to see some *crocodile* tears shed over the violated rights of the States. If experience did not prove that war, oppression, and misery, are embraced by the greater portion of mankind, in preference to peace, happiness, and freedom, it would be no difficult matter to demonstrate that these resolutions, so far from infringing upon the rights of Georgia, are in direct support of those rights, as asserted by her in the most solemn manner, at this day.

I little expected to stand on this floor, in the list of persons hostile to State rights—to be charged, as the gentleman before me has expressed himself, with having brought forward propositions subversive of the rights of the States. The sovereignty of the States has ever been the cardinal principle of my political opinions, and in the outset, I enlisted under the banner of State rights in opposition to federal usurpation. The doctrine of exalting the General Government on the ruin of the authority of the States, is at length exploded, and those who have heretofore been most conspicuous in encroaching upon the rights of the States, generally, and upon those of Georgia in particular, are now foremost in displaying their zeal for both. I cannot but rejoice at the acquisition which this cause has made. But to those of its friends, who are too new to it to understand its interests as yet, I would recommend, that they would take the conduct of the Georgia delegation as an evidence of the rights and interests of that State. They surely are not so destitute of information or fidelity, as to misunderstand or abandon the rights of the people whom they represent.—So long, however, as I have the honor of concurring with them in opinion, I shall be very easy under any clamor which the new friends of Georgia and of the rights of States may endeavor to excite. If, however, gentlemen are unwilling to rely on the opinions of so few, however respectable men, I refer them to the act of the Legislature of Georgia herself, generally called the rescinding act, passed under circumstances of unparallelled unanimity and confirmed by the general voice of the people, who subsequently recognised it in, and ingrafted it upon their constitution. If still they remain dissatisfied, I would ask them if the recognition of the claims against Georgia, in the bill which they are so eager to pass, be not equally a violation of the rights of that State, with the rejection of those claims. Does not the bill before you, in pronouncing upon the validity of the act of Georgia, equally involve the principle against which gentlemen protest so loudly, with the resolutions themselves? They have their choice either to pronounce the corrupt act of 1795, or the rescinding act of 1796, invalid. Are not the rights of Georgia as much affected by the one as by the other? and even more, by annulling the act of 1796, since she alone recognises that to be her own. But gentlemen not only annihilate this act, without a scruple, but they support a bill predicated upon a principle which involves the validity of the other also, and then charge us with bringing forward propositions which, because they pronounce upon the acts of Georgia the same sentence which she herself has passed upon them, they denounce as subversive of the rights of Georgia, and with them, of every State in the Union. Will not these gentlemen give themselves the trouble to examine their right to legislate on this subject, at all? Will they refuse to see that we hold it by solemn grant from Georgia herself, without which we could not constitutionally pass any law in relation to the territory in question? It is this only which authorizes us, in any shape, to interfere in a matter which, otherwise, would exclusively belong to her. The act of interfering, and not the manner of that interference, with subjects cognizable by the State alone, would constitute an infraction of her rights. The bill which is advocated by gentlemen themselves would equally infringe the rights of Georgia with the provision which has been attempted to be inserted in it, but for our compact with her. Will any one pretend to say that these resolutions have for their object anything forbidden, either expressly or by implication, in that compact? That it stipulates for any provision for the claims under the act of 1795? Would the Georgia delegation unite in defeating those stipulations if any such indeed existed? Is not the right to reject involved in the right to grant those claims? Georgia having transferred the soil and jurisdiction of the country to the United States, subject to the existing claims against it, we have acquired precisely the same right over it that she herself had. We stand in her shoes. There cannot be a clearer position on earth, than that the moment she transferred to us

those lands, subject to prior grants, (those grants not being specifically enumerated,) we became the judges of their validity. So sensible were we of this that we have appointed Commissioners to audit and adjust those claims—and I repeat, that the bill which is so strenuously supported by the opponents to these resolutions does pass upon the validity of the acts of 1795 and 1796, modifying and abridging the grants under the first, and altogether abrogating the last, to say nothing of the act of 1789, under which the Virginia and South Carolina companies claim. But, sir, these unfortunate resolutions, it seems, contain that damnable heresy in politics—abstract propositions. What are many clauses of your Constitution—of your bills and declarations of rights—but so many series of abstract principles? Let us examine whether the propositions, of whatever description, contained in these resolutions, are indeed foreign to the subject before the Committee—whether, on the contrary, they are not intimately and indissolubly connected with the provisions of the bill on your table. If, indeed, they were so vaguely expressed, or so loose in their application, they might have been safely left to expire in their own imbecility. But gentlemen have seen in them the evil genius of this bill, and hence their opposition.

Here Mr. R. read the first and second resolutions:

"*Resolved*, That the State of Georgia was at no time invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same, but in a rightful manner and for the general good."

Who will deny it? If Georgia has made a valid contract we must execute it. If invalid, there is no obligation on us to perform it.

"That when the governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been invested for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment; it is the inalienable right of a people, thus circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act this endeavoring to betray them."

I am afraid if we deny this position we have no title to show for our own existence as a nation.

Mr. R. here read the third resolution:

"That it is in evidence to this House that the act of the Legislature of Georgia passed on the 7th of January, 1795, entitled an act &c., was passed by persons under the influence of gross and palpable corruption, practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest."

If there be any objection in my mind to this resolution, it is that it does not sufficiently detail what it contains in substance; that the vendors of this iniquitous bargain being at the same time the vendees, the contract was therefore void. On a former occasion, when this position was advanced, we were told that, on the same principle, the sale of our western lands might be set aside, since members of the Legislature speculated in them to a vast amount. However indecorous and reprehensible this may have been in persons in their situation, there was a wide and material difference between the sales made by the United States and a pretended sale like this—not of a few acres, but of millions; not of sections and half sections, but of thousands of square miles; not measured by chains and perches, but by circles of latitude and longitude; not made in the face of day, on public notice, for a reasonable equivalent, and with the general participation of the citizens, but bartered away in the dark by wholesale for the emolument of the partners in the job, for a pretended consideration too paltry to give an air of validity to the contract; and even this sum, pitiful as it was, had since been drawn from the treasury of Georgia by those who had paid it, or others claiming under them by an act yet more infamous and disgraceful if possible than that by which it was deposited there. But it is not my intention at this time to enter into the particulars of this transaction. In the former stages of this bill I have endeavored to give a faithful history of it. Weak and vain, however, must be every effort to do justice to this enormous and atrocious procedure. Some gentlemen indeed will tell you that we have no proof of these facts. The depositions are *ex parte*, say they, and therefore in strictness of law cannot be considered as evidence. But when was it known that men could not legislate on less than legal evidence? Have we not the same evidence of the fraud that we have of the existence of the claims? Are not the evidences of both in the same report? the same proof of the corruption as of the claims? They both hang together. Do not gentlemen themselves admit the existence of the corruption? On what other principle could they justify their proposition to withhold from these harpies the whole of their glorious booty, and put them off with a comparative pittance? Set aside the evidence of the corruption, and it cannot be denied, that instead of five, they are entitled to fifty millions of acres. I repeat they are entitled to all or nothing. We at least are consistent, we deny their title to anything, and we propose to give them nothing. Gentlemen on the other side can support the claim to the five millions, which they propose to give, only by arguments which justify a claim to ten times that amount.

Mr. R. here read the fourth resolution:

"That the good people of Georgia, impressed with general indignation at the act of atrocious perfidy and unparalleled corruption, with a promptitude of decision highly honorable to them, did, by the act of a subsequent Legislature, passed on the 13th day of February, 1796, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their Constitution, declare the preceding act and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State and publicly burnt—which was accordingly done—provision at the same time being made for restoring the pretended purchase money to the grantees, by whom, or by persons claiming under them, the greater part of the said purchase money has been withdrawn from the treasury of Georgia."

This is another of the resolutions not even substantially embraced in the proffered amendment, which has been rejected by the committee. The evidence of the facts contained in the former part of it is to be found in the act of Georgia, which I hold in my hand, commonly called the rescinding act. The report of our Commissioners furnishes the proof of the withdrawal of the money, with a detailed statement of that nefarious business, which in the former stages of this bill has been amply explained. In the rescinding act the Legislature of Georgia take other objections to the usurpation of 1795, besides those founded on its corruption. They deny the Constitutional right of their predecessors to have made such an alienation of the public domain, even with honorable views and for a fair equivalent. They declare that their Constitution prescribes a certain mode whereby vacant lands shall be sold and granted, and that the pretended act of 1795 is void, not only from its corruption, but from its contravening those provisions. This is a weighty and vital objection. The slow yet equitable method known to the constitution of Georgia of laying off new counties, granting out the lands, and when they were appropriated and settled, laying off and settling others, was ill-suited to the gigantic rapacity of the Assembly of 1795 and their ravenous accomplices, who grasped at every acre within the nominal limits of the State, whether covered by Indian titles, or whether those claims were extinguished. [Here Mr. R. read a copious extract from the act of Georgia above-mentioned in support of what he had advanced.] The Committee will see that the whole of this act, so far from being an abandonment of the rights of the State, goes on the ground of asserting and supporting them. It recognises every principle and every fact (the withdrawing of the purchase money excepted, which was posterior to it) contained in those resolutions. Can they then be subversive of the rights of Georgia? Gentlemen of the most tender consciences in relation to State rights have but the alternative of deciding against the act of 1795, or against the act of 1796, of justifying the Assembly of 1795, or supporting that of 1796. Mr. R. here read the fifth resolution, as follows:

"That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature, provided such repeal be not forbidden by the constitution of such State, nor of the United States."

Can there be a more undeniable position? Mr. R. here read the sixth resolution:

"That the aforesaid act of the State of Georgia (the rescinding act) was forbidden neither by the constitution of that State, nor by that of the United States."

If it were thus forbidden it may easily be shown.

Mr. R. here read the seventh resolution:

"That the claims of persons derived under the aforesaid act (the corrupt act) of the 7th of January, 1795, are recognised, neither by any compact between the United States and the State of Georgia, nor by any act of the Federal Government."

This fact, although none will venture openly to contradict it, has not been sufficiently attended to or understood. I must beg leave in answer to the objection of some gentlemen here, to repeat what was advanced by me in a former discussion of the subject. Georgia ceded this territory to us subject to certain specified claims, arising under Great Britain, under Spain, and under her Bourbon act, as it is commonly called, which has no relation to any of the Yazoo acts, as they are termed. For these claims we have stipulated to provide, moreover paying her a certain sum out of the first proceeds of the lands, as a consideration for the grant. Besides the above-mentioned claims there were others not recognised by, or provided for, in our compact. In relation to these, Georgia gives a reluctant assent, (which is to be inferred as well from the expressions which are used in the treaty as from the declaration of the Commissioners on both sides,) that we may apply, not exceeding five millions of acres to quiet other claims, generally, without specifying what they are—the appropriation not to exceed the amount above, and to be made within six months from the ratification of the compact, or to revert back to Georgia. Among the claims of this vague description may be ranked those of the Virginia and South Carolina Yazoo companies (under the act of Georgia of 1789, and those arising under the corrupt act of 1795.) We are at liberty therefore to give these reserved five millions of acres to either, or to both, of those descriptions of conflicting claimants, but we are certainly not bound to bestow an acre on one of them, either by compact with Georgia, or by our own act of appropriation. When that act passed it was at the close of our session; there was not time to investigate any of these claims. It was then understood that some of them were equitable, and not founded in corruption. If we had not then made the appropriation, the term within which we were permitted to make it, would have elapsed before the next session of Congress. We therefore made the appropriation in the same general terms of our compact with Georgia, pledging ourselves to none, while we thereby reserved the right of examining and recompensing all, in case they should thereafter be found to deserve it. The day of investigation having arrived, you are invited to decline it altogether, and hold that the reservation of the right to give, is converted by some political magic into a duty, and that too by those who propose to give nothing to the companies of 1789, although their claim is embraced by the general provision of our compact with Georgia, and by the terms of our act of appropriation as much as the claims of the companies of 1795. The appropriation, like the compact, referring to neither of them expressly, but to claims other than those English, Spanish, and Georgian claims, (under the Bourbon act,) before mentioned. The position of the seventh resolution, that these claims are recognised neither by any compact between us and Georgia, nor by any act of our own, being thus undeniably established, the conclusion

in my mind irresistibly follows from it, and from the preceding facts and principles, "that no part 'of the five millions of acres reserved for satisfy-'ing and quieting claims to the lands ceded by 'the State of Georgia to the United States, and 'appropriated by the act of Congress passed at 'their last session, ought to be appropriated to 'quiet, or compensate, any claims derived under 'any act, or pretended act, of the State of Geor-'gia, passed, or alleged to have been passed, dur-'ing the year 1795."

I cannot perceive the ground on which the opposition to these resolutions has been made. Although some have denied and others have evaded some of their positions, they have been generally admitted as true. The objection that they trench upon the rights of the States seems too futile to justify the opposition they have received. That they are inapplicable to the subject before us, would appear yet less cause for the warmth with which they have been attacked. It is their bearing upon that question, it is their vital connexion with the bill, which seems to constitute the strong objection to them. Gentlemen cannot deny them; they see that they cannot pass the bill before you if they enter up their concurrence with them on your journals; they therefore move to postpone. Be it so. But if they pass the bill in question they do an act which whole ages of political penance will never atone. I have during the whole course of this discussion listened with profound attention, and the words expediency and policy alone have reached my ears. But I cannot comprehend that expediency which would countenance fraud, nor the policy which would foster corruption. During the agitation of this question, in every different shape which it has assumed, I have acted as my conscience and principles impelled me. It will be a source of never-failing self-gratulation that I have done so, as it would have been of remorse had I done otherwise. Whatever be its ultimate fate, it has already abundantly appeared that party spirit, personal influence, and a domineering majority, of which we have so frequently heard, have no existence within these walls, but as engines of debate. Such at least is the state of one side of the House. Persons of every political description are marshalled in support of these claims; we have had to contend against the bear of the arctic and the lion of the torrid zone. I have only to wish that those gentlemen who are our opponents may, on returning among their constituents, feel the same pleasure on meeting them which I shall feel; and which I am sure is anticipated by those with whom I have the honor of acting on this occasion.

Mr. BOYD hoped the Committee would not rise before they had decided on the resolutions one by one, and gentlemen allowed a full opportunity of declaring their opinions. He would say for himself that, in his opinion, Congress did not possess the right of censuring the proceedings or taking away the rights of a State. If they acted wrong, their constituents would put them right.

Mr. ELLIOT.—It is certainly unnecessary to reply to the arguments of the gentleman from Virginia. The sense of the House has repeatedly been ascertained upon this subject. I will only observe that the inconsistency which the gentleman believes that he has pointed out in the conduct of those who oppose his resolutions, exists only in his own imagination. We make no decision, we give no opinion, upon either of the acts of the State of Georgia. We carefully avoid that view of the subject, and consider the question as a question of expediency and policy only.

I rejoice to hear, from a gentleman of high political character on this floor, that it is already doubted whether party spirit any longer exists within these walls. But I cannot consider the opinion as the result of cool reflection. Could I believe that this delightful dream of the imagination is to be realized this day, I would hail it as the most auspicious that has beamed upon our country since the declaration of independence. Circumstances of a most imperious nature are constantly occurring, which admonish us to sacrifice our party passions and our ancient prejudices, upon the altar of our country. But many distinguished men have believed that parties are useful in Republics; and the day of their union in our own is yet very distant.

The gentleman from Virginia has apologized to the Committee for that warmth which he so frequently displays, and which, we are told, is occasioned by the adventitious circumstances of constitution and complexion. On this ground, perhaps, the gentleman does not stand alone; and I shall always be as ready as any other member to ask pardon for having injured the feelings of any one. But some of his remarks are very extraordinary. We are told that not only are men of every shade and character of political distinction united in opposition to these resolutions, but even the furious and ferocious animals of the forest; "the bear of the arctic and the lion of the torrid zone;" the bear that roams over the cold regions of the North, and the lion that wanders in groves warmed by the beams of a vertical sun. Was this allusion personal, or otherwise? It is impossible for me to answer the question. But it will be recollected, by those who have read the fables of Æsop, that even the majestic lion, when fallen from his former dignity, was abused by a very inferior animal, an animal distinguished as the emblem of stupidity and folly.

I shall conclude with the observation that the minority will have no just reason of complaint against the majority, if the resolutions should be virtually rejected by the rising of the Committee. The honorable mover has been indulged, on the present occasion, in an elaborate and ingenious argument in support of the resolutions; and other gentlemen, who hold the same opinions, may claim the same privilege.

Mr. SMILIE did not think it of much utility to be spending time about lions and bears. His wish was to consider the subject. When he looked at the resolutions, and the quarter from which they came, he was certain they proceeded from the best motives. He believed, also, it was a respect due to every gentleman to give him an opportunity of supporting any motion he might bring forward; and he should be sorry if this right should be denied. In this instance it had been granted; and the mover of the resolutions had supported them with a degree of ability that did him honor. At the same time, how undoubted soever might be the truth of these remarks, a proposition offered may be of such a nature as to render any expression of opinion by the House improper. It may be improper in point of time, matter, or consequences; and, under such circumstances, a decision may be properly avoided by a motion similar to that before the Committee. This, then, is the simple question, whether it is expedient to decide it at this time on the abstract propositions contained in these resolutions. Those who think it is, will vote against the Committee's rising, while those who hold a different opinion will vote differently. Mr. S. concluded by observing, that he considered the propositions, generally considered, as true; but, he was of opinion that it was improper at the present time to express any opinion respecting them. He should vote, therefore, for the rising of the Committee.

Mr. LUCAS declared himself hostile to any compromise with the claimants.

Mr. J. RANDOLPH said he was sorry to be so troublesome; but when he found he entertained different sentiments from a gentleman whom he highly respected, it became incumbent on him to sustain, as well as he could, his own opinions. The gentleman from Pennsylvania has stated a proposition, which may be true in the abstract; and yet it may not follow that, in this instance, it is not advisable for the Legislative body to express an opinion.

No one would be hardy enough to deny the abstract position laid down by the gentleman, and yet the inference deduced from it may be totally unsustainable. His reasoning amounts to this: Because it is not proper for a Legislative body to express an opinion on an abstract proposition having no connexion with the business before them, if a member should bring forward a proposition that an acid and an alkali united produce a neutral salt, the Committee could, notwithstanding its truth, throw it out. But this is not the nature of the propositions before us? Have they no bearing on the subject under consideration? Because we refuse to express an opinion on abstract motions having no relation to business before us, shall we refuse to express an opinion on subjects that have? Certainly not. Mr. R. said he was rather of the opinion that if these propositions had so little bearing as some gentlemen represented, they would not have received so strenuous an opposition. Had he brought forward a proposition that Lake Erie was the boundary between Canada and the United States, or that a whole was equal to its parts, the Committee would have sneered at its folly or stupidity, and have given it a silent decision. So, if these propositions had been considered trifling or harmless, they would have been easily passed over. But, they are not so considered. They are not, said Mr. R., mere abstract truths; but they probe to the very vitals the question before you; they contain facts which give the death-blow to the claims of 1795. Are specific proofs of corruption abstract propositions? Facts are not abstract propositions. If gentlemen are disposed to doubt them, let them appoint a committee to examine into their truth. Let them not attempt to get under, over, or around the question; but let them meet it. Mr. R. said he was sorry to be deserted by any of his friends, or to desert those with whom it was his honor, on most occasions, to act. Nor was there a gentleman on the floor with whom he differed with a livelier regret than the gentleman from Pennsylvania, (Mr. SMILIE,) not only from a respect for his political character, which he had known long before he knew him, but because he had heretofore acted with him hand in hand.

Mr. SMILIE observed that his remarks had been applied to the proposition only, and not to the bill.

Mr. RODNEY said he was willing, after the able discussion of his friend from Virginia, with whom it was his pride and pleasure to act, to decline saying anything on the subject. He only wished to have a vote on the resolutions, and to have an opportunity in the House of recording it.

Mr. ELMER could not conceive that gentlemen could reasonably desire any more than a vote on the result of the abstract principles and facts, which had been already decided on. The facts may be true, and the principles likewise, in some senses, but not in others. What can gentlemen require more than the result of facts and principles; and why go into an investigation of facts not necessary to act upon? All that is necessary is so far to decide facts and principles as they are connected with the bill.

The question was then taken on the rising of the Committee, and carried—ayes 57, noes 48.

The Committee accordingly rose and reported in part their agreement to the bill, with a request to have leave to sit again.

An adjournment was moved and lost—ayes 37, noes 57.

On the question of leave being given to the Committee to sit again, Mr. J. RANDOLPH said he presumed the question about to be put was dictated rather by a compliance with form than substance. Is it possible, after the House has sent the resolutions to the Committee and the Committee have refused to act upon them, that they will, by a kind of legerdemain, give them leave to sit again, thus keeping the resolutions exchanged and preventing the sense of the House from being taken on them? I do not believe, said Mr. R., that the House will consent to countenance such a procedure. If this, however, shall be the course pursued, I shall bow on this, as on all other occasions, to the will of a majority; but my submission will flow not from the heart but from necessity. But I cannot bring myself to believe, that after the Committee have refused to act on the resolutions, by declining to do anything more than report the bill, that the House will keep the resolutions in a state of abeyance till they shall be dismissed by an adjournment.

Mr. Nicholson said if the mover of the resolutions did not wish the Committee to have leave to sit again, he hoped leave would be refused.

Mr. Holland said he trusted there was no gentleman that could not allow that the resolutions had some bearing on the question before the House. They, in truth, had a very decisive bearing, and Mr. H. said he believed if they were fully investigated, many gentlemen heretofore friendly to the bill would be hostile to it.

Mr. Rodney hoped the Committee would at present receive leave to sit again. If gentlemen should not hereafter be ready to allow them leave to sit, when the order comes up, they may move to discharge them from the further consideration of the resolutions. As they were then in the possession of the Committee, he hoped their friends would vote in favor of their having leave to sit again.

Mr. Eustis hoped the Committee would not obtain leave to sit again. If he understood the decision of the Committee it implied the adoption of the principle that the claims in question may be compensated out of the five millions without investigating the circumstances attending the passage of the acts of Georgia of 1789, 1795, or 1796. Whether this decision is just or honorable will be decided by a higher tribunal than this House. But, if ever respect is due to the decision of a majority, it is in this case, after the opinions of gentlemen have been so fully expressed. Why shall the Committee of the Whole sit again? To debate a proposition, which they have determined not to consider, and which they have declared to have no bearing on the subject before them? There can be no further discussion. Have not these resolutions, so far as regards their substance, been already fully advocated by their friends? It is not only consonant with the principles of justice and honor, that justice which regards the public interest but it is likewise consonant with the rules of the House that when a bill and certain resolutions are referred, and the bill reported, which amounts to a supercession of the resolutions, that leave should be refused to the Committee to sit again. The resolutions, in this instance, were referred as the groundwork of a system hostile to the bill. They were intended to declare the act of Georgia invalid, as a reason for rejecting the bill. If such had been the desire of the House, would they not have suspended the bill, and have given the resolutions the investigation they merited? By taking up the bill, and rejecting the substance of the resolutions, the Committee have given a proper satisfaction to the mover and his friends. It is a misfortune that, on this question, those who generally act together are divided; but it is a misfortune from which no Legislative body, or set of men, is exempt. When such occasions do occur, it is the duty of the minority to submit, and not by unnecessary opposition to widen the difference. If one gentleman is strong in his own opinion, he should have candor and indulgence for those who differ from him, and may feel equal conviction of the truth of their own belief. A disposition to leave the ground of reason appears to me always to have a tendency to draw the attention of the House from the merits of the question, and to lead it astray from the path of duty. It is not my personal interest, said Mr. E., to advocate or oppose these claims. I have no expectation of gain from their allowance or rejection. But, while I allow to other gentlemen a sacred regard to the public good, a sense of public duty, of honor, and of justice, I claim the same respect for myself and those who act with me, however different our opinions on this particular point. We are as conscious of our integrity as those who oppose us. I am sorry the character of this debate compels me to declare that I can consider no observation made during the course of it as personally applicable to me; and I wish that the same were the case with other gentlemen. There is, indeed, cause for regret that anything urged on this occasion should have been considered personal. For myself it is my practice to urge arguments grounded on the nature of the case, and not on the passions or prejudices of others; and, while I extend this right to others, I claim it for myself.

With regard to the resolutions, they have been fully discussed by the mover and his friends. I consider some of them as containing abstract propositions from which the House cannot dissent, as being universal principles in politics; others as of a doubtful nature; but the whole of them, so far as they are applied to the Legislature of a State, unwarrantable, impolitic, not to say unconstitutional. But I will say, when this House adopts the language of abstract propositions and applies it to the Legislature of a particular State, we tread on dangerous ground. If it be said, we barely speak our opinions, I ask whether we came here for that purpose? No; we came here to legislate. If the language is intended to apply to the Legislature of a particular State, I inquire whether this House possesses any such power? Is it thereby intended to warn one State of her course of proceeding? Is it intended to guard any other State against it? If so, the act is unconstitutional. Should, therefore, the resolutions be proposed again and again, with my present view of the subject, I shall consider it my duty to move the previous question. I am unwilling to decide upon them. The more I consider them, the more unwilling I find myself. They point to the specific act of a sovereign State. May there not be other acts of other States equally reprehensible; and can we justify to ourselves as an impartial body the passing on one and not on all? Are there not other Legislatures who have disposed of the public lands in cases where their own members were part owners? If there are, will not this be an act of partiality?

I hope I shall not be understood as the advocate of the Georgia transaction, or of any part of it, or of other Legislatures who have pursued a similar course. No; I am of opinion that it is inconsistent with the honor and duty of a legislator to convey land with one hand and receive it with another. But I appeal to gentlemen whether this has not been the practice? Knowing it to have been the practice, I am unwilling to express the abhorrence I feel of this act, because such an expression of opinion goes to involve others in guilt, in cases where no such right of crimination constitutionally belongs to Congress.

The course we are now pursuing is the true course, that which is founded in justice and in sound policy. It is to cover the transaction without approving it; to pass the whole of its scenes over in silence. Whereas we cannot consider the resolutions without going to the marrow of this foul wound, which every dictate of policy and wisdom prompts us to conceal. I consider this course as going forever to close this offensive wound; to bury it in eternal oblivion. With this view I made the motion. It is immaterial to me whether the Committee be refused leave to sit again, or be discharged from a consideration of the resolutions. So long as the resolutions live, I will with zeal oppose their consideration, without saying that I will bring the House to a vote. A gentleman may propose what he pleases, but it is for the House to dispose of it. I will oppose their consideration, because I see in them nothing of public utility; because they are a source of personal irritation; and because wisdom dictates that the whole transaction to which they relate should be thrown into oblivion.

Mr. Dawson concisely advocated the consideration of the resolutions; he thought it but fair that an opportunity should be given to their friends to support them.

Mr. Smilie said he had avoided, through the whole of the discussion, considering the merits of the resolutions. He would state, at this time, one reason why he was unwilling to vote upon them. Congress should be extremely careful, when they were establishing their own rights, not to violate the rights of others. These resolutions declare the act of Georgia under which the claims in question are preferred, a nullity. I ask, what will be the effect of this declaration on the claims when they are brought before a court of justice? Can they have the same chance of justice after this solemn decision of the House of Representatives of the Union? It is acknowledged to be wrong to bias a jury; and it is well known that printers are punished for publications during a pending suit. Can anything they may publish have such an effect as the decision of the National Legislature? This is the reason, said Mr. S., why I am reluctant to express any opinion on these resolutions.

Mr. John Randolph inquired whether, if leave were refused to the Committee of the Whole to sit again, the resolutions would not therefore be considered as before the House?

The Speaker said they would.

On granting leave, the yeas and nays were taken, and were—yeas 3, nays 101, as follows:

Yeas—Isaac Anderson, Frederick Conrad, and Beriah Palmer.

Nays—Willis Alston, jr., John Archer, S. Baldwin, David Bard, George M. Bedinger, Silas Betton, P. Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Seth Hastings, William Hoge, David Hough, Benjamin Huger, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Thos. Plater, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Tompson J. Skinner, James Sloan, John Smilie, John Cotton Smith, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

[This question, from the unexpected turn which the debate took, and its irrelevancy to the main points under discussion, viz: the expediency of considering Mr. Randolph's resolutions, and the justice or policy of compromising claims under the act of Georgia, of 1795, decided nothing: particularly as it was previously declared by the Chair that, in case leave was refused to the Committee to sit again, the resolutions would thereupon be in possession of the House.]

Mr. J. Randolph immediately moved that the House should take up the resolutions for consideration, and called for the yeas and nays on the motion.

A member inquired, whether it was not first in order to consider the report of the Committee agreeing to the bill?

The Speaker said, Mr. Randolph's motion, being first made, must be first considered.

An unsuccessful motion having been made to adjourn, the question was taken by yeas and nays, on considering the resolutions, and carried affirmatively—yeas 57, nays 46, as follows:

Yeas—Willis Alston, junior, John Archer, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John Dawson, John B. Earle, William Findley, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, Walter Jones, Michael Leib, Joseph Lewis, junior, John B. C. Lucas, Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sam-

mons, Thomas Sandford, James Sloan, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Simeon Baldwin, Silas Betton, Phanuel Bishop, John Boyle, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, John G. Jackson, Nehemiah Knight, Henry W. Livingston, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Thomas Plater, Tompson J. Skinner, John Smilie, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, and Lemuel Williams.

An adjournment was then called for, and the House adjourned.

Thursday, March 8.

Mr. Nicholson, a member of this House for the State of Maryland, informed the House of the death of his colleague, General Daniel Heister, late one of the members of the said State, in this House: Whereupon,

Resolved, unanimously, That the members of this House will attend at Lovell's hotel, this day, at one o'clock, for the purpose of following in procession the body of the late General Daniel Heister, a part of the way to the place of interment at Hagerstown.

Resolved, unanimously, That the members of this House will testify their respect for the memory of the said Daniel Heister by wearing a crape on the left arm for one month.

On motion,

Resolved, That the Speaker address a letter to the Executive of the State of Maryland, to inform them of the death of Daniel Heister, late a member of this House, in order that measures may be taken to supply the vacancy occasioned thereby.

Mr. Varnum, from the committee appointed the sixth instant, presented a bill in addition to "An act fixing the Military Peace Establishment of the United States;" which was read twice and committed to a Committee of the Whole tomorrow.

A Message was received from the President of the United States, enclosing a letter from Governor Claiborne, respecting the importation at New Orleans of slaves from Africa, and his impression that he did not possess power to interpose respecting the same.

The Message, together with the extracts of letters transmitted therewith, were read, and ordered to lie on the table.

Mr. Varnum, from the committee appointed on the thirteenth of January last, presented a bill for establishing rules and articles for the government of the armies of the United States; which was read twice and committed to a Committee of the Whole on Saturday next.

Mr. Samuel L. Mitchill, from the Committee of Commerce and Manufactures, presented a bill to repeal a part of the act concerning Consuls and Vice Consuls, and for the further protection of American seamen;" which was read twice and committed to a Committee of the whole House on Monday next.

Petitions of sundry inhabitants of Georgetown, in the District of Columbia, were presented to the House and read, respectively stating their approbation of the principles contained in a bill now depending before the House to amend the charter of Georgetown; also, praying that the petitioners and other inhabitants of Georgetown, may be exonerated from taxation for the County of Washington, in the said District; and further, that the Corporation of the said town may be authorized to appoint the inspectors of tobacco, with the use and application of the surplus money arising therefrom, to build a poor house; and to impose a tax, and collect the same for the support of the poor.

Ordered, That the said petitions be severally referred to a Committee of the whole House to whom was committed, on the twenty seventh ultimo, the bill to amend the charter of Georgetown.

Mr. John Randolph, from the committee appointed to inquire into the official conduct of Samuel Chase and Richard Peters, presented to the House a deposition thereon, of David Robertson, of the State of Virginia; which was read, and ordered to be referred to a Committee of the whole House to whom was committed, on the sixth instant, the report of the aforesaid Committee of Inquiry.

An engrossed bill supplemental to the act, entitled "An act concerning the City of Washington," was read the third time and passed.

EXPLORATION OF LOUISIANA.

Mr. Samuel L. Mitchill from the Committee of Commerce and Manufactures, who were instructed by a resolution of this House, of the eighteenth ultimo, "to inquire into the expediency of authorizing the President of the United States to employ persons to explore such parts of the province of Louisiana as he may deem proper," made a report thereon; which was read, and is as follows:

By a series of memorable events the United States have lately acquired a large addition of soil and jurisdiction. This is believed, besides the tracts on the east side of the Mississippi, to include all the country which lies to the westward between that river and the great chain of mountains that stretch from north to south, and divide the waters running into the Atlantic from those which empty into the Pacific Ocean; and beyond that chain between the territories claimed by Great Britain on the one side, and by Spain on the other, quite to the South Sea.

It is highly desirable that this extensive region should be visited, in some parts, at least, by intelligent men. Important additions might thereby be made to the science of geography. Various materials might thence be derived to augment our knowledge of natural history. The Government would thence acquire correct information of the situation, extent, and worth of its own dominions, and individuals of research and curiosity would receive ample gratification as to the works of art and productions of nature which exist in those boundless tracts.

There is no need of informing the House that already an expedition, authorized by Congress at the second session of the seventh Congress, has been actually undertaken, and is going on, under the President's direction, up the Missouri. The two enterprising conductors of this adventure, Captains Lewis and Clark, have been directed to attempt a passage to the western shore of the South Sea; from them, on their return in 1805, a narrative full of instruction may be expected. It is also understood that a survey has been ordered to be made of the Mississippi, from the mouth of the Ohio to the falls of Saint Anthony. Of this a correct map may be expected within a reasonable time. The like also is hoped, in the course of a moderate period, from the latter place to the source of the Mississippi, and thence to the Lake of the Woods.

Men of political research have, in like manner, long known that the course of the Mississippi downwards to the Gulf of Mexico, has been well delineated by Captain Hutchings; and that more recently, by the assiduous observations of Mr. Ellicot, the turnings and windings of that river, southward of its junction with the Ohio, and the territorial line on the 31st degree of north latitude, to the northwestern angle of Florida, have been exhibited in a perspicuous and scientific manner. Along the coast of the ocean too, from Perdido Bay to the Bay of Saint Bernard, navigators have viewed the shores and coast so often that there is little left to explore.

But, although there is so much really known, or in a train of investigation, concerning Louisiana, there are still some parts upon which it would be desirable to possess additional information. The tracts alluded to are those which remain principally in their original obscurity, and strongly attract the eye of the adventurer. Their pathless forests may be advantageously penetrated along the channels of the Arkansas and the Red Rivers, two of those large and long water-courses which intersect them. An expedition of discovery up these prodigious streams and their branches might redound as much to the honor, and more to the interest of our Government, than the voyages by sea round the terraqueous globe have done for the polished nations of Europe who authorized them. Such liberal enterprises will befit the present season of prosperity, and may be expected to succeed best during the reign of peace.

The Red River was visited many years ago, and even settled as high as Natchitoches. This old establishment is laid down in some of the maps, as being only seven leagues distant from the station of Adais, the capital of the province of Tecas, and situated on the river Mexicano. Red River is described as difficult to ascend when the waters are low; but when high a traveller may, by means of them, penetrate where he pleases. More than half a century ago, it was said that along its banks were many inferior lakes and drowned lands, that abounded with alligators and fishes; that its shores were inhabited by plenty of bisons, tigers, wolves, deer, and several other species of untamed beasts; as well as by turkeys, geese, swans, ducks, and other kind of wild fowl; and that all manner of indigenous fruit trees and grape vines sprout up luxuriantly from the soil. To these accounts, which are common to most other parts of the American wilderness when first visited by civilised men, other facts and considerations are now to be added. The nation has been lately told, on respectable authority, that the Red River is navigable by boats one thousand miles beyond Natchitoches. It is reported to run through a country abounding in rich prairies, where neat cattle and horses range in innumerable herds, as independent as the natural inhabitants. There is reason to presume the head of this stream lies concealed in the southwestern corner of the newly ceded territory. The limits of Louisiana in that quarter are obscure and undefined. And it is worthy of Legislative consideration, whether the latitude and longitude of the Red River source ought not to be ascertained under the authority of the nation. It may be expected that individuals will venture upon such undertakings for the gratification of their own speculative curiosity, and by discreet management the journeys of such persons will minister to the national wants, and to general instruction, with but a trifling appropriation from the Treasury.

The Arkansas, which has been already traced above one thousand miles, also seems worthy of being explored with more care and to a greater extent than has hitherto been done. A spacious plain and valley incrusted annually (like the soil in some spots about the Persian Gulf) with native salt, in quantity sufficient to impregnate a branch of the Arkansas, and occasionally the river into which it falls, with its briny quality, and to make it a salt river down to the settlement of Ouisarque, for considerably more than six hundred miles of its course, might be mentioned as no ordinary occurrences. The masses of virgin silver and gold that glitter in the veins of the rocks which underlay the Arkansas itself, and mingle with the minerals near certain other of its streams, and offer themselves to the hand of him who will gather, refine, and convert them to use, are no less uncommon and wonderful. These extraordinary productions might be dwelt upon at considerable length, in this report; but, credible as both the relations are, the committee forbear to offer anything more than that the existence of a salt river, precious mines and ores, and of some other remarkable objects, are stated upon solid and credible testimony. Omitting these things, as not necessary to be urged to Congress, the committee consider that the latitude, longitude, and relative situation of the source of the Arkansas, are themselves of sufficient moment to render their attainment very desirable.

Without writing a sentence on the advantages of tracing the streams of the Black river, the White river, the Mexicano, and of other rivers, to their sources, the committee submit the following opinion:

That it will be honorable and useful to make some public provision for further exploring the extent, and ascertaining the boundaries of Louisiana: and,

That a sum not exceeding —— dollars be appropriated for enabling the President of the United States to cause surveys and observations to be made on the Red river and the Arkansas, or either of them, or elsewhere in Louisiana, as he shall think proper, for these purposes.

The report was referred to a Committee of the Whole on Wednesday next.

Friday, March 9.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the twenty-seventh ultimo, to whom was referred the petition of Moses White and Charlotte Hazen, executor and executrix of Moses Hazen, deceased; and, after some time spent there-

in, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said report of the Committee of Claims at the Clerk's table; and so much as is contained in the last clause thereof, being twice read, in the words following, to wit:

"From an attentive consideration of the case, your committee are of opinion the prayer of the petition is reasonable, and ought to be granted."

The question was taken that the House do concur with the Committee of the Whole in their agreement to the said last clause of the report, and resolved in the affirmative.

Ordered, That a bill, or bills, be brought in pursuant thereto; and that the Committee of Claims do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the twenty-seventh of January, on the petition of Lachlin McIntosh and Joseph Habersham, of the State of Georgia; to which Committee of the whole House was also referred a report of the Committee of Commerce and Manufactures on the petition of the executors of John Habersham, deceased, made the twenty-seventh of February last; and, after some time spent therein, the Committee rose and reported two resolutions thereupon; which were severally read, and agreed to by the House, as follows:

Resolved, That the Secretary of the Treasury be authorized to direct credit to be given to the late Collector of Savannah, to the amount of eleven hundred and eleven dollars and eighteen cents.

Resolved, That the proper officers of the Treasury be authorized to pass to the credit of John Habersham, late Collector of Savannah, in Georgia, the amount of two orders or bills drawn in his favor by Edward Price, and one of them endorsed by William Wallace; the former upon Oliver Wolcott, Secretary of the Treasury, and the other upon James McHenry, Secretary of War, making together the sum of two thousand one hundred and twenty-four dollars and fifty-three cents.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolutions; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering; which was read twice and committed to a Committee of the whole House immediately.

The House, accordingly resolved itself into the said Committee; and, after some time spent therein, the bill was reported with several amendments thereto, which were severally twice read, and agreed to by the House.

Ordered, That the said bill be engrossed, and read the third time to morrow.

Mr. Smilie offered a resolution directing a call of the House every morning at ten o'clock, during the remainder of the session, connected with a forfeiture of one day's pay for each neglect of duty. Ordered to lie on the table.

Mr. Rhea, of Tennessee, moved the following resolution, which was referred to a Committee of the Whole on the bill for the government of Louisiana.

"*Resolved*, That it is expedient to make provision, by law, to declare void and of no effect, all grants for land in the Territory of Louisiana, ceded to the United States by the French Republic, by the treaty of the thirtieth of April, in the year eighteen hundred and three, which have been issued by any authority, or pretended authority from the Government of Spain, subsequent to the Treaty of St. Ildefonso."

Mr. Findley, from the Committee of Elections, to whom were referred, during the present session, a memorial of Samuel J. Cabell of the State of Virginia, complaining of an undue election of Thomas Mann Randolph, one of the members returned to serve in this House for the said State; and, also, sundry depositions and other papers transmitted from the counties of Amherst, Albemarle, and Fluvanna, in the State of Virginia, in the case of the said contested election; made a report thereon, which was read, and ordered to lie on the table. The report is as follows:

"That having examined the depositions and papers referred to them, they discover that the land lists of all the counties of which the district is composed are wanting, and the list of voters of all the counties but one, (viz: Fluvanna county) are also wanting. The Committee also inform the House, that, by letters from the memorialist of the thirteenth of October, and third of November, the Committee were requested not to proceed until he could procure and transmit further documents. That by another letter from the memorialist of the fifth of January, accompanied with a protest against documents then before the Committee, he again made a request that the Committee would defer taking the subject under consideration. Afterwards the memorialist was notified, by the direction of the Committee, to be prepared, and to attend the Committee himself, or by his agent, in order to obtain a decision. He has not complied with the notification, and the Committee observe no facts, from examining the documents submitted to them, sufficient to invalidate the claim, or set aside the return of Thomas M. Randolph.

"Therefore, the Committee are of opinion that Thos. M. Randolph, returned as a member for the Congressional District composed of the counties of Albemarle, Amherst, and Fluvanna, in the State of Virginia, is entitled to his seat in the House."

No further proceedings took place upon this report.

GOVERNMENT OF LOUISIANA.

The House went into a Committee of the Whole on the bill for the government of Louisiana. The fifth section being read, as follows:

"Sec. 5. The judicial power shall be vested in a superior court, and in such inferior courts, and justices of the peace, as the Legislature of the Territory may, from time to time, establish. The judges of the superior court, and the justices of the peace, shall hold their offices for the term of four years. The superior court shall consist of three judges, any one of whom shall constitute a court. They shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all those

which are capital, and original and appellate jurisdiction in all civil cases of the value of one hundred dollars. Its sessions shall commence on the first Monday of every month, and continue till all the business depending before them shall be disposed of. They shall appoint their own clerk. In all criminal prosecutions which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the parties require it. The inhabitants of the said Territory shall be entitled to the benefits of the writ of *habeas corpus*; they shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great; and no cruel and unusual punishments shall be inflicted:"

Mr. G. W. Campbell moved to strike out "which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the party require it," and to insert "the trial shall be by jury, and in all civil cases above the value of twenty dollars."

Mr. C. said he conceived that in legislating for the people of Louisiana, they were bound by the Constitution of the United States, and that they had not a right to establish courts in that Territory on any other terms than they could in any of the States. Wherever courts were established in a Territory, they must be considered as courts of the United States, and of consequence cannot be otherwise constituted than as courts in the States. The Constitution expressly declares that, in criminal cases the trial shall be by jury, and in all civil cases where the sum in controversy exceeds the value of twenty dollars, the trial shall be likewise by jury. In the ninth article of the amendments to the Constitution, we find the following words: "In suits at common law where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. The eighth article says: "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury."

I will observe that the right of trial given by this section, to wit: "if either of the parties require it," is a dangerous mode of proceeding, and may tend unwarily to entrap them. The person brought before the court for a misdemeanor, asked if he requires a jury trial, may be ignorant of the evidence, and may not know the benefits of a trial by jury; he must at all events show a want of confidence in the court, or waive a jury trial. If he does the first, he may sour the minds of the court. The party is thus put in a situation which may be worse than if he was deprived altogether of the right of a trial, by the necessity of making a choice which may operate more against him. The bill therefore does not secure the right of a jury trial, as contemplated by the Constitution.

Mr. Sloan said a few words in support of the motion, which was lost—yeas 20.

[At this stage of the business we attended the trial of impeachment in the Senate, and cannot with perfect correctness state the further proceedings of the House on the bill. We understand, however, that the new section, sometime since offered by Mr. G. W. Campbell, providing for the election of a Legislature by the people of Louisiana, instead of their being governed according to the bill from the Senate, by a council appointed by the President, was disagreed to—yeas 37, nays 43.—*Reporter.*]

Saturday, March 10.

Mr. John C. Smith, from the Committee of Claims, presented, according to order, a bill for the relief of the legal representatives of the late General Moses Hazen, deceased; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Thomas M. Randolph, from the committee to whom was referred, on the twenty-sixth of January, the petition of William Dunbar, of the Mississippi Territory of the United States, and to whom was recommitted, on the third of February last, the petition of the Mayor, Aldermen, and Assistants, of the city of Natchez, in the said Mississippi Territory, together with a report of a committee thereon, made a supplementary report; which was read and considered: Whereupon,

Resolved, That the execution of so much of the twelfth section of the act passed the third of March, 1803, entitled "An act regulating the grants of land, and providing for the disposal of lands of the United States south of the State of Tennessee," as directs the Governor of the Mississippi Territory to locate lots in the city of Natchez, and a piece of land adjoining thereto, (if the property of the United States,) for the use of the Jefferson College, be suspended until farther order be taken thereon by Congress.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that Mr. Thomas M. Randolph, Mr. Alston, and Mr. Lattimore, do prepare and bring in the same.

An engrossed bill making appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering, was read the third time, and passed.

A message from the Senate informed the House that the Senate, in their capacity of a Court of Impeachments, will, on Monday next, at twelve o'clock, proceed to pronounce judgment on the articles of impeachment exhibited against John Pickering.

The House proceeded to consider the report of the Committee of Claims, of the twenty-ninth ultimo, on the petition of William Eaton; and so much of the said report as is contained in the last clause thereof, being twice read at the Clerk's table, in the words following, to wit:

"Your committee are therefore of opinion, that the petitioner have leave to withdraw his petition, and the papers accompanying the same;"

The question was taken that the House do concur with the Committee of Claims in their agreement to the said last clause of the report, and resolved in the affirmative.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year 1804:" Whereupon,

Resolved, That this House doth agree to the said amendment.

Mr. John Randolph, from the Committee of Ways and Means, to whom was referred, on the second instant, two reports of the Committee of Commerce and Manufactures; one "on laying a tonnage duty on foreign ships and vessels, to be denominated light money;" the other on various memorials and petitions for the encouragement of domestic acts, trades, and manufactures;" presented a bill imposing more specific duties on the importation of certain articles; and also, for levying and collecting light money on foreign ships and vessels; which was read twice, and committed to a Committee of the Whole on Monday next.

A message from the Senate informed the House, that the Senate agree to the first, second, and fourth amendments proposed by this House to the bill, sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar," with an amendment to the said fourth amendment; to which they desire the concurrence of the House. The Senate disagree to the third amendment by this House to add a new section at the end of the said bill.

GEORGIA CLAIMS.

Mr. J. Randolph moved the taking up for consideration the resolution offered by him on the claims under the act of Georgia of 1795.

Mr. Elliot moved the order of the day on the bill for the compromise of those and other claims.

Mr. Gregg moved to postpone the further consideration of the resolutions till the first day of December next. He was, he said, perfectly prepared to act on the bill for the settlement of the claims, and to give it his decided negative; and should have no objections, but for the lateness of the session, and the great mass of important business that demanded attention.

The Speaker said, the motion to consider the resolutions, being first made, must be first put.

It accordingly was put, and carried—yeas 58.

Mr. Jackson then moved a postponement of the resolutions until the 1st Monday in December.

Mr. Stanford inquired whether the motion of postponement was not susceptible of a division, so as to apply to each resolution separately.

Mr. J. Randolph hoped the question would be so taken.

Mr. Rodney expressed the same wish, and that the yeas and nays might be taken on each division of the question. He was opposed to a postponement. He should not have risen at this late period but for the warm opposition the resolutions had received from various quarters, and but for his desire to avail himself of the opportunity to state his reasons for giving them a firm support. [Mr. R. was interrupted by an inquiry whether his remarks were in order before the Chair had decided on the divisibility of the motion to postpone. Mr. John Randolph remarked that whenever a question was susceptible of division, it might be divided as a matter of right.]

Mr. Varnum asked if a motion were made to postpone certain resolutions, or a bill, whether it would be divided so as to apply to a part only of the bill or the resolutions?

Mr. Jackson said the motion is to postpone the resolutions generally. A major proposition must include the minor, and cannot be susceptible of division. If a member were to move a postponement of one of the resolutions, a motion to postpone the whole would supersede it.

Messrs. Elliot and Eustis were of opinion that the motion did not admit of division.

The Speaker said it had been the practice of the House to commit a particular section. He considered the motion divisible.

The question having been stated on the postponement of the first resolution to the first Monday of December—

Mr. Rodney rose.—I was about, said he, when interrupted by an inquiry relating to a point of order, taking advantage of the opportunity afforded to give my reasons in support of the resolutions under consideration. I had observed that they experienced such a variety of objections, and from such a variety of quarters, that notwithstanding it was my intention to have given them a silent vote, and to have relied on the able manner in which they had been supported by my worthy friend from Virginia, I felt it my duty to remain no longer silent. My friend from Massachusetts has endeavored to interest the feelings of the House by awakening their compassion to the claims of those who have innocently suffered. I will only remark, in reply to such addresses to our feelings, that justice has the first right to be heard. Be just before you are generous, is a maxim consecrated by time and humanity; though an acknowledged virtue is of an inferior order, it may be the second virtue which a Legislative body ought to possess, but justice is the first. In the course of this discussion when reason failed, resort has been had to other means, and a too liberal disposition to use personal recrimination has been indulged. I am pleased, however, to hear the gentleman from Massachusetts declare here that the warmth displayed on this occasion ought not to affect the personal feelings of individual members, and I am happy that this sentiment pervades every part of the House. I shall therefore pass by the sallies of the imagination which we have heard, as we do the flights of our pigeons who leave their owners *animo revertendi*, and return to the subject. I shall pass by the fable of the lion, without reversing it; nor shall I allude to another fable relating to that noble animal, and to a reptile who, having found under him a shelter from danger, attempted to sting him.

It is objected to these resolutions that they are abstract propositions. By abstract principles, I understand axioms unapplied. But when they are applied to facts, they cease to be considered in the abstract. In geometry there are certain elementary principles which are the basis of all reasoning on any proposition in that department of science. So in law there are principles in the abstract while they remain unapplied, and which bear in every case where facts admit of their application. So in politics certain principles are held sacred, either in the view of right, or in relation to the constitution of a State. But when these principles are applied to a given state of things, they cease to be abstract. In the Declaration of Independence there are several abstract principles, such as "that all men are free," &c. But when applied to a certain state of things, they are no longer abstract. I apprehend, therefore, that my worthy friend from Pennsylvania will, on more mature reflection, perceive that the principles contained in the resolutions bearing on facts cease to be abstract; on facts which it is necessary for us to decide, and against examining the consequences of which no reason can be urged. But says another gentleman, we have no jurisdiction in the case; we have nothing to do with the act of Georgia of 1795; we have no authority over it. I confess myself really surprised to be assured, over and over again, that the act of 1795, which gives the House all this trouble, is the corner stone of the present claims, and without which there would not be a shadow of claim, is not to be considered as blended with our proceedings. What! when we are called upon to compromise claims, are we not to go to the cause, to the fountain source, and decide whether they have, or have not, a foundation in justice? Put the act of 1795 out of the way, and would we have ever heard of this compromise? Remove it, and would we have a single claimant before us soliciting a compromise? I consider the act, to Georgia, as involving the all-important point; as intimately and indissolubly blended with the question before us. That question is whether we will consent to give five millions to effect a compromise of claims, directly emanating from the act of 1795; and then, as an incidental question, we are obliged to look at the act of 1795. If the House have authority over the main question, *ex vi termini*, they have authority over every question incidental to it; and common sense teaches us that it is absolutely necessary to determine on the validity of the act of 1795, in order to decide the justice or policy of compromising claims arising out of it.

But says the gentleman from Massachusetts, the United States are pledged to compensate these claimants by the articles of agreement made with Georgia, and by the act of Congress passed at a late session: and he wishes us to drop the curtain over this scene of iniquity. I should be as glad as that gentleman to do it, but I wish to know who raised it, and whether the first act in this dark drama is not the act of 1795, and whether this did not, in the first instance, raise the curtain? I wish to examine the validity of this act. Is there anything in the articles of cession that contravenes its validity? My worthy friend from Virginia has frequently called the attention of the House to that instrument. I will again invite it. By the third article it is—

"*Provided*, That all the lands ceded by this agreement to the United States, shall, after satisfying the above-mentioned payment of one million two hundred and fifty thousand dollars to the State of Georgia, and the grants recognised by the preceding condition, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: *Provided, however*, That the United States, for the period and until the end of one year after the assent of Georgia to the boundary established by this agreement shall have been declared, may, in such manner as not to interfere with the above-mentioned payment to the State of Georgia, nor with the grants hereinbefore recognised, dispose of or appropriate a portion of the said lands, not exceeding five millions of acres, or the proceeds of the said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating for any claims other than those hereinbefore recognised, which may be made to the said lands, or to any part thereof. It being fully understood, that if an act of Congress making such disposition or appropriation shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter to cede any part of the said lands on account of claims which may be laid to the same, other than those recognised by the preceding condition, nor to compensation for the same; and in case of any such cession or compensation, the present cession of Georgia to the right of soil over the lands thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for shall revert to the State of Georgia."

It must be evident from the plain reading of this article, that Georgia did not contemplate on her part to pay, nor wish the United States to pay the claimants. She ties the United States down to a certain time, and if afterwards she undertakes to appropriate one acre to their satisfaction, the whole reverts to Georgia. Is there any specific recognition of claims in the instrument? Is there any covenant to pay the claimants under the act of 1795? We find nothing in the letter of the articles of cession to warrant it; and we must conclude that there is no promise made by the United States to compensate the claimants under that act. But say gentlemen, this is to be found in the act of the last session. I think that act establishes no such thing, and that those claims are not recognised, or intended to be recognised by it; for it explicitly declares in the eighth section:

"That so much of the five millions of acres reserved for that purpose by the articles of agreement abovementioned, as may be necessary to satisfy the claims not confirmed by that agreement, which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been regranted by the Spanish Government, be, and the same is hereby appropriated for that purpose, and so much of the residue of the said five millions of acres, or of the net proceeds thereof as may be necessary for that purpose, shall be and is hereby appropriated for the purpose of satisfying, quieting, and compensating, for such other claims to the lands of the United States south of the State of Tennessee not recognised in the above-mentioned articles of agreement, and which are

derived from any act or pretended act of the State of Georgia, which Congress may hereafter think fit to provide for: *Provided, however*, That no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the Secretary of State, and recorded in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve and a half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim to the said lands, derived or pretended to be derived, from the State of Georgia, and not recognised by the above-mentioned articles of agreement, ever after be admitted or considered as evidence in any of the courts of the United States, unless it shall have been exhibited and recorded in the manner and within the time above-mentioned."

From this view I think it must be obvious to every person who has considered the articles of cession and the act of Congress, that neither in the one nor the other are these claims recognised as valid. They are both very far from containing any covenant to compensate or compromise them. I know that truth is only to be sought by a slow and painful process, while error is very compendious and easy. We can with great ease hop and skip over truth and perch upon assertion, and call it truth. But where shall we find in the articles of cession or the act of Congress any obligation to render compensation for these claims? We can find nothing. No such idea is inculcated. While we may find abundant proof to satisfy us that this assumption is without foundation, and cannot be supported.

Having settled, as I conceive, these preliminary points, I will call the attention of the House to the great point on which their decision must turn. Either the act of 1795 or of 1796 is in force. If that of 1795 is in force the claimants have a legal title to unascertained millions. If that act is not binding, they have no claim at all. If that act is of no authority, there is an end of their title. The tree is cut up by the roots, and all its branches fall. They have either then a title to fifty millions, or they have no title at all. Their case cannot be compared to a common saying, which declares half a loaf better than no bread.

Now let us compare these facts and reasonings with the resolutions. When I rose I intended to have taken them up in order, but as I have been diverted by the course of the argument, I shall pursue the track I have taken. One of the resolutions states 'that a subsequent Legislature of 'an individual State has an undoubted right to 'repeal any act of a preceding Legislature, pro- 'vided such repeal be not forbidden by the consti- 'tution of such State, or of the United States."

This is, I think, a plain and clear axiom. Both Legislatures flow from the same source, and are armed with equal powers. What one Legislature can do, another may undo, if the interest of the public prescribes it. I know an ingenious distinction is taken as to the power of a Legislative body, between municipal acts and those constituting contracts. The distinction holds to a certain degree as to expediency, but not as to power. When a Legislative body forms a contract, it is a solemn thing, and it ought not to be touched, except when the private evil arising from its being annulled should rather be endured than the public calamity arising from its continuance. But still the position of the resolution is perfectly tenable. What one Legislature has done another may undo; what one has enacted, a subsequent one may repeal.

Let us examine whether there is anything in the rescinding act of Georgia at variance with the constitution of that State, or the Constitution of the United States. The whole course of the business shows the previous act to have been a violation of the constitution of Georgia. The Constitution of the United States declares that no State "shall pass any *ex post facto* law, or law impairing the obligation of contracts." That no contract has been impaired, is evident from attending to the sense of the word. I know of no contract formed, either in a legal or equitable sense. Did the constitution of Georgia authorize her Representatives to rob the people of their property? Or did it authorize them only to dispose of it for their welfare? If they had a right to dispose of it in a wrongful manner, it knocks up the argument at once. If they were vested with a right to rob and plunder their constituents, I give up the point. But until this is shown I shall remain of opinion that they only had the right of disposing of it for the general good. I am not about to travel through the fruitful wilderness of inquiry disclosed in the progress of this affair. But gentlemen say that we have no evidence of corruption. What do they want more than we possess? The whole business has been referred to a set of Commissioners, whose comprehensive powers embraced an investigation of every claim. They have fully examined the claims under the act of 1795, and they have reported that—

"A comparison of the schedule annexed to the articles, and which is declared to be a part of the agreement, with the yeas and nays on the passage of the act authorizing the sale, (E.) shows that all the members, both in the Senate and House, who voted in favor of the law, were, with one single exception, (Robert Watkins, whose name does not appear) interested in, and parties to, the purchase.

"The articles of agreement, and list of associates of the Tennessee company, which have been voluntarily furnished by one of the trustees, shows that a number of members of the Legislature were also interested in that company."

This stubborn fact appears on the face of a report made by persons duly authorized to investigate the whole transaction. The fact is indisputable, and ought to satisfy the most reluctant and unwilling mind of the enormity of the corruption attending this business. It is fully satisfactory to my mind. But it is said that this statement is founded on *ex parte* depositions, and that no opportunity has been allowed to cross-examine the witnesses. But where were they taken? In Georgia; in probably the same House that witnessed the scene of disgrace; by a tribunal competent to take them and to inquire into facts. But say gentlemen, admitting the facts to be true, the subsequent rescinding act of Georgia was unjustifiable and is invalid; and, notwithstanding a majority of those who framed it were corrupted, it is a binding law. I do not know, as I have before stated, any case strictly analogous to this. But I consider it as an universal principle that fraud vitiates every contract, and that consequently if this contract was entered into fraudulently, it was null from the moment of its formation. If a Legislature should authorize a man to make a fraudulent conveyance, and he should make it, will gentlemen say that it would be valid. They will not. But say gentlemen there are parties who are innocent. I lament as much as any one that persons of this description are likely to suffer. But a grant void at the period of its formation cannot be valid at any subsequent stage. Void in its creation, no validity can accrue to acts under it. But gentlemen ask if we have ever heard of a case in which two parties are equally guilty of one taking advantage of the other? The general principle of the law is that where both parties are equally guilty of a fraud, the one in possession is in the best condition. A usurer cannot plead his usurious bond and get possession of the property pledged for its payment. So if a contract be made to dispose of land for a corrupt purpose, the party in possession may show the fraud and keep the land and money. Why is this principle established? In order to prevent the parties from practising fraud, which is most effectually done by declaring that neither of the parties practising a fraud shall receive a helping hand from the law.

The opinion that the rescinding act is not obligatory is as novel as unfounded. Has it not been declared obligatory by the Legislature and Convention of Georgia? Have not the Commissioners likewise declared it valid in saying "that un- 'der all the circumstances which may affect the 'case, as they have come within their knowledge, 'the title of the claimants (under the act of 1796) 'cannot be supported." Has not Congress authorized the Commissioners to purchase the territory? In what situation then is the House placed provided the act of 1795 is valid? Are they not a set of land-jobbers? Have they not purchased land from Georgia which she had no right to sell? Are they not at this moment, in proposing to give a part only of the lands conveyed by the act of 1795, declaring that act void as much so as if they gave none? I cannot conceive in what point of view the subject can be placed without coming to the conclusion that the act of 1795 is void: and the proceedings of the House show their perfect unanimity on this point; otherwise some gentlemen would be in favor of giving the whole fifty millions.

But we are told it is politic to satisfy the claimants because they may be troublesome; they may bring ejectments and prevent the disposal of the public lands. Let us see if there is no remedy against this evil, and whether it is not pointed out by the act of the last session. Provision is therein made for registering and recording claims on the United States under the acts of Georgia. This provision goes to a great extent; it declares that unless the claimants observe certain forms they shall be debarred from giving evidence of their validity in any of the courts of the United States. If then Congress have power to declare the claims subject to certain forms, can they not say that no claim, title-papers, or deeds, under the act of 1795, shall be adduced in the courts of the United States, as well as to say that they shall only be adduced under certain prescribed forms?

Upon the whole, it appears to me most evident, on referring to the acts of Georgia, the articles of cession, and the laws of Congress, that the claims under the acts of Georgia have no validity. If, therefore, we give anything, it must be from compassion, and not from the obligations of justice. Let the House, ere it do this, reflect whether there are not objects in the country equally worthy of their compassion. Let them visit the straw shed of the war worn soldier who bled in the defence of our rights; the comfortless hut of the widow who lost her husband in battle. With but little search we shall find a mountain of claims that overhangs the justice of the country. If, after this view, we shall consider any unfortunate victims of injustice in this transaction entitled to compassion, I will agree to go as far as any man in affording them relief. But were we as rich as Crœsus, I would first administer relief to the Belisariuses of our country. Let us be just to these before we are generous to other descriptions of claimants.

In discussing the subject in this manner, said Mr. R., I have attested my entire correspondence with the sentiments of my friend from Virginia, (Mr. RANDOLPH.) who has so ably advocated these resolutions. I believe that he has irrefragably substantiated the principles and facts they contain. I believe he has placed them on a solid basis, and has erected a pyramid of argument in their support which nothing can shake, and which terminates in a point that must lead to the rejection of the bill. I express this opinion with due deference to the ideas of gentlemen on the other side of the question; only observing, in language used on another occasion, that those who are disposed to censure me for my warmth will give me credit for my sincerity. Thinking as I do, I could not repress it. It was the first lesson of my youth to go where duty led; hitherto I have pursued that course. I have found it the road to conquest, and shall teach it to my children. Had I not, on this occasion, trodden this path, I should have considered myself unworthy of the confidence of those who have sent me here.

Mr. T. M. RANDOLPH.—Mr. Speaker: I hope the House will not consent to postpone these resolutions. I hope it will, on the contrary, immediately proceed to consider them, and conclude by adopting them, for, taken generally, they meet my warm approbation as to the principles they lay down, and I am anxious to see the last one,

which is the fair corollary of the other, incorporated into the bill now before us.

It is with reluctance I trouble the House this session, after so long forbearance, with my opinions and sentiments not yet sufficiently matured by any experience in legislation; but my opinion on this question is so decided, my sentiments at this moment are so strong, and I know them to be so consonant to those relative to this subject which are most prevalent in that district of Virginia I have the honor to represent, that my inclination and my duty combined, impel me irresistibly to make an attempt to communicate them. Besides, when an opinion must be publicly pronounced, as mine must be in giving my vote on the question, and it appears to be obnoxious, perhaps I might say unsafe, to assign, in bold and apt words, the reasons which give rise to it, then, in my mind, it is not manly to retain or to veil those reasons. When hatred, it may be danger is likely to ensue from the declaration of truth, then, above all times, I deem it my duty to utter it; for, when many decline that necessary service, none of those who are willing to undertake it can be spared. I have little hope of performing this task in an impressive and agreeable, or even in a smooth manner, but I shall perform it. To do what I conceive to be my duty is my business; the peculiar manner in which I do it is the necessary result of that manner in which nature has formerly done her duty towards me.

My opinion is, that it will cast a broad stain on the American character, as it must be exhibited in future history, for this body which represents it to grant compensation for their pretended losses, under whatever form ingenuity may invent to disguise it, to any of those adventurers who made the spurious contract with Georgia in the year 1795, for the purchase of her western territory, upon the ground that the fictitious bargain gave the least shadow of title to any part of that territory. This opinion is a conviction irresistibly given, to my mind, by an impartial investigation, that what were at that time called companies of land adventurers, were, with the exception of one or two misled individuals, whose delusion and consequent implication I lament, no other, in their conduct on this occasion, than shameless bands of sharpers; what was impudently called a contract, was, in reality, a fraud of unprecedented enormity, and what has since been declared an unjust interposition of the primary sovereign authority of the State, to cancel a fair bargain, was no more than the regular and proper application of the only sufficient means which could be used to redress a cheat upon the people of Georgia of unparalleled audacity and magnitude. I am sorry, by entertaining this opinion, to differ with so many on this floor, with whom it is my pride to think; but I am not much surprised at that difference. Very rarely, indeed, have I heard of important questions which did not divide opinions; never have I been at a criminal trial where numbers did not doubt the reality of the crime. Such is the difference in the impression made by the same testimony upon different minds. Were it not for this extraordinary circumstance in our nature, which almost precludes unanimity, and which completely defies explanation upon any general principles of the moral structure of man, there would be but one sentiment in this House upon the question now before it. The information which has satisfied my mind, I have derived from the declarations of the counties of Georgia, in their petitions and remonstrances presented to the convention of that State, which assembled in the month of May, 1795; from the acknowledgment made by that convention of the dignity of those applications, and the respect due to them, in the resolve which referred the matter they contained to the consideration of the succeeding Legislature; from the proceedings of the General Assembly of 1796, upon that matter, and the evidence it collected and recorded relative thereto; and, lastly, from certain declarations and provisions confirming those proceedings, and thereby establishing that evidence, which were made by the convention of 1798, and which exist now in the body of the present constitution of Georgia. The same means of information are within the reach of all; I ought to say, should be possessed by all; I might say, should be satisfactory to all; since the witnesses are the great body of the people of one of our respectable States, and the testimony is authenticated, confirmed, and preserved, as well by the constitutional as the ordinary code of that State.

It has not been my object in making this inquiry, to learn in what deep sharper's brain this scheme was first engendered, which of the associates stood most prominent in the development and execution of it, how the price paid for the flagrant treason against posterity was apportioned, or how the spoil obtained by such a stupendous larceny, committed upon the inheritance of the unborn, was divided. I have not desired to know, and it would be unimportant to the House to be informed, which of the associates had no moral sense at all, whose conscience was subdued by his avarice, or who, unthinkingly, gave the control of it into the hands of his friend. I desire not to see any name consigned to infamy; of those which have come to my knowledge, one or two I yet respect; the remainder have not more distinct images annexed to them, in my mind, than those of the men who conceived and executed the South Sea cheat in England, or the Mississippi fraud in France. But, from the investigation I have made, I have learned, as certainly as the actions of men can be known to others than the actual beholders of them, that the Legislature of Georgia, which commenced its session in the autumn of 1794, was assailed by every possible artifice of seduction, to procure from it the act of 7th January, 1795, which constituted what has since been impudently called the Yazoo contract. That it yielded to those artifices, and a considerable majority of its members became treacherous to their constituents, and deaf to the voice of their honor. That bribes were daringly offered and unblushingly received for votes in favor of the land. That the property

of the State of Georgia, to the amount of forty millions of dollars, at the most reasonable estimate, was sold by those trustees of the people of Georgia for one half million, and purchased by the sellers themselves, in combination with certain abject worshippers of gold, who had artfully infused into them their blind fanaticism. That another offer of four-fifths of a million, made by other men at the same time, was rejected, because the Legislature itself was concerned in the first. That the Chief Magistrate of the State, after one feeble effort of resistance, and a declaration which ought to have bound him to an obstinate opposition, with a conduct which, to my mind, manifests a thorough knowledge of the corrupt views of the Legislature, as well as a want of energy to defeat them, yielded to the impulse, and ratified the fraudulent sale. That the moment his irresolute hand gave the illusive sanction to the vain and ineffectual deed, this ravenous pack of speculators, keen with the hunger of avarice, unkennelled and scoured the whole peopled territory of the Union, in quest of their appropriate game—the simple, the credulous, and those who are hoodwinked by the excess of their own cupidity. The most voracious of them sought the great cities, where numbers of the thirsty sons of gain became their prey, while numbers more joined in the promising chase, led the way to the victims, and fattened on their spoil. Many, more feil in their nature, though less keen in their appetites for gold, traversed the tranquil country of New England, scenting the homely purses which hung in the smoky corner of peaceful cottages, into which the solitary dollar had been dropped with religious punctuality every week, perhaps every month only, by the hand of the provident father, from the time when the first birth under his roof gladdened his heart. Great numbers of these receptacles of hard-earned gain, with all their rusty treasure, the fruit of long continued industry and frugality, destined to insure to many of the rising race the innocent joys of a life of wholesome exertion in their own fields, were devoured by them, and that happy destiny in a moment changed for a short period of certain pain, and, too probable, vice, in the moving prisons of the ocean.

The promulgation of the law produced one general murmur of indignation throughout the State of Georgia. The crime committed by the representatives of the people was strongly denounced by the grand juries of all the succeeding courts. An assembly of special representatives, which had been summoned for constitutional purposes, meeting in the succeeding spring, was addressed by all the counties of the State, and by nearly the whole people of it, with memorials, remonstrances, and petitions, according to the different degrees of excitement, all setting forth in strong terms the nefarious act, complaining with bitterness of the perfidy of the Legislature, requiring, urging, and imploring the convention to proclaim the fact, and annul the fraudulent sale. No laborious investigation into the huge and naked scheme of speculation, no troublesome search after testimony to expose the framer of it was necessary. Nothing was requisite but to receive, condense, and record the decisive evidence voluntarily offered from all quarters. But this legitimate and easy task the convention, naturally enough, thought fit to decline, as many of its members were themselves openly* concerned, and many more secretly interested in the purchase. The pack of speculators were then in full cry, the game were falling abundantly into their jaws; it could scarcely be expected that those who had contributed so much to set this chase on foot, who expected to share so largely in its profits, should sound the horn of alarm to the objects of it. It quickly occurred to a majority of this body, that a reference of these addresses to the Legislature of the next year, would not only give time for the continuance of the chase, but might be productive of something like safety in the after possession of the spoils of it; while it promised to afford some shield against the popular discontent and indignation which a total neglect, so desirable to themselves, must inevitably have brought on them. Notwithstanding, before midsummer of the same year, the fraudulency and consequent invalidity of the sale must have been unequivocally known throughout the Union, by the ferment in the State of Georgia. Early in the succeeding year all the records of State relative to this transaction were burned, and all recorded evidences of private contracts which had arisen out of the land were cancelled, destroyed, and forbidden to be renewed or afterwards admitted in the courts by the Legislature acting under the authority to consider the matter, and of course the power to redress the complaint of the petitions, which had been given to it by the convention, and also under the express injunction of the people themselves, laid on the individual members of that body at the elections. But the speed of the sharpers had outstripped the slow step of the State. They had, in a great measure, executed their swindling scheme; a number of their dupes were already, instead of amusing their own credulity, insincerely, and I will say, insolently, accusing the perfidy of Georgia.

That was a blot made which never can be completely expunged from the page of American history. It is local, however, and as yet stains but one small spot of that fair sheet. And shall this body, the genuine representative of the American nation, influenced by the clamor of sharpers and the complaints of their dupes, by admitting the bill now pending before it, by refusing these counteracting resolutions proposed to it, extend it over the whole?

I trust we will not. I feel confident we shall, by adopting the one, and rejecting the other, diminish the disgusting spot, so that it shall scarcely be offensive to the eye of the reader of distant futurity. If we do not, it must appear to that eye deeper than any stain of venality in the annals of that nation which affects to believe that corrup-

* Compare the lists of associates of the four companies, as far as they have been brought out, with the list of members of the convention.

tion is politically wholesome; blacker than any blot ever thrown upon that page by the unnatural alliance of Christian avarice with Mahometan cruelty against that devoted country, for the oppression and ruin of which all the vices of the cross and the crimes of the crescent seem to have combined; insomuch as we declare public and private morals to be the only pillar which can support our system, while they openly avow the desire of gain to be the most valuable spring of human actions. Let us not show to-day that our belief is feigned. Let us demonstrate it to be serious. Let us go further, and display the same tenderness for the future character of the American nation, of our time, which we individually feel for that private fame we are respectively to leave with our fellow-citizens hereafter. We may afterwards yield to the impulse of charitable feelings, and relieve, by moderate grants of land, and land only, I hope, all those sufferers who are entirely innocent of this crime, and sincerely ignorant of its perpetration. That innocence and ignorance, or the contrary, guilt and acquaintance with the fraud, can be collected with considerable certainty by an attention to the times and places in the written evidences of the pretended claims, as they must display the information relative to the nature of the transaction which might and ought to have been possessed by the purchasers. Some atonement is due from the State of Georgia for the perfidy of so many of her exalted citizens. She has acknowledged that it is due: she has provided for making it, by placing five millions of acres of land in our hands as a fund for that and certain lesser purposes. The task of applying that fund we have willingly assumed. Is it possible we can coolly resolve, in performing the voluntary service, to insult, most grossly to insult, that respectable State by granting any part of that fund to men whom it has stigmatized, whose conduct in this affair it has in its primary sovereign capacity solemnly pronounced infamous, and whom its representatives on this floor continue still, by the part they take in this question, bitterly to denounce? Surely it is not possible we can give this insult to the State of Georgia. We know she must have intended, if not that an exact discrimination should be made, at least, that a complete exclusion of all the parties to the original fraud, and all the propagators of the mischief of it, should be effected. For myself, I believe the former was the intention, as I know it now to be the wish of Georgia. What will the people of that State think of our conduct if we act otherwise? What should we think of trustees who should render inaccurate expressions in an instrument of trust; bestow upon the highwaymen or incendiaries themselves the best part of a donation, placed in their hands by charitable persons, for the relief of sufferers by highway robbery or by wilful burning? I trust we shall apply this fund for the relief of the real sufferers. I I know that it is greatly more than sufficient for that purpose, and I hope the United States will not be forced by Congress to assume a heavy debt for the increase of it, in order that it may be extended further than charity or justice requires, to objects on which benevolence could not look, and at which justice shakes her head. I trust we will revive the hopes of those good parents of whom I have spoken, and we will restore the destiny of their injured children, but I cannot believe we will consent to admit to a share of the bounty of Georgia, along with them, the wicked contrivers of their distress. Those eagles in human shape, although they were driven with disgrace from the gigantic prey at which they had audaciously stooped, have borne afar immense booty in their rapacious talons. I am assured that somewhat more than a million* of dollars has been truly amassed by them, all from the fraudulent sale; and that of the half million which was paid to Georgia for a property worth then forty millions, and rapidly rising in value, till checked by a late occurrence, five-sixth parts has been withdrawn by them, with her permission, from her treasury, where it lay despised and untouched as polluted trash. Not yet glutted, they now threaten, insolently threaten, to return to the rescued prey, and under assumed, for ought I know innocent names, boldly solicit ten millions from the nation as the price of their abandonment of it. Nay, they have become so fastidious at length, that they now disdain any portion of the destined prey itself. †They require their indemnity for its having been forced out of their talons in American stock. Yazoo stock! Ten millions of Yazoo stock! Heaven preserve our ears from this frightful sound. That of Algerine tribute has always been so distressing to mine, that I have often wished the nation would risk some of its blood to purchase the eternal suppression of it. When once they become subject to be assailed in passing the walls of our treasury by the hideous note of Yazoo stock, from that moment they must become forever callous to all tones which convey the infamy of my country. What excuse can we make to the nation for not carefully excluding them from the additional emolument by their iniquity, which they now boldly expect? Can we say there are no discriminating powers at our command, by which we can separate the real sufferers by their fraud, from the contrivers of it, and the selfish propagators of its mischief? Surely we cannot. The original lists of the four companies, including all the associates, certainly cannot be so carefully hidden as to elude all search. Surely an attention to the proximity or distance of the residence of those claimants who were afterwards involved from the scene of the iniquitous act, and a notice of the period when that inquity became notorious, will enable any tribunal to distinguish the innocent and ignorant purchaser from the

* Those who have sold, deny that more than a trifle over a million has been received in the whole; those who have bought, declare they have paid three millions. What has become of the difference? It has never existed.

† See propositions two and three, made to the Commissioner of the United States, by Hull, Morton, Dexter, Payne, &c., the names now assumed.

fraudulent and knowing speculator, with some degree of accuracy, if not with a precision sufficient completely to satisfy justice. Are we compelled, by our agreement with Georgia, to throw down what her humanity has put into our hands for the relief of the innocent sufferers, (and surely we will not insult her by presuming she meant to include the guilty,) that it may be scrambled for by all the claimants, and seized in the proportions which antecedent cunning and swindling dexterity may have destined? We cannot say we are. Yet what else shall we be doing, if we pass this bill, and thereby confine our commissioners to the literal proofs of those false though specious claims—if we neglect to give them the power, if we fail to instruct them, I ought to say carefully to sift out of the claims all evidence of the original fraud, or of a probable acquaintance with it, which they may contain, and reject or admit them by that test. Ought we not to expect that all the disinterested in the nation will be struck with astonishment if, while some of us are proclaiming the odious origin of these claims, a majority, without disproving our assertions, should pronounce them all to have some legal foundation, and proceed to give indiscriminate relief to the holders of them? For myself, I must hear much more than I have yet heard in support of that opinion, to remove my amazement at it. Surely there cannot be so wide a difference between law and justice, that the former can embrace what the latter must loathe. I have heretofore thought, notwithstanding the simple, uniform, and universally manifest character of the one, and the complicated, various, occult nature of the other, that their essence was the same. I have always believed and till now thought all men concurred with me in the belief, that whatever was manifestly fraudulent must be illegal; that no lapse of time, no change of circumstances, no complication of numbers or of influence, could legalize it. I have further believed that no act of any Legislature, manifestly immoral and unjust, could be deemed genuine, and be afterwards calmly received as binding on the State. These points of belief I shall ever retain, and were my tenderness less for the gentlemen who differ with me on this question, I should not hesitate, trusting yet to their concurrence, to conclude now by calling on them to disprove the history we have given of those claims, or to withdraw their favor from the claimants, to consent to the consideration of those resolutions, and ultimately to the rejection of the bill before us.

But my deference for the sentiments of those gentlemen, leads me for a moment to abandon these all-important axioms of social and political morality, which I have just stated, and which they seem to disallow by advocating the claims; for a moment to admit that a Legislature may, in some way, derive from a constitution the power to do acts manifestly immoral, unjust, and treacherous; that corruption may be purified, fraud may be sanctioned, robbery may be made to give a valid title, by Legislative authority. They will, I make no doubt, with equal complaisance, permit me to demand some admissions of the same nature from them. A government can then, by construction or inference, derive from a constitution the power of plundering the State, and may legitimate the act, so that individuals, into whose hands the plunder may fall, shall be able afterwards to defend their possession of it in courts of justice. Because no literal prohibitory declaration exists in the Constitution of the United States, any more than in the former constitution of Georgia, to guard against what honesty could never have foreseen; their Government, too, may legitimately transfer, for a trivial consideration, to its own members, or to favored individuals, for their private emolument, the best property of the nation, to any amount. Congress can now constitutionally pass a law to divide the contents of the Treasury among the individual members, for imaginary or trivial services, after stipulating a participation; because it has the power to give compensation to those who may render real services to the nation. Nay, because the Senators and Representatives may, by their own vote, take a compensation for their services from the Treasury; they might, also, applying a loose construction to the term compensation, divide the contents of the Treasury amongst themselves, to indemnify them for the long privation of domestic happiness they are here compelled to undergo; and they would be liable to nothing more, therefore, than the neglect and contempt of their constituents.

These positions admitted, I could not refuse to grant, that the Legislature of Georgia, of 1795, could have legitimately sold to companies composed of their own members and others, for a price less than the annual quit-rent the same lands would have paid formerly to the Crown of Great Britain, forty millions of acres of the finest lands in the world, belonging to that State. But in granting it, I should deem it my duty immediately to move this House to take into consideration, with all speed, the necessity of increasing the list of prohibitory clauses in the Federal Constitution. I would recommend, along with numbers of others which would be as necessary, the following: The Senators and Representatives shall not plunder the Treasury under pretext of requiting themselves for their services; the members of the Government shall not engross to themselves the national possessions. Certainly, if it is maintained that a subsequent Legislature can have no power of punishment or of resumption where the plain letter has not been disregarded, such prohibitions as these, ought, without delay, to be adopted into the Federal Constitution. If otherwise, then is the Yazoo tenure ridiculous indeed, for by that doctrine alone, could it be supported.

My respect for our opponents in this question, still prevents my concluding here. I will endeavor to show them that that tenure was contradictory not only to the general laws of equity, but also to the then existing constitution of Georgia, and, accordingly, absolutely null. I have always understood that in equity, a bargain, (above all, for land,) though quite clear of any other symptom of fraud, could not be valid unless it included

a valuable consideration. That the circumstance of the consideration being so ridiculously trivial, as to what was agreed to be accepted by the Legislature of Georgia, would be sufficient to cancel any bargain for land between individuals, even after it came into the hands of a subsequent purchaser, if he had made his purchase after open denial of the contract, and public reclamation by the original owner. This was not only a rule of equity in Georgia, but a principle recognised by a positive law of that State. (See *Marbarie's Digest of the Laws of Georgia*, page 116.)

The price agreed to be paid to Georgia was one cent, and one-fourth of another cent, per acre. The lands sold were, in a great part, among the most fertile of the earth, situated in one of its finest climates, and adapted to all its richest productions. They were sold too, not to citizens of the State alone, and men with agricultural views, but in a great measure to strangers, and altogether to speculators, who meant to demand some hundreds of cents from the sub-purchaser with cultivating intentions. This immense difference would soon have disappeared, swallowed up in luxuries; perhaps the farmer would have been ejected from his farms because his toil did not produce fast enough for impatient appetite. The people of Georgia, the true owners of these lands, immediately reclaimed them, as I have shown, in the most public manner; and among other stronger reasons, upon the ground of the insignificance of the consideration stipulated for by their trustees; and they instructed their next representatives to resume them. These representatives did so; and their act of doing so was solemnly ratified by a Convention.

But many gentlemen here contend, notwithstanding, that the law was irrepealable, and that the contract made by it, however irreciprocal, was valid and indefeasible. I shall make no other reply to them than to endeavor to expose still farther the illegal foundation of that contract. Taking my eyes for a moment from the fraudulent nature of it, I will endeavor to look seriously into the Constitutional character of the pretended law which established it—I will examine more nearly the ground upon which it was framed. I trust I shall be able to show that it stood on a basis of perjured misconstruction, which the first honest breath blown against it completely overturned. It is not requisite to show that the Legislature of Georgia, which convened in December, 1794, had no powers but such as were directly, or through honest inference, granted to it by the convention of 1789. The members of that Legislature themselves claimed no others. It is not necessary, either, for us to search throughout that instrument for a special grant of power to support the law of January 7, 1795. The members themselves selected the head which they pretended to believe contained that grant. Let us examine it: "The 'General Assembly shall have power to make all 'laws and ordinances which they shall deem ne-'cessary and proper for the good of the State, 'which shall not be repugnant to this constitu-'tion." Under such a narrow and flimsy cloak did they expect to hide this gigantic fraud. But this was the peculiar folly of those times. Under such another did certain political assassins, not long after, attempt to strangle unseen the infant liberty of America.

The very next section of the constitution says, "the General Assembly shall have power to alter the boundaries of counties, and to lay off new ones out of them, as well as out of the other vacant territory belonging to the State;" again—"and when any new county shall be laid off in the vacant territory of the State, such county shall have a number of representatives," &c. How could it be other than repugnant to the Constitution to render entirely nugatory this important provision of it? Does not the constitution plainly enough prescribe a division into counties before a sale, by this provision, for a representation in that case, and by totally neglecting to make any kind of provision for the case of sale before a division? Is it possible the framers of the constitution could have foreseen, imagined, or deemed possible, the case which actually happened, and, at the same time, have used the language they did? If the term county was understood to imply representation of course, and the constitutional power to divide after the sale, why was so particular provision made for representation in those counties to be formed out of the waste and unappropriated lands? A power is expressly given to lay off counties within other counties, or in the vacant and unappropriated lands of the State, with a view that representation should coextend with population. The territory after the sale was neither; of course no power remained to divide it into counties, but that power being expressly given, none could have been given to defeat it: yet that was completely done by the law on which these claims rest. One preceding Legislature had laid off the county of Bourbon on the Mississippi—no doubt supposing that to be the true meaning of the constitution which we have given—and had actually proceeded to make grants or sales of land within it. Another had rejected an application to purchase the territory in conformity with the report of its committee, consisting of one member from each county in the State, which report, it is likely, was founded upon the construction we maintain. One, it is true, had acted otherwise; but the eagerness with which the succeeding one seized an occasion that presented itself for retracing the steps of the former, is an additional proof that what we contended for was the sentiment of the State. But the Legislature of 1795, actuated by the motives I have displayed—its prime movers, perhaps, instigated by certain juggling politicians from the North, who preferred to attain the justly desired end of separating that territory from the State, and thereby diminishing the dangerous size of Georgia, by intrigue rather than the plain means since adopted—the Legislature of 1795, I say, in contempt of the general sentiment of the State, in open violation of the constitution, made one sweeping sale of the whole territory for a contemptible price. Nay, with the words of their oath—"I solemnly swear I will give my vote on all questions as in my

judgment will best promote the good of the State"—with these words yet vibrating on their tongues, they rejected four-fifths of a million offered at the the same time, on the same terms of payment, and, to promote the good of the State according to their peculiar judgment of it, we must suppose, took one half million. But perhaps they knew that those who offered the $800,000 were not as sure paymasters as themselves; or perhaps they thought the honorable body of notables of Georgia, which, although numbers of it expressed a noble disdain and indignation at the transaction, was yet fully represented in the companies; or perhaps they thought that was the true thing meant by the term State, in the constitution. Such an hypothesis was not unfashionable in those days, above all in what were supposed the most enlightened parts of the Union.

I might have been abruptly stopped by an observation that we had no right to consider the constitutionality of the laws of Georgia, any more than the morality of her lawgivers; but a shield, which has blunted so many darts that the stoutest of our foes of the present day seem fonder of making feints than hurling seriously at it, stands interposed between me and that attack. I have only to repeat, that, in considering the question before us, we must pronounce between the law of 1785 and that of 1796; that to execute the trust we have undertaken for Georgia, we must decide upon her discordant legislation. I will go on with considering further the constitutionality of the law of 1795. Those particular arrangements which we have shown were made by the Georgia constitution of 1789 for the incorporation of the western territory into the State, surely ought to have extinguished, even in the womb of infancy, all embryo construction for alienating the territory from the jurisdiction of the State; and the law of 1785 did most completely alienate the jurisdictional right of Georgia, along with the soil. The territory, after the grant, could not have been divided into counties; its inhabitants, by an express provision of the grant, could not be taxed by the ordinary Legislature until represented, nor could they have been represented in it under the then existing constitution, until divided into counties. The provisions of the constitution for the incorporation of the territory could not have applied after the grant, for they were expressly made for vacant and unappropriated lands. The jurisdiction of the territory was then lost to Georgia, and of course transferred, though informally, yet substantially, and no doubt designedly, to the United States. Designedly, I make no doubt, for by this renunciation of State jurisdiction, thus artfully interwoven into the contract, the value of the lands was so plainly enhanced. Purchasers from abroad and from the other States would have come forward in great numbers and with much greater alacrity, knowing privately that the territory would come immediately under the Federal jurisdiction, and be sooner erected into new States. Who can believe that the associates and those who held under them, once settled in their territory, and this hidden grapnel I have endeavored to discover, once thrown out by them upon the Federal Government, the strength of Georgia ever could have broken it? But until the constitution of 1798, no power ever existed in Georgia, unless in the whole body of the people collectively, to make an alienation of the territory of that State. Authority for that since made to the United States was given by the convention of 1798, and such a power, it seems to me, can properly flow only from that prime source in any of the States.

That there is a necessary and inherent power even in our national Government to alienate and acquire territory at will, I am not ready to admit. It cannot be necessary where a recurrence to the primary authority is so frequently, so easily, and so safely made as with us. To say it is an inherent power in all governments, from the nature of government, even though not absolutely necessary, would be looking abroad again for analogies, and so far relinquishing our own peculiar and excellent theory. Having purified so well the turbid waters we drew from the political fountains of Europe, better to cut off all communication with their impure sources, than again to admit from them any little rill which might once more discolor our now almost transparent stream. I can never admit a right in any Government which is founded upon the sovereignty of the people, whose sole legitimate end is their good, to grant monopolies of the unappropriated soil. No possible restrictions can, in my opinion, prevent such monopolies from operating powerfully against that good and against the essential principles of such Governments. Besides, many individuals among the people have, according to my idea, just claims upon the nation for free grants of such lands. Poor men, who have lost their limbs or their health in defence of their country, even though they may have received a pittance of daily pay; poor persons upon whom nature has bestowed an uncommonly numerous offspring; poor and virtuous citizens who have married early in life, and having the prospect of a family to maintain sooner than the savings of labor could accumulate sufficiently to insure that maintenance against accidents to the parent, which might suspend the power of labor. All these, I contend, have the right, and it is at least as well-founded as that of not famishing for sustenance, from society.

There are certain conditions, it is true, not improper to notice here, though not altogether pertinent, upon which alone this right should be acknowledged on the part of Government. These are, an actual settlement of the lands immediately, an abandonment of the rights of alienation during the first lives, an equal division among successors. This right is necessarily admitted by the calls for new establishments of those who are able to purchase, which arise continually from the increase of numbers, and of agricultural capital. By answering such at a just price, the national strength, which consists in the number of proprietors, is equally increased as by gifts, and at the same time the national resources are enlarged in the most desirable way—the voluntary contributions of the able. The liberty of a nation it is

true, like that of the rich individual, should always keep in view the ratio of necessary expense, to the amount of the certain and natural resources. It should be more ready, yet at the same time not less prudent and discerning. But by monopolies of the soil, this right of certain citizens, which I have mentioned, is destroyed; liberality itself is extinguished; the national resources are sacrificed for the pernicious aggrandizement of those already too high, to the still greater debasement of those already too low. Innumerable are the evils arising out of them, which appear at once to the examiner's eye, and demonstrate that the power to grant them cannot constitutionally exist in any of our Governments, unless especially delegated.

If this view I have endeavored to lay open to the grant from Georgia, which is the basis of these claims, be fairly taken, no one, I think, can seriously apprehend the legal ejectment from their possessions, of those who may make purchases or receive donations from the United States in the territory pretended to be claimed by the Yazoo adventurers. I cannot believe myself that they will ever venture into the courts of justice of the Union with their fictitious title paper in their hands; in every line of which the word fraud will appear at once in large and indelible characters. If they should, contrary to my expectation, be daring enough, I cannot think so injuriously of any judge of the Union, as to apprehend, that, maintaining the power which sold to be legitimate, shutting his eyes upon the unexampled perfidy of the sellers, denying the early publicity of the fraudulent nature of the transaction, rejecting the authority of the subsequent Legislature to resume the property upon evidence of these, and also the paramount authority of the convention to annul the law, which was acknowledged by the adventurers themselves in withdrawing their money; last of all, declaring the consideration paid by the original purchasers to be sufficiently valuable; he will pronounce the law of Georgia, of 7th January, 1795, to be binding and to preclude equity from the State. No! every judge on the bench of the Union will, I firmly believe, at once declare this law null, all contracts made under it void, and all considerations given upon them reclaimable. If I thought otherwise I would readily acquiesce in any, however strong, remediable measures. I would vote for a law forbidding the admission of such evidence into our courts. If nothing else would do, I would even give my voice in this House for imposing a heavy penalty on the man who should dare to assert such a detestable claim to the indisputable property of the nation, and thereby disparage the property. Our opponents say, the danger of being dragged into courts of justice at any distant day, however uncertain the apprehension of that anxiety, which the most distant prospect of being dispossessed in our old age of buildings, orchards, gardens, established by our own hands, must naturally create in men, will keep all purchasers aloof, will effectually prevent all sales, and keep our most important and most exposed frontier forever weak and defenceless. I answer, let those lands then remain unsold: the nation will sustain no damage in its interest thereby, for it has more at market elsewhere than the demand is likely to take for a great length of time. It is even my opinion that interest will be materially forwarded by the suspension of sales there at this time. It is not, I say, a weak and defenceless frontier, which it is so necessary to strengthen immediately with new settlers that the attainment of that end could justify our giving a bounty to fraud. The most vulnerable point of the Union is now removed many hundred miles farther from the centre, and every settlement made elsewhere at present contributes to diminish our means of covering that point with the impenetrable armour of a republican militia.

Shall we permit those motives of policy to govern us in this happy time of assured peace, unexampled prosperity, and rare tranquillity and unanimity, which we should always reject with disdain if it were not that, if not the stratagems and deceits, at least the forbearances towards fraud, vice, and crime, often necessary in actual war, are thought in some degree justifiable also in certain other periods of national danger, embarrassment or difficulty? For myself I never could have lent my voice in this House to support that policy, even when such reasons had their strongest force. Much less can I acquiesce now. I cannot consent that this Government should draw a veil over its eyes to admit the approaches of fraud. I cannot give my consent that it should tamely suffer itself to be bullied out of such a serious portion of the national wealth, as $2,500,000, which a former act of these Houses has led our commissioners to offer in order to quiet these unfounded claims. I have yet the strongest hopes we shall dismiss them unsatisfied by rejecting this bill. Surely we will not, by passing it, ennoble with Legislative favor the mysteries of speculation: we will not hold out to the tribe of speculators an expectation that this Government will in future gratuitously underwrite on all their land adventures, if they will be moderate in their insurance. Our bounty to the innocent sufferers will do no trifling mischief, by removing from credulity its only restraint, timidity and doubt, which otherwise must have been greatly fortified by this distressing example. I hope, however, we shall extend that bounty to them. But upon the adventurers themselves, or on those who knowingly embarked with them in this desperate and infamous scheme, the nation's forgiveness and its silence is the only boon I will ever give my voice to bestow. We shall, I ardently hope, grant them no other here. If they reflect I think they will accept that and retire; let them do so, and in retiring, let them silently return thanks to the great Creator of all things for his bounty to man in granting him through this life a free will, uninterrupted, unrestrained by heavenly interference. But for this bounty, the wrath of Heaven would have arrested them in the commencement of their scheme. They have made that use they thought best of Heaven's favor; they have coolly projected

and pursued their own chosen plan for advancement in life; let them not look to this Government for aid to bear them up under the disappointment of its failure. But a few days since, their hopes were high: they expected immediately to attain by our supineness the end of their forcibly moderated desires. Thank Heaven, by the bold use of its most noble gift, which was then made by one gentleman particularly in this House, they were suddenly stopped in their progress, and that hope, unless they are thoroughly blinded by their own ardor, completely extinguished. They escaped the thunder of Heaven, but they have not the certain earthly punishment. Since that day they have stood in the eyes of an indignant nation, riven, blasted, stripped of all the lovely foliage of reputation by the lightning of eloquence.

Mr. Lyon.—Although, sir, I have no wish to assume the character of the cunning and sagacious fox of the temperate zone, I am willing to be allowed to possess a share of the magnanimity of the animal whose name has accidentally fallen to my lot, with which magnanimity I will meet the resolutions of the gentleman from Virginia. Certain I am that I come forward on this occasion with clean hands and a pure heart, wishing for a discussion of this subject on the broadest basis. I wish to let my constituents and all the world know the principles that govern me; I am willing to publish my creed on all questions of civil policy involved in this or any other subject that shall come before this House.

The gentleman from Virginia has brought forward certain resolutions, which have been published, and have been called the articles of the creed of the democrats. I am a democrat, and am very free to declare that they are not the articles of my faith. Those articles, in their present shape, contain what I call political heresy; and, rather than be obliged to swallow them, I would be willing to risk the imputation of schism; and should it take place in the democratic church, I am willing to leave the democratic republicans of America to judge who has been the cause of this schism—he who attempts to force his unqualified creed on the public and on Congress, or he who offers amendments, and cannot swallow it in its present crude state.

A few days since I mentioned my intention of introducing, in the course of the discussion of this subject, some amendments, which, with others that on deliberation I think necessary, I will now read, in order to declare my intention of getting them incorporated with the original resolutions. [Here Mr. L. read twenty-one amendments with the original resolutions of Mr. Randolph, as they would read when such amendments were incorporated, as follows:*]

* The parts in *italic*, with several omissions and alterations of words, are Mr. Lyon's amendments.

1. *Resolved*, That the Legislature of the State of Georgia were at no time invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same but in a rightful manner, and for the public good, *of which such Legislatures are the Constitutional judges.*

2. That when the Governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been clothed for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people so circumstanced to revoke the authority thus abused; to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them: *provided that the public faith and the confidence necessary to be placed by men in each other, and the confidence necessary between the Government and individuals, be not impaired.*

3. That it is in evidence to this House, *by ex parte depositions*, that the act of the Legislature of Georgia, passed on the seventh of January, 1795, entitled "An act for appropriating a part of the unlocated territory of this State for the payment of the late State troops, and for other purposes," was passed by persons under the influence of gross and palpable corruption, practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest; *but whether it is so or not this House is by no means competent to decide, nor does it possess the means of forming a just and impartial decision upon the subject.*

4. That the good people of Georgia, impressed with general indignation at this act of *supposed* atrocious perfidy and unparalleled corruption, with a promptitude of decision highly honorable to their character, *under such impressions*, did, by the act of a subsequent Legislature, passed on the thirteenth of February, 1796, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it upon their constitution, *which to this House appears to be strong testimony that the said Legislature had not previously a right so to do*, to declare the preceding act, and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State, and be publicly burnt, which was accordingly done; provision at the same time being made for restoring the pretended purchase-money to the grantees, by whom, or by persons claiming under them, part of the said purchase-money has been withdrawn from the treasury of Georgia.

5. That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature, provided such repeal be not forbidden by the constitution of such State or of the Unit-

These resolutions, thus amended, said Mr. L., I am willing should be considered as the articles of my faith, so far as they go; but as other gentlemen have taken the liberty to depart from the question of postponement, and enter into the merits of the whole subject before the House, I hope I shall be indulged in now submitting the observations I had contemplated to have delivered on the bill when regularly under consideration.

Among the various subjects which have called for the attention of this House the present session, I believe no one has caused so much irritation as the present, and in no one have I been more mortified to be obliged to give my vote and opinion contrary to that of many gentlemen of this House with whom I have been in the habit of thinking

and acting. This makes it the more proper for me to detail the reasons which have governed the vote I have given on this occasion, and will govern those it will be necessary for me to give.

In the first place, I will endeavor to take a concise view of the history of this subject as it occurs to me.

The State of Georgia claimed a great country lying between the settled part of that State and the Mississippi; part of this territory was claimed by the United States, and I believe part by South Carolina. Georgia was, with the other States, (having claims of unappropriated territories,) invited to cede those claims to the United States, the acquirement of those countries having been effected by the common exertions of the people of all the States. Georgia had suffered more, and I believe had fought more in the Revolutionary war, according to the number of her whig inhabitants, than any other State; she felt her sufferings; she met with harsh treatment and neglect from the Federal Government in the early part of the Administration, and she was not disposed to relinquish her claim to the Western country. As early as 1789, it seems the Legislature of that State made a bargain to sell a great part of that country to certain companies called the Virginia and South Carolina Yazoo Companies. On account of non-payment, or owing to some other causes, that bargain was not consummated, and the Legislature of Georgia, in or about the year 1795, offered these lands for sale, and did actually, by an act of their Legislature, dated 7th of January, 1795 and by Executive acts founded thereon, sell and convey by deed their claim and title to about forty millions of acres of that territory, for which they received the compensation agreed on. The succeeding Legislature, it seems, did not like the bargain their predecessors had made. They thought they did not get price enough for the land, or they thought if they did, they put too much of the money in their own pockets. Until now, I never heard it contended that the Legislature of 1795 had not as ample power to dispose of the land as any succeeding Legislature would have had, in case it had not been sold. They, after declaring the sale null and void on account of its being effected by fraud, bribery, and corruption, endeavored to erase and destroy every evidence of the transaction. The proceedings of the Legislature of Georgia on this subject in 1796, carry on the very face of them a doubt of their ability to do away the title given in 1795, when they endeavor to perplex the holders of it by the destruction of the records.

By Commissioners on the part of the United States and on the part of Georgia, an agreement had been entered into lately by which all the title and claim remaining to Georgia on that territory has become vested in the United States. But this has not been done without fair warning being given on the part of the purchasers under the act of Georgia of 1795, wherein they state to the President their purchase, and the ground of their claims.

By the act of Congress passed March 3d, 1802, the Secretary of State, the Secretary of the Treasury, and the Attorney General, were authorized to receive propositions of compromise and settlement from the several companies of persons claiming lands in that territory. This law has been published and has operated as an invitation to those claimants to come forward with their propositions for a compromise of their title; and propositions have been accordingly made which it seems it is in our power to comply with, notwithstanding the severe limitation of Georgia, which does not allow the United States to give more than 5,000,000 of acres of those lands to quiet all the claims. This severe limitation is another strong expression on the part of Georgia of their doubt of the possibility of their doing away, by acts of legislation, the title given by the acts of 1795. I call it a severe limitation, believing as I do that the Legislative and Executive acts of Georgia did, notwithstanding the alleged bribery, legally and authentically convey to the purchasers in 1795, all the title of Georgia to the land so sold; and I do think that the possibility of compromise ought to have been left on a broader basis.

When I saw the convention between the United States and Georgia, I feared by this limitation that every attempt at compromise would prove abortive; that the holders of that title would not accept of what it was in the power of the United States to give, limited as they were in that territory. Thus all my hopes for the speedy settlement of that country were blasted; but I comforted myself before I left home with the thought, by the acquisition of Louisiana, the Government would be able to add (to what Georgia had consented should be given in compromise) a tract on the west of the Mississippi. Feeling as I do a high interest in the settlement of that country lying between me and the ocean, and between my residence and the seats of commerce on the Mississippi, a country which is now, and has long been, a harbor for bands of the most desperate

ed States; *and provided that such act is not a pledge of faith to any individual or body politic or corporate, and does not purport to invest any individual or body politic or corporate with any individual right.*

6. That the aforesaid act of the State of Georgia, passed on the thirteenth of February, 1796, was not forbidden by the constitution of that State nor by that of the United States, *unless it affected the rights of some individual or body politic or corporate.*

7. That the claims of persons derived under the aforesaid act of the seventh of January, 1795, are recognised *impliedly* by compact between the United States and the State of Georgia, *and* by *an* act of the Federal Government, *passed at the last session of the 7th Congress:* Therefore,

Resolved, That the five millions of acres reserved for satisfying and quieting claims to the lands ceded by the State of Georgia to the United States, and appropriated by the act of Congress passed at their last session, shall be appropriated to quiet or compensate any claims derived under any act, or pretended act of the State of Georgia, passed, or alleged to be passed, during the year 1795, *after making provision for other claims secured by law.*

robbers and murderers that ever infested any part of North America—who almost weekly rob or murder some of my neighbors on their return to their homes from market; the settlement of which country I well know must be retarded by the doubt of the title which is offered while two claims exist; or if settled under these disadvantages, it must be settled by people who, not being owners of the soil, will do but little good on it—feeling as I do on the subject, sir, I could not but be extremely pleased to find by the report of the committee to whom this subject has been referred, that a compromise was to be expected without looking to any other resource than the five millions of acres which Georgia had consented should be applied for that purpose.

And nothing could come more unexpectedly to me than the opposition to this compromise, and the arguments made use of to support this opposition.

In the first place, it is urged that the claimants under the act of Georgia of 1795 having obtained their title by means of bribery, it cannot be valid. I fear, Mr. Speaker, that if this principle was to be adopted, very few titles in the United States would bear investigation. I believe it was generally understood, before the Revolution, that there was no approaching the great personage who called the lands we now inhabit his own, for the purpose of obtaining a grant, or even coming at any of his agents in Europe or America for that purpose, through any other medium than the avenues of bribery, by presents and donations, which were to be distributed even among the lowest class of domestics, and I believe very little of the price of the American lands ever went into the Treasury; besides all other presents and donations, there is supposed to be at least 150,000 acres, the best lands in New Hampshire and Vermont, which were reserved by royal Governors directly for themselves, the validity of their title to which I have never heard called in question.

This principle, carried to its extent, would shake the very foundation of the title to landed property in this country; but it has happily never been adopted by any of the courts of the United States. On the contrary, those courts who have the sole power of deciding in cases like this, having the rules, maxims, and precedents before them by which all disputes respecting landed property are to be settled, have decided that the title given by Georgia, in 1795, is a valuable consideration that binds the obligator of a bond given for that title to pay his bond.

Were it now to be established, sir, that the agents who were Constitutionally authorized to grant out the lands of a State, by interesting themselves in the purchase, have rendered invalid the title, deplorable must be the situation of some States in this Union. I remember a grant of land made by a Legislature of a State, in which the name of every member was intended to be inserted as a grantee, and publicly read. I remember many other grants made, in which the members were concerned to what extent they pleased, yet no fault was found. Whenever it was thought that the members acted improperly, they were punished by the neglect of their constituents, but no one thought of invalidating the title.

In the case of the Georgia grant in 1795, I believe it was understood before the members were chosen that it was proposed to sell the western lands; the people ought to have entrusted this important concern with honest men. It is, in my opinion, better to suffer the consequence of almost any act of Government, than admit of the least diminution of public faith. Public faith once pledged by the Constitutional authority, has ever been with me sacred as the *sanctum sanctorum* itself. In the twenty-five years I have been in legislative business, I have never given a vote which seemed to me so near to infringe on public faith as the votes I have given lately on the subject of the suppression of the Commissioners of Loans; and I gave those votes merely with a view to have the subject brought up in detail, reserving to myself a right of voting against the bill in case the preservation of the public faith should ultimately require it.

One of the most valuable traits in our Government is, that property is secured by known and established rules in the acquirement and transfer of it; and when it is obtained from Government, the Legislature that gave it has no more right to snatch it back again, than individuals have when they give away or sell their property. Suppose another revolution to have taken place in France by this time, and the new Government was to declare to the world, that the First Consul had sold Louisiana to us too cheap, that there was bribery and corruption in the business, and that they would not consider themselves bound by the bargain, and tell us to take our stock again; that they will either keep Louisiana, or sell it to those that will give more for it; would not we think such conduct a most flagrant breach of faith? Would not the world think so? Would not we be ready to declare that we would defend our purchase to the utmost of our power?

I will take the liberty to mention another case which I think is in point. Some years since, the Legislature of Kentucky put their vacant lands on sale for forty dollars an hundred acres, with long credit for the price; since that time, by other successive acts, the price has been reduced and the time of payment lengthened; these measures have been opposed by a considerable minority; should that minority prevail and become a majority at the next session; should they declare (which I believe they might do with truth) that many members of the former majority were interested in the former proceedings of the Legislature; should they declare that the lands were sold too cheap, and too long time given for the payment of the price; should they collect the papers, and by means of a glass draw fire from the sun, or obtain it from another region more favorable to such a design, and make a bonfire of the records and the evidence of the appropriation of the lands heretofore made; should they declare that they had a right to re-sell it, and that they would make a better sale—thirty thousand of as worthy, honest, deserving people as inhabit this continent would

be ruined. I think, sir, it is very improbable such a thing will take place; however, the principle urged by gentlemen who sustain the resolution, and oppose the passage of the bill, would justify such a measure.

Although I was not a member of the Congress which established the funding system, I was a spectator, and I believed it to be brought about by corruption and the most iniquitous means. I believe men interested in the speculation influenced the measure. I saw men rising from indigence to opulence by the sub-agency they had in that abominable business. I detested the whole transaction as much as man could, but the public faith being once pledged, I never could consent to a breach of it. I know of no remedy for such evils, but what would encourage a revolutionary spirit, not needed in these days—a spirit which would tend to disorganization, to anarchy and confusion. Let the community suffer for allowing themselves to be imposed on by knaves and they will grow careful whom they trust: such are the reflections we make in private concerns.

I do not believe that this House have power to inquire into the motives of the integrity of the Legislature of Georgia, or any other State; their authority is equal to and independent of that of the Legislature of the United States within their own sphere. I do not believe that any judiciary in this country have that power. If I am not mistaken it has been held by members of this House from one of the greatest States in the Union, that the judiciary of the United States have no right to inquire into the Constitutionality of a law passed by Congress; if this be so (which by the way I don't think to be the case) how can they or we inquire beyond the Constitution itself into the motives of individual members of the Legislature of a sovereign and independent State? Notwithstanding my character has been represented differently, I never was a disorganizer.

So long ago as when we were first about taking up arms in defence of American liberty, I hesitated more to question myself and my acquaintance on the subject of our being able to form and establish a Government suited to our wishes and our wants, than to consider the danger of wounds, death, imprisonment, or any other evil that could happen to me. I have ever dreaded anarchy as the deadliest foe to human happiness. In the early struggles of the country which is now the State of Vermont, military operations became necessary, in order to avoid surrendering our rights and property to a neighboring colony; but I would not join that opposition until a Government of our own was consented to, from which has emanated the Constitution under which four gentlemen hold their seats in this House, and two in the other House of Congress.

At the time when anarchy was prevailing in a State bordering on that in which I lived, the contagion reached Vermont; there are many living witnesses of the energy displayed by me to repress it; myself and my neighbors were ready, and at a moment's warning marched and risked our lives for the Government; from my stores were the militia of the country supplied with provisions, liquor, ammunition, and every necessary; from my pocket were their bills paid. By energy and promptitude Government prevailed; insurrection was nipped in the bud; and we remained quiet, while something like civil war prevailed in our neighboring States for want of that early promptitude and energy.

It is well known to my intimate friends and acquaintance that had I believed opposition to the last Administration had tended to anarchy or disorganization I would have avoided it; as little as I might like a Government administered as ours then was, I would have preferred it, with all that I suffered under it, to anarchy and disorganization. I never shrunk from the claim of a disabled soldier, nor from the honest claim of any public creditor; on this score I have never been behind any member of this House, and I will promise to go every length with the gentlemen from Delaware and Virginia; I think the nation is amply able to pay her debts without plundering or speculating on other people's quarrels. But, sir, it may be said what has all this to do with the present question? I mean by it to show my consistency and my alarm at the revolutionary doctrines held out in the course of the debate on this subject.

It has been said by some gentlemen, who oppose the proposed compromise, that if the title given by Georgia is good for forty millions of acres, why accept it for five? Why not let them have the whole? In answer permit me to say, we are acting for the United States, and we are bound to look to their interest, not that of the claimants; they have judged of what is for their own interest; and if, on account of the difficulties they foresee in contending for their right with the United States, if for peace sake, and perhaps a share of patriotism which induces them to avoid unpleasant controversies with the Government, they are willing to surrender their claim to seven acres for one acre without contention, ought we not to be ready to close a bargain with them? Agents are here, I understand, for the purpose, who are authorized and willing to complete it. After the discussion this subject has had in this House, and a majority of six members have declared themselves in favor of the compromise with a view to favor the United States, not the claimants, and mostly under a conviction that their title is good, can any one suppose that we ever shall have another opportunity to compromise this awfully perplexing business so favorable on the part of the United States as the present? I think not. The claimants, baffled in every attempt at compromise on their part, after being invited to it by the United States, losing all hopes of any kind of compromise, will settle the lands, from which they cannot be driven but by an adjudication of a court of justice, which I believe never can be obtained against them.

Under this impression their price will immediately rise in the market; when we offer another compromise, they will not listen to it; and the United States will lose that immense territory, a small share of which would now redeem the whole.

The United States cannot be a loser in this transaction; in this safe kind of compromise, it is proposed to give for the peaceable and legal title not more than one-eighth of what they have offensively obtained by the Convention with Georgia to secure the remainder; and for the whole they have not, nor are they bound to pay a single dollar out of any other fund than its own avails, while the present claimants, under the act of 1795, have honestly paid for their purchase more than three millions of dollars.

I hope it will not be thought, from what I have said, that I mean to justify or excuse the conduct of the Georgia Legislature of 1795. I mean no such thing; I detest bribery both in the giver and receiver; but how can a third person be obliged to suspect fraud, when he sees fair authenticated title-papers from a sovereign State? Every man who sees these papers naturally considers the faith of that Government pledged, and no person who is versed in the doctrines lately advanced on this floor, would think of scrupling that faith more than he would that of a well known established bank, in which case, when the paper of the bank was offered to him, his inquiry would be, is the paper counterfeit? not, did you come fairly by it, or did you cheat the agent, the clerk, or the teller of the bank out of it?

I feel myself, Mr. Speaker, justified, from the considerations I have mentioned, perfectly justified in the votes I have given, or shall give, on this subject in all its stages. Yet I must confess it is the anxious desire I have for the growth and prosperity of the Western country, that has roused my activity on the occasion. In the course of a few days, in private conversation, I have heard sentiments expressed to this purport: "Last year, 'when I wished that country settled in order to 'serve as a barrier against the encroachments of 'an enemy, I was willing for the compromise, but 'now that is not the case, I do not care whether 'it is settled these hundred years; I shall not vote 'for the compromise." It seems by this to be intended that that fine country, lying in the most delightful climate on the globe, the soil of which is capable of producing the richest fruits in the greatest abundance, shall remain a desert, while thousands of our fellow-citizens in the Eastern States, living in a state of crowded population, as it were, wrangling for a share of the barren rocks among which they cultivate a little earth, barely enough to gain a subsistence, might, if encouraged to become Western land-holders, quit their snowy mountains, and, by the abundance the Western country, cultivated by their industry, would yield yield them, could not fail of being opulent, and, in a superior degree, promoting the population and adding strength to the nation. Are gentlemen going to be governed by this narrow policy, and preserve this dispute purposely to prevent the growth of the Western country? Do they fear that country will increase too fast in political and commercial importance? Have they taken the alarm, since last year, when the law laying the foundation for this much desired compromise was popular? Do they think if people go on the lands without title, or a disputed title, they will never be otherwise than poor and trifling? Are gentlemen willing to pursue this dog-in-the manger policy, and keep the avails of thirty-five millions of acres of those lands out of the Treasury merely to suppress the growth of that envied country? If this is the case, to be sure, they will vote to defeat the compromise.

Some gentlemen, I believe, on a former vote, held back their assent merely because the Commissioners were to have full powers to settle this controversy without recurring again to Congress; but let us consider what these plenipotentiary powers are? They extend no further than to give all the claimants one-eighth of what they bought and paid for; why then should we wish to hear any more of it? Why wish to spend another Winter upon it? The honor, the justice, and unanimity of the nation require the earliest possible finish to this business; the sooner all the disgraceful transactions attending it are buried in oblivion, the better. How can I wish to procrastinate, by withholding plenary powers, when those plenary powers are far short of the terms I have heretofore feared we should have to submit to, in order to accomplish this necessary compromise? One word on the subject of the claimants under the act of 1789. Their bargain not having been consummated by title deeds, I have never been alarmed as to their injuring the title of the United States to the land, and I have not been willing essentially to lessen the pittance allowed by Georgia to be given to those claimants, whose title would operate against that of the United States, lest by that means we should fail of the compromise; but I was always willing to give them, from some other source, whatever in equity should appear to be due them from the United States. However, I have been told that the claimants of 1795, full of the spirit of compromise, are willing that they should come in with them for that share the equity of their claim shall, in the view of the Commissioners, under every consideration, entitle them to; and I am willing, in this way, they shall be included in the bill; they are, in my opinion, included in it, and I do hope the resolutions will be amended and decided on, and that the bill will be carried through.

Mr. Elliot.—I am extremely happy, sir, that the task which I had assigned myself, of replying to the speeches of the gentlemen from Virginia and Delaware, has been anticipated by the able, and I will take the liberty to say, unanswerable speech of the gentleman from Kentucky. If the destinies of the American people are to be governed by the counsels of an individual; if the system of an individual is to be adopted; give me not the system of the gentleman from Delaware, or that of either of the gentlemen from Virginia, but that of the gentleman from Kentucky. He has displayed an equal superiority in argument and in correctness of principle.

In delineating our views of the tendencies of measures, it is frequently difficult to avoid the imputation of directly impeaching motives. Once for all, I declare that I shall never accuse mem-

bers of this House of improper motives. Although I may think the doctrines advanced by the supporters of the resolutions extremely pernicious, invasive of the natural political order of society, and subversive not less of the State sovereignties than of social order, yet I believe those gentlemen to be as honest as myself. And I was once as enthusiastic as they are now. Personal allusions, however, I shall never suffer to pass unnoticed. An allusion is made to the fable of the viper who stung his benefactor. I hope the people, to whom the appeal is now made, and whose indignation and detestation are invoked upon those who dare to oppose the resolutions, will never have reason to accuse those young men whom they have elevated to influence and distinction, of laboring, from whatever motives, to infuse a poisonous sting, never to be eradicated, in the very vitals of the Constitution. If the gentlemen mean to insinuate that I ought to consider myself as standing on inferior ground to themselves, I will tell them that, whatever degree of popularity I may possess at this moment, I shall always claim an equality in point of integrity. And however eminent may be the talents of particular members, they can have no right themselves to claim a superiority, in that respect, over their less favored brethren.

The question was then taken by yeas and nays on the postponement, until the first Monday of December, of the following resolution:

"*Resolved*, That the Legislature of the State of Georgia were, at no time, invested with the power of alienating the right of soil possessed by the good people of that State, in and to the vacant territory of the same, but in a rightful manner, and for the public good:"

And passed in the negative—yeas 51, nays 52, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, Matthew Clay, Frederick Conrad, Samuel W. Dana, John Dawson, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland, William Kennedy, Michael Leib, Joseph Lewis, jun., Matthew Lyon, Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, jr., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, James Sloan, John Smith of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

So much of the said original motion as is contained in the second clause thereof, being again read, in the words following, to wit:

"That, when the Governors of any people shall have betrayed the confidence reposed in them, and shall have exercised that authority with which they have been clothed for the general welfare, to promote their own private ends, under the basest motives, and to the public detriment, it is the inalienable right of a people, so circumstanced, to revoke the authority thus abused, to resume the rights thus attempted to be bartered, and to abrogate the act thus endeavoring to betray them:"

The question was taken that the House do agree to the motion for postponement of the said second clause of the original motion; and resolved in the affirmative—yeas 52, nays 50, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, Matthew Clay, Frederick Conrad, Samuel W. Dana, John Dawson, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland, William Kennedy, Michael Leib, Joseph Lewis, junior, Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, junior, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, James Sloan, John Smith of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

So much of the said original motion as is contained in the third clause thereof, being twice read, in the words following, to wit:

"That it is in evidence to this House, that the act of the Legislature of Georgia, passed on the seventh of January, 1795, entitled 'An act for appropriating a part of the unlocated territory of this State, for the payment of the State troops, and for other purposes,' was passed by persons under the influence of gross and palpable corruption practised by the grantees of the lands attempted to be alienated by the aforesaid act, tending to enrich and aggrandize, to a degree almost incalculable, a few individuals, and ruinous to the public interest:"

The question was taken that the House do agree to the motion for postponement of the said third clause of the original motion; and resolved in the affirmative—yeas 54, nays 49, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, Wm. Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George M. Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, Matthew Clay, Frederick Conrad, Samuel W. Dana, John Dawson, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland, William Kennedy, Michael Leib, Joseph Lewis, jun., Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, junior, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, James Sloan, John Smith of Virginia, Henry Southard, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

So much of the said original motion as is contained in the fourth, fifth, sixth, and seventh clauses thereof, being again read, in the words following, to wit:

"That the good people of Georgia, impressed with general indignation at this act of atrocious perfidy and of unparalleled corruption, with a promptitude of decision highly honorable to their character, did, by the act of a subsequent Legislature, passed on the thirteenth of February, 1796, under circumstances of peculiar solemnity, and finally sanctioned by the people, who have subsequently ingrafted it on their constitution, declare the preceding act, and the grants made under it, in themselves null and void; that the said act should be expunged from the records of the State, and be publicly burnt, which was accordingly done; provision at the same time being made for restoring the pretended purchase-money to the grantees, by whom, or by persons claiming under them, the greater part of the said purchase-money has been withdrawn from the Treasury of Georgia."

"That a subsequent Legislature of an individual State has an undoubted right to repeal any act of a preceding Legislature; provided such repeal be not forbidden by the constitution of such State, or of the United States."

"That the aforesaid act of the State of Georgia, passed on the thirteenth of February, 1796, was forbidden neither by the constitution of that State, nor by that of the United States."

"That the claims of persons derived under the aforesaid act of the seventh of January, 1795, are recognised neither by any compact between the United States and the State of Georgia, nor any act of the Federal Government."

The question was taken that the House do agree to the motion for postponement of the said fourth, fifth, sixth, and seventh clauses of the original motion; and resolved in the affirmative—yeas 53, nays 50, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Yeas—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, John Clopton, Frederick Conrad, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland, William Kennedy, Michael Leib, Joseph Lewis, jun., Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smith of Virginia, Henry Southard, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

And then the residue of the said original motion, contained in the eighth and last clause thereof, being twice read, in the following words, to wit:

"*Therefore, resolved*, That no part of the five millions of acres reserved for satisfying and quieting claims to lands ceded by the State of Georgia to the United States, and appropriated by the act of Congress passed at their last session, shall be appropriated to quiet or compensate any claims derived under any act, or pretended act of the State of Georgia, passed, or alleged to be passed, during the year 1795:"

The question was taken that the House do

agree to the motion for postponement of the said residue of the original motion; and resolved in the affirmative—yeas 54, nays 51, as follows:

Yeas—Willis Alston, jun., Simeon Baldwin, Silas Betton, Phanuel Bishop, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, Nehemiah Knight, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Joseph H. Nicholson, Thomas Plater, Erastus Root, Tompson J. Skinner, John Smilie, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouyk, James Holland, William Kennedy, Michael Leib, Joseph Lewis, jun., Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smith of Virginia, Henry Southard, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

Monday, March 12.

The Journal of the proceedings of Saturday last being read by the Clerk, a member in his place suggested an error therein, by misstating the decision of the House on the report of the Committee of Claims on the petition of William Eaton: Whereupon, the entry of the proceeding on the said report being read, in the words following, to wit:

"The House, according to the order of the day, proceeded to consider the report of the Committee of Claims, of the twenty-ninth ultimo, on the petition of William Eaton; and the said report being twice read at the Clerk's table, in the words following, to wit:

'That, so far as an examination of this case involves a consideration of the petitioner's Consular Agency, your committee feel a pleasure in expressing their decided approbation of his official conduct. Nor do they hesitate in communicating to the House their impression that the petitioner has a well founded claim upon the Government for his sacrifices and expenditures in the public service. But as much of his demand is under a course of examination at the Treasury Department, and as it is confidently believed the Executive is both enabled and disposed to render him complete justice, your committee consider the present application as premature, and that the Legislative interference ought to be withheld until a fair opportunity shall be afforded for the adjustment of the claim by the proper officers.

'Your committee are therefore of opinion that the petitioner have leave to withdraw his petition, and the papers accompanying the same.'

"The question was taken that the House do concur with the Committee of Claims in their agreement to the said report,

"And resolved in the affirmative."

A motion was made and seconded to amend the said entry, by striking out the following words:

"That, so far as an examination of this case involves a consideration of the petitioner's Consular Agency, your committee feel a pleasure in expressing their decided approbation of his official conduct. Nor do they hesitate in communicating to the House their impression that the petitioner has a well founded claim upon the Government for his sacrifices and expenditures in the public service. But as much of his demand is under a course of examination at the Treasury Department, and as it is confidently believed the Executive is both enabled and disposed to render him complete justice, your committee consider the present application as premature, and that Legislative interference ought to be withheld until a fair opportunity shall be afforded for the adjustment of the claim by the proper officers."

And, also, by stating that the House do agree to so much of the said report as is contained in the last clause thereof, in the words following, to wit:

"Your committee are therefore of opinion that the petitioner have leave to withdraw his petition, and the papers accompanying the same."

And on the question to amend, it was unanimously resolved in the affirmative, every member present answering in the affirmative, to wit:

Willis Alston, junior, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, Phanuel Bishop, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Clifton Claggett, Joseph Clay, Matthew Clay, John Clopton, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Gaylord Griswold, Roger Griswold, Samuel Hammond, John A. Hanna, William Helms, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Cotton Smith, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Samuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

Resolved, unanimously, That the Joint Committee on Enrolled Bills be instructed to wait on the President of the United States, and lay before him the engrossed bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," with the several amendments, as the same was finally passed by both Houses of Congress, and to state the variance between the said engrossed bill and the enrolment thereof, as approved by the President; and to request that he will cause the said enrolled bill to be returned to this House, in which it originated, for the purpose of rendering the said bill conformable with the engrossed bill and the amendments thereto, as passed by the two Houses of Congress.

Ordered, That the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

On motion, it was

Resolved, That a committee be appointed to prepare and report a bill to authorize the marshal of any district within the United States to adjourn any special or adjourned district court to the next stated term of said court, whenever the judge of the district court shall be unable to attend such adjourned or special court, and shall direct the marshal, in writing, to adjourn the same.

Ordered, That Mr. R. Griswold, Mr. Nicholson, and Mr. G. W. Campbell, be appointed a committee pursuant to the said resolution.

Ordered, That this House do now attend in the Senate Chamber to hear the Senate, in their capacity of a Court of Impeachments, pronounce judgment on the articles of impeachment exhibited against John Pickering, Judge of the District Court of the United States for the district of New Hampshire, agreeably to the notification contained in a message from the Senate, by their Secretary, on Saturday last.

The Speaker, attended by the members, accordingly withdrew to the Senate Chamber, for the purpose expressed in the foregoing order; and, being returned,

Mr. Huger, from the committee to whom were referred, on the seventeenth ultimo, and the eighth instant, the memorials of sundry merchants of the city and State of New York, and of sundry merchants and ship owners of the city of Hudson, in the said State of New York, made a report thereon; which was read, and ordered to lie on the table.

The House proceeded to reconsider their third amendment, disagreed to by the Senate, to add a new section at the end of the bill sent from the Senate, entitled "An act to erect a light-house on the south end of St. Simon's island, in the State of Georgia, and for the placing a buoy or buoys on or near St. Simon's bar;" as, also, to consider the amendment proposed by the Senate to the fourth amendment of this House to the said bill: Whereupon,

Resolved, That this House doth recede from their said third amendment.

Resolved, That this House doth agree to the amendment proposed by the Senate to the fourth amendment of this House to the said bill.

GEORGIA CLAIMS.

The House proceeded to the further consideration of the first clause of a motion of the twentieth ultimo, respecting "claimants to lands of the United States south of the State of Tennessee, under an act of the Legislature of the State of Georgia, passed in the year 1795;" and the said first clause of the motion being again read, in the words following, to wit:

"*Resolved*, That the Legislature of the State of Georgia were at no time invested with the power of alienating the right of soil possessed by the good people of that State in and to the vacant territory of the same, but in a rightful manner, and for the public good:"

A motion was made, and the question being put that the further consideration thereof be postponed until the first Monday in November next, it was resolved in the affirmative.

The House then proceeded to consider the bill providing for the settlement of sundry claims to public lands lying south of Tennessee, to which the Committee of the whole House, to whom it was referred, reported an amendment on the seventh instant: Whereupon, a motion was made, and the question being put that the further consideration of the said bill be postponed until the first Monday in November next, it was resolved in the affirmative—yeas 59, nays 49, as follows:

Yeas—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, and Marmaduke Williams.

Nays—Willis Alston, junior, Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, John Davenport, John Dawson, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, John Fowler, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, Benjamin Huger, John G. Jackson, Joseph Lewis, junior, Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Jeremiah Morrow, Anthony New, John Patterson, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, Tompson J. Skinner, John Cotton Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Lemuel Williams, Richard Winn, and Joseph Winston.

And so said bill was postponed until the first Monday in November next.

OFFICIAL CONDUCT OF JUDGE CHASE.

The House resolved itself into a Committee of the Whole on the report of the committee appointed "to inquire into the official conduct of Samuel Chase, one of the associate Justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania," made the sixth instant. The report is as follows:

That in consequence of the evidence collected by them, in virtue of the powers with which they have been invested by the House, and which is hereunto subjoined, they are of opinion,

1. That Samuel Chase, Esq., one of the associates justices of the Supreme Court of the United States, be impeached of high crimes and misdemeanors.

2. That Richard Peters, district judge of the district of Pennsylvania, has not so acted in his judiciary capacity as to require the interposition of the Constitutional powers of this House."

On reading the first resolution, for the impeachment of Samuel Chase—

Mr. Elliot said: Mr. Chairman, I have undertaken this day, in a manner neither copious nor tedious, to examine the relative rights of judges and of private citizens. The task is an important one, and I have only to regret that it very far transcends my feeble powers.

In the immense volume of the history of the human mind, there are no sections more interesting than those which develope the latent springs of human action, and record the effects of the spirit of party upon the wisest and the best of men. It is impossible, however, to judge of causes otherwise than by consequences, of motives otherwise than by actions. On an occasion like the present, it is our duty to discard the pride of party and the pride of power. But I have not risen to deliver a moral or political lecture to the Committee; I have risen for a very different purpose. As my opinions upon this subject are probably peculiar to myself, I have opened the discussion with a view to preclude myself from taking any part in the extensive debates which the subject can scarcely fail of producing hereafter. My views shall be succinct, and I will not wander, even for a moment, from the real question.

The resolution under consideration contemplates the impeachment of Samuel Chase, one of the Judges of the Supreme Court of the United States, upon a charge of high crimes and misdemeanors. Although I doubt whether Judge Chase has been guilty of any act which can with propriety be called a high crime, yet he appears to me to have committed one or two misdemeanors. I shall, therefore, under my present impressions, be compelled to vote in favor of the resolution; but my mind is open to conviction, and I hope to be enlightened, if I have unfortunately fallen into error. To misdemean is to behave ill; a misdemeanor is an act of ill behaviour; and the Constitution limits the duration of the office of a judge to the period of his good behaviour. I am not of opinion that every act which, strictly speaking, may be considered as misconduct, ought to subject a judge to impeachment; the misconduct must possess some degree of criminality. In England, it has long been the practice, and the practice has grown into law, to give great latitude to the discretion of judges; to presume, unless the contrary appears by incontestable evidence, that their errors are the errors of judgment, and not to punish them for any error of judgment whatever. It accords with my disposition to adopt, in their full extent, those equitable maxims of the British code. I have no wish to adopt the principle, *de uno crimine disce omnes*, or to embrace the idea of *norum crimen, et ante hanc diem inauditum*. From the proof of one act of misconduct, I will not presume the existence of others; nor will I create new crimes, unknown till this moment.

Except in relation to the trial of James Thompson Callender, I have discovered no ground of impeachment against Mr. Chase; and I will concisely examine the voluminous testimony before us, from which ingenuity may extract a variety of other accusations. The first charge will be, that John Fries, when arraigned for treason, was deprived of a Constitutional trial, by the arbitrary conduct of the court. Candor, however, after an impartial review of all the circumstances of the case, will make a different decision. It appears, by the testimony of Mr. Lewis;

"That Judge Chase, at the moment when Fries was placed at the bar, handed or threw down to Mr. Caldwell, the clerk of the court, one or more papers, and at the same time delivered himself, in substance, as follows: That he understood, or had been informed, that on the former trial or trials, there had been great waste of time, by counsel making long speeches to the jury on the law as well as on the facts, and on matters which had nothing to do with the business before the court, and he particularly noticed, in strong and pointed terms of disapprobation, their having read, and I think having been permitted to read, certain parts of certain statutes of the United States, relating to crimes less than treason, in order to show that the prisoner's case came within them, and which he said, he, or the court, (I do not recollect which,) would not suffer to be read again, as they had nothing to do with the question. He added, that we are judges of the law and understand it, or we are not fit to sit here; that cases at the common law, or under the statute law of England previous to the English revolution, had nothing to do with the question, and that they would not suffer them to be read; that they had made up their mind on the law, and had reduced it to writing, and that the counsel might conduct themselves accordingly, (or conformably to it,) he or they had ordered copies of it to be made, and one of them to be delivered to the counsel in support of the prosecution, and another to the prisoner's counsel, and that as soon as the case was opened or gone through (I am not sure which was the expression) on the part of the prosecution, he or they (I am not certain which) should order one to be delivered to the jury. He also added that, if we had any fault to find with the opinion of the court, or had anything to say on the law, to show that they were wrong or had mistaken it, we must address ourselves to the court, and not to the jury."

This is the evidence which I consider as material to the first point in question. Although the jury are to decide both the law and the fact in criminal cases, I have never heard it doubted that the court have a right to deliver their opinion upon the law, at any stage of the trial. But it is said that by this oppressive conduct of the court the prisoner was deprived of the benefit of counsel. In order to form a correct opinion upon this point, it is necessary to consider the conduct of the court in the first instance, that of the counsel in consequence, and that of the court which followed. That I may save the time of the Committee, I will endeavor to show from memory the substance of the volume of evidence on the table, although I have had very little time to prepare myself for this discussion. Of course the testimony of Mr. Lewis, and Mr Dallas, and Mr. Rawle, must be in some measure blended. It appears that the learned counsel considered the conduct of the court as unprecedented, injurious to the prisoner, and invasive of the rights of the bar; and they declined to proceed in the defence. The trial, however, was not precipitated. In the evening Mr. Chase became sensible that he had committed an error. The next day he told the counsel: "You are not 'bound by the opinion delivered yesterday, but 'may contest it on both sides." "You are at liberty to proceed as fully as you think proper; address the jury, and lay down the law as you think 'proper." "Having thus explained the meaning 'of the court, you will stand acquitted or condemned to your own consciences, as you think 'proper to act. Do as you please." Judge Peters asked, if an error had been committed would not the counsel suffer it to be corrected? I ask so too. Why did they not suffer it to be corrected? Could a court ever descend deeper into the valley of humiliation? Why deny to judges, the privilege so dear and so necessary to all men, that of correcting their mistakes? But the counsel were of opinion that there had been a prejudication of the cause. No such thing. When the court thus retraced the ground they had first trodden, I am clear that the general impression upon the minds of the jurors, resulting from the conduct of the court, would have been favorable to the prisoner rather than otherwise. We find, in the testimony of Mr. Dallas, the real reason for the strange conduct of the counsel: "Mr. Lewis and myself 'were greatly influenced in the conduct which 'we pursued, by our opinion of the means most 'likely to save the life of Fries, under all the circumstances of his case." They anticipated his pardon by the President, if condemned without counsel. I have formed a decided opinion that Fries was not, by any misconduct of the court, deprived of the Constitutional privilege of being heard by counsel, and of course that there exists no ground for impeachment, as it respects that trial.

I presume the Committee of Inquiry were of opinion that the conduct of the judge in the case of Cooper, was improper. Mr. Cooper was indicted for a libel on the President; he offered to give the truth in evidence, and applied for a subpœna for the President himself as a witness, which was very properly refused. Suppose a subpœna had issued. The President of the United States would have commanded the marshal to summon the President of the United States into court. He disobeys the summons. The President then commands the marshal to attach the President. Is not this absurd? Not that I think the President ought to be above attending any court as a witness, in criminal or civil cases. But it is presumed that his whole time is devoted to the important concerns of the nation, concerns infinitely more important than those of any individuals. If he cannot be prevailed upon, or cannot make it convenient, to appear in court, he certainly cannot be compelled to do it. But for what purpose was the testimony of the President wanted? Contrary to every principle of law and to the dictates of common sense, to criminate himself! Is not this absurdity rendered still more absurd?

By the testimony of Mr. Mason and Mr. Smith, it appears that Judge Chase delivered a charge to a grand jury at Baltimore, "in which there 'was much political matter. He spoke of the 'act of Congress, entitled 'An act to repeal certain acts respecting the organization of certain 'courts of the United States, and for other purposes,' as alarming and dangerous in its tendencies, as it went to destroy the independence of the Judiciary. He inveighed in very strong 'terms against the amendment made by the Legislature of Maryland to their State constitution." &c. Next to the holy altars of religion, I consider the temple of justice as the most improper place from whence to dispense the dogmas of party, or the theories of political disquisition. I have felt much indignation at such conduct heretofore, and have always considered it as highly improper, but not as criminal. When I was one of that class of citizens who composed the minority on political questions generally, I believed that I had a right to examine and censure the measures of Government; and I believe that judges possess the same political rights as private citizens, although the bench may be a very improper situation in which to exercise them. This charge cannot constitute any good ground for an impeachment.

It is to me a subject of no small regret, that the deposition of Jonathan Snowden has found a place in this voluminous collection of evidence. Mr. Snowden has undoubtedly testified the truth, but I object to the nature of the testimony. To take any notice of it would be inconsistent with the dignity of the grand inquest of the nation. Judge Chase is stated to have said to Judge Washington: "To tell you the truth, if I had known then as much as I do now, I should not have fined him (Callander) so high." From the testimony of gentlemen of high respectability, who were present on that occasion, it appears that the conversation was of a sportive nature, and in common charity we should have presumed that it was so. From an incautious expression in the moment of convivial amusement, shall we deduce the conclusion that the judge was governed by corrupt motives in the conviction of Callender?

In the trial of Callender, indeed, I believe the judge to have been guilty of such misconduct as ought to render him impeachable. I have not formed this opinion without experiencing many

doubts and difficulties, which I shall be happy to have completely removed; and I shall be equally happy to be convinced that I have done wrong in concluding to vote for the impeachment. The Constitution secures to persons accused of crimes, the right of compulsory process to procure witnesses, and trial by jury. From the testimony of Mr. Hay and Mr. Nicholas, it appears that Callender was deprived of those great Constitutional privileges. However atrocious the libel or the libeller, there should have been a fair trial. A motion was made for a continuance, upon the facts stated in an affidavit which is now before us. I have examined it, and it appears to me to have been sufficient to sustain the motion; and we are told that the motion was urged on Constitutional grounds. Mr. Hay says:

"The witnesses were named, the evidence expected from each distinctly stated, and the documents wanted clearly specified. When this affidavit was presented to the court, it was urged by the counsel that the Constitution secured to the prisoner a right to process to enforce the attendance of his witnesses. He had also a right, under the Constitution, to the assistance of counsel in his defence; but if he were tried when his witnesses were absent, and his counsel not prepared for his defence, without any default in him or them, these important provisions would be useless. The motion was instantly overruled. The Attorney for the United States was told that it was unnecessary to reply. Judge Chase said that it would be a waste of time; that there was no reason for putting off the trial; that as the prisoner did not swear that he could prove all the facts recited in the indictment, his having testimony as to part of them was immaterial. He must prove all, continued Judge Chase, and it must appear that he can prove all, or the trial will not be postponed."

"Mr. Nicholas says—We renewed the motion, and it was urged with great earnestness, under a conviction that a fair trial could not be had without Callender's witnesses, and that as many of them lived at the distance of several hundred miles, and the prosecution had originated only a few days before, it was impossible that Callender could have procured their attendance. We thought also, that he had a Constitutional right to obtain compulsory process to compel the attendance of his witnesses. The court refused to grant a continuance, and Judge Chase declared as the reason why the continuance was refused, that Callender had not stated in his affidavit that he could prove the truth of all the charges stated in the indictment; that it was necessary that he should prove the truth of all the charges to obtain an acquittal, and that as the witnesses who were absent were to give evidence as to part of the charges only, their absence afforded no good reason for a continuance."

Such are the facts in evidence. I think it cannot be denied that Judge Chase denied to Callender a Constitutional privilege; and I am equally clear, if I may be permitted to say so, that the reasons which he gave for the denial were repugnant to the most plain and obvious principles of law. By the law upon which Callender was indicted, he had the right to give the truth in evidence, and the jury had the power to determine both the law and the fact. Judge Chase declared that he must prove all the charges, or be convicted. Was not this unreasonable? I will take it upon me to repeat that this decision was contrary to law and reason. Callender had the right to select one of the charges, or any number he pleased, prove them true, and contend that the remaining charges contained no libellous matter; and if the jury had been of that opinion, they must have acquitted him. Another Constitutional right, that of trial by an impartial jury, was also denied:

"Mr. Nicholas.—We mean to challenge the array and take every advantage which the laws of the country give us. In support of this doctrine I will read an extract from "Trials per Pais." [Here he read the passage.] I believe there is testimony in court to prove that one of the jurors returned by the marshal has expressed sentiments hostile to the traverser. It is like a case stated in the books, where a verdict was set aside because a juryman had previously said that the man accused ought to be hanged; and in that case, on the second trial, every juryman was called on to say whether he had formed an opinion on the subject or not."

I am willing to admit that the law relied on by Mr. Nicholas is of modern date, and by some considered as not perfectly established in criminal cases, probably for the reason mentioned by Judge Chase, that the whole country may have heard of the crime and the criminal, and formed an opinion. It is clear from the books that it is settled in civil cases, and it is certainly in itself very reasonable.

"The court having refused to continue the cause, the jury was called, and one of the counsel for the defendant stated to the court that, he wished to ask the juror who was called to the book, before he was sworn, whether he had formed an opinion on the work, entitled 'The Prospect Before Us,' from which the charges in the indictment were extracted? Judge Chase said no such question should be asked; that the only question which would be allowed, was, whether the juror had formed and delivered an opinion on the charges contained in the indictment? The juror answered that he had never seen the indictment nor heard it read. The judge directed that he should be sworn in chief. The counsel then asked that the indictment should be read to the juror, which might enable him to decide whether he had formed and delivered an opinion on the charges in the indictment. Judge Chase said the court would not permit this."

Mr. Robertson testifies that the Judge said, "He has answered that he never saw the indictment nor heard it read, and if he has neither read nor heard the charges, I am sure he cannot have formed or delivered an opinion on the subject."

Here I cannot but remark, that this conclusion of the Judge was extremely illogical. Because he refused to let the juror know what the charge was, he concluded that the juror could not have formed an opinion. Mr. Robertson afterwards says:

"The eighth juror answered, when the previous question was put to him, that though he had never read or heard the charges in the indictment, and knew not what the traverser had published, yet he had formed an unequivocal opinion that such a book as the 'Prospect Before Us' was, came within the sedition law. But no objection was made to him, and he was sworn like the rest."

It may be asked why no objection was made? The answer is ready; Judge Chase had prejudged that the objection was not a good one: but I think differently, and believe that it was his duty to set aside the eighth juror. I cannot, and will not believe, with this evidence staring me in the face, that Callender was tried by an impartial jury of his country; the eighth juror at least, must have possessed a mind far from impartial towards the author of *The Prospect*. It is proved that the Judge denied to the prisoner the great Constitutional privileges of compulsory process for witnesses, and trial by an impartial jury; but we shall be told that these were errors in judgment. I do not suspect him of corruption, but I believe him to be impeachable for conduct of this description, whether it be the consequence of passion, prepossession, or party-spirit. To allow judges to disregard the Constitution, and shelter themselves under the doctrine that they are not punishable for errors of judgment, would be giving them a dangerous latitude indeed. It is true that Judge Chase, in the latter part of the trial, appears to have been cool and candid.

I am a friend to the Constitutional independence of the Judiciary, but opposed to giving that department an oppressive and overwhelming power, destructive to the liberties of the people. I regret extremely that it has become our duty to accuse a man so eminent for talents and learning, particularly for legal learning, of high crimes and misdemeanors. I wish I could ascribe his conduct to the passion of the moment, or to those ordinary prejudices which invariably constitute a part of the infirmities of human nature. I consider myself as one of a numerous band of sentinels posted around the temple of justice. It is our duty to guard it with more than vestal vigilance, and to prepare punishment for those who appear to us to have presumed, with unhallowed hands, to minister at its sacred altars!

The question was then taken on agreeing to the first resolution, and carried—yeas 74.

The Committee then agreed, without a division, to the second resolution relating to Richard Peters.

The Committee rose, and reported their agreement to the report of the select committee.

The House immediately took the report into consideration.

The first resolution respecting Mr. Chase having been read.

Mr. R. Griswold observed that in the select committee appointed to inquire into the official conduct of Samuel Chase there had been no discussion, and no points settled, except those contained in the resolution. No part of the documents contained in the report had been taken up and discussed. I would, said Mr. G., myself have undertaken on this occasion to enter minutely into the testimony, were I not of opinion that the sentiments of the House are already formed. I have examined the depositions critically, and I am ready to say that they constitute no grounds for impeachment. But I have been lamentably convinced, by a mournful experience, that nothing which can be said in the case of impeachments will have any effect on this House. I shall therefore, say nothing on this resolution, at this time; but shall content myself with calling for the yeas and nays.

Mr. J. Randolph.—Like the gentleman from Connecticut, it is no part of my intention to enter into a consideration of the report of the committee appointed to inquire into the official conduct of Mr. Chase and Mr. Peters. On this occasion, as on another, in which I had the honor of being one of those to whom was confided the management of an impeachment, I am willing to rest the decision which I shall give on the testimony before the House. But I think the observations which have fallen from the gentleman from Connecticut require, in justice to himself (for he was a member of the committee appointed on this occasion,) and as an act of justice to that committee, some remarks in reply. For what purpose he has made these observations I shall not undertake to determine. From them it would appear as if a discussion had been particularly invited. The committee consisted of seven members. On the motion of different members, sometimes in consequence of personal application, at other times by letters, addressed to the committee, testimony was ordered to be taken. A day was then appointed for the meeting of the committee; they did meet. At the time appointed for the meeting some gentlemen of the committee were engaged in the character of managers of an impeachment before the Senate. The gentleman from Connecticut, and a gentleman from South Carolina, (Mr. Huger,) also a member of the committee, waited in the library until the other members thus engaged should be in readiness. As soon as they were ready to meet, a message was sent to the library for the two gentlemen. Before this it had been intimated to the managers that the House wanted a quorum. We, therefore, dispatched a message into the House for the two gentlemen. We received no answer. The committee decided the conduct of Mr. Chase impeachable, in relation to the trial of Fries, and the conduct of Mr. Peters not impeachable. In consequence of this decision, five members being present, the Chairman was directed to draught the report. The report, however, not being presented, owing to the adjournment of the House, and the committee being unwilling to submit it before it had been considered by all the members of the committee, it was again submitted to the committee, who were summoned, for that purpose, the next morning; when it was reconsidered, and agreed to in the presence of the members previously absent.

Mr. R. concluded by expressing his regret at having to trouble the House with so dry a detail; and said he had made it to show, that if there had been no discussion, it was because there was an indisposition on either side to provoke it.

Mr. Huger.—It was my wish and determination to have avoided saying anything on the present question, and to have contented myself with giving a silent vote—nor should I now have risen but for the allusions, which have been made by the gentlemen from Connecticut and from Virginia, to what took place in the Committee of Investigation. The statements given by both these gentle-

men are, as far as they go, correct; but I must beg leave to add one or two additional observations on the subject.

The committee had been duly summoned to meet on the morning of the day preceding that on which the report now under consideration was presented to this House. Both the members from Connecticut and myself accordingly attended at, or about the usual hour of attendance; but on going to the room in which we had always met, we found it occupied by the committee who had been appointed to impeach Judge Pickering. Most, I believe indeed, all the gentlemen, except the member from Connecticut and myself, who composed the Committee of Investigation, were likewise members of the committee, and as they had already met on other business, we of course retired. On my return to the House, I met the honorable Chairman at the door, who expressed a wish that our committee should forthwith meet; but on my observing, that the most of the members of it were on the Committee of Impeachment in the case of Judge Pickering, which was then assembled, he proceeded to join them; intimating, if I did not mistake him, as he left me, that he would send me word should our committee meet. I received no message, however, nor heard anything on the subject until a few minutes before the House adjourned, when to my astonishment the gentleman from Connecticut informed me that he had been told the committee had met during our absence, and come to the determination of reporting to the House a resolution recommending the impeachment of Judge Chase.

The gentleman from Virginia, however, has informed the House that before the committee proceeded to business, one or two messengers had been sent to summon both my friend from Connecticut and myself, and he had before given me the same information in private. And most certainly, sir, I have not the smallest doubt but that this was done; for the assertion of any fact, made by the gentleman from Virginia, will ever receive from me the most ready and implicit belief. It nevertheless, so happened, that neither the member from Connecticut nor myself received the summons, or attended the committee, in which it was determined, during our absence, that a report should be drawn up and made to the House, recommending the impeachment of Judge Chase. This circumstance did, I confess, surprise me in the first instance, and until the matter was explained to me. I still regret it; for we had never had any previous discussion in the committee, on the merits of the various charges exhibited against the judge, and I certainly did expect, that each particular case would have been thoroughly sifted and canvassed in the select committee, and a separate and distinct vote taken on each of them before any report was made. Under this impression I had intended to have objected, had I been present, to the committee's coming to any final decision until we had received the deposition of Mr. Robertson from Petersburg; and I had also (as I observed to the committee on the following morning) intended to have requested, that the depositions of Mr. Edmond Randolph, late Attorney General of the United States, and some other gentlemen, (whom I had just learned were present at the trial of Callender,) might be taken; for as the only depositions before us in this case were solely those of the parties immediately and individually concerned, and who were not merely the political opponents of Judge Chase, but personally interested; as the propriety of their own conduct in the trial was involved in the question at issue between them and the judge, I did not wish to make up my mind, or give a final vote on a case, in which there was evidently no other than perfectly *ex parte* evidence before us. The committee, however, having, as has been stated, met during our absence, and decided in favor of an impeachment, I was virtually precluded from making the proposition I had intended.

It is indeed true, Mr. Speaker, and the gentleman from Virginia is perfectly correct in stating, "that the whole of the committee met the next day, and the report, as it now stands, was submitted to our final decision, when every individual member was present." He is equally correct in the observation, that the report was open to the objections, which might be offered from any quarter. But, after five out of seven members had already on the preceding day decided in favor of the principle it contained, I certainly, sir, had not the vanity to suppose that anything I could say would effect a change of opinion; and I conceived, that after what had passed, it would be regarded as mere cavil on my part, and only done from a wish to embarrass and create unnecessary delay, to propose, when the question of impeachment was already acted and decided upon, that we should wait for further testimony. I therefore acquiesced, and (after having expressed, as above stated, what I should have wished to have been done, and had intended to propose, had I been present in the committee the preceding day) I deemed it my duty, (as believing the evidence in question before us, to be entirely *ex parte*) to give in the select committee, as I shall again do on the present occasion, my decided negative to that part of the report, which includes the resolution for impeaching Judge Chase.

The question was then taken, by yeas and nays, on concurring in the report of the committee, agreeing to the first resolution, and carried—yeas 73, nays 32, as follows:

Yeas—Willis Alston, Isaac Anderson, John Archer, David Bard, George M. Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Patterson, John Randolph, Thomas M. Randolph,

John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston,

Nays—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana John Davenport, Thomas Dwight, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith of Virginia, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

The report of the committee, in relation to the second resolution, was agreed to unanimously.

Mr. J. Randolph moved that a Committee be appointed to appear at the bar of the Senate, to impeach, in the name of the House of Representatives, Samuel Chase, of high crimes and misdemeanors.

The motion was adopted, and Messrs. J. Randolph and Early appointed the committee.

Tuesday, March 13.

Mr. Nicholson, from the committee to whom were referred, on the twenty-fifth of January last, the memorials of Alexander Moultrie, of the State of South Carolina, in behalf of himself and others; and of the Virginia Yazoo Company, by William Cowan, their agent, together with the report of a select committee thereon; made a supplementary report; which was read, and ordered to lie on the table.

Mr. Lattimore, from the committee appointed on the tenth instant, presented, according to order, a bill to suspend, for a limited time, the execution of a part of the twelfth section of the act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" which was read twice and committed to a Committee of the whole House to-morrow.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That there shall be a call of the House at ten o'clock each morning, during the present session; and there shall be deducted one day's pay from the compensation of each member who shall fail of attending such call, unless he shall render to the House satisfactory reasons for such neglect:

The question was taken that the House do now proceed to take the said motion into consideration, and passed in the negative.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House of the twelfth instant, "to instruct the Joint Committee of Enrolled Bills to wait on the President of the United States respecting a variance between an engrossed and enrolled bill," also to the resolution of this House, of the sixth instant, for an adjournment of the two Houses of Congress, with an amendment; to which they desire the concurrence of this House. The Senate have passed the bill, entitled "An act making an appropriation for carrying into effect the Convention between the United States and the King of Spain, on the eleventh of August, 1802," with several amendments; to which they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the bill making provision for the disposal of the public lands in the Indiana Territory, and for other purposes; and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

Mr. John Randolph, from the committee appointed on the twelfth instant, reported—

That, in obedience to the order of the House, the committee had been to the Senate, and in the name of the House of Representatives, and of the people of the United States, had impeached Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors; and had acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles against him, and make good the same.

And further: That the committee had demanded that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.

On motion, it was,

Resolved, That a committee be appointed to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, who has been impeached by this House, during the present session, of high crimes and misdemeanors; and that the said committee have power to send for persons, papers, and records.

Ordered, That Mr. John Randolph, Mr. Nicholson, Mr. Joseph Clay, Mr. Early, and Mr. Boyle, be appointed a committee, pursuant to the said resolution.

Mr. John Randolph, from the Committee of Ways and Means, who were directed by a resolution of this House, of the second ultimo, "to inquire into, and report their opinion upon the expediency of discontinuing the allowance of drawbacks of the duties on spirits, gunpowder, soap, candles, and playing cards of foreign manufacture; and of allowing, in lieu of drawbacks, —— per gallon on all spirits exported both of foreign and domestic manufacture," made a report thereon; which was read, and ordered to be referred to the Committee of the whole House to whom was committed, on the tenth instant, the bill for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels.

The House proceeded to consider the amendment proposed by the Senate, to the resolution for

an adjournment of the two Houses of Congress; and the said amendment being to strike out the word "third," next before the words "Monday, in the present month," and, in lieu thereof, to insert the word "fourth," was, on the question put thereupon, agreed to by the House.

The House proceeded to consider the amendments proposed by the Senate, to the bill, entitled "An act making an appropriation for carrying into effect the Convention between the United States and the King of Spain, on the eleventh of August 1802:" Whereupon,

Resolved, That this House do agree to the said amendments.

PUBLIC BUILDINGS.

The House resolved itself into a Committee of the whole on the report of the Committee of the sixth instant, to whom was referred, on the twenty-second ultimo, the Message from the President of the United States, communicating a report of the Surveyor of the Public Buildings at the City of Washington; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which as read as follows:

Resolved, That fifty thousand dollars ought to be appropriated, to be applied under the direction of the President of the United States, in proceeding with the public buildings at Washington; and in making such necessary improvements and repairs thereon, as he shall deem expedient.

The House proceeded to consider the said resolution: Whereupon, the question was taken that the House do concur with the Committee of the whole House in their agreement to the same; and resolved in the affirmative—yeas 57, nays 23, as follows:

Yeas—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Campbell, Clifton Claggett, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Samuel W. Dana, John Davenport, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, James Gillespie, Peterson Goodwyn, Thomas Griffin, Samuel Hammond, John A. Hanna, James Holland, Benjamin Huger, Walter Jones, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jr., Joseph H. Nicholson, Thomas M. Randolph, John Rea of Pennsylvania, Thomas Sandford, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, James Stephenson, Samuel Tenney, Philip R. Thompson, Abram Trigg, John Trigg, Daniel C. Verplanck, Peleg Wadsworth, Marmaduke Williams, and Joseph Winston.

Nays—Simeon Baldwin, John Boyle, Robert Brown, William Butler, George W. Campbell, Matthew Clay, Manasseh Cutler, Thomas Dwight, John Fowler, Andrew Gregg, Gaylord Griswold, Seth Hastings, John G. Jackson, Nehemiah Knight, Michael Leib, Gideon Olin, Oliver Phelps, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Ebenezer Seaver, James Sloan, and Joseph B. Varnum.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that Mr. Thompson, Mr. Smilie, Mr. Huger, Mr. John Campbell, and Mr. Cutts, do prepare and bring in the same.

Mr. J. Clay moved the following resolution:

Resolved, That a committee be appointed to inquire into the expediency of authorizing the Legislature of the Commonwealth of Pennsylvania to lay and collect, by law, a tonnage duty on vessels employed in foreign commerce, which may enter the port of Philadelphia, not exceeding four cents per ton, on vessels of one hundred and fifty tons burden, and upwards; and not exceeding two cents per ton on vessels under one hundred and fifty tons burden; for any period of time not exceeding five years, to constitute a fund for improving the port of Philadelphia, and for removing obstructions to the navigation of the river Delaware; and that the said committee have leave to report by bill, or otherwise.

The House proceeded to consider the said motion at the Clerk's table: When, an adjournment being called for, the House adjourned.

Wednesday, March 14.

A petition of sundry citizens of Washington, in the District of Columbia, was presented to the House and read, praying that an act may be passed by Congress to enable the petitioners and others interested therein, to form an incorporated company, by shares transferable, for the purpose of carrying on commercial and banking business within the said District.

Ordered, That the said petition do lie on the table.

Mr. Samuel L. Mitchill, from the Committee of Commerce and Manufactures, presented a bill for the relief of the heirs of John Habersham; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Thompson, from the committee appointed yesterday, presented a bill concerning the public buildings at the City of Washington; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. Gaylord Griswold, from the committee appointed on the twenty-fifth of November last, who were directed, by a resolution of this House, of the twenty-second ultimo, "to inquire whether it be necessary to extend Federal jurisdiction to the ordinary court or courts, to be organized for that special purpose, in the Mississippi Territory of the United States," made a report thereon; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act providing for the expenses of the civil government of Louisiana," with several amendments; to which they desire the concurrence of this House. Also communicating to the House certain proceedings of the Senate, relative to the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

The said proceedings of the Senate are as follows:

"In Senate of the United States,

"*March* 14, 1804.

"Whereas, the House of Representatives, on the thirteenth day of the present month, by Mr. John Randolph and Mr. Early, at the bar of the Senate, impeached Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, of high crimes and misdemeanors; and acquainted the Senate that the House of Representatives will, in due time, exhibit particular articles of impeachment against him, and make good the same.

"And likewise demanded, that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment: Therefore,

Resolved, That the Senate will take proper order thereon, of which due notice shall be given to the House of Representatives.

Resolved, That the Secretary of the Senate notify the House of Representatives of this resolution."

"Attest, SAM. A. OTIS, *Sec.*"

The House took up Mr. J. Clay's resolution for the appointment of a committee to inquire into the expediency of authorizing the Legislature of Pennsylvania to lay a certain tonnage duty for improving the navigation of the river Delaware and the port of Philadelphia.

After a few remarks made by Mr. C. in support of the resolution, it was negatived—ayes 36 noes 42.

GOVERNMENT OF LOUISIANA.

The House went into a Committee of the Whole on the bill, from the Senate, providing for the government of Louisiana.

Mr. Leib moved to amend the section fixing the salary of the Governor of Orleans, by striking out five thousand dollars, for the purpose of inserting three thousand dollars.

The sum of five thousand dollars was, he observed, higher than that allowed some of our Heads of Department, and was, in his opinion, above the necessary allowance.

Mr. Nicholson said he should have no objection to striking out five thousand dollars; but it would be for the purpose of inserting a higher sum. The office of Governor of this Territory was unquestionably one of the most important under the Government of the United States. In casting his eyes on those persons competent to a discharge of the great duties attached to the office of Governor, Mr. N. said, his mind had settled upon few individuals with whom it was satisfied. So impressed was he with the importance of the station, that he would agree to give the Governor a salary equal to that allowed to any foreign Minister. A man ought to be appointed, possessed of, and entitled to the full confidence of the Executive, and who, by his manners, character, and conduct, would win the esteem and love of those over whom he is called to preside. It was also well known to the members of the House that the expenses of living were greater at New Orleans than in any part of the United States. Hitherto the Governor of Spain had received a salary of eight thousand dollars. To give the Governor the paltry sum of three thousand dollars will not enable him to pay his expenses. For these reasons Mr. N. called for a division of the question.

The question was put on the striking out five thousand dollars, and passed in the negative—ayes 40, noes 44.

Mr. Leib moved an amendment extending to the inhabitants of Louisiana the naturalization act of the United States.

Mr. R. Griswold opposed the amendment, from an impression that it was not expedient to vest the courts of Louisiana with the power of naturalization.

Mr. J. Clay supported the amendment; as it went to extend to the inhabitants of Louisiana the privileges promised them by the treaty. Whether the proposed amendment would have this effect, he was not ready to say. If it would not, he hoped his colleague would move one that would have that effect. This privilege had been promised and ought to be granted. He presumed that a residence of five years would be required, as the privileges promised were to be received under the Constitution. Mr. C. concluded by saying there was a wide difference between naturalizing the inhabitants of Louisiana, and admitting them into the Union, and though gentlemen might have objections to the one object, they ought not, on the same ground, to object to the other.

The question was taken on the proposed amendment, and passed in the negative—ayes 32.

Mr. Sloan moved an amendment inhibiting the admission of slaves into Louisiana, as well from the United States, as from foreign places.

Mr. S. concisely stated his reasons in favor of this provision, when the question was taken, and the amendment agreed to—ayes 40, noes 36.

Mr. G. W. Campbell proposed an amendment, withholding from the parties to a civil suit the right of waiving a jury trial. The bill provides a jury trial in all cases in which either party shall require it.

This amendment, after being supported by Mr. G. W. Campbell; and opposed by Messrs. Holland, Southard, and Dana, was negatived—ayes 12.

Mr. G. W. Campbell moved to strike out that part of the bill which renders every person settling on lands of the United States liable to a fine of one thousand dollars, and to one year's imprisonment.

This produced a debate of some length, and more animation: in which the motion to strike out was urged by Messrs. G. W. Campbell, Lyon, and Claiborne; and opposed by Messrs. Gregg, Nicholson, Boyd, Smilie, Macon, Sloan, and Holland.

The question was taken, and the amendment was negatived—ayes 23.

Mr. Rhea, of Tennessee, offered the following new section:

"*And be it further enacted*, That all grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the Treaty of Ildefonso, in the Crown, Government, or nation of Spain, and every act and proceeding subsequent thereto of whatever nature, towards the obtaining any grant, title, or claim, to such lands, and under whatsover authority transacted, or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null and void, and of no effect, in law or equity."

Mr. Early said, he hoped this resolution would

not be adopted. He was opposed to it for special as well as general reasons. It declared null and void, not only all grants or titles obtained since the period of cession, but likewise all grants or titles acquired subsequently to the Treaty of St. Ildefonso, or, in other words, during the time the territory belonged to France. He believed it was well understood that after France obtained the country a number of grants had been made. It was certain that the French Government was invested with authority to make grants, and I think, said Mr. E., a legislative declaration that such grants are void, extremely improper. This is the particular reason for which I am opposed to the amendment. I have also a general reason against it. I consider a Legislative body undertaking to declare a grant null and void an assumption of power. If a grant, whether it be of land, or to any corporate body, be null and void, it is so without any Legislative provision. It may be said, however, that such a provision is innocent. I do not think so; because it involves an assumption of power, which is in its nature judicial, exclusively judicial. For these reasons I am opposed to the resolution.

Mr. Rhea, of Tennessee, said, in reply to the gentleman from Georgia, he would only read the first article of the Treaty of Cession. [Here Mr. R. read the first article.] This, said he, is a sufficient answer to the first argument of the gentleman. As to the second part of his reason, it is only necessary to say, that in order to enable the courts of justice to decide properly, laws must be passed fixing the principles on which courts are to decide.

Mr. Nicholson said he thought this was a subject on which the House ought not to act at present. It seemed to imply an unwarrantable suspicion of the Government of Spain. It would be sufficient time to act when they obtained correct information.

Mr. Gregg said there was one reason which would induce him to vote for the resolution. Certain fraudulent grants appear to have been made. Without some notice of them now, second purchasers will be hereafter coming forward to Congress, and will say that they had no knowledge of the fraud. He should therefore vote for the resolution.

Mr. Holland expressed the same ideas with Mr. Gregg.

Mr. Nicholson observed, that as he was persuaded the amendment would have the effect stated by the gentlemen from Pennsylvania and North Carolina, he had no objection to it.

The amendment was then agreed to.

Mr. Rhea, of Tennessee, moved the following as a new section, which was likewise agreed to without debate:

"And the sum of fifteen thousand dollars, out of any money in the Treasury not otherwise appropriated by law, is hereby appropriated to enable the President of the United States to effect the object expressed in this section."

Mr. Early moved the following as a substitute for the fourth section:

"Sec. 4. The Legislative power shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed by the President of the United States from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory, or the United States, to serve one year from the time of their appointment: And the said Legislative Council shall, at their first session, lay off or divide the said Territory into convenient counties or districts, and apportion among them, according to their respective numbers, the thirteen members of the said Legislative Council, who shall, after the expiration of one year from the time of their first appointment, be chosen annually by all the free male white persons of the age of twenty-one years, who were resident in said Territory on the thirtieth day of April, one thousand eight hundred and three, and who had been resident therein one whole year next before the election, on their producing satisfactory proof to the officers of the elections that they have taken an oath of allegiance to the United States, agreeably to an act of Congress passed on the fourteenth day of April, one thousand eight hundred and two, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;' and by citizens of the United States, who may since that time have become residents in said Territory, and who shall have resided therein one whole year, six months of that time next before the election, to be in the district or county in which he or they shall vote; and the Legislative Council, so chosen as aforesaid, shall have power to fix the times and places, and to determine the manner of holding the said elections, and to judge of the qualifications of the members and the validity of their elections. But if any of the said districts or counties shall refuse or neglect to make such election for one month after the time appointed for holding the same, then the Governor, with the Council, shall appoint a person or persons, who shall reside within the district, and be qualified as aforesaid, to serve for the district or county so neglecting or refusing. The Governor, by and with the advice and consent of the Legislative Council, or a majority of them, shall have power to alter, modify, or repeal, the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful powers of legislation; but no law shall be valid, which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship, in all which he shall be free to maintain his own, and not burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall from time to time report the same to the President of the United States, to be laid before Congress, which, if disapproved by Congress, shall thenceforth be of no force. The Governor, or Legislative Council, shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor interfere with the claims to land within the said Territory. The Governor shall convene and prorogue the Legislative Council, whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same from time to time to the President of the United States."

The Committee now rose, reported progress, and obtained leave to sit again.

Mr. Nicholson said it had been for some time in contemplation to establish a branch bank at New Orleans. The business had been before the President and Directors of the Bank of the United States, who were of opinion that they were not authorized to establish the branch. He therefore moved that the Committee of Ways and Means be instructed to prepare and report a bill authorizing the President and Directors of the Bank of the United States to establish offices of discount and deposit in any of the territories and dependencies of the United States.

The motion was immediately agreed to, and Mr. Nicholson reported a bill for that purpose.

The bill making provision for disposing of the public lands in the Indiana Territory, and for other purposes, was read the third time and passed.

Thursday, March 15.

The following Message was received from the President of the United States:

Agreeably to the request of the Senate and House of Representatives, delivered to me by their Joint Committee of Enrolled Bills, I now return the enrolled bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha," to the House of Representatives, in which it originated.

TH. JEFFERSON.

March 15, 1804.

Ordered, That the said Message, together with the enrolled bill, be referred to the Joint Committee for Enrolled Bills, with instruction to correct the variance between the engrossed bill, with the amendments thereto, as passed by both Houses, and the enrolment thereof, and report the same to the two Houses.

Mr. Roger Griswold, from the committee appointed on the twelfth instant, presented, according to order, a bill to authorize the adjournment of district courts by Marshals in certain cases; which was read twice and committed to a Committee of the Whole House to morrow.

Mr. Nicholson, from the Committee of Ways and Means, presented a bill supplementary to the act, entitled "An act to incorporate the subscribers to the Bank of the United States;" which was read twice and ordered to be engrossed, and read the third time to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act providing for the expenses of the civil government of Louisiana; whereupon,

Resolved, That this House do agree to the said amendments.

The House resolved itself into a Committee of the Whole on the bill concerning the public buildings at the city of Washington; and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of the heirs of John Habersham; and, after some time spent therein, the Committee rose and reported two amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of the legal representatives of David Valenzin, deceased, and for other purposes; and, after some time spent therein, the bill was reported with two amendments; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill in addition to an act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;" and, after some time spent therein, the bill was reported with an amendment, which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to amend the act, entitled "An act concerning the registering and recording of ships and vessels;" and, after some time spent therein, the bill was reported with an amendment, and was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, do lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering," with an amendment; to which they desire the concurrence of this House.

GOVERNMENT OF THE ARMY.

The House then went into Committee of the Whole on the bill providing rules for the government of the Army.

The fifth article is in the words following:

"Art. 5. Whatsoever officer or soldier shall presume to use traitorous or disrespectful words against the President of the United States, against the Vice President thereof, against the Congress of the United States, or against the Chief Magistrate, or Legislature of any of the United States, in which he may be quartered, if a commissioned officer, he shall be cashiered or otherwise punished as a Court Martial shall direct; if a non-commissioned officer or soldier, he shall suffer such punishment as shall be inflicted on him by the sentence of a Court Martial."

Mr. Nicholson moved to strike out this article.

Mr. Varnum desired, before the question was put, to be indulged with an opportunity of reading the article at present in force, which would

show that in principle it was the same with that in the bill.

Mr. V. read the old article, which was found to correspond in principle with the article under consideration, the only variation arising from the old provision applying to the "Congress of the United States and the State Legislatures." Why gentlemen should now be inclined to leaving the Army loose to calumniate the Government, he could not say.

Mr. Nicholson said it was not his wish to fence round the President, Vice President, and Congress, with a second sedition law. If the officers of the Army conduct themselves improperly it is in the power of the Executive to punish them. They can be removed at the will of the President, or by a Court Martial. Besides, I do not understand the section. What is the meaning of "traitorous words," used against the President, Vice President, and Congress. I know of no traitorous words that can be so used. There are none such to be found in the Constitution.

The question was then taken on Mr. Nicholson's motion, and carried.

After some further consideration of the bill, the Committee rose, and the House, by a great majority, refused them leave to sit again.

GOVERNMENT OF LOUISIANA.

The House then went into a Committee of the Whole on the bill for the temporary government of Louisiana.

The substitute of Mr. Early, for the fourth section of the bill, was, with some verbal amendments, agreed to.

The bill was reported to the House, which proceeded to consider the said amendments at the Clerk's table; whereupon the first amendment reported from the Committee of the Whole, being to strike out the fourth section of the original bill, in the words following, to wit:

"Sec. 4. The Legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually by the President of the United States, from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory, or the United States. The Governor, by and with the advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful powers of legislation; but no law shall be valid, which is inconsistsnt with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not be burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall, from time to time, report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor, or Legislative Council, shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to lands within the said Territory. The Governor shall convene and prorogue the Legislative Council whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same from time to time to the President of the United States."

And to insert in lieu of the said fourth section a new section, as follows:

"Sec. 4. The Legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed by the President of the United States, from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory, or the United States, to serve one year from the time of their appointment: And the said Legislative Council shall, at their first session, lay off or divide the said Territory into convenient counties or districts, and apportion among the said counties, or districts, according to their respective numbers, the thirteen members of the said Legislative Council: the members of the Legislative Council shall, after the expiration of one year from the time of the apportionment aforesaid, be chosen annually by all the free white male persons of the age of twenty-one years, who were resident in said Territory on the 30th day of April, one thousand eight hundred and three, and who had been resident therein one whole year next before the election, on their producing satisfactory proof to the officers of the election that they have taken an oath of allegiance to the United States, agreeably to an act of Congress passed on the fourteenth day of April, one thousand eight hundred and two, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject;' and by citizens of the United States, who may, since that time, have become residents in said Territory, or who may hereafter become residents, and who shall have resided therein one whole year, six months of that time next before the election, to be in the district or county in which he or they shall vote; and the Legislative Council so chosen as aforesaid, shall have power to fix the times and places, and to determine the manner of holding the said elections, and to judge of the qualifications of the members, and the validity of their elections. But if any of the said districts or counties shall refuse or neglect to make such election for one month after the time appointed for holding the same then the Governor, with the Council, shall appoint a person or persons, who shall reside within the district, and be qualified as aforesaid, to serve for the district or county so neglecting or refusing. The Governor, by and with the advice and consent of the Legislative Council, or a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful objects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not be burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made; and shall, from time to time, report the same to the President of the United States, to be laid before Congress, which, if disapproved by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene and prorogue the Legislative Council whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions, of the inhabitants of the said Territory, and communicate the same, from time to time, to the President of the United States."

A division of the question on the said first amendment was called for, and, on the question that the House do agree to strike out the said fourth section of the original bill, it was resolved in the affirmative—yeas 74, nays 23, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Walter Bowie, John Boyle, Robert Brown, George W. Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Davenport, Jno. Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Samuel Hammond, John A. Hanna, Seth Hastings, Joseph Heister, William Helms, David Holmes, John G. Jackson, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thos. Newton, jun., Gideon Olin, Beriah Palmer, Thomas Plater, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Cotton Smith, Henry Southard, Richard Stanford, William Stedman, John Stewart, Samuel Thatcher, Philip R. Thompson, John Trigg, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Silas Betton, William Blackledge, Adam Boyd, John Campbell, Frederick Conrad, John B. Earle, William Findley, Josiah Hasbrouck, James Holland, Benjamin Huger, Walter Jones, William Kennedy, Andrew McCord, William McCreery, Samuel L. Mitchill, Joseph H. Nicholson, Samuel D. Purviance, Thomas M. Randolph, John Rea of Pennsylvania, John Smith of Virginia, Samuel Tenney, David Thomas and Philip Van Cortlandt.

And then the question being taken that the House do agree to the new section proposed to be inserted in lieu of the said fourth section, it was resolved in the affirmative—yeas 58, nays 42, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, John Campbell, Thos. Claiborne, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John B. Earle, Peter Early, Jas. Elliot, Ebenezer Elmer, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, David Holmes, Benjamin Huger, Walter Jones, Nehemiah Knight, Michael Leib, Andrew McCord, Wm. McCreery, Samuel L. Mitchill, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, Henry Southard, John Stewart, David Thomas, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Richard Winn, and Joseph Winston.

Nays—John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, George W. Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, William Eustis, William Findley, Gaylord Griswold, Roger Griswold, Samuel Hammond, Seth Hastings, James Holland, John G. Jackson, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, David Meriwether, Thomas Plater, Samuel D. Purviance, Thomas M. Randolph, James Sloan, John Cotton Smith, John Smith of Virginia, Richard Stanford, William Stedman, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, John Trigg, Killian K. Van Rensselaer, and Marmaduke Williams.

The second amendment reported from the Committee of the Whole to the said bill, being twice read, was, on the question put thereon, agreed to by the House.

The third amendment reported from the Committee of the Whole being then read at the Clerk's table, and debate arising thereon, an adjournment was called for and carried.

Friday, March 16.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making an appropriation for the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering;" Whereupon,

Resolved, That this House do disagree to the said amendment.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President, in case of vacancy in the offices both of President and Vice President;" to which they desire the concurrence of this House.

The bill sent from the Senate, entitled "An act supplementary to the act, entitled 'An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President," was read twice, and committed to a Committee of the Whole to-morrow.

An engrossed bill for the relief of the heirs of John Habersham, was read the third time, and passed.

An engrossed bill for the relief of the legal representatives of David Valenzin, deceased, and for

other purposes, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act altering the sessions of the District Courts of the United States for the districts of Virginia and Rhode Island," with several amendments; to which they desire the concurrence of this House.

An engrossed bill supplementary to the act incorporating the Bank of the United States, authorizing a branch at New Orleans, was read the third time.

Mr. VARNUM opposed, and Messrs. J. CLAY and S. L. MITCHILL supported it.

The question being taken, it passed—ayes 59.

An engrossed bill concerning the public buildings in the City of Washington, was read the third time, and passed—ayes 60.

NATURALIZATION LAW.

An engrossed bill in relation to the naturalization law was read the third time; and, on the question, shall the same pass? it was supported by Messrs. LEIB, S. L. MITCHILL, J. CLAY, SMILIE, and FINDLEY, and opposed by Messrs. R. GRISWOLD, DANA, and ALSTON.

The question was then taken by yeas and nays, and the bill was passed—yeas 65, nays 38, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, John Boyle, Robert Brown, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, John Dawson, James Elliot, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, John A. Hanna, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Willis Alston, jun., Simeon Baldwin, Silas Betton, Adam Boyd, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas Dwight, Peter Early, Ebenezer Elmer, William Eustis, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Nahum Mitchell, Thomas Plater, Ebenezer Seaver, Tompson J. Skinner, John Cotton Smith, William Stedman, James Stephenson, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, and Lemuel Williams.

[The bill exonerates aliens entering the United States between the years 1798 and 1802, from complying with the first provision of the act of 1798, requiring a declaration made in a court of the intention of the alien to become a citizen five years previous to his admission to citizenship.]

GOVERNMENT OF LOUISIANA.

The House resumed the consideration of the amendments reported yesterday from the Committee of the whole House to the bill, sent from the Senate, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof:" Whereupon,

The third amendment, offered by Mr. RHEA, being under consideration, to insert after the words, "*And be it further enacted,*" in the first line of the fourteenth section of the original bill, the words following, to wit:

"That all grants for lands within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the Treaty of St. Ildefonso, in the Crown, Government, or nation, of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity; and:"

A debate of considerable length ensued, in which Messrs. NICHOLSON, J. CLAY, RHEA, of Tennessee, GREGG, HOLLAND, SMILIE, and ALSTON, supported; and Messrs. LYON, DANA, ELLIOT, and G. W. CAMPBELL opposed it.

The question was taken, that the House do agree to the said third amendment, and resolved in the affirmative—yeas 60, nays 42, as follows:

YEAS—Willis Alston, junior, Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Walter Bowie, Adam Boyd, Robert Brown, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Findley, James Gillespie, Andrew Gregg, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, Wm. McCreery, Andrew Moore, S. L. Mitchill, N. R. Moore, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Simeon Baldwin, Silas Betton, William Blackledge, John Boyle, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, William Dickson, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, Thomas Griffin, Roger Griswold, Seth Hastings, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, John Patterson, Thomas Plater, Samuel D. Purviance, Erastus Root, Tompson J. Skinner, John Cotton Smith, Henry Southard, William Stedman, James Stephenson, Samuel Tenney, David Thomas, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

The other amendments, reported from the Committee of the whole House, being twice read, were agreed to by the House.

Another motion was then made further to amend the original bill, by striking out after the words "In all criminal prosecutions," in the seventh line of the fifth section thereof, the words "*which are capital;*" and also, by striking out, after the word "cases," in the eighth line of the same section, the words "*criminal and civil:*"

And, on the question that the House do agree to the said amendment, it was resolved in the affirmative—yeas 44, nays 37, as follows:

YEAS—Isaac Anderson, John Archer, George Michael Bedinger, William Blackledge, John Boyle, George W. Campbell, Clifton Claggett, Thos. Claiborne, Matthew Clay, John Clopton, Jacob Crowninshield, John Dawson, James Elliot, Ebenezer Elmer, Samuel Hammond, Seth Hastings, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Henry W. Livingston, Matthew Lyon, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, junior, Gideon Olin, Beriah Palmer, John Patterson, Erastus Root, Tompson J. Skinner, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, James Stephenson, John Stewart, Philip R. Thompson, John Trigg, Joseph B. Varnum, Marmaduke Williams, and Joseph Winston.

NAYS—Willis Alston, jun., Walter Bowie, Adam Boyd, Robert Brown, Levi Casey, Joseph Clay, Frederick Conrad, Manasseh Cutler, Peter Early, William Eustis, William Findley, Andrew Gregg, Thomas Griffin, John A. Hanna, J. Hasbrouck, J. Heister, Benj. Huger, Walter Jones, Michael Leib, Joseph Lewis, jr., Andrew McCord, William McCreery, Joseph H. Nicholson, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Cotton Smith, John Smith of Virginia, Henry Southard, Samuel Tenney, Philip Van Cortlandt, Isaac Van Horne, and Richard Winn.

The bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be read the third time to-morrow.

SATURDAY, March 17.

Mr. SAMUEL L. MITCHILL, from the Committee of Commerce and Manufactures, presented a bill relative to the compensation of certain officers of the customs, and to provide for appointing surveyors in the districts therein mentioned; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. GEORGE W. CAMPBELL, from the committee appointed on the twenty-third of January last, presented a bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers; which was read twice, and committed to a Committee of the Whole on Tuesday next.

Resolved, That the Clerk of this House be authorized to continue the services of a third engrossing clerk in his office, from the first day of the present session until the further order of the House.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That it is expedient to provide by law for exhibiting and registering, in proper offices, and in the language used in the United States, and prior to the —— day of ——, in the year ——, all evidences of title and claims for land within the territories ceded by the French Republic to the United States, by the Treaty of the thirtieth of April, in the year 1803, which have originated by virtue of any legal grant made by the French Government, prior to the Treaty of Paris, of the tenth day of February, in the year 1763, or of any legal grant made by the Government of Spain subsequent to the convention made by and between the French Government and the Government of Spain, of the third of November, 1762, and prior to the Treaty of St. Ildefonso, of the first of October, 1800; or of any legal grant made by the British Government subsequent to the said Treaty of Paris, of the tenth of February, in the year 1763, and prior to the Treaty of Peace, of the third of September, 1783.

Ordered, That the said motion do lie on the table.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act altering the sessions of the District Courts of the United States for the districts of Virginia and Rhode Island:" Whereupon,

Resolved, That this House do agree to the said amendments.

The House proceeded to the farther consideration of the bill to amend the act, entitled "An act concerning the registering and recording of ships and vessels," which was amended and ordered to lie on the table on the fifteenth instant; and the said bill being further amended at the Clerk's table, was, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

GOVERNMENT OF LOUISIANA.

The bill erecting Louisiana into two Territories, and providing for the temporary government thereof, was read the third time.

Mr. DAWSON moved a recommitment of the bill for amendment.

Mr. ALSTON was against a general recommitment of the bill, but friendly to a recommitment for the purpose of limiting its duration.

Messrs. NICHOLSON, SMILIE, EARLY, and S. L. MITCHILL, opposed the recommitment.

Mr. BEDINGER advocated the recommitment.

The motion to recommit was then negatived—ayes 39, noes 43.

Mr. ALSTON said, if there was no objection, he would move the insertion of a clause to limit the period of the bill, on account principally of the great powers conferred on the Executive.

This motion being objected to, by Mr. LYON, was declared out of order.

The question was then put on the passage of the bill.

Messrs. LYON, SLOAN, JACKSON, and BEDINGER opposed, and Mr. SMILIE supported its passage.

Mr. Varnum moved to recommit, for amendment, that part of the bill that vests equity powers in the courts of Louisiana.

Motion negatived—ayes 39, noes 44.

A motion was made to recommit the fourth section; which was lost—ayes 15.

Mr. Bedinger moved to recommit the last section for the purpose of obtaining a limitation to the act.

Motion carried—ayes 52.

The House went into a Committee of the Whole on the last section.

When Mr. Nicholson moved an amendment limiting the act to two years and to the end of the next session thereafter.

Mr. Bedinger said he would like its limitation to one year better, but would, if it were the sense of the House, be satisfied with two years.

Mr. Nicholson's motion was agreed to without a division.

The House agreed to the amendment; when the final question was put on the passage of the bill, and carried in the affirmative by yeas and nays—yeas 96, nays 21, as follows:

Yeas — Willis Alston, junior, Isaac Anderson, David Bard, George Michael Bedinger, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Levi Casey, Thomas Claiborne, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, William Eustis, William Findley, James Gillespie, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, John Smilie, John Smith of Virginia, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Marmaduke Williams, Richard Wilgn, and Joseph Winston.

Nays—John Archer, Silas Betton, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, Samuel W. Dana, John Davenport, John Dawson, James Elliot, Gaylord Griswold, Roger Griswold, Seth Hastings, John G. Jackson, Henry W. Livingston, Matthew Lyon, Thomas Plater, James Sloan, John C. Smith, Samuel Tenney, and Lemuel Williams.

TERRITORY OF COLUMBIA.

Mr. Dawson moved the following resolutions:

Resolved, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Virginia, by an act, passed the third day of December, in the year one thousand seven hundred and eighty-nine, entitled "An act for the cession of ten miles square, or any lesser quantity of territory, within this State to the United States in Congress assembled, for the permanent seat of the General Government;" provided that the said State of Virginia shall consent, and agree thereto.

Resolved, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of the Territory of Columbia, without the limits of the City of Washington, which was ceded to the United States by the said State of Maryland, by an act, passed the nineteenth day of December, in the year one thousand seven hundred and ninety-one, entitled "An act concerning the Territory of Columbia and the City of Washington:" provided the said State of Maryland shall consent and agree thereto.

On referring the resolutions to a Committee of the Whole, the House divided—ayes 40, noes 28. There not being a quorum, a motion was made to adjourn, and lost—ayes 31.

The question was then put on considering the resolutions—ayes 36, noes 32.

There being no quorum, the motion to adjourn was repeated, and carried—ayes 45, noes 24.

Monday, March 19.

An engrossed bill to amend the act, entitled "An act concerning the registering and recording of ships and vessels," was read the third time, and passed.

Two petitions of sundry relatives and friends of the officers and others serving on board the United States' frigate Philadelphia, and of sundry other inhabitants of the City of Philadelphia, were presented to the House and read, respectively praying that the Government of the United States will be pleased to take such measures as may be deemed effectual and proper to rescue, from the deplorable state of slavery, the officers and crew of the said frigate Philadelphia, who are stated by the petitioners to have been lately captured near the coast of Tripoli.

Ordered, That the said petitions be referred to the Committee of Ways and Means.

Resolved, That there be a call of the House today at two o'clock, post meridian.

Mr. Dawson's motion to recede the Territory of Columbia, with the exception of the City of Washington, was referred to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole, on the bill for the relief of the legal representatives of the late General Moses Hazen; and, after some time spent therein, the bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill supplementary to the act, entitled "An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee;" and, after some time spent therein, the Committee rose and reported progress.

Pursuant to the order of this day, the Clerk proceeded to a call of this House; and ninety-six members (including the Speaker) appeared in their places.

The absentees being then called over and noted, it appeared that forty-four members were absent; twenty-four of whom have obtained leave; one has not appeared in his seat during the session; and nineteen, for whom no excuses or insufficient excuses were made, failed to be present at the call.

The last mentioned absentees appearing immediately after the call, were, on a motion made and seconded, ordered to be severally excused.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act further to alter and establish certain post roads, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the said amendments of the Senate: Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. Thomas, Mr. Sanford, Mr. Hanna, Mr. Wadsworth, and Mr. Stanford.

The House proceeded to the further consideration of the bill to extend the time for making the oath required in case of goods, wares, and merchandise, exported and entitled to drawback, and therein to amend the act, entitled "An act to regulate the collection of duties on imports and tonnage," which was amended by the House on the fourth of January last: Whereupon, a motion was made and seconded further to amend the said bill; and, on the question that the House do agree to the further amendment proposed thereto, it passed in the negative.

And then the question being put that the said bill, with the amendment agreed to, be engrossed for a third reading, it passed in the negative. So the bill was rejected.

Tuesday, March 20.

Resolved, That there be a call of the House every day, at half past ten o'clock, during the remainder of the session.

The order of the day for the House to resolve into a Committee of the Whole, on the bill supplementary to the act, entitled "An act more effectually to provide for the organization of the Militia of the District of Columbia," being called for, a motion was made, and the question being put, that the said order of the day be postponed until the first Monday in December next, it was resolved in the affirmative.

An engrossed bill for the relief of the legal representatives of the late General Moses Hazen was read the third time, and passed.

A Message was received from the President of the United States, communicating a letter received from Captain Bainbridge, commander of the Philadelphia frigate, informing of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the hands of the Tripolitans.

The Message and the documents accompanying the same were read, and ordered to be referred to the Committee of Ways and Means.

A message from the Senate informed the House that the Senate agree to the seventh amendment proposed by the House to the bill sent from the Senate, entitled "An act erecting Louisiana into two Territories, and providing for the temporary Government thereof;" also, to the eighth amendment, with an amendment thereto; to which they desire the concurrence of this House; and disagree to all the other amendments of this House to the said bill. The Senate have passed a bill, entitled "An act to erect a light-house at the mouth of the Mississippi river; and, also, a light-house at or near the pitch of Cape Lookout, in the State of North Carolina; and a beacon at the North point of Sandy Hook;" also, a bill entitled "An act for the relief of William A. Barron; to which they desire the concurrence of this House.

DUTIES ON IMPORTS.

The House resolved itself into a Committee of the Whole, on the bill for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light-house money on foreign ships or vessels; and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Mr. Dana moved to amend the said bill, by inserting after the fifth section, a new section, proposed to be the sixth section of the bill, in the words following, to wit:

"*And be it further enacted*, That, from and after the last day of June next, the bonds to be given for securing the payment of the duties arising on spirits imported from the West Indies, shall be made payable, the one half in six, and the other half in nine calendar months from the date of each respective importation."

And on the question that the House do agree to the said amendment, it passed in the negative—yeas 38, nays 73, as follows:

Yeas — Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas Dwight, William Eustis, Gaylord Griswold, Roger Griswold, Seth Hastings, Benjamin Huger, William Kennedy, Henry W. Livingston, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Plater, John Cotton Smith, William Stedman, Samuel Tenney, Samuel Thatcher, Philip Van Cortlandt, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Yeas — Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, John Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, William Dickson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, William Findley, John Fowler, James Gillespie, Thos. Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland, David Holmes, John G. Jackson, Nehemiah Knight, Michael Leib, Andrew McCord, David Meriwether, Andrew Moore, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Richard Stanford Joseph Stanton, James Stephenson, John Stewart, Philip R.

Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

Ordered, That the said bill, with the amendments agreed to, be engrossed, and read the third time to-morrow.

WEDNESDAY, March 21.

Pursuant to the order of yesterday, the Clerk proceeded to the call of the House, and ninety-two members, including the Speaker, appeared.

The absentees were then again called over and noted, and the door shut: after which it appeared that there were eleven members for whom no excuses or insufficient excuses were made, but who were then attending at the door to be admitted: Whereupon,

Ordered, That the said absentees, be severally excused.

On a motion made and seconded.

Ordered, That the resolution of the twentieth instant, for a call of the House every day, at half past ten o'clock, during the remainder of the session, be rescinded.

Ordered, That the Committee of Ways and Means, to whom were referred, on the nineteenth and twentieth instant, two petitions from sundry relatives and friends of the officers and others on board of the United States' frigate Philadelphia, and of sundry other inhabitants of the city of Philadelphia; also, a Message from the President of the United States, communicating information of the wreck of the said frigate, and of the capture by the Tripolitans of the officers and crew of the same; have leave to report thereon, by bill, or bills, or otherwise.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act altering the time for the next meeting of Congress;" to which they desire the concurrence of this House.

Mr. THOMAS, from the committee to whom was referred the amendments of the Senate to the post office bill, reported that it was expedient to agree to the same, with the exception of one amendment.

The House concurred in the report, and agreed to all the amendments but one, which authorizes a new route to New Orleans, to which they disagreed.

The bill sent from the Senate, entitled "An act for the relief of William A. Barron," was read twice and committed to Mr. NICHOLSON, Mr. JOHN C. SMITH, and Mr. S. L. MITCHILL.

The bill sent from the Senate, entitled "An act to erect a light-house at the mouth of the Mississippi river, and also a light-house at or near the pitch of Cape Lookout, in the State of North Carolina, and a beacon at the point of Sandy Hook," was read twice and committed to a Committee of the Whole to-morrow.

A bill sent from the Senate, entitled "An act to make further appropriations for the purpose of extinguishing the Indian claims," was read twice and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill to repeal part of the act, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen;" and after some time spent therein, the bill was reported with an amendment thereto; which was twice read, and, agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed and read a third time to-morrow.

Mr. NICHOLSON, from the Committee of Ways and Means, presented a bill further to protect the commerce and seamen of the United States against the Barbary Powers.

[The bill provides that an additional duty of two and a half per centum be laid upon all imported goods at present charged with a duty ad valorem, and an additional duty of ten per cent. on all such duties payable on goods imported in foreign vessels. The proceeds of these duties are to constitute a fund, to be called the Mediterranean fund. The duties to cease within three months after a peace with Tripoli, in case the United States are not engaged in war with some other of the Barbary Powers, in which case they are to cease within three months after a peace with such Powers. The President is authorized to cause to be purchased or built two vessels of war, to carry sixteen guns each, and as many gun-boats as he may think proper. One million of dollars, additional to the sum heretofore appropriated, is placed under the direction of the President for the naval service, which sum he is authorized to borrow at a rate of interest not exceeding six per cent.]

Mr. NICHOLSON moved that this bill should be made the order for this day—

Mr. R. GRISWOLD moved to-morrow.

The question on "to-morrow" was lost—yeas 33, nays 50; when Mr. NICHOLSON's motion prevailed.

DUTIES ON IMPORTS.

The bill laying more specific duties on certain articles, and imposing light-money on foreign vessels entering the ports of the United States, was read the third time.

Mr. HUGER moved its postponement to the first Monday of December, under the impression that its merits, and the principles it contained, had not received that full and deliberate examination to which they were entitled.

Mr. J. CLAY observed that a postponement would be virtually a rejection of the bill.

Mr. MITCHILL concisely advocated the principles of the bill.

Mr. BLACKLEDGE also defended it.

Mr. R. GRISWOLD opposed it, principally on the ground that it increased the existing rate of duties.

Mr. J. CLAY replied; and allowed that the duties imposed by the bill would produce more revenue than that heretofore received, but contended that this would arise from the fraudulent practice heretofore in use of making out invoices of articles subject at present to ad valorem duties. In removing this evil the necessary effect would be

an increase of revenue, not exceeding, however, the probable receipt in case the invoices were fairly made out.

Mr. HUGER followed, in a speech of considerable length, in which he contended that the operation of the bill would be to promote the manufactures of the Eastern and Middle States, to the great detriment of the Southern States. Principally, though not entirely on this ground, he declared himself hostile to the bill.

After a few remarks from Mr. BOYD in defence, and of Mr. CLAIBORNE against the bill, the question of postponement was taken by yeas and nays and lost—yeas 40, nays 68, as follows:

YEAS—Simeon Baldwin, Silas Betton, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Clopton, Manasseh Cutler, John Davenport, William Dickson, Thomas Dwight, John B. Earle, Thomas Griffin, Gaylord Griswold, Roger Griswold, William Hoge, David Hough, Benjamin Huger, William Kennedy, Joseph Lewis, jr., David Meriwether, Nahum Mitchell, Thomas Moore, Thomas Plater, John Cotton Smith, Richard Stanford, William Stedman, James Stephenson, Samuel Tenney, Samuel Thatcher, Abram Trigg, John Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Samuel W. Dana, John Dawson, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, James Gillespie, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, Henry W. Livingston, Matthew Lyon, Andrew McCord, William McCreery, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, John Stewart, Samuel Taggart, Philip R. Thompson, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, and Lemuel Williams.

Mr. KENNEDY moved a recommittment of the motion imposing a specific duty on printed calicoes and lime.

Motion rejected—yeas 34.

The question was then taken on the passage of the bill, and carried in the affirmative by yeas and nays—yeas 65, nays 41, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, James Gillespie, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, James Holland, David Holmes, John G. Jackson, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, Henry Southard, Joseph Stanton, John Stewart, Philip R. Thompson, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, Lemuel Williams, and Joseph Winston.

NAYS—Simeon Baldwin, Silas Betton, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Clagget, Thomas Claiborne, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, John B. Earle, Thomas Griffin, Gaylord Griswold, Roger Griswold, William Hoge, Benjamin Huger, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, David Meriwether, Nahum Mitchell, Thomas Moore, Thomas Plater, John Cotton Smith, John Smith of Virginia, Richard Stanford, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Abram Trigg, John Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, Marmaduke Williams, and Richard Winn.

GOVERNMENT OF LOUISIANA.

The House took up the message of the Senate on the amendments of the House to the Louisiana bill, which represents the disagreement of the Senate to all the proposed amendments excepting two.

The amendments were taken up in the order of succession.

1st. The message stated the disagreement of the Senate to striking out the fourth section of the original bill, and to the substitution of another section.

On receding from this amendment, the House divided by yeas and nays—yeas 37, nays 63, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, David Bard, Adam Boyd, Robert Brown, John Campbell, Levi Casey, Joseph Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John B. Earle, William Findley, Joseph Heister, James Holland, David Holmes, Benjamin Huger, Nehemiah Knight, Andrew McCord, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Joseph H. Nicholson, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Thomas Sammons, John Smilie, John Smith of Virginia, John Stewart, Samuel Tenney, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, and Richard Winn.

NAYS—John Archer, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Blackledge, Walter Bowie, George W. Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, James Gillespie, Thomas Griffin, Gaylord Griswold, Seth Hastings, William Hoge, John G. Jackson, William Kennedy, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, David Meriwether, Nahum Mitchell, Andrew Moore, Thomas Moore, Jeremiah Morrow, Anthony New,

Thomas Newton, jr., Gideon Olin, John Patterson, Thomas Plater, John Randolph, John Rhea of Tennessee, Erastus Root, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Cotton Smith, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, Samuel Taggart, John Trigg, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, and Joseph Winston.

2. On receding from the amendment of the House to insert "criminal," in the room of "capital," the House divided—yeas 48, nays 32.

3. On receding from their amendment giving equity of powers to the courts of Louisiana, the House divided—yeas 58; carried.

4. On receding from their amendment declaring null all grants of land made subsequently to the Treaty of St. Ildefonso, the House divided—yeas 45, nays 46.

5. The message further stated they had agreed to the amendment of the House limiting the duration of the bill to two years, with an amendment, substituting one in the place of two.

On agreeing to the amendment of the Senate the House divided—yeas 45, nays 40.

The House then resolved to insist on their first amendment, striking out the fourth section—yeas 57.

The question was then taken, by yeas and nays on insisting on their fourth amendment, and carried affirmatively—yeas 53, nays 36, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Walter Bowie, Adam Boyd, Robert Brown, Levi Casey, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John Dawson, William Findley, James Gillespie, Thos. Griffin, Joseph Heister, William Hoge, David Holmes, Walter Jones, William Kennedy, Michael Leib, Andrew McCord, William McCreery, David Meriwether, Andrew Moore, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith of Virginia, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

Nays—Simeon Baldwin, Silas Betton, William Blackledge, George W. Campbell, John Campbell, Martin Chittenden, Thomas Claiborne, Samuel W. Dana, John Davenport, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, Gaylord Griswold, John A. Hanna, Seth Hastings, John G. Jackson, Nehemiah Knight, Joseph Lewis, jr., Henry W. Livingston, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, Thomas Plater, Erastus Root, Tompson J. Skinner, John Cotton Smith, Henry Southard, Joseph Stanton, William Stedman, James Stevenson, Samuel Tenney, Samuel Thatcher, Matthew Walton, and Lemuel Williams.

Resolved, That this House do agree to the amendment proposed by the Senate to the eighth amendment of this House to the said bill.

Resolved, That a conference be desired with the Senate on the subject matter of the foregoing amendments; and that Mr. Nicholson, Mr. Rhea, of Tennessee, and Mr. Early, be appointed managers at the said conference, on the part of this House.

NEXT MEETING OF CONGRESS

The bill sent from the Senate, entitled "An act altering the time for the next meeting of Congress, was read twice and committed to a Committee of the Whole House.

A motion was then made and seconded that the said bill be made the order of the day for the first Monday in December next: and on the question thereupon it passed in the negative—yeas 33, nays 68, as follows:

Yeas—Simeon Baldwin, Silas Betton, William Blackledge, Walter Bowie, Matthew Clay, Samuel W Dana, John Davenport, Thomas Dwight, Peter Early, John Fowler, Thomas Griffin, Roger Griswold, Seth Hastings, Joseph Heister, William Hoge, Benjamin Huger, John G. Jackson, William Kennedy, Henry W. Livingston, Matthew Lyon, David Meriwether, Nahum Mitchell, Thomas Plater, Jacob Richards, Ebenezer Seaver, John C. Smith, Richard Stanford, William Stedman, Samuel Taggart, Joseph B. Varnum, Matthew Walton, Lemuel Williams, and Marmaduke Williams.

Nays—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Adam Boyd, Robert Brown, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, James Elliot, Ebenezer Elmer, William Eustis, William Findley, James Gillespie, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, James Holland, David Holmes, Walter Jones, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Andrew McCord, William McCreery, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Thomas Sandford, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, James Stephenson, John Stewart, Samuel Tenney, Philip R. Thompson Abram Trigg, John Trigg, Isaac Van Horne, Killian K. Van Rensselear, Joseph Winston.

Resolved, That the said bill be the order of the day for to-morrow.

Thursday, March 22.

A message from the Senate informed the House that the Senate insist on their sixteenth amendment, disagreed to by this House, to add to the first of two new sections after the third section of the bill, entitled "An act further to alter and establish certain post roads, and for other purposes," and desire a conference with this House on the subject-matter of the said amendment; to which conference the Senate have appointed managers on their part. The Senate agree to all the amendments proposed by this House to the other amendments of the Senate to the said bill. The Senate have also agreed to the conference desired by this House

on the subject-matter of the amendments depending between the two Houses to the bill sent from the Senate, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," and have appointed managers at the said conference on their part.

The House proceeded to consider so much of the foregoing message of the Senate as relates to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes:" Whereupon,

Resolved, That this House doth insist on their disagreement to the sixteenth amendment insisted on by the Senate to the said bill.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of the said amendment; and that Mr. Varnum, Mr. R. Griswold, and Mr. Thomas, be appointed managers at the same, on the part of this House.

A Message was received from the President of the United States, transmitting the last returns of the militia of the United States. The Message, and the returns of the militia transmitted therewith, were read, and ordered to lie on the table.

An engrossed bill to repeal a part of the act, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to ascertain the boundary of the lands reserved for the State of Virginia northwest of the Ohio river, for the satisfaction of her officers and soldiers on Continental Establishment, and to limit the period for locating the said land;" and after some time spent therein, the bill was reported without amendment. The bill was then read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments;" also, a bill, entitled "An act giving additional compensation to the Governor, Secretary, and Judges, of the Indiana Territory;" to which they desire the concurrence of this House.

The bill sent from the Senate, entitled "An act to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments," was read twice and committed to a Committee of the Whole to-morrow.

The bill sent from the Senate, entitled "An act giving additional compensation to the Governor, Secretary, and Judges, of the Indiana Territory," was read twice and committed to a Committee of the Whole to-morrow.

Mr. John Randolph, from the Committee of Ways and Means, who were instructed by a resolution of this House, of the thirtieth ultimo, "to inquire into the expediency of abolishing the office of Accountant of the Navy Department, and the office of the Accountant of the War Department," made a report thereon; which was read, and ordered to be referred to the Committee of the whole House to whom was this day committed the bill sent from the Senate, entitled "An act to amend the laws providing for the organization of the accounting offices of the Treasury, War, and Navy Departments."

The House resolved itself into a Committee of the Whole on the bill relative to the compensations of certain officers of the customs, and to provide for appointing surveyors in the districts therein mentioned; and, after some time spent therein, the Committee rose and reported several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill supplementary to the act, entitled "An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee;" and, after some time spent therein, the Committee rose and reported several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill with the amendments, be engrossed, and read the third time to-morrow.

Mr. Eustis, from the committee to whom were referred, on the first instant, a letter from the Postmaster General, and sundry books or statements, marked A, B, C, and D, in relation to "the amount of postage in each State, for three successive years, commencing the first of October, 1800, and ending the thirtieth of September, 1803; also, to the amount of commissions of postmasters; to the expenses of transporting the mails on all roads in each State; and to other expenses of the post offices;" made a report: Whereupon,

Ordered, That the said letter, together with the summary report or statement, marked D, which accompanied the same, be printed for the use of the members of both Houses of Congress.

ADDITIONAL DUTIES.

The House resolved itself into a Committee of the Whole on the bill further to protect the commerce and seamen of the United States against the Barbary Powers.

Mr. Griswold moved to strike out the first section, which is as follows:

"*Be it enacted, by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the purpose of defraying the expenses of equipping, officering, manning, and employing such of the armed vessels of the United States, as may be deemed requisite by the President of the United States, for protecting the commerce and seamen thereof, and for carrying on warlike operations against the Regency of Tripoli, or any other of the Barbary Powers, which may commit hostilities against the United States, and for the purpose also of defraying any other expenses incidental to the intercourse with the Barbary Powers, or which are authorized by this act, a duty of two and a half per centum ad valorem, in addition to the duties now imposed by law, shall be laid, levied, and collected upon all goods, wares, and merchandise,

paying a duty ad valorem, which shall, after the thirtieth day of June next, be imported into the United States from any foreign port or place; and an addition of ten per centum shall be made to the said additional duty in respect to all goods, wares, and merchandise, imported in ships or vessels not of the United States, and the duties imposed by this act shall be levied and collected in the same manner, and under the same regulations and allowances, as to drawbacks, mode of security, and time of payment, respectively, as are already prescribed by law, in relation to the duties now in force on the articles on which the said additional duty is laid by this act."

Mr. G. said, that it was much to be regretted that gentlemen had thought proper, upon this occasion, to connect with the great and ostensible object of the bill, any provisions which should produce a disunion in the House. The unfortunate event in the Mediterranean called loudly for vigorous and decisive measures, and he trusted there would not exist on the floor a difference of opinion on that point. For himself, he was disposed to clothe the President with all the power, and to furnish him with all the means which were necessary to bring the war with Tripoli to a successful and speedy termination. And when this was done, to make him, as he ought to be, responsible for the event.

It is always improper, said Mr. G., to connect in the same bill two subjects which are in their natures distinct; and much more improper upon this occasion, to tack to the provisions for the Mediterranean service, upon which there could be no difference of opinion, a new tax, in respect to which gentlemen could not agree.

The first section of the bill, which he had moved to strike out, imposed a new tax of two and a half per centum ad valorem on all goods now liable by law to an ad valorem duty. Goods paying at this time an ad valorem duty were divided into three classes—the first class was liable to a duty of twelve and a half per cent.; the second, to a duty of fifteen per cent.; and the third, to a duty of twenty per cent.

The addition of two and a half per cent. now proposed, would increase the duties to fifteen, seventeen and a half, and twenty-two and a half per cent., when the goods were imported in American bottoms; and if they were imported in foreign bottoms, the duties would be further increased, by the addition of ten per cent.

This view of the import, said Mr. G., will satisfy gentlemen that the duties are already high, and that the proposed addition will render them enormous. This step, therefore, ought not to be hazarded, unless the necessities of the Government are absolutely imperious, and no other means can be resorted to for obtaining the money.

There is a point, in imposing duties, beyond which it is not safe or prudent to go, and it becomes gentlemen seriously to consider whether we have not already reached that point. The whole revenue of the United States is at this time collected from commerce. Every other branch of business has been exempted from immediate taxes. The impost has been collected hitherto without much complaint, and with much punctuality; but this has been owing to the honor and integrity of the merchants. The facility of smuggling is great and extensive in this country. The extent of our coast, the innumerable inlets which are found upon it, and the small number of revenue cutters employed, renders it easy to smuggle goods, for those who are disposed to evade the laws.

Fortunately, however, it has been, and still is, disgraceful to engage in this business. But if new impositions are laid on commerce—if trade is made the pack-horse, to carry all the burdens of Government, no man can say how soon it will become fashionable to evade the laws. The merchant, soured by new burdens, and the short credit which is allowed him at the custom-houses, will begin to think it no disgrace to evade the laws and to save his money. He will soon believe that the Government which pays no respect to him, is not entitled to his support. It is easy to foresee what the effect must be, when a spirit of this kind prevails among those who are engaged in commerce. It is well known that the hazard of seizure is by no means equal to the duties, and when men no longer feel themselves bound in honor to pay the duties, will they be paid?

These considerations, said Mr. G., have induced me to reprobate the impolicy of laying all our burdens on commerce, and induced me to consider it unwise to touch the subject, but with the utmost delicacy.

The question then returns upon us, said Mr. G.: Are the necessities of the Government so imperious as to demand this great and extraordinary imposition?

We have not, said Mr. G., received from the Executive departments any estimate of the extraordinary force, or the supply necessary for this service—we are left entirely in the dark upon these important points. Having no connexion with the Executive departments, he had thought it his duty, yesterday, to inquire at the navy yard what ships had been ordered on this occasion for the Mediterranean, and, to his astonishment, he understood that two frigates only had been ordered to be got in readiness. He hoped the account he had received was incorrect, and trusted that some gentleman connected with the Executive, would inform the House what force was in contemplation.

Be the force however, said Mr. G., what it may, there can be no necessity at this time for a new tax. We have heard much for three years, about the wealth of the Treasury, the increase of revenue, and the economy of the Administration. And yet we are now told that the loss of a frigate, and a petty war with pirates, renders a new and large tax necessary.

But it may be proper to go into some detail. He was ignorant, as he had already observed, of the force contemplated by the Administration, but it would appear that the probable force could not require the new tax. Taking the estimate of the last year to ascertain the annual expense of ships on the Mediterranean station, it would appear—

That two ships of forty-four guns each, might be maintained for -	$197,214 74
One ship of thirty-six guns - -	84,120 22
One ship of thirty-two guns -	65,233 17
Two brigs of twelve or fourteen guns each, for - - - - -	42,937 12
Forming an aggregate of the annual expense amounting to - -	389,505 25

Mr. G. said that he did not pretend to state that the force which he had stated was all that was necessary for the service. But a reinforcement of four frigates and two brigs, in addition to the force already in those seas, would cost the Government, if we followed the estimates of the Secretary of the Navy, only $389,505 25 per annum, and if the extra force employed was much more considerable, still the expense would not arise so high as to require any new taxes.

The Treasury account, said Mr. G., of the last year stated that there was in the Treasury, on the first day of October, 1803, in specie, $5,860,981 54. This sum he knew was charged with one or two instalments of the debt falling due under the British Convention, and with two millions, being a part of the $3,750,000 stipulated under the French Convention, to be paid to the merchants.

But, after deducting those sums, there would still remain a sufficient balance for the present emergency. And unless the public had been deceived by those flattering representations which had been given of the Treasury operations, it was apparent that the Government could not want any new taxes.

The proposed tax, if fairly collected, would produce at least $750,000 per annum. This result might be seen from a view of the imports into the United States of goods now liable to an ad valorem duty. From the last official report, it appeared that the importation of goods of that description, amounted in that year to about forty millions of dollars—the two and a half per cent. on the whole sum would, of course, produce one million, but, allowing for the drawback of duties on goods exported, the net revenue could not be less than $750,000. Why, then, impose a tax of seven hundred and fifty thousand dollars to meet an expenditure which will not probably exceed four or five hundred thousand dollars?

The second section of the bill, said Mr. G., is not immediately under consideration, but he was obliged to refer to it for the purpose of explaining his objections to the first section. That section declared that the money arising from the new tax should constitute a distinct fund, under the denomination of the Mediterranean fund, and should be applied exclusively to the objects contemplated by the bill. This was a popular and a plausible provision, but it was perfectly deceptive, and in truth amounted to nothing. Those who gave the bill a cursory reading, would be led to suppose that the money arising from the tax could only be applied to the extra expense to be incurred in the Mediterranean; but this would not be the case. The money might be expended on every object connected with the Mediterranean service, and, as the navy of the United States was only employed in those seas, the consequence would be, that the money would be expended on the navy generally. And in fact the new tax would produce a fund for supporting the Naval Establishment, and if the expense of that establishment did not greatly exceed the items which he had already stated, the new tax would nearly cover the whole expense of the navy, and, during the war with Tripoli, liberate the ordinary revenue from that branch of expense altogether. This, said Mr. G., looks too much like an attempt, on the part of the Administration, to avail itself of a public misfortune to impose new, impolitic, and unnecessary taxes, for the purpose of replenishing the Treasury, for purposes very different from those held out by the bill.

Mr. G. concluded by saying, that he would again express his regret that gentlemen had, in this unusual manner, connected two distinct subjects in the same bill, and in that manner destroyed the unanimity which would otherwise have prevailed in the House. He hoped a majority would consent to separate them, and agree to the motion for striking out.

Mr. Nicholson regretted that it was not in his power to furnish the information desired by the gentleman from Connecticut. Had he been solicitous to learn the extent of the armament about to be fitted out, he would not have gone to the navy yard for information, but to a higher authority, equally accessible to the gentleman as to himself. He had not himself sought this information, because he knew that the President, having confided to him a discretionary power as to the armed force of the nation, would use it in such a manner as would be most effectual. His only object, therefore, was to give him the power of using the means of the United States with energy; leaving the discretion in him, as it necessarily must be, to use it as he should think proper. If we were about to raise an army to commence hostilities against a foreign nation, it would not be the province of the House to inquire how it should be directed. Having authorized the raising and equipping it, it would forthwith come solely under the power of the Executive department—our power being confined to supplying the means by which it may be raised.

In introducing this bill, Mr. N. said, he had thought it proper, when the Government were about to incur a very heavy expense, that means should be provided by which it should be defrayed. The gentleman from Connecticut, who has moved to strike out this section, seems extremely willing to incur the expense, on condition that no means shall be provided by which it shall be defrayed. Mr. N. said he held it a sound doctrine in politics, and more particularly applicable to a Government like ours, when provision was made for incurring expenses, to provide likewise the means of meeting them. This was a doctrine by which the Legislature ought to be governed. They ought not to authorize any expense, without at the same time providing the means,

unless on great emergencies when the means are not in their power. There may be such emergencies, when it is proper to authorize the Executive to loan considerable sums, when no other means can be resorted to by the Government.

We are now about to authorize a greater expense than usual, and the Legislature are called upon to provide means for its discharge. For one, said Mr. N., I can never consent to add to the public debt, while the resources of the country are adequate to its wants. These are my ideas; and I feel somewhat surprised at the calculation of the gentleman from Connecticut, on the expense about to be incurred. He estimates this expense at $388,000; though yesterday when this subject was laid before the Committee of Ways and Means, and it was contemplated to provide $750,000, he moved to strike out $750,000, and insert $1,000,000. And yet he now tells us that only $388,000 are required. As to the specie in the Treasury, the gentleman states that on the 1st of October there were $5,000,000. But with what disbursements is this chargeable? Out of it there are to be paid American citizens for French spoliations the sum of $3,750,000 in cash, which must remain in the Treasury, that just claims may be paid as soon as presented. Under the British Convention there is to be paid $800,000; and there is likewise to be paid the interest on Louisiana stock, amounting to $685,000; the aggregate of which sums is $5,235,000. Not having made this calculation until the gentleman made his observation, it is possible it may not be perfectly correct.

When the loss of the Philadelphia was announced, my first inquiry of the Secretary of the Treasury was what money could be spared from the Treasury for the prosecution of vigorous measures. His answer was, that the greatest sum which could be spared would not exceed $150,000. I did not, like the gentleman, go to the clerks or to the navy yard; but I got the best information I could.

The gentleman from Connecticut, who appears willing to incur an expense of a million of dollars, while he is unwilling to provide the means of meeting it, objects to the mode of raising revenue proposed by the Committee of Ways and Means, without proposing any other. He objects to the laying additional duties on imported goods. In his remarks he has made an erroneous statement of the quantity of goods on which ad valorem duties are paid. His error has arisen from not deducting the amount of drawbacks. By an official statement made this session, it will be found that during the year 1802, goods paying ad valorem duties were as follows:

Rate.	*Amount.*	*Duty.*
12½ per cent.	$23,377,717	$2,922,214
15 "	7,888,614	1,183,292
20 "	439,830	87,966
Amounting to	$34,706,161	$4,193,472

The average duty on goods charged ad valorem is about thirteen and a half per cent. Let us consider the duties paid by other articles. The gentleman says in laying duties there is a point beyond which we cannot go in safety on account of the temptation to smuggling. This is true. But of all goods imported those chargeable with ad valorem duties are the most difficult to smuggle. The invoices are made out in the country from which they are imported. These must be authenticated, and presented at the custom-house and sworn to. If the collector has any reason to suspect that there are goods on board of a vessel, not in the entry, he is to make a thorough examination of the vessel. If he sees a bale in which he suspects there are goods not stated in the invoice, it is in his power to have it examined. I believe there is but little smuggling at this time; but that the articles on which there is most smuggling are rum and coffee. If the gentleman allows that the duty on articles charged specifically is not so high as to encourage smuggling to any great or dangerous extent, he will allow the same in the case of articles charged ad valorem. The great articles from which revenue are obtained, are

Spirits, which pay an average duty of twenty-nine and two-tenths cents, and which produce $2,253,496, and cost the importer from twenty-five to fifty cents per gallon. Spirits which pay twenty-five cents a gallon do not cost the importer more than fifty cents, and consequently pay a duty of fifty per cent. on the price of the article. Spirits of the third proof pay twenty-eight cents, and do not cost more than fifty-six cents a gallon, which is equal to a duty of fifty per cent. So with spirits of higher proof. From this article is derived more than a fifth of our revenue, and yet I never heard the amount of the duty complained of until a few days since a petition was presented from the merchants of Connecticut. It is certain that Congress have never considered it so high as to encourage smuggling.

Of imported sugars 39,443,814 lbs. are consumed within the United States, which pay, on an average, a duty of two and a half cents per pound. The price of brown sugar to the importer is about five or six dollars the hundred. The duty is therefore between forty-five and fifty per cent. Is this duty considered so high as to encourage smuggling? If not, shall gentlemen complain when we are about to lay an additional duty of two and a half per cent. upon articles now chargeable with duties of from twelve and a half to twenty per cent?

Of salt there is consumed 3,244,309 bushels in the United States. It pays a duty of twenty cents a bushel. In many instances this is equal to the first cost; and amounts therefore to one hundred per cent.

The consumption of wines amounts to 1,912,274 gallons, and the average duty is thirty-three cents. The duty on Madeira wine is fifty-eight cents, and it costs the importer one dollar and twenty-five cents. The duty therefore amounts to near fifty per cent. If the cost be taken at one dollar and fifty cents the duty will be thirty-three and a third per cent. And yet it is not complained that it encourages smuggling.

Sherry and St. Lucar pay forty cents per gallon, and the original cost is not more than sixty-six cents. The duty bears the same proportion in the case of Lisbon.

Taking the average duty on wines we find it is from thirty-three to fifty per cent; and yet gentlemen say if the duty on articles chargeable ad valorem be raised from twelve and a half to fifteen per cent. it will encourage smuggling.

Teas produce $382,669. Bohea tea pays a duty of at least one hundred per cent., and Souchong, Hyson, and other teas, pay in the same proportion.

Thus it appears that articles of great consumption, and many of them of almost indispensable necessity, pay a duty of fifty to one hundred per cent., and yet gentlemen are unwilling to lay an additional duty of two and a half per cent. on articles now paying duties of twelve and a half and fifteen per cent. As to those charged with twenty per cent. they are not worth considering, as the whole duties on them only amount to $87,966, and as they are in themselves unimportant.

I have heard an idea thrown out, that instead of laying a duty on articles now charged with ad valorem duties, it would be more advisable to lay a specific duty upon all imported goods. I think I have shown that this would be unjust, and that the articles which at present pay specific duties are charged relatively sufficiently high. I believe if the emergencies of the country required it we might, without disturbing the proper proportion, lay an additional duty of from ten to fifteen per cent. on goods charged ad valorem, and without the increase being felt by the country, or its producing smuggling. At present it is only contemplated to raise them two and a half per cent.

I repeat it, that I consider it the duty of the Legislature, when they authorize extraordinary expenditures, to provide, so far as it is in their power, extraordinary means; for I believe we have no right to burden posterity with taxes which we dare not ourselves meet. The protection now asked for our trade is for our own benefit; we ought not, therefore, to shrink from the burden it necessarily creates. This is the reason why I advocate this additional duty of two and a half per cent., and because I believe trade will bear it, and because I do not think it will be felt by a man in the country. What will be the effect of the additional duty? The greater part of goods charged ad valorem are woollens, linens, manufactures of steel, brass, and articles of a similar kind, and muslins. In a muslin gown the additional duty will make a difference of about five cents. India muslins cost about fifteen cents a yard, and English about twenty-five cents. The additional duty will therefore be about three-eighths of a cent on India, and about three-fourths of a cent on English muslins. This I consider a burden which no one can feel. The additional duty on linens will be equally unfelt. In a bale of osnaburgs, which costs twenty cents, the additional duty on a hundred yards will not exceed fifty cents. So as to Irish linens and woollens. The difference in a coarse suit of clothes for a common man will not be more than twenty-five cents, and that of a better kind will not exceed one dollar and twenty-five cents. I am surprised, after taking this view of the operation of the proposed duty, that gentlemen should dwell upon the great burden it will impose, when it can, in truth, scarcely be felt by the poorest man in the country. It is indeed of no consideration but on account of the money raised by it, which I have estimated at about $750,000.

The gentleman from Connecticut thinks he has discovered in the second section a design that is not avowed, to wit: to liberate the present resources from their application to the support of the Navy. I wonder, however, that the gentleman, before he made this unguarded remark, did not read the section through. He would then have seen that the fund established by this act is to exist no longer than three months after the discontinuance of war in the Mediterranean. Nor is it true that the whole expenses of the Navy are in the Mediterranean. It is true, that at this time they are principally there. But there is likewise considerable expense incurred here in the navy yard on the ships, and on the half-pay of officers not in actual service. Whence the gentleman deduces the inference, when the bill itself declares that the new duties shall cease three months after the end of the war, I am altogether at a loss to comprehend. The duties are to cease with the occasion which produced them. When we shall no longer be at war, the war duties will be at an end.

I had hoped that on an occasion like this, there would not have been a dissenting voice on this floor on measures for protecting the trade and supporting the character of the nation. But, I find that all hope of this kind is vain, and that every measure proposed, however necessary, will be opposed. I can only say that I regret it, and more particularly on this occasion, when our constituents have a right to expect perfect unanimity.

Mr. DANA.—The gentleman from Maryland must surely have committed a mistake, when he said that there is no measure proposed on his side of the House which does not meet with opposition. When the President considered vigorous measures necessary against the Emperor of Morocco, the Journal will show that we entered into them unanimously. Nor is the objection now urged in any way an objection to the general measure contemplated. The only objection, is to the imposition of unnecessary taxes. If the force necessary to be sent into the Mediterranean will not exceed an expense of $380,000, the necessity for the imposition of the proposed taxes surely does not exist. I admit that, after the force is raised, the President, in virtue of his authority as Commander-in-chief, is to have its whole direction; but it is perfectly novel to me to learn that we are not previously to be informed of the extent to which it is proposed to carry it. If to the present number of vessels in service we add two frigates and five smaller vessels, they will require only an additional appropriation of $354,000. This, I believe, is the full extent of the additional force contemplated. As to raising money to that

amount I make no objection. Though I dislike laying duties thus in gross, yet I do not know that there can be any great objection to it. The sum proposed to be raised will give $750,000, which is more than double the sum necessary.

Is it proper thus to raise these duties, and hold forth to the nation that the commerce of the Mediterranean is so expensive? The late disaster in the Mediterranean is not of itself an adequate cause for the measure. I object to this measure, because it goes to give an improper impression of the causes of the bill.

Formerly, this way of raising revenue was arraigned as a deceptive mode of drawing money from the people. Now we find no murmur at extending it. Gentlemen may possibly be right when they say the country would not feel an additional duty of ten or fifteen per cent. I believe, however, they have not so much apathy as the remark implies.

Mr. R. Griswold said he would not detain the Committee for many minutes. The gentleman from Maryland says that, in the select committee that introduced the bill, no estimate of expenses was considered necessary. The sum proposed to be appropriated, was $750,000. I, said Mr. G., proposed adding to it, stating the necessity of making the sum appropriated sufficient; and that if the whole was not wanted it could not be used. I was willing, therefore, to appropriate a million; and I am still of opinion that it is proper to vest the President with ample powers, and I will vote with great cordiality for appropriating a million, trusting, if the whole expense is not necessary, it will not be incurred.

The gentleman from Maryland finds fault with my being ready to incur the expense, but not to provide the means for meeting it. If the new taxes were necessary I would vote for them, much as I dislike the mode. Gentlemen will, I hope, have the candor to believe us sincere, when they recollect that I opposed the repeal of the internal taxes. I thought then that it was not politic to load commerce with the whole burdens of the nation—I think so still.

By the last Treasury report, there appears to have been in the Treasury - - - $5,560,000
Deduct for payments under
French convention - $3,750,000
Under British convention 800,000
4,550,000
Still in the Treasury - - - $1,310,000

I am sensible that there is some charge for the new debt contracted for Louisiana; but if we advert to the report of the Secretary of the Treasury, we will find he has not so estimated it. He states a surplus of $200,000 of net revenue. He considers the interest of the Louisiana stock as chargeable upon the net revenue and not on the specie balance in the Treasury; for, as the interest accrues annually, the specie balance would soon be exhausted. I am sensible that it is difficult, from any documents on the table, to be perfectly correct. Had the gentleman distinctly attended to my estimate of the avails of the proposed additional duties, he would have seen that it was not incorrect. I took the gross amount of goods chargeable ad valorem at forty millions, and estimated that two and a half per cent. duty thereon would produce a million; making twenty-five per cent. allowance for drawbacks. I made it produce the net sum of $750,000.

Mr. G. concluded, by observing that the Committee must be sensible, by adverting to the act, that the proposed fund would not be confined to the Mediterranean. The second section is as follows:

"Sec. 2. *And be it further enacted*, That a distinct account shall be kept of the duties imposed by this act, and the proceeds thereof shall constitute a fund, to be denominated 'the Mediterranean Fund,' and shall be applied solely to the purposes designated by this act; and the said additional duty shall cease and be discontinued at the expiration of three months after the ratification by the President of the United States of a Treaty of Peace with the Regency of Tripoli, unless the United States should then be at war with any other of the Barbary Powers, in which case the said additional duty shall cease and be discontinued at the expiration of three months after the ratification by the President of the United States of a Treaty of Peace with such Power: *Provided, however*, That the said additional duty shall be collected on all such goods, wares, and merchandise, liable to pay the same, as shall have been imported previous to the day on which the duty is to cease."

The object is general, and gentlemen must be sensible, if the money collected is sufficient to discharge the expense of the Navy, it may be so applied. It must, indeed, be applied to that object, as none other is stated.

Mr. Nicholson said, the gentleman from Connecticut seemed to consider the object too general; he would, in case the Committee refused to strike out the first section, move to limit the application of the fund "to protect the commerce and seamen of the United States in the Mediterranean."

The question was then taken on striking out the first section, and passed in the negative—ayes 26.

Mr. N. then offered the amendment just stated.

Mr. Eustis hoped the gentleman from Maryland would withdraw his amendment, as in a subsequent part of the bill the object is distinctly specified. It is altogether unnecessary; and if agreed to, it will be necessary to add, "or adjacent seas."

Mr. Nicholson said, he considered the amendment as unnecessary; but as he had promised to make it, he could not withdraw it.

Mr. J. Randolph said he would suggest one reason why it ought not to obtain. One of the Barbary Powers possessed a coast out of the Mediterranean. If the misfortune of the United States should dispose this Power, (Morocco,) already predisposed to hostility, to war upon the United States, it would not be in our power to block up the port of Sallee, and several other ports out of the Mediterranean.

The question was taken on the amendment, which was lost without a division.

The Committee then rose and reported the bill without amendment.

The House immediately took it up—when Mr. R. Griswold renewed his motion to strike out the first section.

Mr. J. Randolph said that, on his return yesterday to his seat after an indispensable absence during last week, he had learned with as much surprise as concern the disastrous event which had given rise to the bill then before them. Not being present when the bill originated in the Committee of Ways and Means, it could not be expected that he should go largely into detail; and even if he had been prepared so to do, the very satisfactory statement of his friend from Maryland (Mr. Nicholson) rendered it altogether unnecessary. He should content himself with offering some few remarks, by way of reply, to the objections of the gentleman from Connecticut, (Mr. Griswold.) These resolved themselves into two distinct branches—first, to the raising of any additional revenue whatever; secondly, to the proposed mode of obtaining it.

On the first of these points, Mr. R. begged leave to refer to the report of the Secretary of the Treasury, laid before the House early in the present session.

He there computes the permanent annual revenue of the United States at - - - $10,400,000
And the permanent annual expense, viz: sinking fund, civil list, foreign intercourse, military and Indian, naval departments, on the existing establishment, is estimated at - 9,800,000
Leaving a surplus of revenue equal to - - - - - - - - $600,000

How these six hundred thousand dollars are to be disposed of will be seen hereafter. So much, sir, for our permanent revenue, and our permanent expenditure.

The extraordinary resources, consisting of specie in the Treasury and arrears of old taxes, amount to $6,660,000; and this is the fund from which the gentleman from Connecticut boldly asserts we may defray the expense of the projected armament. But it will be observed that these extraordinary resources, ample as they are, are charged, as the gentleman himself well knows, with very heavy extraordinary demands. These, on account of our Convention with Great Britain, expenses in relation to it, and to the Convention with France, a loan due the State of Maryland, and two millions for the purchase of Louisiana, amount, altogether to $4,964,000, which, being deducted from the preceding sum of $6,660,000, will leave only $1,696,000; beyond which the Secretary is of opinion it would not be prudent to reduce the specie in the Treasury.

But it is to be remembered that the purchase of Louisiana has created an additional debt of fifteen millions—$11,250,000 of six per cent. stock transferred to the French Government, and $3,750,000 payable in specie, during the present year, to American citizens having claims for spoliations against that Government. For discharging this last demand, however, two millions are reserved out of the extraordinary resources, as has just been stated, leaving a balance, on this account, of $1,750,000, and reducing the whole amount of debt to be otherwise provided for, on account of Louisiana, to thirteen millions. And here permit me to remark, that, granting, for argument's sake, there was no necessity to retain a dollar in the Treasury, the above balance of $1,750,000 would, of itself, be more than sufficient to absorb all that remained of our extraordinary resources, after defraying the extraordinary demands which I have enumerated. So sensible, however, have we been of the danger of entirely emptying the Treasury, that we have made provision for funding this balance of $1,750,000, which will fall due this year, on account of American claims for spoliations, as well as the $11,250,000 payable to France. These thirteen millions of new debt form no part of the preceding statements. Out of what funds, then, is the annual interest, amounting to $780,000, to be discharged? Certainly not out of the extraordinary resources, for these, after paying the extraordinary demands above stated, leave no greater surplus than it is necessary to keep in the Treasury; and, if the $1,600,000, the amount of that surplus, could be spared, the specie balance of American claims, unpaid, is more than sufficient to employ it. No, sir; the only fund relied upon to meet the interest of this additional debt, is the surplus of the permanent revenue beyond the permanent expense, (under the existing establishments,) to which I formerly adverted, amounting to $600,000, and, to supply the deficiency, the proceeds of the custom-house at New Orleans, taken at $200,000. These, and these only, are the means which can be relied on to meet this additional expense; and the House will perceive that the Secretary of the Treasury advances "with diffidence the opinion that it is possible thus to provide for the payment of the interest of a new debt of thirteen millions, without recurring to additional taxes."

Mr. R. said he trusted it had been satisfactorily shown that there was not one dollar, either of ordinary or extraordinary revenue, which the existing engagements of the Government would not require. This had been repeatedly stated on various other occasions. It had been made an objection to the Senate's proposition for building two small vessels of war. It was then said, if necessary, we are ready to incur the expense, but not unless gentlemen are ready to raise the supplies for meeting it. The gentleman from Connecticut is too liberal; he is willing to grant the Administration credit for more than they require or deserve. After having paid near ten millions of the principal of the public debt, being ready to disburse near five millions more, on account of the extraordinary demands before mentioned, and having provided as well for the final extinguishment by adding to the Sinking Fund, as for the interest of the debt incurred by the purchase of Louisiana, without levying a single additional tax, they are content to acknowledge that they do

not possess resources for defraying the expense of an extraordinary armament in the Mediterranean. The gentleman from Connecticut, however, insists that, after defraying these heavy demands, there is a large surplus remaining, and is willing to vote a million for this service, without providing means to raise a dollar.

Having established, as he conceived, the main object for which he rose, that additional revenue would be required in case we launched into this new expense, it only remained to inquire to what subjects of taxation we should resort. This point, Mr. R. said, had been so ably and forcibly dilated on by his friend from Maryland, that it was hardly necessary to ask whether the House were prepared to increase the duties on tea, coffee, spirits, wines, sugar, salt, and other articles of great and primary importance—for such our habits had rendered those which were not actual necessaries of life—already loaded with specific duties amounting from twenty-five to seventy-five per cent. on their prime cost, or whether we should raise the comparatively low duties on those articles which were taxed ad valorem.

The gentleman from Connecticut has indeed gently insinuated his recommendation that we should burn our fingers with that species of taxation with which he had formerly scorched his own. He is unwilling to throw the whole burden of the nation upon its commerce, as if the very children had not learned that every tax on imports is not paid by the consumer of the article in question; and as if the very revenue in question were not for the protection of trade. Here Mr. R. went into a comparison between the advantages of indirect and direct taxation, and concluded by observing that there were two insuperable reasons for preferring the former, that it was the only mode, in the present state of our society, by which the necessary revenue could be raised, and that by confining ourselves to it altogether, the number of officers employed in the collection of that revenue, was as much as possible restricted. The proposed duties would not give a single additional office, or add in the smallest degree to the patronage of the Executive.

It was a needless memento to the House, or to the nation, to tell them that the gentleman and his friends opposed the repeal of the internal taxes. It would never be forgotton who had laid them on, nor who had taken them off. The people would never forget that the men who had given up that source of revenue and swept off a host of those blood-suckers, the excise men, had rapidly diminished the debt, and acquired Louisiana without laying one additional tax. They will pay the duties proposed in this bill with cheerful confidence, which they repose in its tried and faithful agents, in men who never draw a cent from their pockets but when the public exigency requires it. This language might be reprehended as boastful, but there were occasions when it was treachery to our principles not to assert them with freedom and boldness. He would never pusillanimously sit still and see an attempt to delude the public opinion, without endeavoring to expose it. There was but one point on which he differed from his friend from Maryland. He could not deplore the opposition which this measure had received from a certain quarter. He conceived it a criterion of its merit. In the political, as in the physical world, there must be a centrifugal as well as a centripetal power. In no other manner, said Mr. R. can the harmony of this sphere be preserved. And so far from deprecating opposition, such as we have seen to-day, I invite it. I shall ever prefer the fair adversary who meets me in the field of open enmity, to the skulking assassin who declines the public combat only that he may spring upon me in an unguarded moment.

Mr. Huger said he had only rose to observe that if this clause were retained, he should, notwithstanding, vote for the bill. He was perfectly ready to meet any expense necessary to support the national interest and character. He believed other modes than that pointed out by the bill would be better. He would prefer borrowing the sum; and that a tax on carriages should be laid to pay the interest.

The question on striking out the first section was taken by yeas and nays—yeas 28, nays 77, as follows:

Yeas—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Ebenezer Elmer, Gaylord Griswold, Roger Griswold, Benjamin Huger, Joseph Lewis, jun., Henry W. Livingston, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, Richard Stanford, William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Nays—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, George W. Campbell, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, James Elliot, William Eustis, William Findley, John Fowler, James Gillespie, Thomas Griffin, Samuel Hammond, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, John Stewart, Philip R. Thompson, Abraham Trigg, John Trigg, Isaac Van Horne, Matthew Walton, Marmaduke Williams, Richard Winn, and Joseph Winston.

The bill was thereupon ordered to a third reading.

Being engrossed it was soon after brought in, and read a third time.

When Mr. Huger required the yeas and nays

on its passage. It was his wish to show that those most averse to this mode of raising revenue from its inequality and oppression, were, notwithstanding, ready to vote for carrying the great object of the bill into effect.

Mr. J. C. Smith said he was sorry that the appropriation made and the mode of obtaining revenue to meet it, were incorporated in the same bill. As to the first object of the bill, there was no division in the House; on the second there was a diversity of opinion. He was persuaded it was not proper at present to raise more revenue. Gentlemen, however, were determined to preserve the first section; and the responsibility of it must rest with them. However we may dislike it, approving of the great object of the bill, we must vote for it.

The question was taken by yeas and nays on the passage of the bill, and carried unanimously in the affirmative—yeas 98, nays none:

Yeas—William Alston, jun., Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Silas Betton, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, William Butler, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, James Gillespie, Thos. Griffin, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, William Hoge, James Holland, David Holmes, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Michael Leib, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nahum Mitchell, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Cotton Smith, John Smith of Virginia, Henry Southard, Richard, Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Philip R. Thompson, John Trigg, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, and Joseph Winston.

Friday, March 23.

An engrossed bill relative to the compensation of certain officers of the customs, and to provide for appointing surveyors in the districts therein mentioned, was read the third time, and passed.

An engrossed bill supplementary to the act, entitled "An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee," was read the third time and passed.

Ordered, That the Committee of the whole House to whom was committed, on the fifteenth instant, the bill to authorize the adjournment of district courts by marshals, in certain cases, be discharged from the further consideration thereof; and that the said bill be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary War;" and, after some time spent therein, the bill was reported with an amendment which was twice read, and agreed to by the House.

Ordered, That the said bill, together with the amendment, be engrossed, and read the third time to day.

An engrossed bill to authorize the adjournment of district courts by marshals, in certain cases, was read the third time, and passed.

An engrossed bill in addition to "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act in relation to the Navy Pension Fund;" and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be now read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill in addition to "An act for fixing the Military Peace Establishment of the United States;" and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill for the appointment of an additional judge for the Mississippi Territory, and for other purposes; and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be engrossed, and read the third time to-day.

The bill was subsequently read the third time and passed.

The House resolved itself into a Committee of the Whole, on the bill supplementary to the act, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be authenticated, so as to take effect in every other State;" and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be engrossed and read the third time to-day.

The House resolved itself into Committee of the Whole on the bill sent from the Senate, entitled "An act to erect a light-house at the mouth of the Mississippi river, and, also, a light-house at or near the pitch of Cape Lookout, in the State of North Carolina, and a beacon at the north point of Sandy Hook;" and, after some time spent therein, the bill was reported without amendment.

The bill was then read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President, in case of vacancies in the offices both of President and Vice President;" and, after some time spent therein, the bill was reported without amendment.

Ordered, That the said bill be now read the third time. The bill was accordingly read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of the heirs of John Habersham," with an amendment; to which they desire the concurrence of this House; and the bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject,'" with an amendment; to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act authorizing the payment of two thousand eight hundred dollars to Philip Sloan;" to which they desire the concurrence of this House.

An engrossed bill supplementary to the act, entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings, in each State, shall be authenticated, so as to take effect in every other State," was read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments of the Senate to the bill last mentioned. Whereupon,

Ordered, That the said amendments, together with the bill, be committed to Mr. Nicholson, Mr. Dwight, and Mr. Morrow.

The bill sent from the Senate, entitled "An act authorizing the payment of two thousand eight hundred dollars to Philip Sloan," was read twice and committed to a Committee of the Whole tomorrow.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act in addition to an act, entitled 'An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject:'" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the relief of the heirs of John Habersham:" Whereupon,

Resolved, That this House doth agree to the said amendment.

NEXT MEETING OF CONGRESS.

The House took up the bill received from the Senate, altering the time of the next session of Congress to the first Monday of November.

On the question whether the same shall pass? Messrs. Leib, Sloan, Bedinger, and J. Clay supported, and Messrs. Thatcher, Lyon, Huger, and Elmer opposed it, when the question was taken by yeas and nays, and the bill passed—yeas 54, nays 43, as follows:

Yeas—Willis Alston, jr., Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Adam Boyd, Robert Brown, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Dawson, John B. Earle, James Elliot, William Findley, James Gillespie, Samuel Hammond, Josiah Hasbrouck, David Holmes, Walter Jones, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Samuel L. Mitchill, Nicholas R. Moore, Thomas Moore, Anthony New, Joseph H. Nicholson, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Thomas Sandford, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, John Stewart, Samuel Taggart, David Thomas, Philip R. Thompson, Isaac Van Horne, Peleg Wadsworth, and Joseph Winston.

Nays—John Archer, Simeon Baldwin, Silas Betton, Walter Bowie, John Campbell, Martin Chittenden, Clifton Claggett, Matthew Clay, John Davenport, Thomas Dwight, Ebenezer Elmer, John Fowler, Thos. Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Joseph Heister, William Hoge, David Hough, Benjamin Huger, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Matthew Lyon, David Meriwether, Nahum Mitchell, Andrew Moore, Jeremiah Morrow, Gideon Olin, Thomas Plater, Jacob Richards, Ebenezer Seaver, John Cotton Smith, Richard Stanford, William Stedman, James Stephenson, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, and Richard Winn.

REVOLUTIONARY PENSIONERS.

Mr. Nicholson offered a resolution declaratory of the opinion of Congress, that the first section of the act providing for persons disabled by known wounds received during the Revolutionary war, &c., should be so construed, as to include all persons, who, in consequence of disability arising from known wounds, resigned their commissions.

Mr. Smilie opposed the motion, under the idea that one act of Congress could only be explained by another act of the same kind.

Mr. Nicholson said this was as much a Legislative act as though it began with the words, "be it enacted."

Mr. J. C. Smith suggested the propriety of accommodating the style to the phraseology of the laws. He was of opinion that one solemn act of legislation could only be superseded by an act equally sacred.

Mr. Campbell expressed the same opinion.

On motion of Mr. Nicholson the resolution was referred to a committee empowered to report by bill.

Mr. J. C. Smith, from the committee this day appointed, presented, according to order, a bill supplementary to an act, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" which was read twice and ordered to be engrossed and read the third time to-day.

LOUISIANA BILL.

Mr. Nicholson, from the managers appointed to confer with the managers of the Senate on the disagreeing votes of the two Houses on the Louisiana bill, made a report recommending that the House should recede from their amendment, proposing a substitute for the fourth section of the bill as it came from the Senate. The substitute provides for the election of a Legislative Council by the people of Louisiana. Mr. N. observed that the managers on the part of the Senate, had represented that the election of a Legislative Council by the people of Louisiana would be attended with inconveniences which he, for one, had never perceived before. It was stated by one of the managers who had been in Louisiana, and by another well acquainted with the situation of the country, that the settlements there were usually in parishes in which the inhabitants were generally of one description. Some of those parishes were entirely composed of Spaniards, some of French, some of Germans, and some of Creoles. If each of them were to send a member, the Legislative body would be composed of persons of different languages. The representatives of no two parishes would perhaps speak the same language. This, Mr. N. said, was the principal reason which induced the managers to recommend that the House should recede. There were other reasons, of a very powerful nature, which it was not necessary for him to state.

Mr. Smilie declared himself in favor of receding, as he wished the bill passed, under the conviction that without the proposed new section, it would provide for the people of Louisiana a better government than they at present enjoyed.

Mr. Alston observed, that in consequence of a limitation in the bill, it would expire in one year, which would be antecedent to the time when the contemplated Legislative Council, as eligible by the people, would be organized. He was therefore in favor of receding.

The question was then taken by yeas and nays on receding from the first amendment, and carried in the affirmative—yeas 51, nays 45, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, David Bard, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, John Campbell, Thomas Claiborne, Joseph Clay, Jacob Crowninshield, John B. Earle, Peter Early, William Findley, John Fowler, Jas. Gillespie, Thomas Griffin, Samuel Hammond, Josiah Hasbrouck, James Holland, David Holmes, Benj. Huger, Walter Jones, Nehemiah Knight, Andrew McCord, William McCreery, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Thomas Moore, Thomas Newton, jr., Joseph H. Nicholson, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thos. Sammons, Thomas Sandford, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, John Stewart, Samuel Tenney, David Thomas, Philip R. Thompson, Isaac Van Horne, Matthew Walton, Richard Winn, and Joseph Winston.

Nays—John Archer, George Michael Bedinger, Silas Betton, William Blackledge, William Chamberlin, Martin Chittenden, Clifton Claggett, Matthew Clay, John Clopton, John Davenport, John Dawson, Thomas Dwight, James Elliot, Ebenezer Elmer, Gaylord Griswold, Roger Griswold, Seth Hastings, Joseph Heister, William Hoge, David Hough, William Kennedy, Michael Leib, Joseph Lewis, jr., Henry W. Livingston, Matthew Lyon, David Meriwether, Nahum Mitchell, Jeremiah Morrow, Anthony New, Gideon Olin, Beriah Palmer, John Patterson, Thomas Plater, Ebenezer Seaver, Tompson J. Skinner, James Sloan, John Cotton Smith, Richard Stanford, William Stedman, Samuel Taggart, Samuel Thatcher, Killian K. Van Rensselaer, Joseph B. Varnum, Lemuel Williams, and Marmaduke Williams.

The managers further recommended that the House should insist on their amendment declaring null all grants subsequent to the Treaty of St. Ildefonso, with an amendment saving *bona fide* grants to a certain extent, made to actual settlers.

Mr. R. Griswold said he should vote against the amendment, with the view of afterwards voting against insisting on the original amendment.

Mr. Nicholson and Mr. Smilie said a few words in favor of agreeing to the amendment, when the question was taken on concurring with the report of the managers, and carried—yeas 54.

A message was received from the Senate, stating their agreement to the report of the committee of conference on the Louisiana bill, which was consequently passed.

[It may not be unsatisfactory here to state that the bill, as finally passed, is limited in duration to one year from the first day of October next, (when it is to take effect) and thence to the end of the next session of Congress. It directs the appointment by the President of a Governor, to hold his office for four years; the appointment annually of a Legislative Council, composed of inhabitants of Louisiana, and the appointment of judges. It will be perceived that the principle of the Senate, withholding for the present the right of suffrage from the people of Louisiana, prevailed, subject, however, to the limitation of time introduced in the bill by the House of Representatives.]

EXTINGUISHMENT OF DEBTS.

Mr. Claiborne called up the bill making further provision for extinguishing debts due by the United States.

Mr. Leib said he was friendly to the principle of the bill, but despaired, from the late period of the session, of its passage; he therefore moved its postponement to the first Monday of December.

Mr. Elmer expressed a coincidence of sentiment with Mr. Leib.

Mr. Claiborne said, it was well known to the House that he was friendly to the bill; he was, however, sensible it was too late to act upon it during the present session. His only wish there-

fore, at this time, was to put the bill in such a respectful situation as would recommend it to the early attention of Congress at their next session. He therefore acquiesced in the postponement.

The motion of postponement was then carried without a division.

PUNISHMENT OF CRIMES.

The House went into a Committee of the Whole on the bill from the Senate, to punish certain crimes against the United States.

The first section of the bill was read. It provides for the punishing with death, any person who shall wilfully burn, sink, or destroy any vessel.

Mr. Leib moved to strike out "with death," and to insert, "by imprisonment not exceeding fourteen years."

This amendment gave rise to a debate of some interest and length, on the comparative advantages of sanguinary and mild punishments, and on the relative magnitude of the offence, the punishment of which was under consideration.

Messrs. Leib, Smilie, J. Clay, Elmer, and Stanton supported, and Messrs. Nicholson, Holland, Griswold, Southard, Thatcher, and Macon opposed the amendment, which, on the question being taken, was negatived—yeas 32.

DISTRICT OF COLUMBIA.

Mr. Dawson moved that the House should resolve itself into a Committee of the Whole on the resolutions offered by him, for the recession of the District of Columbia.

Mr. Hughr said this point had been fully and ably investigated the last session. He did not expect, after the decision then made, that the House would have been again called upon to discuss it. He believed the mind of every member was made up respecting it. He hoped, therefore, the House would not agree to go into Committee.

Mr. J. Lewis said he should vote against the House resolving itself into a Committee of the Whole, and should that motion be negatived, he would move to discharge the Committee of the Whole from all further consideration of the resolutions. The question was taken on going into Committee, and lost—Yeas 20.

Mr. J. Lewis then moved to discharge the Committee. This motion was carried without debate—yeas 53, embracing a great majority of the members present.

INDIANA TERRITORY.

The House went into Committee of the Whole on the bill making an addition to the salaries of the Governor, Judges, and Secretary, of the Indiana Territory.

The bill adds to the salary of the Governor, $500; to that of the Judges, $400; and to that of the Secretary, $375, for two years from the first of October next.

Mr. Early spoke in favor of the bill, on the ground that by the annexation of Louisiana to the Indiana Territory, the duties of these officers were greatly increased.

Mr. Lyon opposed the bill, and moved to amend it by striking out the additional compensation allowed to the Governor.

Messrs. Leib and Clay advocated the amendment, when the question was taken on Mr. Lyon's motion, and carried—yeas 51.

Mr. Macon moved to strike out, "to the Judges, each $400." He observed that it was an incorrect procedure to give Judges a temporary salary.

Mr. Morrow opposed the motion, which was then agreed to—yeas 47.

The Committee then rose and reported progress, when leave was refused to them to sit again, and the bill was then postponed to the first Monday of December.

Saturday, March 24.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels,'" with several amendments; to which they desire the concurrence of this House.

Mr. Nicholson, from the committee to whom was committed, on the twenty-first instant, the bill sent from the Senate, entitled "An act for the relief of William A. Barron," made a report thereon; which was read and considered: Whereupon,

Resolved, That the further consideration of the said bill be postponed until the first Monday in November next.

An engrossed bill supplementary to an act, entitled "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," was read the third time and passed.

Mr. Nicholson, from the committee to whom were referred, on the twenty-third instant, the amendments proposed by the Senate to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," made a report thereon; which was read and considered: Whereupon,

Resolved, That this House doth agree to all the amendments of the Senate to the said bill, except the twenty-fourth and twenty-fifth of the said amendments, which were, on the question severally put thereupon, disagreed to by the House.

Mr. Varnum, from the committee appointed on the part of this House to attend a conference with the Senate on the subject-matter of the sixteenth amendment, depending between the two Houses, to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes," made a report thereon; which was read, and ordered to lie on the table.

The House proceeded to consider the amendments of the Senate to the bill, entitled "An act to amend the act, entitled 'An act concerning the registering and recording of ships and vessels:" Whereupon,

Resolved, That this House doth agree to the said amendments.

On motion, it was

Resolved, That the order of the day for the

House to resolve itself into a Committee of the Whole on the bill to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, be postponed until the first Monday in November next.

The House proceeded to consider a motion of the seventeenth instant, relative to "the expediency of providing by law for exhibiting and registering all evidences of title and claims for land within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, 1803," which lay on the table: Whereupon,

Ordered, That the further consideration of the said motion be postponed until the first Monday in November next.

A message from the Senate informed the House that the Senate insist on their sixteenth amendment, disagreed to by this House, to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes;" and desire a farther conference with this House on the subject-matter of the said amendment; to which farther conference the Senate have appointed managers on their part. The Senate recede from their twenty-fourth amendment to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" and they do insist on their twenty-fifth amendment to the said bill. The Senate desire a conference with this House on the subject-matter of the said twenty-fifth amendment, and have appointed managers at the said conference on their part.

The House proceeded to reconsider the sixteenth amendment of the Senate to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes;" as also, to consider the report of the joint committee of conference, made this day, on the subject-matter thereof: Whereupon,

Resolved, That this House doth adhere to their disagreement to the said sixteenth amendment.

A message from the Senate, informed the House that the Senate have passed a bill, entitled "An act for the relief of Moses Young;" to which they desire the concurrence of this House.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, accompanied with two statements, marked A and B, respecting the "moneys which, since the establishment of the present Government, have been paid as fees to assistant counsel, and for legal advice in the business of the United States;" prepared in pursuance of a resolution of this House, of the third instant; which were read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning the public buildings in the City of Washington," with an amendment; to which they desire the concurrence of this House.

The bill sent from the Senate, entitled "An act for the relief of Moses Young;" was read twice and committed to the Committee of Claims.

The House went into a Committee of the Whole on the bill from the Senate, authorizing the payment of $2,800 to Philip Sloan.

The Committee rose and reported their agreement to the bill; which the House ordered to a third reading, and passed—yeas 66.

The House resolved itself into a Committee of the Whole on the bill, sent from the Senate, entitled "An act to make further appropriations for the purpose of extinguishing the Indian claims;" and, after some time spent therein, the bill was reported without amendment.

The said bill was then read the third time and passed.

Mr. Nicholson, from the managers appointed on the part of this House, to attend a conference with the Senate, on the subject-matter of the twenty-fifth amendment, disagreed to by this House, and insisted on by the Senate, to the bill, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," made a report thereon; which was read, and considered: Whereupon,

Resolved, That this House doth insist on their disagreement to the said twenty-fifth amendment to the bill.

ACCOUNTS OF DEPARTMENTS.

The House went into a Committee of the Whole on the bill from the Senate, to amend the laws providing for the organization of the accounting offices of the Treasury, War and Navy Departments.

Mr. Dana observed that this appeared to be a bill for the revival of the office of Commissioner of Loans. This might be necessary; but as there had been no report on the subject, he was not prepared to say that the measure was necessary.

Mr. Nicholson called for the reading of the report of the Committee of Ways and Means and an accompanying letter from the Secretary of the Treasury, which were read.

The Committee rose and reported the bill.

The House immediately took it up, and ordered it to a third reading. The bill was accordingly read the third time, and on the question whether the same shall pass?

Mr. Conrad desired the taking of the yeas and nays. Mr. C. said that he had expected a very different bill from the present, in consequences of the resolutions entered into by the House at an early stage of the session. It was then generally expected that two offices would be abolished; it now appeared that it was contemplated to create a new office. He trusted the bill would not pass.

The question was then taken on the passage of the bill, by yeas and nays, and passed in the negative—yeas 42, nays 44, as follows:

Yeas—Willis Alston, jr., John Archer, David Bard, William Blackledge, Adam Boyd, Joseph Bryan, George W. Campbell, Matthew Clay, Jacob Crowninshield, Richard Cutts, John B. Earle, Peter Early, William Findley, John Fowler, James Gillespie, Josiah Hasbrouck, William Helms, David Holmes, Benjamin Huger, John G. Jackson, Walter Jones, Nehemiah Knight, Joseph Lewis, jr., William McCreery, Samuel L. Mitchill, Andrew Moore, Nicholas R. Moore, Jere-

miah Morrow, Thomas Newton, jun., Joseph H. Nicholson, Samuel D. Purviance, John Randolph, Thomas M. Randolph, Thomas Sandford, Tompson J. Skinner, James Sloan, John Smilie, John Smith of Virginia, Joseph Stanton, Philip R. Thompson, Matthew Walton, and Richard Winn.

Nays—Isaac Anderson, George Michael Bedinger, Silas Betton, Walter Bowie, Robert Brown, William Chamberlin, Clifton Claggett, John Clopton, Frederick Conrad, Manasseh Cutler, Samuel W. Dana, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, Thomas Griffin, Gaylord Griswold, Seth Hastings, Joseph Heister, William Hoge, James Holland, David Hough, William Kennedy, Henry W. Livingston, Andrew McCord, David Meriwether, Nahum Mitchell, Thomas Moore, Gideon Olin, Thomas Plater, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Henry Southard, Richard Stanford, William Stedman, John Stewart, Samuel Taggart, Samuel Tenney, Samuel Thatcher, David Thomas, Isaac Van Horne, Joseph B. Varnum, and Lemuel Williams.

And so the said bill was rejected.

PUBLIC BUILDINGS.

The House took up the amendment proposed by the Senate, to the bill entitled "An act concerning the public buildings at the City of Washington:" Whereupon, the said amendment being twice read, to strike out in the fourth, fifth, and sixth lines of the original bill, the following words, to wit: "proceeding with the public buildings at the City of Washington, and in making such necessary improvements and repairs thereon, as he shall deem expedient:" and to insert, in lieu thereof, the following words, "finishing the President's House in such manner as will accommodate both Houses of Congress; and for the purpose of renting, purchasing, or building a suitable house for the accommodation of the President:"

Messrs. J. Randolph, and Sloan supported; and Messrs. Lewis, Smilie, Dawson, Claiborne, and Elmer opposed this amendment; when the question was taken by yeas and nays on agreeing to it and passed in the negative—yeas 27, nays 76, as follows:

Yeas—Isaac Anderson, David Bard, George W. Campbell, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, William Findley, John Fowler, Gaylord Griswold, Josiah Hasbrouck, Joseph Heister, William Hoge, James Holland, Andrew McCord, David Meriwether, John Patterson, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, James Sloan, Richard Sandford, John Stewart, Isaac Van Horne, Matthew Walton, and Joseph Winston.

Nays—Willis Alston, jr., John Archer, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Clopton, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, James Gillespie, Thos. Griffin, Roger Griswold, John A. Hanna, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lewis, jun., Henry W. Livingston, Matthew Lyon, William McCreery, Nahum Mitchell, Samuel L. Mitchill, Andrew Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas Plater, Samuel D. Purviance, Thomas M. Randolph, Jacob Richards, Thomas Sammons, Thos. Sandford, Tompson J. Skinner, John Smilie, John Cotton Smith, John Smith of Virginia, Henry Southard, Joseph Stanton, William Stedman, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, and Richard Winn.

Ordered, That this House doth disagree to the said amendment.

Monday, March 26.

A message from the Senate informed the House that the Senate insist on their amendment, disagreed to by this House, to the bill, entitled "An act concerning the public buildings at the City of Washington;" and desire a conference thereon with this House; to which they have appointed managers on their part.

Ordered, That the committee who were directed by a resolution of this House, of the twenty-fourth of November last, "to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States," to whom were referred, during the present session, the petitions and memorials of sundry inhabitants of Fairfield county, in the State of Ohio; of Zaccheus Biggs, and others, receivers of public moneys; of sundry citizens residing between the Great and Little Miami rivers, in the State of Ohio; of sundry inhabitants of the said State of Ohio; of sundry inhabitants of the counties of Knox, St. Clair, and Randolph, in the Indiana Territory of the United States; of sundry claimants to lands between the Great and Little Miama rivers, and above what is usually termed Ludlow's line, in the State of Ohio; of sundry citizens claiming the right of pre-emption to certain lands in the Miama country, within and above said Ludlow's line; of sundry inhabitants of Claiborne county, in the Mississippi Territory of the United States; and, also, the affidavits and certificates of Jonathan Donnald, and others, in opposition to the prayer of a petition presented the eighteenth of January last; be discharged from the consideration of the same.

Mr. John C. Smith, from the Committee of Claims, to whom was committed, on the twenty-fourth instant, the bill sent from the Senate, entitled "An act for the relief of Moses Young," reported that the committee had, according to order, had the said bill under consideration, and directed him to report to the House their agreement to the same: Whereupon, the bill was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes,'" with an amendment; to which they desire the concurrence of this House.

The House proceeded to consider the said

amendment of the Senate; and the same being twice read, was disagreed to by the House.

Ordered, That the Committee of the whole House to whom were committed, on the eleventh of January last, the bill sent from the Senate, entitled "An act to authorize the sale of the frigate General Greene, and a further addition to the naval armament of the United States, and a report of the Committee of Commerce and Manufactures thereon, be discharged therefrom; and that the farther consideration of the said bill and report be postponed until the first Monday in November next.

Ordered, That the farther consideration of the bill, entitled "An act for the further protection of the seamen and commerce of the United States," together with the amendments proposed by the Senate thereto, on the twenty-eighth of November last, be postponed until the first Monday in November next.

Resolved, That this House doth agree to the conference desired by the Senate on the subject-matter of their amendment to the bill, entitled "An act concerning the Public Buildings at the City of Washington;" and that Mr. J. Lewis, jun., Mr. Varnum, and Mr. John Campbell, be appointed managers at the said conference, on the part of this House.

IMPEACHMENT OF JUDGE CHASE.

Mr. John Randolph, from the committee appointed on the thirteenth instant, to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, made a report thereon; which was read, as follows:

Report of the committee appointed to prepare articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, in maintenance and support of their impeachment against him, for high crimes and misdemeanors.

Article 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence.

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client.

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.

Art. 2. That, in consequence of this irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard, by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which ultimately rest the liberty and safety of the American people.

Art. 3. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, 1800, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the trial, because he had made up his mind as to the publication from which the words, charged to be libellous, in the indictment, were extracted; and the said Basset was accordingly sworn, and did serve on the said jury.

Art. 4. That the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, because the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

Art. 5. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused.

2. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did at the same time manifestly tend.

3. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment.

4. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

Art. 6. That, at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, wherea

the said Samuel Chase presided—the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order—that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added, "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter;" and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and by a strict examination of them to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

Art. 7. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner, highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra judicial, and tending to prostrate the high judicial character with which he was invested to the low purpose of an electioneering partisan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any farther articles, or other accusation or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and offering proof to all and every the aforesaid articles, and to all and every other article, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

Ordered, That the said report be printed for the use of the members of both Houses; and that the Clerk of this House be directed to transmit to each of the members of the two Houses of Congress, a copy of the said report, as soon as the same shall be printed.

Ordered, That there be a call of the House tomorrow morning at eleven o'clock.

The House adjourned until four o'clock, post meridian.

Four o'clock, p. m.

A message from the Senate informed the House that the Senate have passed a resolution, that the resolution of the two Houses authorizing the President of the Senate and Speaker of the House of Representatives to adjourn their respective Houses on this day, be rescinded; and that the said President and Speaker of the House of Representatives be authorized to close the present session, by adjourning their respective Houses on Tuesday, the 27th of this month; to which they desire the concurrence of this House. The Senate adhere to their amendment, disagreed to by this House to the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes."

The House proceeded to consider the resolution of the Senate to rescind the resolution of both Houses, of the thirteenth instant, for an adjournment of the two Houses of Congress, on this day; and authorizing the President of the Senate and Speaker of the House of Representatives, to close the present session, by adjourning their respective Houses on Tuesday the 27th of the present month: Whereupon.

Resolved, That this House doth agree to the said resolution of the Senate.—Yeas 19, nays 11, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, Walter Bowie, Joseph Bryan, George W. Campbell, John Campbell, Thomas Claiborne, Joseph Clay, Matthew Clay, Richard Cutts, John Dawson, William Dickson, Peter Early, William Findley, James Gillespie, William Helms, David Holmes, Walter Jones, Nehemiah Knight, Joseph Lewis, jr., Matthew Lyon, William McCreery, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, jr., Thos. Newton, Joseph H. Nicholson, Samuel D. Purviance, John Randolph, Thomas M. Randolph, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Thos. Sanford, Tompson J. Skinner, John Smilie, John Smith of Virginia, Henry Southard, Joseph Stanton, James Stephenson, David Thomas, Philip R. Thompson, Philip Van Cortlandt, Peleg Wadsworth, Marmaduke Williams, and Joseph Winston.

Nays—Simeon Baldwin, David Bard, Silas Betton, William Blackledge, Adam Boyd, Robert Brown, William Chamberlin, Martin Chittenden, Clifton Claggett, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, William Hoge, David Hough, William Kennedy, Michael Leib, Henry W. Livingston, Andrew McCord, David Meriwether, Nahum Mitchell, Gideon Olin, Thomas Plater, John Rhea of Pennsylvania, Jacob Richards, James Sloan, John Cotton Smith, Richard Stanford, William Stedman, John Stewart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Joseph B. Varnum, and Lemuel Williams.

The House proceeded to reconsider the amendment disagreed to by this House, and adhered to by the Senate, to the bill, entitled "An act supplementary to the act, entitled 'An act providing for a Naval Peace Establishment, and for other purposes: Whereupon,

Resolved, That this House doth recede from their disagreement to the said amendment.

Tuesday, March 27.

Resolved, That the Clerk of this House be allowed, out of the contingent fund of the House, the sum of three hundred dollars, for extra services during the present session.

Resolved, That the Clerk of this House be authorized and directed to pay, out of the moneys appropriated to defray the contingent expenses of the House, to the principal and engrossing clerks in the office of the Clerk of the House, respectively, two hundred dollars each, for their extra services during the present session; also, to the Sergeant-at-Arms, to the Doorkeeper, and Assistant Doorkeeper, two hundred dollars each, in addition to their present allowance; and also, fifty dollars to Alexander Claxton, out of the contingent fund of the House.

Resolved, That the Clerk of this House be authorized and directed to pay, out of the moneys appropriated to defray the contingent charges of this House, to the Chaplain of this House, one hundred and fifty dollars, in addition to his present allowance.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels;" to which they desire the concurrence of this House: the bill, entitled "An act for the appointment of an additional Judge of the Mississippi Territory, and for other purposes," with an amendment; to which they desire the concurrence of this House: the bill, entitled "An act authorizing the appointment of commissioners to explore the routes most eligible for opening certain public roads," with several amendments; to which they desire the concurrence of this House: the bill, entitled "An act supplementary to the act, entitled, 'An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee," with several amendments; to which they desire the concurrence of this House: also, the bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington," with an amendment; to which they desire the the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels:" Whereupon.

Resolved, That this House doth agree to the said amendments.

Mr. Joseph Lewis, jr., from the managers appointed the 26th instant, on the part of this House, to attend a conference with the Senate on the subject-matter of the amendment depending between the two Houses to the bill, entitled "An act concerning the Public Buildings at the City of Washington," made a report thereon; which was read, and ordered to lie on the table.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act for the appointment of an additional Judge for the Mississippi Territory, and for other purposes:" Whereupon.

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act authorizing the appointment of Commissioners to explore the routes most eligible for opening certain public roads:" Whereupon.

Resolved, That the farther consideration of the said bill and amendments be postponed until the first Monday in December next.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act regulating the grants of land, and providing for the disposal of the public lands south of the State of Tennessee:" Whereupon.

Resolved, That this House doth agree to the said amendments.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act concerning the City of Washington:" Whereupon.

Resolved, That this House doth agree to the said amendment.

Resolved, That the Clerk of this House be authorized and directed to pay, out of the contingent fund of the House, to John Phillips, a laborer employed by the Doorkeeper to attend the committee rooms and Clerk's office, the sum of fifty dollars, in addition to his present allowance.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to provide for a more extensive distribution of the laws of the United States; to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole immediately.

The House accordingly resolved itself into the said Committee; and, after some time spent therein, the bill was reported with an amendment; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be now read the third time. The bill, as amended, was accordingly read the third time, and passed.

Resolved, That Mr. JOHN RANDOLPH and Mr. SAMUEL L. MITCHILL be appointed a committee, on the part of this House, jointly with such committee as may be appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress.

Resolved, That the Clerk of this House be authorized and directed to pay, out of the contingent fund of this House, to Job Pearce and William Ewing, employed by the Doorkeeper during the present session, the sum of forty-nine dollars each, in addition to their present allowance.

Ordered, That the call of the House, directed to be at eleven o'clock in the morning, on this day, be postponed until half-past four o'clock, post meridian. Adjourned until half-past four, P. M.

Half past four o'clock, p. m.

Resolved, That the Clerk of this House do pay to William, the wood-carrier, thirty-five dollars, out of the money appropriated for the contingent expenses of this House.

Mr. JOHN RANDOLPH, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, to wait on the President of the United States and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them he had no farther communication to make during the present session.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn until the first Monday in November next; and that the Clerk of this House do go with the said message.

A message from the Senate informed the House that the Senate, having completed the Legislative business before them, are now ready to adjourn. Whereupon the SPEAKER adjourned the House until the first Monday in November next.

PUBLIC ACTS OF CONGRESS;

PASSED AT THE FIRST SESSION OF THE EIGHTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, OCTOBER 17, 1803.

AN ACT to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth of April last, and for the temporary government thereof.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be, and he is hereby, authorized to take possession of, and occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the thirtieth day of April last, between the two nations, and that he may for that purpose, and in order to maintain in the said territories the authority of the United States, employ any part of the army or navy of the United States, and of the force authorized by an act passed the third day of March last, entitled "An act directing a detachment from the militia of the United States, and for erecting certain arsenals," which he may deem necessary; and so much of the sum appropriated by the said act as may be necessary, is hereby appropriated for the purpose of carrying this act into effect; to be applied under the direction of the President of the United States.

SEC. 2. *And be it further enacted*, That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil, and judicial powers exercised by the officers of the existing government of the same, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion.

NATHL. MACON,
Speaker of the House of Representatives.
JOHN BROWN,
President of the Senate, pro tempore.

Approved, October 31, 1803.

An Act authorizing the creation of a stock to the amount of eleven millions two hundred and fifty thousand dollars, for the purpose of carrying into effect the convention of the thirtieth of April, one thousand eight hundred and three, between the United States of America and the French Republic, and making provision for the payment of the same.

Be it enacted, &c., That, for the purpose of carrying into effect the convention of the thirtieth day of April, one thousand eight hundred and three, between the United States of America and the French Republic, the Secretary of the Treasury be, and he is hereby, authorized to cause to be constituted certificates of stock, signed by the Register of the Treasury, in favor of the French Republic, or of its assignees, for the sum of eleven millions two hundred and fifty thousand dollars, bearing an interest of six per centum per annum, from the time when possession of Louisiana shall have been obtained, in conformity with the treaty of the thirtieth day of April, one thousand eight hundred and three, between the United States of America and the French Republic, and in other respects conformable with the tenor of the convention aforesaid; and the President of the United States is authorized to cause the said certificates of stock to be delivered to the Government of France, or to such person or persons as shall be authorized to receive them, in three months, at most, after the exchange of ratifications of the treaty aforesaid, and after Louisiana shall be taken possession of in the name of the Government of the United States; and credit or credits to the proprietors thereof shall thereupon be entered and given on the books of the Treasury in like manner as for the present funded debt; which said credits or stock shall thereafter be transferable only on the books of the Treasury of the United States, by the proprietor or proprietors of such stock, his, her, or their attorney; and the faith of the United States is hereby pledged for the payment of the interest, and for the reimbursement of the principal of said stock, in conformity with the provisions of the said convention: *Provided, however*, That the Secretary of the Treasury may, with the approbation of the President of the United States, consent to discharge the said stock in four equal annual instalments, and also shorten the periods fixed by the convention for its reimbursement: *And provided, also*, That every proprietor of the said stock may, until otherwise directed by law, on surrendering his certificate of such stock, receive another to the same amount, and bearing an interest of six per centum per annum, payable quarterly at the Treasury of the United States.

SEC. 2. *And be it further enacted*, That the annual interest accruing on the said stock, which may, in conformity with the convention aforesaid, be payable in Europe, shall be paid at the rate of four shillings and six pence sterling for each dollar, if payable in London, and at the rate of two guilders and one-half a guilder, current

money of Holland, for each dollar, if payable in Amsterdam.

Sec. 3. *And be it further enacted*, That a sum equal to what will be necessary to pay the interest which may accrue on the said stock to the end of the present year, be, and the same is hereby appropriated for that purpose, to be paid out of any moneys in the Treasury not otherwise appropriated.

Sec. 4. *And be it further enacted*, That, from and after the end of the present year, (in addition to the annual sum of seven millions three hundred thousand dollars yearly appropriated to the Sinking Fund, by virtue of the act, entitled "An act making provision for the redemption of the whole of the public debt of the United States,") a further annual sum of seven hundred thousand dollars, to be paid out of the duties on merchandise and tonnage, be, and the same hereby is, yearly appropriated to the said fund, making in the whole, an annual sum of eight millions of dollars, which shall be vested in the Commissioners of the Sinking Fund in the same manner, shall be applied by them for the same purposes, and shall be, and continue appropriated, until the whole of the present debt of the United States, inclusively of the stock created by virtue of this act, shall be reimbursed and redeemed, under the same limitations as have been provided by the first section of the abovementioned act, respecting the annual appropriation of seven millions three hundred thousand dollars made by the same.

Sec. 5. *And be it further enacted*, That the Secretary of the Treasury shall cause the said further sum of seven hundred thousand dollars to be paid to the Commissioners of the Sinking Fund, in the same manner as was directed by the abovementioned act respecting the annual appropriation of seven millions three hundred thousand dollars; and it shall be the duty of the Commissioners of the Sinking Fund to cause to be applied and paid out of the said fund, yearly, and every year, at the Treasury of the United States, such sum and sums as may be annually wanted to discharge the annual interest and charges accruing on the stock created by virtue of this act, and the several instalments, or parts of principal of the said stock, as the same shall become due and may be discharged, in conformity to the terms of the convention aforesaid, and of this act.

Approved, November 10, 1803.

An Act making provision for the payment of claims of citizens of the United States on the Government of France, the payment of which has been assumed by the United States, by virtue of the Convention of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic.

Be it enacted, &c., That a sum not exceeding three millions seven hundred and fifty thousand dollars, (including a sum of two millions of dollars, appropriated by the act of the twenty-sixth day of February, one thousand eight hundred and three, entitled "An act making further provision for the expenses attending the intercourse between the United States and foreign nations,") to be paid out of any moneys in the Treasury not otherwise appropriated, be, and the same hereby is, appropriated, for the purpose of discharging the claims of citizens of the United States against the Government of France, the payment of which has been assumed by the Government of the United States, by virtue of a Convention made the thirtieth day of April, one thousand eight hundred and three, between the United States of America and the French Republic, respecting the said claims.

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury shall cause to be paid, at the Treasury of the United States, in conformity to the Convention aforesaid, the amount of such claims, above mentioned, as, under the provisions of the said Convention, shall be awarded to the respective claimants: which payments shall be made on the orders of the Minister Plenipotentiary of the United States for the time being, to the French Republic, in conformity with the Convention aforesaid, and the said Minister shall be charged on the Treasury books with the whole amount of such payments, until he shall have exhibited satisfactory proof, to the accounting officers of the Treasury, that his orders thus paid have been issued in conformity with the provisions of the said Convention.

Sec. 3. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized to borrow, on the credit of the United States, to be applied to the purposes authorized by this act, a sum not exceeding one million seven hundred and fifty thousand dollars, at a rate of interest not exceeding six per centum per annum, reimbursable out of the appropriation made by virtue of the first section of this act, at the pleasure of the United States, or at such period, not exceeding five years from the time of obtaining the loan, as may be stipulated by contract; and it shall be lawful for the Bank of the United States to lend the same.

Sec. 4. *And be it further enacted*, That so much of the duties on merchandise and tonnage as may be necessary be, and the same hereby is, appropriated for the purpose of paying the interest which shall accrue on the said loan.

Sec. 5. *And be it further enacted*, That, for defraying the expense incident to the investigation of the claims above-mentioned, there be appropriated a sum not exceeding eighteen thousand five hundred and seventy-five dollars, to be paid out of any moneys in the Treasury not otherwise appropriated: *Provided*, That the compensation to be made to any of the Commissioners appointed, or to be appointed, in pursuance of the above-mentioned Convention, shall not exceed the rate of four thousand four hundred and fifty dollars per annum; that the compensation of their secretary shall not exceed the rate of two thousand two hundred and twenty-five dollors per annum; and that the compensation of the agent shall not exceed the rate of one thousand dollars per annum.

Approved, November 10, 1803.

An Act making an appropriation for carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between the United States and His Britannic Majesty.

Be it enacted, &c., That a sum not exceeding fifty thousand dollars, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same hereby is, appropriated for the purpose of carrying into effect the seventh article of the treaty concluded at London on the nineteenth day of November, seventeen hundred and ninety-four, between the United States of America and His Britannic Majesty.

Sec. 2. *And be it further enacted*, That the accounting officers of the Treasury be, and they are hereby, authorized to allow an interest, not exceeding the rate of six per centum per annum, on one third part of the amount of any award made in pursuance of the aforesaid article, and presented at the Treasury previous to the passing of this act, to be calculated from the time when such award shall have been presented.

Approved, November 16, 1803.

An Act to repeal the act, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'"

Be it enacted, &c., That the act passed on the fifth day of April, one thousand eight hundred, entitled "An act to allow a drawback of duties on goods exported to New Orleans, and therein to amend the act, entitled 'An act to regulate the collection of duties on imports and tonnage,'" be, and the same hereby is, repealed.

Approved, November 25, 1803.

An Act to repeal an act, entitled "An act to establish an uniform system of Bankruptcy throughout the United States."

Be it enacted, &c., That the act of Congress passed on the fourth of April, one thousand eight hundred, entitled "An act to establish an uniform system of Bankruptcy throughout the United States," shall be, and the same is hereby, repealed: *Provided, nevertheless*, That the repeal of the said act shall in no wise affect the execution of any commission of bankruptcy which may have been issued prior to the passing of this act, but every such commission may and shall be proceeded on and fully executed as though this act had not passed.

Approved, December 19, 1803.

An Act making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and four.

Be it enacted, &c., That, for defraying the expenses of the Navy of the United States, during the year one thousand eight hundred and four, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay and subsistence of the officers, and the pay of the seamen, two hundred and thirty-four thousand three hundred and twenty-eight dollars.

For provisions, one hundred and twenty-five thousand five hundred and eighteen dollars and seventy-two cents.

For medicine, instruments, hospital stores, and all expenses on account of the sick, four thousand eight hundred and seventy-five dollars.

For repairs of vessels, store rent, and other contingent expenses, one hundred and forty-four thousand dollars.

For the purchase of ordnance, and other military stores, five thousand dollars.

For the expense of navy-yards, docks, and other improvements, the pay of superintendents, storekeepers, clerks, and laborers, fifty-two thousand dollars.

For the pay and subsistence of the marine corps, including provisions for those on shore, and forage for the staff, fifty-seven thousand five hundred and forty-one dollars and eighty cents.

For clothing for the same, twelve thousand eight hundred and fifty-two dollars and seventy-six cents.

For military stores for the same, four hundred and fifty-two dollars.

For medicine, medical services, hospital stores, and all expenses on account of the sick belonging to the marine corps, one thousand dollars.

For quartermaster's and barrackmaster's stores, officers' travelling expenses, armorer's and carpenter's bills, fuel, and other contingent expenses, eight thousand eight hundred and forty-seven dollars.

For completing the marine barracks at the City of Washington, three thousand five hundred and eighty-four dollars and seventy-two cents.

Sec. 2. *And be it further enacted*, That the several sums herein specifically appropriated, shall be paid, first, out of any balance remaining unexpended of former appropriations for the support of the Navy, and secondly, out of any moneys in the Treasury not otherwise appropriated.

Approved, January 31, 1804.

An Act to incorporate the Directors of the Columbian Library Company.

Be it enacted, &c., That Stephen B. Balch, Joseph Nourse, Charles D. Green, John Craven, Francis Lowndes, junior, and George French, and their successors, duly elected or appointed in manner hereinafter directed, be, and they are hereby, made, declared, and constituted a corporation and body politic in law and in fact, to have continuance forever, by the name, style, and title of "The Directors of the Columbian Library Company in Georgetown."

Sec. 2. *And be it further enacted*, That all and singular, the goods and chattels heretofore given, granted, or devised, to the said Library Company, or to any person or persons, for the use thereof, or that may have been purchased for, or on account of the same, be, and the said goods and chattels are hereby vested in, and confirmed to the said corporation: *And further*, That the said corpora-

tion may take and receive any sum, or sums of money, or any goods or chattels, or other effects of what kind or nature soever, which shall, or may hereafter, be given, granted, or bequeathed unto them by any person or persons, bodies politic or corporate, capable of making such gift or bequest; such money, goods, chattels or other effects to be laid out and disposed of in the purchase of books, maps, charts, drawings, specimens of minerals, fossils, and other natural and artificial productions, calculated to furnish a library and museum, for the use and benefit of the said company, agreeably to the intention of the donors.

SEC. 3. *And be it further enacted*, That the said corporation, by the name, style, and title aforesaid, be, and shall be hereafter forever, able and capable in law, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended, in any court or courts, or other places, and before any judge or judges, justice or justices, or other persons whatsoever within, the District of Columbia or elsewhere, in all, and all manner of suits, actions, complaints, pleas, causes, matters and demands, of whatsoever kind or nature they may be, in as full and effectual a manner, as any other person or persons, bodies politic or corporate, may or can do.

SEC. 4. *And be it further enacted*, That the said corporation shall have full power and authority to make, have, and use, a common seal, with such device and inscription as they shall think proper, and the same to break, alter, and renew at their pleasure, to appoint a treasurer, secretary, and librarian, to assign them their duties, fix their compensation, and remove him or them from office, and appoint another or others in their place, as often as they shall think fit; to make, ordain, establish, and execute such by-laws and ordinances as may be deemed useful to the institution, and the same to alter, amend, or abrogate at pleasure; to fix the price of new shares and annual contributions on each share; to direct how transfers may be made and certified, and judge of the persons proper to be admitted members; to procure by purchase, rent, or otherwise, a suitable place for keeping the library and museum; to appoint the times for keeping the library open, and for taking out and returning books; to fill up vacancies that may happen in their number between two annual meetings; to levy and collect fines and forfeitures, and to determine upon, do, and transact all business and matters appertaining to the said corporation and library company, agreeably to the rules, ordinances, and by-laws thereof, during their continuance in office; *Provided*, That not less than three of the said directors form a quorum to do business; that no by-law, rule, or ordinance, shall be made repugnant to the laws of this District, and that no contribution be laid on any share, in any one year, greater than one-fifth of the value of a share, without the consent of a majority of the members.

SEC. 5. *And be it further enacted*, That there shall be an annual meeting of the members of the said library company at the library, or such suitable place as the directors may from time to time appoint, of which the directors shall cause public notice to be given in one or more of the newspapers that circulate in the vicinity; at which time and place, the members, or such of them as may be present, either personally or by proxy, and shall not be in arrears for any annual contribution, fines, or forfeitures, shall elect and choose by ballot six directors out of their own number, to serve for the year ensuing their election, and until others shall be elected and consent to serve in their place.

SEC. 6. *And be it further enacted*, That the directors shall cause the treasurer, secretary, and librarian, to keep, in suitable books for that purpose, just and proper entries of all the proceedings and accounts of the company and corporation, and have them laid before the company at every annual meeting, previous to taking the votes for directors; and shall always deliver the said books, together with all the property of the company, in good order to their successors in office, whenever required.

Approved, January 31, 1804.

An Act making appropriations for the support of the Military Establishment of the United States, in the year one thousand eight hundred and four.

Be it enacted, &c., That, for defraying the expense of the Military Establishment of the United States, for the year one thousand eight hundred and four, for the Indian department, and for the expense of fortifications, arsenals, magazines, and armories, the following sums be, and the same hereby are respectively appropriated, that is to say:

For the pay of the army of the United States, three hundred and one thousand four hundred and seventy-six dollars.

For forage, four thousand and fifty-six dollars.

For the subsistence of the officers of the army and corps of engineers, twenty-eight thousand and eighty-two dollars and eighty three cents, and one half of a cent.

For the subsistence of non-commissioned officers, musicians, and privates, one hundred and sixty-three thousand eight hundred and thirty-nine dollars and thirty-seven cents and one half of a cent.

For clothing, eighty thousand dollars.

For bounties and premiums, fourteen thousand dollars.

For the medical and hospital department, ten thousand dollars.

For camp equipage, fuel, tools, expense of transportation, and other contingent expenses of the War Department, seventy-one thousand dollars.

For fortifications, arsenals, magazines, and armories, one hundred and nine thousand eight hundred and ninety-six dollars and eighty eight cents.

For purchasing maps, plans, books, and instruments for the War Department and military academy, one thousand dollars.

For the Indian department, seventy-five thousand five hundred dollars.

SEC. 2. *And be it further enacted*, That the

several appropriations, herein-before made, shall be paid and discharged, first, out of any balance remaining unexpended of former appropriations for the support of the Military Establishment, and secondly, out of any moneys in the Treasury, not otherwise appropriated.

Approved, February 10, 1804.

An Act continuing for a limited time the salaries of the officers of Government therein mentioned.

Be it enacted &c., That, from and after the last day of December, one thousand eight hundred and three, the following annual compensations, and no other, be, and they are hereby granted to the officers herein enumerated, respectively, that is to say:

To the Secretary of State, five thousand dollars.

The Secretary of the Treasury, five thousand dollars.

The Secretary of War, four thousand five hundred dollars.

The Secretary of the Navy, four thousand five hundred dollars.

The Attorney General, three thousand dollars.

The Comptroller of the Treasury, three thousand five hundred dollars.

The Treasurer, three thousand dollars.

The Auditor of the Treasury, three thousand dollars.

The Register of the Treasury, two thousand four hundred dollars.

The Accountant of the War Department, two thousand dollars.

The Accountant of the Navy Department, two thousand dollars.

The Postmaster General, three thousand dollars.

And the Assistant Postmaster General, one thousand seven hundred dollars; which sums shall be respectively paid quarter-yearly at the Treasury of the United States.

SEC. 2. *And be it further enacted*, That this act shall continue in force for three years, and from thence until the end of the next sesssion of Congress thereafter, and no longer.

Approved, February 20, 1804.

An Act for laying and collecting duties on imports and tonnage within the territories ceded to the United States, by the Treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and for other purposes."

Be it enacted, &c., That the same duties which by law now are, or hereafter may be laid on goods, wares, and merchandise, imported into the United States, on the tonnage of vessels, and on the passports and clearances of vessels, shall be laid on goods, wares, and merchandise, imported into the territories ceded to the United States by the Treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and on vessels arriving in or departing from the said territories: and the following acts, that is to say, the act, entitled

"An act to establish the Treasury Department;"

"An act concerning the registering and recording of ships and vessels;"

"An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries;"

"An act to regulate the collection of duties on imports and tonnage;"

"An act to establish the compensations of officers employed in the collection of the duties on imports and tonnage, and for other purposes;"

"An act for the more effectual recovery of debts due from individuals to the United States;"

"An act to provide more effectually for the settlement of accounts between the United States and receivers of public money;"

"An act to authorize the sale and conveyance of lands, in certain cases, by the marshals of the United States, and to confirm former sales;"

An act to provide for mitigating or remitting the forfeitures, penalties, and disabilities accruing in certain cases therein mentioned;"

"An act to establish a Mint, and to regulate the coins of the United States;"

"An act regulating foreign coins, and for other purposes;"

And the act supplementary to, and amendatory of, the two last mentioned acts, or so much of the said acts as is now in force, and also so much of any other act or acts of the United States as is now in force, or may be hereafter enacted, for laying any duties on imports, tonnage, seamen, or shipping, for regulating and securing the collection of the same; for granting and regulating drawbacks, bounties and allowances in lieu of drawbacks; concerning the registering, recording, enrolling, and licensing of ships and vessels; to provide for the settlement of accounts between the United States and individuals; for the recovery of debts due to the United States; and for remitting forfeitures, penalties, and disabilities, shall extend to, and have full force and effect in the above-mentioned territories: *Provided, however, and it is hereby further enacted*, That ships or vessels, which, on the twentieth day of December last, were owned by persons then residing in the above-mentioned territories, and who either were citizens of the United States, or had resided in the said territories during five years next preceding, shall be entitled to the benefits and privileges of ships or vessels of the United States, whilst they shall continue to be wholly owned by such persons, or by citizens of the United States: *Provided nevertheless*, That the persons claiming such privileges for their ships or vessels, if not citizens of the United States, shall have previously taken an oath of allegiance to the United States, which oath the collector of the port is hereby authorized to administer.

SEC. 2. *And be it further enacted*, That so much of any act or acts of the United States, now in force, or which may be hereafter enacted, concerning the Bank of the United States, and for the punishment of frauds committed on the same; for the relief of sick and disabled seamen; for the protection of American seamen; for the govern-

ment and regulation of seamen in the merchant service; and for preventing the exportation of goods not duly inspected, shall extend to, and have full force and effect in the above-mentioned territories.

Sec. 3. *And be it further enacted*, That so much of any law or laws, laying any duties on the importation into the United States of goods, wares, and merchandise, from the said territories, (or allowing drawbacks on the importation of the same from the United States to the said territories,) or respecting the commercial intercourse between the United States and the said territories, or between the several parts of the United States through the said territories, which is inconsistent with the provisions of the preceding section, be, and the same hereby is, repealed; and all duties on the exportation of goods, wares, and merchandise, from the said territories, as well as all duties on the importation of goods, wares, and merchandise into the said territories, on the transfer of ships or vessels, and on the tonnage of vessels, other than those laid by virtue of the laws of the United States, shall, from the time when this act shall commence to be in force, cease and determine: *Provided, however*, That nothing herein contained shall be construed to affect the fees and other charges usually paid in the said territories on account of pilotage, wharfage, or the right of anchoring by the levee of the city of New Orleans, which several fees and charges shall, until otherwise directed, continue to be paid and applied to the same purposes as heretofore.

Sec. 4. *And be it further enacted*, That to the end that the laws providing for the collection of the duties imposed by law on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels, and the laws respecting the revenue and navigation of the United States may be carried into effect within the said territories, the territories ceded to the United States by the treaty above-mentioned, and also all the navigable waters, rivers, creeks, bays and inlets, lying within the United States, which empty into the Gulf of Mexico, east of the river Mississippi, shall be annexed to the Mississippi district, and shall, together with the same, constitute one district, to be called the "District of Mississippi." The city of New Orleans shall be the sole port of entry in the said district, and the town of Bayou St. John shall be a port of delivery; a collector, naval officer, and surveyor shall be appointed to reside at New Orleans, and a surveyor shall be appointed to reside at the port of Bayou St. John; and the President of the United States is hereby authorized to appoint, not exceeding three surveyors, to reside at such other places within the said district as he shall deem expedient, and to constitute each, or either, of such places ports of delivery only: and so much of any law or laws as establishes a district, on the river Mississippi, south of the river Tennessee, is hereby repealed, except as to the recovery and receipt of such duties on goods, wares, and merchandise, and on the tonnage of ships or vessels, as shall have accrued, and as to the recovery and distribution of fines, penalties, and forfeitures, which shall have been incurred before the commencement of the operation of this act.

Sec. 5. *And be it further enacted*, That the shores and waters of the town of Natchez shall be one district, to be called the district of Natchez, and a collector shall be appointed who shall reside at Natchez, which shall be the only port of entry or delivery within the said district, of any goods, wares, and merchandise, not the growth or manufacture of the United States: *Provided, nevertheless*, That it shall be the duty of every master or commander of any ship or vessel destined for the said port of Natchez, to stop at New Orleans, and there deliver to the collector of said port a manifest of the cargo on board such ship or vessel agreeably to law, on penalty of five thousand dollars: and it shall be the duty of said collector to transmit a certified copy of such manifest to the collector of the said port of Natchez, and to direct an inspector to go on board such ship or vessel, and proceed therewith to the port of Natchez, and there report such ship or vessel to the collector of said port of Natchez immediately after his arrival, when the duty of said inspector shall cease.

Sec. 6. *And be it further enacted*, That foreign ships or vessels shall be admitted to unlade at the port of New Orleans, and at no other port within the district of Mississippi: and ships or vessels belonging to citizens of the United States coming directly from France or Spain, or any of their colonies, shall not be admitted to unlade at any port within the district of Mississippi other than New Orleans: and ships or vessels arriving from the Cape of Good Hope, or from any place beyond the same, shall be admitted to make entry at the port of New Orleans, and at no other port within the district of Mississippi: *Provided, however*, That nothing in this act contained shall authorize the allowing of drawbacks on the exportation of any goods, wares, and merchandise, from the said port of New Orleans, other than on those which shall have been imported directly into the same from a foreign port or place.

Sec. 7. *And be it further enacted*, That the master or commander of every ship or vessel bound to a port of delivery only, other than the port of Bayou St. John, in the district of Mississippi, shall first come to at the port of New Orleans with his ship or vessel, and there make report and entry, in writing, and pay, or secure to be paid, all legal duties, port fees, and charges, in manner provided by law, before such ship or vessel shall proceed to her port of delivery; and any ship or vessel bound to the port of Bayou St. John, may first proceed to the said port, and afterwards make report and entry at the port of New Orleans within the time by law limited; and the master of every ship or vessel arriving from a foreign port or place, or having goods on board of which the duties have not been paid or secured, and bound to any port within the district of Mississippi, (other than New Orleans, or Bayou St. John,) shall take an inspector on board, at New Orleans, before proceeding to such port; and if

any master of a ship or vessel shall proceed to such port of delivery, contrary to the directions aforesaid, he shall forfeit and pay five hundred dollars, to be recovered in any court of competent jurisdiction, with the costs of suit.

Sec. 8. *And be it further enacted*, That, during the term of twelve years, to commence three months after the exchange of ratifications of the above mentioned treaty shall have been notified at Paris to the French Government, French ships or vessels coming directly from France or any of her colonies, laden only with the produce or manufactures of France, or any of her said colonies; and Spanish ships or vessels coming directly from Spain or any of her colonies, laden only with the produce or manufactures of Spain or any of her said colonies, shall be admitted into the port of New Orleans, and into all other ports of entry which may hereafter be established by law within the territories ceded to the United States by the above-mentioned treaty, in the same manner as ships or vessels of the United States coming directly from France or Spain or any of their colonies, and without being subject to any other or higher duty on the said produce or manufacture than by law now is or shall at the time be payable by citizens of the United States on similar articles, imported from France or Spain, or any of their colonies, in vessels of the United States, into the said port of New Orleans, or other ports of entry in the territories above-mentioned; or to any other or higher tonnage duty than by law now is or shall at the time be laid on the tonnage of vessels of the United States coming from France or Spain, or from any of their colonies, to the said port of New Orleans, or other ports of entry within the territories above mentioned.

Sec. 9. *And be it further enacted*, That the collector of the district of Mississippi shall give bond for the true and faithful discharge of his duties, in the sum of fifteen thousand dollars, and shall be allowed, in addition to the fees and emoluments of his office, in lieu of all other commissions, one and a half per cent. on all moneys by him received on account of the duties arising from goods, wares, and merchandise, imported into the said district, and on the tonnage of ships and vessels; and the naval officers and surveyors of the said district shall, respectively, receive an annual compensation of two hundred and fifty dollars, in addition to their other fees and emoluments.

Sec. 10. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized to cause to be built and equipped one revenue cutter, in addition to those heretofore authorized by law; which cutter may be officered, manned, and employed in the same manner; and the expense thereof shall be paid out of the same fund as is provided for defraying the expense of the revenue cutters heretofore authorized by law.

Sec. 11. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized, whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river of Mobile, and of the other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district, and to establish such place within the same as he shall deem expedient, to be the port of entry and delivery for such district; and to designate such other places within the same district, not exceeding two, to be ports of delivery only. Whenever such separate district shall be erected, a collector shall be appointed, to reside at the port of entry; and a surveyor shall likewise be appointed, to reside at each of the ports of delivery which may be established. And such collector and surveyor shall be entitled to receive, in addition to their other fees and emoluments, an annual salary of two hundred and fifty dollars. And the said collector shall give bond for the faithful discharge of the duties of his office, in the sum of five thousand dollars.

Sec. 12. *And be it further enacted*, That this act shall commence thirty days after the passing thereof.

Approved, February 24, 1804.

An Act supplementary to an act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia."

Be it enacted, &c., That the act, entitled "An act to incorporate the inhabitants of the City of Washington, in the District of Columbia," except so much of the same as is inconsistent with the provisions of this act, be, and the same is hereby, continued in force for and during the term of fifteen years from the end of the next session of Congress.

Sec. 2. *And be it further enacted*, That the council of the City of Washington, from and after the period for which the members of the present council have been elected, shall consist of two chambers, each of which shall be composed of nine members, to be chosen by distinct ballots, according to the directions of the act to which this is a supplement. A majority of each chamber shall constitute a quorum to do business. In case vacancies shall occur in the council, the chamber in which the same may happen shall supply the same by an election, by ballot, from the three persons next highest on the list to those elected at the preceding election; and a majority of the whole number of the chamber in which such vacancy may happen shall be necessary to make an election.

Sec. 3. *And be it further enacted*, That the council shall have power to establish and regulate the inspection of flour, tobacco, and salted provisions; the gauging of casks and liquors; the storage of gunpowder, and all naval and military stores, not the property of the United States; to regulate the weight and quality of bread; to tax and license hawkers and pedlers; to restrain or prohibit tippling-houses, lotteries, and all kinds of gaming; to superintend the health of the city; to preserve the navigation of the Potomac and Anacosta rivers, adjoining the city; to erect, repair, and regulate public wharves, and to deepen docks and basins; to provide for the establishment and superintendence of public schools; to license and regulate, exclusively, hackney coaches, ordinary

keepers, retailers, and ferries; to provide for the appointment of inspectors, constables, and such other officers as may be necessary to execute the laws of the corporation; and to give such compensation to the mayor of the city as they may deem fit.

SEC. 4. *And be it further enacted*, That the levy court of the county of Washington shall not hereafter possess the power of imposing any tax on the inhabitants of the City of Washington.

Approved, February 24, 1804.

An Act to amend the Charter of Alexandria.

Be it enacted, &c., That the town of Alexandria shall be, and is hereby, divided into two districts, by a line running east and west, at an equal distance between King and Prince streets, beginning at the river Potomac and extending to the western boundary of said town; and all that part of the town, which is situate north of the said dividing line, shall be called the northern district; and all that part of the town, which is situate south of the said dividing line, shall be called the southern district of the town of Alexandria; and where any house or lot shall be situate partly in each district, it shall be considered as lying in that district where the greater part of said house or lot is situate, and shall be assessed accordingly; each of the districts aforesaid shall be divided into two electoral wards, by a line passing from north to south through the middle of Pitt street, to be called the first, second, third, and fourth ward; none of the taxes on the valuation of real property, which shall hereafter be collected in the northern district, shall be expended in the regulating, or filling up, or paving, or repairing of the streets, or sinking of wells, or building of bridges in the southern district; nor shall the taxes on the valuation of real property, which shall hereafter be collected in the southern district, be expended in the regulating, or filling up, or paving, or repairing the streets, or sinking of wells, or building of bridges in the northern district. But all the moneys to be expended upon the aforesaid improvements in either district, shall be raised by an assessment on the valuation of real property in each district, respectively, at the times and in the manner the said common council shall order and direct. It shall be the duty of the assessors and other public officers to keep the accounts of each district separate and distinct in regard to the assessments for the aforesaid local purposes; and all other taxes which are now, or shall hereafter be, assessed or levied upon the valuation of real property or other subjects, together with the fines, and also the rents issuing from the property belonging to the corporation, and all their other resources, shall constitute a general fund, to be appropriated as the common council shall direct.

SEC. 2. *Be it further enacted*, That every free white male citizen of full age, who shall be bona fide seized of a freehold estate in the town of Alexandria, or who shall have resided in the town aforesaid for the space of one year, and have been a housekeeper therein for the space of three months next preceding the day of the election, and who shall have been within that time charged with any tax upon the public books, and shall have paid such tax, shall be qualified to vote for members to serve in the common council of the said town, and no other person shall exercise the right of suffrage; and the persons qualified, as aforesaid, to vote, shall meet at some convenient place in the ward in which they respectively reside, and elect by ballot four persons for the representatives of such ward in the common council, out of the free white male citizens who shall have arrived to the age of twenty-one years, and shall have resided in the town of Alexandria three years, and in the ward for which he shall be elected for the space of three months immediately preceding the election, and shall moreover be seized of an estate of freehold in the said ward, and be housekeeper therein. And that the said election shall be held on the first Tuesday of March, in every year, by three commissioners to be appointed in each ward for that purpose by the mayor and commonalty for the ensuing election, and afterwards by the common council, which appointment shall be at least ten days before the day of each election, except in regard to the first election to be held under this act. The election for the ensuing year shall be held at such place, in each ward, as shall be fixed on by the mayor and commonalty, and thereafter shall be held at such place as shall be appointed by the common council, of which public notice shall be given.

SEC. 3. *Be it further enacted*, That the members of the common council, elected as aforesaid, or any twelve of them, shall, within seven days after their election in each year, assemble themselves at the court-house, or any other place which shall be hereafter fixed for their meeting, and shall choose one of their body to be president of the said common council, to whom shall be administered, by any justice of the peace in the county of Alexandria, an oath or affirmation for the faithful discharge of the duties of his office; whereupon the president of the said common council shall administer the oath of office to the other members of the said council, and shall have, while the council is in session, the same power which is at present exercised by the mayor, upon the like occasion; and he shall convene the council whenever in the opinion of four of the members expressed to him in writing, or whenever in his opinion the good of the town may require it; and the authority of the said common council shall continue one year from the day of their election, and until others are chosen and qualified in their stead, and no longer. That the common council so elected, and those thereafter to be elected, and their successors, shall be and hereby are made a body politic and corporate, by the name of the Common Council of Alexandria; and by the said name shall have perpetual succession with capacity to purchase, possess, and enjoy lands and tenements, and goods and chattels, either in fee or lesser estate therein, and the same to give, grant, let, sell, assign, or transfer; and to plead and be impleaded, prosecute and defend all

causes, complaints, actions real, personal, or mixed, and to have one common seal, and perpetual succession. And all the estate, rights, and credits, now vested in the mayor and commonalty of the town of Alexandria, shall be vested in the said common council, when elected, and may be recovered in their name for the use of the said town, and in like manner all claims and demands against the mayor and commonalty of Alexandria, prior to the operation of the present act, may be prosecuted and recovered against the aforesaid common council; and process served upon the president of the common council, shall be deemed sufficient.

SEC. 4. *Be it further enacted*, That the jurisdiction of the said common council shall extend to the limits heretofore prescribed by law, and exercised by the mayor and commonalty. The concurrence of a majority of the whole number of members elected into the common council, shall be necessary for the passing of any law, order, or resolution, or for repealing, altering, or revoking the same.

SEC. 5. *Be it further enacted*, That the said common council shall have power to erect and repair work-houses, houses of correction, and other public buildings, for the benefit of the said town; to pave, make, and repair the streets and highways; to make all laws which they shall conceive requisite for the preservation of the health of the inhabitants, and for the regulation of the morals and police of the said town, and to enforce the observance of their said laws, by reasonable penalties and forfeitures, to be levied upon the goods and chattels of the offender; and they shall have power to raise money by taxes, for the use and benefit of the said town: *Provided*, That such laws shall not be repugnant to, or inconsistent with, the laws and Constitution of the United States. The said common council shall, whenever they deem it proper, have power to open, extend, regulate, pave, and improve the streets, within the limits of the said town: *Provided*, They make to the person or persons who may be injured by such extension, just and adequate compensation out of the funds of the corporation, to be ascertained by the verdict of an impartial jury, in like manner as has been usual in other cases, where private property has been condemned for public use. They shall have power to hold and keep within the said town, market days in every week, and from time to time, to appoint a clerk of the market, who shall do and perform all things belonging to the office of clerk of the market within the said town, according to the rules and regulations which they shall prescribe. They shall have power to pass all laws not inconsistent with the laws of the United States, which they may conceive requisite for the prevention and removal of nuisances, and to appoint a superintendent of police, commissioners, and surveyors of the streets, constables, collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, who shall be paid for their services a reasonable compensation, and whose duties and powers shall be prescribed in such manner as the common council shall deem fit for carrying into execution the powers hereby granted.

SEC. 6. *Be it further enacted*, That the jurisdiction of the said common council shall extend over the harbor of Alexandria, and over vessels of every description which may arrive and be in the harbor, or be at anchor in any part of the river Potomac, below Pearson's Island, and within the District of Columbia, for the purpose of preventing and removing all nuisances, and such other subjects or things, being on board any such vessel, as may be prejudicial to the health of the town, and for no other purpose: And, also, their jurisdiction shall extend over the house lately built in the vicinity of the town for the accommodation of the poor and others, and over the ten acres of ground thereto belonging, and over all persons who may be sent or placed there by the consent or authority of the common council, and on their way to and from the same, until they be regularly discharged: *Provided*, That paupers and other persons shall not be considered as having thereby gained a residence in the county, so as to become chargeable thereto.

SEC. 7. *Be it further enacted*, That the common council shall, annually, at their first meeting after their own election and qualification, choose by ballot a fit and able man, having the qualifications hereinafter directed, to be mayor of the town, which choice shall be made by a majority of the whole number of members of the said common council, unless the whole number of members be equally divided between two persons, in which case one of those two persons shall be immediately, by the vote of the president of the council, elected. The mayor shall hold his office for one year, from the time of his election, and until a successor is chosen and qualified in his stead. At the expiration of which period he may be re-elected for two years thereafter in succession, and no longer, until he shall have been out of office for one year. He shall, before he enters upon the duties of his office, take an oath or affirmation, in the presence of the council, faithfully to execute his said office, which shall be recorded in their book of proceedings. He shall see that the laws of the corporation be duly executed, and shall report the negligence or misconduct of any officer to the common council, who, on satisfactory proof thereof, may remove from office the said delinquent, or take such other measures thereupon, as shall be just and lawful. He shall have power to convene the common council when, in his opinion, the good of the community may require it; and he shall lay before the council, from to time, in writing, such alterations in the laws of the corporation, as he shall deem necessary or proper. He shall have and exercise all the powers of a justice of the peace within the said town, and shall receive for his services, annually, a just and reasonable compensation, to be allowed and fixed by the common council, which shall not be increased or diminished during the period for which he shall have been elected. Any person shall be eligible to the office of mayor, who is a white male citizen

of the United States, who shall have attained to the age of thirty years, and who shall be the bona fide owner of a freehold estate in the said town, and shall have been a resident in the town of Alexandria five years immediately preceding his election, and no other person shall be eligible to the said office.

Sec. 8. *Be it further enacted*, That in case of the refusal of any person to accept the office of mayor upon his election thereto, or of his death, resignation, inability, or removal, the common council shall elect another in his place to serve the remainder of the year. The common council shall have power to supply vacancies in their own body, by causing elections to be made in manner herein-before directed, out of the citizens qualified to fill the said office in the ward in which such vacancies shall have happened; and may, in the absence of the president, elect a president pro-tempore. In case of the temporary inability or absence of the mayor, the president of the common council shall perform all the duties of the mayor, that may be required to be performed during his absence or inability, and in case of vacancy in the said office he shall perform the duties thereof, until a new election shall be made.

Sec. 9. *And be it further enacted*, That the acts of the common council shall be signed by the president of the common council, and shall be presented to the mayor for his approbation, who, if he objects thereto, shall within three days after it shall be presented to him for his assent, return it to the common council with his objections in writing, and if a majority of the whole council shall be of opinion that the law ought to be passed, it shall, notwithstanding the objections of the mayor, become a law, and he shall sign the same; but if the mayor shall not return his objections to the same, within three days, to the said council, it shall become a law, and shall be signed by him. The clerk of the council shall record in a book to be kept by him for that purpose, all the laws, orders, and resolutions which shall be passed, as aforesaid, and deliver a copy of them to the public printer, to be printed for the information of the people.

Sec. 10. *Be it further enacted*, That the commissioners to superintend the election in each ward, shall, before they receive any vote, take, severally, the following oath or affirmation, to be administered by the mayor, or any justice of the peace: "I A. B. do solemnly swear, or affirm, (as the case may be) that I will truly and faithfully receive, and return the votes of such persons as are by law entitled to vote for members of council in ward No. —, and that I will not knowingly receive or return the vote of any who is not legally entitled to the same; so help me God:" the said election shall be closed on the day it is begun, and the poll shall be kept open until sunset, and no longer. The said commissioners in each ward, or a majority of them shall, on the next day after the election, make a list of all the votes received at said election, and the four persons having the greatest number of votes shall be duly elected; and in all cases of an equality of votes the commissioners shall decide, and shall make a return of the persons so elected, under their hands and seals, to the mayor, who shall cause the same to be published in the newspapers of the town; the said commissioners shall also send a duplicate return, under their hands and seals, of the persons elected, to the clerk of the common council, who shall preserve and record the same; the said common council shall judge of the legality of the election of any person who shall be returned as a member thereof, and shall have full power to pass all laws to enable them to come to a just decision upon a contested election: They shall have power to compel the attendance of the members of the council by reasonable penalties, and to pass all laws for the orderly and regular conduct of business: They may punish any member for disorderly behaviour, and, with consent of three-fourths of the whole council, expel a member.

Sec. 11. *And be it further enacted*, That whenever taxes upon real property, or other claims charged upon real property within the town, shall be due and owing to the common council, and the proprietor shall fail to discharge the same, the said common council, after giving the party reasonable notice, when he resides in the town, sixty days' notice when he resides out of the town and in the United States, and after six months' publication in the newspapers when he resides out of the United States, shall be empowered to recover the said taxes or debts, by motion in the court of Alexandria county: *And provided*, It shall appear to the satisfaction of the court that such taxes or claims are justly due, judgment shall be granted, and an execution shall issue thereupon, with the costs of suit, against the goods and chattels of the defaulter, if any can be found within the town; if not, that the whole property upon which the tax or claim is due, shall, by order of the court, be leased out at public auction for the shortest term of years that may be offered, on condition that the lessee pay the arrearages, and also the future taxes accruing during the term, and be at liberty to remove all his improvements at the expiration of the lease: *Provided always*, That the common council may prosecute any other remedy, by action, for the recovery of the said taxes and claims, which is now possessed or allowed.

Sec. 12. *And be it further enacted*, That so much of any act or acts of the General Assembly of Virginia, as comes within the purview of this act, shall be, and the same is hereby, repealed: *Provided*, That nothing herein contained shall be construed to impair or destroy any right or remedy which the mayor and commonalty of Alexandria now possess or enjoy to or concerning any debts, claims, or demands, against any person or persons whatsoever; or to repeal any of the laws and ordinances of the mayor and commonalty of the said town now in force, which are not inconsistent with this act.

Approved, February 25, 1804.

An Act relating to the recording, registering, and enrolling of ships or vessels in the district of Orleans.

Be it enacted, &c., That any ship or vessel possessed of and sailing under a Spanish or French register, and belonging, on the twentieth day of December, one thousand eight hundred and three, and continuing to belong wholly to any citizen or citizens of the United States, then residing within the territories ceded to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, or to any person or persons being, on the said thirtieth day of April, an inhabitant or inhabitants of the said ceded territories, and who continue to reside therein, and of which the master is a citizen of the United States, or an inhabitant as aforesaid, may be registered, enrolled, and licensed in the manner prescribed by law; and being so registered, enrolled, or licensed, shall be denominated and deemed a ship or vessel of the United States, and entitled to the benefits granted by any law of the United States to ships or vessels thereof: *Provided*, That it shall be lawful for the collector, to whom application shall be made for a certificate of registry, enrollment, or license, for such ship or vessel, by any citizen or inhabitant as aforesaid, to make such variations in the forms of the oaths, certificates, and licenses, as shall render them applicable to the cases herein intended to be provided for: *And provided, also*, That every such inhabitant applying as aforesaid, shall, prior to his being entitled to receive such certificate of registry, enrollment, or license, deposit with the collector, the register and other papers under which such ship or vessel had been navigated; and also take and subscribe, before the collector (who is hereby authorized to administer the same) the following oath: "I, A B, do swear (or affirm) that I will be faithful and bear true allegiance to the United States of America, and that I do entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State, or Sovereignty whatever, and particularly to the King of Spain and the French Republic."

Sec. 2. *And be it further enacted*, That the inhabitants of the said ceded territory, who were residents thereof on the thirtieth day of April, one thousand eight hundred and three, who shall take the oath aforesaid, and who continue to reside therein, or citizens of the United States, residents of said ceded territory, shall be entitled to all the benefits and privileges of owning ships or vessels of the United States, to all intents and purposes, as if they were resident citizens of the United States.

Approved, February 25, 1804.

An Act for the relief of certain military pensioners in the State of South Carolina.

Be it enacted, &c., That the persons to whom military pensions have been heretofore granted and paid by the State of South Carolina, in pursuance of the resolves of the United States in Congress assembled, for the payment of pensions to the invalids who were wounded and disabled during the late war with Great Britain, and who have not been placed on the books in the office of the Secretary for the Department of War, shall be, and the same hereby are, directed to be placed on said books, and their said pensions shall be hereafter paid by the United States, in the same manner as to other pensioners of the United States, out of the funds already appropriated for that purpose.

Sec. 2. *And be it further enacted*, That in placing the names of pensioners on the books, pursuant to the directions contained in the foregoing section, the Secretary of War shall be guided by a certificate from the State of South Carolina, when the same shall be delivered to him, under the proper authentications, which certificate shall specify the names of pensioners and sums of pension; and likewise, that they have not been paid since March the fourth, one thousand seven hundred and eighty-nine, by said State; which certificate shall be recorded in the books of the Department of War, and the original kept on file. And each officer, non-commissioned officer, and soldier, whose name shall be placed on the said list as a pensioner, in conformity to the provisions of this act, or in case of the death of any such officer, non-commissioned officer, or soldier, his heirs or legal representatives shall receive a sum equal to the arrears of his pension, which shall have accrued from and after the fourth day of March, one thousand seven hundred and eighty-nine, until the passage of this act, or until the death of such pensioner, as aforesaid, as the case may be; which arrearages shall be ascertained and certified by the Register of the Treasury in the same manner, and under the same restrictions as are contained in the act passed on the eleventh day of August, one thousand seven hundred and ninety, entitled "An act for the relief of persons therein mentioned or described:" *Provided*, That the commutation of half-pay which may have been received by any commissioned officer entitled to a pension, as aforesaid, shall first be returned by such officer into the Treasury of the United States, or shall be deducted from the arrears of pension directed to be paid by this act.

Approved, March 3, 1804.

An Act to allow drawbacks of duties on goods, wares, and merchandise, transported by land, in the cases therein mentioned.

Be it enacted, &c., That all goods, wares, and merchandise, duly imported into either of the districts of Boston and Charleston, Salem and Beverly, Newburyport, Ipswich, or Marblehead, in the State of Massachusetts, which shall be transported by inland conveyance along the turnpike or other main road into another of the said districts, and be therefrom exported to any foreign port or place, shall be entitled to the benefit of a drawback of the duties upon such exportation, under the same provisions, regulations, restrictions, and limitations, as if the goods, wares, and merchandise, were transported coastwise from one to another of the said districts, and also upon the conditions specified in the seventy-ninth section of the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Sec. 2. *And be it further enacted*, That all goods, wares, and merchandise, duly imported into the district of Delaware, may be transported to the same places, in the same manner, and on the same conditions with goods, wares, and merchandise, duly imported into the districts of Philadelphia, New York, or Baltimore, and shall in like manner be entitled to the benefit of a drawback of the duties thereon, upon exportation to any foreign port or place, agreeably to the provisions contained in the seventy-ninth section of an act, entitled "An act to regulate the collection of duties on imports and tonnage:" and that all goods, wares, and merchandise, which being duly imported into the districts of Philadelphia, New York, or Baltimore, shall be exported from the district of Delaware, shall also be entitled to the benefit of a drawback of the duties on the same, in the same manner, and on the same conditions, which are prescribed by the said seventy-ninth section of the act aforesaid, for goods, wares, and merchandise which, being duly imported into Baltimore or New York, shall be exported from Philadelphia.

Approved, March 3, 1804.

An Act further to amend the act, entitled "An act to lay and collect a direct tax within the United States."

Be it enacted, &c., That it shall be the duty of the collectors of the direct tax, under whose direction, or by whom any tract of land may have been sold for non-payment of such tax, and where the time limited by law for the redemption of such lands shall not have expired before the passing of this act, to transmit, within three months after the passing of this act, correct transcripts of the lists of all the tracts of land or lots, which have been sold, either in whole or in part, for non-payment of the said tax before the passing of this act, to the supervisor or to the officers to whom the duties of supervisor may have been transferred; or in case there be no such person, to the marshal of the district within which such lands may lie; and the said collectors shall likewise transmit to the same officer, within three months after the completion of any sale made subsequent to the passing of this act, similar transcripts of the lists of all the tracts of land or lots which shall, after the passing of this act, be sold, either in whole or in part, for non-payment of the said tax, which several transcripts shall, in every case, specify the tract or lot sold, in whole or in part, the quantity of land which has been sold, the time when sold, the amount of tax, charges, and costs for which it was sold, and the amount paid by, and the name of, the purchaser; and shall also designate all those tracts or lots which shall have been redeemed by the original proprietors, or for their benefit, in conformity with the provisions for that purpose heretofore enacted; and it shall also be the duty of the said collectors to pay over, within the time aforesaid, to the officer to whom the above-mentioned transcripts may have been transmitted, the amount of all the moneys paid to them by or for the benefit of any original proprietor of lands or lots sold for non-payment of the tax, and subsequent to such sale redeemed in conformity of law, by or for such proprietor, which shall not, at the time of transmitting the said transcripts, have been repaid by such collector to the purchaser of such lands or lots: And any collector failing to comply with the provisions of this section, or with any of them, shall forfeit and pay the sum of one thousand dollars with costs of suit.

Sec. 2. *And be it further enacted*, That if any collector shall fail to transmit the transcripts required by the first section of this act within the time aforesaid, it shall be the duty of the supervisor, officer acting as supervisor, or marshal, as the case may be, of the district within which the collection district of such collector may be, to prepare within six months after the passing of this act, from the lists or such other documents as may be in his possession, a similar transcript of the list of lands which such collector had by virtue of the second section of the act, entitled "An act to amend an act to lay and collect a direct tax within the United States," been authorized to sell for non-payment of the said tax; which list shall likewise specify, in every case, the tract or lot described in the original assessment, and the amount of tax, charges, and costs, for which it was liable to be sold; and any supervisor, officer acting as supervisor, or marshal, as the case may be, failing to comply with the provisions of this section shall forfeit and pay the sum of five hundred dollars, with costs of suit.

Sec. 3. *And be it further enacted*, That it shall be the duty of the supervisors, officers acting as supervisors, or marshals, as the case may be, to exhibit the before-mentioned transcripts, whether transmitted by the collector, or prepared by themselves; and also, to keep open the original assessment lists, and whenever required within the time limited by law for the redemption of lands, or lots, thus sold, to any person wishing to ascertain whether any tract of land or lot has been sold for non-payment of the tax, to receive, within the same period, from any person tendering the same, the amount of the tax, charges, and costs, for which any such tract of land or lot has been sold, with the interest which shall have accrued on the same as fixed by law, and execute a receipt for the same; which payment, by whomsoever made, shall always be considered to be made for the benefit of the original proprietor; and to pay over, at any time, within the same period, when applied for, the moneys and interest received from, or for any original proprietors, who shall have availed themselves of the right of redeeming their lands, agreeably to law, to the person who may have purchased the tract of land or lot, so redeemed, when the same was sold for non-payment of the tax, or to the representative of such person.

Sec. 4. *And be it further enacted*, That it shall be the duty of the said supervisor, person acting as supervisor, or marshal, as the case may be, to file at the end of two years after the completion of the sales of lands sold within their district, for

non-payment of the direct tax, with the clerk of the district court within whose district such lands may lie, correct transcripts, similar to those prescribed by the first section of this act, of the lands or lots sold in whole, or in part, for non-payment of the direct tax, and which shall not have been redeemed by, or for, the original proprietor within the said two years; and also to pay into the clerk's office of the said court, for the use of the purchaser, or his representatives, any moneys remaining in their hands which shall have been paid by such original proprietors, as shall have availed themselves of the right of redemption. And it shall also be the duty of the said supervisors, officers acting as supervisors, or marshals, as the case may be, when any collector shall have failed to transmit to them, or any of them, the transcripts of the lists of lands sold for non-payment of the tax, as required by the first section of this act, to file with the clerk of the said district court the receipts given by such collector, either for the purchase-money of lands or lots thus sold, to the purchasers, or for the redemption of the same, to original proprietors which shall have been delivered by the purchasers, or original proprietors, as the case may be, of lands or lots thus sold, to the said supervisors, officers acting as supervisors, or marshals, in the manner and within the time prescribed by this act.

Sec. 5. *And be it further enacted*, That the several marshals, for the time being, of the said district courts, shall alone have the authority in all cases where the time limited by law for the redemption of lands sold shall not have expired before the passing of this act, and they are hereby authorized and required, to execute deeds for so much of the said lands and lots as shall have been sold to satisfy the amount of the direct tax, charges, and costs, due thereon, and which shall not have been redeemed by or for the original proprietor, within the time limited by law, to the purchasers of such lands or lots, or their legal representatives: *Provided, however, and it is further enacted*, That no such deed shall be executed except for lands or lots contained in the transcripts filed with the clerk of the proper district court, in conformity with the preceding section, or unless the purchaser of any tract of land or lot sold for non-payment of the tax, shall have failed within three months after the passing of this act, or within three months after such sale, with the supervisor, officer acting as supervisor, or marshal, as the case may be, a receipt from the collector for the purchase-money, dated within thirty days subsequent to such sale, and specifying, distinctly, the original description of the land assessed and the quantity sold: *And provided, also*, That no such deed shall, in any case, be executed for any land purchased by or for a collector of the direct tax, and not contained in the transcript filed with the clerk of the district court; nor for any land, although not returned as redeemed by the collector, which shall appear by a certificate, or receipt of the said collector, filed with the supervisor, or officer acting as supervisor, or marshal, as the case may be, before the completion of two years after the sale of such land, and filed by such officer with the clerk of the court, in conformity with the preceding section, to have been redeemed by or for the original proprietor by payment of the tax, charges, costs, and interest, to the said collector previous to the time limited by the first section of this act, for the transmission of transcripts by the collectors of the direct tax.

Sec. 6. *And be it further enacted*, That where any lot or tract of land shall have been sold before the passing of this act for non-payment of the direct tax, and for a larger sum than the amount of such tax, with the legal charges and costs, the collector of the said tax shall be accountable to the purchaser for the excess of money paid by such purchaser beyond the amount of such tax, charges, and costs; and deeds shall be executed in favor of such purchasers only for so much of the land as shall bear the same ratio to the whole quantity of land sold as the amount of the tax, charges, and costs, bear to the sum for which the land was sold; and whenever a deed shall be executed for a part only of any tract of land not described previous to the sale, such part shall be laid off at the expense of the purchaser, under the direction of the district court, and in conformity with the instructions given to the collector by the supervisor, or officer acting as supervisor, respecting the sales of lands sold for non-payment of direct tax: *Provided*, That hereafter it shall not be lawful for any collector of the said tax to sell more of any lot or tract of land than will pay the amount of such tax, with the legal charges and costs.

Sec. 7. *And be it further enacted*, That, for the services prescribed by this act, the following fees shall be allowed and paid by the parties respectively, that is to say:

To every supervisor for examining the transcripts of land sold, twenty-five cents; for receiving payment of the tax, charges, and costs for which any tract of land or lot may have been sold, in whole or in part, fifty cents; and for filing a certificate or receipt of the collector, deposited by the purchaser, or original proprietor, six cents.

To the marshal of the court, one dollar for preparing and executing a deed.

Approved, March 3, 1804.

An Act making appropriations for the support of Government for the year one thousand eight hundred and four.

Be it enacted, &c., That, for the expenditure of the civil list in the present year, including the contingent expenses of the several Departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint establishment; for the expenses of intercourse with foreign nations; for the support of lighthouses, beacons, buoys, and public piers; and for satisfying certain miscellaneous claims, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For compensations granted by law to the mem-

bers of the Senate and House of Representatives, their officers and attendants, estimated for a session of four months and a half continuance, one hundred and ninety-eight thousand nine hundred and sixty five dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of both Houses, including the expense of printing the President's Message of the twenty-third of December, one thousand eight hundred and two, with the accompanying documents, thirty-two thousand seven hundred dollars.

For the purchase of books for the use of both Houses of Congress, the balance of the former appropriation being carried to the credit of the surplus fund, two thousand seven hundred and three dollars and five cents.

For furniture for the House of Representatives, being an expense incurred in the year one thousand eight hundred and three, twelve hundred dollars.

For compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks, and persons employed in that Department, eleven thousand three hundred and sixty dollars.

For the incidental and contingent expenses in the said Department, four thousand eight hundred dollars.

For printing and distributing copies of the laws of the first session of the eighth Congress, and printing the laws in newspapers, eight thousand two hundred and fifty dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office, including those engaged in the business belonging to the late office of the Commissioner of the Revenue, fourteen thousand and ninety-two dollars and eighty-seven cents.

For expenses of translating foreign languages, allowance to the person employed in receiving and transmitting passports and sea-letters, stationery, and printing, one thousand dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery, printing, and incidental and contingent expenses in the Comptroller's office, eight hundred dollars.

For defraying the expense of preparing new certificates of registry for ships and vessels, in conformity with the law of the second of March, one thousand eight hundred and three, four thousand five hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery, printing, and incidental and contingent expenses in the office of Auditor of the Treasury, five hundred dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For the expense of stationery, printing, and incidental and contingent expenses in the Treasurer's office, three hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars.

For expense of stationery and printing, (including books for the public stock, and for the arrangement of the marine papers,) two thousand eight hundred dollars.

For the expense of printing and transmitting the certificates of the six per cent. stock, created by virtue of the act of the tenth of November, one thousand eight hundred and three, one thousand five hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of the clerks employed for the purpose of making draughts of the several surveys of land in the Territory of the United States Northwest of the river Ohio, and in keeping the books of the Treasury in relation to the sales of lands at the several land offices, two thousand dollars.

For fuel and other contingent expenses of the Treasury Department, four thousand dollars:

For defraying the expenses incident to the stating and printing the public accounts for the year one thousand eight hundred and four, one thousand two hundred dollars.

For purchasing books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a superintendent employed to secure the buildings and records of the Treasury, during the year one thousand eight hundred and four, including the expense of two watchmen, and for the repair of two fire engines, and other incidental expenses, one thousand one hundred dollars.

For compensation to Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For the expenses of fuel, stationery, printing, and other contingent expenses of the office of the Secretary of War, including certain contingent expenses incurred in the year one thousand eight hundred and one, one thousand one hundred and fifty dollars and two cents.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation to clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in the said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of twelve hundred dollars for compensation to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-

nine, and for expense of stationery, store rent, and fuel for the said office, four thousand eight hundred dollars.

For extra expenses incurred by the removal of the office of Purveyor of Public Supplies from Philadelphia to Germantown, in the year one thousand eight hundred and three, two hundred and three dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing, and other contingent expenses in the office of the Secretary of the Navy, two thousand dollars.

For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred and ten dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a sum of four thousand five hundred and ninety-five dollars, for compensation to his clerks in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand nine hundred and fifty-five dollars.

For expense of fuel, candles, house rent for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the department, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand three hundred and thirty-three dollars and thirteen cents.

For compensation to the clerks of the several commissioners of loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For extra expenses occasioned by the removal of the loan office of Pennsylvania to Germantown, during the summer of one thousand eight hundred and three, three hundred and forty-nine dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans of the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General, and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For compensation to the surveyor of the lands south of the State of Tennessee, clerks employed in his office, stationery, and other contingencies, two thousand seven hundred dollars.

For compensation to the officers of the Mint:

The Director, two thousand dollars;

The Treasurer, one thousand two hundred dollars;

The Assayer, one thousand five hundred dollars;

The Chief Coiner, one thousand five hundred dollars;

The Melter and Refiner, one thousand five hundred dollars;

The Engraver, one thousand two hundred dollars; and one clerk, at seven hundred dollars;

And two, at five hundred dollars each.

For the wages of persons employed at the different branches of melting, coining, carpenters, millwrights, and smith's work, including the sum of eight hundred dollars per annum allowed to an assistant coiner and die-forger, who also oversees the execution of the iron work, six thousand five hundred dollars.

For the repairs of furnaces, cost of rollers and screws, timber, bar-iron, lead, steel, potash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, judges, and secretary of the Mississippi Territory, including a sum of eighty-two dollars for the compensation of one of the judges, which has been carried to the credit of the surplus fund, five thousand two hundred and thirty-two dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, judges, and secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent and other contingent expenses in the said Territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding for each department, respectively, fifteen per centum, in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For compensation granted by law to the Chief Justice, Associate Judges, and District Judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, and including also one thousand dollars for the compensation of the District Judge of Ohio, for the year one thousand eight hundred and three, fifty-four thousand nine hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Ken-

tucky, Ohio, East and West Tennessee, one thousand four hundred dollars.

For the like compensation granted to the several district attorneys of the United States, two thousand eight hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties; and likewise, for defraying the expenses of prosecution for offences against the United States, and for safe-keeping of prisoners, forty thousand dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For the payment of an annuity granted to the children of the late Colonel John Harding and Major Alexander Trueman, by an act of Congress passed the fourteenth of May, one thousand eight hundred and six, six hundred dollars.

For the payment of the annual allowance to the invalid pensioners of the United States, from the fifth of March, one thousand eight hundred and four, to the fourth of March, one thousand eight hundred and five, ninety-eight thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and certain contingent expenses, fifty-five thousand nine hundred and fifty-one dollars and thirty-three cents.

For the erection of a light-house on New Point Comfort, five thousand dollars, being the amount of a former appropriation carried to the credit of the surplus fund.

For the payment of balances due on the contracts for erecting the light-houses on Old Point Comfort and Smith's Point, and for the inspection of the work, the balance of the former appropriations being carried to the credit of the surplus fund, two thousand dollars.

For erecting a light house on Gull's Island, in the sound, between Long Island and the main, in addition to the sum heretofore appropriated for that purpose, three thousand five hundred dollars.

For defraying the expenses incident to the purchase or erection of certain warehouses and wharves, under the act respecting quarantine and health laws, in addition to the sums heretofore appropriated for that purpose, five thousand dollars; and so much of the sums received on account of storage for merchandise deposited in the public warehouses under said act, as may be necessary, is hereby appropriated to the erection and repairs of the warehouses, and to carry the said act into effect.

For defraying the expenses incident to the valuation of lands and houses, and enumeration of slaves within the United States, as directed by the act of the ninth of July, one thousand seven hundred and ninety-eight, the balance of former appropriations having been carried to the credit of the surplus fund, three thousand dollars.

For the purpose of carrying into effect the act of the third of March, one thousand eight hundred and three, in relation to the lands south of the State of Tennessee, in addition to the sum therein appropriated, ten thousand dollars.

For the discharge of such miscellaneous demands against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For furniture for the President's house, being the balance of a former appropriation carried to the credit of the surplus fund, one hundred and forty-five dollars and seventeen cents.

For expenses of intercourse with foreign nations, including the compensation of the Consuls at the several Barbary Powers, forty-six thousand five hundred and fifty dollars.

For the other expenses of the intercourse between the United States and Algiers, and other Barbary Powers, one hundred thousand dollars.

For carrying into effect the treaty between the United States and the King of Spain, the balance of former appropriations having been carried to the credit of the surplus fund, thirty-two thousand seven hundred and forty-seven dollars and thirty-six cents.

For the relief and protection of distressed American seamen, ten thousand dollars.

For salaries of the agents in Paris and Madrid, for prosecuting claims in relation to captures, three thousand three hundred and fifty dollars.

For satisfying a balance due to John Habersham, late agent for supplying the troops in Georgia, nine thousand and fifty-five dollars and seventeen cents.

For the relief of sick or disabled American seamen at New Orleans, in addition to the appropriations heretofore made for that purpose, one thousand dollars.

For discharging such sums as may, on settlement of their accounts by the accounting officers of the Treasury, be found due to persons whose property was taken for the use of the militia employed on the expedition to suppress the former insurrection in the western counties of Pennsylvania, one thousand dollars.

Sec. 2. *And be it further enacted*, That the several appropriations herein-before made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act making provision for the debt of the United States, and out of any moneys in the Treasury not otherwise appropriated.

Sec. 3. *And be it further enacted*, That the sum which shall be found due on a settlement of the accounts of the militia who served on an expedition commanded by Major Thomas Johnson against the Indians, in the year one thousand seven hundred and ninety-four, be paid out of any moneys in the Treasury not otherwise appropriated, the appropriation made by the act of the thirteenth of May, one thousand eight hundred, having been carried to the credit of the surplus fund.

Approved, March 14, 1804.

An Act declaring the assent of Congress to an act of the General Assembly of Virginia, therein mentioned.

Be it enacted, &c., That the assent of Congress is hereby given and declared to an act of the General Assembly of Virginia, entitled "An act for improving the navigation of James river," which act was passed on the twenty-third day of January, in the year one thousand eight hundred and four.

Approved, March 16, 1804.

An Act to revive and continue in force an act, entitled "An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia."

Be it enacted, &c., That the act, entitled "An act for the relief of the refugees from the British provinces of Canada and Nova Scotia," approved on the seventh of April, one thousand seven hundred and ninety-eight, shall be, and the same is hereby revived and continued in force for the term of two years from the passage of this act, and no longer.

Approved, March, 16, 1804.

An Act making an appropriation for carrying into effect the Convention concluded between the United States and the King of Spain, on the eleventh day of August, one thousand eight hundred and two.

Be it enacted, &c., That, for the purpose of defraying the expense which may arise in carrying into effect the convention concluded between the United States and the King of Spain, on the eleventh day of August, one thousand eight hundred and two, the following sums, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same are hereby appropriated—that is to say:

For the salaries of the commissioners, including half the compensation of the fifth commissioner, half the expenses of the board, and the contingent expenses of the commissioners of the United States, twelve thousand seven hundred and sixty dollars: *Provided*, That the compensation to be allowed to any of the commissioners, who may be appointed in pursuance of the said convention, shall not exceed the rate of four thousand four hundred and forty-four dollars per annum.

For the salary of an agent, whom the President of the United States is hereby authorized to appoint, for the purpose of supporting the claims of citizens of the United States before the Board of Commissioners, and to whom a compensation, not exceeding the rate of three thousand dollars per annum, may be allowed, three thousand dollars.

Sec. 2. *And be it further enacted*, That the President of the United States be, and he hereby is, authorized to make the appointment of the said commissioners and agent, during the recess of the Senate, and to grant to the persons thus appointed, commissions, which shall remain in force until the end of the next session of Congress, and no longer.

Sec. 3. *And be it further enacted*, That this act shall take effect and be in force, from and after the day when the exchange of ratifications of the said convention shall be made.

Approved, March 16, 1804.

An Act to provide for Light-houses and Buoys in the cases therein mentioned.

Be it enacted, &c., That as soon as the proprietor of the south end or point of St. Simon's island, in the State of Georgia, shall convey, by good and sufficient titles, unto the United States, so much land on the south end of the said island as the President of the United States shall deem sufficient and most proper for the site and accommodation of a light-house, and the jurisdiction of the land, so to be conveyed, shall have been ceded to the United States, by the State of Georgia, it shall be the duty of the Secretary of the Treasury to provide by contract, which shall be approved by the President of the United States, for building a light-house thereon, and for furnishing the same with all necessary supplies, and also to agree for the salaries or wages of the person or persons who may be appointed by the President for the superintendence and care of the same. And the President is hereby authorized to make the said appointments.

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury, under the direction of the President, be authorized and required to cause to be placed a buoy or buoys at such place or places on or near the bar of St. Simon's, as may conduce to the safe pilotage of vessels to and from the ports of Brunswick and Frederica.

Sec. 3. *And be it further enacted*, That it shall be lawful for the Secretary of the Treasury to cause to be rebuilt, in such manner as he may deem expedient, the light-house at Clark's Point within the town of New Bedford, in the State of Massachusetts.

Sec. 4. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized and required to cause a sufficient light-house to be erected on Five-mile Point, so called, near the entrance of the harbor of New Haven in the State of Connecticut, and to appoint a keeper, and otherwise provide for such light-house at the expense of the United States: *Provided*, That sufficient land for the accommodation of such lightt-house can be obtained at a reasonable price, and the Legislature of Connecticut shall cede the jurisdiction over the same to the United States.

Sec. 4. *And be it further enacted*, That there be appropriated for the purpose of defraying the charges and expenses to be incurred in executing the two first sections of this act, the sum of seven thousand dollars; for rebuilding the light-house, as aforesaid, at Clark's Point, a sum not exceeding two thousand five hundred dollars; and for the erection of a light-house at the Five-mile Point aforesaid, a sum not exceeding two thousand five hundred dollars; which sums shall be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 16, 1804.

An Act granting further time for locating Military Land Warrants, and for other purposes.

Be it enacted, &c., That the act, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services and for the Society of the United Brethren for propagating the Gospel among the Heathen,'" approved the twenty-sixth day of April, eighteen hundred and two, be, and the same is hereby, revived and continued in force until the first day of April, one thousand eight hundred and five: *Provided, however*, That the holders or proprietors of warrants or registered certificates shall and may locate the same only on any unlocated parts of the fifty quarter townships, and the fractional quarter townships which had been reserved for original holders by virtue of the fifth section of an act, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen:'" *And provided, also*, That no holder or proprietor of warrants or registered certificates shall be permitted to locate the same by virtue of this act, unless the Secretary of War shall have made an endorsement on such warrant or registered certificate, certifying that no warrant has been issued for the same claim to military bounty land; and by virtue of the second section of the act, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen, and for other purposes,'" approved the third day of March, one thousand eight hundred and three.

Approved, March 19, 1804.

An Act providing for the expenses of the Civil Government of Louisiana.

Be it enacted, &c., That all the moneys which have been, or which shall be, received by any officer of the United States, on account of duties or taxes within the territories ceded by the French Republic to the United States, by the Treaty of the thirtieth day of April, eighteen hundred and three, shall be paid into the Treasury, and accounted for in the same manner as other public moneys.

Sec. 2. *And be it further enacted*, That, for the purpose of making a reasonable compensation to the person or persons in whom the powers of civil government, heretofore exercised by the officers of the said territories under the Spanish and French Governments, have been vested by the President of the United States, and also for defraying the other civil expenses of the said territories, from the time when possession of the same was obtained by the United States, to the time when a form of Government shall, under the authority of Congress, be established therein, a sum not exceeding twenty thousand dollars, to be expended under the direction of the President of the United States, and to be accounted for as other public moneys, shall be and the same is hereby appropriated, to be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 19, 1804.

An Act for the relief of the sufferers by fire, in the town of Norfolk.

Be it enacted, &c., That all persons who, being indebted to the United States for duties on merchandise, have given bond therefor, with one or more sureties, payable to the collector for the district of Norfolk and Portsmouth, and who have suffered a loss of property by the late conflagration in the town of Norfolk, shall be, and they hereby are, allowed to take up, or have cancelled, all bonds heretofore given for duties as aforesaid, upon giving to the collector new bonds, with one or more sureties, to the satisfaction of the said collector, for the sums of their former bonds, respectively, payable in twelve months from and after the day of payment specified in the bonds to be taken up or cancelled, as aforesaid; and the said collector is hereby authorized and directed to give up or cancel all such bonds upon the receipt of others, as described in this act, which last mentioned bonds shall be proceeded with in all respects like other bonds which are taken by collectors for duties due to the United States: *Provided, however*, That nothing in this act contained shall extend to bonds which had fallen due before the nineteenth day of February last.

Approved, March 19, 1804.

An Act making an appropriation for defraying the expenses incurred in inquiring into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering.

Be it enacted, &c., That the sum of two thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the payment of such expenses as may have been or hereafter may be incurred in prosecuting the inquiry into the official conduct of Samuel Chase and Richard Peters, and in conducting the impeachment against John Pickering.

Sec. 2. *And be it further enacted*, That to every witness summoned to attend the Senate in support of the said impeachment, there shall be allowed for every day's attendance, the sum of three dollars, and at the rate of twelve-and-a-half cents per mile, in coming from and returning to his place of abode, for travelling expenses.

Sec. 3. *And be it further enacted*, That any other expense certified by the chairman of any committee, appointed to conduct the said inquiry or impeachment, to have been authorized by him, shall also be allowed and paid.

Approved, March 19, 1804.

An Act for the relief of the captors of the Moorish armed ships Meshouda and Mirboha.

Be it enacted, &c., That the sum of eight thousand five hundred and ninety-four dollars and fifty cents, being one moiety of the value of the armed ship Meshouda, captured by the frigate John Adams, commanded by Captain John Rodgers, and restored to the Emperor of Morocco, be, and the same is hereby, appropriated for defraying the expense of prize money due to the captors; and that the further sum of seven hundred and thirty-eight dollars and twenty-five cents be, and the same is hereby appropriated for defraying the expenses incurred for the said ship, whilst in possession of the captors.

Sec. 2. *And be it further enacted*, That the further sum of five thousand dollars be, and the same hereby is appropriated, for defraying the expense of prize money due to the officers and crew of the frigate Philadelphia, commanded by Captain William Bainbridge, being one moiety of the value of the armed ship Mirboha, captured by the aforesaid frigate Philadelphia, and likewise restored to the Emperor of Morocco.

Sec. 3. *And be it further enacted*, That the aforesaid several sums shall be divided amongst the captors respectively, in the proportion already established by law, for the distribution of prize money, and shall be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 19, 1804.

An Act altering the sessions of the District Courts of the United States for the districts of Virginia, Rhode Island, and for the district of West Tennessee.

Be it enacted, &c., That the sessions of the district court for the district of Virginia, directed by law to be held in the town of Norfolk, shall be hereafter held and commence on the fifteenth day of June and on the fifteenth day December, in every year; and that the sessions of the said court, directed by law to be held in the city of Richmond, shall be held and commence on the nineteenth day of May, and on the nineteenth day of November, in every year.

Sec. 2. *And be it further enacted*, That when either of the said days shall happen to be a Sunday, the sessions of the said court shall commence on the following day.

Sec. 3. *And be it further enacted*, That all writs and process which have been issued, and all recognizances returnable, and all suits and other pleadings which have been continued to the said district court, directed by law to be holden in Norfolk, on the third Tuesday in March next, shall be returned and held continued to the fifteenth day of June next; and in like manner, all writs and process which have been issued, and recognizances returnable, and all suits and other proceeding which have been continued to the said district court, directed by law to be held in the city of Richmond, on the third Tuesday in June next, shall be returned and held continued to the nineteenth day of May next.

Sec. 4. *And be it further enacted*, That, from and after the first day of April next, the session of the district court for the district of Rhode Island shall commence at Newport, on the second Tuesday in May, and third Tuesday in October; at Providence, the first Tuesday in August, and the first Tuesday in February, annually, any law to the contrary notwithstanding.

Sec. 5. *And be it further enacted*, That all suits, process, and proceedings, of what nature or kind soever, pending in, or made returnable to said court, shall, after the said first day of April next, be continued over until the next court to be held in conformity to this act.

Sec. 6. *And be it further enacted*, That the sessions of the district court for the district of West Tennessee, directed by law to be held in the town of Nashville, shall be hereafter held and commence on the Thursday next succeeding the fourth Mondays of May and November, in every year; and that all writs and process which have been issued, and all recognizances returnable, and all suits and other proceedings which have been continued to the said district court directed by law to be held at Nashville, on the fourth Monday of May next, shall be returned, and held continued to the Thursday next succeeding the said fourth Monday.

Approved, March 23, 1804.

An Act supplementary to the act, entitled "An act to incorporate the subscribers to the Bank of the United States."

Be it enacted, &c., That the President and Directors of the Bank of the United States shall be, and they are hereby, authorized to establish offices of discount and deposit in any part of the territories or dependencies of the United States, in the manner, and on the terms prescribed by the act to which this is a supplement.

Approved, March 23, 1804.

An Act to ascertain the boundary of the lands reserved by the State of Virginia, northwest of the river Ohio, for the satisfaction of her officers and soldiers on Continental Establishment, and to limit the period for locating the said lands.

Be it enacted, &c., That the line run under the direction of the Surveyor General of the United States, from the source of the Little Miami, towards the source of the Scioto, and which binds on the east the surveys of the lands of the United States, shall, together with its course continued to the Scioto river, be considered and held as the western boundary line, north of the source of the Little Miami, of the territory reserved by the State of Virginia, between the Little Miami and Scioto rivers, for the use of the officers and soldiers of the Continental line of that State: *Provided*, That the State of Virginia shall, within two years after the passing of this act, recognise such line as the boundary of the said territory.

Sec. 2. *And be it further enacted*, That all the officers and soldiers, or their legal representatives, who are entitled to bounty lands within the above-mentioned reserved territory, shall complete their locations within three years after the passing of this act, and every such officer and soldier, or his legal representative, whose bounty land has, or shall have been located within that part of the said territory, to which the Indian title has been

extinguished, shall make return of his or their surveys to the Secretary of the Department of War, within five years after the passing of this act and shall also exhibit and file with the said Secretary, and within the same time, the original warrant or warrants under which he claims, or a certified copy thereof, under the seal of the office where the said warrants are legally kept; which warrant, or certified copy thereof, shall be sufficient evidence that the grantee therein named, or the person under whom such grantee claims, was originally entitled to such bounty land; and every person entitled to said lands, and thus applying shall thereupon be entitled to receive a patent in the manner prescribed by law.

Sec. 3. *And be it further enacted*, That such part of the above-mentioned reserved territory as shall not have been located, and those tracts of land within that part of the said territory to which the Indian title has been extinguished, the surveys whereof shall not have been returned to the Secretary of War, within the time and times prescribed by this act, shall thenceforth be released from any claim or claims for such bounty lands, and shall be disposed of in conformity with the provisions of the act, entitled "An act in addition to, and modification of the propositions contained in the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a Constitution and State government, and for the admission of such State into the Union, on an equal footing with the original States, and for other purposes."

Approved, March 23, 1804.

An Act further to alter and establish certain Post Roads; and for other purposes.

Be it enacted, &c., That the following post roads be discontinued:

In North Carolina—From Woodstock to Hyde Court house; from Halifax to Tarborough; and from Tarborough to Louisburg.

In Virginia—From Lexington, by Amherst Springs, to Cabelsborough; from Pendleton Court-house to Bath Court-house, and from Alexandria to Piscataway, in Maryland.

In Kentucky—From Hartford, by Vienna, to Muhlenburg Court-house.

In Ohio—From Zanesville to Marietta; and from Cincinnati to Detroit.

In Maryland—From Westminster to Taneytown; from Emmitsburg to Fairfield, in Pennsylvania; from Elkton to Sassafras; from Bridgetown to Greenborough, and from Rockville to Taneytown.

In Pennsylvania—From Pittsburg to Meadsville.

In Massachusetts—From Worcester to Providence in Rhode Island.

In Vermont—From Newbury, by Barry, to Montpelier.

In New York—From the town of Chester, in Washington county, to Plattsburg.

Sec. 2. *And be it further enacted*, That the following post roads be established, to wit:

In Georgia—From Athens to Walkinsville.

In South Carolina—From Orangeburg, by Barnwell Court-house, Tredways, and Towncreek mills, to Campbelton; and from Statesburg to Columbia.

In North Carolina—From Warrenton, by Ransom's bridge and Enfield, to Tarborough; and to return by Nash Court-house, Sill's Store, and Ransom's Bridge, to Warrenton; from Halifax to Enfield; from Scotland Neck, by Granbury's Crossroads, to Windsor; and from Newbern to the town of Beaufort; from Raleigh, by Nutall's store, to Merritsville.

In Virginia—From Fredericksburg, by Falmouth, Elk Run Church, Fauquier Court-house, and Salem, to Paris; from Clarksburg, by Buchanan Settlement, to Randolph Court-house; from Lancaster Court-house to Kilmarnock; and from Kenawha Court-house, by Point Pleasant, to Galliopolis, in Ohio; from thence to the Scioto Salt Springs; and from Prince Edward Court-house, by Lester's Store, Wheeler's Springs, and Campbell's Court-house, to New London; from Danville in Virginia, to Lenox's Castle, in North Carolina; and from Wood Court-house to Marietta.

In Kentucky—From Springfield, by Green Court-house, Adair Court-house, and Cumberland Court-house, to Jackson Court-house in Tennessee; and from thence to Blackburn Springs; from John Wood's, near the Hazle Patch, to Lincoln Court-house; from the town of Washington to Augusta; from Frankfort to Henry Court-house; that the post road from Montgomery Court-house to Fleming Court-house shall pass by Slate Creek Iron-Works and the Upper Blue Licks; and the post road from Hartford to Logan Court-house shall pass by Muhlenburg Court-house.

In Tennessee—From Dixon's Springs, by Lebanon and Rutherford Court-house, to Nashville; and that the post road from Nashville to Springfield shall pass by Mansker's Lick.

In Ohio—From Warren, in the county of Trumbull, by Cleveland, to Detroit; from Chillicothe to Alexandria; from Steubenville to New Lisbon; from Chillicothe to Franklinton; from Cincinnati, through Franklin and Dayton, to Stanton, from thence through Wainsville and Deerfield to Charleston; from Zanesville to Tuscorowa, to Guadenhutten; and that the post road from Georgetown to Canfield, shall pass through New Lisbon.

In Pennsylvania—From Alexandria, through Hollidaysburg, Beula, and Armagh, to Greensburg; from Pittsburg, through Butler and Mercer, to Meadsville; from Bedford by Berlin, to Somerset; from Chambersburg, through Strasburg and Fannetsburg, to Huntington.

In New Jersey—From Ringoe's Tavern, by Somerset Court-house, Boundbrook, Scotch Plains and Springfield, to Newark; and from Rahway, by Scotch Plains, to New Providence.

In New York—From Kingston through Catskill, Lunenburg, and Coxackie, to the city of Albany; from Lansingburg, through Schaghticoke, Easton, Argyle, and Hartford, to Whitehall;

from Oswego to Aurora; from Unadilla to Cooperstown; from the Little Falls, on the Mohawk river, to the Academy in Fairfield; from Kingston, by Delhi, to the post office in Meredith; from Walton to Jericho; from the Painted Post, in the State of New York, to Williamsport, in the State of Pennsylvania; the post road from Canandagua to Niagara shall pass by Buffalo Creek.

In Connecticut—From Hartford, through Granby and Granville, to Blandford, in Massachusetts; from New Haven, through Hamden, Cheshire, and Southington, to Farmington; and from Hartford, through Glastenbury and Colchester, to New London.

In Massachusetts—From Shrewsbury, through Holden, Rutland, Oakham, Hardwick, Greenwich, Pelham and Amherst, to Northampton.

In Maine—From Brunswick, by Litchfield and Hallowell, to Augusta; from Wiscassett to Boothbay; and from Fryburgh, through Conway, the Notch of the White Mountain, Jefferson, Lancaster, to Guildhall Court-house, in Vermont.

In New Hampshire—From Haverhill, in Massachusetts, to pass through Salem to Windham in New Hampshire; from Alsop to Conway; from Salisbury to Plymouth, alternately on each side of Merimack river; from Littleton to Guildhall Court-house, alternately on each side of Connecticut river; from Littleton, through St. Johnsbury and Danville in Vermont, to St. Alban's on Lake Champlain.

In Louisiana—From Massac, on the Ohio river, to Cape Girardeau in Louisiana; from thence to New Madrid; from the said Cape Girardeau, by St. Genevieve, to Kaskaskias in the Indiana Territory; and from Cahokia to St. Louis in Louisiana; from Natchez to Tombigby; and from Natchez to New Orleans.

Sec. 3. *And be it further enacted*, That all letters, returns, and other papers on public service, sent by mail to or from the offices of Inspector and Paymaster of the Army, shall be received and conveyed free of postage.

Sec. 4. *And be it further enacted*, That whenever it shall be made to appear to the satisfaction of the Postmaster General, that any road established by this or any former act, as a post road, is obstructed by fences, gates, or bars, other than those lawfully used on turnpike roads to collect their toll, and not kept in good repair with proper bridges and ferries, where the same may be necessary, it shall be the duty of the Postmaster General to report the same to Congress, with such information as can be obtained, to enable Congress to establish some other road instead of it in the same main direction.

Sec. 5. *And be it further enacted*, That this act shall not be so construed as to affect any existing contract for carrying the mail.

Approved, March 26, 1804.

An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes.

Be it enacted, &c., That the power vested by law in the surveyor general, shall extend over all the public lands of the United States to which the Indian title has been or shall hereafter be extinguished, north of the river Ohio, and east of the river Mississippi; and it shall be the duty of the said surveyor general to cause the said lands to be surveyed into townships, six miles square, and divided in the same manner and under the same regulations; and to do and perform all such other acts in relation to the said lands, as is provided by law in relation to the lands of the United States, situate northwest of the river Ohio and above the mouth of Kentucky river: *Provided*, That the whole expense of surveying and marking the line shall not exceed three dollars for every mile that shall be actually run, surveyed, and marked: *And provided also*, That such tracts of land as are lawfully claimed by individuals within the said boundaries, and the title whereto has been or shall be recognised by the United States, shall be laid out and surveyed at the expense of the parties respectively, in conformity with the true boundaries of such tracts. And it shall also be the duty of the said surveyor general to cause to be run, surveyed, and marked such of the Indian boundary lines of the said lands, as have not yet been surveyed; and with the approbation of the President of the United States to ascertain by astronomical observations the positions of such places north of the river Ohio and east of the river Mississippi, as may be deemed necessary for the correctness of the surveys, and to the most important points of the geography of the country.

Sec. 2. *And be it further enacted*, That, for the disposal of the lands of the United States north of the river Ohio and east of the river Mississippi, in the Indiana Territory, three land offices shall be established in the same, one at Detroit, for the lands lying north of the State of Ohio to which the Indian title has been extinguished; one at Vincennes for the lands to which the Indian title has been extinguished, and which are included within the boundaries fixed by the treaty lately held with the Indian tribes of the Wabash; and one at Kaskaskia, for so much of the lands included within the boundaries fixed by the treaty of the thirteenth of August, one thousand eight hundred and three, with the Kaskaskia tribe of Indians, as is not claimed by any other Indian tribe; and for each of the said offices a register and a receiver of public moneys shall be appointed, who shall give security in the same manner, in the same sums, and whose compensation, emoluments and duties, and authority, shall, in every respect, be the same in relation to the lands which shall be disposed of at their offices, as are or may be by law provided, in relation to the registers and the receivers of public moneys in the several offices established for the disposal of the lands of the United States north of the river Ohio, and above the mouth of Kentucky river.

Sec. 3. *And be it further enacted*, That every person claiming lands within any of the three tracts of land described in the preceding section, by virtue of any legal grant made by the French Government, prior to the Treaty of Paris, of the tenth of February, one thousand seven hundred

and sixty-three, or of any legal grant made by the British Government, subsequent to the said treaty, and prior to the Treaty of Peace between the United States and Great Britain, of the third of September, one thousand seven hundred and eighty-three, or of any resolution, or act of Congress, subsequent to the said treaty of peace, shall, on or before the first day of January, one thousand eight hundred and five, deliver to the register of the land office, within whose district the land may lie, a notice in writing, stating the nature and extent of his claims, together with a plot of the tract or tracts claimed, and may also, on or before that day, deliver to the said register, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the said register, in books to be kept for that purpose, on receiving from the parties at the rate of twelve and a half cents for every hundred words contained in such written evidence of their claim; and if such person shall neglect to deliver such notice, in writing, of his claim, or to cause to be recorded such written evidence of the same, all his right, so far as the same is derived from any resolution or act of Congress, shall become void, and forever be barred.

Sec. 4. *And be it further enacted*, That the register and receiver of public moneys, of the three above mentioned land offices, shall, for the land respectively lying within their districts, be commissioners for the purpose of examining the claims of persons claiming lands by virtue of the preceding sections. Each of the said commissioners shall, previous to the entering on the duties of his appointment respectively, take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I, —— ——, do solemnly swear (or affirm) that I will impartially exercise and discharge the duties imposed upon me, as commissioner for examining the claims to land, by an act of Congress, entitled "An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes."

It shall be the duty of the said commissioners to meet at the places where the said land offices are by this act established, respectively, on or before the first day of January, one thousand eight hundred and five; and each board shall, in their respective districts, have power to hear in a summary manner all matters respecting such claims; also to compel the attendance of witnesses, to administer oaths, and examine witnesses, and such other testimony as may be adduced, and to decide thereon according to justice and equity, which decision shall be made before Congress in the manner hereinafter directed, and be subject to their decision thereon. The said boards, respectively, shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, full and correct minutes of their proceedings and decisions, together with the evidence on which such decisions are made; which books and papers, on the dissolution of the boards, shall be deposited in the respective offices of the registers of the land offices; and the said clerk shall prepare two transcripts of all the decisions made by the said commissioners in favor of the claimants to land, both of which shall be signed by the said commissioners and one of which shall be transmitted to the surveyor general, and the other to the Secretary of the Treasury; and the lands, the claims to which shall have been thus affirmed by the commissioners, shall not be otherwise disposed of, until the decision of Congress thereupon shall have been made. It shall likewise be the duty of the said commissioners to make to the Secretary of the Treasury a full report of all the claims filed with the register of the proper land office, as above directed, which they may have rejected, together with the substance of the evidence adduced in support thereof, and such remarks as they may think proper: which reports, together with the transcripts of the decisions of the commissioners in favor of the claimants, shall be laid by the Secretary of the Treasury before Congress at their next ensuing session. Each of the commissioners and clerks aforesaid shall be allowed a compensation of five hundred dollars in full for his services as such; and each of the said clerks shall, previous to his entering on the duties of his office, take and subscribe the following oath or affirmation, to wit: "I, —— ——, do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a clerk to the board of commissioners for examining the claims to land, as enjoined by an act of Congress, entitled "An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes."

Sec. 5. *And be it further enacted*, That all the lands aforesaid, not excepted by virtue of the preceding section, shall, with the exception of the section "number sixteen," which shall be reserved in each township for the support of schools within the same, with the exception also of an entire township in each of the three above described tracts of country or districts, to be located by the Secretary of the Treasury, for the use of a seminary of learning, and with the exception also of the salt springs and lands reserved for the use of the same as hereinafter directed, be offered for sale to the highest bidder, under the direction of the surveyor general, or Governor of the Indiana Territory, of the register of the land office, and of the receiver of public moneys, at the places respectively where the land offices are kept, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose. The sales shall remain open at each place for three weeks and no longer: the lands shall not be sold for less than two dollars an acre, and shall, in every other respect, be sold in tracts of the same size and on the same terms and conditions as have been or may be by law provided for the lands sold north of the river Ohio and above the mouth of Kentucky river. All lands, other than the reserved sections and those excepted as above-mentioned, remaining unsold at the closing of the public sales, may be disposed of at private sale by the registers of the respective land offices, in the same manner, under

the same regulations, for the same price, and on the same terms and conditions, as are or may be provided by law for the sale of the lands of the United States north of the river Ohio and above the mouth of Kentucky river. And patents shall be obtained for all lands granted or sold in the Indiana Territory, in the same manner and on the same terms as is or may be provided by law for lands sold in the State of Ohio, and in the Mississippi Territory.

Sec. 6. *And be it further enacted*, That all the navigable rivers, creeks, and waters, within the Indiana Territory, shall be deemed to be and remain public highways; and the several salt springs in the said Territory, together with as many contiguous sections each as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States: And any grant which may hereafter be made for a tract of land, containing a salt spring which had been discovered previous to the purchase of such tract from the United States, shall be considered as fraudulent and null.

Sec. 7. *And be it further enacted*, That the several provisions made in favor of persons who have contracted for lands with John Cleves Symmes and his associates, by an act, entitled "An act to extend and continue in force the provisions of an act, entitled 'An act giving a right of pre-emption to certain persons who have contracted with John Cleves Symmes or his associates, for lands lying between the Miami rivers in the Territory Northwest of the Ohio, and for other purposes," shall be, and the same are hereby continued in force until the first day of June next: *Provided*, That the register of the land office and receiver of the public moneys at Cincinnati shall perform the same duties, exercise the same powers, and enjoy the same emoluments, which by the last recited act were enjoined on or vested in the commissioners designated by the said act: *And provided also*, That no certificate for a right of pre-emption shall be granted, except in favor of persons who had, before the first day of January, one thousand eight hundred, made contracts in writing with John Cleves Symmes or with any of his associates, and who had made to him or them any payment or payments of money for the purchase of such lands; nor unless at least one-twentieth part of the purchase money of the land claimed, shall have previously been paid to the receiver of public moneys, or shall be paid prior to the first day of January next. And every person who shall obtain a certificate of pre-emption, shall be allowed until the first day of January, one thousand eight hundred and six, to complete the payment of his first instalment: *And provided also*, That where any person or persons shall, in virtue of a contract entered into with John Cleves Symmes, have entered and made improvements on any section or half section prior to the first day of April last, (having conformed with all the foregoing provisions in this section,) which improvements by the running of the lines subsequently thereto shall have fallen within any section or half section, other than the one purchased as aforesaid, and other than section number sixteen, such section or half section shall in that case be granted to the person or persons who shall have so entered, improved, and cultivated the same, on payment of the purchase money, agreeably to the provisions made by law for lands sold at private sale; but nothing herein contained shall be construed to give to any such person or persons a greater number of acres than he or they had contracted for with John Cleves Symmes as aforesaid.

Sec. 8. *And be it further enacted*, That every person who may have heretofore obtained from the commissioners a certificate of a right of pre-emption for lands lying between the two Miami rivers, on account of contracts with, or purchase from, John Cleves Symmes or his associates, and who has paid his first instalment; and every person who may obtain a similar certificate by virtue of the preceding section, and shall, on or before the first day of January, one thousand eight hundred and six, pay his first instalment, be permitted to pay the residue of the purchase money in six annual equal payments.

Sec. 9. *And be it further enacted*, That fractional sections of the public lands of the United States, either north of the river Ohio, or south of the State of Tennessee, shall, under the directions of the Secretary of the Treasury, be either sold singly, or by uniting two or more together, any act to the contrary notwithstanding: *Provided*, That no fractional sections shall be sold in that manner until after they shall have been offered for sale to the highest bidder, in the manner hereinafter directed.

Sec. 10. *And be it further enacted*, That all the public lands of the United States, the sale of which is authorized by law, may, after they shall have been offered for sale to the highest bidder in quarter sections, as hereinafter directed, be purchased at the option of the purchaser, either in entire sections, in half sections, or in quarter sections; in which two last cases the sections shall be divided into half sections by lines running due north and south, and the half sections shall be divided into quarter sections by lines running due east and west. And in every instance in which a subdivision of the lands of the United States, as surveyed in conformity with law, shall be necessary to ascertain the boundaries or true contents of the tract purchased, the same shall be done at the expense of the purchaser.

Sec. 11. *And be it further enacted*, That no interest shall be charged on any instalment which may hereafter become due, in payment for any of the public lands of the United States, wherever situated, and which have been sold in pursuance of the act, entitled "An act to amend the act, entitled 'An act providing for the sale of the lands of the United States, in the Territory Northwest of the Ohio, and above the mouth of Kentucky river," or which may hereafter be sold by virtue of that, or of any other act of Congress: *Provided*, That such instalments shall be paid on the day on which the same shall become due; but the interest shall be charged and demanded in

conformity with the provisions heretofore in force, from the date of the purchase on each instalment which shall not be paid on the day on which the same shall become due: *Provided, however*, That on the instalments which are or may become due before the first day of October next, interest shall not be charged, except from the time they became due until paid, but in failure to pay the said instalments on the said first of October, interest shall be charged thereon, in conformity with the provisions heretofore in force, from the date of the purchase.

SEC. 12. *And be it further enacted*, That the sections which have been heretofore reserved, and are by this act directed to be sold, also, the fractional sections, classed as is by the ninth section of this act directed, and all the other lands of the United States north of the Ohio, and above the mouth of Kentucky river, shall be offered for sale in quarter sections, to the highest bidder, under the directions of the register of the land office, and of the receiver of public moneys, at the places, respectively, where the land offices are kept, that is to say: the lands in the district of Chilicothe, on the first Monday of May; the lands in the district of Marietta, on the second Monday of May; the lands in the district of Zanesville, on the third Monday of May; the lands in the district of Steubenville, on the second Monday of June; and the lands in the district of Cincinnati, on the first Monday of September. The sales shall remain open at each place no longer than three weeks; the lands which may be thus sold, shall not be sold for less than two dollars per acre; and shall, in every other respect, be sold on the same terms and conditions, as is provided for the sale of lands sold at private sale. And all the other public lands of the United States, either north of the Ohio, or south of the State of Tennessee, which are directed to be sold at public sale, shall be offered for sale to the highest bidder, in quarter sections: *Provided, however*, That section number twenty-six of the third township of the second fractional range, within the grant made by the United States to John C. Symmes, on which is erected a mill-dam, is hereby granted to Joseph Vanhorne, the proprietor of the said dam; and, also, that section number twenty-nine of the second township of the fourth entire range, be granted to James Sutton; and, also, that section number twenty-one, of the ninth township of the twenty-first range, be granted to Christian Van Gundy, on their payment of the purchase money, agreeably to the provisions made by law, for lands sold at private sale.

SEC. 13. *And be it further enacted*, That whenever any of the public lands shall have been surveyed in the manner directed by law, they shall be divided by the Secretary of the Treasury into convenient surveying districts; and a deputy surveyor shall, with the approbation of the said Secretary, be appointed by the surveyor general for each district, who shall take an oath or affirmation, truly and faithfully to perform the duties of his office; and whose duty it shall be to run and mark such lines as may be necessary for subdividing the lands surveyed as aforesaid, into sections, half sections, or quarter sections, as the case may be; to ascertain the true contents of such subdivisions; and to record in a book to be kept for that purpose, the surveys thus made. The surveyor general shall furnish each deputy surveyor with a copy of the plat of the townships and fractional parts of townships contained in his district, describing the subdivisions thereof, and the marks of the corners. Each deputy surveyor shall be entitled to receive from the purchaser of any tract of land, of which a line or lines shall have been run and marked by him, at the rate of three dollars for every mile thus surveyed and marked, before he shall deliver to him a copy of the plat of such tract, stating its contents. The fees payable by virtue of former laws for surveying expenses, shall, after the first day of July next, be no longer demandable from and paid by the purchasers. And no final certificate shall thereafter be given by the register of any land office to the purchaser of any tract of land, all the lines of which shall not have been run, and the contents ascertained by the surveyor general or his assistants, unless such purchaser shall lodge with the said register a plat of such tract, certified by the district surveyor.

SEC. 14. *And be it further enacted*, That from and after the first day of April next, each of the registers and receivers of public moneys of the several land offices established by law, either north of the river Ohio, or south of the State of Tennessee, shall, in addition to the commission heretofore allowed, receive one-half per cent. on all the moneys paid for public lands sold in their respective offices, and an annual salary of five hundred dollars, the register and receiver of the land office at Marietta excepted, the annual salary of whom shall be two hundred dollars. And from and after the same day the fees payable by virtue of former laws, to the registers of the several land offices, for the entry of lands and for certificate of moneys paid, shall no longer be demandable from, nor paid by, the purchasers of public lands. And it shall be the duty of the Secretary of the Treasury to cause, at least once every year, the books of the officers of the land offices to be examined, and the balance of public moneys in the hands of the several receivers of public moneys of the said offices to be ascertained.

SEC. 15. *And be it further enacted*, That, from and after the first day of April next, the fees heretofore payable for patents for lands, shall no longer be paid by the purchasers. And it shall be the duty of every register of a land office, on application of the party, to transmit, by mail, to the register of the Treasury, the final certificate granted by such register to the purchaser of any tract of land sold at his office: and it shall be the duty of the register of the Treasury, on receiving any such certificate, to obtain and transmit by mail, to the register of the proper land office, the patent to which such purchaser is entitled; but in every such instance the party shall previously pay to the proper deputy postmaster the postage accruing on the transmission of such certificate and patent.

SEC. 16. *And be it further enacted*, That the President of the United States shall have full power to appoint and commission the several registers and receivers of public moneys of the land offices established by this act, in the recess of Congress; and their commissions shall continue in force until the end of the session of Congress next ensuing such appointment.

SEC. 17. *And be it further enacted*, That the several superintendents of the public sales directed by this act, shall receive six dollars each for each day's attendance on the said sales.

SEC. 18. *And be it further enacted*, That a sum not exceeding twenty thousand dollars, be, and the same is hereby appropriated for the purpose of carrying this act into effect; which sum shall be paid out of any unappropriated moneys in the Treasury.

Approved, March 26, 1804.

An Act altering the time for the next Meeting of Congress.

Be it enacted, &c., That after the expiration of the present session, the next meeting of Congress shall be on the first Monday of November next.

Approved, March 26, 1804.

An Act erecting Louisiana into two Territories, and providing for the Temporary Government thereof.

Be it enacted, &c., That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi Territory, and of an east and west line, to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of the said cession, shall constitute a Territory of the United States, under the name of the Territory of Orleans; the government whereof shall be organized and administered as follows:

SEC. 2. The Executive power shall be vested in a Governor, who shall reside in the said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States. He shall be commander-in-chief of the militia of the said Territory, shall have power to grant pardons for offences against the said Territory, and reprieves for those against the United States, until the decision of the President of the United States thereon shall be made known; and to appoint and commission all officers, civil and of the militia, whose appointments are not herein otherwise provided for, and which shall be established by law. He shall take care that the laws be faithfully executed.

SEC. 3. A Secretary of the Territory shall also be appointed, who shall hold his office during the term of four years, unless sooner removed by the President of the United States, whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and Legislative Council, and transmit authentic copies of the proceedings of the Governor in his Executive Department, every six months, to the President of the United States. In case of the vacancy of the office of Governor, the government of the said Territory shall devolve on the Secretary.

SEC. 4. The legislative powers shall be vested in the Governor, and in thirteen of the most fit and discreet persons of the Territory, to be called the Legislative Council, who shall be appointed annually by the President of the United States from among those holding real estate therein, and who shall have resided one year at least in the said Territory, and hold no office of profit under the Territory or the United States. The Governor, by and with advice and consent of the said Legislative Council, or of a majority of them, shall have power to alter, modify, or repeal the laws which may be in force at the commencement of this act. Their Legislative powers shall also extend to all the rightful subjects of legislation; but no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint, burden, or disability, on account of his religious opinions, professions, or worship; in all which he shall be free to maintain his own, and not burdened for those of another. The Governor shall publish throughout the said Territory all the laws which shall be made, and shall from time to time report the same to the President of the United States, to be laid before Congress; which, if disapproved of by Congress, shall thenceforth be of no force. The Governor or Legislative Council shall have no power over the primary disposal of the soil, nor to tax the lands of the United States, nor to interfere with the claims to land within the said Territory. The Governor shall convene and prorogue the Legislative Council, whenever he may deem it expedient. It shall be his duty to obtain all the information in his power in relation to the customs, habits, and dispositions of the inhabitants of the said Territory, and communicate the same from time to time to the President of the United States.

SEC. 5. The judicial power shall be vested in a superior court, and in such inferior courts, and justices of the peace, as the Legislature of the Territory may from time to time establish. The judges of the superior court and the justices of the peace shall hold their offices for the term of four years. The superior court shall consist of three judges, any one of whom shall constitute a court; they shall have jurisdiction in all criminal cases, and exclusive jurisdiction in all those which are capital; and original and appellate jurisdiction in all civil cases of the value of one hundred dollars. Its sessions shall commence on the first Monday of every month, and continue till all the business depending before them shall be disposed of. They shall appoint their own clerk. In all criminal prosecutions which are capital, the trial shall be by a jury of twelve good and lawful men of the vicinage; and in all cases, criminal and civil, in the superior court, the trial shall be by a jury, if either of the parties require it. The inhabitants of the said Territory shall be entitled to the benefits of the writ of *habeas corpus*; they shall be

bailable, unless for capital offences, where the proof shall be evident, or the presumption great; and no cruel and unusual punishments shall be inflicted.

SEC. 6. The Governor, Secretary, Judges, District Attorney, Marshal, and all general officers of the militia, shall be appointed by the President of the United States in the recess of the Senate; but shall be nominated at their next meeting for their advice and consent. The Governor, Secretary, Judges, members of the Legislative Council, justices of the peace, and all other officers, civil and of the militia, before they enter upon the duties of their respective offices, shall take an oath or affirmation to support the Constitution of the United States, and for the faithful discharge of the duties of their office; the Governor, before the President of the United States, or before a judge of the supreme or district court of the United States, or before such other person as the President of the United States shall authorize to administer the same; the Secretary, Judges, and members of the Legislative Council, before the Governor; and all other officers before such persons as the Governor shall direct. The Governor shall receive an annual salary of five thousand dollars; the Secretary of two thousand dollars, and the judges of two thousand dollars each; to be paid quarter yearly out of the revenues of impost and tonnage, accruing within the said Territory. The members of the Legislative Council shall receive four dollars each per day during their attendance in Council.

SEC. 7. *And be it further enacted*, That the following acts, that is to say:

An act for the punishment of certain crimes against the United States.

An act in addition to an act for the punishment of certain crimes against the United States.

An act to prevent citizens of the United States from privateering against nations in amity with, or against citizens of the United States.

An act, for the punishment of certain crimes therein specified.

An act respecting fugitives from justice, and persons escaping from the service of their masters.

An act to prohibit the carrying on the slave trade from the United States to any foreign place or country.

An act to prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited.

An act to establish the post office of the United States.

An act further to alter and establish certain post roads, and for the more secure carriage of the mail of the United States.

An act for the more general promulgation of the laws of the United States.

An act in addition to an act, entitled "An act for the more general promulgation of the laws of the United States."

An act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose.

An act to extend the privilege of obtaining patents for useful discoveries and inventions to certain persons therein mentioned, and to enlarge and define the penalties for violating the rights of patentees.

An act for the encouragement of learning, by securing the copies of maps, charts, and books to the authors and proprietors of such copies, during the time therein mentioned.

An act, supplementary to an act, entitled an act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the times therein mentioned; and extending the benefits thereof to the arts of designing, engraving, and etching historical and other prints.

An act providing for salvage in cases of recapture.

An act respecting alien enemies.

An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated, so as to take effect in every other State.

An act for establishing trading houses with the Indian tribes.

An act for continuing in force a law, entitled an act for establishing trading houses with the Indian tribes. And

An act making provision relative to rations for Indians, and to their visits to the seat of Government:—shall extend to, and have full force and effect in the above-mentioned Territories.

SEC. 8. There shall be established in the said Territory a district court, to consist of one judge, who shall reside therein, and be called the district judge, and who shall hold, in the city of Orleans, four sessions annually; the first to commence on the third Monday in October next, and the three other sessions, progressively, on the third Monday of every third calender month thereafter. He shall in all things have and exercise the same jurisdiction and powers, which are by law given to, or may be exercised by the judge of Kentucky district; and shall be allowed an annual compensation of two thousand dollars, to be paid quarter yearly out of the revenues of impost and tonnage accruing within the said Territory. He shall appoint a clerk for the said district, who shall reside, and keep the records of the court, in the city of Orleans, and shall receive for the services performed by him, the same fees to which the clerk of Kentucky district is entitled for similar services.

There shall be appointed in the said district, a person learned in the law, to act as attorney for the United States, who shall, in addition to his stated fees, be paid six hundred dollars, annually, as a full compensation for all extra services. There shall also be appointed a marshal for the said district, who shall perform the same duties, be subject to the same regulations and penalties, and be entitled to the same fees to which marshals in other districts are entitled for similar services; and shall moreover be paid two hundred dollars, annually, as a compensation for all extra services:

SEC. 9. All free male white persons, who are house-keepers, and who shall have resided one year, at least, in the said Territory, shall be qualified to serve as grand or petit jurors, in the courts of the said Territory, and they shall, until the Legislature thereof shall otherwise direct, be selected in such manner as the judges of the said courts, respectively, shall prescribe, so as to be most conducive to an impartial trial, and to be least burdensome to the inhabitants of the said Territory.

SEC. 10. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in importing or bringing any slave or slaves. And every person so offending, and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought, shall thereupon become entitled to and receive his or her freedom. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or slaves, which shall have been imported since the first day of May, one thousand seven hundred and ninety-eight, into any port or place within the limits of the United States, or which may hereafter be so imported from any port or place without the limits of the United States; and every person so offending and being thereof convicted before any court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought from without the United States, the sum of three hundred dollars, one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and no slave or slaves shall directly or indirectly be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal bona fide owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive his or her freedom.

SEC. 11. The laws in force in the said Territory at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified, or repealed by the Legislature.

SEC. 12. The residue of the province of Louisiana, ceded to the United States, shall be called the District of Louisiana, the Government whereof shall be organized and administered as follows: The Executive power now vested in the Governor of the Indiana Territory, shall extend to and be exercised in the said district of Louisiana. The Governor and Judges of the Indiana Territory shall have power to establish in the said district of Louisiana, inferior courts, and prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof: *Provided however*, That no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship; in all of which he shall be free to maintain his own, and not burdened for those of another: *And provided, also*, That in all criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage, and in all civil cases of the value of one hundred dollars, the trial shall be by jury, if either of the parties require it. The Judges of the Indiana Territory, or any two of them, shall hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general, shall possess the same jurisdiction they now possess in the Indiana Territory, and shall continue in session until all the business depending before them shall be disposed of. It shall be the duty of the Secretary of the Indiana Territory to record and preserve all the papers and proceedings of the Governor, of an executive nature, relative to the district of Louisiana, and transmit authentic copies thereof every six months to the President of the United States. The Governor shall publish throughout the said district, all the laws which may be made as aforesaid, and shall, from time to time, report the same to the President of the United States, to be laid before Congress, which, if disapproved of by Congress, shall thenceforth cease, and be of no effect.

The said district of Louisiana shall be divided into districts by the Governor, under the direction of the President, as the convenience of the settlements shall require, subject to such alterations hereafter as experience may prove more convenient. The inhabitants of each district, between the ages of eighteen and forty-five shall be formed into a militia, with proper officers, according to their numbers, to be appointed by the Governor, except the commanding officer, who shall be appointed by the President, and who, whether a captain, a major, or a colonel, shall be the commanding officer of the district, and as such, shall, under the Governor, have command of the regular officers and troops in his district, as well as of the militia, for which he shall have a brevet commission, giving him such command, and the pay and emoluments of an officer of the same grade in the regular army; he shall be specially charged with the employment of the military and militia of his district, in cases of sudden invasion or insurrection, and until the orders of the Governor can be received, and at all times with the duty of ordering a military patrol, aided by militia, if necessary, to arrest unauthorized settlers in any part of his district, and to commit such offenders to jail, to be dealt with according to law.

SEC. 13. The laws in force in the said district of Louisiana, at the commencement of this act, and not inconsistent with any of the provisions thereof, shall continue in force until altered, mod-

ified, or repealed by the Governor and judges of the Indiana Territory, as aforesaid.

SEC. 14. *And be it further enacted*, That all grants for lands within the territories ceded by the French Republic to the United States, by the Treaty of the thirtieth of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the Treaty of St. Ildefonso, in the Crown, Government, or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted, or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect in law or equity: *Provided, nevertheless*, That anything in this section contained shall not be construed to make null and void any *bona fide* grant, made agreeably to the laws, usages, and customs of the Spanish Government, to an actual settler on the lands so granted, for himself, and for his wife and family; or to make null and void any *bona fide* act or proceeding done by an actual settler, agreeably to the laws, usages, and customs of the Spanish Government, to obtain a grant for lands actually settled on by the person or persons claiming title thereto, if such settlement in either case was actually made prior to the twentieth day of December, one thousand eight hundred and three: *And provided further*, That such grant shall not secure to the grantee or his assigns more than one mile square of land, together with such other and further quantity as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs of the Spanish Government. And that if any citizen of the United States, or other person, shall make a settlement on any lands belonging to the United States, within the limits of Louisiana, or shall survey, or attempt to survey, such lands, or to designate boundaries by marking trees, or otherwise, such offender shall, on conviction thereof, in any court of record of the United States, or the Territories of the United States, forfeit a sum not exceeding one thousand dollars, and suffer imprisonment not exceeding twelve months; and it shall, moreover, be lawful for the President of the United States to employ such military force as he may judge necessary to remove from lands belonging to the United States any such citizen or other person, who shall attempt a settlement thereon.

SEC. 15. The President of the United States is hereby authorized to stipulate with the Indian tribes owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon; but in such stipulation, the said tribes shall acknowledge themselves to be under the protection of the United States, and shall agree that they will not hold any treaty with any foreign Power, individual State, or with the individuals of any State or Power; and that they will not sell or dispose of the said lands, or any part thereof, to any sovereign Power, except to the United States, nor to the subjects or citizens of any other sovereign Power, nor to the citizens of the United States. And, in order to maintain peace and tranquillity with the Indian tribes who reside within the limits of Louisiana, as ceded by France to the United States, the act of Congress, passed on the thirtieth of March, one thousand eight hundred and two, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," is hereby extended to the territories erected and established by this act; and the sum of fifteen thousand dollars of any money in the Treasury not otherwise appropriated by law is hereby appropriated to enable the President of the United States to effect the object expressed in this section.

SEC. 16. The act, passed on the thirty-first day of October, one thousand eight hundred and three, entitled "An act to enable the President of the United States to take possession of the territories ceded by France to the United States, by the treaty concluded at Paris, on the thirtieth day of April last, and for the temporary government thereof," shall continue in force until the first day of October next, anything therein to the contrary notwithstanding; on which said first day of October, this act shall commence, and have full force, and shall continue in force for and during the term of one year, and to the end of the next session of Congress which may happen thereafter.

Approved, March 26, 1804.

An Act in addition to "An act for fixing the Military Peace Establishment of the United States."

Be it enacted, &c., That there shall be appointed, in addition to the surgeon's mates provided for by the "Act fixing the Military Peace Establishment of the United States," as many surgeon's mates, not exceeding six, as the President of the United States may judge necessary, to be attached to garrisons or posts, agreeably to the provision of the said act.

SEC. 2. *And be it further enacted*, That an equivalent in malt liquor or low wines, may be supplied the troops of the United States, instead of the rum, whiskey, or brandy, which by the said act is made a component part of a ration, at such posts and garrisons, and at such seasons of the year, as, in the opinion of the President of the United States, may be necessary for the preservation of their health.

Approved, March 26, 1804.

An Act in addition to the act, entitled "An act for the punishment of certain crimes against the United States."

Be it enacted, &c., That any person, not being an owner, who shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy any ship or other vessel unto which he belongeth, being the property of any citizen or citizens of the United States, or procure the same to be done, and being thereby lawfully convicted, shall suffer death.

SEC. 2. *Be it further enacted*, That if any person shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy any ship or vessel of which he is owner, in part or in whole, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons that hath underwritten, or shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon, or of any other owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall suffer death.

SEC. 3. *And be it further enacted*, That any person or persons guilty of any crime arising under the revenue law of the United States, or incurring any fine or forfeiture by breaches of the said laws, may be prosecuted, tried, and punished, provided the indictment or information be found at any time within five years after committing the offence or incurring the fine or forfeiture, any law or provision to the contrary notwithstanding.

Approved, March 26, 1804.

An Act to make further appropriations for the purpose of extinguishing the Indian claims.

Be it enacted, &c., That a sum not exceeding fifteen thousand dollars, be appropriated to defray the expenses of such treaty or treaties as the President of the United States shall deem it expedient to hold with the Indians, south of the river Ohio, for the purpose of extinguishing Indian claims to any lands lying within the limits of the United States; and that the compensation to be allowed to any of the commissioners who may be appointed for negotiating such treaty or treaties shall not exceed, exclusive of travelling expenses, the rate of six dollars per day, during the time of actual service of such commissioner.

SEC. 2. *And be it further enacted*, That the sum aforesaid shall be paid out of any moneys in the Treasury of the United States, not otherwise appropriated.

Approved, March 26, 1804.

An act to authorize the adjournment of District Courts by Marshals, in certain cases.

Be it enacted, &c., That in case of the inability of the judge of any district court to attend on the day appointed for holding a special or an adjourned district court, such court may, by virtue of a written order from the judge thereof, directed to the marshal of the district, be adjourned by the marshal to the next stated term of said court, or to such day, prior thereto, as in the said order shall be appointed.

Approved, March 26, 1804.

An Act further to protect the commerce and seamen of the United States against the Barbary Powers.

Be it enacted, &c., That for the purpose of defraying the expenses of equipping, officering, manning, and employing such of the armed vessels of the United States as may be deemed requisite by the President of the United States, for protecting the commerce and seamen thereof, and for carrying on warlike operations against the Regency of Tripoli, or any other of the Barbary Powers, which may commit hostilities against the United States, and for the purpose also of defraying any other expenses incidental to the intercourse with the Barbary Powers, or which are authorized by this act, a duty of two and an half per centum ad valorem, in addition to the duties now imposed by law, shall be laid, levied, and collected upon all goods, wares, and merchandise, paying a duty ad valorem, which shall, after the thirtieth day of June next, be imported into the United States from any foreign port or place: and an addition of ten per centum shall be made to the said additional duty in respect to all goods, wares, and merchandise imported in ships or vessels not of the United States: and the duties imposed by this act shall be levied and collected in the same manner, and under the same regulations and allowances as to drawbacks, mode of security, and time of payment, respectively, as are already prescribed by law in relation to the duties now in force on the articles which on the said additional duty is laid by this act.

SEC. 2. *And be it further enacted*, That a distinct account shall be kept of the duties imposed by this act, and the proceeds thereof shall constitute a fund, to be denominated "The Mediterranean Fund," and shall be applied solely to the purposes designated by this act: and the said additional duty shall cease and be discontinued at the expiration of three months after the ratification, by the President of the United States, of a treaty of peace with the Regency of Tripoli; unless the United States should then be at war with any other of the Barbary Powers, in which case the said additional duty shall cease and be discontinued at the expiration of three months after the ratification by the President of the United States of a treaty of peace with such Power: *Provided however*, That the said additional duty shall be collected on all such goods, wares, and merchandise, liable to pay the same, as shall have been imported previous to the day on which the said duty is to cease.

SEC. 3. *And be it further enacted*, That the President of the United States, if he shall deem it necessary, shall be, and he is hereby authorized to cause to be purchased or built, officered, manned, and equipped, two vessels of war, to carry not more than sixteen guns each, and likewise to hire or accept on loan in the Mediterranean sea, as many gun-boats as he may think proper.

SEC. 4. *And be it further enacted*, That a sum not exceeding one million of dollars, to be paid out of any money in the Treasury not otherwise appropriated, shall be, and the same is hereby appropriated, (in addition to the sum heretofore appropriated for the same objects,) for the purpose of defraying any of the expenses authorized by this act, which may be incurred during the present year: or, if necessary, the President of the United States is hereby authorized to borrow the said sum, or such part thereof as he may think

proper, at a rate of interest not exceeding six per centum per annum, from the Bank of the United States, which is hereby empowered to lend the same, or from any other body or bodies politic or corporate, or from any person or persons; and so much of the proceeds of the duties laid by this act, as may be necessary, shall be and is hereby pledged for replacing in the Treasury the said sum of one million of dollars, or so much thereof as shall have been thus expended, and for paying the principal and interest of the said sum, or so much thereof as may be borrowed, pursuant to the authority given in this section: and an account of the several expenditures made under this act shall be laid before Congress during their next session.

Approved, March 26, 1804.

An Act in addition to an act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Be it enacted, &c., That any alien, being a free white person, who was residing within the limits and under the jurisdiction of the United States, at any time between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the fourteenth day of April, one thousand eight hundred and two, and who has continued to reside within the same, may be admitted to become a citizen of the United States, without a compliance with the first condition specified in the first section of the act, entitled "An act to establish an uniform rule of naturalization, and to repeal the acts heretofore passed on that subject."

Sec. 2. *And be it further enacted*, That when any alien who shall have complied with the first condition specified in the first section of the said original act, and who shall have pursued the directions prescribed in the second section of the said act, may die, before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States; and shall be entitled to all rights and privileges as such, upon taking the oaths prescribed by law.

Approved, March 26, 1804.

An Act in relation to the Navy Pension Fund.

Be it enacted, &c., That all the money accruing, or which has already accrued, to the United States, from the capture of prizes authorized by law, and which has not already been paid to the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, as commissioners of the navy pension fund, shall be paid to the Treasurer of the United States.

Sec. 2. *And be it further enacted*, That it shall be the duty of the Treasurer of the United States to receive all the money so accruing, and to disburse the same, pursuant to warrants from the Secretary of the Navy, countersigned by the Accountant of the Navy; and a distinct quarterly account of the moneys thus received and disbursed shall be rendered by the said Treasurer to the accounting officers of the Treasury, in the same manner as is provided for other public moneys received by him.

Sec. 3. *And be it further enacted*, That it shall be the duty of the Accountant of the Navy to receive and settle all accounts whatever, in relation to the navy pension fund, and report from time to time all such settlements as shall have been made by him, for the inspection and revision of the accounting officers of the Treasury, in the same manner as in other cases of public accounts.

Sec. 4. *And be it further enacted*, That the Comptroller of the Treasury shall be fully authorized and empowered to direct suits for the recovery of any sums now due, or which may hereafter be due, to the United States, for prizes as aforesaid, and to prosecute the same in the name of the United States, in the same manner as in other cases for the recovery of moneys due to the United States.

Sec. 5. *And be it further enacted*, That the commissioners of the navy pension fund be, and they are hereby, authorized to appoint a secretary, who shall perform all such duties in relation to the fund as they shall require of him, and shall receive for his services a salary not exceeding two hundred and fifty dollars per annum, to be paid quarter yearly at the Treasury of the United States, and charged to the same fund.

Sec. 6. *And be it further enacted*, That the commissioners of the navy pension fund be, and they are hereby, authorized and directed to make such regulations as may to them appear expedient for the admission of persons on the roll of navy pensioners, and for the payment of the pensions.

Approved, March 26, 1804.

An Act to erect a light-house at the mouth of the Mississippi River, and also a light-house at or near the pitch of Cape Lookout, in the State of North Carolina, and a beacon at the north point of Sandy Hook.

Be it enacted, &c., That, under the direction of the President of the United States, it shall be the duty of the Secretary of the Treasury to provide by contract, to be approved by the President, for building a light-house at the mouth of the river Mississippi, on such site as the President of the United States may deem most proper for the convenience and accommodation thereof.

Sec. 2. *And be it further enacted*, That as soon as land sufficient shall be obtained at a reasonable price for the purpose, and the jurisdiction of the land so to be obtained shall have been ceded to the United States by the State of North Carolina, it shall be the duty of the Secretary of the Treasury to provide by contract for building a light-house on or near the pitch of Cape Lookout, in the said State of North Carolina, which contract shall be approved by the President of the United States; and it shall be the duty of the said Secretary to furnish the said light-houses on Cape Lookout and the mouth of the Mississippi with all necessary supplies, and also to agree for the salaries or wages of the person or persons who may be appointed by the President for the superintendence and care of the same;—and the President is hereby authorized to make such appointments.

Sec. 3. *And be it further enacted*, That the sum of twenty-five thousand dollars be, and is hereby, appropriated for the purpose of defraying the charges and expenses which shall accrue in consequence of the two first sections of this act, to be paid out of any moneys in the Treasury not otherwise appropriated.

Sec. 4. *And be it further enacted*, That it shall be the duty of the Secretary of the Treasury, as soon as the fee of the soil shall have vested in the United States, to cause a beacon to be erected on the north point of Sandy Hook, and the sum of two thousand dollars, out of any unappropriated moneys, is hereby appropriated for that purpose.

Approved, March 26, 1804.

An Act to repeal a part of the act, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen."

Be it enacted, &c., That the ninth section of the act, entitled "An act supplementary to the act concerning Consuls and Vice Consuls, and for the further protection of American seamen," passed the twenty-eighth of February, one thousand eight hundred and three, be, and the same is hereby, repealed.

Sec. 2. *And be it further enacted*, That all powers of attorney for the transfer of any stock of the United States, or for the receipt of interest thereon, executed in a foreign country, since the thirtieth day of June, one thousand eight hundred and three, according to the forms in use at the Treasury of the United States prior to the said thirtieth day of June, one thousand eight hundred and three, shall be valid to all intents and purposes; any provision in the aforesaid section hereby repealed, to the contrary notwithstanding.

Approved March 27, 1804.

An Act supplementary to the act, entitled "An act relative to the election of a President and Vice President of the United States, and declaring the officer who shall act as President in case of vacancies in the offices both of President and Vice President."

Be it enacted, &c., That whenever the amendment proposed during the present session of Congress, to the Constitution of the United States, respecting the manner of voting for President and Vice President of the United States, shall have been ratified by the Legislatures of three-fourths of the several States, the Secretary of State shall forthwith cause a notification thereof to be made to the Executive of every State, and shall also cause the same to be published in at least one of the newspapers printed in each State, in which the laws of the United States are annually published. The Executive authority of each State shall cause a transcript of the said notification to be delivered to the electors appointed for that purpose, who shall first thereafter meet in such State, for the election of a President and Vice President of the United States; and whenever the said electors shall have received the said transcript of notification, or whenever they shall meet more than five days subsequent to the publication of the ratification of the above-mentioned amendment, in one of the newspapers of the State, by the Secretary of State, they shall vote for President and Vice President of the United States, respectively, in the manner directed by the above-mentioned amendment; and having made and signed three certificates of all the votes given by them, each of which certificates shall contain two distinct lists, one, of the votes given for President, and the other, of the votes given for Vice President, they shall seal up the said certificates, certifying on each that lists of all the votes of such State given for President, and of all the votes given for Vice President, are contained therein, and shall cause the said certificates to be transmitted and disposed of, and in every other respect act in conformity with the provisions of the act to which this is a supplement. And every other provision of the act to which this is a supplement, and which is not virtually repealed by this act, shall extend and apply to every election of a President and Vice President of the United States, made in conformity to the above-mentioned amendment to the Constitution of the United States.

And whereas, The above-mentioned amendment may be ratified by the Legislatures of three-fourths of the States, and thereupon become immediately valid, to all intents and purposes, as part of the Constitution, on a day so near the day fixed by law for the meeting of the electors in the several States, that the electors shall not in every State be apprized of the said ratification, and may vote in a manner no longer conformable with the Constitution, as amended, whereby several States might be deprived of their vote in the election of a President and Vice President: for remedy whereof;

Sec. 2. *Be it further enacted*, That the electors who shall be appointed in each State for the election of a President and Vice President of the United States, shall, at every such election, unless they shall have received a transcript of the notification of the ratification of the above-mentioned amendment to the Constitution, or unless they shall meet more than five days subsequent to the publication of the said ratification by the Secretary of State, in one of the newspapers of the State, vote for President and Vice President of the United States, in the following manner, that is to say: they shall vote for two persons as President and Vice President, in conformity with the first section of the second article of the Constitution. And in other respects act in conformity with the provisions of the act to which this act is a supplement; and they shall likewise vote for one person as President, and for one person as Vice President, in conformity with the above-mentioned amendment of the Constitution; and in other respects act in conformity with the provisions of the first section of this act. But those certificates only, of votes given for President and Vice President of the United States, shall be opened by the President of the Senate, for the purpose of being counted, which shall contain the

list or lists of votes given in conformity with the Constitution, as in force on the day fixed by law for the meeting of the electors, by whom the said votes shall have been given.

SEC. 3. *And be it further enacted*, That whenever, by the provisions of the second section of this act, it shall be the duty of the electors for any State to vote, in conformity both with the Constitution and the proposed amendment thereto, the Executive authority of such State shall cause six lists of the names of the electors for the State, to be delivered to the said electors, on or before the day fixed by law for them to meet and vote for President and Vice President; and the said electors shall enclose one of the said lists in each of the certificates by them made and sealed, in conformity with the provisions of this act, and of the act to which this is a supplement.

Approved, March 27, 1804.

An Act to amend an act, entitled "An act concerning the registering and recording of Ships and Vessels."

Be it enacted, &c., That no ship or vessel shall be entitled to be registered as a ship or vessel of the United States, or, if registered, to the benefits thereof, if owned in whole or in part by any person naturalized in the United States, and residing for more than one year in the country from which he originated, or for more than two years in any foreign country, unless such person be in the capacity of a Consul or other public agent of the United States: *Provided*, That nothing herein contained shall be construed to prevent the registering anew of any ship or vessel before registered, in case of a *bona fide* sale thereof to any citizen or citizens resident in the United States: *And provided also*, That satisfactory proof of the citizenship of the person on whose account a vessel may be purchased, shall be first exhibited to the collector, before a new register shall be granted for such vessel.

SEC. 2. *And be it further enacted*, That the proviso in the act, entitled "An act in addition to an act, entitled 'An act concerning the registering and recording of ships and vessels,'" passed the twenty-seventh of June, one thousand seven hundred and ninety-seven, shall be taken and deemed to extend to the executors or administrators of the owner or owners of vessels, in the said proviso described.

Approved, March 27, 1804.

An Act supplementary to the act, entitled "An act providing for a Naval Peace Establishment, and for other purposes."

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to attach to the navy-yard at Washington, and to the frigates and other vessels laid up in ordinary in the Eastern Branch, a captain of the navy, who shall have the general care and superintendence of the same; and shall perform the duties of agent to the Navy Department, and shall be entitled to receive for his services, the pay and emoluments of a captain commanding a squadron on separate service. And the President of the United States is hereby further authorized to attach permanently to the said navy-yard and vessels, one other commissioned officer of the navy, who shall receive for his services the pay and emoluments of a captain commanding a twenty-gun ship, one surgeon and one surgeon's mate of the navy, who shall be severally allowed for their services the same pay, rations, and emoluments, as are allowed to a surgeon and to a surgeon's mate, in the army of the United States; one sailing-master, one head carpenter, one plumber, one head block-maker, one head cooper, two boatswains, two gunners, one sailmaker, one storekeeper, one purser, one clerk of the yard; and also such seamen and marines as in the opinion of the President shall be deemed necessary: *Provided*, That the number of seamen or marines shall not at any time be greater than what is at present authorized by the act to which this is a supplement.

SEC. 2. *And be it further enacted*, That that part of the act to which this is a supplement, which attaches to each frigate laid up in ordinary, one sailing master, one boatswain, one gunner, one carpenter, and one cook, one sergeant or corporal of marines, and eight marines, and to the large frigates twelve, and to the small frigates ten seamen, and which declares that the sailing master shall have the care of the ship, and shall execute such duties of a purser as may be necessary, shall be, and hereby is, repealed.

Approved, March 27, 1804.

An Act supplementary to the act, entitled "An act concerning the City of Washington."

Be it enacted, &c., That the several compensations and allowances established by the act entitled "An act concerning the City of Washington," shall be compensated from the first day of June, one thousand eight hundred and two, being the time when the services, so compensated and allowed, commenced under the authority of the President of the United States.

SEC. 2. *And be it further enacted*, That the surveyor of the said city shall receive as a compensation for his services an allowance of three dollars per day.

SEC. 3. *And be it further enacted*, That the superintendent of the City of Washington be, and he hereby is, authorized to pay the said compensations and allowances, from the said first of June, one thousand eight hundred and two, in conformity with the provision of the said recited act, until Congress shall otherwise direct; and also to pay and discharge all expenses of an incidental nature, which have been or may be incurred in the discharge of the functions of his office and the office of surveyor, which shall be approved by the President of the United States.

SEC. 4. *And be it further enacted*, That the said superintendent be, and he hereby is authorized and directed to settle and pay the claim of Peter Charles L'Enfant, for his services whilst employed by the late Board of Commissioners, in the manner, and on the terms, heretofore proposed by the said Commissioners.

SEC. 5. *And be it further enacted*, That the several expenses authorized by this act shall be paid and discharged out of any funds of the City of Washington, in possession of the superintendent, which are not otherwise appropriated.

Approved, March 27, 1804.

An Act concerning the public buildings at the City of Washington.

Be it enacted, &c., That fifty thousand dollars shall be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated, to be applied under the direction of the President of the United States, in proceeding with the public buildings at the City of Washington, and in making such necessary improvements and repairs thereon, as he shall deem expedient.

Approved, March 27, 1804.

An Act supplementary to the act, entitled, "An act to prescribe the mode in which the public acts, records and judicial proceedings in each State shall be authenticated, so as to take effect in every other State."

Be it enacted, &c., That from and after the passage of this act, all records and exemplifications of office books, which are or may be kept in any public office of any State, not appertaining to a court, shall be approved or admitted in any other court or office in any other State, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the Governor, the Secretary of State, the Chancellor, or the Keeper of the Great Seal of the State, that the said attestation is in due form and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificate be given by the Governor, the Secretary of State, the Chancellor or Keeper of the Great Seal, it shall be under the great seal of the State in which the said certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the State from whence the same are or shall be taken.

SEC. 2. *And be it further enacted*, That all the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts, and offices, of the respective Territories of the United States, and countries subject to the jurisdiction of the United States, as to the public acts records, office books, judicial proceedings, courts, and offices, of the several States.

Approved, March 27, 1804.

An Act for imposing more specific duties on the importation of certain articles; and also, for levying and collecting light money on foreign ships or vessels, and for other purposes.

Be it enacted, &c., That, from and after the thirtieth day of June next, the following articles, in addition to those already exempted from duty, shall and may be imported free from any duty; namely, rags of linen, of cotton, of woollen, and of hempen cloth; bristles of swine, regulus of antimony, unwrought clay, unwrought burr stones, and the bark of the cork tree.

SEC. 2. *And be it further enacted*, That, from and after the thirtieth day of June next, the duties now in force upon the articles hereinafter enumerated and described, at their importation into the United States, shall cease; and that, in lieu thereof, there shall be thenceforth laid, levied and collected upon the said articles, at their said importation, the several and respective rates or duties following, that is to say:

On foreign caught dried fish, fifty cents per quintal.

On foreign caught pickled fish, as follows, to wit:

On salmon, one hundred cents per barrel; on mackerel, sixty cents per barrel; on all other pickled fish, forty cents per barrel.

On cables, tarred cordage, white lead, red lead, almonds, currants, prunes and plums, figs, raisins imported in jars and boxes, and muscadel raisins, two cents per pound.

On all other kinds of raisins, one cent and a half per pound.

On tallow, yellow ochre in oil, anchors, and sheet iron, one cent and a half per pound.

On Spanish brown, dry yellow ochre, slit and hoop iron, one cent per pound.

On starch, three cents per pound.

On hair powder, glue, and seines, four cents per pound.

On pewter plates and dishes, four cents per pound.

On untarred cordage, two cents and a half per pound.

On quicksilver, six cents per pound.

On Chinese cassia and gunpowder, four cents per pound.

On cinnamon and cloves, twenty cents per pound.

On mace, one dollar and twenty-five cents per pound.

On nutmegs, fifty cents per pound.

On black glass quart bottles, sixty cents per gross.

On window glass, as follows: On all not above eight inches by ten, one dollar and sixty cents per hundred square feet; not above ten inches by twelve, one dollar and seventy-five cents per hundred square feet; and on all above ten inches by twelve, two dollars and twenty-five cents per hundred square feet.

On cigars, two dollars per thousand.

On kid and Morocco shoes, fifteen cents a pair.

On foreign lime, fifty cents per cask containing sixty gallons; and on Sicily wine, thirty cents per gallon.

Sec. 3. *And be it further enacted*, That an addition of ten per centum shall be made to the several rates of duties above specified and imposed in respect to all such goods, wares, and merchandise as aforesaid, as shall, after the said thirtieth day of June, be imported in ships or vessels not of the United States.

Sec. 4. *And be it further enacted*, That the duties laid by this act, shall be levied and collected in the same manner, and under the same regulations and allowances as to drawbacks, mode of security, and time of payment, respectively, as the several duties now in force on the respective articles herein before enumerated: *Provided, however*, That no drawbacks shall be allowed on the exportation of foreign fish, or fish oil, or of playing cards.

Sec. 5. *And be it further enacted*, That all duties and drawbacks which, by virtue of this act, shall be payable and allowable on any specific quantity of goods, wares, and merchandise, shall be deemed to apply, in proportion, to any quantity greater or less than such specific quantity.

Sec. 6. *And be it further enacted*, That a duty of fifty cents per ton, to be denominated "light money," shall be levied and collected on all ships or vessels not of the United States, which, after the aforesaid thirtieth day of June next, may enter the ports of the United States: *Provided, however*, That nothing in this act shall be so construed as to contravene any provision of the treaty or conventions concluded between the United States of America and the French Republic, on the thirtieth day of April, one thousand eight hundred and three: *And provided, also*, That the said light-money shall be levied and collected in the same manner, and under the same regulations, as the tonnage duties now imposed by law.

Sec. 7. *And be it further enacted*, That the person exercising the powers which, under the Spanish Government, were vested in the Intendant of the province of Louisiana, shall, until a district court of the United States shall be established in the Territory of Orleans, in conformity with the provisions of the act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," have and exercise, in all cases whatever arising within the said Territory, under the laws regulating and providing for the collection of duties on imports and tonnage, or under any other revenue laws of the United States, the same jurisdiction and powers which, by law, are given to the district and circuit courts of the United States. And the powers to remit fines, penalties, or forfeitures, and to remove disabilities, which, by law, are vested in the Secretary of the Treasury, may and shall, in all cases of such fines, penalties, forfeitures, or disabilities, incurred within the Territory of Orleans, and until a Governor of the said Territory shall be appointed, and shall enter into the functions of his office, be exercised by the person exercising the powers, which, under the Spanish Government, were vested in the Governor of the province of Louisiana; and the said powers to remit fines, penalties, or forfeitures, and to remove disabilities, may and shall, in like manner, be exercised by the Governor of the said Territory, from the time when he shall enter into the functions of his office, in conformity with the provisions of the said act, until the end of the next session of Congress, and no longer.

Approved, March 27, 1804.

An Act relative to the compensations of certain officers of the customs, and to provide for appointing a Surveyor in the district therein mentioned.

Be it enacted, &c., That, from and after the last day of June, in the present year, the salaries heretofore allowed, by law, to the several collectors of the customs for the districts of Bath, Portsmouth, Newport, Middletown, New Haven, Delaware, Richmond, Wilmington, in North Carolina, Newbern and Edenton, shall cease and be discontinued. And there shall be allowed and paid, annually, to the officers of the customs hereafter named, the following sums, respectively, viz:

To the collector for the district of Natchez, in addition to the fees and other emoluments of office, the sum of two hundred and fifty dollars; and to each of the surveyors at New London, Middletown, New Haven, and Alexandria, in addition to the allowances already established by law, the sum of fifty dollars.

Sec. 2. *And be it further enacted*, That, from and after the said last day of June, in lieu of the commissions heretofore allowed by law, there shall be allowed to the collector of the customs for Wilmington, in North Carolina, and Newbern, two and a half per cent.

To the collectors for Petersburg and Richmond, two per cent.

To the collectors for Kennebunk and New London, one and three-quarters per cent.

To the collector for Bath, one and a half per cent.

To the collectors for New Haven and Middletown, one and three-eighths per cent.

To the collectors for Providence and Alexandria, one and one-quarter per cent.

To the collector for Newport, one and one-eighth per cent.

To the collector for Portland, three-quarters of one per cent.

And to the collectors for Salem and Beverly, five-eighths of one per cent., on all moneys by them respectively received on account of the duties arising on goods, wares, and merchandise, imported into the United States, and on the tonnage of ships and vessels.

Sec. 3. *And be it further enacted*, That there shall be appointed a surveyor for the district of Marblehead, to reside at Marblehead, who shall be entitled to receive, in addition to the other emoluments allowed by law, a salary of one hundred dollars annually.

Approved, March 27, 1804.

An Act for the appointment of an additional Judge for the Mississippi Territory, and for other purposes.

Be it enacted, &c., That there shall be appointed an additional judge for the Mississippi Territory, who shall reside at or near the Tombigbee settlement, and who shall possess and exercise, within the district of Washington, as fixed and ascertained by an act of the General Assembly of the Mississippi Territory, entitled "An act for the more convenient organization of the courts of said Territory," the jurisdiction heretofore possessed and exercised by the superior court of the said Territory within the said district of Washington, and to the exclusion of the original jurisdiction of the said superior court within the same: *Provided, always*, That the said superior court shall have full power and authority to issue writs of error to the court established by this act, and to hear and determine the same, when sitting, for the district of Adams, as fixed and ascertained by the act of the General Assembly of the Mississippi Territory, herein before mentioned.

Sec. 2. *Be it further enacted*, That the said superior court are hereby authorized, upon the reversal of a judgment of the court established by this act, to render such judgment as the said court ought to have rendered or passed, except where the reversal is in favor of the plaintiff in the original suit, and the debt or damages to be assessed are uncertain, in which case the cause shall be remanded in order to a final determination.

Sec. 3. *Be it further enacted*, That when any person, not being an executor or administrator, applies for a writ of error, such writ of error shall be no stay of proceedings in the court to which it issues, unless the plaintiff in error shall give security, to be approved of by a judge of the said superior court, that the plaintiff in error shall prosecute his writ to effect, and pay the condemnation money and all costs, or otherwise abide the judgment in error, if he fail to make his plea good.

Sec. 4. *Be it further enacted*, That all pleas, process, and proceedings whatever, which may have been commenced in the said superior court, within the aforesaid district of Washington, shall be, and the same are hereby, transferred to the court established by this act, and the officers appointed to issue or execute the process of the said superior court within the district of Washington, and to record the proceedings of the same, are, hereby, authorized and required to issue and execute the process of the court established by this act, and to record the proceedings thereof.

Sec. 5. *Be it further enacted*, That the court established by this act shall hold two terms in each and every year, at the place where the courts for Washington county, within the said Territory, shall be held, to commence on the day following, to wit: on the first Monday in May and September, annually, and shall then and there proceed to hear and determine the pleas, process, and proceedings depending before them, in the same manner as the said superior court, within the district of Washington aforesaid, might or could have done, in case this act had not been passed.

Sec. 6. *And be it further enacted*, That the judge to be appointed by virtue of this act shall receive the same salary, and payable in the same manner, which is established by law for judges of the said superior court of the Mississippi Territory.

Approved, March 27, 1804.

An Act to provide for a more extensive distribution of the Laws of the United States.

Be it enacted, &c., That the Secretary for the Department of State be, and he hereby is, authorized and empowered to procure four hundred copies of the laws of the United States: one hundred copies of which shall be distributed in just proportions in the Territory of Orleans and district of Louisiana, the other three hundred copies to be reserved for the disposal of Congress.

Sec. 2. *And be it further enacted*, That one thousand copies of the laws of the United States which shall be printed at the close of each session, shall be reserved for the disposal of Congress, and that the distribution of the remainder shall be extended to the Territory of Orleans and district of Louisiana, and to such other Territories as are or may hereafter be established, in the same manner and proportion as is already provided by law for distributing them among the several States and Territories; and the Secretary of State shall cause to be published in one newspaper in each of the Territories of the United States where newspapers are printed, the laws which have passed during the present session, and which may hereafter be passed by Congress.

Sec. 3. *And be it further enacted*, That there shall be transmitted, by the Secretary of State, to each member of the Senate and House of Representatives, and to each Territorial Delegate, as soon as may be after the expiration of each session of Congress, a copy of all the laws which shall have been passed at such session.

Sec. 4. *And be it further enacted*, That the sum of two thousand dollars be, and the same hereby is, appropriated for defraying the expense authorized by this act, payable out of any money in the Treasury not otherwise appropriated.

Approved, March 27, 1804.

An Act supplementary to the act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

Be it enacted, &c., That persons claiming lands in the Mississippi Territory, by virtue of any British or Spanish grant, or by virtue of the three first sections of the act to which this is a supplement, or of the articles of agreement and cession with the State of Georgia, may, after the last day of March, in the year one thousand eight hundred and four, and until the last day of November, then next following, give notice in writing, of their claims, to the register of the land office, for the lands lying west of Pearl river, and have the same recorded, in the manner prescribed by the fifth section of the act to which this is a supplement: *Provided, however*, That where lands are claimed by virtue of a complete Spanish or British grant, in conformity with the articles of agreement and cession between the United States

and the State of Georgia, it shall not be necessary for the claimant to have any other evidence of his claim recorded except the original grant or patent, together with the warrant or order of survey, and the plot; but all the subsequent conveyances of deeds shall be deposited with the Register, to be by him laid before the Commissioners when they shall take the claim into consideration: and the powers vested by law in the Commissioners appointed for the purpose of ascertaining the claims to lands lying west of Pearl river, shall, in every respect, extend and apply to claims which may be made by virtue of this section; and the same proceedings shall thereupon be had, as are prescribed by the act aforesaid in relation to claims which shall have been exhibited on or before the last day of March, in the year one thousand eight hundred and four.

SEC. 2. *And be it further enacted*, That the Commissioners aforesaid, appointed to adjust the claims to lands lying west of Pearl river, shall have power to adjourn from time to time, and for such time as they may think fit: *Provided, however*, That they shall meet on the first day of December, in the year one thousand eight hundred and four, and shall not afterwards adjourn for a longer time than three days, nor until they shall have completed the business for which they were appointed: *And provided, also*, That nothing contained in this act, nor in that to which this is a supplement, shall be construed to prevent the said Commissioners, nor those appointed to adjust the claims to lands lying east of Pearl river, from acting and deciding at any time, on any claim which has been exhibited in the manner prescribed by law, although the evidence of the same may not, at that time, have been transcribed on the books of the register.

SEC. 3. *And be it further enacted*, That when any Spanish grant, warrant, or order of survey, shall be produced to either of the said Boards of Commissioners, for lands which were not, at the date of such grant, warrant, or order of survey, or within one year thereafter, inhabited, cultivated, or occupied by, or for the use of the grantee; or whenever either of the said boards shall not be satisfied, that such grant, warrant, or order of survey did issue, at the time when the same bears date, the said Commissioners shall not be bound to consider such grant, warrant, or order of survey, as conclusive evidence of the title, but may require such other proof of its validity as they may deem proper: And the said Boards shall make a full report to the Secretary of the Treasury, to be by him laid before Congress for their final decision, of all claims grounded on such grants, warrants, or orders of survey, as may have been disallowed by the said Boards on suspicion of their being antedated, or otherwise fraudulent.

SEC. 4. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized to employ an agent, whose compensation shall not exceed one thousand five hundred dollars in full for all his services, for the purpose of appearing before the said Commissioners, in behalf of the United States, to investigate the claims for lands, and to oppose all such as he may deem fraudulent and unfounded. And each of the said Boards of Commissioners shall have the same powers to compel the attendance of witnesses, as are now vested in the courts of the United States.

SEC. 5. *And be it further enacted*, That the Board of Commissioners appointed to adjust the claims to lands lying west of Pearl river, shall be authorized to employ an assistant clerk, and also a translator of the Spanish language, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish grants, deeds, or other evidences of claims on the Register's books. The said translator shall receive, for the recording done by him, the fees already provided by law, and may be allowed, not exceeding fifty dollars, for every month he shall be employed, provided that the whole compensation, other than that arising from fees, shall not exceed six hundred dollars. The assistant clerk shall be allowed a sum not exceeding five hundred dollars for his services; and each of the Commissioners of the said Board, in addition to the compensation now fixed by law, shall be allowed six dollars for every day he shall attend on the Board after the last day of November, in the year one thousand eight hundred and four: *Provided*, That this additional compensation shall not exceed two thousand dollars, for each of the said Commissioners.

SEC. 6. *And be it further enacted*, That, from and after the first day of April, in the year one thousand eight hundred and four, the Surveyor of the lands of the United States south of the State of Tennessee, shall receive an annual compensation of two thousand dollars, in lieu of the annual compensation now fixed by law. And the lands claimed by virtue of Spanish grants, legally and fully executed, and the titles to which were confirmed by the articles of agreement and cession between the United States and the State of Georgia, shall be surveyed in the manner prescribed by the act to which this is a supplement, at the expense of the United States, anything in the said act to the contrary notwithstanding.

SEC. 7. *And be it further enacted*, That the tract of country lying north of the Mississippi Territory, and south of the State of Tennessee, and bounded on the east by the State of Georgia, and on the west by Louisiana, shall be, and the same is hereby, annexed to, and made a part of the Mississippi Territory.

SEC. 8. *And be it further enacted*, That so much of the eighth section of an act, entitled "An act regulating grants of lands, and providing for the disposal of the lands of the United States south of the State of Tennessee," as provides, "that no certificate shall be granted for land lying east of the Tombigbee river," be, and the same hereby is, repealed: *Provided*, That no certificate shall be granted for any lands to which the Indian title has not been extinguished.

SEC. 9. *And be it further enacted*, That the Commissioners appointed in pursuance of the act aforesaid, be, and they are hereby, authorized and

required to make, on or before the first day of December next, a full report to the Secretary of the Treasury of all claims that have been, or may be laid before them for lands held by warrant of survey and improvement in cases where the claimants were minors, and not heads of families, at the time such warrants were issued, with the circumstances which occasioned the issuing of such warrants, and the validity which has been considered as attached to the same.

SEC. 10. *And be it further enacted*, That, for the purpose of carrying this act into effect, a sum not exceeding twenty thousand dollars, shall be, and the same is hereby, appropriated, to be paid out of any money in the Treasury not otherwise appropriated.

SEC. 11. *And be it further enacted*, That the execution of so much of the twelfth section of the act to which this act is a supplement, as excepts "such town lots, not exceeding two, in the town of Natchez, and such an out-lot adjoining the same, not exceeding thirty acres, as may be the property of the United States, to be located by the Governor of the Mississippi Territory for the use of Jefferson College," be, and the same is hereby, suspended until the end of the next session of Congress.

SEC. 12. *And be it further enacted*, That transcripts of the records of the British province of West Florida, to claims for land therein, and which have been delivered to the Government of the United States, may be produced as evidence, and shall be entitled to the same weight in any court of the United States, as if the same had been delivered, or shall be delivered to either of the Registers of the land offices in the Mississippi Territory, before the last of March, one thousand eight hundred and four, anything in this act, or in the fifth section of the act to which this is a supplement, to the contrary notwithstanding.

SEC. 13. *And be it further enacted*, That the sum of three thousand dollars be, and the same is hereby appropriated, for the purpose of extending the external commerce, and exploring the limits of the United States in the new acquired territory of Louisiana, out of any moneys in the Treasury not otherwise appropriated.

SEC. 14. *And be it further enacted*, That Major General Lafayette be, and he is hereby, authorized and empowered to locate and survey the lands allowed him by the fourth section of an act, entitled "An act to revive and continue in force an act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of United Brethren for propagating the Gospel among the Heathen, and for other purposes,'" on any lands, the property of the United States, in the Territory of Orleans; and on presenting the survey of the said land to the Secretary of the Treasury, the President of the United States is hereby authorized to issue letters patent to the said Major General Lafayette for the quantity of lands allowed by the said act.

Approved, March 27, 1804.

Resolution to instruct the Joint Committee of Enrolled Bills to wait on the President of the United States, respecting a variance between an engrossed and enrolled bill.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the Joint Committee for Enrolled Bills be instructed to wait on the President of the United States, and lay before him the engrossed bill, entitled "An act for the relief of the captors of the Moorish armed ships Meshouda, and Mirboha," with the several amendments thereto, as the same was finally passed by both Houses of Congress; and to state the variance between the said engrossed bill and the enrollment thereof, as approved by the President, and to request that he will cause the said enrolled bill to be returned to the House in which it originated, for the purpose of rendering the said bill conformable with the engrossed bill and the amendments thereto, as passed by the two Houses of Congress.

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ANNALS

OF

THE CONGRESS OF THE UNITED STATES.

EIGHTH CONGRESS—SECOND SESSION.

THE

DEBATES AND PROCEEDINGS

IN THE

CONGRESS OF THE UNITED STATES;

WITH

AN APPENDIX,

CONTAINING

IMPORTANT STATE PAPERS AND PUBLIC DOCUMENTS,

AND ALL

THE LAWS OF A PUBLIC NATURE;

WITH A COPIOUS INDEX.

EIGHTH CONGRESS—SECOND SESSION.

COMPRISING THE PERIOD FROM NOVEMBER 5, 1804, TO MARCH 3, 1805, INCLUSIVE.

COMPILED FROM AUTHENTIC MATERIALS.

WASHINGTON:

PRINTED AND PUBLISHED BY GALES AND SEATON.

1852.

PROCEEDINGS AND DEBATES

OF

THE SENATE OF THE UNITED STATES,

AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, NOVEMBER 5, 1804.

Monday, November 5, 1804.

The second session of the Eighth Congress, conformably to the act passed at the last session, entitled "An act altering the time for the next meeting of Congress," commenced this day; and the Senate assembled at the City of Washington.

PRESENT:

Aaron Burr, Vice President of the United States and President of the Senate.

Simeon Olcott and William Plumer, from New Hampshire.

John Quincy Adams, from Massachusetts.

Uriah Tracy, from Connecticut.

Christopher Ellery, from Rhode Island.

Stephen R. Bradley and Israel Smith, from Vermont.

John Condit, from New Jersey.

Samuel White, from Delaware.

Samuel Smith, from Maryland.

Abraham Baldwin, from Georgia; and

Thomas Worthington, from Ohio.

William B. Giles, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Abraham B. Venable, resigned, took his seat, and his credentials were read.

The Vice President gave notice that he had received a letter from William Hill Wells, a Senator from the State of Delaware, resigning his seat in the Senate.

The number of Senators present not being sufficient to constitute a quorum, the Senate adjourned.

Tuesday, November 6.

Jesse Franklin, from the State of North Carolina, George Logan, from the State of Pennsylvania, and Timothy Pickering, from the State of Massachusetts, severally attended.

Andrew Moore, appointed a Senator by the Executive of the Commonwealth of Virginia, in place of Wilson C. Nicholas, resigned, took his seat, and his credentials were read.

The President administered the oath to Mr. Giles and Mr. Moore, as the law prescribes.

Ordered, That the President be requested to notify the Executive of the State of Delaware of the resignation of Mr. Wells.

No quorum being present, the Senate adjourned.

Wednesday, November 7.

Robert Wright, from the State of Maryland, attended.

Ordered, That the Secretary notify the House of Representatives that a quorum of the Senate is assembled and ready to proceed to business.

A message from the House of Representatives informed the Senate that a quorum of the House of Representatives is assembled and ready to proceed to business. The House of Representatives have appointed a committee on their part, jointly, with such committee as the Senate may appoint, to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled and ready to receive any communications that he may be pleased to make to them. The House of Representatives have also passed a resolution that two Chaplains, of different denominations, be appointed to Congress for the present session, one by each House, who shall interchange weekly; in which several resolutions they desire the concurrence of the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States, and notify him that a quorum of the two Houses is assembled; and concurred therein, and Messrs. Samuel Smith and Baldwin were appointed the committee on the part of the Senate.

The Senate took into consideration the resolution of the House of Representatives for the appointment of two Chaplains to Congress during the present session, and having agreed thereto, proceeded to the choice of a Chaplain on their part; and the Rev. Mr. McCormick was duly elected.

Mr. Samuel Smith reported, from the joint committee, that they had waited on the President of the United States, agreeably to the resolution of this day, and that the President of the United States had informed the committee that he would make a communication to the two Houses to-morrow at 12 o'clock.

Resolved, That each Senator be supplied during the present session with three such newspapers, printed in any of the States, as he may choose, provided that the same be furnished at the usual rate for the annual charge of such papers.

Resolved, That James Mathers, Sergeant-at-Arms and Doorkeeper to the Senate, be, and he is hereby, authorized to employ one additional assistant and two horses, for the purpose of performing such services as are usually required by the Doorkeeper to the Senate; and that the sum of twenty-eight dollars be allowed him weekly for that purpose during the session, and for twenty days after.

THURSDAY, November 8.

JONATHAN DAYTON, from the State of New Jersey, and JAMES HILLHOUSE, from the State of Connecticut, severally attended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

To a people, fellow-citizens, who sincerely desire the happiness and prosperity of other nations, to those who justly calculate that their own well-being is advanced by that of the nations with which they have intercourse, it will be a satisfaction to observe, that the war which was lighted up in Europe a little before our last meeting, has not yet extended its flames to other nations, nor been marked by the calamities which sometimes stain the footsteps of war. The irregularities, too, on the ocean, which generally harass the commerce of neutral nations, have, in distant parts, disturbed ours less than on former occasions. But, in the American seas, they have been greater from peculiar causes; and even within our harbors and jurisdiction, infringements on the authority of the laws have been committed, which have called for serious attention. The friendly conduct of the Governments from whose officers and subjects these acts have proceeded, in other respects, and in places more under their observation and control, gives us confidence, that our representations on this subject will have been properly regarded.

While noticing the irregularities committed on the ocean by others, those on our own part should not be omitted, nor left unprovided for. Complaints have been received that persons residing within the United States have taken on themselves to arm merchant vessels, and to force a commerce into certain ports and countries in defiance of the laws of those countries. That individuals should undertake to wage private war, independently of the authority of their country, cannot be permitted in a well ordered society. Its tendency to produce aggression on the laws and rights of other nations, and to endanger the peace of our own, is so obvious that I doubt not you will adopt measures for restraining it effectually in future.

Soon after the passage of the act of the last session authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations were immediately given, and assurances that, reserving our claims in that quarter as a subject of discussion and arrangement with Spain, no act was meditated in the meantime inconsistent with the peace and friendship existing between the two nations; and that conformably to these intentions would be the execution of the law. That Government, however, thought proper to suspend the ratification of the Convention of 1802. But the explanations which would reach them soon after, and still more the confirmation of them by the tenor of the instrument establishing the port and district, may reasonably be expected to replace them in the dispositions and views of the whole subject which originally dictated the Convention.

I have the satisfaction to inform you that the objections which had been urged by that Government against the validity of our title to the country of Louisiana have been withdrawn; its exact limits, however, remaining still to be settled between us; and to this is to be added, that, having prepared and delivered the stock created in execution of the Convention of Paris, of April 30, 1803, in consideration of the cession of that country, we have received from the Government of France an acknowledgment in due form of the fulfilment of that stipulation.

With the nations of Europe, in general, our friendship and intercourse are undisturbed, and from the Governments of the belligerent Powers especially, we continue to receive those friendly manifestations which are justly due to an honest neutrality, and to such good offices consistent with that as we have opportunities of rendering.

The activity and success of the small force employed in the Mediterranean in the early part of the present year, the reinforcements sent into that sea, and the energy of the officers having command in the several vessels, will, I trust, by the sufferings of war, reduce the barbarians of Tripoli to the desire of peace on proper terms. Great injury, however, ensues to ourselves as well as to others interested, from the distance to which prizes must be brought for adjudication, and from the impracticability of bringing hither such as are not seaworthy.

The Bey of Tunis having made requisitions unauthorized by our treaty, their rejection has produced from him some expressions of discontent. But to those who expect us to calculate whether a compliance with unjust demands will not cost us less than a war, we must leave as a question of calculation for them; also, whether to retire from unjust demands will not cost them less than a war. We can do to each other very sensible injuries by war; but the mutual advantages of peace make that the best interest of both.

Peace and intercourse with the other Powers on the same coast continue on the footing on which they are established by treaty.

In pursuance of the act providing for the temporary government of Louisiana, the necessary officers for the Territory of Orleans were appointed in due time, to commence the exercise of their functions on the first day of October. The distance, however, of some of them, and indispensable previous arrangements, may have retarded its commencement in some of its parts; the form of government thus provided having been considered but as temporary, and open to such future improvements as further information of the circumstances of our brethren there might suggest, it will of course be subject to your consideration.

In the district of Louisiana it has been thought best to adopt the division into subordinate districts, which had been established under its former government. These being five in number, a commanding officer has been appointed to each, according to the provisions of the law, and so soon as they can be at their stations, that district will also be in its due state of organization. In the meantime their places are supplied by the officers before commanding there; and the functions of the Governor and Judges of Indiana having com-

menced, the government, we presume, is proceeding in its new form. The lead mines in that district offer so rich a supply of that metal as to merit attention. The report now communicated will inform you of their state, and of the necessity of immediate inquiry into their occupation and titles.

With the Indian tribes established within our newly acquired limits, I have deemed it necessary to open conferences for the purpose of establishing a good understanding and neighborly relations between us. So far as we have yet learned, we have reason to believe that their dispositions are generally favorable and friendly, and, with these dispositions on their part, we have in our own hands means which cannot fail us for preserving their peace and friendship. By pursuing an uniform course of justice towards them, by aiding them in all the improvements which may better their condition, and especially by establishing a commerce on terms which shall be advantageous to them, and only not losing to us; and so regulated as that no incendiaries of our own, or any other nation, may be permitted to disturb the natural effects of our just and friendly offices, we may render ourselves so necessary to their comfort and prosperity that the protection of our citizens from their disorderly members will become their interest and their voluntary care. Instead, therefore, of an augmentation of military force proportioned to our extension of frontier, I propose a moderate enlargement of the capital employed in that commerce, as a more effectual, economical, and humane instrument for preserving peace and good neighborhood with them.

On this side the Mississippi an important relinquishment of native title has been received from the Delawares. That tribe, desiring to extinguish in their people the spirit of hunting, and to convert superfluous lands into the means of improving what they retain, has ceded to us all the country between the Wabash and Ohio, south of and including the road from the Rapids towards Vincennes; for which they are to receive annuities in animals and implements for agriculture, and in other necessaries. This acquisition is important, not only for its extent and fertility, but as fronting three hundred miles on the Ohio, and nearly half that on the Wabash, the produce of the settled country descending those rivers will no longer pass in view of the Indian frontier, but in a small portion; and, with the cession heretofore made by the Kaskaskias, nearly consolidates our possessions north of the Ohio, in a very respectable breadth, from Lake Erie to the Mississippi. The Piankeshaws having some claim to the country ceded by the Delawares, it has been thought best to quiet that by fair purchase also. So soon as the treaties on this subject shall have received their Constitutional sanctions they shall be laid before both Houses.

The act of Congress of February 28, 1803, for building and employing a number of gun-boats, is now in a course of execution to the extent there provided for. The obstacle to naval enterprise which vessels of this construction offer for our seaport towns; their utility towards supporting, within our waters, the authority of the laws; the promptness with which they will be manned by the seamen and militia of the place in the moment they are wanting; the facility of their assembling from different parts of the coast to any point where they are required in greater force than ordinary; the economy of their maintenance and preservation from decay when not in actual service; and the competence of our finances to this defensive provision, without any new burden, are considerations which will have due weight with Congress in deciding on the expediency of adding to their number from year to year, as experience shall test their utility, until all our important harbors, by these and auxiliary means, shall be secured against insult and opposition to the laws.

No circumstance has arisen since your last session which calls for any augmentation of our regular military force. Should any improvement occur in the militia system, that will be always seasonable.

Accounts of the receipts and expenditures of the last year, with estimates for the ensuing one, will, as usual, be laid before you.

The state of our finances continues to fulfil our expectations. Eleven millions and an half of dollars, received in the course of the year ending the 30th of September last, have enabled us, after meeting all the ordinary expenses of the year, to pay upwards of three million six hundred thousand dollars of the public debt, exclusive of interest. This payment, with those of the two preceding years, has extinguished upwards of twelve millions of the principal, and a greater sum of interest within that period; and, by a proportionate diminution of interest, renders already sensible the effect of the growing sum yearly applicable to the discharge of the principal.

It is also ascertained that the revenue accrued during the last year exceeds that of the preceding, and the probable receipts of the ensuing year may safely be relied on as sufficient, with the sum already in the Treasury, to meet all the current demands of the year, to discharge upwards of three millions and a half of the engagements incurred under the British and French Conventions, and to advance in the further redemption of the funded debt as rapidly as had been contemplated. These, fellow-citizens, are the principal matters which I have thought it necessary, at this time, to communicate for your consideration and attention. Some others will be laid before you in the course of the session; but, in the discharge of the great duties confided to you by our country, you will take a broader view of the field of legislation. Whether the great interests of agriculture, manufactures, commerce, or navigation, can, within the pale of your Constitutional powers, be aided in any of their relations; whether laws are provided in all cases where they are wanting; whether those provided are exactly what they should be; whether any abuses take place in their administration, or in that of the public revenues; whether the organization of the public agents, or of the public force, is perfect in all its parts: In fine, whether anything can be done to advance the general good, are questions within the limits of your functions, which will necessarily occupy your attention. In these and all other matters which you in your wisdom may propose for the good of our country, you may count with assurance on my hearty co-operation and faithful execution.

TH. JEFFERSON.

NOVEMBER 8, 1804.

The Message was read, and with the documents therein referred to, ordered to be printed for the use of the Senate.

FRIDAY, November 9.

THOMAS SUMTER, from the State of South Carolina, attended.

A message from the House of Representatives

informed the Senate that the House have appointed the Rev. WILLIAM BENTLEY a Chaplain to Congress on their part during the present session.

MONDAY, November 12.

WILLIAM COCKE, from the State of Tennessee, and DAVID STONE, from the State of North Carolina, severally attended.

Resolved, That Messrs. TRACY, BALDWIN, and FRANKLIN, be a committee to inquire whether copies of the laws of the United States have been procured pursuant to an act passed at the last session of Congress, entitled "An act to provide for a more extensive distribution of the laws of the United States;" and if procured, to report a mode for the disposal of those copies which are by said act reserved for the disposal of Congress.

TUESDAY, November 13.

The Senate assembled, but no business was transacted.

WEDNESDAY, November 14.

The Senate assembled, but transacted no business.

THURSDAY, November 15.

SAMUEL MACLAY, from the State of Pennsylvania, and JOHN SMITH, from the State of New York, severally attended.

FRIDAY, November 16.

The Senate spent the day in the consideration of Executive business.

MONDAY, November 19.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," in which they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

Mr. TRACY gave notice that he should, to-morrow, ask leave to bring in a bill for the repeal of the two first sections, and to alter and amend the last section, of the act passed at the last session of Congress, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers."

TUESDAY, November 20.

A message from the House of Representatives informed the Senate that the House have passed a "resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking in the harbor of Tripoli and destroying a Tripolitan frigate of forty-four guns," in which they desire the concurrence of the Senate.

The resolution last mentioned was read and passed to the second reading.

The bill, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," was read the second time, and referred to Messrs. BALDWIN, TRACY, and LOGAN, to consider and report thereon to the Senate.

WEDNESDAY, November 21.

The PRESIDENT laid before the Senate a report from the Secretary for the Department of Treasury, in obedience to the act, entitled "An act to establish the Treasury Department;" and the report was read and ordered to lie for consideration, and be printed for the use of the Senate.

Mr. LOGAN presented the petition of the Directors of the Library Company of Philadelphia, praying the relinquishment of the duties charged on certain books, the donation of Samuel Preston, of Great Britain, to said company; and the petition was read, and ordered to lie on the table.

Mr. BALDWIN, from the committee to whom was referred, on the 20th instant, the bill sent from the House of Representatives for concurrence, entitled "An act making a further appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," reported it without amendment.

Ordered, That this bill pass to a third reading.

A message from the House of Representatives informed the Senate that the House of Representatives have passed a joint resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana; in which they desire the concurrence of the Senate.

The resolution was read, and passed to the second reading.

THURSDAY, November 22.

The resolution of the House of Representatives expressive of the sense of Congress of the gallant conduct of Capt. Stephen Decatur, the officers, and crew of the United States' ketch Intrepid, was read the second time, and referred to Messrs. BRADLEY, BALDWIN, and GILES, to consider and report thereon to the Senate.

The resolution of the House of Representatives to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was read the second time, and referred to Messrs. LOGAN, WRIGHT, and ELLERY, to consider and report thereon to the Senate.

The bill sent from the House of Representatives for concurrence, entitled "An act making a further appropriation for carrying into effect the

Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America," was read the third time, and passed.

FRIDAY, November 23.

The PRESIDENT laid before the Senate the credentials of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, in place of William Hill Wells, resigned, and the credentials were read.

SAMUEL L. MITCHILL, appointed a Senator by the Legislature of New York, in place of John Armstrong, whose seat has become vacant by his mission to France, took his seat in the Senate, and produced his credentials, which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

Mr. LOGAN, from the committee to whom was referred, on the 22d instant, the resolution of the House of Representatives to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, reported the resolution without amendment; and the further consideration thereof was postponed until Monday next.

Ordered, That Perez Morton have leave to withdraw his petition, presented on the 17th of March last, in behalf of himself and others therein named.

MONDAY, November 26.

The resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was considered, and ordered to the third reading.

Mr. BRADLEY, from the committee to whom was referred, on the 22d instant, the resolution of the House of Representatives expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid, reported it without amendment, and it was agreed, by unanimous consent, to dispense with the rule, and the resolution was read the third time, and passed.

TUESDAY, November 27.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act declaring the assent of Congress to the act of the General Assembly of the State of North Carolina;" in which they desire the concurrence of the Senate.

The bill last mentioned was read and ordered to the second reading.

The resolution to authorize the President of the United Statee to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana, was read the third time, and the further consideration thereof postponed until the second Monday in December next.

WEDNESDAY, November 28.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the second time.

A message from the House of Representatives informed the Senate that the House have appointed the Reverend Mr. PARKINSON, Chaplain to Congress on their part, during the present session, in place of the Reverend Mr. Bentley, who has declined his appointment. The House of Representatives have passed a bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five;" in which they desire the concurrence of the Senate.

The bill last mentioned was read, and ordered to the second reading.

Mr. WORTHINGTON gave notice that he should to-morrow ask leave to bring in a bill making provision for the application of money appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio river, in conformity with an act of April 30th, 1802.

THURSDAY, November 29.

The bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five," was read the second time, and referred to Messrs. STONE, GILES, and CONDIT, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," and the bill was referred to Messrs. COCKE, BRADLEY, and FRANKLIN, to consider and report thereon to the Senate.

On motion, that it be

Resolved, That a committee be appointed to prepare and report proper rules of proceedings to be observed by the Senate in cases of impeachment:

It was agreed that this motion lie for consideration.

FRIDAY, November 30.

JOHN SMITH, from the State of Ohio, and JOHN BRECKENRIDGE, from the State of Kentucky, severally attended.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before you copies of the treaties concluded with the Delaware and Piankeshaw Indians, for the extinguishment of their title to the lands therein described; and I recommend to the consideration of Congress the making provision by law for carrying them into execution. TH. JEFFERSON.

NOVEMBER 30, 1804.

The Message was read, and, with the treaties therein referred to, ordered to lie for consideration.

The Senate resumed the motion made yesterday, "That a committee be appointed to prepare and report proper rules and proceedings to be observed by the Senate in cases of impeachment;" and having agreed thereto, Messrs. GILES, BALDWIN, BRECKENRIDGE, STONE, and ISRAEL SMITH, were appointed the committee.

On motion,

"That a committee be appointed to examine the act, entitled 'An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes,' and that they have leave to report, by bill or otherwise, the manner, in their opinion, the money appropriated by the said act ought to be applied:"

It was agreed that this motion lie for consideration.

Mr. STONE, from the committee to whom was referred, yesterday, the bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year 1805, reported the bill without amendment.

Ordered, That this bill pass to a third reading.

MONDAY, December 3.

BENJAMIN HOWLAND, appointed a Senator by the Legislature of the State of Rhode Island, in the place of Samuel J. Potter, deceased, took his seat and produced his credentials; which were read, and the oath was administered to him by the PRESIDENT, as the law prescribes.

Mr. TRACY, from the committee appointed on the twelfth of November last, to inquire whether copies of the laws of the United States have been procured, and, if procured, to report a mode for the disposal of them, asked and obtained leave to report by bill. He accordingly reported a bill for the disposal of certain copies of the laws of the United States; which was read, and ordered to the second reading.

The Senate resumed the motion, made on the 30th November, for a committee to be appointed to examine the act, entitled "An act to enable the people of the eastern division of the Territory Northwest of the river Ohio, to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes," and that they have leave to report, by bill or otherwise, the manner, in their opinion, the money appropriated by the said act ought to be applied; and the motion was adopted, and Messrs. WORTHINGTON, GILES, BRADLEY, BRECKENRIDGE, and TRACY, were appointed the committee.

The bill, entitled "An act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five," was read the third time, and passed.

Mr. ADAMS, in behalf of William A. Barron, asked and obtained leave to withdraw his petition, and papers annexed, presented the 10th of February last.

Mr. PICKERING gave notice that, to-morrow, he should ask leave to offer a resolution for the purpose of amending the Constitution of the United States in such manner that Representatives and direct taxes may be apportioned among the several States according to their free inhabitants respectively.

TUESDAY, December 4.

JAMES JACKSON, from the State of Georgia, attended.

The bill for the disposal of certain copies of the laws of the United States was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," in which they desire the concurrence of the Senate. Mr. PARKINSON having declined the appointment, the House of Representatives have elected the Rev. Mr. LAURIE a Chaplain in his stead.

The bill last mentioned was read, and ordered to the second reading.

WEDNESDAY, December 5.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was read the second time, and referred to Messrs. S. SMITH, MITCHILL, and BRADLEY, to consider and report thereon to the Senate.

Mr. WORTHINGTON presented the petition of James May and others, citizens and inhabitants of that district of the Indiana Territory situate north and east of a west line, extending to the southern bend of Lake Michigan, praying that said district may be divided into a separate Territory, extending north of the above mentioned line; and the petition was read and referred to Messrs. WORTHINGTON, BRECKENRIDGE, and GILES, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill for the disposal of certain copies of the laws of the United States, and sundry amendments were proposed; which were ordered to lie for consideration.

THURSDAY, December 6.

JOSEPH ANDERSON, from the State of Tennessee, attended.

Mr. S. SMITH, from the committee to whom was referred, on the 5th instant, the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," reported the bill with an amendment.

Ordered, That the report lie for consideration.

The Senate took into consideration the amendments yesterday proposed to the bill for the disposal of certain copies of the laws of the United States; which were adopted.

Ordered, That this bill pass to the third reading as amended.

A message from the House of Representatives informed the Senate that the House of Representatives have appointed managers to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and have directed the said managers to carry to the Senate the articles agreed upon by the House to be exhibited in maintenance of their impeachment against the said Samuel Chase.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a report of the Surveyor of the Public Buildings at Washington, on the subject of those buildings, and the application of the moneys appropriated for them.

TH. JEFFERSON.

DECEMBER 6, 1804.

The Message and report therein referred to were read, and ordered to lie for consideration.

Mr. WORTHINGTON presented the petition of "the democratic republicans of the county of Wayne, in the Territory of Indiana," signed by their chairman, Robert Abbot, praying a division of said Territory, for reasons therein stated; and the petition was read, and referred to the committee appointed yesterday, to whom was referred the petition of James May and others, on the same subject, to consider and report thereon to the Senate.

FRIDAY, December 7.

Mr. GILES, from the committee appointed on the 30th of November last, "to prepare and report proper rules of proceeding to be observed by the Senate in cases of impeachment," made report; which was read, and ordered to lie for consideration.

Resolved, That the Senate will, at one o'clock this day, be ready to receive articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to be presented by the managers appointed by the House of Representatives. [A full Report of this Trial will be found at the conclusion of the Proceedings and Debates of the Senate, *post*.]

Agreeably to notice given on the 3d instant, Mr. PICKERING introduced a resolution for the purpose of amending the Constitution of the United States in such manner that representatives and direct taxes may be apportioned among the several States according to the number of their free inhabitants, respectively;" and the resolution was read, and ordered to lie for consideration.

The Senate resumed the amendment reported by the committee to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," and the amendment was adopted and a new section was proposed.

Ordered, That the consideration thereof be postponed until Monday next.

The bill for the disposal of certain copies of the laws of the United States was read the third time and passed.

MONDAY, December 10.

The Senate resumed the consideration of the resolution respecting the lead mines in the Territory of Louisiana; and it was postponed to Monday next.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was resumed, and the new section proposed on Friday last was amended and adopted; and the bill ordered to the third reading as amended.

TUESDAY, December 11.

The bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," was read the third time.

Resolved, That this bill do pass, with amendments.

Mr. S. SMITH gave notice that he should, to-morrow, ask leave to bring in a bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes."

Mr. WORTHINGTON, from the committee to whom was referred, on the 5th instant, the petition of James May and others, citizens of the Indiana Territory, asked and obtained leave to report by bill.

WEDNESDAY, December 12.

The VICE PRESIDENT laid before the Senate a letter from the Mayor of Alexandria, signed Elisha C. Dick, enclosing resolutions of the sense of that town and county on the proposition made in the House of Representatives of the United States for receding certain portions of the District of Columbia to the States of Virginia and Maryland; which were read.

Agreeably to notice given yesterday, Mr. S. SMITH asked and obtained leave to bring in a bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and the bill was read, and passed to the second reading.

THURSDAY, December 13.

Mr. COCKE, from the committee to whom was referred, on the 29th of November last, the bill, entitled "An act declaring the assent of Congress

to an act of the General Assembly of the State of North Carolina," reported it without amendment.

The bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes," was read the second time, and referred to Messrs. S. SMITH, ANDERSON, and JACKSON, to consider and report thereon to the Senate.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac;" in which they desire the concurrence of the Senate.

FRIDAY, December 14.

The bill yesterday brought up from the House of Representatives for concurrence entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac," was read, and ordered to the second reading.

Mr. S. SMITH, from the committee to whom was yesterday referred the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes," reported the bill without amendment.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" and on motion to amend the bill by adding a proviso thereto, it was agreed that the further consideration of this subject be postponed until Monday next.

Mr. WORTHINGTON, from the committee to whom sundry petitions on the subject were referred, reported a bill to divide the Indiana Territory into two separate Governments; which was read, and ordered to the second reading.

After the consideration of Executive business, and proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 17.

The credentials of WILLIAM B. GILES, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Wilson C. Nicholas, resigned, and the credentials of ANDREW MOORE, appointed a Senator by the Legislature of the Commonwealth of Virginia, in the room of Abraham B. Venable, resigned, were severally read, and the oath was administered to them, respectively, as the law prescribes.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina;" and on motion that the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," together with the said act of the State of North Carolina and the act of the State of Tennessee, passed in pursuance thereof, be referred to a select committee; that said committee be instructed to inquire what have been the acts and proceedings of the States of North Carolina and Tennessee in relation to the lands claimed by the United States within the State of Tennessee, under the deed of cession from the State of North Carolina, executed in December, 1789, to state facts and make a report thereon; and that the amendment proposed on the 14th instant to the bill now under the consideration of the Senate, be referred to the same committee. A division of the question was called, and it was agreed that the bill now under the consideration of the Senate be committed; and on the question to agree to the other division of the motion as an instruction to the committee, it was determined in the affirmative; and Messrs. BRADLEY, ANDERSON, and GILES, were appointed the committee.

The Senate resumed the consideration of the resolution to authorize the President of the United States to appoint an agent to inquire into, and report on, the occupancy and titles of the lead mines in Louisiana; and the consideration thereof was further postponed.

Mr. S. SMITH gave notice that he would, to-to-morrow, ask leave to bring in a bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia."

The bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac," was read the second time, and referred to Messrs. S. SMITH, GILES, and ADAMS, to consider and report thereon.

TUESDAY, December 18.

Agreeably to notice given yesterday, Mr. S. SMITH had leave to bring in a bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia;" and the bill was read, and ordered to the second reading.

The bill to divide the Indiana Territory into two separate Governments was read the second time, and ordered to lie for consideration.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and on motion to insert a proviso thereto, it was agreed that the consideration of the bill and the amendment be postponed.

Mr. LOGAN presented the petition of Thomas Ketland, of Philadelphia, merchant, stating that he, with John Ketland and James Williamson, were in June, 1799, owners of the ship Washington, during a voyage to Batavia, and praying the allowance of a drawback on exportation of certain merchandise, in the said ship imported, for reasons stated in the petition; and the petition was read, and ordered to lie on the table.

WEDNESDAY, December 19.

The bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia," was read the second time, and referred to Messrs. SUMTER, S. SMITH, and BRADLEY, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and

Ordered, That the consideration thereof be further postponed until to-morrow.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide for completing the valuation of lands and dwelling-houses and the enumeration of slaves in South Carolina, and for other purposes;" a bill entitled "An act to amend the act, entitled 'An act for the government and regulation of the seamen in the merchants' service;" and a bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire;" in which bills they desire the concurrence of the Senate.

The bills were read and ordered to the second reading.

The Senate resumed the second reading of the bill to divide the Indiana Territory into two separate governments; and ordered that the bill pass to the third reading.

THURSDAY, December 20.

The bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," was read the second time and referred to Messrs. FRANKLIN, BALDWIN, and SAMUEL SMITH, to consider and report thereon, to the Senate.

The bill entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire," was read the second time and referred to Messrs. JOHN SMITH, of Ohio, WHITE, and BRECKENRIDGE, to consider and report thereon to the Senate.

The bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes," was read the second time, and referred to Messrs. SUMTER, BRADLEY, and JACKSON, to consider and report thereon to the Senate.

The Senate resumed the second reading of the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and the bill, and amendment thereunto proposed, was referred to Messrs. SAMUEL SMITH, GILES, and BRECKENRIDGE, to consider and report thereon to the Senate.

The bill to divide the Indiana Territory into two separate governments was read the third time, and the further consideration thereof postponed.

Mr. ADAMS gave notice that on Monday next he should ask leave to bring in a bill, in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," passed March 3, 1803.

After proceedings as the High Court of Impeachments, the Senate adjourned.

FRIDAY, December 21.

The Senate resumed the third reading of the bill to divide the Indiana Territory into two separate governments; and, on motion to amend the bill, it was agreed that the consideration thereof be further postponed.

On motion, that the President of the Senate and Speaker of the House of Representatives be, and they are hereby, authorized to adjourn the respective Houses on this day to Monday the last day of this month, it was agreed that the consideration of this motion be postponed until Monday next.

After proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 24.

The Senate resumed the third reading of the bill to divide the Indiana Territory into two separate governments, and having amended the same,

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act to divide the Indiana Territory into two separate governments."

Agreeably to notice on the 20th instant, Mr. ADAMS asked and obtained leave to bring in a bill, in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" and the bill was read and ordered to the second reading.

After proceedings as the High Court of Impeachments, the Senate adjourned.

WEDNESDAY, December 26.

JOHN BROWN, from the State of Kentucky, attended.

The bill, in addition to "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the second time and referred to Messrs. ADAMS, BALDWIN, and BROWN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" a bill, entitled "An act declaring

Cambridge, in the State of Massachusetts, to be a port of delivery;" and a bill, entitled "An act to regulate the clearance of armed merchant vessels;" in which bills they desire the concurrence of the Senate. They have passed the bill, sent from the Senate for concurrence, entitled "An act for the disposal of certain copies of the laws of the United States," with amendments; in which they desire the concurrence of the Senate.

The three first bills mentioned in the message were read and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to their bill, entitled "An act for the disposal of certain copies of the laws of the United States; and the further consideration thereof was postponed.

FRIDAY, December 28.

The bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," was read the second time and referred to Messrs. MITCHILL, PICKERING, and ADAMS, to consider and report thereon.

The bill, entitled, "An act to regulate the clearance of armed merchant vessels." was read the second time.

Mr. MITCHILL presented the memorial of the Chamber of Commerce of the city of New York, signed by their President, showing cause why merchantmen should be permitted to arm in certain cases; and respectfully stating the principles on which a bill on the subject should pass; and the memorial was read.

Ordered, That the bill last read be referred to Messrs. MITCHILL, BALDWIN, GILES, BRECKENRIDGE, and LOGAN, to consider and report thereon.

The bill, entitled "An act for establishing rules and articles for the government of the armies of the United States," was read the second time and referred to Messrs. JACKSON, BRADLEY, SUMTER, ANDERSON, and SMITH, of New York, to consider and report thereon.

A message from the House of of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," in which they desire the concurrence of the Senate.

The bill was read and ordered to the second reading.

Mr. WORTHINGTON, from the committee to whom, on the 3d instant, the subject was referred, reported a bill concerning certain public roads; and the bill was read, and ordered to the second reading.

Mr. WORTHINGTON gave notice that he should, on Monday next, ask leave to bring in a bill concerning the mode of surveying the public lands of the United States,

The Senate resumed the consideration of the amendments of the House of Representatives to their bill, entitled "An act for the disposal of certain copies of the Laws of the United States," and concurred therein.

Mr. BRECKENRIDGE gave notice that he should, on Monday next, ask leave to bring in a bill to extend jurisdiction in certain cases to the State and Territorial Courts.

After proceedings as the High Court of Impeachments, the Senate adjourned.

MONDAY, December 31.

The bill concerning public roads was read the second time, and ordered to lie for consideration.

The bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," was read the second time, and referred to Messrs. MITCHILL, BALDWIN, and BRADLEY, to consider and report thereon.

Mr. MITCHILL, from the committee to whom was referred, on the 28th instant, the bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," reported the bill without amendment.

Agreeably to notice given on the 28th instant, Mr. WORTHINGTON asked and obtained leave to bring in a bill concerning the mode of surveying the lands of the United States, and the bill was read and ordered to the second reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of John Steele;" and a bill, entitled "An act to amend the charter of the town of Alexandria;" in which bills they desire the concurrence of the Senate.

The bills mentioned in the message were read, and ordered to the second reading.

Mr. GILES presented the memorial of the planters, merchants, and others, inhabitants of Louisiana, remonstrating against certain laws which contravene their rights, and respectfully petitioning for redress.

Agreeably to notice given on the 28th instant, Mr. BRECKENRIDGE asked and obtained leave to bring in a bill to extend jurisdiction in certain cases to the State and Territorial Courts; and the bill was read, and ordered to the second reading.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The enclosed letter, written from Malta by Richard O'Brien, our late Consul at Algiers, giving some details of transactions before Tripoli, is communicated for the information of Congress. TH. JEFFERSON.

DECEMBER 31, 1804.

The Message and letter therein referred to were read and ordered to lie for consideration.

The PRESIDENT laid before the Senate a letter from the Attorney General of the United States, in reply to the order of the Senate, of the 15th of April, 1802, on the subject of the lands of the United States within the State of Tennessee; which was read and referred to the committee appointed on the 16th instant, on the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," to consider and report thereon.

After the consideration of the Executive business, and proceedings as the High Court of Impeachments, the Senate adjourned.

TUESDAY, January 1. 1805.

The Senate transacted no business to-day.

WEDNESDAY, January 2.

The bill, entitled "An act for the relief of John Steele," was read the second time.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee;" and a bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five;" in which bills they desire the concurrence of the Senate.

After proceedings as the High Court of Impeachments, the Senate adjourned.

THRUSDAY, January 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" and a bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The bill, entitled "An act making an appropriation for the support of the Navy of the United States during the year 1805," also, the bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee," brought up on the 2d instant from the House of Representatives for concurrence, were read, and ordered to the second reading.

After proceedings as the High Court of Impeachments, the Senate adjourned.

FRIDAY, January 4.

The Senate resumed the second reading of the bill, entitled "An act for the relief of John Steele," and it was referred to Messrs. TRACY, ANDERSON, and SMITH, of Ohio, to consider and report thereon.

The PRESIDENT communicated a letter from PIERCE BUTLER, Esquire, late a Senator from the State of South Carolina, dated the 15th of December last, notifying the resignation of his seat in the Senate.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five," was read the second time, and referred to Messrs. BALDWIN, FRANKLIN, and SMITH of Maryland, to consider and report thereupon.

The bill, entitled "An act to amend the charter of Alexandria," was read the second time, and referred to Messrs. BALDWIN, BRADLEY, and CONDIT, to consider and report thereon.

Mr. MITCHILL, from the committee to whom was referred on the thirty-first of December last, the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," reported the bill with amendments; which were read and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was referred, on the twenty-sixth of December last, the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," reported the bill without amendment.

The bill, entitled "An act giving further time to register the evidences of titles to lands south of the State of Tennessee," was read the second time, and referred to Messrs. BRADLEY, BRECKENRIDGE, and BALDWIN, to consider and make a report thereon.

The bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," was read the second time, and referred to Messrs. SMITH of Maryland, MITCHILL, and ELLERY, to consider and report thereon.

The bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," was read the second time, and referred to Messrs. FRANKLIN, BALDWIN, and ADAMS, to consider and report thereon.

The bill concerning the mode of surveying the public lands of the United States was read the second time, and referred to Messrs. WORTHINGTON, BROWN, and BRECKENRIDGE, to consider and report thereon.

Mr. SMITH of Ohio, from the committee to whom was referred, on the twentieth of December last, the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire," reported the bill with amendment.

The bill to extend jurisdiction in certain cases, to the State and Territorial Courts, was read the second time, and referred to Messrs. BRECKENRIDGE, BALDWIN, and GILES, to consider and report thereon.

Mr. FRANKLIN, from the committee to whom was referred on the twentieth of December last, the bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service," reported the bill with amendment.

On motion, the petition of the merchants, planters, and others, inhabitants of Louisiana, presented on the thirty-first of December last, was read, and referred to Messrs. GILES, FRANKLIN, ANDERSON, TRACY, and BALDWIN, with liberty to report by bill or otherwise.

The Senate resumed the second reading of the bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery."

Ordered, That it pass to the third reading.

Mr. BRECKENRIDGE gave notice that he should, on Monday next, ask leave to bring in a bill for

ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana.

MONDAY, January 7.

The letter of PIERCE BUTLER, Esq., announcing the resignation of his seat in the Senate, was read.

Mr. SMITH of Maryland, from the committee to whom was referred on the twentieth of December last, the bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels and for other purposes," together with the amendments thereto proposed, reported them without amendment.

The Senate took into consideration the amendment reported on the fourth instant, to the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire;" and the consideration thereof was postponed until to-morrow.

Mr. MITCHILL, from the committee to whom was referred, on the twenty-eighth of December last, the bill, entitled "An act to regulate the clearance of armed merchant vessels," reported amendments thereto, which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed the bill sent from the Senate for their concurrence, entitled "An act to divide the Indiana Territory into two separate governments," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments reported on the fourth instant to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and, after debate, the consideration thereof was postponed.

Mr. SMITH of Maryland, from the committee to whom was referred on the seventeenth of December last the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," reported amendments thereto, which were read and ordered to lie for consideration.

The Senate resumed the second reading of the bill in addition to "An act making provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war," and after having amended the bill, the consideration thereof was further postponed.

The Senate took into consideration the amendment reported on the fourth instant to the bill, entitled, "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service,'" and having agreed thereto, the bill was ordered to a third reading as amended.

A motion was made as follows:

"*Resolved*, That the journals of the proceedings of the Senate sitting for the purpose of trying the impeachments in the cases of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate, for the present session."

The Senate resumed the second reading of the bill concerning certain public roads, and an amendment thereto was read and submitted for consideration.

The bill, entitled "An act declaring Cambridge, in the State of Massachusetts, to be a port of delivery," was read the third time, and passed.

The amendment of the House of Representatives to the bill, entitled "An act to divide the Indiana Territory into two separate governments," was read, and submitted for consideration.

Agreeably to notice given on the fourth instant, Mr. BRECKENRIDGE asked and obtained leave to bring in a bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana; and the bill was read and ordered to the second reading.

TUESDAY, January 8.

Mr. BRADLEY, from the committee to whom was referred on the 17th of December last the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, together with the said act of the State of North Carolina, and the act of the State of Tennessee, to inquire what have been the acts and proceedings of said State, in relation to the lands claimed by the United States within the State of Tennessee, made report; which was read, and ordered to lie for consideration.

The following resolutions were read and submitted for consideration.

"*Resolved*, That one or more land offices be opened for the sale of the public lands of the United States, on which the Indian title may have been extinguished, in the State of Tennessee."

"*Resolved*, That Commissioners be appointed, with ample powers, to settle all disputes relative to the lands ceded by North Carolina to the United States, and to quiet all claims agreeable to the conditions of the cession."

"*Resolved*, After satisfying all just claims, and the expenses incident thereto, that one —— part of all the public lands belonging to the United States ought to be appropriated for the use of a college or university in said State, forever; one —— part for the use of schools for the instruction of children, forever; and five per cent. on the net proceeds of the sales of the public lands, for the purpose of making roads: *Provided*, the State of North Carolina shall consent to the appropriations aforesaid."

The Senate resumed the consideration of the amendment of the House of Representatives to the bill, entitled "An act to divide the Indiana Territory into two separate governments," and concurred therein.

Mr. WORTHINGTON, from the committee to whom was referred on the 4th instant, the bill concerning the mode of surveying the public lands of the United States, reported it without amendment.

Mr. SUMTER, from the committee to whom was referred on the 19th of December last, the bill supplementary to the act, entitled "An act to provide for the organization of the militia of the District of Columbia," reported it without amendment.

The Senate resumed the consideration of the amendment reported to the bill, entitled 'An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and on motion to agree to the amendment, a division of the question was called for, and that it should be taken on striking out; which passed in the negative.

Ordered, That the consideration of this bill be postponed until to-morrow.

WEDNESDAY, January 9.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," and after debate, the bill was committed to Messrs. BALDWIN, FRANKLIN, and MACLAY, to consider and report thereon.

The bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service,'" was read the third time.

Resolved, That this bill do pass with an amendment.

The Senate resumed the second reading of the bill, entitled "An act giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire," and on the question, Shall this bill pass to the third reading? it was determined in the negative. So the bill was lost.

Mr. BALDWIN, from the committee to whom was referred on the 4th instant, the bill, entitled "An act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five," reported an amendment thereto, which was read, and ordered to lie for consideration.

THURSDAY, January 10.

Mr. JACKSON, from the committee to whom was referred, on the 28th of December last, "An act for establishing rules and articles for the government of the armies of the United States," reported the bill with amendments; which were read, and ordered to lie for consideration.

The bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, was read the second time, and referred to Messrs. BRECKENRIDGE, SMITH of Vermont, and ANDERSON, to consider and report thereon.

The Senate took into consideration the amendment proposed to the bill to amend the act, entitled "An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships or vessels, and for other purposes;" and having adopted the report, the bill was ordered to the third reading as amended.

The amendment reported to the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," was resumed; and it was agreed that the further consideration thereof should be the order of the day for Monday next.

The Senate took into consideration the amendment reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," and, after debate, the Senate adjourned.

FRIDAY, January 11.

Mr. BALDWIN, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," reported the bill with an amendment.

The bill to amend the act, entitled "An act for the imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light-money on foreign ships and vessels, and for other purposes," was read the third time and passed.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," and, on motion to adopt the first amendment reported, which goes to increase the penalty of the bond, by insertion, after the word "furniture," of the words "and also in the additional sum of ten thousand dollars," it passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Cocke, Condit, Franklin, Jackson, Logan, Maclay, Moore, Sumter, and Worthington.

NAYS—Messrs. Adams, Bradley, Brown, Dayton, Elmery, Hillhouse, Howland, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, and Wright.

Ordered, That the further consideration of the bill and amendments be postponed until Monday next.

MONDAY, January 14.

Mr. SUMTER, from the committee to whom was referred, on the 20th December last, the bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes," reported the bill without amendment.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 10th instant, the bill to extend jurisdiction in certain cases to the State and Territorial Courts, reported the bill with amendments; which were read and ordered to lie for consideration.

Mr. LOGAN presented the memorial and petition of the Board of Directors of the Philadelphia Typographical Society, praying an additional duty on the importation of foreign books; which was read and ordered to lie on the table.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels," together with the amendments reported thereto; and the bill and amendments were referred to Messrs. SMITH of Maryland, BALDWIN, GILES, TRACY, and BRECKENRIDGE, to consider and report thereon.

Mr. FRANKLIN, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," reported the bill with amendments.

On motion, it was

Resolved, That the members of the Senate, from a sincere desire of showing every mark of respect to the honorable SAMUEL J. POTTER, deceased, late a member thereof, will go into mourning for him one month, by the usual mode, of wearing a crape round the left arm.

TUESDAY, January 15.

The VICE PRESIDENT being absent, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

JAMES A. BAYARD, from the State of Delaware attended. His credentials having been presented and read on the 23d of November last, the oath was administered to him by the President, as the law prescribes, and he took his seat in the Senate.

Mr. TRACY, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act for the relief of John Steele," reported it without amendment.

Mr. FRANKLIN notified the Senate that he should, to-morrow, ask leave to bring in a bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington."

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes;" also, a bill, entitled "An act further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" in which bills they desire the concurrence of the Senate.

The bills were read and ordered to a second reading.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," and, having disagreed thereto,

Ordered, That the bill pass to the third reading.

WEDNESDAY, January 16.

The bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," was read the second time and referred to Messrs. MITCHILL, LOGAN, and WORTHINGTON, to consider and report thereon.

The bill, entitled "An act further to amend an act, entitled 'An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the second time and referred to Messrs. JACKSON, BRADLEY, and FRANKLIN, to consider and report thereon.

Agreeably to the notice given yesterday, Mr. FRANKLIN asked and obtained leave to bring in a bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington; and the bill was read and ordered to the second reading.

The Senate took into consideration the amendment reported on the 11th instant to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen;" and the amendment was adopted, and the bill ordered to the third reading as amended.

The bill, entitled "An act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac," was read the third time and passed.

The Senate resumed the second reading of the bill concerning certain public roads, together with the amendment proposed thereto; and, after debate, the Senate adjourned.

THURSDAY, January 17.

Mr. MITCHILL presented the petition of sundry merchants of the city of New York, praying that the period for the payment of bonds given for the duties on goods imported from South America and the West Indies, may be extended, for reasons stated therein; and the petition was read and referred to the committee appointed on the 4th instant, to consider the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," to report thereon to the Senate.

The bill giving the assent of Congress to an act of the Legislature of North Carolina, passed the 19th of December, 1804 entitled "An act for the relief of foreign seamen brought into the port of Wilmington," was read the second time, and referred to Messrs. FRANKLIN, STONE, and BRADLEY, to consider and report thereon.

Mr. MITCHILL, from the committee to whom

was referred, on the 16th instant, the bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," reported the bill without amendment.

The Senate resumed the second reading of the bill concerning certain public roads; and having agreed to sundry amendments, the further consideration of the bill was postponed until to-morrow.

The bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," was read the third time, further amended, and the blank filled with the words "two hundred;" and on the question, Shall this bill pass as amended? it was determined in the affirmative—yeas 20, nays 8, as follows:

YEAS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Sumter, Worthington, and Wright.

NAYS—Messrs. Adams, Baldwin, Dayton, Hillhouse, Olcott, Plumer, and Tracy.

So it was *Resolved*, That this bill do pass as amended.

FRIDAY, January 18.

The Senate resumed the second reading of the bill concerning certain public roads: and, on motion to strike out of section 1st, line 5th, the words "one twentieth part," and insert, "remaining two per cent," a division was called for, and the question was taken on striking out:—which passed in the affirmative—yeas 16, nays 10 as follows:

YEAS—Messrs. Adams, Baldwin, Bayard, Bradley, Brown, Condit, Ellery, Franklin, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Stone, and Sumter.

NAYS—Messrs. Anderson, Breckenridge, Cocke, Dayton, Logan, Moore, Smith of Maryland, Smith of Ohio, Worthington, and Wright.

On the question, to insert the words "remaining two per cent:" it passed in the affirmative—yeas 14, nays 11, as follows:

YEAS—Messrs. Adams, Baldwin, Bayard, Condit, Ellery, Franklin, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Stone, and Sumter.

NAYS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Dayton, Moore, Smith of Maryland, Smith, of Ohio, Worthington, and Wright.

Ordered, That the consideration of the bill be further postponed until Monday next.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for the support of Government for the year 1805," in which they desire the concurrence of the Senate. They agree to the amendment of the Senate to the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," with an amendment; in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read and ordered to the second reading.

The Senate took into consideration the amendment to their amendment to the bill last mentioned in the message; and concurred therein.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 4th instant, the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," reported an amendment thereto; which was read and ordered to lie for consideration.

Mr. SMITH also reported, from the last mentioned committee, to whom was yesterday referred the petition of certain merchants of the city of New York, that it would be inexpedient to comply with the prayer of the petition.

Mr. FRANKLIN, from the committee to whom was referred yesterday the bill giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," reported it without amendment.

Mr. DAYTON presented the petition of Benjamin Hovey, in behalf of himself and associates, praying a grant of the pre-emption right of one hundred thousand acres of land in the Indiana Territory, for the encouragement of the association, having undertaken to open a passage from the head to the foot of the rapids of the Ohio river; and the petition was read and referred to Messrs. DAYTON, SMITH, of Ohio, and BROWN, to consider and report thereon.

The Senate resumed the second reading of the bill concerning the mode of surveying the public lands of the United States; and on motion adjourned.

MONDAY, January 21.

Mr. MOORE reported, from the committee, that they this day examined and found duly enrolled the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen."

The bill, entitled "An act making appropriations for the support of Government for the year 1805," was read the second time, and referred to Messrs. BALDWIN, BROWN, and SMITH, of Maryland, to consider and report thereon.

Mr. LOGAN presented the petition of Henry and William Stewart, calico printers, praying that the allowance of drawback may be extended to the exportation of India muslins, which they print and dye, in like manner as is provided on the exportation of white India muslins; and the petition was read, and ordered to lie on the table.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to amend the charter of Georgetown," in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the

bill concerning the mode of surveying the public lands of the United States; and on motion, it was agreed that this bill be the order of the day for Wednesday next.

Mr. LOGAN presented a petition signed Thomas Morris, clerk, on behalf of the meeting of the representatives of the people called Quakers, in Pennsylvania, New Jersey, &c., stating that the petitioners, from a sense of religious duty, had again come forward, to plead the cause of their oppressed and degraded fellow-men of the African race; and on the question, Shall this petition be received? it passed in the affirmative—yeas 19, nays 9, as follows:

YEAS—Messrs. Adams, Bayard, Brown, Condit, Franklin, Hillhouse, Howland, Logan, Maclay, Mitchill, Olcott, Pickering, Plumer, Smith of Ohio, Smith of Vermont, Stone, Sumter, White, and Worthington.

NAYS—Messrs. Anderson, Baldwin, Bradley, Cocke, Jackson, Moore, Smith of Maryland, Smith of New York, and Wright.

So the petition was read.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 14th instant, the bill, entitled "An act to regulate the clearance of armed merchant vessels," reported the bill with amendments.

TUESDAY, January 22.

The PRESIDENT laid before the Senate a letter from the Treasurer of the United States, with his account from the first of October, 1803, to October 1, 1804; also the accounts of the War and Navy Departments for the same period; which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville in North Carolina, to Charleston in South Carolina;" also, a bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805," in which bills they desire the concurrence of the Senate.

The bill was read, and ordered to the second reading.

The bill, entitled "An act to amend the charter of Georgetown," was read the second time, and referred to Messrs. ADAMS, LOGAN, and FRANKLIN, to consider and report thereon.

The Senate resumed the second reading of the bill supplementary to the act, entitled "An act to provide for the organization of the militia in the District of Columbia;" and having amended the bill, on the question, Shall this bill pass to the third reading as amended? it was determined in the negative. So the bill was lost.

The Senate took into consideration the amendment reported on the 9th instant, to the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year 1805;" and having agreed thereto, the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington;" and the bill was ordered to a third reading.

The Senate resumed the second reading of the bill, giving the assent of Congress to an act of the Legislature of North Carolina, passed on the 19th December, 1804, entitled "An act for the relief of foreign seamen, brought into the port of Wilmington;" and the bill was recommitted to the committee to whom it was referred on the 17th instant, further to consider and report thereon.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," together with the amendment reported on the 8th instant; and it was agreed that they be the order of the day for Monday next.

The Senate took into consideration the amendments reported on the 14th instant, to the bill entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation with Spain," and having agreed to the amendments,

Ordered, That the bill pass to the third reading as amended.

WEDNESDAY, January 23.

Mr. MITCHILL presented the memorial of a number of inhabitants of the city of New York, stating that inconvenience arises from depositing the revenue bonds for collection in the Bank of the United States and its branches, and praying the interposition of Congress on the subject; and the memorial was read, and referred to Messrs. MITCHILL, BALDWIN, and SMITH, of Maryland, to consider and report thereon.

The bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville in North Carolina, to Charleston in South Carolina," was read the second time, and referred to Messrs. SMITH of New York, BRADLEY, and JACKSON, to consider and report thereon.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805," was read the second time, and referred to Messrs. BALDWIN, JACKSON, and SMITH, of Vermont, to consider and report thereon.

Mr. BRECKENRIDGE, from the committee to whom was referred, on the 10th instant, the bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, reported the bill without amendment.

The bill, entitled "An act making appropriations for the support of the Navy of the United States during the year 1805," was read the third time as amended.

Resolved, That this bill do pass with an amendment.

The bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of

Friendship, Limits, and Navigation, with Spain," was read the third time as amended, and passed.

The bill, entitled "An act making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes," was read the third time; and, on motion, the bill was amended, and passed with an amendment.

The Senate resumed the second reading of the bill concerning the mode of surveying the public lands of the United States; and the bill was ordered to a third reading.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of the widow and orphan children of Robert Elliott;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The Senate resumed the second reading of the bill concerning certain public roads, and agreed to an amendment. The bill was then recommitted to Messrs. WORTHINGTON, BROWN, FRANKLIN, SMITH of Ohio, and BRECKENRIDGE, to consider and report thereon.

THURSDAY, January 24.

The bill, entitled "An act for the relief of the widow and orphan children of Robert Elliott," was read the second time, and referred to Messrs. MACLAY, BRADLEY, and BALDWIN, to consider and report thereon.

The Senate took into consideration the amendment reported, on the 18th instant, to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage;" and, having adopted the amendment, the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act to provide for the completing of the valuation of lands and dwelling-houses, and the enumeration of slaves in South Carolina, and for other purposes;" and the bill was ordered to a third reading.

The Senate took into consideration the motion made on the 7th of January last, "That the Journals of the proceedings of the Senate sitting for the purpose of trying impeachments in the case of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate for the present session;" and it was referred to Messrs. GILES, ADAMS, and BALDWIN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Alexander Murray;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The bill concerning the mode of surveying the public lands of the United States was read the third time, and passed.

The Senate resumed the second reading of the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" and the further consideration thereof was further postponed.

The Senate resumed the consideration of the amendments reported on the 10th instant, to the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" and the amendments were amended, and in part adopted; and the consideration of the remainder thereof postponed.

FRIDAY, January 25.

The bill, entitled "An act for the relief of Alexander Murray," was read the second time, and referred to Messrs. SMITH of Maryland, MITCHELL, and WHITE, to consider and report thereon.

The bill, entitled an act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," was read the third time as amended, and passed.

The bill, entitled "An act to provide for the completing the valuation of lands and dwelling-houses, and the enumeration of slaves in South Carolina, and for other purposes," was read the third time, and passed.

A Message was received from the President of the United States, by Mr. Coles, his Secretary.

The Senate resumed the consideration of the amendments reported to the bill, entitled "An act for establishing the rules and articles for the government of the armies of the United States," which were amended and adopted; and, having agreed to sundry amendments to the bill, it was recommitted to Messrs. ADAMS, WRIGHT, and WHITE, further to consider and report thereon.

SATURDAY, January 26.

The Message received yesterday from the PRESIDENT OF THE UNITED STATES was read, as follows:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, the report of the Director of the Mint, of the operations of that institution during the last year.

JAN. 25, 1805. TH. JEFFERSON.

Ordered, That the Message and report lie for consideration.

Mr. SMITH, of Maryland, from the committee to whom was yesterday referred the bill, entitled "An act for the relief of Alexander Murray," reported it without amendment.

Mr. SMITH, of New York, from the committee to whom was referred, on the twenty-third instant, the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina," reported the bill with an amendment.

The Senate took into consideration the amendments reported, on the fourteenth instant, to the

bill to extend jurisdiction, in certain cases, to the State and Territorial Courts; and the amendments were disagreed to; and on motion, the bill was amended, and ordered to the third reading as amended.

Mr. WORTHINGTON, from the committee to whom was recommitted, on the 23d instant, the bill concerning certain public roads, reported it with amendments.

The Senate resumed the second reading of the bill, entitled "An act for the relief of John Steele," and it was ordered to the third reading.

Mr. WRIGHT gave notice that he should, on Monday next, ask leave to bring in a bill to regulate fees and proceedings in the Courts of the United States in certain cases, and for other purposes.

The Senate resumed the second reading of the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" and on motion, the second and third sections were rejected; and the first section having been amended, on the question, Shall this bill pass to the third reading as amended? it was determined in the affirmative—yeas 12, nays 11, as follows:

YEAS—Messrs. Adams, Anderson, Brown, Cocke, Condit, Giles, Hillhouse, Jackson, Pickering, Smith of Maryland, Sumter, and Wright.

NAYS—Messrs. Baldwin, Bradley, Breckenridge, Franklin, Howland, Maclay, Mitchill, Olcott, Plumer, Smith of New York, and Smith of Vermont.

MONDAY, January 28.

Mr. DAYTON, from the committee to whom was referred, on the eighteenth instant, the petition of Benjamin Hovey, made report; which was read, and ordered to lie for consideration.

Mr. BALDWIN, from the committee to whom was referred, on the fourth instant, the bill, entitled "An act to amend the charter of Alexandria," reported it without amendment.

Mr. MACLAY, from the committee to whom was referred, on the twenty-fourth instant, the bill, entitled "An act for the relief of the widow and orphan children of Robert Elliot," reported the bill without amendment.

Agreeably to notice given on the twenty-third instant, Mr. WRIGHT asked and obtained leave to bring in a bill to regulate fees and proceedings in the Courts of the United States, in certain cases, and for other purposes; and the bill was read, and ordered to the second reading.

Mr. WORTHINGTON presented the petition of the inhabitants of the county of Greene, in the State of Pennsylvania, stating that if a road passes through New Geneva, or near it, the most eligible route thence is through the town of Waynesburgh to the mou h of Grave creek; and the petition was read, and ordered to lie on the table.

The bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," was read the third time; and, on motion to amend the bill, it was agreed that the consideration thereof be postponed until to-morrow.

The bill to extend jurisdiction in certain cases to the State and Territorial Courts was read the third time, and passed.

The bill, entitled "An act for the relief of John Steele," was read the third time, and passed.

The Senate resumed the second reading of the bill, entitled "An act for the relief of Alexander Murray;" and

Ordered, That it pass to the third reading.

A message from the House of Representatives informed the Senate that the House of Representatives have elected Mr. Clarke a manager to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, in the place of Mr. Nelson, who hath been excused that service.

On motion,

"That —— be directed to procure and lay before the Senate, at their next session, tables of the fees and compensation paid to attorneys at law, the prothonotaries, registers, and clerks of judicial courts, to sheriffs and coroners, to grand and petit jurors, and to witnesses, in the several States."

Ordered, That this motion lie for consideration.

A motion was made, that it be

Resolved, That the President of the United States be requested to cause to be laid before the Senate such documents and papers, or other information, as he shall judge proper, relative to complaints aginst arming the merchant ships and vessels of the United States, or the conduct of the captains and crews of such as have been armed."

And on the question, will the Senate agree to this resolution; it passed in the affirmative—yeas 30, nays 1, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Giles, Hillhouse, Howland, Logan, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Stone, Sumter, Tracy, White, and Worthington.

Mr. WRIGHT voted in the negative.

So the resolution was adopted.

Ordered, That Messrs. GILES and TRACY be a committee to lay the foregoing resolution before the President of the United States.

TUESDAY, January 29.

The Senate took into consideration the resolution proposed yesterday, respecting the fees and compensations to the officers of the judicial courts; which was agreed to, as follows:

Resolved, That the Attorney General of the United States be directed to procure and lay before the Senate, at their next session, tables of the fees and compensation paid to attorneys at law, prothonotaries, registers, and clerks of judicial courts, to sheriffs and coroners, to grand and petit jurors, and to witnesses, in the several States.

The bill to regulate fees and proceedings in the courts of the United States in certain cases, and

for other purposes, was read the second time, and referred to Messrs. WRIGHT, BALDWIN, and BRECKENRIDGE, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 21st instant, the bill, entitled "An act making appropriations for the support of Government for the year 1805," reported the bill with amendments; which were read, and ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act authorizing the discharge of John York from his imprisonment," in which bill they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and ordered to the second reading.

The bill entitled "An act for the relief of Alexander Murray," was read the third time and passed.

Mr. GILES, from the committee to whom was referred, on the 4th instant, the petition of the merchants, planters, and other inhabitants of Louisiana, reported a bill further providing for the government of the Territory of Orleans; and the bill was read, and ordered to the second reading.

The bill is as follows:

A Bill further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be and he is hereby authorized to establish within the Territory of Orleans, a government in all respects similar (except as is herein otherwise provided) to that now exercised in the Mississippi Territory, and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the 20th day of July 1787, and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans shall be entitled to and enjoy all the rights, privileges, and advantages, secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

SEC. 2. *And be it further enacted*, That so much of the said ordinance of Congress as relates to the organization of a General Assembly, and prescribes the power thereof, shall, from and after the —— day of —— next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the —— day of —— next, and give due notice thereof throughout the same and first appoint the most convenient place, within each of the said districts, for holding the elections; and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be determined, and the apportionment made in the manner prescribed by the said ordinance.

SEC. 3. *And be it further enacted*, That the representatives to be chosen as aforesaid, shall be convened by the Governor, in the city of Orleans, on the —— day of —— next. The General Assembly shall meet at least once in every year, and such meeting shall be on the —— Monday in —— annually, unless they shall by law appoint a different day. Neither House, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

SEC. 4. *And be it further enacted*, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

SEC. 5. *And be it further enacted*, That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

SEC. 6. *And be it further enacted*, That the Governor, Secretary, and Judges, to be appointed by virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, Secretary, and Judges, of the Territory of Orleans. And all the additional officers authorized by this act shall respectively receive the same compensations for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarterly out of the revenues of import and tonnage, accruing within the said Territory of Orleans.

SEC. 7. *And be it further enacted*, That whenever it shall be ascertained by an actual census or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of inhabitants included therein shall amount to at least —— thousand souls, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons, the inhabitants of the said Territory, upon application to Congress for that purpose, and upon producing satisfactory proof that the number of souls included therein, ascertained as aforesaid does actually amount to at least —— thousand, shall thereupon be authorized to form for themselves a constitution and State government, and be admitted into the Union upon the footing of the original States, in all respects whatever, conformably to the provisions of the third article of the Treaty concluded at Paris, on the 30th of April, 1803, between the United States and the French Republic: *Provided*, That the constitution so to be established, shall be republican, and not inconsistent with the Constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the 13th day of July 1787, so far as the same is made applicable to the Territorial government hereby authorized to be established: *Provided, however*, That Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the rights of a separate State, to alter the boundaries thereof as they may judge proper: except only, that no alteration shall be made which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State Government, according to the provision of this act.

SEC. 8. *And be it further enacted*, That so much of an act, entitled, "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as is repugnant with this act, shall, from and after the —— day of —— next, be repealed.

WEDNESDAY, January 30.

The bill, entitled "An act authorizing the discharge of John York from his imprisonment,"

was read the second time, and referred to Messrs. LOGAN, OLCOTT, and COCKE, to consider and report thereon.

The PRESIDENT laid before the Senate the petition of Andrew Jackson, Major General, and sundry others, militia officers and other citizens of the State of Tennessee, praying Congress to amend the articles and rules for the future government of the Army, in respect to certain parts of their dress and uniform; and, on the question, Shall this petition be referred to the committee appointed on the 25th instant, who have under consideration the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States?" it passed in the affirmative—yeas 16, nays 15, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Cocke, Condit, Franklin, Hillhouse, Maclay, Mitchill, Olcott, Pickering, Plumer, Stone, and Worthington.

NAYS—Messrs. Breckenridge, Brown, Dayton, Giles, Howland, Jackson, Logan, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, White, and Wright.

THURSDAY, January 31.

JOHN GAILLARD, appointed a Senator by the Legislature of the State of South Carolina, in the room of Pierce Butler, resigned, took his seat in the Senate, and the oath prescribed was administered to him by the PRESIDENT.

Mr. SMITH, of Vermont, gave notice that he should to-morrow ask leave to bring in a bill for the government of the District of Columbia.

Mr. LOGAN, from the committee to whom yesterday was referred the bill, entitled "An act authorizing the discharge of John York from his imprisonment," reported the bill without amendment.

Mr. BALDWIN, from the committee to whom was referred, on the 23d instant, the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1805," reported the bill without amendments.

The bill further providing for the government of the Territory of Orleans was read the second time; and it was agreed that the consideration thereof be postponed.

A Message was received from the President of the United States.

FRIDAY, February 1.

The Message received yesterday from the PRESIDENT OF THE UNITED STATES was read, as follows:

To the Senate of the United States:

According to the desire expressed in your resolution of the 28th instant, I now communicate a report of the Secretary of State, with documents relative to complaints against arming the merchant ships and vessels of the United States, and the conduct of the captains and crews of such as have been armed.

JAN. 31, 1805. TH. JEFFERSON.

Ordered, That the Message and papers accompanying it lie for consideration; and that, in the meantime they be printed for the use of the Senate.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and having agreed to an amendment, the further consideration thereof was postponed.

SATURDAY, February 2.

Agreeably to notice given on Thursday last, Mr. SMITH, of Vermont, asked and obtained leave to bring in a bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned; and the bill was read, and ordered to the second reading.

Mr. ADAMS, from the committee to whom was referred, on the 22d of January last, the bill, entitled "An act to amend the charter of Georgetown," reported the bill with amendments; which were read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and the consideration thereof was postponed until Monday next.

The bill, in addition to "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," was read the third time, and passed.

Mr. GILES, from the committee to whom was referred, on the 24th of January last, the motion, "That the Journals of the proceedings of the Senate, sitting for the purpose of trying impeachments, in the cases of William Blount, John Pickering, and Samuel Chase, be published as an appendix to the Legislative Journals of the Senate, for the present session," made report; which was read, and ordered to lie for consideration.

Mr. WRIGHT presented the memorial of George Scoone, stating, that he was wounded in the battle near Camden, in the year 1781, and that he hath been for some time on the pension list, and praying that his pension may be continued and the arrears thereof paid up; and the memorial was read, and referred to Messrs. WRIGHT, TRACY, and FRANKLIN, to consider and report thereon.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," and the further consideration thereof was postponed.

The Senate resumed the second reading of the bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana; and the bill was ordered to a third reading.

The Senate resumed the consideration of the amendments reported by the committee to whom was referred the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina;" and having disagreed to the amendment, the bill was ordered to the third reading.

MONDAY, February 4.

Mr. SMITH, of Ohio, presented the petition of Jeremiah Hunt and Ethan Stone, praying the preemption right of certain gores of public lands in the town of Cincinnati, for reasons mentioned in the petition; also, the petition of Joseph Prince, President of the select Council of Cincinnati, on the same subject; and the petitions were read, and referred to Messrs. SMITH, of Ohio, BALDWIN, and BROWN, to consider and report thereon.

Mr. ANDERSON presented the petition of George Dougherty, in behalf of himself and the officers and men who accompanied him as volunteers to Natchez, in the Mississippi Territory, praying that twelve thousand dollars deducted from their compensation may be restored to them, for reasons stated in the petition; and the petition was read, and referred to Messrs. ANDERSON, SMITH of Maryland, and TRACY, to consider and report thereon.

TUESDAY, February 5.

The PRESIDENT communicated a report of the Postmaster General, of the roads which have not produced one third part of the expenses of carrying the mail upon them during the last year; and the report was read, and ordered to lie for consideration.

Mr. WRIGHT, from the committee to whom was referred the bill to regulate fees and proceedings in the courts of the United States in certain cases, and for other purposes, reported the bill without amendment.

Mr. BRADLEY, from the committee to whom was referred the bill, entitled "An act giving further time to register the evidences of titles to land south of the State of Tennessee, reported it without amendment.

The amendment reported to the bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was resumed and adopted; and the bill ordered to the third reading as amended.

The Senate resumed the consideration of the amendment reported to the bill, entitled "An act to regulate the clearance of armed merchant vessels," which goes to strike out the whole of said bill, after the enacting clause, for the purpose of inserting an amendment; and a division was called for, and the question was taken on striking out, which was passed in the negative—yeas 13, nays 16, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Gaillard, Howland, Jackson, Maclay, Moore, Smith of New York, Sumter, and Worthington.

On motion to expunge from first section of the original bill the words "in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and furniture," in order to insert "seven thousand dollars:" it passed in the negative—yeas 12, nays 22, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Hillhouse, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Tracy, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of New York, Smith of Vermont, Stone, Sumter, and Worthington.

And, on motion, it was agreed to postpone the further consideration of this bill.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

The Secretary of State has lately received a note from the Danish Chargé des Affaires, claiming, in the name of his Government, restitution, in the case of the brigantine Henrick, communicated to Congress at a former session, in which note were transmitted sundry documents, chiefly relating to the value and neutral character of the vessel, and to the question whether the judicial proceedings were instituted and conducted without the concurrence of the Captain of the Henrick. As these documents appear to form a necessary appendage to those already before Congress, and throw additional light on the subject, I transmit copies of them herewith. TH. JEFFERSON.

FEBRUARY 5, 1805.

The Message and documents therein referred to were read, and ordered to lie for consideration.

The PRESIDENT laid before the Senate the report of the Commissioners of the Sinking Fund, stating, that the measures which have been authorized by the board, subsequent to the 4th of February, 1804, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to the said board, dated the 4th day of the present month, and in the statements therein referred to; and the report was read, and ordered to lie for consideration.

Ordered, That the Secretary inform the House of Representatives that the Senate are going to their public Chamber, to proceed further on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court.

WEDNESDAY, February 6.

The bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned, was read the second time, and referred to Messrs. MITCHILL, SMITH of Vermont, and ANDERSON, to consider and report thereon.

Mr. ANDERSON gave notice that he should to-morrow ask leave to bring in a bill further providing for the government of the Territory of Louisiana.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels;" and, on motion to expunge, from the first section of the original bill, these words: "that after due notice of this act at the several custom-houses," it passed in the negative—yeas 13, nays 20, as follows:

YEAS—Messrs. Adams, Bayard, Dayton, Ellery, Hillhouse, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Tracy, White, and Wright.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of New York, Smith of Vermont, Sumter, and Worthington.

And having agreed to sundry amendments,

Ordered, That the consideration of the bill be further postponed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction;" also, a bill, entitled "An act to continue in force an act declaring the consent of Congress to an act of the State of Maryland, passed the 28th day of December, 1793, for the appointment of a health officer;" in which bills they desire the concurrence of the Senate.

The bills were read, and ordered to the second reading.

The bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina," was read the third time; and, being amended, on the question, Shall this bill pass? it was determined in the affirmative—yeas 26, nays 6, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Bayard, Breckenridge, Brown, Cocke, Dayton, Ellery, Franklin, Giles, Hillhouse, Howard, Jackson, Logan, Maclay, Mitchill, Moore, Pickering, Smith of Maryland, Smith of Ohio, Stone, Sumter, Tracy, Worthington, and Wright.

NAYS—Messrs. Bradley, Condit, Olcott, Plumer, Smith of New York, and Smith of Vermont.

So it was *Resolved*, That this bill do pass as amended.

A motion was made that a committee be appointed, to join with such committee as the House of Representatives may appoint on their part, to consider and report what business is necessary to be done by Congress in the present session; and the motion was read, and ordered to lie for consideration.

Mr. FRANKLIN presented the memorial of the mayor, and members of the Corporation, of the city of New Orleans, stating their situation, their wants, and their claims, for which they solicit the authentic sanction of Congress, in order that the municipality of that city may have at their disposal the means of improving it and its establishments; and the memorial was read, and ordered to lie for consideration.

THURSDAY, February 7.

Agreeably to notice given yesterday, Mr. ANDERSON asked and obtained leave to bring in a bill further providing for the government of the Territory of Louisiana; and the bill was read, and ordered to the second reading.

The Senate resumed the second reading of the bill, entitled "An act to continue in force 'An act declaring the consent of Congress to an act of the State of Maryland passed the 28th of December, 1793, for the appointment of a health officer," and it was referred to Messrs. SMITH of Maryland, WRIGHT, and MITCHILL, to consider and report thereon.

Mr. SMITH, of Maryland, from the committee, reported the above-mentioned bill without amendment.

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was read the second time, and referred to Messrs. DAYTON, SMITH of Maryland, and GILES, to consider and report thereon.

The bill for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana, was read the third time, and amended.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana."

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to authorize the erection of a bridge across a mill pond and marsh in the navy yard belonging to the United States in the town of Brooklyn, in the State of New York," in which bill they desire the concurrence of the Senate.

The Senate resumed the second reading of the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year 1805;" and having amended the bill, it was ordered to the third reading as amended.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels," and having further amended the bill, the consideration thereof was postponed.

The Secretary notified the House of Representatives that the Senate are now going to their public Chamber to proceed further on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court.

FRIDAY, February 8.

The bill yesterday brought up from the House of Representatives for concurrence, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read, and ordered to the second reading.

The bill, entitled "An act making appropriations for the support of the Military Establishment of the United States for the year 1805," was read the third time.

Resolved, That this bill do pass with an amendment.

The bill further providing for the government of the Territory of Louisiana was read the second time and referred to Messrs. ANDERSON, GILES, and BRECKENRIDGE, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," in which they desire the concurrence of the Senate.

The bill first mentioned in the message was read, and ordered to the second reading.

The Senate took into consideration the motion made on the 6th instant, that a joint committee be appointed to consider and report what business is necessary to be done by Congress in the present session; and, on the question to agree to this motion, it was determined in the negative.

Mr. BRECKENRIDGE submitted the following resolution, which was read, and ordered to lie for consideration:

Resolved, by the Senate and House of Representatives of the United States of America, in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid as part of the said Constitution, viz:

"The judicial power of the United States shall not be construed to extend to controversies between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects."

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina," was read the third time. And the question on the final passage of this bill was determined in the negative.

After proceedings as the High Court of Impeachments, the Senate adjourned.

SATURDAY, February 9.

Mr. JACKSON, from the committee to whom was referred, on the 16th of January last, the bill, entitled "An act further to amend an act, entitled 'An act regulating the grants of land, and providing for the disposal of the public lands of the United States south of the State of Tennessee," reported the bill without amendment.

The bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read the second time, and referred to Messrs. MITCHILL, WHITE, and WRIGHT, to consider and report thereon.

The bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," was read the second time, and referred to Messrs. SMITH of Maryland, DAYTON, and MITCHILL, to consider and report thereon.

MONDAY, February 11.

The Senate took into consideration the amendments reported, on the 29th of January last, to the bill, entitled "An act making appropriations for the support of Government, for the year 1805," which were in part adopted, and the further consideration of the bill was postponed.

TUESDAY, February 12.

Mr. SMITH, of Maryland, from the committee to whom was referred, on the 9th instant, the bill, entitled, "An act to appropriate a sum of money for the purpose of building gun-boats," reported the bill without amendment.

Resolved, That the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday the 13th instant, February, at noon, for the purpose of being present at the opening and counting the votes for PRESIDENT and VICE PRESIDENT of the UNITED STATES. That one person be appointed a teller on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the journals, and, if it shall appear that a choice hath been made agreeably to the Constitution, such entry on the journals shall be deemed a sufficient declaration thereof.

Ordered, That the Secretary do carry this resolution to the House of Representatives.

Mr. MITCHILL, from the committee to whom was referred, on the 9th instant, the bill, entitled "An act to authorize the erection of a bridge across a mill pond and marsh in the navy-yard belonging to the United States, in the town of Brooklyn, in the State of New York," reported the bill without amendment.

Mr. SMITH, of Ohio, from the committee to whom the petitions of Ethan Stone, Jeremiah Hunt, and others, were referred, on the 4th instant, reported a bill to authorize the President of the United States to sell a certain lot of land; and the bill was read, and ordered to the second reading.

The Senate resumed the second reading of the bill further providing for the government of the Territory of Orleans; and it was ordered to the third reading.

The Senate resumed the consideration of the bill, entitled "An act making appropriations for the support of Government for the year 1805;" and, having agreed to sundry amendments, the bill was ordered the third reading as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," in which bill they desire the concurrence of the Senate. They have passed a resolution that a committee be appointed on the part of the House of Representatives, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected of their election, and to regulate the time, place, and manner, of administering the oath of office to the President.

The bill brought up for concurrence was read, and ordered to the second reading.

The Senate considered the resolution mentioned in the message, and disagreed thereto.

WEDNESDAY, February 13.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

In the message to Congress at the opening of the present session, I informed them that treaties had been entered into with the Delaware and Piankeshaw Indians, for the purchase of their right to certain lands on the Ohio. I have since received another, entered into with the Sacs and Foxes, for a portion of the country on both sides of the river Mississippi. These treaties having been advised and consented to by the Senate have accordingly been ratified, but, as they involve conditions which require Legislative provision, they are now submitted to both branches for consideration.

TH. JEFFERSON.

FEBRUARY 13, 1805.

The Message was read, and, together with the treaties therein referred to, ordered to lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a resolution that they will attend in the Chamber of the Senate this day at noon, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States, and have appointed tellers to act jointly with the teller who may be appointed on the part of the Senate to make a list of the votes for President and Vice President of the United States as they shall be declared.

The resolution mentioned in the message was read, and, on motion,

Ordered, That Mr. SMITH, of Maryland, be a teller of the votes for the President and Vice President of the United States on the part of the Senate.

Ordered, That the Secretary notify the House of Representatives that the Senate are now ready to meet them in the Senate Chamber, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States.

COUNTING OF ELECTORAL VOTES FOR PRESIDENT AND VICE PRESIDENT.

About twelve o'clock the Senators took their seats; and immediately after the SPEAKER and members of the House of Representatives entered; the SPEAKER and Clerk occupying seats on the floor on the right side of the PRESIDENT of the Senate, and the members of the House being seated in front.

Mr. SAMUEL SMITH, teller on the part of the Senate, and Mr. JOSEPH CLAY, and Mr. ROGER GRISWOLD, tellers on the part of the House, took seats at a table placed in front of the Chair, in the area between the Senate and House.

The Secretary of the Senate read the resolutions of the two Houses, previously agreed to.

The PRESIDENT (Mr. BURR) stated that, pursuant to law, there had been transmitted to him several packets, which, from the endorsements upon them, appeared to be the votes of the Electors of a President and Vice President; that the returns forwarded by the mail, as well as the duplicates sent by special messengers, had been received by him in due time. You will now proceed gentlemen, said he, to count the votes as the Constitution and laws direct; adding that, perceiving no cause for preference in the order of opening the returns, he would pursue a geographical arrangement, beginning with the Northern States.

The PRESIDENT then proceeded to break the seals of the respective returns, handing each return, and its accompanying duplicate, as the seals of each were broken, to the tellers through the Secretary; Mr. S. SMITH reading aloud the returns, and the attestations of the appointment of the Electors, and Mr. J. CLAY and Mr. R. GRISWOLD comparing them with the duplicate return lying before them.

According to which enumeration, the following appeared to be the result:

STATES.	President. Th. Jefferson.	President. C. C. Pinckney.	V. Pres'dt. Geo. Clinton.	V. Pres'dt. Rufus King.
New Hampshire	7	–	7	
Massachusetts	19	–	19	
*Rhode Island	4	–	4	
Connecticut	–	9	–	9
Vermont	6	–	6	
New York	19	–	19	
New Jersey	8	–	8	
Pennsylvania	20	–	20	
Delaware	–	3	–	3
Maryland	9	2	9	2
Virginia	24	–	24	
North Carolina	14	–	14	
South Carolina	10	–	10	
†Georgia	6	–	6	
Tennessee	5	–	5	
Kentucky	8	–	8	
‡Ohio	3	–	3	
Total	162	14	162	14

* In this return, after stating the whole number of votes given for Thomas Jefferson and George Clinton, each Elector certifies distinctly his vote for Thomas Jefferson as President, and for George Clinton, as Vice President.

† The return certifies the votes to have been given as stated in an enclosed paper.

‡ In this return, the votes are not certified to have been given by ballot, but agreeably to law.

After the returns had been all examined, without any objection having been made to receiving any of the votes, Mr. S. SMITH, on behalf of the tellers, communicated to the PRESIDENT the foregoing result, which was read from the Chair; when, the VICE PRESIDENT said, upon this report it becomes my duty to declare, agreeably to the Constitution, that THOMAS JEFFERSON is elected President of the United States, for the term of four years from the third day of March next, and that GEORGE CLINTON is elected Vice President of the United States, for the term of four years from the third day of March next.

[Previous to the above proceedings, a short debate arose in the Senate on the keeping the doors open or shut during the counting of the votes. Mr. WRIGHT submitted a motion for their being kept open, which, after some opposition, was agreed to.]

Ordered, That the Secretary notify the House of Representatives that the Senate will be in their public Chamber at half past two o'clock, to proceed further on the trial of the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court.

On motion that a committee be appointed to direct the forms in which the records of the pending impeachment shall be made up from time to time, it was agreed that this motion should lie for consideration.

A message from the House of Representatives informed the Senate that the House have come to a resolution that a committee be appointed on their part, to join such committee as may be appointed on the part of the Senate, to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States for the term commencing on the fourth day of March next, and have appointed a committee on their part.

Mr. ANDERSON, from the committee to whom was referred, on the 8th instant, the bill further providing for the government of the district of Louisiana, reported it with amendments; which were read, and ordered to lie for consideration.

THURSDAY, February 14.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to inquire and report whether any, and what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next; and having agreed thereto,

Ordered, That Messrs. BALDWIN and FRANKLIN be the committee on their part.

The Senate took into consideration the amendments reported to the bill further providing for the government of the district of Louisiana; and the further consideration was postponed.

The Senate took into consideration a motion made on the 8th instant, for an alteration of the rule precluding debate while sitting as a Court of Impeachments; which was amended as follows:

"*Resolved*, That, in the course of the trial, upon a question being referred to the decision of the Senate, in case it be required by a majority of the members present, the Senate shall return to their Chamber; whereupon, the question to be decided shall be stated by the President, and each member shall be at liberty to state the reasons of his opinion, but shall not be allowed to speak more than once. After the members have delivered their opinions, the Senate shall return to their judicial Chamber, where the question shall be determined by ayes and noes."

And, on the question to agree to this resolution, it passed in the negative—yeas 9, nays 22, as follows:

YEAS—Messrs. Adams, Bayard, Giles, Hillhouse, Olcott, Pickering, Plumer, Smith of New York, and Tracy.

NAYS—Messrs. Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Gaillard, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of Ohio, Smith of Vermont, Stone, Sumter, Worthington, and Wright.

On motion, it was

Resolved, That the President of the United States be requested to cause to be transmitted to GEORGE CLINTON, Esq., of New York, Vice President elect of the United States, notification of his election to that office; and that the President of the Senate do make out and sign a certificate in the words following, viz:

"Be it known, that the Senate and House of Representatives of the United States of America, being convened at the City of Washington, on the second Wednesday in February, in the year of our Lord, 1805, the underwritten Vice President of the United States and President of the Senate, did, in the presence of the said Senate and House of Representatives, open all the certificates and count all the votes of the Electors for a President and Vice President of the United States; whereupon, it appeared that Thomas Jefferson, of Virginia, had a majority of the votes of the Electors as President, and George Clinton, of New York, had a majority of the votes of the Electors as Vice President; by all which it appears that Thomas Jefferson, of Virginia, has been duly elected President, and George Clinton of New York, has been duly elected Vice President of the United States, agreeably to the Constitution.

"In witness whereof, I have hereunto set my hand and seal this 14th day of February, 1805."

And that the PRESIDENT of the Senate do cause the certificate aforesaid to be laid before the President of the United States, with this resolution.

The bill, entitled "An act making appropriations for the support of Government for the year 1805, was read the third time and further amended.

Resolved, That this bill do pass as amended.

The motion made on the thirteenth, respecting the forms of the record of the pending impeachment was resumed and adopted, and Messrs. BRADLEY, BRECKENRIDGE, and GILES, were appointed.

FRIDAY, February 15.

A message from the House of Representatives informed the Senate that the House have passed

a resolution for the appointment of a joint committee to wait on the President of the United States and to notify to him his re-election, and have appointed a committee on their part.

The resolution was read, and ordered to lie for consideration.

The bill further providing for the government of the Territory of Orleans was read the third time; and a motion was made to strike out the first section of the bill, for the purpose of inserting an amendment; and a division was called for. The further consideration of the bill was postponed.

SATURDAY, February 16.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to wait on the President of the United States to notify him of his re-election; and, having agreed thereto, Messrs. BALDWIN, and SMITH of Maryland, were appointed the committee on their part.

A motion was made,

"That a call of the Senate take place every morning at the hour to which the Senate is adjourned, and that absent members be not permitted to take their seats until a satisfactory excuse be made, or the opinion of the Senate be had thereon."

Ordered, That this motion lie for consideration.

A message from the House of Representatives informed the Senate that the House have passed a bill entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," in which bill they desire the concurrence of the Senate.

The Senate took into consideration the amendments yesterday proposed to the bill further providing for the government of the Territory of Orleans, which was amended as follows:

Strike out of the first section of the bill all that follows the enacting clause, and insert:

"That, for the purpose of enabling the people of Louisiana to enjoy the right of self-government, the President of the United States is hereby authorized to cause the territory ceded by the Republic of France to the United States, by the treaty concluded at Paris on the 30th of April, 1803, to be laid off on or before the —— day of —— into convenient election districts, having reference to population and location, and not exceeding the number of —— districts; and to appoint the most convenient time thereafter, as well as place, within each of said districts, for holding an election; and to appoint in each district a proper person or persons, inhabitants of the same, respectively to preside at and to conduct the election which is hereinafter described; of all which he shall cause due notice to be given throughout each district. And on the day and at the place thus appointed, the people of every district who are hereinafter described as qualified voters, shall meet and elect for their districts, respectively, one person, to meet in Convention for the purpose of forming a constitution of government for the people of said Territory. And the President of the United States is hereby authorized to appoint time and place for the meeting of said Convention, of which he shall cause due notice to be given before the choice of the members thereof."

Strike out the residue of said bill, and insert in lieu thereof the following:

"SEC. 2. *And be it further enacted*, That a majority of the members chosen pursuant to this act, to meet in Convention as aforesaid, shall constitute a quorum to do business; and the Convention, when organized, may form one or two governments within said Territory, as to them shall appear most conducive to the general welfare of the people thereof; and if they form two governments they shall define the boundaries of each.

"SEC. 3. *And be it further enacted*, That all free white male persons, who have arrived at the age of twenty-one years, and who are, at the time of the election, *bona fide* inhabitants of the district where they shall offer to vote, and who have been so during the period of —— next before, shall be entitled to vote at the elections authorized by this act. And the person or persons presiding at the respective elections are hereby authorized to determine whether the votes shall be taken *viva voce*, or by ballot, and upon all questions respecting the qualifications of voters.

"SEC. 4. *And be it further enacted*, That, when the Convention aforesaid shall have formed a government or governments for the people of said Territory, they shall appoint a time for commencement of the operations thereof, but the time of said commencement shall be at a period so distant as to afford sufficient time to transmit the result of their deliberations to the seat of Government of the United States, and for Congress to act upon the same, if in session, or at their next session thereafter, and likewise afford time for Congress to give notice to the people of Louisiana of their determination thereon.

"And the said Convention shall, immediately upon their forming a government or governments, as aforesaid, transmit a copy thereof, duly authenticated, to the President of the United States, and, likewise, a certificate of the time they shall have fixed upon for the commencement of operations, as aforesaid; and the President shall cause the same to be laid before Congress immediately, if in session, or at the opening of the next session thereafter, that Congress may be enabled to approve or disapprove of the government or governments so formed, and further to provide for any exigencies which the nature of the case may require. And if Congress shall approve of said government or governments, so formed as aforesaid, such government or governments shall be valid, to all intents and purposes.

"SEC. 5. *And be it further enacted*, That all laws and regulations now in force in the Territories of Orleans and Louisiana, or either of them, shall continue in force, unless altered, modified, or repealed, by the respective authorities enacting the same; or until altered, modified, or repealed, by the local Legislatures which may be established in virtue of this act.

"SEC. 6. *And be it further enacted*, That the sum of —— dollars be, and the same is hereby, appropriated, payable out of any money in the Treasury not otherwise appropriated, to defray the expense of laying off said Territory into election districts, and of giving the several notifications directed by this act. For which services the President of the United States is hereby authorized to direct the payment of such sums as to him shall appear reasonable."

And a division was required, and the question was taken on striking out; which passed in the negative—yeas 8, nays 24, as follows:

YEAS—Messrs. Adams, Bayard, Hillhouse, Jackson, Olcott, Pickering, Tracy, and White.

NAYS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington, and Wright.

MONDAY, February 18.

The bill brought up on Saturday last, for concurrence, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," was read, and, by unanimous consent, the bill was read the second time, and referred to Messrs. BALDWIN, ANDERSON, and BAYARD, to conside and report thereon.

The Senate resumed the third reading of the bill further providing for the government of the Territory of Orleans, and it was amended.

Resolved, That this bill do pass, that it be engrossed, and that the title thereof be "An act further providing for the government of the Territory of Orleans."

The bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was read the second time, and referred to Messrs. TRACY, ADAMS, and SMITH, of Maryland, to consider and report thereon.

The bill authorizing the President of the United States to sell a certain lot of land, was read the second time, and referred to Messrs. BROWN, SMITH, of Ohio, and WRIGHT, to consider and report thereon.

Mr. BROWN, gave notice that he should, to-morrow, ask leave to bring in a bill to amend the act, entitled 'An act to lay and collect a direct tax within the United States."

TUESDAY, February 19.

A message from the House of Representatives informed the Senate that the House have passed a resolution for the appointment of a joint committee to consider and report what business is necessary to be done by Congress during the present session; in which they desire the concurrence of the Senate. They have passed a bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes;" in which they desire the concurrence of the Senate.

The bill and resolution last mentioned were read, and ordered to a second reading.

Agreeably to notice given yesterday, Mr. BROWN asked and obtained leave to bring in a bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States;" and the bill was read, and ordered to the second reading.

Mr. FRANKLIN, from the committee to whom was recommitted, on the 22d of January last, the bill giving the assent of Congress to an act of the Legislature of North Carolina passed on the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," reported the bill without amendment.

Mr. BROWN, from the committee to whom was yesterday referred the bill authorizing the President of the United States to sell a certain lot of land, reported it with an amendment.

Mr. SMITH, of New York, gave notice that he should, to-morrow, ask leave to bring in a bill freeing from postage all letters and packets to and from AARON BURR.

The Senate resumed the second reading of the bill, entitled "An act to regulate the clearance of armed merchant vessels; and, on motion to insert the following amendment, in lieu of the second section of the original bill struck out:

"That all unlawful acts committed on the high seas by any person or persons on board such armed vessels, against the citizens or subjects of any Government in amity with the United States, or against the property of such Government, or any of its citizens or subjects, shall be punished in like manner as if the same was committed within the exclusive jurisdiction of the United States:"

It passed in the negative—yeas 16, nays 18, as follows:

YEAS—Messrs. Baldwin, Breckenridge, Brown Condit, Cocke, Condit, Franklin, Gaillard, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of New York, Sumter, and Worthington.

NAYS—Messrs. Adams, Anderson, Bayard, Bradley, Dayton, Ellery, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, White, and Wright.

And the bill being further amended, it was ordered to the third reading, as amended.

WEDNESDAY, February 20.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter of September 18th, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and valor of his officers and men, in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON,

FEBRUARY 20, 1805.

The Message and papers therein referred to were read, and ordered to lie for consideration.

The bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," was read the second time, and it was agreed, by unanimous consent, that the bill now pass to the third reading.

The bill to authorize the Secretary of War to issue military land warrants, and for other purposes, was read the second time, and referred to Messrs. WORTHINGTON, FRANKLIN, and TRACY, to consider and report thereon.

Mr. BALDWIN, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase, and for other purposes," reported the bill with an amendment.

The Senate took into consideration the resolution of the House of Representatives for the appointment of a joint committee to consider and report what business is necessary to be done by Congress during the present session; and, having agreed thereto, Messrs. GILES, JACKSON, and BRADLEY, were appointed the committee on their part.

Agreeably to notice given yesterday, Mr. SMITH, of New York, asked and obtained leave to bring in a bill freeing from postage all letters and packets to and from AARON BURR: and the bill was read, and ordered to the second reading.

The Senate took into consideration the amendments reported to the bill, entitled "An act to amend the charter of Georgetown; which were in part adopted, and the bill was ordered to the third reading as amended.

The Senate resumed the second reading of the bill concerning public roads; and the further consideration thereof was postponed.

The Senate resumed the consideration of the motion for printing the Journals of their proceedings, while sitting for the purpose of trying impeachments; and agreed thereto as follows:

Resolved, That the proceedings of the Senate, while sitting for the purpose of trying impeachments, shall be published in the same manner in which the Legislative proceedings are now published; and this resolution shall have relation to all proceedings in trials of impeachments which have heretofore taken place.

The Senate resumed the second reading of the bill, entitled "An act declaring the assent of Congress to an act of the State of Maryland, passed the 28th day of December, 1796, for the appointment of an health officer;" and the bill was ordered to the third reading.

THURSDAY, February 21.

The bill to amend the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," was read the third time, and passed.

FRIDAY, February 22.

The bill freeing from postage all letters and packets to and from AARON BURR, was read the second time.

The bill, entitled "An act to regulate the clearance of armed merchant vessels," was read the third time, and further amended; and, on the question to agree to the final passage of the bill, it was determined in the affirmative—yeas 20, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Cocke, Condit, Ellery, Franklin, Giles, Howland, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Worthington, and Wright.

NAYS—Messrs. Adams, Bayard, Dayton, Hillhouse, Olcott, Pickering, Plumer, and Sumter.

So it was *Resolved*, That this bill do pass with amendments.

SATURDAY, February 23.

Mr. LOGAN gave notice that he should, on Monday next, ask leave to bring in a bill to prohibit the granting clearances to vessels bound to St. Domingo.

Mr. SMITH, of Ohio, gave notice that he should, on Monday next, ask leave to bring in a bill for the relief of Nancy Flinn.

Mr. WORTHINGTON, from the committee to whom was referred, on the 20th instant, the bill to authorize the Secretary of War to issue military land warrants, and for other purposes, reported amendments thereto.

MONDAY, February 25.

Mr. BALDWIN, from the joint committee appointed on the 14th instant, respecting the further accommodations of the President of the United States, made a report; which was read, and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was recommitted, on the 25th of January last, the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States, reported the bill amended.

Agreeably to notice given on Saturday last, Mr. SMITH, of Ohio, asked and obtained leave to bring in a bill making provision for the widow and orphan children of Thomas Flinn; and the bill was read, and ordered to the second reading.

Mr. JACKSON laid on the table a motion expressive of the high sense Congress entertain of the gallant and meritorious services of Commodore Edward Preble, and the officers, seamen, and marines, under his command; and the motion was read; and it was agreed that it be referred to a select committee.

The PRESIDENT laid before the Senate the credentials of JAMES A. BAYARD, appointed a Senator by the Legislature of the State of Delaware, for the term of six years, commencing on the 4th day of March next, which were read.

TUESDAY, February 26.

Mr. GILES, from the joint committee appointed for the purpose, reported a statement of the business under the consideration of Congress; and the report was read, and ordered to lie for consideration.

The Senate proceeded to ballot for the committee agreed to yesterday, on the motion respecting Commodore Preble; and Messrs. JACKSON, BRADLEY, and BAYARD, were appointed.

The PRESIDENT laid before the Senate the report of the Secretary for the Department of the Treasury, on the emoluments of the officers of the customs for the year 1804; which was read, and ordered to lie for consideration.

Mr. ADAMS, from the committee to whom was referred, on the 18th instant, the bill, entitled "An act to establish the districts of Genesee, of Buffalo Creek, and of Miami; and to alter the port of entry of the district of Erie," reported the bill without amendment.

WEDNESDAY, February 27.

Mr. DAYTON, from the committee to whom was referred, on the 7th instant, the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," reported the bill with amendments.

Agreeably to notice given on the 23d instant, Mr. LOGAN asked leave to bring in a bill to suspend trade and intercourse with the Island of St. Domingo; and, on the question, Shall leave be given? it was determined in the negative.

The bill making provision for the widow and orphan children of Thomas Flinn was read the second time, and referred to Messrs. SMITH of Ohio, FRANKLIN, and SMITH of New York, to consider and report thereon.

The bill, entitled "An act to continue in force an act declaring the consent of Congress to an act of the State of Maryland, passed the 28th day of December, 1793, for the appointment of a health officer, was read the third time and passed.

The Senate resumed the second reading of the bill, entitled "An act to amend the charter of Alexandria;" and the further consideration of the bill was postponed until the first Monday of December next.

The Senate resumed the second reading of the bill, entitled "An act further to amend an act, entitled 'An act regulating grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

Ordered, That this bill pass to a third reading.

The Senate resumed the second reading of the bill, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

The Senate resumed the second reading of the bill, entitled "An act giving further time to register the evidences of titles to lands south of the State of Tennessee;" and the further consideration thereof was postponed to the first Monday in December next.

The Senate resumed the second reading of the bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York;" and the bill was ordered to a third reading.

The Senate resumed the second reading of the bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats;" and it was ordered to a third reading.

The Senate took into consideration the amendments reported, on the 22d instant, to the bill to authorize the Secretary of War to issue military land warrants, which were in part adopted; and the bill was ordered to a third reading as amended.

The Senate resumed the second reading of the bill freeing from postage all letters and packets to and from AARON BURR; and, on the question, Shall this bill pass to the third reading? it was determined in the affirmative—yeas 18, nays 9, as follows:

YEAS—Messrs. Adams, Baldwin, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Franklin, Gaillard, Giles, Jackson, Mitchill, Moore, Smith of Maryland, Smith of Ohio, Smith of Vermont, and Wright.

NAYS—Messrs. Ellery, Hillhouse, Howland, Logan, Olcott, Pickering, Plumer, Sumter, and Worthington.

The Senate took into consideration the amendments reported on the 25th instant, to the bill, entitled "An act for establishing rules and articles for the government of the armies of the United States;" and the further consideration of the bill was postponed until the next session of Congress.

THURSDAY, February 28.

The VICE PRESIDENT being indisposed, the Senate proceeded to the choice of a President *pro tempore*, as the Constitution provides, and the Hon. JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the Hon. JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary make a like communication to the House of Representatives.

The following Messages were received from the PRESIDENT OF THE UNITED STATES:

To the Senate and House of Representatives of the United States:

I now lay before Congress a statement of the militia of the United States, according to the returns last received from the several States. It will be perceived that some of these are not recent dates, and that from the States of Maryland, Delaware, and Tennessee, no returns are stated. As far as appears from our records, none were ever rendered from either of these States.

TH. JEFFERSON.

FEBRUARY 28, 1805.

To the Senate and House of Representatives of the United States:

I now render to Congress the account of the fund established by the act of May 1st, 1802, for defraying the contingent charges of Government. No occasion having arisen for making use of any part of the balance of $18,560, unexpended on the 31st day of December, 1803, when the last account was rendered by Message, that balance has been carried to the credit of the surplus fund.

TH. JEFFERSON.

FEBRUARY 28, 1805.

The messages and documents therein referred to were severally read, and ordered to lie for consideration.

The Senate resumed the second reading of the bill, entitled "An act for the relief of the widow

and orphan children of Robert Elliott;" and it was ordered to a third reading.

Mr. WRIGHT, from the committee to whom the subject was referred, on the second instant, reported a bill for the relief of George Scoone, a wounded corporal in the Revolutionary war; which was twice read by unanimous consent.

On motion,

"That the Secretary of State be directed to lay before the Senate, at the next session of Congress, such laws of Great Britain as impose any higher or greater duties on the exportation of certain goods to the United States than are charged on exportation to other nations;"

It was agreed that this motion lie for consideration.

On motion,

"That the Secretary of the Treasury be directed to lay before the Senate, at the next meeting of Congress, a statement showing the value of Irish linens, &c., imported into the United States;"

It was agreed that this motion should lie for consideration.

The bill authorizing the discharge of John York from his imprisonment was ordered to the third reading.

A message from the House of Representatives informed the Senate that the House have passed the bill, sent from the Senate for concurrence, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," with amendments, in which they desire the concurrence of the Senate.

The amendments to the bill, entitled "An act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana," were considered and agreed to.

The bill to regulate fees and proceedings in the Courts of the United States, in certain cases, and for other purposes, was resumed, and the further consideration thereof postponed until the first Monday in December next.

The bill, entitled "An act to amend the charter of Georgetown," was read the third time.

Resolved, That this bill do pass with amendments.

The bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes," was read the third time and passed, with amendment.

The bill, entitled "An act further to amend an act, entitled 'An act regulating grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee,'" was read the third time and passed.

The bill, entitled "An act to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York," was read the third time and passed.

The bill, entitled "An act to appropriate a sum of money for the purpose of building gun-boats," was read the third time and passed.

Mr. SMITH, of Ohio, from the committee to whom was yesterday referred the bill making provision for the widow and orphan children of Thomas Flinn, reported it without amendment.

The bill freeing from postage all letters and packets to and from AARON BURR was read the third time; on motion to postpone the further consideration thereof until the first Monday in December next, it passed in the negative—yeas 12, nays 18, as follows:

YEAS—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, and Sumter.

NAYS—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Worthington, and Wright.

On the question, Shall this bill pass? it was determined in the affirmative—yeas 18, nays 13, as follows:

YEAS—Messrs. Adams, Anderson, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Gaillard, Jackson, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, White, and Wright.

NAYS—Messrs. Baldwin, Ellery, Franklin, Hillhouse, Howland, Logan, Maclay, Olcott, Pickering, Plumer, Stone, Sumter, and Worthington.

So it was *Resolved*, That this bill do pass, that it be engrossed, and that the title thereof be "An act freeing from postage all letters and packets to and from Aaron Burr."

The amendment reported on the 20th instant to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," was considered, and the bill ordered to a third reading.

The amendments reported on the 13th instant to the bill further providing for the government of the district of Louisiana, were considered and disagreed to; and the bill ordered to a third reading.

The second reading of the bill authorizing the President of the United States to sell a certain lot of land was resumed, and the bill ordered to the third reading as amended.

The bill giving the assent of Congress to an act of the Legislature of North Carolina, passed the 19th of December, 1804, entitled "An act for the relief of foreign seamen brought into the port of Wilmington," was resumed and amended.

Ordered, That it pass to the third reading as amended.

On motion for an alteration of one of the rules in cases of impeachments, it was agreed that this motion lie for consideration.

FRIDAY, March 1.

MR. SMITH, of Maryland, gave notice that he should this day ask leave to bring in a bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty.

A message from the House of Representatives informed the Senate that the House concur in the bill, sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans," with an amendment, in which they desire the concurrence of the Senate. They have passed the bill, entitled "An act further to alter and establish certain post roads, and for other purposes;" also, a bill, entitled "An act for the relief of Richard Taylor;" in which they desire the concurrence of the Senate.

The bills last brought up for consideration were read, and ordered to the second reading.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act for ascertaining and adjusting the titles and claims to the land within the Territory of Orleans and the district of Louisiana;" and agreed thereto.

Agreeably to notice given, Mr. SMITH, of Maryland, asked and obtained leave to bring in a bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty;" which was read, and, by unanimous consent, the bill was read the second time.

Ordered, That it pass to a third reading.

The bill further providing for the government of the district of Louisiana was read the third time, and further amended; and passed.

The bill authorizing the sale of a certain lot of land was read the third time and passed.

The bill, entitled "An act declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, passed on the 19th day of December, 1804, entitled 'An act for the relief of foreign seamen brought into the port of Wilmington,'" was read the third time; and on the question to agree to the final passage thereof, it passed in the negative.

The bill for the relief of George Scoone, a wounded corporal in the Revolutionary war, was considered and amended, and ordered to the third reading as amended.

The bill making provision for the widow and orphan children of Thomas Flinn, was considered and ordered to the third reading.

The bill, entitled "An act authorizing the discharge of John York from his imprisonment," was read the third time and passed.

The bill, entitled "An act for the relief of the widow and orphan children of Robert Elliot," was read the third time and passed.

The bill, entitled "An act to establish the districts of Genesee, Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was considered and ordered to the third reading.

SATURDAY, March 2.

The bill last brought up for concurrence was read, and, by unanimous consent, the bill was read the second time and referred to Messrs. ADAMS, BRECKENRIDGE, and BROWN, to consider and report thereon.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act supplementary to the act entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" in which they desire the concurrence of the Senate.

Mr. JACKSON, from the committee appointed on the motion expressive of the sense Congress entertain of the gallant conduct of Commodore Preble, his officers and seamen, reported amendments, which were adopted, and sundry resolutions were entered into accordingly.

The bill, entitled "An act further to alter and establish certain post roads, and for other purposes," was read the second time and ordered to a third reading.

The bill, entitled "An act for the relief of Richard Taylor," was read the second time, and ordered to a third reading.

The bill supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States and His Britannic Majesty, was read the third time and passed.

The bill making provision for the widow and orphan children of Thomas Flinn was read the third time and passed.

The bill, entitled "An act to establish the districts of Genesee, Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie," was read the third time and passed.

The bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," was read the third time as amended.

Resolved, That this bill do pass with amendments.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled an act to provide for the accommodation of the President of the United States;" in which they desire the concurrence of the Senate.

The bill last brought up for concurrence was read, and, by unanimous consent, the bill was read the second and third time.

Ordered, That this bill do pass.

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was resumed, and sundry amendments were proposed.

Ordered, That this bill pass to a third reading.

On motion, the committee to whom was referred the bill to provide for the government of the Territory of Columbia, and to repeal the acts of Congress therein mentioned, was discharged, and the bill postponed until the first Monday in December next.

Mr. ADAMS, from the committee to whom was referred, this day, the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," reported an amendment, which was adopted; and the bill ordered to a third reading as amended.

BURR'S ADDRESS.

The VICE PRESIDENT took an affectionate leave of the Senate, in substance as follows:

"Mr. BURR began by saying that he had intended to pass the day with them, but the increase of a slight indisposition (sore throat) had determined him then to take leave of them. He touched lightly on some of the rules and orders of the House, and recommended, in one or two points, alterations, of which he briefly explained the reasons and principles.

"He said he was sensible he must at times have wounded the feelings of individual members. He had ever avoided entering into explanations at the time, because a moment of irritation was not a moment for explanation; because his position (being in the chair) rendered it impossible to enter into explanations without obvious danger of consequences which might hazard the dignity of the Senate, or prove disagreeable and injurious in more than one point of view; that he had, therefore, preferred to leave to their reflections his justification; that, on his part, he had no injuries to complain of; if any had been done or attempted, he was ignorant of the authors; and if he had ever heard, he had forgotten, for, he thanked God, he had no memory for injuries.

"He doubted not but that they had found occasion to observe, that to be prompt was not therefore to be precipitate; and that to act without delay was not always to act without reflection; that error was often to be preferred to indecision; that his errors, whatever they might have been, were those of rule and principle, and not of caprice; that it could not be deemed arrogance in him to say that, in his official conduct, he had known no party, no cause, no friend; that if, in the opinion of any, the discipline which had been established approached to rigor, they would at least admit that it was uniform and indiscriminate.

"He further remarked, that the ignorant and unthinking affected to treat as unnecessary and fastidious a rigid attention to rules and decorum; but he thought nothing trivial which touched, however remotely, the dignity of that body; and he appealed to their experience for the justice of this sentiment, and urged them in language the most impressive, and in a manner the most commanding, to avoid the smallest relaxation of the habits which he had endeavored to inculcate and establish.

"But he challenged their attention to considerations more momentous than any which regarded merely their personal honor and character—the preservation of law, of liberty, and the Constitution. This House, said he, is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

"He then adverted to those affecting sentiments which attended a final separation—a dissolution, perhaps forever, of those associations which he hoped had been mutually satisfactory. He consoled himself, however, and them, with the reflection, that, though they separated, they would be engaged in the common cause of disseminating principles of freedom and social order. He should always regard the proceedings of that body with interest and with solicitude. He should feel for their honor and the national honor so intimately connected with it, and took his leave with expressions of personal respect, and with prayers, and wishes," &c.

Whereupon, the Senate proceeded to the choice of a President, *pro tempore*, as the Constitution provides; and the honorable JOSEPH ANDERSON was elected.

Ordered, That the Secretary wait on the President of the United States, and acquaint him that, the VICE PRESIDENT being absent, the Senate have elected the honorable JOSEPH ANDERSON President of the Senate *pro tempore*.

Ordered, That the Secretary notify the same to the House of Representatives.

Resolved, unanimously, That the thanks of the Senate be presented to AARON BURR, in testimony of the impartiality, dignity, and ability, with which he has presided over their deliberations; and of their entire approbation of his conduct in discharge of the arduous and important duties assigned him as President of the Senate.

Ordered, That Messrs SMITH, of Maryland, and WHITE, be a committee to communicate to him this resolution.

The bill, entitled "An act further to alter and establish certain post roads, and for other purposes," was, by unanimous consent, read the third time, and amended.

Resolved, That this bill do pass as amended.

A message from the House of Representatives informed the Senate that the House concur in the amendments of the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to their amendment to the bill, entitled "An act to regulate the clearance of armed merchant vessels;" and concurred therein.

The bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was, by unanimous consent, read the third time as amended and passed.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," with an amendment, in which they desire the concurrence of the Senate.

The Senate took into consideration the amendments of the House of Representatives to the bill first mentioned in the message; and non-concurred therein.

A message from the House of Representatives informed the Senate that the House insist on their amendment, disagreed to by the Senate, to the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" they ask a conference thereon, and have appointed managers on their part.

The Senate proceeded to consider the message

of the House of Representatives, asking a conference on the bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," and, having agreed to the said conference, Messrs. BRADLEY, and SMITH, of Maryland, were appointed managers at the same on their part.

The Senate took into consideration the motion made on the 28th February last, on the subject; and,

Resolved, That the Secretary of State be directed to lay before this House, at the next meeting of Congress, such laws of Great Britain as impose any higher or greater duties on the exportation of goods, wares, and merchandise, to the United States, than are imposed on similar goods, wares, and merchandise, when exported to the nations of Europe; and also to report the amount, in sterling money, of the exports to the United States, from Great Britain and Ireland, for the years 1802, 1803, 1804, on which such duties are charged.

The Senate resumed the consideration of the motion made on the 28th February, that a statement be exhibited of the amount of certain imported articles; and,

Resolved, That the Secretary of the Treasury be directed to report to the House, at the next meeting of Congress, a statement, showing the value (agreeably to the prime cost) in sterling money, of Irish linens, and all other manufactures of linen, of sail duck, nails, hats, looking-glasses, plated and glass wares, ribands, silks of all kinds, printed linen and cotton, and the quality of British salt and rum, imported into the United States from Great Britain and her dependencies, during the years 1802, 1803, and 1804; and, also, the value of linens imported into the United States from all other foreign nations.

SUNDAY, March 3.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse," in which they ask the concurrence of the Senate. They disagree to the amendments of the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase."

The bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," was read the third time as amended.

On motion, to strike out the first section of the bill, as follows:

"Be it enacted, by the Senate and House of Representatives, of the United States of America in Congress assembled. That whensoever any treason, felony, misprision of treason, or of felony, misdemeanor, breach of peace, or of the revenue laws of the United States, shall hereafter be committed, within the jurisdiction of the United States, and the case shall be cognizable by, or under their authority, if the person committing the same shall be on board any foreign armed vessel, in any other port or harbor of the United States, or in the waters within their jurisdiction, it shall be the duty of any judge or justice of any court of the United States, upon satisfactory proof thereof to him made, to issue his warrant, specifying the nature of the offence, and directed to a marshal, commanding him to take the body of the offender and bring him before the said judge or justice, to be dealt with according to law. And if the said marshal shall deem the ordinary *posse comitatus* insufficient to insure the execution of the said warrant, he shall apply to the said judge or justice, who shall immediately issue his order directed to any officer having command of militia, or any other having command of regular troops, or of armed vessels of the United States, in the vicinity, requiring him to aid the said marshal with all the force under his command, or such part as may be necessary in executing the warrant aforesaid. And the said marshal, conforming himself in all things to the instructions which he shall receive from the President of the United States, or from any other person authorized by the President, shall first demand the surrender of the person charged with the offence; and, if delivery be not made, or if the marshal be obstructed from making the demand, he shall use all the means in his power, by force and arms, to arrest the offender, and all others who are with him giving him aid and countenance in evading the arrest, and he shall convey the said offender and all others arrested as aforesaid, and deliver them to the civil authority, to be dealt with according to law. If death ensue to the person ordered to be arrested, or to any of those giving him aid and countenance, it shall be justified, but, if to the marshal, or any of those supporting him in his discharge of duty, the persons engaged in resisting the civil authority shall be punished as in cases of felonious homicide."

It passed in the negative—yeas 2, nays 25, as follows:

YEAS—Messrs. Logan and Wright.

NAYS—Messrs. Adams, Anderson, Bradley, Brown, Cocke, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Howland, Jackson, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Vermont, Stone, Sumter, and White.

And on the question, Shall this bill pass? It was determined in the affirmative—yeas 25, nays 3, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Brown, Cocke, Condit, Dayton, Ellery, Giles, Hillhouse, Howland, Jackson, Maclay, Mitchill, Moore, Olcott, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, White, and Wright.

NAYS—Messrs. Adams, Logan, and Plumer.

So it was, *Resolved*, That this bill pass as amended.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act for the relief of Robert Patton and others;" in which they desire the concurrence of the Senate. They have passed the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial Courts," with amendments; in which they ask the concurrence of the Senate.

A message was received from the House of Representatives informing the Senate that the House have passed a bill, entitled "An act to revive and make permanent the act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses, passed the third day of January, one thousand seven hundred and ninety-eight, and in addition to the same," in which they desire the concurrence of the Senate. They agree to the "Resolution expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," with an amendment; in which they ask the concurrence of the Senate.

Mr. BRADLEY from the managers appointed on the part of the Senate to confer on the bill, entitled "An act in addition to an act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," reported that they could come to no agreement with the managers appointed on the part of the House of Representatives. Whereupon,

Resolved, That the Senate do adhere to their disagreement to the amendments insisted on by the House of Representatives.

Mr. SMITH of Maryland, from the committee appointed for that purpose, reported that they had waited on the VICE PRESIDENT, agreeably to the resolution of yesterday to which he made the following reply.

To the Senate of the United States:

GENTLEMEN: Next to the satisfaction derived from the consciousness of having discharged my duty, is that which arises from the favorable opinion of those who have been the constant witnesses of my official conduct; and the value of this flattering mark of their esteem is greatly enhanced by the promptitude and unanimity with which it is offered.

I pray you to accept my respectful acknowledgments, and the assurance of my inviolable attachment to the interests and dignity of the Senate.

MARCH 3, 1805. A. BURR.

The Senate took into consideration the amendments disagreed to by the House of Representatives on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase;" and

Resolved, That they do insist on their said amendments, ask a conference thereon, and that Messrs. GILES and BRADLEY be the managers on their part.

A message from the House of Representatives informed the Senate that the House have passed a bill, entitled "An act to provide for a light-house on Watch Hill Point, in the State of Rhode Island; in which they ask the concurrence of the Senate.

The bill, entitled "An act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse," was read three several times, by unanimous consent, and passed.

The bill, entitled "An act to provide for a light-house on Watch Hill Point, in the State of Rhode Island," was read the first and second times by unanimous consent, and

On the question, shall this bill be read the third time by unanimous consent; it was objected to, so the bill was lost.

The bill, entitled "An act to revive and make permanent the 'Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses,' passed the third day of January, 1798, and in addition to the same;" was read the first and second time by unanimous consent; and

On the question, shall this bill be read the third time by unanimous consent; it was objected to, so the bill was lost.

The bill, entitled "An act for the relief of Robert Patton and others," was read three several times by unanimous consent, and passed.

The Senate proceeded to consider the amendments of the House of Representatives to the "Resolution expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron;" and agreed thereto, with an amendment to their amendments.

The Senate took into consideration the amendments of the House of Representatives to the bill, entitled "An act to extend jurisdiction in certain cases to the State and Territorial Courts;" and agreed thereto.

A message from the House of Representatives informed the Senate that the House agree to the conference requested by the Senate on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase," and have appointed managers on their part.

Mr. GILES, from the managers appointed on the part of the Senate, to confer on the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," reported. Whereupon,

Resolved, That the Senate do adhere to their amendments disagreed to by the House of Representatives.

A message from the House of Representatives informed the Senate that the House adhere to their disagreement to the amendments of the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase."

On motion,

Resolved, That Messrs. ADAMS, and SMITH, of Maryland, be a committee on the part of the Senate, with such as the House of Representatives may join, to wait on the President of the United States, and notify him that, unless he may have any further communications to make to the two Houses of Congress, they are ready to adjourn.

Ordered, That the Secretary acquaint the House of Representatives therewith, and desire the appointment of a committee on their part.

Mr. ADAMS, from the committee, reported that they had waited upon the President of the United States, who informed them that he had no further communications to make to the two Houses of Congress.

The Secretary was then directed to inform the House of Representatives that the Senate, having finished the business before them, are about to adjourn. Whereupon, the Senate adjourned.

MARCH 4, 1805.

INAUGURAL SPEECH.

On Monday, at 12 o'clock. THOMAS JEFFERSON, President of the United States, took the oath of office, and delivered the following Inaugural Speech, in the Senate Chamber, in the presence of the members of the two Houses, and a large concourse of citizens:

PROCEEDING, fellow-citizens, to that qualification which the Constitution requires before my entrance on the charge conferred on me, it is my duty to express the deep sense I entertain of this new proof of confidence from my fellow-citizens at large, and the zeal with which it inspires me so to conduct myself as may best satisfy their just expectations.

On taking this station, on a former occasion, I declared the principles on which I believed it my duty to administer the affairs of our commonwealth. My conscience tells me I have, on every occasion, acted up to that declaration, according to its obvious import, and to the understanding of every candid mind.

In the transaction of your foreign affairs, we have endeavored to cultivate the friendship of all nations, and especially of those with which we have the most important relations. We have done them justice on all occasions; favor, where favor was lawful, and cherished mutual interests and intercourse on fair and equal terms. We are firmly convinced, and we act on that conviction, that with nations, as with individuals, our interests, soundly calculated, will ever be found inseparable from our moral duties; and history bears witness to the fact, that a just nation is trusted on its word, when recourse is had to armaments and wars to bridle others.

At home, fellow-citizens, you best know whether we have done well or ill. The suppression of unnecessary offices, of useless establishments and expenses, enabled us to discontinue our internal taxes. These, covering our land with officers, and opening our doors to their intrusions, had already begun that process of domiciliary vexation, which, once entered, is scarcely to be restrained from reaching, successively, every article of property and produce. If, among these taxes, some minor ones fell, which had not been inconvenient, it was because their amount would not have paid the officers who collected them; and because, if they had any merit, the State authorities might adopt them instead of others less approved.

The remaining revenue, on the consumption of foreign articles, is paid chiefly by those who can afford to add foreign luxuries to domestic comforts. Being collected on our seaboard and frontiers only, and incorporated with the transactions of our mercantile citizens, it may be the pleasure and the pride of an American to ask, what farmer, what mechanic, what laborer, ever sees a tax-gatherer of the United States? These contributions enable us to support the current expenses of the Government; to fulfil contracts with foreign nations; to extinguish the native right of soil within our limits; to extend those limits; and to apply such a surplus to our public debts, as places, at a short day, their final redemption; and that redemption, once effected, the revenue thereby liberated may, by a just repartition of it among the States, and a corresponding amendment of the Constitution, be applied, *in time of peace*, to rivers, canals, roads, arts, manufactures, education, and other great objects, within each State. *In time of war*, if injustice by ourselves, or others, must sometimes produce war, increased, as the same revenue will be, by increased population and consumption, and aided by other resources reserved for that crisis, it may meet, within the year, all the expenses of the year, without encroaching on the rights of future generations, by burdening them with the debts of the past. War will then be but a suspension of useful works; and a return to a state of peace, a return to the progress of improvement.

I have said, fellow-citizens, that the income reserved had enabled us to extend our limits; but that extension may possibly pay for itself before we are called on; and, in the mean time, may keep down the accruing interest: in all events, it will replace the advances we shall have made. I know that the acquisition of Louisiana has been disapproved by some, from a candid apprehension that the enlargement of our territory would endanger its union. But who can limit the extent to which the federative principle may operate effectively? The larger our association, the less will it be shaken by local passions: and, in any view, is it not better that the opposite bank of the Mississippi should be settled by our own brethren and children, than by strangers of another family? With which should we be most likely to live in harmony and friendly intercourse?

In matters of religion, I have considered that its free exercise is placed by the Constitution independent of the powers of the General Government. I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the Constitution found them, under the direction and discipline of the Church or State authorities acknowledged by the several religious societies.

The aboriginal inhabitants of these countries I have regarded with the commiseration their history inspires. Endowed with the faculties and the rights of men, breathing an ardent love of liberty and independence, and occupying a country which left them no desire but to be undisturbed, the stream of overflowing population from other regions directed itself on these shores. Without power to divert, or habits to contend against it, they have been overwhelmed by the current, or driven before it. Now reduced within limits too narrow for the hunter state, humanity enjoins us to teach them agriculture and the domestic arts; to encourage them to that industry which alone can enable them to maintain their place in existence; and to prepare them in time for that state of society which, to bodily comforts, adds the improvement of the mind and morals. We have therefore liberally furnished them with the implements of husbandry and household use; we have placed among them instructers in the arts of first necessity; and they are covered with the ægis of the law against aggressors from among ourselves.

But the endeavors to enlighten them on the fate

which awaits their present course of life, to induce them to exercise their reason, follow its dictates, and change their pursuits with the change of circumstances, have powerful obstacles to encounter. They are combatted by the habits of their bodies, prejudices of their minds, ignorance, pride, and the influence of interested and crafty individuals among them, who feel themselves something in the present order of things, and fear to become nothing in any other. These persons inculcate a sanctimonious reverence for the customs of their ancestors; that whatsoever they did, must be done through all time; that reason is a false guide, and to advance under its counsel in their physical, moral, or political condition, is perilous innovation; that their duty is to remain as their Creator made them; ignorance being safety, and knowledge full of danger. In short, my friends, among them, also, is seen the action and counteraction of good sense and of bigotry. They, too, have their anti-philosophists, who find an interest in keeping things in their present state; who dread reformation, and exert all their faculties to maintain the ascendency of habit over the duty of improving our reason, and obeying its mandates.

In giving these outlines, I do not mean, fellow-citizens, to arrogate to myself the merit of the measures—that is due, in the first place, to the reflecting character of our citizens at large, who, by the weight of public opinion, influence and strengthen the public measures. It is due to the sound discretion with which they select from among themselves those to whom they confide the Legislative duties. It is due to the zeal and wisdom of the characters thus selected, who lay the foundations of public happiness in wholesome laws, the execution of which alone remains for others; and it is due to the able and faithful auxiliaries, whose patriotism has associated them with me in the Executive functions.

During this course of Administration, and in order to disturb it, the artillery of the press has been levelled against us, charged with whatsoever its licentiousness could devise or dare. These abuses of an institution, so important to freedom and science, are deeply to be regretted, inasmuch as they tend to lessen its usefulness, and to sap its safety. They might, indeed, have been corrected by the wholesome punishments reserved to, and provided by, the laws of the several States against falsehood and defamation; and public duties, more urgent, press on the time of public servants, and the offenders have therefore been left to find their punishment in the public indignation.

Nor was it uninteresting to the world, that an experiment should be fairly and fully made, whether freedom of discussion, unaided by power, is not sufficient for the propagation and protection of truth! Whether a Government, conducting itself in the true spirit of its Constitution, with zeal and purity, and doing no act which it would be unwilling the whole world should witness, can be written down by falsehood and defamation! The experiment has been tried. You have witnessed the scene. Our fellow-citizens looked on cool and collected. They saw the latent source from which these outrages proceeded. They gathered around their public functionaries; and when the Constitution called them to the decision by suffrage, they pronounced their verdict honorable to those who had served them, and consolatory to the friend of man, who believes that he may be trusted with the control of his own affairs.

No inference is here intended, that the laws provided by the States against false and defamatory publications, should not be enforced. He who has time, renders a service to public morals and public tranquillity, in reforming these abuses by the salutary coercions of the law. But the experiment is noted to prove, that, since truth and reason have maintained their ground against false opinions, in league with false facts, the press, confined to truth, needs no other legal restraint. The public judgment will correct false reasonings and opinions, on a full hearing of all parties; and no other definite line can be drawn between the inestimable liberty of the press, and its demoralizing licentiousness. If there be still improprieties which this rule would not restrain, its supplement must be sought in the censorship of public opinion.

Contemplating the union of sentiment now manifested so generally, as auguring harmony and happiness to our future course, I offer to our country sincere congratulations. With those, too, not yet rallied to the same point, the disposition to do so is gaining strength. Facts are piercing through the veil drawn over them: and our doubting brethren will at length see that the mass of their fellow-citizens, with whom they cannot yet resolve to act, as to principles and measures, think as they think, and desire what they desire: that our wish, as well as theirs, is, that the public efforts may be directed honestly to the public good; that peace be cultivated; civil and religious liberty unassailed; law and order preserved; equality of rights maintained; and that state of property, equal or unequal, which results to every man from his own industry, or that of his father's. When satisfied of these views, it is not in human nature that they should not approve and support them. In the mean time, let us cherish them with patient affection; let us do them justice, and more than justice, in all competitions of interest; and we need not doubt that truth, reason, and their own interests, will at length prevail; will gather them into the fold of their country, and will complete that entire union of opinion which gives to a nation the blessing of harmony, and the benefit of all its strength.

I shall now enter on the duties to which my fellow-citizens have again called me, and shall proceed in the spirit of those principles which they have approved. I fear not that any motives of interest may lead me astray. I am sensible of no passion which could seduce me, knowingly, from the path of justice; but the weaknesses of human nature, and the limits of my own understanding, will produce errors of judgment, sometimes injurious to your interests. I shall need, therefore, all the indulgence which I have heretofore experienced from my constituents. The want of it will certainly not lessen with increasing years. I shall need, too, the favor of that Being in whose hands we are; who led our fathers, as Israel of old, from their native land, and planted them in a country flowing with all the necessaries and comforts of life; who has covered our infancy with His providence, and our riper years with His wisdom and power; and to whose goodness I ask you to join in supplications with me, that He will so enlighten the minds of your servants, guide their councils, and prosper their measures, that, whatsoever they do, shall result in your good, and shall secure to you the peace, friendship, and appprobation of all nations.

After which, the Chief Justice of the United States administered to him the oath of office prescribed by the Constitution; and the oath was, in like manner, administered to GEORGE CLINTON, Vice President of the United States; after which, the PRESIDENT and VICE PRESIDENT retired.

TRIAL OF SAMUEL CHASE,

AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES,

IMPEACHED BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS, BEFORE THE SENATE OF THE UNITED STATES.

[TAKEN IN SHORT-HAND BY SAMUEL H. SMITH AND THOMAS LLOYD.]

[The following report of the trial of SAMUEL CHASE has been drawn up with the greatest care. To guard against misconception or omission, two individuals, one of whom is a professional stenographer, were constantly engaged during the whole course of the trial; and the arguments of the managers and counsel have in most instances, and whenever it was attainable, been revised by them. It is with some satisfaction that the editor of this impression is enabled, under these circumstances, to submit to the public a tract, whose fidelity and comprehensiveness, he hopes will amply reward the interest so deeply excited by the progress and issue of this important trial.—*Editor National Intelligencer.*]

MEASURES PRELIMINARY TO THE TRIAL.

On the fifth day of January 1804, Mr. J. RANDOLPH, a member of the House of Representatives of the United States, rose and addressed that body to the following effect:

He observed "That no people were more fully impressed with the importance of preserving unpolluted the fountain of justice than the citizens of these States. With this view the Constitution of the United States, and of many of the States also, had rendered the magistrates who decided judicially between the State and the offending citizens, and between man and man, more independent than those of any other country in the world, in the hope that every inducement, whether of intimidation or seduction, which should cause them to swerve from the duty assigned to them, might be removed. But such was the frailty of human nature, that there was no precaution by which our integrity and honor could be preserved, in case we were deficient in that duty which we owed to ourselves. In consequence, sir," said Mr. Randolph, "of this unfortunate condition of man, we have been obliged, but yesterday, to prefer an accusation against a judge of the United States, who has been found wanting in his duty to himself and his country. At the last session of Congress, a gentleman from Pennsylvania did, in his place, (on a bill to amend the judicial system of the United States,) state certain facts, in relation to the official conduct of an eminent judicial character, which I then thought, and still think, the House bound to notice. But the lateness of the session (for we had, if I mistake not, scarce a fortnight remaining) precluding all possibility of bringing the subject to any efficient result, I did not then think proper to take any steps in the business. Finding my attention, however, thus drawn to a consideration of the character of the officer in question, I made it my business, considering it my duty, as well to myself as those whom I represent, to investigate the charges then made and the official character of the judge, in general. The result having convinced me that there exists ground of impeachment against this officer, I demand an inquiry into his conduct, and therefore submit to the House the following resolution:

"*Resolved*, That a committee be appointed to inquire into the official conduct of SAMUEL CHASE, one of the Associate Judges of the Supreme Court of the United States, and to report their opinion, whether the said SAMUEL CHASE hath so acted in his judicial capacity as to require the interposition of the Constitutional power of this House."

A short debate immediately arose on this motion, which was advocated by Messrs. J. RANDOLPH, SMILIE, and J. CLAY; and opposed by Mr. ELLIOT. Several members supported a motion to postpone it until the ensuing day, which was superseded by an adjournment of the House.

The House, on the next day, resumed the consideration of Mr. RANDOLPH'S motion, which was supported by Mr. SMILIE, and, on the motion of Mr. LEIB, so amended as to embrace an inquiry into the official conduct of Richard Peters, district judge for the District of Pennsylvania. On the motion, thus amended, further debate arose, which occupied the greater part of this and the ensuing day. It was supported by Messrs. FINDLEY, JACKSON, NICHOLSON, HOLLAND, J. RANDOLPH, EUSTIS, EARLY, SMILIE, and EPPES; and opposed by Messrs. LOWNDES, R. GRISWOLD, ELLIOT, DENNIS, GRIFFIN, THATCHER, HUGER, and DANA. Some ineffectual attempts were made to amend the resolution, when the final question was taken on the resolution, as amended, in the following words:

"*Resolved*, That a committee be appointed to inquire into the official conduct of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and of Richard Peters, district judge of the district of Pennsylvania, and to report their opinion, whether the said Samuel Chase and Richard Peters, or either of them, have so acted in their judicial capacity, as to require the interposition of the Constitutional power of this House."

And resolved in the affirmative—yeas 81, nays 40, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Joseph Clay, John Clopton, Jacob Crowninshield, Richard Cutts, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, William Hoge, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, Oliver Phelps, John Randolph, jr., Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Thos. Sandford, Ebenezer Seaver, Tompson J. Skinner, Jas. Sloan, John Smilie, John Smith of Virginia, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jun., Thomas Lewis, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Samuel L. Mitchill, James Mott, Thomas Plater, Samuel D. Purviance, Joshua Sands, John Cotton Smith, John Smith of New York, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Whereupon, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, R. GRISWOLD, HUGER, and BOYLE, were appointed a committee pursuant to the foregoing resolution.

On the 10th of January, the committee were authorized by the House to send for persons, papers, and records; and on the 30th day of the same month they were authorized to cause to be printed such documents and papers, as they might deem necessary, previous to their presentation to the House.

On the 6th day of March, Mr. RANDOLPH, in the name of the committee, made a report, "That 'in consequence of the evidence collected by them, 'in virtue of the powers with which they have 'been invested by the House, and which is hereunto subjoined, they are of opinion, 1st. That 'Samuel Chase, Esq., an associate justice of the 'Supreme Court of the United States, be impeached of high crimes and misdemeanors.

"2d. That Richard Peters, district judge of the 'district of Pennsylvania, has not so acted in his 'judicial capacity as to require the interposition 'of the Constitutional power of this House."

This report, accompanied by a great mass of printed documents, embracing various depositions taken before the committee, as well as at a distance, was made the order of the day for the Monday following.

On that day the House took up the report, and after a short debate concurred in the first resolution by the following votes—yeas 73, nays 32, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, William Findley, John Fowler, James Gillespie, Peterson Goodwyn, Andrew Gregg, Samuel Hammond, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Andrew Moore, Nicholas R. Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, John Trigg, Isaac Van Horne, Joseph B. Varnum, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittendon, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, Thomas Griffin, Gaylord Griswold, Roger Griswold Seth Hastings, William Helms, Benjamin Huger, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thos. Plater, Samuel D. Purviance, John Cotton Smith, John Smith of Virginia, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Samuel Thatcher, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

The second resolution was agreed to unanimously.

Whereupon, it was ordered, that Mr. JOHN RANDOLPH and Mr. EARLY be appointed a committee to go to the Senate, at the bar thereof, in the name of the House of Representatives, and of all the people of the United States, to impeach Samuel Chase, one of the associate justices, of the Supreme Court of the United States, of high crimes and misdemeanors; and acquaint the Senate that the House of Representatives will in due time, exhibit particular articles of impeachment against him, and make good the same. It was also ordered, that the committee do demand, that the Senate take order for the appearance of the said Samuel Chase, to answer to the said impeachment.

On the 13th of March, Messrs. J. RANDOLPH, NICHOLSON, J. CLAY, EARLY, and BOYLE, were appointed a committee to prepare and report articles of impeachment against Samuel Chase, and invested with power to send for persons, papers, and records.

On the 14th, a message was received from the Senate, notifying the House, that they would take proper order on the impeachment, of which due notice should be given to the House.

On the 26th, Mr. RANDOLPH, from the committee appointed for that purpose, reported articles of impeachment against Samuel Chase. No order was taken on the report during the remainder of the session, which terminated the next day.

At the ensuing session of Congress, on the 6th of November 1804, on the motion of Mr. J. RANDOLPH, the articles of impeachment were referred to Messrs. J. RANDOLPH, J. CLAY, EARLY, BOYLE, and J. RHEA, of Tennessee.

On the 30th of November, Mr. RANDOLPH reported the following articles of impeachment against Samuel Chase, in substance, not dissimilar from those reported at the last session, with the addition of two new articles:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, in maintenance and support of their impeachment against him for high crimes and misdemeanors:

ARTICLE 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which, ultimately, rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as to the publication from which the words charged to be libellous in the indictment were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude manifested by the said Samuel Chase for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, entitled "An act to establish the judicial courts of the United States," that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found: and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to

appear and answer such presentment at the next court, yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas, by the laws of Virginia it is provided, that, in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That, at a circuit court of the United States for the district of Delaware, held at Newcastle in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in 'the State of Delaware, among a certain class of peo-'ple, particularly in Newcastle county, and more espe-'cially in the town of Wilmington, where lived a most 'seditious printer, unrestrained by any principle of vir-'tue, and regardless of social order—that the name of 'this printer was"—but checking himself, as if sensible of the indecorum he was committing, added, "that it 'might be assuming too much to mention the name of 'this person, but it becomes your duty, gentlemen, to 'inquire diligently into this matter," or words to that effect; and that, with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming, in a Judge of the Supreme Court of the United States; and moreover that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra-judicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any farther articles, or other accusation, or impeachment, against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

This report was made the order for the 3d of December. On that and the ensuing day the House took the articles into consideration, to all of which they agreed, according to the following votes:

	Yeas.	Nays.		Yeas.	Nays.
Art. 1	83	34	Art. 6	73	42
2	83	35	7	73	42
3	84	34	8 1st sec.	74	39
4	84	34	8 2d sec.	78	32
5	72	45			

On the 5th, the House proceeded to the choice, by ballot, of seven managers to conduct the impeachment; and on counting the votes, Messrs. J. RANDOLPH, RODNEY, NICHOLSON, EARLY, BOYLE, NELSON, and G. W. CAMPBELL, appeared to be elected.

On a subsequent day, Mr. NELSON having declined his appointment, on account of absence, Mr. CLARK was chosen in his place.

The following resolution was then adopted:

Resolved, That the articles agreed to by this House be exhibited in the name of themselves, and of all the people of the United States, against Samuel Chase, in maintenance of their impeachment against him, for high crimes and misdemeanors, be carried to the Senate by the managers appointed to conduct the said impeachment.

The Senate having appointed the 7th of December for receiving the articles of impeachment, the

managers repaired on that day, at 1 o'clock, to the Senate Chamber. Having taken seats assigned them within the bar, and the Sergeant-at-Arms having proclaimed silence, Mr. J. RANDOLPH read the foregoing articles: whereupon the President of the Senate informed the managers that the Senate would take proper order on the subject of the impeachment, of which due notice should be given to the House of Representatives. The managers delivered the articles of impeachment at the table and withdrew.

On the 10th of December, the Senate, sitting as a High Court of Impeachments, adopted the following resolution:

Resolved, That the Secretary be directed to issue a summons to Samuel Chase, one of the associate justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives on Friday last: That the said summons be returnable the 2d day of January, and be served at least fifteen days before the return day thereof.

On the 24th and 31st of December, the Senate adopted the following rules of proceeding, to be observed in cases of impeachment.

1. Whensoever the Senate shall receive notice from the House of Representatives, that managers are appointed on their part, to conduct an impeachment against a. / person, and are directed to carry such articles to the Senate, the Secretary of the Senate shall immediately inform the House of Representatives, that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment, agreeably to the said notice.

2. When the managers of an impeachment shall be introduced to the bar of the Senate, and shall have signified that they are ready to exhibit articles of impeachment against any person, the President of the Senate shall direct the Sergeant-at-Arms to make proclamation; who shall, after making proclamation, repeat the following words: "All persons are commanded to keep silence, on pain of imprisonment, while the grand inquest of the nation is exhibiting to the Senate of the United States, articles of impeachment against ——;" after which the articles shall be exhibited, and then the President of the Senate shall inform the managers, that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

3. A summons shall issue, directed to the person impeached, in the form following:

The United States of America, ss.

The Senate of the United States, to ——, greeting:

Whereas, the House of Representatives of the United States of America, did, on the —— day of —— exhibit to the Senate, articles of impeachment against you, the said ——, in the words following, viz: [here recite the articles] and did demand that you the said —— should be put to answer the accusations as set forth in said articles; and that such proceedings, examinations, trials, and judgments, might be thereupon had, as are agreeable to law and justice: You, the said ——, are therefore hereby summoned, to be, and appear before the Senate of the United States of America, at their Chamber in the City of Washington, on the —— day of ——, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders and judgments as the Senate of the United States shall make in the premises, according to the Constitution and laws of the United States. Hereof you are not to fail.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of —— in the year of our Lord, —— and of the independence of the United States, the ——.

Which summons shall be signed by the Secretary of the Senate, and sealed with their seal, and served by the Sergeant-at-Arms to the Senate, or by such other person as the Senate shall specially appoint for that purpose; who shall serve the same, pursuant to the directions given in the form next following:

4. A precept shall be endorsed on said writ of summons, in the form following, viz:

United States of America, ss:

The Senate of the United States, to ——, greeting:

You are hereby commanded to deliver to, and leave with ——, if to be found, a true and attested copy of the within writ of summons, together with a like copy of this precept, showing him both; or in case he cannot with convenience be found, you are to leave true and attested copies of the said summons and precept, at his usual place of residence, and in whichsoever way you perform the service, let it be done at least —— days before the appearance day mentioned in said writ of summons. Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which precept shall be signed by the Secretary of the Senate, and sealed with their seal.

5. Subpœnas shall be issued by the Secretary of the Senate, upon the application of the managers of the impeachment, or of the party impeached, or his counsel, in the following form, to wit:

To ——, greeting:

You, and each of you, are hereby commanded to appear before the Senate of the United States, on the —— day of ——, at the Senate Chamber, in the City of Washington, then and there to testify your knowledge in the cause which is before the Senate, in which the House of Representatives have impeached ——. Fail not.

Witness, ——, Vice President of the United States of America, and President of the Senate thereof, at the City of Washington, this —— day of ——, in the year of our Lord ——, and of the Independence of the United States, the ——.

Which shall be signed by the Secretary of the Senate, and sealed with their seal.

Which subpœnas shall be directed, in every case, to the Marshal of the district, where such witnesses respectively reside, to serve and return.

6. The form of direction to the Marshal, for the service of the subpœna, shall be as follows:

The Senate of the United States of America, to the Marshal of the district of ——:

You are hereby commanded to serve and return the within subpœna, according to law.

Dated at Washington, this —— day of ——, in the

year of our Lord ——, and of the Independence of the United States, the ——.

Secretary of the Senate.

7. The President of the Senate shall direct all necessary preparations in the Senate Chamber, and all the forms of proceeding, while the Senate are sitting for the purpose of trying an impeachment, and all forms during the trial, not otherwise specially provided for by the Senate.

8. He shall also be authorized to direct the employment of the Marshal of the District of Columbia, or any other person or persons, during the trial, to discharge such duties as may be prescribed by him.

9. At twelve o'clock of the day appointed for the return of the summons against the person impeached, the Legislative and Executive business of the Senate shall be suspended and the Secretary of the Senate shall administer an oath to the returning officer, in the form following, viz: "I, ——, do solemnly swear, that the return made and subscribed by me, upon the process issued on the —— day of ——, by the Senate of the United States, against ——, is truly made, and that I have performed said services as therein described. So help me God." Which oath shall be entered at large on the records.

10. The person impeached shall then be called to appear, and answer the articles of impeachment exhibited against him. If he appears, or any person for him, the appearance shall be recorded, stating particularly, if by himself, or if by agent or attorney; naming the person appearing, and the capacity in which he appears. If he does not appear, either personally, or by agent or attorney, the same shall be recorded.

11. At twelve o'clock of the day appointed for the trial of an impeachment, the Legislative and Executive business of the Senate shall be postponed. The Secretary shall then administer the following oath or affirmation to the President:

"You solemnly swear, or affirm, that in all things appertaining to the trial of the impeachment of ——, you will do impartial justice according to the Constitution and laws of the United States."

12. And the President shall administer the said oath or affirmation to each Senator present.

The Secretary shall then give notice to the House of Representatives, that the Senate is ready to proceed upon the impeachment of ——, in the Senate Chamber, which Chamber is prepared with accommodations for the reception of the House of Representatives.

13. Counsel for the parties shall be admitted to appear, and be heard upon an impeachment.

14. All motions made by the parties, or their counsel, shall be addressed to the President of the Senate, and if he shall require it, shall be committed to writing, and read at the Secretary's table; and all decisions shall be had by yeas and nays, and without debate, which shall be entered on the records.

15. Witnesses shall be sworn in the following form, to wit: "You —— do swear, (or affirm, as the case may be,) that the evidence you shall give in the case now depending between the United States and ——, shall be the truth, the whole truth, and nothing but the truth. So help you God." Which oath shall be administered by the Secretary.

16. Witnesses shall be examined by the party producing them, and then cross-examined in the usual form.

17. If a Senator is called as a witness, he shall be sworn, and give his testimony standing in his place.

18. If a Senator wishes a question to be put to a witness, it shall be reduced to writing and put by the President.

19. At all times, whilst the Senate is sitting upon the trial of an impeachment, the doors of the Senate Chamber shall be kept open.

HIGH COURT OF IMPEACHMENTS.

WEDNESDAY, January 2, 1805.

The Court having been opened by proclamation,

The return made by the Sergeant-at-Arms was read, as follows:

"I, James Mathers, Sergeant-at-Arms to the Senate of the United States, in obedience to the within summons to me directed, did proceed to the residence of the within named Samuel Chase, on the 12th day of December, 1804, and did then and there leave a true copy of the said writ of summons, together with a true copy of the articles of impeachment annexed, with him the said Samuel Chase.

"JAMES MATHERS."

After which the Secretary administered to him the oath as follows:

"You, James Mathers, Sergeant-at-Arms to the Senate of the United States, do solemnly swear, that the return made and subscribed by you, upon the process issued on the 10th day of December last, by the Senate of the United States, against Samuel Chase, one of the Associate Justices of the Supreme Court, is truly made, and that you have performed said services as therein described. So help you God."

SAMUEL CHASE, having been solemnly called, appeared.

The President of the Senate (Mr. BURR) informed Mr. CHASE, that having been summoned to answer to the articles of impeachment exhibited against him by the House of Representatives, the Senate were ready to receive any answer he had to make to them.

Mr. CHASE requested the indulgence of a chair,* which was immediately furnished.

After being seated for a short time, Mr. CHASE rose, and commenced the following address to the Senate, which he read from a paper that he held in his hand:

"Mr. President: I appear, in obedience to a summons from this honorable Court, to answer articles of impeachment exhibited against me, by the honorable the House of Representatives of the United States.

"To these articles, a copy of which was delivered to me with the summons, I say that I have committed no crime or misdemeanor whatsoever, for which I am subject to impeachment according to the Constitution of the United States. I deny, with a few exceptions, the acts with which I am charged; I shall contend, that all acts admitted to have been done by me were *legal;* and I deny, in every instance, the *improper* intentions with which the acts charged are alleged to have

*We understand, that in correspondence with the Parliamentary practice of England, no chair was, previously to the introduction of Mr. Chase, assigned him; but that an informal intimation was made to him, that, on his requesting it, it would be allowed.

been done, and in which their supposed criminality altogether consists."

The PRESIDENT reminded Mr. Chase that this was the day appointed to receive any answer he might make to the articles of impeachment.

Mr. CHASE said his purpose was to request the allowance of further time to put in his answer.

The PRESIDENT desired him to proceed.

Mr. CHASE proceeded in his address:

"But in charges of so heinous a nature, urged by so high an authority, a simple denial is not sufficient. It behooves me, for the legal justification of my conduct, and for the vindication of my character, to meet *each* charge with a full and particular answer; to explain and refute at length every principle urged against me; to state the evidence by which I am to disprove every fact relied on in support of the accusation; and to detail all the facts and arguments on which my defence is to rest. The necessity of an answer embracing all these objects, in cases of impeachment, is obvious; and the right to make it, is secured by law and sanctioned by uniform practice.

"Such an answer it is my intention to make. It is my purpose to submit the *whole* ground of my defence to the view of this honorable Court, of my country, of the world, and of those who are to conduct the prosecution. So will my judges come to the trial with that full knowledge of the whole matter in dispute, which is essential for enabling them to understand and apply the testimony and the arguments; and the honorable managers will be better prepared to refute such parts of my defence as they may think untenable."

The PRESIDENT here interrupted Mr. Chase; and asked if the paper he was reading was intended for his answer; if so, it would be put on file. If it was the prelude to a motion he meant to make, praying to be allowed further time for putting in his answer, he would confine himself strictly to what had relation to that object. From the tenor of what had been urged it had appeared to him as intended for an answer to the articles of impeachment.

Mr. CHASE said it was not his answer that he was reading; but that he was assigning reasons, why he could not now answer, in order to show that he was entitled to further time to prepare and put in his answer.

PRESIDENT.—You, who are so conversant in the practice of courts of law, know very well that a motion for time must not be founded on mere suggestions, but must be founded on some facts to prove the propriety of the motion.

Mr. CHASE said he meant to show the impracticability of his answering at this time, from the articles themselves, and it was for that purpose he had made an allusion to them.

The PRESIDENT said, with the caution he had given, he might proceed, provided no objection were made by any gentleman of the Senate.

Mr. CHASE proceeded in his address:

"But in a case of this kind, where the accusation embraces so great a variety of charges, of principles, and of facts, it is manifest, that preparing such an answer, as I have a right to make and as my duty to myself, my family, my friends and my country, requires at my hand, a considerable time must be necessary.

"Many of the principles involved in this impeachment, are very important not only to me, but to the liberties of every American citizen, and to the cause of free government in general. These principles ought to be maturely considered, and clearly explained. They present a wide field of legal investigation; many of them require laborious and extensive research, and although some of them have accompanied the prosecution from its commencement, and have thus been for a considerable time subjected to my consideration; some, on the other hand, have been very recently introduced.

"Of this description is the principle, whereon the 5th and 6th articles rest: relative to the extent in which the courts of the United States are to be governed, not only in their *decisions*, but in their *proceedings* by the State laws. A principle which was not brought into view until a few weeks ago, and the explanation of which will require a careful consideration, of the conduct and proceedings of the supreme and circuit courts of the United States, from the first establishment of our federal system.

"The same articles involve the construction of two State laws of Virginia, which I am charged with having infringed in the trial of Callender, which were not mentioned on the trial, or during any of the introductory proceedings, and of which I never heard until these articles were reported a few weeks ago. It is manifest that in order to fix the true construction of these laws, about which professional men have differed in opinion, recourse must be had to the decisions of the courts of that State, as explained by their records; or in case those records should be silent, to the recollection and opinion of professional men, accustomed to preside or attend in the courts where those laws are enforced. It is manifest that such an investigation cannot be accomplished in a short time.

"The facts on which this prosecution rests, except the last article, are alleged to have taken place more than four years ago; some of them at Philadelphia, some at Wilmington, in the State of Delaware, and some at Richmond, in Virginia. These facts are very numerous, and the greater part of them are of such a nature, as to depend, for their criminality or innocence, on minute circumstances, or slight shades of testimony, and often on the different manner in which the same circumstances may affect different spectators, all equally disposed to represent truly what they observed. The most material facts are alleged to have happened in Richmond and Philadelphia. In the former of these places I am an utter stranger, having never been there but once; and in the latter, I know personally but very few individuals. These circumstances render it very difficult for me to ascertain the persons who witnessed the various transactions in question, and are able, after this lapse of time, to give accurate testimony concerning them; and this difficulty is very much

increased by the distance of those places from that of my residence. I assure this honorable court, that from the moment when this prosecution assumed a serious appearance and a definitive form, at the last session of Congress, I have turned my attention to the subject of my defence, and my answer, and have exerted myself in finding out and procuring the requisite testimony; but the difficulties which I have stated, added to my ill state of health during a great part of the last year, have prevented me from making such progress as to afford me the hope of being able to obtain the object in a very short time. I have done much, but much, very much, remains to be done, even in those parts of the prosecution where I had some notice by the proceedings of last session. In those very material parts which have originated during the present session, everything is still to be done.

"It may perhaps be thought, that although these preparations might be necessary for the trial, they are not so for the answer. But such an opinion, I trust, would on examination be found erroneous.

"The answer, in cases of impeachment, must disclose the whole defence, and the defence must be confined to the matters stated in the answer. Otherwise the prosecutors might be surprised at the trial, by objections which with previous notice, it would be in their power to refute or explain. The accused, therefore, before he puts in his answer, ought to have time sufficient for making himself thoroughly master of his defence, of the grounds on which it rests, and of the facts and evidence by which it is to be supported. He ought to be completely prepared for the trial; between which and the answer no delay need to take place, except such as may be necessary for convening the witnesses.

"In so material a part of his preparation for defence, as the drawing up of his answer, it will not, I presume, be denied, that he ought to have an opportunity of obtaining the best *professional* assistance which it may be in his power to procure. This assistance is rendered peculiarly necessary to me, by the very precarious state of my health; which affords me, at this season of the year, especially, but short and uncertain intervals of fitness for mental or bodily exertion. Should my answer be required in a short time, I have no reason to suppose that I shall be able to obtain such assistance of this kind as I so much need, and as probably, I shall otherwise have in my power. Professional gentlemen, engaged extensively in business, are at all times too liable to interruption, and too much occupied to devote themselves exclusively to an affair of this nature, so as to complete it within a short period; and at this season of the year, they are for the most part particularly and indispensably engaged.

"These reasons in favor of a liberal allowance of time for preparing the answer, derive great additional force from one further consideration, which I hope that I may, without impropriety, present to the view of this honorable Court. Reputation ought to be more dear to every man, and is more dear to me than the honors or the emoluments of office. In cases of impeachment, the facts which appear, the explanations which are given, and the arguments which are urged, at the trial, are sometimes wholly omitted in the statements given to the public, and often misrepresented, or stated too indistinctly to be generally understood. It is to the answer that the world must look for the justification of the accused. It is by his answer alone, that he can furnish a clear, concise, and authentic explanation of his conduct and his motives, supported by such a statement of his proofs, as can be extensively read, clearly understood, and easily remembered. He may, therefore, claim from justice, and expect from the high dignity and responsible character of this honorable tribunal, such time for preparing this very important document, as may enable him to bestow on it all the care and labor which it requires, and to give it all the force of which it may be susceptible.

"In stating these considerations, Mr. President, in support of my request for a continuance of this case, I disclaim all intention of affected delay. Feeling a consciousness of my integrity, and a just pride of character, which place me far above the fear of events, I am anxious to meet this accusation, and I rejoice in an opportunity of refuting it. I know that my conduct, though liable to a full portion of human error, has at all times been free from intentional impropriety. I know that, in all the instances selected as the grounds of accusation, I have discharged my official duties, with a sacred and inviolate regard to my oath, my character, the laws of my country, and the rights of my fellow-citizens. I know that I can prove my innocence as to all the matters alleged against me. And acrimonious as are the terms in which many of the accusations are conceived; harsh and opprobrious as are the epithets wherewith it has been thought proper to assail my name and character, by those who were '*puling in their nurses' arms*,' *whilst I was contributing my utmost aid to lay the groundwork of American liberty;* I yet thank my accusers, whose functions as members of the Government of my country I highly respect, for having at length put their charges into a definitive form, susceptible of refutation; and for having thereby afforded me an opportunity of vindicating my innocence, in the face of this honorable Court, of my country, and of the world."

On using the expressions marked in *italics*,

The PRESIDENT interrupted Mr. Chase, and said that observations of censure or recrimination were not admissible; it would be very improper for him to listen to observations on the statements of the House of Representatives before an answer was filed.

Mr. CHASE said he had very few words more to add, which would conclude what he had to say at the present time.

With the permission of the President he proceeded:

"But this vindication, situated as I am, and as this case is, cannot be the work of a few weeks. Much time has been employed in preparing the

accusation; less will be required for the defence; but a short time will not suffice. I am far from presuming to prescribe to this honorable Court, whose sense of justice and disposition to grant every proper indulgence, I cannot doubt; but it may, perhaps, not be improper to suggest that, by the first day of next session, the answer could be prepared and put in; and that the trial might then take place as soon afterwards as the witnesses could be collected. I declare that it will be impossible for me to prepare my answer in such time as to commence the trial during this session with any prospect of bringing it to a close before the session must end; and were I to omit that full answer, which I wish to give, it would be impossible for me, in the course of this session, (only two months of which now remain,) to ascertain fully all the facts necessary for my defence; to find out and bring to this place, the witnesses and written testimony; or to make arrangements relative to that assistance of counsel which my case requires, my age and infirmities render essential, and a longer time would enable me to procure.

"I hope, Mr. President, I may be permitted to observe, that my *private* and *professional* reputation for probity and honor has never been called in question. I have sustained a high judicial character for above sixteen years, and during the first six I presided at the trial of more criminals than any other judge within the United States. During this whole period of time my *official* conduct has never been arraigned, except only in the trial of Cooper, Fries, and Callender, above four years ago. For the truth of these assertions, I appeal to all who know me; and particularly to the two honorable Senators from Maryland.

"In respect to the present prosecution, I will make but one remark: That I am impeached for giving, on the trial of Callender, several judicial opinions, in which Judge Griffin, my associate concurred; my opinions are held to be criminal, or that they flowed from partiality, and an intention to oppress Callender; but the *same* opinions given by my associate have been considered perfectly innocent.

"I have now only to solicit this honorable Court to allow me until the first day of the next session to put in my answer, and to prepare for my trial; and I submit myself as to the further proceedings in this case to the discretion of this honorable Court, in whose integrity, impartiality, and independence, I repose the highest confidence. I will not for a moment believe that the spirit of party can ever enter and pollute these walls, or that popular prejudice or political motives will be harbored in the bosom of any member in this honorable body.

"On the contrary, I hope and expect, that all its decisions will be governed by the immutable principles of justice, and a sacred regard to the Constitution and the law of the land, which every member of this Court is bound by duty, and the obligations of a Christian judge, to support and observe."

Mr. CHASE having finished his address, was desired by the President, if he had any motion to make, to reduce it to writing, and hand it to the Secretary.

Whereupon, Mr. CHASE submitted the following motion:

"I solicit this honorable Court to allow me until the first day of the next session, to put in my answer, and to prepare for my trial."

The PRESIDENT informed Mr. Chase, that the Court would take time to consider his motion.*

The Senate withdrew to a private apartment, where debate arose on the question, whether it was not incumbent on the Senators to take the oath required by the Constitution, before they took into consideration the motion of Mr. Chase, which issued in the adoption of the following resolution:

Resolved, That, on the meeting of the Senate, tomorrow, before they proceed to any business on the articles of impeachment before them, and before any decision of any question, the oath prescribed by the rules, shall be administered to the President and members of the Senate.

On the ensuing day, previously to the entrance of the Senate into the public room, considerable debate took place on the motion of Mr. Chase, without any decision being made.

THURSDAY, January 3.

The Court was opened by proclamation about two o'clock.

The oath prescribed was administered to the President by the Secretary.

The PRESIDENT administered the oath prescribed to the following members:

Messrs. Adams, Anderson, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Giles, Hillhouse, Howland, Jackson, Mitchill, Moore, Olcott, Pickering, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Tracy, White, Worthington, and Wright.

And the affirmation was administered to Messrs. Logan, Maclay, and Plumer.

The PRESIDENT stated that he had received a letter from the defendant, enclosing an affidavit that further time was necessary for him to prepare for trial; which affidavit was read, as follows:

City of Washington, ss:

Samuel Chase made oath on the Holy Evangels of Almighty God, that it is not in his power to obtain information respecting the facts alleged in the articles of impeachment to have taken place in the city of Philadelphia in the trial of John Fries; or of the facts alleged to have taken place in the city of Richmond, in the trial of James T. Callender, in time to prepare and put in his answer, and to proceed to trial, with any probability that the same could be finished on or before the fifth day of March next. And further, that it is not in his power to procure information of the names of the witnesses, whom he thinks it may be proper and necessary for him to summon, in time to obtain their attendance, if his answer could be prepared in time

* During these proceedings, neither the managers nor the House of Representatives were present.

sufficient for the finishing of the said trial, before the said fifth day of March next; and the said Samuel Chase further made oath, that he believes it will not be in his power to obtain the advice of counsel, to prepare his answer, and to give him their assistance on the trial, which he thinks necessary, if the said trial should take place during the present session of Congress; and that he verily believes, if he had at this time full information of facts, and of the witnesses proper for him to summon, and if he had also the assistance of counsel, that he could not prepare the answer he thinks he ought to put in, and be ready for his trial, within the space of four or five weeks from this time. And further, that his application to the honorable the Senate, for time to obtain the information of facts, in order to prepare his answer, and for time to procure the attendance of necessary witnesses, and to prepare for his defence in the trial, and to obtain the advice and assistance of counsel, is not made for the purpose of delay, but only for the purpose of obtaining a full hearing of the articles of impeachment against him, in their real merits.

SAMUEL CHASE.

Sworn to, this third day of January, 1805, before
SAMUEL HAMILTON.

Whereupon, the following motion was made by Mr. BRADLEY:

"*Ordered*, That Samuel Chase file his answer, with the Secretary of the Senate, to the several articles of impeachment exhibited against him, by the House of Representatives, on or before the —— day of ——."

A motion was made by Mr. GILES to amend the motion, and to strike out all that follows the word "*Ordered*," and insert "That —— next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase."

Mr. HILLHOUSE called for a division of the question. And the yeas and nays being taken on striking out, it passed in the affirmative—yeas 20, nays 10, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, and Worthington.

NAYS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy, White, and Wright.

On motion, to insert the amendment proposed, the yeas and nays being taken, it passed in the affirmative—yeas 22, nays 8, as follows:

YEAS—Messrs. Anderson, Baldwin, Bradley, Breckenridge, Brown, Condit, Dayton, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter and Worthington.

NAYS—Messrs. Adams, Hillhouse, Olcott, Pickering, Plumer, Tracy, White, and Wright.

On motion, by Mr. TRACY, to fill the blank with the words "the first Monday of December next," the yeas and nays being taken, it passed in the negative—yeas 12 nays 18, as follows:

YEAS—Messrs. Bradley, Dayton, Hillhouse, Logan, Olcott, Pickering, Plumer, Smith of Maryland, Smith of Ohio, Smith of Vermont, Tracy, and White.

NAYS—Messrs. Adams, Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Maclay, Mitchill, Moore, Smith of New York, Sumter, Worthington and Wright.

On motion, by Mr. BRECKENRIDGE, to fill the blank with the words "the fourth day of February next" the yeas and nays being taken, it passed in the affirmative—yeas 22, nays 8, as follows:

YEAS—Messrs. Adams, Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington, and Wright.

NAYS—Messrs. Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy and White.

On motion, to agree to the order, as amended, the yeas and nays being taken, it passed in the affirmative—yeas 21, nays 9, as follows:

YEAS—Messrs. Anderson, Baldwin, Breckenridge, Brown, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Sumter, Worthington and Wright.

NAYS—Messrs. Adams, Bradley, Dayton, Hillhouse, Olcott, Pickering, Plumer, Tracy and White.

So it was *Ordered*. That the fourth day of February next shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase.

Ordered. That the Secretary notify the House of Representatives, and Samuel Chase, thereof.

[Between this day, and that assigned for receiving the answer of Mr. Chase, the Senate Chamber was fitted up in a style of appropriate elegance. Benches, covered with crimson, on each side, and in a line with the chair of the President, were assigned to the members of the Senate. On the right and in front of the chair, a box was assigned to the Managers, and on the left a similar box to Mr. Chase, and his counsel, and chairs allotted to such friends as he might introduce. The residue of the floor was occupied with chairs for the accommodation of the members of the House of Representatives; and with boxes for the reception of the foreign Ministers, and civil and military officers of the United States. On the right and left of the Chair, at the termination of the benches of the members of the Court, boxes were assigned to stenographers. The permanent gallery was allotted to the indiscriminate admission of spectators. Below this gallery, and above the floor of the House, a new gallery was raised, and fitted up with peculiar elegance, intended primarily for the exclusive accommodation of ladies. But this feature of the arrangement, made by the Vice President, was at an early period of the trial abandoned, it having been found impracticable to separate the sexes! At the termination of this gallery, on each side, boxes were specially assigned to ladies attached to the families of public characters. The preservation of order was devolved on the Marshal of the District of Columbia, who was assisted by a number of deputies.]

TRIAL OF SAMUEL CHASE.

MONDAY, February 4, 1805.

About a quarter before ten o'clock the Court was opened by proclamation, all the members of the Senate, thirty-four, attending.

The Chamber of the Senate, which is very extensive, was soon filled with spectators, a large portion of whom consisted of ladies, who continued, with little intermission, to attend during the whole course of the trial.

The oath prescribed was administered to Mr. BAYARD, Mr. COCKE, Mr. GAILLARD, and Mr. STONE, members of the Court, who were not present when it was before administered.

Ordered. That the Secretary give notice to the House of Representatives that the Senate are in their public chamber, and are ready to proceed on the trial of Samuel Chase; and that seats are provided for the accommodation of the members.

In a few minutes the Managers, viz: Messrs. J. RANDOLPH, RODNEY, NICHOLSON, BOYLE, G. W. CAMPBELL, EARLY, and CLARK, accompanied by the House of Representatives in Committee of the Whole, entered and took their seats.

SAMUEL CHASE being called to make answer to the articles of impeachment, exhibited against him by the House of Representatives, appeared, attended by Messrs. HARPER, MARTIN, and HOPKINSON, his counsel; to whom seats were assigned.

The PRESIDENT, after stating to Mr. CHASE the indulgence of time which had been allowed, inquired if he was prepared to give in his answer?

Mr. CHASE said, he had prepared it, as well as circumstances would permit; and submitted the following motion:

"Samuel Chase moves for permission to read his answer, by himself and his counsel, at the bar of this honorable Court."

The PRESIDENT asked him if it was the answer on which he meant to rely? to which he replied in the affirmative.

The motion being agreed to by a vote of the Senate, Mr. CHASE commenced the reading of his answer, (in which he was assisted by Messrs. HARPER, and HOPKINSON,) as follows:

This respondent, in his proper person, comes into the said Court, and protesting that there is no high crime or misdemeanor particularly alleged in the said articles of impeachment, to which he is, or can be bound by law to make answer; and saving to himself now, and at all times hereafter, all benefit of exception to the insufficiency of the said articles, and each of them, and to the defects therein appearing in point of law, or otherwise; and protesting also, that he ought not to be injured in any manner, by any words, or by any want of form in this his answer; he submits the following facts and observations by way of answer to the said articles.

The first article relates to his supposed misconduct in the trial of John Fries, for treason, before the circuit court of the United States at Philadelphia, in April and May 1800; and alleges that he presided at that trial, and that "unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them faithfully and impartially, and without respect to persons," he did then, "in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust."

This general accusation, too vague in itself for reply, is supported by three specific charges of misconduct:

1st "In delivering an opinion, in writing, on the question of law, on the construction of which, the defence of the accused materially depended:" which opinion, it is alleged, tended to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his favor.

2d. "In restricting the counsel for the said John Fries, from recurring to such English authorities, as they believed apposite; or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client."

3d. "In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give."

This first article then concludes, that in consequence of this irregular conduct of this respondent, "the said John Fries was deprived of the right secured to him by the eighth article amendatory of the Constitution, and was condemned to death, without having been heard by counsel, in his defence."

By the eighth article amendatory of the Constitution, this respondent supposes is meant the sixth amendment to the Constitution of the United States, which secures to the accused, in all criminal prosecutions, the right to have the assistance of counsel for his defence.

In answer to these three charges, the respondent admits that the circuit court of the United States, for the district of Pennsylvania, was held at Philadelphia, in that district, in the months of April and May, in the year of our Lord, one thousand eight hundred, at which court John Fries, the person named in the said first article, was brought to trial on an indictment for treason against the United States; and that this respondent then held a commission as one of the associate justices of the Supreme Court of the United States, by virtue of which office he did, pursuant to the laws of the United States, preside at the above-mentioned trial, and was assisted therein by Richard Peters, Esq., then, and still district judge of the United States for the district of Pennsylvania; who, as directed by the laws of the United States, sat as assistant judge at the said trial.

With respect to the opinion, which is alleged to have been delivered by this respondent, at the above-mentioned trial, he begs leave to lay before this honorable Court the true state of that

transaction, and to call its attention to some facts and considerations, by which his conduct on that subject will, he presumes, be fully justified.

The Constitution of the United States, in the third section of the third article, declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By two acts of Congress, the first passed on the third day of March, 1791, and the second on the eighth day of May, 1792, a duty was imposed on spirits distilled within the United States, and on stills; and various provisions were made for its collection.

In the year 1794, an insurrection took place in four of the western counties of Pennsylvania, with a view of resisting, and preventing by force the execution of these two statutes; and a circuit court of the United States, held at Philadelphia, for the district of Pennsylvania, in the month of April, in the year 1795, by William Patterson, Esq., then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, two persons, who had been concerned in the above-named insurrection, namely, Philip Vigol and John Mitchel, were indicted for treason, of levying war against the United States, by resisting and preventing by force the execution of the two last mentioned acts of Congress; and were, after a full and very solemn trial, convicted of the indictments and sentenced to death. They were afterwards pardoned by George Washington, then President of the United States.

In the first of these trials, that of Vigol, the defence of the prisoner was conducted by very able counsel, one of whom, William Lewis, Esq., is the same person who appeared as counsel for John Fries, in the trial now under consideration. Neither that learned gentleman, nor his able colleague, then thought proper to raise the question of law, "whether resisting and preventing by armed force the execution of a particular law of the United States, be a 'levying of war against the United States,' according to the true meaning of the Constitution? Although a decision of this question in the negative, must have acquitted the prisoner. But in the next trial, that of Mitchell, this question was asked on the part of the prisoner, and was very fully and ably discussed by his counsel; and it was solemnly determined by the court, both the judges concurring, "that to resist or prevent by armed force, the execution of a particular law of the United States, is a levying of war against the United States, and consequently is treason, within the true meaning of the Constitution." The decision, according to the best established principles of our jurisprudence, became a precedent for all courts of equal or inferior jurisdiction; a precedent which, although not absolutely obligatory, ought to be viewed with very great respect, especially by the court in which it was made, and ought never to be departed from, but on the fullest and clearest conviction of its incorrectness.

On the 9th of July, an act of Congress was passed, providing for a valuation of lands and dwelling-houses, and an enumeration of slaves throughout the United States; and directing the appointment of commissioners and assessors for carrying it into execution: and on the 4th day of July, in the same year, a direct tax was laid by another act of Congress of that date, on the lands, dwelling-houses, and slaves, so to be valued and enumerated.

In the months of February and March, A. D. 1799, an insurrection took place in the counties of Bucks and Northampton, in the State of Pennsylvania, for the purpose of resisting and preventing by force, the execution of the two last mentioned acts of Congress, and particularly that for the valuation of lands and dwelling-houses. John Fries, the person mentioned in the article of impeachment now under consideration, was apprehended and committed to prison, as one of the ringleaders of this insurrection; and at a circuit court of the United States, held at Philadelphia, in and for the district of Pennsylvania, in the month of April, A. D. 1799, he was brought to trial for this offence, on an indictment for treason, by levying war against the United States, before James Iredell, Esq., then one of the associate justices of the Supreme Court of the United States, who presided in the said court, according to law, and the above-mentioned Richard Peters, then district judge of the United States, for the district of Pennsylvania, who sat in the said circuit court as assistant judge.

In this trial, which was conducted with great solemnity, and occupied nine days, the prisoner was assisted by William Lewis and Alexander James Dallas, Esqs., two very able and eminent counsellors; the former of whom, William Lewis, is the person who assisted, as above mentioned, in conducting the defence of Vigol, on a similar indictment. These gentlemen, finding that the facts alleged were fully and undeniably proved, by a very minute and elaborate examination of witnesses, thought proper to rest the case of the prisoner on the question of law which had been determined in the cases of Vigol and Mitchel, above-mentioned, and had then been acquiesced in, but which they thought proper again to raise. They contended, "that to resist by force of arms a particular law of the United States, does not amount to levying war against the United States, within the true meaning of the Constitution, and therefore is not treason, but a riot only." This question they argued at great length, and with all the force of their learning and genius; and after a full discussion at the bar, and the most mature deliberation by the court, the learned and excellent judge who then presided, and who was no less distinguished by his humanity and tenderness towards persons tried before him, than by his extensive knowledge and great talents as a lawyer, pronounced the opinion of himself and his colleague, "that to resist, or prevent by force, the execution of a particular law of the United States, does amount to levying war against them, within the true meaning of the Constitution, and does, therefore, constitute the crime of treason:" thereby adding the weight of another and more solemn decision to the precedent which had been established in the above-mentioned cases of Vigol and Mitchel.

Under this opinion of the court on the question of law, the jury, having no doubt as to the facts, found the said John Fries guilty of treason on the above-mentioned indictment. But a new trial was granted by the court, not by reason of any doubt as to the correctness of the decision on the question of law, but solely on the ground, as this respondent hath understood and believes, that one of the jurors of the petit jury, after he was summoned, but before he was sworn on the trial, had made some declaration unfavorable to the prisoner.

The yellow fever having appeared in Philadelphia in the Summer of the year 1799, the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania, did, according to law, appoint the next circuit court of that district, to be held at Norristown therein: Pursuant to which appointment, a circuit court was held at Norristown aforesaid, in and for the said district, on the 11th day of October, in the last mentioned year, before Bushrod Washington, Esq., then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters; at which court no proceedings were had on the aforesaid indictment against John Fries, because, as this respondent hath been informed and believes, the commission of the marshal of the district had expired before he summoned the jurors to attend at the said court, and had not been renewed; by reason of which no legal panel of jurors could be formed.

On the 11th day of April, 1800, and from that day until the 2d day of May in the same year, a circuit court of the United States was held at Philadelphia, in and for the district of Pennsylvania, before this respondent, then one of the associate justices of the Supreme Court of the United States, and the above mentioned Richard Peters, then district judge of the United States for the district of Pennsylvania. At this court the indictment on which the said John Fries had been convicted as above-mentioned, was quashed *ex officio* by William Rawle, Esq., then attorney of the United States for the district of Pennsylvania, and a new indictment was by him preferred against the said John Fries, for treason of levying war against the United States, by resisting and preventing by force in the manner above set forth, the execution of the above-mentioned acts of Congress, for the valuation of lands and dwelling-houses, and the enumeration of slaves, and for levying and collecting a direct tax. This indictment, of which a true copy, marked No. 1, is herewith exhibited by this respondent, who prays that it may be taken as part of this his answer, being found by the grand jury on the 16th day of April, 1800, the said John Fries was on the same day arraigned thereon, and plead not guilty. William Lewis and Alexander James Dallas, Esqrs., the same persons who had conducted his defence at his former trial, were again at his request assigned by the court as his counsel; and his trial was appointed to be had on Tuesday the 22d day of the last mentioned month of April.

After this indictment was found by the grand jury, this respondent considered it with great care and deliberation, and finding from the three overt acts of treason which it charged, that the question of law arising upon it was the same question which had already been decided twice in the same court, on solemn argument and deliberation, and once in that very case, he considered the law as settled by those decisions, with the correctness of which, on full consideration, he was entirely satisfied; and by the authority of which he should have deemed himself bound, even had he regarded the question as doubtful in itself. They are moreover in perfect conformity with the uniform tenor of decisions in the courts of England and Great Britain, from the Revolution in 1688 to the present time, which, in his opinion, added greatly to their weight and authority.

And surely he need not urge to this honorable Court, the correctness, the importance, and the absolute necessity of adhering to principles of law once established, and of considering the law as finally settled, after repeated and solemn decisions by courts of competent jurisdiction. A contrary principle would unsettle the basis of our whole system of jurisprudence, hitherto our safeguard and our boast; would reduce the law of the land, and subject the rights of the citizen to the arbitrary will, the passions, or the caprice, of the judge in each particular case, and would substitute the varying opinions of various men, instead of that fixed, permanent rule, in which the very essence of law consists. If this respondent erred in regarding this point as settled, by the repeated and solemn adjudications of his predecessors in the same court and in the same case; if he erred in supposing that a principle established by two solemn decisions was obligatory upon him, sitting in the same court where those decisions had been made; if he erred in believing that it would be the highest presumption in him to set up his opinion and judgment over that of his colleague, who had twice decided the same question, and of two of his predecessors, who justly rank among the ablest judges that have ever adorned a court; if in all this he erred, it is an error of which he cannot be ashamed, and which he trusts will not be deemed criminal in the eyes of this honorable Court, of his country, or of that posterity by which he, his accusers, and his judges, must one day be judged.

Under the influence of these considerations this respondent drew up an opinion on the law, arising from the overt acts stated in the said indictment, which was conformable to the decisions before given as above-mentioned, and which he sent to his colleague the said Richard Peters for his consideration. That gentleman returned it to this respondent, with some amendments affecting the form only, but not in any manner touching the substance.

The opinion, thus agreed to, this respondent thought it proper to communicate to the prisoner's counsel; several reasons concurred in favor of this communication. In the first place this respondent considered himself and the court as bound by the authority of the former decisions especially the last of them, which was on the same case. He considered the law as settled, and had every reason to believe that his colleague viewed it in the same light. It was not suggested or understood that any new evidence was to be offered; and he knew that if any should be offered, which could vary the case, it would render wholly inapplicable both the opinion and the former decisions on which it was founded. And he could not and did not suppose that the prisoner's counsel would be desirous of wasting very precious time, in addressing to the court an useless argument on a point which that court held itself precluded from deciding in their favor. He therefore conceived that it would be rendering the counsel a service and a favor to apprize them beforehand of the view which the court had taken of the subject, so as to let them see in time the necessity of endeavoring to produce new testimony, which might vary the case, and take it out of the authority of former decisions.

Secondly, there were more than one hundred civil causes then depending in the said court, as appears by the exhibit marked No. 1, which this respondent prays may be taken as part of this, his answer. Many of those causes had already been subjected to great delay, and it was the peculiar duty of this respondent, as presiding judge, to take care that as little time as possible should be unnecessarily consumed, and that every convenient and proper dispatch should be given to the business of the citizens. He did believe that an early communication of the court's opinion might tend to the saving of time, and consequently to the dispatch of business.

Thirdly, as the court held itself bound by the former decisions, and could not therefore alter its opinion in consequence of any argument; and as it was the duty of the court to charge the jury on the law in all cases submitted to their consideration, he knew that this opinion must not only be made known at some period or other of the trial, but must at the end of the trial be expressly delivered to the jury by him in a charge from the bench: and he could not suppose and cannot yet imagine, that an opinion, which was to be thus solemnly given in charge to the jury at the close of the trial, could make any additional impression on their minds from the circumstance of its being intimated to the counsel before the trial began, in the hearing of those who might be afterwards sworn on the jury.

And lastly, it was then his opinion, and still is, that it is the duty of every court of this country, and was his duty on the trial now under consideration, to guard the jury against erroneous impressions respecting the laws of the land. He well knows that it is the right of juries in criminal cases to give a general verdict of acquittal, which cannot be set aside on account of its being contrary to law, and that hence results the power of juries to decide on the law as well as on the facts in all criminal cases. This power he holds to be a sacred part of our legal privileges, which he never has attempted, and never will attempt to abridge or to obstruct. But he also knows, that in the exercise of this power, it is the duty of the jury to govern themselves by the laws of the land, over which they have no dispensing power; and their right to expect and receive from the court all the assistance which it can give for rightly understanding the law. To withhold this assistance in any manner whatever; to forbear to give it in that way which may be most effectual for preserving the jury from error and mistake, would be an abandonment or forgetfulness of duty, which no judge could justify to his conscience or to the laws. In this case, therefore, where the question of law arising on the indictment had been finally settled by authoritative decisions, it was the duty of the court, and especially of this respondent as presiding judge, early to apprize the counsel and the jury of these decisions, and their effect, so as to save the former from the danger of making an improper attempt to mislead the jury in a matter of law, and the jury from having their minds preoccupied by erroneous impressions.

It was for these reasons that on the 22d day of April, 1800, when the said John Fries was brought into court, and placed in the prisoners' box for trial, but before the petit jury were empanelled to try him, this respondent informed the abovementioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, "that the court had deliberately considered the indictment against John Fries for treason, and the three several overt acts of treason stated therein: That the crime of treason was defined by the Constitution of the United States. That as the Federal Legislature had the power to make, alter, or repeal laws, so the judiciary only had the power, and it was their duty, to declare, expound and interpret the Constitution and laws of the United States. That it was the duty of the Court, in all criminal cases, to state to the petit jury their opinion of the law arising on the facts; but the petit jury, in all criminal cases, were to decide both the law and the facts, on a consideration of the whole case. That there must be some constructive exposition of the terms used in the Constitution, "levying war against the United States." That the question, what acts amounted to levying war against the United States, or the Government thereof, was a question of law, and had been decided by Judges Patterson and Peters, in the cases of Vigol and Mitchel, and by Judges Iredell and Peters, in the case of John Fries, prisoner at the bar, in April 1799. That Judge Peters remained of the same opinion, which he had twice before delivered, and he, this respondent, on long and great consideration, concurred in the opinion of Judges Patterson, Iredell, and Peters. That to prevent unnecessary delay, and to save time on the trial of John Fries, and to prevent a delay of justice, in the great number of civil causes depending for trial at that term, the court had drawn up in writing, their opinion of the law, arising on the overt acts stated in the indictment against John Fries; and had directed David Caldwell, their clerk, to make out three copies of their opinion, one to be delivered to the attorney of the district, one to the counsel for the prisoner, and one to the petit jury, after they shall have been empanelled and heard the indictment read to them by the clerk, and after the district attorney should have stated to them the law on the overt acts alleged in the indictment, as it appeared to him."

After these observations, this respondent delivered one of the above-mentioned copies to the aforesaid William Lewis, then attending as one of the prisoner's counsel; who read part of it, and then laid it down on the table before him. Some observations were then made on the subject, by him and the above-mentioned Alexander James Dallas, who had then come into court; but this respondent doth not now recollect those observations, and cannot undertake to state them accurately.

And this respondent further saith, that the paper marked exhibit No. 2, and herewith exhibited, which, he prays leave to make part of this his answer, is a true copy of the original opinion, drawn up by him and concurred in by the said Richard Peters, as above set forth, which original opinion is now in the possession of this respondent, ready to be produced to this honorable Court. He may have erred in forming this opinion, and in the time and manner of making it known to the counsel for the prisoner. If he erred in forming it, he erred in common with his colleague and with two of his predecessors; and he presumes to hope that an error which has never been deemed criminal in them, will not be imputed as a crime to him, who was led into it by their example and their authority. If he erred in the time and manner of making known his opinion, he feels a just confidence, that when the reasons which he has alleged for his conduct, and by which it seemed to him to be fully justified, shall come to be carefully weighed, they will be sufficient to prove, if not that this conduct was perfectly regular and correct, yet that he might sincerely have considered it as right; and that in a case where so much doubt may exist, to have committed a mistake, is not to have committed a crime.

And this respondent further answering insists, that the opinion thus delivered to the prisoner's counsel, viz: that "any insurrection or rising of any body of people within the United States, for the purpose of resisting or preventing by force or violence, under any pretence whatever, the execution of any statute of the United States, for levying or collecting taxes, or for any other object of a general or national concern, is levying war against the United States, within the contemplation and true meaning of the Constitution of the United States." is a legal and correct opinion, supported not only by the two previous decisions above-mentioned, but also by the plainest principles of law and reason, and by the uniform tenor of legal adjudications in England and Great Britain, from the Revolution in 1688 to this time. It ever was, and now is his opinion, that the peace and safety of the National Federal Government must be endangered by any other construction of the terms "levying war against the United States," used by the Federal Constitution; and he is confident that no judge of the Federal Government, no judge of a superior State court, nor any gentleman of established reputation for legal knowledge, would or could deliberately give a contrary opinion.

If, however, this opinion were erroneous, this respondent would be far less censurable than his predecessors, by whose example he was led astray, and by whose authority he considered himself bound. Was it an error to consider himself bound by the authority of their previous decisions? If it were, he was led into the error by the uniform course of judicial proceedings, in this country and in England, and is supported in it, by one of the fundamental principles of our jurisprudence. Can such an error be a crime or misdemeanor?

If, on the other hand, the opinion be in itself correct, as he believes and insists that it is, could the expression of a correct opinion on the law, wherever and however made, mislead the jury, infringe their rights, or give an improper bias to their judgments? Could truth excite improper prejudice? Could the jury be less prepared to hear the law discussed, and to decide on it correctly, because it was correctly stated to them by the court? And is not that a new kind of offence, in this country at least, which consists in telling the truth, and giving a correct exposition of the law?

As to the second specific charge adduced in support of the first article of impeachment, which accuses this respondent, "of restricting the counsel for the said Fries, from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client," this respondent admits that he did, on the above-mentioned trial, express it as his opinion to the aforesaid counsel for the prisoners, "that the decisions in England, in cases of indictments for treason at common law, against the person of the King, ought not to be read to the jury, on trials for treason under the Constitution and statutes of the United States; because such decisions could not inform, but might mislead and deceive the jury: that any decisions on cases of treason, in the courts of England, before the Revolution of 1688, ought to have very little influence in the courts of the United States; that he would permit decisions in the courts of England or of Great Britain, since the said Revolution, to be read to the court or jury, for the purpose of showing what acts have been considered by those courts, as a constructive levying of war against the King of that country, in his legal capacity, but not against his person; because levying war against *his Government* was of the same nature as levying war against *the Government of the United States:* but that such decisions, nevertheless,

were not to be considered as authorities binding on the courts and juries of this country, but merely in the light of opinions entitled to great respect, as having been delivered after full consideration, by men of great legal learning and ability.

These are the opinions which he did, on that occasion, deliver to the counsel for the prisoner, and which he then thought, and still thinks, it was his duty to deliver. The counsellors admitted to practice in any court of justice are, in his opinion, and according to universal practice, to be considered as officers of such courts, and ministers of justice therein, and as such subject to the direction and control of the court, as to their conduct in its presence, and in conducting the defence of criminals on trial before it. As counsel, they owe to the person accused, diligence, fidelity, and secrecy, and to the court and jury, due and correct information, according to the best of their knowledge and ability, on every matter of law which they attempt to adduce in argument. The court, on the other hand, hath power, and is bound in duty, to decide and direct what evidence, whether by record or by precedents of the decisions in courts of justice, is proper to be admitted for the establishment of any matter of law or fact. Consequently, should counsel attempt to read to a jury, as a law still in force, a statute which had been repealed, or a decision which had been reversed, or the judgments of courts in countries whose laws have no connexion with ours, it would be the duty of the court to interpose, and prevent such an imposition from being practised on the jury. For these reasons, this respondent thinks that his conduct was correct, in expressing to the counsel for Fries, the opinions stated above. He is not bound to answer here for the correctness of those principles, though he thinks them incontestable; but merely for the correctness of his motives in delivering them. A contrary opinion would convert this honorable Court, from a Court of Impeachment into a Court of Appeals; and lead directly to the strange absurdity, that whenever the judgment of an inferior court should be reversed on appeal or writ of error, the judges of that court must be convicted of high crimes and misdemeanors, and turned out of office: that error in judgment is a punishable offence, and that crimes may be committed without any criminal intention. Against a doctrine so absurd and mischievous, so contrary to every notion of justice hitherto entertained, so utterly subversive of all that part of our system of jurisprudence, which has been wisely and humanely established for the protection of innocence, this respondent deems it his duty now, and on every fit occasion, to enter his protest and lift up his voice; and he trusts that in the discharge of this duty, infinitely more important to his country than to himself, he shall find approbation and support in the heart of every American, of every man throughout the world, who knows the blessings of civil liberty, or respects the principles of universal justice.

It is only, then, for the correctness of his motives in delivering these opinions, that he can now be called to answer; and this correctness ought to be presumed, unless the contrary appear by some direct proof, or some violent presumption, arising from his general conduct on the trial, or from the glaring impropriety of the opinion itself. For he admits that cases may be supposed, of an opinion delivered by a judge, so palpably erroneous, unjust, and oppressive, as to preclude the possibility of its having proceeded from ignorance or mistake.

Do the opinions now under consideration bear any of these marks? This honorable Court need not be informed that there has existed in England no such thing as treason at common law, since the year 1350, when the statute of the 25th Edward III. chap. 2, declaring what alone should in future be judged treason, was passed. Is it perfectly clear that decisions made before that statute, four hundred and fifty years ago, when England, together with the rest of Europe, was still wrapped in the deepest gloom of ignorance and barbarism—when the system of English jurisprudence was still in its infancy—when law, justice, and reason, were perpetually trampled under foot by feudal oppression and feudal anarchy—when, under an able and vigorous monarch, everything was adjudged to be treason which he thought fit to call so, and, under a weak one, nothing was considered as treason which turbulent, powerful, and rebellious nobles thought fit to perpetrate—is it perfectly clear that decisions, made at such a time, and under such circumstances, ought to be received by the courts of this country as authorities to govern their decisions, or lights to guide the understanding of juries? Is it perfectly clear that decisions made in England, on the subject of treason, before the Revolution of 1688, by which alone the balance of the English constitution was adjusted, and the English liberties were fixed on a firm basis; decisions made either during the furious civil wars in which two rival families contended for the Crown; when in the vicissitudes of war, death and confiscation, in the forms of law, continually walked in the train of the victors, and actions were treasonable or praiseworthy, according to the preponderance of the party by whose adherents they were perpetrated; during the reigns of three able and arbitrary monarchs who succeeded this dreadful conflict, and relaxed or invigorated the law of treason, according to their anger, their policy, or their caprice; or during those terrible struggles between the principles of liberty, not yet well defined or understood, on one hand, and arbitrary power, insinuating itself under the forms of the constitution, on the other; struggles which presented at some times the wildest anarchy, at others, the extremes of servile submission, and, after having brought one king to the scaffold, ended in the expulsion of another from his throne;—is it clear that decisions on the law of treason, made in times like those, ought not only to be received as authorities in the courts of this country, but also to have great influence on their decisions? Is it clear that decisions made in England, as to what acts will amount to levying war against the king, personally, and not against his government, are applicable to the Constitution and laws of this country?

Is it clear that such English decisions on the subject of treason as are applicable to our Constitution and laws, are to be received in our courts, not merely as the opinions of learned and able men, which may enlighten their judgment, but as authorities which ought to govern absolutely their decisions? Is all this so clear that a judge could not honestly and sincerely have thought the contrary? that he could not have expressed an opinion to the contrary without corrupt and improper motives? If it be not thus clear, then must it be admitted that this respondent, sincerely and honestly, and in the best of his judgment, considered these decisions as wholly inadmissible, or admissible only for the purposes and to the extent which he pointed out.

And if he did not so consider them, was it not his duty to prevent them from being read to the jury, except under those restrictions, and for those purposes? Would his duty permit him to sit silently, and see the jury imposed on and misled? To sit silently and hear a book read to them as containing the law, which he knew did not contain the law? Such silence would have rendered him a party to the deception, and would have justly subjected him to all the contumely which a conscientious and courageous discharge of his duty has so unmeritedly brought on his name.

With respect to the statutes of the United States, which he is charged with having prevented the prisoner's counsel from citing on the aforesaid trial, he denies that he prevented any act of Congress from being cited either to the court or jury on the said trial, or declared at any time that he would not permit the prisoner's counsel to read to the jury or to the court any act of Congress whatever. Nor does he remember or believe that he expressed on the said trial any disapprobation of the conduct of the circuit court, before whom the said case was first tried, in permitting the act of Congress relating to crimes less than treason, commonly called the *Sedition Act*, to be read to the jury. He admits indeed that he was then and still is of opinion that the said act of Congress was wholly irrelevant to the issue, in the trial of John Fries, and therefore ought not to have been read to the jury, or regarded by them. This opinion may be erroneous, but he trusts that the following reasons on which it was founded will be considered by this honorable court as sufficiently strong to render it possible, and even probable, that such an opinion might be sincerely held and honestly expressed: 1. That Congress did not intend by the Sedition law to define the crime of treason by "levying war." Treason and sedition are crimes very distinct in their nature, and subject to very different punishments—the former by death, and the latter by fine and imprisonment. 2. The Sedition law makes a combination or conspiracy, with intent to impede the operation of any law of the United States, or the advising or attempting to procure any insurrection or riot, a high misdemeanor, punishable by fine and imprisonment; but a combination or conspiracy with intent to prevent the execution of a law, or with intent to raise an insurrection for that purpose, or even with intent to commit treason, is not treason by "levying war" against the United States, unless it be followed by an attempt to carry such combination or conspiracy into effect, by actual force or violence. 3. The Constitution of the United States is the fundamental and supreme law, and, having defined the crime of treason, Congress could not give any Legislative interpretation or exposition of that crime, or of the part of the Constitution by which it is defined. 4. The Judicial authority of the United States is alone vested with power to expound their Constitution and laws.

And this respondent further answering saith, that after the above-mentioned proceedings had taken place in the said trial, it was postponed until the next day. (Wednesday, April 23, 1800.) when, at the meeting of the court, this respondent told both the above-mentioned counsel for the prisoner, that, "to prevent any misunderstanding of any-'thing that had passed the day before, he would 'inform them, that, although the court retained 'the same opinion of the law, arising on the overt 'acts charged in the indictment against Fries, yet 'the counsel would be permitted to offer arguments 'to the court, for the purpose of showing them 'that they were mistaken in the law; and that the 'court, if satisfied that they had erred in opinion, 'would correct it; and also that the counsel would 'be permitted to argue before the petit jury that 'the court were mistaken in the law." And this respondent added, that the court had given no opinion as to the facts in the case, about which both the counsel had declared that there would be no controversy.

After some observations by the said William Lewis and Alexander James Dallas, they both declared to the court, "that they did not any longer consider themselves as the counsel for John Fries, the prisoner." This respondent then asked the said John Fries, whether he wished the court to appoint other counsel for his defence? He refused to have other counsel assigned; in which he acted, as this respondent believes and charges, by the advice of the said William Lewis and Alexander James Dallas: whereupon, the court ordered the trial to be had on the next day, Thursday, the 24th of April, 1800.

On that day the trial was proceeded in; and before the jurors were sworn, they were, by the direction of the court, severally asked on oath, whether they were in any way related to the prisoner, and whether they had ever formed or delivered any opinion as to his guilt or innocence, or that he ought to be punished? Three of them answering in the affirmative, were withdrawn from the panel. The said John Fries was then informed by the court, that he had a right to challenge thirty-five of the jury, without showing any cause of challenge against them, and as many more as he could show cause of challenge against. He did accordingly challenge peremptorily thirty-four of the jury, and the trial proceeded. In the evening, the court adjourned till the next day, Friday, the 25th of April; when after the district attorney had stated the principal facts proved by the witnesses, and had applied the law to those

facts, this respondent, with the concurrence of his colleague, the said Richard Peters, delivered to the jury the charge contained and expressed in exhibit marked No. 3, and herewith filed, which he prays may be taken as part of this his answer.

Immediately after the petit jury had delivered their verdict, this respondent informed the said Fries, from the bench, that if he, or any person for him, could show any legal ground, or sufficient cause to arrest the judgment, ample time would be allowed him for that purpose. But no cause being shown, sentence of death was passed on the said Fries, on Tuesday, the 2d day of May, 1800, the last day of the term; and he was afterwards pardoned by John Adams, then President of the United States.

And this respondent further answering saith, that if the two instances of misconduct, first stated in support of the general charge, contained in the first article of impeachment, were true as alleged, yet the inference drawn from them, viz: "that the said Fries was thereby deprived of the benefit of counsel for his defence," is not true. He insists that the said Fries was deprived of the benefit of counsel, not by any misconduct of this respondent, but by the conduct and advice of the above-mentioned William Lewis and Alexander James Dallas, who having been, with their own consent, assigned by the court as counsel for the prisoner, withdrew from his defence, and advised him to refuse other counsel when offered to him by the court, under pretence that the law had been prejudged, and their liberty of conducting the defence, according to their own judgment, improperly restricted by this respondent; but in reality because they knew the law and the facts to be against them, and the case to be desperate, and supposed that their withdrawing themselves under this pretence, might excite odium against the court; might give rise to an opinion that the prisoner had not been fairly tried; and in the event of a conviction, which from their knowledge of the law and the facts they knew to be almost certain, might aid the prisoner in an application to the President for a pardon. That such was the real motive of the said prisoner's counsel, for depriving their client of legal assistance on his trial, this respondent is fully persuaded, and expects to make appear, not only from the circumstances of the case, but from their own frequent and public declarations.

As little can this respondent be justly charged with having, by any conduct of his, endeavored to "wrest from the jury their indisputable right 'to hear argument, and determine upon the ques-'tion of law as well as the question of fact in-'volved in the verdict which they were required 'to give." He denies that he did at any time declare that the aforesaid counsel should not at any time address the jury, or did in any manner hinder them from addressing the jury on the law as well on the facts arising in the case. It was expressly stated in the copy of his opinion delivered as above set forth to William Lewis, that the jury had a right to determine the law as well as the fact; and the said William Lewis and Alexander James Dallas were expressly informed, before they declared their resolution to abandon the defence, that they were at liberty to argue the law to the jury. This respondent believes that the said William Lewis did not read the opinion delivered to him as aforesaid, except a very small part at the beginning of it, and of course, acted upon it without knowing its contents; and that the said Alexander James Dallas read no part of the said opinion until about a year ago, when he saw a very imperfect copy, made in court by a certain W. S. Biddle.

And this respondent further answering, saith, that according to the Constitution of the United States, *civil officers* thereof, and no other persons, are subject to impeachment; and they only for treason, bribery, corruption, or other high crime or misdemeanor, consisting in some act done or omitted, in violation of some law forbidding or commanding it; on conviction of which act, they *must* be removed from office; and may, after conviction, be indicted and punished therefor, according to law. Hence, it clearly results, that no civil officer of the United States can be impeached, except for some offence for which he may be indicted at law: and that no evidence can be received on an impeachment, except such as on an indictment at law, for the same offence, would be admissible. That a judge cannot be indicted or punished according to law, for any act whatever, done by him in his judicial capacity, and in a matter of which he has jurisdiction, through error of judgment merely, without corrupt motives, however manifest his error may be, is a principle resting on the plainest maxims of reason and justice, supported by the highest legal authority, and sanctioned by the universal sense of mankind. He hath already endeavored to show, and he hopes with success, that all the opinions delivered by him in the course of the trials now under consideration, were correct in themselves, and in the time and manner of expressing them; and that even admitting them to have been incorrect, there was such strong reason in their favor, as to remove from his conduct every suspicion of improper motives. If these opinions were incorrect, his mistake in adopting them, or in the time or manner of expressing them, cannot be imputed to him as an offence of any kind, much less as a high crime and misdemeanor, for which he ought to be removed from office; unless it can be shown by clear and legal evidence, that he acted from corrupt motives. Should it be considered that some impropriety is attached to his conduct, in the time and mode of expressing any of these opinions; still he apprehends, that a very wide difference exists between such impropriety, the casual effect of human infirmity, and a high crime and misdemeanor for which he may be impeached, and must, on conviction, be removed from office.

Finally, this respondent, having thus laid before this honorable Court a true state of his case, so far as respects the first article of impeachment, declares, upon the strictest review of his conduct during the whole trial of John Fries for treason, that he was not on that occasion unmindful of

the solemn duties of his office as judge; that he faithfully and impartially, and according to the best of his ability and understanding, discharged those duties towards the said John Fries; and that he did not in any manner, during the said trial, conduct himself arbitrarily, unjustly, or oppressively, as he is accused by the honorable the House of Representatives.

And the said Samuel Chase, for the plea to the said first article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said first article is alleged; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The second article of impeachment charges, that this respondent, at the trial of James Thompson Callender for a libel, in May 1800, did, "with 'intent to oppress and procure the conviction of 'the said Callender, overrule the objection of John 'Basset, one of the jury, who wished to be ex-'cused from serving on the said trial, because he 'had made up his mind as to the publication from 'which the words, charged to be libellous in the 'indictment, were extracted."

In answer to this article, this respondent admits that he did, as one of the associate justices of the Supreme Court of the United States, hold the circuit court of the United States, for the district of Virginia, at Richmond, on Thursday the 22d day of May, in the year 1800, and from that day, till the 30th of the same month; when Cyrus Griffin, then district judge of the United States for the district of Virginia, took his seat in the said court; and that during the residue of that session of the said court, which continued till the —— day of June, in the same year, this respondent and the said Cyrus Griffin held the said court together. But how far any of the other matters charged in this article, are founded in truth or law, appear from the following statement; which he submits to this honorable court, by way of answer to this part of the accusation.

By an act of Congress passed on the 4th day of May, A. D. 1798, it is among other things enacted, "That if any person shall write, print, utter 'or publish, or shall knowingly and wittingly as-'sist and aid in writing, printing, uttering or pub-'lishing, any false, scandalous and malicious wri-'ting or writings against the President of the Uni-'ted States, with intent to defame or to bring him 'into contempt or disrepute, such person, being 'thereof convicted, shall be punished by fine, not 'exceeding two thousand dollars, and by impris-'onment, not exceeding two years:" and "that if 'any person shall be prosecuted under this act, it 'shall be lawful for him to give in evidence in his 'defence, the truth of the matter contained in the 'publication charged as a libel; and the jury shall 'have a right to determine the law and the fact, 'under the direction of the court, as in other 'cases," as in and by the said act, commonly called the *sedition law*, to which this respondent begs leave to refer this honorable Court, will more fully appear.

At the meeting of the last above-mentioned circuit court, this respondent, as required by the duties of his office, delivered a charge to the grand jury; in which, according to his constant practice, and to his duty as a judge, he gave in charge to them several acts of Congress for the punishment of offences, and among them, the above-mentioned act, called the sedition law; and directed the jury to make particular inquiry concerning any breaches of these statutes or any of them, within the district of Virginia. On the 24th day of May, 1800, the said jury found an indictment against one James Thompson Callender, for printing and publishing, against the form of the said act of Congress, a false, scandalous, and malicious libel, called "The Prospect before Us," against John Adams, then President of the United States, in his official conduct as President; as appears by an official copy of the said indictment, marked exhibit No. 4, which this respondent begs leave to make part of this his answer.

On Wednesday, the 28th day of the same month, May 1800, Philip Norbonne Nicholas, Esq., now attorney general of the State of Virginia, and George Hay, Esq., now district attorney of the United States, for the district of Virginia, appeared in the said circuit court as counsel for the said Callender; and on Thursday the 3d of June following, his trial commenced, before this respondent, and the said Cyrus Griffin, who then sat as assistant judge. The petit jurors being called over, eight of them appeared, namely, Robert Gamble, Bernard Mackham, John Barrell, William Austin, William Richardson, Thomas Tinsley, Matthew Harvey, and John Basset; who, as they came to the book to be sworn, were severally asked on oath, by direction of the court, "whether they had ever formed or delivered any opinion respecting the subject-matter then to be tri-d, or concerning the charges contained in the indictment?" They all answered in the negative, and were sworn in chief to try the issue. The counsel for the said Callender declaring that it was unnecessary to put this question to the other four jurymen, William Mayo, James Hayes, Henry S. Shore, and John Prior, they also were immediately sworn in chief. No challenge was made by the said Callender or his counsel, to any of these jurors; but the said counsel declared, that they would rely on the answer that would be given by the said jurors, to the question thus put by order of the court.

After the above-mentioned John Basset, whom this respondent supposes and admits to be the person mentioned in the article of impeachment now under consideration, had thus answered in the negative to the question put to him by order of the court, as above-mentioned, which this respondent states to be the legal and proper question to be put to jurors on such occasions, he expressed to the court his wish to be excused from serving on the said trial, because he had made up his mind, or had formed his opinion, "that the publication, called 'The Prospect before Us,' from which the words charged in the indictment as libellous were said to be extracted, but which he had never seen, was, according to the representa-

tion of it, which he had received, within the Sedition law." But the court did not consider this declaration by the said John Basset as a sufficient reason for withdrawing him from the jury, and accordingly directed him to be sworn in chief.

In this opinion and decision, as in all the others delivered during the trial in question, this respondent concurred with his colleague, the aforementioned Cyrus Griffin, in whom none of these opinions have been considered as criminal. He contends that the opinion itself was legal and correct; and he denies that he concurred in it under the influence of any "spirit of persecution and injustice," or with any "intent to oppress and procure the conviction of the prisoner;" as is most untruly alleged by the second article of impeachment. His reasons were correct and legal. He will submit them with confidence to this honorable Court; which, although it cannot condemn him for an incorrect opinion, proceeding from an honest error in judgment, and ought not to take on itself the power of inquiring into the correctness of his decisions, but merely that of examining the purity of his motives; will, nevertheless, weigh his reasons, for the purpose of judging how far they are of sufficient force, to justify a belief that they might have appeared satisfactory to him. If they might have so appeared, if the opinion which he founded on them be not so palpably and glaringly wrong, as to carry with it internal evidence of corrupt motives, he cannot in delivering it have committed an offence.

This honorable Court need not be informed, that it is the duty of courts before which criminal trials take place, to prevent jurors from being excused for light and insufficient causes. If this rule were not observed, it would follow, that as serving on such trials as a juror, is apt to be a very disagreeable business, especially to those best qualified for it, there would be a great difficulty, and often an impossibility, in finding proper juries. The law has, therefore, established a fixed and general rule on this subject, calculated not to gratify the wishes or the unreasonable scruples of jurors, but to secure to the party accused, as far as in the imperfection of human nature it can be secured, a fair and impartial trial. The criterion established by this rule is, "that the juror stands indifferent between the Government and the person accused, as to the matter *in issue*, on the indictment." This indifference is always, according to a well-known maxim of law, to be presumed, unless the contrary appear; and the contrary may be alleged by way of excuse by the juror himself, or by the prisoner by way of challenge. Even if not alleged, it may be inquired into by the court of its own mere motion, or on the suggestion of the prisoner, and it may be established by the confession of the juror himself, on oath, or by other testimony.

But in order to show that a juror does not "stand indifferent between the accuser and the accused, *as to the matter in issue*," it is not sufficient to prove that he has expressed a general opinion, "that such an offence as that charged by the indictment ought to be punished;" or "that the party accused, if guilty of the offence charged against him, ought to be punished;" or "that a book, for printing and publishing which the party is indicted, comes within the law on which the indictment is founded." All these are general expressions of opinion, as to the criminality of an act of which the party is accused, and of which he *may* be guilty; not declarations of an opinion that he actually is guilty of the offence with which he stands charged. It is impossible for any man in society to avoid having, and extremely difficult for him to avoid expressing, an opinion, as to the criminality or innocence of those acts, which, for the most part, are the subjects of indictments for offences of a public nature; such as treason, sedition, and libels against the Government. Such acts always engage public attention, and become the subject of public conversation; and if to have formed or expressed an opinion as to the general nature of those acts, were a sufficient ground of challenge to a juror, when alleged against him, or of excuse from serving when alleged by himself, it would be in the power of almost every offender to prevent a jury from being empannelled to try him, and of almost every man, to exempt himself from the unpleasant task of serving on such juries. The magnitude and heinous nature of an offence would give it a greater tendency to attract public attention, and to draw forth public expressions of indignation, and would thus increase its chance of impunity.

To the present case this reasoning applies with peculiar force. The "Prospect before Us" is a libel so profligate and atrocious, that it excited disgust and indignation in every breast not wholly depraved. Even those whose interest it was intended to promote, were, as this respondent has understood and believes, either so much ashamed of it, or so apprehensive of its effects, that great pains were taken by them to withdraw it from public and general circulation. Of such a publication, it must have been extremely difficult to find a man of sufficient character and information to serve on a jury, who had not formed an opinion, either from his own knowledge, or from report. The juror in the present case had expressed no opinion. He had formed no opinion as to the facts. He had never seen the "Prospect before Us," and, therefore, could have formed no fixed or certain opinion about its nature or contents. They had been reported to him, and he had formed an opinion that if they were such as reported, the book was within the scope and operation of a law for the punishment of "false, 'scandalous and malicious libels, against the President in his official capacity, written or published 'with intent to defame him." And who is there, that having either seen the book, or heard of it, had not necessarily formed the same opinion?

But this juror had formed no opinion about the guilt or innocence of the party accused; which depended on four facts wholly distinct from the opinion which he had formed. First, whether the contents of the book were really such as had been represented to him? Secondly, whether they should, on the trial, be proved to be true? Thirdly, whether the party accused was really the author or publisher of this book? And fourthly, whether he wrote or published it "with intent to defame the President, or to bring him into contempt or disrepute, or to excite against him the hatred of the good people of the United States?" On all these questions, the mind of the juror was perfectly at large, notwithstanding the opinion which he had formed. He might, consistently with that opinion, determine them all in the negative; and it was on them that the issue between the United States and James Thompson Callender depended. Consequently, this juror, notwithstanding the opinion which he had thus formed, did stand indifferent as to the matter in issue, in the legal and proper sense, and in the only sense in which such indifference can ever exist; and therefore his having formed that opinion, was not such an excuse as could have justified the court in discharging him from the jury.

That this juror did not himself consider this opinion as an opinion respecting the "matter in issue," appears clearly from this circumstance, that when called upon to answer on oath, "whether he had expressed any opinion as to the matter in issue?" he answered that he had not. Which clearly proves that he did not regard the circumstance of his having formed this opinion, as a legal excuse, which ought to exempt him of right from serving on the jury; but merely suggested it as a motive of delicacy, which induced him to wish to be excused. To such motives of delicacy, however commendable in the persons who feel them, it is impossible for courts of justice to yield, without putting it in the power of every man, under pretence of such scruples, to exempt himself from those duties which all the citizens are bound to perform. Courts of justice must regulate themselves by legal principles, which are fixed and universal; not by delicate scruples, which admit of endless variety, according to the varying opinions and feelings of men.

Such were the reasons of this respondent, and he presumes of his colleague the said Cyrus Griffin, for refusing to excuse the said John Basset, from serving on the jury above-mentioned. These reasons, and the decisions founded on them, he insists were legal and valid. But if the reasons should be considered as invalid, and the decision as erroneous, can they be considered as so clearly and flagrantly incorrect, as to justify a conclusion that they were adopted by this respondent, through improper motives? Are not these reasons sufficiently strong, or sufficiently plausible, to justify a candid and liberal mind in believing, that a judge might honestly have regarded them as solid? Has it not been conceded, by the omission to prosecute Judge Griffin for this decision, that his error, if he committed one, was an honest error? Whence this distinction between this respondent and his colleague? And why is that opinion imputed to one as a crime, which in the other is considered as innocent?

And the said Samuel Chase, for plea to the said second article of impeachment, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said second article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The third article of impeachment alleges that 'this respondent "with intent to oppress and pro-'cure the conviction of the prisoner, did not per-'mit the evidence of John Taylor, a material wit-'ness in behalf of the said Callender, to be given 'in, on pretence that the said witness could not 'prove the truth of the whole of one of the charges 'contained in the indictment, although the said 'charge embraced more than one fact."

In answer to this charge, this respondent begs leave to submit the following facts and observations.

The indictment against James Thompson Callender, which has been already mentioned, and of which a copy is exhibited with this answer, consisted of two distinct and separate counts, each of which contained twenty distinct and independent charges, or sets of words. Each of those sets of words was charged as a libel against John Adams, as President of the United States, and the twelfth charge embraced the following words, "He (meaning President Adams) was a professed aristocrat; he proved faithful and serviceable to the British interest." The defence set up was confined to this charge, and was rested upon the truth of the words. To the other nineteen charges no defence of any kind was attempted or spoken of, except such as might arise from the supposed unconstitutionality of the sedition law; which, if solid, applied to the twelfth charge as well as to the other nineteen. It was to prove the truth of these words that John Taylor, the person mentioned in the article of impeachment now under consideration was offered as a witness. It can hardly be necessary to remind this honorable Court, that when an indictment for a libel contains several distinct charges, founded on distinct sets of words, the party accused, who in such cases is called the "traverser," must be convicted, unless he makes a sufficient defence against every charge. His innocence on one, does not prove him innocent on the others. If the sedition law should be considered as unconstitutional, the whole inuictment, including this twelfth charge, must fall to the ground, whether the words in question were proved to be true or not. If the law should be considered as constitutional, then the traverser, whether the words in the twelfth charge were proved to be true or not, must be convicted on the other nineteen charges, against which no defence was offered. This conviction on nineteen charges would put the traverser as completely in the power of the court, by which the amount of the fine and the term of the imprisonment were to be fixed, as a conviction upon all the twenty charges. The imprisonment could not exceed two years, nor the fine be more than two thousand dollars. If then this respondent were desirous of procuring the conviction of the traverser, he was sure of his object without rejecting the testimony of John Taylor. If his temper towards the traverser were so vindictive as to make

him feel anxious to obtain an opportunity and excuse for inflicting on him the whole extent of punishment permitted by the law, still a conviction on nineteen charges afforded this opportunity and excuse as fully as a conviction on twenty charges. One slander more or less, in such a publication as the "Prospect before Us," could surely be of no moment. To attain this object, therefore, it was not necessary to reject the testimony of John Taylor.

That the court did not feel this vindictive spirit is clearly evinced by the moderation of the punishment, which actually was inflicted on the traverser, after he was convicted of the whole twenty charges. Instead of two thousand dollars, he was fined only two hundred, and was sentenced to only nine months' imprisonment, instead of two years. And this respondent avers that he never felt or expressed a wish to go further; but that in this decision, as well as in every other given in the course of the trial, he fully and freely concurred with his colleague, Judge Griffin.

As a further proof that his rejection of this testimony did not proceed from any improper motive, but from a conviction in his mind that it was legally inadmissible, and that it was therefore his duty to reject it, he begs leave to state that he interfered in order to prevail on the district attorney to withdraw his objection to those questions, and consent to their being put; which that officer refused to do, on the ground "that he did not feel himself at liberty to consent to such a departure from legal principles."

Hence appears the utter futility of a charge, which attributes to this respondent a purpose as absurd as it was wicked; and without the slightest proof, imputes to the worst motives in him the same action, which in his colleague is considered as free from blame. But this respondent will not content himself with showing that his conduct in concurring with his colleague in the rejection of John Taylor's testimony, could not have proceeded from the motives ascribed to him; but he will show that this rejection, if not strictly legal and proper, as he believes and insists that it is, rests on legal reasons of sufficient force to satisfy every mind, that a judge might have sincerely considered it as correct.

The words stated as the ground of the twelfth charge above-mentioned, are stated in the indictment as one entire and indivisible paragraph, constituting one entire offence. This respondent considered them at the trial, and still considers them as constituting one entire charge and one entire offence; and that they must be taken together in order to explain and support each other. It is clear that no words are indictable as libellous, except such as expressly, or by plain implication, charge the person against whom they are published with some offence, either legal or moral. To be an "aristocrat," is not in itself an offence, either legal or moral, even if it were a charge susceptible of proof; neither was it an offence, either legal or moral, for Mr. Adams to be "faithful and serviceable to the British interest," unless he thereby betrayed or endangered the interests of his own country which does not necessarily follow, and is not directly alleged in the publication. These two phrases, therefore, taken separately, charge Mr. Adams with no offence of any kind; and, consequently, could not be indictable as libellous: but taken together, they convey the implication that Mr. Adams, being an "aristocrat," that is, an enemy to the republican Government of his own country, had subserved the British interest against the interest of his own country; which would, in his situation, have been an offence both moral and legal; to charge him with it was, therefore, libellous.

Admitting, therefore, these two phrases to constitute one distinct charge, and one entire offence, this respondent considers and states it to be law, that no justification which went to part only of the offence, could be received. The plea of justification must always answer the whole charge, or it is bad on the demurrer, for this plain reason, that the object of the plea is to show the party's innocence; and he cannot be innocent if the accusation against him be supported in part. Where the matter of defence may be given in evidence, without being formally pleaded, the same rules prevail. The defence must be of the same nature, and equally complete, in one case as in the other. The only difference is in the manner of bringing it forward. Evidence, therefore, which goes only to justify the charge in part, cannot be received. It is not, indeed, necessary that the whole of this evidence should be given by one witness. The justification may consist of several facts, some of which may be proved by one person, and some by another. But proof, in such cases, must be offered as to the whole, or it cannot be received.

In the case under consideration, no proof was offered as to the whole matter contained in the twelfth article. No witness except the above-mentioned John Taylor was produced or mentioned. When a witness is offered to a court and jury, it is the right and duty of the court to require a statement of the matters intended to be proved by him. This is the invariable practice of all our courts, and was done most properly by this respondent and his colleague, on the occasion in question. From the statement given by the traverser's counsel of what they expected to prove by the said witness, it appeared that his testimony could have no possible application to any part of the indictment, except the twelfth charge above-mentioned, and but a very weak and imperfect application even to that part. The court, therefore, as it was their right and duty, requested that the questions intended to be put to the witness, should be reduced to writing, and submitted to their inspection, so as to enable them to judge more accurately, how far those questions were proper and admissible. This being done, the questions were of the following tenor and effect:

1st. "Did you ever hear Mr. Adams express any sentiments favorable to monarchy, or 'aristocracy,' and what were they?"

2d. "Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3d. "Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?"

The second question, it is manifest, had nothing to do with the charge; for Mr. Adams's approbation or disapprobation of the funding system could not have the most remote tendency to prove that he was an aristocrat, or had proved faithful and serviceable to the British interest. In that part of the publication which furnishes the matter of the thirteenth charge in the indictment, it is indeed stated that Mr. Adams, "when but in a secondary station, censured the funding system," but these words are in themselves wholly immaterial; and no attempt was made, nor any evidence offered or spoken of, to prove the truth of the other matter contained in the thirteenth charge. It was from their connexion with that other matter that these words could alone derive any importance; and consequently their truth or falsehood was altogether immaterial, while that other matter remained unproved. This question, therefore, which went solely to those immaterial words, was clearly inadmissible. The third question was in reality as far as the second from any connexion with the matter in issue, although its irrelevancy is not quite so apparent. Mr. Adams's having voted against the two measures alluded to in that question, if he did in fact vote against them, could by no means prove that he was "faithful and serviceable to the British interest," in any sense, much less with those improper and criminal views, with which the publication in question certainly meant to charge him. He might, in the honest and prudent performance of his duty towards his Government and his country, incidentally promote the interests of another country; but it was by no means competent for a jury to infer from thence, that he was "faithful" to that other country, or, in other words, that he held the interests of that other country chiefly in view, and was actuated in giving his vote by a desire to promote them, independently of, or without regard to, the interests of his own country. Such an inference could not be made from the fact, admitting it to be true. The fact, if true, was *no* evidence to support such an inference, therefore the fact was immaterial; and as it is the province and duty of the court, in such circumstances, to decide on the materiality of facts offered in evidence, it follows clearly that it was the right and duty of the court, in this instance, to reject the third question; an affirmative answer to which could have proved nothing in support of the defence.

The first question, therefore, and the only remaining one proposed to be put to this witness, stood alone; and an affirmative answer to it, if it could have proved anything, could have proved only a part of the charge; namely, that Mr. Adams was an aristocrat. But evidence to prove a part only of an entire and indivisible charge was inadmissible for the reasons stated above.

If, on the other hand, the phrases in question, "that Mr. Adams was an aristocrat," that "he had proved faithful and serviceable to the British interest," were distinct and divisible, and constituted two distinct charges, which may perhaps be the proper way of considering them, still the above-mentioned questions were improper and inadmissible, in that point of view.

The first charge in that case is, that Mr. Adams "was an aristocrat." To be an aristocrat, even if any precise and definite meaning could be affixed to the term, is not an offence either legal or moral; consequently, to charge a man with being an aristocrat is not a libel; and such a charge in an indictment for a libel, is wholly immaterial. Nothing is more clear, than that immaterial matters in legal proceedings ought not to be proved, and need not be disproved. In the next place, the term "aristocrat" is one of those vague indefinite terms, which admit not of precise meaning, and are not susceptible of proof. What one person might consider as aristocracy, another would consider as republicanism, and a third as democracy. If indictments could be supported on such grounds, the guilt or innocence of the party accused must be measured not by any fixed or known rule, but by the opinions which the jurors appointed to try him might happen to entertain, concerning the nature of aristocracy, democracy, or republicanism. And, lastly, the question itself was as vague, and as void of precise meaning, as the charge of which it was intended to furnish the proof. The witness was called upon to declare "whether he had heard Mr. Adams express any and what opinions, favorable to aristocracy or monarchy?" How was it to be determined, whether an opinion was favorable to aristocracy or monarchy? One man would think it favorable and another not so, according to the opinions which they might respectively entertain, on political subjects. The first question, therefore, was inconclusive, immaterial, and inadmissible.

The second, as has already been remarked, was wholly and manifestly foreign from the matter in issue. Mr. Adams's dislike of the funding system, if he did in fact dislike it, had nothing to do with his aristocracy or his faithfulness to the British interest. There is no pretence for saying, that such a question ought to have been admitted.

As to the third, "whether Mr. Adams had not voted against the sequestration of British property, and the suspension of commercial intercourse with Great Britain," it has already been shown to be altogether improper; on the ground that such votes, if given by Mr. Adams, were no evidence whatever of his having been "faithful and serviceable to the British interest." If he had been so, provided it were, in his opinion, at the same time useful to the interests of his own country, which it well might be, and the contrary of which is not alleged by this part of the publication, taken separately, it was no offence of any kind; and to charge him with it was not a libel. The charge was, therefore, immaterial and futile, and no evidence for or against it could properly be received. And, finally, if the charge had been

material, and the giving of these votes had been legal evidence to prove it, that fact was on record in the journals of the Senate, and might have been proved by that record, or an official copy of it. As this evidence was the highest of which the case admitted, no inferior evidence of it, such as oral proof is well known to be, could be admitted.

For these reasons this respondent did concur with his colleague, the said Cyrus Griffin, in rejecting the three above-mentioned questions; but not any other testimony that the said John Taylor might have been able to give. In this he insists that he acted legally and properly, according to the best of his ability. If he erred, it is impossible, for the reasons stated by him in the beginning of his answer to this article, to suppose that he erred wilfully: since he could have had no possible motive for a piece of misconduct so shameful, and at the same time so well calculated to give offence. In a point so liable to misapprehension and misrepresentation, and so likely to be used as a means of exciting public odium against him, it is far more probable, that had he been capable of bending his opinion of the law to other motives, he would have admitted illegal testimony; which, taken in its utmost effect, could have had no tendency to thwart those plans of vengeance against the traverser, under the influence of which he is supposed to have acted.

If his error was an honest one, which, as his colleague also fell into it, might in charity be supposed; and, as there is not a shadow of evidence to the contrary, must in law be presumed; he cannot, for committing it, be convicted of any offence, much less a high crime and misdemeanor, for which he must, on conviction, be deprived of his office.

And for plea to the said third article of impeachment, the said Samuel Chase, saith, that he is not guilty of any high crime or misdemeanor, as in and by the said third article is alleged against him: this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The fourth article of impeachment alleges, that during the whole course of the trial of James Thompson Callender, above-mentioned, the conduct of this respondent was marked by "manifest injustice, partiality, and intemperance;" and five particular instances of the "injustice, partiality, and intemperance," are adduced.

The first consists, "in compelling the prisoner's counsel to reduce to writing and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above-mentioned John Taylor, the witness."

This respondent, in answer to this part of the article now under consideration, admits that the court, consisting of himself and the above-mentioned Cyrus Griffin, did require, the counsel for the traverser on the trial of James Thompson Callender, above-mentioned, to reduce to writing the questions which they intended to put to the said witness. But he denies that it is more his act than the act of his colleague, who fully concurred in this measure. The measure, as he apprehends and insists, was legal and proper; his reasons for adopting it, and he presumes those of his colleague, he will submit to this honorable Court, in order to show that if he, in common with his colleague, committed an error, it was an error into which the best and wisest men might have honestly fallen.

It will not be denied, and cannot be doubted, that according to our laws, evidence, whether oral or written, may be rejected and prevented from going before the jury, on various grounds. 1st. For incompetency; where the source from which the evidence is attempted to be drawn, is an improper source: as if a witness were to be called who was infamous, or interested in the event of the suit; or a paper should be offered in evidence, which was not between the same parties, or was not executed in the forms prescribed by law. 2d, for irrelevancy: when the evidence offered is not such as in law will warrant the jury to infer the fact intended to be proved; or where that fact, if proved, is immaterial to the issue. For these reasons, and perhaps for others which might be specified, evidence may properly be rejected, in trials before our courts.

As little can it be doubted that, according to our laws, the court, and not the jury, is the proper tribunal for deciding all questions relative to the admissibility of evidence. The effect of the evidence, when received, is to be judged of by the jury; but whether it ought to be received, must be determined by the court. This arises from the very constitution of the trial by jury; one fundamental principle of which is, that the jury must decide the case, not according to vague notions, secret impressions, or general belief, but, according to legal and proper evidence delivered in court. So strictly is this rule observed, that if one juror have any knowledge of the matter in dispute, it may influence his own judgment, but not that of his fellow jurors, unless he state it to them on oath, in open court; and nothing is more common than for our courts, after all the evidence which the party can produce has been offered and received, to tell the jury that there is no evidence to support the claim, or the defence; or when proof is offered of a certain fact, to determine that such fact is not proper to be given in evidence.

Hence it results, and is every day's practice, that when a witness is produced, or a writing is offered in evidence, the opposite party, having a right to object to the evidence if he should think it improper, requires to be informed what the witness is to prove, or to see the writing before the first is examined, or the second is read to the jury. The court has the same right, resulting necessarily from its power to decide all questions relative to the admissibility of evidence. This right our courts are in the constant habit of exercising; not only when objections are made by the parties, but when, there being no objection, the court itself has reason to suspect that the testimony is improper. In most cases, but not in all, consent by the opposite party removes all

objections to the admissibility of evidence, and courts sometimes infer consent from silence; but, as it is their duty to take care that no improper or illegal evidence goes to the jury, unless the objection to it be removed by consent of parties, it is consequently their duty, in all cases where they see reason to suspect that the evidence offered is improper, to ascertain whether consent has been given, or whether the seeming acquiescence of the opposite party has proceeded from inattention. This is more particularly their duty in *criminal* cases, where they are bound to be counsel for the Government, as well as for the party accused.

It being thus the right and duty of a court before which a trial takes place, to inform itself of the evidence offered, so as to be able to judge whether such evidence be proper, it results necessarily that they have a right to require, that any question intended to be put to a witness, should be reduced to writing, for that is the form in which their deliberation upon it may be most perfect, and their judgment will be most likely to be correct. In the case now under consideration, the court did exercise this right. When the testimony of John Taylor was offered, the court inquired of the traverser's counsel, what that witness was to prove. The statement of his testimony given in answer, induced the court to suspect that it was irrelevant and inadmissible. They, therefore, that they might have an opportunity for more careful and accurate consideration, called upon the counsel to state, in writing, the questions intended to be put to the witness.

This is the act done by the court, but concurred in by the respondent, which has been selected and adduced as one of the proofs and instances of "manifest injustice, partiality, and intemperance" on his part. He owes an apology to this honorable Court for having occupied so much of its time with the refutation of a charge which has no claim to serious consideration, except what it derives from the respect due to the honorable body by which it was made, and the high character of the court where it is preferred.

The next circumstance stated by the article now under consideration, as an instance and proof of "manifest injustice, partiality, and intemperance" in this respondent, is his refusal to postpone the trial of the said James Thompson Callender, "although 'an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused, and although it was manifest that, with 'the utmost diligence, the attendance of such 'witnesses could not have been procured at that 'term."

This respondent, in answer to this part of the charge, admits that, in the above-mentioned trial, the traverser's counsel did move the court, while this respondent sat in it alone, for a continuance of the trial until the next term; not merely a postponement of the trial, as the expressions used in this part of the article would seem to import; and did file, as the ground work of their motion, an affidavit of the traverser, a true and official copy of which (marked exhibit No. 5) this respondent herewith exhibits, and begs leave to make part of this answer; but he denies that any sufficient ground for a continuance until the next term was disclosed by this affidavit; as he trusts will clearly appear from the following facts and observations:

The trial of an indictment at the term when it is found by the grand jury, is a matter of course, which the prosecutor can claim as a right, unless legal cause can be shown for a continuance. The prosecutor may consent to a continuance, but if he withholds his consent, the court cannot grant a continuance without legal cause. Of the sufficiency and legality of this cause, as of every other question of law, the court must judge; but it must decide on this, as on every other point, according to the fixed and known rules of law.

One of the legal grounds, and the principal one on which such a continuance may be granted, is the absence of competent and *material* witnesses, whom the party cannot produce at the present term, but has a *reasonable ground* for expecting to be able to produce at the next term. Analogous to this, is the inability to procure, at the present term, legal and *material* written testimony, which the party has a *reasonable expectation* of being able to procure at the next term.

These rules are as reasonable and just in themselves, as they are essential to the due administration of justice, to the punishment of offences on the one hand, and to the protection of innocence on the other. If the continuance of a cause, on the application of the party accused, were a matter of right, it is manifest that no indictment would be brought to trial until after a delay of many months. If, on the other hand, the granting of a continuance depended not on fixed rules, but on the arbitrary will of the court, it would follow that weakness or partiality might induce a court, on some occasions, to extend a very improper indulgence to the party accused; while, on others, passion or prejudice might deprive him of the necessary means of making his defence. Hence the necessity of fixed rules, which the judges are bound to expound and apply, under the solemn sanction of their oath of office.

The true and only reason for granting a continuance, is, that the party accused may have the best opportunity that the laws can afford to him, of making his defence. But incompetent or immaterial witnesses could not be examined if they were present; and, consequently, their absence can deprive the party of no opportunity which the laws afford him, of making his defence. Hence the rule, that the witnesses must be competent and material.

Public justice will not permit the trial of offenders to be delayed, on light or unfounded pretences. To wait for testimony which the party really wished for, but did not expect to be able to produce within some definite period, would certainly be a very light pretence; and to make him the judge, how far there was reasonable expectation of obtaining the testimony within the proper time, would put it in his power to delay the trial on the most unfounded pretences. Hence the rule, that

there must be reasonable ground of expectation, in the judgment of the court, that the testimony may be obtained within the proper time.

It is therefore a settled and most necessary rule, that every application for a continuance, on the ground of obtaining testimony, must be supported by an affidavit, disclosing sufficient matter to satisfy the court, that the testimony wanted "is competent and material," and that there is "reasonable expectation of procuring it within the time prescribed." From a comparison of the affidavit in question with the indictment, it will soon appear how far the traverser in this case brought himself within this rule.

The absent witnesses, mentioned in the affidavit, are William Gardner, of Portsmouth in New Hampshire; Tench Coxe, of Philadelphia, in Pennsylvania; Judge Bee, of some place in South Carolina; Timothy Pickering, lately of Philadelphia, in Pennsylvania, but of what place at that time the deponent did not know; William B. Giles, of Amelia county, in the State of Virginia; Stevens Thompson Mason, whose place of residence is not mentioned in the affidavit, but was known to be in Loudon county, in the State of Virginia; and General Blackburn, of Bath county, in the said State. The affidavit also states, that the traverser wished to procure, as material to his defence, authentic copies of certain answers made by the President of the United States, Mr. Adams, to addresses from various persons; and also, a book entitled "an Essay on Canon and Feudal Law," or entitled in words to that purport, which was ascribed to the President, and which the traverser believed to have been written by him; and also, evidence to prove that the President was in fact the author of that book.

It is not stated, that the traverser had any reasonable ground to expect, or did expect, to procure this book or evidence, or these authentic copies, or the attendance of any one of these witnesses, at the next term. Nor does he attempt to show in what manner the book, or the copies of answers to addresses, were material, so as to enable the court to form a judgment on that point. Here, then, the affidavit was clearly defective. His believing the book and copies to be material, was of no weight, unless he showed to the court, sufficient grounds for entertaining the same opinion. Moreover, he does not state where he supposes that this book, and those authentic copies, may be found: so as to enable the court to judge, how far a reasonable expectation of obtaining them might be entertained. On the ground of this book and these copies, therefore, there was no pretence for a continuance. As to the witnesses, it is manifest, that from their very distant and dispersed situation, there existed no ground of reasonable expectation, that their attendance could be procured at the *next* term, or at any subsequent time. Indeed, the idea of postponing the trial of an indictment till witnesses could be convened at Richmond, from South Carolina, New Hampshire, and the western extremities of Virginia, is too chimerical to be seriously entertained. Accordingly, the traverser, though in his affidavit he stated them to be material, and declared that he could not procure their attendance at that term, could not venture to declare, on oath, that he expected to procure it at the next, or at any other time; much less that he had any reasonable ground for such an expectation. On this ground, therefore, the affidavit was clearly insufficient; and it was consequently the duty of the court to reject such application.

But the testimony of these witnesses, as stated in the affidavit, was wholly immaterial; and, therefore, their absence was no ground for a continuance, had there been reasonable ground for expecting their attendance at the next term.

William Gardner and Tench Coxe were to prove that Mr. Adams had turned them out of office, for their political opinions or conduct. This applied to that part of the publication, which constituted the matter of the third charge in the indictment, in these words, "the same system of persecution extended all over the continent. Every person holding an office, must either quit it, or think and vote exactly with Mr. Adams." Judge Bee was to prove, that Mr. Adams had advised and requested him by letter, in the year 1799, to deliver Thomas Nash, otherwise called Jonathan Robbins, to the British Consul, in Charleston. This might have had some application to the matter of the seventh charge; which alleged that "the hands of Mr. Adams, were reeking with the blood of the poor, friendless Connecticut sailor." Timothy Pickering was to prove, that Mr. Adams, while President, and Congress was in session, was many weeks in possession of important despatches, from the American Minister in France, without communicating them to Congress. This testimony was utterly immaterial; because, admitting the fact to be so, Mr. Adams was not bound, in any respect, to communicate those despatches to Congress, unless, in his discretion, he should think it necessary; and also, because the fact, if true, had no relation to any part of the indictment. There are, indeed, three charges, on which it might at first sight seem to have some slight bearing. These are the eighth, the words furnishing the matter of which are, "every feature in the Administration of Mr. Adams forms a distinct and additional evidence that he was determined, at all events, to embroil this country with France;" the fourteenth, the words stated in which, allege, that "by sending these Ambassadors to Paris, Mr. Adams and his British faction designed to do nothing but mischief;" and the eighteenth, the matter of which states, "that in the midst of such a scene of profligacy and usury, the President persisted as long as he durst, in making his utmost efforts for provoking a French war." To no other charge in the indictment had the evidence of Timothy Pickering, as stated in the affidavit, the remotest affinity. And surely, it will not be pretended by any man, who shall compare this evidence with the three charges above-mentioned, that the fact intended to be proved by it, furnished any evidence proper to go to a jury, in support of either of those charges: that "every feature of his Administration formed a distinct and additional evidence of a determination, at all events, to embroil this country with France," that "in sending Ambassadors to Paris, he intended nothing but mischief," that "in the midst of a scene of profligacy and usury, he persisted, as long as he durst, in making his utmost effort for provoking a French war," are charges, which surely cannot be supported or justified, by the circumstance of his "keeping in his possession, for several weeks, while Congress was in session, despatches from the American Minister in France, without communicating them to Congress," which he was not bound to do, and which it was his duty not to do, if he supposed that the communication, at an earlier period, would be injurious to the public interest. The testimony of William B. Giles and Stevens Thompson Mason was to prove, that Mr. Adams had uttered in their hearing certain sentiments, favorable to aristocratic or monarchical principles of Government.

This had no application except to a part of the twelfth charge; which has been already shown to be wholly immaterial if taken separately, and wholly incapable of a separate justification, if considered as part of an entire charge. And, lastly, it was to be proved by General Blackburn, that in his answer to an address, Mr. Adams avowed, "that there was a party in Virginia, which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted, and offended country." There were but two charges in the indictment to which this fact, if true, had the most distant resemblance. These are the fifteenth and sixteenth, the words forming the matter of which, call Mr. Adams "an hoary-headed libeller of the Governor of Virginia, who with all the fury, but without the propriety or sublimity of Homer's Achilles, bawled out, to arms, then, to arms!" and "who, floating on the bladder of popularity, threatened to make Richmond the centre point of a bonfire." It would be an abuse of the patience of this honorable Court, to occupy any part of its time in proving that the fact intended to be proved by General Blackburn could not in the slighest degree support or justify such charges as these. This is the account given of the testimony of the absent witnesses, by the affidavit filed as the ground of the motion for a continuance. From a comparison of it with the indictment, it will appear, that out of twenty charges in the indictment, there were but eight, to which any part of the testimony of those witnesses had the most distant allusion: and that of those eight charges there are five, which the testimony, having some allusions to them, could not in the slightest degree support. Twelve charges, therefore, remained without even an attempt to justify them; and seventeen were wholly destitute of any legal or sufficient justification. On these seventeen charges, therefore, the traverser must have been convicted; even if the remaining three had been completely justified by the testimony of the absent witnesses. The conviction on these seventeen charges, or even on one of them, would have put it into the power of the court to fine and imprison the traverser, to the whole extent allowed by the law. If the truth of these three charges, admitting it to be established, could not have any effect in mitigating the punishment, which depended on the court and not on the jury, the court in passing sentence might make, and in this case actually did make, the fullest abatement on that account that the testimony if adduced would warrant.

This testimony, therefore, was in every view immaterial; and had it been material, there existed no ground of reasonable expectation that it could be obtained at the next term, or any future term. For these reasons, and not from criminal motives, which without the least shadow of proof are ascribed to him, this respondent did overrule and reject the motion for a continuance till the next term; as it was his duty to do, since he had no discretion in the case, but was bound by the rules of law.

But in order to afford every accommodation to the traverser and his counsel, which it was in his power to give, this respondent did offer to postpone the trial for a month, or more, in order to afford them full time for preparation, and for procuring such testimony as was within their reach. This indulgence they thought proper to refuse.

On Monday, the second, and Tuesday, the third day of June, 1800, when Judge Griffin had taken his seat in court, and was on the bench, the counsel for the traverser renewed their motion for a continuance, founded on the same affidavit; and after a full hearing and consideration of the argument, the court, Judge Griffin concurring, overruled the motion, and ordered the trial to proceed.

If this decision be correct, as he believes and insists that it is, no offence could be committed by him in making or concurring in it. It was a proper and legal performance of his duty as a judge. If it be erroneous, still the error, if an honest one, cannot be an offence, much less a high crime and misdemeanor; and as in his colleague it has been considered as an honest error, he confidently trusts it will be considered so in him also.

To the third charge adduced in support of the article now under consideration, the charge of using "unusual, rude, and contemptuous expressions, towards the prisoner's counsel," and of "falsely insinuating, that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of this respondent did manifestly tend," he cannot answer otherwise than by a general denial. A charge so vague, admits not of precise or particular refutation. He denies that there was anything unusual or intentionally rude or contemptuous in his conduct or his expressions towards the prisoner's counsel; that he made any false insinuation whatever against them, or that his own conduct tended in any manner to produce insubordination to law. On the contrary, it was his wish and intention to treat the counsel with the respect due to their situation and functions, and with the decorum due to his own character. He thought it his duty to restrain such of their attempts as he considered improper, and to overrule motions made by them, which he considered as unfounded in law; but

this it was his wish to accomplish in the manner least likely to offend, from which every consideration concurred in dissuading him. He did indeed think at that time, and still remains under the impression, that the conduct of the traverser's counsel, whether from intention or not he will not undertake to say, was disrespectful, irritating, and highly incorrect. That conduct which he viewed in this light, might have produced some irritation in a temper naturally quick and warm, and that this irritation might, notwithstanding his endeavors to suppress it, have appeared in his manner and in his expressions, he thinks not improbable; for he has had occasions of feeling and lamenting the want of sufficient caution and self-command, in things of this nature. But he confidently affirms, that his conduct in this particular was free from intentional impropriety; and this respondent denies, that any part of his conduct was such as ought to have induced the traverser's counsel to "abandon the cause of their client," nor does he believe that any such cause did induce them to take that step. On the contrary, he believes that it was taken by them under the influence of passion, or for some motive into which this respondent forbears at this time to inquire. And this respondent admits that the said traverser was convicted, and condemned to fine and imprisonment, but not by reason of the abandonment of his defence by his counsel; but because the charges against him were clearly proved, and no defence was made or attempted against far the greater number of them.

The fourth charge in support of this article attributes to this respondent "repeated and vexatious interruptions of the said counsel, which at length induced them to abandon the cause of their client, who was therefore convicted, and condemned to fine and imprisonment." To this charge, also, it is impossible to give any other answer but a general denial. He avers that he never interrupted the traverser's counsel vexatiously, or except when he considered it his duty to do so.

It cannot be denied that courts have power to interrupt counsel, when in their opinion the correctness of proceeding requires it. In this, as in everything else, they may err. They may sometimes act under the influence of momentary passion or irritation, to which they in common with other men are liable. But unless their conduct in such cases, though improper or ill-judged, be clearly shown to proceed, not from human infirmity, but from improper motives, it cannot be imputed to them as an offence, much less as a crime or misdemeanor.

Lastly, this respondent is charged under this article, with an "indecent solicitude, manifested by him, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice." This is another charge of which it is impossible to give a precise refutation, and to a general denial of which, this respondent must therefore confine himself. He denies that he felt any solicitude whatever for the conviction of the traverser; other than the general wish natural to every friend of truth, decorum, and virtue, that persons guilty of such offences, as that of which the traverser stood indicted, should be brought to punishment for the sake of example. He has no hesitation to acknowledge, that his indignation was strongly excited, by the atrocious and profligate libel which the traverser was charged with having written and published. This indignation, he believes, was felt by every virtuous and honorable man in the community, of every party, who had read the book in question, or become acquainted with its contents. How properly it was felt, will appear from the book itself, which this respondent has ready to produce to this honorable court; from the parts of it incorporated into the indictment now under consideration; and from further extracts contained in the paper marked exhibit No. 6, which this respondent prays leave to make part of this his answer. He admits, and it can never be to him a subject of self-reproach or a cause of regret, that he partook largely in this general indignation, but he denies that it in any manner influenced his conduct towards the traverser, which was regulated by a conscientious regard to his duty and the laws. He moreover contends, that a solicitude to procure the conviction of the traverser, however unbecoming his character as a judge, would not have been an offence, had he felt it; unless it had given rise to some misconduct on his part. Intentions and feelings, unless accompanied by actions, do not constitute crimes in this country; where the guilt or innocence of men is not judged of by their wishes and solicitudes, but by their conduct and its motives. And this respondent thinks it his duty, on this occasion, to enter his solemn protest against the introduction in this country of those arbitrary principles, at once the off-spring and the instruments of despotism, which would make "high crimes and misdemeanors" to consist in "rude and contemptuous expressions," in "vexatious interruptions of counsel," and in the manifestation of "indecent solicitude" for the conviction of a most notorious offender. Such conduct is, no doubt, improper and unbecoming in any person, and much more so in a judge: but it is too vague, too uncertain, and too susceptible of forced interpretations, according to the impulse of passion or the views of policy, to be admitted into the class of punishable offences, under a system of law whose certainty and precision in the definition of crimes is its greatest glory, and the greatest privilege of those who live under its sway.

In concluding his defence against those charges contained in the fourth article of impeachment, he declares, that his whole conduct in that trial was regulated by a strict regard to the principles of law, and by an honest desire to do justice between the United States and the party accused. He felt a sincere wish, on the one hand, that the traverser might establish his innocence, by those fair and sufficient means which the law allows; and a determination, on the other, that he should not, by subterfuges and frivolous pretences, sport with the justice of the country, and evade that punishment of which, if guilty, he was so proper

an object. These intentions, he is confident, were legal and laudable; and if, in any part of his conduct, he swerved from this line, it was an error of his judgment and not of his heart.

And the said respondent for plea to the said fourth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fourth article is alleged against him, and this he prays, may be inquired of by this honorable Court, in such manner as law and justice shall seem to require.

The fifth article of impeachment charges this respondent with having awarded "a capias against the body of the said James Thompson Callender, indicted for an offence *not capital*, whereupon the said Callender was arrested and committed to *close* custody, contrary to law in that case made and provided."

This charge is rested, 1st, on the act of Congress of September 24, 1789, entitled "An act to establish the judicial courts of the United States," by which it is enacted "that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process, in the State where such offender may be found." And, 2dly, on a law of the State of Virginia, which is said to provide "that upon *presentment* by any grand jury, of an offence *not capital*, the court shall order the clerk to issue a *summons* against the person or persons so offending, to appear and answer such presentment at the *next* court." It is contended, in support of this charge, that the act of Congress above-mentioned made the State law the rule of proceeding, and that the State law was violated by issuing a capias against Callender, instead of a summons.

The first observation to be made on this part of the case is, that the date of the law of Virginia is not mentioned in the article. A very material omission! For it cannot be contended, that by the act of Congress in question, which was passed for establishing the laws of the United States, and regulating their proceedings, it was intended to render those proceedings dependent on all *future* acts of the State Legislatures. The intention certainly was to adopt, to a certain limited extent, the regulations existing in the States at the time of passing the act. Consequently, a law of Virginia, passed after this act, can have no operation on the proceedings under it. But by referring to the law of Virginia in question, it will be found to bear date on November 13, 1792, more than three years after this act of Congress, by which it is said to have been adopted. But the omission of the date of this law of Virginia is not the most material oversight which has been made in citing it. Its title is, "An act directing the method of proceeding against free persons charged with certain crimes," &c., and it enacts, section 28th, "that upon presentment made by the grand jury, of an offence not capital, the court shall order the clerk to issue a summons, or *other proper process*, against the person or persons so presented, to appear and answer at the next court." It will be observed that these words, "or other proper process," which leave it perfectly in the discretion of the court what process shall issue, provided it be such as is proper for bringing the offender to answer to the presentment, are omitted in this article of impeachment.

From these words it is perfectly manifest that the law of Virginia, admitting it to apply, did not order a summons to be issued, but left it perfectly in the discretion of the court to issue a summons, or such other process as they should judge proper. It is, therefore, a sufficient answer to this article to say, that this respondent considered a capias as the proper process, and therefore ordered it to issue; which he admits that he did immediately after the presentment was found against the said Callender by the grand jury.

This he is informed, and expects to prove, has been the construction of this law by the courts of Virginia, and their general practice. Indeed it would be most strange if any other construction or practice had been adopted. There are many offences not capital, which are of a very dangerous tendency, and on which very severe punishment is inflicted by the laws of Virginia; and to enact by law that in all such cases, however notorious or profligate the offenders might be, the courts should be obliged, after a presentment by a grand jury, to proceed against them by summons, would be to enact, that as soon as their guilt was rendered extremely probable, by the presentment of a grand jury, they should receive regular notice to escape from punishment by flight or concealment.

It will also appear, as this respondent believes, by a reference to the laws and practice of Virginia, into which he has made all the inquiries which circumstances and the shortness of time allowed him for preparing his answer would permit, that all the cases in which a summons is considered as the only proper process, are cases of petty offences, which, on the presentment of a grand jury, are to be tried by the court in a summary way, without the intervention of a petit jury. Therefore these provisions had no application to the case of Callender, which could be no otherwise proceeded on than by indictment, and trial on the indictment by a petit jury.

It must be recollected that the act of Congress of September 24, 1789, enacts, section 14, "that the courts of the United States shall have power to issue writs of scire facias, habeas corpus, *and all other writs* not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of laws." Consequently, the circuit court, where the proceedings in question took place, had power to issue a capias against the traverser, on the presentment, unless the State law above-mentioned governed the case, and contained something to restrain the issuing of that writ in such a case. This respondent contends, for the reasons above stated, that this State law neither applied to the case, nor contained anything to prevent the issuing of a capias, if it had applied.

Thus it appears that this respondent, in order-

ing a capias to issue against Callender, decided correctly, as it certainly was his intention to do. But he claims no other merit than that of upright intention in this decision; for when he made the decision, he was utterly ignorant that such a law existed in Virginia; and declares he never heard of it till this article was reported by a committee of the House of Representatives during the present session of Congress. This law was not mentioned on the trial either by the counsel or the traverser, or by Judge Griffin, who certainly had much better opportunities of knowing it than this respondent, and who, no doubt, would have cited it had they known it and considered it as applicable to the case. This respondent well knows that, in a criminal view, ignorance of the law excuses no man in offending against it; but this maxim applies not to the decision of a judge; in whom ignorance of the law in general would certainly be a disqualification for this office, though not a crime; but ignorance of a particular act of assembly, of a State where he was an utter stranger, must be considered as a very pardonable error, especially as the counsel for the prisoner, to whose case that law is supposed to have applied, forebore or omitted to cite it; and as a judge of the State, always resident in it and long conversant with its local laws, either forgot this law, or considered it as inapplicable.

Such is the answer which this respondent makes to the fifth article of impeachment. If he erred in this case, it was through ignorance of the law, and surely ignorance under such circumstances cannot be a crime, much less a crime and misdemeanor, for which he ought to be removed from his office. If a judge were impeachable for acting against law from ignorance only, it would follow that he would be punished in the same manner for deciding against law wilfully, and for deciding against it through mistake. In other words, there would be no distinction between ignorance and design, between error and corruption.

And the said respondent, for plea to the said fifth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said fifth article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The sixth article of impeachment alleges that this respondent, "with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to the law in that case made and provided."

This charge also is founded, 1st, on the act of Congress of September 24, 1789, above-mentioned, which enacts, section 34, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise provide, shall be regarded as the rules of decision, in trials at *common law*, in the courts of the United States, in cases where they apply;" and, 2dly, on a law of the State of Virginia, which is supposed to provide, "that in cases not capital, the offender shall not be held to answer any presentment of a grand jury, until the court next preceding that during which such presentment shall have been made." This law, it is contended, is made the rule of decision by the above-mentioned act of Congress, and was violated by the refusal to continue the case of Callender till the next term.

In answer to this charge this respondent declares, that he was at the time of making the above-mentioned decision wholly ignorant of any such law of Virginia as that in question; that no such law was adduced or mentioned by the counsel of Callender, in support of their motion for a continuance; neither when they first made it, before this respondent sitting alone, nor when they renewed it, after Judge Griffin had taken his seat in court; that no such law was mentioned by Judge Griffin, who concurred in overruling the motion for a continuance and ordering on the trial; which he could not have done had he known that such a law existed, or considered it as applicable to the case; and that this respondent never heard of any such law until the articles of impeachment now under consideration were reported, in the course of the present session of Congress, by a committee of the House of Representatives.

A judge is certainly bound to use all proper and reasonable means of obtaining a knowledge of the laws which he is appointed to administer; but, after the use of such means, to overlook, misunderstand, or remain ignorant of some particular law, is at all times a very pardonable error. It is much more so in the case of a Judge of the Supreme Court of the United States, holding a circuit court in a particular State, with which he is a stranger, and with the local laws of which he can have enjoyed but very imperfect opportunities of becoming acquainted. It was foreseen by Congress, in establishing the circuit courts of the United States, that difficulties and inconveniences must frequently arise from this source, and to obviate such difficulties, it was provided that the district judge of each State, who having been a resident of the State, and a practitioner in its courts, had all the necessary means of becoming acquainted with its local laws, should form a part of the circuit court in his own State. The Judge of the Supreme Court is expected, with reason, to be well versed in the general laws; but the local laws of the State form the peculiar province of the district judge, who may be justly considered as particularly responsible for their due observance. If, in the case in question, this respondent overlooked or misconstrued any local law of the State of Virginia, which ought to have governed the case, it was equally overlooked and misunderstood, not only by the prisoner's counsel who made the motion, and whose peculiar duty it was to know the law and bring it into the view of the court, but also by the district judge, who had the best opportunities of knowing and understanding it, and in whom, nevertheless, this oversight or mistake is considered as a venal error,

while in this respondent it is made the ground of a criminal charge.

This respondent further states, that after the most diligent and the most extensive inquiry which the time allowed for preparing this answer would permit, he can find no law in Virginia which expressly enacts, that "in cases not capital, 'the offender shall not be held to answer any pre-'sentment of a grand jury, until the court next 'succeeding that during which such presentment 'shall have been made." This principle he supposes to be an inference drawn by the authors of the articles of impeachment, from the law of Virginia mentioned in the answer to the preceding article, the law of November 15th, 1792, which provides "that upon presentment made by the 'grand jury of an offence not capital, the court 'shall order the clerk to issue a summons, or other 'proper process, against the person or persons so 'presented, to appear and answer such present-'ment at the NEXT court." This law, he conceives, does not warrant the inference so drawn from it, because it speaks of *presentments* and not of *indictments*, which are very different things; and is, as he is informed, confined by practice and construction, in the State of Virginia, to cases of small offences, which are to be tried by the court itself, upon the presentment, without an indictment or the intervention of a petit jury. But, for cases, like that of Callender, where an indictment must follow the presentment, this law made no provision. Further, the State laws are directed by the above-mentioned act of Congress, to be the rule of decision in the courts of the United States only "in cases where they apply." Whether they apply or not to a particular case, is a question of law, to be decided by the court where such case is pending, and an error in making the decision is not a crime, nor even an offence, unless it can be shown to have proceeded from improper motives. This respondent is of opinion that the law in question did not apply to the case of Callender, for the reasons stated above; and, therefore, that it would have been his duty to disregard it, even had it been made known to him by the counsel for the traverser.

And, in the last place, he contends, that the law of Virginia in question, is not adopted by the above-mentioned act of Congress as the rule of decision, in such cases as that now under consideration. That act does, indeed, provide: "that 'the laws of the several States, except where the 'Constitution, treaties, or statutes of the United 'States shall otherwise provide, shall be regarded 'as rules of decision in trials at *common law*, in 'the courts of the United States, in cases where 'they apply." But this provision, in his opinion, can relate only to rights acquired under the State laws which come into question *on* the trial; and not to forms of process or modes of proceeding, anterior or preparatory to the trial. Nor can it, as this respondent apprehends, have any application to indictments for offences against the statutes of the United States, which cannot with any propriety be called "trials at common law." It relates merely, in his opinion, to civil rights acquired under the State laws; which by virtue of this provision are, when they come in question in the courts of the United States, to be governed by the laws under which they accrued.

If in these opinions this respondent be incorrect, it is an honest error: and he contends that neither such an error in the construction of a law, nor his ignorance of a local State law which he had no opportunity of knowing, and of which the counsel for the party whose case it is supposed to have affected were equally ignorant, can be considered as an offence liable to impeachment, or to any sort of punishment or blame.

And for plea to the said sixth article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said article is alleged against him; and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The seventh article of impeachment relates to some conduct of this respondent in his judicial capacity, at a circuit court of the United States held at Newcastle, in the State of Delaware, in June, 1800. The statement of this conduct, made in the article, is altogether erroneous; but if it were true, this respondent denies that it contains any matter for which he is liable to impeachment. It alleges that, "disregarding the duties of his office, he did descend from the dignity of a judge, and stoop to the level of an informer." This high offence consisted, according to the article, first, "in refusing to discharge the grand jury although 'entreated by several of the said jury to do so." Secondly, in "observing to the said grand jury, 'after the said grand jury had regularly declared 'through their foreman, that they had found no 'bills of indictment, and had no presentments to 'make, that he the said Samuel Chase understood 'that a highly seditious temper had manifested 'itself in the State of Delaware, among a certain 'class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was ——." Thirdly, "in then checking himself 'as if sensible of the indecorum which he was committing." Fourthly, in adding "that it might 'be assuming too much to mention the name of 'this person; but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect. And, fifthly, "in authoritatively enjoining on the District Attorney of the 'United States, with intention to procure the 'prosecution of the printer in question, the necessity of procuring a file of the papers to which he 'alluded, and by a strict examination of them to 'find some passage which might furnish the 'groundwork of a prosecution against the 'printer."

These charges amount in substance to this: that the respondent refused to discharge a grand jury, on their request, which is every day's practice, and which he was bound to do, if he believed that the due administration of justice required

their longer attendance; that he directed the attention of the grand jury to an offence against a statute of the United States, which, he had been informed, was committed in the district; and that he desired the District Attorney to aid the grand jury, in their inquiries concerning the existence and nature of this offence. By these three acts, each of which it was his duty to perform, he is alleged "to have degraded his high judicial functions, and tended to impair the public confidence 'in, and respect for, the tribunals of justice, so 'essential to the public welfare."

That this honorable Court may be able to form correctly its judgment, concerning the transaction mentioned in this article, this respondent submits the following statement of it, which he avers to be true, and expects to prove:

On the 27th day of June, 1800, this respondent, as one of the associate justices of the Supreme Court of the United States, presided in the circuit court of the United States, then held at Newcastle, in and for the district of Delaware, and was assisted by Gunning Bedford, Esq., then district judge of the United States for that district. At the opening of the court on that day, this respondent, according to his duty and his uniform practice, delivered a charge to the grand jury, in which he gave in charge to them several statutes of the United States, and, among others, an act of Congress, passed July 14th, 1798, entitled "An act in addition to the act for the punishment of certain crimes against the United States," and commonly called the "sedition law." He directed them to inquire concerning any breaches of those statutes, and especially of that commonly called the sedition law, within the district of Delaware.

On the same day, before the usual hour of adjournment, the grand jury came into court, and informed the court that they had found no indictment or presentment, and had no business before them, for which reason they wished to be discharged. This respondent replied, that it was earlier than the usual hour of discharging a grand jury; and that business might occur during the sitting of the court. He also asked them if they had no information of publications within the district, that came under the sedition law, and added, that he had been informed that there was a paper called the *Mirror*, published at Wilmington, which contained libellous charges against the Government and President of the United States: that he had not seen that paper, but it was their duty to inquire into the subject; and if they had not turned their attention to it, the attorney for the district would be pleased to examine a file of that paper, and if he found anything that came within the sedition law, would lay it before them." This is the substance of what the respondent said to the grand jury on that occasion, and, he believes, nearly his words; on the morning of the *next day* they came into court and declared that they had no presentments or indictments to make, on which they were immediately discharged. The whole time, therefore, for which they were detained, was twenty-four hours, far less than is generally required of grand juries.

In these proceedings, this respondent acted according to his sense of what the duties of his office required. It certainly was his duty to give in charge to the grand jury, all such statutes of the United States as provided for the punishment of offences, and, among others, that called the sedition act; into all offences against which act, while it continued in force, the grand jury were bound by their oaths to inquire. In giving it in charge, together with the other acts of Congress for the punishment of offences, he followed, moreover, the example of the other judges of the Supreme Court, in holding their respective circuit courts. He also contends, and did then believe, that it was his duty, when informed of an offence, which the grand jury had overlooked, to direct their attention towards it, and to request for them, and even to require, if necessary, the aid of the District Attorney in making their inquiries. In thus discharging what he conceives to be his duty, even if he committed an error in so considering it, he denies that he committed or could commit any offence whatever.

With respect to the remarks which he is charged by this article with having made to the grand jury relative to "a highly seditious temper, which he had understood to have manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington," and relative to "a most seditious printer, residing in Wilmington, unrestrained by any principle of virtue, and regardless of social order;" this respondent does not recollect or believe, that he made any such observations. But if he did make them, it could not be improper in him to tell the jury that he had received such information, if in fact he had received it; which was probably the case, though he cannot recollect it with certainty at this distance of time. That this information, if he did receive it, was correct so far as regarded the printer in question, will fully appear from a file of the paper called the "Mirror of the Times," &c., published at Wilmington, Delaware, from February 5th to March 19th, 1800, inclusive, which he has lately obtained, and is ready to produce to this honorable Court, when necessary, and some extracts from which are contained in the exhibits severally marked No. 7, which he prays leave to make part of this his answer.

And for plea to the said seventh article of impeachment, the said Samuel Chase saith, that he is not guilty of any high crime or misdemeanor, as in and by the said seventh article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

The eighth article of impeachment charges that this respondent, "disregarding the duties and dignity of his official character did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, 1803, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury for the purpose of delivering to the said grand jury an intemperate

'and inflammatory political harangue, with intent 'to excite the fears and resentment of the said 'grand jury, and of the good people of Maryland, 'against their State government and constitution," 'and also that this respondent, "under pretence of 'exercising his judicial right to address the grand 'jury as aforesaid, did endeavor to excite the odium 'of the said grand jury, and of the good people of 'Maryland, against the Government of the United 'States, by delivering opinions which were, at that 'time and as delivered by him, highly indecent, 'extra judicial, and tending to prostitute the high 'judicial character with which he was invested to 'the low purpose of an electioneering partisan."

In answer to this charge this respondent admits that he did, as one of the associate justices of the Supreme Court of the United States, preside in a circuit court held at Baltimore in and for the district of Maryland, in May, 1803, and did then deliver a charge to the grand jury, and express in the conclusion of it some opinions as to certain public measures, both of the Government of Maryland and of that of the United States. But he denies that, in thus acting, he disregarded the duties and dignity of his judicial character, perverted his official right and duty to address the grand jury, or had any intention to excite the fears or resentment of any person whatever against the Government and Constitution of the United States or of Maryland. He denies that the sentiments which he thus expressed were "intemperate and inflammatory," either in themselves or in the manner of delivering; that he did endeavor to excite the odium of any person whatever against the Government of the United States, or did deliver any opinions which were in any respect indecent, or which had any tendency to prostitute his judicial character to any low or improper purpose. He denies that he did anything that was unusual, improper, or unbecoming in a judge, or expressed any opinions, but such as a friend to his country and a firm supporter of the Governments, both of the State of Maryland and of the United States, might entertain. For the truth of what he here says, he appeals confidently to the charge itself: which was read from a written paper now in his possession ready to be produced. A true copy of all such parts of this paper as relate to the subject matter of this article of impeachment, is contained in the exhibit marked No. 8, which he prays leave to make part of this his answer. That part of it which relates to the article now under consideration is in these words:

"You know, gentlemen, that our State and national institutions were framed to secure to every member of the society *equal* liberty and *equal* rights; but the late alteration of the Federal Judiciary, by the abolition of the office of the sixteen circuit judges, and the *recent* change in our State constitution by the establishing *universal* suffrage, *and* the further alteration that is contemplated in our State judiciary, (if adopted,) will in my judgment take away *all security for property and personal liberty*. The independence of the National Judiciary is already shaken to its foundation, and the virtue of the people alone can restore it. The independence of the judges of this State will be entirely destroyed if the bill for the abolishing the two supreme courts should be ratified by the next General Assembly. The change of the State constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property and all security to personal liberty; and our republican constitution will sink into a *mobocracy*, the worst of all possible governments.

"I can only lament that the *main pillar* of our State constitution has been thrown down by the establishment of *universal suffrage*. By this shock *alone* the whole building totters to its base, and will crumble into ruins before *many* years elapse, unless it be *restored* to its original state. If the independency of your State judges, which your bill of rights wisely declares 'to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people,' shall be taken away, by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole State constitution, and there will be nothing left in it worthy the care or support of freemen."

Admitting these opinions to have been incorrect and unfounded, this respondent denies that there was any law which forbids him to express them in a charge to a grand jury, and he contends that there can be no offence without the breach of some law. The very essence of despotism consists in punishing acts which, at the time when they were done, were forbidden by no law. Admitting the expression of political opinions by a judge, in his charge to a grand jury, to be improper and dangerous, there are many improper and very dangerous acts, which not being forbidden by law, cannot be punished. Hence the necessity of new penal laws, which are from time to time enacted for the prevention of acts not before forbidden, but found by experience to be of dangerous tendency. It has been the practice in this country, ever since the beginning of the Revolution which separated us from Great Britain, for the judges to express from the bench, by way of charge to the grand jury, and to enforce to the utmost of their ability such political opinions as they thought correct and useful. There have been instances in which the Legislative bodies of this country have recommended this practice to the judges; and it was adopted by the judges of the Supreme Court of the United States as soon as the present Judicial system was established. If the Legislature of the United States considered this practice as mischievous, dangerous, or liable to abuse, they might have forbidden it by law; to the penalties of which, such judges as might afterwards transgress it, would be justly subjected. By not forbidding it, the Legislature has given to it an implied sanction; and for that Legislature to punish it now by way of impeachment would be to convert into crime, by an *ex post facto* proceeding, an act which, when it was done and at all times before, they had themselves virtually declared to be innocent. Such conduct would be utterly subversive of the fundamental

principle on which free government rests; and would form a precedent for the most sanguinary and arbitrary persecutions under the forms of law.

Nor can the incorrectness of the political opinions thus expressed have any influence in deciding on the guilt or innocence of a judge's conduct in expressing them. For if he should be considered as guilty or innocent, according to the supposed correctness or incorrectness of the opinion thus expressed by him, it would follow that error in political opinion, however honestly entertained, might be a crime; and that a party in power might, under this pretext, destroy any judge who might happen, in a charge to a grand jury, to say something capable of being construed by them into a political opinion adverse to their own system.

There might be some pretence for saying, that for a judge to utter seditious sentiments with intent to excite sedition, would be an impeachable offence, although such a doctrine would be liable to the most dangerous abuses, and is hostile to the fundamental principles of our Constitution, and to the best established maxims of our criminal jurisprudence. But, admitting this doctrine to be correct, it cannot be denied that the seditious intention must be proved clearly, either by the most necessary implication from the words themselves, or by some overt acts of a seditious nature connected with them. In the present case no such acts are alleged, but the proof of a seditious intent must rest on the words themselves. By this rule this respondent is willing to be judged. Let the opinions which he delivered be examined, and if the members of this honorable Court can lay their hands on their hearts, in the presence of God, and say that these opinions are not only erroneous, but seditious also, and carry with them internal evidence of an intention in this respondent to excite sedition, either against the State or General Government, he is content to be found guilty.

In making this examination, let it be borne in mind, that to oppose a depending measure by endeavoring to convince the public that it is improper, and ought not to be adopted; or to promote the repeal of a law already passed by endeavoring to convince the public that it ought to be repealed, and that such men ought to be elected to the Legislature as will repeal it; to attempt, in fine, the correction of public measures by arguments tending to show their improper nature, or destructive tendency, never has been or can be considered as sedition in any country where the principles of law and liberty are respected; but is the proper and usual exercise of that right of opinion and speech which constitutes the distinguishing feature of free government. The abuse of this privilege by writing and publishing as facts malicious falsehoods, with intent to defame, is punishable as libellous in the courts having jurisdiction of such offences; where the truth or falsehood of the facts alleged, and the malice or correctness of the intention form the criterion of guilt and innocence. But the character of libellous, much less of seditious, has never been applied to the expression of opinions concerning the tendency of public measures, or to arguments urged for the purpose of opposing them, or of effecting their repeal. To apply the doctrine of sedition or of libels to such cases, would instantly destroy all liberty of speech, subvert the main pillars of free government, and convert the tribunals of justice into engines of party vengeance. To condemn a public measure, therefore, as pernicious in its tendency; to use arguments for proving it to be so, and to endeavor by these means to prevent its adoption, if still depending, or to procure its repeal in a regular and Constitutional way, if it be already adopted, can never be considered as sedition, or in any way illegal.

The first opinion expressed to the grand jury on the occasion in question, by this respondent, was, that "the late alteration of the Federal Judiciary, by the abolition of the office of the sixteen circuit judges; and the recent change in our State Constitution, by establishing universal suffrage; and the further alteration that was then contemplated in our State Judiciary, if adopted," would, in the judgment of this respondent, "take away all security for property and personal liberty." That is, "these three measures, if the last of them, which is still depending, should be adopted, will, in my opinion, form a system whose pernicious tendency must be, to take away the security for our property and our personal liberty, which we have hitherto derived from the salutary restrictions laid by the authors of our Constitution on the right of suffrage, and from the present constitution of our courts of justice." What is this but an argument to persuade the people of Maryland to reject the alterations in their State Judiciary which were then proposed; which this respondent, as a citizen of that State, had a right to oppose; and the adoption of which depended on the Legislature then to be chosen? If this be sedition, then will it be impossible to express an opinion opposite to the views of the ruling party of the moment, or to oppose any of their measures by argument, without becoming subject to such punishment as they may think proper to inflict.

The next opinion is, that "the independence of the national Judiciary was also shaken to its foundation, and that the virtue of the people alone could restore it." In other words, "The act of Congress for repealing the late circuit court law, and vacating thereby the offices of the judges, has shaken to its foundation the independence of the national Judiciary, and nothing but a change in the representation of Congress, which the return of the people to correct sentiments alone can effect, will be sufficient to produce a repeal of this act, and thereby restore to its former vigor the part of the Federal Constitution which has been thus impaired."

This is the obvious meaning of the expression; and it amounts to nothing more than an argument in favor of that change, which this respondent then thought and still thinks to be very desirable; an argument, the force of which as a patriot he might feel, and which as a free man he had a right to advance.

The next opinion is, that "the independence of the judges of the State of Maryland would be entirely destroyed if the bill for abolishing the two supreme courts should be ratified by the next General Assembly." This opinion, however incorrect it may be, seems to have been adopted by the people of Maryland, to whom this argument against the bill in question was addressed: for at the next session of the Legislature this bill, which went to change entirely the constitutional tenure of judicial office in the State, and to render the subsistence of the judges dependent on the Legislature, and their continuance in office on the Executive, was abandoned by common consent.

All the other opinions expressed by this respondent, as above mentioned, bear the same character with those already considered. They are arguments addressed to the people of Maryland, for the purpose of dissuading them from the adoption of a measure then depending, and of inducing them, if possible, to restore to its original state that part of their constitution relating to the right of suffrage, by a repeal of the law, which had been made for its alteration.

Such were the objects of this respondent in delivering those opinions, and he contends that they were fair, proper, and legal objects, and that he had a right to pursue them in this way—a right sanctioned by the universal practice of this country, and by the acquiescence of its various Legislative authorities. Such, he contends, is the true and obvious meaning of the opinions which he delivered, and which he believes to be correct. It is not now necessary to inquire into their correctness; but if incorrect, he denies that they contain anything seditious, or any evidence of those improper intentions which are imputed to him by this article of impeachment. He denies that in delivering them to the grand jury he committed any offence, infringed any law, or did anything unusual, or heretofore considered in this country as improper and unbecoming a judge. If this article of impeachment can be sustained on these grounds, the liberty of speech on national concerns, and the tenure of the judicial office under the Government of the United States, must hereafter depend on the arbitrary will of the House of Representatives and the Senate, to be declared on impeachment, after the acts are done, which it may at any time be thought necessary to treat as high crimes and misdemeanors.

And the said Samuel Chase, for plea to the said eighth article of impeachment, saith, that he is not guilty of any high crime and misdemeanor, as in and by the said eighth article is alleged against him, and this he prays may be inquired of by this honorable Court, in such manner as law and justice shall seem to them to require.

This respondent has now laid before this honorable Court, as well as the time allowed him would permit, all the circumstances of the case, with an humble trust in Providence, and a consciousness that he has discharged all his *official* duties with justice and impartiality, to the best of his knowledge and abilities; and that intentionally he hath committed no crime or misdemeanor, or any violation of the Constitution or laws of his country. Confiding in the impartiality, independence, and integrity of his judges, and that they will patiently hear, and conscientiously determine this case, without being influenced by the spirit of party, by popular prejudice, or political motives, he cheerfully submits himself to their decision.

If it shall appear to this honorable court, from the evidence produced, that he hath acted in his *judicial* character with wilful injustice or partiality, he doth not wish any favor, but expects that the whole extent of the punishment permitted in the Constitution will be inflicted upon him.

If any part of his official conduct shall appear to this honorable court, *stricti juris*, to have been *illegal*, or to have proceeded from *ignorance* or *error* in judgment; or if any part of his conduct shall appear, although not illegal, to have been irregular or improper, but not to have flown from a depravity of heart, or any unworthy motive, he feels confident that this court will make allowance for the imperfections and frailties incidental to man.

He is satisfied that every member of this tribunal will observe the principles of humanity and justice, and will presume him innocent until his guilt shall be established by legal and creditable witnesses, and will be governed in his decision by the moral and Christian rule of rendering that justice to this respondent which he would wish to receive.

This respondent now stands not merely before an earthly tribunal, but also before that awful Being whose presence fills all space, and whose all-seeing eye more especially surveys the temples of justice and religion. In a little time, his accusers, his judges, and himself, must appear at the bar of Omnipotence, where the secrets of all hearts shall be disclosed, and every human being shall answer for his deeds done in the body, and shall be compelled to give evidence against himself, in the presence of an assembled universe. To his Omnipotent Judge, at that awful hour, he now appeals for the rectitude and purity of his conduct, as to all the matters of which he is this day accused.

He hath now only to adjure each member of this honorable Court, by the living God, and in his holy name, to render impartial justice to him, according to the Constitution and laws of the United States. He makes this solemn demand of each member by all his hopes of happiness in the world to come, which he will have voluntarily renounced by the oath he has taken, if he shall wilfully do this respondent injustice, or disregard the Constitution or laws of the United States, which he has solemnly sworn to make the rule and standard of his judgment and decision.

Mr. RANDOLPH, on behalf of the Managers, requested time to consult the House of Representatives, and likewise to be furnished with a copy of the answer of Judge Chase, for the purpose of making a replication to it.

The PRESIDENT said the Senate would take the request into consideration, and make known to

the House of Representatives such order as should be taken thereon.

Whereupon, the Senate, at the suggestion of the President, retired to their Legislative apartment.

On Wednesday, the 6th instant, the House of Representatives received a copy of the foregoing answer, which was referred to the Managers. On the same day, Mr. RANDOLPH reported a replication to the answer, which was immediately taken into consideration. Several motions were made and rejected, after a short debate, to soften the style; when the replication, as reported, was adopted—yeas 77, nays 34. Whereupon, it was resolved that the Managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

THURSDAY, February 7.

The Court was opened about two o'clock.

Present—the Managers, and Mr. HOPKINSON, of the counsel for Mr. Chase.

Mr. RANDOLPH, on behalf of the Managers, read the replication of the House of Representatives, to the answer of Samuel Chase, as follows:

Replication by the House of Representatives of the United States, to the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment exhibited against him by the said House of Representatives.

The House of Representatives of the United States have considered the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the Articles of Impeachment against him, by them exhibited, in the name of themselves and of all the people of the United States, and observe,

That the said Samuel Chase hath endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations and misrepresentation of facts; that the said answer does give a gloss and coloring utterly false and untrue, to the various criminal matters contained in the said Articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice, of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true; and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place as shall be appointed for that purpose.

Signed by order, and in behalf of, the said House,

NATH. MACON, *Speaker.*

Attest: JOHN BECKLEY, *Clerk.*

Mr. HOPKINSON requested a copy of the replication, which, the PRESIDENT replied, would be furnished by the Secretary.

Mr. BRECKENRIDGE moved a resolution to the following effect:

That the Secretary be directed to inform the House of Representatives that the Senate will, to-morrow, at twelve o'clock, proceed with the trial of Samuel Chase; which was agreed to without one dissenting voice, 34 members voting for it.

Whereupon, the Senate withdrew to their Legislative apartment.

FRIDAY, February 8.

The Court opened precisely at twelve o'clock.

Present: the Managers, and the House of Representatives, in Committee of the Whole; and Mr. Chase, attended by his counsel, Messrs. MARTIN, HARPER, HOPKINSON, and KEY.

The crier having, agreeably to a prescribed form, notified all those concerned to come forward and make good the charges exhibited against Samuel Chase,

Mr. RANDOLPH, the leading Manager, requested that the witnesses on the part of the prosecution might be called, to ascertain who were present.

They were accordingly called, to the number of twenty-four.

Present: Alexander James Dallas, William Lewis, William Rawle, William S. Biddle, Edward Tilghman, George Read, John Montgomery, John Stephen, John Thomson Mason, Samuel H. Smith, John Taylor, George Hay, William Wirt, and John Heath.

Absent: James Lea, John Crow, Risdon Bishop, Aquila Hall, Philip Stewart, Thomas Hall, Philip N. Nicholas, John Harvie, Meriwether Jones, and James Pleasants.

Mr. RANDOLPH observed that various considerations, which it was unnecessary to detail, induced him, on behalf of the Managers, to move a postponement of the trial till to-morrow, when they hoped to be prepared to proceed with it.

Mr. HARPER said that, on behalf of Judge Chase, he would not object to the motion.

The PRESIDENT informed the Managers that the Senate acceded to their request, and added, that the Senate would attend to-morrow at twelve o'clock, for the purpose of proceeding with the trial.

At the request of Mr. HARPER, the witnesses on the part of Judge Chase were called over, to the number of forty.

Present: John A. Chevalier, David M. Randolph, John Marshall, John Basset, Samuel P. Moore, William C. Frazier, David Robertson, Edward Tilghman, Wm. Meredith, Jared Ingersoll, Samuel Ewing, James Winchester, Walter Dorsey, James P. Boyd, Nicholas Brice, John Purviance, Wm. M. Mechin, Thomas Chase, William H. Winder, William Gwynn, William Rawle, William J. Govane, Gunning Bedford, Nicholas Vandyke, John Hall, jun., Archibald Hamilton, and Thomas Carpenter.

Absent: William Marshall, Edmund Randolph, Robert Gamble, Philip Moore, Cornelius Comegys, John Stewart, and Edward J. Coale.

Not found: John Hopkins, Philip Gooch, William Minor, and Samuel Wheeler.

Sick: Cyrus Griffin. *Dead:* J. C. Barrett.

Whereupon the Court rose.

SATURDAY, February 9.

The Court was opened precisely at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel, as mentioned in the proceedings of yesterday.

At a quarter after 12 o'clock, Mr. RANDOLPH, on behalf of the managers, opened the impeachment, as follows:

Mr. President: It becomes my duty to open this cause on behalf of the prosecution. From this duty, however incompetent I feel myself to its performance, at all times, and more especially at this time, as well from the very short period which has been allowed us to consider the long and elaborate plea of the respondent, as from the severe pressure of disease, it does not become me to shrink. The station in which I have been placed calls for the discharge of an important public trust at my hands. It shall be performed to the best of my ability, inadequate as I know that ability to be. When I speak of the short period which has been allowed us, I hope not to be understood as expressing, on our part, any dissatisfaction at the course which has been pursued, or any wish to prolong the time which has been allotted for trial. We are sensible of a disposition in this honorable Court to grant us every indulgence which we ought to ask, and when their attention is called to the precipitate hurry of our preparation, it is only to offer, on behalf of an individual, perhaps a weak apology for the weak defence which he is about to make of the cause confided to his care. A desire for the furtherance of justice and the avoidance of delay, but, above all, an unshaken conviction that we stand on impregnable ground, induce us on this short notice to declare that we are ready to substantiate our accusation, to prove that the respondent is guilty in such manner as he stands impeached.

It is a painful but indispensable task which we are called upon to perform: to establish the guilt of a great officer of Government, of a man, who, if he had made a just use of those faculties which God and Nature bestowed upon him would have been the ornament and benefactor of his country, would have rendered her services as eminent and useful as he has inflicted upon her outrages and wrongs deep and deadly. A character endowed by nature with some of her best attributes, cultivated by education, placed by his country in a conspicuous station, invested with authority whose righteous exercise would have rendered him a terror to the wicked, whilst it endeared him to the wise and good: such a character, presented to the nation in the light in which he now stands, and in which his misdeeds have made it our duty to bring him forward, forms one of the saddest spectacles which can be offered to the public eye. Base is that heart which could triumph over him.

I will now proceed to state the principal points on which we mean to rely, and which we expect to establish by the clearest evidence. In doing this I shall be necessarily led to notice many of the leading statements of the respondent's answer. We will begin with the first article. [Here Mr. R. read that article.] The answer to the first of these charges is by evasive insinuation and misrepresentation, by an attempt to wrest the accusation from its true bearing, the manner and time of delivering the opinion, and the intent with which it was delivered, to the correctness of the opinion itself, which is not the point in issue. And here permit me to remark, that if the Managers of this impeachment were governed only by their own conviction of the course which they ought, necessarily, to pursue, and not by the high sense of duty which they owe to their eminent employers, they would have felt themselves justified in resting their accusation on the admissions of the respondent himself. It is not for the opinion itself, that the respondent is impeached; it is for a daring inroad upon the criminal jurisprudence of his country, by delivering that opinion at a time and in a manner (in writing) before unknown and unheard of. The criminal intent is to be inferred from the boldness of the innovation itself, as well as from other overt acts charged in this article. The admission of the respondent ought to secure his conviction on this charge. He acknowleges he did deliver an opinion, *in writing*, on the question of law, (which it was the right and duty of the jury to determine, as well as the fact,) *before* counsel had been heard in defence of John Fries, the prisoner. I must beg the assistance of one of the gentlemen with whom I am associated, to read this part of the answer. [Mr. Clark accordingly read the reply of Mr. Chase to this charge.] We charge the respondent with a gross departure from the forms, and a flagrant outrage upon the substance of criminal justice, in delivering a written, prejudicated opinion on the case of Fries, tending to bias the minds of the jury against him before counsel had been heard in his defence. The respondent (page 33, of the answer) admits the fact, for he knew that we are prepared to prove it. But he artfully endeavors to shift the argument from the real point in contest, to the soundness of the opinion itself, which, however questionable (and of its incorrectness I entertain no doubt) it is not our object, at this time, to examine. For the truth of this opinion and, as it would seem, for the propriety of this proceeding, the respondent takes shelter under precedent. He tells you, sir, this doctrine had been repeatedly decided on solemn argument and deliberation, twice in the same court, and once in that very case. What is this, but a confession, that he himself hath been the first man to venture on so daring an innovation on the forms of our criminal jurisprudence? To justify himself for having given a written opinion *before* counsel had been heard for the prisoner, he resorts to the example set by his predecessors, who had delivered the customary verbal opinion, after solemn arguments and deliberation. And what do these repeated arguments and solemn deliberations prove, but that none of his predecessors ever arrogated to themselves the monstrous privilege of breaking in upon those sacred institutions, which guard the life and liberty of the citi-

zen from the rude inroads of powerful injustice? The learned and eminent judges, to whose example he appeals, for justification, decided *after*, and not *before* a hearing. They exercised the acknowledged privilege of the bench in giving an opinion to the jury on the question of law, after it had been fully argued by counsel, on both sides. They never attempted, by previous and written decisions, to wrest from the jury their undeniable right, of deciding upon the law as well as the fact, necessarily involved in a general verdict, to usurp the decision to themselves, or to prejudice the minds of the jurors against the defence. I beg this honorable Court never to lose sight of the circumstance, that this was a *criminal* trial, for a *capital* offence, and that the offence charged was *treason*. The respondent also admits, that the counsel for Fries, not meaning to contest the truth of the facts charged in the indictment, rested their defence altogether upon the law, which he declared to have been settled in the cases of Vigol and Mitchell: a decision which, although it might be binding on the court, the jury were not obliged to respect, and which the counsel had a right to controvert before them, the sole judges, in a case of that nature, both of the *law* and *fact*. I do not deny the right of the court to explain their sense of the law to the jury, after counsel have been heard; but I do deny that the jury are bound by such exposition. If they verily believed that the overt acts charged in the indictment did not amount to treason, they could not without a surrender of their consciences into the hands of the court, without a flagrant violation of all that is dear and sacred to man, bring in a verdict of guilty. I repeat that in such a case the jury are not only the sole judges of the law, but that where their verdict is favorable to the prisoner, they are the judges without appeal. In civil cases, indeed, the verdict may be set aside and a new trial granted; but in a criminal prosecution, the verdict, if not guilty, is final and conclusive. It is only when the finding of the jury is unfavorable to the prisoner, that the humane provisions of our law, always jealous of oppression when the life or liberty of the citizen is at stake, permits the verdict to be set aside, and a new trial granted to the unhappy culprit. When I concede the right of the court to explain the law to the jury in a criminal, and especially in a capital case, I am penetrated with a conviction that it ought to be done, if at all, with great caution and delicacy. I must beg leave to take, before this honorable Court, what appears to my unlettered judgment, to be a strong and obvious distinction. There is, in my mind, a material difference between a naked definition of law, the application of which is left to the jury, and the application by the court, of such definition to the particular case, upon which the jury are called upon to find a general verdict. Surely, there is a wide and evident distinction between an abstract opinion upon a point of law, and an opinion applied to the facts admitted by the party accused, or proven against him. But it is alleged, on behalf of the respondent, that the law in this case was settled, and upon this he rests his defence. Will it be pretended by any man that the law of treason is better established than the law of murder? What is treason, as defined by the Constitution? Levying war against the United States, or adhering to their enemies, giving them aid and comfort. What is murder? Killing with malice aforethought, a definition at least as simple and plain as the other. And because what constitutes murder has been established and settled through a long succession of ages and adjudications, has any judge, for that reason, been ever daring enough to assert that counsel should be precluded from endeavoring to convince the jury that the overt acts, charged in the indictment, did not amount to murder? Is a court authorized to say, that, because killing with deliberate malice is murder, therefore the act of killing, admitted by the prisoner's counsel, or established by evidence, was a killing with malice prepense, and did constitute murder? I venture to say that an instance cannot be adduced, familar as the definition of murder is even to the most ignorant, numerous as have been the convictions for that atrocious crime, where counsel have been deprived of their unquestionable right to address the jury on the law, as well as on the fact. Much less can an instance be produced, in any trial for a capital offence, where they have found themselves anticipated in the question of law by a written opinion, to be taken by the jury out of court, as the landmark by which their verdict is to be directed. I have always understood, that, even in a civil case, when the jury carried out with them a written paper, relating to the matter in issue, and which was not offered, or permitted to be given in evidence to them, it was sufficient to vitiate their verdict, and good ground for a new trial. This written opinion of the court, delivered previous to a hearing of the cause, is a novelty to our laws and usages. It would be reprehensible in any case, but in a criminal prosecution, for a capital offence, and that offence treason, (where, above all, oppression and arbitrary proceedings on the part of courts are most to be dreaded and guarded against,) it cannot be too strongly reprobated, or too severely punished.

What would be said of a judge who in a trial for murder, where the facts were admitted (or proved) should declare from the bench, that whatever argument counsel had to offer, in relation to the facts, may be addressed to the jury, but that they should not attempt to convince the jury that such facts came not within the law, did not amount to murder, but that everything which they had to say upon the question of law, should be addressed to the court, and to the court only. Can you figure to yourselves a spectacle more horrible?

We are prepared to prove, what the respondent has in part admitted, that he "restricted the counsel of Fries from citing such English authorities as they believed apposite, and certain statutes of the United States, which they deemed material to their defence:" that the prisoner was debarred by him, from his Constitutional privilege of addressing the jury, through his counsel, on the law, as

well as the fact, involved in the verdict which they were required to give, and that he attempted to wrest from the jury their undeniable right to hear argument, and, consequently, to determine upon the question of law which in a criminal case it was their sole and unquestionable province to decide. These last charges (except as far as relates to the laws of the United States) are impliedly admitted by the respondent. He confesses that he would not admit the prisoner's counsel to cite certain cases, "because they could not inform but might deceive and mislead the jury." Mr. President, it is the noblest trait in this inestimable trial, that in criminal prosecutions, where the verdict is general, the jury are the sole judges, and, where they acquit the prisoner, the judges, without appeal, both of law and fact. And what is the declaration of the respondent but an admission that he wished to take from the jury their indisputable privilege to hear argument and determine upon the law, and to usurp to himself that power which belongs to them, and to them only? It is one of the most glorious attributes of jury trial, that in criminal cases (particularly such as are capital) the prisoner's counsel may (and they often do) attempt "to deceive and mislead the jury." It is essential to the fairness of the trial, that it should be conducted with perfect freedom. It is congenial to the generous spirit of our institutions to lean to the side of an unhappy fellow-creature, put in jeopardy, of limb, or life, or liberty. The free principles of our Governments, individual and federal, teach us to make every humane allowance in his favor, to grant him, with a liberality unknown to the narrow and tyrannous maxims of most nations, every indulgence not inconsistent with the due administration of justice. Hence, a greater latitude is permitted to the prosecutor. The jury, upon whose verdict the event is staked, are presumed to be men capable of understanding what they are called upon to decide, and the Attorney for the State, a gentleman learned in his profession, capable of detecting and exposing the attempts of the opposite counsel to mislead and deceive. There is, moreover, the court, to which, in cases of difficulty, recourse might be had. But what indeed is the difficulty arising from the law in criminal cases, for the most part? What is to hinder an honest jury from deciding, especially after the aid of an able discussion, whether such an act was killing with malice prepense, or such other overt acts set forth in an indictment, constituted a levying war against the United States; and to what purpose has treason been defined by the Constitution itself, if overbearing arbitrary judges are permitted to establish among us the odious and dangerous doctrine of constructive treason? The acts of Congress which had been referred to on the former trial, but which the respondent said he would not suffer to be cited again, tended to show that the offence committed by Fries did not amount to treason; that it was a misdemeanor only, already provided for by law, and punishable with fine and imprisonment. The respondent indeed denies this part of the charge, but he justifies it even (as he says) if it be proved upon him. And are the laws of our own country (as well as foreign authorities) not to be suffered to be read in our courts, in justification of a man whose life is put in jeopardy!

I now proceed to the second article—the case of Basset, whose objection to serve on Callender's jury was overruled by the judge, who stands arraigned before this honorable Court. In the 30th page of the respondent's answer it is stated, that a new trial was granted to Fries, "upon the ground (as this respondent understood and believes) that one of the jurors, after he was summoned, but before he was sworn, had made some declaration unfavorable to the prisoner." It will be remembered that both the trials of Fries preceded that of Callender. Upon what principle, then, could the respondent declare Basset a good juryman, when he was apprized of the previous decision in the case of Fries, by his brother judge, whom he professes to hold in such high reverence, and by whose decision, on his own principles, he must have held himself bound. For surely the same exception to a juryman, which would furnish ground for a new trial, ought to be a cause of setting aside such juror, if it be taken previous to his being sworn.

From the respondent's own showing it appears, that the question put to the jurymen generally, and to Basset among others, was, whether they "had formed *and* delivered any opinion upon the subject-matter then to be tried, or concerning the charges contained in the indictment." And here let me refer the court to the question which the respondent put to the jurors in the case of Fries. It was, "whether they had ever formed, *or* delivered any opinion as to his guilt, or innocence, or that he ought to be punished?" How is this departure from the respondent's own practice, this inconsistency with himself, to be reconciled? In the one case the question is put in the disjunctive; "have you formed *or* delivered?" In the other, it is in the conjunctive, "formed *and* delivered;" besides other material difference in the terms and import of the two questions. Wherefore, I repeat, this contradiction of himself? But, Mr. President, we shall be prepared to prove that the words "*subject-matter then to be tried*," were not comprised in the question propounded to Basset, or to any of the other jurors. The question was, as will be shown in evidence, "have you ever formed *and* delivered any opinion *concerning the charges contained in the indictment*?" And it is remarkable that the whole argument of the respondent upon this point, goes to justify the question which was *actually* put, and which he probably expected we should prove that he did put, rather than that which he himself declares to have been propounded by him. Such a question must necessarily have been answered in the negative. Basset could never have seen the indictment: and although his mind might have been made up on the *book*, whatever opinion he might have formed and delivered as to the guilt of Callender, or however desirous he might have been of procuring his conviction and punishment, still,

not having seen the indictment, he could not divine what passages of the book were made the subject of charges, and, by the criterion established by the judge, he was a good juror. But if the juror's mind was thus prejudiced against the book and the writer, was he, merely because he had not seen the indictment, competent to pass between him and his country on the charges contained in it, and extracted out of the book? And even if the question had been such as the respondent states, yet being put in the conjunctive, the most inveterate foe of the traverser who was artful, or cautious enough to forbear the expression of his enmity, would thereby have been admitted as competent to pass between the traverser and his country in a criminal prosecution.

The third article relates to the rejection of John Taylor's testimony. This fact also is admitted, and an attempt is made to justify it, on the ground of its "*irrelevancy*," on the pretext that the witness could not prove the whole of a particular charge. By recurring to "The Prospect Before Us," a book, which, with all its celebrity, I never saw till yesterday, I find this charge consists of two distinct sentences. Taken separately the respondent asserts that they mean nothing; taken together, a great deal. And because the respondent undertook to determine (without any authority as far as I can learn) that Colonel Taylor could not prove the whole, that is both sentences, he rejected his evidence entirely, for "*irrelevancy*." Might not his testimony have been relevant to that of some other witness, on the same, or on another charge? I appeal to the learning and good sense of this honorable Court, whether it is not an unheard of practice (until the present instance) in a criminal prosecution, to declare testimony inadmissible because it is not expected to go to the entire exculpation of the prisoner? Does it not daily occur in our courts, that a party accused, making out a part of his defence by one witness and establishing other facts by the evidence of other persons; does it not daily occur that the testimony of various witnesses sometimes to the same, and sometimes to different facts, does so *relieve* and support the whole case, as to leave no doubt of the innocence or guilt of the accused, in the minds of the jury, who, it must never be forgotten, are, in such cases, the sole judges both of the law and the fact? Suppose for instance that the testimony of two witnesses would establish all the facts, but that each of those facts are not known by either of them. According to this doctrine the evidence of both might be declared inadmissible, and a man whose innocence, if the testimony in his favor were not rejected, might be clearly proved to the satisfaction of the jury, may thus be subjected by the verdict of that very jury to an ignominious death. Shall principles so palpably cruel and unjust be tolerated in this free country? I am free to declare that the decision of Mr. Chase, in rejecting Colonel Taylor's testimony, was contrary to the known and established rules of evidence, and this I trust will be shown by my learned associates, to the full satisfaction of this honorable Court, if indeed they can require further satisfaction on a point so clear and indisputable. But this honorable Court will be astonished when they are told (and the declaration will be supported by undeniable proof) that at this very time neither the traverser, his counsel, or the court, knew the extent to which Colonel Taylor's evidence would go. They were apprized, indeed, that he would show that Mr. Adams was an aristocrat, and that he had proved serviceable to the British interest, in the sense conveyed by the book; but they little dreampt that his evidence, if permitted to have been given in, would have thrown great light upon many other of the charges. There is one ground of defence taken by the respondent, which I did suppose, a gentleman of his discernment would have sedulously avoided. That although the traverser had justified nineteen out of twenty of the charges contained in the indictment, if he could not prove the truth of the twentieth, it was of little moment, as he was, "thereby, put into the power of the court." Gracious God! sir, what inference is to be drawn from this horrible insinuation?

In justification of the charges contained in the fourth article, the respondent, unable to deny the fact, confesses that he did require "the questions intended to be put to the witness to be reduced to writing, and submitted to the court," in the first instance, as we shall prove, and before they had been verbally propounded. And this requisition, he contends, it was "the right and duty of the court" to make. It would not become me, elsewhere, or on any other occasion, to dispute the authority of the respondent, on legal questions, but I do aver that such is *not* the *law*, at least in the State in which that trial was held, nor do I believe that it is law anywhere. I speak of the United States. Sir, in the famous case of Logwood, whereat the Chief Justice of the United States presided, I was present, being one of the grand jury who found a true bill against him. It must be conceded that the Government was as deeply interested in arresting the career of this dangerous and atrocious criminal, who had aimed his blow against the property of every man in society, as it could be in bringing to punishment a weak and worthless scribbler. And yet, although much testimony was offered by the prisoner, which did by no means go to his entire exculpation although much of that testimony was of a very questionable nature, none of it was declared *inadmissible;* it was suffered to go to the jury, who were left to judge of its weight and credibility; nor were any interrogatories to the witnesses required to be reduced to writing. And I will go farther, and say that it never has been done before or since Callender's trial, in any court of Virginia, and I believe I might add in the United States, whether State or Federal. No, sir, the enlightened man who presided in Logwood's case knew that, although the basest and vilest of criminals, he was entitled to *justice*, equally with the most honorable member of society. He did not avail himself of the previous and great discoveries, in criminal law, of this respondent; he admitted the prisoner's testimony to go to the jury; he never thought it *his right* or *his duty* to require questions to be reduced to writing; he gave the accused a *fair trial*, according to law and usage, without any innovation or departure from the established rules of criminal jurisprudence, in his country.

The respondent also acknowledges his refusal to postpone the trial of Callender, although an affidavit was regularly filed, stating the absence of material witnesses on his behalf; and here again the ground of his defence is, in my estimation, good cause for his conviction. The dispersed situation of the witnesses, which he alleges to have been the motive of his refusal, is, to my mind, one of the most unanswerable reasons for granting a postponement. The other three charges contained in this article will be supported by unquestionable evidence. The rude and contemptuous expressions of the judge to the prisoner's counsel; his repeated and vexatious interruptions of them; his indecent solicitude and predetermined resolution to effect the conviction of the accused. This predetermination we shall prove to have been expressed by him long before, as well as on his journey to Richmond, and whilst the prosecution was pending; besides the proofs which the trial itself afforded.

The fifth article is for the respondent's having "awarded a capias against the body of James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in such case made and provided:" that is, contrary to the act of Assembly of Virginia, recognised (by the act of Congress passed in 1789, for the establishment of the judicial courts of the United States) as the rule of decision in the federal courts, to be held in that State, until other provision be made. The defence of the respondent embraces several points: That the act of Virginia was passed posterior to the act of Congress, viz: in 1792, and could not be intended by the latter to be a rule of decision. Fortunately, there is no necessity to question, which we might well do, the truth of his position. It may be necessary to inform some of the members of this honorable Court, that, about twelve or thirteen years ago, the laws of Virginia underwent a revision; all those relating to a particular subject being condensed into one, and the whole code thereby rendered less cumbrous and perplexed. Hence, many of our laws, to a casual and superficial observer, would appear to take their date so late as the year 1792, although their provisions were, long before, in force. The twenty-eighth section of this very act on which we rely, the Court will perceive to have been enacted in 1788, one year *preceding* the act of Congress. (Virg. laws, chap. 74, sec. 28, page 106, NOTE b. Pleasants' edition.) [Here Mr. Randolph read the act referred to.] "Upon presentment made by a grand jury of an offence not capital, the court shall order the clerk to issue a summons, or other proper process, against the person so presented, to appear and answer such presentment at the next court," &c. But the respondent, aware, no doubt, of this fact, asserts that the act not being adduced, he was not bound to know of its existence, and that he ought not to be censured for the omissions of the traverser's counsel, whose duty it was to have cited it on behalf of their client; and this objection, with the preceding ones, which I have endeavored to answer, will equally apply to the sixth article. Sir, when the counsel for the traverser were told by the judge at the outset, when they referred to a provision of this very law, "that such may be your local State laws here in Virginia, but that to suppose them as applying to the courts of the United States, is a *wild notion*," would it not, indeed, have been a *wild experiment* in them to cite the same law with a view of influencing the opinion of a man, who had scornfully scouted the idea that he was to be governed by it?

Unwilling, however, to rest himself now on the ground which he then took, the respondent justifies himself by declaring that he complied, although ignorantly, with this law, by issuing that *other proper process*, of which it speaks, that is a capias. But that other process must be of the nature of a summons, notifying the party to appear at the *next term;* and will any man pretend to say, that a capias taking him into close custody and obliging him to appear, not at the next, but at the existing term, is such process as that law describes? Sir, not only the law, but the uniform practice under it, as we are prepared to show by evidence, declares the capias not to be the proper process. But it is said that this would be nothing more than notice to the party accused to abscond, and therefore *ought not* to be law. Sir, we are not talking about what ought to have been the law; that is no concern of ours; the question is, what *was* the law? But the impolicy of this mode of proceeding is far from being ascertained. It is a relief to the innocent who may be in a state of accusation. It saves the expense of imprisoning the guilty, and if they should prefer voluntary exile to standing a trial, is it so very clear that the State is thereby more injured than by holding them to punishment, after which they would remain in her bosom to perpetrate new offences? Remember, this proceeding is against petty offenders, not felons. It does not apply to capital cases; to felonies, then, capital, for which our law has since commuted the punishment of death, into that of imprisonment at hard labor.

For further defence against the sixth article, the respondent takes shelter under this position: That the provision of the law of the United States establishing the judicial courts relates only to rights acquired under *State* laws, which come into question *on* the trial, and not to forms of process *before* the trial, and can have no application to offences created by statute, which cannot, with propriety, be termed trials at "*common law*." We are prepared to show that the words "trials at common law," are used in that statute, not in their most restricted sense, but to contradistinguish a certain description of cases from those arising in equity, or under maritime or civil law.

I will pass over the seventh article of impeachment, as well because I am nearly exhausted, as

being content to leave it on the ground where the respondent himself has placed it. It would be impossible for us to put it in a stronger light than has been thrown upon it by his own admission.

The eighth and last article remains to be considered—[article read.] I ask this honorable Court whether the prostitution of the bench of justice, to the purposes of an hustings, is to be tolerated? We have nothing to do with the politics of the *man*. Let him speak, and write, and publish, as he pleases. This is his right in common with his fellow-citizens. The press is free. If he must electioneer and abuse the Government under which he lives, I know no law to prevent or punish him, provided he seeks the wonted theatres for his exhibition. But shall a judge declaim on these topics from his seat of office? Shall he not put off the political partisan when he ascends the tribune? or shall we have the pure stream of public justice polluted with the venom of party virulence? In short, does it follow that a judge carries all the rights of a private citizen with him upon the bench, and that he may there do every act which, as a freeman, he may do elsewhere, without being questioned for his conduct?

But, sir, we are told that this high Court is not a court of errors and appeals, but a Court of Impeachment, and that however incorrectly the respondent may have conducted himself, proof must be adduced of criminal intent, of wilful error, to constitute guilt. The *quo animo* is to be inferred from the facts themselves; there is no other mode by which, in any case, it can be determined, and even the respondent admits that there are acts of a nature so flagrant that guilt must be inferred from them, if the party be of sound mind. But this concession is qualified by the monstrous pretension that an act to be impeachable must be indictable. Where? In the Federal courts? There, not even robbery and murder are indictable, except in a few places under our exclusive jurisdiction. It is not an indictable offence under the laws of the United States for a judge to go on the bench in a state of intoxication—it may not be in all the State courts; and it is indictable nowhere for him to omit to do his duty, to refuse to hold a court. But who can doubt that both are impeachable offences, and ought to subject the offender to removal from office? But in this long and disgusting catalogue of crimes and misdemeanors, (which he has in a great measure confessed,) the respondent tells you he had accomplices, and that what was guilt in him could not be innocence in them. I must beg the Court to consider the facts alleged against the respondent in all their accumulated atrocity; not to take them, each in an insulated point of view, but as a chain of evidence indissolubly linked together, and establishing the indisputable proof of his guilt. Call to mind his high standing and character, and his superior age and rank, and then ask yourselves whether he stands justified in a long course of oppression and injustice, because men of weak intellect and yet feebler temper—men of far inferior standing to the respondent, have tamely acquiesced in such acts of violence and outrage? He is charged with various acts of injustice, with a series of misconduct so connected in time, and place, and circumstance, as to leave no doubt, on my mind at least, of intentional ill. Can this be justified, because his several associates have at several times and occasions barely yielded a faint compliance, which perhaps they dared not withhold? Can they be considered as equally culpable with him whose accumulated crimes are to be divided amongst them, who had given at best but a negative sanction to them? But, sir, would the establishment of their guilt prove his innocence? At most, it would only prove that they too ought to be punished. Wherever we behold the respondent sitting in judgment, there do we behold violence and injustice. Before *him* the counsel are always contumacious. The most accomplished advocates of the different States, whose demeanor to his brethren is uniformly conciliating and temperate, are to *him*, and him only, obstinate, perverse, rude, and irritating. Contumacy has been found to exist only where he presided.

Mr. President, it appears to me that one great distinction remains yet to be taken. A distinction between a judge zealous to punish and repress crimes generally, and a judge anxious only to enforce a particular law, whereby he may recommend himself to power or to his party. It is this hideous feature of the respondent's judicial character, on which I would fix your attention. We do not charge him with a general zeal in the discharge of his high office, but with an indecent zeal, in particular cases, for laws of doubtful and suspicious aspect. It is only in cases of constructive treason and libel, that this zeal breaks out. Through the whole tenor of his judicial conduct runs the spirit of party. I could cite the name and authority of a judge of whom, if I might be permitted to speak, I would say, that he was no less a terror to evil-doers than a shield to the oppressed. In a commendable zeal for the faithful execution of the laws, he has never been surpassed, neither in tenderness to the liberty of the citizen, nor the liberty of the press, nor trial by jury. [Here Mr. R. read the following passage from Tucker's Blackstone, vol. 4, page 350.] "But it is not customary nor agreeable to the 'general course of proceedings (unless by consent 'of parties, or where the defendant is actually in 'jail) to try persons indicted of smaller misde-'meanors at the same court in which they have 'pleaded not guilty, *or traversed the indictment*." [What follows is subjoined in a note.] And this is the practice in Virginia; but in the case of the United States against Callender, in the Federal court at Richmond, May, 1800, a different course was pursued, although the act of Congress (First Congress, 1 Sept., chap. 20, sec. 32) may be interpreted otherwise. This is the very act and section on which we rely.

I have endeavored, Mr. President, in a manner, I am sensible, very lame and inadequate, to discharge the duty incumbent on me; to enumerate the principal points upon which we shall rely, and to repel some of the prominent objections advanced by the respondent. Whilst we confidently expect on his conviction, it is from the strength of our cause, and not from any art or skill in conducting it. It requires so little support that (thank Heaven) it cannot be injured by any weakness of mine. We shall bring forward in proof, such a specimen of judicial tyranny, as, I trust in God, will never be again exhibited in our country.

The respondent hath closed his defence by an appeal to the great Searcher of Hearts for the purity of his motives. For his sake, I rejoice that, by the timely exercise of that mercy which, for wise purposes, has been reposed in the Executive, this appeal is not drowned by the blood of an innocent man crying aloud for vengeance; that the mute agony of widowed despair, and the wailing voice of the orphan, do not plead to Heaven for justice on the oppressor's head. But for that intervention, self-accusation before that dread tribunal would have been needless. On that awful day the blood of a poor, ignorant, friendless, unlettered German, murdered under the semblance and color of law, sent without pity to the scaffold, would have risen in judgment at the Throne of Grace, against the unhappy man arraigned at your bar. But the President of the United States by a well timed act, at once of justice and mercy, (and mercy, like charity, covereth a multitude of sins,) wrested the victim from his grasp, and saved him from the countless horrors of remorse, by not suffering the pure ermine of justice to be dyed in the innocent blood of John Fries.

The Managers proceeded to the examination of witnesses in support of the prosecution.

William Lewis, affirmed.

Mr. Dallas, Mr. W. Ewing, and I were counsel for John Fries, at his request, and I believe by the assignment of the court, on his trial in the year 1799. It was conducted, I believe, in the usual manner, and we were certainly allowed all the privileges that were customary on such occasions. The trial was had before Judges Iredell and Peters. He was convicted, and a new trial was ordered, because one of the jurors had manifested a prejudice against the people in general concerned in the insurrection, and against Fries in particular. This trial took place partly in April and partly in May, 1799. At October session following, Mr. Dallas and I attended at Norristown, expecting the trial would again take place; but it did not. The proceedings on the first indictment were quashed by the District Attorney, and a new bill was found at April term, 1800, at which Judges Chase and Peters presided. Mr. Dallas and I appeared again as the counsel of Fries, at his request, and I believe we were assigned by the court, but, of this I am not certain. On the morning of a certain day, which I do not now recollect, I entered the court room when the judges were on the bench, and, if I recollect rightly, the prisoner was in the bar; but if he was not then there, I feel very sure that he soon was. The list of petit jurors was called over, and many of them answered. Whether his trial had been appointed for that day, I do not recollect; nor can I say whether he was brought up in consequence of such appointment or not. I will now state, as accurately as is in my power, what took place on the occasion, premising that, although my memory is a remarkably accurate one for a short time, it is far from being so after a considerable lapse of time. I will not, therefore, undertake to state the precise words used in the altercation which took place; but I am very confident that I shall not vary from the substance. When I say that I am thus confident, I beg to be understood as not undertaking to distinguish positively in all respects between what took place on the first or on the second day.

Almost immediately after the jurors were called over, Judge Chase began to speak. At this time Mr. Dallas had not come into court. Judge Chase said, he understood, or had been informed, that on the former trial or trials, for it was impossible for me to know whether he alluded to the case of Fries only, or of him and others, there had been a great waste of time in making long speeches on topics which had nothing to do with the business, and in reading common law cases on treason, as well as on treason under the statute of Edward the Third, and also certain statutes of the United States, respecting the resisting of process, and other offences less than treason. He also said, that to prevent this in future, he or they, I do not precisely recollect which, had considered the law, had made up their minds, and had reduced their opinion to writing on the subject, and would not suffer these cases to be read again; and in order that the counsel (but whether for the prisoner, or the counsel on both sides, I cannot say) might govern themselves conformably, he had ordered three copies of that opinion to be made out, one to be delivered to the prisoner's counsel, one to the counsel in support of the prosecution, and the other, as soon as the case was fully opened, or gone through, I cannot say which, to be delivered by the clerk of the court to the jury. I rather think that the expression was, fully gone through.

Mr. Randolph. And this, sir, before the counsel had been heard?

Mr. Lewis. I have said Mr. Dallas had not yet come into court, and as to myself I had not at this time said a single word. I think it was at or about this time, that Judge Chase handed, or threw down to Mr. Caldwell, clerk of the court, one or more papers; but whether I saw them pass immediately from the hands of one to the other, I am not certain. Mr. Caldwell reached one of the papers towards me. If I took it in my hand, I did not read a single line of it. I remember well that speaking aloud, but whether addressing myself to the court or not, I am not positive, and either waving my hand, or throwing the paper from me, I used this expression: "I will never permit my hand to be tainted with a prejudged opinion in any case, much less in a capital one." If Judge Peters made use of a single expression on the first day, I either did not hear him or do not recollect it.

Judge Chase, when speaking of the authorities

at common law, and those under the statute of Edward III., and, I believe, of the acts of Congress, said he would not suffer them to be read again. I am sure he said he would not suffer the decisions at common law, or under the statute of Edward III., to be read. I am not altogether certain whether he did or did not say the same thing as to the statutes of the United States; but I am perfectly sure that he did say they had nothing to do with the question, and that he expressed himself in strong terms of disapprobation either at their having been read or permitted to be read on the former trial. I am not certain whether some parts of this as well as that which I am about to mention occurred on the first or the second day. Judge Chase said, I think on the first day, that they were judges of the law, and if they did not understand it they were unworthy of their seats, or unfit to sit there, and that if the prisoner's counsel had anything to say, to show that they had mistaken the law, or that they were wrong, the counsel must address themselves to the court for that purpose, and not to the jury. I made some observations in answer, which it is impossible for me in all respects particularly to recollect, as having passed at this time, since some parts of it may perhaps have taken place in other stages of the business. At this time, Mr. Dallas was not in court. I was struck with what appeared to me to be a great novelty in the proceedings, and as I was extremely anxious to be of service to Fries, I was desirous that Mr. Dallas might be present. I think I went out of the bar to get somebody to go for him, and while I was out of the bar, he entered the room. I briefly stated to him what had taken place, or some parts of it; but, I believe, not the whole. We came forward, and we made some remarks, which I am unable to repeat. I was early struck with the idea, that as the court had made up their minds, and decided the question of law, before the jury was sworn, or the witnesses or counsel heard, it was not likely we should alter that opinion by anything we might say, and that we should probably render Fries more service by withdrawing from his defence, than by engaging in it. We told him so, and earnestly recommended to him to pursue that course. He appeared greatly alarmed and extremely agitated, and much at a loss what determination to come to. We, however, told him that, if he insisted on it, we would proceed in his defence at every hazard, and contend for what we deemed our Constitutional rights as his counsel, until stopped by the court; or we used expressions to this effect. His state of alarm and apprehension scarcely left him the power to decide for himself. After some time he acquiesced in our advice; said he had nobody to depend on but us; that he was sure we would do our best for him, and he would leave us to do for him as we pleased. Being very anxious for him, we told him we would call upon him at the jail, and satisfy his mind as to the course which we wished him to pursue. He finally agreed to our proposal to withdraw; but as we were apprehensive that the court might assign him other counsel in our place, and that our views might be defeated by such an arrangement, we advised him against accepting any, and I understood that he afterwards did refuse to accept of any other counsel. I will not assign my reasons for giving this advice, as it might, perhaps, be improper, unless I am directed by the Court.

Mr. Martin asked what those reasons were?

The President desired the examination to proceed on the part of the House of Representatives, and said when that was closed, the witness might be examined by the counsel for Judge Chase.

Mr. Lewis. It being thus determined that we should withdraw, and that Fries should not accept any counsel that might be assigned him, I left the court, expecting to have little or nothing more to say, as we were no longer counsel for the prisoner. The next morning, soon after the court was opened, and, I believe, when the prisoner was in the bar, Judge Chase addressed Mr. Dallas and myself, and probably Mr. Rawle, and asked us if we were ready to proceed? I answered that I was not, or that we were not any longer counsel for the prisoner. He asked our reasons for this; and I began to answer by mentioning what had taken place the day before; on which he and Judge Peters certainly manifested a strong disposition that we should proceed in the prisoner's defence, and that they would remove every restriction which had been previously imposed. I was stopped in what I was about to say by Judge Chase telling us to go on in our own way, and address the jury on the law as well as the facts, as we thought proper; but, at the same time, he said it would be under the direction of the court; and at our own peril, or the risk of our characters, if we conducted ourselves with impropriety. This had rather a contrary effect on my mind than that of inducing me to proceed, as I did not know that there had been anything in my conduct so indecorous as to make it necessary to remind me that, if I proceeded, it should be at my own peril and risk of character; and this expression, therefore, rather strengthened than lessened the determination which I had taken.

I have said if Judge Peters made use of a single expression on the first day I did not hear it, or have forgotten it. On the second day he spoke, and joined Judge Chase in urging us to proceed, in the prisoner's defence. He told us that we might take as large a scope as we pleased; said he knew the Philadelphia bar would take the stud, and asked, if they (the judges) had committed an error, or got into a scrape, would we not permit them to get out of it? I mentioned in this or some other stage of the business, that I deemed it the Constitutional right of the prisoner to be heard by himself or counsel in his defence. That it was the Constitutional right of the jury to hear counsel on the law as well as the facts; that it was their Constitutional right to pass between the prisoner and his country on both, and that it was the Constitutional right of counsel to be heard by the jury on the law as well as the facts. If I did not deliver myself in these precise words, I am confident that the substance is the same, and that there is no material difference in the sense. I

also mentioned that I considered this a great Constitutional right, which should never be surrendered or sacrificed by me. Of this expression I am sure. And I added, that I never had, nor ever would, in a criminal prosecution address a court either on the law or the facts: In this, however, I find that I was mistaken; for I since recollect, though from the hurry of the moment, I did not then, an instance where, in a criminal case, I did address the jury on a point of law, which was separate and distinct from the facts. Judge Peters remarked that no harm could arise from the papers, (containing the opinion of the court,) as they, or the copies, had been called in or collected, and either burnt or destroyed. To this I answered, that although the papers were or might be destroyed, the opinion which the court had formed, without hearing the prisoner's counsel, still remained, and could not be erased from their minds, and would be as injurious to my client (the jurors being present and having heard what had passed) as if the papers had not been destroyed.

When Judge Chase said that we should read no common law authorities, or decisions under the statute of Edward III., before the Revolution in England, I said that we meant to contend what was the law of treason in England under the head of "levying war," was not in all respects law here; that we did not mean to cite any cases before the English Revolution to prove what the law of treason was, or for any other purpose than to show the dangerous lengths that the judges had gone while they were corrupt and dependent on the Crown; that although since the Revolution in England the judges had been independent and upright, they had, in a variety of particulars, held themselves bound by a train of former decisions which had taken place in bad times; but that the judges in this country in the construction of a new instrument of our own, defining the offence of treason, were not bound by any of the decisions or constructions which had taken place in England under the statute of Edward III.; and that the authorities we meant to cite were intended as a guard against the dangerous constructions which had prevailed in that country. It was not, therefore, to show what the law was, but to guard against the danger of constructive treason; and to show that our judges were not bound by the English decisions, that we had read them before, and intended to read them again. This principle we contended for before, and meant to contend for again; and we were principally led to it, from Mr. Sitgreaves, who had assisted the District Attorney on the former trial, having begun by stating "that the words of our Constitution respecting treason are taken from the 25th Edward III., and, therefore, the people of this country had, by adopting the words of that statute, adopted all judicial determinations under it." This position we could not agree to, and the cases which had been read were merely intended to show and guard against the dangerous lengths to which we should be carried, if it were admitted to be true. Judge Chase asked if the counsel offered to read cases from any foreign country, (mentioning several with whom we had never been connected,) was the court to permit them? We, in reply, said that we had not cited such cases on the former occasions, and it was not likely that we should attempt it now.

Finding that Mr. Dallas and I were determined not to proceed in the prisoner's defence, Judge Chase said, if we intended to embarrass the court we should find ourselves mistaken, as they would proceed without us, and, by the blessing of God, render the prisoner as much justice as if he had the aid of our counsel or assistance. Both the judges, therefore, on the second day, even took pains to induce us to proceed in the defence, with liberty to go through the whole question as well in relation to the law as the facts; but we absolutely refused, believing it not likely that any arguments we could urge would change the opinion of the court already formed, or destroy its effects, and also believing that, after what had taken place, the life of Fries, even if he should be convicted, would be exposed to less jeopardy without our aid than it would be if we should engage in his defence.

Mr. Nicholson. You say that, on the first trial of Fries, you were allowed the usual latitude. What do you mean by usual latitude?

Mr. Lewis. We were allowed to address the jury on the law as well as on the facts. We were allowed the privilege of reading to the jury all such law authorities as we thought applicable, and as might, under the direction of the court, tend to satisfy them, that the doctrine contended for on the part of the prosecution was not well founded. We met with no restraint or interruption, not having, that I know of, given occasion for either.

Mr. Nicholson. Were you, on the first trial, allowed to read the statutes of the United States?

Mr. Lewis. Unquestionably; I have the notes in my pocket from which I spoke on that occasion, which I can produce if desired.

Mr. Nicholson. Were you allowed to read cases before the Revolution as well as since?

Mr. Lewis. We were; we did it to show the extravagant lengths to which constructive treason had been carried, and not what the law actually was.

In answer to an interrogatory,

Mr. Lewis said that he did not read the opinion of the court which had been handed or thrown down; that he had never read it in his life.

Mr. Randolph. If not the oldest, are you not an old practitioner at the bar, and have you not been frequently employed in criminal cases?

Mr. Lewis. I was admitted to practice in the court of common pleas, in November, 1771, and in the Supreme Court, in April, 1774, and I have been employed in a pretty extensive practice almost ever since. Immediately after the British left Philadelphia, in 1778, I was engaged for one hundred and fifty-three persons charged with treason or misprision of treason. I defended almost every man of them that was tried; and, since that time, I have been concerned in perhaps more capital cases, particularly for treason, than any

other gentleman in Pennsylvania, compared with our business in other respects.

Mr. Randolph. Did you ever see such a proceeding as that which took place on the bench in the case of Fries; or did you see anything before, to induce you to abandon the defence of your client?

Mr. Lewis. This question seems to be a pretty general one, but if——

Mr. Key. If I understand this question, it is calculated to draw from the witness an opinion, instead of a narration of facts.

The President desired Mr. Randolph to reduce his question to writing.

While Mr. R. was engaged in penning it,

Mr. Chase said he had no objection to the question being put.

In the mean time the question in writing had been handed to the Chair, and been read by the Clerk.

The President said, the objection being withdrawn, the question would be put unless objected to by any member of the Senate.

No objection being made,

Mr. Lewis answered. No, I did not. It was entirely novel to me.

Mr. Randolph. And yet you have been present at criminal trials, at trials for treason, when there was a vast number of civil actions on the docket?

Mr. Lewis. Criminal trials for capital offences are generally tried before the court of oyer and terminer, in Pennsylvania, where there is seldom much interference in civil suits.

At the circuit court of the United States, in 1794, there were, I believe, many civil cases. Judges Iredell and Peters presided. I do not know, or believe, that the circumstance of their being civil cases occasioned the least variation in the mode of procedure in the criminal cases.

Mr. Lewis said he had one thing further to state, that Mr. Dallas and he withdrew from a desire to save the life of John Fries, and because they thought it most likely that it would be effected by doing so, and not because they were influenced by any other considerations, and that had it not been for this consideration, he would have persisted in the exercise of what he deemed his professional rights, until he was actually stopped by the authority of the court.

Mr. Harper. Did you not appear for Vigol?

Mr. Lewis. I did.

Mr. Harper. With what overt acts was he charged?

Mr. Lewis. The overt act was levying of war, particularizing the time and place.

Mr. Harper. I will ask you whether on the trial of John Fries, in 1799, in which Mr. Dallas and you appeared as his counsel, you did not make this point of law; that, to resist by force the execution of a particular law of the United States does not amount to treason, but to riot only? Or what was the point of law?

Mr. Lewis. On the first trial of Fries we made this point of law. Before the trial before Judges Chase and Peters came on, I had considered the subject with great deliberation, and my determination was to insist that, although resisting the laws generally, or even a particular law respecting the regular forces or militia of the nation was treason, yet that resisting any other particular law was not treason.

Mr. Harper. Was not the same point made on the first trial?

Mr. Lewis. It was.

Mr. Harper. Was it not ruled by the court that such acts amounted to treason?

Mr. Lewis. It was.

Mr. Harper. When then the court granted a new trial did they not express doubt on this point, or was it not granted on a collateral point?

Mr. Lewis. The new trial was granted solely on a collateral point.

Mr. Harper. How long did the trial last?

Mr. Lewis. I cannot tell; but it was a very long trial. The point of law was argued to the fullest extent, and we quoted all the authorities we thought relevant. I was assisted by Mr. Dallas. We spoke very fully, and were laid under no restriction. At the last trial we meant to have also taken other ground, and to have contended that the trial could not take place in Philadelphia, but must be in the county in which the offence had been committed, according to a law of the United States, which provides that in capital cases trials shall take place in the county where the crimes are committed, unless this cannot be without great inconvenience. This we had before contended; and had been then overruled because it was alleged the county in which the offences had been committed was not free from a state of insurrection or the effects of it. At the time of the last trial, there was no insurrection in the county where the offences charged against Fries had been committed, and we believed him, therefore, entitled to a trial in that county.

Mr. Harper. Did any part of Judge Chase's written opinion go to this point?

Mr. Lewis. It was not mentioned to the court, as Mr. Dallas and I determined to have nothing further to do in the case.

Mr. Harper. Why did you abandon that part of your client's case? It was a new point, upon which you might have had the decision of the court.

Mr. Lewis. I did not wish to have anything more to do with the case, after the manner in which we had been treated by the court.

Mr. Hopkinson. Did not the court ask Fries whether he would have counsel assigned him?

Mr. Lewis. I believe there is no doubt of the fact.

Mr. Randolph. I understand you to say that by withdrawing from the defence of Fries, and the not having counsel assigned him, you expected to serve your client. Wherefore did you think the cause of your client would thereby be served?

Mr. Lewis. It appeared to me that the conduct of the court justified us in withdrawing, after not being suffered to go on in the usual manner, and I thought it more probable that a man, thus convicted, would be pardoned by the President, than that we should be able, by anything we could say, to alter the opinion of the court.

Mr. Nicholson. Were the jurors present?

Mr. Lewis. They were. They were called over as usual, but I do not know that they were called for the trial of Fries. It was, I believe, usual to call over the list on the morning of each day.

Alexander J. Dallas, sworn.

Mr. Dallas. I will endeavor to be correct in the statement which it is my duty to give; and I am sure that I shall be substantially so, though I cannot promise to place the facts precisely in the order of time in which they occurred; nor to recite the very words that were used by the several parties in the course of the transaction.

When the northern rioters were brought to Philadelphia, in the spring of 1799, some of their friends applied to Mr. Ingersoll, and to me to undertake their defence. Mr. Ingersoll was then Attorney General of Pennsylvania; and on consideration, I believe, declined the task. Mr. Lewis, either before or after this application, was also requested to act as counsel for the prisoners; and upon his acquiescence, we repaired to the prison to make the necessary arrangements preparatory to a trial. Mr. William Ewing had been engaged by several of the rioters, and we agreed to unite in the defence, as the same general facts in law, applied to all the cases.

In April term, 1799, the first trial of Fries took place. It was conducted with great propriety throughout, by the court, and by the prosecuting officer; and the counsel of the prisoner were permitted to address the jury at large, on the law and the facts, as well as to cite every authority which they thought proper. Fries was convicted; but on a motion made by Mr. Lewis and me, the verdict was set aside, and a new trial awarded.

The second trial of Fries, upon a new indictment (the first having been discontinued by Mr. Rawle) occurred in May, 1800. Mr. Lewis and I had again, at his request, been assigned by the court to defend him. On the morning fixed for the trial, I entered the court room sometime after the court had been opened. Fries was standing in the prisoner's box, the jurors of the general panel appeared to be in the jury boxes, and the hall was crowded with citizens. On my entrance, I perceived Mr. Lewis and Mr. E. Tilghman engaged eagerly in conversation, and the gentlemen of the bar, generally, seemed to be much agitated. As soon as Mr. Lewis saw me, he hastened towards me on the outside of the bar, and told me, in effect, that a "very extraordinary incident had occurred; that Mr. Chase, after speaking in terms of great disapprobation of the defence at the former trial, declared that the court, on mature deliberation, had formed and reduced to writing, an opinion on the law of treason involved in the case; and that he should direct one copy to be delivered to the attorney of the district, another to the prisoner's counsel, and a third (after the opening for the prosecution) to the jury, to take out with them."

Here Mr. Harper rose, and said—Mr. President, surely it is improper that the witness should repeat what Mr. Lewis told him, not in court, nor when the judge was present.

Mr. Dallas, turning to Mr. Harper, said, "Sir, I know the rules of evidence, and I mean to conform to them." Then turning to the Vice President, he continued, "If, Mr. President, the counsel's patience had lasted for a minute, he would have heard that I repeated Mr. Lewis's communication to the court, and that it was not contradicted. What I have said was necessary to introduce that fact; and, surely, it is strictly within the rules of evidence."

Mr. Lewis and I exchanged an opinion on the impropriety of the conduct of the court; we determined (as I thought, when first recurring to my memory for the facts, and as I still think, though I wish not to speak positively) to withdraw from the defence; and we entered the bar together. When there, something occurred which called the attention on our part, and Mr. Lewis informed the court, in effect, "that there was little dispute about the facts in the cause, and that as the court had deliberately prejudged the law, he could not hope to change their opinion, nor to serve his client; while a submission to such a proceeding would be degrading to the profession." It was then, I think, that I stated to the court, the information which I had received from Mr. Lewis, (but certainly it was either then, or, as it has been suggested to me by a respectable gentleman of the bar, at the opening of the court on the next day,) and I paused, to give an opportunity for contradiction or explanation; for, although I had no doubt of Mr. Lewis's intention to deliver a correct representation of what had passed, it was possible, and I might myself have mistaken the import of his communication. I cannot now state all that Mr. Lewis told me, but I am confident that I then repeated it all to the court. No remark being made in consequence of the pause, I proceeded to state a few comparative observations on the province and rights of the judge, and the province and rights of the advocate; and concluded with declining to act any longer as counsel for the prisoner. The court was soon afterwards adjourned. These are all the material occurrences of the first day, which I recollect; except, perhaps, that soon after I came into court, I heard Mr. Peters remark to Mr. Chase, "I told you what would be the consequence. I knew they would take the stud."

On the next day, the court was opened, Fries was placed in the prisoner's box, the jury attended, and the number of spectators was increased. Silence being proclaimed, Mr. Chase asked, "if the prisoner's counsel were ready to proceed on the trial?" and Mr. Lewis and I, successively, declared, that we no longer considered ourselves as the counsel of Fries. Mr. Peters then, as well as at other times, expressed a great desire that we should overlook what had passed; he told us that the papers delivered the day before had been withdrawn, and that he did not care what range we took, either on the law, or the fact. Mr. Chase also said: "The papers are withdrawn, and you may take what course in the defence you please; but it is at the hazard of your characters." I thought the expression was in the nature of a

menace; that it was unkind, improper, and unnecessary. Mr. Lewis observed, in effect: "You have withdrawn the papers; but can you eradicate from your own minds the opinion which you have formed, or the effect of your declaration on the attending jurors, a part of whom must try the prisoner?" Mr. Chase said: "If you think to embarrass the court, you will find yourselves mistaken." He then asked Fries if he chose to have other counsel assigned? Fries answered, that he did not know how to act, but that he thought he would leave it to the court and the jury. On which, Judge Chase exclaimed, "Then we will be your counsel; and, by the blessing of God, do you as much justice as those who were assigned to you." Mr. Lewis and I had visited Fries in prison during the preceding afternoon; we had told him our determination to withdraw from his defence, unless he and his friends wished us to resume it; and we declared it to be, in our view of the case, his best chance to escape, as we could entertain no hope of changing the opinion of the court. He finally left the matter to us; and I think Mr. Lewis in my hearing, with my concurrence, advised him not to accept other counsel, if the court should offer to assign them. The rest of the facts, as stated by Mr. Lewis, correspond so precisely with my recollection, that I presume, after this recognition, it is unnecessary to repeat them. I wish it, however, to be properly understood that, on the second day, both the judges were extremely anxious to prevail on us to proceed in the defence; and, as I understood, withdrew all the restrictions of the preceding day. We persisted, however, in our determination; because, after what had happened, we deemed it the best chance to save our client's life, and not because we wished, as has been insinuated, to bring the court into disgrace or odium. Fries, was accordingly tried and convicted without counsel.

It is proper, perhaps, to state what passed on the first trial of Fries, as it has been much misunderstood or misrepresented. The general course of argument, *on the facts*, was, an attempt to show that the acts of Fries and his companions amounted to nothing more than a riotous opposition to the direct tax officers, or obstruction of the marshal in the execution of process, and the rescue of a particular description of prisoners whom the marshal had arrested. We drew to our aid, in this part of the discussion, the sections of the penal law, and the sedition act, which provided for the punishment of such offences, distinct from the crime of treason. The general course of our argument, on the law, was, an endeavor to show that the offence did not amount to an act of levying war against the United States. The Constitution defines that to be the only treason that can be committed; and neither the Legislature, nor the courts, can amplify or alter the definition. The words of the Constitution, however, require a practical exposition. This exposition can only be obtained by a consideration of the natural, the familiar, and the reasonable import of the words themselves, or by reference to a glossary of the English decisions on the same branch of treason, expressed in the same terms, in the English statute of Edward III. The glossary of the English decisions ought not to be relied on. It is true, that since the English Revolution of 1688, and particularly since the statute of William III., (which first gave judicial freedom to the English bench,) the judges of England have been independent, as well as wise and virtuous; and implicit confidence may be reposed in their judgments, upon all matters originally submitted to their jurisdiction. But the English judges, since the Revolution of 1688, are bound to administer the law, according to the precedents established by the English judges before that Revolution; although either in criminal, or in civil matters, if the question were *res integra*, they would, themselves, have decided in a different way. Hence, the counsel of Fries were induced to cite common law authorities, and authorities under the statute of Edward III., to show (not what the law of England was, or ought to be, not what the law of the United States was, or ought to be, but) what had been the extravagance of dependent judges in setting the precedents which the independent judges of England were bound to follow. Among other books they read Blackstone's Commentaries, where, in illustration of a positive or imputed treason, the commentator cites the cases (under the statute of Edward III.) of one man being hung as a traitor, for saying that his son was heir to the Crown, because he was himself the owner of a tavern with the sign of the Crown; and of another man's meeting the same fate, because he wished the horn of his buck, which had been killed by the king, in the belly of the monarch. These were, indeed, the illustrations of Blackstone, and not of Fries's counsel; but what professional man need be ashamed to be supposed capable of resorting to the same authorities to enforce an argument, which Blackstone had employed? Fries's counsel contended that American judges were not under the same obligation, and that the era of our Federal Constitution furnished a favorable opportunity to emancipate ourselves from the trammels of constructions given to the words of our Constitution by corrupt and dependent courts, before the English Revolution. Resorting then, to the natural, familiar, and reasonable import of the words, it was urged in defence of Fries, on the first trial, that it was not a case of treason, but of riot, obstruction of process, and rescue of prisoners; that the discrimination in the offences was marked by the very distinct nature of the actions; and that the sedition act having treated the latter case as a case of misdemeanor, it was a Legislative construction that it was not a case of treason. There was still ground enough for the Constitutional provision to occupy, (an attempt by force to subvert the Government, to defeat the legitimate operation of its principal departments, to attack or to resist its military power, &c.,) and, after the passing of the sedition act, it might be presumed such ground alone was intended to be occupied.

On this course of argument, we could not ascertain the opinion of the court, nor how far the case of the Western insurrection would be deemed

to apply, till the charge was pronounced. But, after hearing the charge, and after a new trial was granted, I confess the whole force of my mind was bent to show, on the new trial, the strong distinction between the cases of 1794 and those of 1799; and that even in England, there was no authority since the Revolution of 1688, for construing the offence of Fries to be treason, unconnected with the obligation of the judges to conform to the previous adjudications.

The President. Both you and Mr. Lewis have stated that the jury were present when the written opinions of the court were handed to the clerk: Could they hear what passed on the occasion?

Mr. Dallas. Undoubtedly, sir. I do not mean, however, the jury who tried Fries, but the general panel of jurors, from whom Fries's jury might have been taken.

The Court rose about four o'clock.

MONDAY, February 11.

The Court was opened at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

Mr Randolph observed, that it was the wish of the managers that there should be no departure from the ordinary rules observed in examining witnesses, and that immediately after their examination on the part of the prosecution, they might be cross examined by the counsel for the accused.

Mr. Harper hoped, that no absolute rule would be adopted to this effect, as circumstances might arise that would justify a departure from it. The counsel for the respondent would without any special rule endeavor to conform to the mode suggested. After a few further remarks from Mr. Martin and Mr. Nicholson, it was agreed to waive any specific motion.

Mr. Lewis was called in; when

Mr. Harper put to him the following question:

Did you at the first trial of Fries make a distinction between resistance to a particular law, and the general law of the United States, or some special laws of a particular nature, and state your intention to argue that point on the second trial.

Mr. Lewis. I was not able to answer the question the other day precisely. But having since looked at my notes, I find that that distinction was made and urged.

Henry Tilghman, sworn.

I was present at the circuit court of the United States, for the district of Pennsylvania, held on the 22d day of April, 1800. A very short time after the opening of the court (whether the general pannel of jurors had been called over or not, I do not recollect) Judge Chase declared that the court had maturely considered the law arising on the overt acts charged in the indictment against John Fries; and that they had reduced their opinion to writing; he mentioned that he understood that a great deal of time had been consumed on a former trial, and that in order to save time, a copy of the opinion of the court would be given to the attorney of the district; another to the counsel for the prisoner, and that the jury should have a third to take out with them. I took no notes of what passed either on the first or second day. Fries was tried on the third day, and having been appointed, with Mr. Levy, counsel for Heany and Getman, indicted for treason, and who were actually tried on the 27th or 28th, I deemed it my duty to attend the trial of Fries, to take notes of the evidence, the arguments, and the charge of the judge. I do not recollect that Judge Chase said any more on the first day than what I have mentioned previous to his throwing a paper or papers on the table round which the bar usually sit. The moment the paper or papers were thrown on the table, Judge Chase expressed himself in these words; "Nevertheless, or notwithstanding this, (I cannot recollect which expression he used) "counsel will be heard." The throwing of the papers on the table and the address of the judge caused some degree of agitation at the bar; in a short time after the judge used the last expression, I looked round and saw Mr. Lewis walking from under the gallery, towards the bar: I stepped towards Mr. Lewis, and met him directly opposite the entrance into the prisoner's bar. The prisoner, as well as I can recollect, not being then in court, but being brought into court some time that morning, I entered into conversation with Mr. Lewis, and as well as I can recollect, during that conversation, Mr. Dallas came into court. Mr. Dallas and Mr. Lewis had some conversation in my hearing, after which they came forward to the bar; the paper, as well as I can recollect, was then handed by Mr. Caldwell, the clerk of the court, to Mr. Lewis. Mr. Lewis cast his eye on the outside of the paper, and looked down, as if he was considering what to say. He threw the paper from him, as it appeared to me, without reading it, and the moment he threw the paper down, said, "my hand shall never be stained by receiving a paper containing a prejudged opinion, or an opinion made up without hearing counsel." I cannot recollect which was the expression, but this was the substance. I have not the least recollection that anything passed on the third day, between the counsel for the prisoner and the court; for when Mr. Lewis used these expressions, his face was not turned to the court, and he spoke with considerable degree of warmth; the court sat in the south part of the room, and Mr. Lewis (I think) turned his face full to the westward, when he used these expressions. The paper lay on the table a considerable time; after which some gentlemen of the bar took it up, and I for one copied it. Whether I took the whole of it, and all the authorities cited, I cannot say. The prisoner having been brought into court, his counsel had a good deal of conversation in my hearing, on the subject of supporting or abandoning his defence; that conversation appears to me to have been accurately stated by Mr. Lewis and Mr. Dallas. I do not recollect why the prisoner was not put on his trial that day, but the court adjourned between 12 and 1 o'clock. I went home, and after taking a walk, on returning, I saw the district attorney on my steps. He asked me whether I would have any objection to deliv-

ering up the copy which I had taken of the opinion of the court. I said I had no objection, and gave it to him. That paper was not read on the first, or on any other day by the court, or anything stated by the court, as the substance of it. On the next morning, to wit: the 23d, the prisoner was brought into court. The court asked the prisoner's counsel, if they were ready to proceed to the trial. Mr. Lewis rose and uttered a few words, in order to show that they did not mean to proceed with it. Judge Chase here interrupted Mr. Lewis—the particular expressions of the judge I do not recollect; the substance of them was, that the counsel were not to consider themselves bound by the opinion which the court had reduced to writing the day before; that the counsel were at liberty on both sides to combat that opinion. Judge Chase as well as Judge Peters appeared to be very anxious that the counsel should undertake the defence of the prisoner. Judge Chase said, the cases at common law before the statute of Edward the Third, ought not to be read to the court: he mentioned the case of a man whose stag the king had killed, and who said he wished the stag's horns were in the king's belly; he also mentioned the man who kept a public house, with the sign of a crown, and said he would make his son heir to the Crown. He said such cases as these must not, shall not be cited; and I think he made use of these expressions: "What! cases from Rome, Turkey and France!" That the counsel should go into the law, but must not cite cases that were not law.

He said that he had an opinion in point of law as to every case that could be brought before the court, or else he was not fit to sit there. He said something (but the precise words I do not pretend to recollect) as to the counsel proceeding according to their consciences; he said that the gentlemen would proceed at the hazard of their character, and when it appeared pretty plain, that the gentlemen would not proceed in defence of the prisoner, he said, you may think to put the court to difficulties; but if you do, you miss your aim, or words in substance to that effect. Judge Peters addressed the counsel, and said if an error has been committed, why may it not be redressed? the paper has been withdrawn—and I think both the judges concurred in expressing the sentiment that matters were to be considered as if the paper had never been thrown on the table. When Judge Peters mentioned that the paper had been withdrawn, Mr. Lewis answered, the paper, it is true, is withdrawn, but how can the court erase from their minds an opinion formed without hearing counsel. A good deal more passed which I do not recollect, having taken no notes. Mr. Dallas addressed the court, but I have no recollection of what he said. The counsel continued firm in their determination to abandon the prisoner: the court took great pains to induce them to act as counsel for the prisoner, and before Fries was remanded to jail, expressed their hope that the counsel would think better of it, and appear in his defence. I recollect nothing more of what happened on the second day. Should any questions be put to me, they may awaken a recollection of what does not now occur to me.

On the third day when the prisoner was brought to the bar, he was asked if he had any counsel, (I think on the second day, the court had mentioned to him that he might have other counsel,) he said no, he would depend on the court to be his counsel. Judge Chase said, the court will be your counsel, and by the blessing of God, will serve you as effectually as your counsel could have done. The trial proceeded, and after the testmony was given and a short statement of the case made by the district attorney, the judge charged the jury; he told them they were judges of the law as well as the fact. He stated to them that cases determined in England, before their Revolution, should not be received by the court. I have my notes of the charge; he stated the law very much in the manner as it was stated by Judge Paterson in the trial of Mitchell for whom I was counsel. I cannot undertake to recollect anything further than I have already stated.

Mr. Randolph. I understood you to have stated that the written paper thrown or handed down by Judge Chase on the table produced a considerable degree of agitation at the bar.—From what do you conceive that agitation arose?

Mr. Harper said he would take the opinion of the court, at some stage of the business, as to what was proper testimony. On Saturday there had been an opinion and argument interwoven in the testimony given. He paid great deference to the opinion of the witness, but he submttted it to the decision of the court whether it was proper to require it.

The President. The gentleman may vary the question, so as to attain his object, by inquiring as to the facts that took place.

Mr. Randolph then said, I ask, with the permission of the court, whether in the course of your practice, which I understand to have been long and extensive, you have ever witnessed a similar proceeding.

Mr. Key. I shall object to that question. I pray the opinion of the court, whether, in order to abridge time——

The President desired that the question might be in the first instance reduced to writing.

It was accordingly reduced to writing as follows:

Question 1st. You say that when the written opinion of the court was thrown on the table, it produced considerable agitation among the gentlemen of the bar. What did you conceive to be the cause of that agitation?—Which being read by the Secretary,

Mr. Bayard moved that the Senate should withdraw.—The motion was lost on a division.

The question was then taken on receiving the proposed question, and passed in the negative by an unanimous vote.

Mr. Randolph then submitted in writing,

Question 2d. In the course of your practice, which is understood to have been long and extensive, did you ever witness a similar proceeding on the part of the court?

To the putting of this question, Mr. Martin withdrew the objection, which had previously been made.

Mr. Tilghman answered: I have been in the practice of the law for thirty-one years, and have no recollection of a similar proceeding.

Mr. Randolph. When Mr. Chase, after throwing or handing down the papers, went on to say that counsel would be heard, did he go on to say, or not, that counsel, when heard, must address themselves to the court and not to the jury?

Mr. Tilghman. I am confident that at that time he said nothing of the sort, nor do I recollect that he said any such thing at any other time. If he did it escaped my recollection, which is very strong, as to what was said by the judge when he threw down the paper or papers.

Mr. Harper. You have said that you are perfectly clear, that when the paper was delivered or thrown down, the court did not say the counsel must address themselves to the court and not to the jury, and I understand you also to say that you have no recollection that they said any such thing at any other time.

Mr. Tilghman. I have no recollection that they did.

Mr. Harper. Have you any recollection that the court at that time prevented the counsel from proceeding?

Mr. Tilghman. I have not.

Mr. Harper. Did the court forbid them during the proceedings, or on the trial, to cite cases?

Mr. Tilghman. There were no counsel at the trial.

Mr. Harper. Did Judge Chase at any time say that they would prohibit their reading the acts of Congress to the jury?

Mr. Tilghman. I do not reccollect that he did.

Mr. Harper. Was anything said about the sedition law, and the act——

Mr. Tilghman. I do not recollect that there was.

Mr. Harper. Did Judge Chase express any disapprobation of the conduct of the circuit court on a former trial in suffering those acts to be read?

Mr. Tilghman. I do not recollect that he did.

Mr. Hopkinson. I think you have stated that you attended the trial of John Fries throughout?

Mr. Tilghman. I did.

Mr. Hopkinson. Did you see any disposition, or act, or conduct of the court, calculated to oppress the prisoner?

Mr. Nicholson objected to this question being put, and Mr. Hopkinson said, that to avoid all difficulty, he would waive it.

Mr. Martin. Has it been the usual practice in the courts of Pennsylvania for the judges to declare to the jury what is the law in criminal cases?

Mr. Tilghman. They always in their charge to the jury state the law and the evidence, and apply the law to the evidence.

To an interrogatory offered by Mr. Martin,

Mr. Tilghman answered. The court generally hear the counsel at large on the law, and they are permitted to address the jury on the law and the fact; after which the counsel for the State concludes; the court then states the evidence to the jury, and their opinion of the law, but leaves the decision of both law and fact to the jury.

To another interrogatory of Mr. Martin, as to the practice of the courts, Mr. Tilghman replied, that counsel generally take that course which they consider best calculated to benefit their clients. In capital cases, he did not recollect the court stopping gentlemen of character in any course they thought fit to adopt.

Mr. Nicholson. In your practice in Pennsylvania, or Delaware, where I understand you have practised, did you ever hear the court undertake to inform the jury of their opinion of the law before the prisoner' counsel had been heard?

Mr. Tilghman. I do not recollect I ever did.

In answer to a question,

Mr. Tilghman said, in the charge to the jury, the contents of the paper containing the opinion of the court, and which had been withdrawn, were never alluded to; nor in the least alluded to when it was thrown down or delivered.

Mr. Nicholson. You have stated that the opinion was not read to the jury. I ask whether when this paper was laid on the table the jury was sworn?

Mr. Tilghman. No. They were not sworn till the next day but one.

Mr. Nicholson. Were the general panel then in court?

Mr. Tilghman. According to my recollection the general panel attended with great punctuality. I this morning looked over my notes and I took down those that were challenged by Fries, and those that tried him, in order to assist me in making my challenge in the case of Heany and Getman. But I do not know that I then saw the face of any of them. It is proper to state that the common jury as soon as the court is opened generally walk forward into the jury box, which holds only eleven, a chair being placed for the twelfth—the other jurors take their seats behind those, in another box, or remain in the hall of the court.

Mr. Nicholson. The judge declared that the counsel for the prisoner might proceed at the hazard of their characters?

Mr. Tilghman. I think those were the words he used.

Mr. Nicholson. Were the general panel, at this time, in a situation to hear what was said?

Mr. Tilghman. Certainly, sir, this was on the second day.

Mr. Randolph. Before the written opinion was handed down, did not Mr. Chase or the court declare that the question of law had been settled in the case of Vigol and Mitchell?

Mr Tilghman. On the trial of Fries they did cite this case and rely upon it. If the court will indulge me I can turn to my notes. Judge Chase stated the opinion of the court in his charge to the jury to be the same as in the case of Vigol and Mitchell.

Mr. Randolph. Did he say that the opinion in the case of Vigol and Mitchell was the opinion contained in that paper?

Mr. Tilghman. I do not remember. Many things might have happened, of which I have no recollection, as I did not take notes at the time.

Mr. Campbell. How many of those papers were thrown down or given to the clerk?

Mr. Tilghman. I cannot say with perfect certainty. But I stated before, that one was handed to the attorney of the district, another to the counsel for the prisoner, and the third to the jury, to take out with them.

Mr. Campbell. Was there sufficient time before the papers were withdrawn, for the jurors or other persons to have read them?

Mr. Tilghman. I stated before that the court rose between twelve and one o'clock. The jury were not in a situation to have access to the bar table. After the paper lay for some time, several of the bar employed themselves in copying it. I have no recollection that ony one of the papers were handed into the jury box.

President. At what hour were they withdrawn?

Mr. Tilghman. I think on the same day, between one and two o'clock, that the district attorney called on me. I am pretty certain that the papers thrown down were not taken away, but remained in the hands of the court.

Mr. Campbell. Can you say how many copies were taken?

Mr. Tilghman. Not precisely. I took one, and Mr. Thomas Ross another. I believe we copied them at the same time. But I do not know of my own knowledge that any person transcribed them. Now I recollect, I think I saw one or two others also taking copies.

Mr. Campbell. Do you know whether all those taken were withdrawn?

Mr. Tilghman. I do not. I only know that mine was withdrawn.

Mr. Nicholson. Did you hear the subject spoken of generally that day?

Mr. Tilghman. Those who copied the paper spoke on the subject to each other.

Mr. Nicholson. I ask whether it was a subject of general conversation?

Mr. Tilghman. Very much so, among the gentlemen of the bar.

Mr. Nicholson. You have said that it is a usual thing in the courts of Pennsylvania for the judge to charge the jury after the counsel on both sides have spoken. Do you recollect to have seen a court reduce their charge to writing, and give it to the jury?

Mr. Tilghman. Never.

William S. Biddle, sworn.

Mr. Randolph. Were you present at the trial of John Fries?

Answer. I was.

Mr. Randolph. Were you present when the written opinion of the court was handed down?

A. From the length of time which has passed I have not a very distinct recollection of the circumstances that occurred.

Mr. Randolph. Did you take a copy of that opinion, and was that copy the whole or a part of it?

A. I did take a copy in part; I took the substance in regard to the point of treason, but I believe I did not copy the whole.

Mr. Randolph. Were there other copies taken?

A. I know of one taken by Mr. Rawle.

Mr. Randolph. Was any application ever made to you to deliver up the copy in order to destroy it?

A. Never.

Mr. Randolph. Did you communicate to any person the substance of the copy?

A. Never, until during the last session of Congress, in conversation with Mr. Dallas, I mentioned my being possessed of it, and he expressing a desire to see it, I stepped over to my office and brought it.

Mr. Randolph. Although you did not take a copy of it verbatim, did you take the substance of it?

A. I did.

Mr. Randolph. Would you know that copy?

A. I subscribed my name to it.

Mr. Randolph. Is that the paper? (showing him a paper.)

A. Yes, it is.

Mr. Randolph. Did you hear much conversation about the paper at that time?

A. I have no distinct recollection; I attended the trial of Fries and others for treason, but I do not recollect any conversation about it.

Mr. Randolph. Can you tell whether the contents became known to any of the jurors?

A. I cannot.

Mr. Harper. I observe the paper contains notes and references to authorities; were they taken from the paper handed down by the court, or were they made by yourself?

A. I cannot say as to those at the bottom; those at the end were all my own.

Mr. Martin. Do you know whether the judges or the district attorney knew you had a copy?

A. I do not.

William Rawle, affirmed.

The circuit court of the United States sat in Philadelphia in April, 1800. As the former proceedings in relation to the prisoners indicted for treason were considered at an end, except from the intervention of an act of Congress, it appeared to me most regular to quash all the previous proceedings. I made a motion to this effect, which was granted. On the same day the court charged the grand jury, and I sent to them bills against John Fries, and other persons charged with treason and other offences. The bill against John Fries was returned on the 16th a true bill, and he was immediately brought up, arraigned and pleaded not guilty. Messrs. Lewis and Dallas appeared as counsel for Fries. Copies of the indictment, and lists of the jurors and witnesses were furnished to Fries as directed by law. The bringing on the trial was postponed on account of the absence of George Mitchel, whom I deemed to be a material witness. According to my best recollection it was not intended that John Fries should be tried on the 22d, the first day alluded to. I cannot say that John Fries was then at the bar. That circumstance does not appear on the minutes of the clerk of the court. It was certainly

not my intention that he should have been brought up, but he may possibly have been brought through mistake. Shortly after the court met, Judge Chase observed, that as much time had been lost on the former trial or trials, the court had determined to express their opinion in writing, on the point of law, that they might not be misunderstood; that they had therefore committed that opinion to writing, and that the clerk had made copies of it, one of which should be given to the district attorney, one to the counsel for the prisoner; and one the jury should take out with them: as these words were pronounced, several papers, I think three, were handed down or thown down, as it were; my back was to the court, and whether this was done by Judge Chase or the clerk, I know not. I immediately took up the one intended for me and began to read it, but casting my eyes to the opposite side of the table, I saw Mr. Lewis with another copy before him, looking as it, apparently with great indignation, and then throwing it on the table. I am pretty clear nothing passed between the court and the counsel in the course of that morning. I observed much agitation among the gentlemen of the bar, who were conversing with each other with apparent warmth; but having at that time a very great burden of criminal prosecutions on me, my attention was much engaged, and I did not hear distinctly what was said, nor did I know, until the court rose, that there was a probability of the counsel for John Fries declining to act. I think that twenty-one persons were that day brought before the court charged with seditious combinations, and who submitted to the court. The court rose pretty early in the morning, and intimated that I should not call any witnesses in relation to the submissions until the trials for treason were over. When the court rose I learnt from several gentlemen, that Mr. Lewis and Mr. Dallas were disgusted with the conduct of the court, and meant to decline acting as counsel for Fries, and I have an indistinct recollection that I heard something of this kind drop from Mr. Dallas himself. I went home, and had been there but a few minutes, when Judge Chase and Judge Peters came in. We went into another room, and Judge Peters began by expressing a good deal of uneastness, from an apprehension that the gentlemen assigned as counsel for John Fries would not go on. Judge Chase said he could not suppose that that would be the consequence. I supported the idea which Judge Peters had expressed; I told him the gentlemen of the Philadelphia bar were men of much independence and character, and that unless those papers were withdrawn, and the business conducted as usual at our bar, they probably would desist from conducting the defence. My recollection at this distance of time cannot be very distinct, but I am pretty well satisfied that Judge Chase expressed his regret that the conduct of the court should be so taken, and said, that he did not mean that anything which he had done should preclude the counsel from making a defence in the usual manner. Judge Peters asked if I would consent to go out, and undertake to recover the papers; I said I had no objection, and both the judges concurred in requesting me to do so. I recollected seeing Mr. Edward Tilghman and Mr. Thomas Ross engaged in making copies. I did not recollect to have seen any others so engaged. I went to their houses and asked for the copies, which were readily given, and took them to Mr. Caldwell, clerk of the court. I asked him if he had noticed any others to have been taken? He said, he thought a copy had been taken by Mr. William Meredith. I desired him to go to him and endeavor to recall it. I did not know that Mr. Biddle, who was then a student in my office, had taken a copy in part, or I should have desired him to give it up. From some circumstances which I do not recollect, I find that I did not hand my own copy to Mr. Caldwell. I now have it in my possession. The paper was not read, I think, by any but those who transcribed it, and I entertained an anxious hope, after what had taken place, that the gentlemen would proceed with the defence of the prisoner. I shall now take the liberty of referring to some original notes made by me at the time—from which I can state what passed the following morning. So far as they go I believe them accurate, though they may not enable me to relate all that was said. On the 23d April, John Fries was brought and put to the bar, Messrs. Lewis and Dallas attending. The court asked if we were ready to proceed. Mr. Lewis rose and said—If employed by the prisoner, I should think myself bound to proceed, but being assigned—he was here interrupted by Judge Chase, who said, "you are not bound by the opinion delivered yesterday you may contest it on both sides." Mr. Lewis answered—I understood that the court had made up their minds, and as the prisoner's counsel have a right to make a full defence, and address the jury both on the law and the fact, it would place me in too degrading a situation, and therefore I will not proceed. Judge Chase answered with apparent impatience—"You are at liberty to proceed as you think proper, and address the jury and lay down the law as you think proper." Mr. Lewis answered, with considerable emphasis, I will never address the court in a criminal case on a question of law. He then took a pretty extensive view on the propriety of going into cases decided before the Revolution and said, if he was precluded from showing that the judges since the Revolution in England had considered themselves bound by the decisions before the Revolution, which ought not to be the doctrine in this country, he must decline acting as counsel for the prisoner. Judge Chase answered, sir, you must do as you please. Mr. Dallas then addressed the court. He contended that the rights of advocates had been encroached upon by the proceedings of the day before. He went into a general view of the ground taken by Mr. Lewis, and concluded with his determination not to proceed as counsel for John Fries.

Judge Chase then observed, no opinion has been given as to facts in this case. I would not let the witnesses be examined in the combination cases, because I would not let the jury hear them before

the trial of Fries came on. As to the law, I knew that the trial before had taken nine days; that many common law cases were cited, such as wishing a stag's horns in the King's belly, and that of a man's saying he would make his son heir to the Crown; such cases ought not, shall not go to the jury. No case can come before me on which I have not a decided opinion as to the law, otherwise I should not be fit to preside here. I have always conducted myself with candor, and I meant, gentlemen, to save you trouble. It is not respectful, nor is it the duty of counsel, to say they have a right to offer anything they please. What! decisions in Rome, France, Turkey? No lawyer will say that common law cases are law under the statute of Edward the Third, nor justify those judges who overset the statute of William, and overrule the necessity of having two witnesses to one overt act, and to admit hearsay testimony to prove matters of fact. It is the duty of counsel to lay down the law, but not to read cases that are not law. Having thus explained the meaning of the court, you will stand acquitted or condemned to your own consciences, as you think proper to act. But, gentlemen, do as you please. The course will be, the District Attorney will open the law, state his case, and produce his witnesses. You are at liberty to controvert the law as to the matter, but the manner must be regulated by the court. Judge Peters said you are to consider every everything done yesterday as withdrawn. Mr. Lewis replied, true, sir, the papers are withdrawn, but the sentiments still remain, I shall not therefore act.

Mr. Dallas expressed the same determination, which I did not take down.

A pause for a few moments took place, when Judge Chase said, you cannot put the court into a difficulty by this conduct, gentlemen; you do not know me if you think so; and desiring the persons between him and the prisoner to stand aside, and addressing himself to John Fries, he asked, are you desirous of having other counsel assigned you, or will you go on to trial without? John Fries, after a pause, said he did not know what to do; he would leave it to the court. Under these circumstances I felt a repugnance to go on with the trial, not wishing to act in a case so extremely singular. I therefore moved to postpone the trial to the next day; the court readily concurred, and Fries was remanded to jail.

On the 24th, Fries was brought to the bar again. Judge Chase asked him if he had any counsel. He told the court that he relied on them as his counsel, and he expressed himself with a degree of firmness and composure that convinced me that his decision was formed on mature reflection. Then, Judge Chase answered, by the blessing of God we will be your counsel, and do you as much justice as those assigned you.

The jury were then called over, and the court took pains to inform Fries of his right to challenge thirty-five without cause, and as many others as he could show cause against. In every instance they appeared extremely anxious that he should defend himself. There were one or two friends near him, I believe, to assist him in his challenges. After the jurors had been severally passed by him, and before they were sworn, the court directed that they should severally be asked whether they had delivered an opinion on the subject. The first juror said he had not, and was sworn; the second said he had; he was then sworn to make true answers; and he declared that he had in a conversation said that these men ought to be punished; the court directed this person to be set aside, and he was not sworn on the trial.

The court afterwards directed the question to be somewhat altered: "Have you formed *or* delivered an opinion," &c.? Before this question was put to more than three persons, it was again altered, and put in these words: "Have you formed *and* delivered an opinion?" Three, including the one already mentioned, answered affirmatively, and were set aside. The prisoner challenged, without cause, thirty-four of the panel. Twelve jurors were then sworn, and I opened the case in a very brief manner, laid down the law, and adduced the testimony. The trial lasted till the afternoon, and till the next day; the court retired twice for refreshment and repose. John Fries called no witnesses. But at the end of the examination of each witness called on the part of the prosecution, Judge Chase reminded him that he had a right to put any question to the witness that he thought proper, and told him to be cautious not to put any question the answer to which might injure him. When the evidence on the part of the prosecution had closed, John Fries expressed his determination to call none on his part. I then addressed the jury in as brief a manner as I could, consistent with the duty I had to perform, for I severely felt the unpleasantness of the situation in which I stood, acting against a man tried on a capital charge without professional assistance. The court then charged the jury, who retired, and in about half an hour returned with a verdict of guilty. These are all the general facts I recollect in relation to the trial.

Mr. Randolph. Did you on the first day, the 22d of April, hear Mr. Lewis express in court any sentiments in regard to the paper which you say he viewed with such indignation?

Mr. Rawle. I have no recollection of hearing Mr. Lewis say one word on that day.

Mr. Randolph. You stated that on the next day Mr. Lewis, when told by the court to proceed as he thought proper, answered that he never would address the court in a criminal case on a point of law, and urged the propriety of citing cases before the Revolution, to show that the English judges since the Revolution thought themselves bound by cases before the Revolution, which ought not to be the law in this country, and that if he was not permitted to do this, he would be obliged to abandon the defence?

Mr. Rawle. Yes, sir.

Mr. Randolph. Did you hear any opinion given by the court which warranted Mr. Lewis in the opinion that he was precluded from citing such cases?

Mr. Rawle. On the 23d, I did understand the court to say that such cases should not be cited, because they tended to mislead the jury. But at no time did I hear the court say that counsel were precluded from addressing the jury on the law, but it was said that as to the authorities cited, it must be determined by the court whether they were admissible or not.

Mr. Randolph. You stated that both the judges after the adjournment came to your house. Was your house their place of abode?

Mr. Rawle. No, sir.

Mr. Randolph. At what hour did they call?

Mr. Rawle. About ten o'clock.

Mr. Randolph. And that Judge Peters expressed an apprehension that Messrs. Lewis and Dallas would not go on?

Mr. Rawle. Yes, sir.

Mr. Randolph. On what grounds did he express this apprehension?

Mr. Rawle. I do not know.

Mr. Randolph. Have you any recollection of any grounds for such an apprehension, except that which arose from the general character of the bar?

Mr. Rawle. I have already stated that I understood there was a measure of that kind in contemplation. I have a faint recollection of having heard something of that kind fall from Mr. Dallas.

Mr. Randolph. Did you express to the judges that your opinion was drawn from any other source than your general knowledge of the bar?

Mr. Rawle. I do not recollect that I did.

Mr. Randolph. Mr. Chase expressed his regret, and said he did not mean to preclude the counsel from proceeding in the trial in the usual manner. Was the course pursued in the case of Fries in the usual manner?

Mr. Rawle. I never saw a similar circumstance take place at our bar during the whole course of my life.

Mr. Randolph. Is it usual for the court to give a general opinion on the law before counsel are heard?

Mr. Rawle. Never, except on their general charge to the grand jury. They sometimes inquire of the gentlemen who prosecute, what are the offences likely to be presented, in order to inform the grand jury what it is their duty to do, and to make their charge more pointed.

Mr. Randolph. Did you ever hear of its being done in a particular case before the court?

Mr. Rawle. Not that I recollect.

Mr. Randolph. Do you know whether much conversation took place at the bar on this novel opinion thrown down on the table?

Mr. Rawle. I stated before that I had a great burden of criminal cases to manage; as I was situated it was not in my power to keep up the usual colloquial intercourse, and I cannot recollect any conversation until that which I have mentioned.

Mr. Randolph. Do you suppose that the act of delivering the opinion in writing was so public as to attract the notice of the jurymen that were attending?

Mr. Rawle. From the number of the jurymen, and from the construction of the court-room, I think that a considerable proportion must have paid attention to the transaction.

Mr. Randolph. If you heard Mr. Lewis use no language on the opinion of the court, whence do you infer his indignation?

Mr. Rawle. From his countenance, and the manner of his throwing down the paper.

Mr. Randolph. Was it such as to attract the attention of those in court?

Mr. Rawle. If they saw him, they must have been struck with the manner in which he expressed his indignation. It was very strong.

Mr. Randolph. Did you hear Mr. Chase say, that if the prisoner's counsel had any objection as to the law, as laid down by the court, they must address the court and not the jury?

Mr. Rawle. I have no recollection of hearing such an expression fall from Judge Chase at any time.

Mr. Nicholson. You stated much of your testimony from your notes. I would ask, sir, were those notes taken at the time, and in the order they stand arranged?

Mr. Rawle. Precisely so, sir. I made my notes in court.

Mr. Nicholson. What was there in the conduct of Judge Chase that induced the counsel to infer that they would be precluded from citing the statutes of the United States which have been referred to?

Mr. Rawle. I cannot say from what circumstance, unless from a recollection of the strenuous opposition made on a former trial on the part of the prosecution to the course then adopted.

Mr. Nicholson. Judge Chase also declared: "No case can come before us on which I have not an opinion as to the law, otherwise I should not be fit to preside here." Was there anything which took place prior to this on which Mr. Lewis founded the opinion that he would be compelled to address the court and not the jury?

Mr. Rawle. It appeared to me that it arose altogether from misapprehension. Nothing fell from the court in my hearing, either in public or in private, which tended to control the counsel from speaking, or to withdraw the consideration of the law from the jury. There appeared to be much misapprehension; and I observed that the court did not set him right as explicitly as might have prevented part of this misapprehension.

Mr. Randolph. I think you said that you entertained at the time of your conference with the judges an anxious hope that the gentlemen would be induced to proceed. If there is no impropriety in the question, I wish to know the cause of the great anxiety you felt on that subject, which induced you to become the agent of calling in the papers containing the opinion of the court?

Mr. Rawle. My reasons arose from an anticipation of those unpleasant sensations, which I would never wish my greatest enemy to feel, that of conducting a trial, in a capital case, and standing alone against a man without counsel. It is easy to conceive that my hopes may have been anxious that I might not be placed in such a painful situation.

Mr. Nicholson. I will ask you whether you took notes of what passed on the first day?

Mr. Rawle. I did not.

Mr. Harper. Inform the court whether Judge Chase did, at any time during the proceedings, say that he would restrict the counsel of Fries from citing any statutes of the United States to the jury, and especially the sedition law?

Mr. Rawle. I do not recollect that he did.

Mr. Harper. Did he say that he disapproved of the conduct of the former circuit court in permitting the statutes of Congress to be read?

Mr. Rawle. He did not. I never heard any such expression from Judge Chase in relation to the statutes.

Mr. Harper. Have you the paper in your possession which was thrown down on the table?

Mr. Rawle. I have it in my pocket.

Mr. Harper. Will you please to produce it?

Mr. Rawle. This is it, (handing it to Mr. Harper.)

Mr. Harper. Do you know in whose handwriting it is?

Mr. Rawle. In that of the assistant clerk of the court, Mr. Bond.

Mr. Harper. We will offer this paper in evidence.

Mr. Harper then read the paper, as follows, being exhibit No. 2:

"The prisoner, John Fries, stands indicted for *levying war* against the United States.

"This *Constitutional* definition of *treason* is a question of *law*. Every proposition in any statute (whether more or less distinct—whether easy or difficult to comprehend) is always a question of *law*.

"What is the true meaning and true import of the statute, and whether the case stated comes within the statute, is a question of *law* and not of *fact*. The question in an indictment for *levying war* against (or adhering to the enemies of) the United States, is 'whether the *facts* stated do not amount to *levying war*.'

"It is the duty of the court in this, as in all *criminal* cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present, and in all criminal cases, *both the law and the facts*, on their consideration of the *whole* case.

"The court heard the indictment read on the arraignment of the prisoner, some days past, and just now on his trial, and they attended to the *overt acts* stated in the indictment.

"It is the opinion of the court that any insurrection or rising of any body of people, within the United States, to attain or effect, by *force* or *violence*, any object of a great public nature, or of public and general (or national) concern, is a levying war against the United States, within the contemplation and construction of the Constitution of the United States.

"On this general position, the court are of opinion that any such insurrection or rising to resist or to prevent by force or violence the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling for the militia to execute the laws of the Union, or for any other purpose, (under any pretence, as that the statute was unequal, burdensome, oppressive, or unconstitutional,) is a levying war against the United States within the Constitution.

"The reason for this opinion is, that an insurrection to resist or prevent by force the execution of any statute, has a direct tendency to dissolve all the bonds of society, to destroy all order, and all laws, and also all security for the lives, liberties, and property of the citizens of the United States.

"The court are of opinion that military weapons (as guns and swords, mentioned in the indictment) are not necessary to make such insurrection or rising amount to levying war, because numbers may supply the want of military weapons; and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

"The court are of opinion that the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of a private nature, is not treason, although the judges and peace officers should be insulted or resisted; or even great outrage committed to the persons and property of our citizens.

"The true criterion to determine whether acts committed are a treason or a less offence, (as a riot,) is the *quo animo* the people did assemble. When the intention is universal or general, as to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of houses, or the like) are done, will show to what class of crimes the case belongs.

"The court are of opinion that if a body of people conspire and meditate an insurrection, to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor; but if they proceed to carry such intention to execution by force, that they are guilty of the treason of levying war, and the quantum of the force employed neither lessens nor increases the crime; whether by one hundred or one thousand persons is wholly immaterial.

"The court are of opinion that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war, but that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force, connected with the intention, will constitute the crime of levying war."

Mr. Harper. I will ask you one question. Do you recollect whether, after the verdict of guilty was brought in against John Fries, the court gave him information of his right to make a motion for an arrest of judgment?

Mr. Rawle. When the verdict was brought in, the court briefly told him he might be heard then or at a future day. When he was afterwards brought up for sentence, they told him, if he, or any person for him, could point out any error or irregularity in the course of the proceedings, they should be patiently heard; and in like manner Judge Chase addressed the other prisoners; the same question was put to all that were found guilty. They answered, that they had nothing to say.

Mr. Hay being called, and not immediately appearing—

Mr. Harper observed this witness was called on an article subsequent to that on which the witnesses already examined had testified. He would submit a proposition to the honorable Managers, to go through at one time the whole of the testimony on each article. It might not be the regular course, but if gentlemen assent to it, said Mr. H., we shall prefer it; it will be convenient to the witnesses, many of whom may be discharged before the whole of the testimony is gone through.

Mr. Randolph. Though this mode may have its advantages, it is attended with its difficulties. A witness may be found to support more than one article. With regard to the first article, I have no objection to this course; but with regard to the subsequent articles I have.

President. If the gentlemen are agreed, I will take the sense of the Senate on the course to be pursued.

Mr. Randolph. It is the wish of the Managers not to depart from the usual course.

Mr. Harper. We do not claim it as a right.

George Hay, sworn.

The greater part of the evidence I am to deliver relates to what was said by me as counsel for J. T. Callender, who was indicted for a libel on the President of the United States, and what was said by *one* of the judges; for I do not recollect to have heard the voice of Judge Griffin at any time during the trial. In order to make this statement as accurate as possible, as my memory is not strong, it is necessary to resort to a statement made by myself and the counsel associated with me in the defence of J. T. Callender, which I now hold in my hand, and every part of which, according to my best recollection, is correct.

Mr. Harper here interrupted Mr. Hay, and said, the witness may refer to anything done by himself at the time the occurrences happened which he relates. But I submit it to the Court how correct it is to refer to what was not done by him, or done at the time.

The President asked Mr. Hay whether the notes were taken by him.

Mr. Hay. The statement was made by different persons. Some parts were made by myself, perhaps the greater part; the rest by Mr. Nicholas and Mr. Wirt. I believe I shall be able to state from it every material occurrence which took place at the time. With regard to those parts of the statement not made by me, a reference to them will call to my recollection the facts mentioned in such parts. If I state anything which I do not distinctly recollect, upon adverting to the statement, I will explain the actual situation of my mind on that point.

Mr. Nicholson. If I understand the witness, it is not his intention to give the paper in his hand as evidence, but merely to refer to it for the purpose of refreshing his memory.

Mr. Harper. I do not understand the way in which it is meant to use the paper. I apprehend that it is a rule of evidence that nothing but notes made at the time of the transactions related can be received as evidence. I therefore am of opinion that a reference to this statement is inadmissible, because a part of it is made by others, and none of it made at the time.

Mr. Rodney. When we advert to what has been stated by the witness, who says he does not mean to state in evidence anything in the paper of which he has not, independently of it, a distinct recollection, I think it is within the law to admit him to avail himself of it. I apprehend that had I attended the trial of Callender, and taken minutes, and others had attended and not taken notes, if by recurring to my notes there should be recalled to their recollection facts so distinctly that they could swear to them before the court, it would be competent to admit their reference to such notes.

Mr. Campbell inquired whether the objection were not confined to that part of the statement not made by the witness?

Mr. Harper said the objection related to the whole of it.

Mr. Campbell believed that a witness might use any memorandum to refresh his memory; and that it was not necessary that it should be made at the point of time when the events happened. It is sufficient if made at a time when his remembrance of the facts was correct. With regard to that part not taken by himself, if he perused it at a time so shortly after the events related, as to be able to determine it accurate, and now recognises the memorandum to be the same, it is sufficient.

Mr. Martin said he had been many years in the practice of the law. The rules of evidence were probably different in different States. But he had always supposed that a witness could not be permitted to use any memorandum not made by himself, or at the time of the events related, or near it. He may, before he comes into court, consult any memorandum for the purpose of refreshing his memory, but not in court.

The President. The witness proposes to make use of a memorandum under the circumstances which he has stated. The question is, shall the witness be permitted to make use of it?

Mr. Adams. I am not prepared to answer that question at present, not knowing the nature of the minutes the witness proposes to use. I therefore move that the Senate retire before the question is taken.

The question on retiring was taken, and, on a division, lost.

Mr. Adams said he wished to see the paper before he voted.

The President asked Mr. Hay whether it was in his own hand-writing?

Mr. Hay replied that it was not; but that it was written by a clerk from a printed statement.

President. Have you the parts made by yourself separate?

Mr. Hay said he had not.

The President then put the question, whether the witness should be permitted to use the paper? and, the question being taken by yeas and nays, passed in the negative—yeas 16, nays 18.

Mr. Randolph asked the witness to state to the Court the circumstances which took place during the trial of James T. Callender, and particularly what respected the excuse and testimony of John Basset.

Mr. Hay. I will state as well as I can what fell from the judge, and which appeared to me to be material. After some previous observations, the counsel for the traverser claimed for their client his Constitutional right to be tried by an impartial jury. I cannot pretend to relate precisely either the course of proceeding or the exact words which were used, since I am deprived of the aid of those notes which I know to be correct. I shall not, therefore, recite the precise words, but I shall give the substance of them, and the words themselves as nearly as possible. According to my best recollection Judge Chase's declaration on that point was, that he would see justice done to the prisoner in that respect. In order to obtain the object which the counsel for Callender had in view, we pursued this course. Believing that a majority of the petit jury, if not all of them, were men decidedly opposed to J. T. Callender, in political sentiments, and thinking it probable, from the state of parties at that time, that they had made up their minds, we wished to ask every juror, before he was sworn, whether he had ever formed an opinion with respect to the book called "The Prospect Before Us." According to my best recollection, Judge Chase interfered, and told us it was not the proper question. He said he would tell us what the proper question was. He then went on to state that the proper question was this: "Have you ever formed and delivered an opinion concerning the charges in this indictment?" Though I have but little dependence on my memory, in general, yet in this I am certain, that I not only give the substance, but the identical words used. To this question an answer was necessarily given in the negative.

Mr. Key. Who answered?

Mr. Hay. A juror.

Mr. Key. The whole, or what jurors? Was it the answer of John Basset? no other juror is mentioned in the second article. The moment any attempt is made to extend the inquiry beyond the precise object of the second article, I will object to it.

Mr. Randolph. We have no objection to that course being pursued, as we can get all we want from the fourth article.

Mr. Rodney. We are examining a witness who may be able to give testimony on the second, third, or fourth articles.

President. Will the gentleman read the article on which the witness is called?

Mr. Randolph. I do not know that we are bound to do so.

President. The Senate desire it.

Mr. Randolph. I beg pardon. I thought it was desired on the other side.

Mr. Rodney then read the second, third, fourth, fifth, and sixth articles.

Mr. Harper. Our wish is to confine the witness to the *matter* charged. We only object to the *opinion* of the witness being given.

President. It is probable, gentlemen, that nothing will arise in what the witness states, that will occasion difficulty. He will please proceed.

Mr. Hay. What I was about to mention was not so much opinion as fact. I was proceeding to relate the facts which constitute the basis of the second article. When Mr. Basset was called by the marshal, he manifested some repugnance to serving on the jury. He said, according to my best recollection, that he was unwilling to serve, because he had made up his mind as to that book. I do not pretend to say that the words used were precisely those I state. He may have expressed himself in the words ascribed to him by the stenographical statement given of the trial. The objection, thus made by Mr. Basset, was overruled by Judge Chase, who asked him whether he had ever formed and delivered an opinion concerning the charges in the indictment. He was sworn to answer this question. Like the other jurors, he answered in the negative, and the judge ordered him, like the other jurors, to be sworn on the jury. He was sworn, and did serve.

Mr. Harper. Was the word used by the judge, *and* or *or*?

Mr. Hay. I am perfectly clear it was *and*, and not *or*.

In the state of things at that time, and seeing the temper that was manifested on the trial, I would not, and did not, ask the juror a single question without submitting it to the court, and soliciting their permission to ask it. I solicited the leave of the court to ask a question. The reply of the judge was this—the difficulty I experience at this moment in stating the precise words, furnishes the reason I had for wishing to have recourse to the statement I had in my hand; since I am denied that indulgence, I will not pretend to state literally what was said, but I will state the substance. I told the judge I wished to ask a question. "What, said the judge, is the question you want to put?—state it. If I think it a proper question, or if I choose it, you may put it. Come, what is your question?" Notwithstanding the humiliation I felt at being addressed in such a way before a crowded audience, I asked, "have you formed (leaving out, "and delivered") an opinion concerning the book from which the charges in the indictment are taken?" The reply of Judge Chase was, "no, sir, no, you shall ask no such question." And the question

was not asked. This is all I recollect at this moment respecting Mr. Basset, and the occurrences connected with that part of the trial.

It was stated by Callender, in his affidavit, that Colonel Taylor, of Caroline, was a material witness; but of this I am not certain, because I have not read the affidavit since the trial. In the interval that elapsed between the day on which the first motion was made, and that on which the trial took place, Tuesday, Colonel Taylor was summoned. When he came to town, I know not. I have no recollection of having seen him until he came into court. I had, therefore, no opportunity of ascertaining whether it would be in his power to furnish the accused with the evidence he expected to derive from him. After the witnesses on the part of the United States had been adduced to prove the fact of publication, and after the attorney of the United States had opened the case, and stated the law arising upon the evidence, Colonel Taylor was offered to the court as a witness. He was sworn; and, immediately after, or probably while he was swearing, Mr. Chase asked the counsel of Callender what they expected to prove by him. If I recollect rightly, Mr. Nicholas, one of my associates, observed that we did not know distinctly what could be proved by Colonel Taylor; but that we expected to prove what would amount to a justification of one of the counts in the indictment; that we expected to prove that Mr. Adams, the then President of the United States, had avowed, in conversation with Colonel Taylor, sentiments hostile to a republican Government; and that he had voted in the Senate of the United States against the law for sequestering British property in this country, and against the law for suspending commercial intercourse between the United States and the Kingdom of Great Britain. I do not recollect precisely the words which were used by Mr. Nicholas, in making the observations that accompanied this statement; but I think he said he hoped that it would be understood that he was not tied down to these particular points, saying that probably the answers given by Colonel Taylor might suggest other questions proper to be put. Nor do I use the precise words in which Judge Chase made an objection; but I do remember that the objection was made. The principle upon which he founded his objection was this, that Colonel Taylor's evidence did not go to a justification of any one entire charge; and he declared Colonel Taylor's evidence to be inadmissible on that ground. The judge was then asked by Mr. Nicholas whether we might not prove part of a charge by one witness, and the other part by another. The judge answered him, that he desired him to understand the law as he had propounded it; and the law was this: that this could not be done; that Colonel Taylor's evidence related to only one part of a charge, and that he could not prove one part by one evidence, and one part by another. I then observed to the judge that I thought Colonel Taylor's evidence admissible even on the principle laid down by the court; that I thought his testimony would go to prove both members of the sentence. The one asserted that Mr. Adams was an aristocrat, the other, that he had proved faithful and serviceable to the British interest; and that he could prove that he had heard Mr. Adams make the remarks already stated; and that he had proved serviceable to Great Britain in the way mentioned by the author, that is, in giving the two votes in the Senate, alluded to in the work. The judge did not say in express terms that the position taken at the bar was wrong, but he said that the evidence of Colonel Taylor was inadmissible, and that the counsel knew it to be so; and I believe it was at the same moment of time, he said that our object was to deceive and mislead the populace. I remember these expressions as well as if I had heard them yesterday. Finding that the attempt I had made to render a service, not to the man, but to the cause, instead of affording service to the cause, only brought on me the obloquy of the court, I felt myself disgusted, and said no more on the subject.

I recollect that we were requested by the judge to reduce to writing the questions that we wished to propound to Colonel Taylor. I thought the measure so novel and unprecedented that I was not disposed to comply with this desire. The questions were, however, stated in writing by Mr. Nicholas, who observed that he hoped we would not be confined in the examination of the witness to the questions thus stated in writing. If I mistake, not, before the questions were reduced to writing, Mr. Nicholas made some observations about the mode pursued by the court in reference to the attorney for the United States, and that exercised towards the counsel for the prisoner; that the attorney for the United States had not been required to state in writing the questions he wished to ask. When this remark was made to the judge, he said that the attorney for the United States had stated in the opening of the case all that he expected to prove; "but though this were done, we were not bound to do it." My impression is that that word escaped the judge several times.

Nr. Nicholson. What word?

Mr. Hay. The word "we."

Mr. Nicholson. Did it refer to the court as well as the attorney?

Mr. Hay. So, sir, I understood it.

The fourth article relates to the refusal of the judge to postpone the trial on the affidavit of Callender; on which I can only say that the affidavit was filed, but whether regularly drawn or not I do not know. This affidavit, according to my best recollection, stated the absence of material witnesses.

The next article relates to a subject, that it is very unpleasant to me to make any remarks upon, because I feel myself to be a party concerned. The judge is charged with—

[Mr. Hay here read the third, fourth, and fifth clauses of the fourth article.]

There were many expressions used by Judge Chase during the trial which were uncommon, and which I thought, and still think to be so. With respect to the asperity with which he censured me, I shall not——

Mr. Harper interrupted the witness, and desired him to state the expressions, and let the court judge for themselves.

Mr. Hay. The first expression, which made a very strong impression on my mind, was this: In the course of the argument, urged by me in support of the motion for a continuance to the next term, I assumed it as a clear position, that the law of the State of Virginia, which directs that the jury shall assess the fine, would govern in this case. As soon as I got to that part of the argument the judge interrupted me, and gave me to understand that I was mistaken in the law, and added, the assessment of the fine by the jury may be conformable to your local and State laws, but when applied to the federal courts, it is a "*wild notion.*" In the case of Colonel Taylor's evidence, which I have already stated, the judge said that we knew the evidence to be inadmissible, though we pressed it upon the court, and then the expression followed which has been already mentioned, that we were endeavoring to mislead and deceive the populace. At another time he was pleased to observe, Gentlemen, you have all along been in error in this cause, and you persist in pressing your mistakes on the court. On more occasions than one he charged the counsel with advancing doctrines they knew to be wrong. I endeavored in one part of the cause to satisfy the court that the book called the Prospect Before Us, could not be given in evidence in support of the indictment, because the title of the book was not mentioned in the indictment. In support of my argument, I observed to the court that if the indictment mentioned the book from which the charges were formed, and any subsequent prosecution should afterwards be instituted, the traverser would have nothing more to do than to produce a copy of the record, and plead in bar of a subsequent prosecution; but that according to the opinion of the court, the situation of the traverser would be more precarious than according to the doctrines for which I contended; for that the traverser, if he should plead a former prosecution in bar, would not be able to prove the fact by comparing the record with the indictment; but must resort to extraneous evidence to prove that the subsequent prosecution was founded on the same publication that gave rise to the first. The judge was pleased to observe, without seeming to understand the distinction that I had endeavored to draw, that I knew the present prosecution could be pleaded in bar. I certainly did know it, and was endeavoring at that very time to show by my argument that the better mode of proving the truth of the plea would be by a copy of the record, rather than by an appeal to parole testimony. Judge Chase again interrupted me, and said, I knew that this prosecution might be pleaded in bar.

In the course of the same argument, which I addressed to the judge, for the purpose of showing the truth of the positions we had stated, I observed that according to the established doctrine, the words "tenor and effect," in an indictment for a libel, bound the party to the literal recital of the parts charged as libellous. In support of that opinion I quoted several authorities that satisfied my mind. The judge was pleased to tell me, I was mistaken in my application of them; but I do not remember his precise words. He said the words "tenor and effect" did not oblige the prosecutor to give more than the substance of the paper meant to be recited. It is contended, said he, that the book ought to be copied *verbatim et literatim*. I wonder, he continued, *they* do not contend for *punctuatim* too.

Mr. Nicholson. Was this observation addressed to the bar?

Mr. Hay. It appeared to me to be intended for the people; for he looked round the room when he said, with a sarcastic smile, I wonder they do not contend for *punctuatim* too. I recollect also, that when Mr. Wirt, who was associated with me as counsel for the traverser, was addresssing the court, he was ordered by Judge Chase, to sit down—in this precise language, *sit down*. The judge also declared that the counsel on the part of Callender should not address any observations to the jury concerning the unconstitutionality of the second section of the sedition law, in respect to prosecutions for libellous publications.

Mr. S Smith, at this stage of the examination of the witness, moved an adjournment of the Senate to their legislative apartment.

The motion not being agreed to;

Mr. Hay proceeded.—When Mr. Wirt was arguing from a proposition he had laid down, he said the conclusion which followed was perfectly syllogistical. The judge bowed to him in a manner I cannot describe, and said "*A non sequitur, sir.*" I do not remember any other expression used by the judge calculated to deter the counsel from proceeding in the defence of J. T. Callender. But I do remember that I was more frequently interrupted by Judge Chase on that trial, than I have ever been interrupted during the sixteen years I have practised at the bar. I do not state how often I was interrupted, because I do not recollect; but I know the interruptions were frequent, and I believed them to be very unnecessary, not only as they regarded myself, but the counsel who were associated with me in the defence.

Mr. Randolph. In your testimony you have said that during the whole course of the trial you never once heard the voice of Judge Griffin. Where those replies and those decisions, which you have detailed, given by Judge Chase apparently without any consultation with Judge Griffin?

Mr. Hay. I stated that I did not hear the voice of Judge Griffin; but I by no means meant it to be inferred that Judge Griffin was not heard by any other person. Judge Chase's manner of delivering the opinion of the court was generally this: after having stopped or interrupted the counsel for the traverser, by telling them to sit down, or that they were mistaken in the law, sometimes, but not every time, he would look at Judge Griffin, who sat upon his left hand, and turning to the bar, and to the audience, he would say, such is the opinion of the court. I think also, that I saw them speaking to each other, but not in such a manner as if they were consulting upon a question of law.

Mr. Randolph. You said that the question propounded to Mr. Basset, and the other jurors, was, "Have you formed and delivered an opinion as to the charges contained in the indictment?" Are you certain that the expression was "formed *and* delivered?"

Mr. Hay. I am as clear on that point as I am of anything that ever occurred in the course of my life. I have said that my memory at the best is not a good one; but some of the occurrences on this trial were so singular and novel, that they made an unusual impression on my mind.

Mr. Randolph. When it was decided by the court that the question, "Have you ever formed and delivered an opinion on the charges contained in the indictment," was the only proper question, was it stated by the court, or requested by the counsel for the accused, that the indictment might be read?

Mr. Hay. It was requested by the counsel that the indictment might be read, that the juror might have an opportunity of ascertaining whether he had made up his mind on the particular charges it contained.

Mr. Randolph. Was the indictment then read?

Mr. Hay. It was not then read, nor until the jurors were sworn.

Mr. Randolph. You have been, you have stated, a practioner of the law for fifteen years. Has it been the practice of the courts in Virginia, or have you ever heard of, or seen, an instance, where the questions propounded by counsel, were required to be reduced to writing, and submitted to their inspection, before they were permitted to be put?

Mr. Hay. I never knew of a single instance; nor do I remember to have even heard or read of such an instance. I acted as the prosecutor in the trial of Logwood, charged with counterfeiting notes of the Bank of the United States. The Chief Justice of the United States, who presided at the trial, made no such requisition, nor did it ever occur to me, that such a thing ought to be, or could be done.

Mr. Nicholson. When you were required to reduce the questions to writing, was it at the instance of the attorney of the district, (Mr. Nelson,) or was it by the court?

Mr. Hay. I do not remember that Mr. Nelson made any objection to putting the question. The objection was made only on the part of the court. I recollect that Mr. Nelson made one remark as to the witnesses giving testimony on what took place in the Senate of the United States.

Mr. Randolph. Upon what ground did the counsel for the accused assume the right of proving the vote which was given in the Senate by parole testimony? To prove facts done in the Senate you should have reference to their journal.

Mr. Hay. It will be recollected that I stated that Colonel Taylor came into court at the time the jury was about to be sworn; and that the counsel for the traverser was called upon to state in writing the questions that were to be put. Those questions were written without any reflection on my part, as to the propriety or legality of proving the vote of the Senate by parole testimony.

The Court rose at 5 P. M.

TUESDAY, February 12.

The Court met at 12 o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

Mr. Hay, in continuation.

A very short statement will close the detail which I have to make. It was the intention of the counsel, who appeared in behalf of the traverser, to have defended him on the ground of the unconstitutionality of that section of the law, commonly called the sedition law, on which the indictment was founded. The gentlemen associated with me in the defence proceeded to argue this point. They were not permitted to address the jury respecting it. The treatment experienced by Mr. Wirt on this occasion, I have already in some degree stated. I recollect he was interrupted by Judge Chase at several times, and particularly at one of those times, for the purpose of telling him that the doctrine he contended for was true, that the jury had the right to determine on the law as well as the fact. Mr. Wirt then went on to state that the Constitution of the United States was the law of the land. Judge Chase interrupted him, and said there was no necessity for proving that point, it was the *supreme* law of the land. Mr. Wirt then went on to argue that if the jury had a right to determine the law in this case, and if the Constitution was the supreme law, the conclusion was perfectly syllogistical, that the jury had a right to determine on the Constitutionality of the law. It was at that time that Judge Chase addressed him in the words that I have mentioned. According to my best recollection he bowed, and with an air of derision, addressing him, said, "a *non sequitur*, sir." Whether Mr. Wirt said anything more after this in behalf of his client, I do not recollect; he did not, however, say much. After Mr Wirt sat down, I rose, addressed myself to the court, and stated that I addressed myself to the court exclusively. I observed that I did not wish to be heard by the jury, or by the very numerous assemblage that surrounded me. This observation was intended by me as a sort of reply to the observation made by the judge that our defence was intended for the people. I did not attempt to speak to the jury on the question, which I wished to argue before them, but I addressed myself to the court for the purpose of satisfying them. After I had gone on for a short time, I was interrupted by the judge, by a question which I thought an unnecessary one. I will endeavor to state it. I stated to the court, in terms as distinct as my knowledge of the English language enabled me to use, the specific proposition for which I meant to contend; which was, that the jury had, according to the laws of the land, a right to determine every question necessary to the decision of the question of guilty or not guilty. Judge Chase asked me

whether I laid down that proposition as true in civil as well as in criminal cases, because, if you do, said he, you are wrong. My reply was that I believed the proposition universally true; but it was sufficient for my purpose if it were true as applied to criminal cases. I went on, as well as I could, in the argument I intended to urge. I was again interrupted by the judge. What the circumstances were that gave rise to that interruption, my *unaided* memory will not enable me to tell, nor do I recollect what expressions were used by him. I have not, since yesterday, taken the liberty of looking at the statement, which I have in my pocket, of the circumstances that took place on the trial; but I know that I was interrupted more than once, and I believe more than twice; but the impression on my mind was, that to get through the argument, I should be subjected to more humiliation than any man vindicating another in a court of justice was bound on any principle to encounter, and I declined proceeding in my argument.

When the judge perceived by the movements I was making with my papers, that I was about to retire, he asked me to go on. I told him I should not go on. He said there was no occasion for me to be captious. I told him I was not captious. He then said, go on, go on—you will not be interrupted. I, however, retired from the bar, and, I believe, from the room where the court was held.

Mr. Randolph. Did any circumstances occur, in relation to a witness brought forward on the part of the prosecution, of an unusual nature; were any observations made by the court to that witness, and what were those observations?

Mr. Hay. I do not know whether the circumstance I am about to state is an answer to the question which has been put to me. But I recollect distinctly that a circumstance did occur, which I thought extraordinary. A witness was brought forward to prove the publication of the Prospect Before Us, who was the very man employed by Callender to print the work. Whether the publication could be proved by any other person than Callender's agents, I do not now recollect. But I stated to the court that this witness was about to do what the Constitution authorized him to refuse to do, and what he was not required to do by the established rules of law in criminal prosecutions, which was, that no man was bound to deliver testimony that would go to criminate himself; and, if anything done by him implicated him in the transaction charged against Callender as libellous, he was not bound to answer, nor could he be required to answer by the court. Mr. Chase said that the opinion I had expressed was correct; but the witness, who had come forward to give evidence of the publication, might rest assured that he would not be molested for any part which he may have taken in the publication. I do not recollect that the District Attorney said a word on the occasion. Everything that was said on that head was said by myself, and answered by the court, as I have stated. The witness was sworn, and gave in his testimony, in which he stated that he was employed by Callender to print the work called the Prospect Before Us.

Mr. Randolph. The counsel for the accused seemed to have considered in this case, as well as in all the others, that the proceedings would be governed by the act of the State of Virginia, which, in virtue of the act of Congress of 1789, was the rule of procedure. It appears that process was issued, such as the laws of Virginia did not authorize. Was there no reference made by the counsel for the accused to the act of Virginia, to show that the process was illegal, or that it was contrary to law, to rule the party to trial at the same term the indictment was found?

Mr. Hay. There was a general, but not a specific reference to that circumstance. In making the motion for a continuance, I stated that in conformity to the law and usage of Virginia, when a presentment was found, the ordinary process was by summons to the next term, and that, during the interval between serving the process and the time at which it was returnable, the accused was enabled to prepare and collect matter for his defence. It is extremely probable that some other motion would have been made, but for an observation that fell from the judge on another part of my argument. I stated that the jury were to assess the fine according to law; this opinion was opposed and denounced as a wild notion. Finding that the judge had made up his mind on that subject, and that the law of Virginia was not considered as obligatory, I had no idea of making any motion to the court founded on the doctrine which he had thus denounced. My opinion before, at that time and at the present time, the opinion which I expressed officially on a late occasion, is, that where the laws of the United States do not otherwise require or provide——

Mr. Martin said that he apprehended this testimony was of no kind of consequence.

Mr. Hay. I was only about to state the reasons why nothing more was said on that subject, or a motion founded on it.

The President. The Senate object to that sort of testimony. You will please to confine yourself as much as possible to facts.

Mr. Hay. I only meant to have stated a fact, that the express declaration made by the court to the counsel for the accused, in relation to the doctrine just mentioned, put a stop to my mentioning any idea, or making any motion founded on that doctrine.

Mr. Randolph. I wish to ask the witness, who tells us he has been sixteen years a practitioner at the bar, whether he ever knew an instance, in which, in a case similar to that of Callender, punishable only by fine and imprisonment, a capias was issued.

Mr. Hay. I ought to premise, that this question relates to a branch of jurisprudence which I have not much attended to, although sometime since I acted as prosecutor for the State for one of its counties. I have never known a single instance in which a capias has been awarded in the first instance. I believe the invariable practice is to

issue a summons, and I believe it is not customary in Virginia to try a cause at the second term, when the party appears and pleads.

Mr. Randolph. If it is not the practice at the second term, do you mean that it is at the first?

Mr. Hay. No, sir; the presentment is found at the first term; the summons issues returnable to the next; at the second term the issue is made up, and the trial comes on at the subsequent term. This, I believe, is the ordinary mode of proceeding in Virginia.

Mr. Randolph. Finding that the law of Virginia was not considered as applicable, did you move, and support the motion by argument, for a continuance, founded on the affidavit filed by the accused, and what were those arguments?

Mr. Hay. I do not know whether I can state accurately all the arguments urged for a continuance. The argument was certainly in part founded on the affidavit of the traverser. He stated that he wanted documents which he could not instantaneously procure, and material witnesses who resided at a great distance. If I recollect rightly, I stated when Callender was first carried into court, that I was not prepared to discuss the important question whether a jury had a right to determine on the constitutionality of a law. I also stated the case to be a new one, that a prosecution for a libel had never before occurred in Virginia, and that the gentlemen of the bar were not masters of the subject; and that therefore I wished time to look into it.

[Mr. Charles Lee was here introduced into Court as counsel for Judge Chase.]

Mr. Harper. In your examination in chief, you stated that you defended the cause and not the man. We are not capable of understanding your meaning, and beg you to explain it. Was it the cause of Callender, or was it some other cause?

Mr. Hay. It was the cause of the Constitution, and I did not mean to defend Callender farther than he was connected with that cause.

Mr. Harper. Your object appears to have been to show that the law under which he was indicted was unconstitutional?

Mr. Hay. That was one great cause.

Mr. Harper. Not the sole one?

Mr. Hay. I had previously made up my mind, that if a prosecution should take place in Virginia under that law, I for one would step forward and offer my services to the person who should be selected as its first victim.

Mr. Harper. You said that you referred, when making a motion for a continuance, generally to the law, but not specifically to the law of Virginia?

Mr. Hay. My meaning was, that I did not quote the precise title of the act, but made a general reference to it.

Mr. Harper. Without citing the particular law?

Mr. Hay. Without citing it; I made no other than a general reference to the law.

Mr. Harper. Do you recollect whether, on the subject of Colonel Taylor's testimony, Judge Chase applied to Mr. Nelson, the attorney of the district, to determine whether the testimony should be admitted?

Mr. Hay. I have some indistinct recollection of some such thing.

Mr. Harper. Did not Judge Chase offer to postpone the cause for a month or more?

Mr. Hay. I have no recollection of such an offer; it would have been the wish of the counsel for the accused to have obtained that delay. I know that, in consequence of an impression on my mind, that a postponement could not be obtained, I devoted my days and nights to make myself acquainted with the subject, previous to the day when the trial came on. I have no recollection of such an offer; if I had so understood it at the time, I should have availed myself of it.

Mr. Harper. Did the counsel of Callender ask for a postponement, independently of a continuance to the next term?

Mr. Hay. I do not recollect that they did.

The President. You say some conversation appeared to pass between Judge Chase and Judge Griffin; did you hear so much as to understand the substance of it?

Mr. Hay. No, sir.

President. How then did you draw the inference?

Mr. Hay. From the business then before them.

President. You spoke of a witness called by the name of Rind. Did he appear willing to give testimony?

Mr. Hay. He did not appear unwilling. The objection to his testimony was made by myself.

John Taylor, sworn.

Mr. Randolph. The witness will please to state the circumstances that passed in the rejection of his testimony, and other circumstances which have any relation to the conduct of Judge Chase on the trial of Callender?

Mr. Taylor. I was summoned as a witness on that trial on the part of Callender. I attended and was sworn. On being sworn, Judge Chase inquired what it was intended to prove by my testimony? I do not recollect the expressions of Judge Chase, nor do I recollect precisely the answer made to this inquiry; but Judge Chase desired the counsel for the accused to reduce their questions to writing. They did so.

[Colonel Taylor's testimony was here so indistinctly heard, that we could not collect his words.]

I had come into court very near the hour when the court met, nor had I previously given any intimation of the testimony I could give either to Callender or his counsel. I should have added that, after I think, the judge had declared the witness could not be examined, he applied to the district judge for his opinion; who replied in so low a voice that I could not well tell what he said. But this was after he had given his own opinion that my testimony could not be received.

Mr. Randolph. You state that neither the accused nor his counsel knew the extent to which your testimony would go. Would your testimo-

ny, according to your belief, have had a material bearing on the charges against Callender?

Mr. Martin objecting to this question, Mr. Randolph said he would withdraw it.

Mr. Randolph. Did you observe anything unusual in conducting the trial?

Mr. Taylor. One or more motions were made by the counsel for Callender, who was interrupted by Judge Chase repeatedly. The words in which these interruptions were couched, I cannot recollect, though I formed an opinion of the style and manner of them; the effect of which was to produce laughter in the audience at the expense of the counsel. If I am required to declare the character in which I conceived them to be made, I am ready to do so.

There was here a short pause, when Judge Chase rose and said, he had no objection to the opinion of the witness being delivered.

Mr. Taylor. I thought the interruptions were in a very high degree imperative, satirical, and witty.

Mr. Randolph. Did there appear to you anything unusual in the manner of the counsel for the accused towards the court?

Mr. Taylor. I neither discovered the least degree of provocation given by the counsel, nor perceived any anger expressed by the court. Judge Griffin was silent, nor were Judge Chase's interruptions accompanied by the indication of any anger as far as I could perceive.

To an interrogatory made, Mr. Taylor said, the interruptions of the court were extremely well calculated to abash and disconcert counsel.

Mr. Randolph. Do you recollect anything in relation to the objection taken by John Basset to serving as a juror?

Mr. Taylor. I by no means recollect the circumstances with precision, but the impression on my mind is strong, that Basset said that he had entertained some prepossession against the book called "The Prospect Before Us," or against Callender; and that the judge inquired whether he had any prepossession in regard to the charges in the indictment. He said, no: and it was also said by him or by some other person brought forward as a juror, that he had not read the indictment. Judge Chase ordered him to be sworn.

Mr. Randolph. You were, I believe, a long time a practitioner of the law in the courts of Virginia?

Mr. Taylor. For a few years—about seven, I practised the law.

Mr. Randolph. I will ask you if you have ever known a capias issued against a person indicted for an offence not capital, or a person, presented for such an offence, tried at the same term the presentment was made?

Mr. Taylor. I must answer in the negative, but it is proper to remark that, as I never turned my attention to the practice of the criminal law, no great reliance ought, on this point, to be placed on my answer.

Mr. Randolph. Has it ever been the practice in the courts of Virginia for counsel to be compelled to reduce to writing, questions which they wish to propound, and submit them previously to the court?

Mr. Taylor. I have never seen such a practice in a case like that of Callender.

Mr. Randolph. Do you remember a question put by Mr. Chase to the counsel on the part of the United States, with regard to permitting your testimony to be received?

Mr. Taylor. After the decision of the court, I do recollect Mr. Chase did express some such idea as that intimated in the question. The attorney for the district instantly expressed his dissent to what I conceived to have been in a very feeble manner recommended by the judge.

Mr. Randolph. This intimation was after the positive rejection by the court?

Mr. Taylor. I think so, although I will not be positive, as I made no memorandum of what occurred.

Mr. Randolph. Were you present when a motion for a continuance was made, and do you recollect the grounds of it?

Mr. Taylor. I only recollect that it was founded on the affidavit of Callender: I have no recollection of the arguments used.

Mr. Nicholson. Do you recollect the grounds of the court for rejecting your testimony?

Mr. Taylor. I think, on the ground that though it were admitted, it would not acquit the accused.

Mr. Randolph. Was any observation made personally to you after the testimony was rejected?

Mr. Taylor. None, sir.

Mr. Harper. You have said, you considered the interruptions of the court as highly calculated to abash the counsel; did you mean thereby to give your opinion that they were so intended, or that such was their tendency?

Mr. Taylor. I thought they were so intended, and they had their full effect. They were followed by a great deal of mirth in the audience. The audience laughed, but the counsel never laughed at all.

Philip N. Nicholas, sworn.

In the year 1800, in the month of May, the circuit court of the United States sat at Richmond. Of this court, Mr. Chase and Mr. Griffin were the judges. I believe Mr. Chase sat alone for some time—for how long I do not recollect. Mr. Griffin did not, I believe, take his seat until the motion to continue the cause was renewed. On the first day of the court, Judge Chase delivered a charge to the grand jury, and called their attention, in a particular manner, to infractions of the sedition law. The grand jury returned with a presentment against James Thompson Callender, for a libel against the President, by the publication of a work, entitled "The Prospect Before Us." On this presentment, the attorney for the district filed an indictment, which the grand jury found a true bill.

Process was immediately issued on the indictment. My impression at the time, and until very lately, was, that the process issued was a bench warrant. I have lately heard that it was a *capias*.

For several days it was believed that Callender, who resided at Petersburg, could not be found; but the marshal at length arested him, and brought him into court. Mr. Hay and myself undertook his defence. My motive was, that I believed the sedition law unconstitutional, and of course oppressive to any person prosecuted under it.

Mr. Hay and myself had an interview with Callender, in order to ascertain the grounds on which he expected to make his defence. Callender informed us that his witnesses were considerably dispersed, and that there were many documents which it would be necessary for him to obtain, before he could be prepared for his trial. An affidavit was drawn, stating the absence of Callender's witnesses, the want of the documents, and that the counsel could not be prepared during that term. On this affidavit was founded the motion to continue the cause. This motion was urged with great earnestness and zeal, as we were convinced that justice could not be done if the case was tried during that term. The arguments principally urged by us, were, that the defendant had a Constitutional right to compulsory process for his witnesses, and to counsel, but that these privileges would be nugatory if the court would not allow time to summon the witnesses, and for counsel to prepare for the defence.

When the motion was first made, Mr. Chase sat alone. He did not absolutely reject the motion for a continuance, but he intimated in pretty strong terms his opinion that the affidavit did not afford a sufficient ground to continue the cause. Mr. Chase observed that the evidence of Mr. Giles, as stated in the affidavit, was of a serious nature; that he would let the cause lie over till Monday, and in the meantime we might summon such of our witnesses as were accessible to us. On Monday, Mr. Giles did not attend. Mr. Hay stated to the court that the badness of the weather during the preceding day had probably prevented Mr. Giles's attendance, and asked that the cause might lie over a few hours. The judge said we might either let it lie a few hours, or until next day, at our option: the latter was preferred. On Tuesday, the motion was renewed to continue the cause. Amongst other arguments used in support of this motion, Mr. Hay observed, that by the laws of Virginia a person indicted for a misdemeanor was never tried at the term at which the indictment was found, but that a summons issued against him, returnable to the next term.

Mr. Hay further stated, that as the sedition law gave the party accused the right to give the truth of the matter charged as libellous in evidence, it resulted that the law meant only to include the case of facts falsely recited, and not the case of abuse or erroneous opinions; because they are not susceptible of proof, and their verity or falsehood would depend on the particular course of thinking of those who were to judge in the case. Mr. Hay said he wished time to deliberate maturely on this view of the sedition law, and said, that if his construction was correct, the jury, in assessing the fine, ought not to regard such parts of the indictment as related to mere matters of opinion.

[Here Judge Chase interrupted Mr. Hay, and told him he was mistaken in supposing the jury were to assess the fine. This may be the case, said he, by your local State laws, but as applied to the courts of the United States it is a wild notion. Mr. C. said the cause must come on; that the traverser had not stated in his affidavit that he could prove all the charges in the indictment to be true; that it was necessary for him to prove the truth of all to obtain his acquittal; and that, as the absent witnesses were to give evidence as to part of the charges only, their absence afforded no good reason for a continuance.]

The motion to continue the case was overruled, and Judge Chase directed the jury to be called. When the jury came to the book, I stated to the court that I believed there was ground of challenge to the panel in consequence of one of the jurors, who was returned, having expressed opinions very hostile to the traverser. Mr. Chase, after looking into an authority which I quoted, and also into Coke Littleton, said the law was clear, that our objection did not apply to the panel, but to the individual juror. He further said that we must proceed regularly; that we might either introduce testimony to prove that a particular juror had expressed an opinion on the case, or we might examine the jurors as they came to the book. We preferred the latter mode, and Mr. Hay asked if he might ask a question of the first juror who was sworn. Mr. Chase said that Mr. Hay must submit the question to his previous inspection, and that, if he thought it a proper question, it might be asked. Mr. Hay stated that the question which he wished to ask, was, have you ever formed an opinion on the work, entitled "The Prospect Before Us," from which the charges in the indictment were extracted? Judge Chase said that the counsel should not ask that question; that the only proper question was, have you ever formed and delivered an opinion on the charge; in the indictment? I say (continued the judge,) formed and delivered; for it is not only necessary that he should have formed, but also delivered an opinion to exclude the juror. The judge propounded the last mentioned question to the first juror, and he replied that he had never seen the indictment, or heard it read. The judge said he was a good juror, and desired he might be sworn. Mr. Hay requested that the indictment be read to the juror, that he might be thereby enabled to say whether he had formed and delivered an opinion on the indictment. The judge replied that he had already indulged the counsel as much as he could, and they ought to be satisfied; he refused to let the indictment be read to the juror. The clerk then called the jury and swore them, till he came to John Basset, who in reply to the previous question said, he never had seen the indictment or heard it read. But Mr. Basset seemed to have considerable scruple at serving, and said he had formed and delivered an opinion that the book called "The Prospect Before Us," came within the sedition law. Judge Chase, however, said he was a good juror, and he was sworn and served as such. The witnesses on the part of the prose-

cution were called and sworn, and, among others, Mr. Rind was examined to prove the publication of "The Prospect Before Us." Mr. Hay observed that no witness who was any way concerned in the printing of the "Prospect," was bound to criminate himself. Mr. Chase admitted this to be correct, but declared that the witnesses might rest assured that no person would be prosecuted in consequence of any evidence given in the case then before the court. Under these circumstances Mr. Rind proved that he had printed part of the "Prospect" for Callender, and took out of his pocket some of the original sheets from which he had printed parts of the work. Judge Chase himself compared these sheets with the work as published, and they were found to correspond. After the testimony on the part of the prosecution was finished, Col. Taylor of Caroline was called on the part of the traverser, and, after he was sworn, Judge Chase asked with apparent haste and earnestness of manner, what we expected to prove by that witness. We said we expected to prove that Mr. Adams had avowed in the presence of the witness sentiments favorable to monarchy or aristocracy, and that he had voted in the Senate against the sequestration of British debts, and the suspension of commercial intercourse with Great Britain. Judge Chase then said that we must reduce the questions to writing. This I objected to, and stated that it was a thing very unusual in our courts; that it had not been required by the court of the District Attorney, when he examined witnesses against Callender; that it involved a dangerous principle, and was calculated to subject every question of fact to the control of the court; besides, I added, that I did not know the extent to which Col. Taylor's evidence would go; that I wished him to state all he knew, and that very probably the examination would point out new questions proper to be asked. I then stated that if the court insisted on the questions being reduced to writing, I would comply with their direction, but that I hoped it would not be considered as precluding us from asking any additional questions. The questions were then reduced to writing, and are as follow, viz:

1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy, and what were they?

2. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3. Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and the suspension of intercourse with Great Britain?

Judge Chase, after examining the questions, declared Col. Taylor's evidence inadmissible. No evidence can be received, said the judge, which does not go to justify the whole charge; the charge is, that the President is a professed aristocrat, and has proved faithful and serviceable to the British interest. Now, you must prove both these points, or you prove nothing, and as your evidence relates to one only, it cannot be received; you must prove all or none. These, I believe, were the precise words of the judge. I think it right here to state that after Mr. Chase had declared Colonel Taylor's evidence inadmissible, he said to the District Attorney, that although the questions were improper, he wished the attorney would consent to let them be asked of the witness. The attorney said, he could not consent. The evidence of Colonel Taylor being excluded, the attorney for the United States addressed the jury, and commented at considerable length on the indictment. After that, Mr. Wirt addressed the jury for the defendant. He premised that the counsel for the traverser were placed in a very embarrassed situation; that the prisoner during the same term was presented, indicted, arrested, arraigned, tried; and that this precipitation precluded the possibility of obtaining witnesses or making the necessary preparations for arguing a cause of so much magnitude. Here Judge Chase interrupted Mr. Wirt, and told him, that he would not suffer anything to be said which reflected on the court. Mr. Wirt said he did not mean to reflect on the court; his object was only to apologize to the jury for the lameness of the defence. Mr. Chase replied that his apology contained the very reflection he disclaimed, and desired him to go on with the cause. Mr. Wirt then said, that an act of Assembly had adopted the common law of England as a part of the laws of Virginia; that an act of Congress had directed the United States courts sitting in Virginia to conform to the laws of the State in which such court might happen to sit; that by the common law the jury had a right to decide on the law as well as the fact. He then said, that if the jury upon inquiry should find the sedition law unconstitutional, they would not consider it as law, and if they did, they would violate their oaths. Here Mr. Chase said to Mr. Wirt, sit down sir. Mr. Wirt endeavored to explain, and said I am going on, sir, to——No, sir, said Mr. Chase, you are not going on; I am going on. Judge Chase then read from a paper, which he held in his hand an instruction to the counsel that they should not address the jury on the constitutionality of the act of Congress, but that arguments might be addressed to the court to prove the right of the jury to consider the constitutionality. Mr. Wirt then addressed the court. He said he had not considered the case elaborately; that it appeared to him so clearly that the jury had the right contended for, that he did not imagine it required any great research to prove it. He then proceeded to state that it was certainly the right of the jury to consider of and determine both law and fact. Mr. Chase here remarked that Mr. Wirt need not give himself trouble on that point; we all know, said he, that the jury have a right to decide the law. Mr. Wirt then said that he supposed it equally clear that the Constitution is the law. Yes, sir, said Mr. Chase, the supreme law. If then, said Mr. Wirt, the jury have a right to decide on the law, and if the Constitution is law, it follows syllogistically that they have a right to decide on the constitutionality of the law in question. *A non sequitur*, sir, said Judge Chase. Here Mr. Wirt sat down.

I followed Mr. Wirt, and spoke concisely to prove the right of the jury to decide on the constitutionality of the sedition act. I believe I was not interrupted.

Mr. Hay followed on the same side, and in the course of the discussion laid down the position that the jury had a right to decide the law as well as the fact. Mr. Chase interrupted him to ask whether he meant to extend his position to civil as well as criminal cases; for if you do, sir, said the judge, you are wrong; it is not law. Mr. Hay said he believed the position to be universally true, but it was sufficient for his purpose if it was true in criminal cases. Mr. Hay proceeded a very little way further before he was again interrupted by Judge Chase. Mr. Hay, who had been during the cause frequently interrupted, then folded up his papers and appeared to be retiring from the bar. Mr. Chase, addressing him, said, go on sir. No sir, said Mr. Hay, I will not go on. What, sir, said Mr. Chase, will not you proceed with your cause? No, sir, said Mr. Hay; my mind is made up, and I will not proceed. The judge told Mr. Hay he need not be captious. Mr. Hay replied, he was not captious. The judge said, go on, sir; proceed, and you shall not again be interrupted; you may say what you please.

Mr. Hay, Mr. Wirt, and myself left the bar at the same moment, and I cannot state what happened after with any degree of certainty. Callender was however convicted.

Mr. Randolph. When you observed to the court, at the time you were directed to reduce your questions to writing, that the attorney for the United States had not been required to do the same, was there any reply made by Judge Chase?

Mr. Nicholas. It was, I believe, stated by Judge Chase, that the attorney for the United States had, at the opening, stated what he expected to prove by his witnesses.

Mr. Randolph. Did you hear any offer made by the court to postpone the trial of Callender for a month?

Mr. Nicholas. No, sir, I did not hear such an offer, and I never heard it suggested until within a week or two, that such an offer was alleged to have been made. If such an offer had been made, I am sure we should have accepted it, as I know very well that a postponement would have been the most acceptable thing to us, except a continuance until the next term.

Mr. Randolph. Did the opinion of the court appear to be given after consulting with the district judge?

Mr. Nicholas. I never saw Judge Chase consult Judge Griffin but once, and that was after he had declared Col. Taylor's evidence inadmissible. He turned to Judge Griffin, and asked whether his brother Judge agreed with him, to which Judge Griffin assented.

Mr. Randolph. Did Judge Chase make use of any rude, unusual, and contemptuous expressions to the counsel, and what were they?

Mr. Nicholas. I recollect when he overruled Col. Taylor's evidence, he said, my country has made me a judge, and it is my duty to pronounce the law; the evidence of the witness is inadmissible; the counsel for the traverser know it to be so, but they wish to deceive and mislead the populace. I take the responsibility of this decision on myself, and say the evidence cannot be received.

At another time Mr. Chase told the counsel that they had all along mistaken this business, and kept pressing their mistakes on the court; and said repeatedly that what we urged as law we knew not to be law. Many remarks of a similar nature were made, and in many instances the judge seemed to endeavor to throw ridicule on the counsel. When Mr. Hay was endeavoring to prove that the declaration in the indictment, that the libel was of the tenor and effect following, held the prosecutor to a strict and literal recital, Mr. Chase said that it was not law; the counsel have contended, said he, that the recital ought to have been *verbatim et literatim;* I wonder, continued he, they have not contended for *punctuatim* also. In another instance, when Mr. Hay was adducing authorities to show that the title of the book ought to have been stated in the indictment, Mr. Chase observed that he knew there were cases in which the title was recited. I remember one, continued he, in the case called the Nun in her Smock; but though it was recited in that case, it was not necessary, nor is it so in any case. It is difficult in language to convey an adequate idea of Mr. Chase's manner; but in these and similar instances, from the sarcastic way in which he expressed himself, it was evidently his intention to throw ridicule on the counsel.

Mr. Randolph. You say that on the rejection of Col. Taylor's evidence, Judge Griffin was consulted by Judge Chase; was he consulted before, or after the opinion of the court was pronounced?

Mr. Nicholas. It was after.

Mr. Randolph. In speaking of the District Attorney, who, he said, had in opening the case stated the purpose for which he meant to introduce the witnesses, do you recollect that he said *we* were not bound to do this, and by the word "*we*," identifying himself with the public prosecutor?

Mr. Nicholas. I recollect that Judge Chase, in the course of the trial, used the term *we* in the manner alluded to; but I do not recollect with certainty in what part of the trial it was.

Mr. Randolph. Were you attorney general of the State of Virginia at that time?

Mr. Nicholas. I was, sir.

Mr. Randolph. Did Judge Chase apply the epithet young men, or young gentlemen, to you and the other counsel for the traverser?

Mr. Nicholas. I do not perfectly recollect whether he said young men or young gentlemen. I believe the latter, and as applied to me, it was true, for I was then a very young man.

Mr Randolph. Is it the practice in Virginia to issue a capias to take the body of the party on presentments for misdemeanors at the term when the presentment is made, or the indictment found?

Mr. Nicholas. By our act of Assembly the proceedings on an indictment or information for a misdemeanor, is by summons returnable to the next term, and if the summons is returned executed, and the party does not appear, a capias is awarded returnable to the succeeding term. If the party comes in and pleads, the plea is received, and the cause stands over to the next term.

Mr. Randolph. Did you ever know the party in such case ruled to trial the same term the presentment was made?

Mr. Nicholas. Never.

Mr. Randolph. Did the counsel for the traverser refer to the act of Assembly, by which a summons is declared to be the proper process?

Mr. Nicholas. Mr. Hay mentioned it in his argument for a continuance; he said that as the laws of Virginia pointed out a summons as the proper process, and there was no act of Congress directing a different procedure, he thought the United States courts should allow the same time which the State laws did.

Mr. Harper. When you say that Mr. Hay referred to the law in question, do you mean he cited the particular act of Assembly?

Mr. Nicholas. No, sir, he referred generally to the Virginia laws, and said such was the process pointed out by them.

Mr. Harper. You said that the term *we* was used by Mr. Chase; how did you understand him to apply the expression?

Mr. Nicholas. I thought he identified himself with the prosecution.

Mr. Harper. In what part of the trial did this take place?

Mr. Nicholas. I do not particularly recollect, but I am sure he used the term *we* in the sense stated.

Mr. Harper. Is it unusual to give testimony by a person concerned in the commission of the offence for which another is indicted, and do you not as Attorney General of Virginia consider it your duty to promise a witness in such case that he shall not be prosecuted for anything he may then testify?

Mr. Nicholas. No case has occurred since I have been in office in which such promise was made.

Mr. Harper. Are you correct, sir; do you particularly remember whether you was Attorney General of Virginia at the time of the trial?

Mr. Nicholas. I certainly was; I had been a short time before the trial appointed by the Executive, subject to the approbation or rejection of the next Legislature.

Mr. Nicholson. You say the counsel were frequently interrupted, pray how frequently?

Mr. Nicholas. The counsel were frequently interrupted during the trial; and as a general character of the trial, I can say that, on most of the points which were made, not many sentences were uttered by the counsel at a time without interruption.

The President. Were you present when the process was issued against Callender?

Mr. Nicholas. I believe process was awarded whilst the court was sitting, but my impression at the time was that it was a bench warrant.

The President. Was anything said in court against its being issued?

Mr. Nicholas. There was not.

The President. By whom was the process made out?

Mr. Nicholas. I do not positively know. I suppose it was made out by the clerk, but whether by the particular direction of the court, or under an idea that it was, of course, I do not know.

John Thomson Mason, sworn.

Mr. Randolph. It has been contended on the part of the respondent, that the *quo animo* determines the guilt or innocence of an action; now, if the *quo animo* with which he went down to Richmond to execute the sedition law, can be shown, it will have an important bearing on his conduct. I wish, therefore, to ask the witness this question: Did you ever hear Judge Chase, previous to the trial of Callender, utter any expression, and, if any, what was it, on the subject of Callender's prosecution, or respecting the book called "The Prospect Before Us;" did he say that the counsel of the Virginia bar were afraid to press the execution of any law, and particularly the sedition law; did he say that he had a copy of that book, or what did he say? State the circumstances particularly.

Mr. Mason. The question refers to circumstances of which I have but an indistinct recollection, and which happened in a way which renders it extremely unpleasant on my part to relate them. Judge Chase presided in the circuit court held at Annapolis in the Spring of the year 1800; during the term a man by the name of Saunders was tried for larceny, and found guilty. After sentence was passed upon him, he was taken out of court to receive it. The press of the people being very great, the judges and myself were detained within the room. Judge Winchester, Judge Chase, and myself had a conversation, altogether of a jocular complexion. I think it was just after he delivered his valedictory, but how to connect the circumstances at this time, I do not know. I remember, however, that he asked me my opinion of the book called "The Prospect Before Us;" I told him I had not seen it, and from the character I had heard of it, I never wished to see it. He told me, in reply, that Mr. Luther Martin had sent a copy to him, and had scored the parts that were libellous, and that he would carry it to Richmond as a proper subject for prosecution. There was a good deal of conversation besides, but I do not recollect it. There was one expression, however, that he used, which just occurs to my memory, and which I will repeat, that before he left Richmond, he would teach the people to distinguish between the liberty and the licentiousness of the press. He said that he was as sincere a friend to the liberty, as he was an enemy to the licentiousness of the press. There was a sentiment he expressed, which I cannot undertake to give in his precise words, that if the Commonwealth or its inhabitants were not too depraved to furnish a jury of good and respectable men, he would certainly punish Callender. I do not precisely recollect the words: I never repeated this conversation before, and seldom or ever, after it occurred, thought of it.

John Heath, sworn.

During the trial of J. T. Callender, I attended at the court in Richmond as one of the bar. I had occasion to apply to the court for an injunction. The motion not having been decided upon, I went round to Crouch's, where Judge Chase lodged, and found him in his chamber alone, in which I thought myself very fortunate. We then talked over the application I had made the day before for an injunction; while talking on it, Mr. David M. Randolph, the then marshal, stepped in with a paper in his hand. The judge accosted him, and asked him what he had in his hand? He said that he had the panel of the petit jury summoned for the trial of Callender. This was after the indictment was found by the grand jury. After Mr. Randolph had mentioned that it was the panel of the petit jury that he had in his hand, Judge Chase immediately replied, have you any of those creatures called Democrats on the panel? Mr. Randolph hesitated a moment, and then said that he had not made any discrimination in summoning the petit jury. Judge Chase said, look it over, sir, and if there are any of that description, strike them off. This is all I know of this affair.

The Court rose at four o'clock.

WEDNESDAY, February 13.

The Court was opened at half-past two o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

James Triplett, sworn.

Mr. Randolph. I wish to know whether you ever heard previous to, or during the trial of Callender, any expressions used by the respondent, Judge Chase, manifesting a hostility toward J. T. Callender, and what were those expressions?

Mr. Triplett. I recollect to have had a conversation with Judge Chase on our passage in the stage down to Richmond. A book was handed to me by him, and I was asked if I had read it? I was asked, whether I had seen him, (Callender?) I told him, I had never seen him. There was a story recited about the arrest of Callender by a warrant of a magistrate, under the vagrant act of Virginia; I recollect that the judge's reply was, "it is a pity you have not hanged the rascal."

Mr. Randolph. Was there any other expressions of this nature used, after you got to Richmond?

Mr. Triplett. I did not hear anything particular; but I think the judge did say something about the Government of the United States showing too much lenity towards such renegadoes. I do not recollect any other conversation passing between us at that time, until after the court was sitting, when Judge Chase was the first who informed me of the presentment being made by the grand jury against Callender. At the same time, he informed me that he expected I would have the pleasure of seeing Callender next day before sundown, that the marshal had that day started after him for Petersburg.

Mr. Randolph. We wish you, as well as your memory serves, to state not only the substance, but the exact expressions used by the judge.

Mr. Triplett. I will state them as well as my memory serves me. Some time after this conversation, I met the judge at the place where he boarded; he said that the marshal had returned without Callender, and used this expression, "I am afraid we shall not be able to get the damned rascal at this court."

Mr. Randolph. You say a copy of this book was handed you by Judge Chase. Did you read it, sir?

Mr. Triplett. I read several passages of it.

Mr. Randolph. Were they marked?

Mr. Triplett. I saw several passages marked; but by whom I do not know.

Mr. Randolph. Do you remember any particular passages that were marked?

Mr. Triplett. I do not. I have stated everything I recollect; but if the gentlemen have any questions to ask, I am ready to give them an answer.

Mr. Martin. I will ask how many days you resided at the same house with the judge?

Mr. Triplett. I think, six days.

Mr. Martin. Do you recollect whether my name was not marked on the book which Judge Chase handed to you?

Mr. Triplett. I do not.

Mr. Harper. Can you state the day of the month, or of the week, when the last conversation passed.

Mr. Triplett. I think it was Sunday, but I am not positive. I made no minutes, as I never expected to be called upon to answer inquiries of this kind.

Mr. Harper. How long was it after the first conversation with the judge, when he mentioned that the marshal had gone after Callender?

Mr. Triplett. I do not precisely recollect. It was not, I think, so much as three days. I do not think it was so much as two days; but I cannot be positive, after so great a length of time has elapsed.

Mr. Harper. Do you recollect who travelled with you in the stage from Dumfries to Richmond?

Mr. Triplett. I cannot recollect. The stage was much crowded from Dumfries to Fredericksburg; and there was a passenger taken in at Stafford court-house.

Mr. Harper. Well, sir, how was it from Fredericksburg to Richmond?

Mr. Triplett. I do not particularly recollect; but there were passengers repeatedly getting in all the way.

Mr. Harper. Did this conversation take place before you reached Stafford court-house?

Mr. Triplett. It was after.

Mr. Harper. Was it between Fredericksburg and Richmond?

Mr. Triplett. Yes, sir.

President. Had you any conversation with Judge Chase previous to this interview?

Mr. Triplett. No, sir.

President. Did you sit together in the stage?

Mr. Triplett. We did the second day, and it was then the conversation passed.

Mr. Hopkinson. When was it, that, for the first time, you mentioned this conversation to anybody?

Mr. Triplett. I do not recollect when I mentioned it the first time; but I remember to have communicated it to General Mason on my return to Dumfries.

Mr. Nicholson. Have you since mentioned it to others?

Mr. Triplett. Frequently.

On the suggestion of Mr. Randolph, that Mr. Triplett had fractured his wrist, from which he apprehended serious consequences, he was dismissed with the consent of the counsel for the respondent, from further attendance on the Court.

At the instance of Mr. Lee, *John Heath*, examined yesterday, was again called in.

Mr. Lee. You mentioned yesterday that you made two applications for an injunction. Were they made at the judge's chambers, or in court?

Mr. Heath. I mentioned that I made the application to the court, and that it was not then granted. I then stated that I went to the judge's chambers the next day before the court met.

Mr. Lee. Who composed the court when the injunction was moved in the first instance?

Mr. Heath. I think, but I cannot be particular, that Judge Griffin was there. He was, however, there the next day.

Mr. Lee. At what time of the day was it that you went to the judge's chambers respecting your application for the injunction?

Mr. Heath. It was immediately after breakfast. We generally breakfasted early. Immediately after, I waited upon him. I think it was between eight and nine o'clock.

Mr. Lee. What space of time were you there?

Mr. Heath. I do not think I was there quite half an hour.

Mr. Lee. Was the bill read by yourself, or put into the hands of the judge to read it, at the time you made the application at his chambers?

Mr. Heath. I do not recollect to have presented the bill to the judge. I am not positive that I had the bill with me. I called upon him for the purpose of learning the reasons, why he did not grant the application. [Here the witness related some remarks of Judge Chase on the application for an injunction, which were too indistinctly heard to be related.]

Mr. Lee. Who were present at the judge's chambers at the time you state the conversation took place between Judge Chase and Mr. David M. Randolph respecting the panel of the jury?

Mr. Heath. No other person was present but myself. When I came in I found the judge alone, and I thought myself fortunate in so finding him. We had been in conversation by ourselves for eight or ten minutes before Mr. Randolph came in.

Mr. Lee. Was any one present at the door, or was the door open at the time?

Mr. Heath. I do not recollect that there was; but it appeared to me that as I was going into the house, somebody was coming out; and I found the judge alone, I am positive, when I entered; and we continued alone until Mr. Randolph stepped in. It struck me that there might have been somebody that came in at the main door of the house between the time I was there and Mr. Randolph's coming in; but I am not certain.

Mr. Lee. You say somebody was coming out, when you went into the room. Was it Mr. Randolph?

Mr. Heath. No, sir, I said there might be somebody coming out, but whether out of his chamber, or out of another room, I am not certain; but when I entered his chamber, I found him alone, and I thought myself fortunate in so finding him.

Mr. Lee. On what day of the week was this?

Mr. Heath. I do not recollect.

Mr. Lee. How many days was it after your motion to the court before you went to the judge's chambers?

Mr. Heath. I do not recollect; but I think it was a few days after the bill against Callender had been found, and he had been arrested; but as to days, hours, and minutes, I do not pretend to recollect them.

Mr. Lee. Am I to understand that it was after Callender appeared in court?

Mr. Heath. I do not say so. It was after Callender was brought forward by the marshal, and a true bill found. I think it was immediately after; but I do not recollect whether it was a day or two after.

Mr. Lee. Did you go to Judge Chase's chambers on any business more than that one time?

Mr. Heath. No; I never did more than that one time.

Mr. Chase. It was with the motion?

Mr. Heath. Yes, sir, it was with the motion.

Mr. Randolph. Did you at any, and at what time, mention this circumstance, and to whom did you mention it?

Mr. Heath. As soon as it happened, I considered the conversation improper, and thought I had a right to relate it, as I did not visit Mr. Chase as a friend, but as a judge in his judicial character to perform the duties of his office, and on business which might have been done in open court as well as at his chambers. I mentioned it to Mr. Hugh Holmes, also to Mr. Meriwether Jones.

Mr. Randolph. Do you mean Mr. Holmes, the present Speaker of the House of Delegates of Virginia?

Mr. Heath. Yes, sir.

Mr. Randolph. You state that you mentioned it to Mr. Holmes and Mr. Jones; did you mention it to anybody else?

Mr. Heath. I was so much impressed with it, that I mentioned it to several others.

Mr. Nicholson. Did you say that you made this communication to those gentlemen immediately after the conversation occurred?

Mr. Heath. On the very day, and within an hour afterwards; and I have since mentioned it frequently to others—I never kept it a secret.

Mr. Hopkinson. Was this conversation on the day of the trial of Callender, or how many days before?

Mr. Heath. I do not recollect whether Callender was tried that day; I mentioned yesterday that I did not attend the trial.

Question. Did you make your motion at the same term that Callender was tried?

Mr. Heath. Yes, sir—There were intervals in which motions were made by counsel. During one of these intervals I made my motion for an injunction. Callender had not then been tried; I do not know that when I made the motion the marshal had returned with Callender, but I made it the day before I went to the judge's chambers.

Mr. Nicholson. Was the conversation before the impanelling of the jury in the case of Callender?

Mr. Heath. Yes, sir—The marshal came in during the time I was in conversation with the judge, it appeared to me, to show the judge what kind of a panel he had.

At the request of Mr. Harper, and with the consent of the managers, *John Basset*, a witness on the part of Judge Chase, was sworn and examined, in consequence of the peculiar situation of his family requiring his immediate return home.

Mr. Harper. Relate the circumstances that took place relative to your being sworn on the jury, on the trial of Callender, and what the application to the court was on your behalf?

Mr. Basset. The circuit court of the United States at which James T. Callender was presented and indicted for a libel, was held on Monday the second or third of June. I left home in the morning and arrived in Richmond as early as might be expected. On my arrival I saw David M. Randolph, who was standing at a corner of a street; perceiving me, he came towards me; before I alighted from my horse, he informed me that I had been summoned as a grand juror, and that for not appearing, had been crossed, that it was my duty to go to the court and justify myself for my absence; that he summoned me on the petit jury for the trial of Callender, and that my serving in that capacity would be an apology for my previous absence. I presented myself to the court, but the trial did not come on that day. The second day I attended also. I knew very well that the law under which the traverser was to be tried, was odious to my fellow-citizens; I knew it was conceived to be a great oppression to the liberty of the subject, and I believed that great umbrage would be given to the mass of the people by those who should undertake to execute that law. I was weak or wicked enough to be among that class of people called federalists, and I did believe that the law [sedition law] was Constitutional. I felt myself bound when called on to be a juryman, to make a declaration of my political sentiments. I made this declaration to relieve the impression on my own mind, and not in order that it should be considered that I declined, in consequence of my political opinions, to serve on Callender's trial, or in any other case. I thought it possible that I might be excused; but if I were found by the court to stand in a proper relation between my country and the traverser, I would cheerfully serve. My object was to justify my own conduct to myself, and to the whole world. I made use of these expressions, and I believe I repeat the very words, but I am well assured that I shall express the force and efficacy of what I said. I declared to the judge that my politics were federal; that I had never seen the book called the Prospect Before Us, but I had seen in a newspaper some extracts from it; that if the extracts were correctly taken from the book, and if the traverser was the author or publisher of that work, it appeared to me that it was a seditious act; that I had formed and expressed an unequivocal opinion, that the book was a seditious act; that I had never formed an opinion in respect to the indictment, for I had neither seen it nor heard it read. The court considered me a good juror, and I was sworn accordingly. After the trial had been gone through, the jury retired to their room. I informed the jury that I thought we should have the book read through.

The President here stopped the witness, and informed him that it was useless waste of time to relate what took place in the room of the jury.

The witness, however, continuing the statement he had previously begun, the President desired him to go on, if it were necessary for the purpose of connecting the testimony he had to give; but to pass over what occurred among the jury as briefly as possible.

Mr. Basset. I told the jury that I thought the book should be read. The jury did not at first agree, but the greater part of it was afterwards read. In respect to the general progress, I will state one point that makes a great impression on my mind; I do not pretend, however, to a superior recollection, especially after a lapse of five years, during which I never dreampt it would be the subject of discussion; but I will give my impressions. The judge, addressing the counsel for the traverser, said, when my country invested me with my sacred office, it placed me under an obligation to administer justice according to law; this I am determined to do, and I have done it. I have decided what the law is, but this decision is not conclusive against the traverser. If any exceptions are made by his counsel to my decision, they may be reduced to writing, and if I have commited errors, a superior tribunal shall correct them.

Mr. Randolph. You stated that you had read extracts from the Prospect Before Us in newspapers, before you were impanelled on the jury, which impressed you with the opinion that it was a seditious publication. After reading over the book, did it appear to you to answer that description.

Mr. Basset. I thought it was more libellous than the extracts I had seen.

Mr. Randolph. The extracts and the book did not then correspond.

Mr. Basset. I cannot say. I could not say the extracts were the same with what I read in the book; I only recollect that my impression was, they were the same. I could not then, nor can I now say they were conformable to the book, but my impression is, that they were the same in substance.

Mr. Harper. Did you mean to say that the contents of the book were more libellous than the extracts?

Mr. Basset. I meant to say, that after I had read the book, my impressions were that it was more libellous than I conceived it to be when I read the extracts.

Mr. Nicholson. Do you recollect at what time you arrived in town?

Mr. Basset. I cannot recollect, but I believe soon after the court met: that morning I rose early and rode twenty-two miles, about four hours riding.

Mr. Nicholson. Was the book given by the court to the jury?

Mr. Basset. I understood that it was delivered by the court to the jury for their inspection, and to compare the extracts from the book, and see whether they were correctly taken, but I do not recollect that the judge particularly called our attention to the book, and directed us what was to be done with it; but my recollection is that the book was delivered to us.

Mr. Rodney. Was the indictment read after all the jury were sworn?

Mr. Basset. I do not recollect that the indictment was read till after the jury was sworn.

Mr. Rodney. Had the book given to the jury any passages scored?

Mr. Basset. I think it had.

Mr. Rodney. Do you know whether the passages marked formed any part of the indictment?

Mr. Basset. I cannot say that I recollect.

Mr. Campbell. When you were sworn did you understand that the charges in the indictment were taken from the book called the Prospect Before Us?

Mr. Basset. It was subject of general notoriety, that the indictment was drawn from the Prospect Before Us.

Mr. Campbell. What authority had you for supposing that the extracts you had read were taken from the Prospect Before Us?

Mr. Basset. I had no authority but the newspapers, they purported that the extracts were taken from the book called the Prospect Before Us.

Mr. Randolph. Have you any reason to believe that the extracts in the newspapers were not taken from the book?

Mr. Basset. I firmly believe they were taken from it.

Mr. Hopkinson. Was the book which you took out that which was given in evidence during the trial?

Mr. Basset. Whether it was the book which was furnished by the prosecutor and handed to us by the agent of the court, I cannot tell.

Mr. Hopkinson. At what hour did the court meet?

Mr. Basset. I believe about ten o'clock.

The President. I understand you as saying that you never saw the book, until you saw it in court?

Mr. Basset. I am firmly and fully so impressed.

The President. When you were questioned as a juror, I understand you to have said, that if the extracts you had read were correctly given, the matter was libellous; did you say that you had formed an opinion?

Mr. Basset. No, sir, nor that I had delivered an opinion, but I said that if the traverser was the author of those extracts, he was guilty of a breach of the sedition law. I repeat every expression that is now remaining on my memory. I answered so far as to the fact. The inquiries extended no farther than to making up my opinion on the extracts contained in the newspapers. It had no connexion whatever with the book. I do not think that I stated to the court that I had expressed an opinion.

Mr. Harper. Did you make an application to the court to be excused, or did your observations arise from motives of delicacy?

Mr. Basset. If my memory does not fail me I did not solicit the judge to excuse me; the office of a juryman is no doubt always an unpleasant one, but when I am called upon to perform a duty, I do not shrink from the task. I had some doubts whether my mind was in a proper state to pass between my country and the traverser. It was to remove these doubts that I made the declaration, and for no other purpose.

Mr. Lee. On what day of the week was Callender tried?

Mr. Basset. I arrived about ten o'clock on Monday, and, the next day, the jury were sworn at the usual time.

Mr. Bayard. What was the general deportment of the judge to the counsel, and of the counsel to the court?

Mr. Basset. The different coloring through which the same things are seen make some men see things differently from others. My own opinion is that the judge conducted himself with decision unmixed with severity, and that he was witty without being sarcastic. It was my impression that the judge wished the prisoner to have a full hearing, that he might be acquitted, if innocent, and found guilty, if really guilty. It appeared to me that the sole point on which the counsel hoped to save their client was by proving the unconstitutionalty of the sedition law, and it appeared to me that they could not form a reasonable expectation of acquitting him on any other ground. I believe his counsel believed the law unconstitutional, and thought they had eloquence and argument enough to convince the jury of it. I believe they thought the judge deprived them of their right to address the jury on that point; and that having the cause very much at heart, they were vastly mortified that the court did not permit them to take the course they wished. They appeared

to consider themselves as advocating the cause of an oppressed citizen, and they felt hurt at not being allowed the mode of defence which in their opinion the law authorized. In all their arguments they travelled but little way before they came to the point that went to prove the law unconstitutional, and the judge declared, at every such time, that they had no right to address the jury on that point; that the Constitution had made the court the sole judges of the law as far as it respected its constitutionality. From these circumstances, it is my impression that the altercation between the bar and the court arose solely from the sensibility of the counsel to this particular subject, and from being deprived, as they supposed, of their rights.

The President. What were the particular causes of irritation between the judge and the counsel?

Mr. Basset. I have stated what I considered the causes. They arose from the counsel adverting to that particular point, and their so frequently doing it occasioned the judge to elevate his voice, and to pronounce over and over again what he conceived to be the law.

Mr. Rodney. Was the question put by the court, whether you had formed and delivered an opinion on the charges contained in the indictment?

Mr. Basset. My memory on the particular form of the question is imperfect, but I will state my idea of it. I at first thought the question had been put in the disjunctive, *or*—but I am now persuaded that I was mistaken; so many gentlemen concurring in recollecting that the word *and* was used, I must believe I was mistaken.

Mr. Rodney. When the question was put, did you not say that you had formed an opinion on the extracts, and did you not express the very opinion which you had formed?

Mr. Basset. I did, and I said that if the book answered to the extracts, I had formed an unequivocal opinion that it was libellous.

Mr. Rodney. And this before you were sworn?

Mr. Basset. Yes, sir.

The witness was then, from the peculiar circumstances already stated, excused with the consent of the parties from any further attendance on the court; the President observing that although the indulgence was granted in this instance, he hoped it would not be made a precedent for a general practice.

The Court rose at four o'clock.

THURSDAY, February 14.

The Court was opened at twelve o'clock.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel,

On the request of Mr. Harper, and with the consent of the Managers, *Edmund Randolph*, a witness on behalf of the respondent, was sworn.

Mr. Hopkinson. Were you present at the trial of Callender?

Mr. Randolph. I was present during a short part of the time.

Mr. Harper. What was the general conduct and demeanor of the court towards the counsel? Was it harsh, rough, and irritating; or was it mild and facetious?

Mr. J. Randolph. I wish to submit to the Court, whether it is proper to put this question in the form proposed. I wish the witness may, in stating the conduct of the court, confine himself to specific facts, as much as possible.

Mr. Harper. The general conduct of the court is a matter of fact, and the particular acts of the court go to show what that was.

The President here desired the answer to be reduced to writing, when Mr. Harper said that he had no objection to withdrawing the question—Mr J. Randolph, however, waiving any objection to it, the President desired Mr. Randolph to proceed.

Mr. Randolph. The answer I have to make is very short. Having been absent the greater part of the time, I do not consider myself competent to say what the general conduct of the court was. I recollect that shortly after the trial commenced, I came into court, and sat very near the bench on which the judges sat. I continued there for some time, while a portion of the very lengthy indictment was reading. I then went out, and returned to my own house, where I continued until the time when I supposed the reading of the indictment would be finished. Just on my entrance into the lobby of the court, I saw the counsel for the traverser folding up their papers, and retiring from the bar.

Mr. Harper. Were you in court during the time when the previous motions were made?

Mr. Randolph. Shortly after the indictment was found against Callender, I was in court. The only incident which I recollect to have taken place at that time, was seeing the clerk or the attorney of the district hand up to Judge Chase a paper, about which I made inquiry of somebody near me, and learnt that it was a warrant for process for apprehending Callender. This is all I recollect previous to the arrest of Callender. When Callender was brought into the court, I stood outside of the crowd, at some distance from the court. I heard a great deal said, but I do not recollect what I did hear. I am therefore satisfied that I am incapable of giving a connected statement of what passed at that time. On the succeeding day the trial commenced; but I was not present when the motion was made for a continuance. I have stated already how far I was a witness from that time to the conclusion of the trial.*

Mr. Harper. What was the demeanor of the court when you saw the counsel folding up their papers?

Mr. Randolph. I do not recollect any specific facts.

Mr. Harper. What was their general demeanor during the trial?

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* The introduction of Mr. Randolph's testimony was delivered in so low a voice as not to be heard by the reporter. But it is understood that, in the part not heard, nothing relevant to the charges in the articles of impeachment, was said.

Mr. Randolph. From the causes I have stated, I am not able to answer this question.

Mr. Harper. Have you no general impression?

Mr. Randolph. I cannot say I have.

Mr. Harper. Was there anything which struck you as remarkable, improper, or otherwise?

Mr. Randolph. I have no hesitation in saying that I saw nothing which conveyed the idea of corruption.

Mr. Harper. What do you mean by corruption?

Mr. Randolph. I mean an evil intention to oppress the traverser. I speak only of those parts of the trial which I witnessed myself, and I must be understood as knowing little of what passed from my own observation.

Mr. Harper. You say you perceived no evil intent to oppress the traverser?

Mr. Randolph. I had no idea of the sort.

Mr. Lee. Do you recollect nothing that was said by the court to the counsel, when they were putting up their papers and retiring?

Mr. Randolph. No, sir; I was at a considerable distance—at the door of the lobby at the time. I have no further answers to make to the questions proposed; I do not think it incumbent on me to relate matters that are irrelevant, or to go into conjectures.

Mr. Harper. We are ready to hear anything from a gentleman so well skilled——

Mr. Randolph. The reason of my remark is, my having understood that I was summoned in relation to opinions delivered by me at the time of the trial.

Mr. Harper. We are sensible that we cannot require them.

Mr. Randolph was, by consent of both parties, excused from further attendance as a witness.

George Read, sworn.

Mr. Randolph. The witness will please to state what he knows in relation to certain proceedings at a circuit court of the United States, held at Newcastle, in the State of Delaware, in the month of June, 1800.

Mr. Read. It is incumbent on me to state that several years have elapsed since the transactions which I am now about to relate occurred; of course I cannot pretend to say that the language I shall use to convey the sentiments delivered by Mr. Chase is precisely according to what occurred at the time; but the substance of what I relate will be correct. The transactions to which I presume I am called to testify took place at a session of the circuit court, held at Newcastle, for Delaware district, in June, 1800. The court sat two days, viz: on the 27th and 28th days of the month. At that court, Samuel Chase, one of the associate justices, presided, and Gunning Bedford, district judge, was associated with him. Judge Chase, as usual, delivered a charge to the grand jury, on the first day of the term. The grand jury, after hearing the charge, retired to their chamber; after remaining there for some time, they returned into court, and on being asked whether they had found any bills, or had any presentments to make, they answered they had found no bills of indictment, and had no presentments to make. After receiving this answer, Judge Chase proceeded to observe, as nearly as I can recollect, addressing himself to the grand jury, that he had been informed, or heard, that a highly seditious temper had manifested itself in the State of Delaware among a certain class of people, especially in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was ——; the judge here paused, and said, perhaps it might be assuming, or taking upon himself too much to mention the name of this person; but, gentlemen, it becomes your special duty, and you must inquire diligently into this matter. Several of the jurors, I believe, made a request to the court to dismiss them, and assigned as the reasons for their request, that some of them were farmers, and, as it was about the time of harvest, they were anxious to be on their farms. The judge observed that the business to which he had called their attention was of a very urgent and pressing nature, and must be attended to; that he could not, therefore, discharge them before the next day, when further information should be communicated to them on the subject he had referred to. The judge then addressing himself to me as the District Attorney, asked me, as I believe is usual on such occasions, whether I had any criminal charges to submit to the grand jury? I said that none such had yet occurred, and I believed none were likely to occur during that term. Judge Chase, continuing his address to me, observed, you might, by prosecuting proper researches, make some discoveries. Have you not heard of some persons in this State who have been guilty of libelling the Government, or the administration of the Government of the United States? I am told, and the general circulation of the report induces me to believe it, that there is a certain printer in the town of Wilmington who publishes a most scandalous newspaper; but it will not do to mention names. Have you not two printers in that town? I answered that I believed there were. Judge Chase observed, that one of them was a seditious printer, adding, he shall be taken notice of, and it is your duty, Mr. Attorney, to examine unremittingly and minutely into affairs of that nature; times like these require that this seditious temper or spirit, which pervades too many of our presses, should be discouraged or repressed. Can you not find a file of these newspapers between this time and to-morrow morning, and examine them, and discover whether this printer is not guilty of libelling the Government of the United States? This, I say, sir, must be done; I think it is your duty. I observed, as this subject was pressed by the honorable judge, I believed I was acquainted with the duties of my office, and was willing to discharge them. I mentioned that I had not in my possession the papers alluded to by the judge, nor had read them; but that if a file of them were procured and handed to me, I had no objection to examine them, and communicate with the grand jury on the subject.

The judge then said he was satisfied, and, turning to the jury, observed, that he could not discharge them, however inconvenient their stay; they must attend the ensuing day, at the usual hour. The judge then directed that a file of the papers should be procured for me. I understood him to mean the paper called the Mirror of the Times and General Advertiser, though I do not recollect to have heard the title of the paper mentioned during the proceedings. A file of those papers was brought to me in the afternoon, after the adjournment of the court; by whom they were brought I do not recollect. I examined them, but in a very cursory manner, as I was very much interrupted by persons calling upon me. I did not discover during the course of this examination, any libellous matter coming within the provisions of the sedition act.

According to what I understood to be the wish of the judge, I sent this file of papers to the grand jury. Soon after the meeting of the court on the second day, and at the request of the grand jury, I attended them in their room. On entering, the foreman of the jury addressed me, and directed my attention to a paragraph in a publication contained in the Mirror of the 21st June, 1800, republished from the Aurora, reflecting, perhaps in strong and pointed language, on the former conduct of Judge Chase. He observed that there was a difference of opinion among the jurors as to the nature of the paragraph—some doubted whether it was a libel or not, and, if libellous, whether they had a right to present it to the circuit court. I observed that it was not necessary for me to be very particular in my opinion of the publication, as I did not consider it as coming under the sedition law, though it might be considered as an offence at common law, because Judge Chase had decided that the circuit court could not take cognizance of cases arising at common law. I returned into court. After some time, the file was placed before the judge. Judge Chase asked me what had been done, and whether the grand jury had made any discoveries of libellous matter? I answered none, unless it were the paragraph which related to Judge Chase, which I showed him, observing that it did not appear to me to come under the sedition law. Judge Chase acquiesced, and the business passed over on his part in a very polite and affable manner. I do not recollect anything further to have passed. I have, however, an indistinct recollection of a conversation between Judge Chase and myself, in the room of a tavern, before we went into court, in which I understood him to have made a general declaration of hostility against seditious printers.

Mr. Randolph. You said the judge gave orders to somebody to procure a file of newspapers. Do you recollect to whom he addressed himself?

Mr. Read. I do not; but I understood to the bailiff or marshal, or some other officer.

James Lea, affirmed.

Mr. Rodney. Please relate to the court the occurrences which took place at a circuit court of the United States at Newcastle, and whether you were summoned as a grand juror at that court.

Mr. Lea. I was summoned by the marshal of the district of Delaware as a grand juror at the circuit court held in the month of June, 1800. I attended agreeably to that summons, and was qualified as a juror. After receiving a charge from Judge Chase, we retired into our room, and remained there for some time. There appearing to be no business for us, we returned into our box. The usual question was put to us, whether we had found any bills? We said that we had not. After some time, Judge Chase addressed the grand jury, and observed that a very seditious disposition had manifested itself in the State of Delaware, in the county of Newcastle, and particularly in the town of Wilmington; that a seditious printer lived in that place, who edited a paper called the Mirror of the Times and the General Advertiser, who was in the habit of libelling the Government of the United State, and that his name was——, he said he would not mention his name, but that it was our duty to inquire if any seditious publications had been made; that he would not discharge us that day, nor until we had made the inquiry. Several of the jurors addressed the judge for leave to return home, stating that they were farmers, and were extremely anxious to be on their farms, as it was harvest time. Some conversation passed between Judge Chase and the Attorney for the District, after which he said he would not discharge us until the next day. We returned the next day into court, and after sitting some time in our box, we retired to the jury room. A file of newspapers was produced by some persons, and we examined them. We found nothing in them of a libellous nature, in our opinion, excepting something relative to Judge Chase, which some of the jury thought came under the sedition law. We sent for the Attorney of the District to inform us as to the nature of the paragraph. He told us it did not come under the sedition law. We went into the jury box, when a conversation of some length took place between Judge Chase and the Attorney of the District, after which we were discharged.

Mr. Martin. What time did you come down on the first day?

Mr. Lea. We were up a very short time—perhaps an hour.

Mr. Martin. What time the second day?

Mr. Lea. A good while.

Mr. Martin. What time is the harvest in Delaware?

Mr. Lea. It was the time of hay-harvest.

Mr. Randolph. I will ask you whether you recollect the judge to have quoted the title of the paper?

Mr. Lea. I recollect that he did.

Mr. Randolph. Was it the same paper that was sent you by the attorney?

Mr. Lea. It was.

John Crow, sworn.

Mr. Rodney. Please to state what occurred in the circuit court held at Newcastle.

Mr. Crow. I was not in the court-house the first day. On the second day, I went into court just after it was opened. I recollect there was some conversation that took place between Judge Chase and the district attorney. The judge asked the attorney of the district if there were any presentments likely to be made that day. The attorney answered, there were none; that, on examining the file of newspapers, there was nothing found rebellious, unless it were some strictures on the judge himself. If that is all, the judge replied, we will take no notice of it. I recollect nothing further. The judge shortly after discharged the grand jury.

John Montgomery, sworn.

Mr. Randolph. The subject on which it is understood you are capable of giving some information to the court is the conduct of Judge Chase, at a circuit court of the United States held for the district of Maryland at Baltimore in May 1803, or about that time.

Mr. Montgomery. The point, I presume, on which I am called to give testimony, relates to a charge to a grand jury delivered by Judge Chase, at a circuit court where he presided, and Judge Winchester was associated with him. It will not, from the nature of the subject, be expected that I shall be able to detail, in the precise language of the judge, the whole of the charge which was delivered in 1803 at the May term. Though not one of the bar, I was present at the court, and took a chair among the gentlemen of the bar. After the grand jury were impanelled, Judge Chase addressed them. He appeared to address them from a written paper that lay before him. He proceeded in the usual manner to charge the jury as to the duties expected to be performed by them. After he had thus far proceeded in his charge, he mentioned, that before the jury retired to their chamber, he would make some observations, and that they would be considered as flowing from a wish for the happiness or welfare of the community. He stated that it was important that the people should be fully informed, particularly at such a crisis; that falsehood was more easily disseminated than truth; and that the latter was reluctantly attended to, when opposed to popular prejudice. I cannot pretend to state the sentiments delivered by the judge in the order in which they were delivered. I can undertake to state, from my recollection, the substance of those he delivered. To the best of my recollection, the judge stated that the Administration was weak, relaxed, and inadequate to the duties devolved on it; and that its acts proceeded not from a view to promote the general happiness, but from a desire for the continuance of unfairly-acquired power. The language *unfairly-acquired power* made a strong impression on my mind at the time; and when the judge called the attention of the jury to the observations he was about to make, I was prepared to expect something extraordinary from him, as I was at Annapolis when he pronounced the valedictory address which Mr. Mason, in his testimony, took occasion to mention. The judge stated the violation of the Constitution that had taken place by the act of Congress repealing the Judiciary act of 1800, and the consequent removal of sixteen judges; that it had made a violent attack on the independence of the Judiciary. He also found fault with a law passed by the Legislature of Maryland in 1800, the effect of which was the removal of all the judges on the county-court establishment. He stated that those acts were a severe blow against the independence of the Judiciary. He stated, that since the year 1776, he had been an advocate for a representative or republican form of government; that it was his wish that freemen should be governed by representatives chosen by that class of citizens who had a property in, a common interest with, and an attachment to, the community. The language might have been in the words of our constitution. He found fault with the law passed by the Legislature of Maryland, which he styled "The Universal-suffrage Law." He stated that that also affected the independence of the Judiciary, and to the best of my recollection, he explained his ideas in this manner: that every free, white, male citizen, in the language of the Constitution, having the qualification of age and residence, though he had not a property in, an interest with, and an attachment to, the community, being suffered to choose those who constituted the Legislature, and the Judiciary being dependent on the Legislature for their support and continuance in office, few characters of integrity and ability, who are competent to discharge the duties of judges, would be found to accept appointments held by such a tenure. He stated that these measures were destructive of the happiness and welfare of the community; that they would have a tendency to sink our Republican Government into what he called a *Mobocracy*—the worst of all possible governments. When on the subject of the alteration of the State constitution, he stated that the framers of that constitution were men of ability and patriotism—the names of some of whom were honorably enrolled on the Journals of Congress, and also I think he said, on the Journals of the Convention of Maryland; that he had to observe, that the sons of those characters (which he regretted) were the chief supporters of these destructive measures. He stated that where there were equal laws and equal rights—viz: laws equally administered between the rich and the poor—in that country there was freedom. But where the administration of the laws was partial and uncertain, the people were not free; and he was apprehensive we were fast approaching to that state of things. He stated that there was but one act remaining to be done, (mentioning the act passed by the Legislature of Maryland for the trial of facts, and for abolishing the general and appellate court;) if that should be adopted, the Constitution would not be worthy of further care or preservation. At the close of the judge's charge, he, in an impressive manner, called on the jury to pause, to reflect, and when they returned to their homes, to use their endeavors to prevent these impending evils, and save their country. He said that the people had been misled by misrepresentation, falsehood, art, and cunning;

that, by correcting these errors, the threatened evils might be prevented—or words to that effect. With regard to a part of the answer of Judge Chase, which has been published, and which I have read, perhaps it may not be improper for, and may be expected of me, to mention a fact contradictory to what is stated therein. It is stated in the answer, "The next opinion is, that the independence 'of the judges of the State of Maryland would be 'entirely destroyed if the bill for abolishing the 'two supreme courts should be ratified by the next 'General Assembly. This opinion, however incorrect it may be, seems to have been adopted by 'the people of Maryland, to whom this argument 'against the bill in question was addressed; for, 'at the next session of the Legislature, this bill, 'which went to change entirely the Constitutional 'tenure of Judicial office in the State, and to render the subsistence of the judges dependent on 'the Legislature, and their continuance in office 'on the Executive, was abandoned by common 'consent."

It is true it was abandoned by common consent, but not for the reasons assigned by the judge in this part of his answer.

Mr. Nicholson. Was the provision for establishing universal suffrage a part of the constitution at the time Judge Chase delivered the charge?

Mr. Montgomery. It was.

Mr. Randolph. You state that the charge appeared to have been delivered from a written paper which lay before the judge. Do you mean to be understood, that after going through the first part of the charge on the ordinary duties of a grand jury, the latter part appeared to be delivered from a written paper?

Mr. Montgomery. It appeared to me that the latter, as well as the former part, was delivered in the same manner—the judge keeping his eyes on the paper before him.

Mr. Nicholson. Do you recollect whether the very last part of the charge, when he desired the jury to pause and reflect, &c., was delivered from the written paper?

Mr. Montgomery. It appeared to me as if he confined himself throughout to the written paper.

John T. Mason was again called.

Mr. Randolph. You will please to mention such circumstances as came under your observation, at a circuit court of the United States held at Baltimore in May, 1803, in relation to a charge delivered to a grand jury.

Mr. Mason. I was present when such a charge was delivered; I was present when it commenced and continued in court until it ended. I have, however, a very imperfect recollection of the greater part of it, and of a great part of it, perhaps, I have no recollection at all. I had not been in Baltimore for two years previous; the court room was very full; and while I was there a number of persons came up to salute me. I felt no particular interest in it, and I only attended to those parts of the charge, during the delivery of which I was not interrupted by interchanging the civilities of my friends and acquaintance. I do not think I can charge my recollection with more than three great points in the charge; nor am I certain that I can give them in the order in which the judge delivered them. The first contained pretty strong and censuring animadversions on the act of Congress which repealed the law passed in February, 1801, for the new organization of the courts of the United States, by which the sixteen new judges of the circuit court were removed from office. He spoke of it as an event which had wounded the independence of the judiciary, and as calculated to produce great mischief. I do not, however, pretend to give the words, but only to embrace the idea.

With regard to the second point which I recollect, it will perhaps be necessary for me to explain that, according to the provision in the constitution of Maryland for altering that instrument, amendments may be made by a Legislative act passed by two successive Legislatures. Under the constitution, before a late amendment was made, no man was permitted to vote unless possessed of property to the value of thirty pounds. That part of the constitution had been altered by two successive Legislatures by confining the qualifications of voters to age, residence, and color. This amendment Mr. Chase spoke of as one calculated to sap the foundations of Government, as injurious, and as leading to a great many evils.

The third ground arose on this circumstance: An effort had been made to alter the constitution by a considerable change in the judiciary system, and which had so far progressed as to have obtained the sanction of one Legislative vote. He spoke of this as a measure extremely dangerous in its nature, and which, if carried into effect, was calculated to deform and injure one of the most beautiful features of the constitution, and so to affect it as to leave nothing or little in it worth preserving. He concluded his remarks on this point by an earnest recommendation to those persons to whom he addressed himself, to make the necessary exertions to prevent the passage of this act, which would have made it a part of the constitution. There were at least two gentlemen in the room who were members of the Legislature, and whose fathers, as I understood, were members of the convention which formed the constitution of Maryland. Judge Chase observed that it was a matter of peculiar mortification, or concern, to look at, to see, or to know (using some such expression) some gentlemen engaged in thoughtlessly demolishing the fair fabric, which their fathers had toiled with him in erecting.

There is one point of fact in which I differ from the witness last examined. Judge Chase delivered the charge from a written paper which he had before him. He wore his spectacles at the time, and though he turned over leaf by leaf, he occasionally threw up his head, and sometimes raised his spectacles on his forehead, and spoke as if he was making what I considered an enlargement of the original charge, by extemporary observations in addition to what he had written. I cannot charge my memory with anything further.

Samuel H. Smith, sworn.

Mr. Nicholson. Please to state what you know of the charge delivered by Judge Chase at Baltimore.

Mr. Smith. The charge of Judge Chase having been published, I did not expect to be called upon to state in detail its general contents; supposing that the only inquiry made would be on the correspondence of my recollection with the contents of the published charge. I do not know that I should be able, under these circumstances, to give a particular statement, from memory, of its contents. On the evening subsequent to the delivery of the charge, I committed to paper the most important features of it, which were published in the National Intelligencer, and which form part of the printed testimony received by the committee of inquiry. If I could be indulged with access to it, I should be enabled to state more correctly my knowledge of the charge.

[Mr. Smith here, with permission, read the following, extracted from the National Intelligencer of May 20, 1803:

"After a definition of the offences cognizable by the grand jury, Judge Chase said he hoped he should be pardoned for making a few additional observations. He had, he remarked, been uniformly attached to a free republican Government, and had actively participated in our Revolutionary struggle to obtain it. He still remained warmly attached to the principles of Government then established. Since that period, however, certain opinions had sprung up which threatened with ruin the fair fabric then raised. It had been contended that all men had equal rights derived from nature, of which society could not rightfully deprive them. This he denied. He could conceive of no rights in a state of nature, which was in fact entirely a creature of the imagination, as there was no condition of man in which he was not, under some modification, subject to a particular leader or particular species of government. True liberty did not, in his opinion, consist in the possession of equal rights, but in the protection by the law of the person and property of every member of society, however various the grade in society he filled. Nor did it consist in the form of government in any country. A monarchy might be free, and a republic in slavery. Wherever the laws protected the person and property of every man, there liberty existed, whatever the government was. Such, said he, is our present situation. But much I fear that soon, very soon, our situation will be changed. The great bulwark of an independent judiciary has been broken down by the Legislature of the United States, and a wound inflicted upon the liberties of the people which nothing but their good sense can cure. Judge Chase here went into an assertion of the right of the judiciary to decide on the constitutionality of laws. He then adverted to the proceedings of the Legislature of Maryland. He commented on the wisdom and patriotism of those who had framed the constitution of that State. That wisdom and patriotism had never conceived liberty to consist in every man possessing equal political rights. To secure property the right of suffrage had been limited. The convention had not imagined, according to the new doctrine, that property would be best protected by those who had themselves no property. The great rampart established in the limitation of suffrage was now demolished by the principle of universal suffrage ingrafted in the constitution. In addition to this, a proposition was now submitted, whose ratification depended upon the next Legislature, and which, if ratified, would destroy the independence and respectability of the judiciary, and make the administration of justice dependent upon Legislative discretion. If this shall, in addition to that which establishes universal suffrage, become part of the constitution, nothing will remain that will be worth protecting. Instead of being ruled by a regular and respectable Government, we shall be governed by an ignorant mobocracy. When he reflected on the ruinous effects of these measures, he could not but blush at the degeneracy of sons, who destroyed the fair fabric raised by the patriotism of their fathers.']

President. Did you hear any reflections cast on the Administration?

Mr. Smith. I do not recollect any other beside those contained in the statement I have read.

John Stephen, sworn.

I was at Baltimore when the charge was delivered by Judge Chase. My recollection of its contents is extremely vague. But, with regard to some of it, it coincides with that of Mr. Montgomery, Mr. Mason, and Mr. Smith. He spoke of the repeal of the Judiciary law, and said that it was injurious to the independence of the judges. He also mentioned the general suffrage law as injurious; and said no man ought to be permitted to vote unless he had a property in, a common interest with, and an attachment to, the community; that the act violated this principle, and would be attended with very injurious consequences; he denied the doctrine of natural rights; and said that they were altogether derived from convention; and at the end of the charge he exhorted the jury to use their efforts to prevent the injury likely to result from the temper of the times. I cannot say whether Judge Chase confined himself to a written paper or not. He declared that the independence of the Judiciary of the United States had been injured by the repeal of the Judiciary system; and that the bill then pending before the Legislature of Maryland, if adopted, would have the same effect upon the Judiciary of that State.

Mr. Nicholson stated, that all the witnesses present on the part of the prosecution had been examined; the managers would therefore proceed to offer certain records; but, as several material witnesses were absent, he hoped they would not be precluded from calling them, should they attend, at a future stage of the trial.

Mr. Randolph offered in evidence a copy of the record in the case of J. T. Callender; also, in the case of Fries.

Mr. Randolph then stated that the managers had submitted all the evidence they were prepared to adduce. Whereupon the Court rose.

FRIDAY, February 15.

The Court was opened at 10 A. M.

Present: The Managers, accompanied by the House of Representatives in Committee of the Whole: and Judge Chase attended by his counsel.

The evidence being closed on the part of the prosecution,

Mr. HARPER, of counsel for the respondent, addressed the Court to this effect:

Mr. President: We feel so strong a reliance on the justice, impartiality, and discernment of this honorable Court, that nothing but an anxious regard for the character and feelings of the honorable gentleman who is the object of this prosecution, and a solicitude to remove even the slightest imputation of impropriety or incorrectness that may rest on his conduct, could induce us to occupy any portion of that time which we know to be so precious, by the introduction of testimony on his part. We believe the charges to be utterly unsupported by the testimony adduced on the part of the prosecution; and had we no other object than a mere legal acquittal, we should cheerfully rest the case on that testimony. But we are aware that some parts of the honorable judge's conduct, though not criminal nor punishable by impeachment, may, if left without explanation, appear in an unfavorable light. We are prepared with testimony to give this explanation; to show that, through all the transactions which form the matter of this prosecution, he has been governed by the purest motives, and that whatever errors he may have committed, are trivial in themselves, are imputable to human infirmity alone, and were instantly corrected by himself. This testimony we request the permission of this honorable Court to produce. But a consciousness of the strong ground on which we stand, and a recollection of the very important public business which now presses on the attention of this honorable Court, in its Legislative capacity, have determined us to waive our right to a general opening of our case; and to confine ourselves, in this stage of the cause, to a brief statement of the points to which our testimony will be directed.

On the first article, which relates to the conduct of Judge Chase in the trial of John Fries for treason, we shall produce testimony to show, that the opinion contained in the paper which the judge delivered to the prisoner's counsel was not only legal, but had been twice expressly decided, and once admitted in the same court, and had before that trial been laid down as a general principle of law, in a charge delivered to a grand jury in the same court, by one of Judge Chase's predecessors.

[Here Mr. Harper sat down, while the Committee of the Whole were entering and taking their seats.]

Mr. Harper then rose and proceeded. He stated that the counsel for the respondent had begun to open their defence, and were stating the ground which they should take in opposition to the first article of impeachment. We shall show, said he, by the most indisputable testimony, that the point of law respecting treason in levying war against the United States, which was stated in the paper delivered to the counsel of Fries, had been once informally decided by the same court, in a prior case, and twice after solemn argument and full discussion, and that one of those discussions was made in the case of John Fries himself, on an indictment for the same offence. We shall show that Judge Chase's predecessor had, before counsel was heard and before an indictment was found, delivered the same opinion in a charge to the grand jury. We shall proceed to prove in a more particular manner the contents of the paper thus delivered to the counsel. We shall produce the original paper itself; and shall prove that delivered to the prisoner's counsel to be a true copy of it; and we shall conclude, by showing that when the counsel of Fries had refused to proceed in his defence, and were informed by the judge that they might go on, and conduct the case as they thought proper, he employed no menacing expression, and uttered no such words as "proceed at the hazard of your characters:" but merely informed them that they should be under no other restriction, but that which a regard to their professional character would impose. That, far from threatening, he did all in his power to soothe; and instead of restricting, gave the utmost latitude of indulgence.

Proceeding, then, to the second general head of accusation, the conduct of the respondent relative to the trial of Callender, which furnishes the matter of the second article, and embraces in the whole five articles, we shall show that the copy of the "Prospect Before Us," which the respondent carried with him to Richmond, was marked, not by him, but by another person, without any view to a prosecution of the author, and was given to him by that person without any request, on his part, as a performance which might amuse him on the road.

As to the private conversation at Annapolis, we shall prove that it was a mere jest between the respondent and the gentleman, who, after treasuring it up for five years, has this day brought it forward to support an impeachment; and whose recollection of it we shall show to be far less accurate than ought to be required of a man, who, after so great a lapse of time, adduces a private, confidential, and jocular conversation, to aid a criminal prosecution.

We shall then follow Judge Chase to Richmond, where we shall show that, far from having formed a corrupt determination to oppress Callender, he felt solicitous for the escape of that unfortunate wretch; that, far from entering into a combination with the marshal to pack a jury for the conviction of Callender, Judge Chase expressed a wish that he might be tried by men of that political party whose cause his book was intended to support. We shall prove, by testimony not to be doubted, that no conversation whatever took

place between the judge and the marshal, relative to striking any person from the panel, much less such a conversation as has been sworn to by one witness for the prosecution. We shall show that no panel of the jury actually summoned was formed, until the opening of the court on the day when the trial of Callender was to have commenced; that it was completed in open court, and was never seen by the judge. And we shall prove that the marshal, not by the direction of the judge, from whom he was bound to receive no directions on that subject, but with his entire approbation and according to his advice, took the utmost pains to select a jury of the most impartial, considerate, and respectable men; that, in this selection, no attention was paid to party distinctions; and that if no persons of Callender's political opinion actually did serve on the jury, it was because, after being summoned, they made excuses, which were admitted by the court, or refused to attend.

Thus much respecting the conduct of the judge previous to the trial. Proceeding then to the particular matter of the second article, which relates to the supposed rejection of John Basset's application to serve on the jury, we shall prove, more fully than we have already done, that the nature of this application has been wholly misunderstood by the witnesses on the part of the prosecution; that the juror did not offer an excuse, or apply to be discharged, but merely suggested some scruples of delicacy, and was willing to serve if those scruples were not sufficient to constitute a legal disqualification. We shall fully corroborate the testimony which the juror himself has given on this head, and shall show clearly that his scruples were not of such a nature, as to furnish a legal or proper ground of objection to his competence as a juror.

As to the refusal of a continuance, which has been so much relied on as a criminal violation of the law, with intent to oppress the party, we shall prove, that although no legal grounds for a continuance were shown, and it was therefore not in the power of the court to grant it, Judge Chase did offer to postpone the trial for a month or six weeks, in order to accommodate Callender and his counsel, and to enable them to prepare; an offer which they thought proper to reject. And we shall also show, that when this motion for a continuance was made, the law of Virginia, by which it is now contended that the court ought to have been governed, was not cited, nor even mentioned.

With respect to the conduct of Judge Chase towards Callender's counsel, we shall prove that it was free from any appearance of harshness, or desire to intimidate, abash, or oppress: that the irritation which took place proceeded from the counsel themselves, and that the conduct of the court was far more mild and forbearing than from those irritations could have been expected. That every decision on the law was the joint opinion of Judge Chase and his colleague, delivered after consultation between them. That every interruption of the counsel arose from their pertinacity in pressing points which had been decided, and on which propriety and duty required them to be silent; and that after the respondent had delivered the opinion of the court on these points of law he offered to assist the counsel for the traverser in framing a case for the opinion of all the judges of the Supreme Court, and thus to give them an opportunity of correcting any errors which he and his colleague might have committed in those decisions. And finally, we shall produce a witness who, having attended the trial and taken down all the proceedings in short-hand, will lay before this honorable Court an exact detail of all that passed.

Passing then to the matter of the fifth and sixth articles, we shall prove, by a rule solemnly made by the Supreme Court of the United States, that they never considered the State laws as regulating *process*, by virtue of the act of Congress which is relied on in support of these articles; but merely as governing the decision of rights acquired under them, when such rights come into question in the courts of the United States; that the practice in the courts of Virginia, under the State law in question, has been and is conformable to our construction, and not to that contended for on the other side. And as a proof how little the recollection of men, even the most correct, can be relied on, in cases where their feelings have been strongly excited, we shall produce a record, in which the learned gentleman who, though very young, was Attorney General of Virginia in 1800, and who has delivered his testimony with the greatest candor and propriety, did himself order a capias, on a presentment in a case not capital. We shall produce evidence to prove that the capias is the proper process, in all cases of presentments, except those of petty offences, which are tried by the court, without an indictment, and are punishable by fine only, but not imprisonment. And to remove every possible doubt on this head of accusation, we shall prove that when the presentment against Callender was made, and it became necessary to issue process against him, Judge Chase applied to the District Attorney for information as to what was the proper process, who answered, a capias; and that the capias, which was actually issued, was drawn up by the clerk, inspected and approved by the District Attorney, and issued on his suggestion.

Respecting the transactions at Newcastle, in the State of Delaware, which constitute the matter of the seventh article, we shall prove that those offensive and improper expressions, which are attributed to the respondent, relative to a seditious temper, in the State of Delaware, and, especially in the county of Newcastle and the town of Wilmington, never were uttered by him; that the witnesses who have deposed to those expressions are under a mistake; and that nothing was said or done by Judge Chase on that occasion, but what he has admitted in his answer; but what propriety justifies, and his duty required. To this end we shall offer the testimony of persons who were in a situation to remark every occurrence; to listen to every expression, and on whom such expressions, had they been uttered,

could not have failed to make a strong impression. We shall then proceed to the charge delivered to the grand jury at Baltimore, which furnishes the eighth and last ground of accusation; and then we shall prove that the respondent said nothing of a political nature to the jury, except that which he has stated in his answer, and which he hopes to satisfy this honorable Court he had a right to say, however indiscreet or unnecessary the exercise of that right in this instance may have been. We shall produce an host of witnesses to prove that he never uttered such sentiments as are attributed to him by one witness, relative to the present Administration, its character, views, and manner of obtaining its power; sentiments which he admits would have been in the highest degree reprehensible on such an occasion; that the charge which was delivered was read from a book; and that he spoke nothing extemporary, as other witnesses for the prosecution have supposed. And, finally, we shall produce this book to speak for itself; shall prove it to be the same from which the charge was delivered; and shall conclude with the examination of witnesses who stood round the respondent while he read it, sat by his side, and almost looked over him while he delivered the charge which it contains.

This, Mr. President, will be the general bearing of our testimony; which we shall now, with the permission of this honorable Court, proceed to adduce, in the order in which it has been stated.

Samuel Ewing, sworn.

Mr. Hopkinson. (producing a paper.) Be pleased to inform the Court whether this is your handwriting.

Mr. Ewing. It is my handwriting so far as the paragraph at which I have signed my name; it was written by me at the time, and my name signed to it. The remainder is not in my handwriting, and I do not know by whom it is written.

Mr. Hopkinson. At what time and from what paper did you make it out?

Mr. Ewing. I made it out from the opinion of the court which was thrown down by Judge Peters or Chase, and within about half an hour after it was thrown down from the bench. I took the copy home with me, to Mr. Lewis's office, where I was at that time a student. In the afternoon of the same day Mr. Caldwell, the clerk of the court, called on me, and, at the desire of Judge Chase and Judge Peters, requested that it might be returned; and I gave it to Mr. Caldwell. I made out only one copy, and this is it.

Mr. Hopkinson. The paper being proved, I will read it in evidence.

Mr. Rodney observed that the original paper was the best evidence, and as one of the copies thrown down from the bench was already before the court, he presumed that ought to be considered as the best evidence.

Mr. Hopkinson said, he was desirous to read it merely to show that it corresponded with the copy in the possession of the attorney of the district.

Mr. Hopkinson then read the copy in the handwriting of Mr. Ewing, (containing the opinion of the court in the case of Fries,) which appeared to correspond precisely with the copy adduced by Mr. Rawle.

Mr. Hopkinson. Please to state whether you were in the court the day subsequent to that on which the opinion was delivered by the court, and what you recollect occurred at that time?

Mr. Ewing. I attended at the court the day succeeding, and I remember that Judges Chase and Peters, addressing Messrs. Lewis and Dallas, said they were not to consider anything which took place the day before as a restriction on the course they wished to pursue; Judge Peters said that everything done yesterday was withdrawn. Judge Chase asked them if they would go on in the cause; some conversation ensued, which ended in the determination of Messrs. Lewis and Dallas not to proceed in the defence of Fries. Judge Chase then made this observation: that if, after the court had expressed their opinion on the law, they persisted in stating to the jury their sentiments on the law, they must do it at the hazard of their legal reputations. I did not understand this as a menace, but as a delaration to the counsel that they must do it on their standing at the bar, and from a regard to their reputations. If I state anything further, it will only be a recapitulation of the testimony already given.

Edward J. Coale, sworn.

Mr. Hopkinson. Will you examine that paper, and say what you know respecting it?

Mr. Coale. It is a copy of the paper handed down by Judge Chase on the trial of Fries, made at the instance of Judge Chase, from a paper in his hand-writing; there were some words in the original which I could not ascertain: I left blanks for them, and they were filled up by Judge Chase; the other parts are written by me. It was made out before the trial of Fries. When in the office of Judge Chase, I was frequently in the habit of transcribing papers from his hand-writing. After I left him I went to Philadelphia, and lived there when Fries was tried. The judge occasionally, during my residence there, sent for me to transcribe his opinions; and on that occasion he called on me to transcribe this paper from the original hand-writing of himself.

Mr. Hopkinson. Was there a conversation between you and Judge Chase, in which he assigned his reasons, and what were they, for making out this opinion?

Mr. Nicholson objected to the putting of this question.

The President desired Mr. Hopkinson to reduce it to writing.

Mr. Nicholson said he would withdraw his objection rather than occasion delay. Some objection, however, arising on the part of the court,

Mr. Hopkinson submitted, in writing, the following question:

At the time Judge Chase desired you to make the copy in your hand, did he, or did he not, explain to you his reasons or motives for drawing up the paper from which this copy was made? If yes, what were they?

Mr. Hopkinson said, he thought such questions perfectly legal, when they went to show the intention of the accused. We have heard, said he, much of the *quo animo*; and it is perfectly clear, that the intention constitutes the guilt of the offence.

Mr. Nicholson. The *quo animo* is to be collected from the acts of the party. The evidence of his declaration may be shown to prove the *quo animo*. But I do not consider it to be correct that Judge Chase shall be permitted to give in evidence declarations made at any other time than that when we have stated he made them; otherwise it will always lay in the discretion of the party accused to state declarations made at another time by him, for the purpose of justifying any acts he may have committed.

Mr. Martin said he had ever considered the declaration of the party at the time he was charged with committing a criminal act, as competent evidence to show his innocence.

Mr. Nicholson said there was no doubt of it; but that he was not charged with drawing out the paper as a criminal act. Any declaration made by Judge Chase at the time he delivered the opinion of the court, may be given in evidence, but any other declarations have nothing to do with the case.

The President. Where was the conversation between the judge and yourself?

Mr. Coale. At the judge's lodgings.

The question was then taken on permitting the question to be put, and passed in the negative—yeas 9, nays 25.

Mr. Hopkinson next offered a certificate of the clerk of the circuit court of Pennsylvania, to show that at the trial of Fries, in 1799, there were eighty-six civil suits depending.

Also a copy of the indictment on the first trial of Fries.

Also a part of a charge delivered by Judge Iredell at the term when Fries was tried, taken from Carpenter's report of that trial, page 14.

Mr. Campbell intimating some objection to receiving this paper in evidence,

The President said it might be read as a report of the case; but what credit it would be for the court to determine.

Mr. Rawle was again called in.

Mr. Hopkinson. You were District Attorney at the trial of Fries. I will ask you whether the restriction of the court as to arguing the point of law was not applied to the counsel of the United States, as well as to those of the prisoner?

Mr. Rawle. I certainly did consider the restriction as imposed upon us both.

Mr. Hopkinson submitted extracts from 2d Dallas, pages 346, 348, to show that in the cases of Vigol and Mitchell the crime of high treason was completely settled by the court, and was the same as defined by Judge Chase in the trial of Fries.

William Meredith, sworn.

Mr. Hopkinson. Were you present at the trial of Fries?

Mr. Meredith. On the 22d day of April, 1800, I went to the court house for the purpose of attending the trial. It was rather at a late hour; I think after eleven o'clock before I reached the court house, I met several persons coming from the court room; I thought therefore that the court had adjourned, but not seeing any gentlemen of the bar, or the judges, I went on; when I came into court, I saw Judge Chase holding a paper in his hand, and he said that the court had with great deliberation considered the overt acts in the indictment against Fries, that they had made up their minds on the extent of the Constitutional definition of treason, and that to prevent their being misunderstood, they had committed their opinion to writing, one copy of which was intended to be given to the District Attorney, another to the counsel for the prisoner, and a third to be given to the jury; perhaps something else might have been said, but I do not recollect it. The paper was then thrown down by him to the bar, and a sentiment of this kind expressed by Judge Chase: that this opinion was not intended by the court to prevent the counsel from proceeding in the usual manner. I felt a desire to take a copy of the paper. I do not recollect whether more than one was thrown down. I had not, however, an opportunity of doing it. The paper was so fully occupied till the adjournment of the court, that although I made two or three attempts to obtain it, I could not succeed. The court adjourned a short time afterwards. After I went home I recollect that an application was made to me by the clerk of the court to return the copy, which he understood I had taken. I informed him I had not taken a copy. On the following day I was in the court room at the opening of the court. Fries was put to the bar, and the judge then inquired whether the counsel were ready to proceed on the trial. I remember Mr. Lewis addressing himself to the court, and objecting to proceed in the defence, because the counsel had been restrained by the court from proceeding in the manner which they deemed most beneficial to their client. I remember also that Judge Chase told him that he ought not to refer to the opinion which had been delivered on the preceding day; that the counsel were not to be bound by that opinion, as it had been withdrawn. Mr. Lewis referring to that opinion, however, considered it as the formed and decided opinion of the court, and that although the court had withdrawn it, it still would have an operation upon their minds; that while the court was under its influence, they could not expect to be heard in any of their arguments with effect. Judge Peters replied that the opinion was withdrawn, and I think Judge Chase repeated the opinion before expressed, that the counsel were not to be bound by that opinion, might enter fully into the case, and argue as well on the law as on the fact before the jury. I recollect Mr. Lewis stating to the court his opinion of the appositeness of cases decided at common law in England. I remember Judge Chase expressing his opinion and belief that they were perfectly inapplicable; and afterwards remarking, that if, however, the counsel would go on, it was not the intention of the court to circumscribe them, or to take from the jury the decision of the law as well as the fact. He further added, that the counsel might manage the defence in such way as they thought proper, having a regard to their own characters. I am the more particular and positive of these expressions, because very shortly after the trial I made a summary of the proceedings. I find it stated as coming from the mouth of Judge Chase, and that he repeated that the counsel for the prisoner might go on in their own way, having a regard to their own characters. Judge Peters made a remark which I thought was calculated to put the counsel into good humor, but they persisted in their refusal to proceed. Thus far the court manifested, in my opinion, a desire that the cause might progress, and a persuasive and conciliatory temper; but Mr. Lewis having again decidedly said that he would not proceed, Judge Chase said, if you suppose by conduct like this to put the court into a difficulty, you are mistaken. After a pause, Judge Chase addressed himself to the prisoner, and asked him if he was ready to proceed on his trial, or whether he would have other counsel assigned to him. Fries replied he did not know what was best for him to do, but he would leave his case to the court. Mr. Rawle stated that from the peculiarity of the circumstances of the case, and the prisoner being left without the assistance of counsel, his wish was that the trial might be postponed for a day, and the postponement took place by order of the court. The following morning when the court was assembled, Fries was again put to the bar, and Judge Chase inquired of him whether he wished the court to assign him counsel? His reply was, that he would trust himself to the court and jury. Judge Chase replied, then by the blessing of God the court will be your counsel, and will do you as much justice as could be done by the counsel that were assigned you, or nearly in those words. The trial proceeded, but I was not present during the whole of it.

Mr. Hopkinson. Do you recollect whether Judge Chase guarded the prisoner against putting any improper questions to the witnesses, &c?

Mr. Meredith. Judge Chase seemed to me to perform his promise. He told him he had a right to put any questions he pleased, and guarded him against putting improper ones.

Mr. Harper said he would next proceed to the case of Callender.

Luther Martin, sworn.

Mr. Harper. Did you furnish Judge Chase with a copy of the book, entitled the "Prospect Before Us," and at what time did you furnish him with it?

Mr. Martin. It is not a pleasing thing for me to be a witness on this point, as I may be considered as a party concerned, and especially from being one of the counsel for Judge Chase. Yet, as it is required from me, I will proceed to state what I know. When I was in New York, I observed in a newspaper which I took up at a barber's shop an advertisement for the sale of the "Prospect Before Us." I mentioned it to Judge Washington, and he sent his servant to procure a copy, and I desired him to purchase two copies. I read it, and as was usual with me with respect to books any wise interesting, I scored such passages as were remarkable either for their merit or demerit, and I did score a great portion of the book. But I did not score them with the least idea of an indictment being founded upon them. When I scored the book I did not know that Judge Chase was going on the circuit of Virginia. My scoring was for my own amusement, and for that of my friends. Afterwards I saw Judge Chase. I asked him if he was going down to Richmond; he answered yes. I asked if he had seen the book called the "Prospect Before Us?" He said he had not. I then told him, I will put it into your hands, you may amuse yourself with it as you are going down, and make what use of it you please. There was a great deal more scored than was contained in the indictment. I most solemnly declare that I had no view to a prosecution in scoring it; though I have no hesitation in saying that in common with every worthy inhabitant of America I detested the book.

Mr. Nicholson. What do you mean by detest?

Mr. Martin. I am ready candidly to acknowledge that I did think it a book that ought to be prosecuted; and I did not think that Judge Chase would have an opportunity of seeing it unless I gave him a copy of it. Having since heard it suggested that I had some share in drawing up the indictment against Callender, I most solemnly declare I did not put pen to paper on the subject.

Mr. Harper. Was not your name written on the book?

Mr. Martin. It was.

President. Did you express the view you had in putting it into his hands?

Mr. Martin. I said what I have already stated; that he might take it down with him, and make such use of it as he pleased.

James Winchester, sworn.

Mr. Harper. Will you please to state whether you were in Annapolis in 1800, in court with Judge Chase, and Mr. John T. Mason, and what was the conversation which then took place?

Mr. Winchester. I attended a circuit court held at Annapolis in 1800. I do not recollect either the day the court commenced or ended. I think on the last day of the term sentence was passed on —— Saunders for stealing, in his character of postmaster, the contents of a letter. A crowd gathered round the door, and retarded our passage out of court. I do not remember what persons remained; but Mr. Mason came up and addressed himself to Judge Chase. My recollection is at best but imperfect, and of this conversation necessarily indistinct. In the account of it, therefore, I shall use my own language. I may occasionally use the language of Judge Chase and Mr. Mason. According to the impression on my

mind the conversation commenced in this way. Judge Chase had delivered a charge to the grand jury. Mr. Mason came up, and in a laughing manner jocosely asked in what light are we to consider the charge, as moral, political, judicial, or religious? These are the words, I believe, but of this I am not certain. The judge replied in the same style and manner, I believe, that it was a little of all. I cannot be certain, but I think Mr. Mason intimated to the judge that he would not deliver such sentiments in Virginia. It appeared to me that the language of Mr. Mason conveyed to Judge Chase the idea that he was afraid to deliver such sentiments in Virginia, though I am not myself confident that such was his meaning. The judge replied that he would, and that he would at all times and in all places execute the laws in the manner he had declared. The conversation then turned on the book called the "Prospect Before Us;" as well as I remember it was spoken of as a book written by Callender. The conversation which passed on the subject I cannot pretend to relate at all, more than that I have a strong impression on my mind that Judge Chase mentioned that Mr. Martin had put the book into his hands, that he would take it with him to Richmond, and lay it before the grand jury, and have it presented. I heard Mr. Mason's testimony, and my recollection corresponds with his, that the whole conversation was jocular. I do not remember the particular expressions which Mr. Mason relates; but I cannot say that they were or were not made—because my attention was not very pointedly directed to the conversation, and at the time, from the laughing which took place, I might not have heard the expressions though they had been used.

Mr. Harper. What is the expression you do not recollect?

Mr. Winchester. That if the whole State of Virginia was not depraved, he would carry the book down with him, and have the fellow indicted.

William Marshall, sworn.

Mr. Harper. Inform the court how soon you saw Judge Chase after his arrival at Richmond, what passed between you, &c.?

Mr. Marshall. Judge Chase arrived in Richmond, but whether on the 21st or 22d of May, I do not recollect; but my impression is that it was Tuesday. I waited on him, as was usual with me, and gave him information respecting the state of the docket. The associate judge did not attend on the 22d, when the court was opened and the grand jury received their charge. They went to their room, and did not return till Saturday the 24th of May, when they returned a presentment against James T. Callender, which I have. [The original presentment was produced by the witness, read, and delivered to the Secretary.]

As soon as I had read the presentment, at the request of the attorney of the district the jury were taken back to their chamber, and progress was made in preparing the indictment. There was some conversation between Judge Chase and Mr. Nelson, which lasted for a few minutes. Judge Chase inquired what was the proper process on the presentment. The answer which the District Attorney made, was, that he supposed a capias was the proper process. I recollect that Judge Chase said something of a bench warrant, which was a practice unknown to us. Judge Chase asked me to draw the warrant. I said I could not. He then said he would endeavor to draw it. Afterwards Judge Chase desired the District Attorney to draw out the form of a capias; the Judge said he would draw one himself, and that I might draw out another; and he said he would take the most approved of the three. I recollect mine was drawn first; but whether before Judge Chase and Mr. Nelson had finished theirs, I do not recollect. On looking over mine, he said he was better satisfied with mine than his own; and he requested me to sign, seal, and deliver it to the marshal.

[Mr. Marshall here produced and read the original capias.]

On Saturday the 24th of May, in the afternoon, the grand jury brought in the indictment. I have taken these circumstances from a copy of the minutes of my office, which, if the court wish to see, I can produce, as I have them with me. Judge Chase alone formed the court from the 22d to the 29th of May, inclusive. On the 27th of May the marshal brought Callender into court, Judge Chase being at that time the only member of the court. A chair was handed to him, and he remained in court while the court proceeded with the docket in the usual way, until near evening, when Judge Chase observed that as the traverser was in court, he might perhaps have some application to make. I do not recollect whether the counsel afterwards employed for the defence of Callender were then in court; but if they were, they made no observations. But Mr. Meriwether Jones, with whom Callender resided, said that Callender was not then prepared to make any application; but that perhaps to-morrow he would move a continuance. Then Judge Chase applied to Callender, and asked if he could give bail. Mr. Jones replied that he could give bail in a moderate sum. Judge Chase asked Callender what were his circumstances; that in fixing the sum, he would be governed by that circumstance. Callender said they were nearly equal. The judge repeated the question and then Callender said he was indebted about two hundred dollars, and there was about as much due to him which he expected to receive; and therefore he did not consider himself worth anything. Judge Chase then asked if he could give bail, himself in two hundred dollars, and another in a like sum. The reply made by Mr. Callender or Mr. Jones was, that he could find bail to that amount; and he accordingly gave bail. On the 28th May, an application was made by Mr. Hay; this was the first instance in which Mr. Callender took any steps for his defence. Mr. Hay stated that he was not well acquainted with the practice in such cases; that he had an affidavit, of a general nature, stating the impossibility of going into the trial, with any prospect of success, without the attendance of a number of witnesses who lived

at a great distance. Mr. Hay also inquired whether a general affidavit was sufficient, or whether a special affidavit, stating the names of the witnesses and the facts they were expected to prove, would be required. Judge Chase said that the strict practice of the law required a special affidavit; but they might take till to-morrow to prepare a special affidavit, submitting it to their discretion to manage the cause as they thought proper. I beg pardon for being a little too hasty in my narrative. When Mr. Hay offered his motion for a continuance, the court said that before they could hear the motion it was necessary that the traverser should plead to the indictment. For if he pleaded guilty, there would be no necessity for an application. Mr. Hay assured the court that the traverser would not plead guilty. Mr. Callender was arraigned and he plead not guilty; and then the conversation, which I have stated took place. The reply of Judge Chase was, after a general affidavit is made, it must be relied on, but you may withdraw the general, and file a special affidavit. Nothing further passed on the 28th.

On the 29th, in the morning, Mr. Hay produced a special affidavit; I have the original here. It is stated therein that, there were a number of witnesses, one from New Hampshire; one from Massachusetts; some from Pennsylvania, and some from South Carolina, absent; who were material witnesses for his defence; that there were also sundry documents to be procured; and an essay written by Mr. Adams on canon and feudal law, which the traverser supposed it important to have for his defence. Mr. Hay, on these grounds, moved for a continuance to the next term, in a pretty long speech. Judge Chase observed, that every person before he made a publication, if he meant to justify it, ought to know the names of his witnesses; and if he meant to justify it by documents, they ought to have been within his reach. It was not to be presumed, indeed, that he could calculate upon being able to procure his witnesses in a few days; that in this case, it was alleged that one witness resided in New Hampshire, which was a great way off. He said that the ordinary sittings of the court would be too short for him to obtain witnesses from so great a distance. He said that the prisoner should have time, and he should have a fair trial, but he could not allow him to the next term. He said he might have two weeks—but that might be too short a time—you may have three weeks, a month, nay, six weeks. We cannot sit so long, because we are obliged to hold a court in the district of Delaware; but I will adjourn this court, to go to Delaware, and will return in six weeks. In the course of the observations offered by Mr. Hay to the court, as well as I can recollect, he said if the documents and witnesses were here, he did not think he would be prepared during that term to investigate all the facts, and the law arising on them; but he would be prepared against the next term, if the court would indulge him with a continuance. After Judge Chase had made this offer of a postponement, I do not distinctly remember that Mr. Hay or Mr. Nicholas made any reply. After a short interval Judge Chase said, as they did not seem disposed to take the time he had offered, the trial should come on within the time the testimony of the witnesses residing in Virginia, deemed material, can be procured. He asked the marshal what was the distance of the residences of Mr. Giles and General Mason, and in what time they could conveniently come to Richmond; and, whether his deputy marshals could go for them? The reply of the marshal was, that his deputies were prepared to execute any orders of the court. Judge Chase then directed me to make out the subpœnas for Monday, the 2d of June; and I issued subpœnas for Messrs. Giles, Mason, and Taylor; but Colonel Taylor's name does not appear in the affidavit. The deputy marshals were directed to use all possible expedition in serving the subpœnas: they were all returned executed on Monday the 2d of June, endorsed with the hour of the day on which they were executed.

[Here Mr. Marshall offered the originals with the endorsements of the time of service.]

On Monday, the 2d day of June, Colonel Taylor appeared in court. The other witnesses were called, but they did not appear. A postponement was asked by one of the gentlemen, for two hours, who stated that it had rained on Sunday preceding, which might have impeded travelling, and it was granted. Some time in the course of the day, Judge Chase observed he might have till to-morrow, which was accepted.

On Tuesday morning, soon after the opening of the court, the motion for a continuance was renewed, founded on the affidavit of Callender, which gave rise to the first motion. Judge Griffin was then in court, having arrived on the 30th of May, and continued during the remainder of the term. It was argued much at length, and received the same decision as on the 29th. The marshal was then ordered to call the petit jury; twelve jurors appeared; there were some objections which I do not precisely recollect, to the panel of the jury; and a motion made to quash the array. An argument was made and some authorities quoted; Judge Chase said they were not to be relied on, and he asked for Coke upon Lyttleton. I brought it from the library in the capitol. Judge Chase looked into it, and said the array should not be quashed; but I do not know the principle on which he decided. When the jury had all answered, the gentlemen proposed to propound a question to the jurors as they came to the book. I do not recollect what the question was, but Judge Chase said he would propound the proper question himself. The question which Judge Chase said it was proper to propound, was: "Have you formed and delivered an opinion (for he said it was necessary to have delivered as well as formed it) on the indictment?" The answer of the first juror was, that he had never seen or heard the indictment, and could not say that he had formed an opinion respecting it. Eight or nine of the jurors were asked the same question, and gave a like answer. The gentlemen who defended the traverser then said it was unnecessary to ask the

other jurors that question; the rest were sworn, and the trial proceeded. The course it took was pretty lengthy, and I cannot state all the circumstances that took place. I recollect that the testimony of Colonel Taylor was refused, but I do not recollect the particular circumstances attending it.

Mr. Harper. Did anything pass between you and Judge Chase respecting the jury summoned to try Callender?

Mr. Nicholson made some objection to this question.

Mr. Harper replied in support of it.

The objection was then withdrawn by the Managers; but further objection being made by a member of the court,

The President desired the question to be reduced to writing, which was accordingly done by Mr. Harper, as follows:

"Testimony on the part of the prosecution, tending to show from the declarations of the respondent, that he had a corrupt intention to pack a jury for the trial of Callender, having been given; he offers in evidence other declarations of his, made during the proceedings, but on a different day, for the purpose of rebutting the former testimony, and of showing that his intentions, in that respect, were pure, and even favorable to Mr. Callender."

When the Senate decided that it should be put—yeas 32, nays 2;

Mr. Marshall. Mr. Giles was on a jury in the circuit court, on, I think, the 27th of May, the day Callender was brought into court by the marshal. When Mr. Giles's name was called, Judge Chase asked me whether that was the celebrated Mr. Giles, Member of Congress. I said that it was, He said that he had never seen him before. Nothing more passed at that time. In the evening I was at Judge Chase's lodgings. He asked me whether I supposed Mr. Giles would remain in Richmond until the trial of Callender. I said it was uncertain, that it was not customary for Mr. Giles to remain any length of time when he came to town. Judge Chase said he wished he would remain, and serve in Callender's case; nay, he wished that Callender might be tried by a jury of his own politics. He said that if his situation as a judge would permit him to drop a hint to the marshal with respect to the jury, he would intimate his wish that Callender should be thus tried; but, in his situation, it would be improper for him to interfere with the duty of the marshal.

Mr. Harper. Inform the Court at what time, if any, you were at Judge Chase's chambers, when a certain Mr. John Heath was there; what passed, and what did not pass.

Mr. Marshall. Judge Chase was, as he informed me, a total stranger in Richmond, and had never been there until he held the court in 1800. He asked me if I would call upon him from time to time. When I knew he was at home, I used to go in an evening, and spend an hour or two with him at his lodgings. I also generally went in the morning, about an hour before the meeting of the court. I recollect about ten o'clock, going to Mr. Chase's lodgings. I went, I think, but of this I am not positive, with Mr. Randolph. I found Mr. Heath in Judge Chase's chamber, or in the passage. Mr. Heath was, I think, in the act of leaving the room; he had his hat in his hand, and I met him either in his way out of the room, or in the passage.

President. Can you state the day of the month?

Mr. Marshall. I cannot, but I think it was the day before Judge Griffin arrived. I recollect very well, on that day Mr. D. Randolph and myself walked up to the court room. I was surprised at seeing Mr. Heath at Judge Chase's, and asked Mr. Randolph what could have brought him there.

Mr. Harper. Was Mr. Heath in the act of going out when you entered?

Mr. Marshall. Yes sir, he was on the floor. He had taken his leave, as I supposed, of Judge Chase, and was either out of the room, or in the act of coming out of it. I do not recollect positively whether Mr. Randolph went with me. I recollect going with Mr. Randolph to court, and that it was the usual practice of Mr. R. and myself to go to Judge Chase's chambers in the morning and attend him to court. I do not certainly recollect whether that morning we went together to the judge's chambers, but I am positive we left the chamber together. The court met generally at eleven o'clock. I had something particular to do that morning, and it was from ten to half-past ten when I went to the judge's chambers; it may have been about ten. The time I saw Mr. Heath must have been about ten o'clock.

Mr. Harper. Did any conversation take place between the judge and Mr. Heath while you were there?

Mr. Marshall. I believe I met Mr. Heath outside of the door. There was not a word of conversation at any rate.

Mr. Harper. Did any incident take place respecting a paper handed from Mr. Randolph to Mr. Chase?

Mr. Marshall. There did not.

Mr. Harper. Did you hear anything about creatures called democrats?

Mr. Marshall. I never heard anything pass between them. I never heard the judge say anything about the jury, except what occurred either at the judge's lodgings or at court, which I took to be instructions to summon twenty-four jurors above twenty-five years of age, and freeholders; that there should be enough to supply the juries required at that court.

Mr. Harper. Did he direct them to be summoned from the country or the town?

Mr. Marshall. I have stated all that I remember relative to the summoning of the jury.

Mr. Harper. Did he say anything of the description of persons, relative to parties?

Mr. Marshall. I do not recollect that he said a word.

Mr. Harper. Did you make it a practice to go with the judge to the court every day from his lodgings?

Mr. Marshall. I walked every day with him. I made it an uniform practice. The judge's lodgings were on my way to court, not more than twenty yards out of my way.

Mr. Key. When the subpœnas were returned on the 2d of June, and neither Mr. Giles nor General Mason appeared, was there any application made on the court to allow a further time for their appearance?

Mr. Marshall. There were some observations made, but I do not recollect whether I attended to them at the time or not; but I think Judge Chase offered to issue an attachment for them, and left it to the pleasure of the traverser to say whether he would have compulsory process issued.

Mr. Key. Do you recollect, sir, whether that was applied for by the counsel, or whether it was a voluntary offer on the part of the court?

Mr. Marshall. I understood that it was a voluntary offer on the part of the court.

Mr. Harper. Did Judge Chase confer with Judge Griffin upon the motion of a continuance, and upon the rejection of Colonel Taylor's testimony?

Mr. Marshall. I sat very near them, and I frequently heard them in conversation in a sort of whisper.

Mr. Harper. Did you hear any part of the conversation between them?

Mr. Marshall. I did not hear anything distinctly; but when Mr. Basset was sworn, after having stated the situation in which he stood, Judge Chase asked him whether he had formed an opinion who was the author of the Prospect Before Us; he replied that he had not formed an opinion of the author, but he had formed an opinion of the book, and had said that the author ought to be punished. Judge Chase then turned to Judge Griffin, and said that the question propounded by the counsel would prevent the formation of a jury with respect to a notorious murder, as every man in the county where it had been committed might have declared that the perpetration ought to be punished. In that case there would not be in the whole county a competent jury. Judge Chase then said, let him be sworn. I do not know positively that Judge Griffin concurred in that opinion; but I think, from what I heard, that he did.

Mr. Harper. Did this conversation take place prior to the declaration of the opinion of the court by Judge Chase?

Mr. Marshall. I cannot say with certainty, because Judge Chase sometimes spoke without consulting Judge Griffin. I do not recollect any case in which they held a consultation, but that on the rejection of the testimony of Colonel Taylor, and the direction that Mr. Basset should be sworn on the jury. He was consulted as to the testimony of Colonel Taylor, but I did not hear him declare his assent aloud, but I took it for granted, as it was not denied.

Mr. Harper. With respect to the motion for a continuance, do you know whether the decision was made after a consultation with Judge Griffin?

Mr. Marshall. I do not recollect that anything was said on the part of Judge Griffin; but I understood that it was assented to, as it was delivered as the opinion of the court.

Mr. Harper. Was there any expression on the part of Judge Griffin of disapprobation of what was delivered by Judge Chase as the opinion of the court?

Mr. Marshall. None, sir.

Mr. Nicholson. At the time of the trial of Callender, was it not the custom of the judges to choose their circuits?

Mr. Marshall. I believe it was, sir.

Mr. Nicholson. At that time, the Virginia district was within Judge Chase's circuit, and do you recollect that he said he would not continue the cause till the next term?

Mr. Marshall. I recollect that Judge Chase said he would not continue it till the next term.

Mr. Nicholson. Who presided at the next term?

Mr. Marshall. Judge Paterson.

Mr. Randolph. You have said that on the morning when you found Mr. Heath about retiring from Judge Chase's chamber, you did not recollect whether the marshal accompanied you there or not?

Mr. Marshall. I do not recollect whether he did or not, but the probability, as resting on my mind, is that he did.

Mr. Randolph. Did he accompany you from the lodgings of Judge Chase to the court?

Mr. Marshall. Yes, I am certain of that, because I had the conversation which I have mentioned.

Mr. Randolph. You mentioned a conversation you had with Judge Chase on the subject of the political characters serving on the jury; that he wished that Mr. Giles, and other gentlemen of the same political character, might serve on the trial of Callender; did you mention that conversation to the marshal?

Mr. Marshall. I do not remember to have conversed with him on that subject?

Mr. Randolph. Were you acquainted with the gentlemen who served as petit jurors on Callender's trial?

Mr. Marshall. Yes, sir.

Mr. Randolph. Is there any one of them that comes under the description of being of the same political character with Mr. Giles?

Mr. Marshall. I believe not, sir. At the time of the trial, I was not fully acquainted with the political characters of the gentlemen that served on the jury; but since I have learned, as I then conceived, that none of them were of the same politics with Mr. Giles.

Mr. Randolph. If I understood you right, sir, you stated that a capias was ordered to be issued before the grand jury returned the indictment a true bill.

Mr. Marshall. I said on the presentment a capias was issued for the arrest of Callender, which was before the indictment was found.

Mr. Nicholson. The indictment was found on the 24th of May, was it not sir?

Mr. Marshall. The presentment was made on the morning of that day. The court sat longer than usual, and I remember that the jury wished to be discharged, but they were not, and it was five or six o'clock before they brought in the bill of indictment.

Mr. Nicholson. Do you recollect whether the attorney of the district had commenced drawing the indictment before the presentment was made?

Mr. Marshall. I remember that the district attorney was drawing up the indictment before the presentment was made; he had made, however, very little progress in it at the time; it was finished afterwards as soon as convenient, and transmitted to the grand jury.

Mr. Randolph. During the course of that trial, pray, sir, tell the court were the interruptions of the counsel for the traverser more frequent than you have been in the habit of witnessing?

Mr. Marshall. I have rarely seen a trial where the interruptions were so frequent.

Mr. Randolph. Do you remember a single instance?

Mr. Marshall. I think in a trial where Judge Iredell presided there were interruptions which were as frequent, if not more frequent than took place in the course of this trial.

Mr. Randolph. Do you recollect anything disrespectful on the part of the counsel towards the court on the trial of Callender?

Mr. Marshall. One of the counsel, Mr. Hay, appeared to be under a great deal of irritation during a great part of the trial.

Mr. Randolph. Did you perceive any cause for this?

Mr. Marshall. The court were very positive that the jury should not be addressed by the traverser's counsel on the constitutionality of the sedition law, and whenever that point was touched by the counsel, there was as much decision shown by the court as I ever witnessed.

Mr. Randolph. Was there much mirth among the by-standers?

Mr. Marshall. There was a good deal. I cannot say what gave rise to it, but it was kept up during the course of the trial. The court was extremely facetious during that part of the trial which I particularly attended to, but I was not very attentive to the trial till that morning.

Mr. Martin. What was the cause of the interruptions?

Mr. Marshall. It was the counsel persisting in addressing the jury on the unconstitutionality of the sedition law, after the court had declared what was their opinion of the law on that point.

Mr. Randolph. Do you recollect any particular expressions used by the court on this subject?

Mr. Marshall. I heard Judge Chase say that the counsel for the traverser were mistaken in their exposition of the law, and they kept pressing their mistakes upon the court; he said so once, if not oftener.

Mr. Harper. You say, sir, that there was no gentleman on the petit jury of the same political opinion with Mr. Callender or Mr. Giles. Do you mean on the jury that tried Callender, or on the panel?

Mr. Marshall. On the jury that tried Callender.

Mr. Harper. Were there any on the panel?

Mr. Marshall. There were Colonel Harvie, Mr. Radford, and Mr. Marks Vanderval. Mr. Harvie was called very early, and Mr. Marks Vanderval; but it appeared to me that there was a great unwillingness on the part of those gentlemen to be on the jury to try this cause, and several applications were made to have them excused.

Mr. Harper. How did it happen that none of those gentlemen served?

Mr. Marshall. Mr. Harvie suggested that he was sheriff of Henrico county, and that the county court was sitting at the time; that his presence was required, and on that ground the court excused him from serving on the jury. The other two gentlemen did not attend at all.

Mr. Harper. When you said that the confusion on this trial took place from the counsel's pressing their opinion on the jury, do I understand you as saying that it was after they (the counsel) had been overruled by the court?

Mr. Marshall. I so understood it; I did not perceive any other cause.

Mr. Harper. What took place on the motion for a continuance? The affidavit filed stated that the traverser could not produce his witnesses; did it state that he could prove a justification as to all the charges in the indictment?

Mr. Marshall. No, sir, not that I remember; but the affidavit is here on file. It was stated by Judge Chase, that there were nineteen charges in the indictment, and that it was necessary for the traverser, in order to procure his acquittal, to prove the truth of the matter in the whole; it was not sufficient to prove a dozen or more of them to be true, if he could not prove them all. It was not sufficient to prove a part instead of the whole of any one charge; for example, suppose a man should charge me with being a great scoundrel, a rogue, and a very ugly fellow, and he should prove that I was a very ugly fellow, would that go to acquit him for having called me a scoundrel or a rogue? Can a part proven in this way be said to be a justification?

Mr. Harper. Was this remark made by Judge Chase in good humor?

Mr. Marshall. I thought him in a remarkable good humor.

Mr. Harper. You say Judge Chase was positive. Was he harsh towards the counsel of the traverser?

Mr. Marshall. I did not think so. I remember that he said his country had made him a judge, and he would be the judge on the business of that day, and whatever was transacted should be under the direction of the court. He said also that he was a frail and feeble man, and that it was possible he was in an error in respect to the opinion which he entertained of the law. If the gentlemen who dissented from his opinions would form a bill of exceptions, he would be the first man to allow them a writ of error to go into the Supreme Court of the United States, a superior tribunal, and have there his opinions tested.

Mr. Harper. Did the counsel for the traverser state a case on this offer of the judge?

Mr. Marshall. Those were the observations of the court, but I do not recollect that the counsel said anything in reply.

Mr. Randolph. You mentioned that no person

of Mr. Giles's politics was on the jury; did I understand you, when speaking of Mr. John Harvie as being of those politics, as meaning Mr. Harvie of Belvidere?

Mr. Marshall. Yes, sir.

Mr. Randolph. What do you conceive to have been his politics at that time?

Mr. Marshall. I thought, from his opinion on the sedition law, which I had understood was, that it was unconstitutional, he might have been of the same politics as Mr. Giles.

Mr. Randolph. What was your opinion of Mr. Radford?

Mr. Marshall. I understood his politics to have been of the same kind.

Mr. Randolph. Did you ever hear that Mr. Marks Vanderval had denied that he was summoned on the jury for the trial of Callender?

Mr. Marshall. I have understood that he denied ever having been summoned.

Mr. Randolph. Did Mr. Harvie answer to his name when called on the jury list?

Mr. Marshall. Yes, sir, and he was excused as being high sheriff of the county of Henrico.

Mr. Randolph. Did Mr. Radford answer to his name?

Mr. Marshall. I believe not, sir; Mr. Vanderval I am certain did not.

Mr. Randolph. Were you well acquainted at the time with Mr. Radford and Mr. Harvie?

Mr. Marshall. I was with Mr. Harvie, and tolerably well with Mr. Radford.

Mr. Randolph. Were you well acquainted with Mr. Marks Vanderval?

Mr. Marshall. Not very intimately.

Mr. Randolph. Do you know, or believe, that at the election for members of the House of Representatives in the Spring of the year 1799, whether Mr. Vanderval did vote for your brother, the present chief justice?

Mr. Marshall. I believe he did not vote at all; but if he had voted, I believe it would have been for him.

Mr. Harper. Colonel Tinsely appears upon this panel; I would ask you if his political opinions were at that time the same as they are now?

Mr. Marshall. I do not know what were his political sentiments at the time; but I remember that he had been hostile to the adoption of the Federal Constitution.

Mr. Martin. The panel of the petit jury is never returned, if I understood you right, by the marshal, until the jury appears in court, and the clerk of the court knows nothing of it. Did you learn anything of the panel that had been summoned by the marshal on the morning you were with him at Judge Chase's lodgings?

Mr. Marshall. I did not.

The President. Did you know whether Mr. D. Randolph had or had not made out his panel?

Mr. Marshall. I knew nothing of it.

Mr. Wright. When was it that the conversation took place at Judge Chase's lodgings, when you met Mr. Heath there?

Mr. Marshall. I do not recollect the precise day, but I think it was the 27th or 28th of May.

SATURDAY, February 16.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, accompanied by the House of Representatives; and Judge Chase, attended by his counsel.

David M. Randolph, sworn.

Mr. Harper. Were you marshal of the United States for the district of Virginia in 1800?

Answer. I was, sir.

Mr. Harper. Did you attend the circuit court held in May of that year, as marshal?

A. I did, sir.

Mr. Harper. Did you summon the panel of the jury that served on the trial of Callender?

A. I did.

Mr. Harper. Had you any conversation with Judge Chase on the forming that panel?

A. I had no conversation with him on that subject. There was a conversation offered to me by Judge Chase.

Mr. Harper. What was it?

A. The judge recommended to me that I should get persons generally from the country; represented that they should be twenty-five years of age, of fair characters, untainted by party prejudices.

Mr. Harper. What were his reasons for taking them from the country?

A. I do not know.

Mr. Harper. If at that period you had been disposed to form a jury of the political opinion of those then in power, would you have taken them from the town or country?

A. I knew very little of the political sentiments of the citizens. There were, however, in town a great majority of those whose politics were called federal.

Mr. Harper. Was that the case in the country?

A. I cannot say. I never meddled with politics in any way except in private conversation. Not attending at public meetings, I had but little acquaintance with the politics of individuals.

Mr. Harper. Did you, in forming the panel, summon any persons you knew to be opposed to the then Administration?

A. I believe I did several. I summoned the best and fairest characters, without respect to their political opinions. I employed two deputies.

Mr. Harper. Did you summon Colonel Vanderval?

A. I did by my deputy.

Mr. Harper. On what day was he summoned?

A. I received directions from the bench on Friday, to be prepared with two juries, of twenty-four each, on the Monday following.

Mr. Harper. When did you proceed to form the jury?

A. I proceeded the moment I was directed. I summoned several in person while in court.

Mr. Harper. When did you complete the panel?

A. I completed it on Monday morning following while the court was sitting.

Mr. Harper. Did you complete the panel before?

A. Never. It might have been considered as in an incomplete state at that period.

Mr. Harper. Why so?

A. It is never the practice in Virginia for the jury summonedd to consist of any precise number of persons.

Mr. Harper. Did you ever show the panel to Judge Chase?

A. Never at any time or place. The list was handed to the clerk of the court on Monday after the court was in session.

Mr. Harper. Did Mr. Chase ever say anything to you about striking off any persons of any particular description from the panel?

A. Never at any time or at any place, I am very confident.

Mr. Harper. You are very confident of that?

A. Perfectly so.

Mr. Harper. You say the panel was not completed till Monday?

A. It was not finished till that day when the court was in session—and the list was never shown by me to any person.

Mr. Harper. It was not the practice then to present a list to the clerk?

A. Never, except as the jurors are sworn?

Mr. Harper. Were the jurors called and sworn on that day?

A. There were twelve of them sworn on that day.

Mr. Harper. Did any gentlemen summoned apply to you to be discharged?

A. Several. At the moment I received orders to have two juries ready by Monday, I called on my two deputies, and desired them to take down, on distinct papers, the names I mentioned to them. I observed that I chose to take the responsibility on myself. While they were taking down the names, I summoned several persons whose names were not put down till Monday. On Monday, finding my two deputies had not summoned a sufficient number, I went in quest of them. I found them at the end of the town, in the act of executing my orders. Mr. Moseby, one of my deputies, was standing with Colonel Vanderval, I think in conversation with him. I called him across the street, and asked him how they succeeded. At this time I saw my other deputy. They told me they wanted but one or two jurors. I told them they must make haste. About this time I saw Mr. Basset entering town on horseback. I told him that he had been crossed as a grand juror for non-attendance; that he must serve as a petit juror, which would give him an opportunity of offering his apology. I took out my watch, and told him that I allowed him five minutes. We arrived at the capitol, and my deputies there gave me their memorandums, from which, and my own, I made up the list of the jury. Two gentlemen, Mr. Lewis and Mr. Blakely, offered something like excuses. I looked at Mr. Blakely, and said there was only one excuse that I would admit, to wit: his being under twenty-five years of age. He said he was under that age, and I dismissed him. Mr. Lewis said he might make the same excuse. I said I doubted it, but I let him off. As I went into the passage, I met Mr. Samuel Myers, who also desired to be let off. I told him I could not and would not. He said I would excuse him for a reason which he could assign. He whispered, and said that he was prejudiced against Callender. I permitted him to go, but begged him to keep that reason to himself. Another juror summoned, was very warm and importunate to be excused. I told him there was only one ground on which I would excuse him. He asked me what it was? I answered that if it applied to him, he already knew it. I begged him to go to the court, and he would learn what it was. He did so. Colonel Harvie stopped me in the passage in a hasty manner, and with great warmth and friendliness urged me to let him off. He said he was sheriff of Henrico county. I said I knew it, but that I also knew that his duties were generally performed by deputies. I did not let him off. He applied to the court, and was excused.

Mr. Harper. Were there any other gentlemen who applied to be excused?

A. Yes, sir, Mr. Radford. He was in court at the time I commenced making out the list. He urged as an objection to serving that he differed in politics from myself. This I considered evasive, and I told him I should call him. When called he did not answer. I believe he went immediately home.

Mr. Harper. Did you go in person to execute the process against Callender?

A. I did.

Mr. Harper. Did you meet any person at Petersburg with whom you had a conversation repecting the arrest of Callender?

A. The first person I had any conversation with was Mr. George Hay.

Mr. Harper. Did anything pass in that conversation tending to dissuade you from searching for Callender?

A. I had fruitlessly gone in pursuit of Callender some distance from Petersburg; on my return about sunset, at a tavern nearly opposite the residence of Mr. Hay, he came up, and entered into conversation with me with regard to Callender. I said I had been on a wild-goose chase, and had found myself foiled, but that I was determined to find whether he was not in town. Mr. Hay appeared to interest himself very much, in dissuading me from the pursuit. He said that Callender would not be taken, and that it was in vain to pursue him. I replied that I would do my duty, and, if possible, apprehend him. I asked him if he knew where Callender was. He said he knew not where he was, and if he did, he would not tell me. He invited me to take a bed at his house, which I declined, as I was going to spend the evening down town.

Mr. Harper. Did Mr. Hay assign any reasons why Callender ought not to be arrested?

A. I cannot state the language he used. He urged a great many things. Among others, he observed, that as Callender could not be defended this term, he would be found guilty and imprisoned, and said that if he was not then arrested, he might, in the fall, surrender himself.

Mr. Harper. You understood Mr. Hay to say, that if Callender was not arrested till the next term, he would surrender himself?

A. He so intimated to me. These were not his very words, but that was my understanding of them.

Mr. Harper. You say you completed the panel after the court met on Monday?

A. I did.

Mr. Harper. And that you never submitted it to Judge Chase, or spoke to him about it?

A. I did not, at any time or place whatever.

Mr. Harper. And that you had no conversation with the judge about forming it, except that you have mentioned?

A. None other; and that was at his lodgings in a familiar conversation.

Mr. Randolph. I understand you to have said you did not summon Marks Vanderval yourself.

A. I said so—but he was summoned by my order.

Mr. Randolph. Were you present when the order was executed?

A. I was on the opposite side of the street, and saw my deputy, Moseby, in conversation with him. He crossed the street, and said that Colonel Vanderval expressed a repugnance to serving. I told him it laid with him to release him, and if he departed from the general rule he must answer for it.

Mr. Randolph. Do you know whether Mr. Vanderval has denied that he was ever summoned?

A. I do not, except seeing it so stated in the public papers.

Mr. Randolph. Have you ever at any time had any conversation with Judge Chase on the subject of the grand jury?

A. Not that I recollect.

Mr. Randolph. Was the William Radford who was summoned and expressed his unwillingness to serve on the jury, the same who keeps the Eagle tavern?

A. The same.

Mr. Randolph. Did he keep the Eagle tavern at that time?

A. I believe not.

Mr. Randolph. Did he say his politics differed from yours?

A. I do not know that he used those words; but such was my impression, at the time, of his meaning.

Mr. Randolph. Did you understand his opinions to be of that political character?

A. I cannot say positively. I have some indistinct recollection that he was classed among that description of men.

Mr. Nicholson. What party?

A. The democratic party, as they are called.

Mr. Randolph. Did I understand you to say you were not positive to which party he belonged?

A. I was not positive at that time.

Mr. Campbell. I wish you to state when you showed the panel of the grand jury to the judge.

A. On the first day of the court after it was formed.

Mr. Campbell. Had he never seen it before?

A. Never, sir; I had never seen it before myself. The practice is, for the returns to be handed in by the deputies, and a list formed and given to the clerk, who hands it to the court.

Mr. Campbell. Have you any recollection of seeing Mr. Heath at the judge's lodgings, and when?

A. I have no recollection of seeing him at the judge's chambers at any time, or of seeing him in Richmond during that session of the court, until it was called to my mind by Mr. Marshall's testimony.

Mr. Nicholson. Then you recollect by presumption that he was there—did you see him?

A. I rather think I saw him; but I have no recollection of seeing him in Judge Chase's chamber, or with Judge Chase alone.

Mr. Randolph. Did the judge lodge at Crouch's?—is it not a tavern?

A. It is a boarding-house, and no wise distinguished from a tavern. I had never been in the house before Judge Chase's arrival.

Mr. Randolph. Did you ever receive any instructions, verbal, or by letter, from Judge Chase, in relation to the grand jury?

A. Never.

John Marshall, sworn.

Mr. Harper. Please to inform this honorable Court whether you did, or did not, on the part of Colonel Harvie, make an application for his discharge from the jury, and on what ground that application was made?

Mr. Marshall. I was at the bar when Colonel Harvie, with whom I was intimately acquainted, informed me that he was summoned on the jury. Some conversation passed, in which he expressed his unwillingness to serve, and stated that he was an unfit person; for that his mind was completely made up, that he thought the (sedition) law unconstitutional, and that, whatever the evidence might be, he should find the traverser not guilty; and requested me, on that ground, to apply to the marshal for his discharge. I told the marshal that Colonel Harvie was extremely desirous of being discharged, and, on his discovering great repugnance to his discharge, I informed him that he was predetermined, and that no testimony could alter his opinion. The marshal said that Colonel Harvie might make his excuse to the court; he observed that he was watched, and, to prevent any charge of improper conduct from being brought against him, he should not interfere in discharging any of the jurors who had been summoned. I informed Colonel Harvie of this conversation, and it was then agreed that I should apply to the court for his discharge, upon the ground of his being sheriff of Henrico county, that his attendance was necessary, as that court was then in session. I moved the discharge of the juror on that ground, and he was discharged by the court.

Mr. Harper. Did you communicate to Judge Chase, or to the court, the reasons which first induced Colonel Harvie to make this application?

Mr. Marshall. I only stated that he was sheriff of Henrico county, and that it was unusual to re-

quire the attendance of sheriffs on juries. I believe the marshal was at that time obtaining jurymen, he had at that time a paper in his hand; and appeared to be setting down the names of persons within his view.

Mr. Randolph. Were you in court during a part of the trial, or during the whole of the trial?

Mr. Marshall. I think I was there only during a part of the time.

Mr. Randolph. Did you observe anything unusual in the conduct on the part of the counsel towards the court, or the court towards the counsel, and what?

Mr. Marshall. There were several circumstances that took place on that trial, on the part both of the bar and the bench, which do not always occur in trials. I would probably be better able to answer the question, if it were made more determinate.

Mr. Randolph. Then I will make the question more particular by asking whether the interruptions of counsel were much more frequent than usual?

Mr. Marshall. The counsel appeared to me to wish to bring before the jury arguments to prove that the sedition law was unconstitutional, and Mr. Chase said that that was not a proper question to go to the jury; and whenever any attempt was made to bring that point before the jury, the counsel for the traverser were stopped. After this there was an argument commenced (I think) by Mr. Hay, but I do not recollect positively, to prove to the Judge that the opinion which he had given was not correct in point of law, and that the constitutionality of the law ought to go before the jury; whatever the argument was which Mr. Hay advanced, there was something in it which Judge Chase did not believe to be law, and he stopped him on that point. Mr. Hay still went on, and made some political observations; Judge Chase stopped him again, and the collision ended, by Mr. Hay sitting down, and folding up his papers as if he intended to retire.

Mr. Randolph. There were many preliminary questions, such as, with respect to the continuance of the cause, the admissibility of testimony, &c. Did the interruptions take place on the part of the court only when the counsel pressed the point of the unconstitutionality of the sedition law?

Mr. Marshall. I believe that it was only at those times, but I do not recollect precisely. I do not remember correctly what passed between the bench and the bar; but it appeared to me that whenever Judge Chase thought the counsel incorrect in their points, he immediately told them so, and stopped them short; but what were the particular expressions that he used, my recollection is too indistinct to enable me to state precisely; what I do state is merely from a general impression which remains on my mind.

Mr. Randolph. Was there any misunderstanding between the counsel and the court, and what was the cause of that misunderstanding, or what was your opinion as to the cause, or did you form one?

Mr. Marshall. It is impossible for me to assign the particular cause. It began early in the proceedings and increased as the trial progressed. On the part of the judge it seemed to be a disgust with regard to the mode adopted by the traverser's counsel, at least I speak as to the part which Mr. Hay took on the trial, and it seemed to increase also with him as he went on.

Mr. Randolph. When the court decided the point that the jury had not a right to decide upon the constitutionality of a law, did the counsel for the traverser begin an argument to convince Judge Chase that the opinion which he had delivered on that point was not well founded? Is it the practice in courts when counsel object to the legality of an opinion given by the court, to hear the arguments of counsel against such opinion?

Mr. Marshall. If the counsel have not been already heard, it is usual to hear them, in order that they may change or confirm the opinion of the court, when there is any doubt entertained. There is however no positive rule on this subject, and the course pursued by the court will depend upon circumstances; where a judge believes that the point is perfectly clear and settled, he will scarcely permit the question to be agitated. However, it is considered as decorous on the part of the judge to listen while the counsel abstain from urging unimportant arguments.

Mr. Randolph. In the circuit courts of the United States, after a court is opened for any district, is it the practice of such courts to adjourn over from time to time, in order to hold a court in another district in the intermediate time, and then to return back; or is not the uniform practice to postpone causes when they cannot be conveniently tried, to the next term?

Mr. Marshall. I can only speak of courts where I have attended, in which the practice is, that the business of one term shall be gone through as far as possible, before any other court is held.

Mr. Randolph. Was it ever the practice of any court, in which you have practised or presided, to compel counsel to reduce to writing the questions which they meant to propound to their witnesses?

Mr. Marshall. It has not been usual; but in cases of the kind, the conduct of the court will depend upon circumstances. If a question relates to a point of the law, and is understood to be an important question, it might be proper to require that it be reduced to writing. Unless there is some special reason which appears to the court, or on the request of the adverse counsel, questions are not commonly reduced to writing, but when there is a special reason in the mind of the court, or it is required by the opposite counsel, questions may be directed to be committed to writing.

Mr. Randolph. When these questions are reduced to writing, is it for a special reason, after the court have heard the question, and not before they have been propounded?

Mr. Marshall. I never knew it requested that a question should be reduced to writing in the first instance in the whole course of my practice.

Mr. Randolph. I am aware of the delicacy of the question I am about to put, and nothing but duty would induce me to propound it. Did it appear to you, sir, that during the course of the trial, the conduct of Judge Chase was mild and conciliatory?

Mr. Marshall. Perhaps the question you propound to me would be more correct, if I were asked what his conduct was during the course of the trial; for I feel some difficulty in stating in a manner satisfactory to my own mind, any opinion which I might have formed; but the fact was, that in the progress of the trial, there appeared some—

Mr. Cocke, (a Senator) here interrupted Mr. Marshall, by observing that he thought the question an improper one.

Mr. Randolph said he would not press it, if there were any objection to it.

Mr. Harper. We, sir, have no objection; we are willing to abide in this trial by the opinion of the Chief Justice.

Mr. Randolph. Did you ever, sir, in a criminal prosecution, know a witness deemed inadmissible, because he could not go a particular length in his testimony—because he could not narrate all the circumstances of the crime charged in an indictment, or in the case of a libel; and could only prove a part of a particular charge, and not the whole of it?

Mr. Marshall. I never did hear that objection made by the court except in this particular case.

[Some inquiry was here made relative to the above question put by Mr Randolph, and objected to by Mr. Cocke, which Mr. R. answered by observing that he withdrew it.]

Mr. Harper. Please to inform this honorable Court, sir, whether you recollect that Judge Chase during any part of the proceedings made an offer to postpone the trial of Callender, and if you do, to what time?

Mr. Marshall. I recollect at the time a motion was made for the continuance till the next term, that Judge Chase declared, as his opinion, that it ought to be tried at the present term. A good deal of conversation took place on the subject. The counsel for the traverser stated several circumstances in favor of their client, particularly relative to the absence of his witnesses; but the whole terminated at that time by a postponement for a few days; so many days as, I thought at the time, were sufficient for obtaining the witnesses residing in Virginia. I do not now recollect what the time was, nor do I say it was sufficient. I simply recollect that I thought it was. When the cause came on again, there was no proposition that I recollect on the part of the traverser's counsel for a continuance, but a desire was expressed of a postponement for a few hours in order to give their witnesses time to arrive at Richmond, as it was possible they had been impeded by the badness of the roads; a considerable quantity of rain having fallen the preceding day. There was a declaration on the part of the court that they might take until the next day, and they went on to say they might have a longer time, if they thought it was necessary, but the precise length of time offered I do not recollect; but I do remember that they said the trial must come on before the present term closed.

Mr. Harper. Is it the practice of the circuit courts to hold an adjourned court; and is it not in the power of the circuit court to adjourn the jury, and direct them to meet again at some subsequent time?

Mr. Marshall. That is a question of law I have never turned my mind to.

Mr. Harper. Do you know an instance in which it has been done?

Mr. Marshall. I do not know any instance in which it has ever been done.

The President. Do you recollect whether the conduct of the judge on this trial was tyrannical, overbearing, and oppressive?

Mr. Marshall. I will state the facts. The counsel for the traverser persisted in arguing the question of the Constitutionality of the sedition law, in which they were constantly repressed by Judge Chase. Judge Chase checked Mr. Hay whenever he came to that point, and after having resisted repeated checks, Mr. Hay appeared to be determined to abandon the cause, when he was desired by the judge to proceed with his argument, and informed that he should not be interrupted thereafter. If this is not considered tyrannical, oppressive, and overbearing, I know nothing else that was so.

Mr. Randolph. Was the check given to the traverser's counsel more than once?

Mr. Marshall. There were several interruptions, as I have stated; for whenever the counsel attempted to show the unconstitutionality of the sedition law, Judge Chase observed that it was a point which should not go before the jury, and he would not permit a discussion upon it.

Mr. Randolph. Then it was these checks that induced the counsel to abandon the cause of the traverser. I understood that the counsel were endeavoring to show, without any regard to the jury, that the opinion of the court was incorrect.

Mr. Marshall. That was my impression.

Mr. Randolph. Is it not usual, when the opinion of the court is not solemnly pronounced, to hear counsel?

Mr. Marshall. Yes, sir.

The President. Is it usual for a trial to take place at the same term that the presentment is made?

Mr. Marshall. My practice, while I was at the bar, was very limited in criminal cases; but I believe it is by no means usual in Virginia to try a man for an offence at the same term at which he is presented.

Mr. Randolph. Did you ever hear Judge Chase apply any unusual epithets—such as *young men*, or *young gentlemen*—to the counsel?

Mr. Marshall. I have heard it so frequently spoken of since the trial, that I cannot possibly tell whether my recollection of the term is derived from the expressions used in the court, or from the frequent mention since made of them; but I am rather inclined to think that I did hear them from the judge.

Mr. Randolph. Are you acquainted with Mr. Wirt; was he a young man at that time; was he single, married, or a widower?

Mr. Marshall. I am pretty well acquainted with

him; he is about thirty years of age, and a widower.

Mr. Randolph. Do you know Mr. Norborne Nicholas and Mr. Hay; they practised with you at the bar; did you observe anything in their conduct that required the interposition of the court to check or prevent its consequences?

Mr. Lee objecting to this question, Mr. Randolph said he would decline putting it. Mr. Marshall then withdrew.

Mr. Randolph. The managers think themselves entitled to put to any witness, however respectable his standing in life, any questions which they deem necessary to bring out the whole facts.

The President. If it is not objected to by the counsel for the respondent, nor decided by the court to be irrelevant or improper, the managers will be gratified by having their questions answered.

At the instance of Mr. Randolph, Chief Justice Marshall was again called.

Mr. Randolph. Is it the practice of the courts in Virginia to proceed against a person when indicted for an offence less than felony—say for a misdemeanor—by issuing a *capias* in the first instance?

Mr. Marshall. My practice, I before stated, had not taken this course; I therefore cannot well say what the usual practice is.

Mr. Harper. I will ask you a question, sir: When Mr. Hay was interrupted by the court, at the commencement of the argument, to show to the jury that they were the judges of the constitutionality of the law, was the interruption that took place one which went to the argument, or barely reminding them of some erroneous opinion delivered?

Mr. Marshall. I believe it was the latter; though I am not certain.

Mr. Randolph. Do you recollect, sir, whether it was as to the matter, or whether the impression has not been made on your mind by some conversations which you have heard since?

Mr. Marshall. My impressions are, sir, that Mr. Hay pressed the matter of the constitutionality of the law in the manner I have heretofore stated.

Edmund J. Lee, sworn.

Mr. Harper. Were you at the circuit court in the spring of 1800, held at Richmond, at which Judge Chase presided?

Mr. Lee. I was not in court when Callender was presented by the grand jury; but I was when application was made for a continuance, and I remember that Judge Chase, on an application made for a continuance, on account of the absence of some of the witnesses, informed the counsel that he could not continue the cause, but if they would fix upon any determinate time, within which they could obtain their witnesses, without its going over to the next term, the court would postpone the trial. Judge Chase also added that he had no objection to postpone it for a fortnight or a month; I am not certain whether he did not say he would postpone it for a longer time, I do not know but he said for six weeks, but he said positively he would not postpone it to the next term. He added, if the counsel conceived they could obtain the evidence within the time mentioned, they might have it.

Mr. Nicholson. At what stage of the business was this proposition made?

Mr. Lee. I think it was made after the affidavit was read.

Mr. Nicholson. On what day was it made?

Mr. Lee. I believe it was the first day. I do not recollect when the application for a continuance was first made; it possibly had been before, but I was not in court.

Mr. Nicholson. There was no subsequent application?

Mr. Lee. None, sir.

Mr. Nicholson. How long was it before the jury were sworn?

Mr. Lee. I do not recollect the day of the week on which the jury were sworn, but I remember the offer was made at the time the application for a continuance was made.

Mr. Randolph. Do you recollect whether the court offered to postpone the trial until all the witnesses could be procured, or whether the offer related alone to those who resided in the State of Virginia?

Mr. Lee. I do not recollect whether the court said anything on that point; but I recollect perfectly that they made the offer to postpone the trial for some length of time, such as I have just mentioned, a fortnight, month, or more.

Mr. Randolph. How far did you understand that *more* to extend?

Mr. Lee. Not beyond six weeks.

Mr. Campbell. Were the counsel for the traverser present, and did Judge Chase address himself to them?

Mr. Lee. The counsel were present, and I think the judge did address himself to them.

Mr. Campbell. What then was their reply?

Mr. Lee. I do not recollect, if they did say anything, what they said.

John A. Chevalier, sworn.

Mr. Harper. Were you present at the circuit court held at Richmond, in Virginia, in the spring of 1800, on the trial of James Thompson Callender?

Mr. Chevalier. I was at Richmond at the time.

Mr. Harper. Do you recollect what took place on the trial of Mr. Callender?

Mr. Chevalier. I was in the court room some few minutes during the trial, but I do not recollect anything that occurred.

Mr. Harper. Why not, sir?

Mr. Chevalier. Because I was too far off to hear anything which was said, and my mind was otherwise occupied.

Mr. Randolph. Pray how long have you resided in the United States?

Mr. Chevalier. About twenty years.

Mr. Randolph. Have you been much in courts?

Mr. Chevalier. I have had very little to do with court business. I had a suit, and it was on that account that I happened to be in court.

Mr. Randolph. Do you recollect anything remarkable in the conduct of the court while you happened to be present?

Mr. Chevalier. Why, sir, I recollect Mr. Hay's shutting up his books and putting away his papers, and that Judge Chase said to him, when he observed it, sir, you may go on with your speech as long as you please, and I shall not interrupt you any more.

Robert Gamble, sworn.

Mr. Harper. Were you at the circuit court of the United States for the Virginia district, in the month of May or June, 1800, held at Richmond?

Mr. Gamble. I was one of the jurors, sir, and I was in court when a motion was made for continuing the cause of Callender to the next term.

Mr. Harper. Do you recollect whether an offer was made by the court to postpone that cause?

Mr. Gamble. Yes, sir; Judge Chase said he would postpone it for a week, a fortnight, a month, or more, and I think he mentioned he would postpone it for six weeks, or as long as the term would admit, without its going over to the next term.

Mr. Harper. Do you recollect what Mr. Basset's scruples were against serving on the jury?

Mr. Gamble. I recollect that he stated to the court that he had seen extracts in the newspapers that were alleged to be taken from the book called "The Prospect Before Us," and upon that circumstance he made a declaration that if the extracts were faithfully copied from the work, he was satisfied that it would come under the operation of the sedition law. The judge asked him whether he had made up and delivered an opinion on the articles contained in the indictment, and he answered that he had neither seen the indictment, nor heard it read; he therefore could not declare that he had formed any opinion upon it. The judge said in that case he was a good juror and must be sworn.

Mr. Harper. What was understood to have been the subject of indictment?

Mr. Gamble. It was pretty well understood that the indictment was for libellous matter contained in the book called "The Prospect Before Us." I did not know it myself; I was taken that morning to serve as a juror, without any previous intimation. I had not seen either the book or the extracts alluded to, but I had heard them spoken of as being within the sedition law; yet I said nothing to the court after having heard Judge Chase declare that Mr. Basset's objection would not excuse him.

Mr. Harper. Did you understand that Mr. Basset urged it as an objection to serve on the jury?

Mr. Gamble. No, sir, he merely suggested it to the court.

Mr. Harper. Then he did not ask to be excused on that account?

Mr. Gamble. No, sir.

Mr. Randolph. You say that Mr. Basset and yourself informed the court that you had not made up your mind on the charges in the indictment, because you had not read it, and did not know its contents?

Mr. Gamble. I had never read or seen the indictment; of course I had not made up my mind in respect to anything it contained.

Mr. Randolph. Had you made up your mind on the publication of the book called "The Prospect Before Us," from which you believed the charges were extracted?

Mr. Gamble. Sir, I never read the "Examiner" that contained those extracts, nor had I then seen the book called "The Prospect Before Us," although, after the jury retired, in order to determine on our verdict, we were compelled in some degree to read it nearly through.

Mr. Randolph. What induced you to read the book after you retired?

Mr. Gamble. Mr. Basset wished it to be read. The whole book consisted in defamation of the Government.

Mr. Randolph. As that book is a lengthy production, suppose you had read it before instead of after the indictment was read, might it not so have happened that you might have made up your mind as to the publication, and not as to the indictment?

An objection having been made to this question by Mr. Martin,

Mr. Randolph said he would withdraw it, but would ask the witness another question. Do you recollect anything of an offer made to postpone the trial of Callender on the part of the court?

Mr. Gamble. I remember there was a short adjournment of the cause in the first instance, and that an offer was made by the court to postpone the trial for a month or more.

Mr. Randolph. Do you recollect what that *more* was?

Mr. Gamble. I do not recollect.

Mr. Nicholson. Was the offer to postpone the cause made before the jury was sworn or after?

Mr. Gamble. I do not recollect at what time it was made.

Mr. Randolph. Did you understand that an objection was to be made against you, sir, as a juror on this trial?

Mr. Gamble. I had understood that I might be objected to, because I had spoken words disrespectful of Callender.

Mr. Randolph. Was evidence offered to show that you had done so?

Mr. Gamble. I acknowledged it myself, and the judge said, notwithstanding, I was a good juror.

Mr. Randolph. Did you speak disrespectfully of Callender, and so declare it to the court, and what had you said?

Mr. Gamble. I had said that I thought him to be a very unworthy character.

Mr. Randolph. How did you understand that you were to be objected to?

Mr. Gamble. I had heard that Mr. —— had heard me use this expression, and that it was intended to bring him forward as a witness to prove the fact; this was on the morning of the day of the trial, and just before I was sworn.

Philip Gooch, sworn.

Mr. Harper. Please to inform this honorable

Court whether you were present at the trial of James Thompson Callender, at a circuit court, holden at Richmond, in the year 1800?

Mr. Gooch. I was in court during a part of the time of that trial; I did not get in until the jury were called, and just before they were sworn; I believe I was not present at the whole of the trial.

Mr. Harper. What was the nature of that trial?

Mr. Gooch. I understood it to be an indictment for a libel upon the President, under the sedition law, and I went on purpose from Amherst county, where I reside, to be present at it.

Mr. Harper. What did you observe relative to the conduct of the court and counsel on that day? State what happened.

Mr. Gooch. When Mr. Basset suggested to the court his wish to be informed whether it was their opinion that he was a proper person to serve on the jury, because he had formed and expressed an opinion on the extracts which he had seen, and declared that if correctly copied from the work called "The Prospect Before Us," the author was within the pale of the sedition law; on that suggestion, I recollect, the court decided, and laid it down as law, that he must not only have formed an opinion, but delivered it also, and the judge gave some reasons why he must not only have formed, but delivered an opinion. I think he said that if a notorious murder was committed in the body of a county, which every man believed ought to be punished with death, and had so formed his opinion, it would in that case be impossible to get a jury to try such an offender, if it were an objection that a man had formed an opinion. I understood that he had consulted Judge Griffin on this point. The court was very crowded, but I had obtained a situation just behind the judges, and had an opportunity of hearing in some degree what passed between them, though not distinctly. Mr. Basset was eventually sworn upon the jury. The cause proceeded. Mr. Nelson (the District Attorney) then opened the case. I am unable to detail all his observations, nor is it material that I should do so; however, he said that the intention of the traverser was to be understood from the matter which had been extracted from "The Prospect Before Us," and laid in the indictment with inuendoes. He examined the witnesses on the part of the prosecution, but I do not recollect that any question was put on the part of the counsel for the traverser in objection to the testimony; but I remember that when Colonel Taylor was called to give testimony on the part of the traverser, the court required his counsel to state what they intended to prove by him, and that Judge Chase required the questions to be reduced to writing; after that was done, I remember that he determined that as this testimony did not go to prove the whole of a charge, it should not be received. He turned to Judge Griffin, and asked him if that also was his opinion; Judge Griffin said it was. Judge Chase added afterwards, in a pleasant manner, to the counsel for the traverser, "you show yourselves to be clever young men, and I believe you know that testimony of this kind ought not to be adduced, but perhaps you do it to blind the people and to work up their minds to a state of opposition;" he then turned to the attorney for the district, and said he was pressed by the counsel to admit the testimony of Colonel Taylor, and that he wished him to give his consent that it should be received. The District Attorney told him that he could not. Judge Chase asked him a second time to accede to the reception of the testimony of Colonel Taylor; the District Attorney replied he would not, it being inconsistent with his duty.

Mr. Wirt then opened the cause on the part of the traverser; he made some allusion to the court's prohibiting the mode of defence, which the counsel for the traverser had adopted, but he was interrupted by the court, and was told that the decision of the court must be binding for the present; that if they objected, they might file their bill of error, and it should be allowed.

Mr. W. proceeded in the cause, and was endeavoring to show that the sedition law was unconstitutional; the court interrupted him, and told him that what he had to say must be addressed to the court, but if he was going on that point, he must again be informed that the court would not suffer it to be urged. Mr. W. appeared to be in some agitation, but continued his argument, and when he came up to that point a second time, he was again interrupted by the court. Mr. W. resumed his argument, and said he was going on. Judge Chase again interrupted him and said "no, sir, you are not going on, I am going on; sit down." I recollect, also, after the judge had made some observations, Mr. W. again proceeded, and having observed that as the jury had a right to consider the law, and as the Constitution was law, it followed syllogistically that the jury had a right to decide on the constitutionality of a law. Judge Chase replied to him, a *non sequitur*, sir, and, at the same time, made him a bow. Whether these circumstances took place exactly in the order in which I have mentioned them, I am not positive, but I believe they did. Mr. W. sat down, and the judge delivered a lengthy opinion. He stated that the counsel must argue the law before the court, and not before the jury, for it was not competent for the jury to decide that point, or that the jury were competent to decide whether the sedition law embraced this case or not, but that they were not competent to decide whether the sedition law was Constitutional or not, and that he would not suffer that point to be argued.

Mr. Harper. What was the effect produced by the reply of Judge Chase to Mr. Wirt's syllogism, a *non sequitur*?

Mr. Gooch. It appeared to me as if it was intended to excite merriment, and if it was so intended, it certainly had that effect, and the same appeared to me to be the motive of the judge in adding the word *punctuatim* after the words *verbatim et literatim*. I thought these circumstances were calculated to display his wit. After this, Mr. Hay addressed the court on behalf of Callender, and I recollect he met with some interruptions in

the course of his argument, which ended in his folding up his papers, and moving as if he was about to quit the bar. The judge perceiving it, said to him, sir, since you are so captious, you may go on and say what you please, you shall not be again interrupted.

Mr. Harper. When the judge told Mr. Wirt to sit down, did you conceive the conduct of the court to be rude, and peremptory, or was there anything like it in his application of the term "young gentlemen?"

Mr. Gooch. I did not perceive anything rude or intemperate in his conduct, unless it can be inferred from the words themselves, when he said you show yourselves clever young gentlemen, but the law is, nevertheless, not as you have stated it.

Mr. Harper. Was this allusion made to a particular point of the law, which had been agitated, or was it general?

Mr. Gooch. I do not know, sir, to what point of law it applied.

Mr. Harper. Did Judge Chase consult his brother Judge (Griffin) on the several decisions which were made, and did Judge Griffin concur in them all?

Mr. Gooch. I think he privately conversed with Judge Griffin on all the points which he decided; I do not mean that he consulted him at every time at which he stopped or interrupted the counsel.

Mr. Harper. Pray, did Judge Chase say to Mr. Wirt, sit down, or please to take your seat, sir?

Mr. Gooch. I think it was, please to sit down, sir. I think, on that occasion, the judge was proceeding to deliver an opinion of the court, and that Mr. Wirt was standing at the time, and that the judge spoke with a view of letting him have an oppportunity of being easy in his seat.

David Robertson, sworn.

Mr. Harper. Did you attend the trial of James Thompson Callender, at the circuit court of the United States, held in Richmond, Virginia, in May or June, 1800.

Mr. Robertson. I attended during a part of the trial, and I took down what occurred in short-hand. I have my original notes with me, as well as a printed copy. I must, however, observe that the printed copy does not exactly correspond with my short-hand notes. There are four instances of a variation, which I have discovered by comparing it recently with my notes. If I may be permitted to have recourse to those papers, I can give as faithful a narrative, perhaps a more correct one, than when depending altogether on my own recollection. The notes were taken at the time, for my own amusement, and without an idea of their being made public. However, at the request of some of my friends, they were published, I think, in July following.

Mr. Randolph. We have no objection to take the printed statement as evidence on this occasion.

Mr. Robertson then read the printed statement.

[As this statement was published soon after the trial, in the newspapers, and was republished by the committee of inquiry of the House of Representatives, its insertion on this occasion has been deemed unnecessary. The variations in the printed statement from the original notes are entirely verbal.]

Mr. Randolph. An observation has been made in your deposition, that Judge Chase consulted with his brother Judge (Griffin) in the opinions which he gave as the opinions of the court; did you see him in the act of consultation, or did you hear him?

Mr. Robertson. I was too busily engaged in writing to have leisure for observing the attitudes or motions of the judges on the bench, but I understood at the time, and my impression is, that they held those mutual consultations.

Mr. Randolph. I observe in this printed deposition, that Judge Chase always speaks in the first person singular, was that his manner of expressing himself?

Mr. Robertson. He spoke in that manner on all those occasions on which I cited him.

Mr. Randolph. How long, sir, have you been in the practice of the law in Virginia?

Mr. Robertson. I have been a practitioner of the law for seventeen or eighteen years in Virginia. I have been a practitioner on the part of the public for several years. I am now a practitioner in two districts, having criminal jurisdiction, as public prosecutor. I have been twelve years employed in the one, and ever since the year 1788 employed in the other.

Mr. Randolph. What is the mode of proceeding in criminal cases less than capital; I mean less than felonies, such as misdemeanors, assaults and batteries, &c.?

Mr. Robertson. I will explain, sir. Misdemeanors, (short of felony,) such as assaults and batteries, are the only offences in which it is the practice to issue a summons, and upon the return of the summons, if the party does not appear, a capias is directed to be issued by the court; but I never knew, in offences of that nature, that a capias was ever issued in the first instance. When I say I do not recollect a capias to have issued in the first instance, I mean to be understood as saying, that I never knew it to be issued, although there are two cases within my knowledge in which offenders, for crimes less than felony, were indicted and tried at the same term. The one was a conspiracy to poison, and the person was bound, under recognizance, to attend at the court which was then sitting. Bail was given in a considerable sum, the trial came on shortly after, and a sentence of fine and three years' imprisonment was pronounced. The other was a conspiracy to set fire to the town of Petersburg. It was examined in the county court, and sent to the court above, the district court. There they obtained a new indictment against the prisoner, and upon that indictment, which was tried at the same term, the person was found guilty, and sentenced also to fine and imprisonment. It was from the heinousness of these offences, I think, that bail was required.

Mr. Randolph. Then, in cases of misdemeanor,

not so heinous as to poison a person, or to burn a town, I understand it is your practice, under the laws of Virginia, to issue a summons?

Mr. Robertson. Yes, sir.

Mr. Randolph. Well, sir, at what time is your summons made returnable?

Mr. Robertson. Always to the next term.

Mr. Randolph. Does the trial take place at the next term, sir?

Mr. Robertson. If the party appears, he pleads, and the trial goes over until the next term; if he does not appear, a capias may be awarded, and he is brought in to answer at the next term.

Mr. Randolph. Did you ever know a capias to issue in the first instance for a misdemeanor, and the party ruled to a trial at the first court at which he was presented?

Mr. Robertson. No, sir, not in cases of that sort, which I have described.

Mr. Randolph. Did you ever ask a man to be ruled to trial for a misdemeanor at the first term?

Mr. Robertson. I never did, sir, if I understand your question.

Mr. Randolph. Did you ever hear of an offer made by the court to postpone the trial of Callender?

Mr. Robertson. I have heard it out of doors, but I have stated that I was not present the first day, and it was only the two last days that I was there.

To an interrogatory,

Mr. Robertson answered. In all those cases of misdemeanor to which I have alluded, the punishment is fine and not imprisonment.

The President. When the party comes in on a summons, and the trial does not proceed, is bail required for his further appearance?

Mr. Robertson. I never knew an instance unless it was in a flagitious case. In one of those which I have mentioned, the party was imprisoned, and it was considered as a favor to him, to bring on the trial in order to avoid the imprisonment which must have taken place till the next term. It was, however, considered within the power of the court either to postpone the cause or to bring it on, but I felt it a duty on my part, as public prosecutor, to urge it forward; but I have always thought it in the power of the court, in cases of high misdemeanor or flagitious offences, that the party might not escape the punishment of the law upon conviction, to issue a capias and require bail.

Mr. Randolph. The eighty-third chapter of the Revised Code of Virginia has this clause respecting the mode of proceeding upon presentment.

[Mr. R. here read the passage.]

Mr. Robertson. That is one law on this point; but there is another respecting proceeding upon information, which I will turn to if indulged with the volume. The book being handed to him, after some time, he discovered and read some passages from the 24th, 25th, 26th, and 28th sections, page 305, directing the mode of proceeding on informations.

Mr. Campbell. In the two cases, which you have mentioned, in respect to arson and poisoning, was there an application made for the continuance of either of them?

Mr. Robertson. I do not recollect that there was; I believe there was not.

Mr. Nicholson. Were they proceeded against by indictment or information?

Mr. Robertson. One by information, the other upon indictment. In one case it was impossible to obtain an acquittal, because the facts and the law came up to a conviction, and that notoriously; but in both cases, if they had been continued, the imprisonment would have been for six months longer, the period of the court being half-yearly. As the accused could not procure bail, they would have been confined for six months longer than the period for which they were condemned.

Mr. Hopkinson. Then, if I understand you right, sir, you would have kept those persons in prison, till next term, if they could not furnish bail?

Mr. Robertson. Yes, sir.

MONDAY, February 18.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, attended by the House of Representatives in Committee of the Whole; and Judge Chase, attended by his counsel.

William Marshall, called in.

Mr. Randolph. Have you not been clerk of the federal court ever since its establishment?

A. Yes, sir.

Mr. Randolph. Have you ever known an instance of the circuit court adjourning from one time to another, and, in the interim, holding another court?

A. I knew it once to adjourn from Tuesday to Friday. I have never known it to hold another court in the interim.

Mr. Randolph. Was that in relation to a particular case?

A. Yes, sir. The adjournment took place to give the gentlemen of the bar an opportunity of qualifying in the superior court.

Mr. Harper. We have heard in this case much about political opinions, and of the effects they were intended to have on the trial of Callender. What was the political character of Mr. Nelson, District Attorney, at that time?

A. I considered his politics as violently opposed to the then administration of the General Government.

Mr. Harper. Was he in strong and decided opposition to it?

A. He was at that time.

Mr. Harper. Do you know any instances that occurred before Judge Chase went to Richmond, of a decision in the circuit court that the State law of Virginia respecting the assessing the fine by the jury did not apply in that court, and what were they?

A. There had been two instances of indictment in the circuit court at Richmond. In one case Judge Iredell presided, and in the other Judge Wilson. In both, it was decided that the jury should not assess the fine, but the court. The indictment in one case was quashed; and in the other the judgment was arrested, so that the decisions were not final.

Mr. Nicholson. In what manner did the court decide that the jury should not assess the fine?

A. In one case the jury was about to be sworn, when the court said they would certainly assess the fine.

Mr. Nicholson. Was any question made of the right of the jury to assess the fine?

A. It was mentioned; but was not, I think, discussed.

To an interrogatory put,

Mr. Marshall answered, that he knew a case in which a capias issued; it was a case in which a felon was rescued from the civil authority.

Mr. Martin. Was he tried the same term he was arrested?

A. Not in that case; but I have known repeated trials the same term; and in some instances trials have been had the same day the indictment was found.

Mr. Randolph. Have you known motions to be made for a continuance, and what was the decision?

A. I have generally agreed to them; but not as a matter of right.

Mr. Nicholson. In what courts were you public prosecutor?

A. In the court of hustings for the city of Richmond.

Mr. Nicholson. Was that court created by a law of the corporation?

A. No, sir, by an act of the Assembly.

Mr. Nicholson. You stated that, in going to Judge Chase's lodgings, you met Mr. Heath, I think, in the passage?

A. I stated that I was uncertain whether I met him within or without the house.

Mr. Nicholson. Are you rather inclined to think that you met him in the passage?

A. I cannot speak with certainty.

Mr. Nicholson. How is the door of Judge Chase's chamber situated as to the other parts of the house?

A. As well as I recollect there is but one door in a narrow passage leading to Judge Chase's room.

Mr. Nicholson. Are there other doors leading to the passage?

A. I believe there are; but I am not certain; as I have not been at the house since Judge Chase lodged there, and had not been there before.

Mr. Clark. Did I understand you to say that misdemeanors are tried in the same term that the indictment is found?

A. Yes, sir.

Mr. Clark. How was the defendant got into court?

A. He was bound in a recognizance.

Mr. Randolph. Was it at Crouch's tavern that Judge Chase lodged?

A. I do not know where he lodged. His sitting room was in the upper end of the house.

Mr. Randolph. The house stands on the side of a hill, and may be said to have two ground-floors; was his room on the upper or the lower floor?

A. He sat in a room on the upper floor.

Mr. Harper. Do you recollect instances of motions for postponement, which you opposed?

A. Yes, sir. I recollect one such instance, in which a man was charged with receiving a hogshead of tobacco, and was imprisoned six months and fined one hundred dollars.

President. I understand that you were prosecutor for the commonwealth of Virginia?

A. I was, sir. I was appointed to prosecute for Richmond, while Colonel Innes was Attorney General. I applied to him and to his successor, Mr. Brooks, for information as to the practice; but I could never find that there was a fixed practice. I therefore acted according to my best judgment.

Mr. Harper said that, before he proceeded in the examination of other witnesses, he would correct a misapprehension which had arisen with regard to the testimony of Mr. D. M. Randolph. For the purpose of correcting it, he would read a letter he had just received from that gentleman.

[Mr. Harper here read the letter to show that, though Mr. Hay had, in conversation with Mr. Randolph, stated his opinion that it would be either impossible, or extremely difficult to find Callender, and his belief that he would surrender next term; yet it was not the impression of Mr. Randolph that this was done to influence him in the discharge of his official duty.]

Mr. Nicholson observed, that he wished, at this stage of the trial to suggest a question which had arisen in his mind. Some of the witnesses on the part of the prosecution were absent. He did not know whether the court considered itself authorized to issue attachments for absent witnesses. There were some witnesses absent whose testimony the managers were extremely anxious to obtain. If the court deemed itself authorized to issue attachments, he would make a motion to that effect.

President. The Court cannot take order on hypothetical cases. If any witnesses summoned have disobeyed the orders of the Court, the Court will take proper order for securing their attendance on a proposition being made to that effect.

Mr. Harper. I will proceed to show the practice of the circuit court in the State of Maryland, where Judge Chase resides, and also in Delaware. It has been a common practice in Maryland, ever since the federal courts were organized, to adjourn, whenever a necessity for it appeared to the court to exist. In the State of Maryland there is no limitation to the session of the State courts.

James Winchester, called in.

Mr. Harper. Do you, at an adjourned court, try causes?

A. No doubt. We progress with causes at an adjourned court, in the same manner as at an original court.

Mr. Harper. Do you not try criminal as well as civil actions?

A. I do not recollect any instances of criminal cases. We have very few instances of criminal cases in the circuit court.

Mr. Harper. Has this practice existed as long as the court has existed?

A. It has been the constant practice ever since I was on the bench. A postponement often takes place for the convenience of the bar, to allow time for making up the issues, which cannot be done during the hurry of business.

Mr. Harper. Has Judge Chase ever adjourned the circuit court for Baltimore, and, after holding a court in Delaware, opened the adjourned court at Baltimore?

A. I do not recollect. I think there was one case of an adjournment, during the interval of which he went to Delaware.

Mr. Key. The circuit meets at Baltimore on the first Monday of May, and the general court of Maryland at Annapolis on the first Tuesday of the same month. Do you recollect an instance of the circuit court adjourning the first week in May to September, and that a circuit court was in the mean time held by Judge Chase in Delaware?

A. I do not recollect this precisely. But I recollect the circuit court having adjourned from May to September; and I believe Judge Chase held a court in Delaware in the mean time.

Mr. Randolph. Have you ever known any other judge to make a similar adjournment?

A. I do not recollect. There is very little business in the circuit court, and generally all the business is transacted without a necessity for an adjournment.

Mr. Key. It has been the invariable practice of the circuit court to adjourn to intervening periods between the stated terms, at the discretion of the court; also in the State courts?

A. It has.

William Rawle, called.

Mr. Harper. Please to state what you know of the practice of the circuit court for Pennsylvania as to adjournments and meeting in the intervening time?

A. The first time I recollect the subject to have been discussed in the Pennsylvania district, was when Mr. Jay presided. On some occasion, which I do not remember, it accorded with the views of the court to adjourn for a few days, or perhaps a week. At first I was inclined to doubt whether this could be done. Mr. Jay and Mr. Peters called upon me to state my ideas, and desired me to consider the case and look at the acts of Congress. The next day I gave it as my opinion, that the court had a right to adjourn, as the length of their session was not limited by law. Mr. Jay and Mr. Peters were of the same opinion; but what took place I do not recollect.

I recollect, in 1795, at the trials arising out of the Western insurrection, many of the trials lasted till three or four o'clock in the morning; and that, in one instance, the court adjourned from the 16th to the 18th of the month. I recollect another instance, when Judge Chase presided, where, at the instance of the bar, an adjournment took place until the first Monday in August, and that the court met that day, and did some chancery business.

Another instance in which the question was discussed, was during the trials before Judge Iredell arising out of the Northern insurrection. Mr. Iredell then thought it the safest way for him to come to the court at ten o'clock, and adjourn the court from day to day, stating, however, that he did not know that this was necessary.

The next instance I recollect, was in the year 1804, when Judge Washington presided, when, at my instance, in consequence of large bodies of land having been orderd to be sold, the court adjourned from May to some day in July. I do not recollect any other instances.

Mr. Harper. Do you recollect an adjourned court being contemplated to be held in January?

A. I do. Judge Washington agreed with Judge Peters, if the yellow fever should occur at the usual time of holding the court, that the latter should open and adjourn the court. But the calamity not occurring that year, there was no necessity for the adjournment.

Mr. Randolph. Did not the first case you mentioned arise from Mr. Jay having been appointed an Envoy Extraordinary?

A. I do not recollect.

Mr. Hopkinson. Is it not the invariable practice of the court of common pleas to do every species of common business at an adjourned court?

A. Unquestionably. The period of the adjourned court is regularly fixed; and all the jury trials take place at an adjourned court.

Mr. Harper said, that he considered it his duty to do justice to a gentleman, (Mr. Nicholas.) to whose testimony he had alluded in his remarks on opening the defence. He had stated that it could be proved, contrary to his testimony, that he had himself issued a capias in a particular case. He had since inspected the record, and found that it did not warrant the inference.

Mr. Harper then said that, to show what was the practice in Virginia, he would call Mr. E. Lee.

Edmund J. Lee, called.

Mr. Harper. Please to inform the Court whether you are acquainted with the criminal practice in any, and what parts of Virginia.

A. I have been a practitioner of the law for about nine years. My practice has been confined to the upper court in three counties, and to one district court. I have never appeared in the character of a public prosecutor; but generally in defence of the accused. In the county courts of Virginia, the usual practice of presentments for offences not capital, and not prosecuted by way of indictment, is to issue a summons. There are some offences which, according to the laws of Virginia, are tried solely by the court, without the intervention of a jury: such as neglect of duty on the highway, profane swearing, sabbath breaking. When the grand jury present offences of

this sort, the penalty attached to a number of which does not exceed five dollars, a summons issues against the party to appear at the next court, and on his appearance the court examine him, and proceed to judgment.

There are also some offences which may be prosecuted before the district court, when the penalty does not exceed ——. In these cases the court also proceeds to judgment without the intervention of a jury.

There are other offences solely prosecuted by way of information. On a presentment by a grand jury, a summons issues.

But, in the courts in which I have practised, I have never known a summons against a person to answer an indictment for any offence. The practice in the courts in which I have had occasion to attend, is this: when the party is proceeded against by indictment, the attorney for the State sends the indictment to the same grand jury that found the presentment; they return it a true bill, and a capias is then issued.

Mr. Harper. Then the distinction is between indictable offences, and those founded on presentment or information?

A. Yes, sir.

Mr. Harper. I understand you to say that it is the practice to issue a capias in cases as low as assault and battery?

A. In the county courts.

Mr. Harper. Do you recollect a question lately made under the law of Virginia in the District of Columbia?

A. Yes, sir. In the district court for Alexandria, it has been determined on argument that a capias is the proper process on all indictments; and Mr. Mason, who has for some years prosecuted, on the part of the United States, has, in all cases for assault and battery, issued a capias.

Mr. Harper. And this under the law of Virginia?

A. Yes, sir. The laws of Virginia are, by act of Congress, made the law for Alexandria.

Mr. Lee. Is a capias the mode of process for misdemeanors used in Virginia?

A. That is either used, or a warrant.

Mr. Randolph. I wish to know whether it is regular to take the professional opinions of witnesses?

President. Gentlemen are inquiring into the practice.

Mr. Lee. Is not a capias the usual mode of process for arresting offenders for misdemeanors?

A. I never knew any other mode.

Mr. Randolph. You have mentioned that it is usual for a capias to issue on an indictment. Did you ever know a capias to issue on a presentment?

A. I have not, when the punishment is only fine.

Mr. Randolph. When a capias issued in the cases you have mentioned, when was it returnable?

A. To the next court.

Mr. Clark. Where bail is required, is it not the practice to take the engagement of the attorney instead of security?

A. I have never known an instance.

Mr. Randolph. I think you said you have not been much engaged in this kind of practice?

A. Except in the district court, and some counties of Virginia.

Mr. Harper. You have stated that, in cases where indictments have been found, you have known a capias ordered, but not on a presentment. Have you ever known a man, for an offence of an indictable nature, taken on a magistrate's warrant, and held to bail?

A. Yes, sir; in a case of assault and battery, a magistrate brought the man before him, and compelled him to give security to appear at the next court.

Mr. Harper. In cases of presentment for indictable offences, before the indictment was found, have you ever known a summons issued?

A. No; I do not recollect an instance of any process issued before the finding the indictment.

Mr. Harper. Suppose process should issue before, what do you conceive it would be?

A. I do not know.

Mr. Harper. I will examine one witness more, as to this *very variable and doubtful practice.*

Philip Gooch, called.

Mr. Gooch said that he had practised thirteen or fourteen years in the district court of Charlotte, and in the county courts, and observed that, when the punishment was only pecuniary, it was usual to issue a summons; and if the party did not appear on the return day, a capias was issued. If the case were important, the general practice was to apply to a magistrate for a warrant, or for the by-standers to carry the offender before a magistrate.

Mr. Harper. It is not, then, an object in your part of the country that offenders should escape?

A. No, sir. A magistrate may issue his warrant, and apprehend persons punishable for misdemeanors. I do not recollect any instance of the kind on a presentment. But at the district court, where Judge Tucker presided, I understood that a capias issued against a person for throwing a stone at the court.

Mr. Harper. Was it on an indictment or presentment?

A. Neither. It was for a contempt of court.

Mr. Harper. They do then punish for contempts in Virginia?

A. Certainly.

Mr. Harper. I will ask you a question relative to another part of this case. Have you ever known an instance in Virginia in which a question was proposed to a juror of this kind—"Have you ever formed and delivered an opinion respecting the matter in issue?"

A. In the county where I resided, the British merchants had a great many claims against the citizens, called British debts, some of which I was employed to prosecute. It was found that it would be impossible to get a jury, if the having formed

an opinion was admitted as an excuse, as every man had formed an opinion. The court determined that unless a man had delivered as well as formed an opinion he was a good juror.

Mr. Harper. As the Virginia practice is extremely unsettled, I will proceed to show what the practice of Maryland is, in which Judge Chase was brought up.

Mr. Randolph. I am of opinion that the counsel might as well adduce the law in Turkey. The article only charges the respondent with a breach of the Virginia law.

Mr. Lee. I hold it as undeniable that when a high officer is brought before this high tribunal, charged with high crimes and misdemeanors, he may produce evidence from any source whatever that repro[illegible]ates the evil intention wherewith he is charged. When testimony is produced by the Managers to show what the judge said in the presence of strangers, jocosely, and with unsuspicious freedom, to prove an evil intent, how comes it, when we attempt to show by indisputable evidence that there was no evil intent, that we are denied the right? This high Court which I have the honor of addressing, is, I apprehend, a court of impeachment, and not of errors. When an error is alleged to have been committed by the judge, shall we be denied the right of adducing evidence to show, that if it was an error, it was common to the judicial tribunals before he was raised to the high place he now holds; that during the whole course of his professional career he retained the opinion, now charged as an error; that in all cases he held and supported this opinion, and that he ever acted under the conviction that he was faithfully discharging his duty; that he sat as a judge in criminal cases for six years; and that it was his uniform practice to have the capias returned to the same term on which it issued, and that it was his practice to try for offences at the same term that they were indicted. Will the court deny this right? If the conduct of the judge shall be deemed an error, will not this be considered as some excuse?

Mr. Randolph said, had he known that his remark would have occasioned so long an argument, he would not have said a word. He was ready to admit as proven that for which the gentleman meant to produce testimony—that the practice was such as they stated it to be in Maryland.

Mr. Key. I understand then that it is admitted to be the universal practice in Maryland in criminal cases, before the indictment is found, to issue a capias or bench warrant.

Mr. Randolph. I admit it.

Mr. Key. And in all cases where there is a presentment, a capias or bench warrant issue *instanter*.

Mr. Randolph. I admit that it is the *general* practice.

Mr. Key. That is sufficient.

Mr. Martin. And that it is the general practice to try the first term.

Mr. Nicholson. I admit that this is the case in capital cases; but not in lighter cases, if the party accused oppose it.

Mr. Martin. The reverse is the case. The court will rather avoid pressing a trial in capital cases, where the life of a party is involved.

Mr. Wright said he wished to put a question to Mr. Martin in his capacity of a witness. In what cases have you ever known a bench warrant to issue?

Mr. Martin. I have practised for twenty-seven years; and the invarable practice is to issue a bench warrant immediately on the presentment; in all cases, from the lowest to the highest offences.

President. Is there any difference between a capias and a warrant?

Mr. Martin. They are the same, except that one is issued by a magistrate, and the other by the court.

Mr. Lee here adduced a number of authorities, (the greater part of which he barely referred to,) for the purpose of exhibiting fully the grounds of the defence. As these were again introduced in the arguments of counsel, we shall only, in this place refer to them. He referred to the 14th and 34th sections of the judicial act of the United States; to 2d Dallas, 411—Gilbert's law of evidence, page 307, 308—also page 333—2d Dallas 235, 341.

Mr. Harper said they would proceed to adduce testimony relative to the 7th article.

Gunning Bedford, sworn.

Mr. Harper. Please to state to the court whether you were present in your judicial character at a circuit court held at Wilmington in 1800, and relate the circumstances which occurred?

A. I attended that court on the 27th of June. Judge Chase presided. I arrived in the morning about half an hour before Judge Chase. We went into court about eleven o'clock. The grand jury was called and empanelled. The judge delivered a charge: they retired to their box; after an absence of not more than an hour they returned to the bar. They were asked by the judge whether they had any bills or presentments to make to the court. They said they had none. The court called on the attorney of the district to say whether there was any business likely to be brought forward. He replied that there was none. Some of the grand jury then expressed a wish to be discharged. Judge Chase said it was unusual for the court to discharge the grand jury so early in the session; it is not the practice in any circuit court in which I have sat. He turned round to me, and said, Mr. Bedford, what is your usual practice? I said it depended upon circumstances, and on the business before the court; that when the court was satisfied there was nothing to detain them they were discharged. Judge Chase then turned to the jury, and observed, "But, gentlemen of the jury, I am informed that there is conducted in this State (but I am only *informed*) a seditious newspaper, the editor of which is in the practice of libelling and abusing the Government. His name is ——, but perhaps I may do injustice to the man by mentioning his name. Have you, gentlemen of the jury, ever turned your attention to the subject?" It was answered, no,. "But, resumed the judge, it is your duty to attend to things of this kind. I have given you in charge the sedition act, among other things. If there is anything in what is suggested to you, it is your duty to inquire into it." He added, "It is high time that this seditious printer should be corrected; you know that the prosperity and happiness of the country depend upon it." He then turned to the attorney of the district, and said Mr. Attorney, can you find a file of those papers? He answered that he did not know. A person in court offered to procure a file. The attorney then said, as a file was found, he would look it over. Can you, said the judge, look it over, and examine it by to-morrow at ten o'clock. Mr. Attorney said he would. Judge Chase then turned to the grand jury, and said, gentlemen, you must attend to-morrow at ten o'clock. Other business was gone into, and the court adjourned about two o'clock.

On my way to Judge Chase's lodgings, I said to him, my friend, I believe you know not where you are; the people of this country are very much opposed to the sedition law, and will not be pleased with what you said. Judge Chase clapped his hand on my shoulders and replied, "my dear Bedford, no matter where we are, or among whom we are, we must do our duty."

The next day we went into court about ten o'clock. The grand jury went to their chamber, and I believe Mr. Read returned with them into court. They were asked if they had anything to offer to the court; and the attorney was called on again to state whether he had found anything in the file of a seditious nature. He had a file of the paper before him, and he said he had found nothing that was a proper subject for the notice of the jury, unless a piece, relating to Judge Chase himself. The judge answered, take no notice of that, my shoulders are broad, and they are able to bear it; but where there is a violation of a positive law of the United States it is necessary to notice it.

Mr. Harper. Did Judge Chase say nothing about a seditious temper in the town of Wilmington in Newcastle county?

A. I do not recollect that he did. The subject has occupied my attention since I saw Mr. Read's testimony given to the committee of inquiry of the House of Representatives; and I have not been able to trace in my mind any recollection of the kind. What I said to the judge shows that I did not hear such remarks. Another circumstance strengthened my conviction that no such remarks fell from him. There was a publication in the Mirror, on the fourth of July, giving an account of the proceedings of the court; in which many circumstances that occurred appeared to me to be highly exaggerated; and yet in that publication no such remarks are ascribed to the judge.

Mr. Harper. Was there anything authoritative or commanding in the language of Judge Chase to the attorney of the district; or was what he said in the nature of a request?

A. It was a request, made in the usual style of a request.

Mr. Harper. Was the business conducted with apparent good humor?

A. It appeared so to me.

Mr. Harper. From what source did the printer obtain his statement of the proceedings of the court?

A. The printer stated that he had it from a person in court.

Mr. Randolph. Was the title of the paper mentioned at the time?

A. I think not. I believe, I suggested the title, when inquiry was made as to the procuring a file.

Mr. Rodney. In what manner did the judge address the grand jury?

A. In his usual manner of speaking; but without passion.

Mr. Rodney. Do you recollect whether on the second day there was not an unusual concourse of people in court?

A. I believe there was.

Mr. Rodney. Did not Judge Chase ask whether there were not two printers in town?

A. I believe he did ask that question.

Mr. Rodney. You do not recollect a suggestion by the district attorney that the paragraph you have alluded to did not come within the sedition law?

A. I do not recollect it.

Mr. Nicholson. Do you recollect the particular expression of Judge Chase when he asked if there were not two printers?

A. He spoke very much in these terms—"Perhaps I am going too far—I may do the man injustice. Have you not two printers?"

Mr. Nicholson. In the town or State?

A. I do not recollect. I think it is more than probable that he mentioned the town.

Mr. Nicholson. You are not certain whether Judge Chase cited the title of the paper?

A. I am not certain.

Mr. Nicholson. What induced you to consider what he said as applicable to the Mirror?

A. We had two papers printed in Wilmington, one of which was federal, and the other, the Mirror, democratic.

Mr. Rodney. Do you recollect whether it is the general practice in Delaware to discharge the grand jury the same day they are empanelled?

A. I believe it is the general practice.

Mr. Randolph. Do you recollect whether the judge, when speaking of the printer, said, "and one of them, if report does not much belie him, is a seditious printer and must be taken notice of. I consider it a part of my duty, and it shall or must be noticed. And it is your duty, Mr. Attorney, to examine minutely and unremittingly into affairs of this nature; the times, sir, require that this seditious spirit, which pervades too many of our presses, should be discouraged and repressed."

A. I have no recollection of such words.

Mr. Harper. Do you know who gave the information to Judge Chase about the printer—was it yourself?

A. It was not—I had not the opportunity, as I came to town at a late hour.

Nicholas Vandyke, sworn.

Mr. Harper. Please to state whether you were at the circuit court for Delaware in the year 1800?

A. I attended the circuit court held in Newcastle on the 27th and 28th June, 1800. I was not present when the court opened; but I think I entered the court house while Judge Chase was delivering a charge to the grand jury. After its delivery the grand jury retired; they were absent a short time: and as well as I can recollect before and when they returned, I was either out of the court house, or engaged in conversation with some person out of the bar. I think so, as I have no recollection of the question put to the grand jury, whether they had found any bills, and that put to the district attorney. I entered the bar while there was a pause, and silence prevailed. I recollect that the first circumstance that attracted my attention was the observation of Judge Chase to the grand jury, that since he had come among them, he had been credibly informed that there was a seditious printer within the State, in the habit of libelling the Government of the United States, and having received this information, he thought it his duty to call the attention of the grand jury to the subject. He appeared to me to be proceeding to state the name of the printer; but he did not name him. He said that might be doing injustice to the man, or that it was improper in him. I cannot say which was the term he used. I think he then asked the district attorney if there were not two printers in the State. He answered, that there were. There was then some conversation between the judge and the district attorney. My impression was that it conveyed a request from Judge Chase to the district attorney to inquire into the subject on which he had previously spoken to the jury. Mr. Attorney said that he had not seen the papers. The judge asked him whether he could not procure a file of them. I do not recollect that the name of the printer was mentioned then, or during the whole sittings of the court. Some person at the bar said a file could be procured. Judge Chase asked the attorney, if he could make the inquiry by to-morrow at 10 o'clock. About this time I heard some observations made respecting the discharge of the grand jury on that day. Some of the gentlemen said it was a busy season, that they were farmers, and were desirous of returning to their homes. Judge Chase replied, that might be very true; but that the business of the public was also important; it must be attended to: and therefore he could not discharge them. I do not pretend to say I have pursued the language used. I have only attempted to give my impression of the facts that occured.

Mr. Harper. Did you hear any such phrase, as this: that a seditious temper had manifested itself in the State of Delaware, in Newcastle county, and more especially in the town of Wilmington?

A. I do not think I heard such expressions.

Mr. Harper. What was the manner of Judge Chase in addressing the District Attorney?

A. His usual manner; which is always warm and earnest.

Mr. Harper. Did he say anything that was authoritative or imperious to the District Attorney?

A. It did not strike me so.

Mr. Harper. But made a request in the usual way?

A. Yes, sir.—On the second day, a short time after I entered the court, some person spoke to the District Attorney, who soon after, as I supposed, went to the grand jury; in a short time after he returned, and then the grand jury, with a file of papers. The judge inquired of the jury whether they had anything to lay before the court. They said they had not. The same question was put to the District Attorney, who answered there was nothing, unless a certain piece against Judge Chase. Judge Chase said, that was not a proper subject of inquiry; it was only matter that tended to libel the Government of the United States, that was a proper subject of inquiry for the grand jury.

Mr. Nicholson. Is your recollection of what occurred very perfect?

A. I cannot say that it is, after so long a lapse of time, I only state my present impressions of what occurred.

Archibald Hamilton, sworn.

Mr. Harper. Please to inform the court whether you were present at a circuit court for Delaware in 1800?

A. I recollect that I was present on the 27th of June. I arrived about ten o'clock, at which time Judge Chase was not there. Some time after, the court was formed, the grand jury was sworn, and Judge Chase delivered a charge. Having retired for about an hour, the grand jury returned to the bar. Judge Chase asked them if they had any bills or presentments to make. Their reply was that they had not. Judge Chase then asked the Attorney of the District if he had no business to lay before them. He said he had not. The jury requested to be discharged. Judge Chase said, it was not usual to discharge them so early, some business might occur during the course of the day. He told them, he had been informed that there was a printer who was guilty of libelling the Government of the United States; his name is——; here he stopped, and said, "perhaps I may commit myself, and do injustice to the man. Have you not two printers?" The attorney said there were. Well, said Judge Chase, cannot you find a file of the papers of the one I allude to? Mr. Read said he did not take the papers, or that he had not a file. Some person then observed that a file could be got at Mr. Crow's. Judge Chase asked the attorney if he could examine the papers by the next morning. Mr. Read said, that under the directions of the court, he conceived it to be his duty, and he would do it.

On the second day the same questions, whether they had found any bills, were put to the grand jury. They answered that they had not. Mr. Chase asked the Attorney of the District if he had found anything in the papers that required the interposition of the jury. He said that he had found nothing which in his opinion came within the sedition law; but there was a paragraph against his honor. Judge Chase said, that

was not what he alluded to. He was abused from one end of the continent to the other; but his shoulders were broad enough to bear it.

Mr. Harper. Did the judge say anything of a seditious temper in that State?

A. I do not recollect any such expressions.

Mr. Harper. Were you in the court the whole time?

A. I was.

Mr. Harper. How were you situated?

A. I was directly under Judge Chase, and nothing could fall from him without my hearing it.

Mr. Rodney. Do you recollect whether he mentioned the name of the paper?

A. I do not recollect that he did.

Mr. Rodney. What was the manner of the judge?

A. I saw nothing unusual.

Mr. Rodney. Do you recollect whether his manner made any impression at the bar?

A. On nobody but the printer.

Mr. Rodney. Do you recollect that the District Attorney said he conceived it his duty to inquire into matter of the kind he alluded to?

A. I do.

John Hall, sworn.

Mr. Harper. Were you present at the circuit court for Delaware held in June 1800?

A. I believe I was in court when they met, and when the grand jury were called, and returned into court. I have but a faint recollection of what passed between the court and the jury after they returned; I was at a considerable distance from the court. I was not present the second day.

Mr. Harper. Do you recollect what occurred the first day about a printer?

A. I recollect that Judge Chase said, he was credibly informed there was a seditious paper published in the State of Delaware; and he made inquiry of the jury whether anything of that nature had come under their notice. They said it had not.

Mr. Harper. What did Judge Chase then say?

A. I cannot recollect particularly.

Mr. Harper. What did he say afterwards?

A. There was some conversation between Judge Chase and the District Attorney. The judge asked him whether he had seen anything of the kind he had alluded to. He said he had not. The judge asked him if he could procure a file of the papers.

Mr. Harper. Did Judge Chase say anything about a seditious temper in the State of Delaware, or Newcastle county, or in the town of Wilmington?

A. I do not recollect.

Mr. Rodney. Was Mr. McMechin a member of the grand jury?

A. Yes, sir.—He and Judge Chase went to court together.

Gunning Bedford, called.

Mr. Rodney. Did Judge Chase, in a conversation with you, subsequent to the discharge of the grand jury, complain that he could not get a person indicted in Delaware for sedition, though he could in Virginia.

Mr. Bedford. I have no distinct recollection of that kind. I have some indistinct recollection that in a small circle of friends, though not to me personally, he said some such thing in a jocular way.

Samuel Moore, affirmed.

Mr. Harper. Were you in the circuit court held in Delaware in June, 1800, when it met?

A. No, sir.—I did attend early enough on the first day to hear the charge given to the grand jury. I think I did not attend before twelve o'clock. I attended as a juror. On the next day I attended early, and was in the court-house when the court met. When the jury returned into court, inquiry was made whether they had any bills or presentments to make. They answered no. The court then inquired of the Attorney of the District whether he had any business to lay before the grand jury. He said he had not. While he was making this reply, he rose, and laid hold of a file of newspapers, which I took to be the Mirror of the Times, and while he was in the act of presenting it, he observed that he had not seen anything that in his opinion required notice, unless it were a publication reflecting on Judge Chase, which did not appear to him to come under the sedition law. Judge Chase answered, no, sir; they have abused me from one end of the continent to the other; but it is the Government, and not myself, that I wish protected from calumny. Immediately after the grand jury were discharged.

Mr. Harper. Have you ever seen the printed deposition of Mr. Read on this subject? If you are acquainted with any particular circumstances relative to it, please to state them.

A. I do not know any particular circumstances respecting it.

Mr. Harper. I mean to inquire whether there was any consultation?

A. If you mean a private conversation, it may be improper to state what may be considered as confidential.

Mr. Harper. I will not then ask it.

Mr. Nicholson. If these questions are stated with a view to impeach the testimony of Mr. Read, I hope they will be put and answered.

Mr. Harper. I will state the object of the question. It is to discredit the testimony of Mr. Read by particular circumstances that occurred in a conversation between the witness and him. If the witness knows of no such circumstances, I have been misinformed.

Mr. Rodney. Conscious that nothing which can be stated will in the least invalidate the testimony of Mr. Read, it is my wish, and that of the Managers, to allow the fullest liberty to the witness to state anything he knows.

Mr. Moore. I will answer any questions put, but unless directed, I shall not consider it correct to relate a confidential conversation.

Mr. Harper. I will waive all further inquiry, if the witness deem it indelicate.

Mr. Moore intimated that he did so deem it.

Mr. Randolph. I will ask the witness if he ever had a conversation with Mr. Read on the subject?

A. Frequently.

Mr. Randolph. I understand you to say that you do not know anything that goes to invalidate Mr. Read's testimony.

A. Yes, sir.

Mr. Randolph. That is all we want.

Mr. Hopkinson here adduced a charge delivered by Chief Justice McKean in November, 1797, in Philadelphia, printed in Claypoole's paper in December, 1797, (respecting alleged libellous publications of William Cobbett.)

Mr. Harper. We will now adduce testimony relative to the 8th article. But before we call our witnesses, I will ask a question or two of Mr. Montgomery.

Mr. Montgomery was called.

Mr. Harper. Will you look at that paper? Is it the publication referred to in your testimony as having been sent to the press?

Mr. Montgomery. Yes, sir.

Mr. Harper. Did you ever send any other publication of the same kind to a newspaper?

A. No, sir.

Mr. Harper. I will offer this publication in evidence, and I will proceed to read it.

Mr. Montgomery. A short time after I returned home, from my recollection at that time, I committed to paper what I conceived to be the substance of the charge delivered by Judge Chase, and made my comments upon it. The court will observe that it refers to other conduct of Judge Chase, in the State of Maryland.

Mr. Harper here read the paper above alluded to from the Baltimore American of the 30th June, 1803, and added, this is the temper of the witness who has on a previous day given his testimony in this court.

Mr. Harper. I will now proceed to show that Mr. Montgomery, in his strong anxiety to get Judge Chase impeached, has remembered things which nobody else remembers, and has heard things which nobody else heard.

Mr. Randolph. I will ask of this court whether the witnesses we have called are not under their protection?

The President. If the counsel, in the testimony they adduce, come up to what they state they can prove, they will not be subject to reproach; if they do not, they merit it.

Mr. Randolph. I have no objection to the counsel impugning the veracity of one witness by the evidence of another, and descanting upon it; but I think they take an improper liberty when they undertake to say, before it is proved, that what is deposed by a witness never passed.

The President. I understand the gentleman to say that he will prove, by another witness, that what has been deposed never did pass.

Mr. Harper. Precisely so, sir.

William H. Winder, sworn.

Mr. Harper. I will ask you whether you were in the circuit court of the United States, held at Baltimore, in May, 1803? I will, however, previously observe that it is not my intention to say or to prove that the witness, when he deposed to certain facts, knew that they had not passed. I mean only to impeach his correctness, and to infer that, as he was angry, he gave to what he heard the coloring of his own feelings.

Mr. Winder. I was present at that court when it was opened, and the jury empanelled, and I heard Judge Chase deliver his charge. After delivering the general and usual charge to the grand jury, he said he begged leave to detain them a few minutes, while he made some general reflections on the situation of public affairs. He commenced by laying down some abstract opinions, stating that that Government was the most free and happy that was the best administered; that a republic might be in slavery and a monarchy free. He also drew some distinctions with regard to the doctrine of equal rights, and said that the idea of perfect equality of rights, more particularly such as had been broached in France, was fanciful and untrue; that the only doctrine contended for with propriety was, the equal protection of all classes from oppression. He commented on the repeal of the Judiciary system of the United States, and remarked that it had a tendeney to weaken the Judiciary, and to render it dependent. He then adverted to the laws of Maryland respecting the Judiciary, as tending to the same effect. One was a law for the repeal of the county court system. He also alluded to the depending law for the abolition of two of the courts of Maryland. He said something of the toil and labor and patriotism of those who had raised the fair fabric, (constitution of Maryland,) and said that he saw with regret some of their sons now employed in destroying it. He also said that the tendency of the general suffrage law was highly injurious, as, under it, a man was admitted to full political rights, who might be here to-day and gone to-morrow.

This is the amount of my recollection; and I think I have stated the language of the judge in as strong terms as he himself used. Since I was summoned as a witness I have never seen the charge of the judge, or that published in the National Intelligencer, or by Mr. Montgomery. I concluded that it was most proper not to avail myself of those publications. My impressions, therefore, are altogether unassisted by them.

Mr. Harper. Did you attend carefully to the charge?

A. I did. I am sure no part of it escaped me.

Mr. Harper. Did Judge Chase appear to read it from a paper?

A. I so took it. Occasionally he raised his eyes, but not longer than I should imagine a person would who was familiarly acquainted with what he was reading.

Mr. Harper. Did you hear him use any of those expressions deposed by one of the witnesses—that the Administration was feeble, and inadequate to the discharge of its duties, and that their object was to preserve power unfairly acquired. Did he use any such words?

A. To my best belief, he did not. I have a strong reason for considering my recollection on this point correct. Immediately after the charge was delivered, I conversed with several gentlemen respecting it. It was complained of as harsh, and as containing reflections on those who had brought about the measure alluded to. I reflected on it, and the result on my mind was, that it was couched in polite terms, and that the reflections it contained were entirely matters of inference.

Mr. Harper. Did the judge use any arguments against pending measures?

A. Certainly.

Mr. Harper. Did he mention the present Administration?

A. I believe not. If he had, it would have struck my mind very forcibly.

Mr. Harper. Did he use any such phrase as "degenerate sons?"

A. I have a particular recollection of that, or some such expression. I considered it as a very happy allusion to events which occurred in the State Legislature.

Mr. Harper. You considered it as calculated to have a persuasive influence?

A. That was not my language. The sentiment I think was this. He regretted to see sons taking part in destroying the fair fabric their fathers had raised. He spoke feelingly on this point.

Mr. Harper. Had you any other conversation which tended to impress the substance of the charge on your memory?

A. I do not recollect. I was very attentive to the charge. I observed Mr. S. H. Smith to be present; and it was observed at the time that we might expect to see an accurate statement of the charge from him, as he could detail what he heard with great precision. I recollect to have looked at the statement published in the National Intelligencer at the time it appeared, and I thought it gave a faithful view of the substance of the charge, quite as strong as the charge itself.

Mr. Nicholson. Did Judge Chase say anything of the motives of the members of the Legislature of Maryland?

A. He did, according to my impression.

Mr. Nicholson. What were the motives he ascribed to them?

A. As I understood him, the motive he ascribed to them, was to get rid of the judges, and not the system.

Mr. Nicholson. He did certainly, then, allude to the motives of the members of the Assembly of Maryland?

A. I think he did. If he did not, that was the impression produced on my mind by what he said.

Mr. Nicholson. Do you recollect whether Judge Chase did at the close of his charge recommend to the members of the grand jury to return home, and prevent certain laws from being passed?

A. I think that was the result which he drew from what he had previously said.

James Winchester, sworn.

Mr. Harper. Please, sir, to state to this court your recollection respecting a charge delivered by Judge Chase in the circuit court of Maryland in May, 1803?

Mr. Winchester. As already stated, that court sat in May, 1803, in a room in Evans's tavern. The court and gentlemen of the bar sat round several dining tables. I sat on the left of Judge Chase, and the jury were on his right. He addressed a charge to them, the beginning of which was in the usual style of such addresses. He then commenced what has been called the political part of the charge, with some general observations on the nature of government. He afterwards adverted to two measures of the Legislature of Maryland; the first related to an alteration of the Constitution on the subject of suffrage; the other contemplated an alteration in the judiciary. He commented on the injurious tendency of the principle of universal suffrage, and deprecated the evil effects it was likely to have. Incidental to these remarks, he adverted to the repeal of the judiciary law of the United States. I say incidental, for my impression was that his object was to show the dangerous consequences that would result to the people of Maryland from a repeal of their judiciary system, and to show that as the act of Congress had inflicted a violent blow on the independence of the federal judiciary, it was more necessary for the State of Maryland to preserve their judiciary perfectly independent. I was very attentive to the charge for several reasons. I regretted it as imprudent. I felt convinced that it would be complained of; and I am very confident from my recollection, and from the publications respecting it, which I afterwards perused, that all the political observations of the judge related to the State of Maryland.

Mr. Harper. Did the judge appear to deliver the charge from a written paper?

A. I have sat in the circuit ever since 1800. Judge Chase has a kind of standing form in his charges on the general subject of crimes and offences. When there is much business expected to be transacted he goes into a detailed view of the duties of a grand jury. When there is little business he contents himself with a charge of a different form. When he delivered this charge, he had in his hand a marble covered book.

Mr. Harper. (Showing him a book.) Do you think this was the book?

Mr. Winchester. I believe it was. There were occasional pauses during the delivery; he turned backwards and forwards, and read sections from different parts of the book. At the conclusion of particular sentences he lengthened out the tones of his voice, and made a pause, as if to arrest the attention of the jury. Though I cannot say that there was not a word or expression introduced that was not written, yet my impression is that he delivered the whole from the book before him.

Mr. Harper. Did you hear any expressions applied to the present Administration, or was the Administration mentioned at all?

A. My impression is very strong that neither the present Administration was mentioned, or the

views or designs of any member of it in any manner whatever. I am confident of this, because if such remarks had been uttered, they would have made a strong impression on my mind.

Mr. Harper. Did you ever hear the judge allude to such topics in his charges?

A. I never heard Judge Chase in any of his charges reflect on any Administration. I have heard a great many charges of his, containing political matter, and they have been all rather calculated to support the existing Administration.

Mr. Harper. Have you heard any since 1800?

A. I recollect no particular charge delivered by him since that time.

Mr. Harper. Was the general tenor of his charges since and before 1800 calculated to support the laws?

A. I think there has been this difference. Those delivered before 1800 called on the jury to support the measures of the Government as wise and upright; since that period he has made no allusion to the measures of the Administration.

Mr. Harper. But his general practice has been to recommend to them the observance of law, and the support of government?

A. He generally addressed the jury on the necessity of obeying the laws: that has been the tenor of his charges at all times.

Mr. Key. In a criminal case, when a question of law arises, is not the opinion of the court always taken?

A. Except in a case which occurred between the present Secretary of the Navy and myself. [The details of this case were not heard.] I never knew an instance in which the direction of the court was not taken, and I know no instance in which counsel attempted to controvert the opinion of the court on a point of law.

Mr. Key. Have you ever known counsel address a jury on a point of law after it had been decided by the court?

A. Never.

Mr. Martin. Would it not be deemed indecorous to do so?

A. I have always thought so.

Mr. Nicholson. I will ask you whether Judge Chase recommended to the jury, on their return home, to use their exertions to prevent the adoption of a depending law?

A. I do not know whether the recommendation came from the judge in language and terms. I rather think it flowed as an inference from what he had said.

By a Senator. In any criminal or civil case, did you ever know the court give an opinion without being required by counsel?

A. I recollect no instance, except in a general charge to the grand jury, or in summing up the testimony at the end of the trial?

Mr. Randolph. I will ask whether the case you allude to is, after both parties have been heard, at the end of the trial?

A. Certainly, sir.

Mr. Martin. I will ask you whether in any case, where the law is settled, and counsel go into an argument on the point of law, the court do not frequently stop them?

A. It is difficult to give a correct answer to this question. It is certain that it often happens, that in arguments on points of law, the court check the counsel, and say they are too clear to be controverted, and, to prevent delay, beg the counsel to pass over them.

TUESDAY, February 20.

The Court was opened at 10 o'clock, A. M.

Present: the Managers, accompanied by the House of Representatives, and Judge Chase attended by his counsel.

At the instance of Mr. Harper,

Edward Tilghman was called.

Mr. Harper. Do you recollect any instance of an adjournment of the circuit courts of the United States?

Mr. Tilghman. I recollect in the year 1801, that at a circuit court of the United States, where Judges Tilghman, Griffith, and Basset were on the bench, which was held at Philadelphia, there was an adjournment on the 26th or 27th of October to some day early in January ensuing. The court adjourned because they were obliged to hold a court in Bedford, which was in the western district of Pennsylvania. I recollect that in the court held in Philadelphia, they were not able to go through the business before them, particularly in the case of Peter Blight's assignees. The court consulted with the bar on the adjournment, and the sentiment was unanimous that an adjournment could take place. After the court was held in Bedford, it was again held in Philadelphia, in the month of January; the cause I have mentioned was tried, and I believe several others.

Mr. Harper. What is the distance of Bedford from Philadelphia?

Mr. Tilghman. I believe between one hundred and one hundred and fifty miles. In the last year in the month of May, while Judge Washington was holding a court in Philadelphia, he learned that an attempt had been made to set fire to his house; in consequence of that circumstance and the situation of his family he was obliged to leave town. He and Judge Peters consulted on the course proper to be pursued in case the yellow fever should be in Philadelphia at the usual time at which the court met, and it was agreed that Judge Peters should in that case open the court and adjourn it over to January. This was agreed after consulting the bar, and I do not recollect that there was any difference of opinion among them. The court had commenced in April, and this determination was made some time in May.

Mr. Martin. Did the judges, after holding a court at Bedford, return to their homes before the adjourned court was held in Philadelphia?

Mr. Tilghman. According to my impression they certainly did; there was little or no business done at Bedford, where they either broke up the day on which they met, or on the day after.

Mr. Randolph. Have you ever known of a bill of exceptions in a criminal case in the courts of the United States?

Mr. Tilghman. Never. I recollect in the case of the United States *vs.* Worrell, which was an attempt to corrupt Mr. Tench Coxe, the verdict was against the defendant, and there was an arrest of judgment. There was a division of opinion whether it was an offence at common law, and there was a talk of a writ of error. It was said at the bar a writ of error would not lie, and I think when it was mentioned to the court, they said the same thing, under the idea that writs of error were confined to civil cases.

Thomas Chase, sworn.

Mr. Harper. Please to look at that paper, (showing a paper.) Do you know the handwriting of it?

Mr. Chase. I do not.

Mr. Harper. Will you look at that book; do you know whose handwriting it is?

Mr. Chase. I do.

Mr. Harper. Did you copy it?

Mr. Chase. I did.

Mr. Harper. This is exhibit No. 8, (charge of Judge Chase.) it contains the whole of the charge; from what page did you copy it?

Mr. Chase. From page 13 to the words "fathers erected."

Mr. Harper. From what did you copy the book?

Mr. Chase. From a paper in my father's handwriting, except some few words interlined by way of correction.

Mr. Harper. When did you copy it?

Mr. Chase. A few days before May term 1803.

Mr. Martin. Have you made any alterations in it since?

Mr. Chase. No, sir.

Mr. Harper. We will offer this book in evidence.

Philip Moore, sworn.

Mr. Harper. Do you know that book? (Showing him the same book above referred to.)

Mr. Moore. Judge Chase is in the practice of delivering his charges from a book. I saw him deliver his charge in May, 1803, from a marble-covered book, which I believe is the same with that book.

Mr. Harper. Did he appear to read the whole time he was delivering that charge?

Mr. Moore. He appeared to me to do so; he occasionally raised his eyes from the paper before him, and spoke with more than common emphasis, but he still appeared to speak from the book.

Mr. Harper. Did you hear anything said by him about the present Administration?

Mr. Moore. I have never heard the judge in courts of justice speak of the present Administration.

Mr. Harper. Do you think in the charges he said anything about the Administration?

Mr. Moore. I do not.

Mr. Harper. Had he made any such remarks, are there any peculiar reasons why they would have made a strong impression on your mind?

Mr. Moore. I think they would have made a strong impression, as my impressions were always in favor of the administration, while Judge Chase's were against them.

Mr. Randolph. Was there any recommendation to the jury, when they returned home to use their influence to prevent the passage of certain laws?

Mr. Moore. I do not know that there was; there may have been, but if there was, I have no recollection of it.

Walter Dorsey, sworn.

Mr. Harper. Please to inform the court whether you were at a circuit court held at Baltimore in 1803?

Mr. Dorsey. I was.

Mr. Harper, Were you present when Judge Chase delivered a charge to the grand jury?

Mr. Dorsey. I was.

Mr. Harper. Was you in such a situation as to hear that charge?

Mr. Dorsey. I was.

Mr. Harper. Were you near Mr. Montgomery?

Mr. Dorsey. I was; I think there was only one person between us.

Mr. Harper. Did you attend to the charge?

Mr. Dorsey. I attended to what is generally called the political part of it, because it was novel, and contained speculations with respect to government in general, and remarks on national and State laws.

Mr. Harper. Do you recollect anything in it respecting the Administration?

Mr. Dorsey. I do not, I recollect a part of it relating to the State and national judiciary, and to universal suffrage. I did not hesitate to state that it was an indiscreet thing; my attention was particularly drawn to it by seeing in the room the editor of a newspaper, and from expecting that it would be the subject of newspaper animadversion.

Mr. Harper. Do you think Judge Chase made any remarks relative to the present Administration?

Mr. Dorsey. I do not. I have no distinct recollection of any such. I think if he had made such remarks, I should recollect them; there is another circumstance of which I am not positive, whether he did at the end of the charge, recommend to the jury to use their exertions to repeal certain laws of the State of Maryland, or whether I drew a construction in my own mind to that effect, from what he said, I cannot say, though it is impressed on my mind that the former was the case.

Mr. Harper. Did he appear to read the charge?

Mr. Dorsey. He did, he appeared occasionally to throw his eyes off the paper.

Mr. Harper. Did he appear to throw his eyes off for a longer time than is usual with a person who is reading his own composition?

Mr. Dorsey. No, he did not.

Mr. Harper. You are of opinion that he read the whole from a book?

Mr. Dorsey. It appeared so to me.

John Purviance, sworn.

Mr. Harper. Please to inform this honorable Court whether you was present at a circuit court held at Baltimore in May, 1803?

Mr. Purviance. I was.

Mr. Harper. State what happened on that occasion.

Mr. Purviance. I do not pretend to recollect everything which occurred; but as I attended to what Judge Chase said in his charge to the grand jury, I think I have a pretty distinct recollection as to the manner in which he delivered that address; he appeared to me to read the whole from a written paper laying before him. I never expected that this inquiry would have been made of me, and after such a lapse of time I can only speak of the impressions now on my mind.

Mr. Harper. Do you recollect whether Judge Chase made any mention of the present Federal Administration, and what was it?

Mr. Purviance. I have no recollection that he mentioned it, but as it was identified with the repeal of the law for establishing the circuit court of the United States, and so far as the Executive composed a part of the Legislature, he may have mentioned the Administration.

Mr. Harper. Was there any particular mention or allusion to the Executive of the United States?

Mr. Purviance. No, sir, nothing of the kind; I have endeavored to retrace in my mind everything which was said, and I have not the smallest recollection that any remark was made upon the Executive Department of the United States.

Mr. Harper. Was there nothing said about preserving power unfairly obtained?

Mr. Purviance. I think if such an expression had been used, it would have struck me forcibly, for shortly after the charge had been delivered, in a conversation among some gentlemen on its contents, it was declared that the sentiments expressed by Judge Chase were impeachable. I thought these kind of charges ought not to be delivered from the bench, but I did not observe that anything which had fallen was of a nature to warrant an impeachment.

Mr. Harper. Please to inform this honorable Court whether you are accustomed to practice law in the courts where Judge Chase presides?

Mr. Purviance. I am, sir.

Mr. Harper. Is it not his practice frequently to interrupt counsel?

Mr. Purviance, I think so; but I always attributed it to his quickness of apprehension, which induced him rather to anticipate counsel than to listen to them; this I always ascribed to his superior sagacity.

Mr. Harper. Have you seen any difference in his interruptions between counsel with whom he was supposed to be on ill terms, and those with whom he was on good terms?

Mr. Purviance. I never observed any difference in his conduct arising from a consideration of persons, but it always appeared to me to arise from the manner in which gentlemen treated the subject.

Mr. Harper. Were there gentlemen at the bar with whom Judge Chase was not on good terms?

Mr. Purviance. I think there were.

Mr. Harper. Did you ever know Judge Chase after having decided a point, hear counsel against his own opinion, and upon hearing, induced to decide differently?

Mr. Purviance stated a case in which the judge had retracted his opinion upon argument in a case in which he had been employed, and added that notwithstanding the pride of opinion to which men were liable, he had observed in Judge Chase an almost unparalleled disposition to hear his opinions contested, and when mistaken to relinquish them.

Nicholas Brice, sworn.

Mr. Harper. Please to inform this honorable Court whether you was at a circuit court held in May, 1803, when a charge was delivered by Judge Chase to the grand jury.

Mr. Brice. I was there and attended to the charge very particularly.

Mr. Harper. Was that charge spoken extempore or was it read from a book?

Mr. Brice. I kept my eyes steadily upon the judge, and I conceived that he read the whole from a paper, as is customary with him in delivering a charge to the grand jury.

Mr. Harper. Have you a distinct recollection of the latter part of the charge?

Mr. Brice. I have no recollection of the words, but I think I recollect their general nature and tendency.

Mr. Harper. Did he say anything respecting the present Administration?

Mr. Brice. Not in the slightest manner, further than mentioning the repeal of the judiciary law of the United States, which he mentioned incidentally in the course of his observations on the alterations of the Judiciary system in the State of Maryland. One thing more I will add, with respect to the advice which it is alleged he gave to the grand jury: shortly after the charge was delivered, in talking over this subject with Mr. Stephen, I recollect that I rather thought it was an inference drawn from the charge, than any express advice of the court on that point. Indeed I am pretty sure the words were not used.

Mr. Martin. Do I understand you right? You say he had no allusion to the present Administration, but in connexion with the repeal of the law of the United States as it was likely to affect the State of Maryland.

Mr. Brice. So far as I recollect, he made use of no other expression, but mentioned the repeal of that law to show the evil tendency of such measures as it regarded the judiciary of Maryland.

James P. Boyd, sworn.

Mr. Harper. Please to inform this honorable Court whether you were present at the circuit court held in Baltimore in May, 1803, and what occurred at that time?

Mr. Boyd. I was there, but I do not know whether I was there at the opening of the court, but I was there when the charge was delivered to the grand jury. After Judge Chase had gone through that part of the charge which is an instruction to the grand jury relative to the duties of their office, he proceeded to make some further observations, to which I paid particular attention because they were novel to me. I was under an impression at the time that Judge Chase was watched.

Mr. Harper. Did the judge read the charge from a book?

Mr. Boyd. To the best of my recollection he did read it, but he cast his eyes off from time to time, in the manner described by Mr. Montgomery. I thought at the time the political part of the charge would bear hard upon him, because I observed Mr. Montgomery paying particular attention to the address of the judge, which was an animadversion upon the measures Mr. Montgomery had been anxious to carry in the Legislature of Maryland. I do not, however, recollect the words which were used; those who paid it more attention are likely to be more correct.

Mr. Harper. Did that charge contain a sentiment like those you have heard, that the present Administration was weak, or wicked, &c.?

Mr. Boyd. I have not a scintilla of recollection of a word of the kind, no further than as an inference to be drawn from what was said in relation to the repeal of the Judiciary law. I have, however, a faint trace of the idea in my mind, not from my own recollection, but from having repeatedly heard it stated that there was such a remark made in the charge.

Mr. Harper. Have you any reason to believe that if such an expression had been used it would have struck you so forcibly as to enable you now to recollect it, and what is the reason?

Mr. Boyd. The reason is this. I thought a charge of that kind was both imprudent and improper; reflecting on the present Administration, of which he formed a part, I should have remarked it in a particular manner; and it is for this reason I think he did not use it. If he did, it has wholly escaped my recollection.

William McMechin, sworn.

Mr. Harper. Inform this honorable Court whether you was present at the circuit court held at Baltimore, in May, 1803?

Mr. McMechin. I was present and heard the charge delivered by Judge Chase to the grand jury.

Mr. Harper. Was you in a situation to hear the charge distinctly? How near was you to the judge?

Mr. McMechin. I was near the door of the room, about five yards distant from the judge. I saw the judge delivering the charge, but whether he kept his eyes constantly on the book I cannot say, as I did not keep my eyes steadily upon him; but it appeared to me that he read from the book throughout.

Mr. Harper. Have you a recollection of the latter part of that charge?

Mr. McMechin. I think I have.

Mr. Harper. Have you any recollection of his having said anything against the present Administration?

Mr. McMechin. I have no recollection of anything of the kind, either that they were weak, or of their having unfairly acquired power; such an idea was mentioned in no way, unless it be inferred from the remark on the repeal of the law establishing the sixteen circuit judges.

Mr. Harper. If such a sentiment had been uttered, it would not have escaped your notice?

Mr. McMechin I think it would not.

Mr. Harper. Had you any conversation about this charge? If you had, please to inform when, with whom, and what was it?

Mr. McMechin. About five minutes after the charge was delivered I left the court room: going down stairs I met Mr. Montgomery, and I asked him, or he asked me, what was thought of the charge? After a few observations, he said it was such an one as Mr. Chase would be impeached for. This drew my attention pointedly to the charge itself; after this, I heard of the publication in the American, but I did not see it. I met afterwards with a publication in the Anti-Democrat, which paper I took, purporting to be the charge of Judge Chase. I have conversed with gentlemen of both parties on the publication, and it appeared to them as it did appear to me, and as I still think it is, substantially the charge delivered by the judge.

Mr. Harper. Has that opinion rested on your mind ever since you heard the charge and read the publication?

Mr. McMechin. It has always so rested on my mind, and I have never read anything on the subject since.

William S. Govane, sworn.

Mr. Harper. Was you at the circuit court of Baltimore in May, 1803?

Mr. Govane. I was, and heard the charge delivered by Judge Chase. The room in which the court was held was a long one, in a tavern; a range of tables formed the bar, and the seats around were occupied by professional gentlemen. I went to the bottom of the table, opposite to Judge Chase, and directed my attention towards him. Whilst he was delivering his charge he appeared to read it from a book, but generally ended the sentences by looking towards the grand jury; except this circumstance, he appeared to read the whole time.

Mr. Harper. Do you retain a distinct recollection of the substance of what the judge said?

Mr. Govane. I think I do.

Mr. Harper. Do you remember any part containing animadversions on the present Administration, such as that they were weak, feeble, or incompetent?

Mr. Govane. I think no such words were used. If I could swear to a fact negatively after such a lapse of time, I could swear that no such expressions fell from the judge. He said that a Monarchy might be free, and a Republic a tyranny; and then proceeded to define what a free government was.

Mr. Harper. Then you have no recollection of any reflection made upon the present Administration?

Mr. Govane. I have not the most distant idea that such an expression was used.

Mr. Harper. Would you have remembered them if they had been used?

Mr. Govane. I think I should, as I had a conversation with a friend respecting it soon after it was delivered; and I paid particular attention to the charge, because it came from Judge Chase, a man of great celebrity, and I wished to draw what information I could from such a respectable source; everything arrested my attention, and it appeared that the attention of the whole company was fixed upon the judge.

John Campbell, sworn.

Mr. Harper. Did you attend the circuit court held at Baltimore in 1803, and in what capacity?

Mr. Campbell. I attended that court as a grand juror and was appointed foreman.

Mr. Harper. Do you recollect the charge that was then delivered by Judge Chase?

Mr. Campbell. I recollect some parts of it, but not the whole. I paid a particular attention to that part which described my duties as a grand juror, and have some recollection of the latter part. I kept my eyes constantly upon the judge.

Mr. Harper. Did he read the charge, or speak it extempore?

Mr. Campbell. He appeared generally to read it, taking off his eyes from the book from time to time, but never for a longer time than what is usual for men to express the words they retain in their memory from their own composition.

Mr. Harper. Have you a distinct recollection of the latter part of the charge?

Mr. Campbell. I cannot say I have a distinct recollection of any particular part of the charge, though I remember its general tendency.

Mr. Harper. Do you remember to have heard the present Administration censured as weak, feeble, or incompetent, &c.?

Mr. Campbell. I have not the slightest recollection of any such expressions, if they were used they have altogether escaped my memory.

Mr. Harper. Was there any allusion to the present Administration?

Mr. Campbell. No, sir.

Mr. Harper. If such words were uttered, is there any circumstance which would have impressed them on your memory?

Mr. Campbell. I should have thought them very improper, and that would have fixed them in my mind, but I have no trace of any such impression.

Mr. Nicholson. You gave a deposition before the committee on this point?

Mr. Campbell. I did, sir.

Mr. Nicholson. Did you say that the judge recommended to the jury, when they returned home, that they should use their influence to prevent the passage of certain laws then pending before the Legislature of Maryland?

Mr. Campbell. It does appear still to me that I heard some such expression. I have thought of it repeatedly since, and I continue to believe that the judge gave the jury that advice.

Mr. Harper. Was the exhortation made by the judge, or is it an inference you draw in your own mind?

Mr. Campbell. Some such expression fell from him, and it is not an inference formed in my mind.

William Cranch, sworn.

Mr. Harper. Were you present at the circuit court held at Baltimore in 1803?

Mr. Cranch. I was. The court was held at Evans's tavern, in Baltimore. Judge Chase was seated in an arm-chair, at one end of a long table placed before him. The grand jury were on his right, some sitting on benches placed along the wall and others standing. I stood myself about fifteen feet from the judge, who was sitting during the whole time he was delivering his charge; he generally held the book in his hand.

Mr. Harper—(showing a book.) Is that the book?

Mr. Cranch. He appeared to be reading from such a book.

Mr. Harper. Did he read the whole, and did he read constantly?

Mr. Cranch. He appeared to me to read the whole charge, but I did not keep my eyes so constantly fixed upon him as to declare positively that he did.

Mr. Harper. Were there variations in his manner of delivering the charge, as if he was at one time reading and at another speaking *ex tempore?*

Mr. Cranch. He delivered some parts with more emphasis than others. He often raised his eyes from the book, but I did not observe that he repeated more than one sentence without recurring to the book; he repeated no more than a man might repeat after running his eyes hastily over a passage.

Mr. Harper. Did he raise his eyes for a longer time than a man might be supposed to do who was reading a composition of his own?

Mr. Cranch. I do not think he did.

Mr. Harper. Do you recollect the latter part of the charge?

Mr. Cranch. I recollect more of the latter part than of the beginning, because I paid more attention to the latter part.

Mr. Harper. Do you recollect any sentiments expressed relating to the weakness of the present Administration, and that they were not employed in promoting the public good, but in preserving ill-gotten power?

Mr. Cranch. No, sir, there was no such expression, as I recollect.

Mr. Harper. Was there any expression at all relative to the present Administration?

Mr. Cranch. Not as an Administration, nor anything alluding to the Administration separate from the Government of the United States.

Mr. Harper. In what way was the Government alluded to?

Mr. Cranch. By alluding to the repeal of the act of February, 1801, for the establishment of the circuit judges. I recollect no other measure of the General Government which was alluded to, or any allusion to the present Executive.

Mr. Harper. I will now offer in evidence the book containing the charge of Judge Chase at Baltimore, which has been proved to be that from which he read his charge; it will be unnecessary to read it as it is left on file, and we wish to save the time of the court.

The written book was then returned to the clerk's table.

Mr. Harper said he wished to ask a question of Mr. McMechin.

Mr. McMechin was called, and Mr. Harper inquired if he had rightly understood him, when he said that a few minutes after he had left the court room he met Mr. Montgomery on the stairs, and Mr. Montgomery stated to him that Judge Chase would be impeached. Did Mr. Montgomery at that time say for what he would be impeached, or that he would be impeached for reflecting upon the Administration?

Mr. McMechin. He said the judge would be impeached, but I do not recollect that he said any thing about his being impeached for reflections upon the present Administration. I thought he felt hurt on the subject of the alterations in the Judiciary of Maryland, which had been much talked of, and for which he had been an advocate in the State Legislature.

Mr. Harper. In order to show that it is the custom of the courts in this country to deliver political charges to the grand juries (a practice which I am ready to admit is indiscreet,) I wish to be indulged in a narration of what has been the practice, and then this honorable Court will be convinced that it did not originate with the present respondent, but that he followed the track which had been a long time marked out. For this purpose I will refer to several transactions which have taken place. First in the year 1776, on the 27th April, an address was made to the grand jury in the State of South Carolina, by William H. Drayton, (vol. 1 of Ramsay's history of South Carolina, page 103.) A further evidence that the custom obtained is derived from the address of the executive council of Pennsylvania, wherein it is recommended that the judges of the Supreme Court make mention in their charges of various subjects of a political nature; it is under date of October 8th, 1785—American Museum, vol. 1, p. 228. I will also offer in evidence a charge delivered by Judge Iredell in Pennsylvania, previous to the trial of Fries in 1799. I will adduce that part only which may be denominated political.

I will also offer in evidence the general notoriety of the practice in this country for thirty years past, to enforce from the bench political principles, and to defend political measures; a practice which we contend universally prevailed.

I will submit a paper yesterday referred to as evidence on the 7th article; a charge delivered by Chief Justice McKean on the 27th November, 1797. In this charge the learned judge, whose eulogium has been so boldly pronounced, discusses the doctrine of libels, and after a variety of pertinent observations, goes on as follows:

[Mr. Harper here read extracts from the above charge.]

Exhibit No. 7 contains extracts from the *Mirror of the Times*, which are offered for the purpose of verifying the statement of the respondent; the first is contained in the paper of Wednesday, February 5, 1800, and the second in that of February 8th.

Mr. Randolph. The exhibits are those which accompanied the respondent's answer and pleas.

Mr. Martin. They are, and we here close our testimony, adding only the letter of Governor Claiborne, who has acted on the same principle, and given to the world his political opinions on various subjects.

Mr. Randolph. One of our witnesses has arrived in town, and we wish that he should be called.

Thomas Hall was called, and sworn.

Mr. Nicholson. Were you at Baltimore when the charge was delivered by Judge Chase, and do you recollect the language he made use of in addressing the grand jury?

Mr. Hall. I do not recollect the particular language used. I paid very little attention to what was there transacted.

Mr. Nicholson. Do you recollect the subjects generally on which he spoke?

Mr. Hall. I have a general impression, but I cannot be particular.

Mr. Nicholson. Did he mention the present Administration as weak and feeble?

Mr. Hall. My impression is that he mentioned them, or I inferred it from what was said.

Mr. Nicholson. Did he mention them in such a way as to cast an odium upon them?

Mr. Hall. I could not identify the language of Judge Chase, even if it were laid before me.

Mr. Nicholson. Do you recollect his recommendation to the jury to use their exertions to prevent the passage of particular laws?

Mr. Hall. I think he used language in substance to that effect.

Mr. Nicholson. In what way did he speak of the Administration?

Mr. Hall. I do not recollect particularly the manner.

Mr. Nicholson. Is it your general impression that he mentioned the Administration?

Mr. Hall. I think he did, or else I inferred it from what he said.

Mr. Randolph. Although you do not recollect the precise expressions of the judge, you inferred from what he said that his design was to convey to the by-standers the idea that the Administration was weak or wicked?

Mr. Hall. Yes, sir, those are my impressions.

Mr. Nicholson. Were you on the jury?

Mr. Hall. Yes, sir, I was on the petit jury.

Mr. Rodney here adduced a list of the grand jury for the circuit court held in the year 1800, in the State of Delaware.

Mr. Randolph wished that Mr. George Hay might be called to explain part of his testimony; that part which related to the conversation between the marshal and himself, when the former was in pursuit of Callender.

George Hay was accordingly called.

Mr. Randolph. Did you endeavor to dissuade the marshal from the execution of his duty in the arrest of Callender?

Mr. Hay. I certainly did not, and Mr. D. M. Randolph could not mean to convey to this honorable court that idea. I should have been prevented from doing this by two considerations, one exclusively relating to myself, which I need not explain; the other, that I had a better opinion of Mr. Randolph than to suppose he would listen to any such suggestion. I did tell him that in my opinion he would not be able to get Callender, as I understood that he had attempted to make his escape, and in the place in which he was, it would be impossible for the marshal to discover him.

Mr. Randolph. Did you mention to him that he (Callender) would surrender at the next term?

Mr. Hay. I am not certain, but I believe I did.

Mr. Randolph. Were you at that time retained as counsel for Callender?

Mr. Hay. I was not retained as his counsel at that time, nor ever after; but I intended to appear in his defence for the sake of defending the cause, not for the man.

Mr. Randolph. Were you averse to proceed in the trial at that term for any particular reason?

Mr. Hay. I did not wish to appear before Judge Chase, from an impression that had been made on my mind in conversations with persons who knew him. I conceived it would be an unpleasant business for me to carry into execution the intention I had formed to defend Callender. This impression arose principally from the conduct the judge had manifested towards Mr. Lewis and Mr. Dallas, on the trial of Fries, at Philadelphia. He had there, as I understood, restrained them from managing the defence in the way that they thought proper. I did not expect any greater indulgence or advantage than had been allowed on that occasion. I had therefore made up my mind to meet all the exigencies of the case with temper, but with firmness. The conduct of the judge on the trial of Mr. Thomas Cooper had also its weight upon my mind. A great deal was said about the judge's conduct on that trial, whether correct or not. I do not say; but it made me unwilling to appear as counsel before Judge Chase, though I was perfectly willing to undertake Callender's defence at the next term, before any other judge.

Mr. Randolph. What was the political complexion of the jury which tried Callender?

Mr. Hay. I am not personally acquainted with the gentlemen who composed that jury. I believe some of them did not live in the city of Richmond, but the impression on my mind was, and still is, that all the persons on the jury were not only opposed to Callender, but decidedly so; and were distinguished for the warmth of their political sentiments.

Mr. Randolph. Are you acquainted with Colonel John Harvie; what is his political character?

Mr. Hay. I know Colonel Harvie, but what is his political character I do not know. I lived at Petersburg and he at Richmond. I only knew that it was said that he did not vote with the Republican party.

Mr. Randolph. Are you acquainted with Mr. William Radford? what are his politics?

Mr. Hay. He was ranked among those called moderate, but I am not well enough acquainted with him to decide upon his political character.

Mr. Randolph. Are you acquainted with Mr. Marks Vanderval, and what is his political character?

Mr. Hay. He is a very reserved man, but has been uniformly regarded as a Republican, though not a zealous one.

Mr. Randolph. In criminal actions, did you ever hear of a bill of exceptions being filed in Virginia?

Mr. Hay. Never, sir; there can be no such thing, it would answer no purpose; because, from a criminal court there is no court which has appellate jurisdiction.

Mr. Randolph. But cases are transferred from the district courts to the general court.

Mr. Hay. There is a particular process for that purpose; criminal cases are not carried up after trial for the decision in that case is final; but if the district court are unwilling to decide, it is then carried up to the Supreme Court.

Mr. Harper. I understood you to say that it was your intention to argue the point. What point did you mean?

Mr. Hay. I meant to contend against the constitutionality of the second section of the sedition law.

Mr. Harper. Did you not mean to argue it before the public, although you knew it would be unavailing if addressed to the court? Did you mean by that argument to acquit the traverser, or to produce a political effect out of doors?

Mr. Hay. I meant to address my arguments to the court; if they should work the acquittal of the traverser, or operate any wise in his favor, it was a thing to be desired; if they should affect also the public mind, that, too, was a desirable circumstance.

Mr. Harper. I ask you now, whether you did not say to the marshal that Callender could not be defended, and that your object in requiring a continuance of the cause was, to gain time, and bring the trial nearer that period in which it was probable he might get a pardon?

Mr. Hay. I have no recollection of having said anything of this kind, but if Mr. Randolph (the marshal) says that I expressed myself to him in that manner, I shall not contradict him.

Mr. Harper. I understood him to say so in his testimony.

Mr. Hay. I do not recollect it.

D. M. Randolph was called in by Mr. Harper, and asked whether Mr. Hay had not said to him that Callender could not be defended, and that his purpose was to keep off the trial till the next court, in order to obtain a pardon?

Mr. Randolph. I do not recollect the words which were used, but I understood that Callender could not then be defended, and that he would surrender himself at the next term. I think it

proper to remark one thing further: there never was a panel of the jury made out or presented to Judge Chase, or any other person, till the morning I made it out in court, before the commencement of Callender's trial, except in the case of the grand jury, when it is handed to the judge to appoint a foreman. In setting down their names on the list, I arranged them according to my own idea of their respectability.

Mr. Nicholson. In your conversation with Mr. Hay, did he tell you that he wished to delay the cause, in order to bring it nearer the time in which he might obtain Callender's pardon?

Mr. Randolph. He did not use the words, but I thought he had it in his mind. I inferred it from the conversation.

Mr. Randolph wished to ask another question of Mr. Hay, who was thereupon called.

Mr. Randolph. Did you ever say that Callender could not be defended?

Mr. Hay. I cannot recollect what I may have said on that point, but I recollect perfectly that I was impressed with the idea that he could not be defended, if the charge was either for writing or publishing the Prospect Before Us, for these facts were too notorious to be called in question. But I did then think, and always since have thought, that he might be defended on the ground of the unconstitutionality of the sedition law.

Mr. Randolph. Do you mean, when you say that he might be defended on the ground of the unconstitutionality of the sedition law, that you would not have defended him on any other ground, such as a flaw in the indictment, or a misstatement of the matter of the book in the indictment?

Mr. Hay. Most certainly, sir. I meant to take advantage of any mistake or defect that might appear in the indictment or in the evidence; and that may be evinced by recurring to my objection against the witnesses who were concerned with Callender in the publication, when I told one of them that he was not bound to give testimony which would go to criminate himself.

P. N. Nicholas, called.

Mr. Key. Do they ever arraign a person for a misdemeanor in Virginia?

Mr. Nicholas. I do not recollect that they do.

John Montgomery was called in at the instance of Mr. Nicholson, who desired him to explain some parts of his testimony.

Mr. Montgomery. When I was before this honorable Court the first time, I stated that I should not be able to state all the charge delivered by Judge Chase at Baltimore, or any particular part in the precise language which he used. From the examination of a great number of witnesses before this honorable court, I am induced to believe that I have been misunderstood. When I first used the word Administration, I used it not as the precise word he uttered, but what struck my mind as being his sense. The judge seemed to lay down a proposition that the administration of Government was so and so, and stated that their acts were not guided by a view to promote the general welfare, but principally to keep themselves in the possession of unfairly acquired power. I thought the judge explained his position by his allusion to the repeal of the law creating the sixteen circuit judges, the general suffrage law of Maryland, and the contemplated alteration of the Judiciary law of that State. I did not mean to state that he said Mr. Jefferson was weak or feeble, but that the Administration or the Government was so. This is the impression I then had, and now have, with respect to that part of the charge. But I did not then say, nor do I now, that I use the precise words of the judge; but I think I follow his spirit and his meaning.

Mr. Nicholson. At the concluding part of the charge, did Judge Chase recommend it to the jury when they returned home, to use their influence to prevent the passage of the Judiciary bill, or was that an inference from what he delivered?

Mr. Montgomery. That part of the charge was in the express words, and not an inference at all. I recollect that shortly after I had a conversation with several gentlemen, who concurred with me in opinion that these expressions were used; and I recollect that on the very day the charge was published in the Anti Democrat, or the day after, I called these expressions to the recollection of the son of Judge Chase, and observed that these parts were omitted in the printed statement.

Mr. Harper. I am desired by Judge Chase to make of this honorable court the request contained in the following letter, which I will read:

"Mr. President: The state of my health will not permit me to remain any longer at this bar. It is with great regret I depart before I hear the judgment of this honorable court. If permitted to retire, I shall leave this honorable court with an unlimited confidence in its justice; and I beg leave to present my thanks to them for their patience and indulgence in the long and tedious examination of the witnesses. Whatever may be the ultimate decision of this honorable court, I console myself with the reflection that it will be the result of mature deliberation on the legal testimony in the case, and will emanate from those principles which ought to govern the highest tribunal of justice in the United States."

The President observed that the rules of the Senate did not require the personal attendance of the respondent; whereupon Judge Chase bowed in a very respectful manner, and withdrew.

Mr. Hay came again to the bar to explain the motives which induced him to undertake the defence of Callender. He said he was not without some hope that his arguments against the unconstitutionality of the sedition law, although they might not be conclusive with the court, would nevertheless have some weight with the jury, and might operate to produce the acquittal of Callender.

Mr. Randolph. On behalf of the Managers, I have to request of the court that further progress in the trial be postponed until to-morrow, in order to give those gentlemen who follow, time to digest, compare, and collate the great volume of testimony which has been given. We shall be ready

to proceed to-morrow. There is also another reason for this request; we expect hourly some important witnesses, and are in hopes that they will make their appearance in town before the next meeting of the court. If, however, this should not be the case, we shall proceed without them. If they come, we presume we shall be permitted to take the benefit of their testimony.

President. I understand that gentlemen have nothing further to offer.

Mr. Randolph. Not, sir, at this time.

Mr. Harper. I beg leave to state that we do not join in the motion for delay, though we do not oppose it.

President. Is the course of the arguments on each side understood?

Mr. Nicholson. We understand that the Managers will open; that reply will be made by the counsel for the respondent, and that the Managers will then close.

Mr. Key. This is the usual course, and we have no objection to it.

The Court then rose.

WEDNESDAY, February 20.

The Court was opened at ten o'clock.

Present: the Managers, accompanied by the House of Representatives in Committee of the Whole; and the counsel of Judge Chase.

Mr. Nicholson. We expected a witness from Virginia; but he has not arrived: a witness, however, from Maryland is present, whom we wish to examine.

Philip Stewart, sworn.

Mr. Nicholson. Were you a member of the grand jury summoned to attend the circuit court held at Baltimore, in May 1803?

Mr. Stewart. I was.

Mr. Nicholson. Do you recollect any particular expressions used by Judge Chase in his charge to the jury?

Mr. Stewart. I have but an imperfect recollection. I have never seen the charge, nor have I heard it read since it was delivered.

Mr. Nicholson. Had you not some reason for attending to the charge, other than your duty as a grand juror?

Mr. Stewart. There were some things which struck my mind with some force.

Mr. Nicholson. Had you not been a member of the Legislature of Maryland?

Mr. Stewart. I had.

Mr. Nicholson. Did he not throw some censure upon the members of that State Legislature?

Mr. Stewart. I felt something of the kind, but I cannot tell his expressions.

Mr. Nicholson. Do you recollect his speaking of the sons of some gentlemen who had assisted in framing the constitution of Maryland; what were his expressions?

Mr. Stewart. If I were to hear the charge read I could perhaps point them out.

Mr. Nicholson. I will state the question more precisely.—Did he use the words *degenerate sons*, and apply that epithet to the members of the Legislature?

Mr. Stewart. To the best of my recollection he did; he spoke of degenerate sons of fathers who had formed the constitution of the State, which they were about to destroy by the introduction of the general suffrage bill.

Mr. Nicholson. Did he recommend to the grand jury when they returned home, to use their influence to have such men elected as would vote against the judiciary bill then pending before the Legislature?

Mr. Stewart. I do not recollect.

Mr. Harper. I will ask you, sir, whether the word *degenerate* was inferred by you, or did you actually hear it.

Mr. Stewart. I believe I heard it.

Mr. Martin. Have you ever seen any publication of the charge?

Mr. Stewart. I have not.

The President. If no further witnesses are to be introduced, I would inquire whether gentlemen consider it necessary to detain those who have been examined?

Mr. Nicholson. It is possible that gentlemen may differ in their account of the testimony; but if there is no dispute on that point the witnesses I think may be discharged.

Mr. Martin. There is a list of the grand jury summoned at the circuit court in Delaware; I do not know for what it is filed; until we are informed on that point we shall be under the necessity of detaining the witnesses from that State. Is it intended to show that there were men of different political sentiments on that jury?

Mr. Rodney. We have nothing more to prove from that list than what has already been stated.

Mr. Harper said the counsel for the respondent would have no objection to discharge all the witnesses; but must object to discharging part of them.

The President. If the gentlemen do not agree upon the discharge of the witnesses, I will take the sense of the Senate upon the point.

Mr. Harper. The particular situation of Mr. Tilghman's family requires his return to Philadelphia. I must therefore request that his further attendence be dispensed with.

The Managers consented, and Mr. T. was discharged.

The question was then taken by the President on the discharge of the witnesses, and lost; there being sixteen votes in the affirmative, and seventeen in the negative.

Mr. Rodney requested the discharge of the witnesses from Delaware; which being consented to by the respondent's counsel, they were discharged

It may be proper here to notice that, from time to time, during the trial, witnesses were discharged with consent of the parties.

The testimony having been closed on both sides,

Mr. EARLY rose, and addressed the Senate as follows:

Mr. President—There is no attitude, in which the Government of this nation can be viewed more completely demonstrative of the *efficacy* of

its principles than that in which it is now placed. We are now occupied in an act well calculated to test the *practicability* of those principles, and to prove their fitness or unfitness for the condition of that country over which they are destined to rule. There is presented before this great depository of national justice, a highly important officer of the Government, charged with acts violative of some of its leading and most essential principles. An officer who has been clothed with the function of administering to a great and rising people the blessings of freedom in their most vital relations, is the object against whom charges of this serious nature are exhibited. He stands charged with violating the sacred charter of our liberties, and with setting at naught the most holy obligations of society. He stands charged with perverting the high judicial functions of his office for the purposes of individual oppression, and of staining the pure ermine of justice by political party spirit. These charges are founded upon transactions which have passed in review before an inquiring world, and which in the estimation of the representatives of the American Government have cast a foul reproach on their national character. To this tribunal have they appealed for a vindication of that character. Hither do they appeal for the preservation of the dearest principles of their liberty, and for the sure support of their most sacred rights. It is here they must enter the complaints of the nation. It is here they must drag the *guilty* to punishment.

The first article, preferred by the House of Representatives in support of their impeachment, charges a conduct upon the respondent, which strikes at one of the most vital principles of the Government of this nation; the right of "trial by an *impartial* jury." It ought never to be forgotten that the deprivation of this right was one of the injuries for which the people of this country put to the risk of a revolution all that was dear. Nor ought it to be forgotten that the security of this right forms one of the great *safeguards* of the Federal Constitution. "In all criminal trials the accused shall enjoy the right to a speedy and public trial by an *impartial* jury of the State and district."

The relative rights of judges and juries have at some periods of judicial history been so little understood, and the limits of each so indistinctly marked, that the benefits of the institution of jury trial were left much at the mercy of *arbitrary and overbearing judges*. But it was reserved for the honor of modern times to dissipate this uncertainty so baneful to justice, and to fix down the establishment upon its only proper foundation; that of the right to determine without control, both the law and the fact *in all criminal cases whatsoever*. This right has now been so long practised upon in the United States, and may be considered as so well established, that it is scarcely to be expected we shall witness upon that point any difference of opinion. Still less is it to be expected that we shall witness such difference, when we are discussing principles which apply to cases capital. In such case it is the glory of the laws of this country, that the offence of the accused should be left exclusively to the judgment of those least liable to be swayed by the weight of accusing influence. It is no part of my intention to deny the right of judges to expound the law in charging juries. But it may be safely affirmed that such right is the most delicate they possess, and the exercise of which should be guarded by the utmost caution and humanity.

The accused shall enjoy the right to a "trial by an *impartial* jury." We charge the respondent with deliberately violating this important provision of the Constitution, in arresting from John Fries the privilege of having his case heard and determined by an impartial jury; for that the respondent took upon *himself* substantially to decide the case by prejudging the law applying thereto, at the same time accompanying the opinion thus formed and thus delivered, by certain observations and declarations calculated necessarily to create a prepossession against the case of Fries in the minds of those who had been summoned to serve upon the jury, thereby making them the reverse of impartial.

These were the acts of a man, who, from his own declarations, appears to have well understood upon what *points the defence would turn*. It was the act of a man, who, it appears, had been well informed of all that passed at the previous trial of Fries; who knew that there was no dispute as to facts, and that the whole of the defence depended upon the discussion and determination of those very principles of law which he had thus prejudged, and upon the application of those authorities which he had thus excluded in the hearing and very presence of those who were to pass upon the life and death of the accused. No argument had been heard from counsel; no opportunity had been afforded to prove that the offence committed did not amount to the crime charged; no defending voice had been raised in behalf of the accused; but, without being heard, and without having had any opportunity to be heard, his case was adjudged *against* him. I say, *adjudged against him without the chance of being heard*. For surely the case was adjudged against him, when the only point upon which it was defensible was determined against him, and that determination publicly announced from the bench. That this was done before the accused could possibly have had a chance of being heard, is placed beyond contradiction by all the testimony. And that the judge knew the point which he thus prejudged, to be the only ground upon which the defence rested, is perfectly clear. For, from his own declarations at the time of announcing the opinion, it appears that he was well acquainted with all that had passed at the previous trial of Fries.

But, sir, we must look further into the progress of this transaction. It was not enough that the poor, trembling victim of judicial oppression should thus have his dearest privileges snatched from him, by a prejudication of his case; it was not enough that the impartiality of those who were to compose his jury should be converted into a prepossession against him, by the imposing authority of solemn declarations from the bench;

but the small remaining, darling hope of life, was to be smothered by a preclusion of his counsel from arguing the law to the jury. This fact, though sternly denied in the answer of the respondent, has, nevertheless, been established in a manner which must irresistibly force conviction upon the mind. Mr. Lewis affirms it positively. Mr. Dallas confirms it in a manner peculiarly strong. Not being himself present when the opinion was delivered to the bar, he received from Mr. Lewis a statement of what had passed, and, in an address to the court afterwards, repeated distinctly this statement, and particularly that part which attributed to the judge a declaration, that, if the counsel had anything to say upon the law, they must address themselves to the court and not to the jury. To this statement no reply was made by the court, either correcting or denying it. Thus stands the evidence in the affirmative. Opposed to this we have the negative testimony of Messrs. Rawle, Tilghman, and Meredith, who have no recollection of any such declaration. I address myself to those who well know the difference between affirmative and negative testimony. I address myself to those who well know the established rule in the law of evidence, that the testimony of one affirmative witness countervails that of many negative ones; and I am sure that I address myself to those who must feel the complete coincidence of this rule with the dictates of common sense. Upon this ground alone we might safely rest our proposition; but, sir, we will not rest it here. It appears from the testimony of the witnesses on both sides, that almost every observation from the counsel to the court, on the second day, was predicated upon the idea that something had been said on the preceding day, restrictive of their privileges. These observations, although addressed to the court, and carrying this feature prominent in their face, were neither contradicted nor corrected by the court. This was a strong tacit admission of the correctness of the idea upon which they were bottomed. But, sir, we have not only this tacit admission, but we have in testimony, this strong and impressive declaration from Judge Chase, that "the counsel might be heard in opposition to the opinion of the court, at the hazard of their characters."

But, Mr. President, we have the positive admission of the respondent, in page 18 of his answer, that certain observations were made by him condemning the use of common law authorities upon the doctrine of treason, and also condemning authorities under the statute of treasons, but prior to the English Revolution. [Here the passage was read.] By a recurrence to page 22 of the answer, it will be found that the respondent admits that these observations of his were made on the first day; yet, sir, nothing of all this is remembered by Messrs. Rawle, Tilghman, or Meredith. How light, then, how extremely light, must their bare want of recollection weigh against the positive affirmative testimony of Messrs. Lewis and Dallas!

Considering my position as uncontrovertibly established, I will proceed to observe that the offence with which Fries stood charged, was the highest possible offence which can be committed in a state of society. The punishment annexed to its commission, was the highest possible punishment known to our laws. The accused was, therefore, entitled to every possible indulgence. In favor of life, not only every possible ground should be occupied by counsel to the jury, but every possible argument listened to and weighed with patience and forbearance; and it should never be forgotten that Judge Chase had such a conduct set as an example before him, in a previous trial of the same case. Yes, sir, a brother judge of his, who has since gone to the world of spirits, had set him an example conspicuous for the purity of its excellence, and which should have arrested his career in the commission of this cruel outrage upon all humanity. But Judge Chase predetermines the law, then prohibits the counsel from proving to the jury that the law was not as laid down. This was, in effect, an extinguishment at once of the whole right of jury trial. All the privileges and all the benefits of that institution were swept at once from an American court of justice, and scarcely the external form preserved. The law was predetermined by the judge, and the accused was debarred from pleading it to the jury. Of what avail is it, sir, that the jury should be made judges of law and of fact, when the law is not permitted to be expounded to them? Of what avail is it that the accused should have a trial by jury, when he is prevented from stating and explaining to the jury the only grounds upon which his case is defensible? The right to hear and determine facts is *not more the right* of a jury, than the right to hear and determine the law. To deprive them, then, of the privilege of hearing and determining the law, is as much a violation of their rights, as to deprive them of the privilege of hearing and determining facts. The right of the accused to be heard upon the facts, to the jury, is not more his right, than the right of being heard upon the law, to the jury. To deprive him, then, of the privilege of being heard upon the law, to the jury, is as much a violation of his rights, as to deprive him of the privilege of being heard upon the facts to the jury.

But, sir, we are assailed by a train of reasoning on the part of the respondent, in exculpation of his conduct, which it may be proper to notice in part at this stage of the argument. He informs us in his answer, that the law of treason having been solemnly settled by prior adjudications, he was not at liberty to depart from the principles so settled, even had he thought them incorrect, and he enters into lengthy discussion to show the importance of uniform adherence to doctrines properly considered and solemnly established. It is no part of my intention to dispute either the correctness of the decisions previously made upon the Constitutional doctrine of treason, or the propriety of an adherence to those decisions on the part of Judge Chase. For although I consider both extremely questionable, they yet appear to me to constitute no part of the present inquiry. This inquiry is whether the judge was authorized or can be excused for delivering an opinion upon

the law before counsel were heard on the part of the accused, and for debarring counsel from the exercise of their Constitutional privilege to address the jury on the law as well as the facts, thereby making the opinion thus prejudged and thus extrajudicially delivered completely decisive of the case. And give me leave to say, sir, that the reasoning, resorted to by the respondent to excuse this conduct on his part is, in my opinion, an aggravation of his offence. It is of importance truly that juries should be guarded against improper impressions from counsel, by having the law previously explained to them! And it is a favor to counsel to be informed that the ground they mean to occupy is not tenable, that they may look out for other resources! Would not this reasoning go to authorize a judge in all criminal prosecutions to settle the law before the case was heard? He has nothing else to do, sir, according to this doctrine, than to inform himself of the facts, as in Fries's case, and then, before any trial is had, settle the law; at the same time prohibiting counsel from arguing that to the jury. And if the reason that the law has been so solemnly settled that it cannot be departed from is to form an excuse, the more settled the law, the longer practised upon, the stronger the reason. In every case of murder or theft then it is to confer a favor on the counsel to inform them what grounds are not tenable. It is of importance to instruct the jury what the law is upon the case, that they may be guarded against improper impressions, and then to render this object effectual prevent the counsel from arguing the law to the jury. In the case of Fries I hold it that the knowledge of the judge that the case depended solely upon legal principles is a circumstance highly aggravating his offence. He knew that there was no dispute as to facts, and that by thus prejudging the law, he fixed the destiny of the accused. But it was material to do this to guard the jury from improper impressions! My God! has it come to this? And is this the amount of our boasted Constitutional right of jury trial, that they whose exclusive right it is to determine both the law and the fact, are to be guarded from improper impressions by the prejudged, extrajudicial opinion of him who possesses no right to determine either!

We are told by the respondent, that he not only never interdicted the counsel for Fries from arguing the law to the jury, but that he afterwards on the next day expressly offered to let them take as wide a range as they pleased. Mr. President, I must confess I have been disappointed. I had expected that much of the defence against the first article would have rested upon the transactions of that day. I had so expected, not because of any opinion of my own, that from them any substantial excuse could be extracted; but because public opinion had somewhat inclined to rest an excuse upon that foundation. For myself, it has been my misfortune to be unable to perceive in this part of the transaction any features other than such as afford additional proof of the unjust and oppressive intent with which the judge appears to have acted. Indeed, sir, the respondent must himself have considered the transactions of the second day, as dangerous topics. He has touched them lightly indeed. If his conduct had been so free from blame as is contended in the answer, why was an appearance of fairness to be cast over the scene by having papers recalled upon which the opinion had been written, whilst the opinion itself remained? A short view of this part of the transaction may not be unimportant. It may afford us some strong proofs of the motives of the respondent. We are involuntarily led to inquire why the papers were recalled? Was it because of the oppressive tendency with which they operated upon the case of the accused? Was it because of any conviction on the part of the judge of the impropriety of the steps he had taken, or compunction for the cruel situation in which he had placed poor Fries? No, sir! The papers were recalled because of the firm and manly stand made by the counsel. It was because those counsel were men of character, too independent, and were governed by a sense of duty too high to submit to such a prostration of their rights. The determination to recall the papers was not taken until after it was seen that the counsel would abandon their cause rather than acquiesce in a conduct so oppressive and so injurious.

This recalling of the papers was a farce acted for the purpose of giving a specious appearance to the face of things; but the folly thereof could only be exceeded by the criminality of the first act. Was the crime the greater because the opinion was written? Was it the act of writing the opinion and throwing down the paper to the bar which constituted the evil to Fries? Or was it the formation of a prejudged and extrajudicial opinion completely decisive of the case, and the communication of that opinion in the very presence of those who were to try the accused? In my opinion it was the last. The evil was complete by the act of prejudication, and withdrawing the paper could have no possible effect. The case of the accused had been predetermined—had been extrajudicially predetermined—predetermined by the judge who had no right to determine it at all; and the counsel were left to the forlorn hope of convincing the judge that the opinion delivered by him was erroneous. "They 'might be heard in opposition to the opinion of 'the court at the hazard of their characters." This is his declaration on the second day.

If then I were asked, as were Fries's counsel, on the second day, by the other judge, and as I know many are now disposed to ask, whether, if an error had been committed, I would not suffer it to be corrected? I would answer that this was an act which from its nature admitted of no correction. It was a *crime* complete in its performance, and complete in all its baneful consequences. Repentance, even had there been any, could have afforded no relief; it came too late. As well might a man, after he had inflicted a mortal wound upon another, ask to be forgiven, because before the death of the wounded he was brought to relent, from an apprehension of the

consequences. In my opinion, Judge Chase had committed the sin not to be repented of.

As to the proffered permission to the counsel, on the second day, that they might proceed without the restrictions before imposed, it has been my misfortune to be unable to perceive either any proof of a disposition to relent on the part of the judge, or any privileges to the counsel which placed them or their client upon ground more advantageous than that on which they had before stood. On the contrary, I think I perceive, in the whole of the judge's conduct taken together, on the second day, a deliberate design to impose upon the understanding of those present, by exhibiting the external form of fairness, whilst he continued to hold on upon the substance of injustice. For, notwithstanding there appeared from his expressions at first a disposition to permit the counsel to argue the cause without any restraint, yet it ought to be kept in constant recollection, that, when brought to explain himself, the general permission which had been thus apparently given was subjected to restrictions of very serious import. The counsel were permitted to argue the law to the jury, but the manner in which they should do so would be regulated by the court. The counsel were permitted to lay down the law, but should not read cases which were not law. That common-law cases, and cases under the statute of treason, but prior to the revolution in England, were not law, and should not be read. Look at the consequence? The counsel might argue the law to the jury, but were interdicted from the use of those authorities which in their opinion bore most strongly upon the case, and upon which, it was within the knowledge of the judge, they had principally relied in the prior trial. They might lay down the law to the jury, but should not read cases which were not law. And who was to determine whether the cases offered by counsel were or were not law? The judge. And pray, sir, was not the right of the jury to determine the law as effectually invaded by the judge taking upon himself to determine each case as it was offered, as their right was invaded by the judge determining upon the whole together? I maintain, sir, that it is not the right of the judge in criminal, and especially in capital causes, to determine that any case is not law: for, if he can determine that question as to a single authority, and upon that ground arrest it from the jury, he may do so as to all, and thus as effectually abolish the great privilege of trial by jury. I know it may be objected to this reasoning, that unless some restriction is imposed upon counsel, they may abuse their privileges by reading anything, however inapplicable to the jury. This, sir, is to suppose an extreme case, and it is never correct to reason from extreme cases. It is no proof against a privilege, that it is subject to be abused. And there is security against extreme abuse in this privilege from the regard which professional men necessarily feel for their professional reputation.

Here, Mr. President, we might close the argument upon the first article; but it is not possible—no, sir, not possible—here to stop our reflections. When we review the ground which has been already travelled over; when in that review we behold an American citizen summoned to the bar of justice to undergo a trial in which his life is at stake; when we behold his judge, contrary to all precedent, and in violation of every feeling of humanity, pre-occupying the only ground upon which the case of the accused was defensible, and closing upon him this only possible avenue to safety, truly I feel that my feeble powers of language are not competent to a description of the scene: it must be left to the strong expression of silence. For this transaction, then, in the name of the American people, we denounce Judge Chase. We denounce him for invading their most valuable privilege, *the trial by jury*. We denounce him for taking into his own unhallowed hands the disposal of the life of an American citizen, and we invoke the justice of the nation to expiate by the proper punishment, this unholy sins

The second, third, and fourth articles, exhibited by the House of Representatives, charge the defendant with a course of conduct upon a particular trial which affords many grounds of accusation. In this case it is true no unfortunate individual was charged with an offence which demanded his life as an expiation; yet, sir, there were other rights involved equally sacred in the laws of a free country. The liberty and the property of the accused were the price of a conviction. In casting our eyes over the ground upon which the different scenes of the transaction now about to be examined are spread, we are struck with a feature not usual in the history of human concerns. It would seem that even the restraint of appearances was no longer felt. We find the respondent setting out with a conduct, which seemed to prove that the fate of the accused was fixed. We find him pursuing a system of conduct throughout, which arrested from the accused some of his established and most valuable privileges. We find him endeavoring to heap shame and odium on those who occupied the station of advocates, because they would not tamely yield to his unwarrantable invasion of long established rights.

Mr. President, notwithstanding the labored attempts made by the defendant in his answer to exculpate himself from imputation in compelling Mr. Basset to serve upon the jury in the trial of Callender; yet, sir, I must be permitted to say that those attempts appear to me to be only the exertions of a mind conscious of impropriety, and seeking to impose upon the understanding of others. The test adopted, by which to try the impartiality of the jurors, in that case may possibly by some be held a correct one; but the manner of applying that test as then practised upon, is what I believe can be accounted for upon no other supposition than that of a determination on the part of the judge to procure the conviction of the accused. Upon what other principle can it be accounted for, that the jurors should be asked whether they had formed and delivered an opinion upon the charges laid in the indictment, when they knew not and were not suffered to know

what those charges were? Why else could it be laid down by the judge, that because the individuals called to serve upon the jury did not know what charges were in the indictment, (having never seen it nor heard it read,) that therefore they could not have formed and delivered an opinion upon the subject? And why else did the judge, when this monstrous logic was contradicted by the fact of one of the jurors delivering in open court an opinion upon the whole subject of those charges, without having seen, or heard the indictment read; why else did the judge, in the teeth of this damning fact, order the jurors sworn?

Every juror sworn might, like Mr. Basset, have formed and delivered an opinion which concluded the conviction of the accused, and yet because they did not know that the subject-matter of such opinion constituted the charges in the indictment, having neither seen it nor heard it read, the expression of such opinion created no disqualification. Unworthy evasion! An evasion which prevents the doctrine of disqualification in a juror from receiving any practical operation. An evasion which effectually puts at naught that principle of the Constitution so often adverted to in a former part of the argument, that "the accused shall enjoy the right of a trial by an impartial jury." Upon this point I beg leave to read two authorities. [Mr. Early here cited 3 Bac. Abr. 176, and Co. L. 157.]

But we are told by the respondent in his answer, that the declaration made by Mr. Basset did not disqualify him, because it contained no direct opinion as to the guilt of the traverser. This I understand to be the amount of all the labored reasoning and nice distinctions drawn by the respondent upon this point. There is, sir, a plain common sense rule to govern us upon this subject, which in my opinion is as safe in its application as it is reasonable in its principle. A juror must be indifferent. How must he be indifferent? What kind of indifference is this which is made necessary? The manner in which Judge Chase has stated and explained this rule is certainly calculated to confuse and mislead. "The juror, says he, must be indifferent between the Government and the accused as to the subject-matter."

Must the juror in reality be indifferent between the parties as to the subject-matter of prosecution only? Will not a prejudice against the accused, flowing from other causes, create a disqualification? I address myself to those who well know that partiality arising from a variety of relations in society, as well as prejudice arising from a variety of causes, destroys that character of indifference necessary to render a juror competent, and that this partiality or prejudice need not relate to the subject-matter of prosecution.

So also I apprehend that character of *indifference* is as effectually destroyed by a prejudice as to the subject-matter, without any prejudice as to the person. I mean the prejudice of a prejudication of the criminality of the subject-matter. We meet with the rule every day, that it is good cause of challenge to a juror that he hath expressed an opinion upon the subject-matter of prosecution. Wherefore then the manner of stating the rule, which we find adopted in the answer? Most evidently to suit the respondent's case. What, sir, must a juror, to be so prejudiced as to be disqualified, have expressed an opinion not only that the subject-matter of prosecution was criminal in law, but that the person prosecuted was the author of the crime? Yes, sir, according to the doctrine of the answer, he must have prejudged both *law* and *fact*. In other words, although Mr. Basset had formed and delivered an opinion that such a book as "The Prospect Before Us," came within the sedition law, yet, not having said that Callender was the author or publisher, he was still a competent juror. Suppose a man indicted for murder, in a case where there is no dispute as to the fact of killing, (and here there was no dispute as to the fact of publishing,) but the defence set up was that he was excusable. A juror has given his opinion, in reference to the act, that such a killing does amount to murder, but without saying that the person prosecuted was the murderer; will any man say this expression would not disqualify him? I am bound to presume not. Sir, in the case of Callender, although Mr. Basset did not say that the person prosecuted was guilty, yet he did in effect say that whoever wrote or published the book was guilty. And give me leave to remark here that in prosecutions for libels, the question of law, as to their criminality, is generally the only question of dispute. The fact of publication is one about which there seldom occurs any difficulty, and has to be proven merely because not admitted. To have expressed an opinion then upon the question of law in such cases is substantially to have prejudged the whole case. A juror under such circumstances cannot be called impartial. As well might it be alleged that Judge Chase himself was impartial, as to the case of Fries, after he had delivered the opinion which we have before discussed.

We are told in the answer that the guilt of the traverser was not prejudged by Basset, for another reason; that as the charges to make them criminal must have been false, so Callender might have exculpated himself by proving their truth. But, sir, the traverser was at liberty to rest his defence either upon a justification or want of criminality in law, or upon both. He was not bound to disclose which, nor could the judge officially know which. Both and each of these grounds were proper for the jury to determine under the plea. The acquittal of the traverser then did not depend exclusively upon the proof of the truth of the charges.

Again, we are told that the juror barely expressed his opinion upon the book, as the contents thereof had been represented to him. The same may be said of almost every other case. Few, very few, jurors are spectators of a murder, or an act of treason. Any opinion they may have formed and delivered of the actual guilt of the person charged must be, in nine cases out of ten, from representation. Few, very few, of the jurors who were summoned in the case of Fries, had

been spectators of the acts which were alleged to have been treasonable; probably not one of them. Yet we learn from the answer of Judge Chase, that in that very case several were repelled from serving, because of the opinions which they acknowledged they had given. Such opinions must, in nine cases out of ten, be bottomed upon representation. There are numerous secret crimes, which, from their very nature, preclude the possibility that an opinion concerning them, however positive, and however decisive of the conviction of the accused, should be founded upon any previous knowledge of facts. And yet, sir, I presume no person will deny that, in such cases, a juror may, nevertheless, so express an opinion as to disqualify himself from serving.

But, sir, the scene rises upon us. We have now to examine a part of the transaction for which, I had supposed, human invention might be tortured for a palliation in vain. I allude to the rejection of Mr. Taylor's testimony. The reason assigned for that rejection was, that the witness could not prove the truth of the whole of *any one charge*. Let us, for a moment, examine the consequences of this doctrine. According to the judge's own decisions then, as well as his doctrine now, each charge laid in the indictment must have constituted a separate offence. For it is explicitly declared both by Mr. Hay and Mr. Nicholas, that when an application was made to continue the case, because of the absence of some material witnesses, the application was rejected, upon the ground that it did not appear from the affidavit filed that the witnesses, so absent, could prove the truth of all the charges. That proof of the truth of a part only, would be of no avail, and that the whole must be proved to entitle the traverser to an acquittal. Each charge in the indictment, then, must have constituted a *separate offence;* for the charges cannot be made to help each other out. One charge, however, it seems might consist of different facts. This was the case with several in that indictment. It was particularly the case with the very charge, the truth of which Mr. Taylor was called to prove. "The President was a professed aristocrat. He had proved faithful and serviceable to the British interest." Here was a charge made up of two distinct facts; so distinct in their nature, that the knowledge of their truth might not only rest with different persons, but was extremely likely not to rest with any *one* witness. Put the case of a man charged with any offence—murder, theft, or any other crime you please. There may be a string of facts upon the proof of which the defence may depend; some within the knowledge of one man; some within that of another. Was it ever heard of before, that, because one witness could not prove the existence of all those facts, that, therefore, such witness should not be examined as to what he did know? Or, if some of the facts depended upon written testimony, was it ever heard of before that, therefore, a witness should not be examined as to those resting on oral testimony? To these questions no man will answer in the affirmative. Why, then, was an unheard-of and palpably absurd doctrine brought to bear in Callender's case? Was the defence of justification, under the sedition law of the United States, such an anomaly in its nature, that none of the established rules of jurisprudence would apply to it? Was it a thing so *entire* in its nature, that it could not consist of different parts? I have always been taught, and the respondent's answer confirms the principle, that a defence must apply to the whole of a charge. If, then, a charge consist of different parts, surely, so must the defence. But, according to Judge Chase, be the parts ever so many, they shall not be proven, unless the proof can all be made by one witness, or unless it appear that the defendant has proof in reserve to establish all. I ask this honorable Court how it can appear that the defendant has proof in reserve applying to all the parts of a charge? Suppose a witness called to substantiate *one part*, how is it to be known to the court whether there is or is not other testimony behind, in the power of the party, by which the residue of the charge may be established? We are told, by the respondent, that none of the questions propounded to Colonel Taylor had any application to the charge, except the first, and this only to a part of the charge; and that this question was repelled because no proof was offered as to the residue. I answer, sir, that the judge had no right to know, nor were the counsel bound to disclose whether there was such testimony in reserve or not. It is a new doctrine, sir, that the legal admissibility of testimony is to depend upon what the party can afterwards prove by other testimony. It is the right of the party to establish his defence as far as he can, and if he fail in establishing it completely, the evil is to himself alone. And, permit me here to add, sir, that whether he succeed in establishing his defence or not, is a question for the jury to determine, and not the judge. The judge possesses no right to *determine*, even after the testimony is finished, whether that testimony has or has not established the defence; still less, then, can he, before it is heard, determine that it will not make good the defence.

We are told, in the respondent's answer, that his rejection of Colonel Taylor's testimony can be no proof of a determination on his part to oppress, as such an intention might have been gratified by the conviction of the traverser upon the other articles. This is true, very true, upon the principle that the judge and not the jury was to determine the question of law in criminal cases. If the criminality of the charges in point of law, was to be settled by the judge, his conclusion is certainly correct. But if, as I apprehend, the criminality of the charges was to be exclusively determined by the jury, then it was not entirely certain that the judge might have been sure of his object, notwithstanding the tenth charge had been proved. For aught he knew, or ought to be presumed to have known, the jury might have been of the opinion that the other charges did not come within the sedition law, and might have, therefore, given a verdict of acquittal.

But, Mr. President, this apart, it is a novel proof of innocence to me, at least, that a man should have the magnanimous boldness to disregard appearances. It is a novel proof of innocence that a man should possess a spirit daring enough to insult the common sense of mankind. Yes, sir, I yield to the respondent the full share of glory, which he is desirous of accumulating from this source.

The last of the three articles now under examination goes on to charge the defendant with various acts of injustice, partiality, and intemperance, highly derogatory to his character as a judge, and equally injurious to the reputation of the American bench. Without fatiguing the patience of the honorable Court with an inquiry into the proofs and an investigation of the criminality of all the particulars here enumerated, I beg leave to call their attention to one part of the judge's conduct, which appears to me to stand pre-eminent for its open defiance of all justice, and its flagrant violation of the Constitution of this country. I allude to the refusal to continue the cause. The reasons assigned for that refusal, were, we learn, that it did not appear by the affidavit exhibited, and upon which the motion for a continuance was founded, that the witnesses, whose testimony was wanted, could prove the truth of all the charges laid in the indictment. This conduct, Mr. President, strikes me as being of the same family with the rejection of Mr. Taylor's testimony. The charges in the indictment are in number many. They embrace a numerous collection of facts, some of them assimilated, others extremely variant in their nature, many of them involving legal difficulties as to their criminality. Under the plea of not guilty, to the indictment, it was competent to the traverser not only to prove the truth of the charges in point of fact, but also to prove that any of the charges were not criminal in point of law. It was competent for the defendant to prove the truth of a part of the charges, and to contend that the rest were not seditious. Both these grounds of defence were proper for the jury, and the jury possessed the right to pass without control upon both. With what propriety, then, could the judge pronounce from the bench that to entitle the accused to a continuance, it must appear that he could prove the truth of all the charges? What, sir, was the question of law as to their criminality, a point which the judge here again arrogated to himself the exclusive right to determine, and that, too, before the traverser was heard? Indeed, it would appear that, in this case also, as in the case of Fries, the law was to be arrested from its proper organ, the jury, and to be exclusively passed upon by the judge himself. What other construction can be given to his determination that the truth of all the charges must be proven? There surely could be no necessity for this, unless they were all seditious within the act of Congress. By determining, then, that all must be proved true, the judge did determine that all were seditious. This, sir, it was the exclusive right of the jury to determine.

The Constitution of this country has most wisely provided, that "the accused shall have compulsory process for obtaining witnesses in his favor. Of what avail is this provision if time be not given for their attendance? Of what avail to grant the process, and, before the witnesses can by any physical possibility reach the place, force the accused to trial? This conduct, sir, is worse than mockery. It is an insult to the common sense of mankind. It is high treason against the majesty of the Constitution of a free country. The Constitution of the United States gives to the accused the right of process to compel the attendance of his witnesses. But, Judge Chase so administers, that the accused is indicted, arrested, tried, convicted, and punished, all in the same term, whilst his witnesses are distant hundreds of miles.

After all this, Mr. President, surely we shall not be asked for proofs of corrupt intent. They are too thick upon every feature of the transactions which have been examined. The defendant is, on all hands, acknowledged to possess an acquaintance with the laws and Constitution of his country, which yields not to that of any other man in this nation. He is, on all hands, acknowledged to possess talents which might do honor to any tribunal. With such knowledge and such talents, permit me to ask, if it was within the compass of possibility that he should mistake in points so familiar as those in which he is charged with criminal conduct? Although all things are possible, yet there are things the extreme improbability of which defies belief. Among those I rank the supposition of mistake on the part of Judge Chase in the trial of James T. Callender. We might just as well be asked for proof of malice in a case where a man wilfully and without provocation kills another. In such a case as the one now under consideration, the answer is, that the criminal intent is apparent upon the face of the act. And there is a question, sir, which strikes me as applying itself with almost irresistible force to the present discussion. Can it be that such outrages should be committed upon the most ordinary principles of law and justice, and yet the conduct of the judge not be influenced by corrupt motives? Can it be that everything should be done to favor the prosecution and stifle the defence, and yet justice be administered "faithfully and impartially and without respect to persons?" But, if all this be insufficient, I pray this honorable Court to recollect the declarations of the judge in relation to the case, as attested by several witnesses.

The fifth and sixth articles rest upon grounds so extremely simple, and so easily comprehended, that it appears totally unnecessary to fatigue the patience of the honorable Court by dwelling upon them.

The seventh article is as follows:

"That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by

refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood 'that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order; that the name of this printer was'—but checking himself, as if sensible of the indecorum which he was committing, added, 'that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter,' or words to that effect; and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States, the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of 'Mirror of the Times and General Advertiser,') and, by a strict examination of them, to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare."

The respondent stands here charged with a conduct, than which, in my opinion, nothing could be more at war with his official duty—nothing more tarnish his official character. The Constitution and laws of this country certainly intended in erecting high judicial tribunals, that those who might be appointed to minister therein, should be impartial dispensers of justice between such as might resort thither for an adjustment of their differences. In public prosecutions more especially was it intended that such dispensation should be made without respect to persons. In these, above all other cases, ought a judge to stand aloof from influence, free from predilection towards one, or prejudice against the other. Most peculiarly here is it his duty to stand firm at his post, resisting the overbearing influence of a powerful public, and protecting the rights of the accused in so unequal a contest. But Judge Chase, disregarding these principles, always held sacred in a land of laws, converts himself into a hunter after accusations. He who, in the humane language of the laws, should be counsel for the accused, becomes himself an accuser. He, whose duty it is impartially to decide between the prosecutor and prosecuted, becomes himself the procurer of prosecutions.

I have always been taught that the character of an informer, in any station of life, was deservedly considered as the reverse of reputable. What, then, shall we say of him who descends from the judgment seat of the nation to inform against and direct the prosecution of one against whom he avows the strongest antipathy, and over whose trial he himself has to preside? Surely, sir, his thirst for punishment was great. Surely it was extreme indeed when he could not wait for the tardy motion of the public prosecutors. If our judges are thus to turn informers—if they are thus to seek after objects for themselves to try and themselves to punish—then indeed must this country, heretofore considered an asylum from oppression, become itself the nursery of oppression in its most odious form. And this Government, heretofore the pride of humanity, will be held up as an object of scorn and derision to the nations of the earth.

The eighth article is in these words:

"And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness; yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with an intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a Judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion, and in a proper manner, were at that time, and as delivered by him, highly indecent, extrajudicial, and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partisan."

It is not my intention, Mr. President, to trouble the court with many observations upon this article; not because of any opinion that it is unimportant. I believe it equally important with any in the catalogue. I believe it possesses a peculiar importance in affording, from the testimony by which it is supported, proofs of the spirit by which Judge Chase was usually governed in his official conduct.

There are features too in that part of the judge's official conduct, charged in this article, which place him in a point of view awfully grand. We have heretofore been viewing him as bringing his talents to bear upon individuals. Here we see his genius rising, in the majesty of its strength, to far higher objects. Here we see him consigning over whole governments to the scourge of his own avenging wrath. Whithersoever he turned his eyes, whether to the State constitution and laws, or to the laws and Constitution of the whole Union, they were equally exposed to the whip and the rack.

Mr. President, there is no truth more forcible than that expressed in the language of this article, that "mutual respect and confidence between 'the Government of the United States and those 'of the individual States, and between the people 'and those governments respectively, are highly 'conducive to that public harmony, without which 'there can be no public happiness." Indeed, sir, it may with truth be said, that this respect and confidence are *essential* to that harmony, without which we can enjoy no public happiness. What words then can describe in its proper colors the conduct of an officer of the highest judicial tribunal of the General Government, who abuses the duty and perverts the privilege of his station to destroy the confidence and excite the odium of the people against not only their State government, but that of the United States? He who was seated on the judgment-seat of the nation to execute the laws of the Union, converts that very judgment seat into a forum, from whence to pronounce a Philippic not only against the State government with which he there had no right to meddle, but against that very government under whose authority he was there sitting, and whose laws he was sworn there to execute. Not content with endeavoring to excite discontent and odium against the government of the State of Maryland, the Congress of the United States must be held up as sacrilegious destroyers of the national Constitution.

Mr. President, I have taken those views of this subject which presented themselves most forcibly to my mind. I have finished all I intended to say upon this argument. There has, in my opinion, been established against the respondent a volume of guilt, every page of which calls for punishment at the hands of this nation. I leave the case and the respondent in your hands. I leave them where the Constitution of this country has placed them. I leave them where I hope, and I believe, there will be found a different measure of justice from that which Judge Chase has been accustomed to administer. I leave them where justice *will* be administered "faithfully and impartially, and without respect to persons."

Mr. Campbell then rose and spoke as follows:

Mr. President, and Gentlemen of the Senate: It is with peculiar diffidence I rise, in compliance with the duty assigned me, to address this honorable Court on this important occasion. Sensible of my own incompetency to do that justice to the investigation of this cause which its importance, and the influence that the whole transaction is calculated to have on the jurisprudence of our country, would seem to require, I should have felt disposed to decline the undertaking; but called upon by the representatives of the nation to aid in supporting a prosecution which they have deemed it proper to institute for the public good, I conceive it my duty to yield up, in some degree, my own feeling to obey the voice of my country, and perform the duties imposed upon me thereby. Under this impression I shall endeavor to execute the trust reposed in me on this occasion in such manner as the very short time left me from other public avocations, and the limited means of information on subjects of this nature, which the present situation of this place affords, will enable me. I feel, however, sir, considerable confidence in this undertaking, from the consideration that there are other gentlemen associated with me on this occasion, who are fully competent to do complete justice to the subject. And a still higher degree of confidence arises from a perfect conviction that the honorable members who compose this high tribunal, and who are to pronounce the final decision in this cause, are well qualified to investigate its merits; and that their talents and experience are such as to preclude even the possibility of a defeat of justice taking place, in consequence of any deficiency that may exist in the exertions of counsel on either side.

The scene, presented to the nation by this trial, is more than usually interesting and important. One of the highest officers of the Government, called upon by the voice of the people, through their representatives, before the highest tribunal known to our Constitution—that same tribunal that sanctioned his elevation—to answer for the abuse of the power with which he had been entrusted! It is a melancholy truth, that derogates much from the dignity of human nature, but it is a truth that has been for ages established by experience, that high and important powers have a tendency to corrupt those on whom they are conferred. Few minds are possessed of sufficient integrity and independence, when elevated above the ordinary level of the great mass of their fellow citizens, to resist the impulse their high station gives them, to grasp at still greater powers, and prostitute those which they already possess.

Hence it has been the great exertion of all governments, who regard the rights and liberties of the people, and still must continue to be so, to watch over the conduct of the high and confidential officers of State, and guard against their abusing the powers reposed in them. For this purpose the mode of trial by impeachment was resorted to in very early times in that country from which we have derived most of our laws and usages. Near five hundred years ago, the representatives of the people in that nation felt themselves clothed with sufficient authority to check the abuses of power, in the highest officers under the Crown, by calling upon them by impeachment to answer before the House of Lords for their conduct, and punishing them for such acts as were unauthorized, illegal, or oppressive.

It was a wise and politic measure to have charges of this nature tried by the highest tribunal in the nation, that would not be *awed* by the great powers and elevated standing of the accused, nor influenced by the popular voice of the accusers,

further than a strict regard to impartial justice would require. As I conceive, therefore, that pure and unstained impartiality ought to be the characteristic feature in the trial by impeachment, I shall for myself, and I conceive I may in the name of the representatives of the people, utterly disclaim any design or wish that party considerations, or difference in political sentiments, should, in the remotest degree, enter into the investigation, or affect the decision of this question. Yet, in order to ascertain the motives that actuated the respondent, it may become necessary to notice the difference of political sentiments, so far as regarded the accused, and those who are stated to have been injured by his conduct, at the time those transactions took place, that gave origin to this prosecution.

In the view which I propose taking on this subject, I shall in the first place notice the provisions in the Constitution relative to impeachment, and endeavor to ascertain the precise object and extent of such provision, so far as the same may relate to the present case.

The first provision in the Constitution on this subject, (art. 1st, sec. 3.) declares, that the Senate shall have the sole power to try all impeachments. Here we discover the great wisdom of the framers of the Constitution. The highest and most enlightened tribunal in the nation is charged with the protection of the rights and liberties of the citizens against oppression from the officers of Government under the sanction of law; unawed by the power which the officer may possess, or the dignified station he may fill, complete justice may be expected at their hands. The accused is called upon before the same tribunal, and in many instances before the same men, who sanctioned his official elevation, to answer for abusing the powers with which he had been entrusted. Men who are presumed to have had a favorable opinion of him once, are to be his judges; no inferior or co-ordinate tribunal is to decide on his case, which might from motives of jealousy or interest be prejudiced against him and wish his removal. No, sir, his judges, without the shadow of temptation to influence their conduct, are placed beyond the reach of suspicion.

The next provision in the Constitution declares that judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

Here the Constitution seems to make an evident distinction between such misdemeanors as would authorize a removal from office, and disqualification to hold any office, and such as are criminal, in the ordinary sense of the word, in courts of common law, and punishable by indictment. So far as the offence committed is injurious to society, only in consequence of the power reposed in the officer being abused in the exercise of his official functions, it is inquirable into only by impeachment, and punishable only by removal from office, and disqualification to hold any office; but so far as the offence is criminal, independent of the office, it is to be tried by indictment, and is made punishable according to the known rules of law in courts of ordinary jurisdiction. As, if an officer take a bribe to do an act not connected with his office, for this he is indictable in a court of justice only. Impeachment therefore, according to the meaning of the Constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner in which he performs the duties thereof; and the effects that his conduct therein may have on society. It is more in the nature of a civil investigation, than of a criminal prosecution. And though impeachable offences are termed in the Constitution high crimes and misdemeanors, they must be such only so far as regards the official conduct of the officer; and even treason and bribery can only be inquired into by impeachment, so far as the same may be considered as a violation of the duties of the officer, and of the oath the officer takes to support the Constitution and laws of the United States, and of his oath of office; and not as to the criminality of those offences independent of the office. This must be inquired into and punished by indictment.

This position is strongly supported by the mode of proceeding adopted by this honorable Court in cases of impeachment. You issue a summons to give notice to the accused of the proceeding against him; you do not consider his personal appearance necessary; you issue no compulsory process to enforce his personal attendance; and you pass sentence, or render judgment on him in his absence. But, in all criminal prosecutions, compulsory process must issue at some stage of it to enforce the defendant's appearance; unless outlawry in England be considered an exception, which, it is believed, is not resorted to in this country, and his personal appearance is considered absolutely necessary; and in almost every case he must be present when sentence is pronounced against him. This construction of the Constitutional provision appears to be absolutely necessary, to avoid the absurd consequence that would arise from a different construction; that of punishing a man twice for the same offence, which could not have been intended by the framers of the Constitution. The nature of the judgment which you are bound to render, and not to exceed, appears also conclusive on this head. You can only remove and disqualify an individual from holding any office of honor, trust, or profit. This cannot be considered a criminal punishment; it is merely a deprivation of rights; a declaration that the person is not properly qualified to serve his country. Hence, I conceive, that, in order to support these articles of impeachment, we are not bound to make out such a case as would be punishable by indictment in a court of law. It is sufficient to show that the accused has transgressed the line of his official duty, in violation of the laws of his country; and that this conduct can only be accounted for on the ground of impure and corrupt motives. We need not hunt down the accused as a criminal, who had committed crimes of the deepest die; and this honorable Court are not authorized to inflict a punishment adequate to such crimes, if they had been committed and could be established. With this view of the meaning of the Constitutional provision relative to impeachments, I shall proceed to examine the articles now under consideration, and the evidence given to support them. In the course of this examination, we apprehend it will clearly appear that the whole conduct of the judge in the several transactions, for which charges are alleged against him, *had its origin* in a corrupt partiality and predetermination unjustly to oppress, under the sanction of legal authority, those who became the objects of his resentment in consequence of differing from him in political sentiments; turning the judicial power, with which he was vested, into an engine of political oppression. So completely, it is conceived, has this motive pervaded the whole of his judicial transactions now in question, that there is not a single act charged in the articles of impeachment, that is not strongly marked with manifest oppression, springing from political intolerance, under the mask of administering justice. This is the corrupt origin from which have issued all the evils complained of; this has for ages been the scourge of society; and it is all important that, in our country which is yet in its infancy, when this poisonous germ cannot have taken deep root, it should be crushed in its embryo, and not permitted to gather strength by the sanction of high and superior authority.

In order to observe some arrangement in the investigation of this subject, I propose to consider, first, under one general view, the conduct of the judge on the trial of Fries for treason, as stated in the charges contained in the first article; and,

Secondly, I will consider also, under one general view, the conduct of the judge in the trial of Callender for a libel, as stated in the several charges contained in the impeachment. The fifth and sixth articles I will leave to be supported by those gentlemen associated with me in the management of this prosecution, who have been more conversant than myself with the laws of, and practice of the courts in Virginia, upon which the support of these articles materially depend; and the remaining articles, to wit, the seventh and eighth, will be chiefly relied upon by me, to show the spirit of oppression, partiality, and political intolerance, that marked the whole judicial career of the judge during the course of these transactions, thereby establishing more clearly the motives that actuated his conduct in the several acts charged as misdemeanors in the articles already noticed and relied upon.

In examining the first article, I shall rely upon the following positions:

First—That, under the eighth article amendatory of the Constitution of the United States, (referred to in this article of the impeachment,) which secures to the defendant, in all criminal prosecutions, the assistance of counsel, he is thereby entitled to the *right* of such counsel being heard in his defence by the court, before a decision be made and declared against him on the law arising in his case; and, also, that such counsel should exercise their professional rights in making his defence, according to the known and established laws and usages of the nation, free from any arbitrary control or restriction whatever.

Secondly—That, in the trial of Fries for treason, the judge did, by delivering an opinion in writing on the law arising in the case, before counsel were permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel.

Thirdly—That he imposed on the counsel engaged for the defendant, arbitrary restrictions and control, in the exercise of their professional rights, unknown to, and unauthorized by the laws and usages of the nation, which compelled them to relinquish the defence of the prisoner.

Fourthly—I will then insist that this conduct was such a flagrant violation of his duty, as could only spring from corrupt motives, and a disposition to oppress those who became the objects of his resentment.

With regard to the first position, that counsel ought to be permitted to be heard for a defendant before a decision should be declared against him; and, also, that the counsel ought to be protected in the exercise of their professional rights, according to the usages and practice of courts, it appears to me substantially supported by the Constitutional provision already noticed, securing to the defendant the assistance of counsel, and to be a necessary consequence of that provision; and essential, in order to give it effect. For, in the first place, as to the law, of what use would the assistance of counsel be to the defendant, if a decision of the law arising in his case should be deliberately made up by the court, committed to writing to give it more solemnity and effect, and delivered, or made known, before such counsel were permitted to be heard in his defence? What hopes could the counsel entertain of being able to convince a court that an opinion thus deliberately formed and solemnly made known, was incorrect, and ought not to be given? Surely, if the right of the assistance of counsel, secured to a defendant, means anything, it must mean that he should have an opportunity, through his counsel, to make his case known to the court, to explain the law arising thereon, and show, as far as it could be done, that, according to the true construction of the law applying to his case, or under which he is charged, he is not subject to its penalties; before their opinion be declared on the subject, while the mind of the court is unbiassed, open to conviction, and capable of duly weighing the arguments that may be advanced on either side. But when an opinion is deliberately declared, or made known, against a defendant, before he is permitted to be heard by counsel, his case is prejudged, the character of the court is committed in a very great degree to support such opinion, the arguments of counsel cannot be expected to be heard by such a court with impartiality and fairness, that go to prove such opinion to be erroneous; and under such circumstances, the aid of counsel is a mere name without a benefit; a form without substance. But

again, if such counsel were subject to the arbitrary control and restriction of a court, of every capricious and irritable judge; if they were not protected in the performance of their professional duties, so long as they acted within the laws of their country and the known usages and practice of courts, of what use would their assistance be to the accused, or what substantial aid could they afford him in making his defence? The counsel would have no rule to direct them in shaping their client's defence. When they had prepared to examine his cause in the manner heretofore usual in courts, and upon grounds which they conceived most likely to establish his innocence and procure his acquittal, they might be stopped at the very threshold of the defence; surprised with a new and unheard-of mode of proceeding; presented with a digested and formal opinion upon the very points they intended to contest; and informed that, in the remarks they might be permitted to make to the court, to show that such opinion was not correct, they must confine themselves in their endeavors to establish the doctrine they might advance, to the producing of authorities of a certain description; and must not extend their researches after decisions, on similar cases, beyond certain prescribed limits, as to time and the kind of decisions. Under such circumstances no counsel could render any substantial service to the accused; none would be found to submit to the tyranny of such a practice

Further, it is conceived an universal rule of construction, that when a right is secured to any person, by a law, the means of acquiring the benefit of that right are thereby also secured to him. The Constitution secures to the defendant in all criminal cases the assistance of counsel in his defence; the only means by which the benefits of that right can be obtained by such defendant, it is conceived, must be, by permitting counsel to be heard in his behalf, before his case is decided against him, and by protecting such counsel in the due performance of their professional duties. These rights are secured to counsel for the benefit of those for whom they are concerned, and whose interests they advocate; and not for their own advantage. And hereit may be proper to observe, that though counsel may be considered in some respects as officers of the court, and in a certain degree subject to their control and direction; yet, it is certain while they act within the line of their duty, and the known sphere of their action as counsel, their rights are as sacred as those of the court; and they are, in performing their professional duty, in a certain sense, as independent of the court, as the court are of them.

The *second* position proposed to be established and relied upon, to wit, that the judge did, in the trial of Fries for treason, by delivering an opinion in writing, on the law arising in the case, before counsel was permitted to be heard in his defence, effectually deprive the defendant of any benefit from the assistance of counsel, is in part a deduction from the preceding position, and supported by it. The fact of the judge's delivering an opinion in writing, in this case, against the defendant, previous to permitting counsel to be heard in his defence, is admitted by the judge in his answer, and is also established beyond a doubt by the evidence of Messrs. Lewis, Dallas, Tilghman, and indeed of all the witnesses on the subject. No difference exists in the evidence of the different witnesses with regard to the written opinion being delivered before the cause was heard. The statement briefly is, that after the court met, the jury were called, and many of them answered and appeared; the prisoner was (Mr. Lewis believes) in court; the counsel assigned the prisoner had not all got to the bar, when the judge handed down, or threw on the clerk's table, several papers, each containing the opinion of the court on the law that was to decide the defendant's fate: one of these copies, the judge said, was to be given to the counsel for the defendant; one to the Attorney for the United States, and one to be delivered to the jury before they retired on the case. Some of the gentlemen about the bar began to copy these papers: Mr. Lewis, one of the counsel for the defendant, refused to receive or read, it, declaring his hand should never be tainted by reading a prejudged opinion in any case, but especially in a capital one. The papers were subject to public inspection; the jurymen then might, and probably did, read the opinion. Thus the formal opinion of the court on the law, being made known to the jury before the cause was heard, would bias their minds against the defendant, and, render an impartial inquiry into his case next to impossible. The counsel had no hopes of changing an opinion thus deliberately and formally made up, and stamped with the solemnity of a written sentence; the judge by deciding the law seemed to have decided the facts also, as he must have assumed them as proved, in order to found his opinion upon them; and indeed the answer states that no doubts existed with regard to the facts or evidence in the case, on either side; the jury would, therefore, consider such opinion as a decision of the whole case, and would be prepared, so far as they could be influenced by the judge, to pronounce the defendant guilty, before they heard the cause examined, or even a syllable of the evidence. In a case thus situated, how could the defendant be said to enjoy the benefit of the assistance of counsel; when the whole case was decided before the counsel was permitted to be heard; and no ground left for them to occupy? This mode of proceeding, adopted by the judge, was, therefore, a direct violation of the Constitutional right secured to the defendant, of having the assistance of counsel in all criminal prosecutions; for it cannot be pretended that to hear counsel after the cause was substantially decided, would be complying with the true intent and meaning of the Constitution; for this would render the provision totally futile and useless, and would be calculated only to deceive unfortunate defendants, who might place reliance upon it. The judge, in delivering this opinion, introduced a mode of proceeding new and before unknown in our jurisprudence; and contrary to the known and established usages and practice of the courts in

our country. All the legal characters that have been examined as witnesses on both sides, and most of the witnesses to this article were legal characters, prove the fact, that no such practice ever did exist in this country; not one solitary case can be adduced of a similar proceeding by a judge, either in this country or in that from which we have taken most of our laws and usages. The writers on the laws of England afford no instance of this kind; and it was left for Judge Chase to introduce this extraordinary and before unheard-of mode of administering justice.

But it is insisted on, by the judge in his answer, that the opinion was a correct one, as to the law of treason, supported by former decisions, and, therefore, there would be no harm in making it known, at the time and in the manner he did; that it could not mislead the jury, but would guard them against being imposed upon by the ingenuity of counsel. Though this reasoning may appear plausible at first view, it will be found, upon examination, to be fallacious, tending to establish a dangerous doctrine, that would in principle go the whole length of justifying a judge, for dispensing with the intervention of a jury altogether in trials for crimes. If a judge may give a solemn opinion against a defendant in a criminal case, without permitting counsel to be heard in his behalf, when the party is entitled of right to the assistance of counsel, and then justify such conduct by showing that the opinion itself was correct, and must have been delivered by him in some stage of the trial; why may he not pass sentence of execution upon a criminal without the verdict or intervention of a jury? And, when charged with this conduct as unconstitutional and illegal, justify himself by showing that the sentence he passed was a correct one, that the facts in the case were notorious and admitted on all hands; that the law was clear and had been established by former decisions that could not be shaken; and that, therefore, the intervention of a jury could be of no service to the defendant, as they must find him guilty; and that, as he would have to declare the same sentence he had pronounced, after their verdict should have been rendered, it could do no harm to pronounce it without such verdict; as it could not do an injury to pass a correct sentence at any time? This reasoning would be of the same kind with that advanced by the judge in the case before you, to justify him in delivering a written opinion, before the cause was heard, or the defendant permitted to make his defence by counsel; for if in the one case it would be a violation of the Constitutional right of a trial by jury, secured to defendants in criminal prosecutions, so in the other case it would be equally a violation of the Constitutional right secured to defendants of having the assistance of counsel in their defence. The reason therefore of the judge, if it proved any thing, would prove too much; it would virtually destroy the most valuable provisions in our Constitution for the protection of the rights and liberties of the citizen; and authorize a judge or court at pleasure to dispense with Constitutional restrictions, when they found it convenient so to do.

But in the present investigation, the correctness or incorrectness of the written opinion delivered by the judge, is not in question; this opinion is not charged to be in itself incorrect or erroneous, but the offence charged is in the manner and time of delivering it; the attempt, therefore, by the judge, to justify his conduct by insisting that the opinion delivered was correct, and authorized by former decisions, is a mere evasion of the real charge alleged in the impeachment, and an exertion to prove what was not denied or put in question. It cannot therefore, in fact, aid the accused, or make his case better than it would be if such opinion had been evidently erroneous; but it is not intended, in this place, to admit the correctness of the opinion delivered by the judge in writing, by not going into the discussion of it; but this discussion of the opinion is omitted here, because its correctness or incorrectness is irrelevant to the present question, and, therefore, unnecessary to be discussed.

I will now proceed to consider the third position stated, to wit: That the judge did impose on the counsel engaged on behalf of Fries, arbitrary restrictions and control in the exercise of their professional rights, unknown to and unauthorized by the laws and usages of the nation. In support of this part of the charge there is the evidence of Mr. Lewis, who states that when the judge delivered the written opinion in the manner already noticed, he observed that on the former trials there had been a great waste of time by counsel making long speeches to the jury, on the law as well as on the fact, and stated his disapprobation of their having been permitted to read certain statutes of the United States, relating to crimes less than treason, which he, or the court, declared they would not suffer to be read again; and that cases at common law, or under the statute law of England previous to the English Revolution, had nothing to do with the question, and that they would not suffer them to be read; that they had made up their mind on the law. This is, in substance, the evidence of Mr. Lewis on this point, and it is strongly supported by that of Mr. Dallas, who, though he was not present when this statement was made by the judge, yet corroborates the truth of it by the statement he made to the court afterwards on the same day, as made to him by Mr. Lewis, and by the circumstances that took place in consequence thereof. Mr. Dallas also states that the judge said, as he thinks on the next day, that in arguing upon the law the counsel must address themselves to the court alone, and not the jury. The evidence of Messrs. Rawle and Tilghman support most of these facts in substance, except as to the judge refusing to permit the statutes of the United States to be cited, and differ only as to the time at which the judge made these declarations; these facts, therefore, are supported by evidence that cannot be shaken; and were the evidence given by Mr. Lewis and Mr. Dallas, different from that given by Messrs. Tilghman, Rawle, and others, more weight and credit ought to be given to the evidence of the former gentlemen than to that of the latter, though

all may be men of equal integrity and veracity; for there is a material distinction between the credit due to witnesses as men of integrity and veracity, and the weight or credit that ought to be given to their evidence as containing a correct and full statement of facts. Two men may be of equal credibility in society, and equally tenacious of deposing the truth; yet the evidence of the one as to a particular transaction, may deserve much more weight and credit than that of the other, in consequence of his possessing better means of information, and being so circumstanced as to feel more interest in, and receive stronger impressions from the facts that may have taken place; so in the question before us, Mr. Lewis and Mr. Dallas felt the strongest interest in the transaction that took place; their rights as counsel were invaded, and the impressions they received were strong and not easily effaced. Mr. Lewis had the most correct means of information; his attention was arrested by the paper containing the opinion being handed or offered to him; the statement of the judge containing the restrictions already stated, immediately followed, to which he attended; he could not, therefore, possibly be mistaken; and the impression so strongly made, by so extraordinary a transaction, could not be erased from his memory. This was not the case with Messrs. Rawle and Tilghman, for though Mr. Rawle was concerned for the prosecution, he states he was much engaged with other business; the opinion delivered was also in favor of his side of the question, and of course the affair was not likely to excite so much the interest of those gentlemen, or make so deep an impression on their minds. The evidence, therefore, of Mr. Lewis and Mr. Dallas may be considered as a correct statement of this transaction. These restrictions, therefore, imposed upon the counsel, of not citing such authorities as were usually permitted to be used, and not arguing the law to the jury, are unauthorized by the laws of our country, and contrary to the usages and practice of our courts of justice, and in the case in question amounted to a prohibition to argue the cause in any possible way that could be of the least service to the defendant. That these restrictions were unauthorized by the practice in our courts, is established by the evidence of every witness that has been examined to this point, who declare that no such restrictions had ever been imposed on counsel, concerned in criminal cases, in any courts with which they had been acquainted, and particularly by the practice of the circuit court of the United States in the same State, in the trial of the same cause before, and in other similar trials, when the utmost latitude was given the counsel in making their defence. This was, therefore, a direct and arbitrary innovation on the known and established modes of proceeding in courts of justice in criminal cases, and an unwarrantable attack on the privileges secured to defendants by the Constitution and laws of the country. That judges are not authorized to substitute their own arbitrary will in place of law, and to dispense at pleasure with the established rules of proceeding in the tribunals of justice, is proved by every principle of reason and of law. To show that this position has been expressly recognised by law writers, and legal decisions for ages, I will refer the court to 2. *Bac. Ab.*, (new edition) page 97, where it is declared that, "judges are to determine according to the known law and ancient customs of the realm;" and to 4 *Com. Dig.* 418, where it is stated that "judges ought to act conformably to law, and not according to discretion."

These authorities, when we consider the country from which they come, and the times in which they were written, strongly mark the limits that ought to circumscribe the conduct of the judge. And shall the judges in our country assume greater latitude in their proceedings than those of England, and depart at pleasure from what are known to be the customs of the country? I should presume not. But the judge states in his answer, that decisions at common law, and before the Revolution in England, could throw no light on the doctrine of treason here, but might mislead the jury; and, therefore, ought not to be admitted to be read, not being law; and he wades into the dark ages of the history of England, when the judges were corrupt and under the influence of the Crown. This reasoning of the judge is evidently an evasion of the point in question. The object of the counsel for Fries, in wishing to cite those authorities, both at common law and under the statute of Edward the Third, was not to show by them what the construction of the words of our Constitution with regard to the treason ought to be; but to show first, the absurd and ridiculous lengths to which those decisions had gone, in determining what acts amounted to treason there, and then to prove that since the English Revolution, the judges in England considered themselves bound by cases decided before the Revolution, and that as the decisions on treason in England, since their revolution, were bottomed upon those cases before the revolution, they ought not to govern the courts in this country, in giving a construction to the words of our Constitution, in order to determine what acts amounted to treason. This was evidently the object of the counsel, and it is proved to have been so stated by them, by the evidence of Mr. Lewis, Mr. Dallas, and Mr. Rawle. There was, therefore, no ground for the pretence the judge makes for refusing these authorities to be introduced.

It is admitted by the answer that the jury have the right to decide upon the law as well as upon the fact; and if it were denied, it could be shown by clear and undoubted authorities, of ancient and modern times. From what motives, therefore, and under what plausible pretence, could the judge refuse to permit the law to be argued before the jury? How could they decide upon it properly, without hearing it discussed? And with what color of reasoning can the judge say that the jury have the right to decide the law, and yet that they have not the right to hear it argued and explained by counsel? Does not this show the greatest absurdity, and prove that the accused must have had some object in view, that he did

not choose to avow, and that would not bear examination? In this case there was no dispute about the facts; the answer states, they were admitted on both sides. The judge makes up his opinion upon the law, commits it to writing, and makes it known as the opinion of the court, before the jury are impanelled in the case. For what purpose was counsel assigned to the defendant? What remained for the counsel to examine or contest, when the facts were admitted and the law decided by the court? Would not the assistance of counsel, under such circumstances, be to the defendant a mere phantom, a name without substance? Was not the assignment of counsel, in this case, and with such views as the judge must have had, an useless ceremony, an empty compliance with form, a mere mock of justice? The clear inference from the whole transaction must be, that the judge was determined the defendant should derive no benefit from the assistance of counsel, and only affected to permit them to argue the facts to the jury, because he knew they were not disputed, even by the defendant himself. It must, therefore, be a fair inference that the defendant was deprived of the assistance of counsel, by the unwarrantable, illegal, and unauthorized restrictions imposed upon them in the performance of their professional duties by the judge.

It remains on this part of the subject, to show that this conduct of the judge was such a flagrant violation of his duty, as could only spring from corrupt motives, and a disposition to oppress those who became the objects of his resentment. I lay it down as a settled rule of decision, that when a man violates a law, or commits a manifest breach of his duty, an evil intent or corrupt motive must be presumed to have actuated his conduct; as every man is presumed to know the law, and every officer or judge to understand their duty; and if the party will undertake to excuse himself, for misconduct, on the score of pure motives and unintentional error, it is incumbent on him to make the same appear by satisfactory and incontestible evidence. In some instances, erroneous conduct may be explained, excused, or palliated, by the weakness or ignorance of the delinquent, and the circumstances that attended the case. But, in this whole transaction, what marks of innocence or pure motives, are to be discovered?—What excuse to be offered for the conduct of the accused? Ignorance of the law cannot be relied upon as forming a ground of excuse. The legal talents, long experience, and distinguished abilities of the judge, are too well known to admit of such a plea. It was no new and difficult case, wherein he might be easily mistaken. There were no former precedents to lead him astray. The proceeding was entirely new, and of his own invention; a total deviation from all former practice, and a manifest innovation upon the established usages in our courts of justice. The whole bar were agitated by the proceeding; counsel of near thirty years practice felt embarrassed and astonished at it. The common sense of the whole audience appeared shocked at the transaction, as being altogether new and extraordinary. The accused, in his answer, states that he relied upon the decisions of the circuit courts, wherein Judges Iredell and Paterson presided, with regard to the law of treason, as forming a precedent from which he would not even dare to depart. Why did he not consider himself equally bound by the practice they adopted in criminal cases? They gave the utmost latitude to counsel in making their defence to the jury, both on the law and the fact, did not restrict them as to the authorities they should cite, and delivered no opinion until the cause was heard. Judge Chase reversed the whole of this mode of proceeding. What good reason can be given for his adhering to their opinion in the one instance, and totally departing from their practice and example in the other? No excuse can be formed for this conduct. This is the strongest possible evidence of corrupt motives, of partiality, and a determined design to overleap all former rules of proceeding, to oppress the unfortunate defendant that was arraigned at his bar for trial. The whole course of the judge's conduct in this transaction goes to establish the same spirit of oppression. Counsel are assigned the defendant, merely for the sake of form, and, as it were, to mock him in his misfortunes. The day of trial arrives. In the mean time the judge makes up his opinion on the law arising in the case, and, to add solemnity to the act, commits it to writing. There is no doubt, no dispute as to the facts. The prisoner is brought to the bar. Not a voice is permitted to plead his cause, until the solemn sentence of his legal conviction is made known; and thereby the avenues of his defence, that might lead to his acquittal, for ever closed.

Here let us pause a moment, and behold the unfortunate, and, in the language of his able counsel, poor Fries, trembling before his condemning judge, stripped of the aid of counsel, his only and forlorn hope; the fatal fiat of his condemnation pronounced in the solemn language of a written opinion; and thus friendless, unprotected, and unheard, about to be consigned to the hand of the relentless executioner! Let us view this spectacle, and then let me ask, if this can be considered an impartial administration of justice? I might here charge the accused with having knowingly and wilfully trampled on the laws of his country, and overleaped the bounds of legal justice, to oppress a friendless individual brought before him for trial. I might call upon this honorable court to vindicate the character of insulted justice, and demonstrate to the American people, that when their rights and liberties are invaded, even though under the sacred sanction of judicial authority, this high tribunal will always be found ready and willing to avenge their wrongs and protect their interests.

But it is alleged by the judge that the offensive written opinion that had been made known was withdrawn, and that next day full latitude was offered to the counsel to argue both the law and the facts to the jury. This was a fallacious offer. It came too late to be of service to the defendant, or excuse the judge. The act on his part was

done—the offence was complete—and it was only the sternness of the counsel that made him retract. The impression had been made on the minds of the jury that could not be erased—the flame had been kindled by the fire-brands he had scattered, which could not be extinguished by withdrawing the instruments that occasioned it. The experiment was as dangerous as it was novel, and can only be ascribed to the same spirit of oppression and political intolerance that will be found to distinguish the whole conduct of the judge in his judicial career during these transactions.

The respondent further insists, in his answer, that he cannot be impeached, except for some offence for which he may be indicted at law. This position cannot be supported by any fair construction of the provision in the Constitution on this subject. It has already been attempted to be shown, in the view taken of this Constitutional provision, that in order to support an impeachment it is not necessary to show that the offence charged is an indictable one, but only that it is a breach and violation of official duty; and I conceive that this is the only construction that can be adopted to give consistency to the Constitution; to the mode of proceeding adopted under it in cases of impeachment; to reconcile with justice the nature of the judgment that must be rendered upon conviction, and to avoid the palpable absurdity that would follow a different construction of punishing a man twice for the same offence. To the exposition already given of this provision in the Constitution I beg leave to refer the court as controverting the position here relied upon by the judge. But I would here further observe, in support of this doctrine, that according to the laws of England, a judge of a court of record is not accountable by indictment for anything done in open court, in his judicial capacity, and that he may plead to an action brought against him, for any such act, that he did it, (that is, what he was charged with) as a judge of record; and it would be a good justification. In support of this doctrine the court are referred to 2 Bac. Ab. (new ed.) page 97; 2 Hawk. 113; Jac. Law Dictionary, (new ed.) verbum Judges. It appears from the same authorities that the judges in England are accountable in Parliament only for opinions delivered by them in court; and are not, for such opinions, to be questioned before any other tribunal. This is the great protection and security that judges of courts of record have, that they are accountable for their official conduct only to the legislature, and are punishable at law only for such acts as would be indictable offences, independent of their official character. This view of the subject renders the judges, so far as regards their judicial conduct, independent of all tribunals except the legislature, and is certainly better calculated to preserve the independence and dignity of the judges, than that contended for in the answer. I cannot, therefore, entertain a reasonable doubt that the true intent and meaning of the Constitution will support this doctrine, and that it will be sanctioned by the opinion of this honorable Court.

Mr. Campbell here observed that he had closed the remarks he proposed making on the first part of the subject, and, finding himself indisposed, expressed a wish that the Court would adjourn.

Whereupon the Court rose.

THURSDAY, February 21.

The Court was opened at 10 A. M.

Present: the Managers, attended by the House of Representatives in Committee of the Whole, and the counsel of Judge Chase.

MR. CAMPBELL, *in continuation.*

I will now proceed, as well as my indisposition will permit, to examine in a brief manner the second part of the subject, containing the several charges founded on the trial of Callender, at Richmond, as stated in the second, third, and fourth articles of the impeachment. I will consider these several articles in the order in which the transactions on which they are founded took place in court. In order to ascertain the motives that actuated the judge in this whole transaction, it will only be necessary to view his conduct as proved, so far as the same relates to this subject, previous to the trial. The first account we have of the intended prosecution, or I might say persecution, of Callender, is at Annapolis. Here the judge received the famous book called the "Prospect Before Us," upon which the prosecution was founded, and here the determination was formed to convict and punish Callender. The respondent said he would take the book with him to Richmond; that the libellous parts had been marked by Mr. Martin, and that before he returned he would teach the lawyers of Virginia to know the difference between the liberty and licentiousness of the press; and, that if the Commonwealth of Virginia was not totally depraved, if there was a jury of honest men to be found in the State, he would punish Callender before he returned from Richmond. This is the evidence of Mr. Mason, nearly in his own words, and no person will pretend to doubt its correctness. What language could be used that would more clearly show the partiality and predetermination of the judge to punish Callender, and the spirit of persecution by which he was actuated. Again: on his way to Richmond, according to the evidence of Mr. Triplett, the judge reviles the object of his intended vengeance; states his surprise and regret that he had not been hanged in Virginia; remarks that the United States had shown too much lenity to such renegadoes; and after arriving at Richmond, informs the deponent he was afraid they would not be able to get the damn'd rascal that court. Thus evincing in every stage of this business that intolerant spirit of oppression and vengeance that seems to have given spring to all his actions. After the indictment is found against Callender, the panel of the petit jury is presented to the judge; he inquires if he had any of the creatures called Democrats on that panel, directs the marshal to examine it, and if there were any such on it, to strike them off. This is the evidence of Mr. Heath, whose character and standing in society are known to many of the members of this honorable Court. And though his evidence is opposed to the negative declarations of Mr. Randolph, who affirms that he did not present the panel of the jury to the judge, or receive such directions, yet I conceive the court will give more weight to the affirmative declarations of Mr. Heath, with regard to these facts, than to the negative assertions of Mr. Randolph, who may have forgotten the transaction. This point rests upon the integrity and veracity of Mr. Heath. He could not receive the impression of these facts, unless the transaction had taken place; he could not reasonably be mistaken; the affair was new and extraordinary, and must have arrested his attention; and in this case there is no ground to make allowance for a treacherous memory, for it is not pretended that the witness, Mr. Heath, has forgot the facts, but that they never existed. If you do not, therefore, believe the statement he makes, it must follow that you admit the witness has wilfully and corruptly stated a falsehood. This, I presume, will not be admitted. But on the other hand, Mr. Randolph may have forgotten the transaction in the bustle of business, and this will account for the difference in the evidence of the witnesses without impeaching the veracity of either. This mode of reconciling the evidence is agreeable to the rules of law. I take the facts, therefore, as stated by Mr. Heath, to be correct, and they afford an instance of judicial depravity hitherto unequalled and unknown in our country—a direct attempt to pack a jury of the same political sentiments with the judge to try the defendant. This is a faint representation of the previous conduct of the judge relative to this subject, before whom the defendant was about to be tried, or rather before whom he was to be called for certain conviction and punishment, for it ought not to be dignified with the name of a trial. With this view, therefore, of the temper and disposition of the judge, and of his previous conduct on this occasion, we will examine the first important step taken in the trial, in which the designs of the judge begin more clearly to unfold themselves, viz: his refusal to postpone or continue the trial until the next term, on an affidavit regularly filed, stating the absence of material witnesses and the places of their residence, being the second charge in the fourth article.

It is admitted by the respondent, in his answer, that an affidavit was filed, which he exhibits to the court, and a motion made thereupon by the counsel of Callender to continue his cause for trial until the next term; and it is proved by the evidence of Mr. Hay and Mr. Nicholas, that, as counsel for Callender, they insisted for a continuance of the case on the grounds stated in the affidavit, and also on other grounds; that they were not prepared to argue the law arising in the case, for want of time to examine the subject, and that the defendant was not, by the laws of Virginia, bound to come to trial that term. Here it may be proper to show what are the grounds for a continuance known in law, and to inquire whether those stated in the affidavit come within the decisions heretofore made in courts of justice. On this subject I will refer the court to one authority only, but one equally respectable with any that can be produced on criminal law.—*Foster Cr. Law, pp.* 2, 3. Here Mr. Campbell read the case at length, and then observed that this decision took place in a country where criminal law is executed with as much rigor as in any in the world where there is the shadow of liberty; and yet the affidavit filed in this case, upon which a continuance was granted, only states the absence of material witnesses and the places of their abode; the defendants were not required to state the facts that those witnesses would prove. In ordinary cases, the courts do not require this, and in many cases it would be impossible for the defendant to know all that a witness could give in evidence; nor is the defendant bound, except in ordinary cases, to disclose the evidence that his witnesses, who are absent, can give, as it might endanger his defence and give an advantage to the prosecutor, if so disposed, to procure evidence, whether true or false, to controvert that of the defendant. The court, in the case cited, was held by a special commission from the Crown, for the purpose of trying offenders for crimes of the deepest die, and such as are punished in that country with the utmost rigor; yet the court continued the cases of those defendants for such a length of time as was deemed sufficient to procure their witnesses, according to the distances at which they resided. There were in this case no stated terms to which the court could adjourn and continue the causes; they therefore fixed upon a reasonable time, and adjourned over to such day, in order to enable the defendants to prepare for trial; and it was observed by the court, in that case, as an additional ground for continuance, that the indictments had not been found until the court sat, and that, therefore, the defendants had not time to prepare for trial. This was the case with Callender; he had no notice of this prosecution until after the indictment was found, and during the same term; he therefore could not have had time to prepare for his trial. The affidavit he filed was stronger and much more full than that in the case cited; it states the absence of a number of witnesses whose evidence the deponent declares material to his defence. This would be sufficient to authorize a continuance upon a first application, and more ought not to have been required; but the affidavit goes further, and states the substance, as far as the defendant knew, of the evidence the witnesses could give; and also states the want of papers and books, material to the defence, that could not be obtained without allowing a considerable time to procure them. What more could be stated in an affidavit for a continuance on the ground of want of testimony by any defendant who wished to adhere to the truth? Yet a continuance is refused, and the judge states in his answer, as the principal cause of such refusal, that the evidence of all the witnesses stated in the affidavit to be in writing would not prove the truth of all the charges in

the indictment, and would not, therefore, make a complete justification if procured, and enters into an examination of the charges and evidence to prove this position. This excuse of the accused is founded on a train of the most fallacious and sophistical reasoning that can be resorted to, and is no more than a groundless apology, by which, if possible, to evade the true question, and avoid the odium that ought and must attach to such a transaction. It is not denied by the judge that the absent witnesses would prove in part the charges in the indictment; but he says it ought to appear, they could prove the whole. By this rule, in order to obtain a continuance, the party must show to the court the whole of the evidence necessary to support his case, and the judge is to compare the evidence with the charges, and must be satisfied that it is sufficient to cover the whole of the case, or he will not grant a continuance. This doctrine is too absurd to require a refutation; it would destroy all the benefit that could arise to parties from the right, so well established in law, of continuing causes upon affidavit of absent material witnesses; and subject the right to a fair and impartial trial to the mere arbitrary will of a judge, who would thus assume the right to weigh the evidence wanted, and measure its materiality by his prejudice against the party. This would, in fact, tend in many instances to destroy the trial by jury, and reduce it to a mere form without substance; for the party could not state on oath all that his witnesses could prove once in a hundred times. But the answer states that the court proposed to postpone the trial for a month, and some of the witnesses go further than the accused himself, and say for six weeks; and this is relied upon as showing the disposition of the judge to accommodate the defendant. This is a pretence that could answer the defendant no valuable purpose. The absent witnesses resided at such great distances, that most of them could not be procured in that time, and this the judge well knew. He even states in his answer that they lived at such great distances as left no reasonable ground to believe they could be procured at the succeeding term, being six months, and yet pretends that one month or six weeks would be sufficient. But here I must notice, that it is remarkable the counsel for the defendant never heard of this proposed postponement, and I must therefore conclude it was not seriously made; but if it was, it only proves that the judge was determined to try Callender himself, and would not, therefore, on any ground whatever, continue the cause to a succeeding term, at which he was not to be present. He had, therefore, determined to punish Callender, and could not trust his case to the management of any other judge. This is of a piece with the rest of his conduct on this occasion, and presents this honorable Court and the world with an instance of the most flagrant abuse of common justice, under the sacred sanction of administering the law for the correction of offenders.

The next charge which I propose to examine is contained in the second article of the impeachment, and consists in the judge's overruling the objection of John Basset, one of the jury, who wished to be excused from serving on the trial of Callender, because he had made up his mind as to the book from which the words charged to be libellous in the indictment had been drawn. The Constitution secures to defendants charged with crimes, the right of a trial by an impartial jury; anything, therefore, that goes to show that a man has made up an opinion with regard to the guilt or innocence of the accused, or with regard to the matter in question, or decided it in his own mind, proves him to be disqualified to serve as a juror, because it proves he is not impartial, has a bias upon his mind, and cannot be said to be indifferent. The same doctrine is supported by the laws of England. In order to show this, I will refer the court to 3 Bac. Ab. (new ed.) 756, and also Co. Litt. 158; where it is stated, if a juror has declared his opinion, touching the matter in question, &c., or has done anything by which it appears that he cannot be indifferent or impartial, &c., these are principal causes of challenge; and therefore such juror would be disqualified. Here it is manifest, that though declaring an opinion is good cause of challenge to a juror, if it is not necessary he should declare such opinion in order to disqualify him; it is sufficient that he has done something, whether making up an opinion, or doing any act whatever, by which it appears he is not indifferent, is not perfectly impartial. The objection, therefore, made to Basset as a juror, ought to have been sustained, and he ought to have been excused from serving on the jury, upon two grounds. First, because he had made up an opinion with regard to the matter of the charge against Callender. This is proved by the evidence of Basset himself, who says, he had seen in a newspaper, extracts stated in the publication to have been taken from the Prospect Before Us; and he stated to the court on the trial, that he had made up his opinion that those extracts were seditious, and that the author of the book called the Prospect Before Us, or that from which these extracts were taken, was within the sedition act, and therefore punishable under it. It was at the time notorious and well known that Callender was the author of the Prospect Before Us; it was equally notorious and known that the indictment against him was founded on that book: and Mr. Basset stated, he had no reason to doubt that the extracts were taken from that book as stated in the papers. Is it not, therefore, clear, that forming an opinion with regard to the extracts, was forming an opinion with regard to the matter charged as libellous in the indictment? No reasonable doubt can exist on this point, and though Mr. Basset did not hear the indictment read, as the court refused to permit it to be read until the jury were sworn, a measure under such circumstances as extraordinary as it was new; yet he knew the subject-matter it contained as well as if he had heard it. The opinion, therefore, that he had made up his mind on this subject, clearly proves he was not indifferent, was not impartial; he had decided the guilt of Callender, in fact, in his own mind, and could not be expected to shake

off the effect of such prejudication. He was, therefore, according to the Constitution, and the law already cited, disqualified from being a juror, having done an act that showed he was not indifferent, was not impartial, and ought of course to have been excused from serving on the jury. He ought also to have been rejected as a juror on a second ground; because he had not only made up an opinion on the matter in question, but had declared that opinion in public. It is proved by the evidence of Mr. Basset himself, as well as by that of Mr. Hay and Mr. Nicholas, and also by that of Mr. Robinson, that when he was asked whether he had formed and delivered an opinion upon the charge in the indictment, he stated, that although he had never heard the indictment read, yet he had formed an opinion that the author of the Prospect Before Us was within the sedition act. This, as has been already insisted upon, was the same as forming an opinion upon the charges in the indictment, as he knew the indictment was founded upon that book; and this opinion, which he had formed, he then declared in open court, in the hearing of all bystanders, and before he was sworn as a juror. This was, therefore, according to the rule laid down by the judge and the question he declared proper to be asked, a complete disqualification of Mr. Basset from serving as a juror on that trial. For he had formed and delivered an opinion on the matter in question. And what difference could it make, whether such opinion was delivered a minute or an hour before the juror was sworn on the trial, or a week, or a month before? Certainly the effect on his mind must be the same, and he must be equally unfit to serve as a juror in either case. On both of these grounds, therefore, Mr. Basset ought certainly to have been rejected from serving as a juror on the trial of Callender; and this is so glaring an innovation on the impartiality of trial by jury, (the *security* of our rights and great *bulwark* of our liberties,) that when taken in connexion with the rest of the judge's conduct, it strongly evinces an overbearing disposition, that would not stop at the use of any means, however unjust and illegal, to obtain a desired object. He had told the marshal, if he had on his list of jurors any creatures called democrats, to strike them off. He, therefore, knew the political sentiments of those who were called as jurors, to be favorable to his wishes, as no doubt this direction was pursued. Mr. Basset had declared his opinion, that the author of the Prospect Before Us was within the sedition law, who was notoriously known to be Callender. He therefore knew the sentiments of the juror; knew he must be disposed to convict the defendant, and for this reason he would not excuse him from serving on the trial, but would pervert the meaning of the law to make it subservient to his own views.

The next charge to be inquired into, is that stated in the third article, in rejecting the evidence of Colonel Taylor, a material witness in favor of the defendant, on the pretence that he could not prove the truth of the whole of one charge. In this instance the judge acted contrary to all former precedents in courts of justice, and without the shadow of law or reason to justify his conduct. Not a solitary case could be stated by any of the witnesses of a similar conduct in a judge. The rule here adopted, with regard to the admissibility of evidence, would deprive the jury of their undoubted right to decide on the credibility and weight of evidence, as well as on the extent to which it proved the matter in question; would transfer in substance this right to the court, and thereby shake to its very centre the fabric so justly admired, and held so sacred, *of trial by jury*. It would make it necessary for the party to present to the court, all the evidence relied upon to make out his case. This evidence, the court or judge would first deliberately examine, compare it with the charges or case to be supported, and if it did not, in his opinion, prove the whole of one charge, or go the whole extent of the case to be established by it, he would reject it, and not permit the jury to hear it. This would strip the jury of the very prerogative that renders this kind of trial so much superior to all others, that of deciding on the weight and credit of evidence. There is a manifest distinction between the right which a judge has to decide upon the admissibility of evidence, on the ground of its being proper or improper according to the established rules of law, and the right here assumed of deciding upon the extent to which such evidence, that is admitted to relate to the matter in question, will go to support the case: the former is the exercise of a proper authority to prevent the admission of extraneous and improper matter, wholly irrelevant to the matter in question; the latter is an arbitrary assumption of power, to decide on the extent to which evidence admitted to be relevant, at least in some degree, would go to prove the matter in question; and is a direct innovation on the most sacred privilege of the jury. Nothing can be more absurd and dangerous, than the consequences that would flow from such a doctrine. The judge would first weigh the evidence himself, measure its extent, reject it at pleasure, and call this a trial by jury. But I must here be permitted to notice the reasoning resorted to by the judge in his answer, to excuse his conduct on this occasion, which is as dangerous and absurd, in its consequences, as it is subtle and evasive. It is stated by the judge, that the plea of justice must answer the whole charge, or it is bad on the demurrer; and that when the matter of defence may be given in evidence without being formally pleaded, the same rules prevail. This doctrine of the judge would require the party to show, that the evidence he offered would cover the whole of his case, with the same exactness and formality that he would file a plea to avoid its being held bad on a demurrer: thus narrowing down the province of the jury, and subjecting the decision of all the facts as well as the law to the court. There is no rule of law to warrant such a proceeding, and it is manifestly contrary to all reasoning on the subject. The plea, in order to be good, must state matter sufficient to justify that part of the charge or suit to which it is put in; the demurrer admits all the facts stated in the plea that are well pleaded, but cannot admit facts that

are not stated in it, therefore the plea must appear to contain sufficient matter of justification, or it will be held bad on demurrer; but no such rule was ever heard of before to apply to evidence offered to a jury. They alone are the proper and only tribunal to decide whether the evidence offered and given is sufficient to prove the whole matter in dispute or not; and if the jury be deprived of this right, there is nothing left them that deserves the name of a trial.

The judge insists, if he was mistaken, it was an error of judgment. This cannot be presumed. Ignorance of the law is no excuse in any man; but in a character of such high legal standing and known abilities as that of the accused, it is totally inadmissible and not to be presumed. How could any judge with upright intentions commit so many errors, or hit upon so many mistakes in the course of one trial, as are manifest in that of Callender? They must have been the result of design, and a predetermination to bear down all opposition, in order to convict and punish the defendant.

But it is stated that Judge Griffin concurred with him in opinion, and this is insisted upon by the accused in different parts of his answer, as an excuse for the errors he committed, if, as he states, they were errors. This seems to be a kind of forlorn hope resorted to, when all other expedients fail. To this argument of the judge I would in this place answer, once for all, that it can be no excuse for him, nor any justification of his offences, that another has been equally guilty with himself; and it must strongly prove the weakness of his defence to rely upon this ground. Though Judge Griffin has not yet been called to an account for his conduct on this occasion, that is no reason why he should not hereafter be made to answer for it. The nation has not said he was innocent, or that he will not be proceeded against for this conduct; and there is no limitation of time that would screen him from the effects of charges of this kind, if they should be brought forward and supported against him hereafter. No ground of excuse therefore can arise from the circumstance of Judge Griffin not having been called upon to answer for his conduct in this respect.

I will now proceed to notice very briefly the conduct of the judge in the subsequent part of this trial. Compelling the defendant's counsel to reduce to writing all questions to be asked the witness, was a direct innovation on the practice in our courts of justice, and tended to embarrass the management of and weaken the defence. It is proved by the testimony of all the witnesses, that no such practice ever prevailed in our courts of justice, for such a purpose as that avowed in this instance; the only cases in which it is required to reduce to writing questions to be asked a witness, and the only cases in which it can be proper or consistent with reason and justice to do so, are those in which an objection is made to a question proposed to be asked, on the ground of its being improper and contrary to the rules of evidence; and in order to ascertain the precise meaning and effect of the question, so as to decide on the objection made to it, it may be proper to require it to be reduced to writing, but it never was before done, so far as we can discover, for the purpose of ascertaining how far the witness could prove the matter in question, and whether he could prove the whole of one charge or not, and thereby decide whether the witness should or should not be examined. According to this rule the judge would first try the cause himself upon the evidence offered, by the questions thus reduced to writing, and if he did not consider such evidence fully sufficient to support the whole of the charge or case to which it was offered, he would reject it, and not permit the jury to hear a word of it, lest they might consider it stronger than he did, and give it sufficient weight to support the case to which it was offered. This mode of proceeding was left to be discovered and adopted by Judge Chase. No other court or judge ever attempted in this manner to trifle with the rights of the jury, and establish a doctrine so tyrannical and oppressive; but this is in perfect conformity with the whole of his conduct on this occasion; a preconcerted system of oppression, to bring the defendant, Callender, to certain conviction and punishment. For the same purpose the defendant's counsel were ridiculed, treated with indignity, and the whole audience entertained at their expense. They were frequently and abruptly interrupted in their arguments; charged with wilfully perverting the law, in order to impose upon and deceive the multitude: called boys, by way of derision, and treated as mere mushrooms of the day, who ought to cringe submissively when they appear before a circuit court in which the honorable judge presided. He was facetious, witty, and sarcastic, as the occasion required; and it is pretended there can be no harm in this; it was all in jest and good humor! It is too serious a matter, Mr. President, for judges thus to jest and trifle with the rights and liberties of the citizen. Though this proceeding was levelled immediately at the counsel, it was the defendant who was the principal object of resentment, who was intended to be made an example of, and who felt the injury and became liable to the consequences of such illegal and unjust conduct of the judge.

Barely to notice the conduct of the respondent, at Newcastle, in Delaware, as charged in the seventh article is sufficient to show that he was there actuated by the same spirit of persecution and oppression that has, as already stated, marked the whole of his conduct during the course of these transactions. That he should descend from the elevated and dignified station in which he was placed as a judge, to hunt for crimes as a common informer against his fellow-citizens; urge the jury to take notice of, and present certain persons sufficiently designated though not named; and press the attorney for the district to search for evidence among the files of newspapers to support a prosecution, was degrading to the sacred character of a judge, and was perverting the Judicial authority to a mere engine of persecution to answer party purposes. Of the same complexion with this is the conduct of the respondent in delivering an inflammatory and disorganizing charge to the grand jury at Baltimore, as stated in the eighth article of the impeachment. This proceeding evinced a mind inflamed by party spirit and political intolerance; it was calculated to disturb the peace of the community, and alarm the people at the measures of Government: to force them by the terror of judicial denunciation to relinquish their own political sentiments and adopt those of the judge. This was the favorite object of this whole proceeding, and to obtain it no means were left untried. It was attempted to excite the fears of the public mind, to destroy the confidence of the people in the administration of their Government. The judicial authority was prostituted to party purposes, and the fountains of justice were corrupted by this poisonous spirit of persecution, that seemed determined to bear down all opposition in order to succeed in a favorite object. Citizens of all descriptions felt alarmed at this new and unusual conduct. All the counsel at the bar, wherever the respondent went, though consisting of the ablest and most enlightened in the nation, were agitated into a general ferment, and the whole community seemed shocked at such outrages upon common sense; for, to go to trial was to go to certain conviction. Is this, Mr. President, the character that ought to distinguish the Judiciary of the United States? No, sir. The streams of justice that flow from the American bench ought to be as pure as the sunbeams that light up the morning. The accused should come before the court, with a well founded confidence that the law will be administered to him with justice, impartiality, and in mercy. When this is the case, he submits without a murmur to his fate, and hears the sentence of condemnation pronounced against him, with a mind that must approve the justice of the law and the impartiality of those who administer it.

The decision of this cause may form an important era in the annals of our country. Future generations are interested in the event. It may determine a question all important to the American people; whether the laws of our country are to govern, or the arbitrary will of those who are entrusted with their administration. Mr. President, we, on this important occasion, behold the rights and liberties of the American people hover round this honorable tribunal, about to be established on a firm basis by the decision you will make, or sent afloat on the ocean of uncertainty, to be tossed to and fro by the capricious breath of usurped power and innovation.

Mr. CLARK addressed the Chair as follows—Mr. President: I rise only to make a few remarks on two of the articles, the fifth and sixth, that the counsel for the respondent may be possessed of all the points we mean to make. I will endeavor, in a few words, to state the practice which we think ought to have been pursued in the case of Callender. The practice in the federal courts is regulated by that in each State. If this position be correct, we contend, that the proper process in the case of Callender was a summons. An act of Virginia, passed in the year 1792, provides that the grand jury "shall present all treasons, murders, felonies, *or other misdemeanors whatsoever*, which shall have been committed or done within the district for which they are impanelled."

By another act of Virginia, passed in the same year, it is enacted that, "upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons or other proper process against the person or persons so presented, to appear and answer such presentment *at the next court*, and thereupon hear and determine the same according to law."

In this last provision, the words "*or other proper process*," have a direct application to the previous provision, which enacts that the grand jury shall present all treasons, murders, felonies, "or other misdemeanors." For treasons, murders, and felonies, we admit that a capias is the proper process; and when the law directs *other proper process*, it had reference to a class of crimes where a capias was required. It is in vain alleged, that the counsel for Callender made no objection to the process issued. They were not at that time to be considered as his counsel; it was only after he was brought into court that their duty commenced.

Further, whether the proper process was a capias or summons, the law of Virginia requires that it shall be returnable to the next court; and I contend that this point is established by the English practice. To show which I refer to Hawkins's Pleas of the Crown, where it is stated that a *venire facias*, which is in the nature of a summons, is the proper process, and that it is returnable to the next court.

It was surely, then, the duty of the judge to be acquainted with the laws of England, however unacquainted he may have been with the laws of Virginia. He cannot, therefore, on this ground, attempt a justification from ignorance. In his answer he informs us that ignorance of the law is no excuse. If it is no excuse in an unlettered individual, shall it constitute the apology of him who was expressly appointed to expound the law and administer justice? And if, on this occasion, he was not acquainted with the law, did it, therefore, become him to proceed with such fatal precipitancy? No sooner was the presentment made than the marshal, before any indictment was brought in, was despatched after Callender. We can only account for this, by supposing that it was the intention of the judge to act in conformity to his previous declaration, however jocularly it may have seemed to have been made; and that this was one of the means he had determined to pursue in order to convict Callender, regardless of the dignity of his station or the innocence of the man. Having offered these remarks, I am instructed to say that the case is fully opened on the part of the prosecution.

Mr. HOPKINSON.—Mr. President: We cannot remind you, and this honorable Court, as our opponents have so frequently done, that we address you in behalf of the majesty of the people. We appear for an ancient and infirm man, whose better days have been worn out in the service of that country which now degrades him; and who has nothing to promise you for an honorable acquittal

but the approbation of your own consciences. We are happy, however, to concur with the honorable Managers in one point; I mean the importance they are disposed to give to this cause. In every relation and respect in which it can be viewed, it is, indeed, of infinite importance. It is important to the respondent to the full amount of his good name and reputation, and of that little portion of that happiness, the small residue of his life may afford. It is important to you, Senators and judges, inasmuch as you value the judgment which posterity shall pass upon the proceedings of this day. It is important to our country, as she estimates her character for sound, dignified, and impartial justice, in the eyes of a judging world. The little, busy vortex that plays immediately round the scene of action, considers this proceeding merely as the trial of Judge Chase, and gazes upon him as the only person interested in the result. This is a false and imperfect view of the case. It is not the trial of Judge Chase alone. It is a trial between him and his country, and that country is as dearly interested as the judge can be, in a fair and impartial investigation of the case, and in a just and honest decision of it. There is yet another dread tribunal to which we should not be inattentive. We should look to it with solemn impressions of respect. It is posterity; the race of men that will come after us. When all the false glare and false importance of the times shall pass away; when things shall settle down into a state of placid tranquillity and lose that bustling motion that deceives with false appearances; when you, most honorable Senators, who sit here to judge, as well as the respondent who sits here to be judged, shall alike rest in the silence of the tomb, then comes the faithful, the scrutinizing historian, who, without fear or favor, will record this transaction; then comes a just and impartial posterity, who, without regard to persons or to dignities, will decide upon your decision. Then, I trust, the high honor and integrity of this Court will stand recorded in the pure language of deserved praise, and this day will be remembered in the annals of our land, as honorable to the respondent, to his judges, and to the justice of our country.

We have heard, sir, from the honorable Managers who have addressed you, many harsh expressions. I hope, sir, they will do no harm. We have been told of the respondent's unholy sins, which even the heavenly expectation of sincere repentance cannot wash away; we have been told of his volumes of guilt, every page of which calls loudly for punishment. This sort of language but pursues the same spirit of asperity and reproach which was begun in the replication to our answer. But we come here, sir, not to complain of anything, we come expecting to bear and to forbear much. It does, indeed, seem to me, that the replication filed by the honorable Managers on behalf of the House of Representatives and of all the people, carries with it more acrimony than either the occasion or their dignity demanded. It may be said that they have resorted for it to English precedent, and framed it from the replication filed in the celebrated case of Warren Hastings. There is, however, no similarity between that case and ours. Precedents might have been found more mild in their character, and more adapted to the circumstances of our case. The impeachment of Hastings was not instituted on a petty catalogue of frivolous occurrences, more calculated to excite ridicule than apprehension, but for the alleged murder of princes and plunder of empires. If, however, the choice of this case as a precedent for our pleadings, has exposed us to some unpleasant expressions, it also furnishes to us abundance of consolation and hope. There, the most splendid talents that ever adorned the British nation, were strained to their utmost exertion to crush the devoted victim of malignant persecution. But in vain; the stern integrity, the enlightened perception, the immovable justice of his judges stood as a barrier between him and destruction, and safely protected him from the fury of the storm. So, I trust in God, it will be with us.

In England, the impeachment of a judge is a rare occurrence. I recollect but two in half a century. But, in our country, boasting of its superior purity and virtue, and declaiming ever against the vice, venality, and corruption of the Old World, seven judges have been prosecuted criminally in about two years. A melancholy proof either of extreme and unequalled corruption in our Judiciary, or of strange and persecuting times among us.

The first proper object of our inquiries in this case is, to ascertain with proper precision what acts or offences of a public officer are the objects of impeachment. This question meets us at the very threshold of the case. If it shall appear that the charges exhibited in these articles of impeachment, are not, even if true, the Constitutional subjects of impeachment; if it shall turn out on the investigation that the judge has really fallen into error, mistake, or indiscretion, yet if he stands acquitted in proof of any such acts as by the law of the land are impeachable offences, he stands entitled to discharge on his trial. This proceeding by impeachment is a mode of trial created and defined by the Constitution of our country; and by this the Court is exclusively bound. To the Constitution, then, we must exclusively look to discover what is or is not impeachable. We shall there find the whole proceeding distinctly marked out; and everything designated and properly distributed necessary in the construction of a court of criminal jurisdiction. We shall find, 1. Who shall originate or present an impeachment. 2. Who shall try it. 3. For what offences it may be used. 4. What is the punishment on conviction. The first of these points is provided for in the second section of the first article of the Constitution, where it is declared that "the House of Representatives shall have the sole power of impeachment." This power corresponds with that of a grand jury to find a presentment or indictment. In the third section of the same article, the court is provided before whom the impeachment thus originated shall be tried: "The Senate shall have the sole power to try all impeachments." And the fourth section of the second article points out and describes the offences intended to be impeachable, and the punishment which is to follow conviction; subject to a limitation in the third section of the first article.

Have any facts, then, been given in evidence against the respondent which makes him liable to be proceeded against by this high process of impeachment? What are the offences? What is the Constitutional description of those official acts, for which a public officer may be arraigned before this high Court? In the fourth section of the second article of the Constitution, it is declared, that "the President, Vice President, and all civil 'officers of the United States, shall be removed 'from office on impeachment for, and conviction 'of, treason, bribery, or other high crimes and 'misdemeanors." Treason or bribery is not alleged against us on this occasion. Our offences, then, must come under the general description of "high crimes and misdemeanors," or we are not impeachable by the Constitution of the United States. I offer it as a position I shall rely upon in my argument, that no judge can be impeached and removed from office for any act or offence for which he could not be indicted. It must be by law an indictable offence. One of the gentlemen, indeed, who conduct this prosecution, (Mr. Campbell,) contends for the reverse of this proposition, and holds that for such official acts as are the subject of impeachment no indictment will lie or can be maintained. For, says he, it would involve us in this monstrous oppression and absurdity, that a man might be twice punished for the same offence, once by impeachment, and then by indictment. And so most surely he may; and the limitation of the punishment on impeachment takes away the injustice and oppression the gentleman dreads. A slight attention to the subject will show the fallacy of this gentleman's doctrine. If the absurdity and oppression he fears will really ensue on indicting a man for the same offence for which he has already been impeached, they must be charged to the Constitution itself, which, in the third section of the first article, after limiting the extent of the judgment in cases of impeachment, goes on to declare, that "the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law." The idea of the honorable Manager is, that for acts done in the course of official duty a judge must be proceeded against exclusively by impeachment; and that no indictment will lie in such case. The incorrectness of this notion appears not only from a reference to the Constitution, but to the known law of England also. I will remind you of a case, stated, I believe, in the elementary books of the law, in which it is said, that if a judge undertakes, of his own authority, to change the mode of punishment prescribed by law for any crime, he is indictable; for instance, should he sentence a man to be beheaded when the law directed him to be hanged, the judge is guilty of murder, and may be accordingly indicted. When, sir, I contend, that, in order to sustain an impeachment, an offence must be proved upon the respondent which would support an indictment, I do not mean to be understood as admitting that the converse of the proposition is true; that is, that every act or offence which is impeachable, is indictable. Far from it. A man may be indictable for many violations of positive law, which evince no *mala mens*, no corrupt heart or intention, but which would not be the ground of an impeachment. I will instance the case of an assault, which is an indictable offence, but will not surely be pretended to be an impeachable offence, for which a judge may be removed from office. It is true that the second section of the first article, which gives the House of Representatives the sole power of impeachment, does not in terms limit the exercise of that power. But its obvious meaning is not, in that place, to describe the kind of acts which are to be subjects of impeachment, but merely to declare in what branch of the Government it shall commence. The House of Representatives has the power of impeachment; but for what they are to impeach, in what cases they may exercise this delegated power, depends on other parts of the Constitution, and not on their opinion, whim, or caprice. The whole system of impeachment must be taken together, and not in detached parts; and if we find one part of the Constitution declaring who shall commence an impeachment, we find other parts declaring who shall try it, and what acts and what persons are Constitutional subjects of this mode of trial. The power of impeachment is with the House of Representatives—but only for impeachable offences. They are to proceed against the offence in this way when it is committed, but not to *create* the offence, and make any act criminal and impeachable at their will and pleasure. What is an offence, is a question to be decided by the Constitution and the law, not by the opinion of a single branch of the Legislature; and when the offence thus described by the Constitution or the law has been committed, then, and not until then, has the House of Representatives power to impeach the offender. So a grand jury possesses the sole power to indict; but in the exercise of this power they are bound by positive law, and do not assume under this general power to make anything indictable which they might disapprove. If it were so, we should indeed have a strange, unsettled, and dangerous penal code. No man could walk in safety, but would be at the mercy of the caprice of every grand jury that might be summoned, and that would be crime to-morrow which is innocent to-day.

What part of the Constitution then declares any of the acts charged and proved upon Judge Chase, even in the worst aspect, to be impeachable? He has not been guilty of bribery or corruption; he is not charged with them. Has he then been guilty of "*other high crimes and misdemeanors?*" In an instrument so sacred as the Constitution, I presume every word must have its full and fair meaning. It is not then only for crimes and misdemeanors that a judge is impeachable, but it must be for *high* crimes and misdemeanors. Although this qualifying adjective "*high*" immediately precedes and is directly attached to the word

"*crimes*," yet, from the evident intention of the Constitution and upon a just grammatical construction, it must be also applied to "*misdemeanors*." The repetition of this adjective would have injured the harmony of the sentence without adding anything to its perspicuity. How would this be in common parlance? Suppose it should be said that at this trial there are attending many ladies and gentlemen. Would it be doubted that the adjective *many* applies to gentlemen as well as ladies, although not repeated? Or, if there is anything peculiar in this respect in this word "*high*," I will suppose it were said that among the auditors there are men of high rank and station. Would it not be as well understood as if it were said that men of high rank and station are here? There is surely no difference. So in the Constitution, it is said, that "a regular statement of the receipts and expenditures of all public money shall be published from time to time." Is not the account to be regular as well as the statement? I should have deemed it unnecessary to have spent a word on so plain a point, had I not understood that a difficulty would probably be made upon it. If my construction of this part of the Constitution be not admitted, and the adjective "high" be given exclusively to "crimes" and denied to "misdemeanors," this strange absurdity must ensue:—That when an officer of the Government is impeached for a crime, he cannot be convicted unless it proves to be a high crime: but he may nevertheless be convicted of a misdemeanor of the most petty grade. Observe, sir, the crimes with which these "other high crimes" are classed in the Constitution, and we may learn something of their character. They stand in connexion with "*bribery and corruption*;" tried in the same manner and subject to the same penalties. But if we are to lose the force and meaning of the word "*high*" in relation to misdemeanors, and this description of offences must be governed by the mere meaning of the term "misdemeanors," without deriving any grade from the adjective, still my position remains unimpaired, that the offence, whatever it is, which is the ground of impeachment, must be such an one as would support an indictment. "Misdemeanor" is a legal and technical term, well understood and defined in law; and in the construction of a legal instrument we must give to words their legal signification. A misdemeanor or a crime, for in their just and proper acceptation they are synonymous terms, is an act committed or omitted, in violation of a *public* law, either forbidding or commanding it. By this test, let the conduct of the respondent be tried, and, by it, let him stand justified or condemned.

Does not, sir, the court, provided by the Constitution for the trial of an impeachment, give us some idea of the grade of offences intended for its jurisdiction? Look around you, sir, upon this awful tribunal of justice—is it not high and dignified, collecting within itself the justice and majesty of the American people? Was such a court created—does such a court sit to scan and punish paltry errors and indiscretions, too insignificant to have a name in the penal code, too paltry for the notice of a court of quarter sessions? This is indeed employing an elephant to remove an atom too minute for the grasp of an insect. Is the Senate of the United States solemnly convened and held together in the presence of the nation to fix a standard of politeness in a judge, and mark the precincts of judicial decorum? The honorable gentleman who opened the prosecution (Mr. Randolph) has contended for a contrary doctrine, and held that many things are impeachable that are not indictable. To illustrate his position, he stated the cases of habitual drunkenness and profane swearing on the bench, which he held to be objects of impeachment and not of indictment. I do not desire to impose my opinions on this court as of any value. But surely I could not hesitate to say that both of the cases put by the gentleman would be indictable. Is there not known to us a class of offences, not provided for indeed by the letter of any statute, but which come under the general protection which the law gives to virtue, decency, and morals in society? Any act which is *contra bonos mores* is indictable as such. And it is so, not by act of Congress, but by the pure and wholesome mandates of that common law which some men would madly drive from our jurisprudence, but which I most sincerely pray may live forever.

If I am correct in my position that nothing is impeachable that is not also indictable, for what acts then may a man be indicted? May it be on the mere caprice or opinion of any ten, twenty, or one hundred men in the community; or must it not be on some known law of the society in which he resides? It must unquestionably be for some offence, either of omission or commission, against some statute of the United States—or some statute of a particular State, or against the provision of the common law. Against which of these has the respondent offended? What law of any of the descriptions I have mentioned has he violated? By what is he to be judged, by what is he to be justified or condemned, if not by some known law of the country; and if no such law is brought upon his case—if no such violation rises on this day of trial in judgment against him, why stands he here at this bar as a criminal? Whom has he offended? The House of Representatives—and is he impeached for this?

I maintain as a most important and indispensable principle, that no man should be criminally accused, no man can be criminally condemned, but for the violation of some known law by which he was bound to govern himself. Nothing is so necessary to justice and to safety as that the criminal code should be certain and known. Let the judge, as well as the citizen, precisely know the path he is to walk in, and what he may or may not do. Let not the sword tremble over his unconscious head, or the ground be spread with quicksands and destruction, which appear fair and harmless to the eye of the traveller.—Can it be pretended there is one rule of justice for a judge and another for a private citizen; and that while the latter is protected from surprise, from the malice or caprice of any man or body

of men, and can be brought into legal jeopardy only by the violation of laws before made known to him, the latter is to be exposed to punishment without knowing his offence, and the criminality or innocence of his conduct is to depend not upon the laws existing at the time, but upon the opinions of a body of men to be collected four or five years after the transaction? A judge may thus be impeached and removed from office for an act strictly legal, when done, if any House of Representatives for any indefinite time after, shall for any reason they may act upon, choose to consider such act improper and impeachable. The Constitution, sir, never intended to lay the Judiciary thus prostrate at the feet of the House of Representatives, the slaves of their will, the victims of their caprice. The Judiciary must be protected from prejudice and varying opinion, or it is not worth a farthing. Suppose a grand jury should make a presentment against a man, stating that most truly he had violated no law or committed any known offence; but he had violated their notions of common sense—for this was the standard of impeachment the gentleman who opened gave us—he had shocked their nerves or wounded their sensibility. Would such a presentment be received or listened to for a moment? No, sir—And on the same principle, no judge should be put in jeopardy because the common sense of one hundred and fifty men might approve what is thus condemned, and the rule of right, the objects of punishment or praise, would thus shift about from day to day. Are we to depend upon the House of Representatives for the innocence or criminality of our conduct? Can they create offences at their will and pleasure, and declare that to be a crime in 1804, which was an indiscretion or pardonable error, or perhaps an approved proceeding in 1800? If this gigantic House of Representatives, by the usual vote and the usual forms of legislation, were to direct that any act heretofore not forbidden by law, should hereafter become penal, this declaration of their will would be a mere nullity; would have no force and effect, unless duly sanctioned by the Senate and the approbation of the President. Will they then be allowed, in the exercise of their power of impeachment, to create crimes and inflict the most serious penalties on actions never before suspected to be criminal, when they could not have swelled the same act into an offence in the form of a law? If this be truly the case, if this power of impeachment may be thus extended without limit or control, then indeed is every valuable liberty prostrated at the foot of this omnipotent House of Representatives; and may God preserve us! The President may approve and sign a law, or may make an appointment which to him may seem prudent and beneficial, and it may be the general, nay the universal sentiment that it is so; and it is undeniable that no law is violated by the act. But some four or five years hence there comes a House of Representatives whose common sense is constructed on a new model, and who either are or affect to be greatly shocked at the atrocity of this act. The President is impeached. In vain he pleads the purity of his intention, the legality of his conduct, in vain he avers that he has violated no law and been guilty of no crime. He will be told, as Judge Chase now is, that the common sense of the House is the standard of guilt, and their opinion of the error of the act conclusive evidence of corruption. We have read, sir, in our younger days, and read with horror, of the Roman Emperor who placed his edicts so high in the air that the keenest eye could not decypher them, and yet severely punished any breach of them. But the power claimed by the House of Representatives to make anything criminal at their pleasure, at any period after its occurrence, is ten thousand times more dangerous, more tyrannical, more subversive of all liberty and safety. Shall I be called to heavy judgment now for an act which, when done, was forbidden by no law, and received no reproach, because in a course of years there is found a set of men whose common sense condemns the deed! The gentlemen have referred us to this standard, and being under the necessity to acknowledge that the respondent has violated no law of the community, they would on this vague and dangerous ground accuse, try, and condemn him. The code of the Roman tyrant was fixed on the height of a column, where it might be understood with some extraordinary pains; but here, to be safe, we must be able to look into years to come, and to foresee what will be the changing opinions of men or points of decorum for years to come. The rule of our conduct, by which we are to be judged and condemned, lies buried in the bosom of futurity, and in the minds and opinions of men unknown, perhaps unborn.

The pure and upright administration of justice, sir, is of the utmost importance to any people; the other movements of Government are not of such universal concern. Who shall be President, or what treaties or general statutes shall be made, occupies the attention of a few busy politicians; but these things touch not, or but seldom, the private interests and happiness of the great mass of the community. But the settlement of private controversies, the administration of law between man and man, the distribution of justice and right to the citizen in his private business and concern, comes to every man's door, and is essential to every man's prosperity and happiness. Hence I consider the Judiciary of our country most important among the branches of Government, and its purity and independence of the most interesting consequence to every man. Whilst it is honorably and fully protected from the influence of favor or fear, from any quarter, the situation of a people can never be very uncomfortable or unsafe. But if a judge is forever to be exposed to prosecutions and impeachments for his official conduct, on the mere suggestions of caprice, and to be condemned by the mere voice of prejudice, under the specious name of common sense, can he hold that firm and steady hand his high functions required? No! if his nerves are of iron they must tremble in so perilous a situation.

In England the complete independence of the Judiciary has been considered, and has been found

the best and surest safeguard of true liberty, securing a government of known and uniform laws, acting alike upon every man. It has, however, been suggested by some of our newspaper politicians, perhaps from a higher source, that although this independent Judiciary is very necessary in a monarchy, to protect the people from the oppression of a Court, yet that, in our republican institution, the same reasons for it do not exist; that it is indeed inconsistent with the nature of our Government that any part or branch of it should be independent of the people from whom the power is derived. And as the House of Representatives come most frequently from this great source of power, they claim the best right of knowing and expressing its will; and of course the right of a controlling influence over the other branches. My doctrine is precisely the reverse of this. If I were called upon to declare whether the independence of judges were more essentially important in a Monarchy or a Republic, I should certainly say, in the latter. All governments require, in order to give them firmness, stability, and character, some permanent principle, some settled establishment. The want of this is the great deficiency in republican institutions. Nothing can be relied upon; no faith can be given either at home or abroad to a people whose systems and operations and policy are constantly changing with popular opinion. If, however, the Judiciary is stable and independent; if the rule of justice between men rests upon known and permanent principles, it gives a security and character to a country which is absolutely necessary in its intercourse with the world and in its own internal concerns. This independence is further requisite as a security from oppression. All history demonstrates, from page to page, that tyranny and oppression have not been confined to despotisms, but have been freely exercised in Republics, both ancient and modern—with this difference, that in the latter, the oppression has sprung from the impulse of some sudden gust of passion or prejuduce, while in the former it is systematically planned and pursued as an ingredient and principle of the Government. The people destroy not deliberately, and will return to reflection and justice, if passion is not kept alive and excited by artful intrigue, but, while the fit is on, their devastation and cruelty is more terrible and unbounded than the most monstrous tyrant. It is for their own benefit and to protect them from the violence of their own passions that it is essential to have some firm, unshaken, independent branch of Government, able and willing to resist their frenzy. If we have read of the death of a Seneca under the ferocity of a Nero, we have read too of the murder of a Socrates under the delusion of a Republic. An independent and firm Judiciary, protected and protecting by the laws, would have snatched the one from the fury of a despot, and preserved the other from the madness of a people.

I have considered these observations on the necessary independence of the Judiciary applicable and important to the case before this honorable Court, to repel the wild idea that a judge may be impeached and removed from office although he has violated no law of the country, but merely on the vague and changing opinions of right and wrong—propriety and impropriety of demeanor. For if this is to be the tenure on which a judge holds his office and character; if by such a standard his judicial conduct is to be adjudged criminal or innocent, there is an end to the independence of our Judiciary. In opposition to this reasoning I have heard (not from the honorable Managers) a sort of jargon about the sovereignty of the people, and that nothing in a Republic should be independent of them. No phrase in our language is more abused or more misunderstood. The just and legitimate sovereignty of a people is truly an awful object, full of power and commanding respect. It consists in a full acknowledgment that all power originally emanates in some way from them, and that all responsibility is finally in some way due to them; and whether this is acknowleged or not, they have, if driven to the last resort, a physical force, to make it so. But, sir, this sovereignty does not consist in a right to control or interfere with the regular and legal operations and functions of the different branches of the Government at the will and pleasure of the people. Having delegated their power; having distributed it for various purposes into various channels, and directed its course by certain limits, they have no right to impede it while it flows in its intended directions. Otherwise we have no Government. In like manner the officers of Government are responsible in certain modes, and at certain periods, for the exercise of their duties and powers; but the people have no right to make them accountable in any other manner, or at any other period than that prescribed by the great compact of Government, or Constitution. Having parted with their power under certain regulations and restrictions, they are done with it. They are bound by their own act, and having retained and declared the manner in which they will correct abuses in office, they have no right to claim any other sort of responsibility. If this be not the case, what government have we? What rule of conduct? What system of association? None; but we are truly in a state of savage anarchy and ruthless confusion, with all the vices incident to civilization without the restraints to control them.

Having discussed this necessary preliminary point as to what is or is not impeachable, I will proceed to a consideration of the charges now in issue between the respondent and the House of Representatives of the United States. It will be some relief to this honorable Court to learn, that for the expediting of this trial, and to avoid useless and irksome repetition, the counsel for the respondent have divided the articles of impeachment among themselves. I shall beg leave to address you on the first article, which relates to the transactions at Philadelphia, on the trial of John Fries for high treason.

The gentleman (Mr. Early) who has offered you his observations on these articles of impeachment, appears to have grounded his argument,

not on the evidence, but on the articles. Supposing, perhaps, that they would be proved, he has taken it for granted that they have been proved, and has shaped his remarks accordingly. Had we filed a general demurrer to these charges, thereby admitting them as stated, the argument of the gentleman might have had the force and application he intended. But, if I mistake not, the respondent has pleaded not guilty, and the case must therefore be decided by the amount of the evidence, and not by the averments of the articles. I admit, indeed, that the honorable Managers are put to some difficulty in this respect. They are under the necessity of making their election between the articles and the evidence as the foundation of their argument; for they are so totally dissimilar, that they could not take them both; they meet in so few and such immaterial points, that no man can argue from them both for five sentences. This being the situation of the gentlemen, he has thought proper to select the articles and the facts therein set forth as the foundation of his argument in defiance of the testimony. In the observations I shall have the honor to submit, I propose to take the evidence as my text and guide, and leave the articles to shift for themselves, under the care and patronage of our honorable opponents.

Upon reading this first article of impeachment against the respondent, after a due degree of horror and indignation at the monstrous tyranny and oppression portrayed in it, the first question that would strike the mind of the inquirer would naturally be, when did this horrid transaction take place—when and where was it that Judge Chase thus persecuted an unfortnnate wretch to the very brink of the grave, from which he was snatched by the interference of Executive mercy, shocked at the injustice of his condemnation? When were the rights of juries and the privileges of counsel and their clients thus thrown down and prostrated at the feet of a cruel and inexorable judge? What would this inquirer think and believe on being informed that these atrocious outrages upon justice, law, and humanity, were perpetrated five years since? Why and where has the justice of the country slumbered so long? What now awakens it from this lethargic sleep? Why has this monstrous offender so long escaped the punishment of his crimes? To what region of refuge did he fly? But will not surprise be greatly increased when it is told that at the time of the trial of John Fries, this injured and oppressed man, at the very time when these crimes of the judge were committed, the Congress of the United States, the guardian of our lives and liberties, were actually in session in the very city where the deeds were done, and probably witnessed the whole transaction? I do not expect to be answered here, for I cannot suspect our honorable opponents of so much illiberality, that at that period the Administration of our affairs was in the hands of the political friends of the judge, and therefore he was permitted to escape, however atrocious his crimes. Whatever, sir, may have been the character of that Administration, even if a weak and wicked one, as it has been represented, it could have no object in protecting any individual at so great a risk to themselves and their reputation. If Judge Chase had really violated the law and Constitution to come at the blood of Fries, and had done this in the face of the public, the Administration would have put too much at hazard by endeavoring to shelter him. I hope, however, no such reason will be given for the neglect of these charges; and as we most cheerfully and truly confide in the justice of the present Administration, we trust no such distrust will be avowed of the integrity of the former; we feel as safe under trial now as we should have done then, and look without distrust for the same impartial justice from this honorable Court, as we should have expected and received at any time.

We feel however, sir, a serious inconvenience from the delay of this prosecution In five years facts fall into oblivion, and witnesses engaged in their ordinary occupations of life cannot tax their memories with the circumstances of such distant events. It is difficult to discover, indeed, who were present at the transaction. To guard against injustice of this kind, even in civil cases, and protect us from fraudulent and slumbering demands, a limitation is put by law upon the claims of every man. The criminal code of the United States has justly adopted the same principle. By a statute, no person shall be prosecuted or punished for treason or other capital offence, with some exceptions, unless the indictment be found within three years after the offence is committed; and for smaller offences the prosecution must be instituted within two years. We cannot it is true claim the benefit of the letter of this law, but we may claim something from its principle; in expecting from this honorable Court every indulgence and allowance for any deficiency in our proof, which should be attributed, not to the real weakness of our case, but to the unreasonable staleness of the charges. Judge Chase was a stranger in Philadelphia, and necessarily found extreme difficulty in discovering what persons were in court at the time to which the charges relate, and in selecting those who had the best recollection of the transaction.

This first article, sir, charges, "that unmindful of the solemn duties of his office, and contrary to the sacred obligations by which he stood bound to discharge them faithfully and impartially and without regard to persons, the said Samuel Chase on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May 1800, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust." This general accusation is followed by three distinct specifications of offence, to wit:

"1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the

case of the said John Fries, the prisoner, before counsel had been heard in his defence:

"2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions, upon which they intended to rest the defence of their client:

"3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give."

In the whole of these specifications I am able to discover but one truth; the rest is wholly contradicted and disproved by the evidence. It is true, that Judge Chase did form and reduce to writing, and, in a limited manner, deliver an opinion on a question of law, on the construction of which the defence of the accused materially depended—but when the article goes on to charge that this opinion tended to prejudice the minds of the jury against the case of John Fries the prisoner, before counsel had been heard in his defence, it is utterly unfounded and untrue. To whom was this opinion delivered? To the counsel for Fries and to the Attorney for the United States; and to no other person. The third copy, and but three were made, never was delivered to the jury or to any other person, and never could produce any prejudice or injury to John Fries—nor indeed was it ever intended to come to the knowledge of the jury, until they had completely heard the discussion of the case by counsel, when they were to have *taken out* with them this opinion of the judge upon the law of the case submitted to them. At that period of the trial when it was not only the right but the duty of the court to state to the jury their opinion of the law arising on the facts, then, and not until then, was it the intention of the judge to communicate to them this deliberate opinion. Could this be done with any intention to injure or oppress the prisoner? If such was the intention of the act, then and not otherwise, it was criminal. In inquiring into the nature of this act, I confine myself now to the forming and delivery of this opinion, and to decide its innocence or criminality we should consider it in relation to it *motives*, its *time and manner*, and its *consequences*. If nothing partial, oppressive, or corrupt, is to be found in any of these, I know not in what or whence the criminality is to be established. In deciding, sir, upon the *motive* which prompted the judge to this act, we must look for materials in the testimony: by this we must be governed, and not by the imputations, surmises, and constructions of our opponents, however eloquent and ingenious. The judge and his motives are not only strongly denounced in the article, but have also had the same fate from the mouths of the Managers. I take the evidence for my guide, and I know it will be the guide of this honorable Court.

What then, sir, did Judge Chase declare himself to be the reasons which induced him to form this opinion, to reduce it to writing, and to hand it to the counsel? And permit me here, sir, to state, that in all criminal prosecutions for an act equivocal in itself, and whose character of guilt or innocence depends upon the *intention* with which it was done, the declarations of the party, made at the time, are always received in evidence to ascertain and fix the true character of the act; and the fair and legal explanation of the act is taken and derived from such declarations of the party, if not disproved by other evidence. What, then, did Judge Chase himself say of his intention and motives in relation to this opinion? Mr. Lewis states that, on this occasion, Judge Chase said that he had understood that, at the former trial, *there had been a great waste of time* on topics which had nothing to do with the business or case, and in reading common law decisions on the doctrine of treason, as well as under the statute of Edward III., before the Revolution; and also relating to certain acts of Congress for crimes less than treason. That, *to prevent this in future*, he or they had considered the law, made up their minds, and reduced it to writing. And, in order that the counsel might govern themselves accordingly, had ordered three copies to be made out, &c. Here, then, the judge, at the time of the act now charged to proceed from a corrupt and partial intention, declares in unequivocal language what were his true motives. His object was to prevent an unnecessary waste of time in a court, where a vast deal of criminal and civil business was then pending and waiting for trial. This was the motive, and the only motive declared and avowed by the judge, at the time he delivered this offensive paper, and unless it be disproved by the evidence or the circumstances of the case, it must be taken to be the true one. It is not a subject of inquiry now, whether the reason he assigned for this proceeding be a good or a bad one: it is enough to our purpose that it most certainly is neither partial nor corrupt, As the motive was not partial, so neither was or could be the act oppressive to the prisoner, unless the judge, in executing his design of preventing the waste of time, pursued it to an unreasonable extent. If he obstructed only the introduction of irrelevant matter, and did not exclude anything that could and *ought* to have benefitted the prisoner, he was guilty of no injustice or impropriety. If the proper and legal rights of the counsel of the prisoner were curtailed, to his injury, there was certainly injustice done; but if nothing more than wholesome and reasonable restrictions were imposed, to the manifest advantage of the general business of the court and of other suitors there, without any unjust detriment to John Fries, then not only the motive was correct, but the act was highly laudable. And such was undoubtedly the case. If we go no further than Mr. Lewis's testimony on this subject, every idea of an intention on the part of the judge to injure or oppress John Fries is done away. As far as the judge declared himself, his intention was pure and correct, and we cannot say

that, in the execution of this correct intention, he would have carried it to such excess as to produce oppression and injustice. The design was crushed in embryo: as far as we are acquainted with it, it is fair and clear of oppression, and we are not authorized to presume that *if* it had proceeded farther, it would have changed its character and become partial and corrupt. It is well known in Pennsylvania, that the loudest clamors are made against our courts for the delays of justice and the unreasonable time spent in the trial of every cause. These complaints had doubtless reached the ears of the judge; there was an enormous list of civil causes then before him, and he presumed that any expedient fairly to save time, would have been acceptable to everybody, to counsel as well as to suitors. I have as yet considered this part of the case only in its most unfavorable aspect to the respondent. Upon turning to the testimony of the other witnesses, its complexion becomes much more mild and unexceptionable. The suggestion, that this opinion made up by the court and handed to the counsel was declared to be final and conclusive upon them, and that no argument in opposition to it was to be permitted or heard, rests wholly and solely on the recollection of Mr. Lewis. Mr. Dallas was not in court at the time it is supposed to have happened; no other witness of all that were present has any remembrance of any such declaration, and two witnesses expressly disprove it. Mr. Edward Tilghman states that Judge Chase declared that the court had maturely considered the law arising upon the overt acts charged in the indictment against John Fries. That they had reduced their opinion to writing; that he understood a great deal of time had been consumed upon the former trial; and that, *in order to save time*, a copy of the opinion of the court would be given to the attorney of the district; another to the counsel of the prisoner; and that the jury should have a third *to take out with them*. Mr. Tilghman further states, that previously to the throwing of the papers on the table, and at the moment it was done, the judge expressed himself in these words: "Nevertheless, or notwithstanding, counsel will be heard." Mr. Rawle, a witness examined, as well as Mr. Tilghman on the part of the Managers, gives the same account of the declared motive of the judge in preparing this opinion, to save time, as much had been lost at the former trial; and states that the judges said the court had determined to express their opinion in writing, on the law, *that they might not be misunderstood*. Here we find the reason, not only for forming the opinion, but for reducing it to writing also. The court, continues Mr. Rawle, observed, they had therefore committed their opinion to writing; that the clerk had made three copies, one of which should be given to the District Attorney, one to the counsel for the prisoner, and one the jury *should take out with them*. To put this part of the transaction beyond doubt, and strengthen, if possible, the character it now bears, I beg this honorable Court to advert for a moment to Mr. Meredith's testimony. He, too, states that the judge declared the court, on great deliberation, had formed an opinion on the law on the overt acts set forth in the indictment; and that *to save time and prevent mistakes*, this opinion was reduced to writing—the copies to be distributed as mentioned by the other witnesses. He further expressly avers that the judge, when he threw down the papers, declared that the giving of this opinion was not intended to preclude the counsel from being heard, or from expressing any objections to its correctness. After this mass of concurring testimony, can the motive of the judge in forming and delivering this opinion be misrepresented or misunderstood; and can it now be believed or pretended that it was done, as the article charges, to prejudice the mind of the jury against John Fries before counsel had been heard in his defence? In order to bear up this charge against this weight of evidence, and support Mr. Lewis's testimony in discredit of that delivered by the other witnesses, the Managers who have spoken to this part of the case pretend that Mr. Lewis should be most relied upon, because most interested in the transaction. This interest, sir, may have given a false coloring and appearance to the conduct of the judge, and his anxious zeal for his client may have represented the conduct of the court to his mind in harsher views than it deserved. I have always understood that those witnesses were most to be relied upon who were most cool and least interested in the transaction to which they testify; but the ingenious gentlemen invert this rule. But, sir, I have no intention of making a comparison between the credibility of these witnesses, they are all respectable, above suspicion. It is a question of memory and not of character between them, and we must judge from various combinations of circumstances in ascertaining the respective correctness of memory. Mr. Lewis himself most candidly declared his memory to be very uncertain and imperfect of distant events. Besides, Mr. Tilghman and Mr. Meredith positively aver that the judge said, counsel would be heard on the correctness of that opinion. Now, Mr. Lewis does not and cannot say that the judge did not say so, but his evidence is no more than this, either that he did not hear it at the time, or that he does not remember it now. I refer the honorable Managers to their own rule about affirmative and negative testimony. In the Baltimore case, a single, solitary, unsupported witness (Mr. Montgomery) swears to a declaration of the judge, which some fourteen or fifteen respectable witnesses, both for and against this prosecution, with equal and better opportunities of hearing all the judge said at that time, declare was not, to the best of their knowledge, uttered by the judge, nor anything like it. Now, say the Managers, this single affirmative of Mr. Montgomery is more to be depended upon than all the other witnesses put together—and if anybody can think so, let it be so. But in Fries's case, we produce two affirmative witnesses against one negative witness, who testifies himself to the imperfection of his memory.

I presume, sir, I have most firmly established the point that the judge, in making up this opin-

ion had, really and truly, no other object or motive than to prevent a burdensome and useless waste of time; and sure I am, that whoever attended the first trial of Fries, would see the necessity of some regulation for this purpose. How then did the judge carry this intention into execution? The opinion of the court on the points likely to arise in the case, was put into writing and delivered to the counsel. Was this any disadvantage to them? Was it not rather a friendly guide to them by which they might shape their argument so as best to meet the points of difficulty and serve their client? The court furnished each side, as well the United States as the prisoner, with copies of this opinion. This would have the effect to regulate and confine the argument on both sides to the proper channel, to the real points of difficulty, and prevent a wild, devious, and useless extension of the argument into matters wholly irrelevant. It was surely an advantage to Fries's counsel thus to know the opinion of the court on the points of law in their case, and thus to have an opportunity of meeting and repelling it. If they would convince the court or jury this opinion was erroneous, they would succeed for their client. But if the court had permitted the counsel to take the usual course, and had kept their own opinion in close reserve, without any intimation of its direction until the argument was closed, and had then delivered it to the jury, as unquestionably they might have done, and this opinion had contained some points which had been overlooked by the counsel, surely it would have been more prejudicial to the prisoner than the course that was pursued. The jury would naturally take the law from the court, and if, therefore, the judge had intended to have oppressed John Fries, he would have succeeded better by reserving his opinion, concealing it from the counsel, permitting them to flounder on in the dark, and then, in his charge to the jury, dictate the law to suit his partial and oppressive purpose. Would any gentleman of the law, about to argue a case before a court, think himself aggrieved if the judge were previously to inform him of the ideas he entertained of the case, with full liberty to controvert them? It would be esteemed a favor.

You will be pleased to bear in mind, sir, that this paper containing the opinion of the court, was not read, nor was there any declaration whatever of its contents or substance. It was known to none, it was intended to be made known to none but the counsel for whose use it was designed. How then could it produce any prejudice to John Fries? No attempt was made, no intention was manifested to read it. It was privately handed to Mr. Lewis. How then did it become public? In what manner were copies distributed to various hands? Not sir, by the court, but by the counsel of John Fries. Mr. Lewis, in a moment of real or affected indignation, threw the paper from him, declared his hands should not be polluted by it, and cast it upon the table of the court, and it does not appear that to this hour he knows the contents of the paper he so hastily condemned. Several gentlemen of the bar by this means got hold of it, and some copies were taken. But for this conduct on the part of Mr. Lewis, nobody ever could have known the contents of the paper, or the opinion of the court. It was this that gave publicity to the opinion, and extended a knowledge of its contents, not only without the design and concurrence of the court, but decidedly against them. The act of the court was thus thrown into a different course and direction from what was intended or contemplated by them.

What then, sir, is the whole amount of the crime of the judge on this occasion? That he, a law judge, had been bold enough to form an opinion—not on John Fries's case, or the facts or circumstances of it, for he knew them not; but on certain abstract points of law, without first consulting and hearing Messrs. Lewis and Dallas. And further, he had not only formed such opinions, but he had the audacity to put them into the hands of these gentlemen, which, in the article of impeachment, is called "delivering the opinion." The judge, then, on mature deliberation, from a full consideration both of English and American precedents and decisions, had really made up his mind upon what overt acts would constitute the treason of levying war; and to prevent mistake, he had reduced this opinion to writing, and for the information of the counsel on both sides (no partial selection) he gave a copy of this opinion to each of them, and intended to give another to the jury to take out with them. The jury should have this opinion where they could not mistake it, instead of their memories where it might be misunderstood. Is not this, sir, a fair and just epitome of the facts given in evidence? Is it not the full measure and amount of the judge's crime and corruption? If the judge had a right to have any opinion of his own on the case, and if the opinion he formed was a correct one, and it is admitted or at least not denied to be so, where or whence could any injury arise from it to John Fries or his counsel? The opinion is supported by English authority, and by the highly respectable names of Judges Paterson and Iredell. And this opinion Judge Chase had an undoubted right to give to the jury. He never intended to give it until the argument was closed, and then he designed to vary from the usual mode of charging juries only in this, that to prevent mistake, and for more certainty, he would deliver in writing instead of verbally. Yet the article charges that in consequence of the forming and delivering this opinion, in this illegal manner, John Fries was convicted and sentenced to death. The undisputed correctness of this opinion wipes away every idea of an intention to injure or oppress John Fries. No injustice could result to him from a legal and correct opinion, which must finally have ruled the case, delivered at any time and in any manner. There might be some inattention to usual forms, but there could be no substantial injury. An opinion thus anticipated, if manifestly unsound and erroneous, and against the prisoner, might carry some suspicion of unjust prejudice, but how *corrupt intentions* are to be proved, manifested, or executed by

correct opinions, is to me inexplicable. The judge had taken much labor and particular pains to inform himself on the law of the case. He would not trust himself on hasty opinions, made up at the moment the life of a fellow-citizen was at stake, and might be the forfeit of an error; and he therefore carefully examined the law and deliberately took an opinion. For this unusual attention, he deserves thanks and not impeachment. If knowledge of the law be a crime in a judge, ignorance is his best recommendation; and that judge is most worthy and best qualified for his office, who possesses no opinions of his own on any legal subject, but presents himself as a scholar to be taught by the counsel, and has no impressions but such as they are pleased to give him. I mean not to pass a sentence of condemnation on the views or conduct of the counsel of Fries. Their sole object and anxiety were to save the life of their client; and if they believed they could better effect this end by taking fire at the conduct of the court, by exciting a strong feeling and prejudice against the mode of proceeding, and by involving the court in embarrassment and difficulty, it was for them to judge how far they might pursue this object by such means, and to their own judgment I submit it. It is not easy to say how far counsel may fairly go in such a case, and when the life of the client is in issue much more will be allowed than in common cases.

We have heard much about the agitation of the bar on this occasion. The particular cause of it has not been clearly explained. It might have been produced by the demeanor of Mr. Lewis, which, from his own account, was violent and indignant, or it might have been the mere bustle produced by the different efforts that were made to get hold of the obnoxious paper which Mr. Lewis cast from him with so much feeling as too foul for his hand; or from a combination of these with other causes. Another circumstance equally immaterial has been dignified with much importance by the attention the Managers have bestowed upon it—I mean the *novelty* of the proceeding. Every witness was asked in solemn form, "Did you ever see the like before?" "How long have you been a practising lawyer?" "How many criminals have you defended?" "Was not this mode of forming and giving opinions by the court a novelty to you?" Granted—it was a *novelty*—I say granted for argument's sake—it was a novelty; and what follows? Is it therefore impeachable? Every innovation, however just and beneficial, is subject to the same consequence. But, sir, if this novelty proceeded not from impure intentions, and was not followed by oppressive or injurious consequences, where is its injustice or criminality? There were many other novelties in that trial. It was a novelty that a man named John Fries should commit treason, and be tried and convicted for it. I never heard of precisely the same thing before. It was a novelty that counsel should desert their cause in the abrupt manner in which it was then done. But I presume it will not be pretended that these things were wrong merely because they were novel; much less that a judge is to be convicted of high crimes and to be removed from office for a harmless novelty. The articles charge not the judge with innovations and novelties in legal forms, but with depriving John Fries and his counsel of their Constitutional rights; and if he has not done this, the rest is of no importance now. But what is this strange novelty that excites so much interest and alarm? Is it that a law judge had a law opinion, and was capable of making it up for himself without the assistance of learned counsel? I hope not. I should be sorry to suppose this is a novelty in the United States. Was it then the reducing this opinion to writing, putting it on paper with pen and ink, that makes the dangerous novelty? To have the opinion is nothing; but to write it constitutes the crime. And yet, sir, where is the difference to the prisoner? Except that in the latter case there is more certainty; less chance of misapprehension and mistake on the part of the jury than when it is delivered to them verbally. It should be recollected, sir, and I am sure it is too important to be forgotten by this honorable Court, this written opinion contained all the limitations and discriminations on the law of treason which could serve the prisoner, as well as those which might operate against him. But, sir, I deny that there was so much novelty either in forming this opinion, or in reducing it to writing, as is pretended. Is it uncommon for judges to state their opinions on particular points of law to counsel, even before argument, for the direction of their observations? And was it ever before considered a prejudication of the case, or an encroachment upon the rights of the bar? In criminal courts the practice is constant and universal. Previous to the trial of the cases of treason, after the restoration of Charles II., the judges of England met together, and did form and reduce to writing opinions, not only upon the mode of proceeding upon the trials, but also on all those questions or points of law which they supposed would arise and require their decision in the course of the trials. (See Kelynge's Reports, pp. 1, 2, &c.—11.) Here the judges met in consultation expressly for the purposes now deemed so criminal in Judge Chase, and took to their aid the King's counsel. Our judge did not take to his assistance the Attorney of the United States in forming his opinion; nor did the judges in England deliver to the counsel of the accused the result of their deliberations, but doubtless it would have been received as a favor if they had. In the only two points of difference, therefore, between the two cases, we have most decidedly the advantage.

But, sir, how can the proceedings of Judge Chase, in *principle* and *effect*, be distinguished from the common and universal practice of charging grand juries on the legal nature and description of the crimes to come under their notice? When a judge is about to hold a criminal court, he is particular to introduce into his charge those very offences, and his opinions upon them, which, by information or otherwise, he supposes will be brought before the court. The opinion of the

judge in such cases is formed, is reduced to writing, and is publicly delivered in the presence of all the jurors, both grand and petit, but never was before conceived to be objectionable. Nor was it ever before supposed to be a prejudication of any man's case, who might afterwards be tried for an offence thus defined. Judge Chase stated what acts in his opinion would, in construction of law, amount to treason in levying war; but whether those acts, and the necessary intention which must accompany them, would be proved upon John Fries, or anybody else, was left quite at large to be decided by the jury on the evidence. In Hardy's Trial, p. 13, Chief Justice Eyre states to the grand jury:

"Jurors and judges ought to feel an extraordinary anxiety that prosecutions of this nature should proceed upon solid grounds. I can easily conceive, therefore, that it must be a great relief to jurors placed in the responsible situation in which you now stand, bound to do justice to their country and to the parties accused, and anxious to discharge this trust faithfully; sure I am that it is consolation and comfort to us, who have upon us the responsibility of declaring what the law is in cases in which the public and the individual are so deeply interested, to have such men as the great Sir Matthew Hale, and an eminent judge of our own times, who, with the experience of a century, concurs with him in opinion, (Sir Michael Foster,) for our guides.

"To proceed by steps. From these writers upon the law of treason, who speak, as I have before observed, upon the authority of adjudged cases, we learn that not only acts of *immediate* and *direct* attempt against the King's life are overt acts of compassing his death, but that all the *remoter steps* taken with a view to assist to bring about the actual attempt, are equally overt acts of this species of treason—even the meeting and consulting what steps should be taken in order to bring about the end proposed, has been always deemed to be an act done in prosecution of the design, and as such an overt act of this treason. This is our first step in the present inquiry. I proceed to observe, that the overt acts I have been now speaking of have reference nearer or more remote to a *direct* and *immediate* attempt upon the life of the King; but that the same authority informs us that they who aim directly at the life of the King (such for instance as the persons who were concerned in the assassination plot in the reign of King William) are not the only persons who can be said to compass or imagine the death of the King. 'The entering into measures which, in the nature of things, or in the common experience of mankind, do obviously tend to bring the life of the King into danger, is also compassing and imagining the death of the King;' and the measures which are taken will be at once evidence of the compassing and overt acts of it."

Where is the criminality of such instruction and direction; but in what does it differ in principle, and in all its possible consequences to the prisoner, from the conduct of Judge Chase? The learned English judge thought he was obliging the jury, not encroaching upon them, by stating fully and precisely the legal construction of those acts which would probably be given to them in evidence to support the charges of treason. It is true the treason charged upon Hardy was not that of levying war—it was that of compassing the King's death. Now what overt acts amount to a compassing of the King's death, is a question of law resting upon long and established decisions and precedent. And Judge Eyre thought it no crime to declare to the jury his opinion of the law in this respect. So in our case, treason by levying war is a general Constitutional definition of the offence; but the application of this general definition, and the fixing and describing such overt acts as amount to a levying of war, is matter of legal construction, depending upon a knowledge of former adjudications, which the judge was bound to know, or he was not worthy of his office, and which he was also bound to communicate to the jury. The difference in the cases is only here. Chief Justice Eyre formed his opinion on deliberation, and reduced it to writing; but he also *publicly* delivered it with all the weight of his name and authority in the face of all the jurors and of the country. Whereas Judge Chase gave his opinion privately to the counsel, to be at their disposal and discretion—to use it for the benefit of their client if they could, or to disregard and suppress it if they thought proper. It might forever have been concealed from the jurors and from the world if the counsel of Fries had not themselves made it public. This practice of delivering opinions on points of law in charges to grand juries is not confined to the English courts. It is the same in the United States. The Managers have pronounced a very deserved eulogium upon the official conduct and character of Judge Iredell. The respondent has been referred to him as a bright example of justice and impartiality, and it has been lamented that with such an example before him, Judge Chase should have so wandered from the path of rectitude. We take their standard of excellence. We agree to be judged by Judge Iredell; and if I show that this humane and learned judge really did the same thing for which the respondent now stands on his trial, I hope there will be an end of the complaint. On the first trial of this same John Fries for the same offence, Judge Iredell actually committed, with some circumstances of aggravation, the same enormous crime for which Judge Chase is now impeached. He did form an opinion on the law of treason, he did reduce that opinion to writing, and he did deliver that opinion, the same in substance, and nearly the same in words with that delivered by Judge Chase. This bright example was before our eyes; he is now so, and let us be judged by him. In the charge delivered to the grand jury in 1799, who found the first bill against Fries for treason, speaking of those cases which he thought would come before the court, the judge says:

"The only species of treason likely to come before you is that of levying war against the United States. There have been various opinions and

different determinations on the import of those words. But I think I am warranted in saying, that if, in the case of the insurgents who may come under your consideration, the intention was to prevent by force of arms the execution of any act of the Congress of the United States altogether, (as for instance the land-tax act, the object of their opposition,) any forcible opposition calculated to carry that intention into effect, was a levying war against the United States, and of course an act of treason. But if the intention was merely to defeat its operation in a particular instance, or through the agency of a particular officer, from some private or personal motive, though a higher offence may have been committed, it did not amount to the crime of treason. The particular motive must, however, be the sole ingredient in the case, for if combined with a general view to obstruct the execution of the act, the offence must be deemed treason."

Judge Iredell, therefore, so far from conceiving it to be a crime to have an opinion upon the law of treason in levying war and the overt acts which would constitute it, to reduce that opinion to writing, and to deliver both to counsel and jury, seems to have considered it, as Chief Justice Eyre had done before him, to be his duty to do so. The opinion delivered by this respectable judge coincides entirely with that of Judge Chase, and the manner of delivering was, on our opponent's principles, vastly more exceptionable. The novelty of this proceeding seems to have vanished on investigation. There is indeed one striking difference in the two opinions: That Judge Chase goes more fully and clearly into the definition of the offence, and is more particularly careful to state those distinctions and discriminations which might serve the accused, and reduce his transgression to some smaller offence, provided they could appear in his case. He sets out not only the description and character of those overt acts which constitute treason, but enumerates also with equal care such as will not amount to that offence. If these favorable discriminations might in any way have been useful to the accused, they were put fully into the power both of the counsel and the jury.

The gentleman who opened the prosecution, (Mr. Randolph,) took occasion to speak in very handsome, and I doubt not very deserved terms of applause, of a distinguished judge in Virginia. This same judge has published an edition of Blackstone's Commentaries, into which he has introduced a variety of his own opinions on the Constitution and laws of the United States. If hereafter a person should be accused under the operation of some of those statutes on the construction of which Judge Tucker has published his comments and opinions, would it be any impeachment of the justice and impartiality of this judge to say, he had made up his opinion, he had reduced it to writing, he had delivered it to the world, and therefore he had prejudged the case. No, this would be a sort of reasoning even more absurd than the Richmond *non sequitur*. The honorable Manager, (Mr. Randolph,) to enforce and exemplify his doctrines on this subject, put an analogous case. He stated that a judge holding a criminal court might properly give the legal description of murder, and the circumstances and ingredients that in point of law would constitute this offence. But, says he, he may not go on to apply this definition to the *overt acts* laid in the indictment. This, I confess, is a *novelty* to me. I never before heard of overt acts in an indictment for murder. The general charge of the offence is laid in legal and general terms, but there is no specification of the particular facts and circumstances by which the charge is to be supported. But suppose a judge, knowing that a man was coming before him for trial, accused of going into the street with a declared resolution to kill the first person he should meet; and this judge were to say to any person or in any place, verbally or in writing, that a killing under such circumstances was murder, and a full manifestation of malice in legal construction, would this be called a prejudication of the case? Is it not a mere declaration of the law existing and established long before the case, which it was the duty of the judge to know, to obey, and to declare? If the facts proved before the jury brought the accused within the law, the consequence of conviction followed, not by the will of the judge, but by the sentence of the law; and while this question was left open, the case was in no wise prejudged. To explain this point still further, I will put the case of *libelling*. This offence, like that of treason, consists of two parts—the act and the intent. Would it be criminal in a judge, knowing that such a case was to come before him, to inform himself, if necessary, of the law of libels, to make up his mind upon the constituent parts of the offence, and to declare them to the grand jury, the counsel, or anybody else? Might he not be of opinion, and write and say, that a libel is a malicious defamation of any person in writing, in order or intending to excite their wrath, or to expose them to public hatred or contempt? Here the fact of publication must be proved, and the malicious intent; and might not a judge state what in contemplation of law is a malicious and defamatory writing, and that if such an one is published with intent to injure and defame, it is in law a libel? Apply this doctrine to the case of Fries. May not a judge have an opinion and declare that an insurrection of a body with intent or in order to resist the execution of any law of the United States, and the carrying that intent into execution by actual force and violence, is treason against the United States by levying war? There is no prejudication in either case; the facts and the intent which constitute the crime, and on which the guilt or innocence of the accused depends, are left wholly untouched, and come without prejudice or bias to the jury. I have heard the phrase "prejudging the law" repeated over and over again. Judge Chase *prejudged the law* against Fries, we are told. I confess the phrase is a very singular one to me. I know not precisely how to understand it. I can comprehend what is meant when I hear of prejudging a man's case—in prejudging the

facts of any case. But as to the law, I presume it is always prejudged—always settled, certain, and ascertained. It is never a question in a case of murder, whether a killing with malice prepense is or is not murder. The law has prejudged that, and so in all other cases the question is, whether the facts proved bring the case within the law. And so it was in Fries's case, and upon that point Judge Chase neither gave nor intimated nor had an opinion; for as the evidence had not been heard, he could not anticipate what facts would be proved.

I hope and trust, sir, that the first specification of this article is now disposed of to the satisfaction of this honorable Court, and the justification of the respondent. Part of it, when tested by the evidence, turns out to be wholly unfounded; and the rest which is true, has been fully justified both on principle and by precedent. If there was some haste and error in the conduct of the judge, which however I neither believe nor admit, there was certainly no criminality in the act. There was nothing impure in the motive—nothing injurious in the consequence.

Suffer me now, sir, to offer you some observations on the second specification of the first article of impeachment. I hope it will not be necessary to trespass greatly on your patience in refuting it. It charges Judge Chase with "restricting 'the counsel for the said John Fries from recurring to such English authorities as they believed 'apposite, or from citing certain statutes of the 'United States, which they deemed illustrative 'of the positions upon which they intended to 'rest the defence of their client." This charge consists of two parts; it complains of a restriction as to English authorities, and as to American statutes. I will consider them distinctly. First, sir, permit me to remark that these allegations are made to support the general charge of partiality, oppression, and injustice. But what becomes of these pretences when we bear in mind the testimony of Mr. Rawle, the District Attorney, and always, and in every situation, a gentleman whose character, in all its relations both public and private, bears the first stamp of respectability, and fears no competition for credit? He has informed this honorable Court that this restriction so grievously complained of, and now the subject of a criminal prosecution, was imposed upon him as well as upon the counsel of Fries. Is this the character or the conduct of partiality or oppression? Does it evince that strong appetite the judge is said to have, to drink the heart's blood of this unfortunate German, and stain the pure ermine of justice with his gore? I have always understood by partiality in a judge, a favoring bias to one party to the prejudice of the other; but where a restriction is put equally on both sides, I cannot conjecture how it can be resolved into partiality or oppression. It will be seen presently that as far as this restriction could have any operation, it was friendly in that operation to John Fries. But, sir, what was this restriction so much complained of, and now magnified into a high crime? That certain English decisions in the law of treason, made before the Revolution of 1688, should not or ought not to be read to the jury; and pray, sir, what were these decisions? I will take their character from Mr. Lewis himself, and no man is better acquainted with them. He says they were decisions of dependent and corrupt judges, who carried the doctrine of constructive treason to the most dangerous and extravagant lengths. True, they were so—sanguinary, cruel, and tyrannical in the extreme; and could the exclusion of such cases injure John Fries? If cases which extenuated and softened the crime of treason had been rejected, he might indeed have suffered; but how he was or could be injured by keeping from the jury those cases which aggravated his offence, I am really at a loss to learn. The restriction there was on the United States. Had they been adduced by the Attorney General, no doubt they would have been ably answered by the defendant's counsel; but the ability of the counsel was not inferior to Fries' counsel; and if Judge Chase had indeed a design to oppress and injure John Fries, and to convict him on strained constructions of treason, his best policy would surely have been to have suffered these cases to have come forward, and if supported by his authority and the talents of the counsel of the United States, they might have had their influence with the jury, notwithstanding the able refutations they might have received. But why and for what good purpose did the counsel desire to read these cases, operating, if they operated at all, directly against the life of their client? Why would they fatigue the court and impose upon the jury with those wicked and ridiculous decisions against a man who wished his stag's horns in the king's belly; and another, who declared he would make his son heir to the Crown?

Sir, there could have been but one object in this attempt. It was this: to excite such horror in the minds of the jurors by reciting these tales of tyranny and blood, as would create a general prejudice in them against all the laws of treason. The abhorrence which would be honestly given to such extraordinary cases of cruelty practised under the law of treason, they hoped would extend itself to all cases of treason, even the most just and upright. I know another and ingenious coloring and pretence has been given for this design, this strange anxiety to read cases, which so strongly support prosecutions for treason. It has been said by Mr. Lewis, not here as a witness, but in Philadelphia as counsel for John Fries, that his object in desiring to read these extravagant cases was of this sort. That many of the decisions on the law of treason made since the Revolution of 1688, and which are received as authorities in modern courts, were actually grounded on the iniquitous cases decided before the Revolution; and therefore, says Mr. Lewis, we wished to lay these cases before the jury that they might place no reliance on those since the Revolution, which were derived from them. Could the gentleman be sincere in this pretence? How far would he carry it? To all decisions

since the Revolution; and are we to have no adjudications on this subject which may be relied upon as sound, legal, and virtuous? I apprehend he does not mean so much. He desired I presume only to discredit such of the English decisions since the Revolution, as were derived from those corrupt sources alluded to. Then, most assuredly, he was premature in his attempt to read these precious cases. If the district attorney should read and rely upon any case, decided since the Revolution, to convict John Fries, and Mr. Lewis could trace that decision back to the horrible times spoken of, and show that it was derived from and grounded upon the opinions of those corrupt and dependent judges, it would surely have been competent for him to do so, and no court would have attempted to prevent him. But that he is to deluge the court and jury with a mass of trash and corruption, and so declared to be by himself, by way of anticipation and when no necessity had occurred or probably would occur to justify it, could not be endured by any court knowing its duties and respecting its dignity. These cases are law, or they are not law. If the former, their opinion and influence were against the prisoner; if the latter, the court should not suffer them to be read to mislead and impose upon the jury. So far, sir, and I shall trouble you no further, on the exclusion of these English statutes. Now, as to the statutes of the United States. That any such restriction was laid on the counsel of John Fries, rests wholly and entirely on the testimony and recollection of Mr. Lewis. I will, sir, first consider the nature and extent of this charge against the respondent, supposing the fact to be so. I presume it will be granted to me that a judge has some sort of authority in a court; that he does not sit there as a mere cypher, without power or command. Among the acknowledged powers of a judge, is that of regulating and directing in some degree the argument before him, and preventing the introduction of matter either grossly improper or palpably irrelevant to the issue. If then it be demonstrated that these statutes of the United States had really and truly nothing under heaven to do with the trial of John Fries, I hope the judge will not be condemned for excluding them. John Fries, sir, was indicted for the treason of levying war against the United States, and for no other offence.

The crime is created and defined by the Constitution of the United States. It became the duty of the attorney of the United States to show to that court and jury, that the prisoner had been guilty of the treason charged in the indictment according to its definition and description in the Constitution, or the prosecution must fail. If, on the other hand, he did show this to the satisfaction of the court and jury, John Fries must necessarily be convicted. Now, sir, what possible influence or control could any act of Congress have over the character of a crime defined in and derived from the higher authority of the Constitution? The act of Congress could not enlarge, restrict, or in any way alter or affect the Constitutional description. To what proper purpose then could any act of Congress be read? Why, sir, we have heard something about a Legislative construction of the Constitution; and that these acts of Congress defining sedition and other offences, might be used and were important to show what was intended by the Constitution in the description of treason. In the first place, sir, Congress in passing these statutes never had the most remote idea or intention of giving any sort of construction or opinion upon the law of treason; and if they had such an intention, it was beyond their powers and rights, and should be wholly disregarded, not only by that court, but by this. The construction of the Constitution, in common with every other law, belongs exclusively to the Judiciary, as best qualified both from its permanency and independence as well as from legal learning to exercise so important a right. The necessity of a power existing some where to judge of the Constitution, and of the conformity or non-conformity of laws to the provisions of it, results from the very nature of a written constitution. It is in vain we have an instrument paramount to ordinary legislation, if there is no authority to check encroachments upon it, and there is no department of Government with whom this power can be so safely lodged, or by whom it can be so ably and impartially exercised as the Judiciary. If the Legislature, the very branch of Government most controlled by the Constitution, and intended to be so, shall be permitted to assume the wide and unlimited right of construction, the Constitution will sink at once into a dead and worthless letter; moulded into various fantastic shapes at the will of the Legislature, and purporting one thing to-day and another to-morrow, and nothing at last. But Congress, I repeat, sir, in passing the sedition law, had no intention whatever of giving their construction to the Constitutional description of treason, or of affecting or touching it in any way. The counsel of Fries were, therefore, about to use or abuse the act of the Legislature to purposes never contemplated or intended. Should the court suffer a delusion of this sort to be practised upon a jury, equally disrespectful to the court and to the Congress? It was not Judge Chase only who thought these statutes of the United States totally irrelevant to the case of Fries. They had been solemnly adjudged to be so, after every exertion of the talents of the counsel to show their application and force. I refer you, sir, to the opinion of Judge Iredell on the first trial of Fries:

"An act of Congress which I have already read to you (that commonly called the sedition act) has specially provided in the manner you have heard, against combinations to defeat the execution of the laws. The combinations punishable under this act must be distinguished from such as in themselves amount to treason, which is unalterably fixed by the Constitution itself. Any combinations, therefore, which before the passing of this act would have amounted to treason, still constitute the same crime. To give the act in question a different construction, would do away altogether the crime of treason as committed by

levying war, because no war can be levied without a combination for some of the purposes stated in the act, which must necessarily constitute a part though not the whole of the offence.

"This, gentlemen of the jury, is an indictment against the prisoner at the bar for levying war against the United States; the first inquiry therefore is, what is meant by these words in our Constitution? 'Treason against the United States shall consist only in levying war against them.' &c. These words are repeated verbatim, I believe, in an act of Congress called the Judiciary act, defining the punishment of the crime of treason, pursuant to Constitutional authority. This crime being defined in the Constitution of our country, becomes the supreme law, and can only be altered by the means therein pointed out, and not by any act of the Legislature; and, therefore, the repetition of the words of the Constitution in the Judiciary act is quite unnecessary, as the only power left to Congress over this crime was, to describe the punishment; the same act, in another part, makes provision for the method of trial. Agreeably to their power, Congress have described the punishment, and thereby declared the crime to be capital. It is clear, therefore, that, as the Constitution has defined the crime, the Congress, drawing its sole authority from that Constitution, cannot change it in any manner, particularly as it is so declared; yet the counsel for the prisoner say, that the Legislature have given it a legislative interpretation, and that their interpretation is binding on this court. They say that Congress did not mean to include the offence charged upon the prisoner at the bar, under the definition of levying war; because the sedition act describes a similar offence, and because a rescue is provided for in another act, the punishment extending no further than fine and imprisonment. Several answers may be given to remove these objections:

"First, if Congress had intended to interpret these words of the Constitution, by any subsequent act, they had no kind of authority so to do. The whole judicial power of the Government is vested in the judges of the United States, in the manner the Constitution describes; to them alone it belongs to explain the law and the Constitution; and Congress have no more right nor authority over the judicial expositions of those acts, than this court has to make a law to bind them. If this was not an article of the Constitution, but a mere act of Congress, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory sections to it. In this we differ from the practice of England, from whence we received our jurisprudential system in general; for they having no Constitution to bind them, the Parliament have an unlimited power to pass any act of whatever nature they please; and they, consequently, cannot infringe upon the Constitution. The very treason statute of Edward III. itself, contains a provision giving Parliament an authority to enact laws thereupon, in these words: 'Because other like cases of treason may happen in time to come, which cannot be thought or declared at present: it is thought that, if any such does happen, the judges should not try them without first going to the King and Parliament, where it ought to be judged treason, or otherwise felony.' On this point Sir Matthew Hale was very careful lest constructive treason should be introduced.

"This, gentlemen, you will observe, only relates to any case not specified in that act. But, on the occasion now before you, it is not attempted, by any construction or interpretation, that anything should be denominated treason that is not precisely and plainly within the Constitution. No treason can be committed except war has actually been levied against the United States.

"But further, nothing is more clear to me than that Congress did not intend, in any manner whatever, to innovate on the Constitutional definition of treason, because they have repeated the words, I think, verbatim, in their own act, with regard to the rescue and obstruction of process which is mentioned in the act alluded to. It will not be pretended, by any man, that every rescue or every obstruction of an officer in serving process, or even both together, amounts to high treason, or else to no crime at all. No; the crimes are differently specified, and rescue or obstruction of process may be committed without that high charge. This, I think, was sufficiently explained by the counsel for the United States."

Will it be pretended, sir, that counsel have a right to read anything before the court which they may find in a law book? Is there anything of such peculiar dignity and privilege in the statutes of the United States, that any of them may, at all times and on all occasions, whether pertinent or not, be read in a court of justice; and is it a high crime in a judge to prevent it? Suppose the counsel had chosen, on the trial of John Fries, to amuse themselves with reading the revenue laws of the United States, would the mere circumstance of their being bound in our statute book have given them such a sacred character that the court would be bound to listen, with the most respectful attention, to such an absurd waste of time? I do not hesitate to aver that the revenue laws have full as clear and proper an application to the case of John Fries as either of the statutes the counsel were so anxious to produce.

But, sir, although Judge Chase undoubtedly believed that these statutes of the United States had no sort of application to the case before him, and we contend that he would have been wholly justifiable in excluding them from the discussion, yet we deny most explicitly that he did so. The respondent never declared that these laws should not be read or referred to on that occasion. The proof of the fact rests entirely on the recollection of Mr. Lewis. Among the numerous spectators of this transaction, not a man but Mr. Lewis has been produced to sustain this charge now deemed so important. Mr. Lewis has doubtless declared this fact as he believes it; but, sir, when we recollect the agitation of this gentleman, as described by himself, the strong state of feeling or passion into which he was excited, the length of time and the acknowledged frailty of his memory,

and when to this we add that something was probably said about the irrelevancy of these statutes, we shall find sufficient reason to believe that Mr. Lewis has, in this respect, fallen into a mistake. Opposed to this imperfect recollection, we have Messrs. Rawle, Tilghman, Meredith, Biddle, and Ewing, all possessing an equal opportunity with Mr. Lewis to hear and to understand what passed from the court; and from their cool and disinterested situations less likely to receive unfounded or discolored impressions. I cannot avoid reminding you, sir, that Mr. Tilghman and Mr. Rawle are witnesses summoned and examined on the part of the United States, and although the honorable Managers have thought proper to claim only Mr. Lewis and Mr. Dallas, and to treat the other gentlemen as witnesses for the respondent, they are nevertheless entitled to the full regard and respect, whatever it may be, attached to the witnesses for the majesty of the people. The five gentlemen I have named, were all of them in court during the trial of John Fries, and at the time Mr. Lewis supposes this restriction to have been laid upon him; and yet not one has any recollection of any such prohibition; I believe they, or some of them, state in decided terms that none such were made. If this comparison of the recollection of five witnesses against one, who himself testifies to the imperfection of his memory, leaves any doubt about the truth of the fact, I can refer this honorable Court to a written document, drawn up by Mr. Lewis in conjunction with Mr. Dallas, which must put the question to rest. When there is such a contradiction in the testimony of such respectable witnesses, it is a great relief to my mind to have some permanent voucher to refer to, to decide the difference. I allude, sir, to the letter addressed by Messrs. Lewis and Dallas to Mr. Lee, then Attorney General of the United States. This letter was written in May, 1800, soon after the trial of Fries, and when every circumstance was fresh in the memory of Mr. Lewis. This letter was written in consequence of a communication from Mr. Lee, stating "that the case of Fries was before the President; 'that *all the information* was wished which could 'assist in making a proper decision upon a claim 'for mercy and pardon; for which purpose Mr. 'Lee desired to know the grounds on which the 'counsel intended to have enforced the defence.". In consequence of this solemn and important call from such high authority, and for such an interesting purpose, Mr. Lewis writes to Mr. Dallas—states that, in justice to "*poor Fries*" as well as to themselves, they ought to make the desired communication; that they should state their intended arguments, &c., and that they should state "in 'decent and manly terms *our reasons for declining* '*any interference in the trial;*" he then requested from Mr. Dallas "*every communication* likely to render service to *poor* Fries." Turn then, sir, to the letter addressed to Mr. Lee, with all these friendly dispositions on the part of Mr. Lewis, with all the anxious desire he had to serve poor Fries, and with all the aid of Mr. Dallas, in making the statement, which was to contain *all* their information on the subject, and *all* their reasons for declining to interfere in the trial. We find, sir, in this important letter, that they informed the President that the "cause was prejudged" by an opinion they were wholly unacquainted with; by a paper they had never read, and knew not the contents of; and the jury were also *prejudged* by this opinion, although they knew not what it was. But, sir, we do not find any complaint whatever; nay, not the slightest suggestion that the court prevented or forbade the reading of these statutes of the United States, or restricted the counsel from making any use of them they thought proper. With the manifest disposition of these gentlemen, in writing this letter, with the object before them for which it was required, and the uses they intended should be made of it—uses which they anticipated at the moment they abandoned the cause—is it probable so important a circumstance would have been omitted if it had really occurred? I refer you and this honorable Court, sir, to the following pages of the evidence printed at the last session of Congress for the use of the House of Representatives, pages 21, 24, 25, 26, to 32.

May I not now flatter myself, sir, that all the criminality charged upon the respondent, in the second specification of the first article of impeachment is washed away from the minds of this honorable Court? Under this hope and impression, I will proceed to consider, as briefly as possible, the third and last specification. In this the judge is charged with "debarring the prisoner from his 'Constitutional privilege of addressing the jury '(through his counsel) on the law as well as on 'the fact which was to determine his guilt or in-'nocence, and at the same time endeavoring to 'wrest from the jury their indisputable right to 'hear argument, and determine upon the question 'of law, as well as the question of fact, involved in 'the verdict which they were required to give." This charge is absolutely unfounded and untrue, and is, in all its parts, most completely disproved by the evidence. As to debarring counsel from being heard, I need only refer you, sir, to the testimony of Messrs. Tilghman and Meredith, who expressly swear, that Judge Chase, when he threw down the paper containing the opinion the court had formed on the law, explicitly declared that, nevertheless, counsel would be heard against that opinion. It is, indeed, true that Mr. Lewis seems, throughout the business, to have been under an impression that nothing would be heard in contradiction to that opinion; and that his professional rights were invaded. But this appears to be a hasty and incorrect inference or conclusion of his own, from the conduct of the court. He wholly misapprehended the court, and has charged his misapprehension to their account. This is the usual effect of such precipitate proceedings. The Managers have greatly relied on this circumstance; they urge that Mr. Lewis, through the whole affair, and in all he said concerning it, took for granted and stated that he was debarred from his Constitutional privileges. He did so; but he did so under a mistake of his own, not proceeding from the court. It is not only that no other wit-

ness speaks of any such restriction, but expressly negative it and say, some of them at least, that none such was imposed; but Mr. Rawle has further informed you, that it appeared to him throughout the business that Mr. Lewis had wholly misunderstood the court and mistook their intention. But, surely, sir, we are not to be condemned because we have been misunderstood; especially as the mistake seems to have been peculiar to Mr. Lewis, and no other witness fell into the same error. I rely most implicitly on Mr. Rawle's testimony, not only from the strength and correctness of his character, but from the unusual pains he took to be accurate in his knowledge of this transaction. His notes are copious, connected, and satisfactory, and although he has no notes of the first day's proceeding, yet he seems to have given an uncommon and cautious attention to every circumstance to which he has testified. This gentleman negatives every idea of any restriction upon the arguments of counsel, and is supported by every witness but Mr. Lewis. If any doubt can remain upon this subject, I am happy to have it in my power to refer to a written and unchanging document, which destroys the third specification, and demonstrates not only that the counsel were not prohibited from addressing the jury, both on the law and the fact, but also that the right of the jury to decide both the law and the fact was most largely and explicitly avowed and declared to them. I beg to refer this honorable Court to the second exhibit, filed with the respondent's answer. It contains this very opinion, so scorned by the counsel of Fries, and from the pollution of which they shrunk with horror. If they had read it before it was thus indignantly condemned; if it had been understood before it was consigned to contempt, and denounced as a violation of every valuable and sacred right, how much confusion, how much unnecessary discontent, might have been saved and prevented! In this opinion, then, will be found the sentiment in these words: "It is the duty of the court 'in this and all criminal cases, to state to the jury 'their opinion of the law arising on the facts; but 'the jury are to decide on the present, and on all 'criminal cases, both the law and the facts, on 'their consideration of the whole case." Was there ever a more ample and explicit avowal of the rights of juries? Is there any friend to juries so extravagant as to contend or ask for more? The acknowledgment is as full as any man can require or the law would warrant. The judge, in thus admitting and confirming the right of the jury to decide both the law and fact, admits, by inevitable consequence, that the jury have a right to hear counsel both upon the law and facts. That which they are to decide upon, they must have information upon; and the court which declares the jury to be the tribunal to determine the *whole* case, never could have said, in the same breath, that they should hear no argument on the case they were thus to determine. This monstrous absurdity, of which the judge can hardly be suspected, brings it to a certain conclusion, that Mr. Lewis must have mistaken the court; and that no such restriction was laid upon him or the jury as he has apprehended.

The charges, sir, laid in this first article of impeachment, are grounded altogether on the proceedings of what has been called the first day of Fries's trial; and most firmly believing that the whole of this proceeding on that day will bear the most scrutinizing inquiry, and stand on the strong ground of justification, I have been willing to meet the Managers on that day's proceeding disjointed from that of the following day. But, sir, it is most evident, that this is by no means a full or a fair examination of the judge's conduct on that occasion. When he is charged with a corrupt or partial intention to injure and oppress John Fries, when he is charged with a wilful violation of the rights of the counsel and jury, the whole of the proceeding should be brought into view, before we decide upon the character of any part of it. An attention, sir, to what passed on the second day, as it is called, of Fries's trial, will most abundantly prove that Judge Chase never had intended any partiality or oppression against him; and certainly that if he had any such intention, he never carried it into execution or effect. And, I trust, I am safe in saying that the mere intention to commit a crime, however gross or outrageous, unless carried into some sort of action or effect, constitutes no crime. A man may intend to commit a larceny, assault and battery, or any other offence; but while he abstains from the act, the mere intention cannot subject him to trial or punishment. The respondent, then, discovering from the conduct of Fries's counsel, and the indignant hostility they assumed, that he was greatly misunderstood; that an arrangement he had adopted for the convenience of public justice, the reasonable expedition of the approaching trial, and the real accommodation of the court, the counsel, and the jury, was construed and received as an oppression upon the prisoner, an encroachment upon the privileges of counsel, and a violation of the rights of the jury; in short, as a corrupt and polluted prejudication of the cause to be tried, and that the fair and upright intentions of the court were misinterpreted by a real or pretended mistake into the vilest purposes of partiality, resolved to destroy the formidable engine they saw erecting against the court, and to remove at once all pretence for clamor or irritation. Granting the judge had been in error on the first day, what more could he, or any man do, than to rectify the error as soon as it was discovered, and hasten to the right path before any injury could have resulted from his momentary deviation. But the honorable Manager has told you he had sinned beyond the grace of repentance, and that no contrition, however sincere, could wipe away the offence. When I suffer such words as repentance and contrition to pass my lips, it is in quoting precisely the words of the Manager. For my part, I disclaim them. The respondent has done nothing that required the humiliation of repentance, or for which he now asks to be forgiven. Let him stand on his justification or stand not at all. But, sir, a part of that justification is that the corrupt intent charged upon him is disproved by his entire willingness to permit the counsel to manage their cause in their own way, if they disapproved of his, and, by his full and candid retraction of the error, if any error had been committed. By adverting to the testimony of Mr. Rawle, this honorable Court will see how greatly Judge Chase was surprised to find, from conversing with this witness and Judge Peters, that his conduct was viewed in so strange a light by Messrs. Lewis and Dallas. On making this discovery, although still convinced of the propriety of the proceeding, he does not obstinately adhere to it, but resolves to remove all possible cause of complaint by withdrawing all the papers which had given rise to this astonishing irritation and violation. The papers were accordingly resumed, every copy collected, and the counsel, the prisoner, and the jury, were placed in the same precise situation as if these papers had never been distributed; with the most ample acknowledgment of all their rights, and the most urgent solicitations to them to proceed in the enjoyment and exercise of them. But no, the counsel had taken their ground, and nothing could move them. John Fries had received their instructions, and with equal perseverance declined the aid of other counsel offered to him by the court repeatedly. Now, sir, let me ask you and this honorable Court, on your consciences, not to be blinded by the management and finesse of ingenious counsel; what was the meaning of all this? What was the object of it? Did the counsel now believe they would not be fully heard in defence of their client, both on law and fact? Did they now suppose themselves or the jury restricted in their rights, or that a just and impartial trial would not be had? Most certainly not. But, in the language of Mr. Lewis, they thought they had got the court into an error or a scrape, and they were determined to keep them there. What! says Judge Peters, if we have done wrong, will you not suffer us to repair the wrong by doing what is right, by doing all that you have required? No, no, was the answer. Mr. Lewis has declared to you in the most ample and explicit terms, that they abandoned John Fries because they thought they had a better chance of saving him by this means, than they could have by any trial; and, to use his own words in another part of this testimony, "we withdrew," says he, "from the 'defence of John Fries, because we thought it 'would best serve him, and we were not influ-'enced by any other motive whatever." They had already, before Judge Iredell, tried the efficacy of the full and unconfined exertion of their talents in his defence, and found how vain the attempt was. They were well satisfied no hope of success could be entertained on a fair trial of the merits of their case, both in law and fact, and they eagerly grasped any occurrence, that, by operating on the passions, the humanity, or the prejudices of mankind, might give to their client a chance for escape, which he could not look for in the merit of his own conduct. With this view they most solemnly impressed upon the mind of John Fries the necessity of his maintaining the ground they had taken for him, and refusing the assistance of any other counsel. So well did these gentlemen know the court had no intention of oppressing John Fries, that in their communications to him, they anticipated the offer of other counsel to supply their desertion.

But, sir, there is one circumstance in this second day's proceeding, which has been introduced to show, that the respondent continued the same tyrannical spirit with which he is charged on the first day, and which it may be incumbent on him to remove. I mean the "unkind menace," as it has been termed by one of the witnesses, used to the counsel of Fries, when the judge told them they would proceed in the defence at the hazard or on the responsibility of their character. To ascertain the true nature of the expression, whatever it was, which fell from the court in this respect, I will refer to the same guide I have endeavored to follow throughout my argument, I mean the evidence. The aspect of this pretended menace will then be changed into a complimentary confidence in the discretion of the counsel, or at least into no more than such a menace as every gentleman of the bar acts under in every case; that is, to manage every cause before a jury with a due regard to their own reputation; to urge nothing as law to the jury, which they are conscious is not law, and to introduce no matter which they know to be either improper or irrelevant. This in its worst character, will be found to be the whole amount of this terrible menace. What account does Mr. Lewis give of this occurrence? After stating that the court manifested a *strong desire* that he and his colleague should proceed in the defence of their client; that every restriction, if any had been imposed, was now removed, and that they were at full liberty to address the jury on the law and the fact as they thought proper; the judge said that this would be done "under the direction of the court, and at the peril of our own character, *if we conduct ourselves with impropriety.*" And was it not so? And where is the criminality of saying so? Mr. Lewis did not consider this as a menace intended to restrict him in the exercise of the rights just before conceded him by the court, but rather as an unwarranted suspicion of his sense of propriety; for, says he, "I did not know of any conduct of mine to make this caution necessary."

The court perhaps thought his conduct on the day before did make it necessary. Let us now take Mr. Dallas's impression of this part of the conduct of the judge. This witness after testifying to the ample range, both as to law and fact, given to the counsel by the court, states that the judge observed "they would do this at the hazard of their characters." This Mr. Dallas afterwards terms an "unkind menace." I think upon recurring to Mr. Lewis and the other witnesses, and to some considerations naturally arising from the manifest disposition of the court at that time, it will be concluded that Mr. Dallas has mistaken the nature and character of this act of the judge, when he describes it as a menace. Mr. Tilghman states that the court seemed *very anxious* that the counsel should proceed, gave them full liberty to

combat Judge Chase's opinion before the jury, and that they were not to be bound by that opinion. Judge Chase mentioned that cases at common law before the statutes of Edward III., *ought* not to be read. So of certain other cases; he particularly mentioned the case of a man who wished the stag's horns in the King's belly; and also of the man who kept a tavern with the sign of the Crown, who said he would make his son heir to the Crown. The judge declared such cases must not be cited; and said in illustration of his idea—What! cases from Rome, from Turkey, and from France? That the counsel should go into the law, but must not cite cases that were not law. After these observations, and in direct connexion and reference to them, the judge said something about "their proceeding agreeably to their own conscience." What now begins to be the complexion and character of this part of the judge's behaviour? Why, that after giving these gentlemen the utmost latitude of discussion they could possibly require, he states a certain class of decisions and cases, which appeared to him and must appear to everybody to be unworthy of notice—to be of no sort of authority or application in the case of Fries, which were not law; which Mr. Lewis himself has described as the offspring of corrupt and dependent and bloody judges, and which, if they had any operation, were hostile to the prisoner: I say, sir, after alluding to such cases, which he knew too had been used on the former trial, was it criminal or strange, he should make an appeal to their consciences, or characters, take it either way, before they proceeded to their defence?

A further examination of testimony, puts this part of the case beyond doubt. Mr. Rawle, after stating the same course of observations from the judge, as has been mentioned by Mr. Tilghman, and that he said, "I have always conducted myself with candor, and I meant to save you trouble;" after relating to you how fully the respondent removed every obstacle which had arisen from the proceeding of the first day, and how honorably he explained and justified the motives of his conduct, declared himself thus to the counsel: "having thus explained the meaning of the court, you will stand acquitted or condemned to your own consciences;" the same terms used by Mr. Tilghman; "as you think proper to act. Do as you please." This honorable Court will be pleased to recollect that Mr. Rawle speaks not from the imperfect impressions of memory after the lapse of five years; but from full notes taken at the very moment of the transaction. It is needful to go further in justification of this mistaken menace. What says Mr. Ewing? "That the respondent told the counsel that if they read cases which were not law, after knowing the opinion of the court that they were not so, they would do it with a view to their own reputations." Mr. Meredith, after reciting what the judge observed upon the cases at common law, testifies that the respondent informed the counsel of Fries, "they might manage the defence in such way as they thought proper, having regard to their own character." I hope, sir, we have now obtained a just notion of the nature and intent of whatever was said by the judge at this period of the transaction; and as no witness considered it as a menace but Mr. Dallas, we may justly conclude he has mistaken it. Is not this the true interpretation of it, that the judge had determined to give these gentlemen the utmost latitude of discussion, both of the law and fact, to any extent they thought proper, referring them only to their own sense of propriety, to their own consciences, to their regard for their own characters, as to the manner in which they would use this unbounded liberty? The respondent confided in the character and conscience of these gentlemen for the fair exercise of their professional duty, and for such a limitation of their privilege of speech, as would prevent any abuse of it to improper purposes, or to an unreasonable extent.

Suffer me, sir, to make one further remark in confirmation of my position. It grows out of the acknowledged circumstances of the case, and, if fairly deduced, is evidence of the highest description. It is agreed by all the witnesses that on the second day the respondent manifested and expressed the utmost solicitude and anxiety for the counsel to proceed in the defence, and that he took "great pains" to induce them to do so. It is not doubted that he was sincere in this. Is it probable or possible, then, with these dispositions, and while he was endeavoring to persuade and to induce these gentlemen to return to the defence of their client, he would indulge himself in threats, in insults, and menaces, which would necessarily confirm them in the abandonment of the cause, and defeat the acknowledged wish the judge had that they should return to it? But still we are told, and this first article of impeachment concludes with averring, that in consequence of the conduct of the respondent, Fries was deprived of his right of being heard and defended by his counsel. To refute this unfounded assertion, we need go no further than to the testimony of Messrs. Lewis and Dallas. They surely are the best judges of the motives of their own conduct. What reason do they give for denying Fries their aid and advising him to refuse all other counsel? Because they had no hopes of success on a trial; because they believed the court had got into a difficulty where they were determined to keep them; because they thought they had a better chance to save their client's life by the uses they might make of the novelty of the first day's proceeding than they could have on a full trial after this novelty was removed; the counsel, in short, withdrew from the defence of Fries, because they thought it would best serve him, *and were not influenced by any other motive whatever.* How does this testimony support the averment in the conclusion of the article, which boldly affirms, not that John Fries was saved, but that he was condemned to death in consequence of not being heard by his counsel?

A very strange and unexpected effort has been made, sir, to raise a prejudice against the respondent on this occasion, by exciting or rather forcing a sympathy for John Fries. We have heard him most pathetically described as the ignorant, the friendless, the innocent John Fries. The ignorant John Fries! Is this the man who undertook to decide that a law which had passed the wisdom of the Congress of the United States, was impolitic and unconstitutional, and who stood so confident of this opinion as to maintain it at the point of the bayonet? He will not thank the gentleman for this compliment, or accept the plea of ignorance as an apology for his crimes. The friendless John Fries! Is this the man who was able to draw round himself a band of bold and determined adherents, resolved to defend him and his vile doctrines at the risk of their own lives, and of the lives of all who should dare to oppose? Is this the John Fries who had power and friends enough actually to suspend, for a considerable time, the authority of the United States over a large district of country, to prevent the execution of the laws, and to command and compel the officers appointed to execute the law to abandon the duties of their appointment, and lay the authority of the Government at the feet of this *friendless usurper?* The innocent John Fries! Is this the man against whom a most respectable grand jury of Pennsylvania, in 1799, found a bill of indictment for high treason; and who was afterwards convicted by another jury, equally impartial and respectable, with the approbation and under the direction of a judge, whose humanity and conduct, on that very occasion, have received the most unqualified praise of the honorable Manager who thus sympathizes with Fries? Is this the John Fries, against whom a second grand jury, in 1800, found another bill for the same offence, founded on the same facts, and who was again convicted by a just and conscientious petit jury? Is this *innocent* German the man who, in pursuance of a wicked opposition to the power and laws of the United States, and a mad confidence in his ability to maintain that opposition, rescued the prisoners duly arrested by the officers of the Government, and placed those very officers under duress; who, with arms in his hands and menace on his tongue, arrayed himself in military order and strength, put to hazard the safety and peace of the country, and threatened us with all the desolation, bloodshed, and horror of a civil war; who, at the moment of his desperate attack, cried out to his infatuated followers, "Come on! I shall probably fall on the first fire, then strike, stab, and kill all you can?" In the fervid imagination of the honorable Manager, the widow and orphans of this man, even before he is dead, are made in hypothesis to cry at the judgment seat of God against the respondent; and his blood, though not a drop of it has been spilt, is seen to stain the pure ermine of justice. I confess, sir, as a Pennsylvanian, whose native State has been disgraced with two rebellions in the short period of four years, my ear was strangely struck to hear the leader of one of them, addressed with such friendly tenderness, and honored with such flattering sympathy by the honorable Manager.

It is not unusual, sir, in public prosecutions for the accused to appeal to his general life and conduct in refutation of the charges. How proudly may the respondent make this appeal! He is charged with a violent attempt to violate the laws and Constitution of his country, and to destroy the best liberty of his fellow-citizens. Look, sir, to his past life, to the constant course of his opinions and conduct, and the improbability of the charge is manifest. Look to the days of doubt and danger; look to that glorious struggle so long and so doubtfully maintained for that independence we now enjoy; for those rights of self-government you now exercise, and do you not see the respondent among the boldest of the bold, never sinking in hope or in exertion, aiding by his talents and encouraging by his spirit; in short, putting his property and his life in issue on the contest, and making the loss of both certain by the active part he assumed, should his country fail of success! And does this man, who thus gave all his possessions, all his energies, all his hopes to his country and to the liberties of this American people, now employ the small and feeble remnant of his days, without interest or object, to pull down and destroy that very fabric of freedom, that very Government, and those very rights, he so labored to establish? It is not credible; it cannot be credited, but on proof infinitely stronger than anything that has been offered to this honorable Court on this occasion. Indiscretions may have been hunted out by the perseverance of persecution; but I trust most confidently that the just, impartial, and dignified sentence of this Court, will completely establish to our country and to the world, that the respondent has fully and honorably justified himself against the charges now exhibited against him; and has discharged his official duties, not only with the talents that are conceded to him, but with an integrity infinitely more dear to him.

FRIDAY, February 22.

Mr. KEY.—Mr. President, I rise to make some observations on the second, third, and fourth articles of the impeachment. I shall not apologize for the manner in which I shall discharge a duty which I have voluntarily undertaken, but merely regret that indisposition has prevented my giving the subject that attention which it merits. It will be at once perceived that these articles relate to the trial of Callender. Before, however, I go into an examination of the second article, it may be proper to notice the situation in which the judge found himself and the state of the public mind at the time. The sedition law was passed in the year 1799. It immediately arrested the public attention, and strongly agitated the public feelings. In the State of Virginia it was peculiarly obnoxious; many of the most respectable characters considered it as unconstitutional, and as a violation of the liberty of the press; most deemed it impolitic; while some viewed it as a salutary restraint on the licentiousness of the press, more calculated to preserve than to destroy it. In this state of the public mind it became the duty of the respondent, in the ordinary assignment of judicial districts, to go into the district

of Virginia, where he was entirely a stranger, to carry the laws into execution. It is scarcely necessary to observe that when laws are considered obnoxious, much of the odium attending them inevitably falls on those who carry them into effect. In May, 1800, Judge Chase went to Richmond to hold a court, and soon after it was in session, the grand jury found a presentment and afterwards a bill against James T. Callender for an infraction of this law, in publishing the book entitled "The Prospect Before Us," which brought into issue its constitutionality. Professional men of talents, carried along by the tide of public opinion, volunteered their services in defence of the accused; and every effort was exhausted to wrest the decision from the respondent. Exceptions were accordingly taken at every stage of the case, and when the jurors were brought to the book, a question arose which forms the foundation of the charge contained in the second article. I will in the first place read the article, then state the law and the fact in the case referred to, and show that if both are against us, still the respondent is not guilty of the charge contained in it.

The second article states "That prompted by a 'similar spirit of persecution and injustice, at a 'circuit court of the United States, held at Rich-'mond, in the month of May, one thousand eight 'hundred, for the district of Virginia, whereat 'the said Samuel Chase presided, and before 'which a certain James Thompson Callender was 'arraigned for a libel on John Adams, then Pres-'ident of the United States, the said Samuel 'Chase, with intent to oppress and procure the 'conviction of the said Callender, did overrule the 'objection of John Basset, one of the jury, who 'wished to be excused from serving on the said 'trial, because he had made up his mind as to the 'publication from which the words, charged to 'be libellous, in the indictment, were extracted; 'and the said Basset was accordingly sworn and 'did serve on the said jury, by whose verdict the 'prisoner was subsequently convicted."

If we extract from this article the epithets it contains nothing will remain, and epithets fortunately do not constitute crimes. The offence and fact charged is, the permitting Mr. Basset to be sworn on the jury with an intention to oppress the traverser, which is not in the least supported by the testimony. The article alleges that Mr. Basset wished to be excused. I appeal to the testimony, whether he did wish or desire to be excused. The observations he made arose entirely from a scruple on his own mind, and not from any objection to serving. Instead of his wishing to be excused, the real fact is that which he said flowed from the peculiar situation in which he stood; and he says that he declared himself willing to serve, provided in law he was competent. The fact, therefore, on which this article rests, is not supported by the testimony, and not being supported, I might here dismiss this branch of the subject without further animadversion. But I cannot consistently with my duty stop here, or omit proceeding to show that the arguments of the honorable Managers are as unfounded in law as their facts are destitute of proof. Let us then examine the law on this case. To sustain the article, the honorable Managers must prove three points.

1. That Mr. Basset objected to serving.

2. That in point of law he ought not to have been admitted on the jury; and

3. That his objections to serving were overruled from a corrupt intention on the part of the respondent to oppress and procure the conviction of the traverser.

It is necessary here to examine the ancient doctrine of challenges. The law of challenges presents itself to our view in a twofold character, the one a challenge to the array which goes to vitiate the whole jury; the other, an objection to a particular juror. In this case there was no serious challenge made to the array. My observations will therefore be directed to the latter species of challenge, that of individual jurors, which is made by excepting to an individual when he is presented to be sworn. In this case no such exception was made to Mr. Basset.

When a juror is challenged there are two modes of trying whether he stands indifferent. One mode is by two triers consisting of the two jurors first sworn. Callender's counsel did not avail themselves of this mode.

The other mode is to swear the individual offered as a juror, and interrogate him as to his indifference.

Here I cannot avoid expressing my surprise at the law laid down by the honorable Managers. No point of law is more certain than that a juror, to be indifferent, need not have refrained from having expressed an opinion either upon the law or the fact involved in the case he is to try; and that he is only rendered incapable by favor or malice.

The great principle which the counsel laid down was that jurors should be impartial; but is that the subject of investigation in this article; what are the facts? That Judge Chase put this question to the juror: "Have you formed and delivered an opinion on the charges contained in the indictment?" The juror answered in the negative and was sworn. Gentlemen say the question should not have been formed *and* delivered, but formed *or* delivered; and that this was the question on the trial of Fries. I mean to show that there is no difference between the two expressions. I mean to show that, if the juror had both formed and delivered an opinion, this would not incapacitate him. The oath of triers will bring this case to a precise point. Trials per Pais 179, Salkeld 144, states the oath of a trier to be, "you shall well and truly try, whether A (the juror challenged) stands indifferent between the parties to this issue."

But the counsel were not willing to determine the competency of a juror by this oath, and therefore gave the decision to the court. They contend, however, that the indictment ought to have been read. But though on the facts the juror may have made up his mind, the offence consisted in the intention, and, therefore, the forming an opinion on the former did not imply a judgment on the latter. Is there a man that does not believe that when one person kills another with malice prepense, he perpetrates murder? Is not the intention the gist of the offence? And yet I can produce authorities to show, that although a juror in a criminal case give a verdict on the fact and the law, this is considered as no objection to his serving as juror in similar cases.

In Rolles' Abridgement, title Trial, folio 657, it is laid down, that, "if a juror has said that he will 'find for one of the parties, it is a good cause of 'challenge for favor, if he so spoke from favor; 'but if he did not speak it out of favor, but from 'his knowledge of the matter in issue, it is not a 'good cause of challenge."

In the same folio, it is also laid down as law, "that it is no cause of challenge to a juror that he 'hath said that he will find his verdict for one of 'the parties, if it is not found by the triers or the 'court, that he spoke from favor and not from the 'truth of the fact."

In folio 655, and in Trials per Pais, it is laid down, "that if a juror hath twenty times declared 'that he will find for one of the parties, it is not 'a principal challenge, because he might have 'spoken it from his knowledge of the matter in 'issue, and not out of favor or malice."

In Keelynge, folio 9, we find a case where a juror had formed a verdict of guilty against a person, and another person was tried on the *same* indictment for the same offence; in which an objection on that account to the juror was overruled.

The objection in this case was overruled—why? Because the juror stood indifferent. Could, then, any answer of Basset to the question propounded to him evince any degree of partiality, or that his mind was not in a state of indifference as to the issue of the trial? Having formed an opinion that a particular writing constituted a libel, did not preclude him from forming an upright opinion on the law and the fact. How had Basset formed an opinion? Simply from seeing certain passages in a newspaper, which purported to be taken from "The Prospect Before Us." Did he not, then, stand impartial so far as respected the ascertaining whether those passages were authentic, whether Callender was the author?—if edited with intent to defame? Further, was there not another decision to be made, whether the matter was false and malicious? The essence of the offence consisted in the intention. On all these points the mind of Basset was perfectly free from partiality.

To the authorities I have cited I will add one derived from our country, in which all the doctrines I have contended for are expressly recognised, in the decision of Chief Justice Ellsworth in the State of Connecticut, to be found in Kirby's Reports, page 427—"As to the other point, an 'opinion formed and declared upon a general prin-'ciple of law does not disqualify a juror to sit on 'a case, where that principle applies. Jurors are 'judges of the law as well as of the fact, as rela-'tive to the issues put to them, and are supposed 'to have opinions of what the law is, though a 'willingness to change them, if reason appears, in 'the course of the trial. They may all be chal-'lenged on one side or the other, if having an 'opinion of the law in the case is ground of chal-'lenge. It is enough in point of indifferency, that 'jurors have no interest of their own affected, and 'no personal bias or prepossession, in favor or 'against either party, and not requisite that they 'should be ignorant of the cause, or unopinionated 'as to the rules and principles on which it is to be 'decided. It has been adjudged (23 Can. K. B.) 'not to be a sufficient cause of challenge, that a 'juror had declared his opinion concerning the 'title of the land in question; so also that the jury 'have found others guilty on the same indict-'ment; or that a juror has declared his opinion 'that the party is guilty, and will be hanged, if 'it appears he made such declaration from his 'knowledge of the cause, and not out of ill-will to 'the party.—2 Hawk. P. C. 418."

I trust the authorities I have adduced fully show, that in point of law there was no valid objection to Mr. Basset as a juror, and that the illegality charged against Judge Chase on this account, falls to the ground.

I will now turn to an authority cited by one of the honorable Managers—3d Bacon, 756. [Mr. Key here read the case.]

We find that all the causes of challenge here recited go to evince partiality, or, in the language of the ancient books, "favor or malice." If the having formed and delivered an opinion on the law were a good cause for challenge, no capital case could come before an unprejudiced jury. The only question in such cases is, whether the facts proved come up to the charge; for such is the interest men take in the commission of great crimes, that every man forms an opinion on them.

Something has been said of the trial of Logwood, for forging the currency of the Bank of the United States. There is probably no man of information that has not heard something of the subject, or made up his opinion on the illegality of counterfeiting. But does it follow that the having formed such an opinion could disqualify a man from serving as a juror in the case? If this were so, it would follow that he who had formed the most correct opinion on the laws of his country, would be the most incompetent, while he who was the most ignorant of them, would be the most competent juror. It appears that if Mr. Basset had even answered in the affirmative to the question put to him, supposing the indictment to have been previously published, it would not have destroyed the competency of the juror, because he, notwithstanding, stood perfectly impartial as to the facts to be proved and the law arisng on them.

Believing that no subtility or ingenuity can shake the principle I have laid down, or establish a contrary principle, I feel full confidence in having shown the legality of the opinion laid down by the court; and I do believe that a more correct opinion was never delivered.

Suppose we are mistaken in the fact, which we say is proved, that Mr. Basset did not desire to be excused; admit that he did pray to be excused;

still, so far as he has himself, on oath, explained the situation of his mind, there was no cause for challenge.

Admit, also, that we are mistaken in the law we have laid down, does it follow as a necessary consequence that the directing Basset to be sworn on the jury, was done with an intent to oppress the traverser? We call for the facts that impeach the motives of Judge Chase. In the opening of this case we were told that the respondent was highly gifted with rich attainments of mind. It was correctly said; and it might have been added that his integrity was equal to his talents. But the observation was made to raise his head at the expense of his heart. I will examine this argument.

The truth is that no judge is liable for an error of judgment. I apprehend this is conceded by the article itself, which states a criminal intent. Now for the evidence. What criminal intention do the honorable managers draw from it? It is said that the respondent is highly gifted with intellectual powers, and must have known in this instance the law. *Timeo Danaos et dona ferentes.* I dislike the compliment; the best gifted mortals are frail, and a single erroneous decision may be made by any man.

Let us, on this point, refer to decisions in modern times. They will show that an error in judgment has never of itself been considered an evidence of corruption in a judge.

[Mr. Key here cited a case from Dunford and East, folio 653—King *vs.* Johnson, containing the opinion of Justice Buller, who declares "that you can never infer corruption from the judgment itself but from the opinion given."]

Here then is the decided opinion of a most able judge that although the act and judgment of the court be illegal, there is no ground to infer corruption. So in this case, admit, for argument's sake, that we are mistaken in point of fact, and that the law we have laid down is incorrect; still, however gross the error of the judge, it cannot in itself contain any foundation for presuming fraud. From what fact is fraud inferred? From the general mass of the transactions attending the trial of Callender? The evidence cannot be taken accumulatively. Each article must be taken by itself, and one can derive no force from the rest. Were this not the case, a hasty word, uttered in an unguarded moment, might be construed into a crime, and a number of small offences, individually of the most trifling nature, be made to constitute a great one.

I shall, in a subsequent view, take into consideration the whole conduct of Judge Chase, and show that, so far from operating to his injury, it redounds to his credit. Upon this second article, I trust I may be permitted to say that the evidence does not bear out the facts in the manner stated; that even if the alleged facts are proven, the law is clear that Mr. Basset was still a competent juror. I have also endeavored to show that no inference of corruption can be drawn from an error in law; but that, on the contrary, particularly if it be committed by a man of acknowledged talents and unimpeached integrity, it is to be considered at best but as a mistake.

It would be well to analyze this argument of the honorable managers, by putting it in the form of a syllogism. The major proposition represents Judge Chase as possessed of great legal attainments and as highly gifted by nature; this I admit—the minor is, that with these high gifts and attainments he has erred in a clear point of law; this I deny. But what is the conclusion deducible from the premises? That his decision was corrupt? So say the managers. I deny it. In the language of the judge it is a palpable *non sequitur*.

I will now proceed to the third article, which, when correctly understood, will be found as destitute of impeachable matter as either of the other articles. It is as follows: "That, with intent 'to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material 'witness on behalf of the aforesaid Callender, was 'not permitted by the said Samuel Chase to be 'given in, on pretence that the said witness could 'not prove the truth of the whole of one of the 'charges contained in the indictment although 'the said charge embraced more than one fact."

In opening the case one of the honorable managers inquired what human subtility or ingenuity could devise to extenuate this act of the respondent. Our reply is that it requires no subtility or ingenuity; that it was correct in point of law, and that the case is so clear, that he who runs may read. The court must permit me to observe that the article presents an abstract case, not growing out of, or connected with the evidence. This court, I apprehend, is not sitting here to decide this abstract point, whether in any case it is admissible to prove one fact contained in a particular charge by one witness, and one by another; but to determine whether in this case, where one witness was offered to prove part of one charge, and no other witness offered to the same charge, it was proper to receive testimony offered. I contend that the decision was correct on the case before the court. The indictment against Callender contained two counts, each of which embraced twenty distinct set of words. Colonel Taylor was called to prove particular facts contained in one of the charges. It is not necessary here to discuss the propriety of ordering the questions to be reduced to writing, as that is the subject of the next article. Colonel Taylor, without meaning any improper use of words, was a witness on speculation; for no man has a higher respect for his character; but I bottom the remark on this circumstance, that several days previous to Colonel Taylor's appearance, an affidavit had been drawn, on the part of Callender, for a continuance, in which the names of a number of material witnesses were stated; among which was an honorable member of this court (Mr. Giles) and General Mason, but in which the name of Colonel Taylor does not appear. It appears that subpœnas had issued for three witnesses; two of which did not attend, for whom no attachment was prayed. Colonel Taylor alone appeared; and the counsel

were certainly ignorant at the time he was sworn, what he could prove. Mr. Hay has declared that neither Callender or his counsel knew what Colonel Taylor could prove. Was it not correct in the court, under these circumstances, to ask what he could prove? Colonel Taylor was produced, under an expectation, it is said, that he could prove the twelfth set of words contained in the second count of the indictment. Let us, to elucidate the conduct of the court, refer to the testimony of Mr. Robertson, a man distinguished for his stenographical talent, which remains on paper, which was drawn up at the time, and does not therefore depend on the frailty of his memory.

Mr. Robertson says, "The attorney for the United States having concluded, the counsel for the traverser introduced Colonel Taylor as a witness, and he was sworn; but at the moment the oath was administered, the judge called on them, and desired to know what they intended to prove by the witness. They answered, that they intended, to examine Colonel Taylor, to prove that Mr. Adams had avowed principles in his presence which justified Mr. Callender in saying that the President was an aristocrat—that he had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Britain." This was then the object and view with which Colonel Taylor was called on. What is the charge in the articles of impeachment? That the testimony of Colonel Taylor was rejected "on pretence that the said witness could not prove the truth of the whole of one of the charges, contained in the indictment, although the said charge embraced more than one fact." The charge in the indictment is that the President "was a professed aristocrat; that he proved faithful and serviceable to the British interest;" and Colonel Taylor was called to prove that Mr. Adams had voted against the sequestration law, and the resolutions concerning the suspension of commercial intercourse with Great Brttain. Was it competent to Colonel Taylor to give evidence on this point? The best evidence the nature of the case will admit must be adduced. Colonel Taylor then was clearly an incompetent witness on this point; as there was better evidence, the journals of this honorable body, within the reach of the traverser. It only then remained for Colonel Taylor to prove that the President had avowed principles which showed him to be an aristocrat; which, if proved, would have been altogether immaterial. To prove no other facts was he called upon. Are then counsel to be indulged in consuming the time of courts in the examination of witnesses, who have nothing relevant to offer? Let us familiarize this to a common case. Suppose a man is indicted for stealing a horse. One witness deposes that he saw him go into the stable where the horse was; another saw a man coming from the stable leading a horse; and another saw, an hour after, the man, with the horse, five miles off, selling him as his own property. This testimony will be admitted But state the case the other way; that a witness was brought forward solely to prove the first fact; is there a court on earth that would say such testimony should be admitted? And this was the case here. Colonel Taylor was called upon to prove what is altogether unimportant, a part only of one charge, or that which, if true, could be proved by better evidence. Are not, also, the court the exclusive judges of the competency of the testimony that shall go to the jury; and does not every day's experience show us that evidence that is offered, but which does not go to the whole of the case, is refused? This is done by all courts at all times. But say gentlemen, was it possible for the court to know whether the questions offered to be put might not have led to other inquiries, and produced information of consequence? True, but on this ground no testimony ever could be rejected, because, by possibility, it may lead to what is important.

But, admitting the judge to have been wrong, I again ask, does an error of judgment in itself imply corruption? Most surely not. In the nature of things can it be so? To give credit to my honorable client but for a moiety of the talent allowed him, he must have seen that, even had he admitted the testimony of Colonel Taylor, and admitting that it had justified the whole of the twelfth charge, there remained nineteen other charges, on which Callender must have been convicted. And whence this conduct towards Colonel Taylor? Did not the judge know that Colonel Taylor stood high in the esteem of a large portion of the community; and that umbrage offered to him would naturally excite the indignation of his friends? The decision given could not then flow from a corrupt motive. No. It was given in the sternness of his integrity. Had his motives been impure, had he viewed his conduct as wrong, instead of acting in this manly way, he would have put a gloss on his actions, he would have courted the reputation of forbearance by admitting the testimony of Colonel Taylor, and would still have satiated his vengeful feelings, if he had them, with a conviction on the remaining charges.

Let us examine another fact in this case. Judge Chase, as appears by the statement of Mr. Robertson, requested the attorney of the United States to permit the questions to be put to the witness; but Mr. Nelson "declared that he did not feel himself at liberty to consent to such a departure from legal principles." If then, in this act, there was error, that did not depend on him. The prosecutor for the United States objected to the indulgence which he proposed. I do for myself believe, that where no evidence is offered to prove the whole of one entire fact, it is within the sound discretion of the court to refuse the testimony of part. But, notwithstanding this, the judge was willing to relax the severity of the law.

Is there nothing else that goes to show that there was no intention on the part of the judge to oppress the traverser? As I have already observed, if he had possessed but half the talent ascribed to him, he would, with such intention, have gilded the bill. But he did not do so. Further, the subsequent act of the judge in imposing so light a fine,

and so short a period of imprisonment, for so atrocious an offence, when he had power to impose a fine of two thousand dollars, and an imprisonment for two years, is indisputable evidence of his freedom from all such intention. No; the conviction flowed of necessity from the evidence, which was too powerful to be resisted. But did not the judge, in the integrity of his heart, declare, on rejecting the testimony of Col. Taylor, "Gentlemen, I may be mistaken, but if I am not 'right, it is an error in judgment, and you can 'state the proceedings on record, so as to show my 'error, and I shall be the first man to grant you 'the benefit of a new trial, by granting you a writ 'of error, in the Supreme Court."

It is said, however, that this was a mere pretext; that a bill of exceptions would not lie in a criminal case; and what could then be done? The simplest thing on earth—a point of law can be saved without an exception. The counsel were not so ignorant as not to have respected this declaration, and to have known that they might, under it, have saved the point, and taken the opinion of the superior court. The least informed counsel can show a multitude of cases of this kind. In the progress of my argument I shall show why this offer was not accepted.

It does then appear to me, that, considering the third article as connected with the facts substantiated, the judge was perfectly correct in point of law in the decision he made. All must agree in the opinion that if the testimony of Col. Taylor had proved Mr. Adams an aristocrat, it could not have justified the libellous matter with which the traverser was charged. If this is the fact, and no other evidence was offered that could be legally received, the rejection must have been perfectly correct. Supposing, however, that we are wrong on this point, there is still abundant evidence to show that Judge Chase was not influenced by any intention to oppress the accused, or to procure his conviction, because that unavoidably flowed from the nature of the charges and the state of the defence, whether testimony of Colonel Taylor were admitted or not.

In the course of my whole observation through life, I never heard it doubted, till yesterday, that in a case of doubtful aspect, a man is to be considered innocent until he is proved to be guilty. But we are now told that whenever an infraction of a law is committed by a judge, he is to be presumed guilty, unless he establishes his innocence. But this is not the case; the benignity of our law is very different. If it were so, who, that possesses the ordinary frailties of humanity, would undertake in the judicial station to interpose between man and man? The law clearly is that a judge shall be presumed innocent until he is proved guilty, even when he decide against law; and that his errors shall be ascribed to the head, and not to the heart. This notice is due to the observation of an honorable Manager, which struck me with great surprise, that Mr. Basset's request to be excused from serving as juror arose from his sentiments being known by the judge. This, however, does not appear from the evidence. It appears, on the contrary, that he was a stranger to Judge Chase, and that he did not wish to be excused. But in this prosecution we are not only to hear much new and extraordinary doctrine; but we are likewise to hear statements of facts for which there is no foundation.

I will now proceed to the fourth article, which contains five distinct specifications of facts as follows:

"That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

"1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission, or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness:"

"2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material winesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:"

"3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of the judge did, at the same time, manifestly tend:"

"4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which, at length, induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:"

"5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice."

The word *injustice* in the preliminary part of the article must refer to Callender; the partiality charged, must have been to the United States, I presume, and against Callender; the term *intemperance* is of such doubtful import, that I scarcely knew what to understand by it. It cannot be used as opposed to sobriety, as no one will charge the judge with a violation of this virtue. It may refer to his conduct to counsel, and perhaps to Callender. This conduct is said to have been evinced, in the first place, "In compelling the 'prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission, or rejection, all questions which the said 'counsel meant to propound, to the above named 'John Taylor, the witness."

If this was incorrect, I cannot perceive its injustice to Callender, nor its partiality or intemperance. But did the conduct of the court in this instance correspond with the law and the practice? I apprehend that it did. I understand it to be a clear and admitted principle of law, that the court is the only competent tribunal to determine the competency, the admissibility, and the relevancy

of evidence; when admitted, its credibility is the exclusive province of the jury. I have before stated the reasons which rendered it necessary in this case to know what Colonel Taylor could prove. To understand the object for which he was produced with greater certainty and precission, the judge ordered the questions proposed to be put to be previously reduced to writing. I am not sufficiently acquainted with the practice in the courts of Virginia to say this was not novel, but I may surely venture to affirm that there was nothing criminal in it. I know well that in different States there are different forms of practice. I can only say, that Judge Chase, going from Maryland, where the practice does prevail, would naturally carry to Virginia the knowledge of the practice of the State from which he went. It is said that it is not the practice in Virginia, and one gentleman says he never heard of an instance of the kind. But I believe there are exceptions. I recollect, in the *mandamus* case, the counsel were called upon to reduce their questions to writing, and that the Attorney General had a whole day allowed to him to make up his mind on the propriety of answering the questions put to him. And yet in that case there was no disposition manifested to oppress; the course was pursued to determine the competency and relevancy of evidence. Need I go further than the practice of this honorable Court in this very case, in which there have been numerous instances of questions directed by the court to be reduced to writing? Have not you, Mr. President, from a knowledge derived from your extensive practice of the bar, or from an instantaneous exercise of right reason, in several instances, directed questions to be reduced to writing? And has it not been seen that though counsel withdrew their objection, every member of the court possessed and exercised the right of requiring it to be done? No testimony which is not legal should be admitted to go to the jury; and what is legal testimony and the manner of determining it must be determined by the court.

We have thus made it to appear that it is the practice to direct questions to be committed to writing in the courts of Maryland, in the Supreme Court of the United States, and in this court. Does this not abundantly justify the conduct of the respondent? But even admitting that conduct to have been improper, was it corrupt or criminal? What moral obligation did it violate? What statutory provision did it infringe? And is a man impeachable for that which violates no moral principle or legal provision? If so, this is the most dangerous doctrine ever advanced.

The *second* specification is in the following words:

"In refusing to postpone the trial, although an 'affidavit was regularly filed, stating the absence 'of material witnesses on behalf of the accused; 'and although it was manifest that, with the ut-'most diligence, the attendance of such witnesses 'could not have been procured at that term."

This charge is grounded on the fact of a refusal to postpone the trial on an affidavit. That the court acted correctly in this instance will appear from this consideration. Nothing is more clear than that, under the common law, all applications for a continuance, on affidavit, are founded on the discretion of the court. Is it not wonderfully singular that there should have been an application founded on an affidavit, if the law of Virginia, as stated in the 6th article, applied to the case? One thing is clear: either that the Attorney General and Mr. Hay lost all recollection of the existence of this law of Virginia respecting continuances, or that they considered it inapplicable; for they would not otherwise have founded the application on an affidavit. They would have produced the law and have demanded a continuance. Did they do so? No. If, then, the law officer of the State and Mr. Hay both forgot that it existed, is it surprising that it should be unknown to Mr. Chase? If those gentlemen did recollect the existence of the law, they must surely have been of opinion that it did not apply to the case of Callender, or they would have saved themselves the trouble of filing an affidavit. It will however be shown that it did not apply, and hence their application founded on affidavit.

I have stated that all applications for a continuance on affidavit are addressed to the discretion of the court. It is a great object of criminal justice that the punishment of the guilty should be certain, lenient, and speedy. In the State of Maryland, where Judge Chase had so long presided or practised, it is the uniform practice to try offences the first term they are presented. It is also the practice in England, unless particular reasons are assigned for delay. I was about to prove this; but as it is conceded, I will not trouble the court with authorities. Judge Chase, then, having no knowledge of the particular law of Virginia had to recur to the affidavit. Was that a cause for the continuance of the trial? When a man is charged with a criminal offence, matter which shall justify a continuance must go to the whole of the charges, and not merely to a part of them. If he cannot defend some of the charges, he is to plead guilty to them, and pray a continuance of such of the charges as he can justify by evidence. This is an universal rule of justice and of practice. To familiarize it by a common incident: A man is indicted for stealing a horse, a saddle, and a bridle. He is arraigned, and pleads not guilty, and then desires a continuance, on an affidavit that an absent witness can prove that the bridle is his own. Would it not revolt common sense to continue the case, when his defence rested on such grounds? No court of criminal jurisprudence would prostitute justice by conniving at such an indulgence.

How was it in the case of Callender? Were there not, in each count of the indictment, twenty distinct sets of libellous words? In order, then, to warrant a continuance, it was necessary to show the absence of material witnesses in relation to the whole, or to plead guilty to all the charges on which such testimony did not exist.

But it is said the judge had no right to be in-

formed what it was expected could be proved on behalf of the traverser. This idea is novel to my practice. I will not say it does not prevail elsewhere; but certain I am that it does not prevail in the courts which I have attended. It is again alleged that a party is not obliged to disclose his testimony. But the law provides that he shall, when he applies for a favor. So different is the practice in the State of Maryland from that contended for on this occasion, that a party is obliged to state what he expects to prove, and if the opposite party admits it, they must go to trial on the remaining part of the charge. According to the practice of Maryland, this affidavit is materially defective, inasmuch as not guilty is pleaded to the whole of the charges contained in the indictment, and it is not declared that testimony is wanting, which there is a reasonable expectation of getting, to disprove or justify the whole of them. It is also materially defective in another point. It is not stated that there was a probability of obtaining the testimony within a reasonable time. I have never known an affidavit considered good, which did not state this circumstance.

We allow that every man is entitled to compulsory process to obtain the attendance of his witnesses: but this right does not in the least lessen the discretion of the court with regard to the time on which the trial shall take place; this they will fix according to circumstances; and when the trial does come on, should the witnesses summoned by a party not attend, he is entitled to attachments against them. This affidavit, then, was defective in two respects: it did not state the absence of witnesses who could justify the whole of the charges; neither did it state an expectation that they could be had within a reasonable time. If a man undertakes to libel the Government under which he lives, to hold it up to the resentment and scorn of the people, it is but reasonable that he should be prepared at the time of his publication with a justification of his charges. In this instance, it appears that a large part of the contemplated justification rested on records, and that even these had not been procured.

The honorable Managers have observed that, even in England, the courts will grant time to enable the party accused to issue process for his witnesses. Let me, however, surmise that, although subpœnas had been served on Mr. Giles and Mr. Mason, no process of attachment issued on their non-appearance. The judge intimated that it might issue, but the counsel waived accepting it. From what cause? Because they well knew that the testimony of these witnesses would be of no avail.

An authority has been cited from the English books (*Foster's Reports*) to show that at a special court, time was granted for obtaining witnesses alleged to be material, although, as it has been remarked, the court was confined to one term; but I cannot perceive the force of this observation, as it had the power of adjourning from time to time, until the business before it was finished. The court met, saw the extent of the business to be attended to, and allowed time for the obtaining of witnesses.

[Mr. Key here cited the case from Foster's Crown Law.]

In this case, the prisoner was tried at a great distance from his witnesses, and the place where the crime had been committed. Some of his witnesses resided in England and others in Scotland. He was allowed eleven days for obtaining his witnesses in England and twenty-one days for obtaining those in Scotland.

Compare this case with that of Callender. In the latter case, a motion was made for a continuance. The judge declared he could not postpone the trial to the next term, but offered a postponement for a month or six weeks; nay, he offered to go to Delaware, hold a court there, and return to Richmond. With such a disposition manifested by the court, is there any reason to doubt that, if asked, three months, or any reasonable time, would have been allowed. And why did they not ask for a longer time, if they deemed it important? The answer is obvious—Judge Chase was still to preside.

Doubts have been started of the power of the courts of the United States to adjourn except from day to day—a power which I never before have heard questioned, and which is essentially necessary to the impartial administration of justice. We have proved that this is the practice of the courts in Maryland and Pennsylvania, and that it has been done in Richmond; and I believe we may safely add that it is, and must be, the practice throughout the United States, when circumstances demand it.

I have stated it as an acknowledged principle of law, that he who edits libellous matter ought to be prepared with his vouchers to support it. What is there valuable among men, what is there estimable in private or public life, that has not in this country been basely calumniated by the licentiousness of the press? All characters in all administrations have been most wantonly assailed by its scurrility. He then who takes this bold and daring ground, ought to have his vouchers at hand, or to have them within accessible reach. In the situation in which a libeller wantonly stands, he is entitled to nothing but law, sheer law.

On the third specification, which charges the respondent with "the use of unusual, rude, and 'contemptuous expressions towards the prisoner's 'counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and 'to produce that insubordination to law, to which 'the conduct of the judge did, at the same time, 'manifestly tend;" I have but a few observations to make. I should indeed have spared many of the remarks I have made, were it not for an ignorance of the peculiar ground on which the honorable Managers mean to rely in their reply, and were it not for the fear that an omission to notice any of the charges preferred, might be considered as an abandonment of our defence as far as related to them.

I have no where discovered in the evidence anything that supports in point of fact the charge against Judge Chase, of falsely insinuating that the prisoner's counsel wished to excite the public fears and indignation to produce insubordination to law. The judge did say that the counsel used a popular argument, calculated to mislead and deceive the populace; and this is the extent and head of his offending; but there is a wide difference between this and the charge laid to his door. He told the counsel, and told them truly, that they were availing themselves of a popular argument, calculated to mislead and deceive the people. Attend, I pray you, to the testimony of Mr. Hay. Did not the counsel for the prisoner say they had no hope of exculpating him on the facts? Did they not say they did not argue for Callender? That it was the cause, and not the man, they defended? That they did not expect to convince Judge Chase, or any other federal judge of the unconstitutionality of the sedition act? Were they not then laboring with their whole talents to catch the popular ear? Did they not expressly declare that they had little hopes of the jury, and that their object was to make an impression on the public mind? And when the judge declared that the constitutionality of the act could not be discussed before the jury, did they not, failing in their object, abandon the defence? The ground which they meant to have taken was withdrawn, and they withdrew with it.

As to the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel, no particular facts appear to be relied on. The term *captious* may be unusual; the phrase *young gentlemen*, which in the opening the honorable Manager metamorphosed into *boys*, but which last word does not by the testimony appear to have been used, may have been obnoxious to the ears of those to whom it was applied. There may not have been manifested in this language the most refined decorum; but let us recollect that our honorable client is not now on his trial for a violation of the decorums of society. Possessed of great ador of mind and quickness of feeling, he conceives with rapidity, and expresses with energy his ideas. This may be a weakness; but it is a weakness of nature. Had he a colder heart, and weaker head, he might not be exposed to these little indiscretions. But where is the *vade mecum* from which a judge is to derive precedents for his behaviour? Courts are instituted, not to polish and refine, but to administer justice between man and man. One judge may possess a more pleasing urbanity of manners than another; but are we to infer that because a man is warm in the expression of his sentiments, he is, therefore, angry? It will not be contended that when the counsel for the traverser spoke of the necessity of the indictment being *verbatim et literatim*, in the witty reply of the judge that they might as well insist that it should be *punctuatim*, there was any violation of decorum manifested. The reply grew out of the occasion, and never was a remark better applied.

I know of no other unusual language, except the expression of *non sequitur;* and surely there was nothing improper in that. We have been told that it is the usual habit of Judge Chase to interrupt counsel when they attempt to lay down as law that which is not law. In this case, he certainly did so; but it does not appear that he departed from his ordinary course; and if he had, where is the rule which, on such occasions, is to govern a judge? Such conduct, as I have before observed on another point, violates no moral obligation, infringes no statutory provision. The judge may not have displayed the urbanity, the suavity, and the patience, which so happily characterize some high characters; but where or when has the absence of these minor qualities been considered as criminal? Some of the witnesses, and among them Colonel Taylor, have described the conduct of the judge as imperious, sarcastic and witty; but no witness has pronounced it tyrannical or oppressive.

With regard to the 4th specification, which relates to the interruption of counsel, I shall say but little. A judge has a right at all times to interrupt counsel whenever they act improperly. It is the inherent right of courts. When that is laid down as law which is not law, it is not only their right, but it is their duty, to stop them. Such interruptions may be considered vexatious by the counsel that are interrupted; but of such matters the court only can be the judge. One witness, examined on the frequency of the interruptions of counsel on the trial of Callender, has said that more interruptions occurred in a case before Judge Iredell, whose eulogium has been pronounced by an honorable Manager; and another witness has informed us that it is the habit of Judge Chase frequently to interrupt counsel in civil as well as criminal cases; that the habit arises from the vigor of his mind, and the ardor of his feelings; that this is somewhat embarrassing to counsel, but that a little suavity on their part soon restores the judge to good humor. On this point I have no further observations to make. I will leave it to the good sense of this honorable body to determine how far the conduct of the respondent was, on this occasion, indecorous, and how far, on account of this conduct, he is liable to impeachment.

I have omitted to notice one of the interruptions, relied on by the Managers. When the counsel for the traverser insisted that the jury had a right to assess the fine, according to one of the witnesses, the judge replied that it was a wild notion; according to Mr. Robertson, he said it was a mistaken idea. And that it was, every professional man will acknowledge. The point had been previously decided at Richmond by Judge Paterson and Judge Iredell; it had been decided that the law of Virginia did not apply, and that the assessment of the fine was the province of the court. By the law of Virginia, a fine is assessed *ad libitum;* by the act of the United States it is provided that it shall not exceed a certain sum. How then was it possible to act under both laws?

As to the fifth specification, which is in these words: "In an indecent solicitude, manifested by 'the said Samuel Chase for the conviction of the

'accused, unbecoming even a public prosecutor, 'but highly disgraceful to the character of a judge, 'as it was subversive of justice." I have no precise idea of the meaning of the term *indecent solicitude*—solicitude means *mental* anxiety. If we are to understand by solicitude that the judge felt anxiety for the furtherance of justice, that is simply an operation of the mind, and to determine whether it is praiseworthy or reprehensible, some overt act must be shown. For is it possible that, in any interesting case, a judge can sit on the bench without feeling some interest in the issue? This is more than falls to the lot of mortal. No, he must have feelings; and all that can be required is, that he restrain them from breaking out into acts subversive of justice. I will endeavor, on this point, to condense the testimony. It is said that the solicitude of the respondent is evinced by his indecent behaviour to the counsel, and by his conduct previous to the trial. A jocular conversation is resorted to; and expressions made in the most unguarded moments are drawn forth in judgment against him. After he had delivered a charge at Annapolis, Mr. Mason came up to him, and asked him what kind of charge he had delivered, whether it was to be considered as legal, religious, moral or political. To which the judge replied, that it was a little of all. Some conversation ensued on the licentiousness of the press, and he observed that when he went to Richmond, if a respectable jury could be found, he would have Callender punished. All this is worked up, as it were by magic, to prove a deliberate purpose on his part to institute a prosecution. That a man of the intelligence of Judge Chase, had he conceived such a project, should have thus jocosely, as is proved, and in public have divulged it, is beyond all belief. Let not a casual conversation of this light and sportive kind be tortured into evidence of a deliberate design. No man, the least acquainted with the general character of Judge Chase, will entertain the idea for a minute.

Another circumstance complained of, is, that Judge Chase was provided with a *scored* copy of "The Prospect Before Us;" and this is adduced to prove his purpose to oppress Callender. But we have given it in testimony that this copy was scored by Mr. Martin, who handed it to the judge, when he was about going to Richmond, to amuse him on the road, and to make such other use of it as he pleased. What was there improper or indecent in this? Further: the respondent is next hunted through a line of stages on his passage from Dumfries to Richmond; and Mr. Triplet is brought forward to prove that he expressed a wish that the damned rascal had been hanged. Had there been a settled purpose to convict or oppress Callender, would it not have been manifested by concealment and prudence, instead of being divulged by such an intemperate impulse of feeling?

We next find the respondent at Richmond. And here a gentleman states that, having moved the court for an injunction, he went to the chambers of Judge Chase on the subject, on the morning subsequent to the motion being made, and before the judge had gone to court; that while he was there, Mr. David M Randolph, the marshal, came in, and showed the judge the panel of jurors for the trial of Callender; that the judge asked him whether there were on it any of the creatures called democrats; and added, if there are, strike them off. Here must be some mistake. The witness must have heard some other person say so. Sure I am that the testimony will show that the statement of Mr. Heath cannot be received as correct I impute no criminal intention to the witness; this is not my habit; but, for ascertaining the weight which it ought to have, I will collect and compare the several parts of the testimony on this point.

It appears that Mr. Heath was at the judge's chambers but once. Mr. Marshall, the clerk of the court, called on Judge Chase the same morning that Mr. Heath was there—he cannot recollect whether Mr. Randolph went with him, according to his usual practice, but he is certain, from a conversation he states, that they walked together to court; he met Mr. Heath either in the act of coming out of the judge's room, or exterior to the door; and he heard no such conversation as he relates. What says Mr. Randolph? That no such conversation ever did take place. Here, then, the testimony is directly opposed. But it is said that our testimony is negative, and is therefore outweighed by the positive testimony of Mr. Heath; this, however, is not the fact. Much of our testimony is positive. Mr. Randolph declares that he has never shown the panel of a jury to a judge, except in the case of a grand jury offered to the court to select a foreman; and he is positive that the panel in the case of Callender was not made out until the morning of the third of July, in court, when his deputies came forward with the names of the jurors they had summoned on small slips of paper; and in corroboration of this evidence, it appears, on the testimony of Mr. Basset, who was sworn on the jury, that he was not summoned until the third of July; and that the marshal sent out his duputies that very morning to summon jurors. We oppose, then, to the simple declaration of Mr. Heath, unaccredited by other witnesses, the clear and strong evidence of Mr. Randolph, corroborated by that of Mr. Marshall and Mr. Basset.

It does, then, appear to me that none of the alleged facts are so supported as to show an indecent solicitude on the part of the respondent.

It may perhaps be proper to take a general view of the conduct of Judge Chase, after his arrival at Richmond.

The court met on the 22d of May; on the 24th in the morning a presentment was found against Callender; and an indictment late in the day. When Callender was brought into court an application was made for a continuance, on a general affidavit, drawn by Callender. When this was about to be presented, if the judge had been anxious for the conviction of the prisoner would he not have suffered it to be filed, and then said no supplementary affidavit, such is the strict principle of law, can afterwards be received. Instead of taking this course, the judge told the counsel that,

if the affidavit were filed it would not be regular to withdraw it; that they had better draw up a special affidavit, and take till to-morrow to consider of it. This was done. A new affidavit was offered. It did not contain grounds for a continuance of the cause to the next term; but the court offered a delay of two, four, and even six weeks; all of which were rejected.

The cause came on for trial on the second of June. Two witnesses summoned had not arrived, and a delay of two hours was prayed for. The court postponed the trial until the next day. The testimony of Colonel Taylor was rejected on account of its illegality, and its not applying to the whole of any one charge; still the judge asked the prosecutor to admit it; and afterwards tells the counsel for the traverser, such is my opinion; but I am a fallible man, I may be mistaken; and if you desire it, you may state your exceptions, and a superior tribunal shall decide—but the offer was not accepted. Callender, in truth, was out of the question; it was not the man, but the cause in defence of which the counsel came forward; their great object was, through an address to the jury, to impress the public mind with the unconstitutionality of the sedition law. So often as they attempted to do this, they were interrupted by the court, and all their sensibility and indignation grew out of this refusal to allow them to argue the constitutionality of the law before the jury to the by-standers.

Carry, Mr. President and gentlemen of the Senate, in your minds these facts, and you will find that the conduct of the respondent was during the whole course of this trial, not only free from criminality, but, in all respects, justified by law and propriety.

Mr. Lee.—May it please this honorable Court: We are now arrived, Mr. President, in the course of the defence, to the fifth article of impeachment. I have, sir, been led to believe, that the present prosecution is brought before this honorable Court as a court of criminal jurisdiction, and that this high Court is bound by the same rules of evidence, the same legal ideas of crime, and the same principles of decision which are observed in the ordinary tribunals of criminal jurisdiction. The articles themselves seem to have been drawn in conformity to this opinion, for they all, except the fifth, charge, in express terms, some criminal intention upon the respondent. This doctrine relative to impeachment is laid down in 4 Black. 259, and in 2 Woodeson, 611. "As to the trial itself, 'it must of course vary in external ceremony, but 'differs not in essentials from criminal prosecu-'tions before inferior courts. The same rules of 'evidence, the same legal notions of crimes and 'punishments prevail. For impeachments are not 'framed to alter the law, but to carry it into more 'effectual execution, where it might be obstructed 'by the influence of too powerful delinquents, or 'not easily discerned in the ordinary course of 'jurisdiction, by reason of the peculiar quality of 'the alleged crimes. The judgment, therefore, is 'to be such as is warranted by legal principles 'and precedents." The Constitution of the United States appears to consider the subject in the same light. By the third section of the third article, "the trial of all crimes, except in cases of impeachment, shall be by jury;" and by the fourth section of the second article, the nature and extent of the punishment in cases of impeachment is defined. Hence it may be inferred that a person is only impeachable for some criminal offence. With this view, I have examined and re-examined the fifth article of impeachment, to know against what the defence should be made. Looking at it with a legal eye, I find no offence charged to have been committed, and although it may seem strange, it is not the less true, this circumstance has produced the greatest difficulty and embarrassment in what manner the defence should be made.

That this honorable Court may perceive that I have not misapprehended the article, I will pray leave to read it: "And whereas, it is provided by 'the act of Congress, passed on the twenty-fourth 'day of September, one thousand seven hundred 'and eighty-nine, entitled 'An act to establish 'the judicial courts of the United States,' that, 'for any crime or offence against the United States, 'the offender may be arrested, imprisoned, or 'bailed, agreeably to the usual mode of process 'in the State where such offender may be found; 'and whereas it is proved by the laws of Virginia, 'that, upon presentment by any grand jury of an 'offence not capital, the court shall order the 'clerk to issue a summons against the person or 'persons offending, to appear and answer such 'presentment at the next court; yet the said 'Samuel Chase did, at the court aforesaid, award 'a capias against the body of the said James 'Thompson Callender, indicted for an offence not 'capital, whereupon the said Callender was ar-'rested and committed to close custody, contrary 'to law, in that case made and provided."

This article charges no evil intention, no offence, no crime, yet the respondent is required to make a defence, and is to address defence to this court as one of criminal jurisdiction.

I do not mean to produce authorities to this high and learned tribunal, to show that a judge cannot be impeached for a mere error of judgment in any instance of his judicial conduct. I wish for none better than those produced by one of the honorable managers of the prosecution (Mr. Clark) to prove this position, 2 Bacon, 97, and Jacobs' Law Dictionary, title *Judges*. The elegant advocate that has just sat down (Mr. Key) has fully established the same doctrine. If then this be admitted, where or what is the crime charged in the fifth article. The whole charge is, that by authority of the judge a process called a capias was awarded against Callender, when that process ought to have been a summons. It is not alleged that the capias was awarded with any corrupt or evil intention of any kind. If then the article contains no charge of a crime, there must be an acquittal. Upon this point I hope I may be permitted to remind the court of an observation of another of the honorable Managers, who opened the comments upon the evidence for the prosecu-

tion (Mr. Early.) He stated, and he stated truly as a general rule of jurisprudence, that if there be no evil intention set forth in the charge and proved, the party accused must be acquitted. With these remarks, if this was an ordinary case before an ordinary tribunal, I might dismiss this part of the accusation, and it may seem scarcely proper to occupy the precious time of this honorable Court, so near the close of its session, in defending the respondent any further against such a charge, but I feel too much respect for the House of Representatives who have preferred this article, and the honorable Managers who support it, not to give it a fuller investigation.

The article may perhaps be understood to produce an important inquiry: the inquiry how far the power of impeachment possessed by the House of Representatives shall extend. Although the Constitution declares that "the House of Representatives shall have the sole power of impeachment," yet I trust there is some limit to this power, and that a judge cannot be impeached for a mere legal error in his judicial conduct, when no crime is imputed to him. An impeachment is an accusation of a most serious nature, and the people of the United States have not vested the power of impeachment exclusively in the House of Representatives in Congress, but in their State governments they have established tribunals who are to possess the power of impeachment. I hold in my hand a little book which contains the most valuable matter; it contains the constitutions of the several States. By referring to them we find, in almost every instance, that a power of impeachment may be exercised under the State authority. When, therefore, the doctrine of impeachment is about to be fixed in regard to the limits of the power of impeachment by a judgment of this high and honorable Court, a judgment is about to be given that will be a precedent for the tribunals of the different States. An example is about to be set to the tribunals of the several States, that will influence and direct their decision in the construction of their constitutions relative to the power of impeachment. The words used in some of these instruments are the same, and in others nearly the same with the words in the Constitution of the United States upon this subject.

Is there not some limit to the power of impeachment, a power which we find can be exercised by so many authorities in this country? If there is a limit, what better limit can be set, than that of high crime and misdemeanor in office, as appears by the language of the Constitution to have been intended.

Let us now examine whether Judge Chase, in issuing a capias against Callender after he had been presented for an offence not capital, has been guilty of a high crime or high misdemeanor in office. Surely the Managers should have pointed to the proofs, if any there were, of a corrupt and evil intent with which this act was done. I have already referred to those parts of the Constitution which show that no impeachment can be maintained but for a crime. If the court will turn their attention to the article now under consideration, they will perceive that no crime is charged in express terms, and therefore the accused ought not to be held to answer it; but an idea has been suggested by the honorable Managers, that as the article charges an unlawful act to have been done, a criminal intention must be presumed, unless the respondent shows it to have been innocent. This principle, however true it may be in some cases, is not applicable to the present case. If the act charged be *malum in se*, the rule of law may be as has been stated, but if the act be *malum prohibitum*, the rule is otherwise.

In order that the honorable Court may not have the least difficulty on this subject, I will undertake to show that the learned judge acted, in this instance, strictly according to law, and if this be shown there will remain no foundation for the present charge.

It is well established as a general rule of jurisprudence, that a court which has jurisdiction over an offence, may award process concerning it, and compel the party to appear. This may be seen in 2 Hawk. Pleas, ch. 13, sec. 15, 16. The cognizance of offences against the statutes of Congress is vested in the circuit courts of the United States, 1 vol. Laws of U. S., p. 55. From the principle just stated, the circuit court acquired the power of awarding process to compel such offenders to appear in that court when they became vested with a power to try the offence. A presentment or indictment of a grand jury is sufficient evidence to authorize the court to award process against the offender. This is not only the evidence upon which a court usually proceeds, but it is recognised in the fifth article of the amendments to the Constitution. We find there a restriction upon the power of the courts; "no person shall be held to answer for a capital or other infamous crime, unless by a presentment or indictment of a grand jury, &c;" which restriction carries the implication, that by a presentment or indictment, the party shall be held to answer. If an offender may be held to answer to an accusation in this form, it follows, as a matter of course, that the court is bound to award process to compel him to answer.

I know no process by which a person can be apprehended except by a capias. In the present trial we have heard of a bench warrant, but that too is a capias awarded by a judge sitting in court. In all cases of misdemeanors, where the punishment is by imprisonment or fine, a capias is proper process, according to the practice of the King's Bench in England. For this I refer the court to a passage read at another day from Gilbert's treatise upon the origin of the King's Bench, page 308. So also the doctrine is laid down by Judge Blackstone, in regard to those cases where it is not intended to proceed to outlawry—4 Black. Com. 319.

A capias, therefore, in the case of Callender, was the proper process, according to common law principles, and the English authorities of modern date. In reason and common sense, a capias is the proper process where the offence is punishable by imprisonment, and we all know that Callender was charged with an offence punishable by fine and

imprisonment. In such a case, a summons would be a notification to the offender to abscond or remove himself out of the reach of the court.

If any doubt can yet remain as to the propriety of issuing the capias, it will be entirely removed by attending to the laws of the United States. The 14th section of the "act to establish the judicial courts of the United States," gives power to the circuit courts to issue all writs necessary for the exercise of their jurisdiction, and agreeable to the principles and usage of law, and the 11th section of the same act gives exclusive cognizance of all crimes and offences cognizable under the authority of the United States to the circuit courts, except otherwise directed by that or some other statute. The court which awards the writ, is to decide what process is necessary for the exercise of its jurisdiction, and agreeable to the principles and usage of law in each particular case.

The 33d section of the same statute contains a great deal of important matter in regard to the present inquiry. "That for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of the United States where he may be found, agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States, as by this act has cognizance of the offence: And copies of the process shall be returned as speedly as may be, into the clerk's office of such court, together with the recognisances of the witnesses for their appearance to testify in the case; which recognisances the magistrate, before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender, or the witnesses, shall be in a district other than that in which the offence is to be tried, it shall be the duty of the judge of that district where the delinquent is imprisoned, seasonably to issue, and of the marshal of the same district to execute a warrant for the removal of the offender, and the witnesses or either of them, as the case may be, to the district in which the trial is to be had. And upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of the district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence and the usages of law. And if a person committed by a justice of the supreme, or a judge of a district court, for an offence not punishable with death, shall afterwards procure bail, and there be no judge of the United States in the district, to take the same, it may be taken by any judge of the supreme or superior court of law of such State."

Here it is expressly authorized that a judge of the circuit court may order a process for the *arrest* of the accused for any crime or offence against the United States, agreeably to the usual mode of process of arrest against offenders in the State where the court is holden and the offence committed. A summons is not authorized by the section, because a summons is not a process of *arrest*. I call upon the learned Managers to point out any other process by which a person can be arrested, even in Virgina, except by a capias. In England, in Virginia, in Maryland, in every State, the process of arrest is by a capias.

There is another statute of Congress on the subject of process, which passed on the second of March, 1793. It contains eight sections, and relates as well to *criminal* as *civil* matters. The seventh section is in the words following: "That 'it shall be lawful for the several courts of the 'United States, from time to time, as occasion 'may require, to make rules and orders for their 'respective courts, directing the returning of writs 'and processes, the filing of declarations and other 'pleadings, the taking of rules, the entering up 'judgment by default, and other matters in the 'vacation, and otherwise in a manner not repugnant to the laws of the United States, to regulate the practice of the said courts respectively, 'as shall be fit and necessary for the advancement of justice, *and especially to that end to 'prevent delays in proceedings.*"

I know not what language can convey a more complete power to the court over its process, than is given by the passages from the statutes which have been cited. An uniform rule in the courts of the United States is very desirable, that criminals may be brought to trial by the like forms in every State, for violations of the statutes of Congress. To allow one kind of process in Virginia, and a different one in Maryland for the same offence, would be a heterogeneous and unequal mode of administering justice. A construction ought not to be given to the statutes of Congress, which admits of such a system, if it may possibly be avoided. Shall it be said that in one State a man who publishes a libel shall be arrested immediately and brought to trial and punished, while in another State, another person who has committed the same offence, shall be served with a process that shall be notice to him to make his escape: and shall it be said that such a rule shall be applied to cases where imprisonment is part of the punishment? It has been in proof, that in Maryland it is usual to arrest by capias in cases of misdemeanor, and to try the traverser at the same term at which he appears. Are the courts of the United States if sitting on one side of the Potomac, to be governed by one rule, and if sitting on another side of the same river, to be governed by another rule in cases of crime or offence against the laws and Constitution of the United States? It can never have been the intention of Congress that any such variety of proceeding should be allowed in practice, or that the process should be anywhere a summons, in cases of offences which were to be punished by imprisonment.

This can be further illustrated by attention to the laws of Congress, inflicting punishment upon certain crimes, passed in the year 1790. For perjury, for bribery, for obstructing by force the ser-

vice of legal process, for importing slaves from foreign parts, for violence to an Ambassador and for other offences relative to Ambassadors, the punishment is fine and imprisonment. See 1st vol. *Laws of the United States*, page 111. The process in all these cases is to be the same; if a capias is proper in one it is proper in all, or if a summons is necessary in one it is necessary in all. Suppose in regard to an Ambassador who has applied to our Secretary of State for the punishment of an individual who may have done violence to his person or one of his family, that a summons shall have been issued to the offender, who should abscond or remove himself; it would be deemed very strange, perhaps incredible to the Ambassador, if he should be told by our Secretary of State that, the offence being committed in Virginia, it was necessary to summon the party to appear before the court, and instead of obeying the summons, he had removed himself entirely, but if the same matter had been prosecuted in Maryland, the offender might have been instantly arrested and punished; the President of the United States regretted that the offender had escaped with impunity, but the escape was according to law. Would not such an explanation be apt to be conceived an affront to the understanding of the Ambassador?

On a former occasion I read a rule of the Supreme Court made in August, 1792, by which the judges declared, "that they considered the 'practice of the Courts of the King's Bench in 'England, as affording outlines for the practice of 'this court, and that they will, from time to time, 'make such alterations therein as circumstances 'may render necessary;" and on the same occasion reference was had to the practice of the King's Bench to show that a capias was a proper and usual process. But it is neither necessary nor correct to admit that the rule of the King's Bench in England is absolutely a rule for the circuit courts of the United States. It furnishes a good outline of practice. The true position is, that neither the King's Bench nor the State laws furnish rules to the federal courts in regard to process which are positively binding on them, but these courts are to establish their own rules, under the direction and control of the statutes of the United States.

It is a known and undisputed maxim, that the criminal code of each sovereign State furnishes the rule in prosecutions in the State courts, and is confined to offences against such State. An offence against the commonwealth of Virginia, is not an offence against the United States, and therefore the laws of Virginia which regard offences against itself, will have no effect touching offences against the United States, unless Congress by their express statute has given to them some effect. The laws of Virginia, and of every State, have declared how an offence against such State respectively shall be prosecuted, but they are not to be applied to the circuit court of the United States sitting in such State, and holding cognizance of crimes against the United States. In confirmation of this doctrine, suffer me to avail myself of the opinions of some very distinguished characters in the Virginia Convention which adopted the Constitution. An eminent judge who presided in the highest court of that State for a long space of time, I mean Judge Pendleton, laid it down as too clear to be disputed, that the powers of the federal Judiciary should be coextensive with the powers of the federal Legislature. In this opinion, Mr. George Mason coincided with that gentleman, although he was opposed to him on almost every other. Of the same opinion was another distinguished member of the convention who now holds the high office of Secretary of State. (3d vol. *Virginia Debates*, pages 108, 121, 190.)

Unless then Congress has made the laws of each State the rule of process to bring offenders before the circuit courts, those laws do not bind the circuit courts, in this respect, and there will be no foundation for the doctrine, that a circuit court of the United States ought to be governed by the laws of a State in respect to process to bring the party to answer. Where is such a statute of Congress? Not in their statute books, as I humbly conceive, none such has been produced.

The honorable Managers have referred to the thirty-fourth section of the statutes already mentioned, and upon that alone they rely. The words of the section are as follows: "And be it further 'enacted, that the laws of the several States, except where the Constitution, treaties, or statutes 'of the United States shall otherwise require or 'provide, shall be regarded as rules of decision in 'trials at common law in the courts of the United 'States, in cases where they apply." We are to take the whole expressions of the section together, and this section is to be considered conjointly with all the other provisions of the statute. It makes the laws of a State the rules of decision in trials at common law where they apply. The laws of the State are to be rules of decision in trials. The process which is awarded to bring in a party to stand his trial, is obviously different from the trial itself: rules *of decision in trials*, are not rules of *process* antecedent to the appearance of the party. What is a trial at common law? A trial may be said to begin with empanelling a jury, and to end with the judgment of the court—4 *Black.* 352. A capias that is issued for the purpose of bringing the party to a *trial* by arresting his person, cannot therefore be deemed a part of the trial itself. Whether the traverser appears with or without process, is seldom deemed material; it is only after he is brought to answer that his trial can commence.

If the construction contended for by the Managers be admitted, it will make this section militate against the 14th and 33d sections of the same statute, which expressly provides upon the subject of process. Besides, it is unnecessary to give this construction, inasmuch as the statute provides amply respecting the steps preparatory to the trial. The 29th section regulates the mode of summoning a jury. There is no defect in the provisions of the statute which establishes one system that is to prevail everywhere, in regard to matters prior

to the trial. Why would Congress provide, in respect to process, as they have done in the 14th and 33d sections, if they meant to adopt the various laws of each State in regard to process, as has been contended by the Managers? Congress has declared what kind of process may be used in the circuit courts, and that process of arrest may be used. Our construction is warranted by the rule of the Supreme Court that has been quoted, which rule was made long after the statute of 1789, and which statute is as obligatory on the Supreme Court, as upon a circuit court. It is also warranted by the judgment of the circuit court in Pennsylvania district, in the case of the United States against the insurgents, determined in the year 1795, before the respondent was elevated to the bench of the Supreme Court. (2 *Dal.* 340, 341.)

In giving his opinion on the 34th section of the statute, Judge Peters observes, "although in ordinary cases it would be well to accommodate our 'practice with that of the State, yet the judiciary 'of the United States should not be fettered and 'controlled in its operations, by a strict adherence 'to State regulations and practice. As to the 'clause in the law of the United States, directing 'that the laws of the States (with great exceptions) shall be regarded as rules of decision in 'trials at common law in the courts of the United 'States, I do not think that it applies to the case 'before us."

In conformity to the rule of the Supreme Court and the authority of the case just cited, Judge Chase determined that the laws of the State of Virginia, which require a summons to be issued in cases of the Commonwealth, did not apply to the courts of the United States. Why, let me again ask, should this section receive the construction contended for by the honorable Managers? It has been shown that the laws of the United States provide fully in regard to the process to be issued by their courts: that, for the furtherance of justice, such a construction is neither necessary nor convenient, and is inconsistent with other parts of the same statute. It is therefore perfectly correct in the court to bestow no attention upon the laws of Virginia concerning the process to be awarded against Callender. When a presentment was found by the grand jury, it was the duty of the court to act; it was their duty to award a proper process for arresting the offender. This is not only warranted by the principles and reasons already adduced, but is inferrible from various passages of the laws of Congress, particularly from the 19th and 20th sections of the statute passed 30th April, 1790, 1st vol. page 108.

The learned counsel who defended Callender, appear from the testimony to have taken up some improper opinions relative to the criminal code of the United States. The subject was, as they say, new to them, and for this reason let me remark, they might readily have fallen into error. It appears that they had not only thought it was competent for a jury to decide upon the Constitutionality of a law, but also that it belonged to the jury to assess the fine upon the traverser, because a jury has that power by the laws of the State in respect to offences against the State. In the like manner it is erroneously said, in the present prosecution, that the laws of the several States in respect to process, are the rules which should guide the circuit courts of the United States.

I have, sir, endeavored to show in the first place, that there is no charge of criminality stated in the fifth article of impeachment, and therefore the respondent ought to be acquitted. And, in the second place, I have endeavored to satisfy this honorable Court, that the act stated in the article to have been done by Judge Chase, was correct and legal in itself, and if legal, there remains no ground to presume or infer the smallest degree of evil intention. In this point of view he will also stand acquitted.

I will now proceed to make some observations upon the sixth article of impeachment: "And whereas it is provided by the 24th section of the aforesaid act, entitled 'An act to establish the judicial courts of the United States,' that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall be made; yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided."

The charge in this article against the respondent is in substance that he, with intent to oppress and procure the conviction of Callender, ruled him to trial during the term at which he was presented and indicted, contrary to the laws of Virginia, which it is alleged have provided that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the next succeeding court.

This article it is admitted does contain an accusation of crime; but I hope I shall be able to satisfy this honorable Court, that in this instance no crime or offence was committed. I shall undertake to show that no error in law was committed, and that if the judge had done otherwise he would have been more liable to censure than he now is. If this be made to appear, as a supposed illegality of his conduct is the foundation of the charge, there will remain nothing to support the charge.

The accused judge had sworn to support the Constitution of the United States, and to administer justice without respect to persons, and to perform all the duties of his office according to the laws of the United States. If in ruling Callender to trial at the same term at which he was indicted, he acted according to law, the judge per-

formed his duty and ought not to be charged with oppression.

The article may be understood as affirming, that there exists some law of Virginia which positively prohibits the trial of a misdemeanor at the same term at which the indictment is found. No such law has been produced, and I must be allowed to deny that any such law of Virginia exists. The act of Assembly of 1788, which provides that "upon presentment by any grand jury of an offence not capital, the court shall order the clerk 'to issue a summons or other proper process 'against the person or persons offending, to appear and answer such presentment at the next 'court," appears to have given birth to the idea that an offender may not be tried for a misdemeanor at the same term he is indicted. It however does not warrant the position. When the party appears and answers the presentment, the trial may immediately take place. When the party appears and answers an indictment, the trial may immediately take place, *if* so ruled by the court who are vested with a discretion unfettered by any positive statute. The defence of this article may therefore be placed on two grounds, either of which will be sufficient. 1st. There is no law of Virginia which prohibits the trial of a misdemeanor at the same term the indictment is found. And, 2dly. If there be such a law, the same is not binding on the courts of the United States, in respect to offences against the United States.

With respect to the first ground, in addition to what was said, it may be observed, that some instances have been proven before this honorable Court, of trials in the State courts of indictments for misdemeanors, at the same term they were found. Mr. Robertson stated two specific cases where the punishment might be imprisonment. These instances show there can have been no such positive prohibition by the laws of Virginia as the article of impeachment has alleged; howsoever that may be, such a law, and that in the general practice of that State there are some exceptions, or such a general practice would not be obligatory on the courts of the United States, which is the second ground of defence against this charge.

A great deal which has been said in relation to the 5th article, applies with equal force to the article now under discussion.

When the Supreme Court, by their rule of court deliberately formed, declared that the practice of the King's Bench should form outlines for the practice in their court, subject to the alterations they might make, it was reasonable and natural for the circuit court, composed of justices of the Supreme Court, to conduct its business upon the like principle. In the King's Bench, process may be returnable immediately.—Gilbert's origin of King's Bench, page 313; 2 Hawk. ch. 8. sec. 14; 4 Black. 319. And such is the practice if the offence is committed in the county where the court sits; but if the offence is committed in another county, the process may be returned to any day the court will appoint. The object of the court in using its discretion will be to insure the service of the process, and its due return, by allowing sufficient time according to circumstances for that purpose. It is not denied that *venire facias* is *a proper* process in cases not capital, but it is not *the only* process that may be issued. Judge Blackstone, who wrote since Hawkins in the passage cited, declares that a capias is a usual process from the King's Bench, and may be returnable at the pleasure of the court, but that in strictness there ought to be a *venire facias* where it is intended to proceed to outlawry. In the United States, under the statutes of Congress, there can be no proceeding to outlawry, and therefore the reason for awarding a *venire* in England does not hold in the United States in regard to prosecutions in their courts. But let the practice of the King's Bench be as it may, it is merely to be used as an outline by our judges who will guide and direct themselves by the statutes of the United Ststes, and will act in conformity to them. When process has been served, and the offender brought into court to answer an indictment already found, it is the duty of the court to proceed to the trial. Such will be shown to be the manifest direction of the laws of the United States. As to the laws of Virginia, it is repeated, there is no Legislative act of that State which fixes positively the time of trying an indictment for a misdemeanor, and if there were, it would not bind the federal court. The *time* of a trial is not the trial, but a circumstance which, as well as the *place* of trial, is subject to the laws of the United States.

But it has been said in support of this article, that in England it is not usual, or according to the general course of proceedings, to try petty misdemeanors at the same court that the traverser pleads. For this is cited 4 Black. 351; and it is also said that the practice of Virginia conforms to the practice in England in this instance. Let this be admitted, and what does it avail? The practice that has been mentioned applies only to *petty* misdemeanors, and the law has always distinguished between petty misdemeanors and those of a greater malignity. The practice does not apply to what are termed *crimina majora*. Can it be said that such a rule of practice applies to the case of Callender? Was he indicted for a petty misdemeanor? No, sir, he was not. I have long learned to abhor the detestable crime of calumny. A calumniator is the greatest of criminals, and Callender has been the greatest of calumniators. All have agreed in reprobating the wickedness of his calumnies; and ought the honorable judge, who is now answering before you, to have applied the rule of English and Virginia practice concerning petty misdemeanors to such a case as that of Callender? Certainly not.

To place this matter still more clear of doubt, I wish the honorable Court to turn their attention to the Constitution, and to a few clauses of the laws of the United States. The sixth amendment to the Constitution provides, "that in all 'criminal prosecutions the accused shall enjoy 'the right to a speedy and public trial by an im-'partial jury of the State and district wherein the 'crime shall have been committed." In the same

spirit of speedy justice, a clause in the 33d section of the statute directs, that "copies of the process 'shall be returned as speedily as may be into the 'clerk's office of such court, together with the re-'cognisances of the witnesses, for their appear-'ance to testify in the case, which recognisances 'the magistrate before whom the examination 'shall be, may require on pain of imprisonment; 'and if such commitment of the offender or the 'witnesses shall be in a district other than that 'in which the offence is to be tried, it shall be the 'duty of the judge of that district where the de-'linquent is imprisoned, seasonably to issue, and 'of the marshal of the same district to execute, a 'warrant for the removal of the offender and the 'witnesses, or either of them, as the case may be, 'to the district in which the trial is to be had. 'And upon all arrests in criminal cases, bail shall 'be admitted, except where the punishment may 'be death," &c.

With the same view to a speedy trial, the 7th section of the statute of 2d March, 1793, enacts "that it shall be lawful for the several courts of 'the United States, from time to time, as occasion 'may require, to make rules and orders for their 'respective courts, directing the returning of writs 'and processes, &c., and otherwise in a manner 'not repugnant to the laws of the United States 'to regulate the practice of the said courts re-'spectively, as shall be fit and necessary for the 'advancement of justice, and especially to that 'end to prevent delays in proceedings." Hence it is evident, that in bringing Callender to trial at the same term at which he was indicted and at which he pleaded, the court obeyed the injunction of the Constitution, and it obeyed the injunction of the laws of the United States.

In cases where bail is requirable to delay, the trial may be used to the oppression of the accused. It is therefore enjoined by the Constitution and by the laws that there shall be no delay. If the honorable judge, who stands accused of trying Callender too soon, had deferred the trial to another term, that is to say six months, and the traverser could not have given bail, he would have been imprisoned six months without a trial. After he was convicted, the sentence of imprisonment pronounced by the same judge was only an imprisonment of about nine months. He had acted, therefore, not only according to law, but with humanity in bringing the traverser to trial at the same term at which he was indicted. If the trial had been postponed to another term, and Callender in the meantime had been imprisoned, such a conduct in the court would have given cause of complaint against the judge, who would then have been accused of postponing the trial of an innocent man, for the purpose of oppression. What in such a case ought the judge to have done? Exactly what he did. Obeying the Constitution and the laws of the United States, he brought the traverser to a speedy and public trial.

It is, may it please the honorable Court, upon these grounds that the respondent stands justified in his conduct, in relation to the charge contained in the sixth article of impeachment.

In the distribution of the articles of impeachment among the counsel of the respondent, he assigned to me the 5th and 6th, and I humbly indulge the hope that the defence which has been made will be deemed satisfactory. But before I conclude, I hope I may be allowed shortly to advert to some of the remarks which have fallen from the honorable Managers in respect to this part of the accusation.

The honorable Managers have attempted to show a difference between a presentment and an indictment, and that until the indictment was found, a capias ought not to have been issued, even if it were lawful to issue it upon an indictment. That there is no such distinction, I appeal to those passages of the acts of Congress to which reference has been already made. I appeal to the reason of the thing and to the nature of a presentment. It is a species of indictment, an informal indictment; it is an accusation of a grand jury. There are cases where it would be improper in a court to wait until a presentment shall be put in the form of an indictment. Circumstances may be such that the offender would escape if process was not issued upon the presentment.

One of the honorable managers charged the respondent with precipitancy in awarding the capias. If this gentleman had recollected the testimony, he would not have made that remark. It was undeniably proved that the respondent inquired of the clerk of the court and of the district attorney, what was the proper process. These officers answered, that a capias was the proper process. Upon such subjects it is usual to inquire of such officers, and their answer is generally deemed sufficient by the courts.

It was in proof, that Judge Chase informed the counsel of Callender they might except to any opinion given by the court, he would sign their bill of exceptions and be the first man to grant a writ of error; this was intended to show, that the respondent had no disposition to injure or oppress the traverser. To obviate any influence of this circumstance favorable to the respondent it was intimated, perhaps asserted by some of the Managers, that no writ of error could be maintained in such a case of criminal prosecution, and that Judge Chase well knew it, and the offer was made merely for a cloak to his injustice and oppression. This idea seemed to be derived from certain opinions of Virginia jurisprudence, and it was attempted to be proved that in Virginia, a writ of error did not lie in a criminal case and had never been granted and sustained in that State in its courts. This however can be and will be readily disproved. Although one of the witnesses, Mr. Hay, did not recollect with precision whether there was any bill of exceptions in the cases concerning the Berkley clerk, which were carried from the district court into the court of appeals; yet another of the witnesses, Mr. Nicholas, the Attorney General of Virginia, well remembers there was. Until these cases were decided, which happened several years after the trial of Callender, it was the received law of that State for the court of appeals to hold juris-

diction as a court of errors over criminal prosecutions. In support of this doctrine I refer to the case of Newall against the Commonwealth, adjudged in the year 1795.—2 Washington's reports, 88. It was against a magistrate for bribery in his office, and the judgment was reversed with costs. Also I refer to the case of Jones against the Commonwealth, adjudged in the year 1799. 1st Call's Reports, 555. This was an indictment for an assault, and the judgment was reversed. It is true that since the trial of Callender these cases have been overruled, yet as the established law was different at the time of his trial, the offer of the judge to grant a writ of error in the manner which has been proved, ought not to be attributed to any unjust or improper motives.

The learned counsel who spoke last stated the practice in Maryland to be, to award a capias and to try the traverser at the first term at which he pleads. This has been fully proved. As the respondent long presided in the criminal court of Maryland, with honor to himself and great usefulness to his country, it was quite natural for him to follow the like practice in Virginia.

It has been objected that the judge misconducted himself towards the counsel during the trial of Callender in various instances, which it has been argued proceeded from a desire to convict and punish the traverser, howsoever innocent. I will observe with great deference, that if in the opinion of some gentlemen the judge did not act with becoming politeness to the counsel, it is not a high crime or misdemeanor that may be examined or tried in this honorable Court. But I trust upon a view of the circumstances as they have been given in evidence, that this Court will be of opinion that the respondent behaved to the counsel with sufficient propriety. One of the counsel, Mr. Wirt, offered to the court a syllogism, to which the honorable judge promptly replied in a technical phrase of logic, and this excited in the audience some diversion. When another of the counsel, Mr. Nicholas, was speaking on the favorite topic of the right of the jury to consider the constitutionality of the sedition law, he was not interrupted by the judge. But Mr. Nicholas has been proved to have been always civil, always respectful to a court of justice, consequently the court would be civil to him. A third counsel, Mr. Hay, who was extremely desirous, as he has himself testified, to make an oration, not only for the purpose of satisfying the jury but the audience that a jury had a right to judge of the constitutionality of the sedition law, was interrupted by the judge, who denied his position. Mr. Hay had stated other matters during the trial which appeared to the judge to be erroneous. He had stated that a jury in this case of Callender, was the proper tribunal to assess the fine, in which he had been corrected by the court; that one of the jurors, Mr. Basset, was not qualified to serve, &c. His zeal in the cause of liberty and the Constitution, made him pertinacious in some things which the judge pronounced to be errors. It was no wonder then that such an advocate was stopped and often interrupted by the court. If anything was done amiss by the judge during the trial, it was his desiring Mr. Hay to proceed in his own way, and promising to interrupt him no more let him say what he would; but this circumstance plainly evinces that the interruptions did not arise from corrupt motives. It may truly be said that Judge Chase, in his behaviour to counsel, was "all things to all men." To the logical Mr. Wirt, he was logical; to the polite Mr. Nicholas, he was polite; to the zealous and pertinacious Mr. Hay, he was warm and determined. If the counsel had conducted themselves with propriety towards the court there would have been no interruptions; but when the judge found that the opinions of the bench were slighted, and that the conduct of the bar had a tendency to mislead and influence the public mind against a statute of Congress, he endeavored to turn their sentiments and reasoning into ridicule, and he produced by his wit a considerable degree of merriment at their expense, of which no doubt Colonel John Taylor, who has proved it for the prosecutors, was, from his natural temper, a full partaker.

Mr. President, it is now a very late hour, and I will bring my observations to a close. The articles relative to Fries and Callender have been fully investigated; there is neither uncertainty or doubt as to the facts. I flatter myself that it has been shown that those charges have not been supported by the evidence, and that the impeachment has proceeded from misinformation. If the honorable House of Representatives had known as much as has been disclosed to this honorable Court, they would not have deemed it necessary to have brought forward an impeachment. All must now be satisfied that the information on which the articles are grounded has been derived from mistaken sources, both in regard to fact and law. An aggregate body cannot be better guarded against misinformation than an individual; and I am induced to believe from the known integrity and virtue of the House of Representatives, they will hear with satisfaction, that the evidence which they received was not the same which has been delivered before this honorable Court, and that they will take pleasure in the acquittal of the respondent.

You are now about to set an example in a case of impeachment which will have a most important influence in our country. It will be an example to the tribunals in the several States who like you possess the power of trying impeachments, and who may learn from you by what rules the doctrine of impeachment is to be regulated. It will be a polar star to guide in prosecutions of this kind. You are about to set an example to the ordinary tribunals of justice in every corner of the United States. They will know how this high Court has done justice between the House of Representatives of the American nation and a single individual, and hence they may learn how to do justice to the most weak and friendless individual, when accused in their courts by the most powerful. An upright and independent judiciary is all-important in society. Let your example be as bright in its justice as it will be extensive in its influence. If the people shall find that their confidential servants, the House of Representatives, have brought forward an accusation against another of their servants for high crimes and misdemeanors in his exalted office, which after a fair and patient hearing has not been supported by evidence, it will afford them pleasure to hear of his honorable acquittal, and such may it please this honorable Court will be, I trust, the result of your deliberations.

SATURDAY, February 23.

Mr. MARTIN.—Mr. President: Did I *only* appear in defence of a friend, with whom I have been in habits of intimacy for nearly thirty years, I should feel less anxiety on the present occasion, though that circumstance would be a sufficient inducement; but I am, at this time, actuated by superior motives. I consider this cause not only of importance to the respondent and his accusers, but to my fellow-citizens in general, (whose eyes are now fixed upon us,) and to their posterity, for the decision at this time will establish a most important precedent as to future cases of impeachment.

In the discussion of this cause, I fear I shall occupy a greater portion of your time than I could wish, but, as the charges are brought forward by such high authority as the House of Representatives of the United States, it becomes necessary to bestow upon them more attention than they would deserve, were they from a less respectable source.

We have been told by an honorable Manager, (Mr. Campbell.) that the power of trying impeachments was lodged in the Senate with the most perfect propriety; for two reasons—the one, that the person impeached would be tried before those who had given their approbation to his appointment to office. This certainly was not the reason by which the framers of the Constitution were influenced, when they gave this power to the Senate. Who are the officers liable to impeachment? The President, the Vice President, and all civil officers of Government. In the election of the two first, the Senate have no control, either as to nomination or approbation. As to other civil officers, who hold their appointments during good behaviour, it is extremely probable that, though they were approved by one Senate, yet from lapse of time, and the fluctuations of that body, an officer may be impeached before a Senate, not one of whom had sanctioned his appointment, not one of whom, perhaps, had he been nominated after their election, would have given him their sanction.

This, then, could not have been one of the reasons for thus placing the power over *these* officers. But as a second reason, he assigned, that, if any other inferior tribunal had been entrusted with the trial of impeachments, the members might have an interest in the conviction of an officer, thereby to have him removed in order to obtain his place; but, that no Senator could have such inducement. I, sir, disclaim, I hold in contempt the idea, that the members of any tribunal, would be influenced in their decision by so unworthy—so base a motive; but what is there to prevent this Senate, more than any other court, from being influenced? Is there anything to prevent any member of this Senate, or any of their friends, from being appointed to the office of any person removed by their conviction?

I speak not from any apprehension I have of this honorable Court. In their integrity I have the greatest confidence. I have the greatest confidence they will discharge their duty to my honorable client with uprightness and impartiality. I have only made these observations to show that the reasons assigned by the honorable Manager for vesting the trials of impeachment in the Senate are fallacious.

I see two honorable members of this Court, [Messrs. Dayton and Baldwin,] who were with me in Convention, in 1787, who as well as myself, perfectly know why this power was invested in the Senate. It was because, among all our speculative systems, it was thought this power could no where be more properly placed, or where it would be less likely to be abused. A sentiment, sir, in which I perfectly concurred, and I have no doubt but the event of this trial will show that we could not have better disposed of that power.

Let us now, sir, examine the Constitution on the subject of impeachments, and from thence learn in what cases, and in what only, impeachments will lie. To have correct sentiments on this subject is of infinite importance. An error here would be like what is called an error in the first concoction, and would pervade the whole system.

By the Constitution, it is declared that "the House of Representatives shall have the sole power of impeachment." That section, however, does not declare in what cases the power shall be exercised. This is designated in a subsequent part of the Constitution, and I shall contend that the power of impeachment is confined to the persons mentioned in the Constitution, namely, "the President, Vice President, and all other civil officers."

Will it be pretended, for I have heard such a suggestion, that the House of Representatives have a right to impeach *every citizen indiscriminately?* For *what* shall they impeach them? For *any* criminal act? Is the House of Representatives, then, to constitute a grand jury to receive information of a criminal nature against all our citizens, and *thereby to deprive them of a trial by jury?* This was never intended by the Constitution?

The President, Vice President, and other civil officers, can only be impeached. They only in that case are deprived of a trial by jury; they, when they accept their offices, accept them on those terms, and, as far as relates to the tenure of their offices, relinquish that privilege; they, therefore, cannot complain. Here, it appears to me, the framers of the Constitution have so expressed

themselves as to leave not a single doubt on this subject.

In the first article, section the third, of the Constitution, it is declared that, judgment in all cases of impeachment, shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit, under the United States. This clearly evinces, that no persons but those *who hold offices* are liable to impeachment. They are to lose their offices; and, having misbehaved themselves in such manner as to lose their offices, are, with propriety, to be rendered ineligible thereafter.

The next question of importance, is, in what cases the House of Representatives have a right to impeach the President, the Vice President, and the other civil officers.

It has been said that a judge cannot be indicted for the same crime for which he may be impeached: "for," says the honorable Manager, (Mr. Campbell,) "it would introduce the absurdity that a person might be punished twice for the same crime."

This honorable Court will observe that the two punishments which may here be inflicted on impeachment and subsequent indictment, amount to no more than in England takes place on a single prosecution; for there, on a single conviction, a judge may be removed from office, and also fined, imprisoned, or otherwise punished, according to the nature of his offence. But the whole of this power the United States have not vested in the same body. To the Senate they have confined the punishment of removal from office, and disqualification of the person from holding offices in future; but can there be a single doubt that a person, by impeachment, removed from office, cannot afterward, according to the nature of his crime, be punished by indictment? Can gentlemen suppose a removal from office was intended to wash away all crimes the officer should have committed? What are the crimes for which an officer can be impeached? "Treason, bribery, and other high crimes and misdemeanors."

Suppose a judge removed from office, by impeachment, for treason, would that wash away his guilt? would he not afterwards be liable to be indicted, tried, and punished as a traitor? Undoubtedly he would; so in the case of bribery. Yet, if the gentleman's idea is correct, a removal from office, on impeachment, for either of those crimes, would free the officer from any other punishment. Consider the monstrous consequences which would result from the principle suggested by the Managers, that a judge is only removable from office on account of crimes committed by him as a judge, and not for those for which he would be punishable as a private individual! A judge, then, might break open his neighbor's house and steal his goods; he might be a common receiver of stolen goods; for these crimes he might be indicted, convicted, and punished, in a court of law; but yet he could not be removed from office, because the offence was not committed by him in his judicial capacity, and because he could not be punished *twice* for the same offence.

The truth is, the framers of the Constitution, for many reasons, which influenced them, did not think proper to place the officers of Government in the power of the two branches of the Legislature, further than the tenure of their office. Nor did they choose to permit the tenure of their offices to depend upon the passions or prejudices of jurors. The very clause in the Constitution, of itself, shows that it was intended the persons impeached and removed from office might still be indicted and punished for the same offence, else the provision would have been not only nugatory, but a reflection on the enlightened body who framed the Constitution; since no person ever could have dreamed that a conviction on impeachment and a removal from office, in consequence, for one offence, could prevent the same person from being indicted and punished for another and different offence.

I shall now proceed in the inquiry, for what can the President, Vice President, or other civil officers, and, consequently, for what can a judge be impeached? And I shall contend that it must be for an indictable offence. The words of the Constitution are, "that they shall be liable to impeachment for treason, bribery, or other high crimes and misdemeanors."

There can be no doubt but that treason and bribery are indictable offences. We have only to inquire, then, what is meant by high crimes and misdemeanors? What is the true meaning of the word "crime?" It is the breach of some law, which renders the person who violates it liable to punishment. There can be no crime committed where no such law is violated. The honorable gentleman to whom I before alluded, has cited the new edition of Jacob's Law Dictionary; let us, then, look into that authority for the true meaning of the word "misdemeanor." He tells us

"Misdemesnor, or misdemeanor, a crime less than felony. The term 'misdemeanor' is generally used in contradistinction to felony, and comprehends all indictable offences, which do not amount to felony, as perjury, libels, conspiracies, assaults," &c. See 4 *Comm. c.* 1, *p.* 5,

"A crime or misdemeanor, says Blackstone, is an act committed or omitted in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms, though, in common usage, the word 'crimes' is made use of to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentle name of misdemeanors only.

"In making the distinction between public wrongs and private, between crimes and misdemeanors, and civil injuries, the same author observes, that public wrongs, or crimes and misdemeanors, are a breach and violation of the public rights and duties due to the whole community, considered as a community in its social, aggregate capacity." 4 *Comm.* 5.

Thus, it appears, crimes and misdemeanors are the violation of a law, exposing the person to punishment, and are used in contradistinction to those breaches of law, which are mere private injuries, and only entitle the injured to a civil remedy.

Blackstone's Commentaries, 4th vol. page 5th, is cited by Jacob, and is as there stated. I shall not turn to it. Hale, in his Pleas of the Crown, volume first, in his *Præmium*, which is not paged, speaking of the division of crimes, says:

"Temporal crimes, which are offences against the laws of this realm, whether the common law or acts of Parliament, are divided into two general ranks or distributions in respect to the punishments that are by law appointed for them, or in respect to their nature or degree; and thus they may be divided into capital offences, or offences only criminal, or rather, and more properly, into felonies and misdemeanors. And the same distribution is to be made touching misdemeanors, namely, they are, such as are so by the common law, or such as are specially made punishable, as misdemeanors, by acts of Parliament."

Thus, then, it appears that crimes and misdemeanors are generally used as synonymous expressions, except that "crimes" is a word frequently used for higher offences. But, while I contend that a judge cannot be impeached except for a crime or misdemeanor, I also contend that there are many crimes and misdemeanors for which a judge ought not to be impeached, unless immediately relating to his judicial conduct. Let us suppose a judge, provoked by insolence, should strike a person; this certainly would be an indictable, but not an impeachable offence. The offence for which a judge is liable to impeachment must not only be a crime or misdemeanor, but a high crime or misdemeanor. The word "crime," as distinguished from misdemeanor, is applied to offences of a more aggravated nature, the word "high," therefore, must certainly equally apply to misdemeanors as to crimes. Nay, sir, I am ready to go further, and say, there may be instances of very high crimes and misdemeanors, for which an officer ought not to be impeached, and removed from office; the crimes ought to be such as relate to his office, or which tend to cover the person who committed them with turpitude and infamy; such as show there can be no dependance on that integrity and honor which will secure the performance of his official duties.

But we have been told, and the authority of the State of Pennsylvania has been cited, by one honorable Manager (Mr. Rodney) in support of the position that a judge may be impeached, convicted, and removed from office, for that which is not indictable, for that which is not a violation of any law.

What, sir! can a judge be impeached and deprived of office, when he has done nothing which the laws of his country prohibited? Is not deprivation of office a punishment? Can there be punishment inflicted where there is no crime? Suppose the House of Representatives to impeach, for conduct not criminal; the Senate to convict, does that change the law? No, the law can only be changed by a bill brought forward by one House in a certain manner, assented to by the other, and approved by the President. Impeachment and conviction cannot change the law, and make that punishable which was not before criminal.

It is true, it often happens that the good of the community requires that the laws should be passed, making criminal and exposing to punishment conduct, which, antecedently, was not punishable; but, even in those cases, Government has no power to punish acts antecedently done; it can only punish those acts done after the enaction of the law. The Constitution has declared, "no *ex post facto* law shall be passed."

Should such a principle be once admitted or adopted, could the officers of Government ever know how to proceed? Admit that the House of Representatives have a right to impeach for acts which are not contrary to law, and that thereon the Senate may convict, and the officer be removed, you leave your judges, and all your other officers, at the mercy of the prevailing party. You will place them much in the unhappy situation as were the people of England during the contest between the white and red roses, while the doctrine of constructive treasons prevailed. They must be the tools or the victims of the victorious party.

I speak not, sir, with a view to censure the principles or the conduct of any party which has prevailed in the United States since our Revolution, but I wish to bring home to your feelings what may happen at a future time. In republican Governments there ever have been, there ever will be, a conflict of parties. Must an officer, for instance a judge, ever be in favor of the ruling party, whether wrong or right? Or, looking forward to the triumph of the minority, must he, however improper their views, act with them? Neither the one conduct nor the other is to be supposed but from a total dereliction of principle. Shall, then, a judge, by honestly performing his duty, and very possibly thereby offending both parties, be made the victim of the one or the other, or perhaps of each, as they have power? No, sir, I conceive that a judge should always consider himself safe while he violates no law, while he conscientiously discharges his duty, whomever he may displease thereby.

But an honorable Manager (Mr. Campbell) has read to us an authority to prove that a judge cannot, in England, be proceeded against by indictment for violation of his official duties but only in Parliament, or by impeachment; his authority was the new edition of Jacob's Law Dictionary. Let me be indulged with reading to this honorable Court the case from 12 Coke, the case of Floyd and Barker, to which Jacob refers, and it will be found that the reasons there assigned, however correct they might be as to judges in England, can have no possible application to the judges of the United States.

[Here Mr. MARTIN read the following part of the third resolution, to wit:]

"It was resolved that the said Barker who was judge of assize, and gave judgment on the verdict upon the said W. P., and the sheriff who did execute him according to the said judgment, nor the justices of peace who did examine the offender, and the witnesses for proof of the murder before the judgment, were not to be drawn in question, in the Star Chamber, for any

conspiracy; nor any witness, nor any other person ought to be charged with conspiracy in the Star Chamber, or elsewhere, when the party indicted is convicted or attaint of murder or felony, and although the offender upon the indictment was acquitted, yet the judge, be he judge of assize, or a justice of peace, or any other judge, by commission, and of record, and sworn to do justice, cannot be charged for conspiracy for that which he did openly in court as judge or justice of peace; and the law will not admit any proof against this vehement and violent presumption of law, that a justice, sworn to do justice, will do injustice, but if he hath conspired before, out of court, this is extra-judicial, but due examination of causes out of the court, and inquiring by testimony, and similar, is not any conspiracy, for this he ought to do; but subornation of witnesses, and false and malicious prosecutors, out of court, to such whom he knows will be indictors, to find any guilty, &c., amounts to an unlawful conspiracy.

"And as a judge shall not be drawn in question in the cases aforesaid, at the suit of the parties, no more shall he be charged in the said cases before any other judge at the suit of the King.

"And the reason and cause why a judge, for anything done by him as a judge, by the authority which the King (concerning his justice) shall not be drawn in question before any other judge, for any surmise of corruption, except before the King himself, is for this; the King himself is *de jure* to deliver justice to all his subjects; and for this, that he himself cannot do it to all persons, he delegates his power to his judges, who have the custody and guard of the King's oath.

"And forsmuch as this concerns the honor and conscience of the King, there is great reason that the King himself shall take account of it, and no other."

But, even in England, it has been solemnly determined, that judges may be proceeded against by indictment for the violation of the laws in their official conduct, for which I refer this honorable Court to Viner's abridgment, 14th vol. page 579. (F) pl. 3, and in notes, where he says:

"A justice cannot rase a record, nor imbecile it, nor file an indictment which is not found, nor give judgment of death where the law does not give it, but if he doth this it is misprision, and he shall lose his office, and shall make fine for misprision." In the note "Brooke, Corone pl. 173 cities 2 R. 3, 9, 10, S. C. and P. and that he shall be indicted and arraigned."

And that to Hawkins's Pleas of the Crown, vol. 1, chap. 69, sec. 6, where that author tells us:

"It is said that, at common law, bribery in a judge, in relation to a cause depending before him, was looked upon as an offence of so heinous a nature, that it was sometimes punished as high treason, before the 25th Edward III., and at this day it certainly is a very high offence, and punishable, not only with the forfeiture of the offender's office of justice, but also with fine and imprisonment," &c.

Mr. President, the principle I have endeavored to establish is, that no judge or other officer can, under the Constitution of the United States, be removed from office but by impeachment, and for the violation of *some law*, which violation must be, not simply a crime or misdemeanor, but a *high* crime or misdemeanor.

But an honorable Manager, (Mr. Rodney,) who has this morning referred to some authorities, as to other parts of the case, has also contested the correctness of the foregoing principle, and has introduced the constitution of the State of Pennsylvania, by which he has told us, a judge may, by the Governor, be removed from office, without the commission of any offence, upon the vote of two-thirds of the two Houses for his removal; notwithstanding that constitution has a similar provision for removal by impeachment as has the Constitution of the United States. To this I answer, as we have no *such provision* in the Constitution of the United States, the *reverse* is to be inferred, to wit, that the people of the United States, from whom the Constitution emanated, did not intend their judges should be removed, however obnoxious they might be to *any part* or to the *whole* of the Legislature, unless they were guilty of some high crime or misdemeanor, and then only by impeachment. It is also well known, that the Governor of Pennsylvania has not considered those words in the constitution of that State, "that he *may* remove the judges on such address," as being *imperative*. For, in a recent instance, where he did receive such address, instead of admitting the construction to be, as was contended, "*you must*," he determined it to be "*I will not*," and I have had the pleasure of seeing that judge, some time since that transaction, on the bench with his brethren dispensing justice. I again repeat, that as the framers of the Constitution of the United States did not insert in their Constitution such a clause as is inserted in the constitution of Pennsylvania, it is the strongest proof that they did not mean a judge or other officer should be displaced by an address of any portion of the Legislature, but only according to the Constitutional provisions.

The same gentleman (Mr. Rodney) has told us that the tenure by which a judge holds his office is good behaviour, therefore that he is removable for misbehaviour; and, further, that misbehaviour and misdemeanor are synonymous and co-extensive. Here I perfectly agree with the honorable gentleman, and join issue with him. Misbehaviour and misdemeanor are words equally extensive and correlative; to misbehave or to misdemean is precisely the same; and, as I have shown that to misdemean, or, in other words, to be guilty of a misdemeanor, is a violation of some law punishable, so, of course, misbehaviour must be the violation of a similar law.

The same honorable gentleman has mentioned the impeachment and conviction of Judge Addison, and has told us that he was not impeached for the breach of any law, but only for rude or unpolite conduct to his brother judge; that *this objection* was made with much energy on his defence, but that the Senate were convinced, by the great talents and eloquence of Mr. Dallas, and some other gentlemen, that the objection was groundless; they, therefore, convicted and removed him. I have not here the proceedings against Judge Addison, and, therefore, it *is possible* that the Senate of Pennsylvania erected themselves into a court of honor to punish what they might consider breaches of politeness; but does this honorable Court sit here to take its precedents from the State of Pennsylvania or any other State, however respectable? I should rather hope that this honorable Court should furnish precedents which might be respected and adopted by the different States. I would also ask, when was that precedent established? Was it not at a time when there is too much reason to believe that the warmth and violence of party had more influence in it than justice: and that the Senate of Pennsylvania overleaped their constitutional limits? But if we are to go to Pennsylvania for a precedent, why should we not be guided by that which the same State has so recently given us in a trial in which that gentleman bore so conspicuous a part? a precedent of *acquittal;* a precedent which we are perfectly willing should be adopted, and which we trust will be adopted, on the present occasion.

My observations thus far have been principally with a view to establish the true construction of our Constitution, as relates to the doctrine of impeachment. I now, Mr. President, will proceed to the particular case before this honorable Court; and, in the first place, I agree with the honorable Managers, that there is a manifest difference even between the credibility of witnesses, and the credibility of testimony, for, I admit, if witnesses are equally credible, and some swear that words were uttered, or acts were done, and others, that they did not hear the words, or that they did not see the acts done, the presumption is certainly in favor of the positive, and against the negative testimony. But this must be admitted with considerable restrictions.

If, immediately after a transaction, there is a full and clear memory of the words spoken, or the acts done, there is great reason to credit the testimony; but, even in that case, if there are a number of persons equally respectable, having equal opportunity to hear and see, and who were attentive to what took place, and none of them heard or saw what is testified by a single witness, there would be great reason to suspect the affirmative witness to be mistaken; more so if the transactions had happened for some years antecedent to the examination.

But, as to *Heath*, we do not contradict him *merely by negative testimony;* we contradict him by a series of positive facts which my honorable colleague (Mr. Key) has detailed, proved by characters, whose *veracity cannot be doubted*, which positive facts incontestably show that what he swore never could have taken place. And, here again, permit me sir, to make a further observation, that, where a person is charged *criminally* for words he is supposed to have uttered, those words ought to be proved *with precision*. Every witness on *this* occasion, who hath been examined as to expresssions used by my honorable client, either on the one or the other charge, which are held as exceptionable, declares he cannot pretend to recollect the express words uttered by the judge, but only to state what at this distance of time he can consider the amount of what was said. Nay, Messrs. Lewis and Dallas declare further, that they cannot pretend to say with accuracy, what part of the conversation, of which they give testimony, took place on the first or the second day, or in what order. Such kind of testimony, therefore, ought to be received with great caution, and not to be considered as conclusive. On this subject I will trouble this honorable Court with a passage, from McNally's Treatise on Evidence, page 518.

"It is no evidence in a criminal case, that the defendant said so and so, or in other words to the like effect, because the court must know the very words to judge of their force and effect.—2 Hawk. ca. 46.

"And the reason of this rule is, that of words spoken, there can be no tenor, that is transcript, for there is no original to compare them with, as there is of words written: and though there have been attempts to plead a tenor of words spoken, it has never been allowed. And therefore if a plantiff declares for words spoken, a variance, in the omission or addition of a word, is not material, and it is sufficient, if so many of the words be proved and found as are in themselves actionable.—12 Vin. abr. 68. pl. 46.

"So in Hussey *vs.* Cooke, Easter, 18. Jac. 1. in the Star Chamber. The court held, that if a witness depose that a defendant did persuade a juror to appear and to do him reasonable favor, or words to the like effect, this is no sufficient proof in criminals, because the court must know the very words to judge of their force and effect.—Hob. 294. Fos. 200. 1 Hale, p. 6. 111. Kel. 14.

"Hale, Coke, and Foster, fully justify the principle of this rule. Foster says, as to mere words supposed to be treasonable, they differ widely from writings in point of real malignity, and proper evidence. They are always liable to great misconstruction from the ignorance or inattention of the hearers, and too often from a motive truly criminal. And therefore I choose to adhere to the rule which hath been laid down on more occasions than one since the Revolution, that loose words to any act or design are not overt acts of treason.—Fost. 200.

"Keyling says, I see no difference between words spoken. Foster answers, the difference appeareth to me to be very great, and lieth here. Seditious writings are permanent things, and if published, they scatter the poison far and wide. They are acts of deliberation, capable of satisfactory proof, and not ordinarily liable to misconstruction; at least they are submitted to the judgment of the court, naked and undisguised as they come out of the author's hands. Words are transient and fleeting as the wind, the poison they scatter is at worst confined to the narrow circle of a few hearers: they are frequently the effect of sudden transport, easily misunderstood and often misrepeated.—Keyling 13. Fos. 200.

"The suppression of a word or syllable may change the sense; so the change of an emphasis. So words spoken in exclamation, conveying by sound and gesture surprise and abhorrence, may be represented in evidence as spoken blasphemously or seditiously."

Sir Michael Foster, a judge whose worth has seldom been equalled, perhaps never surpassed, and who has so correctly observed, that a popular judge, that is, one who in his decisions seeks after popularity, was one of the most contemptible beings in the world, is referred to as an authority.

This principle equally applies, where a person

is charged *criminally* on account of words spoken, whether the offence is supposed to be treason, or only misdemeanor; the case referred to in Hobart, page 294, is an authority in point; it is true, this case was determined in the *Star Chamber*, but being determined in favor of the person accused, it becomes an higher authority—Star Chamber cases are only complained of on account of their oppression.

I will now, Mr. President, proceed to consider the conduct of my honorable client on the trial of Fries, and to examine the law upon that case, and of course to investigate the rights of judges, in criminal cases, as well as the rights of attorneys. I do not mean to go minutely into the testimony, which has been given in that case; but, taking it up on that given by Messrs. Lewis and Dallas, to examine whether the court is to control the counsel, or be mere cyphers, destitute of authority to restrain and keep within bounds the lawyers when acting improperly. The whole of the practice, of which I have heard during this trial, as being usual in the courts of Pennsylvania and Virginia, hath been to *me at least as novel* as the conduct of Judge Chase appears to have been to the honorable managers. *I*, sir, have *always* considered it the province of the court in the course of a trial in *all* cases, whether civil or criminal, to declare what is the law. This right is admitted in civil cases, but, it seems, is denied in criminal. And therefore, it is contended, that in criminal cases counsel have a right to address the jury upon the law, and to urge them to determine the law in contradiction to the decision of the court. How doth the jury acquire the *power* of deciding the law in *any* case? Because, upon the general issue, having a right to give a general verdict, which involves both law and fact, the jury *incidentally* have the power to decide the law. But this doth not authorize them to give a verdict *contrary* to law. When a case comes before a jury, the court informs them what is the law, if they believe the facts given in evidence. If they do believe the facts they are *bound in duty* to decide according to the law thus explained to them by the court. The decision *ought* to be the same as if the facts had been found by the jury in a special verdict, and the law left to the court. The jury, I admit, have the *power* to decide the law contrary to the direction of the court, but I deny that they have a *right* to do it. No person will deny that it is much more proper for the court to decide the law than that it should depend upon jurors, who in general are ignorant of the law. In civil cases, a jury sometimes give a verdict contrary to the direction of the court, but the court correct this abuse of power by interposing and granting a new trial, thereby correcting the evils which would result from such abuse.

Let us then examine this question as to criminal cases. Is it not as important to society that there should be uniform and fixed principles for the decision in criminal as in civil cases? Would it not be highly improper that one man should be convicted for a crime, and another, who had committed the same, be acquitted, merely from the passions, prejudices, or ignorance of jurors, influenced thereby to *decide* the law differently in the different cases, though perfectly similar in criminality? No person can doubt on this subject.

Where, then, is the difference between the civil and criminal cases? It is not that the jury have a *greater right* to decide the law in the *last* than in the *first;* but that, having the power to give a general verdict, which, *incidentally*, involves the law, they may give a verdict contrary to law, and contrary to the direction of the court; and the courts of justice, not having in criminal cases, through tenderness, enforced the remedy of a new trial, the abuse of power, thus practised in some cases by juries, have been uncorrected. No person can doubt but that juries, in criminal as well as in civil cases, *ought* to give their verdict according to law, and, whenever they do not, they are answerable to their consciences and to their God, however they may be exempt from human punishment.

The *right* of the court to decide the law, is the same in criminal as in civil cases. If there is a demurrer to an indictment, the court decides without the intervention of a jury. If there is a demurrer to evidence, the court decides the law. So, if a special verdict is found, which may be found in a criminal as well as in a civil suit.

The *power* of the jury, as I have before said, to decide against law, doth not give them the right, any more than the *power* of a person to knock down a man weaker than himself, gives him the right so to do. And, if juries, in any case, knowingly give a verdict contrary to law, instead of acting *impartially*—which is the duty of a jury—they act with *criminal partiality*.

So great is the difference of sentiment between the honorable Managers and some of the witnesses who have been examined in this trial, and myself, upon the *right* of juries to decide the law in criminal cases, that, in confirmation of my own sentiments, and to convince this honorable Court I do not wish to impose upon them, I hope I shall be indulged in reading to them a very respectable authority upon this subject. It will be found in Co. Lit. 155, as follows:

"The most usual trial of matters of fact, is, by twelve such men; for, *ad questionem facti non respondent judices;* and matters in law the judges ought to decide and discuss; for, *ad questionem juris non respondent juratores.*"

Upon this is the following note:

"This *decantatum*, as Lord Chief Justice Vaughan calls it, on account of its frequency in the books, about the respective provinces of judge and jury, hath, since Lord Coke's time, become the subject of very heated controversy, especially on prosecutions for State libels; some aiming to render the juries wholly dependent on the judge for matters of law, and others contending for nearly a complete and unqualified independence."

"In respect to my own ideas on this subject, (says Mr. Hargrave,) they are at present to this effect: On the one hand, as the jury may, as often as they think fit, find a general verdict, I therefore think it unquestionable, that they so far may decide upon the law as well as fact, such a verdict necessarily involving both.

In this I have the authority of Littleton himself, who writes, that, if the inquest will take upon them the knowledge of the law upon the matter, they may give their verdict generally.

"But on the other hand I think it seems clear, that questions of law generally and more properly belong to the judges; and that, exclusively of the fitness of having the law expounded by those who are trained to the knowledge of it by long study and practice, this appears from various considerations.

"1st. If the parties litigating, agree in their facts, the cause can never go to a jury, but is tried on a demurrer; it being a rule, and I believe without exception, that issues in law are ever determined by the judges, and only issues of fact are tried by a jury.

"2d. Even when an issue in fact is joined, and comes before a jury for trial, either party, by demurring to evidence, which includes an admission of the fact to which the evidence applies, may so far draw the cause from the cognizance of the jury, for in that case the law is reserved for the decision of the court from which the issue of the fact comes, and the jury is either discharged, or at the utmost only ascertains the damages.

"3d. The jury is supposed to be so inadequate to finding out the law, that it is incumbent upon the judge who presides at the trial, to inform them what the law is; and, as a check to the judge in the discharge of this duty, either party may, under the statute of Westminister, the 2d. C. 31., make his exception in writing to the judge's direction, and enforce its being made a part of the record, so as afterwards to found error upon it.

"4th. The jury is ever at liberty to give a special verdict, the nature of which is to find the fact at large, and leave the conclusion of law to the judges of the court from which the issue comes. Formerly indeed it was doubted, whether in certain cases in which the issue was of very limited and restrained kind, the jury was not bound to find a general verdict. But the contrary was settled in Dowman's case, 9. Coke, 11. b., and the rule now holds both in criminal and civil cases without exception.

"5th. Whilst attaints, which still subsist in law, were in use, it was hazardous in a jury to find a general verdict where the case was doubtful, and they were apprized of it by the judges, because if they mistook the law, they were in danger of an attaint.

"6th. If the jury find the facts specially, and add their conclusion as to the law, it is nothing binding on judges, but they have a right to control the verdict, and declare the law as they conceive it to be.

"7th. The courts have long exercised the power of granting new trials in civil cases where the jury find against that, which the judge trying the cause, or the court at large, holds to be law; or where the jury find a general verdict, and the court conceives that on account of difficulty of law there ought to have been a special one. Though too in criminal and penal cases, the judges do not claim such a discretion against persons acquitted, the reason I presume is in respect of the rule that *nemo bis punitur aut vexatur pro eodem delicto*, or the hardship which would arise from allowing a person to be put twice in jeopardy for one offence, and if this be so, it only shows that on that account, an exception is made to a general rule. Upon the whole, as my mind is affected with this interesting subject the result is, that the immediate and direct right of deciding upon questions of law, is entrusted to the judges; that in a jury it is only incidental; that in the exercise of this incidental right the latter are not only placed under the superintendence of the former, but are in some degree controllable by them; and, therefore, that in all points of law, arising on a trial, juries ought to show the most respectful deference to the advice and recommendation of judges. In favor of this conclusion, the conduct of the juries bears ample testimony; for to their honor it should be remembered, that the examples of their resisting the advice of a judge, in points of law, are rare, except where they have been provoked into such an opposition by the grossness of his own misconduct, or betrayed into an unjust suspicion of his integrity by the misrepresentations and ill practices of others. In civil cases, particularly where the title to real property is in question, juries almost universally find a special verdict as often as the judge recommends their so doing; and, though in criminal cases special verdicts are not frequent, it is not from any averseness to them in juries, but from the nature of criminal causes, which generally depend more upon the evidence of facts than any difficulty of law. Nor is it any small merit in this arrangement, that in consequence of it, every person accused of a civil crime, is enabled by the general plea of not guilty, to have the benefit of a trial, in which the judge and jury are a check upon each other; and that this benefit may be always enjoyed, except in such small offences as are left to the summary jurisdiction of a justice of the peace, which exception, from the necessity of the times, is continually increasing, but which, however, cannot be too cautiously extended to new objects. Thus considered, the distinction between the office of judge and jury seems to claim our utmost respect. May this wise distribution of power between the two, long continue to flourish, unspoiled either by the proud encroachments of ill designing judges, or the *wild presumption of licentious juries.*"

In this prayer I most cordially join, and, with the learned commentator, hope that this wise distribution of power may long continue to flourish unimpaired either by the proud encroachments of ill-designing judges, or the wild presumption of licentious jurors. Such as I have here stated, I consider the principles of the English law, and to these principles I cheerfully subscribe.

But the principles adopted on this impeachment, and advocated, as I understand, by the honorable Managers, appear to me to have a direct tendency to break down every barrier between the province of the court and the jury, giving everything to the latter and nothing to the former; and so far from placing them or the counsel under the direction and control of the court, prohibit the court from restraining either the jury or the counsel, under the danger of impeachment. I differ with them. If in any case the law is known to be settled by a uniformity of decisions, a court of justice *degrades* itself if it permits counsel to take up their time in arguing against it. If the question is not considered as fully settled, counsel certainly ought to be heard, but it is to the court they ought to address themselves. In England the first lawyers who have ever existed, have not thought themselves degraded by arguing the law in criminal as well as in civil cases, before the court. If counsel should attempt to impose on the jury what is not law, is the court to sit tamely by, and suffer them to proceed? Such has not been the practice in

the courts which I have attended. Where the law is know to be settled, or where, upon application to the court, a determination is given, the endeavor to distinguish his case, and show that it counsel must go before the jury upon the fact, and doth not come within the law as established; for should counsel attempt to state anything to the jury, which appears designed to controvert the law as declared, they are immediately stopped by the court, and to persist would be considered highly indecorous, nor would the court permit it to be done. In Maryland the lawyers do not claim, as a Constitutional right, to mislead and deceive the judges, much less to mislead and deceive the jurors, free from any control of the court.

But it has been said that juries are most proper to decide the law in criminal cases, thereby to prevent a criminal from being borne down and oppressed by the weight of the prosecuting power. What case can arise in this country, to which this argument can apply? In England, before the Revolution, while judges were dependent on the Crown, if, also, wicked and corrupt, there might, where Government was interested, be some such cases. But is our situation to be compared to that of England, at that time? If so, it was not worth while for us to have taken upon ourselves the risks of the late Revolution to have changed our Government.

Is there anything to induce judges to oppress any individual even though offensive to the Government, while they are *independent?* Any danger of that kind is to be apprehended from judges who are *dependent.*

And hence flowed the great Constitutional provision, which secures the independence of the judges, which secures them from being removed or punished while they discharge their duty.

What probability is there that a judge would do injustice to any person with a view to please any party; when he could have but *very little prospect of reward*, and would be sure that though he did his duty he could not be removed from office or exposed to injury?

I wish this honorable Court to reflect on the nature of man. In a Government like ours, there will always be majorities and minorities. Minorities will often be powerful, and frequently in due time become majorities. If a judge should do an act pleasing to a majority, he must know it may render him hateful to the minority, who, in course of events, may get the power in their hands. If he endeavors to ingratiate himself with the minority, he exposes himself to the displeasure of the ruling majority. It is the duty of a judge to enforce the laws, while they exist, however unpopular those laws may be to any portion of the community. If he enforces such laws, he will gain the approbation of one party, but he will as certainly be disapproved by the other. Would you then wish that your judges should be exposed to be removed from office because, by the *most honest conduct*, they had displeased one party or the other, and leave them at the mercy of those who should, from time to time, hold the power of Government in their own hands? No, it is the *sacred independence* of the Judiciary, and that alone, which can be the best security that the judges shall not act with oppression.

But let me ask, further, are juries more free from undue influence than judges? Have they greater inducements to do what is right? They do not possess the elevated situation of the judges, they feel not the same responsibility; whatever may be the impropriety of their conduct, it would probably be scarcely heard of out of their own neighborhood, not long even there. They are liable to all the political prejudices of men devoted to the different parties which may exist. They are generally men totally ignorant of the law; nay, I shall prove when I come to speak of Basset's case, that though the Managers contend the jury should decide the law, yet ignorance of the law is by them considered the first recommendation of, nay, a necessary requisite for a juror!

Can it then be wise to reduce a judge to the humiliating situation of having the law decided by such a body, exposed to be led into error by the ingenuity of counsel? Can it be the wish of this Court to trust their property, their lives, all that is most dear to them, *even as to the legal questions*, to the *wild ideas* of jurors, liable to all the frailties of human nature, in preference to the sound discretion of judges well skilled in the law, and holding a high and responsible station?

Having laid down these general principles as to the relative rights and duties of the court, the bar, and the jury, I shall proceed with my honorable client to the State of Pennsylvania.

It was known that John Fries, charged with treason, had, on a former trial, been found guilty, and that a new trial had been granted upon a suggestion, which I hope will not become a precedent; will never be a rule for decisions. When I say this, I mean not to detract from the merit of that highly respectable character who presided, and who granted the new trial. His conduct flowed, I am convinced, from his humanity; his was the error of the heart, not of the head. It was an honest, nay, an amiable error. My honorable client knew, when he arrived at Philadelphia, that the trial of Fries was to take place that term. He has been acknowledged by the honorable Managers, to be a gentleman of the highest legal talents. In this they have only done him justice; and have been as prodigal of their praise as his warmest friends could have wished. It would have given me great pleasure if they had been as just in expressing their sense of his integrity. He had been in the practice of the law for forty years, and also a judge for a number of years, and for about six years, I believe, presided in the criminal court of Baltimore county, where, during that time, there were more criminal trials probably than in any other court in America. I believe I speak moderately, when I say that I have attended on behalf of the State, at least five thousand criminal trials in that court. From those circumstances it is to be presumed that he was not deficient in knowledge of what related to criminal proceedings, but would he have acted the part of an upright judge, if he had not endeavored to make

himself master of the law of treason, when a case of that nature was about to come before him; particularly the law of treason, as it related to levying war against the United States, or in adhering to those who levied war against them, which is the only kind of treason that our Constitution acknowledges; although I have heard, I must own, of *treason* against the *principles* of the Constitution, and *treason* against the *sovereignty* of the people—words well enough suited to a popular harangue, or a newspaper essay, but not for a court of justice.

When Judge Chase arrived at Philadelphia he had the advantage of perusing the notes of Judge Peters and the District Attorney, relating to the former trial; he thereby became well acquainted with all the points at that time made by the counsel for Fries; and Mr. Lewis has sworn, that all the points which were intended to have been made before Judge Chase had been made at the former trial. Why then should the court either wish, or be obliged to hear counsel again on the law? In two previous cases the law had been settled. Judge Paterson, a gentleman of the first abilities, mild and amiable, whom no person will charge with being of a vindictive, oppressive disposition, and who certainly has more suavity of manners than my honorable client had, after a most patient and full hearing, where eminent counsel attended, decided the law as it was decided by the respondent. Judge Iredell, whose encomium has been most justly given us by the Managers, a gentleman of great legal talents, than whom no worthier man has left this for a better world; and who, while living, honored me with his friendship, after having heard Messrs. Lewis and Dallas, and after full and patient investigation, gave, in the case of Fries himself, a similar decision; in both which opinions Judge Peters perfectly coincided. Under these circumstances, Judge Chase, who had no doubt of the propriety of those decisions, to prevent waste of time when there was so much business to transact, and to facilitate the business, thought it best to inform the counsel on each side, that the court considered the law to be settled, and in what manner. For which purpose they delivered to the clerk three copies of their opinion, one for the counsel on each side, the third to be given to the jury, when they left the bar. On this subject, Mr. Lewis, in his testimony, said it was to be given to the jury when the counsel of the United States had opened, or after he had closed the pleadings, but he believed the last. Mr. Rawle is clear that it was to be given to them, when the case was finished, to take out with them.

No gentleman on behalf of the impeachment has denied the correctness of this opinion. But the criminality of the judge, is, we are told, not in the opinion itself, but in the *manner* and the *time* in which it was given.

Was there anything improper that the opinion should be reduced to *writing?* Why are opinions given? Surely to regulate the conduct of those to whom given; for this purpose they ought to be perfectly understood, and in no degree subject to misconception; delivering the opinion, *in writing*, greatly facilitates these objects; if therefore it was *proper* to give an opinion, it was *meritorious* to reduce it to writing, and Judge Chase, in so doing, most certainly acted with the strictest propriety. And, unless a court of justice is bound to sit and hear counsel on points of law, where they themselves have no doubts, before they give their opinion, my honorable client could not be incorrect in delivering it at the time when it was delivered. If the opinion was *proper*, how, I pray, could any *injury* be done to Fries by its being delivered? The honorable Managers say, it was intended to influence the jury. In the first place, this assertion is not supported by the evidence. When the paper was thrown on the clerk's table, not one word was said of its contents; nor did the court declare any opinion on Fries case. They only determined the indictment correct in point of form, and not liable to be quashed. They determined that the overt acts stated were overt acts of treason, if Fries had committed them, but whether Fries had committed those acts remained for the jury to determine upon the evidence; as to that part of the case the court gave no opinion. But the honorable Managers have told us that Judge Chase must have known what were the facts in the case, because they had been disclosed in the former trial. And I pray you, sir, if he had the knowledge, could it *alter the law in the case*, or render the declaration of what the law was, *more improper?* But, as a new trial was granted, the judge could not know what additional evidence might be brought forward to vary the case from its former appearance.

Nor *did*, sir, the judge's conduct, either improperly influence, nor was it intended so to influence, the jury. No copy of the opinion would have been taken but for the conduct of Mr. Lewis, and no testimony has been offered to show the least probability that one single juryman ever saw the copy, or knew one word of its contents. Nay, sir, it is proved, that Judge Chase took *uncommon* pains to prevent any of the jurors from being prejudiced against Fries; for, although a great number of criminals, indicted for sedition, submitted to the court before Fries was put upon his trial, the judge would not permit *one single witness*, who was summoned against Fries, to be examined on the submissions, lest the jury, by an examination which would have been, as to Fries, *ex parte*, might take up prejudices against him. This, Mr. President, was an act of the judge that carries with it the most convincing proof, that he had no wish to oppress Fries, or to prevent him from having an impartial trial: and I pray that this circumstance may be deeply impressed on the mind of every member of this honorable Court.

But if the opinion had been publicly read and known, how could it have *injured* Fries? He was to have an *impartial* trial. What is the meaning of these expresions? It is a trial according to law and fact, in which, if he is proved innocent, he shall be acquitted; if guilty, convicted. If, then the opinion was agreeable to law, it could not prevent, it could not interfere with his having an impartial trial. If in any case a person is acquitted,

when the facts are clearly proved, and the law is against him, it must be because he has had a *partial*, not an *impartial trial*.

I again ask, sir, ought the court, who were perfectly satisfied with respect to the law, and who considered it settled by previous decisions, in which they perfectly concurred, to have wasted perhaps several days of the public time before they gave their opinion, in listening to Messrs Lewis and Dallas, exerting all the powers of eloquence and of sophistry to mislead their judgment? Nor did even Judge Chase give *his* opinion without the full consideration of the arguments of each of these gentlemen in the very case of Fries. On his arrival, it is admitted by the Managers, that he became perfectly acquainted with the proceedings in the former trial, as to the legal questions which had occurred, from the notes of Judge Peters and of the District Attorney; and this honorable Court have had an opportunity of witnessing with what precision that gentleman takes down the substance of proceedings on a trial. Judge Chase had an opportunity of examining and considering the arguments used by Messrs. Lewis and Dallas, at the former trial, on the different legal questions then brought forward, the authorities produced, and the applicability of those authorities. He there saw everything that the great legal knowledge and high talents of those gentlemen, indulged to the utmost extent and heard with the greatest patience, had produced in favor of Fries. And he had the opportunity of calmly and deliberately considering the whole of these arguments and authorities in his chamber. And having done this, where would be the propriety of spending day after day in listening to the same arguments orally repeated in court, which he had read in his closet, the merit of which he had there coolly discussed, and deliberately decided?

But the Managers say that this *ought* to have been done. That, though the court had no doubt of the law, and although it is not contended but that the opinion given is correct, yet it was the *duty* of the court to have patiently listened to the counsel, and suffered them to exert all their eloquence, their ingenuity and sophistry, to pervert their judgment, and lead them into error, to prevail over their understanding, and obtain from them an erroneous opinion. And yet in the same breath we are told, by one of the honorable Managers, (Mr. Campbell,) that if a judge gives an erroneous opinion, the presumption is that he doth it from corrupt and criminal motives: and that on impeachment, it is necessary that he should prove the uprightness and integrity of his intentions.

Thus, then, they insist, that if a judge, intelligent, sensible, well acquainted with the law, doth not indulge counsel in their attempt to lead him into error, he is to be impeached for it. And, if the judge should listen to counsel against his well formed opinion, and, by their ingenuity, be led to give up his better judgment, and pronounce an erroneous opinion, he is to be impeached for that also?

Nay, it is expressly said, that the more completely the law is considered to be settled, the more absolutely necessary it is that the criminal's counsel should be permitted to argue the law to the court, and to contend against the law so settled. Thus, then, I suppose, if a person is tried for an assault and battery, the prisoner's counsel must be indulged by the court, and that under pain of impeachment, in spending as much time as they please, in endeavoring to convince the court, that, to come up behind an innocent, inoffensive man, and fracture his skull with a bludgeon, doth not amount to an assault and battery; or, if a person is tried for a burglary, his counsel must also, under the same penalty, be indulged in the endeavor to convince the court, that to break into a dwelling-house in the night time, and steal therefrom, is not the offence of burglary.

But the honorable Managers do not stop even here. They say that even had Judge Chase indulged the counsel of Fries with all the length of time they might think proper, in an endeavor to pervert the judgment of the court, and their endeavor had proved unsuccessful, the court was further under pain of impeachment, after they had correctly declared the law to the jury, to suffer the counsel to take up as much more time as they pleased in endeavoring to mislead the jury, by impudently and insolently, in the face of the court, attempting to impress them with the idea that the court, though acting under a solemn oath, and having no interest to mislead them, had given an erroneous opinion; and, to induce them to receive the law from the counsel themselves, acting not under similar obligations, but whose fame and whose fortunes might be materially benefitted by deceiving the jury—from counsel whose every interest might be to pervert justice.

All which indulgence, the court, it seems, is also equally bound to give to the counsel in endeavoring to mislead the jury, and pervert justice, in the cases I have before mentioned, of assault and battery, or burglary, or, in reality, of any other offence, however incontestable the principles of law in such cases may be. Such are the Constitutional rights which criminals and their counsel, we are told, possess—the Constitutional right, if possible, to impose upon the court—and, if they fail there, the Constitutional right to impose upon the jury; in other words, the Constitutional right to *pervert* justice!

Nay, we are told the more manifest the guilt, the more indisputably criminal the offender is, the more necessary that he should enjoy these Constitutional rights; and so it would be if the Constitution intended, as seems to be the idea of the Managers, that guilt should go unpunished; since such offenders can have no chance to escape unless justice be perverted, through the ingenuity of counsel operating upon the ignorance, the passions, or the prejudices of judges or jurors.

The Managers have, consistent with the above idea, which they seem to have adopted, exclaimed, "what good could counsel do to Fries after the 'court had decided the law? As to the facts there 'was no dispute. Under such circumstances, to 'assign counsel to him was mockery, was insult."

In reply, I will admit that Fries's case was such that counsel could not render him much service, but this was not the fault of the court, it was the fault of the case itself, it was because the law was clearly against him, and because the evidence indisputably proved that he had committed acts which brought him within the law.

In such cases, what is the duty of the counsel, whether assigned by the court or employed by the prisoner? It is to advise the prisoner to plead guilty, and throw himself upon the mercy of his country, instead of taking up the time of the court, and creating expense by a jury trial; but such advice, however agreeable to the Constitution of our country, would not, I admit, agree very well with the constitution of a lawyer, as thereby he might occasionally lose large fees extorted from a criminal, fed on a vain hope that the eloquence and chicanery of his lawyer might procure his acquittal, contrary to law and contrary to evidence.

But counsel *may be* of service to a criminal however guilty he may be, and has duties which he may correctly perform. The counsel may with propriety avail themselves of any defect in the indictment or other proceedings; they may take care that the panel of jurors are legally and impartially returned; they may direct the prisoner as to his challenges to jurors; they may take care that no incompetent witnesses are sworn, and that no improper testimony is given; they may, in any questions of law not considered settled, be heard, and have the questions decided; in fine, they may take care that the prisoner has a *fair trial;* but, when all this has been done, if agreeably to law and clear undoubted evidence, the prisoner is guilty, it is the duty of the counsel to submit his client's case to the honest decision of the jury, without any attempt to mislead them; and this, whether the counsel are appointed by the court or employed by the criminal. Thus lawyers in Maryland are in the habit of conducting themselves in such cases, and thus ought lawyers who respect themselves, and have a regard for their own characters, to conduct themselves in all places.

I have heard so much, Mr. President, in this case about the Constitutional rights of criminals to have counsel; and that the counsel should argue to the jury upon the true construction of the law, against the direction of the court; and that the jury have the right to decide the law without regard to such direction; and finding, also, that this article of impeachment, as well as the arguments in support of it, appear to be grounded on these principles, that I had been almost induced to suppose I had mis-read the eighth amended article of the Constitution; but, on turning to it, I find that the Constitution secures to the criminal the assistance of counsel, to see that his trial is fairly and correctly conducted, but has not given to the person charged with an offence, or to his counsel, if he is guilty, any Constitutional rights for the purpose of his evading punishment by the imposition of counsel either on the judge or the jury.

Whatever may have been the *practice*, I have ever considered it contrary to the *duty* of counsel, either in civil or criminal cases, to exert their abilities in attempting to procure a decision which they are conscious is unjust. The duty of a lawyer is, most certainly, in every case to exert himself in procuring justice to be done to his client, but not to support him in injustice.

Having made these observations on the relative duties of the court and counsel, let me advert a moment to the conduct of Mr. Lewis, as appears from his own testimony. When my honorable client delivered at the clerk's table the copy of the opinion designed for the defendant's counsel, having taken it in his hand—without opening it, without reading one word—Mr. Lewis contemptuously threw it from him, publicly declaring that he "would never contaminate *his hand* by 'receiving into it a *prejudicated opinion* in any 'cause where he was concerned, from any judge 'whatever." What insolence! Would to God no lawyer may ever *contaminate his hand* in a more disgraceful manner, than by receiving therein a sensible, correct, legal opinion, in a cause about to be tried, at whatever time it may be delivered to him!

He also informs us, that he declared to the court that he never had, nor ever would so far degrade himself as a lawyer, as to argue a question on law, in a criminal case, before the court. What arrogance! Sir, the most eminent, the most respectable lawyers both in England and America, have been in the constant habit not only of arguing questions of law in criminal cases before the court, but in modestly submitting to their decisions, without ever considering it as lessening their consequence. I have long been at a loss, sir, for the enmity the State of Pennsylvania has shown for its bar, and the desire of its citizens to get rid of their lawyers; but if such is the manner in which the lawyers conduct themselves to their courts, if they, when they are employed in a cause, claim the Constitutional right, uncontrolled by the court, instead of furthering justice, to pervert it, I wonder no longer why the citizens of that State wish to be freed from them, and will readily join in the sentiment, "the sooner the better." I will go further, and say if their courts submit to such conduct, and think themselves bound to be the passive witnesses of such perversion of justice, it is not much matter how soon they also get rid of their courts, for they might as well be without them.

The principles which have been advocated in support of this article, are subversive of the whole order of things; instead of lawyers being the officers of the court, subject to their control, and amenable for the propriety of their conduct, the judges must be the menial, degraded instruments of the lawyers, and must suit their conduct, not to propriety and justice, but to the pleasure of any haughty, overbearing lawyer possessing abilities and popularity, and that too under the hazard of being impeached, and turned out of office if his principles should, on any occasion, render him restive, or, in the language of the testimony, if he should "take the stud."

And here, Mr. President, I hope I shall be in-

dulged with some inquiry as to this "prejudicated opinion," which Mr. Lewis seems to think has such a contaminating, polluting tendency to the hand of a lawyer, and of which he was so apprehensive, that he would not retain it for a moment. I confess I feel myself here at a loss to know exactly what the witness meant by a "prejudicated opinion" on the law. I should suppose that the expression, if it can in any instance be correctly applied, must mean the same as to prejudge the law; which if used to signify anything improper, must be confined to the case where a person forms an *erroneous* opinion of the law, without using *all due means* to acquire correct information.

To *prejudge* any case, I consider as meaning, that a person without competent knowledge of facts, hath formed an opinion injurious to the merits of the case. If the term "prejudication" is used in this sense, there is no pretence that my honorable client gave a *prejudicated* opinion in the case of Fries; for it is not alleged that the opinion given was not strictly legal and correct; neither Mr. Lewis nor Mr. Dallas have ever attempted to hazard their characters by suggesting the contrary, nor have the honorable Managers taken that ground; they do not contest its propriety. Should they, in their reply, I shall cheerfully rest that question upon the well known legal abilities of Judges Iredell, Paterson, my honorable client, the associate judges who concurred with them, and the legal knowledge of this honorable Court.

But if by a prejudicated opinion, is meant that the judge, from his great legal knowledge, and familiar acquaintance with the law as relative to the doctrine of treason, particularly levying war against the United States, had formed a clear, decided opinion that the facts stated in the indictment against Fries, if proved, as laid, amounted to treason, I will readily allow that I have no doubt my honorable client had *thus* prejudicated the law, not only before Fries was brought to trial, but before he had committed the treason for which he was tried. But if this manner of prejudicating law is thought improper, nay, criminal, in a judge; a prejudication which is nothing more than an eminent and correct knowledge of the law, why, I pray, are gentlemen of great talents and high legal attainments sought for in your appointments of judges? How, sir, are they to free themselves from this obnoxious prejudication of the law and acquire the contended fitness for the trial of a cause, but by forgetting all that legal knowledge which had been a principal inducement to their appointment? If I understand the gentlemen, to gratify their ideas we ought to have judges, who, when they take their seats on the bench to preside at the trial of a criminal, should not have one single legal idea relative to the offence about to be tried, but should have their minds exactly in that state in which some ingenious metaphysicians tell us the human soul is, when first united to the body, like a pure, unsullied sheet of white paper, ready to receive any impressions which may be made upon it.

Well, be it so, and let us consider the trial of Fries as if it had been conducted on that principle. The judges, with their minds like this white sheet of paper, were to sit still and suffer the counsel to scrawl thereon whatever characters they pleased, to blot and to blur it until they were perfectly satisfied. After this ceremony, the judges, examining the impressions thus made upon the antecedent clean sheet, were from these, and these *only*, to form their opinion of the law; and this opinion, having been thus formed from nothing but what occurred *during* the trial, and *after* the jury were sworn, would not be called a prejudicated opinion, and therefore, I presume, would be perfectly satisfactory to the honorable Managers. So far we should have done very well as it related to the trial of Fries. But next day another criminal is to be tried for a *similar* offence; Messrs Lewis and Dallas are not his defenders. Getman has selected Mr. Tilghman for his counsel. How, I pray you, are the judges to be qualified to preside with propriety in this trial? Yesterday they gave a solemn determination in Fries's case upon the *same* question of law which now must come forward in the case of Getman. Mr. Tilghman was not then heard. The opinion then given is, as *to Mr. Tilghman and his client*, as much a prejudicated opinion, an opinion as contaminating to the hands of a lawyer to receive, and as highly criminal for a court to give, as was the opinion given by my honorable client. What can be done? The minds of the judges are *no longer a pure, unsullied sheet of paper*. Yesterday, in the trial of Fries, they had been scrawled upon and sullied by Lewis and Dallas; the impressions still remain. I, sir, can think of no remedy in this difficulty, except that the judges should be supplied with a reasonable quantity of *India rubber*, or something which will answer in its place, with which they might wipe off and erase every impression which had been made the day before by Lewis and Dallas, during the trial of Fries; and thus *once more* take their seats on the bench for the trial of Getman, with minds again like clean sheets of white paper, ready to be again scrawled over, again to be blotted and blurred at the pleasure of Mr. Tilghman, and from these scrawls, blots and blurs, and from these *alone*, to take their impressions as to the law, and form their decision as to Getman's case, without regarding, or even *remembering* the decision they had given the day before; and in this manner to proceed in every case that might come before them successively in their judicial capacity.

If, sir, judges are to be censured for possessing legal talents, for being correctly acquainted with the law in criminal cases, and for not suffering themselves to be insulted, and the public time wasted, by being obliged to hear arguments of counsel upon questions which have been repeatedly decided, and on which they have no doubt; I pray you let not our courts of justice be disgraced, nor gentlemen of legal talents and abilities be degraded by placing them on the bench under such humiliating circumstances! But let us go to the corn-fields, to the tobacco plantations, and there take our judges from the plough and

hoe. We shall there find men enough possessed of what seems to be thought the first requisite of a judge, a total ignorance of the law! That degradation which no gentleman of merit and abilities could endure they will not feel.

In reply to an observation made by my very respectable colleague who opened our defence, and which I have endeavored to enforce, "that, if 'the opinion given by the court was correct, Fries 'could receive no injury thereby, though Messrs. 'Lewis and Dallas had not been suffered to argue 'against that opinion, because the opinion ought, 'notwithstanding, to have been the same;" one of the honorable Managers has said, that had Judge Chase sentenced Fries to death without the verdict of a jury; had he decided the fact as well as the law, and he says he might have done the one with as much propriety as the other, it might have been urged in the same manner in defence of the judge, "that it was of no consequence to 'Fries, for the fact being clearly against him, had 'he been tried by a jury, the jury must have 'found him guilty, and then the judge must have 'done what he did, sentence him to death."

This argument is totally fallacious. By the Constitution and laws of the United States, the criminal has a right to demand that the facts shall be decided by a jury. This the court cannot refuse if the criminal requires it. Was a judge to refuse the criminal the trial of the fact by a jury, he would violate a well known legal and Constitutional right of the criminal. But as the criminal has a right that the jury should determine questions of fact, so do the principles of jurisprudence equally declare it to be the right of the court to decide questions of law, and the Constitution in no part contravenes this right; it no where says that the judges must be ignorant of the law, and take their impressions from the counsel of the criminal, or that it is the right of counsel to be heard where the court has no doubt of the law, or to argue to the jury that the law is contrary to the direction of the court, or that the jury should have a right to decide the law contrary to such direction. Hence, therefore, there is this great distinction between the two cases; in the first the court only exercise their own rights, infringing no right of the criminal; while in the last, the court would act in direct violation of his well-known legal and Constitutional rights. But though the criminal has the Constitutional right to have all facts decided by a jury, he may waive this right, in which case the court may pass sentence without the intervention of a jury; as where the criminal demurs to the indictment, and rests upon his demurrer, or where he pleads guilty, in which cases the court, without the intervention of a jury, proceed to pass sentence according to law and the nature of the offence.

In the opening of our defence, it has also been urged, that if there was any impropriety in the conduct of the court respecting the trial of Fries, on the first day, it was amply compensated by the conduct of the court on the second day, in having called in the written opinions, and the copies which had been taken, and given the counsel liberty to proceed in such manner as they should think proper.

In answer to this the honorable Managers have replied that it was then too late. The mischief that had been done the first day was irretrievable; the sin that day committed was inexpiable: Nay, one of the Managers has told us that the excuse is as absurd, as would be the excuse of a person who, having thrown a firebrand into combustibles, and set the whole neighborhood in a blaze, should attempt to excuse himself by saying "he had again got into his possession, and extinguished the brand with which he had enkindled the fire, although the conflagration was still extending, and consuming everything before it"—a most happy simile.

But let us examine wherein the mischief was so irretrievable—the sin so inexpiable. Neither more nor less than in this: that as the written opinion only contained the impressions on the minds of the judges, the destruction of that written opinion would not prevent the same impressions remaining on their minds, and those impressions would be as difficult to remove after the opinions were called in as before. It is all very true; but how came the judges to have on their minds those impressions? Not from having committed them to paper, but from their correct knowledge of the law. And how were those impressions to be removed? Certainly by no means, unless that correct knowledge of the law could also be removed. To accomplish which, I know of no means that could be used, unless the judges could have been supplied with a quantity of our India rubber, or with a few barrels of the water of Lethe, with the one to rub out and efface from their minds all their legal knowledge, or by copious draughts of the other to wash it away. But, sir, I have not made, nor shall I make any use of the proceedings of the second day as an excuse for any impropriety of the court on the first; I only consider them as incontestable proofs, that the court had no other object in view, on either of those days, than conscientiously to discharge their duty by giving Fries a fair and impartial trial; that if he was guilty, he might be punished; if innocent, acquitted. I deny that the court was guilty on the first day of any impropriety; I take higher ground, and have contended, and do contend, that the conduct of the court on the first day was correct and proper, and during the whole trial I find nothing improper in their conduct, except their almost humiliatingly soliciting the counsel of Fries to do their duty, instead of committing them to jail for the impropriety of their conduct, which the court ought to have done; but even in this the court has afforded the strongest proof of their solicitude that Fries should have every legal and Constitutional benefit of counsel at his trial.

Reflect, also, that at the time when Mr. Lewis thus contemptuously dashed from his pure hand the contaminating opinion, he had not read a single word, nor received the least intimation of its

contents, nor did he know its contents until long after, and yet he instantly formed the determination not to appear for Fries, and to advise their client not to accept the assignment of any other counsel should the court offer it. Whence this conduct? How did he know the opinion was not favorable to his client? His conscience told him it was not. His own great legal knowledge confirmed to him the truth. He well knew the law; he was acquainted with the correct decisions which had been before given. He well knew the great legal knowledge of the judge, who on this occasion presided; he was certain my honorable client could not but concur with his brethren. He acknowledges they had no hope to change the opinion of the court, and that they had not the vanity to suppose the jury would, under their influence, decide the law contrary to what the court should direct; therefore that they had no hopes of the acquittal of their client by the jury on the trial, whatever services they were permitted to render him, and therefore, as the only chance which they had to save his forfeit life, they assumed that line of conduct which has been disclosed in the evidence. When Mr. Lewis, in giving his testimony, mentioned, "Judge Peters asked us on the next day whether 'if the court had got into a scrape the first day, 'the counsel would not let the court get out of 'it." "No," said Mr. Lewis, "we were determined not to let them get out of it, as the only means to save our client's life;" and in the conclusion of his testimony he repeated that they were actuated in their conduct, from considering it the only chance they had to save the life of their client, and not from any other motive. And Mr. Dallas also observed in his testimony, that when the court on the second day pressed them to continue their services as counsel of Fries they refused, determined not to depart from the policy they had adopted, and to withdraw, as the most probable means of benefiting their client.

I shall conclude what relates to this article by observing, that the conduct of Fries's counsel to the court on that trial was such as nothing can excuse. It can only be palliated by the reflection, that for his crimes he was liable to suffer death. Feelings of humanity and compassion, independent of interest, might excite in their bosoms an earnest anxiety to save his life, this may serve to mitigate censure; but even those feelings, however amiable, ought not to be gratified at the expense of national justice, nor by an endeavor to stamp upon judges of uprightness and integrity the dishonorable charge of partiality and oppression. I fear, sir, I have been tedious on this article; but it will be considered that, whatever may be my own sentiments of the futility of any part of these charges, I cannot determine how far this honorable Court may correspond with me in sentiment; nor can I do otherwise than treat, as of consequence, any charge brought forward by the honorable House of Representatives, or not consider it as being of importance.

I will now, Mr. President, proceed to those articles which arise out of the trial in Virginia; and I find it stated in the beginning of the second article that my honorable client went there prompted by the *same* shameful spirit of persecution and injustice, the truth of which I am ready to acknowledge, after having satisfactorily proved that at Philadelphia he had not shown in any manner whatever a spirit of persecution and injustice, but had acted with uprightness and integrity; and that his greatest fault on that occasion was, that he did not commit the counsel of Fries to the public jail for their insolent, their arrogant, their contemptuous behaviour to the court; and I flatter myself that I shall be able to show that my honorable client acted with the same uprightness and integrity in the case of Callender as I have shown he acted in the case of Fries.

The second article goes on to charge Judge Chase with overruling the objection of John Basset, who wished to be excused from serving on the jury in the trial of Callender, and causing him to be sworn, and to serve on the said jury by whose verdict Callender was convicted.

This article requires a discussion of the law relating to challenges of jurors, and whether Mr. Basset was legally sworn on that jury. And here again, as well as in the case of Fries, I meet with the most perfect novelties, for except in those trials I never heard of jurors, when called to be sworn, examined on oath whether they had formed, or formed or delivered, or whether they had formed and delivered an opinion on the subject about to be tried. And here also let me observe that there is no just grounds for the charge that Judge Chase from partiality administered the oath differently in Callender's case from the manner in which he administered it to the jurors in the case of Fries; for Mr. Rawle, referring to his notes taken at the time, has told us that in the case of Fries, one or two of the first jurors were only asked whether they had formed an opinion, after which the question was put, whether he had formed *or* delivered an opinion, but ultimately the question asked was, whether they had formed *and* delivered an opinion, which question was put to the greater part of the jurors; so that the interrogatory *ultimately* fixed upon in the case of Fries is the same which was put to all the jurors who were interrogated in the case of Callender.

I have, Mr. President, been in the practice of the law for thirty years. Before the Revolution I attended, two or three years, the two counties on the Eastern Shore of Virginia—Sussex county in Delaware, and Somerset and Worcester in Maryland; since the Revolution I have constantly attended the general courts on the Western and Eastern Shores of Maryland, and the civil and criminal courts of Baltimore county, and for about six years several other counties in Maryland. In the whole course of my practice, I have never known a single case, either civil or criminal, in which the jurors have been, when called to the book, demanded to answer upon oath either of the aforesaid questions which the defendant's counsel requested to be put to them.

If either party choose to challenge a juror for favor, on account of declarations made by the juror, the only ground for it is that he has used expressions showing his determination to decide for one party or the other without regard to truth and justice. In which case the party makes his objection to the particular juror specifying the expressions uttered by the juror indicative of such improper determination, and produces witnesses to establish his objection; for the juror cannot be examined on oath to substantiate the charge; and, unless by mutual consent, the objection made must be decided, not by the court, but by triers. And the only matter to be decided is, whether the juror has made any declaration of a design to give a verdict one way or the other, whether right or wrong; for if the juror made the declarations from his knowledge of the facts in the case, this would be no cause of challenge, nor any objection to his being sworn on the jury. And as the juror himself against whom such objection is made cannot be examined on oath, it follows, of course, he cannot be challenged for having formed an opinion, but only for having delivered it, as third persons cannot know of an opinion being formed but by its having been delivered. And, as I have observed already, even the delivery of an opinion is no cause of challenge, if it appears to have been founded upon the juror's knowledge of facts, and not from partiality. In consequence of this principle of law, it can be no objection against a juror being sworn, even though he should have the most perfect knowledge of every fact relative to the issue, to try which he is about to be sworn; on the contrary, the principal reason assigned why trials ought to be by jurors from the vicinage, is the presumption that they will be best acquainted with the facts which will be put in issue for their decision.

Suppose a person, summoned as a juror to try an indictment for assault and battery, or any other offence, had seen the offence committed and perfectly knew the offender, it would be no cause of challenge against the juror, nor could he for that reason be rejected at the trial; on the contrary, the law considers him the better qualified to serve in that case as a juror, in consequence of that knowledge. If, in the instance I have put, such juryman had declared that the criminal had committed an assault and battery, and that he was determined to find him guilty, this declaration being founded on the knowledge of the juror as to the truth of the case would be no ground for challenge; to support a challenge, the juror must show an intention to act partially, through favor or malice. It is, therefore, no objection to a person serving as a juror because he is also a witness.

And so far is it from being the case that a juryman's knowledge of the law, or his having declared his opinion of the law arising in the case to be tried, should be a cause of challenge, that, if two or more persons are indicted in the same indictment for the same offence, and one is tried and convicted, a juryman, who served on that trial, may be sworn on the subsequent trial of the other person joined in the indictment, and cannot be challenged, although as to the law arising in the case he had not only declared his opinion, but even declared it on oath in the former trial. So, also, is the case of a judge, whether he is to decide the law only, as in jury trials, or the law and fact both, as here in the case of impeachments; his knowledge of the facts in the cause is no objection to his acting as a judge, and he may be called on to give testimony, and yet give his decision in his judicial capacity. In support of these principles, in addition to the authorities adduced by my very respectable colleague, (Mr. Key,) I will trouble this honorable Court with Brookes's Abridgment, title Challenge, pl. 90, where he says: "It is a cause of challenge to the favor if the juror has declared that should he be empanelled he would give a verdict for the plaintiff."

This authority shows that a declaration, as I have contended, must have been made; but I shall now also show that, as I have before stated, the declaration must be made from motives of partiality, that is, from favor or ill will, to the one or the other party. For this purpose I will read 2d Hawkins, chapter 43, section 28: "It hath been allow-'ed a good cause of challenge on the part of the 'prisoner that the juror hath declared his opinion 'beforehand, that the party is guilty, or will be 'hanged, or the like. Yet it hath been adjudged 'that if it shall appear that the juror made such 'declaration from his knowledge of the cause, 'and not out of any ill will to the party, it is no 'cause of challenge." This doctrine is as old as the seventh of Henry VI.; during whose reign it was determined that though a juror had said twenty times that if he was sworn he would give his verdict for one of the parties, yet, if he said this from the knowledge which he had of the matter in dispute, and the truth of the case, such juror was indifferent; but, if he said this from any affection to the party, the juror in that case was favorable, and thus Judge Babington directed the triers. See Brookes's Abridgment, title Challenge, pl. 55.

In Viner's Abridgment, vol. 21, p. 266, we find the same principle recognised. It is there stated that "if a juror says twenty times that he will 'pass for the one party, this is not a principal 'challenge, for it may be that he speaks it for the 'notice which he has of the thing in issue, and 'not for affection." A decision in the seventh of Henry VI., and another in the twentieth of the same King are referred to; and the authority from Brooke, Challenge, pl. 55, before mentioned, is in the note introduced with approbation,

In 2 Hawkins, chapter 43, section 29, we find in confirmation of the positions I have taken, the law thus declared: "It hath been adjudged to be 'no good cause of challenge, that the juror hath 'found other persons guilty on the same indict-'ment, for the indictment is in the judgment of 'law several against each defendant, for one must 'be convicted by particular evidence against him-'self." The same principle is established by the decisions in vol. 4, State Trials, pages 141 and 175, (which he turned to and read.) Volume 2, State

Trials, 255, 256, also show that, though a person is a witness in the cause, it is no reason he should not serve as a juror, and also the knowledge which a juror may have of the case to be tried by him, is no disqualification. It also shows how questions of this nature are to be tried.

And to prove that the knowledge of the facts to be decided doth not in any degree interfere with the right of a judge to decide in the case, and that any member of this honorable Court might be sworn as a witness, and yet give his decision in the cause, I will read an authority from State Trials, vol. 2, page 632, where Lord Stafford, on his trial, puts this question to the court. "If I shall name any of the House of Lords as my witnesses, can that exempt them from being judges?" The answer given by the Lord High Steward was, "No, my Lord, if your Lordship has any witnesses 'among my Lords here, they may well testify for 'you, and yet remain in the capacity of your 'judges, for my Lord of Strafford had a great 'many witnesses, who were Peers."

Thus, though in this instance the judges had to decide both the law and the fact, the knowledge of any one of them in no respect formed an objection to his deciding as a judge.

I have said, also, that a juror cannot be examined on oath to prove that he has made any declaration which would be a good cause to challenge him for favor. To support this position, I will trouble the honorable Court with two authorities. The first from Leitch's edition of Hawkins, 2d vol., page 589, in the note. In the text it is mentioned as a cause of challenge, "that a juror hath said the prisoner is guilty, or will be hanged, or the like," &c. In the note it is stated that the prisoner shall not examine a juror, concerning such matter, on a *voir dire*, because it sounds in reproach.

The second, from Cooke's case, 1 Salk. 153, where it appears that Cooke, being indicted for high treason, offered to ask the jurors when called, in order to challenge them, "if they had not said he was guilty, or would be hanged." And, by the court, "this is a good cause of challenge, but then the prisoner must prove it by witnesses, not out of the mouth of the juryman."

With these observations, I shall rest the question as to what disqualifies a juror, and shall proceed to examine whether Basset was improperly or illegally sworn upon that jury which tried Callender. I have shown that he might not only have formed, but delivered an opinion respecting the conduct of the criminal, and yet that, unless his declarations tended to prove that he did not mean to give a just and impartial verdict, but to decide against propriety and right, he was competent to be sworn on the jury. The question which was put to the jurors by the court, no law required to be put, nor was any of the jurymen bound by any law to answer the question; and the judge was perfectly correct when he said, upon the counsel insisting that the indictment should be read to the jurors, and that they should then be asked if they had formed or declared an opinion as to the charge in the indictment, that the court had already indulged them beyond what they were entitled to by law. But, to proceed with Basset: What was his situation? He expressed no wish to be excused, provided there would be no impropriety in his being sworn, but, from a delicate scruple, he informed the court that he had seen in the newspapers, extracts said to be taken from "The Prospect Before Us;" that he had no knowledge whether they were truly extracted, but if they were, and the context did not explain away the apparent meaning of the extracts, he had made up his opinion unequivocally that their author came within the provisions of the sedition law. But let us suppose that Mr. Basset had actually seen and read "The Prospect Before Us," and had found the extracts fairly taken from it, and had formed and declared his opinion, that it was a publication which came within the sedition law; as to Callender, it would have amounted to no more than this, that if he was the author or publisher, and could not prove the truth of his charges, and had published them maliciously, to defame the President of the United States, he ought to be punished. And what honest man ever thought differently? None, whom I ever heard speak of the book. Whether the extracts he had seen agreed with the contents of the book; whether the context supported the apparent meaning; whether the charges were true; whether Callender was the author or publisher; and if so, whether he wrote or published them maliciously to defame, &c., were subjects of which Mr. Basset was ignorant, and on which he had declared no opinion. On these questions he was at liberty freely to decide, according as the evidence in the case should justify him.

But, it is said, this opinion formed, and declaration made, was improper, because they say the criminal ought to have the law and the fact both decided by the jury; and a juror should have his opinion as little made up on the law as on the fact. Hence, then, we are to infer, that as want of knowledge of the law is the best qualification for a judge, so the ignorance of the law is the best qualification for a juror; and yet, we are told, that a juror has a Constitutional right to determine the law, and that too, in defiance of the opinion of the court! Thus, it seems, the more ignorant they are, the greater our security for obtaining a just decision! I admit, the greater their ignorance, the better will they be qualified for taking what is contended to be the due impression from the exercise of what, we are told, is the Constitutional right of counsel!

But, in this case, as appears from the testimony, there were others besides Callender, concerned in printing and publishing "The Prospect Before Us;" suppose some other person, for instance, Mr. Rind, had also been indicted; that, on the trial of Rind, Mr. Basset had served as a juror, and had found him guilty; that Callender had afterwards been brought to trial, and Mr. Basset had been called as a juror, he could not be set aside, according to the authorities I have produced, although in the case of Rind he had, and that on oath, declared his opinion of the law.

Mr. Basset, although being possessed of a liberal fortune he doth not now practice, was bred to the law; his legal knowledge was such that he could not doubt but that such publications as "The Prospect Before Us," came under the provisions of the sedition law. And it is, for this reason, that the Managers contend that he ought not to have been sworn. Yes, sir, this very knowledge of the law which rendered him a more proper character to serve on the jury, is by honorable Managers insisted on as what ought to have been his disqualification! And yet they contend that the jury have the uncontrolable right to decide upon the law!

Suppose, Mr. President, a person to be indicted for an assault and battery, or for burglary; if any person should be summoned on the jury who had so much common sense and general information as to know that the man who comes behind the back of another and knocks him down, is guilty of an assault and battery, he would be unfit to serve as a juror in the first case; or to know that if a man breaks into a dwelling-house in the night time, and steals therefrom, such offender is guilty of burglary, he would be equally unfit in the last case.

Hence, then, it follows that, in the opinion of the honorable Managers, that as judges ought to have no previous knowledge of the law, relative to cases which are to be tried before them; so, also, jurors ought not to have any knowledge of what is the law, in cases to be tried before them; and that if any juror, with such legal knowledge, should be summoned, he ought not to be admitted to serve, unless, indeed, he can be rendered properly qualified by the application of the India rubber, or by the use of the Lethean waters; by the one mode or the other, to be reduced to that happy state of ignorance thought by the Managers to be the essential requisite of a juror.

I would, before I conclude this subject, remark upon an observation made by one of the honorable Managers (Mr. Campbell;) he has charged Judge Chase with having caused Mr. Basset to be sworn as one of the jury for the very purpose of convicting Callender, from his knowledge of Basset's political principles.

My worthy colleague (Mr. Key) has with great strength of argument shown that Judge Chase could not, from the facts proved, be otherwise than a stranger both to the person and to the political principles of Mr. Basset. But I am aware that, in reply, it will be said the declaration Mr. Basset made in court showed what were his political sentiments. He only there declared that "The Prospect Before Us," if the extracts he had seen were justified by the book, was a seditious publication. This could be no proof that he was a federalist. I never knew a gentleman of any political principles that did not uniformly declare, that if the sedition law was Constitutional, that publication was clearly within the provisions of the law. Even his counsel have declared that they did not appear on his account, that they despised the wretch, and considered him as a disgrace to society. They have declared they had no hopes of saving him unless by establishing the unconstitutionality of that law.

But even had Judge Chase known the political principles of Mr. Basset to have been federal, it would not have justified him in excusing him from being sworn; nor would he have been justified in setting aside a juror because he was a republican, unless there had been in each case some other legal objection. There is no distinction between the two cases; the political principles of a man is not the test of his fitness to serve as a juror. If Mr. Basset had been exempted from being sworn on the jury in consequence of the scruples he suggested, the court must have exempted all who should make similar excuses, or they must have given just cause for complaint. It was the duty of the court to direct the jurors to be sworn, as they were called, against whom there was no legal objection. I flatter myself, I have sufficiently shown that, against Basset, there was no such objection; that the judge was not only free from impropriety in directing him to be sworn, but that his conduct would have been censurable had he acted otherwise; and here, sir, I conclude my observations upon the second article of impeachment.

I now come, Mr. President, to the third article, wherein my honorable client is criminally charged for the rejection of the evidence proposed to be derived from Colonel John Taylor.

In this part of the case the facts are admitted. The next question of law, therefore, which presents itself for discussion is, whether or not Col. Taylor's evidence ought to have been received, or was properly rejected. Here again I must observe that the honorable Managers, to support their charge, resort to principles which are to me, to the last extremity, strange and novel. We are told that the court has no right to order questions which are meant to be put to a witness to be reduced to writing. Nay, that the court have no right to know what evidence is meant to be given by the witnesses, or its connexion with other testimony, or its bearing on the cause, but to receive it drop by drop, as the counsel think proper to deal it out. In answer to these extraordinary ideas which we have had thus introduced, I must be permitted to assert that the court have, in my opinion, an undoubted *right* to require of the counsel that they should open their case, explain the nature of the evidence meant to be given, and on the production of a witness, state what they expect to prove by such witness. In the course of my practice it has been the usual method of proceeding for counsel to conduct themselves in this manner, and on this subject McNally, in his rules of evidence, page 14, expressly lays it down as a *rule*, "that counsel ought not to call a witness without first opening to the court the nature of the evidence they intend to examine into. This has been *often solemnly adjudged*, though *not strictly adhered to in practice*." And in page second he gives us as the *first* rule, "that no evidence *ought to be admitted to any point* but that on which the issue is joined." But how is a court to prevent, and it is only the court which can

prevent, evidence being admitted which is not pertinent to the point on which the issue is joined, unless they are first informed what evidence is meant to be given? It is then upon the authority of McNally established that the court have the legal right to know what counsel mean to prove by a witness; and having that right, they may exercise it whenever, in their discretion, they may think it necessary.

To determine, therefore, whether they acted correctly in rejecting the testimony of Colonel Taylor, let us examine what testimony they hoped to obtain from him; and for this purpose, what were the questions proposed to be put to him.—They were,

1st. Did you ever hear John Adams express any sentiments favorable to monarchy, or aristocracy, and what were they?

2d. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

3d. Do you know whether Mr. Adams did not, in the year 1794, vote against the sequestration of British debts, and also against the bill for suspending intercourse with Great Britain?

Colonel Taylor's testimony was offered as being relevant only to one set of words stated in the two counts of the indictment, to wit: "he (meaning the said President of the United States) was a professed aristocrat; he (meaning the President of the United States) had proved faithful and serviceable to the British interest—(inuendo) against the interest and welfare of the United States."

Need I state to this honorable Court, that words which do not in themselves, or on the face of them, purport anything criminal, cannot be made so, or considered as libellous, but by laying an *inuendo*, giving them a criminal meaning, without which they would be innocent; and, also, that the criminal meaning laid in the inuendo must be strictly proved?

Let us now examine the set of words to which Colonel Taylor's evidence was meant to apply; they were without any inuendo, as follows: "He was a professed aristocrat; he had proved faithful and serviceable to the British interest."

This sentence consists of two separate distinct clauses or parts; the first, that "he was a professed aristocrat;" the second, that "he had proved faithful and serviceable to the British interest." I ask this honorable Court if either of these clauses or parts, of themselves, and without an inuendo, carry with them any charge of criminality, or any thing libellous? To say that a man is an aristocrat, a democrat, or a republican, is not of itself charging the person with anything criminal, nor is it slanderous, unless indeed the charge is accompanied with an inuendo, stating that, by the epithet so *used*, something very bad was intended; and *that* Government would indeed merit contempt in which a person should be punished upon such a charge. So, also, to say that a man had been faithful and serviceable to the British interest charges him with nothing criminal, and therefore cannot be slanderous, because the British and the American interest in many instances have been and may be the same.

There may be a variety of instances in which the interest of two nations may concur. There have been many in which the interest of America and of Britain did concur; many also in which the interest of America and France have combined. In the first instance a man may have been faithful and serviceable to Britain; in the other to France, without the violation of any duty to the United States—without having been guilty of the least criminality.

The sentence then taken altogether, connecting the two clauses, does not of itself import anything criminal, and consequently is not slanderous, if it remained without any inuendo; and if it was free from an inuendo, being not slanderous, would not require any evidence relative thereto. Nay, it would be no part of the charge put in issue, for in legal construction it is only such part of the publication stated in an indictment which is slanderous; that is the point in issue.

I will now, sir, read that part of the indictment in connexion with the inuendo: "He (meaning the President of the United States) was a professed aristocrat." Here there being no inuendo, this clause or part of the sentence remains in its primitive innocency; he (meaning the President of the United States) had proved faithful and serviceable to Great Britain" This of itself, as I have observed, is perfectly innocent; but here comes the inuendo with its sting in its tail—"inuendo, against the interest and welfare of the United States of America." Thus it was only the *latter* clause in the sentence that was presented as being libellous; and how was that part of the sentence to be justified? By showing that the President had, in the high station he had occupied, prostituted his character by sacrificing the interest of the United States to the interest of Great Britain. And how was this justification to be proved? Not by any answer Mr. Taylor could give to the *first* question, for that, as far as his answer could have relation, could only relate to the first clause; but that clause being of itself inoffensive, and not made criminal by any inuendo, was no part of the *criminal charge in issue*, but was merely introduced as being part of a sentence, the latter clause of which was only charged to be criminal. Any evidence from Colonel Taylor as to the first clause was therefore totally irrelevant, as not going to the point in issue, and as only going to prove the truth of what was neither stated nor relied on as being criminal, and therefore was properly rejected by the court.

As to the second question, to wit: "Whether Mr. Adams, while Vice President, had expressed his disapprobation of the funding system?" The question could not be in any degree relevant to the one or the other clause in the sentence.—Whether Mr. Adams expressed his disapprobation while he was Vice President, of the funding system, or not, could in no respect go to prove or disapprove his being a professed aristocrat, or his having sacrificed the interest of the United States to the interest of Great Britain. The court therefore, considering this question totally irrelevant to the "point in issue," did as was their duty to do, they refused to suffer it to be put to the witness.

So much for the two first questions. We now come to the third, respecting the votes of Mr. Adams, when Vice President, against the bill for the sequestration of British debts, and the bill for suspending intercourse with Great Britain. For the conduct of my honorable client in refusing to permit this question to be put to Colonel Taylor, two reasons may be assigned; the first, that if the fact was as stated, it could not be proved by Colonel Taylor. The second, that if the fact was established, it would be totally immaterial to the issue. Colonel Taylor's evidence was not the best which the nature of the case admitted. I will not say that the traverser, in order to prove this vote, was under the necessity of procuring a copy from the Journal of the Senate, properly authenticated by their clerk, but he certainly ought at least to have produced a printed copy of the votes and proceedings of the Senate as published by them. One thing at least is certain, that the traverser could not consistently, with rules of law, give parole evidence to establish the vote of Mr. Adams, and therefore that Colonel Taylor could not be legally examined on that subject. But I will go further in defence of my client, and will say, that if they had had the best possible evidence of the fact, if they had had an attested copy from the records of the Senate, the judge would have departed from his duty if he had permitted the evidence which was wished to have been obtained from Colonel Taylor to have been given to the jury. Ought any evidence to be given to a jury which is not proper and pertinent to prove the *fact in issue*, or to prove some fact from which the fact in issue *ought* legally to be *inferred*—evidence not relevant to the point before the court and jury? Was not, as to this part of the charge, the fact in issue, whether Mr. Adams had swerved from his duty by intentionally prostrating the interest and welfare of his country to the interest and welfare of Great Britain? Should not a charge of so atrocious a nature be proved by some direct act of this criminal sacrifice of the interests of the United States to the interest of Great Britain, or by the proof of some other act from which such criminal sacrifice must and ought on principles of law to be clearly and necessarily inferred? And what was the proof proposed to be offered for this purpose? That upon the question whether British debts should be sequestered, and whether our intercourse with Great Britain should be suspended, after full discussion one-half the members of the Senate voted in favor of those measures, and one-half of the Senate against them; and that in this situation Mr. Adams thinking them of too hazardous a nature, and such as might involve our country in a war, did not choose to take upon himself so great a responsibility as to give his casting voice in the affirmative.

I have, Mr. President, neither time nor inclination to enter into a discussion of either the propriety or policy of those measures, but I have no hesitation to express my belief, that the honorable members who voted for or against those measures, were equally actuated by the same purity of motive. That those who voted on the one side or the other acted from the sincerest desire to promote what they respectively considered the best interests of their country.

Shall then the rejection of the evidence, that Mr. Adams, on measures *in fieri*, on which the Senate was equally divided, gave his casting vote with the Senators whose political sentiments accorded with the then majority; and which evidence, if admitted, would have proved nothing, be considered as a ground of impeachment? I say evidence, which, if admitted, would have proved nothing; for that act of Mr. Adams certainly would not have proved that he had corruptly and wickedly sacrificed the interest and welfare of the United States to Great Britain; nor would it have proved anything, from which such sacrifice ought legally and necessarily to be inferred. Where is the man who would dare say, that the members of the Senate who voted for or against the bill for sequestration of British debts, and the suspension of our intercourse with Great Britain, acted from corrupt motives? Is there a member of this honorable Court who believes that the Senators who voted against those measures were actuated by a desire to promote the interest of Great Britain at the expense of their own country? Or, that those who voted in favor of those measures were actuated by a desire to promote the interest of France at the same expense? The heart of every member of this honorable Court, I am confident, revolts at the idea! Ought then any judge to have suffered this act of Mr. Adams to have been offered to a jury as evidence directly to establish that he had wickedly and corruptly preferred the interest and welfare of Great Britain to that of the United States, or as an evidence from which the jury ought, upon legal principles, necessarily to infer that he had thus acted?

The judge who would have permitted such evidence to have been given for such purpose, in my opinion, ought much rather to be impeached for his conduct, than the judge who should reject it.

It is the sole province of the court to determine what evidence shall go to the jury, either as proper, directly to prove the fact in issue, or to prove any facts from which that fact ought to be inferred. The court are the sole judges of the competency and admissibility of the evidence—the competency depends upon its legality; the admissibility upon its relevancy to the question in issue. If illegal, it is their duty to reject it; but though legal in its nature, yet if not relevant to the point in issue, it ought equally to be rejected; because its production only wastes time, and has a tendency to mislead the jury.

The right of the court to decide what evidence shall go to the jury I never heard questioned till in the course of this trial. The honorable Managers appear disposed to advocate a different doctrine, and as they claim the right that the jury should decide the issue without regarding the opinion of the court as to the law, so they seem to think

that the court ought not to restrict the evidence to the jury. And hence they have expressed some indignation against my honorable client, because he told the counsel in Fries's case that they might go on as they pleased, but still subject to the direction of the court as to what evidence they might offer. On that occasion they exclaimed "the court took upon themselves to decide what evidence should go to the jury! But perhaps that evidence which might have been rejected might have influenced the decision of the jury, and as the jury have a right to decide the law, uncontrolled by the court, they ought to have before them all that evidence which might possibly influence their decision!" Charming doctrine! Thus the jury are not only to decide the law on the issue, but likewise all questions of law which arise upon the proceedings in the cause and upon the evidence that is to be admitted. The honorable Managers seem to forget that it is only in consequence of the right of the jury to give a general verdict that they get incidentally the power of deciding the law in any case, but that this cannot in any manner enable them, either as to power or right, to have any control over the court in any collateral questions.

The maddest enthusiast that ever yet advocated the rights of jurors, has never questioned the right of the court to determine upon the competency and admissibility of evidence. Such being the law, it was the duty of Judge Chase, when the question meant to be established was, that Mr. Adams wickedly and corruptly sacrificed the interest of the United States to Great Britain contrary to his duty, to prevent the vote of Mr. Adams on that occasion being given in evidence to the jury, either as proper directly to prove the fact, or from which they ought necessarily to infer it. And I again repeat, if he had suffered such evidence to have been given to them as proper and relevant, he would have been much more deserving of impeachment.

I have stated that there are two ways of proving the issue—either by directly proving the *fact* in issue, or by proving some fact from which the fact in issue ought legally to be inferred; and that, in the one case and the other, the court are the judges as to the competency and the admissibility of the testimony. But I go further; it is the court who have a right to determine whether or not the fact in issue *ought* to be inferred from a fact proved, or what fact being proved will justify a jury in inferring and accordingly finding the fact in issue. I will, sir, explain my meaning—the question in issue is a grant or no grant of a tract of land; the grant is the fact to be established; no grant can be produced, but evidence is given of possession for a great length—a regular transference of the property as having been granted—payment of rents to the successors of the supposed grantor, &c.; the court not only determine what testimony is proper to establish these facts, but they direct the jury that, if they believe the evidence, they then ought to find that a grant had been given. On this point I refer to Cowper, page 112, and 12 Coke, 2. So, sir, if, in an action of *indebitatus assumpsit* for money due, the defendant pleads the act of limitation, and the plaintiff replies a promise to pay within three years. If, on the trial of the cause the plaintiff proves an *acknowledgment* of the debt within the limited time, the court will instruct the jury, that, if they believe that fact, they ought to find from it, as being sufficient evidence for the purpose, the fact in issue, that he did *promise to pay*. Yet, if the jury was to find a special verdict, stating that within three years the defendant had acknowledged the debt, the court could not give judgment, but must order a *venire facias de novo*, because the jury would not have found the fact in issue, but only a fact which was, as evidence, sufficient to have justified them to have found by their verdict that the defendant assume. Again, in the case before supposed, if evidence was given to the jury that the defendant had acknowledged the debt as aforesaid, the court would instruct the jury that upon that evidence they ought to find the defendant had promised; and if the jury did not give their verdict for the plaintiff, the court would grant a new trial. So, sir, in an action of trover and conversion. If it was proved that the defendant had the thing in possession for the conversion of which the suit was brought, and evidence is given that the plaintiff demanded the article from the defendant, and that he refused to deliver it, though this is not itself a conversion, and if the jury was to find a special verdict stating these facts, the court could not give judgment, yet the court would direct the jury that, upon such fact being proved, they ought to find the fact in issue, to wit, the conversion; and if the jury was not to find for the plaintiff the court would grant a new trial. Again, in the case of an action brought to recover money, and the statute of limitation pleaded; if the defendant acknowledges the justice of the debt, but at the same time absolutely and unequivocally declares that he never will pay any part of it, the court would instruct the jury that upon such evidence they could not find for the plaintiff, for that the acknowledgment of the debt being only presumptive of a promise to pay, that presumption was taken away when the acknowledgment was accompanied with a direct unequivocal declaration that he never would pay any part of it. So in the case of trover and conversion, if the thing in question was large, heavy, and unwieldy, as a large piece of mahogany or other timber, and when the delivery of it was demanded, the defendant was to refuse troubling himself on the occasion, but to direct him to where this ponderous article lay, and tell him that he might take it into his possession when he pleased; the court would certainly say there was no proof of conversion—the *prima facie* evidence being defeated by the circumstances of the case.

I have introduced these cases by way of illustration; and to show that the court determines what is proper evidence to prove the fact in issue, from what fact the fact in issue may be inferred, and also what evidence is admissible to prove this secondary fact; and therefore as the vote given by Mr. Adams of which Callender wished to give evidence was not sufficient to prove directly the charge that Mr. Adams had wickedly, and against his duty, sacrificed the interest of his

country to that of Great Britain—nor was a fact from which the jury, on principles of law, ought to have inferred it; and I am sure no person will attempt to support the contrary, therefore, that my honorable client instead of being impeachable for rejecting such evidence, would have exposed himself to censure had he admitted it.

Nor can I doubt but that the respectable counsel who were concerned for Callender, would have cheerfully acquiesced in and approved of my honorable client's conduct in this respect, had it not been for a cause, which they honestly acknowledged—their extreme ignorance of the law which relates to the doctrine of libels; and which had induced them to use every exertion to obtain a continuance of the cause to a future term; that in the mean time, either in their own offices, or under the instruction of some legal character, they might acquire a more accurate knowledge of that branch of the law. An indulgence that it seems they could not prevail upon the court to give—for the refusal of which, however, I hope my honorable client will not be thought impeachable.

I have now, sir, finished my observations on the third article, and am under the direction of this honorable Court whether I shall proceed to the fourth, or wait till they take some refreshment. (It was now three o'clock, and the Court adjourned for half an hour.)

[The Court having again met, Mr. MARTIN continued.]

I shall now, sir, proceed to the fourth article, which charges the respondent's conduct to have been marked during the whole course of the trial by manifest injustice, partiality, and intemperance.

From the evidence it certainly appears that Judge Chase prevented the counsel from arguing to the jury that the sedition law was unconstitutional; and this seems to have given rise to a great portion of the altercation and ill humor between the court and the bench.

I admit that the Constitution gives to a criminal the right of having counsel; but the Constitution has not defined the rights or duties of counsel, or to what extent they are to exercise them. One thing, however, is certain; that they have no Constitutional right to impose upon the court or mislead the jury.

When Callender's counsel contended that if the jury have a right to decide questions of law, then the Constitution being the supreme law of the land, the jury must of course have the power of deciding on the *constitutionality* of a law; the judge might well say it was a *non sequitur*.

What has been allowed to the jurors as their incidental right on the general issue? Not to decide whether there is an existing law, or whether a law is in force, but to declare the true construction of an *existing* law, and whether the case at issue comes within the true construction of such law.

But those who contend that the jury have a right to determine the constitutionality of a law, insist not for the power of the jury to decide its true construction and whether the prisoner's case comes within it, but to decide whether what is produced as law is not void, a mere nullity, a dead letter; or in other words whether such a law is in existence. The maddest enthusiasts for the rights of jurors, their most zealous advocates, have never contended for such a right before the cases of Fries and Callender. Whether a law exists, whether a law has been enacted, whether a law has been repealed, whether a law has become obsolete or is in force? The decision of these questions hath always been allowed the exclusive right of the court. The power of the court to decide exclusively upon these questions hath never been before controverted. Nay, the very right claimed on behalf of jurors, that they may determine what is the true construction of the law, and whether the case is within its provisions, of itself necessarily presupposes, and is predicated upon the *existence of a law*, the *construction or meaning of which* they are to determine. It has indeed been seriously questioned, and that by gentlemen of great abilities, whether even the Judiciary have a right to declare a law, passed by the Legislature, to be contrary to the Constitution and, therefore, void! I shall not enter into an examination of that question, but I have no hesitation in saying that a jury have no such right, that it never was intended they should have such right, and that if they had the right, we might as well be without a Constitution.

The first specific instance of my client's unjust, partial, and intemperate conduct, which is stated in this fourth article is, that he compelled the traverser's counsel to reduce to writing the questions which they meant to propound to Colonel Taylor. The correctness of this procedure will depend on the question whether the court had by law such a power, for if such a power was possessed by them, it is to be presumed that they, on that occasion, exercised it according to their best discretion, nor can it be inferred that their conduct was criminal, because the procedure was *novel* in Virginia. There are cases in which the practice of a court may be considered the law of the court; but these are not in any manner analogous to the case in question; nor do I find the *practice* of the State courts is obligatory "in any case of this kind on the courts of the United States." My honorable client did not consider what was usual in Virginia, but what was correct and proper; he knew that the law authorized him to make this demand. In Maryland, where he imbibed his legal knowledge, and where at the bar and on the bench he had carried it into practice, nothing was more common than for questions to be reduced to writing at the request of counsel, or at the request of the court. If counsel doubt of the propriety of the evidence meant to be drawn from the witness, or the correctness of the question meant to be propounded to him, they have a right to request it to be reduced to writing. So also, if the court, without whose approbation no testimony can be given to a jury, and whose duty it is to prevent improper testimony to be given, has reason to suspect an intention to introduce such evidence, they have a right, and they ought to require the questions to be reduced to

writing, that there may be no misapprehension of the tendency of the question, and that they may more deliberately decide whether it is proper to be put to the witness. And in this case, the counsel were not required to reduce their questions to writing in the first instance, or before they had stated what they had meant to prove, as hath been suggested. When Colonel Taylor was called and sworn, the court desired to be informed what they meant to prove by him. McNally is an authority that in so doing they acted legally. The counsel stated the facts, to prove which Colonel Taylor was called; upon which, the court doubting the admissibility of the testimony directed the question to be reduced to writing for their consideration. It cannot for a moment be seriously contended, but that the court had a right so to do. As my respectable colleague (Mr. Key) has observed, the practice of this honorable Court during this trial, hath perfectly sanctioned that part of my client's conduct. If at any time a question has been put, the propriety of which hath been doubted, it has been directed to be reduced to writing. It is true, that this has been, principally, when an objection has been made by the counsel; but there can be no doubt, that if any honorable member of this court had apprehended the question to be improper, the court would have had a right, and would have directed the question to be propounded in writing for their consideration. The propriety, the principle, in each case is the same. On this part of the charge I need not dwell any longer.

The *next instance* of the judge's conduct specified in this article is his refusal to continue Callender's case to the next term, notwithstanding the affidavit filed, and the applications made. On this subject, I shall not make many observations as to the law; but I may venture to assert that the conduct of Judge Chase in this instance also appears to have been free from any corrupt or oppressive motive or design; no part of his conduct on this occasion has been produced to show that he entertained a disposition to prevent Callender from obtaining the testimony of his witnesses, or deprive him of the necessary time to procure their attendance. Let it be recollected that the first affidavit prepared and proposed to be filed in order to obtain a continuance of the cause was a general affidavit. By the laws of England a general affidavit is not sufficient to entitle the party to a continuance, and upon principles of law as adopted in England and the United States, at least in Maryland, a supplemental affidavit cannot in a case of this nature be received.

If, then, Judge Chase had wished that Callender should have been, at all events, prevented from a continuance of his cause, he would have suffered them to file their general affidavit.

According to the laws of England, and so is the law considered in Maryland, to entitle the party to a continuance, he must file an affidavit showing what witnesses he wants—what he expects to prove by them—that he has used due diligence to procure them—and that he has a reasonable expectation to procure their attendance at some time. Judge Chase, had he wished that Callender should be deprived of a continuance of his cause, would have suffered them to file their general affidavit, but what was his conduct? Desirous they should not improperly and hastily commit themselves, and lose advantages to which they might be entitled, he gave them a caution, and time till next day to profit by it. On the next day they did, it is true, file a *special* affidavit; but this special affidavit, so drawn up, under the caution given them by the court, is not such as can, in any degree, stand the test of legal investigation, even under the authority which one of the honorable Managers (Mr. Rodney) hath this day introduced. Callender did not, in his affidavit, state that he expected to be able to procure his witnesses at the next term, the term after, or at any term. He also stated that there were certain books necessary for his defence, but he could not state that he had endeavored to procure them before, or that he expected to get them against the next term. And surely, if when Callender wrote that libel, he founded any part of his charge upon books which had been published, he ought to have had them by him when he wrote and published, and to have kept them by him for his defence whenever he should be called upon to answer for that publication, and could have no right to claim a continuance for the purpose of obtaining such books. One of the honorable Managers, (Mr. Rodney) has this morning referred us to 6th vol. Bacon's Abridgment, from page 650 to 652, upon the subject in contest, the mode of putting off a trial, and there, as he acknowledges, and as the authority enforces, "if there is any cause of suspicion that delay is the object, the court should be satisfied, from circumstances, that the person absent is a material witness; that the person applying has been guilty of no laches or neglect; and that he is in reasonable expectation of being able to procure his attendance at some future time." That the court had, in Callender's case, just reason to believe that delay was the sole object of the counsel, no person can doubt. Nay, the counsel themselves have upon oath declared that delay was their object; that they had no hope or expectation that witnesses could be of any service to them; that they considered Callender's cause desperate, if the law was Constitutional; and that their great object was to continue the cause to another court, that it might not be tried by my honorable client, of whose conduct in the case of Fries they had heard, and against whom they had formed, it seems, the most decided prejudices.

This authority, then, produced by the honorable Managers, perfectly justifies the conduct of my client in refusing, upon that affidavit, to continue the cause to the next term. The court was then sitting to hear the charges brought before them; it was their duty to have them determined without unnecessary delay, that if the party was innocent he should be acquitted; if guilty, he should be brought to speedy punishment. The same honorable Manager has, from the same authority, shown "that, upon the particular circumstances of the case the court will make a rule for putting

off the trial of a cause to the second term after the rule for putting off the trial is made." I admit the law, and will therefore readily admit that if an affidavit had been made by Callender, stating that he expected to be able to prove certain facts, stating what the facts were, by witnesses, who, from their particular situation, could not with any probability be produced before the second term, after the affidavit, and could then probably be had, the court might with propriety, and perhaps ought to have continued the cause to the second court, but no such affidavit was made; therefore, not having made out such a case, they have no reason to complain that they had not the benefit of it. They did not even swear that they expected to be able to procure the attendance of their witnesses at any time whatever.

A case has also been referred to in Cowper's Reports, where the defendant wanting the testimony of a witness who lived out of the jurisdiction of the court, and the court not having the power to issue a commission to obtain his testimony, the court declared that if the plaintiffs would not consent to have the deposition of such witnesses taken to be read at the trial, they would continue the cause indefinitely. The honorable Manager has further said, that though in England the court cannot issue a commission to examine witnesses, yet here the court has a power to issue a commission for that purpose. The honorable Court will recollect that the case of Callender was a criminal prosecution. I doubt whether the court has any power in a *criminal* case to issue a commission to examine witnesses for or against the prosecution. I do not know of any law which gives them that power. If the honorable Managers know of such a law, they will be so obliging as to refer us to it. But I will take up the objection upon each view. Suppose a commission might have been issued, the counsel of Callender did not apply to the court to grant a commission, and to continue the cause till the commission was returned; suppose a commission could not be issued, Callender's counsel did not apply to the Attorney General of the district for his consent that these witnesses should be examined where they lived, and their deposition be read in evidence on the trial; they did not apply to the court for their determination, that the counsel for this prosecution should consent to this, and that if he refused, the cause should on that ground be continued. Had they prayed a continuance on either of these grounds, and it had been refused, they might have had some pretext under their authorities for complaint, but this ground they never attempted to take.

Had they prayed for a commission, and the law authorized it, it is to be presumed the court would have granted it. If the court could not grant a commission, and the defendant's counsel had proposed that the depositions of absent witnesses should be taken to be read at the trial, it is possible the court would have continued the cause, unless the prosecutor would have consented that depositions should be thus taken. Hence, therefore, on no principle doth it appear that there was anything improper, incorrect, or illegal, in refusing a continuance of the case of Callender.

But, sir, there is another ground upon which the conduct of the court was strictly justifiable, in requesting to know by the deposition what the absent witnesses were expected to prove, and also in refusing to continue the cause. Upon their own statement, the witnesses wanted were only material to a few of the charges in the indictment. Their absence, therefore, could not be a sufficient reason to put off the trial. The Attorney might have struck out of the indictment those sets of words to which their testimony was wanted, and proceeded to the trial upon the other part of the charge. And as the punishment both as to fine and imprisonment was discretionary, not exceeding a certain sum and time, Callender was equally in the power of the court, convicted on a part, as if he had been convicted of the whole of the charges; and the court having the discretion, and having refused a continuance for the want of the testimony suggested, had it in their power, when they passed sentence, to throw out of their consideration those parts of the charge for which the testimony was wanted.

And on this subject, the case put by my respectable colleague (Mr. Key) is perfectly in point; he supposed the case of a person indicted for stealing a horse, saddle, and bridle; to delay the trial, the prisoner suggests the want of witnesses; the court compel him to declare in his affidavit what he expects to prove by them. It appears that he only wants to prove that the bridle was his own! This, surely, would be no cause for delaying the trial. The prosecutor might instantly strike out of the indictment the bridle, and there could not be the least pretext for not going to trial upon the residue of the charge—the stealing the horse and saddle. So in Callender's case, the want of witnesses to justify as to a few sets of words could afford no reasonable cause why he should not be tried upon a dozen or more sets of libellous words, charged in the indictment, as to which he did not pretend to allege that he wanted a witness.

In Maryland, it has ever been the practice to try criminal prosecutions of what nature soever at the first court, if practicable, and not to continue them unless some legal cause is shown. Judge Chase had been accustomed to this mode of procedure. It was in Maryland that he acquired the first rudiments of law. It was in that State that his legal knowledge was matured by practice.

Why should capital cases, rather than inferior crimes, be tried at the first court? The honorable Managers admit that it is the general rule not to continue, but to try at the first term, capital cases. Surely if indulgence, if delay is necessary in any case, it is in a capital case, where life is at risk; where an injury, if done, is irretrievable!

There are many reasons which show the propriety that prosecutions of every kind should be decided with as little delay as possible. One of the principles as to criminal jurisprudence, as Governor Claiborne has justly observed, is, that though punishments should be mild, yet they ought to be *speedy;* by having an immediate decision

there is a great certainty that the criminal shall not elude justice by flight. The expense, whether to the criminal or to the public, is increased by delay; delay also hazards the loss of testimony by the death or absence of witnesses; and therefore diminishes the chance of having justice done, either to the party or to the public, the one or the other of whom may be essentially injured for want of testimony, which might have been had if the trial had not been delayed; but even if witnessess live, and can be had at the trial, yet the lapse of time impairs memory, and their testimony cannot be relied upon in the same manner as if they were examined immediately after the transaction, when every circumstance would be fresh in their memory. These, with many other reasons which might be given, have actuated our courts of justice in Maryland, never to continue criminal prosecutions of any kind, if it can be avoided; and show the propriety of their conduct.

The next specification, in this article, of improper conduct in the judge, is, that he "used *unusual*, '*rude*, and *contemptuous expressions* towards the 'prisoner's counsel; and insinuated that they 'wished to excite the public fears and indignation, 'and to produce that insubordination to the law, to 'which the conduct of the judge did at the same time 'manifestly tend." As to this part of the charge, there is but little of a legal nature contained in it, I shall therefore hastily pass over it. If true, it seems to be rather a violation of the principles of politeness, than of the principles of law; rather the want of decorum, than the commission of a *high crime and misdemeanor*. I will readily agree that my honorable client has more of the "*fortiter in re*," than the "*suaviter in modo*," and that his character may in some respects be considered to bear a stronger resemblance to that of Lord Thurlow than to that of Lord Chesterfield; yet Lord Thurlow has ever been esteemed a great legal character, and an enlightened judge.

But let me ask this honorable Court whether there is not great reason to believe that the sentiments my honorable client expressed with respect to the conduct of the counsel, and their object, was just and correct? What was the conduct of Callender's counsel? Was it not such as immediately tended to inflame the minds of the bystanders, and to excite their indignation against the court, and highly insulting to the judges? In the first place, they endeavored to obtain a continuance of the cause to the next court, merely with an intention to procure delay, and to prevent the cause being tried before Judge Chase, acknowledging that they had no hopes or expectation from *any testimony* to save their client if the law was determined to be Constitutional; and yet they brought forward their client to swear just what they pleased, in order to procure this delay, with respect to the necessity of witnesses, whose testimony they acknowledge they were conscious could be of no service to them, and yet they wished the bystanders to consider the court acting highly *improper* for not granting that continuance? Was this even to serve Callender? No, they avow they did not appear to serve him, but to serve *the cause*. Sir, it appears from their own evidence that Callender would have submitted to the court, but for their interference; that they volunteered on the occasion not for *him*, but for *their cause;* and yet the volunteers wanted the court to give them to another term to prepare themselves, and made Callender swear what they pleased to effect their purpose. They said they were not well acquainted with the law upon libels, and therefore wanted time to examine the subject; but surely when persons undertake to volunteer their services on any subject, they ought to be masters of it, and are entitled to no indulgence of delay. And as they declare they had formed the determination, on the first instance of an indictment under the sedition law, to come forward and volunteer their services for the sake not of the man, but of their cause, common decency to the court, and a proper respect for themselves, ought to have dictated to them in the interim to have made themselves fully acquainted with all the law relative to that subject in which they had thus determined officiously to interpose.

In the next place, when the jury were about to be sworn, they challenged the array in order to set aside the whole panel. Such challenge can never be made correctly, but for the jury being returned by an officer not authorized, or for unfair and partial dealings in the officer who summons the jury. The reason assigned was that one of the jurors who was returned had expressed sentiments inimical to Callender. This, if true, might be a good cause to challenge the individual juror for favor, but no boy, who had read in an office six months, would have supposed this a sufficient cause to have challenged the array, unless it had been further alleged that the marshal knew the juror had expressed such sentiments before he had summoned him, and had summoned him for that reason; which was not suggested. Is it possible to believe that legal characters of so great estimation, that one of them was then the Attorney General of the State of Virginia, another almost immediately after appointed Attorney General of the United States for the district of Virginia, and the third, appointed one of the chancellors of that State, should have been so utterly ignorant of the law relative to the challenge of the array, as to have made the motion they did? If not, it must be presumed their conduct was influenced by a wish to embarrass the court; to hold up the prosecution as oppressive; to excite public indignation against the court and the Government, who endeavored to enforce it, by attempting to impress a belief on the public mind, that even their marshal had, in the very beginning, violated his duty to gratify the wishes of an oppressive Government, and that for that purpose he had unfairly packed a jury! Was not this immediately, was it not designedly done for the purpose of exciting public indignation? What was the conduct of the same counsel when the court desired them to reduce to writing the questions they meant to propound to Colonel Taylor? They have declared they hesitated whether they would do it; and before they did comply with the court's direction, they made a

direct effort to hold up to the bystanders that the court was acting with oppression and partiality, to the prejudice of Callender, by imposing on his counsel difficulties and impositions which the court had not imposed upon the counsel for the prosecution! Whereas in fact the counsel for the prosecution had fairly stated the testimony he meant to offer, before he produced his witnesses, having no desire that the jury should be surprised with improper evidence,—whereas the counsel for Callender wished to have witnesses examined to the jury, without the least previous disclosure, to the jury or court, of the evidence meant by them to be given; most evidently that they might have testimony illegal thus imposed upon them; and because they were, by the correct interposition of the court, defeated in this object, they could not consent even to let this act of the court pass, without a direct attempt to impress upon the bystanders that it was another instance of the unfair and oppressive conduct of the court, which ought to excite their indignation! And here let this honorable Court remember that Callender, in his Prospect Before Us, had in the most solemn manner appealed to the State of Virginia, that if ever the time should come, when the Government of the United States should attempt to prosecute him and make him a victim under the sedition law, that State was bound under every principle of interest, of justice, and of the claims he had upon them, to come forward, and at *all risks* and *by all means* to protect him. Is there not, sir, great reason to believe, that the object of counsel was to second this appeal so made by Callender, and to induce the people of Virginia to come forward to save their client from the pretended oppression of Government,—to rescue him from their fangs!

One of the gentlemen who was counsel for Callender, has told us, that whenever a prosecution should be attempted under the sedition law, he had formed the determination to come forward and prove its unconstitutionality. That, in consequence of this determination in Callender's case, and *only* for that purpose, he did appear in order to argue its unconstitutionality. He has told us further, that he had no hopes of convincing the court, and scarcely the faintest expectation of inducing the jury to believe that the sedition law was unconstitutional; but yet, that he wished to argue the question, with a view of making a proper impression upon the public mind; and yet he has disclosed to us upon his oath, that when the court had charged him with wishing to address himself to the populace and not to the court, he denied the charge, and told the court he only wanted to address himself to and to be heard by the court, and did not wish to be heard by the jury and by the bystanders! When, at the same time, he knew he could not be heard by the court without also being heard by the jury and the bystanders, unless they had all been, a thing unknown, sent out of the court-house; or what is equally unknown, had their ears stuffed with cotton, or filled with wax; and yet the same gentleman has said on oath, notwithstanding that declaration, that it was his chief, almost his sole, object upon that subject, to be heard by the bystanders, and on them to make proper impressions! What barefaced, what unequalled hypocrisy doth he admit he practised on that occasion! What egregious trifling with the court! But, I would ask this honorable Court, what were the impressions which Mr. Hay was so solicitous to make on the people? Was it merely to convince them that the sedition law was unconstitutional, and ought not to be enforced? Had not the Legislature of his State, some time before, denounced this law as unconstitutional, and destructive to liberty? Had they not circulated the denunciation throughout every part of their own State, and sent it to every Legislature in the Union? Do not let me here be misunderstood to censure that honorable body, or to question the propriety of their conduct, or the rectitude of their motives; far be it from me to doubt that they honestly believed the law to be unconstitutional, and fraught with all the evils which they suggested would flow from its execution; and, therefore, that they thought it a sacred duty to act as they did. I am not in the habit of questioning the motives which influence public or private bodies; it is my duty to leave that question to their own consciences and to their God; I myself view them in the most favorable light. I only mean to state, as a fact, a transaction of notoriety; but can it possibly be supposed, after this, the people of Virginia wanted a speech from Mr. Hay, to induce them to consider the sedition law unconstitutional, or could he expect that those who doubted, after being so well acquainted with the sentiments and conduct of their Legislature, would be made converts by anything they should hear from him? No, sir, no person can think it. What, then, was his motive? Was it not to impress on the people that, not only an unconstitutional, oppressive law, was about to be enforced, but also that the court, in order to enforce it, was acting in the most unfair and oppressive manner, as well as the marshal; and thereby to inflame the resentment and indignation of the populace against the court? I will not say that he really wished so far to have excited their violence against my honorable client as to have endangered his life; but it is impossible that I should doubt but that it would have given him pleasure, that their violence should have been so far, at least, excited, as to have intimidated the court from executing this obnoxious law.

When my honorable client went from Baltimore to Richmond, to hold the circuit court, he knew how violently that State was opposed to the enforcement of this law; but he equally knew that it was his duty to carry it into execution, without regard to the sentiments of any portion of the community, or however disagreeable it might be to them. Under these circumstances he went to Richmond, and found the counsel, from the first step in this cause, attempting, as he could not but consider it, to inflame the audience and excite their indignation against him. My honorable client, who well knows mankind, and has been accustomed to popular assemblies, appears to have

been anxious, as his best security, to keep the bystanders in good humor, and to amuse them at the expense of the very persons who were endeavoring to excite the irascibility of the audience against him. Hence the mirth, the humor, the facetiousness, by which his conduct was marked during the trial; and which, most fortunately, was attended with the happy consequence he hoped from it, for it is admitted that he kept the bystanders in great good humor, and excited peals of laughter at the expense of the counsel, as the witness very justly concludes, for he says, "the counsel did not appear to join in the laugh." And this, sir, most satisfactorily accounts for the more than usual exertion of his facetious talents on the trial of Callender; and I doubt not was the real cause of that exertion.

Among the different charges made against Judge Chase of rudeness, and unusual language by him used towards the counsel of Callender, we find it stated that, when the judge had repeatedly declared the counsel could not be permitted to argue to the jury the constitutionality of the law, and one of the counsel, who appears to have felt particularly sore on the occasion, still urging that question to the jury, the judge interrupted him, and declared that the counsel of Callender had, from the first, mistaken the law, and that they had persisted in pressing their mistakes on the court. Never was a more proper or correct expression used by a judge. Never, I believe, did the conduct of lawyers more fully justify such a charge! And, if the abilities of the counsel are as great as they are represented to be, it is almost impossible not to believe their errors were intentional, and with the express view to embarrass the court. In the first place, they insisted that the jury, not the court, was, on the indictment of Callender, to assess *the fine* which should be imposed on him, if found guilty. This was one of their errors, and a most egregious error it was. And yet, my honorable client has been charged with *rudeness* for calling it, as one witness states, "a wild notion;" or, as Mr. Robertson has it in his *short-hand*, "a mistaken notion." Either of these expressions was, in my opinion, extremely mild. I, sir, should not have hesitated in calling it a *mad* notion.

The idea that the array was to be quashed, because there was returned an individual juror who was supposed to be liable to be challenged, was another mistake; a mistake that even a schoolboy in law could scarcely be expected to have made. The affidavit, so incorrectly drawn, and their insisting on a continuance of their cause in consequence of that incorrect affidavit, was another mistake!

An additional mistake was, their idea that the court had no right to know what testimony they meant should be given by the witness produced, and that it was improper to require that the questions meant to be propounded to Colonel Taylor, should be reduced to writing. And the attempt to obtain from the jury a decision that the sedition law was unconstitutional, in which they so pertinaciously persisted, was also an error. I ask, then, whether, when the counsel had been guilty of all these mistakes, it did not perfectly justify my honorable client in the expressions he used, that they had been from the first mistaken, and that they had continued throughout pressing their mistakes upon the court? Nay, did it not justify the observation used by him, which has been urged as most exceptionable, "that they must know better; and that their conduct was intended to influence the bystanders?" That the counsel's great object was to give an impression to the people has been acknowledged on oath; and the court must have had a very moderate idea, indeed, of the legal abilities of Callender's counsel, if they could have supposed such a succession of errors to have arisen from ignorance.

But the judge is also charged with great rudeness in the manner in which he replied in one part of the argument to Mr. Wirt, just at a time when that gentleman had finished a syllogism, by replying that it was a *non sequitur*. I will state the transaction: Mr. Wirt having, as he supposed, established the position, that the jury had a right to decide the law as well as the fact, he proceeded to state that the Constitution was the supreme law of the land, and, therefore, that since the jury had a right to decide the law, and the Constitution was also the law, the jury must certainly have a right to decide the constitutionality of a law made under it; and this conclusion was, as he declared, perfectly syllogistic. As Mr. Wirt had assumed the character of a *logician* in his argument, nothing could be more natural than for the judge, in his answer, to assume the *same character;* he therefore replied, like a logician, "a *non sequitur*, sir"—the correct answer to a syllogism, which is rather lame in its conclusion. But it seems this answer was accompanied by a *certain bow*. As *bows*, sir, according to the manner they are *made*, may, like *words*, according to the manner they are *uttered*, convey very different meanings; and as it is as difficult to determine the merit or demerit of *a bow* without having seen it, as it is the expression of words without having *heard* them; to discover, therefore, whether there was anything *rude* or *improper* in this *bow*. I could have wished that the witness, who complained so much of its effect, had given us a *fac simile* of it. Had we been favored not only with the answer, but also with a complete *fac simile* of the *bow*, we might have been enabled to have judged of the propriety of my honorable client's conduct in this instance. But it seems this *bow*, together with the "*non sequitur*," entirely discomfitted poor Mr. Wirt, and down he sat "and never word spake more!" If so, it was a saving of time. But we have no proof that Mr. Wirt meant to have proceeded any further in the argument, even had he not been encountered with this formidable bow and non sequitur. And the presumption is, that having condensed the whole force of his argument into a syllogistic form, and, finding his syllogism did not produce the conviction intended, he took his seat without wishing to spend more of his breath in what, after the failure of his logical talents, he no doubt considered a fruitless attempt. Mr. Nicholas followed Mr. Wirt. He is a gentleman mild and polite in his manners; he was treated by the court with politeness. He did not *persist* in addressing the jury contrary to the decisions of the court; he, therefore, met with no interruptions.

We have now more particularly to discuss the charges made against Judge Chase, as they relate to Mr. Hay, the other counsel for Callender. Mr. Hay insisted that the indictment could not be supported, because the title of Callender's publication, parts of which were charged to be libellous, was not inserted in the indictment, to wit, because it was not stated in the indictment that the book, which contained the libellous matter was called "The Prospect Before Us." And to support this objection, he went on to prove that, when an indictment states libellous writings in tenor following, the libellous part of the writing set forth, and on which the indictment is found, must be set forth "verbatim et literatim!" There was no attempt to shew that any expression in the indictment was not stated correctly both *verbally* and *literally*, as published by Callender. The indictment did not charge the title of the book as being libellous. It did not notice the title of the book in any manner. If the title of the book was necessary to have been inserted, which I deny, there could not have been a more absurd or inconclusive argument to support the position, than that upon which Hay relied; and the judge showed great temper in merely exposing it to ridicule in the manner he did, by observing that, as he insisted the libellous matter should be set out *verbatim et literatim*, he wondered he had not also insisted it should be set forth *punctuatim*. An observation, by the by, which, perhaps, contained full as much of good sense as of smartness, since we all know the same words written or printed, will be liable to different constructions, and convey very different meanings, as they are punctuated. Mr. Hay, it appears from his own testimony, as well as the testimony of the other witnesses, was guilty of very improper conduct to the court. He insisted that, if the prisoner was convicted upon that indictment, he might again be indicted for the same offence, and could not defend himself by the conviction on the indictment then before the court. When the court assured him he was mistaken in the law, Mr. Hay still persisted, and declared that he should not be more surprised, even if Mr. Callender should again be indicted for the same offence, and should be punished a *second time* for the same offence, than he was surprised at the indictment then before the court, and the attempt to punish Callender in consequence of that indictment. What language, I pray you, could be used to the court, but in reality addressed to the populace, more derogatory to the then Administration, as being unprincipled and oppressive, or containing a more direct attack upon the integrity of the judges, holding them up as the venal tools of the then Administration, ready to be the instruments of its oppression!

What was also the final conduct of Mr. Hay, when having repeatedly attempted to argue to the jury against the direction of the court, and having as repeatedly been interrupted and stopped by the court? He took up his papers to withdraw; upon which the court told him, if he pleased he might proceed. His answer was, "*I will not.*" When the court further observed, you will not Mr. Hay be captious, go on if you please in any manner you choose, and we will not interrupt you. Even then, when in my opinion the court had, as in Fries's case, made improper concessions, what was his answer? "I am not captious, *but I will not proceed.*" And he folded up his papers and withdrew.

How came he thus to act? As to Callender, he acknowledges he despised the wretch; that his object was to serve *the cause*, not Callender. How was he to serve the cause? By giving an impression to the public mind. What impression did he wish to give? By holding up the idea of oppression on the part of the Government, and corruption on the part of the court. But finding himself thus foiled in his attempt by the superior abilities of my honorable client, and his superior knowledge of mankind; finding that instead of exciting indignation against my client, my client most fortunately had excited against him the laughter and ridicule of the auditors, he went out in a passion. At the same time, even the manner in which he left the court showed his wish to impress the public mind, as far as possible, with sentiments disadvantageous to the court. And as to the interruptions Mr. Hay received, they are clearly proved to be in consequence of his pertinaciously attempting to act contrary to the direction of the court, and in that case the only question could be, whether the court or Mr. Hay had the control over the other.

But, sir, there is another charge which has been made against my honorable client, to justify that part of the article which accuses him of *rudeness*. It is said that speaking of Callender's counsel, or addressing himself to them, he called them "*young gentlemen.*" To me it appears astonishing that these expressions, if used by the judge, should be thought reproachful to the counsel, or a proper subject of a criminal charge; and it gave me real pleasure to find that Mr. Nicholas, whose whole conduct marks him as a gentleman, did not consider them as offensive. He has observed that he was young at the time, and whoever has seen him as a witness, must be convinced of the truth of his assertion. But we are told that Mr. Wirt was at that time about thirty years of age, had been a married man, and was then a widower. It doth not appear that Judge Chase knew of these circumstances; but if he had, considering that Mr. Wirt was a widower, he certainly erred on the right side, if it was an error, in calling *him* a *young* gentleman. But, sir, let it be considered that my honorable client has been stated by the honorable Managers, to be nearly three score and ten let also his great legal attainments be considered, and let me ask, if any person can think his addressing gentlemen, so much inferior to himself in age and knowledge, by the epithet of "young

gentlemen," offensive to them, much less criminal as to the public? But as another instance of his rudeness we are told, that, addressing himself to Mr. Wirt, who observed that "he was going on," the judge replied, "No, sir, I am going on, therefore sit down, sir." This address was made by the judge to Mr. Wirt, when he (the judge) was about to give a long opinion to him and the counsel employed with him, which opinion, upon Mr. Wirt's sitting down, the court did give: and pray, sir, was there the least impropriety in a situation of that nature, that the court should desire the counsel to be silent and to take their seats?

Before Judge Chase went from Baltimore to hold the circuit court at Richmond, he knew that the sedition law had been violated in Virginia. I had myself put into his hands "The Prospect Before Us." He felt it his duty to enforce the laws of his country. What, sir, is a judge in one part of the United States to permit the breach of our laws to go unpunished because they are there unpopular, and in another part to carry them into execution, because there they may be thought wise and salutary? And would you really wish your judges, instead of acting from principle, to court only the applause of their auditors? Would you wish them to be what Sir Michael Foster has so correctly stated, the most contemptible of all characters, popular judges; judges who look forward, in all their decisions, not for the applause of the wise and good, of their own consciences, of their God, but of the rabble, or any prevailing party? I flatter myself that this honorable Senate will never, by their decision, sanction such principles! Our Government is not, as we say, tyrannical, nor acting on whim or caprice. We boast of it as being a Government of laws. But how can it be such, unless the laws, while they exist, are sacredly and impartially, without regard to popularity, carried into execution? What, sir, shall judges discriminate? Shall they be permitted to say, "this law I will execute, and that I will not; because in the one case I may be benefitted, in the other I might make myself enemies?" And would you really wish to live under a Government where your laws were thus administered? Would you really wish for such unprincipled, such time-serving judges? No, sir, you would not. You will with me say, "Give me the judge who will firmly, boldly, nay, even *sternly*, perform his duty, equally uninfluenced, equally unintimidated by the "*Instantis vultus tyranni*, or the "*ardor civium prava jubentium!*" Such are the judges we ought to have; such I hope we have, and shall have. Our property, our liberty, our lives, can only be protected and secured by such judges. With this honorable Court it remains, whether we shall have such judges!

The remaining part of this charge states that my honorable client "betrayed an indecent solicitude for the conviction of the accused, unbecoming even a public prosecutor, and as highly disgraceful to the character of a judge as it was subversive of justice!" I am not certain, sir, whether I exactly know what is here meant by a *public* prosecutor. If thereby is meant the public officer who prosecutes those charged with being guilty of crimes against the public, I am indeed sorry to find that those officers, so necessary, are holden by the House of Representatives of the United States in so incorrect a point of view. I deny, sir, the propriety of the remark, and must be permitted to rescue the public prosecutor from a remark so derogatory. He is as much the protector of innocence as the avenger of guilt; his duties are as clearly marked as those of a judge. They have both one common object in view, though acting in different characters. The prosecutor and the judge are equally bound to shield the innocent and to punish the guilty. The prosecutor does the same benefit to his country by saving the innocent from punishment as by preventing the guilty from impunity. Neither the judge nor the prosecutor ought to attempt to injure innocence. It is equally the duty of both to punish guilt. Such, sir, are my ideas; such, sir, I have ever understood the duties of an office, which I have held in the State of Maryland for twenty-seven years or more; and if my conduct had not been during that period consonant to these sentiments, I should indeed feel myself degraded and dishonored.

I have now, Mr. President, gone through the observations which have appeared to me necessary upon the four first articles. If I have been thought tedious, my apology is the respect I feel for the dignified source from which these charges have proceeded; from my inability to decide which of the charges the honorable Managers will most rely upon in their conclusion, and the consequent necessity of dilating upon them all; sensible of the extreme danger that, for want of exertions which indeed require greater abilities than I am able to bring into action, erroneous impressions should remain in any instance upon the minds of this honorable Court, in a case of such public magnitude, and in which my honorable client is so deeply interested, for his sake, for the sake of my country, I have felt it a sacred duty to exert those few talents which Providence hath been pleased to bestow upon me!

[It was now five o'clock, when Mr. Martin informed the Senate that he had not breakfasted that morning, and had not during that day taken any refreshment of any kind, except two glasses of wine and water; that the fifth and sixth articles yet remained to be investigated by him, as being altogether of a legal nature; and that he felt himself too much exhausted to proceed—solicited the indulgence of the Court to permit him to conclude on Monday, which was granted, and the Court accordingly adjourned.]

MONDAY, February 25.

Mr. MARTIN proceeded as follows:

After having returned my very sincere thanks to this honorable Court for their polite attention on Saturday, in giving me time till this morning, I will now proceed to the further investigation of the case in which we are engaged. But before I call your attention to the fifth and sixth articles

of impeachment, permit me to notice some few points that I find had been unattended to by me on Saturday.

When a witness (Mr. Rind) who had been in some degree concerned in printing "The Prospect Before Us," appeared at the trial of Callender to give evidence against him, we are told Judge Chase assured him that he might be under no apprehension from giving testimony, for that he should not be prosecuted on account of anything he should disclose on that trial.

What is the fact from the evidence? Mr. Rind, it seems, was summoned as a witness. He came forward, without any objection on his part, to give evidence. It was then that Mr. Hay, in order to throw impediments in the way of the prosecution, undertook to interfere with the witness of the United States, and to tell him that he was not obliged to give testimony, as it might criminate himself. The judge replied, it was very true, but that the court would take care that the witness should not be prosecuted on account of anything he should disclose in his evidence, which might affect himself. By this the court only meant that they would not institute any criminal prosecution against the witness, and if any indictment should be found against him grounded on the testimony thus given by him, they would interfere with Government to procure a *nolle prosequi*, or pardon; and on these conditions, and under such promises, it is a most usual practice to introduce associates and accomplices to give evidence for the conviction of other and greater criminals. But this is suggested to have been improper in the judge; and one of the witnesses, the present Attorney General of Virginia, has, on his examination, rather hazarded the idea, that any interference of the nature in question ought to have been by the United States Attorney for that district, and not by the court.

The gentleman is mistaken. In Great Britain when an accomplice is produced to be a witness, his production, and the security he hath against prosecution on account of anything which he may disclose having a tendency to criminate himself, is the act of the court, and not of the public prosecutor, except so far as it is done under the direction and with the court's approbation. To support this position I will again turn to M'Nally, page 203:

"The admitting an accomplice as a witness for the Crown, is not a matter granted by the court as of course, but depends upon the question, whether the indictment can be found, and supported without his evidence. As in the King *vs.* Robert and William Luckhurst, Maidstone, Lent Assizes, 1798. Counsel for the Crown moved that Avery, an accomplice, might be brought before the grand jury to give evidence on a bill of indictment. Justice Buller said it was not a motion of course, and he desired the counsel to read over his brief, and certify that there was not sufficient evidence to convict without the testimony of the accomplice, otherwise he would not allow the motion, because it might be the means of letting off the worst offender, and punishing those to whom otherwise, according to circumstances, mercy might be shown, and he instanced a similar case which happened at York Assizes. The counsel then stated that this offender had been before admitted King's evidence against the others by the *committing justice*. Buller said that he would not pay any regard to that, because it ought not to be in the power of a justice of the peace to say who ought and who ought not to be admitted King's evidence. The counsel thereupon said, that on reading the indictment and his brief, he thought the accomplice ought to be admitted as evidence, *and his motion was granted*"—that is, by the *court*.

This authority clearly shows, that in England it is considered the province of the court to decide when, and on what terms accomplices shall be introduced as witnesses; and such has been the uniform practice in Maryland. And here let me observe before I quit this subject, as to Mr. Hay's conduct, that although this witness came forward voluntarily to give testimony, without making any objection on his part, Mr. Hay, to obstruct the prosecution, officiously interfered as far as he could, to deprive the United States of the testimony necessary to convict the offender, and to dissuade the witness from being sworn. A conduct, I confess, I cannot but view as being at least highly censurable; yet, sir, my honorable client suffered it to pass without even the smallest reprimand! This did not show a disposition on the part of Judge Chase to be captious, even with Mr. Hay.

There was another part of the testimony which I omitted to notice. I will now do it, lest the gentleman who comes after me might make the same omission. It has been suggested by two of the witnesses, that the court, in one instance, used the word "we," in the plural number, as identifying the court with the prosecutor of the United States. Mr. Hay has stated it to have been on the following occasion; when the counsel for Callender reproached the court with being guilty of partiality, in requiring the questions by them propounded to Col. Taylor to be reduced to writing, although the court had not made a similar requisition of the prosecutor; the court, in reply, observed: "The attorney, when he opened his case, stated what he expected to prove; but although he did, we were not obliged to." He was asked if he was satisfied as to the correctness of these expressions; he replied in the affirmative, and being taken down as I have now introduced them, and read to him, he adhered to them. Some mistake there must be, for the words so stated are destitute of sense or meaning. "But though he did we were not obliged to." To do what? I presume to have compelled him to give us his questions in writing.

The sense then must have been, that as the attorney had disclosed what he meant to prove, and as there was no doubt of the propriety of the evidence, therefore they, the court, were not obliged to require of him to put his questions in writing. This construction reduces the answer to common sense and propriety, and frees the answer from obscurity and from censure. Mr.

Nicholas thinks the word "we" was used in one instance by the court, as understood by him, in the same incorrect manner, as identifying the court with the attorney, but not at the time, or on the occasion to which Mr. Hay alludes; he however is incapable to specify at what time, or on what occasion. I ask, sir, upon such evidence, so uncertain, so vague, so unsupported, can any criminality be fixed, as to this part of the charge, upon my honorable client?

Indulge me, sir, with a few remarks on certain private and social conversations, which it seems have taken place between the judge and some others, and which, though perfectly innocent of themselves, have been pressed into the service of this prosecution, and attempted to be distorted into criminality,—and I will then quit this part of the charges. A very worthy and respectable gentleman, with whom I have long been acquainted, (John T. Mason, Esq.) has been called upon to disclose a jocose conversation, which took place between him and my honorable client, a few days before he went on to Richmond, to hold the court at which Callender was tried. On that occasion he tells us, Judge Chase informed him that he was going to hold the court at Richmond, and that he was determined to teach the Virginia bar the difference between the liberty and licentiousness of the press. That as to himself, there was no person a greater friend to its real liberty, nor a more decided enemy to its licentiousness. Judge Chase further observed that he was in possession of a copy of "The Prospect Before Us," which I *had given to him*, and said *either* that if the State of Virginia was not totally debased, or, that if there was an honest jury to be found in that State, but first, he would bring Callender to punishment. Mr. Mason thinks the conversation was open and public, in the presence of a number of gentlemen, perfectly jocular, and in great good humor, and it is proved the conversation was introduced by Mr. Mason himself, whose facetious talents are so well known. That gentleman has declared that it was painful to him to be obliged now to disclose what then passed. Nor can any person doubt it;—or that nothing but a sense of the obligation he owes to his country, when thus called upon to obey the claims society has upon him, could have induced him thus to disclose the particulars of this sportive and facetious conversation, introduced by himself, to gratify the views of any person, who would wish to turn it to the disadvantage of my honorable client.

But, sir, I will ask, in all this what is there that fixes any criminality on Judge Chase, or which indicated on his part a disposition to oppress? It was a fact notoriously known, that the bar of Virginia, in general did, or at least professed to consider the sedition law unconstitutional, as *unduly* restraining the liberty of the press, that great palladium of our rights. On the contrary, my honorable client with many other respectable characters, legal and other, considered it as a wholesome and necessary restraint upon its licentiousness, and believed that such restraint was the best security for the preservation of its liberty. And on this subject let me introduce the authority of Dr. Franklin, himself a printer, and as great an advocate for the liberty of the press, as any reasonable man ought to be. He has declared that unless the slander and calumny of the press is restrained by some other law, it will be restrained by club law. The sentiment, sir, is just. If gentlemen cannot find in the laws of their country a protection from that profligate conduct of printers, which is at this time so common, or cannot obtain from the laws of their governments ample punishment against their base calumniators, they will become their own avengers. And to the bludgeon, the sword or the pistol, they will resort for that purpose. But to return to my client, it was his knowledge of the prevailing ideas of the Virginia bar that induced him to use expressions which amount to no more than his strong sense, that they had erroneous opinions as to what was the true liberty of the press, and did not properly distinguish between its liberty and its licentiousness.

And as to the determination he expressed that he would bring Callender to punishment, Mr. Mason has declared that everything the judge said on that subject was predicated upon the supposition, that Callender was, in reality, the author of The Prospect Before Us.

There was nothing then personal as to Callender, but only an honest indignation expressed against a vile libeller, whomever he might be.

The judge had in his hands one of the most flagitious libels ever published in America,—a case in which there had been the most impudent and daring violation of a law of the United States; he considered it his duty to put the law in force against such an offender. And was it not? Yes, sir, if a judge, either of his own knowledge, or by information derived from a respectable source, has reason to believe the laws of his country have been violated, particularly in cases of magnitude, it is his *sacred duty* to recommend to the grand jury an examination into such crimes, and to endeavor to bring their perpetrators to due punishment. I, sir, disclaim the idea, that a judge shows a want of impartiality because he is desirous to see *guilt* punished. I, sir have no idea, that our judges should be, like the gods of Epicurus, lolling upon their beds of down, equally careless whether the laws of their country are obeyed or violated, instead of *actively* discharging their *duties*. Judge Chase went to Richmond determined to enforce the laws of his country: it was an honest determination! He might, it is certain, under the frivolous pretexts used for that purpose, have continued the cause to another term; he might by so doing have left the odium of enforcing this obnoxious law to be incurred by some other of the judges; by so doing my honorable client might have avoided the obloquy to which he has been exposed on account of this trial, and the impeachment, as far as it is founded thereon. But had he so done, in my opinion, he would been *guilty of a cowardly dereliction of his duty*.

Mr. Triplet has also been introduced to prove

casual conversation in the moments of unsuspecting sociality and levity. He it seems travelled in the public stage with Judge Chase to Richmond. On the second day of their journey, having formed an acquaintance during that time, some conversation being introduced relative to Callender, Mr. Triplet informed the judge that Callender had, when he first came to Virginia, been taken up in Berkley county as a vagrant: and Judge Chase replied "it is a pity that they had not hung the rascal." And this is introduced to prove that the judge left Baltimore with a predetermination to oppress and do injustice to Callender!

I have, sir, heard, I believe, more than one hundred of the most respectable gentlemen of all political parties use similar expressions, not only when speaking of Callender, but also of some other printers; but these expressions I only considered as marking their disapprobation of the conduct of those printers, not as a proof they would be guilty of injustice towards them, or that they would do them any unauthorized injury. Triplet had in the stage informed my client that he had never seen Callender; the judge meeting him at the door of the tavern, where they both lodged, as he came from court, the day on which the bench-warrant issued, observed to Triplet, "that the marshal had gone after Callender, therefore that he probably would have the pleasure of seeing him,"—and a day or two after informed Triplet that the marshal had returned without Callender, and he was afraid they should not catch the damned rascal that court. Triplet has told us he boarded with Judge Chase at the same tavern six days; they were travelling together three days: during this whole time of nine days, such only are the scraps of loose, idle conversation, which have been picked up and brought forward as indicating a hostile and oppressive principle towards Callender.

As to the word "damned," which has been introduced in the conversation, however it may sound elsewhere in the United States, I cannot apprehend it will be considered *very* offensive, *even* from the mouth of a judge on this side of the Susquehanna;—to the southward of that river it is in familiar use, generally introduced as a word of comparison,—supplying frequently the place of the word "very,"—not confined to cases where we mean to convey censure, but frequently connected with subjects the most pleasing; thus we say indiscriminately a very good or a damned good bottle of wine; a damned good dinner, or a damned clever fellow.

But, sir, what must at once efface every pretence of a disposition hostile and oppressive towards Callender on the part of Judge Chase is, the mildness of the punishment inflicted.

I now, Mr. President, shall proceed to the fifth and sixth articles of impeachment—these relate to the process issued against Callender, and to the time at which it was made returnable. By the fifth article my client is charged with having "awarded a capias against Callender by which he was arrested and committed to close custody, although it is provided by an act of Congress, passed the 24th day of September, in the year 1789, that for any crime or offence against the United States the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and although it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer at the next court."

The criminality alleged against my honorable client by this article, as well as the *sixth*, consists in his violation of a law of the State of Virginia, by which it is supposed his conduct ought to have been regulated.

We find, from the evidence in this cause, that the legal character of that State, whether on the bench or at the bar, cannot agree among themselves as to what is the law of that State,—and that the practice has been and continues to be variant in Virginia. Nay, it is proved that two highly respectable legal characters who successively held the office of Attorney General, (Colonel Innes and General Brooke.) were applied to by one of their deputies, and declared themselves incapable to decide what ought to be the practice, or in other words, to decide in which case a summons ought to be issued and in what cases a capias was the proper process. Surely then Judge Chase, who was a stranger in Virginia, cannot be considered criminal nor even subject to reproach for not understanding a law of that State, the true construction of which remains even now a question, upon which the Virginia judges and lawyers find it impossible to agree.

Upon these observations I think I might safely rest my client's defence, as to this charge—and even consent that he shall be convicted and removed from office, whenever they shall agree among themselves upon the construction of their law,—provided it should be against us.

But, sir, I must request to be indulged in an endeavor to investigate this subject which appears so intricate, and to try if I cannot throw such lights upon it as possibly may be serviceable to the gentlemen of the bar of that State, whose law is in question; and in this attempt I feel a confidence, that I shall be at least able to satisfy this honorable Court, Judge Chase, even if bound to conduct himself according to the laws of Virginia, which I utterly deny, and shall endeavor to disprove, acted not only free from criminality, but with the strictest propriety.

I shall lay down as a position, which will not be controverted, that in all *personal* actions, civil or criminal, instituted against individuals in Virginia as well as in Maryland, the process to bring them into answer to the suits is, and hath always been a capias, or process to arrest the body, except so far as by Legislative acts of the respective States, the law hath in certain cases been altered and *other* process directed. And I mean to show that every case in Virginia, civil or criminal, and some there are of both, where a summons is the legal process, arises out of the Legislative provisions, that is, the acts of Assembly of that State. And by examining the different acts, which have

been passed upon this subject, we shall be able to ascertain what are the cases, and the only cases, wherein a summons ought to be issued. I have, sir, before me the laws of Virginia antecedent to the American Revolution; it is the edition printed at Williamsburg, by *Rind*, *Purdie*, and *Dixon*, in the year 1769. It appears, sir, that until the year seventeen hundred and forty-eight, suits might be brought in the county court for any sum exceeding twenty-five shillings current money, or two hundred pounds of tobacco; and actions of trover or detinue without regard to the value of the article converted or detained; in all such actions a *capias ad respondendum* was the first process issued, authorizing the sheriff to take the body of the defendant into his custody, and have him before the court at the time when his writ was returnable. In that year a law was passed, chap. 4th, by the 26th sec. of which it is enacted, "that for the more *speedy* recovery of *small* debts, it shall be lawful for the justices of any county court to hear and determine all suits brought for any debt or demand, due by judgment, obligation, or account for any sum or sums of money or tobacco of the value of twenty-five shillings current money, or two hundred pounds of tobacco, and not exceeding five pounds of like money, or one thousand pounds of tobacco, by *petition*, without the *solemnity of a jury;* and where the demand shall not exceed the above-mentioned sums, the plaintiff shall proceed by petition, and *not otherwise*." After directing in what manner the claim is to be set forth in the petition, the same section directs that "upon filing such petition in the clerk's office, a summons of course shall be issued returnable to the next court (the courts were then held monthly,) a copy of which, together with the copy of the petition and accounts shall be delivered to the defendant, or left at his or her usual place of abode, ten days at least before the next succeeding court, and the same being returned executed by a sworn officer, or oath made of the due service thereof, if the defendant do not then appear, it shall be lawful for the said justice to hear and examine into the truth of the matter so complained of, and to determine the cause on the evidence produced, or to dismiss the petition, as to them shall seem just. And if the defendant do appear, he shall forthwith put in such answer or plea thereto as will bring the matter of complaint in issue thereupon: Or if he fails to plead, the court shall instantly proceed to hear and determine the cause in a summary way upon such evidence as shall be given, and shall give judgment according as the very right of the cause and matter in law shall appear unto them, without regard to form or want of form," &c.

By the 22d sec. of the same law, it is enacted "that when any person entitled to an action of trover or detinue shall set forth the value of the thing demanded to be *under the value of five pounds*, in a *petition* to any county court, a *summons* shall issue, and the same proceedings shall be had as in cases for the recovery of small debts." But for the recovery of *any penalty* for the *breaches* of the *penal laws* of the then colony, no change was made as to the mode of instituting the action. The process of capias to arrest the offender, the right of trial by jury in such actions, as to these subjects, the law was left as before: and yet actions of this nature were under the consideration of the Legislature; for we find in sec. 23, of the same law, "that for the easier, speedier, and better advancement of justice in obtaining judgments in any such suit or action, where the penalty sued for shall not *exceed five pounds*, current money, or *one thousand pounds* of tobacco, if in such suit any *demurrer* shall be joined and entered therein, in any court of record within said *dominion*, the judges shall proceed and give judgment according to the very right of the case, and as the matter of the law shall appear to them, without regarding any imperfection, omission, or defect, &c., except those only which the party demurring shall specially and particularly set down and express, together with his demurrer, as causes of the same, notwithstanding, &c. And that if any *verdict should be given* in any such action or suit, in any court of record in said dominion, the judgment thereupon shall not be staid or reversed for or by reason of any default in the form or want of form, of any writ, &c., any law, statute, or usage, to the contrary notwithstanding."

And here, sir, it may perhaps be proper to observe, that in Virginia, at least before the Revolution, the *penalties* inflicted for the breach of their *penal* laws, were commonly by the acts themselves directed in what mode to be recovered, which mode was almost universally directed to be "by *information*, bill, plaint, or action of debt, 'in any court of record within said dominion, 'wherein no essoin, protection, or wager of law, 'privilege or any more than imparlance shall be 'allowed." [Mr. Martin turned to a variety of the penal laws to show such were the provisions.] This honorable Court will perceive that under *these provisions*, the penalties could not be recovered by presentment and indictment, as hath frequently been determined; hence the usual suits or actions resorted to in the courts of Virginia, for the recovery of those penalties from the smallest to the greatest, were *informations* or *actions of debts*. And the twenty-third section which I have just read relates to such informations or actions of debt, where the penalty should not exceed *five pounds*, and to those only applies such regulations as are thereby made, which however do not alter the form of action or nature of the process to be issued, even in those cases, but leaves the law in those respects as it was before.

However, during the same session, in their legislatorial disquisitions, they thought proper to take away the trial by jury in proceedings *by presentment*, to recover penalties not exceeding five pounds; to give the courts summary jurisdiction in *those cases;* and to take away the process of a capias therein. And hence having by the first section of chapter 7, (see page 188, laws of Virginia,) enabled *grand juries* to *present breaches* of all *penal laws* of that then colony: by the second section it is thus enacted, "that when any 'offence or offences should be *presented by a* 'grand jury, and the penalty or forfeiture by law, 'inflicted thereon, shall not exceed five pounds 'current money, or one thousand pounds of to-'bacco, be it to the King and informer, or to the 'party and informer only, or appropriated to any 'other use whatever, such *presentment* need not 'be drawn up in *other form* than as the same 'stands *presented by the grand jury*, and there-'upon the court shall order a *summons* forthwith 'to issue, to summons any person, so presented, 'to appear and answer such *presentment* at the 'next court, (as I have before observed, the courts 'were then held monthly,) and shall not admit of 'any exception or pleading to the form or manner 'thereof, but shall proceed to trial, without *the formality of a jury*, and give judgment upon such 'presentment, according as the very right of the 'cause and matter in law shall appear to them; 'and if the party summoned fails to appear, the 'court may give judgment for the penalty."

Thus, sir, the law of Virginia remained until the Revolution, and from this view it will appear that the only cases, where, in personal civil actions, the process was to be by summons, and not by capias, were where debts were claimed not exceeding five pounds, or one thousand pounds of tobacco, or property converted or detained not exceeding the same value, in all which cases the suit or action was to be instituted by *petition*, and the *court* was to decide in a *summary* manner, without the *intervention of a jury*.

And that the only case, in *criminal* proceedings, where a summons was directed to issue, is where a *presentment* hath been made by a *grand jury*, for an offence, *the penalty* whereupon shall not exceed five pounds current money, or one thousand pounds of tobacco, which presentment need not be drawn up in any other form; and on presentment the court was to decide in a *summary* manner, without the *intervention of a jury*. This honorable Court will also perceive, that the provision of this act directing summons to issue in the case I have stated can only apply to presentments made under the local, penal laws of Virginia, where the penalty is restrained to a sum not exceeding five pounds current money, or a thousand pounds of tobacco, and cannot extend to presentments for offences at *common law*, such as assaults, riots, &c. since in all such cases the courts have a discretionary power to fine what sum they think reasonable, and therefore, may fine beyond five pounds current money, or a thousand pounds of tobacco. Nor doth the provision extend to any case even under the penal laws of Virginia, where the court may punish by imprisonment. Upon this examination of the subject, it appears that until the time of the American Revolution, according to the laws of Virginia, a capias remained the proper process in all personal civil actions, except where the claim was for money or debts due not exceeding five pounds current money, or one thousand pounds of tobacco; or where, in detinue or trover, the plaintiff laid the value of the property not exceeding the aforesaid sum, and that in criminal cases a capias remained the proper process in all proceedings for offences at common law; and for all offences against the acts of the State of Virginia where the court may inflict a fine of more than five pounds current money, or which were punishable by imprisonment. Having thus shown what was the law on this subject at the time of the American Revolution, I have, sir, to examine what changes and alterations have been made therein since that period.

The first law made since the Revolution was passed in the year 1792, and is to be found in the edition of the Virginia laws, published by Augustine Davis, in the year 1794, page 96; the thirty-seventh section increases the amount of the debt, which may be recovered by the petition in the county, city, or borough court, to a sum not exceeding twenty dollars, or eight hundred pounds of tobacco, directing process to be by summons and the mode of procedure for recovery of the same as for recovery of small debts before and at the time of the Revolution. The thirty-eighth section also increases the value of the property where in trover and detinue, petition may be filed and proceedings be had as before the Revolution, to the sum of twenty dollars, or eight hundred pounds of tobacco.

In the same year an act was passed, to be found page 106, by the sixth section of which it is enacted, "that in a *presentment* to the county or 'corporation courts, if the penalty of the offence 'exceed not five dollars, or three hundred pounds 'of tobacco; or to the district court, if the penalty 'exceed not twenty dollars, or one thousand 'pounds of tobacco, no information thereupon shall 'be filed, but a summons shall thereupon be issued 'against the defendant to answer the said *present-'ment*, and such summons having been served 'upon him, or a copy thereof having been left at 'his usual place of abode, and if he doth not ap-'pear, judgment shall be given by the court against 'him for the penalty, and if he doth appear, the 'court shall in a *summary way*, without the *inter-'vention of a jury*, hear and determine," &c. And by the thirty-seventh section of chapter 74, page 113, there is a general provision, that where no presentment may be made, yet where the penalty incurred by the breach of any penal law shall not exceed twenty dollars, or eight hundred pounds of tobacco, the same may be sued for and recovered in the manner directed by law for debts of like amount.

This clause was designed to prevent informations or actions of debt to be originally instituted for the recovery of penalties not exceeding that sum, where no presentments should be made, and to direct a procedure by petition in which also the process must be a *summons*, and the decision by the court in a summary manner.

One other provision, and one only, hath been made for issuing a *summons;* this is found in the twenty-fourth section of the same act, and runs thus: "No information for a trespass or misde-'meanor, shall be filed in any court, but by ex-'press order of the court entered on record, nor 'unless the party supposed to be culpable shall 'have failed to appear and show good cause to 'the contrary, having been required to do so by 'a *summons*, appointing a convenient time for

'that purpose, served upon him, or left at his 'usual place of abode."

These are the only acts of the Virginia Legislature I find on this subject—I believe there are no others. If there are any more, the honorable Managers will be so obliging as to point them out; but presuming that they can produce no further provisions, what is the result of this investigation? That even at this time, the only instances in personal civil actions where summons is the proper process, are where the demand for money due, or on account of trover or detinue, doth not exceed twenty dollars, or eight hundred pounds of tobacco, in which case the proceeding is to be by petition and the court determine in a summary manner without the intervention of a jury. And in criminal cases, or for recovery of penalties for the breach of their penal laws, the only cases where a summons is the regular process are where the actions are instituted by presentment of a grand jury, on which presentment no information is to be filed, or without such presentment by petition, for the recovery of penalties not exceeding twenty dollars, or its correspondent value in tobacco; which cases can only arise under the acts of Assembly of Virginia, and not where the offences are at common law—nor in any case even under the laws of Virginia, where punishment may be by imprisonment; that the only additional instance, in which a summons is to be used in a criminal case, is where application is made for an information—and there it is directed in order that the party may have an opportunity to show cause why an information shall not be ordered against him: but even in this case, if the information is ordered, a capias is the process to bring the party to answer the charge contained in such information,—as it remains to be in every other criminal prosecution or suit, except those which I have already particularly designated.

I will now, sir, turn to the law of the State of Virginia, with the violation of which we are charged; but first let me premise it is most erroneously stated in the article of impeachment; how this hath happened is not for me to say, but such is the fact: the article of impeachment sets forth, that "it is provided by the laws of Virginia, that upon presentment by any grand juror of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending to appear," &c.; whereas in truth the words of the law are, "upon presentment made by the grand jury of an offence not capital, the court shall order the clerk to issue a summons or other proper process against the person or persons," &c. (See page 112, section 28, same edition, laws of Virginia.)

Thus then the very law points out that upon such presentments a summons is not in all cases a proper process, but that a summons is to issue, or other proper process, according to the nature of the offences presented. That is, as I have already shown, a summons is to be issued where presentments are made for a violation of the penal laws of their State, punishable by a fine of not more than twenty dollars, or its corresponding quantity of tobacco, nor by imprisonment; but in all presentments for offences at common law, or for breaches of their penal laws punishable by fine beyond twenty dollars or by imprisonment, in such cases the clerk must issue a capias, that being the proper process. And upon these principles it has been determined in the circuit court of Columbia, sitting at Alexandria, acting under the laws of Virginia, that on presentments for assaults and battery, and other common law offences, a capias is the proper process to be issued; and this determination has been made while a gentleman of great legal knowledge, a native of Virginia, and who received his legal education in that State, (John Thompson Mason, Esq.) prosecuted in that court for the United States, upon whose application, I presume, the determination was made.

I will now examine the law of the United States, passed the 24th September, 1789, entitled "An act to establish the judicial courts of the United States," section 33; "And be it further 'enacted, That for any crime or offence against 'the United States, the offender may by any justice or judge of the United States, or by any justice of the peace, or other magistrate of any of 'the United States, where he may be found, agreeably to the usual mode of process against such 'offenders in such State, and at the expense of 'the United States, be *arrested* and *imprisoned*, 'or *bailed*, as the case may be, for trial before *such 'court* of the United States as by this act has cognizance of this offence; and copies of this process shall be returned, as speedily as may be, 'into the clerk's office of such court, *together with the recognisances of the witnesses for their appearance to testify in the case*, which recognisance the magistrate before whom the examination shall be, may require on pain of imprisonment. And if such commitment of the offender 'or of the witnesses shall be *in a district other 'than that in which the offence is to be tried*, it 'shall be the duty of the judge of that district 'where the delinquent is imprisoned, seasonably 'to issue, and of the marshal of the said district 'to execute, *a warrant* for the removal of the offender and the witnesses, or either of them, as 'the case may be, to the district into which the 'trial is to be had. And upon all *arrests* in criminal cases, bail shall be admitted," &c. This is the law of the United States, mentioned in the fifth article as governing the question now before us, the basis on which this article is founded. The least examination will show that it provides only for the manner in which offenders shall be arrested under warrants issued by the judicial officers of the United States or of the different States, upon complaint made to them, in order that such offender may be bailed or committed, and witnesses bound over to the approaching proper courts, that the offences may be inquired of by a grand jury, and hath no relation to the manner in which process shall be issued *by a court* to bring in offenders to answer to presentments which are depending in the court. And a similar provision for arrests in such cases is made by the acts of Assembly of Virginia, in that State. [See 17th sec. chap. 67, page 93, same edition of Virginia laws.]

But that the aforesaid act of Congress can in no manner relate to, or be regulated by, any law of Virginia, directing a summons to be issued as the proper process, appears clearly from this, that the offender is to be *arrested* and imprisoned, or bailed, according to the nature of the offence; but no person can be *arrested* on *process of summons*, or on such process be compelled to give bail under pain of imprisonment. This can only be done when a *capias*, or similar process, such as a magistrate's warrant, or the warrant of a court, called a bench warrant, is issued! And here, sir, let me explain what is meant by a *bench warrant*. When a presentment is made by a grand jury against a person not imprisoned nor recognised, process is issued to arrest the offender and bring him before the court then in session; as when an application is made to a judge or a justice out of court, and oath made of an offence committed, it becomes the duty of such judge or justice to issue *his warrant* to take the offender into custody, and thereby secure his appearance at court to answer to any presentment which may be made against him; so, when a presentment is made by a grand jury of any offence, that presentment being made by the oath of not less than twelve of the grand jurors, founded also on the oath of witnesses, it authorizes the court upon this proof that an offence has been committed, to issue process commanding the sheriff to arrest the offender presented, and bring him before them, to be bailed or committed, according to the nature of the crime with which he is charged. This process is what in Maryland is called a *bench warrant*. It differs from the warrant issued by a judge or justice, inasmuch as this last is directed to a constable, the other to a sheriff. It differs from the common capias only in this, that the bench warrant is made returnable immediately, that is, during the session of the court, whereas, what is commonly called a capias, is returnable to the succeeding term. And in Maryland, it is the constant practice of our courts, whenever presentments are made against persons not in confinement nor under recognisance, to issue such process in *all cases*, from the highest to the lowest offences, in order to secure the persons presented.

I have said, sir, that the law relied on by the House of Representatives in support of this article doth not relate to process issued on *presentments made* in the courts of the United States; and as a further proof of this, I now refer this honorable Court to the fourteenth section of the same law, where it is enacted "That all the be-'fore-mentioned courts of the United States shall 'have power to issue writs of scire facias, habeas 'corpus, and *all other writs* not specially provided 'for by statute, *which may be necessary for the 'exercise of their respective jurisdictions*, and 'agreeable to the principles and usages of law." By this provision, a power is given to the courts of the United States to issue such process as in their discretion they shall think best, so that it be consistent with the general principles and usages of law. And the act of the United States, entitled "An act in addition to an act to establish the 'judicial courts of the United States, passed on 'the 2d March, 1793," in its seventh section has the following provision, to wit: "That it shall be 'lawful for the several courts of the United States, 'from time to time, as *occasion may require, to 'make rules and orders* for their respective courts, '*directing the return of their writs and processes*, 'the filing of declarations and other pleadings, 'the taking of rules, the entering and making up '*judgment or default*, and other matters in the 'vacation and otherwise, in a manner not repugnant to the laws of the United States, to regulate the practice of the said courts, respectively, 'as shall be fit and necessary *for the advancement 'of justice*, and especially to that end *to prevent 'delays* in proceedings." This act gives the courts of the United States full power to regulate the return of process as to time and everything else; the former law gave them the power of issuing *such process* as in their judgment and discretion they should think most proper. On these subjects, then, they are uncontrolled, unrestrained by the laws or the practice of any State or State courts. The courts of the United States having this power, can only exercise it as the case comes before them; they then determine what is right and proper, and that becomes a precedent in similar cases, and thus it was the court acted in the case of Callender, as to the process issued and the time of its return, and was perfectly justified by the laws of the United States in so acting.

The sixth article alleges that by the laws of Virginia it is provided, that in cases not capital, the offender *shall not be held* to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall be made, and yet that my honorable client, with intent to oppress and procure the conviction of Callender, did, at the said court at which he was presented, rule and adjudge him to trial during the term at which he, Callender, was presented and indicted, and this, notwithstanding the provisions of the thirty-fourth section of the aforesaid law of the United States, mentioned in the fifth article, which provides "that the laws of the 'several States, except where the Constitution, 'treaties, or statutes of the United States, shall 'otherwise require or provide, shall be regarded 'as the rules of decision in trials at common 'law in the courts of the United States where 'they apply."

In answer to this charge, sir, permit me to state there is no law in Virginia that declares the offender, presented for an offence not capital, *shall not be tried until the succeeding term;* it is only an inference, which that honorable body, who formed the articles of impeachment, have made from the supposition that in all such cases a *summons only* could be issued, returnable to the succeeding term, and in consequence that the offender could not be compelled to go to trial before the succeeding term.

But, sir, I have already shown that summons was not the proper process in Callender's case; that the laws of Virginia were not in the least degree operative on either the process to be issued

nor the time or the manner of its return, but that the one and the other was solely in the power of the court, vested in them by the laws of the United States, unrestrained by any law of the State of Virginia. Thus, then, the premises failing from which the inference was drawn, the inference, of course, must be rejected. Thus, then, the court, unrestrained by any law of Virginia, or by any inference drawn therefrom, not only had a right to try Callender the same term he was indicted, but were bound in duty so to do, unless there was some good cause to justify the delay. When a presentment is made, there is such evidence that a crime has been committed, as to authorize the court, nay, to make it their duty, (as I have before observed,) to issue process to *arrest* the criminal to prevent his escape from justice. Our laws are not founded on the principle that the offender may have an opportunity to escape and elude justice; and hence it is that a grand jury is sworn to secrecy as to their deliberations, lest those offenders against whom inquiries are making, getting information of that fact, may run off before they can be secured. And, when the criminal is arrested and brought into court, it is the duty of the court, both as to the criminal and the public, to have the cause decided as soon as can be, consistent with justice. And now let me turn to the 34th section of the judiciary law of the United States, which is introduced in this article, and on which reliance is placed by that honorable House which hath prepared these articles. It is as follows: "That the laws of the several States, except 'where the Constitution, treaties, or statutes of the 'United States shall otherwise require or provide, 'shall be regarded as rules of decision in trials at '*common law* in the courts of the United States, 'in cases *where they apply*." I shall not, sir, enter here into a discussion whether a prosecution for the violation of a penal law of the United States, can be with propriety, within the meaning of this act, called a proceeding at common law. Nor shall I, sir, rely, as I might do, upon the observation, that they are only to be regarded "*in cases where they apply*," and that it is the court, and the court only, who are to determine in what cases they do apply; in doing which they are only required to exercise impartially their legal discretion; but I shall ask whether this law in any manner relates to the process to be issued to bring into court the party to the suit, antecedent to the *trial*, to compel him to appear in order that a trial may be had? I presume not. The provisions for that purpose are to be found in the 14th section of the law of September 24th, 1789, and in the 7th section of the law of March 2d, 1793, which I have already cited, and which regulate not only the issuing but the returning of process to bring the party into court, to answer to the charge, whether civil or criminal. According to my judgment, sir, the law in question means only to declare that the rules and decisions of the State courts, in any questions as to the right of the parties, shall be respected and attended to in similar questions, which may come into controversy in the courts of the United States, in their respective districts or circuits, as far as they shall be thought to apply in cases at common law; that is, if two cases exactly similar are in litigation, as to civil rights, the one in the State court, the other in the district or circuit court held in the same State, there ought to be in each case the same decision; and that where the law in the case had been settled by antecedent State decisions, the judges of the United States should respect those decisions. And also, that when the courts of the United States try a cause in any district or any circuit, the rights of the parties are to be decided according to the laws of the States under which rights were acquired, as settled by the legal decisions of the State courts, where decisions have been had. To exemplify my ideas, if the courts of the United States have on any occasion to determine, either immediately or incidentally, a right arising under a devise of lands in Maryland, they must determine the devise void, unless the will was attested by three witnesses. But if the devise was of lands in Virginia, the courts would be obliged to determine the devise good, although attested in a different manner. So, also, the obligation contracted by the execution of a promissory note is different if executed in Virginia, from what it is if executed in Maryland. Upon actions therefore which may be instituted in the courts of the United States in such cases, these courts ought to consider what are the rights of the parties according to the laws of the States where the transactions took place, and where there have been decisons of the State courts upon the subject-matter, or any decisions which may be considered as having a bearing on the question, the United States courts are to regard such decisions as far as they think they are *applicable*.

Thus, sir, I flatter myself, that I have upon the fifth and sixth articles shown that there was no law of Virginia by which the conduct of the judge was to be regulated, and that, even if the laws of that State had been operative, they have not been, according to their true construction, in any degree violated.

But surely it can never be seriously contended, that where a gentleman is appointed a judge of the United States, he is thereby expected to become perfectly acquainted with all the local laws, usages, and decisions of every separate State in the Union; no such judge by any possibility can be had. However great the legal knowledge of any gentleman, it has been generally confined to the laws, to the practice, the judicial proceedings of his own State, and to the common law as there used and introduced. From the perfect conviction of this truth, the district judge is appointed an inhabitant of the State which composes the district; he is supposed to know the particular laws, usages, and decisions of his State. It is to him, or the District Attorney in his absence, the judge of the Supreme Court, when he goes to hold the circuit court, is expected to apply for information as to what relates to these subjects; and thus we find Judge Chase correctly acting; for the district judge being absent when Callender was presented, we find my honorable client consulting with the

District Attorney, whose political principles certainly did not lead him to wish to oppress Callender, and also with the clerk of the district court, who is himself a gentleman of legal knowledge, and a prosecutor in one of the State courts in Virginia; and it was under their advice and with their approbation that the process was issued, of the nature used, and returnable in the manner we have seen. In fine, sir, it is impossible for the Judges of the Supreme Court to have even a general knowledge of the particular State laws and practices, and if, in consequence of that want of knowledge, they were to be subject to impeachment, you would not be able to prevail upon any respectable character to accept the appointment. But I do not apprehend, sir, that the honorable Managers place much reliance at this time on these two articles. Nor do I believe the honorable House of Representatives would have either adopted them or any of the articles which have been brought forward against Judge Chase, had the same evidence been before them which hath been produced before this honorable Court.

In saying this, I do not mean in the slightest degree to censure that honorable body, they were acting as a grand inquest of the nation; they only had, and they only could have, before them *ex parte* evidence. On the evidence which they had before them, I shall not suggest but what there was sufficient foundation for bringing forward the charges. But these charges have been patiently discussed; a mass of evidence hath been produced here, which they had not, and, after this full investigation, the honorable members who impeached him, and who have regularly attended his trial, I doubt not, are perfectly satisfied that he ought to be acquitted, and will rejoice at that acquittal.

Before I conclude, let me add one other proof that the framers of the Constitution never intended that juries should have any power to decide the law contrary to the instructions of the court, much less to decide upon the *constitutionality* of a law. By the 2d section of the 3d article of the Constitution of the United States, it is provided, that in all cases to which the judicial power applies, except cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State is a party, "the Supreme Court shall have '*appellate jurisdiction*, both as to law and fact, 'with such exceptions and under such regulations 'as Congress shall make."

Thus, therefore, it is in the power of Congress to authorize, in all such cases, an *appeal* to the Supreme Court, *even as to the fact*, from the *verdict of a jury*, and empower the Supreme Court to control the jury if they appear to have erred. And such was the intention of the framers of the Constitution.

They assumed as a principle, that the interests of the State governments and of the General Government would often be at variance; that laws passed by the United States, the most wise and salutary, might be very obnoxious to and unpopular in, some of the States; judges holding their commissions under the respective States, that is, the State judges, the framers of the Constitution would not, therefore, entrust with the execution of the laws of the United States. They also considered that, as far as juries were introduced, the jurors would be citizens of the respective States wherein the trials should be had, that they would, in consequence, probably partake of the interests, the prejudices, and the passions prevailing in the State, and therefore might decide contrary to the direction of the judges appointed by the United States, and thereby prevent the due execution of their laws. To obviate this, the Constitution has a provision for an appeal to the Supreme Court, even from the verdict of such a jury. Judge then whether the framers of the Constitution ever contemplated giving power to counsel to argue to jurors *against the opinions of their judges, or juries to decide against such opinions*.

I have now only to return to this honorable Court my sincere thanks for the patient attention with which they have indulged me on this occasion, and to express to you, Mr. President, the high sense I have of the impartiality, politeness, and dignity with which you have presided during this trial.

Mr. HARPER.—It was greatly to be desired, Mr. President, and might have been confidently expected, that in a case every way so important, where it so greatly concerns the public happiness that the decision should command the public confidence, nothing would be presented to the view of this honorable Court in aid of the prosecution, except the law which ought to govern the decision, and the proofs relied on for supporting the allegations.

But it has not so seemed good to the honorable Managers. They have thought proper to introduce into the discussion, the political opinions and party connexions of the respondent, for the purpose of throwing a shade of doubt over his motives and of establishing inferences unfavorable to his character. How far this conduct ought to be commended, it is not for me to decide. My confidence in the justice and discernment of this honorable Court forbids me to apprehend that it can be successful.

But since these opinions and connexions have been introduced, permit me to use them for a different purpose.

The duty imposed on judges is at all times delicate, and in criminal cases, where life or liberty may be affected, where reputation, dearer than both, depends on the issue, this duty becomes peculiarly arduous and painful to an honorable and generous mind. But if there be a situation more delicate, more embarrassing than every other to such a mind, it is that of a judge sitting on the trial of a person who, from political opposition, or any other cause, may have excited hostile or angry feelings in his mind. It is then that he most fears to trust himself. It is then that he most dreads the influence of his passions in misleading his judgment. It is then that he feels the strongest alarm for his reputation, lest he should possibly afford ground for the suspicion that he had gratified his resentments under the semblance

of executing the law. Hence he constantly leans towards the side of the accused, and requires the clearest conviction before he condemns. Hence he rejects all doubtful or contradictory testimony, lays out of the case all little indiscretions and slight shades of suspicion; and is rigid in requiring from the prosecutors the unequivocal proof of unequivocal offences. That his enemy is in his power, is always a reason for the utmost forbearance. The fear that he may possibly be misled by his passions, is always a reason for acquittal, where doubt can exist.

Need I invoke these noble and generous sentiments to the breasts of this honorable Court? No! my heart tells me I need not. I see on those benches distinguished soldiers and eminent statesmen, who have triumphed alike in the fields of politics and war, and who always disdained to tarnish their laurels by the blood or humiliation of a vanquished foe.

If this, the person now arraigned at your bar, be connected with a political party in opposition to any of those who sit as his judges; if it were possible that, in promoting the views of that party, he may have excited feelings of anger or resentment in the mind of any member of this honorable tribunal; if it were possible that any portion of the angry passions engendered by the conflicts of party could find a place within these hallowed walls, and could attach itself to him who stands upon his trial at this bar, the existence of such a possibility would furnish every member of this honorable Court with the strongest motives that can operate on a generous and noble mind, for leaning constantly to the side of the accused, and for pronouncing in favor of an acquittal, wherever there remains a doubt of guilt.

Attempts have also been made to enlist the sympathy of this honorable Court on the side of the prosecution, and for this purpose, a criminal twice convicted, who did not hesitate to risk civil bloodshed in support of political theories, and is now indebted for his life to the clemency of that Government against whose laws he armed his ignorant and misguided neighbors, is presented to view, decked out in all the ornaments which rhetoric can bestow. We, Mr. President, disclaim the aids, and protest against the interference of rhetoric and sympathy. However proper in other situations, they ought to be excluded from courts of justice, whose decisions should be governed by truth and not by feeling.

But if sympathy could find a place in this tribunal, what object more fit to awake it than that now presented at your bar? An aged patriot and statesman, bearing on his head the frost of seventy winters, and broken by the infirmities brought upon him by the labors and exertions of half a century, is arraigned as an offender, and compelled to employ, in defending himself against a criminal prosecution, the few and short intervals of ease allowed to him by sickness. Placed at the bar of a court, after having sat with honor for sixteen years on the bench, he is doomed to hear the most opprobrious epithets applied to his name by those whose predecessors were accustomed to look up to him with admiration and respect, and whose fathers would have been proud to have been numbered among his pupils. His footsteps are hunted from place to place, to find indiscretions which may be exaggerated into crimes. The jests which, flowing from the gayety and openness of his temper, were uttered in the confidence of private conversation; the expressions of warmth produced by the natural impetuosity of his character, are detailed by companions converted into spies and informers, and are adduced as proofs of criminal intention.

This cup, so full of bitterness for one who has been accustomed for forty years to fill the most honorable stations in his country, he drinks to the dregs without complaining. In this sad reverse, he supports himself with a calmness, a fortitude, and a resigned dignity which melt the hearts of those who are not his enemies, and extort the respect of those who are.

If sympathy must be excited, here let it find a nobler object. If from generous breasts it cannot be excluded, let it be turned towards

"A brave man struggling with the storms of Fate,"

and greatly supporting himself under a pressure of evils the most afflicting that an elevated mind can know.

Not content with endeavoring to blow up a flame of party spirit against the respondent, and to engage sympathy in the ungracious, and to her unnatural, task of aiding a criminal prosecution, the honorable Managers have resorted to a principle as novel in our laws and jurisprudence as it is subversive of the Constitutional independence of the judicial department, and dangerous to the personal rights and safety of every man holding an office under this Government. They have contended "that an impeachment is not a criminal prosecution, but an inquiry in the nature of 'an inquest of office, to ascertain whether a person holding an office be properly qualified for his 'situation; or, whether it may not be expedient 'to remove him." But if this principle be correct—if an impeachment be not indeed a criminal prosecution, but a mere inquest of office—if a conviction and removal on impeachment be indeed not a punishment, but the mere withdrawal of a favor of office granted—I ask why this formality of proceeding, this solemn apparatus of justice, this laborious investigation of facts? If the conviction of a judge on impeachment is not to depend on his guilt or innocence of some crime alleged against him, but on some reason of State policy or expediency, which may be thought by the House of Representatives, and two-thirds of the Senate, to require his removal, I ask why the solemn mockery of articles alleging high crimes and misdemeanors, of a court regularly formed, of a judicial oath administered to the members, of the public examination of witnesses, and of a trial conducted in all the usual forms? Why not settle this question of expediency, as all other questions of expediency are settled, by a reference to general political considerations, and in the usual mode of political discussion? No! Mr. President! This

principle of the honorable Managers, so novel and so alarming; this desperate expedient, resorted to as the last and only prop of a case, which the honorable gentlemen feel to be unsupported by law or evidence; this forlorn hope of the prosecution, pressed into its service, after it was found that no offence against any law of the land could be proved, will not, cannot avail. Everything by which we are surrounded informs us that we are in a court of law. Everything that we have been three weeks employed in doing reminds us that we are engaged not in a mere inquiry into the fitness of an officer for the place which he holds, but in the trial of a criminal case on legal principles. And this great truth, so important to the liberties and happiness of this country, is fully established by the decisions of this honorable Court, in this case, on questions of evidence—decisions by which this court has solemnly declared, that it holds itself bound by those principles of law which govern our tribunals in ordinary cases. These decisions we accepted as a pledge, and now rely on as an assurance that this cause will be determined on no newly discovered notions of political expediency, or State policy, but on the well settled and well known principles of law and the Constitution.

The honorable Managers, indeed, are as much at war with themselves on this point, as with the Constitution and the laws. For when they have told us in one breath, that this is merely a question of policy and expediency, they resort in the next to legal authorities, both English and American, for the purpose of explaining the doctrine of impeachment, and of proving that the acts alleged against the respondent amount to impeachable offences; thus paying an involuntary homage to truth, and furnishing an instance of the irresistible power with which she forces herself on the mind, even when most obstinately determined to resist her. Let us also, Mr. President, be permitted to adduce the authority of an elementary writer, of very high authority, on the laws of England, in support of the principle for which we contend. Woodeson, in his Lectures, vol. 2, p. 611, treating on the law of impeachment, speaks thus: "As to the trial itself, it must of course 'vary in external ceremony, but differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the 'same legal notions of crimes and punishments, 'prevail. For impeachments are not formed to 'alter the law, but to carry it into more effectual 'execution, where it might be obstructed by the influence of two powerful delinquents, or not easily 'discerned in the ordinary course of jurisdiction, 'by reason of the peculiar quality of alleged 'crimes. The judgment therefore is to be such 'as is warranted by legal principles or precedents. 'In capital cases the mere stated sentence is to be 'specifically pronounced." Thus far this learned professor and commentator of the laws of England; and he cites as authorities for this doctrine Selden and the State Trials; the latter of which, this honorable Court need not be informed, is a collection of adjudged cases in the highest courts of England; and the former, a writer of great learning and very high authority, peculiarly tenacious of every principle tending to the security of public liberty, and not likely to mistake on a point so essential as the law of impeachment.

Thus we find that even in England, where the power of impeachment is subject to no express constitutional restrictions, and where abuses of that power, for the purpose of party persecution and State policy, have sometimes been committed, and more frequently attempted, an impeachment has never been considered as a mere inquest of office, but always as a criminal prosecution, differing not in essentials from those which are carried on before the ordinary tribunals of justice, and subject to the same rules of evidence, and the same legal maxims concerning crimes and punishments, as a proceeding contrived not to alter the law, but to carry it into more effectual execution. These authorities, sanctioned by the practice of one hundred and fifty years, prove the principle for which we contend. Instances may, no doubt, be found in the history of that country where these salutary principles have been disregarded, and impeachments have been converted into engines of oppression. But this abuse does not destroy or impair the principle. *That* remains as eternal as the laws of reason and justice on which it is founded; while the abuse passes into oblivion, with the temporary interests and fleeting projects which it was made to subserve; or remains in our recollection as a sad monument of the excesses into which frail man is hurried by his passions.

And has not this great principle of English jurisprudence, which in that country has weathered so many storms of faction, revolution, and civil war, received the sanction also of this honorable Court? Has not testimony been rejected, because it was judged illegal, according to the ordinary rules of evidence? And how could those rules apply to this case, unless it were considered as a criminal prosecution?

The Constitution of the United States will as little bear out the Managers in their position as the laws of England. That Constitution gives the power of impeachment to the House of Representatives, and to the Senate the power of trying impeachments. Had the authors of that instrument, and those who adopted it, intended to leave this power at large, or to erect it into a general inquest, for inquiring into the qualifications of judges, and the expediency of removing them, nothing more would have been done than merely to give the power. But it will be found that various restrictions are imposed in the subsequent parts of the instrument, which prove that no person can be impeached except for an offence.

Thus, for instance, in speaking of the power of pardoning, the Constitution provides (Art. 2, Sec. 2) that "the President may grant reprieves and pardons for *offences* against the United States, except in cases of impeachment." Is not this the same thing as saying, that cases of impeachment are cases of offences? What, Mr. President, are offences, in the language of the Constitution and

the laws? For a definition of the term "offence," in a Constitutional sense, we must consult our law books, and not the caprice or the varying opinions of popular leaders or popular assemblies. Those books tell us, that the word "offence" means some violation of law. Whence it evidently follows, that no officer of Government can be impeached, unless he have committed some violation of the law, either statute or common. It is not necessary for me to contend, that this offence must be an indictable offence. I might safely admit the contrary, though I do not admit it; and there are reasons which appear to be unanswerable in favor of the opinion, that no offence is impeachable, unless it be also the proper subject of an indictment. But it is not necessary to go so far; and I can suppose cases where a judge ought to be impeached, for acts which I am not prepared to declare indictable. Suppose, for instance, that a judge should constantly omit to hold court; or should habitually attend so short a time each day as to render it impossible to despatch the business. It might be doubted whether an indictment would lie for those acts of omission, although I am inclined to think that it would. But I have no hesitation in saying, that a judge in such a case ought to be impeached. And this comes within the principle for which I contend; for these acts of culpable omission are a plain and direct violation of the law, which commands him to hold courts a reasonable time for the despatch of business; and of his oath, which binds him to discharge faithfully and diligently the duties of his office.

The honorable gentleman, who opened the case on the part of the prosecution, cited the case of habitual drunkenness and profane swearing on the part of a judge, as an instance of an offence not indictable, and yet punishable by impeachment. But I deny his position. Habitual drunkenness in a judge, and profane swearing in any person, are indictable offences. And if they were not, still they are violations of the law. I do not mean to say that there is a statute against drunkenness and profane swearing. But they are offences against good morals, and as such are forbidden by the common law. They are offences in the sight of God and man, definitive in their nature, capable of precise proof and of a clear defence.

The honorable Managers have cited a case decided in this court, as an authority to prove that a man may be convicted on impeachment, without having committed an offence. I mean the case of Judge Pickering. But that case does not support the position. The defendant there was charged with habitual drunkenness, and gross misbehaviour in court arising from this drunkenness. The defence set up was that the defendant was insane; and that the instances adduced of intoxication and improper behaviour proceeded from his insanity. On this point there was a contrariety of evidence. It is not for me to inquire on which side the truth lay. But the court, by finding the defendant guilty, gave their sanction to the charge, that his insanity proceeded from habitual drunkenness. This case therefore proves nothing further, than that habitual drunkenness is an impeachable offence.

As little aid can the honorable gentlemen derive from the case of Judge Addison, on which also they have relied. The articles of impeachment will show, that Judge Addison was not impeached, as the honorable gentlemen suppose, for rude and ungentleman-like behaviour in court to one of his colleagues; but for a supposed usurpation of power, in preventing his colleague, by an exertion of authority, from exercising the right which he was supposed to possess, to charge a grand jury; and in exerting his official influence and power, to prevent the jury from paying attention to the legal opinions expressed by his colleague, in a civil case. The report of that trial, now in my hand, will attest the correctness of this statement; and will show also that Judge Addison was so far from being charged with rude and ungentleman-like behaviour to his colleague, that the honorable gentleman himself towards whom that behaviour is supposed to have been used, and who gave evidence on the trial, bore testimony to the mildness and politeness of Judge Addison's manner, on the occasions which furnished the grounds of impeachment. Whether the acts done by that learned and distinguished judge did amount to an usurpation of unconstitutional power; or whether his colleague did possess those rights, in the exercise of which he was supposed to have been improperly restricted; are questions foreign from the present inquiry. But I am free to declare, that if Judge Addison's colleague did possess those rights, and if he did arbitrarily prevent and impede the exercise of them, by an unconstitutional exertion of the powers of his office, he was guilty of an offence for which he might properly be impeached; because he must in that case have acted in express violation of the Constitution and laws.

The great principle for which we contend, and which is so strongly supported by the clause of the Constitution already cited, that an impeachment is a criminal prosecution, and cannot be maintained without the proof of some offence against the laws, pervades all the other provisions of the Constitution, on the subject of impeachment. The fourth section of the second article declares, "that the President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and *conviction* of treason, bribery, or other high crimes and misdemeanors." This provision, I know, has been considered by some as a mere direction of what shall be done, in those specified cases; and not as a prohibition, confining impeachment to those cases. But it must be recollected, Mr. President, that the Constitution is a limited grant of power; and that it is of the essence of such a grant to be construed strictly, and to leave in the grantors all the powers, not expressly, or by necessary implication granted away. In this manner has the Constitution always been construed and understood: and although an amendment was made, for the purpose of expressly declaring and

asserting this principle, yet that amendment was always understood by those who adopted it, and was represented by the eminent character who brought it forward, as a mere declaration of a principle inherent in the Constitution, which it was proper to make, for the purpose of removing doubts and quieting apprehensions. When, therefore, the Constitution declares for what acts an officer shall be impeached, it gives power to impeach him for those acts, and all power to impeach him for any other cause is withheld. The enumeration in the affirmative grant implies clearly a negative restriction, as to all cases not enumerated. This provision of the Constitution, therefore, must be considered, upon every sound principle of construction, as a declaration that no impeachment shall lie except for a crime or misdemeanor; in other words, for a criminal violation of some law.

The same idea is found in the second section of the third article, third clause; where it is declared that "the trial of all *crimes*, except in cases of impeachment, shall be by jury:" plainly implying that cases of impeachment, are cases of "trials for crimes."

It is material also, Mr. President, to advert to the peculiar force of the term "conviction," which is employed in several parts of the Constitution, in application to cases of impeachment. The third section of the first article, sixth clause, speaking of the trial of impeachments, says, "and no person shall be *convicted* without the concurrence of two thirds of the members present." The seventh clause of the same section, treating on the extent and operation of a judgment in impeachment, says, "but the party *convicted* shall nevertheless be liable and subject," &c. And the fourth section of the second article declares, that certain officers "shall be removed from office on impeachment for, and *conviction* of, treason, bribery," &c. This term "conviction" has in our law a fixed and appropriate meaning. There is indeed no word in our legal vocabulary, of more technical force. It always imports the decision of a competent tribunal, pronouncing a person guilty of some specific offence, for which he has been legally brought to trial. In an instrument so remarkable as the Constitution of the United States, for technical accuracy in the use of terms, the frequent and indeed constant use of this word is decisive to prove, that in the intention of the framers of that instrument, no man could be impeached, except for some offence against law, of which he might in legal language be said to be 'convicted."

In fixing the construction of this instrument, no safer guide can be followed than contemporaneous expositions, furnished by those who made or ratified it; and among those expositions, the most authoritative are to be found in the constitutions of the several States, formed about the same time, and drawn up in many instances by the same persons. Whenever it appears clearly from the context of these constitutions, that they affix a certain meaning to particular terms, we may safely infer that those or similar terms, in the Constitution of the United States, were intended to have the same meaning. And we shall find, by inspecting the constitutions of the several States, that impeachment has been considered by all of them as a criminal prosecution, for the punishment of defined offences against the laws.

Let us begin with that of Pennsylvania. In treating of impeachments, article the fourth, it speaks of conviction on impeachment; and declares that all civil officers shall be liable to impeachment for any misdemeanor in office. The term "misdemeanor" is of as accurate meaning, and of as much technical force, as any term in the law. It describes a class of offences against law, as well defined as any in the criminal code. A still stronger argument is furnished by the second section of the fifth article, which provides that, for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor may remove any of the judges, on the address of two-thirds of each branch of the Legislature. It is most manifest that this provision would have been wholly unnecessary had the people of Pennsylvania, in framing their constitution, considered impeachments, like the honorable Managers, merely as inquests of office, by which a judge might be removed for any cause, which two-thirds of each branch might think reasonable. And the arguments derived from the constitution of Pennsylvania have more force, inasmuch as the terms "misdemeanor in office," used by it for describing impeachable acts, are much less strong, than "treason, bribery, and other high crimes and misdemeanors," employed by the Constitution of the United States for the same purpose.

The constitution of Delaware, section 22, directs that impeachments shall lie against all persons "offending against the State, either by mal-'administration, corruption, or other means by 'which the safety of the State may be endanger-'ed." This is a very broad description of impeachable offences against the laws, liable to punishment in the regular course of justice. It is declared that all impeachments shall be commenced "within eighteen months after the offence committed," and shall be prosecuted by the Attorney General, or such other persons as the House of Assembly shall appoint, according to the laws of the land." Persons found guilty on impeachment are to be disqualified, or removed, "or subjected to such pains and penalties as the laws shall direct." And the term "conviction," whose peculiar technical force has been already remarked, is applied by this constitution to cases of impeachment.

The people of Maryland did not think fit to invest the Legislature with the power of impeachment; but have directed by their Bill of Rights, section 30, and by their constitution, section 40, that misbehaviour in office shall be proceeded against by indictment, in a court of law only; and that removal, and, in some cases, disqualification, shall be the consequence of conviction. It will not be denied, that "misdemeanor" and "misbehaviour in office" are convertible terms. If there be any difference, the latter is the less strong; and

yet the people of Maryland have declared that the term "misbehaviour in office" means an indictable offence, of which a person may be convicted in a court of law.

The constitution of Virginia provides, that persons offending against the State by mal-administration, corruption, or other means by which the safety of the State may be endangered, "shall be impeachable by the House of Delegates," in the General Court, according to the laws of the land: "and that if all or any of the judges of the General Court, should on grounds (to be judged by the 'House of Delegates) be accused of any of the 'crimes or offences above-mentioned, such House 'of Delegates may, in like manner, impeach the 'judge or judges so accused, to be tried in the 'court of appeals." Hence it appears most clearly that these general words "offending against the 'State by mal-administration, corruption, or other 'means by which the safety of the State may be 'endangered," words far more general and indefinite in themselves than those employed by the Federal Constitution, were considered by the people of Virginia as meaning specific crimes or offences, which might be proceeded against in a court of law, according to the usual course of criminal justice. The words "any other means by which the safety of the State may be endangered," are certainly broad enough to embrace those reasons of political expediency and State policy for which the honorable Managers contend that a judge may be removed by impeachment; but we find that the people of Virginia had no idea of giving them a construction so contrary to the notions entertained in this country respecting legal rights, personal safety, and Constitutional liberty.

The provisions made on this subject by the constitution of North Carolina breathe the same spirit. That instrument declares, section 23, "that 'the Governor and other officers offending against 'the State, by violating any part of this constitu-'tion, mal-administration, or corruption, may be 'prosecuted on the impeachment of the General 'Assembly, or presentment of the grand jury, of 'any court of supreme jurisdiction in this State." This plainly implies that impeachable acts, though described in terms the most indefinite, were neither more nor less than offences indictable in the ordinary course of law.

In the constitution of South Carolina, article 5, we find the same idea necessarily implied. The words "misdemeanor in office" are used as the description of impeachable offences; the term "conviction" is applied to impeachments; and it is provided that persons so convicted, "shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law." It is plain, therefore, that the words "misdemeanor in office," were understood and intended by the people of South Carolina to mean offences against the laws, for which the offender might be indicted and "convicted."

The constitution of Georgia contains no words, which can operate in any manner to define or describe impeachable offences. It merely directs who shall have the power of impeaching, who shall try impeachments, and what description of persons may be impeached. But, in that of Vermont, there is a provision on this subject, which, though very concise, is very strong to our present purpose. Among the powers given by it, section 9, to the House of Representatives, is that to "impeach State criminals." This term "criminals," which in our laws is never applied except to persons charged with offences of the highest nature, sufficiently declares that the people of Vermont considered impeachments as applicable to cases of crimes only, and not to removals for reasons of State expediency: not even to cases of smaller offences, much less of indiscretion or impropriety of behaviour, such as is alleged against the respondent in this case. For, surely, it would be an abuse of language to apply the term "criminal" to improper interruptions of counsel; to rude, hasty, or intemperate expressions; to ridicule employed by a judge against counsel, who, in his opinion, conducted themselves incorrectly; or to the precipitate and ill-timed expression of a correct legal opinion. No, sir. This word imports the intentional violation of some known law; the perpetration of some specific defined crime, which may admit of precise proof, which every citizen may be able to avoid, against which, when accused of it, he may know how to make his defence.

Such, Mr. President, is the solemn exposition of impeachable offences given by the people of the United States, through the medium of their constitutions. Though not accustomed to talk about the will of the people, there is no man that bows with more reverence to that will, when constitutionally declared. And shall we, Mr. President, let go this sheet-anchor of personal rights and political privileges, to commit ourselves to the storms of party rage, personal animosity, and popular caprice? Shall we throw down this great landmark, fixed by the wisdom and patriotism of our fellow-citizens and fathers? Instead of having our best and dearest rights secured, by fixed and known principles of law, shall we leave them to be governed and disposed by the ever-varying whims and passions of the moment? No, sir, I trust not. When I look at these benches and recollect how deep a stake the members of this honorable Court have in those rights which form the palladium of our safety, and are now entrusted to their care and keeping, I cannot but confidently expect that they will feel the whole importance of the great trust reposed in them by their country; that they will regard themselves as acting for future generations, as well as for the present age; and will elevate themselves above the sphere of little views and momentary feelings. They will recollect, sir, that unjust principles, adopted to answer particular purposes, are two-edged swords, which often rebound on the head of him who strikes with them; and that justice, though it may be an inconvenient restraint on our power, while we are strong, is the only rampart behind which we can find protection when we become weak. They will remember

that power which depends on popular favor, is of all sublunary things the most fleeting and transient; that it must, from time to time, change hands; and that when the change which, sooner or later, must arrive, shall have taken place; when those who now direct the thunder of impeachment, shall be placed, as ere long they must, in a situation to be smitten by its bolts, they will be glad to invoke, and unless they now set a great example of correct decision, will invoke in vain those Constitutional privileges to which we now cry for safety.

Need I, Mr. President, urge the necessity of adhering to those principles, as it respects the independence of the judiciary department? Need I enlarge on the essential importance of that independence to the security of personal rights, and to the well-being, nay, to the existence of a free Government? These considerations of themselves strike the mind with a force not to be increased by any efforts of mine. It is sufficient merely to bring them into the view of this honorable Court.

But it is not to the party accused, to the nation, to posterity, and to the interests of free Governments that the observance of settled Constitutional principles in cases of impeachment, is alone important. It is equally so to the character and feelings of those appointed to judge. Is there any member of this honorable Court, who would wish, nay, who would consent, in deciding this cause, to be set free from the restraints of the law, or, more properly speaking, to be deprived of its guidance, and left to the influence of his own passions, feelings, or prepossessions? Were causes like this to be determined on expediency, and not on fixed principles of law, to what suspicions might not the judges be liable, of having sought the indulgence of some animosity, or the attainment of some selfish end, instead of consulting for the public good? But when they are known to be governed by the settled rules of law, and are considered as merely its organs, their motives will be more respected, and their conduct less liable to suspicion or reproach? Is any member of this honorable body prepared to relinquish the high and venerable station of the organ and expounder of the law, in order to assume the doubtful and dangerous character of a judge, subject to no rule but his own arbitrary will?

To a judge, too, it is the sweetest consolation in the discharge of his painful duties, that when he has doomed a fellow-citizen to dishonor and misery, he has merely pronounced the decision of the law, and not the dictates of his own will; that he is not the author of the sentence by which so much calamity is brought on others, but merely its official organ. This reflection soothes his mind under the anguish which it must feel from another's wo. And is there any member of this honorable Court who would consent to relinquish this consolation? I boldly say, no. I feel that every heart will respond to the assertion. And if any who hear me be capable of entertaining a contrary opinion, or would wish, in the same situation, to hold a different conduct, I envy not their feelings, however highly I may estimate their intellectual powers.

In every light, therefore, in which this great principle can be viewed, whether as a well-established doctrine of the Constitution; as the bulwark of personal safety and judicial independence; as a shield for the characters of those whose lot it may be to sit under the trial of impeachments; or as a solace to them under the necessity of pronouncing a fellow-citizen guilty; it will equally claim, and I cannot doubt that it will receive the sanction of this honorable Court, by whose decision it will, I trust, be established so as never hereafter to be brought into question, that an impeachment is not a mere inquiry, in the nature of an inquest of office, whether an officer be qualified for his place, or whether some reason of policy or expediency may not demand his removal, but a criminal prosecution, for the support of which the proof of some wilful violation of a known law of the land is known to be indispensably required.

Before I proceed, Mr. President, to apply this principle to the case now under consideration, permit me to notice briefly another proposition advanced by the honorable Managers, which I perfectly concur in, and shall take the liberty of using against them. They have laid it down, that the testimony of witnesses equally credible in themselves, is entitled to different degrees of credit, according to the means which they respectively enjoyed of correctly discerning the truth, in the matter about which they testify. To this proposition I fully assent. Let the principle be applied to the case now under consideration. Look at the witnesses on each side. With some few exceptions perhaps, about which I do not feel it necessary to make any particular remarks, they are equally credible in themselves, equally disposed to state correctly the facts. But who are the witnesses on the part of the prosecution? It must be answered, that almost all of them are persons who have supposed themselves to be ill-treated by the respondent; whose resentment the lapse of four years has not been able to assuage; and who come here under the manifest influence of those angry feelings, to complain of their imaginary wrongs. It is plain that such persons, however correct in their intentions, however desirous of speaking the truth, are liable to be misled by the irritation which these events excited in their minds, and to state as facts the recollection of their erroneous impressions. It is perfectly manifest that those gentlemen were very much irritated by the transactions of which they complain, and in which they were or supposed themselves to be parties. It is equally clear their anger has not yet cooled. And I will ask whether men in such circumstances, giving them the utmost credit for correct intentions, are equally entitled to belief with persons who, like the witnesses on the part of the respondent, were calm, and disinterested spectators of the events which they relate? Equally respectable with the witnesses for the prosecution; much more cool; free from that irritation which the parties in contention can hardly

ever avoid; and testifying their impartiality by expressing without reserve their disapprobation of some things in the respondent's conduct; it must be admitted that in every collision of testimony, they possess the highest title to belief.

Having taken this view of these preliminary points, I now proceed, Mr. President, to consider the various charges against our honorable client, in the order in which they have been stated by the prosecutors. It is not my design to go over the same ground, which has been so recently trodden by my able colleagues. The task assigned to me, is to range rapidly over the first six articles; to present some views of the subject, which the multiplicity of the matter induced my learned colleagues to omit; and then to discuss at large the law and the facts, under the seventh and eighth articles, which have not yet been touched.

On the case of John Fries, the subject of the first charge, permit me, Mr. President, to avail myself of a distinction, laid down by the honorable gentleman who opened the case on the part of the prosecution (Mr. Randolph.) That honorable gentleman, in his opening address, made a distinction between a general maxim or principle of law, such as the definition of a crime, and a particular opinion on the law, as applicable to a particular case. The former he admits to be proper in a judge at any stage of a trial. The latter he denies to be so. He has chosen the definition of one offence to illustrate his position: I will take that of another. Suppose a man to be indicted, and put on his trial, for burglary. The crime of burglary consists in "breaking and entering a dwelling-house, in the night time, with intent to commit felony." This is the established definition of this offence. According to the distinction of the honorable gentleman, the judge might at the commencement of the trial, or at any stage of it, declare this general principle respecting the nature of the offence, even before counsel were heard. Nay, more, he would be justified in preventing counsel from attempting, before the jury, to controvert this principle. This latter point is not expressly admitted by the honorable gentleman; but it flows from his admission, as a necessary consequence. So far the judge might safely go. But should he advance a step further, and declare, before counsel had been heard, that the acts done by the person on trial did amount to burglary, then he would be culpable, and even criminal; and this, the honorable gentleman contends, was done by the respondent in the case of Fries.

I consent to be judged by the rule which the honorable gentleman has himself established; and I undertake to show that nothing more was done by the respondent in the case of Fries than the honorable gentleman admits may be properly done by a judge; that he merely stated the general definition of the crime of treason by levying war against the United States, but expressed no opinion whether the prisoner was guilty or innocent, whether the acts which he had done amounted to treason. For the correctness of this position I appeal to the opinion itself, as in evidence before the court. It is contained in exhibit No. 2, filed with the answer. In this paper the court, after some preliminary observations to show that the questions relative to the Constitutional definition of treason were questions of law and not of fact, proceed to state as their opinion, "that 'any insurrection, or rising of any body of people within the United States, to effect by force 'or violence any object of a great public nature, 'or of public and general (or national) concern, 'is a levying of war against the United States, 'within the contemplation and construction of 'the Constitution of the United States." "That 'on this general position any such insurrection or 'rising to resist or prevent by violence the execution of any statute of the United States for 'levying or collecting taxes, duties, imposts, or 'excises, or for calling forth the militia to execute the laws of the Union, or for any other 'purpose; under any pretence, as that the statute was unequal, burdensome, oppressive, or unconstitutional, is a levying war against the United States, within the Constitution." "That 'military weapons, as guns and swords, mentioned in the indictment, are not necessary to 'make such insurrection or rising amount to levying war, because numbers may supply the want 'of military weapons, or military array." "That 'the assembling bodies of men, armed and arrayed in a warlike manner, for purposes only of 'a private nature, is not treason, although the 'judges and peace officers should be insulted or 'resisted, or even great outrage committed on the 'persons and property of our citizens." "That 'the true criterion to determine whether *acts committed* are a treason, or a less offence (as a riot) 'is the *quo animo* the people did assemble. That, 'if a body of people conspire and meditate an 'insurrection to resist or oppose the execution of 'any statute of the United States by force, they 'are only guilty of a high misdemeanor; but if 'they proceed to carry such intention into execution by force, they are guilty of the treason of 'levying war, and the quantum of the force employed neither lessens nor increases the crime." "That a combination or conspiracy to levy war 'against the United States is not treason, unless 'combined with an attempt to carry such combination or conspiracy into execution," and that "some actual force or violence must be used in 'pursuance of such design to levy war; but it is 'perfectly immaterial whether the force used is 'sufficient to effectuate the object."

This no doubt is a long definition. Perhaps it might have been expressed in much fewer words, but still is a general definition of the crime of treason by levying war, without application or reference to any particular case, much less to the case of John Fries. It amounts nearly to this, "that for any number of people, however small 'or inadequate, to rise, with intent to resist or 'prevent by force the execution of any general 'law of the United States, and to employ actual 'force for that purpose, amounts to levying war 'against the United States, although neither military weapons nor military array be used." This is the substance of the opinion. All the rest is

merely illustration, and in this shape it is as much a general definition as that of burglary.

How wide a field of defence do these definitions leave open! In the case of an indictment for burglary, would any counsel peevishly or insolently retire from the prisoner's defence, because the court might, in the commencement of the trial, have stated this to be the legal definition of the crime? Would he insist on the absurd and mischievous privilege of controverting so plain and well-settled a principle of law? No. Far different would be his conduct. He would inquire whether any acts had been done, amounting in law to the breaking open of a house? Whether the prisoner was the perpetrator of those acts, or a party in them? Whether the house was broken open in the night time? Whether it was entered by the prisoner as well as broken? Whether it was a dwelling-house? And whether it was broken open and entered with intent to commit any crime amounting to felony? All these questions would be perfectly open, under the general definition which has been stated; and on the result of these inquiries would the guilt or innocence of the prisoner depend.

So in the case of Fries, it was perfectly competent to his learned counsel, under the general definition of treason given by the court, to contend that the acts proved did not amount to a rising of any number of people; that John Fries was not implicated in those acts; that they were not done with intent to resist or prevent, by force or violence, the execution of any general law of the United States; or that no force or violence was actually employed in pursuance of such intention. All these questions were perfectly open to them, notwithstanding the general definition of treason given by the court. Not one of these questions did the court in any manner decide. These questions involved the application of the general definition to the particular case; an application in which the true, proper, and only defence of the prisoner consisted, and which the court neither made, nor intended to make.

Surely these questions offered full scope to the learned gentlemen for the exertion of those argumentative powers, and the display of that legal learning, of which they have given, in the shape of testimony, so handsome a specimen at this bar. Even that eager fondness for legal disputation, which has carried them on this occasion so far beyond the limits prescribed by the law of evidence, might have been gratified in this ample field. There was room enough for the learned and ingenious distinction, which one of the gentlemen (Mr. Dallas) has told us that he intended to make between the case of Fries and that of the Western insurgents. It was his intention, he says, had he not been prevented by this unfortunate definition, to dwell on several circumstances which, in his apprehension, distinguished the former of these cases from the latter. He tells us that his mind turned itself towards these distinctions, and was occupied upon them from the moment when the court granted a new trial after the first conviction of Fries. His mind was led into this course of reflection by the stress which he had observed the court to lay, in the first trial of Fries, on the decisions in the cases of the Western insurgents. It would surely have been very unkind in the respondent to prevent the learned gentleman from exhibiting the results of these long and profound reflections. But happily the respondent did not prevent him. His disappointment must be attributed solely to himself. The circumstances on which he informs us that he intended to rely for distinguishing the case of Fries from those of the Western insurgents, were the martial array at Braddock's field; the march to Pittsburg, for the avowed purpose of attacking the garrison; and, I think, the attack on Nevil's house. The first of these circumstances applied to the nature of the assemblage, whether it amounted to a rising or insurrection; the second to the intent with which the rising was made, and the third to the degree and nature of the force or violence committed. They were all open to the learned gentleman under the opinion, which did not declare what sort of an assemblage would constitute an insurrection or rising; what circumstances would be sufficient evidence of the improper intent; or what kind or degree of force or violence must be employed; but merely stated that a rising or insurrection, proceeding from such an intent, and accompanied by actual force or violence, would amount to levying war. Whether the assemblage in Bucks and Northampton had the necessary ingredients to constitute a rising or insurrection; whether the acts done afforded sufficient evidence of an intent to resist or prevent by violence or force the execution of the act of Congress; whether the force or violence committed were sufficient in nature or degree; and whether, in all or any of these points of view, the case of Fries in Bucks and Northampton was weaker than that of the Western insurgents, or materially different from it, were questions not at all affected by the opinion, but left entirely open to the learned gentleman, who might, notwithstanding this opinion, have discussed them before the court and jury, at all the length into which the exuberance of his genius so much delights to shoot.

These learned gentlemen possessed, therefore, under the opinion communicated to them by the respondent, even if it had not been withdrawn, all the latitude which moderate counsel could have desired. All the questions of fact; all the questions of intention, which are questions of fact; the whole business of deciding, whether the case proved came within the general principle of law; of applying the general rule to the particular case; remained within the province of the jury, and furnished the only proper means of defence. Even if the facts had been admitted, as the honorable Managers contend, still the intent remained to be ascertained, and was a question of fact solely cognizable by the jury. But it is utterly incorrect to say that the facts were admitted. It was indeed admitted, or rather it was not doubted, that certain acts had been done by John Fries and others; but whether those acts were of

such a nature, and proceeded from such an intention, as to bring the case within the general rule of law laid down by the court, was a point unsettled, which formed the proper and sole ground of inquiry. And this point was not affected by the opinion communicated by the respondent to the prisoner's counsel.

And here, Mr. President, let me be permitted to notice what I deem a most dangerous error, respecting the Constitutional power of juries in criminal cases. It is constantly asserted that the jury are to decide the law and the fact in criminal cases; and this is correct, when properly explained; but taken in its literal and unqualified sense, it is contrary to every principle of law, and every dictate of common sense. It is the province of the court to expound and declare the law generally, in all cases, criminal as well as civil. To apply the law to each particular case; to decide whether the facts proved in any case bring it within the general rule of law, is the province of the jury, and their only province. They have no dispensing power over the laws of the land. Will any man in the least acquainted with our system of jurisprudence declare that a jury has a right to decide, that breaking open a dwelling-house in the night time with intent to steal is not burglary, unless an actual theft be committed? I presume that no one will hazard such an opinion. The jury, in such a case, may decide that the house was not broken open, that is, was not a dwelling-house, that the fact was not committed by the person accused, that it was not committed in the night time, or that it was not committed with an intent to commit a felony. But if they believe the affirmative on all these points, they must find the prisoner guilty, or commit a direct violation of their oaths. They are bound by the general principle of law as declared by the court. Their duty, and their sole duty, consists in applying it to the particular case. In this sense, and in this alone, are they judges of the law as well as of the fact.

It is well known that a new trial may be granted in a criminal case, where the verdict is against the party accused, and is supposed by the court to be contrary to law. This proves that the jury are not the judges of the law, in the unqualified sense contended for by some persons; for if they were the judges of the law in that sense, it would necessarily follow that a new trial could no more be granted in favor of the prisoner in a criminal case than against him. The rule that it cannot be granted against him has been established by the courts in favor of life, through a laudable motive of tenderness and humanity, and not because they had not power to grant new trials in this case, as well as in others, where the verdict is contrary to law.

So in case of an offence created by statute, a jury may declare that the case proved on an indictment, under the statute, does not come within it, for want of the improper intent, or some other necessary ingredient. But it has never entered into the head of any man to suppose that the jury in such a case has a right to declare that the statute itself is not a law of the land—has been repealed, has expired, or does not create any offence. All these are questions of law, which come within the exclusive province of the court.

This consideration, by the way, furnishes the true answer to the famous Richmond syllogism, of which we have heard so much in this case, and proves the correctness of that decision, by which the counsel of Callender were prevented, most properly, from contesting before the jury the constitutionality of an act of Congress—a decision which the honorable Managers have had the good sense not to call in question. This decision, undeniably correct as it is, and as strange as the absurdities are to which a contrary principle would lead, can be defended on no other ground than that for which I contend.

And I will ask, how the case of treason can be distinguished, in this respect, from that of burglary? If a jury be bound by the general rule of law which defines the crime of burglary, and be confined solely to the inquiry, whether the case proved comes within that rule; upon what principle can it be contended that they are not equally bound by the general definition of treason?

Will it be contended that the latter definition is not as well settled as the former? This position I deny. How was the definition of burglary settled? It was not by any Legislative act remaining on record or known by tradition, but by judicial determinations declaratory of the law. In the same manner has the definition of treason by levying war been settled. Three solemn adjudications in the same court, and one of them in the same case, had declared it to be the law; and it was the law of the land as much as the law defining burglary or any other offence. If gentlemen deny that three solemn decisions on the same point, by a court of the highest jurisdiction, are sufficient to settle the law, will they inform us how many decisions are necessary for that purpose? Or are we never to have fixed principles, or settled definitions of crimes? Is the law of treason never to be established on a certain basis? Are the nature and definition of this high offence to be left forever floating on the uncertain and varying opinions of courts and juries? Is that which was not treason to-day to be treason to-morrow, according to the caprice, the interests, or the prejudices of those who may be appointed to determine, or to the power, influence, or intrigues of the accuser or accused? If succeeding courts and juries are not to be bound by precedents established by their predecessors, then will everything be treason when a man is tried by his foes, and nothing when he is tried by his friends. There will no longer be any security, in times of party contention, for life, liberty, or property; and we are destined to see acted over in this land, vainly boasting of its freedom and happiness, the scenes of judicial murder and pillage which disgraced our mother country during the struggles between the houses of York and Lancaster. Sooner than live under such a system, I would take refuge in Turkey, where, by bribing the Cadi, I might escape from judicial tyranny, and might be safe

from the oppressions of the Government, provided I avoided the offence of growing rich. Not for one moment would I live in a country where I should be tantalized with the semblance of liberty, and in fact liable to the penalties of treason, whenever I might by any act of opposition, or any assertion of my rights or those of my fellow-citizens, become obnoxious to a party in power. This must be the consequence should the principles contended for by the Managers finally prevail. When the rules of law defining offences are fixed and certain, then is every man safe, because he may know the law, and may avoid offending against it. But if no respect is to be paid to former decisions; if counsel are to be allowed to controvert points, which have been solemnly and repeatedly adjudged; if our courts and juries, without regard to former decisions, are to declare that to be law in each particular case, which the passions, the prejudices, or the political views of the moment may dictate; then indeed have we grasped a shadow, while the substance has escaped from us; and the blood of our fathers has in vain bedewed their native soil. But no. So monstrous a principle cannot be endured, and will not receive the sanction of this honorable Court. Rules of law, once established, must be adhered to. Courts must regard them as sacred, and must not allow them to be called in question. In this case the opinion communicated had been solemnly settled, and was a part and a most important part of the law of the land. There was no superior tribunal to review it; and if there be one, the argument is still stronger: for then the acquiescence of the parties, who took no measures to have these decisions reversed, is added to the authority of the court which made them. The court, therefore, where the respondent presided, was bound to consider these decisions as the law of the land; to declare them as such, and to prevent them from being called into question, for the purpose of misleading the jury.

Another charge urged against our honorable client, under the first article of impeachment, is, that he prevented the prisoner's counsel, in the case of Fries, fron citing to the jury certain English adjudications on the law of treason, and some statutes of the United States. So far as this charge relates to the statutes, I shall leave it most cheerfully where it has been placed by my learned and ingenious colleague who commenced the defence. Nothing can be added to the striking and satisfactory view which he has given of that point. As to the English authorities, I will make one observation, which did not fall within the scope of his argument.

The respondent did say that English adjudications, at common law, on the doctrine of treason, ought not to be read to the jury; that English decisions before the Revolution of 1688, under the statute of treasons, were deserving of very little attention, and ought to be received with great caution; and that such decisions since that Revolution, though proper to be cited, were not to be considered as absolute authorities, but merely as strong arguments. Into the legal correctness of this opinion, it is not now my purpose to inquire. That point has been sufficiently discussed. But I beg this honorable Court to remark, that this opinion of which the learned counsel for Fries so loudly complain, was an opinion precisely in their favor, and gave them all the advantage on this subject that they expected to derive from citing these English cases. It was, they tell us, to convince the jury of the very thing which the court thus declared to them, namely, that these English decisions before the Revolution of 1688, were entitled to little or no attention; and that even those since the Revolution, being in some degree founded on the former, ought to be received with caution, and not to be considered in the light of absolute and binding authorities. These were the points which they wished to establish, by citing the English adjudications; and these were precisely the points which the court established. The decision was completely in their favor, and yet they complain of it as a grievous injury. They complain of it, though in their favor, because it was made without giving them an opportunity of speaking. Whence this causeless discontent, this most unreasonable complaint? Did it proceed from the disappointment of a childish and little vanity, which made them wish to exhibit their talents before the public? Surely we cannot suspect those learned gentlemen of so contemptible a motive. Why then, I repeat, do they complain of a decision made in their favor? They have been compelled by the force of truth, to explain the reason. The truth is, as it appears on their own testimony, that they complained, not because they thought themselves or their client injured, by this decision, but because it suited their purpose to represent themselves as injured, their client as oppressed, the case as prejudged, and the conduct of the court as arbitrary and precipitate; in order to excite odium and resentment against the court, and commiseration towards their client, and to induce the President, by erroneous impressions thus made on his mind, to extend his mercy to a person, who could not have been thought a fit object for compassion, had the truth been known. The whole of this pretended displeasure, all this affected outcry about the privileges of counsel, the rights of jurors, and prejudged opinions, was a mere finesse, an artful contrivance, to procure the pardon of a criminal twice convicted of treason, and to procure it by holding up a falsehood to the view of the President, and of the public; by calumniating the court, deceiving the Executive, weakening the confidence of the people in the administration of the laws, and sacrificing truth and justice to the attainment of a momentary purpose.

The learned gentlemen thought themselves justified in all this, by their duty to their client. It is not for me to condemn them. I am here to inquire into the propriety of their conduct. But I may be permitted to ask, whether such a contrivance ought to receive the countenance of this high court? And whether gentlemen who have thought it right thus to act, ought not to be list-

ened to with caution, when they come here, after their finesse has completely succeeded, to complain of injuries, which in the same breath they tell us are entirely fictitious? I will ask whether this honorable Court ought not to discountenance such proceedings in future, by vindicating the conduct of the respondent in this particular? Counsel, Mr. President, have duties to themselves and to the public, as well as to their clients. They are at all times bound by the obligations of candor and of truth. They are at all times bound to respect the courts of justice and themselves. They owe to their clients every honorable exertion of their talents and industry, and the zealous use of every fair means of defence. In criminal cases, and especially when life is in jeopardy, we expect more zeal, and are willing to allow greater latitude. In favor of this zeal, we are disposed to excuse some departure from the strict line, which propriety would in other cases prescribe. But to be countenanced, upheld, and commended, for attempting to excite odium unjustly against a court; and to induce the President to believe, that the prisoner was deprived by the court of a fair trial, when they know the fact to be directly otherwise; is more than modest men would ask, or any man has a right to expect.

But let it be admitted for a moment, Mr. President, that on the first day of the trial of Fries, the respondent committed an error. I ask if it was not atoned for by his full and honorable retraction on the second? By the pains which he took to do away all the proceedings of the first day; to induce the prisoner's counsel to go on with the defence, and to secure to him, in the utmost latitude, every advantage for making that defence? One of the honorable Managers has told us that the respondent's conduct on the first day was an unpardonable sin; that repentance, if it came at all, came too late. But this, sir, is not the rule by which we hope one day to be judged. We live in the comforting hope, that repentance, if sincere, can never come too late. We hope, by a short or death-bed repentance, we may obtain pardon for a life of errors and sins. Our holy religion permits us to believe, that there is but one unpardonable sin, and that is hardness of heart, or refusal to repent. And shall we, frail and sinful mortals, mete to each other a measure, which an all just and all powerful God does not mete to us? Shall we refuse to each other the effects of that repentance, by which alone we can ourselves hope for happiness hereafter? If for one error, thus atoned for, the respondent must be punished, let the first stone be cast by him who has always retracted and corrected his errors, as soon as he was made sensible that they had been committed.

I do not, Mr. President, with my learned colleague who commenced the defence, disclaim the term "repentance" for my honorable client. Repentance is a term that suits creatures so frail and liable to error as men, even the best of men. We all have need of it, and I trust that we shall be ashamed of our errors, but not of our repentance. I have often had occasion to repent myself. I fear that I have not done it often enough. And however slight the error which the respondent may have committed, I am willing, in his behalf, to rely on the plea of repentance and amendment.

But this amendment, we are told by the honorable Managers, was a mere pretence, a cloak beneath which the respondent sought to hide the supposed deformity of his conduct, when he found that it began to attract attention. But I ask was it a pretence to entreat, to supplicate the prisoner's counsel to proceed with the defence, till the cup of humiliation was drained to the dregs? Was it a cloak to be anxiously solicitous, after the prisoner was abandoned by his counsel, to protect him from the dangers into which his ignorance of the law might betray him; to urge his acceptance of other counsel; to inform him carefully of his right of challenge; to assist him in cross examining the witnesses; suggesting such questions as might be to his advantage, and guarding him against such as might draw forth unfavorable answers; to prevent the witnesses in the submitted cases from being examined before his trial, lest the jury might hear testimony unfavorable to him, which he could have no opportunity of cross examining? Was this the conduct of a designing hypocrite, seeking to gloss over his wicked purposes, by a fair outside of humanity and justice?—of an artful and ruthless oppressor, thirsting for the blood of an innocent victim? If this be oppression, God grant that I and mine may never be otherwise oppressed!

I come now, Mr. President, to the case of Callender. But before I enter into those views which remain to be taken of the charges arising out of that case, let me be indulged in some preliminary remarks, on that part of the evidence adduced in their support, which was supposed by the honorable Managers to furnish direct proof of corrupt intentions, on the part of the respondent.

This evidence was given by Mr. Mason, Mr. Triplet, and Mr. Heath. As to the first gentleman, his testimony relates to a private and jocular conversation, no part of which he recollects perfectly, and the most material part of which, the part that furnishes the true explanation of the whole affair, he has entirely forgotten. It cannot be doubted that this honorable gentleman was dragged with extreme reluctance to detail, at the bar of a court of justice, a private and of course a confidential conversation, the most material parts of which a lapse of five years has effaced from his memory. It must have been to him a most painful necessity, a most cruel violence, which obliged him to do an act that, if done voluntarily, would have amounted to a violation of that confidence which in the intercourse of society men of honor place in each other. Ought a species of examination to be countenanced, which must place honorable men in so painful a situation, and subject them to so cruel a necessity? Which must compel them, after having been considered as companions, and perhaps as friends, to assume the odious character of spies, and to fulfil the detestable functions of informers? Which must destroy all the confidence, and of course all the pleasure of social intercourse, that great sweetener of the ills of life; must spread the gloom of mistrust over

all our moments of hilarity and relaxation; and must convert our parlors, our breakfast tables, and even our friendly suppers, where the bosom is wont to expand, and the heart is laid on the table, into scenes of watchful jealousy, of dark and cautious silence? Ought a practice to be tolerated, which thus strikes at the root of social harmony, private honor, and public morality?

How dangerous too is this species of testimony, to the interest of truth and the safety of innocence! In this very case, the honorable witness, with all his accuracy of recollection, and all his desire to represent the transaction in a light as favorable to the party accused as the truth would permit, has forgotten the most material part of the conversation; that part in which he himself was immediately concerned, which drew forth the rest, and which furnishes the true explanation of the respondent's meaning. The part which he has thus forgotten, has been happily supplied by another witness, Judge Winchester, who was also present at the conversation. But what might have been the situation of the respondent, had Judge Winchester's memory been equally frail, or had he died before this trial? That most satisfactory explanation which he has given, and which has removed every shadow of doubt from this part of the case, would then have been wanting: and the respondent might have been convicted, on a recollection which would in that case have appeared complete, though we know it to be utterly imperfect.

This explanation proves the whole conversation to have been a mere jest, and a jest provoked and drawn out by Mr. Mason himself. Without the explanation, it might have borne an improper, though not a criminal aspect. With the explanation, it amounts to nothing more than an expression of the respondent's intention, made in jest, by way of reply to a jest of Mr. Mason, to have the affair of "The Prospect Before Us" investigated, when he should arrive at Richmond, and to bring the author and publisher to punishment. Will it be said that in this there is anything criminal, or even improper? Is it not the duty of a judge, presiding in a court of criminal jurisdiction, to cause inquiry to be made into offences which he knows to have been committed, and to take steps for bringing the offenders to justice? Suppose that instead of a libel, a piracy had been committed; and that the respondent, being informed that the parties were lurking in the district of Virginia, had declared that he would have them brought to trial, if they could be caught, and punished if guilty? Would this have been improper? And does the difference between offences make any difference in the duties of a judge? Is he not equally bound to execute all the laws? If gentlemen say no, will they be pleased to draw for us the proper line of discrimination, between those laws which a judge must execute, and those which he ought to neglect? Or is this line to be drawn by his own caprice? Was not the sedition act a law of the land, and was not "The Prospect Before Us" a violation of that law? If there were any circumstances which rendered it proper to dispense with the penalties of this law, or to pardon the offences committed against it, there was a power in the Constitution to do so; but that power resided in the Executive department, and not in the Judicial; whose duty it was to execute all the laws, without respect to circumstances, persons, or cases.

As to the testimony of Mr. Triplet, I cannot conceive what proof it can furnish of criminal intentions. It amounts to this, and nothing more, that the respondent, in the course of some very loose and thoughtless conversation, from which it would have been much more prudent to abstain, applied some harsh epithets to "The Prospect Before Us," and its reputed author; and expressed an apprehension that he would escape punishment. But does it follow, that because a judge remarkable for hasty and strong expressions, has applied some harsh and angry epithets to a person believed to be an atrocious offender, he will not do him justice, when he comes on trial? It must also be remarked, that Mr. Triplet is manifestly in a mistake, respecting the last conversation which he has attempted to detail. He represents the respondent as saying, that the marshal had returned without Callender. But we know that the marshal did not return without Callender. This mistake on the part of Mr. Triplet, may induce us to doubt, whether with the most sincere desire to represent nothing but the truth, which I have no doubt that he felt, he may not have viewed the other circumstances also in too strong a light. We well know that facts of this nature derive their complexion, almost entirely, from small circumstances of time, manner, and connexion; and when we find so candid a witness mistaken in so material a circumstance, we may fairly conclude that he has omitted on one hand, or too much heightened on the other, some of those finer shades, on which the character of the piece always depends.

With respect to the facts related by John Heath, I have no difficulty in admitting that, if true, it fixes the stain of corruption on the character and conduct of the respondent, and ought to produce his conviction. Juries in every case, and especially in criminal cases, ought to be selected without respect to any circumstance but their impartiality and legal qualifications. Of all circumstances, that of political opinion and party connexion is the most improper to govern, and ought the most carefully to be avoided. For a judge to interfere with the marshal, and direct him to strike off from a jury list, in a criminal case, all those persons who were supposed to agree in political opinion with the party accused; or, in other words, to combine with the marshal in packing a jury, for the purpose of insuring the conviction of the party accused, would be an offence for which he ought to be punished. But this testimony of John Heath is deeply shaken by one witness, and flatly contradicted by another. I will not inquire into the character of John Heath; which I have no means of knowing or of making known; but I will say that it cannot stand on higher ground than that of David Mead Randolph, who has flatly contradicted Mr. Heath; or of

William Marshall, who has gone as near to a positive contradiction, as it is possible to go without making one. There must be a mistake somewhere. But we cannot believe the fact stated by John Heath, without believing that David Mead Randolph has been guilty of a flat and wilful perjury, and that William Marshall has gone as near it as possible. These gentlemen are known to all Virginia. The evidences of their character are to be found in the breast of every man in that State. But as to Mr. Randolph, there is direct evidence in this case to support his veracity. Mr. Hay has declared at this bar, that he did not recollect having used certain expressions which were attributed to him, but had no doubt that he used them, after Mr. Randolph said so. Such was his reliance on Mr. Randolph's veracity and recollection! It is not possible to have stronger testimony in favor of a witness. If stronger could exist, it would be found in another circumstance which has appeared in evidence. When one juror whom he had summoned for the trial of Callender, told him that he had made up his mind to convict the traverser, and urged that circumstance as an excuse, the excuse was admitted by Mr. Randolph, and the juror was discharged. But when Colonel Harvey applied, through the Chief Justice, to be excused in a similar situation, and alleged as a reason that he was predetermined to acquit Callender, let the evidence against him be what it might, because he believed the sedition law under which he was indicted to be unconstitutional. Mr. Randolph would not excuse him. This fact appears by the testimony of the Chief Justice. Can it be for a moment believed, that a marshal acting in this manner would enter into a corrupt and profligate combination with a judge to pack a jury for the conviction of Callender; and would come to this bar and complete his turpitude by a flat and wilful perjury? His conduct in office; the universal respect which he enjoys in his county, among men of all parties and opinions; his manner of giving testimony at this bar; and the evidence which his political enemies have here borne in his favor, all preclude the idea.

This witness, so honorably supported by the principal witness on the part of the prosecution, so high in his character, so scrupulously delicate in his conduct, so ready to discharge a juror who had made up his mind to convict the traverser, while he refused to discharge one who was predetermined to acquit him, is said by John Heath to have presented the panel of jurors to the respondent, who told him that if he had any "of those creatures called democrats on it," they must be immediately struck off. He positively declares that no such conversation as that stated by Heath ever took place; that the respondent never saw the panel; and that it was not completed till after the meeting of the court, when the respondent was on the bench, and therefore could not have been shown to him.

In this positive contradiction of Heath, he is strongly supported by William Marshall; the irresistible effect of whose testimony, derived from the peculiar candor, solemnity, and precision with which it was delivered, as well as from his high character, all who have heard him, have felt and acknowledged.

Heath has declared that the incident which he relates took place at the lodgings of the judge; that he was there but once, which was in the morning a little before the time when the court usually met; that he remained about half an hour; and that no person was present except the judge, the marshal, and himself.

William Marshall declares, that in the morning he called on the judge, according to his custom, a little before the meeting of the court: that when he entered the room, Heath had left it, or was in the act of leaving it, and immediately went away; and that the judge did not say one word in his hearing which it was possible for Heath to hear. Thus far he speaks positively. He adds that he firmly believes, but cannot positively assert, that the marshal, David M. Randolph, went with him to the judge's lodgings, and left them with him; and that they both together attended the judge to the court-house. His reasons for this belief are, that he has a strong impression of the facts on his mind, though not a perfect recollection; that it was his daily custom to call on the judge in the morning, on his way to the court-house; that in going from his own house to the lodgings of the judge, he passed by or near to the office of the marshal, who usually accompanied him, in order to attend the judge to court; and that he perfectly recollects a conversation between himself and the marshal, on the way from the judge's lodgings to the court-house, in which he remarked to the marshal the circumstance of having seen Heath with the judge. This conversation with Mr. Randolph Mr. Marshall perfectly recollects, and that it took place on the way from the judge's lodgings to the court-house; and he very naturally infers from it, that they left the judge's lodgings at the same time; as the circumstances which he has stated induced him to believe with equal probability that they went there together.

If they went together, then is Mr. Marshall also in positive contradiction with Mr. Heath. The only way in which they can be reconciled, is to suppose that Mr. Randolph went there without Mr. Marshall, and had, before that gentleman's arrival, the conversation which is related by Mr. Heath. It could not have been afterwards; for Heath went away as Marshall entered, and did not return. He has said that he was there but once; and that when he left the judge he went immediately on the hill, and related the conversation. That Marshall and Randolph went together, is in the highest degree probable; not only from Marshall's belief of the fact, and the strong impression of it remaining on his mind, but also from the circumstances which he has stated. If they went together, then it is clear, if Marshall tells the truth, that Heath left the room as they entered it; that no conversation could have taken place between Randolph and the judge, in the hearing of Heath, without being heard by Marshall also; and that none in fact did take place. Consequently it is manifest, that unless we believe, contrary to all probability, and to the belief and strong impressions of Marshall himself, that Randolph went to the judge's lodgings before him, we must admit that his testimony, as well as that of Randolph, is in flat contradiction to the testimony of Heath.

To this double contradiction we must add, the extreme improbability of the fact itself. A judge having a design to pack a jury for the purpose of procuring the conviction of a person, whose supposed offence was intimately connected with the political struggle, in which the country was then so warmly engaged; about to execute this design, at the place where the prosecution had excited the greatest irritation; surrounded on all sides, and watched at every moment, by those whom he knew to have most zealously espoused the cause of the supposed offender; and entering into a corrupt combination with the marshal, for the purpose of carrying this criminal design into effect; a judge in these circumstances and with these views, developes his plan to a perfect stranger, whom, if he had known anything of him, he must have known to be perfectly devoted to the political friends and supporters of the party accused! Sir, the thing is incredible. The judge must have been a fool as well as a knave to act in this manner. Conspiracy, sir, seeks darkness and not light. Its plots are formed in secret corners. Its communications are wrapt up in cyphers, or conveyed in cautious whispers. Had the respondent intended to hold such a conversation with the marshal, he would have waited till Heath was gone, would then have drawn his accomplice into one of those dark hiding places which conspirators love, and there would have muttered his corrupt orders. If the words which Heath relates had been spoken, the single circumstance that they were spoken openly in his presence, would be sufficient to prove that they were nothing more than a foolish jest, devoid alike of criminal intent and serious meaning. It is indeed possible that Heath may have heard the respondent utter some inconsiderate jest about democrats on the jury, which his zeal led him to mistake for a direction to the marshal to strike them off. I am desirous of supposing that something of this sort may have happened, for I can see no other way of rescuing this man from the imputation of wilful false swearing; which it would be most painful to see fixed on any person, and especially on one who has filled an honorable station under the Government of his country.

Before I quit the subject of Heath's testimony, let me be permitted, Mr. President, to ask why, if it was believed, it was not taken a year ago when witnesses were convened from all parts of the continent, and the testimony was collected on which these articles of impeachment were founded? It must have been well known at that time, for he has declared that he mentioned the fact to Hugh Holmes, Meriwether Jones, and some others, as soon as it happened, and to a great many persons afterwards. Had this testimony then been taken and presented to the public, with the rest of the evidence, we might have been prepared to contradict or explain it. I will ask why the honorable Managers have not summoned some of those persons to whom this story was related by Heath, and who might have corroborated or refuted his testimony? Those persons were fully within their reach. Nay, the minutes of this Court show that Mr. Hugh Holmes has actually been summoned; and, if I am rightly informed, he has attended for three days past. Why is he not produced? I will not undertake to account for this omission, but I will say, that if Heath's testimony was believed, it ought to have been taken at first, so as to give us an opportunity of investigating it fully; and that it appears probable that the Managers would have adduced the witnesses who were certainly in their reach, to corroborate Heath, did they not apprehend a contradiction instead of a corroboration.

So much for the proofs adduced of a previous corrupt intention in the respondent, to procure the conviction of Callender! Weak as they are in themselves, and broken by the opposing testimony, let us complete their overthrow by bringing against them the proofs which the evidence exhibits of a disposition full of justice and humanity. It is written that "by their fruits ye shall know them." Let us then look to the fruits. Let us examine the conduct of the respondent towards Callender throughout the trial, and inquire whether it bears the marks of a disposition to oppress. And first, let us oppose conversation to conversation; the conversation with William Marshall about the jury to those with Mr. Mason and Mr. Triplet. William Marshall has informed us that the judge, having heard the name of Mr. Giles mentioned in court, inquired if that was the celebrated Mr. Giles, member of Congress; that he afterwards asked the witness whether it was probable that Mr. Giles would remain in Richmond till the trial of Callender, and afterwards added, that he should wish Mr. Giles to be on that jury; and indeed, if it were proper for him to give any intimation to the marshal respecting the jury, would request him to compose it entirely of persons who agreed with Callender in political opinions. What is to be inferred from this conversation? That he wished to convict Callender? No. But that, as he knew the case to have excited strong party feelings, he wished the person accused to have a trial which would silence clamor, and preclude all suspicion of improper bias; so that a conviction, should one take place, being free from the imputation of party vengeance, might operate more strongly as an example to check the licentiousness of the press. Surely this motive was humane towards the party accused, and highly patriotic as it respected the public.

When Callender was taken, the respondent, instead of committing him to prison, as he might have done, there to wait till bail should be offered, manifested the utmost readiness to let him go out and seek for bail, and an anxious solicitude that he should find it. Instead of demanding bail in a large sum, one, two, or three thousand dollars, for instance, which it was in his power to do, he

demanded only what Callender himself declared that he could give; and bail was actually taken in the very moderate sum of two hundred dollars. After the counsel of Callender had been most properly overruled, on legal grounds, in their attempts to obtain a continuance; the respondent, being obliged to refuse the continuance for which no sufficient ground was laid, humanely offered to postpone the trial for weeks and months, for the accommodation of the traverser and his counsel. When this was refused, he postponed it from day to day, as long as they desired, to give the witnesses who were within reach an opportunity of coming in, and offered to issue attachments for those who did not appear, which would have induced necessarily a further delay.

And, lastly, when Callender was convicted and thus placed completely within the power of the court, the respondent, instead of going to the utmost verge of the law in the severity of punishment, fined him only one tenth of the sum, and imprisoned him only for but little more than a third of the time which the law allowed. The sum limited by law was two thousand dollars, and the fine imposed was two hundred. The term of imprisonment which the law allowed was two years, and the time fixed by the court was nine months.

Are these, Mr. President, the fruits of a disposition, oppressive and corrupt? Again I say, if this be oppression, God grant that I and mine may never be otherwise oppressed.

It is urged against the respondent, under the second charge, that he refused to let the indictment be read to the jury, when it was requested by Callender's counsel. Why did they wish the indictment to be read? It was, they tell us, for the purpose of making known to John Basset and the other jurors, before they were sworn, the nature of the charges, and thereby enabling them to declare whether they stood indifferent, or had made up and expressed an opinion as to the matter in issue. But John Bassett has informed us, that when the question whether he had formed and expressed an opinion was put to him, he was perfectly apprized of the nature of the charges, and knew that Callender was indicted under the sedition law, for printing and publishing "The Prospect Before Us." As to the other jurors, it is in evidence that before the question was propounded to them, the respondent explained to them fully the subject and object of the prosecution, and the nature of the issues which they were called upon to try. Where then was the necessity, where would have been the use of reading the indictment? It could have informed John Basset of that only which he knew before; and the other jurors, of that which the respondent explained to them much better than they could have understood it, by merely hearing a long indictment read in court. The object of the counsel, they say, and certainly the only proper object, was to inform the jury. The judge took a shorter and much more effectual method of attaining the object. He clearly and fully stated to the jury the matter in issue, the points in dispute, and the legal principles which ought to govern their determination. He told them that Callender was indicted for printing or publishing certain libellous matter, extracted from "The Prospect Before Us;" that he must be proved to be the author or publisher of that book; that the passages stated in the indictment must appear to be contained *verbatim* in the book, and to be false, scandalous, and malicious; and that the book must appear to have been published with intent to defame the President of the United States, and to bring him into disrepute and contempt. All this he fully explained to the jurors before the question was propounded to them. Will any one say that all this could have been as clearly understood by the jury from simply hearing the indictment read? And is a judge to be censured because, instead of consuming the time of the court in reading a long indictment, he took a shorter and more effectual method of attaining the only proper object that could be attained by the reading?

As to the main point of the second charge, the overruling of Mr. Basset's supposed objection to serving on the jury, I leave the legal correctness of that decision where it has been placed by the testimony of Mr. Basset himself, and by the very learned arguments of my two colleagues, who took up this part of the case. But admitting it for a moment to be incorrect, it is not impeachable, unless it proceeded from an improper motive. And what evidence of an intention to oppress, or other improper motives does it furnish? The respondent did not know, and had no means of knowing the political opinions of Basset. And if he had known them, they could have furnished no reason for a particular wish to retain that gentleman on the jury. It would have been very easy to find another juror of the same opinions, who would have answered the purpose equally well. It is in evidence that the city of Richmond, where the court sat, and from whence a new juror must have been summoned had Basset been excused, abounded with persons of the same politics. Why then commit a crime, from which it was manifest that no advantage could have been derived?

Stress has also been laid on the question propounded to the jurors in this case; "whether they had formed and delivered an opinion on the charges in the indictment?" But this question, it will be recollected, was the same which had been settled in the case of Fries, after much deliberation. This appears by the testimony of Mr. Rawle. If, therefore, it were an improper question, it would furnish no proof of improper intentions against Callender; since it merely followed a precedent, which was established without the least reference to his case; a precedent too, in which Judge Peters concurred; and although Judge Peters was, I presume, included in the general charge of imbecility of character, advanced against the district judges by the honorable Manager who opened the prosecution, he has never been charged with a deficiency in legal knowledge.

It has moreover been proved undeniably, by my two learned colleagues who discussed this charge,

that this question, as propounded to the jurors in the case of Callender, was a great relaxation of the law, in favor of the traverser. It was therefore an indulgence instead of an act of oppression; and adds one more to the numerous proofs displayed by the respondent in this case, of a disposition full of humanity and kindness towards the party accused.

Under the third charge, which is founded on the rejection of Colonel Taylor's testimony, it has been contended by the honorable Managers, that the respondent rejected this testimony without knowing what it was. But this, sir, is an utter mistake. No part of Colonel Taylor's testimony was rejected except what related to the three questions stated by the counsel for Callender. From anything that appears we cannot conclude, that any other testimony which Colonel Taylor might have been able to give, would have been rejected. It was not suggested that he could give any other, and there was no question about any other. Into the legal correctness of rejecting those questions, it is not necessary for me to inquire. That point I most cheerfully leave to be decided on the very learned and conclusive arguments of my two colleagues. But I will request the indulgence of this honorable Court, while I advert, as briefly as possible, to some of those considerations which show conclusively to my mind, that admitting the decision on this doubtful and difficult point of law to have been incorrect, it could not have proceeded from improper intention.

And here let me remark, that the respondent could not have been ignorant of Colonel Taylor's high standing and character in the State of Virginia, of the influence attached to his name and his opinions, or the resentment which must in all probability be excited by any act of oppression or impropriety, whereof he might in any degree be considered as the object. The respondent could not be ignorant of the state of irritation which then existed, in that part of the nation, on the subject of the sedition law; nor of the extreme offence which must be given by any conduct of the court having or capable of receiving the appearance of oppression, under that law. He could not be ignorant that to reject Colonel Taylor's testimony was extremely capable of receiving that appearance, and could hardly fail to assume it in the state of personal and political feeling which then existed. He is admitted on all hands to be a man of sense: and would a man of sense, without some strong motive, commit deliberately a crime, so likely to blow up a flame of resentment against himself, and those with whom he was connected?

What motive could the respondent have for rejecting improperly this testimony? To secure the conviction of Callender? No: for he was equally sure of that without the rejection; Colonel Taylor's testimony applied to but one charge, and there were nineteen others undefended. If then he rejected this testimony, knowing it to be proper, he committed, without motive or object, the crime the most like to heap odium on himself, and to bring disgrace and ruin on the party with which he was connected.

Had he been actuated by a criminal intention to oppress Callender, it is far more probable that he would have received this testimony, believing it to be improper, than that he would have rejected it, believing it to be proper. A judge capable of acting deliberately under the influence of such a design, must be as regardless of the law as of his oath. His considering the testimony as illegal would not prevent him from receiving it, if receiving it could serve his purpose better than its rejection. In this case it would have served his purpose better. To reject it gave him no additional hold on Callender, who was placed completely in his power by the nineteen undefended charges; but to receive it would throw a cloak of fairness and humanity over his conduct, under cover of which he might more safely and more fully glut his vengeance. The more he had saved appearances in this respect, the more safely might he have indulged his vindictive temper afterwards.

But it is clearly proved, by his requesting the District Attorney to consent to this evidence, that he was actuated not by a wish to exclude it, but by a conscientious belief that it was illegal and inadmissible. This request may perhaps be represented, and I think already has been, as a mere cloak; as an artful subterfuge, to escape from the indignation which he saw rising. But how does this agree with the character of open and high-handed violence, which the honorable gentlemen attribute to the respondent? How does it agree with that incautious openness in his conversation, that indiscreet promptness in his conduct, almost amounting to precipitation, which appear throughout to enter essentially into his character? And had he been thus artificial, thus capable of throwing an hypocritical cloak of candor over his wickedness, must he not have perceived that his true policy consisted in receiving the testimony without regard to its illegality.

If there could remain any doubt as to the correctness of his motives in rejecting this testimony, it would be removed by his offer to submit the question to the judges of the Supreme Court, and to respite the sentence until their opinion could be known; the traverser, in the mean time, remaining at large on bail. It is distinctly stated by Mr. Robertson and Mr. William Marshall, that this offer was made in reference to the decision of this point. We have had, indeed, some cavilling about bills of exceptions in criminal cases; perhaps the judge may have expressed himself inaccurately. He may have spoken of a bill of exceptions instead of a case stated; or he may have been misunderstood by the witnesses in this particular. But it is unquestionably proved, that in substance he offered to submit the question, whether this testimony was properly rejected or not, to the revision of all the judges of the Supreme Court; to let the sentence await the result of their deliberations; and to grant a new trial if they should think the decision erroneous. It is well known to every lawyer, that although no writ of error or bill of exceptions lies in criminal cases, yet it is the usual practice, in England as well as in America, when any new and difficult

point arises in a criminal trial, to state it for the consideration of a superior court, and to respite the judgment till the decision of that court can be had. The point in such cases is regularly argued by counsel before the superior court, to whose decision the judgment of the inferior court is made to conform. It is also known that a new trial may be granted in a criminal case where there is a conviction, though not where there is an acquittal. What the respondent offered in this case might have been done; and he went further. He offered to assist Callender's counsel in doing it. He offered them the assistance of his legal knowledge and experience in framing the case to be stated on the record, for the consideration of the Supreme Court. This appears from the testimony of Mr. William Marshall. It is not for me to decide or inquire why these offers, and all the others made by the respondent in this trial of Callender, were contemptuously rejected by his counsel. It is enough for me that the offers were made, and that the conduct of my honorable client in making them, taken in connexion with the other circumstances which have been noted, proves beyond all possibility of doubt, that however erroneous in point of law his rejection of Colonel Taylor's testimony may have been, it proceeded from his honest judgment, and not from a corrupt intention to oppress.

I come now, Mr. President, to notice some of the charges embraced by the fourth article; and first the refusal to continue the case of Callender till the next term. To prove the correctness of this refusal in point of law, I desire no better authority than that produced by the honorable Managers themselves, from 6 *Bacon's Abridgment*, new edition, page 652. It is there laid down on the authority of *Tidd's Practice*, 500; 3 *Burrows*, 1518, *and* 1 *Black. Rep.* 436, that, "where 'there is no cause of suspicion, the affidavit to 'put off the trial on account of the absence of a 'material witness, is sufficient in the common 'form, namely: that the person absent is a material witness, without whose testimony the defendant cannot safely proceed to trial; that he 'has endeavored without effect to get him subpœned, but that he is in hopes of procuring his 'future attendance. But if there be any cause of 'suspicion, the court should be satisfied from circumstances—first, that the person absent is a 'material witness; secondly, that the party applying has not been guilty of any laches; and 'thirdly, that he is in reasonable expectation of 'procuring his attendance at some future time." Here it appears that even where there is no cause of suspicion, that is, no cause for suspecting that the application for a continuance is made merely for the purpose of delay, still the affidavit must state, that the party applying for the continuance "is in hopes of procuring the future attendance of the witness." The affidavit in Callender's case is contained in the exhibit, No. 5, filed with the answer. Let it be examined, and contrasted with this authority. It will be found to contain no such statement, and is therefore clearly insufficient, even had the case been free from suspicion of affected delay. But is it possible for any man to say that it was free from such suspicion, after having heard the testimony delivered at the bar? Has not the leading counsel for Callender, who filed the affidavit and made the motion for a continuance, impliedly acknowledged that his sole object was delay? Has he not acknowledged that he knew Callender to be incapable of defence on any other ground than the unconstitutionality of the sedition law, and consequently, that he knew the absent witnesses to be unnecessary, and was as well prepared for trial without them as he could be with them, since nothing that they could prove could have any effect on that question? Has he not expressly declared, that one great object which he had in wishing for the continuance was, to get the trial before a different judge? And when this is admitted by the learned gentleman himself to have been the truth, was it very unnatural that the respondent should suspect it? If he had grounds for suspecting it, of which he was to judge, the authority informs us that there ought to have been circumstances stated by the affidavit, sufficient to satisfy him that the absent witnesses were material, and that the party applying was in reasonable expectation of being able to procure their attendance at some other time. No such expectation is stated in the affidavit, which was clearly insufficient on that ground, and a comparison of it with the indictment plainly shows that the absent witnesses were not material. The learned Managers are therefore entitled to our thanks, for furnishing us with an authority which conclusively establishes our case.

But admitting the respondent to have decided incorrectly in refusing this continuance, where is the evidence of improper intention? If it were an honest error in judgment, he is free from blame. And how can we doubt the uprightness of his intentions, when we recollect that although he considered himself unauthorized to grant a continuance till the next term, because it was not a matter of mere discretion, and no legal ground for it was in his opinion shown, he yet offered a postponement for six weeks, which it was in his power to grant without legal cause? This offer to postpone for six weeks, which throws so strong a light of upright intention and humane indulgence on the whole conduct of the respondent, has been forgotten by Mr. Hay, but fortunately for us it is remembered distinctly by three or four most respectable witnesses, and especially by Mr. Edmund Lee and Mr. William Marshall. There can be no doubt of the fact. It is even manifest that three or four months would have been allowed, had they been asked for. To give six weeks would have made it necessary for the judge to return home, in order to hold the court in Delaware; and when he had returned, it would have been more agreeable and convenient to remain some time at home, than to hurry immediately back to Richmond, in order to hold the court at the end of six weeks. How is this humane and accommodating offer to postpone, at a great inconvenience to himself, to be reconciled with a

corrupt disposition to oppress Callender? And why should the respondent refuse to continue the case till the next term, which would have exposed him to no inconvenience or trouble, and yet offer to postpone it for six weeks at the expense of a new journey to Richmond? It could have been for no other reason, than a belief that he was obliged by the law to refuse the continuance, and a desire to indulge the traverser and his counsel as far as the rules of law would permit.

Here again I forbear to inquire into the motives of Callender's counsel for refusing this indulgence, by which they would have completely obtained all the legal and proper objects of a continuance. With their motives we have nothing to do. It is into the motives of the judge alone that we are bound to inquire, and of the purity of them, this offer so indulgent and humane, and so unaccountably rejected, leaves no doubt.

As to the rude, unusual, and contemptuous expressions, which are charged under the fourth article, and have been detailed by one of the witnesses for the prosecution, it is material to remark, how different an impression these expressions made on different persons, according to the various states of mind in which they were heard. Mr. Hay was so highly irritated, as to construe a bow into an affront. There had been much mirth at his expense, in which Colonel Taylor tells us that he did not at all partake; and he thought these expressions rude and contemptuous. To Colonel Taylor, who, though perhaps not inclined to view the respondent's conduct with very favorable eyes, had not the same causes of irritation with Mr. Hay, and was far more cool, they appeared in the less exceptionable light of "imperative, sarcastic, and witty." Mr. Gooch may be considered, perhaps, as favorably inclined toward the respondent, but has shown no disposition to extenuate his conduct; and he regarded these expressions, as mere efforts on the part of the respondent to show his wit. Wit, I allow, has nothing to do on the bench. If a judge should happen to possess it, attempts to display it in the discharge of his official functions, would, perhaps, be unbecoming, or even improper; but certainly not criminal. To Mr. Basset, who appears to be of a warmer temperament, and whose feelings seem to lean toward the respondent, those expressions appeared to be firm without being imperative, and facetious but not sarcastic. And is criminality to be inferred from acts which thus receive their hue, not from anything in themselves perceptible to this honorable Court, but from the characters, the feelings, and the modes of thinking of those who relate them? If so, then innocence and guilt must depend not on the conduct of the accused, but on the temper and discernment of the witnesses. The Chief Justice of the United States, who was present during all these transactions, saw nothing improper or unusual in the conduct of Judge Chase. These expressions, which so forcibly struck the heated and angry mind of Mr. Hay, conveyed no idea of impropriety to the mind of the Chief Justice; a gentleman as remarkable for the delicacy of his manners, as for quick discernment and sound understanding. Mr. Edmund Randolph was in court during a great part of Callender's trial, and he perceived in the conduct of the court, nothing rude, unusual, or indicative of a disposition to oppress. I appeal to all who have the pleasure of knowing that gentleman, whether such conduct could have taken place without arresting his attention. So remarkable himself for urbanity of manners, and correctness of personal deportment, he must have been shocked by so glaring a departure from them in a judge seated on the bench. That lively and instinctive sense of propriety, which forms the basis of refined good breeding, would have made him feelingly alive to such a departure, in such a place, from that line of conduct which decorum no less than duty prescribes to a judge. On those finely attuned nerves, which render him the delight of every social circle where he appears, expressions rude and contemptuous would have grated most harshly, and would have made an impression not to be forgotten. Yet Mr. Randolph remembers no such expressions.

And we find no less difference between the different witnesses, respecting the specific terms of those expressions, than respecting their general character. Of this, one instance may suffice. Mr. Hay has stated that the respondent interrupted Mr. Wirt, and rudely and peremptorily ordered him to sit down. The expressions which this witness attributes to the respondent, on this occasion, are, "sit down, sir;" than which the language furnishes none more harsh or indecorous. But from the testimony of Mr. Robertson, a disinterested spectator, who took down in short-hand all that passed at the trial, it appears that the expressions addressed to Mr. Wirt, were, "please, sir, to be seated." And Mr. Gooch, who attended the trial for the express purpose of observing all that passed, states that the respondent, being about to deliver an opinion while Mr. Wirt was up, said to that gentleman, "please, sir, to take your seat." Thus it is that passion distorts every object to the view, magnifies mole-hills into mountains, and converts the most complaisant phrases into "rude, unusual, and contemptuous expressions." To the heated imagination of Mr. Hay, the expressions which he has detailed, no doubt, appeared in that light; but this honorable Court will be guided, not by the exaggerated and distorted views presented to his irritated mind, but by the testimony of those calm and dispassionate witnesses, who were able to view the subject through an unclouded medium.

Let me now, Mr. President, be indulged in one or two remarks respecting the interruptions of counsel, which form one of the charges under this article. Mr. William Marshall has told us that he remembers a case, in which counsel were more frequently interrupted by Judge Iredell, than they were, on this occasion, by the respondent. We all know the character of that eminent and excellent judge, whose just eulogium the honorable Managers have pronounced at this bar, and whose example they have set up as a standard, whereby to measure the conduct of the respondent. Will

they not, in this instance, consent to be judged by their own rule? Will they still insist on condemning, in the respondent that which has been practised to a greater extent by Judge Iredell?

But we know the cause which produced the greater part of these interruptions, and which rendered them proper and necessary. Mr. Basset has informed us that Callender's counsel appeared to rest their case wholly on the unconstitutionality of the sedition law; that they wished to argue this point before the jury, and had flattered themselves with the hope of success; that after the court had formally declared this attempt to be improper, and that the jury could not take cognizance of the question, they continually renewed the attempt, and as often as they did they were stopped by the court. This statement is supported by Mr. Gooch and Colonel Gamble. And will any man say that, under such circumstances, it was not proper to interrupt the counsel? Will any man say, that counsel ought to be suffered to fly in the face of the court's authority, and to set at naught its orders and decisions?

These interruptions, moreover, as the Chief Justice has informed us, were made in the ordinary manner of the judge, and were not more frequent than was usual with him in civil cases. Therefore, they afford no proof of an oppressive disposition toward Callender, or of an improper disposition toward any person. They afford proofs of that promptness, sometimes bordering on precipitation, which is well known to make part of his character. It is in proof by the testimony of Mr. Purviance, who has long practised in courts where the respondent presided, that he is much in the habit of interrupting counsel, even those to whom he is known to be most strongly attached; that in his interruptions there is no discrimination between his friends and those who are not so; and that if counsel, when thus interrupted, keep their temper, and coolly and respectfully insist on their right to be heard, they never fail to obtain a hearing, and frequently succeed in removing impressions which the judge had too hastily taken up against their cause. If here be weakness, there is magnanimity which atones for it; and if, in this case, Mr. Hay, instead of contemptuously leaving the court, when he thought himself improperly interrupted, had maintained his ground with firmness, but with that respectful manner, also, which was due to the age and station of the judge, and which would have been highly becoming in himself, there is no doubt that he would have obtained as full a hearing as he could have desired.

On the "indecent solicitude" charged by this article to have been manifested by the respondent for the conviction of Callender, I will remark that, if its existence had been proved, still it broke out into no overt act of oppression or injustice, and, therefore, is not the object of punishment, or of judicial cognizance. Intentions, unless accompanied by acts, solicitude, and wishes, unless carried into effect, are offences unknown to our criminal code, and inconsistent with the principles of our Constitution.

The fifth and sixth charges, relative to the operation of the Virginia laws on the case of Callender, and their supposed violation by the respondent, have been so ably and clearly refuted by my two learned colleagues, who immediately preceded me, that nothing remains to be said on those points. I will merely remark that, had an error been committed, in awarding a capias against Callender on the presentment, and making it returnable to the court then sitting, it would have been the error of the District Attorney and the clerk, for which the respondent could have been in no manner answerable. It is in evidence by the testimony of the clerk himself, Mr. William Marshall, that when the presentment against Callender was returned into court, the respondent, then sitting alone, asked Mr. Nelson, the District Attorney, what was the proper process in such a case? who answered, a capias; and that the capias, actually issued, was immediately drawn up at the bar by the clerk, was inspected and approved by Mr. Nelson, and was then ordered by the judge. In a case of this nature, relating to the local laws and practice of the State, the respondent being then unassisted by the district judge, could apply to no better guides than the clerk and the District Attorney, both at that time practitioners in the State courts; and had they led him into an error, which they certainly did not, it would be the height of absurdity as well as of injustice, to impute it to him as an offence.

I have now, Mr. President, concluded my remarks on those charges which arise out of the trial of Callender.

[Mr. Harper was proceeding to the next article, when, it being three o'clock, a motion was made to adjourn till the next day. When the question was about to be taken, Mr. H. observed to the Court that, although an adjournment would be a personal convenience and gratification to him, yet if his wishes could be at all consulted, he would prefer to conclude his argument on that day; that the time had become very short, which afforded some ground to apprehend that a postponement of the decision till next session might be thought necessary; and that it was, therefore, extremely desirable, and very much desired by his client and himself, to close the argument as soon as possible.

An adjournment for half an hour was then moved and carried.]

When the Court met again,

Mr. RANDOLPH said that, with the leave of the counsel for the respondent, he would offer one or two observations, which might save that gentleman and the Court some trouble. We know, said he, we cannot lay much stress on the testimony of a single man, rebutted by that of another respectable witness. Among the persons summoned to appear, who are able to give evidence of the declaration of Mr. Heath respecting the conversation between Judge Chase and Mr. Randolph, are Messrs. Meriwether Jones and Hugh Holmes. Mr. Jones, we are advised, is, from extreme indisposition, unable to attend. Mr. Holmes, the Speaker of the House of Delegates, did not attend

until since the evidence on the part of the prosecution was closed. That honorable and respectable man is, however, now in the lobby. I only state this circumstance in tenderness to the character of the witness, and that Mr. Holmes is ready to prove that, pending the trial of Callender, Mr. Heath did declare to him as having passed in his presence such a conversation as the witness has stated. It is not our wish to press his evidence, because we know that the evidence of a witness thus rebutted can establish nothing material to the prosecution. But we are ready, if the Court and counsel for the respondent agree, to receive his testimony.

Mr. HARPER.—It is not for us to say how the honorable Managers shall proceed in conducting this prosecution. We have no objection to Mr. Holmes being examined; and we feel perfectly indifferent whether Mr. Heath be abandoned or not. Should Mr. Holmes not be examined, I presume it will be understood that he was offered to support the declaration of Mr. Heath.

Mr. RANDOLPH said it was not intended to abandon Mr. Heath.

Mr. HARPER inquired how long Mr. Holmes had been in the city. If correctly informed he had been here three days, and if so, his testimony might have been adduced before the defence on the part of the respondent was made.

Mr. RANDOLPH said, the not previously offering Mr. Holmes to the Court arose solely from an indisposition to interrupt the counsel for the defendant. The character of Mr. Holmes stood too high to be impeached. It was only when they heard the correctness of Mr. Heath's testimony questioned, that the Managers deemed it necessary to do that, for the not doing of which they had received the censure of the counsel for the respondent. Mr. Randolph then moved that Hugh Holmes should be sworn.

The PRESIDENT said, the reasons assigned for the admission of Mr. Holmes's testimony, so far as they arose from tenderness to the character of Mr. Heath, could have no weight with the Court. The only question for them to decide was, whether his testimony was or was not material.

Mr. NICHOLSON said, he held it to be the right of either party, at any stage of the trial, when the evidence of a witness was impeached, to justify it by the testimony of another witness. He asked the receiving, therefore, of Mr. Holmes's testimony as a matter of right, not of favor.

The yeas and nays were taken on examining Mr. Holmes, and were—yeas 21, nays 11.

Hugh Holmes, sworn.

In answer to an interrogatory put by Mr. Randolph,

Mr. Holmes replied: I was at Richmond when the circuit court sat there. I am told they sat on the 22d of May, 1800. On the Sunday following I left Richmond. My impression is, that Mr. Heath, between Wednesday and Sunday, told me in substance what I understand has been related to this honorable Court. It has been detailed to me, and I cannot trace any difference between it and my recollection.

Mr. Harper. Please to state it.

Mr. Holmes. It was this: That he (Mr. Heath) had business with Judge Chase of a judicial nature, and waited upon him; that while he was there Mr. Randolph came in; that he held a paper in his hand; the judge asked him what it contained; he replied, the panel of the jury for the trial of Callender. The judge asked if there were any persons of a particular description, I think democrats, on it. Mr. Randolph said there was. The judge then said no such persons must be on the panel.

Mr. Harper. Are you confident that you left Richmond the Sunday following?

Mr. Holmes. I think so. It is possible that I may be mistaken. As to the substance of the conversation I cannot be mistaken, though I may as to the time. Mr. Heath may have given me the account in the following September, when I was at Richmond.

Mr. Nicholson. Were there any persons present when Mr. Heath gave you this information?

Mr. Holmes. I think Judge Brookes and General Minor were.

Mr. Martin. Did you leave town on the Sunday before or after Callender was tried?

Mr. Holmes. I left town before he was tried.

Mr. Randolph. I understand you as stating that you are positive as to the substance of the conversation, but not as to time?

Mr. Holmes. I think it was during the first time I was in Richmond, but it may have been during the second time. But I think I may speak positively of the substance of the conversation.

Mr. HARPER. This testimony of Mr. Holmes, Mr. President, completes the overthrow of John Heath, whom it was adduced to support. It adds the last clench to the nail, by which his testimony is fixed on high. This honorable Court will recollect that John Heath declared that, as soon as the conversation between Judge Chase and the marshal about striking those "creatures called democrats," from the jury summoned to try Callender took place, which was in the morning before the court met, he went immediately on the hill and related that conversation to Hugh Holmes, This, consequently, must have happened before Mr. Holmes left Richmond. He tells us that he left Richmond on Sunday, the 25th of May. We know from the record evidenced in the cause, as well as from the testimony of Mr. William Marshall, and some other witnesses, that Callender was not brought to Richmond until the 27th of May. And it is well known that, by the practice of Virginia, a jury is never summoned to try an offender till he is before the court, and puts himself upon trial. Consequently, at the time when John Heath informed Mr. Holmes that he had seen the marshal present to the respondent the panel of jurors summoned for the trial of Callender, and heard the respondent tell the marshal to strike off all the "creatures called democrats," it is perfectly certain that no jury had been summoned; that the marshal had not taken Callen-

der; that it was perfectly uncertain whether he would be taken; and that no such circumstance as Heath related to Mr. Holmes, could possibly have taken place. For this flat contradiction of their witness, we are indebted to the honorable Managers, and we tender them our thanks. They have furnished us, by the same respectable testimony, with another contradiction of minor importance, but not undeserving of notice. Heath says that he made this communication to Mr. Holmes in the morning. Mr. Holmes states, as his strong belief, that it was made in the evening. So much for the testimony of Mr. John Heath; which I leave, without further remark, where it has been placed by Mr. David M. Randolph, Mr. William Marshall, and Mr. Holmes; and proceed to consider the transactions at Newcastle, in Delaware, which form the matter of the seventh charge.

And here three questions present themselves for examination: What was the repondent's conduct on that occasion? How far was that conduct conformable to duty and propriety? What were the motives from which it proceeded? On all the previous articles the same division of the matter presented itself to the mind; but the two first grounds were fully occupied by my learned colleagues. What remained for me belonged almost entirely to the third division. Here, on the eighth charge, being deprived of their able assistance, it is incumbent on me to consider the subject under each of these three points of view.

As to the conduct of the respondent, he admits, in substance, that he did, on the first day of the court, decline to discharge the grand jury on their request; did state to them some information which he had received respecting a seditious printer in the town of Wilmington, who was said to be in the habit of violating the act of Congress called the sedition law, and did inform them that it was their duty to inquire into that affair. He also admits that he requested the District Attorney to assist them with his advice in making this inquiry. But he denies that he did utter those expressions relative to a seditious temper in the State of Delaware, or any part of it, with which he is charged.

That he uttered those expressions is sworn by Mr. George Read, the District Attorney of Delaware, and Mr. Lee, one of the grand jurors. Four witnesses, on the contrary, equally respectable and equally intelligent with Mr. Read and Mr. Lee, have deposed that they were present, that they attended particularly to what passed, and that they heard no such expressions. First, Judge Bedford, who sat by the side of the respondent at the time, who must have heard all that was said, and who appears to have remarked particularly what the respondent said on the subject of seditious publications; for he afterwards told him that he had used expressions which would give offence; yet Judge Bedford did not hear any such expressions as are stated by Mr. Read and Mr. Lee. Next, Mr. Vandyke, the Attorney General of the State of Delaware; a gentleman of high character, whose manner of delivering his testimony, proves him to be very capable of accurate observation. He attended in court at this time, and was attentive to the proceedings, but he heard nothing of these remarkable expressions. Then, Mr. Hamilton, who attended the court as an assistant to his father, the marshal, sat near the judges, listened to the conversation between the respondent and the jury, but heard nothing of those remarkable expressions. And fourthly, Mr. Hall, was in court during the whole time, paid particular attention to what passed, but heard nothing of this seditious temper in the State of Delaware, and particularly in the county of Newcastle, and more especially in the town of Wilmington. On Mr. Moore, so much stress cannot be laid as on the former witnesses, because he was not particularly attentive to what passed on the first day. Laying him, however, out of the case, we have four witnesses against two; and these four witnesses were so situated that they must have heard those expressions had they been uttered, and must have remarked them. Judge Bedford did remark expressions far less strong, which he was apprehensive might give offence. Is it possible then to believe that those very offensive expressions, had they fallen from the respondent, could have escaped his notice?

But there is another piece of evidence still stronger than the testimony of these witnesses. We know that within a day or two after these transactions took place, an account of them was published by the printer, and in the gazette which had been the object of the respondent's animadversions. The publication is in evidence before the court. It is sufficiently exaggerated, but it makes no mention of those remarkable and offensive expressions. The printer, it is evident, was extremely well disposed to represent the respondent's conduct in the most unfavorable light that truth would justify. He no doubt received his information of what passed from persons who felt the same disposition. Those persons must have heard these expressions, had they been uttered, must have been struck by them, and surely would not have suppressed them.

When this mass of evidence stands opposed to Mr. Read and Mr. Lee, can we hesitate to pronounce that they have stated what never took place? I am far from intending to charge them with intentional departure from truth. No doubt they understood, in this manner, something that was said. But it is plain that there must be a mistake somewhere. Their testimony cannot be reconciled with that of the four witnesses for the respondent, or with that of the printer, which, under the circumstances of this case, is stronger than all the rest. And it is much more probable that two men should be mistaken than four; and that all the six should have been mistaken, than that this printer should have been uninformed of, or should have omitted to notice, those expressions, if they had been used by the respondent.

These expressions, indeed, contain nothing criminal. To have used them would not have been an impeachable offence; but it would have been an act of great indecorum and impropriety. It

was the duty of the judge to charge the grand jury, and to point their attention to any specific offences against the laws of the United States, which had come within his knowledge or information; but, to utter indiscriminate abuse against a whole State or county, to charge the people of it, generally, with a seditious temper, would have been equally extrajudicial and unbecoming. This consideration, we hope, will be admitted as an apology for occupying so much time in the refutation of a charge, which, in every other point of view, is manifestly frivolous and futile. We wish to rescue the conduct of our honorable client from the imputation of impropriety as well as of guilt.

It may, perhaps, be replied, that we rely on merely negative testimony to disprove these expressions, while positive testimony is adduced to prove them. But whether testimony ought to be regarded as positive or merely negative, depends on the situation of the witnesses and the circumstances of the case. When a man swears he did not see a transaction which might have taken place without his seeing it, his testimony is merely negative, and can have no weight against that of a witness who swears that he did see the transaction. But when it is of such a nature that it could not possibly, or within the bounds of reasonable probability, have taken place without being seen by the person who swears that he did not see it, the testimony of such person then assumes the character, and possesses the weight, of positive testimony. It is the same as if he had sworn positively that no such transaction did take place. If, for instance, a witness were to swear that he saw a man standing with his hat on during the whole of the trial, in the open space on the floor, between the President and me; and every other person present were to swear, as they no doubt would, that they had seen no such person—surely no man in his senses would put this on the footing of merely negative testimony, and contend that the first witness was to be believed against all the others! And where is the difference between the two cases? It consists, I answer, solely in the number of witnesses; for it is as impossible that these expressions should have been uttered by the respondent, without being heard by Judge Bedford, Mr. Vandyke, Mr. Hamilton, and the persons who gave information to the printer, as that a man should stand for an hour with his hat on, in the middle of this floor, without being observed by the audience.

We are therefore warranted in laying these expressions out of the case; and then to what does it amount? There was a law of the United States for the punishment of seditious libels, which the respondent, as judge of the circuit court of Delaware, was bound to enforce within that district. On his way to the court he receives information that certain habitual violations of this law are committed within the district. This information is given to him, as appears from the testimony of Mr. Hall, by a justice of the peace for that district, whose duty it was to attend to such offences, and to take all legal steps for bringing the offenders to justice. This information, derived from this official and authentic source, the respondent communicates to the grand jury, observing to them that it was their duty to inquire into the matter, and that they must remain in session one day more for that purpose. He goes further. He requests, or, if the honorable Managers will have it so, he orders the District Attorney to assist them with his advice in making this inquiry, and directs a file of the newspapers supposed to contain these libellous publications, to be procured and laid before them. This is "the head and front of his offending." And will the honorable Managers be pleased to point out the rule or principle of law that was violated by these acts? Will they be so good as to inform us whether it was not the duty of the grand jury to inquire concerning offences within the district; and of the judge to give in charge to them all such offences as had come to his knowledge? Suppose that, instead of a breach of the sedition law, a piracy had taken place on the high seas, and information had been given to the judge that the pirates were lurking in the district of Delaware; would it not have been his duty to state this information to the grand jury, and to direct them to inquire concerning the offence? And I again call on the honorable gentlemen, as I had occasion to do in a former part of the case, to inform us by what authority, and what criterion, a judge is to distinguish some offences from others—to prosecute some and let others, as far as depends on him, escape with impunity.

The honorable gentleman who opened the case on the part of the prosecution, admitted distinctly, in his opening speech, that a judge may properly be zealous and active, in the execution of the criminal law generally; and he bestowed very high, and probably very just encomiums on a judge of Virginia, whom he represents as thus vigilant, zealous and active. But it is zeal and activity in the execution of this particular law, that he imputes as a crime to the respondent.

But if this zeal and activity of the respondent be not confined to this particular law, of which there is not the least proof or pretence, how, I ask, can it be an offence, according to the principle of the honorable gentleman? Surely each particular law is a part of the whole body of the law. Will the honorable gentleman be pleased to inform us how it is possible to be zealous and active as to the whole, without being so as to each of the parts? Will he inform us how the laws can be executed, except by parts; and whether it ever did or could happen that they were all violated at once?

There is, however, a more serious objection to this principle; which, if it be correct, goes to invest the Judiciary with a power infinitely more formidable and alarming than has ever yet been contended for in this, or, as far as I know, in any country.

In what part of our Constitution, or of our system of jurisprudence, have the honorable gentlemen found this dispensing power of the judges, over a part of the laws? Was not the sedition act, while in force, a law of the land? Were the

courts of justice to neglect its execution, because it had been opposed by a political party in the Legislature, or was disagreeable to a portion of the people? Are the honorable gentlemen willing to be tried by this their principle? Let them, before they answer in the affirmative, examine how far it will carry them. We now have circuit courts, and associate justices to hold them. We now have, and probably always shall have, parties in Congress and in the country. It is very possible that laws may be pased, which will be highly disagreeable to one of those parties. Are gentlemen prepared to say, that judges may dispense with the execution of all laws, which they may suppose to be of this description? If gentlemen find this principle intolerable and absurd, when applied to laws passed by themselves, will they still insist on its application to such as were heretofore passed against their opinion? Or will they contend that the question, whether a person shall be punished for the violation of a law, shall depend on the popularity or unpopularity of the law, in the particular district where the offence is committed? Is a judge appointed to hold a criminal court, to inquire from the people of the district, or from popular leaders, what laws he shall execute? Ought he to take his information on this subject from political parties, or from the statute book? Would this be living under equal laws equally, impartially, and steadily administered? And do not such laws, so administered, constitute the very essence and definition of free government?

On principle then—even the principle admitted by the honorable gentleman himself who opened the prosecution—the conduct of the respondent in directing the attention of the grand jury to this offence, is strictly justifiable. But it does not rest on principle alone. It is strongly supported by precedent, both in England and this country. In the Lawyer's Magazine, an authentic collection of legal proceedings and adjudications, vol. 3, page 331, we find a charge delivered to a grand jury by Chief Baron Perryn, in which he calls their attention to certain particular offences. In page 384, of the same book, we find Lord Loughborough calling the attention of the grand jury to particular offences. In the fifth volume of the same work, page 199, there appears a charge of Judge Ashurst, in which he directs the attention of the grand jury to certain seditious societies. And in the report of Hardy's trial, we see the celebrated Chief Justice Eyre, as illustrious for his justice, humanity, and love of liberty, as for his profound knowledge of the law and his great talents as a judge, directing the attention of the grand jury to a particular offence.

Passing from England to this country, we see Judge Iredell, whose example has so often been held up for imitation, directing the attention of the grand jury, in a very particular and emphatical manner, to the particular case of the Northampton insurgents. This took place at the circuit court at which those insurgents were to be tried; and the charge was delivered to the same grand jury which found the first indictment against John Fries. And we have another authority more directly in point, because it occurred in the case of a supposed libellous publication. It is also furnished by a judge of great legal reputation and talents, whom I trust the honorable gentlemen will not consider as inimical to liberty, or disposed to judicial oppression—I mean Mr. McKean, formerly Chief Justice, and now Governor of Pennsylvania. In a charge delivered to a grand jury of the city and county of Philadelphia, on the 27th of November, 1797, after a very elaborate and luminous exposition of the law relative to libels, he informs them that a certain printer in that city, meaning Cobbett, the publisher of Porcupine's Gazette, was, and long had been, in the habit of offending against this law, by the publication of scandalous and malicious libels; that he had interfered and endeavored to arrest the progress of this offender, by binding him over to good behaviour; that the printer, in contempt of his recognisance, and in defiance of the authority of the law, persisted in his mischievous course; and that the duty of arresting him devolved on the grand jury, by whom alone the strong correctives appearing to be necessary could be applied. The expressions used by this learned and able judge are strong and remarkable. I will take the liberty of presenting them to the court in his own dress. [Here Mr. Harper read the charge from Claypole's Gazette, of November 28th or 29th, 1797.] It will be remarked that the printer in this case had not been bound over to appear at the court and answer for a libel, but had been bound in a recognisance to be of good behaviour, which he was supposed to have violated by publishing further libels. On this recognisance a civil action had been brought; and the grand jury, who had nothing to do with the recognisance, nor any information before them, were thus called upon to apply a further corrective, by presenting the offender. It is impossible that a case should be more exactly in point. Indeed it goes much farther than the conduct of the respondent at Newcastle.

I am far from condemning or calling in question the conduct of the late Chief Justice of Pennsylvania, in this instance. But I contend that the same act which has been considered proper in him, ought not to be imputed as a crime to my honorable client.

Thus we see that the conduct of the respondent, in this instance, was strictly correct, whether it be tested by principle or precedent. If this could be doubted, if it were even admitted that he acted incorrectly, it would still be clear that he acted from proper motives; that his error was a mere error of his judgment, and consequently cannot be the ground of a conviction on impeachment.

Had he been conscious of improper intentions, how easy was it for him to accomplish his object, without appearing in the business? When Dr. McMechin, from whom, as Mr. Hall tells us, he received the information, mentioned these publications to him, it would have been easy for him to request that gentleman to give the information to the grand jury. Dr. McMechin no doubt would have complied with this request; the grand jury would have obtained the information; the printer, had it appeared proper to them, would have been presented; and the respondent would have attained his end without in the least exposing himself to view. Would he not have acted thus had he been conscious of improper designs? With criminal plans of oppression in his mind, would he not have sought concealment, where it was so easily practised, and could in no degree have impeded his projects? Undoubtedly he would. Nothing but a consciousness of upright views could have induced him in such circumstances to act this frank and open part.

In judging of men's motives, it is material also to listen to their private conversations, addressed at the time to those in whom they have confidence. In such conversations the hearts of the most cautious are apt to expand, and the most hidden plans are sometimes disclosed. What was the respondent's reply to Judge Bedford, when that gentleman censured him for acting imprudently in recommending in that part of the country an inquiry into the offences against the sedition law? "My dear Bedford," to use the beautiful language of the respondent as repeated by the witness, "no matter where we are, nor among whom we are, we must do our duty." This, sir, is the language of the heart; not of a corrupt heart, filled with plans of oppression and violence, but of a heart manly, upright, and honorable. It bears the intrinsic character, the genuine stamp, of sincerity and truth. It is a frank and unstudied avowal of motives, made to a confidential friend in an unsuspecting moment; and it is of more avail than volumes of testimony, to show the real impressions under which he acted.

Remember, too, how readily, and in what good humor the respondent gave up this point, and acquiesced in the opinion of the grand jury and the District Attorney, when they declared they had found nothing libellous in the papers. Having acted from a sense of duty in calling the attention of the grand jury to the subject, he was content with having discharged his duty, and pressed the matter no further. But had he acted from a vindictive spirit of oppression, or any other improper motive, inducing him to wish for the prosecution of the printer, would he so readily have desisted? The file of papers was within his reach. We, who have examined it, know that he might have found in it libellous matter enough. And would he not have examined it? Would he not have pointed out the libellous passages to the grand jury? Would he not have sent them out again with stronger injunctions to do their duty? Do oppressors so readily abandon their projects when the accomplishment is so much in their power? No, sir. This conduct in the respondent is utterly inconsistent with any other motive than that sense of duty under which it is manifest that he acted throughout.

We come now, Mr. President, to the eighth charge, under which I find myself again obliged to perform the disagreeable task of contrasting evidence, and controverting the testimony of a witness for the prosecution. This witness, Mr. Montgomery, has attributed to the respondent expressions relative to the character, motives, and views, of the present Administration, which, had he uttered them from the bench, ought to draw on him the censure of the public and the severe animadversion of this tribunal. These expressions I am authorized by him expressly to deny and disclaim. He contends that, according to the custom of this country, subsisting for almost thirty years, without any mark of public disapprobation, he had a right to warn his fellow-citizens, in a charge from the bench, against the political dangers by which he believed them to be threatened; to assist in this manner in averting impending ruin; in snatching the people of his native State from the abyss in which he thought them about to plunge. He contends that, for this purpose, and according to this custom, he had a right to point out what he considered as the pernicious tendency of certain measures of the Federal Government, in order to show in a stronger light the danger of adopting similar measures in the State. This is what he did, and what he supposed himself authorized to do. But he neither claims, nor has exercised, the privilege of abusing those who have been appointed to administer the Government of his country; nor of passing strictures in his official capacity on their character, motives, or general conduct. However he may differ from them in political opinion; however he may disapprove their principles; whatever apprehensions he may entertain about the tendency of their measures, he has always inculcated obedience to them, in the exercise of their Constitutional powers, and has carefully avoided any remarks, in his judicial character, on their system, views, or conduct. When he could not approve their measures he was silent, except in this single instance, where, in order to dissuade the people of Maryland from the adoption of a Constitutional amendment then under consideration, which he conceived to be fraught with so many evils, he adverted to the consequences likely, in his judgment, to flow from one of those measures. These very reprehensible expressions, "that the present Administration was 'weak, incapable, and unequal to the proper discharge of their duties; and that the object of 'their measures was not to promote the public 'good, but to preserve unfairly acquired power," are attributed to the respondent by one witness alone, Mr. Montgomery, of Maryland. How far that witness is entitled to credit, in this particular, it is my duty to inquire.

Let us advert, Mr. President, to the state of mind in which this witness was at the time when these expressions are supposed to have been uttered.

He informs us that he was the author and chief supporter of those measures of the Maryland Legislature, against which the respondent levelled his artillery; that he considered himself as particularly pointed at; and supposed the eyes of the audience to be turned upon him. So greatly was he irritated by this imaginary attack on himself that as he left the room, after the charge was finished, he declared that the respondent should be

impeached for that charge. This we learn from the testimony of Mr. McMechin, who heard the declaration. After he went home, he wrote an inflammatory piece for the press, purporting to be the substance of the charge. This piece was avowedly written for the purpose of promoting an impeachment. It recommends that measure; abounds with the most opprobrious and abusive language against the respondent; and, what is still worse, it varies very materially from the testimony which the author of it has delivered at this bar.

Is it surprising that a man in this state of mind should misconceive the truth? Is it to be wondered at that he should convert his own inferences, the misconceptions and distortions of his own brain, into facts? Have any members of this honorable Court heard a person give an account in a court of justice, of a quarrel in which he himself had been a party?—of a brawl or riot in which he had been himself engaged, in which he had perhaps been beaten, and of his wrongs of which he came to complain? Have they observed how the truth, in such situations, is distorted by the blindness of passion, the partiality of self-love and thirst of revenge? I presume that they have; and they will then know how to appreciate the testimony of a witness, in the state of mind in which Mr. Montgomery viewed these transactions, and in which he has given evidence at this bar.

I have said that his publication, purporting to be the substance of this charge, varies materially from his testimony in this case. For the truth of this statement I refer to the publication itself, which is in evidence before the court, and to his testimony, which is in the recollection of the honorable members. But I will point out one of the most remarkable variances.

In the publication he represents the respondent as saying, "that in a country where were equal 'rights and equal laws, that is, laws equally ad-'ministered, and that operate equally upon the 'rich and poor, there was freedom, but that coun-'try was *not* ours; we had no equal rights or equal laws." In his testimony, as taken down by the short-hand writer, he represents the respondent as saying, "that where there were equal laws 'and equal rights, there was freedom, but where 'the administration of the laws was partial and 'not certain, the people were not free: and that we 'were approaching to that state of things." In his publication he accuses the respondent of saying, that we actually were in this condition: in his testimony, that we were approaching to that state of things. Is it possible to give credit to a witness who thus contradicts himself? And what assurance have we that he whose memory is so treacherous, and who is proved by his publication to have been so angry, has not stated his own impressions and inferences as facts?

This witness has indeed made an attempt to support himself, by an explanation of this part of his testimony. In his explanation he tells us, that although he attributed the word "administration" to the respondent, the term used might perhaps have been "government." In this way he endeavors to get rid of the contradiction between himself and the numerous other witnesses. But this cannot avail him. The expressions, whether applied to the Administration or the Government, must, in this instance, have meant the same thing. The charges of weakness, relaxation, incapacity, and a view to the continuance of their unfairly acquired power, instead of the public good, could have had no application to the Government in its general abstract nature. They could have applied to it only as administered by the persons or the party now in power. So that whether the term "government" or "administration" was used, the meaning was precisely the same. The expressions were equally remarkable, in one case as in the other. They must have struck the bystanders as much in one case as in the other. They were in fact the same, with the variance of a single word, which did not in the least vary the sense. The witnesses have all sworn that they heard no such expressions, and the contradiction is as strong after the explanation, as it was before.

Who are these witnesses thus standing opposed to Mr. Montgomery? These witnesses that were present, and attentive, and yet did not hear these remarkable expressions which he heard so distinctly, and which he tells us made so strong an impression on his mind? If, when he stood on his own merits, and on the comparison between his publication and his testimony, he was so weak, how must he appear when opposed by this host of witnesses?

First, Mr. Mason. That gentleman, indeed, was so much occupied by the salutations of his friends, that he did not attend accurately to the whole charge; although he had leisure enough to remark, what nobody else saw, that the respondent, in the intervals of reading his charge, sometimes seemed to introduce extemporaneous observations, by way of comment on what he read. Still he has given us with great confidence, and no less accuracy, the principal points of the charge. He recollects nothing of these expressions. Can it be believed that they would not have struck him, had they been used? Mr. Mason is one of the strongest adherents, one of the warmest and most zealous friends of those who now administer the Government. Indeed he is one of the chief props of the present Administration, united with it in interest, principle, and affection. He is, moreover, so accurate in his observation, and so correct in his recollection, about what relates to the respondent, as to be able, after a lapse of five years, to repeat a casual, and jocular conversation; which is usually forgotten as soon as it passes. Can it be believed that so outrageous an attack upon his friends, by this judge, and in such a place, could have escaped his notice, or been effaced from his memory?

Next Mr. Smith, editor of the National Intelligencer, than whom the present Administration certainly has not a more zealous friend. He is, indeed, remarkable for the devotedness of his attachment to this Administration; his lively and keen sensibility to all its wrongs, real and imaginary; and his vigilant and unwearied zeal in its defence. He is, moreover, remarkable for his talent for stating in writing, whatever he has heard spoken or read; a talent into the careful cultivation and constant exercise of which he is led by his profession. He listened attentively to this charge. After hearing it he sat down in his chamber, the same evening, and committed the substance of it to writing, for the express purpose of publishing it in his paper. This publication he has produced and attested, and it contains no such expressions about the present Administration, or the present Government, as were heard by Mr. Montgomery. Is it possible to believe that had such expressions been used, they would not have been heard by Mr. Smith; or that, if he had heard them, he would have omitted them in his publication?

Mr. Stephen, too, who is known to be strongly attached to the present Administration, was present at the delivery of this charge, attended to it, but heard no such expressions as those related by Mr. Montgomery. A multitude of other witnesses who stood round the respondent while he delivered the charge, who were all for various reasons very attentive to it, have with one voice declared they had heard no such expressions. Among them is the district judge, who sat by the side of the respondent; the clerk of the court, who sat next to him but one, and who moreover is an adherent of the present Administration; the foreman of the grand jury, who stood close to the respondent, and to whom the charge was particularly addressed; and one of the judges of this district, who attended that court as a witness, and stood very near to the respondent, while he delivered the charge. The others are gentlemen of the bar, men of high character, who have delivered their testimony with great accuracy, and assigned with candor and precision the reasons of their belief. And all these persons declare most positively, that they heard no such expressions as have been related by Mr. Montgomery, about the conduct, character, and views, of the present Administration.

Nay more. The charge was read from a written paper, and that paper is produced in court, and proved by the person who wrote it, from a rough copy furnished by the respondent. Mr. Mason, it is true, states that some extemporaneous comments appeared to him to be made by the respondent, while reading from the written paper; and the inference to be drawn from this, I presume, is that these expressions might have formed one of those extemporaneous comments, and therefore might have been used, though they do not appear in the paper. But Mr. Mason, it will be remembered, though very correct and positive in stating the substance, does not pretend to accuracy in the particulars. He was too much interrupted by the salutations of his friends, who pressed through the crowd to speak to him. And it may very well have happened that when, after these interruptions, he turned his attention again to the respondent, he sometimes found him with his eyes raised from the paper, as those of every man will be who reads his own composition, or any writing with which he is familiar. This might have led him to conclude that the respondent sometimes spoke extempore. But Mr. Montgomery himself has stated that the whole charge was read from a paper; and the same fact has been established by the testimony of nine or ten witnesses, among whom are the district judge and the clerk of the court. Those gentlemen sat near to the respondent while he delivered the charge. One of them sat next to him, and the other next but one. They were both attentive to the manner in which the charge was delivered, and they both say that it appeared to them to be entirely read. They both say that the respondent, in reading it, occasionally raised his eyes from the paper at the close of a sentence, and turned them on the audience; but not longer at any one time than is usual with a person reading. In this the other witnesses fully concur. They all stood round the respondent, had their eyes upon him during the whole time, and were particularly attentive to the manner as well as to the matter of the charge.

Mr. Montgomery, indeed, after he had heard the testimony of Mr. Mason, explained himself on this subject. He said at first that the whole charge appeared to him to be read from a written paper. But after he had heard Mr. Mason state that the respondent, in delivering the charge, sometimes appeared to leave the paper and introduce extemporaneous matter, he was called again, and he then informed us that his eyes were not constantly directed towards the respondent, but were occasionally turned on the bystanders, whose eyes he observed to be directed to him as the known author of the measures reprobated in the charge. From this he inferred, very properly, that the respondent might have spoken extempore from time to time without his observing the fact. This explanation certainly removes the contradiction which at first appeared between Mr. Mason and Mr. Montgomery; and weakens materially the testimony of the latter gentleman as to the fact now in question. But it has no such effect on the testimony of the other witnesses, whose attention was not called off like that of Mr. Montgomery; who had their eyes upon this respondent during the whole time; and who firmly believe that every word which he delivered was read from the paper. This fact, then, I consider as completely established. The paper has been proved, and is in evidence before the court. A true copy of it will be found among the exhibits filed with the answer, No. 8. On examination, it will be found to contain no such expressions as are attributed to the respondent by Mr. Montgomery.

The testimony of Mr. Montgomery on this point, thus liable to suspicion in itself, on account of the state of irritation in which he saw the transaction; thus contradicted by his own written statement, by the testimony of so many witnesses, and by the written charge; is not entitled to belief, but must be laid wholly out of the case. I do not charge him with wilfully misstating the

fact, but that he has utterly mistaken it cannot be doubted.

There is another point on which some contrariety appears in the testimony. Some of the witnesses have supposed that the respondent concluded this charge with a direct recommendation to the jury to use their endeavors on their return home towards preventing the final passage of the act of Assembly of Maryland for abolishing the Supreme Courts, by procuring in their several counties the election of such persons as would vote against that measure. Others are under the impression that no such recommendation was expressly made, but was merely to be inferred from the general tenor of the charge. That such a difference of opinion should take place is by no means surprising; but the difference is immaterial. The object of the charge undoubtedly was to dissuade the people of Maryland from adopting the measure in question; and to impress on the grand jury and the audience the necessity of exerting themselves against it, at the election which was then approaching, and was to decide its fate.

If this recommendation was not expressly given, it was plainly implied. Such was the intention of the respondent; and his defence rests on the correctness of this intention; on his right, according to the long established custom of this country, to pursue the object in this way.

Let the charge, Mr. President, be carefully examined, and it will be found to have no object in view but to convince the people of Maryland, by arguments drawn from reason and experience, of the danger of adopting a change in their State constitution, which had been submitted to their consideration, and the object of which was to abolish all their supreme courts of law; to introduce a system entirely new and untried; and above all to destroy the independent tenure of judicial office, secured to them by their existing constitution; and to leave the judges dependent on the Executive for their continuance in office, and on the Legislature for their support. The respondent, who had contributed largely to the formation and establishment of the State constitution, was greatly alarmed at these changes. He considered them as of the most destructive tendency to the liberty and happiness of the State to which he belonged, and he resolved to take this opportunity of warning his fellow-citizens against them. This is the whole scope of his address to the grand jury, to show the importance of an independent judiciary, the dangerous tendency of changes already made, and the mischiefs which would result from taking this additional step in the career of innovation. He did, indeed, advert to the act of Congress for repealing the circuit court law, and remarked that it had shaken to its foundation the independence of the Federal judiciary; but the manifest and sole object of this was, to show that the spirit of innovation had gone forth, and ought to be carefully watched; that the public respect for great Constitutional principles had begun to be weakened; and that by how much the security which might have been derived from an independent Federal judiciary had been diminished, by so much the more vigilantly it behooved us to guard our State institutions. No other object can be discovered in the charge, or inferred from its general tenor, or from the language in which it is expressed; neither is there any evidence which has the most remote tendency to show that he had any other object in view. And was not this an object which a citizen of this country might lawfully pursue? Is it not lawful for an aged patriot of the Revolution to warn his fellow-citizens of dangers, by which he supposes their liberties and happiness to be threatened? Or will it be contended that a citizen is deprived of these rights because he is a judge? That his office takes from him the liberty of speech which belongs to every citizen, and is justly considered as one of our most invaluable privileges? I trust not. And if there could be any doubt on this point, I would remove it by referring to a recent instance of two judges of the supreme court of Maryland, who, in a late political contest, entered the lists as champions for the rival candidates, and travelled over a whole county, making political speeches in opposition to each other. Yet these gentlemen justly possess the confidence and respect of the public; their conduct in this instance has never been considered as a violation of duty; and he who espoused the interest of the successful candidate has been far from receiving any marks of displeasure from the Government of this country.

If, therefore, a judge retain this right, notwithstanding his official character; if it still be lawful for him to express his opinions of public measures, to oppose by argument such as are still pending, and to exert himself for obtaining the repeal, by Constitutional means, of such as have been adopted, I ask what law forbids him to exercise these rights by a charge from the bench? In what part of our laws or Constitution is it written that a judge shall not speak on politics to a grand jury?—shall not advance, in a charge from the bench, those arguments against a public measure which it must be admitted he might properly employ on any other occasion? Such conduct may perhaps be ill-judged, indiscreet, or ill-timed. I am ready to admit that it is so; for I am one of those who have always thought that political subjects ought never to be mentioned in courts of justice. But is it contrary to law? Admitting it to be indecorous and improper, which I do not admit, is every breach of decorum and propriety a crime? The rules of decorum and propriety forbid us to sing a song on the floor of Congress, or to whistle in a church. These would be acts of very great indecorum, but I know of no law by which they could be punished as crimes. Will they who contend that it is contrary to law for a judge to speak of politics to a grand jury, be pleased to point out the law of the land which forbids it? They cannot do so. There is no such law. Neither is there any Constitutional provision or principle, or any custom of this country, which condemns this practice.

And will this honorable body, sitting not in a legislative but a judicial capacity, be called on to make a law, and to make it for a particular case which has already occurred? What, sir, is the great distinction between legislative and judicial functions? Is it not that the former is to make the law for future cases; and that the latter is to declare it as to cases which have already occurred? Is it not one of the fundamental principles of our Constitution, and an essential ingredient of free government, that the legislative and judicial powers shall be kept distinct and separate? That the power of making the general law for future cases shall never be blended in the same hands, with that of declaring and applying it to particular and present cases? Does not the union of these two powers in the same hands constitute the worst of despotisms? What, sir, is the peculiar and distinguishing characteristic of despotism? It consists in this, sir, that a man may be punished for an act which, when he did it, was not forbidden by law. While, on the other hand, it is the essence of freedom, that no act can be treated as a crime, unless there be a precise law forbidding it at the time when it was done.

It is this line which separates liberty from slavery; and if the respondent be condemned to punishment for an act, which far from being forbidden by any law of the land, is sanctioned by the custom of this country for more than twenty years past, then have we the form of free government, but the substance of despotism.

Let gentlemen, before they establish this principle, recollect that it is a two-edged sword. Let them remember that power must often change hands in popular Governments; and that after every struggle, the victorious party come into power, with resentments to gratify by the destruction of their vanquished opponents, with a thirst of vengeance to be slaked in their blood. Let them remember that principles and precedents, by which actions innocent when they were done, may be converted into crimes, are the most convenient and effectual instruments of revenge and destruction with which a victorious party can be furnished. Let them beware how they give their sanction to principles which may soon be turned against themselves; how they forge bolts which may soon be hurled on their own heads. In a popular government, where power is so fluctuating, where constitutional principles are therefore so important for the protection of the weaker party against the violence of the stronger, it above all things behooves the party actually in power to adhere to the principles of justice and law, lest by departing from them they furnish at once the provocation and the weapons for their own destruction.

I have stated, Mr. President, that the practice of introducing political matter into charges to grand juries has been sanctioned by the custom of this country from the beginning of the Revolution to this day. Need I adduce any other proof of the fact than its general notoriety? Need I refer to the charge delivered in South Carolina, in 1776, by William Henry Drayton, for which he has been so much admired and applauded? Need I refer to the recommendation of the Executive Council in Pennsylvania, at a period something later, in which that body, with John Dickinson at its head, enjoins it on the judges to avail themselves of their charges to the grand juries on their circuits for disseminating correct political information and principles among the people? Shall I refer to the case of Judge Addison, in Pennsylvania, who has delivered many political charges, and against whom, when he was lately impeached, those charges made no part of the accusation? Shall I refer again to the charge of Judge Iredell, delivered to the grand jury, which found the first indictment against John Fries, and containing a variety of political matter? It is unnecessary to dilate on these instances. They have been given in evidence, and are fresh in the memory of this honorable Court. The recollection of the honorable members must furnish them with many others equally striking.

And yet have the authors of none of these political charges been censured. No mark of public or private disapprobation has been fixed on their conduct. No legislative act has forbidden this practice. From the time of Judge Drayton to the time of Judge Chase, it has been considered as innocent. It remained for the year 1803, after a lapse of twenty-seven years, to discover its criminality. But this honorable body will not so determine. It will not forget the distinction between its judicial and its legislative character. In its judicial character it will declare, that an act, however improper in itself or dangerous in its tendency, shall not, if forbidden by no law, be punished as a crime; that the prevalence of this custom for twenty years, the countenance which it received from some governmental authorities, and the acquiescence of all, are sufficient evidence of its legality; and that the criminal intent which constitutes an essential ingredient of the offence, in this as well as in every other case, and of which no direct proof is now adduced, can never be inferred from the act itself, when done in compliance with a custom so long established, and so highly sanctioned. But if the members of this tribunal should be individually of opinion, that this custom is dangerous or improper, they will, after pronouncing a sentence of acquittal in this case, resume their legislative character, and pass a law to restrain the practice in future. Thus will the mischief be prevented on one hand, and the principles of liberty and justice respected on the other.

This charge, therefore, fails like the rest; and what remains of the accusation? It has dwindled into nothing. It has been scattered by the rays of truth, like the mists of the morning, before the effulgence of the rising sun. Touched by the spear of investigation, it has lost its gigantic and terrifying form, and has shrunk into a toad. Every part of our honorable client's conduct has been surveyed; all his motives have been severely scrutinized; all his actions have brought to the test of law and the Constitution; his words and even his jocular conversations, have been passed in

strict review; and the ingenuity and industry of the honorable Managers have proved unable to detect one illegal act, one proof, or one fair presumption of improper motive.

Perceiving, by anticipation, this desperate situation of his case, the honorable gentleman who opened the prosecution, has devised another expedient to escape from anticipated defeat, and to secure that conviction on which he seems to have set his heart. He has told us, and no doubt will hereafter insist, that in order to form a true judgment on the respondent's conduct, the whole of it must be embraced in one view; and all the particulars regarded as parts of one whole. This means, if it means anything, that although no single act alleged in the articles should be considered as an impeachable offence, and a sufficient ground of conviction, yet all the acts taken together may constitute such an offence. That is, in other words, that many nothings may make something; that many noughts may make an unit: that many innocent acts may make a crime. What is this but recurring, in another form, to the absurd and monstrous doctrine, that judges may be removed on impeachment for reasons of expediency, without the proof of any specific offence? No sir! This last subterfuge will not avail the prosecutors. This honorable Court, adhering to the principles of the Constitution, the positive rules of law, and the plain dictates of justice and common sense, will require, before it convicts, the clear proof of a criminal intent, manifested and carried into effect, by some act done in violation of the laws. Under the shield of this great principle, our honorable client stands secure. In full confidence that you, Mr. President, and the members of this honorable Court will be guided by it, I cheerfully submit the case to you; and when you retire to deliberate on it, remember that posterity will sit in judgment on your conduct; that her decision will be pronounced on the testimony of impartial history; and that from her awful sentence there lies no appeal.

TUESDAY, February 26.

The Court opened at about half past ten o'clock, A. M.; the Managers, the House of Representatives, and the counsel of the respondent having taken their seats,

Mr. NICHOLSON, as one of the managers, addressed the Court in reply to the counsel of the accused. He said the House of Representatives having impeached Samuel Chase, one of the associate justices of the Supreme Court of the United States, of high crimes and misdemeanors; the evidence on their part having been adduced, and that on behalf of the accused, and the arguments of his counsel having been fully and patiently heard, it now became his duty to reply in support of the impeachment. To me, Mr. President, said he, this duty is an unpleasant one. Upon all occasions and under all circumstances, the office of a public accuser is the most painful that can be imposed on us; but it is more peculiarly so when the object of accusation appears before us covered with age and infirmities. I think I speak the sentiment of my brother Managers of the House of Representatives, when I say, that this impeachment never would have been instituted, that it never would have arrived at its present crisis, if we had not believed that the best interests of our common country required, that the conduct complained of should not go unpunished. There is no nation on earth, sir, in which the freedom of man and the consequent happiness of society are not inseparably interwoven with the full, free and impartial administration of justice.

"Una salus ambobus erit commune periculum."

It was to preserve this unity of safety, to avert this common danger, that we thought ourselves bound by the most solemn obligation, to bring these charges before the highest tribunal of the nation. We may in vain make laws to secure our property, to protect our liberty, and to guard our lives, if those to whom we appeal, and to whose decrees we are bound to submit, shall prove unfaithful in the discharge of their duty. If our laws are not faithfully administered; if the holy sanctuary of our courts is to be invaded by party feeling; if justice shall suffer her pure garment to be stained by the foul venom of political bigotry, we may indeed boast that we live in a land of freedom, but the boast will be vain and illusory.

In this point of view, therefore, this cause may justly be called an important one. I need not however urge its importance to the Court, for the feelings of every honorable member will speak its importance more forcibly than anything that I can utter. But I do trust that those frequent appeals which you have heard, those frequent instances in which you have been reminded that posterity will pass between the accused, his accusers and his judges, will have no influence on your minds. A desire to secure the approbation of posterity is an honorable feeling, pervading every human breast, and is most inseparable from our nature: but to secure the approbation of posterity, we must take care to pursue the dictates of our own consciences, and, by doing justice here, trust to posterity to do us justice too.

Our country, it is true, are now looking on with anxious solicitude for the event of this cause; but the sentence which they shall pass will not depend upon the judgment given here. To the world and to posterity the conviction of the accused, by this Court, will not establish his guilt; and I thank God, as the case has been put in issue between us, his acquittal will not prove his innocence. The facts in the cause, sir, those facts which we have proved by the most undeniable evidence, and upon which your judgment must be given; those facts will be presented to the eyes of the world and of posterity, and upon those only will they decide. If it should ever be the fortune of my humble name to descend to posterity, by the vote which I gave for instituting this impeachment, and by my conduct in discharging the great duty now committed to me, I cheerfully consent to be tried. To this awful tribunal I willingly submit. If the judge is guilty, posterity will heap on him all that

odium which his guilt deserves; if he is innocent, let that odium be turned upon his accusers.

Because Sidney and Russell bled upon a scaffold, have their names been less the objects of veneration with posterity? and because Scroggs and Jeffries escaped the punishment due to their crimes, have they therefore been less the objects of universal execration? No, sir; and the honorable counsel (Mr. Hopkinson) who first addressed you on behalf of the accused, gave us himself a memorable example of the poor respect which posterity will feel for the decisions of those who have gone before them. That honorable gentleman told you that Warren Hastings was impeached for the murder of princes and the plunder of empires, and yet he was acquitted. But, is there any who hears me, that believes he was innocent? If we read the history of that trial; if we look to the facts charged, and listen to the unexampled eloquence by which they were supported, our only wonder will be, that he was not condemned. Sir, it has been said that those plundered millions were the best witnesses to prove his innocence; and I greatly fear that the day will come when the crying blood of those murdered princes will be the best witnesses to prove his guilt. The most splendid action in Edmund Burke's life was his accusation of Warren Hastings; the foulest stain upon the national justice of England was his acquittal.

We have been charged, sir, by one of the honorable counsel (Mr. Harper) with having endeavored to enlist on our side the sympathies of the Court. Permit me to ask, what sympathy have we endeavored to excite? What feelings have we endeavored to engage? To what passion have we addressed ourselves? None, sir. We came here to demand justice. The Constitution has placed in your hands the power of punishing guilt; we have proved the guilt of the person accused, and at your hands we demand his punishment. To your consciences and your understandings we appeal, and not to your feelings. These have been assailed by our adversaries. They have exhibited their client to you, covered, as they say, with the frost of seventy winters, and have endeavored to hide the magnitude of his crimes, in the length of his years, and the infirmity of his health. In attempting to excite your compassion, they have wished to drown the voice of justice, and have addressed you not as judges but as men. I do trust, however, that if any sympathy is to be excited, it will be neither for the accused, nor his accusers. Let your feelings be turned toward the nation! Let your sympathy be awakened for those who are to come after you, for by the sentence which you pronounce in this case, it must ultimately be determined whether justice shall hereafter be impartially administered, or whether the rights of the citizen are to be prostrated at the feet of overbearing and tyrannical judges. We, who are engaged in this prosecution, feel that our fathers handed down to us a glorious birthright, and we appear at this bar to demand that it be transmitted to our children unimpaired and unpolluted. Do the nation justice, and you will do justice to us, to yourselves, and to posterity.—We were also told by the honorable counsel for the accused, that when we found the accusation shrunk from the testimony, and that the case could no longer be supported, we resorted to the forlorn hope of contending that an impeachment was not a criminal prosecution, but a mere inquest of office. For myself I am free to declare, that I heard no such position taken. If declarations of this kind have been made, in the name of the Managers, I here disclaim them. We do contend that this is a criminal prosecution, for offences committed in the discharge of high official duties, and we now support it, not merely for the purpose of removing an individual from office, but in order that the punishment inflicted on him may deter others from pursuing the baneful example which has been set them.

Nor do we mean to take another ground which the counsel for the accused have thought proper to assign us, for we never entertained the most distant idea that any citizen might be impeached. It was with no little surprise that I heard such doctrines ascribed to us, and I was astonished to hear the Attorney General of Maryland combatting positions which we had not laid down, and searching for argument to prove that which we should not have hesitated to admit.

But, sir, there is one principle upon which all the counsel for the accused have relied, upon which they have all dwelt with great force, and to the maintenance of which they have directed all their powers, that we cannot assent to; we mean to contend against it, because we believe it to be totally untenable, and because it is of the first importance in the decision of the question now under discussion. We do not contend that, to sustain an impeachment, it is not necessary to show that the offences charged are of such a nature as to subject the party to an indictment, for the learned counsel have said that the person now accused is not guilty, because the misdemeanors charged against him are not of a nature for which he might be indicted in a court of law.

To show how entirely groundless this position is, I need only pursue that course which has been pointed out to us by the respondent himself, and his counsel. I might refer to English authorities of the highest respectability, to show that officers of the British Government have been impeached for offences not indictable under any law whatever. But I feel no disposition to resort to foreign precedents. In my judgment, the Constitution of the United States ought to be expounded upon its own principles, and that foreign aid ought never to be called in. Our Constitution was fashioned after none other in the known world, and if we understand the language in which it is written, we require no assistance in giving it a true exposition. As we speak the English language, we may, indeed refer to English authorities for definitions, as we should refer to English dictionaries for the meaning of English words; but upon this, as upon all occasions, where the principles of our Government are to be developed, I trust that the Constitution of the United States will stand upon

its own foundation, unsupported by foreign aid, and that the construction given to it will be, not an English construction, but one purely and entirely American.

The Constitution declares, that "the judges both of the supreme and inferior courts shall hold their commissions during good behaviour." The plain and correct inference to be drawn from this language is, that a judge is to hold his office so long as he demeans himself well in it; and whenever he shall not demean himself well, he shall be removed. I therefore contend that a judge would be liable to impeachment under the Constitution, even without the insertion of that clause which declares, that "all civil officers of the United 'States shall be removed for the commission of 'treason, bribery, and other high crimes and mis-'demeanors." The nature of the tenure by which a judge holds his office is such that, for any act of misbehaviour in office, he is liable to removal. These acts of misbehaviour may be of various kinds, some of which may, indeed, be punishable under our laws by indictment; but there may be others which the law-makers may not have pointed out, involving such a flagrant breach of duty in a judge, either in doing that which he ought not to have done, or in omitting to do that which he ought to have done, that no man of common understanding would hesitate to say he ought to be impeached for it.

The words "good behaviour" are borrowed from the English laws, and if I were inclined to rest this case on English authorities, I could easily show that, in England, these words have been construed to mean much more than we contend for. The expression *durante se bene gesserit*, I believe, first occurs in a statute of Henry VIII. providing for the appointment of a *custos rotulorum*, and clerk of the peace for the several counties in England. The statute recites, that ignorant and unlearned persons had, by unfair means, procured themselves to be appointed to these offices, to the great injury of the community, and provides that the *custos* shall hold his office until removed, and the clerk of the peace shall hold his office *durante se bene gesserit*. The reason for making the tenure to be during good behaviour, was, that the office had been held by incapable persons, who were too ignorant to discharge the duties; and it was certainly the intention of the Legislature that such persons should be removed whenever their incapacity was discovered. Under this statute, therefore, I think it clear that the officer holding his office during good behaviour, might be removed for any improper exercise of his powers, whether arising from ignorance, corruption, passion, or any other cause. To this extent, however, we do not wish to go. We do not charge the judge with incapacity. His learning and his ability are acknowledged on all hands; but we charge him with gross impropriety of conduct in the discharge of his official duties, and as he cannot pretend ignorance, we insist that his malconduct arose from a worse cause.

If, however, a judge were not made liable to removal, from the very nature of the tenure by which he holds his office, we still insist that every judge conducting himself improperly in office, comes under that clause of the Constitution which declares, that "the President, Vice President, and 'civil officers of the United States, shall be re-'moved from office on impeachment for, and con-'viction of, treason, bribery, or other high crimes 'and misdemeanors."

We do not mean to contend against a position which one of the learned counsel took so much pains to prove, that the word "high" applies as well to misdemeanors as to crimes; nor do we deem it important at this time to inquire whether a civil officer of the United States can be removed for offences not committed in the discharge of his official duties. It will be time enough to make this inquiry when the case presents itself. At present we aver that the party charged has been guilty of a high misdemeanor in office, and that he ought to be removed for it.

Here, however, we are met by being told, that although his conduct may have been improper, yet that he is not liable to impeachment, unless the offence is of such a nature as that he might be indicted for it in a court of law.

If this be true, as it relates to a judge, the Constitution, to be consistent with itself, must make it universally true; and yet, if the doctrine be admitted, the Constitution will be found to be at variance with itself. Treason is an offence which may or may not be committed in the discharge of official duty, and no doubt the party committing it may be indicted. Bribery is an offence for which a judge may be indicted in the courts of the United States, because an act of Congress makes provision for it, and declares the punishment; but there is no law by which any other officer of the United States can be indicted for bribery. If, therefore, the President of the United States should accept a bribe, he certainly cannot be indicted for it, and yet no man can doubt that he might be impeached. If one of the Heads of Departments should undertake to recommend to office for pay, he certainly might be impeached for it, and yet, I would ask, under what law, and in what court could he be indicted?

To this, perhaps, it might be answered, that bribery is one of those offences for which the Constitution expressly provides that the officer may be impeached. This is true; but let us proceed further, and inquire whether there are not other offences for which an officer may be impeached, and for which he cannot be indicted?

If a judge should order a cause to be tried with eleven jurors only, surely he might be impeached for it, and yet I believe there is no court in which he could be indicted. You, Mr. President, as Vice President of the United States, together with the Secretary of the Treasury, the Chief Justice and the Attorney General, as Commissioners of the Sinking Fund, have annually at your disposal eight millions of dollars, for the purpose of paying the national debt. If, instead of applying it to this public use, you should divert it to another channel, or convert it to your own private uses, I ask if there is a man in the world who would

hesitate to say that you ought to be impeached for this misconduct? And yet there is no court in this country in which you could be indicted for it. Nay, sir, it would amount to nothing more than a breach of trust, and would not be indictable under the favorite common law.

But, sir, this ground, which was so strenuously fought for, will probably be abandoned, and instead of our adversaries maintaining that the offence must be of an indictable nature, they will, like one of the honorable counsel, (Mr. Harper,) go a step back, and say that it must be a breach of some known positive law. Thus they will endeavor to shelter their client by saying that there is no act of Congress declaring it illegal for a judge to deliver his opinion on the law before counsel have been heard, or to make political harangues from the bench.

There are offences for which an officer may be impeached, and against which there are no known positive laws. It is possible that the day may arrive when a President of the United States, having some great political object in view, may endeavor to influence the Legislature by holding out threats or inducements to them. A treaty may be made which the President, with some personal view, may be extremely anxious to have ratified. The hope of office may be held out to a Senator; and I think it cannot be doubted, that for this the President would be liable to impeachment, although there is no positive law forbidding it. Again, sir: a member of the Senate or of the House of Representatives may have a very dear friend in office, and the President may tell him unless you vote for my measures your friend shall be dismissed. Where is the positive law forbidding this, yet where is the man who would be shameless enough to rise in the face of the country and defend such conduct, or be bold enough to contend that the President could not be impeached for it?

It was said by one of the counsel that the offence must be a breach either of the common law, a State law, or a law of the United States, and that no lawyer would speak of a misdemeanor, but as an act violating some one of these laws. This doctrine is surely not warranted, for the Government of the United States have no concern with any but their own laws. In a State court, I would speak of a misdemeanor as an offence against a State law; in the courts of the United States, I would speak of it as an offence against an act of Congress; but, sir, as a member of the House of Representatives, and acting as a Manager of an impeachment before the highest Court in the nation, appointed to try the highest officers of the Government, when I speak of a misdemeanor, I mean an act of official misconduct, a violation of official duty, whether it be a proceeding against a positive law, or a proceeding unwarranted by law.

If the objection that the offence must be of an indictable nature, or against some positive law, means anything, it must be that the misconduct for which a judge or any other officer may be impeached, is either made punishable by, or is a violation of an act of Congress, for we are not to be regulated either by the common law or a State law. What then would be the result? I have pointed out several instances of gross misconduct in violation of no act of Congress, and yet under this doctrine he is to be permitted to pursue his wicked courses until every possible offence is defined by statute. This, too, would teach us that we have done wrong heretofore; for, at the last session a judge was impeached and removed from office for drunkenness and profane swearing on the bench, although there is no law of the United States forbidding them. Indeed, I do not know that there is any law punishing either in New Hampshire, where the offence was committed. It was said by one of the counsel that these were indictable offences. I, however, do not know where; certainly not in England. Drunkenness is punishable there by the ecclesiastical authority, but the temporal magistrate never had any power over it until it was given by a statute of James I., and even then the power was not to be exercised by the courts, but only by a justice of the peace, as is now the case in Maryland, where a small fine may be imposed.

But the Attorney General of Maryland (Mr. Martin) admits that offences may be of so heinous a nature that their punishment carries infamy with them, and that, though not committed in the discharge of official duty, yet if against a State law, the party may be impeached and removed from office. This, though not very material to the present question, may serve us in showing how inapplicable the doctrine is, that the offence must be against a State law or the common law. I will suppose that in New Hampshire there is no law punishing profane swearing. In Maryland a magistrate is authorized to impose a fine of thirty-three cents, and if this is not paid instantly the offender may be put in the pillory and receive thirty-nine lashes. The punishment is infamous, and if inflicted on a judge, according to the idea of this gentleman, he is to be impeached and removed from office. If the same offence is committed in New Hampshire, the judge is not to be removed, not because he has been guilty of a lighter offence, but because there is no State law punishing it. If then the State law is to be made the criterion, a judge in Maryland is to be removed from office for that which he might do with impunity in another State.

To carry this idea a little further:—There was once in the State of Connecticut, and may be yet for aught I know, a celebrated code called the *Blue Laws*. Under the provisions of this code, I believe it is a fact, that a captain of a ship was tied up and publicly whipped, because, on returning from a long voyage, he met his wife on a Sunday at the front door and kissed her. This was deemed a high offence, and was ignominiously punished. Now, if we are to be governed by the State laws, I trust the Blue Laws of Connecticut will be rejected, and that our grave judges may be allowed to kiss when and where they please, as to their wisdom shall seem meet, without incurring the pains and penalties of an im-

peachment. This, sir, may be somewhat ludicrous, but I hope it is not therefore the less illustrative of the absurdity of the doctrine contended for. It has been said that the offences for which a judge or other officer is to be impeached, ought to be defined by act of Congress. This is impossible. Such is the multiplicity of passions that sway the human heart; such is the variety of human action, that a code of laws never did and never can exist, in which all human offences are defined. The Constitution is sufficiently definite when it declares that a judge shall hold his office during good behaviour, and that all civil officers shall be removed for *high crimes and misdemeanors*. The law of good behaviour is the law of truth and justice. It is confined to no soil and to no climate. It is written on the heart of man in indelible characters, by the hand of his Creator, and is known and felt by every human being. He who violates it violates the first principles of law. He abandons the path of rectitude, and by not listening to the warning voice of his conscience, he forsakes man's best and surest guide on this earth. The best and ablest judge will often err in mere matters of law, but as to principles of duty, in discharging acts of common justice to his fellow-men, he can never err so long as he follows conscience as his guide, and suffers justice to be the only object which he has in view.

How far Judge Chase has governed himself by this great, unerring rule of human action, it is your province to determine. How far he has excused himself by his answer and the arguments of his counsel, I shall now beg leave to examine, premising at the same time that it is my intention to confine myself to the first article.

It has been alleged by the counsel for the accused, that my honorable colleagues have argued this case upon the articles and not upon the evidence; and this allegation contains an admission, that if the articles are proved, the guilt of the party is established. It shall be my endeavor to show that there is no material variance between the charges as laid in the articles, and the evidence brought to support them; but that they are amply and fully proved by the very best testimony which could be adduced.

One of the learned counsel in commenting upon the first article, declared that he discovered but a single truth in it, which was, that the judge had formed and reduced to writing an opinion upon the law; and that gentleman, as well as the Attorney General of Maryland, labored with great zeal and with much display of talent, to convince the Senate that there could be nothing wrong in this. Unfortunately for these learned gentlemen, even that truth is not to be found in it, for by recurring to the article it will be found that the judge is not charged for having formed an opinion, or for having reduced that opinion to writing, but for "having delivered an opinion in writing 'on the question of law, on the construction of 'which the defence of the accused materially depended, tending to prejudice the minds of the 'jury against the prisoner before counsel had been 'heard in his defence."

In this we find no charge against him for having formed an opinion, or for having reduced it to writing, and certainly the learned counsel might have spared themselves the trouble of proving what I am sure every member of the Court was fully convinced of before, that there was no impropriety in a judge's forming an opinion on any subject whatever, whether legal or philosophical. It is not, however, unusual for skilful advocates to attempt to draw the attention from the material points in dispute, for the purpose of fixing it on others of little or no importance. Such has been the course pursued by our adversaries. But, Mr. President, the real charge is, that Samuel Chase did, upon the trial of John Fries for treason, endeavor to prejudice the minds of the jury against him, by delivering an opinion to them upon the law before his counsel were heard; and this too in a case of life and death, where the jury had an ample, uncontrolable right, to decide as well the law as the fact. It is the right and duty of judges to inform their minds upon all questions of law whatsoever, but it is an unwarrantable proceeding, it is an unauthorized assumption of power in them, to deliver that opinion to the jury in a criminal cause before the jury is sworn, and before the counsel of the prisoner have been heard in his defence.

I did not expect to hear the fact denied by the counsel, but I did expect to hear it would be admitted, and attempted to be justified. This, however, has not been done; and they have pretended to deny the fact by insisting on an impossibility, I had almost said an absurdity. They have declared that Judge Chase did not make the opinion known, but that it became public by what they call the warm and improper conduct of Mr. Lewis. Sir, it is impossible. What are the facts, as proved even by their own witnesses? That Judge Chase handed the written opinion down to the bar. That it was put into the hands of Mr. Lewis, who, without reading it, immediately and disdainfully threw it from him, declaring that "his hand should never be tainted by receiving a prejudged opinion in any case." How then, I ask, was it made known by Mr. Lewis? He refused to read it, and threw it from him with the correct feeling and indignation naturally arising from a high sense of the injury done to his client. No, sir, it was made public by Judge Chase, as I will presently prove beyond the possibility of doubt, in the hearing of the whole panel of jurors. But permit me here to meet one of the honorable counsel (Mr. Harper) upon that ground, to which he defied my friend who first opened this cause, (Mr. Randolph.) The learned counsel avails himself, he says, of the difference between a general opinion and a direct application of the law to a particular case, and insists that Judge Chase's was nothing more than an opinion upon the law generally. Here I meet him, and if I do not prove that the judge delivered the opinion; that he applied it in the most direct terms to Fries's case; that he knew there was no controversy about the facts, and of course that the defence must rest upon the construction which the

jury would give to the Constitutional definition of treason; that he publicly pronounced the opinion so as to make an impression not only upon the jury, but upon the bystanders: If I do not prove all this, then I will agree to surrender this article, and indeed the whole impeachment.

In order to prove this, I might rest satisfied with referring the Senate to the clear and pointed testimony of Mr. Lewis, Mr. Dallas, and Mr. Tilghman. But as Mr. Rawle and Mr. Meredith do not recollect so much as these other gentlemen, and it has therefore been argued that the former must be mistaken, because it is said that their warmth at the moment gave a coloring not warranted by the facts, I shall not rely *solely* on the information derived from them. But I mean to show, that Mr. Lewis and Mr. Dallas are supported in their statement by the judge himself, while Mr. Rawle and Mr. Meredith are pointedly contradicted by him. In truth, sir, it would seem as if the counsel for the accused had entirely forgotten that he had ever filed an answer, or they had never read it. We allege that the judge delivered the opinion, and that he applied it directly to Fries's case in the hearing of the jury; they deny this. We have proved it by Mr. Lewis and Mr. Dallas, they rely on Mr. Rawle and Mr. Meredith who do not recollect it. Let us hear the judge himself. In the 14th page of the answer the judge says:

"It was for these reasons that on the 22d of April, 1800, (acknowledged by all to be the first day of this memorable transaction.) when the said John Fries was brought into court, and placed in the prisoner's box for trial, but before the jury was empanelled to try him, this respondent informed the above mentioned William Lewis, one of his counsel, the aforesaid Alexander James Dallas not being then in court, that the court had deliberately considered the indictment against John Fries for treason, and the three overt acts of treason stated therein: that the crime of treason was defined by the Constitution of the United States: that as the Federal Legislature had the power to make, alter or repeal laws, so the Judiciary only had the power to declare, expound and interpret the Constitution and laws of the United States."

Here then we find the attention of the counsel and of everybody else, called in open court to the case of John Fries, and all the witnesses agree, that the jury though not then sworn, were in the box for that purpose, as might naturally be supposed when the prisoner was brought in for trial. We find too that the court had deliberately considered the indictment and the three overt acts of treason charged in it. Now let us see what the result of that consideration was: in the 15th page of the answer the judge proceeds with the statement then made by him from the bench, in which he declared, "that the question, what acts amounted to treason, was a question of law, and had been 'decided by Judges Paterson and Peters in the 'cases of Vigol and Mitchell, and by Judges Iredell 'and Peters in the case of John Fries, the then 'prisoner at the bar, in April 1799. That Judge 'Peters remained of the same opinion which he 'had twice before delivered, and he, this respondent, on long and great consideration, concurred 'in the opinion of Judges Paterson, Iredell, and 'Peters."*

What opinion was it that Judge Iredell and Peters had before given, and in which Judge Chase then publicly declared that he concurred? Why, that the overt acts charged in the indictment against Fries did amount to treason, for upon those very overt acts, the judge himself admits, Fries had before been tried in April, 1799, when these same acts were decided by Judges Iredell and Peters to amount to treason, and in this opinion Judge Chase then declared that he himself concurred. Here then was a full expression of the opinion. Here it was publicly pronounced in the hearing of the jury, in the face of the prisoner, before his counsel were heard in his defence, and so eager was the judge to make it known that he could not even wait until the jury was sworn. Here too was a direct application of the law to the case of John Fries, then about to be tried for treason, by which application of the law, the fate of the prisoner was fixed, and all hope of life entirely cut off.

But gentlemen say that no opinion was given as to facts. True, sir, for he perfectly knew that there was no controversy about the facts; these were all admitted. And because he knew this, his offence was the greater; for when he was convinced the facts were undisputed, he placed the whole case beyond the reach of hope, by pronouncing the law, before the jury was sworn. That he did know there was no dispute about the facts is proved in the 12th page of his answer, in which he says, "it was not suggested or *understood* that any new evidence was to be offered," and one of his counsel, the Attorney General of Maryland, has said, that the judge had the use of Mr. Rawle's and Mr. Peters's notes of the former trial. From these notes, and from his conversation with these gentlemen, he became perfectly acquainted with the facts in the case. Knowing them to be undisputed, he resolved to seal the doom of the wretched prisoner, by publicly pronouncing his opinion before the trial commenced, in the presence of the jury, thereby attempting to prejudice their minds against anything which might afterwards be urged in his favor.

The learned counsel for the judge having denied that the opinion was publicly delivered, they endeavor to give a coloring to the transaction, by alleging that it was delivered to Mr. Lewis only, as counsel for the prisoner; and this they, as well as their client, pretend was intended for the benefit of Fries, in order that himself and his friends might see the necessity of procuring new testimony. This is the excuse offered by the judge in the 12th page of his answer, and it has been reiterated over and over again, by his counsel at the bar. Let us examine it, and determine for ourselves, whether

*Fries had been tried in April, 1799, for the same offences, and had, under the direction of the court, been convicted of treason; but this last was a new trial, granted in consequence of supposed prejudice in some of the jurors who sat on the former trial.

this could be the motive. In the 10th page of the answer, it is stated, that the indictment against Fries was found by the grand jury, on the 16th day of April, 1800, and "that his trial was appointed to be had on the 22d day of the same month." Thus six days intervened between that on which the indictment was found, and that fixed for the trial, agreeably to the judge's own statement. The court was in session every day, and we may fairly presume that Mr. Lewis and Mr. Dallas, both being extensively engaged in business, attended constantly. If this great favor to Fries was intended, and there was a wish to apprize his counsel of the opinion of the court, in order that new testimony might be procured, one would naturally suppose, that some opportunity of conversing with the counsel *privately*, might have been embraced, and this special favor might have been thus conferred. But what is the fact? This information was never given until the day arrived which was fixed for the trial, nor until after the prisoner was brought to the bar. Was this a time to procure new testimony? Did it afford any opportunity to send fifty or sixty miles into Northampton county, for the purpose of bringing other witnesses? Could this possibly be the motive which actuated the judge? Surely not—or why defer it to the very latest moment preceding the trial? Why deliver the opinion *publicly*, not only in the hearing of the counsel, but of the jury, and every other person present? Sir, I am persuaded the Court will agree with me, that the reason assigned is, as it has been stated in the replication, an unworthy evasion.

The counsel (Mr. Hopkinson) who first addressed the court in favor of the accused, viewed this part of the subject in a different light. He very ingeniously offered another excuse. He considered it a great favor done to the prisoner, not because it was intended to give him an opportunity of introducing new testimony, but he says the judge declared the opinion of the court, for the purpose of drawing the attention of the counsel to those particular points, which it would be necessary for them to argue, in order that the error of the court might be corrected, if it was an error. This he called a very great advantage, and supposed that counsel always ought to be thankful for it. Such a course may sometimes give advantages, but in my judgment the disadvantages are generally much greater. On that occasion, however, it gave no advantage, and could not be intended to give any. The court knew precisely what ground the counsel meant to take. One of them had been present at Fries's former trial, and we are told that Judge Chase had the benefit of his notes, as well as of those of the District Attorney. He knew therefore perfectly well, that the points intended to be relied on, were precisely those which he had peremptorily decided against them. He knew that there could be no necessity for drawing the attention of counsel to them, for they had been relied on at the former trial. This therefore could not be the motive, and is, like the other, nothing more than an evasion.

Let us see, too, how this reason or excuse will correspond with the principal ground of defence set up by the judge, and very much dwelt on by his advocates. In the twelfth and thirteenth pages of the answer, the judge states that there was more than one hundred civil causes then depending in the court, and he conceived that an early communication of the court's opinion would tend to the saving of time. Now permit me to ask if any time whatever could be saved, if, as the gentleman supposes, it was the intention of the court to draw the minds of the counsel to the particular points stated in the judge's opinion? For it must be conceded, that if the counsel were to attempt to convince the court that their opinion was erroneous, no time whatever could be saved, as the very attempt itself would tend to the consumption of that time which the judge deemed so precious.

I have therefore proved that the opinion was publicly delivered; that it was applied by the judge in direct terms to the case of Fries, in the presence and hearing of the jury who were to decide upon his life and death, thus tending to prejudice their minds against him; and I flatter myself I have also proved the entire futility of those excuses which have been set up for him, as well by himself as by his counsel.

Much has been said with a view to convince the court that the opinion thus delivered was a correct one, and it has therefore been argued that his conduct was perfectly justifiable. For my own part, I consider it totally immaterial in the present case whether the doctrine of treason, as laid down by the judge, was correct or not; for even if it were correct, the time and manner of delivering it, and the persons to whom it was delivered, form the substance of the charge against him. It is a misdemeanor, a high misdemeanor in a judge, wantonly to give an opinion upon any case which is to come before him, previously to the swearing of the jury, and the offence is made much greater by the opinion being publicly declared in the presence of the jury, who ought to come to the trial of every cause with minds wholly free from prepossession against either party.

Although the judge has said in his answer, that no gentleman of established reputation for legal knowledge would deliberately give a contrary opinion, yet I have not the slightest apprehension that any little reputation which I may possess, can in any manner be affected by my expressing, as I now do, my entire conviction that the doctrine of treason, as laid down in Fries's case, is wholly repugnant to the spirit and meaning of the Constitution. It is not my intention at this time to enter into an argument to prove this, for I have before said, that I consider it quite immaterial in the present discussion; but I will offer some few observations, to demonstrate to the Senate that there was nothing very unreasonable in the wish expressed by Mr. Lewis and Mr. Dallas, to show that the Constitution was susceptible of another construction.

The Constitution declares that "treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." John Fries was indicted for *levying war* against the United States, and the facts I believe were, that he, with some others, did, in a forcible manner, rescue some prisoners from the marshal of Pennsylvania. This was called a resistance to a law of the United States, and, by construction, was determined at the former trial to be the treason of levying war. It was in opposition to this construction of the Constitution that Mr. Lewis and Mr. Dallas wished to be heard. It was certainly not a very extravagant wish on their part, for it ought to be recollected that we are a young nation, and it is deeply interesting to us all that the Constitution of the United States should not receive a construction unwarranted by its letter. After the decisions had taken place in the courts upon the Western insurrection, (I mean in the cases of Vigol and Mitchel,) Congress had passed an act declaring that to resist a law of the United States should be deemed a high misdemeanor, punishable by fine and imprisonment; and they had before provided, by the act of 1789, that to rescue prisoners from the custody of the marshal should also be punishable by fine and imprisonment. Mr. Lewis and Mr. Dallas were desirous of showing that Fries's case came within the provisions of these laws, and that his offence was not of such a nature as to forfeit his life. They also wished to have an opportunity of proving that the terms *levying war* ought not to receive the same construction here as in England. To convince the Senate that they were not singular in their ideas, and that the construction given by the court has not been unanimously assented to, I shall take the liberty of referring to an author of merited reputation, to whom I believe our adversaries will not refuse their respect. Judge Tucker of Virginia, in his valuable edition of Blackstone's Commentaries, in the appendix to the fourth volume, under the title of *Treason*, after reciting that part of the Constitution relating to the subject, observes:

"It is probable that no part of the Constitution of the United States was supposed to be less susceptible of various interpretations than that which defines and limits the offence of treason against the United States. The text is short, and until comments upon it appeared, might have been deemed explicit. It is as follows: 'Treason against the United States shall consist only 'in levying war against them, or in adhering to their 'enemies, giving them aid and comfort.'

"From this declaration contained in the Constitution of the United States, the supreme law of the land, and the fountain both of the authority of the Government and of the crime against it, a plain man might draw conclusions very different from the artificial reasoning and subtle refinement of technical men; and seeing that that instrument is to be regarded as the act of the people of the United States, both collectively and individually, it might seem reasonable that the interpretation of nine hundred and ninety-nine plain men, who were parties to it, ought to serve as a guide to the thousandth man, who may happen to be called upon to expound it. But as technical men are not very apt to respect the opinions of such as have not been educated in the same habits with themselves, the probability is, that the opinions of one man in a thousand, or rather in a hundred thousand, will overbalance that of the rest of the community, unless the latter should deem it an object worthy of their attention to express their opinion in some way that may be regarded as obligatory upon the few who dissent from them.

"As new-fangled and artificial treasons have been the great engines by which violent factions in free States have usually wreaked their alternate malignity on each other, the convention have, with great judgment, opposed a barrier to this peculiar danger, by inserting a Constitutional definition of the crime."*

"Judge Wilson, in the first charge which he delivered in the federal circuit court of Pennsylvania, expressed himself thus on the subject: 'It well deserves 'to be remarked, that with regard to treason, a *new* 'and *great* improvement has been introduced into the 'Government of the United States. Under that Government the citizens have not only a legal but a Constitutional *security* against the *extension* of that crime, 'or the imputation of treason. Treasons capricious, 'arbitrary and *constructive* have often been the most tremendous engines of *despotic* or *Legislative* tyranny.'†

"Judge Iredell, on a similar occasion in South Carolina, observes: "Treasons consist in *two* articles *only*; 'levying war against the United States, or adhering to 'their enemies, giving them aid and comfort. The *plain* 'definition of this crime was justly deemed of such 'moment to the liberties of the people, that it was 'made a part of the Constitution itself. None can so 'highly prize the importance of this provision as those 'who are best acquainted with the *abuses* which have 'been practised in other countries in *prosecutions* for 'this offence. *No man of humanity can read them* 'without the highest indignation; nor in partieular, 'can they be read by any citizen of America, without 'emotions of gratitude for the much happier situation 'of his own country.‡

"Such probably were the opinions of the citizens of America in general, when they adopted the Constitution; but *technical* men have since made some inferences and deductions from the use of some words in that definition, which are to be found in the statute of treasons in England,‖ from whence they conclude, that the decisions made upon that act in England, during a period of near five hundred years, however contradictory or inconsistent they may be with the text or with each other, have been *adopted* also by the Constitution, 'as a *direction* whereby the *courts* are to *understand* the *application* of that act.'§ And it has even been advanced on a very important occasion, that what in England is called *constructive* levying of war, in this country must be called *direct* levying of war.¶

"It is on the authority of a passage in the Mirror,

* 2 Federalist, No. 43.
† Carey's American Museum, Vol. 7, page 40.
‡ Idem, Vol. XII, part 2, pa. 36.
‖ 25, Edw. III.
§ Trial of Fries, p. 123 and 168.
¶ The passage stands thus. "If you expunge what is a direct levying of war, there can no such thing as treason be found; either the law is wrong, or the arguments used on the other side. Gentlemen, the law is established, but the arguments vanish like vapor before the morning sun; what then in England is called *constructive* levying of war, in this country must be called *direct* levying of war." *Trial of Fries*, p. 161. I should incline to suspect the reporter of some mistake

that Sir Edward Coke lays it down,* that levying war against the King was treason by the common law. We find then that the common law sense of this obscure phrase, as Sir Matthew Hale calls it†, was *the bringing in or raising an army.* And in this sense it is probable that every man in America [with the exception perhaps of half a dozen lawyers] understood the term *levying* war, when the Constitution was adopted: and in this sense it seems to be still understood by some gentlemen, whose professional talents are both an honor and an ornament to their country‡."

Such we find are the opinions of Judge Tucker, an able and upright lawyer, who thinks that the Constitution ought to be construed agreeably to the plain import of its language, and ought not to be involved in technical abstruseness. In that series of publications entitled the Federalist, written at the commencement of the present Government, by some of the ablest men in this nation, for the purpose of defending the Constitution, it is matter of boast, that treason was fully defined, and not left to wild and arbitrary construction. But what avails the definition, if the constructive treasons of England are to be drawn in as precedents for us?

Sir Matthew Hale, than whom an abler, or a better judge never graced the English bench, tells us that the words *levying war* were formerly construed to mean "the raising an armed force or bringing in an army," and surely such to a man of plain sound sense, would appear to be their true meaning under our Constitution. He says that the first instance which he finds of constructive treasons, was in the reign of Henry the Eighth, when certain persons who had combined for the purpose of raising servants' wages, were adjudged to be guilty of levying war; and the next was in the reign of Elizabeth. Thus, from these two decisions constructive treasons became fashionable, and scarcely anything could be done, but arbitrary judges were found to construe it into treason. All was either levying war or conspiring against the life of the King, and executions and attainders innumerable followed. Every new case formed a new precedent, and strengthened the old ones. In the reign of Charles the Second, a number of apprentices were indicted for treason of levying war, and this levying of war consisted in their having pulled down a certain description of houses. Hale was then one of the judges, and although these constructive treasons had been fashionable for a hundred and fifty years, he doubted. His brethren, however, overruled him, and these decisions in the worst of times have governed England since, and are now to be introduced here to govern us. Hale's reasons for differing with the other judges are stated in his Pleas of the Crown and more at large by Keelyng in his reports. Although he lived in bad times, he wished to make them better, by resisting the torrent of oppression which threatened to overwhelm the subject. I am sorry to add that since the Revolution of 1688, the courts of England have thought themselves bound by those prior determinations, and decide accordingly. But we are not bound by them, and I do trust that they will be rejected. It is impossible to say to what lengths we are to be carried, but I cannot help feeling some alarm when I find it declared by Mr. Rawle, the then district attorney, upon Fries's trial, that "what in England is called *constructive* levying of war, must in this country be called *direct* levying of war." (See Fries's trial, p. 161.)

I before stated that I did not mean to enter into an argument against the correctness of the court's opinion; nor have I done so, but have offered these remarks to show that it was not unreasonable in Mr. Lewis and Mr. Dallas to wish that another construction of the Constitution might be received. The counsel for Judge Chase seem to think it monstrous that they should have wished to argue the point after the law had been settled by three former decisions, which had taken place in the course of four years. Let it be remembered that Sir Matthew Hale doubted, after the lapse of one hundred and fifty years from the first of these constructive treasons, and after, for aught I know, one hundred and fifty cases had been decided. Mr. President, far from thinking their conduct on that occasion extraordinary, I, as a free man of America, most cheerfully accord them my thanks for the stand they made; and I do hope and trust, that if ever a similar case should occur, in which the same doctrine of constructive treasons shall be urged to a jury, men like Mr. Lewis and Mr. Dallas will be found, men of exalted talents and extensive learning, who will be bold enough to assert the rights of the citizen, and save the Constitution of their country from destruction.

Another justification of a peculiar nature is set up in defence of Judge Chase, by a statement made in Keelyng's Reports. It is there said that "after the *happy* restoration of King Charles the Second, Sir Orlando Bridgman, chief justice of the King's Bench, and some six or eight others, judges, prosecutors, and King's solicitors, assembled for the purpose of determining in what manner the *regicides* should be tried, and they settled many points which it was supposed would occur upon the trials." This, sir, is an unfortunate period to refer to for justification of the conduct of judges in our day. Never was there a moment of such fawning servility; never was there a period of such unbounded licentiousness. The hope of reward or the fear of punishment brought almost every man crouching at the foot-stool of the throne, and all united in singing hosannas to the King, and crying aloud for the crucifixion of the miserable regicides. This conspiracy (which has been quoted) against the wretched victims whose sacrifice was resolved on, was headed by that most servile of all servile tools, Sir Orlando Bridgman. His character and those of his brother judges who conspired with him, may be recollected from the charge which he gave to the grand

in this passage, but it would seem that it had been submitted to the inspection of the counsel to whom it is ascribed.

* 3 Inst. pa. 9.
† 1 Hale's Hist. P. C. 143.
‡ Trial of Fries, 92, 99, 139, &c.

jury on that occasion. It will be found in the fourth volume of State Trials, and it will there be seen how flamingly he talked of the *divine right of Kings*, whom he called *God's vicegerents* on earth; their persons he said were too *sacred* for their conduct to be inquired into: *they held their power from God, and were accountable to him alone: it was treason in their subjects to inquire into the propriety of what they did;* with much more of the same cast. These are the times, these the men, and this is the conduct now introduced for the justification of Judge Chase. If they will afford him a justification he is welcome to it for me. They were woful times indeed, one would have thought the Parliament which the King found in session upon his return, was submissive enough; but he was not satisfied, and finding the whole nation ready to bow at his nod, he ordered a new one elected, and they proved so compliant to all his wishes, that he continued them for eighteen years. This sufficiently proves the servile spirit of those whom the King thought proper to employ on this noted occasion, and it is not much to Mr. Keelyng's honor that he was one of them. The points which they did settle were of an extraordinary nature, and one of them was read a few days since by one of the counsel (Mr. Key) to show that Basset was a good juror in Callender's trial.

If, however, this famous precedent had been made in the best of times, it does not apply to the present case. For these judges, bad as they were, yet had modesty enough to keep their opinions to themselves, till after the trials had commenced, and did not deliver them until the occasions arose which called for them. Judge Chase, we have fully proved, delivered his opinion before hand, publicly, and in the hearing of the jury, so that the authority of Mr. Justice Keelyng and Sir Orlando Bridgman does not justify him. He outstripped even them.

Having thus, as I conceive, fully established the first specification contained in this article, and having answered the only colourable excuses advanced in favor of the judge, I shall proceed to the second specification. This is a charge against him for "restricting Fries's counsel from recurring to such English authorities as they believed apposite, and from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client."

The restriction is in some sort admitted, for we are told that the counsel on both sides were restricted, and Mr. Rawle's testimony is relied on to support their allegation. If the counsel on both sides were restricted, it was a restriction of a most curious nature, as far as it related to the district attorney, Mr. Rawle; for the only restriction imposed on him was that he should not defend Fries, which his duty would not permit, nor perhaps his inclination. It is in vain therefore to talk about both being restricted, when the opinion of the court was all on one side; and it was well ascertained by the course taken by Mr. Rawle on the former trial, that he had no disposition to controvert the doctrine of treason, as laid down by the court.

That the counsel of Fries were prohibited from recurring to such English authorities, as they believed apposite, and from citing certain statutes of the United States, I consider entirely proved by the testimony of Mr. Lewis and Mr. Dallas. Without meaning to impeach Mr. Rawle's veracity, or that of any other person, I contend that Mr. Lewis and Mr. Dallas are entitled to more credit than he is, because he took no notes of the first day's proceedings, and is contradicted in many very material points by the admissions of the judge himself. Mr. Lewis and Mr. Dallas gave their testimony a year ago; they have considered it at the bar now, and are supported by the judge in his answer, as far as he thought it prudent to go. That Mr. Rawle is contradicted, and Mr. Lewis and Mr. Dallas supported by the judge in many material points, I will proceed to show.

Mr. Rawle says that the judge, when he handed the written opinion down, declared the counsel on each side were to have a copy, and another copy was to be *taken out by the jury.* Mr. Lewis states this materially different, for he says the judge declared that a copy *was to be delivered to the jury as soon as the case on the part of the prosecution was opened or gone through.* Here these gentlemen differ. Let us see what the judge says. In the 15th page of the answer he says he stated that "three copies were to be made 'out, one to be delivered to the attorney of the 'district, one to the counsel of the prisoner, and 'one to the petit jury, after they should have been 'empanelled and heard the indictment read to 'them by the clerk, and after the district attorney 'should have stated to them the law on the overt 'acts in the indictment, as it appeared to him." Thus Mr. Lewis and Mr. Dallas are supported, and Mr. Rawle pointedly contradicted.

Again, Lewis and Dallas state a long conversation, not of a very mild nature on the part of Lewis, which took place between him and the judge on the first day, in which the contents of the written paper were very fully disclosed by the judge. Mr. Rawle recollects nothing of this, but expressly says the court when they handed down the papers, only stated that they had thought proper to draw up their sentiments of the law, likely to arise in the cases of treason, in order that they might be perfectly understood, which would tend to save time. He does not recollect that anything more was publicly said about it that day. In the 14th and 15th pages of the answer, the judge states a long conversation that took place between himself, Mr. Lewis, and Mr. Dallas, and in this supports the testimony of these two gentlemen, while he contradicts that of Mr. Rawle.

Another fact in which Mr. Rawle differs from Mr. Lewis and Mr. Dallas is as to John Fries being in court that day. Mr. Rawle does not recollect that he was; Mr. Lewis swears that if he was not in the prisoner's box at the moment the paper was handed down, he was placed there

a few minutes after, and Judge Chase, in the 14th page of his answer expressly states, that Fries was placed in the prisoner's box, before any of the events occured which form the subject of inquiry to day.

When Mr. Rawle's memory is so defective as to these three important facts, in the statement of which Mr. Lewis and Mr. Dallas are so strongly supported by the judge himself, I ask if their testimony ought not to have infinitely more weight than his? In noticing these contradictions, I have not relied on my own notes of the evidence, or on my own memory, but have referred to the three printed affidavits of Mr. Rawle, Mr. Lewis, and Mr. Dallas, made out by themselves last year, and corroborated by the oral testimony which each has delivered in at the bar.

I must therefore be permitted to insist that Fries's counsel were prohibited from recurring to English authorities, and from citing certain statutes of the United States. It is fully proved by Mr. Lewis, and corroborated by Mr. Dallas. The latter was not in court when the conversation took place; but coming in immediately after, he was informed of it by Mr. Lewis, and then stated to the court what Mr. Lewis had told him. The court did not deny it, and certainly it is to be presumed, if Mr. Lewis had made an erroneous statement of facts to Mr. Dallas, and they had been repeated by Mr. Dallas, the court would have contradicted them. This was not done, and both these gentlemen now swear that they were prohibited.

Let us inquire why there was a wish on the part of the prisoner's counsel to recur to English authorities. On the former trial of Fries, the court had grounded their opinion upon the construction which had been given in England to the words *levying war*. The district attorney and his assistant had relied on the same authorities. The counsel for the prisoner were desirous of showing, as they themselves have stated, that although these interpretative treasons had been admitted in England since the Revolution of 1688, yet that they were founded on precedents made during arbitrary reigns, by which the courts in England afterwards conceived themselves bound. I have already shown to you from Hale's Pleas of the Crown, what was held to be the plain and simple meaning of the words *levying war*, antecedent to the reign of Henry VIII., when these interpretative treasons were first introduced, and it cannot be doubted that the object of Fries's counsel was to convince the jury that the Constitution of the United States ought to be construed agreeably to the plain import of its own language, without being subjected to those wild and arbitrary constructions, which had originated in the worst of times for the worst of purposes. The reason why they wished to cite the statutes of the United States I have before mentioned to be, to show that the offences charged against Fries were of such a nature as to subject him to fine and imprisonment only, and not to a forfeiture of his life.

But, sir, a doctrine as novel to me as any I have lately heard, has been advanced on this occasion. A distinction is attempted to be taken between the *right* of the jury to decide the law as well as the fact, and their *power* to do so. I have always thought that in criminal cases the jury had both the right and the power. This is the first time I have ever heard it denied, and I trust it will be the last. This right is one of the most valuable features in the trial by jury, and if a jury should be so servile on a question of life and death, to surrender their own opinions to those of the court, they would be unworthy of the name of freemen. Although the *right* is denied, the *power* is admitted. I contend, therefore, that the power includes the right. For if they have been suffered to exercise this power for more than an hundred years, without being restricted by law, it surely cannot be questioned that they have acquired the right. The right to decide both the law and the fact is admitted in England; it has been acknowledged there for more than two hundred years, although I believe an instance or two may be found in the time of the noted *Jeffries*, when juries were attainted for daring to exercise this right. The power to attaint however has been long since abolished, and no instance can be produced since the Revolution of 1688, in which a verdict of acquittal has been ever set aside, because the jury have ventured to decide against the opinion of the court. The judge in his answer admits the *right* of the jury to decide both the law and the fact, and if he had not, but had taken the ground contended for by his counsel, I should have considered it a strong evidence of his guilt under the third specification.

The third and last specification charges the judge with "debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law as well as on the fact, which was to determine his guilt or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument and determine upon the question of law as well as the question of fact, involved in the verdict which they were required to give."

We do not contend that the counsel were debarred from addressing the jury by the interference of sheriffs and constables, for it is not necessary to prove the actual exercise of force. But we do allege, and we have proved it by Mr. Lewis and Mr. Dallas, that the judge declared on the first day, that they must address the court and not the jury. I have before shown that these gentlemen are entitled to more credit than either Mr. Rawle, Mr. Meredith, or Mr. Tilghman, for their testimony is better supported than that of the others by the answer of the judge. It ought to be remembered, too, that they were more particularly interested in the transaction than the rest of the gentlemen, and therefore the probability is, that the facts were more strongly impressed on their minds.

An attempt however is made to shelter the judge from this part of the accusation, by saying that he declared counsel would be heard although this

opinion was given. Sir, this is another evasion. The opinion itself carries with it internal, uncontrovertible evidence of the determination of the court that the counsel should not address the jury. What is the principal ground of the defence? what is the leading reason urged for giving this extraordinary opinion before the jury was sworn? It was, as the judge says, and as his counsel have argued, to save time. They state that there were more than one hundred civil causes then depending, that the delay of business in Pennsylvania had been long a subject of complaint, and the judge was anxious to make Fries's trial a short one, in order that they might have time to proceed with the other business. Now suffer me to inquire how time was to be saved; how the trial of Fries was to be shortened, if his counsel were to be allowed to address the jury on the law which the court had already decided? Was not the opinion of the court given for the express purpose of preventing them from addressing the jury; or, if not for this, let me ask for what purpose it was given? Was it to prejudice the minds of the jury; to close their ears and their understandings against any arguments which might be offered them? Gentlemen say no. Was it to save time? This was impossible, because the time was still to be occupied by the counsel being permitted to address the jury. Why then, let me ask, was the opinion given? The answer is ready. It was intended to produce both these effects. The minds of the jury were to be preoccupied by the imposing authority of the court, and in this manner it was expected to deter the counsel from addressing them on the law. Nothing, therefore, can be clearer, than that the counsel were prevented from addressing the jury, and that the judge "*endeavored* (in the language of the article) to wrest from the jury their right to hear argument, and determine upon the question of law." But it is said that the right of the jury to decide the law does not give them a dispensing power over the law, and that therefore they are bound by the opinion of the court. Nor does the right of the *court* to decide the law give *them* a dispensing power over the law. The jury have a right to decide the law, and are not bound by the opinion of the court. In order to enable them to decide correctly they have a right to hear argument, and any attempt to prevent this, is an attempt to wrest from them their right to decide the law, and is a high misdemeanor.

We are told, however, that if anything wrong was done on the first day, ample atonement was made on the second. It is true that the judge exhibited some appearance of a wish that the counsel would proceed on the second day, but Mr. Lewis well remarked, that although the papers were withdrawn, the impression which had been made on the minds of the jurors could not be removed. What sort of an atonement, too, was this? It carried insult with it; and the language in which it was made had a still greater tendency to strengthen the impression made the day before. The counsel were publicly informed they might proceed as they pleased, *but it must be at the hazard of their characters*, under the direction of the court. Is there a man of reputation on earth, possessed of the smallest spark of feeling, that would consent to disgrace himself by addressing a jury under such circumstances? This alone, if nothing else had taken place, was sufficient to drive them from the defence of their client; and if they thought that their abandoning him might eventually save his life, they were fully justified in doing so.

The learned advocates for the judge have talked highly of the independence of the judiciary, and have asked what inducements any judge could have to act as we have charged Judge Chase with acting. Are there then no inducements for a judge to swerve from his duty? Has he no feelings to gratify, and is it impossible for him to become a partisan? Does his character as a judge divest him of his ambition as a man? Is he so incorruptible that temptation cannot assail him? Look through the annals of other nations—read the history of England for the last forty years. Judicial independence has been for a long time as well secured there as here; and yet how many instances shall we find in that country of prosecutions in which the feelings of the Ministry had been engaged, and in which their influence over the judges has been too flagrant to be mistaken? In Ireland, miserable Ireland, a still more gloomy prospect presents itself. They, too, have boasted an independent judiciary; but an overruling influence has crumbled it into ruins. The demon of destruction has entered their courts of justice, and spread desolation over the land. Execution has followed execution, until the oppressed, degraded and insulted nation has been made to tremble through every nerve, and to bleed at every pore. Let us then be warned by the fate of Ireland. In State prosecutions her judges look to the Castle; although they cannot be put down, they may be elevated. Some of our judges have been elevated to places of high political importance; splendid embassies have been given to them. I will not say that they were given or accepted with improper views; but they have been given, and surely they hold out inducement enough for a judge to bend to the ruling party. It is our duty to prevent party spirit from entering into our courts of justice. Let us nip the evil in the bud, or it may grow to an enormous tree, bearing destruction upon every branch. You have now an opportunity of doing it, and I trust you will not suffer it to escape you. I therefore hope that you will not only remove Judge Chase from the high office which he now fills, but that by your judgment you will forever hereafter disqualify him from holding any office of profit or trust under the Government of the United States.

I have thus, Mr. President, gone through the first article of the impeachment, and will not encroach upon the others; their elucidation I shall leave to my friends, who will follow me. A sense of public duty alone led to the present prosecution, and having discharged this, we shall have nothing to reproach ourselves with, let your decision be what it may.

Mr. Rodney.—Mr. President, and gentlemen of the Senate: The present trial exhibits a spectacle truly solemn and impressive. A man who holds one of the highest judicial offices under the Government who, from the period of the Revolution, has filled many of the most important public situations, and whose hairs have been bleached in the service of his country, is charged before this dignified tribunal, by the Representatives of the American people, with the commission of acts in violation of his duty as a judge, and of the laws and Constitution of the land.

On one hand, the character of an aged and respectable individual, which may be dearer to him than the small remnant of his life, is involved in your decision; on the other, the most precious rights of free citizens, and the dearest interests of society.

The mind which could contemplate, unmoved, such a scene, cannot feel for the welfare of the people, or the honor of the nation, and must be equally insensible to the finer sympathies of life and the practice of its charities and affections.

The public anxiety manifested by this deeply interesting trial must be evident to all—a trial of the first importance, because of the first impression—a trial not confined to a single act in the conduct of the accused, but embracing a variety of transactions at different periods of his life—a trial which departs from the ordinary mode of decision, whose novelty and magnitude have excited so much interest and attention that it seems to have superseded for the moment, not only every other grave object or pursuit, but every other fashionable amusement or dissipation.

The task of prosecuting is always very unpleasant, and to me extremely painful; but my rule has ever been not to suffer private considerations or personal feelings to stand in the way of a firm and independent discharge of public duty.

To this exalted tribunal I look with confidence for a display of that dignified impartiality, which will do credit to their elevated situation, and reflect honor on their country. You will raise yourselves, I am convinced, above the common level of human prejudices, personal or political, and will suffer no considerations but those which are perfectly correct to be blended with your inquiries or mingled with your decisions.

Party, it is true, is a spirit of so subtle a nature as to diffuse itself almost imperceptibly over the human mind; it frequently pervades the system without being felt, and sometimes warps the judgment when least suspected. Against the influence of this spirit I need scarcely caution the judges whom I have the honor to address. It cannot approach within the pale of this court or enter their hallowed walls.

I have marked, Mr. President, in the questions which you have so correctly put to the witnesses in the course of their examination, that singleness of eye, which looks to the discovery of truth alone, without reference to the party whose case it may affect; whilst your conduct in maintaining that order and decorum suitable to the solemnity of the occasion has exhibited an example worthy of imitation.

I have observed, with heartfelt pleasure and honest pride, the unwearied and impartial attention paid by the members of this court during the progress of this momentous cause. To my mind it presages a decision worthy of themselves and serviceable to their country, and is a sure pledge that their determination will be honest, upright, and independent.

If, after a fair and full inquiry into the facts, illustrated by the arguments for and against the accused, and a careful examination of the law, commented on by those whose duty it is to support the impeachment, and those who are opposed to it, the Senate shall be of opinion that the charges have not been substantiated, and pronounce a verdict of acquittal, believe me, sir, I, as a citizen faithful, obedient, and affectionate to the laws of my country, shall most cheerfully acquiesce in the decision. But I do confidently trust that it will not take place, on the principles or the precedent established in the case of Warren Hastings, the Governor of Bengal, that plunderer of India, that destroyer of the people of Asia, that devastator of the East, whose crimes were without number, and whose enormities exceeded calculation. What fields have been dyed, what streams have been tinged with the innocent blood of victims sacrificed on the altar of his avarice or his ambition! An obligation however solemn, a treaty however sacred, interposed but a weak and feeble barrier to the views of his personal or political aggrandizement. Even a *zenana*, the sacred retreat of women, holy and consecrated to the fairest work of the creation, by the religious customs of that country, has been violated whenever the silver and the gold, the jewels and the diamonds, were sufficient objects to attract his attention or gratify his rapacity.

Before I proceed to the discussion of those facts and principles more immediately connected with the subject now under investigation, permit me to advert for a few moments to the manner in which the defence has been conducted. I shall also claim your indulgence for a small portion of time, whilst I reply (I fear in a desultory way) to some remarks, and notice some matter which has been blended with this case, no doubt with the view of giving it a complexion favorable to the defence, but which I humbly conceive to be rather foreign and extraneous.

The fascinating voice of eloquence and the deluding tongue of ingenuity, though excited with great address, will produce no other effect before this tribunal than to excite that degree of pleasure which we all feel on the display of professional talents. It shall be my duty (because I believe it to be not only the duty but the interest of every advocate to have a decision on argument and argument alone) to avoid everything like declamation, and to address you in the sober narrative of fact, and the temperate language of reason.

The counsel for the aged defendant have explored every avenue to the human heart to awaken

your sensibilities, and have appealed to your passions to enlist them under their banners; at one time attempting to excite your sympathies in favor of their unfortunate client, and at another endeavoring to kindle your resentment against the prosecution. They may, perhaps, have been occasionally in the habit of addressing those with whose feelings they could play as the winds do with the waves; and, animated by the trophies of former victories, they have recurred to the same means of conquest which have before crowned their exertions with success. The judges of this court are no doubt alive to the generous feelings of sympathy and compassion, when an object presents itself calculated to excite them. But even when under the influence of this mysterious power, they will always remember that humanity is the second virtue of courts, justice the first.

We have been more than once solemnly reminded that the decision which you may give will be re-examined by those who succeed you, and that posterity will rejudge the judgment which you may pass at this time. To that impartial tribunal let the appeal be made. I fear that when future annals, faithful to the cause of truth and justice, shall record the patriotism and the virtues of my honorable friend who gave birth to this impeachment, the weeping voice of history will be heard to deplore the oppressive acts and criminal excesses of the judge who, with a boldness and violence unparalleled in this country, seems to have trampled under foot, as if conscious of impunity, the established principles of law, and the rules of decency and decorum.

The defendant himself, in his answer, looking beyond the transient scenes of this world, has crossed the stream of time, and carried us, in idea, on the ocean of eternity, to the footstool of that throne which is washed by its waves. It is true ere long we must all embark on that voyage from which no mariner returns; and be borne with myriads on the same swell to the judgment seat, when our fates will be decided for eternity. On that awful day, I trust we shall appear with the hopes and the consolations which beam upon the soul from the everlasting light of Divine Revelation; that, whatever frail passages may chequer the volumes of our lives, though the conduct of the defendant towards the unfortunate, unprotected, and persecuted Fries may appear *scored matters* in the book which records his deeds, infinite mercy will obscure them from the eyes of infinite purity, and a sincere repentance blot them out forever.

It struck me with some degree of surprise, when I heard the language of complaint from my learned friend, (Mr. Hopkinson,) who summed up the evidence on the first article in favor of the accused, because this impeachment was not instituted sooner. He seemed to ask with an air of triumph, when did the transactions take place upon which the prosecution is grounded? I answer with confidence they took place at different and distant periods. Some of them as far back as the year 1800, and others but yesterday, as it were. The whole linked together by the spirit of persecution, and forming a chain of offences against the violated laws of the country and the insulted justice of the land, which cannot be broken by testimony or weakened by argument. And yet because the guardians of the people's rights and liberties have submitted to bear with patience the oppressive acts of the defendant, until they could endure them no longer; because considering him clothed beneath the ermine of justice with the common infirmities of man, they have been slow to anger, and have waited for the season of repentance and reformation; the very lenience and forbearance, which they have manifested by their conduct, to the world, are forsooth used as an argument against the present impeachment. With what justice or propriety this Court will determine. Had they, imitating the example of the accused, employed their time in hunting for criminality, and the instant they suspected an offence, a sentence of condemnation succeeded, quick as the thunderbolt pursues the flash, they would have received, I presume, credit for the zeal and promptness which they displayed in the task of prosecution. Let it be remarked that justice is of slow pace, but of certain step, and that the sufferings and the tears of the innocent, however deeply buried, will rise up in judgment to confound the guilty.

The House of Representatives, so far from deserving blame, in my humble opinion, merit commendation for the reluctance with which they proceeded to accusation, and for the care, caution, and dignity which have marked their steps. I have frequently heard an unbecoming zeal reprobated in a prosecutor; but never before did I hear from the lips of a counsel for an offender, a complaint of delay and remissness in charging his client with guilt. What a striking contrast does their conduct furnish, compared with that of the defendant! They betrayed no thirst for prosecution, but an unwillingness to accuse; no eager appetite for conviction, but an anxious desire that impartial justice should take place between the public and an individual, whom irresistible evidence had compelled them to present before the highest judicial authority of the nation. Not, it is true, for the murder of despotic princes whose will was the law, and whose laws perhaps were as sanguinary as those of Draco; nor for the plunder of empires, swayed by an iron sceptre as oppressive as the dominion of Hastings. Far other crimes are laid to his charge. The defendant, a citizen of this free land, sworn to support our mild Constitution and our equal laws, and bound by his oath of office to administer justice impartially, having a perfect knowledge of his duty, (for of ignorance the whole world will aquit him,) stands charged with plundering, in the holy habit of a judge, a jury of his country of their most sacred rights, and injured and insulted freemen of their Constitutional privileges.

He was indeed providentially prevented from imbruing his hands in the blood of poor Fries, but he stands accused of shedding, with unfeeling severity, the life blood of the Constitution itself.

Such are the crimes for which he is arraigned at your bar, and which one of the gentlemen has been pleased to term petty offences. In the dark catalogue of criminal enormities, perhaps few are to be found of a deeper dye. If I were an advocate of the doctrines of constructive and cumulative treasons, of which the learned judge appears to have been a great admirer and a zealous supporter, I would say that he himself was guilty of judicial treason against the Constitution of the country, and majesty of the people.

The independence of the Judiciary, the political tocsin of the day, and *the alarm bell of the night*, has been rung through every change in our ears. They have played upon this cord until its vibrations produce no effect. The sound is rather calculated to stun us into an insensibility against real attacks, for the poor hobby has been literally rode to death. To the rational independence of the Judiciary, I am, and ever have been a firm and uniform friend. But I am no advocate for the inviolability of judges more than of Kings. In this country I am afraid the doctrine has been carried to such an extravagant length, that the Judiciary may justly be considered like a spoiled child. They are here placed almost beyond the reach of the people, though not beyond the immediate power and influence of the Executive. I wish not to see them the slaves of any administration, but the faithful and impartial executors of justice. My desire is that the laws, like the providence of the Deity, should shed their protecting influence equally over all.

It will be allowed that the hopes of an individual are as powerful inducements to action as his fears. Whether the Executive can depress or exalt him, his influence is equally great. Whether he can punish his errors or reward his faults, his dominion is the same. We all know that an associate judge may sigh for promotion, and may be created a Chief Justice, whilst experience teaches us, that more than one Chief Justice has been appointed a Minister Plenipotentiary. These facts are staring us in the face, when we talk of judges being independent of the Government.

What has been the natural effect of such conduct? Have the judges stood aloof during the political tempests which have agitated the country—or have they united in the *Io triumphe* which the votaries and idolaters of power have sung to those who were seated in the car of Government? Have they made no offerings at the shrine of party; have they not preached political sermons from the bench, in which they have joined chorus with the anonymous scribblers of the day and the infuriate instruments of faction? Let a recurrence to past events decide.

I wish to be understood as speaking on these topics in the abstract, and not with a view of imputing improper motives to those concerned in the arrangements which have taken place.

The people of the United States, on the other hand, have no offices of profit and emolument to bestow. They have no post immediately in their power to give, except a station in the House of Representatives, which a judge would not accept from their hands. But, let me ask, was there no vacancy in the gift of the Excutive, to which the defendant could aspire, and to which his conduct might furnish him with a passport or a letter of introduction?

Some observations have been made on the independence of the judges in England. In that country they are removable by an address of both Houses of Parliament. By what a slight tenure, by what a slender thread, are their offices held! The voice, nay, the whisper, or the breath of the Minister for the time being, may remove them, and yet they have generally manifested a spirit of real independence, even in the season of alarm and terror, of which I fear our judges at a similar period cannot boast. But in that county, a seat on the bench is considered as a place of rest, and they look not beyond it. There the judges are not made Envoys Extraordinary or Ministers Plenipotentiary.

We ought not to be imposed upon by names in this country. Give any human being judicial power for life, and annex to the exercise of it the kingly maxim "that he can do no wrong," you may call him a judge or justice, no matter what is the appellation, and you transform him into a despot, regardless of all law, but his own sovereign will and pleasure.

I had nearly omitted stating, but it is worthy of remark, that, by the Constitution of the Union, the Chief Justice must preside in case the President is impeached; and, if the President can at any time send him out of the country to negotiate treaties or conventions, he can most effectually prevent the execution of this salutary provision, and shelter himself from punishment.

These ideas are thrown out in reply to the lengthy remarks on judicial independence, and to which it was stated no answer would be given except some jargon about the sovereignty of the people! They contain a concise commentary on the *theory* furnished by the *text* of practice.

In this country, where the people are justly recognised as the real sovereigns of the land, and the only source of all legitimate authority, it is wonderful to observe the manner in which it is too much the fashion of the times to speak of them. The first article of our political creed, that all power emanates from the people, cannot be attacked by argument, and yet they attempt to turn it into ridicule. On this head, they are extremely dexterous. In the course they pursue, they exhibit all the skill of political jockies. They admit the principle that the will of the people should rule, because, forsooth, they dare not dispute it. But it must not interfere with their own views, or it ceases to be that awful object, that just and legitimate sovereignty which commands respect, and to which they bow with submission; it is no longer the voice of the people, but the clamor of faction; it instantly becomes political jargon, grating to the ears of those who claim the exclusive right, as if anointed with holy oil, of protecting the people from the violence of their own passions, or, in plain language, saving them from themselves!

I cannot subscribe to another doctrine of my learned friend (Mr. Hopkinson)—for such I may style him from the terms of intimacy, at an early period of life—that the people, after delegating a portion of authority for their own welfare and advantage, to different departments and subordinate agents, have nothing to say or do with the manner in which such authority is exercised. My position is the reverse. The people should watch with a jealous eye over those whom they have entrusted with authority, to discover whether it is enacted for their benefit or perverted to their detriment—whether it is exercised for the public good, or prostituted to private purposes. This is the rule in private life, and it will hold equally true in public.

Suffer me, at this place, to notice the remarks of the learned counsel who spoke yesterday, (Mr. Harper,) with so much sensibility and feeling for his client, on the change of parties in popular governments, and the proscriptions, persecutions, and punishments, too frequently inflicted by those who are triumphant, on the fallen victims of their authority; when acts, innocent in themselves, because against no known law, have been converted into crimes to gratify the vindictive passions of the victorious against those whom the fortune of political war has placed within their power. No man can deprecate more sincerely than I do, such a state of things. To the situation of affairs in this country, I presume these remarks cannot have the most distant application. If they were made with reference to the present Administration, to the Executive or Legislative Departments of the Government, the allusion may perhaps have the light support of visionary imagination, but has no substantial foundation in reality. It may be fancy, but is not fact.

The illustrious Chief Magistrate of the Union has furnished a precedent, by his liberal and enlightened conduct, of which the lamentable annals of mankind afford no example. Under his wise and his mild guidance, what auspicious beams of public sunshine have been diffused over the whole face of the country! until, to the discontented few, the language of the Latin poet might justly be applied—

"O fortunati nimium sua si bona norint!"

This enlightened policy has been adopted in conjunction with the luminous constellation of distinguished worthies, by whom he is surrounded; whose exalted character and talents add to the usefulness, the dignity, and splendor of his measures, and increase to an extent almost incalculable the general sum of the happiness of this great and independent nation.

Turning our eyes to those who have exercised the high and responsible functions of legislation, we find their acts equally deserving commendation. Their proceedings are calculated to excite at once the envy and the admiration of their opposers and the world. They breathe not the fell spirit of resentment and persecution. To their honor be it spoken, that, instead of enlarging the circle of offence, they have reduced the scale of criminality. They have abolished an odious, and, I believe, an unconstitutional sedition law, which had been executed with a rigor and severity perfectly congenial with the passionate policy which gave it birth. The decrees under it, if not written in the blood of the sufferers, were written in their tears. A more dreadful engine of persecution and oppression cannot well be conceived. With this instrument in their hands, they could have smote their enemies and shielded themselves. It would have been a sword and a buckler, but they disdained the idea.

Actuated by the best motives, with the honest view of purifying the fountain of justice, and restoring the characters of the American bench, they are now engaged in the unpleasant, but indispensable task of bringing to exemplary punishment a judge who has offended against the letter and the spirit of the Constitution, and the well-known statutes of Congress, who has violated the bounden duties of his office, and that high Legislative act, which, to the sanction of a law, added the solemnity and obligation of an oath.

In this important undertaking they are contending not for themselves, but for posterity; not for those in power, but those whom power has forsaken. Against all the wild theories of new-fangled opinions and the monstrous iniquity of exploded doctrines, they wish to teach a lesson of instruction to future judges that, when intoxicated by the spirit of party, they may recollect the scale of power may one day turn, and preserve the scales of justice equal.

We have now arrived at an important point of the discussion, comprehending the Constitutional doctrine of impeachments. On this ground, the learned counsel have made a formidable stand, and have contended for it with as much zeal and perseverance as if it were the Thermopylæ of their defence. The reason must be obvious. Conscious of the weakness of their cause upon the merits, and sensible that the conduct of their client will not bear the eye of scrutiny, they wish to preclude investigation by arresting us at the threshold of inquiry. To protect a citadel without a palladium, they have endeavored to form of various materials a Scean gate, which it requires no stratagem to enter. The positions they have piled together, without much regard to order and regularity, seem to resolve themselves into the shape of a plea to the jurisdiction of this Court over the case. It appears in a strange, anomalous form, both in the answer and their argument, but this is the result, I believe, when well understood.

One of the counsel has exclaimed, "Look on 'this dignified tribunal, inspiring awe and veneration! Was it constituted for the trial and punishment of such offences as are charged in the 'articles of impeachment?" Drawing an inference even from the appearance of the judges and of these walls against the exercise of the authority vested in them by the Constitution! I would ask, in turn, the counsel to look on his client, if he were present; to recollect the elevated post that he fills, the powerful talents with which the boun-

ty of nature has blessed him, the knowledge which he has acquired, the experience he has had; I would say, behold a man, designed to have shone one of the brightest luminaries that ever dignified the profession of the law, formed by nature for the friend and benefactor of society; what has been his conduct? Seated in the curricle of passion, he has driven on, Phæton-like, and destruction has marked his course; persecution and oppression have followed in his wake. His faults and his follies have increased with his years. Age has added to the rashness and violence of youth. His shining talents and superior knowledge have been employed in support of doctrines fatal to the liberties of his country. The Temple of Justice has been profaned by unholy acts, and its altars violated with impious hands. The laws and the Constitution have been trampled under his feet. But shall these acts be perpetrated with impunity in this free country? Is it not becoming the dignity of this tribunal to inquire into offences of the highest grade, committed by a judge of the Supreme Court of the United States? I trust they will consider their talents and their time well employed in this arduous investigation; that neither the elevation of the offender, the boldness with which he avows his acts, nor the ingenuity with which his counsel defend them, will protect him from the impartial sentence of the law. Justice, I must acknowledge, appears in her most attractive form, and with the fairest features, when she presents her helping hand to relieve injured innocence from cruel oppression; but she is not less worthy of approbation, when, with a stern countenance, she hurls the bolt at the head of the offender, and inflicts merited punishment on the guilty. In ordinary cases it is necessary, on every exception to jurisdiction, to state the proper forum which has authority to try the questions involved in a cause. The objection must be predicated on the principle that the right to decide is vested in another tribunal. The gentlemen have not been so good as to point out the authority which has cognizance of the offences of Judge Chase, and can grant adequate redress, if this Court be not vested with that power.

We have been told by that able lawyer, the Attorney General of Maryland, that a judge cannot be impeached for any offence which is not indictable; nor, indeed, for an indictable offence, unless it be a high crime or misdemeanor; and not even for a high crime or misdemeanor, except such as stamp infamy on the character and brand the soul with corruption. A variety of cases have been put to explain his ideas. The law books and the Constitution have been relied on to support those positions, which it becomes my duty to examine. Without troubling you to remove the lumber of the books, let me call your attention, in the first place, to the Constitution. The Constitution shall be my text. I think I shall be able to demonstrate that, in order to render an offence impeachable, it is not necessary that it should be indictable. But, I will go further, and prove that, agreeably to the learned counsel's own principles, Judge Chase has committed indictable offences. Taking his own explanation of crimes and misdemeanors, and recurring to his authority, I will prove that, within the strictest terms of the definition on which he relies, Judge Chase is guilty, not merely of misdemeanors in the various acts of judicial misbehaviour, but of aggravated crimes against the express language of the laws and the positive provisions of the Constitution.

In adverting to the Constitution, when looking at one part, we should take a view of the whole instrument to fix the proper construction. In examining any provision, we should consider the bearing and tendencies of all the rest. By adopting this rule we shall preserve order and harmony throughout the system.

The first place in which the subject of impeachment is mentioned in the Constitution is in the first section of the first article. The language used by those who framed it, is, in my humble opinion, too plain to be misconceived, and too clear to be misunderstood: "The House of Repre-'sentatives shall choose their Speaker and other 'officers, and shall have the sole power of im-'peachment."

This section vests the exclusive authority to impeach in the immediate Representatives of the people. The power thus delegated is general and comprehensive. It is not limited to any particular acts or transgressions, but is coextensive with every proper object or subject of impeachment. The House of Representatives is thus constituted, most emphatically, the grand jury of the nation: A high and responsible authority, which, I trust, will always be exercised with prudence and discretion, directed with impartiality and justice. But I do confidently hope that there will ever be found sufficient spirit and firmness to arraign the guilty delinquent, however elevated his station, when the Constitution or laws have been infringed, the tenure of office broken, or its duties violated.

The next passage, in order, which touches this topic, and to which I shall refer, is the third section of the same article: "The Senate shall 'have the sole power to try all impeachments. 'When sitting for that purpose they shall be on 'oath or affirmation. When the President of the 'United States is tried, the Chief Justice shall 'preside. And no person shall be convicted without the concurrence of two-thirds of the mem-'bers present."

This clause establishes a tribunal for the trial of impeachments. To the Senate this important trust is wisely confided. It prescribes the manner in which the jurisdiction shall be exercised, directs that the members shall be under oath or affirmation, and fixes the number necessary to convict. Let us proceed a step further in the path: "Judgment in cases of impeachment shall not ex-'tend further than to removal from office, and 'disqualification to hold and enjoy any office of 'honor, trust, or profit, under the United States; 'but the party convicted, shall, nevertheless, be 'liable and subject to indictment, trial, judgment, 'and punishment, according to law."

The part I have just read contains two very

salutary provisions. The first limits the extent of the punishment to be inflicted by the Senate. The second, as a necessary consequence of the former, reserves to the ordinary tribunals of law the right to proceed by indictment. This last provision has been a fruitful source of argument to the learned counsel. They have very ingeniously played upon these terms, and, in the zeal of their imaginations, have fancied that they proved to a demonstration the position, that an offence must be indictable, or it is not impeachable. There may be magic in their argument, but I do not perceive there is any logic. The superstructure which they have erected on this basis, is easily demolished. From the language of this clause they draw the inference that the framers of the Constitution intended that no person should be impeached for any offence for which he was not liable to be indicted. Is this the fair import of the expressions? The text of this instrument is remarkably free from ambiguity. Clearness, correctness, and precision, are its leading characteristics. With a very few exceptions, it speaks a language intelligible by all. Had it been the design and wish of the authors of the Constitution that no offences should be impeachable which were not indictable, they would have declared so in express and positive terms, and left nothing for inference or conjecture. This they have not done, and we may reasonably presume they did not intend to do. They prudently looked into the volume of history, where they saw the shocking purposes to which, in evil times, the power of impeachments had been basely and inhumanly prostituted. They read in those instructive pages the dear-bought lessons of experience, and wisely ordained limits, which the authority to punish should not exceed. They fixed a *ne plus ultra* for the tribunal that they established, which their severest judgments should not pass. They knew, at the same time, that crimes might be perpetrated and offences committed, which would demand additional chastisement. The loss of office, and disqualification to hold any in future, the maximum of punishment which they had prescribed, would be very inadequate and bear little proportion to the atrocious guilt which might be incurred. Under the influence of these impressions, they reserved to the tribunals established by law, the right to inflict the just penalties annexed to this class of cases. Without any intention whatever, when any acts had been committed which manifested an unfitness for office, or when there had been a breach of the tenure by which it was held, by malconduct or misbehaviour, to prevent the proceedings by impeachment, although the case might not be such as to warrant any additional punishment at law. This, I apprehend, is the object they had in view, and this is the fair, easy, natural, and obvious sense of they words they have used.

Those conversant with the juridical history of England, or who have studied her political annals, must be sensible of the deplorable situation to which that country has been reduced, at different periods, by the abuse of the power of impeachment. The revengeful exercise of this authority has too often deluged the scaffold with blood. In that country the proceeding by impeachment for any offence supersedes all other modes. The person accused, whether he be acquitted or condemned, cannot afterwards be indicted for the same offence, or called to an account before the ordinary tribunals. The former course is a complete bar to the latter. To prevent those consequences flowing from a proceeding by impeachment under the Constitution, those who formed that instrument, at the same time that they limited the punishment, have expressly declared it shall have no effect to bar a trial before the ordinary courts, but that the party shall be liable to indictment and punishment according to law. Without this positive provision, as we are almost as much in the habit of drawing on the *Bank of England* for law as our merchants are for cash or credit, we might have incorporated a principle into our code totally repugnant to the system. The Constitution has drawn the true line on this subject. From a mere reprimand or temporary suspension, the court may ascend in the scale of punishment to removal and disqualification. But thus far can they go, and no farther. They cannot pass the Rubicon. If the crime deserves a more exemplary sentence, recourse must be had to the ordinary mode of proceeding, and then their judgment is not pleadable in bar to an indictment. By this means adequate punishment may in all cases be inflicted.

In England every person, in a public or private capacity, either as an officer or an individual, is liable to be proceeded against by impeachment. In this country the sphere of impeachment is properly limited. The Attorney General of Maryland has taken a long, tedious and circuitous march to arrive at this point, which I would readily have yielded without an argument. I do not recollect that any of my colleagues contended for the position that every man in this country, in his individual capacity, might be an object of impeachment. For myself I utterly disclaim the idea, Admitting, as I do, in its fullest extent, this wide distinction between the power delegated by the Constitution and that exercised in England, which embraces every subject of that kingdom, how does it bear on the case or affect the argument? After laboring for a considerable time, and employing all his talents, and that fund of legal knowledge which is inexhaustible, to prove that the House of Representatives cannot impeach every citizen indiscriminately, the learned Attorney General has not favored us with any application of his principle to the present cause. It proves certainly one among many other broad lines of difference which exist between the British doctrines on the subject of impeachment and the constitutional provisions of this country. In this respect it adds to the weight of our scale. It shows how cautious we should be in bowing down to British precedents which cannot be perfectly applicable. I hope I have satisfied the Court, that the gentlemen are mistaken in their argument on this part of the Constitution. In the general wreck of their defence, I conceive this sinking plank, to which they have clung, cannot afford them the most distant

prospect of safety. We will now proceed a little further in the broad and plain road of the Constitution, carefully examining the ground on which we move.

By the fourth section of the second article of the Constitution, it is provided that, "The President, 'Vice President, and all civil officers of the Uni-'ted States shall be removed from office on im-'peachment for, and conviction of, treason, bribery, 'or other high crimes and misdemeanors."

The learned counsel have placed great reliance on this passage, to prove that an officer must be guilty, not merely of an indictable offence (as they concede every crime or misdemeanor to be) but must have committed a *high* crime or *high* misdemeanor to justify an impeachment. One of the learned gentlemen, to fix the true construction of the terms, "*or other high crimes and misdemeanors*," commented at great length on the expressions. To illustrate the subject his fancy readily formed an objection, which with logical accuracy he removed. He demonstrated that, agreeably to the strictest grammatical construction and the nicest propriety of speech, the epithet *high* was to be considered as prefixed to misdemeanors as well as to crimes. In this manner the phantom, which his own imagination raised, was laid not by a *spell*, but by the exertion of his argumentative powers. We would willingly have conceded the point, and spared him his labor and his breath. We mean not to cavil about trifles, or dispute for straws.

Taking it for granted that he has given the proper construction to a *part*, let us examine what is the just sense of the whole of this passage. In plain English, it commands, upon the conviction by impeachment of certain atrocious offences, that the guilty officer shall be removed at all events. Depriving the court thus far of the discretion which they would otherwise have possessed, as to the judgment they might pass. Having previously limited, in general cases, the punishment which they might inflict according to their discretion, by establishing a maximum which they should not exceed, in this particular grade of flagrant offences, they have fixed the sentence which they shall pass. The language of the Constitution is peremptory and imperative. Those convicted of such daring enormities of those *high* crimes or *high* misdemeanors, must be removed from office, which they have justly forfeited. This is the minimum of punishment to be inflicted. Perhaps those who penned the great charter of the Union apprehended, that in evil times, some high officer of the United States, clothed with power and armed with influence, might be proved to have committed the base and detestable crime of bribery, or some other equally great, by evidence too strong and too powerful to be resisted, and in an unfortunate hour, awed by fear or seduced by favor, the Constitutional judges would not hurl him at once from the seat which he was unworthy to occupy, but permit him to remain in his station, to the disgrace of the country and to the injury of the people. Hence they were induced to make this wholesome provision, which left nothing to the discretion of the judges. But is there a word in the whole sentence which expresses an idea, or from which any fair inference can be drawn, that no person shall be impeached but for "treason, bribery, or other high crimes and misdemeanors?" It does not pretend to specify the various acts of an officer which may subject him to an impeachment, its whole object is to define and fix the punishment which he shall incur on the commission of particular offences, which is removal from office. This is the least penalty they can inflict in such cases, and God knows it would be much too little, had they not in the former part provided, that after stripping the traitorous impostor of the insignia of office and power, the ordinary tribunals may add to the Constitutional sentence of the Senate the fines or forfeitures imposed by law.

From the most cursory and transient view of this passage, I submit with due deference, that it must appear very manifest that there are other cases than those here specified for which an impeachment will lay, and is the proper remedy. In these particular cases the punishment is ascertained, to wit, removal from office; but in a clause to which I have sometime since adverted, it is discretionary. Where was the necessity or use of *that*, if *this* defined all the impeachable offences, and specified the punishment? We must, if possible, give effect to every sentence of this instrument. We must not suppose that its authors made nugatory provisions. The sense and meaning which I have given to their language, and the constructions which I have maintained, will give force and effect to every word.

The system of impeachment thus understood, and I humbly submit rationally explained, is perhaps as little liable to exception as any branch of the Constitution. It is stripped of those terrible instruments of death and destruction, which have made such dreadful havoc and carnage in the ages that have preceded us. We have been benefited by the sanguinary precedents of barbarous times. We have been taught wisdom ourselves by the folly of others. We have improved the advantages we possessed, and thus, according to his own inscrutable ways, has the benevolent Author of our existence brought good out of evil.

In guarding effectually against the cruel and vindictive punishments which the extraordinary tribunal of impeachment might inflict, in the exacerbations of party violence and personal animosity, the fathers of the Constitution took care to provide that a certain grade of offences should deprive the guilty incumbent of his office, thereby rendering him a harmless object to the community, when dispossessed of his abused authority. Nay, they went further. Their wisdom and prudence led them to make a specific declaration, that after being deprived of his power, he should be subject to the legal consequences of his guilt, upon trial and conviction before the ordinary tribunals at law. Thus rendering the system perfect and complete.

There is an important provision contained in the Constitution, intimately connected with this subject, to which I now beg leave to refer. It will be found in the first section of the third article:

"The Judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour."

With this particular part of the Constitution the learned judge must have been more especially acquainted when he accepted of his present office, and must then have expressly accepted it on the terms specified. No man can seriously say that for a judge to continue in the exercise of his authority and the receipt of his salary, after any acts of misbehaviour, is not a violation of this essential provision of the Constitution. He holds his office explicitly and expressly during good behaviour. The instant he behaves bad he commits a breach of the tenure by which he holds the possession, and the office becomes forfeited. The people have leased out the authority upon certain specified terms. So long as he complies with them, and not a moment longer, is he entitled to exercise the power which was not intended for his individual advantage but for their benefit. But, sir, who is to take notice of these acts of misbehaviour? How are they to be ascertained, and what shall be considered as such? Are the people in their individual capacity, *ipso facto*, on the commission of the act to declare the office forfeited, and is a judge then to cease from his labors? Or must it not be officially, or rather judicially ascertained? This, I conceive, would be the proper mode of procedure. Has the Constitution provided no tribunal for this purpose? I answer it has, most indubitably. By the Constitution the Senate, as the Court, and jury too in cases of impeachment, has the sole power of removing from offices those who hold them by the tenure of good behaviour. If a judge misbehave he ought to be removed, because agreeably to the plainest provision he has forfeited his right to hold the office. The Constitution having established this single mode of removal, and having declared that a judge shall hold his office only during good behaviour, it becomes the duty of the Representatives of the People, as the grand inquest of the nation, vested with the general power of impeachment, when they know, of their own knowledge, or from the information of their constituents, that acts of misbehaviour have been committed, to present the delinquent to this high tribunal, whose powers are competent to inquire into the case and apply the remedy; whose authority is co-extensive with the complaint, commensurate with the object, and adequate to the redress of the evil. Shall it be said that it is true the Constitution has declared that a judge shall hold his office no longer than he behaves himself well, and that though he behaves never so ill, it has provided no means to turn him out of office, if he has the hardihood to remain in his seat? If such a doctrine be contended for, it is too preposterous to receive the sanction of this court. It would render this provision nugatory indeed. It would do more; it would be establishing the principle, that whether they behave well or ill, they must continue in office, because there was no mode fixed for removing them. This would be the strongest construction that plain language, obvious to the common sense of the most unlettered man, ever received in a court of justice. The method I have pointed out solves all difficulties at once, and releases us from every embarrassment on this subject. It makes the Constitution consistent with itself, and preserves uniformity throughout all the parts.

The learned counsel were compelled to make a show in maintenance of unsound doctrines, to give the appearance of support to positions equally untenable.

I flatter myself that every member of this Court is by this time convinced that if a judge misbehave, he should be deprived of his office, because guilty of a breach of the tenure by which it is held. That any acts of misbehaviour must be judicially inquired into and ascertained. That the Constitution, having delegated to the House of Representatives exclusively the general power to impeach, acts of misbehaviour are proper subjects of impeachment, upon conviction of which the Senate has the authority to remove an officer, and is bound to exercise it. Shall we be told, then, that no matter how gross the acts of judicial misbehaviour, or how flagrant the misconduct of a judge, he cannot be removed from office, nay, he cannot be impeached, unless guilty of treason or bribery, or some crime equally great? Sir, it is impossible that the intelligent understandings and the mature judgments of this Court could countenance for a moment such an idea.

The terms "during good behaviour," appear to have been considered as very vague and indefinite by the learned counsel for the defendant, from the manner in which they have argued the case. When, in the strong, nervous language of my honorable friend, the conduct of the accused has been described in the most appropriate terms in the articles of impeachment; they have treated them with levity, as if they did not understand their import, because they admitted of no serious refutation. The clear explanation of the expression "during good behaviour," and the lucid exposition of this passage contained in the charges themselves, they seem unwilling to comprehend. The commentary is as unintelligible as the text. When to such conduct as was never before witnessed in a court of justice is applied the epithet of *novel*, we have been told by one counsel that the term is too uncertain to be comprehended—no precise idea can be affixed to it, nor is the language sufficiently technical to constitute a criminal charge. When behaviour the most rude and contumelious, disgraceful on any occasion, but truly degrading on the bench, and unquestionably criminal, because calculated to bring the Judiciary into the lowest contempt, and to excite universal indignation against the tribunals of the country, is portrayed in the impressive style of truth, the age of captious sophistry or technical bigotry is resorted to, for proving there is no sense or meaning in the charge. Upon what an ocean of uncertainty have we embarked when the plainest language is

not understood! If sound, solid common sense, were to be confounded by technical jargon, the tower of Babel would not present a greater confusion of tongues. Sir, when the gentlemen cannot but feel the force of these charges, with what admirable ingenuity do they attempt to evade them! Is this tribunal, say they, to erect itself into a court of honor, or assume the chair of chivalry, and form a scale by which decorum and good manners may be nicely graduated? Is every slight deviation from the line of politeness at an assembly or drawing-room to be marked with accuracy and chastised with severity? The testimony furnishes apt and ready answers to those questions. The learned judge is not arraigned because he does not possess the polished manners of an accomplished gentleman, but for outraging all the rules of decency and decorum by conduct at which the plain sense of every honest man would revolt.

I beg this Court seriously to consider whether a judge may not be guilty of acts of misbehaviour inferior in criminality to treason or bribery, for which he ought to be impeached, though no indictment would lay for the same. When gentlemen talk of an indictment being a necessary *substratum* of an impeachment, I should be glad to be informed in what court it must be supported. In the courts of the United States or in the State courts? If in the State courts, then in which of them? Or, provided it can be supported in any of them, will the act warrant an impeachment? If an indictment must lay in the courts of the United States, in the long catalogue of crimes there are very few which an officer might not commit with impunity. He might be guilty of treason against an individual State, of murder, arson, forgery, and perjury, in various forms, without being amenable to the federal jurisdiction, and unless he could be indicted before them, he could not be impeached! Are we then to resort to the erring data of the different States? In New Hampshire drunkenness may be an indictable offence, but not in another State. Shall an United States judge be impeached and removed for getting intoxicated in New Hampshire, when he may drink as he pleases in another State with impunity? In some States witchcraft is a heinous offence, which subjects the unfortunate person to indictment and punishment; in several other States it is unknown as a crime. A greater variety of cases might be put to expose the fallacy of the principle, and to prove how improper it would be for this Court to be governed by the practice of the different States. The variation of such a compass is too great for it to be relied on. This honorable body must have a standard of their own, which will admit of no change or deviation. The test by which they will try an impeachment cannot be that of indictment. Even in England, to whose practice and whose precedents such constant recourse has been had, the learned counsel have not adduced a single case where a judge of one of their superior courts has been indicted for any malconduct in office. Nay, I believe I may defy them to show an example of the kind. The best authorities tell us they are not subject to indictment, but may be proceeded against by impeachment. They have been impeached, convicted, and punished for giving opinions which they knew to be contrary to law, and for a variety of misdeeds, but never in a solitary instance that I know of have they been indicted. I think I can put so many striking cases of misconduct in a judge, for which it must be admitted that an impeachment will lay, though no indictment could be maintained, that the learned counsel themselves must be compelled at length to surrender this post at discretion, without any terms of capitulation. I will not state the case of a judge wilfully and designedly neglecting to hold a court on the day prescribed by law, for I am aware of the answer gentlemen would give, that it is an offence against a particular provision. But let us suppose Judge Chase, to comply with the forms of the law at the time appointed, should appear and open the court, and notwithstanding there was pressing business to be done, he should proceed knowingly and wilfully to adjourn it until the next stated period. He would be guilty of no violation of any positive law, for which he might be punished by indictment; but ought he not to be impeached? Suppose he proceeded in the despatch of business, and from prejudice against one party, or favor to his antagonist, he ordered on the trial of a cause, though legal grounds are exhibited, for postponement. Is this not a proper subject of impeachment? And yet there is no express law infringed. If when the jury return to the bar to give the verdict, he should knowingly receive the verdict of a majority; is there any positive provision by which a jury shall be composed of twelve men, and that their decision shall be unanimous? I believe even the learning of that profound lawyer (Mr. Martin.) from the reading of laborious years and the indefatigable researches of a life devoted to the pursuit of his profession, could not show any positive provision in the Constitution of the United States or any statute of Congress on the subject. So far from it being originally necessary in civil cases, that a jury should be unanimous, the late Judge Wilson, (a great and venerable authority.) *magnum et memorabile nomen*, asserts that a majority always decided agreeably to the primary principles of that valuable institution.

Again: there is no man so ignorant as to be insensible to manifest violations of the sanctuary of a court. It was never intended as a stage for the exhibition of pantomimes or plays. Were a judge to entertain the suiters with a farce or a comedy, instead of hearing their causes, and turn a jester or buffoon on the bench, I presume he would subject himself to an impeachment; and yet there is no positive law preventing a court from being converted into a theatre, or of preferring the buskin to the sock: if he should exhibit a tragic scene, in which an unfortunate fellow-citizen might find himself *really* no *actor* in the part which he bore, I presume his conduct would claim the attention of the House of Representatives, as the grand inquest of the nation. It must be unnecessary to multiply examples of misconduct in a judge against the known law of his duty, so manifest at first blush that the most callous conscience cannot be insensible to them, not minutely specified and described (for that would be impossible) by particular provision in any Legislative act, but all embraced and comprehended in the solemn oath which he takes to perform his duty faithfully and impartially as a judge. As a judge he is bound to execute the laws. Every opinion which he gives, and every sentence which he passes, must be in conformity to law and be authorized by it. It ought to be the judgment of the law, and not his own individual opinion. If he wilfully make a decree not sanctioned by law, he is guilty of misbehaviour as a judge, for it is a glaring violation of the fundamental principles of his office. I shall have occasion in the course of my argument to advert to judicial opinions delivered by the accused which there was no Legislative act to warrant, no precedent to authorize, no principle to sanction, and which the utmost latitude of legal discretion would not justify. In such a case, if this court be satisfied that he acted innocently wrong, that it was an honest error of judgment which led him astray, he will no doubt stand acquitted. But if, from a concurrence of circumstances, they are convinced that he erred through design, from prejudiced and partial motives, though he may not have been corrupted by a bribe, they will consider him as a proper subject of their jurisdiction, and a proper object for the exercise of their authority.

The doctrines of the learned counsel for the defendant would lead to a conclusion which they may not have contemplated, but which the country would feel. Time would fail me to enumerate the different offences of various grades which a judge might commit, and for which he ought most assuredly to be impeached, though no indictment could be maintained in any of the Federal courts. If their positions were correct, a judge might violate all the Ten Commandments without subjecting himself to impeachment and removal; for I know of no method of removal but through the medium of impeachment. There is no law of the United States prohibiting drunkenness on the bench, or indeed punishing this vice at all, unless we look into the laws of a naval or military court martial, and yet a judge ought certainly to be removed from office if guilty of habitual intoxication. The use of profane or obscene language by a judge is not expressly proscribed by any act of Congress with which I am acquainted, though if it were forbidden in general terms, gentlemen might say with as much propriety as they have done in other cases, in the course of their argument, that every term, considered as such, ought to be enumerated, and yet, I believe, should a judge, in his place, be guilty of taking the name of his God in vain, of cursing and swearing on the bench, or using the obscene language of Billingsgate or St. Giles, he ought to be impeached and removed. The sanctity of a court should be preserved unsullied, and the officer displaced who was capable of exhibiting so shocking an example, calculated to destroy all respect for, and confidence in, the Judicial establishment of the country, and to corrupt the morals of the nation. But, sir, why need I enlarge on this subject? The counsel for the defendant have appeared at one stage of their argument to possess great respect and deference for precedent. To consider cases solemnly argued or deliberately adjudged, as fixing the law so perfectly as to justify a court in absolutely preventing any counsel, even though concerned for a criminal, and that, too, in a capital case, from questioning principles thus established. If precedent will furnish us with a clue to the intricate labyrinth in which they have attempted to involve us, we are in possession of one equal to that of Ariadne.

Suffer me again to refer them to the precedent which I cited a few days since. I allude to the case of Judge Addison, in Pennsylvania. One of the counsel, (Mr. Martin,) for whose legal erudition I feel the greatest respect, has endeavored to impeach the authority of the highest tribunal in that State, and has asked if that decision is to be a precedent for this court? I was the more surprised at this, because his colleague (Mr. Lee) had cited, in the course of his argument, a case from Kirby's Connecticut Reports, decided by Chief Justice Ellsworth and his associates. I ask, sir, in reply, whether, when a case determined in one of the ordinary courts of Connecticut has been produced by the opposite counsel as entitled to consideration, the decision of the Senate of Pennsylvania, the highest court of criminal judicature in that Commonwealth, ought not to be respected. Permit me to add, that in my humble opinion, there is as much propriety in referring to such examples as in recurring to British precedents. I have said, and with increasing confidence I repeat it, that this case, under the constitution of Pennsylvania, is emphatically stronger than the present, under the Constitution of the United States, on the much litigated question, whether a judge can be impeached for any act for which he cannot be indicted. In the constitution of Pennsylvania, article 5th and section 2d, there is a provision not to be found in the Constitution of the United States, by which a judge, for any reasonable cause, which shall not be sufficient ground for impeachment, may be removed by the Governor, on the address of two-thirds of each branch of the Legislature. This provision would seem to be intended to meet the distinction which the learned counsel have labored to establish. In this light, Judge Addison himself on his trial considered it, and pressed the point most forcibly on the Senate of Pennsylvania. He had the strongest interest in so doing. If this course had been pursued, he would have merely lost his office, but upon conviction by impeachment he dreaded the disqualification to hold any office which the Senate might annex to the judgment of removal. But, sir, this is not the only reason, cogent as it is, for considering the case of Judge Addison particularly applicable to the present. It so happens that we have a decision of the supreme court of Pennsylvania on the very ob-

jection which the gentlemen now take, when the conduct of Judge Addison was brought before them previous to his being impeached. If the learned counsel will not give full faith and credit to the determination of the Senate of Pennsylvania, perhaps they will admit the authority of her supreme court. I hope this tribunal, at least, will give it equal weight with that of the supreme court of Connecticut. A very correct account of the case will be found in the statement of the Attorney General on the trial of Judge Addison, taken in connexion with a printed report of the case, which was produced by Mr. Dallas on that occasion. I will not detain this honorable Court with reading all which is there recorded on this subject, but will refer to pages 51, 52, 64, and 69, of Addison's trial, and endeavor to present them an accurate view of the case.

On the ground of an application filed by J. B. C. Lucas, then an associate judge of the same court in which Judge Addison presided, stating that Judge Addison, on a particular occasion, after having delivered a charge to the grand jury himself, had prevented Judge Lucas from addressing them, by ordering a constable to be sworn and the jury to be taken from the box, the Attorney General moved for leave to file an information against Mr. Addison.

The Attorney General made two points. First, that Judge Lucas had an equal right with the presiding judge to deliver a charge to the grand jury, on principle and authority. The Chief Justice, Shippen, immediately observed, that it was unnecessary to speak to that point or to read authorities, "*speak to the second point—Is this conduct the subject of an information?*"

After the argument was closed, the opinion of the court (Judge Breckenridge taking no part) was delivered by the Chief Justice, who stated that the proceeding was arbitrary, unbecoming, unhandsome, ungentlemanly, unmannerly, and improper, but "*but that it was not indictable, nor the subject of an information,*" and that there was another remedy. Referring no doubt to an impeachment; for the Attorney General states, in page 52, "That from what fell from the judges of 'the Supreme Court, when the case was before 'them, it might be easily inferred that impeach-'ment was the proper mode to correct the evil 'complained of."

Thus we have the solemn adjudication of the Supreme Court that conduct in a judge may be impeachable though no indictment can be maintained for it. We could not have formed for ourselves a precedent more apposite.

An impeachment was accordingly presented against Judge Addison by the constitutional authority to the Senate of Pennsylvania. Pardon me for trespassing so much on your time as to read distinctly the articles, in order to put this court in possession of the whole case:

"ART. 1. That the said Alexander Addison, being duly appointed and commissioned president of the several courts of common pleas, in the circuit consisting of the said counties of Westmoreland, Fayette, Washington, and Alleghany, within the territory of the said Commonwealth, while acting as president of the said court of common pleas of the said county of Alleghany, on Saturday, the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and one, in open court of common pleas, then and there holden, in and for the county last aforesaid, did, after John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the court of common pleas of the county last aforesaid, had, in his official character and capacity of judge as aforesaid, and as of right he might do, addressed a petit jury, then and there duly empanelled, and sworn or affirmed, respectively, as jurors in a cause then pending, then and there, openly declare and say to the said jury, 'that the address delivered to them by the said John Lucas, otherwise John B. C. Lucas, had nothing to do with the question before them, and that they ought not to pay any attention to it;' thereby degrading, or endeavoring to degrade and vilify the said John Lucas, otherwise John B. C. Lucas, and his character and office as aforesaid, to the obstruction of the free, impartial, and due administration of justice, and contrary to the public rights and interests of this Commonwealth.

"ART. 2. That the said Alexander Addison, being duly appointed and commissioned president as aforesaid, did, at a court of quarter sessions of the peace and court of common pleas, holden in and for the county of Alleghany aforesaid, on Monday, the twenty-second day of June, in the year of our Lord, one thousand eight hundred and one, under the pretence of discharging and performing his official duties as president aforesaid, unjustly, illegally, and unconstitutionally claim, usurp, and exercise authority not given or delegated to him by the constitution and laws of this Commonwealth, inasmuch as he, the said Alexander Addison, president as aforesaid, did, under pretence as aforesaid of discharging and performing his official duties, then and there, in time of open court, unjustly, illegally, and unconstitutionally stop, threaten, and prevent the said John Lucas, otherwise John B. C. Lucas, also duly appointed and commissioned one of the judges of the said courts, from addressing, as of right he might do, a grand jury of the said county of Alleghany, then and there assembled and empanelled, and sworn or affirmed, respectively, concerning their rights and duties as grand jurymen, thereby abusing and attempting to degrade the high offices of president and judge as aforesaid, to the denial and prevention of public right, and of the due administration of justice, and to the evil example of all others in the like case offending."

You have now a clear and comprehensive view of the grounds on which the impeachment was supported. The first charge accuses Judge Addison of speaking, in terms very unjustifiable for a president of a court, of an address delivered to a petit jury by his associate, Judge Lucas. The language which he used, and the manner in which it was proved to have been delivered, are equally exceptionable. His conduct was rude, ungentlemanly, and utterly inconsistent with that decorum and respect which should be inculcated and practised on the bench, to preserve the credit and the character of a court of justice. Its object and tendency was to deter Mr. Lucas from exercising his judgment and expressing his opinion from the bench, and to reduce him to a perfect cypher.

The other charge was, for preventing Judge Lucas from addressing a grand jury. This was

effected in the same rude and insolent manner, as will appear from the testimony of Judge Lucas himself, in pages 33 and 37 of the printed trial.

To support the first article, I believe it would not be possible to find any positive act or special provision prescribing what particular language a president of a court may use, and what he shall not, in reference to the opinion which an associate justice may have delivered. There is no legal barometer for weighing words, nor any particular law embracing all the variety of cases of lighter and darker shades which may occur. The learned counsel who supported the prosecution did not cite a single precedent, even, of the kind. There may have been a law to be found in the breast of every man of common sense and common manners, with which Judge Addison was not unacquainted, and upon which the Senate considered themselves perfectly justified in convicting him. This was the general, but clear and comprehensive law, which marked his rights and duties as a judge. The law of his office, prescribed by his oath.

The second article, for preventing an associate judge from delivering a charge to the grand jury, after they had received one from the president of the court, could not have been maintained on the ground of any express statute or legal usage. It is the first time I ever heard of such a case. The uniform practice in the courts to which I have been accustomed is, for the chief justice or president to deliver the charge. This was more especially the case in the court in which Judge Addison presided, for it appears they had adopted a positive rule on the subject. The practice of a court of justice is generally considered as the law of that court. But the Senate, believing on principle (and believing correctly) that the power of all the judges of the court was equal, pronounced a sentence of condemnation.

With these plausible circumstances to countenance him, Judge Addison, a gentleman of considerable celebrity both in the legal and political world, and of unquestionable talents, conducted his own defence. His principal reliance was on the very objection which the learned counsel for the present defendant now make. He contended that he had committed no act for which he was liable to indictment, and that he was, therefore, not subject to impeachment. In the position that his conduct was not indictable, he was supported by the opinion of the supreme court, who had, nevertheless, considered it a fit subject for impeachment. His argument was able and ingenious; but, sir, his objection was anticipated or answered in such a masterly manner, by a chain of reasoning so irresistible, that it produced complete conviction on the minds of the Senate of Pennsylvania. This honorable Court know the result. He has been not only removed, but disqualified to hold the office of judge in any court of law in that State. We have, then, the deliberate opinion of the Senate of Pennsylvania, upon solemn argument, confirming the decision made by her supreme court. If these cases do not furnish us with lessons of instruction, I know not where such lessons are to be read.

I will remark, sir, further, in relation to this case, that had it not been for the extreme anxiety of Judge Addison to propagate his political dogmas from the bench, he would never have been reduced to this serious dilemma. Like the defendant, he converted the sacred edifice of justice into a theatre for the dissemination of doctrines to which I hope I shall never subscribe. If I have a desire relative to the administration of justice, paramount to all others, it is that party and party spirit should be banished from every court. My sincere and fervent prayer is, that the laws, like the providence of God, may shed their protecting influence equally over all, without respect to persons or opinions.

I have been requested by the Attorney General of Maryland to state another and a recent case which has happened in Pennsylvania. For his satisfaction I will briefly inform this honorable Court of all that took place on that occasion, in the least degree applicable to the present trial. Three of the judges of their supreme court were accused of fining and imprisoning, without the intervention of a jury, a fellow-citizen, for publishing a paper which they considered as a contempt of court. The judges were defended by two most able and eloquent counsel, who contended that the constitution, the laws and the practice of Pennsylvania, by adopting the common law doctrines on the subject, justified the proceeding; and that if there was no law to justify it, their conduct flowed from an honest error in judgment, for which they were not liable to impeachment. But, sir, they did not attempt to maintain the position contended for on this occasion, that to support an impeachment the conduct of a judge must be such as to subject him to an indictment. Nor could they, with any consistency, have supported such a doctrine, for their clients had before, in the case of Mr. Addison, decided that his conduct was not a proper subject of impeachment though it might be of indictment.

This precedent, then, fortifies the former decisions on this point, and adds another authority to those which previously existed, and to which I have adverted.

The judges were acquitted, I acknowledge, and were I to hazard an opinion, I would say because some of the members of the Senate of Pennsylvania thought their conduct proceeded from an honest error of judgment. If this court shall be of the same opinion with respect to the conduct of Judge Chase, I trust they will follow the precedent and acquit him, and I shall cheerfully acquiesce in the decision.

I fear I shall fatigue this honorable Court by noticing the various cases on this subject, but I cannot omit pressing on their attention a decision of the most authoritative and binding nature, because it is one of their own. The case to which I allude and its attending circumstances must be fresh in the recollection of every member of the Senate. The district judge of New Hampshire was impeached for habitual drunkenness on the bench, and for using profane and indecent language. It was not in evidence to the court that drunkenness

or profane and indecent language were indictable by any law of that State. There is no law of the United States, unless we recur to the naval or military code, punishing these vices as offences. Of course, sir, it was not pretended by the Managers on that occasion, of whom I had the honor to be one, that any indictment could be maintained against Judge Pickering in any civil court of the United States, or of the individual State of which he was a citizen. I appeal to your recollection, sir, for the accuracy of this statement; and, let me ask, what was the result? A Constitutional majority of the Senate pronounced a verdict of guilty and passed a judgment of removal.

One of the counsel, (Mr. Harper,) of whose argument I may be permitted to observe, without disparagement to the talents and learning of his colleagues, that it contained an able and masterly defence of the conduct of the accused, sunk beneath the weight of this stubborn and conclusive precedent. It was a stumbling block which he could not remove out of his way; and he seemed compelled, reluctantly, to yield the principle to the decisive authority and pointed application of the case.

We have then the whole weight of American authority in our scale, whilst the learned counsel have not been able to adduce a single precedent, foreign or domestic, against us. When I speak of precedents, I do not allude to the obscure *dicta* which may be found by turning over the dark lantern of tradition in remote ages of antiquity, or to the interpolations which may be scattered through the marginal references to the abridgments, by unknown editors; but to some authoritative case which has occurred since the regular date of parliamentary impeachments. The fines which Edward I. imposed on some of his judges, in what manner is not certainly known, to replenish, as many have supposed, an exhausted treasury, are familiar to every student. But from the period of impeachment to the present time, I believe no instance of an indictment can be shown against a judge of the Common Pleas, Exchequer, or King's Bench in England, nor against a Lord Keeper or Lord Chancellor, who hold their offices to this day, let it be remembered, *during pleasure*. The civil business of the Court of Chancery is more important than that of all the other courts, and the decisions of that tribunal have been as impartial I believe as any, notwithstanding the high sounding doctrines of judicial independence. There have been many impeachments, the judges have sometimes been complained of by information in the execrable Star Chamber, but there have been no indictments at law. The Star Chamber has been long since abolished, and the sole method of proceeding against judges of the superior court now is by impeachment. The best writers agree, "that judges 'of record are freed from all presentations whatever, except in Parliament, where they may be 'punished for anything done by them in such 'courts as judges.' Numerous authorities might be cited on this subject, but I shall content myself with barely referring to them.—1 Hawk. 192, chap. 73, sec. 6; 1 Salk. 396; Woodeson 596, Jacob's Law Dictionary, title *Judges*, 12 Co. 25, 26.

Were I to rest the point here, I confidently believe we should be perfectly safe, but I will proceed further, agreeably to my engagement, in the commencement of my argument, and demonstrate that according to their own principles, and authorities, Judge Chase has been guilty of crimes and misdemeanors, in the strictest technical sense of the terms, for which he ought to be punished in an exemplary manner.

In contesting the principles that no act is impeachable unless it also be indictable, I have not contended for the position attributed to me by the learned Attorney General of Maryland, that a judge may be impeached for conduct which is not criminal. On the contrary, we rely on supporting this as a criminal proceeding, and the gentlemen are entitled to every advantage which they can reap from this declaration.

I have had occasion to state that I considered every act of misbehaviour in a judge as a misdemeanor, and the Attorney General of Maryland has expressed in strong terms his perfect agreement in the opinion, that misbehaviour is synonymous with misdemeanor. He appeared to imagine that he gained a great advantage by making this concession, and I am content to give him the full benefit to be derived from it. I shall not shrink from the position, but meet the gentleman with pleasure and confidence on this ground. I love to break a lance in the open field of discussion, and disdain every kind of ambush in argument.

As we agree in one point, that misbehaviour and misdemeanor are convertible terms, Jacob's Law Dictionary, which quotes the language of Judge Blackstone in his commentaries, has been recurred to for a definition of a misdemeanor. Let us try the conduct of Judge Chase by his text. "A crime 'or misdemeanor (says Judge Blackstone) is an 'act committed or omitted, in violation of a public law either forbidding or commanding it." "This general definition comprehends both crimes 'and misdemeanors, which properly speaking are 'mere synonymous terms."

There is a *public law* that prescribes the following oath which Judge Chase took on his entrance into office; 1 vol. p. 53. "I do solemnly swear, 'that I will administer justice without respect to 'persons, and do equal right to the poor and the 'rich, and that I will faithfully and impartially 'perform all the duties incumbent on me as a judge 'of the Supreme Court, according to the best of 'my abilities and understanding, agreeably to the 'Constitution and laws of the United States."

Who that reads this solemn and impressive provision, and looks at the plenary evidence we have before us, can hesitate to pronounce the respondent guilty of violating a public law, which he was bound by the most sacred of all human obligation, to execute with fidelity? His oath informed him that the law, like the Gospel, was no respecter of persons, and yet what have we beheld in his conduct, when a poor, unfortunate Fries, or a wretched Callender was before him, upon a criminal charge? I appeal to the testimony which I shall by and by comment upon, whether his acts do not prove that he marked

them out as victims to be sacrificed on the altar of party. Sir, I cannot believe that gentlemen will seriously contend that the expressions "faithfully and impartially to perform his duties," have no definite meaning; that conduct grossly prejudiced, and the most shameless partiality, shall be considered as no violations of his solemn oath. If they did, I have too exalted an opinion of the good sense and discernment of the court to believe they would countenance such an idea. Their import is certainly plain and obvious, without recurring to the black-lettered lore for explanation. What, then, was the conduct of the respondent to Fries, if testimony not only unimpeached but unimpeachable is to be believed? Was he not prejudiced both against the unhappy prisoner and his case, which he had from a superabundance of zeal completely prejudged? Or, sir, when he declared Callender ought to be hung, and set off with his miserable pamphlet in his pocket, ready scored for his purpose, and proceeded in the most arbitrary manner with his trial, was he impartial, or was he not guilty of the most manifest and daring partiality? Shall he be guilty of all these outrages against the plain language of a public statute, which combines the obligation of an oath with the sanction of a law, and yet be innocent of any crime or misdemeanor? If gentlemen will hold up the acts of Congress in one hand, and the acts of Judge Chase, proved by the testimony, in the other, they will see and be satisfied, that within the strictest legal definition he has been guilty of repeated and aggravated violations of public law, and therefore unquestionably of crimes and misdemeanors.

The Constitution, however, is declared to be emphatically the supreme law of the land. This sacred instrument he was bound by a twofold oath to preserve inviolate. All executive and judicial officers of the United States, independent of their oaths of office, are bound by oath to support the Constitution—Art. 6, sec. 3.

By the seventh article of the amendments of the Constitution, which have been duly ratified, and therefore now form part of that instrument, it is declared, that "In all criminal prosecutions 'the accused shall enjoy the right to a speedy 'and public trial, by an impartial jury of the 'State and district wherein the crime shall have 'been committed, which district shall have been 'previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against 'him; to have compulsory process for obtaining 'witnesses in his favor; and to have the assistance of counsel for his defence."

This article secures to every accused individual the right of a trial by an impartial jury. Without their unanimous consent, no matter how eager the Government are for conviction, no person can be punished. Where any man is charged in due form with the commission of a crime, and pleads he is not guilty, the jury are to decide on the whole case whether he be innocent or not. Their verdict must be commensurate with the issue joined, which involves both fact and law, which they have indubitably the right to decide, agreeably to the express and positive provision of the Constitution. This right, therefore, is an original right, flowing from the highest authority. It is beyond doubt a principle and not an incidental right. It is not a right incidental to the trial, but it constitutes the trial itself; for there can be no other trial in the case but by jury.

This same amendment guaranties to the accused the assistance of counsel. How important is this privilege, when it is recollected that veterans of the bar are generally selected to prosecute. The situation too of an innocent man, charged with the commission of a crime, is delicate and embarrassing. It excites frequently apprehensions which unfit him for making a defence. I feel myself compelled to declare, upon the authority of the testimony in this case, that the respondent has been proved guilty of violating the supreme law of the land in those great essential provisions. He has deprived accused individuals of a trial by jury, for he would not suffer the jury to decide, or even to hear argument on the subject of the law, and he has deprived them of the benefit of counsel by conduct which drove counsel from the bar. This has happened in more than one instance, and above all, an injured fellow-citizen has been stripped of his invaluable privileges in a capital case. Is this imagination or is it reality? Let the recorded testimony determine. If, however, I am correct, must I not have satisfied this honorable Court, agreeably to my promise that taking the learned counsel's own definition, and relying upon his authorities, I have demonstrated that the accused has been guilty of crimes and misdemeanors. But have I not gone further, and shown that he has been guilty of high crimes and misdemeanors, and such as disqualify him for a seat on the bench, so as to come fully within the rule which he has laid down?

God forbid that it should be said, when a judge is guilty of grossly violating not merely a public law, but the supreme law of the land, nay, a law which he was bound by two solemn oaths to support, he is not guilty of any crime or misdemeanor; or that when he violated this supreme law which he is thus obligated to respect, for the purpose of depriving a fellow-citizen, accused of a capital crime, of the benefit of counsel, and the inestimable right of trial by jury, he shall not be declared guilty of high crimes and misdemeanors, which evince a want of integrity, and mark a depravity of heart that completely disqualify him for a judicial office.

I have now finished my observations in reply to the preliminary objections which have been made to this mode of proceeding, and have been reluctantly compelled to discuss them at much greater length than I at first contemplated, from the zeal and pertinacity with which they have been urged and insisted on by the learned counsel opposed to us. Under the impression that I have been successful in this undertaking, I shall hasten to the investigation of the articles themselves.

To the observations which have already fallen from me on the subject of the technical refined exceptions that have been taken to the language of the articles, I shall only add a remark or two in reply to what fell from one of the counsel, (Mr. Lee,) when commenting on the 5th and 6th articles.

He appeared to consider the House of Representatives bound down to the same strict and technical forms required in the ordinary courts of justice. Even there I believe suitors are too often caught in this miserable net, which is calculated to hold a shadow and let the substance escape. But the legal maxim, if I am correctly informed, applicable to impeachments, is, that they whose duty it is to present them, may speak in plain, common language, *loquendum ut vulgus*—Foster 389, 90; 2 Woodes. Lect. 607. I believe if we were to try the articles either by the test of technical nicety, or the standard of common sense, they would be found on examination correct in form and substance. The articles particularly excepted to charge the respondent with committing acts in violation of certain public laws of the United States, either enacted by Congress or adopted by their statutes. If this be not a sufficient allegation of criminality, I know not what would constitute an offence. Suppose an act of Congress were made to punish an assault or battery committed in any place within their exclusive jurisdiction, and an indictment were to state the fact to have been committed, and allege that it was done against the act in such case made and provided, it would certainly be held sufficient in any court of criminal judicature in the United States.

In examining the various articles of accusation, I will consume no more of your valuable time than the intrinsic importance of the subject absolutely requires. I am not standing in an ordinary court of justice. I do not consider myself arguing a case before an honest, but perhaps an unlettered jury. I feel myself addressing an enlightened tribunal, composed of venerable and illustrious characters, who add to the native virtue of integrity, that intelligence and knowledge which is acquired by the study and experience of years. I am sensible that I am addressing those more capable of communicating information to me than I am of instructing them.

The case of poor Fries, embraced by the first article, presents a melancholy picture, of which I must solicit you, painful as the object may be, to take a view. From this gloomy spectacle you would naturally desire to avert your eyes, and I could wish for the honor of human nature that it had never been exhibited. But your duty compels you to contemplate it, whilst mine compels me to portray it.

In justice to my early acquaintance, (Mr. Hopkinson,) who defended the respondent against this charge, I must observe, that the task assigned him was performed with great ability and address. But my learned friend, (Mr. Nicholson,) in reply to his observations, presented such a clear exposition of the facts, and such a sound commentary on the law applicable to this article, that I am sensible he must have removed the great mountain of objections which overshadowed for a time this part of the case. My share of duty is therefore considerably diminished. It only remains for me to add a brick or two to the wall which he has erected, and to answer some of the remarks of the learned Attorney General of Maryland, and his eloquent colleagues, Mr. Harper and Mr. Key.

On questions of fact I shall rely principally on the admissions contained in the answer, and shall not detain this Court with adverting to the volume of evidence which has been taken, unless where the respondent has thought proper to deny any material part of a charge. I believe his own answer confesses substantially the truth and correctness of the principal facts on which the articles rest. This Court will require no stronger evidence, I presume, than the admissions of the party, deliberately recorded by himself. When he denies facts, it is his duty to support such denial by the necessary proofs. But taking the answer altogether, though a masterly performance in point of style and language, in my humble opinion, it gives a death wound to his case.

It appears that Fries had been tried in the year 1799, before Judges Iredell and Peters, and convicted of the crime of high treason. His counsel afterwards moved for a new trial, on the ground that one of the jury had been prejudiced against him. That he had not in fact been an impartial juror in the case. The court, consisting of the same judges, upon argument, ordered a new trial to be had. A new trial, according to the best authorities, is "a rehearing of the cause 'before another jury, but with as little prejudice 'to either party as if it had never been heard be-'fore." In this light Judge Chase should have considered it. He ought to have gone to Pennsylvania with a mind totally unprejudiced, and viewed every circumstance of the case with the utmost impartiality. The very circumstance which produced the second trial ought to have put him sufficiently on his guard. When a new trial has been directed, to use the language of the respondent in his answer, "solely on the ground 'that one of the jury" (a single man out of twelve) "after he was summoned, but before he 'was sworn on the trial, had made some declara-'tions unfavorable to the prisoner," how ought an impartial judge to have felt and to have acted? Mr. Chase, let it be recollected, presided in a court composed of but two members. With this lesson before his eyes, we find the respondent forming an opinion in his closet on the law of treason, applicable to the case of poor Fries, and not satisfied with making up his own mind on this subject, he took care to bind the judgment of his associate, by obtaining his approbation of that opinion, which he reduced to writing for the purpose. This irregular and reprehensible measure was adopted before the hour of trial arrived, when the man whose life was at stake was to be heard on a subject that involved his existence. This bold step in the path to conviction, has been

defended on plausible grounds, and by subtle refinements.

The respondent in his answer and the learned counsel in their defence have endeavored to prove that this conduct was not only right, but perfectly proper and correct. Among the various pretexts eagerly laid hold of to justify this novel procedure, they urge as a reason for prejudging and despatching a capital case, the multiplicity of civil business pending in the same court! I will forbear to inquire into the facts on this point, though I believe there is not a spark of testimony to prove the allegation to its full extent, because, if the docket had been loaded with civil suits, it would form no excuse for hurrying though a criminal trial, on the issue of which the life of a fellow-citizen depended. That cause must be bad indeed that requires to be propped by such miserable expedients. When I first read this passage in the answer, it struck me with astonishment, and excited a burst of indignation which it is my duty to repress. "A multitude of civil business 'is depending, and therefore I must make up my 'mind conclusively on the law in a capital case, 'before the proper season arrives, without hearing 'a single word from the prisoner or his counsel 'in defence!" The learned judge certainly did not reflect on the effect of such an excuse, which instead of palliating his conduct, aggravates it. That he was in a great hurry, every part of his conduct proves. From the opinion, a copy of which is annexed to his answer, it would appear that he did not intend to make it public, at least until after the jury had been sworn and Fries was on his trial. In that we find these expressions: "The court heard the indictment read on 'the arraignment of the prisoner some days past, '*and just now on his trial*, and they attended to 'the overt acts stated in the indictment."

This honorable Court will recollect that the whole current of the testimony proves, and the defendant in his answer admits, that he delivered the papers containing this *ex parte* opinion before Fries's trial commenced. Such was his eagerness to despatch the case, with a view, he says, of reaching expeditiously the civil list. As if gifted with the spirit of intuition and with an infallible judgment, he seems not to have proceeded on the principle of *castigatque auditque*, but to have improved even upon that model, considering it not necessary for him to hear arguments at any stage of a cause, for the purpose of forming a correct opinion. His counsel ask us whether it be a fault in a judge to have a profound knowledge of the law, which will enable him to decide promptly any question that may occur; and the respondent said, on Fries's trial, that "he had an opinion in point of law as to every case which could be brought before the court, or else he was not fit to sit there." Yet, when Callender's trial was progressing, we find this same judge, upon a common point of practice relative to a challenge to the jury, calling out for Coke on Lyttleton to be brought into court before he could make up his mind on the subject.

Sir, I hope always to see more of profound legal erudition and extensive information on the bench. A rational diffidence in their own opinions is the result and the companion of knowledge. Characters of this description, who combine integrity and impartiality, qualities essential for a judge, with their learning, will never form and deliver an extra judicial opinion. They will adopt the maxim, *audi alteram partem*, in their practice. If judges act correctly and properly in deciding the law in a single case, without hearing both sides, the principle will hold good in all cases. Every issue of pure, unmixed law ought to be thus decided. Demurrers, special verdicts, and motions in arrest of judgment, instead of being determined in open court on solemn argument, should be decided by the judges in their closets. Cases in error, removed up to the higher tribunal for the purpose of correcting the mistakes of inferior jurisdictions, would of course be adjudged without argument. The court would only have to meet to deliver the opinions in public, which they had formed in their chambers. Surely when gentlemen contend it was correct in the respondent in a criminal case, when law was blended with fact, and the life of the accused involved in the issue, they must advocate in civil causes, where from the nature of the pleadings, the fact is separated from the law, the practice of their own principle. I agree it would save time and some expense in obtaining decisions, but would causes be decided as justly and satisfactorily?

I have before stated, and endeavored to prove by the letter and spirit of the Constitution, that in all criminal cases the jury have an established right to decide the law as well as the fact. The respondent, whose actions do not always correspond with his declarations, in the charge delivered before they retired from the bar, to the jury who convicted Fries, uses the following language: "But the jury are to decide in the present, and in all *criminal cases, both the law and the fact.*"

It cannot therefore be necessary for me to repeat the same answer to the maxim that has been suggested, *ad questiones facti respondent juratores. ad questiones legis respondent judices*, which Lord Chief Justice Vaughan, on a memorable occasion, gave to the counsel of his day; a very good maxim, but often very improperly applied. It is referable to these cases solely when the law and fact by the pleadings are separated, as in the case of demurrers and special verdicts. It has not the most remote application to criminal cases, on the issue of not guilty, which necessarily blends law and fact together. A pure, unmixed question of law never came before a jury, it is always mingled with fact, and must depend upon the testimony. In such a case the judge cannot give any positive directions of law on the trial; for the law can only arise out of facts, and the judge cannot know what the facts are until the jury have given their verdict. Lord Hale, a great authority in criminal law, also observes, that "it is the con-'science of the jury that must pronounce a pris-'oner guilty or not guilty; for to say the truth, it 'were the most unhappy case that could be to the

'judge, if he at his peril must take upon him the 'guilt or innocence of the prisoner, unhappy also 'for the prisoner; for if the judge's opinion must 'rule the verdict, the trial by jury would be use-'less." I think I tread on ground which can neither be removed nor shaken, when I assert the unqualified right of the jury in Fries's trial to decide the law equally with the fact, because, added to all the rest, I have the respondent's own authority in support of the position.

Suppose then that Judge Chase had not been so eager and in such great haste to display the offspring of his profound legal reflections. That he had been patient enough to wait as he originally designed, as appears in his answer, "until 'after the petit jury should have been empan-'elled and heard the indictment read to them 'by the clerk," and the jury, "before the district 'attorney should have stated to them the law on 'the overt acts alleged in the indictment as it 'appeared to him;" had presented a set of papers to the court and counsel on each side, containing their decided opinions of the law, that the overt acts stated in the indictment did not amount to treason agreeably to the Constitution. That they would not have this law controverted, nor suffer any cases of construction in the British statutes to be cited. I presume the learned judge would scarcely have brooked such conduct in the jury, though the case is parallel with his own. He declares himself that the jury had a right to decide the law in that cause, and they would only have done what he himself did do, decided it without argument, having made up their minds at home, after hearing the indictment read on the prisoner's arraignment. Had the jury adopted this conduct, which I fear the judge could not have tolerated, and had they persisted in it, the prisoner must have been acquitted, against the predetermined opinion of the court. Sir, notwithstanding the observation of Mr. Harper, that the court refused to grant a new trial in criminal cases in favor of life from motives of humanity, and not because they have not the power if they choose to exercise it, I must beg leave most explicitly to deny this position. The court possess no such authority, nor have they ever attempted it in a single case within my recollection, and certainly the learned counsel produced no example of the kind. Besides, the defendant states in his answer, that "he well knows that it is the 'right of juries in criminal cases, to give a verdict 'of acquittal which cannot be set aside on ac-'count of its being contrary to law."

To bring the case home to the business and bosom of the respondent, let us suppose that when he first appeared before this honorable Court, surrounded by the able and eminent counsel which the laws and humanity afford him, you, Mr. President, had presented to his advocates a paper containing the predetermined opinion of a Constitutional majority of the Senate, that if the facts contained in the articles of impeachment were substantiated by proof, that the respondent was guilty in law of high crimes and misdemeanors, for which he ought to be removed from office and disqualified to hold any other under the United States, would he not have said, and with great justice too, that you had prejudged his case? The refined distinctions so eloquently urged to excuse his own conduct, would have vanished the moment the reality was experienced. The splendor of his sophisms, which have sometimes almost dazzled our eyes, would have been obscured by his own feelings. The instant the case was made his own, his conduct would have furnished us with all the evidence and all the arguments that would have been required. Had this court acted in such a manner, it would have given the respondent a volume of explanation on the subject of *prejudging the law*, which one of his counsel (Mr. Hopkinson) has stated he did not understand. But, thank Heaven, this tribunal has treated the respondent with that indulgence which is due to individuals in his situation. They have given him the full benefit of our equal laws. They have acted upon the humane and benevolent principles of our code, which presumes every man innocent until he is proved to be guilty. The laboring oar is on our side, and unless we satisfy the Senate by plenary evidence of his guilt, they must and will, I trust, acquit him.

The examples of Lord Chief Justice Eyre and of Judge Iredell, in the charges which they have delivered to the grand juries, have been referred to, for the purpose of shielding the respondent. The cases are utterly dissimilar, and bear no analogy or resemblance to each other. Their charges contain a general definition or description of those offences which come under the cognizance of a grand inquest. When they do advert from peculiar circumstances to particular cases, the opinions they express are always subject to correction; for whoever heard of a judge refusing to permit the counsel for an accused individual to controvert any doctrines delivered in his charge to a grand jury? This was not the conduct of Lord Chief Justice Eyre or Judge Iredell. Whatever sentiments they may have expressed in their charges, they were open to conviction, and permitted the counsel to indulge themselves in all the latitude of argument they considered necessary to their client's defence. Would to God, that the respondent had imitated the examples which his own counsel have held up to our view!

As the learned judge had formed this *ex parte* opinion, to which he was determined to adhere, his advocates make a merit of his revealing it at the period he did, and they inform us that he might have kept it locked up in his own bosom, of which he alone kept the key, and have divulged it when it was too late to counteract it. But the express purpose of opening the budget was, to prevent the counsel from controverting the points. For the defendant, in his answer, expressly says: "The court held itself bound by the former de-'cisions, and would not therefore alter its opinions 'in consequence of any arguments." Without this precious confession, we well know the effect of bias on the human mind. Such is its peculiar mechanism and constitution, that when an opinion is once formed on any subject, it is extremely difficult to correct it, though erroneous. When once, therefore, the judgment was rivetted against the prisoner, before the season of exertion in his behalf comes round, the tongues of angels would have been insufficient for the task of changing it.

The aid of precedent has been called in to justify this wide departure from principle, and it is contended that the opinion was correct in point of law. My honorable friend (Mr. Randolph) has detected and exposed the fallacy of this species of justification. I will remark that a great and respectable character (Lord Mansfield) has observed, that he is a most unrighteous and wicked judge who decides without hearing both sides—even when he decides correctly—because his judgment is the effect of chance or accident, and not the result of a fair, full, and impartial investigation. Precedents, let me observe, do not make the law, they are merely evidence of it; nor is the law to be absolutely decided by precedents, *judicandum est legibus, non exemplis.* "If a judge 'conceives that a judgment given by a former 'court is erroneous, he ought not in conscience 'to give the like judgment, he being sworn to 'judge according to law." says Lord Chief Justice Vaughan. But Judge Chase declares that, had he differed in opinion from former precedents, even in a capital case, he should have held himself bound by them. But here let me ask what are those precedents to which he subscribes? It is not my intention to go at full length into the discussion of them, or comment at large on the law of treason. My object is, on this interesting occasion, to enter a solemn protest against doctrines which would entail on us all the constructive treasons of another country, and to assign in a few words the reasons of my opinion. I am not to be deterred from my duty by the assertion that no counsel of eminence would controvert the principles laid down by the respondent in his *ex parte* opinion, more especially when characters of such high standing at the bar as Mr. Lewis and Mr. Dallas, have honorably and conscientiously opposed such monstrous doctrines. The Western insurrection in Pennsylvania was materially different from the momentary disturbances in the counties of Bucks and Northampton. The precedents which arose from one could not be applicable to the other, and the cases of Mitchell and Vigol, which have been cited, are readily distinguished from that of Fries.

In the first, the combination was formed and organized to seize *all* records and papers, and to destroy *all* offices, to expel *all* officers in the whole survey. The insurgents traversed the country armed, seized papers, attacked offices, and drove officers out of the country.

They seized and imprisoned the marshal, who escaped and returned to Philadelphia by a circuitous route.

They assembled at Cooche's fort, consulted on the attack upon Colonel Neville's house, marched thither in military array, summoned him to surrender by a flag, set fire to his house, and destroyed his records. They assembled at Braddock's field; deliberated on taking the garrison at Pittsburg; marched thither with that avowed object; but finding the garrison prepared for defence they filed off.

They assembled after the proclamation, and after the militia were ordered to march. They avowed an intention to resist. They compelled the Government to negotiate. The leaders, Bradford and Marshal, fled on the approach of the army, and the insurgents generally accepted the terms of amnesty, as in a case of treason. The army was, however, maintained for sometime in the country.

In the last, the people were illiterate, ignorant of the laws and language. They did not conspire to act themselves, but to prevent *particular* inferior officers from acting, by making the assessments in *particular* townships.

They acted like a mob, in obstructing the progress of the officers by threats, hooting, &c., and once they took an officer's tax list or papers, but immediately returned them.

They assembled expressly to release or rescue a *particular* set of prisoners whom they called their neighbors.

They rescued the prisoners, and withdrew without injuring or attempting to injure the marshal, or the tax officers who were at Bethlehem.

They never suggested the idea of resisting the army. They dispersed as soon as the proclamation was issued, and they never met afterwards.

The distinctions are striking and obvious.

In the insurrection of 1794, the object was general; in the riot of 1799, it was particular.

In 1794, the insurgents *acted* as assailants; the rioters of 1799 stood on the defensive, and only obstructed the officers in attempting to act.

In 1794, the design of attacking a fort and resisting the army was deliberately formed, and overt acts committed to carry it into effect; in 1799, the idea of attacking or resisting the military power of the Government never was suggested.

In 1794, the sedition act had not provided for combinations to impede the execution of a particular law: In 1799 that act was in existence.

In 1794, the outrage extended to the seizure of the marshal to prevent his executing any process. In 1799, it was confined to the release of a particular set of friends and neighbors.

The precedents, therefore, of Mitchell and Vigol, which have been so much relied upon, did not, I humbly submit, apply to the case of poor Fries. But the defendant has dwelt much on the opinion expressed by Judge Iredell, in his charge to the petit jury on the former trial of Fries, notwithstanding the verdict was set aside, which was given on that occasion, and Judge Chase should have proceeded on the second trial, as little prejudiced by any opinions on the former, as if such trial had never taken place. It appears from the testimony of Mr. Dallas, that so confident was he of the broad difference between the cases of 1794 and 1799, that in the first trial he did not advert to the former, little suspecting that they would be considered as precedents for the latter. When he found, by the charge of Judge Iredell, that he did

unexpectedly rely upon them, his intention was, in the second trial, to direct his arguments to the manifest distinctions between them. In this, however, he was disappointed by the arbitrary conduct of the defendant. Under these circumstances, can this case be considered binding and obligatory; or, is a single precedent to make the law, and absolutely prevent counsel from controverting it?

The learned judge bolsters up his opinion by stating that it is in conformity to the uniform opinion of British judges since the Revolution of 1688. But these judges were bound by all the precedents which had previously occurred. And is every baneful exotic to be thus transplanted into our soil? If they are, I trust, however they may flourish in their native land, they may wither and die in our clime. The Constitution defines treason, and to that instrument alone we should look for a complete description of the crime. Those illustrious characters who formed it, no doubt supposed they gained a great point in thus ascertaining with precision the offence. The precedent, Montesquieu justly observes, for the crime of high treason to be indeterminate or uncertain, is of itself sufficient to make any Government despotic. The text of our Constitution is sufficiently plain without any British glossary. Let me earnestly recommend, on this point, without reading them myself, the perusal of the observations of a learned and excellent judge (Mr. Tucker) the pure ermine of whose character is not sullied by a single stain, contained in his edition of Blackstone's Commentaries. On this American stock shall we ingraft every scion which we can procure from the luxuriant *upas* of England? No, sir; I trust there will be found independent judges who will prune away such unnatural branches, and restore the original purity to the Constitution.

The Court will indulge me, at this stage, with a few observations in reply to the authority from Keelyng, cited by one of the counsel (Mr. Hopkinson) and which I had nearly omitted. They must have been extremely pressed when they had recourse to this case, where the Judges, the Attorney General, and the Solicitor General for the Crown met together in conclave to decide the fate of those accused of treason. Need I remind this intelligent Senate that this shameful transaction, this gross prostitution of justice, took place before the Revolution, and just after the restoration of Charles II., when pliant judges were selected to bring to punishment the innocent as well as the guilty. The island of Great Britain was at that period a common slaughter-house. Such was the savage thirst of the Government for blood, that they persecuted persons who had fled to the remotest parts of the earth. Is it not surprising that conduct, pursued at a time when proscription was the order of the day, should be produced, to justify the respondent? It proves vastly too much. It evinces that, if precedents in evil times are to be implicitly followed, there is no offence, however great, no conduct, however flagrant, which may not be sanctioned and supported. But, sir, to produce a case which happened before the Revolution of 1688, to excuse the conduct of a judge who refused to hear authorities read prior to that period, is, I must confess, a singular incident in this trial. Independent of the consideration that the court themselves had thus predetermined the case of the unfortunate Fries, what must have been the effect on the minds of the jury summoned on the panel, who were present when this *ex parte* and extra-judicial opinion was published to them and to the world? The agitation produced at the bar has been described by the witnesses in such a manner, that you are capable of contemplating the sum, and of estimating the fatal effects which it must have necessarily produced in the case of the prisoner.

I contend, therefore, from the respondent's confession, and the testimony, that he is guilty of the first specification contained in this article; that he unfairly, and in violation of the plainest rule of duty, prejudged the case of Fries, without any reasonable excuse, much less justification for so doing.

Not contented with prejudging the cause and prejudicing the minds of the jury who were to try the issue, he proceeded still further, with adventurous strides on untrodden ground. Apprehensive that a single ray of argument must dispel the mist which he had raised, he determines that the counsel assigned by the court themselves shall not controvert before the jury the opinion delivered in writing. They were directed to address themselves to the court, who would not, if we believe Judge Chase himself, in his answer, alter their opinion on the subject. And yet the respondent admits the undoubted right of the jury to decide both law and fact.

It appears, from the history we have received of the case, that the counsel for Fries, knowing that the Attorney for the United States would rely on cases decided in England since the Revolution, wished to trace them to their origin. It is a fact which will not be disputed, even by the respondent, that, since the Revolution, the British judges have held themselves bound by the authority of cases previously decided. Sensible, then, that the determinations which resulted from the sanguinary precedents which the rude decisions of barbarous ages had established, would be urged against their client, the counsel for Fries desired to go to the fountain head, to expose the poisonous source from which such streams flowed. Is there any member of this Court who can, for a moment, hesitate to pronounce their conduct correct on this point? Judge Iredell, whose example has been quoted, on the former trial, permitted it to be done.

The advocates of Fries wished also to draw arguments in favor of the defence from some of the acts of Congress, particularly from the sedition law, as it is commonly called. Mark the objection of the respondent: "Treason is defined in 'the Constitution. We can pay no respect to the 'opinion of the representatives of the people of 'the United States on this subject. We will not 'hear them. Much time was wasted on the former

'trial by citing and commenting on the statutes 'of Congress." The opinions, however, of three or four British judges are entitled to great weight and consideration. Judges who never read or heard of our Constitution, but who paid the debt of nature before it existed. But the deliberate opinion of both Houses of Congress, and the President of the United States, evidenced by a solemn Legislative act defining and punishing the very offence, in my humble opinion, which Fries had committed, was not to weigh a feather in the scale. It might reasonably be supposed that the acts of Congress, though not received as authoritative and decisive of the question, would be respected, and no person could have imagined that counsel were not to be permitted to read them. The Legislative body contained, at that time, characters well versed in Constitutional lore. The sentiments of men, however well acquainted with the provisions of the Constitution, as a matter of study and of duty, were not to be expressed before a jury, to decide law and fact, for the purpose of informing their consciences on legal topics. I will not detain you, by citing cases to prove that acts of the Legislature have been frequently received to assist the judgment even when deciding on a Constitutional question. An able and upright statesman (Mr. Madison) has declared at an early period of the Government, "that as to 'a doubtful part of the Constitution, an exposition, 'may come with as much propriety from the Legislature as any other department of Govern-'ment." The wisdom of judges has not always been thought so paramount to that of legislators, that they would not even hear their opinions. But, then, Fries was before the court, it was perfectly irrelevant and highly improper to refer to an authority so inconsistent with the closet opinion of the court. I have generally understood, in the little experience I have had in courts of justice, that opinions given without argument are never to be relied on, and I question whether any counsel in any court of justice, except where the respondent presided, would think of producing as authority, the singular document, prepared in his chamber, in a case which he had never heard argued. His able defenders assert (in the very face of his own declaration, that his opinion could not be changed by any arguments) that the respondent was willing to hear the counsel for Fries. Such is the testimony of a witness, Mr. E. Tilghman, whose candor and impartiality are beyond the reach of suspicion, and to whom I give the most implicit credit. The learned judge did observe that, "nevertheless, counsel should be heard." Considering that he was resolutely determined never to change his written opinion, one would suppose he might have agreed that they should range as widely as they pleased through the field of argument, and could have safely permitted them to talk until they were satisfied. This, however, was not the fact. They were to be heard in his own way and on his own terms. His memorable expressions in relation to the cases which the counsel for the accused wished to cite and to apply, must be recollected by this Court: "What! cases from Rome, Turkey, or France!" In this emphatic manner did he persevere in preventing any recurrence to the rotten foundation on which the authority that the learned judge considered as conclusive was built. Was this imitating the conduct of Lord Chief Baron Eyre? Let any gentleman peruse the trials of the honest Hardy, the upright Tooke, and independent Thelwall, and he will be struck with the difference of conduct. Throughout those trials the court leaned to the side of the prisoners, as if, in the benevolent language of the law, they really were counsel for the accused. They manifested a becoming indulgence to the celebrated characters concerned for them, and when Mr. Erskine, that distinguished ornament of the bar, who is not more justly admired for his shining talents than his inflexible unblemished integrity, by some animated observations which proceeded from the warmth natural in an honest cause, excited the feelings of the Solicitor General, the President of the court complimented him for the zeal and ability which he displayed in the cause of his clients. Messrs. Lewis and Dallas both declare expressly that the respondent said that they must address themselves to the court and not to the jury. I acknowledge that neither Mr. Tilghman nor Mr. Rawle, for whose characters I feel the greatest respect, recollect this particular fact, but surely this cannot operate against the positive testimony of two witnesses; for though there may be an apparent contradiction to a superficial observer, there is no real difference between them. On the subject of positive and negative testimony, let me refer this Court to what has already happened in the course of this very trial, where the advocates on both sides are attentively taking notes of everything which is said. The gentleman who closed the defence (Mr. Harper) mentioned that one of the Managers had stated that an impeachment was merely an inquest of office. I believe there is not a Manager who recollects that such an observation was made (unless it may be the gentleman who made it) and yet there is not one of us who does not believe that it was actually made. It is precisely the same case with respect to the testimony of Messrs. Dallas and Lewis. There cannot be any exception taken, on this point, to their evidence merely because the other witnesses have not the fact impressed on their recollections. Let me observe, further, that Messrs. Dallas and Lewis particularly state that Judge Chase absolutely declared that the acts of Congress should not be read; the same remarks, which have just been made, will apply to Messrs. Tilghman and Rawle's not recollecting that fact. By the Constitution every accused individual is entitled to the benefit of being heard by counsel. If the court will not permit the jury to hear, or the counsel to speak, any language which they do not approve, they deprive the accused at one and the same time of the right of trial by jury, and of the privilege of being heard by counsel. The learned judge states that the jury have an undoubted right to decide both law and fact, but in the same breath declares that he is to be the exclusive judge of what is law.

This really reminds me of the story of the sailor in the play of the Tempest, who agreed that his comrade should be the Viceroy over the island provided he were Viceroy over him. As it relates to the counsel you may as effectually deprive a prisoner of this benefit by preventing their speaking on the points which they conceive material to the defence, or by a rude course of overbearing, insulting conduct toward them, which will totally disqualify them for the task, as if you were to nail their lips or clap a padlock on their mouths. Such was the conduct pursued by the respondent in Fries's case that, I hesitate not to pronounce him, on the strength of the facts, guilty of depriving the unfortunate prisoner of the benefit of counsel, and the jury of their Constitutional right. I do not contend that counsel should be permitted to read on a trial anything they please—an idle tale, a novel, or a farce—totally irrelevant to the issue; but I assert and maintain their undoubted right, in the case of Fries, to read and comment at large before the jury on the statutes of Congress, and on those old precedents from which the modern ones sprang, like shoots from a parent stock, which they earnestly wished and desired.

When deprived of their Constitutional privileges they would not degrade the independent character of the profession by becoming the servile instruments of the court. They disdained going through the mockery of a trial, that their client might be hung according to form; and they retired with indignation from a tribunal which had reduced them to this distressing alternative. For this laudable conduct the Attorney General of Maryland has been pleased to say, they ought to have been instantly committed to prison. What, sir! Send counsel to jail for insisting on their Constitutional right to address the jury at large on the law in a criminal case, and on a trial for high treason, and for withdrawing when compelled, by conduct unequalled in the annals of jurisprudence, to abandon the cause of their client, and suffer professional ignominy and disgrace! So far am I from subscribing to this extraordinary opinion, that I think the gentlemen who defended Fries deserved a civic garland or a laurel wreath, for their manly firmness and dignified independence. I was sorry, sir, to hear from the lips of a learned and respectable witness (Judge Winchester) that, in Maryland, it is the uniform practice *in criminal cases* to take the judgment of the court on points of law, and that although counsel seriously differed from them in opinion, it would be thought a high breach of professional decorum to attempt to controvert the point before the jury. When, however, I put a case of gross and palpable error in the opinion of the court, on a trial for a capital offence, and asked the witness whether he would not then argue the case before the jury, that able and humane judge replied that such a case would justify a departure from the ordinary course. Yet even in Maryland the court do not, I understand, decide the point until it is legally brought before them, and fully discussed. When the respondent, therefore, in the case of Fries, determined without hearing any argument, and before the season of trial arrived, he should have recollected the memorable example recorded in Holy Writ. Even Omniscience would not condemn Adam without hearing him: "Adam, where art thou?" And shall man,

> "Proud man,
> Drest in a little brief authority,
> Play such fantastic tricks before high heaven,
> As make the angels weep!"

We find the respondent, after he had thus completely stripped Fries of the panoply with which the Constitution and the laws of his country had clothed him, informing the disconsolate prisoner, almost in the very words of the execrable Jeffries to the unfortunate Sydney, that "the court would be his counsel, and by the blessing of God, would serve him as effectually as his counsel would have done!" Gracious heaven! what must have been the deplorable situation of the accused, and what the emotions of his mind at that awful moment? Before a jury prejudiced by the court themselves, deprived of their rights, without counsel and without friends, standing on the verge of eternity. His senses must have sickened at the scene, and expiring hope reclined upon the tomb. But I will not attempt to portray it; my feeble powers and weak language lag far behind nature. I should do injustice to the subject, which you can better feel than I can describe. On your feelings, therefore, I must draw for the deficiency of expression. It is truly singular that the respondent should rely on the circumstance of Fries's counsel retiring from the case, as a ground favorable to the present defence. This is taking advantage of his own wrong, because it so happened (for the ways of the Deity are inscrutable to the human eye and intellect) that his illegal and unjustifiable conduct rescued Fries from the grave, after he had consigned him to an ignominious tomb, and released the poor victim which he had bound to the altar. Yes, there was an overruling Providence who watched over the prisoner; there was, to use the language of the eloquent Curran, "a redeeming spirit in the Constitution, which walked with the sufferer through the flames of the prosecution, and rescued him unhurt from the conflagration." The shameful occurrences on the trial of Fries reached the ears of the late President Adams. Through the then Attorney General of the United States, he requested from the counsel for the prisoners, a statement of the grounds on which they intended to rely had they been permitted to defend him. These were candidly and concisely, but with great clearness and perspicuity unfolded, and Mr. Adams, rising superior to the passions of the day and the folly of the times, with a firmness and humanity which did him infinite honor, stretched the arm of mercy to the devoted victim of party. Sir, I will venture to affirm, notwithstanding the confident manner in which it has been asserted, that the respondent's prejudicated opinion on the law of treason in the case of Fries was correct, that, in questioning that opinion, I have the authority of Mr. Adams in my favor, evidenced by an official act, of which I feel it would be impossible for me to speak in terms of

panegyric too lofty. As I cannot add to the eulogium of my honorable friend, Mr. Randolph, I will not, by any feebleness of expression, take from it. Is the respondent entitled to any share of the merit of this great and good action? Did he intercede at the seat of mercy? And yet, because the life of Fries was saved by the justice and humanity of Mr. Adams, his counsel would almost persuade us that Mr. Chase had this object in view, when he adopted the conduct which he exhibited on the trial. He deprived him of an impartial trial by jury, the adamantine chain which secures the life of a fellow-citizen, and suspended his existence on the slender hair of Executive discretion, and his counsel make a merit of the deed!

Taking the conduct of the respondent altogether, in that unfortunate case, which will be remembered as long as virtue is revered or vice deplored, it exhibits a stupendous colossus of judicial despotism and *legal* injustice, which, standing with one foot fixed on the rights of juries and the other placed on the privileges of the accused, bestrode the prostrate Constitution and laws of the land, and with a look more fatal than that of the basilisk, threatened to destroy the liberties of our country.

The case of Fries was succeeded by that of Callender. There is seldom one act of crying injustice without being followed by another. It is the misfortune, if not the fault, of the respondent, that his conduct compels us to unfold more than one solitary case, in which he grossly violated his duty and the laws of the land.

Callender had written a book, which I never saw until since the commencement of this trial. A wretched performance, which ought never to have excited in the breasts of the honest supporters of the late Administration any passion but contempt. They should have applied to it the memorable declaration of one who once figured in political life, "a wise and virtuous Administration is not to be battered down by mere paper shot." The respondent, it appears, was furnished by one of his present counsel, (Mr. Martin,) when in the act of setting off for the district of Virginia, with a copy of this formidable work, which threatened destruction, in his opinion, to the Federal fabric. The book was ready scored to his hands, so that, with a single glance, he might discover the fatal passages. With this volume for a "*vade mecum*, or travelling companion," he proceeded to Richmond to hold a circuit court. Soon after his arrival a presentment was made and an indictment found against Callender. The miserable object of persecution was hunted up and down the country. At length he was discovered by the marshal and brought into court. To the indictment he pleaded not guilty, and able and eminent counsel appeared to defend him. To avoid any dispute about testimony in discussing this case, I shall rely implicitly on the evidence of their own witness, Mr. Robertson. The case of Callender is comprised by the second, third, fourth, and fifth articles, which specify the particular acts that were committed in violation of the law and of his duty as a judge. I shall advert to the prominent grounds of charge in the order in which they occurred on the trial, without confining myself to the order in which they are stated in the articles.

Callender not being prepared with the testimony necessary to substantiate his defence, an affidavit was filed in due form, which stated ample grounds to postpone the trial of the cause, and upon which the court ought certainly to have granted a continuance. One of the counsel for the respondent has read a rule of the Supreme Court, which declares that they will consider the practice of the King's Bench as forming the outline for them. In the authority which I produced a few days ago, the general doctrine on the subject of postponing trials is laid down in a clear and plain manner. In the case of the King vs. D'Eon, the court of King's Bench state very accurately the rule adopted for the postponement of a cause. It is only necessary to state in the affidavit that a material witness is absent, whom you have used your diligence to obtain, without the benefit of whose testimony you cannot safely proceed to trial, and that you expect to procure his future attendance. The affidavit of Callender stated the absence of witnesses whom he believed material, mentioned their names and places of residence, and the facts which he expected to prove by them. This was the very term when the indictment was found. What are the objections raised against the motion to postpone, founded on this affidavit, and the reasons urged in support of the respondent's refusal to put off the trial? They are truly singular. One is a refined technical objection to the form of the affidavit, because it does not state in strict legal language that Callender expected to be able to procure at a future time the attendance of the witnesses. But he states facts which prove on the face of them, that by postponing the trial he could obtain the benefit of their testimony, for he mentions the places of their residence, all of them within the United States. I say the case is stronger than if, *secundum formam*, he had sworn that he could procure their attendance. When he tells where they lived, the court must have been satisfied on this point. However, the respondent assigns a curious reason, to be sure, for his conduct. If the witnesses who were absent were actually before the court, and were to prove all that Callender had stated or expected, it would not have justified all the libellous passages that had been selected from the book and thrown into the indictment. How was Judge Chase to know but that Callender had testimony as to those points on which his absent witnesses would not have deposed? I have ever understood it to be a sufficient ground of postponement, if a witness be absent who can prove any one material fact in a cause, and I never yet heard of a court after being satisfied of this, attempting to ascertain whether there were other witnesses who would prove all the rest of the facts necessary to substantiate a defence. This would be most effectually trying and deciding a cause upon a motion which was intended to prevent the trial of it at that time. It

is further contended, that any person who writes on political subjects should have all the documents, vouchers, and witnesses, at his elbow to prove the truth of any fact which he asserted. I have always thought that when a charge is preferred against any man, it is time enough then to look for testimony to prove his innocence. In fact, there is no method which I know of by which he could procure the evidence of any individual until there was a case depending. All the exparte affidavits he could obtain, this honorable court know would be incompetent testimony.

The respondent it seems was willing to postpone it for a particular period, provided he would be present at the trial. Nay, he would go all the way to Delaware, and return again to accomplish an object he seems to have had so much at heart. In my humble opinion this part of the Judge's conduct proves stronger than almost any other of his acts, the motives which influenced him. If I were to select any one circumstance to prove that his intentions were improper, I would lay my hand on this. "I will not postpone this important trial until the next term, because, according to the arrangement, I shall not then be on this bench, but I will agree to delay it for a shorter period, and travel three or four hundred miles in order to accommodate Mr. Callender with my presence on the trial." Did any lawyer ever hear of such conduct? Did they ever hear of a court adjourning to a particular time, to try a single solitary case of a common misdemeanor?

I read a case the other day from Bacon, where the trial of an indictment was postponed until the second term from that in which the motion was made. I referred to another case in Cowper's Reports, where the court declared they would postpone the cause for ever, as the witnesses were not within the power of the defendant, unless the prosecutor would agree that their depositions should be taken and read as evidence.

Let us suppose that Callender had stated in his affidavit that he could not procure the attendance of material witnesses, because the process of the court would not reach them, and that the respondent himself had been of opinion that their testimony could not be taken by commission, the court possessing no such authority in a criminal cause. Ought he not under these circumstances to have imitated the humane example of a British judge, and to have told the District Attorney that he would postpone the cause until he consented that their depositions should be taken. He preferred acting in a very different way. As some of the witnesses were not within the power of the court, no matter how material their testimony might be to the defence, it was an argument sufficient in his own mind to order on the trial of the cause, more especially as the affidavit did not state, what was never before required, that he had other witnesses ready to prove the residue of his case, provided he could procure the evidence of those that were then absent, which was absolutely necessary, fully and completely to substantiate his defence. I take up this case and test the conduct of the respondent by the facts which at that time appeared before him, and not by any subsequent declarations of the counsel for Callender. Was there any legal cause of suspicion in the case, arising from any circumstances which have been related? The wretched author of a vulgar, miserable performance, had been presented, arrested and indicted, and was about to be tried off hand, as if in a court of *pie poudre*, where business is despatched as quick as you can shake the dust from your shoes, when his counsel exhibited an affidavit of the absence of material witnesses, and moved the court to postpone his trial to the usual course. And though strong legal grounds are laid before them, this reasonable request is refused upon the miserable pretexts which have been assigned. Despatch appears to have been a favorite object with the respondent in criminal business. But this extempore mode of proceeding, this impromptu method of administering justice, when an accused individual is praying for time to collect the testimony necessary for his defence, is in perfect hostility with the humane spirit of our laws and the practice of every court with which I am acquainted. I have read as a maxim of law, that in capital cases no delay is long; and I should presume, that in crimes of an inferior grade, a reasonable postponement, as the object cannot be to convict and punish innocence, ought certainly to be granted, and is enjoined in all the authorities, let us turn our eyes to whatever book of practice or precedent we may. I am far from thinking that there may not be such glaring violations of the law by those who are presumed to be best acquainted with it, as at first blush to prove that they were intentional, and proceeded from impure motives, not from ignorance, but design.

Suppose a judge should sentence any person to the pillory for an offence which was by law punishable with a small fine, or condemn him to the whipping post for a crime, the penalty annexed to which was imprisonment. I presume in either case there would be no question about motives. I put these merely for examples, because I take it, whenever there is an unequivocal, glaring and manifest violation of any known principle, or settled rule of justice, with which a man well educated in the legal science, and more especially one who possesses the *viginti annorum lucubrationes*, cannot be unacquainted, no doubt can arise whether he acted from honest mistake, or evil design. The case which was cited on this point by one of the counsel. (Mr. Key,) from Term Reports, does not apply on this occasion. That was an application to the court of King's Bench for an information, which is a more summary mode of proceeding than by indictment, and in such cases it is the practice of that court, unless very strong grounds are laid before them, not to interpose their extraordinary power of granting an information, which deprives the accused party of the security and protection of a grand jury, and will compel the applicant to resort to the ordinary remedy of indictment.

I do respectfully submit, for the reasons assigned, that the conduct of the learned judge, in refusing to postpone the trial of Callender, was a most

manifest violation of the principles of law, and was attended with such circumstances as render it highly improbable that it proceeded from a mere error in judgment.

Let us examine the subsequent conduct of the respondent. And whilst we view him progressing with the case, we shall find him at every step deviating more widely from the course which he ought to have pursued.

It is in evidence, that a person (Mr. Basset) was called to the book to be sworn as a juror, who suggested to the court facts, which, in my humble opinion, rendered him incompetent for that office. This suggestion was made from laudable motives. It proceeded from a conviction that he was not an impartial juror, whose mind had received impressions unfavorable to the case of the accused. He candidly stated to the court that he had seen in the newspapers extracts, said to be taken from the work called the "Prospect Before Us," and that if the extracts were truly taken, he had formed an unequivocal opinion, that the book was a libellous publication, for he had made up his mind that the sedition law, as it is called in common parlance, was perfectly Constitutional. This very work was the foundation of the indictment, which we may reasonably suppose contained, if not all the passages which had been scored by that profound lawyer the Attorney General of Maryland, a judicious selection of those that were most obnoxious and offensive. I undertake to state as a correct principle of law, that upon an indictment for a libel, though particular sentences may have been culled by the prosecutor, the jury have a right to examine the whole publication, and to judge from the general context of the book, whether the publication be criminal or not. This was universally allowed, even when the powerful talents and commanding influence of a Mansfield had effected a monstrous innovation in the trial by jury, in cases of this nature; when, like the defendant, (but recollect not in a capital case, as on the trial of Fries,) he had reduced the jury to mere cyphers, and had usurped their powers, and arrogated for the court the right to decide what it was the duty and the province of the jury to determine. The poor jury were to be confined to the mere fact of publication, and the truth of the *inuendoes*, and the court were to decide exclusively the law.

It was reserved for that great and enlightened statesman, Mr. Fox, to restore the law to its ancient uniformity, and revest in the jury that power in prosecutions for libels, which they possessed in every other criminal case. It will be remembered that in this arduous and laudable undertaking, he was supported by the eloquent Erskine, and the venerable Earl of Camden, who had resisted, with that independence and integrity which strongly marked his dignified character, the new-fangled doctrines of the Court of King's Bench. Since the libel bill has been enacted, in all the cases which have occurred, the subject has been left at large with the jury. I recollect particularly on the trial of the King *vs.* Stockdale, which took place soon after, Lord Kenyon told the jury they were not tied down to the passages selected from the pamphlet, but were to compare the extracts with the whole publication, and judge for themselves from the entire work, as to the guilt or innocence of the accused, and Stockdale was acquitted. If a juror had formed an unequivocal opinion, that the work entitled the "Prospect Before Us" was a libellous publication, he had in fact formed an unequivocal opinion on an indictment predicated on extracts, taken from that book. There is no logic which can destroy or evade this position, drawn from the facts. Observe the subtlety, with which the respondent eludes the most obvious principles. The question put by him to the juror was, "Have you ever formed and delivered an opinion on the charges contained in the indictment?" Remember that the indictment was not read to him, in order that he might know what it contained, and having understood its contents, be able to give a correct answer; he was called upon to declare whether he had formed and delivered an opinion on what he had never seen, nor heard read, and, with sophistry exposed to vulgar inspection, the learned judge proceeds to state, that "he never saw the indictment nor heard it 'read, and, if he had neither read nor heard the 'charges, he was sure he could not form an opinion 'on the subject." But how unjust was the conclusion which the respondent drew from his premises; for the indictment which Mr. Basset never heard read, when he came to read it, might be found to contain those very passages which he considered as libellous; and how in the face of the fact, for the juror had decided "The Prospect Before Us" to be a libel, and the "Prospect Before Us" Judge Chase knew himself to be the sole basis of the indictment. Let us suppose that the respondent himself, after scanning with eagle eyes this terrible publication, had absolutely made up his mind that it was libellous, and had afterwards been called upon as a juror, on an indictment against Callender, which he had never seen or heard read, but which in fact was founded on this publication. Would he pretend to say, because he did not know what the indictment contained, that it was impossible he should have formed an unequivocal opinion on the charges which composed it? I presume not. Behold then the imposition which was practised upon a juror, who had made up his mind absolutely on the very question to be tried. He might as well have asked him whether he had formed and delivered an opinion on any indictment, of which he had never heard before, as one which he had never read, and of the contents of which he was utterly ignorant. To have asked Mr. Basset whether he had formed and delivered an opinion on any particular case in the books with which he was entirely unacquainted, and if he answered from that circumstance in the negative, to have ordered him to be sworn, would have been just as proper as the course the judge pursued. Mr. Basset had formed an unequivocal opinion, that the publication for which Callender was indicted was a libel; and had delivered this opinion to bring it completely within the respondent's rule. Some of the counsel have observ-

ed. that the objection was not made by the advocates of Callender, and that it proceeded from a mere suggestion of Mr. Basset. And which is the strongest case? I apprehend that where a juror, conscious of his impressions, from motives of delicacy, puts the court in possession of information, on which they were bound to act. Let me ask under these circumstances, whether Mr. Basset was an impartial juror? And does not the imperative language of the Constitution declare, "that in all criminal prosecutions the accused shall 'enjoy the right to a speedy and public trial by 'an impartial jury?" With this plain provision on my side, I want not the glossary furnished by the authorities which have been cited by the counsel for the respondent. Nor can it be necessary to enter into a critical examination of them, as we have a case determined in our own courts, on the motion for a new trial, made on behalf of Fries. On that occasion, this honorable Court will find, that all the precedents relied upon at this time were adduced and urged. The passages from Brooke, Roll, Viner, and Trials per Pais, were cited. The law at large and the law abridged, were brought before the judges, who decided after a solemn argument in favor of a new trial. This single case is sufficient to overturn the authorities, in which the respondent's counsel appear to repose such implicit faith. What were the facts on the motion for a new trial in Fries's case? After a verdict of guilty, an affidavit was made that one of the jurors had said that Fries ought to be hung. Mr. Basset, this court will recollect, in effect declared as positively that Callender ought to be convicted. Mr. Basset had formed an unequivocal opinion, that the publication for which Callender was indicted, was a libel. This opinion, to bring it completely within the respondent's rule, he delivered in open court at the moment of being sworn as a juror. That certainly was giving an opinion that Callender ought to be punished. But the juror in Fries's case, when confronted with the witnesses who deposed to his declaration, denied having made use of the expressions imputed to him.

I do therefore most sincerely believe, that the respondent decided against the principles of law and the plain letter and spirit of the Constitution, when he directed Mr. Basset to be qualified as a juror on the trial of Callender. He decided also against the just construction of his own rule, contained in the question which he had addressed to the jury, and gave it an interpretation which rendered it equally ridiculous and absurd. The question must have presupposed the juror acquainted with the contents of the indictment, and must have been predicated on this principle. Any other supposition would render it not merely idle and nugatory to be put, but truly nonsensical; and yet the respondent made his being ignorant of the charges in the indictment the pretext for swearing him on the jury. So far as relates to the delivery of an opinion which he had previously formed, Mr. Basset, in answer to an interrogatory which was put to him by me, replied, that he did publicly, in open court, pronounce the opinion which he had formed of "The Prospect Before Us," from the extracts which he had seen in the papers. Here then is proof that he did deliver in the most solemn and public manner an opinion on the subject, from which, on his oath as a juror, for he was just about to be qualified, he could not depart without subjecting himself to ignominy and the severest reproach.

The point is, I humbly conceive, too plain to require any further comments, and I shall proceed to another extraordinary circumstance which occurred on this trial, which I am sorry to say was characterized by so many and such strange modes of proceeding, that I think we might safely challenge the profoundest researcher in the judicial history of England to furnish a parallel. Let me remark, that all the questions proposed to the witnesses, on the part of the prosecution, were put *ore tenus*. The tongue and not the pen propounded them. As soon as the examination began on the part of the defendant, or to speak more correctly, before it commenced, the tables were turned, and the counsel of Callender were directed to reduce to writing the questions which they wished to ask. This is proved to be a novelty in trials of this nature. If so, was it an innocent novelty? Why embarrass the counsel for the prisoner with an unusual and unprecedented regulation, and compel them to do that which they did not require on the part of the prosecution. This extraordinary measure has been attempted to be excused, because this honorable Court has adopted, though partially, the same rule upon the request of any of its members. The large number of judges, of which this dignified tribunal is composed, rendered such a rule necessary and proper. It flowed from the very nature and constitution of this court, and is agreeable to constant and general usage. The two cases bear no resemblance nor similarity to each other. The rule operates here equally and fairly, let the question come from what quarter it may, whether from the Managers or the counsel, or whether it be proposed by any member of this honorable body. The counsel for Callender submitted to this new law of the court, promulgated at the instant it was to be executed, and suited to the case before them. They reduce the questions which they wished to ask Colonel Taylor to writing. Immediately an objection is raised against them. And if it were not already known to this honorable Court, I am sure no member could guess what it was. The respondent had first inquired of them what they intended to prove by the witness, and then insisted that their interrogatories should be committed to writing. It will be recollected that from the miserable trash of Callender, the prosecutor had picked and culled here and there the most noxious and loathsome passages. Every offensive paragraph constituted a separate and distinct charge. The charges were of course numerous. The following sentence was selected as the ground of two of them. Alluding to the late President Adams, the publication says, "He was 'a professed aristocrat. He had proved faithful 'and serviceable to the British interest." The

passage itself contained two distinct assertions, both of which had been charged with the proper *inuendoes*, to explain the intentions of the author, and the tendency of the expressions as highly criminal in the indictment. The District Attorney, it appears from the note taken by Mr. Robertson of his argument, considered the term aristocrat, used in the common political or party acceptation, with the views of Callender as particularly offensive and libellous. Contrary to the precipitate opinion of the respondent, he considered the assertion that Mr. Adams was a professed aristocrat, a substantive offence of itself. Colonel Taylor's testimony it was expected would go to prove the truth and justice of those observations of Callender's. It often happens that counsel are not accurately informed of all that a witness can depose. From the questions drawn up in haste by Mr. Hay, to be put to Mr. Taylor, the respondent drew the inference, but, in my humble opinion, very erroneously, that Colonel Taylor's testimony would not go the whole length of substantiating the facts necessary to evince that Mr. Adams was a professed aristocrat, and that he was faithful and serviceable to the British interest. He thought it could only prove part, and therefore rejected it as inadmissible. For this opinion Mr. Robertson states, that the judge declared that "he took the responsibility on himself, and risked his character on it." His reasons were neither solid nor plausible. He stated that the passage constituted an entire charge, and every part of it must be proven, or none at all. If a person had a respectable witness as to part, and another equally respectable as to the residue, he would examine neither, because singly taken their testimony would not go to all the charge. It is seldom, indeed, any party can make out his whole case by one solitary witness, and when it does happen it is always suspicious. When an individual is selected to prove all that is required, agreeably to the rule of the respondent, no objection of this kind would occur. But is not that case much stronger where a number of witnesses appear, each ready to depose to the particular facts within his knowledge, and where the sum or aggregate of their testimony furnished a complete answer to the charges, however numerous?

I may safely venture to say, that in the annals of any courts of justice or injustice under Heaven, such an exception of testimony is not to be found. The Chief Justice of the United States, a gentleman every way well qualified to judge, declares that he never heard of such an objection before. It is without precedent, and in violation of every rule of the law of evidence. The idea is too absurd to be dwelt upon. It is too distorted in principle to admit of consistency in practice. It is contraband in law, and can only be smuggled by the address with which it was introduced. It requires great talents and ingenuity for a moment to hide its deformity, and in vulgar hands it would become truly ridiculous and contemptible. It is utterly indefensible; and the respondent's counsel themselves have felt it incapable of being justified. They have attempted to excuse it, by endeavoring to show that the learned judge was not influenced by bad motives. For my part I consider it so flagrant that I can ascribe his conduct to no other, especially when taken in connexion with the facts and circumstances proved by the evidence. This will lead me to make a few remarks on the *quo animo*, with which he acted throughout the whole of this transaction. On this topic the evidence is copious and pointed. We have been charged with destroying the confidence of society, because we have given evidence of the declarations of the respondent made to Mr. Mason. These have been stated with all that delicacy which is characteristic of the gentleman. I do not discover from the manner or the circumstances, that the respondent's conversation with Mr. Mason was a confidential one. If I did, I will candidly acknowledge I should feel little disposed to trespass on the walks of private life. It was said to have taken place at an unguarded moment, and that every unreserved expression should not be tortured into an accusation. Let us bear in mind that the respondent was a judge of the land, and about to depart to Virginia to perform the duties attached to his office. He had then in his possession a copy of Callender's work, and declared he would teach the people of Virginia to distinguish between the liberty and the licentiousness of the press, and that if the State was not too much depraved to furnish a jury of good and respectable men, he would certainly punish Callender. If we pursue him on his way to Richmond, we find him in the stage asking a perfect stranger whether he had ever seen "The Prospect Before Us," and expressing a wish that Callender had been hanged. He actually proceeded to Richmond with the scored book in his pocket, which was delivered to the jury, and Callender was convicted and punished. It is said by his counsel, that these declarations of the respondent's were not made in earnest, they were mere jests. I suspect Callender did not find them so. Like the fable of the frogs, it might have been jest and sport to Judge Chase, but it was cruelty to him. Sir, I will not dwell longer on those unpleasant and painful circumstances. This honorable Court can and will duly appreciate them. Much more might be said on this case, but I will leave the task to abler hands than mine. My honorable friend will do ample justice to those points which I have omitted.

From Virginia, flushed with success and elated with his triumph over Callender, the respondent hastened to Delaware. The night preceding the day on which the respondent was to hold the court, he lodged at the village of Christiana, about five miles distant from the court-house. From this place he rode into Newcastle the next morning with Dr. William McMechin, who was summoned as a grand juror to the court, and it is in evidence, was actually sworn on the panel. This is the very man, who, it is represented, gave the respondent the information relative to the seditious printer. As a grand juror it was his duty to communicate to his fellows any offences against the laws of the land which had come to his know-

ledge, and it was the duty of the grand jury to present every criminal act punishable by the laws of the United States. We are bound to pronounce that Mr. McMechin put the rest of the grand jury, for he was sworn so to do, in complete possession of all the information which he communicated to the respondent. With these circumstances, the respondent was perfectly well acquainted. He saw with his own eyes the very man empanelled on the inquest who had opened the budget to him, and knew it was his duty to unfold the intelligence to his brethren. The respondent proceeds to deliver an appropriate charge to the jury—a charge free from all those blemishes which stain a subsequent performance of the same kind. He presented to their view in chaste and eloquent language the proper subjects for their inquiry. In my humble opinion it may have been equalled but never excelled. I considered it, according to my poor judgment at the time, a perfect model; the most finished piece in style and substance that I ever heard addressed to a grand jury. Had he stopped here he would have been an object of praise rather than complaint. Had he been contented with discharging his official duty he would have been entitled to our thanks, rather than merited an accusation.

The grand jury retire to their chamber, and after some time return to the box. To the credit of the then marshal of the Delaware district, I must observe, that he had manifested on that occasion, (as I know him uniformly to have done, even when the storm of party raged with the greatest violence) in the selection of his jurors, an independence becoming the responsible station which he filled. They were not men of pliant tempers, nor were they carefully culled from the ruling sect; but chosen without respect to party, from the most respectable of both sides. It gives me great pleasure to speak of such conduct, because I wish to hold it up as an example. The grand jury were asked by the clerk in the usual form, "have you any bills or presentments to make?" Their foreman respectfully answered they "had not." On this, the judge could no longer bridle his temper. He had anticipated perhaps a treat from the prosecution of an obnoxious printer, and expected to regale his palate with a favorite dish. Provoked by disappointment, his passion burst into a flame, and he condescended to stoop from his bench, for the purpose of seizing on his prey. It was at this period he betrayed emotions so highly reprehensible, and so very unsuitable to the dignity of his situation. In a tone, well adapted to the exceptionable language, he observed to the grand inquest "What! no bills or presentments?" This was matter of astonishment to him, and he proceeded to make the observations so correctly described by Mr. Read, the District Attorney of Delaware, a gentleman of irreproachable life and manners, whose character is not only unimpeached but unimpeachable, and Mr. Lea, one of the grand jury themselves, to whom part of the observations were addressed, a merchant of established reputation, and as a man respected by all who are acquainted with him. Sir, after the observations I have made on positive and negative testimony, I will not stop to demonstrate that everything stated by Mr. Read and Mr. Lea was said, though not recollected by some other witnesses. I will barely mention that all the extra-judicial remarks of the respondent were addressed to the grand jury or to the district attorney. They must, therefore, naturally be presumed to have paid the strictest and closest attention to all that fell from the learned judge, and we have produced one of the grand inquest themselves, and the district attorney, to prove the language he used. I feel confident under these circumstances, that implicit credit will be given to them. I am also convinced that the statement made by the respondent is scarcely more favorable to his cause. The grand jury repeat, to the interrogatory put to them by the respondent, the answer which they gave to the previous question of the clerk, and request additionally that they may be discharged, as many of them were farmers, and it was hay harvest, a very busy season with them. But no matter for that, the business of the persecution, for I will not say prosecution, must go on if possible. The judge would not discharge the grand jury on the first day, agreeably to general practice, as proved by Judge Bedford, though pressed so to do. He proceeds to give them information of the seditious temper which had manifested itself in the State, and particularly in Newcastle county: a county, which, suffer me to say, is well known from its old and unshaken patriotism from the Revolution to the present day. But he did not stop here, he proceeds to mention a seditious printer, point out the place where he lived, and the borough of Wilmington, justly celebrated for its uniform attachment to the cause of republicanism, and, according to his own answer, to specify the title of his paper, and just as his name was escaping from his lips, a returning sense of propriety checked his speech. Sensible how deeply he had committed himself already, he paused for reflection. But he had gone too far to effect a safe and honorable retreat. He calls on the district attorney to know if a file of the papers cannot be had. Some officious person offers to procure them, and the respondent directs the district attorney to examine them and lay them before the grand jury, who are ordered to attend the next morning. They do accordingly attend, the file of the papers is laid before them and examined. Behold, after all his exertion, the respondent had his labor for his pains; after all this noise and bustle *montes parturiunt*, and not even *ridiculus mus nascitur*. The grand jury return once more to the box without any bills or presentments, and the learned judge with admirable address covers his defeat. Such appears to have been his conduct on that memorable occasion. Where is the law or the authority which gives him the power to goad the grand inquest to indict an individual, or vests in him the right to order a district attorney to search for criminality? Is the judge himself authorized to hunt up offenders? Or is he justified in pronouncing a person guilty of sedition before he is charged with the offence? Remember, though

he did not mention the name of the printer, he confesses himself that he named his paper, and *id certum est quod certum reddi potest*. Instead of pronouncing sentence of condemnation on a person before he has been accused, the benevolent language of our laws commands the judge to be his counsel when the constituted authority of the country has put him on his trial. If this conduct be not a violation of his duty, if it be not a case of plain and palpable misbehaviour, I know not what is.

Mr. HARPER. The judge did not undertake to pronounce sentence on his guilt, or innocence. He gave the information as he received it.

Mr. RODNEY. I am now arguing from what I consider in evidence; I am speaking from a copy of the deposition of Mr. Read, taken last winter, in which my honorable colleague, (Mr. NICHOLSON,) has remarked the very expressions used by the witness when he gave his testimony on the trial, and which literally corresponds with his former deposition.

The PRESIDENT (Mr. Burr.) Proceed, sir, if it differs in any respect, the Court will mark the difference.

[Here Mr. Rodney referred to Mr. Read's deposition, and contended that the respondent gave as matter of information part of what he stated, but as to the residue, he undertook to assert it; and proceeded.] But, sir, if it is all to be considered as matter of information, let the respondent's rule in Callender's case operate upon himself. His language there was, you should have the proof at your elbow for everything you publish. Do unto others as you would have others to do unto you, is a golden rule. He undertakes on the credit of another to inform against an independent citizen, and to bring him before the accusing power of the country, who by their solemn act, with one voice pronounce him innocent. A judge who ought to set an example to the nation, and more especially one who had just returned from punishing a person for communicating to the public information which he had received from others, appears guilty of pronouncing from the bench a libel on the character of a county and of an individual, and contends in the face of his own doctrine there is no guilt or criminality in it. But this predetermination of a case not before him, is in my humble opinion extremely reprehensible. To show that the respondent is not culpable, a precedent from the State of Pennsylvania is cited. Much as I venerate the character of the then Chief Justice of that State (Mr. McKean) and esteem him dear as a man, (I should be lost to the sense of gratitude if I did not,) I cannot in the case alluded to, subscribe to the precedent which he established. But even that is clearly distinguishable from the one under consideration. Mr. Cobbet, who undoubtedly was a man of extraordinary talents, not merely for invective and abuse, but for the strength, simplicity, and originality of his style, however much I may dislike the monstrous principles which he espoused, had been previously bound over for various supposed libels against characters peculiarly the objects of protection with the laws of this country. This may be considered as an inchoate accusation, and may have led Mr. McKean to make the observations which he delivered on that occasion.

Though I do not, Mr. President, perceive my voice fail me, I feel myself so exhausted with standing such a length of time this morning, before the court adjourned for half an hour, and so long since that temporary relaxation, that I find myself unable to continue any longer on my feet.

The Court adjourned until the next morning; when Mr. RODNEY proceeded as follows:

Mr. President—Before I resume the discussion of the Delaware charge, I beg leave to return my sincere thanks to this honorable Court for the indulgence which they were kind enough to grant me last evening. It is the first and most sacred principle in our criminal code that a man is presumed to be innocent until he is proved to be guilty. The counsel for the respondent have strenuously urged this principle, and wish it to govern the case of their client. I am willing to give him the full benefit of it. But did the judge himself act in conformity to this in Delaware? No. He did undertake to denounce a person guilty of a crime, before he was charged with the commission of any offence. Did he allow an independent printer who would not sacrifice the freedom of his press, on the altar of the Baal, or the Mammon of the day, the advantage of those principles which his counsel now claim for him? He did not. He pronounced the absent man guilty without waiting to see or hear him. Upon the mere *say so* of another, he took the risk upon himself, to tell the grand jury there was a printer of libels against the Government, when his informant was one of them, and even after they had returned, without any bills or presentments. It manifests a deliberate persistence in accusation, which I will forbear to qualify by the proper terms. The grand jury, upon a careful examination of the very documents on which he relied, can find nothing libellous, nothing seditious, and the contemplated victim is thus preserved by the integrity and the independence of a jury of his fellow-citizens.

The conduct of the learned judge at the circuit court in Maryland, furnishes, I consider, one of the strongest articles of impeachment. I had intended to have dilated very much at length on this charge, but the fatigue of yesterday has really indisposed me, and I have already trespassed too much on your time.

Every member of this Court must have been sensible of the impropriety of the respondent's conduct on that occasion. Every reflecting man must be decidedly opposed to the idea of blending political discussion, with the legal observations which ought to proceed from the bench. A party harangue little comports with the temperate and learned charges to be delivered by the president of a court. The character of an electioneering partisan, whose rostrum is a stump, or whose stage is the head of a hogshead, is utterly inconsistent and incompatible with that of a grave and upright judge. The duty of a judge is to expound the laws, and not to exercise the office of a censor

over them, and much less to disgrace himself by reprobating them in a manner calculated to excite groundless alarm and apprehensions in the minds of the people, and to alienate their affections from the Government. Every man in his individual capacity possesses the undoubted right to advocate the political principles which he believes most beneficial to his country. The respondent as an individual is entitled to this privilege in common with his fellow-citizens, and to the free exercise of his splendid talents in such a case. But does this justify him as a judge in his judicial character, and from the judgment seat, to preach political sermons, and impose his private dogmas on the people, under the garb of administering the laws? Sophistry may for a moment confound two things perfectly distinct in their nature and effect, but the mist vanishes before the light of argument.

I most ardently desire that the sanctuary of justice may not be profaned by the unhallowed spirit of party. The law, like the gospel, should be no respecter of persons, whatever may be their political sentiments. The virtue and integrity of a judge should keep him within the line of his duty, and form an eternal barrier against the encroachments of party prejudices and partialities. If politics are forbidden to enter, or even to approach a court of justice, neither judge nor jurors will feel those sensations which disqualify them for the impartial discharge of their respective duties. Though party may rage with violence and agitate the country, all will be calm and tranquil in a court, in which every man's property, liberty, and life, will find a safe harbor. This should be inculcated by lessons and by examples, as a primary principle in our judicial system. I am happy to find that we all agree on this great and essential point. It is the anchor of hope amid those storms and tempests in which it is the will of Providence that all human affairs should sometimes fluctuate. The learned counsel, though they acknowledge the conduct of the respondent to have been imprudent, improper, and indiscreet, attempt to justify it by the production of charges, which wear a political aspect, delivered during the American Revolution. I will enter my protest against those, even at so turbulent a season; but none that have been produced furnish any grounds of defence to the respondent. In no instance which has been cited, have they attempted to exclaim against the very Government from which they received their commissions. We behold the defendant, a judge of the United States, passing judgment of condemnation on the laws which he was bound to conform to, and execute, and with the policy of which, in his judicial character, he had nothing to do. Much pains was taken in the examination of the testimony to disprove a fact the defendant himself admits in his answer; to show that the respondent did not censure the Administration, when he himself has furnished us with a copy of the charge in which he condemns in the strongest manner one of the most prominent acts which have passed since a change took place in the politics of the country. He reprobates the late law abolishing the judicial establishment, made under the late Administration. To this law the Senate, who in their Executive capacity form a material part of the Administration, gave their consent, and the President, who is at the head of affairs, gave his approbation. And yet gentlemen contend that the respondent uttered not a syllable against the present Administration! Is it not a plain, incontrovertible act of misbehaviour in a judge to denounce the very law under which he was then exercising his functions, and to hold it up to the people as shaking to the foundation the independence of the national Judiciary?

It will be conceded that there yet exist State jealousies against the General Government, the acts of which are closely watched and scrutinized. When the Constitution of the United States was framed, it was the legitimate offspring of a liberal spirit of accommodation which reconciled jarring interests, *discordia semina rerum*. It requires the patriotic exertion of every good man to preserve and to promote a reciprocal cordiality between the General and State Governments. The officers particularly of each should manifest a respect and reverence which would inspire at once confidence and attachment. What language can express the criminality of the respondent, when from the bench of the United States he undertook to thunder anathemas against the act of the Legislature of an individual State! Was this a part of his duty, or was it not? Can there be a doubt, sir, but that it was a gross violation of his duty, and that the respondent well knew it at the time? Yet such were his unbridled passions and his uncontrolled prejudices, that, regardless of the station which he held, and the dignified post which he occupied, he did not hesitate to commit the character of the United States by conduct which must have irritated the audience against the government of Maryland and its officers. If ever a *mobocracy* take place in this country, it will be brought about by such instruments and such conduct. Let those clothed with the laws become the violators of them, let the judges of the United States issue fulminations against the measures of individual States, and the judges of the different States retaliate, by declaiming against the acts of the General Government, and the consequences are easily foreseen.

When a poor miserable object like Callender, without character and without influence, censures the measures of our Administration, or reprobates an unconstitutional law, the respondent considered him guilty of a crime and deserving of punishment. But a man elevated to the bench may declaim in the strongest language against any measure or law of the United States, or of an individual State with perfect impunity! Recollect, sir, that if the defendant be justified in reprobating a single law of the United States, he has the right to reprobate them all indiscriminately. It is without question the duty of a judge to inculcate a respect and a reverence for the laws of the land. But, sir, the respondent, so far as he was able, has endeavored to excite the indignation of the people against them, and to terrify them into an opposition to measures which he has chosen from the

bench to denounce, by the dread of a *mobocracy* and other alarming stories unworthy the columns of a common newspaper, and scarcely equalled since the days of the Rye House, and of Titus Oates.

Mr. President, I have now gone through the several articles of impeachment, and submitted to your consideration the remarks which I had to offer in illustration of the subject. Permit me, before I conclude, to observe, that in this country no ignominious punishment follows upon a conviction by impeachment. Your sentence cannot extend so far as to hurt a single hair of the respondent's head. In England, the power to punish is unlimited, and has been but too often exercised with cruel, unrelenting severity. With us, it seems intended to restore and to preserve the purity of office, rather than to punish the offender by a penalty proportioned to his guilt. Remember, if this honorable Court acquit the defendant, they declare in the most solemn manner, and their sentence will be of record, that he has on all the occasions to which I have adverted, behaved himself well, in a manner becoming the character of a judge worthy of his situation. They sanction every act which he has committed, and proclaim them to the world as examples which ought to be followed. Sir, they in effect adopt every part of his conduct and make it their own, thus participating in the actions and transgressions proved against him by the testimony. This is indeed a serious consideration. Are the members of this Court prepared by a solemn judgment, which, proceeding from a tribunal so elevated, will have a powerful and commanding influence, to sanction by their high authority the conduct of the respondent? No, sir; I trust that they will embrace the present opportunity of displaying the virtue, the purity, and the energy of our republican Government, and that, in pronouncing the sentence which they may pass, they will erect a beacon, by which future judges will avoid the rocks on which the respondent now lies shipwrecked.

Sir, I have the fullest confidence, that if in the opinion of the members of this Court the respondent be innocent, they will have the independence to acquit him, and I entreat them to do so. On the other hand, if he be guilty, they will have the firmness to convict him.

With a sincere and a fervent hope that the Supreme Ruler of the Universe may so govern the decision of this case, that it may punish guilt, but protect innocence, I cheerfully submit it to the consideration of this honorable Court.

WEDNESDAY, February 27.

Mr. RANDOLPH.—Mr. President: After the very long and able, though (as I fear it must have proved to this honorable Court) tedious discussion of this important subject, it again becomes my duty to address you. That duty springs not only from the authority with which the House of Representatives have been pleased to invest me, but is enforced by the strong and deep interest which I take in the question before you. It is an interest which I am not ashamed to avow here. Strange, indeed, would be the mechanism of my composition, could I stand indifferent to the fate of this impeachment; if the success of a prosecution instituted at my own motion, of an indictment drawn by my own hand, and backed by the strongest body of evidence that perhaps was ever adduced in support of any accusation, should fail to interest me. My first wish indeed would have been to find this great culprit innocent of the charges which have been preferred against him. But since, by the clearest testimony, and even by his own admission, we are denied this gratification, all that remains for us is to see that signal justice done upon him which the Constitution demands for offenders of his high rank, and which we confidently expect from your decision.

The course which has been pursued by my learned colleagues and right excellent friends leaves but a barren field in which to glean after them. I shall, therefore, present you with the most condensed view that I can take of the subject, endeavoring, as far as possible, to avoid the ground which has been already trodden; and should I fail in this attempt, I hope to be pardoned, as having been absent during a great part of this discussion. Very far indeed is it from my intention, by tiresome repetitions, yet more to weary the patience of the Court, and prolong that decision which is anxiously awaited by all. I was not present when the defence was opened, in a style so honorable to himself, by the junior counsel of the respondent, (Mr. Hopkinson.) I was then ill abed. I regret the loss of the very able argument which he is said to have urged against the first article. God forbid that the time shall ever come with me when merit shall be disparaged because found in an adversary. Report speaks fairly of the gentleman's performance, and I am willing to credit her to the utmost extent.

Suffer me to say a few words on the general doctrine of impeachment, on which the wildest opinions have been advanced—unsupported by the Constitution, inconsistent with reason, and at war with each other. It has been contended that an offence, to be impeachable, must be indictable. For what then I pray you was it that this provision of impeachment found its way into the Constitution? Could it not have said, at once, that any civil officer of the United States, convicted on an indictment, should (*ipso facto*) be removed from office? This would be coming at the thing by a short and obvious way. If the Constitution did not contemplate a distinction between an impeachable and an indictable offence, whence this cumbrous and expensive process, which has cost us so much labor, and so much anxiety to the nation? Whence this idle parade, this wanton waste of time and treasure, when the ready intervention of a court and jury alone was wanting to rectify the evil? In addition to the instances adduced by my right worthy friend, (Mr. Nicholson,) who first addressed the Court yesterday, permit me to cite a few others by way of illustration. The President of the United States has

a qualified negative on all bills passed by the two houses of Congress, that he may arrest the passage of a law framed in a moment of Legislative delirium. Let us suppose it exercised, indiscriminately, on every act presented for his acceptance. This surely would be an abuse of his Constitutional power, richly deserving impeachment; and yet no man will pretend to say it is an indictable offence. The President is authorized by the Constitution to retain any bill presented for his approbation, not exceeding ten days, Sundays excepted, within which period he may return it to the House wherein it originated, stating his reasons for disapproving it. Now let us suppose that, at a session like the present, which must necessarily terminate on the third of March (and that day falls this year on a Sunday,) the President should keep back until the last hour of an expiring Congress, every bill offered to him for signature during the ten preceding days, (and these are always the greater part of the laws passed at any session of the Legislature) and should then return them, stating his objections, whether good or bad is altogether immaterial. It is true that a vote of two-thirds of each branch may enact a law in despite of Executive opposition; but, in the case I have stated, it would be physically impossible for Congress to exercise its Constitutional power. Indeed, over the bills presented to the President within nine days preceding its dissolution, the Legislature might be deprived of even the shadow of control, since the Executive is not bound to make any return of them whatever. Now, I ask whether such misconduct in the President be an indictable offence? And yet is there a man who hears me who will deny that it would be a flagrant abuse, under pretence of exercise of his Constitutional authority, for which he ought to be impeached, removed, and disqualified? Sir, this doctrine, that impeachable and indictable are convertible terms, is almost too absurd for argument. Nothing but the high authority by which it is urged, and the dignified theatre where it is advanced, could induce me to treat it seriously. Strip it of technical jargon, and what is it but a monstrous pretension that the officers of Government, so long as they steer clear of your penal statutes—so long as they keep without the letter of the law—may, to the whole length of the tether of the Constitution, abuse that power, which they are bound to exercise with a sound discretion, and under a high responsibility for the general good? The counsel who closed the defence (Mr. Harper) felt that this ground trembled beneath his feet; and, fearing to be swallowed up in the yawning ruin, he precipitately abandoned it. He shifts from the position taken by his associates, and lays down this principle, "that an offence, to be impeachable, need not be indictable, yet it must have been committed against some known law." Well, take the question in this point of view, and there is no longer matter of dispute between us; it is reduced to a miserable quibble. For what do we contend?—that the respondent has contravened the known law of the land and of his duty, which required him "to dispense justice, faithfully, and impartially, and without respect to persons." He stands charged with having sinned against this law and against his sacred oath, by acting in his judicial capacity, unfaithfully, partially, and with respect to persons. These are our points. We do charge him with misdemeanor in office. We aver that he hath demeaned himself amiss—partially, unfaithfully, unjustly, corruptly. This is the sum and substance of our accusation, and this we have established by undeniable proof. I will waste no more time in attempting to dislodge our opponents from a position which they have abandoned in the face of day. I will no longer worry the good sense of this honorable Court by combatting the claim set up by the adverse counsel in behalf of the civil officers of this Government, to make their own passions and caprices, personal and political, the rule of that action which should be governed by a sound discretion, and exercised under a high responsibility, to oppress to the last extent of the letter of the law, and set at defiance an abused and insulted people.

The defence on the first article has been so much at variance with itself, the counsel opposed to us have replied so satisfactorily to each other, that the labor of combatting their respective positions is materially lessened. Whilst the honorable Attorney General of Maryland has almost exhausted his ingenuity to prove that the crime charged in the first article was no offence at all; that the judge did not, in that instance, exceed the bounds of his judicial authority; the gentleman who closed the argument on that side has confessed the offence in its full extent; but, in extenuation, avers that it was committed by a man of contrite heart.

Mr. HARPER rose and said, that he did not mean to make that admission. He was proceeding, when the President reminded him that he must not interrupt the honorable Manager; that if he conceived any facts to be misstated, he might make a note of them, and have them corrected after the argument was gone through.

Mr. RANDOLPH. The words to which I refer, I took down at the time they were uttered by the respondent's counsel: "the papers were with-'drawn; the prisoner's counsel were entreated to 'go on, until the cup of humiliation was drained 'to the very dregs." I took these words down at the moment. They must still ring in the ears of this honorable Court. To it I appeal for the fidelity of my statement. Did not the counsel declare that whilst, on every other point, his client invoked your justice, on this he implored your mercy? But mercy is not among the dispensations of this honorable Court. You will mete unto him that which his defenders tell you he has measured unto others—justice—to use their own language, "*sheer*" justice—all that he is entitled to at your hands. If the course pursued by the respondent, in delivering a written, prejudiced opinion in the case of Fries, was (as the Attorney General of Maryland has contended) warranted by law, wherefore the recantation on the next day? Was the court ignorant of its own

authority? or was it willing to surrender to the bar, laboring, too, under its high displeasure, its undeniable and just privileges? Is there anything in the character of the respondent which will warrant either conclusion? Mr. President through every stage of this transaction you perceive every symptom of guilt—trepidation, remorse, and self-abasement. Look at the consultation at Rawle's, who was followed home by the judges as soon as the court rose. Recollect the conversation which ensued, and the conduct of the court on the following day, when the respondent is said to have atoned for his misbehaviour; although, in the same breath, you are told there was no offence to expiate. Do you recognise in that procedure an honorable and manly acknowledgment of unintentional error, which, from a sense of justice, the respondent was anxious to rectify? Or do you behold the sullen perverseness of guilt, half ashamed to confess its offences, yet trembling at their consequences?—now soothing, now threatening, its adversary—every characteristic of conscious crime? Sir, I blush for the picture which the gentleman has drawn of his client; and I ask you, Mr. President, if such a character is fit to preside in a court of justice?—a man whose violent temper and arbitrary disposition perpetually drives him into acts of tyranny and usurpation, from which, when vigorously opposed, he must disgracefully recede; equally ready to take an untenable position, or meanly to abandon it. To-day, haughty, violent, imperious; to-morrow, humble, penitent, and submissive; prostrating the dignity of his awful function at the feet of an advocate, over whom, but the day before, he had attempted to domineer. Is this a character to dispense law and justice to this nation? No, sir! It demands men of far different stamp—firm, indeed, but temperate; mild, though unyielding; neither a blustering bravo, nor a timid poltroon. I speak not of private character; with it I have nothing to do. It is the official conduct only that concerns me. I have no hesitation in saying that such men are not fit to preside in your judiciary; and that the greatest abilities, when joined to such tempers, serve but still more to disqualify their possessors.

I must here reiterate my regret at losing the argument of the gentleman who opened the defence. I understand him to have said, (speaking of Fries,) "could that man be 'innocent,' who 'had been twice convicted of treason? Could he 'be 'illiterate,' who pretended to expound the 'Constitution? Could he be 'friendless,' who 'had arrayed his numerous followers in opposi-'tion to the laws of his country?" Sir, this is a very pretty specimen of antithesis; but, unfortunately for itself, it proves too much, whilst, as to the question before the court, it proves nothing. Does the gentleman believe the London mob, in 1780, to have been among the most influential men in England? or, because their discontents grew out of religion, that they were more deeply read in canon law than any other body of men in that kingdom? They far surpassed the Northampton rioters in depth and intricacy of research. They undertook to expound the Constitution of the Church of England. But, unfortunately for this gentleman, the guilt or innocence of his honorable client is in nowise affected by the guilt or innocence of this poor German and his comrades. The respondent stands charged with a departure from the principles of the Constitution and the established forms of law, in conducting the trial which was to ascertain the guilt or innocence of John Fries. What has this to do with his character? How does that affect the question? Guilty or innocent, he was entitled to a fair and impartial trial, according to the known usage and forms of law; for, be it remembered in such cases, *form* is *substance*. It is the denial of this sacred right, which the Constitution equally secures to the most hardened offender as to persecuted virtue—this daring outrage on the free principles of our criminal jurisprudence, that constitutes the respondent's crime. If Fries was innocent, what language can sufficiently reprobate the conduct of the judge? An innocent man, by his procurement, iniquitously consigned to an ignominious death. If guilty, he ought to have expiated his guilt upon a gibbet. But what was the fact? The President of the United States, in consequence of the arbitrary and unprecedented conduct of the court, was, in a manner, *compelled* to pardon him. The public mind would never have brooked the execution of any man thus tried and condemned. By the misdemeanor of the respondent, then, to rescue the administration of justice from the foulest imputation, to make some atonement for the offended majesty of the Constitution, the Executive was reduced to the necessity of turning loose upon the country, again to sow the seeds of disaffection and revolt, a man represented by the adverse counsel to be every way desperate and daring—a traitor and a rebel. Upon what other principle, sir, can you account for the President's application to the prisoner's counsel, and his subsequent pardon? I repeat, Mr. President, that it is wholly immaterial to the question before you, whether John Fries was or was not a traitor. Either alternative is fatal to the respondent. He is charged with oppression and injustice on the trial, and you have not only the clearest testimony of the fact, but it is in proof before you that such was the President's motive in issuing the pardon. He must have believed that the sentence was in itself unjust, (which serves but to aggravate the respondent's guilt,) or he must have acted (as I am unwilling to concede he appears to have done) on the ground that, however deserving of punishment, the prisoner had been unfairly tried, and his condemnation illegally obtained. Whichsoever of these positions be *true*, the defence set up on behalf of the respondent is *false*. What have you seen? A man condemned to death, unheard, by a prejudiced jury and an unrighteous judge, thirsting for his blood; the Executive demanding to hear that defence, to which the court would not listen, and extending the arm of its protection to snatch the victim from the oppressor's grasp. And will you now turn this man loose upon society, armed with

the terrors of the law and secure in impunity, to perpetrate similar offences? Let it not be said that the court dealt out justice, and the President dispensed mercy, each in their own province. To extend mercy to the convict, where was the necessity of an application to his counsel for that defence which the court had overruled? It must have been from a conviction that justice had not been done the prisoner by the court, that this application was made. I defy the utmost ingenuity of man to refer it to any other probable or plausible motive. The conduct of the prisoner's counsel merits an abler eulogium than I can pretend to give; it is above my feeble praise; but my gratitude shall never cease to flow for their firm, vigorous, and manly stand against an imperious domineering judge; for their resolute assertion of American rights against a proud and cruel oppressor. The Attorney General of Maryland (whose wit and ingenuity I shall be the last man to deny) has indeed said, that he wishes a lawyer's hand may never be polluted with anything more corrupt than a prejudiced opinion; and I, for my part, most fervently hope that the hand of an advocate may ever thus instinctively shrink from the touch of judicial corruption. "My hand shall never be tainted by receiving a prejudiced opinion in any case, much less in a capital one." The man who uttered those words needs no other monument or epitaph. He gave a lesson, of which the judge might have profited—that, in discharging his professional duty, he was not to be swayed by political antipathies or predilections; he disdained to become a weak and wicked instrument to sanction premeditated, legalized murder; he scorned to assist, in a miserable mummery of law and justice, a man who could invoke the blessing of God at the moment when he was perpetrating a judicial murder. Had the counsel been seduced, or terrified into submission, this enormity (like many others) would have been shrouded under the mantle of form and precedent.

The precedents which are relied upon to justify the respondent in the trials of Fries and Callender, and the law which is adduced by his counsel on the powers and rights of courts and juries, respectively, relate to *civil* cases, where the law and the fact, being always separate and distinct, the first falls under the dominion of the judge, whilst the last only becomes the province of the jury. But in a criminal prosecution, the verdict embraces both law and fact, of which being necessarily compounded, so much of the law is combined with the fact upon which they are to pronounce, it belongs to the jury, and to the jury alone, to decide and determine. They are inseparably connected; and, therefore, the powers of a jury, in a common lawsuit between man and man, is no measure of their rights in a criminal prosecution. Thus, in a civil action, the court possesses the power of granting a new trial on the motion of either party; whilst in a criminal case, it can exercise this power only in favor of one of those parties—the prisoner; it cannot grant a new trial to the prosecutor if a verdict is found in favor of the accused. It is a final acquittal. That the scope of action in the court is diminished, whilst in the jury it is enlarged, in a criminal case, is notorious; it is not a subject of argument. But our opponents have not only resorted to the practice in civil cases, which here is totally inapplicable, but they have brought forward English precedents before the Revolution, and decisions of the court of *Star Chamber!* Precedents drawn from the worst periods of their history, from hard, unconstitutional times—decisions from the most flagitious tribunals, whose very name has passed into a proverb of corrupt, unfeeling tyranny. For an account of this Star Chamber I would refer you to John, Lord Somers, of whom it has been said, not with more elegance than justice, that, "like a chapel in a palace, he alone remained unpolluted, whilst all around was profanation and uproar."

"We had a privy council in England (says 'this great constitutional lawyer) with great and 'mixed powers; *we suffered under it long and 'much.* All the rolls of Parliament are full of 'complaints and remedies; but none of them effectual till Charles the First's time. *The Star 'Chamber was but a spawn of our council;* and 'was called so only because it sat in the usual 'council chamber. It was set up as a formal court 'in the third year of Henry VIII., *in very soft 'words,* 'to punish great riots, to restrain offenders too big for ordinary justice; or, in modern 'phrase, to preserve the peace.' '*But in a little 'time it made the nation tremble.* The privy 'council came at last *to make laws by proclamation, and the Star Chamber ruined those that 'would not obey.* At last they fell together." (Hatsell's Precedents, vol. 4, page 65, Note.) Is this the court whose adjudications are to justify the decisions of an American tribunal in the nineteenth century? And in a case of *treason*, too? Is this vile and detestable tribunal (whose decisions, even in England, are scarce suffered to be drawn into precedent) to furnish rules of conduct for the courts of this great confederate Republic? Yes, sir, you have not only been obliged to listen to Star Chamber doctrines, but you have been referred to one most arbitrary magistrate to justify the oppressions of another. I allude to Chief Justice Keelyng. Who he was, may be seen in the same volume of Hatsell, page 113.

"On the 16th of October, 1667, the House being 'informed, 'that there have been some innovations 'of late in trials of men for their lives and deaths;' [the very offences charged upon the respondent;] 'and in some particular cases restraints have been 'put upon juries, in the inquiries'—this matter is 'referred to a committee. On the 18th of November, this committee are empowered to receive information against the Lord Chief Justice Keelyng, 'for any other misdemeanors besides those concerning juries. And on the 11th of December, 1667, this committee report several resolutions 'against the Lord Chief Justice Keelyng, of illegal 'and arbitrary proceedings in his office." The 'first of these resolutions is; "That the proceedings of the Lord Chief Justice, in the cases now 'reported, are innovations in the trial of men for

'their lives and liberties: and that he hath used an 'arbitrary and illegal power, which is of dangerous 'consequence to the lives and liberties of the people of England, and tends to the introducing of an 'arbitrary government." The respondent's own case. The second resolution is, "that in the place of judicature"—[how does this bear upon the eighth article?] "the Lord Chief Justice hath undervalued, vilified, and contemned Magna Charta, the great preserver of our lives, freedom, and property." And the authority of this infamous judge, the minion of Charles II.,—of judges in the most corrupt period of English history, from the restoration of that King to the revolution, is relied upon by his counsel to absolve the respondent from guilt. Permit me to do their client more justice. I do believe that the man who is held up here as a revolutionary patriot of 1776, although in a moment of human infirmity he hath imitated their crimes, would blush to be justified by their example. For his sake I rejoice in that visitation of God which hath saved him this last degradation: from seeing his defence rested upon the authority of those infamous times, and yet more infamous men, with whom, with all his weakness and all his infirmities upon him, he would yet (I am persuaded) disdain a comparison. Yes, I do feel relieved that he hath been spared the disgraceful spectacle of beholding himself defended by his friends on principles more unjust and iniquitous, if possible, than have ever been imputed to him by his enemies: that he hath not been reduced to see those very decisions, prior to the revolution, cited in his defence, which he himself denied to a fellow creature put in jeopardy of life! The benefit of these decisions (it seems) can be taken only by the powerful oppressor—they offer no shelter to his victim. I thank God, sir, that I have indeed studied at the feet of far different Gamaliels from the honorable Attorney General of Maryland, or those by whom, it would appear, he has been brought up; that I have drawn my notions of justice and constitutional law from a far different source—not from the tribunals of Harry VIII., nor the tools and parasites of the house of Stuart, but from the principles, the history, and the lives of those illustrious patriots and their disciples, who brought the Star Chamber to ruin, and its abettors to the block.

But I cannot consider the able Attorney General of Maryland quite sincere in the doctrine which he has advanced. He shines indeed a luminary in this defence. Mr. President, there is an obliquity in human nature that too often disposes us rather to applaud the brilliant, though pernicious ingenuity that can "make the worse appear the better reason," than the humble but useful efforts of a mind engaged in an honest search after truth. There is something fascinating in such a display of the powers of the human mind. The vanity of the whole species soothes itself with the excellence of an individual. We yield to the illusions of self love—"*we* lay the flattering unction to our souls"—and are cheated and abused. It is under this perverse bias of our nature that I render to the honorable Attorney General of Maryland the willing tribute of my admiration. But, he will pardon me, I cannot suppose him serious. I will not do him the injustice to believe that to a noble motive, to long habits of political and social intercourse, a friendship of thirty years standing, he has refused what he himself tells you is done, every day, nay in nine hundred and ninety-nine cases in a thousand, by persons of his profession, for a mercenary consideration. What has he said? "That, in defence of their clients, lawyers are in the daily habit of laying down as law what they know not to be law." Mr. President, when I see a man of his unrivalled resources reduced to the miserable shift of Star Chamber doctrines and precedents before the revolution—and, conscious, no doubt, of the actual weakness of his defence, calling to his aid all the force of wit, ingenuity, repartee, pleasantry, and good humor, what inference must I draw? and what must be the conclusion of this honorable Court?

[Here Mr. Randolph solicited the indulgence of the court for the very desultory style of his address, not less painful to himself than he felt it to be oppressive and irksome to them. This defect, the result of his incompetency, had been aggravated by the loss of the voluminous notes which he had taken, and which, but for that accident, he would have been able to reduce to something like system and method. It was however the strength of the cause, and not the ability of the advocate—the weight of the bullion, not the fashion of the plate, on which he relied. The court would decide according to the evidence, and that was enough.]

I will now, with the Court's permission, offer some observations on the articles growing out of Callender's case. The second article relates to the overruling of Bassett's objection to serve upon the jury. That Bassett did object to serving on that jury is established by the concurrent testimony of Mr. Hay, Mr. Nicholas, and Mr. Robertson, who took down the proceedings upon the trial in short-hand, and of the juror himself, who has appeared as evidence on behalf of the accused. And yet, sir, the counsel affirm that he offered no objection, but merely expressed "scruples of delicacy" against serving. Delicate distinction this! What is an *objection?* A man is called upon to do a particular act—on which he states reasons, or *doubts*, if you will have it so, why he should not do it. This is not a *refusal*, or a *denial*, but what is it, if not an *objection?* And an objection too, which, according to the respondent's own rule, as laid down on that trial, ought to have disqualified the juror. For he has deposed—and if he had not, we have the strongest testimony to the fact—that, from extracts which had appeared in the newspapers, he had formed *and delivered* an opinion, that "The Prospect Before Us" came within the sedition law. Sir, if he had never delivered such an opinion before, he did *then* deliver it, at the time and in the place of all others the most injurious to the prisoner and disqualifying of himself—in open court, preceding the trial. As to the wretched subterfuge that he had not delivered any opinion respecting the charges contained in the "*indictment*," which he had never seen, and which he

was not permitted to see, or to hear read, it is a mockery of common sense, that gives the finishing stroke to the tyrannous and insulting conduct of the judge. He had formed and delivered an opinion of the publication, from which the charges contained in the indictment were extracted—and although he could not possibly know the particular sets of words selected by the public prosecutor as libellous, he *did not*, he *could not* possess that unbiassed and impartial state of mind requisite to constitute a good juror. The testimony which he has delivered before this honorable Court corroborates every objection which could have been urged to him. He has shown himself too far gone in political gangrene, to have decided fairly any question, in which the feelings of the then party were at all involved. Indeed, he seems to have had some confused perceptions of his own unfitness. But that, which in the estimation of every honorable mind—which even in his opinion constituted an objection to him, was his strongest recommendation to the judge. The objection was overruled—Bassett was declared a good juror—was sworn, and served accordingly. And all this is justified on the authority of the court of Star Chamber, and of Lord Chief Justice Keelyng.

On the subject of Mr. Taylor's testimony, its rejection is attempted to be defended by a solitary precedent, *in a civil case*, drawn from a reporter, who, I am informed by gentlemen of the first professional character, is far from being considered as very good authority. I mean McNally. In support of this article I might urge as well the admissions of the honorable Attorney General of Maryland, as the universal practice of our courts. What said Mr. Robertson—and what said the Chief Justice of the United States, on whose evidence I specially rely? He never knew such a case occur before. He never heard a similar objection advanced by any court, until that instance. And this is the cautious and guarded language of a man placed in the delicate situation of being compelled to give testimony against a brother judge. What more could you expect from a person thus circumstanced? What does it prove but that the respondent was the first man to raise, to invent such an objection to a witness? Can any one doubt Mr. Marshall's thorough acquaintance with our laws? Can it be pretended that any man is better versed in their theory or practice? And yet in all his extensive reading, in his long and extensive practice, in the many trials of which he has been spectator, and the yet greater number at which he has assisted, he had never witnessed such a case. It was reserved for the respondent to exhibit, for the first, and I trust, for the last time, this fatal novelty, this new and horrible doctine that threatens at one blow all that is valuable in our criminal jurisprudence.

Against the fourth article the Attorney General of Marylaud hath adduced a similar and doubtful authority, in defence of his client. And here again I bottom myself upon the testimony of the same great man, yet more illustrious for his abilities than for the high station that he fills, eminent as it is. He declares that he has never known a similar requisition made by any court; that where the propriety of questions, verbally propounded, has been denied, or for the sake of precision, (where they were intricate,) they have been reduced to writing, at the request or order of the court; but in the first instance, and before they had been stated verbally, *never*, within the compass of his experience. And what inference can any candid, unprejudiced mind drawn from these repeated and, until then, unprecedented acts of interference by the judge, on behalf of the prosecution, but that, instead of an umpire, he was a partisan?

With regard to his deportment towards the counsel, I shall call the attention of the court not to the statement made by themselves:—Because I question it in the slightest degree? God forbid—I know those able and honorable men too well—but because I would deprive our opponents of their almost sole argument—the personal irritation which they allege those witnesses must have felt. Waiving then any remarks on their testimony, powerful as it is, I again ask you, what said the Chief Justice? And, if I may say so, *what did he look?* He felt all the delicacy of his situation, and as he could not approve, he declined giving any opinion on the demeanor of his associate. What does Mr. Robertson say? In substance, everything that has been deposed by other witnesses: "That the judge always spoke in the first person singular." And here I will remark, that the short hand report which this gentleman made of the trial, and which he has given in evidence, was published, in the first instance, as a defence of Mr. Chase against alleged misrepresentations of his conduct on that occasion. It cannot be considered, therefore, as an *un*favorable view of the transaction, at least so far as the respondent is concerned. What says Mr. Gooch? That the judge was very '*yearnest*' with the counsel: that they were much abashed; that he set them down; that they appeared alternately red and pale; that he exhibited their confusion to the mirth of all the bystanders: and Colonel Taylor tells you, "that the conduct of the judge had the full effect it seemed intended to produce—to abash the counsel for the prisoner, and turn them into ridicule, for that everybody laughed but themselves."

But the ingenious Attorney General of Maryland, whose fruitful invention is never without resource, has endeavored to persuade you, that this conduct was not merely justifiable, but even meritorious. That the design of the counsel was to irritate and inflame the people; and the respondent, dreading a riot, had no object but to keep the audience in a good humor; and that, by a seasonable exertion of his acknowledged wit and pleasantry, he completely succeeded in turning their weapons upon themselves, and totally defeated their purpose. This apology reflects credit on the inventive faculty of him who makes it, and yet what is it but an admission of the charge? Look to the evidence. You will see nothing to support the twist which has been attempted to be given to it—no apprehension of disorder and confusion but what

grew out of the insufferable tyranny and insolence of the judge. Where was the respondent at this time? In some obscure corner of the Union—some remote district notorious for disaffection, infamous for its spirit of insurrection, far removed from the protection of State or Federal authority? No sir, he was in the enlightened capital of Virginia, a country never disgraced by rebellion—unless the epithet be applied by some squeamish politician to our glorious revolutionary struggle—a State whose soil has never been stained by insubordination to law. No, sir, he was sitting within a stone's throw of the residence of the Governor of Virginia, a man of whom I shall say nothing. Let the exalted stations he has more than filled, the high public trusts on which he has seemed rather to confer honor than receive it, his unshaken constancy in the worst of times, the dismay and confusion of his enemies, whose vain aspersions have passed him like the idle wind—let the confidence of a united people speak his eulogium. The respondent was sitting within musket-shot of a cantonment of Federal troops. Why were these troops placed there at that time, and why were they kept there for some time afterwards, belongs not to my present purpose. It is enough to say that they were a part of our famous provisional army—"*fruges consumere nati*"—to ascertain their readiness to protect, in any outrage on the law, or Constitution, (then practised or meditated,) the Government that maintained them in dissolute idleness. Governor Monroe was more interested in the respondent's safety than he himself appears to have been. He trembled lest the indignation of the people should get the better of their good sense, and hurry them into some act of violence, that would cast an odium on the State and afford matter of triumph to her enemies. That the respondent's object was to goad her citizens to some outrage, which might justify the humiliation that was preparing for her, there is too much reason to believe, and that he would have succeeded, but for the intervention and influence of that excellent man, and the persuasions of the counsel themselves, whom the Attorney General of Maryland would represent as endeavoring to excite public commotion, that he may find some shelter for the enormities of his client.

Another attempt at justification of his conduct on this trial is by reference to the law and practice in Maryland. But surely the judge who scouted the idea of being governed by the law of Virginia, whilst exercising jurisdiction there, shall not be permitted to take refuge under the law of another State. For if the law of Virginia was not binding on the respondent, in Virginia, *a fortiori*, he could not have been governed by the law of Maryland. But you are asked, whether the respondent's conduct as stated by the prosecutors, is too inconsistent with the character universally ascribed to him for discernment, by his enemies as well as by his friends, to be credited? Whether to attain his object (granting it to have been corrupt) he was under any necessity to unmask and wantonly expose himself to future punishment? Without noticing that this is argument against fact, hypothesis opposed to actual experiment, his conduct may easily be reconciled with his character, and with the circumstances attending it. "If his object was oppression, why did he not lie in ambush, (say his counsel) why disclose (nay almost avow) it?" Because caution and circumspection form no part of the charges against him: because (even allowing that he is as conspicuous for these qualities, as he is notorious for the reverse) there is no principle of human nature, or human conduct, more true, more invariable than this: that whatsoever be the general character of a man, he is unable at all times to act up to it. It is the inevitable condition annexed to guilt, that it will betray itself—it is the privilege of truth alone always to be consistent. We find him in the case of Fries not more dictatorial and arbitrary, than wavering and irresolute. On one day arrogant and imperious—on the next alarmed and trying to remove the impression his rashness had made—retracing his steps, sitting (as you are told by his counsel) not on the bench of justice, but on the stool of repentance, "draining the cup of humiliation to the very dregs,"—in a word, a man penitent and of contrite heart. That repentance, although it cannot avail here, will (if sincere) be accepted by another and more dread tribunal. But much I fear that the contrition which is accompanied by a threat will avail but little, although offered at the throne of mercy itself. No, sir, fortunately for us, although the tiger and hyæna too often appear in human shape, there is no disguise that can long conceal them—not even though they crouch upon the judgment seat and under the ermine. Thanks to the beneficence of God! this insidious character cannot always be supported. God forbid it should! "No wonder (says the Attorney General of Maryland) that the people of Pennsylvania wish to get rid of the bar," alluding to the case of Fries. Rather let him say no wonder that they are tired of the bench, for it is against the judges, this very judge, in that very case, that they have protested. They have deprecated his jurisdiction over them, and the solemn protest of their representatives against his iniquitous condemnation of Fries, is the groundwork of the present prosecution.

But our doctrine, it is said, goes to prostrate the rights of the accused—where?—at the feet of juries. There may they forever lie, but never at the foot of a judge. The gentleman from South Carolina (I beg his pardon) deprecates the placing of criminal law solely in the power of juries. He would not have the life of a man depend on their decision of a point of law. But it is the glorious attribute of jury trial, that the question of guilty or not guilty, involving both law and fact, *that* law as well as *that* fact the jury alone is competent to determine. It is the necessary consequence of the general verdict which they are required to find. The very able and learned Attorney General of Maryland indeed says that this is an incidental *power*, rather than a *right* of the jury. But, sir, what is that power which no man may question, but a right? For, whether incidental or direct, the exercise of it is

final and complete, if in favor of the accused; and the power of the court to award him a new trial is further protection to the prisoner against abuse. There is no specific power given, in so many words, by the Constitution, to Congress, to punish robberies of the mail; but it is incidental to the right of establishing post offices and post roads, and necessary to carry the specified power into effect. This curious distinction between "*right* and *power*, *direct* and *incidental*," is an *ignis fatuus* of the learned gentleman's composition to bewilder and mislead us from our object, that we may be lost and led astray over a wide moor of absurdities. The right of the jury is not the less, whether immediate, or derivative; as Congress possess the power to pass all laws necessary to carry any delegated power into effect, in like manner juries possess every power necessary to the general verdict which they have a right to give. The violation on the part of the judge of the incidental power, as much subjects him to punishment, as if he had invaded the original right over the fact, to which it is appendant. What would he say to a robber of the mail claiming impunity because the power to make the offence penal was incidental, and not specified in the Constitution? But, say gentlemen, we admit the *power* in the jury, we only deny the *right*: and in this tissue of self-contradictions they declare, that whilst a jury is bound by the exposition of the law, as laid down by the court, yet they have not the right to determine whether the facts come within the law. Can there be a greater absurdity?

"Whilst the jury have no right to decide the law, they must decide whether the facts come within the law!" If the jury is tied down by the court's construction of the law, is it not plain that *they* do *not* decide whether the fact is, or is not, embraced by the law? but that whilst they find naked fact, it is the *court* that decides whether that fact does, or does not, come within the law? Gracious God! is it come to this? Are the great principles for which our forefathers contended, and many of yourselves have bled, now to be frittered away by technical sophistry? Is the same doctrine to be established here in capital offences—in cases of treason—that Lord Mansfield attempted to impose on the people of England as the law of libel, and which they would not endure? Shall principles of criminal law which they have scouted, even in cases not capital, be established here for the decision of capital offences? that whilst the jury finds the facts, their application to the law shall depend solely on the will of the court? I deny the gentleman's law; and assert that, as an American citizen, I would refuse to be bound by it. A man is charged with having committed certain treasonable acts. The Constitution has defined treason to consist "in levying war against the United States, or in adhering to their enemies, giving them aid and comfort." But the court, assuming to themselves a more than Papal infallibility—the exclusive exposition and construction of the Constitution—tell me, as a juror, to surrender into their hands my conscience and my understanding; that, as a levying of war is treason, so is the picking up of a pin a levying of war; that I, an unlearned layman, must not presume to expound the holy scripture of the Constitution, but must leave that to the elect; and, if the fact of his having picked up the pin be proved to my satisfaction, I am bound to find the prisoner guilty of levying war against his country—to convict him of treason. Sir, the parallel runs on all fours; for there is nothing to uphold this monstrous judicial assumption, but that which supported the pretensions of the Roman Pontiff—the willing obedience of ignorant superstition. If the jury is contumacious, if, whilst they confess their entire conviction of the truth of the fact charged in the indictment, they deny the legal doctrine and acquit the prisoner, the court is without redress. They may bully and look big—there is no help. Put the case of murder. A killing with malice aforethought is charged upon the prisoner—there is no dispute about facts—it is admitted that the party arraigned did kill the deceased. Shall I, a juror, contenting myself with deciding a fact that nobody disputes, surrender to the court the question of law, should they attempt to usurp it, (as that killing with a particular weapon is a killing with malice prepense,) and find a man guilty of murder whom I believe to have acted in self-defence?—in defence of life, or, what is dearer than life, of reputation? No, sir; I will not find him guilty, although all the courts in the universe should instruct me to do so. I will look to the great precept, "do as you would be done by," and say, "I would have done so too, and, therefore, I will not say, that man ought not so to have done." And what is there, sir, in the words "*levying of war*," more unintelligible than in the words, "*malice prepense?*" The first, being altogether a matter of fact, would appear more exclusively the province of the jury than the last, which rather partakes of a question of opinion. If you leave the law in criminal cases to the jury, (as well as the fact,) you are safe; but if your decision should sanction the opposite doctrine, you set all our liberties, fixed by the decisions of ages, afloat on an ocean of uncertainty and contention. We have no beacon, no compass, no polar star to direct our course. If you suffer the rights of a jury to be thus invaded on a criminal trial—on a trial for life and death—you bind us in conclusions more fatal than those of the Church of Rome. You force us one moment to say whether such a fact amounts to such a crime, and, the next, you will not permit us to know what the crime is. I hope the marshal will never summon me on such a jury. I give him warning; I will never surrender the Constitution, my understanding, and my oath to the "*grim gribber*" of a court of law. I should consider myself as much entitled to decide the law for the judge in a civil case, as bound by his decision of it in a criminal one. Vain and futile is the attempt of the Constitution to settle and define treason, if that definition is to mean anything or nothing at the option of a corrupt judge. If this doctrine, sir, be denied by any member of this honorable Court, let him, in his legislative capacity, move for a bill "to render juries more

obedient to the judges, and *especially in criminal cases*." Until that is done, I shall refuse obedience to their dictates, and act as a juror upon the principles which I have avowed.

There is an expression, sir, in one of the articles (the fourth) much carped at by the opposite counsel, (Mr. Key,) which, as they have proceeded, every word and tittle, from my pen—and as I believe them correct—I feel called upon to explain: it is the term "*intemperance*." Intemperance may consist in gluttony, drunkenness, in other sensual and criminal excesses, or *in a want of temper*—its manifest meaning here; and in that meaning, confessed by the respondent's counsel, who excuse a particular act, or rather series of acts of intemperance, by alleging that it is habitual to their venerable client—that it is of seventy years standing—that it is too invetrate to be corrected—that he and they too sir are sorry for it, but it cannot be helped. Whatever you may think of the ingenuity of this defence I am sure, sir, you must allow it candor.

[Here Mr. Randolph entered into a defence of the testimony of John Heath, contending that there was nothing in the evidence of William Marshall inconsistent with it—that it was rebutted only by the evidence of a single witness, who might be considered as implicated in the charge. He also contended for the position that the law of Virginia was binding on the Court, where the law of Congress was silent, adducing several cases in illustration of his argument.]

I will now proceed to the eighth article of impeachment, in my desultory way, and for it I believe I might plead the precedent set me by the Attorney General of Maryland. The time has been, sir, when the sentiments uttered by the judge in his charge to the grand jury would have been denounced as Jacobinical—certain I am they would have come under the sedition law. In England, where the Church is connected with the State—indeed, forms a part of the Constitution—parsons have been impeached (and justly too) for preaching "sermons tending to introduce arbitrary gov-'ernment, and containing tenets derogatory to the 'rights and liberties of the subject."

[Here Mr. Randolph cited the cases of Doctor Mainwaring, in 1628—4 *Hatsell*, 125 to 206—and of the Rev. Richard Thomson in 1680—*ibid*, 118.]

But, sir, we are not reduced to reason from analogy—here is a case in point: "On the 23d of De-'cember, 1680, Sir Richard Corbett reports, from 'the committee appointed to examine the pro-'ceedings of the judges in Westminster Hall, sev-'eral resolutions"—among them is the following: 'That certain expressions in a charge given by 'Baron Weston were a scandal to the Reformation, in derogation of the rights and privileges of 'Parliament, and tending to raise discord between 'His Majesty and his subjects." To which resolution the House agrees, and resolves "That Sir 'Richard Weston, one of the barons of the Court 'of Exchequer, be immediately impeached;" and a committee is appointed to prepare the impeachment accordingly.—*Hatsell's Precedents, vol.* 4, *page* 17. These, sir, indeed are "cases before the Revolution," but on the eve of it, when the nation was making a stand against the Duke of York, afterwards James II.

In addition, we might cite the respondent's own authority, who, on the trial of Callender, declared that "If he knew himself, the opinion he had 'delivered and the reasons offered in its support 'flowed, not from political motives or reasons of 'State—with which he had no concern, and which 'he conceived ought never to enter courts of 'justice—but from deliberate conviction," &c.—*Robertson's printed statement, taken in short-hand, p.* 71. Try him by his own standard, and you must condemn him. Even-handed justice returns the poisoned chalice to his own lips—let him drain it to the very dregs. The very crimes on which he shows no mercy in others, he himself hath perpetrated. Compare, I beseech you, sir, the ability of this respondent to raise insurrection with that of Fries and Callender; compare his capacity, intelligence, opportunity, and influence, with theirs, and then pronounce who is the greatest criminal. With less bodily strength, indeed, but with gigantic powers of mind, he hath endeavored to alienate the people of Maryland from the General Government, and to excite them to nothing short of commotion against their own.

Mr. President, much as I regret the trespass that I have already committed on your patience, I must (painful as it may be to you, and it is not less so to myself,) attempt something like a review of the conduct of this judge. In May, 1800, you find him in Philadelphia, engaged in propagating and establishing the detestable doctrine of constructive and implied treason, which, in England, has proved the dreadful engine of persecution and murder. From thence you trace him to Annapolis; (not by the blood of John Fries—no thanks, however, to him for that;) you hear his declaration in presence of Mr. Mason. But this, his counsel tell you, was all a joke, nothing but humor, sir; like his conduct at Richmond. If you listen to them, you must become a Pythagorean, and believe that the soul of Yorick himself has transmigrated into the body of this judge. It is true he could not be the king's jester, because, *unfortunately*, we have no king, we have not yet reached that stage of civilization; but, sir, he is the jester of the sovereign people, a jester at your laws and Constitution, and it is for you to say whether he shall continue to exercise his function. This jocular conversation is likely to prove a bitter and biting jest to the respondent. So serious did that most intelligent and respectable witness deem it to be, that he locked it up in his own bosom, without venturing to mention it to any human being. He did not consider himself authorized to play with the fame of the respondent, however disposed *he* might be to sport with the feelings and rights of others. This merry fit lasted a long time. He indulges the same humor in the stage with Mr. Triplett, an entire stranger; and here let me observe, in justice to this gentleman, that never did any man deliver a more clear and unimpeachable testimony in a court of justice than this witness. It is conclusive. When the

judge made personal declarations against Callender, could he be said to administer justice without respect to persons? But, sir, one of our adversaries (Mr. Harper) protests against this sort of evidence, and deems it highly inadmissible. Why? Because, forsooth, it violates the sanctity of private conversation, and wounds the feelings of gentlemen who may be called on as witnesses. Thank God! sir, we live in a country where the law is open to all, and knows no distinction between *gentlemen* and *simple-men*. No man, I trust, has a greater respect for the real gentleman than myself. When Francis I., the accomplished monarch of the most gallant people of Europe, deemed it his first distinction to be ranked as the first gentleman of his kingdom, he did not hold that sacred character in higher reverence than I do. But the respondent himself has told you that a court of justice is a coarse sort of thing, blind to these nice discriminations; that the polished address of a Chesterfield, and the rugged scowl of a Thurlow, in the eye of the law are equal. Suppose a person killed, will not the court hear evidence of a previous declaration by the prisoner, of ill-will to the deceased, as "that he would be the death of him," &c.? or, will they stop to ask whether it was uttered in a tippling-house, or a drawing-room; by a ruffian in rags, or in ermine? and yet we are accused of lying in wait for the respondent, of watching his unguarded and convivial hours, of wounding the nerve of social intercourse to the quick. We are ministers of justice, and as such, we know nothing of these delicate distresses, equally unknown to our forefathers, to the framers of our free and manly institutions. Their composition was of sterner stuff than this modern, flimsy, fashionable ware. To their robust constitutions and strong common-sense these qualmish megrims, these sickly sensibilities of modern refinement were happily unknown.

Follow the respondent, then, with the steady and untired step of justice, from Philadelphia to Annapolis, from Annapolis to Richmond, and back again to Newcastle. You see a succession of crimes each treading on the heel, galling the kibe of the other—so connected in time, and place, and circumstance, and so illustrated by his own confessions, as to leave no shadow of doubt as to his guilt. You are to take the facts, not, as his counsel would have you, isolated and dismembered, but embodied; a series of acts indissolubly linked together, each supporting, each animated by the vital principle of guilt that pervades and gives life to the whole. God hath joined them; no man shall or can put them asunder. Carry your mind back to the state of things in 1800; then advert to the testimony in the case of Fries. Lewis, Dallas, Tilghman, and *even Rawle*, declaring that they had never witnessed such a proceeding before; pronouncing the conduct of the judge, on that occasion, to be altogether novel in the annals of our criminal jurisprudence. The same spirit pervades his whole career. But you are warned by the counsel (Mr. Harper) not to tarnish the laurels of your unmanly triumph over a fallen adversary. He implores the tribute of a sigh for the mournful yew and funeral cypress that bedecks the hearse of his political reputation. Dreading the decision of your judgment, your sympathies are enlisted for his client. An aged patriot, whose head is whitened with the hoar of three score and ten years, is presented to your afflicted imaginations: broken with disease, compelled to employ his few and short intervals from pain and sickness, to spend the last moments of a life devoted to a thankless country's service, in defending himself against a criminal prosecution. Do we thirst for his blood? yet, even there, English authorities would bear us out. Do we seek to lead him to Tower Hill? If his heart will fly in his face, is it we who cast it there? Do we even ask his disfranchisement? No, sir, we only demand the removal of a man, whom the very suspicion of such crimes unfits for the high station which he fills. A man bent with age and infirmity, struggling with misfortune, is a venerable object, entitled to your sympathy, even although he were not a patriot. Mine shall never be denied to such a character. But, sir, mark the difference between Samuel Chase, powerful and protected, and John Fries, feeble and oppressed. Look at the one lodged in a sumptuous hotel, partaking of the best cheer, surrounded and supported by every comfort of life, by a large and respectable circle of friends, indulged with ample time for his defence, assisted by counsel second to none in the land, unrestricted in the conduct of their cause. When I give a man so situated my sympathy, it is not of so jejune a cast as to refuse itself to the victim of his injustice—a hardy yeoman wrestling with indigence and persecution—selling his last bit of property to support a long imprisonment and meet the expenses of this very prosecution; a soldier of the Revolution, with whom the words "stamp act" and "window tax" were synonymous with slavery; who, in a moment of political delirium, perhaps of intoxication, had instinctively raised his hand against what he deemed an oppressive tax—immured in a dungeon, listening only to the clanking of fetters; snatched from the bosom of his family, to whom no doubt he was a kind parent and an affectionate husband—for be it remembered he was popular and beloved among his neighbors—this man, caught in the trap of judicial and constructive treason, at which common sense revolts, laid by the heels, trembling at the charge, ignorant of the extent of the law, without a friend to comfort and console him, no counsel in his defence; such a man, so situated, is as much entitled to my sympathy as any King that ever wore a crown, and he shall have it; he shall have more, he shall have justice from this honorable Court. Yes, sir, to my shame I confess, that my sympathy is not of this exclusive sort. It is not scared by the homely garb of poverty and wretchedness. It can feel for misfortune, even if it be not sumptuously arrayed. But let us suppose the character of John Fries to have been what one of our opponents has represented it; the other, on all sides it is agreed, was every way base and detestable. Yet, sir, this will not render your decision more

favorable to the accused. If Fries was a dangerous rebel, new cause of discontent and disaffection should not have been given to his countrymen by condemning him unfairly and unheard. Is this the way to extinguish the spirit of revolt, to reconcile freemen to your Government? Sir, we do not appear at your bar the advocates of Fries and Callender, but of the violated laws of your country. We know it is in the persons of the weak, the worthless, and the wicked, that the liberties of every people are first attacked; and we feel that society is as deeply interested in protecting the most obscure and friendless of her members, as her most illustrious benefactor; and more so, for this last may protect himself. Be the character and condition of the prisoner what they may, we say, "*give him a fair trial:*" the greater his guilt, the less the occasion of relaxing the principles of law and justice in trying him. If he be a great State prisoner, dangerous to Government from the number and power of his followers, the greater the necessity for a rigid adherence to those principles, that no pretext for future insurrection be found in the injustice of his sentence. Sir, if these men had had fair trials, our lips would have been closed in eternal silence. Look at the case of Logwood. The able and excellent judge, whose worth was never fully known until he was raised to the bench, who presided at that trial, uttered not one syllable that could prejudice the defence of the prisoner. He felt, he knew that the wretch was entitled to fair play, and he gave it him. We heard of no prejudged (written or verbal) opinion in that case; no denial of testimony, no requisition that questions should be reduced to writing and submitted to the inspection of the court, before they were suffered to be propounded to a witness—none of the respondent's new discoveries in criminal law were there brought into play. The Chief Justice knew that, sooner or later, the law was an overmatch for the dishonest, and leaving the cause of the commonwealth to its attorney, he disdained to descend from his great elevation to the low level of a public prosecutor. He let the law take its course. But, sir, the honorable Attorney General of Maryland has said, that these men had fair trials; or what he terms "*the essence of an impartial trial;*" that they were guilty, and found guilty accordingly; and had the verdict (the essence of the trial) been otherwise, it would have been partial and unjust: that is to say, sir, that the end will justify any means resorted to for its accomplishment; that all the forms of law, invented to protect the innocent, may be dispensed with on the trial of the guilty; that you may deny a man the benefit of testimony or counsel in his behalf, on his trial; and, after he is hanged, bring forward evidence of his guilt to justify the deed. Do you want other proof of the weakness of a cause, when men of sense defend it by arguments like these? If the respondent be indeed innocent, in his name I impeach his defenders; if he is not guilty, they have betrayed his cause.

Had I, Mr. President, been governed in this case by considerations of personal feeling rather than by my duty to the public, I should long since have asked a respite from a task to which I feel myself physically as well as morally incompetent. In a little time and I will dismiss you to the suggestions of your own consciences. My weakness and want of ability prevent me from urging my cause as I could wish, but it is the last day of my sufferings and of yours.

We are asked to assign any rational motive for the conduct imputed to the respondent. His object might have been to court the Administration which he upheld and supported, to recommend himself to the President of the United States, to obtain the Chief Justiceship. Those who are anxious to attract the notice and favor of the powers that be, are not apt to put their light under a bushel. The fulsomeness of sycophants, who always overact their part, is proverbial. Sir, he might be aspiring to the Presidency itself, and anxious to engage the favor of the leaders of his party. Let it be remembered, the triumph of that day was complete, and the reckoning of this day too remote from probability to be taken into the account. Here, sir, you have a key to his whole conduct. It becomes you, then, Mr. President and gentlemen of the Senate, to determine whether a man whose whole judicial life hath been marked by habitual outrage upon decorum and duty, too inveterate to give the least hope of reformation, interwoven and incorporated with his very nature, shall be arrested in his career, or again let loose upon society, to prey upon the property, liberty, and life of those who will not rally around his political standard. We have performed our duty; we have bound the criminal and dragged him to your altar. The nation expects from you that award which the evidence and the law requires. It remains for you to say whether he shall again become the scourge of an exasperated people, or whether he shall stand as a landmark and a beacon to the present generation, and a warning to the future, that no talents, however great, no age, however venerable, no character, however sacred, no connexions, however influential, shall save that man from the justice of his country, who prostitutes the best gifts of Nature and of God, and the power with which he is invested for the general good, to the low purposes of an electioneering partisan. We adjure you, on behalf of the House of Representatives and of all the people of the United States, to exorcise from our courts the baleful spirit of party, to give an awful memento to our judges. In the name of the nation, I demand at your hands the award of justice and of law.

Mr. HARPER.—I beg leave, Mr. President, to correct the honorable gentleman who has just concluded. (Mr. RANDOLPH,) with respect to what he has called admissions on our part; and to notice a little the authority which he has read respecting Chief Justice Keelyng.

The PRESIDENT observed that it would be necessary for Mr. HARPER to confine himself to the facts which he considered misstated.

Mr. HARPER. The honorable gentleman has stated that we admitted *our* client to be guilty. I disclaim and deny any such admission. Had

we made it, we should have admitted what is not true. We did, indeed, admit, that our client has been guilty of some casual indiscretions, such as are common to every man; but we neither did or could admit more.

The honorable gentleman is also incorrect, in his manner of stating John Heath's testimony. John Heath did positively swear, that he told the circumstances to Mr. Holmes, within an hour after the conversation in his presence took place, between the respondent and the marshal.

The honorable gentleman has also said, that I compared the conduct of my client, to a brawl or a riot. This is an utter mistake. I said no such thing. I made no such comparison.

The PRESIDENT here checked Mr. HARPER, who was apparently entering into an argument.

Mr. HARPER. I will confine myself to saying the remark of the honorable gentleman is a mistake. As to the authority cited by the honorable gentleman from Hatsell, to show that Sir John Keelyng was a man of worthless character, whose writings are not entitled to credit; it does, indeed, appear from Hatsell, that Sir John Keelyng, while Chief Justice of England, was cited to appear before the House of Commons, upon charges exhibited against him. But what was the result? The honorable gentleman has omitted to inform us. But had he proceeded to read the next sentence in the book, he would have found that Sir John Keelyng appeared to the summons, made his defence, and was most honorably acquitted. It was a light, vague, and groundless accusation, which met with the fate that ought ever to attend such accusations, and that I hope will attend the present.

The honorable gentleman has also discovered, that the decisions reported by Sir John Keelyng, which were cited by my learned colleague, were Star Chamber decisions; and he has indulged himself in reneating many of the usual invectives, against Star Chamber proceedings, and Star Chamber decisions. But where did he find that these decisions were made in the Star Chamber? If he had taken the trouble to read the book, which together with its author, he has so much stigmatized, he would have found that these decisions were made not in the Star Chamber, but in the Court of King's Bench; which was at that time filled by some of the ablest lawyers that England has ever produced. If he will take the trouble to open the learned work of Hale on the criminal law—of Hale whom he and his colleagues have so much and so justly extolled, and whose eulogium is a perpetual theme in every court of criminal jurisdiction—if he will turn to Hawkins, the leading authority and constant manual of criminal law; he will find that Keelyng's reports are constantly cited as authority, by those learned writers; and that the very decisions cited by my learned colleague, which have so strongly excited the indignation of the honorable gentleman himself, are at this moment considered as the established law of England, and consequently for this country, so far as they apply.

The latitude allowed by this honorable Court, would admit of my correcting many other mistakes of minor importance, into which the honorable gentleman has fallen: but the lateness of the hour, and an anxious wish to bring the trial to a close, admonish me to abstain from any further remarks.

Mr. RANDOLPH said he hoped that until tomorrow would be allowed the gentleman to make any further observations he might be desirous to offer. Mr. HARPER having declined saying anything more, the President informed Mr. R. that he was at liberty to reply to Mr. HARPER.

Mr. RANDOLPH. Sir, I did not say that Keelyng was Star Chamber authority; I expressly stated that he was Chief Justice of the King's Bench. At the time of his impeachment the Court of High Commission and Star Chamber had been abolished forty years. But I did aver (and I repeat the assertion) that Star Chamber authorities had been adduced to justify the conduct of the respondent. Keelyng was impeached for innovation in trials of men for their lives, and putting unlawful restraints on juries. It is true, sir, the Commons dropped their prosecution, but what does that prove? Surely not even his own innocence, much less that of the respondent. If we have not made out our case, if we are not fully supported by the law and the evidence, you will acquit the accused, not by a scanty and frigid majority, but by an unanimous vote. If we have not proved the truth of our charge, on us, and on all the people of America, who cry aloud against him, be the shame. Let us be dismissed to infamy, and hosannas be sung to him whom the highest tribunal of the nation delighteth to honor.

On motion of Mr. JACKSON.

Resolved, That the Court will on Friday next, at 12 o'clock, pronounce judgment in the case of Samuel Chase, one of the associate justices of the Supreme Court of the United States.

FRIDAY, March 1.

The Court being opened by proclamation, the Managers, accompanied by the House of Representatives, attended.

The counsel for the respondent also attended.

The consideration of the motion, made yesterday for an alteration of one of the rules in cases of impeachments, was resumed: Whereupon,

Resolved, That in taking the judgment of the Senate upon the articles of impeachment now depending against Samuel Chase, Esq., the President of the Senate shall call on each member by his name, and upon each article, propose the following question, in the manner following: "Mr. —— how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the —— article of impeachment?"

Whereupon, each member shall rise in his place, and answer guilty or not guilty.

The PRESIDENT rose, and addressing himself to the members of the Court, said:

Gentlemen: You have heard the evidence and arguments adduced on the trial of Samuel Chase, impeached for high crimes and misdemeanors: you will now proceed to pronounce distinctly your judgment on each article.

The Secretary then read the first article of impeachment, as follows:

ARTICLE 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give:

In consequence of this irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard, by counsel, in his defence, to the disgrace of the character of the American bench, in manifest violation of law and justice, and in open contempt of the rights of juries, on which ultimately rest the liberty and safety of the American people.

When the PRESIDENT took the opinion of the members of the Court respectively, in the form following:

"Mr. ——, how say you; is the respondent, Samuel Chase, guilty or not guilty of a high crime or misdemeanor, as charged in the first article of impeachment?"

Those who pronounced guilty, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Howland, Logan, Maclay, Moore, Stone, Sumter, Worthington, and Wright—16.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Giles, Hillhouse, Jackson, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White—18.

The second article was read by the Secretary, as follows:

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, one thousand eight hundred, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial because he had made up his mind as to the publication from which the words charged to be libellous in the indictment were extracted; and the said Basset was accordingly sworn and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Cocke, Condit, Ellery, Giles, Howland, Maclay, Moore, and Sumter—10.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Brown, Dayton, Franklin, Gaillard, Hillhouse, Jackson, Logan, Mitchill, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Tracy, White, Worthington, and Wright—24.

The third article was read by the Secretary, as follows:

ART. 3. That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith, of Ohio, Smith of Vermont, Stone, Tracy, and White—16.

The fourth article was read by the Secretary, as follows:

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance; viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness:

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term:

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did, at the same time, manifestly tend:

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

5. In an indecent solicitude manifested by the said Samuel Chase for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—18.

Those who pronounced not guilty, are:

Messrs. Adams, Baldwin, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—16.

The fifth article was read by the Secretary, as follows:

Art. 5. And whereas it is provided by the act of Congress, passed on the 24th day of September, 1789, entitled "An act to establish the judicial courts of the United States," that for any crime or offence against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found: and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer such presentment at the next court; yet the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

All the members pronounced not guilty on this article, viz:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Breckenridge, Brown, Cocke, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Howland, Jackson, Logan, Maclay, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, Tracy, White, Worthington, and Wright—34.

The sixth article was read by the Secretary, as follows:

Art. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the Judicial Courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States, shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Howland, and Maclay—4.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Franklin, Gaillard, Giles, Hillhouse, Jackson, Logan, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of Maryland, Smith of New York, Smith of Ohio, Smith of Vermont, Stone, Sumter, Tracy, White, Worthington, and Wright—30.

The seventh article was read by the Secretary, as follows:

Art. 7. That at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided—the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared, through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order—that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added, "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and by a strict examination of them to find some passage which might furnish the ground-work of a prosecution against the printer of the said paper; thereby degrading his high judicial functions, and tending to impair the public confidence in, and respect for, the tribunals of justice, so essential to the general welfare.

Those who pronounced guilty on this article, are:

Messrs. Breckenridge, Cocke, Franklin, Howland, Jackson, Maclay, Smith of Maryland, Stone, Sumter, and Wright—10.

Those who pronounced not guilty, are:

Messrs. Adams, Anderson, Baldwin, Bayard, Bradley, Brown, Condit, Dayton, Ellery, Gaillard, Giles, Hillhouse, Logan, Mitchill, Moore, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, White, and Worthington—24.

The eighth article was read by the Secretary, as follows:

Art. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra judicial, and tending to prostrate the high judicial character with which he was invested, to the low purpose of an electioneering partisan.

Those who pronounced guilty on this article, are:

Messrs. Anderson, Baldwin, Breckenridge, Brown, Cocke, Condit, Ellery, Franklin, Giles, Howland, Jackson, Logan, Maclay, Moore, Smith of Maryland, Stone, Sumter, Worthington, and Wright—19.

Those who pronounced not guilty, are:

Messrs. Adams, Bayard, Bradley, Dayton, Gaillard, Hillhouse, Mitchill, Olcott, Pickering, Plumer, Smith of New York, Smith of Ohio, Smith of Vermont, Tracy, and White—15.

The President rose and said, on the first article, sixteen gentlemen have pronounced guilty, and eighteen not guilty; on the second article, ten have said guilty, and twenty-four not guilty; on the third article, eighteen have said guilty, and sixteen not guilty; on the fourth article, eighteen have said guilty, and sixteen not guilty; on the fifth article, there is an unanimous vote of not guilty; on the sixth article, four have said guilty, and thirty not guilty; on the seventh article, ten have said guilty, and twenty-four not guilty; and on the eighth article, nineteen have said guilty, and fifteen not guilty.

Hence, it appears that there is not a Constitutional majority of votes finding Samuel Chase, Esq., guilty, on any one article. It, therefore, becomes my duty to declare that Samuel Chase, Esq., stands acquitted of all the articles exhibited by the House of Representatives against him.

Whereupon, the Court adjourned without day.

APPENDIX
TO
THE TRIAL OF JUDGE CHASE.

Charge of Judge Chase, being exhibit number three, referred to in his answer.

Gentlemen of the Jury: John Fries, the prisoner at the bar, stands indicted for the crime of treason, of levying war against the United States, contrary to the Constitution.

By the Constitution of the United States, article three, section three, it is declared: "That treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

By the same section, it is further declared: "That no person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court;" and that "The Congress shall have power to declare the punishment of treason."

Too much praise cannot be given to this Constitutional definition of treason, and the requiring such full proof for conviction; and declaring that no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

This Constitutional definition of treason is a definition of law. Every proposition in any statute (whether more or less distinct, whether easy or difficult to comprehend) is always a question of law. What is the true meaning or true import of any statute, and whether the case stated comes within it, is a question of law and not of fact. The question in an indictment for levying war against (or adhering to the enemies of) the United States, is "whether the facts stated do or do not amount to the levying of war" within the contemplation and construction of the Constitution.

It is the duty of the court in this case, and in all criminal cases, to state to the jury their opinion of the law arising on the facts; but the jury are to decide on the present and in all criminal cases, both the law and the facts, on their consideration of the whole case.

It is the opinion of the court that any insurrection or rising of any body of people, within the United States, to attain or effect, by force or violence, any object of a great public nature or of public and general (or national) concern, is a levying war against the United States, within the contemplation and construction of the Constitution.

On this general position the court are of opinion, that any such insurrection or rising to resist, or to prevent by force or violence, the execution of any statute of the United States, for levying or collecting taxes, duties, imposts, or excises; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the statute was unjust, burdensome, oppressive, or unconstitutional, is a levying war against

the United States, within the contemplation and construction of the Constitution.

The reason for this opinion is, that an insurrection to resist or prevent by force the execution of any statute of the United States, has a direct tendency to dissolve all the bonds of society; to destroy all order and all laws; and also all security for the lives, liberties, and property of the citizens of the United States.

The court are of opinion that military weapons (as guns and swords mentioned in the indictment) are not necessary to make such insurrection or rising amount to levying war; because numbers supply the want of military weapons; and other instruments may effect the intended mischief. The legal guilt of levying war may be incurred without the use of military weapons or military array.

The court are of opinion that the assembling bodies of men, armed and arrayed in a warlike manner for purposes only of a private nature, is not treason; although the judges or other peace officers should be insulted or resisted, or even great outrages committed to the persons or property of our citizens.

The true criterion to determine whether acts committed are treason, or a less offence (as a riot) is the *quo animo* or the intention with which the people did assemble. When the intention is universal or general, to effect some object of a general public nature, it will be treason, and cannot be considered, construed, or reduced to a riot. The commission of any number of felonies, riots, or other misdemeanors, cannot alter their nature so as to make them amount to treason; and, on the other hand, if the intention and acts combined amount to treason, they cannot be sunk down to a felony or riot. The intention with which any acts (as felonies, the destruction of property, or the like) are done, will show to what class of crimes the case belongs.

The court are of opinion that if a body of people conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, that they are only guilty of a high misdemeanor, but if they proceed to carry such intention into execution by force, that they are guilty of the treason of levying war; and the quantum of the force employed neither lessens nor increases the crime, whether by one hundred or one thousand persons, is wholly immaterial.

The court are of opinion that a combination or conspiracy to levy war against the United States is not treason, unless combined with an attempt to carry such combination or conspiracy into execution; some actual force or violence must be used in pursuance of such design to levy war; but that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force connected with the intention will constitute the crime of levying war.

This opinion of the court is founded on the same principles, and is, in substance, the same as the opinion of the circuit court for this district in the trials in April, 1795, of Vigol and Mitchell, who were both found guilty by the jury, and afterward pardoned by the late President.

At the circuit court for the district (April term, 1799.) on the trial of the prisoner at the bar, Judge Iredell delivered the same opinion; and Fries was convicted by the jury.

To support the present indictment against the prisoner at the bar, two facts must be proved to your satisfaction: First. That, some time before the finding of the indictment there was an insurrection (or rising) of a body of people in the county of Northampton, in this State, with intent to oppose and prevent, by means of intimidation and violence, the execution of a law of the United States, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States;" or of another law of the United States, entitled "An act to lay and collect a direct tax within the United States," and that some acts of violence were committed by some of the people so assembled, with intent to oppose and prevent, by means of intimidation and violence, the execution of both or of one of the said laws of Congress.

In the consideration of this fact, you are to consider and determine with what intent the people assembled at Bethlehem, whether to effect by force a public or a private measure.

The intent with which the people assembled at Bethlehem, in Northampton, is a necessary ingredient to the fact of assembling, and to be proved, like any other fact, by the declaration of those who assembled, or by acts done by them, when the question is, "What is the man's intent?" It may be proved by a number of connected circumstances, or by a single fact.

If, from a careful examination of the evidence, you shall be convinced that the real object and intent of the people assembled at Bethlehem was of a public nature, (which it certainly was if they assembled with intent to prevent the execution of both the above-mentioned laws of Congress, or either of them,) it must then be proved to your satisfaction that the prisoner at the bar incited, encouraged, promoted, or assisted in the insurrection or rising of the people at Bethlehem, and the terror they carried with them, with intent to oppose and prevent, by means of intimidation and violence, the execution of both the above-mentioned laws of Congress, or either of them; and that some force was used by some of the people assembled at Bethlehem.

In the consideration of this fact, the court think proper to assist your inquiry by giving you their opinion.

In treason all the *participes criminis* are principals; there are no accessaries to this crime. Every act which in the case of felony would render a man an accessary, will in the case of treason make him a principal. To render any person an accomplice and principal in felony, he must be aiding and abetting at the fact, or ready to afford assistance, if necessary. If a person be present at a felony aiding or assisting, he is a principal. It is always material to consider, whether the persons charged are of the same party, upon the same pursuit, and under the expectation of mutual defence and support. All persons present, aiding, assisting, or abetting any treasonable act, are principals. All persons who are present, and countenancing, and are ready to afford assistance, if necessary, to those who actually commit any treasonable act, are also principals. If a number of persons assemble and set upon a common design, as to resist and prevent by force the execution of any law, and some of them commit acts of violence and force, with intent to oppose the execution of any law, and others are present to aid and assist, if necessary, they are all principals. If any man joins and acts with an assembly of people, his intent is always to be considered and adjudged to be the same as theirs; and the law in the case judgeth of the intent by the fact. If a number of persons combine or conspire to effect a certain purpose, as to oppose by force the execution of a law, any act of violence done by any one of them, in pursuance of such combination, and with intent to effect such object, is, in consideration of law, the act of all who are present when such act of violence is committed. If persons collect together to act for one and the same common end, any act done by any one of them, with intent to effectuate such common end, is a fact that may be given in evidence against all of them; the act of each is evidence against all concerned.

I shall not detain you at this late hour to recapitulate the facts; you have taken notes, and they have been stated with accuracy and great candor by Mr. Attorney.

I will only remark, that all the evidence relative to transactions before the assembling of the armed force at Bethlehem, are only to satisfy you of the intent with which the body of the people assembled there. If either of three overt acts (or open deeds) stated in the indictment, are proved to your satisfaction, the court are of opinion that is sufficient to maintain the indictment, for the court are of opinion that every overt act is treasonable.

As to accomplices, they are legal witnesses, and entitled to credit, unless destroyed by testimony in court.

If, upon consideration of the whole matter, (*law* as well as *fact*,) you are *not* fully satisfied without any doubt that the prisoner is guilty of the treason charged in the indictment, you will find him not guilty; but if, upon the consideration of the whole matter, (*law* as well as *fact*,) you are convinced that the prisoner is guilty of the treason charged in the indictment, you will find him guilty.

Exhibit number eight, referred to in Judge Chase's answer.

Copy of the conclusion of a charge delivered and read from the original manuscript, at a circuit court of the United States, holden in the city of Baltimore, on Monday the second day of May, 1803, by Samuel Chase, one of the judges of the Supreme Court of the United States.

Before you retire, gentlemen, to your chamber to consider such matters as may be brought before you, I will take the liberty to make a few observations, which I hope you will receive as flowing only from my regard to the welfare and prosperity of our common country.

It is essentially necessary at all times, but more particularly at the present, that the public mind should be truly informed; and that our citizens should entertain correct principles of government, and fixed ideas of their social rights. It is a very easy task to deceive or mislead the great body of the people by propagating plausible, but false doctrines, for the bulk of mankind are governed by their passions and not by reason.

Falsehood can be more readily disseminated than truth, and the latter is heard with reluctance if repugnant to popular prejudice. From the year 1776, I have been a decided and avowed advocate for a representative or republican form of government, as since established by our State and national Constitutions. It is my sincere wish that freemen should be governed by their representatives, fairly and freely elected by that class of citizens described in our bill of rights, "who have property in, a common interest with, and an attachment to, the community."

The purposes of civil society are best answered by those governments where the public safety, happiness, and prosperity, are best formed, whatever may be the constitution and form of government; but the history of mankind (in ancient and modern times) informs us "that a monarchy may be free, and that a republic may be a tyranny." The true test of liberty is in the practical enjoyment of protection to the person and the property of the citizen, from all injury. Where the same laws govern the whole society without any distinction, and there is no power to dispense with the execution of the laws; where justice is impartially and speedily administered, and the poorest man in the community may obtain redress against the most wealthy and powerful, and riches afford no protection to violence; and where the person and property of every man are secure from insult and injury; in that country the people are free. This is our present situation. Where law is uncertain, partial, or arbitrary; where justice is not impartially administered to all; where property is insecure, and the person is liable to insult and violence without redress by law, the people are *not free*, whatever may be their form of government. To this situation I greatly fear we are fast approaching!

You know, gentlemen, that our State and national institutions were framed to secure to every member of the society equal liberty and equal rights; but the late alteration of the Federal Judiciary by the abolition of the office of the sixteen circuit judges, and the recent change in our State constitution by the establishing of universal suffrage, and the further alteration that is contemplated in our State judiciary (if adopted) will, in my judgment, take away all security for property and personal liberty. The independence of the national Judiciary is already shaken to its foundation, and the virtue of the people alone can restore it. The independence of the judges of this

State will be entirely destroyed, if the bill for the abolition of the two supreme courts should be ratified by the next General Assembly. The change of the State constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments.

I can only lament that the main pillar of our State constitution has already been thrown down by the establishment of universal suffrage. By this shock alone the whole building totters to its base, and will crumble into ruins before many years elapse, unless it be restored to its original state. If the independency of your State judges which your bill of rights wisely declares "to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people," shall be taken away by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole State constitution, and there will be nothing left in it worthy the care or support of freemen.

I cannot but remember the great and patriotic characters by whom your State constitution was framed. I cannot but recollect that attempts were then made in favor of universal suffrage, and to render the judges dependent upon the Legislature. You may believe that the gentlemen who framed your constitution, possessed the full confidence of the people of Maryland, and that they were esteemed for their talents and patriotism, and for their public and private virtues. You must have heard that many of them held the highest civil and military stations, and that they, at every risk and danger, assisted to obtain and establish your independence. Their names are enrolled on the Journals of the first Congress, and may be seen in the proceedings of the Convention that framed our form of Government. With great concern I observe that the sons of some of these characters have united to pull down the beautiful fabric of wisdom and republicanism that their fathers erected!

The declarations respecting the natural rights of man, which originated from the claim of the British Parliament to make laws to bind America in all cases whatsoever; the publications since that period, of visionary and theoretical writers, asserting that men in a state of society are entitled to exercise rights which they possessed in a state of nature; and the modern doctrines by our late reformers, that all men in a state of society are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us; and I fear that it will rapidly progress, until peace and order, freedom and property, shall be destroyed. Our people are taught as a political creed, that men living under an established Government, are, nevertheless, entitled to exercise certain rights which they possessed in a state of nature; and, also, that every member of this Government is entitled to enjoy an equality of liberty and rights.

I have long since subscribed to the opinion, that there could be no rights of man in a state of nature previous to the institution of society; and that liberty, properly speaking, could not exist in a state of nature. I do not believe that any number of men ever existed together in a state of nature without some head, leader, or chief, whose advice they followed, and whose precepts they obeyed. I really consider a state of nature as a creature of the imagination only, although great names give a sanction to a contrary opinion. The great object for which men establish any form of government, is to obtain security to their persons and property from violence; destroy the security to either, and you tear up society by the roots. It appears to me that the institution of government is really no sacrifice made, as some writers contend, to natural liberty, for I think that previous to the formation of some species of government, a state of liberty could not exist. It seems to me that personal *liberty* and *rights* can only be acquired by becoming a member of a community, which gives the protection of the whole to every individual. Without this protection it would, in my opinion, be impracticable to enjoy personal liberty or rights. From hence I conclude that liberty and rights (and also property) must spring out of civil society, and must be forever subject to the modification of particular governments. I hold the position clear and safe, that all the rights of man can be derived only from the *conventions* of society, and may with propriety be called social rights. I cheerfully subscribe to the doctrine of equal liberty and equal rights, if properly explained. I understand by equality of liberty and rights only this, that every citizen, without respect to property or station, should enjoy an equal share of civil liberty, an equal protection from the laws, and an equal security for his person and property. Any other interpretation of these terms is, in my judgment, destructive of all government and all laws. If I am substantially correct in these sentiments, it is unnecessary to make any application of them, and I will only ask two questions. Will justice be impartially administered by judges dependent on the Legislature for their continuance in office, and also for their support? Will liberty or property be protected or secured, by laws made by representatives chosen by electors, who have no property in, a common interest with, or attachment to the community?

True copy:

THOMAS CHASE.

JANUARY 31, 1805.

PROCEEDINGS AND DEBATES

OF THE

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,

AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AT THE CITY OF WASHINGTON, MONDAY, NOVEMBER 5, 1804.

MONDAY, November 5, 1804.

This being the day appointed by law for the meeting of the present Session, the following members of the House of Representatives appeared and took their seats, to wit:

From New Hampshire—Silas Betton, Clifton Claggett, David Hough, and Samuel Tenney.

From Massachusetts—Jacob Crowninshield, Thomas Dwight, Nahum Mitchell, Ebenezer Seaver, William Stedman, Joseph B. Varnum, and Lemuel Williams.

From Rhode Island—Nehemiah Knight and Joseph Stanton.

From Connecticut—John Davenport and John Cotton Smith.

From Vermont—William Chamberlin, Martin Chittenden, James Elliot, and Gideon Olin.

From New York—Gaylord Griswold, Josiah Hasbrouck, Henry W. Livingston, Andrew McCord, Samuel L. Mitchill, Beriah Palmer, Erastus Root, Thomas Sammons, David Thomas, Philip Van Cortlandt, Killian K. Van Rensselaer, and Daniel C. Verplanck.

From New Jersey—Adam Boyd, Ebenezer Elmer, James Sloan, and Henry Southard.

From Pennsylvania—Isaac Anderson, David Bard, Joseph Clay, Frederick Conrad, William Findley, Joseph Heister, Michael Leib, John Rea, Jacob Richards, John Smilie, John Stewart, and John Whitehill.

From Maryland—John Archer, William McCreery, Nicholas R. Moore, and Thomas Plater.

From Virginia—Thomas Claiborne, John Dawson, John W. Eppes, Thomas Griffin, David Holmes, John G. Jackson, Joseph Lewis, jr., Anthony New, Thomas Newton, jr., John Randolph, Thomas M. Randolph, John Smith, James Stephenson, and Philip R. Thompson.

From Kentucky—George Michael Bedinger, John Boyle, and Thomas Sandford.

From North Carolina—Willis Alston, jr., William Blackledge, James Gillespie, James Holland, William Kennedy, Nathaniel Macon, (Speaker,) Richard Stanford, and Joseph Winston.

From Tennessee—George W. Campbell, William Dickson, and John Rhea.

From South Carolina—John B. Earle.

From Georgia—Peter Early and David Meriwether.

From Ohio—Jeremiah Morrow.

Delegate from the Mississippi Territory—William Lattimore.

Several new members, to wit: from Massachusetts, SIMON LARNED, returned to serve in this House, as a member for the said State, in the room of Tompson J. Skinner, who has resigned his seat; from New York, SAMUEL RIKER, returned to serve as a member for the said State, in the room of John Smith, appointed a Senator of the United States; and from Virginia, CHRISTOPHER CLARK, returned to serve as a member for the said State, in the room of John Trigg, deceased; appeared, produced their credentials, and took their seats in the House; the oath to support the Constitution of the United States being first administered to them by Mr. SPEAKER, according to law.

And a quorum, consisting of a majority of the whole number, being present,

Ordered, That a message be sent to the Senate, to inform them that a quorum of this House is assembled, and ready to proceed to business; and that the Clerk of this House do go with the said message.

The following committees were appointed pursuant to the standing rules and orders of the House, viz:

Committee of Elections—Mr. FINDLEY, Mr. VARNUM, Mr. LIVINGSTON, Mr. KENNEDY, Mr. EPPES, Mr. CLAGETT, and Mr. ELMER.

Committee of Ways and Means—Mr. JOHN RANDOLPH, Mr. JOSEPH CLAY, Mr. GAYLORD GRISWOLD, Mr. BOYLE, Mr. DAVENPORT, Mr. NICHOLAS R. MOORE, and Mr. MERIWETHER.

Committee of Commerce and Manufactures—Mr. SAMUEL L. MITCHILL, Mr. CROWNINSHIELD, Mr. MCCREERY, Mr. LEIB, Mr. NEWTON, Mr. EARLY, and Mr. CHITTENDEN.

Committee of Claims—Mr. JOHN COTTON SMITH, Mr. HOLMES, Mr. PLATER, Mr. CHAMBERLIN, Mr. BEDINGER, Mr. STANFORD, and Mr. STANTON.

Committee of Revisal and Unfinished Business—Mr. TENNEY, Mr. DICKSON, and Mr. EARLE.

The SPEAKER laid before the House a letter from the Governor of the State of Maryland, enclosing a certificate of the election of ROGER NELSON, to serve in this House as a member for the said State, in the room of Daniel Heister, deceased; which was referred to the Committee of Elections.

Ordered, That the Clerk of this House cause the members to be furnished, during the present session, with three newspapers to each member, such as the members, respectively, shall choose, to be delivered at their lodgings; and that if any member shall choose to take any newspaper other than a daily paper, he shall be furnished with as many of such newspapers as shall not exceed the price of a daily paper.

Resolved, That, unless otherwise ordered, the daily hour to which the House shall stand adjourned, during the present session, be eleven o'clock in the forenoon.

TUESDAY, November 6.

Several other members, to wit: from Massachusetts, MANASSEH CUTLER; from Connecticut, SAMUEL W. DANA and ROGER GRISWOLD; from New Jersey, JAMES MOTT; from Pennsylvania, JOHN A. HANNA, JOHN B. C. LUCAS, and ISAAC VAN HORNE; from Maryland, JOHN CAMPBELL; from Virginia, JOHN CLOPTON; and from South Carolina, THOMAS LOWNDES; appeared and took their seats in the House.

Another new member, to wit: ROGER NELSON, from Maryland, returned to serve in this House as a member for the said State, in the room of Daniel Heister, deceased, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. J. RANDOLPH moved for the appointment of a committee on the part of the House to join a committee of the Senate to wait on the President and inform him that a quorum of both Houses are formed, and ready to receive his communications.

Mr. DANA inquired if a quorum of the Senate was formed? That circumstance, he thought, ought to be ascertained before the House adopted the gentlemen's resolution.

Mr. RANDOLPH did not know whether or no the Senate had formed a quorum, but he saw no objection on that account to proceeding with their own business. He however had understood that the Senate would form a quorum this day.

The resolution was carried, and Messrs. J. RANDOLPH and R. GRISWOLD appointed the committee.

Mr. J. C. SMITH requested the House to excuse him from serving on the Committee of Claims; he had been on that committee for four years past, and he knew that the members of that committee, particularly, ought to remain at the seat of Government during the whole session; he unfortunately would be obliged to ask leave of absence in January, at farthest. He was hereupon excused, and Mr. DANA appointed in his place.

Resolved, That a committee be appointed to inquire whether any, and what amendments are necessary to be made in the acts establishing a post office and post roads within the United States, and that the said committee have leave to report by bill or otherwise.

Ordered, That Mr. NEWTON, Mr. THOMAS, Mr. HANNA, Mr. NAHUM MITCHELL, Mr. LOWNDES, Mr. GEORGE WASHINGTON CAMPBELL, and Mr. SOUTHARD, be appointed a committee pursuant to the said resolution.

Mr. J. RANDOLPH requested information from the Chair as to the situation in which the articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, were left at the last session. The House would recollect that they were then merely reported and ordered to be printed. If that business was to be prosecuted, he conceived it of importance that the party should have all the time to prepare for his defence that political existence would allow him. Was it the opinion of the Speaker that this subject was before the Committee of Revised and Unfinished Business, or should it be referred to a special committee to prepare articles *de novo*?

The SPEAKER judged that it was before the Committee of Revised and Unfinished Business as a matter of course.

Mr. VARNUM moved for the appointment of Chaplains to Congress for the present session, one by each House, to interchange weekly.

Mr. SMILIE thought that a Chaplain, when once appointed by the House, should remain as an officer of the House during its Constitutional existence, in like manner as the Speaker, Clerk, and other officers.

Mr. VARNUM turned the gentleman to the Journal, in which it would be found that Chaplains were expressly appointed for the session.

The SPEAKER declared the practice had always been to appoint them every session.

Mr. GRISWOLD observed, that were the Chaplain an officer of that House only, the gentleman's (Mr. S.) idea would be correct; but he would recollect that the Senate had a concurrent vote on this subject.

The resolution was hereupon adopted.

Ordered, That the report of the committee appointed on the thirteenth of March last, to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, be referred to a select committee, and that Mr. JOHN RANDOLPH, Mr. JOSEPH CLAY, Mr. EARLY, Mr. BOYLE, and Mr. Rhea of Tennessee, be appointed of the said committee.

WEDNESDAY, November 7.

Several other members, to wit: from Maryland, JOSEPH H. NICHOLSON; from Virginia, WALTER JONES; from South Carolina, THOMAS MOORE; and from Georgia, JOSEPH BRYAN, appeared, and took their seats in the House.

Mr. LEIB observed the narrow limits to which the members were confined by the reduced size of the Chamber they now occupied, and the difficulty the members were exposed to in passing and repassing in the lobby by the admission of strangers. He was forced, by these considerations, to move the House to rescind one of their rules, which permitted the members to introduce strangers. But as another required that motions for altering the standing rules of the House should only be made by giving one day's previous notice, he contented himself with laying his motion on the table.

On motion of Mr. LEIB, a Committee of Accounts was appointed, whose duty it is to superintend and control the expenditure of the contingent fund of the House, and to audit and settle all accounts charged upon the same.

A message from the Senate informed the House that a quorum of the Senate is assembled, and ready to proceed to business. The Senate have appointed a committee on their part, jointly with the committee appointed on the part of this House, to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, and ready to receive any communications he may be pleased to make to them.

A message from the Senate informed the House that the Senate have agreed to the resolution of this House for the appointment of Chaplains to Congress for the present session, and have appointed the Rev. Mr. MCCORMICK, on their part.

The House then proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Rev. WILLIAM BENTLEY.

Mr. JOHN RANDOLPH, from the joint committee appointed to wait on the President of the United States, and inform him that a quorum of the two Houses is assembled, reported that the committee had performed that service, and that the President signified to them he would make a communication to this House, in writing, to-morrow at twelve o'clock.

THURSDAY, November 8.

Several other members, to wit: from New Hampshire, SAMUEL HUNT; from Massachusetts, SAMUEL TAGGART; from Connecticut, SIMEON BALDWIN and CALVIN GODDARD; and from North Carolina, SAMUEL D. PURVIANCE; appeared, and took their seats in the House.

A memorial of the Board of Trustees of Jefferson College in the Mississippi Territory of the United States, signed by Cato West, their President *pro tempore*, and attested by Felix Huges, their Secretary, was presented to the House and read, praying that the title to certain lots or parcels of land, situate in the city of Natchez; also, to an outlot adjoining the same, may be confirmed by Congress, for the benefit and accommodation of the said College, and thereby to promote the education of youth within the said Territory.

Ordered, That the said memorial, together with the petition of the Mayor, Aldermen, and Assistants, of the city of Natchez, and of William Dunbar, presented the ninth of November, one thousand eight hundred and three, and twenty-sixth of January, one thousand eight hundred and four, and two reports of select committees, made at the last session, thereon, be referred to Mr. LATTIMORE, Mr. THOMAS M. RANDOLPH, Mr. STEDMAN, Mr. ALSTON, and Mr. ELLIOT; that they do examine the matter thereof, and report the same, with their opinion thereon, to the House.

A Message was received from the PRESIDENT OF THE UNITED STATES, by Mr. BURWELL, his Secretary, as follows:

Mr. Speaker: I am directed to hand you a communication, in writing, from the PRESIDENT to the two Houses of Congress.

The communication was read, and, together with the documents accompanying the same, referred to the Committee of the whole House on the state of the Union. [See Senate proceedings of this date, page 11, for the Message.]

The motion made yesterday by Mr. LEIB, was taken into consideration, and an amendment was proposed by adding, "blacks and people of color, other than freemen, shall be excluded from the gallery."

This gave rise to some conversation, after which the amendment, upon a division of the House, appeared to have but one member in its favor.

The question on the resolution to exclude all persons from the lobby except members of the Senate and Stenographers, was taken and lost, only 32 members voting for it.

Mr. J. CLAY moved the following resolution:

Resolved, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, of the value of —— dollars, and to each of the officers and crew of the United States ketch Intrepid, —— months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services, of Captain Decatur, the officers, and crew, of the said ketch, in attacking and destroying a Tripolitan frigate, of forty-four guns, late the United States frigate Philadelphia.

Ordered, That the said motion be referred to a Committee of the Whole to-morrow.

Mr. TENNEY, from the Committee of Revisal and Unfinished Business, to whom it was referred to examine the Journal of the last session, and report therefrom such matters of business as were then depending and undetermined, made a report, in part; which was read, and ordered to lie on the table.

FRIDAY, November 9.

Two other members, to wit: from Massachusetts, WILLIAM EUSTIS; and from Pennsylvania, ROBERT BROWN, appeared, and took their seats in the House.

FRIGATE PHILADELPHIA.

Mr. J. CLAY's motion relative to Captain Decatur and the officers and crew of the ketch Intrepid, was taken up in Committee of the Whole.

On motion of Mr. CLAY, the resolution was altered, by striking out after the word "sword," the words "the value of —— dollars," and filling up the other blank with the word "two," thereby giving the officers and crew two months' pay.

Mr. C., with a view of showing the propriety of the measure, read extracts of letters written by Commodore Preble and Lieut. Decatur, which had been obtained from the Secretary of the Navy; they contained an account of the circum-

stances attending this honorable exploit, which have heretofore been printed in the public newspapers.

The Committee rose and reported the resolution as amended.

Mr. Griswold presumed the object of this step was to pay a tribute of respect to those brave men who had so gallantly achieved this glorious and dangerous enterprise. He wished to do this in a manner the most honorable and notorious, and perhaps the best course would be to obtain, from the Head of the Navy Department, a list of the names of the officers and the number of the crew, together with a detail of the circumstances attending the event. With this view, he moved to postpone the consideration of the resolution reported by the Committee of the Whole, till to-morrow, in order to introduce a resolution to this effect:

Resolved, That the Secretary of the Navy be directed to communicate to this House the names of the officers and the number of the men employed in the destruction of the frigate Philadelphia in the harbor of Tripoli, together with a statement of the circumstances attending that event.

The postponement was agreed to without opposition, and the resolution of Mr. Griswold was adopted, with a small variation, suggested by Mr. J. Randolph, and acquiesced in by the mover, to wit: "That the President of the United States be requested to cause to be laid before this House," &c.

Mr. J. Clay and Mr. T. M. Randolph were appointed a committee to wait on the President and communicate the request of the House.

Monday, November 12.

Several other members, to wit: from Massachusetts, Peleg Wadsworth; from New Jersey, William Helms; from Delaware, Cæsar A. Rodney; from Virginia, Matthew Clay; from North Carolina, Marmaduke Williams and Thomas Wynns; and from South Carolina, Levi Casey and Richard Winn; appeared, and took their seats in the House.

The House resolved itself into a Committee of the Whole on the state of the Union.

Mr. J. Randolph submitted seven resolutions, which were agreed to, and afterwards adopted by the House, as follows:

1. *Resolved*, That so much of the Message of the President of the United States as relates to the restraining of our merchant vessels arming themselves without authority, and attempting to force a commerce into certain ports and countries, in defiance of the laws of those countries, be referred to a select committee.

2. *Resolved*, That so much of the Message of the President of the United States as relates to an amelioration of the form of government of the Territory of Louisiana, be referred to a select committee.

3. *Resolved*, That so much of the Message of the President of the United States as recommends an enlargement of the capital employed in commerce with the Indian tribes, be referred to a select committee.

4. *Resolved*, That so much of the Message of the President of the United States as relates to the defence and security of our ports and harbors, and supporting within our waters the authority of our laws, be referred to a select committee.

5. *Resolved*, That so much of the Message of the President of the United States as relates to the improvement of the militia system of the United States, be referred to a select committee.

6. *Resolved*, That so much of the Message of the President of the United States as relates to the inconvenience arising from the distance to which, under existing laws, prizes captured from the corsairs of Barbary must be brought for adjudication, be referred to a select committee.

7. *Resolved*, That so much of the Message of the President of the United States as relates to the lead mines of Louisiana, be referred to the Committee of Commerce and Manufactures.

Ordered, That Mr. Eustis, Mr. Dawson, Mr. Goddard, Mr. Wynns, Mr. Root, Mr. Betton, and Mr. Knight, be appointed a committee pursuant to the first resolution.

Ordered, That Mr. John Randolph, Mr. Roger Griswold, Mr. Thomas Moore, Mr. Smilie, Mr. Gillespie, Mr. Dwight, and Mr. Sammons, be appointed a committee pursuant to the second resolution.

Ordered, That Mr. Joseph Clay, Mr. Livingston, and Mr. Sandford, be appointed a committee pursuant to the third resolution.

Ordered, That Mr. Nicholson, Mr. Brown, Mr. Griffin, Mr. Riker, Mr. Hunt, Mr. Seaver, and Mr. Olin, be appointed a committee pursuant to the fourth resolution.

Ordered, That Mr. Varnum, Mr. Van Cortlandt, Mr. Stephenson, Mr. Helms, and Mr. Holland, be appointed a committee pursuant to the fifth resolution.

Ordered, That Mr. Rodney, Mr. Jackson, Mr. Baldwin, Mr. Lucas, Mr. Nelson, Mr. Larned, and Mr. Lowndes, be appointed a committee pursuant to the sixth resolution.

Mr. Griswold stated that some inconvenience had been felt by some of the merchants of the Atlantic ports in making shipments to New Orleans, as they were not authorized to obtain drawbacks on a reshipment from that port to a foreign country; heretofore New Orleans had been a depot from which many foreign articles were shipped to the French, Spanish, and even British colonies and islands, a commerce that had been very productive. He wished, if there was no solid objection to it, that the usual course of trade might be continued. He, therefore, moved the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire into the expediency of allowing, under proper regulations, a drawback of duties on goods, wares, and merchandise, imported into the port of New Orleans from any port of the United States, and from thence exported to any foreign port or place, and that the Committee report by bill or otherwise.

The resolution was carried *nem. con.*

The Speaker laid before the House a letter from Mr. Thomas Claxton, Doorkeeper of the House of Representatives of the United States, written in his official capacity, stating that, at the request of one of the inhabitants of the city, the Chaplain to the Senate, after he had performed Divine service in the Chamber of the House of Representatives in the forenoon, gave notice that, in the afternoon, a stranger would preach in the same room, which is a thing altogether unusual. This notice was given without consulting the Speaker, or being mentioned to any other officer of the House. Believing it to be a precedent which might hereafter lead to many inconveniences, he opposed the measure, &c. In taking this step he unfortunately gave umbrage to some of the gentlemen belonging to the House. This circumstance induced him to hope that the Speaker would establish some regulation on this point, or bring the matter before the House for its decision.

Mr. Speaker observed, that he had never exercised any authority on this subject. Whenever he had been applied to for leave to preach in that room, he had uniformly answered that he had no objection.

On motion, the letter was referred to a committee of three.

BRITISH TREATY.

Mr. J. Randolph informed the House that the Committee of Ways and Means had received a communication from the Treasury Department, stating that the appropriation of $50,000, for carrying into effect the seventh article of the British Treaty, had not been sufficient to discharge the second instalment upon all the awards made in pursuance thereof, and suggesting the propriety of making, as early as possible, a further appropriation for that object. The Secretary of State estimated the amount unpaid at $60,000, and that, in order to prevent any disappointment, it would be eligible to make the appropriation $70,000. Mr. R. hereupon moved that the Committee of Ways and Means have leave to report a bill on this subject. Leave being granted,

Mr. J. R. reported a bill accordingly, which was read a first and second time, and referred to a Committee of the Whole to-morrow.

Tuesday, November 13.

Two other members, to wit: from Massachusetts, Richard Cutts; and from South Carolina, William Butler; appeared, and took their seats in the House.

No quorum being present, the House adjourned.

Wednesday, November 14.

Another member to wit: Phanuel Bishop, from Massachusetts, appeared, and took his seat in the House.

A memorial of Duncan McFarland, of the State of North Carolina, was presented to the House and read, stating his claim to a seat in this House, as the Representative from the seventh election district of the said State; and praying that the House will take into farther consideration and ultimately decide on the subject-matter of his memorial presented the eighth of February last—Referred to the Committee of Elections.

A memorial of William Dunbar, of the Mississippi Territory of the United States, was presented to the House and read, praying, for the reasons therein specified, that Congress will be pleased to postpone the consideration of any petition of or claim respecting the title to a certain lot or parcel of land within the limits of the city of Natchez, which has been granted to the memorialists by the Spanish Government, in consideration of services heretofore rendered by him to the said Government.—Referred.

On motion of Mr. Varnum, it was

Resolved, That the Committee of Claims be instructed to consider at large the subject relative to invalid pensioners, and all persons wounded or disabled in the service of the United States, during the late Revolutionary war with Great Britain; and report to the House what further measures are, in their opinion, necessary to be adopted, in order to render them such ample remuneration for their sufferings as justice may require.

A memorial and petition of sundry inhabitants of the town of Alexandria, in the District of Columbia, was presented to the House and read, submitting to the consideration of Congress certain propositions, by way of modification and amendment of an act passed at the last session, entitled "An act to amend the charter of Alexandria," which they pray may be adopted for the convenience and benefit of the memorialists and other inhabitants of the said town.—Referred to Mr. Eppes, Mr. J. Campbell, and Mr. Thompson; to examine and report their opinion thereupon to the House.

Mr. Leib mentioned to the House the condition in which the public buildings (the arsenal at Philadelphia) the property of the United States were; one of the sections was raised to the first floor, and some other parts were left unfinished; indeed all the uncovered parts of the buildings were more or less suffering dilapidation or going to decay; he thought it would be found prudent to finish them in order to preserve them. He therefore moved that a committee be appointed to inquire into the expediency of making provision by law for the completion of the public buildings belonging to the United States, near Philadelphia.—Referred to a select committee of three members.

On motion, of Mr. G. W. Campbell, it was

Resolved, That the committee appointed the twelfth instant on so much of the Message of the President of the United States as relates to "the enlargement of the capital employed in commerce with the Indian tribes," be instructed to inquire what alterations and amendments are necessary in the "act to regulate trade and intercourse with the Indian tribes;" and to report thereon by bill, or otherwise.

Thursday, November 15.

Two other members, to wit: from Massachusetts, Samuel Thatcher; and from Pennsylvania, Andrew Gregg; appeared, and took their seats in the House.

The House resolved itself into a Committee of

the Whole on the bill making farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America. The bill was reported with an amendment, which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time tomorrow.

A Message was received from the President of the United States, as follows:

To the House of Representatives of the United States:

Agreeably to your resolution of the ninth instant, I now lay before you a statement of the circumstances attending the destruction of the frigate Philadelphia, with the names of the officers and the number of men employed on the occasion; to which I have to add, that Lieutenant Decatur was, thereupon, advanced to be a Captain in the Navy of the United States.

Nov. 15, 1804. TH. JEFFERSON.

The said Message and the papers referred to therein, were read, and ordered to lie on the table.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, description of claims against the United States are barred by the statutes of limitation, which, in reason and justice, ought to be provided for by law; and that the said committee have leave to report thereon by bill, or otherwise.

Ordered, That Mr. Claiborne, Mr. Hough, Mr. Wadsworth, Mr. Knight, Mr. J. C. Smith, Mr. Chittenden, Mr. McCord, Mr. Boyd, Mr. Anderson, Mr. Rodney, Mr. Nicholson, Mr. Bedinger, Mr. Marmaduke Williams, Mr. Dickson, Mr. Casey, Mr. Meriwether, and Mr. Morrow, be appointed a committee, pursuant to the said resolution.

Ordered, That the copy of an act passed by the Legislature of the State of North Carolina, on the twenty-second of December, one thousand eight hundred and three entitled "An act to authorize the State of Tennessee to perfect titles to lands reserved to this State by the cession act," which was presented to this House on the fourteenth of February last, be referred to Mr. Alston, Mr. Winn, Mr. Taggart, Mr. John Rhea, of Tennessee, and Mr. Bard, with leave to report thereon by way of bill, or bills.

Mr. Newton stated a fact relative to a citizen of Georgia, who had been sued in that State; but the creditor, finding the citizen was coming to Washington, dismissed his suit there, and procured his arrest here. The debtor, as a stranger, for want of bail must have gone to prison, but through the humanity of the marshal, who accompanied him to several places in the Territory in search of a friend, the debtor was fortunate enough to procure the requisite security, and thereby avoided the hardships of imprisonment. To prevent in future this species of oppression to which strangers are liable, he moved that a select committee of five be appointed to inquire whether any, and if any, what alterations are necessary to be made in the laws of the District of Columbia relative to holding persons to bail, and that they be authorized to report by bill or otherwise.

A committee of five was appointed accordingly.

NEW YORK SLATE COMPANIES.

Mr. Mitchill made a report from the Committee of Commerce and Manufactures on the petition of the Slate Companies of New York and Dutchess counties, concluding that any additional duty on imported slate at this time will be inexpedient. The general principle upon which this report was bottomed, being of considerable importance, and likely to excite discussion, he moved to refer it to a Committee of the Whole, and that it be made the order for Tuesday next; agreed to, and in the mean time ordered to be printed. The report is as follows:

Two associations of individuals, in the State of New York, were formed, one in the year 1800, and the other in 1803, for the purpose of exploring and opening quarries of slate, within Dutchess county, in the said State. After expending considerable capital, they state that they have been successful in finding slate of an excellent quality. This they have brought to market in great quantity, and offer for sale at a reduced price of fifty per cent. They allege that they are capable of supplying the whole domestic demand for this useful article of building, and could easily furnish slate of various sizes and thickness, for exportation. But they complain of the rivalship and competition of the importers of slate from foreign countries; who, by means of superior numbers and capitals, can, without sensible inconvenience, submit to temporary losses, undersell the petitioners, and interrupt the regular course of their domestic industry. For the sake of preventing these discouraging embarrassments, they solicit an increase of impost on the importation of slate from foreign parts.

In the preamble to the act "making further provision for the payment of debts of the United States," passed August 10, 1790, it is declared that duties were laid on goods, wares, and merchandise, imported, for the discharge of the debts of the United States, and the encouragement and protection of manufactures. By the first section of that act, slate was charged with a duty of ten per cent. ad valorem, Afterwards, by the act "for raising a further sum of money for the protection of the frontiers, and for other purposes therein mentioned," passed May 2, 1792, an additional two and a half per cent. was added; but this ceased at the end of two years, by its own limitation. Then again an additional five per cent. ad valorem was laid upon imported slate, by the first section of the "act for laying additional duties on goods, wares, and merchandise, imported into the United States," passed June 7, 1794.

A further impost of two and a half per cent. was laid by the first section of the "act further to protect the commerce and seamen of the United States against the Barbary Powers," passed March 25, 1804, upon all goods, wares, and merchandise, chargeable with an ad valorem duty. Slate comes within this class of articles. The money collected goes to "the Mediterranean fund;" and this additional two and a half per cent. will not be discontinued until three months after a ratification of a Treaty of Peace with Tripoli.

Hence, it appears that the existing duties on slate, imported from foreign ports, amount to seventeen and a half per cent. if imported in ships or vessels of the United States; and computing the ten per cent. additional, amount to nineteen and a half per cent. upon all slate imported in vessels not of the United States. When to these are added freight, commission, insurance, and the other heavy charges on such a bulky article, it would seem that a sufficient *protecting* duty was already imposed to encourage this species of domestic manufacture. The committee are inclined to think it would be impolitic to increase the import to a *prohibitory* amount.

The committee cannot forbear to express a sentiment of pleasure on this discovery of an inexhaustible quantity of an incombustible material for covering buildings. The increasing scarcity of timber, and the prevailing custom of constructing fire-proof houses, added to the more excellent, it may be said unequalled quality and abundance of the slate of New York, may be expected in a short time to accomplish the wishes of the petitioners, and give the home made slate a complete ascendency in the market. While, therefore, they rejoice at the detection of this new resource of their country, and of its proportionally increased independence, they forbear to recommend any augmentation of impost upon its introduction from abroad.

On the whole, it is the opinion of the committee that any additional duty upon imported slate would, at this time, be inexpedient.

Friday, November 16.

On motion, of Mr. R. Griswold, it was

Resolved, That a committee be appointed to inquire whether further provisions ought not to be made by law for the encouragement of the fisheries of the United States; and that the committee report by bill, or otherwise.

Ordered, That Mr. R. Griswold, Mr. Gregg, Mr. Verplanck, Mr. Clark, and Mr. Taggart, be appointed a committee, pursuant to the said resolution.

Ordered, That the report of a select committee made on the third of January last, on the subject of the whale and cod-fisheries of the United States, be referred to the committee last appointed.

On motion, of Mr. W. Jackson, it was

Resolved, That a committee be appointed to prepare and bring in a bill making provision for the application of the money heretofore appropriated to laying out and making certain public roads.

Ordered, That Mr. Jackson, Mr. Morrow, Mr. G. W. Campbell, Mr. Boyle, and Mr. Stewart, be appointed a committee, pursuant to the said resolution.

Mr. Findley, from the Committee of Elections, to whom it was referred to examine the certificates of election or other credentials of the members returned to serve in this House, made a report, in part, which was ordered to lie on the table.

Mr. Bryan reported from the committee on the official letter of Mr. Thomas Claxton, Doorkeeper of the House of Representatives, respecting the admission of Chaplains to preach in the Chamber of Congress; that in the case stated by him, he had acted with propriety, and they recommended a resolution to the following effect: That no person shall be authorized to preach in this Chamber unless by consent of the Speaker, or being introduced by one of the Chaplains.

Ordered to lie on the table.

An engrossed bill making a farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America, was read the third time, and passed.

Monday, November 19.

Another member, to wit: Seth Hastings, from Massachusetts, appeared, and took his seat in the House.

The Speaker laid before the House a letter from Thomas M. Thompson, Secretary of the State of Pennsylvania, accompanying the copy of a letter from William Hoge, addressed to the Governor of Pennsylvania, containing his resignation of a seat in this House, as one of the members for the said State; also, a copy of the Governor's writ of election to supply the vacancy occasioned thereby, and a duplicate return of the election of John Hoge, to serve in this House as a Representative for the said State of Pennsylvania, in the room of the said William Hoge; which were read, and referred to the Committee of Elections.

Mr. S. L. Mitchill called the attention of the House to a subject he considered of importance to the literary institutions of the United States. Understanding that an application was about to be made to Congress from the College of Princeton for an abatement of the bonded duties due on a recent importation of books and philosophical apparatus, imported for the use of that seminary, he undertook to foretell the fate of the application. The committee would probably report as had been usual—that the prayer of the petition cannot be granted. True, gentlemen felt it a painful task to report negatively, but such had ever been the case. Yet he would advocate a relaxation of that principle. He had himself, when applied to on such occasions, replied that the United States wanted revenue and of course must seek it from the imports as well of literary institutions as of private individuals; but this reason has now less weight than heretofore—laying out of the question all that relates to the importance of education, especially in a Republican Government like that of the United States, he would only remark that the President's Message showed that such was the flourishing state of our affairs generally, particularly of our revenue, that we might now dispense with the collection of duties on these importations. He hereupon moved that the Committee of Ways and Means be instructed to inquire into the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of colleges and universities, for the benfit of those learned institutions, and that they report by bill or otherwise.

The motion passed in the affirmative.

The House proceeded to consider the resolution reported, on the ninth instant, from the Committee of the Whole House to whom was referred a

motion relative "to Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid;" and the said resolution being twice read, and amended at the Clerk's table, was agreed to by the House, as follows:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword; and to each of the officers and crew of the United States ketch Intrepid, two months's pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of Captain Decatur, the officers, and crew, of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Ordered, That the said resolution be engrossed, and read the third time to-day.

The House proceeded to consider the report of the committee of the sixteenth instant, to whom was referred a letter addressed to the Speaker from the Doorkeeper of the House, which lay on the table; and the resolution submitted by the committee in the said report, being twice read and amended at the Clerk's table, was agreed to by the House, as follows:

"*Resolved,* That in future, no person shall be permitted to perform Divine service in the Chamber occupied by the House of Representatives, unless with the consent of the Speaker."

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanied with a report and estimates of appropriation necessary for the service of the year one thousand eight hundred and five; also, a statement of receipts and expenditures at the Treasury of the United States for one year preceding the first day of October, one thousand eight hundred and four; which were read and ordered to be referred to the Committee of Ways and Means.

An engrossed resolution, in the form of a concurrent resolution of the two Houses, "expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers, and crew, of the United States' ketch Intrepid, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns, was read the third time, and on the question that the same do pass, it was resolved in the affirmative—Yeas 104, nays 2, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George M. Bedinger, Silas Betton, Phanuel Bishop, Wm. Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, Geo. W. Campbell, John Campbell, Levi Casey, Wm. Chamberlin, Martin Chittenden, Clifton Claggett, Thos. Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, Sam'l W. Dana, John Davenport, John Dawson, William Dickson, Thomas Dwight, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, James Gillespie, Calvin Goddard, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, David Holmes, David Hough, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, Henry W. Livingston, John B. C. Lucas, Andrew McCord, David Meriwether, Nahum Mitchell Samuel L. Mitchill, Nicholas R. Moore, Thos. Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Thomas Plater, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, John Cotton Smith, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Killian K. Van Rensselaer, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays.—William Butler, and Richard Stanford.

Tuesday, November 20.

Another member, to wit: George Tibbits, from New York, appeared, and took his seat in the House.

On a motion made and seconded to add a new rule to the standing rules and orders of the House, in the words following, to wit:

"That each of the Committees of this House be empowered to appoint a chairman, by plurality of votes, in all cases where the first named member of the Committee shall be absent, or excused by the House;"

Ordered, That the said motion be referred to Mr. Dawson, Mr. Roger Griswold, and Mr. Heister, to examine and report their opinion thereupon to the House.

Mr. Alston, from the committee appointed on the fourteenth instant, presented a bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina, which was read twice, and committed to a Committee of the Whole House to-morrow.

Mr. Matthew Clay, from the committee appointed, presented a bill giving the power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire; which was read twice, and committed to a Committee of the Whole House to-morrow.

Mr. Mitchill, from the committee appointed on that part of the President's Message respecting the lead mines in Louisiana, reported a resolution authorizing the President to appoint an agent, who shall be instructed to collect all the material information respecting the actual condition, occupancy, and title of the same, and the agent to make report before the next session of Congress. The resolution was read a second time, and referred to a Committee of the Whole.

Mr. Lucas suggested the propriety of altering the resolution, so as to make it general to all kinds of ore, and even to embrace salt springs and licks. He knew there were other ores in that Territory, and had seen specimens of a very rich copper ore when he had gone into the country.

Mr. Mitchill said, that the Executive had anticipated the gentleman's object, and he expected the House would be soon gratified with an account of the discoveries now making by Major Lewis, and other agents on the Missouri, Arkansas, Red river, &c., as they respect the mineral, vegetable, and animal kingdoms, on which account he preferred the resolution in its present state.

The resolution was carried without opposition, and adopted by the House after the rising of the committee, and ordered to be engrossed for a third reading.

Wednesday, November 21.

Another member, to wit: John Patterson, from New York, appeared and took his seat in the House.

Mr. Rhea, of Tennessee, moved a resolution for the establishment of an office for exhibiting and recording deeds and papers relating to grants of land in Louisiana, whether made by France, Spain, or Great Britain; to be entered in the original language, with an American translation of the same. Ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the bill giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire; and, after some time spent therein the Committee rose and reported progress.

Mr. John Randolph, from the Committee of Ways and Means, who were instructed by a resolution of this House, of the nineteenth instant, "to inquire into the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of the colleges and universities existing within the United States, for the proper and exclusive use of the learned institutions;" made a report thereon, which was read, and ordered to be referred to a Committee of the Whole House to-morrow.

LOUISIANA LEAD MINES.

The engrossed resolution authorizing the President to appoint an agent, who shall be instructed to collect all the material information respecting the actual condition, occupancy, and title of the lead mines in Louisiana, was taken up on its third reading.

Mr. Lucas entertained a doubt as to the propriety of this measure; indeed, the gentleman from New York, (Mr. Mitchill.) seemed to admit that it was superfluous, for he had said that the President, under proper authority, had already appointed agents to explore generally the Territory of Louisiana; that they have been sometime engaged in that service at the Missouri, Arkansas, Red river, and about Detroit, and indeed Major Lewis had been sometime in St. Louis, a post in the neighborhood of these very lead mines, and from his known enterprise and minute inquiries, there was good reason for believing that the subject which was the object of the proposed resolution, would be narrated in his general report of discoveries. But in addition to this expectation, the document accompanying the President's Message sheds considerable light. The information as to the condition of the lead mines, their number, names, and value, were explained, and as he had heard no gentleman suggest a doubt as to the accuracy of the narrative, he was inclined to give it full credit, from the general character of the gentleman who made the communication, and the particular knowledge he must necessarily have acquired by a long residence in the country. From this view of the subject he was compelled to acknowledge that he had altered his idea of the resolution, and could not now vote in its favor.

Mr. Mitchill had hoped that the gentleman from Pennsylvania, after the explanation of yesterday, would consent to the resolution; he would now add but a few explanatory words. The object of the resolution was simply to appoint an agent to inquire into the occupancy and titles of the present holders and claimants; this required a civilian versed in the municipal laws of the nations who had heretofore held that territory; not a natural historian, or mineralogist, not one who was acquainted with the art of mining, or smelting and testing ores. Neither did Mr. M. believe it would be necessary to send the agent to the mines themselves, but to the place where the deeds and conveyances constituting the title-papers of the proprietors, or pretended claimants, are recorded or preserved. Whether these were at New Orleans, or what other place, he did not know. As to the expense, it was not likely to exceed $1,000 or $2,000 even if the agent were sent from this city; but he imagined if the business could be as well conducted by the appointment of an agent in Louisiana, the President would instruct the Governor how to act. It might be seen too, from the words of the resolution, that it was a mere temporary employment, not likely to be of longer duration than three or four months, for the report is instructed to be made before the next meeting of Congress. Mr. M. concluded, that if Mr. Lucas would reconcile himself to vote for the present motion upon this explanation, and should he hereafter desire a more extensive examination into the actual circumstances of the newly acquired Territory, he might rely upon his earnest co-operation.

Mr. Lucas observed in reply, that Louisiana had been held alternately by three or four nations: each of which in sequence had granted titles to more or less of the lands in question. An examination into those titles would at this time excite a high degree of sensibility among the inhabitants, who, he thought, ought in their youthful state to be treated by Congress with tenderness and delicacy. The titles were various, some derived from the Governors of the country, some from commanders of posts. Many of the latter he believed might be considered by the agent illegal; especially as he had learned that the commander of St. Louis, in North Louisiana, held paramount authority over the subordinate posts, and that without his approbation the lands so granted would not be allowed; yet these persons who held under such title, and by occupancy and improvement consider themselves the *bona fide* proprietors of the lands. He feared that the inquiry intended by the resolution might create great dissatisfac-

tion, while a postponement for the present could do no possible evil.

Mr. EARLY said, if Mr. L. had made a correct statement of the condition in which the titles in that country really stood, and he had no reason to doubt it, it would operate as the strongest reason on his mind to pass the resolution: though it would be perceived that the agency to be given on the present occasion extended no farther than to the lead mines. The gentleman, Mr. L., had yesterday mistaken his friend, Mr. MITCHILL's object, supposing a general agency was intended to be raised. He had mistaken him again to-day, by thinking the agent was to go into the Territory of Louisiana to decide upon the titles he might have an opportunity of examining. This was not the case. He was merely to inquire into the actual condition of the lead mines, the occupancy and title, for the information of Congress. We are not going to send a Board of Commissioners, or a Judiciary Establishment, for the purpose of hearing and determining upon the claims set up, but to procure for ourselves that information which will enable the Government to decide, without their instrumentality. If the gentleman (Mr. L.) views the subject in this point of light, he will find it freed from his objection.

The question was now put, and the resolution passed, 74 members voting in its favor.

THURSDAY, November 22.

Two other members, to wit: PETERSON GOODWYN and EDWIN GRAY, from Virginia, appeared and took their seats in the House.

A memorial of Samuel H. Smith, and others, on behalf of the Washington Building Company, was presented to the House and read, praying that Congress will reconsider and ultimately decide on their petition, presented of January 3, 1803, praying that a law may pass to incorporate the said company, under certain rules and regulations intended for the improvement and ornament of the Metropolis of the Union; and, also, that they may be enabled to extend the application of the funds of the company to the insurance of buildings from fire.—Referred to Mr. LEWIS, Mr. JOHN RHEA, of Pennsylvania, and Mr. ARCHER, with leave to report thereon by bill, or bills, or otherwise.

Mr. NICHOLSON, from the committee appointed, presented a bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction; which was read twice, and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Ways and Means, on the expediency of exempting from impost all such books and philosophical apparatus as shall be imported on account of the Colleges and Universities existing within the United States, for the proper and exclusive use of the learned institutions; and, after some time spent therein, the Committee rose and reported a resolution thereupon. The House proceeded to consider the said resolution, and the same being read, the further consideration thereof was postponed until Monday next.

Mr. M. CLAY presented a petition from sundry citizens of Georgetown, stating that the channel of the Potomac was considerably obstructed below Mason's island by a mud bank recently formed, which did not allow more than thirteen and fourteen feet water. A few years back vessels of eighteen feet draught passed the same safely. And praying to be allowed to raise a tax not exceeding one per cent. on the real estate of the inhabitants, to be applied in erecting a causeway from the island to the Virginia shore, which they conceive would effectually cure the evil. They intended to obtain the consent of the owner of the island and the proprietors of the Virginia shore, who are the only persons that can possibly be injured by the work contemplated to be erected. Referred to the last mentioned committee.

HEALTH OF SEAMEN.

Mr. MITCHILL called the attention of the House for a few moments, while he explained a circumstance particularly interesting to the sailors of the United States. The eighth section of the act regulating the merchant service, &c., contained a regulation that vessels of one hundred and fifty tons or upwards, whose crews consist of ten men, should be obliged to carry a medicine chest. But the most dangerous part of our commerce to the health of seamen was that to the West Indies, and it is well known that the vessels engaged in that trade are under one hundred and fifty tons of course the care of the health of such seamen was entirely under the discretion of the merchants and captains, and however distressing it might be, yet the fact was so, that we lost one-tenth of our sailors, nay he believed one-eighth in that particular trade.

It was calculated that one-sixth of our seamen are in an incipient state of a disease, liable to break out on the passage, when they enter on board; of course all vessels ought to make a cautionary provision against the probable consequences. The danger of voyages to the West Indies, and other places, was so great as to preclude the youth of the middle States generally from engaging in a maritime life, and the deficiency was generally made up of foreign seamen; two-fifths of the crews from those ports—indeed he believed three-fifths—were composed of English, Irish, and Scotch, some of whom were naturalized, but others of them contrive to obtain protections without this probationary step, and perhaps it is owing in some degree to this circumstance that we are involved in every war they wage in these everlasting disputes with Great Britain. While he would take effectual care of the health of the seamen at sea, he would throw it out for consideration whether the medicine chest ought to be at the expense of the merchant or seamen. It will be recollected that seamen pay twenty cents a month, hospital money, to form a fund for their assistance in sickness on shore. He did not understand why they should not contribute to their own safety at sea—the captain generally performing the part of the physician in the latter case, as the hospital physicians did in that first mentioned. He moved the Committee of Commerce and Manufactures to inquire into the propriety of altering the law on this point, which was agreed to, and that they may report by bill or otherwise.

CHAIRMEN OF COMMITTEES.

Mr. DAWSON reported from the committee appointed for forming a rule of the House, respecting the mode of appointing chairmen to the standing and select committees. The principle was, that the member first named by the SPEAKER should be chairman; but in case of absence, or being excused by the House, the majority of the committee should choose one of the members chairman in his stead.

Mr. R. GRISWOLD wished to amend the resolution so that in the case of the excuse or absence of the first named member, the next on the list be the chairman, and in like manner the senior member be the chairman when the others are absent or excused; believing that this mode would provide for every case that could arise.

Mr. DAWSON thought the committee were the best judges of who was the most proper member of their own body to preside as chairman in any event of the absence or excuse of the chairman appointed by the SPEAKER.

Mr. R. GRISWOLD urged the adoption of an uniform system. The SPEAKER appoints the chairman of the Committee of the Whole, of the standing committees, and the select committees. He thought the principle ought to go through.

Mr. DANA did not consider the subject of much importance; but after the excuse by the House of the chairman of the Committee of Claims, another member was appointed in his stead. The second gentleman on the list declined, and the subsequent embarrassment arose. He stated what was, in his opinion, the Parliamentary rule, and wished a consistent rule to be fixed at this time, in hopes the question might be set at rest.

Mr. HOLMES wished to correct a part of the statement made by the gentleman who spoke last. He (Mr. H.) was the second person on the list of the Committee of Claims alluded to, but he did not decline the situation of chairman. The fact is, it had never been offered to him, and as he had doubts himself whether he was entitled to the chair, he called the committee together, and they confirmed his doubts by deciding that he had not. He would have it understood that he did not decline, and further, that he would never shrink from a duty which he was called upon to perform, or aspire to a situation to which he was not regularly called.

Mr. ELMER admitted the Parliamentary rule laid down by Mr. DANA, to be right; but he thought the SPEAKER merely nominated a chairman to the Committee of the Whole, under the pleasure of the House, who generally, by their silence, gave a tacit consent which constituted the appointment.

Mr. HOLLAND intended to vote against the amendment, and then against the resolution, with a view of adopting a different principle, viz: that the standing committees be chosen by ballot, and after being met, they should choose their own chairman.

Mr. ELLIOTT hoped the amendment would obtain, if it were only to prevent the motion threatened by Mr. HOLLAND, but he doubted if the amendment was altogether so definite as might be wished; the words senior member might be applied as well to a gentleman's age as to his standing on the list of the committee.

Mr. LEIB would prefer the amendment to the resolution as it stood, if for no other, yet for this one consideration: The committee, for example, consists of seven members, the chairman being absent, the six remaining members are then to vote for another chairman. Suppose they divide three and three, there is no decision, and they are then placed on the spot we now stand, and the question is left exactly as we found it.

Mr. R. GRISWOLD explained that the words "in like manner," alluded to the seniority or order in which the members' names stood on the list of appointment.

Mr. ELLIOT had not adverted to the words "in like manner," when he was up. He therefore withdrew his opposition.

Mr. SLOAN conceived there would be a consistency in another mode of appointment. The people appointed the House of Representatives, the House appointed the SPEAKER, and the SPEAKER or House may appoint their committees. Why then not let the committees appoint their own chairmen?

Mr. GREGG, after explaining what had heretofore been the practice, noticed the inconvenience of appointing the chairman of a committee chosen by ballot, and, for the sake of regularity, would vote for the amendment.

The question on the amendment being taken, was lost—forty-five only voting for it, and fifty-six against it.

On the question to agree to the resolution, the House divided—fifty in the affirmative, and fifty-six in the negative. Of course it also was lost.

Mr. HOLLAND offered his motion that all committees shall choose their own chairman, and it shall be incumbent on all persons, so chosen, to perform the duties of that function, unless excused by the House. This motion lies one day on the table as a matter of course.

FRIDAY, November 23.

Mr. EUSTIS, from the committee appointed, presented a bill to regulate the clearance of armed merchant vessels; which was read twice and committed to a Committee of the whole House on Monday next.

The SPEAKER laid before the House a letter from SAMUEL L. MITCHILL, one of the members for the State of New York, stating "that the Legislature of the said State having appointed him a Senator of the United States, he had taken a

seat in the Senate, and of course resigned his seat in this House."

The said letter was read: Whereupon the SPEAKER was requested to inform the Executive of the State of New York of the resignation of SAMUEL L. MITCHILL, one of the Representatives from that State.

Ordered, That Mr. LOWNDES be appointed of the Committee of Commerce and Manufactures in the room of S. L. MITCHILL, who hath resigned his seat in this House.

On motion, it was

Resolved, That a committee be appointed to inquire into the expediency of extending the time for claimants to lands under the State of Georgia, lying south of the State of Tennessee, to register the evidences of their title with the Secretary of State; and that the said committee report thereon to the House.

Ordered, That Mr. CLARK, Mr. CUTTS, and Mr. BRYAN, be appointed a committee pursuant to the said resolution.

Mr. HOLLAND'S motion of yesterday authorizing committees to appoint their own chairmen, was considered, and on the question, Will the House agree to the same? it passed in the negative, only thirty-three members voting in its favor.

Mr. R. GRISWOLD moved another resolution on the same subject, giving the committees power to elect their own chairmen if a majority was so disposed; if not, that the first named member shall be the chairman; in case of his absence or excuse, then the second; and if neither of these members were present, then the next member named on the list. This motion was laid on the table.

On motion of Mr. EUSTIS to dispense with the standing rule of the House, it met an unanimous acquiescence, and the resolution was afterwards modified and agreed to as follows:

"That the first named member of any committee appointed by the Speaker or the House shall be the chairman, and in case of his absence, or being excused by the House, the next named member, and so on, as often as the case shall happen, unless the committee shall, by a majority of their number, elect a chairman."

Mr. RHEA, of Tennessee, moved the following resolution:

Resolved, That it is expedient to provide, by law, for exhibiting and registering in proper offices, in the original language, and in the language used in the United States, all evidences of title and claim for land within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, in the year one thousand eight hundred and three, which have originated by virtue of any legal grant made by the French Government prior to the Treaty of Paris, of the tenth day of February, in the year one thousand seven hundred and sixty-three; or of any legal grant made by the Government of Spain, subsequent to the convention made by and between the French Government and the Government of Spain, of the third of November, one thousand seven hundred and sixty-two, and prior to the Treaty of St. Ildefonso, of the first of October, one thousand eight hundred; or of any legal grant made by the British Government, subsequent to the said Treaty of Paris, of the tenth day of February, in the year one thousand seven hundred and sixty-three, and prior to the Treaty of Peace of the third of September, one thousand seven hundred and eighty-three.

Ordered, That the said motion be referred to the committee appointed the 12th instant, on so much of the Message from the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana."

MONDAY, November 26.

Another member, to wit: BENJAMIN TALLMADGE, from Connecticut, appeared, and took his seat in the House.

The SPEAKER laid before the House a letter from the Clerk, enclosing a letter addressed to him from the Rev. William Bentley, of Salem, in the State of Massachusetts, dated the sixteenth instant, declining to accept the appointment of one of the Chaplains to Congress, for the present session.—Ordered to lie on the table.

The petition of Benjamin Emmons, as agent of sixty associates, in Vermont, praying for a grant of land in Louisiana, for settlement, which was postponed at the last sessoin, was called up.

Mr. ELLIOT moved its reference to a select committee.

Mr. NICHOLSON thought it ought to go to the committee appointed on that part of the President's Message, which relates to the amelioration of the government of Louisiana, and asked if such a motion would be in order?

The SPEAKER said that both committees must be considered as select ones; and Mr. ELLIOT insisting on his motion, it was put and carried by a great majority, and a committee of seven appointed, viz:

Messrs. ELLIOT, CLOPTON, WHITEHILL, HASTINGS, PALMER, WINSTON, and BUTLER.

The House resolved itself into a Committee of the Whole on the bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina. The bill was reported to the House with its amendments, and ordered to be engrossed, and read the third time tomorrow.

PRESERVATION OF PEACE.

The House resolved itself into a Committee of the Whole on the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

The first section authorizes the President and other proper officers to call in the aid of the militia, regular troops, or armed vessels, to execute civil process upon offenders who take refuge on board foreign armed vessels.

On motion of Mr. NICHOLSON, any commanding officer refusing to obey a requisition to this effect was subjected to a fine not exceeding five thousand dollars.

Mr. R. GRISWOLD, observing in the latter part of the first section, the words "and if death ensues on either side, those who are concerned in 'support of the civil authority shall be justified, 'and those engaged in resisting shall be punished 'as in cases of homicide committed in resisting a 'civil officer," wished to know what the punishment should be, as he did not recollect that Congress had heretofore ever made any law on this point, or perhaps it was intended to be punished under the State laws where the cases should arise; in the latter mode, the punishment would not be equal, for some States punish this offence with more severity, others more mildly. As this was a penal law he thought that great precision was expedient, so as to leave as little latitude as possible for construction.

Mr. NICHOLSON remarked that homicide committed in resisting a civil officer did not stand in their statute book; but the law of 1798, defining crimes and punishments in the exclusive territory of the United States, its forts, and arsenals, made provision for punishing manslaughter: he would agree to strike out the first and insert the last, and then the punishment would be uniform for crimes of the same species, viz: three years' imprisonment and one thousand dollars fine.

Mr. NELSON was sorry to differ from his colleague, (Mr. N.) on this point, but he could not view the trifling punishment of fine and imprisonment anywise adequate to the crime. Shall the murder of your officer in the execution of the duties of his office be commuted for fine and imprisonment? You fine your militia officer five thousand dollars for not going upon this service, and the man who kills him in resisting your process is fined one thousand dollars and imprisoned for three years. I should certainly recommend something more commensurate to the offence.

Mr. NICHOLSON remarked that homicide, happening in resisting a civil officer, was not considered in the bill as murder; of course the punishment of death was not the proper one, whether three years imprisonment and one thousand dollars fine was exactly what the punishment ought to be, he would not undertake to say. That, however, is the punishment to be inflicted on our citizens upon the commission of manslaughter. But gentlemen should remember that fine and imprisonment is not the only punishment to which such criminals would be liable—upon their arrest they are delivered over to be dealt with according to law. He should have no objection to let the punishment remain as it stood under the several States, but that he considered they were in a considerable degree unequal. The punishment of Maryland was different from that in New York, he believed, but he was not certain that it was milder in Pennsylvania. The punishment by death might defeat the object of justice; it being more than the offence deserved, juries would be inclined to mercy and acquit the criminal, in order to avoid taking his life upon their consciences. Liberty being one of the most desirable things on earth tends in some degree to justify, and if not to justify at least to diminish the offence, as flowing from the principle of self-defence.

Mr. NELSON would briefly state the case, and then he trusted his worthy friend would be of his opinion. They seemed to differ more about words than things. Manslaughter was a hasty killing upon a sudden affray; this, it is true, was never punished with death, either here or in England; but murder was a deliberate killing with malice prepense, and in case such killing take place in demanding an offender from on board an armed vessel and murder ensues, surely the party ought to suffer the punishment of a murderer. The crime of murder is not defined in any of the United States statutes; neither in Maryland, nor perhaps in the laws of any State in the Union; how then are we to come at the description of this offence, or distinguish it from manslaughter, but by a reference to the common and statute laws of England, from which we have borrowed all our legal definitions? Look into all the elementary writers on criminal law, and you will find that the crime of murder is aggravated when a civil officer is killed in the execution of his official duties by a person maliciously opposing the course of legal jurisdiction, and as a punishment he is deprived of life, as a person unworthy of being any longer a member of society; and the clause in the bill contemplates the apportioning of the punishment to this description of homicide, manslaughter, or murder; call it which you will, the effect is the same, and you must support your officers in the execution of their duty, or your laws will be without support.

Mr. EARLY.—The observation made by the gentleman from Maryland who has just sat down, (Mr. NELSON.) struck my mind very forcibly as deserving serious consideration; upon turning to the law of 1798, for the government of our forts, arsenals, &c., where the United States enjoy exclusive jurisdiction, I find that there is provision made as well for the case of murder as of manslaughter; now, with a view to make our penal law correspond throughout, I would suggest to the gentlemen engaged in the discussion, whether it would not be as well to strike out all the words from "resisting" in the thirty-eighth line to the end of the period, and insert in their place the following: "And in case such killing amounts to murder, it shall be punished with death—and in case such killing is only manslaughter, then such offender shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars."

Mr. RODNEY observed, that when a death ensues in the case mentioned by the bill, it must be murder. In ordinary cases between man and man, and death ensues by killing, it might be either murder or manslaughter. Where are we to resort for a meaning but as has been said, to the common law, as a known standard, uniform and invariable? The decisions in the courts of the several States, and their laws on this head, may vary; but the common law describes each of these crimes with accuracy. The definition is founded on the fact. If I take a life by beating a man with a weapon that may naturally be expected to produce death, and death ensues, then my using such a weapon proves malice prepense, for it is an illegal weapon. So if I resist an officer in

the execution of his legal duty, and kill him in the resistance, it is also murder, for my resistance was illegal and implies malice. Then according to the language of this act, if death ensues, it is murder and not manslaughter. If a man strikes another upon a sudden heat, with a stick, upon the scull, and death ensues, it is manslaughter; but if he strikes with an iron crowbar it is murder; the intention being inferred from the weapon. While Mr. R. urged the propriety of classing the present offence with murder, and consequently punishing its commission with death, he would not be understood as an advocate for that kind of punishment. On the contrary, he was desirous of ameliorating these punishments, and introducing a system that should reform the offender, and restore him, after repairing his offence, to his family and his country; but this cannot at present be done; of course we must apply the rule of punishment as we find, it to make it general and uniform.

Mr. Early, while he concurred in the general doctrine laid down by Mr. R. respecting the common law, was not convinced that the manner in which they had been applied to this particular case was correct. It seemed to be Mr. R's. opinion that no other offence than murder could be committed, if death ensued in resisting the officer; without seeking far, he would adduce one case where a resistance to death would amount only to homicide. Suppose the marshal or sheriff does not conform himself in all things to the instructions of the President, or that he demeans himself improperly, and death ensues, will it be held that the resistance and its consequence amounts to murder? No, certainly; but if he behaves properly, the killing is murder; hence this double provision is necessary to provide for the two cases.

Mr. Dana thought the embarrassment might be attributed to an attempt to combine in one section two different species of crimes, but it was exposed to objections which had not yet been made. The clause gives the marshal or sheriff the power to arrest the offender by force of arms, and then, if the persons resisting kill your officer, it is murder, and shall be punished accordingly. If, however, your officer and his armed force kill any of the offenders resisting your process for it stands; if death ensues on either side, those who are concerned in support of the civil authority shall be justified, but those engaged in resisting shall be shot, or, if not shot, and they are taken alive, then they shall be fined and imprisoned for manslaughter committed upon their party. He did not think the amendments proposed, take which of them they might, likely to remove the difficulty.

Mr. Nicholson said the case they were about to provide for was different from any other that could arise in civil society. I was devising a punishment for persons who are armed with a species of power to resist a legalized force under their command, and, though they are bound to submit to our laws, yet they have others under their command who are bound to submit to them. An offender seeks protection from the effects of our offended laws on board an armed ship; he is sought by our officer, and the commanding officer, regardless of his proper duty, orders his sailors to defend themselves by resisting the process; in the struggle death ensues; now let it be asked, are those seamen guilty of murder or manslaughter? The servant of a person invested with authority equal to that of a British officer, and directed to do an illegal act, to kill a man for example, though it would be murder in the officer, yet it could be no more than manslaughter in the servant. The case is the same as it relates to the officer and crew; though the latter are not justified to do the act, yet they do not feel themselves justified to disobey their commander. When he was up before, he had not clearly expressed himself for want of attending to the bearing of the whole bill. In England every man's house was his castle; no officer was authorized to break a house open except in cases of treason or felony; an officer attempting it might be killed, and it would amount only to manslaughter. The attempt here to take a man from on board an armed ship might be considered as attempting to break open a castle, and if death ensued it would be manslaughter. The bill, however, authorized the force, and cases might exist in which the killing would be murder —other cases where the killing would be manslaughter only.

Mr. Nelson objected to Mr. Early's amendment, because it left the denomination of the crime to the judge or jury, and how could they determine whether it was murder or manslaughter but by the common law, as the United States had never yet defined either. If the case was defined and left to go to the jury, upon the matter of fact, the objection would be in some degree obviated.

Mr. Nicholson was sorry to see such a discussion had taken place. He would, in order to remove the difficulty, strike out all that related to the punishment, and leave them to be dealt with according to law, when delivered over to the civil authority.

Mr. R. Griswold had two objections. First, that mentioned by his colleague. Where you authorize your sheriff or marshal to take an armed force, and as you justify these in case death ensues, and punish the others as murderers, the sheriff has only to order his men to fire and shoot some; then, for these deaths you hang the rest. This is making short work, and giving no quarter. The other objection was on the ground of the Constitution. He did not see that Congress had power to punish crimes committed against a State, or in its ports or harbors. The Constitution expressly gave Congress power to define and punish crimes and piracies committed on the high seas, but not within a State's limits.

Mr. Smilie observed a great deal of embarrassment had taken place on wording the section; that, however, was not to be wondered at, as the bill had only just been distributed; but the last objection, that it was unconstitutional, deserved very serious reflection; he should, therefore, move the Committee to rise, with a view of giving time for consideration.

Mr. Nicholson had no objection to the Committee rising; but he would not have it it understood that he had any Constitutional difficulties to struggle with. Congress had powers sufficient to enforce their revenue laws, and this very bill contemplates that as one circumstance that may occur, and to be corrected. But whence did the gentleman (Mr. R. Griswold) acquire this timidity, this care for State rights? It is believed they have not stood in his way on former occasions, any more than they did in the way of those with whom he acted. In the case of the sedition bill, which trenched upon the State Courts' jurisdiction, there was no squeamishness—the end justifying the means.

The Committee rose, reported progress, and obtained leave to sit again.

REMISSION OF DUTIES.

Mr. J. Randolph called for the order of the day on the report of the Committee of Ways and Means respecting the remission of duties on books imported for the use of colleges and seminaries of learning—the resolution declaring it to be inexpedient to allow the same.

The House taking the subject into consideration—

Mr. J. Randolph observed that the Constitution of the United States was a grant of limited powers for general objects, which Congress had no right to exceed, although they might think the powers too limited. This position, he considered as of primary importance. Its leading feature was an abhorrence of exclusive privileges; it might be called the key to that instrument; every thing which rose up in the shape of privilege, was repressed in a peculiar manner, whether it related to orders or classes of men. Whenever they have touched the doctrine of privilege, the framers of that instrument, and the people of the United States adopting it, have been careful that nothing should be got by inference, or construction; the privileges of this House even, have been precisely defined, and nothing is left for its extension, whatever may be the wishes or disposition of its members. The principle that this Constitution is but a limited grant of power occurs, if not directly, yet frequently and effectually, so that it cannot be mistaken. On the privilege asked for, to permit colleges and universities to import their books free of impost, we refer to the eighth section of the first article, where it is declared that Congress shall have power to levy and collect taxes, duties, imposts and excises; but all duties, imposts and excises, shall be uniform throughout the United States. The impost shall be uniform. It is a lamentable fact, but nevertheless it is a fact, and cannot be too much dwelt and insisted upon, nor too well known, that the ambiguity of language gives our Constitution that character which leaves it in the power of civilians to say it means any thing or nothing. Whatever may have been said on other points, I think in this instance the language is so definite that it cannot possibly be mistaken. They shall be uniform, that is to say, there shall be but one quantum, one mode of collecting, and one manner; there shall not be two measures to mete with. If Congress undertake to exempt one class of people from the payment of the impost they may exempt others also. If they begin with colleges and universities for the advancement of learning, surely they may go on to exempt the clergy and congregation for the advancement of religion; they may exempt their own members. Indeed it cannot be seen where they are to stop, having once overleaped the Constitutional barrier and entered on the wide field of privilege. The duties must be uniform! Nobody can be exempted: the President if he chooses to import books, must pay the duty as well as any private citizen. In this country we have no privileged class, all must fare alike, every man must bend to the law, and the tax must be uniform whether on land or books.

Perhaps it may be said that the practice under the Constitution has decided against my construction; for philosophical apparatus is exempted from duty when imported for the benefit of seminaries of learning. I agree that philosophical apparatus is exempted by law; but I believe that law to be an unconstitutional law, as well as some others passed by former Congresses. But I do not wish to cast an odium upon its framers, more than they deserve; it might have passed through inadvertence or want of reflection, nay, it might have been the result of pure motives, the advancement of science and literature. Yet to show how intent the Constitution is to guard against powers drawn by construction even on this very subject, which it must have been solicitous to have extended, it has limited the efforts of Congress to promote literature and the useful arts by any other means than that of granting to authors and discoverers the exclusive use of their inventions, and publishing their works. And Congress have no power to promote the advancement of science or literature in any other than this particular way. If these observations are not received as reasons for the report of the committee, they will be considered as the justification of one of its members.

Mr. Findley observed, that in addition to the Constitutional objections urged, he had others on the ground of expediency. The country colleges and seminaries whose funds were small, had seldom or never an opportunity of importing books; they were happy to receive them in the country as donations, or by cheap editions; they would therefore receive no corresponding accommodation, and yet they were more useful and their use more universally felt than those called higher institutions, which claim to be exempted from paying impost. There are only a few of the well endowed academies that can afford to procure foreign books, and when they have them, their circulation is extremely confined; to say nothing more, these reasons would engage me to support the resolution.

Mr. R. Griswold.—The gentleman from Virginia (Mr. Randolph) must have misunderstood me when he supposed I objected to the report because the committee had assigned no reason for the resolution: I mentioned the circumstance merely to show that we ought not then to decide

With respect to the Constitutional objection he has set up, I acknowledge it is new to me. Such an inquiry may be of great weight, but it does not appear so to me. The paragraph quoted from the eighth section of the first article, "that Congress shall have power to levy and collect taxes," has never struck me in the way it has that gentleman. The words are, "levy and collect taxes, duties, imposts, and excises;" but it drops the word *taxes*, it being settled in another part of the Constitution, and declares that duties, imposts, and excises shall be uniform. The one speaks of direct taxes, the other of indirect—meaning that if an indirect tax is laid it shall be uniform. No one State is to have an excise laid upon its inhabitants unless it extends to the citizens of every other: one part is not to be excised and another excused. This has always been the construction of that section of the Constitution till the present moment, and I think it the true one. It is now said that Congress can only promote science and literature in one way. Why, have not Congress made grants of lands to promote those objects in the Western country? They have. I believe the power of Congress adequate to promote literature in the way applied for; and it has been frequently the case that, even after duties have been paid into the Treasury upon the uniform system, yet individuals have had those duties returned. I do not want to detain the House; but I am well persuaded that the Constitution forms no impediment, and the expediency must be apparent.

Mr. J. Randolph believed the gentleman last up had misunderstood him; but it was not very material whether he was misunderstood or not, as Mr. Griswold had not thought proper to answer him on the principal ground—namely, the Constitutional objection. He however said something: duties, imposts, and excises, shall be uniform. Can they be uniform, when a particular class or corporation are exempt from their payment? This is a new kind of uniformity: it is a species of uniformity I do not understand. He asks if you have not granted land and returned duties received into the Treasury? Indubitably you have. And we have the power, and in some instances the right, to give away the money in our Treasury to objects we think deserving. Have not all the dispositions gone upon the question of particular hardship? But tell me, do these individual cases, resting upon their own merits, class with a wholesale disposal of public money? Suppose you want to raise up an exclusive privilege in favor of, let us say shoemakers, and let them import their materials free of duty; will you bring up as precedent or authority the case of Mr. Messonier, or any other person? Can such a case, standing singular and isolated, be held up to promote the doctrine of exclusive privilege for a corps of thousands? Of lands, the United States have given General Lafayette some acres; they have given the like for schools in the Wilderness country; they may give some to the gentleman from Connecticut; but would any of them contend for an exemption from paying half or two-thirds of the price when the sale was made on a uniform system, and would they ask for an exemption from the payment of their tax if it was imposed? Mr. R. concluded by repeating the idea that if you once step over the barrier there is no security, and if you forgive or exempt the payment of the duties in this instance, Congress may forgive everything to their favorites, when they have any.

Mr. Dana made a reply to Mr. Findley, but it is so difficult to hear gentlemen across the floor, that the Reporter dare seldom attempt to follow them. He considered Mr. Findley's objection as being formed upon the idea that the books composing the libraries of colleges and universities were of the same kind as those used in country schools. Few things were more dissimilar. The one was merely to initiate the pupil in the first principles, the other took a more extensive range, embracing the whole circle of science, the classic authors, and the best writers, ancient and modern—books scarcely ever to be found but in collections attached to literary institutions—and the revenue arising from them may be called a tax upon seminaries of learning.

Mr. J. Clay said he was one of the committee, and had agreed to the report. Since reasons had been called for, he would in a few words assign those which influenced him. The gentleman from Connecticut (Mr. Dana) mistakes in thinking that a denial to exempt books from impost is a tax on literary institutions, and therefore not uniform, as the Constitution requires all imposts should be; but he did not make his stand on the ground of the Constitution—he rested the question upon its expediency. Giving literary institutions the privilege of exemption from imposts would open a wide door for fraud: we should soon have them importing books for sale duty free, rivalling the booksellers, who are subjected to the payment of impost, and vending them in every street and avenue of the nation. But why privilege colleges and universities to accommodate the rich; for we may believe that the rich, and the children of the rich, are the only persons who have access to these collections? The poor have little leisure and less opportunity to improve the advantage which even *neighborhood* would give them to peruse works of the kind alluded to; and sure it would be thought unjust to tax their pittance of imported articles, in order to enable gentlemen to read the classic authors, or the sublime and beautiful of the modern writers.

Mr. Findley spoke of colleges, not of universities. We have three in Pennsylvania—one of them, to be sure, has also the title of university—but two of them have not funds to import books on their own account. It is only rich institutions that have this advantage: the poorer class of seminaries buy of booksellers, and pay them the impost as well as their retail profit. Indeed, this remission of duties will rather tend to create disgust than give satisfaction; and those seminaries which have large collections of books would be induced to sell them at their present price in order to procure new ones cheaper, as they have had to pay the duty on the former, but would have none to pay upon those they should hereafter import.

The question being called for, it was put on agreeing to the report of the Committee of the Whole, that it is inexpedient to remit the duty on books, and carried in the affirmative—seventy-nine members voting in the affirmative.

The House then adjourned.

Tuesday, November 27.

Another new member, to wit: John Hoge, returned to serve as a member for the State of Pennsylvania, in the room of William Hoge, who hath resigned his seat, appeared, produced his credentials, was qualified, and took his seat in the House.

An engrossed bill declaring the assent of Congress to an act of the General Assembly of the State of North Carolina was read the third time, and passed.

Ordered, That the Committee of the Whole House, to whom was committed on the twenty-second instant, the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, be discharged from the farther consideration thereof; and that the said bill be recommitted to Mr. Nicholson, Mr. Brown, Mr. Griffin, Mr. Riker, Mr. Hunt, Mr. Seaver, and Mr. Olin.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of the House, in the place of the Reverend William Bently, who hath declined an acceptance of the said appointment; and upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend William Parkinson.

Mr. John Randolph, from the Committee of Ways and Means presented a bill making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object, during the year one thousand eight hundred and five; which was twice read and committed to a Committee of the whole House today.

Mr. Lewis, from the committee appointed, presented a bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac; which was read twice and committed to a Committee of the whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for the support of Government, during the present year, and making a partial appropriation for the same object, during the year one thousand eight hundred and five. The Committee reported the bill with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. Lewis, from the committee appointed, presented a bill to incorporate the Washington Building and Fire Insurance Company; which was twice read and committed to a Committee of the whole House on Friday next.

PORT OF NEW ORLEANS.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, who were instructed by a resolution of the House, of the twelfth instant, "to inquire into the expediency of allowing, under proper regulations, a drawback of duties on goods, wares, and merchandise, imported into the port of New Orleans, from any port of the United States, and from thence exported to any foreign port or place," made a report thereon; which was read, and referred to a Committee of the Whole on Friday next. The report is as follows:

Upon examining the act passed at the last session of Congress, entitled "An act for laying and collecting duties on imports and tonnage, within the territory ceded to the United States by the treaty of the 20th April, 1803, between the United States and the French Republic, and for other purposes," it appears that the sixth section refuses the drawback on all goods, wares, and merchandise, exported from the port of New Orleans, *other*, than on those which shall have been imported directly into the same, from a foreign port or place. Drawbacks have been allowed in all the ports of the United States, since the first acts were passed laying a duty on imports and tonnage. No inconvenience or loss has or can happen in giving back what we have received in cases where the article is really exported out of the limits of the United States, and many advantages have resulted from pursuing this policy. Our ports thus become the places of deposit for the merchandise of all nations. Our commerce with foreign countries is enlarged. Greater shipments of our own productions can be made. New employment can be given to our tonnage, already respectable and on a rapid increase, and as we necessarily import more than we consume, the surplus is again shipped to other countries. But if drawbacks are discontinued even in a single port, commerce must experience great embarrassments, or it will open for itself some new channels, where the streams of wealth may flow unimpeded and free from improper restraints, and other nations will reap advantages, which a different policy would unquestionably have secured to ourselves.

The duties, to their fullest amount, form a part of the value of all goods, and are always estimated in the price demanded from the consumer, or from the purchaser who intends to ship them for a foreign market; and it must be evident to every one, the least acquainted with the operations of commerce, that if any article is denied the drawback, the price will be depreciated to an equal amount with the original duties with which it may be chargeable.

New Orleans, not only as a port of deposit for the produce of the western country, where it can be shipped to all parts of the world, possesses peculiar and important advantages from its proximity to the British, French, and Spanish settlements in the West Indies. Various articles, whether of European, Asiatic, or American growth or manufacture, which we can readily supply at reasonable prices, can be carried to their ports, and be exchanged for such as they can conveniently spare, and which may be necessary for our own consumption. A commerce known to be highly beneficial to all the parties interested in it; supplying the United States too, in some cases with the precious metals, so necessary in our intercourse with Asia, it is presumed was not intended to be discouraged.

If we place every description of goods, on a similar footing in relation to drawbacks, whether imported coastwise or direct from foreign countries, upon being exported out of the limits of the United States, the committee conceive we shall then have done all which will be necessary on this occasion. The committee therefore report, as their opinion, that so much of the act entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as refuses the drawback on goods, wares and merchandise imported coastwise into New Orleans, and exported to foreign countries, ought to be repealed; and they submit a bill for the purpose.

Mr. Crowninshield, accordingly, presented a bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases; which was read twice and committed to the Committee of the whole House last appointed.

Wednesday, November 28.

An engrossed bill making appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five, was read the third time and passed.

POTOMAC RIVER.

The House resolved itself into a Committee of the Whole on the bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's island to the western shore of the river Potomac.

Mr. Macon (Speaker) moved to strike out the first section of the bill, with a view of trying its merits.

Mr. J. Randolph seconded the motion of his respectable friend, (the Speaker.) The river Potomac was the joint property of the States of Maryland and Virginia under compact between those States. This property, at least on the part of Virginia, had never been relinquished. Congress, in his conception, had no right to pass the law in question; but if they had, there was another objection. The corporation of Georgetown were empowered to lay a tax which would be unequal and oppressive, since the property on which it was to be levied would not be equally benefitted by deepening the harbor, supposing that effect to be accomplished. He hoped a prompt rejection of the bill would serve as a general notice to the inhabitants of the District to desist from their daily and frivolous applications to Congress, to the great obstruction of the public business.

Mr. Smilie understood there was a rival interest between the towns of Alexandria and Georgetown, and as this rivalry had been exhibited on many former occasions, he deemed it proper, before they passed any bill for the encouragement of either place, that the parties should be obliged to publish their intentions some weeks before the application, that if there were any objections to the measure contemplated, they might be before the House at the same time. He stated this merely as a ground of postponement, not saying whether he was in favor or against the measure.

Mr. Gregg thought the House bound to legislate for these people, until they relinquished the claim to the jurisdiction, either by authorizing them to legislate for themselves, or retroceding them to the States to which they originally belonged. He approved of the idea of publishing, as expressed by his colleague, (Mr. Smilie,) which he considered absolutely necessary. If Alexandria were opposed to the bill, it is probable they would have sent in a memorial on the subject before this time; their not having done so inclined him to believe that they were satisfied that the measure should go into operation. He did not think the bill perfect, but nevertheless he should not oppose its progress.

Mr. Lewis said the landholders of Georgetown had very generally signed the petition to Congress. And no person out of the walls of this House gave it opposition. The people of Alexandria were content, and the owner of the island and the west shore of the river was the person most likely to be affected, yet he had given it his hearty assent. He was well persuaded that no injury would be done to the navigation of the Eastern branch, or to the port of Alexandria; if therefore they could render a benefit to Georgetown, without injuring any other property, he trusted the House would agree to the bill.

Mr. Sloan felt interested in the result of this measure. The people here have nobody to look to but Congress to make Legislative provision for their well-being; he therefore considered it a duty to attend to their desires; but he wished the applicants to give notice of their intentions, in order that any person conceiving himself likely to be aggrieved should have an opportunity of being heard. This was the usual course pursued in the State where he resided.

Mr. Claiborne was by no means satisfied that the removal of the mud bank would do no injury to the Eastern branch and to Alexandria.

Mr. Nelson said that, on a question so important to the upper parts of Maryland and Virginia, he could not refrain from stating some reasons in favor of the measure, and against the motion of the Speaker, which was intended to destroy the bill. It had been urged that the sediment which now obstructed the navigation to Georgetown, if set afloat, by increasing the current and volume of water across it, would impede the navigation of the Eastern branch or fill up the harbor of Alexandria. Those who would take a view of the Eastern branch would be convinced it could make no deposit there, it being intercepted or turned aside by the point which projected into the

Potomac; and as the water of the Eastern branch was more rapid than the Potomac, the breadth of the latter being much wider than the former, there certainly was no danger to be apprehended in that quarter. As to Alexandria, it was not to be supposed that the solid mass of sediment was to be taken off the bar at once and lodged in that harbor; the probability was, it would remove gradually and deposit at the eddy on each side the river, while the union of the Eastern branch with the Potomac would increase the celerity of the current and carry it far below Alexandria.

The compact mentioned by the gentleman from Virginia (Mr. Randolph) between the States of Maryland and Virginia he acknowledged to exist; but as the measure contemplated the improvement of the navigation of the Potomac, instead of obstructing it, the right of each State to the free navigation thereof remained unimpaired. He imagined that the inhabitants of Alexandria and the citizens of Virginia wished success to the measure. He knew his constituents had it much at heart, knowing that a choice of markets is a great accommodation to farmers; and if defeated, it would be as much to their advantage to bring their produce to a shipping port at once by land, as to use the canal recently constructed at such prodigious expense, having afterwards to go with their produce to Alexandria by land.

Mr. Smilie should not be against the bill, if upon full and fair inquiry it was found proper to pass it. But he could not agree to be hurried along without allowing time to acquire information. He therefore moved that the Committee rise and report progress.

Mr. Macon (Speaker) opposed the rising of the Committee, because it was leaving the business exactly where it stood, unless it was meant to recommit it to a select committee for modification. But as he was determined to vote against it in any and every shape, he was prepared to decide now. As to the mode he had taken to come at his object, he should only say it was a fair one, and such as had been the uniform practice of the House since he had a seat in it.

The gentlemen in favor of this dam or causeway, say it will do no harm; but where is the demonstration? On the other side, serious apprehensions are entertained of its injurious effects upon the United States navy yard in the Eastern branch, and its causing obstructions in the harbor of Alexandria. He would assure the committee he was ready to promote the welfare of any of the citizens; but it must in justice be done, without injuring any other portion whatever.

At the last session, an application was made for a permanent bridge across the Potomac, with a draw for the passage of vessels; the petitioner urged the general utility of the measure to all persons travelling North or South, but particularly the vast benefit accruing to the inhabitants of the District, by affording a solid and secure means of intercourse between its several parts. This measure was opposed by the present petitioners, on the ground of the compact between Maryland and Virginia, securing the right of free navigation to the river, and also alleging that their navigation to Georgetown would be impeded. The argument which they applied then, now applies against them, and it ought, in the minds of the same legislators, apply with equal success.

Mr. Findley was rather in favor of the bill, believing the mode proposed would be successful in deepening the channel, which would certainly improve the navigation to and from Georgetown, and in that object the citizens of some of the western counties of Pennsylvania were materially interested; several of their boatable creeks nearly interlocking with those of the Potomac. He would however agree to the Committee rising, with a view to postpone the bill, until gentlemen acquired the information they asked for.

Mr. Goddard hoped the Committee would rise, and the subject be postponed until sufficient light was obtained to guide their votes to a proper decision. He also hoped that no member might be considered as the friend or the foe of the present bill, until he became such by an examination into its merits or demerits. He narrated the course the business had taken since its introduction into this House, and inferred that the same deliberate mode ought to be pursued to the end. Whether the measure was good or evil could only be determined in that way, and gentlemen ought not to reject doing positive good, unless it was demonstrated that positive evil would result to counterbalance the good that was intended. He conceived the members ought to inquire for themselves on this point, and legislate accordingly. He would on all occasions endeavor to promote the interests of the District; and as it had no immediate representative on the floor, he considered every representative bound to serve them, while the seat of Government remained among them.

Mr. G. W. Campbell would not declare whether he should vote for the final passage of the bill or not. But he was disposed to take notice of the applications made from time to time by the inhabitants of the District; whether to redress grievances, or procure benefits. But he by no means approved of the principles of legislation without representation. He regretted that they were placed in this unfortunate situation; but he should decide on the present question according to its merits; and if it was found to be of great consequence to the petitioners, and not likely to work an injury to others, he presumed the bill would finally pass. But he wished the Committee to rise, in order to give further time to obtain information. It had been alleged that the friends of the measure ought to demonstrate that the erection of a causeway would do no injury to any one. This was not a fair position; it was requiring them to prove a negative. The burden of proof should lie on those who oppose the bill, and it was for them to demonstrate that injury would result. The gentleman from Virginia (Mr. J. Randolph) has stated that the boats from the western country have a choice of passing by the western or eastern channel to the market below Georgetown, and this, it is presumed, he means they should be

still entitled to under the compact between Maryland and Virginia. Let us hear from those persons also, and then ascertain whether they have any objection to the project on that account. This was also an argument in favor of the rising of the Committee, and perhaps it may be added, that a little delay will enable the House so to modify the bill as to render it less exceptionable than at present.

Mr. Southard had not considered this subject of much consequence in the outset, but he found that its importance increased as it toiled along. He thought this morning it would have occupied but a short portion of their time; in that he found himself deceived; and he believed he was not singular in these opinions. He suspected many other members were in the same predicament. He therefore would vote for the Committee's rising. That navigable waters are considered as highways, is a matter of great notoriety; but he did not know that to deepen a channel, by contracting its surface, was considered as obstructing the free navigation of a river, nor could he conceive that the body of sediment meant to be removed, would descend *en masse* and deposit itself at the confluence of the next stream it met. On the contrary, he imagined it would be separated by the force of the current giving it action into millions of particles, some of which would settle promiscuously on either side, while a part would ultimately be deposited in the ocean.

The Committee hereupon rose and reported progress, and asked leave to sit again. On the question, shall the Committee have leave to sit again?

Mr. J. Randolph requested that the act of cession by Virginia might be read, by which it would clearly appear that she had not ceded, or intended to cede to the United States any right acquired under her compact with Maryland. [The act was read.]

It is plain from the preamble, said Mr. R., that the intention of the State was to make a cession above the tide water; that the expected seat of Government would be fixed in some place contiguous to the limits of Maryland and Pennsylvania. It is not contended that the United States were bound to select any particular spot. This circumstance is mentioned only to show what was contemplated at the time by the Legislature of Virginia. Her act of cession was more broad. It extended to any tract of country not exceeding ten miles square, "to be located within the limits of the State." Over this she had relinquished to Congress her jurisdiction as well of soil as of persons. But her limits did not extend beyond high water mark on the western bank of the Potomac. Her right of highway on the river was a natural right acknowledged and secured by convention with Maryland. Her civil jurisdiction over its waters was a conventional right, entirely derived from compact with that State, was a jurisdiction not within her limits, and which the words of the act just read could not embrace or convey.

Mr. Dawson would vote against the Committee having leave to sit again. He was convinced that the objection made by his colleague (Mr. J. Randolph) was conclusive: the fact was, that neither Maryland nor Virginia had ceded their joint rights to this river, nor could they do so, by their separate acts. The terms of the compact requiring that anything done respecting the navigation of the Potomac, should be done by their joint act. It was worthy of remark, that the petitioners for the causeway were the identical persons who petitioned against the bridge as a violation of the compact between the two States, and denying the authority of Congress to legislate on the subject of the navigation of the Potomac. He thought them right then, and he voted against the bridge. His opinion had not changed with their opinions, and, therefore, he should vote against the causeway now.

Mr. R. Griswold said that from the vote just taken he presumed that the question of expediency had been settled. But it is now objected that Congress have no exclusive jurisdiction over the Potomac. In reply he would submit a few observations. By the Constitution Congress were empowered to exercise exclusive jurisdiction over any place not exceeding ten miles, which might be ceded by particular States. The States of Maryland and Virginia had ceded this District to Congress, and the cession had been accepted. But the gentleman from Virginia (Mr. Randolph) had said that Virginia did not cede the jurisdiction of the Potomac, because she did not own it separately. To this he would answer that the river Potomac must have been under the jurisdiction of either Maryland or Virginia or both. And as both allowed Congress to accept of any part of their territory not exceeding ten miles square, and Congress had chose to accept of part from one and part from the other, he presumed the jurisdiction of the Potomac, let it have been held by either of the States, or jointly, must have passed to the United States. He was of opinion, that if Congress had no jurisdiction over the Potomac, they had none over the District. The Constitution provides only for the cession of one district of country not exceeding ten miles square. The act of Congress made in pursuance of the Constitution had also provided for the laying out one district. If the arguments of the gentleman from Virginia were correct, and Congress had no jurisdiction over the Potomac, the Commissioners and the then President of the United States, under whose direction the district was laid off, had been mistaken, and had taken two districts of territory instead of one. This being the case, Congress had no jurisdiction in the District, because it not being laid off conformable to the Constitution and the law of Congress, the acceptance by Congress was absolutely void. If this was correct, there was an absolute necessity for giving leave to the Committee to sit again, for the purpose of deliberating whether Congress had jurisdiction or not. If they had not, and were legislating for the people of the District without authority, the sooner they put an end to such an assumption of power the better.

Mr. J. Randolph declared that the opinion which he had just given was the result of his

most deliberate judgment. To what it might lead he should not at that time undertake to determine; but when that question should come before the House he was not sure that he should deny the corrollary of the gentleman from Connecticut, (Mr. R. Griswold,) at least as far as related to the testimony on the other side of the river. The question, however, then was, whether Congress possessed exclusive jurisdiction over the Potomac. How could they acquire it? From Maryland? It was more than she had to give. At farthest she could only grant her own qualified right. Had they obtained it from Virginia? not at all. She had granted a jurisdiction exclusively her own, over a tract of country within her limits. And could any man pretend to say that this was a grant of her concurrent jurisdiction over the Potomac, confessedly without her limits? She had, to use the expression, issued her warrant to Congress, to be located somewhere within the State, and, under this pretext, her property out of the State was about to be usurped. Suppose the gentleman from Connecticut were to convey by deed his exclusive property, by certain metes and bounds, would his joint interest in other property not contained within those bounds pass by such a deed? Surely not. To a person setting up a claim to such property he would probably say, produce the evidence of your title; and in like manner Mr. R. demanded to be shown the conveyance by which Virginia had relinquished her concurrent jurisdiction over the Potomac? And in answer to this, gentlemen refer to a conveyance relinquishing something else in nowise connected with it, and tell us we always believed that we had a grant for this jurisdiction; we shall be grievously disappointed if we have not; it will be a great inconvenience to us to do without it, and, therefore, we must have it. And Virginia is to be forcibly dispossessed of her right, to suit the convenience of Congress.

Mr. Nelson said, it was with diffidence he again troubled the House after the lengthy discussion which had taken place. But doubts having been originated as to the authority of Congress to pass the bill in question, he felt compelled to remove those doubts, as far as lay in his power. As the House had decided the expediency of the measure by a large majority, if upon an investigation it should be demonstrated that Congress possessed ample power to pass the bill, he trusted the same majority would still be found in favor of it. He would proceed to examine the power which Congress possessed to pass the bill, and he trusted that he should be able to satisfy a majority of the House, that they had sufficient power. Previous to the compact between Virginia and Maryland, which had been so much talked of, Maryland claimed the sole jurisdiction of the Potomac river, and Virginia claimed Cape Henry and Cape Charles, also the jurisdiction of the Pocomoke as her property. In order to prevent any duties from being imposed upon their vessels at either of those places, the two States entered into a compact by which Maryland agreed that the navigation of the Potomac should be free to the people of Virginia, and Virginia contracted not to impose duties on the vessels of Maryland coming by Cape Henry, or navigating the Pocomoke. By this compact, the Potomac became the joint property of Maryland and Virginia as to the free navigation, but all the islands were under the jurisdiction of Maryland. This being the situation, each of these States, by a law, ceded to Congress any part of their territory not exceeding ten miles square, which they might choose to accept. Congress chose to accept of part from one and part from the other; and, among the rest, this joint property the river Potomac. There was no exception made in the act of cession as to the water courses, and it would be needless to inform the members that a grant of land necessarily carried with it a grant of the waters thereon, unless an exception was made.

But, it had been said, that this being joint property, neither of the States had the power to grant it to Congress, and they had not done it jointly. To this, he would answer, that each State had granted to Congress all their right at different times, and Congress having accepted of it, the whole had vested in them. If two persons, to wit, A and B, are possessed of joint property and A grants the whole to C, the moiety passed thereby. After this, if B grants the whole to C also, his part passes by the grant, and C becomes proprietor of the whole. This was exactly similar to the present case. But he would ask gentlemen if the jurisdiction of the Potomac was not in Congress, in the body of what county was it? If not in Alexandria or Washington counties, it could be in no county. Suppose, then, a crime should be committed on the river, in the body of what county should the indictment state the crime to have been committed? It could not be in the county of Fairfax or Montgomery, because the parts of those counties adjacent to the river had been ceded to Congress. Then, if the doctrine contended for by gentlemen was correct, no offence could be committed on the Potomac, as far as the limits of the District extend, and it would become a sanctuary for crimes. He trusted this was not the case, but that the river was, by the cessions, granted to Congress, and was in Washington and Alexandria counties. He considered the argument of his colleague (Mr. Nicholson) that Virginia had no property in the river, which she could cede, of no avail; because, if that was the case, Maryland owned the whole, and Maryland had ceded it to Congress. He hoped the Committee would be granted leave to sit again.

Mr. J. Randolph.—The gentleman asks in the body of what county is the river Potomac passing through the District of Columbia? Will he take it for an answer that its jurisdiction is within the bodies of the same counties it was in before the acceptance of the territory on each side?

In addition to the observations made on passing joint property with exclusive property, suppose England and France to hold Malta in joint possession, and that they cede to Germany, for her acquiescence in that measure, some of the exclusive property held by each within the German

empire, will they say that their joint property in Malta passed by the treaty?

Mr. Clark was unwilling to trouble the House at that late hour with any remarks, and would have entirely forborne, was not the question on which we were about to decide, and which had become extremely important, susceptible of a position which it had not assumed. It had been stated, and generally agreed to, and he supposed was correct, that the State of Maryland, previous to her compact with Virginia, rightfully claimed the whole river Potomac to the high-water mark on the western bank. Virginia owned the Capes. This collision of interest produced, in the year 1786, an adjustment of their interfering interests, and it was expressly stipulated that the river Potomac should remain a highway, free for the navigation of each State. In the year 1799, the Legislature of Virginia passed a law making a cession to the United States of a territory ten miles square, or any less quantity that should be accepted for the seat of the General Government, to be located and laid off within her limits; thus by the terms of her cession confining it to her territory. Maryland, nearly at the same period, made a similar cession. Out of these two cessions is the present Columbian Territory made. It is contended by the gentleman from Maryland, (Mr. Nelson,) that the two States uniting in the cession makes the grant complete, and the right in the United States predominant and exclusive. He acknowledges, at the same time, this correct principle that they could grant no greater right than they possessed. This doctrine, I hold incontrovertible, that the alienee can have no greater or better title than the alienor, otherwise the derivative would be superior to the original title, a principle not to be admitted.

Let it be distinctly recollected that, prior to the cession, Virginia had purchased a right out of the soil of her sister State, distinct from the land—an incorporeal hereditament, a franchise which she had the right of exercising, unconnected with the use of the soil—so that, while Maryland owned the land, Virginia owned the right of way. She never passed this right by the terms of her cession or by any other act. Maryland could not, having already parted from it. No strength of argument can be derived from the terms of the Constitution; for, if Virginia never parted with her right, the United States could never have acquired it. I trust I have shown that Virginia purchased a right in the navigation of the Potomac, which she never parted from, and, of course, retains to this moment. We, therefore, cannot constitutionally legislate on this subject.

Let it not be said that the object is improvement and not obstruction. Is not building the wall from Mason's island to the Virginia shore an obstruction and the improvement at best problematical? But, this is begging the question. On a fair admission of my construction, I contend, and have endeavored to prove, that we, possessing no jurisdiction over the river, it cannot be touched by any Legislative act of ours in any point whatever. For, if it be touched in one way, it may be in another, and may finally end in whatever arrangement Congress may think expedient to make.

He had another objection to the bill. This might be but the commencement of a scheme which should compel all boats coming down the Potomac to unlade their cargoes here. This would be effected by obstructions in the river above, and a canal terminating in a basin in this city; thus diverting to the exclusive benefit of Washington, all the labor and expense which had been jointly incurred by Maryland and Virginia for opening the navigation of the river Potomac. When the Constitution of the United States was under consideration, that section which gave Congress exclusive legislation over a district not exceeding ten miles square, to be afterwards ceded to them, was viewed with a jealous eye. It was regarded by some of the best and greatest men who ever had lived, or who, he believed, ever would live, as the germ of incalculable mischief, as the ambush from which the masked monarchy of the Constitution was to spring upon the people. At one time, this prediction seemed to be verifying itself. Accordingly, we had seen a city laid out on a gigantic scale. Edifices the most stupendous were planned. We seemed determined not only to vie with Paris or London, but to rival Thebes or Babylon of old. Happily these splendid visions had ended in a monstrous abortion. He wished to see the people of the District restored to their rights. So long as they remained in their present condition, he should be averse to promote the growth of a city, which he considered to be as much the nursery of despotism as the Newcastle trade of England was of seamen.

Mr. Jackson did not stop to inquire whether it was proper for Congress to retain the jurisdiction over this District, but he was willing to remove a grievance which the people complained of and required to be done. He was not one of those who was disposed to guard the people against their worst enemies, themselves, as he did not believe the doctrine to be true. The objection that Virginia and Maryland had only ceded their exclusive property, and not the joint property of the free navigation of the Potomac, might, perhaps, be extended further than gentlemen wished, or were aware of. By the Treaty of Paris, France had ceded Louisiana in full sovereignty to the United States, but expressly reserved the right of free navigation of the Mississippi; if, then, the United States were disposed to shorten the navigation by cutting through the bend of that river, or in any other way improve the same, will it be necessary for the United States to consult and obtain the assent of France to the measure before they ventured to put it in execution?

Mr. Nicholson had but few observations to make upon the question before the House. His opinion was the same as at the last session when a petition was presented for the erection of a bridge. He then thought that the erection of a bridge over the Potomac would tend much to the improvement of the place. He thought so still. But he then thought that Congress had no right to interfere in the least with the free navigation of the Potomac, and, of course, was opposed to the bridge. The same reason operated, in his mind, against the bill now in question. Neither of the States of Maryland or Virginia could have passed such a law previous to the cession of the District to Congress. The question to be determined, then, was "whether the jurisdiction of the Potomac was ceded to Congress." If this should be answered in the negative by the Committee, all questions as to the expediency of the measure would be at an end. Previous to the compact between Virginia and Maryland, the latter claimed the river Potomac as its exclusive property. By that compact it was declared that the navigation of the said river should be free. Virginia, therefore, acquired a kind of property in the river, inasmuch as she acquired the right to the free navigation thereof. The question, then, to be inquired into, was, Had Virginia parted with this right? He conceived she had not. By the act authorizing the cession of ten miles square or less to the United States, this could not have been done; Virginia had no power to make the cession of the Potomac, because she had not the jurisdiction over it, and could not grant more than she possessed. After this grant by Virginia, the State of Maryland granted to Congress a portion of territory not exceeding ten miles square for the seat of Government. Had Maryland the sole property in the river it could have passed in this grant, provided Congress accepted that part of her territory. But she had not this sole property, because the State of Virginia had a right by compact to the free navigation thereof. How, then, had the United States acquired the jurisdiction over the Potomac? Would it be contended that they had acquired it from Maryland? This did not appear from the act of cession. Had they acquired it from Virginia? That could not be, because Virginia had no power to make such a grant. So long as he had the honor of a seat in the House, he would hold up his hands against any measure like the present, which would go to affect the rights of any of the States. If Congress had a right to interfere in the least with the free navigation of the Potomac, they had a right to stop it altogether. He conceived they had no right to pass any law on the subject; and, believing so, he would certainly vote against the Committee having leave to sit again.

Mr. Crowninshield was of opinion that due notice ought to have been given by the applicants of their intention to petition Congress on the subject, that private property might not be injured without the knowledge of the owners; he believed the causeway might be of use, but he was not a competent judge; but others very probably would be benefited besides the inhabitants of Georgetown, and he thought it reasonable that such should likewise contribute to the expense. Till these circumstances should be ascertained, he would vote against the Committee having leave to sit again.

On motion the Committee rose and the House adjourned.

Thursday, November 29.

A petition of sundry citizens of the United States, and inhabitants of the Territory of New Orleans, was presented to the House and read, stating their approbation of the government prescribed for that Territory, by an act passed at the last session of Congress; and praying that, whenever the said Territory of Orleans shall, consistent with the Constitution of the United States, be admitted as a State into the Union, such conditions may be annexed to the admission as will secure to the petitioners the use of their native language in the Legislative and Judicial authorities of the same.—Referred.

A representation of sundry citizens of the State of Massachusetts was presented to the House and read, stating a claim for the value of certain lands purchased by them under an act of the Legislature of Georgia, passed in the year one thousand seven hundred and ninety-five, which have since been ceded to the United States, and praying that the subject-matter of their said claim may be taken into the immediate consideration of Congress, and a speedy decision had thereon.

Ordered, That the said representation be referred to Mr. Varnum, Mr. Meriwether Mr. Tibbits, Mr. Thomas M. Randolph, and Mr. Nelson; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

On a motion made and seconded that the House do come to the following resolutions:

Resolved, That it is expedient for Congress to recede to the State of Virginia the jurisdiction of that part of the Territory of Columbia which was ceded to the United States by the said State of Virginia, by an act passed the third day of December, in the year one thousand seven hundred and eighty-nine, entitled "An act for the cession of ten miles square, or any lesser quantity of territory within this State, to the United States in Congress assembled, for the permanent seat of the General Government;" provided the said State of Virginia shall agree thereto.

Resolved, That it is expedient for Congress to recede to the State of Maryland the jurisdiction of that part of the Territory of Columbia within the limits of the City of Washington, which was ceded to the United States by the said State of Maryland, by an act passed on the nineteenth day of December, in the year one thousand seven hundred and ninety-one, entitled "An act concerning the Territory of Columbia and the City of Washington;" provided the said State of Maryland shall consent and agree thereto:

Ordered, That the said motion be referred to a Committee of the whole House on Wednesday next.

ARMED MERCHANT VESSELS.

The House resolved itself into a Committee of the Whole on the bill to regulate the clearance of armed merchant vessels.

The bill was read, as follows:

Be it enacted, &c., That, after due notice of this act at the several custom-houses, no merchant vessel armed, or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the port where she may be armed or provided, without bond,

with two sufficient sureties being given by the owner or owners, or by the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault, or violence, against the vessels, citizens, subjects, or territory of any nation in amity with the United States: *Provided*, That the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

Sec. 2. *And be it further enacted*, That, if any armed merchant vessel clearing for any port or place within the Mediterranean, or beyond the Cape of Good Hope, shall make or commit any depredation, outrage, or unlawful assault, or violence, as aforesaid, on her voyage to or from, or at any place to which she may be bound, such vessel, with her arms and cargo, or the value thereof, shall be forfeited to the use of the United States.

Sec. 3. *And be it further enacted*, That, on satisfactory evidence or information being given to the collector of any port that any vessel within the same is armed or arming, or provided with the means of being armed at sea, for the purpose of committing any unlawful act as herein before expressed, or of carrying on by force of arms, any unlawful commerce, it shall be the duty of such collector to detain such vessel until the case be submitted to the President of the United States, who is hereby authorized to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

Mr. Crowninshield moved to amend the first section of the bill in such manner as to prevent armed merchant vessels from clearing out for one port and sailing for another; it would prevent a deviation from the true voyage.

Mr. J. Clay thought this alteration would extend beyond what was the true object of the bill; it might interrupt the European trade, while it was only intended to prevent the forced trade to St. Domingo. He suggested an amendment to the amendment, viz: to confine the forfeiture of armed vessels clearing from one port of the West Indies, and which shall proceed to any other port or place than that of her original destination.

Mr. Crowninshield moved, then, to strike out the whole of the second section. He thought it unreasonable to forfeit the cargo as well as the vessel, her arms, tackle, and furniture.

Mr. Rodney asked whether the Committee would not be put to greater inconvenience by striking out the section than by amending it?

On the question to strike out, it was lost—only thirty-two voting for the motion.

Mr. J. Clay then moved to insert the amendment he had suggested, adding thereto, "unless compelled by stress of weather." The sole object being to confine the regulation of the clearance of armed vessels to those destined to the West Indies.

On a division, Mr. J. Clay's motion was agreed to—yeas 62.

Mr. Crowninshield then offered another amendment, to extend the regulation of the clearance of armed merchant vessels to the Mediterranean and beyond the Cape of Good Hope.

Mr. J. Clay did not see the necessity of this amendment, as vessels bound to those places never touched at the West Indies.

On the question, only 24 members were in favor of the motion; of consequence, it was not carried.

Mr. Crowninshield then moved to strike out that part which related to the forfeiture of the cargo, in which he was supported by

Mr. Eustis, who represented it as an enormous hardship upon the owner to put at risk four or five hundred thousand dollars, for which he was to give sureties, and which might be the value of the cargo.

On the question, the word *cargo* was struck out; 71 being in the affirmative.

On motion of Mr. Eustis, after the words in the first section that they "should not commit any depredation, outrage, unlawful assault, or violence," these words were added, "nor make any other unlawful use of her arms."

Mr. E. suggested the propriety of adding a new section to the bill, to extend the security against the commander making also an improper use of the arms intrusted to him, or selling them to others in the West Indies.

A question was, however, previously taken on a motion to strike out what respected the forfeiture of the cargo in the fourth section, which the mover observed he would not have made but that the words had been stricken out of the second section; his own private judgment being that the cargo, as well as the vessel, should be forfeited for an improper use of their arms; but he moved it for the sake of consistency.

On the question, there were 51 for striking out, and 40 in the negative.

Mr. Eppes thought the bill founded on erroneous principles. Instead of permitting our merchantmen to arm and afterwards punishing them for the abuse of those arms, he conceived it would be infinitely more prudent and politic to restrain them altogether from arming.

Mr. J. Randolph, fully impressed with the importance of the ideas suggested by Mr. Eustis in relation to selling their arms and vessels in the West Indies, or, rather to the people of St. Domingo, thought it would be better for the Committee of the Whole to rise, report the amendments, that the House might incorporate them into the bill, and direct the whole to be printed.

This course was accordingly pursued, and the bill made the order for Wednesday.

Friday, November 30.

A petition of sundry citizens of the county of Washington, in the State of Pennsylvania, was presented to the House and read, complaining of an undue election and return of John Hoge, to serve in this House as one of the Representatives for the said State.—Referred to the Committee of Elections.

The Speaker laid before the House a letter addressed to him from the Reverend William Parkinson, dated the twenty-ninth instant, declining to accept the appointment of one of the Chaplains

to Congress for the present session.—Ordered to lie on the table.

A Message was received from the President of the United States, transmitting copies of the treaties concluded between the Delaware and Piankeshaw Indians for the extinguishment of their title to the lands therein described.

The Message was read, and, together with the papers, referred to the Committee of Ways and Means.

Mr. Nicholson, from the committee to whom was committed the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, reported an amendatory bill; which was read twice and referred to a Committee of the whole House on Monday next.

A memorial of Perez Morton and Gideon Granger, in behalf of the holders of the title of the Georgia Mississippi Company to lands lying within the territory ceded by the State of Georgia to the United States, was presented to the House and read, stating that the claimants to the said lands are ready to enter into a negotiation for a compromise of their claims, agreeably to the conditions and limitations of the cession of Georgia, with any Commissioners who may be authorized thereto by the Government of the United States; the claimants reserving all their rights at law, in case the compromise should not be effected; and praying that Congress will come to a final determination on the subject, that the said claimants may no longer be exposed to a fruitless and expensive pursuit of what they conceive to be their rights.

Ordered, That the said memorial be referred to the committee appointed yesterday, on a representation of sundry citizens of the State of Massachusetts; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

The House resolved itself into a Committee of the Whole on the bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases. The Committee reported the bill with several amendments, which were twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table and, together with the amendments, ordered to be engrossed and read the third time on Monday next.

The House proceeded, by ballot, to the appointment of a Chaplain to Congress, on the part of this House, in the place of the Reverend William Parkinson, who hath declined an acceptance of the said appointment; and, upon examining the ballots, a majority of the votes of the whole House was found in favor of the Reverend James Laurie.

On motion, it was

Resolved, That a committee be appointed to revise the rules and articles for the government of the Army of the United States; and that they report by bill or otherwise.

Ordered, That Mr. Varnum, Mr. Matthew Clay, Mr. Tallmadge, Mr. Patterson, and Mr Butler, be appointed a committee, pursuant to the said resolution.

IMPEACHMENT OF JUDGE CHASE.

Mr. J. Randolph, from the committee appointed on the 6th inst. reported articles of impeachment against Judge Chase. They were nearly the same as reported at the last session except the fifth and sixth articles, which are new ones.

Mr. R. moved to refer them to a Committee of the Whole on Monday next.

Mr. Elliot rose to move a more distant day, and to assign his reasons for the motion. It had been to him a subject of considerable regret that the present report had been so long delayed, and he had repeatedly examined his own mind to imagine reasons for the delay. Twenty-four days ago the gentleman who now presented the report, announced to the House his conviction that all the time which our political existence would allow should be given to the person accused for the purpose of making his defence; and he moved a recommitment of the report of the last session for the purpose of alteration or amendment. A solution of the difficulties which have occupied my mind upon this subject, said Mr. E., may perhaps be found in the report itself. If I understand it, it embraces accusations, the evidence of which repose in the breasts of the committee alone, as it has never been exhibited to the House. This course of proceeding may be parliamentary and proper, but it strikes my mind as possessing a very different character. At the last session a voluminous body of evidence was reported, upon which the House decided the general question of impeachment. The committee appointed to prepare and report articles of impeachment possess not the powers of a committee of inquiry; the inquiry is already at an end; they are only to reduce to form the decision of the House upon the evidence before them; and if they have proceeded to make a new inquiry, to obtain new evidence, and report new articles thereon, they have wandered beyond the limits of their duty. Nor am I furnished with that intuitive knowledge of right and wrong, in cases of this kind, which would be necessary to enable me to decide almost instantly upon a question of such magnitude. While it is our duty to grant a reasonable time to the person accused to make his defence, it is indispensably necessary to proceed not only with deliberation but with caution. He concluded by moving that the report be made the order for Thursday next.

The question was taken on Thursday, as the most distant day, and lost; 40 voting for and 68 against it. Wednesday was next tried and lost. It was then ordered for Monday, and in the mean time to be printed.

On motion, the House adjourned.

MONDAY, December 3.

An engrossed bill repealing so much of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic, and for other purposes," as prohibits drawbacks of duties upon goods in certain cases, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of Orleans."

Mr. RODNEY, from the committee appointed, presented a bill establishing a court for adjudication of prizes in certain cases; which was twice read and committed to a Committee of the Whole House to-morrow.

Mr. J. RANDOLPH, after the minutes of Friday were read, said he perceived that certain persons having claims against the United States, had obtained an order of the House for a reference of their claims to a select committee. He was not then in the House, and not being acquainted with the petitioners, and not knowing who were on the committee, the motion he was about to make could not be attributed to personal motives, but to a respect for regularity in the proceedings of the House; he wished when the House had standing committees the members of which, from frequent investigation, were more minutely acquainted with the detail than others, that all subjects relative thereto should be sent before them rather than to select committees. For these considerations he moved to refer the petition, memorial, or remonstrance, or whatever it was denominated, from certain agents of Yazoo claimants to the Committee of Claims, and that the committee erected for inquiring thereinto be discharged.

Mr. NICHOLSON, informing Mr. J. RANDOLPH that another petition on the same subject had been referred the preceding day to the same Committee, asked if the gentleman had not better include both in his motion.

Mr. J. RANDOLPH incorporated the suggestion of Mr. N., in his motion. And on the question there was 56 yeas, and 27 nays—of course all controversies relating to the Yazoo claims go to that committee.

Mr. NICHOLSON presented a memorial from the inhabitants of Louisiana, said to be signed by 2,000 heads of families, which takes a view of the laws of the United States, for their Territorial government. He observed that the three gentlemen appointed from that country had requested him to state that the copy which appeared in our papers in the course of the last statement was by no means authentic, many expressions as well as ideas in that do not appear in this, and there are expressions and ideas used in this, that are not to be found in that. The translation that accompanies the French original, though correct, may contain expressions that the House will have to pardon, ascribing them to the feelings of the inhabitants so peculiarly situated, and not to any want of respect for the Government of the Union; they labored under an idea that their morals, manners, and customs, had been misunderstood, and consequently complained of, and that the law of last session was passed by Congress under those mistaken impressions. They, therefore, pray an alteration of the law so far as to allow them to be their own legislators, not dividing the Territory into two governments, and not prohibiting the importation of slaves.

Mr. NICHOLSON moved, after the memorial was read, to refer it to the committee appointed on that part of the President's Message which relates to the melioration of the government of Louisiana, and it was referred accordingly.

IMPEACHMENT OF JUDGE CHASE.

The House resolved itself into a Committee of the Whole on the report of the committee of the thirtieth ultimo, to whom was referred the report of a select committee appointed on the thirteenth of March last, "to prepare and report articles of impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States."

The report was read, as follows:

The committee to whom was referred, on the sixth instant, the report of a select committee, appointed on the thirteenth of March last, "to prepare and report articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States," submit to the House the following report:

Articles exhibited by the House of Representatives of the United States, in the name of themselves and of all the people of the United States, against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in maintenance, and support of their impeachment against him, for high crimes and misdemeanors.

ART. 1. That, unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them, "faithfully and impartially, and without respect to persons," the said Samuel Chase, on the trial of John Fries, charged with treason, before the circuit court of the United States, held for the district of Pennsylvania, in the city of Philadelphia, during the months of April and May, one thousand eight hundred, whereat the said Samuel Chase presided, did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive, and unjust, viz:

1. In delivering an opinion in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury against the case of the said John Fries, the prisoner, before counsel had been heard in his defence:

2. In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States, which they deemed illustrative of the positions upon which they intended to rest the defence of their client:

3. In debarring the prisoner from his Constitutional privilege of addressing the jury (through his counsel) on the law, as well as on the fact, which was to determine his guilt, or innocence, and at the same time endeavoring to wrest from the jury their indisputable

right to hear argument, and determine upon the question of law, as well as the question of fact, involved in the verdict which they were required to give.

In consequence of which irregular conduct of the said Samuel Chase, as dangerous to our liberties as it is novel to our laws and usages, the said John Fries was deprived of the right, secured to him by the eighth article amendatory of the Constitution, and was condemned to death without having been heard by counsel, in his defence, to the disgrace of the character of the American Bench, in manifest violation of law and justice, and in open contempt of the right of juries, on which, ultimately, rest the liberty and safety of the American people.

ART. 2. That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States, held at Richmond, in the month of May, 1800, for the district of Virginia, whereat the said Samuel Chase presided, and before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the trial, because he had made up his mind as to the publication from which the words, charged to be libellous, in the indictment, were extracted; and the said Basset was accordingly sworn, and did serve on the said jury, by whose verdict the prisoner was subsequently convicted.

ART. 3. That with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact.

ART. 4. That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured at that term.

3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law to which the conduct of the judge did at the same time manifestly tend.

4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which at length induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment.

5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice.

ART. 5. And whereas it is provided by the act of Congress passed on the 24th day of September, 1786, entitled "An act to establish the judicial courts of the United States," that for any crime, or offence, against the United States, the offender may be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and whereas it is provided by the laws of Virginia, that upon presentment by any grand jury of an offence not capital, the court shall order the clerk to issue a summons against the person or persons offending, to appear and answer such presentment at the next court; yet, the said Samuel Chase did, at the court aforesaid, award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody, contrary to law in that case made and provided.

ART. 6. And whereas it is provided by the 34th section of the aforesaid act, entitled "An act to establish the judicial courts of the United States," that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as the rules of decision in trials at common law, in the courts of the United States, in cases where they apply; and whereas by the laws of Virginia it is provided, that in cases not capital, the offender shall not be held to answer any presentment of a grand jury until the court next succeeding that during which such presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did, at the court aforesaid, rule and adjudge the said Callender to trial during the term at which he, the said Callender, was presented and indicted, contrary to law in that case made and provided.

ART. 7. That, at a circuit court of the United States, for the district of Delaware, held at Newcastle, in the month of June, one thousand eight hundred, whereat the said Samuel Chase presided, the said Samuel Chase, disregarding the duties of his office, did descend from the dignity of a judge, and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and after the said grand jury had regularly declared through their foreman, that they had found no bills of indictment, nor had any presentments to make, by observing to the said grand jury, that he, the said Samuel Chase, understood "that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order, that the name of this printer was"—but checking himself, as if sensible of the indecorum which he was committing, added "that it might be assuming too much to mention the name of this person, but it becomes your duty, gentlemen, to inquire diligently into this matter," or words to that effect: and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States the necessity of procuring a file of the papers to which he alluded, (and which were understood to be those published under the title of "Mirror of the Times and General Advertiser,") and, by a strict examination of them, to find some passage which might furnish the groundwork of a prosecution against the printer of the said paper: thereby degrading his high judicial functions, and tending to impair the public confidence

in, and respect for the tribunals of justice, so essential to the general welfare.

Art. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those governments, respectively, are highly conducive to that public harmony without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court for the District of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury and of the good people of Maryland against their State government and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and moreover that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at the time, and as delivered by him, highly indecent, extra judicial, and tending to prostitute the high judicial character with which he was invested to the low purpose of an electioneering partisan.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any farther articles, or other accusation, or impeachment, against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice.

Mr. Elliot.—It will be recollected, Mr. Chairman, by every member of the Committee who was present at the close of the last session, that upon the report of the committee of inquiry, recommending the impeachment of Judge Chase, no member but myself thought proper to deliver his sentiments. I feel no inclination to retravel the ground which I then occupied in solitude; especially as the opinions which I then advanced remain unaltered. Nor have I a disposition to embarrass the proceedings. I wish, indeed, to simplify them. But I feel it my duty to suggest that course of proceeding, and that mode of decision, which I believe to be demanded equally by our duty to the person accused, to our own consciences, and to our country; and I shall suggest them with confidence rather than with diffidence, because they are so extremely obvious. I believe it to be our duty deliberately to investigate the principles involved in the report, some of which are certainly novel, and to take distinct questions upon each general head of accusation. Because I think Mr. Chase ought to be impeached for two or three misdemeanors, I cannot give my vote in favor of articles accusing him of eight high crimes and thirty or forty misdemeanors. If I should be so fortunate as to be seconded in the opinions which I entertain upon this subject, I will move to amend the report upon the table by striking out that part which relates to the conduct of Judge Chase on the trial of John Fries, and which is now comprised in the first article

The motion being seconded,

Mr. Smilie asked if the motion was in order; observing that the report consisted of a number of distinct propositions which he conceived were to be considered in the usual way, article by article, and the question would be, either to concur or non-concur. The gentleman (Mr. E.) might gratify his zeal in this way as well as in the mode he had proposed for striking out, and the result would be the same. It would furnish an opportunity for every member to speak for or against each article, as well as to amend any.

Mr. Elliot replied that he was not tenacious of form. His only object was to obtain distinct questions. If the Committee of the Whole were disposed to pursue the course pointed out by the gentleman from Pennsylvania, he would withdraw his motion.

The Chairman gave it as his opinion that the proper mode of proceeding would be to take the report up by articles.

On the first article being read, Mr. Elliot moved to strike it out.

The Chairman said the motion to strike out the first section was in order, and was usual in the case of a bill, in order to decide upon its merits; but in independent articles like the present it would be preferable to take the question on concurring, so that the opinion of the committee might be ascertained on each article.

Mr. Smilie expressed an indifference as to the mode of decision, but he believed what he had suggested was conformable to all former rules and practices.

Mr. J. Randolph, after a short pause, said that the question of concurrence with the select committee, in his opinion, ought to be taken on each article, separately; and for his part he had no objection to take it upon each separate member of each article, if any gentleman wished it to be taken in that way.

Mr. Nicholson, observing that there was no question before the committee, conceived that one ought to be presented for their decision. He therefore moved that the Committee of the Whole concur with the select committee and agree to the first article. Which being seconded, the question was put by the Chairman; a division was called for, and 78 members rising in the affirmative, it was carried without reverting to the question—78 being more than a majority of the whole House had all the members been present.

The second article being under consideration—

Mr. Dawson.—This mode of proceeding incurs some difficulty which might be prevented by the motion to strike out, as in the latter case the principle upon which the article is grounded would be tested, and if the principle was adopted the phraseology might be varied and amended as might be thought proper.

The Chairman.—The Committee has already determined to proceed in a different manner; it therefore does not rest upon the discretion of the Chair.

Mr. Smilie suggested the propriety of reading the evidence in support of each article, as there were many gentlemen here who were not present at the last session when the testimony was both read and printed.

Mr. Findley seconded the motion.

Mr. Nicholson.—Reading the testimony will occupy the whole day, it constitutes the volume in my hand (a volume of apparently two hundred pages.)

Mr. Smilie would not call for its reading on his own account; he had already pursued the testimony, but there were several gentlemen now present who were not here at the last session, who perhaps have not had an opportunity of seeing the documents, and he believed gentlemen generally voted with more satisfaction on subjects with which they are well acquainted than on those where doubts or apprehensions are entertained. Besides, he deemed it more safe and dignified to proceed with caution and due deliberation on so serious a question as that of impeaching a person holding one of the most important stations in the Government.

Mr. Nicholson.—The manner of proceeding in the business of impeachment at the last session, was, to read such parts of the testimony upon the call of a member as related to the particular article under consideration. He recollected, upon the impeachment of Judge Pickering, that the gentleman on the other side of the House from New Hampshire called for reading the particular part of the testimony most likely to extricate the officer impeached, or produce a conviction in the minds of others such as he felt himself—he hoped the same course of proceeding would be adopted by the Committee, and such portions would from time to time be read as members required.

The Chairman put the question on reading the testimony generally, which was lost on the division, being only 40 in the affirmative, and 50 in the negative.

The second article being under consideration,

Mr. Boyle moved to amend the latter part of the article by striking out the words in italics and inserting those in a parenthesis: "John Basset, one 'of the jury, who wished to be excused from serving on the said trial, because he had made up his 'mind *as to* (that) the publication from which the 'words charged to be libellous in the indictment '*were extracted* (was within the statute of the 'United States upon which the said Callender 'was indicted) &c." Making the allegation in this way, you will find it supported by the testimony, for they are the words of the testimony itself. It is said that the eighth juror acknowledged that he had formed an unequivocal opinion that such a book as "The Prospect Before Us" came within the sedition law.

A member supposed that the rule adopted by the Committee against the reading of the general testimony would not prevent particular parts, as they apply to particular points, from being read. He therefore called for the reading so much of the evidence as related to the juror mentioned in the second article.

Mr. Nicholson mentioned page 133 of the depositions of the witnesses on the part of the United States, as the place where the Clerk would find what the gentleman wanted.

Which being read as follows:

"Perhaps it is not improper here to observe, that the eighth juror answered, when the previous question was put to him, that though he had never read or heard the charges in the indictment, and knew not what the traverser had published, yet he had formed an unequivocal opinion, that such a book as "The Prospect Before Us" was, came within the sedition law: but no objection was made to him, and he was sworn like the rest."

Mr. J. Randolph referred to page 56, near the top, for other corroborative evidence.

The Clerk read the following:

"One of the jury, John Basset stated that he was unwilling to serve, having made up his mind as to the book called "The Prospect Before Us;" but as he acknowledged that he had not formed and delivered an opinion concerning the charges in the indictment, because, in fact, he knew not what they were, his objection was overruled."

And also from page 61, as follows:

"It is to be observed that Mr. Basset, who had been summoned on the jury, seemed to have considerable scruples at serving, and stated that he had expressed some opinion as to "The Prospect Before Us." Judge Chase, however, declared Mr. Basset a good juror, and he was sworn and acted as a juror."

Mr. J. Randolph thanked his friend from Kentucky for every suggestion tending to improve the report of the committee, confident that his motives were highly commendable. The report has been referred by the House to a Committee of the Whole, for the purpose of obtaining by a full, fair, and free discussion, two objects—first, to determine whether the charges exhibited are such as the House are willing to prefer against the person impeached; and in order, if they be found incorrect, to make them as perfect as possible. On both these points I invite discussion in the name of the select committee, who brought in this report. At the same time I wish to suggest to my friend (Mr. Boyle) the propriety of re-examining his idea, and ascertaining whether the eighth juror alluded to in the account of Callender's trial is the juror mentioned in the testimony of Mr. Hay and of Mr. Nicholas. These gentlemen mention the juror by name. Mr. Robertson, in his account of the trial, mentioned him by number. Now, if it should appear that the eighth juror was not Mr. Basset, must not the article fall to the ground if the proposed alteration should

take place? I think it one of the strongest circumstances in this article, that a juror was compelled to serve after stating that he had made up his mind as to the criminal offence on the question he was about being sworn well and truly to try. The committee will perceive a considerable variation between the testimony in pages 133 and 56. In the first the writer introduces with a "perhaps it is not improper here to observe," that the eighth juror answered when the previous question was put to him, though he had never read the indictment, yet he had formed an opinion that such a book as "The Prospect Before Us" came within the sedition law. This I believe is the amount of what is said in that page, and it appears from this to be an incidental circumstance only; whereas if you turn to page 56, it is there stated, with the clearest precision, that he was unwilling to serve, because he had made up his mind on the book called "The Prospect Before Us." It does not appear to be drawn from him by the previous question, but it does appear fully and unequivocally to be of his own mere motion, a conscientious scruple to try what he had already passed judgment upon. In my opinion the report is better as it stands than it would be with the alteration, and I submit to my friend from Kentucky (Mr. BOYLE) whether it would not be better to let the article stand, rather than fail before the Senate, if it should turn out that the eighth juror and Mr. Basset are different persons.

Mr. BOYLE had heard no objection but which might be obviated by another amendment; that was, to strike out the name of John Basset, and then it would apply to the juryman who had used the expression; in that case the House might rely in sustaining their impeachment before the Senate upon the evidence as well of page 133 as on that of 56. He moved to strike out "John Basset."

Mr. NICHOLSON did not think it necessary that the words proposed to be stricken out should be struck out. He thought that under the words contained in this article as it stood it would be perfectly regular and proper, even on a trial proceeding before the Senate, to give in evidence the testimony alluded to in page 133. And he had no doubt but the Senate would admit all evidence of this kind to have its proper weight, because it seems to be universally admitted, and has been long understood, that in proceedings by way of impeachment, that technical precision is not required, which is required by our courts of law on indictment. If, however, gentlemen are embarrassed about having this testimony directly pointed, this may be easily come at. They can add it to the article as another count is added to a bill of indictment. This mode is very well known, and may be adopted by those who think it necessary; for his part he did not think it necessary.

Mr. BOYLE withdrew his motion for the present.

The question was now taken on the second article and carried—eighty members rising in the affirmative.

The third article was then taken up by the Committee.

Mr. JOHN RANDOLPH read the following testimony in support of this article, viz:

"When the trial commenced, Col. John Taylor, of Caroline, was introduced as a witness for the prisoner. I believe he was sworn. The counsel wished to interrogate him. This they were not permitted to do until they had stated the points to which his evidence related. They were then obliged by Mr. Chase to reduce the questions which they wished to propound to Col. Taylor, to writing, and then to submit them to his inspection, that he might determine whether they should be propounded or not.

"Col. Taylor's evidence was rejected.

"The ground of this opinion as stated by Mr. Chase was this, that Col. Taylor could not prove the whole of one charge. The charge was, the judge (Chase) said, 'that the President was a professed aristocrat; that he had proved faithful and serviceable to the British interest.' Proving half, he said, was doing nothing; both facts must be proved. It was contended, on the part of the prisoner, that if it was necessary to prove both facts by the same witness, the charge in both points would be proved by the testimony of Col. Taylor. He would prove that Mr. Adams had professed aristocratical opinions, and that he had proved faithful and serviceable to the British interest, in the way meant by 'The Prospect Before Us,' by voting against the sequestration law, and the law suspending all intercourse with Great Britain. The judge (Chase) repeated that the evidence was inadmissible, that the counsel knew it to be so, and that they only wanted to deceive and to mislead the populace."

And afterwards he added the following, viz:

"*Interrogatory 4th.*—Did Mr. Chase refuse to the prisoner the testimony of a witness, because he, the said witness, could not prove the truth of all the facts set forth, and upon which the indictment was grounded?

"*Answer.* After the jury in Callender's case were sworn, Colonel Taylor, of Caroline, who attended as a witness, in consequence of a subpœna served upon him on behalf of Callender, was called to the book and sworn in the usual form. Judge Chase at this moment asked, with considerable haste and eagerness of manner, what the counsel expected to prove by the witness? He was informed that they meant to ask him whether Mr. Adams had not avowed, in his presence, sentiments inimical to a Republican form of Government, and whether he did not, whilst Vice President, give the casting vote in the Senate against the sequestration of British debts, and against the suspension of intercourse with Great Britain. Judge Chase demanded that the counsel should state in writing the questions meant to be asked. The counsel for the defendant opposed this, because, although a number of witnesses had been examined on the part of the United States, no similar requisition had been made with respect to them, because it was contrary to the practice in the State courts, and because, also, it was unreasonable in itself, and calculated to subject every question of fact to the control of the court. Judge Chase, however, insisted that the questions should be submitted to his previous decision. They were accordingly put in writing, and were as follows, to wit:

"1. Did you ever hear Mr. Adams express any sentiments favorable to monarchy or aristocracy; and what were they?

"2. Did you ever hear Mr. Adams, while Vice President, express his disapprobation of the funding system?

"3. Do you know whether Mr. Adams did, in the year 1794, vote against the sequestration of British debts, and for stopping all intercourse with Great Britain?

"After having examined the questions, Judge Chase declared that Colonel Taylor's evidence was inadmissible. He declared that no evidence could be received that did not justify the whole charge. The charge, said he, is, that the traverser said of the President, he is a professed aristocrat, and has proved faithful to the British interest; now you must prove both points, or you prove nothing; and as your evidence relates to one only, it cannot be received—you must prove all or none. This was in substance, and it is believed the precise words in which Judge Chase stated his objection to Colonel Taylor's evidence. The counsel asked the judge whether they could not be allowed to prove part of a charge by one witness and part by another? To this Judge Chase replied, that if the counsel could prove the whole of any one charge by Colonel Taylor, they might do it, otherwise they should not examine him. The counsel contended that Colonel Taylor's evidence applied to the whole of the charge which the judge had stated in his opinion. That they meant to prove by him that the President has professed anti-republican sentiments, and had proved faithful and serviceable to the British interest, in the sense in which those expressions were used in the Prospect. The judge, however, adhered to his determination to exclude the evidence; and Colonel Taylor retired from the court with evident marks of astonishment."

The question was taken upon the third article without a division, and carried.

The fourth article being before the Committee, it was considered by paragraphs.

Mr. J. RANDOLPH.—The testimony in support of the first paragraph has been read on the preceding article; in it is that part of Mr. Nicholas's testimony stating the demand of Judge Chase that the counsel should state in writing the questions meant to be asked.

The CHAIRMAN proceeded to read the second paragraph, and

Mr. J. RANDOLPH read in its support the following affidavit:

CITY OF RICHMOND, *to wit:*

This day James Thompson Callender made oath before me, a magistrate for the said city, that William Gardner, Tench Coxe, Judge Bee, Timothy Pickering, William B. Giles, Stevens Thomson Mason, and General Blackburn, he believes to be material witnesses in his defence, against an indictment found against him during the present term of the circuit court of the United States for the middle circuit, Virginia district: that William Gardner, aforesaid, resides, he believes, in *Portsmouth*, in the State of New Hampshire; that Tench Coxe, aforesaid, resides in Philadelphia, in the State of Pennsylvania; that Judge Bee resides, the deponent hath understood, in South Carolina, but in what part of the State he knows not; that Timothy Pickering, aforesaid, resided of late in Philadelphia, in the State of Pennsylvania, but where he resides at this time the deponent doth not know; that William B. Giles, aforesaid, he hath understood, since he hath been furnished with a copy of the indictment, and since the said Giles hath left town, resides in the county of Amelia; and that General Blackburn resides in the county of Bath.

The said James Thompson Callender further declares, that he expects to prove by the said William Gardner, and that he verily believes that he shall prove by the said William Gardner, that the said William Gardner was commissioner of loans for the State of New Hampshire, under the Government of the United States, and that he was turned out of the said office of commissioner of loans, because he, the said Gardner, refused to subscribe an address circulated in the town of Portsmouth in New Hampshire, and presented to the President of the United States, in the year 1798, at the instance of several inhabitants of the said town; in which address unequivocal approbation of the conduct of the said President in the administration of the United States is expressed.

Second. The said James Thompson Callender also declares on oath, that he verily believes that he shall prove by the evidence of Tench Coxe, aforesaid, that he, the said Tench Coxe, in the year 1798, held an important office under the Government of the United States, to wit, commissioner of the revenue, from which office the said Coxe was ejected by the President of the United States; because he did not approve the measures of his, the said President's Administration, or the principles on which it was conducted.

That he verily believes he shall be able to prove by the evidence of Judge Bee, that he did receive from the President of the United States in the year 1779, a letter in which he, the said President, did advise and request the said Judge Bee, then acting in his judicial character, to deliver to the Consul of the British nation in Charleston, Jonathan Robbins, alias Thomas Nash, who had been apprehended and carried before the said judge on a charge of murder committed on the high seas on board the British frigate Hermione.

He farther deposes on oath, that he verily believes that he shall be able to prove, by the evidence of Timothy Pickering, that the President of the United States was in possession of despatches from Mr. Vans Murray, American Minister in Holland, containing assurances on the part of the French Republic, that ambassadors from the United States would be received in a way satisfactory to the people and Government of the United States, many weeks while Congress was in session, before he communicated the same to Congress.

The deponent further saith, that he verily believes that he shall be able to prove, by the evidence of Stevens Thomson Mason and William B. Giles, that John Adams, President of the United States, has unequivocally avowed, in conversation with them, principles utterly incompatible with the principles of the present Constitution of the United States; principles which could not be carried into operation under any political institution without the establishment of a direct, powerful, and dangerous aristocracy: that he declared, in express terms, to the said Stevens Thompson Mason, that he had no more idea that the present federal Constitution could, for any length of time, control the people of the United States, than that it could control the motions of the planets; that he also declared to the said Stevens Thomson Mason, that he had no more idea that political society could exist without a distinction of ranks, than that an army could exist without officers. And also, that he can prove by the said William B. Giles, that the President of the United States has avowed, in conversation with him, a sentiment to this effect: that he thought the Executive Department of the United States ought to be vested with power to direct and control the public will.

That this deponent verily believes that he shall be

able to prove by General Blackburn that he did, on the —— day of ——, in the year 1798, receive an address from John Adams, President of the United States, in answer to the field officers of Bath county, in which the said President does avow, that there was a party in Virginia which deserved to be humbled into dust and ashes, before the indignant frowns of their injured, insulted, and offended country.

And this deponent further saith, that he is advised and believes that it is material to his defence against the indictment aforesaid, that he should procure authentic copies of sundry answers made by the President of the United States to addresses from the inhabitants of the United States in various parts thereof, which authentic copies he cannot procure, so as to be in readiness for trial, during the present term.

He also saith, that he is advised and doth believe that a certain book entitled "An Essay on Canon and Feudal Law," or entitled in words to that import, ascribed to the President of the United States, and of which he believes the President is the author, is material to his defence, and that he cannot procure a copy of the same, and evidence to prove that the said President is the author thereof, without being allowed several weeks and perhaps months for the purpose.

He farther saith, that he is told by the counsel who mean to appear for him, that they cannot possibly be prepared to investigate the evidence relating to the several charges in the indictment, even if all the persons and documents wanted were upon the spot.

May 28th, 1800. WM. DUVAL.

District of Virginia, 5th Circuit, to wit.

I certify that the foregoing is truly copied from the original in my office.

W. MARSHALL, *Clerk.*

The Committee proceeded to consider the third paragraph of the 4th article.

Mr. J. RANDOLPH.—Under another paragraph, part of the testimony has been read, but the following should be added. Mr. HAY says:

"The counsel, who were associated with me in Callender's defence, attempted to address the jury on the unconstitutionality of the law on which the indictment was founded. They were interrupted, and obliged, by Mr. Chase, if not ordered, to sit down. I then addressed Mr. Chase himself, with a view to satisfy him, that I had a right to discuss this point before the jury. I told him that what I was then about to say, was intended for the court alone. He interrupted me; he asked some question which was answered; in a very short time, after I had resumed my argument, I was interrupted again by Mr. Chase. How often I was interrupted I know not; but I was interrupted, rudely interrupted, several times. Having seen in the course of this trial what I had never seen before, having felt what I never felt before, and what I certainly expect never to feel again, and being impressed with a belief that Mr. Chase was determined to silence me, if he could, my mind was overwhelmed by *conflicting sentiments*, and I quitted the bar, my client, and the court."

When the question was about to be put on agreeing to the whole of the 4th article—

Mr. MOTT rose and remarked that he was not here when the committee on this subject reported at the last session, and of course did not get a copy of the evidence; he had however seen a part thereof in the newspapers and examined so much of the subject as to have satisfied him, that it was proper to vote in favor of two of the articles, to wit, the first and third; but as he had not an opportunity since coming to this place of comparing the articles of impeachment with the testimony on which they were founded, and since he could not make up his mind in hearing the evidence partially read, and as the House have refused to put it off for a short time, and he was not allowed to make the examination for himself, he was obliged to inform the committee, that he was not satisfied to vote in favor of the 4th article, whereas had he been allowed time he might join in a vote with the majority.

Mr. NICHOLSON said all the evidence on the subject of this article had not been read, he would therefor read it himself, as the Clerk was indisposed with a hoarseness.—He read the following:

The additional deposition of Philip Norborne Nicholas, taken before George Wythe, and Joseph Scott, Esquires, under authority of the House of Representatives of the United States.

"The said Nicholas, being asked by the said Commissioners what was the general deportment and manner of Judge Chase during the trial of James Thompson Callender, answered:

"That the general deportment and manner of Mr. Chase, during the said trial, appeared to the said Nicholas to be marked with great violence and precipitation; and that Judge Chase manifested a solicitude for the conviction of the prisoner, which, in the estimation of said Nicholas was improper in a judge sitting in a criminal prosecution. The said Nicholas further states, that the deportment of Judge Chase to the counsel who appeared for Callender was rude and overbearing, and calculated to prevent that full and free defence, without which it was impossible for them to do justice to their client. PHILIP N. NICHOLAS.

"RICHMOND, February 7, 1804."

"*The additional deposition of George Hay, who, being asked what were the manners and deportment of Samuel Chase during the trial of James Thompson Callender? deposeth and saith:*

"That it appeared to him at the time of the trial, and he yet believes, that the manners of Mr. Chase were intentionally rude and insolent. The deponent thought, and still thinks, that Mr. Chase was determined that Callender should, if possible, be convicted, and that to accomplish this purpose, he endeavored to intimidate, to depress, and to silence his counsel. He inrerrupted them frequently with wanton rudeness. He ordered one, if not more, of them to sit down. He charged them with advancing doctrines which they knew to be illegal, and which they advanced, he said, only to deceive and mislead the populace. The patience of the deponent was at length exhausted, and he quitted the court and the cause, under a belief that further exertions in the defence would only tend to cover himself with still greater shame, to subject him to still greater humiliation.

"The deponent believes that there did not escape from him, during the trial, a word or gesture that could have given offence to the judge. The conduct of his associates was, he believes, equally guarded. He does not, therefore, ascribe the insolence of Mr. Chase to irritation occasioned by the conduct of the bar.

The deponent is under no apprehension that his judgment has been much misled by the circumstances attending his own situation. He knows, and can now

name men, whose politics then differed from his own, who expressed their abhorrence of Mr. Chase's conduct, in terms as strong as language could afford. In fact, the public mind was very much excited, and apprehensions were entertained by many, that some serious disturbance might take place. Mr. Monroe, then Governor of Virginia, was so completely convinced of the danger, that he not only earnestly recommended moderation and forbearance to those who were daily crowding about him, but kept his eye constantly on the capitol, that he might be ready to command the peace, at the first appearance of commotion. To him Mr. Chase is probably indebted for the safety of his person during his residence in Richmond.

"The solicitude of Mr. Monroe to preserve order, arose from causes totally unconnected with Mr. Chase. The character of the State, he observed, had never been tarnished by any opposition to the laws, or any outrage on persons clothed with its authority. The preservation of this character at that period, (May, 1800,) was, in his estimation, a matter of infinite importance. He therefore urged and entreated those who he supposed might come into collision with the judge, to be patient under every outrage."

"GEORGE HAY.

"RICHMOND, Feb. 7, 1804."

The question was taken on the fourth article, and carried without a division.

The fifth article was then taken into consideration.

Mr. JOHN RANDOLPH, stated the circumstances upon which this article was grounded. By the thirty-third section of the act of Congress establishing the judicial courts of the United States, it is provided that, for any crime or offence against the United States the offender shall be arrested, imprisoned, or bailed, agreeably to the usual mode of process in the State where such offender may be found; and it is provided by the laws of Virginia, printed in a volume called "The Revised Code of 1794," that the manner of proceeding against persons charged with crimes shall be in one of these two modes; the first, in capital cases, such as treason or felony; the second, in cases not capital. The Virginia laws authorize expressly the isssuing of a *capias*, on which, the body of an offender may be taken and committed to close custody in the first species of offence. In the other case, that is, of offences not capital, this process is not warranted by our laws, which require a different process, viz: a summons, which the court may order the clerk to issue, returnable to the next ensuing court. In the case of Callender, who was presented and indicted for a crime not capital, the circuit court did issue the process which is only warranted in capital cases. To convince the Committee o these points, he read the fifth section of the law of Virginia, page 110, respecting the trial and punishment of crimes, and also section twenty-eighth, page 112. From these regulations, he said, there could not remain a shadow of doubt that the process which was issued against Callender by order of the circuit court, and which is annexed to the articles of impeachment, and which commands the marshal of the Virginia district to arrest the body of J. T. Callender, and bring him forthwith before the judges of the court, was illegal, being contrary to the laws of Virginia, and of course contrary to the laws of the United States.

The question was taken on adopting the fifth article, and carried—71 voting in the affirmative, and 30 in the negative.

The sixth article being under consideration,

Mr. J. RANDOLPH said, the law of Virginia relative to this point having just been read, he would only point to the words which are repeated from that law by the article of impeachment. They evince that the authority of Congress as well as the laws of the State of Virginia, had been both disregarded and contemned.

On the question to agree to the sixth article, the Committee divided, there being 70 in its favor, and 22 against it—it was carried.

The seventh article being before the Committee,

Mr. J. RANDOLPH said it was extracted, almost word for word, from the deposition of George Read, Attorney for Delaware district. The deposition is as follows:

"*First.* To the first interrogatory this deponent saith, that he was present in the character of District Attorney of the United States of America, in and for Delaware district, at a circuit court of the said United States, holden at Newcastle, on the twenty-seventh and twenty-eighth days of June, one thousand eight hundred, in and for the said district, by and before Samuel Chase, one of the judges of the Supreme Court of the United States, and Gunning Bedford, district judge of the United States aforesaid, for the said district.

"*Second.* To the second interrogatory this deponent saith, that he was present in court on the first day of the said court, mentioned in this deponent's answer to the first interrogatory, when the grand jury then and there attending, after having received a charge from the said Samuel Chase as presiding judge, retired to their room, and also when they returned to the bar of the said court.

"*Third.* To the third interrogatory this deponent saith, that the grand jury, through their foreman, upon being asked by the clerk the question stated in the third interrogatory, did answer that they had found no bills of indictment, nor had any presentments to make.

"*Fourth.* To the fourth interrogatory this deponent saith, that the said Samuel Chase did, on receiving the answer from the grand jury, mentioned in this deponent's answer to the 'third interrogatory,' observe to that body, in his hearing, 'That he had been informed or heard a highly seditious temper or disposition had been manifested in the State of Delaware, among a certain class of people, particularly in Newcastle county, and more especially in the town of Wilmington, where lived a most seditious printer, unrestrained by any principle of virtue, and regardless of social order. That the name of this printer was' ——. (Here the learned judge paused a moment, and then observed:) 'Perhaps it might be assuming too much to mention the name of this person, but it becomes your special duty, and you must inquire diligently into this matter.' That although this deponent will not undertake to say that every word as here set forth is precisely what the honorable judge expressed, yet he is perfectly convinced that the language is, for the most part, what was used by the said judge, and the ideas conveyed by him at the time, precisely what the context imports.

"*Fifth.* To the fifth interrogatory the deponent saith, that several members of the grand jury on the behalf of themselves and their brethren, did, as soon as the said judge had closed the observations, detailed in the answer to the fourth interrogatory, then and there earnestly request the court to dismiss them from further attendance on that duty, mentioning to the court, as a reason for the request, that they were generally farmers, and it being the season of harvest, their personal attention was most requisite on their farms. To which the judge replied: 'that the business to which he had called their attention, was of a most urgent and pressing nature and must be attended to, that he could not, therefore, discharge them until the ensuing day, when further information should be communicated to them on the subject he had referred to,' or words to that effect; but this deponent did not at the time hear the judge say that his detaining the grand jury was for the purpose of examining a file of papers, published by the said printer."

On the question to agree to the seventh article, it was carried without a division.

The eighth article being under consideration,

Mr. MOTT rose to move an amendment, which was to strike out the words, declaring that the House "saved to itself the liberty of exhibiting 'at any time hereafter any further articles, or 'other accusation or impeachment against the 'said Samuel Chase," and further, that part which saved to the House "the right of replying to any such articles of impeachment or accusation which shall be exhibited to them." It seemed to him unfair that the House should reserve such a right to themselves. If there is anything more with which he ought to be charged, it ought to be now brought forward, and the accused should be informed at once how far we mean to go, in order to enable him the better to make his defence.

Mr. J. RANDOLPH hoped the gentleman (Mr. MOTT) would not insist upon his amendment. He believed the article stood very well as it was, but, if it be faulty, it has, however, one thing in its favor, it is fortified by precedent, which is of some importance in cases of this nature. He hoped the gentleman, who was a decided friend of the American people, and of the rights of this House, did not wish to abridge the liberties of the one or the privileges of the other, as they had been granted by the people, and had been received by us from our predecessors. He hoped it was not intended that our powers should be less than those who sat here before us, and yet the amendment would be a tacit avowal that they were wrong in making this reservation in the case of the impeachment of Blount, and that we ourselves were wrong in so doing in the case of Judge Pickering. He trusted the House would not agree to the amendment, if it was persisted in by the gentleman.

Mr. MOTT.—If precedents are wrong, they ought not to be our guides, and if we have such precedents the sooner we establish new ones, on other principles, the better. He thought it cruel, as well as unjust, to bring new articles of impeachment against a man when on his trial; a sudden attack, when a man is unprepared, may defeat the best talents and convict an innocent man. He conceived, if they had a design to bring other articles, they ought to do so at the present time; but, if they had not a design, he would ask, why do you reserve a power you do not mean to exercise? He knew it was the practice to make this reservation, and had seen it in New Jersey, but, for all that, he thought it improper and unjust.

The question on adopting the amendment was taken and lost.

The question was next taken on agreeing to the eighth article, and carried in the affirmative.

There were for it seventy-six members, which are more than a majority of the whole House.

Mr. ELLIOT.—Mr. Chairman, as I have voted in opposition to every one of the articles, and shall of course vote in the negative, when they are considered in the aggregate, it is indispensably necessary that I should make a few observations, in order to rescue myself from the imputation of voting, on this occasion, in a different manner from what I did at the last session, although I am already sufficiently justified to my own conscience.

My cool judgment tells me that were I to vote in favor of the present impeachment, in its present form, I must forfeit, in my own estimation, that political character as a republican, which it has been the study of my life to acquire and preserve, and which has hitherto secured me the confidence of a people as truly republican as ever have existed, in any age or nation. It is upon republican principles that I oppose the report. At the last session, I declared myself in favor of the impeachment, so far only as related to the conduct of Judge Chase upon the trial of James Thompson Callender. I considered the conduct of the judge upon that occasion as amounting to a denial of important Constitutional privileges to Callender—the privileges of compulsory process for witnesses, and trial by an impartial jury of his country—and had the Committee taken that strong ground, I must have given it my support. They have, however, abandoned it; and I am decidedly of opinion, that, if the conduct of the judge did not amount to a violation of the Constitution, it ought to be considered as a mere error in judgment; and for errors of judgment a magistrate is not impeachable.

It is not upon any trifling or minute distinction between form and substance, that I found my objections to the second and third articles, but upon what I consider as strong and solid ground. But to the fourth article there are a variety of objections. After having stated in the second and third articles, everything which it was necessary to state, when the strong ground of the Constitution was abandoned, we are presented with the blackest catalogue of judicial crimes that has ever been invented. This article will forever form a phenomenon in the history of impeachments, and command admiration by its wonderful display of the powers of invention, modification, and embellishment. Never have I been more completely convinced that genius is capable of creating anything whatever—that it possesses even magic

powers. We are here presented with a stupendous pyramid of judicial guilt, of which *manifest injustice* forms the pedestal, and *indecent solicitude* constitutes the apex. Judge Chase is accused of manifest injustice, partiality, intemperance, rudeness, vexation, solicitude, &c., &c. If this horrid list of the crimes of a judge is to be crowned by solicitude, if solicitude is to swell the list of new transgressions, I must still be permitted to believe that its decency or indecency has very little connexion with the essence of its criminality. Besides, the conduct of the judge was different at different stages of the trial, and were I to consider his supposed solicitude as criminal, I could not consider the report as consistent with truth unless amended so as to read in this manner: "In manifesting, in the early part of 'the trial, an indecent solicitude, and at its later 'stages, a very decent solicitude, for the convic-'tion of the prisoner, &c." Solicitude is a mere mental operation. Had the judge displayed an anxiety to save the prisoner, he might, with equal propriety, have been impeached as guilty of sympathy or pity.

I cannot vote for the last article without a violation of my political principles. I do not believe that the expression of political opinion is a crime in a Republican Government. I have repeatedly declared that I consider it improper in a judge to read political lectures from the bench: and I have also had frequent opportunities, both on former and recent occasions, of expressing my conviction that the judicial officers ought not to be punished for declaring their political opinions. We ought not ourselves to practice what we reprobate in others, and it is always desirable to carry our own theories into practice.

With these powerful considerations, others of a different nature have naturally mingled themselves, in my own mind, while reflecting upon this important subject. Is there no danger that the feelings and views of party have, imperceptibly to ourselves, involved themselves with our reflections, and that they will improperly influence our conduct? For myself I am disposed to look upon a member of our highest judicial tribunal, upon whom, with correct motives, such an irresistible torrent of public opinion is precipitated, with a favorable eye. It is our duty to endeavor to realize the ancient idea of the blindness of justice. Let us be blind as it respects the man, blind to his political opinions, but eagle-eyed as it respects his crimes. The pure fountain of justice ought not to be polluted with a single muddy particle of the spirit of party.

I have said enough to explain my sentiments and views upon this subject, and I will not trouble the Committee with a repetition of any of my arguments at the last session.

Mr. NICHOLSON inquired of the Chairman whether it would be in order to move an amendment to any of the articles, now they have been severally agreed to.

Mr. VARNUM (Chairman) said the amendments might be moved in the House on agreeing to the report of the Committee of the Whole or in the Committee by a vote to reconsider.

Mr. J. RANDOLPH thought it of importance that if amendments were necessary they should be brought forward in Committee of the Whole, to give gentlemen an opportunity of fuller discussion. In the House, members were trammelled by the rule permitting them only to speak twice on the same question, but here we are free to discuss and debate at pleasure. If an amendment is wished, he would move to reconsider the first article—and he did move it.

It was carried without opposition.

Mr. NICHOLSON then observed, that part of the misconduct of Judge Chase which was complained of had taken place previous to the trial. He would therefore move to make it read by the insertion of the words in italic "the said Samuel Chase *antecedent to and* on the trial of John Fries," so as to cover the whole ground.—Carried.

Mr. NICHOLSON proposed a similar amendment to the fourth article:

"That the conduct of the said Samuel Chase was marked during the whole course of the said trial *as well as antecedent thereto*" "with manifest injustice, partiality and intemperance."

The amendment was lost.

After some desultory conversation it was agreed that the amendment to the first article be altered, by inserting the words *in relation thereto*, instead of those in italic; and a similar amendment was agreed to in the fourth article.

The Committee of the Whole rose and reported the articles as amended, and then the House adjourned.

TUESDAY, December 4.

Two other members, to wit: ABRAM TRIGG, from Virginia, and MATTHEW LYON, from Kentucky, appeared, and took their seats in the House.

Another new member, to wit: ALEXANDER WILSON, returned to serve in this House as a Representative for the State of Virginia, in the place of ANDREW MOORE, appointed a Senator of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

Mr. CLARK, from the committee appointed, on the twenty-third ultimo, "to inquire into the expediency of extending the time for claimants to lands under the State of Georgia, lying south of the State of Tennessee, to register the evidences of their title with the Secretary of State," made a report thereon; which was read, and referred to a Committee of the Whole House on Thursday next.

Mr. M. CLAY, from the committee to whom was recommitted, on the twenty-second ultimo, the bill giving power to stockholders of the Marine Insurance Company of Alexandria to insure against fire, reported an amendatory bill; which was twice read and committed to a Committee of the Whole House to-morrow.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom were referred the petition of Thomas Parker and others,

Directors of the Library Company of Philadelphia, and the memorial and petition of the Board of Trustees of the College of New Jersey, made the following report:

"The Directors of the Library Company of Philadelphia state to the House that they have lately received a valuable collection of books and prints, bequeathed to their institution, by the Rev. Samuel Preston, of the county of Kent in Great Britain, on the importation of which, at Philadelphia, the sum of four hundred and ninety eight dollars and twenty cents is demanded for duties, agreeably to the laws of the United States.

"The President of the Board of Trustees of New Jersey College informs Congress, that, after replenishing their library, (which had been destroyed by fire) in part, by donations and purchases of books, they have been obliged to import a large number of books from Europe, on the importation of which duties have been bonded at New York, under the laws of Congress, to the amount of four hundred and fifteen dollars and sixty-two cents. The object of the petitioners, in both instances, is to be exonerated from the payment of the duties, on their respective importations, and they pray that the bonds given at the custom house may be cancelled.

"It is not within the knowledge of the committee that any duties which have accrued upon any importation whatever have been restored to the importers. To grant exemptions from duty to any institution, or to free any class or body of our citizens from the obligations of their bonds, for money due to the United States, would be going beyond what the committee could venture to recommend to the House. 'All duties shall be *uniform* throughout the United States,' is the peremptory language of the Constitution, and the committee are well persuaded that the petitioners themselves would not, after mature reflection, hesitate to acknowledge, that the Constitution is the paramount law, and that, in granting a privilege to them, to import books free of duty, while the right is denied to others, would be a violation of that justice which is so eminently due to the whole people of the United States; and as, from a late decision of the House, involving the same principle, there can be no reasonable expectation that the petitioners could obtain the exemptions prayed for, the committee recommend that they have permission to withdraw their respective petitions.

The report was agreed to by the House.

IMPEACHMENT OF JUDGE CHASE.

The House proceeded to consider the report of the Committee of the Whole, made yesterday, on the articles of impeachment against Samuel Chase.

Mr. RODNEY had not been convinced of the necessity or propriety of the amendments adopted yesterday in the Committee of the Whole. For his part he was inclined to believe the articles, for every material purpose, correct as they first stood. It will be remembered that in cases of impeachment by a Legislative body we are not tied down to those forms and technical decisions, which in courts of law are so essential. The maxim is, that they may express themselves in the common language of the country, in common parlance, or *loquendum ut vulgus* as it is stated in the books. Therefore the words on the trial of a person include everything relative to the trial; it is so laid down by Lord Hale, and he is followed in the opinion by all the able writers who have treated on this subject to the present day. All arrangements previous to the testimony, and argument, are as much a part of the trial as the arguments of counsel. So that were even technical phraseology required on this occasion, the language of the articles comes up to it in this particular. He hoped the House would refuse its concurrence to the amendments reported from the Committee of the Whole.

On the question for concurring with the Committee, it passed in the negative; so that article the first remains unaltered, and the like fate attended the amendment proposed to article fourth.

Mr. NICHOLSON meant to require that the yeas and nays be taken upon each article separately.

Mr. R. GRISWOLD would cheerfully join in the call, as he wished to record his vote against every part of this very extraordinary proceeding.

The first article being before the House,

Mr. LUCAS wished to ask if it would be at this time in order to propose an amendment to the first article. He was informed by the Speaker that such a motion was in order. He thereupon proceeded to move to strike out what related to the conduct of Judge Chase, in saying "to the disgrace of the character of the American bench." He moved this amendment from an impression that the improper conduct of one judge could not be a reflection upon the proper conduct of another judge. If he was one, he should not consider himself disgraced because his colleague had acted improperly; if then, one cannot be disgraced by another, much less can the whole be disgraced by the improper conduct of one. The word *bench* extends to the whole courts of the United States. He did not like either to use a figurative word for a legal one, such as the word bench for court; he did not rely much upon this, but he thought so serious a matter as that of impeachment ought to be cautiously expressed. Should Judge Chase be convicted on this impeachment, he will be disgraced, but that disgrace will entirely rest upon his own head. He trusted that if his motion succeeded there would still remain enough in the charge to make him highly reprehensible, if found guilty; for it is stated that his conduct was in manifest violation of law and justice, and in open contempt of the rights of juries.

Mr. ELLIOT was pleased with the ingenuity of the gentleman, but he hoped the motion would not prevail, and observed that if they were to have a discussion on every rhetorical flourish, on every trope or figure introduced in the report, they would not get through the business in an age. But the objection against the word bench did not apply, for he considered it one of the most chaste in the whole composition.

On the question the amendment was not carried.

On the question that the House do agree to the first of the said articles of impeachment, it was resolved in the affirmative—yeas 82, nays 34, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, N. R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas Mann Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

On the question that the House do agree to the second of the said articles of impeachment, it passed in the affirmative—yeas 83, nays 35, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, S. W. Dana, John Davenport, Thos. Dwight, James Elliot, Calvin Goddard, Thos. Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

On the question that the House do agree to the third of the said articles of impeachment, it was resolved in the affirmative—yeas 83, nays 34, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George M. Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, junior, Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, David Hunt, Sam'l Hunt, Joseph Lewis, jun., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

The fourth article being under consideration,

Mr. ELMER was not satisfied with that part of the article which charges the judge with criminal conduct in his choice of words in conflicting with the prisoner's counsel; the expressions on both sides might have been unusual and rude, for, from the statement of the trial, it appears that there was some considerable altercation, and he could not see from the evidence how far the conduct of the counsel for the prisoner was correct; perhaps they might have furnished some cause for reprehension, or have excited such a sentiment in the mind of the judge. The other parts of the article he considered of the highest

moment, and should give them his hearty approbation.

Mr. J. RANDOLPH observed to the gentleman, that he might attain his object by moving to strike out the parts he disliked.

Mr. ELMER believed he could reach his object in that way, and thereupon moved to strike out the third and fourth sections of the article.

Mr. JACKSON hoped the gentleman would not persist in this motion, and requested him to cast his eye over the sixth article of the amendment to the Constitution, where he would find that the accused person has a right secured to him on his trial, to be assisted by counsel in his defence. If the counsel are deterred from rendering that assistance by the rude and insolent conduct of a judge, such judge may say peremptorily that counsel shall not be heard. It is the same thing in the end, and whatever way it is brought about, it is a heinous crime on the part of the judge, who may, in this way, become paramount to both the law and the Constitution, if such things are permitted with impunity. In the present case, he deemed the third and fourth sections to be of importance, and trusted that if the mover persisted, he would be defeated.

Mr. ELMER acknowledged that indubitably every man had a right to be heard by counsel in his defence, but a Constitutional declaration on that point did not go to authorize counsel to insult the court; he did not say what was the aggravation or who gave it, but he observed in the testimony that much altercation had taken place between them.

Mr. JACKSON called for the reading of Mr. Hay's testimony, already qouted in Committee of the Whole. It was read again.

Mr. J. RANDOLPH hoped the House would not agree to strike out the paragraphs in question. To those gentlemen of the House who have the pleasure of knowing Mr. Hay, it will be deemed sufficient that he had made the statement just read, in order to be fully impressed with its truth. To those gentlemen who are not acquainted with him, an additional reason may be given for its truth. The fact is, that the conduct of the judge on the occasion stated in the article, was such as to excite universal indignation throughout Virginia, and, it is believed, throughout the United States. To allay this irritation and defend the judge's conduct, it has been supposed that the trial of Callender was published; but, be the motives for publication what they may, it is a matter of great notoriety, that the gentleman who reported it was a violent political partisan for the party then in power; and it was generally understood that the printed report of the cause tended to soften the public feelings which had been excited against the judge by the relation of those who had been present at the trial; and on the point of treating the counsel rudely and contemptuously, it ought to be noticed that the reporter acknowledges he was not present on the first days of the trial. That it was not an unfavorable detail of Judge Chase's conduct, might be inferred from this circumstance—that the committee sent for this testimony on the suggestion of a gentleman from Connecticut. But even this report of the trial establishes, beyond a doubt, all the allegations in the part moved to be stricken out; and when you recollect the time it was published, and the appearances at that time, it cannot be supposed it was meant to criminate him. No; it was meant to rescue him from popular odium. Mr. Wirt, one of the counsel, on addressing the court, was interrupted by Judge Chase in these words, "take your seat, sir, if you please." Is this the usual language from the bench to the bar? Let the Clerk read that account of the trial, and you will find it a tissue of damning evidence of every fact set forth in the article.

The question on the amendment was taken and lost.

On the question that the House do agree to the fourth of the said articles of impeachment, it was resolved in the affirmative—yeas 81, nays 34, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwin, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, James Mott, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, junior, Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

The fifth article being under consideration,

Mr. JACKSON declared himself opposed to this article, and asserted that the testimony did not support it. He had read and investigated the act of the Assembly of Virginia, and found that the section relied upon was susceptible of another construction. He quoted the words of the act,

and added, here we find that the court may order the clerk to issue a summons, or other proper process. These words are suppressed in the article under consideration. It is a known maxim in courts of conscience, that the suppression of a truth, or the suggestion of a falsehood are equally weak and wicked. And it ought to be deemed equally improper for us to suppress a truth, or allege a falsehood, in so solemn a transaction as that of an impeachment. If after the word "summons," in the article, we were to insert the words "or other proper process," it might go a great way toward altering the opinion of members. What other process can issue beside a summons? If you will not trust a summons, you will take the body; this is a capias. If there be no other than these two writs, it was in the discretion of the judge to order a capias. If a person commits a great crime, though not capital, a capias may be the proper process; for a summons will only be a notice to the party to run off. He, therefore, could not agree to the first part of the article, and the latter part was left unsupported if the other failed. If the court had a right to award a capias, it necessarily followed that the party must be arrested if found, and, if arrested, he must be committed to close custody, or give bail for his appearance; there is no other mode of avoiding imprisonment upon arrest. Has there appeared any proof that Callender made an application to be bailed? If he did not, he could not be refused by the judge. Nothing of this kind has been heard in proof, and until then we ought to withhold our assent to the latter part of the article.

Mr. NICHOLSON.—The laws of Virginia relative to this point, if he recollected rightly, were that, in capital cases, a capias is ordered to issue for the apprehension of the offender, but in cases of crimes, less than capital, a summons, or other process shall issue. What is the practice in that State? He had never understood that it was the practice there to issue a capias for the apprehension of small offences, but a summons to answer at the next court after the presentment.

Mr. J. RANDOLPH.—My friend (Mr. NICHOLSON) is not mistaken in the law; and the practice, so far as he knew it, was what every reasonable man would suppose it ought to be, that is consonant with the law itself. There are two distinct species of crimes, one capital, the other not capital. The first species is divided into treasons and felonies. The second contains all other lesser crimes. For the first, it is mentioned in the law itself that a capias is the proper process; but in the second it is to be by summons, or other proper process, to the next court. By confining the writ of capias to capital cases it also infers that a capias is not a process in cases under capital. If the court awarded a capias, then, in Callender's case, they did what the law did not authorize them to do, and which the practice in our State courts did not warrant. Instead of this defence of the judge, he suspected the defence would be exonerating the judge at the expense of the clerk, who issued the writ; that being the act of the clerk, they would not hold the judge responsible therefor. It will be recollected that the capias issued after the indictment was found, and that the prisoner was tried in the same term. Mr. Hay, in his testimony, sets this matter in a very clear point of view. The capias was issued by the clerk on the award of the court, at the instance of the prosecuting officer. If, concluded Mr. R., there is one article I put more reliance on than another, this is the very article.

Mr. BECKLEY, the Clerk, read extracts from the laws of Virginia on these two points.

Mr. JACKSON agreed that the conduct of the judge in ruling the party to trial at the same term, he was presented, was a high-handed, arbitrary proceeding; but that is the charge contained in the sixth article which he much approved of, and should certainly vote for. But he had not been influenced, by anything said, to change his opinion; he should, therefore, vote against the fifth article.

Mr. ALSTON observed that the laws of Virginia spoke only of presentment; "that, upon present-'ment by any grand jury of an offence not capital 'the court shall order the clerk to issue a sum-'mons for the party to appear and answer such 'presentment at the next court." Callender was indicted, and there being a difference between presentment and indictment, it appears that the court had a discretion as to the time of trial; this however seemed to him to be the case.

Mr. J. RANDOLPH replied by reading the warrant, annexed to the articles of impeachment, in which are the words "to answer a certain presentment found against him (Callender) by the grand jury."

On the question that the House do agree to the fifth of the said articles of impeachment, it was resolved in the affirmative—yeas 70, nays 45, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Phanuel Bishop, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, Rich'd Cutts, John Dawson, William Dickson, John B. Earle, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Andrew Gregg, J Hasbrouck, J. Heister, David Holmes, Walter Jones, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, Joseph Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, junior, Silas Betton, William Blackledge, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Tho-

mas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, James Holland, David Hough, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, Erastus Root, John Cotton Smith, John Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Marmaduke Williams.

The sixth article being under consideration,

Mr. RODNEY.—As I intend to vote against this article of impeachment, I mean to assign my reasons in as few words as will enable me to be clearly understood. It has been admitted, on all sides, that such interesting proceedings as that in which we are engaged should be conducted with calmness and temper, void of every sensation arising from hostile passions; but particularly when we consider all the circumstances connected with the object of this impeachment—a man of talents, placed in an eminent elevation of office, qualified to ascertain the bearing of your evidence and testimony—too much caution cannot be used, and gentlemen are justified in their minute examination into the relation between the charges and testimony upon which they are erected.

I consider this article objectionable, because there is concealed within it a principle pregnant with mischief to this country; if it be adopted, it will go to establish a principle most dangerous and oppressive. It goes so far as to say that the courts of the United States have criminal jurisdiction at common law. If gentlemen will attend to the article, they will observe that it cites the act of Congress establishing the judicial courts of the United States so far as relates to the regulations of the several States, and they are enacted to be the rules of decision of those courts in trials at common law; and then it goes on to charge Judge Chase with violating this very act. It is the act of Congress which gives life to the act of Virginia in the United States courts, and it says that the statute shall be enforced as on trials at common law. The first inquiry will be, what was the meaning of the Legislature in using the expressions "in trials at common law;" and to ascertain whether Callender was tried by the common law, or under the sedition act? Law writers are not more clear, precise, or correct, on any subject, than they are in their definition of the common law; it is the unwritten law, as contradistinguished from the statute law. A gentleman suggests to me that the common law mentioned in our statute is merely to mark the difference between our admiralty and maritime jurisdiction. We usually refer to English authorities for an explanation of the technical words we borrow from them, and there we find that the common or unwritten law is so called to distinguish it from statute law; and this is the broad line laid down by Virginia herself in a declaration of her Legislature, drawn up by one of the greatest statesmen that ever that or any other country produced. They declare that the United States Government has no common law jurisdiction. All their powers must be exercised in virtue of some statute made under the conditions of the Constitution. In casting our eyes over the Constitution we shall not find a syllable of the words "common law;" the first time it appears, it is in the seventh amendment, relating to debts exceeding twenty dollars.

The judiciary bill refers to the civil jurisdiction of those courts, in cases between foreigners and citizens; but there is no where to be found a word that gives to the United States criminal jurisdiction at common law. Mr. Chase held this opinion himself, as you hear from the affidavit of Mr. Read, who, observing the attack upon Judge Chase in the Wilmington Mirror, reminded him that the sedition act did not protect the judges from libel; they had no cognizance thereof, and it could not be punished but through the State courts. Even in England they paid respect to this distinction. The first trial of Rinewick Williams, commonly called the monster, for his abominable wickedness, in cutting women as they passed him in the street; he was indicted under a particular statute, judgment was successfully arrested, though he was afterward indicted at common law for assault and battery, and convicted.

To make the allegation conform to the principles, it should be said that Callender was tried by the common law. Where was the authority at common law? Callender's was not a civil case, between a citizen of another State and himself. No; it was a criminal case, under a particular statute, and he was tried by statute law, not by the common law. He was confirmed in this opinion by the report of the case, where it appears that such eminent men as Mr. Hay and Mr. Nicholas preferred to rely upon an affidavit for a postponement rather than bring forward the statute of Virginia, alleged to be decisive; they would hardly leave their client in the discretion of the court, when they had the strong language of the law that they should not try the cause at that term; their talents and vigilance forbid us for a moment to entertain the idea that the matter had escaped their notice or recollection.

These are the principal reasons which induce me to vote against the sixth article now under our consideration.

Mr. J. RANDOLPH said, if he agreed in the construction which his friend from Delaware contended for, he would not be the last man to join him against the article. He would not support any act that would tend to sustain the pretension that Congress have criminal jurisdiction in common law cases. If this construction could in any wise be put on this article, he here entered his protest against it, as well as against the doctrine itself. One of the first acts of the General Government was, to establish judicial courts on the part of the United States; and let it be recollected that, besides the great national power vested in the courts by the Constitution, there were others vested in them of a peculiar nature. Their authority extended to cases between a State and

citizens of another State—between citizens of different States, and foreign States, citizens or subjects. It was enacted that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require, shall be regarded as the rules of decision in trials at common law. It has always been held as a sound rule of construction that all the words ought to have efficacy, and, when this law of the United States gave life and vital spirit to the law of Virginia, it provided that in all cases at common law the rule of the State should govern, but, in cases under a statute where rules of decision are otherwise provided, the law of the State shall not govern. Congress saw in the outset the necessity of carrying into effect that great Constitutional power of establishing courts and regulating their mode of procedure. Instead, however, of establishing any mode of their own, they adopted the modes already existing in the several States, and there is no other mode except in cases of admiralty and maritime jurisdiction. If the laws of the State where the offence has been committed does not apply, what possible rule of procedure or decision could govern the court? In what manner is a criminal trial to be conducted? The 34th section, under any other construction, becomes absurd and nugatory. He did believe, that, by the 33d and 34th sections of the act establishing the judicial courts, the laws of the several States have been adopted by Congress in criminal as well as in civil cases.

But the gentleman from Delaware asks us how we can believe this to be the just construction, when the able counsel assigned to the defence in this case failed to produce this law to the court, which would have procured them the direct attainment of their end, without applying to the discretion of the court? To this he answered, he could not tell why they omitted to bring forward this objection. This was not his concern. It might, perhaps, have escaped their memory. But will it be an objection, that, because they failed, we also should fail, who think this law has been violated. That the law of Virginia was the rule of conduct adopted in this case, is proved by every preliminary as well as subsequent step. If, then, they did not make this exposition of the law of the United States, why was the trial, in all other parts, conducted consonant with the laws of Virginia. He stated the case in another point of view. Although there is no common law jurisdiction of the United States in criminal cases, yet there is in each State a peculiar common law generally drawn from England, but varied so as to suit their purposes. Suppose Virginia had never modified the common law of England as it relates to the law of descents, and suppose a claim brought in the United States court by a citizen of North Carolina for a tract of land in Virginia, (it will be admitted that Congress can make no law in relation to descents,) how is the court to be governed?—by the law of descents in North Carolina, or by that of Virginia, or by the common law of England? Certainly they must conform their decision to the rule of Virginia, where the land lies. Take this common law doctrine, then, in any other sense than as being in contradistinction to our admiralty and maritime code, and it has no basis for common law jurisdiction; Congress have none in criminal cases, as all such cases must be constituted crimes by a statute of Congress, previous to their perpetration, and a statute or written law is the opposite of common, which is an unwritten law, made up of usages, time immemorial. If it was established that this article tended in any shape to establish the exploded doctrine, that the United States had common law jurisdiction in criminal cases, he would readily vote against the article.

Mr. NICHOLSON entertained no doubt but the term of common law expressed in the statute establishing the courts of the United States, was used as a term of definition, and that it ought not to be construed to give the courts any additional jurisdiction, nor to abridge them of any they possessed. He observed in other parts of the law, that the words common law are used to distinguish that mode of procedure from what was used in our courts of admiralty. In England, they had three district courts governed by three distinct modes of proceeding, under three laws. The common law courts, or the courts at Westminister, and the chancery court, are governed by the common law. The admiralty courts are governed by the civil law, and the ecclesiastical courts by the ecclesiastical law; but all and every one of these are governed by the statute law. But in their mode of proceeding, each has its own peculiar rules, yet they are all bound to conform to a statute, as if a statute had originally given them jurisdiction. In our own courts, he believed, it would be difficult to conduct trials without some provision as to the mode. Bills of exchange and promissory notes were not made current until the time of Queen Anne. The suit on these actions is still at common law, as was the case mentioned in the article. And, with the gentleman from Virginia, he asked in what manner a criminal can be prosecuted but by the rules of the common law, unless you have him to be tried by such arbitrary ones as the court may make at the time, in order to suit their own purpose? If it be true that we have no rules of proceeding established for our courts of justice, it is high time to set about making them. But the fact is, that rules are established, and the reason why they were established in the manner they are, is, that in this way Congress expected, and justly too, that they would give more satisfaction to their constituents to leave them to the rules of proceeding they had long been accustomed to, than they would by introducing a novel set of their own contrivance. And he sat down fully convinced that the circuit court was bound to proceed through the whole case by the rules established in Virginia.

The sixth article was agreed to—yeas 73, nays 42, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, George M. Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay,

Matthew Clay, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Samuel Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Christopher Clark, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Cæsar A. Rodney, Erastus Root, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Peleg Wadsworth, and Marmaduke Williams.

On the question that the House do agree to the seventh of the said articles of impeachment, it was resolved in the affirmative—yeas 73, nays 38, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George M. Bedinger, Adam Boyd, John Boyle, Robert Brown, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Nehemiah Knight, Simeon Larned, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, Wm. Blackledge, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, Joseph Lewis, jr., Henry W. Livingston, Thos. Lowndes, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Peleg Wadsworth, and Marmaduke Williams,

The eighth and last of the said articles of impeachment, being again read at the Clerk's table, a division of the question on the same was called for; and on the question to agree to the first member of the said eighth article, in the words following, to wit:

"ART. 8. And whereas mutual respect and confidence between the Government of the United States and those of the individual States, and between the people and those Governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of his judicial character, did, at a circuit court, for the district of Maryland, held at Baltimore, in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury then and there assembled, on the matters coming within the province of the said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland, against their State government and constitution—a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the Supreme Court of the United States; and, moreover, that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland, against the Government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time, and as delivered by him, highly indecent, extra judicial, and tending to prostrate the high judicial character with which he was invested, to the low purpose of an electioneering partisan:"

It was resolved in the affirmative—yeas 74, nays 39, as follows:

YEAS—Isaac Anderson, John Archer, George M. Bedinger, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Jos. Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jr., Simeon Baldwin, Silas Betton, William Blackledge, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W Dana, John Davenport, Thomas Dwight, John B. Earle, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, David Hough, Samuel Hunt, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Peleg Wadsworth, and Marmaduke Williams.

On the question that the House do agree to the second member of the said eighth article, as contained in the last clause of the report made by the Committee, in the words following, to wit:

"And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any farther articles, or other accusation or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and offering proof to all and every the aforesaid articles, and to all and every other article, impeachment, or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials, and judgments, may be thereupon had and given, as are agreeable to law and justice:"

It was resolved in the affirmative—yeas 78, nays 32, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, William Blackledge, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, Frederick Conrad, Jacob Crowninshield, John Dawson, William Dickson, John B. Earle, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, James Gillespie, Peterson Goodwyn, Edwin Gray, Andrew Gregg, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Patterson, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, Samuel Hunt, Joseph Lewis, jun., Henry W. Livingston, Nahum Mitchell, James Mott, Thomas Plater, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, and Peleg Wadsworth.

And then the main question being taken that the House do concur with the select committee in their agreement to the said articles of impeachment, as originally proposed, and hereinbefore recited, it was resolved in the affirmative.

Mr. NICHOLSON moved the following resolution:

Resolved, That —— Managers be appointed, by ballot, to conduct the said impeachment on the part of this House.

The House proceeded to take the said motion into consideration; when, an adjournment being called for, the House adjourned.

WEDNESDAY, December 5.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be directed to inquire whether any, and, if any, what, further provision is necessary to be made, by law, for carrying into effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain, so far as relates to exemptions from duties, charges, and fees, arising upon the whole or any part of the cargo of such Spanish vessels as may be wrecked, foundered, or otherwise damaged, on the coasts or within the limits of the United States, where, from the insufficiency of the vessel, it becomes necessary to export or relade the same upon our bottoms, and that the committee have power to report by bill or otherwise.

IMPEACHMENT OF JUDGE CHASE.

The House resumed the unfinished business of yesterday, viz: the appointment of Managers to conduct the impeachment of Samuel Chase, one of the Associate Justices of the United States, and having directed that the number should consist of seven, the House proceeded to ballot for the same; and upon examining the ballots the following six members were elected, having a majority of the whole number of votes, viz: Mr. J. RANDOLPH, Mr. RODNEY, Mr. NICHOLSON, Mr. EARLY, Mr. BOYLE, and Mr. NELSON.

The House then proceeded to ballot for the seventh Manager, and it appearing that Mr. G. W. CAMPBELL had the plurality of votes given in, but not a majority,

The SPEAKER, supposing that the rules of the House in the case of committees chosen by ballot was applicable to that of Managers, declared Mr. G. W. CAMPBELL duly chosen.

A conversation arose respecting the precedents on this subject, in which it was apparent that on all former occasions a majority of the votes had been given in favor of each Manager; but this appeared in the instance of the impeachment of Judge Pickering, rather from the recollection of gentlemen who spoke on the subject than from the Journal.

Mr. Speaker had not recollected how the election was conducted, but he should not regret an appeal to the House on his decision.

Mr. J. Randolph, impressed with respectful sentiments of the understanding and integrity of the Speaker, would be the last man to appeal from his decision; but for the purpose of preventing what either had heretofore taken place, and what may hereafter take place, in case of such decisions, involving the House or individual members in very unpleasant situations, he would move an appeal to the House from the decision of the Chair.

The question was immediately taken, and 25 voted in favor of the Speaker's decision, 50 voted against it; of consequence, the decision was reversed.

And the House proceeded to ballot a third time, but no member had a majority. At a fourth ballot the result was the same. On the fifth ballot Mr. G. W. Campbell had a majority, and was declared to be duly elected.

On motion of Mr. Nicholson, it was

Resolved, That the articles agreed to by this House, to be exhibited in the name of themselves and of the people of the United States, against Samuel Chase, in maintenance of their impeachment against him for high crimes and misdemeanors, be carried to the Senate by the Managers appointed to conduct the said impeachment.

Ordered, That a message be sent to the Senate to inform them that this House have appointed Managers to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, and have directed the said Managers to carry to the Senate the articles agreed upon by this House to be exhibited in maintenance of their impeachment against the said Samuel Chase; and that the Clerk of this House do go with the said message.

Thursday, December 6.

The Speaker laid before the House a letter from the Governor of the State of Virginia, enclosing a return of the election of Alexander Wilson, to serve in this House, as a Representative for the said State, in the place of Andrew Moore, appointed a Senator of the United States; which were referred to the Committee of Elections.

Mr. Claiborne, from the committee appointed on the sixteenth ultimo, presented a bill making farther provision for extinguishing the debts due from the United States; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Nelson, from the committee to whom was referred on the nineteenth ultimo, the petition of Samuel Carson, of the town of Alexandria, in the District of Columbia, made a report thereon; which was read, and considered: Whereupon,

Resolved, That a bill be brought in, agreeably to the prayer of the said petition; and that Mr. Nelson, Mr. Jones, and Mr. Thatcher, do prepare and bring in the same.

A Message was received from the President of the United States transmitting a report of the Surveyor of the Public Buildings at Washington. The Message was read, and, together with the papers, ordered to lie on the table.

PRESERVATION OF PEACE.

The House resolved itself into a Committee of the Whole on the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

Mr. R. Griswold had doubts respecting the propriety of several parts of the second section, and he wished the gentleman who reported the bill would explain the intention of them. If he understood it, the section made a provision for the warrant of the State officer to arrest an offender who shall have fled on board an armed foreign vessel, and in order to give aid to the process of the State, provision is made to call in the United States authority, to call out the militia to secure the execution of a State warrant. The Constitution gives to Congress the power of calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. Here is an express authority given to Congress to aid civil officers by the militia in executing the laws of the Union; but it is silent as to the calling in the aid of the militia to execute the laws of a particular State. If there is any part of the Constitution from which gentlemen infer that Congress possess authority, he would be glad they would point it out, as he had never heard of it before.

Another part of which he doubted was this. He had already said that the State officer was to be aided in the execution of a State warrant beyond the jurisdiction of the State; if the officer goes out of his jurisdiction he goes beyond his authority; consequently he acts without any authority. Now the last part of the section declares that if any person shall be killed in resisting the civil authority in a place not within the body of the county, but within the jurisdiction of the United States, it shall be justified. Why introduce this provision? Again, it is declared that if any of those concerned in making the arrest be killed in the place not within the body of a county, but within the United States jurisdiction, those engaged in resisting the civil authority shall be punished as in cases of felonious homicide. The sheriff not being invested with any power to make arrests out of his proper county, if he does so, and commits homicide, why justify him? Why should he not be subjected to the same punishment as others who commit the crime of homicide? If the sheriff, or one of his party, following a person out of his county into some other place within the jurisdiction of the United States or any other place out of the limits of his legal bounds, and is resisted in making his arrest, the arrest being illegal and without the county, the resistance may be legally justified. If these objections are unfounded, the gentleman will be good enough to show in what; and at the same time we shall be glad to hear what are the reasons for the propositions contained in this part of the bill.

Mr. Nicholson admitted there might be some difficulty in the provisions of the section, but he flattered himself they might be got over. He considered this as the most important part of the bill, and he wished to preserve it in order to prevent or punish in future the offences which had last year been committed with impunity. From the information he had received, the greater part of the offences committed last summer were committed in the body of a county; those particularly which universally excited the most indignation of the citizens of the Union, were committed either in the body of a county or within the jurisdiction of a State; some were committed within the jurisdiction of the United States, but the greater part were committed in the places before mentioned. Hence, it becomes necessary that some provision should be made for taking offenders, when the strength of a county or State is insufficient to arrest them. The objections of the gentleman from Connecticut are two-fold; first that we have no Constitutional authority to call out the militia to execute the State laws; next, that a State officer has no authority to go beyond the jurisdiction of the State to execute his State process. On the first point Mr. N. had entertained strong doubts himself, when contemplating the subject; but on looking into the Constitution again, there did not appear to be so much room for doubting as he had first apprehended. The Constitution provides that Congress shall have power to call forth the militia to execute the laws of the Union, &c. The laws of the Union may be exclusively considered the laws passed by Congress. But may not the laws of every State be also considered as laws of the Union? Every State forms a part of the Union. How far a State has the power to call out the militia for the purpose of executing its State laws, he could not determine, but it appears that Congress have the power to call forth the militia, not only to execute the laws passed by Congress for the whole Union, but to execute the laws passed by each State, as each State is a part of the Union; the whole forming one confederacy, the whole are interested in the due execution of the laws of each.

The subsequent part of the Constitution provides for suppressing insurrection; and he asked if insurrections might not be against the authority of the State, as well as against the United States, and he further asked if a resistance to the civil authority about to execute process may not be termed an insurrection, when a process is issued under the authority of a State, as it would be, if the process issued under the authority of the United States. If the Northampton insurrection had arisen from opposing the execution of process from the State of Pennsylvania under its own laws, instead of opposing the process issued from the district of Pennsylvania under the law of the Union, would it not have been as much an insurrection against the authority of the State, as it was against the United States? He thought, upon the fullest consideration he had been able to bestow on the subject, that in passing this section we should not overleap the boundary of the Constitution, believing the laws of every State to be a part of the laws of the Union.

The second objection may perhaps excite some doubts in the minds of some gentlemen; but he begged leave to suggest a case that might happen, and probably will happen, in which he thought a State officer would be justified in going beyond the boundary of a State to execute his process. The body of the county of New York extends upon the water to the northeast end of Staten Island; from there to Sandy Hook, is not in any county, but within the jurisdiction of the State. If the crew of a vessel lying below Staten Island should come up to the city of New York and commit outrages upon the citizens—say, should perpetrate murder, this is an offence against the State; the United States could issue no process in this case. The State officer therefore issues his; the sheriff proceeds to serve it, the crew leap into their boat, push off, row down below Staten Island and get on board their armed vessel; would not the sheriff be authorized to pursue them, even if they went without the Hook? He believed he would be justified in doing so; but he acknowledged it would not be proper to pursue them into Jersey; because the Constitution makes provision for the pursuit of fugitives from justice seeking an asylum in another State; but he might pursue and take the offender within the limits of the United States. He is offending against no jurisdiction, but pursuing an offender against a State law, which is a part of the United States. To illustrate farther, he stated that Congress had the right to authorize a State officer to execute State process within the territory of the United States. Have they not the power to authorize an officer of the State of Maryland or Virginia to execute a State process within the Territory of Columbia? There is nothing in the Constitution, nor in the acts of cession, that prevents us. If then we authorize State process to run into the District of Columbia, shall a murderer or fugitive from justice take refuge here, and escape punishment, because he is beyond the limits of the State in which the offence was committed? He trusted that such a result would not be contended for: but that every gentleman would aid the object of the bill, which was to prevent in future the commanders of foreign armed vessels from insulting American shipping in our ports and harbors, or in the waters under the jurisdiction of Congress.

Mr. R. Griswold.—The remarks of the gentleman have not proved to my mind that I was mistaken. He supposes, in respect to the first idea I suggested, that Congress has a right under the Constitution to call out the militia to execute the laws of a State, because a State being part of the Union, so are its laws a part of the laws of the Union. If this proposition is true, if the laws of a State are the laws of the Union, they must bind the Union, for it is the nature of laws to bind those upon whom they operate. Now will that gentleman tell me that the laws of a particular State are obligatory upon the whole Union? The

Constitution does not bear along his idea; it only means that the laws passed by Congress are the laws of the Union. Of course no power is given by the Constitution to call forth the militia to execute the laws of a particular State. He conceives that under that part of the Constitution making provision against insurrections, Congress might call forth the militia to suppress an insurrection against the authority of a State. Be that as it may, this bill does not contemplate calling out the militia for that purpose. It merely confines itself to the execution of a magistrate's warrant; therefore that part does not authorize the passing of a law of this kind. Mr. G. was aware that the militia might be drawn out to aid the civil arm, where it could not effect its object with the assistance of the *posse comitatus*. But he had always thought that the Executive of the State authority was the proper organ to call forth the militia to execute their own laws. And are the States to be now deprived of this power? By the Constitution, Congress have the power of organizing, arming, and disciplining the militia, and of governing such part of them as may be employed in the service of the United States; but to the States is reserved the appointment of officers, and training, and he had ever understood that the States had the right of commanding their own militia and calling them forth to execute their own laws. This being the case, where is the necessity for Congress undertaking to legislate on this point? The States having competent authority for the purpose, why not leave it to them? If any States should think it necessary to call out the militia, they could do it with as much despatch and as effectually as the United States; and all of them, he believed, had laws for the purpose. If any of them had not, they would soon pass them if they saw their necessity.

To the second objection the gentleman has replied; but it cannot be conceived that a sheriff having a warrant can ever be justified in going out of his jurisdiction to execute it. He admits that the warrant shall not run into the State of Jersey; not because the Constitution provides for reclaiming the offender, but because the jurisdiction of New York does not extend to the State of New Jersey. If this is a reason in that case, it must be a reason in this, and a sheriff cannot go within the jurisdiction of the United States to execute his warrant any more than he can go into that of a neighboring State. It is, perhaps, competent to Congress to pass a law to return an offender that has fled from justice within their territory; but they cannot extend the State process beyond what the State itself directs. They may, perhaps, be authorized under the authority of exclusive legislation, to pass a law directing offenders who seek an asylum in the District of Columbia, to be delivered up to an offended State. But that is not the object of the present bill, nor is there any provision of the kind contained therein. Entertaining these sentiments he moved to strike out the second section.

Mr. Nicholson.—The gentleman does not consider the laws of the particular States as part of the laws of the United States, because they are not obligatory over the whole Union. Mr. N. alleged that a law passed by a State, conformable to its constitution, was as obligatory over all the people of the Union who went into that jurisdiction, as a law passed by Congress was obligatory over the whole people who resided within the United States. The laws passed for the government of the District of Columbia were also binding over the whole Union, though they did not operate upon any person but those who are within the ten miles square. So the laws of every particular State are binding on the Union *pro tanto*, for as much as they extend to. But the gentleman makes no remarks upon my second observation, that the United States have a right to allow the officers of a particular State to execute their warrants within the exclusive territory and jurisdiction of the United States. The Constitution does not prohibit us from exercising this authority any more than the constitution of any State prohibits its Legislature from granting a similar indulgence to its neighbor. If New Jersey was to pass a law authorizing the officers of New York to pursue an offender and arrest him in the State of New Jersey, could it be complained of, or would it be said that the act of a sheriff making such an arrest was illegal, and that resistance would be justifiable? In fact, Virginia and Maryland have actually such a mutual regulation, and a person escaping from justice may be arrested by the officer under process from either State.

Mr. J. Randolph said there undoubtedly were difficulties arising out of this subject, but generally they had been satisfactorily answered by his friend from Maryland, (Mr. Nicholson.) The situation of the United States in relation to the individual States, it is well known, differs from that of every other Government under the sun. The waters in our harbors are generally under the jurisdiction of the State Governments, while the mouths of those harbors are under the jurisdiction of the United States. And if the position is true that the United States cannot authorize a State officer to execute his process, when an offender shall have escaped into the waters under the United States jurisdiction, the case is irremediable. And it will be known that the most daring outrages committed within a State are to be passed by with impunity if the criminal escapes beyond the State boundary into that of the Union. This was a doctrine to which he never could accede. He saw no good reason why a State might not as well have the privilege granted of executing its process within the jurisdiction of the United States, as of reclaiming offenders flying from justice into other parts of the Union. He deemed it prudent to fortify the arm of the State with the strength of the United States. There is, however, one part of the clause that had not been satisfactorily supported to his mind. He did not understand how the Congress could enjoin it upon a magistrate to call out the militia to execute a State warrant. He was not satisfied either as to the right, the constitutionality, or propriety of the measure. The Constitution, when it speaks of

calling out the militia, confines the object to three things: to execute the laws of the Union, to suppress insurrections, and repel invasions. Congress may call forth the militia to execute the laws of the United States, but not to execute the laws of a particular State. The States individually have the right to call forth the militia of their own States to execute their own laws, and the United States have also the power to call forth the whole militia of the United States to execute the laws of the Union. He had no doubt of the propriety of giving the States authority to execute their process within the limits of the United States jurisdiction; but he doubted extremely the authority of Congress to call out the militia for the purpose mentioned in the bill; that he conceived to belong to the State authority, and the State alone was competent to its execution.

The doctrine of the gentleman (Mr. R. Griswold) on another point was not so correct. It will be recollected that the individual States could neither raise an army nor create a fleet; yet armed vessels may commit, in our waters and in our ports and harbors, the most violent outrages upon the persons and property of the citizens; and this miserable quibble is to enable them to elude a nation's justice. We cannot, we are told, extend the jurisdiction of a State, nor aid her with the national force; surely the lives and fortunes of our citizens are not thus tamely to be sacrificed.

Suppose murder to be committed in the harbor of New York by a citizen or a foreigner not belonging to an armed vessel. This may be considered as a crime against the State, and which the State authority is competent to punish. But if murder is committed by the crew of an armed vessel, is not such an armed force equivalent to an invading foe? If a man came from Canada into Vermont, and was to commit a similar outrage, would not the civil power of the State apprehend him, and punish him with death, if his crime was of such enormity as to require it? And shall an armed vessel be permitted to outrage the person and property of our citizens on the Atlantic shores because she has the strength? He would be glad to see a remedy more complete than the one mentioned in this bill. He would like to see such a force repelled by force, not by the civil arm. He would like to see the armed vessels employed in disturbing our peaceable commerce blown out of the water. He wished to see our American officers and seamen lying yard arm and yard arm in the attack, and the question of peace or war staked on the issue, if the conduct of such marauders was justified by the Government of the nation to which they belonged. This language may appear different from what he had constantly used; but our situation was also different. Heretofore he was not disposed to engage in hostilities for the protection of our navigation; but we then had no maritime force. We have since created one. If we had no Navy, we could not meet them on the ocean; but having one, he would apply it to the best purpose—that of efficaciously defending our ports and harbors—and would struggle till the whole of our marine was annihilated, if in the contest Britain should not leave us a single ship. Though we lost all, we should not lose our national honor; though we should not beat her on the ocean, we should save our reputation. But to suffer insult to be added to injury, is indeed a degradation of national honor, and ought never to be borne with, let it come from any nation whatever.

Mr. R. Griswold did not say that Congress had not power to authorize the individual States to send their process into the territory under the jurisdiction of the United States. That point could not be a question on this bill, because that power is no where proposed to be given. The objection was, that without having given the State power to send its process within the United States jurisdiction, you say that if the person making the arrest, or the person intended to be arrested, shall be killed within the jurisdiction of the United States, it shall be justified; or if any person aiding the sheriff be killed by those resisting the civil authority, they shall be punished as in cases of felonious homicide. He was desirous that some efficacious mode of resisting or repelling the aggressions upon our commerce should be adopted, and the peace and security of our country effectually secured for the future.

Mr. Elliot.—The question has some traits of peculiar importance, and it would be desirable at all times to harmonize the conflicting claims of the State and General Governments. He could have wished that the doubts upon his mind had been dispelled by the ingenious explanation of the gentleman from Maryland, (Mr. Nicholson.) But instead of being dispelled they were materially strengthened by his observations. We are told that the laws of the Union embrace the laws of the individual States. That the Constitution gives us power to call forth the militia to execute the laws of the Union; but it no where says that we may call forth the militia to execute the laws of the particular States. Are the State laws then laws of the Union? One gentleman affirms that they are, and another gentleman denies it. Let us inquire for a moment what is the meaning of the phrase, Union. The first paragraph of the Constitution says, We the people of the United States, in order to form a more perfect Union. Again, new States may be admitted by Congress into this Union; and in section 4, article 4, the United States shall guarantee to every State in this Union a republican form of Government. Surely it means the combination of the whole, and those only are the laws of the Union which are made by the representatives of the whole Union. If the laws of the individual States are laws of the Union, because a State is a part of the Union, then every by-law of every city, borough, town, or corporation in the United States are laws of the Union, for these also are parts of a State in the Union. How stands the question now? By the Constitution you have no power to execute a State law; yet you assume that power if you pass this bill. It is said the State laws are binding over the Union. They are only binding

on those who reside or come within the limits of the State, and not on citizens residing and remaining in other States without their limits. An inhabitant of Jersey is not bound by the laws of New York while he remains on this side of the North river. You might as well say that the State laws were binding upon the universe, for a State is a part of the universe.

Mr. J. CLAY suggested to Mr. R. GRISWOLD to vary his motion, so as to strike out only that part of the section which related to the call of the militia by a State magistrate, and let all that relates to the Army and Navy stand. For although a State had the power of calling out its own militia to enforce the execution of her own laws, yet she could not call upon the regular troops or Navy of the United States, and this force he considered as a necessary aid in the cases alluded to in the bill.

Mr. R. GRISWOLD intended, if the section was struck out, to introduce a new one in its stead, declaring that the State process may be executed within the jurisdiction of the United States on the seaboard, and then adding a permission to the State to call in the aid of the Army and fleet of the Union.

Mr. J. RANDOLPH asked if he understood the gentleman right. Did he mean to authorize the State officer to execute his process within the United States jurisdiction, and make the killing of the officer or his assistant a felonious homicide?

Mr. R. GRISWOLD meant to give the power to the State officer expressly, and in that case, if resistance be made, most indubitably it is felonious homicide.

Mr. NICHOLSON was not convinced by anything which had been said, that Congress have not the authority to call out the militia in order to secure the execution of the State laws; but he was not generally tenacious of his opinions, and he would be the last man in the world to give his assent to the assumption of powers not granted by the Constitution, and if any reasonable doubt existed he would certainly refrain from pressing the question. He had no objection to the alteration proposed by the gentleman from Pennsylvania, (Mr. CLAY,) but he could not consent to strike out the whole section, as he conceived it gave the very authority contended for by the gentleman from Connecticut. He wished the bill to be rendered as efficacious as possible, and in order to remove the objection raised by doubts as to the constitutionality on account of calling forth the militia, he was willing to strike that part from the bill.

Mr. G. W. CAMPBELL.—This section contains a principle of much importance, although not yet touched upon by any of the gentlemen who have engaged in the discussion; and the manner in which the House may now decide thereon will go to fix a precedent upon which the freedom and independence of the individual States may be placed in jeopardy.

The first object in the section is to authorize a State officer, acting under the State authority, to go beyond the limits of such, and of course beyond its jurisdiction, to execute State process upon an offender escaping from justice. He did not believe that the United States were competent to give such authority, or that the United States could extend the laws of the several States beyond the boundaries of the State for which they had been enacted. For this reason he meant to oppose giving this authority to a State officer, but he would be clearly in favor of making such provision as would more effectually preserve peace in the ports and harbors and waters of the United States, and at the same time remove the doubts suggested by gentlemen on both sides. He would be for introducing into the bill, instead of the present section, a provision, that when such a crime shall have been committed, and the party charged had escaped into the United States jurisdiction, the State officer having received the State process might exhibit the same to a proper officer of the United States, who should issue a new warrant, and upon such warrant the offender escaping should be arrested. This he conceived to be the only mode in which Congress had a Constitutional right to reach their object, or to aid the State government in apprehending offenders. He was clearly of opinion that the powers of a sheriff could only correspond with those vested by the writ, which never did more than command the person to be taken, if he be found within your bailiwick or county; if you extend his powers in the manner contemplated in the bill, the State officers of Philadelphia will be despatched with State process to execute in Charleston.

He had always been of opinion that each State had a right to call out its own militia to carry into effect their own laws, and that the United States cannot require it of any State officer to call forth the militia to carry into effect the laws of such State; but he was also of opinion that Congress may authorize a State officer to call upon the United States officers to aid in the apprehension of fugitives from justice; but here we could only authorize them, and not compel them to make such call; if we could, we should annihilate the very existence of the State governments. This provision being made he would go further, though he was not willing to authorize every justice of the peace to call to his aid the military and naval forces of the United States, yet he was inclined to draw out this force whenever it became necessary under the direction of a proper officer to carry into execution a State process, where a State was incompetent to that object.

He would briefly mention another objection. It was to that part of the section which relates to punishment in case of resistance. He conceived this to be altogether unnecessary. When the United States authorize their officer to execute a process, he is armed with all the requisite power for its accomplishment; and as long as he acts within the authority given to him he will be justified in his conduct; and all who oppose him will be guilty of such crime as is known to the laws in the quarter where opposition may be given. This part of the bill appeared to him to

be unnecessary, and if unnecessary it would be found also inconvenient. Whether the killing of the officer or his assistants was murder or manslaughter would be determined by the facts, and the punishment in either case would be found under the State law, adopted from the English law, to which a court would have to turn for its decision.

Mr. NICHOLSON wished that gentlemen, before they found fault with the bill, would pay a more particular attention to its provisions. The gentleman last up had supposed this bill enjoined upon the State officer, as a duty, that he should call in the aid of a military force to execute the State laws. That was not the case; the bill only says it shall be lawful for him so to do. It was observed some days since that our statutes affixed a punishment to the offence of resisting a civil process, consisting of fine and imprisonment; but this being a different crime when attended with killing, it became necessary, in order to remove doubts as to what punishment should be inflicted, that it be simplified and expressed in the law itself. He held himself ready to agree to the amendments suggested by the gentleman from Pennsylvania, (Mr. CLAY,) which he expected would satisfy every member, except the gentleman last up from Tennessee.

Mr. NELSON took this opportunity of expressing, in the most public and most explicit manner, that he should on all occasions vote against every measure which went to aggrandize the power of the United States at the expense of the individual State governments, or the authority of the people. It is at this day admitted that the General Government have no other powers of jurisdiction than what are granted by the people in the Constitution; that the powers not delegated therein, or prohibited by it to the States, are reserved to the States respectively, or to the people. The section before the committee contains two important regulations—one of which he considered as just and proper; the other not, as warranted by the Constitution. Nay, it would be a direct infringement upon the rights of the individual States. The section contemplates giving authority to the State officers to call out the militia of the State to execute its own laws, and thereby take the command of that force out of the hands of the Executive authority, where the State constitutions generally placed it. He admitted the right of Congress to call forth the militia in cases of invasion or insurrection, and to execute the laws of the Union; but exclusively of these cases authorized by the Constitution, he was bold to say Congress had no right to interfere with calling the militia into service. The command of the militia he considered as a sovereign power, and as such it could not be exercised by two sovereign authorities, as that would destroy the very idea of sovereignty, which was an exclusion of all other authority than one; the State Executive could not call forth the militia, and the Congress exercise the like power at the same time. He should always hold up his hand against such interference with the State sovereignties, or an assumption of power by Congress in this case, as well as other analogous cases.

Some gentlemen have entertained doubts whether Congress have power to authorize a State officer to execute process within the United States jurisdiction; if Congress have exclusive jurisdiction, it is competent for them to point out the manner in which it shall be conducted, and the persons by whom. The States of New York and Connecticut may mutually agree that the process of each State may take effect in the other. This is a principle so plain that it cannot be doubted, and it never ought to have been doubted but what Congress may in like manner permit a State process to be executed within its exclusive jurisdiction.

His colleague (Mr. NICHOLSON) had made a distinction on enjoining it upon a State officer to call out the militia, and said that only gave him the power to do so if he deemed it requisite. It is true that it is not enjoined as a duty, but it is nevertheless equally true that you assume to take away the power of a Governor of a State, and give the authority to a justice of peace, intended by the State constitutions to be exclusively within Executive and Legislative control. He should therefore vote in favor of striking out that part of the section, giving to judges or justices the power of calling out the militia, while he meant to favor that part extending the power to the civil officer of the State to make an arrest within the territory of the United States, or waters under its jurisdiction, in cases of fugitives from justice.

Mr. DANA had no objection to the second part of the clause, so far as it went to preserve peace in our ports and harbors, or maintain the rights of a State against every foreign aggression whatever. The general idea of combining the force of the United States, and the force of an individual State, he thought unobjectionable as to its principle, and gentlemen differed merely as to the detail. True, the manner of conducting this operation was important, and required deliberation in order to avoid the establishment of a precedent, which might hereafter be drawn out to support an unconstitutional authority. In respect to the first point, calling forth the militia to execute the State laws, he did not see that it need be considered as an insuperable impediment; because although the United States could not call them forth to execute a State law, yet the States themselves possessed the power, and would no doubt provide for its efficacious exercise in carrying their respective laws into full effect. But a doctrine that had been broached for the first time in the course of this debate, was a subject of an alarming tendency, and in his opinion was contrary to the whole scope of the Constitutional powers granted to the General Government of the Union. It is said that the laws of particular States are laws of the United States, because the States are a part of the Union. The Constitution declares it to be the duty of the President to take care that the laws be faithfully executed, and he is to commission all officers of the United

States. Is it meant that the President shall see to the execution of the laws of each particular State? This will give a vast range to Presidential authority. But this is not all; for if you extend your view to the end of this construction, it will be found that the judicial authority is coextensive, and they will pass judgment of right upon the State laws. It is very well known that the laws of the several States are of two kinds—part statute and part common law; and this will extend their jurisdiction to all cases arising at common law. Grant this sweeping clause its whole range, and it will enable the courts of the United States to draw every litigated subject within their own cognizance. This is a step which surely gentlemen are not prepared to take at this time.

With respect to the latter part of the section, he was prepared to go the whole length. He would furnish the whole force of the United States to support the peace and independence of the States, and to vindicate lawful commercial pursuits, against any or every nation that dare attack them. He assented to the position of the gentleman from Virginia, (Mr. J. Randolph,) and was willing to risk the question of peace or war upon the issue. He was not anxious to strike out the section; he did not know but it might be as well to recommit it.

Mr. G. W. Campbell explained in what he conceived he had been mistaken by Mr. Nicholson, and declared his willingness to go as far in the protection of our commerce, and preserving peace within our waters, as any gentleman on the floor; the only point in variance was as to the mode. He wished it might be done in conformity to established principles in law and in right reason, keeping altogether clear of Constitutional embarrassment.

The question on striking out the second section of the bill was carried in the affirmative—61 being in favor of, and 41 against it.

A motion was then made by Mr. R. Griswold for the Committee to rise and report the bill, with a view to its recommitment to a select committee. This being negatived—

The Committee continued discussing the details of the bill.

Mr. J. Clay proposed to amend the bill by declaring that all unlawful search, or other vexation, or impressment of any of the crew of trading vessels coming to or going from the United States, should be punished in the manner defined in the fifth section.

Upon some desultory conversation, and it appearing that the idea embraced by the amendment was provided for by other words in the bill, the amendment was lost.

Mr. J. Randolph observed that it was not surprising so much variation in sentiment had been disclosed. On the contrary he was surprised there had been so little. For he conceived it the most arduous task that had ever devolved upon a committee to report at once a bill perfectly satisfactory in its details on a subject as novel as it was important. The great difficulty was in providing against the clashing of the two jurisdictions in the execution of a State process. He thought it would be best to create the offence, and leave to the State the mode of punishment in ordinary cases; but where offences were committed by foreign armed vessels, he conceived the United States and the States might have a concurrent jurisdiction.

The Committee rose and reported progress.

Friday, December 7.

Mr. Jackson, from the committee appointed on the sixteenth ultimo, presented a bill making provision for the application of the money heretofore appropriated to the laying out and making public roads leading from the navigable waters emptying into the Atlantic, to the Ohio river; which was read twice and committed to a Committee of the Whole on Monday next.

On a motion made and seconded, that the House do come to the following resolution:

Resolved, That a post road ought to be established from Knoxville, in the State of Tennessee, by the most direct and convenient route that the nature of the ground over which it is to pass will admit, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New-Orleans; and that a post road ought also to be established from —— in Georgia, to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee.

Ordered, That the said motion be referred to a Committee of the whole House on Monday next.

A message from the Senate informed the House that the Senate will, at one o'clock this day, be ready to receive articles of impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, to be presented by the managers appointed by this House.

Mr. John Randolph, from the managers appointed on the part of this House to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, reported that the managers did, this day, carry to the Senate the articles of impeachment agreed to by this House, on the fourth instant; and that the said managers were informed by the Senate, that their House would take proper measures relative to the said impeachment, of which this House should be duly notified.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations ought to be made in the militia laws of the District of Columbia; and that leave be given to report by bill or otherwise.

Ordered, That Mr. Lewis, Mr. Thompson, and Mr. John Campbell, be appointed a committee pursuant to the said resolution.

The House resolved itself into a Committee of the Whole on the report of the committee, appointed on the twenty-third ultimo, "to inquire into the expediency of extending the time for claimants to lands under the State of Georgia,

lying south of the State of Tennessee, to register the evidences of their titles with the Secretary of State;" and, after some time spent therein, the Committee reported a resolution thereupon, which was twice read, and agreed to by the House, as follows:

Resolved, That the further time of three months ought to be allowed to claimants to lands under the State of Georgia, south of the State of Tennessee, to register the evidences of their titles with the Secretary of State of the United States.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Clark, Mr. Cutts, and Mr. Bryan, do prepare and bring in the same.

DUTY ON SALT.

Mr. Thomas said, he rose with a view to propose an inquiry relative to the duty on salt. On this article a duty of six cents per bushel was first laid, in the year 1790 it was raised to twelve cents, and in the year 1797 eight cents more were added, making the duty twenty cents per bushel of 56 lbs.; at which rate it now stands. But, as every measured bushel of good strong salt which is imported into this country will weigh 80 or 90 lbs., this is in reality a duty of 30 cents per bushel.

Three years ago, when the repeal of the stamp act, excise, and other internal tax laws, were before Congress, an attempt was made to reduce the duty on salt, and retain a part of that system.

At that time, although he was conscious the duty on this article of real necessary consumption was too high, and fell extremely heavy on the agricultural part of the community, particularly those living back from the sea-board, who were obliged to use large quantities of it, for their black cattle and other beasts of pasture, notwithstanding the increased price at which it came to them, in consequence of the transportation, and the profits charged on the amount of duty as well as original cost by the several merchants or traders through whose hands it passed, yet he did believe it better to allow this duty to remain as it was, a while longer, rather than not be enabled to abolish that expensive, inconvenient and anti-republican system of internal taxation.

And should it now be found, on due inquiry, that a reduction of the duty on this article, at this time, would be incompatible with the great object of paying off the national debt and meeting the other exigencies of Government, for his part he would not urge it; but he was persuaded this was not the case—he believed our finances are amply sufficient to authorize the measure.

On examining the report of the Secretary of the Treasury he found, that besides meeting all the calls of Government, including the sum appropriated annually towards the reduction of the public debt, there is a surplus of $4,882,225 in the Treasury, and although there are several payments to be made out of this sum, there will still be a large balance remaining.

It also appears, from a comparative view of the bonded duties of the present with former years, that there will be an increase of revenue coming into the Treasury the ensuing year, and he believed there was no reasonable probability of any new causes for expenditure.

This being the case, he flattered himself, it would not be deemed unseasonable or improper to propose a reduction of the duty, on this article of necessary consumption, at this time.

With this object, however, said Mr. Thomas, I wish to couple another which I consider of equal importance, as it respects the reputation of our beef, pork, fish, and butter, put up for exportation, as well as the health of our seaport towns, and seamen employed on foreign voyages.

He said by the Treasury accounts it appears that the aggregate amount of salt imported into the United States during the year, ending the 30th September last, was 3,858,195 bushels of 56 lbs. each, of this about one fourth part or 868,355 were imported in foreign vessels. All this salt was brought from foreign places, and no part of the salt prepared from the briny waters near the Onondaga, in New York, the various springs in the Western States, and the sea water of Cape Cod, Portsmouth, &c. is taken into this calculation.

Of this salt some parts came from the Swedish, Danish, and Dutch West Indies—other parts were imported from the British West Indies, and other British colonies, from the French West Indies, from Spain, from Teneriffe, and the other Canaries, and the Spanish West Indies; parcels of the same salt were likewise brought from Portugal, Maderia, Cape de Verd Islands, and Italy, and about 20,000 bushels of a similar kind has heretofore annually been brought from Louisiana, which is now a part of the United States.

But notwithstanding all this trade in salt, to so many parts of the earth, the commerce in that article between the United States and Great Britain is very extensive and important. During the year he before mentioned, the proportion of imported salt which was furnished by England alone, and of the manufacture of that country, amounted to 1,271,537 bushels of 56 lbs. So that it is evident at least one third of the salt consumed in our country is exported from that part of Great Britain called England, and chiefly from those countries of which Liverpool is the mart.

This salt, as he understood, was prepared by the process of boiling the brine of the rock salt from Cheshire, and the water of the sea; and on account of the great plenty and cheapness of coal in Lancashire, there being also, as he believed, no export duty laid on it, this salt was produced in abundance and sold on very low terms; it is employed as ballast for British ships coming into our ports, and when arrived is sure to sell and pay the freight and frequently afford a profit; our own ships also very commonly take it in for ballast, and often as part of the cargo.

This traffic would be perfectly fair and convenient if English salt was of a strength and quality fit to preserve animal flesh for provisions. But he was clearly of opinion, from his own knowledge, this was not the fact, and he had lately observed a discussion on this subject in the British Parliament which confirmed that opinion:

The British Government long ago made a distinction between English salt and foreign salt on their importation into Ireland. To encourage the introduction of salt from the Bay of Biscay and the Portuguese dominions, they permitted it to be imported into that kingdom at the rate of 84 lbs. the bushel, while Liverpool salt was charged with the same duty of two shillings on the bushel of 56 lbs. The reason of this distinction was undoubtedly wise and cogent; experience had proved that British salt, as brought to the market, was destitute of that purity and strength which was necessary to preserve animal flesh from taint and corruption, and fit for human food in hot climates and on long voyages.

The trade of Ireland in beef, pork, and butter, was of great importance, not only to that country itself but to the whole navy and army of Britain. To keep up the character and wholesomeness of their provisions was a matter of immense national importance, and this could only be done by attention to have it preserved with salt of purity and strength. Experience had proved that the salt formed by chrystalization in the open sunshine on the western shores and islands of Southern Europe, was vastly better than that produced by artifical coucretion, in a boiling heat over a fire in the North. And the Government had with prudent discernment favored the introduction of Bay salt into Ireland, by permitting 84 lbs. to be imported for the same duty that was paid on the introduction of 56 lbs. of Liverpool salt.

The people of Liverpool have lately expressed uneasiness at this partiality, and an attempt has been made in Parliament, so to equalise the duty, as to give to both Bay and English salt a fair competition in the Irish market. This, however, was repelled by the Irish members, with manly discernment and spirit; on the ground, that Bay salt was of a stronger quality, less easy to dissolve, and indispensable to the salters of meats; that English or Liverpool salt would not answer for this extensive and important branch of business; that the discrimination in favor of Bay salt was politic and proper, especially connected with the provision trade and the health of the fleets and armies.

It is my wish, said Mr. T., that such a distinction should be made on the introduction of English salt into the United States, as has been made by the British laws themselves, on its importation into Ireland. There certainly exists the same causes for it. Like Ireland, our country abounds in provisions—beef, pork, fish, and butter, are great and staple articles of export; but their quality is very far inferior to the provisions of Ireland. The putrefaction of beef, pork, and fish, to a very serious extent, has often occurred; the loss of the property thereby was great, and the reputation of our provisions materially affected. But that was not the greatest evil; there is no doubt but that the exhalation from tainted and corrupted meats and fish, in our towns, as well as on board our vessels, poison the atmosphere and excite malignant fevers and other diseases.

His object was to retrieve and establish the reputation of our salted provisions in foreign markets—to prevent the loss of property by those who put up provisions for exportation, and also to prevent the evils resulting to our citizens and seamen from tainted and spoiling meats and fish. With this view of the subject he should propose in the first place, an inquiry into the expediency of reducing the duty on salt generally; and, in the second, the propriety of making a distinction, so as to encourage the importation of strong and pure salt, in preference to the weak and impure salt manufactured in England.

He, therefore, moved the following resolution:

Resolved, That the Committee of Ways and Means be instructed to inquire into the expediency of reducing the duty on salt, and also into the propriety of making a distinction in the duty, so as to encourage the importations of salt from the dominions of Denmark, Sweden, the United Netherlands, Spain, France, Portugal, and the British West Indies, in preference to any other place or places; and that they report thereon by bill or otherwise.

Mr. J. Randolph said that the resolution which the gentleman from New York had submitted, and in relation to which he had favored the House with such copious details, embraced two objects: the reduction of the duty on salt, generally, and the encouragement of the importation of a particular description of that article. The last subject belonging to a class which was consigned to the Committee of Commerce and Manufactures, he should confine himself to the first branch of the resolution; nor should he have troubled the House at all were not the motion of the gentleman from New York calculated to excite an expectation, which he wished to repress, because he feared it could not be gratified. It was not to oppose inquiry, but to apprize the mover and the public that the result was likely to prove unpropitious to his wishes, that he had risen. The country on which the salt duty fell with peculiar force was that middle region, near enough to the seaboard to be supplied altogether by importation, but too remote to have its consumption diminished by vicinage to the sea. Those whose stock had access to salt water felt the duty but partially; those whose situation obliged them to use salt of home manufacture only, not at all. As an inhabitant of that district of country by which the duty was principally paid, and as a friend to agriculture, he had at an early period of the session, in conjunction with his friend the Speaker, turned his attention to the practicability of reducing the duty on salt, and you well know, sir, (said Mr. R.) that the result of our inquiry satisfied us that this desirable object was not at present attainable. He mentioned this to show that other members felt an interest in this subject, as well as the gentleman from New York, although they had not brought it before the House. The Treasury statements on which that gentleman relied for the support of his position, that we can dispense with a portion of our existing revenue, establish the opposite opinion, beyond controversy. The estimated revenue of the ensuing year, after defraying the estimated expense, yielded only a surplus of $210,000, and the specie value in the Treasury, which the gentleman had brought to his aid, was large indeed, but charged with near four millions of dollars on account of Great Britain, Maryland, and American claims upon France, whose payment we had assumed by convention with that Power. The delay of these claims which were expected to have been paid and for which we had made provision accordingly during the present year, had swelled the specie balance in the Treasury, but certainly had not liberated that resource. On this subject what was the inference drawn by the head of that Department? precisely the reverse of that of the mover of the resolution. "As the greater part of 'these demands will be paid in the course of the 'year 1805, the balance will not, probably, at the 'end of that year, exceed the sum which it is al-'ways expedient to retain in the Treasury." The House would recollect that by our last accounts our flotilla was bombarding Tripoli. Who could answer for its fate? Who could undertake to say that, before the Christmas holidays, intelligence might not be received from that quarter (as was the case last year) which would render it necessary to impose new burdens, instead of taking them off? The remarks which he had offered were not in opposition to the motion of inquiry. He thought it his duty, and was always ready to go into every profitable research, whether it tended to diminish the public burdens, or to promote the agriculture, trade, or manufactures of the country. He had their interests much at heart. He was as much interested in lowering the impost on salt as any member in that House could be, but he felt it to be his duty explicitly to state that the object at which the resolution aimed was illusory. If, however, the prosperous condition of our affairs should experience no reverse, if our Mediterranean warfare should have a speedy and honorable termination, if we should continue to maintain a pacific position between the belligerent nations of Europe, and no unforeseen calamity should befall us, he had a well-founded expectation that we might dispense with the additional duty of eight cents on salt, at the next session of Congress.

Mr. Jackson, impressed with the importance of the subject, hoped it would be referred to the committee; and he would assure the gentleman from Virginia that the district of country over the mountains was greatly affected by the duty, for they did not procure salt in sufficient abundance in the interior to answer their consumption; salt usually sold there from 3½ dollars to four, and when it is considered what the merchants and traders advance was a per cent. upon the first cost, it would be readily allowed that the citizens in the western country did not pay less than one dollar per bushel. If, however, the public exigencies are absolutely such as the duty cannot be dispensed with, he would be one of the first to vote against the reduction. But the House will not refuse its assent to reduce the duty, because it is possible that dangers may occur, or that it is possible we may go to war with other of the Barbary Powers, or even with all the world; for that too is possible. So desirous was he of getting rid of of this duty, that he would rather postpone the payment of the public debt a little longer, than oppress the people with such an unequal law. Unequal and oppressive as it was to his constituents, yet he was satisfied they would willingly bear it, if it should prove on investigation that its repeal would endanger our finances or create a failure in the payment of the public debt in a reasonable time.

Mr. Thomas had no objection to adopt the idea of Mr. J. Randolph in referring the second part to the Committee of Commerce and Manufactures.

Mr. Crowninshield said the effect of reducing the duties on salt would be the loss of $220,000 annual revenue, which was more than its present excess; and as to the four millions in the Treasury, that would speedily be required to pay the bills drawn upon the Secretary on account of the purchase of Louisiana, and the whole of it was appropriated. He called for a division of the question; whereupon the first part respecting the repeal of the duties was referred to the Committee of Ways and Means.

After this question, the second part could neither be debated nor amended, and a question to refer it was lost.

Monday, December 10.

Two other members, to wit: Matthew Walton, from Kentucky, and Nathaniel Alexander, from North Carolina, appeared, and took their seats in the House.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act for the disposal of certain copies of the laws of the United States," to which they desire the concurrence of this House.

The said bill was read twice, and committed to a Committee of the Whole on Thursday next.

Mr. John Randolph, from the Committee of Ways and Means, presented a bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes; which was read twice, and committed to a Committee of the Whole on Thurday next.

Ordered, That the report of a select committee, appointed on the eighteenth of October, one thousand eight hundred and three, "to inquire by what means the mail may be conveyed with greater despatch than at present, between the City of Washington and Natchez and New Orleans," made the thirteenth of December, in the same year; as, also, a supplementary report on that subject, from the same committee, made on the twelfth of January, one thousand eight hundred and four, be referred to the Committee of the Whole, to whom was referred, on the seventh instant, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to

New Orleans; also, for the establishment of a post road from ——, in Georgia, to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee."

A memorial and petition of Joseph Peppin, in behalf of the Upper Mississippi Company, was presented to the House and read, stating that the said Mississippi Company are ready to enter into a negotiation for a compromise of their claims to the title of lands within the territory ceded to the United States by the State of Georgia, agreeably to the conditions and limitations of the cession of Georgia, with any commissioners, who may be authorized thereto by the Government of the United States, the said Mississippi Company reserving all their rights at law, in case the compromise should not be effected; and praying that Congress will come to a final determination on the subject-matter of the said claims, during the present session.—Referred.

Mr. FINDLEY, from the Committee of Elections, to whom was referred, on the thirtieth ultimo, a petition of sundry citizens of the county of Washington, in the State of Pennsylvania, complaining of an undue election and return of John Hoge, to serve in this House as one of the Representatives for the said State, made a report thereon; which was read, and referred to a Committee of the Whole on Friday next.

Mr. EPPES, from the committee appointed, presented a bill to amend the charter of the town of Alexandria; which was read twice, and committed to a Committee of the Whole on Wednesday next.

A message from the Senate communicated to the House certain proceedings of the Senate, relative to the impeachment of Samuel Chase, one of the associate justices of the Supreme Court of the United States.

ADJUDICATION OF PRIZES.

The House resolved itself into a Committee of the Whole on the bill establishing a court for the adjudication of prizes, in certain cases.

Mr. R. GRISWOLD said there was some difficulty occurred to his mind in the very outset of the bill. The Constitution of the United States declares that all their judges shall hold their offices during good behaviour. Yet the first section of the bill declares that the judge of this court shall hold his office during the existence of the war between the United States and any of the predatory Powers of the States of Barbary; and the ninth section goes still further in abridging the duration of the office, by giving power to the President to abolish the court when he may think proper. By the Constitution, the President is empowered to nominate, and by and with the advice of the Senate to appoint judges; but nowhere, by that instrument, is he authorized to abolish a court or annihilate the office of a judge of the admiralty, as this section attempted to authorize him to do. He asked the gentleman who reported the bill to justify this arrangement of a judge of admiralty holding his office either during a war, or at the discretion of the President. In order to try the principle, he moved to strike out the first section of the bill.

Mr. RODNEY did not know that he had it in his power to satisfy the scruples of the gentleman from Connecticut; but, if he had, he would endeavor to remove them. He considered this case as one *sui generis*, dependent upon its own peculiar circumstances; and he should not bring into view the question, extremely analogous, which had been so much controverted a few years back, but had been then set at rest, namely, that judges, appointed under the law of the United States, when once the courts were abolished, and their jurisdiction taken from them, shall not still continue judges of the land, and receive a salary for being idle, or worse than idle.

The case of last session, in forming a temporary government for the Louisiana Territory, was precisely on the principle of the bill, and the gentleman will find, upon inspecting the law, that the judges in that Territory only hold their offices for four years. The tenure in that case is a term of years, and is surely as strong a case as the one to be provided for by the bill, both courts being erected, or to be erected, out of the original limits of the United States at the time of adopting the Constitution; and he believed the Constitution, when it declared that the Judges of the Supreme Court and inferior courts should hold their offices during good behaviour, confined itself to the then territory of the Union, and not to judges out of the United States. There is another section of the Constitution which gives to Congress the power to make all laws necessary for carrying into execution the other powers granted by that instrument, and under this power it becomes Congress to make provisionary regulations for temporary contingencies, and we are authorized to establish a temporary Judiciary out of the United States, because the exigency occasioned by the exercise of the Constitutional power of declaring war imperiously calls for it. Without such a provision as that contemplated in the bill, our gallant tars would be fighting to little effect, if there was no judicial authority for the condemnation of Tripolitan vessels after capture. The terms of the Constitution do not apply to cases of this kind. This question was talked over in the select committee, and the committee were unanimous that we were as much at liberty to fix the duration of the judge's office in this case as we were to fix the term of four years as the period of the establishment of the courts in Louisiana.

Mr. R. GRISWOLD said the case did not compare. The Judiciary power vested in the judges of the Territory of Louisiana, was not that Judiciary power of the United States mentioned in the Constitution, and therefore the variation of the tenure might be justified; but in the present case they were about to vest a judge with the proper Constitutional power of an United States judge, exercising admiralty jurisdiction, which is a regular Judiciary power of the United States; and although it was to be exercised out of the territory of the United States, it was, nevertheless, the

power alluded to in the Constitution, and an inferior court to be established by Congress, the judge of which is to hold his office during good behaviour; and no gentleman on that floor could deny that this judge was bound in his decisions by the laws of the United States binding on the district and other judges of the Union. He did not see that the point he had made out on the present question was the same as that alluded to in the repeal of the late Judiciary law. What was then contended for was the repeal of the law, and not whether Congress had the power of removing the judges. The present was not repealing a law in order to abrogate the office, but it was creating a new court and providing for the appointment of a judge thereto, who by the Constitution is to hold his office in that court during good behaviour. Yet this bill declares that the office shall be limited to the war with the Barbary Powers. He did not think that the measure was warranted by the Constitution.

Mr. J. RANDOLPH said that this was an old question in a new shape; it was not in the same words, but it turned upon the same pivot. If Congress possessed the power when a court became useless to abolish it, certainly they had the power when creating a court for a particular purpose to declare that, when that purpose was answered, the court should be discontinued. Where was the difference between creating a judicial court now and at the end of the Tripolitan war (or any definite period of time) annulling it, and specifying in the law creating the court that it should cease and be discontinued at the end of the Tripolitan war, or at any definite time hereafter? So far as related to the judges there was more of speciousness in the claim of him who entered into an office the term of whose existence was not defined in the law creating it, than of him who knew when he accepted an appointment that on a certain contingency, or at a certain time, his office was to cease and be discontinued.

In regard to the ninth section, without seeing it in the very objectionable point of light in which it was viewed by the gentleman from Connecticut, he thought the bill would be as well without it. Whatever might be the relative situation which he might hold on that floor, he should always be averse to an unnecessary accumulation of patronage and power in the hands of the Executive. The salary bill the next session of Congress, supposing peace in the meantime to be made with Tripoli, was no object.

Mr. ELLIOT did not view the subject in the same point of light as the gentleman who had preceded him. He did not consider the first section as limiting the duration of the court, but merely authorizing the President, by and with the advice of the Senate, to appoint a judge of admiralty in the territory of some foreign nation at war with the same nation with which we are now at war. But the ninth section gave the President the power of abrogating this court after it should be established. He would never consent to give the President the power to abrogate any judiciary tribunal whatever. He should therefore vote for retaining the first section and subsequently for striking out the ninth.

Mr. NELSON, as one of the committee who had reported the bill, begged to be permitted to assign some reasons in its defence. He did not pretend to understand the forms of proceeding in this body. The short time he had had the honor of a seat on this floor forbade his aspiring to that knowledge; but in all the legislative bodies with which he was acquainted, it is not deemed parliamentary to argue against the first section of a bill that the last section is imperfect or incorrect. When a bill is to be considered by sections, the merits or demerits of each is to be considered by itself. Now the first section does not fix the time at which the law shall expire or the office shall cease; and although the Constitution says that judges shall hold their offices during good behaviour, who is there here that can say that this office may not last during the life of the judge, nay, may not last to the end of time, for no man can say when the war will end? But admitting it to be in order to refer to the ninth section while discussing the first, he would ask how did that infringe the Constitution? The power to abolish the office is fixed somewhere, and when once abolished, and the officer left with nothing to do, will it be yet contended that he shall still be entitled to receive his salary? Does the Constitution prohibit Congress from making a judge a justice, or a commissioner, call him what you please, on an extraordinary emergency, and insist upon his holding such office during good behaviour? He had always construed differently. The idea of a tenure during good behaviour in the office of a judge was borrowed from England, and there it was considered as a great point gained over the Crown, by which they were appointed, and upon which they had heretofore been wholly dependant. But was it ever contended that the British Parliament, including King, Lords, and Commons, were incompetent to dismiss them from their seats? It never was so contended, nor it never can be so contended with success; and though the President has not the power to remove inferior judges, yet the Legislature may remove them with their offices, and the body of the people may remove them by an expression of their sovereign will; but perhaps these remarks are unnecessary, and need not be dwelt upon. He would vote against striking out the clause.

The question was taken on striking out the first section, and lost without a division.

Mr. LUCAS moved to strike out the ninth section, and assigned for reason that Congress ought not to attempt to do that indirectly which could not be done directly. The fundamental principle of the Constitution was the separation of the Government. The judge, therefore, ought to be independent of the Executive for the tenure of his office; by this section he is rendered altogether dependant upon the will of the President. There is no limitation as to the time or to the power which the Executive may exercise over the judge. He may not hold his office even du-

ring the present war, for during the present war it is only made lawful for the President to appoint such an officer, and by this section it is also made lawful for him to abolish the same when in his opinion it shall be proper to do so. It may be said that the judge cannot be removed, unless the court is suppressed. This is but an evasion, for the President has not the power of actually removing him, yet he can virtually do so, and the effect upon the judge is exactly the same. This power is unconstitutional in itself, and dangerous as a precedent. He hoped it would not be granted, nor did he see any necessity for it on the ground of expediency, even supposing Congress had a right to vest the power in the President. It is well known that Congress is enjoined by the Constitution to meet annually, and if the usefulness of the judge should cease on the cessation of the war, the inconveniences which may ensue or the expense which might accrue, would be short and inconsiderable, for Congress will meet in nine months after the close of the present session. It will be therefore better to leave it to Congress to abolish this court when they see cause for it, than transfer the power into other hands.

Mr. Rodney had no great objection to striking out the clause, because he thought the bill adequate to its object without it. The eighth section, he observed, established a principle that had heretofore been considered of considerable importance, viz: that a judge shall not receive a salary beyond the time he continues in the exercise of the duties of his office. The committee had supposed it possible that a speedy end might be put to this war, and thereupon conceived it unnecessary to charge the Treasury with the payment of the judges and others' compensations beyond the term of service. He was himself much averse to vesting in the President any unusual or extraordinary power; but he thought a proclamation by the President was an official proceeding proper to attract the attention of the Executive authority of foreign nations to its subject-matter. He was the proper organ to express the will of the law, and to give information to those interested. Although in all human probability, the war will not continue long, he had no objection to the clause being struck out.

Mr. Smilie said, if it had not been in the bill, the bill would have been well enough without it; but as it was in, he was not inclined, through an unfounded jealousy, to strike it out. He would ask gentlemen to point out any probable ground for jealousy of the President in the exercise of this power; for he took it for granted that the Constitution furnished no obstacle. Its injunctions in regard to judges holding their offices during good behaviour, extended to the courts of the United States, within the limits of the several States represented on this floor. Now the law itself cannot affect the person or property of any citizen within the United States, and as its usefulness may suddenly cease after the close of the session, he did not see why we should subject ourselves to a single dollar's expense, which might be prevented by the immediate publication of the President's proclamation.

Mr. Lucas was not governed by jealousy of the Executive in making his motion. The present Executive possessed his entire confidence; but when we are legislating, we do not legislate on the confidence we have in the Executive, but on those circumstances which are most likely to procure happiness to our fellow-citizens, and secure their liberties on the basis they have themselves established them; and my colleague will recollect that the Executive will not always be filled by the same person, and that a change of men may produce a change of measures, if the man is the standard of legislation; but if we legislate upon principles, the principles will remain after the persons who propounded them are forgotten. He did not consider the inference made by his colleague (Mr. Smilie) correct, for he did believe the officers and seamen employed in the marine of the United States were particularly interested, and that they were citizens of the United States. He observed, upon the remark made by Mr. Rodney, that foreign nations would be more likely to take notice of the President's proclamation than of a law. He did not see that the President would be prevented from issuing his proclamation in the event of peace, if the abolition of the court depended upon Congress.

Mr. G. Griswold expressed a jealousy for the preservation of the Constitution, and conceiving the proposed regulation in enmity with one of its most important injunctions, he hoped it would be struck out; and he, for one, would never give his consent that a judge, under the Constitution of the United States should hold the tenure of his office by Presidential will.

Mr. Southard differed with gentlemen who thought the section a violation of the Constitution. The law itself grew out of the exigency of the war with the Barbary Powers, and it so expresses itself. It therefore carries its own remedy with it; during the existence of the war, and so long as any nation at war with the same Power shall consent or permit the United States to establish a judge of admiralty within its territory, so long shall the office remain, but no provision is made for its remaining any longer. Nor can the judge complain of the abolition of his office, or consequent loss of salary, because he consents to receive it upon the terms of the law. He considered the section a proper one, though not absolutely necessary. If peace takes place the President will be the first person to know it, and his proclamation of the cessation of the court will render it of greater notoriety than any law can possibly render it. One more observation, and he had done. It may be suggested in favor of a determinate abolition of the court, that the judge may become arbitrary, and the court prove injurious, in which case the sooner it was abolished the less would be its evil.

Mr. Dana thought the section very objectionable. It is true it does not say that the judge shall hold his office during the pleasure of the President and no longer, in those precise terms, but it says what is tantamount, that when, in the opinion of the President, it shall be proper so to do, it shall and may be lawful for him, by proclamation, to abolish the said court. This is not the precise form of expressing the pleasure of the Crown; the President must manifest his pleasure by proclamation; the Crown might manifest its pleasure privately before the act of settlement; but the power of the judges, in both cases, is held by the loose and insecure tenure of will and pleasure. Gentlemen cannot set up a good distinction between judges of courts of admiralty, acting within or without the boundaries of the United States; and, if you once declare that the President shall have power to dismiss one of your judges, nothing can prevent you from giving him power to dismiss them all. The principle, once established, goes through. For his part, he was decidedly against granting such power. The question ought not to be considered for a moment on the light ground of being a good or a bad bargain for the judge; but on the broad and solid ground of preserving what remains of the due administration of justice.

Mr. Rodney would not have risen again but in consequence of Mr. Dana's remarks and refined distinctions where there was no difference. The bill provides that the judge shall receive his salary as long as he has jurisdiction, and that jurisdiction is limited by the duration of the war. This itself is a limitation of the office. The President has no power over the individual person of the judge; he cannot turn out A and put in B. So the tenure is not precarious; it is fixed, and depends upon the abolition of the jurisdiction; and that principle is strictly conformable to what was formerly decided to the general satisfaction of a great majority of the people.

The observation of the gentleman from Connecticut (Mr. R. Griswold) respecting a distinction between judges within the limits of the United States and within the Territory of Louisiana, concluded nothing; for he will find the judges of that Territory exercising all their functions under the Constitution and the laws of Congress; and he believed there was a time when the gentleman had thought differently on the subject before the Committee. He referred to the yeas and nays called on passing a bill limiting the duration of office in respect to the judges or justices of the Territory of Columbia, by which they are continued in office for the term of five years only, while the Constitution declared, as it does now, that judges of the supreme and inferior courts shall hold their offices during good behaviour. He hoped the gentleman would abandon the idea of the officer continuing to receive a salary after the office was abolished.

Mr. Dana had no idea of an officer totally destitute of office, receiving a salary, but until he was divested of all official authority, he ought to be independent, and salary was but a mere contingency.

Mr. J. Randolph said that the first section established the court during the continuance of the Mediterranean war, and the ninth gave a power to the President to abrogate it at his discretion. He thought the section, to say the best of it, superfluous. So soon as we, or the nation within whose limits this court shall be erected, shall have made peace with Tripoli, its jurisdiction would terminate by the provisions of the bill itself. It might indeed be expedient to prolong the existence of the court beyond the term contemplated by the bill, but no circumstances could arise which would render it necessary to shorten it.

Mr. Eustis thought the judge ought to hold the office during good behaviour, and yet this section makes him dependant on the Executive. Congress could not vest the Executive with any power which they had no right to exercise themselves, yet this section proposes to do so; and, on this precedent, occasion may hereafter be taken to frustrate and contravene the Constitution in its most important regulations.

Mr. Jackson meant only to make a single observation, with a view of rescuing the section from the inconsistency charged upon it by Mr. Eustis. The first section was not at variance with the last. The first declared the duration of the office to be during the war; the last, that the President may, by proclamation, abolish the court. There might be something formed as a substitute to designate the precise duration of the court, as, from the mode of expression used in both sections, it seemed not sufficiently definite.

Mr. Gregg would vote for striking out, unless his colleague (Mr. Lucas) would modify his motion, for he would never vote to vest the President with the power intended to be given by the ninth section; yet he thought that a modification of the clause would cure the defect without striking out. If the time was precisely defined for which the court should continue, the President might notify the expiration of the office by proclamation.

Mr. R. Griswold said, the gentlemen who advocate this measure appear to differ in this construction. Some entertain an opinion that the first section does not limit the tenure of the office of the judge; other gentlemen think the office limited by that section to the duration of the war. He thought the first section explicit, that the President should appoint a judge of the admiralty during the existence of the war, and, in conformity with this idea the second section was penned. The said judge shall exercise the admiralty jurisdiction for trying captures in the said war; these last words show expressly the limitation of the law. The true and fair meaning of which is, that the judge shall hold his office during the war, and no longer. The ninth section gives the power to the President, of shortening this period, and it was this power he believed the Constitution never meant should be exercised by the Executive. As to the observation about the judges or justices of this District, it did not bear on the present question, the Constitution providing only for the tenure of offices held by the judges of the supreme and inferior courts of the United States, and not for justices of peace; besides, in the District of Columbia, the Constitution gave them the power of exclusive legislation.

Mr. J. CLAY would vote for striking out, with a view to add a new section in its stead.

On the question to strike out the ninth section, the House agreed thereto without a division, and

Mr. J. CLAY moved a new section declaring that the existence of the court should terminate with the war, and that the President should make proclamation of that event.

This section was agreed to—ayes 51, noes 45.

No other amendments being made, the Committee rose and reported progress.

TUESDAY, December 11.

The SPEAKER laid before the House a letter addressed to him from George Washington Parke Custis, chairman of a meeting of the inhabitants of the county of Alexandria, in the District of Columbia, enclosing sundry resolutions of the said inhabitants, expressive of their disapprobation of so much of a motion now depending before the House, as relates to a recession of jurisdiction to the State of Virginia, of that part of the District of Columbia which is contained in the county of Alexandria, aforesaid.—Referred.

On motion of Mr. EARLE, it was

Resolved, That a committee be appointed to inquire into the expediency of granting to persons claiming lands in the Mississippi Territory, by virtue of any British or Spanish grants, farther time for registering their claims agreeably to an act passed the third day of March, in the year one thousand eight hundred and three, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

Ordered, That Mr. EARLE, Mr. ALEXANDER, Mr. TIBBITS, Mr. WILSON, and Mr. LYON, be appointed a committee, pursuant to the said resolution.

The proceedings of the Senate communicated yesterday by their Secretary, relative to the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States were read, and are as follow:

"*In Senate of the United States.—High Coutr of Impeachments, Monday, Dec.* 10, 1804.

"THE UNITED STATES *vs.* SAMUEL CHASE.

"*Resolved*, That the Secretary be directed to issue a summons to Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to answer certain articles of impeachment exhibited against him by the House of Representatives, on Friday last. That the said summons be returnable the second day of January next, and be served at least fifteen days before the return day thereof.

"*Ordered*, That the Secretary carry this resolution to the House of Representatives.

"Attest: SAM. A. OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

The House resumed the consideration of the bill establishing a court for the adjudication of prizes in certain cases: Whereupon so much of the said bill, as amended, as is contained in the ninth section thereof, was recommitted to Mr. RODNEY, Mr. JACKSON, Mr. BALDWIN, Mr. LUCAS, Mr. NELSON, Mr. LARNED, and Mr. LOWNDES.

Mr. NELSON, from the committee appointed on the sixth instant, presented, according to order, a bill for the relief of Samuel Carson; which was read twice and committed to a Committee of the Whole to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," with several amendments; to which they desire the concurrence of this House.

POTOMAC RIVER.

The House again resolved itself into a Committee of the Whole on the bill authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Mr. MACON gave it as his opinion that it would be improper at this time to take up the subject, as there was a motion on the table to recede the territory of the District back to the jurisdiction of the States out of which it had been carved. If it is intended to recede the territory, it would certainly be better to recede with as few encumbrances or alterations as possible; indeed, the striking propriety of the business taking the course he had just mentioned, had led him to expect that the present bill would not be again agitated until the question of recession had been investigated and decided. He would therefore move that the Committee rise and report progress.

Mr. SMILIE voted against going into a Committee of the Whole, on the ground mentioned by the Speaker. If it be the intention of the Legislature to recede this territory, there was certainly no necessity of discussing the propriety of erecting a causeway; if it be not the intention, when this is manifest it will be time enough to consider the bill before them. From what he had observed on the part of the inhabitants of the District of Columbia, there seemed to be a disposition, if not a determination, to give Congress as much trouble in legislating for them as they had for all the rest of the Union. During the present session, this single ten miles square had occupied as much of the time of the House as the whole of the United States, whose general and important business was daily caused to be suspended for the local concerns of this place. From observing this to be the settled course of proceeding, he was convinced that Congress must do one of two things, either recede them to their respective States, or put them in a situation capable of managing their own affairs, in their own way. The daily pay of the members amounted to a considerable sum, and the length of time consumed on every trifling application for want of some member able to explain the true situation of the District, occasioned by its unrepresented state on this floor, were evils much to be lamented, if they could not be remedied. He thought members could hardly justify the waste of time, intended to be devoted to the public, whatever they might think of the expense it occasioned. He hoped the Committee would agree to rise.

Mr. LEWIS did not think it fair to anticipate the opinion of the House on the subject of recession, which he considered would be the effect of the Committee's rising. If, however, the Committee shall determine that they would not, at this time, discuss the present bill, he had no objection to enter on the consideration of the other subject.

Mr. NELSON thought this the proper time to discuss this question, even in preference to that of recession. It appears from the petition of the inhabitants of Georgetown, that the channel of the river, on which the salvation of that town depends, is filling up daily; that the mass of mud would soon increase to such a degree as totally to ruin the navigation to that port. If even it should be agreed by Congress to recede the territory to the States of Virginia and Maryland—which he wished and hoped in God would not be the case—it would be late in the session, and in all probability, at a time when neither of those State Legislatures will be in session. Supposing both States were willing to accept the recession, which he believed would not be found to be the case, the petitioners could not apply to the Virginia Legislature until next December, as their session began in that month, nor to Maryland until next November. A twelvemonth's delay might defeat the object altogether, for the petitioners assert that it requires immediate exertions to prevent the channel filling up altogether.

Again, if the question of recession must be first decided, he saw that it would be an everlasting obstacle to the consideration of the propriety of the measure contemplated by the bill. Suppose a number of gentlemen, opposed to the consideration of the question on recession, should join with those opposed to the erection of a causeway, the subject will never be called up, neither at this, or any future session. When a petition is presented from Georgetown to be allowed the object of their present prayer, it is in the power of any gentleman inclined to vote against that measure, to lay on the table a motion for recession, and the two will sleep side by side on your table till the rising of Congress. The same argument for this course of proceeding will have as much weight at any future period as at the present time. Hence he inferred that now was the proper season for investigation, and the sooner a decision was obtained, the better. He did not think the subject of recession ought to have been introduced on the present occasion, as it did not necessarily connect itself with an improvement of the navigation of the Potomac.

Mr. MACON had stated his reasons for making the motion, and the gentleman from Maryland (Mr. NELSON) had replied that the main question would be eternally suspended, if his (Mr. MACON'S) arguments were allowed to prevail; this did not appear to follow from the premises. If there is a majority in favor of the causeway, and the minority attempt to defeat the will of the majority by introducing the question of recession, nothing is more easy than to remove that or any other obstruction thrown in their way. The majority may call up the motion made by my colleague (Mr. STANFORD) to recede the jurisdiction to Maryland and Virginia this day if they please; and when they have it before them, it is an easy matter to reject it, and proceed to their favorite measure of damming up the western half of the river.

Mr. NELSON.—Mr. Speaker tells us it is easy for a majority to reject anything they disapprove; true, but when a motion has obtained access to your table, it would be deemed ill-manners for any gentleman but the individual who introduced it, to call it up to the attention of the House with a view to turn it out of doors. Politeness, or common civility, will permit every gentleman to carry on the business he introduces here, in his own way; it was for this reason that he had said it never would be called up, but stand an eternal obstacle in the way of the required improvement.

Mr. SLOAN reminded the Committee of an old saying: "The time present only is in our power, the future we know not of." The time present then, is the time to redress the grievances of the suffering part of this community, and as the citizens of Georgetown were really embarrassed, and their apprehensions excited of greater danger, he hoped the Committee would proceed with the business.

Mr. STANFORD seldom troubled the House with any motion; but the one alluded to by his colleague, (Mr. SPEAKER,) he had brought forward from a sense of duty. The reiterated applications of the inhabitants of this District for Legislative provisions, he had always listened to with attention, and he had no objection to proceeding in the discussion of the present bill, convinced that it would only serve to show the necessity of receding the territory. From all that had hitherto been done, it was apparent that they could not attempt to accommodate one part of the District without drawing forth petitions against the same from another part. Counter-petitions were constantly coming in. He was willing to hear everything, but he did not believe the House could agree to anything, and it was not to be wondered at when the inhabitants could not agree among themselves; or, if the House agreed at this time relative to the objects of the bridge company and the causeway petitioners, it would be, he suspected, to do nothing in either case. All this tended to evince the propriety of adopting the resolution he had laid on the table to recede the territory to the States of Virginia and Maryland, who would then have competent powers to gratify both parties, if they deemed it expedient, of which he was convinced they were better judges than this, or any future Congress was ever likely to be.

The question on the Committee rising was taken, and lost—only forty-three members voting in the affirmative.

Mr. MACON then proposed to amend the bill in such a way as to provide for regulating the ferries that might be established across the eastern part of the stream to the causeway, and applying the

fund arising from the same for the purpose of keeping the causeway in repair.

Mr. Lewis did not consider it useful to travel over the ground assumed on a former occasion, but would confine himself to state to the Committee some information he had acquired since, in respect to the damage the Eastern Branch or the port of Alexandria was likely to sustain, as had been alleged. Before the year 1784, the channel on the western side was so shallow that vessels only of very ordinary burden could pass, while on the Maryland side vessels of great draught of water could easily pass up to Georgetown. The uncommon hard Winter of 1783–'4 was followed in the Spring by the greatest torrents ever known in the Potomac. The bodies of ice were of immense magnitude, and many of them lodged upon the island, and under the rocks of its bed. prising with a force beyond all credibility: it tore the rocks asunder and pressed them over into the new channel, occasioning a rise of thirty or forty feet on the Georgetown shore. On the Virginia side the torrent also forced itself and deepened that channel, while it left a vast quantity of mud, rocks, and sand in the eastern channel, which has been constantly accumulating since that period. The situation of the present bar is at the meeting of the two arms of the river, below the island, and does not permit the passage of vessels over it drawing more than twelve feet water. The consequence of this alteration in the bed of the river below the island has been to narrow the mouth of the Eastern Branch, but it had no effect upon the harbor of Alexandria. This may serve to explain what may be the effect of opening the old channel in the way proposed: it may operate to widen the mouth of the Eastern Branch harbor, but it cannot injure Alexandria.

With regard to the objection stated by his colleague, (Mr. Plater,) in relation to the power given to the Corporation of Georgetown to tax the additions to that town, he could assure the Committee that almost every person in Georgetown had signed the petition; and as no objection had been made by any portion concerned, (though the bill had been a long time before the Committee,) he considered it a tacit acknowledgment on the part of those who had not signed the petition that they wished the measure might be adopted and carried into execution. He felt particularly solicitous for the erection of this dam, as it regards the interests of the citizens in the western parts of the States of Virginia, Maryland, and Pennsylvania; for if no steps are taken to improve the navigation below Georgetown, the navigation will soon become so shallow as not to permit sea-vessels to come to Georgetown to carry off the produce which may descend by the Potomac and its improved canals. The destruction of Georgetown will follow the loss of the navigation, and the Western farmers will lose a choice of two rival markets.

While he was up, he would add a few words with respect to the right which Congress have to legislate on this subject. He differed entirely from those of his colleagues who held that Congress had no jurisdiction over the river Potomac, because it never was ceded by Virginia. The State of Virginia ceded to her dividing line, and it was immaterial whether that dividing line was high-water mark on her shore or the middle of the channel; for as Maryland has ceded all she had, she cedes up to the Virginia line, wherever that may be; for he held it to be sound law that you could not convey a body of territory without conveying all its appurtenances, unless expressly reserved, and neither State had made a reservation of any right, or a part of any right. Suppose A and B should hold two adjoining tracts of land, and A should sell to C all the tract he held, and B should also sell to C all his adjoining tract, would not the whole of the property of A and B thereon, of what nature soever it might be, vest solely and exclusively in C; and if a road passed along the line of A upon the land of B, or part on each of their lands, would it be contended that C could not keep it in repair, or improve it for his own and his neighbor's accommodation, without obtaining the consent from A and B every time an improvement was required? This statement he considered as a full reply to all that had been urged on this head, and he concluded with repeating his former wish that the bill might be speedily passed into a law.

Mr. Clark.—When this bill was under consideration, some days past, I endeavored to show (and hope with satisfaction) that Congress had not the power of legislating on this subject. The ground I then assumed, was, that Virginia had, by contract with the State of Maryland, before the cession to the United States, acquired the right of highway on the river Potomac, which she has never granted. It it now unnecessary to inquire into the reasons of this policy; it is sufficient for our present purpose to say it is the fact.

In retracing this subject, I find my arguments very much strengthened by examining the Articles of Agreement between the States of Maryland and Virginia, and this circumstance is the only inducement for my troubling the Committee again. The sixth article of the Agreement declares that "the river Potomac shall be considered as a common highway for the purpose of navigation and commerce to the citizens of Virginia and Maryland, and of the United States, and all those in amity with them." The eighth article declares that "all laws and regulations which may be necessary for preserving and keeping open the channel and navigation of the river shall be made with the mutual consent and approbation of both States." If a doubt remained, therefore, it appears to me this must remove it, and time will be spent in vain to illustrate the subject.

My colleague (Mr. Lewis) supposes, that as the two States have ceded the territory, all that either or both possessed passed by the grant; but let it be recollected this was a several and not a joint conveyance, and nothing more passed than is embraced by the terms of the grant; and Virginia has expressly limited it to her territory, and cautiously avoids yielding any right she had acquired from the State of Maryland. Here, Mr. Chair-

man, they distinguish between what they call an improvement and an obstruction of the navigation—the one they contend they have the right to do, but the other they have no power over. This admission, in my conception, surrenders the question; for, if we have the power of legislating on the subject, we can make any regulations we please, and indiscriminately improve, alter, or construct. It seems a little remarkable that gentlemen wish to improve a property they have no title to; and it does not appear a conspicuous mark of understanding to begin at the wrong end to improve, and then contend about the right.

Mr. Nelson did not expect that this point would have been brought up again, but since it had so happened, he felt a propriety, not to say a duty, in recapitulating also what he had urged before, and adding some further reasons to show that Congress had the right, and exclusive right, of jurisdiction over all that part of the river Potomac within the District of Columbia. The burden of the song appears to be this: that because the States of Maryland and Virginia entered into compact before the formation of the present Constitution, by which it was agreed that the river should be considered a common highway, and as both possessed the right of way, it was a joint right, which, as they did not jointly convey the right, has never been ceded to the United States. Does the gentleman (Mr. Clark) mean to say that the States of Virginia and Maryland had not the power of granting this joint right? If he does not assert this, or if he admits they had the power, we shall be able to demonstrate that they have granted it to Congress. After two States have made a division of a part of each of their particular property, cannot they mutually give to another the property they have thus acquired? Surely common sense cannot deny them the right so to do: if you cannot grant away a right, it is no right, for a right cannot be complete if it cannot be conveyed to another; the very idea of a right implies the power of disposal. They say that Maryland had the exclusive right of navigating the river Potomac, and that she gave by compact a qualified property in that exclusive right to Virginia. Cannot Virginia convey this qualified right? If one holds a right to an estate for life or a term of years, is it not as competent for the party to convey such right, as it would be to convey an estate in fee simple? Whether the right be a special right, or a limited right, or of whatever nature it be, every man has a right to convey it to another, unless there be exceptions or reservations; but in the compact between Maryland and Virginia there are no reservations or stipulations that abridge or preclude a conveyance. Then he asked them to propound this case: Maryland has a common right with Virginia in the Potomac, and Maryland declares that she gives up all her right to ten miles square of her territory—the Potomac is a part—Virginia also says that, so far as she has a right, she gives it up also. Well, then, both States have given up their respective rights. Does not the relinquishment of their rights by both States produce the same effect as if it had been done by a joint instrument? Maryland, he asserted, had given up her right; no matter whether it was a real right or qualified right, she gave up all but what she had conveyed to Virginia, and Virginia has given up all she possessed.

Mark the reverse—if Virginia has not ceded her right in the Potomac, and Maryland hers, to Congress, then this is not a district of territory within the meaning of the Constitution; and if it be not the Constitutional district, we have no right to exercise any other jurisdiction here than what we exercise in common for every other part of the United States. For, if the District be separated by the Potomac, it is not one district, but two districts, and the Constitution does not give Congress power to assume exclusive jurisdiction over two districts. If, however, the State of Maryland has ceded the Potomac, and it runs up to the Virginia territorial line, then the district is but one district, though it consists of parts taken from two States. He felt a difficulty in defining this idea, because, when a thing is self-evident, it renders it hard to prove what is so palpable, and a multitude of words rather tend to confuse than clear the point. But what he understood was, that when several tracts of land were joined altogether, they are not separated by the water courses or anything else crossing or traversing the same; then the jurisdiction of Congress runs as well upon the bed of the river as its banks, and so over the whole ten miles square; if this idea was correct, Congress had assumed the exclusive jurisdiction over no more territory than they had a Constitutional right to acquire. He might be mistaken in his opinion; he therefore urged his arguments with great diffidence. He was liable to error, and that very often; and it may be the case in the present instance. But he must acknowledge that he had not as yet heard anything that satisfied his mind that he had been wrong. He therefore still hoped that the bill might pass into a law, from conviction that it would be a great benefit to all persons residing upon or near the waters of the Potomac.

Mr. J. Randolph had hoped that the very perspicuous statement of his colleague (Mr. Clark) when the subject was last under consideration, had satisfied the most incredulous that Congress were not competent to pass the bill before them. Indeed, he had hoped that the bill would have been suffered to sleep through the rest of the session, and the House no more troubled on the subject. The reasoning of the gentleman last up was to his mind utterly fallacious and inconclusive. The district was not necessarily divided into two bodies politic, because of the intervening jurisdiction of Virginia over the Potomac. Did Massachusetts constitute two States, because its parts were completely separated by New Hampshire through which you must necessarily pass to get into Maine from old Massachusetts, as it was called? For the purpose of division the mathematical line which marked the boundary between the two States of Maryland and Virginia was equivalent to the whole breadth of the Potomac. On the ground of natural right, Congress could

not obstruct the navigation of the river. They could not do it without admitting the right of Virginia and Maryland to raise obstructions above and below. Those States had as good a claim to stop the passage of ships of the United States as Congress had to interrupt their batteaux. But gentlemen say they are not stopping the navigation, they are improving it. How? by damming up the best channel. Did not this justify any species of obstruction? It was only to term it an improvement, and every objection was silenced. Whatever might be the decision of the House, he trusted no member from Virginia would be found to concede her right over the Potomac. He hoped also that the subject would be suffered to remain at rest until the question of recession was decided; but, in whatever shape it should appear, he should always protest against it, as a violation of the rights of the State which he represented.

Mr. Nelson would briefly reply to what had been said in relation to two districts being but one district. The fact was, as had been often stated, that two parts of the District had been separately granted by Maryland and Virginia; that, if these two parts touched each other and left no interval, they became one district; but if there was an interval between them, such as the river Potomac, they were two districts, and over two districts Congress had no authority to assume exclusive jurisdiction. But he thought the gentleman from Virginia had evaded an answer to the position that Congress cannot exercise powers of exclusive legislation over two districts. What had been said of Massachusetts and Maine being one State, although separated from each other by New Hampshire, did not apply; they might be, and in fact were, a body politic, notwithstanding the geographical separation of the parts. A nation and its territory, like the United States and Louisiana, were a body politic, but the decision of the present question does not depend on things like these. The jurisdiction given to Congress by the Constitution over one district of country can never be considered a jurisdiction over two separate districts. True, if both parts join together, they are but one district; yet, if they are separate, they are two districts.

What has been said of Virginia's holding the right of free navigation under the law of nature and of nations was an opinion different from that he held; but it would take such a length of time to discuss that point, and recite his authorities, that he was induced to give it the go-by, with one single remark. It was not the understanding which the States of Virginia and Maryland had at the time of entering into the compact for the free navigation of the Potomac, Pocomoke, and the mouth of the Chesapeake bay. By that instrument, it would appear that their right of navigating these waters was the result of compact, and did not grow out of the law of nature, or the code adopted by the nations of Europe.

But suppose his ideas not to be correct, still he would contend that what was proposed to be done by the inhabitants of Georgetown was within the power of the United States Legislature, inasmuch as it goes to amend and make better the navigation of the Potomac. Indeed, any stranger standing by and hearing the debate which had taken place would suppose that the advocates for the dam were disposed to obstruct the navigation of the river in such a manner that no other vessels than those belonging to Georgetown should be permitted to pass by Mason's island. This, however, was by no means the intention. He concluded with observing, that, to him and his constituents, it was really a matter of great concern; and he believed it to be equally important to all the upper country of Maryland, and part of Virginia and Pennsylvania—all in Pennsylvania within twenty miles of the south line of that State, and all the inhabitants of Virginia between the ridge dividing the head-waters of Rappahannock and James rivers from the Potomac. If, by inaction or refusal, the channel to Georgetown should be suffered to fill up, he would not give a single farthing for all the improvements made upon the canal navigation. The Potomac Company may as well be abolished at once, for there will be an end to all the advantages they have heretofore calculated upon, and which had been the inducement for them to expend so many myriads of dollars on their improvements. He could not restrain himself from expressing his anxiety that the bill should pass, and this he still thought, as he had before declared, to be the proper time.

Mr. Lucas.—The question is, whether we can authorize the inhabitants of Georgetown to improve the river at their own expense? And it appears, from the statements made in the course of the argument, that the Potomac was within the charter bounds of Maryland, and not within the charter bounds of Virginia; and unless Maryland had ceded the right of navigation thereon to Virginia by compact, Maryland would yet have been as the sole owner of the soil, also the sole owner of the river. What Maryland gave to Virginia was not a title to admit them to the right of ownership; they granted only a qualified right, and reserved the territorial right, and if so, Virginia has never possessed more than a qualified right. Let it be inquired, what right is that? and it will be found to be merely the right of free navigation. That is nothing more than the right of passage over the soil of another, or, as it is termed by the civilians, the right of servitude. It is not a right in the territory, but merely a right of usage across the soil. If, for example, an alluvion was to form an island in the Potomac, would Virginia claim it as joint owner of the soil? She would not, because she has no other claim than what is declared in the compact; that being only a qualified right, she is not joint owner; of course Maryland being the sole owner of the soil might convey her whole territorial right, subject only to the qualified right of Virginia, viz: the right of navigation. If the right of fishery, or any other territorial right, was contended for on her part, it would not be allowed her. For all territorial rights, as they were in Maryland from the beginning, remained in her till her act of cession.

It is evident, therefore, that Maryland, as absolute proprietor of the soil, could convey the same to Congress without the intervention of Virginia, and if Maryland could do this, she has done it; for, by her act of cession, she has ceded to Congress all her territorial rights over ten miles square, or less, of her State, but still subject to the qualified right of Virginia. It is urged that such a conveyance cannot be complete without the consent of Virginia, and as Virginia has not ceded her qualified right derived from Maryland, Congress do not hold the Potomac in full sovereignty. He granted it, and admitted further that as Virginia had only ceded such of her territory as was within her charter bounds, and as the right she had to the river was not included in her charter, but derived from Maryland by compact, that she still had that right; but that was a right neither more nor less than that of the free navigation to which the gentleman from Virginia (Mr. John Randolph) had said the State of Virginia was entitled by the law of nature and of nations, inasmuch as she held territory above and below. But if Maryland has conveyed to Congress all her right to that part of the Potomac lying within the boundaries of the District, Congress has the same right which Maryland had. Suppose a case: A person conveys his right of soil to another, but, previously, he had agreed with his adjoining neighbor to let him have the service of his road. Shall this qualified right in the use of the road across the other's soil, prevent the new possessor from repairing or improving such road? Such a position cannot be supported, because a general right of improvement in the owner of the soil would be counteracted by the special right of way or passage granted to another. Can it be said that Congress, when they wish to improve a road or a river within their exclusive jurisdiction, cannot exercise this right without the consent of those whom they have allowed to travel along or over the same? Surely this will not be contended for.

The waters of the Potomac are a common highway. We grant it; but will it cease to be a common highway, while the whole body of the waters are carried through one channel instead of two? Does the contraction of the surface and deepening of the channel render it less a highway than it was heretofore? Will the river Potomac cease to be the Potomac, when its waters are comprised within narrower bounds? No. What is lost in surface is gained in depth, not a drop is lost to the river, but there is a clear profit in the gain.

Allusion has been made to the navigation of the Mississippi, in which France has a qualified right of navigation—the United States owning the soil on both sides. If the United States should pass a law to remove its obstructions or cut across from point to point, would France interfere, and say you shall not remove a single stick of driftwood, or any of the masses of trees which almost choke up the navigation at certain seasons? It is preposterous to think so. What! not remove a bar that shall be formed by the course of nature? It is absurd. But there is more ground for this position than the one now advocated for the concurrent jurisdiction of Virginia. It has been contended that the States of Maryland and Virginia were to make the improvements in this river, not only by joint consent, but at joint expense. Now, would Georgetown, at her own expense, offer to lay out such a sum of money as is likely to be required for the erection of the dam in order to obstruct the navigation of the river—a river in which she is most deeply concerned? Would they pay the whole expense if it was to work an injury instead of a benefit? The States of Virginia and Maryland agreed, in the opening of the canal, but here Georgetown bears the whole expense; and let any man say whether they would contrive and pay for their own ruin?

Mr. Sloan would leave the dispute, as to the right of jurisdiction over the river, to be settled by those who were more competent to investigate law questions than he was himself. But, from what he had heard, he had brought his mind to this conclusion, that, whatever right Maryland possessed to the jurisdiction of the Potomac, Congress was now entitled to exercise. The gentleman from Virginia (Mr. J. Randolph) has said that Congress has no right to obstruct the navigation. True; but it does not follow that Congress has no right to remove obstructions. He says, also, that we might stop both branches. Not so; it is intended to stop one only, in order to deepen the other, so as to render the navigation more useful and safe. The case before us has been occasioned by the act of God, or a great movement in nature; a great quantity of ice has been lodged, and tore up from the shore and the island the materials that form, perhaps, the base of this sand bar, by which the navigation has been obstructed. Now, suppose another case, that this ice had pent up the whole body of the river, and compelled the waters to form themselves a channel for escape through the lower grounds of the Virginia side, and thereby have given a new course to the river; and it would not be the first time that ice had been the cause of changing the bed of a river. He would ask, was there any member of this House but would heartily concur in restoring the inhabitants on this side the river to the use of the river, by erecting proper works to restore the stream to its old bed? He did not believe there would be the slightest objection to such a proposition, especially if it was to be done, like the present measure, at the sole expense of the people of Georgetown. With regard to the doubt which had been entertained whether it would be advantageous or not, he believed that to be perfectly settled, after what had been stated by the gentleman from Virginia. (Mr. Lewis.) He believed it would no more injure Alexandria, or the mouth of the Eastern branch, than it would the mouth of the Chesapeake.

Mr. R. Griswold.—This question has assumed several important aspects since it has been before the Committee. The first, though not the least, has been the denial of the right of Congress to exercise exclusive jurisdiction over this District of ten miles square. This question, however, must

be solved by adverting to the Constitution of the United States, and the acts of cession of the States of Maryland and Virginia, which were passed for the purpose of carrying into execution that part of the Constitution relative to a territory over which the United States were to exercise exclusive legislation. The gentleman from Virginia (Mr. J. Randolph) has stated in fact, though not in words, that Congress have the power of assuming the exclusive jurisdiction over more than one district, if granted by any of the States. He says that this District of ten miles square is divided into two districts by the Potomac, or by a mathematical line, therefore, they are still two districts, and it does not deny the right of Congress to assume the exclusive legislation over them, but merely they have no right to exercise jurisdiction on the interval between them; this he has illustrated by a reference to old Massachusetts and her province of Maine. He says they are one body politic, and constitute one State of the Union. Here, that gentleman must surely be mistaken. It is not to be disputed that a State may consist of separated parts, and so might the territory of ten miles square, if the Constitution had not tied it down to one entire and connected district. As well might it be pretended that Congress might assume one hundred districts, each consisting of one mile square, as that they are authorized to hold two districts within their ten miles square. But the truth is, that, by the acts of cession both of Maryland and Virginia, the two parts which Congress have assumed are expressly granted, and Congress now stand on their ground, and have all the rights and jurisdiction which either or both States possessed previous to the act of cession, and that right extends over the river included in the ten miles square. He would admit, for argument sake, that those two States have the privilege of free navigation, or the right of highway; but he would ask, if there was anything contained in the bill that infringed that right? And he knew the answer must be that there was nothing in the bill likely to work an injury to any person.

Mr. Ashton did not intend to consume much of the time of the Committee in delivering his sentiments, as the discussion had already been protracted to a much greater length than he, at the first view of the subject, supposed it merited. It has been contended by several gentlemen that Congress have no power to legislate at all upon the subject of the navigation of the river Potomac. This really, to him, appeared to be a very extraordinary doctrine indeed. That because Virginia and Maryland had not jointly conveyed a common property, their conveyances separate, although including this very common property, was not obligatory, and did not convey to Congress exclusive legislation and jurisdiction over such part of the river as lay within the District of Columbia. He admitted that the river Potomac was a common highway, and ought ever to remain so, for the benefit not only of the people of Virginia and Maryland, but likewise for all the citizens of the United States choosing to navigate the same; and to do any act whereby the navigation would, in the slightest degree whatever, be obstructed, was more than we had a right or ought to do. But would it follow, in consequence, that we had no right to improve or benefit the navigation of the river? Most indubitably not. It was, in his mind, clear, from the information he had received, that, unless something was done for the benefit of the navigation of the river, that an end would soon be put to Georgetown as a commercial spot. He believed it to be universally the case that the uniting of any two streams of nearly equal size produced a bar or shallow place just below their junction. If, then, the bar complained of, just below Mason's island, has been produced in consequence of the uniting of the two arms of the river, it seemed to him an inevitable consequence that, if one of them was dammed up, the channel would return to its former depth. Mr. A. could not see the force of an argument made use of by his colleague, the honorable Speaker, if he understood him correctly, to say that, if the dam contemplated should be effected, it would tend to injure the ferries established on the river. In what manner the erecting the dam from Mason's island to the Virginia shore could affect them, he was not able to discover, as the land on the Virginia shore, opposite the ferries, and the island, belong to the same person. He entertained no doubt but that the same privileges would extend to the island as were now enjoyed at the landing on the Virginia shore.

It, therefore, appeared to him that the propriety or impropriety of the measure contemplated by the bill upon the table, turned wholly upon the question, whether thereby the navigation of the river Potomac would be obstructed or benefited? For his part, he had no doubt but that it would greatly tend to the improvement of the navigation of the river. He should, therefore, give it his decided support, and hoped the bill would pass into a law.

Mr. Claiborne asked if the ten miles square, located and surveyed to the United States, included the river? He rather suspected that they had laid off ten miles square, exclusive of the river. If this were the case, Congress had assumed jurisdiction over more territory than they were constitutionally entitled to.

Mr. J. Randolph had really hoped that, after this question had been so long before the Committee, it would have been better understood than it appeared to be. He regretted his incompetency to make himself intelligible. He had not meant to convey the idea attributed to him by Mr. R. Griswold. What he had said in relation to the two districts was offered as a solution of the difficulties which the gentleman from Maryland (Mr. Nelson) seemed to labor under. He never did contend that, because Congress had the power of exercising exclusive jurisdiction over a district of ten miles square, they had, therefore, the right to exercise similar authority over one hundred districts of one mile square. The same gentleman seemed to labor under another error in supposing that he contended that Congress, because they had no right to legislate over the river, had no right to legislate here. The right of jurisdiction over the territory is not impugned by a denial of the right over the river. It is a little remarkable that the gentleman from Connecticut (Mr. R. Griswold) and the gentleman from Pennsylvania (Mr. Lucas) draw the same conclusion from different premises; but it never was contended by him, that Virginia had a territorial right over this river. What she had was a stipulated right, and Maryland had conceded that no obstruction should be made in the river, but by the consent of the two States. It is, however, said, that the dam will not be an obstruction, and the gentleman from Pennsylvania has discovered that all the water will still flow between the banks of the Potomac; but though the water be there, there will be no navigating up or down the west side of the island. The gentleman is also at a loss to conceive how Georgetown, which is so greatly interested in the navigation of the Potomac, should, at its own expense, undertake to throw obstructions in the river. Is he yet to learn that Georgetown might not be greatly concerned, if she hindered the navigation generally, while she derived much benefit to herself? He knows that there is a project afloat for cutting a canal across from the Potomac to the Eastern Branch, and by that means obstruct the passage to Alexandria. If you undertake to exercise this right, what is to prevent your taking the water out at the Little Fall, and bringing the whole to the residence of your favorite child, the City of Washington, and thereby destroy the canal constructed at such vast expense by the joint funds of Maryland and Virginia? He thought the present to be a very important question, or he would not have been so troublesome. He would just review the positions he had taken. The State of Virginia acquired by compact an extension of her natural right to the navigation of the Potomac; she afterwards ceded ten miles square within her limits; but did not cede any qualified right she might have beyond her limits; yet you assume this power, and deprive Virginia of what she alleges she neither did nor ever meant to convey. He hoped, whatever might be the decision, that not a single member from Virginia would vote to yield up her rights without her consent.

Mr. J. Lewis.—My colleague has expressed a hope that no member from Virginia would be found to sanction a measure so hostile to the rights of that State. I lament extremely that I should, upon any occasion, differ in sentiment with that gentleman, and particularly upon this; but, because I am so unfortunate as not to agree with my colleague upon this question, I hope I shall not, on that account, be charged with an abandonment of the interests of Virginia. I am as tenacious of her rights as my honorable colleague, or any other Representative from that State, and I must, at the same time, be permitted to express my regret that any member from Virginia shall be found to oppose a measure so very interesting to a large portion of the citizens of that State.

Mr. G. W. Campbell, considering an important principle involved, would offer a few remarks on the point in question, namely, whether Virginia did really intend to cede to the United States any right of jurisdiction which she possessed over the Potomac, and if she did mean to cede, whether the law passed by her is couched in such terms as to convey that right?

The principal objection relied upon is, that the right which Virginia had was nothing more than a use springing out of the real property, without any territorial right; yet he understood that both the States of Maryland and Virginia could send their civil officers to execute process upon the Potomac. This being admitted, the inevitable conclusion is that the river was within the jurisdiction of Virginia for such purpose. Now look into the law, and see whether the terms be not broad enough to cover the jurisdiction claimed by Congress; the words are, that she cedes a tract of country not exceeding ten miles square, &c., and that Congress may exercise exclusive jurisdiction over the soil and the persons residing thereon. From these words it is clear, that Virginia meant to convey everything she possessed in relation to the soil. He believed that a person might use expressions in a deed that conveyed more than he possessed. Although the object did not pass, yet it was, *pro tanto*, good for as much as he did possess, which was the case with Virginia. He concluded by observing that it was singular so much danger should be apprehended, and yet no person came before them to complain; there were no petitions either from Alexandria or the Eastern Branch, nor did he apprehend there would be any, as he believed that deepening the channel would be a general good, and not produce even a partial injury.

Mr. Macon.—Although it may be a good rule, yet it is not a general one, that people are well satisfied when they do not complain; yet gentlemen, when they are sent here to legislate, must exercise their own judgment on the probable consequences. If all the people of the District were to say that this was a proper measure, he should still exercise his own opinion. The gentleman from Virginia (Mr. Lewis) had narrated the history of this river, and informed us there was no impediment prior to 1784. He did not doubt the correctness of the statement; but he should have gone further, and informed us what was the population on the waters of the Potomac at that time, and what it is at present, and likely hereafter to be; because if such a mud bank was raised in the river when its banks had little or no cultivation, what was it likely to be when thickly settled, for every new farm and every additional cultivation, loosened the earth, which was swept away by every fresh, and the mud bank at the head of tide water would proportionably increase in magnitude. Such had been the case with the Rappahannock, and if it should turn out that these two rivers are in a similar situation, their trouble would be thrown away.

Mr. Holland admitted that the quantity of mud would increase by cultivation; but if the channel is deepened by narrowing the river, the

mud would descend lower, and deposit itself in that part of the bed of the river where the channel was deeper. He had no doubt of the right of Congress to the exclusive legislation over the river, as well as over every other part of the District. He should therefore vote for the bill, believing that they had the right, and that the measure would be greatly beneficial to the commerce of the country.

On the question being about to be put, Mr. Eppes requested the Clerk to read the eighth article of the compact between Maryland and Virginia, which being done,

The question on striking out the first section was put and lost—forty members voting in the affirmative, and seventy-two against it.

Mr. Lyon proposed a new section incorporating a company to build a bridge over the Potomac. He thought the two objects ought to go together, and unless they were connected, he should not vote for the bill.

The Chairman determined the motion not in order, the Committee having had nothing relative to a bridge referred to them. The amendment, however, would be proper in the House.

The Committee then rose and reported, and the House adjourned.

Wednesday, December 12.

Another member, to wit: Benjamin Huger, from South Carolina, appeared and took his seat in the House.

Two memorials of sundry inhabitants of the counties of Randolph and St. Clair, in the Indiana Territory of the United States, in behalf of themselves and other inhabitants of the said Indiana Territory, were presented to the House and read, respectively praying that they may be permitted to purchase public lands, the property of the United States within the said Territory, at a less price than that fixed by an act passed at the last session of Congress for the disposal of the said public lands, and that the right of pre-emption may be granted to the memorialists and other actual settlers thereon.—Referred to Mr. Lyon, Mr. Morrow, Mr. Gray, Mr. Hoge, and Mr. Cutts, to examine and report their opinion thereupon to the House.

Mr. Varnum, from the committee appointed, presented a bill for establishing rules and regulations for the government of the Armies of the United States; which was read twice and committed to a Committee of the Whole on Friday next.

On motion of Mr. Lewis, the unfinished business of yesterday, on the bill relating to the dam or causeway to be erected across the Potomac, from Mason's island to the Virginia shore, was considered by the House, and after some attempts to modify the bill, all of which proved unsuccessful, the bill was ordered to be engrossed and read a third time to-morrow.

Mr. Thomas called for the order of the day on the report, on the petition from the New York and Dutchess counties slate companies, recommending a resolution that it is not expedient at this time to increase the duties on slate.

The House went into a Committee of the Whole on the report.

Mr. Thomas moved the Committee of the Whole to concur in the report of the select committee, which was agreed to without a division. The Committee then rose and reported its concurrence, and the resolution was thereupon adopted by the House.

Mr. Stanford would have called up the resolutions for the recession of the Territory of Columbia to the States of Virginia and Maryland, but on account of the absence (as he understood, occasioned by indisposition) of two or three gentlemen who feel interested in the decision; but he gave notice, that he should call it up when he saw them in their places, which he hoped would be to-morrow.

Mr. Jackson called up the order of the day on the bill making application of the moneys heretofore appropriated by law for making a post road from the navigable waters of the Atlantic to the Ohio river.

Mr. Eppes stated that the Senate had a bill on the same subject at this moment before them, and that too in the same form.

Mr. Jackson withdrew his call.

ARMED MERCHANT VESSELS.

Mr. Jackson called for the order of the day on the bill relative to the clearance of armed merchant vessels, if gentlemen were prepared to consider the same. He thought a law on this subject should be enacted as speedily as possible, for a number of merchants in our seaports had embarked extensively in an illicit commerce, which he conceived dangerous to our peace and national honor.

Mr. J. Clay requested that the bill might be suffered to lie until the memorial from the Chamber of Commerce of Philadelphia was printed, which had been ordered a few days since.

Mr. Jackson did not know of this memorial, or of an order for printing. If the business could be understood on its being read to the House by the Clerk, he should incline to consider the bill. He wished, however, the House to decide on the postponement.

Mr. Eustis wished the bill to lie on the table.

A question was taken for postponing till to-morrow, and carried—seventy-two voting in favor of the motion.

The House adjourned.

Thursday, December 13.

The Speaker laid before the House a letter from John Gregory, a black man, alleging himself to be a native of Nansemond county, in the State of Virginia, dated on board of the British ship of war, called the Alcmene, the nineteenth of August, in the present year, stating, that having lost his protection, and being shipwrecked in the British Channel, he has been impressed on board the said Alcmene, and detained there against his inclination; and praying that Congress will be pleased to take his case into consideration, and obtain his discharge from the British service.

The said letter was read, and, together with a certificate of the Consul and Agent of the United States at London, accompanying the same, ordered to be referred to the Secretary of State for information.

POTOMAC RIVER.

On the third reading of the bill for the erection of a dam or causeway from Mason's island to the western shore of the Potomac, the yeas and nays were called for by Mr. Varnum.

Mr. Dawson said: My absence from this House for some days past, occasioned by my bad health, has prevented my hearing the arguments which have been urged in favor of this bill, as well as those in opposition to it; presuming, however, that they had much affinity to those which were urged on its introduction, which, in my judgment, were conclusive in opposition and feeble in support, I must be permitted to express my astonishment that it has progressed so far, and that this House must now decide on its passage or rejection.

In this stage of the business, and under existing circumstances, I should not intrude a single observation, especially as I learn that the subject has been fully discussed, and various votes taken, did I not feel impelled by one consideration superior to all others; but, sir, whenever a proposition is made which goes to affect the interest and wantonly violates the rights of a State, one of whose Representatives I am, I hold it to be my bounden duty to rise in the opposition. Such is the bill in your hands, and under such influence do I now act. In my judgment, that bill usurps a power, and attempts the exercise of a right, which the States of Maryland and Virginia never have, and I trust never will, relinquish to any Government—a right essential to them as sovereign States, and the relinquishment of which will render them dependencies not only on the General Government, but upon any Corporation within the District of Columbia.

In the course of this discussion, reference, no doubt, has been had to the deeds of cession from those two States to the General Government; I mean not again to bring them to their view, and mention them only for one purpose. I presume that in the construction of those articles, the same rules will be observed, the same principles will be adhered to, which are observed in the construction of the original compact, the Constitution. I well know that in the construction of that instrument, two opinions have gone abroad in the United States, and have their zealous advocates: the one is, that the General Government possesses all powers which it shall deem necessary, and which are not expressly reserved to the States; to this doctrine I have never been a friend, and am surprised to find that it has so many advocates on this day who support that bill; the other is, "that 'all rights, powers, and jurisdictions, are reserved 'to the States, which are not expressly delegated 'to the General Government." This is the doctrine which I have always advocated, and which I support on this day by opposing that bill. Admitting, sir, my first position to be true—that the same rules of construction must be used in the two cases which I have mentioned, I call upon gentlemen to show any express surrender of this right of jurisdiction, either by the State of Maryland or that of Virginia. None appears, and gentlemen must either adopt the extensive doctrine of *implication* as one of their political tenets, or relinquish that bill. I will go further, sir, and declare it as my opinion, that the Legislatures of those two States never could have intended the surrender of that jurisdiction. I was a member of the Legislature of Virginia at that time, and the idea was new to me until the last year, when the bridge proposition was brought forward. I appeal to the candor of the gentlemen of this Committee, and call upon them to say whether it is reasonable to suppose that those two States, after taking uncommon pains to fix, and render secure forever, to themselves and their friends, the navigation of this river; after uniting their efforts to open and improve it to a considerable distance above tidewater, would surrender the jurisdiction to any earthly power, thereby putting it in their power to impede it whenever they please? for, be it remembered, that if we have a right to throw up a dam in one place, we have a right to build a bridge in another; if to build a bridge, to draw an artificial line at any place, saying, "thus far you shall go, and no further."

For these reasons, I am convinced that the right has never been surrendered; that it never was intended; and that it never ought to be relinquished. Considering the objections which I have mentioned as sufficient to defeat the bill, I have forborne to examine into its expediency; whether it will prove advantageous to some of the District and injurious to others, I will not pretend to say. One thing, however, appears probable to me, that if, by the erection of this dam, the rapidity of the water opposite to Georgetown is increased, and thereby the sand and mud carried to a lower point and there deposited, that point may be at or near the Eastern Branch, which we have established as our navy yard, to which heavy vessels get with great difficulty, and from which they may be entirely excluded, should the effect which I apprehend take place. I submit this to the consideration of the friends of this establishment, which is not without its enemies already.

One more word and I am done. If we admit the right to erect a dam, we have the same to build a bridge; and if we grant the one for the accommodation of one part of the people of the District, I know not how we can refuse the other to the inhabitants of the other part. Let the friends of the present bill look to this; the division of this House on the last year on that point was very equal, and the admission of the right will certainly give it new friends.

On the passage of the bill the yeas and nays were taken, and are as follows:

Yeas—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, David Bard, Silas Betton, Phanuel Bishop,

William Blackledge, Joseph Bryan, George W. Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Frederick Conrad, John Davenport, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, William Findley, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, John A. Hanna, Joseph Heister, John Hoge, James Holland, Samuel Hunt, William Kennedy, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, William McCreery, David Meriwether, Nahum Mitchell, Thomas Moore, Jeremiah Morrow, James Mott, John Patterson, Thomas Plater, Thomas M. Randolph, John Rhea of Tennessee, Erastus Root, Ebenezer Seaver, James Sloan, John Cotton Smith, Henry Southard, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, George Tibbits, Philip Van Cortlandt, Isaac Van Horne, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Lemuel Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Nathaniel Alexander, George Michael Bedinger, Adam Boyd, John Boyle, Robert Brown, William Butler, Christopher Clark, Joseph Clay, Jacob Crowninshield, John Dawson, William Dickson, Peter Early, John W. Eppes, William Eustis, Peterson Goodwyn, Thomas Griffin, Josiah Hasbrouck, David Holmes, Walter Jones, Nehemiah Knight, Michael Leib, Andrew McCord, Nicholas R. Moore, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, John Smilie, John Smith, Richard Stanford, Philip R. Thompson, and Joseph B. Varnum.

Resolved, That the title be, "An act authorizing the corporation of Georgetown to make a dam or causeway from Mason's Island to the Western shore of the river Potomac."

ARMED MERCHANT VESSELS.

The consideration of the bill to regulate the clearance of armed merchant vessels was resumed. The bill as amended was read, as follows:

A Bill to regulate the clearance of armed merchant vessels.

Be it enacted, &c., That, after due notice of this act at the several custom-houses, no merchant vessel, armed, or provided with the means of being armed at sea, shall receive a clearance, or be permitted to leave the ports where she may be so armed or provided, without bond, with two sufficient sureties, being given by the owner or owners, or by the master or commander, to the use of the United States, in a sum equal to double the value of said vessel, conditioned that such vessel shall not make or commit any depredation, outrage, unlawful assault, or violence, nor make any other unlawful use of her arms against the vessels, citizens, subjects, or territory of any nation in amity with the United States; *Provided*, That the regulations herein contained shall not be construed to extend to vessels bound to any port or place in the Mediterranean, or beyond the Cape of Good Hope.

Sec. 2. *And be it further enacted*, That, if any armed merchant vessel, clearing for any port or place within the Mediterranean or beyond the Cape of Good Hope, shall make or commit any depredations, outrage, unlawful assault, or violence as aforesaid, on her voyage to or from any place to which she may be bound or elsewhere, or shall wilfully proceed to any port or place in the West Indies, such vessel with her arms, tackle, and furniture, or the value thereof, shall be forfeited to the use of the United States.

Sec. 3. *And be it further enacted*, That, on satisfactory evidence or information being given to the collector of any port, that any vessel within the same is armed or arming, or provided with the means of being armed at sea, for the purpose of committing any unlawful act, as hereinbefore expressed, or of carrying on by force of arms any unlawful commerce, it shall be the duty of such collector to claim such vessels, until the case be submitted to the President of the United States, who is hereby authorized to cause such vessel to be disarmed, or to order a clearance to be granted, as he shall judge proper.

Sec. 4. *And be it further enacted*, That if any armed vessel as aforesaid, shall proceed to sea without a clearance, or shall leave the port, where her detention or disarming shall be required, contrary to the provision of this act, such vessel, with her arms, furniture, and tackle, or the value thereof, shall be forfeited to the use of the United States.

Mr. Crowninshield moved to strike out the proviso to the first section, which declared that the regulations contained in the bill should not be construed to extend to vessels bound to the Mediterranean, or beyond the Cape of Good Hope.

Mr. Eppes observed, there were only two cases in which nations usually allowed their merchant vessels to arm; the one, when a nation is at war, when she willingly takes advantage of the aid furnished by her subjects in arming private vessels of war or letters of marque. The other, when the trade is so remote and the seas so dangerous to peaceable navigators, that each vessel must be qualified to defend itself, as the nation can neither furnish convoys nor establish a force for their protection. He considered the latter case to be provided for by the proviso, and it was to him the most unexceptionable part of the bill. He did not approve of allowing merchant vessels to arm at all. He therefore would move to strike out all that part of the section which went to allow a clearance upon giving bond not to commit depredations on the vessels or subjects of nations in amity with the United States; and so on, to the end of the section. As this included the words intended by Mr. Crowninshield to be struck out, he presumed his motion would therefore supersede that made by that gentleman; and after the words were struck out, he meant to insert after the words, "shall receive" "at any custom-house of the United 'States any clearance, or be permitted to leave the 'port where she shall be so armed and provided, 'unless bound to the Mediterranean, or beyond the 'Cape of Good Hope."

In passing the first section of the bill in the way it now stood, he was convinced that we adopted a principle almost, if not entirely unknown to maritime jurisprudence, and such as would without great caution involve the United States in a foreign war. He did not think that circumstances required the adoption of that principle at this time. The following passage in the President's Message he suspected gave rise to the present measure:

"While noticing the irregularities committed 'on the ocean by others, those on our part should

'not be omitted, nor left unprovided for. Com-'plaints have been received that persons, residing 'within the United States, have taken on them-'selves to arm merchant vessels, and to force a com-'merce into certain ports and countries, in defiance 'of the laws of those countries. That individuals 'should undertake to wage private war, independ-'ently of the authority of their country, cannot be 'admitted in a well ordered society. Its tendency 'to produce aggression on the laws and rights of 'other nations, and to endanger the peace of our 'own, is so obvious, that I doubt not you will adopt 'measures for restraining it effectually in future."

These are the evils we are called upon to correct; but let him ask whether the remedy was of a nature to cure the disease? What! Shall it be permitted to every man, who can execute a bond, to wield the arms of the nation? Yet this is the only circumstance required to make a commander of an armed merchant vessel, and this too in time of profound peace. The evil complained of by the President, was that our merchants have taken upon themselves to arm and force a commerce. The obvious remedy is to take away their arms, for then the evil can no longer exist. It is much more easy and more politic to prevent the injury being committed, than to punish the party for the offence.

We are informed that armed vessels sailing to the West Indies are sold, with their arms and ammunition, to a class of people it is the interest of the United States to depress and keep down, rather than put arms in their hands, to do such extensive mischief as is every day practised in that island; to say nothing of the feelings such conduct on the part of our citizens, or people among us assuming that character, might have on the Government of France.

Mr. Lowndes wished the gentlemen who made the report would give the committee some information of the ground upon which they had bottomed the bill. When the President's Message was received, he had supposed that the French Minister had remonstrated against this commerce, and that something was required to be done to restrain the trade to St. Domingo. If that is the design, it will not be answered by the bill in its present form. You here authorize your merchant vessels to arm, on giving bond and sureties; bond to do what? Why, conditioned that such vessels shall not commit depredation, outrage, or violence, against the vessels or persons of nations in amity with the United States. What is the fair inference from these words, but that you shall be competent to trade to St. Domingo in vessels armed or unarmed? If in an armed vessel, shall they refuse to be searched? Suppose they resist the search, what then? Do gentlemen mean to extend this law to Spanish vessels claiming a right to search? for Spain is likely soon to become a belligerent Power—if they do, how can we preserve a neutral position? He was willing to do as much to preserve the peace of the nation as any man. And should think it the best and fairest mode of proceeding, either to declare the trade to St. Domingo to be a lawful trade, and in that case protect commerce by a public force, or suffer the private shipping to defend themselves. Or say, that the trade to that island is unlawful, and interdict it at once, and altogether. Say, then, they shall not trade to any part of St. Domingo, (and this appears to be what the Message pointed at,) and you will effectually restrain them.

Mr. Eustis said, that depriving merchant vessels of the power of arming would be to deprive them of the capacity of trading to St. Domingo—not to St. Domingo alone, but to Cuba, and many other of the West India islands, as well as the Spanish Main; for the number of small picaroons, employed for the express purpose of capturing our neutral and defenceless ships, would render the seas too dangerous for our navigation. He trusted, however, that Congress would not abandon so advantageous and profitable a trade, as that to the West Indies, but on a full conviction that it would ultimately do more injury than benefit to the United States. It is well known, and the circumstances are too recent not to be in the recollection of every member, that during the last European war many millions of dollars were taken from our citizens by almost every one of the belligerent Powers having colonial possessions on this side of the Atlantic. A second time we are exposed to a similar injury, and he did not know how to avoid it without enabling our merchant vessels to arm and make effectual resistance to the small privateers which swarmed in those seas. He hoped that Congress would express their opinion on this point; for if the idea of the gentleman from Virginia (Mr. Eustis) is to be acted upon, the business would have to be put into a different train, and would thereby render it unnecessary on the part of the select committee to give the information which had been requested.

He would, however, state the object of the bill. It must be very well known that in carrying on the trade with St. Domingo a great number of irregularities have taken place; that our vessels have supplied the natives with considerable quantities of articles contraband of war; they have taken away people from that island, whether subjects of France or others, contrary to the established rules and legal regulations of the place. These are circumstances it is desirable to avoid in future, and that can be best done by making a law for the regulation of this trade, and thereby secure to our country a very valuable commerce. Every gentleman knows there is great difficulty in restraining a trade where the profits are high, though attended with more risk and danger than ordinary. And he saw but two ways in which the thing could be done on the present occasion; which were, either to interdict the trade altogether, or pass the bill now on the table. The interdiction of the trade would be followed by a loss to this country, which existing circumstances did not call upon us to make. He was persuaded that our merchant vessels must arm in order to get to St. Domingo, or many of the West India islands; it is necessary for the safety of the vessel and the lives of the crew. Will a merchant vessel under

this bill, being armed and cleared, having given proper security, proceed to sea? What is then required? They are to abstain from committing outrage, unlawful assault, or violence, upon our friends, nor make any other unlawful use of their arms. The clause is expressed generally and not minutely; the committee did not deem it necessary to go into a detail showing the nature and defining the species of every act of violence, assault, or outrage; the difficulty of such a detail would have discouraged the attempt had it even been required. The Government will be equally secure against these armed merchantmen, committing offences, under the general definition, as they would have been in any other mode; the vessels are subject to the general restriction contained in the first section of the bill, and this, he thought, would restrain them sufficiently. As for the rest of the bill, the second, third, and fourth sections, he did not consider them of importance, and he should move to strike them out.

Mr. J. CLAY expressed some surprise at Mr. EPPES's amendment, which went to restrain all merchant vessels from being armed, unless such as were bound to the Mediterranean, or beyond the Cape of Good Hope. This was saying nothing more than the laws already enacted declare. He supposes, too, that the peace of our country is to depend upon the honesty or villany of the commander of an armed merchant vessel. If gentlemen would investigate this subject, they would find that the peace of the country never had been, nor was ever likely to be, hazarded by our armed merchantmen, except in the single instance of forcing a trade to St. Domingo; there is no danger to be apprehended from our armed merchant vessels in any other country. The object of the bill is to preserve the peace of the country by laying a penalty to be incurred for every offence. The trade to the West Indies must either be suspended, or if carried on in unarmed vessels, it must be left to the plunder of a ferocious banditti, disguised under the French flag. Nor are these the only ones to be apprehended; the brigands of small force are lying in wait in every quarter; indeed it is not safe for our merchantmen to sail unarmed from our ports on the Atlantic to New Orleans. The depredations already made on our commerce had amounted to an immense sum; the insurance companies in Baltimore alone have lost $100.000; yet the commerce is too valuable to the United States to be abandoned altogether. But were America to suspend her intercourse with St. Domingo, the evil of having the present inhabitants for our neighbors would not be lessened; for, whilst the rich productions of that island are in such universal demand, they will find their way to market, and their want of military stores or contraband of war will be equally supplied to them, not by Americans, but by British vessels, from the Danish or other neutral islands; the trade will continue, and either neutral or belligerent nations will reap the benefit. To make the thing still more secure, he thought it would be as well that the commander should give bond and sureties for his conduct on board an armed vessel, and if the cargo were made liable to forfeiture as well as the vessel, he should deem it a sufficient security to prevent the misapplication of the power entrusted to the commander. He hoped the committee would reject the amendment proposed by the gentleman from Virginia, (Mr. EPPES,) and afterwards concur in the amendment suggested by the gentleman from Massachusetts (Mr. EUSTIS.)

Mr. MCCREERY.—Mr. Chairman: Whatever may be the fate of the bill now before you, I think it my duty to state to this committee some circumstances which induce me to think, that the information given to the Executive concerning the conduct of our merchant vessels has been much exaggerated.

I am aware that the liberty of trade granted us to that island has been much abused by some of our citizens, and it is my wish that such laws may pass as will effectually restrain and punish such proceedings.

It is well known, sir, that we have had a considerable share of the trade of St. Domingo for more than ten years past, except for a certain period of the late administration, when it was prohibited by our own Government; that under all the late legitimate governments of that island it was not only permitted but invited; that in consequence of this and of contracts made by the Generals Le Clerc and Rochambeau, with some of our citizens, for the supply of provisions and other necessaries, there was American property to an immense amount in that island when evacuated by the last mentioned General, and, consequently, a considerable number of our citizens remained there. Under these circumstances it was not to be expected that this property and those men were to be abandoned. The trade was therefore continued in a peaceable manner, and would still have been carried on so, had it not been interrupted by vessels unlawfully armed in the ports of Cuba. Into these ports many of our vessels were carried, their cargoes landed in the night, the vessels sent out of the harbors, scuttled and sunk, to prevent detection, and the crews left without any means of returning to their own country. The question with our merchants then was, whether they were to abandon this trade altogether, and sacrifice their property remaining there, or arm their vessels for defence. The latter plan, and in my opinion the wisest, was adopted; and, I believe, not more than one instance has occurred where our vessels, thus armed, have resisted a legitimate force. To prove to the Committee that the vessels thus opposing our trade were not authorized, I request that the Clerk may be permitted to read the decree not long since issued by General Ferrand, at the port of St. Domingo.

[The decree was here read by the Clerk as follows:]

A Decree for re-establishing order in the Leeward Islands, for the issuing and use of letters of marque.

WE, L. FERRAND, General of Brigade, Commander-in-Chief of the Army of St. Domingo, Captain General pro. tem:

Being informed that several owners and captains of French corsairs, who have obtained limited letters of marque, whose time is expired, continue or renew their cruising, without having regard to any of the formalities required in such cases.:

That others have obtained, of some pretended French agents, the term of their letters of marque to be prolonged:

That others are bearers of letters of marque, whose transfer has been made by these pretended agents over to other ships than those for which they had been delivered:

That others have purchased letters of marque of these pretended agents, who, abusing the confidence of the Captains-General, of whom they held their power, have permitted a commerce thus culpable, without even examining the morality of the men to whom these letters of marque have been sold:

That some navigate with letters of marque expedited by those Generals who, not being Captains-General, not exercising those functions, have no right to deliver them. Informed likewise that under pretence of being ignorant that the tribunals of St. Domingo are alone competent to decide on neutral prizes, in relation with the rebels of that island, without regard to the authority from which the letters of marque, with which the privateers are provided, issued, several owners and captains of corsairs have neglected to observe the formalities prescribed, the principle of which is to make known the literal contents of those letters which have been given them:

Considering, that to tolerate much longer the irregular conduct of the privateers and captains of corsairs, which are found in the different cases mentioned, there would incontestably result abuses which would cause privateering to degenerate into piracy, and dishonor the French flag:

DECREE.

ARTICLE 1. From the first of Vendemiaire, 13th year, all the letters of marque delivered by General Rochambeau, those delivered by the Generals formerly employed in the army of St. Domingo, likewise those issued by us until the present day, the 8th Thermidor, shall be null and without effect. The only letters of marque delivered by us from the present date, 8th Thermidor, and which shall be declared under our hand, that they shall be valid until such epoch, are not to be comprised in this repeal.

ART. 2. From the same day, the 1st Vendemiaire, 13th year, all the owners and captains carrying letters of marque of the French Captains-General, other than those of St. Domingo, which shall be in the case of having relation to Santo Domingo, whose courts are the only competent tribunals to judge of neutral ships taken in contravention on the coast of St. Domingo, as well as those arrested with clearances for the ports occupied by the rebels, or going out of those ports, shall be held to prove their powers in the original.

ART. 3. Those who should wish to arm for a cruise, or those having armed who should wish to continue cruising, will obtain from us letters of marque when they shall conform to the requisite formalities.

ART. 4. The Captains-General of the French Windward Islands shall be apprized of the abuses committed daily, in consequence of the cupidity of some owners or captains disposed to see every ship in contravention, wheresoever they may meet neutral flags in sight, and even out of sight of the coast of St. Domingo; and they shall be invited to put a stop to those abuses, to have returned the letters of marque confided to those men who have abused them; they shall likewise be desired to recall those charged with their affairs, pretending to be French agents, who have given well-founded cause of complaint.

ART. 5. From the date of the 1st Vendemiaire, 13th year, the prizes that shall be made by owners and captains of French cruisers who have not conformed to the regulations contained in articles 1, 2, 3, of the present decree, shall be confiscated for the use of the invalid fund.

ART. 6. The pretended French agents who shall issue letters of marque, of which they may be in possession, or cause to be assigned those delivered by competent authority, shall be considered as forgers, and denounced as such to the Minister of the Marine and of the Colonies, and prosecuted with all the rigor of the law.

ART. 7. Copies of this decree shall be sent to the Minister of the Marine and the Colonies. They shall likewise be sent to the Governors of the neighboring colonies, to the Captains-General of the French Windward Islands, to the Minister of France near the United States of America, and likewise to the French agents in the Antilles. The present decree shall be printed, published, and posted up in the city of Santo Domingo, and likewise in all parts of the island of St. Domingo occupied by the French. It shall be registered in the Bureau of the Inspection of the Marine, likewise in the Register of the Provisional Commission of Justice, and also in the Special Commission of Prizes.

Headquarters at Santo Domingo, the 8th Thermidor, 13th year. L. FERRAND.

And to give to the committee some idea of the extent of the lawless depredations committed on our commerce in those seas, I beg leave to state the losses sustained by the five insurance offices of Baltimore, not correctly stated by the gentleman from Pennsylvania, (Mr. CLAY:)

The Maryland office - - - -	$128,565
The Baltimore office - - - -	80,140
The Chesapeake office - - -	67,455
The Union office - - - -	90,687
The Marine office - - - -	125,110
	492,555

Making, in all, nearly $500,000, besides considerable property not insured—nearly all of which has been sold without any form of trial, and leaves our merchants without any hope of redress.

If this bill passes into a law, we shall in fact be deprived of the trade to all the leeward islands, and even that to New Orleans will not be safe. One vessel lately bound from Alexandria to Jamaica has been carried into Cuba, where her cargo was landed and sent in small vessels to Jamaica, by these picaroons. Another, from Baltimore to St. Jago de Cuba, was, on her homeward passage, with a cargo worth $40.000, taken by one of them, who had no commission, and was carrying his prize into Barracoa, when it was retaken by a British cruiser and sent to Jamaica; and no later than last month, the vessel of a Baltimore merchant, who never armed a vessel, and who, I verily believe, was never concerned in any illicit trade, was obliged to put into the port of Savannah in distress, on her return from St. Domingo. On going up the river she was met by one of these

freebooters, that had chased her on her voyage out; the captain of which declared he would make prize of this schooner, and waited off the river for that purpose.

I will not detain the Committee by reading documents to prove these statements, but will leave them on the Clerk's table for the perusal of any gentleman of the Committee who may choose to satisfy himself. I have been also informed, but I have no documents to prove it, that one of our vessels, bound from Liverpool to New Orleans, has been taken by one of these cruisers. On the whole, sir, as I consider our entire trade to the West Indies and to New Orleans implicated in this motion, I shall decidedly vote against it.

Mr. Epps said that, notwithstanding the objections made to his proposed amendment, he sincerely believed the best interests of the nation required that it should prevail. It appeared to him that neither of the gentlemen who had opposed it had taken a correct view of the question. We are not, said he, passing a law for the protection of American commerce, but we are making provision against the improper use of arms; for it seems to be the intention of those gentlemen to allow our vessels to arm. They tell you that their vessels cannot do without arms; they cannot effect the object of their voyages without being prepared with a sufficient armament. Why, this is precisely the argument of a highwayman for the use of his pistols. But ought the United States to protect their commerce in this way? He thought they ought not. Do these gentlemen possess information that we cannot carry on our commerce without armed vessels? If so, it will bring up the whole principles upon which the right of armament is founded, and he trusted it would be manifested that the provisions of this or any other bill to be enacted for the purpose, would be such as to secure the United States from a collision with foreign Powers. He did not think it comported with the dignity of the Union to arm their merchant vessels and turn them loose upon the ocean, to act as whim, or caprice, or a thirst of lucre should dictate. It would be nothing more or less than covering the ocean with an armed banditti, that would bring down upon the United States the sovereign contempt and just indignation of all the Powers of Europe. He hoped the navigating and commercial character of Americans would be formed upon their superior skill and industry; if in the exercise of these, they were opposed, he was willing to extend the public protection to them; he would not only protect their rights in this way, but he would also avenge their wrongs. The arms of the Union can reach the Caribbean seas as well as the Mediterranean; and this, he presumed, was the course proper to be pursued. He felt extremely averse to the principle of the bill; he could not reconcile himself to do what no other nation had ever done: that is, give arms to every man sailing on the ocean who shall require it. Do you grant even letters of marque in this way? By no means. What! shall A, B, and C, persons we know nothing of, because they can sign a bond, with a security, range the ocean under the sanction of the flag of the Union, to make war upon other nations, and exercise a power which the Constitution declares shall be exercised exclusively by Congress? He did not believe the good sense of the Committee would permit them to confer the power of making war on any set of men, however virtuous or respectable, much less to commanders of armed merchant vessels, cruising in pursuit of wealth or plunder. No, they would certainly prefer to retain such an important power in their own hands; and he was well persuaded that the public peace would be preserved but a very short time after the moment that Congress put it in the power of others to make war. For whatever may be the character of a sea captain, if he executes his bond, he is entitled to his arms; and is any gentleman weak enough to believe that a bond to the amount of the value of the vessel will restrain an intemperate person from using arms when he is irritated by an anticipated detention or scrutinizing overhaul? It is well known, even in civil life on shore, where every man is equal, how difficult it is to restrain the vindictive passions of hasty tempers. The difficulty was much greater at sea. He really thought the risk too great to be entrusted to this body of men. He was, however, willing to protect them in every lawful commercial pursuit, as far as the arm of the Union could reach. But he would not consent to put the national vengeance in the hands of any man or set of men, with whose characters he was unacquainted, and who, for all he knew or appeared to be required by the bill, might be totally regardless of all the ties of virtue, justice, and national honor.

The question on Mr. Epps's amendment was taken—40 voting in the affirmative and 61 in the negative; the motion was lost.

Mr. Crowninshield moved to strike out the proviso and the second section.

Mr. J. C. Smith conceived the motion out of order; the proviso belonged to the first section, and that was the section under consideration; the Committee had not as yet reached the second section.

Mr. Crowninshield then proposed to strike out the proviso alone; which was agreed to by the Committee—55 against 32.

Mr. J. Clay said that he did not think the bond of an owner or commander for the value of the vessel was sufficient. He therefore moved to forfeit also her tackle, apparel, furniture, and cargo. It was well known that in many voyages now making, the forfeiture of the vessel would be but a trifling loss, compared with the profits made upon some cargoes, and that merchants would cheerfully incur the penalty rather than decline a voyage whereon such great profits were to arise.

Mr. Eustis admitted in some cases that the penalty might not be too great; but there were others in which it would be out of all proportion. Instance an East Indiaman with a cargo of four or five hundred thousand dollars; he feared requiring sureties to such an amount would greatly interrupt that branch of commerce, if not totally prevent it.

Mr. Crowninshield objected to the insertion of the cargo, but had no objection to the tackle, apparel, and furniture being forfeited with the vessel.

Mr. J. Clay.—The gentleman knows that the bond given in the case of East Indiamen is a mere formality; that trade being, on account of its profit, one in which there is no danger as to the improper conduct of the captain, men of respectability and good character always being employed; but the provision is intended to prevent illegal voyages, under an idea that the profit upon the cargo will more than cover the condition of the bond. He had no objection to exclude the cargoes of East Indiamen from the effect of this bond; but, in the case of West Indiamen, he thought Government would not have an adequate security unless the value of the cargo was made liable as well as the vessel.

Mr. Goddard asked if it was intended to take two bonds, one of the owner and the other of the commander, and to be for double the value of the vessel and double the value of the cargo? In this event, the security would be quadruple. He would merely submit it to the consideration of gentlemen, whether it would be proper to embarrass commerce in this way.

Mr. J. Clay.—That may be easily obviated by making it a joint bond.

The question on the amendment was taken and agreed to—66 against 32.

Mr. Clark thought, while we were imposing penalties on our citizens, it would likewise be proper equally to restrain foreigners; he therefore moved an amendment, to insert after the American owners of the vessel, the words "or any person or persons resident within the United States." This would restrain aliens reaping the profits so frequently mentioned.—Agreed to.

Mr. Crowninshield moved to add the following: "Provided, that the regulations herein contained 'shall not be construed to extend to vessels bound 'to any country situated to the southward of the 'equator."

Mr. J. Clay said, that would not restrain vessels from clearing out for the coast of Africa and returning to the West Indies.

Mr. Smilie asked if the words were not the same as had been stricken out; if so the motion was out of order.

Mr. Crowninshield said the words were varied; the former proviso extended to the Mediterranean, and beyond the Cape of Good Hope; here not a word is said of the Mediterranean, but the language is confined exclusively to the southward of the equator.

Only fifteen members voting in favor of Mr. Crowninshield's proviso, of course it was lost.

Mr. Epps suggested the propriety of amending the second section in such manner, as to make the captain and crew liable to punishment, if they should commit any violence or unlawful assault upon any vessel or territory of a nation in amity with the United States, or should make any other unlawful use of their arms. If the offence amounted to murder or felony they should suffer the punishment of murderers or felons; or if the offence should be of less degree they should be punished accordingly. He said it was well known that the privilege they were now about to bestow was not a right derived from the law of nature or of nations. If then it was no natural right, the Legislature have the right to dictate the conditions upon which they are willing to grant it. The first section provides a security against the improper use of arms, or as it were for their good behaviour. His amendment would go to provide a suitable corporal punishment for any offence they might commit after they had arms in their hands. It appeared to him that they were about to change the whole system of commerce. Instead of resting its success on the skill, enterprise, and industry of our mariners, we are about to give them force by which they may find their way to market. Your vessels are to be light, swift-sailing runners, capable of combat or flight. We shall hear no more of vessels of burden being employed in the West India trade. Upon the whole, he submitted to the House whether the public safety did not absolutely require this additional security. He had not however thrown this idea into form, but if it met the approbation of gentlemen he would endeavor to reduce it to writing.

Mr. J. Clay would make a motion which would supersede the necessity of the amendment suggested by the gentlemen from Virginia, (Mr. Epps,) that was, to strike out the whole of the second section.

Mr. Epps asked if Mr. J. Clay meant to propose a substitute.

Mr. J. Clay replied that he did not, as he believed the bill would be effectual for its purpose without anything more than the first section, as it now stood amended.

On the question to strike out, there were fifty-three in favor of the motion, and forty-four against it. The section was struck out accordingly.

Mr. J. Clay next moved to strike out the third section, which was carried without debate, by fifty-eight against twenty-two.

Mr. Eustis moved to amend the fourth section, so as to read, that if any armed vessel as aforesaid shall proceed to sea without a clearance, such vessel, &c. shall be forfeited to the use of the United States.—Agreed to.

Mr. Epps moved a new section, in conformity to the idea he had expressed when the second section was under consideration. It was nearly as follows:

"That if any armed merchant vessel shall make or commit any depredation, outrage, unlawful assault, or violence, against any vessel or territory of a nation in amity with the United States, or against any of the citizens or subjects of such nation, or make any other unlawful use of the arms on board such vessel; if such depredation, &c. shall be made or committed, as if made or committed in any place under the exclusive jurisdiction of the United States, would be murder, felony, or misdemeanor, as the case shall be; and the principals and accessaries concerned therein shall be punished as they would respectively be in other cases of murder, felony or misdemeanor, by the laws of the United States."

Mr. J. CLAY said he should be glad to hear the reasons on which this amendment was founded.

Mr. EPPES had stated, when he was up before, the reason for which he was induced to make this motion. The right of making war was, in all cases, lodged in the hands of the Government. When men entered into civil society, they abandoned whatever natural right they had to employ force against others, and vested their defence in those who were qualified to exercise the whole strength of the community. In our Government, the Constitution has delegated this power exclusively to Congress. Our merchant vessels have no right to arm, nor does the law of nations warrant it. If, then, Congress extend this privilege to merchantmen, Congress have a right to prescribe the conditions. He had also stated, that he did not consider the bond entered into at the custom-house an adequate security for preserving the peace of the nation, or preventing an improper use of cannon and ball entrusted to the citizens ranging the ocean in pursuit of wealth. Indeed, he thought the power confided to captains of vessels under this bill was too dangerous, and therefore Congress could not be too cautious in guarding against its abuse by every means in their power. It is true, the penalty enjoined by the new section is a severe penalty, but it does not affect any one unless he commits one of those improper acts it is intended to restrain; and if he willingly and wickedly does commit a crime, he incurs the penalty and deserves the punishment, and let him receive it, in order to check a similar licentiousness in others. He confessed some degree of surprise that gentlemen should ask for the reasons of the amendment, when they would not deign to offer any argument against it.

Mr. J. CLAY asked if it was meant to attach these penalties on a commander who shall, in resisting an illegal search, happen to kill or wound some of his adversary's crew? That right, he thought, was secured by the law of nations. If a vessel is attacked by pirates, may she not resist, and beat them off? This is the natural right of self-defence. He believed the provision of the first section was sufficient to prevent all voluntary transgressions; but shall a man who involuntary kills another by firing a cannon at sea, for any of the usual purposes, be hanged? If he is, is not this, then, a new and unusual punishment for such an offence, and such as is forbidden by our Constitution? Will any man say that this is a punishment proportioned to the crime?

Mr. EPPES requested the Clerk to read the amendment again, for the information of the gentleman from Pennsylvania, as it was very evident to him that he had misunderstood the object of the section.

This being done, Mr. E. proceeded. The words "new and unusual," certainly might have been spared by the gentleman, for the punishment is exactly the same as what has been usual in every place under the exclusive jurisdiction of Congress. It subjects them for a similar crime, committed at sea, to the same punishment as if the offence had been committed in this territory of Columbia. The arms, it is said, are only given to them for their defence; well, will you not then take sufficient security that they shall not be used for offence? or shall they be permitted to trespass upon the vessels or territories of those in amity with the United States? He could not distinguish why murder committed on the high seas should be less murder than if perpetrated on shore. In both situations the offence was the same, and the punishment directed by the amendment was precisely the same; unless this was allowable, he did not see how Congress could annex even an old punishment to a new crime. If, however, the offence and the punishment were the same as heretofore, he could see no impropriety in passing the section he had offered.

Mr. LUCAS could not discover how his colleague had inferred that the right of arming merchant vessels was a natural right, or a right under the law of nations. He supposes a neutral may resist illegal search, or defend himself against a pirate. On these points he need not add anything, as they had been fully exemplified by the gentleman who moved the amendment. As to its inflicting new and unusual punishments, he could not make that discovery either; the punishment for the offence was the same when committed at sea as if committed in the body of a county; the only difference was as to the place where. In short, he thought the amendment a very proper one, and hoped it would be agreed to. He thought the object of the bill was not so much to preclude the continuation of the trade to St. Domingo, as to give a kind of half-way satisfaction to France in excuse for the iniquity of that trade, as it had for some time past been carried on. From what had been stated by the gentleman from Maryland, (Mr. MCCREERY,) he supposed that the contracts for certain supplies to be furnished by the contractors in Maryland, and particularly in Baltimore, to the agents of the French Government, while at St. Domingo, had not yet been fully completed, but that shipments continued to be made, and the supplies destined for the service of the French actually were delivered at the ports as stipulated, although those ports were in the possession of the brigands. Under the intended regulation armed vessels will defend themselves to get in, which may produce a clashing of power between the contractors and the persons now lawfully commissioned by France to intercept the commerce between neutral nations and the brigands of St. Domingo. He admitted it was difficult to draw a line as to how far an armed vessel should be restrained in the exercise of her force. He knew there would necessarily be some latitude of construction, but he thought the best security which could be obtained was, to punish an abuse of the power conferred upon them, by making all the parties principals or accessaries, and punishing the offences in the same way as they would be punished if committed within the territory over which Congress have the power of exercising exclusive jurisdiction.

Mr. SLOAN hoped he should always be careful how he undertook to speak on matters he did not

understand. He had therefore remained silent on the bill so far as it had proceeded. He did not fully understand the commercial relations between the United States and other nations; but he had a full feeling and high estimation for the preservation of the peace and happiness of this country, and on this point he meant to express an idea which had occurred to him. He observed that it was but a very few years since merchant vessels were permitted to arm in any other case than that of actual and declared war. He supposed then, and still believed it was a dangerous experiment; he believed now that it was equally dangerous. Whether it was practically wise to pursue the St. Domingo trade, at such an immense risk, he would not say, as he had not as yet learned to calculate profits, when set against the peace and happiness of his country. He should not decide for those who understood this kind of political economy; but to his mind it resulted, from the arguments he had heard, that it would be better to restrain arming altogether. Yet, as a majority of the House had decided the contrary, he should not oppose their will, but he hoped they would endeavor so to secure this power from abuse, as to prevent to the utmost every possible evil which might otherwise arise to the unexampled prosperity of the Union.

Mr. CROWNINSHIELD said he regretted the necessity of again troubling the Committee on this subject. The bill under consideration was highly interesting to the merchants of the United States. He had repeatedly stated his objections to the bill as it was first reported, and as it was subsequently amended, and had moved an amendment which had been finally agreed to. This was to strike out the cargo, so that bonds should be exacted only for double the value of the vessel, without reference to her loading, and he had the satisfaction to find that a majority had been found in favor of the proposal. Without repeating what he had observed formerly, when this subject was before the House, he would call the attention of gentlemen to the great value of some of the cargoes shipped from this country. He was convinced that the East India trade from the United States could not be carried on to advantage, if the merchants were compelled to give bonds in a sum equal to the full amount of vessel and cargo. This commerce was extremely valuable, and he hoped no embarrassments would be thrown in its way. If we wished to restrain the trade to a particular island in armed vessels, for his part he thought it might be done without touching the whole commerce of the United States, but he saw no reason why that trade was to be wholly interdicted. It might be well to oblige those who carried it on to enter into bonds to double the value of the vessel, tackle, and furniture, conditioned that no aggression should be committed on the vessel of a friendly nation, and he should not oppose this regulation; but, in doing this, he could see no necessity of extending these conditions to all other vessels. He said that he was certain, if the bonds were to be exacted for the cargoes of the East India vessels, it would fall extremely hard on the merchants of the Eastern and Middle States, who carried on a great and increasing trade to India. Some cargoes might amount to three, or even four hundred thousand dollars, and in such cases bondsmen could not be procured. In general, the cargoes were not near so valuable; but we employed upwards of one hundred and fifty vessels in the India and China trade, and he hoped no restraints would be imposed on that commerce. The ships engaged in voyages beyond the Cape of Good Hope were generally provided with arms, merely to defend themselves against pirates, who were sometimes found in those distant seas, and he knew of no instance where they had committed an aggression, or where they had made any unlawful use of their arms, and he presumed none would occur in future. Why, then, should we compel the owners of these vessels to give such heavy bonds? Why embarrass commerce unnecessarily? Commerce will be always most flourishing when left most free to individual enterprise. In some cases these bonds would operate to the injury of our European trade. It was well known that a vessel of two hundred and fifty or three hundred tons, loaded with sugar and coffee, would be worth nearly one hundred thousand dollars. Would any gentleman in this House be willing to sign bonds for his neighbor for that amount? They would not, it might be presumed. Is it probable, then, that one merchant will stand surety for another at the custom-house for these enormous sums? If the bill should unfortunately pass with a condition to include the value of the cargo in the estimate of the bonds, he ventured to predict that the revenue would be sensibly diminished for the next year. He would not be much surprised if it fell short nearly a million of dollars. It would be impossible to procure the necessary bondsmen in all cases, and the merchants must give up their voyages to the East Indies in armed vessels, and if they disarmed, they exposed their property to almost certain loss. If the bill was properly amended, Mr. CROWNINSHIELD said he believed he should vote for it, though he did not like all its provisions; but he supposed something must be done, and he would willingly consent to regulate the particular commerce so frequently alluded to, but he could not approve of the bill in its present form.

Mr. CLARK voted for the first section under an impression that it would be proper to permit merchant vessels in some cases to defend themselves. He was therefore willing that they should have arms on board for the purpose of self-defence; but while he was willing to provide for their security, he conceived himself bound to restrain them from the commission of crimes, and this amendment goes no further. It does not deprive them of the right of self-defence, and the privilege of repelling force by force. They are authorized to beat another vessel off when attacked, but they are restrained from becoming the aggressors. The amendment does not go to deprive a sailor of a single privilege at sea which he possesses on shore, and surely it will not be

contended that because a man is a sailor he is entitled to exclusive privileges. A mariner has no right to attack another man on shore, neither ought he to be privileged to attack another at sea; but his rights, be they what they may, are the same both on land and sea. If this were a proposition to put arms in the hands of a man setting out on his travels, would any one object to punish him for every unjust and criminal abuse of such arms? There is not a member on this floor but whose mind would revolt at the idea of protecting such a man, more than if he had remained at home. Why, then, do gentlemen advocate a distinction between the man travelling by land, and another traversing the ocean? in each case the protecting arm of his country is extended to preserve to him his legal and Constitutional rights; in each case then also should the sword of justice perform its office without distinction or favor. This regulation, he was convinced, would have a beneficial effect upon foreign nations, as at the same time it would show them that we will protect our lawful commerce; that our citizens are not authorized to offend any other people, and that if they do they will be punished by their Government in a manner proportioned to the offence. On these two grounds he was in favor of the motion of amendment: first, it would go to prevent an offence by fear of the punishment; and, second, it would have a good effect upon the belligerent nations of Europe with whom we are at peace, to preserve our commerce from wanton spoliation.

Mr. Smilie had also agreed to the first section of the bill, because he thought it useful that our merchant vessels trading to the West Indies, during their present unsettled state, should be permitted to arm in their own defence; but at the same time there was another circumstance equally important to be attended to, that was to preserve a peace between the United States and other nations unfortunately engaged in war. He was of opinion that since merchant vessels were permitted to arm, every precaution ought to be taken against the improper use of their arms. The gentleman from Massachusetts (Mr. Crowninshield) has represented the American merchants as a set of peaceable and harmless men. He did not carry his idea of the virtuous and forbearing disposition of this class of citizens quite so far; but he honestly believed they were as virtuous and honorable as any other set of merchants on the face of the globe. But he believed that they had all the infirmities to which mankind were liable, as well as other persons constituting the other classes of the community, to say nothing of the nature of their calling, which many writers supposed to be bottomed on principles of avarice. Be that, however, as it might, he did not think it impossible that a seaman's conduct at sea might at times be as irregular and as improper as a landsman's on shore. He could not think the crew of a ship at sea would be more orderly than our own citizens residing in our own territory. Yet, we have such crimes as felonies and misdemeanors, for the commission of which the law has furnished correspondent remedies, and why not make a similar provision for similar offences committed at sea? He did not know but the temptation at sea was stronger than on shore; a weaker vessel might easily become the prey of the stronger, and the impunity arising from concealment might induce men to risk something more in one case than in the other. In a moral point of view a murder committed at sea was as heinous an offence as a murder perpetrated on shore, and if committed on the body of a foreigner, the crime was as great in the eye of Heaven as if committed on a fellow-citizen. But he would ask gentlemen of what they were afraid? They must allow that the crews of vessels may commit these crimes. Do they wish to rescue them from condign punishment? Surely not. But if a ship's crew make no unlawful use of their arms, they are not obnoxious to any punishment. He hoped the amendment would be agreed to, for the honor of Congress and the security of the peace of the nation. He had good reason to believe that the agents of a certain nation had made loud complaints to our Administration with respect to the conduct of several American vessels trading to the West Indies. If this section is added to the bill, it will evince the disposition of the Government of the United States to preserve peace and do justice to all the nations of the world.

On the question to insert the new section proposed by Mr. Eppes, there were 56 in its favor, and 50 against it.

The Committee then rose, and reported the bill with the amendments agreed to.

The House having agreed to consider the amendments,

On motion of Mr. J. Clay an amendment was made substituting for the words "citizen or citizens," &c., the words person or persons resident within the United States or territories thereof.

Mr. R. Griswold thought that giving bond for double the value of the vessel, her tackle, apparel, and furniture, was sufficient, without adding the cargo; if other gentlemen agreed with him, he hoped they would refuse their assent to so much of the amendment. The gentleman, (Mr. J. Clay,) to be sure, had said that the bond taken in the case of East Indiamen was merely formal. He did not think Congress ought to legislate on this principle. When securities are demanded they should be for an efficient purpose, and not merely nominal. Why should a vessel sailing with arms to India be compelled to give security on her cargo, of 500,000 dollars, for a million of dollars? Is there more risk of an improper use of her arms than in the case of a West Indiaman with a cargo of $30,000, which gives security only for $60,000? or is a murder or felony committed by one vessel less a murder or felony if committed by another? and yet from the disparity of the bonds one would be led to suspect that such was the idea. Viewing this additional encumbrance on commerce as a shackle that would subject small traders to real inconvenience, while it would facilitate the enterprise of merchants of large capital and long established credit, he meant

to call the yeas and nays on the question of agreeing to this part of the report of the Committee of the Whole.

Mr. J. Clay said it was true that he had said that bonds given at the custom-house for East India ships were merely formal; it is not however because they are unnecessary or improper, but because the commanders of such vessels were men of such consideration and prudence that they would not subject themselves to the forfeiture, and so far he was willing to admit that the amendment would also be a mere formal regulation as to the clearance of armed East Indiamen. But as to vessels bound to the West Indies, it was a notorious fact that the value of the vessel and her equipment formed no proportion to the profits made on the cargo, if they have a fortunate run, and it was against the illicit commerce of such that he wished to be secure. He was unwilling unnecessarily to shackle commerce as any gentleman; but this regulation was not an unnecessary shackle, it was one absolutely required by existing circumstances, and will not work a hardship on any merchant engaged in a lawful commerce. One thing, however, he acknowledged it would effect. It will prevent in future that species of trade which, to say the least of it, approaches very near to illicit trade at the present moment. A merchant, willing to run the risk of such a voyage as he had alluded to, would prefer to make it unarmed rather than armed, because he knows the consequences, and the probability of transgressing some of the provisions of this act. It had been suggested that two bonds would be required; he did not believe they would, as it was not the practice under the law of 1798, which was expressed in the same terms as the amendment before the House. If the House should, however, consider this regulation as bearing hard on the East India trade, they might remedy it by refusing to concur with the Committee of the Whole in striking out the proviso.

Mr. Eustis did not consider the capacity of committing a crime as enlarged in proportion to the value of the cargo—perhaps it was the reverse. But he would observe, that if a captain with a very valuable cargo on board was to commit even a trifling misdemeanor against this act, the owner would lose his all—both vessel and cargo. Under such impressions, he imagined it would be extremely difficult to obtain the requisite security. Where is the man that can find security to the amount of a million of dollars that the captain of his ship, his officers, or crew, shall not commit some small degree of violence, even upon friends? for enemies may often assume the garb of friends, and thereby render even friends suspected. The law of 1798 required bonds only to the amount of the value of the vessel, tackle, and apparel, and did not even extend to the number of guns she might carry.

Mr. R. Griswold again declared that commercial enterprise would be greatly diminished if a bond was required for both vessel and cargo. The consequence would be, that those merchants only who possess large capitals and independent fortunes could give bond. And while the young and small traders would be incapable of sending a single ship to sea, the large speculator would be enriching himself with the total profits of a very advantageous commerce.

Mr. J. Clay said, the observations of the two gentlemen who preceded him applied against striking out the proviso; but he did not see that the position of the gentleman from Connecticut (Mr. R. Griswold) was of such great weight as he seemed to imagine. But, for his part, he did not see the ill consequence of regulations which might prevent rash speculations, on the part of young traders, upon small capitals, in engaging in voyages that overstrain their credit and prove their ruin. As it respected the trade to the West Indies, he hoped the House would agree to the amendment as it stood, and non-concur in the amendment for striking out the proviso. He would agree with them to retain the proviso if the present amendment was adopted.

On the question to agree to that part of the report extending the bond to double the value of the vessel, *her tackle, apparel, furniture, and cargo*, (the amendment being the words in italic,) it was negatived—ayes 53, noes 55, as follows:

Yeas—John Archer, David Bard, George Michael Bedinger, William Blackledge, Robert Brown, Joseph Bryan, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher, Clark, Joseph Clay, Matthew Clay, Frederick Conrad, William Dickson, John B. Earle, Peter Early, John W. Eppes, James Gillespie, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, John G. Jackson, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, John Rhea of Tennessee, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Abram Trigg, Isaac Van Horne, John Whitehill, and Alexander Wilson.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, Adam Boyd, John Boyle, William Butler, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, Calvin Goddard, Edwin Gray, Gaylord Griswold, Roger Griswold, John A. Hanna, Seth Hastings, William Helms, John Hoge, David Hough, Benjamin Huger, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, James Mott, Thomas Plater, Samuel Riker, John Cotton Smith, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Samuel Thatcher, George Tibbits, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, Marmaduke Williams, Joseph Winston and Thomas Wynns.

The new section being before the House, as reported by the Committee of the Whole,

Mr. Elliot hoped the House would not agree to this amendment. The gentleman who had moved it apprehended gentlemen had not well understood it when in the Committee of the Whole;

be questioned whether the mover had paid that close attention to its effects, as to insure its being proper and beneficial. He said it created a new class of crimes, and if that measure was proper, it was proper also to define the punishment of each crime. The section refers to certain laws of the United States establishing the enumerated offences, and directs that the punishment shall be conformable to the punishment inflicted for similar offences committed on shore. It is true the Constitution provides that Congress shall have power to define and punish piracies and felonies committed on the high seas; that power had been exercised, the crimes defined, and the punishments annexed. [Mr. E. here read an extract from the law on that subject.] A misdemeanor was a crime, but under the terms of the Constitution he did not see how Congress could legislate upon it unless they defined it a felony; and were gentlemen prepared to say that every depredation, every species of outrage or violence was a felony; he was persuaded it was not the intention of the mover. If a misdemeanor, however, be considered a crime, it ought to be defined, and the punishment decreed, for none of the laws of the United States had hitherto done it. On this view of the subject, he considered the new section totally unnecessary, or if necessary, it was so imperfect that it would not reach the case for which it was intended.

Mr. EPPES said the remark he had made in Committee of the Whole had no allusion to the gentleman last up. He should however detain the House but a moment in making one observation in reply. The law quoted by the gentleman was the one defining and punishing piracies committed on the high seas, and was confined to cases arising on board our unarmed vessels. Acts committed by persons legally commissioned to carry arms, are not termed acts of piracy; in order to constitute piracy it is essential that the vessel has no legal sanction to bear arms. That is a case that cannot arise under the present measure, which is to give a legal sanction to our merchantmen to arm, only restraining them by a penalty and corporal punishment, if they abuse their trust. It was necessary, in order to embrace this offence, that the definition and punishment should both be declared in the bill; he had endeavored so to do. As to the perfection or imperfection of the section in its present form, he should say nothing more than it appeared to his mind adequate to the end proposed. If however the gentleman from Vermont thought otherwise, he should be happy to hear him point out the mode of improvement.

Mr. R. GRISWOLD said that whether the effects to be produced by this section, so far as related to murder and felony, were really provided for under the existing laws, he would not assert positively; but he believed that neither the existing laws nor this section made any provision for the punishment of misdemeanors. The offences defined and punished were provided for many years ago, in 1790. By that law murder was punishable with death, the same crime and punishment were revived in this section, and so it is in case of felony. Why then pass a new law on this subject? Or does the gentleman mean to infer that because murder or felony may be committed by armed vessels which are to be punished, that therefore murder or felony committed by unarmed vessels shall pass with impunity? He presumed in both cases they were murder or felony, and in both cases they were to be punished under the existing laws. He saw no occasion to multiply our statutes unnecessarily. With respect to the punishment of misdemeanors, he should remark that the Constitution gave to Congress the power to define and punish piracies and felonies committed on the high seas, and violation of the law of nations. Those who acted on this subject before us, he presumed acted under an impression that they had gone to the extent of their powers in defining piracies and felonies, and that a definition of misdemeanors was not in their power. But suppose the Constitution gave this power to Congress, does the section provide for this? It certainly does not. What says the section? that persons guilty of misdemeanors shall be punished as other misdemeanors are punishable under the laws of the United States. He could not find any statute in the books defining these misdemeanors, or inflicting a punishment. How then was the offender to be punished, if there was no general law on this point? and from the cursory view he had given the statutes, he had found none: the section would be altogether nugatory so far as it related to misdemeanors.

Mr. EPPES could not refrain from expressing the surprise he felt that gentlemen should contend that misdemeanor was a term unknown in the statutes of Congress. He had just dipped into a volume of the laws, and he found it in almost every one which respected the criminal jurisprudence of the United States. Sometimes an offence is deemed a high misdemeanor; at other times a simple misdemeanor. Under the act of June, 1794, there were several misdemeanors, particularly expressed; accepting the command of an armed foreign vessel was a misdemeanor—increasing the armament of such vessel within the United States was a misdemeanor, and others to which punishments are annexed. He believed the wording of the section to be correct, but as gentlemen doubted it, he should not wish to press the adoption of a correct principle in incorrect language, and to give time for the required alteration, he moved an adjournment.

And the House thereupon adjourned.

FRIDAY, December 14.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, who were directed by a resolution of this House, of the twenty-second ultimo, "to inquire whether any, and what, regulations are needful to be made in the act for the regulation and government of seamen in the merchants' service, so far as respects the furnishing of ships and vessels with medicine chests, on their voyages to foreign ports," presented, a bill to amend the act, entitled "An act for the government and regulation of the seamen in the merchants' service;" which was read twice and committed to a Committee of the Whole on Tuesday next.

The House resolved itself into a Committee of the Whole on the bill for establishing rules and articles for the government of the armies of the United States; and, after some time spent therein, the Committee rose and reported progress.

ARMED MERCHANT VESSELS.

The House resumed the consideration of the amendments reported yesterday from the Committee of the whole House to the bill to regulate the clearance of armed merchant vessels.

The new section being before the House—

Mr. EPPES admitted that the objection taken yesterday, by the gentleman from Connecticut (Mr. R. GRISWOLD) was in part correct. The offence of misdemeanor, contemplated by the proposed section, was not mentioned in the law of 1794; the offence of misdemeanor defined in that law, was that of fitting out or arming any vessel within the United States, for the purpose of cruising against nations in amity with the United States. He moved, therefore, to strike out the words, "or misdemeanor," as often as they occur, in order to separate them from those of "murder and felony," and to form a distinct and subsequent period in the section in relation to that subject, by saying, "and if the offence be of a less degree, it shall be a high misdemeanor, punishable by a fine not exceeding —— dollars, and imprisonment not exceeding —— years."

Mr. R. GRISWOLD agreed that it was proper to strike out the words alluded to, but he had doubts of the propriety of inserting all those which were proposed. It was plain that there was no general law of the United States, declaring the nature of the crime of misdemeanor, or its punishment. It is true that there are several of our statutes which prohibit certain specified things, and the persons guilty of committing them are deemed guilty of a high misdemeanor. But the terms used in the section reported by the Committee of the Whole, have no reference to any of the class of crimes designated in our statutes. It refers merely to the general common law under the head of misdemeanor. The gentlemen bring in a common law definition of misdemeanor, and give it a range over all that class of offences which it reaches in England. He wished the gentlemen, however, to meet the other objection, and answer whether the offences of murder and felony are not already provided for by the laws of the United States? He believed, still, that the law of 1790 embraced the very case now intended to be provided for by the amendment. If the section is adopted, are offenders to suffer death under the law of 1790, and again under the one of 1804? Can they suffer death twice? He thought if they suffered once, it would be sufficient for an atonement of the crime. If a misdemeanor is to be defined and punished by the section, let the gentleman confine his amendment to that crime alone, and so modify it that it does not re-enact an old law still in existence. If the gentleman did this, though he doubted the necessity, he should not object.

Mr. JACKSON said there had been two objections made by the gentleman from Connecticut and the gentleman from Vermont (Messrs. GRISWOLD and ELLIOT.) If they were attentively examined and compared with the Constitution and laws of the United States, they would be found not tenable. One of the objections was, that the Constitution of the United States did not authorize Congress to legislate on any other crimes committed on the high seas, than those of piracy and felony. He would ask them whether all other offences were to go unpunished? But he reminded them that the words of the Constitution extended further than what had been quoted; it declared in the same paragraph that Congress had power to define and punish offences against the law of nations. Is not a misdemeanor committed on board a vessel cognizable by the courts of the Union? For instance, if a gun is discharged at another vessel belonging to a nation in amity with the United States, and does considerable damage, though it may not amount to piracy or felony, is there no remedy? Surely by the Constitution Congress have the power of declaring it a misdemeanor, and of punishing it accordingly. If they have this power, and he believed it would no longer be denied that they had it, then the question would resolve itself into the expediency of exercising it at this time; and inquiry might be proper to ascertain whether the existing laws provided for the case. The act of 1790, upon which the gentleman from Connecticut (Mr. R. GRISWOLD) relied, would be found on examination not to embrace it. Suppose, in firing into a foreign vessel, a mayhem is committed, or a leg or an arm shot off, is this case provided for by the law of 1790? It is not a felony, nor is it piracy, the only two cases provided for by that act. If, indeed, the case was provided for by the act of 1790, it could not operate as an objection to insert it in this bill, because the bill was intended to draw into itself all the regulations on this head. That Congress had the power of legislation on this point, he trusted would no longer be disputed; and, having the power, the necessity of the case required its exercise. If nothing further was added to the bill than what was contained in the first section, nine tenths of the offences committed at sea would go unpunished.

Mr. ELLIOT did not mean to give the force to the extract from the Constitution quoted by him all that range which the gentleman just sat down had chosen to extend; he however admitted that, being a Constitutional question, it deserved serious and solemn deliberation. It had been often said that the Constitution of the United States is a limited grant of power and that the powers not therein granted are reserved to the States or to the people. Admitted. By the Constitution, then, Congress are authorized to define and punish piracies or felonies committed on the high seas; they are also authorized to punish offences against the law of nations, as stated by the gentleman from Virginia, (Mr. JACKSON,) but

where is the power given them by the Constitution to punish misdemeanors? It is, however, contended that a misdemeanor may be an offence against the law of nations. Misdemeanor means literally ill behaviour. He would not however deny that misdemeanor in certain cases might amount to an offence against the law of nations, and in such an event might be punishable as an offence against those laws.

By the law of 1790, in its 8th section, the crimes of murder and piracy are punishable. Does not that law go further, and punish what this law does not provide for? One thing further is contended for, which he did not think tenable; the same crimes that are punishable by the existing laws are again to be punished by this. This was clearly shown by the gentleman from Connecticut, and he would add nothing more.

Mr. CLARK thanked the gentleman from Connecticut for the light he had thrown on the subject; but he was not convinced that the crimes attempted to be defined by the amendment of his colleague were punishable by the existing laws of the United States, and he thought if the gentlemen would re-examine his argument he would discover his mistake. The law of 1790 had relation to a different crime. But he would not decide positively what might be the opinion of the Judiciary on that head; they might entertain a construction different from that of the Legislature. Yet his own opinion was that no provision could be found in the law of 1790 to restrain and punish the offence of an armed vessel of the United States on the commission of outrage and violence. Was the provision made in this law which his colleague had moved, he should not object to merchant vessels arming themselves; should it be refused, he never would consent to trust them with arms.

Mr. EPPES after having troubled the House so often on the present question, would have remained silent at this period; but such a variety of objections had been made, and many of them so foreign to the subject, that he could not avoid adding one concluding word. It might perhaps be considered as a reiteration of his first sentiment. He was decidedly opposed to trusting merchant vessels with public arms, the improper use of which might commit the peace of the nation. If, however, the sense of the Committee was against him, in that particular, he would submit; but then it must be under such a provision as had been introduced in the section now before the Committee.

Upon this the Committee rose, and the bill and amendments were postponed until Monday next.

MONDAY, December 17.

The amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans," were read, and, together with the bill, ordered to lie on the table.

The House again resolved itself into a Committee of the Whole on the bill for establishing rules and articles for the government of the armies of the United States. The bill was reported, with several amendments thereto; were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Friday next.

The House resumed the consideration of the amendments reported, on the thirteenth instant, from the Committee of the Whole House, to the bill to regulate the clearance of armed merchant vessels: Whereupon, the fifth and sixth amendments being twice read and amended at the Clerk's table, were agreed to by the House.

The bill was then further amended and, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what, further amendments ought to be made to the law "regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and that they have leave to report by bill, or otherwise.

Ordered, That Mr. LATTIMORE, Mr. GREGG, and Mr. BOYLE, be appointed a committee, pursuant to the said resolution.

Ordered, That the memorials and petitions of sundry citizens and inhabitants of the District of Columbia, praying "the aid and patronage of Congress in the establishment of a company for the building of a bridge across the Potomac river from the western and southern extremity of the Maryland avenue, in the City of Washington, to the nearest and most convenient point of Alexander's Island, in the said river;" and a memorial of sundry inhabitants of Georgetown, in the same District, in opposition to the prayer of said memorials and petitions; as, also, the petition of Anthony Addison, praying "the privilege of building a bridge over the Eastern Branch of the river Potomac, near the ferry owned by him within the District of Columbia, and of abutting the said bridge on the western shore at the termination of Virginia avenue, or some other public street in the City of Washington;" which were presented to this House during the first session of the seventh Congress, and at the last session, be severally referred to Mr. JOSEPH CLAY, Mr. JONES, Mr. JOHN CAMPBELL, Mr. BOYD, and Mr. LOWNDES; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Ordered, That the Message from the President of the United States, communicating a report of the Surveyor of the Public Buildings at the City of Washington, on the subject of the said buildings, and the application of the moneys appropriated for them, which were read and ordered to lie on the table, on the sixth instant, be referred to Mr. THOMPSON, Mr. NELSON, Mr. HUGER, Mr. JOHN COTTON SMITH, Mr. GOODWYN, Mr. PLATER, and Mr. CUTTS; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

And the House adjourned.

TUESDAY, December 18.

Two other members, to wit: JOHN DENNIS, from Maryland; and JOHN FOWLER, from Kentucky; appeared, and took their seats in the House.

Ordered, That the petition of Simeon Philipson, of the city of Philadelphia, merchant, presented on the ninth of February last, be referred to the Committee of Commerce and Manufactures.

Ordered, That the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported to New Orleans," together with the bill, be committed to the Committee of Commerce and Manufactures.

Ordered, That the bill to regulate the clearance of armed merchant vessels, as amended, be recommitted to Mr. EUSTIS, Mr. GODDARD, Mr. ROOT, Mr. BETTON, and Mr. LEIB, with instructions to consider and report thereon to the House.

Mr. RODNEY, from the committee to whom was recommitted, on the eleventh instant, the ninth section of the bill establishing a court for the adjudication of prizes in certain cases, made a report thereon; which was read, and, together with the bill, committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, to whom was referred the petition of Moses White and Charlotte Hazen, executor and executrix of Moses Hazen, deceased; and, after some time spent therein, the Committee rose and reported their agreement to the same, in which the House concurred.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. BRYAN, from the committee appointed on the seventh instant, presented a bill giving further time to register the evidence of titles to land south of the State of Tennessee; which was read twice, and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes. The Committee reported the bill with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill giving power to the stockholders of the Marine Insurance Company of Alexandria, to insure against fire.

It was amended at the Clerk's table, and, together with the amendments, ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to amend the act, entitled "An act for the government and regulation of the seamen in the merchants' service."

The bill was reported without amendment, and ordered to be engrossed and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Samuel Carson; and, after some time spent therein, the Committee rose and reported progress.

On motion, it was

Resolved, That the Committee of Commerce and Manufactures be directed to inquire into the expediency of amending the sixty-second section of the act, entitled "An act to regulate the collection of duties on imports and tonnage," in relation to the terms of payment of duties on goods, wares, and merchandise, imported from the "West Indies," and from any foreign ports in North America; and that the committee have power to report by bill or otherwise.

WEDNESDAY, December 19.

An engrossed bill to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes, was read the third time and passed.

An engrossed bill giving power to the stockholders of the Marine Insurance Company of Alexandria to insure against fire was read the third time, and passed.

An engrossed bill to amend the act, entitled "An act for the government and regulation of seamen in the merchants' service," was read the third time, and passed.

CONTESTED ELECTION.

The House resolved itself into a Committee of the Whole on the report of the Committee of Elections, of the tenth instant, to whom was referred, on the thirtieth ultimo, a petition of sundry citizens of the county of Washington, in the State of Pennsylvania, "complaining of an undue election and return of JOHN HOGE, to serve in this House as one of the Representatives for the said State;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said report of the Committee of Elections at the Clerk's table; and the same being read, in the words following, to wit:

"That William Hoge, member of the House of Representatives for the eighth Congress, having, by letter to the Governor of the State of Pennsylvania, dated the fifteenth of October, resigned his seat in Congress, the Governor, in pursuance of the provisions made in the second section of the first article of the Constitution of the United States, issued a writ of election, to supply the vacancy which had thus taken place; that the said writ was issued on the twenty-second day of October, and the election directed to be held on the second day of November, eleven days after the date of the said writ; that the writ was brought by the mail to the prothonotary's office, in Washington, on the thirtieth of October, but not proclaimed by the sheriff till the thirty-first.

"It appears to the committee that, though by the second section of the first article of the Constitution of the United States, it is made the duty of the Executive authority of the respective States to issue writs of election to fill vacancies, yet, by the fourth section of the afore-

said article, it is made the duty of the Legislature of each State to prescribe the times, places, and manner for holding such elections. It appears, however, that several elections to supply vacancies in Congress have been heretofore held in Pennsylvania, yet, on examining the laws of that State, it appears that no law exists prescribing the times, places, and manner of holding elections to supply such vacancies as may happen in the representation in Congress; and, consequently, if the election of John Hoge is, on this account, set aside, no election can be held to supply the vacancy, until the Legislature of the State enact a law for that purpose.

"By the law for the general election of Representatives to Congress from Pennsylvania, the sheriff is to give thirty days' notice before the election, and to make the returns within thirty days after it. This election is held near five months before the expiration of the existing Congress. By the law of said State for supplying vacancies in the State Legislature, the Speakers of the respective Houses shall issue writs to supply vacancies that may happen, giving at least ten days' notice. The Governor, in the case now before the committee, has directed the election to be held on the same day, &c., on which the Electors for President and Vice President were to be chosen. There is no proof before the committee of any abuse in the manner of conducting the election, in obedience to the writ issued by the Governor.

"While the committee are of opinion that the Legislature of Pennsylvania ought to have appointed, as near as might be, the times as well as the places and manner of holding elections to supply vacancies in Congress, and that, in ordinary cases, a longer period ought to intervene between the time of public notice and the day of holding the election, yet, considering the special circumstances attending the election of John Hoge, and particularly that the election took place on the day fixed by the Legislature for the appointment of Electors for the State of Pennsylvania, the committee are of opinion that John Hoge is entitled to a seat in this House."

Mr. LEIB said, he was opposed to the report of the Committee of Elections; he thought it a duty, therefore, to assign the reasons of his opposition. Were not the report to operate as a precedent for future decisions, he should have contented himself with a silent vote; but on this occasion he could not forbear expressing his dissent to the doctrine advanced by the Committee in support of the seat of the sitting member.

The Committee had made four points in their report; that the Constitution gives to the Executive of the State the power of issuing writs of election to supply vacancies; that if the election of Mr. Hoge be set aside, no election can be held to supply the vacancy until the Legislature of Pennsylvania pass a law regulating special elections; that there exists no law in Pennsylvania for the regulation of special elections for members of Congress; and that the notice of the Governor was sufficient, because it directed the election to be held on the same day on which the Electors for President and Vice President were to be chosen.

He would not deny that the Constitution of the United States gave to the Executive the power of issuing writs of election to supply vacancies, but he denied the power of the Executive to prescribe the manner and to fix the time of holding the elections. In the fourth section of the first article of the Constitution, it is declared, "that the time, place, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof." It is evident, therefore, that, although the Executive may have the power of notifying the vacancy, and directing it to be supplied, yet, that he cannot prescribe the time, the place, or the manner of carrying it into effect, this power being specifically delegated to the Legislature. If he can prescribe the time, he certainly can prescribe the place and manner, for the doctrine contended for implies an absolute discretion, and if the place and manner be also placed in Executive hands, he is vested with an absolute control over all special elections. Are the Committee prepared to sanction such a doctrine? Will they admit that elections on which the fate and safety of the nation may sometimes depend, shall rest upon Executive will?

Under the construction given to the Constitution by the Committee of Elections, the Governor may have directed all the citizens of Washington county to hold the election at the town of Washington, or at any other town he pleased, and he may have conveyed the superintendence of it to other officers than those appointed by the people. The power to issue writs to supply vacancies comprehended every incidental power, and the special election was wholly dependent upon Executive discretion.

He agreed with the Committee of Elections in the second point, that if no law exists to regulate special elections, and the election of Mr. Hoge is set aside, no election can be held to supply the vacancy until the Legislature of the State shall enact a law for that purpose; but he contended that a law did exist, and that the general rule governed the special case. The law for the regulation of the general election for members of Congress was the rule on this subject, and this rule ought to have governed the special case in question. By this law thirty days' notice is to be given, but, in this instance, only one day's notice was allowed. If thirty days' notice were deemed not more than sufficient for a general election, surely a special election, not less important to the district, required an equal time for information to be diffused, and consideration to be matured; and if this notice, pointed out by the law, had been given, he would dare affirm that the result would have been extremely different.

The Committee of Elections suppose that, because the election was notified for the day on which the election for Electors of President and Vice President took place, it was a sufficient notice. The testimony upon the table showed that only one day's notice had been given; that the writ had not been received until the thirtieth, and that the advertisement of the sheriff was not even prepared for publication until the thirty-first of October; the notice, therefore, could not have issued until the morning of the first of November, one day before the election was to be held. The county of Washington comprehends not less than

six election districts, and is extensive, and he would ask how it was possible for the electors to be informed in one day? He averred that, in Philadelphia, where there are so many daily prints, and where information could travel with so much rapidity, that even there one day's notice would not enable the people to be informed; and could this be done in Washington, where the population was diffused over an extensive surface? It certainly could not.

The notice of an election for Electors was no notice for a member of Congress. The electoral election excited little attention, because it was not disputed; and, as there was no opposition, the people remained at home. How, then, did this operate as a notice? Those only who attended could have been informed. And was the notice to them to be taken as a notice to all? Would a notification of an election for charter officers in any of our towns be deemed a notice of an election for a legislator of the United States? And if not, by what process could the notice in the present case be made to apply? Are the rights of the people to be held by such tenure as is implied in this doctrine? He trusted not; and he hoped, therefore, that the Committee of the Whole would not affirm the report of the Committee of Elections.

Mr. FINDLEY said that, being chairman of the Committee of Elections, it was his duty to give notice to the Committee of the Whole House of the principles on which that committee made their report; that, in order to do this, it was necessary to state in what manner the case was submitted to the Committee of Elections. This, he said, was the more necessary, as no election had ever heretofore been contested before Congress on the same principles. No opposing candidate claimed the seat; no unlawful vote was even suggested to have been given; no officer entrusted with conducting the election was charged with error or corruption. There were two points alone, therefore, on which the decision must rest. The one was the Constitutional authority of the Governor to issue a writ to supply the vacancy that had happened; the other was, whether the Governor had exercised that authority in an incorrupt or unjustifiable manner. He said that the Committee of Elections had not been unanimous in approving the report; that two had voted against, and four for it; that, in this case, it not being necessary, he had not given his opinion; but that now, when the report was brought before the Committee of the Whole, and the case having originated in the State which he represented, and with whose laws and practice respecting elections he ought to be acquainted, he claimed indulgence and attention in offering some further explanations on the subject. For this purpose, he would examine the Constitution as far as it related to the case. In the second section of the first article of the Constitution, it is said, "when vacancies happen 'in the representation of any State, the Executive 'authority thereof shall issue writs of election to 'fill such vacancies."

In the fourth section of the same article, it is said, "the times, places, and manner of holding 'elections for Senators and Representatives, shall 'be prescribed in each State by the Legislature 'thereof, but Congress may, at any time, by law, 'make or alter such regulations, except as to the 'places of choosing Senators."

Mr. F. said that on these Constitutional provisions there was a difference of opinion; that, ever since the commencement of the Federal Government, he had understood the general opinion to be, that the fourth section related solely to the general elections of Senators and Representatives, but not to supplying vacancies that might happen; that the State of Pennsylvania, and several other States, had uniformly acted agreeably to this construction of the Constitution; that the State of Pennsylvania had enacted five different Congressional election laws, all differing in several principles from each other, three of which he had assisted in preparing; but on all these occasions, though influenced by different parties, there had been but one opinion on this subject, and but one practice. In all cases the issuing of writs to fill vacancies was left to the discretion of the Executive, and in he believed four, if not five cases, which had happened previous to the present, the practice had been agreeably to this opinion. He said that he did not maintain that his opinion, or the opinion of the State he represented, on which it had so uniformly acted, decided the true sense of the Constitution; but he was still of opinion that it seemed to be the fairest construction, at least in cases where the Legislature had not interfered. The Executive shall issue writs, is the language of command; it renders the issuing of the writs an indispensable duty. The fourth section is equally positive in enjoining on the Legislature to appoint the times, places, and manner of appointing Senators as of Representatives, yet in the third section the Executive is authorized to appoint Senators to supply vacancies in the recess of the Legislature, and this is done probably to every Congress; but he believed the Legislature of no one State had prescribed any rules for supplying vacancies in the Senate, though the Constitutional injunction in that case on the Executive is certainly not so positively expressed, as with respect to issuing writs to supply vacancies which may happen in the Representatives. Taking the fourth section of the first article of the Constitution literally, as it applies to the general elections, it is impossible for the Legislature to mention the day on which a vacancy may happen, or consequently to appoint the day on which an election to supply a vacancy should be held, as it can do with the general election; therefore, it appears evident that the Constitution does not restrain the Legislature from establishing rules respecting it, if they choose to do so.

Mr. F. said that, from a view of the Constitutional provisions respecting elections, and some other objects, it had been the opinion of many that they were designedly calculated to give a latitude to the States to vary their conduct with respect to forms and circumstances, provided the essentials were preserved. On this ground only

can the great variety of practice, under these rules, and all admitted by Congress, be accounted for. The first section of the second article of the Constitution directs that "each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors," &c.

From these words, Pennsylvania and several other States have always been of opinion, and practised accordingly, that it was the duty of the State Legislatures to prescribe the manner and rules agreeably to which the citizens should appoint the electors; but the Legislature of New York, and perhaps some other States, have not only always prescribed the rules or manner, but have themselves appointed the electors. This he said was more essential to the rights of the citizens than the case now before the committee; and yet, though universally known, had been, in every instance, admitted, by Congress. The rule for the representation in each State has been prescribed by the Constitution; yet, in many States, the Representatives are chosen at a general election; in others, in single districts. In other States, even in Pennsylvania, some districts choose three members, some two, and some but one; but all of them may be chosen from any part of the State. Some other States have been divided, indeed, into single districts, and obliged to vote for candidates residing within their respective districts. He said he would not detain the Committee with further instances of the various, and yet approved practices under the Constitution, but hoped that even the members who might be of opinion that Pennsylvania had not given the Constitution, in the instance in question, the most correct construction, that yet they would duly consider other instances of variety of construction which had hitherto passed, not only without objection, but with approbation.

Mr. F. said that, since this case was returned to the Election Committee, he had heard the opinion of the Constitutional provisions, agreeably to which Pennsylvania had acted, called in question, but never before; that the objections were new to him; but, upon examining the laws of different States, he had discovered that the Legislatures of two or three States, though they had not literally prescribed the times for holding elections to supply vacancies, yet they had prescribed such rules to the Executive, in doing so, as answered the same purpose, and thought they did right; but Pennsylvania, and some other States, had not done so in any instance, and that in no instance, before the present, had an election been questioned, because the Legislature had not appointed these rules. The Legislature of Pennsylvania, not having prescribed any rules to the Executive to regulate his duty in issuing writs to supply vacancies, did not release the Governor from the Constitutional responsibility of performing a duty so positively and conditionally enjoined. Hence, Mr. F. concluded that the election could not be set aside merely on account of the Legislature not having enacted a law to prescribe the time of holding the election. The Governor had acted in obedience to the express words of the Constitution, and violated no law of the State. Setting aside this election on this ground, would virtually annul all the elections to supply vacancies in Congress that had ever taken place in the State of Pennsylvania, and in some other States.

By the fourth section of the first article of the Constitution, Congress is authorized, by law, to prescribe the time, place, and manner, of holding elections; but this must be done by law, not by a vote of the House, after an election was over; therefore, that power cannot apply to this case. Congress has passed no such law.

Mr. F. said, if the report of the committee was rejected, it must be on other grounds than this. It could not be because the Executive exercised his Constitutional discretion, but because he had exercised it in a corrupt, or in such an indiscreet or improper manner, as to vitiate the election. This was a fair subject of inquiry, on which there might, and probably would be, a difference of opinion; and, with respect to which, he admitted the propriety of several of the objections made by his colleague, who had just sat down, (Mr. LEIB.)

The Governor, it appears, issued the writ immediately on the resignation of William Hoge coming to him. He directed the election to be held on the same day, at the general election for the choice of electors for President and Vice President. The writ, it appears, laid one day in the prothonotary's office, before it was proclaimed, the sheriff and prothonotary being from home. The notice, after proclamation before the election, was only a part of three days, and not sufficient time for the citizens to be informed of it at their homes, notwithstanding that it is the smallest district in the State; but those who did attend at their respective districts to vote for electors, were actually informed by persons sent for the purpose. That this was the case was proposed to the committee, and proved by the sitting member; for the fact appearing to be admitted by the petitioners, such proof was thought unnecessary. It appeared probable to the committee that the district at the seat of justice at which the Governor's writ first arrived, had the advantage of earlier information than other districts; but this was incidental, and as the prothonotary, to whose office the writ came, and was opened, and the sheriff, &c., were opposed to the election of the sitting member, they had at least an equal advantage of the earliest notice, and those most zealous for the electoral ticket were not supposed to be his friends. Partial or fraudulent intention is not complained of by the petitioners; they are, indeed, few in number, and appear all to have had the earliest notice. There is no petition from any citizens, complaining that they themselves were deprived of their votes for want of notice. The election for the choice of electors was not so numerous as was reasonably expected; but if the Governor had given the ten days' notice directed by law for filling vacancies in the State Legislature, and claimed by the petitioners, this would have happened in about a week after the other, respecting

which, the probability, justified by all experience in Pennsylvania, is, that it would have been still less numerous. This appears to have been the Governor's opinion. It was also the opinion of several of his colleagues from the eastern parts of the State, who had seen, and been informed by the Governor that he had issued the writ, and who had first informed himself that it had been issued. They, and all his other colleagues, with whom he had conversed on the subject, he understood, approved of the Governor's conduct, till they heard of the result of the election, and there was no proof before the committee that the shortness of the notice operated in favor of the sitting member more than the other candidate. All the voters for both candidates agreed in voting for the same electors, notwithstanding that there was little time for concert. On the whole, Mr. F. concluded that as the issue of the election had occasioned exceptions to be taken to the shortness of the notice, he wished that longer notice had been given, though he had approved of issuing the writ. But, as it was conducted under an authority vested by the Constitution, on the same principle which had been always acted on in Pennsylvania, and several other States, and never heretofore objected to by Congress, which was the only competent judge in the case, and as no corrupt intention or abuse was complained of, he thought it his duty to vote in favor of the report of the Committee of Elections. If the election was set aside till a law would be passed to prescribe the time, probably the district would not be represented this session, which he thought an argument of weight, but of little importance compared with deciding the principle; in doing which, if the report of the Committee of Elections was rejected, the decision might virtually vacate the seats of the members, and would condemn all the elections heretofore made in Pennsylvania, and some other States, to supply vacancies to the House of Representatives.

Mr J. CLAY could not agree with the Committee of Elections, in the opinion that there was no law in Pennsylvania regulating the place and manner of holding special elections for members of Congress, to supply any vacancy which might occur in the representation from the State By turning to the law respecting general elections, he found that members of Congress were to be chosen by the inhabitants qualified to vote for the most numerous branch of the State Legislature, and that those elections were to be held at the same places, conducted in the same manner, and by the same officers, as for members of Assembly. In cases of general elections, therefore, there could be no difference of opinion; as these were to be governed in both cases by the same rules, it was fair to infer that special elections for Representatives were to be conducted in the same manner as special elections to fill vacancies in the Legislature of the State. By the laws of Pennsylvania, it appears that, in cases of vacancy in the representation of any county, the Speaker is to issue a writ at least fifteen days before an election can be held, and the sheriff of the county must make proclamation, and give at least ten days' notice to the people. The reason of the law was evident; it was intended to prevent the people from being surprised, and to give them time to look round for suitable persons to represent them. If the reason was good, as applied to the State Representatives, who were all chosen in single counties, it was more so as applied to Representatives in Congress, who are chosen in districts composed in some instances of three or more counties. He, therefore, was of opinion that they should be governed by the same law. The committee, however, had been told, by his colleague, (Mr. FINDLEY,) that the Legislature never intended to make any law on the subject; that they conceived they had no power; that the Constitution of the United States, by saying that, in case of vacancy in the representation of any State, the Executive thereof should issue a writ of election to fill such vacancy, was imperative, and, by making it the duty of the Governor to issue such writ, gave him the sole power of regulating the time, manner, and place, of holding the election, and precluded all Legislative interference. We were not to judge of the law, by the alleged intention of the Legislature; if they had mistaken their own powers or the powers of the Executive, their mistake was not to govern the decisions of Congress. All that we had to do was, to inquire whether there was a law applied to the case, and whether its provisions had been complied with. But he could not suppose that the Assembly had so far misconceived the Constitution. By the fourth section of the first article of that instrument, the State Legislatures were empowered to regulate the time, place, and manner of holding elections for Senators and Representatives to Congress. This power was not confined to *general* elections, but must necessarily extend to elections to fill vacancies. It was true that, in special cases, they could not direct the precise time, but they might prescribe the notice which should be given; and shall we be told, because the very day cannot be named, that the number of days which shall intervene between the proclamation of the sheriff and the election, shall not be fixed by law? The notice is part of the manner, and the Legislature, though they cannot fix the time, may fix, and have fixed, the places and manner. It is true the Executive is compelled, by the second section of the first article of the Constitution, to issue a writ of election to supply a vacancy; but this writ he contended was merely a notification. It gave no power, no discretion. If the Governor had a discretion, it might extend to the place and manner. The northwest district of the State is very extensive; and, under this discretion, the Governor might so direct an election, that, in case of vacancy, the town of Pittsburg alone might be notified, and would alone vote for the member to supply that vacancy. But the case of a choice of a Senator during the recess of the Legislature had been resorted to as analogous to that of Representatives. If the Senator were chosen by the people, the case would be in point. Senators, when vacancies happen during the recess of the Legislature,

are chosen by the Executive, and, therefore, there was no necessity for the Legislature to prescribe either time, place, or manner, as it would be absurd to suppose that the Governor should notify himself, or change his residence, in order to make an appointment. Would it be argued, therefore, that it was unnecessary to give the people due notice of an election for Representatives? Surely not.

But, said Mr. CLAY, the Governor has himself recognised the law in the very writ. Were not the same officers appointed to conduct this election, as were appointed to conduct the general elections? Were not the ballots given in the same manner, counted by the same persons, and returned by the same judges? Whence did they derive their authority, but from the law? And the law ought to have been complied with in every other respect. It is true, an election was to be held throughout Pennsylvania for electors of President and Vice President. The Governor, actuated by the most laudable motives, in order to save the county of Washington the expense of a special election, directed that a member of Congress should be chosen on the same day to fill the vacancy caused by the resignation of Mr. Hoge. But the committee would recollect that, although the people knew that electors were to be appointed, they did not, they could not, know of the intended choice of a Representative. In Pennsylvania the people do not, as in some of the Southern States, all meet at one place in the county to give their votes. No; each county is divided into a number of districts, in each of which an election is held, so that no person has more than a few miles to go to the poll. The county of Washington is divided into six or eight of these districts. The sheriff's proclamation was issued on the first day of November, and the election was held on the second; although the people of the town of Washington, and its immediate neighborhood, might receive due notice, it was impossible that those who resided and voted in the remote parts of the county, should. Indeed, it was evident that they did not. An election for electors was held on the same day. It was generally known that no opposition was intended, and the people were, therefore, less anxious about the result. The electors were chosen by a general ticket throughout the State; the votes of any one county were, therefore, deemed of comparatively little importance. This was not the case, however, with a Representative in Congress. The county of Washington forms a district for the choice of one member. The people of that county, not having the co-operation of any other part of the State, necessarily depend for success on their own vigilance and exertions. Yet what was the result? The bare *majority* given for electors exceeded the whole number of votes given, both for the sitting member and for the rival candidate. It was, therefore, evident that the people had not notice sufficient of the Congressional election. Mr. C. did not mean to impeach the motives of the Governor; on the contrary, he thought them praiseworthy; but substance ought not to be sacrificed to form. The object of elections was, that the majority of the people might have an opportunity of giving their fair and unbiassed suffrages in the choice of persons to represent them, and not through any mistaken constructions, however pure might be the intentions of the Executive, or of the Legislature. This object was defeated in the election. It was a manifest violation of the rights of the people, and ought not to be confirmed. This opportunity was not given in the present instance, or the sitting member would not have been returned. Conceiving this to be the case, and believing that the people had not that notice which by law they ought to have had, he considered the election void, and should vote against the report of the committee.

Mr. FINDLEY said, if the subject before the Committee of the Whole was an election law, he would cheerfully subscribe to many of his colleague's (Mr. CLAY's) observations. He admitted that Congress had a Constitutional authority to make laws, which would prescribe rules to regulate the exercise of the Executive discretion in issuing writs to supply vacancies; but neither Congress nor the State Legislatures have made such laws, but left it in the hands of the Executive, who is under an unconditional obligation to issue such writs, and who, in Pennsylvania and other States, always have done so, and the returns of elections on these writs have, in all cases, passed the decision of the Committees of Elections, and received the approbation of Congress. Therefore, as he said before, the question turned more properly on the discreet or proper use of the Executive discretion, than the right of exercising it. In order to prove that the Governor, in the case before us, had acted indiscreetly, Mr. F. said his colleague had observed how unreasonable it would have been for the Governor to have issued a writ with such short notice to a district which he had named, and which consists of three counties, and sends two members. The petitioners themselves argue from the extent of the Alleghany districts, which contain eight counties, thinly settled, and are spread over an extent of territory larger than some whole States. He thought it unfair to argue that, because the Governor gave such short notice to the least extensive and least numerous district in the State, a district consisting of one thickly settled county, and which had a Representative for less than thirty thousand inhabitants, and to correspond with another very important general election, the day on which it was to be held had been so long proclaimed that every man knew it, to charge the Governor with indiscretion, equal to what it would have been had he given but the same notice to the most extensive and dispersedly settled districts, at a time when no general election made it the duty of the citizens to be present on the election ground, was improper. As it was the Governor's conduct, and that only, that was called in question in this case, it was proper to observe that though his colleague was justified in saying that they had but one day's official notice, yet in fact, they had a part of two other

days, and the writ having laid one day open in the prothonotary's office, as was understood, before it was proclaimed, through the absence of the sheriff, was not the fault of the Governor. If the Governor had done wrong, he did not wish to extenuate his offence, but he thought it improper to magnify the charge by supposed cases so essentially different.

Mr. F. observed that his colleague (Mr. CLAY) had maintained that the general Congressional election law of Pennsylvania applied also to the case of filling vacancies, and that it made it the duty of the Governor to give thirty days' notice before the election. If the gentleman would examine that law, he would find this opinion incorrect; it did not make it the duty of the Governor to give any notice: this duty was enjoined on the sheriff of each county; the sheriffs are enjoined to give thirty days' notice, and were allowed thirty days after the election to make their returns. After the returns were lodged in the Secretary's office, it was made the duty of the Governor, by proclamation, to give public notice to the members elected, and to transmit the returns to the Speaker of the House of Representatives in Congress. The Governor was not authorized, by the constitution or the laws of Pennsylvania, to issue a writ for holding any elections whatever. The authority of issuing a writ in the case in question was solely derived from the Constitution of the United States. This law could not be applied to elections to fill vacancies, without absurdity. The sheriff has sixty days for giving the public notice and making the returns; and adding to this a reasonable time for the Governor to make a proclamation, and the candidate at a distant part of the State, before he could go to Congress, in most cases the session would be over before the vacancy could be filled.

The petitioners themselves argue much more reasonably when they apply the law for filling vacancies in the State Legislature to the case; this law makes it the duty of the sheriff to give ten days' notice after he receives the writ from the Speaker of the respective Houses, in all cases when the Houses are not in session, to direct the vacancy to be filled at a general election. This is a reasonable law for the purpose, but prescribes no duty to the Governor, nor is it binding on him, yet the Executives have always acted as nearly to it in filling vacancies in Congress as circumstances would permit, and in this case it was only varied agreeably to the spirit of that law, in favor of the day on which an important general election was to be held. But, supposing the obligation of the general election law on the Executive in this case, the election officers having done their duty, is urged as a proof either that the general election law applied to this case, or that the election is void, because it was not conducted by officers authorized for the purpose. A brief explanation will remove the force of this argument.

By the laws of Pennsylvania, the election officers appointed annually for the elections held on the second Tuesday of October, are to discharge the duties of their respective trusts at all elections by the citizens for national purposes throughout the year. The constitution of Pennsylvania prescribes the manner that citizens shall vote, by ballot, &c. The laws of Pennsylvania institute the election officers, and prescribe their duty. The Constitution of the State and the United States and the laws of the State, declare the officer that shall be voted for; if the election officers conduct elections for officers not instituted by any of those authorities, it is void; otherwise, it is valid. It will not be said that an election to fill vacancies in Congress is not authorized by the Constitution of the United States, or that the Governor's writ did not sufficiently authorize the election of officers.

Mr. ELLIOT said that the very comprehensive and argumentative examination of this question, which had been made by the gentleman from Pennsylvania, (Mr. FINDLEY,) would probably have been conclusive to his mind had any doubt existed on the subject. Without repeating, however, any of the arguments of that gentleman, a candid consideration of the provisions of the Constitution, relative to this subject, will evince the correctness of the position taken by the Committee of Elections. In the second section of the first article of the Constitution, it is declared that "when vacancies happen in the representation from any State, the Executive authority thereof shall issue writs of election to fill such vacancies." It is an established principle that a Constitutional delegation of a general power includes a grant of all the subordinate and incidental powers requisite to give effect to the principal one, unless restrained, limited, or placed elsewhere by another part of the Constitution. What is the power given to the State Executives by this clause of the Constitution? Not merely, as some gentlemen seem to believe, an authority to issue writs of election, but to give to those writs a certain operation and effect, that of filling a vacancy. They have authority to issue writs of election, to cause elections to be holden in consequence, and the vacancies filled. Is the power here given to the Executives of the States limited or taken away by any other part of the Constitution? If not, I shall not suffer myself to inquire into the discretion or indiscretion with which it has been exercised on the present occasion, as I believe the Constitution has placed it beyond our power of inquisition or censure. By the fourth section of the Constitution, it is declared that "the times, 'places, and manner of holding elections for Sen-'ators and Representatives shall be prescribed in 'each State by the Legislature thereof; but the 'Congress may, at any time, by law, make or 'alter such regulations, except as to the places of 'choosing Senators." The words *by law*, in this section, are peculiarly emphatical. Congress can do nothing on this subject, but *by law;* the State Legislatures may act by resolutions, and in that manner Senators are commonly chosen. This section appears to have been intended to regulate the general election of the whole number of Senators and Representatives to which a State is entitled, and to have no application to the case of

vacancies. But if this construction be not the correct one, it will be necessary to adopt this construction of the two clauses taken together, that although the State Legislatures have a right to regulate the elections in cases of vacancy, yet the Executive possesses a complete discretion on the subject, under the Legislative interference. Such, we are told, has uniformly been the practical construction in Pennsylvania. Two questions are only to be answered: Was the election in the present instance held in pursuance of a power delegated by the Constitution? Certainly it was. Was it regularly and legally conducted? It appears to have been conducted, except as to time, conformably to the laws of Pennsylvania which govern other elections. Believing that, under the peculiar circumstances of the case, no injustice has been done, and believing that the election was constitutionally conducted, I shall vote in favor of the report of the committee.

Mr. LUCAS.—Believing, as I do, that the report under consideration involves an important question, I cannot forbear to add a few remarks. It appears that members of Congress may be elected under two different circumstances—periodically by general elections, accidentally by special elections. The election of the sitting member (which is the subject of the report,) is a special election—an election to fill the vacancy of William Hoge, resigned. It is not alleged that any illegal votes have been given, or any fraud practised in conducting that election; it is merely contended by those opposed to the report that the election ought to be set aside, because the time, place, and manner of holding the election has not been according to law, or because the power of prescribing the time, manner, and place, has been assumed by an improper authority. Turning to the second section of the Constitution of the United States, we find this provision: "When vacancies happen 'in the representation from any State, the Exec-'utive thereof shall issue writs of election to fill 'such vacancies.' From this, it appears the Governor is only vested in part with the powers to cause an election to be holden—that is, the power of issuing a writ of election—which gives him the initiative; but this initiative does not destroy the power placed by the fourth section of the same Constitution in the State Legislature, which is, that "the times, places, and manner of holding 'elections for Senators and Representatives shall 'be prescribed in each State by the Legislature 'thereof." The words *holding elections* indisputably include all kinds of elections. A special election is not less an election than a general one; and unless the Constitution express an exception to that general principle, it follows necessarily that the State Legislature or Congress have the power of prescribing the times, places, and manner of holding elections for Representatives. Thus, from the provision in the Constitution which vests the Executive of each State with the power to issue writs to fill vacancies, and from the provision which vests the State Legislature with the power to prescribe the times, places, and manner of holding elections, it appears that the powers necessary to cause elections to be held to fill vacancies are divided between the Executive and Legislative powers: the first is directed to issue writs of election, the second to prescribe the times, places, and manner for holding the same: both are bound by a Constitutional injunction equally imperative. Thus, that an election to fill a vacancy be legal, the Executive and Legislature must have co-operated to that election by the exercise of their respective Constitutional powers. If the election under consideration hath been holden under the authority of but one of these powers, it is not according to the Constitution, inasmuch as the Constitutional exercise of the power of the one, without the concurrence of the other, is but a lame power.

The report states that this election was held without the concurrence of the Legislature; that is, that the State Legislature hath omitted to prescribe by law the times, places, and manner of holding elections to fill vacancies. This being the case, the power of causing the election to be holden was incomplete; and if its deficiency was supplied, it was by an authority other than that designated in the Constitution.

But a gentleman from Connecticut (Mr. GRISWOLD) contends that, by the Constitution of the United States, in the second section of the first article, requiring the Executive authority of each State to issue writs of election to fill vacancies, the Executive became vested with the absolute power of causing elections to be holden, and that all other powers necessary to carry that act into effect are implied, and can lawfully be exercised.

To this, it may be answered, that the Constitution of the United States hath been careful in distinguishing between the substance and forms of elections. The substance of elections, which consists in the right of electors, and the result of the exercise of that right, hath been sufficiently expressed. The Legislature of each State has been expressly vested by the Constitution with the power of regulating the forms, which consists in prescribing the times, places, and manner of holding elections. If the construction of the gentleman from Connecticut were correct, the consequence would be that two provisions of the Constitution would militate against each other; that is, that the Executive would, from the power he hath to issue writs of election to fill vacancies, derive by implication the power of prescribing the times, places, and manner; that is, would have by implication a power which the Constitution expressly vests in the Legislature of each State, and which appears to be a subject of such importance that Congress is empowered to control the State Legislatures in that very case. The gentleman from Connecticut hath gone further: he hath said that, admitting for a moment that the power vested in each State Legislature to prescribe the times, places, and manner of holding elections, which he believes extends only to general elections, should extend to elections to fill vacancies, yet that, inasmuch as the Legislature of Pennsylvania did omit to legislate on that subject, the Government had a right to supply the omission by assuming that

power. In this argument, I answer, that as none of the constituted authorities can transfer, by any act whatever, the power lodged by the Constitution in any of them, by a stronger reason no transfer of power can be made by their omission to act. The security of our political system rests principally upon the Constitutional partition of the Constitutional powers. The Constitution doth not only require that none but the powers which it grants should be exercised, it also requires that they should be exercised only by the authorities to which they are confided; and to contend that the omission of the Legislature to legislate entitles the Executive to perform acts of legislation, is a position too preposterous to require refutation.

It has been urged that it would be out of the power of the State Legislature to prescribe the time of holding elections in pursuance of the writ of the Executive to fill vacancies, because the Governor issues his writ under the immediate authority of the Federal Constitution, and this power cannot be impaired, or receive modifications by a legal State Legislative act. It has been added, that this election to fill a vacancy being the result of a contingency, the time cannot be prescribed by law. I grant that the time cannot be absolutely prescribed, but I contend that it can be prescribed relatively, and so it is prescribed, too, by the law of Pennsylvania, regulating the times, places, and manner, of holding elections to fill vacancies in the Legislature. Upon issuing a writ by the Speaker of either House, a time is fixed which bears relation to the time of issuing the writ, or proclaiming the election in pursuance of the writ; and as this relative prescription of time does not limit or abridge the power of the Speaker, so a similar relative prescription of time, with respect to the time of proclaiming an election under the writ of the Governor, would not abridge or impair the exercise of his right.

Independent of the radical deficiency of the election alluded to in the report, on Constitutional grounds, it cannot, in my opinion, bear the test, in point of discretion or inquiry. The shortness of the notice offers to my mind an insuperable objection. From the report before us, it appears that the sheriff of Washington made a proclamation of the election on the 31st of October, and that the election was holden on the 2d of November. It was not only morally impossible, but it was physically so, that one-third of the electors could be informed; but this objection has been anticipated on this floor, and great endeavors have been made to justify this shortness, I might say the want of notice, by alleging that the 2d day of November had been preferred, it being a day already appropriated for the election of electors, and that the notice given for that election would answer the purpose of the election of a Representative in Congress, while it would save the electors the trouble of assembling again. These considerations, more specious than solid, cannot prevent me from discovering the whole extent of danger of holding elections without certain principles and rules with respect to a previous notice. It was generally believed in Washington county, as well as in every other part of Pennsylvania west of the mountains, that the election of electors would, without any risk, be carried according to the wishes of a large majority. Hence, many persons, far distant from their respective election districts, did rely upon those that were nearer to attend the election of electors; hence the result of the election of a member of Congress. Had the electors of the district been informed, as they ought to have been, that a member of Congress was to be elected on that day, although there was no danger of risking their object as to the election of electors, yet there might be some doubt as to the election of a Representative. Have we not every reason to believe, from the repeated instances of public spirit prevailing in that district, that the election would have been attended by probably more than three times the number of persons than did actually attend? and as to myself, I have a strong presumption that the result would have been quite different from what it was. Some of the gentlemen who supported the report have endeavored to justify this election on the ground of precedents. They have said that all former elections in Pennsylvania, to fill vacancies in Congress, have been holden under the same authority and circumstances. It is not improper to take notice that this election is the first of the kind that has been contested in Pennsylvania; that as no exceptions were taken to the former ones, it is an ordinary thing that the Committee of Elections report as legal elections those that appear such from *prima facie* evidence, and they never enter into details but when the elections are disputed. Ought precedents to govern where they militate against an express Constitutional provision? And will gentlemen say that elections to fill vacancies, held after thirty days' notice, such as the first election of William Hoge and others were, can be received as a precedent in point, with an election held after one day's notice?

It has been the pleasure of some honorable members to bring into view the motives that have actuated the Governor of Pennsylvania in directing the election to be holden after so short a notice. The purity of these motives has been insisted upon, as if any member of this Committee were questioning the good intentions of that magistrate; but the intentions of the Governor, pure as I doubt not they were, cannot be the criterion to judge of the legality of this election. The Governor may think one way, and the Committee another, and yet we may all be influenced by good intentions. From the present view of the subject, I am induced to vote against the report. I lean still more to the rejection of the report, as, by setting this election aside, the Legislature of Pennsylvania, which is now in session, will feel more immediately the necessity of exercising Constitutional powers, and of prescribing, by law, the times, places, and manner, of holding elections to fill vacancies in future.

Mr. JACKSON.—Mr. Chairman, two objections have been made by the gentleman to the report of the Committee of Elections: First. That the Constitution of the United States requires that in

all cases the times, places, and manner, of holding elections shall be prescribed in each State by the Legislature thereof; and as no law has been passed in Pennsylvania providing for the cases of supplying vacancies in case of death or resignation, that the election of Mr. Hoge is invalid. Second. If the Constitution does not conclude the question, we have a right to examine all the circumstances incident to the proclamation of Governor McKean, and to determine whether the discretionary power vested in him by the Constitution, as the Executive of Pennsylvania for the time being, was duly exercised or not; and it is asserted that it was improperly exercised by him.

The fourth section of the first article of the Constitution, upon which the superstructure of the arguments on the first point rests, is in these words: "The times, places, and manner, of holding 'elections for Senators and Representatives 'shall be prescribed in each State by the Legisla-'lature thereof." The language of the section clearly proves it has reference to the general elections, and precludes the idea that it was intended to include the cases of vacancies, as no human prudence could designate the proper time for holding elections to supply vacancies that would thereafter occur. Who can determine when the incumbent will die? When the unrelenting hand of death shall cut the thread of life, or when some occurrence in life shall induce him to resign into the hands of the people the trust reposed in him? And, unless these these things are foreseen, the State Legislature cannot say at what time, at what place, and in what manner, elections to supply vacancies shall be held. If the Legislature were to pass a law regulating the time only, and leaving the place and manner to the direction of the Executive officer conducting the election, on designating the place, and leaving the time and manner to be fixed by him, it certainly would not be a compliance with the requisitions of the Constitution, and a person thus elected would not be constitutionally entitled to a seat in this House. In the construction of a grant it is necessary that the person thereby claiming a privilege shall show that he has complied with all its requisitions, and being imperative, that the States shall prescribe the time, place, and manner, of holding elections. I doubt very much whether a compliance with either requisition alone would be correctly within the meaning and spirit of the Constitution.

I am the more inclined to adopt this construction, when I refer to the paragraph contained in the second section of the first article, which declares that "when vacancies happen in the repre-'sentation from any State, the Executive author-'ity thereof shall issue writs of election to fill 'vacancies." Either this sentence has some meaning, or it has not. If it has any, it clearly follows that the cases of vacancies are provided for in a different way from that directed by the fourth section, which succeeds it. Mr. Chairman, when I contemplate the great talents and wisdom which the framers of this instrument possessed in an eminent degree, and the perspicuous and emphatic language which characterizes its provisions, that not only every paragraph, but every word of each paragraph, conveys some meaning, I cannot reject the sentence just read as a dead letter, unmeaning and inoperative; and, unless it is rejected, the Executive authority of any State has the power, and is required, to issue writs of election to fill such vacancies as may happen in its representation, independent of any State law or provision, and in conformity with the supreme law of the land.

Some gentlemen, however, contend for a limited construction of this clause, granting to the Executive authority to issue writs of election, by denying the right of designating the time, place, and manner, of holding such elections. But it is not to be presumed that a power so merely nominal would be guarded by the insertion of an independent and express provision. If, however, I err in the opinion I have advanced, I deny the propriety of making a contrary opinion at this late day. The States, the great party to the compact, have, without a single exception that I know of, considered that vacancies are to be supplied by writs of election under Executive proclamations, and have not passed any law upon the subject. A respect for their decisions, for the uniform practice of this House, and a consciousness that if we err, it is on the side of justice, will, I hope, incline us to sustain the report. If we do not, I call upon gentlemen to go through the House, to examine the rights of every individual to a seat, and to decide all cases similar to the one now before us, in the same way.

Sir, we have no law in Virginia providing for similar cases. I speak from present impressions. If I am mistaken, I will thank gentlemen to correct me. Two of my colleagues (Messrs. Clark and Wilson) now hold their seats in virtue of elections to supply vacancies occasioned by death and resignation. If the gentleman is not entitled to his seat upon Constitutional principles, my colleagues are not. If they are, he is. One gentleman from Pennsylvania (Mr. Conrad) however, varying the ground of objection, says, the laws of Pennsylvania provide for the case, and require a notice of twenty days previous to holding elections; and, as twenty days' notice was not given, this election is void. The language of the law he read proves that he is mistaken. It provides for issuing writs of election by the Speaker of the Senate, or of the House of Representatives, as the case may be, to supply vacancies; and as neither branch of the State Legislature, as such, has anything to do with the elections of Representatives to Congress, it must clearly apply to members of the State Legislature only.

I will now consider the right of examining the conduct of the Executive of Pennsylvania, and of controlling the discretionary power vested in him; and, first, permit me to declare that I believe it is entitled to the highest approbation, and was well calculated to procure a fair and honest expression of the public will. Congress were in session; the district of Washington unrepresented, and the necessity of providing for the exigency as soon as possible most apparent. An important

election, the most important, sir, which occurs under our Constitution, about to take place for the appointment of Electors to choose a President and Vice President of the United States; and upon that day, by the Governor's proclamation, was this election also to be holden. True, sir, a lengthy notice was not given, without suffering this election to pass by, and requiring the people to assemble a second time, under a short interval, which would have been highly inconvenient. He had reason to believe that all the people would have attended; it was eminently their duty to do so, as the magnitude of that election was great beyond comparison, when considered with the other.

A gentleman from Pennsylvania (Mr. Conrad) has told us that he wishes the elections to be more frequent, as it is the interest and duty of the people to attend them. Where were they, I ask him, when the electors were chosen? Were they, regardless of their interest and duty, asleep at their posts? Sir, the fact proves the unwillingness of the people to attend; and, were the elections more frequent, their neglect would increase with their numbers. I will not dwell longer upon this subject, in supporting the conduct of the Governor of Pennsylvania. The gentleman from South Carolina (Mr. Huger) has done ample justice to it. I now deny the right of this House to supervise or control the Executive of a free and independent State, and call upon gentlemen to show me whence the power is derived. It cannot be too often repeated that ours is a limited grant of powers; no constructive or implicative power is to be exercised by us. This is the language of the Constitution. It is the language of common sense. If we have the power, I ask, how is it to be exercised? Shall we erect ourselves into a high court of criminal judicature with censorial powers? Shall we say the Governor of Pennsylvania acted from corrupt motives? That he was influenced by a desire to control the district of Washington in opposition to the people? Unless we do, sir, I see no ground for interposition. Mr. Chairman, there is no power vested in this House more dangerous in its injudicious exercise than the right of judging of elections, returns, and qualifications, of its members. By it a party may determine of what number the minority shall consist, and even whether there shall be any minority at all. I will never consent to exercise this power, even legitimately, except in cases of emergency, or urgent necessity.

When Mr. Jackson had concluded, so much as is contained in the last part of the fourth clause of the report, was again read, in the words following, to wit:

"The committee are of opinion that John Hoge is entitled to a seat in this House."

And on the question that the House do concur with the Committee of the whole House in their agreement thereto, it was resolved in the affirmative—yeas 69, nays 38, as follows:

Yeas—Willis Alston, junior, Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Blackledge, John Boyle, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Sam'l W. Dana, John Davenport, John Dennis, William Dickson, Thos. Dwight, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, Calvin Goddard, Peterson Goodwyn, Edwin Gray, Thomas Griffin, Gaylord Griswold, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, James Holland, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, Simon Larned, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, James Mott, Thomas Newton, junior, John Rhea of Tennessee, Erastus Root, Thomas Sammons, John Smilie, John Cotton Smith, John Smith, William Stedman, James Stephenson, Samuel Taggart, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Lemuel Williams, Alexander Wilson, and Thomas Wynns.

Nays—Isaac Anderson, John Archer, David Bard, George Michael Bedinger, Adam Boyd, Robert Brown, Joseph Bryan, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, Andrew Gregg, Joseph Heister, William Helms, William Kennedy, Nehemiah Knight, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Anthony New, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sandford, James Sloan, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, Joseph B. Varnum, and Joseph Winston.

Thursday, December 20.

The House resolved itself into a Committee of the Whole, on the bill to amend the charter of Alexandria. The principal feature of the bill is the extension of the right of suffrage. A motion to strike out the first section, produced considerable debate; and was lost by a large majority. The bill, after undergoing several subordinate amendments, was reported to the House, who took it into immediate consideration, and ordered it to be engrossed for a third reading on Monday.

Friday, December 21.

Mr. Eustis, from the committee to whom was recommitted the bill to regulate the clearance of armed merchant vessels, as amended, reported that the committee had had the said bill under consideration, and made several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Monday next.

Mr. Dana, from the Committee of Claims, presented a bill for the relief of the legal representatives of the late General Moses Hazen; which was read twice, and committed to a Committee of the Whole on Monday next.

An engrossed bill establishing rules and articles for the government of the Armies of the United States, was read the third time, and amended at

the Clerk's table, by the unanimous consent of the House: Whereupon,

Resolved, That the said bill do pass, and that the title be, "An act for establishing rules and articles for the government of the armies of the United States."

A petition of sundry British merchants, and others, subjects of his Britannic Majesty within the United States, whose names are thereunto subscribed, was presented to the House and read, praying that the power and authority granted by law to the federal circuit courts may be extended to the trial and determination of "all causes arising under treaties," or to causes where an alien is a party, in which the matter in dispute, exclusive of costs, is under the sum of five hundred dollars; or that such other tribunal may be established for the trial and determination of the said causes, as to the wisdom of Congress shall seem meet.—Referred to Mr. Clopton, Mr. George Washington Campbell, Mr. Gaylord Griswold, Mr. Boyle, and Mr. Huger; that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, presented a bill declaring Cambridge, in the State of Massachusetts, to be a port of delivery; which was read twice, and ordered to be engrossed and read the third time on Monday next.

Mr. Crowninshield, from the same committee, who were instructed by a resolution of this House of the seventh instant, to inquire into the expediency of so far amending the act "to regulate the collection of duties on imports and tonnage, as to allow the Collector of the port of Philadelphia an additional deputy," presented a bill to authorize the Collector of the port of Philadelphia to act by an additional deputy; which was read twice, and committed to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for the disposal of certain copies of the laws of the United States." The bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time on Monday next.

Mr. Purviance gave notice that, on the third Monday of January, he intended to introduce a resolution giving to the District of Columbia a durable legislature of their own, on which the opinions of the Heads of Departments were to be obtained.

Mr. Rhea, of Tennessee, moved that the Secretary of War be directed to lay before this House a statement of the officers and privates of the several corps in the actual service of the United States during the years 1804 and 1805, and the names of the ports and the numbers of the officers and soldiers occupying the same; also, a detailed statement of the moneys expended on the several fortifications, arsenals, armories, and magazines, of the United States during the aforementioned period.

Mr. Varnum doubted whether the Secretary of War could give all the information required, particularly as he could not make up returns of 1804 until some time in 1805.

Mr. Dana did not know that there was any military secret in the disposal of the small military force of the United States, but he did not think it prudent to give a written document on this subject, lest any nation of Indians should occasion some trouble to a post but weakly manned.

Mr. Rhea, of Tennessee, in answer to Mr. Varnum, replied, that if the Secretary of War could not give the information required he should say so. On the observation of Mr. Dana, he replied that in his opinion the representatives of the nation ought to be acquainted with the number of their troops and their respective stations.

Mr. Eustis requested the resolution might lay on the table till Monday.

Mr. Rhea, of Tennessee, acquiesced, and the motion lies accordingly.

COLLECTION OF DUTIES.

Mr. Leib moved that a committee be appointed to inquire into the expediency of making provision by law to authorize the Collectors of the several ports of the United States, to deposit for collection the bonds received by them for the payment of duties, in the Bank of the United States, or any of its branches, or in any of the chartered banks of the several States. In support of the reference, he remarked that the resolution contemplated an inquiry, and an important one. The Bank of the United States and its branches had usually a deposit of the moneys of the Government to the amount of between four and five millions of dollars; that by means of this deposit that bank was enabled not only to hold the mercantile interest tributary to the institution, but all the banks of the States. His object was to equalise the benefits, and not to permit that institution to monopolize an enormous profit from the treasure of the nation. He wished to unfetter the bank institutions generally, and he hoped the inquiry would obtain, and he believed the bonds due to the United States would be as carefully collected in the chartered banks, which are at the same time equally secure, as that of the United States or any of its branches.

Mr. R. Griswold recollected this subject was suggested at a former session, and as it had a relation to the management of our finances he thought it would be more proper to refer it to the Committee of Ways and Means; he made that motion accordingly.

Mr. Leib did not see that the subject necessarily appertained to the Committee of Ways and Means. It had no relation to the increase or decrease of the duties on imports, but merely to the deposit of the bonds given by the merchants to the Collectors. His true object was to prevent a monopoly, and he trusted gentlemen would not be enabled to defeat it by this mode of reference.

Mr. R. Griswold understood the motion to relate to the deposit of the bonds, but it would be proper to inquire into the safety of such deposit before it was authorized by law; and in his opinion the Committee of Ways and Means, from the habits of their business, was as competent to make the inquiry as any select committee.

On the question, it was referred to the Committee of Ways and Means—51 being in favor of such reference, and 41 against it.

Monday, December 24.

Mr. Leib, from the committee appointed, on the fourteenth ultimo, to "inquire into the expediency of making provision, by law, for the completion of the public buildings belonging to the United States, near Philadelphia," made a report thereon; which was read, and referred to a Committee of the Whole on Monday next.

An engrossed bill to amend the charter of the town of Alexandria was read the third time; and the further consideration thereof postponed until Friday next.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to divide the Indiana Territory into two separate governments;" to which they desire the concurrence of this House.

ARMED MERCHANT VESSELS.

An engrossed bill to regulate the clearance of armed merchant vessels was read the third time; a debate of considerable length took place. Messrs. Dana, R. Griswold, and Dennis, spoke against the bill, and were replied to by Messrs. Eppes, Smilie, Jackson, and Eustis: Whereupon, a motion was made and seconded that the said bill be recommitted to the consideration of a Committee of the Whole House; and, the question being put thereupon, it passed in the negative.

Another motion was made, and the question being put, to recommit the second section of the bill to a Committee of the Whole House, it passed in the negative. And then the main question being taken that the said bill do pass, it was resolved in the affirmative—yeas 77, nays 33, as follows:

Yeas—Willis Alston, jun. Nathaniel Alexander, Isaac Anderson, David Bard, William Blackledge, Adam Boyle, John Boyle, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, William Dickson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, James Gillespie, Edwin Gray, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, Jeremiah Morrow, James Mott, Anthony New, Thomas Newton, jun., Gideon Olin, John Patterson, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, David Thomas, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—John Archer, Simeon Baldwin, George Michael Bedinger, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Benjamin, Huger, Joseph Lewis, jun., Nahum Mitchell, Beriah Palmer, Thomas Plater, Thomas Sandford, John Cotton Smith, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, George Tibbits, Abram Trigg, Peleg Wadsworth, and Lemuel Williams.

The House adjourned to Wednesday.

Wednesday, December 26.

An engrossed bill declaring Cambridge, in the State of Massachusetts, to be a port of delivery, was read the third time and passed.

The bill sent from the Senate, entitled "An act for the disposal of certain copies of the laws of the United States," together with the amendments agreed to on Friday last, was read the third time and passed.

The bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate Governments," was read twice and committed to Mr. Gregg, Mr. Morrow, Mr. Livingston, Mr. Alston, and Mr. Clagett.

Mr. Boyle laid on the table a resolution to amend the rules of the House, by adding, that a standing committee should be erected for the consideration of all matters relating to the sale or distribution of the vacant lands belonging to the United States, to be styled the Land Committee.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the thirteenth instant, to whom was referred the petition of John Steele, late Secretary of the Mississippi Territory, presented the twenty-first of December, one thousand eight hundred and three; and, after some time spent therein, the Committee reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the proper accounting officers liquidate and adjust the account of John Steele, for his services as Secretary of the Mississippi Territory, from the seventh of May, one thousand eight hundred and two, to the second of March, one thousand eight hundred and three, inclusively; and that there be paid for his salary and official expenditures, such sums as are allowed by law to persons acting in that capacity.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. John Randolph, from the Committee of Ways and Means presented a bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of the legal representatives of the late General Moses Hazen;

the bill was reported with an amendment, which was twice read, and agreed to by the House.

The said bill was then further amended at the Clerk's table, and, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain; which was read twice, and committed to a Committee of the Whole on Friday next.

THURSDAY, December 27.

A petition of Amy Dardin, of the county of Mecklenburg, in the State of Virginia, widow and administratrix of David Dardin, deceased, was presented to the House and read, praying compensation for the value of a stud horse, called Romulus, the property of the deceased, which was impressed into the service of the Southern Army, under the command of Major General Greene, by order of James Gunn, a Captain in a regiment of Continental cavalry, some time in the month of July, one thousand seven hundred and eighty-one.—Referred to the Committee of the Whole House to whom was committed, on the sixth instant, the bill making farther provision for extinguishing the debts due from the United States.

The House resolved itself into a Committee of the Whole on the bill to incorporate the Washington Building and Fire Insurance Company. The bill was reported with several amendments, which were twice read, amended, and agreed to by the House.

The said bill was then amended, and, together with the amendments, ordered to be engrossed, and read the third time on Monday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage;" which was read twice, and committed to a Committee of the Whole to-morrow.

GENERAL HAZEN.

An engrossed bill for the relief of the legal representatives of the late General Moses Hazen was read the third time; and, on the question that the same do pass, it was resolved in the affirmative—yeas 60, nays 38, as follows:

YEAS—Willis Alston, jun., Isaac Anderson, Simeon Baldwin, David Bard, Silas Betton, Phanuel Bishop, Adam Boyd, William Butler, Levi Casey, Christopher Clark, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, James Elliot, John W. Eppes, William Eustis, William Findley, John Fowler, Edwin Gray, Andrew Gregg, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, James Holland, Benj. Huger, Samuel Hunt, John G. Jackson, Michael Leib, Henry W. Livingston, John B. C. Lucas, Matthew Lyon, Thomas Moore, Jeremiah Morrow, Anthony New, Beriah Palmer, John Patterson, Samuel Riker, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, Samuel Taggart, Samuel Tenney, David Thomas, George Tibbits, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, Marmaduke Williams, Richard Winn, and Joseph Winston.

NAYS—Nathaniel Alexander, John Archer, George Michael Bedinger, William Blackledge, John Boyle, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Davenport, John Dennis, Thomas Dwight, John B. Earle, Peter Early, Ebenezer Elmer, Calvin Goddard, David Holmes, David Hough, William Kennedy, Nehemiah Knight, Simon Larned, Andrew McCord, David Meriwether, Nahum Mitchell, Nicholas R. Moore, James Mott, Gideon Olin, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sandford, Henry Southard, William Stedman, Benjamin Tallmadge, Abram Trigg, Peleg Wadsworth, Alexander Wilson, and Thomas Wynns.

FRIDAY, December 28.

Mr. DANA, from the Committee of Claims, presented a bill for the relief of John Steele; which was read twice and engrossed, and ordered to be read the third time on Monday next.

Mr. J. RANDOLPH moved that the Postmaster General be directed to lay before this House a list of the names of persons with whom contracts have been made for carrying the mail of the United States from the 31st of December, 1801, to the 31st of December, 1804, inclusive, specifying the terms on which such contracts were made, and the sums paid, or to be paid to the contractors respectively. On motion it was agreed to consider the resolution, and on the question will the House agree to the same, it was carried *nem. con.*

CHARTER OF ALEXANDRIA.

A memorial of sundry resolutions of a number of the inhabitants of the town of Alexandria, in the District of Columbia, in approbation of the principles contained in a bill now depending before the House, to amend the charter of the town of Alexandria; also, sundry resolutions of a number of other inhabitants of the same town, in opposition to the said bill; were presented to the House and read: Whereupon,

Mr. LEWIS called for the third reading of the bill to amend the charter of the town of Alexandria.

A lengthy discussion took place on the passage of the bill, which was opposed by Mr. LEWIS, and its postponement contended for by Messrs. DENNIS, GREGG, EARLY, R. GRISWOLD and GODDARD. The bill was advocated by Messrs. LYON, ELMER, LEIB, EPPES, SMILIE, and G. W. CAMPBELL, who likewise opposed the postponement.

On the question to postpone the bill till the first Monday in December next, it was lost, 44 being in favor of the postponement, and 60 against it. On postponing till the first of February the question was also lost, 42 in favor and 58 against it.

A motion was then made to recommit the bill to a Committee of the Whole in order to withhold from aliens the right of holding real estate within

the bounds of the corporation, and to make some other alterations, which, though not very material, would give satisfaction to the party in Alexandria who opposed the passage of the bill.

On the question to recommit, there were 36 in the affirmative, and 61 in the negative; so the motion was lost.

Mr. J. RANDOLPH then spoke against the passage of the bill, and was replied to by Messrs. DAWSON, and G. W. CAMPBELL.

And then the main question being taken that the said bill do pass, it was resolved in the affirmative—yeas 55, nays 51, as follows:

YEAS—Willis Alston, jr., Isaac Anderson, John Archer, David Bard, George Michael Bedinger, John Boyle, Robert Brown, William Butler, George W. Campbell, Thomas Claiborne, Christopher Clark, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, John Dawson, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, Josiah Hasbrouck, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, David Meriwether, Nicholas R. Moore, Jeremiah Morrow, James Mott, Anthony New, Thos. Newton, jr., Gideon Olin, Beriah Palmer, John Patterson, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sandford, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, David Thomas, Abram Trigg, Matthew Walton, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

NAYS—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, John B. Earle, Peter Early, James Elliot, William Eustis, Calvin Goddard, Edwin Gray, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, James Holland, David Hough, Benjamin Huger, Samuel Hunt, Joseph Lewis, jr., Henry W. Livingston, William McCreery, Nahum Mitchell, Thomas Plater, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sammons, James Sloan, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, George Tibbitts, Philip Van Cortlandt, Joseph B. Varnum, Daniel C. Verplanck, Peleg Wadsworth, John Whitehill, Lemuel Williams, and Marmaduke Williams.

Mr. VARNUM suggested that his colleague from Massachusetts (Mr. LARNED) had made a mistake in his vote on the Alexandria bill, which he wished to be permitted to rectify. Whether it would alter the decision of the House he did not know. The gentleman voted for the bill, though he was against it altogether, under an impression that he was voting on the question of recommitment instead of its final passage. If he was permitted to record his vote according to his intention, it would make the result stand 53 to 52; and if the SPEAKER was to add his vote to the minority, the bill would not pass.

This gave rise to a great deal of conversation relative to the rules of the House and its uniform practice, which appeared to have been against an alteration of the vote by yeas and nays, unless the alteration would produce no effect upon the vote by changing the majority into a minority. This idea was combatted by the reason of the thing. It was deemed extremely improper to confine members to a *lapsus linguæ*, without suffering them to explain. While the argument was going on, Mr. BECKLEY (the Clerk) had been induced to examine his list of yeas and nays with the most careful scrutiny, and had discovered that in the numerical list of votes he had marked the same number twice among the yeas, so that in fact there were 55 yeas and but 51 nays. The alteration requested being now found not to alter the decision, several members hoped the gentleman might be indulged; but this being to be done by the unanimous consent of the House, and Mr. CONRAD refusing his consent, the alteration was not made. Four motions were made to adjourn during the debate, and the last succeeded.

MONDAY, December 31.

An engrossed bill for the relief of John Steele was read the third time and passed.

Mr. J. RANDOLPH, from the Committee of Ways and Means, presented a bill making appropriations for the support of Government for the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole on Wednesday next.

On a motion made and seconded that the House do come to the following resolutions:

1. *Resolved*, That a post road ought to be established from the City of Washington, on the most convenient and direct route, to pass through or near the Tuckabachee settlement to the Tombigbee settlement, in the Mississippi Territory, and from thence to the city of New Orleans.

2. *Resolved*, That the President of the United States be requested to cause to be laid before this House any documents, and give such other information as he may think proper, relative to opening a post road from the City of Washington to the City of New Orleans.

The first resolution being twice read, was, on a motion made, ordered to be referred to the Committee of the whole House, to whom was committed, on the seventh instant, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the said settlement on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee."

The second resolution being twice read, was, on the question put thereupon, agreed to by the House.

Ordered, That Mr. HOLLAND and Mr. G. W. CAMPBELL be appointed a committee to present the second resolution to the President of the United States.

A Message was received from the President of the United States, enclosing a letter written from Malta by Richard O'Brien, our late Consul at Algiers, giving some details of transactions before Tripoli. The Message and letter were read, and ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the fourteenth instant, on the petition of Ann Elliott. The Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of Ann Elliott is reasonable, and ought to be granted.

Ordered, That a bill or bills be brought in pursuant to the said resolution, and that the Committee of Claims do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Wednesday next.

Mr. Lattimore, from the committee appointed on the seventeenth instant, presented a bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" which was read twice and committed to a Committee of the Whole.

The House resolved itself into a Committee of the Whole on the bill giving further time to register the evidences of titles to land south of the State of Tennessee. No amendment being made to the bill, it was ordered to be engrossed, and read the third time on Wednesday next.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, to whom were referred, on the eighteenth instant, the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods wares, and merchandise exported from the district of New Orleans," made a report thereon; which was read, and together with the said amendments committed to a Committee of the Whole on Wednesdey.

On motion of Mr. Eustis, it was

Resolved, That the Secretary of State be directed to lay before this House a return of the number of American seamen who have been impressed or detained on board the ships of war of any foreign nation; stating the names of the persons impressed; the name of the ship or vessel by which they were impressed; the nation to which she belonged; and the time of the impressment, so far as may be practicable; together with any facts and circumstances, relating to the same, which may have been reported to him.

DISTRICT OF COLUMBIA.

Mr. Gregg called up the resolutions for a recession of the District of Columbia to the States of Maryland and Virginia.

Mr. Huger moved to postpone the same till this day week.

Mr. Jackson moved to postpone them till the 31st December next.

Some desultory remarks were made, not touching the merits of the main question; at length the question was taken on postponing till 31st December, and lost, without a division.

On postponing till Monday next, the question was decided in the affirmative—59 for and 31 against it.

An engrossed bill to incorporate the Washington Building and Fire Insurance Company was about being read, when

Mr. Gregg expressed a wish that it might be postponed, and a speedy decision had on the question of recession. He understood this was the day fixed for that subject.

Mr. Lewis observed that the motion for recession could have had no effect upon this bill, as it did not contemplate the recession of the City of Washington, but only of the other parts of the District.

Mr. Stanford had intended to have called up the resolutions for recession, but he had just received a letter from a number of the inhabitants of the District, wishing a short delay. There were also absent from the House several members who had taken considerable interest in the subject. For these reasons, he did not intend to call up the resolutions for two or three days.

Mr. Early was averse to a postponement. He thought an early decision ought to be made, to quiet the minds and soothe the feelings of the inhabitants, who felt a deep interest in the decision. Indeed, the members themselves had had their feelings excited in no inconsiderable degree. He hoped if the gentleman who brought the resolutions forward should forbear to bring them up, some other gentleman would do it for him.

Mr. Stanford was induced to let the subject rest a few days longer, on account of those very feelings and interest which pervaded the whole body of the people. He would also prefer a decision by a full House, rather than by such a thin one as now appeared.

Mr. Early did not think that a thin attendance by the members was a good argument for postponement. If it was expected that every member should attend, he feared the public business would progress very slowly; but if the subject was entered upon now, and the resolutions adopted, they would have to take the shape of a bill, and it would be many days before the subject was finally decided, by which time no doubt the absent gentlemen alluded to would arrive.

Mr. Lyon said the bill that was moved to be postponed had nothing to do with the recession, as it was not proposed to recede the city.

Mr. Gregg knew that the resolutions excepted Washington City, but he hoped that if a part of the District was to be receded, there would be found a majority for receding the whole. He was against the recession altogether, and so he should be till the question was decided against him. The business had been so long before the House, that he could not see any reason for further delay.

On the question to postpone the bill for incorporating the Washington Building and Fire Insurance Company, there were 51 for it and 42 against it; and the bill was postponed accordingly.

The House then adjourned to Wednesday.

Wednesday, January 2, 1805.

Mr. Dana, from the Committee presented a bill in addition to an "Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war; which was read twice and committed to a Committee of the Whole on Monday next.

Mr. Dana, from the Committee of Claims, presented a bill for the relief of the widow and orphan children of Robert Elliot; which was read twice and committed to a Committee of the Whole House on Friday next.

An engrossed bill making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five, was read the third time, amended at the Clerk's table by the unanimous consent of the House, and passed.

An engrossed bill giving further time to register the evidences of titles to lands south of the State of Tennessee was read the third time and passed.

A petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others, was presented to the House and read, praying relief, in the case of certain negro slaves and other property, which were taken from sundry citizens of the said State of South Carolina, therein named, on their way to the Natchez, by a party of Cherokee Indians, some time in the month of June, one thousand seven hundred and ninety-four.

Ordered, That the said petition, together with the petition of Eliakin Morse, of the State of Massachusetts, presented the twenty-third of January last, be referred to the Committee of Claims.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage." The bill was reported without amendment, and it was ordered to be engrossed, and read the third time to-morrow.

Mr. Gregg, from the committee to whom was referred, on the twenty sixth ultimo, the bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments," reported that the committee had directed him to report the same to the House, without amendment: Whereupon the bill was committed to a Committee of the Whole to-morrow.

Mr. Newton, from the committee appointed, on the fifteenth of November last, presented a bill to prohibit the exaction of bail upon certain suits brought in the District of Columbia; which was read twice and committed to a Committee of the Whole on Wednesday next.

The House resolved itself into a Committee of the Whole on the bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

An engrossed bill to incorporate the Washington Building and Fire Insurance Company, was read the third time, and on the question that the same do pass, it was decided in the negative—yeas 23, nays 65, as follows:

Yeas—Willis Alston, jr., John Archer, Silas Betton, William Blackledge, William Chamberlin, Martin Chittenden, Manasseh Cutler, John Dennis, Thomas Dwight, Ebenezer Elmer, William Helms, John G. Jackson, Joseph Lewis, jr., Thomas Plater, Henry Southard, James Stevenson, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, George Tibbits, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

Nays—Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, Phanuel Bishop, Adam Boyd, Robert Brown, William Butler, Levi Casey, Clifton Claggett, Christopher Clark, Matthew Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, James Elliot, John W. Eppes, John Fowler, Edwin Gray, Josiah Hasbrouck, Joseph Heister, James Holland, David Hough, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Gideon Olin, Beriah Palmer, John Patterson, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, John Smilie, Richard Stanford, Joseph Stanton, Samuel Taggart, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Daniel C. Verplanck, Matthew, Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

And so the bill was rejected.

Thursday, January 3.

An engrossed bill supplementary to the act entitled, "An act to regulate the collection of duties on imports and tonnage," was read the third time and passed.

An engrossed bill for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain, was read the third time and passed.

On a motion made and seconded to add a new rule to the standing rules and orders of the House, in the words following, to wit:

"A standing committee to consist of seven members, and to be styled 'the Land Committee,' shall be appointed, whose duty it shall be to take into consideration all such matters and things, touching the lands of the United States, as shall be presented, or shall or may come in question, and be referred to them by the House, and to report from time to time their opinion thereon; and also to report such alterations and amendments to the laws concerning the lands of the United States, as may become necessary:"

The question was taken that the House do agree to the same, and passed in the negative. So the said motion was rejected.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures, of the thirty-first ultimo, to whom were referred the amendments proposed by the Senate to the bill, entitled "An act concerning drawbacks on goods, wares, and merchandise, exported from the district of New Orleans;" and, after some time spent therein, the

Committee rose and reported their disagreement to the report, and their agreement to all the amendments referred to them.

The House then proceeded to consider the said report and amendments of the Senate: Whereupon, the question was taken that the House do agree to the report of the Committee of the Whole thereon, and resolved in the affirmative.

FRIDAY, January 4.

The House resolved itself into a Committee of the Whole on a bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate governments;" and, after some time spent therein, the bill was reported with an amendment, which was twice read and agreed to by the House.

Ordered, That the said bill, with the amendment, be read the third time on Monday next.

The House resolved itself into a Committee of the Whole on the bill to authorize the Collector of the port of Philadelphia to act by an additional deputy; and, after some time spent therein, the Committee rose and reported progress.

On a motion made and seconded that the committee appointed, the twelfth of November last, on so much of the Message from the President of the United States as "recommends an enlargement of the capital employed in commerce with the Indian tribes," be discharged from the consideration of the alterations and amendments necessary in the "Act to regulate trade and intercourse with the Indian tribes," referred to them by a resolution of the House of the fourteenth of the same month; the question was taken thereupon, and resolved in the affirmative.

A motion was then made, and the question being put, that the House do come to the following resolution:

Resolved, That a committee be appointed to inquire whether any, and, if any, what, alterations are necessary in the "Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" and that the committee have leave to report thereon by bill or otherwise,

It passed in the negative.

Another motion was then made and seconded to reconsider the vote of the House for discharging the committee appointed the twelfth of November last from the consideration of the subject referred to them on the fourteenth of the same month; and, on the question for reconsideration, it was resolved in the affirmative.

On the question that the said vote of the House to discharge the committee, be rescinded, it was resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee;" and, after some time spent therein, the Committee rose and reported progress.

A remonstrance and petition of the representatives elected by the freemen of the Territory of Louisiana, was presented to the House and read, stating certain objections to the system of government for the said Territory, as established by an act passed on the twenty-sixth of March last, and submitting thereon various matters and propositions to the consideration of Congress, which, they pray, may be adopted for the convenience and benefit of the petitioners and other inhabitants of the said Territory of Louisiana.—Referred to Mr. EPPES, Mr. LUCAS, Mr. CLAGETT, Mr. HUGER, Mr. EUSTIS, Mr. FOWLER, and Mr. BRYAN, to consider and report thereon.

A message from the Senate communicated to the House farther proceedings of the Senate relative to the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

The said proceedings of the Senate were read, and are as follows:

"*In Senate of the United States.—High Court of Impeachments, January 3d*, 1805.

UNITED STATES *vs.* SAMUEL CHASE.

"*Ordered*, That the fourth day of February next, shall be the day for receiving the answer, and proceeding on the trial of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States."

"Attest: SAM. A OTIS, *Secretary*."

Ordered, That the said proceedings of the Senate do lie on the table.

MONDAY, January 7.

The bill sent from the Senate, entitled "An act to divide the Indiana Territory into two separate Governments," together with the amendment agreed to on Friday last, were read the third time, and passed.

Mr. ELLIOT presented a petition from Barnabas Strong and sundry other inhabitants of Vermont, praying a grant of a tract of land six miles square, in the Territory of Indiana.

Mr. OLIN opposed this application, as being a speculation upon the public property of the Union, and hoped the petition would be rejected.

Mr. ELLIOT did not view the application in the samelight with Mr. OLIN; but were it the thing suggested, he thought still it might be suffered to go to a committee for inquiry.

On the motion to refer it to a select committee, there was thirty-seven yeas, and thirty-two nays.

The SPEAKER said the voters did not amount to a quorum, and having called in the members to their seats, the motion was put a second time, and there were forty-one in favor of the reference, and thirty-seven against it. It was accordingly referred to a select committee of three.

Mr. FINDLEY laid upon the table a resolution to be added to the rules of the House, directing the SPEAKER to call upon the chairmen of committees to report the progress they had made in the several items of business referred to them, every Friday morning during the residue of the session.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what alterations

are necessary to be made in the laws for the disposal of the public lands Northwest of the Ohio, and that the said committee be authorized to report by bill, or otherwise.

Ordered, That Mr. MORROW, Mr. GREGG, Mr. GODDARD, Mr. STEPHENSON, and Mr. VAN CORTLANDT, be appointed a committee pursuant to the said resolution.

Mr. OLIN moved the appointment of a select committee, for the purpose of considering the propriety of increasing the allowance made to the persons employed in bringing to the seat of Government the returns of the election of President and Vice President of the United States. The allowance made by law being two dollars and fifty cents for every twenty miles travel to Washington, and nothing allowed them for their return.

On the question to raise such committee, there were fifty-six members in its favor, and twenty-one against it. A committee of three was appointed.

REMISSION OF DUTIES.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom were referred the petitions of Benjamin Bailey, James Bogart, Jr., and others, citizens of the United States, and resident merchants of the City of New York, made the following report:

The petitioners have been sufferers to a large amount by a late distressing fire in the City of New York. They represent that they imported into the district of New York, various goods and merchandise, of a great value; and while they were still owners of such property, a conflagration took place, which destroyed their stores, with all, or nearly all, their contents, including the merchandise on which the duties were secured to be paid. They pray that Congress will authorize the Collector of New York to deliver up, or cancel, all bonds or other securities given by them for duties upon such part of the said goods and merchandise as were destroyed by the fire.

Repeated decisions on similar applications leave no doubt on the mind of the committee that it would be improper to grant the prayer of the petition. When any article is imported into the United States, and the duties thereon are ascertained at the custom-house, the amount forms a part of the actual value, and is an insurable interest: if it is afterwards destroyed by fire, or lost in the transportation, coastwise, from port to port, or in any manner injured or damaged, it has never been considered that the United States were bound to cancel the bonds entered into by the importers for the duties. The United States can, in no respect, be considered in the light of underwriters. When the duties have at any time accrued, they ought to be paid, and the importing merchant can have no greater right to call upon the Government for a return of the duties than he would to demand of the seller a diminution in the price, or to ask the possessor of his note or bond that he may be exonerated from the payment for any article purchased in the market, merely because the bargain was not advantageous, or because the merchandise was burnt or destroyed, which formed and constituted the evidence of *value "received."* It is with regret the committee make these observations, but they wish it to be generally understood by the merchants, that in no case could they deem it proper to advise the House to refund the duties upon merchandise destroyed by any accident whatever.

It is true the Treasury of the United States ought not to be enriched from the losses of private individuals, and that our revenue is chiefly derived from the duties on articles consumed in the country; but, when it is fairly considered that, to abandon claims upon the importers, would lead to numerous impositions; that if some were relieved from debts contracted in good faith, (although the articles on which those debts originated were actually destroyed) it might induce others to expect similar indulgences, without having equal claims upon the national bounty, and as there exists a strong necessity for preserving uniformity in these decisions, and as it cannot be reasonably expected that Congress should now deviate from a long course of practice, founded as it is on equitable and strict commercial principles, the committee recommend that the petitioners have permission to withdraw their petition.

The report was agreed to by the House.

DISTRICT OF COLUMBIA.

The House resolved itself into a Committee of the Whole, on a motion "to recede to the States of Virginia and Maryland, the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. STANFORD said it was his wish to make a few observations on the resolution now before the Committee, for the retrocession of that part of the District of Columbia which had been ceded to the United States by the State of Virginia, in support of the vote he should give—expecting that what was said on the first, would be generally applicable to the last resolution also. He begged leave, however, in the first place, to suggest that, in bringing forward the motion, he had not had any the least intention to take any step that should go to a removal of the Government. He trusted no gentleman of the Committee would entertain such an opinion of his views. Had such been his intention he would have preferred a direct motion to that effect.

As then both the resolutions together made but a single object—that of ceding back again to the respective States of Virginia and Maryland all the District of Columbia, except the City of Washington—he should, in the course of the discussion, consider it more incumbent on those adverse to the measure to show the original wisdom and utility of the provision in the Constitution, than on its friends. It would be enough for them to show its present evil tendency, and that it was an encumbrance no way necessary or useful to the General Government.

Upon a former occasion some question had arisen, and might yet lie in the way of some gentlemen, whether Congress, having once accepted the cessions of the States, had now the power of recession. On that head he had not, himself, ever found reason to doubt. By the third section and fourth article of the Constitution, "Congress has power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States;" and besides the eighth section of the first article, which assigns to Congress the exclusive legislation over this district, in all cases whatsoever," does not ap-

pear to come short of such a power. Like authority is also given, in the same paragraph of the Constitution, over all places purchased by the consent of the State in which the same shall be, "for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Congress, thus possessing the right of disposal, had exercised that right by an act passed two sessions ago, authorizing the Secretary of the Navy to convey to the Salem Turnpike and Chelsea Bridge Companies a part of the navy yard at Boston. With it, will any one contend that jurisdiction did not also pass to the State of Massachusetts, whence it had been obtained? It certainly would by every fair and *bona fide* view of the circumstances. If, for instance, murder should be committed on that part of the turnpike which was formerly a part of the navy yard, could it be contended that such murder was not punishable by the laws of Massachusetts; that the General Government was the only competent authority to punish? He hoped otherwise. A like discretionary power of cession was also exercised, when Congress anticipated the ordinance, and transferred the jurisdiction to the people of the Northwestern Territory, which now forms the State of Ohio. It would be remembered that, at the time of the transfer, the United States held the exclusive jurisdiction of that territory.

But, Mr. Chairman, we have a case of recent date still more conclusive, as being more directly in point. The very term itself (*cede*) is used. In the second article of the late "Articles of Agreement and Cession with Georgia," after accepting the cession of Georgia, the United States go on to say, "and they cede to the State of Georgia 'whatever claim, right, or title they may have to 'the jurisdiction or soil of any lands lying within 'the United States, and out of the proper boundaries of any other State, and situated south of the 'southern boundaries of the States of Tennessee, 'North Carolina, and South Carolina, and east of 'the boundary line herein above described as the 'eastern boundary of the territory ceded by Georgia to the United States." It is worthy of remark Congress never even took exception to this act of cession, and interchange of cessions, as it respected the power of doing so—nor did the State of Georgia, though she had both a federal and State interest to serve upon the occasion, and had to pass a solemn act of ratification, and acceptance of such cession from the United States, for it made a part of her compensation for the Mississippi Territory. That State has, moreover, since extended her authority, and erected a county in the very territory thus ceded. Other cases might be cited of a similar exercise of power on the part of the General Government, but he must be allowed to consider the present as sufficiently conclusive and unanswerable.

As to the expediency of a retrocession, he did not know that much need be said. Every debate during the present session, in relation to the affairs of the District, was but an additional argument for the expediency as well as policy of the measure. Whole days had been lately taken up with local and unimportant matters, to the neglect of the greatest concerns of the nation. He did not think there could be found another district of country, of the same variety, not to say contrariety, of interests. There seemed, indeed, a perfect turmoil of contending interests, not possible to reconcile, and as impossible to legislate for in peace. He would ask, did it accord with the genius of the General Government to be thus occupied with this small portion of the country? Could it be supposed we should be able to get along with such an appendage? He thought not. With the exception of territorial jurisdictions, the powers of Congress were, as they ought to be, not of a local, but general nature; and yet with one local concern or another, within this ten miles square, Congress had been harassed with petitions, counter-petitions, and memorials, more than from one-half of the States in the Union besides. This fact would appear by a reference to the journals of the different sessions since the assumption of jurisdiction. But the time consumed in this way was not all; the existing government of the District formed annually no inconsiderable item of expense in an aggregate point of view. To this should be also added the expense of printing. Our journals are much enlarged, voluminous bills and other matters printed, which, no doubt, went far to swell the contingent expenses of the House, of late so justly complained of as enormous.

But, said Mr. S., over and above the consideration that the District of Columbia is no way necessary and every way expensive to the General Government—in fact, a kind of governmental nuisance that ought to be removed—there was another objection, still more serious with him, the people of the District were the merest subjects in their condition. If they held rights, they were not apparent to him in the Constitution. He believed all they held were those of courtesy. In the Constitution no immunity, no privilege, no political right, had been, in so many words, reserved to them. They had been specifically given away, consigned to the ideal convenience of the General Government, without a single specific reservation. This was not the case as to the people of the States. If he were told the people were content, and did not wish a change, that with him was a good reason why the motion should at once prevail. If twenty, or twenty-five thousand people had already become willing subjects, without wishing any share or control in their own affairs, such an example ought no longer to remain under our system of Government, and he trusted would not. He concluded by expressing a hope that the resolutions might be adopted.

Mr. SMILIE rose in reply. He disclaimed any intention hostile to Washington remaining the seat of Government, and denied that the recession would have any influence upon it. Having elucidated the Constitutionality of the measure, he exhibited in strong colors the degraded situation of the people of the District, and the dangers which might hereafter arise from a continuance of it.

Mr. DENNIS.—Mr. Chairman: As a resolution analogous in all its leading features to those now under consideration, was submitted to the consideration of a former Congress, by a gentleman from Massachusetts, (Mr. BACON,) and as that resolution was put at rest by a very decisive majority, I had not expected that its ghost would have risen up at so early a day to haunt the people of Columbia, or to interrupt the deliberations of this body. That the gentleman who has offered these resolutions has acted from the best lights of his own understanding, and has believed the object intended to be thereby effectuated is both within the pale of our Constitutional authority, and politically expedient, it is not for me to question. To me, however, they appear unconstitutional and politically inexpedient, and I will moreover add, cruel, unjust, and tyrannical, in their operation on the people of this district.

In order to ascertain the extent of our power on the subject, we must resort to the eighth section of the first article of the Constitution. Here we find that, amongst other powers therein enumerated, it is declared as follows: "That Con-'gress shall have the power to exercise exclusive 'legislation in all cases whatsoever, over such 'district (not exceeding ten miles square) as may, 'by cession of particular States, and the accept-'ance of Congress, become the seat of the Gene-'ral Government," &c. This clause contemplates, first, a place to be acquired, lying at the time within the jurisdiction of some of the States, but which was to be put out of their control and within the exclusive jurisdiction of the General Government. This was to be done in order that a permanent seat might be established, which should not be liable to be changed by Legislative caprice; and in order that the jurisdiction over the place in which its operations were to be conducted might be, like the Government itself, the property of the whole people of the Union, and free from the influence of any one of its component parts.

This appears to be as much a part of the Constitution, that you should always have this federal district, as that there should be a Legislative, Executive, and Judiciary department.

2d. It points out the manner in which this district shall be acquired, and the agents who are to be instrumental in the acquisition. The convention, on behalf of the people of the United States, who are the principals, appoint Congress the attorney in fact to receive the conveyance, and constitute the Legislatures of the States from whom the cession or conveyance is to be made similar agents to make it. The several agents have performed their respective offices, the district has been acquired in conformity with the authority given, the right to the property vested in the American people, and possession held of it by us, for their benefit, for whose use it was acquired. All the power which was given as to the acquisition of the territory has been exhausted, and no other power remains but that of exercising over it exclusive legislation. To explain and illustrate this subject to the most ordinary capacity, let me compare the transaction to a case in common life. If I give a man a power of attorney to purchase for me a tract of land, in a particular district of country, of a specified quantity of acres, leaving it to him to make the location, and he accordingly make a purchase, and I consent to the act, receive the conveyance, and take possession of it, can my agent afterwards make another choice, divest me of my right, and reconvey the property without my consent? No man will answer this question affirmatively; and yet it is clear there is a perfect similitude between the cases, and that Congress are agents acting in this case under a limited authority and confined in the exercise thereof to a specific object. That Congress are special agents, and not vested with a general power over every possible case is manifest from the whole tenor of the Constitution; and I will lay down in this instance a rule which has been generally recognised as the standard, by which to test the extent of Constitutional authority in any given case. It is, that Congress can exercise no power on any subject but what is expressly delegated and specifically enumerated in the Constitution, or necessary and incidental to the execution of the specified powers. What is their power in the present instance? To accept a cession and exercise over it exclusive legislation. Can you infer from hence a power of retrocession? To do so is at war with the amendment of the Constitution, which declares that all powers not given to the General Government are retained by the States or the people respectively. Was not the power confined to the acceptance of the district directed to be procured for a specific purpose, and when so acquired, to continue an object over which Congress, as a permanent body, might always have it in their power to exercise exclusive jurisdiction? Can you then claim the power of reconveying the district and receiving one as often as your caprice may dictate, or of divesting your successors of the same control over this district which we may exercise ourselves? The power is not expressly delegated, nor is it a necessary power to carry into effect any power given; for it will not be contended, but we may exercise all our powers and perform all our duties, and still retain the jurisdiction over the district.

It has been said that Congress and the Legislatures of Maryland and Virginia, being the parties to the contract, may, like all other parties, by mutual consent, dissolve the obligation. The premises might be admitted, and the conclusion does not follow. For it is not always true, and never so where the rights of third persons are involved, that the original contracting parties can dissolve the contract. If I draw a bill of exchange, and the drawee endorse it to a third person, it is not in the power of the drawer and drawee to cancel the obligation. This case will apply as well to the people of the United States as to those of the District of Columbia, whose vested rights are mutually affected by the proposed resolution. But surely the premises are incorrect, and this is to be regarded as a contract of the American people, and not the contract of Congress, made

with the people of the ceded territory, that if they would consent to give up their property, and the States in which they lived would make the cession, Congress should accept it, and exercise over them exclusive legislation.

Again, sir, it is said that Congress are not imperatively commanded to exercise this power, but have an option to exercise it or not, at discretion. Be it so. But does this give the power to transfer its exercise to a foreign jurisdiction?

This district has been completely severed from Maryland and Virginia, and has been erected into two counties by the name of Washington and Alexandria, and forms, at this time, no more a part of the territorial limits of Maryland and Virginia, than of New Hampshire or Georgia; and you may by the same authority that you propose to reannex them to those States, unite them to Delaware or Jersey, and put the people, many of whom never were citizens of Maryland or Virginia, under the jurisdiction of the Emperor of Hayti.

"Congress shall have the power to exercise exclusive legislation." &c. What Congress? Is it the Congress of 1804–'5, or 1820–'50? if, indeed, the Union so long endure. Surely, sir, we can exercise no power which our successors may not also exercise on an object declared by the Constitution to be a subject of legislation for Congress; and if you should give up the exercise of the jurisdiction for the present, and repeal the act of assumption, your successors may repeal the repealing act and resume the jurisdiction; otherwise you may deprive your successors of all the powers of legislation. In the section in which the power of exercising exclusive legislation is given, is also contained, amongst other powers therein enumerated, the power "to coin money and regulate the value thereof," &c.—"the power of making a uniform system of bankruptcy," &c. These powers Congress may exercise or not; but can they vest in Maryland and Virginia, or any other State, the power of legislating for the Union on these subjects, and thereby deprive their successors of the exercise of these powers, should they hereafter deem it advisable to resume them? No, sir. Neither can we by any act of ours (nor can it be done in any way but by an amendment of the Constitution) divest our successors of an ultimate control over this territory, and of the right of resuming jurisdiction over it, which you in vain attempt to give way.

Then it may be problematical, at least, whether the States of Maryland and Virginia will consent to exercise powers, in consequence of this kind of Legislative deputation, over a people, not within their territorial limits, and who form no more a portion of the citizens of those States than of any other section of the Union? Why should they expend their time and money, and encounter those difficulties as your viceroys and mere tenants at will; which you are afraid to encounter yourselves? You might as well vest in Maryland and Virginia the exclusive right of legislating for Louisiana.

But, Mr. Chairman, I should be glad if the gentleman who proposed the resolutions, and who by the term recession and some kind of magical operations is to produce a re-annexation of this district to the States from which it has been severed, would inform me precisely what he understands by the term, and what is to be the result of the measure on the rights of the people of the district. I presume however, he expects, by the adoption of these resolutions, to reinstate them in all their former rights. Will this be thereby effected? Having been cut off completely by the Constitution, the acts of cession on the part of the States, and by the acts of acceptance in 1790, from their parent States, they will be in the same situation as a purchased or conquered people, and entitled to no other rights and privileges but such as their new masters may think proper to concede. They were, before you separated them from their parent States, a part of the sovereignty of those States and their rights secured to them by their respective constitutions.

But it will be said, you may annex a condition to the retrocession compelling Maryland and Virginia to reincorporate them into their respective political systems, with all the immunities and privileges they formerly enjoyed. Even then they are dependant for their rights, not on the constitution of those States respectively, but on compact and legislative promises. But you have already made one legislative promise, which you are about to violate, and where is the security that the legislative promises now to be made will not be violated again, especially as the very act which makes the new one, violates a former one, accompanied with greater solemnity? Sir, we have had some experience as to the difference between a people who have their rights secured by a constitution, and one who depends for that security on compact, in the people of Louisiana. By the treaty they were to be incorporated into the Union, with all the rights, immunities, and privileges of American citizens. We know the latitude of discretion and the various constructions which have prevailed, to deprive these people of the rights stipulated by the treaty. Suppose the States to whom you propose the retrocession to be made should assume a similar latitude, to whom are these people to apply for redress? They must invoke the aid of Congress, instead of appealing as before to the constitution of the State as a guarantee of their rights.

But, Mr. Chairman, are the people of the territory unworthy of a moment's consideration, and will their remonstrances against the measure be altogether disregarded? Let us take a retrospective view of the circumstances under which they were seduced from their parent State, and the manner in which they consented to dissever the civil and political bonds by which they were formerly connected. What induced them to alienate their native allegiance, and with a generous confidence to submit themselves to your authority? First, the Constitution held out a pledge and formed the basis of the contract, involving a promise, that if the people living in the district of country, which should be fixed upon for the seat of Government, would give up the rights possessed under

the government of the States to which they belonged, they should forever remain under the exclusive jurisdiction of Congress. By the act of Congress accepting the cession, the territory received is declared to be the place fixed on for the *permanent seat* of the Government, and the States ceded forever the jurisdiction of the persons and soil within the same to Congress, for the purpose of exercising therein exclusive legislation. Finally, you assume the government, establish your own systems, and annul those of the States. Confiding in the premises, they gave up the control of their persons, and some of them divided with you their property. They came to you with one consent, and hailed your arrival here as the most fortunate epoch in the annals of their country—and now, will you set them adrift without deigning to listen to their prayers?

But all this is to be done to restore them to their lost liberty; to emancipate them from the shackles of despotism with which they are encumbered, and to elevate them from their degraded condition to the rank of freemen. These are very pretty theories, but like many other theories on the subject of the abstract rights of man, when pushed to their extent and everything made to bend to them in order to give them complete effect, are found to be in their practical operation oppressive and unjust. I deny, sir, that the people of this district are in that deplorable state of slavery which some theorists, imagine. They are entitled to, and are in the enjoyment of all the rights secured to the people of this country by the various restrictions on the powers of their governors. No man in this territory can be deprived of life, liberty, or property, but through the medium of the Judiciary department, operating in the same way, and under the same circumstances as in every other part of the Union. The clause relative to the independency of the judicial power, applies itself to the courts here as well as to any other court of the Union. But if it should not be so considered, since the new doctrine has been established, that the tenure of good behaviour in your judges is no bar to the omnipotency of the Legislative power, the people here in this respect have the same security for the independency of their judges and their fellow-citizens as in other parts of the Union. The principal difference between the people of this district and of the different States is, that they have no immediate and actual representation; but notwithstanding the importance of the right of representation to a people, generally speaking, and however correct may be the general principle, that a people cannot enjoy perfect freedom without it, yet, in a place situated as is this district, there is more of theory than of fact in the assertion that the people who are without it are in a state of civil and political despotism.

This being the seat of Government, where all the representatives of the nation are collected, and who, from the responsibility which they owe to their respective constituents and to the whole people of the United States, are under every moral and political tie to do justice, and to protect the rights and interests of the people here. Here every citizen of the district has access to every member, and he may personally communicate his wants, his wishes, and solicit his particular patronage of his interest; and instead of being confined, like a district of country in the remote parts of the Union, to a single member, who may not possess the talents to explain its interests to the Legislative body, the citizens of this place may make a selection out of the whole of the members to whom he may chose to confide his application. Like the seat of Government in all other places, without having any actual representation, this district will have more than its equal share of influence, and its weight will always be felt more sensibly in the Legislative Councils of the nation than the remote parts of the Union. Our theoretical philosophers, however, not only contend that in order to make these people free and happy, we must force liberty upon them, whether they will have it or not, but that even with respect to the conveniency or inconveniency of being governed by this body and the States of Maryland and Virginia, they are incapable of judging for themselves.

But is there no conveniency resulting to them from having all their concerns brought within the narrow limits of ten miles square? Is there no conveniency in having their own courts of justice at their very doors, instead of travelling to Richmond and Annapolis? It is an old-fashioned idea perhaps, but it is one which very generally prevails, even at the present day, that to bring justice home to every man's door, is a great political and civil blessing; and in this respect the people of this place enjoy an advantage which is unknown to any other people in the world.

The great advantages contemplated as likely to result from being represented in the Legislatures of Maryland and Virginia, and the powers of self-government which it is supposed may result from the measure, are merely ideal. What weight will the district on the Virginia side of the Potomac have in the large body of the Legislature of that State, when they will only form a part of the county of Fairfax, and have a share in choosing two members to the Assembly? The same question might be asked in relation to the district of country formerly comprehended in the counties of Prince George and Montgomery, in Maryland. They would be regarded with a jealous eye; a sort of aliens, who were forced, contrary to their remonstrance, to submit to their respective jurisdictions.

But the trouble of governing these people is urged as a serious objection; we certainly have had sundry applications and some legislation has been necessary to accommodate our laws and political systems to this new situation. But this has been, in a great degree, already accomplished; and, I believe, little more is now necessary to be done. And, with respect to the imaginary wants which have sometimes constituted the basis of troublesome applications, it is believed there is now prevailing a very general disposition to suppress them in future. This resolution, however, proposes to retain the city, and the same objection applies, and nearly to the same extent, to its

government, as to the whole. The laws of this territory have been enacted; its systems established, and the officers appointed with reference to the whole; and it will require nearly as much legislation to accommodate your laws to the city alone, as will probably be requisite if the whole be retained. Lastly, I have another objection to these resolutions; because they go to dismember the plan of the territory, which was the favorite child of that illustrious man who may justly be denominated the political Father of his Country. This great and patriotic statesman, whose energetic and comprehensive mind viewed things on a grand scale, foresaw the necessity of bringing nearer together the Atlantic and Western divisions of his country. He considered this place, from the contiguity of its position to the western waters, destined to occupy, at some future day, that situation which would render it the great market for western supplies, and which would stand at one end of a great national turnpike connecting the Western and Atlantic frontiers. He knew full well the local jealousies which will forever exist, and which we know do exist, between places situated like Georgetown, Washington, and Alexandria. He foresaw that these local jealousies, if properly restrained, would, by the action and reaction which they would produce, operate as a general stimulus to the whole, and thereby become rather an advantage than otherwise to the general prosperity; that, by gradual approximation, these places would be brought together and form one great whole. This could only be effected by making the General Government the common centre around which these rival towns, revolving in their respective orbits, would revolve free from collision. But, put them under three different and hostile jurisdictions, three different centres of attraction would be formed; and in revolving around which these hostile bodies might meet each other, and mutual injury ensue. He knew that, by restricting the inspection of produce descending the Potomac, and coming from the west side of the river to Alexandria, Virginia might force all her produce by the City of Washington; and that, by a similar operation on the part of Maryland, all her exports might be stopped at Georgetown; that the destruction of the city and of all her prospects would be the consequence; and, therefore, the wisdom of the plan, as originally adopted, and to support which, free from dismemberment, under whatever pretext, I shall always contribute my exertions. To discourage local jealousy I have always thought desirable when likely to be carried to a pernicious extent, and have always determined to leave each place to the enjoyment of its own natural advantages. I beg leave to conclude by remarking upon one or two observations of the gentleman from North Carolina on the Constitutional question. He has produced some Legislative precedents respecting the transfer of navy yards, arsenals, &c. If these precedents were in point, having passed, *sub silentio*, they ought to have no obligatory force. But, I am not aware that Congress has ever done anything, in this respect, but to sell the right of soil in places acquired for such purposes, and it still remains a question if they do not retain the jurisdiction, if they choose to exercise it. That gentleman seems to make no distinction between the right of soil and power of legislation over it, though the one may be in one body and the other in another. I do not deny but you may sell the lots in the City of Washington, either to individuals, States, or other bodies politic, but I do deny that you can sell your right of governing it.

The next precedent adduced was the case of the compact with Georgia, and by which we acquired an extensive territory. Perhaps this may be considered as growing out of the treaty-making power, and it is not denied that the Government may acquire territory and jurisdiction over it, through the medium of the treaty-making power.

I trust, Mr. Chairman, I have shown, what I intended in the outset of my remarks to establish, that Congress are not competent to effectuate the object of the resolution; that if they could do it, it is not demanded by the general interest, and that it would be unjust and tyrannical, as it relates to the people here, to make the contemplated transfer.

Mr. SMILIE supposed the Committee were now considering the resolutions of retrocession generally, previous to giving a separate opinion on the two resolutions before them. Under this impression, he would make one cautionary observation. He knew that it always had been, on all occasions, the practice of those opposed to the retrocession, to connect that question with another subject, wholly and totally distinct; that was the removal of the seat of Government from this place. If it was possible to separate these two things in the minds of some of the members of the present House, he was persuaded they would find no difficulty in restoring the inhabitants of this District to their natural, their political, and civil rights; a thing so desirable in a Government founded as the Government of the Union was founded, and as almost every citizen of the Union contended, for the sovereignty of the people.

For his part he never did, nor ever should, connect these two ideas. Advocate, as he was, for retrocession, he had no idea of removal. He would go further, and declare it as his opinion, that Congress could not remove the seat of Government honorably, nor of right, and he trusted Congress would never hereafter, feeling power, forget right.

Having made this observation, he would briefly inquire, whether the arguments of the gentleman from Maryland (Mr. DENNIS) were well founded? If he is correct in stating that, under the Constitution, the Congress have no right to legislate on the present subject, there was an end of the business. If he thought with that gentleman, he would be the last man to vote for the retrocession; but, as he thought differently, he would assign the reasons upon which his opinion was founded.

The gentleman read a part of that section of the Constitution, which granted certain specified powers to the Congress of the United States. He

wished he had read the whole, and shown that there was a particular restriction placed on this particular power.

For his part, he conceived this to be a general grant of power under no restriction. In the several grants of power, under the eighth section of the first article, there were three out of the eighteen that were grants with particular restrictions. All the rest were complete and full grants of power, and the eighteenth grant had relation to them without limitation; of course they had complete Legislative control over the seventeenth, respecting the exercise of exclusive legislation over the District of Columbia.

He here read over the whole of the eighth section of the first article, observing upon each, that Congress shall have power:

1. To lay and collect taxes, &c., but all duties, &c., shall be uniform throughout the United States. Here is a restriction. Congress have power to lay duties, but they cannot lay them unless they shall be uniform throughout the United States. So of imposts, and so of excises.

To raise and support armies. But, no appropriation of money for that use shall be longer than for two years. Here, although Congress may raise and support armies, they cannot order any money to be applied to that use for more than two years, however desirable or convenient a longer appropriation might appear to them to be.

Respecting the militia, they may provide for organizing, arming, and disciplining, and governing the militia. But they can neither officer nor train them; that is a restriction, and the latter powers are reserved to the States.

The other powers, such as to borrow money, to regulate commerce, to establish an uniform rule of naturalization, and uniform laws of bankruptcy, to coin money, to fix the standards of weights and measures, to punish counterfeiting the securities and coins of the United States, to establish post offices and post roads—

To promote the progress of science and the useful arts in a prescribed mode; and this also may be considered as a restriction upon their general power, as they cannot give to science and the useful arts any other encouragement than by securing for limited times to authors and inventors the exclusive right to their writings and discoveries.

They have also complete and exclusive powers to constitute tribunals inferior to the Supreme Court; to punish piracies and felonies committed on the high seas, and offences against the law of nations; to declare war, and other consequent powers; to provide and maintain a navy; to make rules for the government and regulation of the land and naval forces; to provide for calling forth the militia of the Union for special purposes only; perhaps this also may be considered as a restriction on the general power to call forth the militia.

And then they have the power given by the seventeenth grant, viz: to exercise exclusive legislation, &c., to the end of the paragraph; and to the whole is added, the sweeping clause, as it used to be called, which was formerly urged to give unlimited power to the General Government. The Congress have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or any department or officer thereof.

What, he asked, was the conclusion to be drawn from this view of the Constitution? Surely and fairly this: that Congress may of right exercise all the powers which are unrestricted, under their sound discretion, to promote the general welfare; then it is declared that Congress may assume the exclusive legislation of this district, or they may not. If, however, they do assume it, they have equal power to recede. Congress, in the exercise of its legitimate and Constitutional power, passed a bankrupt law and a naturalization law; on experience they were dissatisfied with their effects, and they repealed them. Was it ever imputed to Congress as a violation of the Constitution? No: there being no restriction, they felt themselves either free to act or free to refrain, as circumstances rendered the one or the other expedient.

He would, however, agree that gentlemen had thrown some obstructions in the way, which, though it did not touch the right of Congress to act, yet rendered the action a point of extreme delicacy. We are told we have no right to transfer a people satisfied with their destinies in life, to another Government, without their consent. The gentleman has gone upon the idea that we are about to injure these people. Why, if he thought this was the case, he should not any longer incline to vote as he had intended to vote. But if he conceived, as he did conceive, that so far from injuring these people by restoring to them the right of suffrage, and all the consequent rights of freemen, he was about to render them essential service, he should persevere in his object. That gentleman also finds the people here secure from injury under a Government over which they have no control, and in the choice of whose members they have not a vote; by observing that the Government of the Union can have no interest in injuring a people depending upon them for their laws and their protection.

This argument, if such it may be called, goes too far; it would apply to all other Governments, because it can be demonstrated that the best interest of all governments is to promote the best interests of their subjects. It is the interest of even despotic Governments; but does not experience teach us that these Governments often, nay, almost always, sacrifice these interests to their own whim, caprice, self-gratification, or to the villany and avarice of subordinate agents?

He denied the security which the people of this district had for their natural rights. Political rights they had none, and they depend upon Congress from time to time for the civil rights which indulgence might afford them. What advantages then did Congress receive by retaining the jurisdiction proportioned or equivalent to the disadvantages? Was it that half their time was oc-

cupied in deliberations productive of no one satisfactory measure to the people they meant to befriend? Was it that so much of the money of the several States of the Union was expended uselessly at this place? He was confident no individual would sacrifice his time in this way, nor expend the money of his employers on such objects; and what was wise in private life would be politically right in public. He, therefore, believed it the reverse of good policy in the American nation, to retain the jurisdiction of the district.

On the point of expense he would add one idea; he deemed it enormous. Congress spent near half their time in legislating for ten miles square at the rate of $1,400 per day; at that ratio what would be the expense of legislating for the extensive territory of the United States, or even what would be a proportionate expense of legislating for a small State?

Let gentlemen stop for a moment and contemplate the subject in this point of view, and ask themselves, individually, would their own State agree to such an enormous expenditure under any circumstances than those of absolute and uncontrollable necessity. He was satisfied, not a member on the floor would accede to such a monstrous measure. If, then, no State could be justified by its individual representatives, he would ask for the arguments whereby the Representatives of the United States were to justify themselves to their constituents!

Why then retain this exclusive jurisdiction? We do not know their situation; we are strangers or sojourners here; we have not, therefore, their feelings. But restore them to the parent States, and they will be admitted to the full participation and enjoyment of every principle which elevates the prosperity and happiness of America over every other nation on earth.

It is said that dangers may hereafter happen, that the freedom of debate and deliberation may be overawed by the inhabitants. He admitted it to be possible, but the day was remote indeed. There was more danger to be apprehended on the other side. Congress, possessed of arbitrary power over this district, might grow infatuated with that power, and when the people of the district grew numerous, it was more probable that they would be called upon to assist in pulling down the citizens of other States to their miserable condition. It was the nature of envy to destroy what it could not reach.

He expected that gentlemen opposed to recession would show that superior advantages were likely to accrue from retaining the jurisdiction, or that on conviction they would join with him, and agree to adopt the measure of a total recession, which for himself he was in favor of doing.

Mr. EARLY.—Mr. Chairman, the resolutions which we are now called upon to decide, possess a high degree of importance, not only from their object, and the consequences likely to result, but also from certain principles which have been contended for, as applying themselves to the subject. In the outset of the discussion we are met with objections upon Constitutional principles against our right. We have been told by the people of this district, that we cannot recede the territory of which they are inhabitants, without their consent; and the gentleman from Maryland (Mr. DENNIS) has told us to-day that the proposed recession cannot be made without the consent of the people of the whole United States.

It is certainly desirable that all questions of this nature should receive a solution from the principles and practice of our own governments, without having a resort to foreign sources. But much I fear that the condition of the District of Columbia is one of a nature so peculiar to itself, that no such solution can be found. For it is impossible to conceive that the principles of a government whose essence is right, should be found to apply to the situation of a people stripped of all right.

The proposition that the consent of the people of this District is necessary to give validity to an act of Congress, having for its object a recession of the territory, carries with it the resolution of itself. It proves too much. The same reason by which they maintain this proposition, would go to prove that their consent was necessary to give validity to any act of legislation over them. That Congress possess the power of exclusive legislation over them, cannot be denied. We exercise, and we are authorized so to do, a power over all their rights of life, liberty, and property. And there cannot be presented to my mind a greater absurdity than to say the consent of the people of Columbia is necessary to any act in relation to them, when they are stripped of all rights of self-government.

I know, sir, that a distinction has been made between the right of legislation, and the power of transferring that right to others. And whilst it is admitted that the Congress of the United States possess themselves an exclusive right of legislation over the District of Columbia, it is denied that this right can be transferred to the States of Maryland and Virginia, without the consent of the people who are to be affected by the transfer. Of those who maintain this proposition, I would inquire by what authority was the cession at first made by Virginia and Maryland to the United States? Was the consent of the people who were to be affected by the transfer, then deemed necessary to its validity, and if so, how was such consent obtained? I have heard it argued that the people to be affected, were component parts of counties in the two States, and as such had a representation in the Legislatures of those States, through which their consent was given. I ask where is the proof that their consent to the cession was so given. For anything that appears, the representatives of those counties voted against the cession acts, in which event the will of the people of this District was, so far as the same could be in that way expressed, directly opposed to the measure. And for the sake of illustration I will suppose the fact to have been so, and ask gentlemen whether the acts making the cession were on that account invalid? I take upon myself the risk of saying, that no one will answer affirmatively. If so, the doctrine is reduced to this dilemma, that a cession of the District of Columbia cannot be constitutionally made without the consent of the inhabitants thereof, but that such cession may be made in the face of their express negative.

The position of the gentleman from Maryland (Mr. DENNIS) and his reasoning to support it have not had weight on my mind. I cannot conceive how the people of the United States are parties to the compact, so as to make any consent on their part necessary. The only parties, in my opinion, are the Congress on the one hand, and the States of Maryland and Virginia on the other. These parties negotiated and formed the compact; the said parties can undo it.

But be the reasoning of the people of Columbia and the reasoning of the gentleman from Maryland ever so correct and well founded in the abstract, I still have a conclusive answer, that it cannot apply to the case. No reasoning drawn from the principles of free governments can apply to a case, where the people are disfranchised of all rights. The inhabitants of this District are in every sense the subjects of Congress, and Congress are their masters. This is not only the theory of the Government exercised here, but in my opinion that theory has in a recent instance (the case of the Alexandria charter) been put into rigid practice. It is my wish, Mr. Chairman, to put an end to this disgraceful state of things; a state of things exhibiting the monstrous phenomenon of a country where the principles of freedom extend to the remotest extremity, whilst there is a despotism at the heart.

If precedents were necessary, they could easily be adduced. The gentleman from North Carolina, (Mr. STANFORD,) has already cited several; some before, some since the adoption of the Federal Constitution. The one most recent is directly in point: it is the convention between the United States and Georgia. In this instance it is a fact, that a tract of country inhabited by a considerable population, was transferred by the General Government to Georgia, and is now incorporated with that State. The gentleman from Maryland has endeavored to evade the force of this precedent, by saying that the compact was entered into under the treaty-making power. The gentleman is incorrect as to the fact. The convention was made by Commissioners appointed under the authority of a special law of the United States on the one hand, and a special law of the State of Georgia on the other hand. It remains to examine the expediency of the proposed recession.

If no positive good can be proved to arise from the existing state of things, that of itself would with me be a reason amply sufficient to justify the adoption of the resolutions upon the table. But, sir, in my opinion, it is easy to demonstrate, not only that much positive evil does result, but that much more will probably result from the retention of the district. The gentleman from North Carolina (Mr. STANFORD) has forcibly represented the evils arising from the load of business which is thrown upon us from this fruitful source. He has well stated the total impracticability of our legislating with any correctness for those with whose interests and concerns we are entirely unacquainted. Need I call to the minds of gentlemen the recollection of that which they are in the daily habit of witnessing—the collision of so many rival and contending interests? Need I call to their minds a very recent scene, in which the sensibilities of this House were so strongly excited in the discussion of a question relative to a part of the district? Need I call to their minds, how much the order and tranquillity of the House was invaded by the presence and anxiety of the opposing parties? If these things happen in the present infancy of our territorial government, what evils may not be anticipated when with increase of numbers we shall have an increase of interests, wants, pretensions and antipathies? When disappointment shall increase discontent, and we are engaged in the discussion of a territorial party question? The language of petition may be converted into the language of menace; and where now we have a peaceable people laying their complaints at our feet, we may have a mob brandishing their weapons at our heads.

Of a certain part of the people of this territory who have expressed to us their enmity to the resolutions, it may with propriety be asked why they are desirous of continuing to live under the exclusive Government of the United States; why should they wish to continue subject to a Government whose laws they endeavor to obstruct? Why wish to continue under a system of things, where they not only refuse to execute the laws themselves, but do all in their power to render such an execution by others, disgraceful? These inconsistencies remain for themselves to reconcile.

There is another point of view in which this subject deserves to be considered. It is in its relation to the Executive officer of the General Government. Mr. Chairman, I am not by nature jealous. I believe I am not enough so. When I shall have counted more years and have seen more of human nature it is not improbable I may be more disposed to suspect the correctness of human motives than I do at present. But I have seen enough to convince me that the best prayer which was ever prayed, was that against being led into temptation. The most effectual means of steering clear of temptation is to avoid opportunity. All example teaches that a military force at the command of an active, ambitious, and unprincipled leader, is the most dangerous foe to liberty. I know, sir, that faction and rebellion have also had their share in fettering the human race; but faction and rebellion generally carry with them their own cure. The military of this district are subject to the orders of your President. Sir, you may not always have a President whose principles will be a safeguard for the correctness of his actions. He is to judge of the occasions proper for calling the military of the district into the field, and the plausible pretext of preserving order, or guarding the Government from insult or injury, may array a military force around these walls. Put the case of a contested Presidential election, and the in-

cumbent in office a man of military genius, insinuating, bold, and unprincipled. The military force of the District is at his command, the officers appointed by him. Gratitude, patronage, emolument, all those principles which operate most strongly with a soldiery, are arrayed on one side and opposed by that weak thing the *amor patriæ* on the other. This House, on whom the Constitution has devolved the right of settling the choice, may, under the same pretext of preserving the public order, be surrounded by the whole military force of the district, and then farewell freedom of decision.

Upon the subject of the city, I wish to be distintly understood. There is no gentleman in this House who wishes more for its prosperity than myself—none who would more resist any attempt to unsettle any of the existing establishments within it. I feel it to be the duty of this Government to nurse it by every aid within their power. Let us, sir, give permanency to our station within it, and give the inhabitants the right of governing themselves. But I believe for myself, that we shall witness no prosperity or settled confidence here until we strip ourselves of the District. I believe the district is a dead weight about the city, which if not shaken off will, sooner or later, bury the whole in ruins.

Mr. EPPES, with the gentleman from Pennsylvania, (Mr. SMILIE,) considered the question of receding the Territory of Columbia as entirely separate and distinct from a question to remove the seat of Government. He did not understand the particular connexion between the two questions. He believed that the seat of Government would be as permanently fixed here if the jurisdiction of Congress extended only over the soil covered by its public buildings as if it embraced any given number of square miles. All that the National Legislature wants here is accommodation. Assembled at this place for purposes of general legislation, the exercise of a local sovereignty over a few square miles is neither beneficial to the nation nor interesting to Congress. The right of legislating for persons around us, whose local interests we do not feel or understand, cannot attach to this spot the Representatives of the nation: the exercise of this power by Congress cannot attach to this spot the nation itself. The public convenience and interest fixed our Government within this territory: the public convenience and interest can alone continue it here. The permanent seat of our Government depends, not on the extent of our powers over the country around us, but on the will of the nation. Whatever might be the feelings of other gentlemen on this subject, he had no hesitation in declaring, that, although he was in favor of receding the Territory of Columbia, he should never feel himself authorized, as a Representative of Virginia, to vote for a removal of the seat of Government.

In the observations he should make on this subject, he was willing to pursue the course taken by the gentleman from Maryland, (Mr. DENNIS.) who had set out with declaring that he considered receding the territory as unconstitutional and impolitic. He would examine these two questions; and, first, the Constitutional right of Congress to recede the territory. If the words of the Constitution were, that Congress *shall* exercise exclusive legislation over the territory, there would be no doubt but that, like every other part of the Constitution, they must be obeyed. Whatever inconvenience might attend the exercise of this power by Congress, if, by the words of the Constitution, it was positively enjoined as a duty, we could not shrink from its performance. The words of the Constitution are, that "Congress shall have power 'to exercise exclusive legislation, in all cases whatsoever, over such district of country, not exceeding ten miles square, as may by cession of particular States become the seat of Government of the United States." What do we understand by the words "shall have power to exercise?" Not that Congress *shall*, but that Congress *may*, exercise exclusive legislation over this District, precisely as she may exercise any other of her delegated powers. By the first clause of the eighth section of the first article of the Constitution, Congress shall have power to lay and collect taxes, by another clause to borrow money, and by other clauses various other powers, which certainly may or may not be exercised, without a violation of the Constitution; as, for example, if Congress was never to lay a tax—was never to borrow money—was never to lay an excise, or pass a uniform law on the subject of bankruptcy—it could not be contended that the Constitution was violated because she did not exercise these powers; yet, in all these cases, the language of the Constitution is, "Congress shall have power." Nor did he suppose, if Congress were never to exercise exclusive legislation over this territory, it could be contended the Constitution was violated; because this power, like all others given under the different clauses of the eighth section, may or may not be exercised, as the public exigencies shall require. None of the clauses are mandatory. The National Legislature is, in every case, left to determine whether the public good requires the exercise of a particular power. If, then, Congress may never exercise this power, and not violate the Constitution, it follows that the actual exercise of exclusive legislation over this territory is not an essential part of the Constitution, but that this clause, like all others in the eighth section, is a mere grant of power. If, then, this clause, which gives to Congress exclusive legislation over this Territory, is only a grant of power, the use she may constitutionally make of the power depends on the extent of the grant; and we may fairly inquire whether the power over this territory is conferred on Congress, in terms so unlimited as to authorize its transfer to any other person or persons.

In order to decide this question, it will be necessary to ascertain what is the power conferred on Congress over this District by the terms exclusive legislation in all cases whatsoever? Is it the same limited sovereignty which she possesses over other Territories of the United States, which have not become States? Or is it an absolute

sovereignty? In countries where no written compacts or charters exist between the people and those who govern, sovereignty is defined to be the "power of making laws." A right to dictate the rule of action in all cases, subject to no control, is certainly a complete sovereignty. In this country, in the individual States, the sovereignty resides in the people, and the Legislative power extends only to certain specified objects, fixed by their constitutions. Under the General Government, also, the Legislative power of Congress, so far as it respects the confederated States, extends only to certain specified objects, fixed by the Constitution, and all powers, not expressly given, are reserved by the States or the people. In speaking, therefore, of the Legislative power of a State or of Congress, so far as it relates to the United States, we mean nothing more than the power of making such laws as are authorized by the constitutions of the different States, or of the United States. He supposed, however, that the terms "exclusive legislation," contained in the article which gave to Congress jurisdiction over this territory, had a very different meaning from the mere power of making laws. They did, in his opinion, vest in Congress absolute sovereignty over the District. He had no doubt but that the words were selected for that purpose. An absolute sovereignty is the power to pass laws without any limitation as to the exercise of that power. Let any gentleman attend to the clause which gives to Congress jurisdiction over this district of country—Congress shall have power to exercise exclusive legislation in all cases whatsoever. What is the limitation to this power? Is there any but the moral rectitude of Congress? Have the people of this territory any charter of rights? If they have, where is it to be found? Can they claim the Constitution of the United States as their charter of rights? They are not parties to that compact. If they are at all parties to that compact, it must be as citizens of Maryland and Virginia. Whatever rights, as a portion of the States of Maryland and Virginia, they might have acquired, by being citizens of those States, at the time the Constitution of the United States was adopted, were certainly lost by the acts of cession of Maryland and Virginia. By that transfer they lost their chartered rights under the State constitutions of Maryland and Virginia, and also the rights they had acquired under the Constitution of the United States, as portions of the States of Maryland and Virginia, at the time of its adoption. By the acts of cession, their right of property only is secured: their particular rights vested in Congress. And the people of this territory have as good a right to claim as their charter the State constitutions of Maryland and Virginia, as they would have to claim the Constitution of the United States. Their rights, under the Constitution of the United States, were acquired as citizens of Maryland and Virginia, and their rights, as citizens of those States, are lost. It is not, therefore, in the Constitution of the United States we are to look for the limitation of the power of Congress, as it respects this District. Is it in the people of the District we are to look for this limitation? Have they any share in our elections? Are we, in any shape, responsible to them? Are they represented on this floor? Do they pretend to claim or exercise any political rights? If then, an absolute power to legislate without control, is an absolute sovereignty, and there is no control, either by charter or in the people of this territory over the power of Congress, as it respects this District, it follows irresistibly, however galling it may be to the people of the District, that as complete sovereignty over them as human language can give, is vested in Congress. That her will is the law of the District of Columbia, and that the political privileges of these people depend solely on the moral rectitude of the National Legislature. The doctrine is strengthened by the opinion which has always been entertained, that the framers of the Constitution intended to vest Congress with absolute powers within this District. And, indeed, he had often heard that one of the most conspicuous friends to this monster in the Constitution, declared that liberty ought not to exist within the ten miles square; that one great officer and one great prison was the only government which ought to be established within this devoted Territory. If, as he had attempted to show, an absolute sovereignty over the territory was vested in Congress, it followed, as a necessary consequence, that it might be transferred. The United States had sanctioned the principle of transfer where the sovereignty was complete, because they had acquired a valuable territory under such a transfer.

But there was another point of view in which this question might be placed. It was generally admitted that, under the terms "exclusive legislation," Congress had power to exercise, or provide for the exercise, of Legislative, Executive, and Judiciary powers within this District. Some of her powers she must necessarily delegate, because she cannot herself exercise them. If she can transfer a portion of her sovereignty, she might, he presumed, establish a government for the territory, and vest it in the Legislative, Executive, and Judiciary powers. If Congress has a right to establish a government for the territory, in whom does the Constitution require her to vest her powers? She may vest them in one or more persons, or in one or more corporations. There is no limitation on the exercise of this right if Congress possesses it at all. If she can transfer her powers over this territory to a government within the ten miles square, what prevents her transferring these powers to a government without the ten miles square? Has not Congress the same right to transfer her sovereignty over the part of the territory bordering on Maryland, to that State, and her sovereignty over the part of the territory bordering on Virginia, to that State, that she would have to transfer the same powers to a government within the District? The same clause which gives her exclusive legislation, is the only limitation on her power. By establishing a government for the District, Congress would be divested of her exclusive legislation. By a trans-

fer to Maryland and Virginia, Congress would be divested of her exclusive legislation also. The extent of the power exercised in the two cases is substantially the same.

There was another point of view in which this question might be placed. This ten miles square is a portion of territory within the United States. It is admitted that the people of this territory possess no portion of the sovereign power. The sovereign power over this District, then, is either absolutely in Congress, or Congress possesses a portion of the sovereignty, and the residue is in the people of the individual States or in the States. If Congress possessed the entire sovereignty she might transfer, as he had shown. If Congress possessed only a limited sovereignty within this District, it must be derived from the second clause of the third section of the fourth article of the Constitution, which declares "that Congress shall 'have power to dispose of and make all needful 'rules and regulations respecting the territory and 'other property belonging to the United States." Or, in other words, Congress possesses the same power over this territory which she has over other portions of territory which possess population without being States. In the exercise of her ordinary territorial power, Congress, during the last session, attached the territory of Upper Louisiana to Indiana. If Congress had a right to attach that territory to Indiana, why may she not transfer this territory, divide it as she did the territory of Louisiana, and attach a part to Maryland and a part to Virginia, with the consent of those States?

If the view he had taken of the powers of Congress over this District was a correct one, it would not be necessary to say much on the expediency of a measure interesting to the people of the District, to the people of the United States, and to the National Legislature. The people of the District, in returning to the bosom of the respective sovereignties from which they have been torn, will be again restored to the rights of freemen. Instead of a miserable dependence on the will of Congress, their rights will stand on the firm basis of a written charter; their industry be placed under the fostering care of men elected annually by themselves, possessing their feelings and interests. They will quickly experience the difference between that legislation which flows from a cold sense of duty without responsibility, and the active and zealous exertion excited by a common interest, and kept up by proper responsibility. To doubt the beneficial effects of such a change to the people of this territory, would be to call in question the great principles of representative government. It is true that a gentleman from Maryland has told us that the rights of a people are sufficiently secure, if those who govern them have no interest in injuring them; and that the advantage of a legislative body of their own might be questioned, because too much legislation was worse than none. The people of America have ever deemed the right of electing those who govern them essential to freedom. The time, he hoped, would never arrive in this country when this important privilege shall cease to be valued. He should not attempt to demonstrate a first principle. If the gentleman from Maryland had any doubts as to the blessing of self-government to a people, he would recommend to him a perusal of the history of American Independence, in which he will find the patriot whose shade he had invoked, devoting the best period of his life to toil and danger for the establishment of that principle. But we are told that the people of this District deprecate a change, and prefer political slavery to a full participation of American rights. Do we believe this to be a fact? If it was a fact, it was to his mind a conclusive one in favor of receding the territory. If this people have already so far degenerated as to attach no value to the blessings of self-government, and prefer living destitute of political rights, they are already fit instruments for tyrants. It is time for them to take a new lesson in the rights of man. Let us restore them to a situation in which if they cannot acquire the feelings of American citizens, their detestable principles may not infect the great mass of the community. He did not, however, believe that this was the sentiment of a majority of the people of this District. He did not believe it was the fair sentiment of any portion of people in any part of the United States. He had no doubt if the question was fairly put to the great mass of any community: had you rather have your persons, your property, and rights, protected by men elected by yourselves, or live dependent on men in whose election you have no voice, over whose power you have no control? that the answer would in every instance be in favor of possessing these important privileges. What had been viewed as the sentiment of the District, he considered only as the opinion of a few landlords, who having embraced the erroneous idea that receding this territory would affect the value of their property, had misled and enlisted on their side the people against their substantial interests. By what process of reasoning this people had been induced to believe that enlarging their political rights would lessen the value of their property, he did not know. It was a species of logic he wished not to understand. As one of the Representatives of the United States he should consider himself bound to extend to these people the privileges which every American ought to possess. He had always been taught to believe that the privileges attached to property constituted an important part of its value. That in enlarging human rights in a district of country, you enlarge also the means of happiness, and give additional value to the property of the citizen.

The people of the United States will be freed from the expense of legislating for this District. The time destined for national purposes will be employed for the good of the nation, and not in local legislation for a territory, whose internal regulations must in time require more laws than all the general interests of the Union. They will restore to the rank of American citizens a portion

of people doomed under momentary error to political degradation. Their system of protection and rights will become uniform throughout the United States, and our people be relieved from an example odious to freemen, and dangerous to liberty, of a political society existing in our country destitute of political rights.

As it respects the National Legislature, he had always thought this exclusive jurisdiction, while it devolved on them great additional labor, was not calculated to afford them any additional security or freedom in their deliberations. The legislative body of a free country must stand on the broad basis of public opinion. In the faithful discharge of their duties, they require not the hand of power to protect their deliberations. An honest and enlightened Legislature, pursuing faithfully the public interest, will find in the attachment of a grateful people that safety which would be in vain sought in powers derived from parchment. Deserving the confidence, and possessing the support of the nation, the National Legislature can command respect in any situation. Let them forfeit that confidence, and if their jurisdiction, absolute and uncontrolled, embraced the whole continent instead of this ten miles square, the frowns of an indignant people would reach them. It is not by surrounding your Capital with men destitute of political rights that you can exclude the voice of freemen. The sanctity of parchment power used as an engine of oppression, is not known in this country. The virtue of the Legislature is its only shield. It is that alone which insures the support of the nation. With the confidence of the nation we possess its sword and its purse, and can command the respect due to the representatives of a free people. Under whatever aspect he viewed the question, whether as it respects the people of the District, the nation, or National Legislature, he had no doubt as to the expediency of receding the territory.

The Committee now rose, reported progress, and had leave to sit again.

Tuesday, January 8.

THE DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion of the twenty-ninth of November last "to recede to the States of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. Southard.—Mr. Chairman, I should have contented myself with giving a silent vote on this question, had it not been for the strong impressions on my mind that more is intended than expressed in the resolutions now on the table. It is not two years since two resolutions were introduced to this House similar to those now under consideration, with this distinction, that *they* went to include the City of Washington with the other parts of the District in the transfer to the States of Virginia and Maryland.

I believe it to be the object of some members not only to recede the branches of the District contained in these resolutions, but likewise the city. If the doctrine so strongly contended for, that Congress has a right to transfer or recede, be once established—take the first step, and you may as easily take the second. I have no desire to call in question the sincerity of the mover of these resolutions, nor of many who support them; yet there are others who wish a recession of the *whole* territory.

This subject involves two questions: First, whether Congress has a Constitutional power to make a retrocession of this District to the States of Virginia and Maryland; and secondly, whether it be good policy. As to the first, Mr. S. said, he had strong doubts on his mind, as to the rightful power of Congress to recede or transfer.

The members of the Convention who framed the Constitution of the United States looked forward to a day when it would become necessary to fix a place which should become the permanent seat of the Government. By reference to the eighth section of the first article of the Constitution, we see it clearly expressed that Congress shall have power "to exercise exclusive legisla-'tion in all cases whatsoever, over such district, 'not exceeding ten miles square, as may by cession 'of particular States, and the acceptance of Con-'gress, become the seat of the Government of the 'United States."

This article, with all others contained in that instrument, after publication for the consideration of the people of the United States, was adopted, and became a part of the Constitution. In pursuance of this object, Congress, on the 16th of July, 1790, passed an act, entitled "the cession act," in the words following, to wit:

"That a district of territory, not exceeding ten miles square, to be located as hereafter directed, on the river Potomac, at some place between the mouths of the Eastern branch and Connogochegue, be, and the same is hereby accepted for the permanent seat of the Government of the United States."

Congress accepted a cession of ten miles square for the express purpose, and on the express condition of exercising exclusive legislation and jurisdiction, and this, too, agreeably to the spirit and meaning of the Constitution and law, thus forming a compact, which Congress has no right to violate. All the States in their Legislative capacity, and the people of the United States, including the inhabitants of this territory, are bound by this compact, which compact is as strong as the Constitution itself.

But, Mr. Chairman, we are told that there can be no Constitutional objection to the retrocession. The gentleman from North Carolina (Mr. Stanford) contends that this district stands on the same footing as a plot of land purchased by the Government for a navy yard, from the State of North Carolina, for the United States. Sir, there is no analogy in these cases. In the purchase of land for a navy yard, the Government becomes the proprietor of the soil, and in such case jurisdiction and soil are inseparable; so also in the cession by North Carolina the right of soil passed

with the jurisdiction. The case under consideration is widely different; the right of soil passed not with the jurisdiction; the right of legislation *only* being vested in Congress. Congress cannot, therefore, transfer the right of soil, nor the inhabitants, to the States of Virginia and Maryland, nor to any other State or nation, without their consent.

Gentlemen complain that Congress are too often called to legislate for this District; and why? Is it not owing to the neglect to enact laws really necessary to the internal regulation of the city?

The gentleman from Pennsylvania (Mr. SMILIE) laments the degraded situation of the people of this District, in being unrepresented, and in a state of absolute despotism. Mr. S. said, he did not view them in such a degraded situation as stated by that gentleman; he considered them represented as the Convention and as the people of the United States intended they should be, and as they themselves expected to be. Were the inhabitants of the territory in the degraded state so much lamented by gentlemen, or were the people of the United States once persuaded that a portion of their fellow-citizens were really thus oppressed, we should have complaints and memorials from every quarter of the Union. But sir, we have no such complaints—they are satisfied, and I am entirely so.

We are told, and the alarm is given, that there is great danger of despotism springing up in this District; that the seeds of despotism are already sown; that the germ of aristocracy already begins to appear; and they beg us to "reflect upon certain conduct of an ambitious leader."

Sir, I apprehend no evil, dangerous to the liberties of the country, flowing from this source. Suppose, for the sake of argument that an ambitious leader, or a corrupt President, should rise up, could he, with a military force, confined to the militia of the District, give laws to the Union? Can the territory afford sustenance to an army? Hence, the idea of danger, held up by the gentleman, is predicated on the corruption of the Legislature, and a total dereliction from the principles of liberty. While the Legislature shall remain pure and uncorrupt the liberties of the people are safe. Without the aid of the Legislature, the Executive, in this case, is impotent. He can neither raise nor feed one soldier. But if the dangers and difficulties pointed out by the advocates of these resolutions be real, why do they not apply at once an effectual remedy? Carry them into effect, and the *principal* evil will still remain. It is lopping off the branches while the stock remains. You still retain all that, in my opinion, can ever prove dangerous to the liberties of this country. The gentlemen concede that Congress must still legislate for the city; this acknowledgment destroys one half their argument; for it will require nearly as much time to enact laws for five miles as for ten miles square.

The advocates of these resolutions call on us to prove the advantages derived by Congress in exercising exclusive jurisdiction over this territory? If they are dissatisfied, and wish to make innovations on the regulations established by the Constitution and the laws, the burden lies on them to prove that injury is done to the citizens by our exercising this Constitutional power. But, sir, this is a task too hard for them to perform.

Mr. Chairman, I will now make one observation as to the policy of the measure. I consider it bad policy at any time to make unnecessary innovations upon established laws and customs. Why in this case, I ask, set the Government afloat? Or, why destroy the confidence of the citizens in their Government? Our constituents are happy in the enjoyment of their freedom and liberties, the people of the District are also happy and satisfied with their present situation, and I cannot, nor do I wish to agitate the public mind without a just cause. Under the impression that, to adopt these resolutions would produce much evil, without doing any good, I shall vote against them, and hope they will not pass.

Mr. FINDLEY observed that, after what his colleague (Mr. SMILIE) and others had said in favor of the resolutions for a retrocession of the territory, exclusive of the city, he had not expected to hear any objection to the resolutions on arguments derived from the Constitution; the resolutions for receding the territory to the States who had made the original cession might, he thought, have been fairly combatted, on the ground of expediency; on this ground only did the resolutions before the Committee rest. He gave the credit, however, to the gentlemen opposed to the resolutions, for their ingenuity in taking the most tenable ground, though not directly involved in the question, but he acknowledged it was indirectly connected with it. If we had not a right to retrocede, the Representatives of the United States undoubtedly might decline to exercise jurisdiction, for, whatever the rights of the people were, the Legislature must be free to act or not to act. If this is not the case it could not be a sovereign Legislature, Congress itself, in this case, would act by compulsion.

As the constitutionality of the question had been discussed by every member that had spoken on the subject, he would endeavor to be very concise in his observations on that ground. The power vested in Congress by the Constitution to exercise exclusive jurisdiction over a territory not exceeding ten miles square, was evidently one of those powers left to the discretion of Congress, such as the power to regulate weights and measures, to make a bankrupt law, &c. Congress had enacted a bankrupt law, and had repealed it again. They had attempted to regulate weights and measures, and had dropt the subject after trial. Congress had accepted of the ten miles square, had found the exercise of the jurisdiction inconvenient, and were now proposing to make a recession thereof to the States from which it had been ceded. Mr. F. said, he knew of no well founded argument that would apply, on Constitutional ground, against doing so, but what would, with equal force, have applied against repealing the bankrupt or the excise law, or any other law enacted under Constitutional authority.

He said that, though a member of the ratifying convention of Pennsylvania, and of the Legislature of that State, and of Congress since that time, he did not remember ever to have heard it suggested that Congress was not vested with the same discretion in this case as in others, expressed in similar terms. He had, indeed, of late, heard several members say that Congress was obliged to establish a permanent seat, &c., but, in taking a review of the Constitution, he found no such expressions. The word permanent was not in that instrument, nor any other expression that made it the duty of Congress to establish a permanent seat, more than to establish a permanent excise, direct tax, or bankrupt law. The word permanent, however, he found in an act of Congress, but certainly not authorized by the Constitution; and this present Congress had equal power to make a retrocession as that Congress had to accept. He said it was not necessary to prove to the members of this Committee that laws, in their nature, were not permanent, but changeable with circumstances, and that Congress had by the Constitution equal powers with any other Congress. That, from the express words of the Constitution investing this power in Congress, and from its analogy to the investiture of other powers, no argument could be drawn against the resolutions, that every argument of that kind he had heard was not taken from the words of the Constitution, but from constructions given to it, which he conceived the words would not bear, and which would have a ruinous effect applied to other powers expressed in similar words. That he did not consider himself bound by what other gentlemen fancied the Constitution meant or intended, but by what it said.

Mr. F. said the argument had taken a different turn from what he had expected. The resolutions did not propose to remove the seat of Government. Far from it; none of those who advocated the resolutions proposed to remove the seat of Government; they all agreed in declaring they had no such intention; he also declared that whatever its inconveniences were, he had no such intention, nor did he know a member who had. But he wished to be candid; he was of opinion that Congress had authority to remove, when and where they pleased. The Constitution did prescribe restrictions on the exercise of several Legislative powers, but it prescribed no restrictions on the power of exercising exclusive jurisdiction over a territory not exceeding ten miles square, or over forts, arsenals, &c. Of several of these he had no doubt Congress would make a retrocession. He had no doubt but a retrocession would be made of whatever of that kind Congress had received from the State of Pennsylvania, at Pittsburg, Meadville, Presqu'isle, &c., when they ceased to be useful to Congress, and became inconvenient to that State. These subjects are, by the explicit language of the Constitution—a language which cannot by fair exposition be perverted—vested without restriction in the Legislative discretion of Congress, in the same unqualified terms as the power in question. Mr. F. said twelve amendments had already been made to the Constitution, and, if it was found that Congress was imprisoned in a situation they did not approve, or where they could not act freely or safely, and that they were constrained by the Constitution to do so, another amendment could and would as easily be made; therefore, even admitting though not granting, the Constitutional obligations, the property of the residence of Congress is not permanent. Its continuance must depend on the will of the people of the United States. Other considerations are a greater security. In the city many have laid out large sums of money on their confidence in Government, and the Government has laid out very large sums of money to provide accommodations, and must lay out more for that purpose. And, notwithstanding some present inconveniences, he said he believed it was nearly as central and capable of being made as convenient a situation for the seat of Government as could be found. From this it was evident that justice to the city and policy with respect to the United States, combined in preventing a removal of the seat of Government. Justice and policy, he said he thought were a better security for the citizens than even the word permanent, if it had been in the Constitution, which all who would be at the pains to read, would find it did not contain.

Mr. F. said that he had detained the Committee longer in discussing the constitutionality of the resolutions than he had intended, and would endeavor to be short on the question of expediency, though he thought it was on this ground only it ought to have been contested. He said he had heard the members who were in favor of the resolutions called on to prove the injury or inconvenience arising from legislating for a territory of such extent. This was done as an evasion of the question. On the other side, it was required to state the advantages of rejecting the retrocession. Waiving the inquiry, on which side of the question the burden of the proof lay, Mr. F. said he would state some of the disadvantages. Every session Congress, since it came here, he found, had spent a large proportion of their time in making laws for different portions of this territory, and, from his own experience, he knew that, for one important part thereof, (Alexandria,) they had made a law last session. They were told this session they had been imposed on; they had repealed the law of last session and made another, and it was asserted they had been imposed on again. He said he could enumerate more instances, but he would only state that Congress now sat at the expense of above $1,000 per day. He said, if members would recollect how many days had been spent every session legislating for this territory without giving satisfaction, and consider how many more probably may be spent, they would not inquire for the inconveniences arising from governing the territory, but would be prepared to state the advantages; of these he knew nothing, nor had heard anything.

Mr. F. said it had been frequently asked what more difficulty there was in legislating for ten miles square, than for the city alone. In answer

to this, he asked those members to recollect how many applications had been made, how many laws have been passed, how many days have been occupied in legislating for other parts of the District than the city. He would ask what the people would lose by being receded to the States to which they formerly belonged, and what they gain by the members of Congress, who have no common interest with them, nor even acquaintance with them or their peculiar circumstances, and liable to be imposed on by every one with whom they converse, legislating for them? He said that it had not been made to appear that the people would suffer any loss by agreeing to the resolutions, and that, as it was indubitably evident that the public would gain advantage, he hoped they would be agreed to. He had early observed that there were nearly as many interfering interests in this ten miles square, as in the whole United States; the members of the Committee would recollect that several of the most tedious debates, accompanied with the greatest irritation, that had taken place this session, arose from such subjects.

He said the gentleman from Maryland had alleged that if Congress had a power to agree to the resolutions on the table, they had a power to transfer it to the Emperor of Hayti; he conceived this observation required very little reply, the question was a recession, a restoration of what we had, not about making an original transfer. Mr. F. said he was delighted with the gentleman's (Mr. Dennis) anticipation of the prosperity of this place, that all the parts would become one city, and have but one interest, that consequently the subjects of legislation would be fewer and less difficult. He asked in such a case what would be the consequence? In anticipating the pleasing progress of population and wealth, he supposed that at some period not far distant, the population would be equal to that of Philadelphia, which with a small district around it at present had three members on this floor, and supposed at a more distant period it would have a population equal to London or Paris, which if they could be represented, would be entitled to from twenty to thirty members. Are we to presume that in such a case the people would be contented to have no voice in their own Government? The people of all the States have constitutions for their own internal government, and are represented in the Government of the Union, these they consider as privileges highly advantageous. He would not say what rights the people of the district in question did enjoy, but he was confident in saying that they did not possess the invaluable rights he had just mentioned. He knew of no good reason why the people are not equally capable of governing themselves as the people of the several States, and he was surprised to observe several members who were but a few days since zealous advocates for extending the right of suffrage to the people of Alexandria, even when the majority of the people of that district were petitioning against that extension. If the population increased agreeably to the expectations of the member from Maryland, a recession, or something to that amount, must take place; it is inconsistent with all our ideas and all principles of Government to have such a mass of people in the centre of the Union without any Constitutional rights, without any voice in their own Government, and without having a common interest in supporting the General Government or in protecting the United States in the possession of those privileges of which themselves enjoy no share.

Without this, they could never be represented in either House of Congress, or vote for a President: let their number be ever so great, they will have no independent Legislature to enact laws for the election of members of Congress or appoint Senators, no Executive to issue writs for supplying vacancies.

Mr. F. added, that those who contemplate so great an increase of population and wealth, ought to prepare early for such an event, by making an early retrocession. He did not, however, for himself, believe the population of this district would increase with the rapidity suggested. It probably, with the name of a city, may be but a respectable village like the Hague, the seat of Government in Holland, a country where large commercial cities are numerous. The Hague, though seated near the sea, has never become a commercial city; that this might be the fate of the city wherein we sit he thought probable, not only because commerce had already taken its seat in other situations equally convenient, where every political privilege is enjoyed, but because he could not believe that any great number of citizens of the United States set so little value on the rights of freemen as to exchange those rights for the pecuniary advantages arising from the seat of Government, and in such as set so little value on these privileges he had not great confidence. The United States had given a sufficient pledge for the continuance of the seat of Government in this place; they had laid out large sums of money, and were continuing to do so, and had thereby encouraged others to do so, and no other situation was thought of or could easily be agreed to; therefore, the inhabitants would have equal advantages after the retrocession as they had at present, with the addition of enjoying the privileges of a Republican Government, and the rank of free citizens; therefore, being fully convinced that Congress was not restrained by the Constitution, he thought every argument derived from expediency was in favor of the measure.

Mr. Boyd said, that, although some gentlemen had left the constitutionality of the proposed measure out of the question, he was not satisfied any more on that point than he was of its expediency. The Constitution was to him the polar star by which his course through the sea of politics would be regulated. The Constitution had been formed by a convention composed of delegates from the several States of the Union, and was afterwards adopted by State conventions, on behalf of themselves and the people. He had been a member of his State Legislature, when they passed a law ceding a part of their territory, well knowing that if Congress did accept it, by the Constitution, they must and would exercise exclusive legislation over such district. He was well aware at that

time of the consequence of accepting a district of territory not exceeding ten miles square, as laid down in the section so often alluded to; and he did believe that that consequence would be, that Congress must exercise exclusive legislation whenever they accepted the ceded district. The idea of recession was not taken up at that time. The States of Pennsylvania, Delaware, New Jersey, Maryland, and Virginia, made offers of cession under the terms of the Constitution. A partial cession was accepted by Congress from Maryland and Virginia. If a new disposition is to be made of this district, he did not see why Congress might not convey it to any of those States which had proffered to comply with the Constitutional suggestion, and receive from the same another territory in lieu thereof. This statement he made merely to show the absurdity of recession, as it had presented itself to his mind.

We are asked to recede this terrritory on account of the difficulty of legislating for its inhabitants. The same arguments would apply for the recession of the ceded territory of Georgia or Louisiana; their interests are also too indistinctly understood; their distance too remote for our legislation. But no gentleman would act on such an argument in those cases. In his opinion, it would be equally improper to act in the case now before the Committee.

It has been said that the City of Washington would be the germ of aristocracy in this country. He did not apprehend such an effect. It would be recollected that Congress had the power of self-defence; they had the power of the militia to suppress insurrections; they had not that power under the old articles of Confederation, yet they resisted every menace, every attempt to introduce aristocracy. Look at New York, at one time the residence of 40,000 British troops, with additional support, to the amount of 80,000. Were these adequate to drive the people of America into the toils of monarchy and aristocracy which beset them! Neither that force nor any other could effect such an end, so long as the Constitution remained, and the people preserved their virtue. But, if he was in favor of a system of aristocracy, he would be in favor of laying hands upon the Constitution, and changing it from day to day, till it had lost all that symmetry and connexion which endeared it to the hearts of Americans. In that event, the people would throw it from them in disdain, and then would be the time to propose another system. For his part, he considered the Constitution a sacred instrument, which ought not to be lightly touched. Considering it thus sacred, he should ever consider it his duty to elevate his voice against its violation, and that, he believed, would be one of the consequences of the present measure.

Mr. Nelson meant to lay his opinion before the Committee, because it appeared to be the habit of members to assign reasons for voting, without expecting to make any impression upon others. He considered the present question of the greatest magnitude to the United States generally; and of peculiar importance to his immediate constituents. He thought he should be able to show, to the satisfaction of every member present, that the removal of the seat of Government, which would be the consequence of recession, was not only inexpedient, but also unconstitutional. If he was successful in making out his point, that it was unconstitutional, he presumed the question of expediency need not be argued; the measure would be set at rest, and not a member would be found to give it his support. But, if he should prove unfortunate in this respect, which however appeared to his mind as true as that two and two make four, he might have reference to the question of expediency.

Previous to an inquiry into the constitutionality of the proposed project, he would just observe that constitutions themselves were things of recent date. Before the American Revolution the word itself was never fully understood. Lexicographers who attempted to define it never could agree. There was no practice whereupon to try its meaning. No power on earth had a Constitution before the American States. True, England has long boasted of possessing a Constitution, and so satisfied were her statesmen and politicians of the reality of this imaginary being, that they have extolled it to the skies. The glorious Constitution of England, her pride, and the envy of the world! Fine words truly; but where is the thing itself to be found? Is it reduced to writing? No. Who has seen it? No man. Is it known to any man? If it be, no two agree as to what the boasted Constitution of Britain is. How different, how honorably different, is the American Constitution! With us it is reduced to writing. It is in every man's hand; it is known to the whole world, and every citizen agrees in its true and legitimate meaning. He would take this opportunity of expressing his voice, and of holding up his hand in resisting the doctrine of construction and inference formerly set up, whereby the tenor and effect of that invaluable instrument was likely to be changed. He knew that artful and ingenious men might twist and turn, and make it, like the word republican, to mean anything or nothing, as best suited their nefarious designs. But this declaration and these attacks upon the body of that sacred work, were introduced by insinuating and artful lawyers, aided by the villany of judges, and accepted by men employed in the administration of our public and most important national affairs.

He saw nothing to justify the present motion. Gentlemen had attempted to show, not only its policy, but also its constitutionality. He, however, could not discover any words on that paper that warranted the project in the most remote degree; perhaps it had escaped his search; but he rather suspected gentlemen relied more upon an inference than on either the letter or spirit of the instrument itself. But he here would repeat, that no man was authorized to infer or construe, from the Constitution, any other thing than what the plain sense of plain words would justify.

He again declared the measure unconstitutional, and would prove it. The eighth section

of the first article authorized Congress to exercise the power of exclusive legislation in all cases whatsoever over such district as may become the seat of the Government of the United States. Now, he asked, if this section did not mean that the district ceded by particular States, and accepted by Congress, should ever thereafter be considered and deemed to all intents and purposes the permanent seat of Congress, what did it mean? For what other purpose could the words be used? The Constitution, to be sure, does not say that this particular District shall be the permanent seat of the Government; but it says Congress shall have the power of legislation over such district as may, by cession of particular States become the seat of Government, wisely leaving it to Congress, who had more time and leisure to contemplate the place proper for the purpose, to make the selection. Congress have done this, and the people have sanctioned the measure. The Constitution prevents the removal; true, Congress have powers to pass laws for the regulation of the general concerns of the nation; but, in this case, the Constitution has set up a barrier which neither we nor our successors have any right to overleap. The acceptance of this territory by Congress is the final seal to the compact, and no power on earth can annul its binding obligation. We cannot lay our unhallowed hands upon the instrument in order to cancel its injunctions.

Congress could not, under the terms of the Constitution, assume the jurisdiction at several times; it is made but one act, and that being done, cannot be undone. It must, therefore, be considered preposterous to propose to recede a part of the jurisdiction and retain a part; yet, such is the intention of the second resolution on the table.

Will gentlemen contend that the Constitution may be altered on this subject, in virtue of the fifth article? He did not deny the sovereign power of the people to make, alter, or abolish the constitutions of their Government; but until that was done, the Constitution must remain as we find it, and we would look in vain for the power of recession in that instrument.

It had been argued, and well argued too, and the argument is difficult to answer, that the people of this District are placed in a degraded situation. That they have no immediate voice in the choice of Representatives; that their civil and political rights are prostrated at the feet of Congress. He did not, however, acknowledge that the argument, in its utmost extension, was perfectly correct, and the reason was, that the Constitution, which every member is sworn to support, provides a guarantee for a republican form of Government, and under this solemn tie, he was inclined to believe that Congress could never exercise a despotic authority, or tyrannize over the inhabitants of the District, any more than they could over the citizens of the other States. If Congress were to assume a power of passing oppressive laws, for instance, say over Georgia or New Hampshire, the delegation from those States on this floor would give the measure an honorable opposition; but their voice would be no more than a drop in the ocean. What is a representation of three or four, nay of half a dozen members, to compare with the numbers composing the present House? He believed the people of the District might depend upon the rectitude of Congress, and he placed a greater reliance on this ground than on all the abstract reasoning he had heard.

The gentleman from Pennsylvania (Mr. SMILIE) had said that retrocession was one thing and removal another; that the two things were distinct and not necessarily combined. He trusted that the gentleman was sincere in saying he did not wish for a removal; but Mr. N. could not separate in his mind the two ideas. If Congress violate the Constitution by agreeing to a retrocession, what security have we that the next step may not be a further violation, and followed up by a removal? It is true it would be a breach of contract, and perhaps produce the destruction of a thousand families, now in the possession of a comfortable competency. But he would ask, is this honest? is it right? He could consider the present proposition in no other light than as a stepping stone to the removal altogether.

The gentleman on his left (Mr. EARLY) had said that the people of this District were ceded to Congress without their consent, and infers that Congress have the right to recede them without consulting their wishes. Mr. N. considered this a fallacious representation. The people of the territory had their Representatives in the Legislatures of Virginia and Maryland at the time that the acts of cession were passed. He did not deem it material whether those individual members voted for or against the cession: because, in republican Governments, the will of the majority is the will of the whole people.

He here recapitulated the several points he had endeavored to maintain, and apologized for the length of time he had detained the Committee, and concluded with a declaration of his wish that the Committee would give to the resolutions a decided and prompt negative, in order that the question might be put to rest forever; that the people of the District might go on with their improvements, in full confidence that the public faith is pledged to them for the support of the privileges they enjoy under the Constitution and laws of the United States.

Mr. ELMER said he agreed with the gentleman from Maryland who had just now been up, that the question before the Committee is an important and weighty one; but it seems that it is not of itself sufficiently weighty for that gentleman's shoulders, for he has loaded it with much extraneous matter. Had the gentleman proved to my satisfaction either of the positions which he promised to demonstrate, I would not have troubled the Committee with any remarks on the subject, but would have joined him in voting against the resolutions on the table. But, unfortunately for me, I have, by everything that has been said, become more convinced of the constitutionality and expediency of carrying the resolutions into effect.

Mr. Chairman, it has not been contended, and

indeed it cannot be contended but what the power of exercising exclusive jurisdiction over this territory was left discretionary with Congress by the Constitution. That they might or might not assume it optionally. It only remains then for us to inquire whether the act of acceptance was of such a nature as to lay Congress under the necessity of continuing the exercise of that power which they have constitutionally assumed. In order to prove this, gentlemen have blended the act for fixing the permanent seat of Government here, with the assumption and exercise of the right of legislating over the inhabitants of the Territory. The latter results from the former, but it does not necessarily follow therefrom. This is clear to my mind from the words of the Constitution, and from the proceedings of Congress under it. Among the enumerated powers granted to the National Legislature is that of exercising exclusive legislation over an extent of territory not exceeding ten miles, which, by the consent of the States to which the jurisdiction might belong, should be established as the seat of the General Government. But, let it be remarked, that Congress have the power to exercise this exclusive legislation, which, like all all other powers granted, may or may not be exercised. If the seat of Government had not been fixed here, Congress could not have legislated particularly over this territory; but the seat of Government being fixed here, they may exercise that power or not, at their option. And the proceedings had under the Constitution, relative to the subject, confirm the position. In July, 1790, an act was passed fixing the seat of Government on the Potomac, but no act of legislation was passed, until the year 1801. It is therefore clear that this may be considered as the permanent seat of Government, and yet the jurisdiction of the territory reside in the States of Virginia and Maryland, as heretofore. But, a gentleman from Maryland told us that the cession and acceptance of this territory was in the nature of a contract, in which Congress acted only as agents or trustees of the people of the United States, and therefore it could be receded only by their act. The allusion, however, to a contract, is by no means striking, nor applicable in every particular. It is altogether a political transaction, at least so far as relates to the right of exclusive legislation, and bears very little affinity to a contract between individuals in society. Indeed, the people of this territory, if we may trust to the account of their proceedings printed in the public papers, have given up the point, of Congress being obliged to legislate exclusively over them. One of the objects of their association, it appears, is to obtain the right of legislating for themselves; and surely if Congress may delegate that power to a body within the territory, they may transfer their right of jurisdiction over them to the States of which they formed a part, and to which they belong.

Having, therefore, a clear right to legislate exclusively over this territory, or not, it is only necessary to inquire whether it is proper and useful to exercise it. In my opinion it is altogether improper. There might be some reason for delegating that power by the Constitution, but I can perceive none for exercising it; nay, to my mind it is a power that ought not to be exercised but upon the most urgent necessity. It is an excrescence of the body politic—a kind of government very foreign from the leading features of that which forms the basis of our social compact. The general principles of our Government are the wisest and best that the ingenuity of man ever yet devised. They are the boast of every American citizen, and the admiration of the whole world. Under this Government I hope and believe the United States will long continue to be flourishing and happy; and that her example will instruct, and tend to ameliorate the condition of the inhabitants of all the nations of the earth. We have most happily combined the democratic representative with the federal principle in the Union of the States. But the inhabitants of this territory, under the exclusive legislation of Congress, partake of neither the one nor the other. They have not, and they cannot possess a State sovereignty; nor are they in their present situation entitled to the elective franchise. They are as much the vassals of Congress as the troops that garrison your forts, and guard your arsenals. They are subjects, not merely because they are not represented in Congress, but also because they have no rights as freemen secured to them by the Constitution.

They have natural rights as men, and moral agents; they may have some civil rights constructively secured to them by the Constitution; but have not one political right defined and guarantied to them by that instrument, while they continue under the exclusive jurisdiction of Congress. I have not heard any gentleman pretend to point out any sentence of the Constitution that secures them against arbitrary and despotic domination—that says to Congress thus far may you go in your Legislative acts and no farther. As Americans they may, perhaps, petition Congress, and there is no doubt the ears of the members will be open to their complaints; but they refrain from granting their most reasonable requests, and I don't wish to see such an uncontrollable power in operation. But, say gentlemen, the Constitution does not give to Congress the power of receding the jurisdiction of the territory, and they are not disposed to exercise a constructive power. I do not comprehend this language. I know some philosophers speak of negative power, but in my mind this is speaking incorrectly, and means nothing less than a powerless power. This is precisely the case as to the subject under consideration. Ceasing to exercise the power vested by the Constitution is but a negative, and wants no specific grant of power. Congress may now exercise legislation over this territory exclusive of the State Governments to which it formerly belonged; but with the consent of those States they may waive that right, and exercise only concurrent jurisdiction over them, in common with the people of all other States. But some gentlemen say, why annex them to Virginia and Maryland, rather than to any other of the States? The answer is

plain, because they belonged to those States, because they are contiguous to them, and because by forming a re-union with them, they will be restored to their former rights, privileges, and habits. As integral parts of States they will have rights which are defined and guarantied to them by the Constitution; and then will our federal edifice be composed of homogeneous and proportionate parts, without any excrescence to mar its beauty.

A notion seems to be entertained by many of the inhabitants of this city that, by adopting these resolutions, we shall affect the rights of private property. If I believed this, however much I dislike the principle of exclusive jurisdiction, such is my disposition to foster this city and promote its prosperity, that I could not at present give them my support. But if I should speak from my experience in life, I should say that, by throwing off the jurisdiction of the other parts of the territory, and confining the fostering care of Congress to the city, would increase the value of property therein. This, however, may be theoretical, but it is more probable than the contrary; and by a recession of the whole territory, it cannot be rationally concluded that the value of property would be materially affected so long as the Government should remain at this place, and that I trust will be for ages. On the whole, believing it to be strictly consonant with the principles of the Constitution, and that it will promote the interest of the people of the United States and of this territory, to carry the resolutions on your table into effect, I shall, from a sense of duty, give my voice in favor of them.

Mr. R. GRISWOLD said the object of the present motion was, he supposed, to make a permanent recession of the two parts of this District, one to Virginia, and the other to Maryland, retaining the City of Washington. If this was really the object, there could be no doubt but it went to operate a change of the seat of Government. This he would endeavor, in as few words as possible, to demonstrate. The eighth section of the first article authorizes Congress to assume the exclusive legislation over a district not exceeding ten miles square, &c. The States of Maryland and Virginia ceded a district of ten miles square, or any lesser quantity, and Congress accepted a part from each State, making one district, to become the seat of Government of the United States. From this statement, it is apparent that the territory, or district, of Columbia is the seat of Government, and not the City of Washington. If, then, you recede the territory, you recede the seat of Government, although you reserve the City of Washington. He asked, then, whether this did not substantially go to remove the seat of Government? After you have receded two parts of the district, can a district be said to remain? If it does not remain, your seat of Government is gone, and gentlemen are justified in connecting the idea of removal with that of recession. Indeed, he felt surprised at the declarations made by gentlemen on this floor, that the recession had no connexion with removal, and if they thought it had, they would abandon the measure; yet, nevertheless, they give the resolutions their warmest support.

He was not prepared to say that Congress had no right to exercise the powers of recession and removal; but he did not think they were prepared to act upon those questions at the present day. He, however, acknowledged, that events might arise to make a removal necessary, but nothing of the kind had yet occurred. There were some inconveniences in residing here, but the members knew them, and they are lessening every day. If, however, gentlemen are not satisfied with the accommodation, and think that a justifiable ground for removal, they will vote for the motion, if they can get over the Constitutional objections, which had considerable weight on his mind.

It was very clear to him, that the Convention which framed the Constitution intended and designed to establish a permanent seat of Government; that the Constitution fully and effectually provides for that object. The circumstances which gave rise to the measure are too recent, and must be too fresh in the minds of the members of this Committee, to render it necessary or useful for him to detail them at this time. Now, whether the Convention accomplished the object they had in view, the Constitution would decide; and whether the object had been accomplished by the cession of particular States and the acceptance of Congress, the laws will decide. But whether it is wise or expedient to destroy a work on which so much wisdom, time, and money, had been expended, the gentlemen forming this Committee will decide.

The Constitution declares that Congress shall have power to exercise exclusive legislation in all cases whatsoever, over such district as may, by the cession of particular States and the acceptance of Congress, become the seat of Government of the United States. What is the import of these terms, but that there shall be a permanent seat of Government? not a temporary one—not an estate for years or lives, but forever. These considerations induced the States of Maryland and Virginia to cede a territory, and Congress to accept it, with a view of making it the permanent seat of Government. The Constitution never contemplated more than one seat of Government. If this is a fair construction of the Constitution, how is it possible for gentlemen to advocate a removal? But it is said that the law assuming the jurisdiction might be repealed, as is the case with every law passed by this body. He did not think that this general maxim extended as far as some gentlemen seem to suppose. Among the enumerated powers given to Congress, there were several not liable to repeal; at least the repeal could not affect the acts consequent on them. They have power to borrow money on the credit of the United States. If money is borrowed under your law, can Congress repeal it? They may establish an uniform rule of naturalization, but can they take from a citizen, who has become such under that law, his right of citizenship, and reduce him again to an alien? So they can and may make

and repeal a bankrupt law—they have done so—but can they repeal the effect it has had on those who have been discharged from their debts under it? They cannot.

Congress might have refused to accept a cession of this District—whether it was right or wrong to accept it is not the question—but having accepted, Congress have given the inhabitants a lien upon their justice, and they cannot, by a repeal, destroy any of the effects produced by the public confidence on the value of property within and near the District. But if this Congress were to adopt the resolutions, what would be the consequences? Is it contended that a future Congress could not hereafter assume the exercise of exclusive legislation, even if the two States should agree to accept the recession? He believed no gentleman would contend this point; and if Congress may hereafter assume the jurisdiction, we do nothing more than merely tie up our own hands. He saw no occasion for this, as he had not seen, felt, or understood the inconveniences complained of.

Much had been said of the disgraceful state in which the inhabitants of this District are placed; they are considered by some gentlemen as vassals or slaves. Now, he was willing that the people should judge on this point themselves. If they are satisfied to remain under Congressional legislation, he should not do anything to diminish that satisfaction. That they were satisfied, he inferred from the increasing population. He heard of no considerable emigration from the District; he heard of none flying to that country of liberty, across the Potomac. On the contrary, they were satisfied with the portion of freedom which they enjoyed in this place; that was fully evinced by the petitions and memorials on the table, praying Congress to continue to exercise legislation over them.

Mr. G. said, he repeated again, that the people were the proper judges of their own situation, and he would leave them to judge for themselves. He was not for forcing upon them his notions of liberty or political happiness. He said it was true Congress did not derive much advantage from sitting here and exercising exclusive legislation; but the people, perhaps, might; and that, perhaps, would console them for such deprivations as gentlemen had conceived in the warmth of a strong imagination. But, although Congress had not as yet derived much advantage from their exclusive legislation, the time may come when it will be all important for Congress to have the sole jurisdiction over the territory in which the public deliberations and conclusions are conducted. The time has been, and it is not impossible but it may be again, that Congress have been driven from the walls within which they were sitting. He knew nothing so likely to prevent a renewal of such an outrage as keeping in their own hands the right of sole and exclusive jurisdiction.

There were doubts entertained of the constitutionality of the measure of retrocession, and if gentlemen doubted, it would be much safer not to act on the subject than to risk the breach of the solemn obligations they had entered into at that table. He thought the weight of the argument on the expediency preponderated on the side he had advocated; and, from the most candid view of the subject, he was inclined to recommend the rejection of the resolutions; at all events, he should give them his decided negative.

Mr. CLARK.—The question before the Committee is truly of considerable importance, not only as it respects the constitutionality but the policy of the measure. He was sorry he had not the talents requisite for a full and complete investigation of so great a subject. Bred to an occupation purely professional, he had been led more to the study of detail and practice, than to abstract theories; hence it was, that, engaged in that laborious pursuit, he had no time and less opportunity of studying the diversified objects of political science. Thus circumstanced, he approached this question with extreme diffidence and cautious circumspection; the infraction of the Constitution was to him a source of alarm, and however great the object or brilliant the achievement, he stood appalled at the prostration of that Constitution he had always held in an estimation that approached to reverence.

But, on reflection, he was convinced that Congress were not about to violate their oaths, as had been insinuated, by the adoption of the present motion. He considered them in the exercise of a legitimate authority, and he would endeavor, in a brief manner, to examine whether they had not complete Constitutional power to make a retrocession. If he was capable of demonstrating this point, he trusted, he need not go further. But, it was necessary he should, in order to ascertain whether the present was the proper time, and the resolutions the correct mode? In doing this he had no prejudice to gratify or caprice to indulge; a stranger to the place, a stranger to the people, he had no motive to action but the unbiassed result of his own opinion.

He should not, however, look into the Constitution for sections wherefrom to draw a constructive power on this head; he was not one of those that collected power from implication, and if the authority is not expressly given, he would not assume it. The eighth section of the first article gives to Congress the power of exercising the sole and exclusive legislation in all cases whatsoever.

What is the appropriate meaning of the word "exclusive" as here used? It implies more than the debarring and shutting out all other possible powers of legislation, and, when taken in connexion with the after, and immediately following words of the paragraph, it vests the absolute and uncontrollable power in Congress, free from any restriction; there is no possible case in which it cannot legislate. The Constitution declares Congress shall legislate in all cases whatsoever. But gentlemen say there is a case in which Congress cannot legislate. Aware of this absurdity, a distinction is attempted to be drawn between legislating for inhabitants of the District and for the District itself. But if it be established, as I think it has been, that Congress is here omnipotent, if

you will allow me the expression, the conclusion in both cases (admitting the distinction, which can by no means be done,) is the same; in one case, the retrocession will mean nothing more than a cessation from legislation, accompanied with a desire that it may be resumed by the States; in the other, it will be a complete transfer of the District. In this sense it must be considered; the very words go the whole of this length. It is given to Congress, and not to the people; it is a complete investiture, boundless and indefeasible; and this is a full answer to the argument of gentlemen that the power is held in trust and not absolute.

But, if gentlemen are not satisfied with the conclusions from the eighth section of the first article, surely they will not contend against the express terms of the second paragraph of the third section of the fourth article.

There it is declared that Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States. Let gentlemen look at this section, and compare it with that part of the eighth section of the first article, which declares that Congress may exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings. The words "like authority," in this part of the paragraph, have a direct reference to the words "exclusive legislation in all cases whatsoever," and mutually throw light on each other.

But the question, so far as it relates to the constitutionality, has been already settled by the practice of Congress, in the cases mentioned by the gentleman from North Carolina, (Mr. STANFORD,) and ably commented on by a gentleman from Georgia, (Mr. EARLY.) Yet gentlemen say, that those laws passed *sub silentio*, and the principles not being discussed, the precedents are not in point. This, however, admits their force, and either shows that every member was satisfied that Congress possessed the power, or it argues a criminal remissness on the part of those who doubted the Constitutional power of Congress to effect that object. He was not inclined to infer the latter, especially as the former part of the statement obviated all the objections he had heard.

He would go a step further, as he thought the acts of cession from Virginia and Maryland would give a solution of the present question; they appeared to him to have themselves the seed of their own destruction sown. We are told that the power of retrocession or of cession, is not expressly delegated to Congress in the Constitution. This objection, he thought, however, had been fully refuted, but if the power is necessarily possessed in the complete and uncontrollable authority of Congress over the District, he would ask gentlemen to point out the clause in the constitution of either Maryland or Virginia, which gave their Legislatures the right of ceding any portion of their territory. But they did not, under the general power of making rules and regulations in relation to their domain. The opposers of this measure are then reduced to this dilemma—that the States had no right to disfranchise its citizens and cede the territory, and in so doing violate the rights unalienable, and that the General Government in its zeal to acquire the property, had been guilty of an act of unwarrantable usurpation and tyranny; or they must yield to the correctness of my exposition; the difficulty then vanishes, and both the States and the Federal Government have acted correctly.

The territory belonged to them, and they had the right to pass their cession laws. If it belonged to them of right, it now belongs to us, and is now our domain. It cannot, however, be our domain, if there is a restriction upon our power; and the denial of the right of disposal is such a restriction. But, why labor this question? The gentleman who had just sat down, (Mr. GRISWOLD,) in the soundness of whose understanding and the perspicuity of whose mind I have the highest confidence, has made a fair surrender: he candidly admits that, at some period or other, this measure may not only be expedient, but become absolutely necessary. Is not this an explicit avowal of the power? The gentleman has too much candor to deny it.

As to the expediency of retrocession, he would add a few words. When he took a view of this mighty ten miles square, he saw nothing pleasant—nothing political—to commend. He spoke of the inhabitants, whenever he had occasion to allude to them, with pity and compassion; and he most devoutly wished to see them placed, as Americans, in a condition more congenial to his own feelings, and the feelings of every true lover of civil and political freedom. The question in this point of view will be, Is it proper for Congress at this time to recede the parts of the District contemplated by the resolutions?

He should allude to the expense, in order to give an answer to that question—an expense enormous, indeed, yet every day increasing, and one which threatened to defeat every calculation made to ascertain its amount. The time of Congress is occupied day after day in trifling Legislative provisions for this or that particular spot, so inconsiderable in size or commercial importance as scarcely to furnish a speck in the map of the United States. But laying this circumstance out of sight, he would ask, Was Congress competent to legislate for the inhabitants of the District? He had hoped when he first came to Washington that they were, but experience had convinced him that they were not equal to the task. One day they received petitions to make certain provisions for the benefit of the people of the District, and Congress, with the best intentions and dispositions, went into the inquiry. After some progress made therein, a counter-petition is presented, and the House is suspended between two or more jarring interests. How much better, then, would it be to let these people have recourse to those Governments which understand their real views, and can adopt measures to ameliorate their condition! Congress is composed of materials too heterogeneous ever to do this with any tolerable satisfaction.

We are told, that, without the consent of the inhabitants of the District, they cannot be receded; and it is alleged that they are opposed to retrocession, and are willing to remain under the jurisdiction of Congress. If they are content in this situation, be that to themselves; but he was extremely loth to admit that any set of men could voluntarily remain in their degraded situation. It was stated that they might be induced to prefer this alternative to retrocession, because they had vested their all in property in the District. He did not discover how the value of property would be affected by a retrocession. He admitted that it would by a removal, but he had no idea of removal. If that question was before the House, he would be the last man to give it his assent; and he was willing now to go as far as any member to satisfy the inhabitants that a removal shall not be the consequence of retrocession.

We are told the people are happy at present, and why disturb their tranquillity?—that they are better represented than any other part of the Union, for they may choose the member to whom they may think proper to confide their affairs. Let us examine this circumstance. They have no rights; and is there anything so bewitchingly grateful in the sound of ten miles square or Columbian District to compensate for their humiliation of condition? It is true, they may find some alleviation in the boasted privilege of choosing from one hundred and seventy masters, but they ought to recollect that many masters are worse than one. In this state of listlessness and affected tranquillity I discover strong and weighty reasons for the measure now before us—the destruction of the source of so contagious an example. When people around the seat of Government shall be so unaccountably indifferent to their best rights, it may pervade the surrounding country, and give a fashion and currency to this anti-revolutionary doctrine; and though, from the present inhabitants we may have nothing to hope, let us not relinquish in despair the rising generation.

But we must obtain, say gentlemen, the consent of the people of the District, before they can be receded. Were they asked at the cession? And what consent have they to give? They have no rights, and, from the description we have had of them, they are very unfit instructers to the Representatives of a free and independent people. They may be the proper instruments, indeed, to enslave the balance of the nation; and they have already, at their deliberations, taken measures to ascertain more accurately their *numbers*, and adopt more *efficacious* means for carrying their *purposes* into effect. If this language can be used when their numbers are so inconsiderable, what will they not do when their numbers shall increase! Gentlemen say we have no right to impair contracts. What contracts, I ask, do these resolutions tend to impair? They violate no man's engagement; they take away no man's property; they devastate no man's house; they plunder no man's family. On the contrary, they intend the amelioration of those who have here sold ther birthrights for a mess of pottage, by sending them back to their natural parent, who with open arms will receive and nurture them with the fondness of an indulgent and tender mother, and not suffer them any longer to be supplied by the grudging hand of a cruel and hard-hearted step-dame. We are told this measure will lessen the value of property. I very much doubt this fact. Who, I ask, will go into this speculative calculation upon the rise or fall of property? Some may give more to live in the District, under the Government of the United States—others to live under the State Governments, in the enjoyment of their political rights. The people had, however, hailed the approach of Congress with the songs of joy and gladness, and it will be cruel to array them with the mantle of mourning. Did this joy, I ask, arise, from patriotism or (motives less praiseworthy) the increased value of property? I suspect the latter; and this source of their gladness is not to be destroyed. Congress will still remain here, and he had already declared that he would be the last man in the world to advocate its removal.

Mr. SLOAN.—My friend from Maryland (Mr. NELSON) has observed that it is customary for members to express their sentiments on subjects under discussion in the House—not that he expected to make one proselyte by his observations. I perfectly agree with him, that there is no reason to believe that he has, for this plain reason: he has not adduced a single fact in support of his argument; but, after exploding all conclusions drawn from implication or construction, drew his own from nothing else.

But, Mr. Chairman, under sanction of the aforesaid custom, and also from a sense of duty, I beg the attention of this Committee to some brief observations on this important subject. I consider it as altogether improper, unfair, and unjust to blend a subject under discussion with others not even contemplated, and to endeavor to influence the minds of members with predictions of certain events, yet in the womb of futurity, that may or may not come to pass. The end contemplated by the present resolutions is neither the removal of the seat of Government nor to prevent Congress from exercising exclusive jurisdiction over any territory, but to reduce the present quantum. But, say the opposers of these resolutions, the proposed retrocession of a part of the territory is intended as an opening wedge, preparatory to a total retrocession and removal of the seat of Government.

Mr. Chairman, I do not pretend to a foreknowledge of any member's thoughts before they are articulated in words; those who have this foreknowledge have a great advantage over other members who have it not; but I am free to declare that my opinion is quite the reverse—believing that the retrocession of that part of the territory contemplated by the resolutions now under consideration would have a tendency to continue the seat of Government in this place.

But it has been asserted that we have no right to make the proposed retrocession, and from the

dictatorial style of the resolutions of the town of Alexandria, and the positive assertions that we have heard on this floor that it was unconstitutional, oppressive, and tyrannical, I expected, from the usual accuracy and correctness of the member who made those assertions, (Mr. DENNIS.) that he was in possession of documents to substantiate the fact; but to my surprise, instead of such documents, he has adduced and principally relied on the Constitution, in which there is not a single imperative sentence obligatory on Congress, either to receive a cession, or, when received, to continue exclusive jurisdiction over one foot of territory—the plain and unequivocal language of the Constitution leaving it perfectly optional whether to receive, and, if received, whether to retain jurisdiction or not. Hence, I conceive that no Legislative body can be justly charged with tyranny or oppression for altering or (if from experience it becomes necessary) disannulling their own acts—a contra-opinion I consider as altogether uncongenial to improvement, genuine liberty, and the inherent rights of man, and as such, I hope will ever be exploded in these United States.

Mr. Chairman, the constitutionality and right to recede being settled, it turns solely on the principle of expediency. Here let me ask, what advantage the United States derives from exercising exclusive jurisdiction over that part of the territory proposed to be receded? Is not the city sufficient, even admitting the utility or necessity of exclusive jurisdiction? I conceive that no possible advantage can be drawn from a larger quantum of territory. Here let me me call the attention of the House to the real and obvious disadvantages: These are, at least, the loss of the time of one hundred and seventy-five members of Congress from twenty to thirty days annually spent in legislating for the District, at an expense of from thirty to forty thousand dollars. This enormous expense can only be justified upon the principle contended for during the late Administration, that "A public debt was a public blessing," and consequently that the greater the debt the greater the blessing.

But, Mr. Chairman, I do not consider the expense as the greatest evil; I consider it as incompatible with the principle of taxation and representation being inseparable, and counteracting the just principle of equal rights set forth in our Declaration of Independence, to obtain which the noble patriots of America fought, bled, and died! And shall we, whilst thousands are yet living, who, at the risk of their lives, obtained for us the inestimable blessings of liberty, evince to the world that we despise and reject this heavenly gift, this celestial treasure, by continuing in the centre of the Union, at the seat of Government, thousands of our fellow-citizens, deprived of the elective franchise, exactly in that degraded situation which the noble patriots before-mentioned chose rather to suffer death than continue in? I hope we shall not.

Finally, Mr. Chairman, considering the principle of exclusive jurisdiction over so large a territory dangerous in its tendency, and as contrary in its nature, to the liberty and independence of these United States, as the frigid to the temperate zone; considering it as nursing a germ of aristocracy in our bosom—as an inexplicable paradox, of liberty supporting tyranny, and as a vulture rising in the centre of the Union, to prey upon the vitals of liberty—I conceive it a duty I owe, not only to my constituents and the present generation, but also for the sake of millions yet unborn, to call upon the members of this House, if not in our power at present to destroy this yet unfledged monster in its infancy, at least to clip its wings so close, that if permitted to live to mature age, it will be unable to fly upon its prey.

Mr. JACKSON.—Mr. Chairman: When this subject was first presented to Congress during the present session, I felt a strong predilection in favor of the resolutions, and contemplated to give them my warmest support; after the maturest deliberation I have changed the opinion I had partially formed, and with the permission of the Committee I will proceed to explain the reasons which to my mind have been conclusive in influencing that opinion.

The question depends upon two propositions. 1st, The right to cede; 2ndly, The policy of the cession. Upon the first point, I am free to declare, the clause in the Constitution which has been relied on by the gentlemen who have preceded me, does not prohibit us from adopting the resolutions. The words, "Congress shall have power to exercise exclusive legislation" are not imperative; a grant of power does not imply a coercion to assume its exercise; if it did we should be in a monstrous dilemma. Congress, the Constitution says, shall have power to declare war, to lay and collect taxes, to borrow money, to raise and support armies, &c.; yet no man will contend that we are bound to adopt these measures indiscriminately. We search the Constitution in vain for the authority to repeal a law; it is an inherent right, incident to all Governments; the right to repeal, unless expressly prohibited, or unless violating or impairing contracts growing out of laws, is co-extensive with the power of enacting them, and this power to exercise exclusive legislation, is conceived in the same terms with the other powers given by the eighth section to Congress.

Mr. Chairman: While I admit there is nothing in the Constitution directly prohibitory of the retrocession, I believe the spirit of that instrument would thereby be violated. It is predicated upon the sovereignty and indivisibility of the States, and the impossibility of dividing them, of transferring, or extending their territories, or of ever exercising any act of sovereignty over the people without their consent. By the adoption of the Constitution the people of the United States consented that a partial transfer should be made to Congress of a territory not exceeding ten miles square, with its citizens, for certain specified purposes; but by doing so they did not authorize Congress to dispose of them as they might think fit. An inference has been made by the friends of the resolutions, that the right of transfer is an implied right, because it it is not prohibited. Is this a true

construction of our charter? If this is, then indeed the great care expended in defining the powers of this Government had been worse than useless; because it held forth an idea to the States who were invited to adopt it, that it was limited in its objects. If the right to cede the jurisdiction over the District of Columbia is inferred, because no Constitutional barrier exists, the right to cede a portion of any State in the Union may be exercised likewise. If the Constitution did not repel this idea, there is a natural and inherent right incident to all governments which rejects it. The right of the people to be consulted as to the propriety of transferring the sovereign power over them is a special and a natural right; and social and natural rights survive the dissolution and wreck of States. By adopting a system of civil policy we give up certain natural rights; but an act of the Government transferring the sovereignty over us to others, without our consent, would be totally subversive of the fundamental principles of the social compact, tyrannical, null, and void. We have been told by gentlemen, that precedents may be found in our statutes, for the transfer of territory without the consent of the people; and have we indeed arrived at that epoch, when precedents once established are so much power? Precedents somewhat analogous, made without opposition when the principles involved in them were not examined! I hope in God we have not; when we do, then adieu to liberty! But the precedents quoted are not in point; the transfer of Upper Louisiana to the government of the Indiana Territory is not a similar case. That country was acquird by treaty; the principles of the Constitution do not apply to it; it was not a part of the United States, and did not comprehend any portion of the people who were parties to the compact: and I do not believe that it can even be admitted into the Union upon an equal footing with the original States without an express amendment to the Constitution for that purpose. It would contravene the object of the Constitution, for Congress to assume the right of admitting Louisiana into the Union, unless authorized by an amendment for that purpose; as much as to admit the Island of Ceylon or any other island or continent, whose population would be sufficiently numerous to destroy the very principles of the Government; therefore the disposition of Upper Louisiana by the act of last session does not afford an analogous case.

Thus much for the constitutionality of the question. I will now examine whether it is politic to make the recession. In approaching this part of the inquiry, gentlemen lament in the most pathetic terms the degradation of human nature, and the prostration of the principles inculcated by "the rights of man," in the unwillingness of the people of this District to accept the proffered blessings of a free government. Sir, I am disposed to think charitably of these people, and if possible to find an apology for their conduct, in preference to pronouncing the terrible denunciation that they are fit engines of political despotism; and I do not believe that their opposition to a recession is conclusive evidence of political depravity. The people of Alexandria know that their influence in the State of Virginia would be as a drop in the ocean. The privileges extended to them would be merely nominal; they would be an integral part of the county of Fairfax, which is authorized to send two representatives to the State Legislature, and whose representation could not be controlled by them. Representation governed by population are the fundamental principles of freedom. In contemplating these, they would recollect the county of Warwick with a white population of (I think) 635 white inhabitants, which has an equal representation in the popular branch of the Legislature with Frederick, containing 24 or 25,000. Warwick, charged with a land tax of $349 13, which has an equal representation with Harrison, whose land tax is $5,515 85 per annum! What would be said to a proposition giving the State of Delaware an equal representation on this floor with New York, Pennsylvania, or any other of the great States in the Union? Yet a much greater inequality exists in the representation in Virginia. By the Virginia laws the poor man is compelled to labor as many days in repairing and improving the highway as his rich neighbor, not owning slaves, possessed of a princely fortune; and he is also compelled to pay an equal sum annually to defray the county charges, and for the maintenance of the poor. These monsters, in what we call a Republican system, exist in the constitution and government of Virginia; and with these facts, which have been more sensibly felt by the people included in the territory west of the Potomac than the darkness which pervaded the land of Egypt in the days of Moses, we are told that their refusal to join their destinies with Virginia is conclusive evidence of a penchant for political despotism. But, Mr. Chairman, notwithstanding what I have stated, I should be disposed to join those who have depicted their miserable and abject condition in such glowing colors, if the question propounded to them were: Will you consent to remain forever without a representation, and the inestimable right of suffrage, in preference to annexation to Virginia? Sir, this is not the prospect before them. They expect a local Legislature—a free representation—a government given by the generous feelings and liberality of the States and of Congress; and if it be necessary, I have no doubt they will, by an amendment to the Constitution, permit them to realize these expectations. This disposition may induce them to remain even longer in their present state, encountering all its temporary evils. Gentlemen say it is politic to recede, to avoid the great trouble and expense of legislating for the District. I acknowledge they are great, but they can be better avoided by giving a local Legislature than by the adoption of the resolutions. They contemplate retaining the jurisdiction over the City of Washington. For what purpose? Certainly for the purpose of relieving their wants by legislating for them. And where, I will ask you, sir, is the mighty difference between the *trouble* of legislating for a district of ten miles

square, and a district of four miles square, the size of the City of Washington? Their general laws must be the same, and the only difference consists in the passage of a few more laws for local purposes. An additional, and to my mind, important consideration is, that by the measure we shall have to continue these people included in the city, much longer in the state they now are, as they alone are incapable of supporting the expenses of a subordinate government. Mr. Chairman, *stability*, of all things, is most desirable. The enemies of the republican system have predicted that the want of it will produce convulsions in the body politic—the certain precursors of its dissolution. By giving into *instability*, national faith and national convenience become convertible terms; all confidence in the Government will be lost—its credit at home and respect abroad will be destroyed, and it will be the reproach of all nations. By instability we shall become the prey of despotism, and then republican America will give the awful example to the world, that in the very age she achieved her liberty she also bore testimony of its incompatibility with the degenerate state of man. It is always impolitic to do injustice. The value of property will be diminished by the recession. Admit this year that the argument of the propriety of receding on account of the great trouble of legislation be a good one. Next year an argument more substantially correct, and verified by the feelings of every member, may likewise be urged, and Congress called upon to remove to Baltimore, Philadelphia, or New York. The establishment of the Government here is a part of the same system with the location of the ten miles square; they depend on the same principles—the Constitution is not more explicit in the one case than the other. Admit the right to recede, the right to remove is also admitted. The propriety of the measure has indeed already been contended for. The people associate the two ideas, and if they believe that Congress ever will remove, whether they do or not, its effect will be the same. Congress, in the act of acceptance of jurisdiction, declared that this ten miles square should be the permanent seat of Government. The people considered the faith of the nation pledged that the Government should conduct its operations here; and under it, in many instances, they vested all their fortunes in city property. Now to remove, or by any other act to injure the value of property, would be an act of injustice. There is no difference in principle between an injury done to one, and that inflicted on a whole nation. The smallest animalculæ feel as much pain in expiring as the Brobdingnagian giants. I will never give my consent wantonly to sport with the rights and feelings of this people, and therefore shall vote against these resolutions.

The Committee now rose and the House adjourned.

Wednesday, January 9.

Mr. Thompson, from the committee appointed, presented a bill making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes; which was read twice, and committed to a Committee of the Whole on Friday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to amend the act entitled 'An act for the government and regulation of seamen in the merchants' service,'" with an amendment; to which they desire the concurrence of this House.

DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion "to recede to the State of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia as are without the limits of the City of Washington."

Mr. Lucas.—After having heard the question under consideration so extensively and ably discussed, I rise with the greatest diffidence; indeed, I do rise, not so much in hope to throw light as to justify the vote which I intend to give.

That I may preserve perspicuity, I shall investigate the following points in their proper order. Has Congress the Constitutional power to cede to the States of Maryland and Virginia part of the District of Columbia? Has Congress the power to cede it without the consent of the inhabitants of the parts intended to be ceded? Is it expedient to make that cession, both with respect to the United States and with respect to the inhabitants of the parts intended to be ceded?

The power vested in Congress by the Constitution to accept a district not exceeding ten miles square, to become the seat of Government, is a power which appears to stand on a perfect level with all the other powers enumerated in the eighth section of the first article; it is as optional to Congress to accept or not accept a district not exceeding ten miles, as to lay or not lay duties, imposts, or excises. There was a seat of Government before the District of Columbia was in existence, and there may be a seat of Government after the District of Columbia may have ceased to exist. If it be urged that, inasmuch as there is not in the Constitution an express delegation of powers to cede the district, Congress cannot cede it. I shall be told that, as there is no express power delegated by the Constitution, to repeal laws laying impost or excise, Congress cannot repeal such laws. This argument proves too much, to prove anything. My apprehension of the power of Congress is, that whatever it has the power to do, it hath the virtual power to undo; indeed, without that power Congress could not change its operations with circumstances, nor improve the system of legislation.

The next question is this: Has Congress the power to cede a part of the District of Columbia without the consent of the inhabitants of that part? This point leads to a previous one. Could the Legislatures of Virginia and Maryland originally cede to Congress a part of their States not exceeding ten miles square, without the consent of the inhabitants of the parts ceded? I believe

that those Legislatures had not that power. It ought to be remembered that the inhabitants of the District of Columbia, although they have been represented, in the course of the debates, as men in a state of degradation, were a part of the people who, in the preamble of the Constitution of the United States, did express themselves in the following manner: "We, the people of the 'United States, in order to form a more perfect 'union, establish justice, insure domestic tranquil-'lity, provide for the common defence, promote the 'general welfare, and secure the blessings of lib-'erty to ourselves and our posterity," &c. The right of being represented in the Legislatures of their respective States and in Congress, was the right of the inhabitants of the District of Columbia, at the time they were component parts of the States of Virginia and Maryland. Those blessings of liberty were secured to them and their posterity by their respective State constitutions, and by the Federal compact. How, then, can it be conceived that the Legislatures of Virginia and Maryland had the power to give them away, to become subject to the "Executive legislation of Congress in all cases whatsoever;" that is, to be deprived of their elective franchise and right of representation? How can it be conceived that the Legislatures of these States, that are the creatures of the Constitution, had the power to bereave Americans of the most valuable rights that the Constitution of their country guaranty to them? It is the comfort and pride of an American, that no power on earth but his own can deprive him of his Constitutional rights; this is a principle self-evident. But it is urged, that the inhabitants of the District of Columbia, notwithstanding this, are actually subject to Congress, without elective franchise. This I grant. But if they are so, it is by their consent, without which the cession could not have been legitimate. Thus it has been their pleasure to barter their elective franchise for pecuniary advantages, or other considerations arising from being within the bounds of the seat of Government. It is evidently a matter of choice on their part, and they have been put in that situation neither by violence nor conquest. To those who contend that the Legislature of Maryland and Virginia were of themselves as competent to make the cession to Congress as Congress was competent to accept, I beg leave to observe that, yet, as by those acts, the right of elective franchise of the inhabitants of the parts ceded would have been virtually defeated; this brings me back to my former position, that the cession made by Maryland and Virginia could not be legitimate without the consent of the inhabitants of the parts ceded, otherwise the Constitution would give power to invade liberties which, at the same time, the Constitution intended to secure. This consent was given by acclamation; even the women and children of the district rejoiced on that occasion. Hence, the consent of the inhabitants of the district having been necessary to render the cession legitimate, and that consent having been given, a contract exists between them and Congress; a contract may exist, and does generally exist, between the governors and the governed; the protection and subjection are reciprocal obligations even in monarchies. The whigs of England contended, in 1688, that James Second, had violated the original contract between him and his people, a contract which nobody pretended to be reduced to forms and written, but which, nevertheless, was binding, and derived its force from the relations necessarily existing between the monarch and the subject.

Certainly, Mr. Chairman, the inhabitants of this district are not in a worse situation than subjects are under a monarchy; yet a worse treatment is offered to them; by the present resolutions they are to be receded against their consent to Maryland and Virginia. The word *recession* heretofore unknown in a contract, is introduced in the resolutions, I suppose, to soften or put the affront offered to the people of this district under disguise; by this intended *recession*, they are to be transferred as a bale of goods; and if they can be transferred to Maryland and Virginia, they may be transferred to Vermont and Georgia; for the acts by which they have been severed from Maryland and Virginia are perfect and complete; and what is termed a recession in those resolutions is as completely a transfer as if the district had never been a part of Maryland and Virginia. But a gentleman from Virginia has told us that, by the cession and acceptance, Congress is omnipotent over the district; for my part I am at a loss to find the reasons that can justify such an assertion; the Constitution gives Congress the power "to exercise exclusive legislation in all cases whatsoever over such district." How can it be said that exclusive legislation and omnipotence are convertible terms?

Under the monarchy of France, before the revolution, the King did exercise exclusive legislation; yet he could not make a transfer of the monarchy. By fundamental laws, it was descendible in a lineal succession, and not otherwise. Had the dynasty been extinguished, the three estates of France would have been the sole authority competent to make the choice of a new dynasty. Thus, the people of France, although under the exclusive legislation of their King, were vested by the fundamental laws of the monarchy with an eventual political right. The exercise of a power, and the power itself, are then obviously two distinct things.

Believing that I have proved that the consent of the inhabitants of the district was necessary to legitimate the cession made by the States of Virginia and Maryland; it being also notorious that such a consent has been given, and that an implied contract exists between the inhabitants of the district and the people of the United States, they have a right to the protection of Congress, as Congress has a right to their obedience. These mutual obligations cannot, in my opinion, be defeated, but by mutual consent, or at least, if Congress should find it inconvenient to exercise the power of legislation over the district, the terms of submission, on the part of the inhabitants of

the district, and also reason and justice, require that they should be restored to themselves, and not be an object of transfer. The right of a guardian over an orphan is a species of jurisdiction and government; yet a guardian cannot transfer his right to another. If he finds it inconvenient to discharge his duties he may resign. It is the right of an orphan, if he has attained the age of discretion, to choose his own guardian. The feudalists themselves acknowledge that the rights of patronage, of church jurisdiction, and other feudal honors, are not transferable, unless as a dependence of a glebe or manor. The transfer of jurisdiction intended by the resolutions before the Committee is less justifiable than if it had originated in feudal principles; it is neither a dependence nor appurtenance of any glebe or other object susceptible of transfer.

Among others, two gentlemen from Virginia have told us that the inhabitants of the District of Columbia are in a state of political *annihilation*; that they possess no right; that they are unconstitutionally at the discretion of Congress. I am one of those that cannot give my assent to these positions. I believe that they possess political and civil rights, which Congress has no power to abridge or impair. I believe that Congress and they are mutually bound by moral obligations. The exercise of exclusive legislation over the district by Congress, not having been introduced by violence or conquest, cannot be, consequently, of a despotic kind. It necessarily partakes of the qualities of the power of legislation commonly exercised by a political and civil authority. The power which the Constitution authorizes Congress to exercise is defined; it is to exercise exclusive legislation. This exercise is no more, as I have already said, than the use of a power, and by no means the ownership of that power. If the right of ownership is not vested in Congress, it remains in the inhabitants of the district; thus far the people of the district possess a political right; this consequence arises fairly from the premises, and is perfectly congenial with the elements of American polity.

The inhabitants of the district possess also civil rights; for the exercise of the power of legislation vested in Congress is generally qualified by the declaration of rights, introduced in the amendment to the Constitution: "Congress shall pass no law respecting an establishment of religion," &c. This restriction applies to all laws whatever: a law passed by Congress for the government of this district is not less a law of Congress than a law passed by Congress for the government of the United States—hence, the people possess civil rights. As to moral rights, no society can exist without them, unless in a momentary struggle of revolution. These rights are reciprocal and obligatory upon moral agents, either in a single or corporate capacity.

Mr. Chairman, I must confess, however, that the situation of the inhabitants of this district is not such as I should like to be in. No pecuniary advantages could ever induce me to part with my elective franchise; but it has been the pleasure of those people to part with theirs, and the Constitution of the United States has authorized them to do so. Taste has no criterions: "*San quemque trahit voluptas.* The people of this district are in such a situation as had been foreseen and intended by the good and great men who framed the Constitution of the United States. To find fault with the situation of the people of this district, in point of principle, is to find fault with the Constitution. Were I so tender for their rights as some gentlemen appear to be; were I conscious that the manner in which they are governed is of a pernicious example to the people of the United States, I should endeavor to apply a radical remedy. I should move an amendment to the resolutions, by including also the city; for, in principle, the evil remains the same, if the district be continued within the bounds of the city.

I cannot, for my part, carry my philanthropy so far as to enforce upon persons privileges which they do not wish to have. A man who lives in Turkey would not thank us for dragging him into our free country. I do not think I should have relished the liberties of America, if I had been taken from France by force, and brought here against my own will. Our choice is a necessary ingredient in our enjoyment; but if the two gentlemen from Virginia feel such tenderness for the rights of others, and are so fond of extending the elective franchise, let their charity begin at home; there they will find a full opportunity to extend and improve the system of representation.

Mr. Chairman, were I an inhabitant of the District of Columbia, having but a small property, I think that I should be very little anxious to better my condition by going to live in Virginia. I know that my political influence would be there merely nominal; I know that whatever my moral worth might be, I could not stand in competition with those who possess that kind of property which is entitled to representation. I know that my occupation and habits would keep me a stranger among my neighbors, and render my situation uncomfortable, perhaps disgusting.

Had Congress the power to refuse to legislate over the District of Columbia; nay, had it the power to cede that district to Maryland and Virginia, would it be expedient to do it? For my part, I avow that I do not see a great utility in the Constitutional provision, which authorizes Congress to accept a district. I am one of those who believe that the safety and independence of Congress must rest upon their regard to the true interests of the people of the United States, and the virtue and spirit of that people. I believe that when these things shall be wanting, it is idle to think that the District of Columbia can make up the deficiency. However, the sages who framed the Constitution thought that a district might be useful. The Congress that did accept the district, and the several Congresses that did let it exist, are authorities of great weight and respectability. I feel averse to undo what a future Congress cannot do again. If we cede to Maryland and Virginia any part of the District of Columbia, is it

to be expected, in case another Congress should wish to have those parts restored, that Maryland and Virginia, after having experienced the versatility of the present Congress, would consent to make another cession? It plainly appears to me that, if the resolutions now before the Committee be adopted, any future Congress will become virtually disabled from restoring the district to its present extent. This unavoidable consequence adds, in my mind, importance to the question. Those that will sit within these walls next year will have a more recent evidence of the people's confidence than that which we now possess.—Would it not be more prudent to leave them the opportunity of exercising their opinions upon these resolutions?

As to the expediency of the contemplated cession, so far as it relates to the inhabitants of the district, I shall not undertake to say anything. They know much better than I do what suits them; and if it was their interest to be ceded again, we would have seen them offering here their consent, or petitioning for the cession.

Mr. THATCHER was opposed to the motion for a recession, and he had heard only two reasons urged in favor of the measure; that the exercise of exclusive legislation by Congress over the District of Columbia was attended with an undue expense of the public money, and occupied so much of their time, that the business of the Union was interrupted and put to a stand by the interference of the local concerns of this place. This statement he did not believe to be perfectly correct; no doubt some of their time was taken up, but he would leave it to every gentleman to say, whether, if they had even more business before them than they had, there was not time enough to transact it. The House usually sat from eleven o'clock until three; but it must have been frequently observed, that the adjournment took place much earlier for want of business to employ them. But he was not an advocate for the present mode of conducting the business of the district; it would perhaps be a better way to give them a subordinate government, controllable by Congress; or a committee of Congress might be appointed for the purpose. He did not see that the complaint of too much legislation was well founded, in anything that had taken place during the present session. If the little labor they had to perform was too great for them, what must the labor of their predecessors have been, who had passed all the laws in existence for the government of the district, and yet he had never heard any complaint made by them on the ground now taken; they knew that the Constitution enjoined upon them the duty of exercising exclusive legislation over the ten miles square, and they performed it with patient attention.

His mind revolted at the idea of recession. Gentlemen had contended that the powers exercised over the people of Columbia, were derogatory of, and inconsistent with, the principles of free government. Yet, what does this motion for recession propose? Why, to transfer them and the territory away, in the manner practised in Russia, in the transfer of provinces or manors transferring the vassals with the soil. This may be truly called derogatory to the principles of freedom. Nor is this all; for you do not transfer them merely without their consent, but in the face of their serious remonstrances against the transfer.

When he considered the doubts which had been suggested, as to its being Constitutional or not, he declared that such a circumstance would decide him to vote against the measure, and he supposed it would decide the vote of every member who was not fully and clearly satisfied that Congress possessed, under the grants of the Constitution, the power of recession. But, if we have a Constitutional right to recede the jurisdiction, we may transfer it to whom we please; but such a measure being merely an act of Congress, could not bind up the hands of a future Congress to assume the power over it at some future day; and if the parts of the District were severally given to the States of Maryland and Virginia, what is to prevent them from giving the whole back whenever Congress might require it? From this view of the case, he did not see that the members in favor of recession were likely to fix it on any durable foundation.

A gentleman from Pennsylvania (Mr. FINDLEY) had contended that, unless Congress was restricted by the Constitution from receding this territory, Congress possessed the right, as essential to their exclusive legislation. He, for his part, considered the converse of this proposition to be the truth; and gentlemen were bound to show that part of the Constitution which gave the power now contended for. If they cannot show this, their right may be doubted, and under such circumstances the safer mode of proceeding would be to reject the resolutions.

He was further of opinion that the inexpediency of the measure was of itself sufficient to induce the Committee to lay it aside. It had been stated, and he knew the facts to be true, that at one time the old Congress had been pent up in the house in which they were sitting by a party of soldiers, and at another time insulted by an assemblage of the people. Such circumstances as induced those outrages upon the National Government may occur again; but if Congress retain the power of exclusive jurisdiction they may, by a prudent caution, prevent these effects. The circumstances which he had mentioned, laid the foundation for granting, in the Constitution, the power alluded to; and while the nature of man continued the same as heretofore, he believed it would continue to be a regulation wise and expedient. He could enumerate several cases, such, for instance, as a contested Presidential election, in which the danger of sitting in a large city made independent of the control of Congress would be imminent; but he would forbear, as it would be as well understood as if expressed. He concluded with expressing his disapprobation of the present resolutions.

Mr. TAGGART.—Mr. Chairman: As considerable time has been already spent on the question

under consideration, it is not my intention to detain the Committee long; but as it is one of very considerable magnitude, and one upon which there seems to be a disposition among members to express their sentiments, and not content themselves with barely giving a silent vote, I crave the indulgence of a few minutes, while I state some difficulties which are still in the way of my voting in favor of the resolutions for a recession, unremoved by the discussions which have taken place. Gentlemen who advocate the resolutions now before the Committee, disavow an intention to do anything which may pave the way for the removal of the seat of Government from this place, or weaken the confidence of either the citizens of the District, or of the United States at large, in their belief that it will continue to be permanent. I am disposed to give full faith and credit to the sincerity of gentlemen making this declaration; but permit me to observe that the belief that the permanent continuance of our National Government at the City of Washington will not be affected by the recession, can be founded on nothing but conjecture. That it would materially affect the probability of such a permanency, and even prove an important inchoate step towards a removal, is also a matter of conjecture, which appears to me to be founded on quite as great a degree of probable evidence as the other, and so long as I retain this apprehension I cannot vote for the resolutions. So long as human nature continues what it is, and has always been, we may naturally expect that three rival places in the situation of Alexandria, Washington, and Georgetown, when owing allegiance to, and protected by, the immediate jurisdiction of three distinct, independent sovereignties, would be much more likely to enter into and prosecute measures mutually to cramp and injure the prosperity of each other, than when under the immediate control of the same sovereign authority, disposed to do justice, and render protection equally and impartially to them all.

Should such a disposition prevail, while they are under distinct sovereignties, the probable consequence would be, either that one would obtain such an ascendancy as to cause the others to sink, or that they would mutually weaken and injure each other. Should Alexandria, for instance, gain such an ascendancy as to cause this city to dwindle and come to nothing, a removal of the seat of Government, though not contemplated at present, might soon become a matter of necessity, and not of choice. Should such a necessity arise, and, notwithstanding all the plausible arguments I have heard urged to the contrary, should the proposed recession take place, I cannot view it as an unimportant step towards that event; so many and different, and even clashing, are the local interests, and such the variety of manners and habits in the United States, which are constantly increasing with our extended and still extending population, that the fixing of another seat of Government might, and probably would, materially affect the Union itself. As I hope not only to see the union of the States to continue during my time, but that it may descend unbroken to ages yet unborn, I cannot vote for a measure which has, in my view, a remote, or even a conjectural, tendency to affect it.

I find also a Constitutional difficulty in the way of the recession, which has not been, to my apprehension, satisfactorily removed, by all the variety and ingenuity of argument, and all the labored discussions I have heard on the subject. I shall not again repeat that clause of the Constitution which has been already so often recited and commented upon by gentlemen on both sides of the present question. I only observe that, although the members composing a particular Congress are constantly changing, and Congresses, as distinguished into first, second, third, &c., follow each other in succession, yet the Constitution contemplates the Congress of the United States as being permanent, or immortal, if the expression may be permitted. When the Constitution says that Congress shall have jurisdiction, or the exclusive right of legislation, over a district of territory not exceeding ten miles square, it is not the particular Congress for the time being, but Congress generally, the permanent Congress of the United States, which is meant. I see not, therefore, that the present Congress possess the right to recede the territory so as, in any manner of way, to affect the right of their successors, or to hinder a future Congress, the next if you please, from reassuming the jurisdiction the first day of their session. Without granting the correctness of the position, yet admitting, for the sake of the argument, the first proceedings of Congress, in accepting the cession of the territory from the Legislatures of Virginia and Maryland, and assuming the jurisdiction over the same, to stand on the footing of mere Legislative acts, repealable at any time, at the pleasure of the Legislature, and that they did not partake of the nature of a Constitutional provision, or an irrepealable contract, even this would not, in the present instance, remove the difficulty from my mind. The Constitution vests Congress with the power of establishing a uniform system of bankruptcy throughout the United States. I single out this instance in particular, because I have already heard frequent allusions made to it, in the course of the debate, and because certain recent transactions must render that subject familiar to the minds of almost every member of the Committee. Agreeably to this provision, some years ago, a bankrupt law was enacted. Congress, at their last session, saw fit to repeal that law, and I believe it was done with great propriety. But will any person assert that Congress possessed a Constitutional power to pass a law, affecting the proceedings and decisions which had already taken place, and been carried into effect under the law which they had seen fit to repeal, or to restrict a future Congress from either re-enacting, at pleasure, the same law, or framing another statute to the same effect? I believe this will not be asserted. But, by the resolutions on the table, it is contemplated to alienate from every succeeding Congress, that right of jurisdiction now vested in Congress by

the Constitution of the United States; an act which cannot but materially affect the proceedings which have taken place during the continuance of the session. It appears to me, therefore, difficult for the warmest advocates for the resolutions to prove that Congress possess any Constitutional power to make such a permanent recession of this territory as can, in any way, affect or impair the right of the next, or of any future, Congress to reassume the jurisdiction, whenever it shall be thought proper. I believe there are several powers vested in Congress by the Constitution of the United States, which have never yet been carried into effect, and probably may not for many years to come, if ever. But will any member of this Committee assert that the present, or any particular, Congress has a right to pass a law declaring that these provisions of the Constitution shall not be carried into effect in future? I believe it will not be presumed that Congress possesses any such power.

Much has also been said about the expediency and necessity of the proposed recession, and a variety of arguments have been urged which, if they prove anything, it is only that the resolutions are inadequate to the contemplated object. This expediency or necessity, is grounded principally on two points, viz: In order to restore them to their natural and political rights, and to save Congress the trouble, and the nation the expense, of legislating for the territory. We have heard much ingenious declamation about the restoration of the citizens of Columbia to certain political rights of which they have been injuriously deprived by the act of cession, and such an affecting picture has been drawn of the present state of their degradation and vassalage, as would lead us to believe that their situation more nearly resembled that of the slaves of a Turkish Bashaw than that of citizens of the United States. Should a stranger be suddenly transported within these walls, and know nothing of the situation of the inhabitants of the surrounding district, only what he learnt from the picture drawn in certain discussions on this subject, what a scene of wretchedness would be pictured before his imagination! Would he not almost expect to have his ears assailed with the harsh grating sound of fetters and the clanking of chains, on going out into the streets; or, if there was so much liberty left as to permit their departure, to see the wretched inhabitants flying in every direction from this land of tyranny and oppression, this worse than Egyptian bondage, to the surrounding Edens of freedom and happiness? But, on making a tour through the District, how great would be his surprise to see the citizens of Columbia contented, free, and happy; to see the various classes of civilized society, the man of fortune, the merchant, the tradesman, the husbandman, and the laborer, each one quietly pursuing his respective occupation, and each enjoying the fruit of his labor, under the protection of mild and equitable laws. Attached as I am to the rights of man, and the principles of civil and political liberty, and wishing that those rights may be extended to every nation on the globe, capable of appreciating and enjoying them, I am not fully possessed of the propriety of doing an act, doubtful, at least, by the Constitution of the United States, for the purpose of restoring people to certain abstract rights, contrary to their wishes, and against their warmest remonstrances. Even the servant under the Jewish law, who had such an attachment to his master as to wish to remain in his present situation, was not compelled to go out free. Congress has been represented as standing in the relation of a master to this District. If this is correct, it is some consolation that, by evidence so irresistible, it appears to have hitherto proved a good master at least.

Being, I trust, as real a friend to the rights of man as any member on this floor, and wishing to extend, rather than abridge, those rights, I think it needless at present to enter into any dissertation on that subject. But if we confine political rights to the right of suffrage only, although I duly appreciate that right, and wish it extended as far as is consistent with the greatest political good of society, yet I hope I shall not be accused of nourishing a germ of aristocracy, or of harboring a vulture, either fledged or unfledged, in my bosom, when I express my belief that there are other rights of equal, if not of greater, importance; I mean that life, liberty, and property, be protected by mild and equitable laws, faithfully and impartially executed. No man who enjoys these privileges in their full extent, can be considered as enslaved or degraded. These rights are universal; they are the property of free citizens of all classes; but the right of suffrage can only be exercised by a part, and the extension of it in the several States is unequal. The modification of this right is different in the adjoining States of Virginia and Maryland. But I have no satisfactory evidence that the essential privileges of freemen are better secured to the citizens of Maryland than they are to those of Virginia. There is a small variation in the modification of this right, between the States of Massachusetts and New Hampshire, but I believe it will hardly be asserted that the citizens of New Hampshire are more free, and have their liberties more secure and better protected, than the citizens of Massachusetts. But in every State certain modifications of that right have been deemed necessary. In all the States, that sex which is formed by nature to be the ornament of society, and which, in every kingdom, state, or nation, forms half, or nearly so, of the whole population, is excluded. Of the male population, those under twenty-one years generally form more than one half; these are also excluded. If to these classes we add various other individuals of several descriptions, who are excluded, it will, I presume, appear that considerably less than one-fifth of the whole population enjoy the right of suffrage in those States wherein that right is farthest extended. But will it be said that the remaining four-fifths or upwards, are in a degraded situation, stript of all privileges and destitute of the invaluable blessings of a free government, or that they have not equal security

for life, liberty, and property? I trust it will not. I farther observe that, so far as the actual proceedings of Congress in certain cases express their sentiments correctly, it does not appear to be their opinion that the right of suffrage, and of framing and organizing a Government by their own immediate representatives, is, in every case, necessary for the security of life, liberty, and property. In the Territories of the United States, for example, i. e., those parts which are not so far advanced in population as to obtain a State constitution, their government is organized immediately under the direction of the President of the United States. Their rulers can feel but a small degree of individual responsibility to the people over whom they are placed, and the immediate responsibility of the President himself is still less, and, from local distance, or other causes, even his control over the agents of his own appointment, is somewhat remote. If a President of the United States is not, in these circumstances, deterred from acting tyrannically, by his regard to the maxims of sound policy, by his attachment to the Constitution of the United States, the spirit and genius of our Government, and by his sacred oath, and his responsibility to the nation at large, he will feel but very little check arising from his responsibility immediately to the citizens of the Territories. It will not, I believe, be admitted that they are in a state of political non-existence, that their rights are sported with, that either their lives, liberties, or property, are insecure, or themselves slaves. In passing the act last session of Congress for the government of the ceded territory of Louisiana, it did not seem to be the sense of the House that this particular description of political rights was, in all cases, necessary. But will it be admitted that the inhabitants are hereby deprived of everything essential to freedom, and that all that is worthy of preserving is rendered insecure? No, Mr. Chairman, this will not be admitted. Though sincerely wishing that, as soon as it can be done consistent with a Constitutional provision and the plighted faith of Government, the right of suffrage, as it respects the several branches of Government, may be as liberally extended to the citizens of Columbia as to other parts of the United States, yet, permit me to observe, that if any people can be secure under the temporary suspension of this description of political rights, we would naturally expect it to be the case of those who are immediately under the fostering care of the Legislature of the United States. I see not what motive those who are, by their station, guardians of the Constitution of the United States, and the liberties of the Union, can have to oppress the citizens of the District of Columbia. Congress, it is true, possess a physical power to violate the Constitution, and to enact an oppressive statute which may operate injuriously against this District. So they possess the same kind of power to pass a law which may be oppressive to either of the States of Georgia or Vermont. In this case, should the Representatives of Vermont, for instance, not be deterred from voting for a law to oppress the State of Georgia, by their fidelity to the Constitution of the United States, and by their solemn oaths and general responsibility to the nation at large, they would feel but little check arising from their immediate responsibility to the citizens of Georgia; and so, *vice versa*, of the Representatives of Georgia, in case the statute should have reference to Vermont. Certainly but few members of this House can feel a less degree of responsibility to the citizens of this District than would be felt in either of these cases. But is there any more danger that a statute, intentionally oppressive, would be sanctioned in the one case more than the other? Besides, although the District of Columbia has no immediate representative on this floor, yet it has now, and as long as it continues to be the seat of Government, will, from its contiguous situation, probably retain virtually as efficient a representation as any portion of territory of equal extent and population within the United States; nay, it probably has now, and will maintain, a greater influence over the deliberations of this House, especially when the peculiar local concerns of the territory are under consideration, than some whole States. An honorable gentleman who has given considerable scope to his imagination in painting the danger of oppression and tyranny to which the District is exposed by the continuance of the present system, admits that there is no immediate present danger, that he presumes the present Congress harbor no designs of that nature; but he entertains frightful apprehensions of danger arising from the uncontrolled, tyrannical dispositions of future Congresses. I grant it to be somewhat of a natural disposition in mankind to entertain the suspicion that every body of men to whom power is delegated, will be prone to abuse it, unless an exception is to be made in favor of our noble selves. There, at least, we can probably view it safe. But though it may be admitted that such an event is barely possible, yet I wish not to harbor the supposition for a single moment. I will not admit it to be probable that the citizens of the United States will be less careful in time to come, than they are now, or than they have been in times past, in selecting men of probity and virtue to represent them on this floor. Let us rather cherish the pleasing anticipation that our successors will make progress in wisdom, in patriotism, and in every public virtue. Probably no member of this House will say that such an event is undeniable, or that there is not room. Should an extension of the elective franchise, and a local legislation be deemed expedient, this may, I believe, be effected without any of those Constitutional difficulties involved in a recession.

But were we even to admit that this horrible system of degradation and oppression did actually exist, and that both in point of principle and expediency, a retrocession was necessary, the resolutions before the Committee are wholly inadequate to the contemplated object. If it is necessary to recede certain portions of the District, in order to restore the citizens to their political rights, the argument must be equally forcible for retrocession of the whole. If it is contrary to the

spirit of our Government, and to every description of civil and political rights, that a District of ten miles square should be deprived of the elective franchise, it is certainly an equal infringement upon natural right that the City of Washington should be left in that situation. If it is wrong to exercise a tyrannical Government over the whole District, and if the present system is a tyrannical one, it is equally wrong to exercise it over the city. One, two, three, or four miles square ought no more to be tyrannized over than ten. So far, therefore, as these and similar arguments have any weight, they operate equally in favor of a retrocession of the whole as of a part. Should such a degree of confidence in the idea of this continuing to be the permanent seat of Government prevail, as to exclude all apprehensions of a future removal, it is highly probable that, before a very great lapse of years, the city would become, by far, the most populous of any part of the territory. Surely the political rights of the citizens ought to be as sacred as those of any part of the territory. With respect to the expediency of the retrocession, on account of the time necessarily spent in legislating for the territory, this, instead of being a growing evil, as seems to be apprehended by gentlemen, might, I think, probably be lessened. But whether this should be the case or not, the resolutions offer no adequate remedy for the evil; for if Congress has still to legislate for the city, there will be very little difference in respect to time between that and legislating for the whole territory, and it is even problematical whether there is really any expense of time; it is difficult to say, that the sessions of Congress would be shortened, or a cent saved to the public in that way, if the territory was receded. But should it be found necessary to spend a few days every session in legislating for this territory, it cannot be thought altogether unreasonable. For, with the exception of a very few of our largest commercial cities, I believe no portion of territory of the United States, of equal extent, contributes so largely to the revenue as the District of Columbia. Upon the whole, I hope the Committee will not agree to the resolutions.

Mr. ROOT said that he should not have troubled the Committee during the discussion of this question, had it not been for the very extraordinary promise made yesterday by the gentleman from Maryland (Mr. NELSON.) That gentleman, in the exordium of a lengthy harangue, had promised that, before he sat down, he would convince every member of this Committee, that the passage of the resolutions on your table, was both unconstitutional and inexpedient. As he has not performed this promise in full, my mind remaining yet unconvinced, notwithstanding the supposed force of his arguments, I owe it to that gentleman to state some of the reasons which induce me to believe that the passage of the resolutions are both Constitutional and expedient.

The gentleman from Maryland has indulged himself in declaiming against forced constructions of the Constitution, the chicanery of lawyers, and the villany of judges, and descanting upon the unwritten Constitution of England. And how, Mr. Chairman, has he attempted to prove that the passage of these resolutions is unconstitutional? If I understood him correctly, he attempted it by resorting to that construction which he affects to condemn. Because the Constitution has delegated to Congress the power of exercising "exclusive legislation in all cases whatsoever 'over such district, not exceeding ten miles square, 'as may, by cession of particular States and the 'acceptance of Congress, become the seat of the 'Government of the United States," and because Congress have accepted the cession of the District of Columbia, the gentleman seems to infer that Congress must, at all events, continue forever to exercise the exclusive jurisdiction over this District, and that no part of it can at any time, or under any circumstances, be transferred or receded. Whence, Mr. Chairman, is this inference drawn? Surely not from the Constitution itself, nor from the practice under that Constitution, unless by a very forced construction, indeed, and such an one as I would cordially join that gentleman in deprecating.

I should suppose, Mr. Chairman, if Congress, by the acceptance of the jurisdiction over this District, are inhibited by the Constitution from transferring the entire and exclusive legislation and sovereignty over that part thereof embraced by the resolutions now under discussion; that we cannot rightly delegate or transfer any part of the Legislative powers derived under the Constitution. The same principles which apply to the whole, are applicable to a part, and yet we see that certain Legislative powers have been delegated to the City of Washington. In one of the papers of this city we frequently see acts published with all the forms and solemnity of statute laws. Here we discover an exercise of Legislative powers upon subjects over which you have a concurrent jurisdiction. You have continued, and were but the other day engaged in passing a bill for extending certain Legislative powers to the Common Council of Alexandria, and yet I never heard the constitutionality of the measure called in question. But, sir, we have no occasion to have recourse to former practice, or opinions formerly entertained upon this subject. We need only to refer to the Constitution itself, and from that instrument, in my opinion, we can plainly and clearly discover the powers contended for by the mover of these resolutions. In the eighth section of the first article, it is ordained that "the 'Congress shall have power to exercise exclusive 'legislation in all cases whatsoever over such dis-'trict, not exceeding ten miles square, as may by 'cession of particular States become the seat of 'the Government of the United States." Many powers are delegated to Congress by this article, and will gentlemen contend that, because the Constitution has declared that "the Congress shall have power" to do certain acts, that they must and shall at all events exercise those powers? Congress have power to establish uniform laws on the subject of bankruptcies; they have exercised this power, but the bankrupt law is re-

pealed. Congress have power to fix the standard of weights and measures; they have never thought proper to exercise this power, and will gentlemen say that our predecessors, as well as ourselves, have by this omission violated the Constitution of their country? The Congress have power to declare war, and must this power be also put in exercise, whether occasion shall require it or not? Or are gentlemen ready to say that when a war shall once be declared, that a peace cannot be concluded? Although there is no express power delegated in the Constitution for the conclusion of a peace, yet I am induced to believe that the President and Senate, by virtue of their treaty-making power, might put a stop to the ravages of war whenever such a calamity should happen to this nation.

We are told, Mr. Chairman, that Congress cannot constitutionally recede any part of this District without the consent of the people; that citizens cannot be passed away and alienated as an article of property; that they cannot be bartered like "cattle" or like the "vassals of Russia," and the gentleman from Maryland has referred us to certain modest resolutions of a meeting in Alexandria, which have been communicated for the information of Congress. Such expressions are well enough calculated to amuse the ear, but whether these citizens are to be considered as vassals appendant to the soil, or otherwise, I have no doubt but the Constitution authorizes in express terms the transfer contemplated by the resolutions on the table. I perfectly agree with gentlemen in the position, that Congress possess no powers except those delegated in the Constitution; but I contend that the power claimed by the advocates of these resolutions is clearly and expressly delegated. I can point out, in the language of the gentleman from Massachusetts (Mr. THATCHER) the chapter and verse where such power may be found. By the eighth section of the first article, "the Congress shall have the power to exercise 'exclusive legislation in all cases whatsoever over 'such District, not exceeding the ten miles 'square," &c. Here we find the power of legislating without limitation or control on all subjects which may properly come before any Legislature. If the Legislature of a State can make a cession like the present, surely we possess the same power. The Legislatures of Virginia and Maryland, acting in their ordinary Legislative capacities, have ceded this District to the United States, and by the same principle we may recede. The Congress possess all power of legislation over this District, which is not forbidden by the Constitution. The power now claimed not being forbidden, nor denied to belong to the ordinary Legislature of a State, is already delegated to Congress, by the article to which I have just referred. I know, sir, that gentlemen have said that the consent of the people to the original cession was virtually expressed through their Representatives in the Legislatures of Virginia and Maryland. But I would ask if there is any article or clause in the constitutions of those States which expressly authorize their Legislatures to make that cession? And, if not, whether the people themselves, by any public act of theirs, specially authorized and instructed their Representatives to make the cession? I presume that neither can be shown; of course, it was but an ordinary act of legislation, growing out of a general delegation of powers. The same powers are possessed by Congress, and may be put in exercise even without the consent of these people; we can tax them without their consent; we can pass laws to bind them in all cases whatsoever, and I presume gentlemen will not think it necessary to ask their consent. By an ordinary act of legislation these people have been once assigned, like cattle, if gentlemen please, and I am ready to reaffirm them to the States where they originally belonged.

If, Mr. Chairman, the cessions of Virginia and Maryland were extraordinary acts of legislation not flowing from the ordinary Legislative powers, and as no special and express consent of the people has been pretended, I should suppose that those acts are void. These resolutions, then, amount to nothing more than a relinquishment of claim. If we have a bad rule, let us abandon it. But, I am inclined to believe that a State Legislature, acting in its ordinary Legislative capacity, may cede and transfer the jurisdiction over a part of her citizens and territory. Connecticut and New York have exercised this power; South Carolina and Georgia have done the same. The conclusion, in my mind, is, that Congress, in exercise of the ordinary Legislative powers over this District, as delegated in the Constitution, may rightfully adopt the resolutions on your table.

The gentleman from Maryland has endeavored to perform the second part of his extraordinary promise by calling those resolutions the "stepping stone" to a retrocession of the City of Washington; and another gentleman (Mr. THATCHER) considers them "but an entering wedge" to the retrocession of the city and the removal of the seat of Government. I confess, sir, that I do not feel much alarm at the observations. The retrocession of the city would not be to me a deplorable event. If any gentlemen will make a motion to that effect, I will cheerfully second him; and, indeed, I should not much deplore the event of a removal of the seat of Government. But I am willing to adopt the resolutions, as they are offered; we shall gain a great point by getting rid of those rival towns and their conflicting interests. If I cannot be gratified in full, I shall content myself by shaking off a part of this cumbrous load.

Mr. DAWSON.—The resolutions, which are now on the table, I had the honor to offer at the last session. I then thought that we ought to adopt them, and some reflection and observation, added to some occurrences which have taken place during the last and the present session, have confirmed me in that opinion, and that we ought to do it without delay. Could I, however, be taught to believe that, thereby we should, in the most distant manner, violate the Constitution, which I have sworn to support, or the contract which we

have made with the proprietors of land within the City of Washington; that we should impede its growth or prosperity, or do an injury to any part of the District of Columbia, I would immediately withdraw my support and give to them my opposition. The contrary are my firm convictions, formed after some experience and much reflection; and with a disposition most friendly to the City of Washington; a disposition which I have evinced on several occasions, and on none more than on the vote I shall give on this day. I do believe that, by the adoption of these resolutions, we shall give life and enterprise to the City of Washington; that we shall more truly establish it as the seat of our Government; that we shall free our national treasury from a heavy annual expense; and, above all, that we shall raise a number of respectable men from the humble and degraded state in which they now stand, to the more dignified one of citizens; these being the honest and disinterested convictions of my own mind, and these the advantages, it will not be a matter of surprise that I am an advocate of these resolutions. What are the objections, and what are the disadvantages, I know not, and as I have not ingenuity to anticipate, I must wait until gentlemen will furnish us with them, when they shall be acknowledged, or receive such answers as they appear to merit.

Without entering into the merits of this question, I must beg leave to mention one fact, which may meet an argument which I expect will be used here, as it has been elsewhere, and which has excited some alarm and some doubt with persons friendly to this city, as to the retrocession. It has been believed that there is connexion between the law fixing this as the permanent seat of Government, and that assuming the jurisdiction, and that a partial repeal of the latter will endanger the other; than this, in my judgment, no opinion can be more incorrect; the laws themselves are separate and independent, and the objects of them different and distinct, the one passed in 1790, the other in 1801; and here, sir, permit me to observe that the last law passed subsequent to the death of that person whose spirit a gentleman from Maryland has thought proper to introduce, and in my judgment, very improperly on the present occasion. I will not, however, believe that that person, if alive, would give his support to a law which goes to the destruction of those principles, in the attainment of which his whole life had been spent, or that he would have countenanced the doctrines advanced by that gentleman on this day.

Mr. DENNIS rose and explained.

Mr. DAWSON replied, that he had supposed that gentleman meant to apply his observations to the subject under consideration, which was a repeal of the law divesting the inhabitants of the District of the right of representation—and then proceeded: By the first, this is established as the permanent seat of Government, and a solemn contract entered into between the proprietors of land within the city, whereby they relinquished one-half to the General Government. This, sir, forms the obligation of the contract, from which we cannot depart without a violation of the public faith, and to do which I shall ever be found among the last.

The other was an act left to the discretion of Congress, which they might pass or not, according to their pleasure, and which could not, by any possible construction, affect the original contract, which would have been equally secure without it, and, in my judgment, more so. It was passed, and strange to tell, it was passed to gratify the wishes of a majority of this District, without any consideration on their part—for, be it remembered, that they have not made relinquishments to the Government, or contributions to the establishment of the city. I hope it will not long remain a stain in our code. I voted against it, and I have ever felt anxious to confirm that vote by advocating its repeal.

Mr. Chairman, to posterity and to the present age, it must appear a matter of astonishment, that at the seat of our representative Government, where it is presumed that its principles are understood, and within a few years after its adoption, a number of our most respectable citizens, some of whom had fought, and many of whom had contended for eight years for the rights of representation—on which all our other political rights are founded—come forward and pray you to divest them of it. Sir, when I cast my eyes on the table, and examine its contents, I am almost induced to doubt the reason of my senses; at the same moment, I behold a memorial from the inhabitants of Louisiana, just freed from the shackles of an arbitrary Government, written in the enthusiastic spirit of freedom, imploring you to grant to them the right of representation, as the first gift of God to man, and I espy the petition of the inhabitants of Columbia, the seat of our representative Government, begging you to divest them of that right, and to reduce or rather continue them in a state which the Louisianians esteem a degraded one. Whence, sir, does this arise? Where is the spirit which animated those persons—many of whom I know and respect—when, in 1776, they demanded *representation* or *death!* Has it expired in a few short years, or is it to be bartered "for as much trash as may be granted them?"—for a supposed increased value in their property? I hope, sir, we shall not be instruments to the contract, or the trustees for its performance.

These observations, Mr. Chairman, may answer to one which has been frequently made—"that a majority of the inhabitants of the District are opposed to the retrocession." Be that as it may, it has no weight on my mind. I am not disposed to adopt as my political guardians, or to appoint as the trustees of the rights of others, men who have voluntarily relinquished their own, and that right on which all others depend, the right of representation. However highly I may personally esteem, as I do, many of the characters, politically speaking, I view them as non-entities. I wish they were not.

Mr. D. then argued in favor of the Constitu-

tional right of Congress to repeal the law, and contended that there was not any connexion between the law establishing the City of Washington as the permanent seat of the Government, and the one assuming the jurisdiction over the District of Columbia; the first of them formed the obligation of the contract, for a valuable consideration, and for the performance of which the public faith was pledged; the passage of the second was left to the discretion of Congress, and might be repealed at their pleasure. To the several precedents which had been adduced to show the Constitutional right, he begged leave to add one which had not been mentioned, and which, in his judgment, was conclusive. The same section in the Constitution which gave Congress the right to assume the jurisdiction over the territory, gave them the right to "constitute tribunals inferior to the Supreme Court." The latter right has been exercised; inferior courts have been established, and completely organized. Judges were appointed, and the system went into operation; and yet, sir, two years ago, a large majority of this Congress thought that they had a right to repeal that law and put down the system. I now call on gentlemen, and I particularly invite those who favored that repeal, to show me a difference in the exercise of the two rights—except, indeed, that by that repeal you virtually discontinued officers who had received commissions, and which was relied on by the opponents to the repeal as their strong ground.

He concluded by saying, that, as there was no Constitutional bar, in his judgment, the interests of the city would be advanced by freeing it of useless encumbrances, which impeded its growth; that the parts of the District without the city would be benefitted by returning to their parent States; that the national treasury would be freed from a heavy annual unnecessary payment, which might go to the redemption of our public debt, or of our fellow-citizens in captivity; and above all, as it would raise a number of respectable persons from the unequal situation in which they now stand to the more dignified one of American citizens, he should vote in favor of the resolutions, and hoped for their adoption.

Mr. Goddard said he should not have risen on this occasion to discuss a subject already exhausted, but for the remarks of the gentleman from Virginia last up (Mr. Dawson.) If, said Mr. G., I understand that gentleman right, he stated that two acts had been passed by Congress over it—the one in the year 1790, the other in 1801—that the first act authorized the acceptance of a cession of a district of country, not exceeding ten miles square; the second, passed in 1801, assumed the jurisdiction over this territory—and that we have nothing to do but repeal this last act, and the jurisdiction reverts back to the States of Virginia and Maryland, from which it was derived. If this position be well founded, I should agree with that gentleman in one part of his argument, viz: that we have a Constitutional right to recede this territory, or in other words, repeal the act of 1801; but I think that position not well founded. In 1790, Congress passed an act authorizing the President to accept a cession of territory, to become the permanent seat of Government of the United States. The States of Virginia and Maryland made the cession accordingly. This done, the territory, as well as the jurisdiction over it, so far as they belonged to those States, was completely acquired by the United States. The States of Virginia and Maryland parted with all their right. The moment they made the several cessions the jurisdiction resided in the United States. Congress might not immediately begin the exercise of jurisdiction, but the right to do it was complete. By a recurrence to the act of 1790, I find a proviso annexed to the first section, in these words: "Provided nevertheless, that the 'operation of the laws of the State within such 'district, shall not be affected by such acceptance, 'until the time fixed for the removal of the Gov-'ernment thereto, and until Congress shall other-'wise by law provide." Congress, aware that it might not be convenient immediately to organize a government for this district, made provision for the operation of the laws of Virginia and Maryland, until such organization should take place. It hence results that as the laws of Virginia and Maryland were in operation here prior to the act of 1801, yet they were so under the sole authority of Congress; unless indeed, those States in the acts of cession made a reservation of jurisdiction until Congress should organize a government. Of this I am not certain; but if it be so, it makes no difference, because all the pretension on the part of these States to exercise jurisdiction, ceased when the event happened to which the reservation had reference, and, until that time, its exercise was sanctioned by the act of 1790. No jurisdiction therefore was acquired by the act of 1801. That act organized a government, provided for the erection of courts, the appointment of public officers, &c. Suppose we should repeal that act, what would be the consequence? Would the jurisdiction be thereby restored to Virginia and Maryland? Not at all. Congress might the same day pass another act, organizing the government in the same or in a different manner. The jurisdiction would still reside in the United States, and all the legislative power which could be in exercise here, must be exercised by Congress until we pass an affirmative act receding the jurisdiction to those States. And here permit me to inquire whether this does not furnish an answer to all the arguments which have been drawn from the analogy between the power which is given by the eighth section of the first article of the Constitution, authorizing Congress to exercise exclusive jurisdiction over this territory, and the clauses in the same section giving to Congress other powers? And whether the true difference does not consist in this, that in all the other cases we may pass laws and repeal them at pleasure, and the power will continue the same? In this case we are called upon to do more than repeal a law—doing that would not effect the object.

By other clauses in the same section of the first article of the Constitution, power is given to Con-

gress to establish an uniform system of naturalization, uniform laws on the subject of bankruptcies, establish post offices and post roads, &c. Gentlemen say, and very corrrectly, that in these cases Congress may, or may not, exercise the powers given by the Constitution—may pass laws this Congress and repeal them the next. This is doubtless true; and if by repealing the act of 1801 a recession would take place, and a future Congress could enact another law, the argument would hold. But we must pass a law ceding the jurisdiction. This once done Congress can never resume it, or again exercise the power given by the Constitution to legislate exclusively for this district while it remains the seat of the Government of the United States. Do we not, therefore, instead of repealing a law, in effect repeal one of the provisions of the Constitution and render it a dead letter? Can we fairly get along in any other manner than by considering the acquisition of this territory and the jurisdiction over it as one thing, and the constant exercise of legislative power here as another? As it respects the first, may we not consider the Constitution as *functus officio*—as having produced the effect which was intended? As it respects the last, we may repeal all the laws in operation here for the government of the territory, and still the right to govern may belong to Congress. And can we part with this right?

I am sensible, however, that difficulties attend this construction of the Constitution. I say construction, because I believe it cannot safely be affirmed, that there are any plain, positive words which decide the question in debate. We must resort to construction to ascertain the meaning of language. One objection to this construction, as forcible perhaps, as any which has been urged, arises from the succeeding clauses of the same paragraph of the same section: "And to exercise like 'authority over all places purchased by the con-'sent of the Legislature of the State, in which the 'same shall be, for the erection of forts, maga-'zines, dock-yards, and other needful buildings." Whatever may be our authority here, it is the same with respect to places purchased for forts, arsenals, &c. It will doubtless be found to be very inconvenient in practice, to adopt such a construction of the Constitution as would compel Congress to exercise this exclusive legislation forever over those places. Forts may be erected this year upon our frontiers. Hereafter when the country becomes settled, those places are no longer frontiers, and forts are no longer necessary. Exclusive legislation ought no longer to be exercised there by Congress. I can answer this objection only by resorting to known rules of construction, one of which is, that regard is always to be had to the subject-matter about which the instrument is conversant. Give it such a construction as that the object intended to be effected shall rather prevail than be destroyed.

In the one case, the object unquestionably was to obtain a permanent seat of Government for the United States; in the other, a temporary place for the exercise of military power so long as the condition of the country about it rendered it necessary. The United States must always have a place for the seat of the Government, somewhere; forts may not always be necessary anywhere.

The argument of the gentleman from Virginia (Mr. Clark) I cannot think is so conclusive as that gentleman seems to consider it. According to his argument, we are to find positive authority for parting with the jurisdiction of this territory, in the words of the Constitution, which have been so often read, "Congress shall have power to exercise exclusive legislation in all cases whatever." He says that the act which we shall pass to recede, is a legislative act, and we, in possession of all legislative power here, in all cases, have a right to exercise it in this, as well as any other case." The power then, which must be a subsisting one, to govern this territory exclusively, contains in it a power to deprive ourselves, and every future Congress, of the right of governing it at all, or of exercising any legislation here! But I am ready to admit that the question, whether we may constitutionally recede this territory, is a doubtful one, about which gentlemen may very well differ. But not perceiving the necessity or expediency of doing it, in that strong light in which it presents itself to some gentlemen, and entertaining doubts about the Constitutional right to do so, I shall vote against it. Before I sit down, I cannot but notice one remark, which fell from the mover of this resolution, Mr. Stanford. In representing the degraded situation of the people of this territory, he told us that they were wholly destitute of rights, and even the privilege of petitioning Congress was a matter of courtesy, not of right. Will that gentleman read the Constitution of the United States, and make this declaration in his place? Among the amendments which have been adopted to that instrument, the first article is in these words: "Congress shall make no law respecting an 'establishment of religion, or prohibiting the free 'exercise thereof, or abridging the freedom of 'speech, or of the press, or the right of the people 'peaceably to assemble, and to petition the Gov-'ernment for a redress of grievances." All laws which are or can be made for the government of this territory must be made by Congress. And we can no more pass an act, to operate here, which is repugnant to the principles and provisions of the Constitution, than we can, to operate in any other part of the Union. I cannot therefore but express my surprise at the declaration made by the gentleman from North Carolina, as well as others of a similar import. Gentlemen claim the exercise of power here, which is not only dangerous, but expressly denied us by the Constitution, which we are bound to support.

Mr. G. W. Campbell rose with great reluctance, at this late hour, to detain the Committee that had so long been engaged in the investigation of this subject; but he could not consent to give a silent vote on the question now under discussion, while arguments were used which he considered untenable, and which, if unanswered, might be considered abroad as governing the de-

cision that should be made. He would therefore claim the indulgence of the Committee, while he submitted, very briefly, some of the reasons that would influence the vote he was about to give. In examining the subject he would consider the question with regard to the Constitutional power Congress may have to remove the seat of Government as separate and distinct from the question whether, in the present state of things, they have a Constitutional right to recede the territory, or a part of it, while the seat of Government remained within it. He proposed, therefore, to consider, first, whether Congress have power constitutionally to carry into complete effect the proposed measure without first removing the seat of Government; and, secondly, if they have such power, whether there exists at present such a state of things as requires the exercise of that power. In order to comprehend the first view of the subject that he had proposed laying before the Committee, it would be necessary to recur to the Constitutional provision on the subject, and to the acts that have taken place in pursuance thereof. By a clause of the eighth section of the first article of the Constitution of the United States, often alluded to in this discussion, it is provided that "the 'Congress shall have power to exercise exclusive 'legislation in all cases whatsoever over such dis-'trict (not exceeding ten miles square) as may 'by cession of particular States, and the accept-'ance of Congress, become the seat of Govern-'ment of the United States," &c. This was a Constitutional provision by which the power to exercise exclusive legislation, &c., might become vested in Congress upon certain events taking place. Let us now inquire what were these events? and we shall find by the terms of the provision, that, in order to vest this power completely in Congress, two things only were necessary; first, a cession by particular States of a district, (not exceeding ten miles square;) secondly, the acceptance of such district by Congress as the seat of the Government of the United States. These things have taken place. A cession has been made of a district not exceeding ten miles square, by Legislative acts of the States of Virginia and Maryland, (which need not now be recurred to, not being in dispute,) and the said district was accepted as the seat of the Government of the United States by an act of Congress passed in July, 1790, and the territory of Columbia located pursuant thereto. The moment, therefore, that these previous requisites were complied with, the power to exercise exclusive legislation over such territory became vested in Congress by a Constitutional provision, and they could exercise it at any time afterwards at pleasure. They have accordingly assumed, and for some years exercised, the power of exclusive legislation within the said territory. This power being once fully and completely vested in Congress, by virtue of a Constitutional provision, (not as an individual that could alienate or abridge such powers, but as a body politic that cannot by their acts bind up the hands of their successors, or abridge their powers,) it cannot be divested from them, while the seat of Government remains in such territory, by any authority inferior to that from which it was derived. They may omit to exercise it, and for the present relinquish the jurisdiction, but they cannot by any act prevent a future Congress from resuming it, if they should be disposed to do so. Nothing can effectually annul the authority of Congress to exercise exclusive legislation within this district, while the seat of Government remains therein, but an amendment to the Constitution, a revocation equally as strong as the grant that vested the power. He called upon gentlemen to show in what way a Constitutional power once vested in Congress could be transferred, or how the right to exercise it could be so discontinued as to prevent a future Congress from resuming it by a repeal of the law, if the present Congress should pass one on the subject. He himself did not conceive it proper, or consistent with the fundamental principles of legislation, to give his assent to an act, the effect of which would be an attempt to abridge the powers of a future Congress. He would now notice an argument used by a gentleman from Virginia last up on this subject, (Mr. DAWSON,) which he believed when fairly examined would be consistent with, and support the position he (Mr. C.) had taken. That gentleman stated, that by the Constitution Congress had power to constitute tribunals inferior to the Supreme Court, that they had exercised that power and established circuit courts, and that Congress by a subsequent law abolished those courts, repealing the law by which they had been established, and hence he infers that Congress may recede the territory as they may repeal the act by which the exclusive jurisdiction of the same was assumed. He supposed the gentleman would admit, that this or any future Congress could re-enact the Judiciary system that had been abolished, or constitute other tribunals inferior to the Supreme Court, if they deemed it expedient so to do. This would not be denied. So far, therefore, as this case applied, he conceived it proved beyond a reasonable doubt, that should the present Congress relinquish the exclusive jurisdiction of this district, any future Congress could resume it at pleasure so long as it remained the seat of Government of the United States. For, as repealing the Judiciary law, and abolishing the circuit courts, did not deprive Congress of the power to re-enact the same system, or establish other inferior tribunals, neither would, by a parity of reasoning, a recession of the territory, or a relinquishment of the exclusive jurisdiction, deprive a future Congress of the power of resuming the same. In what situation will you put the people of this district by a recession? If the position he had stated was correct, which he firmly believed to be the case, the States of Maryland and Virginia would refuse to receive them as citizens, knowing that a future Congress may wrest them away from their control whenever they shall be disposed to resume the exclusive jurisdiction over them. It is admitted the States are not bound to receive them, and this power to resume the jurisdiction, which would still remain

in Congress, would be a substantial reason why they should not. The inhabitants would then be left without protectors or legislators, exposed to all the ruinous effects of anarchy and confusion. He considered it the duty of Congress to exercise exclusive legislation, either directly or indirectly, over the District of Columbia while it continued to be the seat of Government. Whether this was the most eligible place for a permanent seat of Government was a distinct question, on which he gave no opinion; at present he was not disposed to disturb it. But that Congress should have the power of exercising exclusive legislation over such district as might be made the seat of Government, was, in his opinion, proper, and a wise regulation, and much superior to leaving the protection of the National Government to the State authorities, and subjecting the Legislature of the Union to the inconveniences that might arise from the State regulations, or from the regulations that might be adopted by corporations not subject to the control of Congress.

An argument had been advanced by a gentleman from Virginia, (Mr. CLARK.) to prove that Congress had a right to recede, which, though it might appear ingenious, he conceived was not tenable, and could not be supported upon a fair investigation. It is insisted that the very article of the Constitution that vests in Congress the power of exercising exclusive legislation over such district as should become the seat of Government, does thereby, necessarily, vest in Congress the power to recede such territory; and the gentleman said, "we have the power to exercise exclusive legislation within such district in all cases whatsoever, we must therefore have the power to recede." This was a conclusion not warranted by, or deducible from the premises. For the power to exercise exclusive legislation within a certain district, precludes the power of transferring that right or power, or vesting the same in another. While the power remains in Congress a transfer of it is impossible, and the very act by which you would transfer this power (which would be the consequence of a recession, if it could be completely effected) would destroy its existence in Congress. That is, a power would be vested in Congress, by a Constitutional provision, which would be exerted to destroy or extinguish itself, and in so doing vest the right of exercising their power in another, which he conceived next to an absurdity. In fact the two propositions, of the power to exercise exclusive legislation, being vested in Congress, by a Constitutional provision, and the right to destroy or transfer that power being vested by, or necessarily included in the same provision, are in direct opposition, the one to the other, and like negative and positive quantities in algebra would destroy each other. He called upon gentlemen to show how the doctrine contended for could be supported, according to any known system of reasoning. If they could prove that the power of exercising exclusive legislation necessarily embraced the right to destroy that power, or to deprive themselves and their successors of it, they would discover a mode of reasoning with which he was not acquainted, and establish a kind of logical deduction, he believed, hitherto altogether unknown.

He would now consider the subject in the second point of view, which he proposed, to wit, whether if Congress possessed the power to recede the territory, there existed at present such a state of things as required the exercise of that power. He would ask was it good policy to recede at this time? Is there anything imperious that demands the measure at our hands? Would it not argue a restlessness and a disposition to change, to which mankind are in general so prone, but which he conceived ought to be checked and kept within proper bounds, that sufficient time at least might be given for fair and mature deliberation. Two reasons he had heard advanced and principally relied upon to prove the expediency of this measure—one, that the people of the District are in a state of slavery, and Congress their masters, and that having voluntarily relinquished their civil and political rights, and appearing willing to remain in this state of vassalage, they would be fit engines to enslave the rest of the Union. The other, that they are continually troubling the House and wasting our time, with their petitions and counter-petitions, their memorials and remonstrances. If the people of Columbia are now slaves, he would ask what was their condition when under the States to which they originally belonged before they were ceded to Congress? By an express provision in the act of Congress assuming the jurisdiction, the laws of the States of Virginia and Maryland, as they then existed, were declared to be continued in force in the said territory. The rights of the people were, therefore, secured to them, as far as was in the power of Congress, by this measure; and they enjoy, substantially, the same portion of civil liberty which they formerly possessed. He was also inclined to believe that some respect ought to be paid to the opinion which the people themselves form of their present condition; he could not suppose them so ignorant as not to know the difference between a state of slavery, in which they had been represented to be, and that of civil liberty; and yet we hear no complaints from them on this subject. He was, however, in principle, opposed to the doctrine of governing a people who did not enjoy the representative franchise; his political maxim on this subject was, that, in general, those who contribute to the support of Government ought to partake in the administration of it; but he conceived there might exist such a state of things as would render it more politic, and better for the people, to deviate in some degree from this maxim, than to risk the inconveniences that might arise from a too strict adherence thereto. He would promote any Constitutional measure that would give the inhabitants of Columbia the benefits of the representative principle. This he conceived might be substantially effected, by giving them a legislature, whose acts should be subject to the control of Congress. This would obviate in a great degree the objections that are made to the present condition of these people, on account of the trouble they

gave Congress and the time that is spent in legislating for them—and would leave little room to charge Congress with keeping them in a state of slavery, in the bosom of a country enjoying the most perfect liberty of any upon earth. But the people of Columbia by being degraded are to become fit engines to enslave the rest of the nation. He was sorry such an alarm was sounded at this time, when, he presumed, there was little cause for it. Did gentlemen judge from the present state of those people, or did they look forward to a time when this place was to become a second Rome, prostituted and corrupted by luxury and vice, the grave of liberty, and the scourge of the rest of mankind? He trusted those days that produced such events were long since passed, and, in the present enlightened age, not likely to return. But whence, he asked, can proceed the danger from the inhabitants of Columbia? Are they more corrupt than the rest of the Union? Are they more ignorant, or less alive to their rights and liberties? He had no reason to believe that this was the case. Is there any reason to suppose they will become enslaved under the government of Congress? Will those to whom are confided the rights and liberties of the whole Union, sacrifice the people of Columbia, by degrading them to a state of vassalage? Will not the members of the National Legislature bring with them the feelings of the people in the different parts of the Union from which they come? He presumed they would, and legislate for this district, in the same manner, as far as circumstances would permit, that they would for their constituents. If therefore the people at large enjoyed liberty and equal rights, so would the inhabitants of Columbia; they had their rights and liberty guarantied to them by the Representatives of the whole nation.

Mr. C. concluded by observing that the framers of the Constitution, and the State conventions that adopted it, who spoke the sentiments of the great body of the people of the Union, must have intended that there should be established a permanent seat for the National Government; and being convinced of this, from such high authorities, he would, by no act of his, countenance a measure, that would be likely to shake the confidence of the people in the public faith, give the appearance of instability to our national act, and finally tend to loosen the bonds by which the seat of Government was bound to this district. Believing the proposed resolution calculated to produce such effects, he had determined to vote against it, and he trusted that a large and decided majority of the House would coincide with him in opinion, and by rejecting the measure quiet the alarms it had occasioned, and evince to the public that some reliance, at least, may be placed in the stability of Government.

Mr. RHEA (of Tennessee.)—Having attended with pleasure to the discussion of the question now under consideration, I had designed as on every question heretofore, so also on this, to have given a silent vote, but I have felt myself constrained to state the reasons which govern this vote.

As this discussion may lead me to examine certain principles, I will take this opportunity to express my veneration for the superior wisdom which dictated them.

At the time the Constitution of the United States became obligatory on the particular States, they were bounded by ascertained limits; the sovereignty, jurisdiction, and right of each particular State, within its territorial limits, were secured, and the rights, privileges, immunities and franchises of the citizens were safe under the respective State constitutions.

The constitution of Virginia, after stating a relinquishment of claim to the territories contained within the charters erecting Pennsylvania, Maryland, North Carolina and South Carolina, proceeds to declare that, "the western and northern limits of Virginia shall in all other respects 'stand as fixed by the charter of King James the 'First, in the year one thousand six hundred and 'nine; and by the public treaty of peace between 'the Courts of Britain and France, in the year '1763; unless by act of this Legislature one or 'more governments be established westward of 'the Alleghany mountains."

The words used in this clause of the constitution of Virginia are, "shall stand as fixed," to evince that the limits of that State were unalterable, except as in the same clause is provided.

The constitution of Virginia, also declares expressly that "the right of suffrage shall remain as exercised at present;" the word "shall" is here again used, to evince that the right of suffrage was secured to every citizen, as an inalienable right, a right which, by the force of the terms, could not be surrendered.

The third article of the declaration of rights and constitution of the State of Maryland declares that "the inhabitants of Maryland are en'titled to all property derived to them from or un'der the charter granted by His Majesty Charles 'the First, to Cecilius Calvert, Baron of Balti'more." And the fifth article secures the right of suffrage to the citizens.

It would appear, by these express, unqualified declarations in the constitutions of the States of Virginia and Maryland, that the territorial limits of those States were made fixed and unalterable, except as to the making one or more governments westward of the Alleghany mountains, provided for in that of Virginia; and it does not appear, that any power is delegated in either of the same constitutions, to alter or change the territorial limits of either State, (excepting that, by the constitution of Virginia, one or more governments might be established westward of the Alleghany mountains,) or to cede any part of the territory of either to any other Power. There does not appear in either of the same constitutions, any expression of the public will, delegating power to cede away any of the citizens of either State, or, by a cession, to place them in a condition deprived of the rights of suffrage.

But it may be objected that the cessions of territory and citizen inhabitants which are stated to be made, were made after the ceding States had

adopted the Constitution of the United States, and that the Constitution being the supreme law of the land, anything in the constitution of any State to the contrary notwithstanding, therefore the clauses and articles in the constitutions of the States of Virginia and Maryland, before alluded to, so far as they would have reference to a portion of territory and citizen inhabitants to be ceded, were made null and void.

It is acknowledged that this objection may appear to have some claim to examination; but, if examined, it will appear to have no force.

It will be observed that there is no clause, section, or article in the Constitution of the United States imperiously commanding any particular State in this Union to cede territory to the United States for any purpose. An imperious command to cede territory could not be made. The second article of the Confederation and perpetual Union of the United States declares that "each State 'retains its sovereignty, freedom, and independ'ence, and every power, jurisdiction, and right, 'which is not by this Confederation expressly 'delegated to the United States, in Congress as'sembled."

This article operates as a guarantee by the United States to every particular State; and the second clause of the third section of the fourth article of the Constitution of the United States declares that "nothing in this Constitution shall 'be so construed as to prejudice any claims of the 'United States or of any particular State." Hence it may be inferred that this objection is without force.

This objection will appear more untenable by an examination of the seventeenth clause of the eighth section of the first article of the Constitution. (the clause on which the claim "to exercise exclusive jurisdiction in all cases whatsoever," &c., in the District of Columbia is bottomed.) the words used in this clause are not imperious—they do not command any particular State or States to cede territory to the United States; neither do they impose an imperious necessity to accept such cession from any particular State.

This clause indirectly presents a proposition to the particular States; the words used are, "over 'such District (not exceeding ten miles square) 'as may, by cession of particular States, and the 'acceptance of Congress, become the seat of the 'Government of the United States;" by this mode of expression, it is evident that it was understood that every particular State had the right, under its own particular constitution, to reject this proposition.

Hence it may be concluded that the articles and clauses in the constitutions of the States of Virginia and Maryland, before alluded to, are not impaired by the Constitution of the United States.

In the fourth section of the fourth article of the Constitution, it is expressly declared that "the 'United States shall guarantee to every State in 'this Union a republican form of government." This is a strong expression; when it is recollected by whom it is made, it will appear stronger. It is the voice of the sovereign people of this Union, before whose presence, at whose command, every fabric that they have not ordained to be erected must fall and moulder into ruin.

The words of the Constitution are, "WE," emphatically. "WE, the people of the United 'States, shall guarantee to every State in this 'Union a republican form of government." No book of political institute, ancient or modern, can produce an expression of the public will equal to this.

By the word "State," in this section, is not intended or signified mere soil or territory. No: by it is intended and signified a citizen-people, inhabiting a territory bounded by limits ascertained in their constitution. To these citizen-people comprising every State in this Union, we the people of the United States have guarantied a republican from of government.

At the time the Constitution of the United States became the supreme law of the land, the people inhabiting what is now the District of Columbia are presumed to have been, some of them citizens of the State of Virginia, the residue citizens of the State of Maryland, therefore, were respectively component part of those States, and were embraced by the emphatical word "WE," which stands first in the preamble of the Constitution. They, therefore, being component parts of the States of Virginia and Maryland, guarantied to all the people composing every State in this Union a republican form of government; and all the people composing every State in this Union guarantied a republican form of government to them. This guarantee was and is mutual and reciprocal. No citizen was excepted or excluded, and it cannot be made to appear that any citizen is or can be excepted or excluded from the operation of this principle declared in this fourth section of the fourth article of our Constitution.

This principle is capable of further illustration, evincing its power in aid of the State constitutions.

The citizens composing every State in this Union who have made and ordained a constitution, have, by that constitution, mutually guarantied to each other a republican form of government. At this point, the Constitution of the United States and the constitution of each particular State meet and continue to protect every citizen of every State in this Union in the possession and exercise of his liberties, privileges, and franchises, under a republican form of government.

If, then, these things be so, no good reason can be urged why any section of citizens shall be retained and confined under the dominion of a principle hostile to the grand principles which form the basis of the American Republic. As has already been observed, there does not appear to have been any imperious necessity compelling any particular State to cede territory and the citizen-inhabitants. There does not appear to have been any imperious necessity compelling the acceptance of any such cession; but it is understood that the States of Virginia and Maryland have made cessions of territory composing the District of Co-

lumbia and the citizen-inhabitants thereof to the United States, and they have been accepted, and by that acceptance many thousands of citizens have been deprived of rights and privileges, the possession and exercise of which, under a republican form of government, were solemnly guaranteed to them.

If there has been a splendid departure from principle to obtain an object not yet known, more than is the benefit from the cession resulting to the United States, to any particular State, or to any citizen in this Union, it may be most advisable to return, and to remove any impediment that may prevent the free operation of a republican form of government.

With this view of the subject, I shall vote in favor of the resolutions, impressed with an assured, solemn belief that it is my duty so to do. What remains is, to offer my grateful acknowledgments for the attention with which I have been honored.

Mr. Lewis.—Mr. Chairman: Hitherto I, having been silent upon the question under consideration, have been too much indisposed to do justice either to myself or the importance of the subject. After the very lengthy and able investigation of the resolution upon your table, it is with great unwillingness that I intrude upon the Committee at this late hour, when their patience must be exhausted, and when it is not probable that much new light can be thrown upon the subject. But upon a question so very interesting, and in its consequences so important, I am desirous of assigning some of the reasons which have determined me to give to these resolutions my decided negative. I am opposed to the resolutions for a retrocession of the District of Columbia, or any part of it, for two reasons: first, because, in my opinion, Congress do not possess the Constitutional power to pass them; and, secondly, because (even admitting they possessed the power) it would be inexpedient. I consider that, if the retrocession should take place, that a removal of the seat of Government would certainly follow, and the fundamental principles of the Government would be shaken to the centre. Such a measure I will never consent to sanction, and while I have the honor of a seat in this House, my voice shall be raised against it. I will never vote for a measure that shall in the most distant manner have a tendency to impair the principles upon which this District is based. Before Congress can retrocede the District, or any part thereof, not only the States of Virginia and Maryland, but the people of the District, must give their consent. The latter certainly had a right to the benefits of the Constitution, and cannot be transferred, without their consent, to any State whatever. But the gentleman from Georgia (Mr. Early) has said that the people of the Territory of Columbia had not been consulted when they were ceded to Congress, and that therefore their consent was not necessary on this occasion. Is this correct, sir? No; it is not a fact that they had no voice in the cession. They were represented in the Convention which ratified it, and they were represented in the State Legislatures who gave their assent to the cession. Their assent was necessary—it was obtained. The territory was ceded for those purposes expressed in the Constitution, and for those purposes only did the people consent to relinquish their sovereign rights. What were those purposes? That the ceded territory should be the permanent seat of the Government of the United States, and that Congress should exercise exclusive legislation over it. These were the express terms upon which the cession was made and accepted by Congress, and will it now be said that we can transfer or barter away these people like cattle? No, sir; they still have rights which they cannot be deprived of, without a shameful violation of justice and public faith. How have these resolutions been introduced? Has the State of Virginia or the State of Maryland expressed a desire that a retrocession should take place? I believe not. Have the people of the District who are to be affected by it petitioned in its favor? No; but the reverse is the fact. Resolutions have been received from the town and county of Alexandria denying the right of Congress to transfer them without their consent; petitions have been received from Georgetown and the City of Washton against it, and not one person in the District has come forward and complained of not being restored to his "long lost liberty." And I would ask whether the wishes of the people ought not to be regarded; and whether Congress will retrocede them in defiance of their will? I trust not. If Congress possess the power to transfer them to the States of Virginia and Maryland, they can transfer them to any other State in the Union, or (as the gentleman from Maryland, Mr. Dennis, has said) to the Emperor of Hayti. I trust that no gentleman of the Committee would be willing to do the latter. But gentlemen have said that the people of the District were troublesome to Congress. I never expected, sir, to have heard such a declaration upon this floor. The people have a right, by the Constitution, to petition for a redress of their grievances, and Congress is bound to listen to them; for, although deprived of an immediate representation, yet they are still the people of the United States, and, as such, are entitled to all the privileges of the Constitution, except that of being represented. If because the people are troublesome we are to transfer the District, the same reason might be assigned in favor of ceding any State to a foreign Power. But why, let me ask, sir, do not gentlemen propose a retrocession of Louisiana? Surely that province has been more troublesome than the District of Columbia, and the prospect is that it will be twenty times more so. But it is urged, as an argument in favor of the retrocession, that the District is small. And are we, Mr. Chairman, arrived at that period when justice shall be measured and limited by miles and bounds? If this be the case, then the little State of Delaware will, when compared with the State of Virginia, only be entitled to a proportion of justice as one is to twenty-two. This, I hope, is not the case yet.

The expense of legislating for the District has also been urged; but, in my opinion, it is neither troublesome nor expensive. If Congress have devoted some time to the affairs of the District, it must be recollected that they have devoted more to a number of individual cases. Will gentlemen look at the case of Amy Darden's horse, about which more time has been spent than about all the business of the District. I lament that the claim of this poor woman (which I have always considered just) should still be a subject of legislation and remain unpaid; but it has never been contended that the expense of legislating should prevent persons from having justice. Gentlemen have deplored the degraded situation of the people of this District. I acknowledge, sir, they are in a degraded situation; not because Congress exercised exclusive legislation over them, but because they contended for the right to transfer them without their consent, like so many cattle, (or slaves and nonentities, as they have been termed by gentlemen.) But how will the people in the county of Alexandria be restored to their "long lost liberty" by a retrocession to Virginia? Do not gentlemen know that in Virginia none but freeholders have the privilege of voting, and but a small proportion of the people would be restored to that inestimable right, and would be precisely in the situation in which they are at present in that respect?

After the able arguments which have been adduced against the resolutions, I will not detain the Committee with any further observations, but will content myself with giving to them my decided negative, and hope a majority of the Committee will not be found to sanction a measure fraught with such pernicious consequences.

Thursday, January 10.

The House proceeded to consider the amendment proposed by the Senate to the bill entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service:" Whereupon, the amendment, together with the bill, was committed to the Committee of Commerce and Manufactures.

Ordered, That the committee to whom was referred, on the fourth instant, a remonstrance and petition of the representatives elected by the freemen of the Territory of Louisiana be discharged from the consideration thereof; and that the said remonstrance and petition be referred to the committee appointed on the twelfth of November last, on "so much of the Message of the President of the United States, as relates to an amelioration of the form of government of the Territory of Louisiana;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

DISTRICT OF COLUMBIA.

The House again resolved itself into a Committee of the Whole on a motion of the twenty-ninth of November last, "to recede to the States of Virginia and Maryland the jurisdiction of such parts of the Territory of Columbia, as are without the limits of the City of Washington."

Mr. Williams, of North Carolina: Mr. Chairman, the length of time which has already been occupied in discussing the resolutions now under consideration, would have prevented me from saying anything at this late hour, but from some expressions which gentlemen have made use of by saying, that those who were opposed to the resolutions had in a measure given up the Constitutional objection, therefore they could see no solid reason why they ought not to be adopted. But I did not understand that objection was abandoned, and for my own part I consider that if the resolutions do pass they are contrary to the true meaning of the Constitution. Under these considerations I hope I shall be indulged whilst I offer to the Committee some remarks, and state my ideas on that clause of the Constitution which has so often been read and commented on.

The first article and eighth section of the Constitution, declaring the powers of Congress, in the last clause, says that Congress shall exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States. And we are now told by those who wish to recede this district, that, although the States of Virginia and Maryland have ceded to the Congress of the United States this district, and it has been accepted, that Congress can now recede whatever they think proper; this position I deny, and will endeavor to state what I think to be the true construction of that section of the Constitution. The powers which are delegated to Congress in the eighth section may be exercised or not, but the power still exists in Congress, and I take it that Congress cannot by an act of their own destroy the powers delegated to them by the Constitution; if they can it would be a useless instrument. But gentlemen have said that it would be very absurd if Congress could not repeal any law which they have passed; they certainly can, but does it follow from that, that the power ceases which was given by the Constitution? No, sir, it still remains discretionary in Congress to exercise whenever necessary. I shall therefore contend that the clause of the Constitution under which this district was formed depends on the same principle; that is, it cannot be receded and changed at the will and pleasure of Congress. I believe the convention by inserting that section intended there should be a permanent seat of Government, although they did not fix on the particular place where it should be, but left it in the power of Congress to carry that clause into operation. This has been done by a cession from the State of Virginia and Maryland, and accepted by Congress; that clause, therefore, being now made complete as any of the preceding clauses in that section, it is equally binding on us, as much so as if the district had been laid off by the convention.

But we are told that this district has been formed by an act of Congress, and of course they can dispose of it at pleasure. I admit it required Legislative aid for its completion; and all the

powers which were contemplated under that clause being completely vested in Congress, they are bound by it as much as any other part of the Constitution. Will not, then, a recession of this district destroy the object intended by that section, because, without this district, Congress have no power to exercise exclusive legislation, and that clause will be a mere nullity? There is another reason why I think Congress have no power to recede this district. When the Constitution of the United States was adopted, it was well understood that such a district, not exceeding ten miles square, would be laid off for the seat of Government. I therefore think that Congress have no more power to recede or dispose of it than any one of the States which have been formed and admitted into the Union, by an act of Congress, agreeable to the fourth article and third section of the Constitution. If, then, this district stands upon the same principle as the new States, gentlemen will not contend that they can dispose of those States at pleasure, for having been admitted into the Confederation, they stand upon the same footing with respect to being transferred as any of the States, which were in existence at the adoption of the Constitution. If, therefore, Congress have no power to dispose of one of the States belonging to the Union, except in cases of extreme necessity, for the safety of the nation, they cannot this district, both being formed agreeably to the express provision in the Constitution. To prove this, they have referred to the fourth article and third section, which says, that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States. But, Mr. Chairman, if gentlemen will strictly examine that clause of the Constitution they will see it does not apply to the question now before us, it only relates to the territory belonging to the United States; for the boundary was laid down before the adoption of the Federal Constitution, and it was well known there was a vast extensive territory which Congress would have to dispose of, which they are continually selling, and extending our territory, by extinguishing the Indian claims, and that is the true reason why we see that clause inserted in our Constitution.

Gentlemen have contended that the receding the jurisdiction of this District has no connexion with the removal of the seat of Government, and they have no such intention. I have no reason to doubt the declarations of gentlemen, but if the resolutions which they are in favor of should be adopted, it will have the same effect; because, if Congress can dispose of the District at pleasure, our seat of Government will be afloat; and although there may not be a majority of the members now in Congress who wish to remove the seat of Government, a few years hence there may be; and if the Constitution has no control over us, that clause is useless, and our seat of Government will be removed at the will and pleasure of Congress. We are further told that the jurisdiction of this District was not assumed until after Congress removed in the year 1801; but gentlemen certainly have not examined the laws by which Congress were invested with the jurisdiction of this District, and I am confident they cannot show any act of Congress assuming the jurisdiction, except the act of Congress in 1790. It appears that after the States of Virginia and Maryland had made provision agreeably to the Constitution for the cession of this District, by an act of Congress passed in the year 1790, a district not exceeding ten miles, to be located as hereafter directed, shall be, and the same is hereby, accepted for the permanent seat of Government of the United States; and, sir, the moment Congress passed that law, their jurisdiction was complete. For, although they did not exercise the jurisdiction, the power was vested in them, and provision was made for the government and regulation of the District by enforcing the laws of Virginia and Maryland until Congress should otherwise provide.

The reasons which the friends of the resolutions have advanced why we ought to recede the jurisdiction, are, that these people in this District have no rights secured to them under the Constitution, and that it is too troublesome and expensive to legislate for them. Let us examine and see whether these are sufficient reasons for Congress to recede the District. Gentlemen have asserted that Congress are the absolute masters over these people, possessing powers more despotic than any of the monarchs of Europe, and in order to relieve them from their degraded situation, which is so repugnant to the principles of our free Government, they wish to restore them to their former state of liberty and independence. If gentlemen had examined the Constitution, they would not have made these assertions; for, to my mind, there cannot be a doubt but there are certain rights and privileges secured to the people in this District, under our Constitution, which Congress have no more power to violate than they have the rights which are secured to the several States.

In the first article and ninth section of the Constitution it is declared that the privilege of the writ of *habeas corpus* shall not be suspended unless the public safety may require it; no bill of attainder or *ex post facto* law shall be passed; and can gentlemen deny that those rights are extended to the people in this District? Certainly not; because the limitation of the powers of Congress is general, and not confined to any particular State or district in the Union. Further, in the articles in addition to and amendment of the Constitution, there are a number of rights secured to these people. Congress can make no law respecting the establishment of religion, or abridge the freedom of speech or of the press. In fact, these people are equally secure in their persons and property, by a fair and impartial trial by jury, under the Judiciary Establishment in this District. But great stress has been laid on the clause giving exclusive legislation to Congress; and I cannot for my part see, that because Congress have a right to exclusive legislation over a district, they can exceed the express limitation of their powers. I think not. And the mighty cry we have heard about the degraded situation of these people is merely ideal;

they are secure under our Constitution, and perfectly content with their present situation. And I consider, that, because these people are troublesome, and it costs the United States something to legislate for them, is no reason for us to recede this District; for the same might apply to any other part of the Union. And if this District is such a monstrous evil which exists in our Government, and a nuisance, we ought to get rid of it, in a different manner than is now proposed—by amending our Constitution; because it was formed under that instrument. And believing as I do, that our seat of Government is permanently fixed by our Constitution, and although these resolutions do not go immediately to the removal of the seat of Government, they settle the general principle whether the Constitution does bind us or not, I therefore hope they will be rejected.

Mr. Stanton.—Mr. Chairman, I ask the indulgence of the Committee, while I take a view of the resolution on your table, which contemplates a retrocession of all the federal district, except the City of Washington. The advocates for the resolution in vain attempt to prove the constitutionality and expediency of the measure, I shall waive any observations on the ground of constitutionality, and will endeavor to confine myself to the question merely of expediency. Mr. Chairman, I confess I do not perceive the utility of this resolution; but, on the contrary, plainly foresee the serious evils that will inevitably result from its adoption. An honorable gentleman from the State of New York made an attempt to show the propriety of the resolution on your table; he frankly told the Committee he was not only willing to make the recession of Alexandria and Georgetown, but the City of Washington also, and that he had no objection to the removal of the permanent seat of Government. I thank the gentleman for his candor. I have believed, from the moment the resolution was offered to the House, that it meant something more than merely the retrocession—that it was introduced as an opening wedge, for the removal of the seat of Government; although I am free to declare, that I verily believe the mover of the resolutions was actuated by pure motives, and does not wish a removal of the present seat of Government, yet it is very probable that other gentlemen are aiding the measure with that view. The gentleman from Virginia, who I now see in his seat, supported the resolutions with such ingenuity and talents, that he almost persuaded me to become a convert and sign his Koran; though he was unfortunate in having a bad cause, yet he managed it admirably, and merits much praise. The honorable gentleman from Georgia, who spoke early in this debate, took occasion to quote part of an excellent prayer, one of the best in the world. He said "Lead us not into temptation;" I beg leave to repeat the following part of this inimitable prayer, "But deliver us from the evil of adopting this resolution," which is pregnant with many evils. Mr. Chairman, as the subject and patience of the committee is already exhausted, I will not trouble them longer, but conclude by observing that the District of Columbia is a legitimate child of the Constitution; although a refractory and expensive one, yet it is, in my opinion, premature and unwise for a parent to neglect, or refuse to foster his legitimate offspring. At the same time I deplore as much as any gentleman on this floor, the unpleasant situation of the citizens of this district, with regard to their deprivation of the elective franchise. It is one of those evils that grows out of our Constitution, and we must yield to it, as it is a less evil than to make frequent innovations on the Constitution and laws of our country, which never fail to weaken the reins of Government. Mr. Chairman, these are the principal motives that will induce me to give my vote against the resolution.

Mr. Stanford.—The gentleman behind me, from Rhode Island, does me honor, to be sure. He acquits me of any intention of a removal of the seat of Government. But says, however, he cannot help thinking a little about the beauties of Edenton—the beautiful spots about that town. Mr. S. was at a loss to understand well the application of the gentleman's inuendo. He did not know for his part anything about the beauties of Edenton. He had never been in that town in his life. The allusion, therefore, could have no reference to him. Having disavowed, early in the debate, the least intention of that kind, he thought it might have sufficed, but if it would do, he would again declare as the mover of the resolutions, that to remove the seat of Government would be one of the last votes he would give. As a pledge that such was not his intention he had consented that the city itself should be excepted from the intended cession, and not from any idea that its jurisdiction was necessary or could be retained to the General Government with advantage, for, indeed, he believed the contrary.

Being up, he said he would just observe in answer to the gentleman from Connecticut, (Mr. Goddard,) who had expressed some surprise at the opinion that the people of this district held no rights but those of courtesy, and, to evince the contrary, had read the third amendment of the Constitution, intended to protect religion, the press, and the right of petition. He would acknowledge he had advanced such an opinion, and still believed he was right. Congress had the exclusive right of legislation over this district in all cases whatever, and consequently could, if they thought proper, pass an alien or sedition law to operate within the district. The eighth section of the first article gave Congress sole and exclusive power in so many words, and these formed an exception to the general system, a kind of political death-warrant to the people of this territory. The amendment read, therefore, can only apply generally to the people of the States, but not to any within these devoted bounds. The saving clauses of the Constitution were intended for others, not for them. They were in his opinion excluded from all the boasted privileges of citizens of the United States.

The gentleman from Pennsylvania, (Mr. Lucas,) who had been esteemed for ingenuity on most

occasions, certainly was not as happy as usual upon the present. He had dwelt much upon the preamble to the Constitution, to show that some rights still remained to the inhabitants of the district, and had read with some emphasis the beginning words, "We, the people." Now these words were certainly the most unhappily selected of any in all the Constitution. No person in the district can read those words with application to himself. They can never read only as the sad "memento" of what these people once were. "We, the people of the United States," are words implying the free agency and sovereign sway which they, the people of the United States, have reserved to themselves in their own Government. Their voice when heard must be obeyed, but what voice have the inhabitants of this district? What were they intended to have? None, in his opinion. And yet we hear much about their rights, a people disfranchised, entirely divested of all agency in their own affairs, have rights! Subjects at the will and pleasure of Congress; and yet rights to claim and assert! He believed they were without any, or the shadow of any. The different speakers upon that occasion had attempted to show rights of an implied or constructive kind; but, for his part, he thought the Constitution would not bear any such construction, at any rate none had been given satisfactory to him; nor indeed could he be persuaded that the framers of that otherwise happy instrument intended that they should have any.

He had nothing more to say than to express his consolation, that a much stronger vote was like to be given in favor of the resolutions on the present, than had been on the former occasion, and that it was his earnest hope and wish that the subject would not be suffered to sleep.

Mr. SMILIE advocated, and Messrs HUGER and CLAIBORNE opposed the resolutions; when the question was taken on agreeing to the first resolution, for receding that part of the District formerly attached to Virginia, and passed in the negative—yeas 42, nays 62.

The question was then taken on the second resolution, for receding that part of the District, excepting the City of Washington, formerly attached to Maryland, and passed in the negative—yeas 42, nays 65.

The Committee then rose, and reported their disagreement to the resolutions.

The House immediately took the report into consideration.

Mr. ALSTON said, he did not rise for the purpose of entering into a lengthy discussion of a subject, which has already occupied so much time; in his opinion much more time had been consumed, than the importance of the subject merited.

Although, in Committee of the whole House, there had appeared to be a considerable majority against the resolutions for receding the District of Columbia to the States of Virginia and Maryland, yet he had a hope that the House would not concur in the report of the Committee of the Whole, on the first resolution, which only went to the recession of that part of the district which lay on the other side of the Potomac, to the State of Virginia. Most of the reasons which gentlemen had urged against the recession, had been bottomed upon an idea that this measure was only a stepping stone to the removal of the seat of Government from this place altogether.

Those objections could not have any weight, provided that part which formerly was a part of the State of Maryland was retained. He believed some gentlemen had voted against the resolutions, under an impression, that the friends to the recession had it in contemplation to remove the seat of Government. Mr. A. said, he would only answer for himself, that no such idea had entered his head; he had no desire ever to see it removed from this place, and was he now called upon to give a vote for a permanent seat of the Government of the United States, it would be for this place, in preference of any other; to remove it from this place would be one of the last votes he should think of giving.

He felt at this time indifferent as to the second resolution, which was, to recede to the State of Maryland that part of the district which was taken from that State; he hoped that gentlemen before they decided finally upon this question, would take into view the real situation of the people and the district. The district was composed of a people, who had been heretofore governed by laws passed by two different States; they were separated by the river Potomac; their manners, habits, intercourse, and trade, were very different; their separate interests and wants were as different as those of almost any two States in the Union; that no one uniform system of laws would satisfy them; that so long as they were under the immediate control and government of Congress, strife and discontent would be the inevitable consequence. A great deal had been said about the sentiments of the people of the district, and that they were very much opposed to being receded; whether this was a fact or not, he did not pretend to say, but he verily did believe, if the recession of that part of the district which lay on the other side of the river was made, and the people restored to Virginia, that in a very little time they would become much better satisfied, than they now were.

Mr. BEDINGER.—This question has been so fully discussed, that I have not the vanity to think that I shall be able to change the vote or opinion of a single member of this House. But as it is an important question, and as I believe attempts will be made, and have already been made to mislead the public mind, by pretending to explain the motives of those who are in favor of the resolutions, therefore, to prevent as far as I can a mischief of this kind, I am induced now to come forward briefly to declare my opinion. I deny having any intention to remove the seat of Government from this place, and my vote on former occasions will justify the assertion. I am unwilling to sacrifice the vast sums of money which have been expended here on the public buildings; I am also unwilling to sacrifice private property and national confidence, and all this without obtaining any advantage to the Union. I am, and have uniformly been, a friend to this place as the seat of Government, and being so, I will do all I can to support the Constitutional rights of the citizens of the territory; and in voting for the resolution, I hope I am acting in conformity to the declared intention and spirit of the Constitution, which requires us "to secure the blessings of liberty to ourselves and our posterity."

Much has been said on the constitutionality of this question. The Constitution has on this question been examined with the utmost attention; but I believe not one single sentence has been found, which (without a forced construction) is in opposition to this resolution, but, on the contrary, I think the spirit as well as the letter of the Constitution grants this power. The third section of the fourth article reads thus, "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States;" and if we attempt to secure the blessing of liberty to ourselves and our posterity, I believe this resolution will afford us an opportunity; and although I am certain my vote will be recorded with the minority, I still feel a conscious satisfaction in the propriety of my vote. I will not refuse to the inhabitants of eighty-four square miles out of one hundred, the territory of Columbia, (computing the city at four miles square, or sixteen square miles.) I will not by my act deny them the right of suffrage or representation, so long as I think the spirit of the Constitution and the principles contained in the declaration of rights may be violated thereby. To the many objections which have already been made against continuing this territory in this degraded situation, I will add one more, which is, I think it is a bar to its population; and whether the granter or the refuser of equal rights, is its greatest friend, is a question (I think) not hard to determine by a republican; for my own part I would not wish to live in a territory, to raise a son in it, who should thereby imbibe the servile principles of slavery from his infancy, and I have no doubt but there are many who will on this account remove from it, or, being out, will be willing to stay there. When we consider this place as a permanent seat of Government for the United States, (for the happiest people in the world,) and this House the school of politics, to teach our youth the art of virtuous legislation, and where the true spirit of liberty ought to dwell, shall we here refuse to cherish the principles which made us an independent nation, and doom this place (of all others on the continent) the first to perpetual slavery? I hope not. Would such a condition help to form a more perfect union, establish justice, or insure domestic tranquillity? I think the contrary will be the result, and so far as the experiment has already been made, this truth cannot be doubted; this territory not being secured in any State rights by the pale of any constitution, in the case of a bad administration might become a bone of contention, the seat of usurpation, and an asylum for all those villains who might flee from justice, as they might here meet with protection; as the rights granted to States by the Constitution to demand from States criminals who flee from justice, does not apply to this territory; add to this the power of a disaffected party, and it will be difficult to calculate the extent of the evils which may arise from one, which at first view, to many may appear at present but small. For these and many other reasons, I am opposed to the report of the Committee of the Whole, and in favor of the resolution.

Mr. DENNIS.—The discussion of the principles involved in the resolution has taken a wide and extensive range in the Committee of the Whole, and the subject has generally been considered as exhausted. In the outset of that discussion, in a reply to the author of the resolution, I hastily suggested to the Committee what appeared to me the prominent points involved in the proposition; and without going much into illustration of my own propositions, contented myself with the expectation that they would be enforced by other gentlemen of more ability than myself. In this expectation, I have not been disappointed, and it was therefore that I have sat as a silent and attentive observer of the several speakers, who have done me the honor of noticing my remarks, and have heard some of them perverting arguments which were used and others ascribing to me such as were never expressed, without an intention to reply. But, I have perceived, that as the discussion in Committee embraced at the same time both resolutions, some gentlemen voted then under the idea of voting on the two resolutions together, and are inclined to vote differently in the House on the first resolution from their vote in Committee. I must therefore be pardoned, for reminding them, that every objection on the ground of constitutionality, expediency, and of violation of private right, applies as forcibly to a recession of part, as to the whole, and will claim the indulgence of the House whilst I make some remarks in reply to the observations of some of the speakers, in support of the resolution.

To attempt a reply to them all, and to recapitulate all the leading arguments against the resolutions, would not be admissible at this late hour of the day. I shall confine myself to replying to some prominent observations, and to the statement and illustration of such propositions as result from and go to refute them. In all discussions of this nature, those who hold with the weaker side of the question, choose to misconceive the strong points of their adversaries, or cautiously to avoid them. It is necessary, therefore, that I should distinctly state the primary objections to the resolution, on the Constitutional question; and when this is done, it will be seen, that after all the fine and metaphorical speeches of our opponents, few of them have touched at all the real point in controversy: that they have confounded together, the cession and acceptance of the district, or the object on which the exclusive legislation of Congress is to be exercised, with the power to exercise, at any given time, their exclusive legislation. And because they see that Congress may omit to exercise any given legislative power at any particular pe-

riod, over a standing object of legislation, have very logically concluded that they may alienate that very object of the legislative power itself. Here let me tell these gentlemen, once for all, that I do not deny the power to repeal the act of assumption, but that this repeal does not, and cannot reannex the territory and its jurisdiction to the States to which it formerly belonged; and that the motion before us is not to repeal the act assuming and exercising the jurisdiction, but proposes to divest us of the territory itself, which is the subject of the exclusive legislation of Congress.

Believing that Congress were limited in the exercise of their powers by the Constitution, not only in relation to the number of the objects, but also in the extent of their power over any given subject, I have called on those who have heretofore expressed their enmity to constructive power, to show me the authority for divesting themselves and their successors of one of the standing objects of the legislative power. The gentleman from Virginia (Mr. Eppes,) first up in reply, contented himself in a great degree, with railing at the errors of the Convention—their folly and their wickedness, in inserting into the very heart of our political systems, that cancerous principle, which, unless speedily suppressed, must soon consume the very vitals of national liberty. Having exhausted the stores of his imagination on this subject, he at length thought it necessary to offer some reason and authority for the exercise of so strange a power. Admitting no express power is to be found, he enters into the wide field of construction, and tells us that it is incidental to sovereignty. That, by the definition of the best writers, legislative power and the sovereign power are convertible terms, and that it is one of the incidents of sovereignty to alienate territory. [Here Mr. Eppes rose to explain.] Mr. Dennis, after hearing the explanation, said, he still understood the gentleman, if he was understood by him at all, as inferring the power from the supposed convertibility of sovereignty and legislative power.

I do not deny that in some countries, the sovereignty and legislative power are the same, and that it is an incident to alienate territory and jurisdiction. But ours is a limited legislative power, and the power which we possess is more restricted than even that of the States. For, as it relates to State authority, all power is delegated except what is prohibited; but the reverse of the proposition is true as relates to the General Government. I do not deny your right to sell territory, but your power to sell a legislative power, a right of exclusive legislation, vested by the Constitution, for a particular purpose, and not contemplated as an object of barter, and of sale, or donation, is what I do deny.

The two gentlemen from Pennsylvania, (Messrs. Findley and Smilie,) are next in order on the Constitutional question. The former gentleman, whose understanding, stored with the fruits of a long experience in legislative life, I have been taught every day more and more to appreciate, commenced his remarks, by telling us there was no question before us but that of expediency; that the constitutionality of the proposed transfer, was a self-evident proposition. I confess, sir, I should have been better satisfied, and should have thought it more conformable with the habits of that gentleman, to have undertaken to demonstrate a proposition which his friends, at least, thought required some argumentative support, than in assuming, as conceded, the very point in controversy. But, although he considered it an axiom, and too plain to be reasoned upon, in the outset of his remarks, yet we see him afterwards undertaking to illustrate this axiom, and to prove it accordingly, he tells us, like his colleague, that the power results from the power of repeal. But does he not perceive that by the very same arguments that he undertakes to prove that we possess all the power of our predecessors in repealing laws, that our successors will possess the same that we do; and that if we repeal the act of assumption, they may repeal the repealing act and revive the jurisdiction?

But it is considered by many, and it is reasoned from as a conceded point, that Congress may not only elect to exercise their legislative power or not, over the district when acquired, but there is nothing obligatory in the Constitution as to the obtaining of a federal district at all; that if they choose they may forever hold their sessions in a place within the territorial and jurisdictional limits of a State. This is a doctrine which I deny, and of which no proof has yet been afforded in the elaborate argumentation of the friends of the resolutions; unless it was intended that a federal district should be acquired in which the operations of the Federal Government were to be conducted free from the possibility of control by State authority, the whole paragraph is a dead letter; and although I have admitted that when such a district shall have been acquired, you may exercise, or not, the exclusive legislation vested in Congress, yet I do contend that the Constitution is imperative, so far as that such territory shall be acquired, and over which this exclusive legislation shall always potentially exist—in the same manner that a power to make a bankrupt law shall always exist, although you may exercise it or not, at discretion. Surely the non-exercise of a power does not annihilate it, for, if so, we have already annihilated several powers committed to our charge, and may annihilate the whole.

The next gentleman who has favored us with his remarks on the Constitutional question, is a gentleman from Virginia, and whom to distinguish from the numerous speakers from that State, I will call the new member from Virginia, (Mr. Clark.) This gentleman certainly gave us a very handsome and ingenious speech, and, like a man of analysis, at once saw and seized the question in controversy, laid down his premises, and regularly drew his deductions. Aware of the extent that the principles advocated by his friends would carry them, and that all their doctrines were predicated on the principle that the power not expressly prohibited to Congress was granted, he admitted the correctness of the converse of the

proposition, and declared he would not contend for the exercise of the power unless it were expressly delegated. Here he conceded more than was required; for, in my turn, I do admit that we may not only exercise the powers specifically delegated, but such as are clearly necessary to carry them into effect. He then proceeds to declare that the express power of making a retrocession is to be found in the words "exclusive legislation;" that exclusive legislation and omnipotent legislation are synonymous terms; and having the power of exclusive legislation over the District, we may do with it whatever in the plenitude of our own potency we may think proper.

I confess, sir, it would never have occurred to me that the most appropriate language in which to delegate a despotic legislative power, was that of exclusive legislation; nor have I ever annexed any other idea to the use of a term which seems to some gentlemen to contain such magical force; or thought that the exclusive legislation to be exercised by Congress meant anything more than a legislative power to be exercised, exclusive of State authority, under the limitations as in other cases. Truly, according to this gentleman's construction, it ought to have been denominated, excluding legislation, as it goes to vest in us the power of excluding from ourselves and our successors one of the permanent objects of the legislative power.

The plain and manifest meaning of the word is to be found in the nature of our Government, which is an *imperium in imperio*, which, as it relates to the action of its legislative power, differs from any other nation in the world. The Federal Government acts over the same territory and the same persons which are operated upon by the governments of the States, and they, in many cases, have a concurrent legislative authority. For example, a State may impose a tax on carriages at the same time that Congress have acted upon the same objects; and it is so in an infinite variety of cases. But in the district selected as the seat of Federal authority, it was thought proper that Congress should have the entire control; and this was to be effected by the power of legislating exclusively of State authority. I am sure the good sense of that gentleman, on a little reflection, will satisfy him of the correctness of this interpretation, and that he will admit the necessity of resorting to some other part of the Constitution to find the express delegation of the power in question, without which, he admits, it is not to be exercised.

That gentleman, however, seems to have been aware that he ought not to depend for the support of his doctrine on such equivocal authority as the term alluded to, and, therefore, resorted to the third section of the Constitution as another authority by which the power was expressly vested. It reads as follows: "The Congress shall have 'power to dispose of, and make all needful rules 'and regulations respecting, the territory or other 'property belonging to the United States; and 'nothing in this Constitution shall be so construed 'as to prejudice any claims of the United States, 'or of any particular State." What other meaning can be attached to this clause, but that of vesting in Congress the right of selling their vacant territory, that is, the right of soil therein? So far from contending for this right of legislating over their territory being considered by the Convention as vesting an omnipotent control over it, as is now contended, and so fully were they impressed with the limited nature of the powers vested in Congress by the Constitution, that they deemed it necessary to delegate to Congress an express power to sell their territory and other property. But it is not the property in the soil, or any other property that you are now about to alienate, but a legislative power—a right of jurisdiction; and if this clause vests in you this power, then you may alienate every other power, and transfer your whole legislative authority to some foreign State. This clause, therefore, proves too much, and the gentleman will discover that the power to alienate territory or other property is as inappropriate to the object of selling legislative authority, or of abridging Congressional jurisdiction over an object of their legislative power, as the term, exclusive legislation.

But, it were vain, sir, to examine into the different theories and authorities of my opponents on this subject. They all tell you the power exists. Some say it does not exist but by implication; others that it does exist by express delegation. Those who contend for it by construction, derive it from different sources; those who say it is plainly written in the Constitution, differ as to the clause and section where it is to be found; although they are all equally astonished that no one else can discover it. Some find it expressly given in one place, and some in two. In this manner they prove, themselves, that it no where exists. That it is not expressly given is clear, or else all would see it in the same place—that it is not given by the construction is equally clear; for it will not be contended that it is necessary or incidental to the execution of any other delegated power, since we may carry into effect all powers without resorting to a retrocession of the district. Indeed, sir, it is a strange sort of constructive power, which vests in Congress the right to alienate a part of its legislative authority, to put itself under the entire control of another jurisdiction, which may prevent us from going on with the national business, altogether, and executing our other powers, and to assign as a reason for it, that it is an incidental power, or a power necessary to carry into effect other powers.

Mr. Speaker, the time was, when the assertion of this doctrine of constructive power, was regarded as a usurpation in Congress, which, unless speedily checked, would result in melting down the State sovereignties into one mass of national authority, and end in establishing a limited, if not an absolute monarchy. The time was, when the exercise of a power which appeared by fair and necessary construction to be necessary to carry into effect the powers vested in Congress, was regarded by the then jealous guardians of State and popular rights, as the acts of tyranny and

oppression. I allude to the case of the alien and sedition laws. Here the exercise of a constructive power excited the jealous apprehensions of our patriotical politicians, and Congress were equally assailed by the pop-guns of new-paper paragraphists and political pamphleteers, and by the heavy artillery of legislative assemblies. The advocates of these measures admitted there was no express authority given for the exercise of these powers. But, with reference to the alien law, they said, that Congress were invested with the power of the national defence; and if they had no power to expel from their shores the citizens or subjects of a hostile nation, who might from time to time be landed on our territory under the pretext of seeking an asylum in the nation, but intending in this way to insinuate them into the very heart of our country, to be in readiness to join an invading army, it were vain to undertake the execution of the important trust committed to their charge. They therefore claimed, at a dangerous crisis, the right to exercise that power, as incidental and necessary to carry into effect their specified powers. The same power was inferred in the same manner in the passage of the other law, since without the power of suppressing sedition, and the means necessarily leading to it, the Government itself must be subverted. Can any person say there was not better ground for the authority in those cases, if constructive power is at all to be indulged, than in the present instance? And how will the former jealous opponents of constructive power, contend for a doctrine which breaks down all the barriers of the Constitution interposed between the rights of the people and the States on the one hand, and Congressional omnipotence on the other? A principle which establishes the doctrine that the powers not expressly prohibited to Congress, or expressly retained, are granted to them in absolute sovereignty!

But, sir, the paragraph of the Constitution, and the establishment of the District, which is a creature of it, have been distinguished by many and very odious appellations. By a gentleman from New Jersey, (Mr. ELMER,) it has been denominated an excrescence of the Constitution. This gentleman is a professional man, and, as the doctrine of excrescences is connected with his profession, ought to be better acquainted with the term than myself. But my idea of an excrescence is that of a fungus or other substance growing out of a previously existing body. It is presumed that this part of the Constitution is coeval and coexistent with every other part of the instrument. If therefore it become an excrescence because this gentleman chooses so to call it; another gentleman may call, and in the same way make, any other obnoxious passage of it an excrescence; and a third and a fourth may do the same, until the whole body of it will be composed of excrescences; and as these political doctors will conclude they have a right to cut away excrescences, the whole Constitution will be cut to pieces by the sharpened knives of our Legislative surgeons.

[Here Mr. ELMER rose to explain, and said he did not say it was an excrescence of the Constitution, but of the body politic.]

To which Mr. DENNIS replied, it did not alter the case, as in the same way he might make the Constitution an excrescence of the body politic.

Other gentlemen have christened the District with various names, and assigned to its political state the appellation of a *monster*; and this monster has at different times, and in the imagination of the different speakers, assumed multifarious qualities and various forms. It has never yet been seen, nor has it yet devoured a single citizen of the District; but it is supposed to be a hydra, which, with its hundred mouths, will soon commence its destructive career, (though these prophets cannot foretell the precise period when it will begin,) and will first eat up all the men, women, and children, in certain parts of the territory, and then overleap its barriers and devour the nation. But it is a little singular, and a phenomenon not yet to be explained by our naturalists, that this monster lurks only on the Virginia side of the Potomac, and in that part of the territory, within the former limits of Maryland, lying to the north of Rock creek; and that whilst it occasionally crosses and recrosses the river, it should never attempt to come within the magical circle with which our philosophers have environed the City of Washington! And, sir, it is a little wonderful, that amidst all the sympathies of these gentlemen for the good people of Columbia, they have never glanced their benevolent eyes towards the dangers of the city! It now remains for me, sir, to make a few remarks relative to the degraded state in which the imaginations of our political metaphysicians have placed the people of this District.

And first of all let me ask, if they be in that abject and deplorable state of slavery which is supposed to exist, who have been the foolish or wicked agents that have put them there? I presume they have been placed in their present situation by the General Convention, the Legislatures of Maryland and Virginia, and the act of Congress accepting the cession. Of course, the members of these bodies, respectively, must have been either so foolish as not to perceive the effect of their measures, or a very cruel, hardhearted set of men, who, from the mere love of sporting with the rights of their fellow-men, have doomed them to civil and political despotism. There seems to be no alternative between their folly and their wickedness. However, Mr. Speaker, it may be that these bodies, and particularly the General Convention, who were the primary agents in this business, and who have been generally considered by foolish people as equally wise, virtuous, and patriotic, were both fools and despots. As the whole American people and the world have been mistaken upon this point, it is equally probable that the people of the District, their wise men, their professional men, and their judges, who have generally thought that the several provisions of the Constitution restricting the exercise of a despotic power, whether by the Legislative, Executive, or Judiciary departments, applied to this District and other territories, as well as to

the people of the States, have all been under a gross mistake; that, though they are in the daily habit of experiencing all the practical benefits of civil and political right, except of actual representation, they are mere slaves. But there is no doubt these mists of error are now dissipated, and that they, and all the world, will now be convinced of their mistakes by the omnipotent logic of the illuminated and illuminating supporters of the resolution.

It has been again and again shown, that all the restrictions on the powers of the several departments, both in the body of the Constitution and the amendments thereto, are equally applicable to the people here as to any other people in the Union. At this late hour I will refer you to the fifth amendment only. It is therein declared, "that no person shall be held to answer for a capital or otherwise infamous crime, unless by a 'presentment or indictment of a grand jury, except in cases arising in the land and naval forces, 'or in the militia," &c., "nor shall any person be 'subject, for the same offence, to be twice put in 'jeopardy of life or limb; nor shall he in any 'criminal case be compelled to be a witness 'against himself, nor be deprived of life, liberty, 'or property, without due process of law; nor 'shall private property be taken for public use 'without just compensation." Does this clause apply to the people here, or does it not? If it does not, I cannot see why it does not, and the supporters of the resolution have forgotten to demonstrate that it does not so apply, though no doubt they can easily do so.

Can a people thus guarded be justly obnoxious to the odious appellation of political slaves; and is there any evidence they are so, but the reveries of our sympathetic philosophers? No, sir, the people who feel themselves safe and secure in their rights, and independent in their political opinions, smile at these political quackeries, and know they are to all substantial purposes as well situated as the constituents of those who speak so much about the abstract rights of man. It is true they have no actual representation, but if on that account they are slaves, what will many of them be if restored to Virginia; and what are those citizens of Virginia who, possessing no freehold, are deprived of the right of suffrage? I mention not Virginia here for the purpose of obloquy, but because her right of suffrage is more limited than any other State; because she has been already mentioned by a gentleman of that State, (Mr. JACKSON,) and because, if it be true, that every man who is deprived of a right to participate in the choice of representatives be a political slave, then Virginia will have more of this class of men than any State in the Union. Though the consequence is inevitable, I know the fact will not be admitted by some of the advocates of the resolution. This will prove, sir, that this doctrine of representation and taxation is not susceptible of regulation by the precise rules of arithmetical proportion, and admits of deviations perfectly consistent with the substantial freedom and happiness of a people.

Again, sir, I have been charged with advocating doctrines anti-republican and anti-revolutionary, tending to despotism, and incompatible with the rights of man. Those who make these assertions would have been prudent to have consulted the Declaration of Independence, and re-examined the principles in which originated the Revolution, in order to see how far those principles may be found to comport with or contravene the principles of the resolutions before us; and whether the support of the principles of the resolutions be the best evidence that they are entitled to be regarded as the exclusive champions of those great and essential principles of liberty whereon have been raised the independence and glory of our country. Not having done so, let me do it for them.

One principle of the Revolution was, that of resistance to Parliamentary supremacy, and a claim to apply to us a system of measures and of government contrary to that we had chosen for ourselves, and a right to dispense with certain great and fundamental principles which seemed to belong as well to the colonists as the mother country.

Here the omnipotency of Congress over these people has become a familiar phrase, and claims are set up which seem to regard the people of the territory as the absolute slaves of Congress, who, like the bondmen of ancient Europe, are to be transferred from one master to another as so many appurtenances to the freehold.

Another principle of the Revolution was, that the people have a right to choose their own governors; but these people have chosen Congress for their governors, and these champions of the Revolution say the people here are incapable of judging of their own interest, are unworthy to be consulted, and must be transferred to Maryland and Virginia. It was another grievance complained of by the authors of the Revolution, that the mother country attempted to impair the rights secured by charters and legislative promises at the time of the emigration of our ancestors, and which constituted the leading motives for that emigration.

Here you are about to violate the most solemn engagements, in confidence of which the people of the District have given up whatever rights they may have formerly possessed, which have induced many of them to emigrate from Europe and elsewhere, and here to vest the whole of their pecuniary resources, and to look to Congress for the exercise of that exclusive jurisdiction which they have preferred to the government of the States, to whom the territory formerly belonged, and this, too, in the very teeth of their remonstrances. I might sum up the whole catalogue of grievances which were the foundation of the Revolution, and show that there was not a single violation of our civil or political rights in that instance, which you are not about to sanction in the passage of these resolutions.

I know, sir, some gentlemen have told us that we have no evidence that the people assented to the exercise of Congressional authority, and were

oppression. I allude to the case of the alien and sedition laws. Here the exercise of a constructive power excited the jealous apprehensions of our philosophical politicians, and Congress were equally assailed by the pop-guns of newspaper paragraphists and political pamphleteers, and by the heavy artillery of legislative assemblies. The advocates of these measures admitted there was no express authority given for the exercise of these powers. But, with reference to the alien law, they said, that Congress were invested with the power of the national defence; and if they had no power to expel from their shores the citizens or subjects of a hostile nation, who might from time to time be landed on our territory under the pretext of seeking an asylum in the nation, but intending in this way to insinuate them into the very heart of our country, to be in readiness to join an invading army, it were vain to undertake the execution of the important trust committed to their charge. They therefore claimed, at a dangerous crisis, the right to exercise that power, as incidental and necessary to carry into effect their specified powers. The same power was inferred in the same manner in the passage of the other law, since without the power of suppressing sedition, and the means necessarily leading to it, the Government itself must be subverted. Can any person say there was not better ground for the authority in these cases, if constructive power is at all to be indulged, than in the present instance? And how will the former jealous opponents of constructive power, contend for a doctrine which breaks down all the barriers of the Constitution interposed between the rights of the people and the States on the one hand, and Congressional omnipotence on the other? A principle which establishes the doctrine that the powers not expressly prohibited to Congress, or expressly retained, are granted to them in absolute sovereignty!

But, sir, the paragraph of the Constitution, and the establisment of the District, which is a creature of it, have been distinguished by many and very odious appellations. By a gentleman from New Jersey, (Mr. ELMER,) it has been denominated an excrescence of the Constitution. This gentleman is a professional man, and, as the doctrine of excrescences is connected with his profession, ought to be better acquainted with the term than myself. But my idea of an excrescence is that of a fungus or other substance growing out of a previously existing body. It is presumed that this part of the Constitution is coeval and coexistent with every other part of the instrument. If therefore it become an excrescence because this gentleman chooses so to call it; another gentleman may call, and in the same way make, any other obnoxious passage of it an excrescence; and a third and a fourth may do the same, until the whole body of it will be composed of excrescences; and as these political doctors will conclude they have a right to cut away excrescences, the whole Constitution will be cut to pieces by the sharpened knives of our Legislative surgeons.

[Here Mr. ELMER rose to explain, and said he did not say it was an excrescence of the Constitution, but of the body politic.]

To which Mr. DENNIS replied, it did not alter the case, as in the same way he might make the Constitution an excrescence of the body politic.

Other gentlemen have christened the District with various names, and assigned to its political state the appellation of a *monster;* and this monster has at different times, and in the imagination of the different speakers, assumed multifarious qualities and various forms. It has never yet been seen, nor has it yet devoured a single citizen of the District; but it is supposed to be a hydra, which, with its hundred mouths, will soon commence its destructive career, (though these prophets cannot foretell the precise period when it will begin,) and will first eat up all the men, women, and children, in certain parts of the territory, and then overleap its barriers and devour the nation. But it is a little singular, and a phenomenon not yet to be explained by our naturalists, that this monster lurks only on the Virginia side of the Potomac, and in that part of the territory, within the former limits of Maryland, lying to the north of Rock creek; and that whilst it occasionally crosses and recrosses the river, it should never attempt to come within the magical circle with which our philosophers have environed the City of Washington! And, sir, it is a little wonderful, that amidst all the sympathies of these gentlemen for the good people of Columbia, they have never glanced their benevolent eyes towards the dangers of the city! It now remains for me, sir, to make a few remarks relative to the degraded state in which the imaginations of our political metaphysicians have placed the people of this District.

And first of all let me ask, if they be in that abject and deplorable state of slavery which is supposed to exist, who have been the foolish or wicked agents that have put them there? I presume they have been placed in their present situation by the General Convention, the Legislatures of Maryland and Virginia, and the act of Congress accepting the cession. Of course, the members of these bodies, respectively, must have been either so foolish as not to perceive the effect of their measures, or a very cruel, hardhearted set of men, who, from the mere love of sporting with the rights of their fellow-men, have doomed them to civil and political despotism. There seems to be no alternative between their folly and their wickedness. However, Mr. Speaker, it may be that these bodies, and particularly the General Convention, who were the primary agents in this business, and who have been generally considered by foolish people as equally wise, virtuous, and patriotic, were both fools and despots. As the whole American people and the world have been mistaken upon this point, it is equally probable that the people of the District, their wise men, their professional men, and their judges, who have generally thought that the several provisions of the Constitution restricting the exercise of a despotic power, whether by the Legislative, Executive, or Judiciary departments, applied to this District and other territories, as well as to

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I know, sir, some gentlemen have told us that we have no evidence that the people assented to the exercise of Congressional authority, and were

not consulted in the original transfer. To this remark it would be a sufficient answer, that in the formation of the Federal Constitution, every individual of the United States consented, that if the particular foot of land on which he resided should be included within the ten miles square, he would submit himself to the exclusive legislation of Congress. But although this is the way in which the sense of a people is usually ascertained, to wit: by the sense of representatives, we need not the aid of such support in the present instance. If these skeptics will look over the files of Congress, they will find petitions signed by almost every person living within the three counties of which this District was originally composed, who was capable of signing a petition, counting that jurisdiction as one of the greatest blessings you could extend to them, with which they are still satisfied, and of which it is now proposed to deprive them.

And why are they to be deprived of the right of choosing for themselves? Because they formerly belonged to Maryland and Virginia, and because by restoring them to their former situation they must be so much more eligibly situated, that they and everybody who resists it must be fools, or regardless of all the rights and blessings of a Republican Government. A gentleman from Virginia (Mr. Clark) has used a very strong comparison between the government of Congress, and of the States of Maryland and Virginia. According to that gentleman, by restoring the people on the west side of the Potomac who are the objects of the first resolution to the State of Virginia, they are to experience the kind and indulgent protection of a parent, instead of the cold indifference and petulance of Congress—an ill-natured stepdame. Perhaps, sir, this idea might be enlarged upon, and in the estimation of that and other gentlemen we might greatly enhance the happiness of the whole American people by releasing them from the jurisdiction of this peevish, crusty, cold-hearted, ill-natured stepdame, and putting them under the kind, maternal, and fostering patronage of this tender and affectionate parent.

Another gentleman from Virginia (Mr. Eppes) has talked much about the blessings of self-government, and other gentlemen have spoken much of the necessity of destroying that monster, which they call taxation without representation. In the first place it may be answered that the people here are not taxed for local purposes, except in their several corporations where they are represented. But if the people must be restored to self-government, as one of the greatest blessings man can enjoy, let them be blessed with self-government in reality, and not merely in name. If this horrific monster must be slain, let the people of Columbia be gratified in destroying him with their own hands, and in their own way. Let him be stifled by a territorial government. Let the people of the District have the entire management of their concerns, and let them enjoy the benefits of a representation and of a government in which their voice will be heard, their will obeyed, and their interest promoted; where they will have the substance, not merely the apparent and nominal blessings of the representative principle.

All those who think we may not only suffer the legislative power over the territory to be exercised by the States of Maryland and Virginia, but who also think we may transfer forever the very object itself on which the legislative power is to act, must admit the right to delegate the power to a subordinate authority within the District. I believe myself we cannot transfer the District itself and reannex it to Maryland and Virginia, but that we may consent that an inferior legislative power may regulate the internal concerns of the District, but over which we shall always have the power of revision and control, and of which we cannot divest ourselves or our successors. This power has been already practically recognised in delegating to the several corporations within the District, a legislative power to a certain extent, and which is also recognised by the States in the establishment of their respective corporations. Instead of depriving the people here of the blessings of self-government, as some have conjectured, I have always been of opinion, and still retain my first impressions on the subject, that a Territorial Legislature ought to be extended to the people of the District, reserving to Congress the exclusive right of legislating on certain matters connected with the public property, and their own convenience. And always having the power of repealing or annulling any improper act, we shall retain in our hands all the benefits and advantages of exclusive legislation, whilst we avoid the trouble of regulating the local concerns of the District.

I will now conclude my remarks, after having imposed too long, I fear, on the kind indulgence of the House, by observing, that if the sentiment of the poet be correct that "partial ill is universal good," notwithstanding my abhorrence of the resolutions on account of their injurious effects on the people of the District, I am in some degree reconciled to the proposition on account of the information which has been imparted by the supporters of the resolutions in their various theories and commentaries on the abstract and imprescriptible rights of man, tending so much to the edification of the American people and the advancement of Republican Government.

Mr. Holland.—Mr. Speaker: I rise, sir, to exonerate myself from the charges so liberally cast upon me and upon the friends of the resolutions, by the gentleman from Maryland, (Mr. Dennis.) That gentleman is not contented to find himself in a majority, but he has indulged himself in reprobating the motives of the minority; he has charged them not only with an attempt to violate the Constitution, but also of having a design in a tyrannical manner to take away the sacred rights of all the people of the United States, as well as the rights of the people of this territory; but the gentleman has failed to demonstrate these charges by showing in what manner the Constitution would be violated or the rights of the people impaired. Notwithstanding the severity of his strictures he has not specified any rights that could in the least be affected, except the value of a small portion of private property that might undergo a temporary depreciation, from an apprehension that the measure was a prelude or stepping stone, as it has been called, to the removal of the Government from this city. But, sir, apprehension of this kind on the enhancement or depreciation of a small portion of private property is of little consideration when it comes in collision with the public convenience—it being a political axiom that private emolument or expectations of pecuniary interest must give place to public good; and I also admit that all the argument in favor of a partial cession would apply with equal force to a cession of the whole, and was it not for the apprehensions that a cession of the whole would excite, I should prefer it; and so soon as the people are convinced that a removal is not the object, I should cheerfully cede the whole territory. For the present it will be sufficient to cede all without the city. But I am of an opinion that the measure will have but little effect upon the private property of this place; so soon as it is known that a removal is not intended, all private property will regain its intrinsic worth. But, I would ask, what bearing can the making municipal regulations for the people within the ten miles square have upon the removal of the Government from this place? To my mind the continuance here will be prolonged by the measure proposed. So long as you continue to legislate for these people you will be placed in a disagreeable situation; to legislate for a people whose interests and localities you are unacquainted with, and to whom you are not responsible, is to me an unpleasant task, and has a tendency to sour the minds of the members; and as it will be attended with considerable expense, and prolong your sessions, it ultimately will produce a general disgust unfavorable to this city. The measure proposed is to relieve all future Congresses from a difficulty—the continuance of which will increase the evil, without any possible good under the sun. Let it be remembered that the transfer of the jurisdiction does not transfer any of the valuable and realised property that the Government has secured at this place. It will continue to be the property of the Union. It is not the power that we have of making laws for this territory that will be any inducement to the continuance of the seat of Government here. Its permanency rests upon other principles. This is a central position, suited to the convenience of a large majority of the people, and the Government having acquired much valuable property and comfortable accommodations here is the cause of our sitting here. But so soon as this is changed—when the period arrives that it will be more for the interest and convenience of a large majority of the good people of the United States—they will remove, and they ought to remove, to a place better suited to their convenience. Nor do I consider that there is anything in the Constitution that will prevent the removal at any time when the general sentiment shall dictate the measure, which, in my opinion, will not be in a short period; not until the population of the new acquired territories very much changes the state of things. But has the gentleman demonstrated in what manner the rights of the people of the United States are involved in this question? He has said it, and has left us to conjecture in what way a recession can affect their rights. And for myself, I cannot conceive of what consequence it is to the people of the Union whether the people of Columbia enact their own laws or whether they are made in conjunction with the States of Maryland and Virginia, or made by the Congress of the United States; they can be affected in no other way than in a pecuniary point of view; and a recession would exempt them from this. In every other respect the municipal regulations of the people of this district to the people of the United States is a thing of no consideration. It might afford an agreeable sensation to see them governed as freemen, enjoying the rights of other citizens.

I am not a little surprised at an opinion given by a gentleman from Pennsylvania (Mr. Lucas.) That gentleman seems to think that the people of this territory at present enjoy as much freedom as the citizens of Virginia, and was he to choose his residence, he would make choice of this territory, as being the place of the most political freedom. I think if the gentleman would reflect, he would find himself incorrect. When we consider a people in their collective or national capacity, individual, political disfranchisement is not to be noticed—then, in a national point of view, what is the comparison? Virginia has the sole power to make and execute her own laws, either by the citizens collectively or in their representative capacity. She forms every regulation necessary to their State government, and she has long been in the possession of a right, and has exercised it, of being ably represented in both Houses of the Congress of the United States. Let me ask the gentleman from Pennsylvania if these are not highly important political rights—rights peculiar to a free government—such rights as are not enjoyed by the people of Columbia? I admit, with the gentleman, that these people have civil rights. They are secured in their persons and property; they can sue and be sued. So can aliens; but these people, like them, have no political rights. They may be said to be politically dead, and to return them to the States from whence they were taken, would restore them to the rights of citizens; yet it is said to be an act of tyranny to revest them with those rights that have been, and I hope ever will be, considered as sacred to freemen. The gentleman from Maryland has said that, by the Constitution, Congress is commanded to exercise exclusive jurisdiction over this district, and that this injunction is extended to all succeeding Congresses; but, in reading the Constitution, I am unable to discover any such command. By the Constitution, Congress is invested with exclusive legislative power over this District, and over any other portions of territory that may be ceded by any of the States for the purpose of arsenals,

&c.; but this investment of power, like many other powers that are given by the Constitution, is not obliged to be exercised. The exercise of these powers must be a matter of sound discretion, and ought to be exercised only when the public good requires it. Does the gentleman see to what extent this doctrine goes? After Congress has exercised a jurisdiction, if they are unable to decline that jurisdiction, but must continue to exercise it over all the cessions that may be made by the States, the consequence will be that by a strange kind of inability in the General Government she will become a monster, and eventually swallow up all the State jurisdictions. The extent to which this principle goes demonstrates its absurdity. The Constitution has vested Congress with exclusive legislation over this territory; or in other words, with sovereign legislative jurisdiction; (exclusive and sovereign, as it applies to the powers of Congress relative to this territory, meaning the same thing.) it follows that Congress has sovereign legislative power over the people of this territory. This being the case, the power of Congress is unlimited; bound by no law but their own will. The will of the sovereign is the law of the sovereign. Congress, therefore, has nothing more to do on this occasion, than to consult its own will, and in doing this Congress should exercise a sound discretion; and if upon mature deliberation it shall be found inconvenient for them to continue the exercise of this power, they may say at what time, and in what manner, and to whom they will transfer it. There is nothing that has given importance to this question but the mere circumstance of this territory being the seat of Government. Divest it from this, and consider it in the abstract, and it will be found that the Constitution does not limit the transfer of their power over any other territory over which they have exercised a jurisdiction. Indeed, the gentleman from Maryland gave up the ground of contest. That gentleman admitted that Congress had a Constitutional right to give to the people of this District a territorial government. That is, that Congress could rightfully cede to the people of this district a part of their legislative powers. This being admitted, does it not then follow that they may cede the whole of their legislative powers to the people of this District? and if they can to the people of this District, cannot they also cede it to the people of this District as being connected with the States of Maryland and Virginia? This to my mind would be the most natural kind of cession. For what purpose would you cede to the people of this District the powers of a territorial government? Would such a government be consistent with the general interest, or give satisfaction to the people of the territory? So far as we have experienced the operation of territorial governments they have been unfavorable, and they have been obnoxious to the people. The people of those governments soon become hostile to their rulers, and press forward to obtain the rights of freemen. It is not in the nature of man to be contented with half freedom. If you give them a territorial government they will be discontented with it, and you cannot take from them the privilege you have given. You must progress. You cannot disfranchise them. The next step will be a request to be admitted as a member of the Union, and, if you pursue the practice relative to territories, you must, so soon as their numbers will authorize it, admit them into the Union. Is it proper or politic to foster an arrangement that will lead to this? Is it politic to add to the influence of the people of the seat of Government by giving a representation in this House, and a representation in the Senate equal to the greatest State in the Union? In my conception it would be unjust and impolitic, and to avoid this and other evils, I shall vote against the report of the Committee of the Whole, and in favor of the original resolutions.

The question was then taken by yeas and nays on agreeing to that part of the report which involved a disagreement to the first resolution, and carried affirmatively—yeas 87, nays 46, as follows:

Yeas—Nathaniel Alexander, Simeon Baldwin, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dennis, William Dickson, Thomas Dwight, John B. Earle, James Elliot, William Eustis, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Thomas Plater, Samuel D. Purviance, Thomas Sammons, Thomas Sandford, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Willis Alston, jun., Isaac Anderson, John Archer, George Michael Bedinger, Phanuel Bishop, John Boyle, William Butler, Christopher Clark, Matthew Clay, John Dawson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, Edwin Gray, John A. Hanna, Josiah Hasbrouck, Joseph Heister, John Hoge, James Holland, Walter Jones, Simon Larned, Michael Leib, Andrew McCord, David Meriwether, Nicholas R. Moore, Jeremiah Morrow, James Mott, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, John Stewart, Joseph B. Varnum, Daniel C. Verplanck, John Whitehill, and Alexander Wilson.

Mr. Smilie moved to amend the second resolution by striking out the words "without the limits of the City of Washington," so that the city as well as the other parts of the district might be receded.

Only twenty-one members rising in favor of this motion, it was lost.

The question was then taken by yeas and nays on agreeing to the report of the committee, involving a disagreement to the second resolution, and carried affirmatively—yeas 69, nays 39, as follows.

Yeas—Nathaniel Alexander, Simon Baldwin, William Blackledge, Adam Boyd, Robert Brown, Joseph Bryan, George W. Campbell, John Campbell, Levi Casey, William Chamberlin, Martin Chittenden, Clifton Clagett, Thomas Claiborne, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, John Davenport, John Dennis, William Dickson, John B. Earle, James Elliot, William Eustis, Calvin Goddard, Andrew Gregg, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Holmes, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, William Kennedy, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, Nahum Mitchell, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jr., Thomas Plater, Samuel D. Purviance, Thomas Sammons, Thomas Sandford, John Smith, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, Lemuel Williams, Marmaduke Williams, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Isaac Anderson, John Archer, George Michael Bedinger, John Boyle, William Butler, Christopher Clark, Matthew Clay, John Dawson, Peter Early, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, John A. Hanna, Josiah Hasbrouck, Jos. Heister, John Hoge, James Holland, Walter Jones, Simon Larned, Michael Leib, Andrew McCord, David Meriwether, Nicholas R. Moore, Jeremiah Morrow, Jas. Mott, Gideon Olin, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, James Sloan, John Smilie, Richard Stanford, John Stewart, Daniel C. Verplanck, John Whitehill, and Alexander Wilson.

So the said motion was rejected.

The question was then taken on agreeing to the whole report of the committee, and carried—yeas 50, nays 28.

Friday, January 11.

Mr. Leib, from the committee appointed, presented a bill to amend the charter of Georgetown; which was read twice, and committed to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the report of the Postmaster General, of the seventh instant, to whom was referred the memorial of Robert Henderson, of the State of South Carolina; and, after some time spent therein, the Committee rose and reported progress.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" to which they desire the concurrence of this House.

Mr. Winston, a member of this House for the State of North Carolina, informed the House of the death of his colleague, Colonel James Gillespie, late one of the members of the said State in this House: Whereupon,

Resolved, That a committee be appointed to take order for superintending the funeral of James Gillespie, late a Representative from North Carolina, and that this House will attend the same.

Ordered, That Mr. Alexander, Mr. Winston, Mr. Holland, Mr. Wynns, Mr. Dickson, and Mr. Winn, be appointed a committee pursuant to the said resolution.

Resolved, unanimously, That the members of this House will testify their respect for the memory of the said James Gillespie, by wearing crape on the left arm for one month.

DRAWBACK OF DUTIES.

Mr. Crowninshield, from the Committee on Commerce and Manufactures, to whom was referred the memorial of Thomas Ketland, of the city of Philadelphia, merchant, made the following report:

The petitioner, with John Ketland and James Williamson, all of Philadelphia, in June, 1799, purchased the ship Washington, in London. It is stated that the ship arrived in the Delaware on the 4th of May, 1800, entered at the custom-house, in Philadelphia, on the 17th of said month, and cleared out for Batavia, on the 9th of July following, at which time she received a sea letter, and other regular documents.

The Washington is a foreign built ship, and, by existing laws, is not entitled to the benefit of an American register.

It appears that merchandise, on which the drawback was payable, was exported in the ship to Batavia, (the quantity not stated,) which, having been previously imported in the same ship, had been charged with the additional ten per cent. on the duties.

The collector retained this part of the drawback, under the direction of the act of the 13th of May, 1800, and which the petitioner is now solicitous should be refunded to him.

The Committee on Commerce and Manufactures reported on this case at the last session of Congress, but the petitioner being of opinion that the committee have misconstrued the material facts upon which their decision was founded, solicits a revision, for reasons mentioned in his petition.

On the 13th of May, 1800, Congress passed an act, in which it declared that no part of the additional duties, payable on goods imported in foreign ships, should be drawn back on exportation. And, on the 14th of April, 1802, another law was passed, declaring that the act above referred to should not be deemed to operate upon unregistered ships or vessels, owned by citizens of the United States at the time of passing the said act, in those cases where such ship or vessel, at that time, possessed a sea letter, or other regular document, issued from a custom-house of the United States, proving such ship or vessel to be American property.

At the last session, from the documents then exhibited, the committee concluded the ship sailed for Batavia without a sea letter, but they did not rest their de-

cision on that point. It was material only to prove that the Washington, on the 13th of May, 1800, did not possess a sea letter, or any regular documents, issued from a custom-house of the United States, proving her to be American property. It is stated in that report, that the act of 1802 did not mean "to extend its remedial operation, or to retrospect beyond the 13th of May, 1800; and the petitioner's case not coming within the limitation and description therein specified, there did not seem to be even an equitable claim on the Government for the drawback of the additional duties," &c.

A certificate from the Collector of Philadelphia states that the ship cleared out for Batavia on the 9th of July, 1800, and took out a sea letter and the usual documents; so that it is fully proved she does not come within the provisions of the act of April, 1802; for that act was only meant to operate in favor of vessels possessing a sea letter, &c., on the 13th of May, 1800.

By looking at a document furnished the committee, it appears the petitioner places some dependence on the circumstance, that the ship's "manifest" was delivered to a revenue officer, on the 9th of May, but he acknowledges that the entry at the custom-house was not made until the 17th of May. A manifest is not a regular document issued from the custom-house; it is a memorandum or inventory of the inward cargo, to whom consigned, &c., and is generally made out at sea, and is presented to any revenue officer who demands it, and a copy is always necessary to be delivered previous to the entry.

This paper furnishes no evidence whatever that the owners of the ship Washington ought to receive the allowance prayed for. Upon an impartial review of the whole case, therefore, the committee are satisfied—

1st. That the ship Washington, on the 13th of May, 1800, did not possess a sea letter, or any regular document issued from a custom-house of the United States, proving her to be American property.

2d. That, under existing laws, although the ship received a sea letter, &c., on the 9th of July, 1800, and may now possess it, no goods or merchandise imported in that ship, after the date of the act of May, 1800, can be entitled to the allowance of the additional duties, as drawback upon their exportation, either in the same bottom or on any other whatever. And, further, the committee are fully convinced that unregistered vessels of the United States ought to receive the same privileges, in our ports, as those built within the United States, and entitled by the laws to the benefit of American registers; and the ship Washington's case clearly not being within the limits or provisions of the act of April, 1802.

The committee submit their opinion, that the prayer of the petition of Thomas Ketland ought not to be granted.

Referred to a Committee of the Whole on Wednesday next.

Saturday, January 12.

Resolved, That the Speaker address a letter to the Executive of the State of North Carolina, communicating information of the death of James Gillespie, late a member of this House, in order that measures may be taken to supply any vacancy occasioned thereby in the Representation from that State.

Monday, January 14.

The bill, sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light money on foreign ships or vessels, and for other purposes,'" was read twice, and committed to the Committee of Ways and Means.

The House again resolved itself into a Committee of the Whole on the report of the Postmaster General, of the seventh instant, on the memorial of Robert Henderson, of the State of South Carolina; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the Postmaster General be authorized to grant such additional sum, not exceeding four thousand two hundred dollars per annum, to the contractor or contractors for carrying the mail in a line of stages between the town of Fayette, in the State of North Carolina, and the city of Charleston, in the State of South Carolina, as he may deem expedient and necessary.

Ordered, That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Huger, Mr. Claiborne, and Mr. Cutts, do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

The House again resolved itself into a Committee of the Whole on the bill further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee; and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to prohibit the exaction of bail upon certain suits brought in the District of Columbia; and, after some time spent therein, the bill was reported with several amendments thereto, which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

On a motion made and seconded that the House do come to the following resolution, to wit:

Resolved, That the following be adopted as one of the rules of the House, during the remainder of the present session:

"It shall be the duty of the Speaker to call on the chairmen of all the standing and select committees, at the hour of twelve of the clock, on the Friday of every week during the session; or, if the chairman is absent, on

the member of the committee present, next in numerical order, to inform the House of the progress made by the respective committees on the subjects referred to them."

And the said resolution being twice read at the Clerk's table, was, on the question put thereupon, disagreed to by the House.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the eighth instant, to whom was referred, on the twenty-third of November last, the memorial of Alexander Murray, late commander of the United States frigate Constellation; and, after some time spent therein, the Committee rose and reported progress.

Mr. Rhea moved the following resolution:

Resolved, That the Secretary of War be directed to lay before this House a statement of the number of the officers and privates in the actual service of the United States during the years one thousand eight hundred and three, and one thousand eight hundred and four; and, also, all the names of the posts where soldiers are stationed, together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, and magazines.

The House proceeded to take the motion into consideration; when, an adjournment being called for, it was postponed until to-morrow.

Tuesday, January 15.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanying a statement respecting the "moneys which, since the establishment of the present Government, have been paid as fees to assistant counsel, and for legal advice in the business of the United States," in addition to the statements furnished by him on the twenty-fourth of March last, pursuant to a resolution of this House of the third of the same month; which were read, and ordered to lie on the table.

An engrossed bill making an appropriation for completing the south wing of the Capitol at the City of Washington, and for other purposes, was read the third time and passed.

An engrossed bill further to amend the act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee," was read the third time and passed.

Mr. Huger, from the committee appointed yesterday, presented a bill authorizing the Postmaster General to make a further allowance for carrying the mail from Fayette, in North Carolina, to Charleston, South Carolina; which was read twice, and committed to a Committee of the whole House to-morrow.

The motion of Mr. Rhea, of Tennessee, calling on the Secretary of War for the list of officers and soldiers in the service, and the names of forts, &c., where they are stationed, being the unfinished business of yesterday, was, at his own request, postponed till Monday next.

On motion, it was *Resolved*, That a committee be appointed to inquire whether any, and if any, what amendments are necessary to the several acts regulating the grants of lands to the refugees from Nova Scotia and Canada, and to report by bill or otherwise.

Ordered, That Mr. Thomas, Mr. Thatcher, and Mr. Thomas Moore, be appointed a committee, pursuant to the said resolution.

DISTRICT OF COLUMBIA.

The bill to prohibit the exaction of bail upon certain suits within the District of Columbia was brought in engrossed, and read the third time.

The final passage of the bill was opposed by Mr. Goddard, Mr. Root, and Mr. Nelson, and defended by Mr. Newton, as a proper measure to prevent the oppression of malignant creditors.

Mr. Eppes desired Mr. Beckley to read that part of the Constitution of the United States relative to the extent of the Judiciary power, and that part of the law establishing the Judicial authority of the District of Columbia, with a view of showing that the bill was not essentially necessary.

Mr. Early moved a recommitment of the bill to a select committee.

Mr. Bedinger wished that the bill might go to a select committee, because he considered the principle a valuable one. He imagined, however, that the details were not altogether perfect. He felt concerned on this subject, on account of several of his constituents who had been tricked out of notes and bonds for lands in Kentucky, which had been advertised, and were no longer available against the drawers in that State; but, should it so happen that business called them to Washington, they might be extremely harassed for want of bail.

The reference was opposed by Mr. R. Griswold, as he was against the principle of the bill altogether.

On the question to recommit it, it passed in the negative—ayes 44, noes 59.

The question was then taken on the passage of the bill, and it was lost, there being but thirty members who voted in its favor.

Wednesday, January 16.

The Speaker laid before the House a letter from the Secretary of War, accompanying his report on the petition of sundry officers of the Army, stationed at the city of New Orleans, referred to him by an order of the House of the fourteenth instant; which were read, and ordered to be referred to Mr. Nicholson, Mr. Varnum, Mr. G. Griswold, Mr. M. Clay, and Mr. Hunt, to consider and report thereon to the House.

The Speaker also laid before the House a letter from the Secretary of the Treasury, enclosing his report on the petition of Fontaine Maury, of the city and State of New York, referred to him by an order of the House of the fourteenth instant; which were read, and referred to the Committee of Claims.

On motion of Mr. Leib, the House resolved itself into a Committee of the Whole on the bill to amend the Charter of Georgetown After going through

the same, and making several verbal alterations, the Committee rose and reported the bill with amendments, which were agreed to by the House.

Mr. VARNUM moved to give the Mayor of Georgetown a qualified veto upon the laws passed by the Aldermen and Common Council.

On the question to agree to the same, the House divided, and there appeared thirty-nine in its favor, and forty against it.

The SPEAKER declared that it was not agreed to.

Mr. SMILIE said he had risen in favor of the motion, but he believed he had not been counted, as the Speaker had passed his seat before he rose.

The question was hereupon put a second time, and there were forty-four in favor of the amendment, and forty-two against it. So the amendment was agreed to.

The next question was, on ordering the bill to be engrossed for a third reading. The House divided, and there were for the motion fifty-seven, against it thirteen. This not being a quorum, the members were called upon to divide a second time, and, there appearing sixty-three in favor of ordering the bill to be engrossed, it was carried in the affirmative.

NAVAL APPROPRIATIONS.

The House again resolved itself into a Committee of the Whole, on the bill making appropriations for the support of Government for the year one thousand eight hundred and five.

Mr. J. RANDOLPH moved to fill the blank, in the clause providing for the expense of intercourse with the Barbary Powers, with $63,500, instead of the sum of $113,000, stated in the estimate for the current year. The difference ($50,000) would make a part of additional appropriations, for which he should move a distinct clause.—Motion carried.

Mr. R. then moved to add the following words "for the contingent expenses of intercourse with the Barbary Powers —— dollars." He said, that he should be obliged to ask $150,000, in addition to the sum reserved out of the preceding appropriation, and of course to fill the blank with the words $200,000. This was rendered necessary because the Mediterranean fund, heretofore liable to this charge, had been subjected, on the motion of a gentleman from Connecticut, to the whole expense of the support of the Navy. He supposed that no difference of opinion could exist on the subject of enabling the Executive to make peace with Tripoli. He had no objection to any restriction which might be thought necessary to limit the application of the additional sum of $150,000, which he required, to the object for which it was intended. But as the words ransom, or tribute, had never been introduced into our statutes, heretofore, he hoped they would not be admitted on this occasion.

Mr. R. GRISWOLD had no objection to making the appropriation required, or even a larger sum; for he was well convinced that the President ought to have funds as well as authority to accomplish any object connected with the present subject, which he might wish to accomplish.

The motion he had made for the appropriation of the Mediterranean fund, to the Naval Establishment, he had conceived to be a proper course of proceeding, and his motion for that purpose had the honor of being seconded by the gentleman from Virginia (Mr. J. RANDOLPH.)

Mr. J. RANDOLPH declared the gentleman to be mistaken.

Mr. R. GRISWOLD did not charge his memory perhaps with precision, as to his having actually seconded the motion, but he would venture to assert that the gentleman had said upon the suggestion that the motion would be a proper one, that if he (Mr. R. G.) would make the motion, he (Mr. J. R.) would second it. He admitted that the appropriations, heretofore made, but not expended, were now locked up and confined to the one object which had been mentioned.

Mr. J. RANDOLPH said that nothing was more disagreeable to him, and it cost him nothing to believe that it was equally so to the gentlemen from Connecticut, than to enter into anything like verbal altercation; but the observations which the committee had just heard, required some notice from him. The gentleman is so far correct, when he states that I agreed to second the motion if he would make it, and I can assure him, that, however reluctant, I should have been as good as my word, if I had not been anticipated by the adroitness of his friends, whose alacrity and promptitude in seconding the motion of that gentleman it is not easy to emulate and impossible to excel. It will be recollected that when the act laying the duties, the proceeds of which were to constitute "the Mediterranean fund," was under consideration, it was opposed by the gentleman from Connecticut on the ground that it was a subterfuge to raise money to cover a pre-existing deficit of revenue: that the loss of the Philadelphia was a mere pretext for raising supplies to defray the ordinary expense of the Navy, which, otherwise, we had not funds to defray—and that whilst the avowed object of the bill was to provide for an extraordinary armament, for a vigorous exertion, which our recent loss demanded, it was in reality a mere fetch to throw the whole weight of the Naval Establishment on this fund. Provision was then offered to be made that the ordinary expense of the Navy, estimated at $650,000, should continue to be defrayed out of the ordinary revenue, and that the application of the "Mediterranean fund" to the objects for which it was avowedly raised should be inviolably secured. It was accordingly provided, in the appropriation bill for the current year, that of the $1,240,000 voted for the naval service, not more than $590,000 should be charged on the Mediterranean fund, leaving the ordinary expense still chargeable on the ordinary revenue. When, therefore, I offered to second the motion, if that gentleman would make it, to strike out the proviso, it was done under the same ideal security as if we had been on the house-top, and I had offered, if he would jump down first, to jump down after him. I did the gentleman the injustice to believe that he had too great a respect for his own consistency to bring forward a motion to effect the very object, the design to bring about which he

charged upon us at the last session as highly reprehensible. For this act of injustice to his character I sincerely ask his pardon. Hereafter I shall be better informed, and there is no danger that the offence will be repeated. The gentleman's motion prevailed and the whole expense of the Navy was thrown on the Mediterranean fund. The appropriation now asked was for an object, for which that fund was intended to provide. The words of the act of last session (after providing for the armament) are, "and for the purpose also of defraying any other expenses incidental to the intercourse with the Barbary Powers, a duty of two and a half per cent. &c. shall be laid." This fund having been diverted to another purpose, the appropriation now required must be charged on the ordinary revenue. To the public it was a matter of little consequence out of which it should be paid.

Mr. R. GRISWOLD finding himself charged with inconsistency, in having moved to appropriate a fund raised at the last session to the very object he had then said it was raised to meet, did not wonder at such a charge being made, from the reports of the debates, because he had frequently been made to appear in the newspapers as inconsistent, but he hoped he should now be heard and clearly understood. He had said, at the last session, that the two and an half per cent. additional impost was raised to cover the expense of the Navy: and, this session, he had moved that it might be fairly appropriated to that object. Now where is the inconsistency attributed to him? He said then, that under the pretext of a temporary Mediterranean fund, Congress were laying a tax to cover its permanent expenditure. Congress did so, and the money has been raised, and what has now been done? Why, truly, he had moved and the House had agreed to appropriate it without disguise to the object he had foretold it was to cover. In all this he was at a loss to discover his inconsistency.

He did not see what difference it could make on the present occasion out of what fund the money came; whether the temporary two and a half per cent. or the general fund. In either case the money would be equally good, as there is no difference in the value of the coin supplied by either.

He always thought it a better way to go direct, and in a plain path, to his object, without masking or manœuvreing, or covering bills with plausible titles. He would last year have declared plainly that the money was wanting in the Treasury, and not have given their tax bill any captivating title. But, to conclude, he expressed his willingness to give the $150,000 for the object required, or more. He hoped that Congress would grant enough for every purpose connected with the present war, so that our ships may not again be so long in fitting out; but that they may reach the point of destination before the season has elapsed for naval operations.

Mr. J. RANDOLPH congratulated the gentleman from Connecticut, and all who had been conversant with him in public life, on the reform which he had just announced in his political character. That day was to form a new era in the life of that gentleman. Hereafter he was to exhibit himself as a plain, artless man, undisguised in his views, who would frankly disclose his object, and march up to it in a direct line. But, indeed, it seems he has always had a bias towards this open and manly mode of proceeding. The gentleman has always had an abhorrence against bills with specious titles, tending, as far as a mere title could do it, to deceive the public as to the real object in view. It would be a matter of amusement if the Clerk should be called upon to read some of those bills, passed under the gentleman's auspices, whose specious titles and specious defenders were unable to blind the public eye as to their real object—"An act in addition to an act for the punishment of certain crimes against the United States"—in homely phrase, called the sedition act—and some others.

The gentleman declares his readiness to vote money in sufficient quantity to prevent the delay in our future equipments, of which he complains in a recent instance. It, indeed, was one of which the nation might also complain; but which neither money nor diligence in the Navy Department could remedy. It arose out of a circumstance with which the present Administration had nothing to do. It was the necessary effect of placing the capital of the United States in a desert, and the principal navy yard of the Union in a wilderness. The consequence was, that the workmen, the materials, the ships' stores, in short, the supplies of every kind, were to be brought from a distance, (sometimes in carriages,) at an immense expense of time and money. With some of the fairest cities in the world, and with more good ports than all Europe perhaps could boast, the United States had chosen for their metropolis and naval arsenal, such a spot as Peter the Great had been driven to fix upon by necessity—a morass at the head of a long and tedious navigation, where ships are liable to be frozen up for two or three months in the year. With this additional disadvantage, however, that a vessel of any considerable draught of water cannot proceed to sea without the delay of being attended by lighters to carry her guns, which she must take in below. What was the situation of the ships now in the Eastern Branch? Suppose them ready for sea, and that circumstances required a small squadron to be despatched only to protect the entrance of the Chesapeake. They must wait for a thaw. The evils, therefore, of which the gentleman complains are, in some sort, of his own creation. They cannot be remedied until Washington shall become a great commercial city, and the rigors of the climate shall be softened by the benevolence of nature.

Mr. DENNIS did not think it necessary to connect the City of Washington, as the capital of the United States, with the navy yard on the Eastern Branch. The one might be the most fit for its purpose of any which human wisdom could point out, while the other might be liable to some objections which had been urged against it; and he

did not deny but there were other places equally as commodious for all the purposes of equipping vessels of war. But he considered the arrangement of the navy yard at this place a measure of sound policy.

The question was taken on filling up the blank, without a division, and carried in the affirmative.

THURSDAY, January 17.

The SPEAKER laid before the House a letter, together with a memorial and sundry accompanying documents, in the Spanish language, from Don Joseph de Cabrera, attached to the Legation of Spain, near the United States, now confined in the debtor's apartment of the jail in the city of Philadelphia, under a warrant from the Governor of the State of Pennsylvania, charging him with sundry criminal offences; which were ordered to lie on the table.

Mr. J. RANDOLPH said that the Committee of Ways and Means had received a letter from the Secretary last evening, by which it appeared to be necessary to add an additional item to the appropriation bill, and to make a small alteration in an item already agreed to. The letter was read by the Clerk, and then, on motion, of Mr. J. R., the bill was recommitted to a Committee of the Whole.

After some time spent in considering the same, and making the requisite amendments, the Committee rose and reported. Thereupon, the House proceeded to consider the motion, and having concurred in the amendments reported by the Committee of the Whole, the bill was ordered to be engrossed and read a third time to-morrow.

PAYMENT OF CERTAIN DEBTS.

Mr. CLAIBORNE moved the order of the day for the House to resolve itself into a Committee of the Whole, on the bill making further provision for the extinguishment of the debts still due from the United States. This bill goes generally to make provision for the payment of certain debts liquidated at the Treasury. A new section was proposed by Mr. C., making similar provision for all unliquidated debts due for services rendered or supplies furnished during our Revolutionary war. A debate of considerable length and interest grew out of the question for adding it to the bill.

On motion the Committee divided, and seventy-eight members voting in favor of inserting it in the bill, it was carried.

A motion for striking out the last section, limiting the duration of the bill to —— years, was made by Mr. MACON.

Another debate of some length took place, and when the Committee divided, there were forty-eight in favor of striking out, and fifty-eight against it. So it was determined in the negative.

Mr. ELMER proposed a new section embracing the cases of Messrs. Bowen, Moore, and Elmer, officers of artillery, but who were not attached to the line of any State, providing for an allowance of the depreciation of their pay, which they did not obtain under the resolution of the old Congress, in consequence of having resigned a few days previous to its taking effect.

The motion did not succeed, only eighteen members voting in its favor.

Mr. THOMAS proposed a new section, enacting that the claim of the United States against individual States, for balances which occurred previous to the year 1790, should continue to exist till the —— day of ——, and no longer.

This motion was also lost, only twenty rising in its favor.

The last section, limiting the duration of the law for —— years, being under consideration, it was proposed to fill up the blank with "two," "three," and "twenty."

The question was taken on the highest number, viz: "twenty," and lost, only twenty-seven members voting in its favor.

On filling the blank with "three years," the House divided, and fifty-one were in the affirmative, and forty-two in the negative. So it was carried.

The Committee then rose, and reported the bill and its amendments, and the House proceeded to consider the same.

A considerable debate took place on concurring in the amendment proposed by Mr. CLAIBORNE, extending the law to unliquidated claims; and upon the question of concurring, the House divided, and fifty-four were for it, and fifty-six against it. So the amendment was not agreed to.

Several verbal amendments were afterwards agreed to, and the bill was ordered to be engrossed for a third reading to-morrow.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time on Friday next.

FRIDAY, January 18.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, presented a bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five; which was read twice and committed to a Committee of the Whole House on Monday next.

The Chairman of the Committee of Revisal and Unfinished Business made a further report, that the law regulating the manner of taking evidence in case of contested elections had expired, and ought to be revived; also that the law for incorporating the inhabitants of the City of Washington would expire with the end of the present session, and that it ought to be renewed. The report was referred to a Committee of the Whole for Monday.

Mr. JOHN RANDOLPH, from the Committee of Ways and Means, to whom was committed, on the fourteenth instant, the bill sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" reported that the committee had directed him to report the same to the House, without amendment: Whereupon,

Ordered, That the said bill and report be committed to a Committee of the Whole this day.

An engrossed bill making appropriations for the support of Government, for the year one thousand eight hundred and five, was read the third time and passed.

An engrossed bill to amend the charter of Georgetown was read the third time and passed.

An engrossed bill making farther provision for extinguishing the debts due from the United States was read the third time: Whereupon, the farther consideration thereof was postponed until Monday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill for the relief of the sufferers by fire in the city of New York, in the State of New York; which was read twice, and committed to a Committee of the whole House on Monday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented a bill to establish the districts of Genesee, of Buffalo creek, and of Miami; and to alter the port of entry in the district of Erie; which was read twice, and committed to a Committee of the Whole on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the relief of Charlotte Hazen, widow and relict of the late Brigadier General Moses Hazen," with an amendment; to which they desire the concurrence of this House.

The Senate's amendment was taken up and considered. It went to allow her a pension for life, from the first day of January, 1805, of two hundred dollars per annum.

Mr. VAN CORTLANDT moved to amend the amendment by striking out the first of January, 1805, and inserting in its stead the fourth of February, 1803, being the day of her husband's decease.

This motion being carried in the affirmative, the bill was returned to the Senate. Shortly after which another message was received from that body, expressing their agreement to the amendment proposed to the House.

A petition of John York, of Brookefield, in the county of Chenango, and State of New York, late collector of the taxes on lands, slaves, and dwelling-houses, for the eighty-third collection district, within the said State, and now confined in the jail of said county, was presented to the House and read, praying relief in the case of a judgment awarded against the petitioner and execution issued thereon, for the sum of eight hundred dollars, including interest and cost of suit, for the payment of which the petitioner was compelled to apply a certain proportion of the proceeds of taxes collected by him in the capacity aforesaid.—Referred to Messrs. ROOT, GREGG, and HASTINGS; to examine and report their opinion thereupon to the House.

Mr. DANA, from the Committee of Claims, made a report upon the application and representation of sundry citizens of Massachusetts, purchasers under the Georgia Company; of the agents of persons composing the New England Land Company, purchasers under the Georgia and Mississippi Companies, and the agent for sundry citizens of South Carolina, purchasers under the Upper Mississippi Company; which was referred to the Committee of the Whole, and ordered to be printed with the accompanying documents.

The SPEAKER made the usual inquiry, "for what day shall it be made the order?"

Mr. DANA moved Monday, observing that he had no idea of the report being printed by that time, or even if it were, he should not call it up; his intention being merely to have it on the minutes as a notice to the parties interested.

Mr. LEIB moved its being made the order of the day for the third of March next.

The third of March being the most distant day, was first put, and a division of the House was called upon the question. There appeared but thirty members in the affirmative; of course it was not carried.

Monday next was then agreed to, without a division.

Mr. NICHOLSON moved the order of the day on the report of the Committee of Claims, on the petition of Alexander Murray, praying to be reimbursed the value, damage, and costs of a certain vessel captured by him, and which had been decided against him by the Supreme Court of the United States; which being agreed to, Mr. TENNEY was called to the Chair.

The Committee, after some time spent in considering the report of the Committee of Claims, adopted the resolution thereof, that the prayer of the petitioner was just, and ought to be granted, sixty-six members voting in favor of the resolution.

The House having concurred in the report of the Committee of the Whole, it was referred to the Committee of Claims, to bring in a bill conformably to the said resolution.

DISTRICT OF COLUMBIA.

Mr. DAWSON, from the committee appointed on the petition of Marcella Stanton, and others, reported a bill, entitled an act to authorize the court of the District of Columbia to decree divorces in certain cases; which was read twice, and referred to a Committee of the Whole on Tuesday next.

Mr. DAWSON prefaced his motion, on this subject, when he introduced it, in the manner following:

He observed that, after the decision which had taken place a few days ago, he had resolved not to meddle any further with the affairs of the District of Columbia, but to leave the inhabitants in the enjoyment of the blessings of that government which they seem to have chosen, and the principles of which were sanctioned by this House.

There was, however, one class of persons who claimed, in all situations, our particular attention; who had not made a surrender of their political rights; and, if they had been defrauded out of their natural ones, were anxious to regain them.

It would be remembered that, at the last session,

a gentleman from Maryland, who had been absent for some time, and whom he rejoiced now to see in his place, (Mr. NICHOLSON.) presented a petition from a person in this District, praying for a divorce, and he two others for the same relief. These were referred to a select committee, and a bill reported, which remained among the unfinished business; as he learned that the situations and wishes of these unfortunate persons were still the same, he thought the subject ought again to be renewed.

Mr. SLOAN moved the following resolution:

Resolved, That, from and after the fourth of July, 1805, all blacks and people of color, that shall be born within the District of Columbia, or whose mother shall be the property of any person residing within said District, shall be free, the males at the age of ——, and the females at the age of ——.

The House proceeded to consider the said motion, and on the question that the same be referred to a Committee of the whole House, it passed in the negative—yeas 47, nays 65, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, John Archer, Simeon Baldwin, David Bard, George Michael Bedinger, Phanuel Bishop, John Boyle, Robert Brown, Clifton Claggett, Joseph Clay, Frederick Conrad, Jacob Crowninshield, James Elliot, Ebenezer Elmer, William Findley, Andrew Gregg, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Joseph Heister, David Hough, Nehemiah Knight, Simon Larned, Michael Leib, Henry W. Livingston, John B. C. Lucas, Andrew McCord, Nahum Mitchell, Jeremiah Morrow, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Joseph Stanton, William Stedman, John Stewart, George Tibbits, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, and John Whitehill.

NAYS—Willis Alston, jun., William Blackledge, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, John Davenport, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, John Fowler, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Roger Griswold, William Helms, John Hoge, James Holland, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Joseph Lewis, junior, Thomas Lowndes, Matthew Lyon, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sandford, John Smith, Henry Southard, Richard Stanford, James Stephenson, Samuel Tenney, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

And then the main question being taken that the House do agree to the said motion as originally proposed. It passed in the negative—yeas 31, nays 77, as follows:

YEAS—Isaac Anderson, John Archer, David Bard, Phanuel Bishop, Robert Brown, Clifton Claggett, Joseph Clay, James Elliot, Ebenezer Elmer, William Findley, Gaylord Griswold, John A. Hanna, Josiah Hasbrouck, David Hough, Nehemiah Knight, Michael Leib, Andrew McCord, Nahum Mitchell, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Joseph Stanton, Isaac Van Horne, Joseph B. Varnum, Peleg Wadsworth, and John Whitehill.

NAYS.—Willis Alston, jr., Simeon Baldwin, George Michael Bedinger, William Blackledge, Adam Boyd, Joseph Bryan, William Butler, George W. Campbell, John Campbell, Levi Casey, Thomas Claiborne, Matthew Clay, John Clopton, Manasseh Cutler, John Davenport, John Dawson, John Dennis, William Dickson, John B. Earle, Peter Early, John W. Eppes, William Eustis, John Fowler, Calvin Goddard, Peterson Goodwyn, Thomas Griffin, Roger Griswold, Joseph Heister, William Helms, John Hoge, James Holland, Benjamin Huger, Samuel Hunt, Walter Jones, William Kennedy, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, John B. C. Lucas, Matthew Lyon, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, James Mott, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rhea of Tennessee, Samuel Riker, Thomas Sandford, John Smith, Henry Southard, Richard Stanford, James Stephenson, John Stewart, Samuel Taggart, Samuel Tenney, Philip R. Thompson, George Tibbits, Abram Trigg, Philip Van Cortlandt, Killian K. Van Rensselaer, Daniel C. Verplanck, Matthew Walton, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

So the said motion was rejected.

MONDAY, January 21.

A memorial of the people called Quakers, at their yearly meeting, held in the city of Philadelphia, in the month of December last, was presented to the House and read, praying that effectual measures may be adopted by Congress to prevent the introduction of slavery into any of the Territories of the United States.—Referred to the committee appointed on the twelfth of November last, on so much of the Message of the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana."

Mr. DANA, from the Committee of Claims, presented a bill for the relief of Alexander Murray; which was read twice, and committed to a Committee of the whole House to-morrow.

The bill for extinguishing certain debts due by the United States, being on its third reading, was, on motion of Mr. EPPES, recommitted to a Committee of the Whole.

The House divided on the motion—50 in the affirmative, and 34 in the negative. So it was carried.

Mr. NICHOLSON moved to make it the order of the day for the fourth of March next.

The House divided—39 for it, and 46 against it. It was then made the order of the day for to-morrow.

The House resolved itself into a Committee of the Whole, on the bill authorizing the Postmaster

General to allow an additional sum of $4.200 for carrying the mail from Fayetteville to Charleston, South Carolina.

The Committee, after some time spent in considering the same, rose and reported the bill with an amendment, which was adopted by the House, and the bill ordered to be engrossed for a third reading to-morrow.

The House resolved itself into a Committee of the Whole, on the bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five; and, after some time spent therein, the bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole, on the bill sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles, and, also, for levying and collecting light money on foreign ships or vessels, and for other purposes;" and, after progress, the Committee rose and had leave to sit again.

DUTIES ON REFINED SUGAR.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred the memorial of Moses Rogers, Edmund Seaman, and others, sugar refiners in the city of New York, having had the same under consideration, submitted the following report:

The memorialists are extensively concerned in the manufacture of refined sugar, in the city of New York, and are possessed of establishments adequate (as they state) not only to the supply of the home market, but also to the production of considerable quantities for exportation to foreign countries.

They acknowledge they are protected by the present high duties on imported loaf sugar, to the extent of the domestic demand, but, as their refineries are capable of producing still greater supplies, they pray that a drawback or bounty may be allowed on the exportation, to foreign countries, of all refined sugar in the United States, equivalent to the duty paid on the raw sugar employed in the manufacture.

The committee beg leave to inform the House that similar applications have been frequently made to Congress, and it is almost unnecessary to add that the allowance prayed for has been invariably refused. At the last session of Congress, a lengthy, and, the committee thought, a conclusive report, was made on a resolution of the House "to inquire and report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports and places;" and the committee then offered their opinion, "that it would be improper, under existing laws and regulations, to allow a drawback upon the exportation of domestic refined sugar;" and this report was concurred in by the House. Notwithstanding the repeated decisions of Congress, the present memorialists have hazarded their application; but the committee cannot see that they have offered any new or weighty reasons to induce them to alter their former opinions on this subject.

If the committee are not mistaken, it will be found, upon examination, that the sugar refiners are the most favored body of manufacturers in the United States. Our commercial regulations seem opposed to all prohibitory duties, and to monopolies. These are in direct hostility to systems heretofore deemed valuable, are contrary to what is right and just between one citizen and another, and ought never to be indulged in a free country, except (which could seldom happen) where they are necessary for the safety and protection of the whole people. And where monopolies are granted, or where such high duties exist as enable a particular class of men to engross any article of general use in a community, they only tend to heap up wealth in the hands of a few individuals, at the certain expense of the many. The duties on foreign refined sugar have been several times augmented to benefit the American refiners, and since January, 1795, this sugar has been charged with the high duty of nine cents per pound. It is denied the drawback on exportation, and cannot be imported in less quantities than six hundred pounds, nor in vessels of a less burden than one hundred and twenty tons. The committee are at a loss to conceive the necessity of these severe restrictions. Sugar candy pays a duty, on importation, of eleven cents and one half the pound, and there can be no doubt that this extravagant duty was imposed with a view of favoring the sugar refiners. These high duties amount to almost a prohibition of the two articles; for, it is proved that they have been imported only in the most inconsiderable quantities, in late years, so that the sugar refiners possess the whole American market to themselves. They enjoy a certain monopoly in their business. No foreign loaf sugar can enter into competition with what they manufacture. Bengal and China sugar candy could be imported in considerable quantities, at very reasonable prices; and there is no better substitute for refined sugar, either in the lumps, or when reduced to powder; but the present duty on that article excludes it altogether from the American market, to the injury of the East India trade—a loss of revenue to the United States, and to the benefit of no other persons but the sugar refiners. It might be supposed that these high protecting and prohibitory duties on the foreign article secured to the sugar refiners every important advantage which they could reasonably hope to receive. With the exclusive home trade, supplying the United States, upon their own confession, with every pound of refined sugar consumed in the country, charging their own prices to the consumer, the foreign article excluded from our market, the wide range of speculation all their own, their profits great, and probably beyond any other manufacturer's in the United States, it was rather a matter of surprise to the committee, that the sugar refiners should expect further indulgencies.

Without mentioning all the reasons that have occurred to the committee, against granting the allowance in question, they will suggest some of the objections to which it is liable.

1st. The Louisiana sugar might be used in the manufacture, almost in spite of any regulation that could be safely introduced, (and at New Orleans it would be exclusively employed,) and as it is not charged with any duty, the United States would, in many instances, be compelled to pay the allowance where they had received no equivalent.

2d. It is well known that drawbacks are not payable on any goods and merchandise, after the expiration of

twelve months, dating from the time of importation, and then only in cases where the original duties have been first received. If the crude sugar should lose the drawback, as it would in one year from the period of its importation, the price would be lowered in the market (presuming it was intended for exportation) in a sum equal to the duties, and it must then be sold for home consumption, probably at a reduced rate.

Now, sugar thus circumstanced, if purchased and manufactured by the refiners, could not be entitled to the allowance of drawback, on any principle whatever; and when it is supposed that the surplus of raw sugar in our market will find its way to Europe in American bottoms, and when it is considered that, in a refined state, it is not a bulky article, it may be doubted whether its reduction of weight would, in cases of exportation, be so advantageous to the carrying trade of the United States as might at first be imagined. If the sugar is exported in its crude state, the freight would be double, and those merchant ships that depended solely on freight would thereby derive at least a trifling advantage.

Although the committee do not wish it to be inferred that they would recommend the exportation of the raw materials found in our markets, in preference to those manufactured by American workmen, and reduced to half their ordinary bulk, merely for the benefit of the extra freight, yet, in respect to the article referred to, it becomes questionable whether the exporting merchant and ship owner do not now enjoy as great, or even greater advantages, than they would if bounties were allowed on refined sugar, to the extent of the quantity which could be manufactured for exportation from the United States.

3d. As the raw sugar, in refining, undergoes a complete transformation, it would be difficult, if not impossible, to guard against some impositions in paying the bounty, and frauds might be attempted on the revenue. The custom-house officers could not always attend at the sugar houses; and, however upright the intentions of the refiners and exporters might be, the certificates must be multiplied, and such precautionary measures be introduced, as would embarrass the fair collection of the public revenue; and the allowance might perhaps tend, in some respects, to lessen its amount, and certainly it could not augment it.

4th. Should the prayer of the petition be granted, no good reason could be offered why New England rum, distilled from imported molasses, or cordage and cables manufactured from foreign hemp, and canvass made into sails, for the use of vessels, should not receive similar allowances. All the manufactured iron, too, which had paid a duty on importation in its unwrought state, would certainly be equally entitled to the benefit of such allowance; and domestic rum, sail cloth made up for ship's use, cordage, and various articles of ironwork, such as anchors, bolts, spikes, nails, and hoops, are exported from the United States in considerable quantities, and it is believed in value far beyond the whole amount of refined sugar which could possibly be disposed of to advantage in foreign markets, and yet the committee do not recollect that the distillers, ropemakers, sailmakers, or blacksmiths, have ever petitioned Congress for a repayment of the duties on the exportation of the articles employed by them, or connected with their respective occupations.

The memorialists allege that, in Great Britain, a bounty on the exportation of refined sugar is allowed, of forty shillings sterling per hundred weight. In Great Britain the duties on imports will average about thirty per cent. higher than those paid in the United States, and on sugar, in particular, the duty is twenty-six shillings and six pence sterling per hundred weight, exceeding five and one quarter cents a pound, or double the American duty; still, the drawback on refined sugar exported from England is by no means payable at a certain or fixed standard, and a table of English drawbacks, now before the committee, fully prove that different rates of drawback are allowed, varying from forty shillings, when the price does not exceed forty shillings, to thirteen shillings, when the price is from sixty-eight to seventy shillings, per hundred weight; and whenever the average price of sugar exceeds seventy shillings per hundred weight, nothing is allowed, and it is presumed that sugar is often at that price in England, exclusive of the duties. But, in the examination of this question, it is of little consequence what commercial regulations exist in other countries, so long as they do not affect our rights, and it is sufficient for us that we adopt such as are known to be beneficial, and most conducive to the interests of this nation; and individuals ought not to complain that other countries follow this or that system, under different circumstances, and that our laws are not shaped to operate for their exclusive advantage.

Protecting duties on such articles as we can conveniently manufacture have been a long time established in the United States; and surely the sugar refiners can have no complaints to offer on that point; for there, the committee trust, it has been proved they possess peculiar, if not exclusive advantages. Various other objections could be adduced, to prove that Congress ought not to grant the allowance on the exportation of sugar refined in the United States, particularly while the present high duties are continued on loaf sugar, imported from Europe, and sugar candy, from the East Indies and China; but it is supposed to be quite unnecessary to enlarge a report already too much extended. The committee therefore respectfully submit the following resolution:

Resolved, As the opinion of the Committee of Commerce and Manufactures, that it is inexpedient to grant any allowance or bounty on refined sugar exported from the United States.

The report was referred to the Committee of the Whole on Wednesday next.

TUESDAY, January 22.

An engrossed bill making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five, was read the third time and passed.

An engrossed bill authorizing the Postmaster General to make a further allowance for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina, was read the third time, and passed.

Mr. NICHOLSON, from the committee appointed, presented a bill fixing the value of rations allowed to the commissioned officers in the Army of the United States; which was read twice and committed to a Committee of the Whole to-morrow.

The House resumed the consideration of a motion of the twenty-first ultimo, directing the Secretary of War to lay before the House "a statement of the number of the officers and privates in

the actual service of the United States, during the years one thousand eight hundred and three, and one thousand eight hundred and four; and, also, the names of the posts where soldiers are stationed, together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended, during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, armories, and magazines:" Whereupon, the said motion being again read, was agreed to by the House.

Mr. DANA, from the committee to whom was referred, on the second instant, the petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others, made a report thereon; which was read, and referred to a Committee of the Whole on Thursday next.

Resolved, That the Secretary of War be directed to transmit to this House, copies of any documents in his office, which relate to the case of William Scott, and James and John Pettigrew, stated to have been murdered and plundered by the Cherokee Indians.

The report was referred to a Committee of the Whole on Thursday next.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, presented, by leave of the House, a bill in addition to an act, entitled "An act to promote the progress of useful arts and to repeal the act heretofore made for that purpose;" which was read and committed to the Committee of the whole House.

The House resolved itself into a Committee of the Whole on the report of the committee appointed, on the fourteenth of November last, to "inquire into the expediency of making provision, by law, for the completion of the public buildings belonging to the United States, near Philadelphia:" and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House as follows:

Resolved, That the sum of eighteen thousand nine hundred dollars be appropriated for the completion of the arsenal belonging to the United States on the river Schuylkill.

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that Mr. LEIB, Mr. MOTT, and Mr. CUTLER, do prepare and bring in the same.

A memorial of the Delegates appointed by various sections of the District of Columbia, signed by Cornelius Coningham, their President, and attested by Nicholas King, their Secretary, was presented to the House and read, submitting to the consideration of Congress sundry propositions, by way of amendment and modification of the acts relating to the government of the District of Columbia, which they pray may be adopted for the convenience and benefit of the memorialists and other inhabitants of the said District.—Referred to Mr. NICHOLSON, Mr. THOMPSON, Mr. PLATER, Mr. LEWIS, and Mr. LUCAS; to examine and report their opinion thereupon to the House.

The House resolved itself into a Committee of the Whole on the bill for the relief of the widow and orphan children of Robert Elliot. The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

OLIVER EVANS.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the twenty-first ultimo, the petition of Oliver Evans, of the city of Philadelphia, made a report thereon, as follows:

The petitioner has invented many useful improvements on merchant flour mills, for which he obtained a patent, dated January 7th, 1791. This patent expired on the 7th of the present month. He states that he has also made several valuable discoveries, and improvements on steam engines—explanations, and drawings of which have been exhibited to the committee. The petitioner represents, that, owing to the great extent of the United States, and the difficulties usually attending the introduction of improvements in new countries, he has not yet been able to collect any considerable sums from his patent, and having found it necessary to impose on himself a condition, not to expend in new inventions and discoveries any more than the net profits derived from old ones, he finds himself compelled to ask for the extension of his patent right, for the improvement in merchant flour mills, with a view that he may appropriate the proceeds towards completing his further inventions on steam engines, which in his opinion, are, in their operation, from five to ten times more powerful than any others heretofore invented, in proportion to size and weight; and he avers that he has conceived still greater improvements on steam engines, (which he has not yet put in practice) to lessen their expense, and cause them to last longer, increase their power, and diminish the consumption of fuel to about one fourth part.

The petitioner appears to possess a mind capable of conceiving, and a strong propensity for making new discoveries and inventions, and the greater part of his life seems to have been devoted to improvements in labor-saving machines, and if he could be encouraged to persevere, it is highly probable his discoveries may be rendered useful to his country, and at the same time profitable, and honorable to himself.

He is desirous that his patent may be extended for the term of seven years, without injuring those who have already purchased the right of using it; and if this privilege could be granted, he is convinced that it would enable him to complete his other valuable discoveries, which otherwise he apprehends, from the great expense attending them, he may be obliged to abandon, or at least to delay their completion for several years.

The committee have been favorably impressed with the representations made to them by the petitioner, and would venture to recommend that his patent right for the improvement on merchant flour mills, be extended seven years, from the 7th instant. At the same time, the committee are aware (should the petitioner obtain the extension of his patent) that numerous applications will be made to Congress, by other patentees, for the same indulgence, and as the authors of books, maps, and charts, are allowed to renew their patents for the further term of fourteen years, and seeing no objection to a

general provision calculated to meet the reasonable requests of persons who have made very valuable or important discoveries—they ask leave to report a bill on the subject.

Referred to a Committee of the Whole on Thursday next.

DUTIES ON FOREIGN BOOKS.

Mr. CROWNINSHIELD, from the Committee on Commerce and Manufactures, to whom was referred the memorial of the Philadelphia Typographical Society, made the following report:

The petitioners are desirous that Congress should impose greater duties on books imported into the United States. They are under apprehension that, after the conclusion of the present war in Europe, the English bookseller will be able to undersell the American in his own market; and, possessing a sincere conviction that their situation may be greatly ameliorated by restricting the constant and great importation of foreign books, they solicit an augmentation of the present rate of duties on all books imported into the United States, probably with a view of increasing their profits, or, at least, of giving to the American booksellers the preference in their own market, and to which, the petitioners are of opinion, they are justly entitled.

The committee can entertain no doubt that the petitioners are extremely desirous of encouraging the manufacture of books in the United States; and, if the exclusive interest of printers and booksellers were alone to be consulted, it is probable the committee might be induced to recommend the proposed augmentation in the duties; but, it will be recollected that Congress are legislating for the benefit of the whole American People, and not for the sole advantage of any particular individuals.

At the last session of Congress, a law passed, declaring that rags of all sorts, for making paper, should be imported free of duty. The American paper is presumed to be cheaper here, than it can be imported from Great Britain, and, it may be supposed, we shall soon be able to supply the greater part of the demand for the domestic consumption of that article; so that foreign supplies will not be wanted, after a few years; and, although higher wages may be given for journeymen printers and bookbinders, it must be confessed that the art of printing has progressed more rapidly in the United States, than almost any other branch of machinery. This is a truth acknowledged by the petitioners, and assented to, with much pleasure, by the committee; where, then, can be the danger that the English bookseller will be able to undersell the American in his own market? When it is considered that foreign books pay a duty of fifteen per cent. upon their importation, and that, to this charge, the commissions and various shipping expenses at the place of exportation must be added, together with the freight and insurance, the whole amounting, at the lowest calculation, to forty per cent. in favor of, and as a direct encouragement to, the American printers and booksellers, it might be supposed that the petitioners were sufficiently protected, and that they need not be under any apprehension of foreign competition in their business.

The great expenses which must necessarily attend the importation of European books into this country, if there was no other difference in their favor, will, it is hoped, give a decided advantage to the American bookseller.

In the imposition of duties on imported books, or on any article whatever, it was never imagined that the mere importer became ultimately charged with the amount, or that the Government had not in view the collection of a revenue to defray the expenses, and complete the payments of engagements, for which the public faith stands pledged; but surely it could not be supposed that these duties were to be augmented, at any time, to so high a rate as to amount to a complete prohibition on the importation. If a revenue is to be collected, extravagantly high duties ought not to be laid; and, in their augmentation beyond a fair proportion, a diminution of the revenue may be expected. If the duties are raised to answer the design of the petitioners in its full extent, the consequence will be, that little or no revenue will be derived from imported books; the petitioners will be exclusively benefitted; they will charge their own prices for American books; there can be no competition, and the nation will be the only sufferers.

The American people have still a great predilection for English printed books, notwithstanding it has been frequently proved that they can be as accurately and as elegantly printed here, as in any part of the world. The Committee see no reason why the price should be increased by additional duties, and they are unwilling to augment the charge to those readers, who prefer foreign publications to our own, especially when it is conceived that books of every description, whether of foreign or domestic manufacture, are, at present, sold at the most extravagant prices in the bookstores throughout the United States.

If the committee entertained an opinion that the art of printing was not sufficiently protected in this country, they would consider themselves bound, immediately, to recommend the adoption of some measure, calculated to meet the wishes of the petitioners, for the reasons stated; and, from the strongest conviction that the proposed augmentation of the duties on books imported into the United States is unnecessary and inexpedient, at this time, they submit their opinion to the House—

That the Board of Directors of the Philadelphia Typographical Society have leave to withdraw their petition.

The report was agreed to.

WEDNESDAY, January 23.

On motion of Mr. THOMAS,

Resolved, That the Secretary of State be directed to lay before this House a list of the names of persons who have invented any new or useful art, machine, manufacture, or composition of matter, or any improvement thereon, and to whom patents have issued for the same from that office, with the dates and general objects of such patents.

An engrossed bill for the relief of the widow and orphan children of Robert Elliot was read the third time, and passed.

On motion of Mr. HUGER,

Resolved, That the Secretary of the Treasury be directed to transmit to this House a statement of the foreign tonnage which has been entered at the different custom-houses of the United States for the years one thousand eight hundred and one, one thousand eight hundred and two, one thousand eight hundred and three, and one thousand eight hundred and four; and as correct a statement as in his power of the tonnage of the unregistered ships or vessels which have been owned by citizens of the United States during the said years, and which were in possession of a sea-letter, or other regular document, from a custom-house of the United States; and, likewise, a statement of the amount of light-money which has been collected on unregistered ships and vessels, and on other foreign ships and vessels, since the passage of the act for levying and collecting light-money on foreign ships and vessels.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five," with an amendment, to which they desire the concurrence of this House; also, the bill entitled "An act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes," with an amendment, to which they desire the concurrence of this House; and, also, the bill entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," with several amendments, to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Navy of the United States, during the year one thousand eight hundred and five;" whereupon,

Resolved, That this House doth agree to the said amendment.

The House went into Committee of the Whole on the bill for the relief of Captain Alexander Murray. After some time spent in considering and debating the same, the Committee rose and reported the bill without any amendment; it was then ordered by the House that the bill be engrossed for a third reading to-morrow.

Mr. R. GRISWOLD moved a resolution that the Secretary of War be directed to lay before the House a report of the situation of the public buildings on the bank of the Schuylkill, near Philadelphia; what would be the probable expense of completing them; and whether, in his opinion, the public interest will not be promoted thereby.

On motion of Mr. NICHOLSON, the latter part, respecting the opinion of the Secretary, was stricken out.

Mr. VARNUM then moved to add, "and a statement of the quantity of the public stores deposited in the same building." This motion was lost—38 being in its favor and 42 against it.

Mr. GREGG thought such an amendment as the last suggested was necessary; he therefore varied the language, and offered a motion in this shape: "and a statement of the military stores deposited in said buildings." That amendment being agreed to, the question was taken on the original motion as amended, and carried—61 voting in its favor.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes;" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain: Whereupon, the amendments, together with the bill, were committed to the Committee of Commerce and Manufactures.

PROTECTION OF SEAMEN.

The SPEAKER laid before the House a letter from the Secretary of State, accompanying statements and abstracts relative "to the number of 'American seamen who have been impressed or 'detained on board of the ships of war of any 'foreign nation; with the names of the persons 'impressed; the name of the ship or vessel by 'which they were impressed; the nation to which 'she belonged, and the time of the impressment; 'as also certain facts and circumstances relating 'to the same;" prepared in obedience to a resolution of this House of the thirty-first ultimo.

Mr. CROWNINSHIELD said, that the list of impressed seamen, furnished by the Secretary of State, exceeded in number anything he had expected. He thought these impressments ought to be prevented, and that the subject demanded investigation. He had drafted a resolution, which he would submit to the House, having in view to connect this with another very important subject. Many gentlemen must have observed that some late proclamations had been issued by the Governors of the several British West India Islands, interdicting the American trade after May next. The proclamations bore date in October or November, and were to take effect in six months. It appeared to him that the British Government were determined to exclude us from their islands, upon the expectation that their own vessels would be competent to carry the necessary supplies. Mr. C. said we had a right to carry the productions of the United States in American bottoms, and he hoped we should never permit foreign ships to come to our ports and carry on an exclusive trade with any country whatever, where our vessels were not allowed the same privilege. His intention was to prevent the American carrying trade to the West Indies from falling into the hands of other nations. He would not exclude foreign vessels from our ports, but it was desirable that our own export trade should not be monopolized by foreigners. The subject was highly important to this country. Will the United States tamely submit to see some of its best citizens torn from their families and friends, without attempting something for their relief? Shall we see another country pursuing measures hostile to our commercial rights and make no effort to correct the mischief? The West India Islands depended on the United States for their ordinary supplies, and our vessels had usually carried a large proportion of their cargoes on American account; but it appeared now that we were to be shut out from this trade, and it was in future to be carried on in foreign vessels. An effectual remedy would be to prohibit the exportation of

our productions in foreign bottoms to all ports of islands with which we were not permitted to have intercourse, and in order that the subject might undergo the examination which its importance demanded, he offered the following resolution:

Resolved, That the Committee of Commerce and Manufactures be instructed to inquire if any, and what, further provision be necessary for the protection of the commerce and seamen of the United States, and to inquire whether any foreign country has made any late regulations with a view to monopolize any branch of the American carrying trade, to the exclusive benefit of such foreign country, or which in their operation may be injurious to the agricultural or commercial interest of the United States; and also to inquire into the expediency of prohibiting the exportation from the United States of all goods and merchandise whatever in foreign ships bound to any port with which the vessels of the United States are not allowed communication, or where a free and unrestricted trade is not permitted in the productions of the United States, and that the committee be authorized to report by bill or otherwise.

Mr. RANDOLPH wished the resolution to lie for consideration a few days; he would mention Monday. The gentleman had said it was an important subject, and if he had no objection it would be as well to allow the resolution to remain unacted upon for a little time. It might be printed for the consideration of the House, and he rather supposed some alteration would be necessary in the form of the resolution.

Mr. CROWNINSHIELD replied that he was perfectly willing the resolution should lie for consideration, agreeably to the desire of the gentleman from Virginia, and he would consent to any reasonable delay; but he would not consent to its remaining unacted upon till a period so late as to preclude any measures from being adopted this session, because the proclamation would take effect in the month of May. He was not tenacious of forms, it was the substance of things he looked to, and he would with great pleasure agree to modify the resolution to any shape which the gentleman from Virginia might suggest.

A motion was made to refer the resolution to a Committee of the Whole for Monday next; which was agreed to, and the resolution ordered to be printed.

THURSDAY, January 24.

The SPEAKER laid before the House a letter from the Secretary of War, enclosing sundry documents relating to the case of William Scott, and James and John Pettigrew, stated to have been murdered and plundered by the Cherokee Indians, in pursuance of a resolution of this House of the twenty-second instant; which were read and referred to the Committee of the Whole, to whom is committed the report of the Committee of Claims on the petition of Alexander Scott, of the State of South Carolina, in behalf of himself and others.

On motion of Mr. MCCREERY,

Resolved, That a committee be appointed to inquire into the expediency of farther continuing in force an act, entitled "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer;" and that the committee be authorized to report by bill, or otherwise.

Ordered, That Mr. MCCREERY, Mr. LOWNDES, and Mr. NEWTON, be appointed a committee, pursuant to the said resolution.

Mr. CLARK moved the following resolution:

Resolved, That the Secretary of the Treasury be directed to lay before this House a circumstantial report of the claims standing upon the Treasury books against the United States, which are barred by the statutes of limitation; by what authority and by whom the settlements were made, and the person or persons to whom the respective sums are due; with any discriminating circumstances that may exist in the different classes of claims.

The House proceeded to consider the said motion; Whereupon the farther consideration thereof was postponed until Tuesday next.

Mr. NICHOLSON moved for the House to go into Committee of the Whole on the bill for preserving peace in the ports and harbors of the United States, and in the waters under their jurisdiction. The House agreed to the same.

Mr. NICHOLSON introduced two amendments; one to supply the place of the second section of the bill, and the other as a substitute for the fifth section. These clauses being lengthy and important, he wished them to be printed before they were discussed; for which reason he wished the Committee to rise, report progress, and ask leave to sit again.

Mr. R. GRISWOLD had also prepared an amendment in the place of the second section, which he also wished to have printed. It was accordingly received, and the Committee having risen and reported, the amendments were all ordered to be printed.

On motion of Mr. CROWNINSHIELD, the House resolved itself into a Committee of the Whole on the bill for the relief of the sufferers by fire in the city of New York.

Mr. EARLY proposed a new section, providing for the cases of those who suffered losses by the hurricane of the 8th of September last, at Savannah, in Georgia; Charleston, Georgetown, and Beaufort, South Carolina.

The Committee having agreed thereto, rose and reported the same, and the bill and amendment were postponed until to-morrow.

Mr. PURVIANCE laid on the table a resolution for referring to the Secretary of State, the Secretary of the Treasury, and the Attorney General, the consideration of the constitutionality and expediency of granting to the inhabitants of the District of Columbia a Legislature chosen by themselves, with instructions, in case they deem it Constitutional and expedient, to report a system to the next Congress.

The engrossed bill for the relief of Captain Alexander Murray was read a third time; and on the question, Shall the bill pass?

Mr. CONRAD said he could not agree to a measure of the kind. The conduct of Captain Murray had been decided illegal in every court in the United States into which it had been carried. He did not approve of a legislative body re-examining decisions of courts of justice, as they were totally unqualified for the object. He therefore could not be content to give a silent vote; for which reason he called the yeas and nays.

The yeas and nays were taken on the passage of the bill, and were—yeas 66, nays 37, as follows:

YEAS—Willis Alston, jr., Nathaniel Alexander, Simeon Baldwin, William Blackledge, Adam Boyd, Joseph Bryan, George W. Campbell, John Campbell, William Chamberlin, Clifton Claggett, Thomas Claiborne, John Clopton, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, Peter Early, James Elliot, William Eustis, William Findley, Calvin Goddard, Thos. Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, David Holmes, Benjamin Huger, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, William McCreery, Nahum Mitchell, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Thomas Plater, Jacob Richards, Samuel Riker, Thos. Sandford, John Smilie, John Smith, Richard Stanford, Joseph Stanton, James Stephenson, Samuel Taggart, Benj. Tallmadge, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, Philip Van Cortlandt, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Alexander Wilson, and Thomas Wynns.

NAYS—Isaac Anderson, David Bard, George M. Bedinger, Robert Brown, William Butler, Levi Casey, Matthew Clay, Frederick Conrad, Ebenezer Elmer, John W. Eppes, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, Michael Leib, Matthew Lyon, Andrew McCord, David Meriwether, Thomas Moore, James Mott, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, John Rhea of Tennessee, Erastus Root, Thomas Sammons, Ebenezer Seaver, Jas. Sloan, Henry Southard, John Stewart, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, and Joseph Winston.

NAVY YARDS, &c.

Mr. EUSTIS moved the following resolution:

"*Resolved*, That it is expedient to provide by law for defraying the expense incident to fitting and preparing one of the navy yards belonging to the United States, and lying near the margin of the ocean, for the reception and repairing of such ships of war as are now at sea on their return to port, and such other ships or vessels of war as may hereafter return from their cruises or stations."

Mr. EUSTIS said the resolution now submitted to the consideration of the House had grown out of an opinion which impressed itself on his mind, when he first beheld the whole naval force of the United States moored in the Eastern branch of the Potomac. He had ever considered the establishment of a navy yard in this city, as the principal naval arsenal, to be among the errors or misfortunes which had presided over many other arrangements respecting this city and territory. As the United States were at that time at peace with all the world, excepting the Dey of Algiers, as a small part of the force only was necessary to carry on this warfare, and as the ships had been actually hauled up at a considerable expense, there appeared to be no immediate necessity for incurring a further expense in their removal. Our maritime concerns have now experienced a change. We are at war with another of the Barbary Powers, and a greater number of ships have been necessarily taken into the service. We have at this time six frigates, and five or six smaller vessels on duty in the Mediterranean. After a certain time these ships must be relieved. Others must be sent out to take their stations. Those which return will require repairs; and in order to prepare for these contingencies it was proper that some one of the navy yards nearer to the ocean should be put in a condition to receive them. This was the object of the resolution. It was desirable that some place should be selected easy of access, where the water was deep, and in the neighborhood of some large maritime town, having large markets and magazines of the variety of articles required for repairing and fitting ships for sea, with the artizans employed in that business. It was not his intention to describe the advantages or disadvantages of one place or of another. The United States own six navy yards. The whole coast is before the Executive, and such a place will be selected as will combine the greatest number of advantages and best promote the public interests. To those who believed that ships of war could be repaired or fitted out with the same despatch, at the same expense, and with the same ease and convenience, at a place three hundred miles distant from the sea, as they could be in one of the ports laying on its margin, and possessing the advantages which had been stated, no reasoning could be applied which would change their opinions. The proposition was offered to the House to be decided by common sense and understanding. There was one objection, which he had anticipated, and which had some weight in it. The business of the department would in that case be removed from the eye of the Government, and from the more immediate inspection and control of the intelligent and capable officer who directed its operations; this inconvenience would be balanced by the more ample means and resources which his agents would find in the large towns, and by which they would be enabled to carry his instructions more promptly into effect.

The motion was referred to a Committee of the Whole on Monday next.

FRIDAY, January 25.

A Message was received from the President of the United States, transmitting the report of the Director of the Mint. The said Message was read, and, together with the report, ordered to lie on the table.

Mr. LEIB, from the committee appointed on the twenty-second instant, presented a bill making an appropriation for the completion of the arsenal belonging to the United States on the river

Schuylkill; which was read twice, and committed to a Committee of the whole House on Monday next.

On motion of Mr. CROWNINSHIELD,

Resolved, That the Committee of Ways and Means be directed to inquire whether any, and, if any, what, alterations are necessary to be made in the several acts fixing the salaries and emoluments of the collectors of duties on imports and tonnage; and that the committee have leave to report by bill, or otherwise.

On motion, it was

Resolved, That Mr. NELSON be excused from serving as one of the Managers appointed on the fifth ultimo, on the part of this House, to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage," with an amendment; to which they desire the concurrence of this House. The Senate have passed a bill, entitled "An act concerning the mode of surveying the public lands of the United States;" to which they desire the concurrence of this House.

The bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," was read twice, and committed to Mr. GREGG, Mr. MORROW, Mr. DENNIS, Mr. ALEXANDER, and Mr. MOTT, to consider and report thereon to the House.

A petition of sundry purchasers of lands of the United States, in the State of Ohio, was presented to the House and read, praying, for the reasons therein specified, that an extension of the time of payment for the said lands may be granted by law, and, also, a remission of interest on the several instalments due on the same.—Referred.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage:" Whereupon, the amendment, together with the bill, was committed to a Committee of the whole House on Monday next.

Mr. MORROW presented two petitions, one from Thomas Orr, the other from Joseph Walker, praying Congress to allow them certain sections of land they had settled upon and improved.—Referred to the committee on the subject of the public lands, appointed on the 7th inst.

Mr. MCCREERY, from the Committee appointed for the purpose, reported a bill declaring the assent of Congress to the act of Maryland of December 28, 1793, allowing a health officer at Baltimore.

The bill being twice read, on motion of Mr. LEIB, it was referred to a Committee of the Whole for Monday next.

Mr. ROOT, from the committee appointed for the purpose, reported a bill authorizing the discharge of John York from his imprisonment.—The same was twice read, and referred to a Committee of the Whole for Monday next.

The order of the day for the House to resolve itself into a Committee of the Whole on the report of the Committee of Revisal and Unfinished Business, was taken up.

The first resolution, for reviving and making permanent the law for regulating the mode of taking testimony in cases of contested elections was agreed to.

The second resolution, for renewing the charter of Washington City, being under consideration, Mr. LEIB observed, that it would be unnecessary to act on this subject at this time, as the law of last session had extended the duration of the charter to fifteen years.

On the question, the Committee disagreed to the last resolution.

The Committee then rose and reported.

The House immediately considered and concurred in the report of the Committee of the Whole; and the first resolution was referred to the Committee of Revisal and Unfinished Business, to report a bill for the purpose.

Mr. LATTIMORE presented a memorial from the Legislative Council and the House of Representatives of the Mississippi Territory, stating sundry grievances to which they were exposed by the act of Congress for the government of the same. They complain that a man is not qualified to vote unless he possess fifty acres of land, whereby those who hold houses and town lots, as well as respectable citizens of considerable personal estate, are disfranchised. The inequality of representation in the several counties to the number of inhabitants in each; the necessity of extending the powers and authorities of an additional judge lately furnished the Territory; the inconveniencies arising from the prescribed mode of the disposal of lands; the necessity of establishing a hospital at the Natchez; and, lastly, an increase of the salaries of the judges.

On motion, the memorial was referred to a select committee of five members.

Mr. R. GRISWOLD, after stating at some length the provision made by the several laws of the United States respecting the duties on the importation of goods, wares, and merchandise, into the United States, and endeavoring to show that saltpetre had been particularly exempted from the payment of duties, under most of them, but that lately the Comptroller of the Treasury had directed the like duties to be taken upon their importation as upon other ad valorem goods—said he regretted that a difference existed on this point; his own opinion, as well as that of several eminent civilians, being the reverse, he moved that the Committee of Ways and Means be instructed to inquire whether saltpetre is at this time liable by law to a duty on the importation thereof into the United States? If liable to a duty, what is the rate thereof, and whether it is not expedient to define by law the duty to be levied hereafter on that article?

After some conversation on the subject, the motion was agreed to.

Mr. CROWNINSHIELD called for the order of the day, on the bill for the relief of the sufferers by the late fire in New York. The motion being agreed to, the House took into consideration the amendment proposed by Mr. EARLY, and agreed to in Committee of the Whole, for extending the like relief to those who suffered by the storm of the 8th of September last, in the ports of Savannah, Beaufort, Charleston, and Georgetown, in Georgia and South Carolina.

The motion being expressly to strike out Georgia and South Carolina, for the purpose of particularizing the ports intended to be relieved, viz: Savannah, Beaufort, Charleston, and Georgetown, a division of the question was called for, and the question being put on striking out, it was carried in the affirmative. The remainder of the motion, viz: Shall the above-mentioned ports be inserted? passed in the negative; so there stood a blank in the bill without connexion. It was then suggested that it would be proper to extend this relief all along the coast where sufferings had taken place. But this being opposed as too extensive, and likely to defeat the bill altogether,

On motion of Mr. EARLY the amendment was referred to a Committee of the Whole, for the purpose of restoring it to the state it was in before it was thus mangled. The motion of reference was carried for Monday next.

POST ROADS.

Mr. G. W. CAMPBELL called for the order of the day on the resolution authorizing the establishment of a post road from Knoxville, in Tennessee, to the settlements on the Tombigbee river, and so on to New Orleans.

On the question, Will the House resolve itself into a Committee accordingly? it passed in the negative.

Mr. STANFORD moved to discharge the Committee of the Whole, with a view of referring the subject to the Committee on Post Offices and Post Roads.

Mr. NEWTON wished the subject to remain in its present state, until the information which the House had requested of the President was received.

Mr. G. W. CAMPBELL thought the subject not a proper one for the Committee on Post Offices and Post Roads, and gentlemen might recollect that such a motion had been made when the business was first introduced, and it then failed of success; he hoped the like fate would attend the present motion. It would be recollected that the information alluded to by his friend from Virginia, had been requested seven weeks since, and he presumed was not yet to be procured, nor perhaps might it be during the session; he hoped, however, the House would agree to proceed to the examination of the subject.

Mr. GREGG thought it would be as well to refer it to the Committee of the Whole on the bill directing the application of a certain sum of money out of the proceeds of the sale of western lands, for opening certain roads.

Mr. STANFORD observed, the subjects were not similar, as there was a material difference between the useful roads through a country for carrying its produce to market, and a main post road, like the one under contemplation.

The question, on the motion to discharge the Committee of the Whole, was lost without a division.

GEORGIA CLAIMS.

Mr. DANA called for the order of the day on the report of the Committee of Claims, respecting the Yazoo claims to lands. He did this, that, at the time of adjournment, it might be considered as the unfinished business, and might have the preference over every other order of Monday. It would be recollected that the report was made last week, and fixed as the order of the day for Monday last, but he had forborne to call it up till this time, in order that gentlemen, after having had the printed report so long in their hands, might be prepared to meet the discussion, if not the decision.

Mr. NEWTON was about observing that the subject was too important to be taken up in a thin House, and, if gentlemen looked round, they would perceive most of the seats vacant.

He was here reminded by the Speaker that no debate could take place on the priority of business. If gentlemen were not prepared to go into Committee of the Whole, they would vote against the present motion.

Mr. NEWTON said, since that was the case, he would move to adjourn.

The motion to adjourn being decided in the negative.

The SPEAKER put the question on going into Committee of the Whole on the report.

On a division, there were 47 in the affirmative, and 43 in the negative; the motion was of course carried.

The CHAIRMAN proceeded to read the report, and when he had gone through a small part of it,

Mr. CLARK moved that the Committee should rise.

On the question for the Committee rising there were 50 in the affirmative, and 43 against it; it was carri d.

The Committee hereupon rose, and reported progress, and asked leave to sit again.

On granting leave to sit again, there was 53 in the affirmative, and the Speaker declared that, in his opinion, the question was carried.

TERRITORY OF LOUISIANA.

Mr. JOHN RANDOLPH, from the committee appointed, on the twelfth of November last, on so much of the Message of the President of the United States as relates "to an amelioration of the form of government of the Territory of Louisiana," to whom was referred, on the 3d ultimo, a memorial, in the French language, with a translation thereof, from sundry planters, merchants, and other inhabitants of the said Territory of Louisiana, made a report, in part, thereupon; which was read, and referred to a Committee of the Whole on Monday next. The report is as follows:

The grievances which have been felt by the memorialists, are of a nature which your committee believe to be inseparable from those sudden transitions of government to which late political events have subjected the inhabitants of Louisiana. By them, however, they are ascribed to a denial, on the part of the United States, of those rights and immunities to which they declare themselves entitled, in virtue of the third article of the treaty which transferred them to our dominion, and to the immediate enjoyment of which they now claim to be admitted. It is only under the torture that this article of the Treaty of Paris can be made to speak the language ascribed to it by the memorialists, or countenance for a moment that charge of breach of faith, which they have conceived themselves justified in exhibiting against the Government. By that article it is stipulated that "the inhabitants of the ceded territory shall 'be incorporated into the Union of the United States, 'and admitted as soon as possible, according to the 'principles of the Federal Constitution, to the enjoy-'ment of all the rights, advantages, and immunities, of 'citizens of the United States, and in the mean time 'they shall be maintained and protected in the free 'enjoyment of their liberty, property, and the religion 'which they profess."

"They shall be incorporated into the Union, and admitted"—to what? To the enjoyment of all the rights, &c., of American citizens. When? As soon as it can be done in conformity with the principles of the Federal Constitution; meanwhile they are to be "protected," &c.

Could any doubt be excited of the soundness of this construction of the English context, it would be instantly dissipated by a recurrence to its counterpart in the French language,* if the manifest absurdity of the concluding words of the article, which would result from an opposite interpretation, should fail to remove it. For what necessity could exist for a provision securing to the inhabitants of Louisiana the temporary enjoyment of certain minor privileges, when their *immediate* admission to all the rights of American citizens was one of the conditions on which their country was transferred to the United States by France? Whether the words "as soon as possible, according to the principles of the Federal Constitution," be understood to refer to any change, which, in conformity with its own principles, might at some future period be made in that instrument, or to that provision of the Constitution which requires the rule of naturalization to be uniform, they are equally fatal to the claim urged by the memorialists of their right to an immediate participation of those benefits which they cannot possess in their full extent until admitted to their enjoyment by the principles of the Constitution. The imputation, therefore, of a want of good faith in the Government of the United States, is not more unsupported by the language of the third article of the Treaty of Paris, than it is repugnant to the uniform tenor of the American character, from the commencement of the national existence.

But because the memorialists may have appreciated too highly the rights which have been secured to them by the treaty of cession, the claims of the people of Louisiana on the wisdom and justice of Congress ought not (in the opinion of your committee) to be thereby prejudiced. Relying on the good sense of that people to point out to them that the United States cannot have incurred a heavy debt in order to obtain the Territory of Louisiana merely with a view to the exclusive or especial benefit of its inhabitants, your committee, at the same time, earnestly recommend that every indulgence, not incompatible with the interests of the Union, may be extended to them. Only two modes present themselves whereby a dependent province may be held in obedience to its sovereign State—force and affection. The first of these is not only repugnant to all our principles and institutions of Government, but it could not be more odious to those on whom it might operate than it would be hostile to the best interests, as well as the dearest predilections, of those by whom, in this instance, it would have to be exercised. The United States are not the property of an hereditary despot, or the rich prize of a military adventurer, whose favorites and followers may batten on the spoil of plundered provinces won by the blood and treasure of their exhausted subjects, but they form the patrimony of a free and enlightened people, who control, while they constitute the only fund from which the men and the money of which military power is composed can be drawn. It can never be the interest, therefore, of the people of the United States to subject themselves to the burdens, and their liberties to the dangers, of a vast military force, for the subjugation of others. The only alternative, then, which presents itself, is believed to be not more congenial to the feelings than to the best interests of the people of the Union. So long as their authority pervades the Territory of Louisiana, so long as their laws are respected and obeyed therein, your committee are at a loss to conceive how the United States are more interested in the internal government of that Territory than of any State in the Confederacy. By permitting her inhabitants to form their own regulations, the voice of discontent would be hushed, faction (if it exist) disarmed, and the people bound to us by the strong ties of gratitude and interest. The spirit of disaffection, should it be excited at any future period by ambitious and unprincipled men, would be in direct hostility to the obvious interests of the people of Louisiana, while the ability of the Union to repress it would remain unimpaired.

In considering this subject, the committee have not been inattentive to those forms of provincial government which have heretofore obtained in the remote territories of the United States. But they have found nothing in them worthy of imitation. The second grade, as it is termed, is of the two less liable to objection, but there are many of its features which they are unable to recommend. Their object is to give to Louisiana a government of its own choice, administered by officers of its own appointment. In recommending the extension of this privilege to the people of that country, it is not the intention of the committee that it should be unaccompanied by wise and salutary restrictions. Among them may be numbered a prohibition of the importation of foreign slaves, a measure equally dictated by humanity and policy; restrictions against the establishment of any form of government, other than a representative Republic; against violations of the liberty of conscience, the freedom of the press, and the trial by jury; against the taxation of the lands of the

* Les habitans des Territoires cédés seront incorporés dans l'union des États Unis, et admis aussitôt qu'il sera possible, d'après les principes de la constitution fédérale, à la jouissance de tous les droits, avantages, et immunités des citoyens des États Unis, et, en attendant, ils seront maintenus et protégés, &c.—Treaty of Paris, of the 30th of April, 1803, Art. III.

United States; to which may be added (for further security) that such of the laws as may be disapproved by Congress, within a limited time after their passage, shall be of no force and effect. These, however, are objects which may be embraced in any bill which the wisdom of the Legislature may see fit to pass upon the subject. They will be proper subjects of consideration after the determination of the principal question, the extension of self-government to the people of Louisiana. Your committee, therefore, submit the following resolution:

Resolved, That provision ought to be made by law for extending to the inhabitants of Louisiana the right of self-government.

[The following paper was subsequently presented to the House by the committee.]

After having considered with respectful attention the observations of the committee on the third article of the treaty of cession of Louisiana, we avail ourselves of the permission they have given us, to make such remarks as we conceive may be of some use towards the elucidation of the question on which is principally founded the claim of our constituents.

We have diligently and carefully examined the articles of the Constitution of the United States, which have been pointed out to us as having more or less relation to the present subject.

The first is the article which speaks in a direct and unquestionable manner of the admission of new States into the Union, in these words: "New States may be admitted by the Congress into this Union," &c. This article, the only one which expresses a clause respecting the admission of new States, makes no kind of restriction which can be applicable to Louisiana, and so far we find nothing that can prevent its incorporation.

The next article which has been quoted to us establishes the power of Congress to dispose of, and make all needful rules respecting, the territory or other property belonging to the United States. This, we humbly conceive, has no relation whatever with the situation of the inhabitants of Louisiana, and is evidently relative only to the disposal and management of the property of the United States.

Subsequently, it has been suggested that certain rules and regulations established in the year 1787, respecting the Territory northwest of the Ohio, are applicable to us, because they are considered as a part of the Constitutional laws, and, consequently, must be observed with respect to Louisiana, which is to be admitted into the Union according to the *principles* of the Constitution.

This observation leads to two queries: First, is the ordinance of 1787 to be considered as a part of the *principles* of the Constitution? Second, is it applicable to Louisiana?

Without questioning whether the ordinance of 1787 ought to be considered as an integral part of the rules established by the Constitution, though it appears to us extremely doubtful, we beg leave to say that it cannot be ranked among the *principles* of the Constitution. The *principles* of the Constitution we humbly conceive to be the fundamental laws common to all the members of the Confederation. This is only a local regulation, which, far from having anything to do with the *principles* of the Constitution, has been made, on the contrary, for those who could not enjoy yet the rights secured by the *principles* of the Constitution.

But in whatever light that ordinance may be considered, it can by no means be applicable to Louisiana. It is clearly and unquestionably limited to the Territory northwest of the Ohio; and unless it should have been stipulated afterwards in the Constitution that that regulation would be applicable to any other Territory thereafter to be acquired, it must have remained a local and private rule.

On the other hand we do not conceive what similitude can be found between our country and those territories. The Territory northwest of the Ohio, acquired by the right of war, was a vast desert, almost without any inhabitants, and was the absolute property of the United States. There was no compact, no contract of any kind stipulated by any nations in favor of any population. The United States, being bound by no stipulation whatever, were at full liberty to make such government as they thought fit for that Territory. But the case of Louisiana is evidently different. It is a country which contains already a numerous population, established in it since nearly one hundred years. It becomes a part of the United States by a solemn treaty, containing a positive clause in favor of its inhabitants. Now, to pretend that this engagement goes no further than applying to them the ordinances made for territories, in favor of which no stipulation existed, would be, we conceive, reducing to nothing the third article of the treaty of cession of Louisiana. That article does not stipulate that the inhabitants of the ceded Territory shall be admitted into the Union according to the acts made by Congress to regulate the rights of the inhabitants of the Territory northwest of the Ohio; it expresses, on the contrary, that the Louisianians shall be incorporated into the Union according to the *principles* (the elemental laws) of the Constitution. It is, therefore, in the Constitution that we must look to find on what principles the Louisianians are to be incorporated in it.

Other remarks have been made by the committee tending to show that the incorporation of the inhabitants of Louisiana into the Union cannot be executed without the consent of three-fourths of the several States. Without pretending to enter into any discussion upon subjects of that magnitude, the consideration of which appertains exclusively to the sovereign body of Congress, we will take the liberty to suggest, respectfully, that the treaty stipulates our incorporation into the Union, that the United States have accepted that condition, and that to place it, at the present period, in the power of the individual States to refuse that incorporation, would be exposing the Federal Government to the danger of not fulfilling their promise.

After having briefly stated the principal remarks which have occurred to our memory respecting the suggestions of the committee, we beg leave to present, with all due deference and respect, our own interpretation of the third article of the treaty of cession of our country.

We consider, in the first place, that the clause, which is the ground of our claim, is a stipulation made expressly in favor of the inhabitants of Louisiana then existing, because the French Government had no right to stipulate the incorporation of the *future* citizens of Louisiana. We think that the words "as soon as possible, according to the principles of the Constitution," evidently express that this incorporation is to be executed without any unnecessary delay, and that it is to take place on the same *principles* by which the Constitution has regulated the rights of the individual States, and of the citizens of the United States, in relation to the federal compact. We humbly think that any interpretation tending to procrastinate the incorporation of the *present* inhabitants of Louisiana into the Union

is directly opposite to the spirit of the third article of cession of our country, the object of which is unquestionably to secure that advantage to the inhabitants who are annexed to the United States by that treaty; that, consequently, any condition depending on future circumstances ought to be inadmissible, because it would expose the inhabitants, who existed in Louisiana when the treaty was made, to be kept out of the enjoyment of rights which have been stipulated for them.

Such is our opinion, which we respectfully submit to the Committee, praying them to accept our thanks for the permission they have given us to express our sentiments on the subject, and to make some allowance for the disadvantage under which we labor to express them in a language which is not altogether familiar to us.

L. DERBIGNY,
P. SAUVE,
DESTREHAN,
Agents of the inhabitants of Louisiana.

MONDAY, January 28.

A petition of sundry purchasers of the lands of the United States in the State of Ohio was presented to the House and read, praying (for the reasons therein stated) that an extension of the time of future payments for the said lands may be granted by law, and also a remission of interest on the several instalments due on the same.—Referred to the committee appointed on the seventh instant, "to inquire whether any and what alterations are necessary to be made in the laws for the disposal of the public lands northwest of the Ohio."

A petition of the members of the Presbyterian Congregation, in Georgetown, in the Territory of Columbia, was presented to the House and read, praying that an act of incorporation may be passed, vesting in Stephen B. Balch and other persons therein named, and their successors, such powers, privileges, and immunities, as Congress in their wisdom may deem proper, to enable the petitioners, in behalf of the said congregation, to lease out on ground-rent, or sell, as they may deem expedient, for the purpose of defraying the expenses incident to their mode of worship, and to keep their buildings and grave-yards in decent repair.—Referred to Mr. FINDLEY, Mr. ARCHER, Mr. CUTLER, Mr. JONES, and Mr. BALDWIN.

Mr. J. CLAY, from the committee appointed, presented a bill for establishing trading-houses with the Indian tribes; which was read twice and committed to a Committee of the Whole on Wednesday next.

The House proceeded, by ballot, to the choice of a Manager, on the part of this House, to conduct the impeachment against Samuel Chase, one of the associate justices of the Supreme Court of the United States, in the place of Mr. NELSON, who hath been excused from serving on the subject-matter of the said impeachment; and, upon examining the ballots, Mr. CLARK was found to be duly elected by a majority of the votes of the whole House.

A message from the Senate informed the House that they have passed a bill, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial courts;" to which they desire the concurrence of this House.

On motion, it was *Resolved*, That the Committee of Revisal and Unfinished Business be instructed to inquire whether any, and if any, what alterations are necessary in the "Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," and that the committee be authorized to report by bill or otherwise.

The bill sent from the Senate, entitled "An act to extend jurisdiction in certain cases to the State and Territorial Courts," was read twice, and committed to Mr. J. RANDOLPH, Mr. R. GRISWOLD, and Mr. J. CLAY, to consider and report thereon to the House.

On motion, it was *Resolved*, That a committee be appointed to inquire into the expediency of providing by law for the more effectual prevention of frauds and forgeries on the Bank of the United States, and that the committee be authorized to report by bill or otherwise.

Ordered, That Mr. J. CLAY, Mr. DENNIS, and Mr. G. W. CAMPBELL, be appointed a committee, pursuant to the said resolution.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the ninth and sixteenth of November last, the petitions and memorials of a number of merchants, traders, and farmers, on the waters of Roanoke and Cashie rivers, in the district of Edenton, and State of North Carolina, made a report thereon; which was read, and referred to a Committee of the Whole on Wednesday next.

On motion, it was *Resolved*, That a committee be appointed to take into consideration the present situation of the grounds in the City of Washington, which were appropriated for the purpose of laying out public walks and gardens, and to report such measures to this House as may tend to carry into effect the original intention of the proprietors by whom the said lands were granted for public use.

Ordered, That Mr. HOLLAND, Mr. LIVINGSTON, Mr. VARNUM, Mr. HUGER, and Mr. SMILIE, be appointed a committee, pursuant to the said resolution.

The House resolved itself into a Committee of the Whole, on the bill authorizing the discharge of John York from his imprisonment; and, after some time spent therein, the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The House again resolved itself into a Committee of the Whole, on the report, in part, from the committee appointed on the twelfth of November last, on so much of the Message of the President of the United States as relates to "an amelioration of the form of government of the Territory of Louisiana." The Committee rose and reported a resolution thereupon, which was twice read and agreed to by the House, as follows:

Resolved, That provision ought to be made by law for extending to the inhabitants of Louisiana the right of self-government.

Ordered, That a bill or bills be brought in, pursuant to the said resolution, and that Mr. J. RANDOLPH, Mr. R. GRISWOLD, Mr. T. MOORE, Mr. SMILIE, Mr. DWIGHT, and Mr. SAMMONS, do prepare and bring in the same.

The House again resolved itself into a Committee of the Whole, on a motion relative to "a provision by law for defraying the expense incident to fitting and preparing one of the navy yards belonging to the United States, and lying near the margin of the sea, for the reception and repairing of such ships of war as are now at sea, on their return to port, and such other ships or vessels of war as may hereafter return from their cruises or stations," referred on the twenty-fourth instant; and, after some time spent therein, the Committee rose, and reported a resolution thereupon, which the House proceeded to consider, when the House adjourned.

TUESDAY, January 29.

Another member, to wit: OLIVER PHELPS, from New York, appeared, and took his seat in the House.

The SPEAKER laid before the House a letter from the Secretary of War, stating his intention of complying with the resolution of this House of the twenty-third instant, relative "to the situation of the public buildings on the banks of the Schuylkill, near the city of Philadelphia," so soon as the necessary information can be obtained from the superintendent of military stores of the United States.—Ordered to lie on the table.

An engrossed bill authorizing the discharge of John York from his imprisonment was read the third time, and passed.

The House resumed the consideration of the resolution reported yesterday from the Committee of the Whole on the subject-matter of a motion referred to the said Committee, on the twenty-fourth instant, relative to "a proviso, by law, for defraying the expense incident to fitting out and preparing one of the navy yards belonging to the United States, and lying near the margin of the ocean, for the reception and repairing of such ships of war as are now at sea on their return to port, and such other ships or vessels of war as may hereafter return from their cruises or stations:"

And debate arising thereon, the farther consideration of the resolution was postponed until Saturday next.

Mr. THOMAS, from the committee appointed, the eighteenth ultimo, on a petition of Joshua Sands and others, inhabitants and freeholders of the counties of King's and Queen's, in the State of New York, reported a bill to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York; which was read twice and committed to a Committee of the Whole to-morrow.

GEORGIA CLAIMS.

The House again went into Committee of the Whole on the Georgia claims.

After reading over the report of the Committee of Claims, which concludes with submitting the following resolution:

Resolved, That three Commissioners be authorized to receive propositions of compromise and settlement, from the several companies or persons having claims to public lands within the present limits of the Mississippi Territory, and finally to adjust and settle the same in such manner as in their opinion will conduce to the interest of the United States: *Provided*, That in such settlement the Commissioners shall not exceed the limits prescribed by the convention with the State of Georgia.

Mr. DANA moved that the Committee rise and report the resolution.

Mr. J. RANDOLPH wished before the Committee rose that the gentleman from Connecticut (Mr. DANA) would assign some reasons for the adoption of the resolution. No two things could be more opposite than the prefatory statement made by the Committee of Claims and the resolution which terminated the report. As there were no reasons assigned, he suspected the gentleman had kept them back with a view of surprising the House by their novelty; but he hoped the Committee would not agree to the motion, unless some better cause was assigned for its adoption than had been hitherto made known.

Mr. DANA said the Committee of Claims, in the report now before the Committee of the Whole, had confined themselves to a statement of facts derived from the documents referred to them. He conceived it to be the business of the Committee of Claims to investigate the facts, and arrange them in such a manner as to free the House from the labor of detail; they had done this, and the report was a summary of all that passed in review before them. It was left to gentlemen to reason on the case according to their course of reflection. Whether the committee reasoned on the subject well or ill, he did not know that gentlemen were bound to follow them in their conclusion. Indeed, he apprehended that were the reasoning ever so energetic, it would not go to satisfy every gentleman. On a question like the present, he despaired of making it satisfactory to the gentleman who had asked for reasons. He was persuaded that gentleman could not be convinced by any argument the committee might have used, and it was idle to call upon them to perform impossibilities.

The question on the Committee's rising and reporting their agreement to the resolution was put, and carried—yeas 61, nays 50.

The SPEAKER having resumed the Chair, Mr. VARNUM reported the foregoing resolution as agreed to.

Mr. BRYAN called for the reading of that rule of the House which restrains interested persons from voting.

The Clerk read the same, as follows:

"No member shall vote on any question in the event of which he is immediately and particularly in-

terested; or in any other case where he was not present when the question was put."

A motion was made to consider the report of the Committee of the Whole, and carried—yeas 64, nays 51.

Mr. CLARK moved a proviso as an amendment, declaring that no part of the five millions of acres reserved should go to compensate the claimants under the act of Georgia, passed in 1795.

Mr. J. RANDOLPH called the yeas and nays on the amendment.

Mr. DANA observed that the report on the table had been made on the application of persons claiming land under the act of 1795. The amendment, said he, is nothing more or less than a denial to comply with the prayer of the petitioners, and whether it was not to all intents and purposes a substitute for the resolutions agreed to in the Committee of the Whole, he would leave to the Speaker. If it were decided to be a substitute, it could not be received, conformably to the rules of the House.

The SPEAKER said, the resolution reported from the Committee of the Whole was a general one, including all claims; the amendment went to limit and confine the resolution to a particular class, and, therefore, he conceived it to be in order.

Mr. J. RANDOLPH.—It must be manifest to the House that this discussion is forced upon those who are opposed to the report of the Committee; that we are not prepared at this time to meet it. I am among those who hoped that some reasons would be assigned, if indeed reasons can be found, to warrant the step about to be taken. I did hope that, instead of a string of facts and statements which were already before the House, the Committee would have given us something new in the shape of argument, justificatory of the resolution which they have recommended. But I have been disappointed. Nothing is offered either in the report itself, or in debate, which throws a single gleam of light on the subject. I have particular reasons to deprecate a discussion at this time. I shall not trouble the House by detailing them, but briefly state that I feel myself unequal to an immediate investigation of this question, as well from personal indisposition as from the pressure of other important business, which has left me but little leisure to attend to this. The few moments which I have been able to devote to it, have convinced me that much new and important matter remains to be brought to light. But no apology will be received: we are driven to a vote by an inflexible majority.

The objection taken by the gentleman from Connecticut, (Mr. DANA,) and the doubt which he raised on the point of order, respecting the amendment offered by my worthy colleague, (Mr. CLARK,) discloses his drift, and that of the Committee of Claims, whilst it proves the necessity of some such amendment to save citizens of the United States and their property from spoliation and plunder. The gentleman has stated truly that his object was to further the claim of the New England Mississippi Land Company. As I fear I shall have full occasion to exert my voice, I must beg that the memorial of the agents of that company may be read by the Clerk.

Mr. J. RANDOLPH then called for the reading of the act of Georgia of February, 1796, generally called the rescinding act; and he hoped they would have silence whilst the act was reading, as it was a very important one, and ought to influence the decision on the present subject.

The act was read in compliance with the request.

After it was finished, Mr. CLARK moved to adjourn.

On the division, there was 52 yeas, and 55 nays. So the motion was lost.

Mr. CLARK requested that the act of 1795, under which they derived their pretended titles, might be read.

Whilst the SPEAKER was reading the same, Mr. DANA rose and inquired whether it was necessary to read the whole of the law, or whether gentlemen would not be satisfied with the reading of such part of it as bore upon the present question.

Mr. J. RANDOLPH called the gentleman to order for interrupting the Speaker in his reading.

Mr. SPEAKER.—The objection ought to have been made (if at all) when the reading of the law was first called for.

The reading was continued to the end of the act—when,

Mr. J. CLAY moved that the House adjourn.

On a division there were 53 yeas, and 60 nays. Motion lost.

Mr. J. RANDOLPH.—Perhaps it may be supposed, from the course which this business has taken, that the adversaries of the present measure indulge the expectation of being able to come forward, at a future day—not to this House, for that hope is desperate, but to the public, with a more matured opposition than it is in their power now to make. But past experience has shown them that this is one of those subjects which pollution has sanctified; that the hallowed mysteries of corruption are not to be profaned by the eye of public curiosity. No, sir, the orgies of Yazoo speculation are not to be laid open to the vulgar gaze. None but the initiated are permitted to behold the monstrous sacrifice of the best interests of the nation on the altars of corruption. When this abomination is to be practised we go into conclave. Do we apply to the press? that potent engine the dread of tyrants and of villains, but the shield of freedom and of worth? No, sir, the press is gagged. On this subject we have a virtual sedition law—not with a specious title, but irresistible in its operation, which, in the language of a gentleman from Connecticut, (Mr. GRISWOLD,) goes directly to its object. The demon of speculation, at one sweep, has wrested from the nation their best, their only defence, and closed every avenue of information. But a day of restribution may yet come. If their rights are to be bartered away and their property squandered, the people must not, they shall not be kept in ignorance by whom, or for whom it is done.

We have often heard of party spirit—of causes as they are termed—to settle legislative questions, but never have I seen that spirit so visible as at this time. The out-of-door intrigue is too palpable to be disguised. When it was proposed to abolish a judiciary system reared in the last moments of an expiring Administration, the detested offspring of a midnight hour—when the question of repeal was before this House, it could not be taken up until midnight, in the third or fourth week of the discussion. When the great and good man who now fills, and who (whatever may be the wishes of our opponents) I hope and trust will long fill the Executive chair, not less to his own honor than to the happiness of his fellow-citizens; when he, sir, recommended the repeal of the internal taxes, delay succeeded delay, and discussion was followed by discussion, until patience itself was worn threadbare. But now, when public plunder is the order of the day, how are we treated? Driven into the Committee of the Whole, and out again in a breath, by an inflexible majority, exulting and stubborn in their strength, a decision must be had instanter. The advocates for the proposed measure feel that it will not bear a scrutiny. Hence this precipitancy. They wince from the touch of examination, and are willing to hurry through a painful and disgraceful discussion. But it may be asked why this tenacious adherence of certain gentlemen to each other on every other point connected with this subject. As if animated by one spirit, they perform all their evolutions with the most exact discipline, and march in a firm phalanx directly up to their object. Is it that men combined to effect some evil purpose, acting on previous pledge to each other, are ever more in unison than those who, seeking only to discover truth, obey the impulse of that conscience which God has placed in their bosoms? Such men do not stand compromitted. They will not stifle the suggestions of their own minds, and sacrifice their private opinions to the attainment of some common, perhaps some nefarious object.

Having given vent to that effusion of indignation which I feel, and which I trust I shall never fail to feel and to express on this detestable subject, permit me now to offer some crude and hasty remarks on the point in dispute. They will be directed chiefly to the claim of the New England Mississippi Land Company, whom we propose to debar (with all the other claimants under the act of 1795) from any benefit of the five millions of acres, reserved by our compact with Georgia, to satisfy such claims not specially provided for in that compact, as we might find worthy of recompense. I shall direct my observations more particularly to this claim, because it has been more insisted upon, and more zealously defended than any other. It is alleged by the memorialists, who style themselves the agents of that company, that they, and those whom they represent, were innocent purchasers; in other words, ignorant of the corruption and fraud by which the act from which their pretended title was derived, was passed. I am well aware that this fact is not material to the question of any legal or equitable title which they may set up; but as it has been made a pretext for exciting the compassion of the Legislature, I wish to examine into the ground upon which this allegation rests. Sir, when that act of stupendous villany was passed in 1795, attempting under the forms and semblance of law to rob unborn millions of their birthright and inheritance, and to convey to a band of unprincipled and flagitious men a territory more extensive, and beyond comparison more fertile than any State of this Union, it caused a sensation scarcely less violent than that produced by the passage of the stamp act, or the shutting up of the port of Boston, with this difference: that when the port bill of Boston passed, her Southern brethren did not take advantage of the forms of law, by which a corrupt Legislature attempted to defraud her of the bounty of nature; they did not speculate on the necessities and wrongs of their abused and insulted countrymen. I repeat that this infamous act was succeeded by a general burst of indignation throughout the continent. This is matter of public notoriety, and those—I speak of men of education and intelligence, purchasers, too, of the very country in question—those who affect to have been ignorant of any such circumstance, I shall consider as guilty of gross and wilful prevarication. They offer indeed to virtue the only homage which she is ever likely to receive at their hands—the homage of their hypocrisy. They could not make an assertion within the limits of possibility less entitled to credit.

Yes, the act of the 7th of January, 1795, excited emotions of detestation and abhorrence, equal to those produced by the stamp act, or port bill of Boston. But this was not all. It drew upon it the immediate attention of the Federal Government. The authority which is about to be produced to the House is one which I am not in the habit of prostituting to every light occasion. It is one from which those who are daily endeavoring to shelter their crimes and their follies under its venerable shade, will not dare to appeal. Upon looking into the Journals of this House, I find the following Message from the President, dated on the 17th of February, 1795:

"*Gentlemen of the Senate,*
and House of Representatives:

"I have received copies of two acts of the Legislature of Georgia, one passed on the 28th day of December, 1794." [This, sir, is the act which the wavering virtue of the Governor induced him to reject.] "The other on the 7th of January, 1795," [The act under which the different companies, from one of which the memorialists derive their pretended title, claim] "for appropriating and selling the Indian lands within the territorial limits claimed by that State. These copies, though not officially certified, have been transmitted to me in such a manner as to leave no room to doubt their authenticity. These acts embrace an object of such magnitude, and in their consequences may so deeply affect the peace and welfare of the United States, that I have thought it necessary now to lay them before Congress."

Here, sir, is ample notice to the whole world.

This message was referred to a select committee; consisting of Mr. JOHN NICHOLAS, Mr. MACON, Mr. FINDLEY, Mr. MURRAY, Mr. BOUDINOT, Mr. AMES, and Mr. SHERBURNE; on whose report, after solemn deliberation in the Committee of the Whole, the House, on the 26th of the same month, came to the following resolution: "*Resolved*, That the President of the United States be authorized to obtain a cession from the State of Georgia of their claim to the whole, or any part, of the land within the present Indian boundaries." The very land which the act of the 7th of January had attempted to alienate and sell; and the bill which I now hold in my hand was accordingly brought in, pursuant to the resolution, and passed the House on the 2d day of March. But, unfortunately, the session closed, of necessity, on the following day, and this House is well apprized that the forms of the Senate will not permit any bill to be hurried through that body. A single negative is sufficient to prevent it. The subject was not suffered however to sleep. An act was subsequently passed opening a negotiation with Georgia for the territory in question, of which we have received from her a solemn transfer. Is this notice, or is it not? On a formal Message of the President laying before them the act of 1795—so totally invalid and worthless was that act in their eyes; in such utter contempt did they hold the pretended rights of the grantees under it; that the House of Representatives immediately passed a bill empowering the President to receive a grant of the very land which that act had previously and fraudulently attempted to convey to the four companies. With what face could the President recommend, or Congress endeavor to obtain from Georgia a cession of the whole, or any part of the land within her Indian boundaries, if they believed that the land in question had been conveyed to others by a fair and bona fide sale?—if they attached to the act of January, 1795, any idea of validity? The man who answers this objection shall have my thanks. But, perhaps I shall be told that this was the act of a single branch of the Legislature, and not a law. True, sir, but it was a solemn averment to the whole world that Congress had a right to legislate on the subject. It was notice, on the 17th and 26th days of February, 1794, that the act passed by the State of Georgia, in the preceding month, was void and of no effect—it was loudly proclaimed by the convention of that State, which met in the succeeding May, and was finally consummated by the rescinding act of the 13th of February, 1796, which was subsequently ingrafted on the constitution of Georgia. And yet the New England Mississippi Land Company, under a deed of contemporaneous date (as they say) with this last act, a deed containing not merely a special warranty, but a special covenant that no recourse shall be had against the sellers, for any defect of title in them; a covenant which clearly indicates notice on the part of the buyers of such defect; claiming under a deed by which they purchase such title only as the grantees of 1795 had to sell, in whose stead and place they agree to stand, this company affect to have no notice of any defect of title in those of whom they bought. Sanction the claim of this company, or any other derived from the act of 1795, and what in effect do you declare? You record a solemn acknowledgment that Congress have unfairly and dishonestly obtained from Georgia a grant of land to which that State no longer possessed a title, having previously sold it to others for a valuable consideration, of which transaction Congress was at the time fully apprized. Are you prepared to make this humiliating confession? To identify yourselves with the swindlers of 1795? To acknowledge that you have unfairly obtained from another that to which you know he had no title? I trust, sir, we have not yet reached this point of moral and political depravity.

The agents of the New England Land Company are unfortunate in two points. They set out with a formal endeavor to prove that they are entitled to their proportion of fifty millions of acres of land, under the law of 1795, and this they make their plea to be admitted to a proportional share of five. If they really believed what they say, would they be willing to commute a good legal, or equitable claim for one tenth of its value? Their memorial contains moreover a suggestion of falsehood. They aver that the reservation of five millions for satisfying claims not otherwise provided for, in our compact with Georgia, was specially intended for the benefit of the claimants under the act of 1795, and that we are pledged to satisfy them out of that reservation. Now, sir, turn to the sixth volume of your laws, and what is the fact? In the first place, so much of the reserved five millions, as may be necessary, is appropriated specifically for satisfying claims derived from British grants not regranted by Spain; and as much of the residue as may be necessary is appropriated for compensating other claims, not recognised in our compact with Georgia. An appropriation for certain British grants specially, and for other claims generally, is falsely suggested to have been made for the especial benefit of the claimants of 1795; and the reservation of a power in the United States to quiet such claims as they should deem worthy of compensation, is perverted into an obligation to compensate a particular class of claims; into an acknowledgment that such claims are worthy of compensation. Can this House be inveigled by such barefaced effrontery? Sir, the act containing this appropriation clause was not brought to a third reading till the first of March. Our powers expired on the fourth: it was at the second session of the seventh Congress. It was in the power of those opposed to the corrupt claims of 1795 to have defeated the bill by a discussion. But, sir, they abstained on this ground. If the appropriation of the five millions had not been made at that session, the year within which, by our agreement with Georgia, it was to be made, if at all, would have expired before the meeting of the next Congress; and it was urged, by the friends of the bill, that there were several descriptions of claims to which no imputation of fraud could attach; that by making a general appropriation we secured to ourselves the power of recompensing such claims as, on examination, might be found worthy of it,

whilst we pledged ourselves to no class of claimants whatever. But that if we should suffer the term specified, in our compact with Georgia, to elapse without making any appropriation, we should preclude ourselves from the ability to compensate any claims, not specially provided for, however just and reasonable we might find them, on investigation, to be. Under these circumstances, and I appeal to my excellent friend from Maryland, who brought it in, for the correctness of my statement, the opponents of the bill gave it no other opposition than a silent vote. And now, sir, we are told that we stand pledged, and that an appropriation for British grants not regranted by Spain, specially, and for such other claims against the State of Georgia, generally, as Congress should find quietworthy, was made for the especial benefit of a particular description of claimants, branded, too, with the deepest odium; who dare to talk to us of public faith, and appeal to the national honor!

The conclusion of the memorial is amusing enough. After having played over the farce, which was acted by the Yazoo Squad at the last session, affecting to believe that an appropriation has been made by the act of March 1803, for their especial benefit, they pray that Congress will be pleased to give them—what? that to which they assert they are entitled?—by no means—an eighth or tenth part of it—which said eighth or tenth part, if we may credit them, has been already appropriated to their use by law. From a knowledge of the memorialists, and those whom they represent, can you believe for a moment that, if they had the least faith in the volume of argument (I am sorry to profane the word) which they presented to the House to prove the goodness of their title, can you believe that under such impression they would accept a paltry compromise of two shillings in the pound—much less that, to obtain it, they would descend so low! Sir, when these men talk about public faith and national honor, they remind me of the appeals of the unprincipled gamester and veteran usurer to the honor of the thoughtless spendthrift, whilst in reality they are addressing themselves to his vices and his folly.

I have confined myself on this occasion principally to the question of notice, because it has been made an engine to play upon the generous feelings of many, and not because I deemed it material to the question of title. It is not my intention to travel over the ground which I occupied at the last session on the following important points: that Georgia had no right to make the sale; that even if she had, the contract, being laid in corruption and fraud, was null and void, *ab initio:* that, consequently, the question of notice was not material to the question of title, in the hands of third persons; since, the original grant being obtained by bribery and fraud, no right could vest under it; and that the grantees of 1795 could not sell a greater, or better title, than they themselves possessed: and that, even if these positions were as false as they are indisputably true, the present case presents a monstrous anomaly, to which the ordinary and narrow maxims of municipal jurisprudence ought not, and cannot be applied. It is from great first principles, to which the patriots of Georgia so gloriously appealed, that we must look for aid in such extremity. Yes, extreme cases, like this, call for extreme remedies. They bid defiance to palliatives, and it is only from the knife, or the actual cautery, that you can expect relief. There is no cure short of extirpation. Attorneys and judges do not decide the fate of empires.

The right of the State of Georgia to sell (although I do not propose to go largely into that question) is denied by your own statute book, by turning to which you will find, that so far from being able to transfer to others the right of extinguishing Indian title to the land, she has not been able to exercise it for her own benefit. It is only through the agency of the United States that she can obtain the extinguishment of Indian title to the soil within her limits, much less could she delegate it to a few Yazoo men. But, as has been repeatedly stated on former discussions of this subject, even if the question of right on the part of Georgia to sell, and on the part of the grantees to take, be conceded, it cannot be controverted that the fraudulent and corrupt attempt of the Legislature of 1795, to betray the interests of those who had confided in them, was, *ipso facto*, void; that no right could be vested, by it, in the instigators and participators of the fraud, and that these could not convey to others a better title than they themselves possessed. If the authority were worth anything. I myself would cite that of the memorialists themselves and of the Committee of Claims, in support of this position. It is allowed by these authorities, that the title of the purchasers, at second and third hand, is diminished in the ratio which the five millions of acres bears to the whole territory, which they modestly admit to contain thirty-five millions of acres, although there is the best reason to believe it to be nearer fifty. Now, sir, they have not condescended to explain to us by what legerdemain it comes to pass, that a title to thirty-five millions of acres (to take their own statement) is depreciated in their hands so fearfully as to quantity—is reduced to one seventh of its value, whilst the quality of the title to that seventh is proportionally raised. Plain honest men would reason very differently. A man of this stamp would argue somewhat in this way: If the corrupt and corrupting grantees of 1795, sold a claim to thirty-five millions of acres to third persons, surely those persons would have the same title to the whole of the property which they had purchased, that they could pretend to set up to any part of it. It would never occur to such a man, that whilst, as to quality, these persons had bought a better title than the vendors themselves had to sell, yet, by some unintelligible process, this better title was in quantity, and of course in value, wasted in their hands to one seventh part of its original worth: in other words was seven times worse, and at the same time better, than the title of the original grantees. Discoveries such as these have been reserved for the profound legal learning of the agents of the New England Mississippi Land Company, and the ingenuity of the Committee of

Claims! What, sir, would you say to a pretender to your estate, who after laying claim to the whole of it, and writing a volume of arguments (if I may so abuse the term as to apply it to the sophisticated trash which I hold in my hand) in support of his pretensions, should make it the groundwork of a proposal to receive a seventh, or a tenth part of what he declared himself legally and equitably intitled to, and should at the same time affirm that you were "bound in honor" to accede to his modest, considerate, and generous proposition? Would you not scout him from your presence as a swindler, as a disturber of the peace of society; or would you be trepanned by his artifice, or bullied by his effrontery, out of your property?

The Government of the United States, on a former occasion, did not, indeed, act in this firm and decided manner. But those were hard, unconstitutional times, which ought never to be drawn into precedent. The first year that I had the honor of a seat in this House, an act was passed of a nature not altogether unlike the one now proposed. I allude to the case of the Connecticut Reserve, by which the nation were swindled out of some three or four millions of acres of land, which, like other bad titles, had fallen into the hands of innocent purchasers. When I advert to the applicants by whom we were then beset, I find that among them was one of the very persons who style themselves agents of the New England Mississippi Land Company, who seems to have an unfortunate knack at buying bad titles. His gigantic grasp embraces with one hand the shores of Lake Erie, and stretches with the other to the Bay of Mobile. Millions of acres are easily digested by such stomachs. Goaded by avarice, they buy only to sell, and sell only to buy. The retail trade of fraud and imposture yields too small and slow a profit to gratify their cupidity. They buy and sell corruption in the gross, and a few millions, more or less, is hardly felt in the account. The deeper the play, the greater their zest for the game, and the stake which is set upon their throw is nothing less than the patrimony of the people. Mr. Speaker, when I see the agency that has been employed on this occasion, I must own that it fills me with apprehension and alarm. This same agent is at the head of an Executive department of our Government, subordinate indeed in rank and dignity, and in the ability required for its superintendence, but inferior to none in the influence attached to it. This officer, possessed of how many snug appointments and fat contracts, let the voluminous records on your table, of the mere names and dates and sums declare; having an influence which is confined to no quarter of the country, but pervading every part of the Union; with offices in his gift amongst the most lucrative, and at the same time the least laborious, or responsible, under the Government, so tempting as to draw a member of the other House from his seat, and place him as a deputy at the feet of your applicant; this officer presents himself at your bar, at once a party and an advocate. Sir, when I see this tremendous patronage brought to bear upon us, I do confess that it strikes me with consternation and dismay. Is it come to this? Are heads of Executive departments of the Government to be brought into this House, with all the influence and patronage attached to them, to extort from us, now, what was refused at the last session of Congress? I hope not, sir. But if they are, and if the abominable villany practised upon, and by the Legislature of Georgia, in 1795, is now to be glossed over, I for one will ask what security they, by whom it shall be done, can offer for their reputations, better than can be given for the character of that Legislature? I will pin myself upon this text, and preach upon it as long as I have life. If no other reason can be adduced but a regard for our own fame, if it were only to rescue ourselves from this foul imputation, this weak and dishonorable compromise ought to receive a prompt and decisive rejection. Is the voice of patriotism lulled to rest, that we no longer hear the cry against an overbearing majority, determined to put down the Constitution, and deaf to every proposition of compromise? Such were the dire forebodings to which we have been heretofore compelled to listen. But if the enmity of such men be formidable, their friendship is deadly destruction, their touch pollution.

What is the spirit against which we now struggle, and which we have vainly endeavored to stifle? A monster generated by fraud, nursed in corruption, that in grim silence awaits his prey. It is the spirit of Federalism! That spirit which considers the many as made only for the few, which sees in Government nothing but a job, which is never so true to itself as when false to the nation! When I behold a certain party supporting and clinging to such a measure, almost to a man, I see only men faithful to their own principles; pursuing, with steady step and untired zeal, the uniform tenor of their political life. But when I see associated with them, in firm compact, others who once rallied under the standard of opposite principles, I am filled with apprehension and concern. Of what consequence is it that a man smiles in your face, holds out his hand and declares himself the advocate of those political principles to which you are also attached, when you see him acting with your adversaries upon other principles, which the voice of the nation has put down, which I did hope were buried, never to rise again in this section of the globe? I speak of the plunder of the public property. Say what we will, the marrow and pith of this business will be found in the character of the great majority of its friends, who stand, as they have before stood on this floor, the unblushing advocates of unblushing corruption. But this, it may be said, is idle declamation. We may be told, as we have been told before, that the squanderers of the public treasure are the guardians of the people against their worst enemies—themselves; that, to protect them from further dilapidation, it is necessary to give this Cerberus of corruption, this many-headed dog of hell, a sop; that it is to your interest to pacify him; and this sentiment is re-echoed by his yells. Good God! Sir, can you believe, can any man believe it? Is

there a woman or child in the country weak enough to credit it—that a set of speculators, out of pure regard to the public interest, are willing to sacrifice thirty millions of acres of land? that they press their offer to accept a seventh or a tenth of their claim, from motives of patriotism? Can you believe that their love of country has got the better of their avarice; that their virtue is equal to such a sacrifice at the shrine of the public welfare? Such men, I repeat it, are formidable as enemies, but their friendship is fraught with irresistible death. I fear indeed the "*Danaos et dona ferentes.*" But, after the law in question shall have passed, what security have you that the claimants will accede to your terms of compromise? that this is not a trap, to obtain from Congress something like a recognition of their title, to be hereafter used against us? Sir, with all our wisdom, I seriously doubt our ability to contend with the arts and designs of these claimants, if they can once entangle us in the net of our own legislation. Let the act of March, 1801, of which already they have made so dextrous a use, be remembered. They themselves have pointed out the course which we ought to pursue. They have told us, that so long as we refrain from legislating on this subject, their case is hopeless. Let us then persevere in a "wise and masterly inactivity."

Whenever a bill shall be introduced, in conformity to the principles of the report, if such should unfortunately be the decision of the House, I trust that some gentleman, more competent than myself, will be ready to give it a more effectual opposition. My weak health and want of preparation unfits me for the task. But, sir, if this claim is to be admitted, I hope we shall not fail to go the whole length of our principles; that we shall not narrow down to five millions of acres a legal or equitable title to fifty. If Congress shall determine to sanction this fraud upon the public, I trust in God we shall hear no more of the crimes and follies of the former Administration. For one, I promise that my lips upon this subject shall be closed in eternal silence. I should disdain to prate about the petty larcenies of our predecessors, after having given my sanction to this atrocious public robbery. Their petty delinquencies will vanish before it, as the stars of the firmament fade at the effulgent approach of a Summer's sun.

The Committee rose, and had leave to sit again, and the House adjourned.

WEDNESDAY, January 30.

On motion, it was

Resolved, That the President of the United States be requested to inform this House whether SAMUEL HAMMOND, a member of this House, has not accepted of an Executive appointment, and when?

Ordered, That Mr. BRYAN and Mr. EPPES be appointed a committee to present the foregoing resolution to the President of the United States.

GEORGIA CLAIMS.

The House resumed the consideration of the resolution reported yesterday, from the Committee of the Whole, on the Georgia Claims.

Mr. ELLIOT.—It cannot but be considered as a very fortunate circumstance, and one which cannot fail to have a favorable influence upon the final decision of this important question, that, since the delivery of the animated observations which yesterday so powerfully attracted the attention of the House, we have been afforded a few hours of tranquil retirement from the tempest of the forum, for the purpose, useful at all times, and peculiarly so at the present time, of calm reflection. To transfer ourselves in a moment from the flowery fields of fancy, to the rugged road of argument, to descend instantaneously from the elevated scenes of eloquence to the humble walks of common sense, requires an effort transcending ordinary powers. In claiming your attention, Mr. Speaker, for a greater portion of the day than I commonly occupy in debate upon this floor, I shall not address you in the style of compliment or ceremony. It is time to banish from these walls that idle frippery of ceremonious conversation, which is suited only to a new year's compliment, or a birth-day salutation, and to catch a little of the sturdy spirit of antiquity. A bold, a loud, an impressive appeal is made to the American people. In that appeal I fearlessly and most cordially unite. I regret, however, the existence of a precedent which at once justifies and demands these addresses to the people. Much as I wish to disseminate correct information, particularly on a subject which I believe is but imperfectly understood without these walls, except by interested persons, and convinced as I am that the subject is understood, and an opinion formed upon it, by every member of this House, I shall not so completely follow the example before us as to speak to the people in the first instance, but shall, as usual, direct my observations to the House.

I propose to examine, in a concise, and if it be in my power, in an argumentative manner, the following questions, which have a direct application to the amendment proposed by the gentleman from Virginia (Mr. CLARK) to the resolution under consideration, and which, at the same time, open to view the whole extent of the subject:

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

Were the Legislature of Georgia, in 1795, invested with the Constitutional power of making a sale of the territory, and did they make such sale to those from whom the present claimants derive their title or pretended title? And if such sale was made, what title or color of title did it convey?

Were the members of the Legislature of Georgia, in 1796, invested with the Constitutional power of rescinding the acts of their predecessors in relation to such sale, and did they rescind them?

Were the claims or pretended claims of the present claimants in any manner recognised by

the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a certain description against Georgia in reference to the said territory, should be appropriated for the purpose of satisfying the claims of the present claimants?

However extensive the outline which I have sketched of the subject, the survey will be a rapid one.

It is necessary that I should make one or two preliminary observations. I have uniformly been opposed to the doctrine which has been so powerfully advocated, that Congress is competent to make a legislative decision upon the validity or invalidity of the conflicting acts of Georgia. We possess no such powers. But as individuals we may express our opinions, Nor am I disposed to do anything which shall have a tendency to impugn the title of the United States to this territory. Without deciding the question of title, my principal object is to show that the claimants are in possession of so strong a color of title, that it will be good policy to authorize a negotiation with them for the abandonment of their claim, especially as we have a prospect of obtaining that abandonment on their part, without going beyond the reservation in the act of cession, and of course without the actual expense of a single dollar to the United States.

Did the State of Georgia, in the year 1795, possess a title to the territory in question?

To answer this inquiry, it is only necessary to make one or two quotations from the articles of agreement and cession, entered into on the 24th of April 1802, between the Commissioners of the United States and those of Georgia. In the first article, "the State of Georgia cedes to the United 'States all the right, title and claim, which the 'said State has to the jurisdiction and soil of the 'lands situated within the boundaries of the United States south of the State of Tennessee," &c. By the second article, "The United States accept 'the cession above-mentioned, and on the condi'tion therein expressed; and they cede to the State 'of Georgia whatever claim, right, or title, they 'may have to the jurisdiction or soil of any lands 'lying within the United States, and out of the 'proper boundaries of any other State, and situated 'south of the southern boundaries of the States of 'Tennessee, North Carolina, and east of the bound'ary line herein above described, at the east'ern boundary of the territory ceded by Geor'gia to the United States." Whatever claim or title the United States might previously have had to the territory, they thought proper, in 1802, to combine with it, and to fortify it, by that of Georgia; and surely we shall not do any act, or adopt any principle, tending to impair the title under which we now exercise jurisdiction over the territory.

Were the Legislature of Georgia, in 1795, invested with the Constitutional power of making a sale of the territory, and did they make such sale to those from whom the present claimants derive their title or pretended title? And if such sale was made, what title or color of title did it convey?

In this age of political revolution and reformation, for I consider it an age of reformation as well as revolution, there are still certain principles and maxims, not merely venerable for their antiquity, but consecrated by their conformity to the common sense and reason of mankind, which are considered as universal in their application, and irresistible in their influence. Among these may be numbered the principles which attach to the government of every regularly organized community; the power of pledging the public faith, and that of alienating the right of soil of the vacant territory of the nation. In every free government, there must exist the power of legislation, or of making laws; a distinct power, charged with the execution of the laws, and a judicial power. The union of these different powers in the same man or body of men, is the very essence of despotism. Thus in France, prior to the Revolution, it was a fundamental maxim of State that the King was the Legislator of the French Monarchy; and the power exercised in some instances by certain parliaments, of refusing to register the edicts of the monarch, however in practice it might operate as an obstruction to legislation, was in theory only a matter of form, or at most but a temporary check upon the executive power. In oligarchies the legislative power is vested in the rich and noble; and in aristocracies, in a few individuals who are presumed to be the wisest and the best in the community.—In governments of the democratic form, this power resides in the great body of the people, and is exercised by themselves or their representatives. The base of the temple of American liberty is democracy, or the sovereignty of the people; representation and confederation are the principal pillars which support the great superstructure. As the State governments are unquestionably representative democracies, the General Government is a representative federal republic. In every government of the representative form, the representatives of the people are vested with power to pledge the public faith, and to alienate the vacant territory of the nation. Were the members of the Legislature of Georgia, in 1795, invested with this authority? Certainly it was within the sphere of those Constitutional rights and powers, which had never been surrendered to the General Government. We have since recognised that authority by receiving a solemn deed of cession of the territory, from a subsequent Legislature of Georgia, transferring to us not only the soil, but the right of jurisdiction. Was this authority exercised in 1795? In the act of the Legislature of that State of the 7th of January in that year, granting this territory to those from whom the present claimants derive their claims, certain lands are described, and it is enacted that those lands shall be sold to such and such persons, as tenants in common, and not as joint tenants. The land

shall be sold, or, in other words, the right of soil shall be alieniated. A proper distinction is taken between the *dominium utile* and the *dominum directum* of the civilians. No transfer was made of the right of jurisdiction, although such imaginary transfer forms a prominent article in the reasons assigned by the Legislature of 1796 for passing the recinding act. From this view of the subject, whatever may be the present state of the question of legal title, who can doubt that the present claimants, honest purchasers from the original grantees, upon the faith of an independent State, and innocent of fraud, if fraud existed, possess such a color of title, such an equitable claim, as to render it prudent and politic to enter into a compromise with them upon reasonable terms?

Were the members of the Legislature of Georgia, in 1796, invested with the Constitutional power of rescinding the acts of their predecessors in relation to such sale, and did they rescind them?

Congress is incompetent to the decision of this question. Nor is such decision necessary. I will, however, make one or two inquiries, and state one or two principles, which are applicable to the subject, which at the same time will go to strengthen the ground I have taken as to color of title in the claimants, and the policy of extinguishing their claims.

Can a Legislature rescind a contract made by its predecessors?

Writers on national law make a distinction between laws which operate in the nature of contracts, and those which have no such operation. Every enlightened and reasonable man will subscribe to the opinion that a pledge of the public faith, given by the competent authority, ought to be irrevocable. Laws which pledge the faith of the community, which create contracts, which vest rights in individuals or in corporate bodies, it may safely be assumed as a general principle, are irrepealable. Laws of merely municipal operation are alterable or repealable at the pleasure of the existing Legislature.

Can the judicial power declare a Legislative act void, as having been passed by means of corruption?

Different opinions have existed in our country as to the right claimed by the Judiciary, of deciding upon the constitutionality of laws. The better opinion seems to be, that from the nature of our Government, and the very terms of the Constitution itself, by which that instrument is declared to be the supreme law of the land, the judges not only ought to exercise that power, but that they cannot avoid its exercise. If I am not mistaken, some gentlemen, who deny that the judges possess this right, are prepared to invest them with the more dangerous one of setting aside a Legislative act on the ground of corruption. To admit that the Judiciary may examine into the motives of the Legislature in passing laws, or that they may receive and decide upon evidence tending to prove corruption in the Legislative body, would certainly be going much farther than those have gone who have claimed for that department the right of deciding upon the constitutionality of laws. Suppose a trial of title between a person claiming under the act of Georgia, of 1795, and another claiming under the United States, and suppose evidence offered to the court to prove the corruption of the Legislature of Georgia, in what a peculiar situation would the judges be placed? And would they listen for a moment to an application for the admission of such evidence? It may well be doubted. Do not then the present claimants possess a very strong color of title? Is it not prudent to extinguish claims of this description?

Were claims, or the pretended claims of the present claimants, in any manner recognised by the act of cession of the territory in question from Georgia to the United States? And,

Do justice and policy, or either justice or policy, require that the whole or any part of the five millions of acres, reserved by the act of cession from Georgia to the United States, for the purpose of satisfying claims of a certain description against Georgia, in reference to the said territory, should be appropriated for the purpose of satisfying the claims of the present claimants?

I have anticipated the principal arguments in favor of the equity of the claims, and the policy of a compromise with the claimants. The memorialists state that their claims were particularly contemplated by the Commissioners, both of the United States and of Georgia. They have offered us no evidence of this fact, and we are not to take it for granted. Indeed, I am far from thinking it my duty either to advocate or answer the pamphlet of the memorialists, and I shall make but this single allusion to it. Whatever may be its merits, it has had no influence upon my mind in forming my opinion. An examination of the official documents upon our tables will evince, however, that by a very strong implication, if not by express provisions, these claims have been recognised, both by the act of cession, and by the law of Congress passed in consequence. The first condition of the first article of agreement and cession, provides for the payment of one million two hundred and fifty thousand dollars, to the State of Georgia, out of the first net proceeds of the sales of the lands then ceded: the second provides for certain British and Spanish grants: and the third is as follows:

"That all lands ceded by this agreement, to the United States, shall, after satisfying the above-mentioned payment of one million two hundred and fifty thousand dollars, to the State of Georgia, and the grants recognised by the preceding condition, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: provided, however, that the United States, for the period and until the end of one year after the assent of Georgia, to the boundary established by this agreement, shall have been declared, may, in such manner as not to interfere with the above-mentioned payment of the State of Georgia, nor with the grants herein before recognised, dispose of or appropriate a

portion of the said lands, not exceeding five millions of acres, or the proceeds of said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating for any claims other than those herein before recognised, which may be made to the said lands, or to any part thereof. It being fully understood, that if an act of Congress making such disposition or appropriation shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter to cede any part of the said lands on account of claims which may be laid to the same, other than those recognised by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of Georgia, to the right of soil over the lands thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for shall revert to the State of Georgia."

It is unnecessary to inquire into the motives which dictated a provision so singular; they are obvious to all who are acquainted with the whole history of the transaction. It was well understood that Congress was to pass the law, and it was passed on the third of March, 1803. The eighth section appropriated so much of the reserved five millions of acres as might be necessary to satisfy the claims not recognised by the preceding agreement, which were embraced by the two first sections of the act, or derived from British grants for lands not regranted by the Spanish Government; and it also contained the following appropriation: "So much of the residue of the 'said five millions of acres, or of the net proceeds 'thereof as may be necessary for that purpose, 'shall be, and is hereby, appropriated, for the purpose of satisfying, quieting, and compensating, 'for such other claims to the lands of the United 'States south of the State of Tennessee, not recognised in the above-mentioned articles of 'agreement, and which are derived from any act 'or pretended act of the State of Georgia, which 'Congress may hereafter think fit to provide for: '*Provided, however*, That no other claims shall 'be embraced by this appropriation but those the 'evidence of which shall have, on or before the 'first day of January next, been exhibited by the 'claimants to the Secretary of State, and recorded in books to be kept in his office for that 'purpose, at the expense of the party exhibiting 'the same." The following are the opinions of the Commissioners, the Secretary of State, Secretary of the Treasury, and Attorney General of the United States, upon this subject. On the claims pretended to be derived under the act of Georgia, of the 21st December, 1789, they observe: "Upon a full view of the subject, the 'Commissioners do not perceive that those companies have any equitable claim either for the 'land, or for compensation from the United 'States." Very different is their opinion upon the claims under the act of 1795: "The Commissioners think those propositions inadmissible, 'and without pretending to affirm that the Legislature of Georgia was competent to make the 'decision, they feel no hesitation in declaring it 'as their opinion, that under all the circumstances 'which may affect the case, as they have come 'within their knowledge, and as herein stated, 'the title of the claimants cannot be supported. 'But they nevertheless believe that the interest 'of the United States, the tranquillity of those 'who may hereafter inhabit that territory, and 'various equitable considerations, which may be 'urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms." Here I cannot but remark, how very difficult it is for feeble minds to decide important questions upon which great men disagree. The gentleman from Virginia (Mr. Randolph) is of opinion that it would not only be impolitic to compromise these claims, but that the only claims of the applicants are fraud and villany; the Commissioners, who probably examined the subject with as much attention, at least with as much coolness, as that gentleman, believe that not only the public good requires the compromise, but that various equitable considerations may be urged in favor of most of the present claimants. The Secretary of the Treasury, in his letter of the 9th instant, to the chairman of the Committee of Claims, observes: "My own 'impression was, that the five millions of acres 'would be sufficient to cover all the claims of settlers, British grantees, and others not expressly 'provided for by the articles of agreement, and 'also to make a reasonable compensation for 'claims derived or pretended to be derived from 'Georgia; and it appeared to me that the effect 'of the clause would be—first, to prevent Congress from voluntarily confirming, at some future time, the said Georgia claims; second, to 'leave it in their power to compromise with that 'description of claimants, by allowing so much 'of the surplus of five millions of acres as they 'might think proper; without, at the same time, 'pledging Government to enter into a compromise, if, upon a full view of all the circumstances 'of the case, a different course was thought more 'eligible." The Committee of Claims, who must have paid more attention to the subject than it is possible for other members to do, "on considering these various transactions, are of opinion, 'that it is proper to make some legislative provision for the purpose of settling the existing 'claims on such terms as shall appear to be reasonable," and they recommend the appointment of Commissioners for that purpose. Can there any longer be a doubt that the claims are recognised by the act of cession? Can there be a doubt that Congress, by making the appropriation of the five millions of acres, and by subjecting the claimants to great expense in recording and supporting their claims, have tacitly pledged the public faith that some provision shall be made for them? And do not justice and policy require the adoption of the resolution reported by the committee?

The gentleman from Virginia has expressed his surprise that the chairman of the Committee of Claims has contented himself with reporting facts and principles, and that he has not adopted the novel procedure of reporting something tantamount to an elaborate speech in favor of the

claims. As the speech of the gentleman from Virginia is unfortunately destitute of argument against the claims, and as it might be possible to deduce from it reasons in their favor, it might perhaps be proper for him to print it and annex it to the report, as a substitute for that which he thinks the chairman ought to have subjoined for the edification of the House. My feeble optics have been able to discover but one attempt at argument, which is in those observations which relate to the Message of the President, and the proceedings of Congress, on the act of Georgia, in 1795, and which it is contended, were notice, to purchasers and to the world, of fraud. At that time, it was not suspected that fraud had been committed, and the reason for those proceedings was, that the United States possessed, or were supposed to possess, certain claims to the territory. There are certain subtile, sublimated, etherial, heaven-descended geniuses, the soft and silken texture of whose minds would suffer infinite discomposure from the contact of that rude and knotty thing—an argument. That gentleman is not of this description. Too often have we witnessed his argumentative powers to entertain this idea. I regret that he has declaimed instead of reasoning upon this occasion, as I believe that argument, particularly upon important subjects, is more useful than mere declamation. From motives which I cannot develope, for I ascribe improper views to no one, the present is attempted to be made a party question. The people are told that the Capitol has become a scene of political and private iniquity, of fraud and federalism; that the majority of their Representatives are committing a stupendous robbery upon the public patrimony, and their indignation is invoked upon the plunderers. What facts exist to justify these denunciations? Are we about to barter away the rights and interests of the people? Are we about to be guilty of a wanton waste of the public property? Are we guilty of political apostacy? No such thing. We are about to make arrangements for carrying into effect a solemn stipulation in the treaty with Georgia, and a solemn act of our predecessors, by devoting a part of the five millions of acres, specially reserved for that purpose, for which the United States never paid a cent, and never will pay a cent, to the extinguishment of the colorable claims of equitable claimants. Yet we are told that this act of equity, good faith, and good policy, is a stupendous crime, compared with which the flagitious acts of the former "unprincipled Administration" dwindle into "petty larcenies." I am a republican—a democratic republican. I was opposed to the general system of that Administration. But I do not think it magnanimous, or honorable, malignantly to triumph over fallen foes. Nor do I dread the union of honest men. It can be dreadful only to the dishonest.

It is said that the press is under the influence of a virtual sedition law. No, sir. The press—I speak without allusion to political distinctions—is incorrigibly licentious. Has the gentleman from Virginia read, in one of the oracles of our country, mingled with his own praises, the denunciation of the whole representation of one of the largest States in the Union (Massachusetts,) as composed of men destitute both of public and private integrity, and conspirators against the peace of the Union, merely because they differ in opinion from that gentleman upon this single question? Does he know that these denunciations are echoed and re-echoed, by means of the presses called exclusively republican, through almost every village of the nation? Has he heard that the Representatives of remote districts are denounced to their constituents as traitorous to their rights, and that their independence of his imperious mandates is made the powerful evidence of the treason? I hope, sir, that we shall never see the day when a private caucus of a few individuals shall be enabled to dictate to the people in whom to invest their confidence: and I also hope, that the day is not distant, when independence of sentiment, when independence even of party, shall be the surest passport to public confidence and public honors.

It is said that the circumstance that one of the great officers of the Government is numbered among the claimants, ought to scatter consternation through this House. It is unnecessary for me to undertake a vindication of the character of that gentleman. Does his office divest him of the common rights of a citizen? Does it deprive him of the right of petitioning the National Legislature? But his contracts are resorted to for the purpose of proving that he has extended his official influence within our walls. Unfortunate, indeed, is the application of this argument. By the report upon the table, it appears that three members are contractors, and we all see that two of them are opposed to the present claims.

Believing, Mr. Speaker, that this act of enormous robbery, this wanton dissipation of the public treasure, this abominable league between corruption and federalism, of which we hear so much, is neither more nor less than an act of just national policy; believing with the Secretary of State, the Secretary of the Treasury, and the late Attorney General, that "the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable 'considerations, which may be urged in favor of 'most of the present claimants, render it expedient to enter into a compromise on reasonable 'terms;" and believing that this compromise ought to be delayed no longer, I shall give a decided vote in opposition to the proposed amendment, and in favor of the original resolution, as reported by the Committee of Claims.

Mr. Lucas.—I am, sir, in favor of the amendment proposed to the report now under consideration. The unparalleled fraud which has been practised by the divers land companies styled purchasers, under the act or pretended act of Georgia of 1795, and by the Legislature that passed that act, have been fully noticed and exposed in the course of the debates which took place on the same subject, during the last session of Congress, and again during these two last days. This no-

torious fraud, odious as it is on the part of the land companies, is still much more so on the part of the members of the Legislature of Georgia, as their country had confided in them, and that themselves had pledged their faith under the obligation of an oath. But there are other instances of fraud and deception, materially affecting the purchase or claim in question, which have been solely practised by the land companies, and in which the Legislature of Georgia had no kind of participation. These charges cannot be resisted by the ordinary means of denial of facts, for they are supported upon authentic documents.

It ought to be observed that the four land companies who are original purchasers under the act of the Legislature of Georgia, passed on the 7th January, 1795, stated in their petition, containing their proposals to the Legislature to purchase certain lands belonging to the State of Georgia, that the land contained within the bounds which were described in their petition, amounted to 21,750,000 acres. It was evidently upon the faith of this statement, that the Legislature consented to sell that land for $500,000. However, it is now ascertained that the quantity of the land thus described amounts to 35,000,000 of acres, and the companies themselves compute it to be near 40,000,000. From this it appears evidently that the companies have deceived the Legislature by stating what was not true, that the contracts are legal and obligatory. The parties ought not only to have contracted with liberty of choice, but they ought also to have contracted with a due knowledge of the matter, which was the object of the contract. This has not been the case here; the Legislature has sold twice as much land as they intended to sell, or, which is the same thing, they have sold it one time cheaper than it was their intention, and all this loss is the result of the false statement given by the land companies.

It is an incontrovertible maxim of law, that none ought to be benefitted by his own wrongs; this maxim applies with a double force in a contract between the sovereign authority and private persons. The contract between the Legislature and the land companies having been entered into by the means of a statement which proves to be false, and which has been made by the parties that claim the benefit arising thereof, the contract becomes vitiated and of no effect.

Should this wrong not be sufficient to invalidate the contract, there is another wrong that would arise from it; by the act of 1795, a reserve was made of two millions of acres out of the several tracts sold to the Georgia land companies, for the use of such citizens of Georgia as chose to subscribe in the original terms of the purchase. The price paid by the citizens who did subscribe was two cents and one-third per acre, it being the price then supposed to have been paid by the companies, according to the statement originally made of the whole quantity of land contained in the purchase, which, as I have before said, proves to be very near double the land companies would receive from the citizens of Georgia, who clearly had a right to subscribe on the original terms; a price per acre nearly double to that which they themselves would have to pay, and thus have a profit on the citizens of Georgia for the difference in the quantity of acres contained in the purchase arising from the false statement; which reduces, with respect to the speculators, the actual price of the land to little more than one cent per acre, while it remains at two cents and one-third with respect to the citizens of Georgia. However great may have been the departure of the Legislature of Georgia, from the interest of their constituents on this occasion, it appears evidently, that by the expression, "original term," they understand that their citizens should subscribe, if they chose, to the amount of two millions, upon terms similar to those of the land companies. It appears evidently they did believe they were selling the land of the State at the rate of two cents and one-third per acre, whilst, in fact, they received but one cent and one-sixth, which, upon the whole, is a consideration merely nominal.

To the multiplicity of the radical defects with which the title of the companies claiming under the act of 1795 abound, the advocates of the claim of the New England Mississippi Land Company answer, that none of those who compose their company had any participation in the fraud; they are said to be *bona fide* purchasers, perfectly ignorant of the fraud which may have been practised by those of whom they bought. They are represented in their memorial and vindication as plain farmers, mechanics, &c., who have made what they possess by the closest application and industry.

Sir, I stand among those who are the most ready to acknowledge that the inhabitants of New England are conspicuous for their industry; but I am likewise of opinion, that they are not less noted for their sagacity, in their attendance to their interest; and in the art of making good bargains. I view them as being fully competent to cope in dealings with the inhabitants of the Southern States. That they should not have heard of the notorious fraud which has taken place at the passing of the act of 1795, is a great cause of astonishment to me; that they should have made a purchase to the amount of eleven millions of acres, without making inquiries sufficient to discover what almost everybody knew throughout the United States, if possible, increases my astonishment. For my part, having never thought of purchasing any land from the Georgia land companies, I made no inquiry about the acts of the Legislature of Georgia; yet the corruption was so flagrant, the fraud so notorious, that it reached my ears soon after it was passed. A gentleman from Virginia (Mr. Randolph) has justly observed, yesterday, that the President of the United States had, in his address to the two Houses of Congress, at the beginning of the session of 1795, taken a most direct notice of the act of Georgia, passed in January of the same year, as tending to dangerous consequences. Certainly such solemn communications of the first Magistrate, at the beginning of a session, contain matters that are an object of national concern, and generally sought

for. There is not a paper in the Union that omits publishing those communications. It would be possible, however, that this communication would have escaped the notice of plain industrious farmers, such as are able, perhaps to purchase two or three hundred acres of land; but that a company of sober and discreet speculators, and of New England, too, being about purchasing an immense quantity of land for a great sum of money, should be ignorant of what everybody knows, and of what they ought to know sooner than anybody else, is a circumstance too unaccountable and extraordinary for me to believe that it really exists. I should rather think that the speculators of New England, sober and discreet as they style themselves to be, found the bargain so good and so tempting, the means of pleading ignorance of fraud committed in the original purchase so easy, the means on the part of the State of Georgia, or its vendee, to prove the notice so difficult, that the sober and discreet speculators of New England thought it advisable to make a gambling bargain, expecting that the two extremities of the United States being engaged in the same speculation, they would combine their force and influence to press hard upon the centre, and save through the conflict their speculation, either in whole or in part. Other strong circumstances lead still more to believe, that the New England Company were well aware of the danger which did exist in making a purchase from the Georgia land companies; and that they were taking unusual risks upon themselves; this appears clearly from the face of their deeds; not only the covenant of warranty is special, instead of being general, but another extraordinary covenant is entered upon by which the Georgia Mississippi Company "is not liable to the refunding of any money in 'consequence of any defect in their title from the 'State of Georgia, if any such there should here-'after appear to be." Was not such covenant smelling strongly of the fraud which the Georgia grant was impregnated with? Could the New England Company take more clearly every risk upon themselves? Could they more expressly preclude themselves from every remedy in law or equity in case of eviction?

I shall forbear to advert any longer on the defects of the titles of the four Georgia companies and the New England company, claiming under the act of 1795. I shall only say that the fraud and collusion by the means of which these grants were obtained having operated a gradual defect, viz: a defect from the beginning, no legal transfer does exist by the first grant, and none of course can exist by the second purchase. My confidence in this opinion is much strengthened by that of three distinguished characters who have been appointed Commissioners, in pursuance of "An act, entitled an act for an amicable settlement of limits with the State of Georgia," &c. These Commissioners have said, in their report, a copy of which I now hold, "that they feel no hesitation 'in declaring it as their opinion that, under all the 'circumstances which may affect the case, as they 'have come within their knowledge and as herein 'stated, the title of the claimants cannot be sup-'ported," meaning the claimants under the act of Georgia of 1795. This opinion derives a great weight, not only from the high official standing, the known correctness, and abilities of these Commissioners, but, also, from the special trust which Congress has reposed in them to investigate those claims, and report on their merits. True it is that these Commissioners did express that, "nevertheless, they believe that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms;" when I am satisfied from my own opinion and that of the Commissioners "that the title of the claimants cannot be supported." I think that, on the question of expediency, there is no member of this House but that can form an opinion for himself; indeed, if this House did not act from their own ideas on this question, they need not to exercise their opinion upon anything at all. As to me, I cannot see any danger in not gratifying the cupidity of fraudulent purchasers with large quantities of land. I cannot consent to give away the property of the public to a very large amount, for the sake of humoring land companies and strengthening the nerve of speculation. Money is the bane of morals, when put in the hands of land speculators. Let us give them land or money, and we add to their means of seducing future legislatures. I view land speculators as a separate class of men, acting upon principles quite noxious to the rest of society. I view them as being intimately connected with one another, from one end of the continent to the other end. Their strength consists in a perfect combination of their influence; it is through that influence that any individual whose right clashes with their claims, must submit to their terms or lose all; it is a matter of course with land companies to monopolize lawyers, to have them at their command, to make them speak or be silent, as their interest requires.

While we are debating this great question, the land speculators within these walls or out of these walls are in a silent watch, anxiously waiting for the measures we are going to adopt; they appear at present quite modest and unassuming; but, let us throw in their hands five millions of acres of land, and the scene will soon be changed; their wealth, and the consequence attending it, will soon make us sensible of the advantages they will possess over us as individuals; and their children will, in a very little time, be taught to look with contempt upon ours; all the land companies will find new encouragement to rally round Congress from all quarters, and set forth their claims. We have land companies who claim almost all the lands which the United States have purchased on the year before last, from the Kaskaskia and Piankeshaw Indians. These companies, who style themselves the Illinois and Wabash Land Companies, have purchased for a valuable consideration, and without fraud; they have purchased before the Revolution, from Indians that had

never surrendered to the Crown of Great Britain the right of pre-emption, from Indians who are out of the bounds of the original claim of the confederated Six Nations of Indians.

If we are to follow the doctrine laid down by a gentleman from Vermont, (Mr. Elliot,) which is that the Georgia land companies have, in the first instance, a color of title, and, in the second instance, a strong color of title, for which we ought to give them near five million acres of land, we may as well give as much to the Illinois Company, and again to the Wabash Company, for they also have a color of title, and a color, too, not darkened by fraud. We might, also, at the same rate, adjust and settle the claim of another long-leagued land company, who claim under an Indian grant, a tract of land adjoining the Falls of St. Anthony; for the Indians, under whom they claim, most probably have not acknowledged the sovereignty of the United States over their soil, and might be considered as not bound by the regulations of this country. Thus, land companies, by setting up claims to one hundred million acres of land, might modestly offer to surrender to the United States the nine-tenths of their claim, provided one-tenth part was secured to them by a compromise.

I would not do as a Representative in Congress what I could not do as an individual without blushing. Contracts, in my opinion, cannot be divided by ounces and penny weights. The titles of the companies claiming under the act of Georgia of 1795, are good or bad; if they are good, Congress ought not to screw out of the hands of these companies the seven-eighths of their well-gotten property; if their titles are bad, Congress ought not to suffer them to have an eighth part of the public property.

Supposing that my neighbor had purchased a plantation, and that I knew well both the plantation and the vender: I would not by any means offer to purchase that same plantation from the original vender, unless I was well convinced that the former conveyance was a mere nullity, and then, should I purchase it, my honor and reputation would forbid me to compromise with the pretended vender contending against me, lest it should be thought that I had purchased what I knew my vender had legally conveyed before; lest it should be thought that I had made that purchase with the view of reserving a part of the benefits of the bargain of another: this being the true case which the United States are placed in, on the present occasion, the regard which I owe to their high dignity and interest, does not permit me to give my consent to a compromise.

Mr. Speaker, the agents of the New England Mississippi Company have attempted to prove in their vindication, page 30, that the sales of extensive tracts of vacant territory are not injurious to the interests of a nation; they have said that the State of New York has been settled under the patronage of landholders; they have said that Virginia, Massachusetts, New York, Pennsylvania, and Connecticut, are distinguished for the extent of their grants. I do not pretend to say that these States have escaped the calamities of land speculation; I will say, however, that those of them wherein land speculation did prevail the least are the most flourishing. Can it be said, indeed, that it is through the means of land speculation that these States have attained the advantages which they now enjoy? Their flourishing condition proves certainly the unconquerable spirit of industry and enterprise of their inhabitants; it proves that, notwithstanding the shackles of land monopoly and hard bargains, which was lying in the way of the yeomanry of those States, they have been able to reach, by hard and persevering toil, the comforts of life and independence. Who did clear that land and improve their farms but themselves? Who paid the price of the purchase of their lands but themselves? Was it necessary for their prosperity and that of their country, that they should pay eight or ten times more for the price of their land than they would if monopolizers had not stepped between them and the Government of their country? The same agents observe, also, page 30, that "in Pennsylvania a complete system existed, which, to be sure, has produced embarrassments equally pernicious and distressing to the settler and the landholder." I suppose that the agents allude to the sale of the unappropriated lands of the Commonwealth of Pennsylvania, under the act of April, 1792, situate north and northwest of the rivers Ohio, &c.; however, I beg leave to say, that they are mistaken in giving the system as the cause of the embarrassments; the system was no more complex than what was absolutely necessary to provide for the accommodation of two classes of persons, to wit: Those to whom it was more convenient to give money in the first place, and labor after; and those that could better afford labor at first, and money after; each class had their respective mode of commencing and completing their titles clearly devised. The consequence resulting from their neglect to perform certain conditions, were amply provided for; a partition sufficient to prevent the rights of such persons as the law contemplated from interfering or clashing had been erected. But this partition has been partly thrown down by the irresistible force of divers land companies combined together. I shall not relate, at this moment, the vexations and sufferings which the industrious and inoffensive actual settlers of Pennsylvania have borne and are daily experiencing from several land companies. I shall only say, that the wolves have made a dreadful havoc among the lambs.

Again, I cannot believe that it is good policy to give away an immense property; nay, I believe it to be more dangerous to give it to a few families. The idea of grantees of large tracts of land, brings always to my recollection a multiplicity of other persons without lands and without means of independence. When I look at a castle in Europe, I directly think of the wretched and degraded tenantry, toiling hard to satisfy the luxuries of the proud idler who lives in it.

The extreme of wealth and poverty mostly operates two evils; and these evils become still

greater in a Republic than anywhere else. Was it not for the landed property being held by a few in Ireland, and were not the three-fourths of the people of that country tenants at will, their well known energy and spirit would have enabled them long ago to effect a revolution and ameliorate their fate.

Mr. Boyd.—The question before the House is not whether we are to do a good or an injury to the class of men who are denounced as a band of speculators; but it is whether we shall agree to or reject the amendment to the resolution offered yesterday to the House by a gentleman from Virginia, (Mr. Clark.) Yesterday was taken up in reading the laws of Georgia, and of the United States, and various other papers, which have been long in the hands of the members, and which no doubt had been so attentively perused by them as to have rendered the reading at this day not indispensably requisite. Mr. B. said, that if papers were to be read for the instruction and edification of the members as to well-known facts, he thought it would have been of more consequence to have read the Declaration of Independence, and the Treaty of Peace of 1783, in which the independence of the United States was acknowledged by the only Power on earth who contended against it. We were then free, sovereign, and independent States, to all intents and purposes, and as sovereign States, each and every State in the Union had full power and authority to dispose of their lands to whom they pleased, and under what conditions they pleased. And if the State of Georgia, in the exercise of her sovereignty, have conveyed to the Mississippi Land Company the right of soil to the land in question, and that Company have transferred the same to the New England Mississippi Land Company, the right is vested in them; unless we have arrived at that stage of political depravity that what was yesterday acknowledged as a right shall tomorrow be declared a wrong.

Why is it that speculators are so much reproached, when we ourselves have become speculators to an extent beyond the aggregate of the land speculations in the United States of America? Has not Congress recently speculated in the purchase of Louisiana, and paid the price, and will gentlemen contend here, as if they mean to be confident they might do, that we have acquired no right to the same because we purchased of France, who had no right to sell, as its Government holds all its powers for the good of the people, and that it is not for the good of the French people that their territories should be alienated from them? Does it follow that when a nation has vested in another its rights of soil and jurisdiction, that the investiture does not hold good without inquiry into the purity of the motives of the contracting parties? Will you, then, prevent men from putting their reliance and confidence in the State Legislatures?

It is asked why, if they have a right to the lands in Georgia which they claim, why do they propose to relinquish to the United States nine-tenths of their claim? It would be a sufficient answer to that question to say, that Congress is the only power possessing the right to extinguish the Indian title to the country, and if Georgia had possessed that right he apprehended the present claimants would have been suffered to go on and improve their farms in that district; they never would have been disturbed in their possession. He was not in favor of speculators, but he had made up his mind never to lay his hand violently upon the claim of any man, more than he would a man's property when he was in full and quiet possession. Nor should he pretend to instruct others in the disposal of their money, persuaded that every man had a right to lay his money out in such way as was most agreeable to himself, and of which he was the best judge.

We are asked, who dare vote for squandering the public money in this wholesale manner? This is my declaration in reply: I dare to vote for the measure proposed by the Committee of Claims. Nay, further, I am bound to vote in its favor. It is my duty so to vote, for I have sworn to support the Constitution of the United States, and that Constitution declares that no State shall make any *ex post facto* law, or law impairing contracts. But why do gentlemen dwell so much upon speculators? The act of Congress to obtain the cession of her Western territory from the State of Georgia, is a speculation upon the speculators who purchased the right of soil to the Mississippi Territory.

I do not inquire whether Georgia sold her land in small tracts or in large districts; nor whether she sold the land to individuals or companies—numbers and quantities I lay out of the question, and confine myself merely to the inquiry, did she sell; and finding that she did sell, and that for a valuable consideration, my mind rests satisfied, and I am compelled to render that justice which the annulling act of Georgia refused. Nay, the price itself does not enter into my contemplation, circumstances may alter the relative value of the price to the article. Will any gentleman say that the price at which Congress have sold their lands to the great purchasers, such as Symmes and others, is a cause to justify our setting those sales aside? I apprehend not. Why, then, do they measure by a different standard in the case of Georgia?

Georgia under the old *regime* was what was called a King's government; the right of jurisdiction was given up to her exercise from the first—the right of soil remained in the Crown. But when we acquired our independence, Georgia took possession, which she was justifiable in doing, of the soil as well as the sovereignty, and thus being possessed of both, it was competent for her Legislature to dispose of the vacant land; and no subsequent Legislature could constitutionally say it avails not, and it shall not hold. I am not ashamed of this opinion; on the contrary, it is corroborated by the practice of all the States in the Union. A grant of land by the Legislature is universally held sacred. It is so under the Government of the United States also, yet neither the State Legislatures are all the citizens of the State, nor are Congress all the citizens of the

United States, which, according to the doctrine we have heard advanced, are requisite to complete the contract. This being the case, I will not vote for the amendment; it goes to destroy the right which the petitioners have to the reserved fund of five millions of acres; it goes to defeat and overturn a well-established security which the people have for landed property. I will not vote for it, because I do not believe that Congress have a divine right to do wrong. Mr. B. said, if all the speculators were scouted from these walls, he did not know who would remain. He had no quarrel with them about the question, but he should ever contend that every man had a right to pursue his object in his own way; the right grew out of the moral compact agreed to as fundamental in every established and well-regulated society.

Mr. Clark said he was still in favor of the amendment on the table, and which he yesterday had the honor of submitting. He did not wish it to be understood that the amendment was intended to give a preference to any description of claims under the different acts of the State of Georgia, and provided for by the general resolution, but intended it should meet directly those which have excited the most public attention, have been the most ardently pursued, the most zealously advocated, and attended with the most extraordinary circumstances. If the facts which have accompanied this monstrous business from its origin to the present moment were publicly known, or if it could be retraced through all its cunning and wily mazes, the claims would sink beneath the weight of honest indignation, and instead of now being urged before the Congress of the United States, would be gladly withdrawn from public view, and buried in perpetual silence. He peculiarly wished on this occasion a cool and temperate discussion, to divest ourselves of all feelings either of improper compassion or prejudice, that equally tend to inflame the heart and mislead the judgment. It should be his humble province to endeavor a fair investigation of the naked question, disrobing it of those tinsel habiliments which have been artfully thrown around it for the purpose of concealing its real deformity.

The claims the amendment goes to reject, are derived by a pretended law of the State of Georgia, said to have been passed in the month of January, 1795. He would contend this law was absolutely void, *ab initio*, not only because the Legislature had no power to make such a law, but from the circumstances under which it was made. That the grantees under this law could have no title to the land, either legal or equitable, and that there has been no circumstances attending the subsequent sales, that place the sub-purchasers under superior equitable advantages. It will be particularly necessary, Mr. Speaker, to be attentive to dates; that of the law under which the claims are made, and generally known by the name of the "cession law," has already been noticed. Let us now see how this law passed. It stands characterized by circumstances unparalleled in the annals of pollution—of which, we have the most conclusive evidence before us. The whole State of Georgia has borne testimony to the fact, and it is now deposited in the archives of the Government, that, a majority of the Assembly which passed the law were corrupted and bribed. Some had money given them; others, shares in the lands they were effecting the sale of. This is so universally admitted and detested, that the most enthusiastic friends of the present claimants cheerfully allow the original grantees had no titles, and he believed there was not one now before Congress with his claim. But it is contended the sub-purchasers had no notice of the fraud in the original contract, but are *bona fide* purchasers for a good and valuable consideration actually paid. This he never could agree to. The evidence before him was the contrary, and he would here take a review of at least a part of that evidence, a great portion of which, no doubt, has been destroyed by the lapse of nine years, but a sufficiency remains when brought together, irresistibly to carry conviction to the mind of the most skeptical. The law itself is almost enough for this purpose. The simple object was to sell to four companies the vacant western land; but to delude the people and lull inquiry, it is called "An 'act supplementary to an act, entitled 'an act for 'appropriating a part of the unlocated territory 'of this State, and for the payment of the State 'troops, and for other purposes, and the protec-'tion and support of the frontier;" and the same fascination is kept up through the enacting clauses, and it is the longest act in the statute book. It goes into a lengthy examination of the State title, of extinguishing the Indian title, and appropriating the money, directing it to be laid out in bank stock. Where, Mr. Speaker, will you find such a law as this? If the object of the Legislature had been correct, would there have been a necessity for clothing the law in such delusive colors? No sir! fraud and infamy were to be cancelled, and the covering must be thick. They were, however, disappointed in their aim, for honesty and integrity had yet their residence in the State, and as soon as it was known, the whole country was feelingly alive to the abuse, and a general effervescence pervaded the public mind; this was manifested in the only possible way that remained. The Assembly had adjourned, not to meet again in a twelvemonth. Presentments of the grand juries, in almost all the counties of the State, were made in terms of bitter disapprobation of the law. It was also denounced in the public prints, from one end of the continent to the other. In the month of May, 1795, a convention was held in the State; the grand jury presentments, petitions, and remonstrances from all parts of the country were sent up; these were, by the convention, remitted to the next Legislature as the only competent authority to remedy so enormous an evil. In the month of February before, as has been so ably stated by my valued friend and colleague, (Mr. Randolph.) had this subject been the substance of a communication of the President of the United States to Congress, and a resolution and a bill passed the House of Represent-

atives on the subject. Shall I, after this, be told the sub-purchasers had no notice? Impossible; no historical event so notorious. But the evidence does not stop here. The Georgia Legislature again assembled in the month of November, 1795. The subject of this nefarious and wicked speculation, that covered the country with shame and disgrace, was taken up, and if a doubt had remained of the corruption, it was then removed by a number of affidavits proving incontestably the fact; and on the thirteenth day of February, 1796, a law was passed, not repealing the act of 1795, but with honest and laudable indignation declaring it null and void, as being bottomed upon fraud and perjury, and unveiling to the world the most flagitious conduct that ever disgraced a Legislative assembly. It is there ascertained and declared, that the land had been sold for three hundred thousand dollars less than what had been offered for it, and the quantity of land much greater than it had been represented. The lands contained in the grants to the four companies were estimated at twenty-one millions of acres, which at five hundred thousand dollars, the price given, is twelve and a half cents per acre; the real quantity is about thirty-five millions of acres; this reduces the price of the garden of the world to nearly one and one-third cents the acre. Take notice, Mr. Speaker, that the law of 1796 does not pretend to repeal the act of 1795, but proclaims, to everybody, that to be void which was in reality so before, and with an honest zeal provides that the money which had been paid should be repaid to the purchaser. This annulling law was so precious to the people, it was a monument so honorable to the State, that when afterwards the citizens of that State arose in the majesty of their strength, resuming all those rights, and acted in convention, this very law was ingrafted in their Constitution.

Here the general evidence ends; and is there yet a remaining hesitation about the proof of notice? To such infidelity the glare of meridian light will not be convincing.

The advocates for the claimants have chosen their ground with great address. If they cannot be supported upon principles of law and equity, they adroitly change their position and take the more defensible stand of policy; but even the ramparts here raised will moulder away and fall to the ground at the conquering touch of truth. Can it be good policy to do what is wrong? Shall virtue and integrity, the foundation of our Government, the pillars, the Boaz and Jachin of the temple, be thrown down and trampled under foot? Shall justice be driven weeping from our walls, and vice and corruption here rear their heinous heads? Forbid it reason, forbid it God! But they have high authority on their side. The commissioners who made the articles of agreement and cession with the State of Georgia recommended it; so they did; but I ask you under what circumstances? In the report they made on this subject, and containing this recommendation, they expressly stated the facts which I have just detailed, and concluded by declaring that "under all circumstances which may affect the case and had come to their knowledge, the claimants could not support their title." Upon what data therefore has this compromise been recommended? As great as those gentlemen may be, and as illustrious as is their characters and services to their country, and as great as is my regard—and in this article I yield to no man—yet it is incomprehensible upon what principles such a conclusion is drawn from such premises. The claimants have no title, yet they ought to be provided for; they have cheated the Government, and therefore ought to be rewarded; they have prostrated the fairest of the social virtues, but they are entitled then to compensation; they have acted with the most unbounded profligacy and immorality, nevertheless, they must be noticed and encouraged; they have speculated, therefore must have money. Is this House prepared to assent to such reasoning, and to accept such a system of policy? A man to entitle himself to justice, ought to have clean hands and a pure heart. With a very ill grace does he ask for equity, with bribery in his hands and perjury and corruption in his heart; and shall a horde of speculators be the peculiar objects of Congressional bounty? Shall they be the selected and chosen few whose magnanimity and virtue shall be rewarded with unbounded wealth?

Permit me now, Mr. Speaker, after having said so much upon the general question, to examine it more minutely and in detail. One particular case before us deserves peculiar attention; it is that known formerly by the name of the Georgia Mississippi Company, now the New England Mississippi Company. Too well known in its old jockey dress, it has changed its livery, and after having been driven from the sporting fields of the South, it has taken up its residence in the East, as the theatre of its future career. The agents for this company have written a large pamphlet in vindication of their claim, and every member has been furnished with a copy as an entertainment for his evening's leisure, and pious employment of his Sabbath's holiday. In this book it is stated that the New England Company finished the contract and took a deed from the Georgia Company on the 13th day of February 1796. This is the very day the annulling law received the Executive sanction in the State of Georgia; a wonderful coincidence of circumstances; it seems almost providential: but how different the employment—the Assembly of Georgia completing an act, the proudest boast of their political life, which posterity will praise and admire, while the New England Company were planning cunning and extensive schemes of speculation, and which, we are told, have been but too successful in their effects—that the widows and orphans of men of wealth are now chewing the crust of poverty from this accursed business. This is the melancholy effect of this baneful influence of speculation; and we are called upon to minister to the very passion, and by our imputed righteousness to expiate the sins of this ruinous, vile, and destructive transaction; and that we shall, by sanctifying their

claims, fix a stigma on that glorious monument of Georgian honesty, the annulling law. But, to return, will these people after these things tell us they are innocent purchasers without notice for a valuable consideration, *bona fide* paid? Yes, they have told us so, and told us too by lawyers; for of this description are their agents; and who have admitted that it is not necessary to prove positive notice, a constructive one being sufficient. Where did these people reside? In the town of Boston, in the State of Massachusetts. Are they ignorant? No, they are the best informed men in the State, and most of them public characters, and yet had no knowledge of what was passing in the State of Georgia, or in Congress, which then sat at Philadelphia. The newspapers of the South could not penetrate the frozen regions of the North, yet the polluted laws of Georgia could travel there. Permit me modestly to ask the agents, who are professional gentlemen, if the company, upon the most correct construction of the doctrine, were not *pendente lite* purchasers? did they not buy a lawsuit, and ought they not to abide the decision? The Legislature of Georgia convened in the month of November, 1795, and immediately took up the subject, and on the very day of the decision is the deed made to the purchasers; was not, therefore, the case pending when the purchase was made? If I am asked, how could people in Boston know what the Assembly of Georgia were doing? I answer that the purchaser ought to take care the doctrine of latent equity, so much relied upon by the claimants, does not apply here as in individual cases. If a man has an equity which he does not assert, and an honest purchaser interposes it, he is supposed guilty of negligence, by which a third person may be injured, and, therefore, he is not permitted to disturb the honest purchaser, for the best of all reasons, that when one of two innocent persons must suffer, it ought to be him whose act permitted the injury. But suppose a suit had been commenced against the first grantees in the State of Georgia, in a court of common jurisprudence; as early as November, and on the 13th day of the next February it was determined against the grantees, and the patent ordered to be cancelled, would not the purchasers in Boston be bound by it? No legal gentleman will controvert this position. The people of Georgia did more than this. It is true they did not institute a suit, because there was no possible way in which this could be done. No court of competent jurisdiction in which the ordinary process of law could be carried on, and redress afforded, existed; the injury was grievous and sensibly felt; the representatives of the people had violated the most sacred trust, and had justly doomed themselves to their severest vengeance. The case being *sui generis*, all that could be done was immediately accomplished. The grand juries presented, and the people generally petitioned and remonstrated; it was canvassed in every company, and the topic of universal conversation, at least in that part of the country; these circumstances could not have been unknown to the purchasers. One more circumstance on this head, and which he had nearly forgotten: the President's communication was made in February, 1795; on the third of March following, Congress rose and the Senators and Representatives returned to their respective States with a full knowledge of this wicked transaction, and it would be doing great injustice to suppose they were silent on this important subject. Let the House determine this question by each member asking himself if he did not know it, and on the answer, he would with certainty rely. Should he be told that even all this is not positive proof of notice, in answer, he would assert that it is a mass of testimony strong and invincible, and such as is seldom produced in courts of justice; an unbroken chain of evidence, that infidelity itself cannot resist; nothing but a mistaken tenderness for these unworthy speculations can turn the mind aside from the path of truth and justice.

On this subject he would add but one more remark: if all that has been mentioned shall fall short of positive notice, have not these people been guilty of culpable negligence, unaccountable and even criminal remissness. The sources of information were numerous, and the means of information easy and convenient, the contract an important one; they were about to purchase a tract of country nearly as large as the State they lived in; and was it an evidence of simple honesty and prudence to proceed thus precipitantly? Is it customary for men—men, too, remarkable for their quicksightedness, to act with such unguarded temerity? We must leave this ground before we can reconcile the conduct of the purchasers under any reasonable and rational principles of human action; there is one, and only one, on which all these strange things are reconcilable—speculation. Yes, sir, this was the moving cause, the *primum mobile*, the grand desideratum. Gain and loss employed the whole of their attention; they had their data before them, they knew the circumstances, and calculated their chances, and adventured in the game of hazard; and because they have been unsuccessful, our ears are stunned with the yell of lamentation.

Mr. Speaker, law has been dragooned to the support of these claims, judicial authorities have been cited, and decisions in equity quoted. Yes, unhallowed hands, and polluted hearts, have ventured to approach the pure temple of justice. A book on which the claimants very much rely, I now hold in my hand. I acknowledge it of high authority, from the sacred equity and immutable principles of justice, on which the decisions are founded. *Powell on Contracts* is the book; in the 221st page of the second book, is a correct and general description given to the qualifications of a contract necessary to engage the interposition of a court of equity, and it must be again repeated, the claimants are the applicants. "It 'must be fair, just, reasonable, *bona fide*, certain 'in all its parts, mutual, useful, made upon a good 'and valuable consideration, not merely voluntary, consistent with the general policy of a well 'regulated society, and free from fraud, circumvention, or surprise."

Under these general rules it has been uniformly and invariably decided, that a contract wanting any of these constituent parts, will be set aside in a court of equity; that is, if it be not *bona fide*, and it must not only be so between the contracting parties, but it must not be *mala fide* with respect to others. Fraud has in all well organized societies, and systems of jurisprudence, with which he had any acquaintance, been considered as a sufficient ground to destroy a bargain; it is just and proper it should be so, otherwise what is considered as immoral and detestable in private life, would receive the sanction of a publicly recognised principle, having its foundation in impurity. So far have the conscience of courts of equity gone, that contracts, though fair in themselves, yet, if they had a fraudulent object in view, were set aside; and no rule is more generally received and better established than that contracts made with a view to cheat the Government are void both in law and equity. Here let me pause, and emphatically ask gentlemen, upon what principle of law or equity can these claims be maintained. This Government has never in the most remote degree recognised them or guarantied the title, and what is not a little surprising, the best informed gentlemen on judicial subjects on the other side of the House, are profoundly silent. If the claims could be maintained by reason, argument, law, or justice, would they be satisfied by the silent eloquence of a still vote? This House and their country have something to expect from them, why therefore are they mute? Conscience whispers—management and policy command this silence. He frankly acknowledged it was not competent to him, it was not his wish or design to speak of motives; it would be uncharitable, highly unbecoming, and greatly indiscreet; what he had never been in the habit of doing, and hoped never should do. Every member on this floor, and himself with the rest, had to answer to his country, his conscience, and his God, for his conduct, and he would now solemnly declare, that as greatly as he disapproved the measures of the former Administration, he would rather vote for every one than for the resolution reported by the committee.

Mr. Eustis.—If the position taken by the gentleman from Virginia (Mr. Clark) could be established, it would not in my opinion justify the amendment which he has proposed to the resolution under consideration; because the amendment renders the resolution null and void, and the resolution neither affirms nor admits the legal title. Still, I should be willing to rest the whole merits of the case on the single question, whether the claimants, at the time of making their purchases, had or had not a knowledge of the fraud? In the autumn of 1795, when the sales were generally made in New England, there was no knowledge or suspicion of fraud—the contracts were made in full confidence of the act of a sovereign and independent State—and I know they could have had no knowledge of any fraud in the Legislature of Georgia. We are told by the gentleman that there was "a great uproar throughout the State of Georgia." Whatever might have been the nature or extent of this uproar, I am confident that a knowledge of it had not reached New England at the time the contracts were made. But the proof that there was no knowledge of any fraud depends not on the opinions or assertions of individuals—it is founded on a circumstance which removes all doubt on the subject—it is founded on the price which the purchasers paid for the land. They paid, as they have stated in their memorial, as much per acre for these lands as the State of Massachusetts had received, a few years before, for lands lying in the State of New York. And is it probable that the purchasers who have been represented by a gentleman from Pennsylvania as possessing so much sagacity, and looking so well to their own interests, would have paid or contracted to pay such a price, with a knowledge that the original grant had been fraudulently obtained?

It is also contended, by the same gentleman, that the claimants had knowledge of the rescinding act of 1796. This was impossible in points of time. The sales were generally made in 1795—the rescinding act was passed in January, 1796. It follows, then, that they were innocent purchasers, without knowledge of the fraud or of the rescinding act. Two objections have been made by the gentleman from Pennsylvania, and relied on by the gentleman from Virginia: The first is, that "the original grantees purchased nominally twenty millions of acres, when it appeared that forty 'millions were contained within their metes and 'bounds." This was a transaction between the original grantees and the Legislature of Georgia, in which the present claimants had no agency, and for which they are not responsible. The second objection is said to be found in the deeds of the claimants, where it is contended they have furnished evidence against themselves, in the following words: "And, lastly, it is covenanted and 'expressly agreed and understood, by and between 'the parties to these presents, that neither the grantees aforesaid, nor their heirs, executors, or administrators, shall be held to any further or other 'warrantee than is herein expressed, nor liable to 'the refunding any money in consequence of any 'defect in their title from the State of Georgia, if 'such there should hereafter appear to be." This, it is contended, is an acknowledgment on the part of the claimants of a defective title. Let us now turn to the act of Georgia of 1795, under which the original title was derived. We there find a clause in the following words: "And provided, 'further, that this State and the government thereof shall at no time hereafter be subject to any 'suit at law, or in equity, or claim, or pretension, 'whatever, for or on account of any deduction in 'the quantity of the said territory, or on account 'of the amount of the purchase-money to be paid 'as aforesaid, by any recovery which may or shall 'be had on any former or other claim or claims 'whatever."

The two sections correspond, in a great degree. The first, instead of a suspicion of any fraud, or a doubt of their title, confirms the opinion which was entertained by the claimants of the

validity of their title, and their confidence in the act of Georgia.

It is further contended that the petitioners have no equitable claim on the Government. If this be true, the resolution ought not to be adopted. The equity of the claims depends on a fact admitted on all hands—on the fact that they have purchased the lands, and paid a valuable consideration for the same. This constitutes the essence of the claim, and has produced the resolution now before the House. The legality of the claims is not under consideration. The legality of the claims can only be decided by the courts of law, where the title to the whole of the land would be established or set aside. If the title should be established and confirmed, the United States would have no right to possess or dispose of any part of it, although they have contracted to pay the State of Georgia $1,200,000, and to extinguish the Indian title to their lands.

The resolution proposes an equitable compromise and settlement, and that the claimants shall be compensated out of the residue of the five millions, or the proceeds thereof, which have been reserved for this purpose in the third article of the agreement and cession, by which the whole of the territory was ceded by the State of Georgia to the United States.

When the State of Georgia was about making the cession, the claimants appeared and entered their caveat to the Commissioners of the United States against their accepting the cession, for that they had purchased and paid a valuable consideration for the territory. Proposals of compromise were also made to the Commissioners by the claimants. In a correspondence which took place on that occasion, the title of the claimants and the proposals made by them were declared to be inadmissible by the Commissioners; they proceeded to accept the deed of cession of Georgia, informing the claimants at the same time that a reservation would be made, from which it was their intention that they should be reimbursed the moneys actually paid by them. The reservation in the third article was accordingly made, in the following words: "Provided, however, that the United 'States, for the period and until the end of one 'year after the assent of Georgia to the boundary 'established by this agreement shall have been 'declared, may, in such manner as not to interfere 'with the above-mentioned payment to the State 'of Georgia, nor with the grants hereinbefore rec-'ognised, dispose of or appropriate a portion of the 'said lands, not exceeding five millions of acres, 'or the proceeds of five millions of acres, or of any 'part thereof, for the purpose of satisfying, quiet-'ing *or compensating* any claims other than those 'hereinbefore recognised, which may be made to 'the said lands or to any part thereof."

In conformity with this provision, an act was passed making the appropriation, and appointing Commissioners to receive propositions of compromise and settlement, and requiring the registering the claims in the office of State. The time for registering the claims was afterwards prolonged; and during the present session a resolution has been offered by the gentleman from Virginia (Mr. CLARK) still further to prolong the time. The Commissioners proceeded to receive propositions from the claimants, and after determining that their propositions were inadmissible, they offer their opinion, in the following words: "But they 'nevertheless believe that the interest of the Uni-'ted States, the tranquillity of those who may 'hereafter inhabit that territory, and various equi-'table considerations which may be urged in favor 'of most of the present claimants, render it expe-'dient to enter into a compromise on reasonable 'terms."

Without the habit of placing implicit confidence in the opinion of others, I must confess that this opinion of three gentlemen appointed by the Government, who have examined the whole subject, who have devoted much of their time to it, and who must be supposed to be well acquainted with the nature and merits of the claims, has some influence on my mind. They knew that many of the claimants had advanced large sums of money, which in their opinion constituted an equitable title, and they believed that the interest of the United States required an amicable and reasonable adjustment. And what is the purport of the resolution? Does it contemplate the laying any tax or burden on the whole or on any part of the people? It does not. Does it propose that all the claimants shall be paid or compensated to the extent of their demands? No. It refers all the claims to Commissioners to be appointed by the Government for examination, and such award as their respective merits may entitle them to receive. And out of what fund is the compensation to be made? Out of the residue of the five millions of acres—out of the fund which appears to have been reserved for that purpose.

On the subject of advances actually made, I beg leave to mention a single instance. A judgment was obtained in the supreme court of Massachusetts against an individual in a sum of upwards of $80,000, on a bond given for these lands, for payment of which his estate is mortgaged. This gentleman has paid the tribute to nature—his widow and orphan children are represented in one of the petitions. By the judgment of the court he is held to pay. If a suit should be instituted for the recovery of the land, and it should be determined there is no legal title, where is the remedy? In the case of the corrupt act of the State of Georgia, it has been contended there ought to have been a remedy somewhere, and the State of Georgia sought a remedy in the rescinding act of 1796. In the present instance, I trust it will be found in the justice and good faith of this Government.

THURSDAY, January 31.

On a motion made, and leave given by the House,

Mr. NICHOLSON, from the committee appointed, the twelfth of November last, on so much of the Message of the President of the United States, as relates "to the defence and security of our ports and harbors, and supporting within our waters the authority of the laws," reported a bill to appropriate a sum of money for the purpose of building gun-boats; which was read twice and committed to a Committee of the Whole to-morrow.

ALIEN CREDITORS.

Mr. CLOPTON, from the committee to whom was referred, on the twenty-first ultimo, the petition of sundry British merchants and others, subjects of His Britannic Majesty, within the United States, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole House on Monday next. The report is as follows:

The committee, to whom was referred the petition of sundry British merchants and other subjects of His Britannic Majesty, submit the following report:

The object of this petition is to procure an act for extending the jurisdiction of the circuit courts of the United States, so that the said courts shall have cognizance of "all cases arising under treaties," and of controversies in which an alien is a party, without restriction as to sum, though the matter in dispute, exclusive of costs, should be under the sum or value of $500; or that some other competent tribunal to take cognizance of such causes be established under the authority of the United States.

The petitioners ground their application to the Legislature on the following authorities, viz:

The second section of the third article of the Constitution of the United States, which establishes the judicial power of the United States.

The fourth article of the definitive treaty of peace between the United States and His Britannic Majesty, wherein "it is agreed that creditors on either side shall 'meet with no lawful impediment to the recovery of 'the full value in sterling money of all *bona fide* debts 'heretofore contracted."

And the second article of the convention made the eighth day of January 1802, which recognises and confirms the said fourth article of the definitive treaty.

As reasons for making this application, in support of which they have presented a view of the section of the Constitution and the articles of the treaty and convention which have been recited, the petitioners allege, "that a number of small debts are due from individuals 'widely dispersed throughout the State of Virginia, to 'British creditors, contracted before the peace of 1783; 'and that, for want of a tribunal whose jurisdiction 'shall embrace debts of a smaller magnitude than $500, 'they and their agents are exposed to much trouble, 'incur an heavy expense, and, frequently, with the 'eventual and entire loss of debts, supported by such 'documents and principles as have, in a number of 'similar cases, insured them a recovery in the federal 'circuit courts. That the inferior, and some of the 'superior, courts of the Commonwealth, are not influ-'enced by any uniform course of decision, so that claims 'resting upon precisely the same principles of law and 'evidence, receive different decisions in the different 'courts; and that these courts do not in practice respect 'the decisions of the circuit court and the Supreme 'Court of the United States, on the construction of the 'said 4th article of the British Treaty, in relation to 'British debts."

The committee deem it their duty first to consider whether such a provision as that which is solicited by the petitioners, be expedient and proper, as a general regulation, before they inquire how far the special cases alluded to in the petition, have a claim to the measure. As connected with this view of the subject, a principle of the Federal Constitution presents itself, which is believed to merit serious attention. It is to be remarked that, in the formation of this Constitution, it appears to have been a fundamental principle of great and leading influence, that the powers of the General Government should be so apportioned as not to produce any *unnecessary* diminution in the powers of the State Governments. In conformity with this principle, the powers originally appertaining to those governments, are left in their possession; except those by the exercise of which the general purposes of the Union might be contravened; they are therefore delegated to the Federal Government. This principle strongly characterises the distribution of the legislative power, and it is to be traced in that part of the Constitution which prescribes the limits of judicial power; although, in assigning to that power the objects of its jurisdiction, the principle does not operate so extensively as it does in assigning to the legislative power the object of its jurisdiction. We find that the judicial power does not extend to controversies between citizens of the same State, except in the particular cases where lands are claimed under grants of different States, and obvious is the reason. The State courts, as they always were, so are they still, equally competent to the cognizance of, and a due administration of justice in, all such cases, while they are more convenient to the parties litigant. A transfer of jurisdiction to the federal courts in these cases would *unnecessarily* diminish the authority of the States, and is not necessary to the purposes of the Union; it remains, therefore, exclusively vested in the State courts. We find that the power does extend to controversies between citizens of different States; but here the jurisdiction is not exclusively vested in the Federal Government; in the exercise of it this Government only participates with the State governments. So far, however, as this concurrent jurisdiction is actually exercised, the sphere of State authority is contracted. This authority dwindles and shrinks into narrower limits, as such jurisdiction descends lower in the scale of controversies, embracing in its descent a great variety of cases. Thus the increment of Federal authority produces a proportionate decrease of State authority. To extend this process farther than a due administration of justice requires, is to deviate from an important fundamental principles of the Constitution.

It is presumable that, inasmuch as the Federal Government was instituted for the benefit of every citizen within the United States, this concurrence of jurisdiction, in the case last recited, might have been considered as one of the purposes proper to be provided for in this system; that a citizen of one State having a matter of controversy within the territorial limits of another State, and with a citizen of that State, might take his option of resorting either to the State or to the Federal tribunal for its adjustment and decision. A similar consideration might have induced the extension of jurisdiction to the Federal tribunal, in controversies between citizens of the same State claiming lands under grants of different States. In cases of this description, the extension might have been as strongly recommended on the ground of convenience to the parties, as in ordinary controversies between citizens of different States.

Yet, while regard is thus had to the convenience of those who, residing in one State, have to prosecute in another State, the convenience of the parties on the

other side ought not to be entirely neglected; equal attention is due to each, and the Legislature will respect both alike in the arrangements it makes towards carrying the power into execution. If citizens of one State are entitled, from the nature and general design of the Government, to draw those of another State before the Federal tribunal in matters of controversy between them, it is believed to be a question of no inconsiderable moment how far a provision for that purpose may be extended, without operating a greater inconvenience on the one side, than any rightful claim to such provision on the other side would justify. This question involves an estimate of the degree of interest which may constitute a proper subject of controversy between the parties litigant before such tribunal. It is believed that, in making this estimate, the just rule of calculation is deduced from the following considerations, viz:

The inconveniences to which the parties on one side will generally be subjected from attendance on a single court, sitting at one particular place in the State, contrasted with the situations of the State courts, so numerous and so dispersed, that almost every man finds one convenient to him; and the excess of costs and charges incident to prosecutions in the former, beyond those which are incurred from prosecutions in the latter courts.

From this view of the question, which presents itself to the Committee as a correct one, their impressions are, that matters of controversy between citizens of different States, which do not involve a very inconsiderable interest to the parties, ought not to be subjected to the jurisdiction of the courts of the United States; that, where the interest involved is considerable, a provision extending their jurisdiction to such cases might operate a degree of oppression to the parties on one side, while those on the other side could derive no greater benefits than what are afforded by the State courts. If this be a well founded opinion, can subjects or citizens of a foreign State have a better claim to such provision? If neither the principles of the Constitution nor any sound maxims of distributive justice are favorable to the idea of extending the jurisdiction of the federal courts to controversies of minor importance between American citizens residing in different States, can those principles or maxims be more favorable to such enlargement of jurisdiction as to similar controversies wherein aliens are parties? Every consideration opposed to such a measure in relation to the former cases must resist that idea with at least equal force when applied to the cases last mentioned. No good reason, in the opinion of this Committee, can exist in favor of recommending such a discrimination.

Having contemplated this subject on general principles, and having made the foregoing deductions, the Committee then directed their attention to the particular situation of the petitioners, as stated in their memorial. In respect to the trouble and expense to which they allege their agents and themselves are exposed in prosecuting suits for the recovery of their debts in different courts of the Commonwealth of Virginia, it is to be remarked that, if the inconveniences suggested should be removed from them by the establishment of the tribunal they solicit, what would be the consequence? From their own showing, it is evident that a considerable number of individuals—a number much greater than their own number, together with that of their agents and those they represent, would be exposed to greater inconveniences, trouble, and expense, in attending court at one particular place, from many of whom that place would necessarily be very remote. To grant the prayer of the petitioners merely on this ground of complaint, would be to oppress a considerable number of citizens for the accommodation of a much smaller number of persons who are not citizens. A principle which would justify this step is a sort of principle totally inadmissible by this Committee, as a rule by which to decide on what is just and proper.

As to the allegation that they have frequently incurred "entire loss of debts supported by such documents and principles as have in similar cases insured their recovery in the federal court," the Committee would observe that, however such different decisions may have taken place, it is not admitted as a necessary inference, that the decisions complained of were not as just as those from which recoveries were obtained. And as to that part of the petition which complains that some of the State courts are influenced by no "uniform course of decision," in cases supported by the "same principles of law and evidence," the Committee would remark that, if such be the fact, of which however, no evidence has been submitted, the inconvenience cannot be peculiar to the petitioners; it must extend to all the citizens of the State who have controversies in the different courts. The Committee cannot perceive any propriety in making a provision for the sole purpose of meeting their *especial* cases.

As another ground of complaint, it is stated that the courts of Virginia do not "in practice respect the decisions of the circuit and supreme courts of the United States," in relation to British debts. While the Committee think it proper to observe, that this part of the complaint is also unsupported, but by the mere allegation of the petitioners, they would remark at the same time that it is not deemed material to inquire into that circumstance, in order to make up their own opinion as to the competency of those courts to administer justice between the parties, in deciding the cases in question.

In whatever point of view this subject is considered, this Committee perceive no just ground to disapprove of the policy which dictated the existing limits in the jurisdiction of the circuit courts, so as to deem it proper to recommend any extension of that jurisdiction, or the establishment of any other tribunal, to meet the wishes of the petitioners. They therefore submit the following resolution:

Resolved, That the petitioners have leave to withdraw their petition.

GEORGIA CLAIMS.

The House resumed the consideration of the resolution reported the twenty-ninth instant, from the Committee of the Whole, on the Georgia Claims.

Mr. Jackson.—Mr. Speaker, I rise with some degree of reluctance to address you on the present occasion, not because I fear to give publicity to my sentiments on the question before the House, but from the assurance, that the length of time which this subject has occupied at the last, and during the present session of Congress, renders it most certain that no new view can be given; and more especially that the opinions already formed cannot be changed. I would not now have risen but for the wish that inasmuch as a most extraordinary course has been pursued, and

a general denunciation of every man who dares, to favor the report on your table has been made, my reasons may accompany my vote, and I am willing that they together may form the criterion by which my political existence shall be decided. The reluctance I felt in rising is somewhat removed by the reflection, that the arguments urged on this floor are declared not intended to influence the judgment of this House, but to control the public mind, by an avowed appeal to the people of the United States. Let the appeal be fairly made, and I fearlessly await their decision. For that purpose, I deem it proper to offer my sentiments, in order that they may accompany those of my two colleagues who have preceded me. Sir, I am decidedly in favor of the report of the Committee of Claims, and of course opposed to the amendment under consideration. I do not on this occasion regret the absence of party spirit from these walls, which has been invoked by my colleague (Mr. Randolph.) That party spirit which has been the bane of all Governments; that party spirit which, disregarding all the forms of justice, tramples its most sacred laws under foot, and presides without check or control over questions relating solely to private property; or which was displayed in the conduct of Jeffries, who servilely prostrating his sacred functions to the purposes of ministerial vengeance, has justly excited the reproach and execration of posterity: and which, if cherished upon occasions like the present will tend to demolish the fair fabric of our Republican Government. I will not admit that because a majority of this House are in favor of the claims, and desire a prompt decision without debate, it is evidence that "unprincipled men have 'acquired the ascendency, and knowing them-'selves to be in the commission of wrong they 'are silent.' Is my colleague aware of the extent of this doctrine? When unprincipled men, said he, acquire the ascendency, they act in concert and are silent—silence and concert then are to him proofs of corrupt motive. Is this always a correct position? Does the gentleman recollect that measures were adopted a few years past without discussion, by my political friends in conjunction with him, who were *silent, and united?* I am unwilling to believe that such an inference can result from an union of sentiment. In some instances we are unanimous in our decision of questions, on which no debate takes place; but I have never thought this was proof of the prostration of principle; nor can I suppose that the gentleman himself thinks so; even now we adopt measures advocated by him, and are nevertheless told that to act in concert is proof of corruption. Having premised that the inferences made by the gentleman were not correct, I will proceed to the investigation of the question before the House, viz: Are the claims under the act of 1795, entitled to reference to commissioners for compromise and settlement, or are they not? My colleague (Mr. Randolph) says the persons who obtained the land from the Legislature of Georgia were guilty of a most detestable fraud; and the present claimants, pretending to be innocent purchasers without notice of fraud, are a set of hypocrites, undeserving the attention of Congress, or the commiseration of mankind. In support of this assertion he has quoted the Message of the President of the United States, in 1795, to Congress, describing in terms of approbation the high character of its author—Washington—whose memory I revere, and whose name I will teach my children to lisp, and venerate as the father of American freedom, and who with Liberty were the two best gifts bestowed by Heaven upon our favored country! Washington, my colleague says, gave notice to the nation, and published the rape of unhallowed hands upon the property of the State of Georgia. But, sir, if we examine the Message, and the proceedings of Congress upon the occasion, it will be discovered that no knowledge of fraud in the transactions of the Legislature of 1795, were even known, or suspected; because, if any such information had been received, the known integrity of that virtuous man assures me, he would have communicated it; he would have opposed it with his best exertions, and give me leave to say, deprecated it as much as any man can. The Message of the President, which the gentleman contends contains this ample notice of fraud to all the world, was sent to Congress on the 17th of February, and is to be found in the Journal of the second session of the third Congress, page 245. With permission I will read it.

"*Gentlemen of the Senate and*
of the House of Representatives:

"I have received copies of two acts of the Legislature of Georgia, one passed on the 28th day of December, 1794, the other the 7th January, 1795, for appropriating and selling the Indian lands within the territorial limits claimed by that State. These copies, though not officially certified, have been transmitted to me in such a manner, as to leave no room to doubt of their authenticity. These acts embrace an object of such magnitude, and their consequences may so deeply affect the peace and welfare of the United States, that I have thought it necessary to lay them before Congress."

In this Message there is not a single mention of fraud: but that the acts of Georgia might affect the "peace and welfare of the United States." The meaning of this was, not that fraud was committed in the sale, and known to the President; but that the peace of the United States might be endangered by the sale. The country was an important one, both in its extent and situation; then in possession, and claimed by powerful nations of Indians; the magnitude of the prize might induce the claimants and others, deriving titles from them, to make a desperate effort to settle the country, and drive out the Indians. Hence the danger of a war with them, or, as the President expressed it, the fear that the "peace and welfare" of the United States would be affected.

The committee to whom this Message was referred, reported on the twenty-third February, 1795, as will be seen in page 260 of the Journal:

"Mr. Nicholas, from the committee to whom was referred so much of the Message from the President of the United States of the 17th instant, as relates to the

disposition of the Indian lands, by the Legislature of the State of Georgia, made a report; which was read and ordered to be committed to a Committee of the whole House to-morrow."

On the next day (page 271) the House resolved itself into a Committee of the Whole, and made some progress. On the 25th of February, (see page 276.) the House again resolved itself into Committee of the Whole, and came to several resolutions, which were reported by Mr. Cobb, and were ordered to lie on the Clerk's table. Then follows the following motion:

"*Resolved*, That all persons who shall be assembled or imbodied in arms on any lands belonging to Indians, out of the ordinary jurisdiction of any State, or of the Territory south of the river Ohio, for the purpose of warring against the Indians, or of committing depredations upon any Indian town, &c., shall be punished."

"*Ordered*, That the motion be referred to Mr. Sedgwick, Mr. Madison, and Mr. Hillhouse."

In page 279, on the 26th February, the House considered the resolutions reported by the Committee of the Whole on the preceding day; which were agreed to, as follows:

"1st. *Resolved*, That Congress will co-operate with the President of the United States in giving due effect to all such Constitutional and legal means as he shall adopt and pursue to prevent the infraction of the treaties made with the Indian tribes.

"2d. *Resolved*, That it be recommended to the President of the United States not to permit treaties for the extinguishment of the Indian title to any lands, to be holden at the instance of individuals or of States, where it shall appear that the property of such lands, when the Indian title shall be extinguished, will be vested in, or claimed by particular persons: And that, whenever treaties are held for the benefit of the United States, individuals claiming rights of pre-emption shall be prevented from treating with the Indians concerning the same; and that, generally, such private claims be postponed, to those of the several States, wherever the same may be consistent with the welfare and defence of the United States.

"3d. *Resolved*, That the President of the United States be authorized to obtain a cession of the State of Georgia, of their claim to the whole or any part of the land within the present Indian boundaries.

"*Ordered*, That the first and second resolutions do lie on the table.

"*Ordered*, That a bill or bills be brought in, pursuant to the last resolution, and that Mr. Nicholas, Mr. Macon, Mr. Murray, Mr. Findley, Mr. Boudinot, Mr. Ames, and Mr. Sherburne, do prepare and bring in the same."

"Mr. Sedgwick, from the committee to whom was referred a motion of the 25th inst., respecting such persons as shall be assembled or imbodied in arms on any lands belonging to Indians, out of the ordinary jurisdiction of any State or of the Territory of the United States south of the river Ohio, made a report; which was read, and ordered to be committed to a Committee of the whole House, to-morrow."

The next mention of this subject is in page 285, viz: on the 27th February, the House "resolved 'itself into a Committee of the Whole, on the 'report of the committee to whom was referred a 'motion of the 25th," and came to the resolution contained in page 291:

"*Resolved*, That all persons who, unauthorized by law, and with hostile intent, may be found in arms on any lands allotted to or secured to the Indians by treaties between the United States and any Indian tribes, shall, on conviction thereof, forfeit a sum not exceeding —— dollars, and be imprisoned not exceeding —— months, unless it shall be in continuation of a pursuit to a distance not exceeding —— miles beyond the line of the particular Indians who shall have recently committed murder, or may be carrying off captives or plunder."

"The second resolution being again read, and amended at the Clerk's table, was, on the question put thereupon, agreed to by the House, as follows:

"*Resolved*, That it shall be lawful for the military force of the United States to apprehend every person or persons found in arms, as aforesaid, and him or them to convey to the civil authority of the United States within some one of the States, who shall, by such authority, be secured to be tried in manner and form as is provided in and by the act, entitled 'An act to regulate trade and intercourse with the Indian tribes:' *Provided*, That no person shall be confined, after his arrest and before his removal, more than —— days."

Here, then, is a faithful abstract of the whole proceedings, evincive of the intention of the President and Congress, and it most clearly appears, that these proceedings had no reference to any fraud. The primary object and whole intention to be collected from them was to prevent the settlement of the country by individuals, either by waging war against the Indians, or extinguishing the Indian title; and to prevent a sale by Georgia, except to the United States, of their remaining undisposed of territory; for Georgia still had a large tract of land, after the passage of the act of 1795. But, says my colleague, Congress resolved to apply for the purchase of all the territory in question; and this is notice to the claimants who are now before us. Sir, the gentleman mistakes the resolution; it is "that the President of the United States be au-'thorized to obtain a cession from the State of 'Georgia, of (mark the expressions) their claim 'to the whole, or any part of the land within the 'present Indian boundaries." Here is a most substantial distinction between the case put by my colleague, and the one stated in the resolve; it is not authorizing the purchase from Georgia of all or part of the territory in question, but of their claim to all or any part of the land within the Indian boundaries. From the whole of the documents, it does appear that neither the President nor Congress knew there was fraud, or that any notice, express or implied was given; that the measure originated in corruption; and it does not by any means appear that the present claimants had such notice.

I will now examine that part of the memorial of the New England Mississippi Land Company, which declares that they were specially intended to be provided for in the Convention between the United States and the State of Georgia; and that the act of Congress contains a correspondent provision. Upon this subject my colleague has asserted, that they have "suggested an absolute, direct, and palpable falsehood." If they were not

intended, they assert a falsehood; if they were, they do not. A recurrence to the articles with Georgia, and to the act of Congress, will place this subject upon its proper basis, and by them it will appear whether they were intended to be specially provided for, or not. In the agreement with Georgia it is, among other things, declared, page 5, of the Message from the President of the United States, accompanying the article of agreement and cession, which had been entered into between the Commissioners of the United States and of Georgia, dated on the 26th of April, 1802, after the cession of territory as described in the first article, upon the express conditions therein stated, the first of which conditions provides for the payment of the purchase money. The following additional provisions are made:

"*Secondly*. That all persons, who, on the twenty-seventh day of October, one thousand seven hundred and ninety-five, were actual settlers within the territory thus ceded, shall be confirmed in all the grants legally and fully executed prior to that day by the former British Government of West Florida, or by the Government of Spain, and in the claims which may be derived from any actual survey or settlement made under the act of the State of Georgia, entitled 'An act for laying out a district of land situate on the river Mississippi, and within the bounds of this State, into a county, to be called Bourbon,' passed the seventh day of February, one thousand seven hundred and eighty-five.

"*Thirdly*. That all the lands ceded by this agreement to the United States, shall, after satisfying the above-mentioned payment of one million two hundred and fifty thousand dollars to the State of Georgia, and the grants recognised by the preceding condition, be considered as a common fund for the use and benefit of the United States, Georgia included, and shall be faithfully disposed of for that purpose, and for no other use or purpose whatever: *Provided, however*, That the United States, for the period and until the end of one year after the assent of Georgia to the boundary established by this agreement shall have been declared, may, in such manner as not to interfere with the above-mentioned payment to the State of Georgia, nor with the grants hereinbefore recognised, dispose of or appropriate a portion of the said lands, not exceeding five millions of acres, or the proceeds of the said five millions of acres, or of any part thereof, for the purpose of satisfying, quieting, or compensating, for any claims other than those hereinbefore recognised, which may be made to the said lands, or to any part thereof. It being fully understood that, if the act of Congress making such disposition or appropriation, shall not be passed into a law within the above-mentioned period of one year, the United States shall not be at liberty thereafter to cede any part of the said lands on account of claims which may be laid to the same, other than those recognised by the preceding condition, nor to compensate for the same; and in case of any such cession or compensation, the present cession of Georgia to the right of soil over the land thus ceded or compensated for, shall be considered as null and void, and the lands thus ceded or compensated for, shall revert to the State of Georgia."

Here, sir, is a special provision "for the appropriation of a tract," not exceeding five millions of acres, for the purpose of satisfying, quieting, or compensating for any claims other than those therein before recognised, which may be made to the said lands, or any part thereof. Nothing can be more clear or better settled than that the claims of 1789 and 1795, and especially those of 1795, were specially intended by the articles of cession. If, however, we could doubt as to the meaning of the articles themselves, it would be entirely dissipated on a reference to the report of the Commissioners in page 25 of the same Message; speaking of the propositions of the claimants under the act of 1795, which they deem inadmissible; and of their title, which, they say, "cannot be supported," they add:

"But they, nevertheless, believe, that the interest of the United States, the tranquillity of those who may hereafter inhabit that territory, and various equitable considerations, which may be urged in favor of most of the present claimants, render it expedient to enter into a compromise on reasonable terms.

"Under this impression, a plan is respectfully submitted to the consideration of Congress, which, although it does not give a full indemnity to every claimant, is believed, from such information as has been received, to give in the aggregate nearly as much as has been paid in the whole by all the present claimants.

"As it is understood and generally agreed, that the five millions of acres reserved by the agreement with Georgia, constitute the fund from which the indemnity is to be paid, it is of primary importance, in order to guard against any depreciation, that the nominal sum in money, which may be offered as an indemnity, should not exceed what the sum may be thought amply sufficient to discharge. The probable amount of the annual sales, and the price affixed to the land by Congress, furnish the only data by which that sum can be determined. The Commissioners have supposed that the sales could not reasonably be estimated to yield more than three or four hundred thousand dollars annually; and although it has been presumed that in opening a land office, the price of the land will, at present, be fixed at two dollars per acre; they have believed that it would be improper to assume the payment of any sum out of the proceeds of the lands, which would bind Congress not to reduce the price hereafter, if other considerations shall render that reduction expedient.

"It is after having considered the subject in that point of view, that the Commissioners have been induced to submit the following propositions as the basis of a compromise.

"First. That so much of five millions of acres as shall remain after having satisfied the claims of settlers and others, not recognised by the agreement with Georgia, which shall be confirmed by the United States, be appropriated for the purpose of satisfying and quieting the claims of the persons who derive their claims from an act of the State of Georgia, passed on the 7th day of January, 1795."

They were specially intended by the Commissioners of the United States, who negotiated the treaty with Georgia; and this intention, as I have urged, plainly appears on the face of the treaty itself. The remaining branch of this inquiry is, Were they specially intended by the provisions of the act of Congress? On the third day of March, 1803, the law upon this subject was enacted, and is to be found in volume 6th, page 273, of the laws of the United States, the 8th and 9th sections of which have reference particularly to this subject.

SEC. 8. *And be it further enacted*, That so much of the five millions of acres reserved for that purpose by the articles of agreement above-mentioned, as may be necessary to satisfy the claims not confirmed by that agreement, which are embraced by the two first sections of this act, or which may be derived from British grants for lands which have not been regranted by the Spanish Government, be, and the same is hereby appropriated for that purpose; and so much of the residue of the said five millions of acres or of the net proceeds thereof as may be necessary for that purpose, shall be, and is hereby appropriated for the purpose of satisfying, quieting, and compensating, for such other claims to the lands of the United States south of the State of Tennessee, not recognised in the above-mentioned articles of agreement, and which are derived from any act or pretended act of the State of Georgia, which Congress may hereafter think fit to provide for; Provided, however, that no other claims shall be embraced by this appropriation, but those, the evidence of which shall have, on or before the first day of January next, been exhibited by the claimants to the Secretary of State, and recorded in books to be kept in his office for that purpose, at the expense of the party exhibiting the same, who shall pay to the person employed by the Secretary of State for recording the same, at the rate of twelve-and-a-half cents for every hundred words contained in each document thus recorded; nor shall any grant, deed, conveyance, or other written evidence of any claim to the said lands, derived, or pretended to be derived from the State of Georgia, and not recognised by the above-mentioned articles of agreement, ever after be admitted or considered as evidence in any of the courts of the United States, unless it shall have been exhibited, and recorded, in the manner and within the time above-mentioned; and provided also, that nothing herein contained, shall be construed to recognise or affect the claims of any person or persons, to any of the lands above-mentioned; and provided also, that no certificate shall be granted for lands lying east of the Tombighee river, nor for land situated without the boundary lines established by treaty between the United States and the Choctaws, made the 17th day of October, in the year 1802.

"SEC. 9. *And be it further enacted*, That the Secretary of State, the Secretary of the Treasury, and the Attorney General for the time being, be, and are hereby authorized and empowered to receive such propositions of compromise and settlement, as may be offered by the several companies, or persons claiming public lands in the territory of the United States lying south of the State of Tennessee, and west of the State of Georgia; and report their opinion thereon to Congress at their next session."

They were most certainly intended here; if they were not, the sections are sheer nonsense. Claims derived from any act, or pretended act of Georgia, are none other than the claims of 1795.

My colleague, contending that the claimants have asserted a falsehood in their memorial by alleging they were specially intended to be provided for—in which I trust I have proven he was mistaken—added, and they too talk of national faith and national honor as being pledged to make them compensation. Sir, I do not think with him that the appeal, thus made, is a prostitution of virtue and truth to vile purposes; but that national faith and national honor are pledged to them—not the faith and honor which my colleague ascribes to infamy and baseness, but the faith which, for the honor of my country, I hope will endure forever, and the honor which, co-extensive with our faith, will be the best patrimony we can hand down to posterity, at once their pride and national glory. In support of the opinion I have formed, I refer to the articles with Georgia, and the report of our Commissioners advising a compromise; and that the claimants should within a given time register their titles, as also the act of Congress making provision for the quieting and compensating claims derived under any act, or pretended act of Georgia. "Any act or *pretended* act." Here is a most explicit reference to the '95 claims. The Legislature of that State, in that year, were guilty of gross fraud and perfidy, their act was repealed, expunged from the records of Georgia, and burned. It was called a pretended act by the repealing Legislature, and it has never been contended that any other act of the State was illegitimate. It is alluded to by the appellation of *pretended act*, in as strong terms as the English language can convey the idea; and the ninth section, which I have read, holds out the assurance of a wish to compromise, by authorizing the Secretary of State, the Secretary of the Treasury, and the Attorney General, to receive propositions from the several companies, or persons claiming lands. I repeat it, sir, I think the faith of the Government is pledged to make a compromise with the claimants, if it can be done; if not, I ask why were the claimants required to register the evidences of their titles, at their own expense, in the office of the Secretary of State? Why did we say to the State of Georgia, you must *give* us (remember we did not purchase it) five millions of acres of land to quiet those and other claims, if we had no intention to allow any of them? Why did we pass a law respecting the compensation for claims under any act or pretended act of the State of Georgia, if no claims whatever, under the act or pretended act of Georgia, were to be compromised and settled? And why did we call upon the claimants to incur a great expense in registering the evidences of their titles, and to make propositions of compromise, unless we intended that they should derive some benefit from a compliance? Unless, sir, Congress did intend to make some compromise with the claimants, this was a language of deception, as it regarded the State of Georgia, unworthy of the American Government, and it was adding insult to injury, and expense to both, as it regarded the claimants. It declared in effect: "Commissioners of Georgia, we require five millions of acres of land to compensate these and other claims"—it is obtained. "Claimants register your titles at your own expense, or you will be barred"—this is done. Then, "speculators, swindlers, public plunderers, begone! you have nothing to hope or expect from us." Is this conduct dignified? Is it honorable? I trust it is not, and will not be practised. My colleague alleges that the willingness of the claimants to take one-tenth of what they claim, is conclusive evidence of the injustice of the claim. Sir, the claimants, in their memorial, state a sufficient answer to this argument: "the delay of justice is its denial." What rational expectations can they have to acquire a sufficient indemnity unless in this way? They may indeed wait until the United States shall have disposed of the lands in question to some person hardy enough to purchase a disputed title, as until then they know they can have no opportunity to try their titles; and then the great expense of the law's delay, and the multiplicity of suits necessary to obtain adjudications to the extent of their claims, will produce unavoidable ruin. There is another substantial reason. They do not wish to contend with the strong arm of Government, and instead of their willingness to effect an amicable compromise operating as an evidence of the injustice of their claims, it affords a great proof of their magnanimity and patriotism. They consider themselves entitled to a full compensation, but, consulting the interests of the nation, they are willing to accept a pittance. My colleague says, he last year proved that Georgia had no right to make a grant of the land in question; this is an immaterial point—it is, however, not conceded. I contend we have obtained a recognition of the justice and equity of the claims, and are bound to provide for them. The same gentleman, not satisfied with the arguments he has used, endeavors to make it a party question, and deplores the absence of party spirit. Justice, Mr. Speaker, like the dews of heaven, should be showered down upon all men indiscriminately. She soars above the horizon of political speculators, and disdains to be told of any distinctions; and when she decides in favor of any man, it is because truth, immutable from the beginning of the world to the end thereof, is on his side, accompanied by reason co-extensive with time itself. Tell me not then, when we invoke her aid, that this or that man is good or bad; she is blind to parties, but eagle-eyed to search out truth. What is it to me if the Postmaster General, who is one of the agents, has as many millions as would balance the wealth of the Old World? If he is entitled, fairly and honestly entitled to more, I will give it. But his official powers scatter confusion; men can be found, clothed with Senatorial honors, who will abandon them, and by accepting offices within his gift, prostrate themselves at his feet, and others are ready to receive the snug contracts he can bestow. Hence, if the measure which he advocates be adopted, it will be proof of "corrupt influence which "scatters confusion." Is the gentleman aware of the tendency of this doctrine? The Executive recommends measures, and as the Executive has many valuable offices in its gift, presumed corruption may be urged in all cases of their adoption; although, as in the case of the Postmaster General, the individual members never receive the smallest benefit from the power of appointment to office; and although the national security, and the integrity of the members, forbid the imputation.

As to the contracts spoken of, the mode of disposal is, to prefer the lowest bidder. The principal clerk in the Post Office Department is a Federalist; and disappointed applicants, when others were preferred from motives of favoritism, would be found ready to promulge the perfidious act. Considering these circumstances, which are most important checks, and that, notwithstanding the avidity with which the press seizes on occasions of supposed impropriety in the acts of the Government, or any of its agents, not a single solitary case of malfeasance has ever been charged against this officer; I am confident none has existed. And here allow me to add, that the friends of this measure, whom my colleague has reduced to a level with ninety-five Yazoo men, have, *quo ad hoc*, the same security for their integrity, that the President of the United States and the Commissioners have for theirs—they recommended what we approve. Yes, sir, this measure, which, if adopted, he declared, made us a party to a nefarious swindling—the approvers of fraud—the felons who filch from the poor their support—which reduced us to a level with the corrupt Legislature of Georgia, in the year 1795, and made us patrons of a stupendous robbery—has been recommended by the President of the United States, and by the Secretary of State, the Secretary of the Treasury, and the Attorney General. The President of the United States, in his Message to Congress at the second session of the seventh Congress, after speaking of the convention with the State of Georgia, which was then ratified, and of certain negotiations with the Indians, adds, "we are to 'view this position as an outpost of the United 'States, surrounded by strong neighbors, and distant from its support. And how far that monopoly 'which prevents population should here be guarded against, and actual habitation made a condition of the continuance of title, will be for your 'consideration. A prompt settlement, too, of all 'existing rights and claims within this territory, 'presents itself as a preliminary operation." Remember, sir, that this Message was made on the 15th December, 1802; and the Message containing the convention with Georgia, and the report of the Commissioners, expressly mentioning all the species of claims, and particularly those under the act of 1795, bears date, the 26th of April, 1802, long before the delivery of the communication containing the recommendation I have just read.

And in page 25 of the report accompanying the Message I have quoted, (to wit, the Message of 26th April, 1802,) the Commissioners say, in express terms, they "believe that the interest of the 'United States, the tranquillity of those who may 'hereafter inhabit that territory, and various equitable considerations which may be urged in favor 'of most of the present claimants, render it expedient to enter into a compromise on reasonable 'terms." And who, sir, will have the hardihood to say the President of the United States and these high officers of Government have been influenced by sinister motives? It is (says my colleague) the spirit of Federalism which unites us. Sir, I am young in years, and I am a child indeed in politics: If this be the spirit of Federalism, and with all my enmity to it, which I own has been very great, if it consists in complying with pru-

dent advice and honest engagements, in doing justice to the unfortunate, and deciding on questions of private right by the rules of universal law; I will receive it with open arms; I will cherish it, and hug it to my bosom with the affection of a father for a long lost son returning to the paths of virtue.

My colleague near me, (Mr. CLARK,) with the same liberality which characterizes his general conduct on this floor, has investigated the question of the legality of these claims and contended it was most clear that the parties have no species of legal right. I am not disposed to go largely into this examination; the volume presented by the agents, which is called a "profanation of argument," is an able vindication of it; I will, however, notice some of his positions. In establishing his premises, he assumes certain facts as conceded, which are denied in the most express and direct manner. First, that the claimants now before us had notice of fraud when they purchased the lands in question; this notice, he says, was unquestionably given by the Message of the President to Congress, and the proceedings in the House of Representatives. I have answered this assertion by a minute recapitulation of all the proceedings at that period; and I deny that they either express or imply fraud or corruption in the remotest manner. "They had notice by the presentments of the grand juries in the State of Georgia." Sir, I for one can declare I never saw those presentments in the newspapers; nay, farther, I never saw a Georgia newspaper, to my recollection, until I had the honor of a seat on this floor; they are not extensively circulated beyond the limits of the State; and the facts adduced by my colleague prove nothing. But (added the gentleman) here is presumed notice; facts, sir, always defeat presumptions; it is not a principle admitted in law, because it was possible that the party might have obtained notice, the inference must be that he had notice. And how is the fact of notice or no notice to be settled? My colleague well knows that if the United States shall sell any of these lands to individuals, and the claimants do, as they indubitably will, contest the title, the proper process will be the action of ejectment; in which it is a principle, than which no one is better established, that the eldest grant must prevail. What then? why, sir, the settler will resort to a court of equity, whose province it is to relieve against fraud, and he will charge in his bill in chancery that his antagonist derived his title from the act of a corrupt Legislature, and that he purchased of the grantee with notice of such fraud. The answer, which is sworn to, expressly denies the notice, for, sir, the parties solemnly avow they had no notice of fraud or corruption when they purchased, and a knowledge of their high characters leaves no doubt on my mind of its truth; and it is also a well settled rule in equity, that where the answer is responsive to the bill, it shall be conclusive, unless contradicted by two positive witnesses, or one witness, and strong corroborating circumstances. Where, then, is my colleague's doctrine of presumed—implied notice? They are, said he, *pendente lite* purchasers; and here the gentleman must have encountered a good old law maxim, that "a purchaser for a valuable consideration, without notice, has a good title," unless he is a *pendente lite* purchaser. What, sir! *pendente lite* purchasers, when they derive their title from the law of an independent Legislature! the grantees armed with its official records! the great seal of State affixed! a solemn acknowledgment of the receipt of payment in their possession! That it can be assimilated to a *lis pendens* between A and B, would indeed be a far-fetched supposition. If any suit was depending, it was between the Georgians and their corrupt agents, for abusing the trust reposed in them, not for exceeding their powers. As well might it be urged, that, if an individual give his agent full powers, and he sell his property at a shameful sacrifice, that a suit between such individual and his agent is to affect the property which he had power to sell. My colleague declares his willingness to make provision for such claims as shall appear to have originated in purchases without knowledge of fraud—these alone are the claims which I am willing to provide for; but we are solemnly assured by the applicants that they are all in this situation. Is this House competent to a due investigation of fifteen hundred claims? Sir, the whole period of a session will be inadequate to this object. It is to get rid of the great difficulty which such an inquiry would impose, and more especially to remove beyond our reach the possibility of renewing the unpleasant discussion which this subject has produced, and which, for the honor of my country, I hope will never be witnessed again, that I am desirous to refer the question as to the cases which are deserving of compensation, and the extent of it, to commissioners to be selected by the President, in whom the utmost confidence can be placed. My colleague near me declared that no contract originating in fraud can ever be rendered valid by any after transaction. I will prove to him an exception to this rule in the laws and judicial decisions of the State to which he belongs; and this, sir, will be sufficient to show that the universality of the rule cannot be contended for. In Virginia, our laws declare that no bond given for a gaming contract can be available in law; that money won at gaming may be recovered in a suit brought either by the party losing, or any other person who will sue for it; that all conveyances of land on that account shall be utterly void; yet, under this law, the High Court of Appeals have decided that where a party gave a bond for the payment of a gaming debt, and assured a third person in the presence of the obligee that it was good, and he would pay it; which third person received the bond by assignment, he should be ever afterwards incapable of claiming the benefit of the statute, and that the debt should be paid. But I shall be told by the gentleman, this is not a case analogous to the one before us. In answer to this, I will say, it is not necessary that it should be; it is a strong exception to his rule, and that was what I engaged to have.

Mr. Speaker, strip this question of all extraneous matter, and what is it? Plainly this: The United States are appointed trustees by the State of Georgia, to dispose of a certain designated fund which belonged originally to Georgia, and by the claimants it is contended was ceded to others, but which Georgia denies was a legitimate act. This fund, as I have shown, cost us nothing; we are requested, nay, we have engaged to appropriate it for quieting and compensating those claims thus contested; and to carry these engagements into execution, we are about to appoint commissioners of our own choice, with powers adequate to the object, and this act is denounced as a stupendous robbery, by an appeal to the people. Be it so. People of the United States, we invite your attention to this transaction; we confide in the purity of our motives, which are influenced by considerations of justice alone; and we rely on you for an approval of our conduct. The persons whose claims are before us, are purchasers of land from the grantees of Georgia, for a valuable consideration, without notice of fraud; those from whom they purchased were in possession of the law of Georgia ratifying the sale of grants, duly executed with all the solemn formalities, and of receipts for the purchase-money. Many of the claimants are among the most distinguished characters in the Northern States; they had held, and then held, important offices under the State authority, and had taken an oath to support the Constitution of the United States; which declares that full faith and credit shall be given to the acts and judicial proceedings of the respective States; their inclination as well as their oaths induced them to give full credit to them. It could not be presumed by them that the Representatives of a sister State had been corrupted; and although the act of sale might have been indiscreet, and a bad bargain to the venders; they knew, also, that the Constitution prohibited the States from passing any *ex post facto* law, by which any title vested in others will be impaired. Under these circumstances, they ask that we should give them a part of the property set apart for satisfying their claims, or permit their right to be decided before the judicial tribunals of the nation; and to grant this request, is what the majority of the House of Representatives believe that justice, no less than sound policy, dictates; and this is what we have been told is a stupendous robbery. I rely on the policy of this measure; that alone is sufficient, in my opinion, to warrant the adoption of this report. We can now quiet these claims by a portion of the five millions; they may, if not quieted, recover fifty millions by the decrees of our courts of justice; this is a serious reason in favor of the policy of the measure. Last year, when, as my colleague alleges, the press was gagged, and a virtual sedition law was in force, he declared "let them get a decree of the courts in their favor, let them take possession of the property, and I will expend the last dollar in the Treasury, and sacrifice the last life in the nation to fight them out of the country." [Here Mr. RANDOLPH declared, loud enough to be heard, that he still said so.]

Mr. JACKSON proceeded. The gentleman declares that he is still in the same mind; that these principles are to be trampled under foot by a lawless soldiery. Is this true policy? God forbid that my colleague, whose influence in this House is equal to the rapacity of the speculator whose gigantic grasp has been described by him, as extending from the shores of Lake Erie, to the mouth of the Mobile, should make the nation think so.* Sir, an enlightened and independent judiciary is the safeguard of the poor against the tyranny of the rich, it is the safeguard of the citizen against the tyranny of his Government. In England, sir, the virtue of the judiciary has, except in a few instances, disgraceful to their authors, been the only refuge of the subject against the gripings of tyranny; the judiciary there has been the pride and boast of that nation, and has excited the eulogies of this. Our judiciary is the sheet anchor of safety against popular fury, or the more destructive though less violent attacks of usurpation. I look to it with veneration and respect, as the preserver of civil rights and civil liberty; but if it is to yield to the power of an army, and its decrees are to be reversed on the points of hireling mercenary bayonets; then, indeed, naught remains of liberty but the name, a phantom not worth preserving. It is politic, in the language of the President, to compromise these claims; "a prompt settlement, too, of all existing claims within this territory, presents itself as a preliminary operation." It is politic, sir, on every ground; many eminent lawyers, alike superior to the quirks and quibbles of the law, as well as the heresy of making the law yield to a military force, believe in the legality of these claims, and if there is a pretext of law on their side, it will produce more injury than the value of the land they are willing to take. I speak experimentally upon this subject—ten millions of acres of land (by computation) in the district I represent, are claimed by persons called the Indiana Company, by a grant from the Six Nations of Indians! In the year 1744 a public treaty, under the regal authority, was held at Lancaster with those Indians, and at that time they ceded the whole of their title to all the lands within the chartered limits of the State. Some years afterwards, viz: in the year 1768, as an indemnity to a company of merchants for goods forcibly taken by the Indians, they ceded

* [The following is inserted by request:] Mr. RANDOLPH having informed Mr. JACKSON that he had misapprehended what he said in debate on the Georgia claims at the last session, (which has never been published,) and Mr. R. having declared that what he really said was to the following effect, viz: "That if, when the Indian title to the lands in question should be extinguished, and intruders, under the act of Georgia of 1795, should attempt a settlement contrary to law, (a reason urged by some in favor of compromise,) he (Mr. R.) would extend the strong arm of Government, and drag them from the lands of the United States, would spend the last dollar, and sacrifice the last life, before he would submit to the usurpation:" Mr. JACKSON has no hesitation in admitting upon this information, that he may have mistaken Mr. R.'s expressions.

a large tract of land, bounded by the Laurel Hill, on the east, the Pennsylvania line, on the north, the Ohio river, on the west, and the Little Kenhawa, on the south, to Trent and others. In 1779, this company petitioned the Virginia Legislature to grant them some compensation; this they refused to do, and proceeded to pass sundry resolutions upon the subject, namely, that this grant to Trent and his associates was null and void; that the exclusive right of pre-emption from the Indians was vested in the Government; and that they would vindicate its rights to their utmost power.

Soon after the Constitution was adopted, suit was brought against Virginia in the Federal court, and, in consequence of the amendment concerning the suability of the States, it was dismissed. Various efforts were afterwards made by the company to obtain some allowance, and, finally, they instituted a suit against us in the Virginia circuit court of the United States, which is now depending. I presume, from a reference to the dates of the grants and the established rule that individuals cannot purchase the Indian title, every member of this House will join me in saying that there is no chance of success for the company; yet, sir, the District Attorney of Virginia, who my colleague, on a former occasion, pronounced to be a gentleman of great legal learning, (which I also admit,) has given an opinion in their favor, and he, with other eminent lawyers, equally as learned as himself, are their counsel. The effect of the existence of this claim is, that a tract of country larger than Massachusetts, separated from the province of Maine; larger than Connecticut, New Hampshire, or Vermont; possessing the most salubrious climate in the United States, a most fertile soil, and temperature second to none in the Union; situated, too, upon large navigable rivers; scarcely contains thirty thousand inhabitants: and even now, in consequence of a renewal of the suit, our most valued citizens are abandoning their homes, which are sold for much less than their value, and removing to a country where no such dispute can annoy them. Sir, if we had resorted to a compromise, which they sought and urged, the allowance of their utmost demand would have been much less than the injury we have so sensibly felt.

Mr. Speaker, having taken this view of the subject, I shall, notwithstanding the claimants have been denounced as swindlers, liars, hypocrites, and accessaries to a stupendous robbery, which far outstrips the petty larcenies of the federalists, vote for the reference of their claims to commissioners; because I believe their respectful exercise of a Constitutional right, the right of petitioning, is entitled to attention, and because I do not think they are base men, but abused in a cruel manner, whose lives refute the charges made against them; and if I were permitted to address them upon the occasion, I would say, be not afraid of the shafts of slander, your characters are your shields; and I would add, in the language of a great man, who, after an attentive study of human nature, declared—

"Be thou as chaste as ice, as pure as snow,
Thou shalt not escape calumny."

Mr. Findley said that he claimed the attention of the House for a short time; but from viewing the unusual turn some of the arguments had taken, and the nature of the subject, he found it a matter of some delicacy to know how to proceed. He was opposed to the amendment under debate, and in favor of the resolution, but he observed some members, with whom he had generally voted, and for whose talents he had a high esteem, and in whose integrity he had the utmost confidence, take the other side with such ardent zeal, and in a mode of argument so unusual in public bodies, that on observing this he had hesitated and had voted in the last session for the postponement which took place. He had done this in hopes that the House would in this session meet the case in a temper more becoming their own dignity and the importance and delicacy of the subject. In deciding on this case, they did not act solely in their usual legislative character, which was to make rules for the future conduct of the citizens. In this case they were in the very delicate situation of both parties and judges, in addition to that of legislators—a situation always to be avoided if possible, and when it cannot be avoided, it should be conducted with the greatest decorum. Awed by this situation, Mr. F. said he had again and again viewed the subject in every aspect in which it presented itself to him, and examined it by the rules of equity, of expediency, and policy, with as great attention as he had ever done any case on which he was called to act, and excited by the unprecedented attacks made on the motives and character of the members in opposition to the amendment, when fair and candid argument failed. For his own disinterestedness in the question, he would take the liberty of appealing to the God of judgment, to whom he was to be accountable for the honesty of his decision in this and every other case, and on whose subordinate throne of judgment on earth he considered the House in the present decision to be seated and acting. So tedious an introduction was not usual to him, but on this occasion he thought there was a cause.

By these circumstances he was convinced that on this occasion it was his duty to mention to the House, at least, some of the reasons for the vote which it was his duty to give on this question, but would give them in as few words as it was in his power, to render them intelligible to the House; for this purpose he thought a narrative of the facts was in the first place necessary.

He said he would begin with the Message of the President near the close of the session in February, in the year 1795, informing Congress of the two laws made in Georgia, one in December and the other in the month of February, 1795, (the same Message mentioned by the member from Virginia, Mr. Randolph.) The Message was referred to a select committee, of which he had the honor of being a member, with other very intelligent members from both South and East, (Mr. Nicholas, Mr. Ames, &c.) It had long been

the opinion of men well informed that the title of Georgia to the extent of territory she claimed was doubtful, and that it was too great for any one State to possess in connexion with the Federal Union. The old Congress frequently called on Georgia to make a cession of her unsettled territory, agreeably to the stipulations on which the Confederation was agreed to, but when Georgia did propose a cession, the terms on which it was made were rejected. Other States made cessions of lands to which they had no title, or else had appropriated the lands to individuals before the cession was made; so that, on the whole, but a small quantity of land unencumbered came to the benefit of the United States. But to return: the committee in February, 1795, examined the title of Georgia as far as they had information, the bounds not being certainly known; the unsettled territory of Georgia was believed to be larger than France or Germany, or any other European nation, except Russia, whose Asiatic dominions extend to the Pacific ocean; hence they concluded that such an extent of territory possessed by one State, at the extremity of the United States, and bordering its whole length on the Spanish dominions, with which we were then in danger of a serious contest, it was the opinion of the committee that every proper means should be used to induce Georgia to cede, in a peaceable manner, a proportion of that territory; and, as a first step towards obtaining this object, the committee reported that the Attorney General should examine the titles of the State of Georgia and of the lands claimed by the company from the law of 1795; and they further reported that the President should be authorized to obtain a cession from the State of Georgia of the whole or part of the territory.

It was not certainly known that there was a defect in the title of Georgia, but from the circumstances of the small extent of that colony at the beginning, and in various extensions by different royal proclamations, &c., the title of Georgia was held in doubt. It is well known that the State of Georgia at first was pitched into the State of South Carolina, which for a considerable time granted titles for land south of the State of Georgia, and one degree of latitude which the United States claimed from the definitive treaty with Britain, was yet in the possession of Spain; but this the members of Georgia considered also as within the jurisdiction of that State. This being the case, the committee thought it prudent to make no mention of the supposed defect of the title of Georgia. The committee, and particularly himself, suspected that different laws enacted by that State for the sale of land, and particularly the recent sale of 1795, was encouraged by their own suspicion of a defective title, but they knew nothing of the bribery and corruption assigned as a reason in the year following, for annulling the contract; therefore it was, that no notice to the contractors that Congress doubted the title of Georgia was given. There was no precedent in the United States of a contract authorized by a Constitutional Legislative act being declared null and void by a succeeding Legislature. The power of decisions on frauds and corruptions, or the validity of titles being vested in the courts of justice in all civilized countries, such a decision could only be looked for from that department; but neither a judge who is stated to have been corrupted was impeached, nor any of the members indicted. If this had been done, warning would have been thereby given, and the title might have been called in question; but it was not, nor is not yet done. Therefore, though by the report of the committee printed in the Journals, which few read, it was not published in the laws, which are more generally read and published in the papers, it might have been discerned that Congress had some design of acquiring the sovereignty of some part of that territory, yet no man could infer that there was any intention to interfere with the legal appropriations of the soil, or to what extent the United States would claim or acquire the territory. Therefore, it was justifiable to conclude that no public notice was given of any direct claim of the United States, either to the soil or sovereignty of Georgia. It is well known that the newspapers of Georgia circulate very little in the Middle or Eastern States. Though he read newspapers more than many others, he did not recollect ever to have seen a Georgia paper but with some of the members from that State with whom he then lodged; but though they and himself had disapproved of such an enormous sale of land, he heard no facts stated of fraud and corruption. He had heard, indeed, that several of the members had been the purchasers, but that had been the case in Pennsylvania and other States, of which he also disapproved, but could not prevent.

Mr. F. said, while the case was so situated, the New England purchasers, or long-legged speculators, did not, as his colleague (Mr. Lucas) had said, go to Georgia, but the long-legged contractors or speculators of Georgia, went above a thousand miles to Massachusetts, an old, thick-settled country, the citizens of which needed land for their families, (a country which annually sent forth numerous emigrants, who generally purchased in large quantities and settled in large bodies together,) and sold the land at seven or eight times the original price, by which they gained near $1,000,000 advance. They went with the patents from the State of Georgia, and the law, and probably the constitution of that State, in their hands. This, alone, was sufficient to encourage purchasers among a people who needed land; but this was not all. The respectability of the characters of the sellers was such as would reasonably induce an opinion, that they could not themselves be deceived, and would not deceive others. Among these were a very respectable judge of the Supreme Court of the United States, who had been a member of the old Congress from almost its commencement till its dissolution, for as long a period as the State constitution would permit, and had been an efficient member of the Convention which prepared the Constitution of the United States, and several State conventions, and a gentleman who was then, and both before

and after that time, a Senator of the United States, and many other very respectable characters—who, however, he acknowledged, had by that act, forfeited the character they had formerly enjoyed, and yet, strange to tell, neither before nor after the annulling act, he could not call it a law, as no such law could be made under the Constitution of the United States. The sale was annulled; but the judge said to have been corrupted, nor the federal judge, was impeached, nor any of the members of whom it was testified that they had received bribes, or were sharers in the spoil, were indicted, but still enjoy the confidence, as much as they otherwise would have done, of that State. Not one of them were removed from office, or in any official manner consigned to infamy, by the courts of that respectable State, or by impeachment.

The lands sold at Boston were yet in possession of the Indian tribes, and the Indian war but lately extinguished, while, at the same time, the lands in Pennsylvania were sold, the first rate at one shilling and sixpence; the reputed second rate—but in fact equal if not superior in quality and situation—at one shilling the acre; and what remained unsold to the old settlements, at sixpence: and, in New York, still cheaper the acre; when the Georgia purchase, with all its disadvantages, is stated and admitted to have been sold, rough and smooth, good and bad, and of which a large proportion is allowed to be bad, at something above fifteen pence an acre on the amount reserved. Certainly such a speculation, if it was one, was such as he would not have had any share in, and therefore no proof of the superior cunning ascribed to them by his colleague and others.

Mr. F. said that, so far, the bargain and sale were fair and legal; whether it was a good bargain or a bad one, was the look-out of the purchasers; if it was a bad one, Government would have given them no relief. Had nothing extraordinary, or out of the common road, taken place, he believed the attention of Congress would never have been called to the subject. Soon, however, after this contract was made, the Legislature of Georgia declared the contract, and the law under which it was made, to be void or annulled; and in a short time after, a convention of that respectable State disapproved of the constitutional act of the Legislature; but as long as we pay respect to Constitutional obligations and the distribution of the powers of Government, and as long as we respect the Federal Constitution, which expressly asserts that no *ex post facto* law, or law impairing the obligation of contracts, shall be made, we must agree that one session of a Legislature cannot annul the contracts made by the preceding session. If that could be done, the patent for his own plantation might also be set aside, for he acknowledged it is worth more now than the price that he paid for it. This doctrine had never been entertained even in the Revolutionary period. At that solemn period, all contracts were protected.

Mr. F. said that he cheerfully acknowledged that the amount of land sold under the law of Georgia of 1795, was so enormous as that, if that State had been a separate and wholly independent government, would have justified, in some degree, an agrarian law; and if the fraud and corruption attested by *ex parte* testimony was true, would have justified the most exemplary punishment of those who suffered themselves to be corrupted, or who defrauded the Commonwealth, and this would have proved a defect in the contract itself; but no such thing appears to have taken place. The judge, who is said to have received $13,000 for his vote, was not impeached, nor the members who are said to have given, or received bribes, indicted. It appears to have been so contrived that the State, or citizens of Georgia, should suffer no loss—that the loss and reproach should be transferred to people at the greatest possible distance. He gave credit, however, to the Legislature of Georgia, which met in the year 1796, for making an extraordinary exertion to free themselves from an extraordinary evil. It was a laudable testimony against corruption and fraud, but no court of justice had yet, by deciding on it, acknowledged it to be law, and it was too slow for warning others at a distance against titles originating under the law of 1795.

The annulling law of 1796 had all the effect that any citizen, at that period, could have wished. Congress took possession of the government of the western parts of Georgia, the parts in which the lands in question lay, and erected a territorial government, without the consent of that State, and passed a law authorizing the President to enter into a negotiation with Georgia on the principles of compromise, for the right of soil. The compromise eventually succeeded, and an act of cession took place between the United States and the State of Georgia. In this act of cession, or convention, it was provided that the claims in the counties of Bourbon and Washington, bordering on the Mississippi river, &c., should be protected, and that five millions of acres, or part thereof, should, by the United States, be applied to satisfy, quiet, or compensate, the claims now before the House, and that if they were not so applied, they should revert to the State of Georgia.

On these conditions, Mr. F. said, did Georgia surrender her right of soil. Agreeable to these conditions were the Commissioners of the United States authorized to make and receive proposals, but the Commissioners were not authorized to conclude the agreement, they did report to Congress, and in that report, they state that the claimants cannot, in their opinion, recover by law. This is well founded, because no action can be brought against the United States, nor, since the amendment made to the Constitution respecting the suability of States, against a State. Therefore this fund, viz: the five millions of acres, set apart by the convention of Georgia, to quiet, satisfy, or compensate these claims, must be either applied to that purpose, or revert to the State of Georgia, or the faith of the United States must be sacrificed.

Mr. F. said, that from this view of the subject, he had made up his mind to vote in favor of the

report of the Committee of Claims. That he had not made up his mind lightly, that he had been prepossessed against it, but it becoming his duty to decide, he had thrown aside these prepossessions, and examined the case with all the coolness and deliberation of which he was capable, and would give his vote, as he had made up his mind, without consulting or relying on the opinions of others, for he was responsible only for his own opinion.

To this, however, he had heard objections of a kind, and delivered in a manner, which should receive no answer from him. He would, however, take notice of some made by his colleague, (Mr. LUCAS.) He had said, that as the land sold had been estimated at a little above 20,000,000 of acres, and that the second-hand purchasers claimed 40,000,000 of acres, and the Commissioners had made the estimate at 35,000,000 of acres; that this was a proof of fraud on their part, and a sufficient reason for refusing their claim. He said he would beg leave to inform that gentleman that even in the State where he lived, many surveys had much more land than was named in the patent, and the owner would hold the land without being subject to any imputation of fraud. That the sales now in question, and prior sales by the State of Georgia, not being sold by actual admeasurement, but by natural boundaries, closed by parallels of latitude, it was impossible to estimate the amount with accuracy, and that it was the duty of the seller as much as the purchaser, to take care that the estimate was correct, and that, let the mistake be where it would, it was by no means chargeable to the second-hand purchasers; the purchasers to whom bribing the Assembly of Georgia could not be imputed, as they resided at above a thousand miles distant, and never went to Georgia to make a speculation.

Mr. F. said, that on reflection, the acute discernment of his colleague would convince him that the claim of the Wabash company, for confirmation of their purchases from the Indians during the royal Government, and others which he had introduced, that were contrary to the rules of that Government, or speculations which he now informs us are making with the Indians further to the westward, had not the least analogy to the claim in question—that this was so evident as to need no explanation. He further observed that his colleague's, argument drawn from the character he was pleased to make for the people of New England, was irrelevant to the question, and that at least with respect to land speculations, was not founded in fact. If he took the character of those people from the seafaring men who made their living by trading along the southern coasts, that character would by no means apply to citizen farmers of that country.

Such addresses had been openly made to party spirit, and to the motives and virtue of the members, as were unbecoming public bodies, and unprecedented. In this country, we were in the habit of believing that men who took a solemn oath to serve the public faithfully, might differ in their opinion, but that they would still vote agreeable to their convictions, especially when they had no interest in doing otherwise; but, on this question, they were called on to rescue their characters from the charge of corruption and impure motives, and the Legislature turned into a court of inquisition. In support of this unusual mode of argument, his colleague had, with numerous repetitions, said that he would not act in that House otherwise than he would do out of doors, and that he would not act in the House in such a manner as he would blush for out of doors, &c. Mr. F. said he would assure his colleague, that in this they were agreed, and so he believed were all the members of the House; but, as this was an insinuation that the gentlemen ascribed this purity peculiarly to himself, to correct that impression he would assure him that he would also act in this House, as he would do out of doors, and that he would act such a part as never would lay him under the painful necessity of blushing in secret; in a situation where temporary popularity could give no relief to a wounded mind. He wished it still to be understood that he sincerely believed that other members would vote differently with the purest intentions; but these members being honest themselves, did not impute, nor even insinuate, a suspicion of dishonesty, in those who differed from them in opinion; doing so, indeed, looks so much the worse when it is charged on those who are acknowledged to be the majority of the representation of the United States. For his own part, he would not think himself justified in applying such arguments against the smallest minority he had ever seen in a public body.

Mr. F. said, from a long opportunity of observation, he believed that the people of New England were the least skillful or the most simple of any people in the United States, in their purchases of land, and that in endeavoring to account for this, he thought he had found sufficient data. Their country was long settled; in the present generation, there had been few, if any, contests about original titles. They well knew, that in sales between one man and another, there might be fraud, but that Governments should issue fraudulent patents, or grant titles on which disputes might afterwards arise, was a circumstance with which they were unacquainted. He well knew that about the same time that this purchase was made, land-meddling swindlers went from Pennsylvania with bundles of deeds for land, and the law agreeably to which they were made, and sold them in Massachusetts. Indeed, the land was not settled, but sold to individuals or companies. The people in the old settlements had no suspicion, because they had no experience of a vast body of land, at least six counties in Pennsylvania then unsettled, being at the same time appropriated to others. They purchased the fraudulent deeds, and many of them moved their families into the wilderness, and sat down on heavy-timbered land, reputed to be dear of the clearing, and, after they had spent their strength and endured incalculable hardships, found that the land was not their own, but the property of some Penn-

sylvania or foreign companies, or other land jobbers. He was informed of this peddling or swindling business by the then members from Massachusetts, who inquired of him for information; he informed them that the whole business was a fraud; that all the land in question had been sold long before, though not settled, and he advised them to inform their people. They did so, and put a stop to this mischievous business. But after they had paid the swindlers, and cleared the heavy beach-woods, to make a living, they were ejected; and, no doubt, after paying their money and spending their labor, they were averse to giving up their residence; but, he understood by the newspapers, that they were making overtures to the legal owners for the purchase of the titles.

The lease of the Wyoming settlers from Connecticut in Pennsylvania, which had given so much trouble to that State, and to whose claims he had been opposed, and had assisted in making laws against them, he considered as a proof of the observation he had made; they had rashly confided in a claim of the Connecticut government to part of Pennsylvania, and before that claim was decided had made purchases, and removed their families to the land they had purchased under that claim; they had defended it against the Indians, by whom many of them had been butchered in a most shocking manner; and they had resisted the laws of Pennsylvania, even after judgment was finally given against the claims of Connecticut by a court appointed for that purpose by the old Congress. They defeated even some laws expressly made for their advantage, and continued to live in poverty and uncertainty; long since this contest, they might have taken lands in that State agreeably to law, on very easy terms, and have lived undisturbed. In all this contest, during more than forty years, they have given a continued testimony of simplicity with respect to claims and titles for land, and, at the same time, however, they have set a notable example of perseverance under the greatest difficulties, occasioned by a savage war, and sometimes from an armed force from Pennsylvania. The proprietary government of that State never proposed to quiet these settlements, as had been done with intruders from other States, it having previously granted the land to others, but their obstinate perseverance has had its effect. After trying various and sometimes inconsistent methods, Pennsylvania has found it best at last to quiet their settlements on moderate terms, and for this purpose, to purchase the rights of the original purchasers from the proprietary government.

It had been objected to him by another of his colleagues, that he had himself voted for the repeal of a contract in the State Legislature; from his knowledge of that gentleman's candor and discernment, (Mr. Gregg,) he knew he would not have made this observation, if he had examined the case. Mr. F. said, in the course of a longer life than was common to many, at one time or other, in all the various public bodies, which instituted or conducted republican Governments, he had given some votes which he regretted, and many which he would not give again, if he had the opportunity; and he would never admit that a member was inconsistent for changing his opinion on better information. For what purpose is all our painful studies and wearisome debates, but to inform our judgment; and of what use is this information if we cannot take advantage of it for the public good. And if we have voted wrong, if we cannot correct it by changing our vote, we ought to prevent all discussions, all reading and study, and become mere machines. But though he advocated this right, he did not need it on this occasion, nor for his vindication against the charge of inconsistency.

The Bank of North America, the first bank in the United States, not chartered by the old Congress, which had no Constitutional authority to grant charters; but the situation of the United States, at that period, justified an extraordinary exertion. Congress, however, well knowing their own want of power, recommended to the States also to grant charters to the bank. The State of Pennsylvania granted a charter; other States refused to do it. The bank was put in operation. In 1784, a new company applied for a charter; the Bank of North America, the only one at that time in the United States opposed it, although parties were heard by counsel before the Legislature, but the decision on the question was postponed. In 1785, the question was taken up; the bank company was again heard by counsel in favor of their exclusive monopoly, without limitation of time; the incorporating law was repealed, and afterwards, a new charter was granted for a limited time, and with such restrictions of the monopoly as has permitted the operation of other banks in the State of Pennsylvania, and other States. This, however, was a charter of privileges, which, in free Governments, are always subject to the discretion of the Legislature; no price is paid for them, and the privilege may be always withdrawn when the public good requires it. But the claim before the House is of quite a different nature; it is a transfer of property by a competent authority, for which a more valuable consideration had been received by that State than for any sale of lands by that State, before or since that time, and the present claimants, on the faith of Government, had their purchase at a still much higher rate.

Much had been said about the extent of the purchase by the original grantees, and the corruption of the Legislature, but that was not before the House. The condition of the convention between the United States and Georgia was, that not 40, nor 35, nor 21,000,000 of acres, should be given to satisfy those claims, but that 5,000,000 of acres, or some part thereof, should be given, but 5,000,000 of acres is by that convention vested in the United States as a deposit for that purpose, and if not so applied, the deposit is to be returned to the State of Georgia; these are the facts on record, and if the record is true, the assertion so boldly made, that those who voted in favor of the report of the Committee of Claims were putting their hand into the public purse, that it was public robbery, &c., was not only unfounded, it was mere declamation. He would not say for what purpose. It was not the property or purse of the United States, but a deposit put in the hands of the United States for the very purpose for which the resolution before the House proposes to apply it.

Mr. F. said, that this was not only the opinion of the Committee of Claims, but of the Commissioners of the United States, who had the best opportunity of understanding the subject, and whose talents and integrity, it will be admitted, are not inferior to that of any member on this floor, and, in their words, he would conclude. In their report they say, that "the interest of the United 'States, the tranquillity of those who may here-'after inhabit that territory, and various equitable 'considerations that may be urged in favor of 'most of the present claimants, render it expedi-'ent to enter into a compromise on equitable 'terms."

Mr. Gregg.—I rise, Mr. Speaker, to congratulate the House, on the question being at length brought within such narrow limits. The validity of the title appears to be nearly abandoned, and the advocates of the resolution seem now disposed to rest its defence almost entirely on the ground of expediency. For my own part I have always felt satisfied with the report of the Commissioners, so far as it respects the question of title. They have investigated the subject with more diligence and attention than can well be bestowed on it by members of this House, and being men distinguished for their abilities and of high official standing, their opinion, certainly, should have great weight. That opinion, as recorded in their report, is, that the title of the claimants cannot be supported. In this opinion I most heartily concur, for I can never be induced to believe that an act so marked with fraud and corruption as the act of Georgia, under which the claimants pretend to derive their title, has been fully proved to be, can vest a title either in law or in equity.

The question of title being given up, any remarks respecting the weight that ought to attach to the rescinding act passed by the Legislature of Georgia, in 1796, will be unnecessary. On that part of the subject I will only just observe, in reply to one of my colleagues (Mr. Findley,) who has stated that act to be without precedent, and that one Legislature cannot repeal an act of a preceding Legislature where it involves a contract, that there is one instance at least of such an act, and that instance is in the State in which he and I live. The case to which I allude, is an act passed by the Legislature of Pennsylvania, for repealing the charter of the Bank of North America. This act, if I am not mistaken, was passed when my colleague was a member of the Legislature, and I believe received his support.

But, leaving the question of title, good policy, say gentlemen, requires us to pass the resolution. In this sentiment, they and the Commissioners appear to unite. The Commissioners acknowledge that the title of the claimants cannot be supported, and yet undertake to recommend a compromise, by stating "that the interest of the Unit-'ted States, the tranquillity of those who may 'hereafter inhabit that territory, and certain equi-'table considerations which may be urged in 'favor of most of the present claimants, render it 'expedient to enter into a compromise on reason-'able terms." Now, I would ask, how is the interest of the United States to be promoted by giving five millions of acres of land to persons acknowledged not to have a good title in law, and none in equity? If our interest is to be promoted in this way, we may soon get rid of all our land. Claimants will not be wanting, if it is to be got for asking.

With respect to the equitable considerations which have been urged so strenuously in favor of the present claimants, I must acknowledge they have not appeared to me so very forcible. The innocence of the claimants has been painted in strong and glowing colors. They have been represented, not only as innocent, but innocent through ignorance. One of my colleagues, in particular, has dilated largely on this idea, and applied it especially to the New England purchasers. In evidence of this, he has referred to the case of the Connecticut intruders in the State of Pennsylvania. But in this allusion he was certainly extremely unfortunate. The case might be cited to prove a position exactly the reverse. The fact is, that these intruders have for many years, by their superior skill and address, held their lands in defiance of the State; and, from appearance, I believe will continue to hold them, without making any compensation to the State; and this instance may serve to show the impropriety and inefficiency of governments pretending to compromise with individuals. The measures pursued by the State of Pennsylvania relative to these claimants have generally been of this description. They have produced no advantage to the State, and have always been converted by the intruders into arguments in favor of their claims. I do know of one case that goes far to prove that there are some persons in the Eastern States extremely uninformed in matters relating to land. The case to which I allude is recent, having occurred but a few days ago. A petition was presented by a gentleman from Vermont, signed by a number of persons, praying to be permitted to form a settlement on the public lands lying Northwest of the river Ohio. On a motion for referring it to a committee, a member from the same State rose and opposed the reference, assigning as a reason, that if the petition should so far receive the countenance of the House as to be referred, the petitioners would instantly commence the sale of rights. Now, if there are people so extremely ignorant as to purchase rights of this description, they certainly ought to be pitied. But will any person say that the present claimants belong to this class? No, sir; they are men experienced in business, by all accounts well versed in transactions relating to land, and as little liable to be imposed on as perhaps any equal number of persons that could be selected.

But it is said they could not have knowledge of the circumstances under which the act of Georgia of 1795 was passed; that they became purchasers before such information could possibly reach them. This certainly cannot be seriously insisted on. Will gentlemen look at the deeds conveying the titles, and then say the purchasers had no notice? Evidence, if not of the fraud, at least that there was something wrong in the business, is stamped on the very face of all the conveyances. In the report of the Commissioners it is stated "that all the deeds given by the companies, as well as the subsequent deeds, with only two or three exceptions, not only give a special instead of a general warrantee, but have also a special covenant, in the following words: 'And lastly, it is covenanted and expressly agreed 'and understood by and between the parties to 'these presents: that neither the grantors aforesaid, nor their heirs, executors, or administrators, 'shall be held to any other or further warrantee, 'than is hereinbefore expressed, nor liable to the 'refunding of any money in consequence of any 'defect in their title, from the State of Georgia, 'if any such hereafter there should appear to be." And this notice is rendered still more express and forcible by a reference to a proviso in the act of 1795, in the following words: "And provided 'further, that this State and the government 'thereof, shall at no time hereafter be subject to 'any suit at law or in equity, or claim or pretension whatever, for, or on account of any deductions in the quantity of the said territory, or for, 'or on account of the amount of the purchase-money to be paid as aforesaid, by any recovery 'which may or shall be had on any former claim 'or claims whatever." This clause is contained in a printed pamphlet laid on the table, which, though not official, is presumed to be correct. Surely it cannot be contended that such conveyances did not of themselves give sufficient notice that there was a risk, that there was a defect, or some imperfection in the title; and is Government now to be asked to insure against all risks of this description that adventurers, stimulated by an immoderate thirst of gain, may be disposed to run? I trust not.

Another reason suggested by the Commissioners in favor of a compromise, and on which great stress has been laid in this argument, is the tendency it is presumed it will have, to secure the tranquillity of those who may hereafter inhabit that territory. If passing the resolution would produce that effect, I acknowledge the reason would be a powerful one. But what ground is there for believing that it would produce such effect? Can it be supposed, in the nature of things, that any men possessing a legal title for fifty millions of acres of land would surrender their rights, and accept of five millions? The supposition is too wild to obtain credit. The claimants, I take it, have something in view very different from a compromise. They will not give up their pursuit without a judicial decision. Conscious that their title will not stand the test, they want to fortify it by an act of the Legislature. That this is their scheme, I infer not only from the nature of the case, but from a written document I hold in my hand, signed by a person styling himself the agent of the Tennessee Company. This memorial was laid on the table two years ago, but never having been withdrawn by the party, it is to be considered as expressive of their determination at this moment. This agent states that he considers the title of the company he represents to the lands they claim, as a good and sufficient title, and prays Congress to point out some mode by which they may be enabled to obtain an early judicial decision. This is the plan. Some of the claimants are to press for the act authorizing the compromise, but as some will refuse entering into it, none will consider themselves bound, and of course the act will remain unexecuted, but will be a great point gained by the claimants, inasmuch as they can plead it as an argument in favor of their title when it comes under legal discussion. This may happen when the Indian title to these lands is extinguished, and settlements are commenced under rights obtained from the United States. The claimants, if they see proper, may then bring their ejectments and obtain a trial.

The value of the land I consider as of no great importance. I have always viewed the whole cession as a bargain by no means favorable to the Government. In a pecuniary point of view I do not think it will be found so. Good policy, however, under existing circumstances, might have dictated the propriety of accepting it. My objections, therefore, do not depend on the value of the property or on any supposed injury or loss Government might sustain by giving it up. I am opposed, because I believe the resolution will fail in accomplishing the object intended to be produced by it; because I believe it will have an improper influence on judicial decisions, should such decisions ever be had on the case of the claimants, and because of the abhorrence I feel against the fraudulent and corrupt act under which the claimants pretend to derive their title. I cannot vote in favor of any measure that will have the appearance of giving any countenance or sanction to such an act. Under my present impressions, therefore, I must vote in favor of the amendment, and whether it succeeds or not, I shall ultimately vote against the whole resolution.

Mr. ROOT began by observing that he should not undertake a lengthy and elaborate discussion of the merits of this claim. He was not disposed minutely to inquire into the legality or equity of the claims derived under the act of Georgia of 1795. Although he believed that the New England purchasers were entitled to recover, both in law and in equity—that the fee of the lands in question was vested in them beyond any legislative control, yet as they had offered terms of compromise, and as gentlemen have inclined to put the issue upon the expediency of the measure, he should chiefly confine himself to the answering of such objections as he had heard offered in opposition to the claim. He said that he had listened

attentively during this debate, and the first objection which possessed any claim to argument, fell from the first gentleman from Virginia, (Mr. J. RANDOLPH.) The objection is this: that the New England Company were purchasers with notice—that is, that they had notice of the fraud before they became purchasers; that they knew the sales by Georgia were void, and, purchasing with their eyes open, they must sustain the loss; and how, he inquired, has this notice been shown? By whom and on whom has it been served? The gentleman from Virginia who first spoke on this question has, to be sure, referred us to the President's Message of the 17th of February, 1795, and this he is pleased to denominate a notice. It may be a notice for aught I know, but surely it did not satisfy even Congress, much less the citizens of Boston, that the act of Georgia was passed in fraud, was *ab initio* void, or that a subsequent Legislature would annul the grant. That Message did notify Congress that Georgia had passed a law for selling a part of her vacant lands, and expressed some apprehensions for the future peace of the United States. [Here Mr. ROOT read the President's Message of the 17th February, 1795, and inferred, from the Message itself, that the President's apprehensions arose from the circumstance of that country's being inhabited by warlike Indians, and that he communicated the information to Congress in order that pacific measures might be adopted.] Is this, continued Mr. R., a notice of fraud? Is this a *caveat* to notify purchasers to beware? But, Mr. Speaker, is this Message interpreted into a notice of an adverse claim? If so, in whom did that advere claim exist? Surely not in Georgia, after she had passed all her right. Did it exist in the United States? Such a claim was not asserted by the President in his Message. And indeed it appears, from a perusal of the bill reported by the select committee to whom that Message was referred, that no assertion of claim to the lands in question was then contemplated. [Mr. R. read the bill alluded to, purporting as follows: "*Be it enacted, &c.* that the President be 'authorized to obtain or accept, by purchase or donation, from the State of Georgia, a relinquishment and cession of the claim of the said State to 'the whole or any part of the lands lying within 'the limits of the same, and without the ordinary 'jurisdiction thereof."] Georgia owned other vacant lands, out of her ordinary jurisdiction, than those sold by her to the several companies of 1795. A cession of these lands to the United States appears to have been the object of that committee, and how could they have acted otherwise? It was known to the gentlemen composing that committee that Congress under the old Confederation, and since the adoption of the Federal Constitution, had repeatedly recognised the right of Georgia to the lands in question. Prior to the year 1788, Congress had, at three several times, requested the State of Georgia to cede a portion of her vacant territory to the United States. In that year the State of Georgia, by an act of her Legislature, authorized the delegates in Congress to cede and convey to the United States a portion of her vacant lands, including the same tract now claimed by the New England purchasers. This territory was to have been ceded, under certain restrictions and conditions, for a certain compensation, to be paid by the United States. Congress refused to accept of the cession, not because the lands were claimed by the United States, not from any supposed defect of title in Georgia, but because the terms were thought to be improper and inadmissible. And Congress thereupon, by another resolution, proposed to accept a cession of the lands in question, on other terms and under other conditions. [Here Mr. R. read copious extracts from the journals of the old Congress, to show the recognition of the right of Georgia to the lands now in controversy.] By several public acts and documents, continued Mr. R., have the Government of the United States, since that time, acknowledged and maintained the right of Georgia to these lands. The United States have also, by tacit consent, acknowledged the right of Georgia. That State, as early as the year 1780, asserted her claim by a public act of her Legislature. In 1789, she made a conditional sale of the same lands, and in 1795, by a legislative act, sold them to the several companies under which the New England purchasers claim to hold. No objection on the part of the United States was made to these several public acts, and, by a known rule of law, silence and acquiescence in such cases is tantamount to an express consent and confirmation. Under these circumstances I should hardly suppose that the President's Message amounted to a notice of an adverse claim. Another gentleman from Virginia, (Mr CLARK,) alleging that "an actual notice is not necessary,"—that "a constructive notice is sufficient," which positions I shall not undertake to deny, has relied with much apparent confidence on the circumstance that the deed to the New England Company was executed on the same day that the rescinding act of Georgia was passed. He infers from this that the citizens of Boston must have known on the 13th of February, 1796, that the Legislature of Georgia were about to annul their grants, and pass their famed rescinding act on that day. We have not yet been told that that celebrated act was long in its passage through the different branches of the Legislature, nor have we any evidence to convince us that the effervescence, of which the gentleman speaks, flew like an electric shock almost instantaneously from Georgia to Massachusetts. It is fair to presume that the purchasers never conjectured that a rescinding act could be passed till after their contract was completed. The covenant for the purchase was entered into at Boston, in the month of September, 1795, between the agent of the original grantees and the New-England purchasers. In October, 1795, payment in full of the balance of the consideration money was made, and the Executive of Georgia made out his order for endorsing satisfaction on the mortgage, and for delivering up the same. The act of the Legislature of Georgia authorizing the grant, the deed executed by the Governor according to law, the certificate of the payment in full of the consideration money, and the Executive order for endors-

ing satisfaction on the mortgage, being all shown to the New England purchasers, could they believe that the grant was void? Bred to respect the acts of lawful authority, accustomed to repose confidence in the contracts of Government, and educated in the belief that private rights and private property would not be wantonly despoiled, they required some further notice of the fraud—at least of such fraud as might avoid the grant—than the mere surmises or whispers of the traveller. Thus, Mr. Speaker, I think this formidable notice results in this: that the President had been informed of the passage of the act of Georgia of 1795. He thought, unless precautionary steps were taken, that it might embroil us with the Indians, and deemed it proper to communicate the information to Congress.

Another objection is made by the gentleman from Virginia (Mr. J. Randolph) who first addressed you, that the claimants will perhaps reject the proffered compromise, and afterwards plead our own statute book as a recognition of their claim. This objection can easily be remedied in the bill to be passed pursuant to the resolution now under consideration. A proviso can, and undoubtedly will, be inserted, that in case a compromise shall not be effected, the act shall not be so construed as to impair the rights of the United States or to strengthen the title of the claimants.

Another objection, made by both of the gentlemen from Virginia, (Mr. J. Randolph, and Mr. Clark,) who have spoken in opposition to the resolution reported by the Committee of Claims, is, that nothing passed by the act of Georgia of 1795, and this objection is attempted to be supported—first, on the ground that the Legislature of Georgia had no authority to grant. I flatter myself, Mr. Speaker, that I have sufficiently shown that the lands in question were the property of Georgia as a free, sovereign, and independent State, and that she and she alone, had the right of their disposal. But a distinction is taken between the people and their Legislature. It is said that the people of Georgia had never delegated to the Legislature the right to dispose of her vacant lands. By the constitution of Georgia, all legislative powers were delegated to the Legislature, unless particularly excepted, and we do not learn that the power of disposing of their vacant territory was excepted or reserved. The disposition of vacant lands has always been considered legislative power, necessarily belonging to the Legislature, without any express delegation in a constitution. If such delegation of power is necessary, I imagine that but few valid grants can be found in the several States. In support of this objection it is further insisted, that the grant of 1795 was fraudulent—of course, that it is void *ab initio*. The abominable fraud, the gross and odious corruption, which is said to have been practised by, and upon the members of the granting Legislature of 1795, have been depicted in the most artful and detestable colors. But even were I to admit for a moment, that the motives of a Legislature can be questioned in order to nullify their acts, I should extremely doubt whether that abominable corruption did even exist to the extent alleged. Where, let me ask, is the proof of its existence? I can find it nowhere except in *ex parte* affidavits, taken before no one knows whom, and sworn to by persons equally strangers to us. Being voluntary affidavits, the deponents felt perfectly secure from the pains and penalties of wilful and corrupt perjury. If these legislators were so base and impure, why have they not been arraigned to answer for their crimes? We have heard of no prosecution against them for the bribery and corruption. Instead of jails, gibbets, and infamy, they have been rewarded by the continued confidence, not only of the people, but of the Legislature. Several of the members who stand charged with bribery, have since been elected by the people to seats in both branches of their Legislature. Several others have since been appointed by the Legislature to seats on the bench of justice, and one other has since been appointed by legislative act, a trustee of the University of Georgia. Can we believe, Mr. Speaker, that the people of Georgia are so lost to every principle of virtue as to elect men stained with corruption and stamped with infamy, to fill seats in the Legislative body? Can we believe that the Legislature are so shameless as to defile the sacred bench of justice with such impurity and fraud? And, last of all, can you believe that she would commit the care of the education of her youth to the very child of corruption? No sir, it cannot be! I cannot believe that this transaction is so vile as it has been represented. This objection is still further supported by another gentleman from Virginia, (Mr. Clark,) by a recurrence to that "effervescence," which induced the people to "rise in the majesty of their strength and declare the act null and void." It is true, sir, that the people, or rather their Legislature, became so effervescent in 1796, as to rise in the majesty of their strength and kindle a bonfire. Disregarding the sacred nature of contracts, setting at defiance the Constitution of the United States, which declares that "no State shall pass any *ex post facto* law, or law impairing the obligation of contracts," and that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State," and sporting with the rights of innocent individuals, that Legislature erected the funeral pyre, bound the helpless victim, and laid it upon the altar. Then, not like the patriarchs of old who laid coals upon the altar, they sacrilegeously called down the fire of heaven to aid in the destructive work. This contract was wedded to the Constitution of the United States, and when the latter was about to perish by the hands of Georgia legislators, the former, like a Hindoo spouse, must perish by the same flames, that their ashes might be mingled and gathered in the same urn. But to complete the scene of solemn mockery, a convention was called who ingrafted the rescinding act into their constitution. This effort to give strength to invalidity was equally unavailing. That contract was made under the sanction and authority of the Constitution of the United States, and this Constitution, which forbids a State to impair a contract, also declares that, "this Constitution, and the laws of 'the United States which shall be made in pursu-'ance thereof, and all treaties made, or which 'shall be made under the authority of the United 'States, shall be the supreme law of the land, and 'the judges in every State shall be bound thereby; 'anything in the constitution or laws of any State 'to the contrary notwithstanding."

Another objection made by a gentleman from Virginia, (Mr. Clark,) is, that the price was so inadequate as to evidence the invalidity of the title. The price, Mr. Speaker, although apparently inadequate, was, under all circumstances, equal or nearly equal to what had been paid for large tracts sold by other States.

This country was remote, and then owned and inhabited by warlike tribes of Indians. The Spaniards were on its border, and a part of it was actually occupied by settlers under Spanish and British grants. Yet the New England purchasers paid nearly double the price for which the delightful country of the Tennessee was sold. And, by a known rule in chancery, if a contract equal at its creation, afterwards becomes unequal, still execution will be decreed. I perfectly agree with the gentleman that persons ought to come "with clean hands and pure hearts," to seek for justice; and I also agree in another maxim, that the hands of the claimants are presumed to be clean, and their hearts presumed to be pure, until the contrary be shown. They allege to be innocent purchasers—show that they are otherwise before you brand them with infamy.

The gentleman from Pennsylvania (Mr. Lucas) has objected that the Legislature of Georgia were deceived in the quantity of land by them sold, and refers to the commissioners' report, by which it appears that the country sold contains nearly double the amount of acres which it was supposed to contain at the time of the sale. Shall this pretence vitiate the contract? Are we to suppose that men selected from all parts of the State, possessed less knowledge of her vacant territory than purchasers at a distance? Shall the merchant absolve himself from his contract by saying that he was cheated in the bale of goods which he had sold, and which, for a long time, he had under his eye? Will it avail the vender to say, sir, you have cheated me in the worth of the horse I sold you, and which I had used for a long time? The lands in question were unascertained. The quantity was equally unknown to the venders and to the vendees; of course no fraud can be imputed to the transaction on that score.

The same gentleman from Pennsylvania, and he is joined by his colleague (Mr. Gregg) and by a gentleman from Virginia, (Mr. Clark,) object to this claim on the ground that the deed to the New England purchasers contains a covenant of special and not of general warranty. Thence they infer, that these purchasers might presume that the act was fraudulent, and would be rescinded. In my opinion that inference cannot fairly be derived from the premises. The granting Legislature of Georgia, being ignorant of the extent of former grants, as well as of the quantity of acres in that tract of country, very properly provided that the State should not be subject to any suit, claim, or pretension, on account of any deduction in the quantity of said territory. The limits between the United States and the King of Spain were not at that time definitively settled. Hence the propriety of the special covenant, that the Georgia companies should not be liable to refund to the New England purchasers any money in consequence of any defect in their title from the State of Georgia. They knew, and were willing to encounter, these hazards, but they had been too much accustomed to yield confidence in Legislative contracts to believe that they would be wantonly violated.

Mr. Speaker, I have attempted, as far as my feeble abilities would permit, to answer all the objections I recollect to have heard against this claim, and which appear to possess the merit of argument. If I have been successful, I trust the House will pardon me in declaring that I believe the claimants are not only equitably but legally entitled to the relief which they ask. That Georgia had the right to convey, I think cannot be doubted. And even admitting, for argument's sake, that the original sale was fraudulent and void, and that it is competent to a legislative or a judiciary tribunal to inquire into the motives which influenced a prior Legislature in making a contract, still the purchase is good in the hands of subsequent purchasers who come in for valuable consideration and without notice of the fraud; and the subsequent purchasers would more especially be protected against an after purchaser who purchased from the first grantor, and with notice of the prior grant. The United States have purchased of Georgia, with notice that that State had, years before, sold the same lands to certain companies, and that those companies had sold to the present claimants; and shall the United States avoid the first contract as fraudulent? The law books contain no such doctrine.

But suppose, sir, that the act of Georgia of 1795, was stamped with infamy, was generated in corruption, so that no subsequent transfer could cleanse it of the foul stain, still let me ask, would it not be wise, would it not be prudent, to effect a compromise with these claimants? This tract of country is now estimated at about fifty millions of acres. It is not proposed, and indeed we are not permitted by the convention with Georgia, to allow more than five millions of acres to all the different claimants, in consideration of their relinquishment of claim to the forty-five millions of acres. If their claim is a bad one it would be for the advantage of the United States to give ten per cent. for its extinction. Suppose the Indian title to that country was extinguished, and a land office was opened, would the industrious settler pay you as much for that land, with this claim impending over it, as he would for the same land if it were free from all conflicting claims? If he would, in the latter case, pay you two dollars an acre, which is the medium price for which the United States lands are sold, would he give you

one dollar and eighty cents an acre, knowing that he must encounter a law-suit? No, sir; industrious farmers are are unwilling to purchase a law-suit. That country will never be sold to actual settlers until these claims shall be extinguished or confirmed.

Having offered my sentiments in opposition to the amendment, and in favor of the resolution reported by the Committee of Claims, I confess, Mr. Speaker, that I feel myself not a little embarrassed. I feel myself in an awful dilemma. I feel that I am reduced to a sad, a desperate alternative. I must either acknowledge that I have been bribed, that I am base and corrupt, or, what is almost equally terrible to my feelings, that I have leagued in sentiment with the gentlemen on this side the House, (pointing to the Federal gentlemen.) Unwilling to acknowledge myself corrupt, or that I have been influenced by any circumstance without these walls, I think it justice to myself to declare that neither myself nor any of my connexions, nor any of my constituents, within my knowledge, ever claimed a single foot of this land. If, therefore, I am influenced on this occasion by impure or unworthy motives, it must be by a direct bribe. Unwilling to acknowledge this, I am driven to the other alternative, however painful that election must be, and must acknowledge myself a Federalist. The gentleman from Virginia (Mr. J. Randolph) does not hesitate to denounce to the people all those republican members who dare to think differently from him on this question, as having been bribed or as having gone over to the Federalists. This denunciation is just cause of alarm to all those who, like myself, give their votes according to their own judgment, on the best reflection and most mature deliberation. Coming from that gentleman, it almost astonishes me. To me it appears as terrible as the thunders of Olympus. I fear I shall sink under its weight.

Mr. Speaker, I still entertain a gleam of hope, that my constituents will pardon my presumption in daring to differ from that gentleman in sentiment on this occasion—that they may yet think that I may still be a Republican, although I decline to follow in the servile track of any particular popular leader. This denunciation and proscription of Republican members on this floor, is truly alarming. It is equally alarming to reflect that those gentlemen who have shared the public confidence in the republican districts of the Union, are now declared to be polluted by the embrace of speculators, and are henceforth to be considered as destitute of every moral virtue. If this be true, if the eighth Congress of the United States have such men among them, if corruption already proceeds from your Executive departments, then, indeed, have we arrived to an awful crisis. If this monstrous enormity is practised upon the Republican members of this House, then the whole Republican system of our Government totters to its base. But, sir, these suggestions are but the fantasies of a wild imagination, the chimeras of a heated brain. Before the cool and dispassionate judgment of a discerning mind, they "dissipate into thin air." That officer, in one of the great Executive departments of our Government, to whom the gentleman alludes, I presume is the Postmaster General. That valuable officer is represented as the basest of men, wielding his monstrous engine of patronage and influence for the wicked purposes of corruption. Base as he is said to be, I am proud to say that, for more than ten years past, I have had the honor of his acquaintance. I believe him to be as good, as upright, and as honest a man as any of those other valuable characters who now, happily for our country, preside over the great Executive departments of our Government. His character stands superior to the obloquy of the gentleman from Virginia. That gentleman's denunciations cannot overthrow or destroy him, while talents and integrity are considered as deserving of public esteem and confidence. He is too firmly fixed in the esteem and affections of the people in the eastern section of the Union; his character is too strongly surrounded by the ramparts of virtue, to be shaken by the artillery of that gentleman. Envy may lift her pallid front in vain, the well-earned fame of the Postmaster General will prove an invulnerable shield against her envenomed shafts, and they will fall harmless at his feet.

I hope the gentleman from Virginia will learn, after this, that members are not to be diverted from their object by his threats, and that he will cease to amuse this House with such declamation.

Mr. J. Randolph said, that, as well as his extreme indisposition and excessive hoarseness would permit, he would lay before the House some observations on the various objections which had been urged against the amendment of his worthy and respectable colleague, (Mr. Clark,) for such he was in every point of view. He complained of disingenuous and unfair practices on the part of some of his opponents. They had undertaken to argue, upon a supposed admission of his friend and himself, that the act of 1795 created a contract between the State of Georgia and the grantees therein named. This (said he) is nothing less than begging, or rather, a flagrant robbery of the question. We deny that any contract has been, or could be made under such circumstances—that fraud is a basis on which a contract can be erected. Gentlemen must drive into this morass of corruption, piles of stronger argument and sounder reasoning, before they can build a Stadt-house of a conclusion upon it. It is a quagmire over which they cannot pass; and in their awkward attempts to get round it, they confess, even whilst they effect to deny its existence. Fraud has rendered it without bottom. The act of 1796, is at once declaratory of that fraud, and the highest possible evidence of the fact. The claimants and their advocates themselves concede it, when they cling to the report of the commissioners, by which it is expressly affirmed, and which explicitly declares, that their title cannot be supported. And when they come into this House with that report in their hands, and whine and cringe for our bounty, do they not abandon all pretensions to title? Yes, the advocates of these claims are compelled to acknowledge the fraud, and yield the ground of contract. How else can they justify their own fraud and injustice in stripping fair contractors, with a good title, of seven-eighths of their rightful and bona fide purchase? This point cannot be kept too much in sight, nor too strongly insisted on.

The venerable gentleman from Pennsylvania, (Mr. Findley,) when he gave in his recantation of his last year's opinions on this subject, told you that General Washington's Message had no reference to the fraudulency of the act of 1795. He considered it as a *caveat* on behalf of the United States, who claimed a great part of the territory in question. Be it so. Was that notice to subsequent purchasers, or not? How will gentleman reconcile this inconsistency? Within the disputed limits between the Federal Government and Georgia, five-sixths of this very New England Company's purchase were comprised, besides that valuable part of the Georgia Company's grant contained in the fork of the Alabama and Tombigbee. The United States contended, that the country west of the Chatahoochee, and south of a parallel of latitude which should intersect the mouth of the Yazoo river, never constituted a part of Georgia—that it was within the limits of the province of West Florida, from which being severed, by the peace of 1783, it became vested in the Confederacy, and not in the State to which it happened to be contiguous. The far greater part of the grant to the Georgia Mississippi Company is embraced within these limits: the purchase of the New England Company is stated, by themselves, to have been made from that company, twelve months after the President's Message. The gentleman from Pennsylvania, himself, considers this Message as a formal annunciation of the adverse claim of the United States to the land in question, and, in the same breath, avers that the New England company, subsequent purchasers of that very land, were ignorant of any defect of title in the State of Georgia, or the grantees under her. How will he reconcile this?

The same gentleman has introduced into this debate, the names of two persons; one of them, at that time, a judge of the Supreme Court of the United States, the other a Senator from the State of Georgia; who, he tells us, were deeply concerned in the transaction of 1795. Both these gentlemen are no more. Private character, always dear, always to be respected, seems almost canonized by the grave. When men go hence, their evil deeds should follow them, and, for me, might sleep oblivious in their tomb. But if the mouldering ashes of the dead are to be raked up, let it not be for the furtherance of injustice. In every stage of this discussion, whilst I have kept my eye steadily fixed on the enormity of the act of 1795, I have lost sight of the agents. Since, however, some of them have been mentioned, it may not be immaterial to notice the interest which they took in this business. It is too true, sir, that the Senator in question was one of the fathers of the act of 1795. By the Assembly which passed it he was, at the same session, re-elected to the Senate of the United States for six years thereafter. It is equally true, Mr. Speaker, that the notorious British Treaty was ratified by that Senator's casting vote. And as the Yazoo speculation then carried through the British Treaty, now it seems, the adherents of that treaty are to drag the Yazoo speculation out of the mire. The connexion of the two questions at that day is too notorious to be denied. That very Senator, were he now here, would disdain to deny it. With all his faults, he was a man of some noble qualities. Hypocrisy, at least, was not in the catalogue of his vices. The coupling together of the British Treaty and the Yazoo business, cannot surely be unknown to the gentleman from Pennsylvania. He was a member of the House of Representatives which voted the appropriation for carrying that treaty into effect, and is understood to have acted a conspicuous part on the occasion. Can it be matter of surprise that the same Senate that ratified the British Treaty by the casting vote of one of the principal grantees of the act of Georgia of 1795, should refuse to co-operate with the House of Representatives, in measures for obviating the mischiefs of that act? When you see this corruption extending itself to two great departments of Government, can you wonder at the bitterness of its fruit? With their leaders in the Legislature and on the judgment seat, well might the host of corruption feel confident in their strength; even yet they have scarcely laid aside their audacity.

A gentleman from Massachusetts (Mr. Eustis,) has said, that the claimants from his State had no notice of the fraud; "that he knows they had not;" I cannot have mistaken him, for I took down the words. Sir, I would ask that gentleman, whence arises the proverbial difficulty of providing a negative, but from the difficulty of knowing one?

[Mr. Eustis rose to explain. If he had said that he knew the claimants had not a knowledge of the fraud, he had said too much. It was impossible that any one should know all that was known or passing in the mind of another. Without recollecting the precise words used, he had intended to state his own belief that they had no such knowledge or information. He was resident and conversant with those concerned in the transaction, it was the subject of general conversation, and if there had been any knowledge or report of the kind, he thought it must have come to his knowledge; but he also recollected to have stated at the time that this circumstance did not depend on the knowledge or opinion of any individual—as the price paid for the land precluded any idea or belief that the purchasers could have had any knowledge of the fraud.]

Mr. Randolph resumed. The facts which I am about to mention are derived from such a source that I could almost pledge myself for their truth: When the agent of the Georgia Mississippi Company (under whom the New England Land Company claim) arrived in the Eastern States, he had great difficulty in disposing of his booty. The rumor of the fraud by which it was acquired had gone before him. People did not like to vest their money in this new Mississippi scheme. He accordingly applied to some leading

men of wealth and intelligence, offering to some as high as 200,000 acres, to others less, for which they were neither to pay money, nor pass their paper, but were to stand on his books as purchasers at so much per acre. These were the decoy-birds to bring the ducks and geese into the net of speculation. On the faith of these persons, under the idea that men of their information would not risk such vast sums without some prospect of return, others resolved to venture, and gambled in this new land fund, laid out their money in the Yazoo lottery and have drawn blanks. And these, sir, are the innocent purchasers by whom we are beset; purchasers without price, who never paid a shilling, and never can be called upon for one; the vile panders of speculation. And in what do their dupes differ from the losers in any other gambling or usurious transaction? The premium was proportioned to the risk. As well may your buyers and sellers of stock, your bulls and your bears of the alley, require indemnification for their losses at the hands of the nation. There is another fact, too little known, but unquestionably true, in relation to this business. This scheme of buying up the Western Territory of Georgia did not originate there. It was hatched in Philadelphia and New York, (and I believe Boston; of this, however, I am not positive,) and the funds with which it was effected were principally furnished by money'd capitalists in those towns. The direction of these resources devolved chiefly on the Senator who has been mentioned. Too wary to commit himself to writing, he and his associates agreed upon a countersign. His re-election to the Senate was to be considered as evidence that the temper of the Legislature of Georgia was suited to their purpose, and his Northern confederates were to take their measures accordingly. In proof of this fact, no sooner was the news of his reappointment announced at New York, than it was publicly said in a coffee-house there, "then the Western Territory of Georgia is sold." Does this require a comment? Do you not see the strong probability that many of those, who now appear in the character of purchasers from the original grantees named in the act of 1795, are in fact partners, perhaps instigators and prime movers of a transaction in which their names do not appear? Amidst such a complication of guilt, how are you to discriminate; how fix the Proteus? The chairman of the Committee of Claims, who brought in this report, under the lash of whose criticism we have all so often smarted, that he is generally known as the pedagogue of the House, will give me leave on this subject to refer him to an authority. It is one with which he is no doubt familiar, and, however humble, well disposed to respect. The authority which I am about to cite is Dillworth's Spelling Book, and if it will be more grateful to the gentleman, not our common American edition, but the Royal English Spelling Book. In one of the chapters of that useful elementary work it is related, that two persons going into a shop on pretence of purchase, one of them stole a piece of goods and handed it to the other to conceal under his cloak. When challenged with the theft, he who stole it said he had it not, and he who had it said he did not take it. Gentlemen, replied the honest tradesman, what you say may all be very true, but, at the same time, I know that between you I am robbed. And such precisely is our case. But I hope, sir, we shall not permit the parties, whether original grantees who took it, or subsequent purchasers who have it, to make off with the public property.

The rigor of the Committee of Claims has passed into a proverb. It has more than once caused the justice of this House to be questioned. What, then, was our surprise on reading their report, to find that they have discovered "Equity" in the pretensions of these petitioners. Sir, when the war-worn soldier of the Revolution, or the desolate widow and famished offspring of him who sealed your independence with his blood, ask at the door of that Committee for *bread*, they receive the statute of limitation. On such occasions you hear of no equity in the case. Their claims have not the stamp and seal of iniquity upon them. *Summum jus* is the measure dealt out to them. The equity of the Committee is reserved for those claims which are branded with iniquity and stamped with infamy. This reminds me of the story of a poor, distressed female in London applying for admittance into the Magdalen Charity. Being asked who she was, her wretched tale was told in a few words—"I am poor, innocent, and friendless." "Unhappy 'girl, replied the director, your case does not come 'within the purview of this institution. Innocence has no admission here; this is a place of 'reception for prostitutes; you must go and qualify yourself before you can partake of our re'lief." With equal discretion the directors of the Committee of Claims suffer nothing to find support in their asylum but what is tainted with corruption, and stamped with fraud. Give it these properties and they will give it "equity."

But we are told that the United States gave even less for these lands than the price paid by the several companies of 1795. Admitting the fact, (which is unquestionably false,) did Georgia sell to the Union for pounds, shillings and pence? Did North Carolina and Virginia, in their acts of cession of even more extensive countries, look to pecuniary profit? Are we become so grovelling that public spirit and the general good, go for nothing? The money which we engaged to pay out of the proceeds of the land, although more than double the amount paid by the four companies in 1795 constitutes but a small part even of the pecuniary consideration. We are, moreover, pledged to the extinguishment of the Indian title to an immense territory within the present limits of Georgia. It has been whispered in my ear that the fate of a late treaty with the Creeks is to depend on the decision of this question, and as the British Treaty and the Yazoo were made to stand or fall together in 1795, so the Creek Treaty and the Yazoo are to stand or fall together in 1805. But those who hold out this threat to the members from Georgia, should know them better, should be told that they are made of the sternest stuff of republicanism, and can neither be coaxed nor intimidated out of their principles! Of those who talk of the Western lands being acquired for nothing, I would ask if that be an argument for throwing them away upon flagitious men? But were the toils, and dangers, and treasures of the Revolution nothing? The bloody battles, the burning and devastations of the Southern and Western countries? Was the expedition of the brave and intrepid Clarke, which wants only a Polybius to rival the march of Thrasymene; were the exploits of this American Hannibal, who secured the Western country to you, nothing? Were your Indian wars and massacres nothing?

This Government, let me remind you, has acquired the confidence of the public by the disinterestedness of its measures. The repeal of the internal taxes is not the least conspicuous among them. How long will you retain that well-earned confidence, if you lavish on a band of speculators a landed capital whose annual interest is more than equivalent to the whole proceeds of those taxes? I will not go into petty details now, but I pledge myself that, whoever makes the calculation, will find the value of the land, together with the expense of extinguishing the Indian title, at the rate of our last treaty in that quarter, to yield a clear perpetual annuity, equal to the receipt from the internal taxes. What would you say to a proposition to revive those taxes and mortgage them for the payment of the interest on a Yazoo stock? Do you wonder that we shrink from such a precipice? Shall a republican House of Representatives sanction this wanton waste of the public resources to nourish the bane of every Republic? Are you simple enough to believe that the five millions will quiet them? Yes, as the tribute of the Roman world satisfied their barbarian enemies. You only whet their appetite and increase their means for extorting more. Like the Gauls, after the sack of Rome, they will make their second attempt upon the Capitol, before they have divided the plunder acquired in the first. When I see the formidable front displayed by this band of broken speculators, I am irresistibly impelled to inquire, what would have been their force if their attempt on the western country of Georgia had not been baffled by the virtue and patriotism of that State? What is there in this Government that could have coped with them? Sir, you must have built another wing to your Capitol, for the third branch of your Legislature. You would have had a Yazoo estate in your empire, not with a qualified negative, but an absolute veto on all your proceedings. Scarcely would they have left you the initiative.

I have said, and I repeat it, that the aspect in which this thing presents itself, would, alone, determine me to resist it. In one of the petitioners I behold an Executive officer, who receives and distributes a yearly revenue of $300,000, yielding scarcely any net profit to Government. Offices in his disposal to the annual amount of $94,000, and contracts more lucrative making up the residue of the sum. A patronage limited only by the extent of our country. Is this right? Is it even decent? Shall political power be made the engine of private interest? Shall such a suspicion tarnish your proceedings? How would you receive a petition from the President of the United States, if such a thing can be supposed possible? Sir, I wish to see the same purity pervading every subordinate branch of administration, which, I am persuaded, exists in its great departments.—Shall persons holding appointments under the great and good man, who presides over our councils, draw on the rich fund of his well-earned reputation, to eke out their flimsy and scanty pretensions? Is the relation in which they stand to him, to be made the cloak and cover of their dark designs? To the gentleman from New York, (Mr. Root,) who takes fire at every insinuation against his friend, I have only to observe, on this subject, that what I dare to say, I dare to justify. To the House I will relate an incident, from which it may judge how far I have lightly conceived or expressed an opinion to the prejudice of any man. I owe an apology to my informant for making public what he certainly did not authorize me to reveal. There is no reparation which can be offered by one gentleman and accepted by another, that I shall not be ready to make him; but I feel myself already justified to him, since he sees the circumstances under which I act. A few evenings since, a profitable contract for carrying the mail was offered to a friend of mine who is a member of this House. You must know, sir, that the person so often alluded to maintains a jackall, fed, not (as you would suppose) upon the offal of contract, but with the fairest pieces in the shambles; and, at night, when honest men are in bed, does this obscene animal prowl through the streets of this vast and desolate city, seeking whom he may tamper with. Well, sir, when this worthy plenipotentiary had made his proposal, in due form, the independent man to whom it was addressed, saw at once its drift. "Tell your principal, said he, that I will take his contract, but I shall vote against the Yazoo claim, notwithstanding." Next day, he was told that there had been some misunderstanding of the business, that he could not have the contract, as it was previously bespoken by another!

Sir, I well recollect, when first I had the honor of a seat in this House, we were members then of a small minority; a poor, forlorn hope; that this very petitioner appeared in Philadelphia, on behalf of another great land company on Lake Erie. He then told us, as an inducement to vote for the Connecticut reserve (as it was called) that if that measure failed, it would ruin the republicans and the cause in that State. You, sir, cannot have forgotten the reply he received: "That we did 'not understand the republicanism that was to be 'paid for; that we feared it was not of the right 'sort, but spurious." And, having maintained our principles through the ordeal of that day, shall we now abandon them, to act with the men and upon the maxims which we then abjured? Shall we now condescend to means which we

disdained to use in the most desperate crisis of our political fortune? This is, indeed, the age of monstrous coalitions; and this corruption has the quality of cementing the most inveterate enmities, personal as well as political. It has united in close concert those, of whom it has been said, not in the figurative language of prophecy, but in the sober narrative of history: "I have bruised thy head, and thou hast bruised my heel." Such is the description of persons who would present to the President of the United States an act to which when he puts his hand, he signs a libel on his whole political life. But he will never tarnish the unsullied lustre of his fame; he will never sanction the monstrous position, (for such it is, dress it up as you will,) "that a legislator may sell his vote, and a right, which cannot be divested, will pass under such sale." Establish this doctrine, and there is an end of representative Government; from that moment republicanism receives its death-blow.

The feeble cry of Virginian influence and ambitious leaders, is attempted to be raised. If such insinuations were worthy of reply, I might appeal to you, Mr. Speaker, for the fact, that no man in this House, (yourself, perhaps, excepted) is oftener in a minority than I am. If by a leader he meant one who speaks his opinion freely and boldly; who claims something of that independence of which the gentleman from New York so loudly vaunts; who will not connive at public robbery, be the robbers whom they may, then the imputation may be just; such is the nature of my ambition; but, in the common acceptation of words, nothing can be more false. In the coarse, language of the proverb, "'tis the still sow that sucks the draff." No, sir, we are not the leaders. There they sit, and well they know it, forcing down our throats the most obnoxious measures. Gentlemen may be silent, but they shall be dragged into public view. If they direct our councils at least let them answer for the result. We will not be responsible for their measures. If we do not hold the reins we will not be accountable for the accidents which may befall the carriage.

But, sir, I am a denunciator! Of whom? Of the gentlemen on my left? Not at all; but of those men and their principles whom the people themselves have denounced: on whom they have burnt their indelible curse, deep and lasting as the lightning of Heaven. But, you are told, not to regard such idle declamation. I would remind the gentleman from New York that, if to declaim be not to reason, so neither is it to be argumentative to be dull. Warmth is the creature of the heart, not of the head. A position, in itself just, can lose no part of its truth from the manner in which it is uttered, whether by the driest and most stupid special pleader, or bellowed with the lungs of a Stentor. Are our opponents ashamed of their cause, that they devolve its defence on the little ones by whom we are beset?

Mr. Speaker, I had hoped that we should not be content to live upon the principal of our popularity; that we should go on to deserve the public confidence and the disapprobation of the gentlemen over the way. But, if everything is to be reversed, if official influence is to become the handmaid of private interest, if the old system is to be revived with the old men, or any that can be picked up, I may deplore the defection, but never will I cease to stigmatize it. Never shall I hesitate between any minority, far less that in which I now find myself, and such a majority as is opposed to us. I took my degrees, sir, in this House, in a minority, much smaller, indeed, but of the same stamp. A minority, whose every act bore the test of rigorous principle, and with them to the last I will exclaim, *fiat justitia, ruat cœlum.*

The Committee rose, and the House adjourned.

FRIDAY, February 1.

The following Message was received from the PRESIDENT OF the UNITED STATES:

To the House of Representatives of the United States:

In compliance with the desire of the House of Representatives, expressed in their resolution of yesterday, I have to inform them that, by a letter of the thirtieth of May last, from the Secretary of War to Samuel Hammond, a member of the House, it was proposed to him to accept a commission of Colonel Commandant for the District of Louisiana, when the new Government there should commence. By a letter of the thirtieth of June, he signified a willingness to accept; but still more definitively by one of October twenty-sixth, a copy of which is, therefore, now communicated. A commission had been made out for him, bearing date the first day of October last, and forwarded before the receipt of his letter of October twenty-sixth. No later communication has been received from him, nor is anything later known of his movements.

JAN. 31, 1805. TH. JEFFERSON.

The said Message, and the copy of the letter referred to therein, were read, and ordered to lie on the table.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, accompanying a report, and two statements, marked A and B, exhibiting the tonnage of vessels paying foreign duties, entered into the several ports of the United States, during the years 1801, 1802, 1803; and of light money collected in the several ports of the United States, from the first of July to the thirtieth of September 1804; prepared in obedience to a resolution of this House, of the twenty-third ultimo; which were read, and ordered to lie on the table.

The following Message was received from the PRESIDENT OF THE UNITED STATES:

To the House of Representatives of the United States:

For some weeks past, I have had reason to expect, by every mail from New Orleans, information which would have fully met the views of the House of Representatives, expressed in their resolution of December thirty-first, on the subject of a post road from the city of Washington to New Orleans; but this being not yet received, I think it my duty, without further delay, to communicate to the House the information I possess, however imperfect.

Isaac Briggs, one of the surveyors general of the United States, being about to return, in July last, to his station at Natchez, and apprized of the anxiety existing to have a practicable road explored for forwarding the mail to New Orleans, without crossing the mountains, offered his services, voluntarily, to return by the route contemplated, taking, as he should go, such observations of longitude and latitude as would enable him to delineate it exactly, and, by protraction, to show of what shortenings it would admit. The offer was accepted, and he was furnished with an accurate sextant for his observations. The route proposed was from Washington by Fredericksburg, Cartersville, Lower Sauratown, Salisbury, Franklin Court House, in Georgia, Tuckabachee, Fort Stoddert, and the mouth of Pearl River, to New Orleans. It is believed he followed this route generally, deviating at times only, for special purposes, and returning again into it. His letters, herewith communicated, will show his opinion to have been, after completing his journey, that the practicable distance between Washington and New Orleans will be a little over one thousand miles. He expected to forward his map and special report, within one week from the date of his last letter; but a letter of December tenth, from another person, informs me he had been unwell, but would forward them within a week from that time. So soon as they shall be received, they shall be communicated to the House of Representatives.

TH. JEFFERSON.

FEBRUARY 1, 1805.

The said Message was read, and referred to the Committee of the Whole House to whom was committed, on the seventh of December last, a motion respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlements on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also for the establishment of a post road from——, in Georgia, to the said settlement on the Tombigbee, to intersect the former road, at the most convenient point between Knoxville and the Tombigbee."

A petition of the people called Quakers, inhabitants of the State of Ohio, and parts adjacent, signed by order and in behalf of the society of the said people called Quakers, by Horton Howard and Nathan Updegraff, was presented to the House and read, praying a right in fee simple, at the usual price and credit, in the purchase of certain sections of land therein specified, or such other sections, in the ranges of townships within the said State, as Congress, in their wisdom, shall deem reasonable and proper; to be appropriated by the petitioners to promote the laudable purpose of instructing the youth of the society aforesaid, as well as those who may be interested therein, in the progress of useful literature, and of piety and virtue.—Referred to the committee appointed, the seventh ultimo, "to inquire whether any, and, if any, what, alterations are necessary in the laws providing for the sale of the public lands Northwest of the Ohio;" that they do examine the matter thereof, and report the same, with their opinion thereupon, to the House.

POSTMASTER GENERAL.

The SPEAKER laid before the House the following letter from Gideon Granger, Postmaster General of the United States:

FEBRUARY 1, 1805.

Hon. NATHANIEL MACON, *Speaker of the House of Representatives of the Congress of the United States.*

SIR: I have received information, from various sources, that both my public and private character and conduct have been arraigned on the floor of the House of Congress by a member of that House, in a debate of the 29th, and in another of the 31st ultimo, in a case where no examination of my official conduct was proposed. As there is not, within my knowledge, any instance of a similar abuse offered to an officer of Government, I know not of any precedent whereby to regulate my conduct. I wish at all times, and more especially on an occasion so extraordinary and unprecedented, to approach the Representatives of the nation with all that respect and regard to which they are entitled. My feelings do not allow me, at present, to exercise that coolness and judgment which I might call to my aid in a case less interesting.

Conscious of the purity of my conduct, and that no charge can be made or supported against me consistent with truth and justice, it is a duty which I owe to my country—to the Government which has confided in me—to myself and my family—to declare (and I do now most solemnly declare) that every charge or insinuation which has been made against my private or public character, or against my fairness and impartiality, or of my attempting by bribery, or in any improper manner, to influence any member of Congress upon any question pending before that honorable body, is absolutely and altogether untrue, and founded at least in error only.

The high respect due to your body and every member of it during your sessions, will not allow me to hazard a conjecture as to the motives of the gentleman who has proclaimed these charges.

I court and solicit of Congress an investigation into my official (and if they please my private) conduct, from the first moment the Post Office Department was committed to my charge to the present period. Nor have I any favor to ask, save only this, that an investigation may be had the present session.

I pray you to communicate this to the House of Representatives; and I tender to that honorable body, and to you, their Speaker, the assurance of my high esteem and respect.

GIDEON GRANGER.*

Mr. VARNUM moved that the letter of the Postmaster General be referred to a select committee to inquire into the subject.

Mr. NELSON hoped the motion would not prevail, as no good purpose could be answered by the

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* On the 7th February following, Mr. Granger addressed the annexed explanatory letter to the Speaker:

WASHINGTON CITY, *Feb.* 7, 1805.

SIR: My sole object in addressing to Congress my letter of the first of the present month was to gain an opportunity of refuting the charges and insinuations which had been made against me. The little reflection I could give the subject induced me to believe that it was proper, in a respectful manner, to repel the charges publicly, and in the place where they were made. Nor did it occur to me that the right of an officer to defend his character depended upon the office he happened to hold.

If, however, I erred in this, I presume it cannot be wrong, in defence of my reputation, to address you in

inquiry. It appeared to him to be an affair of honor between two gentlemen, and Congress had nothing to do with it. If, upon investigation, the charges were found to be true, Congress had no power to remove the Postmaster General from office. For what purpose, then, were they to waste the time of the House in such an inquiry? That was not the proper place to make the application; it should have been made to the President, if made at all, as he had the power of removing officers. The session was far advanced and limited in its duration. A variety of important business still remained unfinished, and he feared some of it would remain so; yet, notwithstanding, the House was called upon to take up private quarrels between gentlemen. He hoped the motion would not prevail, and that the gentlemen would be left to settle the dispute themselves.

Mr. Bryan called for the yeas and nays.

Mr. Elliot.—This House was informed by a member, (Mr. Randolph,) in language too strong to be misunderstood, that corruption had found its way within these walls, and that indirect advantages had been taken to influence the decision of the House upon a question pending before them. An officer of the Government, who considered his conduct much implicated, has informed the House, by letter, that he has been informed that his public conduct has been arraigned, and prays an investigation into it. In my opinion, nothing can be more just and reasonable than to grant it. The Postmaster General has been accused by a member of this House of things which, if true, ought to occasion his removal from office. What was the conduct of the House at the last session? When a motion was made to inquire into the conduct of a judge, without any fact being stated, we were told that, if any member of the House entertained suspicion of his uprightness, we were bound to grant an inquiry. The same gentleman who, at the last session, demanded, as a matter of right, the appointment of a committee to inquire into the official conduct of Judge Chase, has, during this session, made charges of a very serious nature against the Postmaster General, and when that officer now requests an inquiry into his conduct, the friends of his accuser oppose the appointment of a committee of inquiry. I consider the House, on this occasion, bound to make the inquiry, both on account of the officer and the public, in order that, if the charges made against him are true, he may be removed from office; if untrue, that it may be declared so. No possible harm can result from the inquiry, and it is due to an officer of Government whose character has been implicated. We have been told by the gentleman from Maryland (Mr. Nelson) that this was a matter of private feeling and honor between two gentlemen. Sir, I cannot agree with the gentleman, and it appears to me astonishing that he should consider it in the light he does. So far from considering it only as a matter of private feeling and honor, I consider the honor of our country is interested, and demands an inquiry, and that it can only be refused the officer who requests it by an act of despotism.

Mr. Nicholson.—I recollect but a single instance in which the conduct of an officer of the Government has been inquired into, at his request; that was the case of Mr. Wolcott, the late Secretary of the Treasury, who, upon his resignation, addressed a letter to the House, requesting an investigation into his conduct. That letter was couched in decent terms, and the language was such that no member could take umbrage at. Had the letter of the Postmaster General been written in the same style, I should have had no objection to the investigation, although I can see no good likely to result from it. But it is couched in such language as this House ought not to listen to. We are told in it, that charges made by a member of this House are untrue. Are we to sit here, and suffer such language to be used? I trust not, sir; had I known the language of the letter, I should have opposed its being read. If gentlemen wish an investigation into their conduct, they ought to ask it in decent terms; and I should not oppose it, although, as I before observed, I can see no good likely to result, for I trust that the Postmaster General will never be dignified with an impeachment. If the charges against him are true, the President ought to remove him, and it is to him that he ought to justify himself. If, however, gentlemen are anxious that an investigation should take place, let them lay a resolution to that effect on the table, and I will give it no opposition; but I will never agree that such a letter as the one now on the table be referred to a committee, and, by that means, give a sanction to the language contained in it.

Mr. Gregg regretted that such business had been brought before the House, especially at so late a period of the session. He did not know for what purpose an inquiry was to be made; for, supposing the charges to be true, the House had no power to remove him. The Postmaster General was not one of those officers who could be impeached; and the President was the only one that could remove him. He was opposed to the motion, conceiving that too much important business remains unfinished, to take up new matters, which would answer no good purpose whatever.

Mr. Clark was opposed to the reference of the letter, on account of the language which it contained. It charged a member of the House with having uttered falsehood. In his opinion, such

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one of the directors of the New England Mississippi Company, solicited me to accept an agency in the business. Although I could not see any objection to it, as I was personally interested, and the duties of my office had not the least possible relation to the business, still I was not willing to accept the agency without advice. Accordingly I stated the case to the last Attorney General, who suggested that he would not be understood to give any opinion on the subject, but for his part he could not perceive the least objection to my acceptance. After this the agency was accepted, and I can with the greatest truth aver, that I then had not the least idea of any objection on the part of Congress. The only difficulty contemplated was that of bringing the claimants and the Commissioners to an agreement.

Lastly. As to my conduct as agent. I acknowledge that I have, in an open, fair, and plain manner, vindicated the rights of the company I represent. But I deny my attempting to make use of any kind of influence.

Here I appeal to the Commissioners, whether I have ever attempted to press anything in relation to the business. I make the same appeal to you, sir, and to every other member of the two Houses of Congress. If I have been guilty of what is charged upon me, there must be some one ready to rise up, and bear testimony against me. I trust I have virtue enough not to attempt improperly to influence any man. If not, I hold the members of Congress in too high respect to deem them capable of yielding to any improper influence.

For the truth of this statement, I appeal to the Author of my existence; and, in support of it, I pledge my character to you and to my country. I cannot close this letter without offering my ardent desire for an investigation of my conduct.

I am, sir, with high esteem and respect, your humble servant, GIDEON GRANGER.

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your private character as a gentleman. I will own that I am desirous of retaining your friendship and confidence. I will own that I am not indifferent to public opinion, and that I seek the confidence and esteem of my fellow-citizens by the even tenor of a well-spent life, and a regular discharge of all the social duties—not by lessening the esteem and confidence to which others are entitled.

Various charges have been made against me for the interest I have in the Georgia grants—for my being an agent of the New England Company, and for my conduct as such agent. As these charges have not yet appeared in print, I cannot give that specific answer which may hereafter become necessary, and for which I pledge myself to the public, in case such necessity should exist.

I now take the liberty of stating how I became interested in the claims—how the agency was accepted, and what has been my conduct as agent.

First, as to my interest.

When the members of the New England Company formed their contract with William Williamson, as agent for the Georgia Mississippi Company, in September, 1795, I had not the least interest in the concern. Upon the advice of my friends, and at their solicitation, between that period and the first of December, I agreed to become interested, and accepted of a certain share, which was procured for me by a voluntary relinquishment of a part by several gentlemen for that purpose. In January, 1796, the agents came on from Georgia to give the conveyance, and I was deputed as agent for many of the proprietors near Connecticut river; to discharge which trust I proceeded to Boston. Before the business was closed my principals arrived; a variety of considerations induced me to relinquish the adventure, such as the difference of climate, the distance of the property, the warlike habits of the natives, and the want of capital, and before the time of which I am about to speak, I relinquished my right to two friends from Connecticut. Thus my concern with the Georgia lands, as I thought, was closed forever. But on the evening of the Sunday next preceding the second Tuesday of February, 1796, Ashbel Stanley, then of Coventry, in Connecticut, applied to Oliver Phelps, Esq., and myself, and requested us to become surety for him and Jeremiah Ripley, Esq., of said Coventry, (they being partners in trade,) to the Georgia agents, for the space of sixty days, to the amount of $75,000, and assigned for reason that the agents would not take notes signed in the name of the firm, and that he only wanted our names till he could have an opportunity to procure the name of Judge Ripley as an endorser to his notes. The great esteem I had for Judge Ripley, and a knowledge of his ability, induced me to give Mr. Phelps, as I was about to return to Connecticut, a written engagement to assume one-third of the risk, in case he should think it best to make the endorsement. Mr. Phelps made the endorsement for Stanley, and took into his hands, as security, Stanley's conveyance of seven hundred and fifty thousand acres of Georgia Mississippi Company's land, for which the endorsement was given; and, also, an assignment by Stanley of one hundred thousand acres more, which Seth Wetmore assigned to Stanley. Stanley failed. Judge Ripley denied the authority of Stanley to use his name in a land contract, and Mr. Phelps and myself, as endorsers, had to meet the $75,000. On the fourth day of May, one thousand seven hundred and ninety-eight, we satisfied these obligations, and they were cancelled and delivered up. To acquire the means of satisfying these endorsements, we were compelled to dispose of 670,000 acres of this land, besides a vast deal of other property. When we called for the scrip on the two thousand acres, conveyed by Wetmore to Stanley, and by Stanley to Phelps, we found that Wetmore had conveyed the same land to Israel Munson, merchant in Boston. Here a new difficulty presented itself, which has been but lately removed. On the 30th of August, 1803, Mr. Phelps, to enable me to close this dispute, gave me a conveyance of these one hundred thousand acres; and on the 8th of September, in the same year, I effected a final settlement with Mr. Munson, of his claim for the joint benefit of Phelps and Granger. This explains the conveyances from Mr. Phelps and Mr. Munson to me, and these facts can be proved by these gentlemen, and by Judge Ripley, Amasa Jackson, Esq., of New York, Joseph Lyman, Esq., of Northampton, Massachusetts, Clerk of the Supreme Court, John Peck, &c.

On record, will also be found a conveyance of one hundred thousand acres, of December 8th, 1803, from John Peck to me. In this property I have not the least interest. It is deposited in my hands in lieu of special bail, in two cases, in favor of Eli Williams, of Hagerstown, against John Peck, of Boston, now pending before the court in this district. John Thompson Mason, Esq., knows this fact.

Finally, I have never been a dealer in this property, nor otherwise than is herein stated, interested therein; excepting only that in one instance I have received some scrip of a gentleman, whose fortune was consumed by his adventuring in the property, for a demand which was subsisting before the 13th of February, 1796.

Secondly. As to my accepting the agency. On the 17th day of February, 1803, the Commissioners on the part of the United States reported to Congress in favor of a compromise of these claims, and Congress afterwards, in the same session, made an appropriation of the 5,000,000 acres of land, to satisfy such demands as Congress might think best to provide for. Thus stood the business, without a single objection within my knowledge to a compromise, when, in August, 1803,

language ought not to receive any sanction from the House.

The Postmaster General had demanded an investigation into his conduct on account of some intemperate expressions used by a member of this House. Should the investigation take place, it would probably have a pernicious tendency, because the House would be troubled with similar applications whenever any member happened to speak disrespectfully of an officer of the Government. If the conduct of the officer had been improper, it might not be proper at that time to make the inquiry, as the session was drawing to a close, and they had much important business to transact. He was, therefore, decidedly opposed to the motion of reference, and trusted it would not be agreed to.

Mr. LYON.—I feel, Mr. Speaker, a sympathy for the Postmaster General, who, as well as myself, was so egregiously belied yesterday by the member from Virginia. (Mr. RANDOLPH.)

[Here Mr. NICHOLSON called Mr. LYON to order, whereupon the latter sat down, when the SPEAKER decided that the words were out of order.]

After this decision was made, Mr. LYON again rose to proceed, and was again called to order, but the SPEAKER determining that he was in order,

Mr. BRYAN appealed to the House, and

Mr. NICHOLSON called for the yeas and nays.

The question was then taken, "is the decision of the Chair correct?" And it was determined in the affirmative—yeas 81, nays 31, as follows:

YEAS—Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, Phanuel Bishop, William Blackledge, Adam Boyd, John Boyle, George W. Campbell, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Thomas Claiborne, Matthew Clay, John Clopton, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John Dennis, Thomas Dwight, John B. Earle, James Elliot, Ebenezer Elmer, John W. Eppes, William Eustis, William Findley, John Fowler, Calvin Goddard, Peterson Goodwyn, Gaylord Griswold, John A. Hanna, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Thomas Lowndes, Nahum Mitchell, Jeremiah Morrow, James Mott, Anthony New, Gideon Olin, Thomas Plater, Samuel D. Purviance, John Rhea of Tennessee, Erastus Root, Ebenezer Seaver, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stevenson, Sam'l Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

NAYS—David Bard, George M. Bedinger, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Christopher Clark, Joseph Clay, Frederick Conrad, Andrew Gregg, Thomas Griffin, Josiah Hasbrouck, Michael Leib, John B. C. Lucas, Joseph Heister, David Holmes, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Roger Nelson, Thomas Newton, junior, Joseph H. Nicholson, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sandford, James Sloan, John Smith, Philip R. Thompson, and John Whitehill.

Mr. LYON, upon this, immediately said, I give up my right; and would not proceed.

Mr. ELLIOT.—However surprising it may appear to some gentlemen, it is not so to me, that the language of innocence should be warm and pointed. We have been told that the letter is couched in disrespectful terms. For my part, I cannot perceive anything of the kind in it; and I am surprised that, as it respects the gentleman who made the charges against him, that he is so moderate. Gentlemen have said that an inquiry would be of no service; because, if the charges are true, the officer cannot be impeached. If gentlemen will advert to the Constitution they will find that "all civil officers are liable to impeachment," and removal from office. Surely it will not be contended that the Postmaster General is not a civil officer. The gentleman from Maryland (Mr. NICHOLSON) differs very widely from his friend from Virginia, (Mr. RANDOLPH,) as to the Postmaster General. The former considers him as holding an office too insignificant to be dignified with an impeachment, while the latter deems his patronage and influence sufficient to influence or to bribe the majority of this House. However insignificant the gentleman from Maryland may think the Postmaster General, still he is a civil officer, and as such is liable to be impeached, and removed from office. We have been told that a combination has taken place between some of those who have avowed themselves republicans and the federalists, and that the liberties of the country will be endangered. Sir, we have no danger to apprehend from monarchists, aristocrats, or federalists.

Our liberty can only be endangered by those description of persons against whom the gentleman from New York, (Mr. ROOT,) so emphatically exclaimed—I mean political demagogues and popular leaders! They have been the curse and destruction of every Republic, and I fear will be our destruction. We are cursed with them in this country, and even in this House. But I trust that the majority of this House are opposed to them. The great objection which gentlemen make to the inquiry is, that the letter is couched in too disrespectful terms. Will they please to bear in mind the charges made against the officer, and, viewing them, is it not a matter of astonishment that he is so mild? As the letter respects this House, it is remarkably respectful. Upon what ground, then, can the investigation be refused? If the charges made are true, the officer ought to be removed; if untrue, this House ought in justice to him whose character has been so assailed to declare that they are so. The gentleman from Virginia (Mr. RANDOLPH) informed us yesterday that the Postmaster General kept in his pay a jackall, who went prowling about this desolate city, at midnight, when honest men ought to be asleep, offering bribes to the members. Sir, the gentleman must have keen optics to discover

this jackall, when he is asleep; for he informs us that he only goes about when honest men ought to be asleep; and surely the gentleman is one of that description. Upon every view which I can take of this subject, I can see no objection to the inquiry, but the strongest reason in its favor; and justice demands that it should be made.

Mr. NELSON would offer a few remarks to the House, why he was opposed to the motion. He would not undertake to give an opinion as to the character of the Postmaster General, or whether the charges made against him could be substantiated. His objection was, that the House had nothing to do with charges made by a member against any individual. If the charges were true, the President (and not the House) was the proper person to apply to, to remove the officer. But it had been said that the House had the power to impeach all civil officers, and, therefore, could impeach the Postmaster General. But, because the House was invested with that power, he asked whether they were bound to exercise it? Surely not. And he hoped they would not, when they could get rid of the officer by a more summary mode. Late experience had taught them the trouble and expense attendant on impeachments, and he trusted that no officer would ever be impeached that could be removed by the President. It would be better to let them remain in office, although guilty of misbehaviour, than to spend so much time as they would be obliged to do in cases of impeachment. Suppose the motion should be agreed to, and the committee appointed, he asked what power they would possess? Were they to declare whether the charges were true or false? A determination either way would have no effect upon the House, because they could not, he trusted, impeach the officer. He was not disposed to do anything to hurt the character of the Postmaster General, but he would not give his sanction to a measure which would spend so much of the time of the House in deciding what he considered an affair of private honor and private feelings between two gentlemen. He also considered that the adoption of the resolution would pass a censure upon the gentleman who made the charges, and he asked whether the House were disposed to censure one of its members for any warm and unguarded expressions about an officer of the Government? He trusted not. How many times had charges been made in the House against the President of the United States; but that officer had never thought it proper to apply to the House for an inquiry into his conduct; nor did the House ever pass a vote of censure on the members who made them. He looked upon this as a question of dispute between two gentlemen, and no tribunal could be erected in the House to decide on it. He should, therefore, vote against the motion of the gentleman from Massachusetts, (Mr. VARNUM,) and hoped it would not prevail.

Mr. HUGER knew not what was the opinion of any gentleman as to the merits of the question, but he was satisfied that a calm decision of it could not take place at that time. They were about to establish a precedent, which might be of importance, and it ought to be done after the utmost deliberation. He called upon gentlemen to say, whether it was possible that a calm and impartial decision could be given after so much irritation had been displayed in the debate? In order to afford an opportunity to gentlemen to give the subject a cool and dispassionate investigation, he moved to postpone the further consideration thereof until Monday.

The question was taken thereon, and determined in the affirmative—yeas 93.

The resolution was never after called up.

GEORGIA CLAIMS.

The unfinished business of yesterday on the Yazoo claims was resumed—the amendment offered by Mr. CLARK, under consideration.

Mr. HOLMES observed that as he was a member of the Committee of Claims from whom the report under consideration emanated, he thought it his duty to state to the House the part he acted on that occasion. I was, said Mr. H., in all our deliberations upon this subject decidedly opposed to the adoption of the report, and in every stage of its progression used all fair means in my power to produce a different result; in this however I was unsuccessful. My conduct was governed by a firm conviction that the present claimants had no right in law or equity to the lands in question, and that policy did not demand the interference of the National Legislature. Most of the arguments that operated upon my mind then, and will influence my vote now, have been adduced by gentlemen who preceded me. It is not my intention to detain the House with a repetition of them; one or two however have occurred to me as worthy of consideration, that have not been urged. This must be my apology for addressing you after the able and lengthy discussion the subject has received. I am of the opinion, Mr. Speaker, that the Legislature of Georgia, of 1795, were not authorised to dispose of the lands in question, even if they had been honestly inclined to do so. This opinion is grounded upon the known maxims of Government and the Constitution under which that Legislature existed. The clause giving general powers to legislate for the good of the State, and by which it is contended the power was delegated, is in these words; "The General Assembly shall 'have power to make all laws and ordinances 'which they shall deem necessary and proper for 'the good of the State, which shall not be repug-'nant to this constitution." By an authority which will be respected by every member of this House and which I beg leave to read, it will be found that general powers to make laws for the good of the State does not extend to a right to part with public property. Vattel, in his Laws of Nations, lays down the following doctrine upon this subject: "The nation having the free dispo-'sal of all the property belonging to it; it may 'convey this right to the sovereign, and consequent-'ly confer upon him that of alienating and mort-'gaging the public property, but this right not ne-'cessarily belonging to the conductor of the State, 'to enable him to render the people happy by his

'government, it is not to be presumed that the na-
'tion has given it him, and if it has not made an ex-
'press law for that purpose, it ought to be main-
'tained that the Prince is not invested with it."
In no clause of the constitution alluded to, do we find an express authority to dispose of public property. If, therefore, the authority that I have just read is to have weight with the House in placing a construction upon that instrument, we must be ready to conclude that the people of Georgia did not delegate a power to the Legislature of 1795, to dispose of the lands in question. But, sir, this position is assailed by an argument drawn from the inconvenience of establishing it. We are told that if you adopt the principle that the Legislature of Georgia had no right to sell, you thereby call in question the titles to more than one-third of the cultivated soil in the nation, because no State Legislature in the Union, is, by express provision, authorized to make sale of their lands. I confess, Mr. Speaker, that, although this argument *ab inconvenienti* does not go to contravene the truth of the position I have laid down; yet if I could not by a further reference to the constitution in question, show its inapplicability in this instance, I should be ready to yield the ground I have taken, for it is not my wish, sir, that the lawful and equitable title to the land of a single individual in this community should be wantonly endangered. But, I confidently expect to be able to show that, by adopting this principle, for which I contend, we will not affect the validity of titles derived from States whose constitutions do not contain an express provision to sell. In the constitution of Georgia we find this sentence immediately following the clause I have read from it. "They shall have power to alter the boundaries of 'the present counties, and to lay off new ones, as 'well out of the counties already laid off, as out 'of the other territory belonging to the State." At the period of the adoption of the constitution, the people of Georgia owned an immense tract of unappropriated land. It cannot be doubted but the power granted to the Legislature to lay off new counties, had an allusion to this extensive back country, and it will not be denied but that a power to lay off a county is subordinate to that of selling a county. Can we then for a moment think that the convention who formed the constitution, supposed, by the clause granting general powers to legislate for the good of the State, they invested the Legislature with a right to sell the whole country to an individual, and that they did not by the same clause believe they had empowered them to lay off a new county within it? We cannot sir: the style and general correctness of the instrument warrants no such absurd conclusion. This clause, therefore, Mr. Speaker, is susceptible of no meaning whatever, or must be considered as limiting the power of the Legislature in relation to the lands in question. It may, however, be said, that it is declarative of a preparatory measure to that of disposing of the lands: giving it even this construction, it answers my purpose as well as the one for which I contend, and believe to be correct; because there was no law in force establishing a county within any of the lands in question at the time the contract for selling them was entered into. We need not, said Mr. H., be told that the Legislatures anterior to 1795, thought themselves invested with the right to sell vacant territory—their opinions should not be put in competition with that of the convention that formed the constitution of 1798. The people of a State, in their conventional capacity, are, unquestionably, better authority to resort to for an explanation of powers granted, than Legislatures, who are censurable if they transcend the limits of those powers. This convention did, sir, declare the law of 1795, disposing of the lands in question, to be an exercise of powers with which the Legislature was not invested, and by express provision they authorized after Legislatures to cede the same to the United States. It therefore appears clear to me, Mr. Speaker, that as the constitutions of the several States do not contain a special clause empowering the Legislature to lay off new counties, &c., we do not endanger the titles to lands sold under a general power to legislate for the good of the State, and we may safely and correctly vote for the amendment proposed by my colleague, and against the report of the Committee of Claims. Permit me, however, Mr. Speaker, to suppose, for the sake of argument, that I have been mistaken in this opinion; can the present claimants establish a title upon the ground of their being innocent purchasers? In the examination of this question I shall not recite the various circumstances which tend to show that they had notice of the fraud. This has already been done by gentlemen who preceded me, and I have no new deductions to make from the facts. Let us then suppose the possible case of their being wholly ignorant of the circumstances attending the original purchase; still I contend they cannot be entitled as innocent purchasers. In support of my opinion I lay down this maxim: that where a title is established in any one on the ground of his being an innocent purchaser, it must always be presupposed that the person claiming to be the rightful owner has, by his connivance, neglect, or misplaced confidence, been the cause of the deception. Apply it to the present case; are the people of Georgia chargeable with either fraud, neglect, or misplaced confidence? The first is out of the question, the last cannot be applied to them—for the delegation of a power to legislate for the good of the State was essentially necessary to the existence of the State; and it cannot be said the people were bound to be answerable to individuals who might suffer by the wilful and corrupt abuse of that power. But, sir, with respect to notice, the people of Georgia used all means in their power to apprize the whole world of the fraud that had been practised upon them, both pending the negotiation and after it was completed; their indignation at the transaction was no secret, they spoke aloud of the manner in which they had been betrayed. But there was no official notice! Alas, Mr. Speaker! the organ of the public sentiment (the Legislature) was polluted, the voice of the people could not approach them, their consciences were incarcerated with gold and impervious to the

sound of truth. What could the people do but await the constitutional period of electing men that would speak their sentiments? They did so, and they stand acquitted of any neglect on their part; By the cession the United States are placed in the situation that the people of Georgia would have stood in if it had not been made. If therefore the present claimants had no legal or equitable demand upon them previous thereto, they have none upon us now. One word, Mr. Speaker, with respect to the expediency of adopting the resolution proposed by the committee. It never can be expedient to do an act of manifest injustice. If the petitioners are entitled to any part, they are entitled to the whole of the lands in question. Can it be just in us, because we have the power, to compel them to receive one-eighth part? If, on the other hand, they have no title whatever in law or equity, which I religiously believe, do we not do an act of great injustice to the public by giving them near five millions of acres? We unquestionably do. Some allusions have been made in the course of debate to the conduct of the Committee of Claims. I regret, Mr. Speaker, that I cannot defend it upon this occasion. I have been for some years past one of the victims devoted to take a part in the arduous, unpleasant, and unthankful duties assigned to that committee—to bear my share not only of the labor, but the importunities and reproaches of the disappointed applicants. No considerations heretofore have induced us to relax from that regular administration of justice, conformable to law and precedent, in which we have uniformly met with the approbation of the House. But, long as I have been a member, Mr. Speaker, I cannot turn to a single instance wherein the committee have recommended a compromise of a claim; we give but seldom, but when we do give, we honestly give all that is due.

Mr. LYON.—After having taken a view of the subject now before the House, during the last session, in all its shapes and bearings, and after having, in a very ample and explicit manner, given the reasons which governed my vote at that time, it was my intention to have given a silent vote on this occasion. The hope of changing the mind of a single member does not now call upon me to rise; no, sir, the uncandid insinuations, the undeserved reproaches and criminations from a member from Virginia have caused me to break through that silence I had imposed upon myself. Yet, since I am up, permit me to remind you, sir, of that view, and in a very brief manner of those reasons which will in every stage of this business induce me to adhere to the contemplated compromise. It seems that the government of Georgia, in 1792, made an agreement with certain companies which was not fulfilled by the grantees, nor consummated by the government of Georgia, for the sale of a large part of their western lands; accordingly, the Legislature again offered those lands for sale, and by solemn legislative and executive acts, did sell, and by deed convey forty millions of acres of those lands to certain other companies, for which they received the compensation agreed on. That those grantees, having it in their power to show to purchasers the best possible evidence of a good and authentic title, did sell the property thus purchased to other purchasers, who had the best right imaginable to put faith in the authenticated documents and title papers presented to them—documents and title papers as good as any ever obtained from an individual by another, or from a State or a nation by a purchaser. Notwithstanding which the succeeding Legislature, not liking the bargain, assumed or attempted to assume the power of reclaiming the property, and passed an act purporting their intention of invalidating the title given by their predecessors, as well as for the destruction of the records and every evidence of the title given by them.

It appears that the purchasers, when they found Georgia offering to cede those lands to the United States, gave warning and notice of their claims to the Chief Magistrate of the Union; in consequence of which, or for some other cause, a provision for a compromise with the claimants was made in the law which authorized the holding a treaty with Georgia respecting the cession of those lands. Commissioners of the United States, agreeably to the powers vested in them by that provision, have met the claimants, and have, it seems, agreed on terms of compromise, which in my opinion are very advantageous to the United States; which compromise is now before this House for their sanction.

I stated last year that, under my impression of the validity of the title of the claimants, the compromise was more advantageous to the nation than could be expected; more advantageous to be sure than I had previously expected could have been made. I still think it an advantageous bargain, on account of the revenue which will arise from the sale of the residue of the lands—seven-eighths of forty millions, to which an unexceptionable title can then be given, a title which good farmers and useful settlers will not fear to improve under. Advantageous, I say also, on account of the benefit to be derived from the early settlement of some of the best lands, and in the best situation of any the Government claims—a country intersected by many navigable waters, and through which the road goes from almost every State in the Union to Natchez and New Orleans; a road which, in the present state of things, is frequently infested with murderers and freebooters.

Nothing could be more surprising to me than the opposition this, in my opinion, reasonable, necessary and profitable compromise has met with, both last session and this. I say profitable, because it takes not a cent out of the Treasury, nor from any other fund but the land itself; which, however wrong it was to purchase it, knowing it to be sold to others, whose claim was in a measure recognised by the contemplated compromise at the very outset of the negotiation—however wrong, I say, it might have been for the United States to have become the purchasers, they have not paid, nor are they bound to pay a shilling from any other fund than the land itself, notwithstanding all this clamor about robbery. Such has ever been my opinion of public faith, that although I doubt not

that bribery was used in the Legislature of Georgia in the transaction of 1795, to a certain degree. their successors and the State were bound to abide by the solemn contract. I say solemn, because it appears to be confirmed by the Executive of the State, against whom I do not recollect any charge of bribery to have been made. Had that Executive (who was on the spot, and must have been a better judge of the corruption talked of than we can be) arrested, by his withholding hand, the completion of the contract, and refused his signature to those papers which enabled the purchasers to convey their purchase to others, I should now say, the title being incomplete, we have nothing to fear from it, we want no compromise. This no doubt would have been done had the Executive supposed that the people of Georgia were injured. and that they would support him in that refusal. But, sir, the honors and preferments retained by and conferred on so many of those persons charged with the bribery, leads me to believe that there were causes unknown to me which led to the uneasiness on the part of the people of Georgia, with regard to the sale in 1795, and led to the attempt at resuming the right to the lands in 1796.

In the course of this discussion, we who wish for a compromise of this perplexing business—this business which seems to be kindling the greatest discord in the nation—have been charged with an intention of committing a robbery which is far to exceed all the petty larcenies of the former Administration, and such of us as have aided to depose the former and support the present Administration, are threatened with being for the future considered as Federalists, let our professions be what they may. For my part, I can assure the member who threatens us, that it never in my life gave me pain to be called a Federalist, in the true sense of that word—in the sense in which the word was used by the great man who said. "We are all Federalists, we are all Republicans;" but, sir, it really gives me pain to hear and to see the character of the head of one of the Departments of our Government lugged into this debate, and so illiberally treated. The man I respect highly both for his integrity and talents—in the first of which, in my opinion, he stands behind no man in this nation; and although he has the misfortune to suffer the censure of the member from Virginia, I believe he enjoys almost universal applause for the great zeal, fidelity, and sound discretion with which he has discharged the important functions entrusted to him.

From the drift of the speeches delivered by the member from Virginia, from his call for the Postmaster General's report of a list of his contracts. and from the invitation he has given to an examination of that report, I am led to consider it a duty I owe to myself, in this House, and in the face of the world, to take up that report, and explain the nature of the contracts which there appear in my name. I find my name seven times mentioned in that report; the first is in the 12th page, for a contract for carrying the mail from Cincinnati to Detroit; the second in the same page, and is from Marietta to Cincinnati; these two contracts I never solicited or bid for, but the Postmaster General having advertised for proposals, and having received none that he thought reasonable, they being new routes and to be let for one year only, he wrote to me offering the price they stand there at, and I undertook to get the business done. For the performance of the latter contract I gave every cent I received, and without saving one penny for a great deal of trouble, risk, and perplexity, I had taken upon myself to get it effected. From the other I saved a few dollars toward paying me for the care, trouble, and responsibility I had sustained on the occasion. Long before these contracts were out, I informed the Postmaster General that I should take neither of them again, and the contract from Cincinnati to Detroit was let to another person at $105 60 more than was given to me; this may be seen in the 22d line of page 20 of the same report.

The third time my name is mentioned is in the same 12th page, and is from Hartford to Fort Massac, a distance of about 180 or 190 miles, for which $654 75 is paid; out of this $65 is to be paid for ferriage. For some parts of this route I am obliged to give much more than a proportionate share of what I receive; some other parts I give a trifle less; sometimes my own horses carry the mail. I cannot with precision tell what is lost or gained in it, but it cannot be $50 either way. The fourth contract is also in the same page, it is from Russelsville to Eddygrove, or, rather, Eddyville; it is 80 miles, for which $240 is paid; this is as low if not lower than the price given anywhere south or west of this place, and I give to the person who performs it the whole amount of what I receive. The fifth and sixth time my name is mentioned in that report is in the 28th page—those are merely a renewal of the two last mentioned contracts, which had expired in 1803; all of those contracts were made before I was elected to my present seat in this House, before I had the pleasure of a personal acquaintance with the present Postmaster General, and before I ever spoke with him.

The seventh contract is noticed in the last page of the Postmaster General's report, which is from Massac to New Madrid, from Kaskaskias to Girardeau, from Cahoka to St. Louis, a distance of more than 200 miles, for $515, out of which more than $150 must be paid for ferriage, at the rate ferriages stood at the time of the contract.

This is the true history of the contracts by which it is insinuated that the Postmaster General has bribed me. I never was bribed, sir; it is not all the lands and negroes my accuser owns that could tempt me to do a thing which honor or conscience dictated to me to avoid. I could, sir, if it was pertinent, show how the over-vigilance of the present Postmaster General has deprived me of the benefit of the only profitable contract I ever made with the Government—a contract made with his predecessor—which he very improperly, in my opinion, considered void on account of some words in it not being exactly consonant with the intention of the contracting parties; believing, however, that the Postmaster

General designed to do what he thought right, he has not lost my esteem, nor do I think his character can be injured by the braying of a jackall or the fulminations of a madman. But, sir, permit me to inquire from whom these charges of bribery, of corruption, and of robbery, come. Is it from one who has for forty years, in one shape or other, been intrusted with the property and concerns of other people, and has never wanted for confidence—one whose long and steady practice of industry, integrity, and well doing, has obtained him his standing on this floor? Is it from one who sneered with contempt on the importunity with which he was solicited to set a price on the important vote he held in the last Presidential election? No, sir; these charges have been fabricated in the disordered imagination of a young man whose pride has been provoked by my refusing to sing *encore* to all his political dogmas. I have had the impudence to differ from him in some few points, and some few times to neglect his fiat. It is long since I have observed that the very sight of my plebeian face has had an unpleasant effect on the gentleman's nose—for out of respect to this House and to the State he represents, I will yet occasionally call him gentleman. I say, sir, these charges have been brought against me by a person nursed in the bosom of opulence, inheriting the life services of a numerous train of the human species, and extensive fields, the original proprietors of which property, in all probability, came no honester by it than the purchasers of the Georgia lands did what they claim. Let that gentleman apply the fable of the thief and the receiver, in Dilworth's Spelling Book, so ingeniously quoted by himself, in his own case, and give up the stolen men in his possession.

I say, sir, these charges have come from a person whose fortune, leisure, and genius, have enabled him to obtain a great share of the wisdom of the schools, but who in years, experience, and the knowledge of the world and the ways of man, is many, many years behind those he implicates—a person who, from his rant in this House, seems to have got his head as full of British contracts and British modes of corruption as ever Don Quixotte's was supposed to have been of chivalry, enchantments, and knight errantry—a person who seems to think no man can be honest and independent unless he has inherited lands and negroes, nor is he willing to allow a man to vote in the people's elections, unless he is a landholder.

I can tell that gentleman, I am as far from offering or receiving a bribe as he or any other member on this floor; it is a charge that no man ever made against me before him, who from his insulated situation, unconversant with the world, is perhaps as little acquainted with my character as any member of this House, or almost any man in the nation; and I do most cordially believe that, had my back and my mind been supple enough to rise and fall with his motions, I should have escaped his censure.

I, sir, have none of that pride which sets men above being merchants and dealers; the calling of a merchant is, in my opinion, equally dignified, and no more than equally dignified with that of a farmer or a manufacturer. I have a great part of my life been engaged in all the stations of merchant, farmer, and manufacturer, in which I have honestly earned and lost a great deal of property, in the character of a merchant. I act like other merchants, look out for customers with whom I can make bargains advantageous to both parties; it is all the same to me, whether I contract with an individual or the public; I see no Constitutional impediment to a member of this House serving the public for the same reward the public gives another. Whenever my constituents or myself think I have contracts inconsistent with my duties as a member of this House, I will retire from it.

I came to this House as a representative of a free, a brave, and a generous people. I thank my Creator that he gave me the face of a man, not that of an ape or a monkey, and that he gave me the heart of a man also, a heart which will spare to its last drop in defence of the dignity of the station my generous constituents have placed me in. I shall trouble the House no farther at this time, than by observing that I shall not be deterred by the threats of the member from Virginia, from giving the vote I think the interest and honor of the nation requires; and by saying if that member means to be understood that I have offered contracts from the Postmaster General, the assertion or insinuation has no foundation in truth, and I challenge him to bring forward his boasted proof.

Mr. J. CLAY.—It was not my intention to have troubled the House with any observations on the subject, but I think a view may be taken different from any exhibited by the gentlemen who have preceded me. Some of the gentlemen who have advocated the appropriation of the land to satisfy the New England Mississippi Land Company, have been content to rest the claim upon the ground of policy. They have said that if some mode should not be taken to satisfy the Yazoo speculators, they would be incessantly troubling Congress. If these men have any title, it must be by right of pre-emption; and yet that title it was not practicable for them to acquire, as the State of Georgia could not extinguish the Indian title. Notwithstanding, however, their imbecility, the Legislature of Georgia, of 1796, undertook to grant an estate in fee simple. It will require more time to examine this question, and perhaps more abilities than I possess; but I cannot conceive how Georgia had a pre-emption title to the land, while the Indian title still existed. The Congress of the United States possessed the sole power of extinguishing the Indian title to lands within her territories: no individual State has either the right or the power of extinguishing the Indian title to any lands they may claim. Of course, Georgia had no right to grant a title in fee simple.

We are told of the policy of compromising with these speculators, and that they are innocent purchasers. How are they so? Are they not the very men who purchased a fraudulent claim, and does not their deed carry on the face of it a proof

that they knew it to be fraudulent? There is also a strange coincidence: These people's deeds are dated February 13th, 1796, the very day that the rescinding act was passed, but these instruments were not all executed until May following. [Here Mr. J. Clay read several passages from the pamphlet published by the agents of the New England Yazoo Company, and compared them with the resolution of Congress passed on that subject, from which he inferred an acknowledgment of the present claimants, that they purchased a disputed title.] He went on to state that Governor Strong, who was at that time a Senator of the United States, was made acquainted with the whole transaction; and it could not but be presumed that he and the Massachusetts delegation communicated to their constituents the circumstance.

The general notoriety of the fraud, said Mr. Clay, is such as to convince any man that the present claimants are not innocent purchasers. The very conditions under which they purchased, demonstrate this. They undertake to stand in the shoes of men who had defrauded the State of Georgia through a corrupt Legislature, and when they paid their money, they conditioned that it should not be repaid them, by reason of any defect in the title. The petitioners take it for granted, that, whatever was the fate of the original compact, though bottomed in fraud and consequently null, they have no other resource than in the mercy of this House. Why did they make that stipulation in their deed? Why not take a general warrantee? If the deeds had been executed in the usual manner, they could have recovered their money from the party who had practised upon them. But notwithstanding that article, I still think they should have recourse to the original grantees; let them go to them, and a court of equity will do them justice.

I have no idea of supporting questions of property upon grounds of mere policy; I shall never be inclined to squander millions of the public money, because a gang of swindling speculators may enter this House and prove troublesome to its members. The agents of these men have accidentally acknowledged that they cannot extinguish the Indian title, and, therefore, they cannot get possession of the land. What is a man to get by a contract, when it is impossible to comply with the terms? I was in hopes, that the representation from the State of Pennsylvania would have been unanimous on this question: they ought to know, from the salutary experience of their own State respecting land speculations, whether it relates to the Connecticut, Susquehanna, or Delaware companies, who have kept a part of our State in a continual broil for fifty years, while another set of men, under the garb of the Population and Holland companies, have thrown their warrants over the north-western corner of the State, and are likely to defeat the great objects which the Legislature had in view, when they disposed of the lands to actual settlers alone. I trust, however, that they will be defeated, and that the courts of justice will determine the case in the manner in which it was recently decided. I regret that the oldest member of Congress from our State, should, at this late hour, abandon those republican principles, which he has so long and so ably maintained, to support a band of Yazoo speculators. For my part, I must be an altered man indeed, if I ever consent to a compromise with a gang of speculators holding a title founded in fraud and speculation.

Mr. Bedinger said that as the gentleman from Virginia, who first spoke in opposition to the report, had called on the Committee of Claims for the reasons on which the report was grounded, and particularly for their reasons for departing on this occasion from the course usually pursued of assigning the reasons on which a report was made, he would, as he was a member of the committee, take the liberty of making a short explanation of facts, which might, in some measure, afford the satisfaction requested. The Committee of Claims was composed of seven members; of these, three were opposed to the report. They contended in committee that the reasons for the report ought to be stated; that before they called on the House to sanction the extraordinary resolutions recommended, cogent argument should be adduced. But this course of procedure was overruled by the majority, for the best reason on earth, because there was no good ground, no sound principle, on which these resolutions could be supported.

When the subject was first submitted to the committee, the minority, of which I was one, entertained hopes that the principles, which had heretofore governed the Committee of Claims, principles long established and sanctioned by the House, would not be dispensed with on this occasion. These were, where a claim was just and equitable, to grant a full compensation; and if otherwise to reject it altogether. Heretofore they had never conceived it equitable or honorable, when there was a just and legal claim, to propose a compromise. And it surely would be highly dishonorable to give to any man, possessed of a good claim, only a part of his just right. We thought it would be degrading to the dignity of this House and of the committee to adopt such a practice. The question was, therefore, put—Had the original grantees any good title, either in law or equity? It was not pretended that they had. We hoped that this point would be decided by the committee, and the decision reported to the House. But we were baffled in this expectation. The majority refused to pursue this course.

Driven from this ground, we thought proper to rely on the abundant evidences of corruption and fraud reported by the Commissioners, and contended, using their own words, that the claim could not be supported. But here again we were overruled.

We then called upon the Representatives of the State of Georgia for such information as they possessed, deeming such information important towards enabling us to make a satisfactory report, and the House a just decision. But unfortunately our inquiries were to little purpose, as the majority overruled the course we wished to pursue. The Representatives informed us of many circumstances contradictory to the statements of the petitioners, of which I will state a few. They represented, that when one of the agents mentioned that he claimed for or under a certain James Bulgin, he was told that James Bulgin was at Augusta during the whole session of 1795, but that he was not an original purchaser; which led me to believe that he was fully acquainted with the fraud, and had no just pretensions to compensation. One of the agents, Mr. Pippin, stated in the presence of the committee that he held under Bulgin.

They represented that the statement of money said to have been expended and used for the benefit of the State, was not true; and this was fully explained, I think, to the conviction of every member of the committee.

They represented that the great body of the people of Georgia were opposed to the sale of the lands, and that only a small part, called the combined party, were in favor of selling. That there was at the time of the sale no extraordinary call for money. That the indignation of the whole people of Georgia had overwhelmed the authors of this black transaction. That presentments had within three months been made by grand juries in seven out of nine of the counties of the State. That the road from Augusta to Charleston was used by travellers almost as frequently as the road leading from the Capitol to Georgetown, and that consequently everything of importance which was transacted at Augusta must have soon reached Charleston; travelling from which place to Boston was usual at all seasons of the year.

This, and much more important information, was given by the Representatives from Georgia, men who, from the honor and respectability of their characters are more to be depended upon than any commissioner who may be sent to that State, who most probably would be guided by *ex parte* evidence.

I consider this question as very important. Let it be recollected that the land in dispute is as large in extent as six States of the Union. What, then, would have been the situation of the United States had these avaricious men succeeded in their gigantic designs?

During the course of this discussion, the merits of the Committee of Claims have been often alluded to. To elucidate the conduct of the committee, I have made this explanation. If any credit is due to those who compose the majority they are welcome to all the honor which can flow from their report. I claim no part of it. I deem myself a representative of the people, appointed to guard their interests from violation. I cannot, therefore, render to my constituents any satisfactory reasons for putting the property, thus confided to me, into the hands of individuals not answerable to them for their conduct. I believe it safer that this power should remain in the hands of Congress, than that it should be placed in the hands of the best men that can be appointed.

Mr. Dana said that he had not intended to have risen on the present question, but the respect he owed to the Committee of Claims, which had been attacked by the two gentlemen last up, who were also members of that committee, obliged him to take some notice of what had been said. He had the honor of being chairman of that committee; but it was well known to this House that it was not a place of his seeking; and he believed there was no one member of that committee who aspired to the honor of the toil and drudgery their chairman was compelled to undergo. The gentleman from Kentucky (Mr. Bedinger) well knows, said Mr. D., that I thought the office ought not to be pressed upon me. He knows the motives on which it was bestowed, and he will have the goodness to recollect that after every other attempt to disentangle myself, I threw out to them an idea that perhaps they would repent having placed me in it. Having, however, once undertaken the task, I performed its duties according to the best of my abilities, and with the greatest assiduity. I did not, however, conceive that when I devoted myself to this service I was to be the servile instrument of any man or set of men, or to be a slave to their opinions. I always gave to the subjects referred to us the best examination and consideration in my power.

Whenever the House decided a question of reference to that committee, whatever might be my own private opinion on the principle, I always considered it my duty to conform the report to the declared will of the House; until that was manifested I always considered myself to act as I judged proper.

It is objected by the two gentlemen who preceded me, that on the present subject the committee pursued a course that had no precedent; if such be the fact, I am uninformed, for be it known that the present chairman of the Committee of Claims had never until this session been a member of that committee: Nor, as a member of Congress, did he know that a proposition of compromise had ever been before referred to the Committee of Claims. So far as his recollection served him, all claims heretofore submitted were for the whole or nothing, and after the applicants had been fully heard before the committee, the question turned upon those two pivots—all or none. On the subject now under consideration, the question was solely as to compromise, and that alone was agitated when the committee took it into consideration; and it will be recollected that the committee adjourned without coming to a decision. The rules of the House which govern in Committees of the Whole, are also applied to the Committee of Claims, and when the House has settled a principle, and referred to the Committee of Claims to make the application, the committee never attempt to travel out of the path prescribed.

I here take the liberty of asking what was the question referred to the Committee of Claims. Certainly it was a proposition for a compromise, or nothing; every member of the committee must know this. I believe there is not a single

member on this floor who is a stranger to the fact. What, then, sir, was the committee to think of the order of the House? Is it understood that the committee were never to report because compromise was the object? Was it intended to make the committee the mere instruments of delay? Yet it must be so understood if they were not to act. That the subject referred was such as I have stated is very clear, and the fact is so stated in the report before the House. And to show that it was so considered and acted upon by the committee, I will read an extract from the report itself, which, after giving an historical account of the transactions relating to the sale of the vacant lands of Georgia proceeds:

"These conflicting acts present a general question of serious moment, on which the committee abstain from expressing a decided opinion. It is not the object of the present applications, that Congress should decide the question of strict title, as originally claimed under the beforementioned act of the 7th of January, 1795.

"The petitioners request a settlement of their claims, on terms compatible with the articles of agreement before mentioned. At the same time it is proposed, as an alternative, that the whole question of title may be submitted finally to judicial decision. The general provisions of the existing laws of the United States do not authorize the institution of any process on the part of the claimants, whereby such a proposition could be carried into effect. And perhaps it might be questioned, whether a special provision for this purpose would be conformable to the spirit of the agreement with Georgia. It is not suggested that any proceedings of the Government of the United States have encouraged an expectation that such provision would be made.

"The remaining inquiry relates to a settlement of claims by compromise. This is the known object of the present applications; and the Committee of Claims have considered it incumbent on them to attend to the proposition for compromise which has thus been referred to them by the House.

"According to the agreement with Georgia, the reserved five millions of acres constitute the whole fund applicable to any such purpose. What portion of this fund will be requisite for satisfying the claims specially provided for by the two first sections of the act of Congress of the 3d of March, 1803, the committee have not been able to determine. From the residue, however, whatever the same may be, it is prayed that a compensation may be made on account of the claims of the present applicants.

"Some of these claims are known to relate to lands within a portion of territory to which there has been a claim on the part of the United States and of Georgia. The act of Congress, of the 7th of April, 1798, which authorized the establishment of a government in the Mississippi Territory as therein described, made provision for the appointment of Commissioners to adjust and determine with such Commissioners as might be appointed under the legislative authority of the State of Georgia, all interfering claims of the United States and that State to the territory; and also to receive proposals for the relinquishment of any such cession of the whole or any part of the other territory claimed by the State of Georgia and out of its ordinary jurisdiction. A supplementary act, of the 10th of May, 1800, authorized the Commissioners, on the part of the United States, finally to settle, by compromise with the Commissioners on the part of Georgia, any claims mentioned in the act of the 7th of April, 1798; and to receive, in behalf of the United States, a cession of any land therein mentioned, or of the jurisdiction thereof, on such terms as should appear reasonable. The same act also authorized the Commissioners, on the part of the United States, to inquire into the claims made by settlers, or any other persons, to any part of the aforesaid lands, and to receive from such settlers and claimants any propositions of compromise, and lay a full statement of the claims and propositions, together with their opinion, before Congress, for their decision thereon.

"In virtue of these acts, the Commissioners of the United States concluded the beforementioned agreement with Georgia, and thereby settled the interfering public claims."

This shows that, according to their understanding, the thing referred was a compromise, and not a question of strict title. Nor do the Committee of Claims, so far as I have information, ever offer a compromise of a claim that goes for the whole amount. Let gentlemen read over the memorial and they will find that I am correct. Not a member now sitting in his place, but who will accord with the opinion expressed by the committee. Were the committee to report on a question not referred to them. Were we so ignorant of our duty, and so perverse that we could not understand, or would not perform the duties required by the House? And were we to subscribe a declaration of an opinion on a subject not before the committee? Whatever may be the admissibility or inadmissibility of the claim of the present applicants, or my opinion thereon, is not the point I am endeavoring to elucidate; or what is, or was, the sense of the House on referring it to the Committee of Claims. From whatever cause the reference sprung, the thing once consented to ought to be attended to, and it was the duty of the committee to do what they were enjoined to perform.

I do not know that there was any deviation from the usual course of proceeding in the committee on this subject whilst it was pending before them. As respects the mode of conducting the inquiry, I can assert that everything was done as orderly and as carefully as on any other claim ever before them. In the first stage of the business, efforts were made to obtain information from every quarter where it was likely to be procured, whereby the propriety of the claims could be tested, that the whole subject, with all its circumstances, might be drawn to a focus, and presented fully and fairly in one view. A general desire was expressed that any gentleman who could throw any light on it, would be pleased to attend the committee, and communicate such information as he possessed. In consequence of this invitation, two of the Delegates from Georgia were present; one of them a member of this House, the other a member of the Senate. And the inquiry was prosecuted with a degree of minuteness seldom equalled, but never exceeded, in a committee of this body, so far as I have witnessed, since I have had the honor of a seat on this floor.

One of the first points of inquiry, was to ascertain whether the present claimants had notice of fraud; and whether we could bring home to them the proof of direct knowledge, or short of that, whether they had an indirect knowledge of the fraud. One of the gentlemen, the gentleman from Georgia, who I see now in his place, answered with that candor and frankness, that removed all doubt of the correctness of his information, even if his general character had not been a security for the fidelity of his relations. I consider this circumstance as highly honorable to him, because it was known that he was hostile to the claim; but, sir, so much did that gentleman hold his passion in subjection to his sense of propriety, that his information had, and deservedly had, the most decisive influence upon the members of the committee.

When he was asked, whether the New England Mississippi Land Company had notice of the alleged fraud? He answered, he did not know that that they had. He was asked whether the presentments of the grand juries were published in any newspapers that went to the State of Massachusetts? He could not say that they were; it was not probable that the information was sent there. He was asked if he knew whether an account of those transactions in Georgia, was published in any paper that had a general circulation in the other States? He did not know that they were. Thus far the inquiry went, as to notice to the New England Mississippi Land Company. With respect to the South Carolina Yazoo Company, for whom tracts had been reserved, the inquiries touching that point were the same.

He was asked whether the grand juries made the presentments in such time as that it was probable they could reach South Carolina previous to the contracts being entered into for purchasing the Upper Mississippi Companies' title to their lands? He answered, he could not tell; but added, that the grand juries made their presentments generally at the first courts which sat after the passing of the act of January, 1795, and the first court sat either the third or fourth Tuesday (which of these days, Mr. D. said, he did not perfectly recollect) in February following; and the deed of conveyance is dated the 6th of March. He was asked, what was the distance from the counties in which presentments were made to South Carolina, and whether they might not obtain information through the usual channel of the newspapers; and whether he knew that any of the purchasers had seen an account of those transactions? He answered, that there was nothing to make it probable that the purchasers in South Carolina had notice. There was no variation in the statement made by the two gentlemen.

It was inquired, whether bribery and corruption were punishable by the laws of Georgia? It was answered that nothing existed in the laws of Georgia on that subject. It was asked, had any person been prosecuted and punished in the counties where the presentments were made? He answered that no indictments had been found upon the presentments—not a single one. In this statement, I have confined myself to simple facts, and I appeal to the gentleman to say whether I am not correct.

During this inquiry, I felt astonished that crimes of such enormity as those alleged to have been perpetrated in Georgia should be suffered to pass with impunity, and that not a single prosecution for fraud, bribery, or corruption, had taken place, but that the whole was passed over without making a single example, although presented by grand juries in almost every county of the State, and the universal indignation of the people was excited. What was the inference to be drawn from this statement of facts? Either that the proof of the crime was not sufficiently clear and connected to establish the fact upon a legal inquiry, or that they did not wish to prosecute. The only effect produced was the rescinding act by the next Legislature. To inquire whether that Legislature might not likewise be suspected of bribery and corruption, was a question of too horrible an aspect to enter into the breast of any citizen in this country; the case is unprecedented in the United States. Whether such an inquiry will ever be proper to make or not, I know not; but it was not an inquiry for the Committee of Claims to make, because it was not necessary for them to inquire into the question of strict title. The question was not to give the present claimants all they claim or to give them nothing; the question was not a disdain to compromise with fraud. That might be the result of a judicial investigation of the case, but was by no means the question before the committee. I will here ask whether it is a mark of fraudulent title, or incompetency to support a legal one, when there are interfering or conflicting claims, and a compromise is suggested between the parties, when an inquiry into a legal or equitable title would suspend a settlement until the parties were mutually ruined? Can it be considered as a mark of corruption, that in such a case, a part should be given instead of the whole, and the dispute thereby settled to mutual advantage? Is it a proof of corruption in the party which accepts a fraction instead of a unit, rather than go through a judicial investigation? Is it a proof of no title? But this point is decided by the act of Congress in the settlement with Georgia; the United States took the lands, allowing a portion of the claim of the United States to be applied to quiet the claims made upon Georgia to the amount of five million of acres. So that it cannot be considered a mark of corruption, unless the badge is also attached to the Government of the Union; and I am confident no such idea can be entertained of Congress by the people of this or any other country on earth.

Would gentlemen, in their private concerns, refuse to act upon this principle? Would they not prefer an accommodation to a law-suit, when an adverse claimant exhibited a feasible title, not to say one strictly legal? If gentlemen demur to this mode of settlement, they forget the general practice of this country, and the maxims of private life, that peace and quiet with a part is better than strife and litigation with the whole.

And such, it appears, was the opinion of the Congress which authorized the Commissioners on the part of the United States to adjust and determine all interfering claims of the United States and of Georgia in the Mississippi Territory, and the Congress of 1800, which authorized the Commissioners on the part of the United States finally to settle by compromise with the Commissioners of Georgia, and to receive a cession of the lands on reasonable terms. The same act expressly authorizes the Commissioners to inquire into the claim of settlers, and to receive from such settlers or claimants any propositions of compromise, the whole to be laid before Congress for their decision.

I apprehend this rapid view of the point in question has thrown the objection to compromise entirely out of sight, or if its recollections are still cherished, I refer them to what was said by the gentleman from New Jersey, (Mr. BOYD,) showing the necessity of getting rid of the claim in the manner proposed; what he said was well urged, and I have not the vanity to think it could be illustrated or embellished by any observations of mine.

The amendment before the House to the resolution goes to direct that the whole five million of acres reserved may be applied to pay the South Carolina and Virginia Yazoo Company claims under the act of 1789, as it excludes every claim made under the act or pretended act of 1795. Let me ask, Mr. Speaker, if this amendment does not defeat the object of the resolution altogether, which is visibly to adjust and settle finally the claim of the present applicants as well as all other claims to public lands in that Territory, and is not consequently inadmissible? But, sir, you have decided it to be in order, and, therefore, I shall not dwell on that point. But are gentlemen ready; are they prepared to go the whole length to which the amendment would carry them; and will they really give to the Virginia and South Carolina Yazoo Companies the five million of acres, when they claim but a very small proportion of that amount? Permit me to call upon the mover (Mr. CLARK) for an explanation of his intention.

Mr. CLARK explained, and stated that the object of his motion was to meet and repel that class of claims which had excited such an interest on this floor, and whose cause had been advocated with such energy—and if it was fortunate enough to obtain a majority in its favor, he was frank enough to declare that he would vote against the whole resolution as amended.

Mr. DANA thanked the gentleman for his frankness, from which he learned that the gentleman meant to defeat the claim of 1789, as well as that of 1795. This being the object, he need not make another observation on the propriety of devoting the whole to the South Carolina and Virginia Yazoo Companies.

Various observations, said Mr. DANA, have been pressed into service, which seem to have no very particular relation to the subject. I will acknowledge that some of those observations deserve some attention on my part, from a regard to the general character and standing of the gentleman who has made them, rather than from their relevancy to the subject, or their intrinsic force. The first general idea thrown out is this: That the proposition of the committee must be wrong, because men of different political sentiments appear in its defence. Let us examine this position, not as a model for argument, but rather as an effort of eloquence; for the gentleman is eloquent, and trusts to eloquence to carry him through all his difficulties. He disdains the arbitrary trammels of logic; and the dull and beaten paths of plain reasoning have nothing to gratify his taste or imagination. For my part, when I see gentlemen avoid the course of plain argument, I am inclined to believe they are aware of the weakness of their cause. And when they who understand a subject, instead of entering into a discussion of its merits, apply their talents in making a pathetic and eloquent appeal to the people from their representatives on this floor, what are we to think of their conduct? If the gentleman had argument on his side, would he have recourse to such means then? No, sir, the gentleman from Virginia does not rely upon the strength of his positions; but he endeavors to storm your judgment through the violence of your passions. The report applies itself to the understanding of honest men, and men of plain and common sense; the inquiry it makes has for its object a compliance with the order of the House, and not a digression toward objects totally distinct and unconnected.

I beg to be indulged in a brief examination of the question whether the agreement of the members of this House, supposed to consist of different political parties, is a proof that they are influenced by bribery or corruption. It is laid down as a broad position, and must equally apply to every vote given in this House, wherein members of both sides have coincided. Last session the national character was struck at by the lawless acts of the pirates of the Mediterranean. The President called for the means of avenging the insulted honor of the nation. The yeas and nays were called on furnishing these means, and the vote turned out to be unanimous. Was this a proof of bribery or corruption on either side? We have had a similar vote this session on giving the people of Louisiana the right of self-government, and the resolution to this effect passed unanimously. But if it is considered as a mark of corruption that the two sides should coalesce, you, Mr. Speaker, are accessory to the crime. The reading of a paper cannot be dispensed with but by the unanimous consent of the House—a vote, to which effect, you are in the daily habit of presenting to us for our approbation, which is almost constantly given. If unanimity is a mark of conspiracy, fraud, and corruption, you, Mr. Speaker, are the great sewer through which it has vent. Excuse me, sir; you know I do not apply these remarks to you as founded in fact, but merely to show the extravagance of the opinion which has been advanced on this point! What, sir, is the world to think of your conduct if it is a stain to have a vote of

both parties in one's favor? Why, sir, at the last session, you had a unanimous vote of thanks for your able and impartial conduct in the Chair which you then filled, and still so honorably and advantageously fill. With these observations I will dismiss this argument, if argument it may be called.

Another remark has been made respecting the conduct of the Committee of Claims generally. It was said that that committee, regardless of the feelings of humanity, uniformly opposed the claims of our Revolutionary soldiers; that their widows and orphans' tears and supplications were disregarded; and that it was only speculators, swindlers, and public robbers whom they felt compassion for; and we were amused with the story of Magdalen charity. But if the gentleman will look forward, he will see a bill on your table from that very committee providing for these Revolutionary claims. Was it for this reason that the claim of Mrs. Elliot was resisted? Let the gentleman (Mr. NICHOLSON) say whether his eloquence was exerted on that occasion for this purpose; and let me ask who was the loudest member in resisting that claim? Sir, an opposition to that measure will have to be put into the black catalogue of your sins. Excuse this language, for you know it is only used to show the extravagance of the charge of want of humanity. Will the gentlemen from Rhode Island and Virginia be discharged from the offence of not feeling for the war-worn soldiers, their helpless widows and orphans? So much for a defence of the general character of the Committee of Claims against the charge of want of humanity!

One observation upon the assertion respecting the present applicants, who are represented as bankrupt in reputation as in fortune. If this is the case of any of them, the observations ought to be applied to the individuals and not to the whole body. Who of the applicants are the refuse of every sect and party, it lies not with me to say. Among them, however, appear characters honorable and highly esteemed in their own country. In Massachusetts, the Attorney General is one; another was an Elector at the last Presidential election; another is the District Attorney of the United States; several others occupy posts of great confidence under the State government; and some are members of the Legislature. And who are those of South Carolina? Let the gentleman from that State answer. I ask, would the gentleman from Maryland subscribe to this character on the part of the citizens who are applicants from that State? The total number is one thousand two hundred, and it is horrible to believe that there is such a multitude of unprincipled men in our young country.

The gentleman, who moved the amendment, has quoted several authorities; but I entertain doubts whether they apply to the present subject, and rather incline to believe that the doctrine contained in them applies only to the particular cases in chancery on which they were delivered, and that they are general law maxims. What he said of asking justice with clean hands and pure hearts does not apply; the question being merely, have the applicants equity to entitle them to a proffered compromise? It is admitted that where the claimant goes for the whole or nothing, any want of equity sets the whole aside. He has however candidly conceded that he was willing to make provision for innocent purchasers, if there were any. This confession his heart would not let him refuse, his head admitted the declaration and his ingenuousness has made the expression. He also adds ingenuously, that though he were willing to relieve the innocent purchasers, yet he would not do it whilst they remained in such bad company. His object is to make a discrimination; but how shall we know who are the innocent purchasers he means to save from ruin? How could the Committee of Claims or how could he himself undertake to sift and scrutinize twelve hundred claims during the present session? If then it is admitted that, among this mass of claims, there may be some proper to be relieved, will it not be the better mode to appoint men of your own choice, of sound discernment and industry, to examine the several cases, and do what is right in each? If the gentlemen could not go through these claims himself within the present session—and I doubt if he could within a year, notwithstanding his disregard of relaxation and his indefatigable application to public business; he would never require others to do that to which he found himself incompetent. Leave it, therefore, to men who are competent, and who have leisure; so that justice may be done in cases which require it, and let those who have acted wrong be neglected.

I would not be understood to say that the United States have come under any absolute engagement to meet the present claimants, but the acts of Government have held out encouragement and raised a general expectation that someting will be done to quiet them. If nothing is to be done, we ought not to have put the parties to the expense and trouble of registering their claims in the Department of State.

The only purpose of the resolution is to authorize three Commissioners to receive propositions of compromise and settlement; and to adjust the same in such a manner as will conduce to the interests of the United States, and not exceed the limits prescribed by the convention with the State of Georgia; and the only difficulty will be to find three persons competent to the task. This, however, will be admitted of sufficient force to countervail the resolution.

Mr. NELSON observed, that as the gentlemen on the north side of the House were getting warm, he feared the heat might increase, and reach the south side; in order to furnish gentlemen with an opportunity of cooling, he would move an adjournment.

On the question the House divided—61 in its favor, and 51 against it. The House then adjourned.

SATURDAY, February 2.

Another member, to wit: WALTER BOWIE, from Maryland, appeared, and took his seat in the House.

The Speaker laid before the House a report of the Secretary of State, on the memorial of Stephen Sayre, of the State of New Jersey, referred to him by order of the House, on the fifteenth ultimo; which was read, and referred to a Committee of the Whole House on Wednesday next.

On motion, it was

Resolved, unanimously, That Samuel Hammond, a member of this House from Georgia, having accepted an Executive appointment, has vacated his seat in this House.

Resolved, That a copy of the foregoing resolution be sent to the Governor of Georgia, by the Speaker of this House.

Mr. J. Randolph, from the committee to whom was committed, on the twenty-eighth ultimo, the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial Courts," reported the same to the House without amendment: Whereupon,

Ordered, That the said bill be read the third time on Monday next.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;" to which they desire the concurrence of this House.

GEORGIA CLAIMS

The consideration of the report of the Committee of Claims on the claims on Georgia lands was resumed.

Mr. Holland.—Mr. Speaker: When this subject was before the House at the last session, I viewed it with the utmost indignation, from an impression that the act of Georgia of 1795, for the sale of their public lands, and under which the petitioners now claim, was an act of the most corrupt Legislature on earth; and I am yet far from believing that all the members who voted in favor of that act were influenced from the purest motives. But upon an examination of the subject, in a cool and dispassionate manner, I find strong grounds for a removal of many of the prejudices that then existed in my mind. Sometime after the passage of the act of 1795, I happened to be in Georgia, and mixing with those who were unfavorable to it, I adopted a prejudice; and when the subject was brought up at the last session my original prejudice was revived and augmented from a whisper in my ear, or from my seeing it in print, that one of the Commissioners of the United States had an interest in the compromise proposed to be made. A combination of these circumstances produced on me a hasty determination never to give a vote that by any possible construction should give a sanction to a measure so originating and involved in fraud. But, sir, after having more time to examine, and on more mature deliberation, I have relaxed from the hasty determination, and have discovered that it was the result of an honest disgust arising from the circumstances that I have stated. But I have since found that many of the facts that I then relied on did not exist, and consequently that my conclusions were drawn from false premises. I have examined with care, whether the suggestion respecting the Commissioner was true. And here I ask pardon of this officer for the unfavorable impression I then entertained of him, having discovered it to be unfounded. That many of the members of the Legislature of the State of Georgia were influenced from improper, impure, and corrupt motives, I have no doubt; but that the conduct of those members, or the act which they passed, was a sufficient cause to authorize the succeeding Legislature to resort to revolutionary measures, is to my mind exceedingly doubtful. There are many causes, however, if we will take the trouble to examine them, which will in a great measure account for the extraordinary proceedings of both those Legislatures, and if their acts can be accounted for without attributing fraud to the one or tyranny to the other, that portion of charity that we are bound to extend to all mankind will impose upon us the most favorable construction. In order to understand these transactions it will be necessary to inquire into the estimated value of land, in the State of Georgia, to which the Indian claim had been extinguished, and also the estimated value of lands in question to which the Indian claim had not been extinguished for years antecedent to the disposal of them by the act of 1795; and, also, inquire whether any external causes subsequent to the act of 1795 produced a different conception relative to the value of those lands. A knowledge of these subjects may be useful, and enable us to judge more correctly and more favorably on the motives of either Legislature. The people of the State of Georgia, as well as the Legislature of the State, for years previous to the passing of the act of 1795, had set a low value upon their vacant lands—lands lying contiguous to the settlements to which the Indian title had been extinguished—lands lying this side of the Oconee. I am credibly informed, and if my information is incorrect let the gentlemen from that State correct me, lands had been sold in 1792–'93–'94 for a cent an acre; sold for a sum only contemplated to indemnify the State for the expense incidental to making titles. And as to the lands in question, their estimated value will be best known by adverting to their legislative acts; their Legislature for years had been attempting to sell these lands; in 1787 a large portion of them was offered to the United States for $171,428; and in 1799, about twenty-five millions of acres was actually sold for a little more than $200,000 to two companies, one called the South Carolina, the other the Virginia Yazoo Land Company; and in this case the land was sold on a credit, and the terms of sale not well understood; the purchasers contended that payments could be made in paper bills; but the State insisted for specie; this not being complied with, the titles were not completed by the subsequent Legislature. In 1795, the quantity of land was estimated at thirty millions of acres; the terms were cash; and the sum five hundred thousand dollars, which was paid, and the titles executed,

subject to many claims derived from Spain and Great Britain, and subject to the Indian title and to the claim of the United States, as well as the claim of Spain to a part of this territory, and also subject to the sale previously made by the State in 1799 to the Virginia and South Carolina companies. It was under these circumstances and conflicting claims to the lands in question that the Legislature of 1795 sold this land. Sir, I shall not justify the conduct of any member that composed this Legislature, and I admit that all those members that were partners, or took any consideration for their votes, acted imprudently, and probably corruptly. But it is possible that even Thomas Rayburn, who appears in the most unfavorable point of light, having taken, as it is said, $600 for his share of the land, or for his vote, (for there is no legal proof,) might believe that the State was not defrauded; he might believe that $500,000, that the company was giving for the claim of Georgia to the lands in question, was more than the claim was worth. The price for which unappropriated lands had been sold, the price the State had offered to take, and the price for which Georgia had previously sold it for, authorized this belief; and that this was his belief, may be inferred from his taking $600 for seventy-five thousand acres, being 1-4 cent less per acre than the State sold it for; for it seems admitted that he had his choice to retain his share or receive the money; his choosing a less sum than the public sold it for, is an evidence of the value he set upon it, and a confirmation that he thought the land well sold. But even admitting that Rayburn, with many others, acted from impure and corrupt motives, does it follow that the State has been defrauded to so high a degree as to justify a resort to revolutionary measures? Did the peace and welfare of the State render the proceedings of the Legislature of 1796 indispensable? What was the property disposed of? Was it a country which was needed for the cultivation of her citizens? No, sir, Georgia had independent of this more vacant lands than fell to her share, or than she could cultivate for generations to come. It was a tract of country, remote from her citizens, claimed, as I have before stated, by Spain, by the United States, and possessed by powerful nations of Indians, over which Georgia had no control. It was of no use to Georgia only as an estate for sale, and she had nothing to sell but a mere nominal title, derived from a dubious construction of her original charter, and for this Georgia received, when in great need of money, $500,000—a much greater sum than it had been previously proposed for or expected to bring. We have now seen the causes that produced this sale under the act of 1795; let us examine what probably produced the act of 1796. The deprecated act passed January, 1795, in the same year an office was opened for the sale of the public lands of the United States; these lands were to be sold for two dollars per acre, and as much more as they would bring. The vast disproportion in the price of these lands, and the price which the Legislature of 1795, of the State of Georgia, had sold their lands, could not well be accounted for by the people of Georgia other than fraud. Fraud was suggested; a single suggestion in a case of this kind is sufficient. Nothing is so disgusting as for our agents, especially in a legislative capacity, to sacrifice from mercenary motives our interests, and be guilty of a breach of trust. Suspicions will now be admitted as full proof; the torrent went on; the belief became general, that by fraud the Legislature of 1795 had bartered off in the most fraudulent manner millions of acres of the realized property of the State. Under this ideal impression, occasioned in a great degree by the causes I have just mentioned, the people of Georgia were misled, and under this impulse the Legislature of 1796 proceeded, and the honest zeal continued until the subsequent conviction. The people of Georgia were not alone misled by the price of the public lands. It inspired an opinion in the minds of the best informed throughout the Union, that fortunes could instantly be made in purchasing lands from the State for a few cents per acre, and then disposing of them much under the public price. Companies engaged; the land laws of South Carolina were peculiarly favorable; the adventurers had a year's credit for the payment of the purchase money, which was about five cents per acre, and, notwithstanding the enthusiasm, the Legislature did not alter the terms, nor raise the price. Under these fair appearances, many companies formed, who were styled land speculators, throughout the Union, but the consequence was a general failure, a general bankruptcy. One company I was well acquainted with, being in my district, in the county of Wilkes, embarked under the fairest prospects; they were generally men of reputation, influence, and wealth; they entered some millions of acres, but, after having spent much time and money, they were unable to realize their expectations, and found it advisable to apply to the General Assembly to have leave to surrender their lands as an indemnity for the State demands against them in the entrytaker's books, and this was granted as a matter of special favor. I have mentioned these circumstances to show what it was that made the act of Georgia of 1795 so obnoxious to the people of that State; and I am strongly induced to believe that had it not been for the price the General Government set upon her lands in 1795, we should have heard but little concerning the corruption of the Legislature of the State of Georgia in 1795, nor ever have heard of the rescinding act of 1796, nor should we ever have been called upon to sanction an act produced from an overheated zeal arising from a combination of circumstances above stated, to sanction an act that would establish a precedent of a most dangerous nature.

Sir, if the doctrine was once recognised, that a subsequent could examine the motives of an antecedent Legislature, there would be no security for the rights of persons or the rights of property. I do not pretend to say, that there is no case that would not justify a recurrence to revolutionary measures; all that I contend for is that this is not

a case of that kind; the manner of the sale and the property sold were not so materially connected with the interest of the State as to require a revolution, and I have endeavored to account for the sale of 1795, and the unprecedented and extraordinary act of 1796, from other causes than attributing universal depravity in the one, and absolute tyranny in the other Legislature. There might be other causes in addition to those I have mentioned, that led to and produced those measures, which I shall not notice. But it was declared by the Legislature of Georgia of 1796, that the Legislature of 1795 had no constitutional power to dispose of those lands, and the same doctrine seems to be advocated by gentlemen on this occasion. It is true that there is no specific power given by the constitution of Georgia to their Legislature, enabling them to make a sale of those lands, nor is there such specification of power in any of the State constitutions, nor in the Constitution of the General Government, yet all the States as well as the General Government have been in the constant exercise of this power. The State of Georgia had previously exercised it; indeed this power is incidental to the legislative authority of every free Government. I therefore consider all objections on the ground of the Legislature of Georgia not having a constitutional authority to dispose of the lands in question of little validity. And I know of no legitimate power that has a right to examine into the motives of the legislative authority of a country: their motives are only to be known by their public acts, and the meaning of those acts so far as they relate to property acquired under them are not to be expounded by a subsequent Legislature, but by the judicial authority of the country. Thus, sir, I have shown the original value of the land in the State of Georgia anterior to the act of 1795, and have demonstrated that the sale under that act was for a much higher price than had been previously asked by the State for those lands, and have endeavored to account for the change of opinion as to the value of lands generally, and the causes that produced so great fermentation and disgust in the people; that the injury was more ideal than real, that the State of Georgia had nothing but a nominal title to the lands in question, and that by the constitution she had a right to dispose of this nominal title in the manner it was disposed of; and that no subsequent Legislature had a right to judge of the motives of an antecedent Legislature, or to impair the rights assumed under a legislative act. I have admitted that there might be a possible case that might justify a recourse to revolutionary measures. But I have shown that the interest of the State did not require it in the present case. And although it may be possible that neither the original grantees nor the sub-purchasers could have any legal remedy in or by the laws of the State of Georgia, as by the act of 1796, judicial remedy seems to be forbidden—yet, sir, in a court possessed of ample judicial power, I have no doubt but that an equitable and just remedy would be obtained, if not to the original grantees, to all innocent purchasers, at least. And here let me observe that it seems to be admitted by gentlemen that innocent purchasers are entitled to an equitable consideration; but they have endeavored to prove that there is none of this description, and that all the petitioners had notice of the original fraud. To prove this notice two cases are relied on. Two gentlemen (Messrs. CLARK and RANDOLPH) from Virginia contended, that the President's Message to Congress on the 17th of February, 1795, is full proof of a notice of fraud. Sir, I consider this communication in a very different point of view. In this Message the President states, that Georgia had passed an act for the disposal of some of their back lands; this communication was evidently intended to excite Congress to adopt measures to induce the State of Georgia to cede to the United States a part of her territory; it is an admission of title in the State, and consequently an admission of a right to sell. So far as this goes (and it is of high authority) it is to my mind a notice of a good title in Georgia, and an inducement to purchase. At all events, it could not by any possibility be construed into a notice of fraud, either in the Legislature or the patentees of the State of Georgia.

The other ground of notice is relied on by a gentleman from Pennsylvania, (Mr. GREGG;) this honorable member states that the deeds obtained from the original patentees are to his mind an evidence and notice of fraud, for that these deeds only convey and guarantee against the State of Georgia. These deeds, like others to lands similarly circumstanced, were not a general but a special warranty; the patentees would have involved themselves extremely had they given any other kind of deeds. The lands in question were known to be subject to sundry claims, and actually encumbered with the Indian title. I was a patentee for a grant of five thousand acres of land derived from an entry made at Hillsboro, being the great office in North Carolina for her western lands, now within the State of Tennessee. Soon after I obtained this grant I sold the land, and from an apprehension that by some arrangement this tract might be subject to the Indian title, I had a similar limitation or provision in the deed. A deed of this kind is evidence of an encumbered estate, but can be no evidence of a fraudulent title. The same gentleman is apprehensive that the sole object of the memorialists is to procure a legislative proposition for the purpose of giving it in evidence in a judicial trial, that is intended to be instituted for the recovery of their whole demand of fifty millions of acres. Had the gentleman paid a little more attention to this point he would have dismissed his fears, it being a settled principle that any propositions that are made for the settling disputes or to avoid a law-suit cannot be admitted as evidence to substantiate a disputed or invalid title. A gentleman up early in this debate, (Mr. LUCAS,) denounced the policy of granting large tracts or monopolies. With whatever force his arguments would have applied had he been in the Georgia Legislature of 1795, when these monopolies were granted, they most certainly can have no application here; the question here is not for granting a monopoly of fifty million of acres,

it is the reverse, it is the destroying a monopoly by frittering down fifty to less than five million of acres. And in this lies the policy. It is policy in the General Government to quiet the claimants that possses titles to so vast a tract of country; it is policy to avoid, if possible, a judicial decision on this question by a compromise; and it is also justice to do so. The measures that have been adopted by Georgia as well as by the General Government demand this justice at our hands; an examination of the course that has been taken will demonstrate that we have given them ground to expect an equitable compensation for their claims. The State of Georgia has relaxed from their rigorous act of 1796. In their convention with the United States they have set apart the residue of five millions of acres for the purpose of quieting all claims derived from any act or pretended act of the State of Georgia. Can any gentleman say that these claims were not included? The State of Georgia by their Legislature ratified this provision; Congress by their act did the same thing; they did more, they appointed three commissioners to receive propositions of compromise, and further directed all claimants to record the evidence of their claims within a fixed and limited period, and this has been done at the expense of the claimants; and can we now without a dereliction of principle, retract and say that no compromise shall be? Would this be a conduct consistent with justice or policy? So far as I am able to comprehend it, I think it would not. I think we should proceed and put an end to this business and at all events grant some indemnification to innocent purchasers. The gentleman from Virginia (Mr. CLARK) has admitted that innocent purchasers should be indemnified, and were they to apply individually he would make them compensation; and the cases cited from Powell on Contracts recognise the principle, that fraudulent contracts are valid as to the originals in fraud, but are voidable in favor of innocent persons. But the cases read only apply to individual contracts, and never can be supposed to extend to a fraud supposed to be committed by a Legislature. It is believed that no precedent can be found under the sun in which the Judiciary can purge a fraud supposed to be committed by a sovereign legislative body. Under these considerations I think that it would be more consistent with justice and sound policy to go on and not disappoint a reasonable expectation that our public acts have justly excited in the memorialists, and prevent the danger of a judicial decision on the validity of their titles by the compromise proposed by the report of the Committee of Claims. Let us constitute a Board of Commissioners to make the inquiry, and if there are but three innocent sufferers who became such by placing such a faith upon the records of the State of Georgia, as by the Constitution and laws of the United States they were bound to do, these three persons, agreeably to a correct opinion given by the chairman of the Committee of Claims who made this report, are entitled to indemnification. Thus, Mr. Speaker, I have in as concise and intelligible a manner as I have been able, given to the House some of the reasons that will influence me on this occasion, and I entertain a hope that if they are not satisfactory to gentlemen who think differently, that at least I shall be rescued in the mind of those gentlemen who have supposed that many of those who are in favor of this measure are under the influence of speculators, or men in office; but if I am so unfortunate as to be suspected by any as acting under this influence, I have the consolation to know that the suspicion is the production of a heart susceptible of this kind of influence, and not attached to me. I shall however in the meantime vote for the resolution, holding myself at liberty to vote for or against the bill, as I shall approve or disapprove of its details.

Mr. DAWSON.—Mr. Speaker, I am among those who have never considered this as a very important question, at least not so much so as some gentlemen wish to represent it. I believe that neither the peace or safety of the United States, or the cause of republicanism, depend on the adoption or rejection of that resolution, or of its proposed substitute. I believe they rest on a better foundation: the virtue and good sense of the American people. I do also believe, that, if there ever was a question which could be considered as not a party one, this is that question; notwithstanding the efforts of gentlemen to make it so. Some local considerations may attach themselves to it; for the truth is, that the knowing ones of the East have been taken in by some corrupt ones from the South; and thus far it may be said to possess locality. The case is, that some years ago the Government of the United States purchased from our sister State of Georgia, then sovereign and independent, her right to certain lands claimed by her, and lying within her limits, A convention was formed between the United States and the State of Georgia. By that convention, five millions of acres of the said land were set apart to satisfy *just* claims, derived either from the State of Georgia itself, or from the power having a right to sell, previous to her becoming a State.

To ascertain which of the claims were just, and ought to be admitted agreeably to the intention of the contracting parties, and the spirit of the convention, the President of the United States was authorized to appoint commissioners. By virtue of this power, an appointment was made. Three persons were selected, pre-eminent for their virtues and their talents. The Secretary of State, the Secretary of the Treasury, and the Attorney General of the United States; men not only pre-eminent for their virtues and their talents, but holding the highest responsible offices under the Government. Men, not only fitted for the appointment by these considerations, but from one other; they were the very persons who formed the convention with the State of Georgia, and must be supposed to know the intention of the contracting parties, and the spirit of the instrument.

These gentlemen, after much investigation, submitted to us the result of their labors, accompanied by an opinion, that justice, and the interest

of the United States, required that some compensation should be made to the persons who are now the immediate applicants. This report was not acted upon during the last session, and the petitioners now pray that we will either confirm that report, that we will permit them to go into a court to support their claim according to law, or that we will establish a tribunal ourselves, to determine on it according to justice. The Committee of Claims has recommended the latter. To their proposition, an amendment has been offered, (and which, in my judgment, according to order, is the only subject now under consideration,) which goes not only to a rejection of the report of the Commissioners; not only to a rejection of the claim of the applicants; but to a denial to them to go either into a court of law, or before a tribunal of justice, to support their claims either at law or according to justice. And to this amendment I am most decidedly opposed, whatever my vote may be on the resolution, or rather upon the bill which shall grow out of that resolution. That, sir, will depend on the provisions of the bill; my object is justice, agreeably to the intention of the contracting parties. If a bill can be formed which shall give relief to innocent and distressed purchasers, if any such there are, it shall have my hearty support; if it shall cover fraud or encourage speculation, it shall receive my negative. Mr. Speaker, I have not been induced to make this avowal of my sentiments, and of the line of conduct which I mean to pursue, in consequence of any of the extraordinaay observations which I have heard during this tedious debate; more extraordinary indeed than any which I ever heard, even during the height of Federal intemperance. I was grieved to hear them. Sir, during this discussion, this hall, into which it is presumed that no one comes "whose hands are not clean and whose heart pure," has been filled with the sounds of suspicion, insinuation, bribery, corruption, treason, robbery, and that long catalogue of black crimes, the recollection of which fills the mind with horror, and the mention of which ought to palsy the innocent tongue. A stranger coming within these walls would indeed suppose that he had entered a den of robbers, and not into the sanctuary of the Representatives of a free and virtuous people.

From whence, I pray you, sir, has this arisen? Do gentlemen believe that personal insinuations, acrimonious sayings, and inflated declamation, give force to an argument, dignity to a proceeding, or influence a decision? They may sometimes wound the feelings of an individual, but generally give ease or pleasure to those only who utter them. With me, they pass by as the idle wind which I respect not; or, if they have any influence, it is to confirm me in my opinion, by lessening those who resort to them for lack of argument—by lessening the regret which I feel for separating from those with whom, in general, it is my pleasure to act.

Armed, sir, with the convictions of my own mind, unshielded during my life by others, and unconnected during that time in speculation, even to the amount of one sous, and believing that not a friend, not a connexion, not a constituent that I have, are interested in the rejection or adoption of this report, or, Mr. Speaker, of any of the other claims, I am left free to pursue that course which I deem for the public good; and, for one, at least, of the opponents to the amendment, I am as willing to submit my public conduct, and my political principles to any tribunal, and as ready to support them here, there, or elsewhere, as any of its advocates.

True republicanism, in my judgment, consists in moderation, in humanity, in justice, and in honor. Humanity and justice command the rejection of that amendment; the interest and honor of our country support the other, and I trust with confidence that a large majority of this House will obey the sacred mandate.

I repeat, that my object is to protect innocence and to punish vice. If a bill can be formed to afford relief to innocent and distressed purchasers, it shall have my hearty support; if it goes to the protection and encouragement of vice or speculation, I shall be found in the foremost rank in opposition. I am willing to make the experiment.

Mr. Nelson said he would not, in imitation of the gentleman just sat down, address the passions of the members with the sweet-scented flowers of eloquence, but he would in plain and homespun language make an appeal to their understandings; and he hoped to be able to demonstrate that the present claimants, one and all, were not entitled to a single foot of the land in question, in point of national justice, in point of law, and in point of equity, and that if Congress granted their request they would do an act of high injustice to the whole body politic of the nation.

It astonished me, said Mr. N., to hear the gentleman from North Carolina (Mr. Holland) arguing in justification of the Legislature of Georgia, which made the fraudulent and villanous contract with the Yazoo speculators of 1795, and were I to go into an argument to prove his mistake, I should be deemed one of the most absurd of mankind. I should be endeavoring to prove what no man will deny. Every gentleman I have heard on this floor, except himself, and every one out of doors, nay even the claimants themselves, admit the corrupt views of the Legislature of 1795, and the fraudulent means employed by the speculators; a justification of such a contract coming from that respectable gentleman has indeed astonished me. Why, sir, the claimants rest their claim upon the ground of being innocent purchasers, admitting thereby that their grantors were rogues. If it be now admitted, and I believe it will be admitted by every gentleman in this House, except the gentleman from North Carolina, that those men calling themselves the Legislature of Georgia did make a fraudulent contract—a contract they were not authorized by the Constitution, nor called upon by the people to make, and which they could not make, with a set of unprincipled men as bad as themselves—if it be admitted that the contract was fraudulent, and made without power, it was void *ab initio*, in fact it never was a contract.

What was the power of the Legislature under the Constitution? Why, to make good and wholesome laws, to advance the happiness and secure the prosperity of the citizens. The Legislature is to be considered the mere agent of the people, not their master. If, as an agent, it made a contract that was fair, or perhaps feasible, and within their powers of agency, it would be binding upon the principal. Such is the doctrine of agency in public as well as in private life. But if I authorize an agent to do certain things for my benefit, and he is detected in a combination with three or four other rascals making a contract to cheat and defraud me of my personal estate, over which I had given him no authority, shall such a contract, though sanctioned with all the forms of law, be binding upon me, and shall I lose my estate by their knavery? No, sir, a court of justice, law, or equity, would equally scout the idea. Yes, sir, I aver it, and will maintain it, that from the moment the Legislature abandoned, or ceased to regard the interests of the people, which was the true rule of their conduct, from that moment they ceased to be the representatives of the people of Georgia, and all their acts done contrary to those interests were null and void.

If the act of 1795 was null and void, as I contend it was, and as every gentleman but one has admitted to be the case, then, I ask, how are the present applicants the innocent purchasers they claim to be? Why, sir, if this tract of country, which gentlemen tell us contains 50,000,000 or 40,000,000 of acres, was on and before the year 1795 the property of the people of Georgia, and the Legislature had no right to dispose of the same, and the people have never authorized a conveyance, I would ask whose it is at present? Why, sir, it belongs to the people of Georgia; the fraudulent claim of the claimants, called the Massachusetts' Mississippi Land Company to the contrary notwithstanding. Yet some gentlemen hint that the Legislature of 1796 had no right to rescind the act of 1795. Sir, they did not rescind this act, but passed a law declaratory of the nature of the act of 1795, that it never was of any avail, that it never did exist, that it was void *ab initio*, and that the representatives pretending to make it never were vested with any power on that subject. And all this is verified by the course which was taken by the people afterwards. They assembled in convention to revise and alter their constitution, and in that constitution they have incorporated the declaratory act of 1796, as an indelible mark of their approbation. Will gentlemen say that the people of Georgia have not a right to change or abolish their constitution for their own security, or for the promotion of their own welfare? I believe the right will not be denied, and they have exercised it. I cannot see after this, what ground of law, justice, or equity, the applicants can find to fix their claims upon. A great outcry has been made that they are innocent purchasers, and ought not to suffer for the faults of others. This outcry may take in a few weak men, but certainly this House, with a full knowledge of all the facts, are not to be swayed from the true balance of public and distributive justice. The number of innocent persons concerned in this transaction may be more or less. I know them not, and have only seen the names of two men; these call themselves agents, but agents of whom? Agents of the New England Mississippi Land Company. If we could learn the names of the members of this New England Mississippi Land Company, we might, from our personal knowledge, or from common report, form some idea of their standing in life. But no, sir, they do not present their petition on their individual subscription, but artfully and cunningly conceal themselves under the cloak of their agents; and to be sure, under the cloak of those gentlemen's names, they may talk of innocence. I am sorry to say it, but I can know no man when I stand on this floor to pass between the claimants and the people of the United States, that it looks too much like trick and concealment. All is not fair, or they would be open and above board in their application to the National Legislature.

I believe if the names of the applicants were disclosed, we might find among them some men of worth and talents, but I believe, at the same time, we should be able to trace the names of some of the greatest and most desperate speculators, remarkable for their success in preying on the indigent. We should very probably find some of those persons in connexion with those who preyed upon your Revolutionary soldiers, and obtained their final settlement certificates for a mess of pottage; the universal abhorrence which is now entertained of such characters would condemn their claims, almost unheard to the flames. Ah! sir, is there not something deep to be suspected when such names are concealed from the knowledge of this House? Viewing the subject in this light, I cannot consider the applicants as innocent purchasers, but rather as taking this color in order to avoid detection. How stands the fact? So far as we are informed, a set of men, combined from various parts of the Union, practised upon a weak and corrupt legislative body in Georgia, to get an act or pretended act to pass for the disposal of a vast territory—travel to the North, and there with others of their associates, contrive to change the names of the holders of the property, in order that they may get their heads out of the halter, and leave it upon the innocent purchaser to procure what they knew they themselves would never be able to obtain. I look upon the case to be something like the thief who having stolen a horse, and being likely to be taken, dismounts, and gives the horse to an honest countryman he has overtaken, with a request that he would walk him along the road to the next tavern, where he will wait for him. So the first set of speculators upon Georgia have made a third person an innocent purchaser, that they may obtain from this House what they well knew they never could obtain in their own right. I say this looks too much like trickery; but it is, I trust, a trick too stale to im-

pose upon the Congress of the United States. It is, I trust, a trick, sir, as old as the settlement of New England itself, and will not pass beyond its boundaries.

But let us take these innocent purchasers on their own ground. An innocent purchaser may be defined a person who verily believes that the party selling has a fair and legal title to what he is about to dispose of. Now will this cap fit the New England Mississippi Land Company? No, sir, it will not. On the very face of the deed conveying the land, the brand of the fraud is found. Not a man that reads the deed but can see the fraud. Was it ever known that when a man buys land he is willing to take a special warrantee, when he can have a general warrantee? But, sir, admitting that such might be the case, was it ever known that a man was willing to take a title without any warrantee whatever? Nay, worse than no warrantee, that he would, after paying his money, consent to stand in the shoes of another with all its risks and hazards, of which he has not even the smallest knowledge. Was such a man to come to you, Mr. Speaker, and make you such a proposition for the sale of an estate, would you not instantly conceive that the man was a rogue and meant to swindle you out of your money, or that he thought you a fool easily to be imposed upon? If this was not the course of thought your mind would pursue, what else could be your opinion of a proposition to stipulate such a covenant as there is recited in the deeds of the New England Mississippi Land Company? Their covenants say that they shall stand in the place and stead of the original grantees. If, then, the grant was not good in the original grantees, how, in the name of common sense, can it be good to those who by express covenant undertake to stand in their identical place and stead? If you state, sir, that you have no title, and yet I agree to give you money for a conveyance, and oblige myself to stand in your shoes, it is plain that I have not purchased any title. This, sir, is plain, sound sense, intelligible to every farmer and mechanic in the United States, as well as the lawyers at the bar. This covenant is their deed, and it appears to me that the purchasers were willing to enter on a gambling speculation of this kind. We will give one hundredth part of the value for your title, be it such as it is. If we lose, we lose little, if we win we make a great estate. Sir, this spirit leads on to a practice well known to happen every day. A man buys a ticket in a lottery, expecting to win the $50,000 prize. Hundreds and thousands engage in the purchase of tickets; yet there is but one $50,000 prize; and as all, except one, must miss of their aim, they ought and I believe they generally do set themselves down contented, although disappointed in their expectation. So, sir, was the case with the New England Mississippi Land Company; they no doubt expected to make twenty times, or a hundred times the amount of the money they risked in the Georgia land lottery; but they have drawn a blank, and ought to be content. Sir, it was nothing more than a gambling match between the gamesters of the North, and the gamesters of the South. For this time the South has won; perhaps the North may on the next gambling match recover or double their stakes. As to the speculators from the South, they had the advantage in the toss up; they said heads, I win; tails, you lose: they could not lose anything for they had nothing at stake. A gentleman who I have in my eye says, he pities these people; if he would condescend to take a view of them from the elevated stand I have taken, he would see little occasion for pity; he would no longer view them as innocent purchasers, but as gambling speculators, who, having adventured in a play they did not completely understand, have lost the game, and now, like gamblers of the lowest degree, they apply to Congress to return them their money.

The title of these men, as decided by the Commissioners, and as yielded by themselves, is neither legal nor equitable; they only claim on the ground of policy. I do not understand that policy. If I have a title to an estate, I claim the whole, I never compromise. If these persons are entitled to the fifty millions of acres, I say in God's name give it them; do not bring them down to five millions, or less. When they apply to this House for this small pittance of their claim, every one must conceive that they do it in consequence of a defective title. The men, whose names I have seen, are not the kind of men to compound; I am surprised that they would put up with such a scanty provision, they generally, I think, exact to the last farthing. These innocent purchasers of fifty millions of acres of land, who claim your pity, and ask for a part of five millions of acres, are men, that if I do anything for, it shall be justice. What kind of justice would this be considered in common life? My worthy friend from Baltimore, sells me goods to the amount of £500; I tell him I am able to pay him the whole, but then it will be justice to pay him only £5. What would he or the world think of me for such conduct? Congress, to be sure, is a liberal body; I look round this chamber to see the men, who make donations; five millions of acres, with ten millions of dollars to be given—to whom?—and for what? During the short time I have had the honor of a seat on this floor, I have been in the habit of presenting petitions, memorials, applications, &c., for a number of my old brother soldiers, worn down by disease and poverty, who have established the liberty, the independence, and the Government of this country. I have never seen the Committee of Claims, to whom these petitions have been generally referred, recommend the allowance of a single cent; but your purse-proud Yazoo speculators are to have ten millions of dollars, because they have the presumption to ask for it. *O tempora! O mores!*

Mr. Sloan.—Mr. Speaker, in the course of this debate, the time of the House taken up by the supporters of the resolution has been six hours and thirty-three minutes; and by the opposers five hours and two minutes, leaving a balance in our favor of one hour and thirty-one minutes. Hence, agreeable to equal justice, it is our turn now.

I shall first observe that none more than I regret the great warmth that has appeared in debating upon this important subject:—No less important than whether the present Congress will in any degree sanction an act which a former Congress has unequivocally declared to be fraudulent; and therefore to all intents and purposes null and void. This I take to be a true state of the question.

Respecting the warmth that has appeared, and which I acknowledge to have risen to too great a height; yet I believe it to have been the product of an honest zeal in the opposers of the resolution, from a conviction of the speculative degree of fraud that evidently appears in the Legislature of Georgia, and the original contractors of 1795; and, therefore, ought to be looked upon with a charitable eye; more especially when full retaliation has been made by the supporters of the resolution. Upon this subject, I shall only notice, hereafter, some ungenerous allusions made yesterday to my worthy friend from Virginia, (Mr. Randolph,) whose exertions in the sacred cause of liberty rendered his name dear to me, long before I had the pleasure of a personal acquaintance with him.

It has been said, that the perpetrators, or at least parties to this act, are men of the first respectability in the Union. To this I answer, that I do not know them; nor do I wish to know any man whilst sitting in the seat of judgment. But, granting the fact, does it sanctify the act? Is a fraudulent act less injurious to the community, for being perpetrated by a person or persons that once possessed the confidence of the people, or by being clothed in purple and fine linen? God forbid that ever such a sentiment should have place within these walls.

In the course of this debate, some represented the New England speculators as very wise; and others have represented them extremely ignorant. Permit me also to give my opinion, which is, that, if their virtue was equal to their knowledge, they would shine as stars of the first magnitude in the firmament of the United States.

Mr. Speaker, I desire that what I shall say upon this subject, may be considered as pointed at principles that I conceive to be wrong; and not at individuals, otherwise than as those individuals espouse and defend such principles.

Believing, as I do, that speculation has heretofore brought our country to the brink of ruin, I hope charitable allowance will be made, if in my subsequent observations I treat the subject (in the opinion of some) too severely.

An allusion was made yesterday to my friend from Virginia, (Mr. Randolph,) which I considered ungenerous; it was an intimation that he had borne no part in the Revolutionary war. Mr. Speaker, if patriotism is confined to those only who took an active part in that war, soon, very soon indeed, will patriotism be banished from within these walls. Yet a little space, until the all-conquering and irresistible scythe of Time will cut down all the noble patriots who took an active part therein, and number them with the silent dead!

We were also told by a member from Vermont, (Mr. Elliot,) from what source the greatest evil and injury to republicanism proceeds; viz: from such demagogues as the member from Virginia before alluded to (Mr. Randolph.) But, Mr. Speaker, notwithstanding the high ground on which that member stands, and his present exalted station, from whence he looks down upon the stripling and his friends, as one did in days of old upon little David; and notwithstanding his supposed superior strains of eloquence, in which he has so emphatically pointed out the late reign of terror, and the proposed union of honest men; as, in this happy land of liberty, infallibility is attached to none, I shall take the freedom of opposing my opinion to his, and say, that not an extreme degree of honest zeal for justice—although the same may not only have scorched the costly robes of speculators, but have caused the body to smart—is the most dangerous source of evil to these United States; but the supporters of speculation, and speculators—those most dangerous enemies of the just principles of our Declaration of Independence. This is the real source of danger, the Pandora's box from which our greatest national evils have and do proceed.

I cannot boast of being a soldier in the Revolutionary war, having been educated in a principle that doth not admit of bearing arms; but, Mr. Speaker, we have had a second revolution, from the powers of a host of speculators, who, as I have before mentioned, brought our country to the brink of ruin. Of the reign of terror that preceded this revolution, I can speak experimentally, having been threatened with imprisonment, and death, for my opposition to the party then in power. My wife and tender offspring were terrified with threats of my being executed for high treason, my estate confiscated, and they reduced, from a comfortable competency, to poverty and want. By whom was this dreadful dilemma, this reign of terror produced? I answer by speculators and their supporters. But a glorious revolution has been effected, not by force of arms, but by the power of truth and reason, those bloodless conquerors, more powerful than the sword! In this revolution my young friend from Virginia, beforementioned, bore a conspicuous part, and remains a zealous supporter of the just principles by which it was effected.

In the course of this debate, preaching has been mentioned. I do not mean to pursue that mode, but shall nevertheless mention a sentence contained in that good old book, so frequently quoted, but whose excellent precepts are too little regarded. It is in the proverbs of Solomon, which my father frequently recommended to my perusal, when but a little boy. The author mentions several great evils which in that day were common amongst men. I shall mention one great evil, which in modern days is common amongst men; that is, for men, after they become vested with legislative or executive authority, to countenance, encourage, and sanction by law, those things which they reprobated in others, when they were in power. Is not this observation verified in the United States at this time? We have reprobated

the law of primogeniture in England, by which the land obtained under the feudal system, is retained in a few hands; also, their chartered boroughs, moneyed aristocracy, &c. And are not we encouraging and increasing them? And have we not already heard within these walls the alarming doctrine, that a charter once granted cannot be disannulled?

In this happy country, land is equally divided, and it is evident that in those States where the land is divided into small farms, and generally occupied by the proprietors, it is in the highest state of cultivation, and most productive But, Mr. Speaker, so long as the human species remains liable to corruption, and to be seduced by pride, and an insatiable thirst for riches and power, so long will individuals be striving to destroy this equilibrium, on which depend the peace, liberty, and happiness of mankind. To effect their evil purpose in the United States, the most powerful engines are paper and land speculation. The latter of these, though more slow in its operation, is more certain and therefore more dangerous. It is, in my opinion, the most potent enemy we have to encounter, and most likely to produce in future ages what God grant may never be the case in this land, a numerous train of poor tenants, coming in the most abject manner to my Lord Nightingale, my Lord Scott, &c.

I did not expect, Mr. Speaker, that any member on this floor would have undertaken to support the principle of speculation, but, as that ground has been taken, and the highest authority in the United States adduced to support it, viz: the purchase of Louisiana, it becomes necessary to analyze both the causes and effects of the two cases, and thereby discover what analogy or likeness they bear to each other; and first, let us inquire what led to the purchase of Louisiana? The best answer to this query will be found in the debates of a former Congress, wherein all the learning, talents, and eloquence of divers members were strenuously exerted, and from the length of their speeches, I conclude, exhausted, to prove the absolute necessity of the United States to own the east side of the Mississippi, and the navigation thereof, alleging that it was the key and door of our western country; that we had nothing in our power to give as an equivalent by way of purchase, and, therefore, must take possession of it by force of arms. Was this the case with the New England Yazoo speculators, at more than one thousand miles distance? Was it the key or door through which it was necessary for them to transport the produce of their farms? Again, let me ask, was Louisiana purchased as property only for the President and Senate who ratified the treaty, or for every free citizen of the United States? I suppose the latter, in which opinion I am supported by a law of last session of Congress, declaring null and void all grants for land, above five thousand acres to one person; from which it appears not to be intended as an article of speculation.

I shall dismiss this subject with observing, that the human mind must turn indignant from a comparison of an act the most laudable and most praiseworthy that ever adorned the pages of American history, with an act universally acknowledged to have originated in fraud; and, as such, merits the detestation of every honest citizen. Yes, Mr. Speaker, when speculators shall be consigned to the contempt they justly merit, the purchase of Louisiana shall be recorded in the book of chronicles of the United States, as chief of the noble acts of, and under the administration of that great and magnanimous benefactor of mankind, our present Chief Magistrate.

I shall now proceed to a brief investigation of the legality of the Yazoo claims. It has been alleged that the Legislature of Georgia had a right to convey the land now claimed by the New England Mississippi Company. Granted, had the sale of the land been made honestly to the highest bidder, and upon the most advantageous terms for the benefit of the State, but not in the fraudulent manner in which the sale of the land now in dispute was made, wherein the Legislature who passed the act were purchasers themselves. In this sentiment I am supported by the highest authority, viz: the Congress of the United States, who have, since the fraudulent, pretended act of Georgia, on which the present claim is founded, purchased of said State the same tract of land. Now, if the sale to the Yazoo companies was just and valid, it necessarily follows that any subsequent purchase by Congress must be invalid, fraudulent, and unjust, and the United States a party to that fraud.

Mr. Speaker: Fully convinced that there is no legal claim, I beg the attention of the House to a brief investigation of the supposed equity of this claim. Our passions have been addressed by a member from Massachusetts, (Mr. EUSTIS,) in behalf of thousands of innocent sufferers. From this great number, one case has been selected; and, from the ingenuity and usual accuracy of the aforesaid member, there is no doubt but, out of so great a number, he has selected the one best adapted to his purpose. Let us analyze this case, and, when reduced to first principles, see what claim there is in it to the equity and justice of this House. It is a widow, who, we are told, has lost $80,000. By what means? By her husband purchasing as much of this land, at sixteen cents per acre, as amounted to upwards of $60,000; thereby putting into the pockets of the original speculators more than $50,000 in one sale, giving about seven times the original price for land yet in possession of the Indians.

Hence, it appears that this purchase was not made with a view of settlement, but upon a principle of speculation. Has this case a claim upon the equity of Congress? No more, in my opinion, than any other species of gambling, whereby a widow and children may have been injured in their property. Such cases, indeed, merit pity; but if Congress undertakes to reimburse every widow, whose husband has lost his property by gambling, we shall soon have an empty Treasury. It is said there are innocent purchasers. None such, in my opinion, has been made appear. I believe there are very few, if any; and if any there be, having been injured by swindlers of their own State, to them let them look for redress.

I shall now proceed to some remarks on the narrative of the predisposing causes and sale of the land now in dispute, given by my worthy friend from Pennsylvania, to which, from his usual accuracy and correctness, I give full credit; and if, in the course of my observations, I should bring into view the conduct of any who are gone from works to future rewards, I beg the members of this House to bear in mind that the conduct of deceased persons, connected with the subject in dispute, was first brought into view by the supporters of the resolution. To proceed: My worthy friend, before mentioned, (Mr. FINDLEY,) has not given us an abstruse clue, whereby we may unravel the mystery of iniquity, but presented us with a fair, complete, and finished portrait; he did not present us a key, but himself opened wide the door, and presented to our view the nefarious kennel—the Pandora's box—that contained more evil in the same space than was ever before known in the U. States, or I hope ever will be again. He tells us that not the long-legged speculators of the North came to Georgia, but the speculators of Georgia went to the State of Massachusetts. Who were those speculators? The Chief Justice of the United States and a Senator of the State of Georgia. Does the exalted station of those speculators lessen the fraud? No, Mr. Speaker, but in my opinion greatly increases it, and proves beyond a doubt that the Southern and Northern speculators acted in concert, and that for years they had been hovering over and with eagle eye watching their destined prey; and as soon as the Southern vultures found means to strike their horrid talons into it—knowing they could not in peace devour it in the South—they swiftly flew with it to their associates in Northern regions, the farthest boundaries of the United States.

The foregoing portrait exposes clearly to view the whole transaction, and in my opinion fully removes the plea of ignorance, and clearly proves it to have been a long-premeditated and preconcerted plan of the most fraudulent species of speculation that ever disgraced the annals of history. Upon the whole, it appears to me in so monstrous and horrid a shape, that I know of no name in modern language by which it can be properly described. I must therefore recur to the language of the ancients, and describe it under the similitude of the *great red dragon*, which St. John the Divine saw, having seven heads and ten horns, who with his tail drew down to the earth a third part of the stars of heaven! Has not this been literally fulfilled in our land? Has not this horrid monster drawn down, from a station where they once shone as stars of the first magnitude, a third part of those entrusted by the people with Legislative or Executive authority, even to the earth; insomuch, that, deluded by the glittering appearance of worldly pomp and show, and actuated by an insatiable thirst after earthly treasure, they have preferred their own emolument, and the prospect of raising their posterity to opulence and power, to the peace, happiness, and prosperity of the United States—as, in the present case, betraying the trust reposed in them, and sacrificing the interests of their constituents, at the shrine of fraudulent speculation? I shall conclude with fervent prayers on behalf of this beloved country that gave me birth, that the mighty Angel of Justice may speedily lay hold of this *dragon*, bind him with a massy chain, and cast him into the bottomless pit, there to remain, not merely one thousand years, but for ever and ever!

Before I sit down, I shall observe, that notwithstanding I shall vote against the present resolution, if a resolution is introduced for the purpose of bringing in a bill appointing commissioners to investigate the different claims, and select just claims and innocent sufferers' cases, if any such there be, with the proof thereof, to lay before Congress at their next session, in order to be then provided for and finally settled, such a bill shall have my support.

Mr. FINDLEY said that, after the attention he had experienced in communicating his opinions on this subject two days ago, it was with reluctance he called their attention a second time to the same question. He would not have done it if the opposition had been conducted in the usual manner, and if such honorable notice had not been taken of himself, while most of his arguments remained unrefuted, and some of them wholely avoided. His colleague (Mr. CLAY) had lamented the want of unanimity in the members from Pennsylvania, and particularly the want of his own vote. Mr. F. said that he did not know how his colleagues would vote till the question should be taken. He had never consulted them, nor the members of any other State on the subject, nor communicated his opinions to but a few of his colleagues in private, before the question came on. If the members from the State he represented had held a meeting on the subject, they had not informed him, and he did not believe they had; but be that as it may, he would inform the gentleman that he was not sent there to vote on either his opinion or theirs, but on his own. That, in making up his mind, he could assure his colleague that he never had taken greater pains and care to free it from prejudices on the subject, which he acknowledged had been strong, and to examine it in all its aspects by the rules of equity, expediency, and national faith; and that he had decidedly made up his mind. He hoped his colleagues had done so too. It was a subject on which good men might differ in opinion. He had not in any manner denounced his colleague for voting as he had said he would do, and he did not know what authority he had to notice him in the manner he had done. If we were obliged by the Constitution to be unanimous, it indeed suggested an idea of economy he had not thought of before. The State of Pennsylvania by sending one member to give the votes of eighteen, would produce a considerable saving to the United States, and he supposed his colleague would do very well to give the vote for the whole. Some other respectable gentleman, he said, had honored him with particular attention, but in such a manner

as he had too much respect for the character of this House and his own character, to follow with any remarks.

Mr. F. said he would not, at this late hour, detain the House with any observations on the laws of Georgia of 1795 and 1796, but would offer a few remarks on the title of Georgia to the land in question, as it respected these claims. A gentleman from Virginia, yesterday, (Mr. Holmes,) had read Vattel on the Law of Nations to prove that some of the Kings in Europe could not alienate the royal domains. He begged leave to observe that this maxim did not apply to this country, which had a common law peculiar to its circumstances. Many of them had vacant land, but this land was not considered so much as part of the sovereignty, as a source of revenue arising from its sale; and the power of disposing of it was vested in, and exercised by, the respective Legislatures; and the constitution of Georgia, in this respect, was similar to that of the other States. None of them had royal domains. Congress had repeatedly acknowledged this right in the Legislature of the State of Georgia, by soliciting a cession of land to be made by it to the United States, and finally by accepting a cession from it, on specified conditions. But being in undisturbed possession, was, agreeably to the practice of this country, sufficient to protect her grants. He believed most of the Union had made compromises of territory, and transfers, even of inhabitants, from one to the other, on the principles of compromise. The State of Pennsylvania has done so with all the neighboring States. The property of the islands of the river Delaware was settled by compromise with the State of New Jersey. The boundary between Pennsylvania and Maryland had been long contested, and was finally settled by compromise in such a manner as that Maryland rights for land in Pennsylvania, and Pennsylvania rights in Maryland were both protected. But the accommodation which applies more fully to the present case, was made with Virginia. On the conclusion of the Indian war which broke out in 1763, a settlement was formed at Redstone Creek, perhaps fifty miles or more within the chartered bounds of Pennsylvania, and the settlers claimed to hold under Virginia. It was forbid by the law of Pennsylvania to settle that country, and the Governor sent as Commissioners General Potter, Col. Allison, and Rev. Mr. Steel, to the place, to inform them of the title of Pennsylvania and to forbid the settling the land, it not then being purchased from the natives. The respectability of the Commissioners was supposed to give weight to the object. They informed the settlers that the land belonged to Pennsylvania, and warned them of the danger of persisting in an unlawful claim. This solemn and candid notice had not the desired effect; citizens from other colonies, and even from Pennsylvania, flocked to that part of the territory, professing to hold under the State of Virginia. At this time, the government of Virginia had given no official titles to the land, but it was well known that the price of land in Virginia was much lower than in Pennsylvania. No such claim was ever made by the United States to any of the territory of Georgia, nor such warning given against purchasing or settling the land.

In a short time after this, however, Lord Dunmore, the last Royal Governor of Virginia, opened a land office in that country, and issued land warrants at one-tenth of the Pennsylvania price, and lesss than one-twelfth of the fees; and at least three counties were organized by Virginia, within the chartered bounds of Pennsylvania, in which only one county court was organized by Pennsylvania, and the justices of that court were arrested while sitting on the bench, at a place near one hundred miles within the chartered limits of that State, and above seventy miles from the limits afterwards made by compromise. The Revolutionary war commenced, and the settlers under the authority of both States, made temporary compromises, by which the country was protected against invasion and property secured.

Though there had been contentions between the settlers, there had been harmony between the States; and after various attempts which had failed, before the war with Britain ceased, the two States made a compromise. Pennsylvania gave up to Virginia half a degree of her chartered claim, and Virginia gave up to Pennsylvania three organized counties, with their inhabitants. Let it not, however, be said that the actual settlers alone were secured in their pre-emption right, as was usual in Pennsylvania. This was not the case. Those who proved that they held under Virginia, procured patents from Pennsylvania at less than one-tenth of the price which those who held under Pennsylvania had to pay, and those who claimed unseated land under Virginia grants held their claim. That fine body of land called Washington's Bottom, in Fayette county, above forty miles within the present limits of Pennsylvania, has been sold without contest; and about the year 1786, General Washington, in the character of guardian, recovered seven or eight plantations by the decision of the State court of Washington county, in Pennsylvania, on which so many families had made large improvements, without suspicion of a prior claim, and there is now a claim of the same kind before the supreme court of Pennsylvania, brought by Craughan's heirs, to a much larger amount. There was a larger amount of land contested between Virginia and Pennsylvania than that which is reserved in the convention with Georgia and the United States to satisfy claims. The claims under Virginia had extended into what is now five extensive counties of Pennsylvania. Adding to this half a degree of latitude of the chartered claim of Pennsylvania, for about ninety miles of length, ceded to Virginia, amounts to much more than the residue of the five millions of acres, which is the greatest amount in question. All this was amicably settled by compromise, and the sister States continued in harmony and the country was settled with respectable citizens. The case, he said, which he had mentioned the other day of the claims of the settlers at Wyoming, had been supposed to teach an opposite doctrine; but the

members who were acquainted with the circumstances would acknowledge it did not. They must acknowledge that the most southern boundary of that State, bordering on Maryland and Virginia, was settled to the utmost western boundary; that the northern boundary, which included the Connecticut settlement, was not settled to half that extent, or at most, very dispersedly settled; that at least ten or twelve counties on that side of the State, laid out by law, could not be organized for want of people, and that all the other side of the State east of the Ohio was thickly settled and organized long ago, and that several counties west of the Ohio are so far settled as to be organized on the southwestern boundary; such were the different effects of a compromise and a continued contest.

Mr. F. said he had reason to beg pardon of the House for calling their attention to so tedious a narrative, and which they might suppose had little relation to the question; but it was his opinion that if the report of the committee and the treaty or convention with Georgia was not carried into effect, though he might not live to see it, the examples he had stated would be found to have a bearing on the subject; but on this view of it he could not enlarge, and he hoped his apprehensions would not be realized. But he was astonished to observe his friends, who on this subject took the other side of the question, depart so widely in their arguments from the question before the House. He said that the laws of Georgia passed in 1789, 1795, and 1796, were certainly not now before the House. The law of Georgia passed in 1789, and the still more extensive, and, he believed, from good information, the most corrupt sale of 1795, were all set aside, and they were not then called on to decide on a territory as extensive as any kingdom in Europe, as the gentleman just sat down (Mr. Sloan, from New Jersey) had alleged. These monstrous speculations had vanished, as many others had done; the whole square miles it would contain was but little more than was not long since contained in one county through which he had to pass going home, but which is now divided into more counties. He said he disapproved of monopolies, but still more of rendering all property insecure. He disapproved of such speculations.

Mr. F. said, though he had had the best opportunities, he had taken no share in those or any other speculations, yet while there is so much land in the United States at market, he had found they were not attended with all the evils which he had anticipated; they paid high county and road taxes, which they would not have done if they had not been owned by individuals, and no profit could be obtained from them but by sale to actual settlers, which could now be done, on easy terms, and in small instalments. The foreign companies, who held much larger bodies of land in Pennsylvania than any other, were much more mischievous. The poor actual settlers were then dragged 400 miles to the Federal courts in Philadelphia, and from thence to this city, to have their claims decided; and even if they gained the action, they had to part with their plantations to pay their own expenses and the attorneys' fees; this, though a great evil, he believed was an incidental one. That clause of the Constitution of the United States which had been construed to favor this practice, he believed was never intended to bring municipal cases before the Federal courts, and the construction which it had obtained in practice, he had no doubt would soon be remedied. He acknowledged he might be thought to have wandered from the subject, but he supposed he would obtain an easy excuse from gentlemen on the other side, some of whom, in their arguments, had scarcely ever touched the point in question.

This observation might seem harsh, but if time would permit, it could easily be substantiated. The candor of the gentleman from Maryland, (Mr. Nelson,) who was up this morning, he said, he was sure would induce him to acknowledge that, instead of arguing against the obligation of the convention between the United States and Georgia and the law of the United States, whereby we are obliged to apply the deposit of the residue of five millions of acres, or part thereof, to satisfy these claims, or to return the land to the State of Georgia; he had taken other ground, he had collected into one mass all the corruption of the Legislature of Georgia yet unpunished by the Judiciary of their own State, and all the corrupt influence of the original purchasers from that Legislature, and this gentleman, with others on that side of the question, had heaped all the guilt of this speculation and of all the speculations, if not since the world began, at least from the commencement of the Revolution, on the heads of innocent and honest purchasers, against whom, though there was above 1,200 of them, no charge of fraud was brought, and whose characters had been asserted not only to be unimpeachable, but very respectable both in a moral and political point of view, by members whose testimony was entitled to the highest respect; yet the contrary had not only been presumed but argued from as an established fact. He acknowledged, however, that the gentleman just sat down (Mr. Sloan) had admitted this position was not supported by any kind of testimony, but had told the House that he had found or created a clue out of his own imagination to trace their guilt, and to convince him that the people at 1,100 miles distance acted in concert with the corrupt Legislature of Georgia in preparing a snare for themselves and their friends, but the gentleman had not informed the House how to trace his imaginary clue; visionary clues had been mentioned for other purposes formerly in Congress, but never traced nor realized.

Mr. F. said, that it had been his lot to have been in public bodies of different kinds, in the State government, and also in the Congress of the United States, where party spirit and irritation had run very high—where sometimes one party preponderated and sometimes another, and where parties were nearly equal. But on no question before the present had he heard corrupt motives ascribed to members who differed in opinion; at

no time had he heard members called on to rescue their characters from the infamy of corruption; at no time had he heard the trumpet of party spirit sounded on the floor of a public body to influence a decision of a claim of property; at no time had he heard the opinions or power of another branch of the Government brought in as a substitute for argument; at no time had he heard the characters of individual members arraigned, instead of replying to their arguments, before the present occasion.

During all his opportunity of observation, Mr. F. said, party spirit was always exerted about the construction of the Constitution, or about the measures of Government, and even in such cases it was never permitted to be mentioned in argument with impunity; but the mention of party in the decision on claims of property would have been considered as a breach of the rules of order and decency by all parties. In times when party spirit rose to an alarming height, he never, even out of doors, heard of any decision on a claim of property ascribed to the influence of party. However far one party might charge the other with political error, and oppose the political measures they pursued, he never had heard the morals or the motives of members attacked on the floor of the House, but had always observed the most remote attempt of that kind suppressed by the authority of the House.

Mr. F. acknowledged he had been astonished at the manner in which the arguments in opposition to the report of the Committee of Claims, in favor of carrying into complete execution the convention with the State of Georgia, had been conducted. These arguments had been uniformly applied to cases that had no connexion with the question before the House. Whether the Assembly of Georgia, in 1789, had made a good bargain or a bad one, or whether the succeeding Assembly, in defeating that contract, had acted on honorable or dishonorable principles; or whether the Assembly of 1795 in their law for the sale, had acted so corruptly as to vitiate the contracts made under that law, though all the other laws made by that same Assembly were sustained; or whether the *ex post facto* act of the Assembly of 1796, impairing the obligation of contracts contrary to the Constitution of the United States, was sufficiently justified by necessity, and could annul the former contracts for a valuable consideration, were questions that had never been decided by a court of justice, nor had Congress any negative or revisionary powers over the laws of Georgia.

Mr. F. said that the whole question before the House arose from the book in his hand (the President's Message.) In pursuance of a resolution of Congress, for that purpose, the President had instructed three commissioners appointed by law, to treat with the State of Georgia for a cession of the territory, or part of it, then possessed by the Indians. The State of Georgia had also appointed three commissioners on their part to meet with the commissioners fully authorized by the United States. A convention or treaty of cession was made to the United States of fifty-two millions of acres of land, subject to specified conditions; five millions of acres of which was appropriated to satisfy specific claims; and the residue, after compensating those claims, was appropriated to satisfy, quiet, and compensate other claims obtained under any law, or pretended law of Georgia, and if not so appropriated within one year, the lands will revert to the State of Georgia.

A law was passed in 1803, to carry the convention of Georgia into execution, in which the residue of the five millions of acres, after the specific claims were satisfied, are expressly appropriated to satisfy, quiet, and compensate the claims in question, and the claimants have been, by Government, invited to release their original claim to thirty-five million of acres, and to make proposals of compromise, and, in the meantime, to register their claims in the office of the Secretary of State. At considerable expense they have made proposals of compromise, and registered their claims, and proposals have been made by the authority of Government to them; and these mutual proposals of compromise have been laid before the Congress by the President, in order that commissioners may be authorized to settle and adjust the claims, and satisfy, quiet, and compensate them, on equitable principles. These, he said, were the facts on record, and from these facts he considered the Government to be under a moral obligation to apply the residue of the five millions of acres, amounting probably to little, if any, more than four millions of acres, and, as a member of the House, he was convinced that he was under a moral obligation to vote for it. He repeated that, agreeably to the opinions of the commissioners, though neither the United States nor the State of Georgia were suable in law, and the claimants had no direct legal remedy, yet that the interest of the United States, the tranquillity of those who may hereafter inhabit the territory, and various equitable considerations, rendered a compromise expedient; a full indemnity is not proposed nor sought.

Some, however, in opposition, had asked, how could this interest of the United States be promoted by it? He would, also, ask if it was not the interest of the United States to fulfil her engagements with good faith? She having never purchased or paid for the land in question, but received it as a deposit to be applied to the relief of those injured claimants, or to be returned to the State of Georgia, whose Legislature had done the injury. The State of Georgia made the deposit for the purpose of making some reparation for the injury, and lest the United States should apply it to her use, had exacted the obligation of returning of it if it was not so applied. He confessed, when he first saw the conditions of the act of cession, he thought this provision expressed an unreasonable jealousy of the United States. But when he heard gentlemen, when argument failed, declaim that, if we applied the residue of the five millions of acres for the purposes for which it was deposited with Government, and appropriated by both the mutual act of cession and the subsequent law of Congress, that we were putting

our hands into the public purse, robbing the public of millions of dollars, &c., he was astonished.

He said he would ask these gentlemen if they were convinced, on dispassionate examination, that, laying hold on this deposit for the use of the United States, would be for their interest? He was persuaded it would not. The commissioners report that there is above three millions of acres adjoining the Mississippi freed from the Indian claim, and these settlements had been made long since, and the land office of the United States has been open for some time; yet we all know that, notwithstanding the great advantages of the situation, the lands sell and the country settles very slowly indeed. Compare this with the State of Tennessee, which has now three members in this House, and very lately was not known as a State. Compare it with the State of Ohio, which lately was an Indian hunting ground, and seat of war, and much more remote from market, and yet this wilderness is now grown to a populous State. He asked why the lands on the Mississippi, with such superior advantages, did not sell, and the population increase in some proportion to other new settlements? The reason to him was plain. Where the title was clear, where there was no danger of future disputes, good people would emigrate and settle their families; where it was not so, no wise man would run the risk of vesting his property, and leaving his family under a cloud of uncertainty.

The United States have purchased fifty-two millions of acres from Georgia, for which they are to make the payments out of the proceeds of the sales, besides the reserve of five millions of acres to satisfy claims against that State. Out of this, in the first place, specific claims of actual settlers, and some others, are to be satisfied, to perhaps more than one million of acres. Georgia sold lands to an amount unknown, in 1789, to the Virginia and Carolina companies, for which part payment was received, and in 1795, that State sold what the commissioners estimated at thirty-five millions of acres, for which payment was fully made, and patents granted in due form, and, by the original patentees, sold to others. None of these sales have ever been set aside by a court and jury, without whose decision no man, under either the Government of the United States or the individual States, can be legally divested of his property. These facts are very generally known, and every man of common information knows, that though the claimants cannot have an action against the State of Georgia or the United States, yet they can have an action against any or all the actual settlers on the land which they claim. This apprehension, if it was worse founded than it is, would be sufficient to prevent the sale and settlement of the land until these claims are settled by compromise, agreeably to the convention with Georgia, and the usual practice of the other States, and the original claim relinquished. Experience and observation had taught him, he said, that the sooner accommodations of this kind were made, they were the easier and the cheaper done. He added, that quieting and satisfying twelve hundred respectable and injured claimants and their connexions, who had been injured by their confidence in the law of a State, and in men who stood high in Government, was certainly the interest and duty of Congress, when it could be done without loss, which it certainly could in this case, for the land in question had cost the United States nothing, but was a deposit from Georgia for that very purpose.

Mr. F. said, that if by the compromise the claimants obtained and accepted of the ninth or tenth part of the land which they had purchased and paid for, they could gain nothing by it except by actual settlement; that compact settlements and improvements made in consequence of the compromise would increase the value and encourage the settlement of the land adjoining, and remove the cloud of doubt that would hang over the sale of these lands, and would also strengthen and enrich the United States in the quarter in which it was weakest and most vulnerable. These considerations had induced him to believe that rejecting the amendment moved, by the gentleman from Virginia, (Mr. CLARK,) and agreeing with the report of the committee was for the interest of the United States, even if they were under no obligation of law or justice. He said he could assure the House that he had possessed as strong prepossessions against the speculations of Georgia as he thought any man could do; that he had examined every avenue of information respecting the case, and sought to find every argument against the claim that his judgment and conscience would admit, before he had to sit on the solemn and awful seat of judgment, before he was called to decide on the case, a case wherein the faith, the honor, and the future peace of the United States, and the fortunes of individuals, were deeply interested, but he undoubtedly had endeavored to divest himself of every prejudice, of every prepossession. To gentlemen who had used the unprecedented freedom of attacking his motives instead of his arguments and of implicating his virtue, he had a right to put the question: Had they divested themselves, of all prepossession? Were they influenced by no prejudice? But passing this, those attacks, without example in any public body, and not justified by any rule of order, had occasioned other members to make declarations of their own character, which nothing but the singularity of the attacks could justify. He thought he was also justified in declaring that he had not now, nor never had any interest in the Georgia or any other speculations, nor had he any friend or relation, to his knowledge, that had; and none of the owners or agents of the companies, or their friends, had attempted to influence his mind on the subject. In making this unusual declaration, he was certain he would be believed by those who knew him best; they knew that he never had even a lawsuit about land in court in his life.

Mr. F. said that, if he had not taken so much pains to understand the subject as he did, the arguments in opposition to the report of the committee and the manner in which the opposition

had been conducted, would have given his mind a bias in favor of the report. During all his time of observation, and he had not been an inattentive observer, he always found a good cause best supported by arguments that had a close analogy to the subject, and candid address to the judgment, without inflaming the passions. He long had been in the habit, when he came into a court of justice, of judging of the goodness of the cause by the manner of the arguments; whenever he heard a good attorney use sophistry, or arguments that had no real bearing on the subject, or have recourse to animated declamation, he believed the cause was bad, and in this he had seldom been mistaken.

He asked, why was all this heat and uncommon zeal? The gentlemen knew well that no public property was at stake, nor any political principle proposed to be perverted. They knew well that no fraud was proposed to be countenanced. If the Assemblies of Georgia of 1789 and of 1795 were corrupt, and committed frauds on people at a distance, and sold lands to the amount of forty or fifty millions of acres, that monstrous and fraudulent sale would be corrected. The corrupt legislators indeed would not, nor had not been punished; but the innocent purchasers would—they would not at most get the residue of five millions of acres after satisfying numerous claims? How can gentlemen say that we propose to reward frauds, when we propose only to authorize the President to appoint, no doubt, the three best men that the United States can afford, to distribute, not an empire, but the residue of the five millions of acres, or part thereof, among the innocent and injured purchasers, who have, agreeably to the law for that purpose provided, made their proposals and registered their claims? Do we doubt the President's discernment and integrity in the choice, or the ability and honesty of the Commissioners he will choose? For his own part, Mr. F. said, he had no doubt of either; and when he opposed the fulfilling the moral and political obligations of the Government with good faith, he would disclaim the name and character of a republican.

Mr. J. Clay requested his friend, Mr. Clark, to withdraw his amendment, that the House might meet the question at once.

Mr. Clark thereupon withdrew the amendment.

Mr. Varnum begged permission to set the gentleman from Maryland (Mr. Nelson) right. The Committee of Claims had reported a bill, making provision for those who were disabled by known wounds received in the service of the United States during the Revolutionary war, which bill had been twice read, and referred to a Committee of the Whole.

Mr. Nelson.—It is true, sir, there is such a bill upon your table; but where is the gentleman on this floor that will say the bill will pass? besides, it contains so many clauses, such restrictions and modifications, that I really do not know the man who will be bettered a single cent by it. I am not throwing any imputation upon the Committee of Claims; they, no doubt, do their duty; I am simply speaking of the liberty of Congress, and comparing a Yazoo land speculator with an old soldier. The one asks you for an annuity of forty dollars to make him comfortable in his old age; the other, in all the bustle and gayety of life, modestly requests a sop in the pan; give me ten millions of dollars, and that will stay my stomach until dinner is ready; I will call upon you next year. We are about giving five millions of acres of land to stock-jobbers, speculators, and gamblers; this they claim of the liberality of Congress. It is an old saying and a true one, that a man ought to be just before he is generous. We have on our table a statement from the Secretary of the Treasury, stating that there are liquidated claims, justly due from the United States to individuals, to the amount of $290 000; those persons are as undoubtedly entitled to the payment of their just debts, as Yazoo men are to our donations. But, say gentlemen, this is a proper subject for you to exercise your liberality on. I have no idea of that species of liberality, which takes from the body of the community their pence in order to give it away by pounds to individuals. There was a celebrated highwayman in England, of whom it was said, he robbed the rich to give to the poor; I do not know but his morality was better than ours, for we are about to rob the poor to give to the rich. If we must be generous, for Heaven's sake, let us search for more worthy objects; let us look for the war-worn soldier; for a numerous family in distress, and then I will say, be liberal: but no, you will not do that. Recollect, however, that the blessings of the widow and the orphan will be more acceptable to the Deity than altars smoking with the blood of hecatombs.

I am sorry to detain the House so long. I will just briefly recapitulate the reasons, why I do not consider a compromise of this claim to be consistent with good policy. It is not politic to do that which is unlawful or unjust; the act of the corrupt Legislature of Georgia, of 1795, never had any validity; it was void *ab initio;* the faith of the people of Georgia was never pledged; it could not be pledged; for the Legislature had no authority on the subject. If, then, there never was a title granted by the Legislature, these innocent purchasers could not obtain it; they had also notice of the fraud, and cannot therefore be deemed innocent purchasers. If they had a title, then Congress are about to do them injustice, by granting them five instead of fifty millions of acres; and lastly, on the score of liberality, they have *no* claim, for it is not liberal to take from the pockets of our constituents money to increase the hoards of speculators. We are appointed guardians of the public purse, and it is our duty to prevent a public robbery.

Mr. Varnum.—I do not mean to impeach the motives of any gentleman, but wish to assign reasons why I shall vote in favor of the resolutions reported by the Committee of Claims. They are reasons which may exonerate me in the opinion of those gentlemen who differ from me on the

present question; and they will be satisfied, when they are convinced their own motives are pure; that mine are the same, although we differ in the views which we take of the subject.

Here Mr. V. recited, in chronological order, all the transactions which had taken place since the commencement of our Revolutionary war in relation to the back lands of the State of Georgia, from which he inferred that the Yazoo act of 1795 was as justifiable as any grant ever made by that State, and that the consideration was equal, if not superior, to any which she had previously obtained.

With respect to the present claimants, he did not conceive they had notice of fraud; that never appeared to him to be the object of the communication of the President of the United States to Congress, in February, 1795. He said, he would give his reasons why he thought that was not the object of the communication. We had recently been engaged in a very extensive Indian war, the flames of which were scarcely smothered, and the exposed situation of the western part of Georgia was such as to render it at times extremely desirable that Georgia should make a cession thereof to the United States. It would be seen, from a perusal of the Message, that the President (Washington) deprecated a continuance of that war; there is not a word in that Message that points to the purchase of the territory by individuals.

[Here Mr. V. read the Message, and everything connected therewith.]

At length Congress finally succeeded in obtaining this land by the cession of Georgia; and if Georgia had no right to dispose of her vacant territory to individuals; neither had she the right to dispose of it to the Union. So well convinced was Georgia of some lien being held upon the property by these and other purchasers, that she made a reservation of five millions of acres to be distributed among the claimants, under the sound discretion of Congress. Mr. V. said, he did not believe the United States entitled to any part of that five millions of acres, while there were any of the claimants of lands under the Government of Georgia left uncompensated. Hence, he did not conceive the position which had been taken a fair one; that we are about to put our hands into the public purse to reward a gang of speculators; or that we are about to rob the poor to give to the rich. He considered Congress as holding these five millions of acres merely in trust for those whom they may find fairly entitled to it. He concurred most heartily in the opinion which had been given by the Commissioners, that "sound policy requires a compromise." He had no concern, no interest in the decision of the question. He mentioned this in order to show gentlemen that his motives were as pure as their own, although their votes might differ.

Mr. Stanton.—Mr. Speaker, I had concluded to have satisfied myself by giving a silent vote on the amendment offered by a gentleman from Virginia, to the report of the Committee of Claims, relative to the Georgia lands. But as an attempt was made yesterday by an honorable gentleman of the committee from the State of Kentucky, with a view to criminate the conduct of the majority of the committee, and in his superabundant goodness, to implicate me in a particular manner, by inuendoes, that a republican member of the committee had gone over to the federal side, it becomes necessary for me to reply. Were that the fact, I shall always take a pride in so doing whenever they happen to be in the right. But the gentleman is incorrect in his statement; the fact is, I never had but one opinion on the subject, sir, when your committee met upon the stupendous speculation which has involved so many serious consequences to the safety and honor of the nation, and such intemperate discussion; that has wounded the feelings and censured the motives of venerable statesmen, whose talents, patriotism, and uniformity of conduct, in support of the rules of morality and sound policy, have never been doubted before. Mr. Speaker, when the committee met they heard the claimants, and those gentlemen from Georgia who opposed the claims with great ability. Your committee then entered into an investigation of the subject. The two honorable gentlemen from Virginia and North Carolina opposed the claims of the petitioners with cogency, to show that the claimants had no right in law or equity, and that it was both imprudent and impolitic for Government to interfere. The honorable gentleman from Kentucky seemed disposed to decline argument, although very able. I endeavored to provoke him to it, but to no purpose. Sir, the honorable member from Virginia who introduced the amendment, advanced a doctrine dangerous to the peace and welfare of the community, in my opinion. That a subsequent Legislature, or Convention, possesses a legitimate right of rendering null and void the doings of an antecedent one of equal constitutional power. Sir, if this pernicious doctrine prevails, I ask where are your boasted liberties, or that security of our persons and property so essentially necessary to our happiness? Gone forever! If this abhorrent doctrine should be sanctioned by Congress, our laws, however just and necessary, passed at the present session, may not only be repealed, but their retrospective operation rendered a nullity. Sir, the idolatrous tenet of our Judiciary, who assume the right not only of expounding and declaring the law, but also of pronouncing what laws are Constitutional, and what are unconstitutional—Mr. Speaker, all the imported diamonds of the East cannot out-blaze the crimson that ought to stain our cheeks, if we admit such dangerous maxims. Experience has taught us the bad effects of our Judiciary system; the tenure by which they hold their offices is such, that they consider themselves too often independent of heaven and earth; it puts the lives of our fellow-citizens at hazard. The honorable member from Maryland, whose lungs are quite equal to his talents, though both eminent, told the House he would not speak to their passions, but to their understandings. In the latter attempt he has failed. He then relapsed into censure; paraphrased on the corruption of the Legislature

of Georgia; that the claimants were speculators and swindlers, but without proving his assertions, he entertained the House with some funny anecdotes; told us we must be just before we are liberal. I confess he appeared animated, as though he considered himself addressing an ignorant jury, and was laboring to ram down their windpipe, like a fish, tail foremost, a fictitious evidence. The venerable gentleman from New Jersey, whose candor and sagacity on most occasions are conspicuous, rose, and after indulging himself in the order of the day; declamation and censure against speculators, and their fraudulent conduct, as dangerous to the peace of the community, he gravely read an extract from the best of books, an account of a red dragon, which would undoubtedly devour all those concerned in speculation. Sir, I could hardly suppose the gentleman serious, when I recollected he recently informed me of his intention to enter into the business himself. Sir, I hope he will not, lest the red dragon should devour him, as well as his brethren, the Yazoo claimants, and the nation lose his aid in her councils, and the State from which he came, a useful citizen. Sir, I have taken as correct a view of the whole ground on which the claims rest, as my humble abilities admit, and every inquiry and step I have taken, tend to confirm my early impressions, that sound policy dictates the measure, not merely because the Commissioners recommended it in their report made to Congress, and in whose talents and integrity, I place the utmost confidence, and Congress seems (by their various acts) to be disposed to satisfy equitable claims. If they shall appear unjust, they will be rejected. Sir, it is not for me at this late period of my life to quit the field because some of my political friends have apostatized from republicanism. I do not entertain a shadow of doubt of the correctness of the position I have taken; I shall persevere to the end, for such and such only will be saved. Sir, I am equally determined to disregard the frowns of tyrants, and the more despicable wheedlings of sycophants, under whatever garb they may appear. This is my political creed. This is my ultimatum. So help me God.

Mr. Van Cortlandt called for the reading of the resolution reported by the Committee of Claims, which being read, as follows:

Resolved, That three Commissioners be authorized to receive propositions of compromise and settlement, from the several companies or persons, having claims to public lands within the present limits of the Mississippi Territory, and, finally, to adjust and settle the same in such manner as in their opinion will conduce to the interest of the United States: *Provided*, That in such settlement the Commissioners shall not exceed the limits prescribed by the convention with the State of Gergia.

Mr. Van Cortlandt then moved to strike out the word "finally," and to add the following clause to the resolution: "And that the compromise shall not be considered binding on the United States, until confirmed by Congress;" in order that the decision might again come before Congress, that the doings of the Commissioners might not be binding on the United States until confirmed by another Congress.

Mr. J. Randolph.—I hope the worthy gentleman from New York will, at my request, consent to withdraw his amendment. I ask it, because a resolution of a similar nature has been already referred to Commissioners appointed on the part of the United States, viz: the Secretary of State, the Secretary of the Treasury, and the Attorney General. They were authorized to receive offers of compromise from these very claimants, and report thereon to the House. They have done it. Do we expect to get Commissioners more able; men of greater talents; of more sagacity; more tried fidelity, or more impartiality than they were? Can you expect to receive propositions of compromise more beneficial than those which have been already received? The course which the worthy gentleman has pointed out, has been already travelled; those Commissioners have exercised that very authority which his proposition goes to vest in a new board; they have recommended a course for us to pursue; they have told you that there was fraud in the original contract; that it was void *ab initio;* they have told you no title can be derived under it; yet they recommend a settlement. They have, however, stated no reasons in support of their recommendation. When I first read their report, I was filled with unutterable astonishment—finding men in whom I had, and still have, the highest confidence, recommend a measure, which all the facts and all the reasons which they had collected, opposed and unequivocally condemned. I feel myself wandering back into the field of the main question. I meant to confine myself simply to oppose the alteration just proposed. I may, however, be permitted to say, that it has been, if not a well fought field, at least, if they prove victorious, to them a dear bought victory.

Mr. Van Cortlandt made an offer so to modify his motion as to confine it to striking out the word "finally."

Mr. J. Randolph spoke against retaining even that part.

Mr. Huger said he was in favor of the motion for striking out, in order that Congress might make the final decision, as he conceived that they were more competent than any three men, be they who they may. He had, on a former occasion, voted for the examination by the Commissioners, but he never gave his vote that they should finally decide. Congress, on this occasion, should be the *alpha* and *omega*.

He was now convinced, from what he had seen, that it would be absolutely necessary for the General Government to compromise the matter, and he thought that it could by no means be done so well as by Congress itself. At the last session he had voted for a similar amendment, and he was anxious that it should obtain at this time. The next Congress would be called upon by the people, to whom we have made an appeal. If they decide against this claim by sending Representatives to this House who are opposed to it, let their fiat be the law.

Mr. Van Cortlandt hereupon withdrew his motion for amending the resolution, which was revived by Mr. Huger, and seconded by Mr. Holland.

Mr. Jackson said he was opposed to the amendment. He would prefer joining with the gentlemen who were in opposition to the measure rather than see this amendment carried. He was fully convinced that the House of Representatives was totally incompetent to decide upon fifteen hundred claims, which assumed as many different shapes. It would occupy the sessions of two years, and at last would probably be decided with less equity than it would be by Commissioners. He hoped gentlemen would not give their sanction to the amendment, and he hoped the decision would be taken on the general question, and that it would be final. He had no doubt but that Commissioners would be found equal to the task, and that they would not be deterred from doing justice by any circumstances which had taken place either within or without these doors.

Mr. Huger requested the yeas and nays might be taken on the question for striking out the word "finally," but not being supported by the Constitutional number of members, the question was put on the amendment, and six members only rose in favor of it.

The yeas and nays were then taken on the resolution of the Committee of Claims, and decided in the affirmative—yeas 63, nays 58, as follows:

Yeas—Willis Alston, jun, Simeon Baldwin, Silas Betton, Phanuel Bishop, Adam Boyd, John Boyle, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Benjamin, Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, Henry Southard, Joseph Stanton, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, and Marmaduke Williams.

Nays—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, Isaac Van Horne, John Whitehill, Alexander Wilson, Joseph Winston, and Thomas Wynns.

The resolution was of consequence agreed to.

Mr. J. Randolph.—On this question I have nothing more to say than to congratulate my friends on the vote just taken. We are strong in the cause of truth, and gentlemen will find that truth will ultimately prevail. When I compare the votes of this session with some of the votes of the last, my objections to refer this subject are almost done away. In whatever shape the subject may be again brought before the House, it will be my duty, and that of my friends, to manifest the same firm spirit of resistance, and to suffer no opportunity to pass of defeating a measure so fraught with mischief.

Mr. Dana moved to refer the resolution to the Committee of Claims to report a bill.

Mr. J. Randolph opposed the motion.

On a division of the House, Mr. Dana's motion was carried, when the House adjourned.

[On a subsequent day, a bill was introduced for compromising the claims; but it was not acted upon by the House during the remainder of the session.]

Monday, February 4.

The Speaker laid before the House a letter from the Secretary of War, transmitting a report in relation to sundry claims to land for military services rendered in the late Revolutionary war, in pursuance of the act of the nineteenth of March last, entitled "An act granting further time for locating military land warrants, and for other purposes;" which were read, and referred to Mr. Southard, Mr. Gregg, Mr. Hastings, Mr. Trigg, and Mr. Lowndes, to examine and report their opinion thereupon to the House.

Resolved, That, during the trial of the impeachment now depending before the Senate, this House will attend, at ten o'clock in the forenoon, and proceed on the legislative business before the House, until the hour at which the Senate shall appoint, each day, to proceed on the trial of the impeachment now pending before that body, and that the House then resolve itself into a Committee of the Whole, and attend the said trial.

Mr. Findley, from the committee to whom were referred, on the twenty-eighth ultimo, the petition of the members of the Presbyterian Congregation in Georgetown, in the District of Columbia, reported a bill to incorporate the Trustees of the Presbyterian Congregation of Georgetown, and for other purposes; which was read twice and committed to a Committee of the whole House on Thursday next.

The Speaker laid before the House a letter from the Postmaster General, accompanying a report relative to post roads within the United States, which have not produced one-third part of the expense of carrying the mail upon the said roads during the last year; which were read, and re-

ferred to the committee appointed, on the sixth of November last "to inquire whether any, and what, amendments are necessary to be made in the acts to establish a post office and post roads within the United States."

A message from the Senate informed the House that the Senate is ready to proceed upon the impeachment of Samuel Chase, one of the Associate Justices of the Supreme Court, in the Senate Chamber; which Chamber is prepared with accommodations for the reception of the House of Representatives.

The House, then, in pursuance of a resolution agreed to this day, resolved itself into a Committee of the Whole, and proceeded in that capacity to the Senate Chamber, to attend the trial, by the Senate, of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and, after some time spent therein, the committee returned into the Chamber of the House, and Mr. SPEAKER having resumed the Chair, Mr. VARNUM, from the said Committee of the Whole, reported that the committee had, attended the trial by the Senate of the said impeachment, and that some progress had been made therein.

POTOMAC RIVER.

Mr. J. CLAY, from the committee to whom were referred, on the seventeenth of December last, the memorials and petitions of sundry citizens and inhabitants of the District of Columbia, in favor of, and in opposition to, "the building of a bridge across the Potomac river, from the extremity of Maryland Avenue, in the city of Washington, to Alexander's Island, in the said river," made the following report:

That doubts had formerly been entertained by some of the members of your committee of the right of Congress to legislate on the subject referred to their consideration; but inasmuch as an exercise of power, as long as that exercise is uncontroverted, may perhaps be considered as deciding the question of right, your committee are of opinion that a late law renders an investigation of the legitimate powers of Congress in the case unnecessary. The only inquiry is, what would be the advantages or disadvantages attending the erection of a bridge over the Potomac?

It appears to your committee that by the proposed bridge a saving of several miles of distance over a very bad road between the seat of Government and the town of Alexandria would be made; that consequently the southern mail would be transmitted to and from the city of Washington with greater expedition and security than at present; the communication between Alexandria and the northern cities would be rendered more easy and safe, and the general interests of the commerce of the United States, as far as respects the transmission of mercantile information between the northern and southern sections of the Union, would be much promoted. The commerce of Georgetown, it is alleged, will be materially injured by any obstruction which may be caused in the navigation of the river Potomac, and that the erection of a bridge would be an obstruction of such a nature as almost to destroy that commerce. That the inhabitants of that town, having generally settled there with views connected with the exercise of a mercantile profession those views would be counteracted, and their property considerably diminished in value. Your committee have little doubt but that the delay in ascending and descending the river produced by the erection of the contemplated bridge would, in some measure, affect the trade of Georgetown; but that trade is so small that it could scarcely have any great operation on the value of property, or on the prosperity of the town. Georgetown owes its present flourishing state to its vicinity to the city of Washington, and not to any commercial profit arising from the enterprise of its inhabitants. And although some small individual injury might be the effect of erecting a bridge, yet that injury would be far more than counterbalanced by the public benefits arising from the measure—your committee therefore recommend the following resolution:

Resolved, That the prayer of the petitioners, that a company should be incorporated for the purpose of erecting a bridge over the river Potomac, is reasonable, and ought to be granted.

The report was referred to a Committee of the Whole on Wednesday next.

TUESDAY, February 5.

Ordered, That the bill sent from the Senate, entitled "An act to extend jurisdiction, in certain cases, to the State and Territorial courts," be recommitted to a Committee of the Whole to-morrow.

The bill sent from the Senate, entitled "An act in addition to an 'Act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war,'" was read twice and committed to a Committee of the Whole to-morrow.

Mr. GREGG, from the committee to whom was committed, on the twenty-fifth ultimo, the bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," reported the same, without amendment.

Ordered, That the said bill be read the third time to-morrow.

A Message was received from the President of the United States transmitting a note and documents from the Danish Chargé de Affairs claiming, in the name of his Government, restitution in the case of the brig Henrich. The said Message was read, and, together with the papers transmitted therewith, as, also, the report and other documents made and presented at the last session, in relation to the subject-matter of the claim for restitution of the said brigantine Henrich, referred to the Committee of Claims.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were referred, on the fifteenth of November last, the petitions of sundry inhabitants of the town of Westerly, in the State of Rhode Island, and of Stonington, in the State of Connecticut, reported a bill to provide for a light-house on Watch Hill Point, in the State of Rhode Island; which was read twice and committed to a Committee of the whole House to-morrow.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom was referred, on the twenty-first ultimo, a memorial of Edward Toppan, and others therein named, of the town of Newburyport, in the State of Massachusetts, merchants, reported a bill for the relief of Edward Toppan, George Jenkins, and William Currier; which was read twice and committed to a Committee of the Whole to-morrow.

On motion, of Mr. CLARK, it was.

Resolved, That the Secretary of State be directed to lay before this House an abstract of all the evidences of title to lands claimed under any act or pretended act of the State of Georgia, passed or pretended to be passed, in the year one thousand seven hundred and eighty-nine and one thousand seven hundred and ninety-five, recorded in his office; noting the dates of the instruments, the names of the parties, the quantity of land, with the species of warranty, and any proviso or condition that may be annexed.

The House resolved itself into a Committee of the Whole on the bill to authorize the erection of a bridge across a mill pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York. The bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth of December, one thousand seven hundred and ninety-three, for the appointment of a health officer." The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be engrossed, and read the third time to-morrow.

The bill for extinguishing certain debts due by the United States was considered in Committee of the Whole.

After some time spent in considering the same, the Committee rose and reported the bill; but were refused leave to sit again.

On motion of Mr. R. GRISWOLD the bill was referred to a select committee of five, to report. During this transaction Mr. EPPES had read a new bill in his place, which went to make immediate provision for the debts still due to our Revolutionary soldiers, and invalid pensioners, which it was intended should go before the committee just appointed. The SPEAKER said the committee had full power to consider the same.

MISSISSIPPI TERRITORY.

Mr. DANA from the Committee of Claims, presented a bill providing for the settlement of sundry claims to lands within the Mississippi Territory.

The bill was read the first time.

Mr. J. CLAY moved that it be rejected.

After a short conversation, the question was taken by yeas and nays—yeas 52, nays 58, as follows:

YEAS—Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, John Clopton, Frederick Conrad, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, David Meriwether, Nicholas R. Moore, Thomas Moore, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, John Smith, Richard Stanford, John Stewart, Philip R. Thompson, Abram Trigg, John Whitehill, Alexander Wilson, Joseph Winston, and Thomas Wynns.

NAYS—Willis Alston, jun., Nathaniel Alexander, Simeon Baldwin, Silas Betton, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Clagett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dawson, John Dennis, Thomas Dwight, James Elliot, Ebenezer Elmer, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Nehemiah Knight, Simon Larned, Joseph Lewis, jun., Henry W. Livingston, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Thomas Plater, Samuel D. Purviance, Erastus Root, Henry Southard, Joseph Stanton William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Matthew Walton, Lemuel Williams, and Marmeduke Williams.

The question was then taken on reading the bill a second time at this time, and carried, yeas 59.

It was then referred to a Committee of the Whole.

On the inquiry of the SPEAKER for what day it should be made the order.

Mr. DANA moved that it be made the order for to-morrow.

Mr. LEIB moved Monday week, in which motion he was supported by Messrs. J. CLAY, and CLARK.

The question was first put upon Monday week, and passed in the negative—yeas 53, nays 59.

This day week was then named, and disagreed to—yeas 55, nays 56.

Monday next was then named, and disagreed to—yeas 55, nays 56.

Saturday was then named, and disagreed to—yeas 52, nays 61.

Friday was then proposed and agreed to—yeas 61, nays 51.

The said bill was then read the second time, and committed to a Committee of the whole House on Friday next.

PRESERVATION OF PEACE.

On the call of Mr. NICHOLSON, the bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, was taken up in Committee of the Whole; when, after a short debate, the

following amendment, previously offered by Mr. Nicholson in lieu of the second section, and an amendment in lieu of the fifth section, were agreed to. The bill so amended was reported and ordered to be engrossed for a third reading.

First amendment in lieu of the second section.

Sec. 2. *And be it further enacted*, That whensoever, after the passage of this act, any felony, misprision of felony, misdemeanor, or breach of peace, shall be committed within the body of a county in any one of the United States, and any process of law shall be issued under the authority of the State, for the purpose of arresting the offender, if the said offender shall be on board of any foreign armed vessel, in any port or harbor of the United States, and within the jurisdiction of the State, in which the offence was committed, it shall be lawful for the Governor, or other supreme executive officer of the State, in which the said offence shall have been committed, upon due proof thereof, and upon his being satisfied that the ordinary *posse comitatus* is insufficient to insure the execution of the said process, to issue the order, directed to any officer having command of regular troops, or armed vessel of the United States in the vicinity, requiring him to aid the officer charged with the execution of the process, with all the force under his command or such part thereof as may be necessary, in arresting the offender and all those giving him aid and countenance in resisting the civil authority. And if the said offender shall flee to any place beyond the jurisdiction of the State, and within the jurisdiction of the United States, the officer charged with the execution of the said process shall be and he is hereby authorized to pursue the said offender into such place, taking with him if necessary the said armed force and there arrest him, in virtue of the said process. And if the said offender shall flee to and be on board of any foreign armed vessel being in any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall first demand the delivery of the said offender, of and from the person or persons having charge and command of the said foreign armed vessel, declaring the authority and cause for which the demand is made; and if the said offender be not delivered according to the said demand, or if the officer charged with the execution of the process, be obstructed in attempting to make the demand, then he shall use all the means in his power by force and arms, to enter on board of the said foreign armed vessel, there to search for and arrest the said offender, and all those who are with him giving him aid and countenance, in preventing and resisting the execution of the said process, and the officer charged with the execution of the said process shall convey the said offender and deliver him over to the civil authority of the State, to be dealt with according to law; and all those arrested for being concerned in resisting the execution of the process shall be delivered over to the civil authority of the United States, and shall be punished in the same manner as if they had been concerned in knowingly and wilfully obstructing, resisting, or opposing any officer of the United States, in serving or attempting to serve any warrant or other legal or judicial writ issued under the authority of the United States. But if any of those concerned in making the arrest be killed in a place within the exclusive jurisdiction of the United States, those engaged in resisting the civil authority shall be punished as in case of felonious homicide; and if the person charged with the offence, or any of those concerned with him in resisting, be killed, in a place under the exclusive jurisdiction of the United States, it shall be justified.

Amendment in lieu of the fifth section:

Sec. 5 *And be it further enacted*, That whensoever any officer of an armed vessel commissioned by any foreign Power, shall, on the high seas or elsewhere, commit any trespass on any citizen or vessel of the United States, or any spoliation of the property of any such citizen, or any vexation of trading vessels actually coming to or going from the United States, it shall be lawful for the President of the United States, on satisfactory proof of the facts, by proclamation, forever to interdict the entrance of the said officer, and of any armed vessel by him commanded, within the limits of the United States; and if at any time after such proclamation made he shall be found within the limits of the United States, he shall be liable therefor to be arrested, indicted, and punished by fine and imprisonment, in any court of the United States, having competent jurisdiction; and it shall be a part of the sentence that he shall within such time after the payment of his fine, and the expiration of his term of imprisonment, as the court shall direct, leave the United States, never to return. And if he shall return within the limits of the United States after the passing of such sentence, or be found therein, after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court, *Provided always*, That if the said officer shall also have committed any other offence made punishable by this act, he shall be liable to prosecution and punishment, the provisions of this section to the contrary notwithstanding.

Wednesday, February 6.

An engrossed bill for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction, was read the third time, and passed.

An engrossed bill to authorize the erection of a bridge across a mill-pond and marsh in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York, was read the third time; and, on a motion made and seconded, recommitted to a Committee of the whole House to-morrow.

An engrossed bill to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer," was read the third time, and passed.

A message from the Senate communicated to the House a copy of the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment exhibited to the Senate against him by this House.

The said copy of the answer was read, and ordered to be referred to the managers appointed, on the part of this House, to conduct the said impeachment.

On motion of Mr. Leib, the House resolved itself into a Committee of the Whole on the bill in addition to an act entitled an act to promote the progress of the useful arts, and to repeal an act heretofore enacted for that purpose.

Mr. Leib moved to strike out the first section

of the bill, in order to try the sense of the House on the principle upon which it was founded, viz., to make a general provision for the extension of patent rights under certain modifications to twenty-one years instead of fourteen years, which the existing laws provide for, and with a view to make special provision for the case of Oliver Evans, the great improver of machinery in mercantile mills, &c.

After some discussion, the first section was struck out, and the Committee rose and reported progress; and, on the question, Shall the Committee of the Whole have leave to sit again? the motion was lost.

It was then moved to refer the bill, together with the petition of Oliver Evans, to the Committee of Commerce and Manufactures, and on the question, the motion was lost. The question on engrossing was also lost; so the bill was rejected.

The House resolved itself into a Committee of the Whole on the report of the Committee of Commerce and Manufactures of the twenty-eighth ultimo, to whom were referred, on the ninth and sixteenth of November last, the petitions and memorials of a number of merchants, traders, and farmers, on the waters of the Roanoke and Cashie rivers, in the district of Edenton, and State of North Carolina; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the same.

The House then proceeded to consider the said report; and the resolution contained therein, being twice read, in the words following, to wit:

Resolved, That it is inexpedient to make Plymouth, in North Carolina, a port of entry:

The question was taken that the House do concur with the Committee of the whole House, in their disagreement to the same, and resolved in the affirmative.

A motion was then made and seconded that the House do come to the following resolution:

Resolved, That it is expedient to make Plymouth, in North Carolina, a port of entry:

Ordered, That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Commerce and Manufactures do prepare and bring in the same.

JUDGE CHASE.

Mr. John Randolph, from the managers appointed to conduct the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to whom was, this day, referred the copy of an answer of the said Samuel Chase, to the articles of impeachment exhibited to the Senate against him by this House, made a report; which he delivered in at the Clerk's table, where the same was read, and is as follows:

"That they have considered the said answer, and do find that the said Samuel Chase has endeavored to cover the crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; and that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; and do submit to the judgment of the House, their opinion, that, for avoiding any imputation of delay to the House of Representatives, in a case of so great moment, a replication be, forthwith, sent to the Senate, maintaining the charge of this House; and that the Committee had prepared a replication accordingly, which they herewith report to the House, as follows:

"The House of Representatives of the United States have considered the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment against him by them exhibited, in the name of themselves and of all the people of the United States; and observe,

"That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; that the answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters contained in the said articles; that the said Samuel Chase did, in fact, commit the numerous acts of oppression, persecution, and injustice, of which he stands accused; and the House of Representatives, in full confidence of the truth and justice of their accusation, and of the necessity of bringing the said Samuel Chase to a speedy and exemplary punishment, and not doubting that the Senate will use all becoming diligence to do justice to the proceedings of the House of Representatives, and to vindicate the honor of the nation, do aver their charge against the said Samuel Chase to be true; and that the said Samuel Chase is guilty in such manner as he stands impeached; and that the House of Representatives will be ready to prove their charges against him, at such convenient time and place, as shall be appointed for that purpose."

On motion of Mr. J. Randolph the House took the said replication into consideration.

Mr. R. Griswold moved to commit the same to a Committee of the whole House.

Mr. Elliot supported, and Mr. J. Randolph opposed the motion.

The question being put, the same was rejected.

Mr. Dennis moved to amend the replication by striking out therefrom after the words "and observe," the following words:

"That the said Samuel Chase has endeavored to cover the high crimes and misdemeanors laid to his charge, by evasive insinuations, and misrepresentation of facts; that the said answer does give a gloss and coloring, utterly false and untrue, to the various criminal matters, contained in the said articles."

The question was taken on this motion, by yeas and nays, and lost—yeas 41, nays 70, as follows:

Yeas—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, John B. Earle, James Elliot, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbitts, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Thomas Wynns.

Nays—Willis Alston, jr., Nathaniel Alexander, Isaac

Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, John Boyle, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, John Clopton, Frederick Conrad, John Dawson, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Joseph Heister, David Holmes, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

And then the main question being taken that the House do agree to the said replication, it was resolved in the affirmative—yeas 77, nays 31, as follows:

Yeas—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, George W. Campbell, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, Joseph Heister, James Holland, David Holmes, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Matthew Lyon, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Erastus Root, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smilie, Richard Stanford, Joseph Stanton, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Simeon Baldwin, Silas Betton, John Campbell, William Chamberlin, Martin Chittenden, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Thomas Dwight, James Elliot, Calvin Goddard, Thomas Griffith, Gaylord Griswold, Roger Griswold, Seth Hastings, John Hoge, David Hough, Samuel Hunt, Joseph Lewis, jr., Henry W. Livingston, Thomas Lowndes, Nahum Mitchell, Thomas Plater, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, and Lemuel Williams.

Resolved, That the replication annexed to the report of the managers, be put into the answer and pleas of the aforesaid Samuel Chase, on behalf of this House; and that the managers be instructed to proceed to maintain the said replication at the bar of the Senate, at such time as shall be appointed by the Senate.

Ordered, That a message be sent to the Senate to inform them that this House have agreed to a replication, on their part, to the answer of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States, to the articles of impeachment exhibited to the Senate against him by this House, and have directed the managers appointed to conduct the said impeachment to carry the said replication to the Senate; and to proceed to maintain the same at the bar of the Senate, at such time as shall be appointed by the Senate.

THURSDAY, February 7.

The SPEAKER laid before the House a certificate of the Secretary, Comptroller, and Treasurer, of the State of New York, relative to the election of GEORGE CLINTON, jr., to serve as a member of this House for the said State, in the place of SAMUEL L. MITCHILL, appointed a Senator of the United States; which was read, and ordered to be referred to the Committee of Elections.

The bill sent from the Senate, entitled "An act concerning the mode of surveying the public lands of the United States," was read the third time, and passed.

Mr. LATTIMORE, from the committee to whom were referred, on the eighth and fourteenth of November last, the memorials and petitions of the Board of Trustees of Jefferson College, in the Mississippi Territory of the United States, and of William Dunbar, an inhabitant of the said Territory, presented to this House during the present and at the last session of Congress, made a report thereon; which was read, and referred to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on an engrossed bill to authorize the erection of a bridge across a mill pond and marsh, in the navy yard belonging to the United States, in the town of Brooklyn, in the State of New York, recommitted to the said Committee on the sixth instant. The bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

The bill, as amended, was then read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill to appropriate a sum of money for the purpose of building gun-boats. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate will, this day, at two o'clock, meet in the Senate Chamber, and proceed on the trial of Samuel Chase.

Mr. CROWNINSHIELD, from the Committee of Commerce and Manufactures, to whom were committed on the twenty-third ultimo, the amendments proposed by the Senate to the bill, entitled "An act for carrying into more complete effect

the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain," made a report thereon; which was read, and considered: Whereupon,

Resolved, That this House doth agree to the said amendments.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina," with amendments; to which they desire the concurrence of this House. And that the Senate will, to-morrow, at twelve o'clock, proceed to the trial of Samuel Chase.

POST ROADS.

The House resolved itself into a Committee of the Whole on a motion of the seventh of December last, respecting "the establishment of a post road from Knoxville, in the State of Tennessee, to the settlement on the Tombigbee river, in the Mississippi Territory, and from thence to New Orleans; also, for the establishment of a post road from Georgia to the settlements on the Tombigbee, to intersect the former road at the most convenient point between Knoxville and the Tombigbee;" to which Committee of the whole House were also referred on the tenth of the said month of December, and on the first instant, the report of a select committee, and a Message from the President of the United States, on the same subject.

Mr. G. W. CAMPBELL observed, that having introduced this resolution, he would very briefly state some of the reasons that induced him to do so, and the grounds upon which he expected the committee to adopt it. He stated the object of the measure to be two-fold. 1st. To obtain a direct route for the transportation of the mail from Knoxville, and also from Georgia, to the Tombigbee settlements, and thence to New Orleans, in order to facilitate the communication with those places by means of the mail. And 2d. To open a communication from East Tennessee to the same places for commercial purposes. This measure, he said, was important to the citizens of East Tennessee, in both those points of view. The mail was conveyed at present, he observed, by a circuitous route, from Knoxville to Nashville, two hundred miles, thence to Natchez, at least five hundred miles, and thence to New Orleans, nearly three hundred miles; making in the whole, from Knoxville to New Orleans, one thousand miles. Whereas the distance from Knoxville to New Orleans by the route proposed to be opened, would not much, if any, exceed five hundred. A gentleman of undoubted veracity, who resided some years in the country through which this road will pass, in the service of the Government, estimates this route in the following manner: From Knoxville to Tellico, thirty-three miles. This part of the route passes through a settled country, and is at present a good road. From Tellico, to a place called the Hickory Ground, in the Creek Nation, near the junction of the Coosa river, with the Tallapoosa, where they form the Alabama and about twenty miles from the Tuckabatchee settlements, two hundred and twenty miles. From thence to Fort St. Stephen's on the Tombigbee river, about one hundred miles; and thence to New Orleans, a direct course, about one hundred and fifty miles, making in all five hundred and three miles; and the largest calculations, as I had been informed, made by the Postmaster General, of this road from Knoxville to New Orleans, was five hundred and fifty miles; making very little more than half the present route. Add to this the distance from Washington to Knoxville, according to the estimated post route, five hundred and forty-seven miles, and the whole distance from Washington to New Orleans, passing by Knoxville—and from thence the proposed route will be about one thousand and fifty miles. This saving of between four and five hundred miles, in transporting the mail from Knoxville to New Orleans, is certainly a very important object to all those who may communicate with the latter place, by means of this route. This road is still more necessary, for the purpose of affording a communication from East Tennessee to the settlement on the Tombigbee, or the eastern parts of the Mississippi Territory. The only mode of communication at present with that country, is by the post road already stated, by Nashville to Natchez, seven hundred—and thence to the Tombigbee, about two hundred; making nine hundred miles. Whereas the real distance along the proposed route, as has been stated, will not exceed three hundred and fifty, or at most between that and four hundred.

The effect of this circuitous route is, at present to cut off the communication, almost entirely, with that country.

But the second object for which we wish this road opened, viz: for commercial purposes, is still more important to our citizens; and is essential for the prosperity of our country.

The only mode by which the people of that country can, at this time, convey their produce to market, is by boating it down the river Tennessee into the Ohio, then along that to the Mississippi, and down that river to New Orleans. Our boatmen employed in this trade are obliged to return by land, as the same boats that carry produce down those rivers, cannot ascend them, and there is but little navigation yet, in boats of any kind, up those waters into the State of Tennessee; and no boats of any considerable burden can pass up the river Tennessee, through the Muscle Shoals, to the eastern part of the State. The only route by which those boatmen can now return from New Orleans, is that already stated, on which the mail is conveyed, being between four and five hundred miles more than they would have to travel by the proposed route. The present road also passes over the Cumberland mountain, a part of which is very bad, and a wilderness at this part of the route, subject to the Indian claim, of between seventy and one hundred miles, without inhabitants. It also passes through another wilderness between Nashville and Natchez, subject

to the Indian claim, of about four hundred miles, a considerable part of which is stated to be very bad road in winter, and that there are many large watercourses to be passed. The difficulties are so great that few of our citizens are willing to embark in this trade, and our farmers, having no convenient vent for their surplus produce, have little or no inducement to industry beyond what may be necessary to produce the ordinary supplies of subsistence. This in a very great degree retards the progress of agriculture, and consequently the prosperity of our country. It is therefore hoped that this House will feel disposed to encourage the farming interests of our infant country by removing those obstacles to its progress that the State authority is incompetent to effect, and that prove so materially injurious to the interests of our citizens. Here it may be proper to remark that this proposed road, so far as it is desired to be established by this measure, passes through a country belonging entirely to the United States, except about sixty miles, and most of it subject to the claim of Indian tribes, being the Mississippi Territory until it enters West Florida, or Orleans Territory. This distance of about sixty miles alluded to, is from Tellico, on the frontiers of the settlements in East Tennessee, to a point beyond the south boundary of that State in the State of Georgia, and near the limits of the Mississippi Territory, being also subject to the Indian claim. A road has already been authorized to be opened in this direction; has been viewed and designated by commmissioners appointed for that purpose from our State, at the expense of the State, and it is expected, by this time, has been opened, being designed to afford us a communication with the State of Georgia. This road will answer the proposed route—at least as far as the limits of our State—being, as before stated, about sixty or seventy miles from Tellico, and about one hundred from Knoxville. There will therefore remain only about one hundred miles (or very little more, if any,) to be opened, to the point at which the road, proposed from Georgia will intersect this route. From this view of the subject, it will appear we do not require the United States to be at any expense in opening a road within the limits of the State of Tennessee, but only to open it through a country belonging exclusively, except the Indian claim, to the United States. With regard to the roads proposed to be opened from Georgia to the Tombigbee settlements, so as to intersect the former road at the most convenient point between Tellico and the said settlements, what has been advanced to show the necessity of the former road will apply with equal force to this. The only route by which the people of Georgia can at present communicate with New Orleans, by means of the mail, or travel to that place along any authorized road, is that already stated, from Knoxville; thence by Natchez to New Orleans; and the people, even on the frontiers of that State, have to travel nearly three hundred miles to Knoxville to take this route, and are not then much, if any, nearer New Orleans than when they set out. This in a great degree cuts off this communication with that country. The road proposed to be opened from Georgia, according to the best information, will intersect the road from Knoxville, near the junction of Coosa and Tallapoosa rivers, and about two hundred miles, or somewhat more, from the latter place—of which, as already stated, one hundred miles at least are opened, and only about one hundred remain to be opened. The country through which the road from Knoxville will pass, is represented, by those who are acquainted with it, and who have resided many years among the Indian nations that inhabit it, to be a fine, open country, generally dry, without being broken by any mountains, and very few streams of any considerable size to be crossed, and no large rivers until you arrive at the Tombigbee. It will pass along the high lands that lie between the waters falling into the Tennessee river, and those that are discharged into the Coosa and Alabama rivers, and will require but little expense to be made a good road. We hope, therefore, upon viewing all those circumstances, Congress will agree to afford us the aid we require, and which is essentially necessary, to enable us to resort to the only market that will compensate our farmers for their industry, encourage agriculture and commerce, and promote the prosperity of our country.

When Mr. W. had concluded, the Committee rose and had leave to sit again.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the twenty-second ultimo, on the petition of Alexander Scott, of the State of South Carolina, on behalf of himself and others. And after progress, the House adjourned.

Friday, February 8.

Mr. Nicholson, from the committee to whom was referred, on the twenty-second ultimo, a memorial of the delegates appointed by various sections of the District of Columbia, reported a bill farther additional to, and amendatory of, an act, entitled "An act concerning the District of Columbia;" which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Nicholson, from the same committee, also reported a bill supplementary to an act, entitled "An act more effectually to provide for the organization of the militia of the District of Columbia;" which was read twice, and committed to a Committee of the Whole on Monday next.

An engrossed bill to appropriate a sum of money for the purpose of building gun-boats, was read the third time, and passed.

Mr. Lowndes, one of the members for the State of South Carolina, presented to the House an act of the Legislature of the said State, passed the twenty-first of December, one thousand eight hundred and four, entitled "An act to authorize the City Council of Charleston, with the consent of Congress, to impose and levy a duty on the tonnage of ships and vessels, for the purposes therein mentioned;" which was read, referred to Mr. Lowndes, Mr. Eustis, Mr. Joseph Clay,

Mr. McCreery, and Mr. Newton, to examine and report their opinion thereupon to the House.

Mr. Morrow, from the committee appointed on the seventh ultimo, presented a bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Southard said it would be well recollected by the House, that, during the last session of Congress, a resolution was introduced into the House which had for its object the imposing of a tax of ten dollars on every slave imported into the United States.

A bill predicated on that resolution was brought in, but was postponed, and not finally acted on. Mr. S. said he had waited with an expectation that some other member would have brought the subject again before the House, but as no member had thought proper to do it, and the session is drawing towards a close, he would move the following resolution.

"*Resolved*, That a tax of ten dollars be imposed on every slave imported into the United States."

Referred to a Committee of the Whole on Monday next.

The House, then, in pursuance of a resolution of the fourth instant, resolved itself into a Committee of the Whole, and again proceeded, in that capacity, to the Senate Chamber, to attend the trial, by the Senate, of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and, after some time spent therein, the Committee returned into the chamber of the House, and Mr. Speaker having resumed the Chair, Mr. Varnum, from the said Committee of the Whole House, reported that the Committee had again attended the trial by the Senate of the said impeachment, and that a further progress had been made therein.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, in the district of Louisiana;" to which they desire the concurrence of this House. The Senate have also passed the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five," with an amendment; to which they desire the concurrence of this House.

The House then went into Committee of the Whole on the report of the Committee of Claims, on the petition of Alexander Scott, respecting the slaves taken by the Cherokee Indians in 1794.

After some time spent in considering the same, the Committee rose and reported their concurrence in the report of the Committee of Claims, that the petitioner have leave to withdraw his petition, and the documents accompanying the same. The report was agreed to by the House, on a division—55 in favor, and 24 against it.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina:" Whereupon, the said amendment, together with the bill, was committed to a Committee of the whole House to-morrow.

Saturday, February 9.

The bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana," was read twice, and committed to a Committee of the Whole on Monday next.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five:" Whereupon,

Resolved, That this House doth agree to the said amendment.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, presented a bill to make Plymouth, in North Carolina, a port of entry; which was read twice, and committed to a Committee of the Whole on Monday next.

Mr. Southard, from the committee to whom was referred, on the fourth instant, the report of the Secretary of War in relation to sundry claims to land for military services rendered in the late Revolutionary war, in pursuance of an act passed the nineteenth of March last, reported a bill authorizing the Secretary of War to issue military land warrants, and for other purposes; which was read twice, and committed to a Committee of the whole House on Tuesday next.

MISSISSIPPI TERRITORY.

Mr. Latimer, from the committee to whom was referred the memorial of the Legislative Council and House of Representatives of the Mississippi Territory, made the following report:

The memorialists represent that, by that part of the ordinance for the government of the Mississippi Territory, which requires a freehold in fifty acres of land as a qualification of an elector of representatives, many of their respectable fellow-citizens, who are possessed of considerable personal property, houses, town lots, and small tracts of land, are deprived of their elective franchise; and that, by the act authorizing the establishment of a government in the said Mississippi Territory, the appointment of representatives is very unequal in the different counties mentioned in that act; they, therefore, solicit that the aforesaid ordinance may be so amended that, having been a citizen of one of the United States, having resided two years in the Territory, and, in either case, having paid a county or territorial tax, assessed at least six months previous to such election, may be the qualification required of an elector of representatives; and that the aforementioned act, authorizing the establishment of a government in the Mississippi Territory, may be so amended that the General Assembly of the said Territory may have power to apportion the representatives in the different

counties, according to the number of free male inhabitants above the age of twenty-one years, in such counties, so that there shall not be less than ten, nor more than twelve, of the whole number of representatives.

From a recurrence to the ordinance for the government of the Mississippi Territory, it appears that there is no difference between the qualifications required therein, and those solicited in the memorial, except the freehold in fifty acres of land, which has been already mentioned. The only question, therefore, relative to this part of the subject is, whether it be expedient to dispense with such a qualification.

If the possession of property were at all essential to the qualification of an elector of representatives, your committee cannot see any good reasons why persons possessing considerable personal property, houses, town lots, and tracts of land less than fifty acres, and otherwise qualified, should be precluded from a participation in the right of suffrage with those who possess a freehold in fifty acres of land, which the ordinance requires. But, believing it inexpedient to limit the exercise of that right by any species of property qualification, your committee conceive that it ought to be extended agreeably to the wishes of the memorialists.

In the first section of the act of May 10, 1800, supplemental to the act authorizing the establishment of a government in the Mississippi Territory, it is "*Provided*, That, until the number of free male inhabitants of full age in the said Territory, shall amount to five thousand, there shall not be returned to the General Assembly more than nine representatives."

Your committee have no means of ascertaining the number of inhabitants of the above description, at this time, in the Mississippi Territory. But believing that no objection, except that of some additional expense to the Territory, can arise to the admission of two or three additional representatives, they can perceive no necessity for a continuance of the restrictive provision above quoted. Nor can they perceive any impropriety in authorizing the Legislature of the Territory to apportion the representatives in the manner requested. And your committee ask leave to report a bill for effecting the purposes which they herein consider as expedient.

The report was referred to a Committee of the Whole on Monday next.

Mr. Lattimore reported a bill extending the right of suffrage in the Mississippi Territory, and for other purposes; which was read twice, and committed to the Committee of the Whole last appointed.

The House then again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Monday, February 11.

The House resolved itself into a Committee of the Whole on the petition of Amy Dardin, of the State of Virginia, presented the twenty-seventh of December last; and, aftar some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the petition of Amy Dardin is reasonable, and ought to be granted.

Ordered That a bill or bills be brought in, pursuant to the said resolution; and that Mr. Claiborne, Mr. Elliot, and Mr. Conrad, do prepare and bring in the same.

The House resolved itself into a Committee of the Whole on the bill to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie. The bill was reported without amendment, and ordered to be engrossed, and read the third time to morrow.

Mr. Lowndes, from the committee appointed on the eighth instant, reported a bill declaring the consent of Congress to an act of the State of South Carolina, passed on the twenty-first day of December, in the year of our Lord 1804, so far as the same relates to authorizing the City Council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; which was read twice, and committed to a Committee of the Whole to-morrow.

The House then resolved itself into a Committee of the Whole, and proceeded to the Senate Chamber to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Tuesday, February 12.

On motion, it was

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected, of their election; and to regulate the time, place, and manner of administering the oath of office to the President.

Ordered, That Mr. Joseph Clay, Mr. Varnum, Mr. Dennis, Mr. Thomas Moore, and Mr. Dickson, be appointed a committee, pursuant to said resolution; and that the Clerk of this House do carry the resolution to the Senate, and desire their concurrence.

On motion, it was

Resolved, That a committee be appointed on the part of this House, to join such committee as may be appointed on the part of the Senate, to inquire and report whether any, and, if any, what further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next.

Ordered, That Mr. Nicholson, Mr. Roger Griswold, and Mr. Bryan, be appointed a committee, pursuant to the said resolution; and that the Clerk of this House do carry the resolution to the Senate, and desire their concurrence.

An engrossed bill to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie, was read the third time, and passed.

On motion, it was

Resolved, That a committee be appointed to inquire whether any, and, if any, what alteration

is necessary to be made in the times of holding the district courts of North Carolina, and that the committee have leave to report by bill or otherwise.

Ordered, That Mr. Stanford, Mr. Huger, and Mr. Meriwether, be appointed a committee, pursuant to the said resolution.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, reported a bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith; which was read twice, and committed to a Committee of the Whole to-morrow.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war;'" and, after some time spent therein, the Committee rose, and were discharged from the further consideration thereof.

Ordered, That the Committee of the whole House to whom was committed, on the second ultimo, the bill in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," be discharged from the consideration of the same; and that the said bill, as also the bill from the Senate last mentioned, be recommitted to the Committee of Claims to consider and report thereon to the House.

A message from the Senate notified the House that the Senate will be ready to receive the House of Representatives in the Senate Chamber, on Wednesday, the thirteenth of February, at noon, for the purpose of being present at the opening and counting the votes for President and Vice President of the United States: That one person be appointed a teller on the part of the Senate to make a list of votes for President and Vice President of the United States, as they shall be declared, and that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals, and if it shall appear that a choice had been made agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

The House resolved itself into a Committee of the Whole on the amendment proposed by the Senate to the bill, entitled "An act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same.

The House then proceeded to consider the said amendment: Whereupon

Resolved, That this House do concur with the Committee of the whole House in their agreement to the same.

Mr. Claiborne, from the committee appointed yesterday, presented a bill for the relief of Amy Dardin, and the legal representatives of David Dardin, deceased; which was read twice, and committed to a Committee of the whole House to-morrow.

A message from the Senate informed the House that the Senate have considered the resolution of this House for the appointment of a joint committee of the two Houses "to ascertain and report a mode of examining the votes for President and Vice President, and of notifying the persons who shall be elected, of their election, and to regulate the time, place, and manner of administering the oath of office to the President," and do not concur therein.

The House then went into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Wednesday, February 13.

Mr. Tenney, from the Committee of Revisal and Unfinished Business, presented a bill to revive and make permanent the act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses, passed the third day of January, one thousand seven hundred and eighty-eight, and in addition to the same; which was read twice, and committed to a Committee of the whole House on Friday next.

On motion, it was

Resolved, That this House will attend in the Chamber of the Senate this day, at twelve o'clock, noon, for the purpose of being present at the opening and counting of the votes for President and Vice President of the United States; that Mr. Joseph Clay and Mr. Roger Griswold be appointed tellers, to act, jointly, with the teller appointed on the part of the Senate, to make a list of the votes for President and Vice President of the United States, as they shall be declared; that the result shall be delivered to the President of the Senate, who shall announce the state of the vote, which shall be entered on the Journals; and if it shall appear that the choice has been made agreeably to the Constitution, such entry on the Journals shall be deemed a sufficient declaration thereof.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

The Speaker laid before the House a letter and report from the Secretary of the Treasury, the Secretary of War, and the Comptroller of the Treasury, Commissioners under the act, entitled "An act for the relief of the refugees from the British Provinces of Canada and Nova Scotia;" which were read, and referred to the committee appointed, on the fifteenth ultimo, "to inquire whether any, and, if any, what amendments are necessary to the several acts regulating the grants of land to the refugees from Nova Scotia and Canada.

A Message was received from the President of the United States, transmitting treaties with the

Delaware and Piankeshaw Indians, for the purchase of their right to certain lands on the Ohio, and with the Sacs and Foxes, for a portion of country on both sides of the river Mississippi; and the said Message was read, and, together with the treaties, referred to the Committee of Ways and Means.

A message was received from the Senate informing the House that Mr. Smith, of Maryland, has been appointed a teller of the votes of President and Vice President of the United States, on the part of the Senate, conformably with their vote of the twelfth instant, and are now ready, in the Senate Chamber, to proceed therein: Whereupon, Mr. Speaker, attended by the House, proceeded to the Senate Chamber, and took seats therein; when, both Houses being assembled, the President of the Senate, in the presence of both Houses, proceeded to open the certificates of the Electors of the several States, beginning with the State of New Hampshire; and as the votes were read, the tellers on the part of each House counted and took lists of the same; which, being compared, were delivered to the President of the Senate, and are as follow:

States.	President.		V. Pres'dt	
	Th. Jefferson.	C. C. Pinckney.	Geo. Clinton.	Rufus King.
New Hampshire	7	–	7	
Massachusetts	19	–	19	
Rhode Island	4	–	4	
Connecticut	–	9	–	9
Vermont	6	–	6	
New York	19	–	19	
New Jersey	8	–	8	
Pennsylvania	20	–	20	
Delaware	–	3	–	3
Maryland	9	2	9	2
Virginia	24	–	24	
North Carolina	14	–	14	
South Carolina	10	–	10	
Georgia	6	–	6	
Tennessee	5	–	5	
Kentucky	8	–	8	
Ohio	3	–	3	
Total	162	14	162	14

RECAPITULATION.

For Thomas Jefferson, of Virginia, as President - - - - - - - 162
For Charles Cotesworth Pinckney, of South Carolina, as President - - - 14
For George Clinton, of New York, as Vice President - - - - - - 162
For Rufus King, of New York, as Vice President - - - - - - - 14

The President of the Senate, in pursuance of the duty enjoined upon him, announced the state of the votes to both Houses, and declared that Thomas Jefferson, of Virginia, having the greatest number, and a majority of the votes of the Electors appointed, was duly elected President of the United States, for the term commencing on the fourth day of March next; and that George Clinton, of New York, having also the greatest number, and a majority of the votes of all the Electors appointed, was duly elected Vice President of the United States, for the term commencing on the fourth day of March next.

The two Houses then separated and the House of Representatives being returned to their Chamber, Mr. Speaker resumed the Chair.

The list of the votes of the Electors for President and Vice President of the United States, as declared by the President of the Senate, and herein before recited, was read at the Clerk's table.

On motion, it was

Resolved, That the Committee of Ways and Means be instructed to inquire into the salaries and compensations of the officers of the two Houses of Congress, as established by law, and report such alterations therein as they may deem expedient.

The House resolved itself into a Committee of the Whole, on the bill authorizing the Secretary of War to issue military land warrants, and for other purposes. The bill was reported without amendment. The House then proceeded to consider the bill at the Clerk's table; and, having made some progress therein, the further consideration of the bill was postponed until to-morrow.

A message from the Senate notified the House that the Senate will, at half-past two o'clock, on this day, be ready to proceed on the trial of the impeachment against Samuel Chase, one of the Associate Justices of the Supreme Court of the United States.

On motion, it was

Resolved, That a committee be appointed, to join such committee as may be appointed by the Senate, to wait on the President, and to notify to him his re-election to the office of President of the United States.

Ordered, That Mr. Nicholson, Mr. Gregg, and Mr. Varnum, be of the said committee, on the part of this House.

The House then went into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Thursday, February 14.

A new member, to wit: George Clinton, jr., returned to serve as a member of this House, for the State of New York, in the place of Samuel L. Mitchill, appointed a Senator of the United States, appeared, produced his credentials, was qualified, and took his seat in the House.

The Speaker laid before the House a letter from the Secretary of State, accompanied with an "abstract of all the evidences of title to lands claimed under any act or pretended act of the State of Georgia, passed or pretended to be passed, in the years one thousand seven hundred and eighty-nine, and one thousand seven hundred and ninety-five, recorded in his office, noting the dates of the instruments, the names of the parties, the quantity of land, with the species of warranty, and any proviso or condition that may be annexed," in pursuance of a resolution of this House, of the fifth instant; which were read: Whereupon, a motion was made and seconded that the said letter and abstract be printed for the use of the members of both Houses of Congress; and, after debate thereon, the question was taken that the House do agree to the said motion for printing, and resolved in the affirmative—yeas 69, nays 49, as follows:

Yeas—Nathaniel Alexander, Isaac Anderson, David Bard, George Michael Bedinger, William Blackledge, John Boyle, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Christopher Clark, Joseph Clay, Matthew Clay, George Clinton, jr., John Clopton, Frederick Conrad, Jacob Crowninshield, John B. Earle, Ebenezer Elmer, John W. Eppes, Peterson Goodwyn, Andrew Gregg, Thomas Griffin, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Walter Jones, William Kennedy, Michael Leib, John B. C. Lucas, Andrew McCord, William McCreery, David Meriwether, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Thomas Sandford, Ebenezer Seaver, James Sloan, John Smith, Henry Southard, Richard Stanford, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Philip Van Cortlandt, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Marmaduke Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

Nays—Willis Alston, junior, Simeon Baldwin, Silas Betton, Adam Boyd, John Campbell, William Chamberlin, Martin Chittenden, Clifton Clagget, Manasseh Cutler, Richard Cutts, Samuel W. Dana, John Davenport, John Dennis, William Dickson, Thomas Dwight, James Elliot, William Eustis, William Findley, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, Benjamin Huger, Samuel Hunt, John G. Jackson, Simon Larned, Joseph Lewis, junior, Thomas Lowndes, Matthew Lyon, Nahum Mitchell, James Mott, Thomas Plater, Samuel D. Purviance, Erastus Root, John Smilie, William Stedman, James Stephenson, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, Matthew Walton, and Lemuel Williams.

Ordered, That the said letter and abstract do lie on the table.

A message from the Senate informed the House that the Senate will, at twelve o'clock, this day, be ready to proceed on the trial of Samuel Chase, one of the Associate Justices of the Supreme Court of the United States; and that, after this day, the Senate will proceed on the said trial, at ten o'clock in the forenoon of each day. The Senate have agreed to the resolution of this House, of the twelfth instant, "for the appointment of a joint committee of the two Houses, to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing on the fourth day of March next;" and have appointed a committee on their part, for the purpose expressed therein.

The House then went into a Committee of the Whole, and proceeded to the Senate Chamber, to attend the trial of Judge Chase. When the Committee returned, the House adjourned.

Friday, February 15.

The House again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase; after which they returned and reported progress.

The Speaker laid before the House a letter from the Secretary of War, accompanied with sundry documents, in relation to the situation of the public buildings on the banks of the Schuylkill, near the city of Philadelphia, to the probable expense of finishing the same, and to the military stores deposited in the said buildings, in pursuance of a resolution of this House, of the twenty-third ultimo; which were read, and ordered to lie on the table.

The Speaker laid before the House another letter from the Secretary of War, accompanied with "a statement of the number of the officers and privates in the actual service of the United States, during the years one thousand eight hundred and three, and one thousand eight hundred and four; also, the names of the posts where soldiers were stationed during those periods; together with the number of privates and officers at such posts; and, also, a detailed statement of the sums expended during the years one thousand eight hundred and three, and one thousand eight hundred and four, on fortifications, arsenals, armories, and magazines;" in pursuance of a resolution of this House, of the twenty-second ultimo; which were read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five," with the several amendments; to which they desire the concurrence of this House.

Mr. John Randolph, from the Committee of Ways and Means, reported a bill making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase; which was read twice, and committed to a Committee of the Whole immediately.

The House accordingly, resolved itself into the said committee; and, after some time spent therein, the bill was reported with several amendments thereto; which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, to whom was referred, on the seventh instant, the petition of Robert Patton and David Williamson, trading under the firm of Robert Patton and Company, and of others therein named, of the towns of Fredericksburg and Falmouth, in the State of Virginia, reported a bill for the relief of sundry persons therein named; which was read twice and committed to a Committee of the Whole to-morrow.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five:" Whereupon, the amendments, together with the bill, were committed to the Committee of Ways and Means.

DRAWBACK OF DUTIES

Mr. Crowninshield, from the Committee on Commerce and Manufactures, to whom was referred the memorial of Stephen Kingston, of the city of Philadelphia, merchant, made the following report:

Stephen Kingston, the memorialist, on the 22d and 23d of July, 1801, entered outwards, at the custom-house of Philadelphia, took out a regular permit, and actually shipped on board the United States frigate George Washington, Captain John Shaw, then destined for Algiers, three bales of cinnamon, fifteen bales of India goods, and eleven hogsheads of loaf sugar, for benefit of drawback and bounty,

All the proceedings at the custom-house, previous to the shipment, appear to have been perfectly regular. The articles were entered outwards, in the usual manner, and an inspector attended to their delivery on board the lighter, and, so far as the committee can discover, the memorialist was willing to comply with every requisite formality at the custom-house, which was enjoined by the laws; yet, it is proved to your committee, that an error was committed by the inspector, in exporting the merchandise. The George Washington was preparing to get under way, and proceed down the Delaware, when the lighter came alongside, and the captain being of opinion that the ship would draw too much water to pass the bar in the river, if the articles were then received on board, ordered the lighter to follow the ship, and they were taken in below the bar, and at some distance out of the Philadelphia district.

In the case under consideration, the articles would have been liable to seizure and confiscation, if they had been relanded in Philadelphia, without permission from the collector. The exporter, therefore, was, in some measure, compelled to ship them on the George Washington; and in doing this, he appears to have pursued a safe and prudent line of conduct; for, if he had peremptorially ordered the lighter to return to Philadelphia, with her loading, he might have exposed himself to a prosecution for an attempt to commit a fraud on the revenue; and his property to almost certain confiscation. Although it is understood that permission was granted in this case, the committee are of opinion that our public vessels ought not to be permitted to carry merchandise for account of private individuals; but as no prohibition then existed to prevent similar shipments, the George Washington having been permitted to clear out in the usual manner, it is conceived that the exporter ought not to lose the drawback, merely because the articles were exported in a national vessel. On the whole, the exporter having complied with the existing regulations of the custom-house, previous to the delivery of the merchandise on board the lighter, and it not appearing that the deviation from the ordinary course which was subsequently committed, proceeded from his fault or neglect, the committee are impressed with an opinion (the irregularity, too, being committed by a captain in the service of the United States) that the memorialist has an equitable claim upon the Government for the drawback and bounty arising on the exportation of the articles mentioned in his memorial, upon the proof being exhibited to the Secretary of the Treasury that the same were actually landed out of the limits of the United States; and the committee submit the following resolution:

Resolved, That the prayer of the memorial of Stephen Kingston is reasonable and ought to be granted.

The report was ordered to lie on the table.

Saturday, February 16.

The House again resolved itself into a Committee of the Whole and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase, after which they returned and reported progress.

An engrossed bill making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase, was read the third time, and passed.

Ordered, That the Committee of Ways and Means, to whom were referred, on the thirteenth instant, a Message from the President of the United States, as also the treaties which have lately been entered into and concluded with the Delaware and Piankeshaw Indians, and the tribe of Indians called the Sacs and Foxes, be discharged from the consideration thereof; and that the said message and treaties be referred to a Committee of the Whole on Monday next.

The House resolved itself into a Committee of the Whole on the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act to regulate the collection of duties on imports and tonnage.'" The Committee rose and reported their agreement to the same. The House then proceeded to consider the said amendment of the Senate: Whereupon,

Resolved, That this House doth concur with the Committee of the Whole House in their agreement to the same.

Monday, February 18.

The House again resolved itself into a Committee of the Whole House, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase; after which they returned and reported progress.

Resolved, That a committee be appointed to join with such committee as the Senate may appoint, to consider and report what business is necessary to be done by Congress in the present session.

Ordered, That Mr. Roger Griswold, Mr. J. Clay, Mr. Blackledge, Mr. Huger, and Mr. Nicholas R. Moore, be appointed of the said committee, on the part of this House; and that the Clerk of this House do carry the said resolution to the Senate, and desire their concurrence.

The House proceeded to the farther consideration of the bill authorizing the Secretary of War to issue military land warrants, and for other purposes, to which the Committee of the Whole House, to whom it had been committed, reported no amendment, on the thirteenth instant; and the said bill being twice read and amended at the Clerk's table, was, together with the amendments, ordered to be engrossed, and read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith; and, after some time spent therein, the Committee rose, reported progress, and were discharged from the farther consideration thereof, and the bill was recommitted to the Committee of Commerce and Manufactures.

Tuesday, February 19.

Mr. Nicholson, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, "to wait on the President and notify him of his re election to the office of President of the United States," reported that the committee did, this day, perform the service assigned to them.

The House again resolved itself into a Committee of the Whole and proceeded, in that capacity, to the Senate Chamber to attend the trial of Judge Chase, after which they returned and reported progress.

Mr. Newton, from the committee appointed on the sixth of November last, presented a bill to alter and establish certain post roads, and for other purposes; which was read twice and committed to a Committee of the Whole to-morrow.

An engrossed bill to authorize the Secretary of War to issue military land warrants, and for other purposes, was read the third time and passed.

A message from the Senate informed the House that the Senate have passed the bill entitled "An act further providing for the government of the Territory of Orleans;" to which they desire the concurrence of this House.

The said bill was read twice and committed to a Committee of the Whole House to-morrow.

The House resolved itself into a Committee of the Whole on the report of the Committee of Claims, of the thirteenth instant, to whom was referred the memorial of Richard Taylor, of the State of Kentucky; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read, and agreed to by the House, as follows:

Resolved, That the prayer of the memorial of Richard Taylor is reasonable, and ought to be granted.

Ordered That a bill, or bills, be brought in, pursuant to the said resolution; and that the Committee of Claims do prepare and bring in the same.

Mr. Thomas, from the committee appointed on the fifteenth ultimo, presented a bill supplementary to the act, entitled "An act, regulating the grants of land appropriated for the refugees from the British Provinces of Canada and Nova Scotia;" which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Dana, from the Committee of Claims, presented a bill for the relief of Richard Taylor; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Dana, from the Committee of Claims, presented a bill for the relief of William A. Barron; which was read twice and committed to a Committee of the Whole to-morrow.

Mr. Eppes, from the committee to whom was recommitted, on the fifth instant, an engrossed bill farther to extinguish the debts due from the United States, made a report thereon; which was read, and ordered to lie on the table.

Wednesday, February 20.

The House again resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase, after which they returned and reported progress.

A Message was received from the President of the United States, transmitting a letter, of September eighteenth, from Commodore Preble, giving a detailed statement of the transactions of the vessels under his command from July the ninth to the tenth of September last past. The Message and papers were read, and referred to Mr. Varnum, Mr. Joseph Clay, Mr. McCreery, Mr. Dana, and Mr. Lowndes; to examine and report their opinion thereupon to the House.

Mr. Holland, from the committee appointed, on the twenty-eighth ultimo, "to take into consideration the present situation of the grounds in the City of Washington which were appropriated for the purpose of laying out public walks and gardens, and to report such measures as may tend to carry into effect the original intention of the proprietors by whom the said lands were granted for public purposes," reported a bill to authorize the leasing of the public lands in the City of Washington; which was read twice and committed to a Committee of the Whole on Saturday next.

Ordered, That the Committee of the Whole to whom was recommitted, on the twenty-fifth of January last, the bill for the relief of the sufferers by fire in the city of New York, be discharged from the consideration thereof; and that the said bill, with the amendment reported thereto by the Committee of the Whole House, on the twenty-fourth of the same month, be committed to the Committee of Commerce and Manufactures.

Mr. Dana, from the Committee of Claims, to whom were referred, on the fifth instant, a Message from the President of the United States, and the documents accompanying the same; as, also,

the reports and others papers made and presented at the last session, in relation to the subject-matter of a claim for the restitution of the Danis brigantine called the Henrich; made a report thereon; which was read, and referred to a Committee of the Whole to-morrow.

On motion it was

Resolved, That a committee be appointed to inquire whether any and, if any, what, provision is necessary to extend, to all parties interested therein, the benefit of bonds given by Marshals for the faithful performance of the duties of their office; and that they report by bill, or otherwise.

Ordered, That Mr. Baldwin, Mr. Dawson, and Mr. Nelson, be appointed a committee, pursuant to the said resolution.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, to whom was recommitted, on the eighteenth instant, the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith, reported the same to the House, without amendment.

Thursday, February 21.

No quorum being present, the House adjourned until half past two o'clock, P. M.

Eodem Die, 2½ *o'clock, P. M.*

The House met, pursuant to adjournment, but immediately after adjourned.

Friday, February 22.

Mr. Joseph Clay, from the Committee of Ways and Means, to whom were referred, on the fifteenth instant, the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government, for the year one thousand eight hundred and five," reported to the House their agreement to the same: Whereupon, the amendments, together with the bill, were committed to a Committee of the Whole to-day.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to amend the act, entitled 'An act further to amend the act entitled an act to lay and collect a direct tax within the United States;" to which they desire the concurrence of this House.

The Speaker laid before the House a letter from the Secretary of State, accompanied with "a list of the names of persons who have invented a new and useful art, manufacture, or composition of matter, or any improvement thereon, and to whom patents have issued for the same from the office of the Department of State, with the dates and general objects of such patents," in pursuance of a resolution of this House of the twenty-third ultimo; which were read, and ordered to lie on the table.

This House resolved itself into a Committee of the Whole, and proceeded, in that capacity, to the Senate Chamber, to attend the trial of Judge Chase: after which they returned and reported progress.

COLLECTOR'S BOND.

Mr. Joseph Clay, from the Committee of Ways and Means, to whom was referred the petition of Anthony Benezet and others, children and surviving heirs of Daniel Benezet, late of the City of Philadelphia, deceased, made the following report:

That Daniel Benezet, the younger brother to the petitioners, was appointed, in March, 1790, collector of the port of Great Egg Harbor, in the State of New Jersey; Daniel Benezet the elder, his father, became his surety in a bond for two thousand dollars, given for the faithful discharge of his duties in that office.

Daniel Benezet, the younger, rendered no account for settlement at the Treasury subsequent to the 30th June, 1791, although repeatedly urged to do it; he continued in the office until the 7th of March, 1795, when he was superseded by the appointment of Constant Somers, who had been his deputy.

Daniel Benezet, the elder, died in April, 1797, and his estate was settled and divided among the heirs, of whom Daniel Benezet, the younger, was one, in the beginning of the year 1798.

Daniel Benezet, the younger, received for his share of his father's estate a sum of money amounting to more than five thousand dollars; he died in December, 1798, and his estate was sold to pay his debts, and finally settled in the year 1801, as far as it was in the power of his administrators and heirs to settle it.

In the year 1802, seven years after his dismissal, his administrator was, for the first time, applied to by the Comptroller of the Treasury for some books and papers, which, it had been intimated, related to the transaction of the custom-house of Great Egg Harbor, with a request that they might be delivered to the then collector. This request could not be complied with, as no such books, and very few trifling papers, were in the possession of the administrator; the attorney for the district of New Jersey was then directed to commence a suit on the official bond; but finding that the parties interested all lived in Pennsylvania, he gave notice of that circumstance to the Comptroller, upon which the District Attorney for Pennsylvania was, by a letter bearing date the 12th of August, 1803, directed to institute a suit for the recovery of the penalty. On the 7th of October, 1803, suit was accordingly brought against the administrators of Daniel Benezet, the elder, and judgment was entered by agreement in favor of the United States, for two thousand dollars, with a stay of execution for six months. It was also agreed, that, if, before the expiration of that time, the defendants could satisfy the Comptroller that they were entitled to be released, in whole or in part, from the amount of the judgment, it should accordingly be endorsed on the Comptroller's certificate. The Comptroller having no authority to release any part of the judgment, the petitioners have applied to Congress for relief. By an act of Congress, passed September 2d, 1789, it is made the duty of the Comptroller to "provide for the regular and punctual payment of all moneys which may be collected," and to direct prosecutions for all delinquencies of officers of the revenue."

By an act of Congress, passed August 4th, 1790, it was made the duty of the collectors, once in every three months, or oftener if required, to transmit their accounts for settlement.

Although Daniel Benezet, the younger, was frequently pressed to forward his accounts for settlement, and refused or neglected to do so, and although he was dismissed from office, probably for delinquency, yet no steps were taken to recover from him the penalty of his bond, during his life, nor from his or his father's estate, until the year 1802, eleven years after his appointment, seven years after his dismissal, five years after the death of his father, and four years after the final settlement and division of his father's estate, and after his own death.

Had any application been made previously to the settlement of either of the estates, the penalty of the bond might have been recovered and paid out of his own effects. But, from the delay, and not to say neglect, of the then Comptroller, no steps were taken until the whole of his property was disposed of, in payment of his private debts.

When it is considered that policy has dictated, in all countries, a limitation of the time in which ordinary debts between individuals may be recovered, and that the humanity of the Government has determined that even penalties and forfeitures, for crimes against the revenue laws, shall not be imposed upon the offenders unless the prosecution be had within a limited time; and particularly, when it is considered that statutes of limitation have been passed, to prevent the allowance of claims against the United States, unless brought before a certain period—claims, too, of the most meritorious nature—it is submitted to Congress whether a consistent regard to justice does not forbid the rigorous exaction of the sum adjudged against the petitioners, especially as the delay has arisen from the negligence of the officers of the Government. Your committee conceiving this case to be extremely severe, think the petitioners entitled to the relief for which they pray, and recommend the following resolution:

Resolved, That the prayer of the petitioners is reasonable, and ought to be granted.

The report was ordered to lie on the table.

Saturday, February 23.

A Message was received from the President of the United States, as follows:

To the House of Representatives of the United States:

In further compliance with the desire of the House of Representatives, expressed in their resolution of December thirty-first, I now transmit the report and map of Isaac Briggs, referred to in my message of the first instant, and received by the last post from New Orleans.

Feb. 23, 1805. TH. JEFFERSON.

The said Message was read, and, together with the report transmitted therewith, referred to the Committee of the Whole to whom was committed a motion respecting "the establishment of a post road from Knoxville to New Orleans.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act to regulate the clearance of armed merchant vessels," with several amendments; to which they desire the concurrence of this House.

Mr. Nicholson, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, "to inquire and report whether any, and, if any, what, further measures ought to be adopted for the accommodation of the President of the United States, for the term commencing the fourth of March next," made a report thereon; which was read, and referred to the Committee of the Whole on Monday next.

The House then, in Committee of the Whole attended the trial of Judge Chase in the Senate; after which they returned and reported progress.

Monday, February 25.

Mr. Baldwin, from the committee appointed on the twentieth instant, presented a bill relating to bonds given by marshals; which was read twice and committed to a Committee of the Whole to-morrow.

The bill sent from the Senate, entitled "An act to amend the act, entitled 'An act further to amend the act, entitled An act to lay and collect a direct tax within the United States," was read three times and passed.

And then, on a motion made and seconded, the House adjourned until three o'clock, post meridian.

Eodem Die, 3 *o'clock, P. M.*

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana;" and, after some time spent therein, the bill was reported with several amendments thereto; which were severally twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the amendments proposed by the Senate to the bill, entitled "An act making appropriations for the support of Government for the year one thousand eight hundred and five;" and, after some time spent therein, the Committee rose and reported to the House their agreement to the same. The House then proceeded to consider the said amendments, and concurred with the Committee of the Whole in their agreement to the said amendments.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels:" Whereupon, the amendments, together with the bill, were committed to a Committee of the Whole to-morrow.

And the House adjourned.

Tuesday, February 26.

The Speaker laid before the House a letter from the Secretary of the Treasury, accompanied with a statement of the emoluments of the officers employed in the collection of the customs for the year one thousand eight hundred and four; as also a letter to the said Secretary from the Comptroller of the Treasury, in relation thereto; which were read, and ordered to lie on the table.

The House met, and on motion, adjourned until three o'clock, post meridian.

Eodem Die, 3 *o'clock, P. M.*

No quorum being present, the House adjourned.

Wednesday, February 27.

Mr. R. Griswold, from the committee appointed on the part of this House, jointly with the committee appointed on the part of the Senate, "to consider and report what business is necessary to be done by Congress in their present session," made a report thereon; which was read, and ordered to lie on the table.

Mr. Crowninshield, from the Committee of Commerce and Manufactures, to whom were committed, on the tenth ultimo, the amendments proposed by the Senate to the bill, entitled "An act to amend the act, entitled 'An act for the government and regulation of seamen in the merchants' service,'" reported to the House their agreement to the same.

Mr. C., from the same committee, to whom was recommitted, on the twentieth instant, the bill for the relief of the sufferers by fire in the city of New York, made a report thereon; which was read, and ordered to lie on the table.

Mr. C., from the same committee, also reported an amendatory bill for the relief of the sufferers by fire in the city of New York, and for the relief of the sufferers by storm in Georgia and South Carolina; which were ordered to lie on the table.

The House then adjourned until four o'clock, post meridian.

Eodem Die, 4 *o'clock, P. M.*

The bill sent from the Senate, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the District of Louisiana," together with the amendments agreed to on Monday last, were read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill further to alter and establish certain post roads, and for other purposes; and, after some time spent therein, the Committee rose and reported progress.

And the House adjourned.

Thursday, February 28.

A Message was received from the President of the United States, transmitting a statement of the militia of the United States. The said Message was read, and, together with the statement of the militia transmitted therewith, ordered to lie on the table.

Another Message was received from the President of the United States, transmitting the account of the fund established by the act of May first, one thousand eight hundred and two, for defraying the contingent charges of Government. The said Message was read, and, together with the account transmitted therewith, ordered to lie on the table.

The House proceeded to consider the report of the Committee of Commerce and Manufactures, of the twenty-seventh instant, to whom was committed the amendment proposed by the Senate to the bill, entitled "An act for the government and regulation of seamen in the merchants' service:" Whereupon, the House concurred with the Committee of Commerce and Manufactures in their agreement to the said amendment.

Mr. Dana, from the Committee of Claims, to whom was recommitted, on the twelfth instant, the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war;" and, also, a bill which originated in this House, to the like effect, made a report thereon; which was read, and, together with the said bills, committed to a Committee of the Whole this day.

Mr. D., from the same committee, to whom was referred, on the fifteenth ultimo, the petition of John F. Randolph and Randolph McGillis, of the State of Georgia, together with sundry reports and documents accompanying the same, made a report thereon; which was read, and referred to a Committee of the Whole this day.

The House proceeded to consider the report of the Committee of Ways and Means, to whom was referred the petition of Anthony Benezet and others, children and surviving heirs of Daniel Benezet, deceased, which was read, and ordered to lie on the table, on the twenty-second instant: Whereupon, the report was referred to a Committee of the Whole to-morrow.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That there be allowed to Isaac Briggs and his assistant —— dollars, as a full compensation for their services in exploring and describing the most eligible route for the transportation of the mail from the City of Washington to New Orleans:

Ordered, That the said motion be referred to the Committee of Ways and Means.

On motion, the House resolved itself into a Committee of the Whole on the bill to alter and establish certain post roads, and for other purposes. The Committee rose and reported several amendments thereto; which were twice read, and agreed to by the House. The said bill was then further amended, and, together with the amendments, ordered to be engrossed and read the third time to-morrow.

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the Clerk be directed, as soon as may be, after the present session of Congress, to advertise three weeks, successively, in two newspapers printed in the District of Columbia, that he is ready to receive separate proposals for supplying the House of Representatives at their next session, with the necessary stationery and printing; which advertisement shall describe the species of stationery and printing wanted; and that the proposals to be made must be accompanied with sufficient securities for the performance. And, in the month of September, he shall publish, in the same newspapers, a statement of the prices at which the stationery and printing are proposed to be furnished by each applicant; and shall notify the lowest bidder or bidders, whose securities are deemed sufficient, of the acceptance of his or their proposals:

The House proceeded to consider the said proposed resolution at the Clerk's table; and the same

being twice read, a motion was made, and the question being put, that the further consideration thereof be postponed until to-morrow, it passed in the negative. And then the main question being taken that the House do agree to the said resolution, in the words hereinbefore recited, it was resolved in the affirmative—yeas 76, nays 30, as follows:

Yeas—Nathaniel Alexander, Isaac Anderson, Simeon Baldwin, Silas Betton, William Blackledge, Walter Bowie, John Boyle, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dawson, John Dennis, William Dickson, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findley, Calvin Goddard, Andrew Gregg, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, James Holland, David Hough, Samuel Hunt, John G. Jackson, Walter Jones, William Kennedy, Nehemiah Knight, Simon Larned, Henry W. Livingston, Thomas Lowndes, Matthew Lyon, William McCreery, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, Oliver Phelps, Thomas Plater, John Rhea of Tennessee, Samuel Riker, Erastus Root, Ebenezer Seaver, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, William Stedman, James Stephenson, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, David Thomas, George Tibbitts, Isaac Van Horne, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Matthew Walton, Lemuel Williams, Marmaduke Williams, Alexander Wilson, Richard Winn, and Joseph Winston.

Nays—David Bard, Robert Brown, Joseph Bryan, Levi Casey, Christopher Clark, George Clinton, jun., John B. Earle, John W. Eppes, Peterson Goodwyn, Josiah Hasbrouck, Joseph Heister, David Holmes, Michael Leib, John B. C. Lucas, Andrew McCord, Nicholas R. Moore, Thomas Moore, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Beriah Palmer, John Rea of Pennsylvania, Jacob Richards, Thomas Sandford, James Sloan, Philip R. Thompson, Abram Trigg, John Whitehill, and Thomas Wynns.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans;" and, after some time spent therein, the Committee rose and reported two amendments thereto.

The House proceeded to consider the said amendments: Whereupon, the first amendment being twice read, was agreed to by the House.

The second amendment reported from the Committee of the Whole being twice read, for inserting a new section between the third and fourth sections of the original bill, in the words following, to wit:

Sec. 3. *And be it further enacted*, That the Council and Representatives of said Territory, when met and organized, shall nominate —— persons, resident in said Territory, and citizens thereof, whose names shall be returned to the President of the United States, one of whom the President shall appoint and commission to be the Governor of said Territory, who shall hold his office for the term of —— years from his appointment; shall take the same oath or affirmation, and shall have the same powers and authorities within said Territory, as are given by law to the Governor of the Mississippi Territory. And in case the office of Governor shall become vacant, such vacancy shall be filled in the same manner as is herein provided for appointing the first Governor; and, until a Governor shall be appointed, commissioned, and sworn, in the manner provided by this act, the powers and authorities of Governor shall be exercised by the Governor of the Territory of Orleans, appointed in virtue of an act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof."

After debate thereon, the question was taken that the House do concur with the Committee of the Whole in their agreement to the said second amendment, and passed in the negative—yeas 46, nays 57, as follows:

Yeas—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Christopher Clark, Matthew Clay, Manasseh Cutler, Samuel W. Dana, John Davenport, John Dennis, Ebenezer Elmer, William Findley, John Fowler, Calvin Goddard, Thomas Griffin, Gaylord Griswold, Roger Griswold, Seth Hastings, John G. Jackson, Simon Larned, Joseph Lewis, junior, John B. C. Lucas, Matthew Lyon, Nahum Mitchell, Jeremiah Morrow, Gideon Olin, Oliver Phelps, Ebenezer Seaver, John Smilie, Richard Stanford, William Stedman, James Stephenson, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, Philip R. Thompson, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, Marmaduke Williams, Joseph Winston, and Thomas Wynns.

Nays—Willis Alston, jun., Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Robert Brown, William Butler, John Campbell, Levi Casey, George Clinton, jr., John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, John W. Eppes, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, William Helms, John Hoge, James Holland, David Holmes, Benjamin Huger, Walter Jones, William Kennedy, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Nicholas R. Moore, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Beriah Palmer, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, Thomas Sandford, James Sloan, John Smith, Joseph Stanton, Abram Trigg, Philip Van Cortlandt, Matthew Walton, John Whitehill, Alexander Wilson, and Richard Winn.

Resolved, That the said bill, with the amendment agreed to, be read the third time to-morrow.

The House resolved itself into a Committee of the Whole on the bill for the relief of Richard Taylor. The bill was reported with several amendments thereto; which were severally twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act to authorize the Secretary of War to issue military land warrants, and for other purposes," with an amendment; to which they desire the

concurrence of this House. The Senate have also passed the bill, entitled "An act to amend the charter of Georgetown, with several amendments; to which they desire the concurrence of this House. The Senate have passed a bill, entitled "An act freeing from postage all letters and packets to and from Aaron Burr;" to which they desire the concurrence of this House.

Mr. Newton, from the committee to whom was referred, on the nineteenth, the petition of sundry freeholders and inhabitants of the town of Portsmouth, in the State of Virginia, made a report thereon; which was read and ordered to lie on the table.

Friday, March 1.

An engrossed bill further to alter and establish certain post roads, and for other purposes, was read the third time and passed.

An engrossed bill for the relief of Richard Taylor was read the third time and passed.

The bill sent from the Senate, entitled "An act further providing for the government of the Territory of Orleans," together with the amendment agreed to yesterday, was read the third time and passed.

Mr. Dana, from the Committee of Claims, to whom was referred, on the seventh of December last, the memorial of Nancy Flinn, widow of Thomas Flinn, deceased, made a report thereon; which was read, and ordered to be referred to a Committee of the Whole this day.

The bill sent from the Senate, entitled "An act freeing from postage all letters and packets to and from Aaron Burr," was read twice and committed to a Committee of the Whole on the first Monday in December next.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act to amend the charter of Georgetown:" Whereupon,

Resolved, That this House do agree to the said amendments.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act to authorize the Secretary of War to issue Military Land Warrants and for other purposes:" Whereupon,

Resolved, That this House do agree to the said amendment.

The House resolved itself into a Committee of the Whole on the bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes;" and, after some time spent therein, the bill was reported with two amendments thereto; which were twice read and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time today.

The House resolved itself into a Committee of the Whole on the Message from the President of the United States, of the thirteenth ultimo, accompanied with certain treaties which have been lately entered into and concluded with the Delaware and Piankeshaw Indians, and the tribe of Indians called the Sacs and Foxes; and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read and agreed to by the House, as follows:

Resolved, That it is expedient to make provision, by law, for carrying into execution the treaties lately concluded between the United States and the Delaware, Piankeshaw, Sac, and Fox tribes of Indians.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that the Committee of Ways and Means do prepare and bring in the same.

The Speaker laid before the House a letter addressed to him, signed "Th. Jefferson," notifying, that "he shall take the oath which the Constitution prescribes to the President of the United States, before he enters on the execution of his office, on Monday, the fourth instant, at twelve o'clock, in the Senate Chamber."

Ordered to lie on the table.

The House resolved itself into a Committee of the Whole on the report of the joint committee of the two Houses, appointed "to inquire and report whether any, and, if any, what, measures 'ought to be adopted for the accommodation of 'the President of the United States, for the term 'commencing on the fourth day of March next;" and, after some time spent therein, the Committee rose and reported a resolution thereupon; which was twice read and agreed to by the House, as follows:

Resolved, That the President of the United States be authorized to cause to be sold such part of the furniture and equipage belonging to his household, as may be decayed and out of repair; and that the further sum of fourteen thousand dollars, together with the proceeds of such sales, be appropriated for the accommodation of the household of the President of the United States, to be laid out at his discretion, and under his direction.

Ordered, That a bill or bills be brought in pursuant to the said resolution; and that Mr. Nicholson, Mr. Roger Griswold, and Mr. Bryan, do prepare and bring in the same.

And then, on motion made and seconded, the House adjourned until four o'clock, P. M.

Eodem Die, 4 o'clock, P. M.

Mr. Elliot, from the committee to whom was referred, on the twenty-sixth of November and seventh of January last, the petitions of Benjamin Emmons, and of Barnabus Strong, and his associates; also, the report of a select committee on the petition of the said Benjamin Emmons, of the twenty-seventh of February, one thousand eight hundred and four; made a report thereon; which was read, and considered: Whereupon, so much of the last clause of the said report, as is contained in the following words, to wit: "They 'beg leave to recommend that the further consid-'eration of the prayer of the said petitions be post-'poned until the next session of Congress," being twice read, was, on the question put thereupon, disagreed by the House.

A motion was then made and seconded, that the House do agree to the following resolution:

Resolved, That the prayer of the petitions of Benjamin Emmons and of Barnabus Strong, and others, ought not to be granted.

And the question being taken thereupon, it was resolved in the affirmative.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act further providing for the government of the district of Louisiana;" also, a bill, entitled "An act authorizing the sale of a certain lot of land;" to which bills, respectively, they desire the concurrence of this House.

On a motion made by Mr. John Randolph, that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be submitted to the Legislatures of the several States, which, when ratified and confirmed by the Legislatures of three-fourths of the said States, shall be valid and binding, as a part of the Constitution of the United States:

The judges of the Supreme and all other Courts of the United States, shall be removed by the President, on the joint address of both Houses of Congress, requesting the same, anything in the Constitution of the United States to the contrary notwithstanding.

A motion was made and seconded that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas 68, nays 33, as follows:

Yeas—Willis Alston, jr., Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Adam Boyd, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, Jacob Crowninshield, Richard Cutts, John Dawson, John B. Earle, Peter Early, John W. Eppes, William Findley, John Fowler, Peterson Goodwyn, Andrew Gregg, John A. Hanna, Josiah Hasbrouck, Jas. Holland, David Holmes, John G. Jackson, Walter Jones, Nehemiah Knight, Michael Leib, J. B. C. Lucas, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, Oliver Phelps, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Cæsar A. Rodney, Thomas Sammons, Ebenezer Seaver, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Isaac Van Horne, Joseph B. Varnum, Matthew Walton, John Whitehill, Alexander Wilson, Richard Winn, and Thomas Wynns.

Nays—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Chamberlin, Martin Chittenden, Clifton Claggett, Manasseh Cutler, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, Calvin Goddard, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, John Hoge, Benj. Huger, Simon Larned, Thomas Lowndes, Nahum Mitchell, Erastus Root, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative.

On a motion made by Mr. Nicholson,

Resolved, That the following article, when adopted by two-thirds of both Houses of Congress, and by the Legislatures of three-fourths of the respective States, shall become a part of the Constitution of the United States, viz:

That the Legislature of any State may, whenever the said Legislature shall think proper, recall, at any period whatever, any Senator of the United States, who may have been elected by them; and whenever a vote of the Legislature of any State, vacating the seat of any Senator of the United States, who may have been elected by the said State, shall be made known to the Senate of the United States, the seat of such Senator shall thenceforth be vacated.

A motion was made and seconded, that the said proposed resolution be referred to the consideration of a Committee of the whole House; and the question being taken thereupon, it was resolved in the affirmative—yeas 53, nays 46, as follows:

Yeas—Willis Alston, jun., Isaac Anderson, David Bard, Walter Bowie, Robert Brown, Joseph Bryan, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, George Clinton, jun., John Clopton, Frederick Conrad, John Dawson, John B. Earle, Peter Early, J. W. Eppes, Peterson Goodwyn, Adrew Gregg, John A. Hanna, Josiah Hasbrouck, Joseph Heister, James Holland, David Holmes, Nehemiah Knight, Michael Leib, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Thomas Sammons, Ebenezer Seaver, James Sloan, Richard Stanford, Joseph Stanton, John Stewart, Philip R. Thompson, Abram Trigg, John Whitehill, Alexander Wilson, Richard Winn, and Thomas Wynns.

Nays—Nathaniel Alexander, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, William Chamberlin, Martin Chittenden, Clifton Claggett, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, William Findley, John Fowler, Gaylord Griswold, Roger Griswold, Seth Hastings, William Helms, David Hough, Benjamin Huger, John G. Jackson, William Kennedy, Simon Larned, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Oliver Phelps, Erastus Root, John Smilie, Henry Southard, William Stedman, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, David Thomas, George Tibbits, Killian K. Van Rensselaer, Joseph B. Varnum, Peleg Wadsworth, Lemuel Williams, and Marmaduke Williams.

Another motion was then made, and the question being put, that the said resolution be the order of the day for the first Monday in December next, it was resolved in the affirmative—yeas 70, nays 28, as follows:

Yeas—Willis Alston, jun., Nathaniel Alexander,

Isaac Anderson, Simeon Baldwin, Silas Betton, William Blackledge, Adam Boyd, Joseph Bryan, William Butler, Levi Casey, William Chamberlin, Thomas Claiborne, George Clinton, jun., John Clopton, Frederick Conrad, Jacob Crowninshield, Manasseh Cutler, Richard Cutts, John Davenport, John Dawson, John B. Earle, Peter Early, James Elliot, Ebenezer Elmer, John W. Eppes, William Findley, John Fowler, Calvin Goddard, Peterson Goodwyn, Andrew Gregg, Roger Griswold, John A. Hanna, Josiah Hasbrouck, Seth Hastings, Jos. Heister, James Holland, David Holmes, Benjamin Huger, John G. Jackson, William Kennedy, Nehemiah Knight, Simon Larned, Thomas Lowndes, John B. C. Lucas, Andrew McCord, William McCreery, Nahum Mitchell, Nicholas R. Moore, Jeremiah Morrow, Thomas Newton, jun., Gideon Olin, Oliver Phelps, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Erastus Root, Thomas Sammons, Ebenezer Seaver, John Smilie, Henry Southard, John Stewart, Samuel Taggart, Benjamin Tallmadge, Samuel Tenney, Philip R. Thompson, Joseph B. Varnum, Matthew Walton, Marmaduke Williams, Alexander Wilson, and Thomas Wynns.

Nays—David Bard, Walter Bowie, Robert Brown, Martin Chittenden, Clifton Claggett, Joseph Clay, Thomas Dwight, Gaylord Griswold, William Helms, David Hough, Michael Leib, Roger Nelson, Anthony New, Joseph H. Nicholson, Beriah Palmer, John Randolph, James Sloan, Richard Stanford, Joseph Stanton, William Stedman, Samuel Thatcher, David Thomas, George Tibbits, Abram Trigg, Killian K. Van Rensselaer, Peleg Wadsworth, John Whitehill, and Richard Winn.

An engrossed bill supplementary to the act, entitled "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," was read the third time, and passed.

Mr. Nicholson, from the committee appointed, presented a bill further to provide for the accommodation of the President of the United States; which was read twice, and committed to a Committee of the Whole to-day.

The bill, sent from the Senate, entitled "An act further providing for the government of the district of Louisiana," was read twice, and ordered to be read the third time to-morrow.

Saturday, March 2.

Mr. Joseph Clay, from the Committee of Ways and Means, presented a bill making an appropriation for carrying into effect certain Indian treaties; which was read twice, and committed to a Committee of the Whole this day.

The bill, sent from the Senate, entitled "An act further providing for the government of the district of Louisiana," was read the third time and passed.

The House resolved itself into a Committee of the Whole on the bill further to provide for the accommodation of the President of the United States. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

The bill, sent from the Senate, entitled "An act authorizing the sale of a certain lot of land," was read the first time, and the further consideration postponed until the first Monday in December next.

The House resolved itself into a Committee of the Whole on the bill, sent from the Senate, entitled "An act to amend an act, entitled 'An act for imposing more specific duties on the importation of certain articles; and, also, for levying and collecting light money on foreign ships or vessels," to which the Committee of Ways and Means, to whom it had been referred, reported no amendment, on the eighteenth of January last; and, after some time spent therein, the Committee reported the same to the House without amendment.

The House then proceeded to consider the said bill: Whereupon a motion was made and seconded that the further consideration thereof be postponed until the first Monday in December next, and the question being put thereon, it passed in the negative—yeas 43, nays 46, as follows:

Yeas—David Bard, Silas Betton, Adam Boyd, William Butler, John Campbell, William Chamberlin, Martin Chittenden, Clifton Claggett, Frederick Conrad, Samuel W. Dana, John Davenport, Thomas Dwight, James Elliot, Ebenezer Elmer, John W. Eppes, Calvin Goddard, Peterson Goodwyn, Andrew Gregg, Gaylord Griswold, Roger Griswold, John Hoge, David Hough, Benjamin Huger, Samuel Hunt, John G. Jackson, Thomas Lowndes, John B. C. Lucas, Nahum Mitchell, Beriah Palmer, Thomas Plater, John Rea of Pennsylvania, John Rhea of Tennessee, Thomas Sammons, Thomas Sandford, Henry Southard, Richard Stanford, William Stedman, John Stewart, Samuel Taggart, Benj. Tallmadge, Samuel Tenney, Samuel Thatcher, and George Tibbits.

Nays—Willis Alston, jun., Nathaniel Alexander, Isaac Anderson, William Blackledge, Walter Bowie, Robert Brown, Joseph Clay, Matthew Clay, John Clopton, Jacob Crowninshield, John Dawson, John Fowler, Josiah Hasbrouck, James Holland, David Holmes, William Kennedy, Nehemiah Knight, Simon Larned, Michael Leib, Matthew Lyon, Andrew McCord, William McCreery, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Anthony New, Thomas Newton, jr., Joseph H. Nicholson, Gideon Olin, John Randolph, Thomas Mann Randolph, Jacob Richards, James Sloan, John Smilie, Joseph Stanton, Philip R. Thompson, Abram Trigg, Joseph B. Varnum, John Whitehill, Lemuel Williams, Alexander Wilson, Richard Winn, Joseph Winston, and Thomas Wynns.

And then the main question being taken, that the said bill do pass, it was resolved in the affirmative.

An engrossed bill further to provide for the accommodation of the President of the United States, was read the third time, and passed.

A message from the Senate informed the House that the Senate have passed a bill, entitled "An act supplementary to an act, entitled 'An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty;" to which they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by

known wounds received in the actual service of the United States, during the Revolutionary war," the bill was reported with an amendment thereto; which was twice read, and agreed to by the House.

Ordered, That the said bill, with the amendment, be read the third time to-morrow.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," with several amendments; to which they desire the concurrence of this House.

The Senate have passed a bill, entitled "An act making provision for the widow and orphan children of Thomas Flinn;" also, a bill, entitled "An act for the relief of George Scoone and Alexander Cameron;" to which bills, respectively, they desire the concurrence of this House.

The House resolved itself into a Committee of the Whole on the amendments of the Senate to the bill, entitled "An act to regulate the clearance of armed merchant vessels. The committee reported to the House their agreement to the same, with sundry amendments thereto. The House then proceeded to consider the said amendments of the Senate: Whereupon,

Resolved, That this House doth agree to the said amendment, with amendments.

A message from the Senate informed the House that the Senate have passed sundry resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron;" to which they desire the concurrence of this House.

The said resolutions of the Senate were read: Whereupon, the resolutions were committed to Mr. R. Griswold, Mr. Nicholson, and Mr. J. Clay, to consider and report thereon to the House.

The House then adjourned until five o'clock, post meridian.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes," with an amendment; to which they desire the concurrence of this House; also, the bill, entitled "An act further to alter and establish certain post roads, and for other purposes," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendment proposed by the Senate to the bill, entitled "An act supplementary to the act, entitled 'An act making provision for the disposal of the public lands in the Indiana Territory and for other purposes:" Whereupon,

Resolved, That this House doth agree to the said amendment.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act further to alter and establish certain post roads, and for other purposes:" Whereupon,

Resolved, That this House doth agree to the said amendments.

The bill sent from the Senate, entitled "An act, for the relief of George Scoone and Alexander Cameron," was read twice and committed to a Committee of the Whole this day.

The bill sent from the Senate, entitled "An act making provision for the widow and orphan children of Thomas Flinn," was read twice and committed to a Committee of the Whole this day.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for carrying into effect certain Indian treaties. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-day.

A message from the Senate informed the House that the Senate disagree to the amendment proposed by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for the persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war."

The House proceeded to consider the said message: Whereupon,

Resolved, That this House doth insist on their said amendment, and desire a conference with the Senate on the subject-matter thereof; to which conference this House doth appoint Mr. Dana, Mr. Root, and Mr. Nelson, the managers on their part.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act for the relief of George Scoone and Alexander Cameron." The bill was reported without amendment, read the third time, and passed.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act making provision for the widow and orphan children of Thomas Flinn. No amendment being made, the said bill was then read the third time, and passed.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase:" Whereupon, the said amendments, together with the bill, were committed to a Committee of the Whole immediately.

The House, accordingly, resolved itself into the said Committee; and, after some time spent therein, the Committee rose and reported to the House their disagreement to the same.

The House then proceeded to consider the said amendments of the Senate: Whereupon, the question being taken that the House do agree with the Committee of the whole House in their disagreement to the first amendment of the Senate, by strik-

ing out, in the first section of the bill, line third, the words "on behalf of the House of Representatives, and of all the people of the United States, to attend the Senate in support," and inserting, in lieu thereof, the words "to attend the Senate on the trial."

It was resolved in the affirmative.—yeas 60, nays 18, as follows:

Yeas—Willis Alston, jr., Nathaniel Alexander, Isaac Anderson, David Bard, William Blackledge, Walter Bowie, Robert Brown, William Butler, Levi Casey, Thomas Claiborne, Joseph Clay, John Clopton, Frederick Conrad, John Dawson, William Dickson, John B. Earle, Ebenezer Elmer, John W. Eppes, William Findley, Peterson Goodwyn, Andrew Gregg, Joseph Heister, James Holland, David Holmes, Walter Jones, Nehemiah Knight, Simon Larned, Michael Leib, John B. C. Lucas, Andrew McCord, Nicholas R. Moore, Thomas Moore, Jeremiah Morrow, Roger Nelson, Thomas Newton, jun., Joseph H. Nicholson, Gideon Olin, Beriah Palmer, John Randolph, Thomas M. Randolph, John Rea of Pennsylvania, John Rhea of Tennessee, Jacob Richards, Samuel Riker, Erastus Root, Thomas Sammons, James Sloan, John Smilie, Henry Southard, Richard Stanford, Joseph Stanton, John Stewart, David Thomas, Philip R. Thompson, Abram Trigg, Isaac Van Horne, Joseph B. Varnum, John Whitehill, Alexander Wilson, and Richard Winn.

Nays—Simeon Baldwin, Jacob Crowninshield, Manasseh Cutler, John Fowler, Calvin Goddard, Gaylord Griswold, Roger Griswold, Benjamin Huger, Samuel Hunt, Nahum Mitchell, Samuel D. Purviance, William Stedman, Benjamin Tallmadge, Samuel Tenney, Samuel Thatcher, George Tibbits, Killian K. Van Rensselaer, and Peleg Wadsworth.

Resolved, That this House doth agree to all the other amendments of the Senate to the said bill.

The bill sent from the Senate, entitled "An act supplementary to the act, entitled 'An act making an appropriation for carrying into effect the Convention between the United States of America, and His Britannic Majesty,'" was read three times, and passed.

Mr. R. Griswold, from the committee to whom were referred the resolutions of the Senate, "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," made a report thereon; which was read, and considered: Whereupon, the resolution was recommitted to the same committee.

A message from the Senate informed the House that the Senate agree to the conference desired by this House on the subject-matter of the amendments disagreed to by the Senate to the bill entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war,'" and have appointed managers at the said conference, on their part.

The House resolved itself into a Committee of the Whole on the bill making an appropriation for carrying into effect certain Indian treaties. The bill was reported with several amendments thereto; which were severally twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-day.

Sunday, March 3.

An engrossed bill, making an appropriation for carrying into effect certain Indian treaties, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse."

On motion, it was

Resolved, That the Committee of Accounts be authorized to adjust and settle an account of William Duane, for arrears of printing, by order of the House, at the second session of the Seventh Congress, and to direct payment of such sum as they shall allow thereon; first, out of any balance remaining unexpended of the appropriation made by an act of the present session, approved on the sixth day of December, one thousand eight hundred and four, "to make good a deficiency of the appropriation for the contingent expenses of both Houses of Congress, authorized by the act of the fourteenth day of March last;" and secondly, out of the sum appropriated for the contingent fund of this House for the present year.

Mr. Findley, from the Committee of Elections, to whom was referred the certificate of election of George Clinton, jr., returned to serve in this House, as a member for the State of New York, in the place of Samuel L. Mitchill, appointed a Senator of the United States, made a report thereon; which was read, and is as follows:

"That they have examined the said certificate, as credentials of the election of George Clinton, jun., and are of opinion, that he is entitled to a seat in this House."

Ordered, That the said report do lie on the table.

The House resolved itself into a Committee of the Whole on the bill for the relief of sundry persons therein named. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

Mr. Dana, from the managers appointed yesterday, on the part of this House, to attend a conference with the Senate, on the disagreeing votes of the two Houses on the amendments to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war,'" reported that the managers had met the conferees on the part of the Senate, but could come to no agreement on the subject-matter of the said amendments.

The House resolved itself into a Committee of the Whole on the bill to revive and make permanent, the "Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," passed the third day of January, one thousand seven hundred and ninety-eight, and in addition to the same. The bill was reported with two amendments thereto, which were twice read, and agreed to by the House.

Ordered, That the said bill, with the amendments, be engrossed, and read the third time to-day.

The House resolved itself into a Committee of the Whole on the bill sent from the Senate, entitled "An act to extend jurisdiction in certain cases, to the State and Territorial courts. The bill was reported with several amendments thereto, which were severally twice read, and agreed to by the House.

The said bill, together with the amendments, were then read the third time, and passed.

An engrossed bill for the relief of sundry persons therein named, was read the third time.

Resolved, That the said bill do pass, and that the title be, "An act for the relief of Robert Patton, and others."

Mr. Roger Griswold, from the committee to whom was, yesterday, recommitted their report on the resolutions of the Senate, "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," made a supplementary report, proposing sundry amendments to the said resolutions, which were twice read, and agreed to by the House.

Ordered, That the said resolutions, with the amendments, be read the third time to-day.

An engrossed bill to revive and make permanent the "Act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses," passed the third day of January, one thousand seven hundred and ninety-eight, and in addition to the same, was read the third time, and passed.

On motion, that it be

Resolved, That the Clerk of this House be authorized and directed to pay, out of the moneys appropriated to defray the contingent expenses of this House, to Joseph Wheaton, Sergeant-at-Arms; also, to Thomas Claxton and Thomas Dunn, the Doorkeeper and Assistant Doorkeeper, two hundred dollars, each, for their extra services during the present session; to John Phillips, fifty dollars, and to Alexander Claxton, fifty dollars.

The House proceeeded to consider the said proposed resolution at the Clerk's table: Whereupon, the further consideration of the said resolution was postponed until the first Monday in December next.

Mr. Varnum, one of the members for the State of Massachusetts, presented to the House a letter from the Governor of the said State, enclosing an attested copy of two concurrent resolutions of the Senate and House of Representatives of the State of Massachusetts, passed the fifteenth of February, in the present year, "instructing the Senators and requesting the Representatives in Congress, from the said State, to take all legal and necessary steps, to use their utmost exertions, as soon as the same is practicable, to obtain an amendment to the Federal Constitution, so as to authorize and empower the Congress of the United States to pass a law, whenever they may deem it expedient, to prevent the further importation of slaves from any of the West India islands, from the coast of Africa, or elsewhere, into the United States, or any part thereof:" Whereupon, a motion was made and seconded that the House do come to the following resolution:

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, two-thirds of both Houses concurring, That the following article be proposed to the Legislatures of the several States, as an amendment to the Constitution of the United States, which, when ratified by three-fourths of the said Legislatures, shall be valid to all intents and purposes, as a part of the said Constitution, to wit:

"That the Congress of the United States shall have power to prevent the further importation of slaves into the United States and the Territories thereof."

The said proposed resolution was read, and ordered to lie on the table.

The resolutions sent from the Senate "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," together with the amendments agreed to this day, were read the third time; and on the question that the same do pass, it was unanimously resolved in the affirmative.

The House resolved itself into a Committee of the Whole on the bill to provide for a light-house on Watch-hill Point, in the State of Rhode Island. The bill was reported without amendment, and ordered to be engrossed, and read the third time to-day.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill for the relief of Philip Nicklin and Robert Eaglesfield Griffith, was called for: Whereupon, the said order of the day was postponed until the first Monday in December next.

Mr. Newton, from the Committee on Post Offices and Post Roads, to whom was referred, on the twenty-third of January last, the petition of sundry inhabitants of York county, in the State of Pennsylvania, made a report thereon; which was read, and ordered to lie on the table.

A message from the Senate informed the House that the Senate have passed the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," with several amendments; to which they desire the concurrence of this House.

The House proceeded to consider the amendments proposed by the Senate to the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction:" Whereupon, the amendments, together with the bill, were committed to Mr. Nicholson, Mr.

CROWNINSHIELD, and Mr. HUGER, to consider and report thereon to the House.

On a motion made and seconded,

That the thanks of this House be presented to Nathaniel Macon, in testimony of their approbation of his conduct in the discharge of the arduous and important duties assigned him while acting as Speaker."

It was resolved unanimously: Whereupon, Mr. SPEAKER made his acknowledgments to the House in manner following:

"*Gentlemen:* Accept my thanks for the vote which you have been pleased to pass, approving my conduct in the chair: permit me to assure you that it has been my constant endeavor so to conduct myself as to do justice to each member; and the highest gratification which I can receive is your approbation."

On a motion made and seconded that the House do come to the following resolution:

Resolved, That the Clerk of this House be, and he is hereby, authorized to pay, out of the contingent fund of this House, the sum of two hundred and fifty dollars to Samuel Hamilton, jun., as a compensation for his services in the library; and two hundred and fifty dollars to Alexander Claxton, as a compensation for his services as a messenger in the House of Representatives.

The House proceeded to consider the said proposed resolution: Whereupon, the further consideration thereof was postponed until the first Monday in December next.

A message from the Senate informed the House that the Senate adhere to their disagreement to the amendment, insisted on by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary war."

An engrossed bill to provide for a light-house on Watch-hill Point, in the State of Rhode Island, was read the third time and passed.

The House adjourned until five o'clock, P. M.

Eodem Die, 5 o'clock, P. M.

A message from the Senate informed the House that the Senate insist on their amendments disagreed to by this House to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," and desire a conference with this House on the subject-matter of the said amendments; to which conference the Senate have appointed managers, on their part.

The Senate have agreed to the amendments proposed by this House to the resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron," with amendments; to which they desire the concurrence of this House.

The House proceeded to reconsider the amendments insisted on by the Senate to the bill, entitled "An act making an appropriation for the payment of the witnesses summoned on the part of the United States in support of the impeachment of Samuel Chase:" Whereupon,

Resolved, That this House doth insist on their disagreement to the said amendments.

Resolved, That this House do agree to the conference desired by the Senate on the subject-matter of the said amendments; and that Mr. JOHN RANDOLPH, Mr. EARLY, and Mr. NICHOLSON, be appointed managers at the said conference, on the part of this House.

Mr. NICHOLSON, from the committee to whom were this day committed the amendments proposed by the Senate to the bill, entitled "An act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction," reported to the House their agreement to the same.

The House then proceeded to consider the said amendments of the Senate; and on the question that the House do concur with the select committee in their agreement to the same, it was resolved in the affirmative.

The House proceeded to consider the amendments proposed by the Senate to the amendments of this House to the resolutions "expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines, of his squadron:" Whereupon,

Resolved, That this House do agree to the said amendments to the amendments.

The House proceeded to consider their amendment insisted on by this House to the bill sent from the Senate, entitled "An act in addition to 'An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States during the Revolutionary war," to their disagreement to which the Senate have adhered: Whereupon,

Resolved, That this House do recede from their said amendment.

On motion, it was

Resolved, That the Committee of Accounts be authorized to settle and adjust the account of Alexander Claxton, for his services, rendered to this House during the present session, and allow such sum as they may deem due to him, out of the contingent fund of this House: *Provided*, That the same shall not exceed one hundred dollars.

The order of the day for the House to resolve itself into a Committee of the Whole on the bill to authorize the Circuit Court of the District of Columbia to decree divorces in certain cases, being called for, a motion was made, and the question being put, that the said order of the day be postponed until the first Monday in December next, it was resolved in the affirmative.

A message from the Senate informed the House that the Senate adhere to their amendments to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," to their disagreement to which this House has insisted.

Mr. JOHN RANDOLPH, from the managers appointed on the part of this House, to attend the

conference with the Senate, on the subject-matter of the amendments depending between the two Houses to the bill, entitled "An act making an appropriation for the payment of witnesses summoned on the part of the United States, in support of the impeachment of Samuel Chase," made a report: Whereupon, the House proceeded to reconsider the said amendments; and the same being again read,

Resolved, That this House do adhere to their disagreement to the said amendments: and so the said bill was lost.

A motion was then made and seconded that the House do come to the following resolutions:

Resolved, That the Clerk of this House be, and he is hereby, directed to pay out of the contingent fund of this House, to every witness summoned on behalf of the House of Representatives, to attend the Senate in support of the impeachment of Samuel Chase, for every day's attendance, the sum of three dollars, and the further sum of twenty cents for each mile in coming from and returning to his place of abode.

Resolved, That the Clerk be likewise directed to pay, out of the said fund, any other expense incurred by order of the managers of the said impeachment, and certified by their chairman.

On which motion, various efforts were made to obtain a decision of the House on the previous question, "that the House do now proceed to consider the said motion;" but no result could, in any instance, be obtained for the want of a quorum.

After which, a quorum being present,

A message from the Senate informed the House that the Senate have appointed a committee, on their part, jointly, with such committee as may be appointed on the part of this House, to wait on the President of the United States, and notify him of the proposed recess of Congress.

The House proceeded to consider the foregoing message of the Senate, and

Resolved, That this House do agree to the same, and that Mr. JOHN RANDOLPH, Mr. HUGER, and Mr. NELSON, be appointed of the said committee, on the part of this House.

Mr. JOHN RANDOLPH, from the committee appointed on the part of this House, jointly, with the committee appointed on the part of the Senate, to wait on the President of the United States, and notify him of the proposed recess of Congress, reported that the committee had performed that service; and that the President signified to them that he had no further communication to make during the present session.

A message from the Senate informed the House that the Senate, having finished the Legislative business before them, are now ready to adjourn.

Ordered, That a message be sent to the Senate to inform them that this House, having completed the business before them, are now about to adjourn, without day; and that the Clerk of this House do go with the said message.

The Clerk, accordingly, went with the said message; and being returned,

The SPEAKER adjourned the House, *sine die.*

APPENDIX

TO THE HISTORY OF THE EIGHTH CONGRESS.

COMPRISING THE MOST IMPORTANT DOCUMENTS ORIGINATING DURING THAT CONGRESS, AND THE PUBLIC ACTS PASSED BY IT.

LOUISIANA.

[Communicated to Congress January 16, 1804.]

To the Senate and House of Representatives of the United States:

In execution of the act of the present session of Congress for taking possession of Louisiana, as ceded to us by France, and for the temporary government thereof, Governor Claiborne of the Mississippi Territory, and General Wilkinson, were appointed Commissioners to receive possession. They proceeded, with such regular troops as had been assembled at Fort Adams from the nearest posts, and with some militia of the Mississippi Territory, to New Orleans. To be prepared for anything unexpected which might arise out of the transaction, a respectable body of militia was ordered to be in readiness in the States of Ohio, Kentucky, and Tennessee, and a part of those of Tennessee was moved on to the Natchez. No occasion, however, arose for their services. Our Commissioners, on their arrival at New Orleans, found the Province already delivered by the Commissaries of Spain to that of France, who delivered it over to them on the twentieth day of December, as appears by their declaratory act accompanying this. Governor Claiborne, being duly invested with the powers heretofore exercised by the Governor and Intendant of Louisiana, assumed the government on the same day, and, for the maintenance of law and order, immediately issued the proclamation and address now communicated.

On this important acquisition, so favorable to the immediate interests of our Western citizens, so auspicious to the peace and security of the nation in general, which adds to our country territories so extensive and fertile, and to our citizens new brethren to partake of the blessings of freedom and self-government, I offer to Congress and our country my sincere congratulations.

JAN. 16, 1804. TH. JEFFERSON.

CITY OF NEW ORLEANS, *Dec.* 20, 1803.

SIR: We have the satisfaction to announce to you, that the Province of Louisiana was this day surrendered to the United States by the Commissioner of France; and to add, that the flag of our country was raised in this city amidst the acclamations of the inhabitants.

The enclosed is a copy of an instrument of writing, which was signed and exchanged by the Commissioners of the two Governments, and is designed as a record of this interesting transaction.

Accept assurances of our respectful consideration.

WM. C. C. CLAIBORNE,
JAMES WILKINSON.

JAMES MADISON, *Secretary of State.*

The undersigned, William C. C. Claiborne, and James Wilkinson, commissioners or agents of the United States, agreeably to the full powers they have received from Thomas Jefferson, President of the United States, under date of the 31st October 1803, and twenty-eighth year of the independence of the United States of America, (8th Brumaire, 12th year of the French Republic,) countersigned by the Secretary of State, James Madison, and citizen Peter Clement Laussat, Colonial Prefect, and Commissioner of the French Government, for the delivery, in the name of the French Republic, of the country, territories, and dependencies of Louisiana, to the commisioners or agents of the United States, conformably to the powers, commission, and special mandate which he has received, in the name of the French people, from citizen Bonaparte, First Consul, under date of the 6th June, 1803, (17th Prairial, eleventh year of the French Republic,) countersigned by the Secretary of State, Hugues Maret, and by his Excellency the Minister of Marine and Colonies, Decres, do certify by these presents, that on this day, Tuesday, the 20th December, 1803, of the Christian era, (28th Frimaire, twelfth year of the French Republic,) being convened in the hall of the Hotel de Ville of New Orleans, accompanied on both sides by the Chiefs and Officers of the Army and Navy, by the municipality and divers respectable citizens of their respective Republics, the said William C. C. Claiborne and James Wilkinson, delivered to the said citizen Laussat their aforesaid full powers, by which it evidently appears that full power and authority has been given them jointly and severally to take possession of, and to occupy the territories ceded by France to the United States, by the treaty concluded at Paris on the 30th day of April last past,

(10th Floreal,) and for that purpose to repair to the said Territory, and there to execute and perform all such acts and things, touching the premises, as may be necessary for fulfilling their appointment conformably to the said treaty and the laws of the United States; and thereupon the said citizen Laussat declared that, in virtue of, and in the terms of the powers, commission, and special mandate dated at St. Cloud, 6th June, 1803, of the Christian era, (17th Prairial, 11th year of the French Republic,) he put from that moment the said Commissioners of the United in possession of the country, territories, and dependencies of Louisiana, conformably to the first, second, fourth, and fifth articles of the treaty and two conventions, concluded and signed the 30th April, 1803, (10th Floreal, 11th year of the French Republic,) between the French Republic and the United States of America, by citizen Barbé Marbois, Minister of the Public Treasury, and Messrs. Robert R. Livingston and James Monroe, Ministers Plenipotentiary of the United States, all three furnished with full powers, of which treaty and two conventions the ratifications, made by the First Consul of the French Republic on the one part, and by the President of the United States, by and with the advice and consent of the Senate, on the other part, have been exchanged and mutually received at the City of Washington, the 21st October, 1803, (28th Vendemiaire, 12th year of the French Republic,) by citizen Louis André Pichon, Chargé des Affaires of the French Republic near the United States, on the part of France, and by James Madison, Secretary of State of the United States, on the part of the United States, according to the *procès verbal* drawn up on the same day; and the present delivery of the country is made to them, to the end that, in conformity with the object of the said treaty, the sovereignty and property of the colony or province of Louisiana may pass to the said United States, under the same clauses and conditions as it had been ceded by Spain to France, in virtue of the treaty concluded at St. Ildefonso, on the 1st October, 1800, (9th Vendemiaire, 9th year,) between these two last Powers, which has since received its execution by the actual re-entrance of the French Republic into possession of the said colony or province.

And the said citizen Laussat in consequence, at this present time, delivered to the said Commissioners of the United States, in this public sitting, the keys of the city of New Orleans, declaring that he discharges from their oaths of fidelity towards the French Republic, the citizens and inhabitants of Louisiana, who shall choose to remain under the dominion of the United States.

And that it may forever appear, the undersigned have signed the *procès verbal* of this important and solemn act, in the French and English languages, and have sealed it with their seals, and have caused it to be countersigned by the secretaries of commission, the day, month, and year above written. WM. C. C. CLAIBORNE, [L. S.]
JAMES WILKINSON, [L. S.]
LAUSSAT. [L. S.]

Proclamation by His Excellency, William C. C. Claiborne, Governor of the Mississippi Territory, exercising the powers of Governor General and Intendant of the Province of Louisiana.

Whereas, by stipulations between the Governments of France and Spain, the latter ceded to the former the colony and province of Louisiana, with the same extent which it had at the date of the above-mentioned treaty in the hands of Spain, and that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States; and whereas the Government of France has ceded the same to the United States by a treaty duly ratified, and bearing date the 30th of April in the present year, and the possession of said colony and province is now in the United States, according to the tenor of the last mentioned treaty; and whereas the Congress of the United States on the 31st day of October, in the present year, did enact that, until the expiration of the session of Congress then sitting, (unless provisions for the temporary government of the said territories be made by Congress,) all the military, civil, and judicial powers, exercised by the then existing government of the same, shall be vested in such person or persons, and shall be exercised in such manner as the President of the United States shall direct, for the maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion; and the President of the United States has, by his commission, bearing date the same 31st day of October, invested me with all the powers, and charged me with the several duties heretofore held and exercised by the Governor General and Intendant of the Province.

I have, therefore thought fit to issue this, my proclamation, making known the premises, and to declare, that the government heretofore exercised over the said Province of Louisiana, as well under the authority of Spain as of the French Republic has ceased, and that of the United States of America is established over the same; that the inhabitants thereof will be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; that, in the meantime, they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess; that all laws and municipal regulations which were in existence at the cessation of the late government, remain in full force; and all civil officers charged with their execution, except those whose powers have been especially vested in me, and except, also, such officers as have been intrusted with the collection of the revenue, are continued in their functions, during the pleasure of the Governor for the time being, or until provision shall otherwise be made.

And I do hereby exhort and enjoin all the inhabitants, and other persons within the said province, to be faithful and true in their allegiance to the United States, and obedient to the laws and

authorities of the same, under full assurance that their just rights will be under the guardianship of the United States, and will be maintained from all force or violence from without or within.

In testimony whereof I have hereunto set my hand.

Given at the city of New Orleans, the 20th day of December, 1803, and of the independence of the United States of America, the twenty-eighth.

WM. C. C. CLAIBORNE.

The Governor's Address to the citizens of Louisiana.

NEW ORLEANS, *Sept.* 20, 1803.

FELLOW-CITIZENS OF LOUISIANA: On the great and interesting event now finally consummated—an event so advantageous to yourselves, and so glorious to United America—I cannot forbear offering you my warmest congratulations. The wise policy of the Consul of France has, by the cession of Louisiana to the United States, secured to you a connexion beyond the reach of change, and to your posterity the sure inheritance of freedom. The American people receive you as brothers, and will hasten to extend to you a participation in those inestimable rights which have formed the basis of their own unexampled prosperity. Under the auspices of the American Government, you may confidently rely upon the security of your liberty, your property, and the religion of your choice. You may with equal certainty rest assured that your commerce will be promoted and your agriculture cherished—in a word, that your true interests will be among the primary objects of our National Legislature. In return for these benefits, the United States will be amply remunerated if your growing attachment to the Constitution of our country, and your veneration for the principles on which it is founded, be duly proportioned to the blessings which they will confer. Among your first duties, therefore, you should cultivate with assiduity among yourselves the advancement of political information. You should guide the rising generation in the paths of republican economy and virtue. You should encourage literature; for without the advantages of education, your descendants will be unable to appreciate the intrinsic worth of the Government transmitted to them.

As for myself, fellow-citizens, accept a sincere assurance, that during my continuance in the situation in which the President of the United States has been pleased to place me, every exertion will be made on my part to foster your internal happiness, and forward your general welfare; for it is only by such means that I can secure to myself the approbation of those great and just men who preside in the councils of our nation.

WM. C. C. CLAIBORNE.

[The following papers, relating to the opposition of Spain to the cession of Louisiana to the United States, were transmitted to Congress with the President's Message of November 8, 1804.]

Extract of a letter from Don Pedro Cevallos, Minister of State of his Catholic Majesty, to Mr. Charles Pinckney, dated at the Pardo, February 10, 1804.

"At the same time the Minister of His Majesty in the United States is charged to inform the American Government respecting the falsity of the rumor referred to, he has likewise orders to declare to it that His Majesty has thought fit to renounce his opposition to the alienation of Louisiana made by France, notwithstanding the solid reasons on which it is founded; thereby giving a new proof of his benevolence and friendship towards the United States."

Copy of a letter from the Marquis of Casa Yrujo to the Secretary of State.

PHILADELPHIA, *May* 15, 1804.

SIR: The explanations which the Government of France has given to His Catholic Majesty concerning the sale of Louisiana to the United States, and the amicable dispositions on the part of the King my master towards these States, have determined him to abandon the opposition which, at a prior period, and with the most substantial motives, he had manifested against that transaction. In consequence, and by special order of His Majesty, I have the pleasure to communicate to you his royal intentions on an affair so important; well persuaded that the American Government will see, in this conduct of the King my master, a new proof of his considération for the United States, and they will correspond, with a true reciprocity, with the sincere friendship of the King, of which he has given so many proofs.

God preserve you many years.

M. CASA YRUJO.

JAMES MADISON, Esq.

To all whom these presents shall come: Whereas, by an act of Congress, authority has been given to the President of the United States, whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river of Mobile, and of the other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district for the collection of duties on imports and tonnage, and to establish such place within the same as he shall deem it expedient to be the port of entry and delivery for such district; and to designate such other places within the same district, not exceeding two, to be ports of delivery only:

Now know ye. That I, Thomas Jefferson, President of the United States, do hereby decide, that all the above mentioned shores, waters, inlets, creeks, and rivers, lying *within the boundaries of the United States*, shall constitute and form a separate district, to be denominated "the district of Mobile;" and do also designate Fort Stoddert, within the district aforesaid, to be the port of entry and delivery for the said district.

Given under my hand, this 20th day of May, 1804.

TH. JEFFERSON.

GREAT BRITAIN.

Communicated to the Senate, October 24, 1803.

To the Senate of the United States:

I lay before you the convention* signed on the 12th day of May last, between the United States and Great Britain, for settling the boundaries in the northeastern and northwestern parts of the United States, which was mentioned in my general Message of the 17th instant, together with such papers relating thereto as may enable you to determine whether you will advise and consent to its ratification. TH. JEFFERSON.

OCTOBER 24, 1803.

Convention with His Britannic Majesty.

In order that the boundaries between the territories of His Britannic Majesty and those of the United States of America may be more precisely ascertained and determined than has hitherto been done, the parties have respectively named their Plenipotentiaries, and given them full powers to negotiate and conclude a convention for this purpose; that is to say, His Britannic Majesty has named for his Plenipotentiary the Right Honorable Robert Banks Jenkinson, commonly called Lord Hawkesbury, one of His Majesty's most honorable Privy Council, and his principal Secretary of State for Foreign Affairs; and the President of the United States, by and with the consent of the Senate thereof, has appointed for their Plenipotentiary, Mr. Rufus King, their Minister Plenipotentiary to his said Majesty; who have agreed upon and concluded the following articles:

ARTICLE 1. The line hereinafter described shall and hereby is declared to be the boundary between the mouth of the river St. Croix and the Bay of Fundy; that is to say, a line beginning in the middle of the channel of the river St. Croix, at its mouth, as the same has been ascertained by the Commissioners appointed for that purpose; thence through the middle of the channel between Deer island on the east and north, and Moose island, and Campo Bello island on the west and south, and round the eastern point of Campo Bello island to the Bay of Fundy; and the islands and waters northward and eastward of the said boundary, together with the island of Campo Bello, situated to the southward thereof, are hereby declared to be within the jurisdiction and part of his Britannic Majesty's Province of New Brunswick; and the islands and waters southward and westward of the said boundary, except only the island of Campo Bello, are hereby declared to be within the jurisdiction and part of Massachusetts, one of the said United States.

ART. 2. Whereas, it has become expedient that the northwest angle of Nova Scotia, mentioned and described in the Treaty of Peace between His Majesty and the United States, should be ascertained and determined; and that the line between the source of the river St. Croix, and the said northwest angle of Nova Scotia, should be run and marked, according to the provisions of the said Treaty of Peace: It is agreed that for this purpose, Commissioners shall be appointed in the following manner, viz; one Commissioner shall be named by His Majesty and one by the President of the United States, by and with the advice and consent of the Senate thereof; and the said two Commissioners shall agree in the choice of a third; or, if they cannot agree, they shall each propose one person; and of the two names, so proposed, one shall be taken by lot in presence of the two original Commissioners; and the three Commissioners, so appointed, shall be sworn impartially to ascertain and determine the said northwest angle of Nova Scotia, pursuant to the provisions of the said Treaty of Peace: and likewise to cause the said boundary line between the source of the river St. Croix, as the same has been determined by the Commissioners appointed for that purpose, and the northwest angle of Nova Scotia, to be run and marked according to the provisions of the Treaty aforesaid. The said Commissioners shall meet at Boston, and have power to adjourn to such place or places as they shall think fit; they shall have power to appoint a secretary and employ such surveyors, and other assistants, as they shall judge necessary: the said Commissioners shall draw up a report of their proceedings which shall describe the line aforesaid, and particularize the latitude and longitude of the place ascertained and determined, as aforesaid, to be the northwest angle of Nova Scotia; duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 3. It is further agreed that the said Commissioners, after they shall have executed the duties assigned them in the preceding article, shall be, and they hereby are, authorized, upon their oaths, impartially to ascertain and determine the northwesternmost head of Connecticut river, according to the provisions of the aforesaid Treaty of Peace; and likewise to cause the boundary line described in the said Treaty of Peace, between the northwest angle of Nova Scotia and the said northwesternmost head of Connecticut river, to be run and marked pursuant to the provisions of the said Treaty. The said Commissioners shall meet at Boston, and have power to adjourn to such other place or places as they shall think fit. They shall have power to appoint a secretary, and employ such surveyors and other assistants as they shall judge necessary. The said Commissioners shall draw up a report of their proceedings, which shall describe the boundary line aforesaid, and particularize the latitude and longitude of the westernmost head of Connecticut river, duplicates of which report, under the hands and seals of the said Commissioners, or of a majority of them, together with duplicates of their accounts, shall be delivered to such persons as may be severally authorized to receive the same, in behalf of their respective Governments; and the decision and proceedings of the said Commissioners, or of a majority of them, made and had as aforesaid, shall be final and conclusive.

ART. 4. It is further agreed that the aforesaid Commissioners shall be respectively paid in such manner as shall be agreed between the two parties, such agreement to be settled at the time of the exchange of the ratifications of this Convention, and all other expenses incurred by the said Commissioners shall be defrayed jointly by the two parties, the same being previously ascertained and allowed by the said Commissioners; and, in case of death, sickness, or necessary absence, the place of any Commissioner shall be supplied in the same manner as such Commissioner was appointed, and the new Commissioner shall take the same oath, and do the same duties.

ART. 5. Whereas it is uncertain whether the river Mississippi extends so far to the northward as to be intersected by a line drawn due west from the Lake of the Woods, in the manner mentioned in the Treaty of Peace between His Majesty and the United States, it is agreed that, instead of the said line, the boundary of the United States in this quarter shall, and is hereby declared to be the shortest line which can be drawn between the northwest point of the Lake of the Woods and the nearest source of the river Mississippi: and for the purpose of ascertaining and determining the northwest point of the Lake of the Woods and the source of the river Mississippi that may be nearest to said northwest point, as well as for the purpose of running and marking the said boundary line beween the same, three Commissioners, upon the demand of either Government, shall be appointed, and authorized, upon their oaths, to act; and their compensation and expenses shall be ascertained and paid, and vacancies supplied, in the manner provided in respect to the Commissioners mentioned in the preceding articles; and the decisions and proceedings of the said Commissioners, or of a majority of them, made and had pursuant to this convention, shall be final and conclusive.

In faith whereof, we the undersigned, Ministers Plenipotentiary of His Britannic Majesty and of the United States of America, have signed this present convention, and caused to be affixed thereto the seals of our arms.

Done at London, this 12th day of May, 1803.

HAWKESBURY. [L. S.]
RUFUS KING. [L. S.]

The Secretary of State to Rufus King, Minister, &c., of the United States to Great Britain.

DEPARTMENT OF STATE,
Washington, July 28, 1801.

SIR: By the Treaty of Peace, the mouth of the St. Croix is supposed to be in the bay of Fundy. But as the Commissioners have, in their decision, settled the mouth of that river, called the Schoodiac, to be in Passamaquoddy Bay, at a place called Joe's Point, it is left undetermined to which nation the islands in the last mentioned bay, and the passages through them, into the bay of Fundy, belong. It appears to have been the intention of the two nations, in adjusting their limits at the peace, to make navigable waters, where they were the boundary, common to both, by a divisional line running through the middle of their channels. Hence, it is believed, that, if it be true that one of the passages from the mouth of the river, intended as the St. Croix, into Fundy bay, be seldom and imperfectly navigable, and the other constantly and completely so, it will be most conformable to the Treaty of Peace to establish it as the boundary. Supposing, on the other hand, that the Treaty of Peace should be literally executed, as far as practicable, and the line drawn from Joe's Point, due eastwardly, Great Britain would be excluded from both passages. At present, it is believed that the following description of the passage to be settled as the boundary, would be satisfactory to both nations: "Beginning in the middle of the channel of the river St. Croix, at its mouth; thence, direct, to the middle of the channel, between Pleasant Point and Deer island; thence to the middle of the Channel, between Deer island on the east and north, and Moose island and Campo Bello island on the west and south, and round the eastern point of Campo Bello island, to the bay of Fundy. The other (western) channel has a bar across it, which is dry at low water.

These ideas are thrown out only for consideration. I shall probably have it in my power shortly to transmit you a commission to settle this point, with definitive instructions. Meanwhile, you may break the business to the British Ministry, but without implicating any fixed mode of settlement.

RUFUS KING, &c.

The Secretary of State to Mr. King.

DEPARTMENT OF STATE, *June* 8, 1802.

SIR: You will herewith receive a commission, giving you powers to adjust, by proper stipulations, with the British Government, whatever remains to be decided in relation to the boundary between the two nations.

In executing the first part of this trust, relating to the bay of Pasamaquoddy, you will recur to the observations contained in my letter of the 28th of July last. I refer you also to a copy, herewith enclosed, of a letter from Judge Sullivan, heretofore agent of the United States, on the controversy regarding the river St. Croix, in answer to some inquiries from me on the subject now committed to you. His information and his reasoning will be useful in the discussion; and, to illustrate both, I also enclose herewith a copy of the map to which he refers in the beginning of his letter.

The essential objects to be secured to the United States are, the jurisdiction of Moose island, and

* The Senate having assented to this convention on the condition that the fifth article should be expunged, the ratifications of the respective Governments were never exchanged.

the common navigation of the bay, and the channels leading to the sea between Deer island and the island of Campo Bello. To the observations of Judge Sullivan, in support of the rights of the United States, it need only be added, that the outlet through Moose island being the only adequate communication with the sea from a great and valuable territory of the United States, they are entitled to the full use of it on that principle, as well as on others, and with the less pretext for objection, as the trifling island of Campo Bello is the only territory held by Great Britain on one side of the channel.

In pursuance of the next object, viz: the establishment of boundaries between the United States and New Brunswick, on one side, and of Canada on another, it will be proper to provide for the immediate extension of the line which is to run from the south of the St. Croix, and which is represented as necessary to guard against interfering or encroaching grants under American and British authorities. As the course of this line is to be due north, and is to proceed from the point fixed by a survey already made, the running of it will be sufficiently provided for by an appointment of a Commissioner by each of the two Governments, and an appointment, by the two Commissioners, of a surveyor. In fixing the point at which the line is to terminate, and which is referred to as the northwest angle of Nova Scotia, the difficulty arises from a reference of the Treaty of 1783 "to the highlands," which it is now found have no definitive existence. To remove this difficulty, no better expedient occurs than to provide for the appointment of a third Commissioner, as in article five, of the Treaty of 1794; and to authorize the three to determine on a point most proper to be substituted for the description in the second article of the Treaty of 1783, having due regard to the general idea that the line ought to terminate on the elevated ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence. The Commissioners may also be authorized to substitute for the description of the boundary between the point so fixed, and the northwesternmost head of Connecticut river, namely, a line drawn along the said highlands, such a reference to intermediate sources of rivers, or other ascertained or ascertainable points, to be connected by straight lines, as will admit of easy and accurate execution hereafter, and as will best comport with the apparent intention of the Treaty of 1783.

The remaining provision necessary to complete the boundary of the United States will be a stipulation amending the second article of the Treaty of 1783, in its description of the line which is to connect the most northwestern point of the Lake of the Woods with the Mississippi. The description supposes that a line running due west from that point, would intersect the Mississippi. It is now well understood that the highest source of the Mississippi is south of the Lake of the Woods; and, consequently, that a line, due west, from its most northwestern point, would not touch any part of that river. To remedy this error, it may be agreed that the boundary of the United States, in that quarter, shall be a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it, westwardly, as a tangent, and, from the point touched, along the water-mark of the lake, to its most northwestern point, at which it will meet the line running through the lake. The map in McKenzie's late publication is probably the best to which I can refer you on this subject.

From the mutual and manifest advantage to Great Britain and the United States, of an adjustment of all uncertainties concerning boundary, it is hoped you will find a ready concurrence in all the propositions which you will have to make to them. Should difficulties or delays threaten those which relate to the boundary connecting the Mississippi and the Lake of the Woods, or that connecting the Connecticut river and the point to be established as the northeast corner of the United States, it will be proper to separate from these the other subjects of negotiation, and to hasten the latter to a conclusion.

With the highest respect and consideration, &c. JAMES MADISON.

RUFUS KING, Esq.

BOSTON, *May* 20, 1802.

SIR: Having the honor of receiving your letter of the 10th inst., I hasten to communicate to you my ideas of the subject-matter of its contents.

When I was under a commission, as agent of the United States, on the controversy with Great Britain regarding the river St. Croix, I forwarded to the office of the Secretary of State a map of the bay of Passamaquoddy, of the Schoodiac, and of the lines of the whole dispute. That map was accurately and elegantly composed from astronomical observations and actual surveys. As that map is under your eye, there is no need of my sending a fac-simile; but I refer you to that for an explanation of this letter.

The Treaty of 1783 with Great Britain evidently contemplates a river, as the St. Croix, which has its mouth in the bay of Fundy. Both rivers claimed by the parties empty their waters in the bay of Passamaquoddy. The agent of the United States urged the Commissioners to settle the boundary through that bay to the sea; because the treaty expressly recognised the mouth of the river as in the bay of Fundy, which is a limb of the ocean, and the other bay united with it might be considered as the river's mouth; but they declined it, on an idea that their commission extended no further than to an authority to find the mouth and source of the river, and that, let whichever would be the river, it had its mouth three leagues from the sea, in Passamaquoddy bay; they, therefore, limited their decision on its southerly line, to a point between St. Andrews and the shore of the United States.

The whole of the waters of Passamaquoddy, eastward and northward of Moose island, and of the island of Campo Bello, are navigable for vessels of any burden. The channel between Moose

and Deer island is the best. The channel between Moose island and the continent of the United States is shoal, narrow, and not navigable for vessels of consequence. That between Campo Bello and the main, called the west passage, is rendered hazardous and dangerous by a bar of rocks, and is so narrow and shoal, that no vessel of considerable size will be risked there excepting on a fair wind, and at the top of high water. The tides there are exceedingly rapid, and rise near about fifty feet. Therefore, any settlement which would deprive the United States of a free navigation as far to the eastward and northward as the channel you propose; that is, to the one between Moose and Deer islands, and north of Campo Bello, would ultimately destroy the important commerce and valuable navigation of an extensive territory within the United States; for, as you may observe on the maps, there is no river of consequence between the Schoodiac and the Penobscot; and that the waters which issue from numerous and extensive lakes, in the interior parts of the country, running into the sea, as the Schoodiac, will give an advantageous and invaluable transportation to the articles of commerce.

Your construction of the Treaty of 1783, which renders the waters dividing the nations common to both, (where they are navigable,) must be reasonable and just. The English people have, in many instances, practised upon the treaty under such a construction. There has been no interruption to the American navigation, in any part of Passamaquoddy bay; but our vessels have proceeded through that bay to the shore of the United States, at and near Moose island, and have gone into the Schoodiac, above St. Andrew's point, and anchored on the western side of the channel, where they have discharged their cargoes. There have been some seizures where goods have been carried from those vessels over to the English side, but the goods have been condemned, and the vessel discharged. These seizures being made within the jurisdiction of the United States, as to the vessels, were clearly infractions of the law of nations.

There was a seizure lately made of a vessel of one Goddard of Boston. She was taken from her anchor on the American side of the channel, in the river established by the Commissioners as the St. Croix, and carried over to New Brunswick: but she was acquitted by the Court of Admiralty, with damages and costs. Campbell, who made the seizure, appealed to England, merely to avoid the costs and damages, where the cause is now depending under the attention of Robert Slade, a proctor, who is the advocate for Mr. Goddard.

There is a clause in the treaty, that the United States shall comprehend the islands within twenty leagues of any of the shores of the United States, and lying between lines drawn due east from the aforesaid boundaries, between Nova Scotia on the one part, and East Florida on the other, as they shall respectively touch the bay of Fundy, and the Atlantic ocean. This circumstance, that the mouth of the St. Croix is settled to be between St. Andrew's point on the east, and the American shore on the west, three leagues within the island of Campo Bello, draws this consequence to the treaty, that nearly all the islands in Passamaquoddy bay are within the United States, by the above provision in the treaty, unless they are taken out by an exception, which I shall presently notice. A line, due east (as you will see on the plan) from the Schoodiac mouth at St. Andrew's point, takes in nearly all the bay. A line south, sixty-seven degrees east, will go to the north of Campo Bello, and take two-thirds of Deer island on the west. A southeast line, from the middle of the Schoodiac mouth, passes on the channel between Moose and Deer islands, and through the centre of Campo Bello.

The consequences attached to this provision may be, in some measure, controlled by an exception annexed to it in these words, "excepting such islands as now are, or heretofore have been, within the limits of the Province of Nova Scotia."

The island of Campo Bello is confessedly within the exception, and, therefore, it may be said that the principle of common privilege to navigable waters will not give our nation a right to a navigation northward of, and between, that and the other islands in the bay, because that they, being all within the same exception, the right of a common navigation in both nations may not extend to the waters between that and them. But the answer to this is, that the clause establishes the jurisdiction of the United States, by lines which clearly include all the islands in the bay of Passamaquoddy, and all within the bay of Fundy comprehended to the south of the east line drawn from St. Croix; while the exception can extend only to the islands formerly within the jurisdiction of Nova Scotia, inclusive of the privileges necessary to the occupancy of them. The principle, therefore, of the common right to navigation or navigable waters which divide two nations, cannot apply here; because, in that case, the line of national jurisdiction seems to be settled on the channel; but here, in this case, the jurisdiction is definite, express, and ceded, according to the lines agreed on, as above described.

The ancient charter of Nova Scotia to Sir William Alexander, in 1638, included all the country from the Kennebeck to the bay of Chaleur. The treaty cannot mean, by the expression 'heretofore within Nova Scotia," all the islands in that charter. If it mean the islands which were within a more recent description of it, where the boundary westward was the St. Croix, excluding the territory of Acadia, which was placed under the jurisdiction of Massachusetts, by the charter of that Province in 1692, and bounded on that river, the river Schoodiac being now the established St. Croix, there can be no question in regard to Massachusetts extending to the channel where it joins that river. But Moose island, which I have described before, lies two leagues below what the Commissioners made the mouth of the St. Croix, and very near the American shore. This was never granted by the Crown of England, or by the Government of Nova Scotia,

before the Treaty of Peace; nor was there ever an occupancy of it by subjects acknowledging the authority of Nova Scotia; nor did that Province ever attempt to exercise authority there. Long before the Revolutionary war, it was in the occupancy of the people of, and from the late Province of Massachusetts Bay. The soil has, I believe, been granted by that Province, or by the State since the Revolution, to the people who had it in possession. I do not know the date of the grant. There have been, as I am informed, recent grants by the Province of New Brunswick of that island; but no formal claim on the part of the English nation has been made to it. The grantees of that Province, who have speculated on the pretended right of the English nation, have excited civil officers, under the authority of the Province of New Brunswick, to attempt to execute precepts there. These attempts were repelled, and I have not heard that they have been recently renewed. Should the jurisdiction of that island be found within the English authority, there can be no doubt how the right of property would be settled. This renders the dispute of consequence to the Commonwealth of Massachusetts in a pecuniary point of view.

If the argument above stated does not prove that the jurisdiction of the United States is extended to all the waters of Passamaquoddy bay, but that the treaty leaves the navigable waters of the same, which form the natural boundaries common to both, it is of great consequence, that any claim made under the Crown of the English Empire to Moose island should be subverted. But if their having the island under the reservatory exception does not deprive the United States of the jurisdiction on all the waters southward of the east line, drawn from the mouth of the Schoodiac, the consideration of the property alone gives consequence to the question.

The channel where the waters more directly issue from the Schoodiac to the bay of Fundy, between Moose and Deer islands, and between Deer island and Campo Bello, as described in your letter of instructions to the Minister, is quite adequate to all navigation of our country.

You mention a resolve of the Legislature, wherein the subject of the navigation in Passamaquoddy bay is mentioned. I have attended to a resolve of the tenth of March, which proposes that the Governor should request the President of the United States to take measures for settling the disputed jurisdiction to certain islands in Passamaquoddy bay; but I do not know of any dispute in that bay as to islands, excepting what I have stated as to Moose island.

The settlement and plain establishment of a line from the head or source of the Cheputnatecook, which is the source of the St. Croix, and empties its waters through a long chain of lakes into the Schoodiac, has become necessary, because that Massachusetts is making grants of the lands in that quarter, and the province of New Brunswick is in the same practice, controversies may be created by interfering locations in pursuance of, or under pretence of, those grants. Such controversies can have no guide to their adjustment, excepting lines drawn through a vast extent of wilderness, where many known and unknown causes will affect the magnetic variations. These disputes on national, or even colonial, or State jurisdiction, are not easily settled when they are connected with private claims.

By the Treaty of Peace, it is provided that the boundaries shall be "from the northwest angle of Nova Scotia, viz., that angle which is formed by a line drawn due north, from the source of the St. Croix, to the highlands; along the highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic ocean, to the northwesternmost head of Connecticut river."

You will see by the maps of that part of the country, that the line which runs north from the source of the St. Croix, crosses the river St. John a great way south of any place which could be supposed to be the highlands; but where that line will come to the northwest angle of Nova Scotia, and find its termination, is not easy to discover.

The boundary between Nova Scotia and Canada was described, by the King's proclamation, in the same mode of expression as that used in the Treaty of Peace. Commissioners who were appointed to settle that line, have traversed the country in vain to find the highlands designated as a boundary. I have seen one of them, who agrees with the account which I have had from the natives and others, that there are no mountains or highlands on the southerly side of the St. Lawrence, and northeastward of the river Chaudiere. That, from the mouth of the St. Lawrence to that river, there is a vast extent of high flat country, thousands of feet above the level of the sea, in perpendicular height; being a morass of millions of acres, from whence issue numerous streams and rivers, and from which a great number of lakes are filled by drains. That the rivers originating in this elevated swamp pass each other wide asunder, many miles in opposite courses, some to the St. Lawrence, and some to the Atlantic sea.

Should this description be founded in fact, nothing can be effectively done, as to a Canada line, without a commission to ascertain and settle the place of the northwest angle of Nova Scotia, wherever that may be agreed to be; if there is no mountain or natural monument, an artificial one may be raised. From thence, the line westward to Connecticut river may be established by artificial monuments erected at certain distances from each other; the points of compass from the one to the other may be taken; and the ascertaining the degree of latitude, which each one is placed on from actual observation, may be very useful. Though there is no such chain of mountains as the plans or maps of the country represent under the appellation of the highlands, yet there are eminences from whence an horizon may be made to fix the latitude from common quadrant observations.

In the description of the morass, which is said to crown the heights between the United States and Lower Canada, it ought to have been noticed, that those swamps are vastly extensive, yet, in the acclivity from the Atlantic to their highest elevation, as well as in their declivity to the St. Lawrence, great tracts of valuable country are interspersed. On the banks of the river Chaudiere, and perhaps on the banks of other rivers, running to the St. Lawrence, the settlements are approaching fast towards those of the United States. This circumstance will soon render an established line of national jurisdiction absolutely necessary.

Should there be anything within my power which will give aid to the Government on this occasion, you will please to command me.

I am, sir, with sentiments of sincere respect, your most humble servant,

JAS. SULLIVAN.

Hon. James Madison.

Mr. Gore to the Secretary of State.

London, *October* 6, 1802.

Sir: I have the honor to acknowledge the receipt of your several letters to Mr. King, under the following dates, viz: 8th June, 20th, 23d, and 26th of July, and 23d of August; the latter by Mr. Brent: all of which came to hand since his absence from this place. That of June 8th, covering commission and instructions to this gentleman to adjust whatever remains to be decided in relation to the boundaries between the United States and the British Government, was received, and forwarded to him before he left Harwich.

According to his desire, and with a view to expedite the business, I requested an interview of Lord Hawkesbury, for the purpose of making to him such communications on this subject as might enable him to enter on the negotiation with effect, on the return of Mr. King. After having opened the business at our first meeting, he requested it might lay over until Mr. Hammond, the under Secretary of State, should come from the seaside, where he then was for his health, to afford him an opportunity of conferring with this gentleman, who was much acquainted with the business to which the communication referred. On Mr. Hammond's arrival, I saw Lord Hawkesbury, and, with the map of the St. Croix, as reported by the Commissioners under the fifth article of the Treaty of 1794, and Arrowsmith's map of the United States, endeavored to trace out the boundaries that were still requisite to explain to him the views of the President, and to impress on his mind the reasonableness and justice thereof, in regard to the British nation. He appeared disposed to accede to the propositions, so far as they relate to the boundary line through the Passamaquoddy, the mode suggested of adjusting that between the United States and New Brunswick, and fixing the point intended in the Treaty of 1783, by the northwest angle of Nova Scotia, and establishing the boundary between such point and the northwesternmost head of Connecticut river. It is, however, to be understood, that the disposition manifested by his lordship was founded on the belief that, on inquiry, he should find the islands in Passamaquoddy bay to have been possessed by, and to belong to, the respective nations as the proposed line would place them; and that, on further reflection, no insurmountable objection should occur to the plan proposed for running the other lines and fixing the point referred to. On these subjects, he doubtless intends to consult with Colonel Barclay, the British Commissioner for ascertaining the St. Croix, who is now in some part of Great Britain, and who is expected in London early in the Winter. On that part of the boundary which is to connect the northwest point of the Lake of the Woods with the Mississippi, he observed that it was evidently the intention of the Treaty of Peace that both nations should have access to, and enjoy the free use of that river; and he doubtless meant that this access should be to each nation through their own territories. He remarked, that commissions, which I had proposed for ascertaining the relation of the Lake of the Woods and the Mississippi, if any doubt remained on this head, and running the line between these two waters, according to your proposition, might establish such a boundary as would secure to each nation this object. To the remark I made no reply, other than by observing that the line suggested was what naturally seemed to be demanded by just interpretation, where such a mistake had happened, as was herein supposed; but this I did, however, chiefly with a view of not assenting to his proposal, and in a manner rather declining than courting the discussion. It will probably be persisted in; and I much doubt if the Government will be inclined to adjust any boundary in this quarter, that has not the right desired for its basis.

I have considered it important to apprize you of the view entertained by the British Government in this respect, that the President may have an opportunity, if he should choose, to forward Mr. King any instructions relative to the boundary in question. The papers marked A, herewith enclosed, are copies of the notes that passed from me to Lord Hawkesbury, and minutes of the proposals made him in conversation, and traced out on the maps before mentioned, and of his note in reply. These, with the above detail of what passed in conversation, will communicate to you all that has been, or probably will be, done on this subject, before Mr. King's return, which may be expected in November, and doubtless before Lord Hawkesbury will have an opportunity of consulting the persons alluded to in his note.

Your letter of 20th July with the enclosed copy of the letter of the Secretary of the Treasury to the Comptroller, respecting the portages, or carrying places, and the exemption from duty of small vessels trading between the northern and northwestern boundaries, came to hand on the 10th of September, and I lost no time in stating their contents to Lord Hawkesbury in a note, (copy whereof is herewith enclosed,) in order to rebut any argument in favor of the pretensions of the British traders, from a supposed acquiescence on the part of the Government of the United States

and to insist on such a construction of the terms, portages, and carrying places, as might comport with the safety of the revenue of the United States, and the interest of their citizens. I afterwards had a conference with him on this subject, in which he acceded to the construction contained in my note; and, as to the tonnage duty, he said it certainly merited, and should receive, all due consideration.

I have the honor to be, with great consideration and respect, sir, your obedient and humble servant,

C. GORE.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
August 24, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that, since the departure of Mr. King, he has received for this gentleman instructions and a full power from the President of the United States, to adjust, by amicable negotiation, with the Government of His Britannic Majesty, whatever remains unsettled as to the boundaries between the territories of the two nations.

Mr. Gore takes the liberty of proposing to his Lordship to communicate to him, whenever he shall be at leisure to attend thereto, the views of the President of the United States, in order that his Lordship may give to the subject such consideration as he shall think its importance requires; and that, having a distinct knowledge thereof, his Lordship may, on the return of Mr. King, be enabled to concur in such measures for defining and settling the boundary lines between the two countries, as shall appear most conducive to their mutual interests and future harmony.

Mr. Gore flatters himself that Lord Hawkesbury will see, in this proposal of the President, a new proof of the sincere and earnest desire of the Government of the United States to live in friendship with that of His Britannic Majesty, inasmuch as it invites to an adjustment, by amicable negotiation, of not only whatever may now be the occasion of inquietude between the parties, but also of everything, as far as can be foreseen, which may interrupt in future that good understanding so essential to the interests and happiness of both nations.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 22, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to inform him that the President of the United States, ever desirous to continue uninterrupted the harmony so happily subsisting between the Government of said States and that of His Britannic Majesty, and by a constant vigilance and unremitted attention to every circumstance that might have a tendency, however remote, to disturb the same, in order to prevent its effect by such seasonable interposition as the occasion may require, has given directions that it should be represented to His Majesty's Government, that certain traders, subjects of His Britannic Majesty, have set up pretensions to transport goods and merchandise, free of duty, through certain rivers, and over tracts of country, in the northwestern parts of the United States, and entirely within their jurisdiction, under the clause of the third article of the Treaty of Amity, Commerce, and Navigation, between the said United States and His Britannic Majesty, which provides "that no duties shall be payable on any goods which shall merely be carried over any of the portages, or carrying places, on either side, for the purpose of being immediately re-embarked, and carried to some other place or places."

Mr. Gore flatters himself that, if his Lordship should take the trouble to look into the article referred to, he will see that such claims derive no support from the most liberal construction of the terms relied on, namely, the right to carry goods, exempt from duty, "over portages or carrying places;" and that these words, so used, can never intend other cases than where the waters forming a boundary between the parties become unnavigable, and where a transit by land is thence required and resorted to, in order to re-enter the common waters where they are again navigable.

While the United States are actuated by the most sincere and earnest desire to give every facility to the trade and commerce of the subjects of His Britannic Majesty, not inconsistent with a due regard to the rights of their own citizens, and the safety of their revenue, they have been obliged to resist, as incompatible with these, pretensions so unauthorized, and must speedily make such regulations in this respect, as the security of their public revenue renders indispensable; not, however, interfering, in the smallest degree, with the rights of His Britannic Majesty's subjects, under the stipulations of said treaty, which will always be held sacred by the Government of the United States.

Mr. Gore has also the honor, according to the instructions of his Government, to represent to Lord Hawkesbury, that the United States, with a view to render the intercourse as convenient and free as possible to their citizens and the subjects of His Britannic Majesty living in the north and northwestern boundaries of said States, and in the British provinces of Upper and Lower Canada, and thereby promote a good understanding between the inhabitants thereof, by removing all impositions on the vessels of either trading there, at their last session passed an act to exempt from tonnage duty all vessels, whether British or American, not above fifty tons burden, trading between the ports of the northern and northwestern boundaries of the United States, and the British provinces of Upper and Lower Canada.

He is also directed further to represent to His Majesty's Government, that vessels of the United States, in the British ports, within the same waters, are subject to a duty of six cents per ton. The disposition manifested by His Majesty's Government to concur in equalising the situation of vessels of the two countries, and to do it rather by abolishing than assimilating the duties on them, raises an expectation, on the part of the President of the United States, that His Majesty's Government will be disposed to place vessels belonging to citizens of said States, in such British ports, on an equality with those of the subjects of His Majesty in the ports of the United States within said waters.

Mr. Gore to Lord Hawkesbury.

GREAT CUMBERLAND PLACE,
September 28, 1802.

Mr. Gore presents his compliments to Lord Hawkesbury, and has the honor to transmit, herewith enclosed, minutes of what he took the liberty to suggest, in conversation with his Lordship this morning, relative to the unascertained boundaries between the United States and the possessions of His Britannic Majesty.

Mr. Gore requests his Lordship will please to consider them, conformably to his declaration then personally made to his Lordship, as intended to afford a general idea of the views of the President of the United States on the subject to which they relate, rather than containing proposals not liable to modification, at the will of the American Government, or its representative; it being distinctly understood that the same may be altered as reflection shall suggest to Mr. King, or any other person to whom the negotiation may be committed at a future day, should it not be finished by this gentleman in the ensuing Winter, of which, however, Mr. Gore will not permit himself to doubt, as so many reasons concur to evince the fitness of the present time for adjusting and establishing, for the mutual benefit of the parties, the boundaries referred to; which, being left open and unsettled until, as the natural and almost inevitable consequence of such a state of things, private gain and individual passion shall intermingle themselves in the question, will prove the most fruitful source of difference and misunderstanding between two nations whose essential interests demand the most amicable and friendly intercourse.

MINUTES, &c.

Boundaries from the mouth of the St. Croix, through the Bay of Passamaquoddy, and to the Atlantic ocean.

Beginning in the middle of the river St. Croix, at its mouth; thence, direct to the channel between Pleasant point and Deer island on the east and north, and Moose island and Campo Bello on the west and south, and round the northeastern point of Campo Bello island, to the Bay of Fundy.

Boundaries between the United States and New Brunswick.

In tracing and establishing the boundary between the United States and New Brunswick, there may be some question what are the highlands intended by the Treaty of Peace?

To run the line from the source of the St. Croix, and fix the point at which it is to terminate, no mode more proper seems to suggest itself than that of instituting a commission, and appointing Commissioners, as in the fifth article of the treaty of 1794; the report of whom to ascertain and establish this part of the boundary, as in the second article of the treaty of 1783, having due regard to the idea that the line ought to terminate on the ground dividing the rivers falling into the Atlantic from those emptying themselves into the St. Lawrence.

The same Commissioners may be authorized to substitute for the description of the boundary between the point so fixed and the northwesternmost head of Connecticut river, a line drawn along the said highlands, with such reference to intermediate sources of rivers by straight lines, as will admit of easy and accurate execution hereafter, and best comport with the apparent intentions of the treaty of 1783.

Boundary from the Lake of the Woods to the Mississippi.

The second article of the treaty of 1783, supposes that the most northwestern point of the Lake of the Woods may be connected with the Mississippi, by running a line due west from that point, and that a line so drawn would intersect that river.

The highest source of the Mississippi is now supposed to be south of the Lake of the Woods, and consequently a line due west from its northwest point will not touch any part of said river.

If this be true, some provision is necessary to complete the boundary of the United States and the British possessions in this quarter, by amending the second article of the treaty of 1783 in that respect, according to the stipulations of the fourth article of the treaty of 1794.

Supposing the most northern branch of the source of the Mississippi to be south of the Lake of the Woods, as seems now to be understood, it is suggested, as consistent with justice and the mutual convenience of the parties, to establish the boundary of the United States in this quarter, by a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it westwardly, as a tangent, and from the point touched along the watermark of the lake to its most northwestern point, at which it will meet the line running through the lake.

Commissioners might be appointed to ascertain the local relation of the Mississippi to the Lake of the Woods, and, if as was supposed by the Treaty of Peace, to run the line there agreed on. But if the relative situation of these two waters be as now believed, to establish the boundary by running a line as above described.

*** To the original were added the second article of the definitive Treaty of Peace of 1783; the fourth article of the Treaty of Amity, Commerce and Navigation, &c. of 1794, (both which articles relate to the boundaries;) and the following

Extract from Mackenzie's voyage.

"The Lake of the Woods is in latitude 49° 37′ north, and longitude 94° 31′ west.

"The northernmost branch of the source of the Mississippi is in latitude 47° 38′ north, and longitude 95° 6′ west, ascertained by Mr. Thomson, astronomer to the Northwest Company, who was sent expressly for that purpose in the spring of 1798. He, in the same year, determined the northern bend of the Missouri to be in latitude 47° 32′ north, longitude 101° 25′ west; so that, if the Missouri were even to be considered as the Mississippi, no western line could strike it."—*History of the Fur Trade, page* 85.

Lord Hawkesbury to Mr. Gore.

DOWNING STREET, *Oct.* 4, 1802.

Lord Hawkesbury presents his compliments to Mr. Gore, and has the honor to acknowledge the receipt of his note of the 28th ultimo, together with the minutes which were enclosed in it.

Lord Hawkesbury is fully sensible of the expediency of adjusting, by some definitive arrangement, the several points to which those minutes refer, and will be ready to enter into a negotiation for that purpose either with Mr. Gore or Mr. King, within as short a period as the circumstances of the case will conveniently admit. In the mean time, it may perhaps be necessary for Lord Hawkesbury to obtain information from persons in the country on some of the subjects which are likely to be brought into discussion. But Mr. Gore may be assured that Lord Hawkesbury is desirous of avoiding any unnecessary delay, and that he will feel the sincerest disposition to terminate the negotiation in such a manner as may be reciprocally advantageous both to Great Britain and to the United States, as may tend, by removing all causes of future dispute, to improve and conciliate the harmony and good understanding which so happily subsists between the two countries, and which are so essential to their several interests and prosperity.

Extract.—The Secretary of State to Rufus King, dated

DEPARTMENT OF STATE,
December 16, 1802.

By the communications of the 6th day of October, received from Mr. Gore, it appears that the proposition for adjusting the boundary in the northwest corner of the United States is not relished by the British Government. The proposition was considered by the President as a liberal one, inasmuch as the more obvious remedy for the error of the treaty would have been by a line running due north from the most northern source of the Mississippi, and intersecting the line running due west from the Lake of the Woods; and inasmuch as the branch leading nearest the Lake of the Woods may not be the longest or most navigable one, and may consequently favor the wish of the British Government to have access to the latter. The proposition, for these reasons, would not have been made but from a desire to take advantage of the present friendly dispositions of the parties for the purpose of closing all questions of boundary between them. As it is not probable, however, that the settlement of this particular boundary will for some time be material, and as the adjustment proposed is not viewed by the British Government in the same light as by the President, it is thought proper that it should not for the present be pursued; and that the other questions of boundary should be adjusted with as little delay as possible. In the meantime, further information with respect to the head waters of the Mississippi, and the country connected with them, may be sought by both parties; it being understood that the United States will be as free to be guided by the result of such inquiries, in any future negotiation, as if the proposition above referred to had never been made by them. Should it be most agreeable to the British Government to have an early survey instituted, with a view to a proper boundary in this case, the President authorizes you to concur in such an arrangement.

Mr. King to the Secretary of State.

LONDON, *February* 28, 1803.

SIR: I have duly received your letters of 16th and 23d December. By Lord Hawkesbury's desire, I have conferred with Colonel Barclay respecting the continuation of the boundary through the bay of Passamaquoddy, who has made no objection to the line we have proposed, though he appears to think that it would be improper to cede to us the island of Campo Bello, unless the cession should be desired by its inhabitants. No objection has been made to our title to Moose island; and at present I foresee nothing to impede a settlement of this boundary, except the difficulty of engaging the Minister to bestow upon the subject sufficient time to understand it. With regard to the line between the source of the St. Croix and the northwest corner of Nova Scotia, I have no reason to suppose there will be any objection to its being ascertained in the way we have proposed. Not having been able to fix the attention of Lord Hawkesbury upon the subject, I am not able to give you any information concerning the line between the northwest corner of Nova Scotia and the head of Connecticut river, or between the Lake of the Woods and the Mississippi.

With perfect respect and esteem, I have the honor to be, sir, your obedient and faithful servant.

RUFUS KING.

Mr. King to the Secretary of State.

LONDON, *May* 13, 1803.

SIR: I have the honor to transmit herewith the convention which I yesterday signed, in tripli cate, with Lord Hawkesbury, relative to our boundaries.

The convention does not vary anything material from the tenor of my instructions. The line through the bay of Passamaquoddy secures our interest in that quarter. The provision for running, instead of describing, the line between the northwest corner of Nova Scotia and the source of the Connecticut river has been inserted, as well on account of the progress of the British settlements towards the source of the Connecticut, as of the difficulty in agreeing upon any new description of the manner of running this line, without more exact information than is at present possessed of the geography of the country.

The source of the Mississippi nearest to the Lake of the Woods, according to McKenzie's report, will be found about twenty-nine miles to the westward of any part of that lake, which is represented to be nearly circular. Hence, a direct line between the northwesternmost part of the lake, and the nearest source of the Mississippi, which is preferred by this Government, has appeared to me equally advantageous with the lines we had proposed.

With respect and esteem, I have the honor to be, sir, &c.

RUFUS KING.

Report of the Committee of the Senate on the foregoing Convention.

Mr. Adams, from the committee to whom the treaty with Great Britain, signed at London, on the 12th of May, 1803, was referred, reported thereon, as follows:

That, from the information they have obtained, they are satisfied that the said treaty was drawn up by Mr. King three weeks before the signature of the treaty with the French Republic of the 30th of April, and signed by Lord Hawkesbury, without the alteration of a word; and that it had, in the intention of our Minister, no reference whatsoever to the said treaty with the French Republic, inasmuch as he had no knowledge of its existence. But, not having the means of ascertaining the precise northern limits of Louisiana, as ceded to the United States, the committee can give no opinion whether the line to be drawn, by virtue of the third article of the said treaty with Great Britain, would interfere with the said northern limits of Louisiana or not.

[The following papers were communicated to the Senate with the foregoing report.]

Mr. Adams to the Secretary of State.

DECEMBER 16, 1803.

SIR: Some difficulty having arisen in the Senate, in considering the expediency of advising and consenting to the ratification of the Treaty of Limits between the United States and Great Britain, signed on the 12th of May, 1803, a committee of that body has been appointed to inquire and report upon the subject.

The difficulty arises from the circumstance that the treaty with the French Republic, containing the cession of Louisiana, was signed on the 30th of April, 1803, twelve days earlier than that with Great Britain; and some apprehension is entertained that the boundary line, contemplated in the third [fifth] article of the latter, may, by a possible future construction, be pretended to operate as a limitation to the claims of territory acquired by the United States in the former of these instruments.

But as the ratification, if it can be effected without unnecessary delay, is a desirable object, it has occurred to the committee that Mr. King may possibly have it in his power to give information which might remove the obstacle. I have, therefore, in behalf of the committee, to ask whether, from any information in possession of your Department, or which may be obtained, in such manner as you may deem expedient, it can be ascertained whether the third article of the treaty with Great Britain was concluded with any reference whatsoever to that with the French Republic, or with any right or claim which the United States have acquired by it.

I am, with much respect, sir, your very humble and obedient servant.

JOHN QUINCY ADAMS.

The SECRETARY OF STATE.

The Secretary of State to Mr. Adams.

DECEMBER 16, 1803.

SIR: Having transmitted to Mr. King the inquiry contained in your letter of ——, I have received the answer, of which a copy is enclosed. The Office of State possesses no further information on the particular point in question with the committee.

With great respect, I have the honor to be, sir, your most obedient, humble servant,

JAMES MADISON.

Rufus King to the Secretary of State.

NEW YORK, *Dec.* 9, 1803.

SIR: The draught of the Convention with Great Britain respecting boundaries, having been settled in previous conferences, was drawn up and sent by me to Lord Hawkesbury on the 11th of April; on the 12th of May the Convention was signed, without the alteration of a word of the original draught; and, on the 15th of May, the letter of Messrs. Livingston, and Monroe, (a copy of which was annexed to my No. 100,) announcing the treaty of cession with France, was received and communicated by me to Lord Hawkesbury. At the date of the signature of the Convention with Great Britain, I had no knowledge of the treaty with France; and have reason to be satisfied that Lord Hawkesbury was equally uninformed of it. It results, that the Convention with Great Britain was concluded without any reference whatsoever to the treaty of cession with France.

With perfect respect and esteem, I have the honor to be, your most obedient faithful servant.

RUFUS KING.

[The following resolution was passed by the Senate.]

IN SENATE U. S. *Feb.* 9, 1804.

Resolved, unanimously, That the Senate do advise and consent to the ratification of the Convention between the United States and His Britannic

Majesty, for fixing the boundaries between the United States and great Britain, concluded at London, May 12, 1803, with the exception of the fifth article.

MOROCCO.

[Communicated to the Senate, November 4, 1803.]

To the Senate and House of Representatives of the United States:

By the copy, now communicated, of a letter from Captain Bainbridge, of the Philadelphia frigate, to our Consul at Gibraltar, you will learn that an act of hostility has been committed on a merchant vessel of the United States, by an armed ship of the Emperor of Morocco. This conduct on the part of that Power, is without cause and without explanation. It is fortunate that Captain Bainbridge fell in with and took the capturing vessel and her prize. And I have the satisfaction to inform you, that, about the date of this transaction, such a force would be arriving in the neighborhood of Gibraltar, both from the East and West, as leaves less to be feared for our commerce, from the suddenness of the aggression.

On the 4th September, the Constitution frigate, Captain Preble, with Mr. Lear on board, was within two days sail of Gibraltar, where the Philadelphia would then be arrived with her prize, and such explanations would probably be instituted as the state of things required, and as might, perhaps, arrest the progress of hostilities.

In the meanwhile it is for Congress to consider the provisional authorities which may be necessary to restrain the depredations of this Power, should they be continued.

TH. JEFFERSON.

NOVEMBER 4, 1803.

U. S. FRIGATE PHILADELPHIA,
East of Malaga about ten miles.
August 29, 1803.

DEAR SIR: I wrote you from Gibraltar on the 24th instant, mentioning that we should sail the next morning for Malta.

Hearing at the Rock that two Tripolitans were off Cape de Gatt, made me proceed with all expedition to examine that part of the Spanish coast. On the 26th, it blowing very fresh, at 8 P. M. being nearly up with Cape de Gatt, fell in with a ship carrying only her foresail, which had a brig in company, under the same sail. It being night, and her guns housed, prevented an immediate discovery of her being a cruiser. After hailing for some time, found that she was a vessel of war from Barbary. On which information, I caused her boat to be sent on board the frigate Philadelphia, with her passports, from which I discovered that she was a cruiser belonging to the Emperor of Morocco, called Meshboha, commanded by Ibraham Subrarez, mounting twenty-two guns, and manned with one hundred men. By not making ourselves known to the officer who came on board, he confessed that the brig in company was an American, and had been with them three or four days; was bound to some port in Spain; had been boarded by them, but not detained. The low sail the brig was under induced me to suspect that they had captured her, notwithstanding their having your passport, which it must appear from the sequel was only obtained to protect them against the American ships of war. I sent my first lieutenant on board, to examine if they had any American prisoners. On his attempting to execute my orders, he was prevented by the captain of the cruiser. This increased my suspicion, and I sent a boat with armed men to enforce my intentions. After they were on board, they found Captain Richard Bowen, of the American brig Celia, owned by Mr. Amasa Thayer, of Boston, and several of his crew, who were taken the 17th instant from Barcelona, bound to Malaga, within two or three leagues of the Spanish shore, and about twenty-five miles to the eastward of Malaga. The captain and crew they had confined below deck, which they always did when speaking a vessel. After making this discovery, I instantly ordered all the Moorish officers on board the frigate, for I had no hesitation in capturing her after such proceeding on their part, and violation of the faith of passports, which ought to be sacred. Owing to the high wind and sea, it took me the greatest part of the night to get the prisoners on board, and man the prize; which detention occasioned losing sight of the brig. The following morning, discovering many vessels in divers directions, the day was spent by the frigate and prize in chasing to find the captured brig About 4 P. M. made her coming round the Cape de Gatt from the eastward, standing close in shore for Almeira bay, owing to the wind being very fresh. We were going slow in approaching her: the greatest exertions were made by Lieutenant Cox, in towing and rowing the prize. Fortunately, the wind increased in the evening, and we recaptured her at 12 o'clock at night. The Moors confessed that they came out for the sole purpose of capturing Americans to besent to Tangier. I have received a paper from them, written in Moorish, which they say is their authority from the Governor of Tangier for so doing. I enclose this to John Gavine, Esq., with a particular request to have it safely conveyed to you, that you may be informed of the circumstances, and act accordingly. I believe the Governor of Tangier is much disposed for hostilities with the United States: the Moorish prisoners accuse him as the sole cause of their present situation. I sincerely hope that this capture may be productive of good effect to the United States with the Emperor, who may be assured that if he unjustly goes to war with the United States he will lose every large cruiser he has; and God grant that it may not in the least prove a disadvantage to you. My officers and self have made it a marked point to treat the prisoners not only with the lenity that is due from humanity, but with particular attention to civility, to impress on their minds a favorable opinion of the American character. That you may receive this information as early as possible, I despatch my boat on shore

at Malaga, to request W. Kirkpatrick, Esq. Consul, to forward it by express to Gibraltar. I shall be extremely anxious to hear from you, as also for the arrival of Commodore Preble, to receive his instructions relative to the captured ships. I am bound to Gibraltar bay with the prize, but am fearful that we shall be detained for want of an eastwardly wind. I am, &c.

WM. BAINBRIDGE.

[Communicated to the Senate, December 5, 1803.]

To the Senate and House of Representatives of the United States:

I have the satisfaction to inform you that the act of hostility mentioned in my Message of the 4th of November, to have been committed by a cruiser of the Emperor of Morocco on a vessel of the United States, has been disavowed by the Emperor. All differences in consequence thereof have been amicably adjusted, and the Treaty of 1786 between this country and that has been recognised and confirmed by the Emperor, each party restoring to the other what had been detained or taken. I enclose the Emperor's orders given on this occasion.

The conduct of our officers, generally, who have had a part in these transactions, has merited entire approbation. The temperate and correct course pursued by our Consul, Mr. Simpson, the promptitude and energy of Commodore Preble, the efficacious co-operation of Captains Rodgers and Campbell of the returning squadron, the proper decision of Captain Bainbridge, that a vessel which had committed an open hostility was of right to be detained for inquiry and consideration, and the general zeal of the other officers and men, are honorable facts which I make known with pleasure. And to these I add, what was indeed transacted in another quarter, the gallant enterprise of Captain Rodgers, in destroying, on the coast of Tripoli, a corvette of that Power of twenty-two guns. I recommend to the consideration of Congress a just indemnification for the interests acquired by the captors of the Mishouda and Mirboha, yielded by them for the public accommodation.

TH. JEFFERSON.

DECEMBER 5, 1803.

[Translation.]

Praise be given to God alone. May God be propitious to our master Mahomet and to his family.

Know all those who shall see this noble writing—all our governors—those encharged with our affairs, and captains of our vessels, that the American nation are still, as they were, in peace and friendship with our person exalted by God.

Their vessels are safe both at sea and in port, and so are their merchants; and you are not to disturb the peace between us and them. What has happened with their and our vessels, has only been an affair among the vessels; but the said nation continues respected as they were with us, and under all security, and equally so their vessels.

Wherefore, we hereby order that all those of our governors; those charged with the command of our ports, and captains of our vessels who shall see this writing, that they act in all respects for the fulfilment of this order, and that they do not deviate therefrom; those who shall contravene it will be punished with a severe punishment.

This order was given on the 21st Chemadi, the second in the year 1218, (9th October, 1803.) and at last we are in peace and friendship with the said American nation, as our father (to whom God be merciful,) was, according to the Treaty made on the first day of Rhamadan, in the year 1200.

The original of the foregoing was translated from Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 15, 1803.

[Translation.]

Praise be given to the only God. May God be propitious to our master Mahomet and to his family.

Our servant the Governor Ben Abdel Sadak, and all officers of our port of Mogadore: May God assist you. Peace, with the mercy and blessing of God, be with you.

Now know ye, that the Almighty having reconciled what had happened with the American nation because of the acts of the vessels, and that we are now, as we were before, with them in peace and friendship, as settled with our father, (to whom God be merciful!)—Take care—take care that none of you do anything against them, or show them any disrespect or disregard, for they are, as they were, in friendship and in peace, and we have increased our regard for them in consequence of the friendship they have manifested to our person, which God has exalted. And we order that you be careful and diligent in all their concerns, and we order that you do well with their vessels and with their merchants. Peace be with you all.

October 11, 1803.

The original of the foregoing was translated from the Arabic to Spanish by Don Manuel de Baccas, and from Spanish to English by

JAMES SIMPSON.

Certified at Tangier, October 17, 1803.

IMPRESSMENT OF AMERICAN SEAMEN.

[Communicated to Congress, December 5, 1803.]

To the Senate of the United States:

In compliance with the desire of the Senate, expressed in their resolution of the 22d November, on the impressment of seamen in the service of the United States by the agents of foreign nations, I now lay before the Senate a letter from the Secretary of State, with a specification of the cases of which information has been received.

TH. JEFFERSON.

DECEMBER 5, 1803.

DEPARTMENT OF STATE, *Dec* 2, 1803.

SIR: Agreeably to a resolution of the Senate, passed on the 22d of last month, requesting the President of the United States to cause to be laid before them such information as may have been received relative to the violation of the flag of the United States, or to the impressment of any seamen in the service of the United States, by the agents of any foreign nation, I do myself the honor to transmit to you the enclosed abstract of impressments of persons belonging to American vessels, which, with the annexed extracts from the letters of some of our agents abroad, comprises all the information on the subject that has been received by this Department since the report to Congress, at its last session, relative to seamen. To the first mentioned document I have added a summary showing the number of citizens of the United States impressed and distinguishing those who had protections as citizens; those who are stated to be natives of the British dominions, and not stated to be naturalized as citizens; and those of all other countries, who are not equally stated to have been naturalized in the United States.

Another source of injury to our neutral navigation has taken place in the blockade of Guadaloupe and Martinique, as notified in the annexed letter from Mr. Barclay, Consul General of His Britannic Majesty for the Eastern States.

Besides the above, I have received no official information of any material violations of our flag during the present European war, except in the recent aggressions of the Emperor of Morocco.

With very high respect, I have the honor to be, sir, your most obedient servant.

JAMES MADISON.

The PRESIDENT *of the United States.*

[The abstract of names is omitted. But the following is a summary of impressments by the British from American vessels:]

DEPARTMENT OF STATE,
December 2, 1803.

Forty-three impressments of citizens of the United States appear to have been made, of whom twelve had protections.

Ten of natives of the British dominions, and not stated to be naturalized as American citizens; and

Seventeen of all other countries, who are not stated to have been naturalized in the United States.

Summary of Impressments by the agents of other Powers, from American vessels.

Two by the agents of France.

One by the agents of the Batavian Republic.

Extract of a letter from James Maury, Esq., Consul of the United States at Liverpool, to the Secretary of State.

MARCH 24, 1803.

"I had the honor to write to you on the 25th ultimo, since which the alarm of war has occasioned a great press for seamen. Many of ours, confident, as I suppose, in the continuance of peace, had not taken the caution, before leaving home, to be furnished with regular documents of citizenship, which exposes them to impressment."

Extract of a letter from John FOX, Esq., Consul of the United States at Falmouth, to the Secretary of State.

MAY 14, 1803.

"The impress is very severe. The citizens of the United States are not molested; two or three, without protections, and on board British ships, have been taken. I have made application for their release. but it is necessary that the seamen should bring certificates of their citizenship with them. otherwise they will run great risk of being impressed."

Extract of a letter from Wm. Savage, Esq., agent of the United States, for the relief and protection of their seamen at Jamaica, to the Secretary of State.

JUNE 25, 1803.

"There has been a hot press throughout this island. In this port about sixty seamen have been taken out of American vessels; immediately after which, I made application to the Admiral, who liberated the American citizens. Some few vessels on the north side have lost their men, and have experienced distress from the measure. The names of the persons impressed I have a minute of, and on the arrival of the frigates, in which they are, I shall make application for their discharge."

Copy of a letter from Thomas Barclay, Esq., Consul General of His Britannic Majesty for the Eastern States of the United States, to the Secretary of State.

OCTOBER 20, 1803.

SIR: I have the honor to enclose you the copy of a letter which I yesterday received from Commodore Hood, Commander-in-Chief of His Majesty's ships of war on the windward station, notifying the blockade of the islands of Martinique and Guadaloupe by the squadron under his command.

I have the honor. &c.

THOMAS BARCLAY.

CENTAUR, OFF MARTINQUE,
July 25, 1803.

SIR: I beg you will have the goodness to acquaint the American Government, and agents of neutral nations, the islands of Martinique and Guadaloupe are. and have been. blockaded by detachments of His Majesty's squadron, under my command, since the 17th June last, that they may have no plea for attempting to enter the ports of those islands. By your acknowledging the receipt of this, you will greatly oblige, sir, your most obedient servant,

SAMUEL HOOD,
Commodore and Commander-in-Chief.

T. BARCLAY, Esq., *Consul General, &c.*

SPAIN.

[Communicated to the Senate, Dec. 21, 1803.]

To the Senate of the United States:

On the 11th of January last, I laid before the Senate, for their consideration and advice, a convention with Spain on the subject of indemnities for spoliations on our commerce, committed by her subjects during the late war; which convention is still before the Senate. As this instrument did not embrace French seizures and condemnations of our vessels in the ports of Spain, for which we deemed the latter Power responsible, our Minister at that Court was instructed to press for an additional article comprehending that branch of wrongs. I now communicate what has since passed on that subject. The Senate will judge whether the prospect it offers will justify a longer suspension of that portion of indemnities conceded by Spain, should she now take no advantage of the lapse of the period for ratification. As the settlement of the boundaries of Louisiana will call for new negotiations on our receiving possession of that province, the claims not obtained by the convention now before the Senate may be incorporated into those discussions.

TH. JEFFERSON.

DECEMBER 21, 1803.

Extract of a letter from the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 8, 1803.

The Convention signed with Spain in August, though laid before the Senate at an early day, had no question taken on it till the close of the session. It was then postponed till the next session, which is to commence in November. More than a majority, but less than two-thirds, which the Constitution requires, would have acquiesced in the instrument in its present form; trusting to the success of further negotiations for supplying its defects, particularly the omission of the claims founded on French irregularities. But it is understood that it would have been a mere acquiescence; no doubt being entertained that Spain is bound to satisfy the omitted as well as the included claims. In explaining, therefore, the course taken by the Senate, which mingles respect for the Spanish Government with a cautious regard to our own rights, you will avail yourself of the opportunity of pressing the reasonableness and the sound policy of remodelling the convention in such a manner as to do full justice. I need not repeat the observations heretofore made on the Spanish responsibility for the conduct of French citizens within Spanish jurisdiction; but it may be of use to refer you to the enclosed copy of a royal order issued by the Spanish Government in 1799, which will enable you to remind them of their own view of the subject at that time. In this document it is expressly declared, that the French consular jurisdiction was not admitted, and that French consuls in Spanish ports were in the same condition with those of every other nation. After such a declaration against the authority of French consuls, the Spanish Government would be chargeable with no less disrespect to the French Republic than to itself, in saying that Spain was not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document, which I add, will explain the just sentiments entertained by the Batavian Government during the same period, in relation to a case turning on the same principle.

Extract of a letter from the Secretary of State to Charles Pinckney Esq., Minister Plenipotentiary, &c., at Madrid, dated

MARCH 22, 1803.

As the convention you signed with Spain will be now submitted to further negotiation, it will be proper, in addition to the general remarks contained in preceding letters, to suggest some particular alterations which are calculated to remove doubts, and to provide for its convenient execution.

1st. The words "excesses of individuals," in the caption of the convention, are liable to exception. The term "excesses" has not a definite meaning in the sense in which it is here used, and "individuals" might be restricted at least as a purely English word to private citizens or subjects, as distinguished from those who are vested with public authority. The English part of the caption in the words quoted uses the preposition *of* in lieu of the Spanish words *cometidas por*, which are preferable.

It is believed that the form of words, "who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it," &c., would be an improvement of importance.

2d. From the first section, it would seem that the fifth commissioner is to be appointed by the common consent of the two nations, or, in case of disagreement, by lot from two persons, one of whom is to be named by each nation. The formation of the board would be very much facilitated by substituting the agency of the commissioners on each side, in the appointment of the fifth commissioner either by consent or by lot.

3d. To equalise the compensation of the commissioners, to provide for the payment of the expenses of the board, and to obviate the case of the death, sickness, or necessary absence of either of them, the eighth article of the British Treaty will serve as an approved model.

4th. It would be desirable to add the words "justice, equity," before the laws of nations, &c. in the close of the second article, and a clause to the oath, whereby the commissioners should engage not to sit at the decision of a case in which they might as individuals be directly or indirectly interested.

5th. The third article limits the term within which claims are to be made to eighteen months;

but the board should be vested with a power to extend it further in special cases, so as not to exceed two years in all. The close of this article admits of the same alteration as was suggested above with regard to the caption.

6th. A criticism, perhaps an unfounded one, having been made upon the word testimony, used in the fourth article, as if it were restricted to parole deposition, it may not be amiss to change it for the word evidence, or to couple them, so as to read "all testimony and evidence, the authenticity of which," &c.

A perseverance in our claims, grounded on the wrongs permitted to be done by French cruisers and tribunals, it is expected will produce a correspondent alteration in the whole convention, and a retrenchment of the sixth article. It will be obvious to you how convenient it will prove if you can terminate your negotiation so as to produce the requisite modifications of the convention in season to preclude its reconsideration in the Senate, at their next session, in its present shape.

Extract of a letter from Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, to the Secretary of State, dated

MAY 12, 1803.

I find, by your letter of the 22d, that the convention signed with this country is to be submitted to further negotiation, on the ground, I suppose, principally, that it did not include the claims for French captures. Your letters, to which the only one I have received refers, have not yet come to hand, and therefore I only know it is to be submitted to further negotiation; and that with some alterations respecting the mode of appointing to vacancies in the commission; extending the time at the discretion of the board to two years; equalising the compensation; altering the terms "excesses of individuals," and the expression respecting testimony. I am to persevere in obtaining redress for the French captures and wrongs permitted to be done by French cruisers and tribunals, which will certainly produce, if obtained, an alteration in the whole convention. I have been some time endeavoring, in every conversation I have had, to obtain the promise to include the arbitration of the French captures, but without effect: for it may be necessary here to state, that, although Mr. Cevallos did positively, in one of his letters last summer, promise to include them, if I would add the words "segun los principios que constituen la moralidad de las acciones," yet that very day, or a very short time after, when I had some inclination to add the words, and take the clause with that addition, he flew the way, and would not agree to it. I was, therefore, obliged to take the convention, such as it was, or none at all; and, as it gave up nothing, secured very important and extensive claims, and opened the door to others, I always hoped the Senate would have ratified it conditionally, striking out the sixth article, and annexing one including the claims for French captures and condemnations, and ordering me, in very strong and decisive terms, to tell the Government here that they were determined to have the whole or none. Had this been done, I believe they would consent, and, as I suppose, the arbitration for the French captures and condemnations not being included was the principal objection to ratifying it at the present session, I shall now take that ground, and insist upon their being included, even if I am obliged to add the words he proposed to annex, and which I have already quoted. I shall also consider myself as not at liberty to sign any convention which does not include them in some manner that I think may be acceptable; but as this subject is one of the most grating and disagreeable that can be to the Spaniards, and as they consider it so extremely hard to be obliged to pay for the French condemnations, I wish to know your positive instructions, whether I am to make them an indispensable part of the convention, and not to sign or agree to any which does not include them in some shape. This is the ground I take at present; and as the Spaniards are not very quick in any of their negotiations, and are particularly crowded with business at this time, when they expect war between France and England, and of course that they will be involved, it is not improbable your instructions may reach me before I conclude the business. Should war take place, it is then very probable I shall succeed, and I shall govern the style of my representations by the probability or improbability of a rupture.

Mr. Pinckney to the Secretary of State.

MADRID, *August* 2, 1803.

DEAR SIR: My last despatches, and those which preceded them, will have conveyed to you the propositions I submitted to this Government on the subject of our claims, and particularly the captures and condemnations by the French; they will also have informed you of the anxious manner in which I have been expecting the arrival of Mr. Monroe since the 20th of May, hopeful that the instructions he would bring might enable me to add such offers, or bring the question of the spoliations by the French in some manner before this Government, to tempt them to accede to our propositions. After waiting until nearly the beginning of this month,* I received a letter from Mr. Monroe and Mr. Livingston, acquainting me with the cession of Louisiana; and another from Mr. Robert Livingston yesterday, saying that Mr. Monroe was gone to London, to reside there as Minister from the United States. In consequence of this, I have again pressed upon this Government a decision with respect to the French captures and condemnations, and have desired an audience on Tuesday.

While I expected Mr. Monroe, and supposed that, in treating respecting Florida, something could have been proposed which might have induced this Government to include our claims for French spoliations and condemnations, notwithstanding I had, in pursuance of your instructions, brought them forward, I forbore to push them, lest I might injure the other and more important parts of the negotiation; but the moment I received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, and that they considered the cession as including West Florida, and that Mr. Monroe was not coming, I then pushed the new propositions respecting our claims, in that positive and decided manner which the circumstances of Europe, and the particular situation of Spain, seemed to me to warrant. In my letter (No. 1) you will perceive the manner in which the new propositions were submitted, and the copy of the new convention; these went in the last despatches. After waiting for some time to see whether Mr. Monroe would arrive with the extraordinary commission, and finding it doubtful, I wrote the letter (No. 2); and immediately on being informed that Mr. Monroe would not come, I demanded an audience of Mr. Cevallos, the Secretary of the Foreign Department, in which I went over the whole ground of our difference in opinion, and repeated to him, at length, not only all the arguments used in my letters, but such others as occurred in the course of conversation, or as I thought the particular and doubtful situation of Spain at present warranted.

I entered fully into the impropriety of Spain's having suffered her ports to be used for the purpose of equipping privateers to cruise upon our vessels, and bringing them in as prizes, and permitting the Consuls of France to condemn them; by which means her territorial sovereignty was not only violated, but her ports, which we ought to have considered not only as the ports of a neutral and a friend, but of a nation in treaty with us, were, by that means, converted into those of an enemy. For what could France do more with her ports against us than equip and man privateers in them, and bring in and condemn our vessels? Spain did not permit us to do so; and if she had offered it, she well knew the offer was of no consequence to us, because the distance from the United States, and the contiguity of the French coasts created a difference in the exercise or use of the permission, which made it extremely important to the one, and of very little consequence to the other. That there can be no doubt that any nation which lends the aid of its ports for the purpose of arming privateers, aids in annoying the commerce of those against which these privateers are intended to cruise; that, further, any nation which vests within its dominions a foreign tribunal, with the power of condemning and selling the property of a neutral nation, assists in depriving the citizens of that nation by force of their property. Hence, it would seem, a permission to arm privateers and sell prizes, granted to one belligerent Power, is inconsistent with the impartiality due to both by a nation which professes to be neutral; that it would not destroy the argument to say the same privileges might be granted to both; that, in our late differences with France, it could not, for the United States never suffered their public or private vessels to capture the merchant ships of France, and, it is believed, in no instance could the privilege operate equally in favor of two nations; from their maritime strength, local situation, or other cause, the one must always benefit by it more than the other; hence, one of them must be materially injured, if it was granted to both. For example: suppose Spain and Russia were engaged in war; would the United States do them equal justice by opening her ports for the arming of their privateers, and the sale of their prizes? Nobody would suppose she did, when he recollected that all, or nearly all, the rich commerce of Spain passes before the ports of the United States, and that Russia has no commerce in that quarter of the world. Again: if unfortunately there was a war between the United States and Spain, would England do equal justice to both, if she opened the port of Gibraltar to both, for the purpose of arming privateers and selling prizes? Certainly not; for, by doing so, she would give to the United States the most advantageous position from whence to annoy the commerce of Spain; and to Spain she would give the use of a port three thousand miles distant from the United States, and not more useful to her than her own on the Mediterranean.

From these and other examples, I endeavored to convince him how peculiarly Spain is situated, and how important it is to her to put an end to a practice so contrary to the principles of justice and strict neutrality. I repeated to him that these observations, together with those which have been, from time to time, during the last four years, offered by my predecessor and myself to the consideration of His Majesty, are believed to be sufficient to entitle us to demand compensation from His Majesty for the property wrested from us by those whose actions he had a right, and most certainly the power, to control; that the respect which the Government of the United States had for His Majesty had induced them to urge the point, which they considered as a point of national honor, with the greatest moderation, as was proved by their offering to refer the question to arbitration, although they were perfectly conscious of their right to demand payment without a reference, of which they had given a proof before they had become interested themselves. But that if Spain will not agree to the principle of neutral right, and chooses to adopt as a part of her public law the practice of opening her ports for the arming of privateers and selling of prizes, I am sure the United States would, in point of mere interest, be benefitted by following the example, after obtaining compensation for the losses they have already sustained.

In order to meet the observations he made before, that His Majesty was not, by the law of nations, liable for the condemnations by the French Consuls, I repeated to him the observations of *Vattel*, in his 3d book, and particularly in the paragraphs sect. 15, 95, 97, 102, and 104; and endeavored to show him how incompatible these aggressions were with the duties enjoined to neutrals; that, at the time *Vattel* and others had written on the laws of nations, no such case had occurred;

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* It seems probable that this date, and the following, are advanced, and that this letter was written in July.

no such new, extraordinary, or unwarrantable attempts had been made to erect, within any country, tribunals independent of its authority. I endeavored to impress upon him the manner in which our Government had defeated a similar attempt upon them at an earlier period of the war, well knowing that, to permit such an exercise of the rights of war within their cities, would be to make their coasts a station of hostility. To show him that we did not stand alone in our opinions on this licentious attempt to exercise the rights of war within neutral countries, where no rights have ever before been exercised, I read and explained to him the doctrines laid down in the English Court of Admiralty, by Sir William Scott, in the celebrated case of the Flad Oyen, Martensen, master; and which, as you have no doubt seen, I shall not trouble you with repeating. I concluded with informing him that our Government considered this as a point of national honor, which they could never relinquish; that, as war had again commenced between Great Britain and France, the decision of Spain on this subject was become now indispensable; that we knew not to what other parts its flames will soon extend; that our commerce must never again be exposed to similar depredations, and that our Government were determined, upon this occasion, to show how far they would protect it; that, having arranged all their differences with France and England, it now rested solely to do so with Spain; that, to do this, they had offered an equal and amicable arbitration, and that I had waited with great patience for their decision; that, however, being now instructed to transmit His Majesty's answer, so that it might be received by the meeting of Congress, the period had arrived when I could delay no longer applying to his Excellency for a prompt and decisive one, which I was hopeful he would give me in a few days, as I had two American gentlemen only waiting to take it to America.

In his answer, he went over the old ground, that Spain, not having authorized, but expressly forbidden, the exercise of this power by the French Consuls, was not, in his opinion, liable to make reparation; that the more he had considered the subject, the more he was convinced; and that, in his view of it, the quotations I had made from *Vattel* did not apply; that, since the last year, he had been informed, from the best sources, that many leading men in our (the American) Government were in sentiment with him that Spain was not liable; and that even some of our best informed lawyers had given the same opinion. I replied, it was incredible to me that any men of information, whether in our Government or among our gentlemen of the bar, could have given such an opinion; that, if they had, I had never heard of it; that it was always safest for his Excellency to take the sentiments and views of our Government, as they respected Spain, from me; that I could assure him every branch of our Government was not only decided in their opinion as to the liability of His Majesty to make compensation, but determined never to relinquish it, at least so far as to insist upon its being included in the arbitration; that the Senate not having ratified the convention, ought to be full proof of their determination upon this subject; that it was time our Government should know His Majesty's decision, and I must request to have it by the day Mr. Young sailed. He said that was impossible, as the royal feasts, and other occupations of His Majesty, for this month, in which he was obliged to attend him, would put it entirely out of his power; but that he would give it as soon as he could. I then informed him that I considered it as my duty to write, and asked him, "whether I was to transmit to our Executive, as His Majesty's final decision, that he could not consent to include in the convention the captures and condemnations by the French and their Consuls." He hesitated, and said, no. The serious manner in which I put this question seemed to have affected him. He added, "The subject, with your representations, are now before His Majesty, and I will state what has passed further this evening;" at the same time assuring me I should have a very speedy answer. He then went on to converse with me on the subject of the cession of Louisiana by the French to us, in which he expressed an opinion so important and extraordinary, that I made a point of transmitting it to you by the post the next day, by the route of Lisbon, and which, I trust, you will soon receive. The substance was this: that, in the cession of Louisiana by Spain to France, there was a secret article that France should never part with Louisiana, except to Spain; that if she (France) should ever wish to dispose of it, Spain should always have the right of pre-emption; from which he argued that France had not the right to make such cession without the consent of Spain, and that he was astonished our Commissioners had not applied to their Government to know the actual terms upon which France was to receive Louisiana, and, in fact, to examine their title. I answered him by saying, that he could not be more astonished at their not doing so than I was at his remark; that he well knew that Mr. Livingston and myself had been applying for upwards of a year, incessantly, to the Governments of France and Spain, to know if Louisiana was ceded, and upon what terms; that, for more than a year, the most guarded silence was observed by both, and that at last, when Spain had answered and avowed the cession, not a word was mentioned in his (Mr. Cevallos's) letter to me of any secret article; that the letter only avowed the cession, and that it had been made subject to the conditions of our treaty; that I had transmitted this to Mr. Livingston and Mr. Monroe; and I asked him whether, after the sight of this letter from him, acknowledging the cession, they could for a moment doubt the perfect right of France to sell. I then further asked him whether, if Spain still continued in possession, and our Government ratified the treaty, there would be any hesitation on the part of His Majesty to give us the possession? To which he made no positive reply, nor could I bring him to do so during the whole evening. I could easily discover, in the course of it, that there exists at present much uneasiness on the part of this Court, with respect to the conduct of France in the sale of Louisiana, and particularly in the opinion held by our Commissioners, that it includes West Florida, which both Mr. Cevallos and the Prince of Peace expressly deny, and on which I write you a separate letter, containing my conversation with them on this subject.

AUGUST 30.

Not receiving the answer of the Secretary as soon as I expected, and anxious to transmit you the result, I followed the Court to San Ildefonso, and had another conference with him on the 24th instant. In this he informed me he was sorry so much delay had been occasioned in his reply; that it was owing to the removal of the Court, and the particular urgency of the moment, alluding, I suppose, to the state of things occasioned by the war; that, however, the answer was prepared, and would be transmitted the following day; that I would perceive in it the two grounds upon which His Majesty conceived he was not liable to make compensation for the French condemnations; and that several very respectable and learned gentlemen in the law in the United States had expressed the same opinion, a copy of which he would send me enclosed in his reply. The grounds were: the inability of Spain to prevent it, and the general relinquishment of our claims to France for everything done by Frenchmen, so far as respects the seizure of our vessels or their condemnation; and that he was convinced, when our Government came to see these opinions, and to reconsider the question, they would think, with His Majesty and his Ministers, that Spain was only liable for the acts of her own subjects, except, indeed, in the violation of their territory by foreign cruisers, which, he said, he had no objection to admit, considering it as a distinct question from that of the condemnations. I told him I believed our Government would be not a little surprised to find Spain resorting to the plea that she was not able to prevent it; that, if he pressed this argument, if he contended she was not then a free agent, and, of course, not a responsible one, and could prove it to be so, it only remained for me to transmit this reply to you for your future directions; that the relinquishment he spoke of to France has nothing to do with our claims on Spain: that we never considered ourselves as having any right to demand compensation from France for these violations of the territory and sovereignty of Spain by the cruisers and consuls of France; that they were by no means included in the claims relinquished, but were as distinct and separate as claims could be; that we had received from France a very valuable compensation, in her consent to dissolve the Treaties of Commerce and Alliance previously existing between the two nations—an alliance by which we were bound to guaranty her islands in the West Indies, and to be liberated from which was inestimable to the United States; that from Spain we had hitherto received no compensation, and that it would be found a great part of these claims had originated since the date of the French Convention; that I still hoped he would consent to include them in some way, convinced that, if they were not provided for, our Government would remain extremely dissatisfied; that, merely from motives of conciliation, I would consent to insert them, with the addition of the words he offered the last year, "segun los principios que constituyen la moralidad de las acciones." He said he was rather of opinion, from the intelligence he had received from the United States, that the thing would now be viewed in a different light, and that our Government would not insist on so hard terms, even if they had the right, as to call upon them for condemnations which they could not prevent, and not one shilling of the proceeds of which went into the pockets of His Majesty or his subjects; that he never meant, the last year, in what he said respecting the arbitration, subject to the limitation of "segun los principios, &c.," to apply it to the condemnations of the French consuls, or to have left it to the Commissioners to decide upon them, but only to the violations of territory; and that, had I admitted the limitation, he would have expressly excepted the condemnations; that for the acts of his own subjects and the violations of territory by foreign cruisers, His Majesty had always been ready to arbitrate, as appeared by his letters to me of the last year; that he wished me to transmit the reply he would send me, with the opinions of the American lawyers on the subject; and that he did not doubt their future instructions to me would be such as would tend to promote the harmony and good understanding of the two Governments.

On the morning following, he sent me the enclosed answer to my several verbal and written applications, accompanied by an opinion, which I also enclose, given by Messrs. Ingersoll, Rawle, McKean, Duponceau, and Livingston, on an abstract question submitted to them, as I suppose, by the order of this Government. I considered it proper to transmit Mr. Cevallos an answer, in which you will find most of the arguments insisted upon which had been before used, and in which I object to the statement submitted to our lawyers, as not expressing either fully or truly the state of facts; that, in relinquishing our claims on France, we had done so for a valuable consideration, and that, in so doing, we had by no means relinquished our claims on Spain, as they were separate and distinct; that, for the truth of this, we referred him to the letters of my predecessor, by which it appears the Government of Spain were continually warned of the illegality of the captures and condemnations, and informed that His Majesty would be held liable to make compensation; that, in resorting to the plea that Spain could not prevent it, it was incumbent on her to show that she really could not, either by force or influence, do so, and that she had exerted herself, as far as she was able, to effect it; that, after all, if it was true she could not prevent it, but to avoid a war, or a re-

newal of the war with France, was under the necessity of submitting to it, and of sacrificing to the preservation of peace the commerce and property of the citizens of the United States, on every principle of justice and national honor she ought now to make a compensation; that the tacit sacrifice of the property of our citizens was the price she paid for a peace, inestimable to her in every respect; and that, in my judgment, she ought now most cheerfully and gratefully to submit to our proposition for an arbitration, rejoicing that we have been so moderate as to acquiesce in this mode, and not to demand, not only immediate compensation for the losses, but satisfaction for the injury to our national honor; that it should be recollected the opinions of gentlemen of the law, however respectable as professional men, were not to direct our Government; that they were supposed to be the best judges of our public rights, and had alone the authority to treat respecting them, and, when necessary, to devise the means of asserting and protecting them; and that even the opinions he produced could easily be proved to be in our favor.

As I cannot now expect that Spain will agree to include the claims for the condemnations by the French Consuls, it will remain for you to direct what is best to be done. You will consider how far her plea that she could not prevent it entitles her to consideration, and whether it appears, in any of our applications to the French Government previously to the signing of the Convention of 1800, we applied to them for compensation for the captures and condemnations by the French privateers and Consuls within the territory of Spain, or included them in those claims which were afterwards relinquished. In determining this, much will depend upon the correspondence of our Envoys or Commissioners who made the Convention with the French Envoys, and I will thank you for the necessary information, and copies of such of his letters respecting the claims as may be proper.

From the above you will see the state of the negotiation, and with what anxiety this Government wish to avoid inserting the claims for the condemnations by the French. I have no doubt Mr. Yrujo has been very industrious on this subject in the United States, and Mr. Azzara in Paris, in endeavoring to collect all the intelligence they can, to prove that we considered these as claims *on France;* that our commissioners had urged them as such; and that they are included in the general relinquishment to that nation. As I do not believe this to have been the case, I have continued to urge them as separate claims, which could be alone made on this Government; and you will perceive, by my letter to Mr. Cevallos, that I do not by any means agree with him, or acquiesce in his doctrines. Upon the whole of this business it appears to me, that, in the present state of Europe, it would be politic in us to endeavor to arrange all the claims on Spain, by conditionally ratifying the convention already sent, striking out the sixth article, and inserting one including such of the claims for French captures and condemnations as you are determined to insist upon, and accompanying it with a specific offer to Spain to purchase Florida, or such part of it as now remains to her; for, on the subject of the limits of Louisiana and Florida, I am otherwise apprehensive we may have some difficulties. Mr. Livingston and Mr. Monroe officially informed me they considered West Florida as included in the cession. This the Prince of Peace and Mr. Cevallos strongly deny; and, unless we can come to some agreement with Spain for the cession of all their claims on Florida, we may, as I have observed, have some difficulties with them. This appears to me, also, to be the best time; for Spain must eventually be involved in the war; and, cut off from her resources in South America, her trade destroyed, and her people without bread, a sum of money would go a great way in tempting her to sell. We are now, also, sure of the influence and assistance of France in persuading them to do so; for General Bournonville, the French Ambassador, told me lately he had received orders from his Government to promote, as far as he could, a disposition in this Court to sell Florida to the United States. Notwithstanding Mr. Monroe has not come on, I am continually conversing with the leading men here on this subject, and keeping it constantly in their view; but, not conceiving myself now authorized to make any explicit offer, and not knowing exactly what proportion of West Florida you will *insist upon* as ceded to the United States by France, I wait your further instructions, which I request may be as particular and as explicit as possible; not wishing, in affairs of so great pecuniary importance, to have too much left to my discretion. I take the liberty to recommend the bearer, Mr. Young, to the President and yourself, as an excellent and deserving public officer. Please present me in the most respectful and affectionate manner to the President, and believe me, with sincere regard and affectionate respect, dear sir, yours truly.

CHARLES PINCKNEY.

Mr. Pinckney to Mr. Cevallos.

MADRID, *May* 23, 1803.

I have the honor to inform your Excellency, that, after the most mature reflection and deliberation, the Government of the United States are of opinion they cannot, consistently with the honor of their Government, or those interests of its citizens which it is their duty to support, consent to any convention with His Majesty for the arbitration in settlement of their respective claims, which shall not include the arbitration of all the claims arising, as well from the acts of Spanish subjects, as those of aliens or foreigners within the Spanish territory, contrary to the laws of nations, or the treaty existing between His Majesty and the United States, and that, in order to allow time for including this class of claims, they have postponed coming to any decision on the convention formed between your Excellency and myself, until the next session of the Senate, in November. In consequence, therefore, of their precise and

positive instructions, I now submit a new convention which they expect His Majesty will consent your Excellency should sign, for the following reasons: That your Excellency has already agreed to arbitrate all the acts of Spanish subjects, contrary to the treaty and the law of nations, and all the infractions of the Spanish territory by foreign privateers; and, in your Excellency's letter of the 26th June, did positively agree to insert all the other claims arising from the acts of aliens, if I would consent to insert after the words "*ó de otros*," the words "*cuyos excesos puedan imputarse al Gobierno Español segun los principios que constituyen la moralidad de las acciones y su responsabilidad.*"

As it was unusual to insert expressions of this kind, and I did not conceive my instructions as warranting it, I objected at that time to the insertion, and preferred trying the opinion of our Government on a Convention confined solely to the acts of Spanish subjects, and leaving the question respecting those of aliens to future negotiation. It is, however, the opinion of our Government that, when the two Governments go to the expense and trouble of constituting this Board, it ought at once to be authorized to consider and decide upon all their mutual claims.

From the dispositions, or rather assent, at first manifested by your Excellency, and on perusal of your letters, a more favorable as well as speedy issue was expected to this negotiation by our Government, and it is still hoped and expected that modifications may be devised that will make the contested article satisfactory to Spain, without being unjust to the United States.

The true object is to give to the board a power that will reach every description of cases. According to information received from time to time, it appears that losses have been sustained by citizens of the United States: first, on the high seas; secondly, within the territorial jurisdiction of Spain herself; thirdly, within the jurisdiction of her colonies: that they have proceeded, first, to the Treaty of 1795; or, secondly, to the law of nations; or, thirdly, to substantial justice. It is desirable, therefore, that a stipulated provision for repairing these injuries should be so expressed as to be commensurate with this view of the cases; or, if this extent cannot be explicitly given to the provision, that it should be as little narrowed as possible.

The objection made to giving the board cognizance of the wrongs committed by aliens within the jurisdiction, and, consequently, within the temporary allegiance of the King of Spain, is clearly open to the reply I made to it. The authority which every Sovereign has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reason, as he is responsible for the conduct of permanent citizens or subjects. This is a doctrine too well established, both by reason and by public law, to be questioned. The United States have pursued it in practice, as well as in discussion; and may, therefore, with the more energy, claim the benefit of it. The remark of your Excellency, that the stipulation on this subject, in our Treaty of 1794 with Great Britain implies that, without such a stipulation, the law of nations would not have imposed on the United States the responsibility assumed, admits of a double answer. The United States acquiesced in the doctrine before the Treaty was made; and the stipulation in the Treaty, like numerous stipulations in other treaties, was not meant to supersede the rule of public law, but to acknowledge and explain it.

It is not denied that there are certain exceptions to the authority over those within a temporary, which do not apply to the authority over those within a permanent allegiance; and so far there may be exceptions to the responsibility of the Sovereign also. But none of these exceptions belong to the cases in question. In the equipment of privateers, and the condemnation of prizes in Spanish ports, the King of Spain had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, he made himself answerable to those injured by the failure.

The losses sustained by Americans from aliens, and for which Spain is held answerable, have proceeded, first, from condemnations within her jurisdiction known to be against the American trade; thirdly, from equipments ostensibly made against the enemies of Spain, but turned against the United States; fourthly, from captures only within the limits of Spanish jurisdiction.

With respect to the first two cases, it is clear that the Spanish Government had not only the right but the power to interpose effectually; and is, consequently, bound to repair the consequences of her omission. With respect to the fourth case, the violations of her territory might be less under her control, where the prizes were not carried into her ports. Still, however, with the right accruing to her against the aggressors, accrues, at the same time, the right against her to the sufferer.

It is my duty to inform your Excellency, and my instructions direct me to do so, that the course pursued by the Senate of the United States, in postponing the decision on the convention until the next session, in order that His Majesty should have time to consent to incorporate and include the arbitration of the claims arising from acts of aliens within the Spanish territories, while it maintains a cautious regard for our own rights, exhibits, at the same time great respect for the Spanish Government. Every branch of our Government is of opinion that the arbitration of these claims ought to be included, and that, by the law of nations, Spain is clearly answerable for the acts of aliens within her territory and jurisdiction; and, notwithstanding the time which has already been spent, and the ruinous delays which have taken place, they still rely on the well known honor of His Majesty, to remodel the convention, so as to do ample justice.

But, in order to remove all doubt on the sub-

ject, and to show how well founded is the right the United States have to expect that this class of claims will be admitted at least to arbitration. I am also directed to refer your Excellency to the enclosed copy of a royal order, issued by the Spanish Government in 1799, which must remind your Excellency of the view of your Government, and of their opinions at that time on this subject. In this document it is expressly declared, that the French Consular jurisdiction was not admitted in Spain, and that French Consuls in Spanish ports were, and always have been, in the same condition only with those of every other nation.

After such a declaration against the authority of French Consuls, the Spanish Government never can say, nor have they ever said, they were not left at liberty to prevent an exercise of the usurped authority; and, if at liberty, she is indisputably answerable for the consequences of not preventing it. A document which I also take the liberty to add, will explain the just sentiments entertained by the Batavian Government during the same period in relation to a case turning on the same principle.

This subject has been so often and so long before your Excellency, that it is not necessary for me to go again into the other arguments heretofore used to prove to your Excellency the policy and justice of the measure. Our Government relies confidently on the justice and honor of His Majesty, and on the promise contained in your letters, and particularly that of the 26th June last, in which you say you consent to the inclusion of the words "*de otros*," and in the arbitration of claims for damages arising from the acts of aliens, with the addition of this comment, for its clear signification: "*ó de otros cuyos excesos puedan imputarse al Gobierno Español segun los principios que constituyen la moralidad de las acciones y su responsibilidad.*" The present convention is drawn in conformity with that limitation, with some few alterations of no moment, which our Government wishes for the more convenient caption, in which, instead of the words "excesses," &c., I have substituted "in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation." An alteration in the mode of filling up vacancies in the commission, should a vacancy occur after formation of the Board, as it would prevent their going on, and be extremely inconvenient and expensive to wait the nomination from the United States of an American commissioner to fill a vacancy, which would now be the case. An article also is added to equalise the payment of the commissioners, and to provide for the payment of the expenses of the Board. We wish, also, the Board to be vested with power to extend the time, if they think proper, in special cases, six months longer, so as not to exceed, in the whole, two years.

Your Excellency will find the whole substantially the same as the last, except with the addition to the claims for the acts of aliens, and I am particularly enjoined by my Government to request as early a decision as possible. Should your Excellency not approve the form exactly as it is now sent, I will then thank your Excellency to be so obliging as to favor me with one which you will sign; it being, however, necessary for me to state to your Excellency that I do not consider myself as now at liberty to assent to any that shall not include the arbitration of the claims arising from the acts of aliens in the territories of each.

I repeat to your Excellency my earnest request that you will be pleased to furnish me with your definitive answer for the information of my Government as early as possible, as I am particularly directed by them to endeavor to obtain and transmit it, with all the despatch in my power,

With sentimens of the most profound respect, I have the honor to be your Excellency's obedient, humble servant. CHAS. PINCKNEY

Don Pedro Cevallos.

[Draught of the proposed convention referred to in Mr. Pinckney's letter to Mr. Cevallos, of May 23, 1803.]

A Convention between His Catholic Majesty and the United States of America, for the indemnification of those who have sustained losses, damages, or injuries, in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others, within the territory of either nation, during the late war, contrary to the existing treaty or the laws of nations.

His Catholic Majesty and the Government of the United States of America, wishing amicably to adjust the claims which have arisen in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others within the territory of either nation, during the late war, contrary to the existing treaty or the law of nations; His Catholic Majesty has given, for this purpose, full powers to his Excellency Don Pedro Cevallos Councillor of State, Gentleman of the Bedchamber in employment, First Secretary of State and Universal Despatch, Grand Cross of the Royal and Distinguished Order of Charles the Third, and Superintendent General of the Posts and Post Offices in Spain and the Indies; and the Government of the United States of America to Charles Pinckney, a citizen of the said States, and their Minister Plenipotentiary near His Catholic Majesty; who have agreed as follows:

1. A Board of Commissioners shall be formed, composed of five commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the Government of the United States, and the fifth by common consent. And in case they should not be able to agree on a person for the fifth commissioner, each party shall name one, and leave the decision to lot. And, hereafter, in case of death, sickness, or necessary absence of any of those already appointed, the remaining commissioner or commissioners of the nation to which the commissioner so dead, sick, or necessarily absent belonged, shall be authorized to proceed to the appointment of another to replace him; and

the new commissioner shall take the same oath or affirmation, and do the same duties. And it is agreed that the commissioners shall be respectively paid in such manner as shall be agreed between the two parties—such agreement being to be settled at the time of the ratifications of this convention. And all other expenses attending the said commissioners shall be defrayed jointly by the two parties—the same being previously ascertained and allowed by the majority of the commissioners.

2. The appointment of the commissioners being thus made, each one of them shall take an oath to examine, discuss, and decide on the claims which they are to judge, according to the law of nations and the existing treaty, and with the impartiality justice may dictate, and not to act directly or indirectly in any case in which they are directly or indirectly interested.

3. The commissioners shall meet and hold their sessions in Madrid, where, within the term of eighteen months, or in special cases, at the discretion of the board, two years, (to be reckoned from the day on which they may assemble,) they shall receive all claims which in consequence of this convention may be made, as well by the subjects of His Catholic Majesty as by citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries sustained by them in consequence of the wrongs committed by the subjects or citizens of either nation, or under color of authority from it, or by others, within the territory of either nation, during the late war, contrary to the existing treaty or the law of nations.

4. The commissioners are authorized by the said contracting parties to hear and examine, on oath, every question relative to the said demands, and to receive as worthy of credit all testimony or evidence, the authenticity of which cannot reasonably be doubted.

5. From the decisions of the commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims as to the amount of indemnification which may be adjudged to the claimants—the said contracting parties obliging to satisfy the said awards in specie, without deduction, at the times and places pointed out, and under the conditions which may be expressed by the Board of Commissioners.

6. The present convention shall have no force or effect until it be ratified by the contracting parties.

In faith whereof, we, the underwritten Plenipotentiaries, have signed this convention, and have affixed thereunto our respective seals.

Done at Madrid, this —— day of ——.

Mr. Pinckney to Mr. Cevallos.

I have waited for some considerable time, to have the favor of your Excellency's reply to the representations I had the honor to make, in conformity to the orders of my Government, on the subject of the claims for captures and condemnations. I was hopeful the respectful manner in which our Government had treated the subject, by postponing their final decision until His Majesty could have time to decide on the propriety of admitting the arbitration of the claims for captures of our vessels by the French, within the territory of Spain, and condemnations in their ports, and the arguments adduced in support of the justice and equity of the arbitration proposed, would have long since convinced your Excellency of the propriety of acceding to our proposition; and I am induced to flatter myself your Excellency will still do so. In referring to the arguments which have been already so often and so much at length adduced in support of our claims, I shall now only say that our Government, on a candid and deliberate review of the subject, are convinced that they never can, in honor to their nation, or in justice to its citizens, totally relinquish these claims; that they have again charged me, in the most positive terms, to request a definite and speedy answer from His Majesty. They well know that, according to substantial justice and the law of nations, they are warranted in demanding payment for all the vessels so illegally captured or condemned by the French; but, in that spirit of friendship and forbearance which has always governed their councils, and particularly as they respect His Catholic Majesty, they have forborne to make the demand for payment in the first instance, and have only asked for an equal and fair arbitration, which it appears to me, on maturely considering the subject, his Majesty will not refuse.

When two nations differ on a point like this—each equally entitled to form its own opinion, and sufficiently powerful to assert its honor and protect its rights, *and each seriously determined not to relinquish them*—there are no modes of terminating the difference but those of war or arbitration. Our Government, while seriously determined never to relinquish their claims, have long and amicably proposed the latter. They have again charged me to call for a definitive answer, in order that His Majesty's determination may be known before the next meeting of the Congress. I do, therefore, again most earnestly request of your Excellency to favor me with a reply to the propositions I made for a new convention, and with the form of such a one as your Excellency will approve, and of the terms on which you will consent to arbitrate the French captures and condemnations.

It is now uncertain whether Mr. Monroe will come on with the new commission extraordinary from our Government directed to him and myself at all, or if he should bring it, when; but if he does, its objects are entirely distinct from these claims—the urging the definitive answer to which my Government has again pressed on me in so serious a manner, that I am confident your Excellency will have the goodness to favor me with as early a reply as possible.

I avail myself, with pleasure, on this occasion, to offer to your Excellency the homage of the high respect and perfect consideration with which I have the honor to be your Excellency's most obedient humble servant. C PINCKNEY.

Don Pedro Cevallos.

Mr. Pinckney to Mr. Cevallos.

MADRID, *July* 15, 1803.

Before your Excellency gives the definitive answer to the propositions made to you by order of my Government—that answer which is probably to determine the relation hereafter to subsist between the two countries—I once more take the liberty of requesting you to reconsider the arguments that have been before used, and the extremely mild and moderate terms I have offered of only arbitrating claims which the laws of nature and nations, as well as those of honor and justice, give us a right to demand compensation for, and that without reference.

Your Excellency having fully conceded the point, that the French Consuls had no right to exercise the power of condemning vessels in Spanish ports, I shall not trouble you with arguments on that subject; but when your Excellency goes on to say that His Majesty, in having forbidden the exercise of this power by them, had done all that could be expected from him, and that he was not liable by the law of nations for the condemnations and sales made by the said Consuls of American vessels and cargoes, either before or after his prohibition, I not only differ with your Excellency, but assert that, by the law of nations, His Majesty is expressly liable for every condemnation and sale which the Consuls were permitted to make in his dominions.

I presume your Excellency will not deny that the authority which His Majesty has over the conduct of aliens within his territorial jurisdiction, makes him responsible to others for their conduct, as much, and for the same reasons, that he is responsible for the conduct of permanent citizens or subjects.

Your Excellency will also allow that, unless otherwise specially provided for by treaty, according to the law of nations, the French Consuls could only exercise the powers therein defined, and that the moment they stepped beyond them, and particularly to the injury of innocent aliens, trading under the sanction of a solemn treaty, it became a duty on His Majesty, not only to forbid the exercise of this unwarrantable and injurious power, but to see that his order was fully carried into effect. To merely issue an order to prohibit it, and not to see it carried into execution, is to do nothing: it operates as a delusion, because, by issuing the prohibition, you hold out an opinion to foreigners that no such authority exists, while in fact it is suffered to be executed to an extent and with a rigor never before heard of. Your Excellency will not say Spain had not the power to prevent its exercise, because we well know she had, and the honor of her Government will not permit her for a moment to resort to this argument. She received the French Consuls only on the footing of other Consuls, and with the same privileges and powers, as she has expressly declared. If they exceeded these, to the injury of innocent neutrals, and, after being forbidden by His Majesty still continued to do so, I presume the necessary means should have been used to prevent them. As these means were not used, and as Spain permitted them to continue the exercise of this unheard-of authority while she had the power to prevent it, and ought to have done so, according to that principle of the law of nations which declares that "*qui non prohibet quando prohibere possit jubet*," His Majesty is to be considered as much liable, in every respect, for these condemnations and violations of territory, as if they had been done by his own subjects, or by his own express authority.

In the equipment of privateers, and the condemnation of prizes in Spanish ports, His Majesty most surely had the same authority to restrain aliens as he had to restrain his own subjects from illegal acts towards other nations. Having this authority, his duty to other nations required him to exert it; and, failing in this duty, I am charged by my Government to repeat it to your Excellency, as their decided opinion, that His Majesty has made himself liable to make reparation.

I beg leave to refer your Excellency to the general representation made by my predecessor on this subject, on the 24th of January, 1800, and to those made by myself since my arrival, and to the rules established by *Vattel*, b. 3, §15, 95, 97, 102, and 104, which show how incompatible these aggressions are with the regulations prescribed by the law of nations for the government of neutral countries. I shall only add, that the United States consider this question as a point of national honor which it is impossible for them to relinquish; and I can assure your Excellency, with great truth, and I am charged to do so, that it is one on which every branch of our Government is decided and unanimous; that having before refused to relinquish points of national honor, either to Great Britain or to France, they are determined not to do so to Spain; convinced that, if they did, they would have soon to meet similar questions with other countries; but that, having proved, as it is their duty to do now, that our rights must be respected, we shall then have some reason to hope they will remain in future unassailed.

The arbitration of the claims for illegal captures and condemnations by the French and their Consuls, however interesting before, has become now, not only extremely important, but absolutely indispensable. War has again commenced between Great Britain and France; we know not to what other parts of Europe its flames will extend; the American commerce must never again be exposed to similar depredations, and their Government must, upon this occasion, show how far they are determined to protect it. Having arranged all their differences with Great Britain and France, it now rests solely to do so with Spain; to effect this, they have offered an equal and amicable arbitration. Your Excellency will do me the justice to say, I have proposed and endeavored to accomplish this with all the calmness and moderation in my power, and perhaps, with more patience than the nature and circumstances of the case warranted. It arose from the friendship I knew my Government had for Spain, and my earnest wish to preserve the peace of the two countries. The period has now arrived when my instructions require me to delay no longer, but to apply to your Excellency for a prompt and decisive answer. I made this application to your Excellency verbally yesterday, and I now repeat it in writing, and I earnestly hope it may be such a one as it will give me pleasure to transmit.

If your Excellency could send me such definitive answer by the 20th instant, I will be obliged, as the American Consul for Madrid leaves this on the 22d for the United States.

With sentiments of the most profound respect and perfect consideration, I have the honor, &c.

CHARLES PINCKNEY.

Don PEDRO CEVALLOS.
First Sec'ry of State, &c.

Mr. Cevallos to Mr. Pinckney.

ST. ILDEFONSO, *Aug.* 23, 1803.

SIR: In the project of a convention or treaty relative to indemnities, which I transmitted to you by order of the King, His Majesty yielded to all the condescensions with which he was inspired by his constant desire to maintain the best understanding and the most perfect harmony with the United States; but you have, nevertheless, thought it your duty to claim and insist that Spain ought to acknowledge herself responsible for all the injuries which the French privateers have occasioned to the citizens of the United States, by violating the Spanish territory.

It is, however, very easy for me to evince, and fully prove, that such a claim is incompatible with the law of nations; that the examples which may be cited in support of it, having been produced by political circumstances of the moment, ought not to be considered as serving for a rule, much less can they alter the invariable principles of natural law; and that as little is such a pretension conformable with the particular relations and ties by which the two nations are bound, in virtue of the Treaty of 1795. But I think it useless to enter into a detailed discussion upon these points, as well because nothing which can be said would be unknown to you, as because, on various occasions, we have sufficiently discussed them, and also because Spain can impugn this pretension on principles which are special, and peculiarly relative to the case in question.

If by the captures which the French cruisers have made of American vessels and cargoes, by violating the Spanish territory, any obligation to pay indemnities could have fallen upon Spain, it never could have been more than an accessary and conditional obligation, and of the same nature with bail, a mortgage, or pledge, whose force is dissolved as soon as the principal debtor complies with his obligation, or is released by the creditor; the latter renouncing his right. This being indubitable, it is not less so that the United States, having renounced, by the solemnity of a convention in favor of France, the principal debtor, the right which they had to claim indemnities for the losses referred to, the obligation of Spain, who, at most, could only be considered as hypothetically responsible, must be dissolved.

That the United States have renounced, in favor of France, the right which they might have to demand indemnities for the losses which they have sustained from the French cruisers, is a fact beyond all doubt, since the convention concluded between the two Powers on the 7th Vendemiaire, ninth year, the second article of which is as follows: "The Ministers Plenipotentiary of the two parties not being able at present to agree relative to the Treaty of Alliance of the 6th February, 1778, to the Treaty of Amity and Commerce of the same date, and to the convention of the 14th November, 1778, nor relative to the indemnities mutually due and claimed, the parties will hereafter negotiate upon these subjects at a convenient time; and, until they shall be agreed upon this point, the said treaties and convention shall have no effect." Secondly, the said convention was presented to the Senate of the United States for their ratification. The Senate, perhaps, with a view to shut the door against France, in order that the treaties cited in the second article might not be renewed, was not pleased to ratify it without the total suppression of the second article; and, this suppression being made, it ratified it. The French Government, being informed of this, ratified it, on their part, in the following terms: "The Consuls of the Republic, having seen and examined the convention concluded, agreed upon, and signed at Paris, on the 8th Vendemiaire, ninth year of the Republic, approve it in all and every of the articles therein contained, declare that it is accepted, &c. The Government of the United States having added in its ratification that the convention shall be in force during the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above convention, with the addition which declares that the convention shall be in force during the space of eight years, and with the retrenchment of the second article: *Provided*, That, by this retrenchment, the two States renounce the respective pretensions which are the object of the said article." This stipulation having been agreed to by the Government of the United States, it results, as a consequence, that it has renounced forever the right to claim indemnities from the French Government for the aforesaid damages; and thus it was reported, in the present year, to the House of Representatives of the United States, by the committee appointed to consider the petitions presented to Congress by sundry merchants who suffered by the depredations of the French.

In our last conference, you seemed sensible of the weight of this reply; but (doubtless in order that, from your zeal for the defence of the interests confided to you, the smallest scruple might not remain of your not having attempted all the means suggested by your political skill,) you endeavored to impugn it, by striving to lay upon Spain the principal obligation and responsibility for the losses which, near her coasts, or in her ports, the French privateers and tribunals have

occasioned to citizens of the United States. But to satisfy this reply, and to evince that the principal obligation can remain only with France, it will be sufficient merely to examine the course which the citizens injured have pursued in their claims, and in the application they have made to Congress, whereby they acknowledged that, by the renunciation which their Government made to France, they were deprived of the right of making a claim anywhere but at home; but I will, nevertheless, add another reflection, which is, that, whether France is alone responsible for the injuries done by privateers, or Spain and France jointly, if you choose to suppose it, the obligation is one, sole, and indivisible, and dissolved by the renunciation of the United States in favor of France; and thus fails the supposition necessary for their claim against Spain.

Although what I have remarked to you is of such intrinsic force that it needs no other support to arrest conviction, I cannot omit adding to you, in confirmation of the same, that the most esteemed lawyers of the United States, some of whom hold offices under the Federal Government, having had the same question which we are discussing presented to them, with only a concealment of the names of the three Powers, Spain, France, and the United States, and a substitution in their place of the first three letters of the alphabet to indicate them, have given their opinion uniformly that Spain is under no obligation to satisfy the indemnities referred to, on the supposition of the renunciation in favor of France. Annexed, I enclose to you literal copies of the question proposed to the said lawyers, who are among the most esteemed of Philadelphia and New York, and of their answers, the original of which is in my hands. By them you will see that the Government of Spain, in judging that it is not responsible for the said indemnities, judges as do the learned in highest repute in the United States; and that, in having endeavored to consult their opinion, it cannot be argued that they procured opinions partial to the interests of Spain. It has rather obtained, from the rectitude of the said learned, a sincere confession of the slender foundation on which the claims of their own country on this subject rest.

I conclude, by assuring you I should be glad if the request of the United States were of such a nature that my Government could accede to it, in order to manifest to you equally on this occasion that the cabinet of Spain does not depart from the system of generosity and condescension with which she has always acted in whatever relates to the United States; and I improve, with pleasure, this occasion to repeat to you my desires to please you, and that our Lord would guard you many years, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Abstract Questions.

The Power A lives in perfect harmony and friendship with Power B. The Power C, either with reason or without, commits hostilities against the subjects of the Power B, takes some of their vessels, carries them into the ports of A, friend of both, where they are condemned and sold by the official agents of Power C, without Power A, being able to prevent it. At last a treaty is entered into, by which the Powers B and C adjust their differences, and in this treaty the Power B, renounces and abandons to Power C, the right to any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C.

Quere. Has the Power B, any right to call upon Power A for indemnities for the losses occasioned in its ports and coasts to its subjects by those of Power C, after the Power B has abandoned or relinquished, by its treaty with C, its rights for the damages which could be claimed for the injuries sustained from the hostile conduct of Power C?

Answer. We have considered the above case, and are of opinion that, on the general principles of the law of nations, the Power A is not liable to the Power B for acts done upon the vessels belonging to the subjects of Power B, by the Power C, within the ports of A, the latter not being able to prevent it. Nations are not, any more than individuals, bound to perform impossibilities.

But even leaving impossibilities out the question, and admitting that the Power A could have prevented the injury which was committed by the Power C, but refused or neglected to do it, we are of opinion that, if the Power B has relinquished the same injury to Power C, in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence.

1st. Because it appears to us that, in the present case, the Power C is to be considered as the principal party, and the Power A merely as an accessory, and that it is in that relation to each other that their several acts and their respective liability to the injured party is to be considered: now, it is in the nature of all accessory things that they cannot subsist without the principal thing; and the principal trespass being done away by the release to C, the accessory offence of A must be done away likewise, according to the well known maxim of the law *accessorium sequitur principale.*

2d. Because a release or relinquishment of a right implies in law the receipt of satisfaction, and it is contrary to every principle of jurisprudence for a party to receive a double satisfaction for the same injury; and here the injury received by B from C and from A is essentially the same: the act of those two Powers were indeed different, but the effect which they produced was the same, and that effect only can be the object of compensation in damages.

3d. Because if the Power A could be compelled to make satisfaction to Power B for the injury which the latter has released or relinquished to C, that release or relinquishment would be defeated to every useful purpose, as the Power C would be liable to the Power A for the same damages from which it was intended to be discharged by the release of B. Now a release, as well as every other contract or engagement, implies that nothing shall be done by the grantor directly or indirectly to defeat its *bona fide* intent or effect. If, therefore, the claim preferred by B upon A will, if admitted, indirectly defeat the release granted to C, such claim must be pronounced to be illegal.

Upon the whole, we are of opinion that the release granted by the Power B to the Power C operates also a release to the Power A, for its participation in the injury which was the object of that release.

JARED INGERSOLL,
WILLIAM RAWLE,
J. B. McKEAN,
P. S. DUPONCEAU.

PHILADELPHIA, *Nov.* 15, 1802.

Answer of the Attorney General of the District of New York to the same question.

According to the above statement, I should have no doubt that B, having abandoned its rights to indemnity against C, would have no claim whatever against A, more especially as the case supposes it out of the power of A to have prevented the transaction.

EDW. LIVINGSTON.

NEW YORK, *Nov.* 3, 1802.

Mr. Pinckney to Mr. Cevallos.

MADRID, *August* 28, 1803.

I feel it my duty to reply to your Excellency's letter of the 23d instant, which was handed to me a few days ago at the Royal Sitio of San Ildefonso, the more especially as your Excellency seems now somewhat to have changed the grounds of your defence. Formerly, I thought that the question between us rested upon the law of nations, and to that point I directed my arguments; but now, your Excellency says, 1st, That we have received compensation; and 2d, (if I understand the application of the abstract question,) That Spain was not able to prevent the injuries we suffered in her ports, from the citizens or subjects of a foreign nation. Before I enter into the discussion of these new topics, I must be permitted to observe, that they appear to me somewhat inconsistent with the first position taken by your Excellency; for, if we have received compensation, it is a simple matter of fact, and at once does away the necessity of resorting to general principles, which are, unfortunately, but too apt to be misunderstood or misapplied even by those whose intentions are perfectly upright; on the contrary, if these were so evidently against us, as your Excellency is pleased to say they are, I am surprised that a resort should be had to the confession that Spain was not the mistress of her ports. The tendency of these observations, and of others which might be drawn from the same source, (but that I do not wish to dilate upon the subject,) is to produce a conviction in my mind, either that your Excellency apprehends that our claims cannot be resisted upon the general principles of the laws of nations, or that it will, on some future occasion, be injurious to Spain to admit this doctrine. If I am mistaken, your Excellency will, I hope, do me the honor to favor me with arguments to show the application of general principles against us. Until then I shall look upon this ground as abandoned, and endeavor to prove to your Excellency that we did not, by rejecting the second article of the convention with France, relinquish our claim against Spain. It is admitted that, by this rejection, "the two States renounce the respective pretensions which are the object of the said article." Now these were (so far as relates to the present discussion) the indemnities mutually due and claimed. The question, then is, what were the indemnities mutually due and claimed? To decide upon this, we are again brought back to the general principles; and until it is shown, by the application of these, that our claim upon Spain is unfounded, it cannot be said that we have received compensation from France. The abstract question submitted to the learned gentlemen from Philadelphia and New York does not fit the present case, as, in the statement made to them, it is affirmed that the Power B renounces and abandons to Power C the right of any claim for the injuries and losses occasioned to its subjects by the hostilities from Power C. Now this is taking for granted the very thing to be proved, and consequently, any deductions drawn from such premises are inadmissible: the question ought to have been, did the Power A violate the laws of nations, by suffering the Power C to make free use of her ports in arming privateers to cruise against the vessels of Power B, and also, by suffering her to establish in the same courts for condemning and selling the said vessels when brought in as prizes? And if this is a violation of the law of nations, whether is the Power B to seek redress from Power C or the Power A? Your Excellency must admit that this is the simple question stripped of any extraneous matter; and if it is determined that the Power B has its resource against the Power A, then no subsequent arrangement with the Power C can affect this claim, unless it expressly includes it. Does, then, the arrangement between France and the United States express the relinquishment of any claims which the latter may have upon Spain? It certainly does not, for Spain is not mentioned in this arrangement. Hence it follows, that if our claim against Spain is supported by the law of nations, or the principles of justice, it cannot be vitiated by our convention with France. Your Excellency well knows that the practice of our Government, and the reclamations of my predecessor, show that we held Spain liable for the injuries we received in her ports; and this clearly proves that, by ratifying the convention with France, we meant not to relinquish our claims upon Spain; and I must suppose that your Excellency did not, until very lately, think we had done it, as I do not remember that you ever before advanced the opinion; and certainly, if it was well founded, there could not be a stronger argument against us, and I am sure it is one which would not have escaped the enlightened mind of your Excellency

There is another inaccuracy, as it applies to

the present case, in the abstract question alluded to above, for it turns principally upon the inability of the Power A to prevent, within its ports, the aggressions of the Power C. This I presume could not have been the case with Spain, and the circumstance of an Algerine vessel being delivered up in Cadiz proves that it was not; but at all events, whatever might have been the inability of Spain, it was incumbent on her to make an effort proportionate to the object, and, if she then failed, her moral obligation ceased; but if, for wise and prudential considerations best known to herself, she chose not to make this effort, but rather to suffer the property of her friends to be sacrificed in her ports, this was the price which she paid for peace, and to those at whose expense the payment was made, she is certainly bound in honor to make compensation. We admitted this reasoning when it operated against ourselves; for we paid the British for their vessels sold in our ports by the French, because we did not, at the time, think it prudent to use all our efforts to procure the restoration of them. This is precisely a case in point, and, having paid then, we have a better right to receive now.

I have thus endeavored to answer the objections of your Excellency, and to show that nothing has been done on either side to impair that claim which accrues to us against His Majesty, from the general principles of justice, as sanctioned by the laws and usages of nations. I have so repeatedly urged the force of these principles in our favor, without receiving from your Excellency more than a simple denial of my conclusions, that I cannot suppose it would be useful to say anything more as to that point. It now only remains for me to inform your Excellency, that I shall forward to the United States the letters which have passed between us, and also a detail of our conversations, that my Government may have this subject before them, as fully as it is in my power to place it. They will then determine what it is proper for them to do: but I cannot close this letter without reminding your Excellency of the unpleasant situation in which they will be placed. Convinced that it can neither be the interest nor the intention of His Majesty to injure them, they will yet see with regret that, for some years past, the conduct of Spain has not been altogether as friendly towards them as they could have wished. I will not probe too deeply into this subject; but I feel it my duty to tell your Excellency, that, in my opinion, something must be done on the part of His Catholic Majesty to adjust our well founded claims in an equal and honorable manner, or I fear he will lessen the friendship of the people and Government of the United States, which has hitherto been sincere and respectful; and I do hope that His Majesty will direct his Minister in the United States to make to our Government some conciliatory propositions, which may tend to preserve a friendly and harmonious intercourse between our two nations; or, if it is more agreeable to His Majesty to make me the organ of these communications I beg your Excellency to believe that it would not be possible to impose on me a more pleasing task, for it is my most anxious wish to prevent a misunderstanding between our two countries, connected together by mutual wants, and freed from the jealousies of a rival commerce, or interfering or rival productions.

With sentiments of the most profound respect and perfect consideration, I have the honor to be, your Excellency's most obedient, humble servant.

Don Pedro Cevallos,
First Secretary of State, &c.

GREAT BRITAIN AND FRANCE

[Communicated to the Senate, Feb. 1, 1805.]

To the Senate of the United States:

According to the desire expressed in your resolution of the 28th instant, I now communicate a report of the Secretary of State, with documents relative to complaints against arming the merchant ships and vessels of the United States, and the conduct of the captains and crews of such as have been armed.

Jan. 31, 1805. TH. JEFFERSON.

Department of State.
January 31, 1805.

The Secretary of State, to whom the President of the United States has been pleased to refer the resolution of the Senate of the 28th instant, requesting that there may be laid before the Senate such documents and papers, or other information, as the President should judge proper, relative to complaints against arming the merchant ships or vessels of the United States, or the conduct of the captains and crews of such as have been armed, has the honor to annex hereto:

1st. A copy of a letter addressed to the Secretary of State by the Envoy of Great Britain, dated on the 31st of August last.

2d. An extract of a letter to the same, from the late Chargé d'Affaires of France, dated May 6, last, which was preceded and followed by other letters and conversations of the same gentleman, urging the subject upon the attention of the Government. It has been also urged, by the present Minister of France, in his interviews with the Secretary of State.

Of the enclosures alluded to in the aforesaid letter and extract, the only authenticated statement, relative to the conduct of American private armed vessels, which has been received at this Department, is contained in the annexed letter from Mr. George Barnewall, of New York, and the document accompanying it.

All which is respectfully submitted.

JAMES MADISON.

No. 1.

Mr. Merry to the Secretary of State.

Philadelphia, *Aug.* 31, 1804.

Sir: I have received information respecting several vessels which have of late been armed in,

and have sailed from, the different ports of the United States: some loaded with articles contraband of war, (gunpowder is said to be the general article,) others with cargoes of innocent goods, and others again in ballast. After the diligent inquiry which it has been my duty to make on so important a subject, I think that I can have the honor of stating to you, with certainty, that several vessels of the above description, which are mentioned to be schooner rigged, have sailed lately from the port of Baltimore, while others, of a larger size, even ships of considerable burden, and completely equipped for war, have sailed from the port of Philadelphia, bound to the possessions of His Majesty's enemies in the East as well as the West Indies. It is said, that the object of some of these equipments is to force a trade with the blacks in the island of St. Domingo; in which attempt, the public prints have stated so circumstantially, as to leave no doubt on the subject, that two American vessels have been captured by French cruisers, after making resistance; but I have strong reason to believe that the destination of others, particularly from the port of Philadelphia, has been with cargoes of contraband articles to the enemy's possessions in the East and West Indies. Let their destinations, however, be what they may, it cannot, I conceive, but be justly considered, that such armaments, on the part of the citizens of a neutral State, must be attended with consequences prejudicial to a belligerent Power, and may, therefore, be deemed rightly as offensive; for which reason, the law of nations has stated one of the first obligations of neutrality to be, that of abstaining from all participation in warlike expeditions. The armed vessels alluded to may become the property of the King's enemies, either by capture at sea, or by purchase in the ports to which they are destined, and are thus in readiness to be converted immediately into instruments of hostility against His Majesty; while, in another point of view, they are calculated to protect the vessels, when they are loaded with contraband articles, against the lawful search and detention of a lawfully commissioned cruiser, when the latter shall happen to be of inferior force. Indeed, I conceive that it may not be giving too great an extent to the principle of the law of nations, without attending to the nature of the cargo, to consider the very arms, ammunition, and other implements of war, with which such vessels are furnished, as contraband articles, when the vessels have been thus equipped without the authority of the nation to which they belong.

I understand, sir, that the arguments in question have, in fact, taken place under no commission or authority whatever from the Government of the United States. I have, therefore, thought it my duty to have the honor of making you acquainted with the information that has reached me on this subject; and if the observations which I have taken the liberty to make upon it should happily be conformable to the sentiments of the American Government, I can safely trust to their justice, as well as to their jealousy of observing the most strict neutrality in the present war, to take such measures as shall appear to them the most proper for suppressing the illegal proceedings complained of, on the part of those individual citizens of the United States who shall appear to be concerned in them.

I have the honor to be, with high respect and consideration, sir, your most obedient, humble servant,

ANT. MERRY.

Hon. James Madison, *Secretary of State.*

No. 2.

Extract of a letter from the Chargé des Affaires of France, dated May 7, 1804, and addressed to the Secretary of State.

The undersigned is informed, in a manner which leaves him no room to doubt it, that the American merchants who pursue this commerce, [meaning the commerce with St. Domingo,] publicly arm, in the ports of the United States, vessels which are intended to support, by force, a traffic contrary to the law of nations, and to repel the efforts which the cruisers of the French Republic are authorized to make, in order to prevent it. These armaments have also for their object to cover the conveyance of munitions to the revolted of that colony. The Government of the United States cannot be ignorant of these facts, which are public: the consequences thereof have already been manifested in the West Indies, where the public papers advise that there have been actions between the French cruisers and American vessels carrying on this commerce.

In considering the matter merely under the view of the law of nations, it is manifest that American citizens, under the very eyes of their Government, carry on a private and piratical war against a Power with which the United States are at peace. The undersigned would be wanting in his duty if he did not vindicate, under such circumstances, the rights and the dignity of his Government, which are openly injured; and if he did not call the attention of Mr. Madison to the disagreeable reflections which the French Government would have a right to make, if the silence of the local authorities respecting acts of this nature should be imitated by the Government of the United States.

The French Government certainly could not see, without a profound regret, that, after having given to the United States the most marked proofs of the desire to place the good understanding of the two nations upon the most immoveable foundations, by abandoning national interests, which might have eventually produced collisions, individual interests should now be permitted to compromit this good understanding. Its regret would be still much greater if, when the dignity and the safety of France are openly injured in the United States, by their citizens, the American Government should preserve, respecting these violations, a silence, which would appear to offer an excuse, and even a sort of encouragement, to all the excesses which cupidity may attempt. Besides that, the peace of the two nations cannot but be seriously compromitted by the proceedings of the

individuals, and by the reprisals to which they must necessarily lead; this state of things would infallibly tend to diminish the amicable dispositions which the two Governments wish to cultivate.

No. 3.

NEW YORK, *Sept.* 6, 1804.

SIR: The sufferings of innocent individuals induce me to the liberty I now take of submitting the following statement to your consideration:

In the month of June last, I despatched the ship Hopewell, Preserved Sisson, master, and the brig Rockland, —— Akens, master, with suitable cargoes, destined for Aux Cayes, in the Island of Hispaniola: the former armed for defence with twelve six-pound cannon and two twelve-pounders, with small arms, &c., a crew of thirty-five in number, besides passengers; the latter, with eight six-pounders, small arms, &c., and a crew of twenty in number, besides passengers. Both these vessels were regularly cleared at the custom-house of this district and sailed on their intended voyage on the 17th of June. In the prosecution of which, they were met with and captured by a privateer belonging to individuals in the island of Guadaloupe, whither they were carried and their crews put into close confinement. I beg leave to refer you to the document enclosed for the particulars of the situation in which those unfortunate men are placed; and have the honor to be, &c.,

GEO. BARNEWALL.

JAMES MADISON, Esq., &c. &c.

GUADALOUPE, POINT PETRE,
July 26, 1804.

SIR: No doubt, ere this, you have heard of the capture of the Hopewell and brig Rockland. Owing to S. W. and S. S. W. winds, was obliged to go to the eastward of Bermuda, in lat. 27 deg. 38 min., long. 61. 57 min., on the 30th of June, at 3, A. M. Saw a brig which appeared to be dogging us, and at daylight she bore down on us, hoisted an English ensign, and fired a gun to leeward: we were then under all the sail we could set; but finding she came up with us very fast, we hoisted American colors, and fired a gun to leeward, and shortened sail. I hailed the Rockland, and desired Captain Akens to keep on our lee bow, and near us, as I wished to speak the privateer first, and know what he was, before we attempted anything. She was then on our weather quarter; the Rockland not keeping in her station, dropping more to leeward, and nearly on our lee quarter; the privateer was then almost within hail of us, but immediately up helm and run alongside the Rockland, and commenced firing under English colors, which was returned from the brig. The privateer being between us and the brig, prevented my firing until I got in a situation to fire clear of the Rockland, which was in less than a moment, when we commenced firing to the best advantage we could; the Rockland fired only one broadside and some musketry, when she was boarded; they only left three men on board, sheered off, and gave us a broadside, and attempted to board us, but was repulsed by our quarter gun pikes and musketry; they then kept clear of our pikes, and played continually with all their men, with nothing but musketry. Our men seeing their shipmates failing, most of the landsmen quit their quarters: the privateer seeing this, attempted the second time to board us, by cutting our nettings, and overpowered us by numbers; was obliged to haul down our colors, and quit the deck, otherwise be cut in pieces; we had three killed, four badly wounded, and two slightly wounded; the first who fell was poor Mr. Bird; he was standing near me; he received one ball through his body, and one through his head, and never after spoke a word. I begged him some time before to go below, and prepare his papers: he said they were already prepared, and would not quit the deck; in consequence of which all his papers were found. It was not my intention to engage the privateer, unless I thought we were sure of getting clear; but the Rockland commencing so quick, I could not then avoid it; but even had we suffered them to board us, they would have made a prize of us; the passengers on board were sufficient to condemn us; upward of one hundred letters were found with them directed to different parts of St. Domingo, and, among the passengers, there were two noted generals who were well known by the Frenchmen; and among Mr. Bird's papers were found instructions from Mr. Lapierre pointing out the whole plan of the voyage. Many other letters were found with Mr. Bird's papers, all of which tended to condemn the ship, which they showed me at Point Petre when I was examined.

When they boarded us, nothing saved our lives but their thinking we were English, and asked us how we dare engage under American colors; and did not believe we were Americans even after we arrived. After the Rockland was boarded we engaged the privateer close on board for forty minutes. When the black General, a passenger, found we were captured, he ran below with a pistol, with an intention to blow the ship up, and with much difficulty we prevented it. He set the cartridges on fire in the cabin and steerage, which was in pouch tubs, and my laying the magazine scuttle over, saved the ship and our lives. When he found he could not blow the ship up, he put the pistol to his head, and blew his brains out. The privateer took out all the passengers, officers, and men, except myself, carpenter, two boys, and one of our men, badly wounded. The privateer continued with us until we arrived in this port, which was on the 17th July, and was immediately put altogether in a most miserable prison with nothing to eat but stinking beef and coarse bread, and very short even of that. They will not suffer me to see any Americans, nor have any communication with anybody. There is a schooner called the Snake in the Grass, bought in New York and fitted out at Salem with five guns taken and brought here a few days before me: one of the mates is allowed to go out at times,

and this was the only opportunity I had to write. They say that orders have gone to America, that every vessel bound to St. Domingo, if taken, shall be treated as pirates. God only knows what they mean to do with us. I beg you will do all in your power to get our Government to claim us, otherwise I do not know what they may do: they seem to be inveterate against the Americans, and even told me every ship and captain's name that was armed from New York.

Captain Akens had his mate killed, and one man, and several wounded, himself wounded, and died at this place on the 22d instant.

The schooner Snake in the Grass was commanded by James Mansfield, who is also in prison, with all his men. The vessel will be condemned, although they did not fire a shot. As no protest can be made here, I thought it best to let the officers sign this letter with me. Several large privateers are getting ready to go down in the bite after the Americans. The privateer that took us was the brig Ferbriskey, Captain Antwan, with ten long French sixes, two twelve-pound carronades, one long eighteen-pounder, and one hundred and fifty men. The French seem to be very inveterate against the Americans, and insult us as they pass the prison. All that I can say more is to request you to do what you can with our Government, to claim us as Americans. I think the manner in which the French privateer engaged us, under English colors, will be a sufficient reason for them to claim us. All that I can say more is, that your ship and property were defended with spirit, until overpowered by numbers.

I am, sir, with respect, your most obedient servant,

P. SISSON,
MAHLON BENNET,
JAMES ROSS, jun.

GEORGE BARNEWALL, Esq.

N. B. You will please to excuse any fault in this letter, as I am so closely watched.

UNITED STATES OF AMERICA,
State of New York, ss:

I, William Popham, Notary Public, duly admitted and sworn, dwelling in the city of New York, and having power by commission, under the great seal of the State of New York, to attest deeds, wills, and other writings, and also to administer oaths, and grant certificates thereof, do hereby certify, declare, and make known unto all persons to whom these presents shall come, or may in any wise concern, that the foregoing is a just, true, and perfect copy of an original letter (whereof it purports to be a copy) this day handed to me by George Barnewall, of the city of New York, merchant, in order to have a notarial copy made thereof; I, the said notary, having carefully compared and examined the said copy with the said original letter, and found the same to agree therewith word for word and figure for figure; and I, the said notary, do hereby further certify and declare, that, upon the day of the date hereof, before me personally came and appeared Dominick Purcell, of the said city of New York, gentleman, who being by me duly sworn, did solemnly depose and declare, that he was well acquainted with the handwritings and signatures of Preserved Sisson, the master, and Mahlon Bennet, the first mate, of the ship Hopewell, of this port, and that he verily believes the names "P. Sisson and Mahlon Bennet," set and subscribed to the said original letter, are of the respective handwritings and signatures of the said Preserved Sisson and Mahlon Bennet; and he further deposeth and sayeth, that James Ross, jr., who hath also signed the said original letter, sailed from this port in the capacity of second mate of the said ship Hopewell; and further sayeth not.

DOMINICK PURCELL.

Of all which, I, the said notary, do now make this public act, that the same may serve, and be of full force and value, as of right it shall appertain.

In testimony whereof, the said Dominick Purcell hath subscribed the foregoing deposition, and I, the said notary, have hereto subscribed my name and affixed my seal of office, at the city of New York, the twenty-first day of August, in the year of our Lord, one thousand eight hundred and four, and of the independence of the United States of America the twenty-ninth.

WILLIAM POPHAM.
Notary Public.

SPAIN.

[Communicated to Congress, December 9, 1805, and February 18, 1813.*]

To the Senate and House of Representatives of the United States:

The depredations which had been committed on the commerce of the United States during a preceding war, by persons under the authority of Spain, are sufficiently known to all: these made it a duty to require from that Government indemnifications for our injured citizens. A convention was accordingly entered into between the Minister of the United States at Madrid, and the Minister of that Government for Foreign Affairs, by which it was agreed that spoliations committed by Spanish subjects, and carried into ports of Spain, should be paid for by that nation; and that those committed by French subjects and carried into Spanish ports should remain for further discussion. Before this convention was returned to Spain with our ratification, the transfer of Louisiana by France to the United States took place; an event as unexpected as disagreeable to Spain. From that moment she seemed to change her conduct and disposition towards us. It was first manifested by her protest against the right of France to alienate Louisiana to us, which, how-

* Although these Messages are of different dates, the papers transmitted exhibit the posture of affairs with Spain at the date of the first Message, and, in many cases, were only duplicate copies of the same paper.

ever, was soon retracted, and the right confirmed. Then high offence was manifested at the act of Congress establishing a collection district on the Mobile, although, by an authentic declaration, immediately made, it was expressly confined to our acknowledged limits, and she now refused to ratify the convention signed by her own Minister under the eye of his Sovereign, unless we would consent to alterations of its terms, which would have affected our claims against her for the spoliations by French subjects carried into Spanish ports.

To obtain justice, as well as to restore friendship, I thought a special mission advisable; and accordingly appointed James Monroe Minister Extraordinary and Plenipotentiary, to Madrid, and, in conjunction with our Minister Resident there, to endeavor to procure a ratification of the former convention, and to come to an understanding with Spain as to the boundaries of Louisiana. It appeared at once that her policy was to reserve herself for events, and, in the mean time, to keep our differences in an undetermined state: this will be evident from the papers now communicated to you. After nearly five months of fruitless endeavor to bring them to some definite and satisfactory result, our Ministers ended the conferences without having been able to obtain indemnity for the spoliations of any description, or any satisfaction as to the boundaries of Louisiana, other than a declaration that we had no rights eastward of the Iberville, and that our line to the west was one which would have left us but a string of land on that bank of the river Mississippi. Our injured citizens were thus left without any prospect of retribution from the wrong-doer; and, as to boundary, each party was to take its own course. That which they have chosen to pursue will appear from the documents now communicated. They authorize the inference, that it is their intention to advance on our possessions, until they shall be repressed by an opposing force. Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided. I have barely instructed the officers stationed in the neighborhood of the aggressions, to protect our citizens from violence, to patrol within the borders actually delivered to us, and not to go out of them but when necessary to repel an inroad, or to rescue a citizen, or his property; and the Spanish officers remaining at New Orleans are required to depart without further delay. It ought to be noted here, that, since the late change in the state of affairs in Europe, Spain has ordered her cruisers and courts to respect our treaty with her.

The conduct of France, and the part she may take in the misunderstandings between the United States and Spain, are too important to be unconsidered. She was prompt and decided in her declarations that our demands on Spain for French spoliations carried into Spanish ports, were included in the settlement between the United States and France. She took at once the ground, that she acquired no right from Spain, and had meant to deliver us none to the eastward of Iberville; her silence as to the western boundary leaving us to infer her opinion might be against Spain in that quarter. Whatever direction she might mean to give to these differences, it does not appear that she has contemplated their proceeding to actual rupture, or that, at the date of our last advices from Paris, her Government had any suspicion of the hostile attitude Spain had taken here. On the contrary, we have reason to believe that she was disposed to effect a settlement, on a plan analogous to what our Ministers had proposed, and so comprehensive, as to remove, as far as possible, the grounds of future collision and controversy on the eastern as well as western side of the Mississippi.

The present crisis in Europe is favorable for pressing such a settlement, and not a moment should be lost in availing ourselves of it. Should it pass unimproved, our situation would become much more difficult; formal war is not necessary, it is not probable it will follow, but the protection of our citizens, the spirit and honor of our country, require that force should be interposed to a certain degree. It will probably contribute to advance the object of peace.

But the course to be pursued will require the command of means which it belongs to Congress exclusively to yield or to deny. To them I communicate every fact material for their information, and the documents necessary to enable them to judge for themselves. To their wisdom, then, I look for the course I am to pursue, and will pursue with sincere zeal that which they shall approve.

TH. JEFFERSON.

DECEMBER 6, 1805.

No. 2.

DECEMBER 6, 1805.

SIR: In order to give to Congress the details necessary for their full information of the state of things between Spain and the United States, I send them the communication and documents now enclosed. Although stated to be confidential, that term is not meant to be extended to all the documents, the greater part of which are proper for the public eye: it is applied only to the Message itself, and to the letters from our own and foreign Ministers, which, if disclosed, might throw additional difficulties in the way of accommodation. These alone, therefore, are delivered to the Legislature in confidence that they will be kept secret.

TH. JEFFERSON.

The PRESIDENT *of the Senate.*

No. 3.

To the Senate of the United States:

I transmit to the Senate a report of the Secretary of State, complying with the resolution of the 18th January, 1813.

JAMES MADISON.

FEBRUARY 18, 1813.

No. 4.

DEPARTMENT OF STATE, *Feb.* 17, 1813.

The Secretary of State, to whom was referred the confidential resolution of the Senate of the 18th instant, has the honor, in compliance therewith, to submit to the President the following papers:

1st. Instructions given by the Secretary of State to Charles Pinckney, Esq., Minister Plenipotentiary of the United States at Madrid, under date of the 6th February, and 10th April, 1804; and to Robert R. Livingston, of the 31st January, 1804.

2d. The Correspondence between Charles Pinckney, Esq., and the Spanish Government relative to the ratification of the Convention of 1802.

3d. Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the same subject.

4th. Instructions given by the Secretary of State to Messrs. Monroe and Pinckney, under date of the 15th April, 8th July, 26th October, 1804; 4th May, and 23d May, 1805.

5th. A letter from Mr. Monroe to M. Talleyrand, of 8th November, 1804; and a letter from M. Talleyrand to General Armstrong, of 21st December, 1804, in reply thereto.

6th. The correspondence between Messrs. Monroe and Pinckney, and the Spanish Government.

These papers communicate all that passed between the dates specified in the resolution, on the subject-matter thereof; no negotiation was ever entered into with Spain, under the instructions to Messrs. Armstrong and Bowdoin, nor was there ever any negotiation with France, either for the cession of East Florida, or for indemnities for French seizures, and condemnations in the ports of Spain, during the late war with France.

All which is respectfully submitted:

JAMES MONROE.

I.—*Instructions from the Secretary of State to Mr. Pinckney and to Mr. Livingston.*

Mr. Madison, Secretary of State, to Mr. Pinckney, Minister to Spain.

DEPARTMENT OF STATE. *July* 29, 1803.

SIR: You will have learned, doubtless, from Paris, that a treaty has been signed there, by which New Orleans and the rest of Louisiana is conveyed to the United States. The Floridas are not included in the treaty, being, it appears, still held by Spain. The enclosed copy of a communication, from the Spanish Minister here, contains a refusal of His Catholic Majesty to alienate any part of his colonial possessions. A copy of the answer to it is also enclosed.

At the date of this refusal, it was probably unknown that the cession by France to the United States had been, or would be made. This consideration, with the kind of reasons given for the refusal, and the situation of Spain, resulting from the war between Great Britain and France, lead to a calculation that, at present, there may be less repugnance to our views. The letter, herewith addressed to Mr. Monroe, gives the instructions under which the negotiations are to be pursued. Being for your use, as well as his, it is left unsealed, and in your cipher; a copy in his having been forwarded to Paris.

In case Mr. Monroe should not have arrived, but be expected at Madrid, you will forbear to enter into negotiations on this subject, unless they should be brought on by the Spanish Government, and the moment should be critical for securing the object on favorable terms. The maximum of price, contemplated by the President, will be found in the instructions. At this price the bargain cannot be a bad one. But, considering the motives which Spain ought now to feel for making the arrangements easy and satisfactory; the certainty that the Floridas must, at no distant period, find a way into our hands; and the tax on our finances, resulting from the purchase of Louisiana, which makes a further purchase immediately less convenient; it may be hoped, as it is to be wished, that the bargain will be considerably cheapened. Under such circumstances, it would not be proper to accede to the terms which, under others, might have been admissible.

In case Mr. Monroe should be obliged to decline or postpone his visit to Spain, I have requested him to give you his ideas on the expediency of your proceeding or not in the negotiation. The advantage given him by his opportunity of scanning the policy of Great Britain and France, in relation to Spain, and of estimating the course of the war, will render his opinion on that point worthy of your confidence.

You will observe, in the answer to the Marquis de Yrujo's communication, a merited animadversion on the motives assigned for the restoration of the deposit. The United States can never admit that this was of favor, not of right; nor receive as a favor what they demand as a right.

As the indemnifications claimed from Spain are to be incorporated in the overtures for the Floridas, it will be advisable to leave them, although within your ordinary functions, for the joint negotiations of yourself and Mr. Monroe. In these, as proceeding from an extraordinary mission, the subject can be pressed with greater force and more probable effect. Should Mr. Monroe, however, not be likely soon to join you, and there be a prospect of extending the convention, not accepted here, to the claims admitted in it, you will continue to urge them on the justice of the Spanish Government; and in terms, and a tone, that will make it sensible of the impolicy of disappointing the reasonable expectations of the United States.

I have the honor to be, &c.

JAMES MADISON.

CHARLES PINCKNEY, Esq.

Extract of a letter from the Secretary of State of the United States to Robert R. Livingston, then their Minister Plenipotentiary in France.

DEPARTMENT OF STATE, *Jan.* 31, 1804.

The convention with Spain, which was not agreed to at the last session of Congress, has been resumed and ratified during the present. The ob-

jection to it was, that it did not provide, in sufficient extent, for repairing the injuries done to our commerce, particularly in omitting the case of captures and condemnations by French cruisers and Consuls, within Spanish responsibility. As the convention does not abandon the omitted cases, but merely leaves them for further negotiation, it was judged best, on the whole, not longer to deprive that class of our citizens, who are comprehended in the convention, of the benefit of its provisions. The claims of the others will be pursued with due attention; and may, perhaps, be advantageously brought into the negotiation with which Mr. Monroe and Mr. Pinckney will be jointly charged. Such of them as Spain refused to submit to arbitration, as proceeding from French citizens, and not from Spanish subjects, are clearly supported by strict justice, and by the soundest principles of public law. French citizens, within the jurisdiction of Spain, were, for the time, subjects of Spain. Spain had a right to their allegiance, and was responsible for their conduct. As well might she say that a murder or robbery committed by a Frenchman on an American, in the streets of Madrid, was to be punished or redressed by France alone, not by her, as pretend that the illegal proceedings of Frenchmen, within Spanish jurisdiction, in the case of spoliations on our commerce, are to depend on France, not on her, for indemnification. Supposing France to be liable eventually, Spain is liable in the first resort, and can be relieved from it only by showing that she exerted all the reasonable means in her power for preventing and correcting the wrong, without being able to succeed in either. At first she seemed sensible of this. Her plea was, in substance, that circumstances did not permit her to control the conduct of French agents and citizens within her jurisdiction. This plea being not very honorable to her sovereignty, or sufficiently established by proof; and being not very consistent with the satisfaction which she may find it expedient to yield to other nations, particularly to Great Britain, whose commerce is, at this time, suffering like injuries from French cruisers and Consuls; it has given place to the plea that the erasure of the second article of our convention with France, in 1800, releases Spain as well as France; because France being liable, in justice, to Spain, for the indemnities paid by the latter to the United States, would indirectly be deprived of the benefit of that release to her. To this the reply is given by the remarks already made. The injury proceeded from Spain. To Spain we look for reparation. Her claim for reimbursement on France is a question between her and France. It may be just, or not just, according to circumstances unknown to the United States. Spain may have found, for anything we know, an equivalent for this use of her ports, and her permission in advantages yielded by, or expected from France. To this the fact may be added, that the indemnification has throughout been claimed from Spain and not from France; or, if from France, the application has been neither patronized, nor authorized by the Government of the United States. Applications of this sort may have been made by individual sufferers: but, it is believed, that they have, in no instance, received the countenance of the American legation at Paris. It is maintained, however, on the part of Spain, that a resort in form has been had to the French Government, in such cases. Will you make the inquiry and communicate the result? It will not be amiss to know the truth, as it may the more effectually silence the sophistry of Spain. But, should the result justify the assertion on her side, it will not vary the merits of the question. The resort of individuals to the French Government could not be pretended to have that effect. If made under the voluntary auspices of an American Minister it might have been unknown to, or disapproved by the Government here. Nay, if made by order of the Government itself, it would not preclude a just resort to Spain, unless accompanied by a positive or clearly implied discharge of the latter from her responsibility.

"It has been thought proper to give you this view of the subject that it may guide the communications thereon, which it may be expedient for you, at any time, to hold with the French Government."

Extract of a letter from the Secretary of State to Chas. Pinckney, Esq., then Minister Plenipotentiary of the United States at Madrid.

DEPARTMENT OF STATE, *Feb.* 6, 1804.

The Senate having resumed at the present session the convention with Spain, postponed at the last, have thought proper to ratify it, and the President has completed the act on the part of the United States. The instrument is now returned to you with these sanctions, in order to be exchanged for the ratification of His Catholic Majesty. You will hasten this formality as much as possible, and forward the result to the Government here, that no time may be lost in procuring to our citizens the benefits stipulated to them. To favor despatch, as well as to guard against casualties, duplicates and even triplicates will be proper.

In concurring in this partial provision for the indemnities due from Spain, it is to be particularly understood that it proceeds from no other considerations than a wish to shorten the delay of relief to that portion of the claimants who are included in the provision, and a determination to avail the residue of the reserve, expressly made in behalf of their claims, by the act of the convention. When the decision of the Senate was postponed at the last session, it was justly hoped that, before the succeeding one, the Spanish Government would have yielded to the reasonableness and justice of giving to the provision the extent required by the United States; in which case, the arrangements would have been simplified, and a foundation laid at once for closing all controversies on the subject. The final refusal of Spain to concur in these views, has been thought to give a preference to the course now adopted.

None of the pleas urged by the Spanish Government, can in the least invalidate the justice of the claims for injuries committed by French citizens or agents within her jurisdiction.

If His Catholic Majesty be sovereign in his own dominions, aliens within them are answerable to him for their conduct, and he, of course, is answerable for it to others. This is a principle founded too evidently in reason and usage to be controverted. As well might Spain say that a theft or robbery, committed in the streets of Madrid, by a Frenchman on an American, is to be redressed by France, and not by her, as pretend that redress is to be sought for spoliations committed by cruisers from, or condemnations within, Spanish ports. Nor is there any room for the distinction between the injuries proceeding from the French cruisers and French consuls. With respect to the consuls, their acts were either authorized or not authorized by Spain; if authorized by Spain, Spain is answerable for giving them the authority; if not authorized by Spain, they could not be authorized at all; the law of nations giving them no such authority, and France having no right to give it; and being acts without authority, they are not to be regarded as consular acts, but as much the acts of private individuals as the cruises or any other irregularities committed or instituted by French citizens within the jurisdiction of Spain. To say that the consuls derived their authority from the sanction given by Spain to the authority derived from France, (without which sanction, positive, or permissive, it is clear that the authority of France, within the jurisdiction of Spain, would be a nullity,) is still to rest the condemnation by the consuls on the authority of Spain, and to leave her responsible for them.

Under every aspect, therefore, Spain is bound to do justice in this case to the citizens of the United States, unless she not only pleads a duress, suspending her free agency, and prostrating her national honor, but proves the reality of this duress; and not only proves this duress, but proves, moreover, first, that she did everything in her power to prevent the evil; next, that she did everything in her power to obtain reparation for it; and, lastly, that, in tolerating the evil, she did not deliberately and wilfully surrender the neutral rights under her protection to advantages, positive or negative, obtained or expected by herself or France.

The suggestion, that France was resorted to for redress was unfounded. It does not appear that any such resort was authorized by the Government of the United States, whilst the claims against Spain have been uniform and pressing; nor is it believed that any interpositions have proceeded from the American legation at Paris. Had, indeed, such interpositions taken place, they would, in no respect, lessen the obligations of Spain. Individuals may have made their applications to the French Government, but it will not be pretended that the merits of the question can be affected by that circumstance.

The plea on which it seems that the Spanish Government now principally relies is, the erasure of the second article from our late convention with France, by which France was released from the indemnities due for spoliations committed under her immediate responsibility to the United States. This plea did not appear in the early objections of Spain to our claims. It was an after thought, resulting from the insufficiency of every other plea, and is certainly as little valid as any other. The injuries for which indemnities are claimed from Spain, though committed by Frenchmen, took place under Spanish authority. Spain, therefore, is answerable for them; to her we have looked, and continue to look, for redress. If the injuries done to us by her resulted in any manner from injuries done to her by France, she may, if she pleases, resort to France, as we resort to her. But whether her resort to France would be just or unjust, is a question between her and France, not between either her and us, or us and France. We claim against her, not against France. In releasing France, therefore, we have not released her.

The claims, again, from which France was released, were admitted by France, and the release was for a valuable consideration in a correspondent release of the United Ssates from certain claims on them. The claims we make on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the bargain with her, and could not be included in the release. The only supposition on which Spain could turn us over to France would be, that of her being in a state of absolute duress, of her being merely the staff by which the blow was given by France. But even on this supposition, the injuries done by France, through Spain, could not, by any fair interpretation, be confounded with the injuries released to France, by which could be meant such injuries only as proceeded from her own individual responsibility, and as were, in the ordinary course of things, chargeable on her.

The last plea, under which refuge has been sought by Spain against the justice of our claims, is, the opinion of four or five American lawyers, given on a case stated, without doubt, by some one of her own agents. An argument of this sort does not call for refutation, but for regret that the Spanish Government did not see how little such an appeal from the ordinary and dignified discussions of the two Governments, by their regular functionaries, to the authority of private opinions, and of private opinions so obtained, was consistent either with the respect it owed to itself, or with that which it owed to the Government of the United States; that it did not even reflect on the reply so obvious, that four or five private opinions, however respectable as such, could have no weight against the probability that other lawyers had been consulted, whose opinions were not quoted, because they were not the same; and that, if the Government here could descend to the experiment, little difficulty could be found in selecting more numerous authorities of the same kind, not only in the United States, but among the jurists of Spain.

Extract.—The Secretary of State to Charles Pinckney, Esq.

DEPARTMENT of STATE, *April* 10, 1804.

SIR: The footing on which your last communications with Mr. Cevallos left the subject of the South American claims of our citizens, requires little to be added to what has heretofore been said in relation to them. I shall observe only, that there is a difference between your statement and construction of the Spanish ordinances and those of Mr. Cevallos; on which I cannot undertake to decide, without a fuller view of the question than I have the means of taking. On the arrival of Mr. Monroe, he will join you in the discussion, and the provision due to our citizens may, perhaps, be incorporated with the principal negotiations which will then be undertaken. In the meantime, you will be under no restraint from taking advantage of any favorable change in the disposition of the Spanish Government, for obtaining justice from it. This is the more to be desired, as it will simplify the transaction, committed jointly to yourself and Mr. Monroe, and leave, applicable to other contested cases, any sum that may be stipulated by the United States in that transaction, and which will probably be inadequate to the aggregate of the cases.

According to information already received, many vessels, belonging to citizens of the United States, have suffered from irregularities in the West Indies, in which Spanish authorities have, in some way or other, participated, and for which, of course, redress will lie against the Spanish Government; and new cases are daily added. As soon as the requisite statements can be made of them, they will form a ground for claiming just reparation. In the meantime, you will represent, generally, to that Government, the illegal and unfriendly practice which exists, and the right which the United States have to expect from the justice of His Catholic Majesty, and his regard to the friendship and harmony of the two nations, immediate instructions to his officers in the West Indies which may put an end to the practice.

II.—*Correspondence between Mr. Pinckney and the Spanish Government, relative to the ratification of the Convention of* 1803.

Mr. Pinckney to Mr. Cevallos.

MADRID, *January* 11, 1804.

SIR: I had the honor lately to inform your Excellency of the ratification and exchange of ratifications of the treaty and convention, respecting the cession of Louisiana; I have now the honor to inform your Excellency, that I have since received another despatch from the Secretary of State, informing me that Congress have passed an act authorizing and enabling the President to take possession of and occupy the said Territory, as ceded by France to us; and have provided for the temporary government thereof, by means calculated to maintain and protect the inhabitants of Louisiana in the free enjoyment of their liberty, properties, and religion. They have also passed another law, for furnishing the means to pay the sums which they have given to the French Republic for the same.

In consequence of this, the President of the United States has issued a joint commission to General Wilkinson, the General commanding the forces of the United States, and Governor Claiborne, of the Mississippi State, to receive from the Prefect of Louisiana, or person authorized, the territory in question, and to possess and occupy the same in the name of the United States.

I should have contented myself with barely making the official communication of these events, if the late communication of your Excellency and your letter did not impress me with a belief that there was something in the observations of your Excellency, and the apparent unwillingness of the Spanish Government, either to arrange our pre-existing differences and claims, or to cordially acquiesce in the cession of Louisiana, which required an answer, and such a one as should still go to prove the justice, the moderation, and the friendship of our Government for Spain.

As I do believe things are growing to a serious height between the two Governments, such as may, possibly, produce war; while we can, with honor, and with something like equal and honorable terms, and before any event occurs, or at least before we know, officially, of any, which may prevent all discussion, and drive things to extremities, I am to request the serious and early attention of you Excellency to the following observations. There are three subjects of discussion between the Spanish and American Governments:

1. The actual cession of Louisiana;
2. The proposed cession of Florida:
3. The claims of American citizens.

As to the first, it may be said, on the part of the United States, that they long ago foresaw the difficulties which would arise from any other nation but themselves possessing the mouth of the Mississippi, and endeavored, by every friendly means, to do them away. They made various propositions to Spain, which were rejected; and, in the interim, the Spanish officer at New Orleans deprived the citizens of the United States of the deposit stipulated for in the Treaty of 1795; this roused the feelings of the whole nation, and their Government, true to their professions of respect and friendship for Spain, and, at the same time, convinced of the necessity of applying some effectual remedy to the evil, sent to Europe an extraordinary mission to treat on the subject. At this time, the Spanish Government officially announced that they had ceded Louisiana to France, and that we must direct ourselves to that Government for any acquisition of territory which might be convenient to us. Our Ministers at Paris made this acquisition; hence accrues to us a right founded on justice.

On the part of Spain, it is said, that Louisiana was ceded to France, under a promise from that Power not to part with it. I presume that the French Government will be able to show that this promise could not be supposed to bind them under the circumstances in which they found themselves last spring; but be this as it may, the promise was neither an equitable nor a legal obligation on the United States, because it had not been made known to them. Repeatedly and earnestly did I ask your Excellency upon what terms Louisiana was ceded to France; for twelve months I could get no answer; at last I was told by your Excellency, on the 31st March, that Louisiana was ceded to France, "avec la même étendue qu'elle a actuellement entre les mains de l'Espagne, et qu'elle avoit lorsque la France la possédoit, et telle qu'elle doit être après les traités passés subséquemment entre l'Espagne et d'autres Etats;" and as no mention was made of any restriction, when it was known that we wished to purchase, we had a right to suppose that there was none. But, even if there could be any doubt, it is cleared up by your Excellency's letter to me on the 4th of May; for your Excellency there tells me, in express terms, that my Government "podrá dirigirse al Gobierno Francés para negociar la adquisicion de territorios (en Luisiana) que convengan á su interes."

From these letters, which were remitted to our Ministers Extraordinary at Paris, and to our Government, it is clear the United States were in possesion of official intelligence that the country was ceded; nor did the least hint drop from Spain of any secret article. She had sold, or exchanged, and conveyed the territory to France; it was a fact known to all Europe, and officially announced to us; it was equally known that we wished that country, and the reasons of our doing so, are such as the world must approve. We have fairly bought and furnished the means of paying for it; and if, after all this, Spain should refuse her acquiescence, and, to possess it, war should be the consequence, I leave it to the enlightened mind of your Excellency to judge who are in the right, and what must be the opinion of every impartial nation as to the procedure. But why should Spain refuse her acquiescence? She has shown already that she did not consider the keeping of Louisiana as indispensable or necessary to her; it was originally a French colony, and never came into the possession of Spain until 1763; it therefore, cannot claim that sort of affection which old countries sometimes entertain for colonies originally established by themselves, and considered as parts of their family. Nor can Spain give that as a reason, as she has always seemed to consider Louisiana and Florida as temporary possessions little valuable to her; nor has she ever hesitated to part with them, when she found it her interest to do so; and, if she has no objection to part with them to other Powers, why should she not wish to see them in our hands? Is she more jealous of us than of others? Have we more power, more ambition, or are we more capable of doing her injury, than Great Britain or France? If she thinks so, she mistakes most egregiously the character of our people, the nature of our Government, or the true interests of a country devoted only to peaceful and honorable pursuits. Does she suppose we have less affection for Spain than the Governments I have mentioned, which have each, in their turn, possessed Florida and Louisiana? This question is at once answered, by saying, that, while we benefit, we cannot rival or interfere with each other; that our commerce is extensive, and mutually advantageous; and that these are the situations which are generally the parents of a sincere and lasting affection between nations; there is but one possible mode of our differing or interfering, and that is by the collision of unsettled boundaries. Let us now forever remove the possibility of this collision. We offer to come forward honorably and openly on this subject: I am hopeful Spain will do the same, and that I shall soon receive such propositions from your Excellency as I shall be authorized to accept.

As to the second subject of discussion, it has been urged, on the part of the United States, that Florida was desirable to them from its local situation; that, by getting it, they should avoid the necessity of submitting to similar evils to those they had suffered in Louisiana; that this country was of little or no use to Spain; that it cost her much money to maintain it; that it greatly increased the probability of her being engaged in war, and lessened her means of supporting it; and that the Spanish capital and industry employed in the trade of that country might be much more advantageously employed in carrying on the commerce of the more fertile provinces of South America. These reasons, it was supposed, would have much weight; yet, the Government of the United States were willing to pay a fair price for it. They had turned their attention to the subject, and saw that misunderstandings must sooner or later arise, and they proposed, with honest intentions, the means they thought most likely to prevent it.

On the part of Spain it is said, that, the system adopted by His Majesty, not to part with any portion of his dominions, prevents him from acceding to the wishes of the American Government; and that, moreover, he is bound, by treaties, not to dismember his American empire. It is not recollected that any other reason is assigned, and to these it may be answered—

1st. That it is unwise to adhere to any general system contrary to the dictates of sound policy; and

2d. That no opposition will or can, with propriety, be made by any foreign Power, to the cession of Florida to the United States; for that country has changed masters so often since the Treaty of Utrecht, that it, at least, is exempted from the general restriction of that treaty; nor, until lately, has been much value annexed to it by Spain. Other arguments might be adduced; but, as it is known that neither the interest of France or England will be injured by this cession, there are reasonable grounds to suppose that neither of them will object to it; and, if they do not, it is presumed that no other Power will. These reasons, then, lose their strength, and leave the naked question of expediency. This, in fact, is the only point for His Majesty's Ministers to inquire into; and if they, in their wisdom, determine that it would be for the interest of Spain to part with this province, no

foreign nation would have the unkindness to oppose it, nor should any general system be suffered to do it. The reasons before mentioned, and which were detailed on a former occasion, prove the actual value of this country to Spain is small; and if it is supposed that it acts as a protection or frontier to any other of her dominions, it is a mistake; it may be the means of bringing about a rupture, which might endanger the others, but it can never be the means of protecting them. It may, and but too probably will, happen, that the seeds of dissension sown in that country will spread to others, where dissension, but for this, would never have been known. If it is believed (and it is hoped it will be) that ambition does not direct the views of the American Government, then no suspicion can be entertained of the sincerity of their declarations, and its proper weight will, of course, be given to their opinions. But even if it was supposed for a moment, that they were guided by ambition, would it not be wise and prudent in Spain to deprive them of all pretext for the further gratification of this passion, by giving up to them, upon reasonable terms, (and upon no other is it asked,) a province which is of no use to her, and one which must fall into the hands of her neighbor if she chooses to attack it? This is an idea but little connected with the real question; for the conduct of the Government of the United States leaves no room to suppose that they are guided by ambition. The wish to purchase a barren and almost uninhabited country could not arise from such a passion; it has its source in the wisdom and prudence of those who view this purchase as the best and readiest means of settling present disputes, and of establishing, upon a solid basis, future peace and friendship between Spain and the United States.

On the 3d topic, viz. the claims of American citizens, little remains to be said, for the subject has been discussed in all its various forms; and the result is, a difference of opinion between the two Governments. One or the other must be wrong; and, as it is presumed that it is equally the interest and the wish of both that the difference should be amicably arranged, it becomes expedient to refer it to the same impartial tribunal, as the only means of accomplishing this desirable end. To this the Government of the United States will agree, although they themselves have paid those who had similar claims upon them without a reference, and might, therefore, with some degree of propriety, insist upon receiving payment in the same way.

The importance of the foregoing subjects call for the serious attention of both Governments, and it is believed that, if they are properly investigated, no material difference of opinion can exist. Peace, harmony, and friendship, it is presumed, are equally the interest and the object of both, and justice and friendly acts are the only means by which to obtain and perpetuate them. Spain certainly ought not to feel a disposition to treat us unjustly or unkindly, and we ask nothing but what we are willing to pay for, or have a right to insist on.

Your Excellency well knows how much and how anxiously I have always desired to accommodate every difference between the two countries; fearing that these are increasing, and that things are rushing to a point from which it will be difficult to recede, in the amicable and honorable manner in which an accommodation may yet take place, as the friend of peace and harmony of the two countries, I seize the present moment still to offer to receive any amicable and reasonable propositions that may have a tendency to produce the arrangements and cession which we have so long and ardently wished.

Having reason to suppose your Excellency has received, by a packet, the same late and important intelligence I have of the critical state of things between the two countries, you will at once perceive the reason of my renewing my application at this time, and of my so earnestly requesting an answer. Your Excellency will, I am sure, be convinced that it flows from that ardent desire for the peace and friendship of the two countries, which has always governed the numerous endeavors I have made to preserve them, and which have been such as I trust will impress your Excellency with the conviction of their having been open, sincere, and always with the best intentions.

I have the honor to be, &c.

CHARLES PINCKNEY.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

Madrid, *June* 1, 1804.

Sir: Since I had the honor to see your Excellency, I have received your letter (31st May) on the subject of an act of Congress, passed by that body, relative to the collection of duties in a district near the Mobile, which you say is a violation of the territory and sovereignty of His Majesty, and which you request me to transmit to my Government. It being their practice to send all the acts of the session at the end of it, there has not yet been time for me to receive these acts, nor have I any information or instructions relative to this particular business; all, therefore, I can do at present is to comply with your request, and transmit your letter by the first safe conveyance. Permit me, on this subject, to remind your Excellency, that, on the first intelligence being received of the cession of Louisiana, I communicated verbally to your Excellency and the Prince of Peace the contents of an official letter I had received from Mr. Livingston and Mr. Monroe, informing me that they considered a great part of West Florida, as so called by the English, to be included. Such letter could not have been written to me officially by them, without their having been so informed by the French Plenipotentiary and Government. The price paid is a proof of the territory being considered as extremely extensive, and if, as must most probably be the case, these were the bounds detailed by the French, it becomes undoubtedly a question between the French and Spanish Governments, and our own; and for this reason, I shall immediately send a copy of your letter to me to Mr. Livingston, our Minister at Paris, for his information and that of the French Government. It not being the interest of either France, Spain, or the United States to differ about this or any other questions, I am sure that a little examination and moderation will soon accommodate it. Apprehending, however, that your Excellency may, from the tenor of your letter to me, make this a reason for not ratifying the convention, or of adding such clauses to it as may defeat or delay its ratification, and depending very much upon your Excellency's friendship for the United States, and strong sense of the great importance it is to both our countries to be on the most cordial and friendly terms, I again take the liberty of recommending to your Excellency to have the convention ratified as it is, and without addition: this will be to the United States so strong a demonstration of the sincere friendship of His Majesty, that I am sure it will be attended with the best effects; whereas, should it now be refused or delayed, or clogged with additions, it will serve to increase the irritation and animosity of the two countries, and only widen a breach which may now easily be closed.

The great point for the consideration of our two nations, is simply this: Is it the interest of both to be at peace and friendship with each other? or can a slip of territory, nearly barren, or the refusal of the ratifications of the convention, be an equivalent for the expense and consequences of embroiling two nations which ought so strongly and affectionately to be united? Your Excellency, I know, thinks with me on this subject, that it is better to conciliate than irritate. Let, therefore, the different questions between our Governments be kept separate. On the subject of the claims and conventions for their arbitration, we have long since agreed to suffer that to be ratified as it is. This will be a strong proof to our Government that Spain wishes peace and friendship, and relies confidently on the well known good faith, honor, and moderation of the United States, for an amicable and just arrangement of the limits. On this subject a new negotiation can take place; it will then be the negotiation of neighbors having extensive concerns with each other, and among whom questions must sometimes arise; but let them be the questions not only of neighbors, but of friends, and unattended by any circumstances to irritate. Do not show the United States that you have no confidence either in their honor or justice—qualities on which they value themselves more than on power or wealth; but show to them that Spain, having the most perfect confidence in both, will rigidly and honorably adhere to what she has promised, and has no doubt the United States will do the same. This is the conduct I wish your Excellency to pursue, and I think I know the United States sufficiently to be convinced they will meet it with sincerity and cordiality.

Your Excellency sees by this letter the strong reliance I have on your Excellency's being, upon all occasions, the promoter of the peace and friendship of the two countries; and on this confidence I have the honor to subscribe myself

Your Excellency's most obedient and very humble servant, CHAS. PINCKNEY.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Pinckney to Mr. Cevallos.

Madrid, *June* 22, 1804.

Sir: Believing it not to be agreeable to your Excellency, I probably should not have again troubled you either with personal or written applications on the subject of the exchange of ratifications of the convention, after having done all I could to persuade your Excellency of the policy and propriety of so doing. I should have contented myself with having done my duty, and in requesting and urging upon you the necessity of an early and definitive answer to send to my Government; transmitting which, I should then have left to them to decide, as the rights and interests of our citizens, and the sacred honor and character of our nation, may require. I have, however, just received accounts of such a nature, as render it necessary or proper I should make one appeal more to your Excellency's love of justice, and to your wish to preserve the harmony of the two countries; and, should this fail, I will then give up the idea of our remaining long in friendship and peace, and consider it as almost an impossible thing. I think your Excellency, in reading this letter, and recollecting circumstances, must view it in the same light, and will at least appreciate the motives which have given rise to it. Be assured that nothing but the pressing importance of the subject, and the difficulty of amicably receding from the point, to which the refusal or delay to ratify as it now is will bring us, would induce me to do so.

To show your Excellency that this opinion is too well founded, we have nothing to do but to go back and examine the conduct of Spain for six years, and we shall find that, during that time, there has been such a series of treatment to the vessels, cargoes, and in many instances persons of our citizens, as no man could believe, who has not an opportunity to examine the archives of our mission to this Court. The individual sufferings have been incredible, and the property lost of immense value. There is scarcely a part or a port of His Catholic Majesty's dominions in Europe and America, that has not been the scene and witness of their sufferings: Sufferings, such as I believe no people ever before endured from a nation to whose coasts they went under the solemn protection of treaties, the laws of nations, and, in many instances, express royal orders or permissions from the King. Nor was the unfriendly treatment of Spain confined only to the acts of her own subjects while we were in difference with France; contrary to the treaty and every principle of the law of nations, she permitted the French cruisers to carry in hundreds of our vessels, and proceed to their condemnation and sale in Spanish ports. If your Excellency will only throw your eye over the vast and melancholy pile of reclamations on these subjects now in your office, I have no doubt you will readily confess that there perhaps never existed

such a collection of wrongs, sufferings, and damages, permitted by one nation toward another, with which she professed to be in peace and friendship. I will venture to say that it is such as no nation, having the same power to assert their rights and protect their citizens as we have, would have so long suffered without some kind of redress.

And yet, under all these accumulated injuries and sufferings of our citizens, under the breach of solemn treaties, of the laws of nations, and in many instances violations of the honor of our flag, what has been the conduct of the United States? Always mild and moderate, in every step of these oppressions and injuries, we have applied for redress in the most respectful terms; we have relied on the justice and magnanimity of His Majesty and his Government for nearly eight years, until our citizens who were concerned were nearly all ruined, such as have been for years personally attending to their claims, exhausted in their resources and fatigued with the useless attendance and absence from their families, have nearly all returned to their homes, abandoning to their Government their rights and claims, and are now incessantly applying to her to see them redressed. Such too, has been the serious and formal appeal of the great commercial cities on this occasion, so solemnly have they pressed it, that it has now become my duty to apply in the most urgent manner for a definite answer, His Majesty will ratify the convention as it was made or not? considering any alteration at this time as amounting to a refusal. On His Majesty's love of justice alone I rely for such an answer as will be agreeable to our Government. I entreat your Excellency to reperuse some of the letters I have written to you on this subject. In these, I intimated to your Excellency the astonishment of the people of the United States at the apparent determination of Spain to consider them as enemies. Although many of their acts from 1796 to 1802 were oppressive and unfriendly, our citizens were hopeful they were occasioned by the war, and that at a proper time they would be redressed; they still, therefore, continued to view the friendship of the two nations as a certain thing, because they were neighbors; their commerce was extensive and mutually valuable; and it was impossible for them to be rivals. These generally being the solid foundations of friendship between Governments, our citizens had a well founded right to expect a firm and increasing one with the subjects of Spain. It was, therefore, with great surprise they viewed their losses and sufferings, the neglect of their claims, and their general treatment for the last six or eight years. Your Excellency will be astonished when I inform you that, on an accurate survey by persons who have examined them, not one case of seizure or damages in thirty has been redressed by Spain. I am sure that, out of the applications made on other subjects, the proportion of refusals has been as great. It has now become almost a regular thing for us to ask and to receive refusals to every application. These, added to the impression made on our citizens by the conduct of Spain as it respected Louisiana, have led to the opinion that Spain really has no wish to remain long on friendly terms with us; or else why did she so quietly consent to restore Louisiana to France, and appear so content that the French should have it, and the moment she found it was to come to the United States, show such displeasure, and do everything in her power to prevent it? There can be but one answer, which is, that Spain considered Louisiana, while in the hands of France, as in the hands of her friends, and as about to be delivered to those whom she did not view as such. I can assure your Excellency that the whole of our situation and concerns, taken together, have led to a point sufficiently important for your Excellency's interference, because with difficulty I shall think your Excellency is not a friend to the United States, or that you wish to see any serious difference with us. At the same time, I do believe that on the present moment it depends to prevent these differences; for I am sure, if this convention is returned without being ratified as it is made, and ratified by our Government, that it will, perhaps, afterwards be too late for us to benefit by your Excellency's friendship and interference. I wish to speak with candor and friendship to your Excellency, because I well know the temper and disposition of our country and its Government, and the manner in which they have received the losses and injuries they have sustained from Spain for the last six or eight years. I am certain they will consider the refusal to ratify, or to give an answer, or the throwing of obstructions in the way so as to postpone it, as such evidence of hostility on the part of Spain as to put an end to all further amicable discussion.

The questions of our claims on Spain, and the convention to arbitrate them, are of an old date; they existed long before any question respecting Louisiana arose. In point of priority, they ought to be the first attended to and settled. It is for that purpose, therefore, I have so earnestly solicited your Excellency to use your powerful and well merited influence to have the convention ratified as it is, as that will open the way to the peaceable and friendly arrangement of the other question respecting the limits of Louisiana—a question totally separate and distinct, and which, having originated from our purchase from France, becomes a question which France must arrange between Spain and us; she is bound in honor and justice, no less than in interest, to do so. For this purpose, I have officially applied to the French Ambassador here, and, have sent a copy of your letter to Paris, to be laid before the French Government. But I again entreat your Excellency not to let this be given as a reason for refusing to ratify the convention. It is because I believe that this will be the sole mode of amicably arranging all our other differences, that I so earnestly press it upon your Excellency, and because I also believe that, in the present state of things, the refusal or delay to answer will be the means of putting a close to all further amicable discussion.

With sentiments of the most profound respect, I have the honor to be, &c.,

CHARLES PINCKNEY.

Don Pedro Cevallos.

Mr. Cevallos to Mr. Pinckney.

Madrid, *July* 2, 1804.

Sir: I have received your letter of the 22d ultimo, in which you have thought proper again to urge the immediate ratification of the convention concluded on the 11th August, 1802, for indemnification of the losses, damages, and injuries sustained during the last war, in consequence of the excesses committed by individuals of both nations against the law of nations or the existing treaty. In answer, I can do no less than begin by stating to you that it appears extraordinary enough that you should consider any delay in the ratification of said convention, on the part of the Spanish Government, as a wrong done to your Government, when that of the United States had taken up almost two years in the examination before the ratification on her part; during which time, if any injuries have resulted to the interested, either Spanish or Americans, they are certainly not to be attributed to the Government of Spain. On her part, there always has existed the greatest desire to terminate, in a friendly manner, the question of indemnities, which are the object of the said convention; and His Majesty is disposed to ratify it, but under certain limitations or conditions, which will in no wise alter the material part of the convention, and which cannot be displeasing to the United States, since they emanate from the sacred principles of the justice, peace, and friendship, of the Governments on which it is founded.

The first of the said conditions is, that a time should be designated within which notice may be given to the subjects of His Majesty, who have reclamations to make to the Commissioners who are to be appointed, and to enable them to prepare the documents necessary for establishing their claims. The reason of this condition is very obvious, and its necessity proceeds from the slowness of the American Government in ratifying the convention, for it is evident that the reclamations of the Spaniards and Americans respectively cannot be made, unless each Government should notify the persons respectively interested to bring forward their demands; and the Spanish Government has not been able, nor ought it to have circulated such notices, being in doubt whether the American Government would or would not ratify the convention—a doubt which, in the session before the last of Congress, had increased to such a degree, as almost to make it evident that it would not be ratified; the general report being that the Senate of the United States had rejected it, which prevented the anticipation of any notice for the government of the Spaniards interested.

The second limitation or condition, founded on the most rigorous justice, is, that the sixth article of the said convention, which relates to the injuries done by French cruisers to American vessels, on the coast and in the harbors of Spain, should be suppressed. This article was inserted, because it was made a question whether Spain was or was not responsible for the said injuries and damages. You sustained the affirmative, and I the negative, with arguments which I have not seen combated, except by actions which do not invalidate them. Subsequently, in my letters under date of the 23d August and 5th October last, to which I refer, I proved to you, in the most solid manner, supported by the opinions of the most eminent jurists in the United States, that, according to the convention concluded between France and the United States the 8th Vendemiaire, year 9, it could no longer be doubted that the United States had not the smallest right to exact indemnities from the Government of Spain for the injuries done by the French privateers on her coasts and in her harbors. To these incontrovertible reasons may be added that which results from the ninth article of the Treaty of 30th April, 1803, between the United States and France, relative to the cession of Louisiana; from which article, it evidently results that the French have satisfied the Americans for the injuries in question. There is no reason, then, why there should be retained in the convention which is to be ratified an article by which the United States reserve a right which they certainly have not, inasmuch as they have already received competent satisfaction from France. Under these circumstances, the suppression of the beforementioned article takes nothing from the essence of the convention; nor, in reality, can it be called a suppression which removes an article that has become notoriously and absolutely null from its own nature.

The third condition, entirely conformable to the pacific desires of the United States, is that which requires the revocation of the part of the act of the Congress of the said States, approved on the 24th February last, which has manifestly violated the rights of the sovereignty of His Majesty, by empowering the President to exercise authority and establishing custom-houses within a territory which belongs to the Crown of Spain. His Majesty being, as he is, persuaded, that through a mistake only could there have been introduced into the said act the expressions which assail the rights of his sovereignty, does not doubt that the United States will give, in relation to the said act, those explanations which may be most conformable to the justice he claims, and the most conciliating and respectful to the rights of his Crown.

Under these three conditions, His Majesty is disposed to ratify the convention of the 11th August, 1802; conditions which, as I said before, do not alter either the nature or the essence of it; for the first of them is nothing more than that a certain time should be allowed for His Majesty's subjects to receive notice that the convention was agreed on, and that he was prepared to support their claims; the second relates only to the suppression of an article which is null in itself; and the third emanates from the necessity of preserving that respect which Sovereigns reciprocally owe to each other.

Besides what relates to the ratification of the convention of the 11th August, you go on in your beforementioned note to accumulate complaints which, although they have no connexion with the

present affair, I have not been able to pass unnoticed. You say that Spain having opposed herself to the alienation of Louisiana, proves little attachment or friendship on our part towards the United States; but if you had made the proper use of your logic and policy, (*politica,*) you would have drawn from this action, the certainty of which I do not dispute, very different conclusions. It is not uncommon that the Governments, the most united by system and by interest, suffer discordances arising from the vicinity of their territories; nor is it uncommon that those which know the importance of peace, and the facilities there unfortunately are by which it may be disturbed, should avoid an approximation of their territories. The views of Spain have been sound and political, and decently manifested; and if you had drawn your deductions from this view of the subject, you would have honored not less the talents than the just and friendly intentions of the King my master.

As to the rest, it does not appear to be in conformity to a conciliating spirit, which is that which you say animates you, to recapitulate old complaints for wrongs which Spain did not commit, and complaints for wrongs which are completely done away; France having given satisfaction for the damages occasioned by them.

I renew to you the testimonies of my constant esteem and consideration, and pray God to preserve your life many years.

PEDRO CEVALLOS.

Mr. Pinckney to Mr. Cevallos.

MADRID, *July* 5, 1804.

SIR: I shall proceed without delay to give your Excellency that decisive answer to yours of the 2d, and to take those definitive measures which my instructions and duty now make necessary; but before I do so, and in order to be correct, I wish your Excellency to say whether I am to understand your letter in this sense; that if the second condition, which respects the suppression of the claims for French spoliations, within the Spanish territory, and the third, the repeal of the law passed by Congress in February, are not agreed to, His Majesty will not ratify the convention. I request your Excellency merely to answer me this question; and if you answer me affirmatively, that is, that His Majesty will not ratify without those conditions, then to return me the ratifications and papers prepared and sent you some time since to Aranjuez.

I wish to have your Excellency's answer as quickly as possible, as on Tuesday I send a courier with circular letters to all our Consuls in the ports of Spain, stating to them the critical situation of things between Spain and the United States, the probability of a speedy and serious misunderstanding, and directing them to give notice thereof to all our citizens, advising them so to arrange and prepare their affairs as to be able to move off within the time limited by the treaty, should things end as I now expect. I am also preparing information for the commander of our squadron in the Mediterranean, for his own notice and government, and that of all the American merchant vessels he may meet.

I confess, after the style of your Excellency's letter of the 31st May, on the subject of the late law of Congress, and the manner in which you annex to the ratification of a convention you yourself had signed, the humiliating conditions of our Government previously suppressing a claim of great magnitude, and which they consider as a point of national honor, and also of repealing an act lately passed with all the deliberation and solemnities prescribed by our Constitution, I see little hope of an amicable accommodation, particularly when I tell you that, in my two last despatches, lately received, I am charged by my Government to repeat to your Excellency, that not one shilling of the property claimed by the citizens of the United States from Spain for French spoliations, within the ports and territories, or on the coasts of Spain, has ever been relinquished to, or paid, or provided for, by France, in any mode, or even claimed from her; her provisions having been all for other claims arising elsewhere, and totally distinct from these; and further, that the United States are determined, at every risk, never to abandon this claim.

I earnestly repeat my request to have your Excellency's answer as soon as possible; and am, with much respect, your Excellency's obedient and very humble servant.

CHARLES PINCKNEY.

DON PEDRO CEVALLOS,
First Secretary of State, &c.

Mr. Cevallos to Mr. Pinckney.

JULY 8, 1805.

SIR: I have received your letter of the 5th instant, in answer to mine of the 2d, respecting the ratification of the convention concluded on the 11th August, 1802, and having given an account to His Majesty of the terms in which it was conceived, it could not but appear to him little conformable to the friendly relations between the two Governments, which you have it in charge to promote on the part of the United States, and which His Majesty takes every occasion on his part to encourage.

In the midst of a discussion which is itself a proof of the sincerity and real disposition with which it is wished to terminate the question of reclamations which are the object of the said convention, when I presented to you the motives there were for desiring to add in the ratification two or three circumstances which do not alter the substance of the convention, nor take anything from its object, it is not possible to comprehend the motive for your breaking out in the decisions, not to say threats, contained in your said letter, nor why you should proceed, as you say you will, to instruct the Consuls and commandants of the vessels of your nation to give notice of the critical situation of affairs between Spain and the United States, with an anticipation certainly not called for by the spirit of conciliation

which you say animates you. It is not easy to conceive how your instructions can authorize you to proceed to these extremes, which are incompatible with the present state of a negotiation hitherto conducted in terms the most conciliating. If, in the year 1803, during the session of Congress, when it was notorious that the Senate of the United States had suspended the ratification of the convention which now occupies us, the Minister of His Majesty should have proceeded in the manner you have now done, what opinion would the Government of the United States have formed? They ought to have believed, and they surely would have believed, that the Minister of His Majesty had exceeded his instructions, and that his Government could not have authorized a proceeding so extraordinary. Almost two years the Government of the United States deliberated whether they ought, or ought not, to ratify the convention, and you pretend to find it extraordinary, and not only extraordinary but disrespectful to the United States, that the Government of Spain should manifest the difficulties which occur, supporting itself on the principles of the most rigorous justice, and promising itself that the American Government would do no less than to take them into consideration. In the meantime, you, without entering into an examination of them, without transmitting them to your Government, consider them as a sufficient reason for terminating all discussion respecting the ratification, and to designate Monday as a time for a final answer, to be conceived in the precise terms, yes or no; as if such a peremptory answer could be demanded on controverted points, and respecting some of which I have not yet had the honor of seeing a single reply from you. The King cannot persuade himself that such language is conformable to the moderation which he appreciates in the American Government.

The peace of two nations, whose reciprocal interests require a good understanding, is an object too important to be committed so lightly; and it is not to be believed that the Government of the United States will think differently, who, without doubt, have not forgotten the repeated proofs of friendship which the Government of Spain has given them from the commencement of their independence, that it distrusts the integrity of a Government which it has so often found ready to hear with impartiality, and to decide with justice and with generosity, on all kinds of reclamations.

The convention, whose ratification now occupies us, originated in the desire of both Governments to terminate speedily the question of the claims of individuals of both nations, for the reciprocal injuries which are mentioned in it. These claims always could have been, and can now, by the nature of them, be brought forward in the corresponding tribunals of each country, respectively, and be decided according to the law of nations and the existing treaties, as being the law of both countries; but it was wished, by means of the convention, to give the greater facility and promptitude, by forming a commission which should decide upon them in the manner therein stated. After the conclusion of the convention, which, however, left both Governments at liberty to ratify it or not, and, consequently, although an effort should be made on the part of one of them to suspend the ratification, it could not give place to well founded complaints on the part of the other, on the ground that it prevented their subjects from establishing their claims, because a recourse was always to be had to the tribunals, which was what was rigorously due to them, and the prevention of which could alone give cause for such complaints. But leaving this apart, as it is not the point in question, let us examine what are the motives which could have given rise to your proceedings: having seen my letter of the 3d instant, none other is perceived but what arises from the second and third limitations under which I told you His Majesty was disposed immediately to ratify the convention. But if you examine them as they ought to be examined, you will see that the suppression of the sixth article does not alter the essence of the convention, since, as that article neither grants nor denies the right which may belong to the Americans, by reason of the injuries occasioned on the coasts, and in the ports of Spain, by French privateers, but leaves it such as it is, it is clear, that by its insertion in the convention, that right does not require greater force than it has itself, if it has any. We have discussed this right both before and since the formation of the convention. I have demonstrated to you that such a right does not exist, by arguments which I have not yet seen combated. I have shown you that if there had been any, it ceased to exist after the convention between France and the United States, concluded on the —— Vendemiaire, 9th year; France having giving satisfaction for it, not by paying money as you seemed to suppose I had said, when you replied to me that the United States had not received a cent from France on account of these injuries, but by way of compensation and of conciliation, which is as legitimate a mode of dissolving obligations as payment itself. I have sent you the opinions of the most eminent jurists of the United States, conforming entirely to my mode of thinking. I have told you of the positive answer of the Ambassador of France, (Bonaparte,) that satisfaction was given for the injuries for which the United claimed compensation from Spain; and my last letter of the 5th of October, in which I stated all this to you, has had no reply or answer. There is then a well founded reason for believing that the American Government is persuaded that such a right does not belong to it, and it is not proper to leave in a treaty which is to be ratified clauses relative to rights, satisfied or renounced, especially when, by their insertion in a treaty or convention, they do not acquire, as I have said to you before, either force or validity.

The second condition, which you consider indecorous and humiliating for the United States, appears to me to be quite the contrary. His Majesty is persuaded that the intention of Congress has not been to usurp the rights of his sovereignty. He has not, nor does he, demand the revocation

of the act nor of its provisions, which relate to the internal regulation of the country, but a satisfactory explanation of the clauses of the eleventh section, which impinge the rights of the Crown of Spain. You say that this is irrelevant to the question, and relates to pretensions which the United States separately establish. I do not know what these pretensions can be respecting territories which indubitably belong to His Majesty; but I know that, although it should be supposed there might be such pretensions, the wrong would still exist, it having disturbed the pacific possession in which His Majesty finds himself, to legislate and exercise authority over the said territories: and, from its nature, demands that a corresponding and satisfactory explanation, preliminary to all discussion whatever, should be required. Be pleased to recollect the arguments and the vigor with which the members of your Government exclaimed when they saw themselves deprived of the deposit at New Orleans by the act of a Spanish agent; and you will see how a Government which values its honor, must resent being despoiled of its rights. Recollect, also, that the United States had immediate recourse to the King, my master, desiring that, in the first place, the deposit at New Orleans should be restored, and that, afterwards, any difference or transaction which might exist between the two Governments should be discussed. His Majesty acceded to it with that justice which characterizes him, and, in the same manner, now hopes and confides that the United States will desire to give the most satisfactory explanation respecting the offensive expressions which are founded in the said act.

Reflections of this kind ought, in my opinion, to have appeared to you worthy of the attention of your Government, and ought to have induced you to have transmitted them to it without proceeding to the extremes of which your said letter treats, which, in truth, do not correspond with the pacific desires of which you have always spoken.

Under these circumstances, the King, acquainted with your determination of terminating every ulterior explanation relative to the convention, and not being able to persuade himself that the Government of the United States has authorized the part which you have thought proper to take, has resolved to despatch an extraordinary courier to the United States, and by this means to make that Government acquainted with the state of the negotiation, renewing the observations made in the discussion, manifesting the moderation, the conviction and the conciliating manner with which this Government has proceeded, and leaving that of the United States, on seeing your letters, to judge of the said affair. If they have reciprocated the friendly disposition of the Government of Spain, His Majesty flatters himself to terminate, by this means, the actual difference which is, from its nature, very far from arriving to the extremes which you suppose it has arrived at. I reiterate, &c.

PEDRO CEVALLOS.

CHARLES PINCKNEY, Esq.

Mr. Pinckney to Mr. Cevallos.

JULY 14, 1804.

Your Excellency asked me if I would put under my signature the request to have the original ratification and forms of exchange, which I sent prepared to you, returned to me, as your Excellency has refused to ratify except on conditions totally inadmissible; and also the notice I gave you that I was, in consequence thereof, preparing to leave Madrid and return to the President and Congress of the United States; and that, when I had prepared and arranged my affairs, and could fix a day, I would send for my passports. Your Excellency will please to consider this letter as complying with your desire. And as I shall leave Madrid shortly, the respect I owe my Government, and the opinion of others, make it necessary for me to state with moderation the reasons which compel me to do so.

I must refer your Excellency to the letters which I have written to you, for the last two years, on all the various subjects of complaint we had against the conduct of many of His Majesty's official servants in his dominions both in Europe and America, and on the claims arising therefrom; and they will show, not only with what justice, but with what mildness and real friendship these claims and complaints have been urged. After the signing the convention, one made entirely in favor of Spain, by postponing, for the present, the arbitration of the French claims, and the point of holding the session of the commissioners in Madrid, instead of any part of the United States, as I wished, supposing it would be the means of laying the foundation for an amicable arrangement of all our differences, the tenor of my letters was ever peculiarly mild and friendly. I heard, during this time, of many acts of the Spanish Government with surprise, but forebore to express it under the idea that they would soon see their true interest in cordially meeting our friendly advances, I rejoiced when circumstances permitted the Government of the United States to ratify the convention, partial as it was, because in that I thought I perceived the hope of permanent peace; it was, therefore, with pleasure I hastened to communicate the event to your Excellency, not doubting that my communication would have been met with equal cordiality. On presenting, however, the ratification for exchange, my concern was equal to my surprise at finding not only a hesitation, but what appeared to me a determination, by some means, to avoid it. In consequence of this, I have used every exertion in my power to produce the ratification; no proper means by personal application to those whose influence I thought ought to have been exerted in its favor, or by letter, were left untried. My letter of the 1st June will always remain an unanswerable proof of the amicable spirit with which I urged the measure, and of my conciliatory efforts to prevent your making the limits of Louisiana a condition to the ratification. It was written in consequence of your letter of the 31st May, which plainly discovered to me that it was in vain to hope either

for a ratification, or for anything like friendship, or scarcely peace, from Spain. I saw at once, that, if she could bring herself to speak in a style so authoritative and improper (not to say more of it) of the act of a Government as much distinguished for its justice and honor as for its moderation, she must be averse to every approach which could lead to an accommodation. In this letter you plainly call the act of Congress of which you speak an outrage and an insult to His Majesty's sovereignty, endeavoring to smooth it over by saying you hoped the President and Congress were not aware of what they did; adding, thereby, the reproach of precipitancy as well as ignorance of their rights and duties; and concluding with saying, in very direct terms, that such a law lessens their good name—language that a monarch may hold to his vassals, or a country to one which she has humbled, but which, to the unbroken spirit of the United States, will not certainly be very pleasing.

As much as this extraordinary letter of yours astonished me, and will, I am sure, my Government, and notwithstanding its style and manner were alone sufficient to justify my present measures, I again attempted to produce a reconciliation. From the long standing of most of our claims, and the multiplicity of your Excellency's avocations, I supposed it not impossible you might have forgotten a number of them, and that the really dangerous and critical state of things did not strike you, or, (to speak plainly,) unless your aim was war, you would not take the irreparable step of rejecting the only means which appeared likely to prevent it; in which rejection, whilst it added unspeakably to our wrongs, our Government could see nothing but determined enmity on the part of Spain. With a view, therefore, to prevent your Excellency from taking this step, I made another conciliatory effort, and wrote my letter of the 22d June, in which I gave you a summary view of our situation, urging, in the most friendly terms, the necessity of ratifying the convention, and leaving the other questions to future amicable arrangements. Extraordinary and unexpected as was the language and tenor of your letter of 31st May, this of 2d July still more astonished me. In answer to the application of our Government, merely to exchange the ratification, you have ventured to dictate two previous and degrading conditions; the former desiring the total suppression of our claim for French captures and spoliations within the territory and on the coast of Spain, and condemnations by the French Consuls within the ports of this kingdom—a claim as great, or greater than that provided for by the convention, one equally just and binding, and which I have repeatedly had it in charge from my Government to say to you never was relinquished to France in any manner, or for any consideration, nor provided for by her, nor included or spoken of in any settlement with that Power, but, on the contrary, always was, and is still, considered by the United States as a point of national honor which they never will abandon without an arbitration or an equivalent; and your Excellency must know that, by our agreeing to the suspension of this article in the convention, we should abandon the claim, for certainly this is what you meant and repeatedly called for. To the degrading and humiliating condition of our previously abandoning and suppressing this claim, you have added another still more so if possible. Instead of mildly and amicably applying for some equal and friendly mode to ascertain the limits of Louisiana, you have at once proceeded to determine them yourself; and without leaving to the American Government either the time or a mode to show, or to endeavor to show, that they are right, you have undertaken to decide in your own case; and have not only authoritatively called upon them, in your letter of the 31st May, immediately to revoke a part of a solemn act of their Legislature (your words being "que revoque la parte del acto,") but have in that of the 2d of July, ventured to make it another condition, on which alone you will consent to ratify a convention signed by yourself, and which you had always acknowledged that His Majesty was bound in honor and justice to consent to.

I have repeatedly told your Excellency that, as to the two questions of abandoning the French claims, or consenting to anything to affect the limits of Louisiana, my instructions are as positive as possible never to abandon the one, or enter into any contract, or even negotiation, respecting the other. The measure, therefore, of my sending these conditions to the United States, which you mention, and waiting for their reply, was not only wholly improper, but would have been contrary to my instructions, which were by every possible means to expedite the ratification.

I well know that it is utterly impossible for your Excellency, without having been there for some time, to be acquainted with the sentiments, character, or feelings of the American people, and being so, that you may doubt the correctness of the opinions I give; but, be assured, there is not a man in the United States, or its Government, who will not consider the refusal to ratify except on such conditions as you proposed, and the very proposing them as a national indignity, and expect from me, the depositary of their views and public honor here, the measure I mean to take. It is as much the duty of a Minister to assert the rights of his nation, and to refuse to receive or discuss degrading or affrontive propositions, as it is to promote mutual harmony and good understanding. Your Excellency says that the measures I now pursue are not consistent with my usual and former friendly professions; to which I reply, that it is with much concern I have observed that your Excellency's conduct, for the last twelve months, and since the cession of Louisiana, has been very little conformable to the amicable sentiments you now wish me to believe you possess; whilst mine, you well know, have always been sincere and active in endeavoring to conciliate and preserve peace. My Government is informed of all that has passed, and will be of all that is now doing, and are the best judges. Your Excellency had it, however, in your power to show whether your

professions were sincere, by never making these propositions, because you were long told, before you did make them, how extremely inadmissible and improper they would be considered. or after they were made, and you found the humiliating light in which they were viewed, by withdrawing them, and consenting to ratify the convention, extending the time for receiving the claims to six or eight months, or to twelve months, as I told you you might, and I even proposed it to you.

In speaking of striking out the sixth article, your Excellency does not appear to me to be aware of the nature of the proposition you have made; in remarking on this subject you say, "que la supresion del articulo 6. de la convencion en nada altera la esencia de esta, pues como en dicho articulo no se concede ni se niega el derecho que puede competir á los Americanos por razon de las perjuicios ocasionados en las costas y puertos de España, por los corsarios Franceses. serio que se dexa subsistir tal qual es para lo sucesivo: es claro que por su insercion en la convencion no adquiere mayor fuerza que la que puede tener por si solo si tiene." Your Excellency certainly knows that it is an established principle of the law of nations that, in framing treaties or conventions. which have for their object the continuance of peace. or the accommodation of differences, all points or claims for injuries or damages, which are intended to be reserved, must be mentioned, or otherwise they will be considered as relinquished; and this was my reason for inserting it in the convention. Our object in framing that instrument was, the amicable settlement of all differences arising from spoliations on our trade, contrary to treaties and the law of nations, and for which we hold Spain liable. Had we, therefore, said nothing about the French captures or condemnations within her territories or ports, or should we now agree to strike out the sixth article, there is not a man who knows anything of the law of nations, who will not instantly say that we had abandoned them; and if your Excellency was not convinced of this, why have you so perseveringly endeavored to suppress it?

By the law of nations, "a monarch cannot, in honor, refuse to ratify a convention made by a Minister with full powers, unless it can be proved that the Minister had remarkably and openly deviated from his instructions. or the monarch has some other very strong reasons for so doing, but they must be very strong." Now, according to this principle, I deny positively, from your own statement of the conditions, that His Majesty has any sufficiently strong reasons to justify the not ratifying this convention: it cannot be because you made it contrary to your instructions; for you are now, and were then, his first Secretary of State, and signed it under his own eye, and in his own palace: neither can it be on account of the suppression of the sixth article; for all that can now be known about it was known then, and the relinquishment to France of other and totally distinct claims, of which you speak so much, and without the least weight, was as much in existence as it is now: for that convention was made in 1800. two years before the present; nor would it be considered, by the law of nations, a very honorable thing to refuse the ratification on the ground of a small part of one of the Floridas, which, you say, Congress have encroached upon, when it is well known that the whole value of both the Floridas would not cover the claims which this convention is intended to provide for. To endeavor, therefore, to get rid of the ratification, on account of a dispute about a small slip of those colonies, will not, I suppose, be viewed by our Government, or any neutral or impartial one, as that honorable right which, according to the law of nations, can alone justify a Power in refusing to ratify a convention formed by a Minister fully authorized. Having high respect for His Majesty's honor and justice, I am very unwilling to believe he could have authorized you to refuse to ratify the convention on these grounds, or to hold such language, or make such demands of the United States, as they have, upon all occasions, manifested great respect for his person and Government. Be assured that our own would have regarded the refusal alone with great seriousness; but coupled with these degrading conditions of totally abandoning the French claims, by the suppression of the sixth article. and, as it were, commanding the repeal of a law of Congress without allowing us time to consult and examine or defend it, are so high an indignity, that I am convinced, had I not determined to refuse all discussions upon the subject of admitting them as conditions of the ratification. as well as to be the instrument of transmitting them to my Government, and, finding you insisted on it. had I not also immediately determined to leave Madrid, and put an end to all discussions on the conditions proposed here until the President's pleasure be known. I should not only have met with his disapprobation. but that of every man in a country where every individual feels himself personally interested in the honor and character of his Government.

The case your Excellency quotes of the Intendant of New Orleans does not apply; that was a flagrant breach of a solemn treaty, and deprivation of a right secured by that treaty, and daily used, and indispensable to a numerous portion of our citizens, which, as your Excellency well knows, was the reason why the Senate did not ratify the convention during that session, and was the cause of the inevitable delay that took place, and for which a Spanish agent was blameable, whom your Minister declared instantly to our Executive had no authority to do so: while the law you complain of is the act of a Government, so constructed as that it is impossible for them to proceed without that due examination which is necessary to prevent precipitate, and generally leads to just, decisions of a Government. as remarkable for its attention to the rights of foreigners as to those of their own citizens; and which, no doubt, will be able to maintain the propriety of any law it has passed, by strong and unanswerable arguments. And here let me remark to your Excellency, that it was not on account of the

time you may have taken to answer my first application to ratify, that I objected, and wrote my letter of the 5th of July; for if you had taken much more, although I should not have considered it as worthy of Spain to think of a revenge of that kind, for the unavoidable delay the convention met with in the Senate, on account of the shutting the deposit of New Orleans, yet I should have waited some time longer; but it was to the answer itself of the 2d of July, when made, and to the refusal to ratify, except upon the degrading conditions you annexed. which I objected to; and it is upon this answer, and this alone, that I grounded my proceedings.

Believing, as I solemnly do, that when the refusal to ratify, except on these degrading conditions, be made known in the United States, this affair cannot be amicably arranged without such sacrifices or concessions. on the one part or the other, as no people having a national character to support will be ready to make; and as I am sure we shall not, there appears to me a great probability of a misunderstanding; and, so believing, it is my indispensable duty not to conceal it from the citizens of the United States in the ports of Spain, who are, or may be, interested, and indeed are always applying to me on the subject of the convention, well knowing it was the only mode to preserve friendship or peace between the two countries. The same duty required of me a similar communication to the commander of our ships in the Mediterranean, for his notice, and of that of our merchant vessels, that they should, using their own discretion, avoid making too free with the Spanish ports or coasts, during the state of uneasiness and uncertainty which now exists. This indispensable part of my duty your Excellency seems, improperly, to feel as a menace, when a moment's reflection should have convinced you it was a duty I could not avoid. How, indeed, was it possible to neglect it? or what other opinion can we form, but that, when the United States see the convention returned, and with conditions so humiliating and inadmissible, they will give up all hope of payment here, and, however unwillingly, still be inevitably compelled to seek some mode of paying themselves? Having this view, therefore, of the business, how unpardonable would it have been in me not to warn our citizens of it, and prevent their being lulled into security, and surprised at a moment when they least suspected it.

Your Excellency complains of my fixing a short day, and requiring a positive answer. The reasons are obvious; you were to leave Madrid with the Court in a short time. It was at least three months since you knew that the convention was ratified, for I have a right to believe you knew it before I did; you had, therefore, full time to consider it; and as my former experience had convinced me, that, on a question not agreeable to you, it would be difficult for me to obtain an answer for a long time, the proposing of these conditions, and my public duty, made it necessary for me immediately to know, and that in the shortest time possible, if you would ratify or not without them; and, certainly, after the manner in which you treated our Government, in your letter of the 31st of May, and that of the 2d of July, your Excellency could not expect any other conduct on my part. There was another reason which gave me a right to consider all discussions on the conditions as out of the question, which was, that my two letters in June, copies of which I send here annexed, had anticipated the question of the conditions proposed, and had shown you the impossibility of my suffering them to be incorporated into the ratification; and this was done before you formally proposed them, as I had received notice you intended it, and endeavored to prevent your doing so.

In all the differences between Great Britain and France, the United States have uniformly maintained their rights with a firmness that has done them honor, in the opinion of every nation; and, as I have often told your Excellency, it is not now to Spain, or any other country, they will yield them. My letter of the 22d of June, and the previous friendly one of the 1st of June, (both of which I annex, and desire your Excellency, in any use you may make of them, to consider as a part of this,) while they state the sufferings of our citizens, and the wrongs the convention is intended to remedy, will, at the same time, show my unwearied exertions, and the mildness with which I attempted to persuade your Excellency to ratify it.

In speaking, as your Excellency does, that it is general in all countries, on questions of this kind, to resort to the ordinary tribunals, I only remark, that your Excellency well knows how painful it has been to be continually representing the sufferings and losses of our citizens, and the delays attending their applications to the tribunals here; delays of such an extent, as to impress them with the opinion that a recourse to the tribunals of Spain can seldom be viewed as the proper means to obtain the rights of American citizens; that the years and means necessary to pursue their claims, through those channels, were infinitely more ruinous than the first loss; and that it was essential for our Government decidedly to interfere; and, for the truth and justice of this remark, I appeal to every unfortunate American citizen who has had business here for the last six years.

How far the conduct of your Excellency, in refusing to ratify, and bring into effect the only mode that remained of arranging them peaceably, will go to strengthen the opinion just given, is left for you to decide. After what has happened, our citizens will very much doubt whether there was ever any serious intention here to ratify the convention as it was made; and, if it is now ratified, I shall always believe it was entirely owing to the measures my duty made it necessary for me to pursue. I form this opinion by reading your Excellency's letter of the 9th, in which I am pleased to see you begin, at last, to have some value for the friendship and peace of the United States; and to find there is a point of indignity or neglect, beyond which even their moderation

will not go. I am, therefore, led to hope that the messenger, who you say is to sail for the United States, will carry out the convention fully ratified, without limitation or condition, and with orders to arrange it agreeably to the United States.

This I advise your Excellency most sincerely to do. I have always done so, until your letter of the 2d of July, in the most mild and friendly terms, and with the greatest deference and respect to Spain; and, had your Excellency proceeded in the same way, it would have been no less honorable to your talents than to the justice and friendly intentions of His Majesty, which you so often mention.

Your Excellency must perceive that the measures I have adopted were rendered indispensable by the respect I owe my Government; it being my duty to defend them from the charge of having lightly or inconsiderately legislated upon important subjects, and thereby outraged and usurped the rights of others. It was equally my duty to defend, and preserve inviolate, the well-founded claims of a numerous and deserving class of our citizens, whose legal and meritorious exertions, while they contribute to increase the enterprise, and extend the commerce of the United States, have the fullest right to demand, and will always be sure to receive, the cordial and unceasing support of their Government.

With this explanation of the reasons which will compel me to leave Madrid, and with the determination and orders to keep our citizens in Spain constantly warned against being lulled into security by any notification or information which they may receive, except from their Government or its officers, I end this letter. It has become my duty to return to the President and Congress of the United States, in order to give them, and, through them, to my fellow-citizens, such statements and opinions as can alone be properly done in person. To them I shall refer the question, well knowing that, in their hands, the rights, the character, and the sacred honor of a free people are always safe.

III.—*Correspondence between the Secretary of State and the Marquis de Casa Yrujo, on the ratification of the Convention of 1802.*

The Marquis de Casa Yrujo to the Secretary of State.

OCTOBER 13, 1804.

SIR: By the communications I have made to this Government, and the translation of the correspondence between His Excellency Don Pedro Cevallos and Mr. Pinckney, Minister of the United States to His Catholic Majesty, you are informed of the just motives His Catholic Majesty has for not ratifying the convention pending between our two Governments, except on certain conditions, founded on the most rigorous justice, and necessary, as well to the honor of his sovereignty as to the protection of the interests of his subjects. That His Majesty has the right to propose the alteration which he may judge proper for these objects, before the ratification, is indisputable, not only from the expression which is found in the seventh article of the said convention, which says, "the present convention shall have no force or effect until it be ratified by the contracting parties," but from many other antecedent examples, as that which occurred at the exchange of ratifications at Paris at the Treaty of Peace of 1763, of which I verbally informed you, and, lately, in the Treaty of Limits between England and the United States; the latter, as is understood, having refused to ratify a part of it, in consequence of the acquisition of Louisiana.

By order of the King, my master, I have renewed here the opposition made by His Majesty to the ratification of the said convention, except under the conditions which were proposed in Madrid to the beforementioned Minister of the United States, one of which was the entire suppression of the sixth article of the convention; but, having recollected that, from insisting on this point, the consequence might be the complete annulment of a convention by which the King, my master, animated by the sentiments of justice which characterize him, desired to do justice to the citizens of the United States who might have suffered during the last war by the excesses of his commanders or subaltern officers, contrary to the existing treaty and the laws of nations, and more and more to prove that the King, my master, proceeds in this affair with the liberality and frankness which always mark his conduct towards the United States, I am authorized to say to you that His Catholic Majesty will accede to the ratification of the said convention, under the following conditions:

1st. The Government of the United States will suppress or modify, as I proposed to you in one of my letters in the month of March past, the eleventh section of the act of Congress of the 24th of February last, and on which His Excellency Don Pedro Cevallos has made like complaints to the American Minister in Madrid; or, if it should be more agreeable to this Government, it will declare to me in writing, through you, that, by the said eleventh section of the beforementioned act, it had not intended to offer any insult to His Catholic Majesty, nor any aggression upon the rights of his sovereignty, and that the Executive, as the true interpreter of the said law, shall declare that the object or intention of what is contained in the said section is and ought to be only applicable to the territory of the United States, and not to the country belonging to and in the actual possession of His Catholic Majesty; it being well understood that, until the commission destined to the demarcation of limits shall have decided, by common consent, that the territory claimed by the United States did not belong to His Majesty, but to the said States, they, nor the President authorized by them, shall make no change in it, nor publish laws, nor establish custom-houses, nor any other species of regulations in said territory; but, on the contrary, that they should leave things *in statu quo*, as they were before the resolution of Congress complained of. Moreover, there shall be given the corresponding notoriety to this act of ratification on the part of the United States, in a mode that, without in any manner compromitting its dignity, may prove that satisfactory explanations were given on this point to His Catholic Majesty.

2d. His Catholic Majesty being informed that the mercantile operations of the citizens of the United States, out of some of which, without doubt, their reclamations will grow, have extended to the most distant possessions of His Majesty, as well in America as in the Philippine islands, and, from the great distance of these points, and the interruption to which the navigation to them is subjected during a great part of the year, the term of eighteen months prescribed to the Commissioners by the thirtieth article to receive all the reclamations must be short, it becomes necessary that the term should have a reasonable extension; and this is requisite, to the end that the subjects of the King, living at so great a distance, may draw the advantage which is due to them from the beforementioned convention.

3d. Although, as has been made apparent, by reasons which His Majesty has not as yet seen combated, that the complete suppression of the sixth article would be conformable to entire justice; nevertheless, thinking that my master will not oppose himself to the retention of the said article, if an alteration is made in its phraseology, which, without diminishing the right of the United States, should give more clearness to the intentions of His Majesty, contained in the said article, the sixth article should be expressed in terms nearly as follows:

"The beforementioned Plenipotentiaries, not having been able to agree on the principle of the claims originating in the excesses of the foreign privateers, agents, consuls, or tribunals, in their respective territories—Spain considering herself not responsible for these, as appears both from the circumstances and the time of the offence, as well as from the character of the measures afterwards taken by the United States with France—and the United States, on the contrary, claiming from Spain the amount of the damages and injuries arising from that source, both Governments have expressly agreed that each Government reserve to itself, (as is done by this convention,) not only for itself, but also for its subjects and citizens, respectively, all the rights which they may now have, it being well understood that the ratification by His Catholic Majesty of the present convention ought not, nor shall not, be considered as an acknowledgment on his part of any right, or that of the United States, to such reclamations and pretensions, nor as a renunciation by His Majesty of the exceptions which result from the conventions between France and the United States."

Under these conditions, which the King flatters himself will appear just to the American Government, His Majesty is ready to ratify the beforementioned convention: and from the moderation, and even liberality, so clearly manifested in these, it will remain apparent, that if the said convention should not take effect, it ought not to be attributed to the want of frank and friendly dispositions on the part of the King my master.

God preserve you many years.

Mr. Madison, Secretary of State, to the Marquis de Casa Yrujo, Minister of His Catholic Majesty.

DEPARTMENT OF STATE,
October 15, 1804.

SIR: Your letter of the 13th instant, communicating certain conditions which His Catholic Majesty considers as proper to be annexed to his ratification of the convention of August 11, 1802, now depending between the two Governments, has been laid before the President. One of these conditions refers to a section in an act of Congress passed on the 24th day of February last, regarded by His Catholic Majesty as disrespectful to his sovereignty, and requires, as a reasonable preliminary to the ratification of the depending instrument, that the said act should be freed, by authentic exposition, from the apparent import at which umbrage has been taken. It could not be learned by the President without some surprise, that the law in question should have given rise to complaint, and much more that it should be made a reason for suspending the final sanction of His Catholic Majesty to an instrument deliberately formed, and awaiting that single formality only for its completion. The President had certainly a right to expect that a legislative act, depending essentially for its effect in the particular case on his discretion, would have been left to the regular exposition and execution, before it should become the object of criticism and complaint from any foreign Government. He had a right, consequently, to prescribe this answer, when the act above cited was first made a subject of representation; and he might even now be justified in resting on this sound principle the reply to the representation which is repeated in the communication just received from you. Yielding, nevertheless, to the disposition of the United States to maintain the most friendly understanding with Spain, and to that frankness which is dictated by the integrity of his views, he charged me with the candid explanations which were contained in my letter of March the 19th last. These explanations, when received by His Catholic Majesty, cannot fail to satisfy him that the United States, not less careful to forbear than ready to resent real insults, could not have meditated, by the act complained of, the slightest disrespect to his rights or his sovereignty; and as the most definite proof of the sentiments entertained for His Catholic Majesty, I am now charged to enclose for his information the executive act of the President, founded on, and of a nature equally public with, the act of Congress aforesaid; by which it will be seen that, in expounding and applying the latter, there is the most exact conformity to the assurance given in the letter of March the 19th; that the operation of the 11th section would take place within the acknowledged limits of the United States, and would not be extended beyond them, until it should be rendered expedient by friendly elucidation, and adjustments with the Spanish Government. In order to hasten those, a special mission to Madrid was sometime since provided for; and if the destined Minister Extraordinary has not already repaired thither, the in-

structions, which will now be repeated, if no unfavorable considerations present themselves, may be expected soon to have that effect. In the meantime, the President concurs with the Spanish Government in the expediency of leaving things precisely *in statu quo*. And he persuades himself that it will be deemed equally expedient on both sides to give to this precaution its full effect, by a mutual forbearance to increase unnecessarily either within or on the borders of territories, the limits of which remain to be adjusted, military provisions of any kind, which, by exciting jealousies on one side or the other, may have tendencies equally disagreeable to both.

The other condition proposes to remodel the terms of the sixth article of the convention, which leaves for subsequent discussion the particular class of claims therein described. The President does not conceal his regret at seeing the ratification of the convention clogged with a condition which, if persisted in, could not easily be reconciled with that delicacy in such transactions which he has always felt a pleasure in ascribing to His Catholic Majesty, or with that desire which His Catholic Majesty has so often professed, to multiply proofs of his friendly sentiments towards the United States. If the preceding condition had not been the result of misconception, which can now no longer exist, it might have had a natural source in the sensibility, not unbecoming a magnanimous Government, and might have been urged by the considerations, it had reference to an event subsequent to the first assent given by His Catholic Majesty, and which, although distinct from the intrinsic merits of the convention, might raise a question how far the completion of it was permitted by a new state of things. The condition relating to the sixth article is of a character altogether different. The article, as it now stands, was negotiated under the eye and with the approbation of the Spanish Government. All the principles, all the facts, all the authorities of public law, were at that time the same as at present. And there can be the less reason for attempting to unsettle what was then decided, as the period of negotiation was sufficiently protracted for the most minute examination and the maturest reflection. If it be said that the alteration proposed would be in words only, and not in the meaning of the article, may it not with greater propriety be answered that, on that supposition, it cannot be of such importance as to be pressed as a condition which would require all the delay, and all the forms of a new stipulation, and which might have the effect of frustrating the convention altogether? For, without entering into a comparison of the article in its present terms with the substitute proposed, it is obvious that the difficulty of adjusting a form of expression—a difficulty not inconsiderable originally—would be much increased by the necessity of seeking in the relation of the new to the old article, as well as in the terms of the new, the precise construction which ought to be given to it.

Were it necessary to enforce these observations by an inquiry into the right of His Catholic Majesty to withhold his ratification in this case, it would not be difficult to show that it is neither supported by the principles of public law, nor countenanced by the examples which have been cited. According to the former, such a refusal ought to be founded either on a departure of the negotiating Minister from his instructions, or on intervening occurrences, or on some surprise or deception. Neither of these can be alleged. The Spanish Government itself was privy to the negotiation, leaving, consequently, its final act of ratification the merest ceremony. No new facts connected with the subject have come to light. The negotiation was so long on foot, and so fairly conducted, that neither surprise nor deception can possibly be pretended. In every such case, besides, the motive for refusal ought to be of great and evident importance. In the present case, the very argument for the change destroys the importance of it, since the change is alleged to be in the words, and not in the meaning, of the article. As to the examples cited, they bear no analogy to the case to which they are applied. In that of the Treaty of Peace at Paris of 1763, the plea, on the British side, is understood to have been a matter deeply interesting, which was discovered and declared by the negotiator himself on the very day of his signing the instrument. The other example of the conditional ratification here of a late convention with Great Britain is still more dissimilar; being occasioned by an important event—the acquisition of Louisiana by the United States—which might have given to one of the articles a scope contemplated by the instructions of neither party, nor within the knowledge or intention of either when signed by the negotiators. Another distinction absolutely decisive is, that the conditional ratification proceeded from the Senate, who, sharing in treaties on the final ratification only, and not till then even knowing the instructions pursued in them, cannot be bound by the negotiation like a sovereign, who holds the entire authority in his own hands. When peculiarities of this sort in the structure of a Government are sufficiently known to other Governments, they have no right to take exception at the inevitable effect of them.

With respect to the enlargement of the time for the assembling of the Commissioners, which can be done without any remodification of the convention, the President's respect for the wishes of His Catholic Majesty will not permit him to refuse his concurrence; although he does not himself perceive the necessity or advantage of it. The Commissioners who may be appointed on the part of the United States will accordingly be apprized that their proceedings are not to be commenced till the month of May next, unless further inquiry shall satisfy His Catholic Majesty that an earlier day will not be inconvenient.

On a view of the whole subject, as it now presents itself, the President infers, with confidence, that His Catholic Majesty, recollecting that the claims to be adjusted under the convention are of the most incontestable character, and finding that a disappearance of every other obstacle to his ratification leaves to him the sole decision between adhering to or relinquishing a condition, for which there cannot be a reason now which did not exist, and was not known at first, and which, as represented on his part, would otherwise be of too little importance to be turned against the act of his own Plenipotentiary, entered into with his own privity, will pursue the course which is prescribed not less by his delicacy, or rather his good faith, than by his love of justice, and the friendship subsisting between Spain and the United States.

In pressing thus the consummation of the suspended instrument, the President cannot be influenced by any peculiar advantage given by the terms of it to the United States. He well knows, as has been just noticed, that the claims therein provided for cannot ultimately be disallowed; and that the convention, if carried into effect in its present form, will still leave for subsequent accommodation several questions deeply interesting to the subsisting relations. If he indulges a solicitude on the occasion, it is because the state of the transaction has justly led the claimants into preparations and expectations, which would involve many in useless expense, and all in disappointment and disgust; because he regards the convention as a step towards a satisfactory adjustment of other depending and accruing questions; because a completion of it will dissipate appearances, which have already begotten inquietudes on both sides, and may embarrass an intercourse desirable and valuable to both; because in a word, it will be a pledge of future justice, at the same time that it guaranties the present harmony between the two nations. These are considerations which cannot surely be entitled to less weight with the Spanish Government than is allowed to them by that of the United States.

It will be added only, that, considering the disadvantages of every kind incident to the present state of uncertainty, and particularly that the arrangements here, preparatory to the execution of the convention, must be regulated by something more positive than an inference, however reasonable, that the instrument will receive from His Catholic Majesty an unqualified ratification, I need not remind you of the utility which would result from such assurances as your knowledge of the views of your Government may enable you to express to this, that the event may be now relied on. On this point, I shall hope for the favor of as early an answer as you can make it convenient to transmit for the information of the President.

I have the honor to be, &c.

JAMES MADISON.

IV.—*Instructions given by the Secretary of State to Mr. Monroe, and to Messrs. Monroe and Pinckney.*

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, *July* 29, 1803.

SIR: The communications by Mr. Hughes, including the treaty and conventions signed with the French Government, were safely delivered on the 14th instant. Enclosed is a copy of a letter written in consequence of them to Mr. Livingston and yourself.

On the presumption which accords with the information given by Mr. Hughes, that you will have proceeded to Madrid, in pursuance of the instructions of the 17th February last, it is thought proper to observe to you, that although Louisiana may, in some respects, be more important than the Floridas; and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it.

You will be at no loss for the arguments most likely to have weight in prevailing on Spain to yield to our wishes. These colonies, separated from her other territories on this continent by New Orleans, the Mississippi, and the whole of Western Louisiana, are now of less value to her than ever; whilst to the United States they retain the peculiar importance derived from their position, and their relations to us through the navigable rivers, running from the United States into the Gulf of Mexico. In the hands of Spain they must ever be a dead expense in time of peace; indefensible in time of war, and at all times a source of irritation and ill blood with the United States. The Spanish Government must understand, in fact, that the United States can never consider the amicable relations between Spain and them as definitively and permanently secured, with an arrangement on this subject, which will substitute the manifest indications of nature for the artificial and inconvenient state of things now existing.

The advantage to be derived to your negotiations from the war that has just commenced will certainly not escape you. Powerful, and it might be presumed effectual, use may be made of the fact that Great Britain meant to seize New Orleans with a view to the anxiety of the United States to obtain it; and of the inference from that fact, that the same policy will be pursued with respect to the Floridas. Should Spain be engaged in the war, it cannot be doubted that they will be quickly occupied by a British force, and held out on some condition or other to the United States. Should Spain be still at peace, and wish not to lose her neutrality, she should reflect that the facility and policy of seizing the Floridas must strengthen the temptations of Great Britain to force her into the war. In every view it will be better for Spain that the Floridas should be in the hands of the United States than of Great Britain; and equally so that they should be ceded on beneficial terms by herself, than that they should find their way to us through the hands of Great Britain.

The Spanish Government may be assured of the sincere and continued desire of the United States to live in harmony with Spain; that this motive enters deeply into the solicitude of their Government for a removal of the danger to it which is inseparable from such a neighbourhood as that of the Floridas; and that, having by a late convention with Great Britain adjusted every territorial question and interest with that nation, and the treaty with France concerning Louisiana

having just done the same with her, it only remains that the example be copied into an arrangement with Spain, who is evidently not less interested in it than we are.

By the enclosed note of the Spanish Minister here, you will see the refusal of Spain to listen to our past overtures, with the reasons for the refusal. The answer to that communication is also enclosed. The reply to such reasons will be very easy. Neither the reputation nor the duty of His Catholic Majesty can suffer from any measure founded in wisdom and the true interests of Spain. There is as little ground for supposing that the maritime Powers of Europe will complain of, or be dissatisfied, with a cession of the two Floridas to the United States, more than with the late cession of Louisiana by Spain to France, or more than with the former cessions through which the Floridas themselves have passed. What the treaties are subsequent to that of Utrecht, which are alleged to preclude Spain from the proposed alienation, have not been examined. Admitting them to exist in the sense put upon them, there is probably no maritime Power who would not readily acquiesce in our acquisition of the Floridas as more advantageous to itself, than the retention of them by Spain. Shut up against all foreign commerce, and liable at every moment to be thrown into the preponderant scale of Great Britain, Great Britain herself would unquestionably have no objection to their being transferred to us, unless it should be drawn from her intention to conquer them for herself, or from the use she might expect to make of them in a negotiation with the United States. And with respect to France, silence at least is imposed on her by the cession to the United States of the province ceded to her by Spain, not to mention that she must wish to see the Floridas, like Louisiana, kept out of the hands of Great Britain; and has, doubtless, felt that motive in promising her good offices with Spain for obtaining these possessions for the United States. Of this promise, you will, of course, make the proper use in your negotiations. For the price to be given for the Floridas, you are referred, generally, to the original instructions on this point. Although the change of circumstances lessens the anxiety for acquiring immediately a territory which now, more certainly than ever, must drop into our hands, and, notwithstanding the pressure of the bargain with France on our treasury, yet, for the sake of a peaceable and fair completion of a great object, you are permitted by the President, in case a less sum will not be accepted, to give two millions and a quarter of dollars, the sum heretofore apportioned to this purchase. It will be expected, however, that the whole of it, if necessary, be made applicable to the discharge of debts and damages claimed from Spain, as well those not yet admitted by the Spanish Government as those covered by the convention signed with it by Mr. Pinckney, on the 11th day of August, 1802, and which was not ratified by the Senate, because it embraced no more of the just responsibilities of Spain. On the subject of these claims, you will hold a strong language. The Spanish Government may be told plainly that they will not be abandoned any further than an impartial tribunal may make exceptions to them. Energy in the appeal to its feelings will not only tend to justice for past wrongs, but to prevent a repetition of them in case Spain should become a party to the present war.

In arranging the mode, the times, and the priorities, of paying the assumed debts, the ease of the Treasury is to be consulted as much as possible: less is not to be done with that view than was enjoined in the case of the French debts to our citizens. The stock to be engaged in the transaction is not to be made irredeemable without a necessity not likely to arise; and the interest, as well as the principal, should be payable at the Treasury of the United States. The only admissible limitation, on the redemption of the stock, is, that the holder shall not be paid off in in less than about one-fifth or one-fourth of the amount in one year.

Indemnifications for the violation of our deposit at New Orleans have been constantly kept in view in our remonstrances and demands on that subject. It will be desirable to comprehend them in the arrangement. A distinction, however, is to be made between the positive and specific damages sustained by individuals, and the general injuries accruing from the breach of treaty. The latter could be provided for by a gross and vague estimate only, and need not be pressed as an indispensable condition. The claim, however, may be represented as strictly just, and a forbearance to insist on it as an item in the valuable considerations for which the cession is made. Greater stress may be laid on the positive and specific damages capable of being formally verified by individuals; but there is a point beyond which it may be prudent not to insist even here; especially as the incalculable advantage accruing from the acquisition of New Orleans will diffuse a joy throughout the Western country, that will drown the sense of these little sacrifices. Should no bargain be made on the subject of the Floridas, our claims of every sort are to be kept in force.

If it be not possible to bring Spain to a cession of the whole of the two Floridas, a trial is to be made for obtaining either, or any important part of either. The part of West Florida adjoining the territories now ours, and including the principal rivers falling into the Gulf, will be particularly important and convenient.

It is not improbable that Spain, in treating on a cession of the Floridas, may propose an exchange of them for Louisiana beyond the Mississippi, or may make a serious point of some particular boundary to that territory. Such an exchange is inadmissible. In intrinsic value there is no equality; besides the advantage given us by the western bank of the entire jurisdiction of the river. We are the less disposed also to make sacrifices to obtain the Floridas, because their position and the manifest course of events guaranty an early and desirable acquisition of them. With respect to the adjustment of a boundary between Louisiana and the Spanish territories, there might

be no objection to combining it with a cession of the Floridas, if our knowledge of the extent and character of Louisiana were less imperfect. At present, any arrangement would be a step too much in the dark to be hazarded; and this will be a proper answer to the Spanish Government. Perhaps the intercommunications with the Spanish Government on this subject, with other opportunities at Madrid, may enable you to collect useful information and proofs of the fixed limits, or of the want of fixed limits, to Western Louisiana. Your inquiries may also be directed to the question, whether any, and how much, of what passes for West Florida, be fairly included in the territory ceded to us by France? The treaties and transactions between Spain and France will claim particular attention in this inquiry.

Should no cession whatever be attainable, it will remain only for the present to provide for the free use of the rivers running from the United States into the Gulf. A convenient deposit is to be pressed as equally reasonable there as on the Mississippi; and the inconveniency experienced on the latter, from the want of a jurisdiction over the deposit, will be an argument for such an improvement of the stipulation. The free use of those rivers for our external commerce is to be insisted on as an important right, without which the United States can never be satisfied; and without an admission of which, by Spain, they can never confide either in her justice or her disposition to cultivate harmony and good neighborhood with them. It will not be advisable to commit the United States into the alternative of war or a compliance on the part of Spain; but no representation short of that can be stronger than the case merits.

The instruction to urge on Spain some provision for preventing, or rectifying by a delegated authority here, aggressions and abuses committed by her colonial officers, is to be regarded as of high importance. Nothing else may be able to save the United States from the necessity of doing themselves summary justice. It cannot be expected that they will long continue to wait the delays and the difficulties of negotiating, on every emergency, beyond the Atlantic. It is more easy, and infinitely more just, that Spain and other European nations should establish a remedy on this side of the Atlantic, where the source of the wrongs is established, than that the complaints of the United States should be carried to the other side, and, perhaps, wait till the Atlantic has moreover been twice crossed in procuring information for the other party, with which a decision may be refused.

The navigation of the bay of St. Mary's is common to Spain and the United States; but a light-house, and the customary water marks, can be established within the Spanish jurisdiction only. Hitherto, the Spanish officers have refused every proper accommodation on this subject. The case may be stated to the Government of Spain, with our just expectation that we may be permitted either to provide the requisite establishments ourselves, or to make use of those provided by Spain.

This letter will be addressed to Madrid; but as it is possible that you may not have left Paris, or may have proceeded to London, a copy will be forwarded to Paris, to be thence, if necessary, sent on to London. In case it should find you either at Paris or London, it must be left to your own decision how far the call for you at either of those places ought to suspend these instructions. Should you decide to go to Madrid, it may be proper first to present your credence to the French or British Government, as the case may be; and to charge a fit person with the public business during your absence. Should you even be at Paris, and your commission filled up for London, it may be best to proceed first to London, if the call to Madrid be not very urgent.

I shall write to Mr. Pinckney, and inform him that this letter is intended for his use jointly with yours; though addressed to you alone, because in part not applicable to him. Should you suspend, or have suspended, your visit to Madrid, you will please to write to him also, giving him your ideas as to the expediency of prosecuting the object of the joint instructions or not until you can be with him.

I have the honor to be, &c.,

JAMES MADISON.

The Secretary of State to James Monroe, Esq., their Minister Extraordinary, jointly with Charles Pinckney, Esq., to the Court of Spain, dated

DEPARTMENT OF STATE, *April* 15, 1804.

SIR: It being presumed that, by the time of your receiving this communication, the negotiation, with which you were charged by my letter of the 5th January last, will no longer require your presence in London, the President thinks it proper that you should now proceed to Madrid, and, in conjunction with Mr. Pinckney, open a negotiation on the important subjects remaining to be adjusted with the Spanish Government. You will understand, however, that besides the consideration how far your immediate departure may be permitted by the state of our affairs with the British Government, or by events unknown at this distance, you are at liberty to make it depend in a due degree on the prospect of active co-operation or favorable dispositions from quarters most likely to influence the councils of Spain. It will be of peculiar importance to ascertain the views of the French Government. From the interest which France has in the removal of all sources of discord between Spain and the United States, and the indications given by her present Government of a disposition to favor arrangements for that purpose, particularly in relation to the territory remaining to Spain on the eastern side of the Mississippi, and from the ascendancy which the French Government has over that of Spain, of which a recent and striking proof has been given in the prompt accession of the latter on the summons of the former, to the transfer of Louisiana to the United States, notwithstanding the orders which had been transmitted to the Spanish Envoy here to protest against the right to

make the transfer, much will depend on, and much is expected from, the interposition of that Government, in aid of your negotiations. Mr. Livingston has been instructed to cherish the motives to such an interposition, as you will find by the extract from my letter to him herewith enclosed; and if you should take Paris in your way to Madrid, as it is probable, you will not only be able to avail yourself of all his information, but will have an opportunity of renewing the personal communications which took place during your joint negotiations.

The objects to be pursued are, 1st, an acknowledgment by Spain that Louisiana, as ceded to the United States, extends to the river Perdido; 2d, a cession of all her remaining territory eastward of that river, including East Florida; 3d, a provision for arbitrating and paying all the claims of citizens of the United States not provided for by the late convention, consisting of those for wrongs done prior to the last peace, by other than Spanish subjects, within Spanish responsibility, for wrongs done to the Spanish Colonies by Spanish subjects or officers, and for wrongs of every kind for which Spain is justly responsible, committed since the last peace. On the part of the United States, it be may stipulated that the territory on the western side of the Mississippi shall not be settled for a given term of years, beyond a limit not very distant from that river, leaving a spacious interval between our settlements and those of Spain, and that a sum of —— dollars shall be paid by the United States in discharge of so much of the awards to their citizens. It may also be stipulated, or rather may be understood, that no charge shall be brought by the United States against Spain, for losses sustained from the interruption of the deposit at New Orleans.

The subjoined draught puts into form and into detail the arrangement to which the President authorizes you to accede; relying on your best efforts to obtain better terms, and leaving to your discretion such modifications as may be found necessary, and will not materially affect the proportion between the gains and the concessions by the United States.

Art. 1. § 1. Spain acknowledging and confirming to the United States the cession of Louisiana, in an extent eastwardly to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands annexed thereto, either whilst the Floridas belonged to Great Britain, or after they became provinces of Spain.

Or, if the article be unattainable in that form, Spain cedes to the United States forever all the territory, together with all the islands belonging thereto, which remain to her between the Mississippi, the Atlantic, and the Gulf of Mexico.

§ 2. Possession of the said territory shall be delivered to a person or persons authorized by the United States to receive the same, within —— days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, excepting ships and military stores, as also all public archives belonging to the provinces comprehending the said territory.

§ 3. Within ninety days after the delivery of possession, or sooner, if possible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

§ 4. Spanish subjects within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real property, and to remove or dispose of their property.

§ 5. The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the Treaty of the 30th April, 1803, with the French Republic.

Art. 2. § 1. It is agreed that, for the term of —— years, no lands shall be granted, nor shall persons who may have settled since October 1, 1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting on one side of the river Sabine, or Mexicano, from the sea to its source; thence, a straight line to the confluence of the rivers Osages and Missouri; and by a limit on the other side, consisting of the river Colorado, (or some other river emptying into the bay of St. Bernard,) from its mouth to its source; thence a straight line, to the most southwestwardly source of the Red river, with such deflections, belonging to the Missouri and the Mississippi from those belonging to the Rio Bravo, to the latitude of the northernmost source of that river; and thence, a meridian to the northern boundary of Louisiana.

§ 2. Such of the settlements within the foregoing limits, not prohibited by article 2, section 1, as were not under the authority of the Government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will respectively offer reasonable inducements, without being obliged to use force, to all such settlers to retire from the space above limited, and establish themselves elsewhere.

§ 3. The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as far as may be necessary for that purpose; and each of the parties agrees to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions of any sort on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the

Indians, to promote in them a disposition to live in peace and friendship with the other party.

§ 4. It shall be free for Indians now within the territories of either of the parties to remove to, and settle within, the said limits, within its territories; taking due care not to make it an occasion of war among the Indians, or of animosities in any of them against the other party.

§ 5. The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish Government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she had them at the date of her cession to France, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

§ 6. It shall be free for either of these parties to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

Art. 3. It is agreed that, within —— years previous to the expiration of the aforesaid term of —— years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true extent of Louisiana, as ceded by Spain to France, and by France to the United States; uninfluenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention.

Art. 4. Whereas, by the sixth article of the convention signed at Madrid, on the 11th day of August, 1802, it is provided, that, as it had not been possible for the Plenipotentiaries of the two Powers to agree upon a mode by which the Board of Commissioners to be organized in virtue of the same should arbitrate the claims originating from the excesses of foreign cruisers, agents, consuls, or tribunals, in their respective territories, which might be imputable to their two Governments &c; and whereas, such explanations have been had upon the subject of the article aforesaid, as have led to an accord; it is, therefore, agreed that the Board of Commissioners to be organized, as aforesaid, shall have power for the space of eighteen months, from the exchange of ratifications hereof, to hear and determine, in the manner provided as to the other claims in the said convention, all manner of claims of the citizens and subjects of either party, for excesses committed, by foreign cruisers, agents, consuls, or tribunals, in their respective territories, which may be imputable to either Government, according to the principles of justice, the law of nations, or the treaties between the two Powers; and also all other excesses committed, or to be committed, by officers or individuals of either nation, contrary to justice, equity, the law of nations, or the existing treaties, and for which the claimants may have a right to demand compensation.

Art. 5. It is further agreed, that the respective Governments will pay the sums awarded by the said Commissioners under this convention, and also those which have been or may be awarded under that of the 11th of August, 1803, in manner following:

The Government of the United States will pay all such sums, not exceeding in all, —— dollars, which may be awarded as compensation to citizens of the United States, from His Catholic Majesty, in three annual instalments, at the City of Washington; the first instalment to be paid in eighteen months after the exchange of ratifications hereof, or, in case they shall not be so paid, they shall bear an interest of six per cent. per annum, from the time when they became due, until they are actually discharged; and in case the aggregate of the said sums should not amount to the said sum of —— dollars, the United States will pay to His Catholic Majesty, within one year after the final liquidation of the claims cognizable by the said board, at the City of Washington, so much as the said aggregate may fall short of the sum above-mentioned; but, on the other hand, if the whole amount of the sums awarded to citizens of the United States should exceed the sum of —— dollars, His Catholic Majesty shall pay the surplus, without deduction, to such of the claimants, and at such times and places, as the said Commissioners shall appoint.

The Government of the United States will also pay, without deduction, at the City of Washington, all such sums as may be awarded against them by the said Commissioners for compensation due to Spanish subjects, at such times as shall be appointed in the awards respectively.

This convention shall be ratified within —— days after the signing thereof, and the ratifications shall be exchanged within —— days after the ratification by the United States, at the City of Washington.

OBSERVATIONS.

The first form of article 1, section 1, is preferred, because it explicitly recognises the right of the United States under the Treaty of St. Ildefonso, and of April 30, 1803, to the river Perdido, which is constructively provided for only in the second form. It is indispensable that the United States be not precluded from such a construction, first, because they consider the right as well founded; secondly, and principally, because it is known that a great proportion of the most valuable lands between the Mississippi and the Perdido have been granted by Spanish officers since the cession was made by Spain. These illicit speculations cannot otherwise be frustrated than by considering the territory as included in the cession made by Spain, and thereby making void all Spanish grants of subsequent date.

It is represented that these grants have been extended, not only to citizens of the United States, but to others whose interest now lies in supporting the claim of Spain to that part of Louisiana,

in opposition to that of the United States. It is conjectured that M. Laussat himself has entered into these speculations, and that he felt their influence in the declaration made confidently to our Commissioners at New Orleans, that no part of West Florida was included in Louisiana.

In supporting the extent of Louisiana to the Perdido, you will find materials for your use in the extract above referred to, and the other documents annexed, to which you will add the result of your own reflections and researches. The secret treaty between France and Spain, ceding Louisiana west of the Mississippi to Spain, and which has never been printed, may doubtless be obtained at Paris, if not at Madrid, and may be of use in the discussion. From the references in the French Orders of 1764, for the delivery of the Province, it is presumed to be among the archives at New Orleans; and Governor Claiborne has been requested to send a copy of it: but it may not be received in time to be forwarded for your use. In an English work, "the Life of Chatham," printed in 1793, for J. S. Gordon, London, No. 166, Fleet street, I find a memorial referred to, but not there printed, with the other negotiations preceding the Peace of 1762–'63, expressly on the subjects of the limits of Louisiana, and, as sufficiently appears, with a view to give the Province its extent to the Perdido. You will, perhaps, be able to procure in London or Paris a sight of this document; it probably contains most of the proofs applicable to the question, and will be the more important as proceeding from France; it will strengthen our lien on her seconding our construction of the treaty. The memorial will be the more important still, if it should be found to trace the western limits also of Louisiana, and to give it a corresponding extent on that side. In page 416 and sequel of volume 1, you will see the fact established that the Floridas, including the French part, were ceded to Great Britain as the price for the restoration of Cuba, and that, consequently, the French part now claimed by the United States was a cession purely for the benefit of Spain.

The reasons, beyond the advantages held out in the arrangement itself, which may be addressed to Spain as prompting a cession of her remaining territory, eastward of the Perdido, will be found in the remarks in the extract aforesaid, in the instructions to Mr. Pinckney and yourself of ths 17th day of February last, and in those which have, from time to time, been given to Mr. Pinckney. The Spanish Government cannot but be sensible that the expense of retaining any part of that territory must now more than ever exceed any returns of profit; that, being now more than ever indefensible, it must the more invite hostile expeditions against it from European enemies; and that, whilst in her hands, it must be a constant source of danger to harmony with the United States.

The arrangement made in article second supposes that Louisiana has a very great extent westwardly, and that the policy of Spain will set much value on an interval of desert between her settlements and those of the United States. In one of the papers now transmitted, you will see the grounds on which our claim may be extended even to the Rio Bravo. By whatever river emptying into the Gulf eastward of that of Spain may with any plausibility commence the western boundary of Louisiana, or however continue it thence to its northern limit, she cannot view the arrangement in any other light than a liberal concession on the part of the United States, to be balanced by an equivalent concession on her part. The limit to the interval on our side is to be considered as the ultimatum, and, consequently, not to be yielded without due efforts to fix a limit more distant from the Mississippi. It is highly important, also, or rather indispensable, that the limit on the Spanish side should not be varied in any manner that will open for Spanish occupancy any part of the waters connected with the Missouri or Mississippi. The range of highlands separating these waters from those of the Rio Bravo, and other waters running westward, presents itself so naturally for the occasion, that you will be able to press it with peculiar force.

To enable you the better to understand the delineations contained in this article, and any others which may be brought into discussion, I forward herewith copies of two maps, and refer you to two others, viz: that of Danville, which you will find either at London or Paris, and, if nowhere else, in Postlewait's Directory, and a map by Mr. ——, in 1768, referred to in one of those forwarded. The latter you will doubtless be able to procure at Madrid. The blank for the term of years is not to be filled with more than —— years, nor with that number, if a shorter term can be substituted.

The fourth and fifth articles relate to claims against Spain, not provided for by the convention already entered into, and the payment to be assured by the United States. For the reasoning in support of the claims founded on wrongs, proceeding from other than Spanish subjects, I refer you to the letters and instructions to Mr. Pinckney; your communications with him will also furnish the grounds on which the claims resulting from injuries done to our citizens in the Spanish colonies are to be maintained. The reasonableness of a residuary provision for all just claims is implied by the concurrence of Spain in establishing a Board of Commissioners for the cases already submitted to it.

You will not fail to urge on the Spanish Government the sixth article of the Treaty of 1795, as particularly applicable to cases where other than Spanish subjects have committed spoliations on our vessels and effects within the extent of Spanish jurisdiction, by sea or by land. To justice and the law of nations, this adds the force of a positive stipulation, which cannot be repelled without proving, what cannot be proved, that the Spanish Government used all the means in its power to protect and defend the rights of our citizens; and which cannot be resisted, without pleading, what self-respect ought not to permit to be pleaded, that the sovereignty of His Catholic

Majesty was under duress from a foreign Power within his own dominions.

The sum of money to be paid by the United States, is, in no event, to exceed two millions of dollars in cash, at the Treasury of the United States, not in public stock, and is to be applied toward the discharge of awards to our citizens; and it is hoped that a much smaller sum will be found sufficient.

If Spain should inflexibly refuse to cede the territory east of the Perdido, no money is to be stipulated. If she should refuse also to relinquish the territory westward of that river, no arrangement is to be made with respect to the territory westward of the Mississippi; and you will limit your negotiations to the claim of redress for the cases of spoliation above described.

If Spain should yield on the subject of the territory westward of the Perdido, and particularly if a comprehensive provision for the claims should be combined therewith, you may admit an arrangement westward of the Mississippi, on the principle of that proposed, with modifications, however, if attainable, varying the degree of concession, on the part of the United States, according to the degree in which Spain may concur in a satisfactory provision for the cases of the territory westward of the Perdido, and of the claims of indemnification.

The United States having sustained a very extensive though indefinite loss, by the unlawful suspension of their right of deposit at New Orleans, and the Spanish Government having admitted the injury by restoring the deposit, it will be fair to avail yourself of this claim in your negotiations, and to let Spain understand that, if no accommodation should result from them, it will remain in force against her.

The term of years, during which the interval between the settlements of the United States and of Spain are to be prohibited, is a consideration of great importance. A term which may appear a moment to a nation stationary, or slowly advancing in its population, will appear an age to a people doubling its population in little more than twenty years, and, consequently, capable in that time of covering with an equal settlement double the territory actually settled. This reflection will suggest the expediency of abridging the continuance of the prohibition as much as the main objects in view will permit. Twenty years are a limit not to be exceeded. Fifteen, or even ten, if the space between the Mississippi and the interval territory be not enlarged, seem to be as much as Spain can reasonably expect. She cannot but be sensible, and you will make use of the idea if you find it prudent so to do, that, before a very long time will elapse, the pressure of our growing population, with events which time does not fail to produce, but are not foreseen, will supersede any arrangements which may now be stipulated, and, consequently, that it will be most prudent to limit them to a period susceptible of some certain calculations.

No final cession is to be made to Spain of any part of the territory on this side of the Rio Bravo, but in the event of a cession to the United States of the territory east of the Perdido; and, in that event, in case of absolute necessity only, and to an extent that will not deprive the United States of any of the waters running into the Missouri or the Mississippi, or the other waters emptying into the Gulf of Mexico between the Mississippi and the river Colorado, emptying into the bay of St. Bernard.

No guaranty of the Spanish possessions is to be admissible.

This letter is intended for Mr. Pinckney as well as yourself, and as containing the instructions by which the execution of your commission is to be guided.

APRIL 18.

The President being absent, and it being most proper to wait his return, which may be shortly expected, before any final instructions be given as to your immediate destination, after closing your mission to Spain, which may be shortened or spun out, according to circumstances, I recommend that you do not actually leave London until you hear again from me. The moment the President arrives I will communicate to you his views by multiplied conveyances, that you may receive them with as little delay as possible. In the meantime, you will make such preparations as will enable you to depart at a short notice.

Mr. Madison to Messrs. Monroe and Pinckney.

DEPARTMENT OF STATE,
July 8, 1804.

GENTLEMEN: Since the instructions given you on the 15th of April last, further views have been obtained with respect to the interior of Louisiana, and the value which Spain will probably put on such a limitation of our settlements beyond the Mississippi as will keep them for some time at a distance from hers. The President has accordingly become the more anxious that, in the adjustment authorized by those instructions, the terms may be made favorable to the United States. He does not, indeed, absolutely restrain you from yielding to the ultimatum therein fixed, in case it be required by the inflexibility of the Spanish Government, and particularly by the posture and prospect of affairs in Europe; but he is not a little averse to the occlusion, for a very long period, of a very wide space of territory westward of the Mississippi, and equally so to a perpetual relinquishment of any territory whatever eastward of the Rio Bravo. If this river could be made the limit to the Spanish settlements, and the Rio Colorado the limit to which those of the United States may be extended; and if a line northwest or west from the source of whatever river may be taken for the limit of our settlements could be substituted for the ultimatum line running from the source of the Sabine to the junction of the Osages with the Missouri, and thence, northward, parallel with the Mississippi, the interval to be unsettled for a term of years would be defined in a manner peculiarly satisfactory. The degree, however, in which you are to insist on these me-

liorations of the arrangement, must be regulated by your discretion, and by the effect which the probable course of events will have on the temper and policy of Spain. Should she be engaged in the war, or manifestly threatened with that situation, she cannot fail to be the more anxious for a solid accommodation on all points with the United States; and the more willing to yield, for that purpose, to terms, which, however proper in themselves, might otherwise be rejected by her pride and misapplied jealousy. According to the latest accounts from Great Britain, a revolution in the Ministry, if not a change on the throne, was daily expected; and, from either of those events, an extension of the war to Spain, if not precluded by the less probable event of a speedy peace with France, would be a very natural consequence. It is to be understood that a perpetual relinquishment of the territory between the Rio Bravo and Colorado is not to be made, nor the sum of —— dollars paid without the entire cession of the Floridas; nor any money paid in consideration of the acknowledgment by Spain of our title to the territory between the Iberville and the Perdido. But a proportional sum out of the —— dollars, may be stipulated for a partial cession of territory eastward of the Perdido. If neither the whole nor part of East Florida can be obtained, it is of importance that the United States should own the territory as far as the Appalachicola, and have a common, if not exclusive right to navigate that stream. I must repeat that great care is to be taken that the relinquishment by Spain of the territories westward of the Perdido be so expressed as to give to the relinquishment of the Spanish title the date of the Treaty of St. Ildefonso. The reason for this was before explained, and is strengthened by recent information, as you will find by the annexed extract of a letter from Governor Claiborne. Other proofs might be added. In any further cession of territory, it may be well so to define it, as to guard as much as possible against grants irregular or incomplete, or made by Spanish officers in contemplation of such a cession.

On entering into conferences with the Spanish Ministry, you will propose and press, in the strongest manner, an agreement that neither Spain nor the United States shall, during the negotiation, strengthen their situation in the territory between the Iberville and the Perdido, and that the navigation of the Mobile shall not be interrupted. An immediate order from the Spanish Government to this effect may be represented as of the greatest importance to the good understanding between the two countries; and that the forbearance of the United States thus long is a striking proof of their sincere desire to maintain it. If such an order should be declined, you will not fail to transmit the earliest information of it, as well as to keep up such representations to that Government on the subject, as will impress it with the tendency of so unreasonable and unfriendly a proceeding to drive the United States into arrangements for balancing the military force of Spain in that quarter, and for exerting their right of navigation through the Mobile. This navigation has become important, or rather essential; and a refusal of Spain to acquiesce in it must commit the peace of the two nations to the greatest hazard. The posture of things there is already extremely delicate, and calls for the most exemplary moderation and liberality in both the Governments. As a proof of it, I enclose a correspondence between Governor Claiborne and the Spanish Government at Pensacola, on the same subject as that of mine with the Marquis de Yrujo, already transmitted to you.

I have the honor, &c.

JAMES MADISON.

J. Monroe and C. Pinckney, Esqs.

The Secretary of State to Mr. Monroe.

Department of State, *Oct.* 26, 1804.

Sir: The turn which our affairs have taken at Madrid renders it expedient, in the judgment of the President, that you should proceed thither without delay, in execution of the instructions heretofore given, with such alterations and additions as are contained in this letter. You will, of course, make such communications to the British Government on your departure as will guard your mission against injurious misconstructions; and at Paris, on your route you will avail yourself of all the opportunities there for ascertaining and turning to just account the dispositions of the French Government with respect to the questions depending between the United States and Spain.

As Mr. Pinckney may have left Madrid, and, if not, is on a footing unfavorable for cordial negotiations with the Spanish Ministry, I enclose herewith a new letter of credence and commission, enabling you singly to execute the trust. Should a successor to Mr. Pinckney be appointed, and arrive in time, it will be decided by the President how far he will be associated in the business.

For a view of the circumstances which call for your presence at Madrid, I refer you to the late correspondence here with the Marquis de Yrujo, of which a copy is annexed, and to that with Mr. Pinckney, and to his with Mr. Cevallos, which his files will furnish you. I add also a letter of this date from the Department of State to Mr. Pinckney.

Notwithstanding the rumor which appears to have spread in Europe of an impending rupture between Spain and the United States, there is nothing in the avowed sentiments of the Spanish Government, and certainly nothing in the sound policy of Spain, to justify an inference that she wishes to be no longer at peace with us. It may reasonably be expected, therefore, that you will meet with a friendly reception. In return, you are authorized by the President to give every proper assurance of the desire of the United States to maintain the harmony and to improve the confidence between the two nations; and, with this view, to hasten, by frank elucidations and equitable accommodations, a removal of every source from which discord might arise. You will not

fail, at the same time, to recollect, in conveying these amicable sentiments, the propriety of leaving the Spanish Government under an impression that they flow neither from a fear of the Spanish Power, nor a belief that Spain sets little value on a continuance of peace with us. If the United States have a deep interest in avoiding war, they know that Spain cannot feel less of interest in avoiding it, and is in no condition, therefore, to extort sacrifices, or to risk the consequences of such an experiment.

If no exchange of ratifications of the convention of August 11, 1802, should have preceded your arrival at Madrid, the President has authorized you to make the exchange; but it is on the expectation that the Spanish ratification will be absolutely unqualified. It must be not only without conditions, but without *protestandos* or declarations of any sort. Rather than admit them, it is thought better to let the convention drop altogether, and to incorporate its provisions with those of a similar kind, making part of the general accommodation with which you are charged. Indeed, if there be a prospect of effecting this accommodation without delay, there may be an advantage in laying aside the convention of 1802, as there will be an opportunity of giving to some of its articles both more precision and more comprehension. You will find some hints on this subject in the letters heretofore written to Mr. Pinckney, and may derive others from similar provisions in former conventions.

The spoliations by French citizens chargeable on Spanish responsibility will be an important topic in your negotiations, whether the convention of 1802 be separately carried into effect, or be consolidated with a new one.

It is clear, as has been distinctly and repeatedly stated in the instructions given to Mr. Pinckney, that where the capturing vessels were equipped in Spanish ports, or the prizes made or condemned within Spanish jurisdiction, Spain is answerable for them to the United States. This, as a general principle, has not been denied. But two pleas are offered, as rendering the principle inapplicable to the claims of our citizens. One is, that the circumstances in which Spain was placed disabled her from controlling the wrongs done by French citizens; the other, that the convention between the United States and France having relinquished the claim of indemnities against the latter, Spain became thereby absolved also; inasmuch as the relinquishment to France would otherwise be so far frustrated by her obligation to satisfy Spain for the indemnities paid by her to the United States.

The first plea alone was advanced in the early stages of the discussion. The second was pretty certainly suggested by the Spanish Minister here, who, for that reason, may be the more anxious to see it prevail; and it has been abetted by the rescripts of several American lawyers, obtained, doubtless, by the same Minister, on a hypothetical case, so stated as to educe the desired opinion.

With respect to the first plea, it is too little consistent with the honor of Spain to be perse-vered in, and has been but feebly urged since the second occurred. It would require, besides, from Spain satisfactory proof that she made every reasonable effort to maintain her own authority against the coercive intrusion of that of France. No such proof has been offered or attempted. In truth, no serious effort appears to have been made; and it may fairly be presumed that the pliability of Spain was either the result of a positive understanding with France, or a compliance offered as a price for some equivalent advantage.

With respect to the second plea, so far as it respects the opinion of the lawyers, I refer, for the light in which it ought to be regarded, to the observations made in my letter of —— to Mr. Pinckney.

In its merits, the plea is equally unsustainable. In the first place, some of the French citizens, whose irregularities are charged on Spain, were private citizens, having no commissions from France, in whose proceedings France cannot be supposed to have taken any interest, and for which, therefore, she might justly refuse to be answerable. In the next place, others of the wrongdoers, though once commissioned by France, may at the time have been without commissions, or have retained dead commissions only. For these, also, as in fact private citizens, France may refuse to be answerable. Again, in cases where the captures are stated to have been numerous, being made within the territorial jurisdiction of Spain, were controllable by Spain, and probably not patronised by France, no sufficient ground appears on which France could be made chargeable.

The responsibility of Spain in this last case is the more direct and positive, as she is bound, by the sixth article of the treaty of October, 1795, to use all her efforts to recover and restore to the right owners their vessels and effects, which may have been taken within the extent of her jurisdiction by sea or land, whether they are at war or not with the Power whose subjects have taken possession of the said effects.

Lastly, therefore, the cases for which France is eventually liable, because presumably a party to them, are those only in which her commissioned cruisers on the high seas were the captors, and her agents in the Spanish ports the instruments of condemnation; the several other cases, with such as may have happened between the convention with France of September 30, 1801, and that with Spain of August 11, 1802, being as unsustainable against France, without the principle on which the Spanish plea is founded.

As to this last class of cases, proceeding from French officers and French agents, as well as every other which can be traced to the sanction and support of France, it is certain that eventual resort may be had to France for indemnification.

But it is no less clear that this eventual remedy does not interfere with the right of the United States to resort in the first instance to Spain, as in the first instance, and in the ordinary course, responsible for the injuries committed. French citizens, like all other aliens within Spanish ju-

risdiction, are, for the time and place, Spanish subjects. As such they are regarded by Spain herself; as such they are regarded by other nations, and as such Spain is answerable for their conduct to other nations in the same manner as she is answerable for that of her permanent subjects.

Could it be shown, therefore, that France had been released from her responsibility, it would not follow that the release of Spain was involved in that of France. France would only have been released from her eventual responsibility, (where it even existed,) whilst Spain would have remained under her immediate responsibility. Both may be considered as bound to indemnify the United States; Spain as the primary, France as the secondary debtor; Spain as the principal, France as a surety; and the release of France, consequently, is no more releasing Spain, than the release of a surety would release the principal debtor. This view of the subject derives force from the consideration that the United States have, from the beginning, addressed their claims to Spain as primarily and principally bound to satisfy them.

But to cut up this plea by the roots, it may be affirmed that no such release has been given by the United States to France. The convention, from which the plea is derived, expressly binds France, in the third article, to indemnification for all captures which might be subsequent to the date of the instrument, and also in cases where no definitive condemnation had, at that date, taken place. Now, the condemnations by French agents in Spanish ports are neither definitive condemnations, nor any legal condemnations at all. The degree of authority and forms of proceeding meant by France to be intrusted to her commercial agents in foreign countries, appear to have been different at different times; and it may deserve inquiry what they were at the respective dates of the cases in question. By a law of the Republic of October, 1795, it would seem that the authority was first granted, and in an unconditional form. By a law of their Consular Government, however, of 8 Germinal, year 8, the same authority was granted, with the following modification: "Et dans le cas où le présent règlement pourra recevoir son exécution, ils rempliront toutes les fonctions dont il charge l'officier d'administration des parts de la république, en se faisant assister de deux assesseurs, choisis, s'il est possible, parmi les citoyens François immatriculés et établis dans le lieu de la résidence de ces commissaires." The proviso implied by the expression "et dans le cas où le présent règlement pourra recevoir son exécution," combined with the preceding reference to treaties, &c., will show that the authority was not to be exercised without the consent of the foreign country where the trial was to be had. And by a Spanish regulation in 1799, referred to, and enclosed in my letter to Mr. Pinckney of 8th of March, 1803, it is expressly declared, that the jurisdiction of the French agents in Spanish ports was not admitted by the Spanish Government. It will deserve inquiry, also, in what light France herself may view the condemnations assumed by her agents in Spanish ports. From some information lately received from Mr. Skipwith, it may be inferred that they are not classed with those relinquished to her by the United States, and, if not mere nullities, are at least within the exceptions to the relinquishment stated in the third article of the convention of 1801; and, consequently, were it possible for Spain to prove the duress she alleges, would be eventually chargeable on France, according to her own view of the subject, so far as her judicial regulations may have been pursued by the individual sufferers.

In fine, the proceedings in question were either valid or not valid. If not valid, the release of France cannot be applicable to them, and the plea of Spain falls. If valid, the validity must proceed from the sanction given to them by Spain herself, since, without that sanction, the French authority could not operate within the sovereignty of Spain; and with that sanction, the proceedings would be virtually the acts of Spain, and the more undeniably chargeable to her account.

Thus, in every view of the subject, Spain will find it impossible to evade the obligation to include, in a just and honorable settlement with the United States, the French spoliations charged on her, as well as those committed by Spanish subjects.

Still her pride may adhere to objections which have been so pertinaciously, though with such little reason, urged by her. To spare this, her retreat may be covered by general expressions confounding the French with the other spoliations; or it may, if necessary, be still more effectually spared by a tacit relinquishment, at the same time, on the part of the United States, of the indemnities for the interruption of the deposit at New Orleans, which, being an express violation of treaty, forms a claim against Spain which she cannot controvert, and of which the Government of the United States has never lost sight. In such a relinquishment, it will be desirable, if practicable, to except such of the few claims for losses sustained by individuals, as can be properly specified and verified; limiting, thereby, the relinquishment to the general injury done to the body of the people by the unlawful obstruction of their commerce. A reparation for this injury is clearly due to the American nation, and Spain has no reason to expect that it will be abandoned without a valuable consideration of some kind or other.

For your guide in your general negotiations, you will take the instructions heretofore addressed jointly to Mr. Pinckney and yourself, with one alteration, however, which is authorized by the President. In case the Spanish Government shall refuse to cede the territory eastward of the Perdido, and shall require, as indispensable to an acknowledgment of our title to the territory westward of that river, an acknowledgment on our part that, in ultimately establishing the western boundary of Louisiana, the pretensions of the United States shall not go beyond the proposed western limit to the interval of desert, to wit: the river Colorado, a line thence to the source of Red river, thence, along the highlands, &c., you are authorized, after reasonable endeavors otherwise to effect your object, to acquiesce in the acknowledgment so required.

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE, *May* 4, 1805.

SIR: I have just received your letter of the 2d of February, and one of the same date, signed by Mr. Pinckney also, with the communications attached to them. Those of the preceding dates, of the 27th of November, 16th of December, and 19th of January, had been previously received.

Observing that, in the project delivered to the Spanish Government, you have omitted the provision contained in the plan for a general accommodation, transmitted in my letter of April 15, 1804, for claims subsequent to the date of the convention of August, 1802, I lose no time in referring you to that letter, and to another of the 26th of October following, in which the course to be pursued is marked out, and in reminding you of the great importance of not losing sight of that class of claims which are of great amount, are daily increasing, and which ought to be embraced to as late a date as possible. Should your negotiation, therefore, be still open, I recommend this subject to your particular attention. Should the negotiations have been successfully closed, it will be proper for you to procure, if it can be done, a supplemental article for the purpose. If this cannot be done, or if the negotiations should have failed, the instructions adapted to that state of things will be given to Mr. Bowdoin, as soon as it shall be known here.

I recommend, in like manner, to your attention the remarks contained in my letter of March 22, 1803, to Mr. Pinckney, on the modifications proper to be given to the text of a convention; and the remark in my letter of October 26, 1804, relative to the Spanish garrison, which alone may be permitted to continue.

With high consideration, &c.,

JAMES MADISON.

JAMES MONROE, Esq., *Madrid.*

Mr. Madison to Mr. Monroe.

DEPARTMENT OF STATE,
May 23, 1805.

SIR: I have duly received the several communications transmitted by Mr. Pinckney and yourself, under date of the 1st March last. I have also received from General Armstrong copies of his letters to you of the 12th and 18th of March. The passages in this last, in cipher, having not been copied into that used by this Department with General Armstrong, remain locked up, but probably do not affect the general tenor of this letter.

From these communications, it appears that France has arranged herself on the side of Spain in such a manner that Spain will neither be disposed nor be permitted to bend to our claims, either with respect to West Florida or the French spoliations. What part France may take in relation to the western boundary of Louisiana seems not to have been disclosed. From the silence on that point, in Talleyrand's note of November 8th, in answer to yours, in which the claim of the United States to the Rio Bravo is expressly asserted, and from the confidential acknowledgment of that boundary by M. Laussat to Governor Claiborne and General Wilkinson, it might be expected that, on this important point, France would side with us against Spain. Should this be the case, it is hoped, notwithstanding the unfavorable posture of the negotiation, that there will be room to give it some such result as was contemplated. But there is so little reliance to be placed on the temper and views of France, as lately developed, that a failure of your efforts ought to be anticipated. The alternative presented by this event is that of war, or a state of things guarding against war for the present and leaving in vigor our claims to be hereafter effectuated. Against war, if to be safely and honorably avoided, the considerations are obvious and powerful. As it is a question which belongs to Congress, not to the Executive, that consideration alone forbids any step, on the part of the latter, which would commit the nation, and so far take from the Legislature the free exercise of its power. And it may be fairly presumed, considering the daily increase of our faculties for a successful assertion of our rights by force, that neither the nation nor its representatives would prefer a resort to arms to a state of things which would avoid it, without hazarding our rights or our reputation. The two essential articles in such a state of things are, 1st. A forbearance on the part of Spain, as well as of the United States, to augment their settlements, or to strengthen in any manner their military establishments within the controverted limits; 2dly. Not to obstruct the free communication from our territories through the Mobile and other rivers mouthing in the Gulf of Mexico, or through the Mobile at least.

In the first of these articles must be included a forbearance on the part of Spain to introduce slaves, as well as free persons, not only as in one sense augmenting her settlements, but as facilitating a clandestine introduction of them, already complained of, into the territories of the United States. It can hardly be supposed that Spain will object to this article, even with such an explanation of it; and if the language of the French Minister here be any test of the sentiments of his Government, it may be expected that France will favor the arrangement. This Minister has repeatedly and strongly declared that, until all questions concerning the boundary of Louisiana should be adjusted, a *statu quo* was the natural and just policy to be observed.

The second article is, perhaps, not less essential as a precaution for maintaining peace. Every moment of delay threatens collisions which lead to war. The necessity of that channel for the exports and imports of the increasing settlements on the Mobile, above the Florida limit, and for

conveying our public stores to the military stations in that quarter, prove at once the reasonableness of this demand and its close connexion with the maintenance of peace. You will find by the enclosed correspondence between Governor Claiborne and the Marquis de Casa Calvo, that the attention of the latter has been drawn to the subject, and that it will have been thence transmitted to the Spanish Government. It is proper for you to know that the existing regulations of the United States permit the settlements in the district of Baton Rouge, on the Mississippi, to navigate this river, with the exception, only, as to the introduction of slaves and armed vessels; exceptions having reference to the very objects of the regulations now in question.

I forbear to repeat the grounds on which the right of the United States to the use of those rivers is to be placed. They are already in the archives of the Legation at Madrid. More effect, however, is to be expected from the necessity which a refusal of the navigation will impose on the United States to enforce their claim, than from any appeal to the principles which support it; and this necessity must be permitted to impress itself fully on the Spanish Councils. The influence which France will have in this instance, as in all others, will make it worth while to learn the doctrine she has maintained with respect to the navigation of waters flowing through different jurisdictions. It is pretty certain that she has been led to assert ours, in relation to the Scheldt, and probably to the Rhine, and perhaps other rivers.

The silence of your communications with respect to the instructions in my letter of July 8th, 1804, to make the subject of the present a part of your conference with the Spanish Government, leaves it uncertain what particular disposition may have been manifested, and whether any orders, such as were required, have been transmitted. The inference that we draw is, that you were either induced to decline pressing them, or that the requisition did not succeed. Whatever may have been the case, you will consider it as a charge from the President, in the event pre-supposed, of a failure in your general negotiation, to pursue, without delay, the course herein prescribed. Should you fail in this also, you will lose no time in transmitting the result, taking care not to commit the Government of the United States in any respect, nor to alarm Spain into hostile measures or preparations further than may be inevitable. Should you succeed in what is here proposed, you will, in that case, also give the earliest notice, without precluding the United States from any course not inconsistent with the temporary arrangement formed, and leaving Spain under the impression that the arrangement will probably guaranty a continuance of peace.

In the instructions of October 26th, 1804, it was left discretionary to accept a ratification of the convention of August, 1802, or to incorporate it with the general one committed to your negotiation, with an intimation that it might be best to do the latter, in case but little delay in giving effect to the Convention of 1802 should be thereby incurred. The delay actually incurred must have led you to take the first course, if left to your option by Spain. From the spirit, however, of Mr. Cevallos's observations in his letter of ——, there is little probability that a ratification would be given, unshackled by conditions, which you were instructed to reject. It only remains now, therefore, to observe to you, that these conditions continue to be regarded by the President as absolutely inadmissible. The ratification, as already signified to you, is not to be accepted with any condition or qualification whatever, beyond such an arrangement as is explained in the letter of October 15, 1804, of which an abstract is repeated from the Department of State to the Marquis de Yrujo, for affording a moderate time to Spanish subjects to produce their claims. If a ratification, thus unshackled, be within your option, the President deems it proper that you should accept and transmit it, although none of the other objects committed to you should have been attained. Besides the pledge which a partial accommodation may prove for a more comprehensive adjustment, it is to be considered that the provision therein made for a considerable portion of our citizens who are claimants, is due both to their interests and to the sanction given to it by the Senate, and that the manner in which the sixth article describes the suspended claims, is favorable to the principle on which they are founded.

This letter will be so addressed, that it may be opened by Mr. Bowdoin, in case of your departure previous to his arrival, or by Mr. Ewing, in case of his reaching Madrid before Mr. Bowdoin: and either of these gentlemen is hereby authorized, in pursuance of the instructions here given relative to the Convention of August, 1802, to arrange and accept its ratification. I have the honor, &c.

JAMES MADISON.

JAMES MONROE, Esq.

V.—*Letter from Mr. Monroe to Mr. Talleyrand; a letter from M. Talleyrand to Mr. Armstrong; and a letter from Mr. Armstrong to Mr. Monroe.*

Mr. Monroe to M. Talleyrand.

PARIS, *November* 8, 1804.

SIR: Before the conclusion of the late treaty between the United States and France, your Excellency will recollect that it was an object of the President, to acquire of Spain, by amicable arrangement, Florida; it being that portion of her territory which she held eastward of the Mississippi. It was also his object, after the conclusion of that treaty, not that it was pressed by such imperious considerations as before, but that, as it would contribute to remove all cause of uneasiness and jealousy between the two Powers, they might adopt and harmonize in future in such a system of policy as might secure to them peace, and give additional protection to their possessions in that quarter, especially to those of Spain. In the conferences which produced the treaty abovementioned, the good offices of His Imperial Majesty were engaged to the United States in any

negotiation which the President might commence with the Catholic King, for the acquisition of Florida. The same assurance was renewed after the conclusion of the treaty, though it was intimated that that was not a suitable time for the commencement of such a negotiation. It was, on that intimation, as your Excellency will also recollect, at a moment when I was about to set out for Spain in pursuit of the object, (the then recent orders of the President permitting it,) that I postponed my journey thither, and took a different position. The proposed negotiation with Spain was, in consequence, and has since remained, suspended; and it is in obedience to late orders from my Government that I am now so far on my way to Madrid on that subject, and that Mr. Livingston has requested the good offices of the Emperor in support of it. It is proper here to remark, that, since the epoch here referred to, the treaty then just concluded between the United States and France has been carried into effect, in its great points, with that scrupulous attention to good faith which does to both parties the highest honor. Their conduct in that transaction gives to each a pledge for the integrity which is to prevail in their future intercourse. I may be permitted to add, that, as I declined my visit to Spain at that epoch, the more readily to give an opportunity for the complete execution of that treaty, so, now that is carried into effect, I undertake it with the greater pleasure, since it confirms me in the confidence before entertained, of the support which would be given to it by His Imperial Majesty.

The President has been induced to adopt this measure at this time, by considerations the most urgent. As these are inseparably connected with the proposed negotiation, indeed, form, in part, the object of it, it is due to the friendship subsisting between our Governments, and to the candor which the President will never fail to observe in his transactions with the Emperor, to give you a distinct idea of them. They will, I doubt not, satisfy you that the President has heretofore shown a sincere desire to cultivate the friendship of the Catholic King, and that the attempt which he now makes to preserve that relation is a new and signal proof of that disposition.

Since the treaty between the United States and France, whereby Louisiana was ceded to the former, a question has arisen between those States and Spain, relative to the boundaries of the ceded territory. It is understood that the Government of Spain entertains an idea that that cession comprises only that portion of Louisiana which was ceded to it by France in 1762; that it does not comprise that portion also which was ceded by her, at the same time, to Great Britain, distinguished, while in her possession, by the name of West Florida. This pretension of the Court of Spain cannot, it is presumed, be supported by even the color of an argument. Had that been the intention of the parties in the Treaty of St. Ildefonso, it would have been easy to have provided for it. The idea was a simple one, which a few plain words would have expressed. But, the language of the article referred to conveys a very different sentiment. We find in it nothing which countenances a presumption that the Emperor meant to retake from Spain only a portion of Louisiana, or to refer to it in a dismembered state. It was natural to suppose, in accepting a retrocession of that province from a Power possessed of the whole, that he would take it entire, such as it was when France possessed it. Accordingly, we find that the terms of the article making the cession are as full and explicit to that object as it was possible to use. It is not stipulated that Spain should cede to France that portion of Louisiana only which she had received from France, or that West Florida should be excepted from the cession.

It is, on the contrary, stipulated that she shall cede it as it was when France possessed it; that is, such as it was before it was dismembered by the cessions afterwards made to Spain by Great Britain; that she should cede it with the same extent that it now has in the hands of Spain; that is, entire, which it became by the treaty of 1783, whereby West Florida was ceded by Great Britain to Spain; such as it is according to subsequent treaties between Spain and other Powers: a stipulation which does honor to His Catholic Majesty, since it proves that, in making the cession to France, he intended to cede only what he had a right to cede; that he recollected the treaty which he had concluded with the United States in 1795, knew the extent of its obligations, and was resolved to execute them with good faith. Your Excellency will receive, within, a paper containing an examination of the boundaries of Louisiana, which, it is presumed, proves incontestably the doctrine above advanced, as also that the river Perdido is the ancient, and, of course, present boundary of that province to the east and the Rio Bravo to the west.

The United States have other causes of complaint against Spain, of a serious import. In the course of the last war many aggressions were committed, under the authority of Spain, but, as it is presumed, without its sanction, on the commerce of the United States. Her ships of war and privaters took many of their vessels in Europe and America, carried them into her ports, detained and condemned them, under pretexts which cannot be justified. The injury sustained by this proceeding was great and extensive, for which it is the duty of the President to obtain for the sufferers an adequate reparation. A convention was entered into at Madrid, about two years since, between the two Powers, which provided a partial remedy for these injuries. The greatest object, however, was left open for future arrangement. It was owing to that consideration, and to a knowledge that the principal cause of variance was unprovided for, that the negotiation was, in truth, unfinished; that neither Government took any interest in ratifying or executing that convention. The whole subject, therefore, now lies open for discussion, and it is very much desired to conclude it on such fair principles as may be satisfactory to His Catholic Majesty, while it enables the President to vindicate the character of his Administration, in obtaining

for American claimants the justice to which they are entitled.

The occlusion of the river Mississippi, about two years ago, contrary not only to the spirit but to the express stipulation of the Treaty of 1795 between the United States and Spain, was an act which exposed to essential injury the interest of the Western inhabitants of those States, while it could not be considered otherwise than as a high indignity to their Government. His Catholic Majesty did not hesitate to disavow the act, when complained of by the American Minister at Madrid. This disavowal made some atonement to the violated honor of the Government, but no reparation for the injury which has been sustained by individuals. A reasonable, but adequate, reparation is still due on that account, and it is expected that His Catholic Majesty will see the justice and propriety of making it.

These circumstances have produced an interesting crisis in the political relation of the United States and Spain, which it is the sincere desire of the President to remove by fair and amicable arrangement. If the negotiation which is about to be commenced by his order does not terminate in that result, it will be owing altogether to the Government of Spain. The measure which is now adopted, the negotiation which is invited, is a convincing proof of the sincerity and good faith with which the President seeks to preserve the relations of friendship between the two Powers. In the pursuit of its objects, no unreasonable pretension is entertained, no unjust demand will be made. On the subject of boundaries, although Congress, on a thorough conviction of its rights, authorized the taking immediate possession of Louisiana, according to its ancient limits, and, of course, to the river Perdido, to the East, yet the President, from motives of respect to the Catholic King, postponed the execution of the measure, to give time for amicable explanation with his Government, in full confidence that they will produce their desired effect. In respect to aggressions on our commerce, and other injuries, it cannot be doubted that a suitable indemnity will be made for them. The cession of Florida is a question which rests on different ground. The policy of that measure, and the conditions of it, in case the policy is admitted, are points to be decided by each Government for itself, from a view of its interest and other circumstances. Should the cession be made, and the other points be adjusted, there is no reason why the peace and harmony of the two nations should not be perpetual: there would remain no cause of jealousy between them—no point of collision. Possessed of ample territory to satisfy their growing population for ages to come, the United States would be left at liberty to pursue their interior arrangements without apprehending the interference of, or having the disposition to interfere with, their neighbors. Such a system of policy on their part would contribute in a very eminent degree to the security of the vast dominions of Spain to the south of us. To Spain, it is presumed that the territory is of but little importance: in itself it is of none, as it is a barren tract. If she retains it, it must be as a port for troops, to be placed there in opposition to us—a measure which tends to provoke hostility and lead to war. The Havana is a port which answers more effectually every object which she could contemplate from this, while it is free from all the objections that are applicable to the latter. Being an island, it is less assailable by a foreign Power. Situated in the Gulf of Mexico, it furnishes the means of giving all the protection to her other possessions that she could desire; and by uniting her whole force at one point, increasing her means of defence against attack, or of annoying her enemies in time of war. It is earnestly hoped that the Catholic King will take a dispassionate view of these circumstances, and of the relative situation of the two Powers, and meet the President in a suitable provision for their future friendship. Should he, however, be disposed to pursue a different policy, on him will the responsibility rest for the consequences.

The relation which has subsisted invariably between His Imperial Majesty and the Government which I have the honor to represent has been of the most friendly character. It is on the knowledge of that fact, and the satisfactory evidence which it furnishes, that the Emperor takes an interest in the welfare of the United States; it is on the promise above adverted to, made on his part, to support with his good offices any negotiation which the President might commence with the Court of Spain for the acquisition of Florida; as also on the firm belief that the attainment of that object, with the amicable adjustment of all subsisting differences between the United States and Spain, must be advantageous to France, that his good offices have been and are now requested in support of that negotiation.

My mission to Spain being extraordinary, is also temporary. As soon as its objects are accomplished, it is my duty to return to London, which I shall do through this metropolis, when I hope to have the honor and pleasure of being presented again to His Imperial Majesty, and of acknowledging in person his friendly offices to my Government and country in a transaction of high importance to its interests, which the President has thought fit to commit in part to my agency.

I beg your Excellency to accept the assurance of my high consideration.

M. Talleyrand to General Armstrong.

PARIS, *December* 21, 1804.

SIR: I had the honor, in Brumaire last, to inform Mr. Livingston that I would submit to the inspection of His Imperial Majesty the letters he addressed to me relative to the motives of Mr. Monroe's journey to Spain, and some discussions between the Court of Madrid and the United States.

Among the observations made on this subject by Messrs. Livingston and Monroe, His Imperial Majesty has been obliged to give particular attention to those bearing on the discussions, of which the object is peculiarly interesting to the French Government. He has perceived that he could not have been a stranger to the examination of these discussions, since they grew out of the treaty by which France has ceded Louisiana to the United States; and His Majesty has thought that an explanation, made with that fidelity which characterizes him, on the eastern boundaries of the ceded territory, would put an end to the differences to which this cession has given rise.

France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish to cede any other; and, that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the Treaty of St. Ildefonso, by which she had acquired that colony two years before.

Now it was stipulated, in her treaty of the year 1801, that the acquisition of Louisiana by France was a retrocession; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day France ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and, could, therefore, give none back to France.

All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the 32d degree of north latitude, bears the name of Florida. It has been constantly designated in that way during the time that Spain held it; it bears the same in the treaties of limits between Spain and the United States; and, in different notes of Mr. Livingston of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida to that on the east of it.

According to the designation, thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, this country ought, in good faith and justice, to be distinguished from Louisiana.

Your Excellency knows that, before the preliminaries of 1762, confirmed by the Treaty of 1763, the French possessions, situated near the Mississippi, extended as far from the east of this river, towards the Ohio and the Illinois, as in the quarters of the Mobile; and you must think it as unnatural, after all the changes of sovereignty which that part of America has undergone, to give the name of Louisiana to the district of Mobile, as to the territory more to the north on the same bank of the river, which formerly belonged to France.

These observations, sir, will be sufficient to dispel every kind of doubt, with regard to the extent of the retrocession made by Spain to France, in the month of Vendemiaire, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before His Imperial Majesty the negotiations of Madrid which preceded the Treaty of 1801, and His Majesty is convinced that, during the whole of these negotiations, the Spanish Government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.

His Imperial Majesty has, moreover, authorized me to declare to you, that, at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi.

The candor of those observations proves to you, sir, how much value His Majesty attaches to the maintenance of a good understanding between two Powers, to whom France is united by connexions so intimate and so numerous. His Majesty, called upon to give explanations on a question which interested France directly, persuades himself that they will leave no ground of misunderstanding between the United States and Spain; and that these two Powers, animated, as they ought to be, by the sentiments of friendship which their vicinity and their position render so necessary, will be able to agree with the same facility on the other subjects of their discussion.

This result His Imperial Majesty will learn with real interest. He saw with pain the United States commence their differences with Spain in an unusual manner, and conduct themselves towards the Floridas by acts of violence, which not being founded in right, could have no other effect but to injure its lawful owners. Such an aggression gave the more surprise to His Majesty, because the United States seemed in this measure, to avail themselves of their treaty with France as an authority for their proceedings, and because he could scarcely reconcile, with the just opinion which he entertains of the wisdom and fidelity of the Federal Government, a course of proceedings, which nothing can authorize, towards a Power which has long occupied, and still occupies, one of the first ranks in Europe.

But the Federal Government having entered the path of negotiation, and the question which divided the two Powers being cleared up, there is reason to hope they will easily agree on the other points; and this His Majesty, from the sincere interest which he feels for the equal prosperity of the two nations, ardently desires.

Accept, sir, the assurance of my high consideration.

C. M. TALLEYRAND.

Extract of a letter from General Armstrong, Minister Plenipotentiary of the United States at Paris, to Mr. Monroe, Minister Extraordinary and Plenipotentiary of the same, dated

PARIS, *March* 12, 1804.

The moment I received your letters of the 15th and 26th February, I took measures to sound this Government on the present posture of things at Madrid, which, on the authority of your communication, I represented as strongly indicating a rupture between the United States and Spain.

Their manner of receiving this information, with the sentiments which they made no scruple to avow in relation to the subject generally, decided me at once against either submitting your correspondence with Cevallos, or submitting anything of my own for it—perceiving clearly that the effect of such communication would be to draw from them some new declaration friendly to the pretensions of Spain, and calculated merely to keep up the tone of her councils. The following sketch of what passed will enable you to judge how far this conclusion was correct, or otherwise.

On the subject of indemnity for the suspended right of deposit, (professing to know nothing of the ground on which the interruption had been given,) they would offer no opinion. On that of reparation for spoliations committed on our commerce by Frenchmen within the territory of His Catholic Majesty, they are equally prompt and decisive, declaring that our claim, having nothing of solidity in it, must be abandoned.

With regard to boundary, we have, they said, already given an opinion, and see no cause to change it. To the question, What would be the course of this Government in the event of a rupture between us and Spain? they answered, We can neither doubt nor hesitate—we must take part with Spain; and our note of the 30th Frimaire was intended to communicate and impress this idea.

Extract of a letter from the same to the same, dated

PARIS, *March* 18, 1805.

I received your favor of the first instant by the Preble. Another experiment has been made, but without producing any result propitious to our objects. Nay, the more this subject is discussed, the more determined are they in maintaining the doctrines and pursuing the conduct indicated in my letter of the 12th. In this explanation, three points were fully and distinctly, but cautiously, urged: 1st. The probability of an immediate rupture between Spain and the United States; 2d. The ill consequences of such an event to Spain directly, and to France indirectly, as her ally; and, 3d. Its tendency to promote the general views of Great Britain, though no closer political connexion between her and us were induced by it.

Extract of a letter from the same to the same, dated

PARIS, *April* 1, 1805.

Your letter of the 12th reached me yesterday. No material change of opinion or conduct has taken place here with regard to your business. A long and querulous note has been put in by the Spanish Chargé d'Affaires, (Santivanes,) stating the claims made by you, and the arguments employed in support of them, and soliciting from this Government its exposition of the Treaties of 1801 and 1803 on the several points in controversy. This note had not been answered on the 30th ult., and, from some circumstances, I suspect that there is no intention of answering it promptly.

VI.—*Correspondence between Messrs. Monroe and Pinckney and the Spanish Government.*

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *Jan.* 28, 1805.

SIR: It is the sincere desire of the President to establish the relations between the United States and Spain on a footing of permanent friendship. As a signal proof of that disposition, he has sent an extraordinary mission to His Catholic Majesty, with full power, in conjunction with their Minister Plenipotentiary at Madrid, to enter into such arrangements, on just and equal principles, as may be best adapted to the object. The situation of the two countries, at this time, required such an effort on his part, and it is our wish, as it is our duty, to do everything in our power to carry it into effect.

It is proper to examine, impartially, the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose, it is necessary to ascertain their respective rights in each case, since thereby an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes. We will proceed to this inquiry, in full confidence that both our Governments are animated with the same zeal to do justice, with the same desire to cherish the friendly relations which have heretofore subsisted between them.

In the course of the last war, many aggressions were committed on the peaceful, and, as it is presumed, lawful commerce of the United States, to the great injury of their citizens, within the territory and jurisdiction of Spain, for which they are entitled to compensation. It cannot be doubted but that Spain is responsible for the injuries, in all cases where the condemnation was contrary to the law of nations, the subsisting treaty between the two Powers, and those principles of justice which are recognised and respected by other nations. It is to be regretted that a perfect accord has not yet taken place between our Governments on the mode of adjusting all the claims proceeding from this cause. It is, however, matter of much satisfaction to observe, that they have gone so far in the establishment of just principles, and approached so near in sentiments, as to justify the expectation that all difficulties will now be removed. The discussions which have already taken place on this subject have too fully illustrated its merits to require anything to be added on that point at present. We observe, with pleasure, that the President reposes too much confidence in the high character of His Majesty, which is distinguished by a sacred regard to justice, to doubt his agreement to whatever it dictates. The proposition which we have the honor to make to your Excellency on this point rests on that basis, and will, therefore, we flatter ourselves, receive his

sanction. Your Excellency will find that, in the terms of payment of such sums as may be awarded, a new accommodation is proposed, which is equally a proof of the disposition of our Government to conciliate the views and interests of His Catholic Majesty in this transaction.

The suppression of the right of deposit at New Orleans, by the Intendant of His Majesty, in the Winter of 1802–'3, contrary to the Treaty of 1795, to the great injury of citizens of the United States who inhabit the territory which is bounded by the Mississippi, and the waters emptying into it, is also an act for which they are entitled to reparation. By restoring the deposit, on the complaint of the President, His Majesty gave a satisfactory proof of his strict regard to the obligations of treaties, and the principles of justice; but, by so doing, the injuries which had been sustained by individuals had not been redressed, nor were the just views of His Majesty in that respect completely fulfilled. It is presumed that His Majesty will not hesitate to allow an adequate indemnity for the losses which were sustained by this act of his Intendant. It is one of the objects of the enclosed project to ptovide for them.

The above are the injuries which have been received by citizens of the United States, for which it is proposed to provide a suitable compensation. In seeking justice, however, it is equally the duty of their Government to render it. It is possible that His Majesty's subjects may have received injuries within the territory or jurisdiction of the United States, or by their officers elsewhere, for which those States are also responsible. It has been the invariable effort of their Government to preserve the best understanding with His Catholic Majesty, by the faithful observance of every duty imposed by the law of nations and the subsisting treaty between them, in their political and social intercourse. If such injuries have been rendered, it is the earnest wish of the President that just reparation should be made for them.

For the fair and amicable adjustment of all such claims on both sides, it is proposed to establish a Board of Commissioners, impartial and independent, which shall be vested with full power to hear and determine and grant awards for all such as shall appear to be well founded. This mode has proved adequate, in similar cases, between the United States and other Powers. It is not doubted but that it would prove equally so between the United States and Spain.

There is another question, which it is equally proper to adjust at this time. By the cession of Louisiana by His Majesty the Emperor of France to the United States, it becomes necessary to settle its boundary with the territories of His Catholic Majesty in that quarter. It is presumed that this subject is capable of such clear and satisfactory illustration, as to leave no cause for difference of opinion between the parties. By the treaty of April 30, 1803, between the United States and France, the latter ceded to the former the said province, in full sovereignty, in the same extent, and with all the rights which belonged to it, under the Treaty of 1800, by which she had acquired it of Spain. That the nature and extent of the acquisition might be precisely known, the article of the Treaty of St. Ildefonso, making the cession, is inserted in that of Paris. To a fair and just construction, therefore, of that article, the United States are referred for the extent of their rights under the Treaty of 1803. There is nothing to oppugn its force or detract from the import of its very clear and explicit terms. We have the honor to present to your Excellency a paper on this subject, which, we presume, proves, in the most satisfactory manner, that the boundaries of that province, as established by the treaties referred to, are the river Perdido to the east, and the Rio Bravo to the west. The facts and principles which justify this conclusion are so satisfactory to our Government, as to convince it that the United States have not a better right to the island of New Orleans, under the cession referred to, than they have to the whole district of territory which is above described. Aware, however, that the question of boundary was one in which His Catholic Majesty was also interested, the President was not unmindful of what was due to that consideration. In pursuing and supporting the just rights of the United States, he is far from wishing to interfere with, or encroach on, those of Spain. As neighbors, he was also sensible of what was due to that interesting relation; and as a Power which claims respect in its intercourse with other nations, he was resolved to give a distinguished proof of that of the United States for His Catholic Majesty in the present case. Thus, no step has been taken since the territory was surrendered to those States by France, otherwise than a strong expression by the Congress of its sense of their rights; no portion of it has been garrisoned, or even possessed by their troops, which could involve any question of the kind adverted to, or manifested a disposition incompatible with these just and friendly sentiments. His definitive arrangements are yet to be taken. He seeks to adopt them in harmony with the sentiments and interests of His Catholic Majesty—a motive which induced the measure of an extraordinary mission, and inspires this communication.

So far, we have treated of the boundary which of right ought to be established between the two nations. It is proper, however, to examine and treat the subject in another view.

By the acquisition of Louisiana, the United States and Spain have assumed, in some respects, a new relation to each other. It is in its nature a very interesting one. It is practicable, at this time, to place it on such a footing, by suitable arrangements, as to preserve their friendship for ages. The importance of the subject merits their very dispassionate consideration, since a failure to adopt such may be productive of much harm. Happily, it is an unquestionable truth, that in consideration of the permanent and substantial interest of the two Powers, there does not exist at present a single point of collision, an opposing interest between them. There are only some topics of uneasiness and jealousy easy to be removed, but which, if suffered to remain, may engen-

der animosities, embitter their intercourse, and finally prove the cause of much trouble, and even misfortune, to both nations. To remove them requires no sacrifice; on the contrary, much will be gained, since, by so doing, their harmony, and with it their permanent interests, will be secured.

What effect does the acquisition of Louisiana by the United States produce on the interest of the Powers in reference to each other? and what ought it to produce in their policy? These questions admit a ready answer. That province is bounded by Florida to the east, and Mexico to the west; hence, Florida is surrounded on every side, that of the ocean excepted, by the territory of the United States. It is, of course, an object with those States to possess it. And as Louisiana extends westward to Mexico, it is presumed to be an object with Spain to retard the progress of their settlements in that quarter. Here, then, is the obvious ground of an accord between the two nations, in an arrangement which seems to be well adapted to accomplish an object which each deems of importance. The object which we have the honor to present to your Excellency is intended to conciliate and provide for those interests. It is believed that its adoption will effectually do so. Your Excellency must be sensible, under existing circumstances, and especially since the acquisition of Louisiana, that that of Florida has become an object of much less importance to the United States. It is not from the want of territory, because it is known not to be fertile, and without it they have enough to satisfy their growing population for ages to come. It is, in truth, suggested more by a desire to remove all cause of a future variance between them and Spain, than of any immediate advantage to be derived from it in other respects. While that province remains to Spain, it must be, in some degree, a cause of jealousy to the United States. Situated in their interior, and detached from the other dominions of His Catholic Majesty, it is probable, to render it secure, that he would be compelled to put a strong force there. Hence, the United States would be compelled to do the same. Thus the attitude of hostilities would be taken, which a thousand causes would tend to promote. The jealousy of Governments so contiguously situated, the rivalry of Governors and Generals, and the conflict of commercial regulations, could not fail to produce that effect. In addition to which, it cannot be doubted that other Powers would take a pleasure in seeing a rupture between the United States and Spain. It is presumed that they are interested in it. Remove, however, this obstacle, and establish on just principles their western boundary, and all cause of inquietude and misunderstanding will be at an end. Their territories and police will be distinct, and their military stations at some distance from each other. Each Power will regulate its own concerns as it thinks best: neither will be interested in disturbing those of the other. Their Governments, on the contrary, will find themselves bound by their interests, their faith, and their character, to keep their citizens within their own limits, which it will take ages to fill. Should Spain not place a strong force in Florida, it will not escape your Excellency's attention, that it will be much exposed to the danger of being taken possession of by some other Power who might wish to hold it, with very different views towards Spain than those which animate the Government of the United States. Without a strong force there, it might even become an asylum for adventurers and freebooters, to the great annoyance of both nations. In this light, however, we forbear to press it.

It is proposed, by the enclosed project, to establish a district of neutral territory between the two Powers, on which neither party shall encroach, and, with a view to accommodation, that it should be, for a given term, within the supposed limits of Louisiana. We are willing that the term should amount to twenty years, to give time for ulterior arrangements relative to that object, and the establishment of a permanent boundary between them in that quarter. If the boundaries of Louisiana are, as our Government believe them to be, and as, we presume, is sufficiently proved by the enclosed paper, this arrangement cannot be considered otherwise than in the light it is intended. This proposition, however, is not offered as an equivalent for the cession of Florida. It is proposed to make a pecuniary compensation for the cession to an amount which is deemed equal to its value. To fix that value, in case His Catholic Majesty is disposed to make the cession, cannot, it is presumed, be difficult, since, without regarding other considerations, the sum given for the whole province of Louisiana furnishes a just and suitable standard. By comparing the extent of the Territory of Louisiana with that of Florida, and taking into consideration the immense advantages derived to the United States from the entire command of the Mississippi and all the waters emptying into it, which followed the cession of Louisiana, we are promptly led to a fair result. On this point we wish to confer in person, when it may suit your Excellency's convenience. The sum which may thus be agreed on, it is wished to appropriate in the manner mentioned in the proposed convention.

In seeking to terminate amicably all subsisting differences between the two Powers, and to place their future relations on a basis of permanent friendship, it is thought that a formal stipulation in behalf of each, not only to observe the limits which may be agreed on, but to cause them to be observed by their respective citizens and subjects, may have a very salutary effect. If such a stipulation is regarded only as proof of the spirit in which the convention is formed, it will always have weight with both Governments to insure a compliance with it. But it merits to be received in a stronger light, since it makes it the duty of each Government to be attentive to, and to enjoin it on their citizens and subjects, respectively, strictly to observe the same. As the convention of the 11th of August, 1802, has not been carried into effect, it is thought best to suffer it to fall, and incorporate its contents into the present one;

on that principle the project is formed. There seems to be a propriety in accommodating all subsisting differences, and providing for the respective interests of the two Powers, to comprise the stipulations which are necessary for the purpose, in the same instrument. To this mode, however, we have no preference, and only submit the idea to your Excellency's consideration.

To facilitate the communication, and promote despatch in an object of so much importance to our Government, we have the honor to annex a translation into French of this note, and the papers which accompany it, to your Excellency. They are as correct as they could be made by those attached to the legation, to whom alone we could confide their contents. We beg leave, however, to observe, that we consider ourselves responsible only for the originals, which are in English.

We beg your Excellency to accept the assurance of our distinguished consideration, &c.

CHARLES PINCKNEY.
JAMES MONROE.

Project of a Convention between the United States and Spain.

ARTICLE 1. Spain, acknowledging and confirming to the United States the cession of Louisiana, in an extent eastward to the river Perdido, cedes to them forever all the territory remaining to her between the Mississippi, the Atlantic, and the Gulf of Mexico, together with all the islands thereunto annexed, either while the Floridas belonged to Great Britain, or after they became provinces of Spain.

Possession of the said territory shall be delivered to a person authorized by the United States to receive the same, in —— days, or less, if practicable, after the exchange of the ratifications of this convention. With the said territory shall be delivered all public property, except ships and military stores, as also all public archives belonging to the same.

Within —— days after the delivery of possession, or sooner, if posssible, the Spanish troops shall evacuate the territory hereby ceded; and if there should be any Spanish troops remaining within any part of the territory ceded by France to the United States, all such troops shall, without delay, be withdrawn.

Spanish subjects, within the ceded territory, who do not choose to become citizens of the United States, shall be allowed eighteen months to dispose of their real, and to dispose of or remove their other property.

The inhabitants of the ceded territory shall be entitled to the same incorporation into the United States, and to the same protection in their religion, their liberties, and their property, as were stipulated to the inhabitants of the territory ceded to the United States by the treaty of April 30, 1803, between those States and France.

ART. 2. It is agreed that, for the term of —— years, no land shall be granted; nor persons who may have settled since the 1st of October, 1800, on lands not granted prior thereto, be permitted to continue within the space defined by the following limits, to wit: by a limit consisting of the river Colorado on the one side, from its mouth to its source; thence, a straight line to the most southwestwardly source of the Red river, with such deflections, however, as will head all the waters of that river; thence, along the ridge of high land which divides the waters belonging to the Mississippi and Missouri from those belonging to the Rio Bravo; and thence, a meridian to the northern boundary of Louisiana: and by a limit, on the other side of the Rio Bravo, from its mouth to its source: and thence, a meridian to the northern boundary of Louisiana.

Such of the settlements within the foregoing limits, not prohibited by the preceding clause, as were not under the authority of the government of Louisiana, shall continue under the authority of Spain. Such as were under that authority shall be under the authority of the United States. But the parties agree that they will, respectively, offer reasonable inducements, without being obliged to use force, to all such settlers to return from the space above limited, and establish themselves elsewhere.

The Indian tribes within the said limits shall not be considered as subject to, or exclusively connected with, either party. Citizens of the United States and Spanish subjects shall be equally free to trade with them, and to sojourn among them, as may be necessary for that purpose; and each of the parties agreeing to restrain, by all proper and requisite means, its respective citizens and subjects from exciting the Indians, whether within or without the said limits, from committing hostilities or aggressions on the subjects or citizens of the other party. The parties agree, moreover, each of them, in all public transactions and communications with the Indians, to promote in them a disposition to live in peace and friendship with the other party.

It shall be free for Indians now within the territory of either of the parties to remove to and settle the said limits, without restraint from the other party; and either party may promote such a change of settlement by Indians within its territory, taking due care not to make it occasion of war amongst the Indians, or of animosities in any of them against the other party.

The United States may establish garrisons sufficient, as security against the Indians, and all trading-houses, at any places within the said limits, where garrisons existed at any time under the Spanish government of Louisiana. And Spain may continue garrisons, for the like purpose, at any places where she now has them, and establish trading-houses thereat. Either party may also cause or permit any part of the country within the said limits to be explored and surveyed, with a view to commerce or science.

It shall be free for either party to march troops within the said limits against Indians at war with them, and for the purpose of driving or keeping out invaders or intruders.

ART. 3. It is agreed, that, within —— years pre-

vious to the expiration of the aforesaid term of —— years, due provision shall be made for amicably adjusting and tracing the boundary between the territories of the United States westward of the Mississippi, and the territories of His Catholic Majesty; which boundary shall then be established according to the true and just extent of Louisiana as ceded by Spain to France, and by France to the United States, uninfluenced, in the smallest degree, or in any manner whatever, by the delay, or by any arrangement or circumstance contained in or resulting from this convention. It is also expressly stipulated by the parties, that they will cause the limits which are hereby defined, between them, to be faithfully observed, by restraining their respective citizens and subjects, by suitable arrangements, from violating them in any manner whatever.

ART. 4. His Majesty and the United States, wishing, in the same spirit of conciliation, amicably to adjust the claims which have arisen from the wrongs and excesses committed during the late war by individuals of either nation, or by others, within the territory or jurisdiction of either, contrary to the law of nations, the treaty existing between the two countries, or the principles of justice, have determined that the same shall be adjusted in the following manner: A Board of Commissioners shall be formed, consisting of five Commissioners, two of whom shall be appointed by His Catholic Majesty, two others by the President of the United States, with the advice and consent of the Senate, and the fifth by common consent of the four Commissioners; and, in case they should not be able to agree on a person for the fifth, the Commissioners of each Power shall name one, and leave the decision to lot; and hereafter, in the case of death, sickness, or necessary absence, of any of those already appointed, the remaining Commissioner or Commissioners of the Power whose Commissioner is dead or unable to attend, shall fill the vacancy. When thus appointed, each one of them shall take an oath to examine, discuss, and decide, impartially on the claims which they are to judge according to the law of nations, the existing treaty, and the principles of justice. The Commissioners shall meet and hold their session in Madrid, where, within the term of eighteen months, to be reckoned from the day on which they assemble, they shall receive all claims which, in consequence of this convention, may be made as well by the subjects of His Catholic Majesty, as by the citizens of the United States of America, who may have a right to demand compensation for the losses, damages, or injuries, sustained by them in consequence of the wrongs and excesses committed by Spanish subjects, American citizens, or others, within the territory or jurisdiction of either of the contracting parties. The Commissioners are to hear and examine, on oath, every question relative to the said demands, and receive as worthy of credit all testimony and evidence the authenticity of which cannot be doubted. The said Commissioners shall grant awards for the sums which may be due to the several claimants, with interest on the same, at the rate of six per cent. per annum, to commence from such dates, respectively, as to them shall appear to be just. From the decision of the Commissioners there shall be no appeal; and the agreement of three of them shall give full force and effect to their decisions, as well with respect to the justice of the claims, as the indemnifications which may be adjudged to the claimants: the said contracting parties obliging themselves to satisfy the said awards in specie, in the manner stipulated by the sixth article of this convention.

ART. 5. The said Commissioners shall also take cognizance of and estimate all damages which were sustained by the citizens of the United States, by the suppression of the right of deposit at New Orleans by the Intendant of His Catholic Majesty, in the year 1802-3, contrary to the Treaty of 1795; for which the said Commissioners shall grant a certificate to the Government of the United States, the amount whereof shall be paid to it by the Government of Spain, in the same manner as it is stipulated in favor of other claims in the preceding article. The Government of the United States shall pay the sums thus received to the individuals who were injured by the suppression of the said deposit.

ART. 6. It is further agreed that the respective Governments will pay the sums awarded by the said Commissioners, under this convention, in the manner following:

The Government of the United States shall pay all such sums, not exceeding —— dollars, which may be awarded as compensation to the citizens of the United States from his Catholic Majesty, in three equal annual instalments, at the city of Washington: the first instalments to be paid in eighteen months after the exchange of the ratifications hereof; or, in case they shall not be so paid, they shall bear an interest of six per cent. per annum, from the time they become due until they are actually discharged; and, in case the aggregate of the said sums should not amount to the said sum of —— dollars, the United States will pay to His Catholic Majesty, within one year after the final liquidation of the claims cognizable by the said Board, at the city of Washington, so much as the said aggregate may fall short of the sum abovementioned: but, on the other hand, if the whole amount of the sums awarded to citizens of the United States should exceed the sum of —— dollars, His Catholic Majesty shall pay the surplus, without deduction, to such claimants, within one year after their claims shall be respectively liquidated. The said claims shall, nevertheless, bear an interest of six per cent. from the time of their liquidation until they are discharged.

The Government of the United States shall also pay, without deduction, at the city of Washington, all such sums as may be awarded against them by the said commissioners, for compensation due to Spanish subjects, within one year after their claims shall be liquidated; and, from the time of their liquidation, the said claims shall bear an interest of six per cent. per annum, until they are discharged.

ART. 7. This convention shall be ratified within —— after the signing thereof, or sooner, if possible, and the ratifications shall be exchanged within —— days after the ratification by the United States, at the city of Washington.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *January* 31, 1805.

GENTLEMEN: The King, my master, having, on all occasions, given such repeated proofs of his friendship towards the United States, and of his desire to live with them in peace and harmony, could not but hear with pleasure what you have been pleased to manifest in your esteemed note of the 28th instant, relative to the sincere desire of the President of the United States to see the friendly relations of the two countries in a manner the most solid and permanent, and that, for this purpose, the American Government had named an extraordinary mission to this Court, to commence such negotiations as might be best adapted to complete an object of so much importance, and founding them on just and impartial principles. His Catholic Majesty, on his part, desires nothing more ardently than that those just and equal principles, so conformable to the rectitude of his Royal mind, may direct the discussions and negotiations depending between the two Governments. For this end nothing appears better adapted than the mode proposed by your Excellencies in the first part of your note:

"It is proper to examine impartially the several points which are depending between our Governments. To make their friendship perpetual, every cause of complaint and inquietude should be brought into view, and amicably settled. For this purpose it is necessary to ascertain their respective rights, in each case; since, thereby, an unerring rule will be established, by which this adjustment may be made, and their future harmony secured. No just Government will ever demand anything which will not bear the test of that rule: no just Government will ever refuse to discharge an obligation which it imposes."

According to this principle proposed by your Excellencies, and which certainly is well worthy the good faith of both Governments, it appears the more proper that, before we proceed to examine projects of a convention, which ought to result from discussion of all the different points in dispute, we should first examine each point separately, and in this form determine the respective rights of each country; and then proceed to such negotiations as the interest of each country may require. Under this idea, and following the tenor of your note, it appears that the points depending may be reduced to the following:

First. The damages occasioned during the last war, by the excesses committed by individuals of both countries, contrary to the law of nations and the existing treaty. This point is nearly decided by the convention of 1802, which has been ratified by the American Government; and His Majesty, on his part, is disposed to ratify the same, after the obstacles which occasioned its postponement, shall be removed. Thus there is but little to regulate on this point, considering how far it is already advanced, and that the sincere desire of both Governments is to proceed with candor and good faith.

The second point mentioned in your Excellencies' note, relative to the indemnification of injuries supposed to have been received by American citizens, in consequence of the suppression of the deposit at New Orleans by order of the Intendant at that city, is a point of discussion which has not as yet been commenced, and it is one on which the Spanish Government is convinced that the United States have neither any motive nor right to found a reclamation.

Third. This point, which is relative to the demarcation of the limits of Louisiana, retroceded by Spain to France, and by her transferred to the United States, by its nature, subdivides itself into two parts, to wit: the demarcation of the limits of Louisiana on the east, or side of the Floridas, and that on the side of the interior provinces of New Spain. As a testimony of the desire with which His Majesty is actuated, that these demarcations may be executed with the skill and and justice requisite, and at the same time with all possible despatch, I have to inform you, what is already known to your Government, that, at the commencement of the last year, the King named for his Commissioner for these demarcations and limits, Brigadier Marquis of Casa Calvo, who is now at New Orleans with the engineer Don Joseph Martinez. Not having yet agreed upon others of the said points mentioned in your Excellencies' note, and they being in their nature unconnected, it appears that it would only be confounding them and multiplying their confusion to treat upon the whole at once; and proceed immediately to form for either party projects of a convention from the mass. Analyze these incorporated points of discussion, and a discussion will become much more plain and simple, and, with this new light, it will afterwards be easy to embrace the whole at one view.

This method is clear and simple, and, according to my idea, is what you indicate in the first part of your note. This being the case, it appears to me that we may occupy ourselves, in the first place, in determining the point relative to reclamation; for which purpose, we may take up the convention of August, 1802, by reason of its almost finished state; fix the rights of each country upon each point, and the means will be plain and easy to negotiate them, with that equal utility which both countries may find convenient. I have no doubt but you will find this method of proceeding conformable to reason, and, waiting your reply, I am, &c.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February* 5, 1805.

SIR: We have received your Excellency's letter of the 31st ultimo, in answer to that which we had the honor to write to you on the 28th, and

beg you to be persuaded that we are highly gratified with the assurance it contains, that His Catholic Majesty is disposed to meet the President of the United States in such arrangements, on just and equal principles, as may be necessary to accommodate subsisting differences, and place the relations of the two countries on a basis of permanent friendship. Since our Governments are animated with such honorable views, it cannot be doubted that their object will be accomplished.

Your Excellency observes that it will be proper to examine previously, and separately, each point depending between our Governments, to establish their respective rights in each, and then proceed to the adoption of such a project of a convention as may provide for the whole. In this idea we perfectly agree. It was on that principle, as you justly observe, that our note of the 28th was conceived; by it every topic of complaint, every question of interest is presented to your Excellency's view. It remains only to decide these several points, and, with them, the fortune of the present negotiation.

The case of claims for injuries done to the citizens and subjects of either party, within the limits and jurisdiction of the other, being first in order of time, ought to be first determined. As we presumed that this subject had been already sufficiently discussed, we thought it sufficient in our former note to submit such arrangement respecting it as we were authorized to propose. Since, however, it seems to be your Excellency's desire, we shall not hesitate to communicate more fully the views and sentiments of our Government on this point, and the principles on which they are founded. It is the more necessary so to do, to free it from the complexity in which it may be otherwise involved.

It is known to your Excellency, that, by the convention of August 11, 1802, an immediate provision was not made for satisfying the claims of their respective citizens and subjects for all the injuries which they had received in the course of the last war, within the jurisdiction of each Power, and for which they were responsible; that it was not then possible for the Plenipotentiaries charged with that subject to agree on a mode of arbitrating the claims originating from the excesses of foreign cruisers, agents, consuls or tribunals, in their respective territories, which might be imputable to their two Governments; and that, in consequence thereof, it was agreed between them to provide then for the adjustment and satisfaction of such as were committed by their respective citizens and subjects only, reserving to each Government, its citizens, and subjects, their respective rights, with liberty to bring forward their claims at such times as might be convenient to them. Had that convention been carried into effect at any time before the present, we should have now to provide for the claims which were then postponed, whose just title to reparation seems to be sufficiently sanctioned by that instrument. But as that convention has not been carried into effect, and, of course, no satisfaction made for that portion of the injuries complained of, it is proper that the whole subject should now be taken into view and definitively settled. It would badly comport with the spirit of the present negotiation, whose object is to adjust every difference, and remove every cause of inquietude, to leave anything unfinished. Our Government considers its citizens entitled to compensation for every injury which they did receive within the jurisdiction of His Catholic Majesty, contrary to the treaty between the United States and Spain, the law of nations, and the principles of justice sanctioned by them, whether they were committed by His Majesty's subjects and tribunals, or those of any other nation. For all such acts, the Government within whose limits they are committed is alone responsible; for over them has it the exclusive jurisdiction. A contrary opinion cannot be advanced without derogating from the established doctrine of the law of nations, or rights of sovereignty incident to each. It is a well established doctrine, that no two nations can, by their accord, or any arrangement between them, change a law adopted by the whole. Such a change, if agreed on by any two nations, can only operate as a special compact between them, which finds an equivalent by the reciprocity of the stipulation, or some other article of the treaty, but can never change the relation of either with other Powers, or the rights and claims of such other Powers on each of those nations. It is equally well established, that protection is due by every Government to foreigners within its limits, in return for which they are entitled to their allegiance while they remain with them, as it is that such protection cannot be withdrawn, or the jurisdiction of a foreign Power be permitted within its limits, to the injury of a third Power. A contrary doctrine supposes separate and independent jurisdictions and Governments within the same limits, and altogether confounds the nature of sovereignty, which is complete, absolute, and exclusive, wherever it exists. It is proper to add that this doctrine of the law of nations, so clear and explicit, is still further enforced by the stipulation of the sixth article of the treaty of 1795 between the United States and Spain.

In the project which we had the honor to present to your Excellency, you will find it is intended to provide for the whole of these claims, whether the convention of August 11th, 1802, is carried into effect or suffered to expire. In the former case, we should expect that an article be inserted in the proposed one, to provide for those cases which were unprovided for in that. We consider it our duty to inform your Excellency that we cannot consent to any arrangement which does not provide for the whole subject, having received orders to that effect by a courier who has just arrived with despatches as late as the 3d December last. We owe it to the spirit of candor which is to prevail in this negotiation, to state to your Excellency this fact; and we ask of you to inform us, in the same spirit, whether we are to expect the accord of your Government to such an arrangement as will be effectual to this object.

That our Government is entitled to expect an adequate compensation for the injuries which our citizens received by the suppression of the right of deposit at New Orleans, is a point on which we did presume there could be no doubt. The right to such a deposit is stipulated forever to the United States, by the twenty-second article of their Treaty with Spain, either at New Orleans, or on some other part of the banks of the Mississippi equally convenient to the parties. It is the obvious import of that article, that there never should be a moment's interruption in the enjoyment of that right; a right which was so necessary to the interest of those dependent on it, and, of course, to the peace and friendship of the two countries. In exercising the right reserved to His Catholic Majesty to change the place of deposit, and assign some other equivalent establishment, it is equally the import of that article, that the whole arrangement should be made at the same time; that the same act which suppressed the existing deposit should open another; and that the Government of the United States should be apprized of that intention in due time to prevent their citizens being injured by the measure, and also to be consulted on the place which it was proposed to substitute to the existing one. In the proceeding which took place at New Orleans, none of those rules were observed; all respect for our Government and the rights of our citizens was lost sight of. In short, had that act been imputable to His Majesty's Government, the President could have seen in it nothing short of a commencement of hostilities, as much so as if his troops had invaded their territory, or his fleets entered in hostile array any of their ports. But the President never considered that act as imputable to His Majesty's Government; he entertained too high a respect for the good faith of the Catholic King to believe that it proceeded from him; he always considered it as the act of the Intendant, and was happy in the result to find that such was the case. Nevertheless, being the act of His Majesty's officer, his Government is responsible for the injuries resulting from it. Your Excellency will find that, as early as March 25, 1803, the Minister of the United States accredited with His Majesty, claimed, by order of the President, an indemnity for these injuries, which was repeated in subsequent notes of the 12th and 23d of April of the same year. It has not since been pressed, because by like order, the subject was reserved with others for final arrangement at this present occasion.

On the subject of limits, we have little to add to what we have already stated in our former note. By it a full view is given of what our Government conceives to be its rights in that respect. The Commissioners appointed by His Majesty for the demarcation thereof can do nothing till some agreement takes place between the two Governments to fix the principle which is to guide them. They must remain inactive until it be known by what course, latitude, meridian, or natural boundary, the demarcation is to be made. It is an important object of the present negotiation to fix that principle. We take the liberty also to refer your Excellency to our former note, and the pieces which accompanied it, for the views of our Government on the other topics of a territorial nature. It is not in our power to add anything on those points to what we have therein stated.

The President, being very desirous, with a view to the permanent harmony and welfare of the two nations, to adjust and arrange every question and interest depending between them, and having given us full power for the like purpose, waits with anxiety the result. Having had the honor to submit to your Excellency, as was agreed in our first interview, our propositions, for the attainment of that desirable end, by which the subject is presented equally in detail as in a general view, and, having now given the further explanations, which were desired by your esteemed note of the 31st ultimo, we have only to request that you will give us your answer to the same. As every point has been long under the consideration of His Majesty's Government, we do not doubt that its mind is made up as to the course the business is to take. It is in His Majesty's power, by the answer which you give, to fix at once the relations which are to subsist in future between the two nations. The United States have done everything in their power, which a regard to justice and the rights of their citizens will permit, to place and preserve them on a most friendly footing; and we flatter ourselves that His Catholic Majesty, who is distinguished, among Sovereigns, by his regard for justice and good faith, will meet them in such arrangements as may be effectual to the object.

We beg your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *Feb.* 10, 1805.

SIRS: I see by the tenor of your esteemed favor of the 5th instant, in reply to my note of the 31st ultimo, that we are of the same opinion, as it relates to the principle established, that, to regulate amicably all the points depending between the two Governments, it is necessary, first, to establish the rights of each nation upon each one of the points in dispute, and then to bring forward such negotiations as the reciprocal interests of each country may require; and, in consequence of the point relative to indemnification for damages, occasioned during the last war, by individuals of each nation, being already so far advanced, that ought undoubtedly first to occupy our attention: we will, therefore, in this letter, discuss the points relative to indemnification, leaving for another opportunity the discussion on the limits, which is so different in its nature.

It is just that the losses sustained by the citizens or subjects of either nation, during the last war, contrary to the law of nations, or the existing treaty, should be satisfied; and to this effect the convention of the 11th of August, 1802, between the Plenipotentiaries of the two Governments, was concluded, that the individual sufferers might find a quiet and convenient redress.

The intention of the King, my master, always unchangeable, and always conformable to the accredited honor and justice which characterize him, is now the same that it was at the time that the convention was concluded.

However, some circumstances have taken place between the time it was concluded and its ratification, which will make several explanations necessary. In the first place, it appears that various subjects of Spain, who had reclamations to make, having been injured by citizens of the United States, in consequence of this convention, came to Madrid from South America, hearing that it was adjusted, but were obliged to return home upon the report that the Senate of the United States had refused to ratify it during the session of 1803. It was but reasonable, then, that these vassals of His Majesty should be informed that the convention was ratified, that they might come forward to establish their claims; and for this, it was necessary to give them a certain space of time. His Majesty proposed that this space of time should be agreed on between the two Governments, that the ratification might be known to all those interested.

It having come to the knowledge of His Majesty that Congress had, on the 27th of February, approved an act, by which it appears that the President was authorized to establish custom-houses in the Territory of West Florida, and as this province belongs to His Majesty, he having conquered it by the valor of his arms, not having received it from France, of course could not *retrocede* it to her; and as he was in quiet possession of the same, and still remaining possessed, His Majesty could not but be offended at this account. Even should it be supposed that the United States have pretensions to this territory, it certainly was not the way to bring them forward to proceed to acts of possession, and disturb a friendly nation in her rights, by a solemn legislative act; such conduct must, consequently, appear to His Majesty very little conformable to the friendly relations of the two countries; and, under such circumstances, it did not correspond with the respect due to his royal person, or to the nation which he governs, to ratify conventions, which are acts of political friendship, with those who had violated, in a solemn manner, the rights of his sovereignty, until they should give satisfaction, or corresponding explanation. Thus it was just that he should ask this satisfaction, which was done accordingly.

It having also reached the King's notice that the French Government had satisfied the United States for the damages sustained during the last war by her privateers, it appeared not only unnecessary, but capable of producing confusion, to let the sixth article of the Convention of August, 1802, exist; by which, as His Majesty did not confess himself responsible for the damages occasioned by French privateers, on the coast and in the ports of Spain, the United States did not strengthen their right which they thought they possessed; and to let it exist would but expose the business to confusion. A desire, therefore, was manifested, that the sixth article should be suppressed. For the purpose of making these circumstances known to the American Government, His Majesty thought proper to suspend the ratification of the Treaty, and to send off a courier to the United States, with letters to this effect, to his Minister resident there.

Your Excellencies are acquainted that your Government, being instructed relative to the observations which were made to them by His Majesty's Minister upon the subject, agreed to fix a term, in which His Majesty's subjects interested in the convention might have notice of its ratification, and come forward with their claims before the Commissioners; and that each Government should give orders to their respective citizens and subjects, not to commence their operations until a convenient term should expire. Thus, upon this article, there remains nothing to do but to fix this term, in order that the ratification of the convention may take place.

In respect to the second particular, the reply of the American Government was not so decisive and clear, as His Majesty had a right to expect from a Government so friendly. The act of Congress of the 24th of February, 1804, in its obvious and literal sense, disturbed the peaceable possession which his Majesty had, and still has, of West Florida; and the explanations of the President of the United States, contained in his proclamation of the 3d of May, saying that it was to be carried into effect within the United States, could not be considered but as equivocal and susceptible of a double meaning, although the explanation of the Secretary of State of the United States is somewhat more explicit, promising to leave everything *in statu quo*, until an amicable arrangement should take place with Spain; and that the port of entry mentioned in the act should be established at Fort Stoddert, within the present territory of the United States. As His Majesty desires to live in harmony with the United States, he wishes to persuade himself that this explanation, although it does not give that satisfaction which he had so just a right to expect, is in some measure satisfactory, so far as it respects his quiet possession of West Florida. But could not His Majesty complain that satisfaction has not been given in explicit and solemn terms, for the publicity of a solemn act, whose obvious and literal sense went to disturb his quiet possession? On the other hand, it is said, in a plausible manner, that the port of entry shall be at Fort Stoddert: but how is it possible to arrive at Fort Stoddert, or go from thence to the sea, without navigating the rivers of West Florida, traversing its territory, and disturbing the peaceable possession of His Majesty? Thus, his well founded motives of complaint, in respect to that act, still exist; and His Majesty intends to keep them in mind, that satisfaction may be given by the United States; but, as it relates to ratifying the Convention of August, 1802, His Majesty agrees, from this time, to be satisfied in this respect; and thinks, in so doing, that he gives an unequivocal testimony of his friendship towards the United States.

Two obstacles to the ratification of the convention being removed, we should only now treat of what relates to the sixth article of said convention. His Majesty expressed a desire that this article should be suppressed, under the idea that its insertion would neither add to nor diminish the rights of the United States or of His Majesty; the clear and obvious sense of that article is, that the two contracting parties, not having been able to agree relative to the indemnities reclaimed by the United States for damages occasioned by French privateers and tribunals, on the coast and in the ports of Spain, reserved to themselves, for a future day, the rights they might have; the United States to reclaim, and His Majesty to show that he was not in any manner bound to satisfy them. In this particular, therefore, no right is given to the citizens of the United States, or taken away from them, by this article; and during the long space of time that has passed between the adjusting the convention and its ratification, His Majesty thinks he has demonstrated, in a most evident and decisive manner, that he is not responsible for the said indemnification. It appears superfluous to permit the existence of an article that can neither give nor take away any right, and which can only serve to produce confusion.

It never was the intention of His Majesty, nor is it now, that the suppression of the said article should imply a renunciation, by the United States, of the right they think they have to reclaim the said indemnification, but, on the contrary, only that they should not believe that His Majesty renounces, on his part, the right he thinks he has to resist the payment of it.

But should the American Government have any objection to the suppression of the said article, His Majesty will not oppose its continuance, provided it be understood in the ratification that, by the insertion of the sixth article, it is not in anywise to be inferred that His Majesty renounces the exceptions which are occasioned by the convention concluded between the United States and France, the 8th Vendemiaire, year 9; the context of the treaty of the sale of Louisiana concluded between the same Powers; the affirmation of the French Government, through the medium of Lucien Bonaparte, its Ambassador, that the damages sustained by the United States during the last war were satisfied by France; and other strong reasons by which this pretension is opposed.

The American Government cannot be surprised that His Majesty wishes to make this explanation in his ratification, if it is recollected that such an explanation is undoubtedly contained in the sixth article. It mentions that His Majesty reserves to himself the rights which His Majesty believes to belong to him; and, at present, to avoid ambiguity, he thinks it necessary to explain in the ratification what these rights are, which are reserved by the sixth article, and to make mention of them.

If the United States, on their part, wish to validate the rights which they think they have to exact indemnifications, and also to reserve them in the same article, it will then be beginning a separate pretension, which in no wise ought to embarrass the regular course of the convention of 1802. It should be reduced to this question: whether Spain is responsible or not for the damages and losses occasioned by French privateers and tribunals within her jurisdiction, during the last war? Spain believes that she is not responsible, and thinks that she can demonstrate it to a certainty.

But as this is the second point in order relative to the pretensions which your Excellencies have manifested, it appears to me convenient to treat it separately, also, after the plan proposed in my note of the 31st ultimo. In the mean time, referring you to what I have already written on this point, relative to indemnification for losses sustained by French privateers, &c., &c., to Mr. Pinckney, under date of 23d of August, and 5th of October, 1803, and to save your Excellencies the trouble of referring to the correspondence of that year, I take the liberty to enclose copies of them, and also of opinions of lawyers the most celebrated in the United States, who have been consulted upon this subject, and who unanimously declared that Spain was not responsible to satisfy said indemnities; and in which declaration these lawyers gave a proof of their rectitude, by their sincere confession of the slender foundation on which these reclamations of their country rested.

I conclude this letter by assuring your Excellencies that His Majesty is disposed to ratify the convention of the 11th of August, 1802, in the form which has been mentioned; and that, should your Excellency find no difficulty in so doing, as I hope will be the case, immediately after the ratification of the convention, we will proceed to the depending points, and finally to those negotiations which the reciprocal interests of both countries may require.

I renew to your Excellencies the sincere demonstrations of my distinguished considerations, &c.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *Feb.* 12, 1805.

SIR: We have received your Excellency's letter of the 10th instant, and have considered it with the attention which was due to an interesting communication on a subject of great importance to the United States. By it we perceive, with regret, that an accord is not likely to take place between us on the point to which it refers, since it appears that His Catholic Majesty is not disposed to make any reparation to the Government of the United States for all the injuries which their citizens received under her jurisdiction, of the character described in our former notes, whether the same were committed by his subjects or those of any other Power. Having had the honor to inform your Excellency that we could accede to no arrangement which did not provide for every injury, it seems useless to prolong the discussion on that point. We submit it to your Excellency's consideration on what we have already said.

Your Excellency having expressed a desire to leave the other points to be discussed afterwards, it is proper now to proceed to them; and as we have already submitted the claims of the United States for injuries arising from the suppression of the right of deposit at New Orleans, and as to boundaries, with our opinions thereon, and the wish of our Government that the same should be amicably adjusted, we take the liberty to request that your Excellency will have the goodness to state to us what are the views of His Majesty's Government on these points, particularly as to the eastern and western boundary of Louisiana; and how far His Majesty is content to cede all his claims to the territory lying eastward of the Mississippi; whether he is willing to adopt the plan of a neutral territory, and in what extent. By being possessed of His Majesty's sentiments and propositions on these points we may be enabled to take a view of the whole subject, and see whether it is yet possible to come to some accord by a general arrangement, which, while it keeps out of sight questions, on which, unfortunately, there has been so much difficulty and disagreement, may, in the end, do substantial justice to all parties. Believing this to be the most effectual and speedy mode of concluding the business, we shall wait with anxiety and impatience your Excellency's answer to this communication. We beg to repeat that we shall receive with consideration, and weigh with attention, whatever propositions by His Majesty's order, your Excellency will do us the honor to communicate, having in view the amicable adjustment of the whole business.

We have the honor to request that your Excellency will accept the assurance of our high consideration.

CHARLES PINCKNEY.
JAMES MONROE.

Don Pedro Cevallos,
First Secretary of State, &c.

Mr. Cevallos to Messrs. Monroe and Pinckney,

Aranjuez, *Feb.* 16, 1805.

Gentlemen: The contents of your esteemed note of the 12th instant, in answer to mine of the 10th, have caused me some surprise, as well on account of not having found in it, as I promised myself, that your opinions are for continuing the discussion relative to the reclamations of individuals of both nations, as of your determination to suspend the discussion upon the matter of this subject, unless the Spanish Government will make itself responsible for the losses occasioned by French privateers. It is my opinion that, as there are two species of reclamation, so different in their nature, they can easily be divided into two; and that, after the convention upon the first point is ratified, the discussion upon the second can take place without inconvenience; and I am persuaded, that, in justice to the individuals of both nations, who have received reciprocal injuries during the last war, we ought to terminate and satisfy, as soon as possible, those reclamations, on which both Governments are agreed, without prejudice to, or discontinuing the examination of the other points.

It appears, however, that your Excellencies wish to leave this point unsettled, and, moreover, refuse to enter into ulterior discussions on the point of indemnifications for losses occasioned by French privateers. In this state of the affair, and notwithstanding the manner in which your Excellencies have chosen to proceed, I cannot but repeat to you, what the accredited honor of my Government requires, to wit: that His Majesty is now, and ever will be, disposed to do justice to the citizens of the United States injured by Spanish subjects during the last war, and to conclude and ratify any convention relative thereto. But as it relates to injuries occasioned by French privateers on the coast and in the ports of Spain, His Majesty thinks he cannot accede in this point to the pretensions of the United States, because he believes that he has demonstrated, in the most convincing and evident manner, that Spain is not responsible for such indemnifications.

Although in my letters to Mr. Pinckney of the 23d August and 5th October, 1803, and in reply of the lawyers of Philadelphia and New York upon this point, of which I enclosed you copies in my note of the 10th instant, it is clearly demonstrated that the Spanish Government is not responsible for such indemnifications, I had nevertheless determined that, when (in the order proposed) we should have arrived at this second point of the pretensions of your Government, to have extended my observations thereon, so as to demonstrate the solid reasons by which the Spanish Government could refute such pretensions. But as your Excellencies believe that it is not necessary, or that it is incompatible with your instructions to lose time in such discussions, I do not wish to molest your attention, and only again refer you to the letters before-mentioned, and also to the reply of the American lawyers. But your Excellencies will permit me to make known to you how far the French Government is persuaded of the unfounded right which the American Government has to reclaim anything from Spain, for damages occasioned by French privateers within the jurisdiction of Spain, and of the surprise which the notice of such a demand from the United States has occasioned to France. For this purpose, I shall copy, for the information of your Excellencies, the expressions made use of in the latter part of a note under date of the 27th of July, 1804, written by the French Minister of Foreign Affairs to the Ambassador of His Catholic Majesty at that Court.

The French Government erroneously believed that Spain had gone so far in her condescensions to the United States, as to make herself responsible for the said indemnifications, and, in consequence, the French Minister of Foreign Affairs explained himself in the following manner:

"And, certainly, if I had been informed that the Ministers of His Catholic Majesty had carried their condescensions towards the United States so far as to engage Spain to be responsible to it for the indemnities for pretended violations made by France. I should most assuredly have received from my Government an order to manifest the discontent which France would have experienced by a condescension so improper; a discontent that would have been more strongly expressed towards the Government of the United States than towards Spain. Besides the explanations which have already been given to your Court on this subject, (alluding to the communication of the Ambassador, Bonaparte,) and those which I have authorized to be again made to the Government of the United States, by the Chargé d'Affaires of His Imperial Majesty, ought to leave the presumption that, from the opinion which His Majesty has adopted on this question, that as it has already been the subject of a long negotiation, and of a formal convention between France and the United States, it cannot again become the subject of a new discussion."

The expressions of the French Minister are clear and pointed, and portray, in a convincing manner, not only that France has satisfied the United States for the damages which they pretend to claim from Spain, but also the just surprise which has been caused to his Government by the notice of such pretensions on the part of the United States, pretensions which are directed to obtain a double indemnity for one and the same debt.

Under this supposition, and continuing the order we proposed, to fix, in the first place, the rights of each nation upon each one of the points in controversy, I will proceed to that of indemnifications, which your Excellencies reclaim for the suspension of the right of deposit at New Orleans. To determine whether Spain is or is not responsible for the damages which your Excellencies suppose to have been sustained by the citizens of the United States, by the suppression of the deposit at New Orleans, in consequence of the edict of the Intendant of that city, it is necessary to examine what are those damages, and from whence they have arisen. The edict of the Intendant of New Orleans, suspending the deposit of American produce in that city, did not interrupt, nor was it the intention to interrupt, the free navigation of the Mississippi; consequently, these pretended injuries are reduced to this small point, that, for a short time, the vessels loaded in the stream, instead of taking in their cargoes at the wharves. This obstruction will appear still less, when we consider that, during a great part of the time that the deposit was suspended, it was in the middle of Winter, when the exportation of produce from the western parts of the United States by the Mississippi is very inconsiderable. If the erroneous opinions which were formed in the United States upon the occurrences at New Orleans; if the complaints published in the papers of your country, as false as they were repeated, that the navigation of the Mississippi was interrupted; if the virulent writings by which the public mind was heated, and which led to compromit the American Government, and tarnish the good name of that of Spain, were causes that the inhabitants of the Western Territory of the United States could not form a correct idea of what passed at New Orleans; and if, in this uncertainty, they were disappointed in the extraction of their produce, or suffered other inconveniences, they ought to attribute the same to internal causes, which originated in their own country, such as the writings before-mentioned, filled with inflammatory falsehoods, the violence of enthusiastic partisans, and other occurrences, which, on those occasions, served to conceal the truth. The Government of Spain, so far from being responsible for the prejudices occasioned by these errors and erroneous ideas, ought, in justice, to complain of the irregular conduct pursued by various writers and other individuals of the United States, which was adapted to exasperate and mislead the public opinion, and went to divulge sentiments the most ignominious, and absurdities the most false, against the Government of His Majesty, and his accredited good faith.

Estimate the damages which may have arisen to the citizens of the United States by their erroneous conception of what took place at New Orleans, and they will be found to be no other than the trifling inconvenience before-mentioned, of their ships loading in a situation not so commodious—an inconvenience for which the Government of Spain is not responsible, (neither ought it to be,) and which does not, in any manner, merit to be mentioned, more especially when it is considered that those who experience it, had been enjoying the rights of deposit for four years more than was stipulated in the treaty, and this, notwithstanding the great prejudice it occasioned to His Majesty's revenue, by making New Orleans the centre of a most scandalous contraband trade, the profits of which it is not improbable but that some of those individuals have, in part, received, who now suppose themselves injured by said trifling inconvenience.

After four years more than the treaty expressed, to wit: three years, making in all seven years, the Intendant thought that it was his duty no longer to permit a deposit, which gave an opportunity for carrying on a fraudulent commerce, prejudicial to the interests of His Majesty, for which he was accountable; he thought it was necessary that New Orleans should no longer be the place of deposit, on account of those inconveniences, and, in consequence, prohibited the same.

Before proceeding to such a determination, the Intendant ought to have asked instructions from his Government; but, perhaps, he thought he might compromise, by delaying this measure. His Majesty, as soon as he was informed of the edict prohibiting the deposit, was pleased to revoke it, wishing thereby to give another testimony of his friendship for the United States. What, in strict justice, was the deposit at New Orleans? A generous and gratuitous concession of the King my master for three years. It is true that His Majesty agreed, in the twenty-second article of the treaty, to continue the favor of the deposit, if it should be found that no inconvenience resulted from it, and of this no person was a better judge than His Majesty, and his agent in that colony.

If the United States desired, after the expiration of three years, to continue the deposit at New Orleans, in a less precarious manner, or to have obtained another place for the deposit, they ought to have solicited the same; for it is more natural that those who aspire to a favor should solicit it, than that those who have the possession of the same should propose the cession or continuance of it.

By this it is not intended to support the edict of the Intendant; His Majesty has disapproved the act; giving, therefore, a proof of his friendship for the United States. However, this subject ought not to be treated on in the light of exacting indemnifications resulting from it, but should be examined to see if, in strict justice, the Intendant, or the Spanish Government, could or could not prohibit the deposit at New Orleans; four years more than the three stipulated in the treaty having expired, and during which time the Royal Treasury experienced the most serious prejudice. Most certainly the Intendant had a right to prohibit the deposit, and, consequently, the Government of Spain cannot be responsible on this point; and this reflection acquires a double weight, if we consider the trifling inconvenience occasioned by the true effect of the said edict, of its short duration, and, on the other hand, the serious damages which the King's revenue has experienced by the continuance of the deposit for four years over and above the term stipulated in the treaty. I think your Excellencies will be convinced of the force of these arguments; and it is to be desired that, in consequence of what I have represented to your Excellences, and to Mr. Pinckney in particular, upon the various points of indemnifications reclaimed by your Government, we may now be of the same opinion, and proceed to fix the rights of each nation, on the other question, relative to the limits of Louisiana, which is in its nature different; because, to have the first points in dispute undecided on, and even without discussing their merits, cannot but augment the confusion of the business; for it is very difficult to settle, in an amicable manner, the whole of the points in dispute, there being an essential difference of opinion on some parts of them.

I am also disposed to enter into a discussion upon the limits of Louisiana, but in the manner proposed by your Excellencies, and adopted by me in my note of the 31st ultimo, to wit: to fix, in the first place, the rights of each country, and then proceed to such negotiations as may be convenient to both nations.

With demonstrations of my most distinguished consideration and respect, I remain, &c.,

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *Feb.* 18, 1805.

Mr. Pinckney and Mr. Monroe have the honor to present their compliments to His Excellency Don Pedro Cevallos, and request that he will be so good as to honor them to-morrow with a conference, or at such other time as may be more agreeable to him. They think proper to ask this conference, in consequence of the note of his Excellency of the 16th instant, received this morning, which appearing calculated to put a prompt end to the negotiation, and that not in an amicable manner, they are desirous of obtaining it, before they give an answer to that note in the manner which their recent instructions make necessary, to see if it is yet possible to arrange amicably the differences which subsist between the two countries.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *Feb.* 24, 1805.

GENTLEMEN: In my note of the 16th instant, I informed your Excellencies that, after having examined the point relative to the indemnifications claimed by the United States, I should be equally disposed to enter into discussions upon the limits of Louisiana. In this mode of proceeding, I follow the plan laid down in your Excellency's first note, to wit: first, to fix the rights of each nation, and then proceed to such negotiations as may be proper for both.

On my part, I continue to follow this plan—a plan which is so conformable to the wishes of both Governments, and so well adapted to the purpose of terminating amicably their differences. We will now begin the examination of the limits of Louisiana, whose boundaries, by their nature, are divided into parts essentially distinct; and, for this reason, we will examine them separately. They are the limits of Louisiana on the east, or side of the Floridas, and its boundary on the side of the interior provinces of New Mexico. The first shall be the object of this letter.

If the declaration of the act of Congress of the 24th February of the last year had not anticipated the declaration of the pretensions of the United States, to extend the limits of Louisiana on the east as far as the river Perdido, including within them the greater part of West Florida, I should have been surprised to have seen this pretension manifested in the first note of your Excellencies. It appears as if the title alone of the treaty, by which His Majesty retroceded Louisiana to France, and to whose title the United States have succeeded, was sufficient to banish even the most distant idea that His Majesty had by it ceased to be the proprietor of West Florida, a province which Spain never received from France; for the possession of which she was only indebted to the valor of her arms many years before the acquisition of Louisiana; and, never having received it from France, it could not be included in a treaty founded entirely on the principle of retrocession. But as, notwithstanding this reflection, so obvious and clear, the United States pretend to stretch the limits of Louisiana to the river Perdido, I find myself under the necessity to manifest more fully the unshaken and solid principles by which His Majesty founds his right to the possession of the province of West Florida.

By the treaty of sale of Louisiana, signed at Paris the 30th April, 1803, the United States have acquired the right which France held, in virtue of the retrocession of that province, made to her by His Catholic Majesty, at St. Ildefonso, October 1, 1800. The stipulation, which ought to serve to found the pretensions of the United States, cannot be any other than the third article of the Treaty of Retrocession, which is in these terms: "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein, relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States.

The first thing which calls our attention, in explaining the said article, is the expression retrocede, and which also serves to denominate the Treaty of St. Ildefonso, called the Treaty of Retrocession. The sense of this expression is obvious; it cannot be misinterpreted or confounded; its meaning is evidently this: that His Catholic Majesty returns to France the territory which he had received from her. Now let us examine if France put Spain into possession of the territory which occasions the present discussion. It is, without doubt, by the Treaty of 1763, it was agreed that the separation between France and England of their possessions in that quarter, should be by a line through the middle of the rivers Mississippi and Iberville, and the lakes Maurepas and Pontchartrain, to the sea; consequently, France ceded to England the river and port of Mobile, as well as all her possessions on the east of the Mississippi, the island and city of New Orleans excepted. From that time this territory formed a part of the possessions of the English, under the name of West Florida, and France lost all claim and title to it. Thus it became an English possession; and, during the war of 1779, Spain conquered from England all that the latter possessed by the title of West Florida; and, in the definitive Treaty of 1803, England ceded to Spain, under a guaranty, both Floridas. It is then seen, by this plain and simple exposition of facts, that the title by which Spain holds possession of the territory on the east of the Mississippi, called West Florida, was acquired to her by the right of conquest, at the expense of her treasures, and blood of her soldiers; and, also, by the cession made by England under the Treaty of 1783. From that time the title of Spain to that territory is entirely independent of France, and of the cession of Louisiana made by her; and, consequently, Spain could not give back to France what she did not receive from her. We will continue the discussion on the third article of the Treaty of St. Ildefonso.

In the first place, it is said that His Majesty retrocedes Louisiana, "with the same extent of territory which it now has in the hands of Spain." This expression confirms most explicitly the right which Spain preserves over the said territory to the east of the Mississippi; because it is well known that Spain possesses West Florida not as Louisiana but as Florida. This circumstance, so notorious, is confirmed by the title of the Governors of the Havana, who, in their character of Captain Generals, have always governed under the title of "Captain Generals of the two Floridas;" and by all the most authentic public acts, which have passed since His Majesty has been in possession of the said territory, this title has been preserved. It will be sufficient to mention the treaty concluded between His Catholic Majesty and the United States, in 1795, in the second article of which we read the following words: "that the southern limits of the United States, which separate them from the Spanish colonies of East and West Florida," &c. It is then proved, in the most authentic manner, the separation of West Florida from Louisiana, and their different appellations; and it is a thing generally understood, that names of countries, bartered, ceded, or retroceded by a treaty, should be considered according to the general acceptation existing at the time of making the treaty; it is clear that if, in that of St. Ildefonso, it had been wished to include West Florida, it would have been expressly mentioned by the name which authenticated it, and under which it is generally known: for it would have been ridiculous to have given the name of Louisiana to that territory, because it had once formed a part of that province, as much so, as it would be at present to call the State of Ohio Louisiana; consequently, no doubt remains that, as His Majesty was in possession of the said territory, under the name and quality of West Florida, it could not be included in Louisiana; because it was in the hands of Spain on the 1st October, 1800, the epoch of the Treaty of St. Ildefonso; and because the before-mentioned clause of the third article, in its natural and explicit sense, excludes France from a right to West Florida.

The second clause or expression of the same article, "and which it had when France possessed it," alludes only to the manner in which France possessed it in 1763, when she delivered it to Spain; for if any other sense is given to it, that expression cannot be consistent with the anterior, which says, "with the same extent which it now has in the hands of Spain:" for if in the second clause a greater extent should be given to Louisiana than that which it had in the hands of Spain, how could it be "with the same extent it had in the hands of Spain?" It is repugnant to common sense that the delivery had to be with *the same extent* and with *greater extent;* it being with *more*, it could not be with the *same*. It is then clear that the obvious sense of both clauses together, and the only one which is not absurd and contradictory, is the following: that Louisiana was retroceded with the same extent it had in the hands of Spain in 1800, and that which it had when France possessed it, and gave it up to Spain. The expression "when France possessed it," not marking any fixed time, it is clear that it ought to be determined by the clauses of the same article;

since, if we should admit the expression "when France possessed it." in all its latitude, it would result that Spain had obligated herself by the third article to give France a part of the State of Kentucky, all the State of Ohio, and Territory of Indiana, and that France should hold a right, by the Treaty of St. Ildefonso, to resell the said States as a part of Louisiana "when France possessed it," and also to prohibit the navigation and deposit to the Americans, because that France had to receive Louisiana "as she possessed it. Absurd reasoning! which does not merit to be refuted, which arises in consequence of the undefined latitude which is pretended to be given to "when France possessed it." It is a principle incontrovertible of the law of nations, that treaties should not receive an odious or absurd interpretation, when they can admit of a clear and simple one. It would be both odious and absurd to suppose that Spain had ceded Louisiana to France, with all the extent with which she had possessed it at an epoch anterior to the treaty of 1763; for it would thence result that she had engaged to give France part of the United States, as before-mentioned; and it would be equally absurd in France, because she abandoned by the treaty of 1763, all her rights and pretensions to the country east of the Mississippi to Great Britain; and by her treaty of 1778, with the United States, she was bound in such a manner that she could not acquire a territory east of the Mississippi without the consent of the United States, and only by that of conquest. At the same time, it would do very little honor to the United States to maintain an interpretation, the consequence of which would make it appear that that part of the United States formed by the Ohio, a part of Kentucky and Tennessee might be comprehended, and become the object of stipulations and cessions between two foreign Powers, such as France and Spain, who have no right to meddle with them.

The third clause of the third article of the Treaty of St. Ildefonso is still more decisive, and offers other arguments in favor of Spain, since it says, "such as it ought to be according to subsequent treaties between Spain and other Powers." The treaties here alluded to, are not, nor can be, others than those of 1783, between Spain and England, and 1795, between Spain and the United States. By the first, His Majesty acquired the territory east of the Mississippi, under the name of West Florida; and, consequently, to be "as it ought to be," since the treaty of 1783 is with the exclusion of a territory acquired at that period, and with a name so different. By the second, His Majesty permitted the deposit, and fixed the limits between Louisiana, the Floridas, and the United States, to be "as they ought to be" after the treaty of 1795, is with the exclusion of France to the rights of the United States in this treaty. And thus, as the Treaty of St. Ildefonso could not affect the rights which the United States acquired by that of 1795, so neither did it affect, nor could it affect, the rights acquired by His Catholic Majesty, by the treaty of 1783 with England.

It would be unnecessary to accumulate more proofs in a case so clear in its nature: but I cannot but mention to your Excellencies, in support of the unquestionable right which Spain has to the territory in question, the respectable and undeniable opinion of the celebrated geographer of the United States, Mr. Ellicot, whose knowledge and talents occasioned his being named by the Government of the United States to run the line of division between the said States, and the Spanish provinces on the south of them, according to the Treaty of 1795. This person, who, perhaps, has more knowledge of what relates to the territory in question than any other, in the preface of his work, published in 1803, under the title of the "Journal of Andrew Ellicot, late Commissioner in behalf of the United States," &c. speaking of the sale of Louisiana, made by France, says, dated Lancaster, 22d July, 1802, "It does not appear, by the cession of Louisiana to the United States, we obtain the whole of both sides of the Mississippi: for, by consulting No. 5, of the maps, it will be seen that the island of New Orleans, which lies on the east side of the Mississippi, only extends north to Manshak; from thence, northerly, along the east side of the river, to the southern boundary of the United States, is still held by His Catholic Majesty as a part of West Florida." He again says, "the important and safe harbors in both the Floridas still remain in the possession of His Catholic Majesty." The expressions, so notable, corroborate and confirm, in the most positive manner, the incontestable right of His Catholic Majesty to all the territories which are on the east of the Mississippi, under the line of the thirty-first degree, excepting the island of New Orleans.

Besides what has been said, it cannot be doubted that the treaty of retrocession of 1800 was a contract between Spain and France; and consequently, it was for France to have represented, in case she had not received all the territories expressed in that stipulation. And it is certain that the Prefect Laussat, charged to carry the treaty into effect, being perfectly instructed in it, and being possessed with the intentions of his Government, has expressed himself satisfied with the manner in which it was carried into effect, without his having been put into possession of the territory in question. Thus, the United States, having succeeded to the rights of France, have no ground to pretend to what France has thought did not belong to her.

I could, by an accumulation of various proofs, establish in different ways the incontestable right of the King my master to West Florida; but it appears to me that what has already been said is sufficient, so as not to leave a doubt in the mind of any one who will examine the question impartially, not even in the mind of Mr. Ellicot, who, notwithstanding the love he bears to the Government that employed him, and in whose favor he has wrought, could not do less than give that just homage to truth and justice which they merit.

With assurances of my distinguished consideration, I remain, praying to God to preserve your lives many years,

PEDRO CEVALLOS.

Messrs. MONROE and PINCKNEY.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *February* 26, 1805.

Mr. Pinckney and Mr. Monroe present their compliments to His Excellency Don Pedro Cevallos, and have the honor to enclose him their answer to his note of the 16th, which was prepared and intended to have been sent yesterday. They avail themselves of the opportunity to acknowledge the receipt of his Excellency's note of the 24th, received last night, respecting the eastern limits of Louisiana, to which they will pay immediate attention.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *February* 26, 1805.

SIR: We have the honor to acknowledge the receipt of your Excellency's letter of the 16th instant, whose contents and tone have equally surprised us. We should consider ourselves failing in the respect which we owe to our Government, if we did not express our sentiments on it, in both respects. In so doing it is necessary to review concisely what has passed between us.

Your Excellency will recollect that, in our interview which took place immediately after Mr. Monroe had the honor of being received by His Majesty, the objects of his mission were fully communicated, and that it was agreed that we should present to your Excellency a project for the adjustment of every point, to which you were so good as to promise an early and explicit answer. In compliance with that arrangement, we did present to your Excellency, on the 28th ultimo, the project which we had promised, in which we stated, fully, the views of our Government, with its opinion of the rights of the United States on each point, which we illustrated in those cases which had not been already exhausted, and, of course, where illustration could be necessary, or was even likely to be agreeable. We had a right to expect, and we did expect, an answer equally full and explicit to every point. In this, however, we were disappointed. On the claims to indemnity for injuries, your Excellency thought proper, it is true, to intimate, in respect to spoliations, that His Majesty was willing to ratify the convention of August 11, 1802, after the obstacle which occasioned its postponement should be removed; and, in respect to that arising from the suppression of the deposit at New Orleans, that Spain was not accountable for them, but without giving any reason for the assertion. On the great question of territorial rights and limits, as on the mode of providing for their security, and, with it, the peace and harmony of our Governments, on which we did ourselves the honor to make to your Excellency what we deemed liberal and salutary propositions, we received what could not be considered as an answer, since it neither rejected our propositions, offered others, nor expressed any sentiments respecting them. If it was proper to open the whole subject, as was admitted in our first interview, it was equally so to answer it. And that it was proper so to do, is not only proved by the agreement referred to, but by the situation of the two countries at the present time. The several points, are, it is true, in their nature distinct; yet it is obvious that the whole must be brought into view and settled together. We do not perceive the means, nor has your Excellency suggested them, of adjusting a part, and leaving the others unfinished.

Although we could not but be hurt at receiving an answer so vague and unsatisfactory to our letter, yet we deemed it inconsistent with the respect we owed to both our Governments, to your Excellency, and to ourselves, as with the spirit of concillation which we wish to preserve through the negotiation, to express that sentiment. We did more; we met the invitation which your Excellency seemed to give us, without, however, furnishing the example, by proceeding to explain further the views of our Government, and illustrate its rights on the two points, on which you had given any opinion. The claims to compensation for injuries arising from spoliations on our commerce, and the suppression of the right of deposit at New Orleans, had been long before our Governments, and their merits were well understood. That for spoliations, more especially, had been so fully and amply discussed, both here and in the United States, as to leave no doubt that such discussion was not necessary to enable either party to make up its mind on it. By entering into it, therefore, we gave your Excellency a convincing proof of our desire to accommodate with your wishes, in the hope that it will produce on your part a corresponding result.

We flattered ourselves, that, as the whole subject was again presented before you, in all its points, with the explanation which you had invited on the two first, we should have received a full answer from His Majesty's Government on each, and, of course, on the whole. In this, however, we were again disappointed. We received, in substance, only the same proposition which had been made to us before, which we had, as we presumed, clearly proved to be incompatible with the rights of the United States, and the principles of justice, and which, as we had taken the liberty to inform your Excellency, the repeated and recent orders of our Government prohibited us from accepting. Under these circumstances we considered it our duty to acquaint your Excellency, respectfully, that we deemed it useless and improper to prolong the discussion on that point; at the same time requesting you to be so good as to communicate the sentiments and propositions of His Majesty's Government on the whole subject, that we might see whether it would be possible, while we avoided discussions of an irritating tendency, to adopt some plan, which, by a general arrangement, might provide for this as well as the other objects, and thereby render justice in the most acceptable manner to all parties. To this proposal, the most respectful and friendly that we could make, one which is warranted by the uniform practice in similar transactions and cases of all Powers, especially the most friendly to each

other, we received a letter which is addressed in a very different spirit. By it we are charged with refusing to discuss points which we had already discussed, and on which we had given to your Excellency our ulterior opinion; our Government is charged with the dishonorable attempt to obtain a double indemnity for the same object; many of our citizens are denounced as unprincipled contrabandists; and others, if not the whole nation, as enthusiastic partisans, calumniators, and disfigurers of truth, for, in respect to the suppression of the deposit at New Orleans, all America had but one opinion, and spoke with one voice. In the article of the press, the freedom of our internal institutions, which all nations have a right to regulate, and do regulate as suits themselves, is attacked; the right of the Intendant to suppress the deposit at New Orleans is justified; and the right itself, though stipulated and made permanent by a solemn treaty, a stipulation which had its equivalent in the other articles of the same instrument, and was otherwise prompted by the law of nature, of reason, and the interest of Spain, is represented as a gratuitous or charitable donation to the United States, which His Majesty had a right to suppress, and keep suppressed, until their Government should implore him to open it to them again. On this note, we think proper to observe that it was impossible for us to have received one which could have been more unexpected. It was the more so, because, in all our communications, we had been studious, in obedience to the orders of our Government—orders which we executed with pleasure—to manifest its high respect for His Catholic Majesty, and we were not conscious of having failed in that which we entertained for your Excellency.

We forbear to make any further comment on the tone of this last note at present, because it is probable it may convey sentiments which are not entertained. We are aware that, in the zeal of an important discussion, incidents of that kind often occur, and are often prompted by patriotic motives, even with those who are the most guarded. We trust that the character of the American Government and people, which is well known, and we flatter ourselves held in just estimation by other Powers, will not be injured by the spirit of conciliation and moderation which animates us on this occasion. On the presumption, therefore, that no premeditated outrage was intended, and with a sincere desire to adjust amicably the differences subsisting between our countries, we will proceed to answer the several objections urged in your Excellency's last note to what we consider to be the just claims of our Government.

Your Excellency insists that His Catholic Majesty is not answerable for the spoliations that were committed on the commerce of the United States, within the jurisdiction of Spain, in the course of the last war, by French cruisers and tribunals; and you urge, in support of the doctrine, first, that those claims were satisfied by the treaties which have taken place between the United States and France; second, that Spain was not in a situation to prevent those aggressions on our commerce. We will examine with candor both these pretensions, which, we are persuaded, it will be easy to show are unfounded. Two treaties have latterly taken place between the United States and France; the first on the 30th of September, 1800, the second on the 30th of April, 1803. Permit us to ask, by which of these was such extinguishment made? If by the first, it is not likely that the subject would have been thought of in the second; if the second is relied on, it is an admission that it was not done by the first. Your Excellency seems disposed to rely on both, which cannot be considered otherwise than as a proof that neither alone had done it. It is equally obvious that it was not done by both together, since, whether we examine them separately or together, they expressly preclude the idea.

By the second article of the convention of 1800 between the United States and France, it is agreed, for certain considerations therein specified, to postpone their respective claims to indemnities to a more convenient time; and, by the ratification of that convention, those claims were relinquished forever on both sides.

By the fifth article of the same convention, it is agreed, that certain specified claims or debts should be recoverable in the same manner as if no misunderstanding had taken place between the parties.

By the first and second articles of the second convention, entered into on the 30th of April, 1803, provision is made for the payment of the debts which were comprised under the second and fifth articles of that of 1800, whose amount, it was expressly stipulated, should not exceed twenty millions of livres.

These are the only articles in those conventions which have any reference to the point in question. If the claim of the United States on Spain for French spoliations and condemnations within her jurisdiction was satisfied by the treaties and conventions between the United States and France, it was by one of these articles. We will examine, first, that pretension, as founded on the second article of the Convention of 1800. On a view of that article, and, indeed, of the whole instrument, we find that it regulates only questions and interests that were depending between the United States and France. A misunderstanding had unhappily taken place between those Powers, and it was the object of this convention to adjust it. Not the most distant allusion is made, in any article of the convention, to Spain or her concerns. Had Spain then been a party to that misunderstanding, she could not have been benefited by that convention. The reason is much stronger why she could not, as she was not a party to it, since there was no variance, and there certainly was none between the United States and Spain, it is more evident that it could not have been in the contemplation of the parties to adjust what did not exist. It may be added that, if it had been contemplated to release Spain from any obligation which she owed to the United States, from any just claims which they had on her, the release would have been complete; it would have extended to every object, especially of the same kind; and settled every ground of difference between them. The fact, however, is admitted by all parties to be otherwise. It has never been contended by Spain, that the spoliations which were committed by her own people, were satisfied by that convention. Hence it is clear that Spain was not discharged from the claim of the United States for French spoliations committed within her limits, by the second article of the Convention of 1800. It is equally clear that she was not discharged by the first and second articles of the Convention of 1803. It is evident, on a slight view of these last articles, and, indeed, of the whole instrument, that they had no other debts in contemplation but those which were made recoverable by the Convention of 1800; that, in truth, the Convention of 1803 did no more than provide funds for the payment of the debts that were due under that of 1800. Thus the claim of the United States on Spain for these spoliations was not discharged by this last Convention. Other circumstances prove clearly, not only that this claim was not discharged, but that a provision or discharge of it by those conventions was not even contemplated by the parties to them. It is very well known that the Government of the United States never made a demand on that of France for the payment of these spoliations; that it always claimed the payment of Spain, and her only, considering her only as responsible for them. It is not presumable that the parties should intend to provide for a claim not made, for a debt not supposed to be due. The conduct of Spain, through the whole of this epoch, corresponds with that of the other Powers in this respect. The Minister of the United States at Madrid pressed the Government of Spain for an indemnity for that and other claims. Had it been contemplated by Spain to obtain her discharge through the medium of France, her Ambassador at Paris would have been seen in both those negotiations, especially that of 1800; and, had he succeeded, a provision to that effect, in explicit terms, would have been introduced into that convention. But nothing of this kind took place. Indeed, the success of such an attempt was so improbable, that it is not presumable that the idea ever occurred. With the claims that were in the contemplation of the parties, and for which France was truly answerable, it was difficult to accomplish an amicable adjustment of their differences. Had these been swelled by the addition of those on Spain, it is probable that the negotiation would have proved abortive. It was not until some years afterward that this pretension on the part of Spain was heard of, and then it was founded on a pretext as singular as it was unexpected—that of her being released by a treaty between the United States and another Power, in which she was not even mentioned. With respect to these claims having been discharged by the Convention of 1803, it has already been shown that that convention could not, by any possible construction, be considered as having any reference to the subject; it may be added, that the funds provided by it were not only intended for other objects expressly stipulated, but that there is reason to think they are not commensurate with those objects.

As to the pretension that Spain was released from this claim, by the release made to France of other claims of a similar nature, it is easy to prove that it has not the slightest foundation. It has already been shown that France was not released from this claim, because it was never made on her. We shall proceed to show that it was properly made on Spain, and that she was, and is still, answerable for it.

It will not be controverted that it is the duty of every independent State to observe, that the citizens or subjects of every other independent State are secured, in their intercourse with it, in the enjoyment of all the rights and privileges to which they are entitled by the law of nations, and treaties with such Power. This principle forms the basis on which the whole system of public law rests. It is the standard by which every question between independent Powers must be examined, and their respective rights in all cases settled.

It is equally true that, for every violation of those rights on the citizens or subjects of one independent State within the jurisdiction of another, the Government of the latter is responsible, whether the same be committed by its own people, or those of another Power. The reason of this rule is obvious. Every Government being sovereign within its own limits, the subjects of every foreign Power are regarded there for the time as its own subjects, and, as such, it is responsible for their conduct. While such Government retains its independence, it cannot divest itself of this duty, or the obligation to discharge it. The principle is the same, whether such acts be performed by the private individuals of a foreign Power, or its public agents. In the latter case, indeed, the claim to an indemnity by the party injured, on the Government under whose jurisdiction it was received, is stronger, since, being done under color of public authority, and especially if persevered in, they become the acts of the Government itself. These principles are too well established by writers on the law of nations to require further illustration.

Hence it appears clearly that Spain was answerable for French spoliations committed under her jurisdiction, in the same manner as if they were committed by her own people. To her, then, the American Government was bound to look for reparation. Whether France was eventually liable or not, is not material to inquire. Where was the injury rendered? What Government had cognizance of the case? Whose laws were violated by the proceeding; or by whose laws was the injury permitted, or, what amounts to the same thing, suffered? By that Government is the reparation due, and by it ought it to be made. If France has actually paid any of those claims, such payment will, of course, be considered as a discharge. That the suffering individuals may have applied elsewhere and everywhere, to save

themselves from ruin, or rather retrieve themselves from it, is possible; but neither will the course which their distresses may have compelled them to pursue, nor will the fortune of some particular applicants, in case any have succeeded, affect the merits of the present question. It is known that the sentiments and conduct of the American Government have invariably been the same on it. It has thought, in every stage, that Spain was responsible for those spoliations, and it has uniformly sought the indemnification of her, and of her alone.

If France was responsible for those claims, the injuries having proceeded from her officers and agents, it was only eventually in case satisfaction was not obtained of Spain; for, as already shown, having been committed under the jurisdiction of Spain, where she only had authority, the redress was strictly due by her. For injuries committed by a Spaniard to an American citizen at Paris, we should not think of making application for redress to the Government of Spain, nor for like injuries committed at Madrid by a Frenchman, to the Government of France. The application, in both cases, would be to the Government having jurisdiction of the territory where the offence was committed, and, of course cognizance of the case, to the Government whose laws were offended, and who had the power of redress. If France was eventually answerable to us for those claims, which we deny, we admit that she was released from them by the Convention of 1800. But can Spain, who was answerable primarily, if not solely, to whom application had been made, to whom it was then, and has since, been made, claim an exemption from them, under a treaty to which she was not a party, and in which her name was not even mentioned? We are of opinion, by the uniform and well-established doctrine of the law of nations, by the clearest principles of justice, that she cannot.

With respect to the opinions which you have been pleased to communicate to us of the Minister of Foreign Relations, and the late Ambassador of France, on this subject, we have received them with the consideration which is due to every respectable authority from which they emanate. We are not willing to believe that they oppugn the principle above laid down, or apply to those cases which are justly chargeable on Spain, because our Government, for the reasons above stated, and by the clearest conviction, thinks otherwise. On all treaties between independent Powers, each party has a right to form its own opinion. Every nation is the guardian of its own honor and rights; and the Emperor is too sensible of what is due to his own glory, and entertains too high a respect for the United States, to wish them to abandon a just sense of what is due to their own. We do not believe that the view which our Government takes of this subject was ever presented to that of France, since we are not aware that there ever was an occasion for it. By those treaties with His Imperial Majesty, all differences between the United States and France were happily terminated, and the relations of the two countries placed on a footing of permanent friendship. In all questions growing out of them, in which France and the United States are interested, their Governments are perfectly of accord. We should regret much if they were not so, in the present case, as, indeed, in all others between the United States and Spain.

As to the doctrine held by certain respectable professional characters in the United States, whose opinions have been asked and given in this case, that France and Spain were associate parties in the injuries complained of, the former as principal, and the latter as accessory, we are sorry to be called on to make any remark on it. Delicacy for those gentlemen makes this an unpleasant duty. From that motive we will confine what we say to the doctrine itself. We will admit that we have not made up our minds to a censure of their conduct, since, if such an interference is justifiable under any Government, it certainly is so under that where it is their happy destiny to dwell. In noticing their opinion, we have to observe, that they have evidently mistaken the case, by applying to nations a maxim of local political law, which is applicable only to individuals. Among nations it is believed that there is no such thing as principal and accessory. All are principals, and are to be regarded as such, in all their transactions. In case of a war, to which there are several parties, allies on each side, nothing is more common than for one to make its peace, and withdraw from it. It was never contended that an adjustment made by one party, in such a case, or any other, settled the differences of the other party. The doctrine of principal and accessory, of a release or discharge to one Power, by virtue of an accommodation with another, was never heard of among them. Indeed, it would be strange if any one nation should undertake to adjust the concerns of another, without its authority. It would be more so if any adjustment between two parties should be so construed as to produce an important benefit to a third, not only without its authority, but the knowledge of any one of them. Suppose that an adjustment made by one of the parties for a third one, should be highly detrimental to it, would such a third party be bound by it? Had France, for example, stipulated that Spain should pay for all those spoliations, and a great proportion of her own, would Spain have allowed her right to do so? Ought she, then, or has she a right to claim any advantage from a transaction to which she was not a party, by which she could not be bound, and which, in its nature, could not be reciprocal?

With respect to the plea on which the opinion of those gentlemen is, in part, founded, that Spain was not in a situation to prevent those violations of her territory by France, and is, therefore, not accountable to the United States for the injuries resulting from them, we find ourselved precluded, by the high respect which we entertain for His Catholic Majesty, from dwelling on it. We shall be permitted, however, to observe, that we utterly deny the fact. Spain was never placed in that dilemma. Having, from very remote antiquity,

held a very distinguished rank among the Powers of Europe, she still enjoys it. In a late war with France, nothing occurred which placed her in the condition of a conquered nation. Her troops behaved with gallantry in the field, and her Government obtained an equal and honorable peace. If, then, she did not prevent those violations of her territory, it was not because she was not able to do it, but because they were sanctioned by some treaty which secured her, in other respects, an equivalent; or that she chose to permit them from some motive of policy at the time; in either of which cases she is responsible to the United States for the same.

We have thus answered fully the arguments urged by your Excellency against the claim of the United States on Spain, to an indemnity for the spoliations on their commerce by the cruisers and tribunals of France, within the territory of Spain, in the course of the last war, and we are persuaded, shown, in the clearest manner, that that claim is well founded. We should have gone more fully into this point on our former notes, had we not believed that it was already fully illustrated by the communications which had taken place on it between our Governments, in the United States and here, to which we beg leave to refer; a note of which latter is here annexed. We have, however, been happy, at your Excellency's suggestion, to review the subject, being very solicitous to prove, on all occasions, that our Government make no claim which is not founded in justice; and being likewise so to avail ourselves of every suitable opportunity to give new proofs of its respect for, and desire to preserve the most friendly relations with, His Catholic Majesty.

On the point respecting the suppression of the deposit at New Orleans, we regret that it is altogether impossible to assent to the doctrine which is insisted on by your Excellency. On a careful perusal of the treaty, we find in it nothing which justifies the idea that there ever was to have been a moment of interruption of the enjoyment of that right; either at New Orleans, or at some other suitable place on the banks of the Mississippi. It is not, it is true, stipulated that, in suppressing the existing deposit, and opening another, the Government of Spain should give notice of the design, and hold communication with that of the United States on the subject. On the other hand, it may also be said, with equal truth, that it is not stipulated, in taking that measure, that that friendly proceeding should not be observed, but that His Majesty may do it, and keep the deposit altogether suppressed until the Government of the United States should make application for the opening of it. In all such cases, the policy of the measure, the object of the treaty, and intention of the parties, are to govern in the interpretation of it; and, by these, it appears to us to be questionable, that another deposit ought to have been opened at the moment the existing one was closed. It is on that principle that the United States consider themselves entitled to an indemnity for the injury which was sustained by that measure. What the precise amount of that may be, it is not in our power to state; from what we have understood, however, it is by no means of the trifling nature your Excellency seems to suppose it. We have not sought, as an indemnity for it, any precise sum. We have only proposed that it should be referred to the judgment of impartial arbitrators, on such proof as might be presented before them, to estimate it—a proposition which we deemed too just and reasonable to admit of objection.

On the subject of limits, and others incident to it, having already stated to your Excellency the views of our Government, we deem it necessary only to refer again to our former communications. As neighbors, desirous of living together in peace and friendship, it is certainly an object of essential importance to adjust and arrange these very interesting points at this time, in a clear, definite, and satisfactory manner. At an epoch so extraordinary, and big with such important events, it may be productive of much harm to leave anything unfinished, and thereby exposed to casualty. In cases of unsettled boundary, especially, where the pretensions of the parties differ, and those of either may be carried, under colorable pretexts, to great height, there is always danger, by delay, of their becoming the cause of serious controversies, and even of destructive wars. Aware of this danger, the President of the United States is sincerely desirous of averting the evils incident to it, while it is practicable. It is with that view that he has sought, by the present negotiation, to settle amicably and finally all the points depending between the two nations.

The propositions which we have had the honor to make on this point are deemed reasonable and just, and we flatter ourselves that they will be so considered by His Majesty's Government.

We have now the honor to submit to your Excelleney again the full view of our Government, on all the points depending between the United States and Spain, and, in so doing, consider it our duty to repeat what we stated in our former notes, that it is equally incompatible with justice, as it is with our instructions, to enter into any arrangement relative to claims for spoliations which does not provide, in some equitable and satisfactory mode, for the whole. To reserve a right, in respect to those which were committed by French cruisers and tribunals, without making provision for it, could at this stage be considered in no other light than an abandonment of it. We have forborne to state, in detail, the extent of these injuries, comprising, in the whole, two hundred and seventy-two vessels and cargoes, or the aggravated circumstances attending many of them, which have involved in ruin many of our most respectable and wealthy citizens, because it has been our object rather to heal than to open wounds. It is well known that, at the time these injuries were rendered to our citizens, there did not exist, on the part of Spain, the slightest cause of complaint against the United States, whose Government, peaceable and friendly, has borne them with a patience and moderation of which history furnishes

no example in equal degree. Many years have elapsed since these injuries were received; during which time, the sufferers have looked to their Government for relief without effect. Their last hope is founded on this negotiation, and great would their astonishment and disappointment be, if they were told that more than one-half of them were to be abandoned. We repeat, however, what we took the liberty to state in our letter of the 12th instant, that, if it is possible, on being possessed of His Majesty's sentiments and propositions on the whole subject, to provide by a general arrangement for this and the other objects, in any mode consistent with our duty, which may be satisfactory to him, we shall be happy to do it.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *Feb.* 28, 1805.

GENTLEMEN: I have received your esteemed note of the 24th instant, in which you reply to mine of the 14th; and before I make the observations necessary in answer to the same, it appears to me indispensable to satisfy, by a separate letter, the complaints of your Excellencies on the tone and expressions of my said note. The King, my master, being animated by the most sincere sentiments of friendship and distinguished consideration towards the United States, your Excellencies will be pleased to do justice to these sentiments of His Majesty and to mine, as being persuaded that I, who have the honor to be the interpreter of them, could have no design nor the most distant idea, I do not say to injure, but even to be wanting in those manifestations of consideration and respect for the United States, and their Government, to which they are so justly entitled. Commencing with this declaration, your Excellencies will permit me to examine the different expressions of my letter of the 16th, which have given rise to your complaints. Your Excellencies say, in the first place, that, on my part, I impute to you a refusal to discuss some of the controverted points; but if your Excellencies will take the trouble to read my note a second time, I hope you will acknowledge that I am far from imputing anything on that subject, and that I only wished to say on it, that, while your Excellencies believe it useless, or incompatible with your instructions, to continue the discussion upon the indemnifications reclaimed for injuries committed by the French privateers, as I understood by the expression of your Excellencies, "it seems useless to prolong the discussions on that point," I found myself obliged to treat the subject less extensively than I thought I could, not to molest your Excellencies too much on it. I am far from supposing that this could involve the smallest disrespect, as it is only reducing it to a difference of opinion, your Excellencies believing that the point was sufficiently discussed, and I, that it wanted to be a little more so. In the second place, your Excellencies show yourselves dissatisfied that I have expressed that the claim of your Government for satisfaction for French spoliations should go to demand two indemnities for the same debt, which expression your Excellencies believe injurious to your Government; but your Excellencies will permit me to observe, that to demand two satisfactions for the same thing would be dishonorable to the American Government, knowing itself already satisfied by France, should still demand satisfaction of Spain; but as your Government does not believe itself satisfied by France, it cannot be dishonorable to pursue its demand of satisfaction from Spain, while it continues in the belief that it has not received satisfaction from France. Spain, on her part, believes she has shown that the United States have received satisfaction from France, and it is in this belief she may say that the United States claim two satisfactions for the same debt; more she cannot say, nor have I said, or thought to say, that they claim it with improper designs, knowing they demand two satisfactions, or that they believe they demand more than one; in which there is nothing dishonorable; although the United States might be mistaken, as Spain believes they are, in founding her belief in reasons which I have already explained to your Excellencies, and thinking, on this occasion, exactly in conformity with the opinion of the most enlightened jurists of your country.

In the third place, your Excellencies complain that, in my note, I have denounced many of the citizens of the United States as contrabandists; on which your Excellencies will permit me to observe, that I do not find anything of this in my letter in positive terms, but in doubtful ones, as the expression denotes, "it will not be extraordinary;" a doubt which the representations of those employed in the royal revenue have given rise to, whose truth I do not pretend to guaranty; nor does the doubt fall upon many of the citizens of the United States, but upon some very small numbers of them, as they very often use much in this sense, although there have been but one or two cases. I do not see the injury that can arise to the American nation in expressing a doubt that there may have been some individuals concerned in contraband business, or giving pretexts to Spaniards to do so; nor have I either attempted to discriminate between the two.

In the fourth place, your Excellencies complain that I have said that some of the Americans, carried away by party spirit, had calumniated Spain on account of the deposit at New Orleans, and have disfigured what has happened in the capital; and your Excellencies suppose that I designed likewise, in a manner, to attribute this to the American nation, the whole of whom, you say, had but one opinion on the subject of the deposit. On this point I cannot do less than feel myself hurt at the construction which is given to my expressions: in my letter I cannot find a single expression which can have the most remote allusion on the subject, either to the American nation, or its Government; it treats only of some individuals; and so far from making the least reflection on the conduct of the American nation and its Government, during the suspension of the deposit, on the contrary, I have afforded many proofs of the satisfaction the conduct of the American Government has given on that occasion; notwithstanding it is not less certain what I have said, that there were some individuals, especially some writers, who published things on that subject injurious and calumniating to Spain, and the result of which was, that some of the inhabitants of the Western States, (as was not extraordinary,) not knowing the truth of the facts, suspended the shipping their produce to New Orleans, and suffered other injuries not imputable to Spain. In the first days of the suspension of the deposit, it was published by some North American, that the navigation of the Mississippi was obstructed; this was a falsehood, whose currency was injurious to the good faith of the Spanish Government, which had stipulated for the free navigation of the said river, and at the same time was prejudicial to the inhabitants of the Western States, who, remaining in this uncertainty, did not choose to undertake a voyage of such length, while there was danger of the outlet being interrupted. Afterwards, they said, and it was repeated in the writings and speeches of some individuals, that the suspension of the deposit, and what they might expect respecting the navigation, flowed from France having influenced Spain to take upon herself the odium of this measure, that France might receive Louisiana free from the obligations imposed by the Treaty of 1795, than which there could be no expressions more calumniating and unjust; it being an indubitable fact that, in the treaty of retrocession of Louisiana of the first of October, 1800, His Majesty had taken the most scrupulous care to secure the rights of the United States in the clause of the third article, which says, "telle qu'elle doit être après les traités passés subséquemment entre l'Espagne et d'autres Etats." As to what respected the "enthusiastic partisans," of which I spoke in my note, your Excellencies will permit me to remind you, that I alluded to the attempts of some of the inhabitants of the Western States, who (as the public papers then announced) showed a disposition and design to descend to Louisiana with an armed force, and, without other legitimate authority, to take justice into their own hands; on which occasion there now exists, in the office of the Secretary of State of the United States, the representations of His Majesty's Minister to have such attempts chastised and corrected. These are the attempts to which I allude in my note of the 16th, and on no account to the conduct of the American Government and nation, which was prudent and just. But can it be denied that the consequence of these errors thus published, and which were, that some or many of the peaceable inhabitants did not carry their produce to New Orleans, are not to be, nor cannot be, attributed to the act of the Intendant, but to the occurrence which took place in the said country. There is nothing in my note which has reference to the liberty, or otherwise, of the press, nor with the institutions of the American Government, which, as your Excellencies observe, every Government is free to regulate as it pleases, but I only insinuated that the writings published with this motive, gave to the western inhabitants a wrong idea of what passed in New Orleans, and that this was not imputable to Spain, or the edict of the Intendant.

This, and this only, is all which I wished to say in my note of the 16th, in which I am extremely sensible that, contrary to my intention, your Excellencies have found motives for complaint; to remove which, it appears to me proper immediately to enter into this explanation, which, although somewhat diffuse, will, I hope, have answered the end I intended. It appeared to me proper to do this in a separate letter, reserving to myself to answer, with all possible despatch and brevity, the other points contained in your Excellencies' esteemed note of the 26th.

In the interim, I renew to your Excellencies the demonstrations of my distinguished consideration and esteem. I pray God to preserve your lives many years.

PEDRO CEVALLOS.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March* 4, 1805.

GENTLEMEN: Immediately after I received your esteemed note of the 26th ultimo, I believed it my duty not to lose a moment in replying to the complaints you had been pleased to make on some of the expressions in my note of the 16th; it not being consistent with my sentiments to let your Excellencies remain for a moment in the suspicion that I was wanting, in any degree, in the respect due to the United States or its Government, or to persons so respectable as your Excellencies, not only in your individual capacities, but as representing the Government you do. I flatter myself I have removed, by my note of the 28th ultimo, all motives for those complaints; but if any doubt should still remain on that subject, I am equally ready to satisfy it, should your Excellencies be pleased to express it.

This done, I proceed to examine the other points contained in your note above mentioned of the 26th. It is certain that, in my first letter of the 31st January, I did not enter upon the points in dispute between the two Governments; but it appears to me that, in my belief, it was somewhat premature to begin to examine projects of a convention upon all the points, without analyzing them first, and fixing the right of each country as far as possible; because, as your Excellencies well know, before we can proceed to a convention upon the whole, it is necessary to know as distinctly as we can what are the rights and obligations of His Majesty and the United States. This knowledge of the detail ought to be the beginning of the negotiation; because it is clear that, according to the extent which they suppose the rights or obligation of each party ought to have, so ought the

convention for the whole to be the more or less enlarged. This is what I believed your Excellencies wished to remark in your first note, by the following expression: "Each of the depending points between the two Governments ought to be examined impartially, and all motives of complaint and inquietude considered and terminated amicably, and to do which it is necessary to determine the respective rights," &c. Understanding it thus in my first note, I did nothing more than enumerate the points on which it appeared to me we had to fix our respective rights, and to request your Excellencies' opinion as to the order in which they should be treated. In my second of the 10th ultimo, I spoke of the reclamations for injuries committed by the individuals of both nations, and told your Excellencies that His Majesty was disposed then to terminate this point; and at the same time spoke, but not extensively, of the damages committed by the French privateers. In my third note of the 16th, not to molest your Excellencies too much, I touched shortly on the same subject, and treated of the damages occasioned by the suspension of the deposit; and, lastly, under date of the 24th, I commenced the examination of the limits of Louisiana, with those which relate to the eastern boundary.

In the context of all the letters together, and of that which I promise to transmit, respecting the western limits of Louisiana, I hope your Excellencies will see I have not omitted entering upon all the points contained in your esteemed notes, only with the difference alluded to from the beginning, that it appeared to me most proper and clear to treat each point separately, according to its different nature.

It is true that, to the present time, I have not been able to say to your Excellencies, as you wish, what is the disposition of His Majesty upon the whole; but the reason is, as I have thought from the beginning, that it is not possible for His Majesty to determine what part he will adopt upon the whole, without being clear what are his rights or what his objections on each particular point. This examination being made, your Excellencies ought not to doubt that His Majesty will be ready to enter upon such a convention as shall be judged proper to conclude the claims and promote the interest of both parties. The King wishes to give proofs of his friendship and good neighborhood to the United States, and to fix them in the most permanent manner.

Having said this, and proceeding in the order of the notes which have passed between us, I must stop to remark a little on the reflections which your Excellencies have made, as to the assertion that Spain is persuaded that the United States are satisfied for the damages occasioned by French cruisers in her ports and on her coast. Your Excellencies wish to know by which of the conventions that have been made between France and the United States, Spain believes these damages to have been satisfied. I answer by that of 1800, and by the context of its ratification. In speaking of the second convention, it is only, as your Excellencies yourselves say on this subject, an explanation or compliance with the first; or, to go to the point at once, one of the reasons which convinces Spain and induces her to believe that she is not responsible for the damages occasioned by French cruisers in her ports and on her coasts, is, that it is notorious that the United States have agreed with France to consider themselves as satisfied for all the damages they have received from her (France) during the last war.

It is true, in the convention no mention was made of Spain; because, in the manner in which they treated, it was absolutely superfluous to do so, and the high contracting parties considering it so, omitted without doubt to mention that which, by the nature of things, could not be less than a necessary and inevitable consequence of what they stipulated. Nothing is more common in law, than that an act between two parties may be, by its nature, and even independent of the will of the contracting parties, general to a third: for example, if a creditor releases a debtor what he owes him, this act between the two is general to the security of the debtor, who, by the nature of things, remains released, although no mention is made of him, and, what is more, although both creditor and debtor have wished that he should not be released; because, by the nature of things, it is impossible the security should remain when the principal obligation has disappeared. In the same point of view ought to be considered the obligation of Spain, if ever there did exist any from the United States, with respect to the damages committed within her jurisdiction by French privateers. France was the offender, and, of consequence, the obligation, and the act of agreement which released France, extinguished the obligation, which was one and indivisible, as justly observe the learned gentlemen of Philadelphia. The release of this claim supposes the same thing as the receipt of satisfaction, and no other can be demanded without requiring two satisfactions for the same offence, which are the identical words of the said learned gentlemen, (from whose answer I took them, when I inserted them in my note of the 16th,) and as the same gentlemen observe, if the Power A (that is, Spain) was yet responsible, and paid to B, (the United States,) Spain could then apply to France to be reimbursed, as she was the offender, and France would not gain anything by the release of the United States, which would become, by this indirect mode, null; and as it is very evident every legitimate act ought to carry within itself everything that is necessary for its validity, it is undoubted that the convention between the United States and France ought to be general to Spain, as much as is necessary for its validity, that is, absolving her from her responsibility, if she had any; because, on the contrary, by the United States reclaiming against Spain, and Spain against France, the latter would, by this indirect mode, have at last to pay for the damages occasioned by her privateers.

Your Excellencies, knowing well the force of this reasoning, attempt now to establish that Spain is the principal obliged for the said damages; that her obligation is not accessory, as presume the learned gentlemen of Philadelphia, who you say have confounded the case, applying the maxims of municipal law to nations, among which there is no such thing known as principal and accessory; and, finally, your Excellencies deny that France can be responsible for the damages committed by her privateers on the coast and in the ports of Spain, and admit that at the most, it can only be eventually so. But I cannot for my part conceive how these assertions can be supported. In the first place, I am persuaded that the principle of universal justice, on which the learned gentlemen have founded their opinion, is as applicable to nations as individuals: nations as well as individuals are bound by them; if an individual releases a debtor nothing can be demanded of the security; so, if a nation confesses itself satisfied for a claim it had against another, the same cannot be repeated against a third, although she bore a part in the responsibility; the reason of this is not a principle of municipal law, as you say, but an eternal and imprescriptible principle of universal justice, which is, that two satisfactions cannot be demanded for the same debt. Your Excellencies say, among nations, that they know nothing of such things as principal and accessorial obligations; but I do not agree to this. Among nations, as among individuals, they may have accessorial obligations, by mutual agreement, and also by the nature of things, since, if two nations agree in an act from which results responsibility, for example, an injury or spoliation, it is indispensable that the responsibility and the obligation shall be proportioned to the intervention each party had in it; that which committed the injury shall be first responsible; that which did not avoid it when she could and might, shall have less responsibility, having had less to do in committing the act, and this second responsibility may be called accessorial, or eventual, if your Excellencies prefer that term: in which I observe, that if your Excellencies acknowledge the possibility that there might be eventual obligations between nations, I do not know how you can refuse to admit the possibility of accessorial obligations; as, to my judgment, it is the same idea, but only expressed by different words. But, in the present case, if we were even to suppose that Spain and France, the first accessory, and the latter principal, associated, and both being principals, it will come to the same thing; the obligation having disappeared by the payment of France, Spain remains released, as the obligation was one and indivisible.

Your Excellencies will say that in the case on which we treat, Spain was the principal, and not only so, but the only one bound: but to me it is inconceivable how Spain can be considered, in any manner, as the only one bound; because it is not possible to imagine how France, who was not at war with the United States, could seize, condemn, and appropriate American property, without incurring some responsibility on her part; it would be a case never seen or heard of, and which combats all principles, and is contrary to common sense. We will see, at least, if Spain can be said to be the principal obliged.

It is evident that the obligation which an offender has to repair his offence, and the right the offended has to demand reparation, arise in the same moment that the offence is committed. Let us apply this principle to what has occurred with respect to French cruisers and American vessels. Spain was in alliance with France, and the two at war with Great Britain; of consequence, the French had a right to arm privateers, and the Government of Spain to permit them to arm in her ports. They armed against the subjects of Great Britain; but when they went out, they committed infractions, and violated the rights of other nations; and these are things which in reality the Government of Spain neither could foresee nor check. It results from this that these offences existed and might exist before Spain knew anything of it, and that, of consequence, the right of satisfaction existed before she had knowledge of the fact, and existed against the aggressor, which, without doubt, constitutes the principal obligation. When Spain might, if at all, with more propriety, be considered as accessory, was after her knowledge of the offence; but in reality she ought not even then to be considered as such, because the injury terminated and was completed by the definitive sentence which took place in the tribunals of France, in which they efficaciously and finally decided the sale of American vessels. In proof that the Americans who were injured considered this subject under this aspect, we find the tribunals of cassation full of the demands of those interested in vessels taken within the jurisdiction of Spain, and that these applications are supported, as I am informed, by the officers of the American agents in France; but, as when they pleased, it is evident that the United States, not being at war with France, always had the door open to commence their reclamations against her, this circumstance, in the present case, constitutes a most essential difference.

1st. Because the offender not being at war with the United States, could not be less than the first, if not the only one responsible for the illegitimate act.

2d. Because the United States had the door open to make the demand of the Government of France, and thus had direct communication with the offender, which could not be the case if war was declared.

3d. That Spain not considering the United States as in war with France, could not foresee the excess that cruisers armed in her ports against England might commit against American citizens, nor less avoid the definitive sentences of the tribunals of France which completed the offence. Besides, it is well known that, among civilized nations, it is customary to demand from privateers a bond or security that they shall not cruise except against the enemies of the State; and as this bond or security could not exist but in France, it is a proof that it is there they ought to go to seek the responsibility, that is, in France; and the United States having renounced this, or being satis-

fied for these damages, nothing can be demanded of Spain. If upon this point there could remain any doubt, the positive affirmation of the Government of France, that they are satisfied, is sufficient to make it vanish. The Government of France ought to know without doubt, what were the offences she satisfied, by the convention of 1800; and it is not credible she would venture to say it was concluded, without a strong and intimate persuasion and conviction it was so, and which comes with great force from a third Power, who does not find herself immediately interested in the present discussion, as are Spain and the United States. On the other hand the information of France is of the greatest importance to establish the rights of Spain in this case: because if we suppose for a moment that Spain did pay to the United States the damages arising from the spoliations of the French privateers, there is not the least doubt she would immediately apply to France to be reimbursed; but she would, in reply, very justly refuse the reimbursement, saying that Spain had done wrong to make the payment, as France had previously communicated to her that the United States had been satisfied.

I have not attempted to avail myself of the argument, as your Excellencies seem to suppose, that Spain could not prevent the injuries committed against the American vessels, although it was in a great measure the case; because it was not possible to prevent injuries of which we had no knowledge, such as the French privateers committed, which were armed in our ports against the English: my defence is founded in the assertion that the said damages are already satisfied by France, and so said the learned gentlemen of Philadelphia understand it, when, in their argument, they say, "but even leaving impossibilities out of the question, and admitting that the Power A could have prevented the injury which was committed by the Power C. in that case the Power A is no longer liable to any responsibility in damages on account of its acquiescence."

I have insisted principally on this method of defence, because, founding it in an act clear and notorious, and of the most easy examination, it appeared to me to be the most convenient to repel a claim which Spain could oppose with many other reasons and arguments.

It is not demonstrable that a nation is obliged to satisfy the damages and injuries committed on her coasts by the subjects of other Powers, and cases without number might be cited to the contrary among civilized nations. Denmark had her ports open during the last war to the belligerent Powers, and condemnations of prizes were made in them without there being, on this account, any responsibility demanded of her; many other neutral Powers suffered, during the same war, various damages from the French cruisers on the coast and in the ports of Spain, without having demanded any other thing of Spain than to interpose her good offices, and co-operate in obtaining redress for the injury. Spain, when she has been injured, has not demanded such indemnifications, and has only demanded that the Government whose flag or coasts have been violated should pass efficacious offices for the reparation of the offence. This, and this only, is all to which Spain obliged herself by the sixth article of the treaty with the United States, in which, after offering defence and protection reciprocally for the vessels of both countries within the extent of their respective jurisdictions, it says, that, in case of offences of the nature of which we treat, each Power in whose jurisdiction it is committed, shall employ all its efforts to recover and have restored to the lawful owners, the vessels or effects which have been taken within the extent of its jurisdiction; from which it results, that the only thing which it can be pretended Spain has obliged herself to, is to employ all her efforts to recover and have restored the vessels and effects so taken; but in no degree exists any obligation in her to make reparation, should such efforts not produce the desired effect: because, if it had been the intention of the high contracting parties to do this, it would have been expressly stipulated. As, on account of this article, your Excellencies pretend to be persuaded that Spain is the only one responsible for the excesses of the French privateers, I could not omit observing that the obligation of the Power which has to restore could not but be greater and more principal than that whose obligation only is reduced to the making efforts that they might be restored; and that France being in the first case, and Spain in the second, it cannot but follow that the principal obligation rests on the first, and only that of accessory on the second.

Proceeding now to the damage occasioned by the suppression of the deposit at New Orleans, I will endeavor, also, to answer with the utmost brevity possible, your Excellencies' remarks in your esteemed note. In the first place, your Excellencies will permit me to declare, that I see with regret that, in what I said in mine of the 16th, as to the deposit at New Orleans, being a generous and gratuitous concession of His Majesty, and other parts of my letter, I did not explain myself as I wished. Your Excellencies understood that I wished to say that the deposit, not only in the capital, but on any other point on the bank of the Mississippi, was a charitable donation of His Majesty, revocable at pleasure, either before or after the three years fixed for its being at New Orleans; and that it might remain revoked until the United States implored His Majesty anew to restore it. It is not honorable to me that such assertions should be attributed to me; I said, and it was my intention to say, that, in its origin, the right of the deposit granted to the United States in New Orleans flowed from a wish in His Majesty to grant it generously, and oblige himself to maintain it there for three years, as a convenience to the United States. Nothing is more common than for a nation to impose on itself an obligation, gratuitously, in favor of another, without more interest than the satisfaction of having done it a useful service without injury to itself. After making the stipulations and conclusion of the treaty of 1795, there was, no doubt, an obligation to maintain and comply with it; but, in the case of the

deposit, there are two things essentially distinct, which ought to be considered: the deposit at New Orleans, and the indefinite deposit in some other place on the banks of the Mississippi. The three years being over, and injury arising to the Royal revenue from the continuance of the deposit at New Orleans, to have continued it there, notwithstanding, cannot be considered less than as a favor of the King my master, because no obligation existed on his part to do so; and, if the United States had desired that the deposit at New Orleans should have continued in a manner not precarious, but established and obligatory, it was necessary to have a new stipulation, because His Majesty was not obliged to do so. At present, as to what regarded the right of deposit in the other place, the United States did not require a new stipulation, because they had it by the treaty; but, as the new place was not established by the treaty, it is clear the United States had to ask the fixing of it on the spot which they thought convenient, or the two Governments had to understand each other in the establishing it; for, as it was to be fixed to the satisfaction of the American Government, Spain could not do it alone, or without saying what were the qualities it ought to have to answer their ends. The difficulty is not in this, which is in itself simple, but, it is in examining its situation after the end of the three years in the capital, and the other four years in which His Majesty generously continued it there, being under no obligation to suffer the inconveniences which were encountered in the said four years. And the question now is, whether he could or not suspend the deposit in New Orleans before agreeing with the parties concerning the fixing another; or in other words, after the conclusion of the three years of the deposit at New Orleans, the King was obliged to suffer the inconveniences of its continuation, until they could enter into a convention or agreement respecting another place; or further, if the United States could in rigorous justice be made to suffer the intervening inconveniences of the suspension for the time necessary for the two Governments to agree upon the fixing it. The treaty says nothing of this; and I hope I have shown that good neighborhood or friendship should have permitted for a short time the inconvenience of the deposit at New Orleans before proceeding to suspend it, and for this reason His Majesty revoked the edict of the Intendant. But speaking of what, in rigorous justice, can be supposed to be due to the solicitude of being indemnified for the same, I am of opinion, that, as the treaty said nothing about it, His Majesty was not obliged to continue the deposit at New Orleans, nor to suffer its inconveniences; although he was bound to consent to its establishment in another place, on which His Majesty could not determine alone, it being necessary that it should be fixed equally to the satisfaction of the United States. I repeat, that it is not my intention to approve the conduct of the Intendent, nor to diminish the rights of the United States under the treaty, but to examine points unsettled in it, and to deduce from thence whether Spain was or was not liable for the indemnifications arising out of the suspension of the deposit at New Orleans—an examination which may in my opinion have been excused, from the short duration of the existence of the injuries which might be considered as really attributable to the edict of the Intendant.

I beg your Excellencies to accept the assurances of my respect, and hope that God will preserve your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *March* 8, 1805.

SIR: We have now the honor to answer your Excellency's note, of the 24th ultimo, respecting the eastern limits of Louisiana, the receipt of which has been already acknowledged.

We are happy to find that we shall not differ as to the material facts on which the question depends—to wit: that France held Louisiana prior to the treaty of 1763, to an extent eastwardly to the Perdido, comprising in it the greater part of West Florida; that she ceded it by that treaty to Great Britain, who, in 1783, ceded it to Spain—Spain having possessed herself of it by her arms in the course of the war; that the treaties referred to in that of St. Ildefonso, whereby Spain ceded Louisiana to France, as having passed subsequently between Spain and the other Powers, are that of 1783 between Great Britain and France, whereby the former ceded to the latter that portion of Louisiana called by her West Florida, and that between the United States and Spain in 1795. None others were made by Spain relative to that object; therefore they only could be referred to. We admit also that they were referred to by a real and sufficient motive.

We are also happy to find that we shall not differ in opinion on the principles of the law of nations, or the rules by which treaties are to be construed under them, especially the following—to wit: that treaties must not have an odious or absurd construction, when it is possible to give them a plain and simple one; that the intention of the party to a treaty is to be collected from the whole article; that each clause is to be taken into view, and the import of the whole collected from that of each clause; and that no part is to be supposed superfluous to which a rational meaning can be given.

We should be happy if we could agree in the application of these facts and principles to the point in question. We draw however from them, by the clearest evidence and most satisfactory reasoning, a conclusion that under the treaty between the United States and France of 1803, which is founded on that of St. Ildefonso, between Spain and France in ——, West Florida was comprised in the cession of Louisiana to the United States. Your Excellency, it appears, is of a contrary opinion.

Before we proceed to the inquiry, and to answer your Excellency's note, we think proper to premise that it would have been more agreeable to the United States to have obtained the cession of that province of France, by a short definition of

its boundaries; since, in that case, they would have known distinctly what they had acquired, and avoided the necessity of a discussion with Spain. But as these had not been traced between France and Spain, it was impossible to give such a definition. It was therefore agreed that France should cede to the United States precisely what she had acquired of Spain; and, that the extent of that cession might be known, that the third article of the Treaty of St. Ildefonso, between France and Spain, should be inserted in that of Paris between the United States and France. Thus, that article, and it alone, became the extent of the right which the United States had thus acquired. There is nothing in the treaty, nor did anything occur in the negotiation, to detract from its just and rational import. The United States were at liberty, as France would have been, had the cession not been made, to examine, under it, the extent of their rights, and, in so doing, to appeal to those facts and principles, which, in the estimation of the enlightened and impartial world, ought to govern in the case. It is by this investigation that the Government of the United States has formed its opinion of their rights; and it is from a regard to justice, and motives of respect to His Catholic Majesty, that they are now made the subject of amicable discussion with his Government. Having made these remarks, we proceed in the proposed inquiry.

We observe that your Excellency relies much in support of the pretensions of Spain, in the point in question, on the import of the term "retrocede," which is found in the treaty; that you consider it as going far to decide the question in her favor. We cannot but express our surprise that such reliance, or indeed that any, should be put on a term, vague and equivocal, at best, which, it is easy to show, neither has, nor was intended to have, any influence in the question. If it were of any importance to analyze that term, it might be contended, that, as France once possessed that province, a cession of it back to her, by any Power who had obtained it of a third, was a retrocession of it. By ceding it back to France, the former proprietor, it would, in respect to her, be a retrocession, although not one acre of it had been received of her by the Power making it; and it is very likely, under such circumstances, that such would have been the title of the treaty, or the phraseology of the article applicable to the subject. In the present case, all the territory which was ceded back to France had belonged to her before. Nineteen-twentieths of it, supposing West Florida to be a part, had been previously ceded by her to Spain, and that twentieth part had been ceded by her to another Power, to accommodate Spain, of whom Spain had obtained it. Was it not natural, then, when Spain ceded back this territory to France, that the term retrocession should be made use of? Had it been the object and studious endeavor of the parties to characterize in the treaty the former propositions and transaction respecting the territory, and no more could have been intended, it is not known how, even with the import annexed to the term by your Excellency, a more suitable or just one could have been adopted for the purpose. But, as already observed, this term is of no real importance in the case, nor was it intended to have any by the parties, in the sense alluded to, as is perfectly evident by the other parts of the article. We find in it three distinct members or clauses, which were introduced for the express purpose of explaining what was intended to be done. By these, is fully and accurately defined what proportion of that province should be transferred to France, and what other proportion of it should be exempted from the operation of the treaty. If it had been intended that the term "retrocede" should be understood in the sense insisted on by your Excellency, it is presumable that none others would have been used, since, not being necessary to illustrate, they could only serve to obscure and perplex. The introduction, there, of other clauses, plainly proves that that term was not to be relied on as expounding the object of the parties, but that those clauses were to do it. It will not be denied, that, although the title of the treaty might be what it is said to be, under the term, "retrocede," introduced in every page, and although Spain had never received one acre of the territory from France, she might, nevertheless, by suitable operative clauses, convey and transfer to France all that portion of Louisiana which she possessed, if she was so disposed. It is by the operative clauses of every article in each, that their meaning is expounded. It is to them that we must respectively refer, in the present instance, for the intention of the parties in that of St. Ildefonso, and the extent of the rights of the United States acquired under it.

By the first clause of the third article of the Treaty of St. Ildefonso, Spain cedes to France the Province of Louisiana—"such as it is in the hands of Spain." It is to be observed, that the reference here made to that Province was in its integral state—that is, while in the possession of France—and of course prior to the cession made of it by her in 1763, as will be more fully seen by the next clause. The simple question then on this clause is, What portion of Louisiana was in the hands of Spain when the Treaty of St. Ildefonso was formed? All that portion, be it what it might, was clearly and positively comprised in the cession, and transferred to France; all that portion, be it what it might, not in the hands of Spain, was as clearly and positively excluded from it. This is the plain and obvious import of the clause—indeed it admits of none other—by adhering to which, everything of an absurd and odious tendency is avoided, simplicity in the construction is preserved, and (what is of equal importance) the integrity and fair intentions of the parties are manifested. All that portion of Louisiana, according to its ancient limits, which lies eastward of the Mississippi, from the 31st degree of north latitude to the northern limits of the United States, had been ceded by the treaty of 1763 to Great Britain, to which France, Spain, and Portugal, were parties, and afterwards confirmed by her to those States at the close of the war of their revolution in 1783, to which France by her treaty with those

States in 1778 had already renewed her special sanction, as did Spain afterwards by her treaty in 1795, with the addition of the right of deposit at New Orleans. It would therefore have been highly improper in the parties to the Treaty of St. Ildefonso to have formed it in such manner as to have admitted the cession to have applied by any possible construction to any part of the territory or rights belonging to it. Accordingly we find, by the clear and obvious import of the article, that such a construction is altogether and absolutely precluded, and by terms the most suitable and judicious that could have been selected. We find, also, that the article is equally clear and explicit as to the position of the Province which it was intended to cede. By ceding that portion, and that only, which was in her hands, Spain did what she had a right to do, and no more, of which a very distinct idea was conveyed in both respects. She excepted from the cession all the territory above described, which of right ought to have been excepted. She comprised in it all that she had a right to cede, including of course (as being her property, and in her hands) West Florida.

In the second clause the cession is further explained and confirmed in the following terms: "Such as it was when France possessed it;" by which a clear and explicit reference is made to the Province, at a period preceding the treaty of 1763, when France possessed the whole. This clause would of course have been understood to have comprised the whole, had no part been specially excepted from the cession. But we have already seen that by the operation of the first clause all that portion of the Province, according to its ancient limits as known before the treaty of 1763, now belonging to the United States, was clearly excepted from it. In every other respect, however, its operation is uncontrolled. It certainly comprises all that part which was then in the possession of Spain, from whatever Power or by whatever means obtained. By referring to it at an epoch anterior to the treaty of 1763—that is, when France possessed it—it was obviously the intention of the parties to reject all idea of subsequent divisions, modifications, or applications, by either of the Powers who were since possessed of it. It was well known that Great Britain had called that portion which was ceded to her by the treaty of 1763, West Florida; and it was probable that Spain might have called some other portion of it adjoining Mexico by some other name. Hence it was possible, if by any construction an allusion to the Province had been admitted at any period after 1763, that these distinctions and terms might have created some embarrassment in the meaning. To avoid that danger, it was deemed advisable to go back to an anterior epoch, and thereby put them entirely out of the question. This clause, then, shows still more clearly that it was the intention of the parties to include West Florida in the cession, since, by taking them together, and giving to each and both their just construction, it is impossible to mistake their meaning. By the first, all that portion of Louisiana which was in the hands of Spain was transferred to France; but as it was possible, for reasons just mentioned, that doubts might arise whether West Florida was comprised in the cession, by this it is expressly declared that no part of the Province in the hands of Spain, which France had ever possessed, should be exempted from it.

By the third clause of the article, the cession of the province is declared to be in an extent "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." The treaties referred to here are, that between Great Britain and Spain, in 1783, whereby West Florida was ceded to the latter; and that between Spain and the United States, in 1795, whereby the boundary adopted in their treaty with Great Britain, with the right to the free navigation of the Mississippi, and of deposit at New Orleans, were established. What, then, is the effect of this third clause? To us, nothing can be more simple or intelligible. We will first examine it in reference to the first treaty, which alone creates the difficulty. By that, Spain became possessed of a portion of the province of Louisiana, which she had not acquired of France; by means whereof, such addition is brought within the scope of the two first clauses, already noticed, and is transferred by them to France. It is brought within the scope of the first, because "it is in the hands of Spain." It is brought within the scope of the second, because it is a part of the province, "such as it was when France possessed it;" and, by the terms of this last or third clause, it is expressly designated as a portion of the territory which it was intended to cede, by that treaty, to France. If we examine impartially the import of these terms, we shall find that it is impossible to give them any other rational interpretation in reference to this object. The terms are, "such as it ought to be after the treaties passed, subsequently, between Spain and other Powers." This portion having been a part of the province when France possessed it, and being now, by the Treaty of 1783, vested in the hands of the same Power, who held every other part, not expressly exempted from it as belonging to and secured to the United States, by many treaties, as already stated, ought to be considered as a part of it again. Had Spain possessed and ceded that portion of Louisiana to Great Britain by the Treaty of 1783, or at any time before that of St. Ildefonso, this clause would have exempted it from the cession, as would both the others. Being out of the possession of Spain, those clauses could not have operated on it; and, being ceded by Spain to another Power, in a treaty passed subsequently, that is, after 1763, the cession would have been sanctioned by this clause. But Spain did not cede that territory to Great Britain; on the contrary, she acquired it of her; and it is inconceivable to us, how that acquisition, which brought it into her possession, and subjected it to the control of the two first clauses, should be supposed to have exempted it from such control; how a treaty which enlarged the limits of the province in her hands, without producing any other effect, should be construed as lessening the extent of the cession. The reference made by

this clause to the Treaty of 1783, must be considered as intended to produce an effect in the present one, correspondent with the spirit of that of 1783. It would be strange, indeed, if it counteracted that spirit, and produced an opposite effect. And in judging of the effect which it was thus intended to produce, not only the spirit of that treaty is to be regarded, but this clause must be construed in connexion with the preceding ones, so as to give them their just effect also. It is a well known rule in the construction of treaties, that "the interpretation ought to be made in such a manner that all the parts appear consonant with each other; that what follows agrees with what went before, at least, if it does not manifestly appear that, by the last clause, something was changed that went before." If we apply this rule to the present case, the conclusion is unavoidable, since, by the construction we contend for, all the clauses have their just import, are consonant to each other, unite in the same object, and produce the same effect; which is to show that it was the intention of the parties to comprise West Florida in the cession.

With respect to the effect of this clause on the other treaty referred to in it, to wit, that of 1795, between the United States and Spain, it is obvious that it was the intention of the parties to secure to those States, in the hands of the new proprietor, the rights which they had acquired on that territory by that treaty. It was, it is true, impossible for those parties, or any others, in any treaty between them, to destroy the rights of a third one. It was, nevertheless, very proper and honorable in them to insert a provision in this, for the security of those rights. Having thus examined carefully and impartially the third article of the Treaty of St. Ildefonso, under which France ceded to the United States the province of Louisiana, and, as we presume, proved incontestably, by a just construction of the several clauses, that West Florida was a part of the cession, we will now proceed to notice some of the other remarks of your Excellency which merit a more particular attention.

Your Excellency observes that, as the territory in question, to wit: that lying between the river Iberville and the Perdido, was called by Great Britain West Florida, after it was ceded to her by the treaty of 1763, and as that name had been preserved to it by His Catholic Majesty in the title to his Governor at the Havana, since it came into the hands of Spain, it cannot be considered as comprised in the cession to France by the Treaty of St. Ildefonso. But we have already shown, and we presume satisfactorily, that that objection is altogether unfounded, supposing the fact as thus stated to be correct in both cases; though it is proper to observe, that we had understood that the territory in question had been governed as a part of Louisiana after the treaty of 1783. Be that, however, as it may, it is proved, by referring to Louisiana at a period when it was possessed by France to characterize the cession made, that it was an essential object of the two first clauses to get rid of that objection, and that they have done so as effectually as if that division or name had never existed. It was also observed, that any construction of those clauses which should comprise West Florida within the cession, might, with equal propriety, be considered as applicable to all that portion of Louisiana which lies within the limits of the United States. We cannot perceive on what principle this remark is founded, since, as the facts are different, there is certainly no analogy in the cases. To support the doctrine, it ought to be shown, that West Florida is not in the possession of Spain, but of the United States or some other Power. We have shown, by a fair construction of the clauses, that it is by virtue of that portion of the province being in the possession of Spain, that it was comprised in the cession; and by virtue of the other portion of it that is, what belongs to the United States, being out of the possession of Spain, that it was excluded from it.

Your Excellency observes, also, that if it had been the intention of the parties to include West Florida in the cession, it would have been easy to have expressed it. We do not know that it would have been possible to have expressed it in a more clear manner than is done; we are satisfied that other terms more comprehensive, and guarded in reference to all the objects which it was proper the parties should have in view, more intelligible, less free from objection, and, at the same time, so concise, could not have been found. With strict propriety may we say, that if it had been the intention of the parties to exclude West Florida from the cession, it was very easy to have done it, and that the means were obvious, since it was only necessary to have stated that Spain retroceded to France that portion of Louisiana only which she had received from her. Had that been done, there would have been no occasion for the subsequent clauses, especially the two first, to explain the meaning of the parties, and define the extent of the cession. We might add that, if the case admitted of any doubt, which, however, we deny; for, in our judgments, there never was a clearer one taken into consideration, from the nature of the transaction, that doubt ought to operate against Spain, since it is a well-established doctrine of the law of nations, in the construction of treaties, that in all cases of cessions or grants, "if the party making them fails to explain himself clearly and plainly, it is the worse for him; he cannot be allowed to introduce subsequent restrictions which he has not expressed." We do not, however, think that the present case admits of any doubt.

We cannot suppose that the French prefect, M. Laussat, had any instructions from his Government by what limits he was to receive the Province of Louisiana from the officers of Spain, or that he had its orders to surrender it to the United States by any of a definite nature. The opinion is founded on the treaty between the United States and France, by which the cession was made to those States, and in which no limits were defined, for the reasons stated in the commencement of this note. We entertain, as already observed, a very high respect for His Imperial Majesty, and we can never believe that he would, by any act of his, be willing to invalidate any of the rights which the United States had acquired under that treaty.

With respect to the opinion entertained by Mr. Ellicott on this point, we have only to observe, that, although we believe him to be a good astronomer and geographer, we are far from considering him in the light of an able civilian. It is presumed that he ran the line between the United States and Spain correctly, in the case alluded to, and that his charts may also be correct; but we doubt if he ever read with attention either of the treaties on which the present question depends, or would be an able expounder of them if he had. In making his book, which it appears he had completed before he was acquainted with the cession of Louisiana to the United States, or with the nature of that made by Spain to France, which was then for the first time known, it was natural that he should consult the old maps of the country, and regard the divisions that were made of it prior to that epoch, especially in conformity to the treaty of 1763. Under such circumstances, and in consideration that this question depends on treaties, your Excellency will, we presume, see the evident impropriety of paying that deference to Mr. Ellicott's opinion which you have been disposed to allow it.

We have read, with much attention, your Excellency's note of the 4th, on the subject of French spoliations committed within the limits of Spain, and are sorry to find, that the opinions which we respectively entertain on it are as remote from an accord as they were in the commencement. We have read with equal attention your remarks on that of the suppression of the deposit at New Orleans, in which you do not seem to assent to the ideas which we deemed justly applicable, and thought it our duty to express, relative to that interesting and unexpected occurrence. Having said all that we have to observe on those points in our former notes, and having communicated fully our sentiments in this, as in that first presented, respecting the eastern limits of Lonisiana, it remains that we should now proceed to the last topic depending between us, to wit: the western limits of that province. Having already had the honor to present our view of the rights of the United States on that point also, we shall be happy to be favored with that of your Excellency on the same.

We avail ourselves of this occasion to observe, that we received with much pleasure your Excellency's note of the 28th ultimo, in reply to our remarks on that of the 16th, the purport of which was further confirmed in that of the 4th, since it gives us the very satisfactory assurance that it was not your intention, by any expressions in that note, to convey the unfavorable sentiments in regard to our Government and country, which we had supposed it did. It was with much reluctance that we communicated to your Excellency the impression which that note made on us, which we certainly should not have done had we not believed that it would have produced a similar one on our Government, on whom, we were persuaded, it was neither your wish nor intention to produce it. The frank and honorable explanation which you have given us in that respect, is a full confirmation of what we had anticipated on that head, and an ample assurance that, whatever may be the result of this business entrusted to us, we shall carry with us the sentiments of that high respect and consideration for your character which it justly merits.

We beg your Excellency to accept the assurance of our high consideration and respect.

CHARLES PINCKNEY,
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *March* 14, 1805.

GENTLEMEN: I have received your esteemed letter of the eighth, in which you are pleased to answer mine of the 24th ultimo, relative to the limits of Louisiana, and I cannot do less than immediately to reply to it.

I agree at once with your Excellencies, that treaties ought not to receive odious and absurd interpretations, which are capable of clear and simple ones, and that the intention of the parties ought to be collected from the whole context, and from each article: from these principles and mode of examination of the third article of the Treaty of St. Ildefonso, I deduce consequences from the same very different from those which your Excellencies have done.

Your Excellencies believe to be of very little importance to the decision of the present question the word "retrocede" or "retrocession," which is the title of the Treaty of St. Ildefonso, and is found in the said third article, and suppose it a term vague and equivocal, which has no influence on the question; and that, if it had been important to analyze it, it might be easily made to appear that with the expression "retrocede," it also intended to denote that West Florida, or a part of it, ought to return to France, although she had not ceded it to Spain. For my part, I cannot but be surprised that your Excellencies should consider vague and indeterminate an expression which serves to denominate the treaty, whose title literally copied is as follows: "Traité préliminaire et secret entre, la république Francaise et Sa Majeste Catholique, touchant l'agrandissement de Son Altesse Royale le Duc de Parma, en Italie, et la rétrocession de la Louisiane," and which governs the whole proceeding, and is conspicuous in all the clauses of the third article of the said treaty. On a single reading of this article, there is no one but must know that, according to grammatical order and the common use of language and words, the words "to engage to retrocede" is the principal action of it, and this principal intention is conspicuous through all the context and clauses of the article; and that, although the following expressions may modify it, they can in no degree contradict

it without giving to the whole an absurd meaning, and as repugnant to common sense as to the most simple rules of grammar and art of writing; nor can it be said without discredit to the contracting parties, that they should avail themselves of an expression vague and equivocal, and use it exactly in the most important article, and upon one of the most interesting objects of the treaty; and that, with a view to find such vague expressions, they should select the word "retrocede," having at hand the word "cede," which, followed by other explicit clauses that might have been inserted, would have explained with facility and precision the return of Louisiana to its former owner, and the cession of West Florida, if such had been the intention. But it was no doubt the intention of the parties that the expression "retrocede," which has given the name to the treaty, and serves to express the principal design of the third article, should be marked with all the exactness and grammatical rigor possible; nor is it susceptible of doubt that the expression "retrocede," in its obvious and grammatical sense, means to cede to one what it has received from it. Your Excellencies ought not, therefore, to think it extraordinary that I have believed, and do believe, that this expression is of the greatest consequence to the decision of the present question.

The force it carries with it makes us see at once with what exactness and simplicity the other parts of the article quadrate with it. If we set out from the beginning to give to the expression "retrocede" a meaning which it has not, it will not be extraordinary if we find some embarrassment and difficulty to decipher the said article. It says, in the first place, that it retrocedes Louisiana "avec la même étendue qu'elle a entre les mains d'Espagne;" but this expression, in the mode in which your Excellencies contrive it, appears absurd and contradictory. It is indubitable that Spain possesses West Florida as Florida, not as Louisiana, and this act, founded on an authenticity the most notorious, is marked, in the Treaty of 1783 and 1795, in a manner which cannot be contradicted or admit of a doubt; consequently, Louisiana, "avec la même étendue" which it had in the hands of Spain, is without West Florida, and to suppose that the cession could have comprehended this province, it was impossible to suppose it could be Louisiana, with the same extent, without incurring a palpable contradiction. Your Excellencies know the force of this difficulty and wish to explain the first clause by the second, which says, "et qu'elle avoit lorsque la France la possédoit." But I ask, has the second clause a fixed epoch, which determines the time when France had it? Certainly not. Then the want of this fixed epoch alludes to the last time that France had it, that is, when she delivered it to Spain; an expression the more convenient, as in any other manner it will be contradictory with the first, which says, "avec la même étendue qu'elle a entre les mains d'Espagne." if it was with more, it could not be with the same. It is more natural that a clause which has a fixed epoch, as the first has, should serve to clear up the sense of the second, which has no epoch, or extent fixed, than that we should give so much force to the doubtful epoch of the second clause, as to make it destroy the clear and marked meaning of the expression "retrocede" in the first clause "avec la même étendue." Admitting the explanation of your Excellencies, the second clause is in contradiction with the first; admitting mine, both explain and combine simply, and prove that Spain delivered Louisiana to France, with the same extent that it had in her hands in 1800; and as France possessed it when she delivered it to Spain, but as neither in the one or other epoch West Florida made a part of Louisiana, the two clauses perfectly unite with each other, and both with the principal action "retrocede," which governs all the clauses of the article.

The third clause, which your Excellencies suppose can also be brought as a proof that West Florida is included in the retrocession of Louisiana made to France, is, to my understanding, a new proof of the contrary; it says: "et telle qu'elle dût être après les traités passés entre l'Espagne et d'autres Puissances." It is impossible to make anything clearer than that the treaty did not alter anything in the treaties which Spain had made with other Powers on this subject. There were two, one of 1795 with the United States, and one with England in 1783, by which Spain had acquired the territories to the eastward of the Mississippi, not as Louisiana, but as Florida, and, consequently, to be, as it ought to be, after this treaty, was with the exclusion of a territory possessed by England as West Florida, conquered by Spain as West Florida, and acquired irrevocably as West Florida by the treaty of 1783, and received, in each of these solemn acts, a new qualification of its total separation from Louisiana, and of the limits which separate them. Your Excellencies contend that the treaty of 1783 was a new incorporation of the said territory to Louisiana; but I do not see in the said treaty of 1783 anything but a confirmation of the right of conquest which His Majesty's arms had made of an English province called West Florida; the cession which France had made to England of the said territory had been an alienation, perfect, irrevocable, and perpetual. The territory became an English possession, and afterwards a Spanish one. That Spain, on the other side, and by other titles, should have acquired Louisiana, and that the two territories should return to be united in the one hand, in which they were before united, does not import, nor could it import, a legal incorporation of them, because their titles and times of acquisition were different. Spain had no Louisiana but what she received from France, and it was undoubtedly Florida she received from England.

It is not conceivable or imaginable how the cession of a province or territory could occur without mentioning or naming it, or that it could be made only by designating it with a name, which, by the consent and notice of all the nations concerned, and the most authentic public acts, it had lost many years ago. This territory was called West Florida, and it was so called authentically, and by this name the contracting parties would have called it, had they imagined it was comprehended in the cession; as it is an acknowledged principle that the territories they change or cede ought to be designated by the names they then officially have; nor can it be said that, by its entrance into the possession of Spain, it returned to its ancient state and name, because all the public acts since its entrance into the possession of Spain, from the treaty of 1783, inclusive, have confirmed its separation from Louisiana, and its difference of name springing from the difference of its title of acquisition; after a separation so qualified, it was only an express and positive stipulation that could reunite it to Louisiana in its retrocession. Your Excellencies have attempted in your note to persuade me that the treaty of 1783 reunited West Florida to Louisiana anew, attributing it to the motive which made France cede to England, in 1763, the territory to the east of the Mississippi, and this motive, your Excellencies say, was to favor Spain. But, on my part, I cannot agree to this. France ceded this territory because she felt it her interest to do so, or was obliged to do so; but this is of no importance, for, be the motive what it may, the cession cannot be considered less than an effectual, irrevocable, and perpetual alienation, with all the consequences which were to make West Florida an English possession. Being so, Spain could conquer, acquire, and receive it from England, having this original and just title to it; and this alone is all she requires to make it her property in every sense of the word, and as independent of Louisiana as it was in the hands of England.

It results from this, that the contracting parties had no intention to include West Florida in the treaty of St. Ildefonso; this is the more confirmed, if we recollect that France could not do it, nor could she stipulate for the acquisition of any territory to the eastward of the Mississippi, without the consent of the United States, as she had obliged herself to this by an express stipulation contained in the sixth article of her treaty with the United States; which article says: "Le Roi très Chrétien renonce à posséder jamois les Bermudes, ni aucune des parties du continent de l'Amérique Septentrionale, qui, avant le traité, de Paris de 1763, ou en vertu de ce traité, ont été, réconnues appartenir à la couronne de la Grand Bretagne." It is to be seen from this, that France could not (if the United States did not consent, when she had bound herself by this treaty) acquire West Florida, which, by the treaty of 1763, belonged to the Crown of Great Britain. If in the treaty of St. Ildefonso, France had intended or proposed to acquire West Florida, it is clear she could not do so without the consent of the United States, and that this consent ought to precede all other stipulations; on the contrary, if France should have infringed the rights of the United States, which can in no manner be supposed, it would not be decorous in the United States to give to the treaty of St. Ildefonso an interpretation, from which it must result, as a necessary consequence, that France had violated their treaty with the United States, and that they founded their right to West Florida on this violation.

The opinion of the astronomer and geographer Ellicot, which is so exactly conformable to the ideas I have just stated, and whose concluding expressions I transmitted you in my letter of the 24th, is of very great weight and consideration on this subject. I do not suppose it, as your Excellencies do, a question for a lawyer or civilian; it is, in its whole extent, entirely geographical; it only treats of the question, whether the territory to the east of the Mississippi, at the time of the retrocession, was Louisiana or West Florida. What person more proper to give an opinion on this subject than the one who has merited to be employed by the United States, in fixing the limits of the very territory he treats about? It is dishonoring his talents to say that he had not with him the maps, both ancient and modern, of the said territory, and the most authentic documents respecting it; and using, as he does, the expressions I copied for your Excellencies in my letter of the 24th ultimo, after he knew of the acquisition of Louisiana by the United States, leaves no doubt that his love of truth and justice forced from him this sincere confession of the incontestable right of Spain to the territory of West Florida.

But all further reflections are unnecessary upon this subject, when it is considered that the Treaty of St. Ildefonso was a contract between France and Spain, and that, of consequence, on whatever point of it (however it might appear doubtful) on which France and Spain are agreed in their understanding and explanation of it, this uniformity of understanding has as much force as the most explicit and determinate stipulation, because no one can know as well as the contracting parties what the one was to cede, and the other to receive. The United States, who have succeeded to the right of France, can have no other right or claim than that which France supposed she had. France has been, and is now, persuaded that, by the treaty of retrocession, she neither did nor had any intention to acquire West Florida. The prefect Laussat, charged to carry the treaty into effect, instructed perfectly in its contents, and being depositary of the intention of his Government, was satisfied of the manner in which it was carried into execution, without being put into possession of West Florida; which act leaves no doubt of the manner in which France understood the Treaty of St. Ildefonso should be executed. But if your Excellencies should still consider this as insufficient proof, will you permit me to send you a copy of a declaration the most positive which can be imagined, in which the Government of France declares that it never thought of acquiring territory to the eastward of the Mississippi by the Treaty of St. Ildefonso, much less has ceded it, or could cede it to the United States. The Minister of Foreign Relations of France has written upon this subject, on the 30th August last, to His Majesty's Ambassador in Paris, and

in his letter are the following remarkable expressions: "Les limites orientales de la Louisiane sont indiquées par le cours du Mississippi, et ensuite par la rivière d'Iberville, le lac Pontchartrain, et le las Maurepas. C'est à cette ligne de demarcation que se termina le territoire cédé par l'Espagne à la France, en vertu traité de 30 Ventose, an 9. La France n'auroit rien démandé à l'Espagne au delà de cette limite; et comme elle n'a fait que substituer les Etats Unis aux droits qu'elle avoit acquis, ils ne peuvent pas exiger de l'Espagne une cession de territoire plus étendue, à moins que cette concession ne soit négociée et stipulee entr'eux et l'Espagne par quelque convention ultérieure."

These expressions are so determinate and clear, as not to permit me to make any further reflections on them, persuaded that the simply reading them is sufficient for the conviction, that, as Spain did not think of ceding, nor France of acquiring, West Florida by the Treaty of St. Ildefonso, it is clear that the United States, who have succeeded to the right of France, could not acquire that which she supposed did not belong to her, and which she has declared she did not acquire, nor think of acquiring. This point appears to me so little susceptible of doubt after what I have said, and had the honor to say to your Excellencies in my note of the 24th ult., to whose contents I again refer you, that I am confident the justice and well established good faith of the United States will acknowledge that they cannot found any right to West Florida from the Treaty of St. Ildefonso.

In concluding this letter, I cannot but declare my satisfaction to your Excellencies, that I see, by yours of the 8th, you are persuaded of my unalterable sentiments of respect and consideration for the United States, and also of my constant esteem for and wish to please your Excellencies, which I now have the honor again to renew; praying God to guard your lives many years.

PEDRO CEVALLOS.

Messrs. Pinckney and Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, *March* 16, 1805.

SIR: We had the honor to receive yesterday your esteemed note of the 14th, and are sorry to find that we still continue so distant in our opinions upon the subject of it.

In our last, we gave your Excellency so fully the view which our Government entertains of the right of the United States to West Florida, and are still so firmly persuaded of their undoubted right to the same, that we think it unnecessary to remark further on that point.

All the questions in controversy between us having been discussed at length, and having been favored with your Excellency's opinion on each of them, except the western limits of Louisiana, we now take the liberty to request you to furnish us with the same, in answer to our communication on that subject.

We beg your Excellency to accept the assurance of our profound consideration and respect.

CHARLES PINCKNEY.
JAMES MONROE.

Messrs. Pinckney and Monroe to Mr. Cevallos.

ARANJUEZ, *March* 30, 1805.

The undersigned, Ministers Plenipotentiary and Envoys Extraordinary of the United States of America, have the honor to inform His Excellency Don Pedro Cevallos, that the length of time since their last note to his Excellency, to which no answer has been given, induces them to suspect that his silence is intended as an intimation of his desire that the negotiation should cease. They are sorry to add that the spirit with which the friendly advances and overtures of their Government have been received, would leave no doubt in their minds on this point, if his Excellency had not given them reason to expect, by his note of the 4th instant, some propositions, on his part, for the fair and equitable adjustment of the differences subsisting between their Governments. Having completely fulfilled the orders of the President, in proving, by their communications, and by the time they have attended his Excellency's propositions, the justice and moderation of his views, as of his friendly disposition and high respect for His Catholic Majesty, it remains that they should not be unmindful of what they owe to the Government and country, which they have the honor to represent. It neither comports with the object of the present mission, nor its duties, to continue the negotiation longer than it furnishes a well founded expectation that the just and friendly policy which produced it, on the part of the United States, is cherished with the same views by His Catholic Majesty. Under such circumstances, the undersigned consider it their duty to request of his Excellency information whether it is his desire to terminate the negotiation on the point it now rests. In case it is, they think proper, in expressing their regret at the result, to add, that they shall not hesitate promptly to comply with it. But if it is still his Excellency's desire to continue the negotiation, they have to request that he will be so obliging as to give them the sentiments of His Majesty's Government respecting the western limits of Louisiana, and that he will also accompany it with such propositions as he may think proper to make for the adjustment of the very important and interesting concerns between the two nations.

The undersigned have the honor to offer to, &c.

CHARLES PINCKNEY.
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *March* 31, 1805.

GENTLEMEN: I have received your esteemed favor of yesterday, in which you were pleased to inform me that the delay of my answer to your favor of the 15th has made you suppose it was, perhaps, the disposition of this Government to put an end to the negotiation in its present state. In answer, it is my duty to inform your Excellencies that it has always been the disposition of this Government to continue, until concluded, a negotiation which has for its object a termination of the discussions that exist between the two countries; examining, first, each controverted point, and endeavoring to fix, as far as possible, the rights of each country; to begin, afterwards, the negotiations that may be convenient to both; that, with this view, and according to this plan, we have examined and discussed the greatest part of the said points. There is now remaining to treat only respecting the western limits of Louisiana, on which point I promised to transmit to your Excellencies the opinion of this Government with the greatest possible despatch, as I have already assured you; being very sorry that my many indispensable avocations, and the attention which a subject of this nature requires, have not yet permitted me to execute it, and that your Excellencies should have interpreted my silence since as a wish to put an end unreasonably to the negotiation

With demonstrations of my sincere respects, I renew to your Excellencies, &c.

PEDRO CEVALLOS.

Mr. Monroe to His Excellency Don Pedro Cevallos.

ARANJUEZ, *April* 3, 1805.

Mr. Monroe presents his compliments to His Excellency Don Pedro Cevallos, and requests that he will appoint some day and hour convenient to his Excellency, when he shall have the honor of a conference.

Mr. Monroe repeats to his Excellency the assurance of his high consideration and esteem.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 9, 1805.

The undersigned, Ministers Plenipotentiary and Envoys Extraordinary of the United States of America, have the honor to inform his Excellency Don Pedro Cevallos that they consider his omission to answer their notes relative to the western limits of Louisiana, for so long a term, with his refusal to accept their propositions of the 28th January, or to propose any others in their stead, for the amicable adjustment of the differences between the United States and Spain, as having evinced the sentiments of His Majesty's Government on that interesting subject, in terms too strong to be misunderstood. By refusing to answer propositions until a discussion was ended, in the mode which his Excellency thought proper to pursue, and declining to bring it to an end, even in that mode, within the term which naturally belonged to it, the indisposition of his Government to such an adjustment is as strongly declared as if it was announced to them in form. They think proper to add, that, by exacting of them in the commencement a discussion in that very dilatory mode, they had even then anticipated unfavorably of the result. To their propositions, which embraced every object in a frank and explicit manner, they had expected a correspondent answer. In discharge, however, of this great trust confided to them by their Government, they were resolved to keep in mind, and to fulfil, in the best manner they could, all its duties, among which they considered it an important one not to fail in any circumstance of respect which was due to His Majesty or his Ministry. On that principle they entered into the discussion in the manner proposed by his Excellency, although it was contrary to their inclination, to their judgment of what was proper in such a case, and to what was agreed between them in their first interview. They did so, in the presumption that the discussion would be of but short duration; that it would not consume more than a few weeks before they reached its object; and that a conclusion of the negotiation afterwards, in one mode or other, would require a still shorter time. They well knew that the subject had been long before His Majesty's Government; that every part had been acted on by it, and was, of course, well understood; they were aware, also, that the extraordinary mission, which the President had appointed to His Catholic Majesty, had been announced to him, and been sometime expected by his Ministry. Under these circumstances, the undersigned could not doubt that His Majesty's Government would be prepared to meet that mission on every point, and to terminate it with the utmost promptitude. What, however, has been the result, and how has their accommodating spirit been requited? If the first indications were unfavorable, they have been fully confirmed since. The United States will be astonished to learn in what manner the friendly advances and liberal overtures of their Government have been received; that, after exacting from their Ministers a form of discussion which tended unavoidably to delay, His Majesty's Ministers had ceased at length to discuss at all.

The undersigned have thought proper to communicate to his Excellency their sentiments of what has passed with that frankness which the nature of the subject requires, and which is due to the Government and country they have the honor to represent. In conformity with those sentiments of the conduct of His Majesty's Government towards the United States, at a period which, under existing circumstances, is made signal by the proof which the President has furnished of his strong desire to preserve the relations of friendship between the United States and Spain, it might be expected that, considering the negotiation as thereby terminated, as in truth it essentially is, they would take the step which is incident to that state of things, and that Mr. Monroe, retiring from Spain, would repair to his station at London. It is, perhaps, their duty to take that step at this time. They are, however, willing to make one further effort to accomplish the objects of the mission, and to add a new and solemn proof to those which already exist, that its failure, should such be the case, shall in no respect be attributable to their Government or themselves.

With this view, whose just and friendly charac-

ter will, they presume, be duly appreciated, the undersigned have the honor to inform his Excellency that they shall still remain in Aranjuez a reasonable time, to receive from him such propositions, on the part of His Catholic Majesty, for the amicable adjustment of all subsisting differences, and other objects of interest depending between the United States and Spain, as he may think proper to propose. With such propositions, should any be made, they will be happy to receive any illustration of them, which his Excellency may be disposed to give. But it is proper to add, that they consider it incompatible with their duty to proceed in the discussion of the subject, or any part of it, until those propositions, which are again invited, are presented to them; that they cannot view his continuing to withhold them in any other light than as an explicit declaration that the further pursuit of the object of their mission is unacceptable to His Majesty. It may, indeed, be thought that, after having possessed his Excellency with the propositions of their Government, they compromitted its character, by proceeding in the discussion in any mode, before they received his in return. To that proceeding they were prompted by a spirit of conciliation, which may justify it to a certain stage. Should they, however, persist in it after what has passed, they would forfeit all claim to that apology.

In inviting again propositions of His Majesty for the amicable adjustment of the points depending between the two nations, the undersigned have the honor to repeat to his Excellency the assurance that they will receive them with the high consideration which is justly due to them. The sentiments of the Government of France have been communicated on two points, which grow out of the treaties between the United States and that Power. The sentiments of one party to a treaty, as is well known, cannot affect the rights of the other, in points which arise between the parties themselves, much less in those which have reference to a third Power unconnected with it; nor ought they to influence its judgment, if the other party is an independent Power, as the United States are. This principle, which is invariable, is more especially sound in the cases referred to, for the reasons which have been heretofore given. The sentiments, however, of His Majesty the Emperor of France, on those or any other points in which the United States are interested, especially such as grow out of their treaties, are entitled to much consideration on their part. The undersigned have not failed to bestow it on those which have been communicated to them by his Excellency, as has been shown by their replies; they shall also be ready to show it in the treaty which they are desirous of forming with His Catholic Majesty, so far as a due regard to the rights of the United States and their indispensable duty will permit. The propositions which the undersigned had the honor to present to his Excellency on the 28th January last, which embrace the whole subject, are, in their judgment, founded, in every particular, in the strictest principles of justice; they are such as the President ordered them to propose; they are such as he expects that His Catholic Majesty, from his known regard to justice, will not hesitate to adopt. They think proper, however, to add, that, in receiving the propositions which His Majesty may make for the amicable adjustment of those important concerns between the two countries, should any be made, and a difference in opinion appear on any point, they are disposed to do everything to conciliate an agreement which their instructions will permit. It is the sincere desire of their Government to adjust amicably, at this time, with His Catholic Majesty, all these high concerns, in a firm belief that the interest of both countries would be essentially promoted by that result. To accomplish it, the undersigned will omit nothing on their part which it is in their power to do.

The undersigned have the honor to inform his Excellency that they expect an early answer to this communication, and that by it will their future conduct be governed. They consider the negotiation as essentially terminated by what has already occurred; and, if they pursue it, it will be only on the proof of such a disposition on the part of His Majesty's Government as shall convince them, that there is just cause to conclude that it will terminate to the satisfaction of the United States. Having acquitted themselves, in every particular, to what was due to the just, the pacific and friendly policy of their Government, it remains that they should not be unmindful of what they owe to its honor, its character, and its rights. If His Majesty is disposed to adjust these important concerns, by an amicable arrangement between the two nations, on fair and equal terms, it may be easily and speedily done. Each party knows its rights, its interests, and how much it ought to concede, in a spirit of conciliation, to accomplish the objects of the negotiation. The undersigned feel the force of that sentiment, and will not fail to respect it. Should His Majesty's Government, however, think proper to invite another issue, on it will the responsibility rest for the consequences. The United States are not unprepared for or unequal to any crisis which may occur. The energy which they have shown on former occasions, and the firmness of their past career, must prove that, in submitting with unexampled patience to the injuries of which they complain, and cherishing with sincerity the relations of friendship with His Catholic Majesty, no unmanly or unworthy motive has influenced their conduct.

The undersigned request, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Monroe and Pinckney.

ARANJUEZ, *April* 9, 1805.

GENTLEMEN: In my letters of the 21st February and 14th March, I had the honor to explain to your Excellencies the incontrovertible reasons on which His Majesty founded his right to West Florida. I showed to your Excellencies, among other things, that the United States could not pretend to more right, nor to more extent of territory, than France had acquired by the Treaty of St. Ildefenso; and that, confessing as France confessed, that she had not acquired, or thought of acquiring by the said treaty, territory eastward of the Iberville, neither could she transmit to the United States any right over it.

Besides what I have said in the said notes, I consider it as indispensable to hand to your Excellencies the adjoined copy of a note which the Minister of Exterior Relations has addressed to the Chargé des Affaires of His Majesty at Paris, under date of the 26th ultimo, showing, in the most positive terms, that France neither acquired any territory to the east of the river Iberville, nor transmitted any to the United States; which declaration ought, in my opinion, to remove the most remote idea of doubt upon the subject, as very pointedly observes the Minister of Foreign Relations of France, "faire connoître les droits que la France avoit acquiré, c'est indiquer l'étendue et les limites de ceux qu'elle a transmis au Gouvernement Federal."

It not being possible, in my opinion, to contradict the evidence of this proof in favor of the rights of His Majesty over West Florida, it will be conformable to the good faith of both Governments, and contribute very much to facilitate the course of the present negotiation, that it should be considered as established between us, and as indubitable that the United States have not acquired any right to West Florida. Being about to enter immediately into the examination of the western limits of Louisiana, it cannot do less than embarrass the course of discussion to leave behind and still depending a point which has been proved to demonstration. The acknowledgment of the right of His Majesty over West Florida, by the American Government, which is not more than an act of rigorous justice on their part, will facilitate and simplify very much the course of a negotiation, which has for its foundation the good faith of both Governments, and their wish to terminate their differences.

I renew to your Excellencies the testimony of my distinguished consideration, &c.

PEDRO CEVALLOS.

P. S. After writing and signing this, I received the esteemed letter of your Excellencies of yesterday, to which I will answer as soon as possible.

P. C.

M. Talleyrand to M. le Chevalier de Santivanes.

PARIS, 5*th Germinal year* 13.

SIR: I have received the letter which you did me the honor to address to me on the fourteenth of March, which particularly relates to the limits of Louisiana on the side of West Florida.

This question cannot become the object of a serious discussion between Spain and the United States, if a view is taken of the clauses of the treaties of cession which have successively transferred Louisiana to France and to the Americans.

Spain retroceded to France the territory only which she had received from her. The rights of France have since been passed to the United States, and it was only with the same extent that she had acquired them.

This principle has been constantly pursued by His Imperial Majesty equally toward the Court of Spain and the Federal Government. His Majesty having no pretensions but to the territory situated to the west of the Mississippi and of the river Iberville, he had not authorized his Commissary at New Orleans to take possession of any other Province, and he did not cede any other to the United States.

His Imperial Majesty has repeatedly authorized me to make the declaration, and I have repeatedly addressed it in his name to the Ministers Plenipotentiary to the United States accredited near him by the Federal Government. His Majesty persuades himself that this frank exposition of facts ought to be sufficient to prevent any difference between Spain and the United States relative to the demarcation between the United States and the Floridas. To make known the rights which France had acquired, is to indicate the extent and the limits of those she transmitted to the Federal Government.

Accept, sir, the assurances, &c.

CH. MAU. TALLEYRAND.

Messrs. Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 12, 1805.

SIR: We have the honor to acknowledge the receipt of your Excellency's note of the 9th, with an extract of one from the Minister of Foreign Relations of France to the Chargé des Affaires of Spain, relative to the eastern limits of Louisiana.

Having had the honor to inform your Excellency, in our note of the 9th, that we considered the negotiation as essentially terminated by the disposition which His Majesty had shown, and the part it had acted in it, and that we deemed it incompatible with our duty to proceed in the discussion of the subject, or any part thereof, until we were furnished with His Majesty's propositions for the adjustment of the whole business, we have only to refer, in reply to this communication of your Excellency, to what was stated in that note on the most solid reasons. As soon as your Excellency complies with that request, we shall endeavor, by all the means in our power, in the sentiments expressed in that note, to manifest the high respect of the United States for His Majesty the Emperor of France, and their disposition to conciliate in the treaty they are desirous of forming with His Catholic Majesty, the mutual interest of both countries.

We repeat our desire to be furnished as soon as possible, with your Excellency's propositions, which have heretofore been so often requested in vain, for the adjustment of all the points that are depending between the two nations. If it is the disposition of His Majesty's Government to meet in this negotiation the friendly advances and overtures of the United States, there can be no motive for longer delay; but if the contrary continues to be shown, we shall hasten to withdraw from a

situation, which, while it compromits the character of our Government, cannot be agreeable to ourselves.

We beg your Excellency to accept the assurance of our high consideration and esteem, &c.

CHARLES PINCKNEY,
JAMES MONROE.

Mr. Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *April* 13, 1805.

GENTLEMEN: Complying with my promise, I proceed to examine, in this letter, the opinions of my Government on the western limits of Louisiana; following the plan established from the beginning, proposed by your Excellencies, and adopted by me, to examine each of the points depending between us, and determining, as far as possible, our respective rights on each. But before I proceed on the question, I should be wanting in the respect I owe to my own Government, to those considerations to which my public character will not permit me to be inattentive, and also to that of which I believe I have not been undeserving in my private one, if I did not state to your Excellencies my surprise at reading your esteemed letters of the 30th March, and 9th of the present month. It is only fifteen days since I had the honor to write to your Excellencies my last note relative to the eastern limits of Louisiana, to which your Excellencies did not find it convenient to answer, except in the general terms that we did not agree, and that we would pass to the other point of the western limits of Louisiana; and, on the 30th of March, notwithstanding my promise, and my word given, that I would treat the last depending point, as I had done the rest, your Excellencies supposed you ought to state to me, that my silence for those days had induced a belief in you that I intended it as an intimation of my wish to end the negotiation. On a view of a discussion, pursued with so much punctuality and activity on all the controverted points, it appears to me as more natural, not to say more just, that your Excellencies should have believed that the nature itself of the point I was about to treat on, or the indispensable occupations of my Ministry, might have occasioned the delay, than to suspect that I wished to put an end to the negotiation, thereby breaking my word which I had pledged. My delicacy not permitting me to suffer such a suspicion to remain in the breasts of your Excellencies, I stated, in my letter of the 31st ultimo, the sensibility which this had caused me; the motives which had prevented my writing more quickly upon the point of the western limits of Louisiana; and, lastly, I reiterated my promise to do so with all the despatch possible. Notwithstanding this your Excellencies have thought proper, in your note of the 9th, to insist upon what you call my omission, and say that the Ministry of His Majesty intend to cease the discussion entirely with other assertions to the same effect, which cannot do less than make me feel very much, both as they respect my public and private character.

In answer to these, I shall confine myself to only stating to your Excellencies, that the nature of the point itself of which I am about to treat, has been the cause of the small delay which I have had the misfortune to have so unfavorably interpreted by your Excellencies.

The question upon the western limits of Louisiana is not a point which can be examined or discussed, upon viewing one or two documents, or other pieces of that kind which may be possessed at the first view. To treat this point with exactness, it is necessary to examine a collection of plans and documents and historical relations which include a space of more than one hundred and fifty years. These documents are not to be found in the department under my care; many of them belong to the Department of the Interior, besides those which are in the Vice Royalty of Mexico. It has been necessary to search and examine those which are here, and to give them a certain classification. It was my intention to form a memoir, which should comprehend all the most important topics, accompanying them with the necessary maps and plans, and handing them to your Excellencies, being anxious to make the opinions of my Government appear with all the exactness which the nature of the subject would permit; but the manner in which your Excellencies express yourselves in your said letters is a sufficient excuse to me to alter my plan, and reduce it to a few pages, that I may not still lengthen a delay which has given rise to such disagreeable suspicions.

The western limits of Louisiana never having been fixed in the exact manner which can be done in territories sufficiently peopled and of small extent, it ought necessarily, at the time of fixing them, to be the object of a negotiation, in which both parties should be agreed as to the principal basis, and by a commission of limits which should regulate themselves by that basis in fixing the demarcation. The principle which ought to serve as a rule for the establishment of the said basis, cannot be any other than the knowledge of the possession which each party had acquired in these territories, and the different establishments made, by each in the said places, by the Spaniards in the province of New Spain, and also those belonging to Louisiana, drawing a line which shall divide the one from the other side, and continuing it by the most natural points of demarcation possible.

It results from this principle, that the examination into the above-named limits is in a great degree historical, as it treats of the fixing the origin of many Spanish establishments, of the interior provinces, and of the French establishment of Louisiana.

If it had been proper to enter into a detailed examination at present, I would make a succinct historical detail of the Spanish establishments in the interior provinces of New Spain; but not to molest your Excellencies with details that may be inconvenient at present, I will confine myself to saying something on the province of Texas bounding on Louisiana, upon the demarcation of

which depends the present questions. The province of Texas where the Spaniards have had settlements from the seventeenth century, bounds by the east with Louisiana, and contains the extensive country which lies between the river Medina, where ends the Government of Cohacula, to the post, now abandoned, of Nuestra Señora del Pilar, of the Adaes, which is distant a few leagues from the fort of Natchitoches; twenty leagues from the mission of Ais; forty from that of Nacogdoches; one hundred and fifty from the abandoned post of Orequisaw; two hundred from the bay of Espiritu Santo; and forty from the post of St. Antonia de Bejar.

It is beyond all doubt that in the year 1689, by a commission from the Viceroy of Mexico, the Marquis de Moncloa, Captain Alonzo de Lem, who was then Governor of the province of Cohacula, went to examine the bay of Espiritu Santo, and the river St. Mazers which empties into it, to whom the Indian chief of Texas presented himself in the most friendly manner, and in 1690 he took possession of the territory, and founded the mission of St. Francisco of Texas.

By a royal order of His Catholic Majesty, November 12, 1692, they ordered new discoveries to be made in the said province by land and sea, which was in consequence then executed, and among other things they undertook the examination of the river Codachos. Twenty-two years after, the Duke of Lenares, being then Viceroy of Mexico, introduced from Louisiana, as far as the Spanish port of St. Juan Baptista, a Frenchman, Louis St. Denis, and other three Frenchmen from Louisiana, with passports from the Governor of Louisiana to buy cattle in the Spanish Missions of Texas: which Frenchmen were carried to Mexico; and then the fourth expedition was resolved upon to Texas, naming as chief of it the Alfarez Don Domingo Ramon. The expedition was received with inexpressible friendship by the Indians; and the Captain Ramon named the chief of the said Indian nations, and also son to the Governor of Texas, and he left there founded the four establishments and missions of St. Francisco, La Purissiama Concepcion, St. Josef, and Nuestra Senora de Gaudalupe, situated seven leagues from Natchitoches. By the royal order in 1719, they made various alterations in the command of the Spaniards employed in the province of Texas, and a little after died the said Captain Ramon in the port of St. Juan de Baptista on the river Granada. War having broken out between Spain and France during the regency of the Duke of Orleans, the French attacked the Spanish mission of Adaes, and its inhabitants were transferred for the moment to the post of St. Antonio de Bejar. But the Viceroy of New Spain, the Marquis de Valero, accepted the generous and honorable proposal which the Marquis St. Michael de Aguago made, offering his purse and person to dislodge the French of what they had unjustly seized and occupied, and to make war upon them. On being named Governor General of the New Philippines, or province of Texas, and of New Estremadura, the Marquis of Aguago raised five hundred dragoons and two companies of cavalry, and undertook his march for the province of Texas in 1779, and without opposition arrived at the Adaes, the French having returned to Post Natchitoches. The King of Spain being informed of this expedition, and the recovery of the province of Texas, determined to fortify it, and that all hostilities should be suspended against the French.

The Marquis de Aguago re-established the other missions and founded the establishments, among them the posts of Nuestra Senora del Pilar de los Adaes; that of Loretto, on the bay of Espiritu Santo; that of Dolores, which is now known by the name of Ozquisau, and improved the situation of St. Antonio de Bejar by placing the establishment between the rivers of St. Antonio and St. Pedro.

The province of Texas being thus at peace, and re-established and increased, the Marquis of Aguago solicited the reunion there of two hundred Tlascalan families, and as many from Galicia, in Spain, or the Canaries; and with some of these families, the King having agreed that four hundred families should go from the Canaries, they peopled the village of St. Fernando, close to the post of Bejar.

At the end of the year 1730, the Spaniards undertook several expeditions from the post of Bejar to the north of said province, on account of a disagreement with the Indians; and, in 1758, the Indians made an attack from the northern part on the post of St. Saba, and killed some soldiers and priests; on which account a detachment was ordered against the said Indians, under the command of Colonel Don Diego Ortiz de Parilla.

A little after, it was determined to organize a general and uniform establishment of posts to cover the interior provinces of New Spain, and they ultimately gave a commission to the Marquis de Rubi to go and revisit and examine their state. And the result of this commission, which it appeared lasted some years, was, that on the 10th of September, 1772, the regulation of posts had so extended itself as to establish a cordon of them from the coast of Sonora to the bay of Mexico, where was situated the bay of Espiritu Santo, there being then in the province of Texas those of St. Antonio de Bejar, and that of the bay of Espiritu Santo, having neglected that of Arquisau and that of Nuestra Senora de los Adeas, which were no longer useful, as Spain was then the mistress of Louisiana.

From this simple and short explanation of those notorious and authentic facts, to prove the truth of which we find the most incontestable documents, supported by uninterrupted possession, results evidently the ancient and exclusive right which the Spaniards have to the province of Texas; that the possession of the province of Texas was acknowledged and respected by the French while they possessed Louisiana; and that the said province is belonging to, and has always belonged to, His Majesty.

That claim must be extremely illusory and unfounded which shall attempt to carry the western limits of Louisiana to the Rio Bravo, including

therein great part of the interior provinces of New Spain, acquired and established at the cost of the treasures of Spain and the blood of her subjects, as has been proved to demonstration in the case of Texas, and can be strengthened more and more by a continued series of events and proofs relative to the said province of Texas and others of the interior provinces of New Spain, and also the acts and dates now existing respecting the subject. There are also many despatches, maps, and documents respecting this question, to be found in the Viceroyalty of Mexico, which is the principal centre of authority for all the provinces.

On my part, I have read with the greatest attention the memoir on the limits of Louisiana, which your Excellencies enclosed me in your note of the 28th of January, anxious to see if anything could be found to support or give a color to the claim of the United States to carry their limits to the Rio Bravo; but the said memoir goes principally to treat of the establishment of Louisiana. I only find that your Excellencies support the claim—first, in a gratuitous supposition that the coast belonged to France—a supposition that is contradicted by the most positive acts and dates abovementioned, by which it is proved that the province of Texas and its coast are belonging to the dominions of His Majesty. And, in the second place, in the general terms of the patent granted by Louis XIV. in September, 1712, in favor of Anthony Crozat, granting him the exclusive commerce of the country of Louisiana, whose extent was, as your Excellencies understand it, with all the waters which directly or indirectly discharge themselves into the Mississippi, and the countries which they water. It would be very easy to make it appear that the most exaggerated claims of France never had the extent which your Excellencies wish to give to Louisiana on this side. But even if they should have had such claims, or France positively should have tried to include, under the name of Louisiana, the territories which His Catholic Majesty possessed, what right or claim could be founded in a document which Spain never has recognised, nor does recognise, and which never could prejudice in any manner her acquired rights? The answer of Spain on this occasion is as simple as just: that, if Louis XIV. or the Government of France exceeded its powers in granting territories or rights over territories which were not their own, or that Spain claimed possession of or property in, that grant ought to be considered as null as far as it extended over these territories, and that it flowed, without doubt, from the total ignorance which prevailed in those days with respect to the geography of the territories situated at a little distance to the west of the Mississippi, and of the establishments of the Spaniards in those parts, more ancient; and proved by repeated acts of possession, that the aforesaid patent of Louis XIV. is the royal order of the 12th of November, 1692, already cited, by which His Catholic Majesty ordered them to make new expeditions to the Texas; and the same are the other authentic acts and establishments of the Spaniards in that quarter.

The limits between Louisiana and the Texas have been always known, even when the French possessed Louisiana. Near the beginning of the last century, the venerable Alanjet, of the order of St. Francisco, founded, in the province of Texas, towards the confines of Louisiana, different missions, among them that of Nacogdoches. And a few years after he wrote, and it was generally known in the writings of those times, that the province of Texas, or New Philippines, had its boundaries about the middle of the Gulf of Mexico to Poncenes, the Rio Grande, and to the East Louisiana. Depending on Louisiana, we find upon the river Colorado, which discharges into the Mississippi, the post of Natchitoches, which the French took from Spain. But, about seven leagues from this, you find the aforementioned post of Nuestra Senora de los Adaes, belonging to the province of Texas; and it is undoubted that the Baron de Riperda, being Governor General of this province, and successor of Don Angal de Manos, appears to have made treaties and conventions with the Indians of the same province of Texas, stipulating that the Spaniards might make among them such establishments as they pleased, acknowledging from that time as depending on the province of Texas, the Indians Stydes, Nacogdoches, Asenares, Nobedacuis, Vidais, Ozquires, Malayes, Ocuanes, Tancques, and Apaches. To the year 1770, there always was in the fort of the Adaes, from the time of its establishment, a competent number of Spanish soldiers, and the same in that of Ozquisaz et St. Saba; and it was not until the year 1773 that the Lieutenant Don Josef Gonzales evacuated the post of Adaes, whose garrison was no longer necessary, as Spain possessed Louisiana.

It follows, therefore, that the boundary between the provinces of Texas and Louisiana ought to be by a line which, beginning at the Gulf of Mexico, between the river Caricut, or Cascassia, and the Armenta, or Marmentoa, should go to the north, passing between the Adaes and Natchitoches, until it cuts the Red river. And as from this point the limits which ought to be established on the northern side are doubtful and little known, it appears indispensable to refer them to the prudent investigation of commissioners to be named by both parties, in order that they, viewing the territory, and having with them documents and dates that will be given them, rectifying what ought to be rectified, and furnishing the necessary light to both Governments, upon limits which have never been fixed or determined with exactness, may thus enable them to fix the demarcation completely conformable to the wishes of both.

With these views, the Government of Spain, ever since it had definitively fixed the retrocession of Louisiana to France, named a commissioner of limits, destined to complete this important object jointly with the commissioners France might think proper to name on her part. In the same manner, it appears to me indispensable to do now, if the demarcation is to be made with the necessary exactness; and that the United States, naming on their part a commissioner of limits, that

they should proceed by common accord, and make upon the territory the investigation which may be necessary. It is more than a year that the Brigadier General the Marquis de Casa Calvo, and the Engineer Don Josef Martinez, have, with a sufficient number of persons to form the said commission on the part of His Catholic Majesty, been waiting in New Orleans the arrival of the commissioners of the United States to begin their labors.

It is only after the researches and investigation of the commissioners of both parties, furnished with such instructions as may be proper, that we can pursue the exact demarcation of limits, which, never before having been fixed with the requisite exactness, cannot now be determined upon with prudence, but upon a view of the territory, and having present the dates and documents necessary to illustrate the subject.

Although upon this point of the western limits of Louisiana I could have extended myself much more in detail, and accompanied my illustration with maps and documents, my wish to answer your Excellencies on this point with promptitude prevented me. I, however, reserve to myself the power of doing so hereafter should it be necessary.

I hope your Excellencies, on reviewing what has been urged on this point, will please to state to me your opinions upon the subject, and that, you will acknowledge that, as well in it, as in the whole course of the negotiation, I have not deviated a jot from the principle proposed by your Excellencies in your first letter of the 28th of January, and adopted by me in that of the 31st of the same month—"Each of the points depending between the two Governments ought to be examined impartially, and all motives of complaint and inquietude considered and terminated amicably; to do which," &c., &c.

As I had the honor to state to your Excellencies in my letter of the 5th March, and believe it indispensable to repeat here, on perusing the contents of your Excellencies' letters of the 30th March and 12th April, I cannot but still consider it as premature to enter upon the forming of projects for a convention on the whole or upon the aggregate of the depending points, without analyzing them first, at least to a certain point, and without fixing the right of each country as far as possible; because, as your Excellencies must know extremely well, before we can proceed to a convention on the whole, it is necessary to know, as far as possible, what are the rights and obligations of His Majesty, and what are the rights of the United States and their objections; which knowledge by detail ought to be the foundation of the negotiations, it being clear that, according to the extent which we believe the right and obligations of the one and the other party ought to be, so ought the convention, upon the whole, to be the more or less extensive.

I hope to have the honor of receiving your Excellencies' answer on the point which is the object of this letter, and reiterate to you the demonstrations of my distinguished consideration, &c.

PEDRO CEVALLOS.

Messrs Monroe and Pinckney to Mr. Cevallos.

ARANJUEZ, *April* 20, 1805.

SIR: We had the honor to acknowledge the receipt of your Excellency's note of the 13th, to which we hasten to give a reply. It is not without much surprise, that we find by it that your Excellency should have construed the apprehension which we expressed in our note of the 30th ultimo, that you intended, by your silence, in not answering ours respecting the western limits of Louisiana for so long a term, to intimate a desire to terminate the negotiation at that point, as conveying any unfavorable imputation to your Excellency either in your public or private character. We do not hesitate to disavow any such intention, and to assure you that nothing was more remote from our views. In making this frank declaration, we must be permitted to add, that we do not think that that note, or any other that we have written, ought to have had such interpretation. We are persuaded that, in all negotiations, each party has a right to terminate that in which it is engaged, whenever it thinks proper, and that it is responsible for so doing to its own Government alone. This right seems to be incident to the very nature of such transactions, and not to be restrained by any promise made in the commencement, or afterwards, by either party, of what it proposes to do in the sequel, in respect to the mode of prosecuting it. Such promise must always be made on the idea, and be so understood by the other party, that the negotiation will be continued. It can never be construed in such a manner as to compel the party to continue it in case anything should occur to make it improper, in its judgment, so to do. It was in this light that we considered your Excellency's promise, and were, therefore, far from supposing that, in making the inquiry which we did, under existing circumstances, we violated any rule of decorum or delicacy. Whether there was sufficient cause for the impression we had taken in that respect, we will not pretend to say. It is, however, most certain that we thought there was, and for the following reasons: 1st, because unusual delay had occurred since our last communication, which we could not otherwise account for; 2dly, because, as your Excellency had repeatedly insisted on the relinquishment of the claim of the United States on Spain for compensation for French spoliations within her limits, and seemed in your note of the 15th to put the continuance of the negotiation on that issue, we were naturally led to suspect, on our repeating the assurance that we were decidedly of a contrary opinion, and could not abandon the claim, especially after so long an interval, that you had come to that resolution. Having this view of the subject, we did not know but that your Excellency had adopted that mode of making known to us the views of your Government, as the one which was deemed most suitable to the purpose, and had even expected on our part to lead to a more full and explicit declaration of them. In making the application, which we did with regret, we followed no rule, but were governed by an impulse which

the occasion excited, and we trust merits to be considered, as an honorable one—one to which your Excellency has shown too great a sensibility, or you would not have so much misconstrued our meaning. We repeat, therefore, that we neither intended, nor do we think that any of our letters ought to be construed to convey any imputation unfavorable to your Excellency in your public or private character, for which we renew the assurance of our high consideration and respect.

Our note of the 9th instant (for that of the 12th was only founded on it) was intended as a justification of the part which, under existing circumstances, we deemed it our duty to take. We intended it as a justification of our conduct equally to His Majesty's Government and our own. We were of opinion, for the reasons therein stated, that, as there was no prospect of obtaining an accord on such terms as our Government thought reasonable and just, and as our Government and ourselves were compromitted by the manner in which the negotiation continued to be conducted, that it was not only useless but highly improper for us to pursue it. It is usual, in all negotiations, especially in important concerns, for one of the parties to present to the other a project of a treaty or convention for the arrangement of the objects in contemplation, founded on his instructions, and to receive from the other party a like one in return, in case any difference of opinion appeared on any point between them. It is by an exchange of such projects, that the views of their respective Governments are seen, and each party is enabled to determine at once whether there is any prospect of an agreement, and to act accordingly; it is by such exchange that the points of agreement and difference between them are shown, and that the topics of discussion are distinctly marked, in case the negotiation is carried to that length; it is, in short, by it, and by it alone, that the basis of the negotiation is formed, and the parties to it placed on equal ground. Whenever this rule is departed from, it must be to the disadvantage of the party whose case forms an exception to it. It is in the power of the other to continue the negotiation as long as he thinks fit, and finally to break it off, if he is so disposed, on his own terms. When we did ourselves the honor to present to your Excellency, on the 28th January, our project for the arrangement of the points in question, with our note explanatory of it, it was in the expectation that we should have received a counter one in return, in case its conditions were not approved, with a note explicit to every point. We do not say that an express agreement to that effect was entered into, but as it was agreed that we should commence the negotiation in that mode, and, as it was known to be the established usage in such cases, we concluded that the business would necessarily take that course. In that expectation, however, we are disappointed in both respects. It was, perhaps, our duty to have declined proceeding in the negotiation until we were furnished with such a communication; and, had we done so, we presume it could not have been refused. By proceeding in it as we have done, in the mode adopted by your Excellency, we were governed, as heretofore observed, by a spirit of conciliation, in the belief that in that mode we should obtain the same, without any essential difference in point of time. In these latter respects we were also disappointed. Your Excellency has repeatedly observed, that you had followed the mode which we had recommended; but you will permit us to remark that, in this respect, your Excellency has altogether misapprehended our idea, in one of its most important features. We said, it is true, in our first note, that it was proper to ascertain the rights of each nation on each point, and we still say so. But did it follow from thence that we were willing to dispense with the ordinary mode of proceeding in such cases? with the just claim to a counter project or proposition from your Government? Did we consent to a mode of discussion in which each point should be made the subject of separate notes, and that these should be subdivided, and each subdivision become so? a mode which tended to create unavoidable delay. Most certainly nothing can be found in any communication from us, which gives the slighest approbation to such a proceeding. It is contrary to that which we expected would have been pursued in the negotiation; it is contrary to that in which we commenced it; and it has been the subject of serious and frequent complaint on our part since. It was after we saw with regret that three months had been consumed without effect, that unusual and unexpected delays had taken place in the discussion, which seemed likely to be protracted to an indefinite length of time, that no basis of the negotiation was laid; no propositions were presented, though often requested with as much earnestness as delicacy would permit; and that to those which we did ourselves the honor to present, we were answered, not in a spirit of accommodation, but with demands that we should surrender unconditionally the just claims of our Government in some of the most important points, that we wrote that letter. To a situation so improper, it was impossible for us to remain longer insensible. We could not but recollect, independent of the justice of our pretensions, that some consideration was due to the friendly and respectful advance that was made by our Government; that special missions in their nature require despatch, and generally receive it; that on former and important occasions those of the United States had received it from France, Spain, and Great Britain; that to the present one, by many causes, the public sensibility had been much excited, and that our Government waited with anxiety the result: in addition to which, that one of the parties to it was the representative of the United States at another Court, where their interests suffered by his absence. It was on a full view of these circumstances that that measure was taken—circumstances which appeared to us to be too imperious to have any cause for hesitation. In writing the letter, we meant, as already observed, to vindicate our own conduct to both Governments. We did not mean in the slightest degree to call in question the right of His Majesty's Government to manage the negotiation, or to conclude it in such mode as it thought fit. We only claimed to ourselves a right to withdraw from it, and report the result to our Government when it appeared to us impossible, after making due exertions, to accomplish the objects of our mission.

In our letter of the 9th, we invited again your Excellency's propositions, which have not been furnished. Your Excellency has, however, furnished us with your observations on the last point of discussion, that of the western limits of Louisiana, by which the negotiation approaches a conclusion in its ordinary form, by treaty or otherwise, which your Excellency seems desirous to give it. Our wish has been invariably the same on this point, and we now feel ourselves called on, under existing circumstances, to give a new and signal proof of our disposition to conciliate. Anxious to adjust at this time the subsisting differences, and place the relations of the two countries on a basis of permanent friendship, by arrangements founded on their common interest, we will not put to hazard these great concerns, by any act which may possibly impute the failure to us. Influenced by these considerations, we shall proceed to discuss this last point in reply to your Excellency's note, although the propositions have not been furnished, in the expectation that, after the discussion on this point is finished, as we trust it hereby will be, we shall experience on your part an equal co-operation to conclude the negotiation itself with the utmost promptitude.

We have gone thus into detail, to place in its true light the part we have acted in these concerns, and the motive of it. The negotiation naturally forms an interesting epoch in the political relations of the two Powers, and it is important to the United States that it should be seen that nothing was omitted on their part which was due to the claims of justice and good neighborhood on the part of His Catholic Majesty.

In examining the question respecting the western limits of Louisiana, we are to be governed by those facts and principles which would have been applicable to France had she never parted with the province. All the rights which she formerly possessed over it were restored to her by the treaty of St. Ildefonso, and by her transferred to the United States by that of Paris, of 1803: to ascertain these, it is necessary to go back to that epoch when the river Mississippi, with the waters which empty into it, and when the bay of St. Bernard were just discovered. The boundary to the West was never traced by an exact line of demarcation between that province and the possessions of Spain; and, in settling it at this day, the same principles and facts must govern as if it had been then made.

The facts which are material in the case are such as relate to the discovery and possession of the territory referred to by the subjects and under the authority of each nation. The principles are those which have been recognised by European Powers in similar transactions, and which of course ought to govern in the present one. It is by a correct view of the material facts, and the faithful application of these principles to them, that the right of each nation will be established in this point, and thereby the boundary between them.

By the memorial which we had the honor to present to your Excellency on the 28th January last, the epoch of the discovery of the Mississippi and of the waters which empty into it, and of the bay of St. Bernard, and of the taking possession of the same, and of the country dependent thereon, is proved by documents which cannot be questioned. By these it is established, in respect to the Mississippi, its waters, and dependent country, as low down the river as the Arkansas, by the Sieurs Joliet and Marquette from Canada, as early as the year 1673, and to its mouth by the father Hennison, in 1680, and by De la Salle and Joutel, who descended the river with sixty men to the ocean, and named the country Louisiana, in 1682, and in respect to the bay of St. Bernard, in 1685. This was done at those periods in the name and under the authority of France, by acts which proclaimed her sovereignty over the whole country to other Powers, in a manner the most public and solemn, such as making settlements and building forts within it. Of these, it is material to notice in the present inquiry two only, which were erected in the bay of St. Bernard, on the western side of the river Colorado, by M. de la Salle, who landed there from France with two hundred and forty persons, in 1685. It was on the authority of the discovery thus made, and of possession so taken, that Louis XIV. granted to Anthony Crozat, by letters patent, bearing date 1712, the exclusive commerce of that country, in which he defines its boundary, by declaring that it comprehended all the lands, coasts, and islands, which are situated in the Gulf of Mexico, between Carolina on the east, and Old and New Mexico on the west, with all the streams which empty into the ocean within those limits, and the interior country dependent on the same. Such are the facts on which the claim of France rested: such are those on which that of the United States now rests.

The principles which are applicable to the case are such as are dictated by reason, and have been adopted in practice by European Powers, in the discoveries and acquisitions which they respectively made in the new world: they are principles intelligible, and, at the same time, founded in strict justice. The first of these is, that when any European nation takes possession of any extensive seacoast, that possession is understood as extending into the interior country, to the sources of the rivers emptying within that coast, to all their branches and the country they cover; and to give it a right, in exclusion of all other nations, to the same, (memoir——, page 116,) it is evident that some rule or principle must govern the rights of European Powers, in regard to each other in all such cases: and it is certain that none can be adopted in those to which it applies, more reasonable or just than the present one. Many weighty considerations show the propriety of it. Nature seems to have destined a range of territory, so described, for the same society; to have connected its several parts together by the ties of a common interest, and to have detached them from others.

If this principle is departed from, it must be by attaching to such discovery and possession a more enlarged or contracted scope of acquisition; but a slight attention to the subject will demonstrate the absurdity of either. The latter would be to restrict the rights of a European Power, who discovered and took possession of a new country, to the spot on which its troops or settlements rested: a doctrine which has been totally disclaimed by all the Powers who made discoveries and acquired possessions in America. The other extreme would be equally improper; that is, that the nation who made such discovery should, in all cases, be entitled to the whole of the territory so discovered. In the case of an island, whose extent was seen, which might be soon sailed round, and preserved by a few forts, it may apply with justice; but in that of a continent, it would be absolutely absurd; accordingly, we find that this opposite extreme has been equally disclaimed and disavowed by the doctrine and practice of European nations. The great continent of America, north and south, was never claimed by any one European nation, nor was either portion of it. Their pretensions have been always bounded by more moderate and rational principles. The one laid down has obtained general assent.

This principle was completely established in the controversy which produced the war of 1755. Great Britian contended that she had a right, founded in the discovery and possession of such territory, to define its boundaries, to given latitudes in grants to individuals, retaining the sovereignty to herself from sea to sea. This pretension, on her part, was opposed by France and Spain, and was finally abandoned by Great Britain in the treaty of 1763, which established the Mississippi as the western boundary of her possessions. It was opposed by France and Spain on the principle here insisted on, which of course gives it the highest possible sanction in the present case.

The second is, that, whenever one European nation makes a discovery, and takes possession of any portion of that continent, and another afterwards does the same at some distance from it, where the boundary between them is not determined by the principle above mentioned, the middle distance becomes such of course. The justice and propriety of this rule is too obvious to require illustration.

A third rule is, that, whenever any European nation has thus acquired a right to any portion of territory on that continent, that right can never be diminished or affected by any other Power, by virtue of purchases made, by grants or conquests of the natives within the limits thereof. It is believed that this principle has been admitted and acted on invariably since the discovery of America, in respect to their possessions there, by all the European Powers. It is particularly illustrated by the stipulations of their most important treaties concerning those possessions, and the practice under them, viz: the Treaty of Utrecht, in 1715, and that of Paris, in 1763. In conformity with the tenth article of the first mentioned treaty, the boundary between Canada and Louisiana on the one side and the Hudson's Bay and Northwestern companies on the other, was established by commissaries, by a line to commence at a cape or promontory on the ocean, in 58° 31′ north latitude, to run thence, southwestwardly, to latitude 49° north from the equator, and along that line indefinitely westward. Since that time, no attempt has been made to extend the limits of Louisiana or Canada to the north of that line, or of those companies to the south of it, by purchase, conquest, or grants from the Indians. By the Treaty of Paris, 1763, the boundary between the present United States and Florida and Louisiana, was established by a line to run through the middle of the Mississippi, from its source, to the river Iberville, and through that river, &c. to the ocean. Since that time no attempts have been made by those States since their independence, or by Great Britain before it, to extend their possession westward of that line, or of Spain to extend hers eastward of it, by virtue of such acquisitions made of the Indians. These facts prove incontestably that this principle is not only just in itself, but that it has been invariably observed by all the Powers holding possessions in America, in all questions to which it applies relative to those possessions.

The above are the principles which we presume are to govern in the present case. We will now proceed to apply these principles to the claim of the United States, as founded on the facts above stated, relative to the discovery and possession of Louisiana by France, and to designate the limit to which we presume they are justly entitled, by virtue thereof, in the quarter referred to.

On the authority of the principle first stated, it is evident that, by the discovery and possession of the Mississippi, in its whole length, and the coast adjoining it, the United States are entitled to the whole country dependent on that river, its several branches, and the waters which empty into it, within the limits of that coast. The extent to which this would go, it is not in our power to say; but the principle being clear, dependent on plain and simple facts, it would be easy to ascertain it.

It is equally evident, by the application of the second principle, to the discovery made by M. de la Salle of the bay of St. Bernard, and his establishment there on the western side of the river Colorado, that the United States have a just right to a boundary founded on the middle distance, between that point and the then nearest Spanish settlement, which, it is understood, was in the province of Panuco, unless that claim should be precluded on the principle first above mentioned. To what point that would carry us, it is equally out of our power to say; nor is it material, as the possession in the bay of St. Bernard, taken in connexion with that on the Mississippi, has been always understood as a right to extend to the Rio Bravo, on which we now insist.

In support of this boundary, we rely much on the grant of Louis XIV. to Anthony Crozat, in 1712. That grant, it is true, establishes no new right to the territory. The right had already accrued by the causes and to the extent contended for, which was never abandoned afterwards, except by the treaty of 1763, which does not affect the present question.

This boundary is also supported by the opinions of the best informed persons who have written on the subject, with which we have become acquainted. By an extract from a work on Louisiana, written by the Colonel Chevalier de Champigny, in 1773, who, being of the country, was doubtless well informed, the Rio Bravo is laid down as the western boundary of that province. The fact is again asserted, with more minuteness, in his second note to that work, in which he states that Louisiana was bounded, before the treaty of 1763, to the west, by the mountains of New Mexico and the Rio Bravo. In a book containing several memoirs on different subjects, published about three years since at Paris, is one entitled a "Memoir, historical and political, on Louisiana, by the Count de Vergennes, Minister of Louis XVI," in which it is stated that Louisiana is bounded to the east by Florida, and to the west by Mexico. The opinion of geographers, in general, confirms that of other writers. By a chart of Louisiana, published in 1762, by Don Thomas Lopez, geographer to His Catholic Majesty, it appears that he considers the Rio Bravo as the boundary of the province, as it does by that of De Lisle, of the Royal Academy of Sciences at Paris, which was revised and republished in 1782. Others might be quoted, but it is useless to multiply them.

Having thus shown the principles on which the United States found their claim to the Rio Bravo as the western boundary of Louisiana, we will proceed to examine the claim of Spain which is opposed to it, as presented by your Excellency, in your esteemed note of the 13th inst. We find by it, that all the facts relied on in support of the claim of Spain, relate to the province of Texas, the whole of which lies eastward of the Rio Bravo, and, as we suppose, within the limits of Louisiana. They amount to this, at different epochs, certain religious missions were established within that province, the first of which was in 1690; that, in 1692, a royal order issued, directing new discoveries to be made in it, under which the river Colorado was explored; that, in 1714, Louis St. Denis, a Frenchman, with a passport from the Governor of Louisiana, made a visit to Mexico on some commercial projects, passing by the Spanish post St. John the Baptist, on the Rio Bravo, at which time Don Diego Lamon was sent into the province of Texas, where he was well received by the Indians, among whom he then founded several religious missions, one of them at a post within seven leagues of Natchitoches; that treaties were afterwards made with some tribes of Indians, who acknowledged their dependence on Spain, that, during the regency of the Duke of Orleans, hostilities took place between the French and Spaniards, in which the former attacked the latter at Adais and, broke up the establishment for a time; that, in 1730, the situation of the post Antonio de Bejar was improved by the Marquis de Aguago, who settled a certain number of families in its neighborhood; that, in 1775, hostilities took place with the Indians, who attacked the post of St. Saba, and killed some soldiers and priests; in consequence of which, a detachment was sent against them, under the command of Don Diego Otiz Pamille; that, after this, the Marquis de Rubi was empowered to organize a system of defence for the provinces of New Spain, which was completed in the year 1772. These, we believe, are all the facts stated by your Excellency, on which we think proper to make a few remarks.

It is evident, as every fact above stated was posterior, and even by many years, to the completion of the title on which the United States rely, that if the principles by which they support that title are sound, there is not the slighest foundation for the claim of Spain to rest on. Every act of Spain, within the limits which it appears justly belonged to France, was an encroachment, which the friendly relations between the two Powers might authorize in a wilderness, but which could give no title. That those acts were considered by the French as encroachments at the time they were made, is proved by many facts and documents the most authentic. In respect to the Spanish post, in the neighborhood of the Natchitoches, on which your Excellency seems chiefly to rely, we beg to refer you to Colonel Champigny's work, page 10 of his notes, by which it is stated, that the post which the Spaniards had established there was on the territory of the French. We refer you also to Du Praty's History of Louisiana, volume 1, page 12; by which it appears that the Spaniards were introduced there under the auspices of the French, by Louis St. Denis, to favor a contraband trade with Mexico; that the favorable reception given by the Indians to Don Diego Ramon was owing to St. Denis, who was recognised by them as their great chief; prior to which year, it appears, by the same author, that there was not an establishment of any kind east of the Rio Bravo, and only that of St. John the Baptist on the western bank of it. But the most authentic and conclusive of all proofs of the light in which these acts of the Spaniards were viewed by the French is, that hostilities actually did take place between them respecting those posts, which history has recorded, and your Excellency admitted.

Your Excellency has noticed, in your statement, some concessions or acknowledgments made to the Spaniards by the Indians of their dependence on them; but these, it is presumed, could convey no title to the sovereignty of the territory against France. The third principle relied on above is conclusive to this effect. Within the known limits of Mexico, there is a vast tract of vacant territory to the north, held and inhabited by the Indians. If any other Power was to treat with, and receive similar acknowledgments of them, would Spain admit that the territory was thereby transferred from her to such Power?

On this view of the subject, in which we have attempted to illustrate more in detail, but have added little to the contents of the memorial which we had the honor to present to your Excellency, on the 28th January last, we rest the title of the United States to the Rio Bravo as the western

boundary of Louisiana. As every point has been thus fully discussed, we flatter ourselves that we shall now be honored with your Excellency's propositions for the arrangement of the whole business. The country on both sides of the Mississippi is yet a wilderness, and it is important to make those arrangements which their mutual interests may require while it is so. As your Excellency is possessed of the sentiments of our Government on every point, it is unnecessary to add more than to repeat, that on receiving your Excellency's propositions we shall have every disposition to conciliate the views and interests of His Majesty's Government which can be expected from the just and friendly policy of the United States.

We request your Excellency to accept, &c.

CHARLES PINCKNEY.
JAMES MONROE.

Don Pedro Cevallos,
First Secretary of State, &c.

Messrs. Pinckney and Monroe to Mr. Cevallos.

Aranjuez, *May* 12, 1805.

Sir: Animated by the same desire which has governed us since the commencement of the negotiation, and influenced by that which was expressed by your Excellency in our interview last evening, we are willing to state the ultimate conditions on which we are authorized to adjust the several points depending between our Governments. With this view, we do ourselves the honor to inform your Excellency that, on condition His Catholic Majesty will cede the territory eastward of the Mississippi, and arbitrate the claims of the citizens and subjects of each Power, according to the convention of August 11, 1802, we will make the Colorado the boundary between Louisiana and Spain, by a line to be run in the manner proposed in the project which was presented on the 28th January last, the United States ceding all right to any territory westward of that line; we will establish a district of territory of thirty leagues on each side of that line, or on the American side only, if preferred by Spain to be run from the Gulf of Mexico to the northern boundary of Louisiana, which shall remain neutral and unsettled for ever; we will relinquish the claim to spoliations which were committed by the French within the jurisdiction of Spain, in the course of the last war, the United States undertaking to compensate the parties in a sum to be specified; and we will also relinquish all claim to compensation for the injuries which were received by the suppression of the deposit at New Orleans. Your Excellency will, we are persuaded, see in these propositions a most unequivocal proof of the sincere desire of our Government to meet the views of His Catholic Majesty in the points referred to, in a spirit of conciliation and concession, to place the friendly relations of the two Powers, who, as neighbors, have so many and powerful motives to promote that object, on a basis never to be shaken. We have endeavored also to give the strongest proof in our power of our disposition to conciliate the views which have been expressed on two points by His Majesty the Emperor of France, since, in case His Catholic Majesty adopts the propositions, and cedes the whole of the territory eastward of the Mississippi, we are willing to accept the cession of West Florida from him; and, in assuming the payment to our citizens of their claims for French spoliations, we make it, as we presume, in a great measure, without any consideration whatever, as we consider that the concession which we propose to make on the western side of the Mississippi is, in itself, an equivalent for all the territory claimed by Spain on its eastern side. If these propositions are accepted, we have to request that your Excellency will be so good as to notify us of it, that a convention founded on them, may be concluded without delay. If they are rejected, we have then to request that your Excellency will consider the United States as in no respect bound by them, and the whole subject as standing on the same ground, in any future negotiation, as if none such had been made. In either event, we have to request that your Excellency will be so good as to give us an early and explicit answer to the same.

We request your Excellency to accept the assurance of our distinguished consideration and esteem.

CHARLES PINCKNEY.
JAMES MONROE.

Don Pedro Cevallos,
First Secretary of State, &c.

P. S. We do ourselves the honor to enclose your Excellency the two notes which we submitted to your view last evening, with our signatures.

Propositions to the Secretary of State.

On condition that Spain will cede, on her part, the territory to the east of the Mississippi, and arbitrate her own spoliations conformably to the convention of August 11, 1802, the United States will cede, on their part, their claim to territory west of a line to be drawn from the mouth of the Colorado to its source, and from thence to the northern limits of Louisiana, in such manner as to avoid the different rivers and their branches which empty into the Mississippi.

They will establish a territory of thirty leagues on both sides of this line, which shall remain unsettled forever, or of thirty leagues, on their own side, if Spain desire to extend her settlements to the Colorado.

They will also relinquish their claim for French spoliations, which amounts to one hundred and sixty-four vessels, by undertaking to satisfy the parties themselves in a sum to be specified.

They will relinquish, likewise, their claim to compensation for the suppression of the deposit at New Orleans.

From the 1st of October 1796, until the ——, there were brought into the ports of His Catholic Majesty, in Europe and Africa, by the French, 168 vessels.

Of the above, have been condemned,	- 74	
Acquitted, ransomed, or compromised,	- 23	
		— 97
Cases of the violation of the Spanish territory, condemned,		13
Run ashore and lost,		1
Unaccounted for,		7
Result not known,		50
Total by the French,		168

A statement of the facts relative to American vessels taken by French privateers, and brought into Spanish ports, obtained from the most authentic sources.

Of the French spoliations, there have been fifty appeals from the consular judgments in Spain to the Council of Prizes at Paris, of which thirty have been released, nine condemned, and twelve are yet depending. Not one sous has been paid in any case, nor is there a single case of such spoliations on the list of liquidations now at the French treasury, which are to participate of the twenty millions of livres to be paid by the United States to their citizens, under the treaty of 1803, on account of French spoliations.

The American Minister never did demand payment of French spoliations made in Spain, knowing them as such; nor did the American agent ever demand it by his order or knowledge. The first intelligence which the American Government had of appeals being permitted from the French Consular tribunals in Spain to the Council of Prizes in France, was received from Spain herself. As soon as it was received, the Secretary of State wrote to the American Minister in Paris, to know what the fact was, and instructed him at the same time, to prohibit the agent from acting in such cases, it having been at all times the opinion of the Government that Spain alone was answerable, of whom only has the recompense been demanded.

Taken by the Spaniards, since the 1st of October, 1796, until the ——, 104 vessels and 4 cargoes. Of these have been condemned 29 vessels. Acquitted, ransomed, or compromised, 51. Disappeared, unaccounted for, or depending, 24. Total by the Spaniards, 104 vessels, 4 cargoes.

His Excellency Don Pedro Cevallos to Messrs. Monroe and Pinckney.

Aranjuez *May* 15, 1805.

Gentlemen: I have read, with due attention, your esteemed note of the 12th, and the propositions you have been pleased to make in the name of your Government, reduced to the following: that Spain shall cede the Floridas, on her part, and shall arrange the point of the claims of the individuals of both nations, conformably to the convention of the 11th, August, 1802; and that, on their part, the United States would fix the river Colorado as the limit between Louisiana and the Spanish possessions, in the form that the said note expresses; and that they will abandon the claim arising from the damages occasioned by the French on the coasts and in the ports of Spain, during the last war, as also that for indemnification for damages occasioned by the suspension of the deposit at New Orleans.

On viewing these propositions, I cannot refrain from saying to your Excellencies that I do not see in them any convenient terms for entering into the exchange or contract proposed; for, although His Majesty has the power to bargain for the Floridas, as owner of them, in the fullest extent, and has also the right, if he pleases, to ratify the convention of August 11, 1802, which is suspended for the reasons your Excellencies know, there are wanting equal right and power in the United States to make the cession your Excellencies mention. The United States having no right to demand of Spain compensation for damages occasioned by the French privateers, as I have demonstrated in my notes on that point, and to which I again refer, Spain, therefore, could not receive from the United States the renunciation of a right they have not, and which she does not recognise as belonging to them. The same may be said as to the claim for the suspension of the deposit at New Orleans, and as to the claim to fix the limit of Louisiana at the Rio Bravo; from which claim flows the assertion, that the fixing it at the Colorado is to be considered as a cession. It is equally necessary for me to observe to your Excellencies, that the Spanish Government has made it appear, and is equally ready to show more and more, by the most irrefragable proof, that the limit which separates Louisiana and the Spanish possessions is a line which, beginning in the Gulf of Mexico, between the rivers Caracut or Carcase and the Armienta or Marmentao, ascends towards the north, between the Adais and Natchitoches, until it cuts the Red river; and as from this point they are doubtful and little known, the limits which ought to be marked on the northern side appear to be proper subjects for reference to the prudent investigation of commissioners of limits, to be named by both parties; who, having the view of the territory, and all the documents and dates which may be necessary, before them, rectifying what ought to be rectified, and furnishing the light necessary to both Governments, on limits which have never yet been fixed or determined with all the exactness necessary, may be thus able to establish the demarcation completely to the satisfaction of both Governments.

In this view of the subject, it cannot be concealed from the penetration of your Excellencies, that, as a consequence of the propositions you have made by your note of the 12th, Spain would cede to the United States, not only the territories which indisputably belong to her to the east of the Mississippi, that is the two Floridas, but also others, equally her own, in the interior province of New Spain, without receiving anything in return but the renunciation of a right which she does not acknowledge in the United States, which is, to reclaim for the damages arising from the suspension of the deposit, and for those occasioned by the French privateers, on the coast and in the ports of Spain, during the last war;

when, on the contrary, Spain thinks she has shown that she is in no manner liable for the same.

The justice of the American Government will not permit it to insist on propositions so totally to the disadvantage of Spain; and, however anxious His Majesty may be to please the United States, he cannot, on his part, assent to them, nor can he do less than consider them as little conformable to the rights of his Crown.

I renew to your Excellencies the demonstrations, &c.

PEDRO CEVALLOS.

Messrs. Monroe and Pinckney to His Excellency Don Pedro Cevallos.

ARANJUEZ, *May* 18, 1805.

SIR: We have received your Excellency's letter of the 15th instant, by which we perceive, with regret, that the propositions which we had the honor to make to His Majesty, on the part of our Government, on the 12th instant, for the adjustment of the several points depending between the United States and Spain, have been absolutely rejected. By this answer, which we presume is given by the order of His Majesty, we consider the negotiation concluded; we have, therefore, only to remark, that we shall hasten to communicate the result to our Government, who will not fail to bestow on it the attention which is due to a concern of such high importance to the United States. The special mission to His Catholic Majesty being thus ended, it becomes the duty of Mr. Monroe to repair immediately to London, where he is resident Minister of the United States; for which purpose, your Excellency will be so obliging as to furnish him with the necessary passport. As preparatory to that step, we have to request your Excellency will be so good as to obtain for him an early audience of their Majesties, that he may be enabled to take his leave of them; and, at the same time, to renew the assurance of the high consideration entertained for them by our Government.

We beg your Excellency to accept the assurance, &c.

CHARLES PINCKNEY.
JAMES MONROE.

His Excellency Don Pedro Cevallos to Messrs. Pinckney and Monroe.

ARANJUEZ, *May* 20, 1805.

GENTLEMEN: Having given an account to their Majesties of the contents of your esteemed letter of the 18th, in which you request the necessary passport for Mr. Monroe to return, agreeably to his wish, to his residence at London, obtaining before his departure an audience of leave, their Majesties have fixed to-morrow, being Wednesday, at half-past eleven, for the audience which Mr. Monroe wishes, and, without loss of time, I shall have the honor to send the necessary passport for Mr. Monroe.

I have the honor to reiterate the demonstrations of my distinguished consideration. &c.

PEDRO CEVALLOS.

Mr. Monroe's address on taking leave.

On my arrival here, I had the honor to assure your Majesty of the high consideration of my Government for your Majesty's person and Government. I then hoped to have had the honor to conclude the special mission with which I was charged, in conjunction with the Minister Plenipotentiary of the United States near your Majesty, to the advantage and satisfaction of both parties; but being disappointed in this respect, all propositions, which we deem just, being rejected, and none others ever offered on the part of your Majesty's Government, though often invited, it is my duty to return to my station at London. We have transmitted the result to our Government for its decision. Under these circumstances, I have thought it my duty to take leave of your Majesty in the usual form. In so doing, I avail myself of the occasion to assure your Majesty, an assurance which I give with pleasure, of the high consideration of my Government, and of the pleasure it would have derived from an amicable adjustment, on just and fair principles, of all the questions depending between the two nations, to accomplish which it has made so many friendly advances and exertions.

Messrs. Monroe and Pinkney to Mr. Madison.

ARANJUEZ, *May* 23, 1805.

SIR: We are sorry to inform you that the negotiation with which we were charged by the President with the Government of Spain is concluded, after failing in all its objects, notwithstanding our unwearied and laborious exertions, for so great a length of time, to procure for it a different result. We have heretofore availed ourselves of such opportunities as offered to transmit you copies of the papers which had passed in our correspondence with the Minister of Spain on the subject, at the dates of our several letters which accompanied them, by which you were apprized of the tone which this Government had assumed in the negotiation. We have now the pleasure to transmit to you, by Captain Dulton, a copy of those, and every subsequent paper which has passed in it. These will give you so clear a view of the transaction, that you will not be at a loss for the policy of Spain in the business, or of the motives which governed us in every stage of it. We endeavored, in obedience to our instructions, to adjust the differences subsisting between the two countries, on such conditions, and to establish their future relations by such arrangements, as were in our judgment safe, honorable, and advantageous to Spain, and we pursued the object in a mode the most conciliating that we could adopt. In respect to the conditions, we were, indeed, willing to make some sacrifice on our responsibility, in the persuasion that, under existing circumstances, our conduct would be approved. But a very different spirit animated this Government in every respect. We experienced, on its part, neither a spirit of candor nor conciliation in the management of the business, nor of accommodation in the conditions. In this latter point it has

disclaimed our rights in every question on which it was possible that a difference of opinion could exist; it has pushed the pretensions of Spain to the most extravagant extent in each; and insisted, finally, in a tone not a little imperious, that those exaggerated pretensions should be the standard by which the subsisting differences and their future relations should be regulated. So far as depended on us, the business might have been ended in a few weeks, but nothing was more remote from the views of this Government than to bring it to an early conclusion. On the contrary, its ingenuity was displayed in an effort to prolong the negotiation to the latest possible epoch. When we asked of the Minister the acceptance or rejection of our propositions, he replied, that he could do neither till His Majesty should be correctly informed of his rights; that a discussion of every point was necessary to give him that information; and that, after he obtained it, he should give us the answer which we desired. Seeing very distinctly, almost from the commencement, that we had nothing to expect from the justice or friendship of this Government, and being of opinion that the delay which was so studiously sought on its part was with no friendly views to us, we resolved, as early as the 12th of February, to push the business to a conclusion as soon as we could consistent with that respectful course of conduct which might be necessary to procure it a favorable one. With this view, and as we saw that he disapproved of our propositions, we called on him, in a note of that date, for his own, to which we received a similar reply. His Majesty, he said, was not yet informed of his rights in the points in question; he must get that information from discussion; and, after the discussion should be ended, that he would proceed, by negotiation, to the arrangement of the whole business, in such manner as might prove of advantage to both countries. In our interviews, he repeatedly intimated, that although we might disagree on every point in the discussion, yet that his Government would be willing, after it was gone through, on a view of the whole subject, to make some sacrifice, as he termed it, to obtain an amicable adjustment. It became, therefore, necessary, even at this period, to decide whether it would be best to desire an explicit answer to our propositions, and, in case it was refused, to end the negotiation at that stage of the discussion. We bestowed on this point all the consideration which it merited; and the result of our deliberation was, that it would be best to proceed in the discussion till it was concluded; in a belief, however, that that would soon take place. We did not wish to furnish any pretext to his Government, how little plausible soever it might be, to sanction his declining to settle by treaty all the differences subsisting between the United States and Spain at this time. We thought it might be useful to answer some of his remarks, and to place in a more distinct light some of the questions that were involved in it; and we were not aware that the delay necessarily incident to it would put us in a less favorable situation to obtain a compliance with our just demands; in addition to which, it seemed proper for us to wait and see what the sacrifices were which he proposed to make when the discussion was concluded, and to which we were the more disposed, from a presumption, against the evidence of very strong facts, that this Government must have too just a knowledge of its interest to court a contest with us, especially by refusing its assent to the just and reasonable terms on which we insisted. Under these impressions, we proceeded in the business for some time, till finally there remained only one point, that of the western limits, to be treated of. Here it appeared to us that Mr. Cevallos had resolved to terminate it, having failed for so long a time to answer our last note, after having pressed some point in a manner to excite that expectation. We asked him, by note of the 30th March, if such was his intention, intimating, if it was, that we should not oppose it. He replied, that it was not, and that he should send us a note, as soon as he could, on the western limits. We waited several days for his note, without receiving one; we then desired an interview, in which we asked him when we should receive one? He replied, as soon as possible; that he was engaged in it. Would it be in the course of the week? It would not. In the course of the next? He could not promise it; he could neither fix the day nor the week. How long did he think it would require to conclude the business, that is, for him to be ready to conclude it, since it depended on him, as we could terminate it at once, and had been ready so to do from the commencement? He thought it was possible to finish it in three months from that time but would not engage for it. It was on this conversation that our note of the 9th of April was written, which obtained from him his reply of the 12th, and in it his essay on the western limits. We had resolved when our note of the 9th was addressed, to proceed no further in the discussion till we received his propositions, and intimated to him in it that we deemed it incompatible with our duty so to do. But, as we had now entered on the last point of discussion, which brought the business in his own mode so near a conclusion, as we wished to show the absurdity of his arguments on that point, and to establish, in reference to it, the perfect solidity of our claim to the Rio Bravo; and, also, as we wished to remove some impressions of a personal nature, which he seemed to have taken from our notes of the 30th of March and 9th of April, and in a spirit of perfect conciliation to open the door again to, and invite on terms the most liberal, the amicable adjustment of the business, we resolved to waive all form, and to proceed to the discussion. Accordingly, we answered his note on the western limits, in which we also took a review of the part which we had respectively acted in the negotiation, placed in its true light the conduct of each party, and again invited his propositions. The note bore date on the 20th of April, seven days after that of his, to which it was in reply, and to which we expected, of course, an early answer. We waited patiently for one till the 1st instant without effect; when it being the day of his weekly rendezvous with the several

members of the diplomatic corps, we asked him, in a private interview, when we should hear from him on the subject of our last. He said it would be soon, as he was engaged on it. Would it comprise propositions? To which his reply was understood to be in the affirmative. Another week had elapsed, when a similar occasion furnished another opportunity to make the same inquiry. His reply to it was still equally vague and unsatisfactory. As we had anticipated such a one, we had made up our mind as to the part it became us to act in that event. We had resolved, on a view of the whole subject, to wait no longer for his propositions, but to offer him on our part such terms as we were willing to close the business on, by treaty, if they were accepted, or without, if they were rejected. With this view, we observed to him that we were disposed to make him a new and more advantageous offer, in which we should go further than our instructions permitted, but which we should do to meet as far as we could the views of His Majesty, for the purpose of terminating the business amicably at once. He replied, that such a proposition on our part in the present stage would be premature, as the discussion was not concluded. We had long seen through Mr. Cevallos's views, and given him cause to know that, in following him in the discussion, we had done it not solely because he had invited us so to do, but from superior considerations which justified us in that conduct; not solely because we were the dupes of his management, but that we really wished to furnish an incontrovertible proof of the sincere desire of our Government to preserve the relations of friendship with Spain, and of the steadiness and magnanimity with which it pursued that object, while the pursuit could be attributed to such generous motives. As this trait in Mr. Cevallos's conduct corresponded with the others, we were not at all surprised by it, nor would we be diverted from the course which we had resolved on. We, therefore, wrote him, on the 12th, a note, in which we made him the propositions above-mentioned, in terms of perfect respect, and to which we asked his explicit answer. On the 16th we received one which was perfectly so. This answer being of the character already stated, left no cause to doubt the part which it now remained for us to take. Accordingly, on the 18th, we informed him that his note of the 15th had ended the negotiation, on which it became our duty to report the result to our Government, and for Mr. Monroe to repair immediately to London, where his duty required his presence. As preparatory to this latter measure, we requested an audience of their Majesties, to enable him to take leave of them in the usual form, and a passport to leave the country; both of which were granted in the course of a few days.

As the above details furnish some facts not to be found in the correspondence with the Minister of Spain, we have thought it our duty to give them. If any doubts existed on a view of the other documents, by any circumstance which occurred in the course of the negotiation relative to the policy of this Government in it, we are persuaded that these will tend to remove them.—We do presume that the motive of this Government in seeking delay, by the management which it used, was its utter indisposition to accommodate the business with us on just principles. With such a determination, delay might be, on many considerations, desirable to it. Having the support of France on some important points, and knowing that an attempt was making by her to induce our Government to yield explicitly on them, it might wish to protract the business till that end was accomplished. Besides, it might hope to profit by the events of the present war. But, on our part, we did not see that any advantage could be gained by prolonging the negotiation, while we were persuaded that some essential injury might result from it. By prolonging, after so much time had already been consumed in it, we thought that we should have furnished the proof of timid councils; that we expected that our Government would yield to the pressure made on it, and thus tend to confirm this Government and that of France in increasing that pressure. While the negotiation was continued under existing circumstances, it seemed to us as if those Powers would have essentially the control of it. But, by withdrawing from it, we were persuaded that we should show the independence of our Government and country to the parties, and put the affair on its true ground in the eyes of other Powers, from which some advantage might result hereafter.

Of the terms on which this Government would have concluded a treaty with us, you will be able to form a tolerably correct opinion in some important points, by the documents which we send you. You will observe that it never furnished us with any propositions whatever, though often requested; that it refused to ratify the convention of August 11, 1802, but on conditions we were positively forbidden to accept; that it refused any accommodation on account of French spoliations, or the suppression of the deposit at New Orleans; disclaimed our right to West Florida, and asserted theirs, on the west of the Mississippi, to a line which should commence at the Gulf of Mexico, between the Caracut and Marmentao rivers, and run thence between the Adais and Natchitoches to the Red river, &c.

The propositions which we made were not only in the spirit, and in conformity to our instructions, but such as we thought, in every respect, just and reasonable. Our claim to the Rio Bravo appears to us to be as well founded as that of Spain to any portion of Mexico which is vacant, and we do conceive that the accommodation which we offered on that side of the Mississippi was worth at least that which was asked in return for it on the eastern side. The territory is more extensive, and it is at least as important to Spain to be accommodated on the side next Mexico as to the United States in respect to Florida; and the advantage of the parties is the standard by which the value ought to be estimated. Besides, we were convinced, if we succeeded at all, we were as likely to do it on these propositions as on any we could make at this time, short of the extravagant pretensions above stated. We are convinced, if we do succeed by other terms than those, that it will be owing to the successful course of events, and to the imposing attitude and decision of our Government and country. To have proposed other terms at this time would have produced no effect as to an adjustment, while it would have weakened our claims and injured us on any future occasion.

In proposing to accept a cession of West Florida from Spain, and to relinquish the French spoliations, in the manner expressed in our note, we did it with a view to satisfy the pretensions of France in these respects. We deemed it advisable to take that ground, in the presumption that her Government might possibly avail itself of the opportunity thereby furnished to separate itself from the question, and eventually use its influence with Spain to adjust the business. You will observe that that proposition offered no relinquishment of those claims, but in case the whole project was accepted; in which case the United States were to pay on that account to the creditors a sum to be specified, for which they would have found in other respects a reasonable indemnity.

As we did not wish to compromit our Government more than was unavoidable, it was thought proper that Mr. Monroe should take leave of their Majesties in the usual form. In so doing, he avails himself of the opportunity to observe to His Majesty that the failure of the negotiation was attributable to his Government, and not that of the United States, for reasons which he took the liberty to mention. A copy of his address is enclosed. As nothing was said in my communication respecting the ordinary mission, it remains of course in force. At present it is our opinion that Mr. Pinckney should continue here, or leave some person charged with our affairs, should he find it inconvenient to remain till the orders of our Government are received on the subject. We are, however, strong in the persuasion that all our concerns depending with this Government, as well those of individuals as of the public, will remain suspended by it till our differences are adjusted.

The result of this negotiation forms an interesting crisis in our affairs, which it has been impossible to prevent, and to which the wisdom, firmness, and virtue of our Government will be fully equal. Having justice on its side, and having given the most ample proof of its moderation, there can be no doubt that its decision on the part now to be taken will be such as to sustain the high character of the American nation, vindicate its just rights, and merit the general approbation of our fellow-citizens.

We are, dear sir, with very great respect and esteem, very sincerely your very obedient servants,

CHAS. PINCKNEY.
JAMES MONROE.

Hon. JAMES MADISON,
Secretary of State.

STATE OF THE FINANCES.

[Communicated to the Senate, October 25, 1803.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report and estimates:

The annual net proceeds of the duties on merchandise and tonnage, had, in former reports, been estimated at nine millions five hundred thousand dollars. That estimated revenue, predicated on the importations of the years immediately preceding the late European war, and on the ascertained ratio of increase of the population of the United States, appears, from the experience of the two last years, to have been underrated. The net revenue arising from that source, which accrued during the year 1802, exceeds ten millions one hundred thousand dollars. The revenue which has accrued during the two first quarters of the present year, appears, from the best estimate that can now be formed, to have been only fifty thousand dollars less than that of the two corresponding quarters of the year 1802; and the receipts in the Treasury, on account of the same duties, during the year ending the 30th September last, have exceeded ten millions six hundred thousand dollars. Those facts afford satisfactory evidence that the wealth of the United States increases in a still greater ratio than their population, and induce a belief that this branch of the public revenue may now be safely calculated at ten millions of dollars.

From the statement A, it will appear that the same revenue, for the two last years of the late European war, (1800 and 1801) calculated at the present rate of duties, averaged $11,600,000 a year; but, although it might, with some degree of probability, be supposed that the renewal of hostilities will again produce a similar increase, no inference from that period is drawn in this report, in relation to the revenue of the ensuing years.

The statement B shows the several species of merchandise on which the duties on importations were collected, during the year 1802, the portion of that revenue which was derived from drawbacks, and that which arose from the extra duty on merchandise imported in foreign vessels.

Although the sales of the public lands, during the year ending on the 30th day of September last, were affected by the situation of the Western country, two hundred thousand acres have been sold during that period; and, as it appears by the statement C, that, independent of future sales, the sums already paid to the receivers, together with those which, exclusively of interest, fall due during the three ensuing years, amount to $1,250,000; the annual revenue arising from the proceeds of those sales, cannot be estimated at less than four hundred thousand dollars.

The permanent annual expenses of Government, which, under existing laws, must be defrayed out of that revenue, amount to nine millions eight hundred thousand dollars, to wit:

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1st. The annual appropriation of $7,300,000, for the payment of the principal and interest of the debt; of which about three millions and a half are at present applicable to the discharge of the principal, and the residue to the payment of interest - - - - $7,300,000

2d. The current expenses of Government, which, according to the estimates for the year 1804, consist of the following items, viz:

For the civil department, and all domestic expenses of a civil nature - - -	791,000	
For expenses attending the intercourse with foreign nations, including the permanent appropriation for Algiers, and all other expenses relative to the Barbary Powers - - - - -	184,000	
For the Military and Indian departments - - -	875,000	
For the Naval Establishment, calculated on the supposition that two frigates and four smaller vessels shall be kept in commission - -	650,000	
		2,500,000
		9,800,000
And deducted from the permanent revenue of - - - -		10,400,000
Leaves a surplus revenue of six hundred thousand dollars, applicable to other objects - - - - -		$600,000

The following extraordinary resources and demands, not being of a permanent nature, are not included in the above calculation, to wit:

The specie in the Treasury, which, on the 30th day of September last, amounted to	$5,860,000
The arrears of the direct tax, estimated at - - - - - - - -	250,000
The outstanding internal duties, which amount to near - - - -	400,000
And the sum which will be repaid to the United States on account of advances heretofore made in England, for the prosecution of claims, estimated at - - - - - - -	150,000
	$6,660,000

Constituting an aggregate of more than six millions six hundred thousand dollars, which, after reserving the sum which it is necessary to keep in the Treasury, will be sufficient to discharge the demands due on account of the convention with Great Britain, and amounting to 2,664,000

Sundry extraordinary expenses in relation to the conventions with France and Great Britain, estimated at -	100,000
The loan obtained from the State of Maryland for the City of Washington, amounting to - - - -	200,000
And also to pay two millions of dollars on account of the purchase of Louisiana, being the same sum which was reserved for the purposes contemplated by the law of the last session, appropriating that amount for the extraordinary expenses attending the intercourse with foreign nations	2,000,000
	4,964,000
It appears by the estimate D, that, during the year ending on the 30th September last, the payments from the Treasury, on account of the public debt, have amounted to	3,096,700
Which, together with the increase of specie in the Treasury, during the same period, amounting to - -	1,320,000
Making an actual difference in favor of the United States during that year of	4,416,700
The payments on account of the principal of the public debt, from the 1st day of April, 1801, to the 30th day of September, 1803, have amounted, as appears by the estimate E, to	$9,924,004
The specie in the Treasury, on the 1st day of April, 1801, amounted to - - - -	1,794,000
And on the 30th day of September, 1803, to - -	5,860,000
Making an increase of - - -	4,066,000
These two items constitute an aggregate of - - - - - - -	13,990,004
From which, deducting the extraordinary resource arising from the sales of the bank shares, which produced	1,287,600
Leaving, for the amount of the true difference in favor of the United States for the period of two years and a half, the sum of - - - - -	12,702,404

From this view of the present situation of the financial concerns of the United States, it seems that the only question which requires consideration, is, whether any additional revenues are wanted in order to provide for the new debt, which, if Congress shall pass the laws necessary to carry the treaty with France into effect, will result from the purchase of Louisiana.

The sum which the United States may have to pay by virtue of that treaty, amounts to fifteen millions of dollars, and consists of two items: first, $11,250,000, payable to the Government of France, or to its assignees, in a stock bearing an interest of six per cent., payable in Europe, and the principal of which will be discharged at the Treasury of the United States, in four instalments, the first of which shall commence in the year 1818; secondly, a sum which cannot exceed, but may fall short of $3,750,000, payable in specie at the Treasury of the United States, during the course of the ensuing year, to American citizens having claims of a certain description on the Government of France.

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It has already been stated that two millions of dollars may be paid from the specie now in the Treasury, on account of the last item; and the whole amount of the new debt which may eventually be created, cannot therefore exceed thirteen millions of dollars, the annual interest of which is equal to $780,000; but, on account of commissions and variations of exchange, will be estimated at eight hundred thousand dollars.

The existing surplus revenue of the United States will, as has been stated, be sufficient to discharge six hundred thousand dollars of that sum; and it is expected that the net revenue collected at New Orleans will be equal to the remaining two hundred thousand dollars. That opinion rests on the supposition that Congress shall place that port on the same footing as those of the United States, so that the same duties shall be collected there, on the importation of foreign merchandise, as are now, by law, levied in the United States, and that no duties shall be collected, either on the exportation of produce or merchandise, from New Orleans to any other place, nor on any articles imported into the United States from the ceded territories, or into those territories from the United States.

The statements F, G, H, exhibit the annual exports of the United States, to and from Florida and Louisiana, for the year 1799 to 1802; and the statement G particularly shows, that the exportations from the Atlantic States to those colonies, of articles, not of the growth, produce, or manufacture, of the United States, amounted, for the three years, 1799, 1800, and 1801, to 6,622,189 dollars, making, an average of more than two millions two hundred thousand dollars of foreign articles liable to pay duty, annually imported into Florida and Louisiana from the United States alone.

It is ascertained that the exportations from the United States to Florida are so trifling that that statement may be considered as applying solely to New Orleans; and it is also known, that almost the whole of those importations were consumed within that colony; and that, during the war, the supplies from the United States constituted by far the greater part of its imports.

From thence it results, that the annual importations into the ceded territory, of articles destined for the consumption of its own inhabitants, and which will, under the revenue laws of the United States, be liable to pay duty, may safely be estimated at two millions five hundred thousand dollars; an amount which, at the present rate of duties, will yield a revenue of about $350,000.

From that revenue must be deducted $150,000, for the following items, viz:

1st. The amount of duties on a quantity of sugar and indigo, equal to that which shall be imported from New Orleans to the United States. The whole amount of sugar exported from New Orleans is less than 4,000,000 of pounds, and that of indigo is stated at about 30,000 pounds. Supposing (which, on account of that exemption, is not improbable) that the whole of those articles should, hereafter, be exported to the United States, the loss to the revenue will be about $100,000.

2d. No increase of expense in the military establishment of the United States is contemplated on account of the acquisition of territory; but the expenses of the civil administration of the province, and those incident to the intercourse with the Indians, are estimated at $50,000: leaving for the net revenue derived from the province, and applicable to the payment of the interest of the new debt, $200,000, as above stated. The only provisions, which, if that view of the subject be correct, appear necessary, and are respectfully submitted are, 1st, in relation to the stock of $11,250,000, to be created in favor of the Government of France, or of its assignees.

That that debt be made a charge on the Sinking Fund, directing the Commissioners of the Fund to apply so much of its proceeds as may be necessary for the payment of interest, and reimbursement or redemption of the principal, in the same manner as, by the existing laws, they are directed to do in relation to the payment of interest and discharge of the principal of the debt now charged on that fund.

That so much of the duties on merchandise and tonnage as will be equal to seven hundred thousand dollars, being the sum wanted to pay the interest of that new stock, be added to the annual permanent appropriation for the Sinking Fund, together with the existing appropriation, eight millions of dollars, annually applicable to the payment of the interest and principal of the public debt.

And that the said annual sum of eight millions of dollars remain thus pledged, and be vested in the Commissioners of the Sinking Fund, in trust for the said payments, until the whole of the existing debt of the United States and of the new stock shall have been reimbursed or redeemed.

As a sum, equal to the interest accruing on the new stock, will thus be added to the Sinking Fund, the operation of the fund, as it relates to the extinguishment of the existing debt, will remain precisely on the same footing as has been heretofore provided by Congress. The new debt will neither impede or retard the payment of the principal of the old debt; and the fund will be sufficient, besides paying the interest on both, to discharge the old debt before the year 1818, and that of the new within one year and a half after that year.

2d. In relation to the American claims, the payment of which is assumed by the convention with France.

That a sum not exceeding $3,750,000, inclusive of the two millions appropriated by a law of the last session of Congress, for defraying the extraordinary expenses incident to the intercourse with foreign nations, be appropriated for the payment of those claims, to be paid out of any moneys in the Treasury not otherwise appropriated.

That, for the purpose of effecting the whole of that payment, the President of the United States be authorized to borrow a sum not exceeding

$1,750,000, at an interest not exceeding six per cent. a year.

And that so much of the proceeds of the duties on merchandise and tonnage, as may be necessary, be appropriated for the payment of the interest, and for the reimbursement of the principal of the loan, which may, eventually, be effected by virtue of the preceding provision.

It is not proposed to charge that loan on the Sinking Fund, because its amount, in case it shall be effected, cannot, at present, be ascertained; and because it may, perhaps, under the then existing circumstances of the Treasury, be found more expedient not to borrow the money, and, in lieu of it, to pay out of the Sinking Fund the whole, or a part of the two last instalments, payable by virtue of the convention with Great Britain, as authorized by the act making provision for the payment of the whole of the public debt.

It is evident that the possibility of thus providing for the payment of the interest of a new debt of thirteen millions of dollars, without either recurring to new taxes, or interfering with the provisions heretofore made for the payment of the existing debt, depends on the correctness of the estimate of the public revenue which has been submitted.

Although it is not without diffidence that the hope of such favorable result is entertained, some reliance is placed on the solidity of the basis on which the estimate is grounded. It rests, principally, on the expectation that the revenue of the ensuing year shall not be less than that which accrued during the year 1802. No part of it depends on the probable increase which may result from the neutrality of the United States during the continuance of the war in Europe, nor even on the progressive augmentation, which, from past experience, may naturally be expected to arise from the gradual increase of population and wealth. Nor has that effect been taken in consideration, which the uninterrupted free navigation of the Mississippi, and the acquisition of New Orleans, may have, either on the sales of the public lands, or on the general resources of the inhabitants of the Western States.

All which is respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

[The tables are omitted.]

ENCOURAGEMENT TO MANUFACTURES.

[Communicated to the House, Dec. 9, 1803.]

To the Honorable the Senate and House of Representatives of the United States, the memorial of the subscribers, artisans and manufacturers of Philadelphia, respectfully showeth:

That in every country there is an inseparable connexion betwixt the manufacturing and the duties on foreign merchandise, insomuch, that some of the greatest statesmen have made the imposts a political engine, to be used for the introduction or protection of the arts: for, as Rousseau observes, in his "Political Economy:" "It belongs only to the real statesman to elevate his views, in the imposition of taxes, above the mere object of the finances, and to transform those burdens into useful regulations."

After the peace, and during the Confederation, the confusion that reigned in that branch of finance, by every State having different objects in view, rendered the manufacturing interest, at that time, precarious and uncertain. Since the adoption of the Constitution, and that the imposts have been transferred to the Federal Government, it is to the wisdom of Congress alone that your memorialists have to look up for protection.

It is with deep concern, however, that your memorialists have to represent, that during the long period from the peace which terminated our Revolutionary war to the present time, they have seen the wealth of the nation sent to foreign countries to purchase a thousand articles which can be as well manufactured at home, and of which nature has abundantly supplied us with the raw materials.

Among that immense number of articles, even of the first necessity, manufactured for the United States by foreign nations, there are very few that could not be produced by our own citizens, upon equal terms, if they were not prevented by some of the following reasons: 1st. Foreign fashion; 2d. Our markets being constantly overstocked with foreign goods; 3d. The unjust competition which we are obliged to sustain with foreign manufacturers; 4th. The expense necessarily attending the commencement of complicated manufactories; and, 5thly. Duties injudiciously laid on raw materials, or goods partially manufactured. On each of these your memorialists beg leave to state what has come within their own observation. And,

1. The articles that are affected by foreign fashion are principally clothing, and more especially fabrics of cotton. Our manufacturers of that article, in the trials that have already been made, find it impossible to keep pace with the changes introduced by the new patterns from foreign nations: they are therefore confined to those articles which bear very little profit, for which low wages are given, and have continually the mortification of seeing themselves excluded from the most profitable branches of the trade, and their goods rejected by the citizens of America as unfashionable.

2. Our stores being constantly glutted with foreign goods, is another very great obstruction to an incipient or even an established manufacture. The greater part of the manufactures, of which iron, silk, wool, cotton, or flax, are the raw materials, ought to be established in the interior of the country, where provisions, house-rent, and fuel, are cheap. It is therefore necessary that there should be a middle man betwixt the consumer and the manufacturer, that the latter may not waste his time in seeking for customers: these are the storekeepers, wholesale or retail, who inhabit the towns and seaports. Now it is evident that if a foreign manufacturer shall be permitted to keep these people with a constant supply of goods, and give them long credit, it will be impossible for the citizen with a small capital to persuade the storekeeper to purchase his goods for ready money; and if he applies immediately to the consumer, the time that he wastes, in a country where the population is diffused, forces him to demand an extraordinary price, or fix himself in a large town, where house-rent, fuel, &c., eat up the profits of his labor.

3. The competition that the manufacturing citizens of the United States are, by the laws of the country, obliged to sustain with the manufacturers of a foreign nation, is, in the opinion of your memorialists, unjust, inasmuch as the finished articles of our infant manufactures, produced from raw materials found in the United States, such as works of copper, iron, lead, earth, cotton, glass, wool, wood, fur, bone, horn, and leather, are generally, either prohibited in foreign countries, or duties imposed far greater than is paid on the like goods coming into the United States; so that there is no encouragement to attempt to excel foreign manufactures: for, in spite of the greatest exertions, still the consumption must be confined to the United States. If any difference were to be made betwixt two competitors, it ought to be in favor of the weakest; and an infant manufacture must have some protection, to enable it to contend with an old establishment. Your memorialits are however, under the painful necessity of stating, that, in the United States, the reverse of this takes place.

In several instances, especially in hats, shoes, paper, and saddlery, manufactures which have arrived to as high perfection as in any country, in spite of foreign competition; they, are however, not permitted into the country of our competitors, while theirs are still admitted here, and gain sometimes a temporary advantage over our manufacturers, which they are not able to recover for many years, owing to a fluctuation in the price of manual labor, or of the raw material, or the necessaries of life. But to whatever state of perfection our manufactures may arrive, and however low we may be enabled to sell them, we never can contend with our competitors in their own markets, or put them to temporary inconvenience, because they totally prohibit us from their markets. And in those manufactories which require great capitals, and a combination of talents, our competitors in foreign countries have us altogether at their mercy: or rather, the word competitor is a perversion of the term: for, wherever one party is laid prostrate at the feet of the other, there is an end to competition.

4. The next obstacle is the expense necessarily attending the commencement of complicated manufactories. Where an article must pass through the hands of several ingenious artists, before it is fit for the market, the expense of collecting those artists must be considerable. The time, too, that is taken up to bring the materials from a raw state, to be fit for sale, must require an additional capital, which no man would risk, unless the consumption of his fellow-citizens was secured to him, and, at the same time, defended from every species of competition, but what he can see, and whose strength he can measure, viz: with his fellow-citizens *only*. If an insidious foe is likely to come upon him in the dark, and in the guise of fashion, it would be the extreme of folly to venture his capital.

5. Your memorialists conceive, that the injudicious imposition of duties on raw materials, or goods partially manufactured, and in some cases a freedom from duty, equally injurious to the arts, merit the attention of Congress. Among the first, may be reckoned, rags for making paper, the bark of the cork tree, &c., and among the latter, wire of all kinds, as being an article for which the United States ought not to depend on a foreign country, especially as iron of the best kind is found here in abundance.

It is a position, that will not be denied by the greatest enemies to domestic manufacturing, that, as soon as any particular branch shall be established, foreign goods of the same kind ought to be prohibited or discouraged; and this is certainly the case with every manufactory of leather and fur; and yet your memorialists would be glad to know by what mode of reasoning it can be made to appear, that the hatter and shoemaker, who have spent their youth in acquiring those arts, should, every five or six years, be ruined by an excessive importation of foreign hats or shoes, which perhaps may be the remaining estate of some European bankrupt?

The enemies to the manufacturing system have, at different times, brought forward objections, which, to men fully acquainted with that branch of industry, hardly deserve notice; but, as there are others, with the best intentions, who are true friends to the prosperity of these States, who may be led away by these specious objections, or rather imaginary obstacles, we shall mention them, not with any intention of entering into a serious refutation, but only to show their insignificance. 1st. They say "this country is too young to begin the manufacture of clothing for the citizens." In the progress of every original country, (colonies excepted) the manufacture of clothing has always preceded everything else, even agriculture itself. But your memorialists cannot help expressing their opinion, that agriculture and the manufacturing arts ought neither to precede or be behind each other; that they were destined for mutual protection and support; of which the history and present state of all nations bear ample testimony. The flourishing state of agriculture must always be in proportion to the population; and population, on any given territory, is in proportion to the manufacturing arts, or the kind of labor in which the people are employed. Already, in some parts of the New England States, emigration is necessary to carry off the superabundant population; and it would be an injustice done to the landholders of that part of the Union, if they were prevented from pursuing that line of industry, which, by preserving the population to the State, would enhance the value of their property. And we have no hesitation in saying, that it will be bad policy indeed, when the United States shall retard the prosperity of the most ancient and most populous States, for no other reason than that the

new States are not equally forward in point of population, agriculture, &c. There is no fact better authenticated than this, that several of the States have, from a multiplicity of causes, far outstripped others in the progress towards that state of society in which all the three great branches of national industry are combined, viz.: agriculture, manufactures, and commerce; and it is equally true, that not one of them, have been permitted to exert the force of their faculties, or call forth the industry of their citizens, but have been uniformly retarded and checked in their career, by United States' policy, and its fiscal regulations. In the great towns, we see all the evils attendant on luxury—such as pride, idleness, and dissipation, without any of the benefits and advantages, which, by political writers, have been ascribed to is: as, that it makes the rich contribute to the ingenious poor; calls forth talents and circulates the wealth of a nation. But no such good can attend luxury in America: instead of circulating the wealth of the nation, it transfers it to foreign Powers, and gives them the sinews of war, only to menace our peace and disturb our tranquillity.

It has been also objected to manufactures, that "they would retard or prevent the population of the Western wilderness"—as if the prosperity of the citizens, in old established situations, were to be sacrificed to new projects and land speculators. Every migration must be a loss, and not a gain, to the American nation at large. What the Western States gain the Eastern lose, and so far there is a balance. And the real loss is in the act of migration—the trouble, the change of climate, and a thousand other inconveniences, which, in a national scale, must be a loss.

The health of the citizens has been considered to be in danger by the sedentary life of manufacturers; but your memorialists know of no manufactory which can be called a sedentary employment, except the clerks necessary to keep the accounts; and, as far as it regards them, the objection will apply to merchants as well as to manufacturers. It is true, in foreign countries, where the Government, the law, and the employer, are all in combination, or rather conspiracy, against the employed, poverty and its concomitant, disease, must be very frequent among the people employed, not only in manufactories, but among the peasantry or cultivators of the ground. And to whatever deplorable condition artisans may be reduced, in these Governments, the cultivators of the soil are still worse; for to every other species of misery, ignorance must also be added.

Objections have been also made to arts and manufactories, on account of the supposed vice which is said to be found in manufacturing towns. A considerable number of your memorialists have seen the manufacturing towns of Europe, and are convinced that the greatest portion of virtue is to be found there, and that ten times the number of crimes are committed near courts and in seaports that are committed in manufacturing towns. In a word, (if we may judge from the state of society in Europe,) artisans and manufacturers, oppressed as they are, are nevertheless the most virtuous and the most intelligent class in civil society. In a letter from Mr. Colquehoun of London to Mr. Eddy of New York, author of the treatise on the prisons of that city, we find the following observations: "From the facts you have disclosed relative to the criminal offences committed in the city of New York, I am induced to enlarge upon this subject. They appear to me to be of a magnitude to excite a considerable degree of alarm with respect to the degree of criminality in the American towns, inasmuch as it would appear that they greatly exceed the larcenies and misdemeanors committed in towns in Great Britain, of an equal or even a greater population. And (although I have not had an opportunity of ascertaining the fact) I have an impression on my mind that the annual convictions in the whole of Scotland, where population approaches two millions of people, are short of those which take place yearly in the State of New York."

The last objection that we shall notice, is "that Government ought not to grant any special privilege or protection to any part or portion of the national industry, more than to another; and if any manufactory will not take root of itself, it shows it is not fit for our climate or state of society, and ought not to be cultivated here." To which your memorialists beg leave to answer, that this objection can only hold good in the case of a simple manufactory, which is begun and finished by the ingenuity of one man, and where the market for the ready sale of the article is at hand, and does not require the interposition of the merchant to dispose of it, at a distance from the manufactory; but, in all complicated arts, where a combination of skill, and a combination of capital, too, is absolutely necessary, it will be found, that this never has, and we presume never will be, obtained, but by the fostering care of Government. And, if we inquire what other nations have done in similar circumstances, we shall find, that those who have given the greatest encouragement to the complex manufactories, have been the most successful, the most wealthy, and powerful; and, although the English Government has always been unwilling to let her artisans know that it was to them she owed her greatness, and has insidiously ascribed it to her navy, to her commerce, to her insular situation, to her soil, to her climate, to the constitution of her Government, and a number of other secondary or auxiliary causes, your memorialists are convinced that she is indebted for her greatness and power to the well directed industry of her artisans and manufacturers; and your memorialists, it is hoped, will not be blamed for trespassing on the time of your honorable body, by showing what that nation has done for her manufactories.

By the statute 3 Ed. IV. c. 4, no merchant or other person shall bring into the kingdom, to be sold within the realm, any of the following goods, viz. woollen cloths, laces, ribbons, silk in any wise embroidered, saddles, stirrups, harness, things wrought of tawed leather, shoes, hats, locks of any kind, &c. &c., upon pain to forfeit the same as often as they may be found in the hands of any

person, to be sold, half to the King and half to the seizer. This statute was confirmed by 19 Hen. VII. c. 21. And, upon consideration that white ashes, made within the realm, are very necessary for the making of soap and saltpetre, and for whitening of linen cloth, and scouring of woollen, &c. therefore, it is enacted that no person shall ship, or carry beyond sea, any white ashes, on pain of forfeiting six shillings and eight pence for every bushel: 3 Ed. VI. c. 26. And to preserve the wool—rams, lambs, or sheep, alive, are prohibited to be carried out of the realm, upon pain that every offender shall, for the first offence, lose all his goods, and also suffer one year's imprisonment, and have his left hand cut off: 8 Eliz. c. 3. And the statute 12 Char II. c. 32, ordains that no person shall export any sheep, or wool, yarn made of wool, wool flocks, or fuller's earth, on pain of forfeiture, &c. And, for the protection of manufactures of leather, it is enacted by the 13 and 14 Char. II. c. 7, that no person shall carry out of England, the skins or hides, tanned or untanned, of any ox, steer, bull, cow, or calf, under a penalty of 500 pounds. And the statutes 13 and 14 Char. II. c. 19, prohibits the importation of card wire, or iron wire employed in making wool cards; that no part of their woollen manufactory might depend upon foreign nations. And for encouraging the manufactories of the kingdom, it is enacted, by the statute 11 and 12 Wm. III. c. 10, that all wrought silks, Bengals, and stuffs, of the manufacture of Persia, China, or the East Indies, and all printed, stained, and dyed calicoes, which shall be imported, shall not be worn in the kingdom; but shall be entered and carried to warehouses appointed by the commissioners of the customs, in order for exportation, and not taken thence, but on security given that they shall be exported. It was by such protecting statutes, and a multitude of others, that England created her extensive manufactories, which multiplied the objects of commerce, and laid the foundation of that Navy, which, at this day, gives laws to the maritime world. And an English author, who wrote upon the trade of that nation forty years ago, says, "What is of the utmost consequence to England, is, that, by laying high duties, we are always able to check the vanity of our people, in their extreme fondness for wearing exotic manufactures: for, if it were not for this restraint, as our neighbors give much less wages to their workmen than we do, and, consequently, can sell cheaper, the Italians, the French, and the Dutch, would have continued to pour upon us their silks, paper, hats, druggets stuffs, and even Spanish woollen cloths; for they have the wool of that country as cheap as we, and are become masters of that business, by the great encouragement they have given to able workmen from other countries to settle with them; and, thereby, have prevented the growth of those manufactories amongst us, and so might have reduced us to the low estate we were in before their establishment; and, therefore, it will be a maxim, to be observed by all prudent Governments, who are capable of manufacturing within themselves, to lay such duties on the foreign as may favor their own, and discourage the importation of any of the like sorts from abroad."

If other nations, as Spain, Portugal, Naples, &c., have neglected their manufactories, and, consequently, hold only a second or third rank among the nations of Europe, it would ill become the United States to follow their example. In this particular we should rather imitate England or France, without, however, making the source of riches a rod of oppression, as they have done; and, notwithstanding artisans are greatly oppressed there, whatever of republicanism is to be found in their constitutions, is to be ascribed to them; for in all ages the peasantry have been too ignorant to understand their rights, and too remote from each other to be able to withstand oppression.

It is, however, conceded by some, "that coarse goods, and articles of the first necessity, ought to be manufactured here, while fine goods, and articles of luxury, ought to be imported from abroad;" which is much the same as to say, that foreign manufacturers ought to be employed in the most beneficial branches of our consumption, and the citizens should be contented with the inferior kinds of labor.

If this be not the meaning of our opponents, then it must be inferred, either that our citizens want genius to perform the finer arts, or that they are despised in the United States. It is a fact, however, of perfect notoriety, that there are more fine goods of every manufacture used in the towns of America, than in those of the same size in Europe; and also, that our citizens do not want talents to execute, or genius to contrive, anything that may be required of them, and for which they shall have due encouragement. Among the members even of this society, if we except chinaware, it would be almost impossible to mention an article in use here that could not be made by one or other of them. It is true, that many of them are employed out of their proper line of business, and in occupations far beneath their genius or talents. Your memorialists cannot, therefore, be blamed for their opinion, that it would be more profitable to the nation to employ these people in teaching the rising generation those arts, than to continue purchasing foreign goods; and also, that the best and most profitable parts of the labor ought to be given to the citizens, and the coarse or inferior branches reserved for foreign nations.

But it has been said that high duties ought not to be laid, because we have not at present a sufficient number of hands to supply the United States. This only shows the necessity of protecting duties, which alone can give encouragement to men of genius to pursue complex and difficult manufactures; and that no length of time would ever produce a sufficient number of hands without it.

Having answered, as briefly as possible, some of the objections of our opponents, and shown what another great nation did for the arts, during their infancy, in that country, your memorialists beg leave to state some of the effects likely to be

produced from an union of the three great branches of national industry—agriculture, manufactures, and commerce; in which it will be seen, that each of them would receive an additional impulse by such an union. And first, of agriculture.

It has been already observed that the state of agriculture is always in proportion to population. This is evident from a view of the price of land, which decreases in the compound ratio of its intrinsic worth, and its distance from the centre of a town, or the populous part of a country. But agriculture alone will never concentrate the population so as to form a town of any considerable magnitude. There can only be a country village, where a few neighboring proprietors are collected, with the blacksmith, tavern-keeper, and storekeeper, &c., which, instead of being the centre of trade and industry, is oftener the focus of dissipation. This scattered population requires a greater extent of roads than can be kept in any decent repair; hence, during several months in the year, they are impassable; and at all seasons, the distance is too great to make it profitable to transport heavy commodities, the rude produce of agriculture, except along the banks of navigable waters.

But when the useful arts are established, in the midst of a fertile country, the system of farming becomes improved; land advances in value, because all the produce of a farm finds a ready market in the neighborhood, and good roads may be made without oppressive taxation. It is thus that agriculture has always flourished best, in the neighborhood of the arts; and commerce consisting in the exchange of the commodities of one district for those of another, the histories of all nations demonstrate that, where objects of interest are greatly diversified, the greater is the trade of the merchant. Manufactories might change the nature and objects of commerce; but, to annihilate it, would be contrary to the experience of all mankind.

As the revenue of the United States is derived principally from the objects of foreign industry, it will be proper to inquire what would be the effects of the manufacturing system on that revenue. We will suppose that, with all the protection that would be given to manufactories, it would be, nevertheless, twenty years before the United States could supply themselves with everything they choose to make, or could arrive at that perfection, so as to equal foreign nations; and if the revenue on goods imported were divided into two parts, viz: 1st. That which arises from the useful arts, (which it would be proper for the United States to encourage here,) and, 2d. That which is levied on luxuries, such as tea, chinaware, &c., or other manufactures, which it, perhaps, would be imprudent, for a series of years, to attempt, it is highly probable, if not evident, that the increasing population of the United States would, in twenty years, double the produce of the revenue arising from the importation of those luxuries, and make the revenue from that part alone, equal to the whole of the present revenue. On the other hand, a heavy protecting duty on the useful arts would make a very considerable addition to the revenue for a few years, which would, however, be gradually diminishing, as manufactories were established throughout the country. This argument is predicated upon the stationary quality which the expenses of the Federal Government possesses, and on the nature of its revenue, increasing in proportion to the population.

Nothing can be a more appropriate object of taxation than foreign fashions and foreign luxuries. When foreign luxuries shall have become more expensive, the citizens will be contented with more decent attire, and learn to place a higher value on the plain fabrics of home manufacture. In a few years, the genius of Americans will be called forth to invent luxuries of our own, which are as beneficial to a country as foreign luxuries are injurious.

Thus, by one operation, many advantages will accrue to the nation. New sources will be laid open for the employment of capital in the interior; the coasting trade and internal commerce will receive a new impulse; domestic industry will put to shame idleness and dissipation; foreign nations will lose their influence over our councils. The fertile lands of America will rise to their just value, by bringing a market to the door of the farmer. The riches with which nature has so bountifully blessed this country, will be explored and brought into use, and the minerals and waters of the country will be employed to the purposes for which they were designed by the God of nature.

Your memorialists now beg leave to state, in a general way, what alterations it would be necessary, in our opinion, to make on the duties on importation, so as to protect some of the most useful arts already established, and to encourage the introduction of others; and this we do, neither in the servile language of petition, nor with the presumption of dictating to the wisdom of Congress.

And 1st. It is our opinion that all manufactures of which wood, fur, leather, horn, bone, or rags, are the raw materials, as they are the produce of the country, ought either to be prohibited, or high duties laid on their importation. Goods manufactured from these materials are either already made here, or may be made as soon as the artisans are secured in their respective pursuits.

The manufactures also, of which hemp, flax, cotton, and iron, are the raw materials, as they require great capital, a great diversity of skill and talents, and have, for the most part, had a beginning here, ought to receive all the fostering care of Government; that we should not, in these expensive undertakings, have to contend with foreign goods in our own market.

Whenever Congress shall seriously take up the subject of manufactures, a great number of articles will come under consideration, which are neither properly raw materials, in the strict sense of the word, nor finished goods; such, for example, are iron and brass wire, sheet brass, sheet copper, printing ink, types, &c., all of which are, however, necessary to the completion of other manufactures. These, it is believed, might, some of them, be encouraged by premiums from the States; for it is known that, if once they are fairly set up, and the first expense got over, a very moderate duty would prevent foreign nations from rivalling us.

Manufactories of the precious metals have already been established; but it is questionable whether they will preserve their reputation without being assayed and stamped, as is practised in other nations, and whether this be within the jurisdiction of Congress.

No nation can be called independent which relies for military or naval stores on a foreign country, and there can be no certainty of a supply, in time of war, but by encouraging their manufacture in times of peace, by prohibiting all foreign arms and ammunition.

Every fabric of silk may, at present, be considered as a luxury, and, therefore, the proper subject of taxation; which, at the same time, would operate greatly in favor of the Southern States, where silk, in a few years, might be as plenty as in China.

Your memorialists have forborne to say much on the manufacture of wool, as that article cannot be multiplied at pleasure, as cotton, hemp, and flax may. This would depend upon a combination of circumstances. The people must be induced to prefer mutton and lamb to the flesh of hogs; and this can only be done by an attention to the breed, and improvements in the mode of pasturing those useful animals—a subject which would come with more propriety from a society of agriculturists.

Having thus submitted our case to the wisdom of Congress, your memorialists must now wait, with anxiety, your decision; and, in whatever manner this great question shall be determined, we shall console ourselves with having brought it to an issue; for, after your determination, the citizens will be no longer in suspense as to the nature and object of their pursuits. The capitalist will be able to calculate in what line he ought to employ his capital. Parents will judge what occupation will be most profitable for their children. And foreign artists will see the propriety or impropriety of migrating hither—points which are not easily determined in the present state of things. All which is respectfully submitted, &c.

DRAWBACK.

[Communicated to the House, December 20, 1803.]

Mr. SAMUEL L. MITCHILL made the following report: The Committee of Commerce and Manufactures report such facts as have occurred to them, on a resolve of the House, of the 9th of November, directing them to report, by bill or otherwise, whether a drawback of duties ought not to be allowed on sugar refined in the United States, and exported to foreign ports or places, together with their opinion on the same.

By "An act laying certain duties on snuff and refined sugar," a duty was laid and collected of two cents the pound, on sugar refined within the United States. By the fourteenth section of the same act, this duty was allowed to be drawback on exportation, together with three cents a pound on account of the duties paid upon the importation of crude sugar. At the time of making this regulation, the duty on crude sugar was one cent and a half the pound. Upon the calculation that two pounds of crude sugar were required to make one pound of refined sugar, three cents of drawback were allowed on exporting the refined article, and to this were added the two cents paid to the excise: the sum of the duty and the excise, when added together, making the five cents of drawback at that time.

By the statute of March the third, one thousand seven hundred and ninety-seven, an additional duty of half a cent the pound was levied on brown sugar imported from foreign places; and by the fifth section of that act, there was allowed an additional drawback of one cent the pound on exported refined sugar, of domestic manufacture; observing the same rate of calculating two pounds of crude sugar for one of refined.

On the thirteenth day of May, one thousand eight hundred, Congress imposed a further duty of half a cent the pound on imported brown sugar, and increased the drawback, in consequence thereof, to one cent the pound on the importation of domestic refined sugar.

The whole amount of drawback, amounting thus to seven cents the pound, on the exportation of sugar refined in the United States, was done away by the statute repealing the internal taxes.

The committee find further, notwithstanding the repeal of the statutes, and of their parts which relate to the duties, excises, and drawbacks, provided for crude and refined sugars, that the refining of sugar at home is not wholly unprotected. It is known that sugar candy or crystallized sugar could be imported from Asia, not only so cheap as to vie with West India brown, but even to be substituted, in many cases, for refined sugars in the markets of the United States. The merchants who could have brought great quantities of this elegant form of sugar, were interrupted in their trade in this article, by the imposition in the statute of March 3, 1797, of the excessive duty of nine cents the pound, and by the statute of May 13th, 1800, an additional duty of two cents and one half per pound, making together eleven cents and one half the pound, and, of course, the almost entire prohibition of the importation. Thus, to protect the domestic refiners of sugar, the merchants who trade to the East Indies are prohibited from bringing sugar candy to the United States, and the citizens at home from consuming it, but at the enormous price paid for it, as a dainty, a medicine, or a rarity.

Sugar candy being thus excluded our market, and, of course, from competition, Congress made another provision for encouraging the domestic

sugar refinery. They imposed, by the several acts of August 10, 1790, of June 7, 1794, and of January 29, 1795, various duties, amounting to nine cents, on the importation of foreign refined loaf sugar, and six and one half cents on all the other refined sugar. They refused, by the statute of June 5th, 1794, a drawback on the exportation of imported loaf and lump sugars of foreign refinery; they forbade the importation of it altogether in vessels of less burden than one hundred and twenty tons; and they, even then, prohibited the admission of it in parcels of smaller quantities than six hundred pounds. This amounts almost to the prohibition of foreign refined sugar; as a proof of which, it may be observed that, from one thousand seven hundred and ninety, to one thousand seven hundred and ninety-two, the quantity of imported loaf sugar consumed in the United States, was two hundred and eight thousand five hundred and forty pounds; from one thousand seven hundred and ninety-three, to one thousand seven hundred and ninety-eight, it was forty-one thousand three hundred and thirty-seven pounds. In one thousand seven hundred and ninety-nine, and one thousand eight hundred, it was eleven thousand seven hundred and eleven pounds; which, at the rate of nine cents per pound, produced, in the first period, eighteen thousand seven hundred and sixty-nine dollars of revenue: in the second period only three thousand seven hundred and twenty dollars; and in the last, but one thousand and fifty-four dollars. From October the first, one thousand eight hundred, to the thirtieth of September, one thousand eight hundred and one, there were only sixteen thousand six hundred and twenty-eight pounds of loaf sugar imported; of which, twelve thousand seven hundred and fifteen pounds were in American, and three thousand nine hundred and thirteen pounds in foreign vessels.

Under this loss of revenue from the existing regulations concerning sugar, it is believed, by the persons engaged in the refining business, that, in the infantine state of this manufacture, it stands in need of greater encouragement.

It will be remembered that already, sugar candy and loaf sugar, from abroad, are loaded with such heavy duties that their prohibition operates as a bounty on the domestic manufacture. It will be recollected, too, that the duties on the refined sugar consumed at home, are paid by the consumer; and that, to protect the refiners of sugar in the United States, Government have adopted measures that have considerably lessened the revenue on that article; and, by removing foreign competition, enhanced the price to the domestic consumer.

Still it is inquired whether the drawback ought not to be allowed on the exportation of refined sugars of our own manufacture?

There are two difficulties attending this, arising from the acquisition of Louisiana.

The first is, that already four thousand and five hundred casks of sugar, weighing half a ton each, estimated to be worth three hundred and two thousand and four hundred dollars, are prepared and exported annually from New Orleans, and its vicinity. By annexing this territory to the United States, this quantity of sugar, or a ratable proportion of it, will come into the States, and probably be refined. It would be unreasonable to pay a drawback upon sugar which had never paid a duty. Under an improved cultivation, the country lying between the river Iberville and the city of New Orleans may be made additionally productive of sugar cane; it is supposed that a tract of ninety miles in length, and three quarters of a mile in breadth, on both sides of the Mississippi, will be turned into sugar plantations, and yield, annually, twenty-five thousand hogsheads of sugar, and twelve thousand puncheons of rum. This quantity, thrown into our market, may be contemplated as good stock for our refiners to work upon.

The second difficulty is, that a refinery of sugar has been, for some time, established at New Orleans, which is said to produce two hundred thousand pounds of loaf sugar annually. This branch of manufacture may be expected to increase there, as the quantity of sugar increases, and as capitalists and men of enterprise go into the business. By performing the operation of refining near the place where the sugar is raised, much of the expense of transportation will be saved, by carrying the wrought rather than the raw article to a distant or a foreign market. And to accomplish the object, which the refiners in the United States have in view, it would be necessary to prohibit the importation of refined sugar from Louisiana; and to avoid paying the amount of a drawback upon sugars that have never paid duties, it will be necessary for the economy of Government, and the security of the treasury, to distinguish those of Louisiana from others of foreign production.

It would appear, from this examination of facts, that sugar refining has been more favored by Government than, perhaps, any branch of domestic manufacture. The diminution of 17,735 dollars in the revenue, heretofore derived from imported loaf sugar, indicates the amount of a virtual bounty annually paid to encourage the business.

It may be questioned whether a drawback ought to be allowed on the exportation of domestic refined sugar, unless the duties were lessened on the importation of sugar candy and foreign refined sugar. While the prohibitory duties exist on the latter articles, the demand for Fredish [United States] refined sugar, in foreign markets, may raise the price of the article, so as sensibly to affect the consumer of refined sugar at home.

This rise of the price of refined sugar at home and abroad, will, of course, raise the price of brown or crude sugar in our home market; and by the competition between the refiners and the housekeepers, muscovado sugar itself must be paid for at a dearer rate by the citizens, at large, who consume it. Thus the trade will be in danger of being engrossed by the refiners, who, without paying any revenue to Government, raise the price of loaf, lump, and brown sugar, to the consumer.

A good reason does not occur to the committee, wherefore both the treasury of the nation, and the pockets of the individual citizens, should be subjected to greater payments than at present, for promoting the refinery of sugar; and particularly, as the extension of the laws of the United States to Louisiana, presents this subject in an aspect different from any in which it has been viewed before.

The plain principle on which drawbacks are allowed, is that the *identical* article imported, shall be exported according to law. If they are granted upon articles that have undergone a remarkable chemical or mechanical alteration, then they ought to be allowed on all exported cordage formed from imported hemp, on exported rum, distilled from imported molasses, and on garments made at the slop shops, and otherwise from imported cloth, and afterwards carried abroad.

In the case of sugar, the committee is inclined to think, that the operation of refining has already been patronised to as great an extent by Government as is consistent with political economy and public good; and under that conviction, they submit to the House their opinion—

That it would be improper, at this time, and under existing laws and regulations, to allow a drawback upon the exportation of domestic refined sugar.

SINKING FUND.

[Communicated to the Senate, February 6, 1804.]

WASHINGTON, *Feb.* 4, 1804.

The Commissioners of the Sinking Fund respectfully report to Congress as follows: That the measures which have been authorized by the board, subsequent to their report, of the 5th February, 1803, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury, to this board, dated the third day of the present month, and in the statements therein referred to; which are herewith transmitted, and prayed to be received as part of this report.

JOHN BROWN, *Pres't of Senate.*
J. MADISON, *Sec'y of State.*
A. GALLATIN, *Sec'y of Treasury.*
LEVI LINCOLN, *Att'y Gen. of U. S.*

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That, at the close of the year 1801, the unexpended balance of the disbursements, made out of the Treasury, for the payment of the principal and interest of the public debt, which was applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, (as will appear by statement A) amounted to - - - - - - - $1,085,907 60

That, during the year 1802, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz:

1. There was paid on account of the reimbursement and interest of the domestic funded debt, the sum of -		4,618,021 39
2. On account of domestic loans obtained from the Bank of the United States, viz:		
On account of the principal - - -	$1,290,000 00	
On account of interest -	162,025 00	
		1,452,025 00
3. On account of the domestic unfunded debt, viz:		
On account of debts due to foreign officers, - - -	7,994 92	
On account of certain parts of the domestic debt - - -	14,966 84	
		22,961 76
4. On account of the principal and interest of the Dutch debt, including repayments in the Treasury - -	3,359,992 03	
Amounting altogether, to		9,453,000 18

As will appear by the annexed list of warrants B.

Which disbursements were made out of the following funds, viz:

1. From the funds constituting the annual appropriation of $7,300,000 00, for the year 1802, viz:

From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement annexed to last year's report, marked B, -	326,449 92	
From the fund arising from payments into the Treasury of debts which originated under the late Government, as per statement annexed to last year's report, marked C, -	888 79	
From the fund arising from dividends on the capital stock, which belonged to the United States, in the bank of the said States, as per statement annexed to last year's report, marked D - -	33,960 00	
From the fund arising from the sale of public lands, being the amount of moneys paid into the Treasury, in the year 1802, as per statement annexed to last year's report, marked E -	179,575 52	
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships and vessels - - -	6,759,125 77	
		7,300,000 00

Report of the Commissioners of the Sinking Fund.

2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part and on account of the annual appropriation of $7,300,000, for the year 1803		745,807 40
3. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, as will appear by the statement E, viz:		
Repayment of the purchase money	109,120	
Damages and interest recovered	10,472 78	
		119,592 78
4. From the proceeds of two thousand two hundred and twenty shares of the capital stock of the Bank of the United States as per statement annexed to last year's report, marked F		1,287,600 00
		$9,453,000 18

That of the above-mentioned disbursements, together with the above-mentioned balance, which remained unexpended on the 1st January, 1802, and, amounting altogether, to - - - $10,538,907 78

Ten millions five hundred and thirty-eight thousand nine hundred and seven dollars and seventy-eight cents, have been accounted for in the following manner, viz:

1. There was paid in the Treasury, during the year 1802, on account of protested bills or advances made for contracts which were not fulfilled, as appears by the above-mentioned statement E, a sum of		109,120 00
2. The sums actually paid during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amount to seven millions seven hundred and seventy-two thousand eight hundred and fifty-four dollars and seventy cents, viz:		
1. Paid in reimbursement of the principal of the public debt		3,638,744 63
2. On account of the interest and charges on the same		4,134,110 07
		7,772,854 70
As will appear by the statement D.		
3. The balance remaining unexpended at the close of the year 1802, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, amounted to (as will appear by the statement F)		2,656,933 08
		10,538,907 78

That, during the year 1803, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt, viz:

1. There was paid on account of the reimbursement and interest of the domestic funded debt, a sum of		4,568,176 68
2. On account of domestic loans obtained from the Bank of the United States, viz:		
On account of the principal	500,000 00	
On account of the interest	82,000 00	
		582,000 00
3. On account of the domestic unfunded debt, viz:		
On account of debts due to foreign officers	12,123 31	
On account of certain parts of the domestic debt	12,073 43	
		24,196 74
4. On account of the principal and interest of the foreign debt, including repayments in the Treasury		2,153,348 17
Amounting altogether, to		7,327,721 59

As will appear by the annexed list of warrants, G.

Which disbursements were made out of the following funds, viz:

1. From the funds constituting the annual appropriation of $7,300,000, for the year 1803, viz:		
From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund, as per statement N	401,355 05	
From the fund arising from payments into the Treasury, of debts which originated under the late Government, as per statement O	135 46	
From the fund arising from the sales of public lands, being the amount of moneys paid into the Treasury, in the year 1803, as per statement P	158,949 65	
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels	5,993,752 44	
Amounting altogether, to		6,554,192 60
Which sum of	6,554,192 60	
Together with the sum advanced during the year 1802, on account of the appropriation for the year 1803, and amounting, as above stated, to	745,807 40	
Make, in the whole, for the year 1803, the annual appropriation of	7,300,000 00	
2. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1804		753,236 40

Report of the Commissioners of the Sinking Fund.

3. From repayments in the Treasury on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of loans, as will appear by the statement I, viz:		
Repayment of the purchase money, and advances	13,117 48	
Damages and interest recovered	2,218 00	
		15,335 48
4. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1803, for that object, as will appear by statement G		4,957 11
		7,327,721 59
That the above-mentioned disbursements, together with the stated balance of		2,656,933 08
Which remained unexpended at the close of the year 1802, and with a further sum arising from profits made on remittances made to Holland, by the way of London, which is estimated at		11,200 00
		9,995,854 67

And amounting altogether, to nine millions nine hundred and ninety-five thousand eight hundred and fifty-four dollars and sixty-seven cents, will be accounted for in the next annual report, in conformity with the accounts which shall then have been rendered to the Treasury Department.

That, in the meanwhile, the manner in which the said sum has been applied, is, from the partial accounts which have been rendered, and from the knowledge of the payments, intended to be made both in Holland and in America, estimated as follows, viz:

1. The repayments in the Treasury have amounted, as by the above-mentioned statement I, to		13,117 48
2. The sums actually applied, during the year 1803, to the payment of the principal and interest of the public debt, are estimated as follows, viz:		
Paid in reimbursement of the principal of the public debt	4,528,196 74	
Paid on account of interest and charges on the same	3,903,144 11	
Amounting, altogether, to		8,431,340 85
As will appear by the estimate K.		
3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, is estimated, as per estimate L, at		1,551,396 34
		$9,995,854 67

That no purchases of the debt of the United States have been made since the date of the last report to Congress.

And that the statement M exhibits the operations at the Treasury, in the transfer of stock to the Commissioners of the Sinking Fund, in trust for the United States, upon the reimbursement of the foreign debt, in the year 1802; and includes, also, the sum of six thousand three hundred and fifty-nine dollars and twenty cents, being the aggregate of the several species of stock transferred in the year 1803, in payment for public lands.

All which is respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Feb.* 3, 1804.

A.

Statement of the provision made before the 1st January, 1803, for the payment of the principal and interest of the public debt falling due after the year 1801.

I. On account of the foreign debt.

1. Cash in the hands of the commissioners at Amsterdam and Antwerp, on the 31st December, 1801:

	Guilders.	*Dolls. Cts.*
In Amsterdam, per treasury statements No. 13,824 & 14,359	1,508 14 02(*a*)	
In Amsterdam, transferred by the commissioners during the year 1802, from the account of Gov. Morris to the credit of Dutch debt, being the balance of a sum formerly remitted for paying the interest on the debt due to foreign officers	41,787 10 08	
	43,296 04 10	
Deduct balance due to C. J. M. De Wolf, in Antwerp,	1,432 00 00	
	41,864 04 10	
At 40 cents, is		16,745 69
2. Amount of remittances paid for at the treasury and remitted to the commissioners on or before the 21st December, 1801, which are credited by the commissioners in their account for 1802 $2,240,523 04(*b*) Which remittances cost only $888,065 64, but, at 40 cents, is		896,209 28
3. Amount of payment, made at the treasury before the 31st December, 1801, for remittances which have been protested for non-payment, on account of contracts not fulfilled, and on that day not repaid into the treasury,		153,120 00 (*c*)
4. Advances made to G. Simpson and P. R. Dalton, agents for purchasing bills of exchange, unexpended on 31st December, 1801,		20,961 40

II. From which deduct, on account of the domestic debt, viz:

The balance on 31st December, 1801, in the hands of deceased commissioners of loans, is $3,393 99

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Ditto in the hands of acting ditto - -	1,196,390 16	
Overpaid to Bank of United States beyond the dividends payable at the Treasury - - -	95 88	
	1,999,880 03	
The demands unsatisfied on the same day, on that account, were, viz:		
Dividends payable by the Commissioners of Loans, including that due on 1st January, 1802, and exclusively of unclaimed dividends no longer demandable at their offices - - -	1,178,863 59	
Unclaimed dividends payable at the Treasury - - -	22,126 59	
Balance due to the late Commissioner of Loans for Georgia	18 62	
	1,201,008 80	
Balance due on account of domestic debt - - - - - -		1,128 77
Amount advanced in anticipation of payments for the public debt -		1,085,907 60

NOTES TO STATEMENT A.

(*a*) In the account of the Commissioners for the year 1801, as settled at the Treasury, per report 13,824, a balance is stated in favor of the United States, of guilders - - - - - 57,631 16 15

In their account for the year 1802, as settled at the Treasury, per report No. 14,359, they are charged for transactions antecedent to 1802, with a further sum of - - - - 6,146 14 03

63,778 11 02

From which deducting an item for dividends on stock sold, only suspended for want of vouchers, and amounting to - - - - - - - - 62,269 17 00

Leaves the balance, as per statement B 1,508 14 02

The Commissioners, in their account for 1801, had stated a balance due to them by the United States, of - 19,676 15 00

Making a difference of - - 21,185 09 02

Which difference consists of the following items, viz:

Overcharge of one-half per cent. on their charges for negotiating the loan of 3,000,000 guilders, of 1st January, 1794—guilders - -	15,000 00 00	
Interest charged by them on said sum	2,679 09 00	
Amount of a bill paid to them on account of the Dutch debt, and by them erroneously credited to the Department of State - - - -	3,000 00 00	
Interest on the said sum - - -	467 05 03	
Commission overcharged on payment of interest on Dutch debt - -	38 14 15	
Guilders - - -	21,185 09 02	

(*b*) This sum, which makes part of the sum of 5,009,985 02 08 accounted for by the Commissioners during the year 1802, as per their account for that year, settled at the Treasury, (report No. 14,359,) consists of the following items, viz:

Guilders, -	814,364 00 at 39 cents,	$317,601 96
	1,426,159 04 at 40 "	571,463 68
	2,240,523 04 cost - -	888,065 64

(*c*) This sum consists of the following particulars:

		Yet in suit.
Bill purchased from Pragers & Co. in 1798, guilders	120,000	$48,000
Ditto from A. Brown in 1801	60,000	24,000
	Repaid in 1802.	
Ditto from D. Harris "	35,000	14,000
Ditto from J. Burrall "	10,000	4,000
Ditto do do "	8,000 at 39 cts.	3,120
Advance to J. and R. Waln, on account of a contract for paying moneys in Amsterdam, not fulfilled in 1801, - - - - -		60,000
		$153,120

JOSEPH NOURSE, *Register.*

TREASURY DEPARTMENT,
Register's Office, Feb. 1, 1804.

STATE OF THE FINANCES.

[Communicated to the Senate, November 21, 1804.]

In obedience to the directions of the act supplementary to the act, entitled "An act to establish the Treasury Department," the Secretary of the Treasury respectfully submits the following report and estimates:

Revenue.

The net revenue arising from duties on merchandise and tonnage, which accrued during the year 1802, and on which the estimates of last year were predicated, amounted, as will appear by the statement A, to $10,154,000. The net revenue arising from the same source, which accrued during the year 1803, has amounted, as appears by the same statement, to $11,306,000: and it is ascertained that the net revenue which accrued during the three first quarters of the year 1804, considerably exceeds that of the corresponding quarters of the year 1803. Without drawing any inference from the increase of the present year, an increase which must be ascribed to the situation of Europe, and will, eventually, be diminished by subsequent re-exportations, that branch of the revenue may, exclusively of the Mediterranean fund, be safely estimated at $10,730,000, which is the average of the two years 1802 and 1803. The actual payments in the Treasury, on account of those duties, during the year ending on the 30th of September last, amount nearly to the same sum; and there is no reason to suppose that the receipts of the ensuing, will fall short of those of last year.

The statement B exhibits, in detail, the several species of merchandise, and other sources, from

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which that revenue was collected, during the year 1803.

It also appears that the revenue arising from the sales of public lands is gradually increasing. The statement C shows that, exclusively of the September sales at Cincinnati, three hundred and fourteen thousand acres have been sold during the year ending on the thirtieth of September last. The proceeds of those sales, calculated on the supposition that every purchaser will be entitled to the discount allowed in case of prompt payment, would yield five hundred and fifteen thousand dollars. And, notwithstanding the difficulties which exist in drawing into the Treasury the moneys collected by the receivers of the remote land offices, it is believed that the actual receipts from that source will, for the ensuing year, exceed four hundred and fifty thousand dollars.

The permanent revenue of the United States may, therefore, including the duties on postage, and other small incidental branches, be computed at eleven millions two hundred thousand dollars.

And the payments in the Treasury, during the year 1805, on account of the temporary duties which constitute the "Mediterranean Fund," are estimated at five hundred and fifty thousand dollars; making, in the whole, for the probable receipts of that year, a sum of - - $11,750,000

Expenditures.

The expenses of the year 1805, which must be defrayed out of that year, consist of the following items:

1. The annual appropriation of eight millions of dollars, for the payment of the principal and interest of the public debt; of which near $3,700,000 will be applicable to the discharge of the principal, and the residue to the payment of interest		$8,000,000
2. For the Civil Department, and all domestic expenses of a civil nature, including military pensions, the light-house and mint establishments, and the expenses of surveying public lands - - -		952,000
3. For expenses incident to the intercourse with foreign nations, including the payment of awards under the seventh article of the British Treaty, and the permanent appropriation for Algiers - - -		294,000
4. For the Military and Indian Departments, including the permanent appropriation for certain Indian tribes - - - - -		954,000
5. For the Naval Establishment, viz. annual appropriation charged to the ordinary revenue -	$650,000	
Extraordinary expenses of last expedition to Tripoli, which will be payable in the year 1805, and are chargeable to the Mediterranean fund -	590,000	
		1,240,000
6. Reserved out of the Mediterranean fund, for meeting other extraordinary expenses, which may be incurred under the act constituting the fund - - - - -		100,000
Making, altogether - -		11,540,000
And deducted from the revenue of -		11,750,000
Leaves a surplus of - -		210,000

Mediterranean Fund.

The sum which may probably be received during the year 1805, on account of that fund, and the payments during that year, which will ultimately be charged to the fund, are included in the preceding estimate of receipts and expenditures; but it is necessary to give a distinct view of the whole amount of revenue and expenses under that head.

The value of merchandise paying duties ad valorem, which was imported in the year 1802, amounts, after deducting the exportations of the same year, to $31,706,000. The value of the same description of merchandise, imported in the year 1803, amounts to $34,370,000. The additional duty of two and a half per cent. on that description of imported articles, constitutes the Mediterranean Fund, and calculated on the average importations of the two years, would have yielded, annually, $826,000. But several articles, which, in the years 1802 and 1803, paid duties ad valorem, having, in lieu thereof, been charged with specific duties, by an act of last session, are not liable to the additional duty of two and a half per cent. Although the value of those articles cannot be precisely ascertained, it is believed that the deduction, on that account, will not amount to $50,000, and the proceeds of the additional duty may be computed at the annual sum of $780,000; and for the eighteen months commencing on the first of July, 1804, and ending on the 31st of December, 1805, at $1,170,000. The expenses authorized under the act constituting the fund, have been predicated on that estimate, and apportioned in the following manner:

1. For the Navy Department, (in addition to the annual appropriation of $650,000,) viz:

There had been advanced, from the ordinary revenue, prior to the 30th of September, 1804 - - - - -	$350,000
A further payment will be made before the first of January, 1805, of - -	130,000
To be paid during the year 1805, on account of this fund, as stated under the fifth item of expenditures for the year 1805 - - - - - -	590,000
	1,070,000
2. Reserved for other extraordinary expenses, which may be incurred for the same object, being the sixth item of expenditures for the year year 1805 - - - - - - -	100,000
	1,170,000

Those duties began to operate on the first day of July last; but, as they are payable six, eight, nine, ten, and twelve months after the importation, no part will be paid in the Treasury during the present year; and a sum of only $550,000 is expected to be received in the course of the year 1805. For that sum only, credit has been taken in the general estimate of receipts for that year; whilst a part of the $1,170,000, chargeable to the fund, has already been expended, and the rest is included in the preceding estimate of expenses for 1805. The difference, amounting to $620,000, will, at the end of the next year, consist of outstanding bonds, payable in 1806. And, if the additional duty should, as well as the extraordinary expense for which it is appropriated, cease at that time, that outstanding balance will, as it is collected, replace in the Treasury the sum advanced for the ordinary revenues, in anticipation of the proceeds of the fund. For it is hoped that the situation of the Treasury will render it unnecessary to recur to the authority given by the act, to borrow on the credit of the fund.

Balance in the Treasury.

The greater part of the balance of $5,860,981 54, which, on the 30th day of September, remained in the Treasury, was, in the last year's report, considered as applicable to the payments of extraordinary demands, therein stated.

As no payment has been made on that account during the last year, besides the first instalment of $888,000 due to Great Britain, nor any other extraordinary expense has been discharged, than the advance of $350,000, in anticipation of the Mediterranean Fund; the balance remaining in the Treasury on the 30th September, 1804, still amounted to $4,882,225 11. That sum, together with the estimated surplus of revenue for the sum advanced from the ordinary revenue to the Mediterranean Fund, and the arrears of the direct tax and internal revenues, may still be considered as sufficient to discharge the balance of $1,776,000, due to Great Britain; the loan of $200,000 due to Maryland; and $2,600,000 on account of the American claims assumed by the French convention. As the greater part of those demands will be paid in the course of the year 1805, the balance will not, probably, at the end of that year, exceed the sum which it is always expedient to retain in the Treasury.

Public Debt.

It appears, by the estimate D, that the payments on account of the principal of the public debt, have, during the year ending on the 30th September last, amounted to - - $3,652,887 15

And during the three years and a half, commencing on the first day of April, 1801, and ending on the thirtieth day of September, 1804, to - - - - $13,576,891 86

During the same period, a new debt of thirteen millions of dollars has been created by the purchase of Louisiana, viz:

Six per cent. stock, issued in conformity with the convention -	$11,250,000 00
Amount of American claims assumed by the convention, and for the payment of which authority has been given to obtain a loan; two millions thereof being already provided for, out of the surplus specie in the Treasury - - - - - -	1,750,000 00
	13,000,000 00

Another view of the subject may be given, in the following manner:

The balance in the Treasury amounted, on the first day of April, 1801, to - - - -	$1,794,044 85
And on the thirtieth September, 1804, to - - - - -	4,882,225 11
Making an increase of - -	3,088,180 26
From which deducting the proceeds of the sales of the bank shares - - - - -	1,287,600 00
Leaves for the increase arising from the ordinary revenue -	1,800,580 26
From the 1st day of April, 1801, to the 30th of September, 1804, the following debts, which originated prior to that period, have been discharged:	
1. Payment on account of the domestic and foreign debt, as above stated - - - - -	13,576,891 86
2. First instalment of the sum payable to Great Britain, "in satisfaction and discharge of the money which the United States might have been liable to pay, in pursuance of the provisions of the sixth article of the Treaty of 1794" - - - - -	888,000 00
Making altogether - -	16,265,472 12
And from which, deducting fifteen millions, being the purchase money of Louisiana - -	15,000,000 00
Leaves - - -	1,265,472 12

A difference of more than twelve hundred thousand dollars in favor of the United States.

It may be added that, if the revenue shall, during the ensuing year, prove, as is not improbable, more productive than has been estimated, the surplus will be applied towards the payment of the above-mentioned sum of $1,750,000, yet unprovided for, on account of the American claims, and will, so far, diminish the amount of the loan authorized for that object.

From the preceding statements and estimates, it results that the United States have, during the period of three years and a half, ending on the 30th September last, discharged a larger amount of principal of their old debt, than the whole amount of the new debt, which has been or may be created in consequence of the purchase of Louisiana; and that their existing and growing resources will, during the ensuing year, be sufficient, after defraying the current expenses of the year, and paying more than $3,750,000, on account of the engagements resulting from the French and British Conventions, to discharge a further sum of near three millions and seven hundred thousand dollars of the principal of the public debt.

All which is respectfully submitted.

ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT,
November 19th, 1804.

EXTENSION OF DUTY BONDS.

[Communicated to the Senate, January 17th, 1805.]

To the Honorable the Senate and House of Representatives of the United States in, Congress assembled, the petition of the subscribers, merchants, residing in the city of New York, respectfully showeth:

That your petitioners are concerned in trade and navigation, to a considerable extent, between the port of New York and different ports on the continent of South America; that, by the act, entitled "An act to regulate the collection of duties on imports and tonnage," the terms of credit allowed for the payment of duties imposed on all "goods, wares, and merchandise, (other than wines, salt, and teas) imported from any other place than Europe or the West Indies," are as follows: one half of such duties payable in six months, one quarter in nine months, and the other quarter in twelve months from the date of each respective importation, as by the said act, to which your petitioners refer, may more fully appear; that, by a construction of the said act, adopted by the collector of the port of New York, which appears to your petitioners to be evidently founded in mistake, and which they are advised by counsel is certainly incorrect, your petitioners conceive that they have been much aggrieved by being obliged to give bonds to the said collector for the payment of such duties, on goods imported from the continent of South America, the one half in three months, and the other half in six months, and to pay such duties, accordingly, as in the case of goods imported from the West Indies; that your petitioners are credibly informed, and believe, that a different construction of the said act, in this respect, has prevailed in several other ports of the United States, and the terms of credit, first above-mentioned, allowed, which your petitioners believe is obviously the intent and meaning of the said act; that some of your petitioners have, at length, resisted the payment of the said duties at the periods claimed by the said collector of the port of New York, and have commenced a suit in the circuit court of the United States, in equity, for the district of New York, in order to obtain a judicial determination of the credits allowed for the payment of such duties by the said act, but, at the same time, offering, in the said suit, to pay the duties in question therein, at such times as should be directed by the said court, which suit is still depending and undetermined; and your petitioners hoped that the mode so adopted, of settling the construction of the said act, if there existed any doubt concerning it, would have been deemed proper, and that a judicial decision thereon would be regarded as regulating the subsequent practice under the same. But your petitioners have since been informed that some application or representation on this subject has been made to your honorable body, and that, in consequence thereof, a bill hath been introduced in the honorable the House of Representatives, proposing to alter or limit the terms of credit on goods imported into the United States from all places on the continent of South America, situated north of the equator, to the periods of credit allowed for duties on goods imported from the West Indies. Your petitioners cannot but view the limitation proposed by the said bill as particularly injurious to their interest, and to the prosperity of a trade, already extensive, and in which a large portion of citizens of the United States are engaged; and your petitioners beg leave to represent, as an important consideration in favor of the periods of credit which they consider to be well established by the act abovementioned, that the voyages to the usual places of trade on the continent of South America; although north of the equator, are generally as long, and as difficult and expensive, as the ordinary course of voyages to Europe; that, in the apprehension of your petitioners, the principal object or reason of allowing a credit in the payment of duties on foreign imports is to enable the merchant, out of the proceeds of the sales of the goods imported, to reimburse himself the amount of such duties before they become payable; that, without a credit of sufficient length to answer this end, it can be of little importance whether any credit be, at all, given: for, if the amount of the duties are required to be paid before they can be realized from the proceeds of the imports on which they are charged, it imposes on the merchant the necessity of employing his capital, or a part of it, for the discharge of such duties, instead of applying to that object the proceeds of such imports. This would operate as a tax upon his capital, and would necessarily tend to cramp and embarrass the negotiations of trade, and, consequently, instead of increasing or aiding the revenue, would diminish its receipts. Your petitioners, therefore, apprehend that the true interests of the merchant and of the Government are, in this respect, the same, and that, considering the heavy duties already imposed on imports in general, it would be just as well as politic to allow a sufficient time of credit to enable the merchant to pay such duties out of the proceeds of the goods on which they are charged. Your petitioners also conceive that such credit, while it is at all times important to the merchant, cannot, when once in operation, prove, in any respect, material

or detrimental to the revenue; and, in conformity to these ideas, your petitioners are also of opinion, and such they believe to be the opinion of a large majority of this and other ports of the United States, that the periods of credit allowed on goods imported from the West Indies are too short and injurious to that trade. And your petitioners are convinced, from experience, that the trade with the continent of South America cannot be carried on, without great disadvantage, except upon terms of credit for the payment of duties equally beneficial with those which they conceive themselves at present entitled to by law, and they therefore humbly pray that your honorable body will not pass any act to limit or curtail such credit. And your petitioners, &c.

NEW YORK, *January 9th*, 1805.

SINKING FUND.

[Communicated to the Senate February 5, 1805.]

The Commissioners of the Sinking Fund respectfully report to Congress as follows:

That the measures which have been authorized by the Board subsequent to their report of the 4th of February, 1804, so far as the same have been completed, are fully detailed in the report of the Secretary of the Treasury to this Board, dated the fourth day of the present month, and in the statements therein referred to, which are herewith transmitted, and prayed to be received as part of this report.

A. BURR, *President of Senate.*
J. MARSHALL, *Chief Justice U. S.*
A. GALLATIN, *Sec'y Treasury.*

WASHINGTON, *Feb.* 5, 1805.

The Secretary of the Treasury respectfully reports to the Commissioners of the Sinking Fund:

That the balance remaining unexpended at the close of the year 1802, and applied to payments falling due after that year, which balance, as appears by the statement F, annexed to the last annual report, amounted to two millions six hundred and fifty-six thousand nine hundred and thirty-three dollars and eight cents, - - - - - $2,656,933 08

Together with the disbursements made during the year 1803, out of the Treasury, on account of the principal and interest of the public debt, which disbursements, as appears by the statement G annexed to the last annual report, amounted to seven millions three hundred and twenty-seven thousand seven hundred and twenty-one dollars and fifty-nine cents - - 7,327,721 59

And amounting altogether to nine millions nine hundred and eighty-four thousand six hundred and fifty-four dollars and sixty-seven cents - - $9,984,654 67

Have been accounted for in the following manner, viz:

1. There was repaid into the Treasury, during the year 1803, on account of the principal of protested bills, and of advances made to Commissioners of Loans, as appears by the statement I, annexed to the last annual report a sum of thirteen thousand one hundred and seventeen dollars and forty-eight cents, $13,117 48

2. The sums actually applied during the same year, to the payment of the principal and interest of the public debt, as ascertained by accounts rendered to the Treasury Department, amount, as will appear by the statement A, to eight millions six hundred and twenty two thousand four hundred dollars and sixty-eight cents, viz:

1. Paid in reimbursements of the principal of the debt,	$4,727,788 44	
2. Paid on account of the interest and charges on the same - - -	3,894,612 24	
		8,622,400 68

3. The balance remaining unexpended at the close of the year 1803, and applicable to payments falling due after that year, as ascertained by accounts rendered to the Treasury Department, amounted, as will appear by the statement B, to one million three hundred and forty-nine thousand one hundred and thirty-six dollars and fifty-one cents - - - - - - 1,349,136 51

$9,984,654 67

That, during the year 1804, the following disbursements were made out of the Treasury, on account of the principal and interest of the public debt viz:

1. On account of the reimbursement and interest of the domestic funded debt		$4,612,171 06
2. On account of domestic loans obtained from the Bank of the U. States, viz:		
On account of the principal, - - - -	$250,000 00	
On account of interest,	60,593 68	
		310,593 68
3. On account of the domestic unfunded debt, - - - - - - -		653 37
4. On account of the principal and interest of the foreign debt, and of the interest on the Louisiana stock, - -		3,336,427 44

Amounting altogether, as will appear by the annexed list of warrant C, to eight millions two hundred and fifty-nine thousand eight hundred and forty-five dollars and fifty-five cents, - - $8,259,845 55

Which disbursements were made out of the following funds, viz:

1. From the moneys appropriated by the third section of the act of 10th November, 1803, for paying the interest accruing on the Louisiana stock, to the end of the year 1803, - - - -	$22,499 33
2. From the funds constituting the annual appropriation of $8,800,000 for the year 1804, viz:	
From the fund arising from interest on the debt transferred to the Commissioners of the Sinking Fund as per statement I, - - -	$366,223 50
From the funds arising from the sales of public lands, being the amount of moneys paid into the Treasury, from the 1st October 1803, to the 30th June 1804, as per statement K, - - - -	324,021 66
From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, - -	6,556,518, 44
Amounting, altogether, to - -	7,246,763 60
Which sum of - -	7,246,763 60
Together with the sum advanced during the year 1803, on account of the appropriation for the year 1804, and amounting, as appears by the last annual report, to -	753,236 40
Makes, in the whole, the annual appropriation for the year 1804, of - -	$8,000,000 00
3. From the proceeds of duties on goods, wares, and merchandise, imported, and on the tonnage of ships or vessels, advanced in part, and on account of the annual appropriation for the year 1805,	829,801 59
4. From repayments in the Treasury, on account of remittances purchased for providing for the foreign debt, and of advances made to Commissioners of Loans, as will appear from statement F, viz:	
Repayment of the purchase money and advances, - - -	$121,446 51
Damages and nterest recovered, - -	32,370 91
	153,817 42
5. From the moneys appropriated by law, for paying commissions to agents employed in the purchase of remittances for the foreign debt, being the amount paid at the Treasury, during the year 1804, for that object, and will appear by the statement C, - - - -	6,863 01
	8,259,845 55
That the above-mentioned disbursements, together with the above stated balance of - - - - - - - -	1,349,136 51
which remained unexpended at the close of the year 1803, and with a further sum, arising from profit on remittances purchased in the year 1804, and amounting, as will appear by the statement D, to - - - - - -	45,049 25
And amounting, altogether, to nine millions six hundred and fifty-four thousand and thirty-one dollars and thirty-one cents, - - - - -	$9,654,031 31

will be accounted for in the next annual report, in conformity with the accounts which shall then have been rendered to the Treasury Department.

That, in the meanwhile, the manner in which the said sum has been applied, is estimated as follows, viz:

1. The repayments in the Treasury, on account of principal, have, during the year 1804, amounted, as by the above-mentioned statement E, to		$121,446 51
2. The sums actually applied during the year 1804, to the payment of the principal and interest of the public debt, are estimated as follows, viz:		
1. Paid in reimbursement of the principal of the public debt	$3,205,248 52	
2. Do. on account of the interest and charges on the same, as will appear by the estimate F, -	4,006,799 69	
		7,212,048 21
3. The balance remaining unexpended at the close of the year 1804, and applicable to payments falling due after that year, is estimated, as per estimate G, at		2,320,536 59
		$9,654,031 21

That no purchases of the debt of the United States have been made since the date of the last report to Congress, and that the statement H exhibits the amount of stock transferred to the Commissioners of the Sinking Fund, in trust for the United States, to the 31st December, 1804, including the sum of $12,730 27, being the aggregate of the several species of stock transferred in the year 1804, in payment for public lands.

All which is respectfully submitted.

A. GALLATIN, *Sec. Treasury.*

TREASURY DEPARTMENT, *Feb.* 4, 1805.

DESCRIPTION OF LOUISIANA.

[Communicated to Congress Nov. 14, 1803.]

To the Senate and House of Representatives of the United States:

I now communicate a digest of the information I have received relative to Louisiana, which may be useful to the Legislature in providing for the government of the country. A translation of the most important laws in force in that province, now in the press, shall be the subject of a supplementary communication, with such further and material information as may yet come to hand.

TH. JEFFERSON.

NOVEMBER 14, 1803.

AN ACCOUNT OF LOUISIANA.

The object of the following pages is to consolidate the information respecting the present state of Louisiana, furnished to the Executive by several individuals among the best informed upon the subject.

Of the province of Louisiana no general map, sufficiently correct to be depended upon, has been published, nor has any been yet procured from a private source. It is, indeed, probable that surveys have never been made upon so extensive a

scale as to afford the means of laying down the various regions of a country which, in some of its parts, appears to have been but imperfectly explored.

Boundaries.

The precise boundaries of Louisiana, westward of the Mississippi, though very extensive, are at present involved in some obscurity. Data are equally wanting to assign with precision its northern extent. From the source of the Mississippi, it is bounded eastwardly, by the middle of the channel of that river, to the thirty-first degree of latitude; thence, it is asserted, upon very strong grounds, that, according to its limits, when formerly possessed by France, it stretches to the east as far, at least, as the river Perdido, which runs into the bay of Mexico, eastward of the river Mobile.

It may be consistent with the view of these notes to remark, that Louisiana, including the Mobile settlements, was discovered and peopled by the French, whose monarchs made several grants of its trade, in particular to Mr. Crozat, in 1712, and some years afterwards, with his acquiescence, to the well known company projected by Mr. Law. This company was relinquished in the year 1731. By a secret convention, on the 3d November, 1762, the French Government ceded so much of the province as lies beyond the Mississippi, as well as the island of New Orleans, to Spain; and, by the treaty of peace which followed in 1763, the whole territory of France and Spain, eastward of the middle of the Mississippi, to the Iberville, thence, through the middle of that river and the lakes Maurepas and Pontchartrain to the sea, was ceded to Great Britain. Spain having conquered the Floridas from Great Britain, during our Revolutionary war, they were confirmed to her by the Treaty of Peace of 1784. By the Treaty of St. Ildefonso, of the 1st of October, 1800, His Catholic Majesty promises and engages on his part to cede back to the French Republic, six months after the full and entire execution of the conditions and stipulations therein contained, relative to the Duke of Parma, "the colony or province of Louisiana, with the same extent that it actually has in the hands of Spain, that it had when France possessed it, and such as it ought to be after the treaties subsequently entered into between Spain and other States." This treaty was confirmed and enforced by that of Madrid, of the 21st of March, 1801. From France it passed to us by the Treaty of the 30th of April last, with a reference to the above clause as descriptive of the limits ceded.

Divisions of the Province.

The province as held by Spain including a part of West Florida, is laid off into the following principal divisions: Mobile, from Balize to the city, New Orleans, and the country on both sides of lake Pontchartrain, First and Second German Coasts, Catahanose, Fourche, Venezuela, Iberville, Galveztown, Baton Rouge, Pointe Coupée Attakapas, Opelousas, Ouachita, Avoyelles, Rapide, Natchitoches, Arkansas, and the Illinois.

In the Illinois there are commandants at New Madrid, St. Genevieve, New Bourbon, St. Charles, and St. Andrew's, all subordinate to the commandant-general.

Baton Rouge having been made a Government subsequently to the Treaty of Limits, &c. with Spain, the posts of Manchac and Thompson's creek, were added to it.

Chapitoulas has sometimes been regarded as a separate command, but is now included within the jurisdiction of the city. The lower part of the river has likewise had occasionally a separate commandant.

Many of the present establishments are separated from each other by immense and trackless deserts, having no communication with each other by land, except now and then a solitary instance of its being attempted by hunters, who have to swim rivers, expose themselves to the inclemency of the weather, and carry their provisions on their backs for a time, proportioned to the length of their journey. This is particularly the case on the west of the Mississippi, where the communication is kept up only by water between the capital and the distant settlements; three months being required to convey intelligence from the one to the other by the Mississippi. The usual distance accomplished by a boat in ascending is five leagues per day. The rapidity of the current, in the spring season especially, when the waters of all the rivers are high, facilitates the descent, so that the same voyage by water, which requires three or four months to perform from the capital, may be made to it in from twelve to sixteen days. The principal settlements in Louisiana are on the Mississippi, which begins to be cultivated about twenty leagues from the sea, where the plantations are yet thin, and owned by the poorest people. Ascending, you see them improve on each side till you reach the city, which is situated on the east bank, on a bend, of the river, thirty-five leagues from the sea.

Chapitoulas, first and second German coasts, Catahanose, Fourche, and Iberville.

The best and most improved are above the city, and comprehended what is there known by the Paroisse de Chapitoulas, Premier and Second Cote des Allomands, and extend sixteen leagues.

Above this begins the parish of Catahanose, or first Acadian settlement, extending eight leagues on the river. Adjoining it, and still ascending, is the second Acadian settlement, or parish of the Fourche, which extends about six leagues. The parish of Iberville then commences, and is bounded on the east side by the river of the same name; which, though dry a great part of the year, yet, when the Mississippi is raised, it communicates with the lake Maurepas and Pontchartrain, and through them with the sea, and thus forms what is called the island of New Orleans. Except on the point just below the Iberville, the country from New Orleans is settled the whole way along the river, and presents a scene of uninterrupted plantations in sight of each other, whose fronts to the Mississippi are all cleared, and occupy on

that river from five to twenty-five acres, with a depth of forty; so that a plantation of five acres in front contains two hundred. A few sugar plantations are formed in the parish of Catahanose, but the remainder is devoted to cotton and provisions, and the whole is an excellent soil incapable of being exhausted. The plantations are but one deep on the island of New Orleans, and on the opposite side of the river, as far as the mouth of the Iberville, which is thirty-five leagues above New Orleans.

Bayou de la Fourche, Attakapas, and Opelousas.

About twenty five leagues from the last-mentioned place, on the west side of the Mississippi, the creek or bayou of the Fourche, called in old maps La Riviere des Chitamaches, flows from the Mississippi, and communicates with the sea, to the west of the Balize. The entrance of the Mississippi is navigable only at high water, but will then admit of craft of from sixty to seventy tons burden. On both banks of this creek are settlements, one plantation deep, for near fifteen leagues; and they are divided into two parishes. The settlers are numerous, though poor, and the culture is universally cotton. On all creeks, making from the Mississippi, the soil is the same as on the bank of the river, and the border is the highest part of it, from whence it descends gradually to the swamp. In no place on the low lands is there depth more than suffices for one plantation before you come to the low grounds incapable of cultivation. This creek affords one of the communications to the two populous and rich settlements of Attakapas and Opelousas, formed on and near the small rivers Teche and Vermillion, which flow into the bay of Mexico. But the principal and swiftest communication is by the bayou or creek of Plaquemines, whose entrance into the Mississippi is seven leagues higher up on the same side, and thirty-two above New Orleans. These settlements abound in cattle and horses, have a quantity of good land in the vicinity, and may be made of great importance. A part of their produce is sent by sea to New Orleans, but the greater part is carried in the batteaux by the creeks above mentioned.

Baton Rouge, and its dependencies.

Immediately above the Iberville, and on both sides of the Mississippi, lies the parish of Manchac, which extends four leagues on the river, and is well cultivated. Above it commences the settlement of Baton Rouge, extending about nine leagues. It is remarkable as being the first place where the high land is contiguous to the river, and here it forms a bluff from thirty to forty feet above the greatest rise of the river. Here the settlements extend a considerable way back on the east side; and this parish has that of Thompson's creek and bayou Sara subordinate to it. The mouth of the first of these creeks is about forty-nine leagues from New Orleans, and that of the latter two or three leagues higher up. They run from northeast to southwest, and their head waters are north of the thirty-first degree of latitude. Their banks have the best soil, and the greatest number of good cotton plantations, of any part of Louisiana, and are allowed to be the garden of it.

Pointe Coupée and Fausse Riviere.

Above Baton Rouge, at the distance of fifty leagues from New Orleans, on the west side of the Mississippi, is Pointe Coupée, a populous and rich settlement, extending eight leagues along the river. Its produce is cotton. Behind it, on an old bed of the river, now a lake, whose outlets are closed up, is the settlement of Fausse Riviére which is well cultivated.

In the space now described from the sea, as high as and including the last-mentioned settlement, are contained three-fourths of the population, and seven-eighths of the riches of Louisiana.

From the settlement of Pointe Coupée, on the Mississippi, to Cape Girardeau, above the mouth of the Ohio, there is no land on the west side that is not overflowed in the spring to the distance of eight or ten leagues from the river, with from two to twelve feet of water, except a small spot near New Madrid; so that, in the whole extent, there is no possibility of forming a considerable settlement contiguous to the river on that side. The eastern bank has, in this respect, a decided advantage over the western, as there are on it many situations which effectually command the river.

Red River and its Settlements.

On the west side of the Mississippi, seventy leagues from New Orleans, is the mouth of the Red river, on whose banks and vicinity are the settlements of Rapide, Avoyelles, and Natchitoches, all of them thriving and populous. The latter is situated seventy-five leagues up the Red river. On the north side of the Red river, a few leagues from its junction with the Mississippi, is the Black river; on one of whose branches, a considerable way up, is the infant settlement of Ouachita, which, from the richness of the soil, may be made a place of importance. Cotton is the chief produce of these settlements; but they have likewise a considerable Indian trade. The river Rouge, or Red river, is used to communicate with the frontiers of New Mexico.

Concord, Arkansas, St. Charles, St. Andrew, &c.

There is no other settlement on the Mississippi, except the small one called Concord, opposite to the Natchez, till you come to the Arkansas river, whose mouth is two hundred and fifty leagues above New Orleans. Here there are but a few families, who are more attached to the Indian trade (by which chiefly they live) than to cultivation. There is no settlement from this place to New Madrid, which is itself inconsiderable. Ascending the river, you come to Cape Girardeaux, St. Genevieve, and St. Louis, where, though the inhabitants are numerous, they raise little for exportation, and content themselves with trading with the Indians and working a few lead mines. This country is very fertile, especially on the banks of the Missouri, where there have been formed two settlements, called St. Charles and St. Andrew, mostly by emigrants from Kentucky. The

peltry procured in the Illinois is the best sent to the Atlantic market, and the quantity is very considerable. Lead is to be had with ease, and in such quantities as to supply all Europe, if the population were sufficient to work the numerous mines to be found within two or three feet from the surface in various parts of the country. The settlements about the Illinois were first made by the Canadians, and their inhabitants still resemble them in their aversion to labor, and love of a wandering life. They contain but few negroes compared with the number of the whites; and it may be taken for a general rule, in proportion to the distance from the capital, the number of blacks diminishes below that of the whites; the former abounding most on the rich plantations in its vicinity.

General description of Upper Louisiana.

When compared with the Indian Territory, the face of the country in Upper Louisiana is rather more broken, though the soil is equally fertile. It is a fact, not to be contested, that the west side of the river possesses some advantages not generally incident to those regions. It is elevated and healthy, and well watered with a variety of large, rapid streams, calculated for mills and other waterworks. From Cape Girardeau, above the mouth of the Ohio, to the Missouri, the land on the east side of the Mississippi is low and flat, and occasionally exposed to inundations; that on the Louisiana side, contiguous to the river, is generally much higher, and in many places very rocky on the shore. Some of the heights exhibit a scene truly picturesque. They rise to a height of at least three hundred feet, faced with perpendicular *lime and free-stone*, carved into various shapes and figures by the hand of nature, and afford the appearance of a multitude of antique towers. From the tops of these elevations the land gradually slopes back from the river, without gravel or rock, and is covered with valuable timber. It may be said, with truth, that for fertility of soil no part of the world exceeds the borders of the Mississippi: the land yields an abundance of all the necessaries of life, and almost spontaneously; very little labor being required in the cultivation of the earth. That part of Upper Louisiana which borders on north Mexico is one immense prairie. It produces nothing but grass. It is filled with buffalo, deer, and other kinds of game. The land is represented as too rich for the growth of forest trees.

It is pretended that Upper Louisiana contains in its bowels many silver and copper mines, and various specimens of both are exhibited. Several trials have been made to ascertain the fact; but the want of skill in the artists has hitherto left the subject undecided.

The salt works are also pretty numerous: some belong to individuals; others to the public. They already yield an abundant supply for the consumption of the country, and, if properly managed, might become an article of more general exportation. The usual price per bushel is one dollar and a half in cash at the works. The price will be still lower as soon as the manufacture of the salt is assumed by Government, or patronised by men who have large capitals to employ in the business. One extraordinary fact, relative to salt, must not be omitted. There exists, about one thousand miles up the Missouri, and not far from that river, a salt mountain. The existence of such a mountain might well be questioned, were it not for the testimony of several respectable and enterprising traders who have visited it, and who have exhibited several bushels of the salt to the curiosity of the people of St. Louis, where some of it still remains. A specimen of the same salt has been sent to Marietta. This mountain is said to be one hundred and eighty miles long, and forty-five in width, composed of solid rock salt, without any trees, or even shrubs on it. Salt springs are very numerous beneath the surface of this mountain, and they flow through the fissures and cavities of it. Caves of saltpetre are found in Upper Louisiana, though at some distance from the settlements. Four men, on a trading voyage, lately discovered one several hundred miles up the Missouri. They spent five or six weeks in the manufacture of this article, and returned to St. Louis with four hundred weight of it. It proved to be good, and they sold it for a high price.

The geography of the Mississippi and Missouri, and their contiguity for a great length of way, are but little known. The traders assert that, one hundred miles above their junction, a man may walk from one to the other in a day; and it is also asserted that, seven hundred miles still higher up, the portage may be crossed in four or five days. This portage is frequented by traders who carry on a considerable trade with some of the Missouri Indians. Their general route is through Green Bay, which is an arm of Lake Michigan; they then pass into a small lake connected with it, and which communicates with the Fox river; they then cross over a short portage into the Ouisconsin river, which unites with the Mississippi some distance below the Falls of St. Anthony. It is also said that the traders communicate with the Mississippi above these falls, through Lake Superior; but their trade in that quarter is much less considerable.

Canal of Carondelet.

Behind New Orleans is a canal about a mile and a half long, which communicates with a creek called the bayou St. Jean, flowing into Lake Pontchartrain. At the mouth of it, about two and a half leagues from the city, is a small fort, called St. Jean, which commands the entrance from the lake. By this creek the communication is kept up through the lake and the rigolets to Mobile and the settlements in West Florida. Craft drawing from six to eight feet water can navigate to the mouth of the creek; but, except in particular swells of the lake cannot pass the bar without being lightened.

St. Bernardo.

On the east side of the Mississippi, about five leagues below New Orleans, and at the head of the English bend, is a settlement known by the name of the Poblacion de St. Bernardo, or the Terre au Bœufs, extending on both sides of a creek or drain, whose head is contiguous to the Mississippi, and which flowing eastward, after a course of eighteen leagues, and dividing itself into two branches, falls into the sea and Lake Borgne. This settlement consists of two parishes, almost all the inhabitants of which are Spaniards from the Canaries, who content themselves with raising fowls, corn, and garden stuff for the market at New Orleans. The lands cannot be cultivated to any great distance from the banks of the creek, on account of the vicinity of the marsh behind them, but the place is susceptible of great improvement, and of affording another communication to small craft of from eight to ten feet draught, between the sea and the Mississippi.

Settlements below the English turn.

At the distance of sixteen leagues below New Orleans, the settlements on both banks of the river are of but small account. Between these and the fort of Plaquemines the country is overflowed in the Spring, and, in many places, is incapable of cultivation at any time, being a morass almost impassable by man or beast. This small tongue of land extends considerably into the sea, which is visible on both sides of the Mississippi from a ship's mast.

Country from Plaquemines to the sea, and effect of the hurricanes.

From Plaquemines to the sea is twelve or thirteen leagues. The country is low, swampy, chiefly covered with reeds, having little or no timber, and no settlement whatever. It may be necessary to mention here, that the whole lower part of the country, from the English turn downward, is subject to overflowing in hurricanes, either by the recoiling of the river, or reflux from the sea on each side; and, on more than one occasion, it has been covered from the depth of two to ten feet, according to the descent of the river, whereby many lives were lost, horses and cattle swept away, and a scene of destruction laid. The last calamity of this kind happened in 1794; but, fortunately, they are not frequent. In the preceding year the engineer who superintended the erection of the fort at Plaquemines was drowned in his house near the fort, and the workmen and garrison escaped only by taking refuge on an elevated spot in the fort, on which there were, notwithstanding, two or three feet of water. These hurricanes have generally been felt in the month of August. Their greatest fury lasts about twelve hours. They commence in the southeast, veer about to all points of the compass, are felt most severely below, and seldom extend more than a few leagues above New Orleans. In their whole course they are marked with ruin and desolation. Until that of 1793, there had been none felt from the year 1780.

Passes, or mouths of the Mississippi.

About eight leagues below Plaquemines the Mississippi divides itself into three channels, which are called the passes of the river, viz: the East, South, and Southwest passes. Their course is from five to six leagues to the sea. The space between is a marsh, with little or no timber on it; but, from its situation, it may hereafter be rendered of importance. The East pass, which is on the left hand going down the river, is divided into two branches about two leagues below, viz: the Pass à la Loutre, and that known to mariners by the name of the Balize, at which there is a small block-house, and some huts of the pilots, who reside only here. The first of these secondary channels contains at present but eight feet water; the latter from fourteen to sixteen, according to the seasons. The South pass, which is directly in front of the Mississippi, has always been considered as entirely choked up, but has ten feet water. The Southwest pass, which is on the right, is the longest and narrowest of all the passes, and a few years ago had eighteen feet water, and was that by which the large ships always entered and sailed from the Mississippi. It has now but eight feet water, and will probably remain so for some time. In speaking of the quantity of water in the passes, it must be understood of what is on the bar of each pass; for immediately after passing the bar, which is very narrow, there are from five to seven fathoms at all seasons.

Country East of Lake Pontchartrain.

The country on the east side of Lake Pontchartrain to Mobile, and including the whole extent between the American line, the Mississippi above New Orleans, and the lakes, (with the exception of a tract of about thirty miles on the Mississippi, and as much square, contiguous to the line, and comprehending the waters of Thompson's creek, bayou Sara, and the Amet,) is a poor, thin soil, overgrown with pine, and contains no good land whatever, unless on the banks of a few small rivers. It would, however, afford abundant supplies of pitch, tar, and pine lumber, and would feed large herds of cattle.

The Inhabitants, and their Origin.

The inhabitants of Louisiana are chiefly the descendants of the French and Canadians. There are a considerable number of English and Americans in New Orleans. The two German coasts are peopled by the descendants of settlers from Germany, and a few French mixed with them. The three succeeding settlements, up to Baton Rouge, contain mostly Acadians, banished from Nova Scotia by the English, and their descendants. The government of Baton Rouge, especially the east side, which includes all the country between the Iberville and the American line, is composed partly of Acadians, a very few French, and a great majority of Americans. On the west side they are mostly Acadians; at Point Coupée and Fausse Rivière they are French and Acadians. Of the population of the Attakapas and Opelousas, a considerable part is American. Natchitoches, on the Red river, contains but a few Americans, and the remainder of the inhabitants are French; but the former are more numerous in the other settlements on that river, viz:

Avoyelles, Rapide, and Ouachita. At Arkansas they are mostly French, and at New Madrid Americans. At least two-fifths, if not a greater proportion of all the settlers on the Spanish side of the Mississippi, in the Illinois country, are likewise supposed to be Americans. Below New Orleans the population is altogether French and the descendants of Frenchmen.

New Orleans.

By recurring to the maps, and examining the position of Louisiana, it will appear that the lower part projects considerable into the sea. It has, in all probability, been formed by the sediment brought down by the current and deposited on the flat coast. There is, therefore, on the east side but a very narrow slip along the bank of the river, from the sea to the Iberville. The land is not generally susceptible of cultivation more than a mile in depth from the river; the rest is low and swampy to the lakes and the sea; but, in general, abounds with cypress timber, which is sawed by mills, which are worked by artificial streams from the Mississippi, in the time of freshets. They generally run five months in the year.

What has been said of the east equally applies to the west side of the river. The soil and situation are nearly the same. After leaving the bank of the river there is an immense swamp, intersected by creeks and lakes, extending to the highlands of Attakapas, and occupying a space of thirty or forty leagues.

The city of New Orleans, which is regularly laid out on the east side of the Mississippi, in latitude 30 degrees north, and longitude 90 degrees west, extends nearly a mile along the river, from the gate of France on the south, to that of Chapitoulas above, and a little more than one-third of a mile in breadth from the river to the rampart; but it has an extensive suburb on the upper side. The houses in front of the town, and for a square or two backward, are mostly of brick, covered with slate or tile, and many of two stories. The remainder are of wood, covered with shingles. The streets cross each other at right angles, and are thirty-two French feet. There is in the middle of the front of the city a *place d'armes*, facing which the church and town-house are built. There are from twelve to fourteen hundred houses in the city and suburbs. The population may be estimated at ten thousand, including the seamen and garrison. It was fortified in 1793; but the works were originally defective, could not have been defended, and are now in ruins. The powder magazine is on the opposite bank of the river.

The public buildings, and other public property in New Orleans, are as follows:

Two very extensive brick stores, from one hundred and sixty to one hundred and eighty feet in length, and about thirty in breadth. They are one story high and covered with shingles.

A Government house, stables, and garden, occupying a front of about two hundred and twenty feet on the river, in the middle of the town, and extending three hundred and thirty-six feet back to the next street.

A military hospital.

An ill-built custom-house of wood, almost in ruins, in the upper part of the city, near the river.

An extensive barrack in the lower part of the city, fronting on the river, and calculated to lodge twelve or fourteen hundred men.

A large lot adjoining the King's stores, with a few sheds in it. It serves as a park for artillery.

A prison, town-house, market-house, assembly room, some ground rents, and the common about the town.

A public school for the rudiments of the Spanish language.

A cathedral church unfinished, and some houses belonging to it.

A charitable hospital, with some houses belonging to it, and a revenue of $1.500 annually, endowed by an individual lately deceased.

The Canal de Carondelet has been already described.

Number of Inhabitants.

According to the annexed census, (No. 2,) of Louisiana, including Pensacola and the Natchez, as made in 1785, the whole number of inhabitants amounted to thirty-two thousand and sixty-two, of which fourteen thousand two hundred and fifteen were free whites, one thousand three hundred and three free people of color, and sixteen thousand five hundred and forty-four slaves.

The statement No. 4, from the latest documents, makes the whole number forty-two thousand three hundred and seventy-five; the free whites, twenty-one thousand two hundred and forty-four; the free people of color, one thousand seven hundred and sixty-eight; and the slaves, twelve thousand nine hundred and twenty.

A particular statement respecting the population, &c., of Upper Louisiana, and another containing the census of New Orleans, in this year, are numbered 5 and 6, in the appendix.

These papers certainly exhibit a smaller number than the real population of the country. From an official document, made in July last, and received from Attakapas since the statement No. 4 was formed, it appears that it contained two thousand two hundred and seventy whites, two hundred and ten free people of color, one thousand two hundred and sixty-six slaves; in all, three thousand seven hundred and forty-six souls, instead of one thousand four hundred and forty-seven, as therein stated. It is highly probable that the return for the neighboring district of Opelousas is in the same proportion underrated.

A conjectural estimation, made by a gentleman of great respectability and correct information, residing at Natchez, raises the number of whites in the island of New Orleans, on the west side of the river, and some settlements on the east side, to fifty thousand one hundred and fifty, and the number of blacks to thirty-nine thousand eight hundred and twenty. His statement is also subjoined, No. 3.

It is at all times difficult to obtain the full census of a country, and the impediments are increased in this, from its scattered population. The actual enumeration may, therefore, fall short of the true numbers.

Militia.

There is a militia in Louisiana. The following is the return of it, made to the Court of Spain by the Baron of Carondelet:

From Balize to the city.—Volunteers of the Mississippi—four companies of 100 men each—complete	400
City.—Battalion of the city, five companies	500
Artillery company, with supernumeraries	120
Carabineers, or privileged companies of horse, two companies of 70 each, incomplete	100
Mulattoes, two companies; negroes one	300
Mixed legion of the Mississippi, comprehending Galveston, Baton Rouge, Point Coupée, Attakapas, and Opelousas, viz: two companies of grenadiers, eight of fusileers, four of dragoons, and two lately added from Bayou Sara—in all, sixteen companies of 100 men each	1600
Avoyelles.—One company of infantry	100
Ouachita.—One company of cavalry	100
Natchitoches.—One company of infantry and one of cavalry	200
Arkansas.—One company of infantry and cavalry	100
Illinois.—Four companies of cavalry and four of infantry; these are always above the complement	800
Provincial regiment of Germans and Acadians, from the first German coast to Iberville—companies—viz: two of grenadiers and eight of fusileers	1000
Mobile, and the country east of Lake Ponchartrain, two companies of horse and foot, incomplete	120
	5,440

The same gentleman alluded to, page 348, makes the number of the militia to amount to 10,340 men within the same limits to which his estimate of the population applies. He distributes them in the several settlements as follows:

1. The island of New Orleans, with the opposite margin and the adjacent settlements	5000
2. The west margin from Manchac, including Pointe Coupée, and extending to the Red river	800
3. Attakapas, along the coast, between the delta of the Mississippi and the Sabine river	350
4. Opelousas	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches	1000
6. Ouachita	300
7. Concord	40
8. Arkansas	150
9. New Madrid and its vicinity	350
10. Illinois and Missouri	1000
11. The settlements on the east side of the Mississippi, from the American line to the Iberville, and some other settlements	600
	10,340

It is to be observed that none of these statements include the country beyond the river Sabine, nor even all those which lie eastwardly of it. Data are also wanting to give them.

Fortifications.

St. Louis has a lieutenant colonel to command in it, and but few troops. Baton Rouge is an ill-constructed fort, and has about fifty men. In describing the canal of Carondelet, the small fort of St. Jean has been mentioned, as has the block-house at the Balize, in its proper place. The fortifications of New Orleans, noticed before, consist of five ill constructed redoubts, with a covered way, palisade, and ditch. The whole is going fast to decay, and it is supposed they would be of but little service in case of an attack. Though the powder magazine is on the opposite side of the river, there is no sufficient provision made for its removal to the city in case of need.

The fort of Plaquemines, which is about twelve or thirteen leagues from the sea, is an ill-constructed, irregular brick work, on the eastern side of the Mississippi, with a ditch in front of the river, and protected on the lower side by a deep creek, flowing from the river to the sea. It is, however, imperfectly closed behind, and almost without defence there; too much reliance having been placed on the swampiness of the ground which hardens daily. It might be taken, perhaps, by escalade, without difficulty. It is in a degree ruinous. The principal front is meant to defend the approach from sea, and can oppose, at most, but eight heavy guns. It is built at a turn in the river where ships in general must anchor, as the wind which brings them up so far, is contrary in the next reach which they must work through; and they would therefore be exposed to the fire of the fort. On the opposite bank are the ruins of a small closed redoubt, called Fort Bourbon, usually garrisoned by a sergeant's command. Its fire was intended to flank that of the fort of Plaquemines, and prevent shipping and craft from ascending or descending on that side. When a vessel appears, a signal is made on one side and answered on the other. Should she attempt to pass, without sending a boat on shore, she would be immediately fired upon.

Indians.

The Indian nations within the limits of Louisiana are, as far as known, as follows, and consist of the numbers hereafter specified.

On the eastern bank of the Mississippi, about twenty-five leagues above Orleans, are the remains of the nation of Houmas, or red men, which do not exceed sixty persons. There are no other Indians settled on this side of the river, either in Louisiana or West Florida, though they are at times frequented by parties of wandering Choctaws.

On the west side of the Mississippi are the remains of the Tounicas, settled near, and above Pointe Coupée, on the river, consisting of fifty or sixty persons.

In the Attakapas.—On the lower parts of the Bayou Teche, at about eleven or twelve leagues from the sea, are two villages of Chitimachas, consisting of about one hundred souls.

The Attakapas, properly so called, dispersed throughout the district, and chiefly on the bayou or creek of Vermilion, about one hundred souls.

Wanderers of the tribes of Bilexis and Choctaws, on Bayou Crocodile, which empties into the Teche, about fifty souls.

In the Opelousas, to the northwest of Attakapas.—Two villages of Alabamas, in the centre of the district near the church, consisting of one hundred persons.

Conchates, dispersed through the country as far west as the river Sabine, and its neighborhood, about three hundred and fifty persons.

On the river Rouge.—At Avoyelles, nineteen leagues from the Mississippi, is a village of the Biloni nation, and another on the lake of the Avoyelles; the whole about sixty souls.

At the Rapids, twenty-six leagues from the Mississippi, is a village of Choctaws of one hundred souls, and another of Biloxes, about two leagues from it, of about one hundred more; about eight or nine leagues higher up the Red river is a village of about fifty souls. All these are occasionally employed by the settlers in their neighborhood as boatmen.

About eighty leagues above Natchitoches, on the Red river, is the nation of the Cadoquies, called by abbreviation Cados; they can raise from three to four hundred warriors; are the friends of the whites, and are esteemed the bravest and most generous of all the nations in this vast country; they are rapidly decreasing, owing to intemperance and the numbers annually destroyed by the Osages and Choctaws.

There are, besides the foregoing, at least four to five hundred families of Choctaws, who are dispersed on the west side of the Mississippi, on the Ouachita and Red rivers, as far west as Natchitoches, and the whole nation would have emigrated across the Mississippi, had it not been for the opposition of the Spaniards and the Indians on that side who had suffered by their aggressions.

On the river Arkansas, &c.—Between the Red river and the Arkansas there are but a few Indians, the remains of tribes almost extinct. On this last river is the nation of the same name, consisting of about two hundred and sixty warriors; they are brave, yet peaceable and well disposed, and have always been attached to the French, and espoused their cause in the wars with the Chickasaws, whom they have always resisted with success. They live in three villages; the first is at eighteen leagues from the Mississippi, on the Arkansas river, and the others are at three and six leagues from the first. A scarcity of game on the eastern side of the Mississippi has lately induced a number of Cherokees, Choctaws, Chickasaws, &c., to frequent the neighborhood of Arkansas, where game is still in abundance; they have contracted marriages with the Arkansas, and seem inclined to make a permanent settlement, and incorporate themselves with that nation. The number is unknown, but is considerable, and is every day increasing.

On the river St. Francis, in the neighborhood of New Madrid, Cape Girardeau, Rivière à la Pomme, and the environs, are settled a number of vagabonds, emigrants from the Delawares, Shawnese, Miamis, Chickasaws, Cherokees, Piorias, and supposed to consist in all of five hundred families; they are at times troublesome to the boats descending the river, and have even plundered some of them and committed a few murders; they are attached to liquor, seldom remain long in any place; many of them speak English, all understand it, and there are some who even read and write it.

At St. Genevieve, in the settlement among the whites, are about thirty Piorias, Kaskaskias, and Illinois, who seldom hunt for fear of the other Indians; they are the remains of a nation which, fifty years ago, could bring into the field one thousand two hundred warriors.

On the Missouri.—On the Missouri and its waters are many and numerous nations, the best known of which are: The Osages, situated on the river of same name, on the right bank of the Missouri, at about eighty leagues from its confluence with it; they consist of one thousand warriors, who live in two settlements at no great distance from each other; they are of a gigantic stature and well proportioned; are enemies of the whites and of all other Indian nations, and commit depredations from the Illinois to the Arkansas. The trade of this nation is said to be under an exclusive grant. They are a cruel and ferocious race, and are hated and feared by all the other Indians. The confluence of the Osage river with the Missouri is about eighty leagues from the Mississippi.

Sixty leagues higher up the Missouri, and on the same bank, is the river Kansas, and on it the nation of the same name, but at about seventy or eighty leagues from its mouth. It consists of about two hundred and fifty warriors, who are as fierce and cruel as the Osages, and often molest and ill-treat those who go to trade among them.

Sixty leagues above the river Kansas, and at about two hundred from the mouth of the Missouri, still on the right bank, is the rivière Platte, or Shallow river, remarkable for its quicksands and bad navigation; and near its confluence with the Missouri dwells the nation of Octolactos, commonly called Otos, consisting of about two hundred warriors, among whom are twenty-five or thirty of the nation of Missouri, who took refuge among them about twenty-five years since.

Forty leagues up the river Platte you come to the nation of the Panis composed of about seven hundred warriors in four neighboring villages; they hunt but little, and are ill-provided with firearms; they often make war on the Spaniards in the neighborhood of Santa Fé, from which they are not far distant.

At three hundred leagues from the Mississippi, and one hundred from the river Platte, on the same bank, are situated the villages of the Mahas. They consisted in 1799 of five hundred warriors, but are said to have been almost cut off last year by the smallpox.

At fifty leagues above the Mahas, and on the left bank of the Missouri, dwell the Poncas, to the number of two hundred and fifty warriors, possessing, in common with the Mahas, their language, ferocity, and vices. Their trade has never been of much value, and those engaged in it are exposed to pillage and ill treatment.

At the distance of four hundred and fifty leagues from the Mississippi, and on the right bank of the Missouri, dwell the Aricaras, to the number of seven hundred warriors; and sixty leagues above them, the Mandane nation, consisting of about seven hundred warriors likewise. These two last nations are well disposed to the whites, but have been the victims of the Sioux or Mandowessies, who, being themselves well provided with firearms, have taken advantage of the defenceless situation of the others, and have on all occasions murdered them without mercy.

No discoveries on the Missouri, beyond the Mandane nation, have been accurately detailed, though the traders have been informed that many large navigable rivers discharge their waters into it far above it, and that there are many numerous nations settled thereon.

The Sioux, or Mandowessies, who frequent the country between the north bank of the Missouri and Mississippi, are a great impediment to trade and navigation. They endeavor to prevent all communication with the nations dwelling high up the Missouri, to deprive them of ammunition and arms, and thus keep them subservient to themselves. In the winter they are chiefly on the banks of the Missouri, and massacre all who fall into their hands.

There are a number of nations at a distance from the banks of the Missouri, to the north and south, concerning whom but little information has been received. Returning to the Mississippi, and ascending it from the Missouri, about seventy-five leagues above the mouth of the latter, the river Moingona, or rivière de Moine, enters the Mississippi on the west side, and on it are situated the Ayoas, a nation originally from the Missouri, speaking the language of the Otatachas; it consisted of two hundred warriors before the smallpox lately raged among them.

The Sacs and Renards dwell on the Mississippi, about three hundred leagues above St. Louis, and frequently trade with it; they live together, and consist of five hundred warriors; their chief trade is with Michilimakinac, and they have always been peaceable and friendly.

The other nations on the Mississippi, higher up, are but little known to us. The nations of the Missouri, though cruel, treacherous, and insolent, may doubtless be kept in order by the United States, if proper regulations are adopted with respect to them.

It is said that no treaties have been entered into by Spain with the Indian nations westward of the Mississippi, and that its treaties with the Creeks, Choctaws, &c., are in effect superseded by our treaty with that Power of the 27th October, 1795.

Of Lands and Titles.

The lands are held in some instances by grants from the Crown, but mostly from the Colonial Government. Perhaps not one quarter part of the lands granted in Louisiana are held by complete titles; and, of the remainder, a considerable part depend upon a written permission of a commandant. Not a small proportion is held by occupancy, with a simple verbal permission of the officer last mentioned. This practice has always been countenanced by the Spanish Government, in order that poor men, when they found themselves a little at ease, might at their own conveniency, apply for and obtain complete title. In the mean time, such imperfect rights were suffered by the Government to descend by inheritance, and even to be transferred by private contract. When requisite, they have been seized by judicial authority, and sold for the payment of debts.

Until within a few years, the Governor of Upper Louisiana was authorized to make surveys of any extent. In the exercise of this discretionary power, some abuses were committed, and a few small monopolies were created. About three years ago he was restricted in this branch of his duty, since which he has been only authorized to make surveys to emigrants in the following manner: two hundred acres for each man and wife, fifty acres for each child, and twenty acres for each slave. Hence the quantity of land allowed to settlers depended on the number in each family; and for this quantity of land they paid no more than the expense of survey. These surveys were necessary to entitle the settlers to grants; and the Governor, and after him the Intendant at New Orleans, was alone authorized to execute grants, on the receipt of the surveys from the settlers. The administration of the land office is at present under the care of the Intendant of the province.

There are no feudal rights nor noblesse.

It is impossible to ascertain the quantity of lands granted, without calling on the claimants to exhibit their titles; the registry being incomplete, and the maps made by the different surveyors general having been burnt in the fires at New Orleans, of 1788 and 1794, no estimate has been obtained.

All the lands on both sides of the Mississippi, from the distance of sixteen leagues below New Orleans to Baton Rouge, are granted to the depth of forty acres, or near half a league, which is the usual depth of all grants. Some have double and triple grants; that is to say, they have twice or thrice forty acres in depth; and others have grants extending from the Mississippi to the sea or the lakes behind them. In other parts of the country, the people, being generally settled on the banks of creeks or rivers, have a front of from six to forty

acres, and the grant almost invariably expresses a depth of forty acres. All the lands ungranted, on the island of New Orleans or on the opposite bank of the Mississippi, are sunken, inundated, and at present unfit for cultivation; but may in part be reclaimed at a future day, by efforts of the rich and enterprising.

Cultivation of Sugar.

The sugar cane may be cultivated between the river Iberville and the city, on both sides of the river, and as far back as the swamps. Below the city, however, the lands decline so rapidly, that, beyond fifteen miles, the soil is not well adapted to it. Above the Iberville the cane would be affected by the cold, and its produce would, therefore, be uncertain. Within these limits, the best planters admit that one quarter of the cultivated lands of any considerable plantation may be planted in cane, one quarter left in pasture, and the remaining half employed for provisions, &c., and a reserve for a change of crops. One Parisian arpent, of one hundred and eighty feet square, may be expected to produce, on an average, twelve hundred weight of sugar and fifty gallons of rum.

From the above data, admitting that both sides of the river are planted for ninety miles in extent and about three fourths of a mile in depth, it will result that the annual product may amount, in round numbers, to twenty-five thousand hogsheads of sugar, with twelve thousand puncheons of rum. Enterprising young planters say that one third, or even one half, of the arable land might be planted in cane. It may also be remarked, that a regular supply of provisions from above, at a moderate price, would enable the planter to give his attention to a greater body of land cultivated with cane. The whole of these lands, as may be supposed, are granted; but in the Attakapas country there is undoubtedly a portion, parallel to the seacoast fit for the culture of the sugar cane. There vacant lands are to be found, but the proportion is at present unknown.

In the above remarks, the lands at Terre aux Bœuf, on the Fourche, bayou St. Jean, and other inlets of the Mississippi south of the latitude supposed to divide those which are fit, from those which are unfit, for the cultivation of the cane, have been entirely kept out of view. Including these, and taking one third instead of one fourth of the lands fit for sugar, the produce of the whole would be fifty thousand instead of twenty-five thousand hogsheads of sugar.

The following quantities of brown sugar, clayed and refined, have been imported into the United States from Louisiana and the Floridas, viz: In 1799, 773 542 pounds; in 1800, 1,560,865 pounds; in 1801, 967,619 pounds; in 1802, 1,576,933 pounds.

Of the Laws.

When the country was first ceded to Spain, she preserved many of the French regulations; but, by almost imperceptible degrees, they have disappeared; and at present the province is governed entirely by the laws of Spain, and the ordinances formed expressly for the colony. Various ordinances promulgated by General O'Reilly, its first Governor under Spain, as well as some other laws, are translated and annexed to Appendix, No. 1.

Courts of Justice.

The Governor's court has a civil and military jurisdiction throughout the province; that of the Lieutenant Governor has the same extent in civil cases only.

There are two Alcaldes, whose jurisdiction, civil and criminal, extends through the city of New Orleans and five leagues around it, where the parties have no *fuero militar*, or military privilege; those who have, can transfer their causes to the Governor.

The tribunal of the Intendant has cognizance of admiralty and fiscal causes, and such suits as are brought for the recovery of money in the King's name, or against him.

The tribunal of the Alcalde Provincial has cognizance of criminal causes, where offences are committed in the country, or when the criminal takes refuge there, and in other specified cases.

The ecclesiastical tribunal has jurisdiction in all matters respecting the church.

The Governor, Lieutenant Governor, Alcaldes, Intendant, Provincial Alcalde, and the Provisor in ecclesiastical causes, are, respectively, sole judges. All sentences affecting the life of the culprit, except those of the Alcalde Provincial, must be ratified by the superior tribunal, or Captain General, according to the nature of the cause, before they are carried into execution. The Governor has not the power of pardoning criminals. An auditor and an assessor, who are doctors of law, are appointed to give counsel to those judges; but for some time past there has been no assessor. If the judges do not consult those officers, or do not follow their opinions, they make themselves responsible for their decisions.

The commandants of districts have also a species of judicial power. They hear and determine all pecuniary causes not exceeding the value of one hundred dollars. When the suit is for a larger sum, they commence the process, collect the proofs, and remit the whole to the Governor, to be decided by the proper tribunal. They can inflict no corporeal punishment except upon slaves, but they have the power of arresting and imprisoning when they think it necessary: advice of which, and their reasons, must be transmitted to the Governor.

Small suits are determined in a summary way, by hearing both parties, *viva voce;* but, in suits of greater magnitude, the proceedings are carried on by petition and reply, replication and rejoinder, reiterated until the auditor thinks they have nothing new to say. Then all the proofs either party chooses to adduce are taken before the keeper of the records of the court, who is always a notary public.

The parties have now an opportunity of making their remarks upon the evidence, by way of petition, and of bringing forward opposing proofs. When the auditor considers the cause as mature, he issues his decree, which receives its binding

force from the Governor's signature, where the cause depends before him.

There is an appeal to Havana, if applied for within five days after the date of the decree, in causes above a certain value. An ulterior appeal lies to the Audience, which formerly sat at St. Domingo, but which is now removed to some part of Cuba; and from thence to the Council of the Indies, in Spain.

Suits are of various durations. In pecuniary matters, the laws encourage summary proceedings. An execution may be had on a bond in four days; and, in the same space, on a note of hand, after the party acknowledged it, or after his signature is proved. Moveable property is sold, after giving nine days' warning, provided it be three times publicly cried in that interval. Landed property must be likewise cried three times, with an interval of nine days between each, and it may then be sold. All property taken in execution must be appraised, and sold for at least half of the appraisement. In pecuniary matters, the Governors decide verbally, without appeal, when the sum does not exceed one hundred dollars. The Alcaldes have the same privilege, when the amount is not above twenty dollars.

In addition to these courts, four years ago there were established four Alcaldes de Barrio, or petty magistrates; one for each of the four quarters of the city, with a view to improve its police. They hear and decide all demands not exceeding ten dollars; exercise the power of committing to prison; and in case of robbery, riot, or assassination, they can, by calling upon a notary, take cognizance of the affair; but, when this is done, they are bound to remit the proceedings to some of the other judges, and, in all cases whatever, to give them information when they have committed any person to prison.

Most of the suits are personal contracts, rights to dower, inheritances, and titles to land. Those arising from personal quarrels are generally decided in a summary way. The inhabitants are said not to be litigious.

Lawyers, and Costs of the Courts, and Officers.

The number of lawyers is small, not exceeding three or four attorneys. Their fees are small. Suits are carried on in writings, called *escritos*, which may be drawn up by the parties themselves, if they please, but they must be presented by the *escribano*, or notary, who is the keeper of the records of the court.

The fees of the judges are twenty-five cents for every half signature or flourish, (which is usually affixed on common occasions;) fifty cents for every whole signature; and two dollars and three-fourths for every attendance, as at a sale, or the taking of evidence.

The fees of the Abogado, or person consulted by the judges on law points, are twelve and a half cents for every leaf of which the process consists, and four dollars for every point of law cited. Those of the attorney, when employed, are sixty-two and a half cents for a simple petition, or *escrito;* but, if it should be necessary to read a process in order to form his petition, and it should require much time and labor, he is compensated in proportion, besides twelve and a half cents per leaf for perusing the papers. For attendance on any business, he is allowed one dollar and fifty cents for the assistance of two and a half hours. The notary has fifty cents for each decree, or order of the judge; twenty-five cents for a notification in his office; and fifty cents for one out of it, but within the city; one dollar and seven-eighths for every attendance of two and a half hours on busines, and twenty-five cents additional for every leaf of paper written by him.

A counsellor or two have sometimes resided at New Orleans, but being generally found obnoxious to the officers of the Government, they have not continued there. The counsellor values his own services, and, in general, exacts large sums. The attorney generally receives from the party who employs him more than is allowed by law.

Crimes, Criminal Jurisprudence, and Punishment.

In cases of petty crimes, the cognizanee of the proper court may be said to be final, and without appeal; and most commonly such causes are decided in a summary way. With respect to crimes of a deeper dye, more solemnity is used. A person skilled in the laws is always nominated by the court to defend the accused. The trial is not public; but examinations and depositions in writing are taken privately by the auditor, at any time most convenient to himself, at which, nevertheless, the counsel of the accused is admitted to be present. He has also every kind of privilege granted to him in making his defence. Such suits are generally very tedious and expensive, when he is wealthy. The condemned is entitled to an appeal, as in civil cases, provided he give security for the payment of the future costs. There appears, however, to be a virtual appeal in every capital condemnation, because a stay of execution takes place until the confirmation of the sentence returns from St. Jago de Cuba, where there is a grand tribunal established consisting of five judges, before whom counsellors plead, as in our courts.

Crimes of great atrocity are very rare. Murder, by stabbing, seems to be confined to the Spanish soldiers and sailors. The terror of the magistrate's power restrains assaults, batteries, riots, &c.

Punishments are generally mild. They mostly consist of imprisonment and payment of costs; sometimes the stocks. White men, not military, are rarely, perhaps never, degraded by whipping, and in no case do any fines go into the public treasury. Murder, arson, and aggravated robbery of the King's treasury or effects, are punished with death. Robbery of private persons, to any amount, is never punished with death, but by restitution, imprisonment, and, sometimes, enormous costs. Crimes against the King's revenue, such as contraband trade, are punished with hard labor for life, or a term of years, on board the galleys, in the mines, or on the public works.

Learning.

There are no colleges, and but one public school, which is at New Orleans. The masters of this are paid by the King. They teach the Spanish language only. There are a few private schools for children. Not more than half of the inhabitants are supposed to be able to read and write; of whom not more than two hundred, perhaps, are able to do it well. In general, the learning of the inhabitants does not extend beyond those two arts, though they seem to be endowed with a good natural genius, and an uncommon facility of learning whatever they undertake.

The Church.

The clergy consists of a bishop, who does not reside in the province, and whose salary, of four thousand dollars, is charged on the revenue of certain bishoprics in Mexico and Cuba; two canons, having each a salary of six hundred dollars; and twenty-five curates, five for the city of New Orleans, and twenty for as many country parishes, who receive each from three hundred and sixty to four hundred and eighty dollars a year. Those salaries, except that of the bishop, together with an allowance for sacristans and chapel expenses, are paid by the treasury at New Orleans, and amount annually to thirteen thousand dollars.

There is also at that place a convent of Ursulines, to which is attached about a thousand acres of land, rented out into three plantations. The nuns are now in number not more than ten or twelve, and are all French. There were formerly about the same number of Spanish ladies belonging to the order; but they retired to Havana during the period when it was expected that the province would be transferred to France. The remaining nuns receive young ladies as boarders, and instruct them in reading, writing, and needlework.

They have always acted with great propriety, and are generally respected and beloved throughout the province. With the assistance of an annual allowance of six hundred dollars from the treasury, they always support and educate twelve female orphans.

Of the Officers of Government.

The officers, who are merely judicial, have been already mentioned, and therefore some of them will be altogether omitted in this place. The executive officers, appointed by the Governor, for each division of the province, and called Commandants, are generally taken from the army, or the militia. When the settlement is small, some respectable character is appointed to the civil command, and the militia officer has the direction of military matters. Where there is a garrison, the commandant is sub-delegate of the Intendant, and draws upon him for all expenses incurred. In that case he has the charge of all matters relating to the revenue, within his district.

The duty of commandants is to superintend the police, preserve the peace of this district, examine the passports of travellers, and to suffer no strangers to settle within the limits of their command, without regular leave obtained from Government. They are to prevent smuggling; to certify that all lands, petitioned for by the inhabitants, are vacant before they are granted; and, when required, to put the owner in possession. They are besides notaries public; and in their offices it is necessary to register all sales of lands and slaves, and even to make the contracts for those purposes before them. They act as sheriffs, levy executions on property, attend and certify the sale, and collect the proceeds. They also take inventories of the property of intestates. By an ordinance of Baron Carondelet, syndics are established every three leagues, who are subordinate to the commandant, decide small causes, and have the police of roads, levees, travellers, and negroes.

The officers of the General Government are the following: Besides his judicial powers, the Governor is chief of the army and militia, and the head of the civil Government. He is also President of the Cabildo, or Provincial Council. He appoints and removes, at pleasure, the commandants of districts. He appoints the officers of the militia, who are, nevertheless, commissioned by the King, and he recommends military officers for preferment. He is superintendent of Indian affairs. He promulgates ordinances for the good government and improvement of the province, but he has no power to assess taxes upon the inhabitants without their consent. Until the year 1798, he possessed the sole power of granting lands; but it then passed into the hands of the Intendant.

The Cabildo is an hereditary council of twelve, chosen originally from the most wealthy and respectable families. The Governor presides over their meetings. Their office is very honorable, but it is acquired by purchase. They have a right to represent, and even to remonstrate to the Governor, in respect to the interior government of the province. The police of the city is under their control and direction. In it they regulate the admission of physicians and surgeons to practice. Two members of the Cabildo serve by turn monthly, and take upon themselves the immediate superintendence of markets, bakers, streets, bridges, and the general police of the city. This council distributes among its members several important offices, such as Alguazil Mayor, or High Sheriff, Alcalde Provincial, Procureur General, &c. The last mentioned is a very important charge. The person who holds it is not merely the King's attorney, but an officer peculiar to the civil law. He does not always prosecute; but, after conviction, he indicates the punishment annexed by law to the crime, and which may be, and is mitigated by the court. Like the chancellor in the English system, he is the curator and protector of orphans, &c.; and, finally, he is the expounder of the law, the defender of the privileges belonging to the town, province, or colony, and the accuser of every public officer that infringes them. The Cabildo is also vested with a species of judicial authority, for which, and for a further elucidation of its constitution, and the

functions of the officers springing from it, see the appendix No. 1.

The Intendant is chief of the departments of finance and commerce, and exercises the judicial powers already mentioned. He is entirely independent of the Governor, and no public moneys can be issued without his express order. The land office is under his direction.

The Contador, Treasurer, and Interventor, are officers subordinate to the Intendant. The first has four clerks under him, and keeps all accounts and documents respecting the receipt and expenditure of the revenue; and is, therefore, a check upon the Intendant. The treasurer is properly no more than a cashier, and is allowed one clerk. The interventor superintends all public purchases and bargains. The administrador is also subordinate to the Intendant, and, with a number of inferior officers, manages everything respecting the custom-house. Every clerk in these offices receives his commission from the King.

The Auditor is the King's counsel, who is to furnish the Governor with legal advice in all cases of judicial proceedings, whether civil or military.

The Assessor's functions are similar to those of the auditor, and are properly applicable to the Intendant's department.

Both of the officers last mentioned are also the counsellors of some of the other tribunals, as before intimated.

A Secretary of the Government, and another of the Intendancy.

A Surveyor General.

A Harbormaster.

A Storekeeper, who takes charge of all public moveable property.

An Interpreter of the French and Spanish languages, and a number of other inferior officers.

All appointments in the province, with a salary of more than thirty dollars per month, are made by the King; and most of those with a lower salary, by the Governor or Intendant, as belongs to their respective departments. There are no officers chosen by the people.

The salaries and perquisites of the principal officers are as follows:

	Salary.	*Perquisites.*
Governor, annually -	6,000	2,000
Intendant - - -	4,000	none
Auditor - - -	2,000	2,000
Contador - - -	2,000	none
Assessor - - -	1,200	1,000
Treasurer - - -	1,200	none
Administrador - -	1,200	none
Secretary of Government	600	2,000

The commandants of districts receive each one hundred dollars from the King annually, unless they are possessed of a military employment or pension.

Taxes and Duties.

Instead of paying local taxes, each inhabitant is bound to make and repair roads, bridges, and embankments through his own land.

A duty of six per cent. is payable at the custom-house on the transfer of shipping. It is ascertained upon the sum the buyer and seller declare to be the real consideration. As no oath is required from either, they seldom report more than half the price.

The following taxes are also payable in the province:

Two per cent. on legacies and inheritances, coming from collaterals, and exceeding two thousand dollars.

Four per cent. on legacies, given to persons who are not relatives of the testator.

A tax on civil employments, the salaries of which exceed three hundred dollars annually, called *media annata*, amounting to half of the first year's salary. By certain officers it is to be paid in two annual instalments, and by others in four. The first person appointed to a newly created office pays nothing, but the tax is levied on all who succeed him.

Seven dollars is deducted from the sum of twenty, paid as pilotage by every vessel entering or leaving the Mississippi; but the treasury provides the boats, and pays the salary of the pilots and sailors employed at the Balize. The remainder of the twenty dollars is thus distributed: to the head pilot four dollars; to the pilot who is in the vessel four dollars; and five dollars to the crew of the row-boat that goes out to put the pilot on board, or take him ashore.

A tax of forty dollars per annum for licenses to sell liquors.

A tax on certain places when sold, such as those of regidor, notary, attorney, &c.

But the principal tax is that of six per cent. levied on all imports and exports, according to a low tariff. The proceeds of which net about one hundred and twenty thousand dollars, whilst all the other taxes are said not to yield more than five or six thousand dollars annually.

Expenses and Debt.

The expenses of the present Government, comprehending the pay and support of the regiment of Louisiana, part of a battalion of the regiment of Mexico, a company of dragoons, and one of artillery, which form the garrison of the country, including Mobile, the repairs of public buildings and fortifications, the maintenance of a few galleys to convey troops and stores throughout the province, Indian presents, and salaries of officers, clergy, and persons employed for public purposes, amount to about six hundred and fifty thousand dollars. A sum, in specie, which does not generally exceed four hundred thousand dollars, is annually sent from Vera Cruz; but this, together with the amount of duties and taxes collected in the province, leaves usually a deficiency of one hundred or one hundred and fifty thousand dollars, for which certificates are issued to the persons who may have furnished supplies, or to officers and workmen for their salaries. Hence a debt has accumulated, which, it is said, amounts at present to about four hundred and fifty thousand dollars. It bears no interest, and is now depreciated thirty per cent. The latter circum-

stance has taken place not from want of confidence in the eventual payment of the certificates, but from the uncertainty of the time when, and the want and general value of specie. The whole of this debt is said to be due to the inhabitants, and to American residents. It would have been long since paid off, but for a diversion of the funds, destined for that purpose, to different and external objects.

Imports and Exports.

The productions of Louisiana are, sugar, cotton, indigo, rice, furs and peltry, lumber, tar, pitch, lead, flour, horses, and cattle. Population alone is wanting to multiply them to an astonishing degree. The soil is fertile, the climate salubrious, and the means of communication between most parts of the province certain, and by water.

The following has been received as a sketch of the present exports of Louisiana, viz:

20,000 bales of cotton, of three cwt. each, at twenty cents per pound, increasing - -	$1,344,000
45,000 casks of sugar, ten cwt. each, at six cents per pound, increasing -	302,400
800 casks of molasses, one hundred gallons each, increasing - - -	32,000
Indigo, diminishing rapidly - -	100,000
Peltry - - - - - - -	209,000
Lumber - - - - - - -	80,000
Lead, corn, horses, and cattle, uncertain.	
All other articles, suppose - - -	100,000
	2,158,000

According to official returns in the Treasury of the United States, there were imported into our territory from Louisiana and Florida merchandise to the following amounts, in the several years prefixed:

In 1799, to the value of - -	$507,132
In 1800, to the value of - -	904,323
In 1801, to the value of - -	956,635
In 1802, to the value of - -	1,006,214

According to the same authority, (which makes the total of the exports to amount to two millions one hundred and fifty-eight thousand dollars,) the imports in merchandise, plantation utensils, slaves, &c., two and a half millions—the difference being made up by the money introduced by the Government to pay the expenses of governing and protecting the colony.

According to the returns in the Treasury of the United States, exports have been made to Louisiana and Florida to the following amount, in the years prefixed:

In 1799, foreign articles, to the value of -	$3,056,268
In 1799, domestic articles, to the value of -	447,824
Total - - - - - -	$3,504,092
In 1800, foreign articles, to the value of -	$1,795,127
In 1800, domestic articles, to the value of -	240,662
Total - - - - - -	$2,035,789
In 1801, foreign articles, to the value of -	$1,770,794
In 1801, domestic articles, to the value of -	137,204
Total - - - - - -	$1,907,998
In 1802, foreign articles, to the value of -	$1,054,600
In 1802, domestic articles, to the value of -	170,110
Total - - - - - -	$1,224,710

It is to be observed, that if the total of the imports and exports into and from these Provinces (of which the two Floridas are but a very unimportant part, with respect to both) be as above supposed, viz:

Imports - - - - -	$2,500,000
Exports - - - - -	2,158,000
Making together - -	$4,658,000

The duty of six per cent. ought alone to produce the gross sum of two hundred and seventy-nine thousand four hundred and eighty dollars; and that the difference between that sum and its actual net produce arises partly from the imperfect tariff by which the value of merchandise is ascertained, but principally from the smuggling, which is openly countenanced by most of the revenue officers.

Manufacturers.

There are but few domestic manufactures. The Acadians manufacture a little cotton into quilts and cottonades; and in the remote parts of the Province the poorer planters spin and weave some negro cloths of cotton and wool mixed. There is one machine for spinning cotton in the parish of Iberville, and another in the Opelousas, but they do little or nothing. In the city, besides the trades which are absolutely necessary, there is a considerable manufacture of cordage, and some small ones of shot and hair powder. There are likewise in, and within a few leagues of the town, twelve distilleries for making taffia, which are said to distil annually a very considerable quantity; and one sugar-refinery, said to make about two hundred thousand pounds of loaf sugar.

Navigation employed in the trade of the Province.

In the year 1802, there entered the Mississippi two hundred and sixty-eight vessels of all descriptions, eighteen of which were public armed vessels, and the remainder merchantmen, as follows: Ships, 48 American, 14 Spanish; brigs, 63 American, 17 Spanish, 1 French; polacres, 4 Spanish; schooners, 50 American, 61 Spanish; sloops, 9 American, 1 Spanish. Total, 170 American, 97 Spanish, 1 French.

Of the number of American vessels, twenty-three ships, twenty-five brigs, nineteen schooners, and five sloops, came in ballast; the remainder were wholly or in part laden. Five Spanish ships and seven schooners came in ballast. The united tonnage of all the shipping that entered the river, exclusive of the public armed vessels, was thirty-three thousand seven hundred and twenty-five register tons.

In the same year there sailed from the Mississippi two hundred and sixty-five sail, viz: Ships, 40* American, 8,972 tons; 18 Spanish, 3,714 tons. Brigs, 58 American, 7,546 tons; 22* Spanish, 1,944 tons. Schooners, 52 American, 4,346 tons; 58 Spanish, 3,747 tons. Sloops, 8 American, 519 tons; 3* Spanish, 108 tons. Polacres, 3* Spanish, 240 tons.—Total, 158 American, 21,383 tons; 104 Spanish, 9,753 tons.

Schooners, 3 French, 105 tons.

Total American 158, tons 21,383; total Spanish 104, tons 9,753: total French 3, tons 105. Grand total 265 sail, 31,241 tons.

The tonnage of the vessels which went away in ballast, and that of the public armed ships, are not included in the foregoing account; these latter carried away masts, yards, spars, pitch, tar, &c., at least one thousand tons.

In the first six months of the present year, there entered the Mississippi one hundred and seventy-three sail, of all nations—four of which are public armed vessels, viz: two French and two Spanish, whose tonnage is not enumerated—as follows: Ships, 23 American, 5,396 tons; 14 Spanish, 3,080 tons; 5 French, 1,002 tons. Brigs, 44 American, 5,701 tons; 20 Spanish, 2,173 tons; 8 French, 878 tons. Polacres, 3 Spanish, 480 tons; 2 French, 436 tons. Schooners, 22 American, 1,899 tons; 18 Spanish, 1,187 tons; 7 French, 488 tons. Sloops, 4 American, 278 tons; 3 Spanish, 167 tons.—Total, 93 American, 13,264 tons; 58 Spanish, 7,087 tons; 22 French, 2,804 tons.

Total of American ships 93, tons 13,264; total of Spanish ships 58, tons 7,087; total of French ships 22, tons 2,804. Grand total, 173 ships, 23,155 tons.

In the same six months there sailed from the Mississippi one hundred and fifty-six vessels, viz: Ships, 21 American, 18 Spanish, 2 French; brigs, 28 American, 31 Spanish, 1 French; polacres, 4 Spanish; schooners, 17 American, 26 Spanish, 5 French; sloops, 2 American, 1 Spanish. Total, 68 American, 80 Spanish, 8 French.

Coasting Trade.

There is a considerable coasting trade from Pensacola, Mobile, and the creeks and rivers falling into and in the neighborhood of, Lake Pontchartrain, from whence New Orleans is principally supplied with ship-timber, charcoal, lime, pitch, and tar, and partly with cattle; and the places before named are supplied with articles of foreign growth and produce in the same way from Orleans. The vessels employed are sloops and schooners—some of which are but half-decked—from eight to fifty tons; five hundred of which, (including their repeated voyages,) and thirteen galleys and gunboats, entered the bayou St. Jean last year. There is likewise a small coasting trade between the Attakapas and Opelousas, and New Orleans, by way of the Balize, which would much increase if there was any encouragement given by Government to clear away a few obstructions, chiefly caused by fallen timber, in the small rivers and creeks leading to them.

* One in ballast.

DIGEST OF THE LAWS OF LOUISIANA.

[Communicated to Congress, Nov. 29, 1803.]

To the Senate and House of Representatives of the United States:

I now communicate an appendix to the information heretofore given on the subject of Louisiana. You will be sensible, from the face of these papers, as well as of those to which they are a sequel, that they are not and could not be official, but are furnished by different individuals as the result of the best inquiries they had been able to make, and now given, as received from them; only digested under heads to prevent repetitions.

Nov. 29 1803. TH. JEFFERSON.

Appendix No. 1.

Don Alexander O'Reilly, Commander of Benfayou, of the Order of Alcantara, Lieutenant General of the Armies of His Majesty, Inspector General of Infantry, and, by commission, Governor and Captain-General of the Province of Louisiana.

The process which has been had in consequence of the insurrection which has taken place in this colony, having fully demonstrated the part and influence which the council have taken in those proceedings, countenancing, contrary to duty, the most criminal actions, when their whole care should have been directed to maintaining the people in the fidelity and subordination which are due to their Sovereign; for these reasons, and with a view to prevent hereafter evils of such magnitude, it is indispensable to abolish the said council, and to establish in their stead that form of political government and administration of justice prescribed by our wise laws, and by which all the states of His Majesty in America have been maintained in the most perfect tranquillity, content, and subordination. For these causes, in pursuance of the power which our Lord the King (whom God preserve) has been pleased to confide to us by his patent, issued at Aranjuez, the 16th April, of the present year, to establish in the military police, and in the administration of justice and of his finances that form of government, dependence, and subordination, which should accord with the good of his service and the happiness of his subjects in this colony: We establish, in his royal name, a city council or cabildo, for the administration of justice and preservation of order in this city, with the number of six perpetual regidors, conformably to the second statute, title 10, book 5, of the Recopilation des Indes; among whom shall be distributed the offices of alferes royal, alcaid mayor provincial, alguazil mayor, depositary general, and receiver of penas de camara, or fines for the use of the royal treasury; these shall elect, on the first day of every year, two judges, who shall be styled alcaids ordinary, a syndic procureur general, and a manager of the rents and taxes of the city; such as the laws have established for good government and faithful administration of justice. And as the want of advocates in this country, and the little

knowledge which his new subjects possess of the Spanish laws might render a strict observance of them difficult, and as every abuse is contrary to the intentions of His Majesty, we have thought it useful, and even necessary, to form an abstract or regulation drawn from the said statutes, which may serve for instruction and elementary formulary in the administration of justice and economical government of this city, until a more general knowledge of the Spanish language may enable every one, by the perusal of the aforesaid statutes, to extend his information to every point thereof. In consequence thereof, and with the reserve of His Majesty's good pleasure, we order and command the justices, cabildo, and their officers, to conform punctually to what is required by the following articles:

SECTION I.—*Of the Cabildo.*

1. The cabildo, at which the Governor shall preside, or, in his absence, the alcaid ordinary, who shall have the first voice, shall assemble at the city hotel on the first day of every year, and proceed to the election of alcaids ordinary and the other officers above mentioned; it shall also assemble every Friday, for the purpose of deliberating on all that may concern the public welfare. The syndic procureur-general shall propose in these assemblies what may appear to him for the welfare of the republic. One or two regidors shall immediately after inform the Governor, if he has not presided, of the resolutions that may have been taken; and, except in pressing cases when the cabildo for very important reasons may assemble at the Governor's dwelling, it shall not assemble in any other place than the city hotel; under the penalty, to the officers who compose it, of being deprived of their employments.

2. In urgent cases, which cannot be deferred until the usual day of meeting, the regidors may hold an extraordinary sitting; they shall be notified to that effect by one of the doorkeepers of the cabildo; and if any one of the members shall not have been notified, the resolutions which may have been taken shall, if he shall challenge the same, be void; as also in case the minority should not have been notified, even if those who have not been notified shall not object thereto. No assembly shall ever be held but by order of the Governor, and the assistants shall keep a profound silence in respect to the subject upon which the assembly may have deliberated.

3. The regidors shall have an active voice in the elections, as well as the alcaids of the preceding year, who shall remain in the cabildo until the election of their successors shall be confirmed, and they shall have been received. The alcaid, however, who, in the absence of the Governor, shall exercise the functions of President, shall not have an active voice; and so soon as the elections shall have been determined, the secretary of the cabildo shall give information thereof to the Governor, who alone may decide on the validity of the opposition made by any member to the persons elected to the municipal offices, and confirm the alcaids and other officers.

4. The office of alcaid should be given to capable persons who may have the information necessary to fill worthily a charge so important. They shall have a house in the city, and shall reside therein. Those who are employed in the militia may be named to those offices; and they may also be given to the regidors, whose employments may not be incompatible with those places.

5. The alcaids, and the other elective officers of the cabildo, cannot be continued in their employments but when all the members without exception shall have given their votes for their continuation. Without this condition, they cannot be re-elected until two years after they shall have quitted the distinguishing badge of their office.

6. Neither the officers of the finances, those who are indebted to the said finances, the sureties of either the one or the other, those who have not attained the age of twenty-six years, nor the new converts to our holy faith, can be elected to the said offices.

7. The election being confirmed by the Governor, the doorkeepers shall deliver tickets from the scrivener to the elected, notifying them to attend at the hall of the assembly, in order to take the oath prescribed by law; the form of which will be found annexed to this regulation, and to be received and put in possession of their offices.

8. The scrivener of the Government will keep a book entitled "Resolutions," in which he shall record the elections and decisions of the assemblies, ordinary and extraordinary; and which shall be signed by all the judges and members who may have assisted thereat.

9. The regidors cannot give their votes for the said offices in favor of their father, son, brother, step-father, son-in-law, step-son or step-brother, of their wives, although they may be elected by all those who shall be entitled to vote.

10. Whenever the cabildo shall deliberate upon an affair which may personally regard a regidor, or other officer of the cabildo, or even any one of his kindred, or for other particular reasons which might induce a suspicion of partiality, he shall withdraw immediately, and shall not return until the affair shall have been decided.

11. All decrees, royal provisions, and despatches, which may be addressed to the corporation either by the Governor or other authorized minister, shall be opened in the cabildo only, where they shall be recorded, and originals preserved in the archives of the said cabildo.

12. In case of the death or absence of one of the alcaids ordinary, the alferes royal shall exercise the duties of that office during the time that may be wanting to complete the year of him who may be deceased or absent: and, if two alcaids should be wanting at the same time, the other place shall fall of right to the senior regidor, provided he does not hold in the cabildo any office incompatible with that employment, as specified in the present regulation, under the heads of those several offices.

13. Whenever the regidors may assist in a body, they shall preserve the order following, as also in the cabildo, viz: the alferes royal shall take the

first place; the alcaid mayor provincial the next; the alguazil mayor, and the other regidors according to their rank and their seniority.

14. Each regidor, according to his rank, and by turns, shall be charged with the maintenance of the municipal ordinances, and the other dispositions of government for the public good. He shall attend to the prices of provisions, exacting the fines, and putting in force the penalties incurred by the delinquents.

15. Whenever there shall be the question of augmenting the price of meat, with which this city is abundantly and constantly supplied, the cabildo, at a public bidding, shall adjudge the contract to him who shall oblige himself to furnish it on the best terms and for the greatest advantage of the public.

16. The cabildo shall have cognizance of appeals from sentences pronounced either by the Governor, or by the alcaids ordinary where the sum does not exceed 90,000 maravedis; which must be understood as extending only to causes wholly civil, for in criminal cases the appeal must be made to the superior tribunal, which His Majesty will have the goodness to appoint, in consequence of my representations to him on that subject.

17. To legalize similar appeals, the cabildo shall name two regidors, who, in quality of commissioners, and after having taken the oath, shall decide on the justice or injustice of the sentence from which an appeal is made, conjointly with the judge who may have pronounced the same. This nomination shall be made so soon as the cabildo shall be required thereto by the appellant; the form of which, and of the institution of the said appeal, will be detailed in their places.

18. In the first ordinary assembly which may be held after that for the elections of each year, the cabildo shall name two regidors to receive the accounts of the mayordome de proprios of the preceding year, of the sums which he may have received for account of the city, and of the expenditures by order of the cabildo for the objects to which those sums are destined. They shall have those accounts rendered with the greatest exactitude, and shall oblige the said mayordome to deliver up immediately to his successor the residue of the said account; the said regidors being responsible for the total thereof when the said accounts shall be settled by one of the principal officers of finance.

19. Although the application and expenditures of the proprios for the objects to which they are destined belongs to the cabildo, it cannot, even in extraordinary cases, dispose of more than 3,000 maravedis thereof; and when a greater expenditure may be necessary, the consent of the Governor must be previously obtained, without which the said cabildo cannot assign either salary or allowance upon any occasion whatsoever.

20. The electors in the two jurisdictions being responsible for the injury and detriment which the public may sustain by the bad conduct and incapacity of the elected for the administration of justice and the management of the public interests, should have for their objects in the election of alcaids ordinary and the other officers the service of God, the King, and the republic; and, to prevent an abuse of that great trust, their choice should be directed to those persons who shall appear most suitable for those offices, by the proofs they may possess of their affection for the King, their disinterestedness, and their zeal for the public welfare.

21. The cabildo is hereby informed that it should exact from the Governors, previous to their taking possession, a good and sufficient surety and a full assurance that they will submit to the necessary inquiries and examinations during the time they may exercise their employments; and that they will pay what may be adjudged and determined in that respect. This article merits the most serious attention of the cabildo, who is responsible for the consequences which may result from an omission or neglect of exacting these securities from the Governor.

22. The offices of regidor and scrivener of the cabildo may be sold; those officers shall also be allowed to assign them in the manner prescribed by the laws of this kingdom. In acknowledgment of this favor, and in consideration of the value that these offices will acquire by the facility of assigning them, by which they will be effectively transferred from one person to another, there shall be paid into the royal treasury, for the first assignment, one-half the sum at which the said offices may be rated, and one-third of the same for every subsequent assignment thereof, exclusive of the royal custom of half annats, (receivable without any deductions in Spain;) which custom shall also be paid by the alcaids ordinary who may be yearly elected to those offices.

23. To render these assignments valid, the assigner should survive the same the term of twenty days, computing from the date thereof; and the assignee should present himself to the Governor within seventy days from the date of the same, provided with an authentic act substantiating the said assignment, as likewise the above-mentioned twenty days that the assigner shall have survived the same. Should neither of those precautions be taken, the assigner shall forfeit the said office, which shall be deemed vacant to the profit of the King's demesne; and neither he nor his heirs may lay claim to any portion of the price at which the same may be sold.

24. The said assignments shall not be valid, unless made in favor of persons known to be capable, of the age of twenty-six years, and possessing the capacity and talents necessary to the common good of the republic, and worthy of the cabildo, on account of the injury which would result therefrom should those officers be deficient in these qualifications. The said assignments shall be carefully executed and preserved by a public notary of the place at which they may be made.

SECTION II.—*Of the Alcaids Ordinary.*

1. The alcaids ordinary shall have cognizance of all matters in dispute, either civil or criminal, between inhabitants residing within their jurisdiction, which shall extend throughout the city

and the dependencies thereof, excepting those which may come within the cognizance of the ecclesiastical, military, or other special court.

2. The alcaids ordinary cannot interfere in the affairs of Government, which come exclusively within the jurisdiction and competency of the Governor.

3. In all matters on which the cabildo may deliberate, the alcaids ordinary, who may assist thereat, shall, during their year of office, have an equal vote with the regidors.

4. The alcaids shall appear in public with decency and modesty, bearing the wand of royal justice,—a badge provided by law to distinguish the judges. When administering justice they shall hear kindly those who may present themselves, and shall fix the hour and place of audience, which should be at 10 o'clock in the morning, at the city hotel; and for the decision of verbal causes, in the evening between 7 and 8 o'clock, at their dwellings, and in none other.

5. One of the principal objects of justice being to prevent, effectually, those disorders which take place during the night, one of the alcaids, assisted by his alguazils and the scrivener, should go the rounds of the city; and, in case a greater force should be necessary, they may not only demand it from those persons who may be present, but also from the corps-de-garde nearest thereto.

6. It is also the duty of the alcaids ordinary to keep a watchful eye upon fornication, and to punish the same, and all other public offences, conformably to the laws; of which a sufficient detail will be given herein.

7. The alcaids may hear and decide verbally in civil causes, when the demand shall not exceed twenty piasters, as also in criminal causes of little importance. They may also hear and decide verbally those which may exceed that sum, in case the parties interested shall consent thereto.

8. Causes legally brought before one of the judges, shall be continued and determined in his tribunal, and neither the Governor nor any other shall deprive him of the cognizance thereof. The Governor, however, being required thereto by the parties, may, by an order in writing, and suitable to the case, require and summon the alcaid to render speedy justice, conformably to law.

9. In cases of controversy, with respect to jurisdiction, between the Governor and one of the alcaids, or between these last, where one of them may claim the cognizance of a cause instituted with the other, either by reason of the said cause having been also instituted in his tribunal, or his supposing the same exclusively within his jurisdiction, they shall draw up a *procès-verbal* of the said controversy, in which they shall set forth their pretensions in a grave and judiciary style. The case shall remain in suspense until the decision of the superior whom they shall be bound to consult, and to whom they shall deliver an exact copy of the proceeding, unless one of the judges may give way to the claim of the other, and thereby put an end to the said controversy. If, however, in the interval of the decision, one of the judges should proceed in, or take the least cognizance of, the aforesaid cause, he shall forfeit his claim to the same, which shall be immediately vested in the other.

10. If one of the parties pleading shall except against the alcaid who may have already taken cognizance of a cause, he may not continue the same but in conjunction with the other; and, if this last should also be excepted against, he shall associate himself with a regidor, who shall take an oath to do his duty impartially, and to terminate the cause according to law, and speedily as possible. Whatever may be done by the alcaid alone, after he may have been excepted against, shall be void and of non-effect. The oath taken by the party to the written act of exception, that he is mistrustful of the alcaid, shall be sufficient to render the same valid; but, if the party shall purpose to exclude him entirely from the hearing of the cause, besides the aforesaid oath, he shall make known and substantiate the ground on which he relies for the support of his pretensions. If the judge should be related, even in the fourth degree, to the adverse party, or in such habits of friendship with him as to excite a suspicion of partiality, or prepossessed against the exceptor, in all these cases he shall be excluded from the hearing of the cause in controversy, which shall be committed to the other alcaid.

11. Two referees appointed, one by the alcaid, and the other by the exceptor, after being sworn to execute their office impartially, shall determine whether the case be of the nature before mentioned; and, if of the said nature, they shall exact the entire exclusion of the alcaid therefrom; and, if a difference should arise between the referees, a third, named by the judge, shall decide therein; which decision shall be indispensably binding.

12. The diversity of cases not permitting a special detail of the forms of proceeding therein, the alcaids shall be guided by the formulary hereunto annexed; and shall consult with the counsellor, to be appointed for that purpose, upon all doubtful cases which may occur in their practice, or which may not be provided for by the said formulary; and shall approach, as nearly as possible, to the spirit of our laws for the administration of justice.

13. The alcaids ordinary, accompanied by the alguazil mayor, and the scrivener, shall, every Friday, make the visitation of the prison. They shall examine the prisoners, the causes of their detention, and the time of their imprisonment. They shall release the poor who may be detained for their expenses, or for small debts; and the jailer shall not exact from them any releasement fee. The alcaids may not set at liberty any of the prisoners detained by order of the Governor, or of any other judge, without their express consent.

14. They may not release those who are imprisoned for debts due to the domain; nor for fines imposed by law, unless the sum due shall be previously deposited.

15. The Governor, with the alcaids, the alguazil mayor and the scrivener, shall, yearly, on the eves of Christmas, Easter, and Pentecost, make a general visitation of the prisons, in the manner prescribed by the laws of the Indies. They shall release those who have been arrested for criminal causes of little importance, or for debts, when the debtors are known to be insolvent; and shall allow them a sufficient term for the payment of their creditors.

SECTION III.—*Of the Alcaid Mayor Provincial.*

1. The regidor alcaid mayor provincial shall bear the rod of justice, and shall have cognizance of crimes committed in the inhabited places without the cities and villages. Thefts, robberies, carrying away of property by force, rapes, as also treason, malice, accompanied by wounds, or followed by death, setting fire to or burning down of houses or crops, and other crimes of this nature, shall be within the competency of the said alcaid mayor provincial.

2. He may also take cognizance of the aforesaid crimes although committed in cities, when the offenders have quitted the same, and have withdrawn to the country with their plunder; as also of murders or assaults committed on their officers while in the exercise of their duties, or in the interval thereof, if the same are the effect of malice. If, however, the Governor, or one of the judges ordinary of the city, shall have previously taken cognizance thereof, the alcaid mayor provincial shall not interfere therein, by reason that the jurisdiction of the same is vested in the alcaid ordinary. The judge, however, who shall have apprehended the offender, shall have the preference therein, even if the others should have preceded him.

3. Whenever it shall be known that the crime does not concern the tribunal of the St. Hermandad, the alcaid mayor provincial shall refer the cognizance of the same to one of the alcaids ordinary, without waiting until he may be required thereto.

4. The alcaid mayor provincial shall see that travellers are furnished with provisions at reasonable prices, as well by the proprietors of plantations as by the inhabitants of the places through which they may pass.

5. The principal object in the institution of the tribunal of the St. Hermandad being to repress disorders, and to prevent the robberies and assassinations committed in unfrequented places by vagabonds and delinquents, who conceal themselves in the woods and attack travellers and the adjacent inhabitants, the alcaid mayor provincial should assemble a sufficient number of the commissaries or brothers of the St. Hermandad to clear his jurisdiction of those kinds of people, by pursuing them with spirit, seizing them or putting them to flight.

6. For the purpose aforesaid, and conformably to the usage of the other India provinces within the dominions of His Majesty, the alcaids mayors provinciaux, their commissaries, and the brothers of the St. Hermandad, shall have the right of arresting, either within or without the city, all runaway negroes and fugitives, and may exact a reasonable fee therefor; which right shall not be vested in any other person save the master of the fugitive slave.

The said fee is so much the more just, inasmuch as the alcaid mayor provincial, to comply with his duty, must, at his own expense, travel through the unfrequented places, for the benefit of the inhabitants.

7. The said officer shall render speedy justice in all matters within his competency; and from his judgment there shall be no appeal; otherwise it would be impossible to remedy the injurious consequences that would result therefrom But, on the other hand, his judgments shall be pronounced in strict conformity with the spirit of the laws, to which end he shall consult some lawyer; but, in the interim, he shall be guided by the instructions herein contained, which relate to the administration of justice and the forms of proceeding.

8. This office of the Hermandad being created with a view to prevent those disorders which may be committed in unfrequented places, the alcaid mayor should make frequent excursions from the city. This duty consequently renders his employment incompatible with that of alcaid ordinary, to which he cannot be elected, unless he shall have previously obtained permission of the King, to commit to a lieutenant, appointed by himself, the duties of the St. Hermandad.

9. The said officer and his lieutenants should take an oath of the form annexed to this abridgement; he shall account to the Governor for the appointments he may have made, and shall notify him of the judgments he may have pronounced, to the end that the same may be put into execution. Although this formality is not prescribed by any law, yet it is necessary for the purpose of preserving harmony and subordination, and for the facility of procuring assistance.

10. In all controversies, with respect to jurisdiction, which may occur between the tribunal of the St. Hermandad, and any other tribunal of the province, the parties shall conform punctually to the instructions which have been given in the particular article which relates to the alcaids ordinary. The instructions which have been given in relation to exceptions against judges, should also be strictly followed, as no alteration should take place on that subject between these officers.

SECTION IV.—*Of the Alguazil Mayor.*

1. The alguazil mayor is an officer charged with the execution of sentences and judgments rendered, as well for payments ordered, taking possession of goods for sale, and imprisonments, as for the punishment of crimes. He cannot be elected alcaid ordinary, unless he shall have appointed a lieutenant to discharge his duties, in the manner prescribed to the alcaid mayor provincial.

2. Recovery of moneys upon writs of execution, orders for taking possession of goods, and seizures of real property, shall be carefully executed by the alguazil mayor, taking the fees allowed by law, and fixed by the tariff included in the present regulation.

3. The alguazil mayor shall also have the super-

intendence of the prisons, shall commission the jailers and keepers of prisons, after having presented them to the Governor, that he may judge of their capacity for those offices, under the penalty of being deprived, for one year, of the right of nominating the same; which shall, for that term, be vested in the Governor. All the jail fees which the prisoners may pay shall be for the use of the alguazil mayor.

4. The said officer cannot appoint as lieutenants any persons but such as are known to be suitable for those employments, who are young, and do not exercise any mechanical profession; they shall be presented to the Governor, and approved by him, and shall take the oath required. The alguazil mayor may not appoint to the said office either the relations or domestics of the judges and officers, but he shall be allowed to change the said lieutenants when he may have just reasons therefor.

5. The alguazil mayor and his lieutenants shall go the rounds, and shall visit the public places, both by night and day, to prevent noises and disputes, under the penalty of being suspended in their offices, and payment of the damages that result from their negligence. They shall arrest, without other authority, the offenders, and shall give immediate information thereof to the alcaids. They shall not tolerate unlawful games, nor public and scandalous offences. They are also hereby informed that, although they have the power of arresting any one without other authority, they may not release the same, under the penalty of being deprived of their offices, and of being declared incapable of holding any other.

6. The alguazil mayor shall conform strictly to the articles which relate to the prisons, and to the tariff which specifies the fees which are demandable. He shall also assist with the judges ordinary in the visitations of the prisons, which shall be made at times prescribed by this regulation.

SECTION V.—*Of the Depositary General.*

1. The depositary general, whose duties are incompatible with those of a judge, cannot be elected alcaid ordinary, unless he may name a lieutenant, who may be charged with the care of the deposits.

2. Before entering upon the said office, the depositary general shall give good and sufficient sureties, who shall answer for the safety of the deposits, and who shall be approved by the Governor, alcaids, and the cabildo. This warranty shall be recorded in the book to be kept by the scrivener of the cabildo for the recording of the deposits, in which he shall inscribe the day, month, and year of the said warranty.

3. The Governor, the alcaids, and the cabildo, shall carefully examine the books which exhibit the sureties of the depositary general, the state of his property, and that of the said sureties, which shall be certified by the scrivener of the cabildo, in order that the same may be verified the succeeding year, and the necessary order taken thereon.

4. If, by the said examination, it shall be found that the situation of the depositary general, or of his sureties, be such as to excite apprehension, they shall prevent him from exercising the duties of his office until he shall have rendered his accounts, and given a better security.

5. The depositary general shall deliver on the first order the sums which may have been deposited with him, in the same coin in which he received them; to which the judges, and other officers competent thereto, should pay particular attention.

6. The depositary general shall record the deposits in a book similar to that of the scrivener of the cabildo; he shall receive for the same, and for deposit fees, three per cent., as explained in the commission which he has received for the exercise of his office.

SECTION VI.—*Of the Receiver of Fines.*

1. The receiver of fines (whose duties are incompatible with those of alcaid ordinary) shall have cognizance of all matters in relation thereto, as also of those imposed by the judge, of which last he shall keep and render an account, having for that purpose a book similar to that kept by the scrivener for the same object, in which they shall be entered according to date.

2. For the security of the balance of the account rendered by the receiver of fines, he shall give good and sufficient sureties, in the same manner as the depositary general. Examination shall yearly be made into the situation of the said sureties, which shall be changed if become less substantial.

3. To the end that the receiver may fully discharge the duties of his office, and a certain knowledge be acquired of the funds in his possession, the scrivener, in whose presence the fines will have been laid, shall advise the scrivener of the cabildo of the same, who shall enter them in a book, the leaves of which shall be marked by the Governor. After which the scrivener of the cabildo shall inform the receiver thereof, who, by these means, will at once perceive the amount of the sums which he should receive; and the book of the cabildo will serve to make him render an account of the sums which are entered therein.

4. The receiver of fines cannot employ the proceeds thereof without the order or permission of His Majesty, by reason that the same being the property of His Majesty cannot be removed without his approbation. He shall dispose of that portion of them only which have been imposed by the judges in conformity to the orders he may receive, and not otherwise.

5. The receiver shall discharge, out of the aforesaid portion of fines, the drafts which may be drawn by the Governor, the alcaids, and the other judges, who shall restrain themselves to the sums which may be necessary.

6. The said receiver shall render a yearly account of the sums he may have received and paid in the execution of his office. His account shall be settled by the officers of finance appointed thereto in this province.

7. He shall be allowed a commission of ten per cent. on all sums which may be recovered and received by himself, or by those commissioned by him, for the recovery thereof.

SECTION VII.—*Of the Procureur General.*

1. The procureur general of the republic is an officer appointed to assist the public in all their concerns, to defend them, pursue their rights and obtain justice, and to pursue all other claims which have relation to the public cause.

2. In consequence thereof, the procureur general, who is appointed solely for the public good, shall see that the municipal ordinances are strictly observed, and shall endeavor to prevent every matter or thing by which the said public might suffer.

3. For these purposes he shall apply to the tribunals competent thereto, for the recovery of debts and revenues due to the city funds, in quality of attorney for the city. He shall pursue causes with the activity and diligence necessary to discharge him from the responsibility in which he would be placed by the slightest omission.

4. He shall see that the other officers of the council or cabildo discharge strictly the duties of their offices; that the depositary general, the receiver of fines, and all those who are to give sureties, shall give such as are good and sufficient, and in case of decadency therein, he shall demand the renewal thereof, conformably to law.

5. He shall be present at, and shall interpose in, the division of lands, and other public matters, to the end that nothing unsuitable or injurious may occur in the distribution of the same.

SECTION VIII.—*Of the Mayordome des Propres.*

1. The mayordome des propres shall have the management of, and shall receive all that is comprised within the denomination of city funds; he shall give receipts to debtors, and shall record all sums which he may receive, as also the expenditures he may make for account of the cabildo, in order that he may be able to render his accounts so soon as his year of office shall expire.

2. He shall discharge the drafts of the cabildo, upon the rents of the city, and none other. He shall abstain from furnishing or lending any sums to any individual whomsoever, under the penalty of being responsible therefor, and of being declared incapable of holding any office under the republic.

3. The construction and keeping in repair of bridges, within and without the city, shall not be defrayed out of the city funds; this expense shall be borne by those who shall enjoy the benefit thereof, amongst whom the same shall be proportioned in the manner pointed out by stat. 1, tit. 16, book 4, of the Recopilation des Indes.

4. When any public work shall be undertaken, either by the cabildo or by individuals, care shall be taken that the same may be substantial and durable. A regidor shall be named for that purpose who, without any requital, shall inspect the said undertaking.

5. The expense of public mourning for the royal family shall be defrayed from the city funds, with all the economy which the cabildo can adapt to these circumstances.

SECTION IX.—*Of the Scrivener of the Cabildo.*

1. This officer shall preserve in his archives all the papers which may concern the cabildo, or its proceedings. He shall inscribe in a book all the securities and deposits which have relation to the depositary general; and, in another book, those which relate to the receiver of fines. He shall, also, keep a third book for guardians and their sureties, ordinary and extraordinary, in which he shall also record the patents and commissions by His Majesty, and shall take care to preserve the originals in the archives of the cabildo.

2. The scrivener of the cabildo shall never suffer any paper or act to be removed from his archives, and if the judges should be obliged to have recourse to the same, he shall furnish them a correct copy thereof, but shall never part with the original.

3. The said scrivener of the cabildo, and of the Government, shall note, at the foot of all acts and instruments of writing, and copies of the same which he may deliver, the fees which he may receive therefor, under the penalty of forfeiting the same, and of incurring the other penalties established, to prevent him from exacting more than is allowed by the tariff.

4. The scrivener of the cabildo, and of the Government, shall inscribe, in a separate book, the mortgages upon all contracts which may be made before him or any other; he shall certify at the foot of each deed, the charge or mortgage under which the sale or the obligation may have been made, conformably to the intention of the law, in order to prevent the abuses and frauds which usually result therefrom.

5. The regidors, the scrivener, and all those who may succeed to any of the venal offices established by the India laws, are hereby informed that the royal ordinances require that, within the term of five years, computing from the date of their commission, they must obtain His Majesty's confirmation, and present the same to the governor of the city or province in which they reside, under the penalty of being deprived of the said offices.

SECTION X.—*Of the Jailer and the Prisons.*

1. The jailer shall be appointed by the alguazil mayor, and approved by the Governor, before entering on the duties of his office. He shall also be presented to the cabildo to be received, and to take an oath to discharge faithfully the duties of the said office, to guard the prisoners, and to observe the laws and ordinances established in this respect, under the penalties therein declared.

2. The said jailer may not enter upon the duties of the said office until he shall have given good and sufficient sureties in the sum of two hundred piasters, which surety shall warrant that no prisoner detained for debt shall be released without an order from the judge competent thereto.

3. The jailer shall keep a book in which he

shall inscribe the names of all the prisoners, that of the judge by whose order they have been arrested, the cause for which they are detained, and the names of those who may have arrested them. He shall reside in prison, and for each considerable fault committed by him he shall pay sixty piasters, applicable one-half to the royal chamber, and the other to the informer.

4. It is the duty of the jailer to keep the prison clean and healthy, to supply it with water for the use of the prisoners, to visit them in the evening, to prevent them from gaming or disputing, to treat them well, and to avoid insulting or offending them.

5. It is likewise the duty of the jailer to take care that the female prisoners are separate from the men; that both of them are kept in their respective apartments, and that they are not worse treated than their offence deserves, or than is prescribed by the judges.

6. With respect to his fees, the said jailer shall confine himself strictly to those which are established; he shall take none from the poor under a penalty of the value of the same. He may not, without incurring the same penalty, receive any gratification, either in money or goods. He shall avoid entirely either playing, eating, or forming any intimacy with the prisoners, under the penalty of sixty piasters, applicable one-third to the royal chamber, one-third to the informer, and the remaining third to the poor prisoners.

Form of the oath to be taken by the Governors, the Alcaids, and the other Judges, when taking possession of their offices.

Don N., elected governor, or alcaid, &c., (according to the employment or office.) I swear before God, the holy cross, and the evangelists, to uphold and defend the mystery of the immaculate conception of our lady the Virgin Mary, and the royal jurisdiction to which I am attached by my employment. I also swear to obey the royal ordinances and the decrees of His Majesty, faithfully to discharge the duties of my office, to decide according to law in all cases which may come before my tribunal; and for the more certain attainment thereto, I promise to consult with such as are well informed in the law, whenever opportunities may occur in this city; and, lastly, I swear that I will never exact other fees than those fixed by the tariff, and that I will never take any from the poor.

Instructions upon the manner of instituting suits, civil and criminal, and of pronouncing judgments in general, in conformity to the statutes of the Recopilation de Castile and des Indes, for the government of the judges and parties pleading, until a more general knowledge of the Spanish dialect and more extensive information upon those statutes may be acquired: digested and arranged by Doctor Don Manuel Joseph de Urrutia and the counsellor Don Felix Rey, by order of his Excellency Don Alexander O'Reilly, Governor and Captain General of this Province by special commission of His Majesty.

SECTION I.—*Of Civil Judgments in General.*

It must, in the first place, be observed that in causes civil or criminal, of any nature whatsoever, persons belonging to any religious order may neither appear, nor make any demand without the permission of their superior. This permission is equally necessary to the son, whose father be living, and whose consent must be obtained; to the slave, who may not act without the consent of his master; to the minor, who must be authorized by his guardian, who may be chosen by himself at the full age of fourteen years, or appointed by the judge, when of an age less advanced; to the wife, who must obtain the permission of her husband; and, lastly, to lunatics and idiots, who must be represented by the guardian appointed by law to the care of their persons and property.

2. It must also be observed that the consent of the father is not necessary to the son, when pleading in his own name for the recovery of property or rights acquired by his services in war, which are styled *castrenses*, or by particular gratification from the prince; or, lastly, of those he may have acquired by some public employment, which are styled *quasi castrenses*. But in the case where the son shall demand a maintenance, or wish to be emancipated from his father, he shall previously obtain the permission of the judge, by reason of the consideration and great respect due to a father or other superior. The slave is also allowed the same course of proceeding towards his master, if the latter, in the exercise of his authority, shall exceed the bounds prescribed by law; in which case the slave is entitled to require either his liberty or to be sold. The wife may, also, without the consent of her husband, require her dowry, if he shall be on the point of squandering the same; or an alimony, in the case of separation or ill-treatment.

3. He who may purpose to institute an action at law for a sum exceeding one hundred livres, shall commence the same by a petition setting forth the fact, and the motives upon which he proceeds; he shall also specify whether his demand be for the proceeds of some sale, for money lent, or other similar claim, with every circumstance necessary to the elucidation of the case, and for the information of the judge. He shall conclude by requiring either the return of the money, if lent, or the payment of his demand, and the condemnation of the adverse party to the payment of costs, if he shall unjustly maintain the contrary.

4. The said petition shall be signed by the party or by his proxy, and shall then be presented to the judge, who shall cause the same to be presented to the party against whom the demand may be made, which proceeding shall have the validity of a citation. The defendant shall make his defence within nine days, computing from the day on which he may have been notified of the demand. He shall draw up a counter-declaration in answer thereto, which shall contain such arguments as tend to defeat the claim of the adverse party, if the same be not indisputable, and shall make his defence in the manner observed by the plaintiff in his introductory petition.

5. If the defendant does not answer within nine days, the plaintiff shall require judgment by default, by a writing setting forth that the delay has expired; and moving that, no answer having been made, the defendant be condemned by default; and that, consequently, his claim be reputed acknowledged and sufficiently established.

6. If, on the contrary, the defendant shall answer within the nine days, and shall allege that he is not bound to defend the suit as to the merits thereof, by reason that judgment in the case is not within the competency of the judge who has taken cognizance of the same, that the plaintiff cannot plead in his own name, that the term of his engagement has not yet expired, or other similar exceptions, communication thereof shall be made to the plaintiff that he may reply, within six days, thereto. Upon his replication the judge shall decide whether the cause shall be defended as to the merits thereof; in which case, without admitting an appeal, the said cause shall be tried on the merits thereof.

7. But if the defendant, without producing any similar exception, shall set forth pleas tending indirectly to admit the demand, as, by alleging that the thing demanded has not become due, that the same has been already paid, or any other pleas, supported by vouchers, which may be admitted before the putting of the cause to issue, the effect of which pleas would discharge him from the demand, the same shall be communicated to the plaintiff, to reply thereto: a copy of which reply shall be delivered to the defendant for a rejoinder to the same; after which, the judge shall require the documents, and shall proceed to give judgment.

8. If the fact contested should be admitted to proof, as being doubtful, the same shall be determined within eighty days, at furthest; during which delay the parties shall furnish their proofs, and shall summon each other reciprocally to attend to the administering of the oath to the witnesses.

9. The testimony of the witnesses shall be so secretly given that neither of the parties shall have knowledge of the depositions of his own witnesses, nor those of the adverse party. The term to which the cause may have been continued having expired, one of the parties shall move that by reason of the said expiration the testimony of the witnesses be made public. This motion shall be communicated to the other party, who shall consent thereto, or if he shall not reply to the same, he shall be condemned by default, in the manner observed when one of the parties does not reply to the plea of the other. The judge shall order the publication of the said testimony, and the delivery thereof to the parties; observing that the same be first delivered to the plaintiff, that he may, if necessary, strengthen the same.

10. The testimony being made public, should the plaintiff find the witnesses of the defendant inadmissible, as being either his enemies, or the intimate friends or relations of the defendant, or for other causes which may weaken the faith which would otherwise be due to their testimony, he shall draw up a declaration in which his exceptions shall be specified, after taking an oath that he has no intention of offending them; which oath shall be notified to the defendant, who may in reply state his exceptions to the witnesses of the plaintiff. The said exceptions shall then be put to the proof, and forty days may be granted therefor: one-half of the term allowed for the decision of the principal cause.

11. When the term allowed for the admission to proof of the exceptions shall have expired, the publication of the testimony, as in the principal cause, shall not be allowed; but the documents shall be delivered to the plaintiff, that he may set forth his proof; and if he shall establish that the same is more complete than that of the adverse party, a copy thereof shall be given to the defendant, upon whose reply, or in default thereof, the judge shall declare the controversy determined. He shall then order that the parties be summoned for the final decision, which must be given within twenty days, computing from the day on which he may have required the documents in the cause. He shall attentively examine the said documents, and determine the suit by condemning the debtor to payment, or by discharging him from the demand, according to the merits of the case.

12. If judgment be given for a sum not exceeding ninety thousand maravedis, an appeal to the cabildo may be made within five days, computing from the day on which the parties may have been notified of the sentence. If the judgment given be for a greater sum, an appeal shall be made to the tribunal to be appointed by His Majesty, in consequence of the representations which have been made to him on that subject. A brief explanation of the manner in which this recourse may be had, will be given at the conclusion of these instructions.

13. If no appeal shall be lodged within the five days allowed, the party who may have obtained judgment in his favor, shall draw up a writing, by which he shall move that no appeal having been made within the legal delay, the judgment be considered definitive; and that, in pursuance thereof, execution be ordered; a copy of which shall be given to the adverse party; and on his reply, or in default thereof, the judge shall pronounce both on the validity of the judgment and the expiration of the delay; after which he shall order that the sentence take effect and be put into execution.

SECTION II.—*Of Executions.*

1. When a debt shall be fully established, and importing a confession of judgment, as by an agreement, or obligation made before a notary; by a simple note, legally acknowledged by the drawer; by confession of judgment, although without any written title from the debtor; by a definitive sentence of the court, or by the cash-books of the debtor acknowledged by him; in all these cases the creditor shall draw up a declaration setting forth his claim and his action, annexing thereto the document which entitles him to a writ of execution, and moving that, by virtue of the said document, a writ of execution be granted him for the sum due, as also the tenth, and the

costs which may be allowed. He shall observe that his declaration contains the oath that the sum demanded is due, and ought to be paid by the debtor.

2. The judge shall examine if the document which entitles the creditor to a recovery imports a confession of judgment; and if such be the case, he shall order immediate execution, by addressing an order in writing to the alguazil mayor, directing him to summon the debtor to pay the demand, or, in default thereof, his property shall be seized to the value of the same, with the tenth and the costs.

3. By virtue of the said order the alguazil mayor shall summon the debtor; if he complies, the execution shall cease. If otherwise, his property shall be seized and held in custody by the depositary general, unless he shall give good and sufficient security for the payment of the sum in which he is condemned by the sentence. But if he shall not give the security aforesaid, or if he has not property sufficient, he shall be imprisoned, unless exempted therefrom by the privilege of nobility, which is also enjoyed by the military, regidors, officers of finance, women, lawyers, physicians, and other distinguished persons. The alguazil mayor shall note, at the foot of the writ, his proceedings thereon, as also the day and hour of the same.

4. The property being seized, the creditor shall, by another writing, move that the same be valued by two capable persons, on whom the parties may agree, and that public notice be given that the sale thereof will be made after the usual delay, according to the nature of the property. The said delay shall be of nine days' duration for personal property, with a public notice every three days; and of thirty days' duration for real property, of which notice shall be given every nine days; but, if the debtor shall consent, the said notices need not be given.

5. The said term being expired, and public notice being given, the creditor shall require that the debtor be definitively summoned to make opposition, and prove that the sum demanded is not due, or has already been paid. In pursuance thereof the debtor shall be definitively summoned, if he has not previously opposed, which he might do during the time of seizure, or of his detention in prison.

6. If the debtor shall not make opposition, within three days, computing from the day on which he may have been definitively summoned, he shall be attached by default; but if he shall make opposition, he shall be ordered to prove his exceptions within ten days at furthest, which shall be common to both parties, to prove the justice of their pretensions in the manner which to them may seem best.

7. During the said delay, the proof offered by the two parties shall be received, and they shall cite each other reciprocally to attend at the administering of the oath to the witnesses, in conformity to the provision of section I, Nos. 8 and 9, for civil judgments in general; with this difference, however, that the said delay may be prolonged at the request of the creditor, and in which case, the debtor shall enjoy the benefit of the said prolongation.

8. The term allowed having expired, no further proof shall be allowed, save the confession of the party; and the documents shall be returned to the creditor that he may set forth his right, of which a copy shall be given to the debtor. Upon his reply, or in default thereof, the judge shall require the documents, and shall proceed to give judgment.

9. He shall examine with attention if the exceptions made by the debtor are just, and more fully established than the claim of the plaintiff; and, if such be the case, he shall discharge him from the demand instituted against him. He shall order the restoration of his property, and shall condemn the plaintiff to the payment of costs.

10. If, on the contrary, the debtor has not proved his exceptions, and the sum demanded be found legally due, the judge shall declare the seizure to be valid, and shall order the fourth and last public notice of the sale to be given, and the adjudication of the property to the highest bidder, that, from the proceeds of the same, the demand of the creditor may be fully discharged, as also the tenth and the costs. The creditor, shall, however, be held to give security in the amount of the sum, lest the sentence should be annulled by a superior tribunal.

11. This sentence shall be carried into execution notwithstanding appeal, but shall not prevent the party who may have been aggrieved, from appealing to the cabildo, provided the sum does not exceed 90,000 maravedis;* otherwise the appeal must be made to the superior tribunal, to be hereafter appointed by His Majesty.

12. Definitive judgment being pronounced, the day for the fourth and last notice of the sale of the property seized shall be appointed. On the said day the sale shall be made in the presence of the parties, who shall be legally summoned to attend; and the amount of his demand shall be paid to the creditor, who shall give the security aforesaid; the tenth shall be paid to the alguazil mayor, and the costs and expenses to the other officers, in conformity to the regulations of the tariff.

13. It must be observed, that, if the debtor discharges his debt within seventy-two hours after the seizure is pronounced to be valid, the tenth shall not be demanded; but in default thereof, the payment of the same may not be dispensed with; and on this account it has been heretofore declared indispensably necessary to note the day and the hour of the proceedings in the seizure.

SECTION III.—*Of Judgment in Criminal Causes.*

1. When information shall have been obtained of any crime, such as homicide, robbery, &c. having been committed, if no prosecutor shall appear, the judge shall officially draw up a *procès-verbal*

* The 90,000 maravedis, mentioned both in the regulations and in the present instructions, make 339 piasters, 7 reals, and 2 maravedis, equal to 1654 livres, 7 sols, 9 deniers.

containing the knowledge he has acquired of the said crime, and shall order an inquiry to be made into the circumstances of the same; as, for example, in the case of homicide, he shall cause the body to be examined by one or more surgeons, who shall declare whether the wounds have been mortal or otherwise; they shall set forth in what place and in what situation the body was found, and with what instrument it may appear that the crime has been committed. In the case of robbery, an examination shall be made, and the scrivener shall detail and certify the marks of violence on the house or the furniture, indicating that the said crime has been committed. The same statement of facts shall also be made in all other crimes; a formality which is the basis of judicial proceedings, and without which the criminal cannot be prosecuted. The judge shall, at the same time, order that the information be taken and the witnesses heard.

2. When the party injured shall bring forward a complaint, he shall commence by a petition, containing a correct and brief exposition of the fact, and requesting an examination into the circumstances of the crime, in the manner beforementioned, and also that a summary inquiry may be made into the truth of the facts set forth in his petition. The judge shall take order on the said petition in the following words: "Be it done as is required."

3. The judge shall make the said inquiries in person, unless unavoidably prevented; in which case he may intrust the same to the Register. If, however, the crime be established, and the criminal unknown, every inquiry, search, and examination necessary to obtain a knowledge of the said criminal shall be made.

4. When the inquiries have been made, and the criminal be known, if two witnesses appear, or one witness of credit, joined to other circumstances indicative of the aggressor, the judge shall direct the body of the said aggressor to be taken into custody, as also an inventory of his property to be taken, and the sequestration of the same in the hands of the depositary general.

5. If the criminal has not been arrested, by reason of either absence or concealment, the judge shall direct that, as by the report of the alguazil the said criminal has not been arrested, he be cited by public proclamation, three times repeated, in the manner following:

6. The accused shall first be cited to appear and deliver himself up within nine days; in default of which, the judge shall direct the scrivener to certify that the term has expired, and the jailer to affirm that the offender has not appeared. In consequence of the said certificates, which shall be annexed to the documents in the cause, the accused shall be condemned to the penalty of contumacy; and the judge shall direct that he be again cited to appear within the aforesaid term of nine days. On the expiration of this second delay the scrivener and jailer shall certify as before; after which the judge shall issue an order for his arrest, and direct the publication of the same, as also the continuance of the proclamation aforesaid. These last nine days being expired, the scrivener shall again certify thereto, and the jailer shall affirm that the accused has not appeared at the prison. The judge shall then declare him fully convicted of contumacy; and if there be no prosecutor, a procureur fiscal shall be appointed to take the necessary steps in the case; but if there be a prosecutor, the cause shall be committed to him that he may proceed therein as he may think best, and to bring the same before the tribunal, in which provisional judgments are given, and the criminal is cited as if he was present. The proceedings shall then be continued until the definitive sentence either in favor of or against the accused be pronounced.

7. If, however, previous to, or after the sentence, the accused shall present himself at the prison, the cause shall be instituted anew, and the defence of the accused shall be heard with attention; and upon what the prosecutor or the procureur fiscal may set forth in opposition thereto, the previous sentence shall be either confirmed or annulled, according to the documents reproduced on the trial.

8. If the criminal be taken after the order for his arrest has been issued, and the *procès-verbal* concluded, the judge shall direct the jailer to certify that the accused is in prison, and the said judge shall, in person, commence the examination by demanding his name, age, quality, profession, country, and residence. If he be under twenty-five years of age, he shall be enjoined to choose a guardian; and, upon his refusal to do so, the judge shall appoint some one thereto, by reason that the said examination cannot proceed without the presence and authority of the said guardian.

9. In the said examination the judge shall charge the accused with the crime, pursuant to the testimony given, and shall start such questions as may tend to the disclosure of the circumstances of the same.

10. The examination concluded, the witnesses, both for and against the accused, shall be heard within the shortest delay possible; which, however, if necessary, may be extended to eighty days, as allowed in civil causes in general. During this delay, the accused on one side, and the prosecutor, or the procureur fiscal, (in default of a prosecutor) on the other, shall produce their proof in the manner provided in civil causes; and although these proofs should be private, as also the re-examination of the witnesses, they may communicate to each other the documents in the cause in order to the necessary arrangement of their proceedings.

11. The witnesses being re-examined, and the delay allowed having expired, one of the parties shall require that the testimony be made public. This demand shall be communicated to the other party, by a copy thereof, upon whose answer, or in default thereof, the judge shall direct the publication of the said testimony. The documents shall then be delivered to the prosecutor, or to the procureur fiscal, that he may bring his accusation in form, and allege the sufficiency of the proof.

12. The accusation being made, conjointly

with the declaration of the sufficiency of the proof, a copy thereof shall be given to the accused, that he may in defence set forth whatever he may think in favor of his case. When the said defence shall have been made, the pleadings shall be considered as concluded, and, consequently, the cause in a state to be determined.

13. If it shall happen that one or both of the parties except against the witnesses produced, they shall proceed in the manner pointed out under the head of civil causes in general, and shall conform precisely to the instructions therein given for similar cases. After the decision on the said exceptions has been made, the determination of the cause shall not be delayed; but the judge shall require the documents, and cite the parties for the definitive sentence.

14. The accused being convicted of the crime, as being fully established on the trial, or by some other proof, in conjunction with his own confession, he may be condemned to the penalty provided by law for the same. The said condemnation shall also take place when two witnesses of lawful age and irreproachable character shall depose that of their certain knowledge the accused has committed the crime; but when there shall appear against the accused but one witness, and other indications of conjectures, he may not be condemned to the penalty provided by law; but some other punishment shall be inflicted as directed by the judge, with due consideration of the circumstances which may appear on the trial; this state of things requires the greatest circumspection, as it must always be remembered that it is better to let a criminal escape than to punish the innocent.

15. After all these precautions, the judge shall pronounce sentence; and although in criminal causes an appeal should be admitted, yet if the judge shall have doubts, or from some difficulties on the trial he shall think it advisable to submit the same to the examination of a superior, execution shall be suspended, and this second instance shall be conducted as in civil causes.

Section IV.—*Of Appeals.*

1. When judgment has been given for a sum or an object, the value of which shall exceed ninety thousand maravedis, an appeal shall be brought by the party who may think himself aggrieved, directly to the tribunal to be hereafter appointed by His Majesty; and when the said appeal shall have been lodged, communication thereof shall be made to the adverse party, who shall plead against the merits of the same: that is to say, whether sentence shall be suspended or executed, notwithstanding appeal. To determine this point, the judge shall demand the documents, and after examining the same pronounce either for or against, as he shall think just; and in urgent and particular cases, such as dowry, alimony, or others of a similar nature, in which appeals should not lightly be admitted, he shall order execution. In this class are also comprised criminal causes, unless such circumstances should occur as are cited at the conclusion of the preceding paragraph; and in which case execution should be suspended until the superior judge may have examined the same, and confirmed the sentence pronounced.

2. If the appeal be admitted, the second trial shall be conducted in the manner following: The judge shall direct the delivery of the documents in the cause to the appellant, that he may declare in what consists the grievance of which he complains; by which is meant that he shall set forth in argument the injury he would sustain by the execution of the sentence, which, for one or more reasons, is not in conformity to the provisions of the law in similar cases, and concluding by moving that the same be annulled. A copy of this declaration shall be given to the other party to reply thereto and confute the arguments of his adversary, by setting forth those tending to prove that the sentence has been pronounced in conformity to law. The judge shall then direct that after having transcribed the documents in the cause, at the expense of the appellant, the originals be transmitted to the tribunal, in which the appeal is to be tried. He shall summon the parties to hear the transcripts compared with the originals, as also to appear in person, or by proxy, at the tribunal to which the said appeal shall be carried, within the delay that may be allowed, according to the distance of the same from this province. The said delay shall commence from the day on which the first registered vessel shall sail from this port for the place where the superior tribunal shall be established; the judge having previously ordered the delivery, on board the said vessel, of the original documents aforesaid. He shall inform the appellant, that if, within the delay allowed, he shall not prove that he appeared before the said tribunal with the original documents, he shall fully and indisputably forfeit his appeal, and that the execution of the sentence shall consequently be ordered on the first requisition of the adverse party. If, however, the appellant shall establish the loss of the vessel in which his documents were embarked, or of the one in which he had transmitted the vouchers of his having appeared at the superior tribunal within the time prescribed; or, in short, any other impediment which may discharge him from the aforesaid obligation, the appeal may not be declared to be abandoned; but on the contrary, a further delay shall be granted; and if the originals have been lost, copies thereof shall be delivered to him, that he may prove his appearance and compliance with whatsoever has been required.

3. In the case of a judgment for a sum not exceeding 90,000 maravedis, exclusively of the costs, the appeal shall be made to the cabildo in this city, and the same shall be conducted in the manner following: Within five days, computing from the day of the signature of the sentence, the appellant shall present his petition, which shall be delivered to the register to annex his certificate thereto; on sight of which the cabildo shall appoint two regidors, in quality of commissioners, to decide on the cause of appeal, conjointly with the judge who pronounced the sentence. The said commissioners shall be bound to accept the said appointment, and shall take an oath that they will impartially discharge the duties of the same.

4. The said document with the certificate shall be delivered to the scrivener in the cause, who shall institute and pursue the appeal. The document shall be delivered to the appellant, that he may deduce and set forth his grievance in the manner explained in the second paragraph; which shall be done within fifteen days at furthest; and communication thereof shall be made to the other party, that he may reply thereto within a further term of fifteen days; so that within thirty days from the appointment of commissioners the cause shall be ready for determination. It must be observed that the aforesaid term of thirty days cannot be prolonged, even with the consent of both parties.

5. The pleadings being concluded in the manner prescribed, the scrivener shall, within two days, deliver the documents to the judges, who shall examine the same, and give judgment within ten days, computing from the expiration of the thirty aforesaid, annulling or confirming, augmenting or diminishing, the previous sentence, as they may think just. After the expiration of the aforesaid ten days, judgment may not be pronounced; or, if given, the same shall be void; and the first sentence shall take full effect, and be executed according to the tenor thereof.

6. If a majority of the three judges appointed shall accord in opinion, their sentence shall be valid and conclusive, and an appeal to any other tribunal shall not be admitted; but the judge who pronounced the first sentence shall cause the second to be executed so soon as the documents shall have been delivered to him for that purpose.

Section V.—*Of Punishments.*

1. He who shall revile our Savior, or his mother, the most holy Virgin Mary, shall have his tongue cut out, and his property shall be confiscated, applicable, one half to the public Treasury, and the other half to the informer.

2. He who, forgetting the respect and loyalty which every subject owes to his King, shall have the insolence to vilify his royal person, or that of the Queen, the hereditary prince, or the infants, their sons, shall be punished corporally, according to the circumstances of the crime; and the half of his property shall be confiscated to the profit of the public or royal treasury, if he shall have legitimate children; but if he shall have none, he shall forfeit the whole; applicable, two-thirds to the public treasury, and the other third to the accuser.

3. The authors of any insurrection against the King or the State, or those who, under pretext of defending their liberty and rights, shall be concerned or take up arms therein, shall be punished with death, and the confiscation of their property. The same punishments shall also be inflicted on all those who may be convicted of lèse-majesté, or treason.

4. Whosoever shall outrage another by either wounds, cuffs, or blows with a stick, shall be punished as the judge may think suitable to the case and to the rank of both the offender and the offended. But if the abuse consists only in words, and the aggressor be not noble, the judge shall exact the retraction of the same, in the presence of himself and other persons, and, moreover, shall condemn the said aggressor to a fine of 1,200 maravedis, applicable one half to the public treasury, and the other half to the party offended. If the aggressor be of rank, or enjoys the privileges of nobility, he shall be condemned to a fine of 2,000 maravedis, applicable as aforesaid. The judge, however, may, in lieu of the same, inflict any other punishment which he shall think suitable to the rank of the parties and the nature of the outrage. If no blood has been spilt, nor complaint been made by the offended, or if he shall desist from prosecuting the same, the judge may not interfere therein.

5. He who shall ravish a girl, a married woman, or a widow of reputable character, shall suffer death, and his property shall be confiscated to the use of the person injured; but if the said person be not of reputable character, the judge may inflict such punishment as he may think suitable to the case.

6. The married woman convicted of adultery, and he who may have committed the same with her, shall be delivered up to the will of her husband; with the reserve, however, that he may not put the one to death without inflicting the same punishment on the other.

7. The man who shall consent that his wife live in concubinage with another, or who shall have induced her to commit the crime of adultery, shall, for the first time, be exposed to the public shame, and condemned to a confinement of ten years in some fortress; and for the second time shall be sentenced to one hundred lashes and confinement for life.

8. The same punishment shall also be inflicted on those who carry on the infamous trade of enticing women to prostitution, by procuring them the means of accomplishing the same.

9. He who shall be guilty of fornication with a relation in the fourth degree shall forfeit half his property to the profit of the public treasury, and shall, moreover, be punished corporally, or banished, or in some other manner, according to rank of the person and degree of the kindred. If the said crime be committed between parents and their offspring, or with a professed nun, the same shall be punished with death.

10. He who shall commit the detestable crime against nature shall suffer death, and his body shall afterwards be burned, and his property shall be confiscated to the profit of the public and royal treasuries.

11. The woman who shall be publicly the concubine of an ecclesiastic shall be sentenced for the first time to a fine of a mark of silver, and to banishment for one year from the city or from the place where the offence may have been committed. The second time she shall be fined another mark of silver, and banished for two years, and in case of relapse, she shall be punished by one hundred lashes, in addition to the penalties aforesaid.

12. If fornication be committed between bachelors and girls, they shall be admonished by the judge to discontinue every kind of intercourse with each other, under the penalty of banishment of the man, and confinement of the girl, for such time as may be necessary to operate a reformation. If this menace have not the desired effect, the judge shall put the same into execution, unless the rank of the parties requires a different procedure; and in which case the said offence shall be submitted to the consideration of the judges, collectively, to apply the remedy which their prudence and zeal for the repression of such disorders may suggest. They shall punish all other libidinous offences in proportion to their extent, and to the injury occasioned thereby.

13. He who shall break his oath taken, in conformity to law, for the validity of an agreement, shall forfeit the whole of his property to the profit of the public and royal treasuries.

14. False witnesses in civil causes shall be exposed to public shame, and banished for ten years; but in criminal causes, in which false testimony is more important in its consequences, the same shall be punished capitally. If, however, the accused shall not have thereby been sentenced to death, the false witness shall only be exposed to public shame, and be sentenced to perpetual banishment to some presidio. The said punishments may, however, be commuted, when from the rank of the offenders they cannot be condemned to the same.

15. He who shall steal the sacred vessels in a holy place shall suffer death.

16. Assassins and robbers on the highway shall suffer death.

17. The same punishment shall also be inflicted in cases of forcible robbery, which shall be reputed such, when the proprietor or other persons shall have made resistance.

18. Robberies of classes other than those comprised in the preceding articles shall be punished corporally, according to the nature of the same, and the rank of the persons.

19. He who shall kill another shall suffer death, unless done in his own defence, or under such circumstances as are explained in statutes 3, 4, 12, tit. 23, book 8, of the Nouvelle Recopilation.

20. He who shall commit wilful murder, or wound another with intent to deprive him of life, although the wounded person may survive, shall suffer death, and shall be dragged to execution at the tail of some animal; and the half of his property shall be confiscated to the profit of the public or royal treasury.

Section VI.—*Of Testaments.*

1. For the validity of a nuncupative will, it is necessary that the same be received by a notary public, in presence of at least three witnesses, residents of the place; or if there be no notary, there must be present five witnesses, residents of the place in which the will shall be made; if, however, it be impossible to procure the last mentioned number, three may suffice.

2. A testament shall be equally valid when made in the presence of seven witnesses, although they be not residents of the place, and although the same be not made in the presence of a notary.

3. If, after the closing of a will, the testator shall wish to add to, diminish, or change any disposition contained therein, he may do the same effectually by a codicil; observing the same formalities, and in the presence of the same number of witnesses required for the validity of the testament itself; but he may not change the name of the heir, unless another will shall be made.

4. If the testator be blind, five witnesses shall be necessary to each of the instruments aforesaid, in order to prevent those deceptions to which those who labor under such a misfortune are exposed.

5. For the validity of a written will, styled in Latin *in scriptis*, the testator, on delivering the same to the notary, (who shall seal it,) shall put an endorsement on the cover, stating that the within is his will; which endorsement shall be signed by himself and the seven witnesses, if they can write; and if not, the others shall sign for them; so that there be eight signatures, including that of the scrivener, who shall also put his signature thereto.

6. Before the opening of a will, after the decease of the testator, it is necessary that the judge who shall have knowledge thereof, shall certify thereto, and that the witnesses appear before the said judge, and declare, on oath, that they were present when the testator declared the same to be his last will: they shall acknowledge their signatures, or shall declare (if such be the case) that by request some one has signed for them.

7. As it often occurs that persons, either unable or unwilling to make a will themselves, empower others for that purpose, they are hereby informed, as follows:

8. That such authority must be given in presence of the same number of persons, and with the same formalities required for testaments.

9. That the person empowered to make a will for another cannot revoke a will previously made by his constituent, unless the said will shall contain a special clause to that effect.

10. That he may neither appoint an heir, bequeath a third or a fifth to any of the children or descendants of his constituent, disinherit any of them, substitute others in their stead, nor name a guardian for them without an express clause and special authority to that effect; by reason that the constituent should himself nominate his heir, and designate, by his will, whatsoever he may wish to be done.

11. That if the testator has not appointed an heir, nor designated one in the power given to make a will for him, the person so empowered may only direct the payment of the debts of the deceased, after which a fifth part of the proceeds of his property shall be distributed for the repose and relief of his soul: the remainder shall be divided amongst the relations of the deceased, who, according to law, shall inherit; or if there be none, the whole shall be applied to pious uses for the benefit of the soul of the deceased, after previously deducting therefrom what is allowed by law to the wife, as dower, bridal presents, *donations proper nuptias*, the half of the profits on the joint estate, and whatever may have fallen to her by succession of donation during the marriage.

12. That if the constituent shall have appointed an heir, the person empowered as aforesaid may not dispose of, in legacies pious and profane, more than the fifth part of the property of the testator, his debts being previously paid, unless, by a special clause, he may be authorized to dispose of a greater part.

13. That the person empowered should proceed to the completion of the will with which he is charged within four months, if he be in the place in which the power was given, or, if not, within six months, unless he be out of the kingdom; in which last case, one year shall be allowed, computing from the day of the decease of the constituent. All that may be done by the person empowered as aforesaid after the expiration of that term shall be void and of non-effect, even if he shall allege that he had no knowledge whatever of his having been so empowered. But all the other stipulations by the testator, in the said power contained, shall be carried into execution, and the remainder of his property shall be delivered to his relations who shall inherit *ab intestat*, and who, with the exception of the legitimate children of the descendants or progenitors of the testator, shall give the fifth part of the net proceeds of the said property for the ease and repose of the soul of the said testator.

14. That the person empowered as aforesaid may not in any manner revoke the will he shall have made by virtue of the authority aforesaid, nor add a codicil, nor any declaration thereto, even if the same should be for pious uses, and notwithstanding he may have reserved the power of revoking, augmenting, diminishing, or changing the disposal he shall have made.

15. To the said testaments, codicils, or powers given to that effect, women, monks, people under the age of fourteen, drunkards, or other disqualified persons, shall not be admitted as witnesses.

16. A testator may bequeath a third or a fifth to any one of his children or other legitimate descendants, by specifying the part of his real or personal property which he designs for that purpose.

17. When a testator shall make a bequest to any of his children or legitimate descendants, he may impose such condition, remainder, or entailment, upon the property bequeathed as he may think proper, in order that his other legitimate descendants, or, in default thereof, his illegitimate descendants, or if there be none of either of those descriptions, his relations may enjoy the benefits resulting therefrom; to the end that the said bequest may never pass to a stranger, unless all the relations in the order aforesaid shall be deceased.

18. The father may also, while living, advance any of his children or legitimate descendants, in the same manner as at his death, or by will; but it is to be understood that he shall make the said advancement but once, and that the same being made during his life cannot be revoked, if settled by agreement and fixed by a public instrument, which should precede the delivery of the object in which consists the advancement; or if having been made with a view to marriage, or for any other similar cause, unless he shall have reserved, by the said instrument, a power to that effect; in which case he may revoke the said advancement.

19. If the father or the mother shall have entered into an agreement not to advance any one of their children, the said agreement shall thereafter be binding; and if they should attempt the said advancement by any public instrument, the same shall be void and of non-effect. If, on the contrary, they shall promise the said advancement in consideration of marriage, or for other similar cause, the right to a third or a fifth shall be good at the decease of the parent, although no mention thereof shall have been made in the will.

20. The said advancement being made during life, or at the point of death, shall be calculated upon the real value of the property at the time of the decease, and not at the time of making the same.

21. All deeds of gift, or legacies, by the father or mother to their children or descendants, during life, or bequeathed by will, shall be reputed on account of the third or the fifth, although the same may not have been expressed. In consequence thereof, they may not bequeath a third or a fifth to any of the other children or descendants, which shall exceed the value of the said legacies, or gifts to the former.

22. When any one shall die intestate, and without having empowered another to make a will for him, in the manner hereinbefore explained, if there be no legitimate children, or progenitors who may inherit, the relations by blood and kindred of the fourth degree shall inherit the whole of the property; observing that the nearest relations shall inherit of right, and to the exclusion of those who may be further removed, unless the nearest relations shall be brothers of the deceased; in which case the children of the other brothers who shall have died previous to the decease of the person intestate, shall take a portion of the whole; that is to say, that if one brother, and three or four children of another brother, be living, the said children shall be entitled to an equal proportion of one-half of the property, and the brother, uncle of the said children, shall inherit the other half, by reason that the nephews succeed by representation of their father, and not in their own right. This rule shall be followed in the division of estates when there may be a greater or less number of heirs; the foregoing being intended for an example.

23. If the deceased shall have neither progenitors nor descendants capable of inheriting, in the order explained in the preceding article, the King shall be his heir, and the property shall be vested in the treasury or royal chamber.

24. Those who have not legitimate descendants may will in favor of their illegitimate children, although they may have progenitors. It must be understood, that by illegitimate children are meant

those born of a free girl, to whose marriage with the father of the said children no legal impediment existed. Those children shall succeed in their own right, to their mother, and shall inherit the whole of her property, whether she may have died intestate or otherwise, and shall have a preference over the progenitors, in case she shall have no legitimate children, who would otherwise inherit, to the exclusion of the illegitimate children.

25. Illegitimate children of every description shall incontestably succeed to their mother, if she have no legitimate children or descendants, even to the exclusion of her father or other progenitors.

26. The father and mother having legitimate children or descendants, may not give, by way of maintenance, to their illegitimate children more than the fifth part of their property; of which proportion they may also dispose for the benefit of their souls, or by a legacy to a stranger; excepting from the foregoing, the children of ecclesiastics, or monks, who cannot in any manner inherit from their parents or kindred, nor pretend to anything possessed by them during their lives.

27. A son or daughter, while under the authority of the father, being of competent age, that is to say, the son being fourteen, and the daughter being twelve, may will, in the same manner as if they were enjancipated from their parent, and may dispose of the third part of their property acquired by succession, donation, or in any other manner, unless derived from the father, who shall inherit the remaining two-thirds, in the same manner as the mother or other progenitor.

Table of Fees demandable by Judges, Lawyers, Scriveners, Attorneys, and the other officers of justice.

Judges.—For a signature containing the baptismal and family name of the judge, four reals in piasters fortes of America, as also for the other fees hereafter detailed. They shall put the aforesaid signature to judgments, decrees, warrants, titles, and despatches which they may deliver for another tribunal. They shall exact but two reals in the same money for a signature containing their family name only, and the same for their cipher.

For a sitting of two hours and a half, in cases of inventories, seizures, assessments, public sales, adjudications of real or personal property, procés-verbaux, declarations, examinations, and other acts of justice of whatsoever nature, two ducats, equal to twenty-two reals in milled piasters. For affixing the seals, in cases of death, one ducat. If a longer time be necessary for the security of the property, the fee may be augmented in proportion to the time that shall be employed. For the opening of a will, and the examination of the seven witnesses, which should precede the opening of the will, forty-eight reals; viz: forty-four for two sittings, and the other four for the signatures to the two instruments. They shall receive four ducats per diem while employed in the country, to continue until their return to their own houses; they shall be decently entertained, and shall be provided with a horse and other things necessary.

Assessors.—Assessors shall have also two ducats for each sitting in the city, and four for the country, either with or without commission. They shall charge one real per leaf for revising documents, according to the bulk of the same, to the circumstances of the case, and to what may be only a continuation of the usual business.

Alcaid, &c.—The Alcaid Mayor Provincial, and the officers of the Saint Hermandad, shall receive the same fees as the other royal judges, for their signatures and their sittings.

Regidors.—In causes of little importance, which may be brought before the cabildo by appeal, two regidors shall be appointed as commissioners, conjointly with the judge who shall have pronounced the previous sentence. In all such cases they shall receive the same fees as the judge for their signatures and sittings.

The Alguazil Mayor.—In common executions against debtors, they shall require payment, and if the same be not complied with within seventy-two hours from the moment of the summons, the said debtors shall pay, besides the fees to the judge and the other officers of justice, the tenth to the alguazil mayor, which is five milled piasters for the first hundred piasters, and two and a half piasters for every other hundred piasters; so that if the execution be issued for three hundred piasters, he shall take ten for the tenth. He may not, however, exact the same until the creditor be satisfied in the sum for which the execution shall be given.

Depositary General.—The Depositary General shall take three per cent., on all sums in specie, which may come into his possession by way of deposit, and the same for plate, jewels, or other personal property which may be deposited with him.

For real property, as houses, plantations, and other property yielding revenue, he shall take five per cent. upon the said revenue, which shall be his compensation for the management of said property, for receiving the proceeds thereof, and for rendering an account of the same to the tribunal by whom he is appointed, whenever he shall be required thereto. He shall also take five per cent. upon the proceeds of the labor of all slaves in his care, who may not be employed upon the estate.

Whenever bonds or notes shall be deposited with him, he shall take five per cent. upon the sums which he may recover on account of the same.

Lawyers.—The fees of lawyers shall be settled by another lawyer whom the judge shall appoint; and for every sitting their compensation shall be the same as that of the judges and assessors. But when they may be employed in examining documents in order to assist at a court, they shall be paid separately.

Scriveners.—Scriveners shall have fifteen reals for a sitting in the city, and thirty per diem when employed in the country, to be continued until their return to their own houses, and two reals for each leaf of writing, and shall be furnished with a horse, and decently entertained.

For the opening of a will, the examination of

the seven witnesses, which should preclude the same, and legacies to the church, fifty-two reals.

For a copy of a decree or a provision, one real. For an act, two reals. For a notification, citation, or participation, two reals. For a declaration in his own house, six reals; or, if elsewhere, eight reals; and two reals for each leaf of writing, either in his own house or elsewhere. For a despatch, two reals per leaf, and eight for the commencement and conclusion of the same. For each leaf of an exemplification of an act, one real and three quartilles, and one real for his signature. For duplicates, or copies of documents drawn from his records, two reals per leaf.

For a bill of sale of slaves, twelve reals. For a sale of personal property, which usually contains two leaves, two piasters; and if the same shall contain more on account of the conditions which the parties may wish to be inserted, he may augment in proportion. For a simple bond, eight reals; for a bond with mortgage, twelve reals; and if there be several mortgages comprised in the said bond, he shall be paid according to the labor and trouble he may have had in drawing up the same. For a receipt, eight reals. For an agreement, according to the number of leaves the same may contain; and if an examination of documents be necessary, the same should be taken into consideration, and the charge should be at least doubled.

For a will containing three or four sheets, four piasters, and augmented in proportion to the number of sheets.

Recorder of Mortgages.—For a certificate of a house, plantation, or other real property, eight reals. For a certificate of a slave, from one to the number of eighteen, four reals; and from that number to one hundred, twelve reals for each certificate. For a certificate of a mortgage on a vessel, four reals. For recording in the book of mortgages, those given for the security of payments, either for personal property, slaves, or vessels, four reals; and if the same be of an unusual length, eight reals; but when only a short note to designate the page in which the mortgage is recorded be required, no charge shall be made.

Attorneys.—For an introductory demand, five reals. For assisting in the city at an inventory, sale, adjudication, or seizure, twelve reals; for the same in the country, if employed a whole day, three piasters. If, however, the case requires much writing, they shall be paid according to the time that the lawyer may have been employed in drawing up the said case.

Contador Judiciaire.—For every five hours employed in preparing an account for settlement, four ducats, making forty-four reals, observing that five hours shall be accounted a day; and out of the aforesaid sum he shall pay four reals to the scrivener for each sheet of twenty-five lines to a page.

Assessor of Costs.—He shall be paid one quartille for each sheet of the documents contained in the cause; the costs of which he shall assess. Four quartilles make a real.

Appraisers of Personal Property, Slaves, and other effects.—To the exchange broker, for the valuation of furniture, houses, slaves, merchandise, &c., eleven reals, notwithstanding the appraisement may require two hours and a half.

Alarifs, Master Carpenters, and Assayers of Silver.—Alarifs, master carpenters, masons, and joiners, shall have a ducat for every thousand piasters of the amount of the appraisement; and if the same shall exceed four, six, or eight thousand, they shall not demand more than four ducats; but if they be employed in the country, and the appraisement shall not amount to one thousand piasters, they shall have two ducats per diem during the time they may be employed, on account of the distance. If, however, one day only shall be necessary, although the appraisement shall amount to three or four thousand piasters, they shall be paid as if the same had been made in the city; but they shall be furnished with a horse, and shall be decently entertained. The assayer of silver shall have eleven reals for each appraisement, although the articles may be valuable, by reason that little time is required for that purpose.

Appraisers of Land.—They shall have two ducats per diem, and the same when they shall value buildings of little conseqnence in the country, woodland, and fields in grain.

Surveyors.—Surveyors shall have three ducats per diem.

Alguazils.—The Alguazils shall have four reals for a summons to appear, and for a demand of payment. They shall also receive the same sum for obtaining documents of every description. They shall have eight reals for arresting and conducting to prison. The sergeant, in this case, shall have the same.

Jail Fees.—The Alguazil Mayor shall have twelve reals for every free person imprisoned, and eight reals for a slave.

At New Orleans, the 25th November, 1769.

DON ALEX. O'REILLY.

Don Alexander O'Reilly, Commander of Benfayau, of the order of Alcantara, Inspector General of Infantry, appointed, by special commission, Governor and Captain-General of this Province of Louisiana.

Divers complaints and petitions which have been addressed to us by the inhabitants of Opelousas, Attakapas, Natchitoches, and other places of this Province, joined to the knowledge we have acquired of the local concerns, culture, and means of the inhabitants, by the visit which we have lately made to the Côte des Allemands, Côte des Acadiens, Iberville, and La Point Coupée, with the examination we have made of the reports of the inhabitants assembled, by our order, in each district, having convinced us that the tranquillity of the said inhabitants, and the progress of culture required a new regulation, which should fix the extent of the grants of lands which shall hereafter be made, as well as the enclosures, cleared lands, roads, and bridges, which the inhabitants are bound to keep in repair, and point out the damage by cattle, for which the proprie-

tors shall be responsible. For these causes, and having nothing in view but the public good, and the happiness of every inhabitant, after having advised with persons well informed in these matters, we have regulated all those objects in the following articles:

1. There shall be granted to each newly-arrived family, who may wish to establish themselves on the borders of the river, six or eight arpents in front, (according to the means of the cultivator,) by forty arpents in depth; in order that they may have the benefit of the cypress wood, which is as necessary as useful to the inhabitants.

2. The grantees established on the borders of the river shall be held bound to make, within the three first years of possession, mounds sufficient for the preservation of the land, and the ditches necessary to carry off the water. They shall, besides, keep the roads in good repair, of the width of at least forty feet between the inner ditch which runs along the mound, and the barrier, with bridges of twelve feet over the ditches which may cross the roads. The said grantees shall be held bound, within the said term of three years' possession, to clear the whole front of their land to the depth of two arpents; and, in default of fulfilling those conditions, their lands shall revert to the King's domain, to be granted anew, and the judge of each place shall be responsible to the Governor for the superintendence of this object.

3. The said grants can neither be sold nor alienated by the proprietors, until after three years of possession, and until the abovementioned conditions shall have been entirely fulfilled. To guard against every evasion in this respect, the sales of the said lands cannot be made without a written permission from the Governor General, who will not grant it until, on strict inquiry, it shall be found that the conditions above explained have been duly executed.

4. The points formed by lands on the Mississippi river, leaving in some places but little depth, there may be granted, in these cases, twelve arpents of front; and, on a supposition that these points should not be applied for by any inhabitant, they shall be distributed to the settlers nearest thereto, in order that the communication of the roads may not be interrupted.

5. If a tract belonging to minors should remain uncleared, and the mounds and roads should not be kept in repair, the judge of the quarter shall inquire into the cause thereof. If attributable to the guardian, he shall oblige him to conform promptly to this regulation; but if arising from want of means in the minors, the judge, after having, by a verbal process, obtained proof thereof, shall report the same to the Governor General, to the end that the said land may be sold for the benefit of the minors, (a special favor, granted to minors only;) but if no purchaser shall, within six months, be found, the said land shall be conceded gratis.

6. Every inhabitant shall be held bound to enclose, within three years, the whole front of his land which shall be cleared; and for the remainder of his enclosure he will agree with his neighbors, in proportion to his cleared land and his means.

7. Cattle shall be permitted to go at large, from the eleventh of November, to the fifteenth of March of the year following; and at all other times the proprietor shall be responsible for the damages that his cattle may have done to his neighbors. He who may have suffered the damage shall complain to the judge of the district, who, after having satisfied himself of the truth thereof, shall name experienced men to estimate the value of the same, and shall then order remuneration without delay.

8. No grant in the Opelousas, Attakapas, and Natchitoches, shall exceed one league in front by one league in depth; but when the land granted shall not have that depth a league and a half in front by a league in depth may be granted.

9. To obtain in the Opelousas, Attakapas, and Natchitoches, a grant of forty-two arpents in front by forty-two arpents in depth, the applicant must make it appear that he is possessor of one hundred head of tame cattle, some horses and sheep, and two slaves to look after them; a proportion which shall always be observed for the grants to be made in the said places, but none shall ever be made of greater extent than that declared in the preceding article.

10. All cattle shall be branded by the proprietors; and those who shall not have branded them at the age of eighteen months cannot thereafter claim a property therein.

11. Nothing being more injurious to the inhabitants than strayed cattle, without the destruction of which tame cattle cannot increase, and the inhabitants will continue to labor under those evils of which they have often complained to us; and considering that the province is at present infested with stray cattle, we allow to the proprietors until the first day of July, of the next year, one thousand seven hundred and seventy-one, and no longer, to collect and kill, to their use, the said strayed cattle; after which time they shall be considered wild, and may be killed by any person whomsoever, and no one shall oppose himself thereto, or lay claim to a property therein.

12. All grants shall be made in the name of the King, by the Governor General of the Province, who will, at the same time, appoint a surveyor to fix the bounds thereof, both in front and depth, in presence of the judge ordinary of the district, and of two adjoining settlers, who shall be present at the survey. The above-mentioned four persons shall sign the verbal process which shall be made thereof, and the surveyor shall make three copies of the same; one of which shall be deposited in the office of the scrivener of the Government and cabildo, another shall be delivered to the Governor General, and the third to the proprietor, to be annexed to the titles of his grant.

In pursuance of the powers which our lord the King (whom God preserve) has been pleased to confide to us, by his patent issued at Aranjuez, the 16th April, 1769, to establish in the military, the police, and in the administration of justice, and his finances, such regulation as should be conducive to his service and the happiness of his subjects in this colony, with the reserve of His Majesty's good pleasure, we order and command the Governor, judges, cabildo, and all the inhabitants of this Province, to conform punctually to all that is required by this regulation.

Given at New Orleans, the 18th February, 1770.

Regulation concerning the general police, the repairs of bridges, roads, and mounds, and the police of slaves; for the use of the commanders of posts and of coasts, and the syndics of the Province of Louisiana.

The astonishing success which has attended certain designing, restless, and enthusiastic persons, and who certainly have nothing to lose, in disseminating injurious reports tending to produce an entire distrust between the Government and the inhabitants, which would infallibly plunge them into all those atrocities which have desolated the French colonies, has induced us to digest a regulation capable of re-establishing order, police, and tranquillity throughout the province.

In pursuance thereof, the Government will establish within every three leagues, at farthest, a syndic chosen from amongst the most industrious and respectable inhabitants of the district, who shall be changed in the month of January of every year, unless he may consent to be continued for the succeeding year, and whose functions shall be subordinate to the commander of the post, or of the coast, to whom he shall render a weekly account of the occurrences in his district.

Functions of the syndics.

Every person who shall have acquired knowledge of an unlawful attempt, either by being an eye-witness thereof, or from hearsay, shall be bound to give information thereof to the syndic of his district, and to require him to take the necessary order thereon, pointing out to him the offender, the place, and those persons who may have knowledge of the same, under a penalty of six piasters, or even being punished to the extent of the law if his silence shall proceed from malice or connivance. Seditious discourses, or those tending to alarm the public mind, shall also be reported to the syndic of the district in which they may be held, as attempts against the public tranquillity, under the penalty of one hundred piasters; and the syndic who shall not give an account of the same to the commandant or to the Government, shall incur the same penalty. Information being given, the syndic shall proceed to a verbal inquiry, accompanied by two respectable inhabitants, who shall assist him as witnesses. In the present case, the syndic shall have power to oblige the two persons who may be nearest at hand, to assist him as witnesses, under the penalty of four piasters, and being considered unfriendly to good order.

As the necessity of an inquiry into the offence may be urgent, and the syndic may be absent, or his residence at too great a distance, every individual shall in this case have a right to summon his two nearest neighbors to accompany him to the place where the offence may have been committed; and, in case of refusal, they shall incur the penalty aforesaid. The offender, being convicted of the offence, shall be conducted to and accused before the syndic, who shall secure him, and give information thereof, or send him to the commandant.

Syndics are authorized to search plantations, houses, negro huts, &c., accompanied by two witnesses, when the case shall require it, and when the informer shall bind himself to find therein the evidences of the truth of his information, and not otherwise; and if the informer shall fail in so doing, he alone shall be responsible to the proprietor.

The syndics shall take cognizance, provisionally and verbally, of all crimes and disorders, committed within their districts, notwithstanding the offender shall belong to another district.

The general police, and the security of the district, the repair of bridges, roads, and mounds, the general inspection of coasters, passengers, the provisions, maintenance, subordination, and police of the negro camps, the security of horses, cattle, &c., shall be within the province of the syndics, who shall conform strictly to the articles herein contained in relation to those objects.

Whenever the Government shall think it expedient to convoke the syndics to a general meeting at the capitol, or to a private meeting at the residence of the commandant of the post, they shall be accompanied by two persons as evidences of the satisfaction of their district, upon which condition only they shall be entitled to take a part in the deliberations; but the evidences shall take no part therein, their duties being to observe that their syndic does not lose sight of the interest of the district. The syndics may not assemble the inhabitants of their district without the permission of the commandant of the post, who shall not make opposition thereto without strong motives, which he shall communicate to the Government. All meetings consisting of more than eight inhabitants, for the purpose of treating of public affairs, is strictly prohibited; and the syndic is enjoined to give information thereof to the Government, under the penalty of being considered a party thereto.

In case a syndic shall incur any one of the penalties provided by this regulation, three individuals shall join him for the purpose of convicting and denouncing him to the commandant of the post, who shall impose the penalty provided, and shall communicate the same to the Government.

A syndic who, through negligence, or from motives of humanity, shall dissemble a fault, or conceal it from the knowledge of the commandant, or shall join with him for that purpose, shall incur the penalty provided for the offender, for having abused the public confidence; and the Government reserves the care of punishing the commandant with still greater severity if he shall be a party thereto.

The commandants of posts, or of the coasts, shall deliver to the Government, the first of December in each year, a list of the inhabitants in

their opinion the most suitable to be elected syndics for the following year; observing that their respective distances from each other must not exceed three leagues, and on which account they shall mention the situation of their plantations; and observing, likewise, that there be some on both sides of the river, as also in the place of residence of the said commandant or adjacent thereto.

The first day of January, the new syndic, elected by the Government, shall enter upon the duties of their office, previously receiving, in presence of the commandant, this regulation, and the other instructions relative to their employment, from the hands of the syndic of the preceding year.

The persons of the syndics shall be respected by the public; and whosoever shall dare to insult, them, menace them, or disobey their orders, shall forfeit forty piasters for the two first-mentioned offences, and one hundred for the third; applicable one-half to the royal treasury, and the other half to defray the expenses of the prison and courts of the district.

Assaults shall be punished to the extent of the laws, when committed on those who are charged with the execution of them.

General Police.

All coasters and travellers shall exhibit their passports, and reply to the questions which may be put to them by the syndic of the district, who shall require the same, and shall make himself known, by declaring his family name.

The passport shall specify the number of horses conducted by the traveller, and all articles for sale on board the coaster, as also the number of the crew, who shall be persons known, and for whose conduct the master shall be responsible. Those who shall be found with an unusual number of horses, cattle, or quantity of merchandise, shall be arrested by the syndic of the district, and sent to the commandant of the post or of the coast, who shall give information thereof to Government.

A passenger that may be necessitated to change horses, to purchase others, or cattle, merchandise, &c., should have the same endorsed on his passport by the syndic of the district in which the said exchange or purchases may have been made.

A coaster who shall during his voyage leave any of his crew on shore, or take others on board, must have an endorsement to that effect made on his passport. Every person found without a passport shall be arrested by the syndic, examined, and delivered to the commandant of the post.

Every traveller, coaster, &c., previous to circulating any news of importance, shall make a relation thereof to the syndic of the district, who shall require his name, and shall permit him to divulge the same, or shall forbid him if the circulation thereof would be injurious to the public tranquility or the good of the State, and shall render an account thereof to Government, previously holding the said traveller or coaster responsible for the result.

Pocket pistols, poignards, large knives, sword canes, and other similar weapons, are forbidden by law, under penalty of the presidio; and the syndics shall arrest those who may wear them.

The syndics shall be acquainted with the brand or marks on the animals of their district, and shall cause those to be taken up which shall be found without the mark of the proprietor, or with another strange mark; in this last case they shall inform the commandant thereof, who shall communicate the same to the other syndics, to the end that the proprietor may be acquainted therewith.

Any person convicted of having detained, stolen, or killed any kind of tame animal which shall not belong to him, without having given information thereof to the syndic of his district, shall be sentenced to return the same, if alive, and to a fine equal to one-half the value thereof; one-third of which shall go to the use of the proprietor, another third to the royal treasury, and the remaining third to defray the expenses of the courts and prison of the district; or, if the animal be dead, he shall pay four times the value thereof, which shall be applied as aforesaid.

It is absolutely forbidden, under the same penalty, to shoot at any tame animals without permission of the syndic, who shall not grant the same without the knowledge of the commandant, and then only when the cattle are known to be strayed and ravaging the grain fields.

The turning out of cattle is forbidden from the 15th of March, to the 15th of November; if, however, the inhabitants of a district shall unanimously agree to prolong the time, the syndic may, with the knowledge of the commandant, depart from this article; in all other cases, it shall be optional with the inhabitant either to kill the tame animals found in his grain fields, in presence of two witnesses, or to be indemnified for the damages, by the award of two or three capable persons, one of whom shall be named by himself, another by the proprietor of the animal, and the third by the syndic, in case the two first shall be divided in opinion; observing that the award shall be made upon the supposed value of the grain when arrived at maturity, and that the animal shall be returned to the proprietor thereof.

Every proprietor having an exclusive right to the enjoyment of his property, none other shall fish, hunt, or go within his enclosures, without his permission, under the penalty of restitution of game, fish, &c., and of a fine of four piasters, applicable one-half to the expenses of the courts and prison of the post, and the other half to the royal treasury, to be imposed by the syndic of the place; and, in case of repetition, the same shall be doubled, trebled, &c.

The syndic shall be entitled to command the patroles of his district when the case shall require it, and with the knowledge of the commandant; no one shall refuse to serve in his turn under a penalty of six piasters, applicable one-half to the person who shall have taken his place, and the other half to the royal treasury; and whosoever shall refuse to conduct a prisoner from one plantation to another on his way to the residence of the commandant of the post, shall incur the same penalty, which shall be disposed of as aforesaid.

For the more speedy execution of justice, the syndics shall take cognizance, in the first instance, of all matters in dispute the amount of which shall not exceed ten piasters; all others shall be brought before the commandant of the post, who may not give judgment for more than fifty piasters, and shall refer those exceeding that amount to the Government, by reason that the law requires that they shall not be decided without the advice of an assessor or a lawyer.

At every post not provided with a prison the commandant shall call a meeting of the syndics, at which he shall preside, for the purpose of selecting a plan for the building; which, being adopted by a majority of the meeting, shall be published and posted up during nine days; after which they shall proceed to the erection of a prison proportionate to the population of the place, the expenses of which shall be defrayed by the inhabitants, according to their means.

The prison of the post shall always be situated near the residence of the commandant, that he may provide for the maintenance thereof, as also that of the prisoners insolvent; to which objects a part of the fines imposed on the infringers of this regulation is appropriated. The commandants shall, in the months of July and January, account to the Government for the fines they have received, and shall at the said times pay into the Royal treasury the amounts applicable thereto.

As the dissemination of false reports on the coasts is one of the most efficacious means resorted to by the disturbers of the public tranquillity to obtain proselytes, it would be proper that the syndics should subscribe for the Moniteur, from which they would obtain correct information upon the events of the day, and should communicate the same to the inhabitants of their district.

It would not be less useful, that, whenever any doubt should arise in the public mind upon the propriety of any proceeding of the Government, the syndics should give information thereof to the commandant of the post, who would communicate the same to the Government of the province, whose reply would satisfy all those possessed of integrity and zeal for the public welfare.

Bridges, Roads, and Mounds.

The keeping in repair of bridges, roads, and mounds being indispensable for the facility of transportation, for the convenience of the inhabitants and travellers, and for the preservation of the fruits of the earth, the syndics shall direct their whole attention to that object, with an impartiality and firmness proof against all reproach and worldly considerations.

Now, inasmuch as experience has demonstrated that the greater part, fearful of reproach and of making themselves enemies, have hitherto neglected an object so essential, and have confined themselves at most to communicating to the Government the negligences of certain inhabitants, every syndic who shall be convicted of having neglected to proceed against those inhabitants who shall refuse immediately to repair their bridges, roads, and mounds, in conformity to the present regulation, shall himself be condemned to make the repairs aforesaid, and shall be responsible for the accidents which may result from his negligence.

The syndics, accompanied by the commandant of the posts and their witness, shall, in the month of July, make a strict examination of all the mounds and roads in their district; shall direct the repairs which each inhabitant is bound to make, of which they, as well as the commandant, shall keep an account; and shall notify the interested that those who shall not have complied with their directions previous to their second visit in December, (in which they shall also be accompanied by the commandant and the same witnesses,) shall be obliged to pay for the labor and food of the negroes of the district who shall be employed for that purpose, by order of and under the inspection of the syndic, besides the fine of one hundred piasters hereinbefore mentioned. The syndics shall require from the inhabitants that their negroes be employed on Sundays for the purpose above mentioned, and they may not refuse in consideration that the price of their labor shall be faithfully paid to the negroes. So soon as a gap shall be perceived, the syndic of the district shall issue orders to the inhabitants of his district to furnish the number of negroes which he may think necessary, in proportion to their means, without waiting for the orders of the commandant or of the Governor. Whoever shall refuse shall be responsible for the ravages occasioned by the waters, which might have been stopped if immediate assistance had been given, and shall besides incur the before-mentioned fine of one hundred piasters for disobedience. If the negroes of the district are insufficient, the syndic shall give immediate information thereof to the Governor or the commandant, who shall issue orders to the inhabitants who might be incommoded by the waters to furnish negroes, in proportion to their means.

The labor and food of the negroes employed in stopping a gap shall be paid by the proprietor of the land, at the rate of four escalins* per day, and one escalin for food.

Holes between the mounds and the river shall be carefully stopped at low water, and filled up by a talus. The drains shall be as far removed as the nature of the ground will permit from the foot of the mound, which they would totally weaken, and would expose to be undermined by the quantity of crawfish which frequent them.

All horses, mules, cows, steers, and hogs, found on the mounds without a conductor, shall be taken up by the proprietor of the mound, and delivered to the syndic, who shall not return the same to the owner, without exacting a fine equal to one half the value thereof, applicable one-third to the proprietor of the mound, another third to the Royal treasury, and the remainder to the expenses of the courts and prison of the district. The appraisement shall be made by two or three capable persons, one of whom shall be appointed by the owner of the animal, another by the proprietor of

* Eleven escalins make one dollar.

the mound, and, if those two are divided in opinion, a third shall be appointed by the syndic.

Police of Slaves.

The disastrous events proceeding from the present war should, with redoubled force, impress upon the minds of the inhabitants the necessity of attention to their slaves, and of keeping them in that state of content and subordination which would alienate them from the wish of acquiring a freedom which has cost so much blood to those of St. Domingo. To prevent, on the one hand, that excessive indulgence with which the slaves of some plantations are treated, introducing insubordination and insolence, and thereby exhibiting a bad example to the others; and, on the other, to provide against the hardships and inhumanity of some masters of little reflection, who, infringing the first law, that of nature, expose their slaves to the influence of despair; the commandants and syndics are required to direct their whole attention to the internal police of the plantations, and to cause the following directions to be strictly observed, under the penalty of personal responsibility to the Government, and of incurring the reproaches of both their own consciences and of the public, if, by an ill-placed complaisance or neglect, their country should hereafter be exposed to the disasters which have ruined the French colonies:

Every slave shall punctually receive the barrel of corn allowed by the usage of the colony, and which quantity is voluntarily augmented by the greater part of their masters.

The syndics shall take measures to induce the planters of their district to allow their negroes a portion of their waste lands, by which they will not only add to their comforts, but increase the productions of the province, and that time will be usefully employed which would otherwise be devoted to libertinism.

Every slave shall be allowed half an hour for breakfast, and two hours for dinner; their labor shall commence at break of day, and cease at the approach of night. Sundays shall be the privilege of the slaves, but their masters may require their labor at harvest, &c., on paying them four escalins per diem.

The slaves who have not a portion of waste lands shall receive punctually from their master a shirt and trowsers of linen for the Summer, and a great-coat and trowsers of wool for the Winter.

No person shall cause to be given at once, more than thirty lashes to his slave, under the penalty of fifty piasters; but the same may be repeated, if necessary, after an interval of one day.

It is permitted to shoot at an armed runaway negro who shall refuse to stop when required, or who cannot otherwise be taken, even if he be not armed; at a negro who shall dare to defend himself against his master or overseer; and, lastly, at those who shall secretly enter a plantation with intent to steal.

Whosever shall kill a slave, except in one of the cases before mentioned, shall be punished to the extent of the law; and if he shall only wound him, he shall be punished according to the circumstances of the case, and shall, besides, allow the slave to seek another master; no one being permitted to dispose of the life of a man at his pleasure: as, for example, when a slave, threatened with thirty lashes, shall fly before his master, he is not yet guilty of any crime, and very often has no other intention than to gain time to soften his master, or to implore the pity of some intercessor. With what shadow of justice could the law permit a master, transported with passion, to kill or wound this unfortunate, solely for endeavoring to escape a rigorous chastisement? Intrigues, plots of escape, &c., arising in general from the negroes of one plantation frequenting those of another, the inhabitants are forbidden, under the penalty of ten piasters, to allow any concourse or resort of negroes to their plantations for the purpose of dancing, &c.; and the amusements of their own slaves, which shall be allowed only on Sundays, shall terminate always before night.

A slave shall not pass the bounds of his master's land, without his permission in writing, under the penalty of twenty lashes.

To prevent those disputes and animosities occasioned by the slaves of one planter being chastised by another, no person shall be allowed to punish a negro not belonging to him, without the consent of his master, or the syndic of the district, under the penalty of thirty piasters.

Every slave arrested without a permission or passport shall be sent to the syndic, who shall order that he be punished and returned to his master. If the residence of the syndic be too remote, the person who may have arrested the slave shall give information thereof, in writing, to the syndic, requesting permission to punish him, and shall conform to the tenor of his reply; after which the slave shall be returned to his master.

A slave who shall ride the horse of his master, or any other person, without permission, shall be punished with thirty lashes during two days; that is to say, with an interval of one day.

Slaves are not permitted to be proprietors of horses, under the penalty of the confiscation thereof, one half to the use of the treasury, and the other half to defray the expenses of the courts and prison; and the master who shall tolerate the same shall incur a fine of four piasters for each horse.

Fire-arms are prohibited to slaves, as also powder, ball, and lead, under the penalty of thirty lashes during three days, and confiscation thereof, one half to the Royal treasury, and the other half to defray the expenses of the courts and prison.

An inhabitant may not have more than two hunters; and he shall oblige them to deliver up their arms and ammunition on their return from the chase, under the penalty of fifty piasters if his hunter shall be arrested without a passport, or if his arms and ammunition be found in the camp.

Slaves may not sell anything without the permission of their master, not even the productions of the waste lands allowed them, under pain of twenty-five lashes, and a fine of double the value of the thing sold; and the white person who shall have purchased the same shall incur the forfeiture thereof, and shall be brought before the syndic.

No white person, negro, or free mulatto, shall be allowed entrance into a camp without the permission of the master, nor to sell anything to the slaves on the borders of the river, under pain of being arrested by the proprietor of the plantation, and transported with all his merchandise to the residence of the syndic, who shall examine his passport and merchandise, and shall sentence him to a fine of fifteen piasters; and if he have not money sufficient to discharge the same, he shall be confined fifteen days in the prison of the post, or be at the disposal of the commandant.

Rum, fire-arms, and ammunition, shall be seized when in possession of coasters, by the syndic, and delivered to the commandant, who shall sell the same at public auction for the use of the Royal treasury, and to defray the expenses of the courts and the prison.

The syndic shall, from time to time, visit the negro camps in his district, both by night and by day, and shall punish with thirty lashes the slaves belonging to other plantations, who shall be found therein without the permission of both masters. White persons, free negroes, and mulattoes, shall be sent to the commandant of the post, who shall punish them with fifteen days' imprisonment.

When an inhabitant shall be informed that there are runaway negroes in a certain place, he shall give notice thereof to the syndic, who shall have authority to assemble as many as fifteen armed inhabitants, without the permission of the commandant, for the purpose of arresting them; but he shall immediately after give notice thereof to the commandant. Patroles, or other military proceedings, may not be had without the permission of the syndic, under the penalty of twenty piasters.

A slave may not complain to the Government, without having previously made his complaint to the syndic of the district and to the commandant, under pain of thirty lashes upon the public square; but the said persons shall be obliged to receive his complaint, and to grant him strict justice.

Whosoever shall shoot at a slave shall be obliged to give notice thereof to the syndic within four hours, under the penalty of fifty piasters, applicable one half to the Royal treasury, and the other half to defray the expenses of the prison and of the post; the syndic shall advise the commandant of the circumstances within twenty-four hours, and the last mentioned shall give information thereof to the Government within a like term, under the penalty of fifty piasters, to be incurred by the syndic or commandant, if either shall fail therein.

As there are plantations the masters of which are mostly absent, the syndic shall attend thereto, and shall charge some inhabitant with the care of the slaves, and to make the necessary visits both by night and by day; such cases excepted, no person shall have authority to visit plantations, granaries, negro camps, dwelling-houses, or huts, of whites, negroes, mulattoes, or mestives, without permission in writing from the syndic of the district; by reason that all property is sacred, and every house an asylum, which the authority of the law can only enter for the public advantage.

Free people of color, enjoying by law the same advantages with the other members of the nation with which they are incorporated, may not be molested in the possession of their property, injured, or ill-treated, under the penalties provided by law for the safety and security of the property of white persons.

The syndics and commandants of posts shall be watchful of their conduct, and shall require that deference and attention which is due from them to the members of that society whom they formerly served, and which has admitted them to its bosom. The syndics shall not tolerate any want of attention to the whites, but shall deliver them over to the commandant of the post, who shall punish them with imprisonment, but never by the lash, or by any other corporeal punishment.

The syndics shall also observe that all free people of color labor either in the field, or at some trade within their district, and shall send the indolent and vagabonds to the commandant of the post, who shall fix them at the capital, where they shall be employed upon the King's buildings, and other public works.

In case a syndic shall be sick, or obliged to be absent from the district, he shall commit the duties of his office to a respectable inhabitant, and shall give notice thereof to the commandant of the post.

All fines herein specified shall be equally divided, and applied to the Royal treasury, and to defray the expenses of the courts and prison of the post. Those persons who may be insolvent shall remain in prison as many days as there shall be piasters composing their debt.

BARON DE CARONDELET.

NEW ORLEANS, *June* 1, 1795.

Census of the Territory of Louisiana.

No. 2.—*Census of Louisiana in the year* 1785.

Districts.	Whites.	Free people of color.	Slaves.	Total.
Balize to the city,	387	67	1,664	2,118
New Orleans	2,826	563	1,631	5,028
St. Bernardo	584	2	–	586
Bayou St. Jean	91	14	573	678
Costa de Chapitoulas	1,128	263	5,645	7,036
First German Coast	561	69	1,273	1,903
Second German Coast	714	5	581	1,300
Catahanose	912	18	402	1,332
Fourche	333	–	273	606
Valenzuela	306	–	46	352
Iberville	451	–	222	673
Galveztown	237	–	5	242
Baton Rouge and Manchac	68	2	100	170
Pointe Coupée	482	4	1,035	1,521
Attakapas and Opelousas	1,204	22	1,182	2,408
Ouachita	198	–	9	207
Avoyelles	149	138	–	287
Rapides	63	–	25	88
Natchitoches	404	8	344	756
Arkansas	148	31	17	196
Illinois	1,139	18	434	1,591
Natchez	1,121	–	438	1,559
Mobile and Tombigbee	325	51	461	837
Pensacola	384	28	184	596
	14,215	1,303	16,544	32,062

No. 3.—*Island of New Orleans and adjacent settlements.*

	Whites.	Blacks.	Militia.
1. The island of New Orleans, with the opposite margin and settlements adjacent, computed at	25,000	25,000	5,000
2. The west margin, from Manchac, including Point Coupée, and extending to the Red river	4,000	5,000	800
3. Attakapas, along the seacoast, between the delta of the Mississippi and the western boundary	1,600	2,000	350
4. Opelousas, on the north of Attakapas	3,750	3,500	750
5. Red river, including bayou Bœuf, Avoyelles, Rapides, and Natchitoches, (the two first bounding on Opelousas)	5,000	3,000	1,000
6. Ouachita river, (falling into the Red river from the north)	1,200	100	300
7. Concord, a settlement on the margin of the river, opposite to Natchez	200	70	40
8. Arkansas river	600	–	150
9. New Madrid, and vicinity	1,750	50	350
10. Illinois and Missouri	4,000	570	1,000
Total	47,150	39,220	9,740
Note.—The settlements of Baton Rouge and New Feliciana, on the east side of the river, lying between the line of demarcation, lat. 31°, and the Iberville, including some establishments on the river Amite, &c, contain	3,000	600	600
	50,150	39,820	10,340

Census of the Territory of Louisiana.

No. 4.—*Census of the districts or posts of Louisiana and West Florida.*

Names and situation of the posts or districts.	Whites.	Free people of color.	Slaves.	Total.
Balize to New Orleans	–	–	–	2,388
San Bernardo, or Terre au Bœufs, on a creek running from the English Turn, east, to the sea and Lake Borgne	–	–	–	661
City of New Orleans and suburbs, as per detail No. 1	3,948	1,335	2,773	8,056
Bayou St. Jean and Chantilly, between the city and Lake Pontchartrain	–	–	–	489
Coast of Chapitoulas, or along the banks of the Mississippi, six leagues upwards	–	–	–	1,444
First German Coast, from six to ten leagues upwards, on both banks	688	113	1,620	2,421
Second German Coast, from ten leagues, and ending at sixteen do.	883	21	1,046	1,950
Catahanose, or First Acadian Coast, commencing at sixteen leagues above the city, and ending at twenty-three, on both banks	1,382	–	818	2,200
Fourche, or second Acadian Coast, from twenty-three to thirty leagues above town	677	–	464	1,141
Valenzuela, or settlements on the Basin de la Fourche, running from the west side of the Mississippi to the sea, and called in old maps the Fourche, or Rivière des Chilimachas	1,797	–	267	2,064
Iberville parish, commencing at about thirty leagues from Orleans, and ending at the river of the same name	658	13	386	1,057
Galveztown, situated on the river Iberville, between the Mississippi and Lake Maurepas, opposite the mouth of the Amite	213	8	26	247
Government of Baton Rouge, including all the settlements between the Iberville and the line of demarcation	958	16	539	1,513
Pointe Coupée and False river behind it, fifty leagues from Orleans, on the west side of the Mississippi	547	–	1,603	2,150
Attakapas, on the rivers Teche and Vermilion, &c. to the west of the Mississippi, and near the sea	859	58	530	1,447
Opelousas, adjoining to, and to the northeast of the foregoing	1,646	–	808	2,454
Ouachita, on the river of the same name, or upper part of the Black river, which empties into the river Rouge	–	–	–	361
Avoyelles, on the Red river, about —— leagues from the Mississippi	336	2	94	432
Rapides on the Red river, about —— leagues higher up	584	–	169	753
Natchitoches on the Red river, about seventy-five leagues from the Mississippi	785	–	846	1,631
Concord, an infant settlement on the banks of the Mississippi, opposite Natchez	Unk'n.			
Arkansas, on the river of the same name, about twelve leagues from its mouth	335	5	48	388
Spanish Illinois, or Upper Louisiana, from La Petite Prairie, near New Madrid, to the Missouri, inclusive, as per detail No. 2	4,948	197	883	6,028
Mobile, and country between it and Orleans, and borders of Lake Pontchartrain	–	–	–	800
Pensacola, exclusive of the garrison, not exceeding	–	–	–	300
	21,244	1,768	12,920	42,375

Memorandum.—This census is taken from the latest returns, but is manifestly incorrect—the population being underrated. From some places there have been no returns for the last seven years; and, from those made this year, it is easy to see that certain causes induced the inhabitants to give in short returns of their slaves and of their own numbers. The Spanish Government is fully persuaded that the population at present considerably exceeds fifty thousand souls.

Census of the Territory of Louisiana.

No. 5.—*Statement of the population of the settlements of Upper Louisiana, with the births, marriages, deaths, stock, and productions of the year* 1799.

Names of the settlements.	Whites.	Free mulattoes.	Free negroes.	Slaves.	Total.	Marriages.	Births.	Deaths.	PRODUCTIONS. Bushels of wheat.	Bushels of Indian corn.	Pounds of tobacco.	Bushels of salt.	Pounds of lead.	Horned cattle.	Horses.
St. Louis - -	601	50	6	268	925 } 184 }	9	52	20	4,360 } 3,300 }	10,300	1,650	-	-	1,140	215
Carondelet - -	181	-	-	3						2,760	4,500	-	-	198	45
St. Charles - -	840	-	-	55	895	15	41	11	6,640 } 6,800 }	12,170	4,053	-	-	1,102	241
St. Fernando -	259	-	-	17	276 }	5	34	7		2,350	750	-	-	230	57
Marais des Liards -	337	-	-	42	379 } 115 }	-	-	-	1,019 } 200 }	1,604	6,800	-	-	629	153
Maranee - -	115	-	-	-		-	-	-		6,370	3,150	-	-	229	125
St. Andrews -	361	5	27	-	393	-	-	-	730	16,950	5,465	-	-	574	122
St. Genevieve -	636	1	2	310	949 } 560 }	5	64	14	16,400 } 1,680 }	21,450	1,999	965	150,000	1,253	268
New Bourbon -	445	-	1	114						14,300	300	-	20,000	295	83
Cape Girardeau -	416	105	-	-	521	-	-	-	510	16,200	-	-	-	707	200
New Madrid -	711	-	-	71	782	-	-	-	47,765	-	-	-	-	1,188	243
Little Meadow -	46	-	-	3	49	-	-	-	-	2,675	-	-	-	35	
	4,748	161	36	883	6,028	34	191	52	88,349	84,534	28,667	965	170,000	7,980	1,763

MEMORANDUM.

St. Louis is situated on the Mississippi, five leagues below the mouth of the Missouri.
Carondelet is two leagues below St. Louis, on the Mississippi.
St. Charles is on the Missouri, about seven leagues from its mouth, and about six from St. Louis by land.
St. Fernando, or Harissaret, is three or four leagues from St. Louis, in a valley, on one of the roads from St. Louis to St. Charles.
Marais des Liards is four leagues from St. Louis, and about a league to the west of the foregoing.
Maranee is on the river of the same name.
St. Andrews is situated about five leagues above St. Charles, on the Missouri.
St. Genevieve is opposite Kaskaskias, and on the banks of the Mississippi.
New Bourbon is about a league below St. Genevieve.
New Madrid is on the Mississippi, fifteen leagues below the mouth of the Ohio.
Little Meadow is seven leagues below New Madrid, on the banks of the river.

Exports for New Orleans.	MEMORANDUM.
1,754 packs of shaved skins, of 100 pounds each, valued at - $70,160	All the fine furs are shipped to Canada, as well as a great quantity of deer and bear skins, where they bring a better price than in New Orleans; and this being a contraband trade, no notice is taken of it in the above account of exports, which is the official one.
8 p'ke bear skins 256	
18 do buffalo robes 540	
36,070 pounds lead - 2,160	
2,000 pounds flour - 60	
73,176	

Writs of Error to the Supreme Court.

No. 6.—*Census of the city of New Orleans, exclusive of seamen and the garrison.*

Date.	Quarters.	Whites.	Free people of color.	Slaves.	Total.
1803.	First quarter - - - - - - -	745	203	546	1,494
	Second quarter - - - - - - -	891	–	951	1,842
	Third quarter - - - - - - -	722	787	579	2,088
	Fourth quarter - - - - - - -	440	219	225	884
	Suburb of St. Charles - - - - - -	70	–	170	240
	Suburb of St. Louis - - - - - -	380	126	302	808
		3,248	1,335	2,773	7,356
	Whole number of persons not domiciliated - -	700			700
		3,948	1,335	2,773	8,056

N. B. This census appears to be incorrect, as, by some unaccountable mistake, the number of free people of color in the second quarter is not included; and, on the whole, the population is thought to be underrated.

APPEALS TO THE SUPREME COURT.

[Communicated to the House, Dec. 29, 1803.]

Mr. BOYLE, from the committee to whom was referred a resolution directing an inquiry into the expediency of vesting the powers usually exercised by a court of equity in the judges of the United States, within the Indiana and other Territories, and also into the expediency of allowing writs of error and appeals from the judgments and decrees of said judges to the Supreme Court of the United States, made the following report:

The courts without equitable jurisdiction will inevitably, in some instances, become the instruments of iniquity, instead of the administrators of justice. Fraud, accident, and hardship, ingredients in many of those transactions of human life, which constitute the basis of litigation; entrenched within legal forms and veiled with specious, but deceitful appearances, are many times not within the reach of a tribunal, vested with common law powers only. To develop, and relieve against them, an equitable jurisdiction is necessary. It may be proper also to observe, that persons may avail themselves of the powers of a court of equity to obtain more complete relief, by coercing the specific execution of contracts fairly made, and rescinding those that are bottomed upon deceit, than a court of law is competent to grant; add to that, *trusts*, which frequently become sources of forensic controversy, are matters properly cognizable in courts of equitable jurisdiction.

The committee, therefore, have agreed respectfully to submit to the consideration of the House the following resolution:

Resolved, That it is expedient to vest the powers usually exercised by a court of equity in the judges of the United States in the Indiana and other Territories.

As to the second matter referred to them for their inquiry, the committee beg leave to observe, that the attainment of a uniformity of decision in any section of country subject to the same laws and usages, is one of the principal objects of the institution of a Supreme Court, with appellate jurisdiction. Where there are many courts dispersed over a country, though subject to the same laws and usages, yet, without one common tribunal, which shall have power to revise and correct the judgments and decrees of the inferior courts, their decisions will be various and contradictory. But to attain this uniformity of decision in each Territorial Government, it is not necessary to allow writs of error or appeals to the Supreme Court of the United States, because each Territory has a supreme court (relatively speaking) within itself, which is composed of three judges and has, or may have, appellate jurisdiction over all others erected in the Territory, whereby it may preserve that uniform rule of decision so desirable.

Correctness, or propriety of decision, is the only other object the attainment of which can be aided by allowing writs of error and appeals from the Territorial courts to the Supreme Court of the United States. The committee are not informed, nor do they believe, that there is any unusual want of confidence in the courts of the Territories. They are aware that hardship and injustice will result to individuals in some instances from the erroneous decisions of those courts, but it has not occurred to them that an appeal will insure infallible relief. Infallibility is not the attribute of any earthly tribunal. So vast is the distance from the Territorial courts to the Supreme Court of the United States, that the mischief resulting from the necessary delay, expense, and inconvenience of prosecuting or defending writs of error and appeals cannot, in the opinion of the commit-

tee, be compensated by any advantage to be derived from the revision of the courts of the Territories by the Supreme Court of the United States.

It is obvious to those who have had an opportunity of observing the spirit which often prevails with litigants, that the right of appeal would sometimes be made use of as an instrument of vexation and oppression, where the distance is so great from the inferior to the superior court.

The committee, therefore, upon the second matter referred to them, agree to submit the following resolution:

Resolved, That it is inexpedient to allow writs of error and appeals from the judgments and decrees of the courts of the Indiana and other Territories to the Supreme Court of the United States.

DIRECT TAX.

[Communicated, to the House, Dec. 22, 1803.]

Documents accompanying "A bill further to amend the act, entitled 'An act to lay and collect a direct tax within the United States."

NOVEMBER 12, 1803.

SIR: I am instructed by the Committee of Ways and Means to submit the enclosed petition to you, and to request such observations upon it as you may deem material. I have the honor to be, &c. JOHN RANDOLPH.

Hon. ALBERT GALLATIN,
Secretary of the Treasury.

TREASURY DEPARTMENT, *Dec.* 5, 1803.

SIR: I have the honor to return the petition of a number of owners of unoccupied lands in the State of New York, together with remarks thereon, in which the propriety of some further modifications of the laws laying a direct tax is submitted to the Committee. I have the honor to be, &c. ALBERT GALLATIN.

JOHN RANDOLPH, Esq.,
Chairman Committee Ways and Means.

Remarks on the petition of sundry inhabitants of New York, complaining of the operation of the law for levying a direct tax.

The inconveniences complained of by the petitioners apply to unoccupied lands, and relate either to the assessment or to the payment of the tax.

It is urged that the vague and uncertained descriptions of the lands assessed, with the omission of the names of the owners in many instances, render it difficult, and sometimes impracticable, to identify the estate to which the tax was attached.

It will be recollected, on that head, that it was enacted by the ninth section of the act "to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," that all persons in the United States owning or possessing any dwelling-houses, lands, or slaves, should deliver to the assessor within whose assessment district they resided, separate written lists specifying such houses, lands, and slaves, owned by them respectively in each and every assessment district of the State, or of any other State, and designating the State, county, parish, township or town where the property laid, the quantity of land, name of the owner, &c. And it was further provided, by the 12th section of the same act, that all lists of property, taken with reference to any other assessment district than that in which the owner or possessor resided, should be immediately transmitted to the commissioner superintending the district, and from him to the principal assessor of the district within which such property was situated.

From thence it appears that, except in the case of sickness, or absence from his assessment district at the time fixed for delivering the lists, the uncertainty of the descriptions of lands is principally chargeable to the neglect of the owner himself, whose duty it was to prepare and deliver correct and descriptive lists of his property either lying in his own or any other assessment district. For it was only in the case when no such list had, in the manner provided by the act, been transmitted to the principal assessor of a district, that it became the duty of the assessor of such district to prepare themselves, in conformity with the section of the act, lists of houses, lands, and slaves, situated in the district, and not owned or possessed by any person residing within the same.

In that case, the assessors must have prepared the lists and described the lands in the best manner they could from the information they were able to obtain. In many instances, they may have mistaken the names of the owners, and when the owners were altogether unknown they have designated the land only by the number of the lot and by the name of the township or original patent. And it cannot be doubted that, either from want of information or from other causes, many vague, incorrect, and inapplicable descriptions of land are to be found in the lists of unoccupied lands, which have been or may hereafter be sold for non-payment of the tax, as well in the State of New York as in all other States which contained large tracts of such lands.

It is, however, evident that, it is impracticable, at present, and especially in cases where the land has already been sold, to rectify the mistakes or incorrect descriptions of the assessment: and, however injurious the result may be to the parties, it does not seem, for the abovementioned reasons, that they have, in that respect, a right to expect redress from Government. It must also be observed, that when the description of the land, without any mention of the owner, did not apply to the tract intended to be taxed; either (as has happened in many instances) the land could not be sold, and the tax is lost to the United States; or, the sale could vest, in the purchaser, but a precarious title to the real tract; and in cases where lands were assessed in the name of other persons than the owners, it has been expressly provided by the 5th section of the act "to amend an act entitled "An act to lay

and collect a direct tax within the United States," that copies of the lists of property assessed, statements of the amount of taxes due thereon, and notifications to pay the same should, before the collectors could proceed to sell, be published for sixty days in four gazettes of the State, if there were so many. From which last provision it appears that when such publication has been omitted, the sale was illegal, and that when it has taken place, the original proprietors may have recourse to it, in order to ascertain the amount of their taxes, even when, as is suggested, the collectors refuse to communicate lists of the lands sold by them.

The petitioners, in the next place, complain that they cannot avail themselves, by a timely repayment of the tax, costs, and interest, of the right reserved to them by law of redeeming, within two years after the sale, those lands which may have been sold for non-payment of the tax; because the collectors to whom that payment was directed to be made, allege in some instances that their office no longer exists, and sometimes refuse to exhibit their lists of lands sold; and because the supervisor has no means whereby to compel such collectors to transmit transcripts of those lists, in conformity with their instructions.

The law appears to be defective as well in that respect as in that no mode has been provided for conveying the lands sold and remaining unredeemed; and although the mode of redress pointed out by the petitioners may not afford complete relief in all cases, nor perhaps be adapted to its full extent consistent with the rights already vested in bona fide purchasers, its general principles do not seem objectionable, and will enable the original proprietors in many instances to redeem their lands.

The following provisions are suggested to effect that object.

1. That the supervisor or officer to whose office the duties of supervisor have been annexed, and, in those States where no such officer may exist, the marshal, should alone be authorized to make deeds for lands sold for non-payment of taxes and remaining unredeemed.

2. That the collectors should within —— months after passing the proposed act, when the land has been previously sold, and within —— months after the completion of sales made subsequent to the date of such act, transmit to the supervisor, officer acting as supervisor, or marshal, as the case may be, correct transcripts of the lists of lands sold for non-payment of taxes; specifying the land as described by the assessment, the quantity of land sold, the amount of tax, charges and costs for which it was sold, and the name of the purchaser; and designating also such tracts of said lands which may have been redeemed, in conformity with the law, by the original proprietors, or for their benefit; and that they should also, within the same time, pay over to the said officer the amount of moneys paid by or for such proprietors, and which shall not by the collectors have been already repaid to the purchasers; under penalty of —— dollars in case of failure on their part either of transmitting such transcripts or of paying over such moneys; and that a reasonable allowance, to be repaid in case of redemption by the original proprietor, should be made to them for transcribing and transmitting those lists.

3. That no deeds should be executed to the purchasers of lands thus sold, unless such lands are stated in the transcripts received from the collectors, or unless the purchaser shall have delivered within a limited time to the officer authorized to make deeds, a receipt from the collector for the purchase money, dated within not more than —— subsequent to the sale, and specifying distinctly the original description of the land assessed and the quantity sold.

4. That deeds should be executed to the purchaser by the officer authorized to do the same, provided that the preceding provision shall have been complied with, unless the original proprietor, or some person in his name and for his benefit, shall within —— after passing the act (or after the date of the sale, or after the receipt either of the transcript, from the collectors, or of the collector's receipt from the purchaser) have either repaid to the officer the amount of the tax, charges, costs and interest, as directed by law, or produced to him a receipt from the collector for such repayment, dated within not more than —— subsequent to the passing of the proposed act: in which case the purchaser shall be entitled to receive the said amount from the officer or collector accountable for the same.

The three first provisions do not appear to be liable to any well grounded objection; but, in order to fix the details of the last, it is necessary previously to decide the question whether under the terms of the existing laws, a right to the land absolutely vests in the purchaser at the expiration of two years after the sale, so as to preclude Congress from extending the time of redemption beyond that term. The modifications of which the provision, fixing the time when deeds for lands unredeemed may be made, is susceptible, must necessarily depend on the opinion which shall be formed by the committee on that subject.

Respectfully submitted.

ALBERT GALLATIN.

PUBLIC LANDS.

[Communicated to the House, January 23, 1804.]

Mr. NICHOLSON made the following report:

The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, and to whom were likewise referred several petitions from sundry persons residing in the State of Ohio, on the same subject; submit an additional report, in part, and recommend to the House the adoption of the following resolutions:

1. *Resolved*, That from and after the —— day of —— next, the public lands of the United States lying north of the river Ohio, shall be sold on payment of one-twentieth part of the purchase-money at the time of

making the purchase, and the remainder within sixty days thereafter, the first payment to be forfeited, and the sale to be void, unless the second payment is made within the time above limited.

2. *Resolved*, That from and after the said —— day of —— next, those townships which have heretofore been sold in half sections, may be purchased, at the option of the purchaser, either in half or quarter sections; in which last case the half sections shall be divided, on application and at the expense of the purchaser, into two equal parts, by a line running due east and west.

3. *Resolved*, That from and after the said —— day of —— next, those townships which have heretofore been sold in entire sections, may be purchased either in entire or in half sections, at the option of the purchaser; in which last case the section shall be divided into two equal parts, on the application and at the expense of the purchaser, by a line running due north and south.

4. *Resolved*, That the sections heretofore reserved in the Steubenville district, and in the tract lying between the two Miamies, south of the twelfth range of townships, shall, from and after the —— day of —— next, be offered for sale on the same terms, and in the same quantities as the other lands within the same townships respectively.

5. *Resolved*, That the public lands north of the river Ohio, and above the mouth of Kentucky river, including the reserved sections mentioned in the preceding resolution, shall be offered for sale in half sections and in quarter sections, before the said —— day of —— next, at the respective land offices, to the highest bidder, provided that no half section shall be sold for less than —— per acre, and no quarter section for less than —— per acre, to be paid within forty days after the day of sale.

6. *Resolved*, That the said lands may, after the said —— day of —— next, be purchased at the respective land offices at the rate of —— per acre, for each entire or half section, and at the rate of —— per acre for each quarter section.

7. *Resolved*, That no interest shall be charged to persons who have purchased, or who, before the said —— day of —— next, shall purchase any of the said lands, in pursuance of the act of the 10th day of May, 1800, and shall not have alienated the same; provided that they have discharged, and shall hereafter discharge, the instalments due on the said lands, on or before the days on which the same have or may become due; but the interest shall be demandable in conformity with the provisions of the said act, from the date of the purchase, on each instalment which shall not have been paid on the day on which the same became or shall become due.

8. *Resolved*, That certificates receivable in payment for lands, shall be granted to persons entitled to the benefit of the last preceding resolution, and who shall have completed their payments before the passing of this act, for a sum equivalent to the interest which has been charged them, and from the payment of which it is intended they should be exonerated.

9. *Resolved*, That the authorities vested in, and the duties enjoined on, the surveyor general, shall extend to all the public lands to which the Indian title has been extinguished, north of the river Ohio, and east of the river Mississippi.

10. *Resolved*, That whenever any of the public lands shall have been surveyed, in conformity with the existing laws, they shall be divided by the Secretary of the Treasury into convenient districts; and a deputy surveyor shall, with the approbation of the said Secretary, be appointed for each district by the surveyor general, whose duty it shall be to run and mark such lines as may be necessary for dividing and classing the lands sold by the United States; for which services they shall receive —— dollars for every mile thus surveyed and marked, from the purchaser of such lands.

11. *Resolved*, That from and after the —— day of —— next, each of the registers and receivers of the land offices heretofore established by law, shall, in addition to the commission heretofore allowed, receive one-half per cent. on all the moneys paid for public lands, and an annual salary of five hundred dollars, the register and receiver of the land office at Marietta excepted; the annual salary of each of whom shall be only two hundred and fifty dollars.

12. *Resolved*, That from and after the —— day of —— next, the fees payable by virtue of the act of the 10th of May, 1800, for surveying expenses, patents, entry of lands, and certificates granted by the register, shall no longer be demandable from and paid by the purchasers.

13. *Resolved*, That the two tracts of land lately purchased from the Indians, on the Wabash, and between the rivers Mississippi and Ohio, shall be surveyed and offered for sale, in the same manner, and on the same terms, as the public lands north of the Ohio, and above the mouth of the river Kentucky, and in conformity with the preceding resolutions.

Letter from the chairman of the committee appointed to inquire into the expediency of amending the several acts providing for the sale of the public lands of the United States, to the Secretary of the Treasury.

DECEMBER 1, 1803.

SIR: The committee appointed to inquire into the expediency of amending the several laws providing for the sale of the public lands of the United States, discovering that a variety of objects embraced by the several petitions referred to them, are connected with, and may materially affect, the revenue, they have directed me to submit to you the following propositions, and to request such information as the nature of the subject may require.

Will the sales of the lands be retarded or accelerated, and how will the revenue be affected?

1. By selling the lands in smaller tracts?
2. By charging no interest on the amount of sales, until after the purchaser has made default in payment?
3. By selling for cash instead of credit now authorized by law?
4. By reducing the price of the public lands?
5. By making grants of small tracts to actual settlers and improvers?

As, from the nature of your official duties, your attention has necessarily been frequently drawn to the several laws providing for the sale of the public lands, the committee will thank you to point out any defects which may have occurred in carrying them into effect; and to suggest such amendments as may appear to you proper to remedy existing inconveniences.

I have the honor to be, &c.

Accompanying a report of the committee to whom were referred, on the 22d of November last and 4th instant, the petitions of sundry residents and purchasers of land in the State of Ohio:

TREASURY DEPARTMENT, *Jan.* 2. 1804.

SIR: In conformity with the request contained in your letter of the first ultimo, I have the honor to communicate such observations respecting the proposed alterations in the laws providing for the sale of public lands, as have been suggested by their operation.

Under the present system, the public lands north of the river Ohio and east of the river Muskingum, are sold only in sections of one mile square, and containing six hundred and forty acres each. The other lands north of the Ohio, and above the mouth of the Kentucky river, are sold, one-half in sections, and the other half in half sections, containing three hundred and twenty acres each. No provision has as yet been made, by law, for the sale of the reserved sections which are interspersed throughout those lands, nor for that of the tracts lying below the mouth of Kentucky river, and lately purchased from the Indians; one of which is situated on the Wabash river, around St. Vincennes, and the other between the Mississippi and Ohio river, above the confluence of these two rivers.

The price at which all the lands offered for sale may be purchased, is two dollars per acre, payable in specie or in six per cent. stock at par, and in four equal instalments, the first of which must be paid at the time, and three others within two, three, and four years after the time of making the purchase. In every instance, except in the case of persons who had made contracts with Judge Symmes, for lands lying between the two Miamies, interest at the rate of six per cent. a year is charged on the three last instalments, from the date of the purchase; and in every case a discount, at the rate of eight per cent. a year, is allowed for prompt payment.

The cash price of the lands is, therefore, only one dollar and eighty-four cents per acre, except for lands lying between the two Miamies, for which contracts had been made with Judge Symmes, which may be paid for at the rate of one dollar and sixty-four cents per acre. It follows from thence, that if all the lands were sold on the same terms as the last-mentioned, that is to say, without charging interest until after the instalments had become due, it would operate a reduction on their cash price of twenty cents per acre.

The reasons which probably influenced the Legislature in fixing a price so much beyond what had been the usual terms on which vacant lands had theretofore been granted in the several States, were a wish to prevent monopolies and large speculations, and at the same time to secure a permanent revenue to the Union. The first object has been fully obtained: and, although the proceeds of the sales have not been commensurate with the vast increase of population, more than nine hundred thousand acres have been sold in three years; on which near eight hundred thousand dollars have been received, and about eleven hundred thousand remain due by the purchasers.

It must, however, be observed, that the price of public securities, at the time of passing these laws would have reduced the real cash price of lands at about a dollar and an half per acre, and that the sales have been effected by the competition of lands held by individuals in the Connecticut reserve, in the military tracts, and in the Kentucky, and which might generally be purchased for a less price than that set on the public lands.

A considerable reduction of the price might be considered as a waste of the public property, and as promoting migration beyond its natural and necessary progress. It would certainly be injurious to private landholders, and by throwing the lands into the hands of a few individuals, prevent that gradual and equal distribution of property, which is the result of the present system. To reduce it only to what may be considered as the market price which actual settlers give for small tracts in similar situations, would only satisfy the demand for land created by the existing population, and without promoting migrations or speculations on a large scale, would increase the receipts in the Treasury: provided that reduction was connected with another measure which is considered as of first importance for the security of that branch of the revenue.

It has been observed that about eleven hundred thousand dollars are due to the United States on account of preceding sales. Great difficulties may attend the recovery of that debt, which is due by near two thousand individuals, and its daily increase may ultimately create an interest hostile to the general welfare of the Union. It appears extremely desirable in every point of view, that lands should hereafter be sold without allowing any other credit than that of forty days now given for the payment of the first instalment; and, as that provision might be considered injurious to that part of the community who are not able to make large payments, it would seem proper to connect it with a moderate reduction in price, and with a permission to purchase smaller tracts than is now allowed by law.

Supposing that the lands which are now sold in entire sections, should be offered for sale in half sections; that those which are now sold in half sections should be offered for sale in quarter sections, and that the price of entire and half sections should be reduced to one dollar and twenty-five cents, and that of quarter sections to one dollar and an half per acre, it is believed that the benefits resulting from the present system would not be impaired, and that several important advantages would be obtained.

1. The price being still as high as that at which lands held by individuals, in similar situations, are generally sold, and higher than can be afforded for any other purpose than that of improving the land or securing it for the use of the purchaser's family, monopolies and large speculations would be as effectually prevented as under the existing provisions.

2. The poorest individuals, as they cannot, at present, purchase less than three hundred and twenty acres, must, in order to become freeholders, be able to pay one hundred and sixty dollars, and become bound for four hundred and eighty more, payable within four years; and it is proper to observe that, if they have no other resources, it is almost impossible that they should, during the first four years of a new settlement, draw the means of payment from the produce of the land. By the proposed alteration, a man might, by the payment of two hundred and forty dollars, acquire a freehold of one hundred and sixty acres, without encumbering himself with any debt whatever. The difficulty of raising eighty dollars more at first, is unimportant, if it shall be admitted that the subsequent payments must at present be provided for from other resources than those arising from the land itself: and, in every other respect, the purchaser will evidently be placed in a much more desirable situation.

3. Whatever revenue may be derived from that source will be collected in the most simple manner, and will be completely secured. There will be no outstanding debts, and the interest of every new purchaser will become identified with that of the Union.

4. It has already been observed that the sales have not, by any means, been commensurate with the demand for land and the increase of population; they have been limited partly to the competition of other lands in the market, and partly by the existing means of payment. Under the system, altered as has been suggested, they would be limited only by the last cause, and be altogether regulated by the amount of circulating medium acquirable by the purchasers. It is evident, indeed, that it would be more easy to sell 300,000 acres at a dollar and a third, than 200,000 acres at two dollars per acre; and no doubt is entertained that the revenue would be not only secured, but also increased by the proposed alterations.

The only difference to the United States will be, that they will transfer the property of a greater quantity of land for the same sum of money than they do at present. The estimated revenue of $400,000, derived from that source, is predicated on annual sales of 200,000 acres at two dollars, or, rather, of about 212,000 at one dollar and eighty-four cents per acre; 266,666 acres at one dollar and an half, or 320,000 at one dollar and twenty-five cents per acre, would produce an equal sum. It would, therefore, under the present alterations, cost annually to the United States about one hundred thousand acres more than at present, to raise a revenue equal to that which may be collected under the existing regulations. Compared with the quantity of land north of the Ohio and east of the Mississippi, not less certainly than one hundred and fifty millions of acres, the soil of which belongs to the United States, that difference is so trifling, and the effect which, in that respect, may result from the alteration so distant, that neither of them seems to afford sufficient ground of objection.

A more serious difficulty will arise from former purchasers, who may complain that they should be left in a worse situation than those who shall purchase under the new arrangement. It is true that those persons who have had the selection of the most eligible spots in point of situation and of soil; yet, under all circumstances, and also in order to secure punctual payments, it might be expedient to release them from the payment of interest until after their instalments had become due. That provision, which it is believed would be perfectly satisfactory, should be extended only in favor of those who shall discharge those instalments with punctuality, and who have not alienated the property. In the few cases where the purchasers have already completed their payments, certificates receivable in payment for land might be given to them for the sums which may have been charged for interest.

It is believed that the alterations which have been suggested will enable a great portion of the actual settlers to become purchasers; but the principle of granting them a right of pre-emption, exclusively of the abuses to which it is liable, appears irreconcilable with the idea of drawing a revenue from the sale of lands. Nor would the reduction of price, and especially the sale in smaller tracts, be an eligible measure, so far as respects the revenue, unless connected with a suppression of the credit which is now given to purchasers.

Should those outlines be adopted, it may be proper to provide that, before the reduction either in the price or in the size of the tracts shall take place, all the lands shall be offered at public sale, as on a similar occasion had been directed by the act passed on the 10th of May, 1800; and some other modifications of less importance, though not immediately connected with that part of the subject, may at the same time be taken under consideration.

The powers of the Surveyor General extend only over the lands lying north of the river Ohio and above the mouth of the river Kentucky; it seems proper, on account of the late purchases, that they should be extended over all the public lands lying north of the Ohio and east of the Missouri; for the surveys of the lands above the mouth of the Kentucky, to which the Indian title has been extinguished, being nearly completed, it is hardly necessary to create a new office for the others; and it would be useful to provide that that officer should also ascertain, by astronomical observations, the situations of some of the most important points of that part of the country.

The surveys are now executed by assistants, appointed by the Surveyor General, whose offices cease with the completion of their work. For the purpose of making legal re surveys, when called on by the parties; of surveying and marking the lines which, in conformity with the mode presented by law, have been left open; and, also, of sub-dividing the tracts into quarter sections, in pursuance of the proposed modifications, it would be eligible to have "district surveyors" appointed, who should receive for their several services stated fees, to be paid by the parties for whose benefit they may be rendered. That arrangement, exclusive of other advantages, would preclude the necessity of any advance from the Treasury for the subdivision of lands into quarter sections.

Whatever price it may be thought proper to fix on the lands, it will be more simple and convenient for the purchasers; that, with the exception of the last mentioned expense, the several fees now paid to the United States for surveying expenses and for entry and certificates and which, in the purchase of an half section, amount, altogether, to about three cents and an half per acre, should be incorporated with the price.

The receivers of public moneys receive now one per cent. on all the moneys paid into the Treasury, and the registers one-half per cent. on the same, besides the fees, amounting to two-thirds per cent. more, the suppression of which is submitted. Those compensations are much lower, in proportion to the revenue collected, than those allowed to most of the officers employed in the collection of the other revenues of the Union, and appear inadequate to the responsibility attached to the officers and to the rate of talents and knowledge necessary to discharge their duties. The propriety of increasing the commission of both officers one-half per cent., and of giving to each of them a small annual salary, as an equivalent for clerk hire and office rent, is respectfully submitted. The salary might in that instance be $500 to each officer, those of the Marietta district excepted, for whom $250 would be sufficient. This, on account of the suppression of the register's fees, would give a greater increase to the registers; which, considering the risk attached to the safe-keeping of the public moneys, appears reasonable.

The expediency of excluding the reserved sections from the sales is doubtful, as the destruction of timber is perhaps more than equivalent to the supposed increase of value, and it is particularly complained of in the Steubenville district, and in the tract lying between the two Miamas, where the greater part of the adjacent lands is sold and occupied.

The preceding observations have been made only in relation to the lands north of the river Ohio. It would be expedient to apply many of the regulations which have been submitted to the public lands south of the State of Tennessee, and I will beg leave to make a separate communication respecting the operation of the law passed during the last session on that subject.

I have the honor to be, &c.

ALBERT GALLATIN.

Hon. JOSEPH H. NICHOLSON, *Chairman*, &c.

INDIANA TERRITORY.

[Communicated to the House, Dec. 29, 1803.]

Mr. LUCAS, from the committee appointed on the eighth instant, to whom was committed the bill sent from the Senate, entitled, "An Act to divide the Indiana Territory into two separate governments," made the following report:

That, by the ordinance for the government of the territory north of the river Ohio, it is stipulated that when any of the three divisions, pointed out to form separate States, shall contain 60,000 inhabitants, that division shall become a State in the Union, and have a right to exercise and enjoy a form of government free and republican. That it appears that nearly all the people contemplated to be governed by a territorial government, according to the bill from the Senate, are within the boundaries pointed out by the ordinance to form the State, which is now called the State of Ohio, and that they have a right to be a part of said State, and to be governed in conjunction with the people of said State, until Congress shall think proper to make a State of that and the adjacent country, agreeably to the said ordinance. Of course your committee cannot recommend to the United States, to take upon themselves, at this time, the expenses of a separate territorial government over that part of the country.

From the foregoing considerations, your committee respectfully submit their opinion, that the said bill ought not to be passed by this House.

FISHERIES.

[Communicated to the House, Jan. 3, 1804.]

Mr. HUGER, from the committee to whom was referred on the 15th of November last, "the report of the committee appointed at the last session of the last Congress on so much of the Message from the President of the United States, as relates to the fostering of the fisheries of the United States," with instruction to inquire, whether any, and if any, what measures are necessary for encouragement of the whale and cod fisheries, made the following report:

That they have taken into consideration the report of the committee made to the last Congress, on the subject of the fisheries; that they coincide in opinion with that committee, as to the importance of the fisheries; and find the facts stated by them, and the inferences they have drawn from those facts, to be generally correct. The additional information, which has been obtained, leads them, moreover, to believe, that the conjecture hazarded in the above report, to wit: "that the cod fisheries have gained ground since the Revolution, more especially since the present Government first went into operation, whilst our whale fisheries, on the other hand, have, for some time past, been more or less on the decline," is well founded.

The documents marked A, B, C, D, which have been received from the Treasury department, and which the committee beg leave to include as a part of their report, seem to corroborate this opinion.

According to the document A, there were, in

1799, 26 vessels and 5,055 tonnage; in 1800, 17 vessels and 2.814 tonnage, and in 1801, only 15 vessels and 2.349 tonnage employed in the whale fishery; so that there was evidently a gradual and annual decline in this branch of business.

The document C, gives the quantity of oil, of spermaceti candles, and whalebone, exported from the United States during the 12 years preceding the year 1802. From this it appears, that, in the year 1791, there were exported 134,595 gallons spermaceti, and 447,323 gallons whale oil, 182,400 pounds spermaceti candles, and 124.829 pounds whalebone; but in the year 1802, only 28.470 gallons spermaceti, and 379,976 gallons whale oil, 135,637 pounds spermaceti candles, and 80,334 pounds of whalebone. During the intermediate period, the quantity of these articles, the productions of the whale fisheries, exported from the United States, varied considerably; the greatest quantity of each specific article, exported in any viz: of spermaceti oil, 221,762 gallons; of whale oil, 1,176,650; of spermaciti candles, 290,666 lbs., of whale bone, 452,127 pounds. The annual quantity on an average for twelve years, from 1791 to 1802, inclusive, of each article is, in round numbers, of spermaceti oil, about 106,493 gallons; of whale oil, 573,941 gallons; of spermaceti candles, 197,967 pounds; and of whalebone, 191,334 pounds. It may be proper, to add, that there would seem (from document B.) to have been a somewhat greater number of vessels and larger quantity of tonnage employed in the whale fisheries during the last than the two preceding years—20 vessels and 3,201 tons having been employed in this business during that year.

With respect to the cod fisheries, the above quoted document C. proves, that this branch of our fisheries has been, though slowly, yet gradually progressing. In 1791, there were 383,237 quintals of dried and 57,124 barrels of pickled fish exported from the United States, and the quantity of these articles annually exported, has annually increased from that period to the year 1802; when 440.954 quintals of dried and 75,819 barrels, and 13,229 kegs of pickled fish were exported from the United States. The average quantity of these articles exported annually during this period, was, of dried fish 402,226 quintals and of pickled, fish 61,743 barrels; to which is to be added during the last seven years, an annual average exportation of 10,125 kegs of pickled fish. Agreeably to the report made to the last Congress on this subject, there were employed in the cod fishery in 1800, twenty-five thousand tons of shipping and 3,840 men; on an average of ten years preceding, rather upwards of 33,000 tons of shipping and somewhat less than 5,000 men. In the year 1802, (document B) there were 1,140 vessels, 39,399 tons of shipping, and 4,533 men employed in the same fisheries, exclusively of vessels and boats under the size of five tons, and the men navigating them, the number of each of which, the committee have reason to believe, has of late years considerably increased.

Such is the least imperfect view of the subject referred to them, which the committee find themselves enabled to present to the House. As the official information with respect to the fisheries heretofore received at the Treasury Department, does not appear, however, to have been as full and as satisfactory as might perhaps be desired, the committee have ventured to suggest the propriety of a more detailed account of their actual state being required annually from the proper officers, and they doubt not but that necessary steps will accordingly be taken by that department to carry this desirable object into effect.

In the mean time, the committee beg leave to state, in compliance with the instruction given them by the House, "to inquire, whether any, and if any, what measures are necessary for the encouragement of the whale and cod fisheries"—with respect to the last, (i. e. the cod fishery,) that as it seems to have been gradually progressing under the present laws and regulations, they deem it unnecessary, at this time, to make any change in them, or to propose any further measure in regard to the cod fishery; unless the House should, in their wisdom, think proper to adopt the resolutions submitted to the House of Representatives at the last session of Congress. It having, indeed, been suggested to them, that there was a larger proportion of foreign fish imported into the United States than they were aware of, the committee had it in contemplation to propose an increase of duty on foreign fish. But understanding that a proposition to the same effect will ere long be submitted to the House from another quarter, they deem it unnecessary to interfere further in the business than to express their approbation of the measure.

The whale fishery, on the other hand, presents itself under a much less favorable aspect, it having been, for some years past, more or less on the decline. And yet there is no branch of industry whatever, perhaps, more highly important to the public. Strongly impressed with this truth, the committee think it a point of true national policy to afford it every encouragement, and to endeavor, as much as possible, to invigorate and reanimate it. They are perfectly aware, however, of the many demands on the Treasury, and feel a strong disinclination to draw unnecessarily on the public funds at this particular period. Yet believing that, in the critical situation in which the whale fisheries appear to be placed, some little encouragement, similar to that which seems to have had so beneficial an effect on the cod fisheries, might turn the scale, and give new life to this interesting branch of our national industry, they venture respectfully to submit to the House the following resolution:

Resolved, That there shall be paid to every vessel, carrying on the whale fisheries, for each and every ton of such vessel's burden, if actually employed at sea, on one and the same voyage, in the prosecution of the said fisheries, at least ——, and not exceeding —— months, the sum of —— cents; if at least —— and not exceeding —— months, the sum of —— cents; if at least —— and not exceeding —— months, the sum of —— cents. And if so employed at sea in one and the same voyage during —— months and upwards, —— cents: *Provided, however*, That no one vessel shall receive for any one voyage, a greater sum than —— dollars.

YAZOO CLAIMS.

[Communicated to the House, Jan. 7, 1804.]

Mr. NICHOLSON, from the Committee to whom were referred the memorials of Alexander Moultrie, of South Carolina, in behalf of himself and others, styling themselves "The South Carolina Yazoo Company," and of William Cowan, agent of the Virginia Yazoo Company, made the following report:

It appears from the memorials, and from the documents submitted with them, that, on the 21st day of December, 1789, the Legislature of the State of Georgia passed an act to dispose of certain vacant lands lying within that State, by which it was enacted that the tract of country lying between the Mississippi and Tombigbee rivers, and extending from the parallel of latitude which crosses the Mississippi at Cole's Creek, to the northern boundary of the State, together with a third tract, lying on the Tennessee river, should, for two years from and after passing the act, be reserved, as a pre-emption, for three companies, styled the "South Carolina Yazoo Company," the Virginia Yazoo Company," and the "Tennessee Company;" and that the Governor should issue grants for the said tracts, according to certain boundaries defined in the act, to these companies respectively, if they should, within two years, pay into the Treasury of the State the following sums, viz: the South Carolina Yazoo Company, the amount of $66,964; the Virginia Yazoo Company, the amount of $93,741; and the Tennessee Company, the amount of $16,875.

It further appears from the statements exhibited, that the South Carolina Yazoo Company, on the 13th August, 1790, paid into the Treasury of Georgia, in bills of credit, the sum of £630 18*s.*; and on the 11th September, 1790, the sum of £500 in paper medium, making in the whole, £1,130, 18*s.*, in part of the purchase money; and that on the 19th of December, 1791, the said company made a tender of the balance to the Treasurer of the State. This tender was made, as is alleged, partly in specie, partly in South Carolina paper medium, and partly in Georgia certificates, but was rejected by the Treasurer, either upon a presumption that the law itself did not authorize the payment to be made in this description of paper, or in pursuance of a resolution of the same Legislature, passed in June, 1790, directing the Treasurer to receive, after a certain day in the month of August following, payment for these lands only in gold or silver, or in the paper medium of the State.

The Virginia Yazoo Company, in a short time after passing the act, (but when, not stated,) paid the sum of $1,515, in the paper currency of the State, as a part of the purchase money, and on the 12th of December, 1791, made a tender of the balance to the Treasurer, in State certificates, and orders on the Treasury for liquidated claims. This tender was also refused, as it is presumed, for the same reason which governed in the other case, as above stated.

In consequence of the neglect or refusal on the part of these companies to pay, within the stipulated period of two years, in such description of money as the Treasurer of the State conceived himself authorized to receive, no grant issued, and the State ceded the same tract of country to the United States, by the articles of compact and cession bearing date the —— day of ——, 1802.

The money deposited by the Virginia Company was withdrawn by J. B. Scott, who was their agent, but who, the memorialist alleges, was not authorized to receive the same. That deposited by the South Carolina Company, is said still to remain in the Treasury of Georgia.

Both companies now contend that they have a claim against the United States for compensation for losses sustained by them, in consequence of the refusal on the part of Georgia to carry what is called their contract into effect, and urge, that if the Constitution of the United States had not been changed in regard to the suability of States, they could have compelled the State of Georgia to a specific execution of their contract. The act of 1789 is called a contract, because the memorialists say their petition to the Legislature, upon which the law is founded, is referred to in the preamble of the act, and thereby becomes a part of it; and they state, that, in this petition, it was proposed to make the payments in that description of paper which was afterwards tendered. The committee have not seen the petition, but they conceive that the idea of the petition being ingrafted into, and thereby becoming a part of the act, is too novel in its nature to require any comment from them to prove its inadmissibility. They do not consider the transaction in the light of a contract, as the companies were not bound by it to a compliance, and might have refused, at any time, to make a payment, without subjecting themselves to any penalty whatever. They view the act as a conditional grant, not of the land itself, but of the pre-emption right; and the title of the companies was to be protected, upon their complying with the condition contained in it. This condition was the payment of a sum of money, and if it had been fulfilled on their part, would have given them a claim upon the honor and justice of the State for a perfect and complete title. To show their compliance with the condition, they offer the evidence of their own petition, referred to in the preamble of the law, the depositions of some of the members of the Legislature, and the protest of the minority who voted against the act, to prove that it was the intention of the Legislature that payment might be made in that description of paper which was tendered.

The preamble of a statute is sometimes referred to, but always with caution, to assist in the interpretation of the enacting clauses, but the preamble of the act in question can throw no light on the

present subject, as it contains no expression relative to the species of money or paper which was to be received in payment. The testimony of individuals who were members of the Legislature, and the protest of the minority, should be resorted to with still greater caution, as they are mere matters of opinion, and the same, or a greater number of other individuals, who were members of the same body, might have entertained opinions of a directly contrary nature. Indeed, the resolution of June, 1790, passed by the same Legislature who framed the act of 1789, directing the Treasurer to receive in payment from these companies only gold and silver, and the paper medium of the State, is a stronger evidence of its spirit and intention than any which has been offered, and this is in complete hostility to the pretensions of the present claimants. It is believed to be a sound doctrine, that laws should, if possible, be interpreted without calling in the aid of any foreign materials, and that the meaning of the Legislature should be collected from the language which they themselves have used to express it. If there should be an obscurity in one clause, all the others of the same act ought to be carefully examined, and compared with that in which the obscurity exists. If in this manner the meaning of the Legislature can be found, and that case be rendered clear which was obscure before, it is the safest method of interpretation, and is always preferred.

The memorialists appear to rely with much confidence upon one expression contained in the first section of the act of 1789, and this is the only one which favors their construction. They allege that, as the law declares they shall be entitled to a grant upon paying into the Treasury the amount of $66,000, and $93,000 respectively, they were at liberty to pay in paper at that time current in Georgia, (except what was called rattlesnake money,) whether bills of credit, certificates, or liquidated claims upon the Treasury. The expression (the *amount* of $60,000, &c.,) is certainly not a very common one, as here applied, the word *sum* being more generally used in this sense; but it is by no means an inconsistent expression. If the companies were authorized to give it the construction which they contend for, it might, with equal plausibility, be extended to wheat, flour, corn, tobacco, or almost any other article which is a subject of traffic between individuals, or, indeed, to the old Continental currency, and to the bills of credit issued by any other State in the Union. This certainly cannot be permitted, as in such case, the lands might have been paid for in paper not worth more than one dollar in the hundred. If, however, the use of the word *amount*, instead of the word *sum*, in the first section, creates any doubt as to the intention of the Legislature, this doubt will be removed by referring to the fourth section of the same act, which is in the following words, viz: "That the Treasurer of this State shall, on application of any agent of either of the said companies, within the said term of two years, receive the sum or sums of money, which they are hereby respectively directed to advance, a certificate or certificates of which payments, under the hand of the Treasurer, shall be a sufficient voucher for the Governor to issue the grants to the respective companies aforesaid." In this clause, the intention of the Legislature is clearly and accurately expressed, as they speak of the "sums of money which the companies were, by the act, directed to advance," thereby referring to the $66,000, and $93,000 which was to be paid for the land, and rendering it clear beyond a doubt, that money alone was to be received.

The committee have been thus minute in investigating this case, because the memorialists appear to entertain an opinion that if the State of Georgia had been guilty of a breach of faith, the United States were bound, in equity, to make good the damages, they being second purchasers with notice. Without undertaking to decide this question, or to say whether it would be proper to place these companies on the same footing with those who claim under the act of 1795, the committee are decidedly of opinion that the Virginia Yazoo Company, and the South Carolina Yazoo Company have no claim whatever upon the United States.

IMPORTATION OF SLAVES.

[Communicated to the Senate, January 23, 1804.]

To the Senate and House of Representatives of the United States of America, in Congress assembled:

The American Convention for promoting the abolition of slavery, and improving the condition of the African race, beg leave respectfully to propose for your consideration the utility and propriety of passing such laws as shall prohibit the importation of slaves into the Territory of Louisiana, lately ceded to the United States.

Your memorialists feel themselves deeply impressed with this important subject, and they deem it their duty to solicit, most earnestly, your serious attention to the proposition. They believe that wisdom and sound policy are so intimately united by their Eternal Parent, that man cannot separate them with impunity. If wisdom urge the performance of any particular act, if it command the formation and establishment of any specific law, the soundest policy will be evinced by obedience to that injunction.

True virtue, the offspring of wisdom, teaches man to love his fellow-man, and enjoins him to perform all that may be within the compass of his abilities for the general happiness of his species. When national Governments comply with this benevolent and sublime law, they become the providential instruments of national blessings; but when they oppose or disregard its dictates, their constituents must necessarily feel, sooner or later, all the calamities which follow such opposition or neglect.

Our ancestors have, unhappily, entailed on some of our States the evils of slavery; many of our fellow-citizens in those States we believe are mournfully sensible of the magnitude of their

burden, but they know and feel that man may commit error with more facility than he can eradicate its consequences. Your memorialists entreat you to reflect on, to consider with impartial attention, the dangers and difficulties before you; and beseech you, with deep concern, to preserve the country, whose regulations depend on your wisdom, from similar calamities.

They also respectfully suggest to you, that while the Constitution of the United States declares all men equally entitled to liberty, they cannot conceive our Government as acting consistently with its declarations, if it shall, in any instance, authorize man to enslave unoffending man. In compliance with that distinguished principle of our national Constitution, a former Congress judged it expedient to introduce among its regulations, for the government of the Northwestern Territory, a provision resembling that which your memorialists now suggest to you.

There is another consideration to which your memorialists feel themselves bound to call your attention. While the Governments of Europe are shaken by civil discord, or surrounded by the incalculable cruelties and horrors of national warfare, a beneficent and overruling Providence has been pleased to preserve for our country the blessings of peace, to grant us new proofs of his goodness, and to place us in a condition of prosperity, unrivalled in the records of history. Does it not become the duty of a nation, so crowned with the blessings of peace, and plenty, and happiness, to manifest its gratitude, to the whole world, by acts of justice and virtue? For the true honor of our country, from benevolence toward the future possessors of our newly acquired soil, your memorialists hope you will hear and grant their request. And with all the respect which is due to the representatives of a free people, they subscribe themselves, cordially, your friends and fellow-citizens.

Signed by order and on behalf of the Convention.

M. FRANKLIN, *Pres't*
OTHNIEL ALSOP, *Sec.*

PHILADELPHIA, *Jan.* 13, 1804.

REMONSTRANCE OF THE PEOPLE OF LOUISIANA.

[Communicated to the Senate, Dec. 31, 1804.]

We, the subscribers, planters, merchants, and other inhabitants of Louisiana, respectfully approach the Legislature of the United States with a memorial of our rights, a remonstrance against certain laws which contravene them, and a petition for that redress to which the laws of nature, sanctioned by positive stipulation, have entitled us.

Without any agency in the events which have annexed our country to the United States we yet considered them as fortunate, and thought our liberties secured even before we knew the terms of the cession. Persuaded that a free people would acquire territory only to extend the blessings of freedom, that an enlightened nation would never destroy those principles on which its Government was founded, and that their Representatives would disdain to become the instruments of oppression, we calculated with certainty that their first act of sovereignty would be a communication of all the blessings they enjoyed, and were the less anxious to know on what particular terms we were received. It was early understood that we were to be American Citizens; this satisfied our wishes; it implied every thing we could desire, and filled us with that happiness which arises from the anticipated enjoyment of a right long withheld. We knew that it was impossible to be citizens of the United States without enjoying a personal freedom, protection for property, and, above all, the privileges of a free representative Government, and did not, therefore imagine that we could be deprived of these rights even if there should have existed no promise to impart them; yet it was with some satisfaction we found these objects secured to us by the stipulations of treaty, and the faith of Congress pledged for their uninterrupted enjoyment. We expected them from your magnanimity, but were not displeased to see them guarantied by solemn engagements.

With a firm persuasion that these engagements would be soon fullfilled, we passed under your jurisdiction with a joy bordering on enthusiasm, submitted to the inconveniences of an intermediate dominion without a murmur, and saw the last tie that attached us to our mother country severed with less regret. Even the evils of a military and absolute authority were acquiesced in, because it indicated an eagerness to complete the transfer, and place beyond the reach of accident the union we mutually desired. A single magistrate, vested with civil and military, with executive and judiciary powers, upon whose laws we had no check, over whose acts we had no control, and from whose decrees there is no appeal: the sudden suspension of all those forms to which we had been accustomed; the total want of any permanent system to replace them; the introduction of a new language into the administration of justice; the perplexing necessity of using an interpreter for every communication with the officers placed over us; the involuntarry errors, of necessity committed by judges uncertain by what code they are to decide, wavering between the civil and the common law, between the forms of the French, Spanish, and American jurisprudence, and with the best intentions unable to expound laws of which they are ignorant, or to acquire them in a language they do not understand; these were not slight inconveniences, nor was this state of things calculated to give favorable impressions or realize the hopes we entertained; but we submitted with resignation, because we thought it the effect of necessity; we submitted with patience, though its duration was longer than we had been taught to expect; we submitted even with cheerfulness, while we supposed your honorable body was employed in reducing this chaos to order, and calling a system of harmony from the depth of this confused, discordant mass. But we cannot conceal,

we ought not to dissemble, that the first project presented for the government of this country tended to lessen the enthusiasm which, until that period, had been universal, and to fix our attention on present evils, while it rendered us less sanguine as to the future. Still, however, we wished to persuade ourselves that further inquiry would produce better information; that discussion would establish our rights, and time destroy every prejudice that might oppose them. We could not bring ourselves to believe that we had so far mistaken the stipulations in our favor, or that Congress could so little regard us, and we waited the result with anxiety, which distance only prevented our expressing before the passing of the bill. After a suspense which continued to the last moment of the session, after debates which only tended to show how little our true situation was known, after the rejection of every amendment declaratory of our rights, it at length became a law, and, before this petition can be presented, will take effect in our country.

Disavowing any language but that of respectful remonstrance, disdaining any other but that which befits a manly assertion of our rights, we pray leave to examine the law for erecting Louisiana into two Territories and providing for the temporary government thereof, to compare its provisions with our rights, and its whole scope with the letter and spirit of the treaty which binds us to the United States.

The first section erects the country south of the thirty-third degree into a Territory of the United States, by the name of the Territory of Orleans.

The second gives us a Governor appointed for three years by the President of the United States.

The fourth vests in him and in a council, also chosen by the President, all Legislative power, subject to the revision of Congress, especially guarding against any interference with public property either by taxation or sale.

And the fifth establishes a Judiciary, to consist of a Supreme Court, having exclusive criminal and original jurisdiction without appeal for all causes above the value of one hundred dollars, and such inferior courts as the Legislature of the Territory may establish. The judges of the superior court are appointed by the President, to continue in office four years.

This is the summary of our constitution; this is so far the accomplishment of a treaty engagement to "incorporate us into the Union, and admit us to all the rights, advantages, and immunities of American citizens." And this is the promise performed, which was made by our first magistrate in your name, "that you would receive us as brothers, and hasten to extend to us a participation in those invaluable rights which had formed the basis of your unexampled prosperity."

Ignorant as we have been represented of our natural rights, shall we be called on to show that this Government is inconsistent with every principle of civil liberty?

Uninformed as we are supposed to be of our acquired rights, is it necessary for us to demonstrate that this act does not "incorporate us in the Union," that it vests us with none of the "rights," gives us no advantages, and deprives us of all the "immunities" of American citizens.

If this should be required, we think neither task will be difficult.

On the first point we need only appeal to your declaration of independence; to your constitution; to your different State governments; to the writings of your revolutionary patriots and statesmen; to your own professions and public acts; and finally, legislators, to your own hearts, on which the love of civil liberty and its principles are, we trust, too deeply engraved to be ever totally effaced.

A Governor is to be placed over us whom we have not chosen, whom we do not even know, who may be ignorant of our language, uninformed of our institutions, and who may have no connexions with our country, or interest in its welfare.

This Governor is vested with all executive, and almost unlimited legislative power; for the law declares that, by and with the advice and consent of the legislative body, he may change, modify, and repeal the laws," &c. But this advice and consent will no doubt in all cases be easily procured from the majority of a council selected by the President or Governor, and dependent on him for their appointment and continuance in office; or if they should prove refractory, the power of prorogation frees him from any troublesome interference, until a more prudent selection at the end of the year shall give him a council better suited to his views. The true legislative power, then, is vested in the Governor alone, the council operates as a cloak to conceal the extent of his authority, to screen him from the odium of all unpopular acts, to avoid all responsibility, and give us the faint semblance of a representative assembly, with so few of its distinguishing features, that unless the name were inscribed on the picture it would be difficult to discover the object for which it was intended.

Taxation without representation, an obligation to obey laws without any voice in their formation, the undue influence of the executive upon legislative proceedings, and a dependent judiciary, formed, we believe, very prominent articles in the list of grievances complained of by the United States, at the commencement of their glorious contest for freedom; the opposition to them, even by force, was deemed meritorious and patriotic, and the rights on which that opposition was founded were termed fundamental, indefeasible, self-evident, and eternal; they formed, as your country then unanimously asserted, the only rational basis on which Government could rest; they were so plain, it was added, as to be understood by the weakest understanding; not capable of alienation, they might always be reclaimed; unsusceptible of change, they were the same at all times, in all climates, and under all circumstances; and the fairest inheritance for our posterity, they should never, it was firmly asserted, be abandoned but with life.

These were the sentiments of your predecessors; were they wrong? Were the patriots who composed your councils mistaken in their political

principles? Did the heroes who died in their defence seal a false creed with their blood? No, they were not wrong! The admiration of the world, the respect still paid to the living, the veneration accorded to the memory of the dead, attest the purity of their principles, and prove the truth of those maxims, which rendered their lives a blessing to their country, and their deaths glorious in its defence.

Are truths, then, so well founded, so universally acknowledged, inapplicable only to us? Do political axioms on the Atlantic become problems when transferred to the shores of the Mississippi? or are the unfortunate inhabitants of these regions the only people who are excluded from those equal rights acknowledged in your declaration of independence, repeated in the different State constitutions, and ratified by that of which we claim to be a member? Where, we ask respectfully, where is the circumstance that is to exclude us from a participation in these rights? Is it because we have not heretofore enjoyed them? This, on the contrary, would seem a reason to hasten the communication, to indemnify us by a futurity of freedom, for the years we have been deprived of it, and enable us, experimentally, to compare the blessings of a free Government with the evils of another kind of dominion. But the present situation of affairs forms no pleasing contrast with that which is past; and if we did not count with confidence on a change in the system you have adopted, the prospect before us would not afford matter for consolatory anticipation; for, though a period is fixed for the absolute government placed over us, though a year may terminate the equally objectionable system which succeeds it, yet what is to follow? Liberty? Self-government? Independence? and a participation in the advantages of the Union? If these were offered to us as the reward of a certain term of patience and submission, though we could not acquiesce in the justice of the procedure, we should have some consolation in our misfortunes; but no manifestation of what awaits us at the expiration of the law is yet made.

We may then again become the victims of false information, of hasty remark, or prejudiced opinion; we may then again be told that we are incapable of managing our own concerns, that the period of emancipation is not yet arrived, and that when, in the school of slavery, we have learned how to be free, our rights shall be restored. Upon the topic to which this leads we are reluctant to speak; but misrepresented and insulted, it cannot be deemed improper to show how groundless are the calumnies which represent us as in a state of degradation, unfit to receive the boon of freedom. How far any supposed incapacity to direct the affairs of our own country would release the United States from their obligation to confer upon us the rights of citizenship, or upon what principle they are to become the judges of that capacity, might, we believe, fairly be questioned; for we have surely not become less fit for the task since the signature of the treaty than we were before that period; and that no such incapacity was then supposed to exist, is evident from the terms of that instrument, which declares that we are to be admitted as soon as possible, according to the principles of the Constitution. If the United States, then, may postpone the performance of this engagement until, in their opinion, it may be proper to perform it, of what validity is the compact, or can that be called one of which the performance depends only on the will of the contracting party?

But if capacity is to be the criterion, and information the preliminary requisite of our admission, let us respectfully inquire what is the nature of this capacity and information, and where it will most probably be found. By the distribution of powers between the General and State Governments, the former have the exclusive superintendence of all external relations, and of those internal arrangements, which regard the several States in their national capacity; the residuary powers, retained by the States, are more limited in their operations, and require in their exercise a species of information to be derived only from local sources. The purest principles will be misapplied, the best intentions will be ill directed, the most splendid efforts of genius will prove ineffectual, without an intimate knowledge of the manners, customs, pursuits, and interests of the people, to whom they are applied, or in whose favor they are exerted. Should this reasoning be just, it would appear to follow that local information should be preferred in a State legislator to splendid acquirement, when they cannot be united; and although we give the representatives of the United States all the superiority they claim and justly merit, yet we cannot be accused of presumption, in supposing that we know somewhat more of our own country and its local interests than men who are acquainted with it only from report. It will not, we trust, be answered that the members of the council must be selected from the inhabitants; we have already shown what share this council will probably have in legislation, and the residence of one year is certainly too short to attain information, or secure anything like a permanence of attachment.

If this local knowledge is necessary to legislate wisely, how much more so is it in order to select discreetly those on whom this task must devolve? The President must necessarily depend on the information of his agents here, without any personal knowledge of the men he must choose. How can he detect imposition, or counteract prejudice? How defeat intrigue, or secure himself from the reproach of having confided our interests to men in whom we have no confidence? We might contrast these inconveniences with the evident advantages of a choice made by the people themselves, and the conviction would be irresistible that the latter possess exclusively that species of information, with respect to character, conduct, circumstances, and abilities, which is necessary to a prudent choice of their representatives; but we presume enough has been said to show that among a people not absolutely sunk in ignorance, the kind of knowledge indispensable to good gov-

ernment, or a selection of rulers, can only be found at home; that the best abilities, and the purest intentions will not replace it abroad, and that without it all legislation is tyrannical and oppressive. Convinced of this truth, we find the advocates for our subjection driven to an argument at which we have before hinted. To deprive us of our right of election, we have been represented as too ignorant to exercise it with wisdom, and too turbulent to enjoy it with safety. Sunk in ignorance, effeminated by luxury, debased by oppression, we were, it was said, incapable of appreciating a free constitution, if it were given, or feeling the deprivation, if it were denied.

The sentiments which were excited by this humiliating picture may be imagined, but cannot be expressed, consistent with the respect we owe to your honorable body. We were willing, however, to ascribe it to the want of correct information, but we could not avoid wondering that it should be so very defective as to have drawn from the names of some districts in our country an argument as to the language spoken in them, which proved fatal to an important amendment to the bill. We could not imagine what had excited the idea of our effeminacy and profusion; and the laborious planter, at his frugal meal, heard with a smile of bitterness and contempt the descriptions published at Washington of his opulence and luxury.

As to the degree of information diffused through the country, we humbly request that some more correct evidence may be produced than the superficial remarks that have been made by travellers or residents, who neither associate with us nor speak our language. Many of us are native citizens of the United States, who have participated in that kind of knowledge which is there spread among the people; the others generally are men who will not suffer by a comparison with the population of any other colony. Some disadvantages as to education in the higher branches of literature have lately attended us, owing to the difficulty of procuring it, but the original settlement of the province was marked by circumstances peculiarly favorable in this respect; it was made at no distant date, at a period when science had attained a great degree of perfection, and from a country in which it flourished; many individuals possessing a property and rank, which suppose a liberal education, were among the first settlers; and perhaps there would be no vanity in asserting, that the first establishment of Lonisiana might vie with that of any other in America for the respectability and information of those who compose it. Their descendants now respectfully call for the evidence which proves that they have so far degenerated as to become totally incompetent to the task of legislation.

For our love of order and submission to the laws we can confidently appeal to the whole history of our settlement, and particularly to what has lately passed in those dangerous moments when it was uncertain at what point our political vibrations would stop; when national prejudice, personal interest, factious views, and ambitious designs, might be supposed to combine for the interruption of our repose; when, in the frequent changes to which we have been subject, the authority of one nation was weakened before the other had established its power. In those moments of crisis and danger, no insurrection disturbed, no riot disgraced us; the voice of sedition was silent; and before a magistrate was appointed, good morals served instead of laws, and a love of order instead of civil power; it is then as unjust to tax us with turbulence as it is degrading to reproach us with ignorance and vice. But let us admit, that by some train of reasoning to which we are strangers, by some incomprehensible fatality, we are cut off from national rights, and form an unfortunate exception to those general principles on which your revolution and Government are founded; that there is no clause for us in the great charter of nature, and that we must look for our freedom to another source; yet we are not without a claim; one arising from solemn stipulation, and, according to our ideas, full, obligatory, and unequivocal.

The third article of the treaty lately concluded at Paris, declares that "the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States, and in the mean time they shall be protected in the enjoyment of their liberty, property, and the exercise of the religion they profess."

Your honorable body seems to have adopted a construction of this article, which would suspend its performance until some period fixed by the principles of the Constitution, and to have read the article thus: "the inhabitants shall be incorporated into the Union, and admitted to the enjoyment of all the rights, &c., as soon as the principles of the Federal Constitution will permit." We, on the contrary, contend that the words "according to the principles of the Federal Constitution," as they are placed in the sentence, form no limitation, that they were to be conferred, and that the article contemplates no other delay to our reception than will be required to pass the necessary laws and ascertain the representation to which we are entitled.

The inhabitants of the ceded territory are to be "incorporated into the Union of the United States;" these words can in no sense be satisfied by the act in question. A Territory governed in the manner it directs may be a province of the United States, but can by no construction be said to be incorporated into the Union. To be incorporated into the Union must mean to form a part of it; but to every component part of the United States the Constitution has guarantied a republican form of Government, and this, as we have already shown, has no one principle of republicanism in its composition; it is, therefore, not a compliance with the letter of the treaty, and is totally inconsistent with its spirit, which certainly intends some stipulations in our favor.

For if Congress may govern us as they please, what necessity was there for this clause, or how are we benefited by its introduction? If any doubt, however, could possibly arise on the first member of the sentence, it must vanish by a consideration of the second, which provides for their admission to the rights, privileges, and immunities, of citizens of the United States. But this Government, as we have shown, is totally incompatible with those rights. Without any vote in the election of our Legislature, without any check upon our Executive, without any one incident of self-government, what valuable "privilege" of citizenship is allowed us, what "right" do we enjoy, of what "immunity" can we boast, except, indeed, the degrading exemption from the cares of legislation, and the burden of public affairs?

Will it be said that though our right be admitted, yet Congress are to determine the period when it shall be conferred? This, we apprehend, would not only be contrary to the words of the treaty, but would be a solecism in itself. The words "according to the principles of the Federal Constitution, to the enjoyment of the rights," &c., certainly mean to such rights as are secured by the principles of the Constitution, or that we are to be admitted to their enjoyment in such manner as the same principles direct; and at any rate, the words "as soon as possible," can never be construed, so as to give a right of deferring it indefinitely. If it may be procrastinated for two years, we see no reason, why it may not be deferred for twenty, or a hundred, or totally omitted. That our verbal construction is the true one will be evident from pursuing the other exposition to its consequences. If the treaty means to say that we shall be admitted as soon as the principles of the Constitution will permit, we must look into that instrument to discover what restrictions oppose its immediate performance. We should naturally expect, if this reasoning be true, to find some period limited before which we could not become members of the Union, some requisites of population or other circumstance to be previously attained or performed; but, on the contrary, the power of admitting new States is vested in Congress, without any restriction whatever that can be applicable to the present case; there is, therefore, nothing that can satisfy these words, if they are construed as a limitation; nothing but the will of Congress is referred to in the Constitution. This Constitution, then, would prove that the United States had stipulated to admit us into the Union as soon as they should think proper; but a treaty implies a compact, and what compact can arise from a stipulation to perform or not perform, as the party shall deem expedient? This would be such a solecism in argument, such a confusion of terms, as must make us doubt the propriety of any construction that leads to them, and we feel ourselves justified in a persuasion, that the treaty intended to incorporate us into the Union so soon as the laws necessary for that purpose could be passed.

We know not with what view the territory north of the thirty-third degree has been severed from us, and carried with it the distinguishing name which belonged to us, and to which we are attached; the convenience of the inhabitants we humbly apprehend would have been better consulted by preserving the connexion of the whole province until a greater degree of population made a division necessary. If this division should operate so as to prolong our state of political tutelage, on account of any supposed deficiency of numbers, we cannot but consider it as injurious to our rights, and therefore enumerate it among those points of which we have reason to complain.

If there is force in our reclamations on the great question of fundamental rights; if we are entitled to legislate for ourselves as a member of the Union, and to establish the forms on which that legislation shall be conducted, by framing a constitution suited to our own exigencies, then no further observations need be made on other parts of the law, for the right of local legislation implies that of making the alterations we might deem expedient; then our judiciary would become independent, the executive power would be properly circumscribed, and the legislative guarded against encroachment.

There is one subject, however, extremely interesting to us, in which great care has been taken to prevent any interference even by the Governor and Council, selected by the President himself. The African trade is absolutely prohibited, and severe penalties imposed on a traffic free to all the Atlantic States who choose to engage in it, and as far as relates to procuring the subjects of it from other States, permitted even in the Territory of the Mississippi.

It is not our intention to enter into arguments that have become familiar to every reasoner on this question. We only ask the right of deciding it for ourselves, and of being placed in this respect on an equal footing with other States. To the necessity of employing African laborers, which arises from climate, and the species of cultivation pursued in warm latitudes, is added a reason in this country peculiar to itself. The banks raised to restrain the waters of the Mississippi can only be kept in repair by those whose natural constitution and habits of labor enable them to resist the combined effects of a deleterious moisture, and a degree of heat intolerable to whites; this labor is great, it requires many hands, and it is all important to the very existence of our country. If, therefore, this traffic is justifiable anywhere, it is surely in this province, where, unless it is permitted, cultivation must cease, the improvements of a century be destroyed, and the great river resume its empire over our ruined fields and demolished habitations.

Another subject, not indeed growing out of this law, but of great moment to us, is the sudden change of language in all the public offices and administration of justice. The great mass of the inhabitants speak nothing but the French; the late Government was always careful in their selection of officers to find men who possessed our own language, and with whom we could personally communicate; their correspondence with the in-

terior parts of the province was also carried on chiefly in our own language; their judicial proceedings were indeed in Spanish; but being carried on altogether by writing, translations were easily made; at present, for the slightest communication, an interpreter must be procured; in more important concerns, our interest suffers from not being fully explained; a phrase, a circumstance seemingly of little moment, and which a person uninterested in the affair will not take the trouble to translate, is frequently decisive, and produces the most important effects. That free communication so necessary to give the magistrate a knowledge of the people, and to inspire them with confidence in his administration, is by this means totally cut off, and the introduction of *viva voce* pleadings into the courts of justice subjects the party who can neither understand his counsel, his judge, nor the advocate of his opponent, to embarrassments the most perplexing, and often to injuries the most serious.

We have thus stated the great sources of discontent which have arisen from the measures your honorable body has been pleased to pursue. Did we suppose them the effect of a settled design to oppress; of a determination to disregard our natural and stipulated rights, we are persuaded we should do as much injustice to your views, as the strongest expressions would do to our feelings of indignation and grief; but we will not insult you by a suspicion so injurious to your motives; the want of true information with respect to us, opinions founded on a superficial acquaintance with our country, and prejudiced relations with our habits and manners, on reports the most unfounded, even as to our language, these alone have given rise to the measures of which we complain, and when these impressions shall have been effaced, we have the fullest confidence that their effects will cease, and the language of remonstrance will be changed to that of congratulation and thanks.

Deeply impressed, therefore, with a persuasion that our rights need only be stated to be recognised and allowed; that the highest glory of a free nation is a communication of the blessings of freedom; and that its best reputation is derived from a sacred regard to treaties; we pray you, Representatives of the people, to consult your own fame and our happiness, by a prompt attention to our prayer; we invoke the principles of your Revolution, the sacred, self-evident, and eternal truths on which your Governments are founded; we invoke the solemn stipulations of treaty; we invoke our own professions and the glorious example of your fathers, and we adjure you to listen to the one and to follow the other, by abandoning a plan so contradictory to every thing you have said, and they have taught—so fatal to our happiness, and the reputation of your country. To a generous and free people we ought not to urge any motive of interest, when those of honor and duty are so apparent; but be assured that it is the interest of the United States to cultivate a spirit of conciliation with the inhabitants of the territory they have acquired. Annexed to your country by the course of political events, it depends upon you to determine whether we shall pay the cold homage of reluctant subjects, or render the free allegiance of citizens attached to your fortunes by choice, bound to you by gratitude for the best of blessings, contributing cheerfully to your advancement to those high destinies to which honor, liberty, and justice, will conduct you, and defending, as we solemnly pledge ourselves to do, at the risk of fortune and life, our common constitution, country, and laws.

We, therefore, respectfully pray that so much of the law above-mentioned, as provides for the temporary government of this country, as divides it into two Territories, and prohibits the importation of slaves, be repealed.

And that prompt and efficacious measures may be taken to incorporate the inhabitants of Louisiana into the Union of the United States, and admit them to all the rights, privileges, and immunities, of the citizens thereof.

And your petitioners, as in duty bound, will ever pray for the happiness and prosperity of the United States.

Conformable to the original deposited in the House of Representatives.

P. SAUVE,
L. DERBIGNY,
DESTREHAN.

The following remonstrance was communicated to the House of Representatives, January 4, 1805:

To the honorable the Senate, and the honorable the House of Representatives of the United States in Congress assembled: The remonstrance and petition of the representatives elected by the freemen of their respective districts in the District of Louisiana, humbly show:

That your petitioners, as well as those whom they represent, were filled with the most lively pleasure at the first rumor of the cession of Louisiana to the United States. When it no longer became us to doubt of the event, and when we were informed that Congress were making laws to organize the newly-acquired territory we experienced emotions of gratitude, and anticipated for ourselves and our posterity all the blessings which result to the people of the United States from the wisdom and magnanimity of an enlightened and free Government.

While we were indulging these fond expectations, unmixed with distrust or fear, the act of the last session of your honorable Houses, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," came to our knowledge, and from our eager grasp snatched the anticipated good. The dictates of a foreign Government! an incalculable accession of savage hordes to be vomited on our borders! an entire privation of some of the dearest rights enjoyed by freemen! These are the leading features of that political system which you have devised for us; for those very men, who, in a solemn treaty, you had stipulated

to call and to treat as fellow-citizens; yet the American colors are hoisted in our garrisons; this far-famed signal of liberty to all, to us alone exhibits a gloomy appearance, and makes us more sensible of the immeasurable interval between us and political happiness. May we not be long doomed, like the prisoners of Venice, to read the word "liberty" on the walls of prisons! We trust to your wisdom and goodness; you are the guardians of our Constitutional rights, and we repose our hopes in you as in the sanctuary of honor.

The right of the people peaceably to assemble and petition the Government for a redress of grievances, is declared and warranted by the first amendment to the Constitution. To this Constitution we appeal; we learned from you to resist, by lawful means, every attempt to encroach on our rights and liberties; the day we became Americans we were told that we were associated to a free people. We cannot suppose that the language of men jealous of their freedom can possibly be unwelcome to your ears.

By the third article of the treaty between the United States and the French Republic, it is agreed "that the inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion they profess."

Your petitioners beg leave to represent to your honorable Houses, that, according to the principles contained in the third article of the treaty above quoted, they conceive that had not Congress thought proper to divide Louisiana into two Territories, they should now be entitled by their population to be incorporated into the Union as an independent State.

In the ordinance for the government of the Territory of the United States northwest of the river Ohio, article the fifth, it is ordained, "that whenever any of the States to be formed out of the Northwestern Territory shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided*, That the constitution and government so to be formed shall be republican, and in conformity with the principles contained in these articles; and so far as it can be considered consistent with the general interest of the Confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand." Your petitioners are informed, moreover, that at the time of the admission of the State of Ohio into the Union, said State, conformable to the last clause of the fifth article of the ordinance above quoted, did not contain more than from thirty-three to forty thousand free inhabitants; which proportion, if adhered to in our case, as it seems to us it should have been, the United States having bound themselves by the third article of the treaty above quoted to admit us as soon as possible into the Union, would have given us a right to be immediately incorporated into the Union.

We find neither in the Constitution of the United States, nor in the treaty with the French Republic, any provisions by which Congress may have been authorized to make such division.

We find in the treaty nothing but the plain and unequivocal obligation in Congress, to incorporate the ceded territory into the Union, and admit it as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; but if Congress had a right to divide Louisiana into two Territories last year, they may claim next year the right to divide it into four or eight Territories. Whenever the population of one of those Territories shall amount to very near the population required by the Constitution of the United States, to entitle that Territory to be admitted in the Union as an independent State, Congress may again claim the right to subdivide said Territory. Your petitioners, if the principle should be granted, see no end to the oppression likely to result from such a precedent; and ill-fated Louisiana is condemned to drag along for ages the fetters of an endless territorial infancy, never (to use the expression of one of the most strenuous advocates of American independence,) to be hardened into the bone of manhood.

Under ordinary circumstances, your petitioners would have been disposed to sacrifice some of those rights secured to them by a solemn treaty, to the convenience of the United States; but the provisory laws enacted by Congress for the district of Louisiana seem to us to be characterized by such an unusual spirit of severity as to oblige your petitioners (if those laws should be enforced) to pray for the unconditional fulfilment of those express engagements contained in the treaty of cession, and for those other benefits to which they are entitled as freemen of the United States. But had not your petitioners the unconditional provisions of a treaty to rest their rights upon, still they might have expected a Government founded on more liberal principles from the Representatives of a free people, who, on a great occasion, had previously declared to the world these truths to be self-evident: "That all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new Government, laying its foundations on such principles, and organizing its powers in such form, as

to them shall seem most likely to effect their safety and happiness."

Little as we are acquainted with the United States, we know by heart your declaration of independence; we recollect the noble deeds of the heroes who bled in your glorious Revolution; we are no strangers to the Constitution of the United States, and the bills of right, and constitutions of the several States in the Union; and it was upon those highly respectable and absolutely binding authorities, that we had anticipated the blessings of freedom.

In order to enforce their pretensions, your petitioners are sensible that it becomes incumbent on them to submit to your honorable Houses a comparative view of the constitutions enacted by Congress, at different times, for the different Territories, which were erected previously to the erection of the district of Louisiana; from that statement, extracted from your own records, your honorable Houses cannot help being convinced that the act respecting the district of Louisiana alone, instead of the open, disinterested countenance of a fond adoptive mother exhibited to our sister territories, bears the stern, distrustful look of a severe, imperious master; and if your honorable Houses will be so good as to follow your petitioners through this interesting review, you will be fully satisfied that the humble remonstrances of your petitioners rest on the rock of American liberty and independence.

Although your petitioners lament that the principle should now appear consecrated by practice, that governors and judges should, contrary to every principle of liberty, and to the principles of the Constitution of the United States, which took care to separate them, unite in their hands the three powers, Legislative, Executive, and Judicial, yet your petitioners would have submitted in silence to whatever had been adopted by Congress, and submitted to by the people. But arbitrary measures without a precedent call loudly for the most energetic remonstrances to your honorable Houses.

By the twelfth section of the act erecting Louisiana into two Territories, and providing for the temporary government thereof, "the Executive power, now vested in the Governor of the Indiana Territory, is to extend to and be exercised in Louisiana." Your petitioners beg leave to state that they have read, with the utmost attention, the laws enacted at different times, for the provisory government of the several Territories of the Union; and that far from observing in those laws anything like trusting the Governor of a neighboring State or Territory with the government of a newly-erected Territory, they find, on the contrary, that Congress paid the most scrupulous respect to the interest and feelings of the inhabitants by the wisest precautions, in not only obliging the Governor to reside in the Territory which he governs, but also in obliging him to hold a freehold estate in the same Territory. In the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find this provision: "Be it ordained by the authority aforesaid, that there shall be appointed from time to time by Congress a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in one thousand acres of land, while in the exercise of his office."

In the act authorizing the establishment of a government in the Mississippi Territory we find, "and the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the Territory Northwest of the river Ohio." And in the act to divide the Territory of the United States Northwest of the river Ohio, we find: "Sec. 2. *And be it further enacted*, That there shall be established within the said Territory a government in all respects similar to that provided by the ordinance of Congress, passed on the 13th day of July, 1787, for the government of the Territory of the United States Northwest of the river Ohio."

In the act erecting Louisiana into two Territories, the executive power in the district of Orleans is vested in a Governor, who shall reside in the territory, &c.

Here, then, are the laws of the three Territories, erected previously to the erection of the district of Louisiana, and the laws of the district of Orleans, erected by the very same act. Those laws make it necessary for the Governor, who is liable to be called upon for the discharge of his official duties by every citizen of the Territory to reside in said Territory. The law with respect to three of those Territories does not stop there. Congress were fully sensible that the inhabitants of those Territories would place more confidence in men who, like the inhabitants themselves, should have a direct interest in the welfare of the country, by their own possessions in it; and to the indispensable condition of residence in the Territory, they made it necessary for the Governor, while in the exercise of his office, to have a freehold estate therein in one thousand acres of land.

The extension of the Executive power to the Governor of the Mississippi Territory over the district of Orleans can hardly be adduced as a precedent; for, ever since the extension of his jurisdiction, the Governor of the Mississippi Territory has habitually resided in the district of Orleans, of which he was Governor in fact; whilst the administration of the government of Mississippi Territory was left in the hands of a Secretary. But admitting, for argument's sake, that it might be construed into a precedent, your petitioners beg leave to observe to your honorable Houses that the circumstances of the two Territories cannot be compared. There are hardly two hundred and forty miles from Natchez to Orleans. An easy and speedy communication can be had at all times between the two places, both by land and by water. The laws of both Territories may be very similar in many important respects, by which the property of the inhabitants may be affected. Slavery prevails in both Territories.

On the contrary, the point of Louisiana nearest to the place where the Governor of the Indiana Territory makes his habitual residence is not less than one hundred and sixty-five miles distant, and there is not a house to be met with on the road; impassable at many seasons of the year, owing to the number of creeks and rivers which sometimes overflow their banks, sometimes are entirely covered with ice; so that we may conclude that, did not justice and sound policy prohibit the alliance in contemplation, nature itself loudly proclaims its impracticability. Your honorable Houses may judge at what an immense distance some parts of Louisiana must be from the Governor, to whom an appeal lies in many cases affecting the property and even the life of individuals.

What would it be, if, arriving at Vincennes in those circumstances, an inhabitant of Louisiana was told of His Excellency's being at Detroit, six hundred miles further? Besides, the laws of both Territories must be very dissimilar in a number of respects. Slavery cannot exist in the Indiana Territory, and slavery prevails in Louisiana; and here your petitioners must beg leave to observe to your honorable Houses that they conceive their property of every description has been warranted to them by the treaty between the United States and the French Republic. Your petitioners are informed that a law respecting slavery has been passed by Congress for the district of Orleans, similar in many respects to the one formerly made for the Mississippi Territory. Is not the silence of Congress with respect to slavery in this district of Louisiana, and the placing of this district under the Governor of a Territory where slavery is proscribed, calculated to alarm the people with respect to that kind of property, and to create the presumption of a disposition in Congress to abolish at a future day slavery altogether in the district of Louisiana?

The same wise precaution which induced Congress to make the residence of the Governor and the holding of property in the Territory where he exercises his office necessary, extends likewise, in the three Territories erected previously to the erection of the district of Louisiana, to the secretary and judges of the said Territories. In the same third section of the ordinance for the government of the Territory of the United States Northwest of the river Ohio, we find, "there shall be appointed, from time to time, by Congress, a Secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein in five hundred acres of land, while in the exercise of his office," &c.

And again, in the same third section, "there shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in five hundred acres of land, while in the exercise of their office."

These provisions extend likewise to the Mississippi Territory, as may be seen by a reference to an act authorizing the establishment of a government in the Mississippi Territory; and to the Indiana Territory, as may be seen by a reference to an act of Congress to divide the territory of the United States Northwest of the Ohio into two separate governments.

Your petitioners cannot consider it as necessary to add any other reasons to those given already, and which appear to them grounded upon justice, in order to determine your honorable Houses immediately to repeal that part of the act providing for the government of the district of Louisiana, which places this district under the administration of the Governor, Secretary, and Judges of the Indiana Territory. To say more on the subject might appear to doubt your disposition to do justice to the request of your petitioners, and to your justice alone they are determined to appeal.

How far the extraordinary measures, contemplated by the fourteenth section of the bill erecting Louisiana into two Territories, may, in the opinion of Congress, have been rendered necessary by circumstances, it does not belong to your petitioners to determine. Were those measures only severe, we should oppose to them only the articles of compact between the original States and the people of the Northwestern Territory. Article second of said compact expressly declares: "That in the just preservation of rights and property it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever interfere with or affect private contracts or engagements, *bona fide* and without fraud, previously formed.

In the fourth article of the same it is provided: "That non-resident proprietors shall in no case be taxed higher than residents."

Here Congress not only acknowledge that they have no right to make a law interfering with or affecting private contracts or engagements, *bona fide* and without fraud, previously formed, but so tender are they of the right of property, that they even go so far as to provide that non-resident proprietors shall in no case be taxed higher than residents.

How different is the condition of the Louisianians! Congress, in the fourteenth section of the act erecting Louisiana into two Territories, seems to acknowledge the validity of some incipient titles to land, for what else can mean these words? "Or to make null and void any *bona-fide act* or *proceedings* to obtain a grant for lands done by an actual settler, agreeably to the laws, usages, and customs of the Spanish Government." Act or proceedings cannot certainly mean anything else than the incipient titles of which we are speaking.

Now, suppose such act or proceeding, agreeably to the laws, usages, and customs of Spain, to have actually taken place, three years were granted by the Spanish Government after having obtained a full or incipient grant for making a settlement thereon. There may be, and there are, American emigrants, who, some time previously to the 20th day of December, 1803, may have bought

from the original proprietor, or rather holder, of that incipient title, his right to said lands. There may be, and there are, some who have obtained those incipient titles in their own name, and who, ignorant as they must have been of a law not enacted at the time, and taking it for granted that Congress would allow the same space of time which was allowed by the Spanish Government for making a settlement upon lands obtained from the Spanish Government, may have returned to the Eastern part of the United States in order to prepare everything necessary for their removal, and with an intention of coming back to Louisiana in the following spring to settle upon those lands which they had bought *bona fide* and without *fraud*. But perhaps Congress, who, in the beginning of the fourteenth section, had declared null and void every act and proceeding subsequent to the Treaty of St. Ildefonso, made the 1st day of October, 1800, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatever authority transacted or pretended, be, and have been, from the beginning, null, void, and of no effect in law or equity, may insist that since the sovereignty of the lands in Louisiana was vested in the United States, the 1st day of October, 1800, and since, more than three years elapsed from the 1st day of October, 1800, to the 20th day of December, 1803, they have unquestionably a right to expel from the lands they claim any man who, according to the conditions of the Spanish Government, has made no improvement on the lands he might have obtained on the 20th day of December, 1793; and as to Congress being pleased to confirm such in itself an insufficient title to any actual settler, it is a favor which they may or may not grant, without binding themselves to extend it to the representative of the original holder, unless the express condition of an improvement has been fulfilled; but if your honorable Houses give leave to your petitioners to remind you that, by the first article of the Treaty of St. Ildefonso, "His Catholic Majesty promises and engages, on his part, to cede to the French Republic, six months after the full and entire execution of the conditions and stipulations herein relative to His Royal Highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it has now in the hands of Spain, and that it had when France possessed it," it will be manifest to your honorable Houses that the King of Spain did not renounce his sovereignty over Louisiana on the 1st day of October, 1800.

At what period of time an absolute renunciation of Louisiana was made by the King of Spain your petitioners cannot ascertain; but they humbly conceive that the sovereignty of the United States in Louisiana did not begin previously to that absolute and unconditional renunciation on the part of the King of Spain.

And if your honorable Houses consider, moreover, that time sufficient must be allowed for the Spanish Government to make known its final treaty with the French Republic to its agents in Louisiana, (authorized, your petitioners humbly conceive to grant lands in its name until they received official notice of the treaty which ceded Louisiana to France,) and that it is not probable that a Government at a considerable distance can be in a greater hurry to take steps by which it divests itself of the sovereignty of a country, than the Government which has just acquired that country, and which is on the spot, has taken to have its sovereignty acknowledged there, and that ten months and ten days elapsed after the treaty between the United States and the French Republic before the United States took possession of Louisiana, your honorable Houses must conclude that there may have been grants for lands obtained from the Spanish Government, as to which those who have obtained them may have yet more than one year to comply with the laws, usages, and customs of the Spanish Government. But your petitioners (we mean the few who have any knowledge at all of the law respecting Louisiana, enacted during the last session of your honorable Houses) find themselves placed between the necessity either of not complying with the conditions on which they received lands from the Spanish Government, or of acting in direct contradiction to a law enacted by your honorable Houses; and yet what do those grants amount to which were given since the 1st day of October, 1800? If your honorable Houses will be pleased to call upon officers in Louisiana for a correct statement of the quantity of land given since that epoch by the officers of the Spanish Government, your honorable Houses will be satisfied that there has been but a very inconsiderable quantity of land thus disposed of, and disposed of chiefly in favor of hard laboring men, who, owing to the various rumors which ran all over the country ever since the cession of France was spoken of; the country belonging sometimes to Spain, sometimes to France, sometimes to the United State, sometimes to Spain again; at an immense distance from every source of information, very often not understanding the language of their neighbors; discouraged at first from exhausting their means in making improvements on lands to which they had obtained an incipient title, from what they conceived the precariousness of those titles, likely to result from the interference of such or such a Power to which they were told Louisiana belonged; prevented by your law from complying with the conditions of Spain, when they had it not any longer in their power to doubt that the country was ultimately to remain to the United States, and who, at the very moment their confidence had begun to revive, find themselves, whatever they may do, liable to be punished by a free and enlightened nation for having listened to the dictates of prudence and placed confidence in the United States.

Your petitioners beg leave to observe further, that it was only on the 10th day of March, 1804, that the United States took possession of the district of Louisiana; it should seem of course that the inhabitants of Louisiana could not be bound by any law of the United States, previously, at least, to that epoch: Yet your honorable Houses,

by a law approved by the President, on the 26th day of March, 1804, deprive of his property, and if he does persist in his claim after the first day of October next, condemn to a fine not exceeding one thousand dollars, and to suffer an imprisonment not exceeding one year, any man who shall have attempted a settlement on lands to which he may not have obtained as yet a complete title, if he has made or attempted a settlement any time posterior to the 20th day of December, 1803, that is, more than three months before the law which condemns him was enacted; and if your honorable Houses reflect that the act erecting Louisiana into two Territories, is only to take place on the first day of October, 1804, it will result that a man may be guilty of doing an act indifferent in itself, in virtue of a law which is to take place more than nine months subsequently according to the law itself, before the provision of that law can be enforced, and that, too, in the very face of the third article of the ninth section of the Constitution of the United States, which declares, "That no bill of attainder, or *ex post facto* law, shall be passed.

The 15th section of the law erecting Louisiana into two Territories authorizes the President of the United States "to stipulate with any Indian tribes, owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands, the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon."

Had the United States bound themselves to exterminate from the face of the earth every inhabitant of Louisiana, your petitioners do not conceive, that they could have taken a more effectual step towards the fulfilment of the engagement, than the measures contemplated by the fifteenth section of the law, respecting the district of Louisiana. But, by the treaty with the French Republic, the United States have engaged to maintain and protect us in the free enjoyment of our liberty and property. Great God! a colony of Indians to protect us in our liberties and properties! And we hear, at the same time, that troops have been ordered from some parts of this district of Louisiana; and, at this moment, the garrison of New Madrid is reduced (not from death or sickness, from which they have kept entirely free, but in virtue of orders received from the commanding officer at Fort Massac.) to fifteen men. In the meantime, depredations and assassinations by the Indians have already begun: it is not a week since your petitioners received the news, that, within forty miles of this place, the Indians had wantonly assassinated three men. A week before, we heard of another set, on the river St. Francis, who committed against one of our scattered settlers every sort of depredation; killing his cattle of every description, destroying all his property of every kind, stripping him and his family entirely naked, and, after glutting themwith what provisions they found in the house, throwing all the rest into the fire. What a time have your honorable Houses chosen for the exchange in contemplation! A plan, wearing the most threatening aspect to our lives and properties—a plan not only alarming in its immediate effects, but pregnant with evils of a most dangerous nature in its remote consequences.

Your petitioners humbly conceive, that the tribes of Indians living in your populous States cannot possibly prove, at any time, dangerous to their white inhabitants, principally dispersed and scattered as they are upon an immense, and, in many parts, very thickly inhabited territory: But your honorable Houses must be sensible that it would be far otherwise with respect to any habitual residence those now scattered Indians could make on the west side of the Mississippi. The Indians will be by the measures contemplated connected together, and our white settlers must, for a very considerable time to come, remain dispersed at an immense distance from each other; an easy and defenceless prey to the bloody rage of the merciless tomahawk. Is this protection? Is this justice? Is this equity? Would your honorable Houses acknowledge in all the Powers of Europe the right to collect in one body all their convicts, amounting in number (if such a number could be found) to twice, or perhaps three times your own population, and to vomit them on your shores? The narrow and limited view of your petitioners does not allow them to see any the least difference between the conduct of the Powers of Europe in that case, and your conduct with respect to us; except that in one case the Powers of Europe are not bound by any treaty to protect you, and the Government of the United States is bound to protect us. Your petitioners might add that convicts might possibly be reclaimed, but experience teaches us that the Indians, when conscious of their strength, the nearer they approach to civilization the more inclined they feel to resume at the first opportunity their naturally cruel and savage disposition.

Your petitioners do not doubt but that some grand political ends were expected to be answered by the provision in the fifteenth section of the bill erecting Louisiana into two Territories, but were those ends as advantageous as in the humble opinion of your petitioners they are disastrous—"Nothing," said Aristides to the Athenians, "could be more advantageous than the proposition of Themistocles, but nothing could be more unjust." Your honorable Houses are well acquainted with the determination of the Athenian people.

Your petitioners have thus gone through the painful, yet they conceive indispensable, task of remonstrating against grievances, in compliance with the duty they owed to their country, to themselves, and to posterity. Your petitioners are sensible that, in the discussion of interests of such magnitude, involving their dearest rights, they may, perhaps, appear to have deviated a little, either in some of the conclusions or expressions, from the respect they never intended to refuse to the highest authority of their country: but let your honorable Houses remember that your petitioners feel themselves injured, deeply injured. Could they tamely submit, could they even represent with more moderation in such a case, you

yourselves would not consider them worthy to be admitted into a portion of the inheritance of the heroes who fought and bled for the independence of America.

Your petitioners ask, 1st. For the repeal of the act erecting Louisiana into two Territories, and providing for the temporary government thereof.

2dly. That legal steps should be immediately taken for the permanent division of Louisiana.

3dly. That a Governor, secretary and judges, should be appointed by the President, who shall reside in the district of Louisiana, and hold property therein to the same amount as is prescribed by the ordinance respecting the Territory Northwest of the river Ohio.

4thly. That the Governor, secretary and judges, to be thus appointed, for the district of Louisiana, should, in preference, be chosen from among those who speak both the English and the French languages.

5thly. That the records of each county, and the proceedings of the courts of justice in the district of Louisiana should be kept, and had in both the English and French languages, as it is the case in a neighboring country, under a monarchical Government, and acquired by conquest.

6thly. That supposing the district of Louisiana to be divided into five counties, ten members, two from each county, shall be elected by the people having a right to vote in each county, according to the rules prescribed by the ordinance respecting the Northwestern Territory every two years, or such another number as Congress may appoint, which said members shall, jointly with the Governor, form the Legislative Council of said district of Louisiana.

7thly. That Congress would acknowledge the principle of our being entitled, in virtue of the treaty, to the free possession of our slaves, and to the right of importing slaves into the district of Louisiana, under such restrictions as to Congress in their wisdom will appear necessary.

8thly. That Congress, taking into consideration the distance at which we live from the seat of the General Government, which does not allow the General Government to be informed with respect to the true interest of this country but through the agents of that same Government, Congress should enact a law authorizing this district of Louisiana to send an agent or delegate to Congress, whose powers, as to speaking and voting in the House, Congress may circumscribe as to them may seem proper.

9thly. That funds should be appropriated for the support, and lands set apart or bought for the building and maintaining of a French and English school in each county, and for the building of a seminary of learning, where not only the French and English languages, but likewise the dead languages, mathematics, mechanics, natural and moral philosophy, and the principles of the Constitution of the United States should be taught. Independent of the obligation of spreading knowledge, upon which alone a free Government can stand in a country till now unacquainted with your laws and language, a powerful additional interest will result, in the opinion of Congress, from the teaching principally of mathematics and natural philosophy, when your honorable Houses reflect that Louisiana abounds with mines of every description, which can never be worked to any advantage without the powerful engines supplied by these two sciences.

10thly. That every private engagement, conformable to the laws of Spain, entered into during the time Louisiana was ruled by the laws of Spain, shall be maintained.

11thly. That any judgment which was considered as final, according to the Spanish law, shall not be revised by any of the tribunals to be established in Louisiana by the United States.

12thly. That any judgment from which an appeal might be had, according to the Spanish law, to any superior tribunal, may be appealed from to a tribunal of equal dignity within this Territory, or the United States, and that a final judgment be had, conformably to the laws of Louisiana, at the time the suits were brought into court.

And now your petitioners trust their remonstrances and petition to the justice of your honorable Houses, and they do not entertain the least doubt but that a nation, who, in their Declaration of Independence, has proclaimed that the governors were intended for the governed, and not the governed for the governors; a nation who complained so loudly of their right of representation, a right inestimable to them, and formidable to tyrants only, being violated; a nation who presented it to the world, as one of their reasons of separation from England, that the King of England had endeavored to prevent the population of their States; a nation who waged war against her mother country for imposing taxes on them without their consent; a nation who styles the Indians "the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions," will not be deaf to their just complaints; and, by redressing their grievances, will deserve forever the most unbounded affection of the inhabitants of the district of Louisiana.

Elated with these hopes, your petitioners conceive that they cannot end their present remonstrance and petition in a more suitable manner than by renewing to you the oath they had administered to them on the first day of their meeting together in General Assembly, by the first civil commandant of this district of Louisiana.

And we all swear "to be faithful to the United States, to maintain with all our power the Constitution of the United States, and to obey the laws made and to be made by Congress for the district of Louisiana."

Signed at St. Louis, the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and four, and of the American Independence the twenty-ninth.

[Signed by the Deputies of New Madrid, Cape Girardeau, Ste. Genevieve, St. Louis and its dependencies, St. Charles and its dependencies.]

DISTRICT OF COLUMBIA.

[Communicated to the House, January 22, 1805.]

To the Senate and House of Representatives of the United States: The memorial of delegates appointed by various sections of the District of Columbia respectfully represents—

That their constituents, at the commencement of the present session, with a view to ascertain the general opinion on such objects as might require the interposition of Congress, and which, by being presented in one view, might supersede numerous petitions on subordinate points, so apt to distract the attention, and unnecessarily consume time claimed by national concerns, empowered your memorialists to take into consideration the situation of the District, and submit whatever, in their opinion, its welfare required.

Your memorialists accordingly met at an early period and made considerable progress in the business confided to them, when their deliberations were arrested by the propositions offered for a recession of the District. As soon as a decision was made upon them, your memorialists resumed their sittings, and now embrace the earliest opportunity in their power of inviting the attention of the Legislature to the results of their deliberations. In submitting these they beg leave to state that they have refrained from noticing any objects, an attention to which is not, at the present time, of indispensable importance to the interests of the District.

The object which, from its superior interest, first engaged their attention, is the administration of justice. By a recurrence to the laws of Congress it appears that, in organizing the Judiciary system of the United States, fees were allowed to the officers of the courts established in the respective States equal to those allowed in the supreme courts thereof, with an addition of one third, together with other emoluments. The reason of this liberal allowance was doubtless the high grade of suits generally carried before those tribunals, and the great extent of country they embraced. When Congress assumed jurisdiction over this small territory, the same fees, it is presumed from inadvertence, were allowed to the officers of the circuit court of the District of Columbia, as those allowed in the other circuits. Previous to this time, that portion of the District which at present forms the county of Washington was charged with fees similar to those paid in the county courts of Maryland; and that portion which now forms the county of Alexandria was charged with the same fees as those paid in the county courts of Virginia. By this provision the fees have been increased, in some instances, to double, and, in other instances, to three times the amount paid under the States to which the portions of the District were attached. Local and peculiar circumstances, so far from creating any reason for this augmentation, strongly enforce a diminution. Among these are,

The small size of the District;

Its compact population;

The increased number of suits before the circuit court, from the extension of its cognizance to controversies for sums exceeding twenty dollars, the greatest part of which arise between tradesmen and mechanics in moderate circumstances.

Without going into detail, it may be proper to state, that, when the defendant immediately on being served with writ satisfies the demand against him, the costs are seldom less than ten dollars; that, in the suit where the debt is not contested but which is carried into court solely for delay, the costs amount to thirty-three dollars, even in cases where the debt does not exceed twenty-one dollars. In the case of an appeal from the decision of a magistrate on a demand of thirteen dollars, which was reversed by the court, the costs incurred by the defendant amounted to about one hundred and thirty dollars, nearly one-third of which was in compensation to witnesses.

Your memorialists need scarcely, after the statement of those facts, and the mass of corroborating facts herewith submitted, say, that the existing system presses with a weight upon the district that threatens in a short time to destroy the industry of the honest citizen or drive him from it. In order to remove these evils, your memorialists pray a reduction of the fees of the officers of the circuit court, in the county of Washington, to the rates payable to the officers of the county courts of Montgomery and Prince George's, in the State of Maryland, at the time of the assumption of the jurisdiction by Congress; and of those of the officers of the circuit court in the county of Alexandria to the rates payable to the officers of the county court at Fairfax, in the State of Virginia, at the same period.

It is respectfully submitted whether the impartial administration of justice does not require the repeal of so much of the act of Congress, entitled "An act additional to, and amendatory of, an act concerning the District of Columbia," as repeals the act providing for the compensation of the justices of the peace thereby created; and as directs execution on magistrates' judgments to issue from the clerk's office, and allows him a compensation therefor; and likewise so much thereof as relates to the compensation of jurors in the county of Washington; which repeal, your memorialists have no hesitation in saying, will give general satisfaction to their constituents.

Experience having proved the existence of various defects in the militia system, it is recommended as the means of obviating them, and of rendering the system more acceptable to the inhabitants of the district, that it be so altered as to reduce the number of musters from eight, as now directed to be held, to five; that is, three musters in company, one in battalion, and one in legion; to reduce the number of courts for assessing fines from six, as now directed to be held, to four; that is, two battalion and two legionary courts; to make the persons of delinquents liable to arrest and imprisonment, not exceeding twenty-four hours, for each day's non-attendance, where property is not shown whereon to assess the fines; and to devolve the collection of fines on the marshal of the district as

practised in the first instance, instead of collectors appointed by military courts, as is now the case.

Your memorialists further request that validity may be given in the District of Columbia to letters testamentary and of administration, granted in any part of the United States, in which the testator or intestate resided at the time of his death; and that owners of slaves residing within the district may be permitted to remove them from time to time from one county thereof to the other, without incurring any penalty or forfeiture.

Inconveniences having arisen from the want of competent authority, to lay out and keep in repair roads within the county of Washington, it is requested that adequate provision be made for this interesting object.

Your memorialists are duly impressed with the lateness of the period of their application, and its possible interference with an attention to objects under the consideration of Congress; but they are likewise impressed with a belief that a sincere disposition exists to promote the general interests of the district, and so far as they can be ascertained, to consult the wishes of its inhabitants; having, however, made no request, not dictated by considerations of great weight, and justified by a regard for the interest of their constituents, they entertain the hope that their representation will obtain the early attention of Congress.

C. CONINGHAM, *President*,
N. KING, *Secretary*.

JANUARY 18, 1805.

The committee appointed on the 19th November, 1804, to whom was referred a resolution directing certain inquiries to be made respecting the administration of law, and the fees allowed to the officers of the district court, offer the following report as the result of their labors:

They have, from Herty's Digest of the Laws of Maryland, ascertained the fees payable to the clerks of the county courts of the State, and reduced them from tobacco to the currency of the United States: (in paper marked A.)

They have, also, from the same source obtained the fees payable to the sheriffs in Maryland, in the money of the United States. (in paper marked B.)

They have, from the law of Congress, chap. 125, sec. 1, passed on the twenty-eighth of February, 1799, made an extract, (C,) of the fees allowed to the marshal; which they have also entered in paper B, for the purpose of making the comparison between them, and the fees received by the sheriffs of Maryland for similar services.

They have, from the same law, ascertained the fees of the clerk of the district court, (in extract D.) These are entered, where for similar services, in the paper A, for the purpose of comparing the compensation of clerk of the district court with the clerks of the county courts of Maryland.

The paper marked E shows the number of suits on the docket at each court or term since the establishment of the county court for the county of Washington; from this it will appear, that, at the three courts holden in 1801, quarter yearly, there were 763 appearances, 384 imparlances, 193 trials, 8 appeals, and 71 criminal cases. At the three courts held in 1802, two of which were quarter yearly, and the third six months thereafter, there were 1,119 appearances, 657 imparlances, 746 trials, 23 appeals, and 96 criminal cases. At the two half yearly courts holden in 1803, there were 880 appearances, 723 imparlances, 462 trials, 17 appeals, and 93 criminal cases. That at the July term, in 1804, there were 467 appearances, 316 imparlances, 267 trials, 7 appeals, and 65 criminal cases.

Desirable as it is, your committee cannot obtain "the nature and amount of those suits, with the expenses attending them, and the sums recovered," without paying a large sum in fees to the clerk of the court for searches, &c., or they would willingly have taken on themselves the labor of extracting all the information which the documents would afford. Nor can they, from the same causes, obtain the facts relative to cases of insolvency, and which might throw light upon their causes, and show how far it is through the instrumentality of the judiciary establishment of the District that they occur.

The number of criminal cases which appear on the docket may be averaged at about ninety in each year, but the committee have not been able to ascertain the amount of fines imposed.

The marshal has been obliging enough to furnish the committee with (F) the amount of compensation paid to grand and petit jurors at March term, 1802; it being $711 75. One of the committee being referred to the marshal's office, from the clerk's, for this information, took the liberty of asking other information at the same time, which it was supposed might be obtained from that source (G.) The application was made to the deputy marshal at the office, as accident, rather than design, had led him there. Although unable to obtain the facts wanted, the committee believe the disposition lay with the marshal and deputy, to furnish any information in their possession; but not having complete returns of fees, judgments, &c. in the office, they could not satisfy the inquiries of the committee.

From a professional gentleman your committee have obtained the following information on the subject of uncontested claims: "That where the defendant is served with a writ, provided he immediately pays the debt, the costs are seldom less than ten dollars." And that the expenses attendant on a suit in the circuit court of the District of Columbia, in Washington county, on a debt of twenty-one dollars, where the defendant does not deny it, but only wishes to obtain time by carrying it into court, as nearly as follows: The plaintiff's costs, seventeen dollars sixteen cents, and the defendant's seven dollars thirty-seven cents, being twenty-four dollars and fifty-three cents incurred to the time of judgment. On execution issuing to the clerk and marshal for issuing, poundage, serving *fieri facias*, swearing appraisers, &c., a further expense of about seven dollars ninety-seven cents will be incurred; making, in all, the sum payable by the defendant to be about fifty-four dollars and forty-nine cents, instead of the original debt of twenty-one dollars! (I.)

The committee have not succeeded in their endeavor to ascertain the expense of a suit where an average number of witnesses were summoned, and the proceedings are protracted by appeal, delay, &c., but as an illustration of the effect of these principles, in a case not pursued to the extremity, they refer to the statement H, given by a citizen of Washington, of the expense he was involved in, by defending himself against what he considered as a gross imposition, and where he was supported in the belief by a previous adjudication. A claim of thirteen dollars was tried before a magistrate, and judgment given in favor of the defendant. The plaintiff by appeal carried the cause into court; about four witnesses were examined; the judges determined on the appeal, reversed the decision of a magistrate, and the defendant had to pay about one hundred and thirty dollars.

At the first establishment of the court, the legal appearance fee of an attorney was fixed at ten dollars. This was, however, at one of the succeeding terms reduced to six dollars and sixty-seven cents, at which sum it now stands.

On reviewing the information thus obtained, it has suggested certain observations, which the committee deem it proper to submit to the consideration of the delegation. The sudden transition from the economical county courts of the State of Maryland to a more dignified judiciary system given to the district, however flattering to our vanity, is not calculated to give satisfaction to those whom necessity impels into its vortex, or who take into view our real situation. For notwithstanding the per diem allowance to the marshal, and the clerk of the court, we find their fees vastly more than the State officers received. By a comparison of the fees allowed to our federal officers, with those paid to the officers of the county courts of Maryland, it appears that the clerk of the court receives about two hundred and fifty per cent. advance; and the marshal's fees are nearly double what the sheriff of Maryland used to receive. This great increase of compensation can scarcely have been dictated by considerations of our local situation, for, in a district only ten miles square, and where the population is more collected than usual in counties of a State, it cannot be supposed that additional labor would be imposed on the clerk, or on the marshal in the discharge of his duty; the reason of the case seems to point to a contrary conclusion. The circumstances of this district being established as the seat of the General Government must increase its population by the removal of strangers into it, many of whom will be tradesmen and mechanics, whose small debts will constitute a large proportion of the business of the courts, and on whom this increase of expense in prosecuting their claims must operate with peculiar hardship. If, on the other hand, these fees were given under the expectation, that from the smallness of the counties in the district few suits would be instituted, and that the compensation of the officers ought therefore to be increased to enable them to live, the result seems to show that expectation was erroneous; as, either from the extension of the jurisdiction to sums of twenty dollars, or the description of the inhabitants, the Washington county docket must afford a reasonable portion of business.

The great labor, and perhaps impossibility of procuring all the facts relative to the expense of prosecuting and the amount recovered, has prevented the committee from obtaining an accurate statement; yet from the docket of the terms which have already passed, they have ventured an estimate of the annual expense to the county of Washington, and the probable amount recovered.

The average number of appearances is nine hundred and eighty-eight in the year; of these suppose eighty-eight are not served, it will leave nine hundred suits on which appearence is entered. And supposing only two attorneys' fees to each suit, although there are frequently four, the amount of attorneys' fees in Washington county will be annually upwards of -	$12,000
The average trial docket is five hundred and twelve, to which suppose two hundred have witnesses summoned, two to each suit, and that they have to attend four days on the average, - - -	2,000
Suppose the clerk's and marshal's fees together, on each suit where the defendant enters an appearance, average five dollars, - - - - - - - -	4,500
The supposed annual expense to the inhabitants of the county, in the prosecution of suits, - - - - - -	18,500
The average yearly trial docket being five hundred and twelve, suppose four hundred of these are actions of debt, and will, one with another, be for fifty dollars each. Then the yearly sum recovered in court will be, - -	20,000
Leaving an excess of the amount over the costs, of - - - - - -	1,500

It has often been considered as humane and beneficial, particularly to debtors, that the trials do not take place until the third term after the institution of the suit; and a very large portion of suits are believed to be carried into court for the purpose of obtaing this delay. Instead of that effect in this District, it appears that this delay costs between thirty and forty dollars; in many cases exceeding, and in some equal to, the original claim. That this expense is frequently involuntary on the part of the debtor, and generally renders him the more unable to pay; a circumstance which even the professional gentlemen and officers complain of, and by which they lose a considerable portion of their fees. It appears to your committee, as more correct, as well as more humane, that the debt should be substantiated as soon as possible, and the delay of execution be given afterwards. In this case, the creditor, having evidence of the truth of his claim, can transfer or otherwise dispose of it; while the debtor, knowing the sum he has to pay, for such a length

of time previous to serving an execution, might make arrangements for its discharge.

From every view your committee have been able to take of the subject referred to them, they are of opinion that the delegation ought to ask of Congress an inferior court for the county of Washington; that this court should be composed of ——; that it should have original jurisdiction in all cases between twenty and one hundred dollars; decide on appeals from a single magistrate, and determine on sums under fifty dollars, without appeal; but that an appeal on matters of law should lie to the circuit court for sums of fifty dollars or upwards, and the original jurisdiction of the circuit court, in cases of debt, be limited to one hundred dollars.

DANIEL REINTZEL,
NICHOLAS KING.
BENJAMIN MOORE.

The committee to whom was referred the inquiry into the effects of our system of civil jurisprudence on the county of Washington, beg leave to report on the following subjects referred to them:

1st. The effect and operation of so much of a law of Congress, additional to and amendatory of an act concerning the District of Columbia, as prohibits the taking of fees by justices of the peace, and which authorize the clerk of the county court to issue executions on their judgments, and take fees therefor.

2d. The effect and operation of so much of the same law as compels jurors to serve without compensation.

3d. And, the effect and operation of so much of the law as provides that "no *capias ad satisfaciendum* shall issue on any judgment of a single magistrate, or in any case, where the judgment, exclusive of costs, shall not exceed twenty dollars."

On the first subject your committee have to observe, that the law and practice of the State of Maryland, which authorized the magistrates to receive fees for transacting such business as came before them, was never complained of as a grievance, because the sums allowed to be taken were in themselves reasonable, and a bare compensation for the time necessarily employed. For issuing a summons or warrant, they were entitled to twelve and a half cents; for judgment, twelve and a half cents; execution, twelve and a half cents; administering an oath, six cents; taking bail bonds, twenty-five cents; taking the acknowledgments of deeds, twenty-five cents to each magistrate; summoning a *venire*, seventy-five cents; valuing an orphan's estate, seventy-five cents; and for several other duties imposed on them, fees equally light.

While these fees, small as they are, were allowed, there was no complaint of a disinclination on the part of the justices to attend to the adjustment of differences arising among our poor but industrious citizens. The fees were received from a principle of justice, and the magistrate was reconciled to them by the consideration, that though an inadequate compensation for his time, they were generally paid by a class of citizens depending on their labor for support, and less able to pay the whole, than the magistrate to abate part of his reasonable claim. The passage of the law which prohibited the magistrates from taking fees was certainly an evil to the community; its tendency was, to render the magistracy less attentive to their duties, and the adjustment of differences less easy of attainment to the poor; it militated against the generally acknowledged principles of justice, particularly in republics, that services ought not to be claimed where compensation for them is not allowed; and it compelled many of our most useful justices of the peace to resign their commissions. While thus taking away from the magistrates, to whom all the trouble of trying the cases brought before them is given, the small compensation they had, the law directs executions on their judgments to be issued by the clerk of the court, and gives him double the fee which the magistrates were allowed to take.

The second subject of inquiry seems attended with more disadvantages to society than the first: for if there are a few men who can give up a portion of their time, without receiving compensation, to the adjustment of differences between their fellow-citizens, and to whom the honor of the magistracy is desirable, they are still fewer in number who can leave their affairs for whole days without previous notice, and attend at a distance from home, at the most unpleasant seasons of the year, for other people's advantage, without being paid for their attendance. When jurors were summoned for the term and received pay for their services, they made arrangements for the transaction of their business during their absence; those summoned were generally judiciously selected, respectable, and in some measure acquainted with those transactions in society to which their inquiries would be directed. Under the present system how differently are we situated: during the whole court, the citizens best qualified for jurors are obliged to keep out of the sight of the marshal and his deputies during the morning of the day when they ought to be attending to their business, lest they be summoned on the jury for the day: and the marshal is obliged to take those whom chance or design has thrown in his way; and they are sometimes travellers, strangers to our habits, our manners, and our laws; who serving against their will may be more anxious to be discharged than solicitous to do justice.

The inconveniences felt from the operation of that portion of the law which prohibits imprisonment for debts under twenty dollars, arise in a great measure from our peculiar local situation. Subject to an influx of strangers by the buildings going on, and the vessels of the United States discharging their seamen in this city, debts of this description to a very considerable amount are contracted by single men with our citizens: many of these contemplating but a transitory residence, and finding the operation of this law, have the dishonesty to avail themselves of it, although they possess sufficient to discharge their debts; and instances of this kind of robbery, aggravated by insult, are not unfrequent. Enemies as your committee are to everything tyrannical in the execution of the law, they are induced to believe, that the effect of this indulgence is neither favorable to humanity nor justice; that it is more an introduction to dishonesty than a provision of humanity in favor of the unfortunate; for few indeed have been the instances of committing a father of a family to prison for a small debt. The law, however, now favors the idle vagabond, shakes the confidence which ought to exist among our citizens, and in many instances is supposed to prevent that lenity and indulgence to the unfortunate, and those having families, which they formerly received. When the confidence of the citizen has been several times abused, he will of necessity withdraw it from others, and the innocent will suffer from the injustice of the depraved.

The committee, therefore, recommend the passing of the following resolution, as declaratory of the sense of the delegation on the subject of the foregoing report:

Resolved, That in the opinion of the delegates of the District of Columbia the repeal of so much of the act of Congress, entitled "An act additional to, and amendatory of, An act concerning the District of Columbia, as repeals the law providing for the compensation of justices of the peace thereby created," would be just, proper, and beneficial to the county of Washington; as would, also, the repeal of so much of the fourth section of said act as directs executions on magistrates' warrants to issue from the clerk's office, and allows the clerk a fee therefor.

DANIEL REINTZEL.
NICHOLAS KING.

[The tables, being voluminous, are omitted.]

MARINE HOSPITAL FUND.

[Communicated to the House, March 5, 1804.]

Mr. S. L. MITCHILL, from the Committee on Commerce and Manufactures, to whom was referred the memorial of sundry citizens and mariners of the city of Baltimore, in the State of Maryland, praying for greater facilities to the admission of sick and disabled seamen into the marine hospitals, made the following report:

The memorialists state, as a grievance requiring a remedy, that seamen of the United States, taken sick or becoming disabled after their arrival in port, and before reshipment on another voyage, are refused admittance into the infirmary, and denied the benefit of the mariner's fund, although such applicants may have heretofore paid hospital money conformably to law. The distress experienced by many seamen, by this construction and execution of the laws, is loudly complained of: and the interposition of Congress is solicited to save the wretched from their present distress, and to avert similar calamities for the future. The seriousness of this complaint, proceeding from the suffering seamen of our country, has been contemplated with anxiety and concern by the committee: their helpless and unfriended situation has been beheld not only with pity, but with an active benevolence, which, at the instant it finds that succour is necessary, exerts itself promptly and without hesitation to afford it. The spectacle of these useful citizens, who navigate the ships of our country, on all their voyages, in which national glory and national wealth are concerned, turned out of doors, because they are sick and indigent, is too painful to be beheld without emotion.

The cause of these exhibitions of woe, so unpleasant to the feelings of individuals, and so calculated to affect the public sensibility, is worthy of being investigated; and the committee believe that much of the evil complained of, will be found to proceed from the generalization of the seamen fund by the act of May the 3d, 1802.

A reference to the different statutes passed on this subject, will satisfy the inquirer that this is the case. By the prudent and salutary provision of an act passed July 6th, 1798, it is made the duty of the master or owner of every ship or vessel of the United States, arriving from a foreign port, and before she shall be admitted to entry, to render to the collecter a true account of the number of seamen employed on board the vessel since her last entry in any port of the United States, and to pay to the said collector at the rate of twenty cents a month for every seaman so employed. The captain is authorized to deduct this out of the sailors' wages. The like regulation was extended to the crews of vessels enrolled or licensed for the coasting trade.

The money thus paid by the seamen, was directed to be accounted for to the Secretary of the Treasury. And the President of the United States was authorized to provide for the temporary relief of sick and disabled seamen. It was an express condition of this capital, that it should be expended only in the district in which it was collected And as it was judged that in some districts, a surplus would remain over and above the needful expenditure, it was directed that such surplus should be vested in the national stock, for the purpose of accumulation, and of being enlarged by charitable donations until proper marine hospitals could be procured for the permanent accommodation of sick and disabled seamen; or, what was better, until pensions could be assigned them.

To these excellent regulations, another important one was added by the statute of March 2d, 1799. By one of the sections of this act the Secretary of the Navy was directed to retain in his hands twenty cents a month from the wages of officers, seamen, and marines, in the navy, to be paid into the treasury, and expended for the same purposes as the money paid by the seamen in the merchants' service, whether on foreign voyages or in the coasting trade. But in that very statute an unhappy diversion was made of those funds from their original destination. In some of the districts, it happened that more money was expended than the sum collected within the same amounted to. This became, in those places, a matter of complaint; to

remedy it, a great inroad was made. The expenditure, which had heretofore been limited to the collection district, was rendered lawful in any part of the State in which such district was situated, and within any other State next adjoining. There was an exception, however, as to the four New England States. Thus was the surplusage in any one district in a great degree prevented, and the project of accumulating money enough for lasting and well endowed hospitals or pensions, by which the sick, wounded, disabled, or veteran seamen might have been provided for and enabled to enjoy repose, almost altogether frustrated.

But even this encroachment upon the primitive design did not give entire satisfaction; complaints were still made in a few places that the surplus of money was inadequate to the wants of the sick and infirm seamen, and they were so loud and reiterated that, on the 3d of May, 1802, Congress listened to them, and declared by a law, the passing of which is never to be regretted, that the moneys heretofore collected—that is ever since 1798—and unexpended, and all moneys thereafter to be collected, under authority of the before mentioned acts, should constitute one general fund, to be employed as circumstances should require, in every seaport of the *nation*. In consequence of this generalizing scheme, the pleasing surplusage that was accumulating in the ports of New York, Philadelphia, Baltimore, and Boston, was broken down and drawn away, except a reservation of $15,000 for building an hospital in Massachusetts.

By this stroke all the hopes of permanent provisions for sailors, with impaired limbs and exhausted constitutions, were blasted at once. No prospect remained but that of a temporary supply, furnished monthly, or from hand to mouth, as the tax was paid to the Treasury. The sums saved by the good management and rigid economy of the managers of them in some places, were not now, as before, treasured up for future benefit there; but, serving merely to tempt the cupidity of persons, in other and distant places, they were melted down and absorbed in the general mass.

The diminution of the fund, in certain ports where it used to be most abundant, has led to a more strict scrutiny than has been usually practised heretofore as to the admission of sailors to the benefits of hospitals. In some places doubts have been entertained whether unemployed seamen ought to be allowed a participation of those advantages. In others (or one other) they have been refused unless the sickness or disability shall have accrued while they are in actual service. In consequence of this manner of construing and executing the law, uneasiness is manifesting itself in several of our most frequented and opulent seaports. Before the generalizing law, these expressions of dissatisfaction were few and local; since that event, they are growing more numerous, and even universal.

For an able and perspicuous view of the sums collected for the relief of seamen, and the places at which they have been collected and expended, with a variety of other interesting and instructive particulars, the committee beg leave to refer to a report of the Secretary of the Treasury, made in obedience to a resolve of this House, on the 21st day of January, and now lying on the table. By this it appears that in some places where money is collected, none is expended.

It is plain to the committee that the seamen of their country ought to be distinguished when in distress from common paupers. It was the intention of the Government to consider them so. They, therefore, while in health and employment, pay something towards their own support when they shall be sick and unable to perform services. The sum collected does not seem sufficient, or why should these unfortunate men be rejected as the memorial states? The committee, while it forbears to make any remarks on the sum of $33,401 expended at Norfolk, and $26,964 at Charleston, S. C., requests that gentlemen will take the trouble to examine these swelling items of the account, while they note only $7,330 are collected at the former of those places, and $15,843 at the latter.

In order, however, to enlarge the means of relief as to temporary purposes, the following proposition is submitted, to wit:

That an additional sum, of five cents per month, be paid for hospital money, by the seamen and others in the foreign, coasting, and naval service, intended by the act of 16th July 1798, and the act of March 2d, 1799.

And with the desire to provide some fund for the permanent relief of decrepit or superannuated seamen, exhausted in service, though not proper objects of a sick infirmary, it is recommended,

That the 1st section of the act of May 3d, 1802, as far as the same respects the generalization of the seamen's fund, be repealed.

LOSS OF THE FRIGATE PHILADELPHIA.

[Communicated to Congress, March 20, 1804.]

To the Senate and House of Representatives of the United States:

I communicate to Congress a letter received from Captain Bainbridge, commander of the Philadelphia frigate, informing us of the wreck of that vessel on the coast of Tripoli, and that himself, his officers, and men, had fallen into the hands of the Tripolitans. This accident renders it expedient to increase our force, and enlarge our expenses in the Mediterranean, beyond what the last appropriation for the naval service contemplated. I recommend, therefore, to the consideration of Congress, such an addition to that appropriation, as they may think the exigency requires.

TH. JEFFERSON.

MARCH 20, 1804.

TRIPOLI, *Nov.* 1, 1803.

SIR: Misfortune necessitates me to make a communication the most distressing of my life, and it is with the deepest regret that I inform you of the loss of the United States' frigate Philadelphia, under my command, by being wrecked on rocks between four and five miles to the eastward of the town of Tripoli. The circumstances relating to this unfortunate event are: At 9 A. M. being about five leagues to the eastward of Tripoli, saw a ship, in shore of us, standing before the wind to the westward; we immediately gave chase; she hoisted Tripolitan colors, and continued her course very near the shore; about eleven o'clock had approached the shore to seven fathoms water; commenced firing at her, which we continued, by running before the wind, until half-past 11; being then in seven fathoms water, and finding our fire ineffectual to prevent her getting into Tripoli, gave up the pursuit, and was bearing off the land, when we ran on the rocks in twelve feet water forward, and seventeen abaft; immediately lowered down a boat from the stern, sounded, and found the greatest depth of water astern; laid all sails aback, loosed top-gallant sails, and set a heavy press of canvass on the ship, blowing fresh, to back her off; cast three anchors away from the bows, started the water in the hold, hove overboard the guns, except some abaft to defend the ship against the gun-boats which were then firing on us; found all this ineffectual; then made the last resort, of lightening her forward, by cutting away the foremast, which carried the main top-gallant with it: but labor and enterprise were in vain, for our fate was direfully fixed. I am fully sensible of the loss that has occurred to our country, and the difficulty which it may further involve her in with this Regency; and feel, beyond description, for the brave unfortunate officers and men under my command, who have done everything in their power, worthy of the character and stations they filled; and, I trust, on investigation of my own conduct, that it will appear to my Government and country consistent to the station in which I had the honor of being placed.

Striking on the rocks was an accident not possible for me to guard against by any intimation of charts, as no such shoals were laid down in any on board, and every careful precaution (by three leads kept heaving) was made use of in approaching the shore, to effect the capture of a Tripolitan cruiser; and, after the ship struck the rocks, all possible measures were taken to get her off, and a firm determination made, not to give her up as long as a possible hope remained, although annoyed by gun boats, which took their position in such a manner that we could not bring our guns to bear on them, not even after cutting away a part of the stern to effect it.

When my officers and self had not a hope left of its being possible to get her off the rocks, and, having withstood the fire of the gun-boats for four hours, and a reinforcement coming out from Tripoli, without the smallest chance of injuring them in resistance, to save the lives of brave men, left no alternative but the distressing one of hauling our colors down, and submitting to the enemy whom chance had befriended. In such a dilemma, the flag of the United States was struck; however painful it will be to our fellow-citizens to hear the news, they may be assured that we feel in a national loss equally with them. Zeal of serving our country, in doing our duty, has placed us in that situation which can be better conceived than described, and from which we rely on our country's extricating us.

The gun-boats, in attacking, fired principally at our masts; had they directed the shot at their hull, no doubt but they would have killed many.

The ship was taken possession of a little after sunset; and, in the course of the evening, myself, and all the officers, with part of the crew, were brought on shore, and carried before the Bashaw, who asked several questions. From his palace, the officers were conducted to the house which Mr. Cathcart lived in, where we lodged last night, and this day the Minister has become the guarantee to the Bashaw for us officers, and we have given him our parole of honor.

Enclosed you will receive a list of the officers, and a few of the people to attend them, who are quartered in the American Consular house, and are to be provided for by such ways and means as I can best adopt, which will be on as economical a plan as possible: the remainder of the crew will be supported by the Regency.

We have all lost everything but what was on our backs, and even part of that was taken off; the loss of the officers is considerable, as they were well provided in every necessary for a long station.

Mr. Nissan, the Danish Consul, has been extremely attentive, and kindly offers every service of assistance.

I trust, sir, you will readily conceive the anxiety of mind I must suffer. After the perusal of the enclosed certificate from the officers, on my conduct, should you be pleased to express the opinion of Government, you will much oblige me.

I have the honor to be, &c.

WM. BAINBRIDGE.

HON. ROBERT SMITH,
Sec'y of the Navy, Washington.

P. S. Notwithstanding our parole, we are not permitted to leave the house, or to go to the top of it, and they have closed our view of the sea.

List of officers and men quartered at the American Consular-house at Tripoli.

Wm. Bainbridge, Captain; David Porter, Jacob Jones, Theodore Hunt, and Benjamin Smith, Lieutenants; Wm. S. Osborn, Lieut. of Marines; John Ridgely, Surgeon; Keith Spence, Purser; Wm. Knight, Sailing Master; Jonathan Cowdery, and Nicholas, Harwood, Surgeon's Mates; George Hodge, Boatswain; Bernard Henry, Daniel T. Patterson, James Gibbon, Benj. F. Reed, William Cutbush, Wallace Wormley, Robert Gamble, Richard B. Jones, James Renshaw, James Biddle, and Simon Smith, Midshipmen; Joseph Douglass, Sailmaker; Richard Stephenson, Gunner; William Godby, Carpenter; William Anderson, Captain's Clerk; Minor Forentan, Master's Mate; James C. Morris, Ship's Steward; Ottis Hunt, and David Irvine, Sergeants of Marines; William Leith, Ship's Cook; James Casey, Master-at-Arms; Peter Williams, Corporal; John Baptist,

Lewis Hecksener, Frederick Lewis, Chas. Mitchell, Peter Cook, Leonard Foster, William James, William Gardner, and William Kemperfill—43.

43
264 men and boys in the Bashaw's Palace.

307 total of crew.

SIR: We, late officers of the United States frigate Philadelphia, under your command, wishing to express our full approbation of your conduct concerning the unfortunate event of yesterday, do conceive that the charts and soundings justified as near an approach to the shore as we made; and that, after the ship struck, every exertion was made, and every expedient tried, to get her off, and to defend her, which either courage or abilities could have dictated. We wish to add, that, in this instance, as well as every other since we had the honor of being under your command, the officer and seaman have distinguished you. Believe us, sir, that our misfortunes and sorrows are entirely absorbed in our sympathy for you.

We are, sir, with sentiments of the highest and most sincere respect, your friends and fellow-sufferers,

DAVID PORTER, Lieutenant.
J. JONES, Lieutenant.
THEODORE HUNT, Lieutenant.
BEN. SMITH, Lieutenant.
WM. S. OSBORN, Lieut. Marines.
JOHN RIDGELY, Surgeon.
KEITH SPENCE, Purser.
WM. KNIGHT, Sailing Master.
JON'A. COWDERY, Surgeon's Mate.
NICH. HARWOOD, do.
BERNARD HENRY, Midshipman.
JAMES GIBBON, do.
BENJAMIN F. REED, do.
WALLACE WORMLEY, do.
ROBERT GAMBLE, do.
JAMES BIDDLE, do.
RD. B. JONES, do.
D. T. PATTERSON, do.
WM. CUTBUSH, do.
SIMON SMITH, do.
JOSEPH DOUGLASS, Sailmaker.
GEORGE HODGE, Boatswain.
RD. STEPHENSON, Gunner.
JAMES RENSHAW, Midshipman.
WM. GODBY, Carpenter.

DESTRUCTION OF THE PHILADELPHIA.

Commodore Preble to the Hon. Robert Smith, Secretary of the Navy.

U. S. SHIP CONSTITUTION,
SYRACUSE HARBOR, *Feb.* 19, 1804.

SIR: I have the honor to inform you that the United States brig Syren, Lieutenant Commandant Stewart, and ketch Intrepid of four guns, Lieutenant Commandant Decatur, arrived here last evening from a cruise. They left this port the 3d instant, with my orders to proceed to Tripoli and burn the frigate (late the United States frigate) Philadelphia, at anchor in that harbor. I was well informed that her situation was such as to render it impossible to bring her out, and her destruction being absolutely necessary to favor my intended operations against that city, I determined the attempt should be made.

I enclose you copies of my orders on this occasion, which have been executed in the most gallant and officer-like manner by Lieutenant Commandant Decatur, assisted by the brave officers and crew of the little ketch Intrepid under his command. Their conduct in the performance of the dangerous service assigned them cannot be sufficiently estimated; it is beyond all praise. Had Lieutenant Decatur delayed one half hour for the boats of the Syren to have joined him, he would have failed in the main object, as a gale commenced immediately after the frigate was on fire, and it was with difficulty the ketch was got out of the harbor. The Syren, owing to the lightness of the breeze in the evening, was obliged to anchor a considerable distance from the city, which prevented her boats from rendering much assistance, as they might have done had they entered the harbor earlier. Lieutenant Stewart took the best position without the harbor, to cover the retreat of the Intrepid, that the lightness of the wind would admit of. His conduct through the expedition has been judicious and meritorious. But few of the officers of the squadron could be gratified by sharing in the danger and honor of the enterprise. In justice to them, I beg leave to observe that they all offered to volunteer their services on the occasion; and I am confident, whenever an opportunity offers to distinguish themselves, that they will do honor to the service.

I enclose you Lieutenants Commandant Stewart and Decatur's official communication, with the names of the officers on board the ketch.

I have the honor to be, &c.

EDWARD PREBLE.

U. S. BRIG SYREN,
SYRACUSE HARBOR, *Feb.* 19, 1804.

SIR: I have the honor to enclose for your information the principal occurrences and observations during our late expedition in company with the ketch Intrepid, Lieutenant Commandant Decatur, to effect the destruction of the frigate Philadelphia in the harbor of Tripoli, and on the happy termination of that enterprise I heartily congratulate you. I only have to lament that a junction had not been formed with the Intrepid by the boats of the Syren under the command of Lieutenant Caldwell, as I make no doubt they would have been able to carry and destroy one or both of the cruisers lying near the frigate.

You will observe by my notes that the boats were despatched in due season to meet the Intrepid, agreeably to our arrangement; but circumstances rendering it advisable for Lieutenant Commandant Decatur to enter upon the enterprise much earlier than was intended, the junction

was consequently defeated until after the ship was on fire and the ketch retreating out of the harbor.

I have the honor to be, &c.

CHARLES STEWART.

Commodore EDWARD PREBLE, *Commander of the U. S. Squadron in the Mediterranean.*

ON BOARD THE KETCH INTREPID,
At Sea, February 17, 1804.

SIR: I have the honor to inform you that, in pursuance of your orders of the 1st instant, to proceed with this ketch off the harbor of Tripoli, there to endeavor to effect the destruction of the United States' late frigate Philadelphia, I arrived there in company with the United States brig Syren, Lieutenant Commandant Stewart, on the 7th, but, owing to the badness of the weather, was unable to effect anything until last evening, when we had a light breeze from the N. E. At seven o'clock I entered the harbor with the Intrepid, the Syren having gained her station without the harbor in a situation to support us in our retreat. At half past 9, laid her along side the Philadelphia; boarded; and, after a short contest, carried her. I immediately fired her in the store-rooms, cock-pit, and berth-deck, and remained on board until the flames had issued from the spar-deck-hatchways and ports, and before I got from along side the fire had communicated to the rigging and tops. Previous to our boarding, they had got their tompions out and hailed several times, but not a gun was fired.

The noise occasioned by boarding and contending for possession, although no fire-arms were used, gave a general alarm on shore, and on board their cruisers which lay about a cable and a half's length from us, and many large boats filled with men lay around, but from whom we received no annoyance. They commenced a fire on us from all their batteries on shore, but with no other effect than one shot passing through our top-gallant sail.

The frigate was moored within half gun-shot of the Bashaw's castle, and of their principal battery. Two of their cruisers lay within two cable's length on the starboard quarter, and their gun-boats within half gun-shot on the starboard bow. She had all her guns mounted and loaded, which, as they became hot, went off; as she lay with her broadside to the town, I have no doubt but some damage has been done by them. Before I got out of the harbor, her cables had burnt off, and she drifted in under the castle where she was consumed. I can form no judgment as to the number of men that were on board of her—there were about twenty killed—a large boatful got off, and many leaped into the sea. We have made one prisoner, and I fear from the number of bad wounds he has received, he will not recover, although every assistance and comfort has been given him.

I boarded with sixty men and officers, leaving a guard on board the ketch for her defence; and it is with the greatest pleasure I inform you I had not a man killed in this affair, and but one slightly wounded. Every support that could be given, I received from my officers, and, as the conduct of each was highly meritorious, I beg leave to enclose you a list of their names. Permit me, also, sir, to speak of the brave fellows I have the honor to command, whose coolness and intrepidity was such as I trust will ever characterize the American tars.

It would be injustice in me, were I to pass over the important services rendered by Mr. Salvador, the pilot, on whose good conduct the success of the enterprise in the greatest degree depended. He gave me entire satisfaction.

I have the honor to be, &c.

STEPHEN DECATUR, JR.

Commodore EDWARD PREBLE, &c.

The following is a list of the officers employed on board the ketch Intrepid, under my command, in boarding and destroying the frigate Philadelphia, in the harbor of Tripoli, on the 16th instant:

Lieutenants—James Lawrence, Joseph Bainbridge, and Jonathan Thorn.

Surgeon—Lewis Herman.

Midshipmen—Ralph Izard, John Rowe, Charles Morris, Alexander Laws, John Davis, of the Constitution; Thomas M'Donough, of the Enterprise; and Thomas Oakley Anderson, of the Syren.

Mr. Salvador, pilot, and sixty-two men.

NAVAL OPERATIONS AGAINST TRIPOLI.

[Communicated to Congress, Feb. 20, 1805.]

To the Senate and House of Representatives of the United States:

I communicate, for the information of Congress, a letter of September 18, from Commodore Preble, giving a detailed account of the transactions of the vessels under his command, from July the 9th, to the 10th of September last past.

The energy and judgment displayed by this excellent officer, through the whole course of the service lately confided to him, and the zeal and bravery of his officers and men in the several enterprises executed by them, cannot fail to give high satisfaction to Congress and their country, of whom they have deserved well.

TH. JEFFERSON.

FEBRUARY 20, 1805.

Copy of a letter from Commodore Preble to the Secretary of the Navy.

U. S. SHIP CONSTITUTION,
Malta Harbor, Sept. 18, 1804.

SIR: I had the honor to write you from Messina, under date of the 5th of July; I then expected to have sailed the day following, but was detained, by bad weather, until the 9th, when I left it, with two small bomb vessels under convoy, and arrived at Syracuse, where we were necessarily detained four days. On the 14th I sailed, the schooners Nautilus and Enterprise in company with six gun-boats and two bomb vessels, generously loaned us by his Sicilian Majesty. The

bomb vessels are about thirty tons, carry a thirteen-inch brass sea-mortar and forty men. Gun-boats, twenty-five tons, carry a long iron twenty-four pounder in the bow, with a complement of thirty-five men. They are officered and manned from the squadron, excepting twelve Neapolitan bombadiers, gunners, and sailors, attached to each boat, who were shipped by permission of their Government. This step I found necessary, as every vessel in the squadron was considerably short of complement. The gun-boats are constructed for the defence of harbors; they are flat bottomed and heavy, and do not sail or row even tolerably well. They were never intended to go to sea, and I find cannot be navigated with safety, unless assisted by tow ropes from larger and better sailing vessels, nor even then, in very bad weather. However, as they were the best I could obtain, I have thought it for the good of our service to employ them, particularly as the weather in July and August is generally pleasant, and, without them, my force too small to make any impression on Tripoli. On the 16th of July we arrived at Malta, where we were detained, by contrary gales, until the 21st, when we left it, and arrived in sight of Tripoli the 25th, and were joined by the Syren, Argus, Vixen, and Scourge. Our squadron now consisted of the Constitution, three brigs, three schooners, two bombs, and six gun-boats, our whole number of men, one thousand and sixty. I proceeded to make the necessary arrangements for an attack on Tripoli, a city well walled, protected by batteries judiciously constructed, mounting one hundred and fifteen pieces of heavy cannon, and defended by twenty-five thousand Arabs and Turks; the harbor protected by nineteen gunboats, two galleys, two schooners of eight guns each, and a brig mounting ten guns, ranged in order of battle, forming a strong line of defence, at secure moorings, inside a long range of rocks and shoals, extending more than two miles to the eastward of the town, which form the harbor, protects them from the northern gales, and renders it impossible for a vessel of the Constitution's draught of water to approach near enough to destroy them, as they are sheltered by the rocks, and can retire under that shelter to the shore, unless they choose to expose themselves in the different channels and openings of the reefs, for the purpose of annoying their enemies. Each of their gun-boats mounts a heavy eighteen or twenty-six pounder in the bow, and two brass howitzers on their quarters, and carry from thirty-six to fifty men. The galleys have each one hundred men; schooners and brigs about the same number. The weather was not favorable for anchoring until the 28th, when, with the wind E. S. E. the squadron stood in for the coast, and, at 3 P. M. anchored, per signal, Tripoli bearing S. two and a half miles distant. At this moment the wind shifted suddenly from E. S. E. to N. N. W., and thence to N. N. E. At 5 o'clock it blew strong, with a heavy sea, setting directly on shore. I made the signal to prepare to weigh. At 6, the wind and sea having considerably increased, the signal was made for the squadron to weigh and gain an offing: the wind continued veering to the eastward, which favored our gaining sea-room, without being obliged to carry so great a press of sail as to lose any of our gun-boats, although they were in great danger. The gale continued varying from northeast to south south east, without increasing much until the 31st July, when it blew away our reefed foresail, and close reefed maintopsail; fortunately the sea did not rise in proportion to the strength of the gale, or we must have lost all our boats. August 1st the gale subsided, and we stood towards the coast: every preparation was made for an attack on the town and harbor. August 3d, pleasant weather, wind from the East; stood in with the squadron towards Tripoli. At noon we were between two and three miles from the batteries, which were all manned, and observing several of their gun-boats and galleys had advanced, in two divisions, without the rocks, I determined to take advantage of their temerity. At half past 12, I wore off shore, and made the signal to come within hail, when I communicated to each of the commanders my intention of attacking the enemy's shipping and batteries. The gun and mortar boats were immediately manned, and prepared to cast off, the gun-boats in two divisions of three each; the first division commanded by Captain Somers, in No. 1, Lieutenant Decatur, in No. 2, and Lieutenant Blake, in No. 3; the second division commanded by Captain Decatur, in No. 4, Lieutenant Bainbridge, in No. 5, and Lieutenant Trippe, in No. 6. The two bombards were commanded by Lieutenant Commandant Dent, and Mr. Robinson, first lieutenant of this ship. At half past 1 o'clock, having made the necessary arrangements for the attack, wore ship and stood towards the batteries. At 2, signal made to cast off the boats; at a quarter past 2, signal for bombs and gun-boats to advance and attack the enemy. At half past 3, general signal for battle. At three-quarters past 2, the bombs commenced the action by throwing shells into the town. In an instant the enemy's shipping and batteries opened a tremendous fire, which was promptly returned by the whole squadron within grape-shot distance; at the same time the second division, of three gun-boats, led by the gallant Captain Decatur, was advancing, with sails and oars, to board the eastern division of the enemy, consisting of nine boats. Our boats gave the enemy showers of grape and musket balls as they advanced; they, however, soon closed, when the pistol, sabre, pike, and tomahawk, were made good use of by our brave tars. Captain Somers being in a dull sailer, made the best use of his sweeps, but was not able to fetch far enough to the windward to engage the same division of the enemy's boats which Captain Decatur fell in with; he, however, gallantly bore down with his single boat on five of the enemy's western division, and engaged within pistol shot, defeated, and drove them within the rocks in a shattered condition, and with the loss of a great number of men. Lieutenant Decatur, in No. 2, was closely engaged with one of the enemy's largest boats of the eastern division

which stuck to him, after having lost a large proportion of men, and, at the instant that brave officer was boarding her to take possession, he was treacherously shot through the head by the captain of the boat that had surrendered, which base conduct enabled the poltroon (with the assistance he received from other boats) to escape. The third boat of Captain Somers' division kept to windward, firing at the boats and shipping in the harbor. Had she gone down to his assistance, it is probable several of the enemy's boats would have been captured in that quarter. Captain Decatur, in No. 4, after having, with distinguished bravery, boarded and carried one of the enemy of superior force, took his prize in tow, and gallantly bore down to engage a second, which, after a severe and bloody conflict, he also took possession of. These two prizes had thirty-three officers and men killed, and twenty-seven made prisoners, nineteen of which were badly wounded. Lieutenant Trippe, of the Vixen, in No. 6, ran along side of one of the enemy's large boats, which he boarded with only Midshipman John Henley and nine men, his boat falling off before any more could get on board; thus was he left, compelled to conquer or perish, with the odds of thirty-six to eleven. The Turks could not withstand the ardor of this brave officer and his assistants; in a few minutes the decks were cleared, and her colors hauled down. On board of this boat fourteen of the enemy were killed, and twenty-two made prisoners, seven of which were badly wounded. The rest of their boats retreated within the rocks. Lieutenant Trippe received eleven sabre wounds, some of which are very severe. He speaks in the highest terms of Mr. Henley, and those who followed him. Lieutenant Bainbridge, in No. 5, had his latteen yard shot away early in the action, which prevented his getting alongside the enemy's boats, but he galled them by a steady and well-directed fire with musket shot; indeed, he pursued the enemy until his boat grounded under the batteries; she was, fortunately, soon got off. The bomb vessels kept their stations, although covered with the spray of the sea occasioned by the enemy's shot. They were well conducted by Lieutenants Dent and Robinson, who kept up a constant fire from the mortars, and threw a great number of shells into the town. Five of the enemy's gun-boats and two galleys, composing the centre division, and stationed within the rocks as a reserve, joined by the boats that had been driven in, and supplied by fresh men from the shore to replace those they had lost, twice attempted to row out, to endeavor to surround our gun-boats and their prizes. I as often made the signal to cover them, which was promptly attended to by the brigs and schooners, all of which were gallantly conducted, and annoyed the enemy exceedingly, but the fire from this ship kept their flotilla completely in check. Our grape shot made great havoc among their men, not only on board their shipping, but on shore. We were several times within two cables length of the rocks, and within three of their batteries, every one of which, in succession, were silenced, so long as we could bring our broadside to bear upon them; but the moment we passed a battery, it was reanimated, and a constant, heavy fire, kept up from all that we could not point our guns at. We suffered most when wearing or tacking; it was then I most sensibly felt the want of another frigate. At half past 4, the wind inclining to the northward, I made the signal for the bombs and gun-boats to retire from action, and, immediately after, the signal to tow off the gun-boats and prizes, which was handsomely executed by the brigs, schooners, and boats of the squadron, covered by a heavy fire from the Constitution. At three-quarters past 4, P. M., the light vessels, gun-boats, and prizes, being out of reach of the enemy's shot, I hauled off to take the bomb vessels in tow. We were two hours under the fire of the enemy's batteries, and the only damage received in the ship is, a twenty-four pound shot nearly through the centre of the mainmast, thirty feet from the deck; main royal yard and sail shot away; one of our quarter-deck guns damaged by a thirty-two pound shot, which, at the same time, shattered a marine's arm; two lower shrouds and two backstays were shot away, and our sails and running rigging considerably cut. We must impute our getting off thus well to our keeping so near that they overshot us, and to the annoyance our grape shot gave them; they, are, however, but wretched gunners. Gunboat No. 5 had her main yard shot away, and the rigging and sails of the brigs and schooners were considerably cut. Lieutenant Decatur was the only officer killed, but in him the service has lost a valuable officer. He was a young man who gave strong promise of being an ornament to his profession. His conduct in the action was highly honorable, and he died nobly. The enemy must have suffered very much in their killed and wounded, both among their shipping and on shore. Three of their gun-boats were sunk in the harbor, several of them had their decks nearly cleared of men by our shot, and a number of shells burst in the town and batteries, which must have done great execution. The officers, seamen, and marines, of the squadron behaved in the most gallant manner. The Neapolitans, in emulating the ardor of our seamen, answered my highest expectations.

I cannot but notice the active exertions and officer-like conduct of Lieutenant Gordon, and the other lieutenants of the Constitution. Mr, Harriden, the master, gave me full satisfaction, as did all the officers and ship's company. I was much gratified with the conduct of Captain Hall and Lieutenant Greenleaf, and the marines belonging to his company, in the management of six long twenty-six pounders, on the spar deck, which I placed under his direction. Captain Decatur speaks in the highest terms of the conduct of Lieutenant Thorn and Midshipman McDonough, of No. 4, as does Captain Somers of Midshipmen Ridgely and Miller, attached to No. 1.

Annexed is a list of killed and wounded; and, enclosed, a copy of my general orders on this occasion.

Killed.—Gun-boat No. 2, Lieut. James Decatur.

Wounded.—Constitution, one marine; gun-boat No. 4, Captain Decatur, (slight,) one sergeant of marines, and two seamen; gun-boat No. 6, Lieut. Trippe, severely, one boatswain's mate, and two marines; gun-boat No. 1, two seamen; gun-boat No. 2, two seamen. Total—one killed and thirteen wounded.

August 5th.—We were at anchor with the squadron about two leagues north from the city of Tripoli; the Argus in chase of a small vessel to the westward, which she soon came up with, and brought within hail. She proved to be a French privateer, of four guns, which put into Tripoli a few days since, for water, and left it this morning. I prevailed on the Captain, for a consideration, to return to Tripoli, for the purpose of landing fourteen very badly wounded Tripolitans, which I put on board his vessel, with a letter to the Prime Minister, leaving it at the option of the Bashaw to reciprocate this generous mode of conducting the war. The sending these unfortunate men on shore, to be taken care of by their friends, was an act of humanity on our part, which I hope will make a proper impression on the minds of the barbarians, but I doubt it. All hands were busily employed in altering the rig of the three prizes, from latteen vessels to sloops, and preparing for a second attack. Observed one of the enemy's schooners and the brig, (two corsairs in the harbor) to be dismasted. Was informed by the French captain, that the damage these vessels received in the action of the third had occasioned their masts being taken out.

August 7th.—The French privateer came out, and brought me a letter from the French Consul, in which he observes, that our attack of the third instant has disposed the Bashaw to accept of reasonable terms, and invited me to send a boat to the rocks with a flag of truce, which was declined, as the white flag was not hoisted at the Bashaw's castle. At nine A. M., with a very light breeze from the eastward, and a strong current which obliged the Constitution to remain at anchor, I made the signal for the light vessels to weigh, and the gun and bomb boats to cast off, and stand in shore towards the western batteries; the prize boats having been completely fitted for service, and the command of them given to Lieutenants Crane, of the Vixen, Thorn, of the Enterprise, and Caldwell, of the Syren, the whole advanced with sails and oars. The orders were for the bombs to take a position in a small bay to the westward of the city, where but few of the enemy's guns could be brought to bear on them, but from whence they could annoy the town with shells; the gun-boats to silence a battery of seven heavy guns which guarded the approach to that position, and the brigs and schooners to support them, in case the enemy's flotilla should come out. At half-past one P. M., a breeze from N. N. E., I weighed with the Constitution and stood in for the town, but the wind being on shore, made it imprudent to engage the batteries with the ship, as, in case of a mast being shot away, the loss of the vessel would probably ensue, unless a change of wind should favor our getting off. At half-past two P. M., the bomb and gun-boats having gained their station, the signal was made for them to attack the town and batteries, within point blank shot, which was warmly returned by the enemy. The seven gun battery, in less than two hours was silenced, except one gun; I presume the others were dismounted by our shot, as the walls were almost totally destroyed. At a quarter-past three P. M. a ship hove in sight to the northward, standing for the town; made the Argus signal to chase. At half-past three one of our prize gun-boats was blown up by a hot shot from the enemy, which passed through the magazine: she had on board twenty-eight officers, seamen, and marines, ten of whom were killed, and six wounded; among the killed were, James R. Caldwell, First Lieutenant of the Syren, and Midshipman John S. Dorsey, both excellent officers; Midshipman Spence, and eleven men, were taken up unhurt. Captain Decatur, whose division this boat belonged to, and who was near her at the time she blew up, reports to me, that Mr. Spence was superintending the loading of the gun at that moment, and, notwithstanding the boat was sinking, he, and the brave fellows surviving, finished charging, gave three cheers as the boat went from under them, and swam to the nearest boats, where they assisted during the remainder of the action. The enemy's gunboats and galleys (fifteen in number) were all in motion close under the batteries, and appeared to meditate an attack on our boats; the Constitution, Nautilus, and Enterprise, were to windward, ready, at every hazard, to cut them off from the harbor, if they should venture down; while the Syren and Vixen were near our boats, to support and cover any of them that might be disabled. The enemy thought it most prudent, however, to retire to their snug retreat behind the rocks, after firing a few shot. Our boats, in two divisions, under Captains Somers and Decatur, were well conducted, as were our bomb vessels, by Lieutenants Dent and Robinson. The town must have suffered much from this attack, and their batteries, particularly the seven-gun battery, must have lost many men. At half-past five, P.M., the wind began to freshen from the N. N. E.; I made the signal for the gun and bomb boats to retire from action, and for the vessels to which they were attached to take them in tow. The Argus made signal that the strange sail was a friend.

In this day's action, No. 4 had a twenty-four pound shot through her hull; No. 6, her latteen yards shot away; No. 8, a twenty-four pound shot through her hull, which killed two men; some of the other boats had their rigging and sails considerably cut. We threw forty-eight shells, and about five hundred twenty-four pound shot into the town and batteries. All the officers and men engaged in the action behaved with the utmost intrepidity. At half-past six, all the boats were in tow, and the squadron standing to the northwest. At eight, the John Adams, Captain Chauncey, from the United States, joined company. At nine, the squadron anchored, Tripoli bearing southeast, five miles distant. Gun-boat No. 3 was this

day commanded by Mr. Brooks, master of the Argus, and No. 6 by Lieutenant Wadsworth, of the Constitution.

Annexed is a return of our loss in this attack.

Killed. Gun-boat No 9—One lieutenant, one midshipman, one boatswain's mate, one quarter gunner, one sergeant of marines, and five seamen.

Killed. Gun-boat No. 8—Two seamen.

Wounded. No. 9—Six seamen, two of whom mortally. *Total*—Twelve killed, six wounded.

Captain Chauncey brought the first positive information that any reinforcement was to be expected. I was honored with your letters of the 7th, 22d, and 31st of May, informing me that four frigates were coming out, under Commodore Barron, who is to supersede me in the command of our naval forces in these seas, at the same time approbating my conduct, and conveying to me the thanks of the President for my services. I beg you sir, to accept my warmest thanks for the very obliging language in which you have made these communications, and to assure the President that to merit the applause of my country is my only aim, and, to receive it, the highest gratification it can bestow.

Captain Chauncey informed me that the frigates might be expected every moment, as they were to sail from Hampton Roads four days after him. In consequence of this information, (and as I could not bring the John Adams into action, she having left all her gun carriages for her gun deck, except eight, on board the Congress and Constellation, a day or two previous to her sailing,) I determined to wait a few days for the arrival of Commodore Barron, before another attack, when, if he should arrive, the fate of Tripoli must be decided in a few hours, and the Bashaw completely humbled. Had the John Adams brought out her gun carriages, I should not have waited a moment, and can have no doubt but the next attack would make the arrival of more ships unnecessary for the termination of the Tripoline war. I gave Captain Chauncey orders to remain on the station, that we might be benefitted by the assistance of his boats and men, as nearly half the crews of the Constitution, brigs, and schooners, were taken out to man the bombs, gun, and ship's boats, when prepared for an attack.

August the 9th, we were engaged supplying the bombs and gun-boats with ammunition and stores, and getting everything in readiness for an attack the moment Commodore Barron should arrive and make the signal. I cannot but regret that our Naval Establishment is so limited as to deprive me of the means and glory of completely subduing the haughty tyrant of Tripoli, while in the chief command; it will however afford me satisfaction to give my successor all the assistance in my power. At three P. M., I went on board the Argus for the purpose of reconnoitering the harbor of Tripoli; we stood in towards the town, and were near being sunk by the enemy's fire. One of their heaviest shot, which struck about three feet short of the water-line, raked the copper off her bottom under water, and cut the plank half through. In the evening the wind blew from the N. N. E., the squadron weighed and kept under sail all night. The day following we anchored, Tripoli bearing S. S. W., six miles distant. At ten A. M., the French Consul hoisted a white flag at his flag-staff under the national colors, which was a signal that the Bashaw was ready to treat. I sent a boat into the harbor and took this opportunity to forward Captain Bainbridge and his officers letters from their friends: the boat was not allowed to land, but returned in the afternoon and brought me a letter, advising that the Bashaw was ready to receive five hundred dollars for the ransom of each of the prisoners, and terminate the war without any consideration for peace or tribute; this is three hundred and fifty thousand dollars less than was demanded previous to the action of the third instant. These terms I did not hesitate to reject, as I was informed by Captain Chauncey that it was the expectation of our Government, on the arrival of four frigates, to obtain the release of the officers and crew of the Philadelphia without ransom, and dictate the terms of peace. I enclose you copies of our correspondence, which will convince you that our attacks have not been made without effect.

16th. No news of the frigates, and but short allowance in the squadron. I sent the Enterprise to Malta, with orders to the agent there, to hire transports and send off immediately a supply of fresh water, provision, and other stores, which have become necessary, as some of the squadron have now been five months in sight of this dismal coast, without once visiting a friendly port; those vessels, as well as the gun-boats, receive their supply of water and provisions from the Constitution.

18th. As the season is fast approaching when we may expect bad weather, and no news of the frigates, I have determined to make an attack as soon as the wind proves favorable. At eight P. M., I sent Captains Decatur and Chauncey in two small boats to reconnoitre the harbor, and observe the disposition of the enemy's flotilla at night; they returned at midnight, and reported that they were anchored in a line abreast, from the Mole to the Bashaw's castle, with their heads to the eastward, for the defence of the inner harbor. At day-light the wind shifted suddenly from N. E. to N. N. W., and brought a heavy sea on shore, which obliged us, for the greater safety, to weigh and stand to sea.

20th. We had gained an offing of nine or ten leagues—still blowing hard. We met with the ketch Intrepid, from Syracuse, with a cargo of fresh water, stock, and vegetables, for the squadron.

22d. Fell in with a ship from Malta, with water and live stock for the squadron. These cargoes arrived very opportunely, as we have for some time past been on short allowance of water. The wind having moderated, we stood in, and anchored with the squadron six miles N. E. by N., from Tripoli; all the boats were engaged in discharging the transports. The Enterprise arrived from Malta, but brought no intelligence of the long-expected frigates.

24th. With a light breeze from the N. E., we stood in, with the squadron prepared for action, intending to attack the town and shipping in the night. At eight in the evening, anchored about two miles and a half from the batteries. At midnight it fell calm. I sent the bomb vessels under the protection of the gun-boats, to bombard the town; the boats of the squadron were employed in towing them in. At two A. M., the bombardment commenced, and continued until day-light, but with what effect is uncertain. At six, all the boats joined us, and were taken in tow by the squadron, which was under weigh, and standing off. At seven, anchored four miles north of the town. The weather, for several days, proved unfavorable for approaching the shore.

28th. We were favored with a pleasant breeze from the eastward. At 3 P. M. we weighed, and stood in for Tripoli. At 5, anchored the Constitution two miles N. by E. from Fort English, and two-and-a-half from the Bashaw's castle; the light vessels ordered to keep under weigh. We were employed until 8 P. M. in making arrangements for attacking the town; a number of the officers, and many of the seamen in the Constitution being attached to the bomb, gun, and ship's boats; Captain Chauncey, with several of his officers, and about seventy seamen and marines, volunteered their services on board the Constitution. All the boats in the squadron were officered and manned, and attached to the several gun-boats; the two bomb vessels could not be brought into action, as one was leaky, and the mortar-bed of the other had given way. The John Adams, Scourge, transports, and bombs, were anchored seven miles to the northward of the town. Lieut. Commandant Dent, of the Scourge, came on board the Constitution, and took charge on the gun-deck; Lieut. Izard, of the Scourge, also joined me. Lieut. Gordon commands gun-boat No. 2, and Lieut. Lawrence, of the Enterprise, No. 5; these are the only changes. At half-past one A. M. the gun-boats, in two divisions, led by Captains Decatur and Somers, were ordered to advance, and take their stations close to the rocks at the entrance of the harbor, within grape-shot distance of the Bashaw's castle. The Syren, Argus, Vixen, Nautilus, Enterprise, and boats of the squadron accompanied them. At three A. M. the boats anchored with springs on, within pistol-shot of the rocks, and commenced a brisk firing on the shipping, town, batteries, and Bashaw's castle, which was warmly returned, but not as well directed; the ship's boats remained with the gun-boats, to assist in boarding the enemy's flotilla, if it should venture out; while the brigs and schooners kept under weigh, ready for the same service, or for annoying the enemy as occasion might present. At daylight presuming that the gun-boats had nearly expended their ammunition, we weighed with the Constitution and stood in for the harbor. Fort English, the Bashaw's castle, crown and mole batteries, kept up a heavy fire on us as we advanced. At half-past five, I made the signal for the gun-boats to retire from action, and for the brigs and schooners to take them in tow. We were then within two cables' length of the rocks, and commenced a heavy fire of round and grape on thirteen of the enemy's gun-boats and galleys, which were in pretty close action with our boats. We sunk one of the enemy's boats; at the same time, two more disabled, ran on shore to avoid sinking; the remainder immediately retreated. We continued running in until we were within musket-shot of the Crown and mole batteries, when we brought to, and fired upwards of three hundred round-shot, besides grape and canister, into the town, Bashaw's castle and batteries. We silenced the castle and two of the batteries for some time. At a quarter-past six, the gun-boats being all out of shot and in tow, I hauled off, after having been three-quarters of an hour in close action. The gun-boats fired upwards of four hundred round shot, besides grape and canister, with good effect. A large Tunisian galliot was sunk in the mole; a Spanish ship which had entered with an Ambassador from the Grand Seignior, received considerable damage. The Tripoline galleys and gun-boats lost many men and were much cut.

The Bashaw's castle and town have suffered very much, as have their crown and mole batteries. Captains Decatur and Somers conducted their divisions of gun-boats with their usual firmness and address, and were well supported by the officers and men attached to them. The brigs and schooners were also well conducted during the action, and fired a number of shot at the enemy, but their guns are too light to do much execution. They suffered considerably in their sails and rigging. The officers and crew of the Constitution behaved well; I cannot, in justice to Captain Chauncey, omit noticing the very able assistance I received from him on the quarter-deck of the Constitution during the whole of the action. The damage which we have received is principally above the hull; three lower shrouds, two spring-stays, two topmast back-stays, trusses, chains, and lifts of the mainyard shot away.

Our sails had several cannon shot through them, and were beside considerably cut by grape; much of our running rigging cut to pieces, one of our anchor-stocks and our larboard cable shot away, and a number of grape-shot were sticking in different parts of the hull; but not a man hurt! A boat belonging to the John Adams, with a master's mate (Mr. Creighton) and eight men, was sunk by a double-headed shot from the batteries, while in tow of the Nautilus, which killed three men and badly wounded one, who, with Mr. Creighton, and the other four, were picked up by one of our boats. The only damage our gun-boats sustained, was in their rigging and sails, which were considerably cut with the enemy's round and grape shot.

At 11, A. M., we anchored with the squadron, five miles N. E. by N. from Tripoli, and repaired the damage received in the action.

29th and 30th, preparing the bomb vessels for service; supplying the gun-boats with ammunition, &c.

31st, a vessel arrived from Malta with provisions and stores; brought no news of Commodore Barron, or the frigates. We discharged this vessel's cargo, and ordered her to return.

September 2d, the bomb vessels having been repaired and ready for service, Lieutenants Dent and Robinson, resumed the command of them. Lieut. Morris, of the Argus, took command of No. 3; and Lieutenant Trippe having nearly recovered from his wounds, resumed the command of No. 6, which he so gallantly conducted on the 3d ultimo. Capt. Chauncey, with several young gentlemen, and sixty men from the John Adams, volunteered on board the Constitution. At 4, P. M., made the signal to weigh; kept under sail all night. At 11, P. M., a general signal to prepare for battle: a Spanish polacre, in ballast, came out of Tripoli, with an Ambassador of the Grand Seignior on board, who had been sent from Constantinople to Tripoli, to confirm the Bashaw in his title; this ceremony takes place in all the Barbary Regencies, every five years. The captain of this vessel informed us, that our shot and shells had made great havoc and destruction in the city, and among the shipping, and that a vast number of people have been killed; also informs us, that three of the boats, which were sunk by our shot in the actions of the 3d and 28th ultimo, had been gotten up, repaired, and fitted for service.

3rd. At 2, P. M. Tripoli bore S. S. W. 2 1-2 miles distant, wind E. by N. At half past 2 the signals were made for the gun-boats to cast off, advance and attack the enemy's galleys and gun-boats, which were all under weigh in the eastern part of the harbor, whither they had for some time been working up against the wind. This was certainly a judicious movement of theirs, as it precluded the possibility of our boats going down to attack the town, without leaving the enemy's flotilla in their rear, and directly to windward. I accordingly ordered the bomb vessels to run down within proper distance of the town, and bombard it, while our gun-boats were to engage the enemy's galleys and boats to windward. At half past 3, P. M. our bombs having gained the station to which they were directed, anchored and commenced throwing shells into the city. At the same time our gun-boats opened a brisk fire on the galleys and within point blank shot, which was warmly returned by them and Fort English, and by a new battery, a little to the westward; but as soon as our boats arrived within good musket-shot, of their galleys and boats, they gave way and retreated to the shore within the rocks and under cover of musketry from Fort English. They were followed by our boats and by the Syren, Argus, Vixen, Nautilus and Enterprise, as far as the reefs would permit them to go with prudence. The action was then divided. One division of our boats with the brigs and schooners attacked Fort English, whilst the other was engaged with the enemy's galleys and boats. The Bashaw's castle, the Mole, Crown, and several other batteries kept up a constant fire on our bomb vessels which were well conducted, and threw shells briskly into the town—but from their situation they were very much exposed, and in great danger of being sunk. I accordingly ran within them with the Constitution, to draw off the enemy's attention, and amuse them whilst the bombardment was kept up. We brought to within reach of grape, and fired eleven broadsides in the Bashaw's castle, town, and batteries, in a situation where more than seventy guns could bear upon us. One of their batteries was silenced. The town, castle, and other batteries, considerably damaged. By this time, it was half past four o'clock. The wind was increasing and inclining rapidly to the northward. I made the signal for the boats to retire from action, and for the brigs and schooners to take them in tow, and soon after hauled off with the Constitution to repair damages. Our maintop-sail was totally disabled by a shell from the batteries, which cut away the leach rope and several cloths of the sail. Another shell went though the foretop-sail, and one though the jib. All our sails considerably cut—two topmast back-stays shot away, mainsheet, fore-tacks, lifts, braces, bowlines, and the running rigging generally very much cut, but no shot in our hull, excepting a few grape. Our gun-boats were an hour and fifteen minutes in action. They disabled several of the enemy's galleys and boats, and considerably damaged Fort English. Most of our boats received damage in their rigging and sails. The bomb vessel No 1, commanded by Lieutenant Robinson, was disabled; every shroud being shot away, the bed of the mortar rendered useless, and the vessel near sinking. She was however towed off. About fifty shells were thrown into the town, and our boats fired four hundred rounds, besides grape and canister. They were led into action by Captains Decatur, and Somers, with their usual gallantry. The brigs and schooners were handsomely conducted, and fired many shot with effect at Fort English, which they were near enough to reach with their carronades. They suffered considerably in their rigging, and the Argus received a thirty-two pound shot in the hull forward, which cut off a bower cable as it entered. We kept under weigh until 11 P. M. when we anchored, Tripoli bearing S. S. W. three leagues. I again with pleasure acknowledge the services of an able and active officer in Captain Chauncey, serving on the quarter deck of the Constitution. At sunrise I made the signal for the squadron to prepare for action. The carpenters were sent on board the bombs to repair damages, and our boats employed in supplying the bombs and gun-boats with ammunition, and to replace the expenditures.

Desirous of annoying the enemy, by all the means in my power, I directed to be put into execution a long contemplated plan of sending a fireship, or infernal, into the harbor of Tripoli, in the night, for the purpose of endeavoring to destroy the enemy's shipping, and shatter the Bashaw's castle and town. Captain Somers, of the Nautilus, having volunteered his services, had, for several days before this period, been directing the preparation of the ketch Intrepid, assisted by Lieutenants Wadsworth and Israel. About one hundred barrels of powder and one hundred and fifty fixed shells, were apparently judiciously

disposed of on board her. The fuzes leading to the magazine, where all the powder was deposited, were calculated to burn a quarter of an hour.

September 4th.—The Intrepid being prepared for the intended service, Captain Somers and Lieutenant Wadsworth made choice of two of the fastest rowing boats in the squadron, for bringing them out. After reaching their destination and firing the combustible materials, which were to communicate with the fuzes, Captain Somers' boat was manned with four seamen from the Nautilus, and Lieutenant Wadsworth's with six from the Constitution. Lieutenant Israel accompanied them. At eight in the evening, the Intrepid was under sail, and standing for the port, with a leading breeze from the eastward. The Argus, Vixen, and Nautilus, convoyed her as far as the rock. On entering the harbor, several shot was fired at her from the batteries. In a few minutes after, when she had apparently nearly gained the intended place of destination, she suddenly exploded, without their having previously fired a room filled with splinters and other combustibles, which were intended to create a blaze, in order to deter the enemy from boarding, whilst the fire was communicating to the fuzes, which led to the magazine. The effect of the explosion awed their batteries into profound silence, with astonishment. Not a gun was afterward fired for the night. The shrieks of the inhabitants informed us that the town was thrown into the greatest terror and consternation by the explosion of the magazine, and the bursting and falling of shells in all directions. The whole squadron waited with the utmost anxiety to learn the fate of the adventurers, from a signal previously agreed on in case of success, but waited in vain; no signs of their safety were to be observed. The Argus, Vixen, and Nautilus hovered round the entrance of the port until sunrise, when they had a fair view of the whole harbor. Not a vestige of the ketch or her boats was to be seen. One of the enemy's largest gun-boats was missing, and three others were seen very much shattered and damaged, which the enemy were hauling on shore. From these circumstances I am led to believe that those boats were detached from the enemy's flotilla to intercept the ketch, and, without suspecting her to be a fire-ship, the missing boat had suddenly boarded her, when the gallant Somers and the heroes of his party, observing the other three boats surrounding them, and no prospect of escape, determined at once to prefer death and the destruction of the enemy, to captivity and torturing slavery, put a match to the train leading directly to the magazine, which at once blew the whole into the air, and terminated their existence. My conjectures respecting this affair are founded on a resolution, which Captain Somers, Lieutenants Wadsworth, and Israel had formed, neither to be taken by the enemy, nor suffer him to get possession of the powder on board the Intrepid. They expected to enter the harbor without discovery, but had declared, if they should be disappointed, and the enemy should board them, before they reached the point of destination, in such force as to leave them no hopes of a safe retreat, that they would put a match to the magazine and blow themselves and their enemies up together—determined as there was no exchange of prisoners, that their country should never pay ransom for them, nor the enemy receive a supply of powder through their means. The disappearance of one of the enemy's boats, and the shattered condition of three others, confirm me in my opinion, that they were an advanced guard, detached from the main body of the flotilla on discovering the approach of the Intrepid, and that they attempted to board her before she had reached her point of destination, otherwise the whole of their shipping must have suffered and perhaps would have been totally destroyed. That she was blown up before she had gained her station is certain, by which the service has lost three very gallant officers. Captain Somers, and Lieutenants Wadsworth and Israel were officers of conspicuous bravery, talents and merit; they had uniformly distinguished themselves in the several actions—were beloved and lamented by the whole squadron.

September the 5th.—We were employed in supplying the gun-boats with ammunition, &c., and repairing the bomb vessels for another attack, but the wind shifting to the N. N. E. a heavy swell setting on shore, and other indications of bad weather determined me for greater safety to take the guns, mortars, shot and shells out of the boats into the Constitution and John Adams, which was accordingly done. The weather continuing to wear a threatening aspect until the seventh, and our ammunition being reduced to a quantity not more than sufficient for three vessels to keep up the blockade; no intelligence of the expected reinforcement; and the season so far advanced as to render it imprudent to hazard the gun-boats any longer on the station; I gave orders for the John Adams, Syren, Nautilus, Enterprise, and Scourge to take the bombs and gun-boats in tow, and proceed to Syracuse with them, the Argus and Vixen to remain with the Constitution to keep up the blockade.

September the 10th.—The United States ship President, Commodore Barron, and Constellation, Captain Campbell, hove in sight and soon joined company, when the command of the squadron was surrendered to Commodore Barron, with the usual ceremony. I continued in company with the squadron until the twelfth, when three strange ships came in sight standing direct for Tripoli. Chase was given and two of them boarded and taken possession of by the Constitution, the President in company, about four leagues from Tripoli, but not more than five miles from the land; while the Constellation and Argus were in chase of the third. The two boarded by the Constitution were loaded with about sixteen thousand bushels of wheat. Tripoli is in a state of starvation, and there can be no doubt but those cargoes were meant as a supply and relief to our enemies.

Considering the season too far advanced and weather too uncertain to hazard any further operations against Tripoli at present, Commodore Barron determined that the prizes should be sent to Malta, under convoy of the Constitution, it being necessary she should go into port to be recaulked and refitted. I notified Commodore Barron that it was my wish to return to the United States in the frigate John Adams Captain Chauncey; this readily and in the handsomest manner met his acquiescence. I shall accordingly return in that ship.

The service in this quarter cannot suffer from this arrangement, as Captain Decatur is at present without a ship, and my return will immediately place him in the exercise of the duties attached to that commission, which he has so gallantly earned, and his country generously bestowed. I shall feel a pleasure in leaving the Constitution under the command of that officer, whose enterprising and manly conduct I have often witnessed, and whose merits eminently entitle him to so handsome a command.

The other commanders merit the highest commendations for their prompt obedience to orders on all occasions, and for the zeal, spirit, and judgment which they displayed in the several attacks on the enemy's shipping and batteries, as well as for the general good order and discipline at all times observed on board their respective vessels. The officers of the squadron have conducted themselves in a most gallant and handsome manner; and the conduct of the different ships' companies has merited my warmest approbation since I have had the honor to command them.

It affords me much satisfaction to observe, that we have neither had a duel nor court martial in the squadron since we left the United States.

I most sincerely regret the loss of our gallant countrymen who have sacrificed their lives to the honor of the service, and that it has not been in my power, consistent with the interest and expectation of our country, to liberate Captain Bainbridge and the unfortunate officers and crew of the Philadelphia. Be assured, sir, I have incessantly endeavored to effect this desirable object. I have no doubt but my successor will be able to effect their release, and establish peace on such terms as will reflect the highest honor on himself and his country.

September 17th.—Arrived at Malta with the two detained Greek vessels. We experienced very bad weather, but had the satisfaction to learn that the bombs and gun-boats had arrived safe at Syracuse the 15th instant without accident. Each of the Tripoline gun-boats which we have captured has two brass howitzers abaft, and a handsome copper gun in the bow, which carries a 29 pound shot, is 11½ feet long and weighs 6,600 pounds.

I send you a plan of the town and harbor of Tripoli, with the disposition of our squadron, and the enemy's flotilla, at the time of the several attacks, with sundry other papers.

I have the honor to be with the highest respect, sir, yours, &c. EDWARD PREBLE.

Hon. Secretary of the Navy.

PUBLIC ACTS OF CONGRESS;

PASSED AT THE SECOND SESSION OF THE EIGHTH CONGRESS, BEGUN AND HELD AT THE CITY OF WASHINGTON, NOVEMBER 5, 1804.

AN ACT making a farther appropriation for carrying into effect the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a sum not exceeding seventy thousand dollars be, and the same hereby is, appropriated, to be paid under the direction of the President of the United States, out of any moneys in the Treasury, not otherwise appropriated, for the purpose of carrying into effect the seventh article of the Treaty of Amity, Commerce, and Navigation, between His Britannic Majesty and the United States of America.

NATHL. MACON,
Speaker of the House of Representatives.
A. BURR,
Vice President of the United States, and President of the Senate.

Approved, November 24, 1804.

TH. JEFFERSON.

An Act making an appropriation to supply a deficiency in an appropriation for the support of Government during the present year, and making a partial appropriation for the same object during the year one thousand eight hundred and five.

Be it enacted, &c., That to make good a deficiency of the appropriation for the contingent expenses of both Houses of Congress, authorized by the act of the fourteenth of March last, the farther sum of two thousand five hundred dollars be, and the same hereby is, appropriated.

SEC. 2. *And be it further enacted*, That, towards defraying the expense of firewood, stationery, and other contingent expenses of both Houses of Congress, during the year one thousand eight hundred and five, the sum of three thousand dollars be, and the same hereby is, appropriated: which several sums shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States."

Approved, December 6, 1804.

An Act for the disposal of certain copies of the laws of the United States.

Be it enacted, &c., That three hundred copies of the laws of the United States, which have been procured by the Secretary of State, in obedience to the law passed for that purpose, and three hundred copies of the journals of Congress, which have been procured in pursuance of the resolution of the second of March, one thousand seven hundred and ninety-nine, shall be placed in the library of Congress.

SEC. 2. *And be it further enacted*, That the Secretary of the Senate, for the time being, be, and he is hereby authorized to receive three hundred copies of the laws of the United States, out of the thousand copies reserved by law for the disposal of Congress, as soon as the same shall be printed after each session; which he shall cause to be placed in the library, and assorted respectively with the sets of copies mentioned in the first section of this act; excepting only, that at the close of the present session, which will complete the eighth Congress, and in like manner after each particular session in future, which shall complete a Congress, he shall cause the several copies, reserved by him as aforesaid, for all the sessions for each respective Congress, to be bound in one volume, making three hundred volumes for each Congress, as aforesaid; which he shall cause to be placed in the library, assorted with the respective sets of copies mentioned in the first section of this act. And the several copies of the laws and journals of Congress, mentioned in this act shall not be taken out of the library, except by the President and Vice President of the United States, and members of the Senate and House of Representatives for the time being. And the expense of binding shall be paid, from time to time, out of the fund appropriated to defray the contingent expenses of both Houses of Congress.

SEC. 3. *And be it further enacted*, That the President of the Senate and Speaker of the House of Representatives, for the time being, be, and they are hereby, empowered to establish such regulations and restrictions in relation to the copies of the laws and journals of Congress, directed by this act to be placed in the library, as to them shall seem proper, and from time to time to alter and amend the same: *Provided*, That no regulation nor restriction shall be valid, which is repugnant to the provisions contained in this act.

SEC. 4. *And be it further enacted*, That to make up the deficiency of the appropriation heretofore made, for the purchase of four hundred copies of the laws of the United States, the sum of eleven hundred and forty-four dollars be, and the same is hereby appropriated, payable out of any money in the Treasury, not otherwise appropriated.

Approved, January 2, 1805.

An Act concerning drawbacks on goods, wares, and merchandise.

Be it enacted, &c., That so much of the sixth section of the act, entitled "An act for laying and collecting duties on imports and tonnage within the territory ceded to the United States by the Treaty of the thirtieth of April, one thousand eight hundred and three, between the United States and the French Republic; and for other purposes," as prohibits the allowance of drawbacks of duties on goods, wares, and merchandise, exported from the port of New Orleans, other than those imported to the same place directly from a foreign port or place, shall be, and the same is hereby, repealed.

Sec. 2. *And be it further enacted*, That any goods, wares, or merchandise, which shall be exported from the United States, or the district of Mississippi, and the manner prescribed by law, to any foreign port or place, situated to the westward or southward of Louisiana, shall be deemed and taken to be entitled to such drawback of duties as would be allowable thereon, when exported to any other foreign port or place; anything in the act, entitled "An act to regulate the collection of duties on imports and tonnage," to the contrary notwithstanding.

This act shall commence and be in force from and after the first day of March next.

Approved, January 5, 1805.

An Act to divide the Indiana Territory into two separate Governments.

Be it enacted, &c., That, from and after the thirtieth day of June next, all that part of the Indiana Territory which lies north of a line drawn east from the southerly bend, or extreme, of Lake Michigan, until it shall intersect Lake Erie, and east of a line drawn from the said southerly bend through the middle of said lake to its northern extremity, and thence due north to the northern boundary of the United States, shall, for the purpose of temporary government, constitute a separate Territory, and be called Michigan.

Sec. 3. *And be it further enacted*, That there shall be established within the said Territory, a government in all respects similar to that provided by the ordinance of Congress, passed on the thirteenth day of July, one thousand seven hundred and eighty-seven, for the government of the territory Northwest of the river Ohio; and by an act passed on the seventh day of August, one thousand seven hundred and eighty-nine, entitled "An act to provide for the government of the territory Northwest of the river Ohio;" and the inhabitants thereof shall be entitled to and enjoy all and singular, the rights, privileges, and advantages granted and secured to the people of the territory of the United States Northwest of the river Ohio by the said ordinance.

Sec. 2. *And be it further enacted*, That the officers of the said Territory, who, by virtue of this act shall be appointed by the President of the United States, by and with the advice and consent of the Senate, shall respectively exercise the same powers, perform the same duties, and receive for their services the same compensations as by the ordinance aforesaid, and the laws of the United States, have been provided and established for similar officers in the Indiana Territory; and the duties and emoluments of Superintendent of Indian Affairs shall be united with those of Governor.

Sec. 4. *And be it further enacted*, That nothing in this act contained shall be construed so as in any manner to affect the government now in force in the Indiana Territory, further than to prohibit the exercise thereof within the said Territory of Michigan, from and after the aforesaid thirtieth day of June next.

Sec. 5. *And be it further enacted*, That all suits, process, and proceeding, which, on the thirtieth day of June next, shall be pending in the court of any county which shall be included within the said territory of Michigan, and also, all suits, process, and proceedings, which, on the said thirtieth day of June next, shall be pending in the General Court of the Indiana Territory in consequence of any writ of removal, or order for trial at bar, and which had been removed from any of the counties included within the limits of the Territory of Michigan aforesaid, shall, in all things concerning the same, be proceeded on, and judgments and decrees rendered thereon, in the same manner as if the said Indiana Territory had remained undivided.

Sec. 6. *And be it further enacted*, That Detroit shall be the seat of government of the said Territory until Congress shall otherwise direct.

Approved, January 11, 1805.

An Act declaring Cambridge, in the State of Massachusetts, to be a port of delivery.

Be it enacted, &c., That the town, or landing-place of Cambridge, in the State of Massachusetts, shall be a port of delivery, to be annexed to the district of Boston and Charlestown, and shall be subject to the same regulations as other ports of delivery in the United States.

Approved, January 11, 1805.

An Act authorizing the Corporation of Georgetown to make a dam or causeway from Mason's Island to the western shore of the river Potomac.

Be it enacted, &c., That the corporation of Georgetown have power to levy a tax, not exceeding one per cent. per annum, on the real property in said town, and its additions within the jurisdiction of the said corporation, for the purpose of defraying the expense of erecting a dam or causeway across that arm of the river Potomac which passes between Mason's Island and the western shore of the said river; that the same shall not be erected until the consent of the proprietor or proprietors of the island, and of the western shore of the river opposite thereto, shall be first obtained. The power hereby granted to the said corporation of levying an extra tax, to cease and determine when the object for which it is granted shall be completely effected.

Approved, January 19, 1805.

An Act making appropriations for the support of the Navy of the United States during the year one thousand eight hundred and five.

Be it enacted, &c., That for defraying the expenses of the Navy of the United States during the year one thousand eight hundred and five, the following sums be and the same are hereby appropriated, that is to say:

For the pay and subsistence of the officers, and the pay of the seamen, four hundred and fifteen thousand five hundred and seventy-eight dollars.

For provisions, two hundred and twenty-seven thousand seven hundred and eighty-six dollars and forty cents.

For medicine, instruments, hospital stores, and all expenses on account of the sick, ten thousand seven hundred and fifty dollars.

For repairs of vessels, store rent, and other contingent expenses, four hundred and eleven thousand nine hundred and fifty-one dollars and two cents.

For the pay and subsistence of the marine corps, including provisions for those on shore, and forage for the staff, eighty-two thousand five hundred and ninety-three dollars and sixty cents.

For clothing for the same, sixteen thousand five hundred and thirty-six dollars, and ninety-eight cents.

For military stores for the same, one thousand six hundred and thirty-five dollars.

For medicine, medical services, hospital stores, and all expenses on account of the sick belonging to the marine corps, one thousand two hundred and fifty dollars.

For quarter-master's and barrack-master's stores, officers' travelling expenses, armorers' and carpenters' bills, fuel, premium for enlisting, music, and other contingent expenses, eight thousand four hundred and nineteen dollars.

For the expense of navy yards docks, and other improvements, the pay of superintendents, storekeepers, clerks, and laborers, sixty thousand dollars.

For completing the marine barracks at the City of Washington, three thousand five hundred dollars.

Sec. 2. *And be it further enacted*, That the several sums herein specifically appropriated, and amounting altogether to the sum of one million two hundred and forty thousand dollars, shall be paid, first, out of the moneys accruing at the end of the year one thousand eight hundred and five from the duties laid by the act passed on the twenty-fifth day of March, one thousand eight hundred and four, entitled "An act further to protect the commerce and seamen of the United States against the Barbary Powers," provided, that the sum to be paid from the proceeds of the said duties shall not exceed five hundred and ninety thousand dollars; secondly, out of any balance remaining unexpended of former appropriations for the support of the Navy, and lastly, out of any moneys in the Treasury, not otherwise appropriated.

Approved, January 25, 1805.

An Act making an appropriation for completing the south wing of the Capitol, at the City of Washington, and for other purposes.

Be it enacted, &c., That a sum not exceeding one hundred and ten thousand dollars, shall be, and the same is hereby, appropriated, to be applied under the direction of the President of the United States, towards completing the south wing of the Capitol, at the City of Washington.

Sec. 2. *And be it further enacted*, That a sum not exceeding twenty thousand dollars shall be, and the same hereby is, appropriated, to be applied under the direction of the President of the United States, to such necessary alterations and repairs as he may deem requisite in the north wing of the Capitol, and other public buildings at the City of Washington; which said sums shall be paid out of any moneys in the Treasury, not otherwise appropriated.

Approved, January 25, 1805.

An Act to provide for completing the valuation of lands and dwelling-houses, and the enumeration of slaves, in South Carolina, and for other purposes.

Be it enacted, &c., That the Secretary of the Treasury be, and he is, hereby authorized and directed to employ clerks, for such compensation as he shall judge reasonable, to complete, register, and record, under the direction of the supervisor of the district of South Carolina, the lists and abstracts of the valuation of lands and dwelling-houses, and of the enumeration of slaves within the State of South Carolina; and under the direction of the supervisor aforesaid, to add to, or to deduct from the valuations aforesaid, of each individual, such a rate per centum as has been determined by the commissioners appointed for the said State, under the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," agreeably to the provisions of the said act, of the act entitled "An act supplementary to the act entitled 'An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States,'" and of the act entitled "An act to provide for equalizing the valuation of unseated lands;" which lists and abstracts, thus completed in conformity with the revisions and equalizations made by the commissioners aforesaid, shall have the same force and effect as if they had been completed, registered, and recorded, under the direction of the commissioners aforesaid, agreeably to the provisions of the above-mentioned acts. The supervisor aforesaid shall be allowed, in addition to his annual compensation, at the rate of three dollars per diem, for each and every day employed by him, in completing or superintending the completion of the lists and abstracts aforesaid: *Provided*, That the whole amount of the said additional allowance shall not exceed five hundred dollars; and the said allowance, as well as the compensation of the clerks employed by virtue of this section, shall be paid out of the moneys appropriated, or which may hereafter be

appropriated for defraying the expenses incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

Sec. 2. *And be it further enacted*, That the supervisor of the district of South Carolina be, and he is hereby, authorized and directed, as soon as the assessment of the direct tax to be levied and collected in the State of South Carolina, by virtue of the act entitled "An act to lay and collect a direct tax within the United States," shall have been completed, to appoint for the whole of the said State, one or more surveyors of the revenue, who shall be authorized to make out the lists containing the sums payable, according to such assessment, for every dwelling-house, tract, or lot of land and slave within the said State. Which lists shall have the same force and effect, as if they had been made for each assessment district, by a distinct surveyor of the revenue; the surveyor or surveyors of the revenue, thus appointed for the whole State of South Carolina, shall likewise perform all the other duties, exercise all the powers, and receive the same compensation, which by virtue of the provisions still in force in any former act or acts, were directed to be performed, exercised, and received by the surveyors of the revenue for the several assessment districts; and so much of any act, or acts, as directed the appointment of one surveyor of the revenue for each assessment district, is, so far as relates to the State of South Carolina, hereby repealed.

Sec. 3. *And be it further enacted*, That the several supervisors, or officers acting as supervisors, may, with the approbation of the Secretary of the Treasury, unite, whenever such measure shall be thought expedient for the better collection of the direct tax, two or more assessment districts into one district, and appoint only one collector of the said tax for the assessment districts, thus united; anything in any former act or acts to the contrary notwithstanding.

Sec. 4. *And be it further enacted*, That the accounting officers of the Treasury be, and they are hereby, authorized to settle the accounts of any of the commissioners or assessors employed in making the valuations and enumerations above mentioned, in the State of South Carolina, although the same may not have been presented to, and certified by the commissioners aforesaid, in conformity with the provisions of the act, entitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States."

Sec. 5. *And be it further enacted*, That any of the commissioners aforesaid, who shall, on the request of the Secretary of the Treasury, attend for the purpose of assisting the supervisor of the district of South Carolina, in completing the lists and abstracts of the valuations and enumerations in the manner provided by the first section of this act, shall be allowed the same rate of compensation, as is provided by law for attending a meeting of the board of commissioners.

Sec. 6. *And be it further enacted*, That a sum not exceeding thirteen thousand five hundred and ninety-three dollars, and twenty-three cents, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same is hereby appropriated, for defraying the further expenses incident to the valuation of houses and lands, and the enumeration of slaves within the United States.

Approved, January 30, 1805.

An Act concerning the mode of Surveying the Public Lands of the United States.

Be it enacted, &c., That the surveyor general shall cause all those lands north of the river Ohio, which by virtue of the act, entitled "An act providing for the sale of the lands of the United States, in the Territory northwest of the river Ohio, and above the mouth of the Kentucky river," were subdivided by running through the townships parallel lines each way, at the end of every two miles, and by marking a corner on each of the said lines, at the end of every mile; to be subdivided into sections by running straight lines from the mile corners thus marked to the opposite corresponding corners, and by marking on each of the said lines intermediate corners, as nearly as possible equidistant from the corners of the sections on the same. And the said surveyor general shall also cause the boundaries of all the half sections, which had been purchased previous to the first day of July last, and on which the surveying fees had been paid according to law by the purchaser, to be surveyed and marked by running straight lines from the half mile corners heretofore marked to the opposite corresponding corners; and intermediate corners shall, at the same time, be marked on each of the said dividing lines, as nearly as possible equidistant from the corners of the half section on the same line: *Provided*, That the whole expense of surveying and marking the lines shall not exceed three dollars for every mile which has not yet been surveyed, and which shall be actually run, surveyed, and marked by virtue of this section. And the expense of making the subdivisions, directed by this section, shall be defrayed out of the moneys appropriated, or which may be hereafter appropriated, for completing the surveys of the public lands of the United States.

Sec. 2. *And be it further enacted*, That the boundaries and contents of the several sections, half sections, and quarter sections of the public lands of the United States, shall be ascertained in conformity with the following principles, any act or acts to the contrary notwithstanding:

1st. All the corners marked in the surveys, returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the said surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

2d. The boundary lines, actually run and marked in the surveys returned by the surveyor general, or by the surveyor of the land south of the State of Tennessee, respectively, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned by either of the surveyors aforesaid, shall be held and considered as the true length thereof. And the boundary lines, which shall not have been actually run, and marked as aforesaid, shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships, when no such opposite corresponding corners have been or can be fixed, the said boundary lines shall be ascertained by running from the established corners, due north and south, or east and west lines, as the case may be, to the water course, Indian boundary line, or other external boundary of such fractional township.

3d. Each section, or subdivision of section, the contents whereof shall have been, or, by virtue of the first section of this act, shall be returned by the surveyor general, or by the surveyor of the public lands south of the State of Tennessee, respectively, shall be held and considered as containing the exact quantity, expressed in such return or returns: and the half sections and quarter sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one half, or the one fourth part, respectively, of the returned contents of the section of which they make a part.

Sec. 3. *And be it further enacted*, That so much of the act, entitled "An act making provision for the disposal of the lands in the Indiana Territory, and for other purposes," as provides the mode of ascertaining the true contents of sections or subdivisions of sections, and prevents the issue of final certificates, unless the said contents shall have been ascertained and a plot, certified by the district surveyor, lodged with the register, be, and the same is hereby, repealed.

Approved, February 11, 1805.

An Act for carrying into more complete effect the tenth article of the Treaty of Friendship, Limits, and Navigation, with Spain.

Be it enacted, &c., That whenever any Spanish vessel shall arrive in distress, in any port of the United States, having been damaged on the coasts, or within the limits of the United States, and her cargo shall have been unladen, in conformity with the provisions of the sixteenth section of the act, entitled "An act to regulate the collection of duties on imports and tonnage," the said cargo, or any part thereof, may, if the said ship or vessel should be condemned, as not seaworthy, or be deemed incapable of performing her original voyage, afterwards be reladen on board any other vessel or vessels, under the inspection of the officer who superintended the landing thereof, or other proper person. And no duties, charges, or fees, whatever, shall be paid on such part of the cargo, as may be reladed and carried away, either in the vessel in which it was originally imported, or in any other whatever.

Sec. 2. *And be it further enacted*, That the collector of the district of Norfolk, in Virginia, shall be, and he hereby is, authorized and required to refund to the owners or agents of the Spanish brigantine Nancy (which vessel arrived in distress at that port, in the year one thousand eight hundred and four) the amount of the duties secured by him on such part of her cargo as was re-exported: *Provided*, That the debenture or debentures issued by the said collector, for the drawback of the duties on the exportation of the said cargo, shall be duly surrendered to him, and cancelled.

Approved, February 14, 1805.

An Act authorizing the Postmaster General to make a new contract for carrying the mail from Fayetteville, in North Carolina, to Charleston, in South Carolina.

Be it enacted, &c., That the Postmaster General shall be, and hereby is, authorized to make a new contract for carrying the mail in a line of stages between the town of Fayetteville, in the State of North Carolina, and the city of Charleston, in the State of South Carolina, upon such terms and conditions as he may deem most conducive to the interest of the United States: *Provided*, That he does not exceed the sum of four thousand two hundred dollars, annually, beyond the amount of the present contract; and that no contract made in virtue of this act shall extend beyond the time to which the present contract extends.

Approved, February 14, 1805.

An act making appropriations for the support of the Military Establishment of the United States, for the year one thousand eight hundred and five.

Be it enacted, &c., That, for defraying the expense of the Military Establishment of the United States, for the year one thousand eight hundred and five, for the Indian department, and for the expense of fortifications, arsenals, magazines, and armories, the following sums be, and the same hereby are, respectively appropriated, that is to say:

For the pay of the army of the United States, three hundred and two thousand seven hundred and ninety-six dollars.

For forage, four thousand four hundred and eighty-eight dollars.

For the subsistence of the officers of the army and corps of engineers, thirty one thousand three hundred and twenty-nine dollars and fourteen cents.

For the subsistence of non-commissioned officers, musicians, and privates, one hundred and seventy nine thousand and nine dollars and sixty-nine cents.

For clothing, eighty five thousand dollars.

For bounties and premiums, fifteen thousand dollars.

For medical and hospital department, twelve thousand dollars.

For camp equipage, fuel, tools, expense of transportation, and other contingent expenses of the War Department, eighty-one thousand dollars.

For fortifications, arsenals, magazines, and armories, one hundred and thirty-three thousand two hundred and ninety-six dollars and eighty-eight cents.

For purchasing maps, plans, books, and instruments for the War Department, and military academy, five hundred dollars.

For the pay and subsistence of the commandants in Louisiana, five thousand nine hundred and seventy one dollars and seventy-seven cents.

For the Indian department, ninety-two thousand six hundred dollars.

SEC. 2. *And be it further enacted*, That the several appropriations hereinbefore made, shall be paid and discharged out of any moneys in the Treasury not otherwise appropriated.

Approved, February 14, 1805.

An Act supplementary to the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Be it enacted, &c., That the same terms of credit which are granted by law for the payment of duties on articles the produce of the West Indies, and no other, shall be allowed on goods, wares, and merchandise, imported by sea into the United States, from all foreign ports and islands lying north of the equator, and situated on the eastern shores of America, or in its adjacent seas, bays, and gulfs.

SEC. 2. *And be it further enacted*, That it shall be lawful for any ship or vessel to proceed with any goods, wares, or merchandise, brought in her, and which shall, in the manifest delivered to the collector of the customs, be reported as destined or intended for any foreign port or place, from the district within which such ship or vessel shall first arrive, to such foreign port or place, without paying or securing the payment of any duties upon such goods, wares, or merchandise, as shall be actually re-exported in the said ship or vessel: *Provided*, That such manifest so declaring to re-export such goods, wares, or merchandise, shall be delivered to such collector within forty-eight hours after the arrival of such ship or vessel: *And provided, also*, That the master or commander of such ship or vessel shall give bond as required by the thirty-second section of the act, entitled "An act to regulate the collection of duties on imports and tonnage."

Approved, February 22, 1805.

An act to continue in force "An act declaring the consent of Congress to an act of the State of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, for the appointment of a health officer."

Be it enacted, &c., That the consent of Congress be, and is hereby, granted and declared to the operation of an act of the General Assembly of Maryland, passed the twenty-eighth day of December, one thousand seven hundred and ninety-three, entitled "An act to appoint a health officer for the port of Baltimore, in Baltimore county," so far as to enable the State aforesaid to collect a duty of one per cent. per ton on all vessels coming into the district of Baltimore, from a foreign voyage, for the purposes in said act intended.

SEC. 2. *And be it further enacted*, That this act shall be in force for nine years from the passing thereof, and from thence to the end of the next session of Congress thereafter, and no longer.

Approved, March 1, 1805.

An Act to amend the act, entitled "An act further to amend an act, entitled 'An act to lay and collect a direct tax within the United States."

Be it enacted, &c., That the supervisor of the district of Kentucky is hereby allowed the further time of three months from the end of two years after the completion of the sales of land within his district, for the payment of the direct tax, to perform the several duties enjoined by the fourth section of the act, entitled "An act further to amend the act, entitled 'An act to lay and collect a direct tax within the United States," anything in the said act to the contrary notwithstanding.

Approved, March 1, 1805.

An Act making appropriations for the support of Government for the year one thousand eight hundred and five.

Be it enacted, &c., That, for the expenditure of the civil list in the present year, including the contingent expenses of the several Departments and officers; for the compensation of the several loan officers and their clerks, and for books and stationery for the same; for the payment of annuities and grants; for the support of the Mint Establishment; for the expenses of intercourse with foreign nations; for the support of lighthouses, beacons, buoys, and public piers; for defraying expenses of surveying the public lands in the Territories of Indiana and Mississippi; for the unexpended balances of former appropriations, defraying the expenses of the second census, and the purchase and erection of wharves and stores under the quarantine law; and for satisfying certain miscellaneous claims, the following sums be, and the same hereby are, respectively, appropriated, that is to say:

For compensations granted by law to the members of the Senate and House of Representatives, their officers and attendants, estimated for a session of four months and a half continuance, one hundred and ninety-eight thousand, nine hundred and sixty-five dollars.

For the expense of firewood, stationery, printing, and all other contingent expenses of the two Houses of Congress, including the sum of three thousand dollars appropriated by the act of the sixth of December, one thousand eight hundred and four, twenty-eight thousand dollars.

For defraying the expenses incidental to dismantling the late library room of Congress, and fitting it up for the accommodation of the House

of Representatives, at the ensuing session, seven hundred dollars.

For expenses of removal of the Library, and all other contingent expenses of the same, and Librarian's allowance for the year one thousand eight hundred and five, nine hundred dollars.

For the expense of labelling, lettering, and numbering five thousand seven hundred volumes of laws and journals of the old Congress, directed by the act of the present session for the disposal of certain copies of the laws of the United States, to be deposited in the Library, five hundred and seventy dollars.

For compensation to the President and Vice President of the United States, thirty thousand dollars.

For compensation to the Secretary of State, clerks, and persons employed in that Department, eleven thousand three hundred and sixty dollars.

For incidental and contingent expenses in said Department, four thousand two hundred dollars.

For printing and distributing copies of the laws of the second session of the eighth Congress, and printing the laws in newspapers, eight thousand two hundred and fifty dollars.

For printing the laws and other contingent expenses of the government of the Indiana Territory, in consequence of the union with it of that of the Territory of Louisiana, three hundred and fifty dollars.

For special messengers charged with despatches, two thousand dollars.

For compensation to the Secretary of the Treasury, clerks, and persons employed in his office, including those engaged on the business belonging to the late office of the Commissioner of the Revenue, thirteen thousand four hundred and forty-nine dollars and eighty-one cents.

For expenses of translating foreign languages; allowance to the person employed in receiving and transmitting passports and sea-letters; stationery and printing, one thousand dollars.

For compensation to the Comptroller of the Treasury, clerks, and persons employed in his office, twelve thousand nine hundred and seventy-seven dollars and eight cents.

For expense of stationery, printing, and incidental and contingent expenses in the Comptroller's office, eight hundred dollars.

For compensation to the Auditor of the Treasury, clerks, and persons employed in his office, twelve thousand two hundred and twenty dollars and ninety-three cents.

For expense of stationery, printing, and incidental and contingent expenses in the office of the Auditor of the Treasury, five hundred dollars.

For compensation to the Treasurer, clerks, and persons employed in his office, six thousand two hundred and twenty-seven dollars and forty-five cents.

For the expense of stationery, printing and incidental and contingent expenses in the Treasurer's office, three hundred dollars.

For compensation to the Register of the Treasury, clerks, and persons employed in his office, sixteen thousand and fifty-two dollars.

For expense of stationery and printing in the Register's office, (including books for the public stock and for the arrangement of the marine papers,) two thousand eight hundred dollars.

For compensation to the Secretary of the Commissioners of the Sinking Fund, two hundred and fifty dollars.

For compensation of the clerks employed for the purpose of making drafts of the several surveys of land in the Territory of the United States Northwest of the river Ohio, and in keeping the books of the Treasury in relation to the sales of lands at the several land offices, two thousand six hundred dollars.

For fuel and other contingent expenses of the Treasury Department, four thousand dollars.

For defraying the expenses incident to the stating and printing the public accounts for the year one thousand eight hundred and five, one thousand two hundred dollars.

For purchasing books, maps, and charts, for the use of the Treasury Department, four hundred dollars.

For compensation to a superintendent employed to secure the buildings and records of the Treasury, during the year one thousand eight hundred and five, including the expense of two watchmen, and for the repair of two fire engines, buckets, lanterns, and other incidental expenses, one thousand one hundred dollars.

For the erection of a fire-proof brick building for the preservation of the records of the Treasury; the cellars in which they have hitherto been kept being found, from their dampness, improper for that use, nine thousand dollars.

For compensation to the Secretary of War, clerks, and persons employed in his office, eleven thousand two hundred and fifty dollars.

For the expenses of fuel, stationery, printing, and other contingent expenses of the office of the Secretary of War, one thousand dollars.

For compensation to the Accountant of the War Department, clerks, and persons employed in his office, ten thousand nine hundred and ten dollars.

For contingent expenses in the office of the Accountant of the War Department, one thousand dollars.

For compensation to clerks employed in the Paymaster's office, one thousand eight hundred dollars.

For fuel in said office, ninety dollars.

For compensation to the Purveyor of Public Supplies, clerks, and persons employed in his office, including a sum of twelve hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second day of March, one thousand seven hundred and ninety-nine, and for expense of stationery, store rent and fuel for the said office, four thousand six hundred dollars.

For compensation to the Secretary of the Navy, clerks, and persons employed in his office, nine thousand one hundred and ten dollars.

For expense of fuel, stationery, printing and other contingent expenses in the office of the Secretary of the Navy, two thousand dollars.

For compensation to the Accountant of the Navy, clerks, and persons employed in his office, including the sum of one thousand one hundred dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, ten thousand four hundred and ten dollars.

For contingent expenses in the office of the Accountant of the Navy, seven hundred and fifty dollars.

For compensation to the Postmaster General, Assistant Postmaster General, clerks, and persons employed in the Postmaster General's office, including a sum of four thousand five hundred and ninety-five dollars, for compensation to his clerks, in addition to the sum allowed by the act of the second of March, one thousand seven hundred and ninety-nine, thirteen thousand nine hundred and fifty-five dollars.

For expense of fuel, candles, house rent for the messenger, stationery, chests, &c., exclusive of expenses of prosecution, portmanteaus, mail locks, and other expenses incident to the Department, these being paid for by the Postmaster General out of the funds of the office, two thousand dollars.

For compensation to the several loan officers, thirteen thousand two hundred and fifty dollars.

For compensation to the clerks of the several Commissioners of Loans, and an allowance to certain loan officers, in lieu of clerk hire, and to defray the authorized expenses of the several loan offices, thirteen thousand dollars.

For defraying the expense of clerk hire in the office of the Commissioner of Loans of the State of Pennsylvania, in consequence of the removal of the offices of the Treasury Department, in the year one thousand eight hundred, to the permanent seat of Government, two thousand dollars.

For compensation to the Surveyor General and the clerks employed by him, and for expense of stationery and other contingencies of the Surveyor General's office, three thousand two hundred dollars.

For compensation to the surveyor of the lands south of the State of Tennessee, clerks employed in his office, stationery, and other contingencies, three thousand two hundred dollars.

For compensation to the officers of the Mint:

The director, two thousand dollars.

The treasurer, one thousand two hundred dollars.

The assayer, one thousand five hundred dollars.

The chief coiner, one thousand five hundred dollars.

The melter and refiner, one thousand five hundred dollars.

The engraver, one thousand two hundred dollars.

One clerk, at seven hundred dollars.

And two, at five hundred dollars, each.

For the wages of persons employed at the different branches of melting, coining, carpenters', millwrights', and smiths' work, including the sum of eight hundred dollars per annum, allowed to an assistant coiner and die forger, who also oversees the execution of the iron work, six thousand five hundred dollars.

For the repairs of furnaces, cost of rollers and screws, timber, bar-iron, lead, steel, potash, and for all other contingencies of the Mint, two thousand nine hundred dollars.

For compensation to the Governor, judges, secretary, and Legislative Council of the Territory of Orleans, nineteen thousand two hundred and forty dollars.

For incidental and contingent expenses of the Legislative Council, and of the secretary of the said Territory, two thousand dollars.

For compensation to the Governor, judges, and secretary of the Mississippi Territory, five thousand one hundred and fifty dollars.

For expenses of stationery, office rent, and other contingent expenses in the said Territory, three hundred and fifty dollars.

For compensation to the Governor, judges, and secretary of the Indiana Territory, five thousand one hundred and fifty dollars.

For the expenses of stationery, office rent, and other contingent expenses in the said territory, three hundred and fifty dollars.

For the discharge of such demands against the United States, on account of the civil department, not otherwise provided for, as shall have been admitted in a due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, two thousand dollars.

For additional compensation to the clerks of the several Departments of State, Treasury, War, and Navy, and of the General Post Office, not exceeding, for each department respectively, fifteen per centum in addition to the sums allowed by the act, entitled "An act to regulate and fix the compensation of clerks," eleven thousand eight hundred and eighty-five dollars.

For compensation granted by law to the Chief Justice, associate judges, and district judges of the United States, including the chief justice and two associate judges of the District of Columbia, and to the Attorney General, fifty-five thousand nine hundred dollars.

For the like compensation granted to the several district attorneys of the United States, three thousand four hundred dollars.

For compensation to the marshals of the districts of Maine, New Hampshire, Vermont, Kentucky, Ohio, East and West Tennessee, and Orleans, one thousand six hundred dollars.

For defraying the expenses of the supreme, circuit, and district courts of the United States, including the District of Columbia, and of jurors and witnesses, in aid of the funds arising from fines, forfeitures, and penalties, and likewise for defraying the expense of prosecution for offences against the United States, and for safe-keeping of prisoners, forty thousand dollars.

For the payment of sundry pensions granted by the late Government, nine hundred dollars.

For the payment of an annuity granted to the children of the late Colonel John Harding and

Major Alexander Trueman, by an act of Congress, passed the fourteenth of May, one thousand eight hundred, six hundred dollars.

For the payment of the annual allowance to the invalid pensioners of the United States, from the fifth of March, one thousand eight hundred and six, ninety-eight thousand dollars.

For the maintenance and support of light-houses, beacons, buoys, and public piers, and stakeage of channels, bars, and shoals, and certain contingent expenses, one hundred and fifteen thousand two hundred and nine dollars and thirty-six cents.

For fixing buoys in Long Island sound, in addition to the sums heretofore appropriated for that object, three thousand dollars.

For erecting beacons in the harbor of New York, in addition to the sums heretofore appropriated for that object, six thousand dollars.

For erecting a beacon and placing buoys near the entrance of Savannah river, being an expense incurred under the act of the sixteenth day of July, one thousand seven hundred and ninety-eight, (the balance of a former appropriation for the same object, having been carried to the credit of the surplus fund,) two thousand four hundred and ninety-four dollars and eighty-nine cents.

For reviving so much of unexpended balances of appropriations granted by an act passed the sixth of April, one thousand eight hundred and two, and which have been carried to the surplus fund, to wit:

For erecting public piers in the river Delaware, five thousand eight hundred and eighty-eight dollars and seventy-nine cents.

For erecting certain light-houses, and fixing buoys in Long Island sound, nine thousand six hundred and seventy-eight dollars and thirty-eight cents.

And for building a light-house on Cumberland South Point, four thousand dollars.

For completing the light-house at the mouth of the Mississippi, and the light-house at or near the pitch of Cape Lookout, in addition to the sum heretofore appropriated to those objects, by the act of the twenty-sixth of March, one thousand eight hundred and four, twenty thousand dollars.

Towards completing the surveys of public lands in the State of Ohio, and in the Indiana and Mississippi Territories, forty thousand dollars.

For the discharge of such miscellaneous claims against the United States, not otherwise provided for, as shall have been admitted in due course of settlement at the Treasury, and which are of a nature, according to the usage thereof, to require payment in specie, four thousand dollars.

For defraying certain expenses heretofore incurred in the War and Navy Departments, and which, in due course of settlement in those departments, have been adjusted, and cannot be discharged out of any existing appropriation, twenty thousand dollars.

For the expense of taking the second census of the inhabitants of the United States, being the balance of a former appropriation carried to the surplus fund, fourteen thousand one hundred and sixty-two dollars and seventy-seven cents.

For the expense of wharves and stores for quarantine ships and vessels, being the balance of a former appropriation carried to the credit of the surplus fund, seventeen thousand one hundred and forty-three dollars and one cent.

For the expense of returning the votes for President and Vice President of the United States for the term commencing the fourth day of March, one thousand eight hundred and five, one thousand six hundred and twenty-four dollars.

For defraying the contingent expenses of Government, (the unexpended balance of a former appropriation for the same object, being carried to the credit of the surplus fund,) twenty thousand dollars.

For expenses of intercourse with foreign nations, fifty-seven thousand and fifty dollars.

For the expenses of the intercourse between the United States and the Barbary Powers, including the compensation of the Consuls at Algiers, Morocco, Tunis, and Tripoli, sixty-three thousand five hundred dollars.

For the contingent expenses of intercourse with the Barbary Powers, two hundred thousand dollars.

For the relief and protection of distressed American seamen, five thousand dollars.

For the salaries of the agents at Paris and Madrid, for prosecuting claims in relation to captures, four thousand dollars.

For payment of demands for French vessels and property captured, pursuant to the convention between the United States and the French Republic, the balance of a former appropriation for the same object, by the act of the third of April, one thousand eight hundred and two, having been carried to the surplus fund, twenty-one thousand dollars.

SEC. 2. *And be it further enacted*, That the several appropriations, hereinbefore made, shall be paid and discharged out of the fund of six hundred thousand dollars, reserved by the act "making provision for the debt of the United States," and out of the moneys in the Treasury, not otherwise appropriated.

Approved, March 1, 1805.

An Act further providing for the government of the Territory of Orleans.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to establish within the Territory of Orleans, a government in all respects similar, (except as is herein otherwise provided,) to that now exercised in the Mississippi Territory; and shall, in the recess of the Senate, but to be nominated at their next meeting, for their advice and consent, appoint all the officers necessary therein, in conformity with the ordinance of Congress, made on the thirteenth day of July, one thousand seven hundred and eighty-seven; and that from and after the establishment of the said government, the inhabitants of the Territory of Orleans, shall be entitled to and enjoy

all the rights, privileges, and advantages secured by the said ordinance, and now enjoyed by the people of the Mississippi Territory.

SEC. 2. *And be it further enacted*, That so much of the said ordinance of Congress, as relates to the organization of a General Assembly, and prescribes the powers thereof, shall, from and after the fourth day of July next, be in force in the said Territory of Orleans; and in order to carry the same into operation, the Governor of the said Territory shall cause to be elected twenty-five representatives, for which purpose he shall lay off the said Territory into convenient election districts, on or before the first Monday of October next, and give due notice thereof throughout the same; and shall appoint the most convenient time and place within each of the said districts, for holding the elections: and shall nominate a proper officer or officers to preside at and conduct the same, and to return to him the names of the persons who may have been duly elected. All subsequent elections shall be regulated by the Legislature; and the number of representatives shall be determined, and the apportionment made, in the manner prescribed by the said ordinance.

SEC. 3. *And be it further enacted*, That the representatives to be chosen as aforesaid shall be convened by the Governor, in the city of Orleans, on the first Monday in November next; and the first General Assembly shall be convened by the Governor as soon as may be convenient, at the city of Orleans, after the members of the Legislative Council shall be appointed and commissioned; and the General Assembly shall meet, at least once in every year, and such meeting shall be on the first Monday in December, annually, unless they shall, by law, appoint a different day. Neither house, during the session, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two branches are sitting.

SEC. 4. *And be it further enacted*, That the laws in force in the said Territory, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

SEC. 5. *And be it further enacted*, That the second paragraph of the said ordinance, which regulates the descent and distribution of estates; and also the sixth article of compact which is annexed to, and makes part of said ordinance, are hereby declared not to extend to, but are excluded from all operation within the said Territory of Orleans.

SEC. 6. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed be virtue of this act, shall be severally allowed the same compensation which is now allowed to the Governor, secretary, and judges, of the Territory of Orleans. And all the additional officers authorized by this act, shall respectively receive the same compensation for their services, as are by law established for similar offices in the Mississippi Territory, to be paid quarter yearly out of the revenues of impost and tonnage accruing within the said Territory of Orleans.

SEC. 7. *And be it further enacted*, That whenever it shall be ascertained by an actual census, or enumeration of the inhabitants of the Territory of Orleans, taken by proper authority, that the number of free inhabitants included therein shall amount to sixty thousand, they shall thereupon be authorized to form for themselves a constitution and State government, and be admitted into the Union upon the footing of the original States, in all respects whatever, conformably to the provisions of the third article of the treaty concluded at Paris, on the thirteenth of April, one thousand eight hundred and three, between the United States and the French Republic: *Provided*, That the constitution so to be established shall be republican, and not inconsistent with the constitution of the United States, nor inconsistent with the ordinance of the late Congress, passed the thirteenth day of July, one thousand seven hundred and eighty-seven, so far as the same is made applicable to the territorial government hereby authorized to be established: *Provided, however*, That Congress shall be at liberty, at any time prior to the admission of the inhabitants of the said Territory to the right of a separate State, to alter the boundaries thereof as they may judge proper: *Except only*, That no alteration shall be made, which shall procrastinate the period for the admission of the inhabitants thereof to the rights of a State government according to the provision of this act.

SEC. 8. *And be it further enacted*, That so much of an act, entitled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," as is repugnant with this act, shall, from and after the first Monday of November next, be repealed. And the residue of the said act shall continue in full force until repealed, anything in the sixteenth section of the said act to the contrary notwithstanding.

Approved, March 2, 1805.

An Act further to amend an act, entitled "An act regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee."

Be it enacted, &c., That persons who may have obtained or shall obtain certificates from the Board of Commissioners appointed to ascertain the claims to lands in the Mississippi Territory, shall be allowed three months after the respective date of such certificates, for entering the same with the register of the proper land office: and certificates thus entered shall have the same force and effect as if they had been duly entered with the said register, on or before the first day of January, one thousand eight hundred and five.

SEC. 2. *And be it further enacted*, That the Commissioners appointed to ascertain the claims to land in the above-mentioned Territory, east of Pearl river, shall be authorized to grant certificates for lands lying in the island known by the name of Nannee Hubba, formed by the cut-off of the river Tombigbee and Alabamaha; and persons having claims for lands lying either in said island or east of the Tombigbee and Alabamaha rivers, shall be permitted to file the same with the register of the land office, till the first day of May, one thousand eight hundred and five; and the Commissioners shall decide on the same in the same manner as if they had been presented before the thirty-first day of March, one thousand eight hundred and four.

SEC. 3. *And be it further enacted*, That each of the last-mentioned Commissioners shall be allowed at the rate of six dollars a day, for every day he shall attend subsequent to the first day of April, one thousand eight hundred and five: *Provided*, That such additional allowance shall not exceed five hundred dollars for each Commissioner.

SEC. 4. *And be it further enacted*, That the clerk of each of the Boards of Commissioners appointed to ascertain the claims of lands in the above-mentioned Territory, shall be allowed at the rate of seven hundred and fifty dollars a year, from the time when he entered upon the duties of his office to the time when the board shall adjourn *sine die*.

SEC. 5. *And be it further enacted*, That persons claiming lands in the Mississippi Territory, by virtue of British grants, legally and fully completed, who may not have filed their claims with the proper register of the land office, in conformity with the provisions heretofore made for that purpose, may, until the first day of December, one thousand eight hundred and five, file such claims with the register of the land office west of Pearl river, and have the same recorded. And the said register shall on or before the first day of January, one thousand eight hundred and six, make to the Secretary of the Treasury a full report of all the British grants thus recorded; which report shall immediately after be laid before Congress. The lands contained in such grants shall not be otherwise disposed of until the end of one year, after that time. And if any such person shall neglect to file such British grant, and to have the same recorded, in the manner and time hereby provided, neither such grant nor any other evidence of such claim, which shall not have been recorded as above directed, shall ever after be considered or admitted as evidence in any court of the United States, or against any title, legally and fully executed, derived from the Spanish Government; any act or acts to the contrary notwithstanding.

Approved, March 2, 1805.

An Act for ascertaining and adjusting the titles and claims to land, within the Territory of Orleans, and the District of Louisiana.

Be it enacted, &c., That any person or persons, and the legal representatives of any person or persons, who, on the first day of October, in the year one thousand eight hundred, were resident within the territories ceded by the French Republic to the United States, by the treaty of the thirtieth of April, one thousand eight hundred and three, and who had, prior to the said first day of October, one thousand eight hundred, obtained from the French or Spanish Governments respectively, during the time either of the said Governments had the actual possession of said Territories, any duly registered warrant, or order of survey for lands lying within the said Territories to which the Indian title had been extinguished, and which were on that day actually inhabited and cultivated by such person or persons, or for his or their use, shall be confirmed in their claims to such lands, in the same manner as if their titles had been completed: *Provided, however*, That no such incomplete title shall be confirmed, unless the person in whose name such warrant or order of survey had been granted, was, at the time of its date, either the head of a family, or above the age of twenty-one years; nor unless the conditions and terms on which the completion of the grant might depend, shall have been fulfilled.

SEC. 2. *And be it further enacted*, That to every person, or to the legal representative or representatives of every person, who, being either the head of a family, or twenty-one years of age, had, prior to the twentieth day of December, one thousand eight hundred and three, with permission of the proper Spanish officer, and in conformity with the laws, usages, and customs of the Spanish Government, made an actual settlement on a tract of land within the said Territories, not claimed by virtue of the preceding section, or of any Spanish or French grant made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the said Territories, and who did on the said twentieth day of December, one thousand eight hundred and three, actually inhabit and cultivate the said tract of land; the tract of land thus inhabited and cultivated shall be granted: *Provided, however*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than one mile square, together with such other and further quantity, as heretofore has been allowed for the wife and family of such actual settler, agreeably to the laws, usages, and customs, of the Spanish Government: *Provided, also*, That this donation shall not be made to any person who claims any other tract of land in the said Territories by virtue of any French or Spanish grant.

SEC. 3. *And be it further enacted*, That, for the purpose of more conveniently ascertaining the titles and claims to land in the Territory ceded as aforesaid, the Territory of Orleans shall be laid off into two districts, in such manner as the President of the United States shall direct; in each of which, he shall appoint, in the recess of the Senate, but who shall be nominated at their next meeting, for their advice and consent, a register, who shall receive the same annual compensation, give security in the same manner, and in the same sums, and whose duties and authorities shall in every respect be the same in relation to the lands which shall hereafter be disposed of at their offices, as are by law provided with respect to the registers in the several offices established for the disposal of the lands of the United States north of the river Ohio, and above the mouth of Ken-

tucky river. The President of the United States shall likewise appoint a recorder of land titles in the district of Louisiana, who shall give security in the same manner, and in the same sums, and shall be entitled to the same annual compensation, as the registers of the several land offices.

Sec. 4. *And be it further enacted*, That every person claiming lands in the above-mentioned Territories, by virtue of any legal French or Spanish grants made and completed before the first day of October, one thousand eight hundred, and during the time the Government which made such grant had the actual possession of the Territories, may, and every person claiming lands in the said Territories, by virtue of the two first sections of this act, or by virtue of any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, shall, before the first day of March, one thousand eight hundred and six, deliver to the register of the land office, or recorder of land titles, within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract or tracts claimed; and shall also, on or before that day, deliver to the said register or recorder, for the purpose of being recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim; and the same shall be recorded by the register or recorder, or by the translator hereinafter mentioned, in books to be kept by them for that purpose, on receiving from the parties, at the rate of twelve-and-a-half cents for every hundred words contained in such written evidence of their claim: *Provided, however*, That where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded, except the original grant or patent, together with the warrant or order of survey, and the plat; but all the other conveyances or deeds shall be deposited with the register or recorder, to be by them laid before the commissioners hereinafter directed to be appointed, when they shall take the claim into consideration. And if such person shall neglect to deliver such notice, in writing, of his claim, together with the plat as aforesaid, or cause to be recorded such written evidence of the same, all his right, so far as the same is derived from the two first sections of this act, shall become void, and forever thereafter be barred; nor shall any incomplete grant, warrant, order of survey, deed of conveyance, or other written evidence, which shall not be recorded as above directed, ever after be considered, or admitted as evidence in any court of the United States, against any grant derived from the United States. The said register and recorder shall commence the duties hereby enjoined on them, on or before the first day of September next, and continue to discharge the same, at such place, in their respective districts, as the President of the United States shall direct.

Sec. 5. *And be it further enacted*, That two persons to be appointed by the President alone, for the district of Louisiana, and two persons, to be in the same manner appointed for each of the districts directed by this act to be laid off in the Territory of Orleans, shall, together with the register or recorder of the district for which they may be appointed, be commissioners for the purpose of ascertaining within their respective districts, the rights of persons claiming under any French or Spanish grant as aforesaid, or under the two first sections of this act. The said commissioners shall, previous to their entering on the duties of their appointment, respectively take and subscribe the following oath or affirmation, before some person qualified to administer the same: "I, ——, do solemnly swear (or affirm) that I will impartially exercise and discharge the duties imposed on me by an act of Congress, entitled 'An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana,' to the best of my skill and judgment." It shall be the duty of the said commissioners to meet in their respective districts, at such place as the President shall have directed therein, for the residence of the register or recorder, on or before the first day of December next, and they shall not adjourn to any other place, nor for a longer time than three days, until the first day of March, one thousand eight hundred and six, and until they shall have completed the business of their appointment. Each board, or a majority of each board, shall, in their respective districts, have power to hear and decide in a summary manner, all matters respecting such claims, also to administer oaths, to compel the attendance of and examine witnesses, and such other testimony as may be adduced, to demand and obtain, from the proper officer and officers, all public records, in which grants of land, warrants, or orders of survey, or any other evidence of claims to land, derived from either the French or Spanish Governments, may have been recorded; to take transcripts of such record or records, or of any part thereof; to have access to all other records of a public nature, relative to the granting, sale, transfer, or titles of lands, within their respective districts; and to decide in a summary way, according to justice and equity, on all claims filed with the register or recorder, in conformity with the provisions of this act, and on all complete French or Spanish grants, the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decisions shall be laid before Congress in the manner hereinafter directed, and be subject to their determination thereon: *Provided, however*, That nothing in this act contained, shall be construed so as to recognise any grant or incomplete title, bearing date subsequent to the first day of October, one thousand eight hundred, or to authorize the commissioners aforesaid to make any decision thereon. The said boards respectively shall have power to appoint a clerk, whose duty it shall be to enter in a book to be kept for that purpose, full and correct minutes of their proceedings and decisions, together with the evidence on which such decisions are made, which books and papers on the dissolution of the boards, shall be

deposited in the respective offices of the registers of the land offices, or of the recorder of land titles of the district; and the said clerk shall prepare two transcripts of all the decisions made by the commissioners in favor of the claimants to land; both of which shall be signed by a majority of the said commissioners, and one of which shall be transmitted to the officer exercising in the district the authority of Surveyor General; and the other to the Secretary of the Treasury. It shall likewise be the duty of the said commissioners, to make to the Secretary of the Treasury a full report of all the claims filed with the register of the proper land office, or recorder of land titles, as above directed, which may have been rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; which reports, together with the transcripts of the decisions of the commissioners in favor of the claimants, shall be laid by the Secretary of the Treasury before Congress, at their next ensuing meeting. When any Spanish or French grant, warrant, or order of survey, as aforesaid, shall be produced to either of the said boards, for lands, which were not at the date of such grant, warrant, or order of survey, or within one year thereafter, inhabited, cultivated, or occupied, by or for the use of the grantee; or whenever either of the said boards shall not be satisfied that such grant, warrant, or order of survey, did issue at the time when the same bears date, but that the same is antedated or otherwise fraudulent; the said commissioners shall not be bound to consider such grant, warrant, or order of survey, as conclusive evidence of the title, but may require such other of its validity as they may deem proper. Each of the commissioners, and clerks aforesaid shall be allowed a compensation of two thousand dollars in full for his services as such; and each of the said clerks shall, previous to his entering on the duties of his office, take and subscribe the following oath or affirmation, to wit: "I, —— ——, do solemnly swear (or affirm) that I will truly and faithfully discharge the duties of a clerk to the board of commissioners for examining the claims to land, as enjoined by an act of Congress, entitled 'An act ascertaining and adjusting the titles and claims to land within the Territory of Orleans, and the district of Louisiana." Which oath or affirmation shall be entered on the minutes of the board.

Sec. 6. *And be it further enacted*, That the Secretary of the Treasury shall be, and he is hereby, authorized to employ three agents, one for each board and whose compensation shall not exceed one thousand five hundred dollars each, for the purpose of appearing before the commissioners in the behalf of the United States, to investigate the claims for lands, and to oppose all such as said agents may deem fraudulent and unfounded. It shall also be the duty of the said agent for the district of Louisiana, to examine into, and investigate the titles and claims, if any there be, to the lead mines within the said district, to collect all the evidence within his power, with respect to the claims to, and value of the said mines, and to lay the same before the commissioners, who shall make a special report thereof, with their opinions thereon, to the Secretary of the Treasury, to be by him laid before Congress, at their next ensuing session. The said board of commissioners shall each be authorized to employ a translator of the Spanish and French languages, to assist them in the despatch of the business which may be brought before them, and for the purpose of recording Spanish and French grants, deeds, or other evidences on the register's books. The said translator shall receive for the recording done by him, the fees already provided by law, and may be allowed not exceeding fifty dollars for every month he shall be employed; provided that the whole compensation, other than that arising from the fees, shall not exceed six hundred dollars.

Sec. 7. *And be it further enacted*, That the powers vested by law in the surveyor of the lands of the United States, south of the State of Tennessee, shall extend over all the public lands of the United States, to which the Indian title has been or shall hereafter be extinguished within the said Territory of Orleans; and it shall be the duty of the said surveyor to cause such of the said lands as the President of the United States shall expressly direct, to be surveyed and divided, as nearly as the nature of the country will admit, in the same manner and under the same regulations as is provided by law, in relation to the lands of the United States northwest of the river Ohio, and above the mouth of Kentucky river.

Sec. 8. *And be it further enacted*, That the location or locations of lands which Major General Lafayette is by law authorized to make on any lands, the property of the United States, in the Territory of Orleans, shall be made with the register or registers of the land offices established by this act in the said territory; the surveys thereof shall be executed under the authority of the surveyor of the lands of the United States south of Tennessee; and a patent or patents therefor shall issue, on presenting such surveys to the Secretary of the Treasury, together with a certificate of the proper register or registers, stating that the land is not rightfully claimed by any other person: *Provided*, That no location or survey made by virtue of this section, shall contain less than one thousand acres, nor include any improved lands or lots, salt spring, or lead mine.

Sec. 9. *And be it further enacted*, That a sum not exceeding fifty thousand dollars, to be paid out of any unappropriated moneys in the Treasury, be, and the same is hereby appropriated for the purpose of carrying this act into effect.

Approved, March 2, 1805.

An Act to authorize the Secretary of War to issue military land warrants; and for other purposes.

Be it enacted &c., That the Secretary of War be, and he hereby is, authorized, from and after the passing of this act, to issue warrants for military bounty lands to the sixty-three persons who have exhibited their claims, and produced satisfactory

evidence to substantiate the same to the Secretary of War; and, also, to such persons as shall, before the first day of April next, produce to him satisfactory evidence of the validity of their claims, in pursuance of the act of the twenty-sixth of April, eighteen hundred and two, entitled "An act in addition to an act, entitled 'An act in addition to an act, regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen,"

Sec. 2. *And be it further enacted*, That the holders or proprietors of the land warrants issued by virtue of the preceding section, shall and may locate their respective warrants only on any unlocated parts of the fifty quarter townships, and the fractional quarter townships, which had been reserved for original holders, by virtue of the fifth section of an act, entitled "An act in addition to an act, entitled 'An act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen."

Sec. 3. *And be it further enacted*, That the act, entitled "An act in addition to an act, entitled 'An act in addition to an act regulating the grants of land appropriated for military services, and for the Society of the United Brethren for propagating the Gospel among the Heathen," approved the twenty-sixth day of April, eighteen hundred and two, be and the same is hereby continued in force until the first day of March, eighteen hundred and six.

Approved March 2, 1805.

An Act to amend the act, entitled "An act for the government and regulation of seamen in the merchants' service."

Be it enacted, &c., That all the provisions, regulations, and penalties, which are contained in the eighth section of the act, entitled "An act for the government and regulation of seamen in the merchants' service," so far as relates to a chest of medicines to be provided for vessels of one hundred and fifty tons burden, and upwards, shall be extended to all merchant vessels of the burden of seventy-five tons, or upwards, navigated with six persons or more, in the whole, and bound from the United States to any port or ports in the West Indies.

Approved, March 2, 1805.

An Act to authorize the erection of a bridge across a mill-pond and marsh in the Navy Yard, belonging to the United States, in the town of Brooklyn, in the State of New York.

Be it enacted, &c., That the President of the United States be, and he hereby is, authorized, by a proper instrument in writing under his hand, in due form, to grant to such person or persons, or body corporate, by their proper name or incorporation, as shall be authorized by an act of the Legislature of the State of New York, to open and improve a road from Brooklyn ferry, in that State, along the shore of the Wallabout, to Bushwick, to erect a bridge across the mill-pond and marsh, being part of the navy yard belonging to the United States, in the said town of Brooklyn, and to maintain such bridge, under such restrictions and on such conditions as he shall prescribe: *Provided, nevertheless*, That if, at any future time, it shall appear to the President of the United States, that the property of the United States is injured by such bridge, he may revoke the permission granted by him for erecting the same.

And provided, also, That no toll shall be demanded at any time for any article the property of the United States, which may be conveyed to or for their use, over or across the said bridge, or from any person or persons employed in the said navy yard, who may pass or repass on the said bridge.

Approved, March 2, 1805.

An Act to appropriate a sum of money for the purpose of building gun-boats.

Be it enacted, &c., That the sum of sixty thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the Treasury, not otherwise appropriated, for the purpose of enabling the President to cause to be built a number of gun-boats, not exceeding twenty-five, for the better protection of the ports and harbors of the United States.

Approved, March 2, 1805.

An Act further providing for the government of the District of Louisiana.

Be it enacted, &c., That all that part of the country ceded by France to the United States, under the general name of Louisiana, which by an act of the last session of Congress was erected into a separate district, to be called the district of Louisiana, shall henceforth be known and designated by the name and title of the Territory of Louisiana, the government whereof shall be organized and administered as follows:

The Executive power shall be vested in a Governor, who shall reside in said Territory, and hold his office during the term of three years, unless sooner removed by the President of the United States: He shall be commander-in-chief of the militia of the said Territory, superintendent *ex officio* of Indian affairs, and shall appoint and commission all officers in the same, below the rank of general officers; shall have power to grant pardons for offences against the same, and reprieves for those against the United States, until the decision of the President thereon shall be known.

Sec. 2. There shall be a secretary, whose commission shall continue in force for four years, unless sooner revoked by the President of the United States, who shall reside in the said Territory, and whose duty it shall be, under the direction of the Governor, to record and preserve all the papers and proceedings of the Executive, and all the acts of the Governor and of the Legislative body, and transmit authentic copies of the same every six months, to the President of the United States.

In case of a vacancy of the office of Governor, the government of the said Territory shall be exercised by the secretary.

Sec. 3. The Legislative power shall be vested in the Governor and in three judges, or a majority of them, who shall have power to establish inferior courts in the said Territory, and prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof: *Provided, however*, That no law shall be valid which is inconsistent with the Constitution and laws of the United States, or which shall lay any person under restraint or disability on account of his religious opinions, profession, or worship, in all of which he shall be free to maintain his own and not be burdened with those of another: *And provided, also*, That, in all criminal prosecutions, the trial shall be by a jury of twelve good and lawful men of the vicinage, and in all civil cases of the value of one hundred dollars, the trial shall be by jury, if either of the parties require it. And the Governor shall publish throughout the said Territory, all the laws which may be made as aforesaid, and shall, from time to time, report the same to the President of the United States, to be laid before Congress, which, if disapproved of by Congress, shall thenceforth cease and be of no effect.

Sec. 4. There shall be appointed three judges, who shall hold their offices for the term of four years, who, or any two of them, shall hold annually two courts within the said district, at such place as will be most convenient to the inhabitants thereof in general; shall possess the same jurisdiction which is possessed by the judges of the Indiana Territory, and shall continue in session until all the business depending before them shall be disposed of.

Sec. 5. *And be it further enacted*, That for the more convenient distribution of justice, the prevention of crimes and injuries, and execution of process, criminal and civil, the Governor shall proceed, from time to time, as circumstances may require, to lay out those parts of the Territory in which the Indian title shall have been extinguished, into districts, subject to such alterations as may be found necessary; and he shall appoint thereto such magistrates and other civil officers as he may deem necessary, whose several powers and authorities shall be regulated and defined by law.

Sec. 6. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed by virtue of this act, shall respectively receive the same compensations for their services as are by law established for similar offices in the Indiana Territory, to be paid quarter-yearly out of the Treasury of the United States.

Sec. 7. *And be it further enacted*, That the Governor, secretary, judges, justices of the peace, and all other officers, civil or military, before they enter upon the duties of their respective offices, shall take an oath, or affirmation, to support the Constitution of the United States, and for the faithful discharge of the duties of their office; the Governor before the President of the United States, or before such other person as the President of the United States shall authorize to administer the same; the secretary and judges before the Governor; and all other officers before such person as the Governor shall direct.

Sec. 8. *And be it further enacted*, That the Governor, secretary, and judges, to be appointed by virtue of this act, and all the additional officers authorized thereby, or by the act for erecting Louisiana into two Territories, and providing for the temporary government thereof, shall be appointed by the President of the United States, in the recess of the Senate, but shall be nominated at their next meeting for their advice and consent.

Sec. 9. *And be it further enacted*, That the laws and regulations, in force in the said district, at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force, until altered, modified, or repealed by the Legislature.

Sec. 10. *And be it further enacted*, That so much of an act, entitled "An act erecting Louisiana into two Territories, and providing for the temporary government thereof," as is repugnant to this act, shall, from and after the fourth day of July next, be repealed; on which said fourth day of July, this act shall commence and have full force.

Approved, March 3, 1805.

An Act to amend the Charter of Georgetown.

Be it enacted, &c., That, from and after the second Monday in March current, the Corporation of Georgetown, in the District of Columbia, shall be divided into two branches; the first branch to be composed of five members, and a recorder, and to be called "the Board of Aldermen;" and the second branch to be composed of eleven members, and to be called "the Board of Common Council men:" which said two branches shall be elected as hereafter particularly provided.

Sec. 2. *And be it further enacted*, That, after the passage of this act, and before the said day above mentioned, the present members of the said corporation shall meet at their usual place of meeting, and then and there choose, by ballot, from their body, five persons to compose the said board of aldermen, which, said persons, when chosen as aforesaid, shall compose the said board of aldermen, and be, and continue such, until the fourth Monday in February, one thousand eight hundred and six; and that the present recorder of the said corporation shall be the president of the said board of aldermen, until the time last aforesaid: that the other members of the said corporation, (except the Mayor,) shall compose the said second branch, called the board of common council men, and be and continue such, until the time aforesaid, and shall choose out of their own body, a president, to be and continue such until the time aforesaid; and when thus organized, said corporation shall have, exercise and possess, all the powers and rights now vested

in the said corporation, and to be herein and hereby vested in them.

SEC. 3. *And be it further enacted*, That the present Mayor of the Corporation of Georgetown, shall be, and continue such, until the first Monday of January next.

SEC. 4. *And be it further enacted*, That on the fourth Monday of February next, the free white male citizens of Georgetown, of full age, and having resided within the town aforesaid twelve months previously, and having paid tax to the corporation, shall assemble at a place to be appointed, as hereafter directed, and then and there shall proceed to elect, by ballot, five fit and proper persons, citizens of the United States, and residents of the said town one whole year next before the said day of election, above twenty-one years of age, and having paid a tax to said corporation, to compose the said board of aldermen; and shall also, at the same time, proceed as aforesaid, to elect eleven fit and proper persons, having the qualifications last aforesaid, to compose the said board of common council; the said board of aldermen to continue two years, and the said board of common council to continue one year: and the said mayor, together with such other fit persons as shall be named and appointed by the said corporation, shall be judges of the election, and the five persons voted for as aldermen, who shall have the greatest number of legal votes, on the final casting up of the polls, shall be declared duly elected for the board of aldermen: and the eleven persons voted for as common council, who shall have the greatest number of legal votes upon the final casting up of the polls, shall be declared duly elected for the board of common council; and that the like election for aldermen be held on the fourth Monday in February, every two years thereafter; and for the said common council, on the said fourth Monday in February, annually, forever thereafter.

SEC. 5. *And be it further enacted*, That on the first Monday of January next, and on the same day, annually, forever thereafter, the said corporation shall, by a joint ballot of the said two branches present, choose some fit and proper person to be mayor of the said corporation, and some fit and proper person, learned in the law, to be the recorder of the said corporation, to continue in office one year.

SEC. 6. *And be it further enacted*, That the said mayor, before he acts as such, and the said recorder, before he acts as such, shall, respectively, make oath, before some justice of the peace, for the county of Washington aforesaid, in the presence of both branches of the said corporation, that he will well and faithfully discharge the several and respective duties of his office; and that each member of the said two branches shall, before he acts as such, in the presence of the corporation, take an oath to discharge the duties and trust reposed in him, with integrity and fidelity.

SEC. 7. *And be it further enacted*, That four members of the board of aldermen, and seven members of the board of common council, shall form a quorum to do business; the said corporation shall hold two sessions in each year; one to commence on the first Monday in March, and the other on the first Monday in December, with power to adjourn from day to day, to be held at such place as the mayor may designate, not otherwise provided for by ordinance: *Provided, always*, That the mayor shall have power, on urgent occasions, to convene said corporation, on application of at least five members, in writing, giving reasonable notice of such intended meeting.

SEC. 8. *And be it further enacted*, That each of the said branches shall judge of the elections, qualifications, and returns of its own members, and may compel the attendance of the members of each branch by reasonable penalties: and either branch shall have power to appoint their president, *pro tempore*, in case of the absence of the one duly chosen, as aforesaid: any ordinance may originate in either branch, and no ordinance shall be passed but by a majority of both branches, nor unless it shall pass both branches, during the same session, and be approved of by the mayor, who shall sign the same, unless he objects thereto, within forty-eight hours from the time the same is presented to him for signature; if he does so object, he shall immediately return the same to the said corporation, with his objections, in writing, and if, on reconsideration, two thirds of each branch of the corporation shall be of opinion that the said law ought to be passed, it shall, notwithstanding the objections of the mayor, become a law; and he shall sign the same; if the said mayor shall not return his objections to the same, to the said corporation, within the time aforesaid, it shall become a law, and shall be signed by him: the clerk of the corporation shall record, in a book to be kept by him for that purpose, all the laws and resolutions which shall be passed as aforesaid, and deliver a copy of them to the public printer, to be printed by him for the use of the people.

SEC. 9. *And be it further enacted*, That in case the aldermen composing the first branch, shall at at any time, on any question before them, be equally divided, the recorder shall have the casting vote, and determine such question to the same effect as if the same had been determined by a majority of the aldermen present; and similar power is hereby given to the president of the second branch in case of an equal division in that body.

SEC. 10. *And be it further enacted*, That it shall be the duty of the mayor to see that the laws of the corporation be duly executed, and to report the negligence or misconduct of any officer to the said corporation, who, on satisfactory proof thereof, may remove from office the said delinquent, or take such other measures thereupon as shall be just and lawful; he shall lay before the said corporation, from time to time, in writing, such alterations in the laws of the said corporation as he shall deem necessary and proper; he shall have and exercise the powers of a justice of the peace in the said town, and shall receive for his services, annually, a just and reasonable compensation, to be allowed and fixed by the said corporation. No person shall be eligible to the said office of mayor unless a citizen of the United States, of the age of thirty years, a resident of the said town for five years then last past, and unless he shall have paid a tax to said corporation.

SEC. 11. *And be it further enacted*, That in case of a vacancy in either branch of the said corporation, by death, removal, or otherwise, of either of the members, a fit person or persons, qualified as aforesaid, shall be elected by the people, in the manner aforesaid, to fill such vacancy immediately thereafter; the mayor giving, however, at least five days' notice of such election; and in case of the vacancy of the mayor or recorder, the said corporation shall, within five days thereafter, as hereinbefore directed, proceed to the choice of a fit person or persons, qualified as aforesaid, to fill his or their place.

SEC. 12. *And be it further enacted*, That the said corporation shall have power to impose a tax, not exceeding, in any one year, fifty cents in the hundred dollars, on all property within the said town; and the sessions of the said corporation shall be held as heretofore, until the second Monday in March, current; and the said corporation shall have, possess, and enjoy, all the rights, immunities, privileges, and powers heretofore enjoyed by them; and shall be called by the same name as heretofore, and shall have perpetual succession; and, in addition thereto, they shall have power to regulate the inspection of flour and tobacco in said town; to prevent the introduction of contagious diseases within said town and precincts; to establish night watches and patrols, and erect lamps; to regulate the stationing, anchorage, and mooring of vessels; to provide for regulating and licensing ordinaries, auctions, and retailers of liquors, hackney carriages, wagons, carts, and drays, within said town and precincts; to restrain or prohibit gambling; to provide for licensing, regulating, or restraining theatrical or other public amusements; to regulate and establish markets; to pass all laws for the regulation of weights and measures; to provide for the licensing and regulating the sweeping of chimneys, and fixing the rates thereof; to establish and regulate fire wards and fire companies; to regulate and establish the size of bricks to be made and used within said town; the inspection of salted provisions, and the assize of bread; to sink wells and erect and repair pumps in the streets; to impose and appropriate fines and penalties, and forfeitures for breach of their ordinances; to erect work-houses; to open, extend, and regulate streets within the limits of the said town; provided they make to the person or persons who may be injured by such opening, extension, or regulation, just and equitable compensation, to be ascertained by the verdict of an impartial jury, to be summoned and sworn by a justice of the peace of the county of Washington, and to be formed of twenty-three men, who shall proceed in like manner as has been usual in other cases where private property has been condemned for public use; and they shall have the power of restraining, regulating, and directing the manner of building wharves and docks; also to direct the manner in which the improvements thereon to be erected, shall be made, so that they may not become injurious to the health of the town; in addition to the power heretofore granted to the said corporation by the act of Congress, entitled "An act additional to, and amendatory of, an act, entitled 'An act concerning the District of Columbia,'" of laying a tax of two dollars per foot front for paving the streets, lanes, and alleys of the said town; they shall have the power, upon petition, in writing, of a majority of the holders of real property fronting on any street or alley, if, in their judgment, it shall be deemed necessary, to lay such further and additional sum on each front foot, on said street, or part of a street, as will be sufficient to pave said street or part of a street, lane, or alley, so petitioned for; and the like remedy shall be used for the recovery thereof as is now used for the recovery of the public county taxes, in the said county of Washington; and they shall have power by ordinance to direct or order the paved streets to be cleansed and kept clean, and appoint an officer for that purpose; to make and keep in repair all necessary sewers and drains, and to pass regulations necessary for the preservation of the same.

SEC. 13. *And be it further enacted*, That the duties on all licenses to be granted as aforesaid, shall be to and for the proper use and benefit of the said corporation; and the said corporation shall have power to pass all laws not inconsistent with the laws of the United States, which may be necessary to give effect and operation to all the powers vested in the said corporation; and to appoint constables and collectors of the taxes, and all other officers who may be deemed necessary for the execution of their laws, whose duties and powers shall be prescribed in such manner as the said corporation shall deem fit for the purpose aforesaid.

SEC. 14. *And be it further enacted*, That the jurisdiction of the said corporation shall extend to the limits of the original plan of said town, and to such additions as are recognised by law; and that a survey, as soon as conveniently may be after the passage of this law, shall be made, under the direction of the said corporation, ascertaining said limits, and a plat thereof made and returned to said corporation, which, when approved of by them, shall be preserved, and become a record.

Approved, March 3, 1805.

An Act supplementary to the act, entitled "An act making an appropriation for carrying into effect the Convention between the United States of America and His Britannic Majesty."

Be it enacted, &c., That the Secretary of the Treasury be authorized to cause the last payment due under the convention of the eighth day of January, one thousand eight hundred and two, between the United States of America and His Britannic Majesty, to be made in Great Britain: *Provided*, That the same may be effected without any risk to the United States.

Approved, March 3, 1805.

An Act to establish the districts of Genesee, of Buffalo Creek, and of Miami, and to alter the port of entry of the district of Erie.

Be it enacted, &c., That from and after the thirty-first day of March next, all the shores and waters of the Lake Ontario, and the rivers and waters connected therewith, lying within the jurisdiction of the United States, and within the State of New York, to the westward of the western extremity of Sodus bay, but excluding all the rivers and waters emptying into the said bay, and to the eastward of the eastern extremity of a certain creek or bay, lying between Niagara and the Genesee river, and known by the name of Oak Orchard creek, shall be a district, to be called the district of Genesee, of which the river Genesee shall be the sole port of entry; and a collector for said district shall be appointed, to reside on the river Genesee.

Sec. 2. *And be it further enacted*, That all the shores, rivers, and waters heretofore belonging to the district of Niagara, which empty into Lake Erie, or into the river Niagara, above the Falls of Niagara, shall, from and after the thirty-first day of March next, be a district; to be called the district of Buffalo creek, of which Buffalo creek shall be the sole port of entry; and a collector for the said district shall be appointed to reside on Buffalo creek.

Sec. 3. *And be it further enacted*, That, from and after the thirty-first day of March next, all the shores, rivers, and waters of Lake Erie, within the jurisdiction of the United States, which lie between the west bank of Vermillion river, and the north cape, or extremity, of Miami bay, into which the river Miami of Lake Erie empties itself, and including all the waters of the said river Miami, shall be a district, to be called the district of Miami; and the President of the United States is authorized to establish such place at or near Sandusky, or on the said river Miami, to be the port of entry, as he shall judge expedient, and also to establish not exceeding two other places, to be ports of delivery only; and a collector for the said district shall be appointed, to reside at the port of entry, and surveyors to reside at such ports of delivery as may be established, as aforesaid.

Sec. 4. *And be it further enacted*, That the President be, and he is hereby, authorized to designate such place, in the district of Erie, as he shall judge expedient, to be the port of entry of the said district.

Sec. 5. *And be it further enacted*, That the several collectors and surveyors who may be appointed by virtue of this act, or by virtue of the third section of an act passed the third of March, one thousand eight hundred and three, which authorizes the establishment of a new collection district on Lake Ontario, in addition to the fees and commissions allowed by law, respectively, receive the same annual salary, which, by law, is allowed to the collectors and surveyors of the several districts comprising the northern and western boundaries of the United States.

Approved, March 3, 1805.

An Act further to alter and establish certain post roads; and for other purposes.

Be it enacted, &c., That the following post roads be discontinued, namely:

In North Carolina—From Williesville, by Waldon's store, Speed's and Wilson's, Sterling Yancey's and Norman's store to Person Court-house; and from Wilkes to Ash Court-house.

In Virginia—From New Dublin, by Tazewell, Russell, and Lee Court-house, to Cumberland Gap.

In Maryland—From Georgetown, by Concord and Laurel to Salisbury; from Annapolis, by Kent Island and Queenstown, to Centreville.

In New Jersey—From Ringo's tavern to Flemington.

In Massachusetts—From Worcester to Lancaster; from Springfield to Northampton; and from Boston to Bridgewater.

In the Northwestern Territory—From Vincennes to Kaskaskia.

Sec. 2. *And be it further enacted*, That the following post roads be established:

In Massachusetts—From Worcester, by Holden, Rutland, Hubbardstown, Templeton, Winchendon, and Fitzwilliam, to Keene in New Hampshire; from Weymouth Landing, by Abington, East Bridgewater, and West Bridgewater to Taunton.

In New Jersey—From Cooper's Ferry, by Haddinfield, Longacoming, Blue Anchor, Great Egg Harbor, River Bridge, and Somer's Point, to Absecome in Galloway township.

In Pennsylvania—From Alexandria, by Centre Furnace and Bellefont, to Williamsport; from Bristol, by Attleboro, Newtown, and Doylestown, to Quakertown; from New Hope, thro' Doylestown and Montgomery's Square, to Norristown; from Norristown, by Pawlingsford, Pughtown, Morgantown, Churchtown, and New Holland, to Lancaster; from Philadelphia, through Germantown, White Marsh, Montgomery Square, and Quakertown, to Bethlehem; from Bethlehem, by Lausanne, to Berwick; from Presqu'isle to Buffalo Creek.

In Maryland—From Annapolis, by Rock Hall, to Chestertown.

In Virginia—From Randolph Court-house to Frankfort; from Genito, by Carsell's store, to Amelia Court-house, and from thence to Perkinsonville; from Prince Edward Court-house, by Hunter's tavern, to Lynchburg; by Campbell and Pittsylvania Courthouse, to Danville; from Smithfield, by Sleepy Hole Ferry to Portsmouth; from Sleepy Hole to Suffolk.

In North Carolina—From Williamsborough, by Bullock's and Brown's stores, Sterlingville, and the Red House in Caswell county, to Caswell Court-house; from Richland, by Onslow Court-house, to Swanborough: from Raleigh, by Paul's Ferry, on Neuse, Cross-roads at Watson's, Little River, at Richardson's, Contentney, at Woodward's, Tossnot, at Dew's, to Tarborough; from Greenville Court-house, in the State of South Carolina, to Ashville in the State of North Carolina.

In Georgia—From Darien, by Tatnall and Montgomery Court-house, to Fort Wilkinson.

From Washington in Kentucky, to Cincinnati in Ohio.

In Indiana—From Vincennes to Cahokia.

In Upper Louisiana—From St. Louis to St. Charles.

In Orleans Territory—From Natchez, in the Mississippi Territory, by Caddy's Ferry, Cahola, and Rapid settlements, to Natchitoches; from Washington city, by Athens in Georgia, to New Orleans; and from Knoxville in Tennessee to the Tombigbee settlements in the Mississippi Territory, so as to intersect the post road from Athens in Georgia to New Orleans, at the most convenient point between Athens and the said settlements.

Approved, March 3, 1805.

An Act making appropriations for carrying into effect certain Indian treaties, and for other purposes of Indian trade and intercourse.

Be it enacted, &c., That, for the purpose of defraying the expenses that may arise in carrying into effect the treaties lately made between the United States and the tribes of Indians called the Delawares, Piankeshaws, Sacs, and Foxes, the following sums, to be paid out of any moneys in the Treasury, not otherwise appropriated, be, and the same are hereby, appropriated, for the payment of the annuities stipulated in the said treaties to be paid to the said Indians, that is to say: to the Delawares, three hundred dollars, annually, for five years, and the further sum of three hundred dollars annually for ten years; to the Piankeshaws, annually, for ten years, the sum of two hundred dollars; and to the Sacs and Foxes, one thousand dollars annually, so long as the treaty with them shall continue in force.

Sec. 2. *And be it further enacted*, That, for the purpose of exploring the Indian country, and of ascertaining proper and convenient places for establishing trading-houses with the different Indian tribes within the territory of the United States, a sum of five thousand dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated.

Sec. 3. *And be it further enacted*, That, for the purpose of establishing additional trading-houses with the Indian tribes, a sum not exceeding one hundred thousand dollars be, and the same is hereby, appropriated, (the balance of a former appropriation being carried to the credit of the surplus fund,) to be paid out of any moneys in the Treasury not otherwise appropriated.

Approved, March 3, 1805.

An Act to extend jurisdiction, in certain cases, to the Territorial Courts.

Be it enacted, &c., That the superior courts of the several Territories of the United States, in which a district court has not been established by law, shall, in all cases in which the United States are concerned, have and exercise within their respective Territories the same jurisdiction and powers which are by law given to, or may be exercised by, the district court of Kentucky district; and writs of error and appeals shall lie, from decisions thereon, to the supreme court, for the same causes and under the same regulations as from the said district court of Kentucky district.

Approved, March 3, 1805.

An Act to amend an act, entitled "An act for imposing more specific duties on the importation of certain articles, and also for levying and collecting light-money on foreign ships or vessels, and for other purposes."

Be it enacted, &c., That the sixth section of the act, entitled "An act for imposing more specific duties on the importation of certain articles; and also for levying and collecting light-money on foreign ships or vessels, and for other purposes," shall not be deemed to operate upon unregistered ships or vessels, owned by citizens of the United States, in those cases where such ship or vessel is in possession of a sea-letter, or other regular document issued from the custom-house of the United States, proving such ship or vessel to be American property: *Provided, however*, That upon the entry of every such ship or vessel from any foreign port or place, if the same shall be at the port or place at which the owner or any of the part owners reside, such owner or part owners shall make oath or affirmation that the sea-letter, or other regular document possessed by such ship or vessel, contains the name or names of all the persons who are then owners of the said ship or vessel; or if any part of such ship or vessel has been sold or transferred since the date of such sea-letter or document, that such is the case, and that no foreign subject or citizen hath, to the best of his knowledge and belief, any share, by way of trust, confidence, or otherwise, in such ship or vessel. And if the owner or any part owner shall not reside at the port or place at which such ship or vessel shall enter, then the master or commander shall make oath or affirmation to the like effect. And if the owner or part owner, where there is one, or the master or commander, where there is no owner, shall refuse to swear or affirm as aforesaid, such ship or vessel shall not be entitled to the privileges granted by this act.

Approved, March 3, 1805.

An Act for the more effectual preservation of peace in the ports and harbors of the United States, and in the waters under their jurisdiction.

Be it enacted, &c., That, whensoever any treason, felony, misdemeanor, breach of the peace, or of the revenue laws of the United States, shall hereafter be committed within the jurisdiction of the United States, and the case shall be cognizable by or under their authority, if the person committing the same shall be on board of any foreign armed vessel, in any port or harbor in the United States, or in the waters within their jurisdiction, it shall be the duty of any judge or justice of any court of the United States, upon satisfactory proof thereof to him made, to issue his warrant, specifying the nature of the offence, and directed to a

marshal, commanding him to take the body of the offender, and bring him before the said judge or justice, to be dealt with according to law. And if the said marshal shall deem the ordinary *posse comitatus* insufficient to insure the execution of the said warrant, he shall apply to the said judge or justice, who shall immediately issue his order, directed to any officer having command of militia, or any officer having command of regular troops, or of armed vessels of the United States, in the vicinity, requiring him to aid the said marshal with all the force under his command, or such part as may be necessary in executing the warrant aforesaid. And the said marshal, conforming in all things to the instructions which he shall receive from the President of the United States, or from any other person authorized by the President, shall first demand the surrender of the person charged with the offence; and if delivery be not made, or if the marshal be obstructed from making the demand, he shall use all the means in his power, by force and arms, to arrest the offender, and all others who are with him, giving him aid and countenance in evading the arrest, and he shall convey the said offender, and all others arrested as aforesaid, and deliver them to the civil authority, to be dealt with according to law. If death ensue to the person ordered to be arrested, or to any of those giving him aid and countenance, it shall be justified; but if to the marshal, or to any of those supporting him in the discharge of his duty, the persons engaged in resisting the civil authority shall be punished as in cases of felonious homicide.

Sec. 2. *And be it further enacted*, That whensoever, after the passage of this act, any felony, misprision of felony, misdemeanor, or breach of the peace, shall be committed within the body of a county in any one of the United States, and any process of law shall be issued under the authority of the State, for the purpose of arresting the offender, if the offender shall be on board any foreign armed vessel, in any port or harbor of the United States, and within the jurisdiction of the State in which the offence was committed, it shall be lawful for the Governor or other supreme executive officer of the State in which the said offence shall have been committed, upon due proof thereof, and upon his being satisfied that the ordinary *posse comitatus* is insufficient to insure the execution of the said process, to issue his order, directed to any officer having command of regular troops, or armed vessels of the United States in the vicinity, requiring him to aid the officer charged with the execution of the process, with all the force under his command, or such part thereof as may be necessary in arresting the offender, and all those giving aid and countenance in resisting the civil authority. And if the said offender shall flee to any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall be, and he is hereby, authorized to pursue the said offender into such place, taking with him, if necessary, the said armed force, and there arrest him in virtue of the said process. And if the said offender shall flee to, or be on board of, any foreign armed vessel, being in any place beyond the jurisdiction of the State, and within the exclusive jurisdiction of the United States, the officer charged with the execution of the said process shall first demand the delivery of the said offender of and from the person or persons having charge and command of the said foreign armed vessel, declaring the authority and cause for which the demand was made; and if the said offender be not delivered according to the said demand, or if the officer charged with the execution of the process be obstructed in attempting to make the demand, then he shall use all the means in his power, by force and arms, to enter on board the said foreign armed vessel, there to search for and arrest the said offender, and all those who are with him giving him aid and countenance, in preventing and resisting the execution of the said process; and the officer charged with the execution of the said process shall convey the said offender and deliver him over to the civil authority of the State, to be dealt with according to law; and all those arrested for being concerned in resisting the execution of the process, shall be delivered over to the civil authority of the United States, and shall be punished in the same manner as if they had been concerned in knowingly and wilfully obstructing, resisting, or opposing any officer of the United States, in serving or attempting to serve any warrant or other legal or judicial writ issued under the authority of the United States. But if any of those concerned in making the arrest be killed in a place within the exclusive jurisdiction of the United States, those engaged in resisting the civil authority shall be punished as in cases of felonious homicide; and if the person charged with the offence, or any of those concerned with him in resisting, be killed in a place under the exclusive jurisdiction of the United States, it shall be justified.

Sec. 3. *And be it further enacted*, That if any commanding officer of militia, of regular troops, or armed vessels of the United States, shall refuse to obey the requisition authorized by this act, he shall forfeit a sum not exceeding five thousand dollars.

Sec. 4. And in order to prevent insults to the authority of the laws, whereby the peace of the United States with foreign nations may be endangered, *Be it further enacted*. That it shall be lawful for the President of the United States, either to permit or interdict, at pleasure, the entrance of the harbors and waters under the jurisdiction of the United States, to all armed vessels belonging to any foreign nation, and by force to repel and move them from the same, except when they shall be forced in by distress, by the dangers of the sea, by being pursued by an enemy, or when charged with despatches or business from the Government to which they belong; in which cases, as well as in all others when they shall be permitted to enter, the commanding officer shall immediately report his vessel to the collector of the district, stating the object or causes of his

entering the harbor or waters, shall take such position therein, as shall be assigned him by such collector, and shall conform himself, his vessel, and crew, to such regulations respecting health, repairs, supplies, stay, intercourse, and departure, as shall be signified to him by the said collector, under the authority and directions of the President of the United States, and not conforming thereto, shall be required to depart from the United States.

Sec. 5. *And be it further enacted*, That whensoever any armed vessel of a foreign nation entering the harbors or waters within the jurisdiction of the United States, and required to depart therefrom, shall fail so to do, it shall be lawful for the President of the United States, or such other person as he shall have empowered for that purpose, to employ such part of the land and naval forces of the United States, or the militia thereof, as he shall deem necessary to compel the said armed vessel to depart; or if he shall think it proper, it shall be lawful for him to forbid, by proclamation, all intercourse with such vessel, and with every armed vessel of the same nation, and the officers and crew thereof; to prohibit all supplies and aid from being furnished them, and also to instruct the collector of the district, where such armed vessel shall be, and of any and of every other district of the United States, to refuse permission to any vessel belonging to the same nation, or to its citizens or subjects, to make entry or unlade, so long as the said armed vessel shall remain in the harbors or waters of the United States, in defiance of the public authority. And if, after the publication of said proclamation, and due notice thereof, any person shall afford any aid to such armed vessel, or to any other, contrary to the prohibition contained in the said proclamation, either in repairing the said vessel, or in furnishing her, her officers or crew, with supplies of any kind, or in any manner whatsoever; or if any pilot shall assist in navigating the said armed vessel, or any other, contrary to the prohibition contained in the said proclamation, unless it be for the purpose of carrying the armed vessel required to depart, as aforesaid, beyond the limits and jurisdiction of the United States, the person or persons so offending shall forfeit and pay a sum not exceeding one thousand dollars, and shall also be liable to be bound to their good behaviour.

Sec. 6. *And be it further enacted*, That whensoever any officer of an armed vessel commissioned by any foreign Power, shall, on the high seas, commit any trespass or tort, or any spoliation, on board any vessel of the United States, or any unlawful interruption or vexation of trading vessels actually coming to or going from the United States, it shall be lawful for the President of the United States, on satisfactory proof of the facts, by proclamation to interdict the entrance of the said officer, and of any armed vessel by him commanded, within the limits of the United States; and if, at any time after such proclamation made, he shall be found within the limits of the United States, he shall be liable therefor to be arrested, indicted, and punished, by fine and imprisonment, in any court in the United States having competent jurisdiction; and it shall be a part of the sentence that he shall, within such time after the payment of his fine and the expiration of his term of imprisonment, as the court shall direct, leave the United States, never to return. And if he shall return within the limits of the United States, after the passing of such sentence, or be found therein after the period limited by the court as aforesaid, he shall again be liable to be indicted, fined, and imprisoned, at the discretion of the court: *Provided always*, That, if the said officer shall also have committed any other offence made punishable by this act, he shall be liable to prosecution and punishment; the provisions of this section to the contrary notwithstanding.

Sec. 7. *And be it further enacted*, That the President of the United States shall be, and he is hereby, authorized and required to give, as soon as may be, after the passage of this act, to the collectors of the respective districts, and to such other persons as he may think proper, the necessary instructions for carrying this act into effect, particularly marking out the line of conduct to be observed by the marshal, and the several collectors, in performing the duties enjoined by this act.

Sec. 8. *And be it further enacted*, That if any person shall be sued for anything done in pursuance of, or in obedience to this, act, he may plead the general issue and give this act in evidence, any law, custom, or usage, to the contrary notwithstanding.

Sec. 9. *And be it further enacted*, That this act shall continue in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act to regulate the clearance of armed merchant vessels.

Be it enacted, &c., That, after due notice of this act at the several custom houses, no vessel owned in whole, or in part, by any citizen or citizens of the United States, or by any person or persons residing within the same, or the territories thereof, and armed, or provided with the means of being armed at sea, shall receive a clearance or be permitted to leave the port where she may be so armed, or provided, for any island in the West Indies, or for any port or place situated on the continent of America, between Cayenne and the southern boundary of Louisiana, without bond with two sufficient sureties being given by the owner or owners, agent or agents, together with the master or commander, to the United States, in a sum equal to double the value of said vessel, her arms, ammunition, tackle, apparel, and furniture, conditioned that such arms and ammunition shall not be used for any unlawful purposes, but merely for resistance and defence, in case of involuntary hostility; and that the guns, arms, and ammunition of such vessel shall be returned within the United States, or otherwise accounted for, and shall not be sold or

disposed of in any port or place in the West Indies; which bond may be sued for and recovered with costs of suit, in the name, and for the use, of the United States, in any court of competent to try the same.

Sec. 2. *And be it further enacted*, That no armed merchant vessel, or vessel prepared for armament, owned as aforesaid, shall receive a clearance, or be permitted to depart from any port in the United States, for any port or place other than those described in the first section of this act, unless the owner or owners, agent or agents, and the commander of such vessel, shall make oath that such vessel is not bound or intended to proceed to any island in the West Indies, or any port or place on the continent between Cayenne and the southern boundary of Louisiana, nor on the continent of America between Cayenne and the southern boundary of Louisiana, and also unless a bond be given by the owner or owners, agent or agents, and commander, in a sum equal to double the value of such vessel, her arms, tackle, apparel, and furniture, to the use of the United States, conditioned that such vessel shall not proceed to any island in the West Indies, or port on the continent, as aforesaid, unless compelled thereto by unavoidable accident; and if so compelled, that no part of the cargo of such vessel shall be sold, except so much thereof as may be absolutely necessary to defray the expenses necessary to enable such vessel to proceed on her intended voyage.

Sec. 3. *And be it further enacted*, That if any armed vessel, as aforesaid, shall proceed to sea without a clearance, contrary to the provision of this act, such vessel, with her arms, ammunition, tackle, apparel, and furniture, shall be forfeited to the use of the United States, and be liable to be seized, prosecuted, and condemned; or the value thereof may be sued for, and recovered with costs of suit, of the owner or owners of such vessel, in any court of competent jurisdiction; and the collector within whose district such forfeiture shall accrue, is hereby enjoined to cause prosecutions for the same to be commenced without delay, and prosecuted to effect.

Sec. 4. *And be it further enacted*, That this act shall be in force until the end of the next session of Congress, and no longer.

Approved, March 3, 1805.

An Act supplementary to the act entitled "An act making provision for the disposal of the public lands in the Indiana Territory; and for other purposes."

Be it enacted, &c., That the lands lately purchased from the Indian tribes of the Wabash, and lying between the rivers Wabash and Ohio, and the road leading from the falls of the river Ohio to Vincennes, shall be attached to, and made a part of the district of Vincennes, and be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

Sec. 2. *And be it further enacted*, That such and so many of the tracts of land lying north and west of the Indian boundary established by the Treaty of Grenville, which were ceded by that treaty to the United States, as the President of the United States shall direct, shall be surveyed and subdivided in the same manner as the other public lands of the United States, and shall be offered for sale at Detroit, or at such of the other land offices established by law in the State of Ohio, or in the Indiana Territory, as the President of the United States shall judge most expedient, under the same regulations, at the same price, and on the same terms, as other lands lying within the same district.

Sec. 3. *And be it further enacted*, That so much of the tract of land lately purchased from the Indian tribes known by the name of Sacs and Foxes as the President of the United States shall think expedient and shall direct, shall be attached to and made a part of the district of Kaskaskias, and shall be offered for sale at that place, under the same regulations, at the same price, and on the same terms, as other lands lying within the said district.

Sec. 4. *And be it further enacted*, That the lands lying within the districts of Vincennes, Kaskaskias, and Detroit, which are claimed by virtue of French or British grants, legally and fully executed, or by virtue of grants issued under the authority of any former act of Congress, by either of the Governors of the Northwest or Indiana Territories, and which had already been surveyed by a person authorized to execute such surveys, shall, whenever it shall be found necessary to resurvey the same for the purpose of ascertaining the adjacent vacant lands, be surveyed at the expense of the United States, any act to the contrary notwithstanding.

Sec. 5. *And be it further enacted*, That persons claiming lands in either of the said three districts, either under legal grants derived from the French or British Governments, or by virtue of actual possession and improvement, or for any other account whatever, may, until the first day of November next, give notice, in writing, to the register of the land office of their claims, and have the evidence of the same recorded, in the manner and on payment of the fees provided by the act to which this act is a supplement; and the right of any person neglecting to give in writing notice of his claim, and to have the evidence of the same recorded, shall become void and forever be barred.

The commissioners appointed for the purpose of examining the claims of persons claiming lands in the said three districts, shall, in their respective districts, have the same powers, and perform the same duties in relation to the claims thus filed, as if notice of the same had been given before the first day of January last; and as was provided by the act to which this act is a supplement, in relation to the claims therein described. It shall be the duty likewise of the clerk of each board to prepare two transcripts of all the decisions made by the said commissioners in favor of the claimants, and to transmit one to the surveyor general and one to the Secretary of the Treasury. It shall also be the duty of the said commissioners, respectively, to make to the Secretary of the Treasury a report of all the claims filed with the register of the land

office, which they may have rejected, together with the substance of the evidence adduced in support thereof, and such remarks thereon as they may think proper; and they shall in relation to any such rejected claims, which were founded on possession and actual settlement and improvement, particularly state the date of the improvement, and the quantity, situation and boundaries of the land claimed. Those reports, together with the transcripts of the decisions of the commissioners, in favor of claimants, shall be laid by the Secretary of the Treasury before Congress at their next session: and the lands, the claims to which shall have been affirmed by the commissioners, as well as those, the claims to which, though rejected by the commissioners, were derived from actual possession, improvement, and settlement, shall not be otherwise disposed of until the decision of Congress thereupon shall have been made. Each of the said commissioners, and each of the clerks of the respective boards, shall be allowed an additional compensation of five hundred dollars, in full for his services as such in relation to such claims; and each of the registers of the land offices, for the said three districts, shall be allowed a further sum of five hundred dollars, as a compensation in full for translating and recording, or causing to be translated and recorded, grants, deeds, or other evidences of claims in the French language.

Sec. 6. *And be it further enacted*, That the Governor of the Michigan Territory shall act as one of the superintendents of the sales of public lands at Detroit, in lieu of the Governor of the Indiana Territory.

Sec. 7. *And be it further enacted*, That all the sections heretofore reserved for the future disposition of Congress, and lying within either of the districts established for the disposal of public lands in the State of Ohio, with the exception of the section No. 16, of the salt springs, and lands reserved for the use of the same, and of the other sections or tracts of land, otherwise heretofore specially appropriated, shall be offered for sale in that district within which such reserved sections may lie, on the same terms, and on the same regulations, as other lands in the same district; *Provided*, That such sections shall previously be offered to the highest bidder at public sales, to be held under the superintendence of the register and receiver of the land offices, respectively, to which they are attached, on the same terms as have been provided for the public sales of the other lands of the United States, and on such day or days as shall, by a public proclamation of the President of the United States, be designated for that purpose: *And provided, also*, That no such heretofore reserved section shall be sold, at either public or private sale, for less than eight dollars per acre.

Sec. 8. *And be it further enacted*, That the expenses which may be incurred by virtue of this act, shall be defrayed out of the sums which have been, or may hereafter be appropriated for defraying the expenses incident to the surveying and disposal of the public lands of the United States in the Mississippi and Indiana Territories.

Approved, March 3, 1805.

An Act in addition to "An act to make provision for persons that have been disabled by known wounds received in the actual service of the United States, during the Revolutionary War."

Be it enacted, &c., That the provisions contained in the first section of "An act to make provision for persons that have been disabled by known wounds, received in the actual service of the United States, during the Revolutionary war," passed the third day of March, one thousand eight hundred and three, are hereby extended to all those persons in the service of the United States, who, in consequence of their disability by known wounds, received in actual service, during the Revolutionary war, resigned their commissions, or took discharges; or who, after incurring their disability, were taken captive by the enemy, and remained, either in captivity, or on parole, until the close of the war; or who, in consequence of known wounds received in the actual service of the United States, have, at any period since, become, and continued disabled in such manner as to render them unable to procure a subsistence by manual labor; *Provided*, That every person of the several descriptions herein mentioned, applying for a pension, shall, in all other respects, conform to the requirements of the act to which this is an addition.

Approved, March 3, 1805.

An Act to provide for the accommodation of the President of the United States.

Be it enacted, &c., That the President of the United States be, and he is hereby, authorized to cause to be sold such part of the furniture and equipage belonging to his household as may be decayed and out of repair; and that the sum of fourteen thousand dollars, together with the proceeds of such sales, be appropriated for the accommodation of the household of the President of the United States, to be laid out at his discretion, and under his direction.

Approved, March 3, 1805.

RESOLUTIONS.

Resolution expressive of the sense of Congress of the gallant conduct of Captain Stephen Decatur, the officers and crew of the United States ketch Intrepid, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

1. *Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be requested to present, in the name of Congress, to Captain Stephen Decatur, a sword, and to each of the officers and crew of the United States ketch Intrepid, two months' pay, as a testimony of the high sense entertained by Congress of the gallantry, good conduct, and services of Captain Decatur, the officers and crew of the said ketch, in attacking, in the harbor of Tripoli, and destroying a Tripolitan frigate of forty-four guns.

Approved, November 27, 1804.

Resolutions expressive of the sense of Congress of the gallant conduct of Commodore Edward Preble, the officers, seamen, and marines of his squadron.

Resolved, by the Senate and House of Representatives of the United States of America in Congress assembled, That the thanks of Congress be, and the same are hereby, presented to Commodore Edward Preble, and through him to the officers, petty officers, seamen, and marines attached to the squadron under his command, for their gallantry and good conduct, displayed in the several attacks on the town, batteries, and naval force of Tripoli, in the year one thousand eight hundred and four.

Resolved, That the President of the United States be requested to cause a gold medal to be struck, emblematical of the attacks on the town, batteries, and naval force of Tripoli, by the squadron under Commodore Preble's command, and to present it to Commodore Preble, in such manner as in his opinion will be most honorable to him: and that the President be further requested to cause a sword to be presented to each of the commissioned officers and midshipmen who have distinguished themselves in the several attacks.

Resolved, That one month's pay be allowed, exclusively of the common allowance, to all the petty officers, seamen, and marines of the squadron, who so gloriously supported the honor of the American flag, under the orders of their gallant commander, in the several attacks.

Resolved, That the President of the United States be also requested to communicate to the parents, or other near relatives, of Captain Richard Somers, Lieutenants Henry Wadsworth, James Decatur, James R. Caldwell, and Midshipman John Sword Dorsey, the deep regret which Congress feels for the loss of those gallant men, whose names ought to live in the recollection and affection of a grateful country, and whose conduct ought to be regarded as an example to future generations.

Approved, March 3, 1805.

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